1556

IN THE CIRCUIT COURS BOSE SEVER CHARLES H. DOING BATTENORE COINTY

The original Potition in this case was filed by Clark Certified Concrete Company, Inc. for a "Special Permit" for the operation of a sand and gravel pit, covering a tract of land located on the north side of Belair Road, as more particularly described in the said Petition filed with the Zoning Commissioner

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That thereafter, the Zoning Commission, of Baltimore County, by Order dated December 17, 1953, granted the "Special Permit" for a portion of the property involved, as described by metes and bounds in the Order of the Zoning Commissioner, and denied the "Special Permit" as to the remainder of the property.

Thereafter, on December 28, 1953, the Fetitioner, Clark Certified Concrete Commany. Inc., entered an Appeal to the Board of Zoning Appeals of Saltimore County from that portion of the Order of the Zoning Commissioner of Baltimore County which denied the Petitioner a "Special Permit" on the remainder of the tract of land for which the "Special Permit" was originally filed. The record also discloses that certain of the Protestants also appealed the Order of the Zening Commissioner of Laltimore County, in the granting of the "Special Permit" by the Zoning Commissioner for that part of the property of the Petitioner, as set forth in said Order, which Appeal was not filed until December 29, 1953. As to this Appeal by the Protestants, a Motion was filed on behalf of the Petitioner, Clark Certified Concrete Company, Inc. for dismissal of the Appeal of the Protestants from the Order of the Zoning Commissioner of December 17, 1953, in that said Appeal was not filed within ton days from the date of the Order appealed from. The expiration date for the filing of such an Appeal would normally have been December 27, 1953, but as this date fell on a Sunday, the last day for the filing of the Appeal would have been extended to December 28, 1953. The Board of Zoning Appeals by its Opinion dated April 28, 1965, dismissed the Appeal of the Protestants in that it was not filed within the time provided



It is the Cointen of the Durt that the provision allowing ten days for an around from an order of the Morant Countesioner to the Board of Zoning App als is numberory. In the case of Halland Manufacturing Company versus Thomas 136-Md Fare T. James Thomas, at employee of the Holland Manufacturing Company, while entered in the course of his amployment with that company, was caught in a ertain port of the machinery of the company and was instantly killed. His section the irrelies. filed a claim for concensation, grow the ground of ispenders, with the State "constrail Accident Commission, which, on June 14, 1918, passed an Order disallowing her claim. On July 15, 1918, thirty-one days after the Decision, the Claiment entered an Appeal from the action of the Commission. The case was tried before a Jury in the Baltimore City Court and resulted in a verdict for the Claimant. Then the Court entered a Judgment reversing the Decision of the Commission and remanded the case to the end that compensation be awarded to the Claimant. The Court of Appeals, however, at Page 78, held

"Section 36 of Article 101 of two Sode relating to the Asphala from the Decisions of two State Instartial Accident Consiston, declares Inst.' Two sees appeal shall be entertained unless sensites of the Consistent within thirty days following the resulting of the Consistent within thirty days following the positive and mandatury and two news no power to distrected it and the case resummed in order that the lower Court and disable the Asphala shall be supposed to the consistency of the

The Thomas case seems entirely controlling upon the facts in this case and the opinion of the Board of Zoning Appeals dismissing the Appeal of the Protestants from the Order of the Zoning Commissioner is affirmed.

After the filing of the Appeal by the Petitioner, Clark Certified Concret Company, Inc., from the Order of the Zoning Commissioner, and prior to its hearing before the Board of Zoning Appeals, Nottingham Farms, Inc. filed a Petition with the Board, relating that it had bought all of the assets of Clare Certified Concrete Company, Inc. and requested that Nottingham Farms, Inc. be substituted as Petitioner and Appellant in this case. The Sound of Zoning Appeals, by its Order of April 28, 1955, granted the Petition and substituted

a parcel of hand in the Eleventh District of Saltimore County on the northwest aide of Belair Road, beginning 170 feet southwest of Slater Aveme, which property has a frontage on the northwest side of Selair Road of 195 feet, a width in the rear of 240 feet and with a depth of approximately 1900 feet. This property is adjacent and immediately contiguous to an area of 33 acres to the west thereof, which 33 acres has been operated as a sand and gravel pit until approximately several years ago and has now "been graded in a perfectly smooth condition. It could be used for building purposes, Yes, I don't think there will be a better piece of property than it is today." Record, Page 22.

The topography of the land in question is such that it rises in a steep bank from the grade of Belair Road, as described by testimony in the Record at Pages 14.

- Where is the crest located? The crest is located right there . . . We have an elevation of 270 at the top of that placesu. Actually, the center is three or four feet higher. Then at the carb, we have an elevation of 23k which gives me a 36 foot climb from Selatir Smad to the crest."

The witness further testified that he would estimate it would take about two years to remove the sund and gravel from the tract of land under consideration.

- "Q Approximately how long would you estimate it would take to more the sand and gravel from this tract of land? A about two years, I say two years. This portion we are talking about would be a year. Q The lack portion will take a year and the forward portion a

The same witness referring to the topography of the tract of ground after the sand and gravel had been removed, testifled as follows: *Q When the sand and gravel has been removed from this parcel, what does your company propose to do so far as the trant is

A We would take and finish and grade the place and in the study we said of it, it would be graded towned belair Rose

Nottingnes Farms, Inc. as the Applicant and Appellant in this matter

In argument on the Appeal to this Court, Councel for the Proexcepted to the action of the Soard of Zoning Appeals in substituting Bottingham farme, Inc. as Applicant and Appellant in place of the original applicant, Clark Certified Concrete Company, Inc. No authority was cited for the con under the irounstances and facts of this case.

The Order of the Board of Zoning Appeals for Saltimore County, dated April 28, 1955 granted a "Special Permit" to Nottingham Parms, Inc., smeetiteted or in lies of Clark Certified Concrete Company, Inc. for a "controlled mations under the provisions of the Soming Regulations of Bultimore County, Sections 200.15 and 403 for all that truck of land more particularly described as

"all that percel of land in the Eleventh District of Baltis County covered by the application in this case, which was archaed from the Order of the Eoning Commissioner dated December 17, 1951."

And the Board by its said Order further provided that upon completion of the excavation, the land should be graded substantially as set forth in the plane submitted to the Board in accordance with the provisions of Section 403 of the Zoning Regulations.

The remaining and most important question before the Court is whether the Board of Zoning Appeals has acted arbitrarily, capriciously, illegally and without substantial evidence to support its findings in granting a "Special Exception" for a sand and gravel pit to be operated by the App'lcant as to the remainder of the tract of land for which the "Special Exception" was refused by the Zoning

In connection therewith, it must be kept in mind that it is not the function, duty or right of the Court to zone or rezone, or to substitute its judgment or discretion for that of the Zoning Board, but merely to pass upon whether the Zoning Board has acted arbitrarily, capriciously and illegally and without substantial evidence to support its findings in granting the special fermit. As was stated by Judge Hammond, speaking for the Court of Aspeals, in Wakefield was Krmft 96 Atl. 2d at Page 27:

and also, to the south of the property, it wouldn't have any holes, hills, banks or anything, it would be a comparatively smooth piece of property.

The Applicant also produced Fred H. Boilenberg, Surveyor and Engineer, who testified that if the forward portion of this tract, the area subject to this Appeal, were prepared for residential development, approximately twelve feet would be out from the area at Belair Road and twenty-four fact to the rearthereof, in order to properly grade it. Mr. Bollenberg further testified that the cut necessary to reclaim the send and gravel would be about twenty-three feet

Mr. Bollemberg also testified (Record - 38) that to develop this property for residential purposes would take considerably longer than one year.

