

RE: ZONING VIOLATIONS
No. 507-ZV
Pulaski Highway & 66th St.,
Industrial Enterprises, Inc.
BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

The Industrial Enterprise, Inc., Robb Tyler, Inc., and Refuse Disposal, Inc., petitioned that the Zoning Commissioner, as provided in Section 500.7 of the Zoning Regulations, shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported non-conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these Regulations.

In addition to the petition it is necessary to decide:
1. May the Zoning Commissioner grant a definite amount of time in which to comply with his Order in the case of a violation?

The answer is he may. From the time of the first Zoning Commissioner, John J. Timanus, it has been customary to grant time to any and all violators so that they may comply with the Baltimore County Zoning Regulations.

2. May the Zoning Commissioner extend the time given on such an Order?

There is no definite regulation or ruling to guide the Zoning Commissioner but in *Wiggin vs. State* 205 Md. 431, the Court had this to say:

"In Maryland all judgments are under the control of the Court during the term in which they are entered, and during that time the Court has inherent power to strike out or modify judgments in both civil and criminal cases."

In the September term of 1960, Judge Stedman

Prescott, Associate Judge of the Maryland Court of Appeals in the case of *Scott vs. State*, 233 Md. 376, had the following to say:

"The record makes it crystal clear that the learned trial judge 'leaned over backwards' in his efforts to afford the appellant every opportunity for a full, fair and impartial trial. We think, however, that he fell into error when he stated, on December 16th, that he could not strike out his verdict. There is no doubt that he had discretionary review power over his verdict until the expiration of the term of court at which it was rendered. *Seth v. Chamberlaine*, 141 Md. 186, 194; *State v. Butler*, 72 Md. 98, 18 A. 115; *Madison v. State*, 205 Md. 425, 109 A. 2d 96. Cf. *Jones v. State*, 214 Md. 255, 135 A. 2d 252. And we think it was irregular to resume the taking of testimony as to a defendant's guilt or innocence, without striking out the verdict of 'guilty generally.' The record clearly shows (and we had recited a part of it above) that the defendant desired to reserve his right to move for a new trial before the Supreme Bench. The simple and proper procedure for the court to have pursued was to have stricken out the verdict (provided it was done during the term), then to have received any further evidence relating to the guilt or innocence of the accused that he, in his discretion, deemed proper, and then to have entered a new verdict consistent with all of the evidence that had been adduced. This would have permitted the trial judge to have received in an orderly manner all of the evidence that he desired, and at the same time, afforded the defendant an opportunity to file his motion for a new trial.

We think the erroneous belief of the trial judge that he did not have the power to strike out his verdict, coupled with the other irregularities, in practical effect, denied to the appellant his right to prosecute his motion for a new trial, and this constituted prejudice.

Having reached this conclusion, it becomes unnecessary to consider the other questions raised by the appellant."

It is my opinion that the courts look with favor upon

considering a case on its merits, therefore, I believe the Zoning Commissioner may extend the time given in the original order.

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From the facts presented this date it is my opinion that the petitioner's request should be granted.

It is this 6th day of November, 1961, ORDERED that the original Order dated August 20, 1961, setting the time in which the petitioners had to comply with Section 256.4 of the Baltimore County Regulations, is hereby extended to the date of the passage of an Order by the Zoning Commissioner of Baltimore County on petitioners' petition No. 5105-X for a special exception for the operation of an open dump.

John J. Timanus
Zoning Commissioner of
Baltimore County

RE: ZONING VIOLATIONS
No. 507 - ZV
Pulaski Highway & 66th St.
Industrial Enterprise, Inc.
BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
Refuse Disposal, Inc.

PETITION FOR HEARING

The Petition of Johnson Bowie, County Solicitor of Baltimore County, respectfully represents:

1. That on August 28, 1961, a hearing was held in the above entitled matter and that on the same date, the Zoning Commissioner of Baltimore County passed an Order as follows:

"It is this 28th day of August, 1961, by the Zoning Commissioner of Baltimore County ORDERED that the above named individuals and corporations shall comply with Section 256.4 of the Baltimore County Zoning Regulations within sixty (60) days of today's date or cease present operations at that time."

2. That the attorneys for Industrial Enterprise, Inc., Robb Tyler, Inc., and Refuse Disposal, Inc., have filed a Petition with the Zoning Commissioner, praying that the Zoning Commissioner pass an Order extending the date within which they must comply with Section 256.4 of the Baltimore County Zoning Regulations.

3. That Section 500.6 of the Baltimore County Zoning Regulations gives the Zoning Commissioner the power to conduct hearings involving any violation or alleged violation or non-compliance with any zoning regulations and to pass his Order, subject to the right of appeal to the Board of Zoning Appeals.

4. That no reservation was in said Order of August 28, 1961, to consider

the matter before the Board and without notice to any of the parties.
5. That Section 500.7 of the Baltimore County Zoning Regulations provides the power to determine any rights whatsoever at a public hearing after advertisement and notice.
6. That it is the opinion of the Office of Law that under Section 500.6 of the Baltimore County Zoning Regulations, the Zoning Commissioner has no right to change the Order of August 28, 1961, and that such exception should not be considered after a public hearing in accordance with the provisions of Section 500.7 of the Baltimore County Zoning Regulations.
WHEREFORE, your Petitioner prays that if any consideration shall be given to the Petition filed for the extension as aforesaid, that the question of such extension be set for hearing, in accordance with Section 500.7 of the Baltimore County Zoning Regulations.

Johnson Bowie
Johnson Bowie
County Solicitor
315 County Office Building
Baltimore 4, Maryland
VAlley 3-3000, ext. 346

I HEREBY CERTIFY that on this 27th day of October, 1961, a copy of the foregoing Petition for Hearing was mailed to Kenneth C. Proctor, Esq., Campbell Building, Baltimore 4, Maryland and Norwood B. Orrick, Esq., 1409 Mercantile Trust Building, Baltimore 2, Maryland.

Johnson Bowie
John on Bowie



INDUSTRIAL ENTERPRISES, INC.
507 WEST FRANKLIN STREET
BALTIMORE 1, MARYLAND

November 1st, 1961

Mr. John C. Proctor, Zoning Commissioner,
Baltimore County,
County Office Building,
TOWSON - 4, Md.

Dear Sir:-

We are in receipt of a Notice of Hearing dated October 27th, 1961 re "Petition for Special Hearing Requesting Extension of Time for Industrial Enterprises, Inc., located at Pulaski Highway and 66th Street" setting up a time on Monday, November 6th, 1961 at room 106, County Office Building.

This notice was mailed to us at Pulaski Highway and 66th Street, Baltimore - 6, Md., and has been forwarded to us today.

We have not requested any special hearing and do not own any property at 66th Street and Pulaski Highway.

We therefore respectfully request that our name be removed from this Petition since we are not interested in same. A recent experience, which we did not bring to your attention, caused some unnecessary, bad publicity.

If your records are not complete, our offices are located at 207 W. Franklin Street, Baltimore - 1, Md., and we would appreciate your so marking your records.

Thanking you for past favors, I am
Very truly yours,

DWCM

David W. Chertkof
(David W. Chertkof)

KCP/lg (4)
10/23/61

RE: ZONING VIOLATIONS:
No. 507-ZV
Pulaski Highway & 66th St.
Industrial Enterprise, Inc.
BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 508-ZV
Pulaski Highway & 66th St.
Robb Tyler, Inc.
No. 509-ZV
Pulaski Highway & 66th St.
Refuse Disposal, Inc.

PETITION

The Petition of Industrial Enterprise, Inc., Robb Tyler, Inc., and Refuse Disposal, Inc., by Kenneth C. Proctor and Norwood B. Orrick, their attorneys, respectfully shows unto the Zoning Commissioner:

1. That subsequent to the Order passed by the Zoning Commissioner in this matter on August 28, 1961, your Petitioners immediately took steps to have a registered land surveyor prepare the necessary plats and descriptions so that Petition for Special Exception for the operation of an open dump might be filed.

2. That your Petitioners were not furnished with the necessary plats and descriptions until Friday, October 20, 1961.

3. That on October 20, 1961, your Petitioners filed their Petition for a Special Exception for the operation of an open dump.

4. That at the time of the hearing in the above captioned matter your Petitioners attorneys advised the Zoning Commissioner that, because of necessity of getting plats and descriptions prepared by a registered land surveyor, it might be necessary to ask the Zoning Commissioner to extend the time of the Order which he contemplated filing in this matter.

5. That your Petitioners are advised that hearing on their Petition for Special Exception for the operation of an open dump cannot be had until Tuesday, November 21, 1961.

WHEREFORE YOUR PETITIONERS PRAY (that the Zoning Commissioner may pass an Order extending the date within which your Petitioners must comply with Section 256.4 of the Baltimore County Zoning Regulations to the date of the passage of an Order by the Zoning Commissioner of Baltimore County on Petitioners' Petition for a Special Exception for the operation of an open dump.)

AND AS IN DUTY BOUND, ETC.

Kenneth C. Proctor
Kenneth C. Proctor

Norwood B. Orrick
Norwood B. Orrick
Attorneys for Petitioners



PROCTOR, ROTHEMAN
AND
ORRICK
CAMPBELL BUILDING
TOWSON 4, MD.
VAlley 3-1000

JB:lp
File #1410
10/27/61



RE: ZONING VIOLATIONS: : BEFORE THE
No. 507 - ZV : ZONING COMMISSIONER
Pulaski Highway & 66th St.
Industrial Enterprise, Inc. :
OF
No. 508 - ZV : BALTIMORE COUNTY
Pulaski Highway & 66th St.
Robb Tyler, Inc. :
No. 509 - ZV :
Pulaski Highway & 66th St.
Refuse Disposal, Inc. :

ANSWER TO PETITION

The Answer of Industrial Enterprise, Inc., Robb Tyler, Inc., and Refuse Disposal, Inc., by Kenneth C. Proctor and Norwood B. Orrick, their attorneys, to the Petition for Hearing filed in this matter by Johnson Bowie, County Solicitor of Baltimore County, respectfully shows unto the Zoning Commissioner for Baltimore County as follows:

