

IN THE MATTER OF
CONSOLIDATED GAS ELECTRIC LIGHT
AND POWER COMPANY OF BALTIMORE
and
SUSQUEHANNA TRANSMISSION
COMPANY OF MARYLAND
BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

ORDER

Upon hearing on Petition for Hearing to Determine the Existence of a Non-Conforming Use and the Petitioners' Rights to Extend Such Non-Conforming Use and for Special Permits, after the required advertisement and posting of property, and without prejudice and determination of the existence of a non-conforming use under the Zoning Regulations and Restrictions of Baltimore County, and it appearing by reason of the location of the proposed electric transmission tower lines described in the Petition that Special Permits should be granted to the Petitioners, Consolidated Gas Electric Light and Power Company of Baltimore and Susquehanna Transmission Company of Maryland, therefore:

It is this 23rd day of June, 1949, ORDERED by the Zoning Commissioner of Baltimore County that a Special Permit is hereby granted Consolidated Gas Electric Light and Power Company of Baltimore for an additional electric transmission tower line, the location of which is to be as described in Paragraph 1 of said Petition.

AND IT IS FURTHER ORDERED that a Special Permit is hereby granted to Consolidated Gas Electric Light and Power Company of Baltimore for two electric transmission tower lines, the location of said lines is to be as described in Paragraph 2 of said Petition.

AND IT IS FURTHER ORDERED that a Special Permit is hereby granted Susquehanna Transmission Company of Maryland for an electric transmission

tower line, the location of which is to be as described in Paragraph 3 of said Petition.

Charles H. Deising
Zoning Commissioner of Baltimore County

PETITION FOR HEARING TO DETERMINE THE EXISTENCE OF A NON-CONFORMING USE AND THE PETITIONERS' RIGHTS TO EXTEND SUCH NON-CONFORMING USE AND FOR SPECIAL PERMITS

IN THE MATTER OF
CONSOLIDATED GAS ELECTRIC LIGHT
AND POWER COMPANY OF BALTIMORE
and
SUSQUEHANNA TRANSMISSION
COMPANY OF MARYLAND
BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

For a Hearing to Determine the Existence of a Non-Conforming Use and the Petitioners' Rights to Extend Such Use and for Special Permits

To the Zoning Commissioner of Baltimore County:

Consolidated Gas Electric Light and Power Company of Baltimore and Susquehanna Transmission Company of Maryland, both being corporations, hereby petition the Zoning Commissioner of Baltimore County for a hearing to determine the existence of a "non-conforming use" and the Petitioners' rights to extend such use and for Special Permits 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, as amended November 15, 1946, for a certain use and permit, as provided under said Regulations as follows:

1. Consolidated Gas Electric Light and Power Company of Baltimore has for many years prior to the effective date of the Zoning Regulations and Restrictions of Baltimore County owned, operated, and maintained in the 13th Election District of Baltimore County an electric tower transmission line running from a point on the Baltimore City - Baltimore County boundary line east of the Baltimore and Annapolis Railroad Company right of way southerly east of the Baltimore and Annapolis Railroad Company right of way southerly to its Pumphrey Switching Station located north of the Patapsco River and east of the Baltimore and Annapolis Railroad Company right of way and thence westerly and generally parallel to the north bank of the Patapsco River to a point approximately 460 feet west of the Pennsylvania Railroad right of way.

sloner of Baltimore County under date of November 9, 1948. The area of said switching station is shown in yellow on Petitioners' Exhibit "A".

CONSOLIDATED GAS ELECTRIC LIGHT
AND POWER COMPANY OF BALTIMORE

By *Charles H. Deising*
Lexington Bldg., Baltimore - 1, Md.

