

APR 9 1954

GEORGE I. HALTER and
E. B. S. HALTER, his wife,
et al
vs.
BOARD OF COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BALTIMORE COUNTY
and
BOARD OF ZONING APPEALS FOR
BALTIMORE COUNTY
ROBERT C. CHEEK

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY

THE HONORABLE, THE JUDGE OF SAID COURT:

The petition of ROBERT C. CHEEK by Z. THOMAS FARM, JR., his
Solicitor, respectfully represents unto Your Honors

FIRST: That your petitioner applied for a permit to erect a tower
to support his amateur radio antenna in approximately September 1952.

SECOND: That the Board of Zoning Appeals approved the application
by your petitioner on October 17, 1952, and even though an appeal was pending
there was no restraining order issued by this court to prevent your petitioner
from erecting the tower, but in respect to the wishes of his neighbors and
out of deference to this Court and the Board of Zoning Appeals, your petitioner
did not erect the tower.

THIRD: That this Court on March 23, 1954, approved the erection of
the tower and immediately thereafter your petitioner through counsel advised
the Board of Zoning Appeals of the decision of this Court and requested that
the permit be issued.

FOURTH: That the Board of Zoning Appeals and the Building Engineer
for Baltimore County have refused to issue said permit, and your petitioner
shows that no appeal is pending, and that he has waited since September 1952,
and due to the present weather conditions and your petitioner's work schedule
he is desirous of erecting the tower immediately and believes, and therefore
avers and alleges that he is entitled to an order from this Court directing
the Building Engineer and the Board of Zoning Appeals of this county to issue

his permit forthwith.

TO THE END, WHEREFORE:

(a) That this Court may order the Building Engineer of Baltimore
County and the Board of Zoning Appeals to issue a proper permit to Robert C.
Cheek for the erection of the tower as applied for in his application.

(b) And for such other and further relief as the nature of your
petitioner's cause may require.

AND AS IN DUTY BOUND, ETC.

Z. THOMAS FARM, JR.
Solicitor for Petitioner

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I, HENRY CANTRELL, that on this 7th day of April, 1954, before me,
the subscriber, a Notary Public of the State of Maryland, in and for Baltimore
City, aforesaid, personally appeared ROBERT C. CHEEK and made oath in due form
of law that the matters and facts set forth in the foregoing petition are
true as therein stated.

AS WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

ORDER

Upon the foregoing petition and affidavit, it is, this *9th* day
of April, 1954, by the CIRCUIT COURT FOR BALTIMORE COUNTY,

ORDERED, That the Building Engineer of this County and the Zoning
Commissioner be and they are hereby directed to forthwith issue a permit to
ROBERT C. CHEEK for the erection of the tower applied for at 234 Bridge Way,
Baltimore 24, Maryland, unless cause to the contrary be shown on or
before the 14th day of April 1954 provided a copy of this order be
served on the counsel to the Board of County Commissioners on or
before the 10th day of April, 1954.

John B. Gorton
JUDGE

True Copy Test
George I. Halter
of counsel

2374

GEORGE I. HALTER and
EVA C. HALTER, his wife, et al
vs.
BOARD OF COUNTY COMMISSIONERS OF
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BALTIMORE COUNTY
ROBERT C. CHEEK

The Court has considered the testimony in the case,
the arguments of counsel, and the opinions of the Zoning Com-
missioner and of the Board of Zoning Appeals.

The Board apparently has a sound understanding of the
guiding principles in this case. The restrictions imposed by
the zoning regulations must be strictly construed.

The Zoning regulations and restrictions of Baltimore
County contain no provision that would prevent the erection of
a structure such as contemplated by Mr. Cheek. As stated in the
opinion of the Commissioners, the tower "is definitely not an
accessory building as set forth under the definitions of Section
1, Page 3 of said regulations as codified September 1, 1948, and
is, therefore, not limited to 15 feet in height above the ground
level".

It appears to the Court that there is an effort on the
part of the protestants to read into the zoning regulations an
indefinite and variable standard of aesthetics or architectural
good taste. The zoning regulations make no provision for any
artistic or aesthetic code.

For some years we have been beset on all sides by busy
and persistent planners, whose purpose apparently is to plan for
every conceivable human activity and regiment us from the cradle

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to the grave with the resultant destruction of freedom. Nothing,
they say in effect, is to be left to individual choice or creative
little or nothing to normal growth and development. However,
as yet we have no high official arbiter or architecture or
companion of culture and it would be a tragic day for us, in my
judgment, if we ever should have one. Some planning is necessary
but the tendency today is to go to unreasonable extremes.

Both our Federal and State constitutions provide for
and guarantee to every citizen certain inalienable rights and
liberties. Under the Federal Constitution no State shall de-
prive any person of life, liberty, or property, without due
process of law. The Constitution of Maryland provides that the
General Assembly shall enact no law authorizing private property
to be taken for public use, without just compensation being first
paid or tendered to the party entitled to such compensation.

Until fairly recently property rights have been
regarded as sacred as those of liberty but in recent years a
growing number of short-sighted persons seem to hold the rights
of private property as of little importance and value. This
attitude is a threat to the fundamental principles upon which
our American system is founded and one which must be met with
firmness and vigor.

The general tendency today is to limit the use of
private property. Under the terms public health, safety and
morals, and the broad, vague and legally loose and elastic catch-
all or "general welfare" such as being attempted and such is being
done in the restriction of property rights. As public welfare
particularly means different things to different people such
uncertainty has been injected into the old understanding of the
theory of private property.

It is, of course, legal for an owner of land to set up
restrictions for a real estate development which include matters

of an architectural and aesthetic nature but to invest public
officials under a zoning ordinance with such broad powers would
reduce the ownership of land to a legal fiction.

Property owners frequently, in purchasing home sites
in restricted sections, submit themselves by private agreement
to the opinion and decisions of the owners of real estate devel-
opments as to the design and type of construction of their
dwellings and to many other restrictions, but there is nothing
in our zoning laws to justify such an assumption of authority by
the zoning officials or the courts. I know of no zoning official
or court qualified to pass upon such a controversial matter as
architectural good taste. What one generation considers an
offensive example of bad taste another may regard as a thing of
beauty.

No doubt the early windmills among the dikes and canals
of Holland were resented by worthy burghers as eyesores, but
many windmills are to be observed in the landscapes of the old
Dutch Masters who apparently considered that windmills added
charm to the lowland scenery. The same is true of the covered
bridges, red barns, and old mills and silos of America; once
scorned as examples of raw New World construction, today they are
considered quaint and furnish inspiration to many native modern
artists. Perhaps a future generation of painters will delight
in depicting the steel towers and aerials which many of us today
regard as fantastic and incongruous.

Although such violence has been done to the old con-
ception of the inalienable constitutional rights of liberty and
property, our courts have consistently ruled that zoning acts
and ordinances passed under these are valid and constitutional
only where the public health, morals, safety or welfare are con-
cerned. Judge Hammond, in *Whitfield v. Kraft*, 76 Md. 2d page 29,
referring to the case of *Charles W. Maryland Stocky CDB, 179 Md.*

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390, said:

"Restrictions can be imposed on private property
only when justified for the protection of the
public health, morals, safety or welfare. The
Court restricted the application of the rule,
saying 'we have been cited no case applying
this principle to a situation of re-zoning from
a higher to a lower class. In order to impose
restrictions some valid exercise of the police
power must be shown. But such power is re-
quired for the protection of the property re-
stricted and not to give protection to the
surrounding property. It is basic to the law
of property that a man shall be allowed the
widest use of his property consistent with the
protection of his neighbors. In order to
justify therefore a restriction of that use,
it must be shown that such restriction is in
some manner related to the police power of the
sovereign'".

The public safety, health, morals or welfare will in
no wise be affected by the erection of the tower among the trees
in Mr. Cheek's backyard. His home is still his castle within
the narrow limits set by law as approved by the courts.

The Court is of the opinion that the Board of Zoning
Appeals made no error in its ruling and its finding is affirmed.

March 23, 1954
John B. Gorton, Judge

RE: APPLICATION FOR BUILDING PERMIT FOR
ERECTOR OF TOWER - 234 Bridge Way,
1st District of Baltimore County,
Robert C. Cheek, Applicant

This is an appeal from the Order of the Zoning
Commissioner of Baltimore County dated October 17, 1952,
determining that an application for a building permit for the
erection of a 60-foot steel tower and pole in the rear of
the property 234 Bridge Way in Catonsville should be denied.
The case came on for hearing before the Board, testi-
mony was taken, and counsel heard.

The protestants urged that there was no evidence to
show that a 60-foot metal antenna tower is usually and customarily
incident to the use and occupancy of a dwelling, and that such
a tower would be unsightly and would be a source of potential
danger for the children in the community; and furthermore,
that the height thereof, being in excess of 15 feet, would be
in violation of the Zoning Regulations of Baltimore County.

It is further contended by the protestants that the
erection of such a tower is not an "accessory use" in that it
is not a use or function customarily or usually incident to a
single family dwelling as is the case of private garages,
barbecue pits, gardens, and television antennas. The Board
recognizes that some of the neighbors and surrounding property
owners may be apprehensive as to the appearance of the proposed
tower, but it is at a loss to find wherein the erection thereof
is under the jurisdiction and control as limited by the Zoning
Regulations and Restrictions of Baltimore County. The tower
is definitely not an accessory building as set forth under the
definitions of Section 1, Page 3 of said regulations as codified
September 1, 1948, and is, therefore, not limited to "15 feet
in height above the ground level."

As to whether or not a television antenna is a proper and necessary use and the proposed 60-foot steel tower is a prohibited use appears to the board to be one of a degree and not sharply enough defined by legislature to rule out this building permit as being in violation of the Zoning Laws of Baltimore County; and, therefore, the Order of the Zoning Commissioner of Baltimore County dated October 17, 1952, is hereby reversed and the application for a building permit for the erection of a steel tower and pole should be approved as to zoning.

ORDERED this 13th day of February, 1953.

H. G. Campbell
Chairman
Carl F. Hildner
Samuel W. O'Sullivan
Members of Zoning Appeals of Baltimore County

Filed 10/21/53

APPLICATION OF ROBERT C. CHEEK : BEFORE THE
FOR THE ERECTION OF TOWER : ZONING COMMISSIONER
231 BRIDGE WAY, 1st DISTRICT : OF BALTIMORE COUNTY

Please enter an Appeal to the Board of Zoning Appeals of Baltimore County from the Order dated October 17, 1952.

Thomasend Parks, Jr.
TOWNSEND PARKS, JR.
Attorney for Robert C. Cheek

LAW OFFICE
TOWNSEND PARKS, JR.
BALTIMORE, MD.

RE: APPROVAL OF APPLICATION FOR BUILDING PERMIT
FOR ERECTION OF TOWER - 231 Bridge Way, 1st Dist.
Robert C. Cheek, Applicant

The hearing on this matter was held for the purpose of determining whether or not an application for building permit for the erection of three steel towers on the property of Robert C. Cheek, 231 Bridge Way, Catonsville, should be approved as to zoning. At the hearing, Mr. Cheek orally amended his application to allow the erection of one steel tower 60 feet high and one pole. He submitted two maps, one a Pennsylvania case and another a New Jersey case, in which it was ruled that such use is allowed in a residence zone.

There was considerable testimony by the protestants that to approve this application for building permit for the erection of such a steel tower on the applicant's lot would be detrimental to the proper enjoyment of their properties for residential use and would adversely affect the value of their properties.

The Zoning Regulations and Restrictions for Baltimore County state that in an "R" Residence Zone (the zone in which the applicant's property is located) in addition to a dwelling, there may be located among other things an accessory building and uses incident thereto when located on the same lot in the rear yard include (a) Accessory Building; (b) Feeding House.

The Regulations and Restrictions defines an Accessory Building as follows:

Any Accessory Building when located not less than 60 feet from front lot line and in case of a corner lot where rear lot line abuts on side of lot adjoining on rear, no accessory building shall be less than 25 feet from the side street line except when built as a part of the main building, provided, however, that any accessory building which is erected within 60 feet of any side street line shall not be less than 10 feet from front of lot adjoining on rear, no accessory building shall be less than 15 feet from the side street line and in no case shall an Accessory Building be located within two feet of any lot line.

Building: A structure having a roof supported by columns or walls for the shelter, support, or inclosure of persons, animals, or chattels. When any portion thereof is completely separated from all other portions by a division wall from the ground up to the roof and without any door or other openings, such portion shall be deemed a separate building.

It is evident that the structure which the applicant wishes to construct in his rear yard is not a building. If it is an accessory use then the Regulations and Restrictions limit the height of such structure to 15 feet, which would preclude the erection of the tower.

The Regulations and Restrictions require for a Commercial Transmitting or Broadcasting Station that a special permit must be granted by the Zoning Commissioner. Even though this tower is to be used for private use only, many of the obnoxious characteristics which pertain to a commercial broadcasting station pertain to this.

It is one of the purposes of zoning to protect a community against uses which will be detrimental to the general welfare. It is the opinion of the Zoning Commissioner of Baltimore County that the use of this property for this purpose will be detrimental to the general welfare of the community, that the tower does not meet the requirements of the Regulations and Restrictions as to height and the application for the building permit should be denied.

It is this 17th day of October, 1952, ORDERED by the Zoning Commissioner of Baltimore County that the above application for building permit for the erection of a steel tower and pole as aforesaid, should be disapproved as to zoning upon application for same by the applicant.

Samuel W. O'Sullivan
Zoning Commissioner
of Baltimore County

Pres. J. Green, Jr., Esq.,
Equitable Building
Baltimore 2, Maryland
to
County Commissioners of
Baltimore County
Zoning Department
303 Washington Avenue,
Towson 14, Maryland

March 30, 1953

Certified copies of Order of Zoning Commissioner and other papers filed in the matter of approval of application for permit to erect one tower on property of Robert C. Cheek, 231 Bridge Way, Catonsville 15.00

Pd
4/14/53

April 15, 1953

5.00
RECEIVED of Pres. J. Green, Attorney for the protestants, the sum of Five (\$5.00) Dollars, being cost of certified copy of papers filed in the matter of application for building permit for erection of one tower on property of Robert C. Cheek, 231 Bridge Way, Catonsville.

Zoning Commissioner

PAID
APR 16 53
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

October 24, 1952

22.00
RECEIVED of E. Townsend Parks, Jr., Attorney for Robert C. Cheek, Applicant, the sum of Twenty Two (\$22.00) Dollars being cost of appeal to the Board of Zoning Appeals from the decision of the Zoning Commissioner disapproving application for building permit for erection of steel towers, 231 Bridge Way, First District.

Zoning Commissioner

PAID
OCT 24 1952
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

NO PLAT
IN
THIS FOLDER