From this testimony the Board of Zoning Appeals could wall believe that the excavating to reclaim the mand and gravel from the tract would be little more than the necessary excavating and grading for the building of a residential development, and that the time element consumed in the sand and gravel operation would be approximately two years and that of the residential development project considerably longer than a year. In this connection, it is contended by the Potitioner that a "Special Permit" would not be required under the law to develop this trust for residential purposes.

While the Protestants contend that the operation of the sand and gravel pit would be dangerous to children, yet it could be well considered that the operation for the grading and construction necessary for the building of a residential development could be equally dangerous and attractive to children of the

While it is true that the amount of traffic will be increased by the operation of the sand and gravel pit (it is estimated that four trucks will be used) yet the testimony of the Petitioner is that they will use the same exit to Joppa Road which was used in the operation of the send and gravel pit in the 33 acre truct hereinbefore referred to. The Petitionor has a right of way which is improved and blacktopped to the Joppa Hoad. Even though traffic should be directed to Belair Road, this is an artery well able to take care of the incressed traffic by this operation.

Before granting the "Special Pormit", the Board of Zoning Appeals necessarily

Th deciding the challengs to the action of the County Commissions functioning as a manifelph lagislature, the Court mass was riserves as all-discipline, as it must expend a country of the country of th

And in the case of Offsett versus Board of Zoning Appeals, 204 Md 551 at Page 562, the Court of Appeals stated

> who secont directors the general value that in an appeal from a desirion of a sounty beart, the Court will not embelliste time on judgment, as to the standow or soundsses of action taken by the Sourd, but will decide only whether or not seek settlem was arbitrary or discriminatory and likepi. The seek settlem arbitrary or discriminatory and likepi. The standown of the seek of the settlem of th return yor discriminatory and Lingui. It is not be function of the Core side to some or to remon, but only to decide whether the Board properly applied the applicable law to decide whether the Board properly applied the applicable law to the legislation of the Board that the independent of the Board that the properly applied to the properly applied to

And in the recent case of Emery A. Enkes etc., versus Board of Soulse Appeals at al, the Opinion in which was filed by the Court of Appeals on March 16, 1956, the Court, speaking through Judge Collins, held

Thisses it is shown that the re-moning by the loand mass arbitrary, capticines, discriminatory, or likepi, assume arbitrary, capticines, discriminatory, or likepi, assume arbitrary, capticines, discriminatory, or likepi, assume arbitrary caption for the loand state of the section caption of the section caption of the section captain the loand is sending and remains existence of the loand state of the section caption of the loand is sending and remains existence of the loand state of

And in the case of Charles Eroen et al versus Board of Zoning Appeals of Baltimore County et al, the Opinion of which was filed March 16, 1956, the Court of Appeals, speaking through Judge Delaplaine, held

When a speed from an eview of a sening beard, it is not the function or the right of the restanting court to some or reside to only to definition. The sening court to some or reside that the sening of the sening of the sening of the personal opinion of the court on society, the law is estimated that in an appeal from a decision of a possing board, the cou-cannot substitute its own judgment as to the wisdom or the soundness of the board's action.

The property described in the Petition for the "Special Permit" consists of

had to consider the asseguards set forth in the Zoning Regulations that, before any "Special Permit" is greated, it must appear that the use for which the permit is requested will not be detrimental to the safety, health, morels and general welfare of the community involved or tend to create conjection in roads, streets and alleys in the area involved.

In the case of Ourslor versus Board of Zoning Appeals, 204 Md at Page 405, which is a case involving a "Special Permit" to operate a restaurant in an "A" Residential Zone, the Court of Appeals stated:

"The function of a Zoning Sourd is to exercise the dispretion of experts, and the Court on Appeal will not disturb the Board's Inding where it has complied with the legal requirements of notice and bearing, and the record above substantial swidence to sustain the finding."

After careful consideration of the arguments of Counsel, and examination of ail exhibits and the record from the Scard of Zoning Appeals, the Court cannot say that the action of the Board in the granting of a "Special Exception" in this case was arbitrary, capricious, discriminatory or illegal.

The Decision and Order of the Board of Zoning Appeals of Baltimore County dated April 28, 1955, in this case, is, therefore, affirmed.

April 5, 1956



· Filed 1/29/04

In the matter of the Petition •
for a special permit for a send
and gravel pit by CLAR CERTIFIED •
CONCRETS COMPANI, INCOMPORATED
Patitioner •

. REPORE THE BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

MOTION TO DISMISS APPEAL OF PROTESTANTS

Now comes Clark Certified Concrete Company, Incorporated, Petition by Michael Paul Smith and W. Lee Harrison, its attorneys, and moves for dismissal of the appeal of the protestants from the order and decision of the Zoning Commissioner of Baltimore County of December 17, 1953 which granted. in part, to your Petitioner a special permit for the operation of a sand and gravel pit, and for reason therefore, says:

- 1. That the last day for filing an appeal to the aforementioned order was December 28, 1953 which was the next full buriness day immediately following Surday, December 27, 1953 which normally would have been the expiration date.
- 2. That no appeal was filed by the Protestants until Tuesday, December 29, 1953, contrary to the Zoning Regulations of Baltimore County which specifically provides that decisions of the Zoning Commissioner must be filed, in writing, within ten days of the date of any final Order.

Wherefore, your Petitioners respectfully request that the appeal of the Protestants on aimissed.

fauf Smit

I Hereby Certify that copy of the above Notion to Minning Appeal was mailed this 27th day of January, 1934 to P. Louis Role, Jr., Mag. 9105 Belair Road, Malvinore, Marchand, Attenuary for Protection

W. Lee Harrison

FILED DEC 29 1953

P. LOUIS ROHE, JR. SIGA BELAIR ROAD FULLE ON, NO.

December 28, 1953

Board of Zoning Appeals 303 Washington Ave. Towson 4, Md.

Re: Petition for a Special Perait for Sand and Gravel Pit - N. M. Side Selair Road 170 feet S. W. Slater Ave., 11th Dist., Clark Certified Concrete Co., Inc., Petitions

As attorney for the protestants in the above matter, I am herewith filing an appeal from the Order of the Zoning Countriloner granting a special permit to use a portion of the above property, Enclosed please fint your costs of this

Yours very truly,

DE. PRITITION OF CLARK CERTIFIED CONCRETE CO., INC. BEFORE THE BOARD OF ZONING APPEALS OF BALTIMOPE COUNTY

ORDER

For the reasons set forth in the foregoing Opinion, it is this latday of December, 1955, by the Board of Zoning Appeals of Baltimore County,

ORDERED that a "Special Exception" be and the same is hereby gran Nottingham Farms, Inc., substituted as the Petitioner in lieu of Clark Certified Concrete Co., Inc., by Order of this Board dated April 28, 1955, for a controlled excavation" under the provisions of the Zoning Regulations of Balti more County, Sections 200.15 and 403, for all that tract of land more particula described as follows, to wite

All tha, parcel of land in the Eleventh District of Saltimore County covered by the Application in this case, which was ex-cluded from the Order of the Zoning Commissioner dated Decem-ber 17, 1953.

AND IT IS FURTHER ORDERED that upon completion of the excavation, the land shall we graded substantially as set forth in the plans submitted to the Board of Zoning Appeals by Mottingham Farms, Inc., in accordance with the provisions of Section 403 of the Zoning Regulations.

AND IT IS FURTHER ORDERED that Nottingham Farms, Inc., be and horeby granted the right in connection with the controlled excavation authorized by this Order to bring onto the tract for the purpose of excavating the mineral deposits therefrom such machinery and equipment as may be necessary for such pur-

AND IT IS FURTHER CRDERED that the "controlled excavation" authorized by this Order shall be begun within two years either from the date of this Order or, in the event of further appeal, from the date of the final decision in thin matter.

