

# 2 WAYS TO SAVE ZONING FOR CITY ARE CONSIDERED

## Perlman May Seek Re argument Of Second Case Lost.

### ORDINANCE VOIDED BY APPELLATE COURT

## Another Bill Possible—En abling Act Or Amend- ment Suggested.

Two ways of saving the zoning situation in Baltimore from an adverse decision given by a majority of the Court of Appeals yesterday were taken under consideration last night by Phillip B. Perlman, City Solicitor.

Five of the eight members of the court held the new ordinance invalid, while three upheld its constitutionality. It was the second time the court, by a majority vote, upset the "use" provisions of the zoning law.

Mr. Perlman said he would study the majority and minority opinions in the latest case.

"If I find," he added, "that any general ordinance regulating the use of property in Baltimore can be sustained under the majority opinion, I shall prepare such an ordinance and send it to the City Council as soon as possible.

#### May Ask Reargument.

"At the same time I shall consider the advisability of filing a motion for a reargument of the case on which the majority based their opinion."

It was pointed out that a motion for a reargument would have the effect of staying the operation of the opinion.

If it is found that a valid ordinance cannot be passed at this time, and if the court refuses to grant a motion for a reargument, the city will have to wait for authority to pass a zoning law under an act of the next Legislature or through a Constitutional amendment.

#### To Move For Special Session.

William S. Norris, president of the Allied Civic Improvement and Protective Associations of Baltimore, last night said he would recommend at a meeting of this organization next Tuesday that a resolution be adopted asking the city authorities to request Governor Ritchie to call a special session of the Legislature for the adoption of an enabling act.

Last October the organization adopted a resolution asking the Governor to take such action. A reply was received from Governor Ritchie saying he was considering the resolution.

Governor Ritchie said last night that it was too early to determine whether he would call the special session. He added, however, that he did not favor such action unless it is found to be absolutely necessary.

#### "Mayor's Ordinance" Remains.

With the court's decision yesterday standing as it is, the city has what is known as the "Mayor's ordinance," limiting the location, use and character of certain types of buildings, including stores, to fall back on. This ordinance, which was passed in June, 1908, is under test now in Circuit Court No. 2 in the case of Samuel L. Krieger.

Charles H. Osborne, head of the Bureau of Buildings, said yesterday that it was "an effective zoning measure, although not as far-reaching as the ordinance declared invalid by the Court of Appeals."

#### Tighe Case Decided.

The decision of the Court of Appeals yesterday was on an application of Mary G. Tighe for a permit to build a two-story brick stable on Cokesbury avenue for thirty horses.

Mr. Osborne, acting under the provisions of the new zoning ordinance, denied the permit on the ground that it was a residential neighborhood and that the stable would constitute a public nuisance; "that the danger from fire would be greatly increased by the storage of hay, straw and feed on the premises; that the residents of the neighborhood would be greatly disturbed in the peaceful enjoyment of their property by the emanation of disagreeable and unhealthy odors, and that the public health would be greatly endangered by the attraction of a large number of vermin and insects to the location."

#### Calls Power Arbitrary.

In the majority opinion, written by Judge T. Scott Offutt, it was held that the ordinance was invalid "because it improperly delegates to the Zoning Commissioner (the head of the Bureau of Buildings) and the Board of Zoning Appeals of Baltimore City arbitrary, undefined and unreasonable powers, under which persons owning real estate in that city can be deprived of the entire beneficial use thereof without compensation."

The decision was concurred in by Judges William H. Adkins, W. Mitchell Digges, Francis Neal Parke and William C. Walsh.

The dissenting opinion was written by Judge Hammond Urner and concurred in by Chief Judge Carroll T. Bond and Judge John R. Pattison.

#### Easton Case Cited.

The ordinance declared invalid was written by Mr. Perlman after the Court of Appeals, by a vote of 4 to 2, upset the "use" provisions of the original zoning law in the Goldman Park avenue tailoring-shop case. It was based on similar ordinances passed at Easton and Salisbury and upheld by the court. Judge Urner said the opinion in the Easton case was delivered by Judge Miller "with the concurrence of Chief Judge Alvey and Judges Robinson, Irving, Bryan, Fowler, McSherry and Briscoe."

Judge Urner said, "It may be safely

(Continued on Page 5, Column 3.)

# 2 Ways To Save Zoning For City Now Are Under Consideration

## Perlman May Seek Reargument Of Second Case Lost By Decision Of Court Of Appeals—Another Bill Possible.

(Continued from Page 28.)

assumed that there was no lack of concern on the part of those judges for the constitutional rights of the citizens whose desire to erect a stable in Easton they were unable to gratify."