1. That answering Paragraphs 1 and 2 of such Petition they admit the matters and facts therein alleged.
2. That answering Paragraph 3 of such Petition they admit the matters and facts therein alleged but aver that a hearing has already been held in this matter, at the conclusion of which attorneys for these parties advised the Zoning Commissioner for Baltimore County that they proposed to file an Application for a Special Exception for an open dump at the earliest possible date, but were confident that the necessary survey work, preparation of plats and descriptions, would involve so much time that a hearing could not be held on such Application within the sixty day period referred to in the Order passed by the Zoning Commissioner in this matter, and further aver that the Zoning Commissioner for Baltimore County indicated that after the filing of such Application he would grant such additional

time as might be required to hold a hearing thereon.

3. That answering Paragraph 4 they deny the matters and facts therein alleged.
4. That answering Paragraph 5 they admit the matters and facts therein alleged but aver the additional facts set forth in 2 above.
5. That answering Paragraph 6 they are advised that such paragraph does not require an answer.

WHEREFORE, having fully answered the Petition for Hearing filed in this matter, Industrial Enterprise, Inc., Robb Tyler, Inc., and Refuse Disposal, Inc., pray that the Zoning Commissioner for Baltimore County may file the Order for extended time previously signed by him, sending copies thereof to all interested parties.

Kenneth C. Proctor
Kenneth C. Proctor
Norwood B. Orrick
Norwood B. Orrick
Attorneys for Industrial Enterprise, Inc.,
Robb Tyler, Inc., and Refuse Disposal, Inc.

I HEREBY CERTIFY that a copy of the foregoing Answer to Petition was mailed by me this 28th day of October, 1961, to Johnson Bowie, Esq., County Solicitor, County Office Building, Towson 4, Maryland.

Kenneth C. Proctor
Kenneth C. Proctor



PROCTOR, ROYSTON
AND
MUELLER
CAMPBELL BUILDING
TOWSON 4, MD.
VALLEY 3-1800

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CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

5412

District 15th Date of Posting 10-28-61
Posted for Special Hearing, Appointing Attorneys of Record
Petitioner: Industrial Enterprise, Inc., Robb Tyler, Inc. & Refuse Disposal, Inc.
Location of property: Pulaski Highway at rear of 66th St. Towson, Md.
Location of Sign: One sign at the end of Oriskany Ave. just S.W. corner of
R.R. Hwy and Oriskany Ave. and a 2nd sign at the S.W. corner of
Oriskany Ave. & 66th St.
Remarks: See map of 15th District
Posted by Blayne H. Johnson Date of return 10-29-61
Signature

CERTIFICATE OF PUBLICATION

TOWSON, MD., November 2nd, 1961
THIS IS TO CERTIFY, that the annexed advertisement was published in The COUNTY Paper, Inc., a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of one successive weeks before the 6th day of November, 1961, the first publication appearing on the 2nd day of November, 1961.

The COUNTY Paper, Inc.
Manager

CERTIFICATE OF PUBLICATION

TOWSON MD., November 3, 1961
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of 1 time successive weeks before the 6th day of November, 1961, the first publication appearing on the 3rd day of November, 1961.

THE JEFFERSONIAN
Frank M. Smith
Manager

Cost of Advertisement, \$.....

PETITION FOR A SPECIAL HEARING
15TH DISTRICT
Special Hearing in accordance with Section 250.7 of the Baltimore County Zoning Regulations to determine whether or not the Petition of Industrial Enterprise, Inc., Robb Tyler, Inc. and Refuse Disposal, Inc. extending the date for Industrial Enterprise, Inc., Robb Tyler, Inc. and Refuse Disposal, Inc. to comply with Section 254.1 of the Baltimore County Zoning Regulations shall be granted.
LOCATION: Pulaski Highway at the rear of 66th Street.
DATE AND TIME: MONDAY, NOVEMBER 6, 1961 at 10:00 A.M.
PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.
By order of
JOHN G. ROSE
Zoning Commissioner of
Baltimore County.
Nov. 3.

PETITION FOR A SPECIAL HEARING
15TH DISTRICT
Special Hearing in accordance with Section 250.7 of the Baltimore County Zoning Regulations to determine whether or not the Petition of Industrial Enterprise, Inc., Robb Tyler, Inc. and Refuse Disposal, Inc. extending the date for Industrial Enterprise, Inc., Robb Tyler, Inc. and Refuse Disposal, Inc. to comply with Section 254.1 of the Baltimore County Zoning Regulations shall be granted.
LOCATION: Pulaski Highway at the rear of 66th Street.
DATE AND TIME: MONDAY, NOVEMBER 6, 1961 at 10:00 A.M.
PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.
By order of
JOHN G. ROSE
Zoning Commissioner of
Baltimore County.
Nov. 3, 11/3/61

**NO PLAT
IN
THIS FOLDER**

MICROFILMED