SUSQUEHANNA TRANSMISSION
COMPANY OF MARYLAND

By *H. A. Vancill*
Lexington Bldg., Baltimore - 1, Md.
Petitioners

of Baltimore County, from a point on the Baltimore City - Baltimore County boundary line and east of the Baltimore and Annapolis Railroad Company's right of way, thence southerly to and through the property of Consolidated Gas Electric Light and Power Company of Baltimore known as its Pumphrey Switching Station, the location of the center line of said electric tower transmission line being more particularly described as follows:

BEGINNING at a point in the Baltimore City - Baltimore County boundary line at a distance of approximately 600 feet southeasterly along said line from the center of the Baltimore and Annapolis Railroad, and thence approximately parallel to and east of the present location of the existing electric transmission tower line, the following courses and distances: S. 112° 14' W. 558.22 feet, S. 140° 02' W. 722.40 feet, S. 157° 20' W. 1075.40 feet, S. 110° 50' W. 928.20 feet intersecting the northern outline of Consolidated Gas Electric Light and Power Company's Pumphrey Switching Station property to a point within said property; thence continuing within said Pumphrey Switching Station property the following three courses and distances: S. 16° 18' E. 618.22 feet, S. 320° 00' W. 524.35 feet, S. 35° 31' 30" W. 112.40 feet to the center line of the existing electric transmission tower line at Tower No. 331, as is more particularly shown in purple on Petitioners' Exhibit "A".

The Susquehanna Transmission Company of Maryland has for many years prior to the effective date of the Zoning Regulations and Restrictions of Baltimore County owned, operated, and maintained in the 13th Election District of Baltimore County an electric transmission tower line located on a right of way 150 feet in width from a point on the Baltimore City - Baltimore County boundary line east of the Baltimore and Annapolis Railroad right of way southerly through the property which is now a part of Consolidated Gas Electric Light and Power Company of Baltimore's Pumphrey Switching Station; that it is necessary to relocate said electric transmission tower line, shown in orange on Petitioners' Exhibit "A", in order to provide space for Consolidated Gas Electric Light and Power Company of Baltimore to build the new electric transmission tower line above described and to clear the site of Pumphrey Switching Station of Consolidated Gas Electric Light and Power Company of Baltimore. A Special Permit for said switching station has heretofore been granted by the Zoning Commissioner

This electric transmission tower line was constructed prior to and placed in operation in September, 1929 and since then has been in continuous operation. The location of the center line of the said electric transmission tower line being more particularly shown in red on the plat attached hereto, marked Petitioners' Exhibit "A" and made part hereof.

Consolidated Gas Electric Light and Power Company of Baltimore requests that the Zoning Commissioner determine that the aforesaid electric transmission tower line is a lawful, non-conforming use existing on the effective date of the adoption of the Zoning Regulations and Restrictions of Baltimore County and that the Commissioner permit Consolidated Gas Electric Light and Power Company of Baltimore to extend or enlarge such lawful, non-conforming use for the construction, operation, and maintenance of an additional and similar electric transmission tower line parallel to and immediately adjacent to said original electric transmission tower line with the exception of that portion of said original electric transmission tower line described in paragraph 2 hereof, the location of the center line of said additional electric transmission tower line being more particularly described as follows:

BEGINNING for the first part thereof at a point in the Baltimore City - Baltimore County boundary line at a distance of approximately 165 feet measured southeasterly along said line from the center of the Baltimore and Annapolis Railroad, and extending thence adjacent to the east side of and approximately parallel to an existing electric transmission tower line, the following courses and distances: S. 6° 31' E. 725 feet and S. 140° 02' W. 426.75 feet to the proposed Pumphrey Switching Station.

BEGINNING for the second part thereof at a point west of Pumphrey Switching Station, and adjacent to the west side of the Baltimore and Annapolis Railroad and extending in a westerly direction adjacent to and parallel with the north side of an existing electric transmission tower line the following courses and distances: N. 37° 47' W. 514.00 feet, N. 85° 32' W. 316.00 feet crossing over Annapolis Road, N. 10° 51' W. 618.22 feet, N. 60° 49' W. 789.40 feet, N. 720° 15' W. 877.40 feet, N. 78° 39' W. 218.12 feet, crossing the proposed Baltimore-Washington Parkway, N. 6° 31' W. 763.30 feet, crossing Bessie's Ferry Road, S. 63° 26' W. 2025.55 feet, S. 37° 04' W. 721.55 feet to a point in the center line of the existing electric transmission tower line 30 feet northeast of Tower No. 330.

BEGINNING for the third part thereof at a point 1/4 mile south and 301 feet west of the center line of the existing electric transmission tower line at Tower No. 297 and thence S. 80° 01' W. 2427.17 feet to existing Tower No. 294; thence continuing

from a point approximately 40 feet north of Tower No. 294, S. 140° 30' W. 1075.40 feet, crossing over the Pennsylvania Railroad to a point 140 feet north of existing Tower No. 293.

All of which is more particularly shown in green on Petitioners' Exhibit "A".

2. Consolidated Gas Electric Light and Power Company of Baltimore requests a special permit for the construction of two electric transmission tower lines upon a right of way 114 feet wide also in said 13th Election District of Baltimore County, the location of the center line of said 114 feet right of way being more particularly described as follows:

BEGINNING at a point 30' northeast and 24' south-east from Tower No. 303, thence S. 51° 10' W. 408.20 feet to a point 30' east and 24' south of Tower No. 297, the said two electric transmission tower lines on said 114 foot right of way are more particularly shown in brown on Petitioners' Exhibit "A".

Consolidated Gas Electric Light and Power Company of Baltimore has for many years prior to the effective date of the Zoning Regulations and Restrictions of Baltimore County owned, operated, and maintained, in said 13th Election District of Baltimore County, by virtue of easement rights granted to it by the Baltimore and Ohio Railroad Company, an electric transmission tower line approximately: as shown the terms of the above description and as an integral part of the existing electric transmission tower line described in paragraph 1 hereof as shown by a dashed red line on Petitioners' Exhibit "A" which electric transmission tower line, because of the dredging and removal of gravel from the surrounding land and the resultant flooding thereof, must be relocated on the same property of said Baltimore and Ohio Railroad Company. In addition thereto a second and similar electric transmission tower line must be constructed parallel and immediately adjacent to said relocated electric transmission tower line on said property of Baltimore and Ohio Railroad Company, all as shown on said Petitioners' Exhibit "A".

3. The Susquehanna Transmission Company of Maryland requests a Special Permit for the relocation and construction of an electric transmission tower line on a right of way 150 feet in width, in the 13th Election District

CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY
OF BALTIMORE

BENJAMIN CHAMBERS
ATTORNEY

BALTIMORE - 3, MO

May
Thirtieth
1914

John Denson Turnbull, Esq.,
Damon Building,
Baltimore, Maryland.

Dear John:

I have examined the zoning law authorities on the question of "non-conforming use" and my efforts have not been too fruitful in that I have been unable to find a case with facts similar to ours under a zoning ordinance similar to the zoning regulations of Baltimore County and as I said to you the other day on the telephone the problem seems to be more of facts than of law.

The facts are briefly as follows:

The electric transmission tower line running from our Westport plant in South Baltimore easterly to our Patsburg switching station located north of the Patuxent River and east of the Baltimore and Annapolis Railroad right of way and then westerly along and generally parallel to the north bank of the Patuxent River to our Patuxent substation located west of the Pennsylvania Railroad right of way was constructed and put in actual operation in September, 1909, many years before the effective date of the zoning regulations of Baltimore County. The new line which we propose to build will be a duplicate of the original and will parallel and be immediately adjacent to the original line. The original tower line has been in continuous operation since September, 1909, except for some minor and very temporary breakdowns. Because of our interpretation of the Baltimore County Regulations the original transmission tower line is regarded as a "non-conforming use" existing on the effective date of the adoption of the regulations as will later be pointed out in this memo. An examination of the zoning map of Baltimore County discloses that that portion of the original transmission tower line running from the city line to the north bank of the Patuxent River to Patuxent Ferry Road is in a "residential zone," from Patuxent Ferry Road to the Pennsylvania Railroad right of way in a "heavy industrial zone" and from the Pennsylvania Railroad right of way westerly to our Patuxent substation it is in a "light industrial zone."

Section 11 - Non-conforming Use of the Zoning Regulations of Baltimore County provide in part as follows:

"A lawful non-conforming use existing on the effective date of the adoption of these regulations may continue, and it is hereby provided that any such lawful non-conforming use may be extended or enlarged to an extent not more than once again the area of the land."

I hope that the contents of this letter will be helpful to you and more particularly to Mr. Smith.

I sincerely believe that our Company is entitled to build this new electric transmission tower line without the necessity of securing a special zoning permit. A lot of things that have happened here held us up on this project and it is now to the point when we must go ahead with it as quickly as possible. If we could get cleared on the zoning and secure our building permit for the erection of the towers within the next few days it would be most helpful and relieve some of the strain and stress which we are at present under around here.

Yours very truly,

Benjamin Chambers

P.S. The reason for the liberal provisions in the Baltimore County's Zoning Regulations for the extension and enlargement of a non-conforming use is in all probability stems from the fact that there has never been any comprehensive zoning of the County. A very great percentage of the County is some "A" residential.

CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE

SHEET NO. 2 TO John Denson Turnbull DATE May 11, 1914

used in the original non-conforming use." (Underlining mine.)

Section XIII - Powers Relating to Special Exceptions and Special Permits. Paragraph 1 provides in part as follows:

"In any case a special permit shall be required for a public utility use or structure."

Because of this latter provision of the Regulations a utility who does not use property for utility purposes or construct a public utility structure must apply for a special permit regardless of the use classification of the zone.

Therefore, a utility use is a non-conforming use in any use zone in Baltimore County and in this respect the zoning regulations of Baltimore County are very different from the zoning ordinance of Baltimore City where we are permitted as a matter of right in certain zones and not excluded in any. It should be emphasized that we are not excluded from any zone in Baltimore County regardless of its classification. About two or three years ago we purchased a small unimproved lot of ground from the Baltimore & Washington Railroad on the Halesboro Farm Road just off of the Washington Boulevard in an Industrial Zone. Under the zoning regulations of Baltimore County we were compelled to apply for a special permit to use this property for electric substation purposes. The permit incidentally was granted and the case is in the files of the Zoning Commissioner.

The Zoning Commissioner of Baltimore County has already established precedent for the action we are requesting in this case. Since the regulations have been effective we have applied for and received permits to enlarge the following utility uses and structures on the theory that these were non-conforming uses existing on the effective date of the adoption of the regulations:

- (1) Halesboro Substation located on the south side of Halesboro Avenue between Westwood Avenue and Lombard Avenue.
- (2) Mount Washington Substation located on the west side of the Falls Road and the Northern Central Railroad right of way. Two applications.
- (3) Haresford Substation located on the north side of Haresford Road, a quarter of a mile east of York Road.

These applications for building permits are matters of record in the files of either the Zoning Commissioner or the Building Inspector.

We have also had two cases before the Zoning Commissioner of Baltimore County that show the converse of the above, that is to say, shortly after the adoption of the zoning regulations we acquired an unimproved lot of ground on the north side of Avenue Avenue west of Polle Avenue. We applied for a Special Permit to use this property as an electric transformer substation. This permit was granted by the Zoning Commissioner. Subsequently, about a

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year ago we acquired an unimproved parcel of land adjoining our Essex Substation also located on the north side of Eastern Avenue and west of Selig Avenue for the purpose of adding in addition to our Essex Substation and because of the use of the original Essex Substation had not existed at the time of the adoption of the zoning regulations. He filed a petition for a special permit to use the subsequently acquired lot for the same purposes, which permit was granted by the Zoning Commissioner.

Zoning Ordinances and Regulations generally permit the continuation of non-conforming uses and in this connection Baltimore, in his book entitled "The Law of Zoning" at page 257 has this to say:

"It is customary for zoning ordinances to provide that a then existing and used structure may continue to be employed for its then purposes, though their locations and uses may be at variance with, and not in conformity to, such respective zoning ordinance. Such exceptions are generally referred to as 'non-conforming uses.' Obviously, it would be inequitable and unnecessary destruction of building values, to even attempt to annul or prevent the use of then existing structures."

"However, it is the common rule for zoning ordinances to provide that such non-conforming uses may not be extended, except to a limited degree, and may not be rebuilt or again employed in the event of a destruction of a greater percentage of such a building."

"Some ordinances have quite detailed and specific provisions limiting the right of such non-conforming uses."

The Baltimore City Ordinance at paragraph 11 "conforming uses" says in part as follows:

"A non-conforming use is a use that now exists and that does not comply with the regulations for the use district in which it is established. . . . Nothing contained in this ordinance shall be construed to prevent the continuance of any use which now lawfully exists."

The right to make extensions or enlargements of non-conforming uses under zoning ordinances and regulations of the various jurisdictions must be determined by an interpretation of the particular ordinance or regulation. To this effect are zoning ordinances and regulations (1914) at page 251, paragraph 13, which says in part as follows:

"Under certain circumstances an extension will be allowed and under other said right will be denied. There is no hard and fast rule and whether the matter is determined by the provisions of each ordinance." (Underlining mine.)

RECD JUN 6 1914

CERTIFICATE OF PUBLICATION

TOVSON, MD. June 3, 1914

THIS IS TO CERTIFY, That the general advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on each

day of June 2, 1914, the first publication appearing on the 25th day of May 1914.

THE JEFFERSONIAN.

Cost of Advertisement \$.....

CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE

SHEET NO. 4 TO John Denson Turnbull DATE May 11, 1914

The Baltimore County Regulation previously noted sets out a very definite and generous rule for the extension of non-conforming uses, namely, that any lawful non-conforming use may be extended or enlarged to an extent not more than once again the area of land used in the original non-conforming use. The County Commissioners of Baltimore County in adopting the zoning regulations obviously endeavored to consider the equities involved as between the benefits to be derived by the County community from the zoning regulations and the injury and damage which might be done the owners of buildings or structures used for purposes that would no longer be permitted in the district where their properties were located after the establishment of the use zones. It is a question of fair balance between the needs of the owner and the benefit to the community.

These opposed principles have been fairly and equitably dealt with in the existing regulations by the County Commissioners in making the provision non-conforming use may be extended or enlarged to an extent not more than once again the area of land used in the original non-conforming use. These words of the Regulation are no plain that I submit we do not have to include in abstract rules of construction in order to demonstrate that our Company is entitled as a matter of right under these regulations to build this second transmission line. The area of land which will be devoted to this use will be less than once again the area of land devoted to the original non-conforming use.

The principles of (1) permitting the continuance of a non-conforming use, and (2) permitting its extension or enlargement are not peculiar to the Baltimore County Regulations. A great many of the zoning ordinances and regulations throughout the country contain similar provisions. As an example of this see Specter vs. Building Inspector of 1910 (Mass.) 115 Northeastern 265 in which the court held:

"There is nothing about the Zoning By-law which denies the petitioner the equal protection of the laws. The provision exempting from its prohibition of business or commercial uses existing buildings in District A and permitting additional alterations or enlargements upon cases shown, are unconstitutional. A classification of this nature does not deny the equal protection of the laws. It is based upon sound distinction. To exempt buildings already devoted to a use from a prohibition of such use of building or buildings thereafter created in a specified area is not unequal and lawful."

See also State ex rel. Habeler vs. Harrison, Louisiana, 6/11/27, 118 So. 397, in which the court held:

"It is also urged that the ordinance is unconstitutional, as being wholly discriminatory, because not only does it exempt existing buildings and the use to which they were being put at the time of the adoption of the ordinance from the prohibition thereof, but it also authorizes the granting of permits for the enlargement of such buildings. . . . Obviously, where this may be permitted without injury to the neighborhood

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

Noted on 13 Electric Transmission Line Date of Posting June 3/14

Posted by Mrs. S. S. L. Tower

Location of property south side of Baltimore City Line & the east side of Baltimore & Annapolis R.R. & north side of P.B. & N.R.R. along Transmission Line from Baltimore City Line to north side of P.B. & N.R.R. Halesboro

Noted by Harry C. Bartlett Date of return June 3/14

Zoning Commissioner

RECEIVED of the Consolidated Gas Electric Light and Power Company of Baltimore the sum of Fifty Nine (\$59.00) Dollars, being cost of petition for special permit, advertising and posting of property in the 13th District of Baltimore County.

Hearings
Friday, June 17, 1914
at 2:00 p.m.

PAID
JUN - 21 1914
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