### Called Studious Effort.

Calling to the Perlman ordinance, under which the Cokesbury avenue stable permit was refused, Judge Urener said:

"The provisions of the ordinance give me the impression that it was written in a studious effort to apply only such principles as this court has approved."

The height and area regulations of the original zoning ordinance are all that remain intact as a result of the decision of the Court of Appeals.

With these exceptions and with the "Mayor's ordinance" to fall back on, the city is "back to the point where it started before the zoning law was passed in 1923," it was said at the City Hall.

### Limited As To Location.

The buildings limited as to location in the "Mayor's ordinance" are hospitals and buildings for the treatment of the feeble-minded, sanatoriums, livery stables, sale and boarding stables, garages, or places for the keeping of motor vehicles of any kind designed to accommodate more than 400 square feet of area or to house more than two such vehicles, blacksmith shops, junk shops, brick, tile and terra cotta factories, stoneware and earthenware factories, paint factories.

Soap factories, candle factories, wood-working factories, buildings for the storage and altering of packing boxes on any lot, lumber yards, planing mills, iron mills, foundries, breweries, distilleries, packing houses, gas works, acid works, buildings for the manufacture of fertilizers, laundries.

Stores for the sale of merchandise generally, storage warehouses and buildings to be used for the storage of household effects or merchandise, dog pounds and places for the detention and extermination of stray cats and dogs and funeral establishments.

### Requires Mayor's Approval.

The ordinance provides that "no permit shall be given by the Inspector of Buildings for the erection of any such buildings without the approval of the Mayor, and if such erection be approved by him there shall be incorporated in the permit therefore such regulations regarding the location of said buildings as may be necessary, in the judgment of the Mayor, to properly safeguard the interests of the public."

It is provided further that "no permit for such buildings shall be issued unless at least ten days' notice of the application therefor shall be published not less than four times in at least two daily newspapers in Baltimore city, and every such application shall be conspicuously posted upon the property and the application accompanied by a sum sufficient to pay the cost of such notice and posting."

Mr. Osborne said the ordinance would be carried out in the absence of a regular zoning law.

The ordinance upset by the Court of Appeals was passed by the City Council February 9, six days after the "use" provision of the old ordinance was declared unconstitutional by the Court of Appeals.

### Grounds For Decision.

The original ordinance, which had been weakened greatly by the decision of the Court of Appeals in the Goldman case, was adopted in May, 1923. The portion of the ordinance passed on was held unconstitutional on the following grounds:

It deprives property owners of

the rights and privileges protected by the Constitution of the State.

Because such deprivation is not justified by any consideration for the public welfare, utility, health or morals apparent in the ordinance itself.

Because the ordinance does not require that the property restriction shall in fact be based by the considerations of public welfare, etc., as already mentioned.

It was declared further by the court that, in reaching its conclusions, it did not hold that the use of property in Baltimore might not be regulated or restricted where regulation or restriction was based by consideration of public welfare, health, utility or morals.

### Provisions Of Ordinance.

The new ordinance provided for the regulation of the use of land, buildings and structures within the city, prohibiting uses which would create hazards from fire or disease or in any way would menace the public welfare, security, health or morals. It also provided that permits for the erection of buildings and structures shall be obtained from the zoning commissioner.

With a view to having a comprehensive study of the zoning situation here, Mayor Jackson last April appointed a commission of seven to study the matter and make recommendations. Albert D. Hutzler was chairman of the commission.

With the exception of a preliminary report presented to Mayor Jackson July 14, the group has taken little action in the way of recommendations. In this report it was declared that Ordinance 334 was useful, but would not accomplish the objects which it is the purpose of zoning to attain and that only by amendment of the State Constitution could any efficient zoning plan be validly adopted so far as the State constitution is concerned.

### Board To Meet Tuesday.

C. Morgan Marshall, chairman of the Board of Zoning Appeals, said the board will hold its weekly meeting at the scheduled time next Tuesday, when

five cases are set for hearings. He added that he will seek from the City Solicitor an opinion by which to be guided in deciding these cases.

James Carey Martien, who was chairman of the board until he resigned two months after the "use" clause of the ordinance was declared unconstitutional, said he favored the calling of a special session of the Legislature to pass in enabling act for zoning.

Edward M. Bassett, of New York, who recently completed a survey of the zoning situation here for the Real Estate Board, declared at the completion of his study that an enabling act is essential before comprehensive zoning can be assured in the city.

A standard form of State enabling act under which municipalities may adopt zoning regulations has been drawn up by the Department of Commerce. An advisory committee on zoning, appointed by Secretary Herbert Hoover, prepared the ordinance. In the revised edition of January, 1923, section 1 of the bill delegates authority to the cities as follows:

"For the purpose of promoting health, morals, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes."