

INDUSTRIAL DEVELOPMENT CORP.

Petitioners

VS:

H. GUY CAMPBELL
DANIEL W. HUBERS
CARL P. VONDER
being and constituting
the BOARD OF ZONING APPEALS
FOR BALTIMORE COUNTY

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

(AT LAW)

Defendants

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE, THE JUDGE OF SAID COURT

The petition of INDUSTRIAL DEVELOPMENT CORP., petitioners, by R. Samuel Jett and Ernest G. Tribble, its attorneys, respectfully represent unto your honor:

1. That your petitioner is a corporation duly organized under the laws of the State of Maryland and property owner and tax payer of Baltimore County, Maryland.

2. That on the 7th day of June, 1951, the petitioners filed an application with the Zoning Commissioner of Baltimore County for a special permit for the storage of fuel oil in a tank on said property. Said property being more fully described in the aforesaid petition for a special permit by being known as the Stansbury Farm on Bear Creek, Baltimore County, Maryland. That subsequent to the filing of said petition and after due notices, by posting and advertising, a public hearing was held. Only one protestant appeared at this public hearing and a full discussion was had with the protestant and the Zoning Commissioner describing the location and construction of the tank, its dimensions, including its width and height above ground, and how it was to be landscaped and painted. It was fully understood by the Zoning Commissioner, and by the protestant, that said tank was to be erected above ground and was to be filled by means of all barges pumping oil into the tank through a large hose line, which moored to a pier to be erected on and extended out from said property. That following said hearing the Zoning Commissioner of Baltimore County, passed the following order:

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Baltimore County of February 21, 1952, denying the petition for a special permit.

(a) That this honorable court may direct the Zoning Commissioner of Baltimore County to grant the petition for a tank for storage of fuel oil above ground as prayed by the petitioners.

(f) That this honorable court may direct the Building Engineer of Baltimore County to issue the aforesaid permit for the erection of a pier to extend out from said property.

(g) And for such other and further relief as the nature of their case may require.

AND AS IT DUTY BOUND, etc.

INDUSTRIAL DEVELOPMENT CORP.

By R. Samuel Jett

Ernest G. Tribble
Attorneys for petitioners

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 21st day of February, 1952, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, aforesaid, personally appeared Ernest G. Tribble, on his own behalf and on behalf of all petitioners named herein, and made oath in due form of law that the matters and facts contained in the foregoing petition are true to the best of his knowledge and belief.

AS WITNESS my hand and notarial seal.

Notary Public

Upon hearing the petition for a special permit to use the property described therein for the storage of fuel oil and it appearing that reason of location, being in a light industrial area, the granting of which would not be detrimental to the health, safety and the general welfare of the community, the said special permit should be granted, therefore:

It is in this 21st day of June, 1951, ORDERED by the Zoning Commissioner of Baltimore County, that the aforesaid special permit be and the same is hereby granted.

3. That your petitioners sought the approval of the Petroleum Administration for Defense regarding the erection of said tank and pier and on July 11, 1951, the project was certified by said Agency as a Defense project providing badly needed storage of fuel oil in that area.

4. Application was sought of the National Production Authority and the project was certified on September 6, 1951, as being in the national interest and an allotment of controlled materials was provided granting a priority to the company to obtain the steel and other controlled materials required.

5. That subsequent to the passage of said order and after the time for appeal had elapsed, your petitioners applied for and were granted a permit for the erection of said tank by the Building Engineer of Baltimore County. Your petitioners were also advised that they should get a permit from the Building Engineer of Baltimore County for the erection of their pier, although they had formerly been advised that no formal application for a special permit was necessary. That, thereupon, your petitioners filed what they supposed was a routine application for the erection of said pier, but the Building Engineer has not issued said permit, but instead, has marked it "HOLD." That in addition, your petitioners applied to the Harbor Engineer of Baltimore City and the United States Army Engineer for full clearance and final permission to construct the pier involved and this approval was granted by both agencies. Bear Creek is a part of the Harbor of Baltimore City and is navigable water and has been under the control of the Harbor Engineer of Baltimore City for many years pursuant to the act of the Legislature of Maryland.