V/Ossulans BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

This case comes before this Board on Appeals by both the Applicant and the Protestants from a decision of the Zoning Commissioner granting a Spactal Permit for a portion of the property for which a Special Permit was requested for the operation of a sand and gravel pit.

The Protestants appealed from the granting of the Special Permit for a portion of the property. The Applicant appealed from the refusal to grant a Special Permit for the entire property.

The Applicant has filed a Mobion to dississ the Appeal of the Proestants on the ground that the Protestants' Appeal was not filed within the time allowed by the Zoning Regulations.

The Order of the Zoning Commissioner granting the Special Permit for a portion of the property is dated December 17, 1953. The regulations allow an Appeal from the Zoning Commissioner within ten days, so that the time for Anneal ordinarily would have expired up December 27, 1953. This date fell on a Sunday so that the last day for the filing of an Appeal was December 28. 1953. The Protestants' Appeal was actually filed on December 29, 1953.

The Protestants in an Answer to the Motion to Dismiss Appeal atcompled to justify their delay, but it is the opinion of this Board that the provision allowing ten days for an inneal from the Zoming Commissioner is mandatory and that the Appeal filed beyond that time came too late. For this reason, the appeal of the Protestants will be dismissed and will not be considered

The matter is therefore before us on the Appeal of the Applicant from the refusal of the Zoning Commissioner to grant a Special Permit for the entire property.

The Testimony and Exhibits produced before us convince us that the Applicant ought to be granted the right to remove the valuable deposits of sand and gravel which are said to be located on this property. The operation will, by its wore nature, he a temporary one and as soon as these demosits have been removed, the property will be graded in a suitable manner in accordance with plans which have been filed with this Board.

OPINION OF THE BOARD OF ZONING AFPEALS

It is our opinion that no one should be refused the right to take valuable mineral deposits from his land except under the most extreme and unurual circumstances, which do not exist in this case.

In addition to this, the testimony showed that anyone desiring to develop the tract in question for residential use would necessarily have to grade the land because of the fact that it is situate at the Belair Road prope ty line some 10 or 12 feet above the road, and the high spots would have to be cut off and the low spots filled. In removing the mineral deposits from the land, the applicant will be doing exactly what a developer would do prior to t erection of dwellings.

For these reasons, we will sign an Order pursuant to Sections 200-1 and 103 of the Zoning Regulations adopted March 30, 1855, granting a "Special Sception" for the entire tract of land included in the original Application to the Zoning Commissioner

FILED DEC 28 19838

Charles H. Doing, Zoning Commissioner Towson 4, Maryland

Re: Petition for a Special Permit for Sand and Gravel Pit -N.W. side Bel Air Road 170 feet S.W. Slater Ave. 11th District, Clark Certified Concrete Co., Inc.,

Mr. Commissioner

Please enter an enneal to the Board of Zoning anneals of Baltimore County in behalf of Clark Certified Concrete Comment. Inc., Fetitioner, from that portion of the Order and Decision of the Zoning Commissioner of Baltimore County of December 17, 1953 which denied to your Petitioner a special permit for the operation of a sand and gravel pit, this appeal being from the Commissioner's donial of said special permit on the property referred to in said Order of December 17, 1953 as the remainder of the tract of land for which special permit was originally applied.

Dated this 28 day of December, 1953.

Petition No.2784-S

Upon hearing on the petition for a Special Fermit to use the property described therein for the operation of a Sand and Gravel Pit. and it appearing from the evidence adduced at the hearing that a special permit should be granted for the operation of a Sand and Gravel Pit on a portion of the property only and denied as to the remainder in order to protect adjoining residential property from noise, dust, hazard to children and depreciation

The portion of the said property upon which the permit is

REGINIME for the same 700 feet northwesterly from the end of the South 13 degrees East 1900 feet line as shown on the plat filled 1900 feet line as shown on the plat filled Word 1200 feet; thence 50th 150 degrees 15 minutes Word 1200 feet; thence South 15 degrees 15 minutes East 900 feet; thence southerly 150 feet to the place of beignining.

It is this 17th day of December, 1953, ORDERED by the Zoning Commissioner of Baltimore County that the aforesaid petition be and the same is hereby granted in part as above set forth provided, however, that ingress and egress to the portion of the property upon which the permit is granted be over the rightof-way owned by the applicant to the Joppa Road.

Programme and a second PETITION FOR SPECIAL PERSIT

IN THE MATTER OF CLARK CERTIFIED CONCRETE COMPANY

BEFORE THE ZONING COM ISSIGNER OF BALTI ORE COUNTY

DIAP 24+14-A Same + never 111-6/53

#2784-5

For A Special Pareit To The Zaning Commissioner of Baltimore

under said Regulations and let as follows:

	Contract Furchaser_
hereby potition for a Special Permit, under the Zoning	begulations
and Restrictions passed by the County Commissioners of	Baltimore
County, agreeable to Chepter 877 of the Acts of the Ger	eral Assen-
bly of karyland of 1943, for a cortain permit and use.	es provided

Clark Certified Concrete Company, Inc. Legal Orn.r

A Special Permit to use the land (and improvements now or be erected thereon) hereinafter described for sand and gravel pit

on the northwest side of Baltir Basis Beast beginning 130 feet southment of Slater Avenue; these southmenterly and binding out the northwest side of Baltir Basis Beast beginning 130 feet southment of Slater Avenue; these southmenterly and binding out the northwest side of Baltir Basis Side Sects them north his degrees 50 minutes west 1300 feet; themeo south his degrees 150 minutes west 1300 feet; themeo south his degrees 150 minutes ass 1300 feet to place of beginning.

Olark Certified Concrete Company, Inc by post llegelity Pres, Contract Purchaser

LAdren

And lade

Lugal Owner

OMERED by the Zoning Commissioner of Baltimore
County this 21st day of October , 1963.
tart the subject matter of this petition be advortised in
a newspayer of general circulation throughout Baltitore
County and that the property be posted, as required by the
Zoning Regulations and Act of Assembly aforesaid, and that
a public hearing thereon by had in the office of the Zoning
Co. issioner of Baltimore County, baryland, on the 18th
day of November . 198, at 3100 o'clock
P A

Zoning Counirsioner of Britimore County

December 29, 1953

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CLRTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE GOUNTY

Town argust # 2784

Diagram to Appear of Day of Prairie 11-4-53

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Printe by Litting B. Derman 1 1-5-53

November 5, 19

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Zoning Commissioner

Hearingt
Whdresdey, Nov. 18, 1953
at 3100 p. m.
Roard Room
Reckord Bldg.,

PAID

NOV 6 - 53

COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

ET

December 25, 1953

830.00

MCHIUD of P. Louiz bins, Attornay for protestants, the sea of Thirty (20,00) fellows, being cost of appeal to the loved of Eming Appeals of Entherer County from the decision of the Zoning Conststant proteins a special portion of East County Conststant proteins of the Air Post, D. to East Area, 11th Entrict, Clark Certified Omeroe Coppeny, publishers.

Zoning Constantoner



Tebruary 24. 195

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Zoning Comula stoner

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SLATER AVE N49: 45 W 1891.16 Merced 1937. 33Acres T \$ 43"E 1900: 1 NECHER AVENUE PROPERTY OF CLARK CERTIFIED CONCRETE CO. INC. LOCATED IN 114 DIST. - BALTO CO. - MO.

Note: Compiled from plats and deeds.

SCALE 1:300 APRIL 22,1952

DOLLENBERG BROTHERS

SURVEYORS & CIVIL ENGRS.

709 WASHINGTON AVE.TOWSON

MD.

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