6. That your petitioners were advised that issue was to be taken with the order of the Zoning Commissioner, dated June 26, 1951, in that it did not specify that the oil was to be stored in tanks "above ground." The Commission heard the testimony of the petitioners and examined the specifications of the proposed storage tank and the plans for painting and landscaping and passed his order accordingly, with the understanding that it was for the erection of the

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ORDER

Upon the foregoing Petition, it is this 21st day of March, 1952, by the Circuit Court for Baltimore County, Ordered that a writ of Certiorari be issued to R. Guy Campbell, Daniel W. Hubers and Carl P. Vonder, constituting the Board of Zoning Appeals of Baltimore County, to review the Jurisdiction, decision and Order of the said Board of Zoning Appeals of Baltimore County dated February 21, 1952, and requiring said Board to return to this Court all papers, records and proceedings, in said matters, 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 appeal was entertained, and said Order was entered and said Board acted, to enable this Court to review said Jurisdiction, decision and Order of the said Board, and that a return to this writ be made and served upon the defendants, or their attorneys, within ten days from the date of this Order;

And it is further ordered that the said Board of Zoning Appeals of Baltimore County shall return to this Court all the original papers or certified or sworn copies thereof, and the return shall concisely set forth each other facts as may be pertinent to show the grounds for the Jurisdiction, decision and Order appealed from together with a transcript of all testimony and exhibits taken and received at the hearing before said Board;

And it is further ordered and leave is hereby granted to the petitioners, to submit such further and additional pertinent testimony as they may wish to present at the hearing on this Certiorari.

Ernest G. Tribble
Attorney

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"above ground" storage tank for which the hearing had been held. In accordance with the "Zoning Regulations," the Commissioner had inserted the words "the granting of which would not be detrimental to the health, safety and general welfare of the community." The Commissioner knew that immediately following his order, a permit would be applied for and granted to build an "above ground" storage tank, and hence, the words "above ground" were superfluous. But, the Commissioner also knew that no stenographic record was made of the proceedings before him, and only by his order could he perpetuate the fact that the testimony presented to him had satisfied him that the "public health and safety would not be adversely affected" that being the "only requirement to be met for "above ground" tanks. If the order was not for the erection of an "above ground" tank, the extra words "in regard to the public health, etc." are absolutely meaningless and unnecessary. The addition of those words means nothing but "above ground." However, since there was no reason why the words "above ground" could not be included, the Zoning Commissioner, at the petitioners' request, in order to make his order unmistakably clear, even to those about to take issue, on the 21st day of December, 1951, handed down the following amended order, which in no way changes the meaning or purpose of the original order:

ORDERED by the Zoning Commissioner of Baltimore County, this 21st day of December, 1951, that the above Order, dated June 26, 1951, is hereby amended authorizing the petitioner to store fuel oil in tanks above ground; this amendment being in accordance with the facts and representations made by the petitioner and so understood by the Zoning Commissioner at the original hearing.

7. That thereafter, certain residents and property owners, feeling aggrieved about the passage of said amended order by the Zoning Commissioner of Baltimore County, entered an appeal therefrom, and a hearing on said appeal was held on the 7th day of January, 1952, by the Board of Zoning Appeals of Baltimore County. That, after the taking of testimony and after counsel for the petitioners and for the protestants had been heard, that thereafter, on the 21st day of February, 1952, the said Board of Zoning Appeals of Baltimore County passed an order, reversing the order of the Zoning Commissioner dated December 21, 1951, and they ordered that the petition for a special permit for a fuel oil storage tank, be denied.

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OPINION OF THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY

This is an appeal from the decision of the Zoning Commissioner of Baltimore County dated December 21, 1951, granting a special permit to use the property described therein for the storage of fuel above ground.

The case came on for hearing before the Board, testimony was taken for and against said petition, and counsel for both sides heard.

The property which is the subject of this petition is a 90-acre tract of land in the 12th Election District of Baltimore County, being bounded on the north by the Baltimore & Ohio Railroad, on the south by Bull Neck Creek, and on the east by Bear Creek. North of the railroad track is Lynch Cove. This peninsula tract of land is in an area of various community beaches and playgrounds, which in certain seasons of the year are attended by large numbers of people, including those from Logan Village, Watersedge, and the Free Burner Excursion Society.

The Petitioner proposes to erect a large steel fuel oil storage tank 60 feet in diameter and 30 feet high, with an approximate capacity of one million gallons. This tank would be filled from barges which enter Bear Creek and draw up to a wharf or pier where the hose would be connected from the vessel or ship to an 8-inch pipe line erected on said wharf. The vessel or tanker has a capacity of approximately 260,000 gallons and would be pumped in a matter of a few hours through this 8-inch line into the million gallon storage tank. Deliveries would be made from the tank by fuel oil trucks. The handling of such large quantities of fuel oil makes a possibility of overflow or spillage into the waters of Bear Creek and the spreading of the same to the adjoining beaches and playground areas, resulting in the contamination and pollution of those waters.

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8. That the aforesaid decision and order of the Board of Zoning Appeals of Baltimore County on the 21st day of February, 1952, whereby your petitioners are aggrieved and injured, is void, without legal force and effect and should be reversed, set aside and annulled by this honorable court for the following reasons:

(a) That the Board of Zoning Appeals was without authority to entertain an appeal, the right of appeal having expired by approximately six months;

(b) That the said order of the Board of Zoning Appeals constitutes an arbitrary and capricious act and a gross abuse of administrative discretion;

(c) That there was no substantial evidence before the aforesaid Board of Zoning Appeals for Baltimore County in these proceedings conducted before it to justify it and support its order of January 21, 1952;

(d) That the order of the Board of Zoning Appeals constitutes an attempted unlawful and unconstitutional exercise of authority by said Board;

(e) And that it deprives your petitioner of the proper use of its property without due process of law;

(f) And for such other and further reasons as may be shown at the hearing thereof.

TO THE END, THEREFORE

(a) That a writ of certiorari be granted by this honorable court directed against said defendants, constituting the Board of Zoning Appeals of Baltimore County, to review the decision and order of said Board of February 21, 1952, in the within proceeding and prescribing therein the time within which a return thereto shall be made and served upon the attorneys for the defendants.

(b) That said Board of Zoning Appeals of Baltimore County may be required to return to this honorable court the original papers acted upon by it, or certified copies thereof, together with a copy of all records in said proceedings and a transcript of all testimony taken before said Board in connection with said proceedings, as well as a copy of the order entered by said Board and a copy of any and all rules and regulations pursuant to which said order was entered and said Board purported to act.

(c) That this honorable court may permit your petitioners to take such other and further testimony as may be necessary for the proper disposition of the matter.

(d) That this honorable court may reverse, set aside, annul and declare void and of no effect the decision and order of the Board of Zoning Appeals for

RE: PETITION FOR A SPECIAL PERMIT FOR STORAGE OF FUEL OIL - at end of Stansbury Road, 12th District - Industrial Development Co., Petitioner.

The appeal in the above entitled matter coming on for hearing on the 17th day of January, 1952, from an order of the Zoning Commissioner of Baltimore County dated December 21, 1951, granting the petition for a special permit for a fuel oil storage tank; and it appearing from the evidence and facts adduced at the appeal that the granting of this special permit would be detrimental to the health, safety, and general welfare of the community, therefore

It is this 21st day of February, 1952, Ordered by the Board of Zoning Appeals of Baltimore County that the petition be denied and that the order of the Zoning Commissioner be reversed.

H. G. Campbell
Chairman
Daniel W. Hubers
Carl P. Vonder
Board of Zoning Appeals of
Baltimore County

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There was also testimony that such a large ship as the oil tanker, as aforesaid, would in itself discharge oil and waste into these narrow confined waters of Bear and Bull Neck Creeks, which would have a tendency to pollute the waters to an even greater extent and thus deprive the adjoining property owners of the proper use of their beaches.

The Board is of the opinion that the granting of the special permit would be detrimental to the health, safety, and general welfare of the community; and further, that the applicant has failed to show a need for such special permit in this area or that the refusal to grant the same would subject it to a hardship or burden greater than that in the surrounding area or neighborhood; and, therefore, an order will be passed denying the application for a special permit for a fuel oil storage tank and reversing the action of the Zoning Commissioner of Baltimore County.

H. Campbell
Chairman
James W. Williams
Carl F. Hinton
Board of Zoning Appeals of
Baltimore County

FILED DEC 28 1951

IN THE MATTER OF THE PETITION OF
INDUSTRIAL DEVELOPMENT COMPANY FOR
A SPECIAL PERMIT FOR STORAGE OF FUEL
OIL AT END OF STANBURY ROAD, TWELFTH DISTRICT
OF BALTIMORE COUNTY

Feeling aggrieved by the decision of the Zoning Commissioner dated December 21, 1951 mandating his original order hereto and authorizing the Petitioner to store fuel oil in tank above ground, Frank L. Plet, for himself and on behalf of Watersedge Improvement Association, James E. Steele, for himself and on behalf of Watersedge Recreation Council, Daniel Boland, for himself and on behalf of Inverness Civic League, Arthur G. Pilon, for himself and on behalf of Lynch Cove Improvement Association, George H. Egbert, for himself and on behalf of Cove Road Improvement Association, and Eugene C. Hess, for himself and on behalf of Logan Village Improvement Association, hereby enter an appeal from the order of December 21, 1951 passed hereto, as aforesaid, to the Board of Zoning Appeals of Baltimore County.

George M. Berry
Attorney for Appellants

ORDERED by the Zoning Commissioner of Baltimore County this 1st day of June, 1951, 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 25th day of June, 1951, at 10:00 o'clock
A.M.

Upon hearing on petition for a Special Permit to use the property described therein for the Storage of Fuel Oil and it appearing that by reason of location, being in a light industrial zone, the granting of which would not be detrimental to the health, safety and the general welfare of the community, the said special permit should be granted, therefore:

It is this 26th day of June, 1951, ORDERED by the Zoning Commissioner of Baltimore County that the aforesaid special permit be and the same is hereby granted.

APPROVED COPY

ORDERED by the Zoning Commissioner of Baltimore County, this 27th day of December, 1951, that the above Order, dated June 26, 1951, is hereby amended authorizing the petitioner to store fuel oil in tank above ground this amendment being in accordance with the facts and representations made by the petitioner and so understood by the Zoning Commissioner at the original hearing.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

2012

Date of Posting June 15/51

District: 12
Posted for: Storage of Fuel Oil
Petitioner: Industrial Development Corp.
Location of property: Kent Road along Catapace Branch
of O & O Railroad
Location of sign: at the end of Kent Road, along Catapace Branch
of O & O Railroad and at sign at Railroad crossing
Remarks: Harry E. Garbisch
Posted by: Harry E. Garbisch

Date of return: June 15/51

December 28, 1951

\$25.00

RECEIVED of George M. Berry, Attorney, for Frank L. Plet, at \$25, the sum of Twenty Five (\$25.00) Dollars, being cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner in the matter of special permit for Storage of fuel oil, at end of Stanbury Road, 12th District of Baltimore County.

PAID
DEC 28 1951
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
G. W. McFadden

\$7.20

RECEIVED of General Automatic Products Corp. the sum of \$7.20 being cost of certified copy of petitions and other papers filed in the matter of petition for special permit for storage of fuel oil at end of Stanbury Road, 12th District, Industrial Development Corporation, petitioner.

Zoning Commissioner

PAID
APR 1 1952
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
G. W. McFadden

FILED JUN 1 1951

2012

PETITION FOR SPECIAL PERMIT

#2012

IN THE MATTER OF
Petition of
Industrial Development
Corporation
REFERS TO
ZONING COMMISSIONER
OF BALTIMORE COUNTY

For A Special Permit

To The Zoning Commissioner of Baltimore

Industrial Development Corp.
Contract
Purchase

hereto petition for a Special Permit, under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 677 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 to be erected thereon) hereinafter described for Fuel

Oil Storage
All that parcel of land in the 12th District of Baltimore, beginning at the end of Stanbury Road, (if continued) (said end being 300 ft. southerly and 1759 feet south-easterly) paralleling Catapace Branch of the B & O Railroad, thence S 15 degrees west 1200 feet, thence S 80 degrees East 425 feet to the westernmost shore line of Bear Creek, thence thence line in a northeastern direction 500 feet to the southernmost right-of-way line of B & O Railroad and thence northeasterly, thence 1020 feet to beginning.

Contract Purchase

Address

Industrial Development Corp.
Charles W. Schuch V.P.
2800 Catapace Lane
Address

April 11, 1952

June 13, 1951

\$25.00

RECEIVED of Industrial Development Corporation, the sum of Twenty Five (\$25.00) Dollars, being cost of petition for a special permit, advertising and posting of property, at end of Stanbury Road, 12th District of Baltimore County.

Zoning Commissioner

Hearings

Monday, June 25, 1951
at 10:00 a.m.

PAID
JUN 7 1951
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
G. W. McFadden

NO PLAT
IN
THIS FOLDER