

No.

48884

Opinion - Zoning

Upon whom is duty to enforce cessation  
of operations under a permit pending  
an adverse appeal.

Case of T. B. Construction Co, brick houses  
on Granada Ave, near Barrington Road  
North Forest Park Imp. Assn, appellant

Bur. of Buildings

Mr. Wallace

*New file*

CITY SOLICITOR'S OFFICE

July 1, 1927.

Mr. C. Morgan Marshall, Chairman,  
Board of Zoning Appeals,  
City Hall,  
Baltimore, Maryland.

Dear Sir:

Your communication of June 30th did not contain all of the facts upon which I could base an opinion on the question presented. Accordingly, I am obliged to supplement them in this letter.

It appears that the R. B. Construction Company was granted a permit by the Zoning Commissioner under the area and height regulations of Ordinance #922, approved May 19, 1923, for the construction of 13 brick houses on Granada Avenue near Barrington Road. From the action of the Zoning Commissioner in granting the permit, the North Forest Park Improvement Association appealed to the Board of Zoning Appeals under Paragraph C, Section 22 of Ordinance #922. While that section does not precisely provide who shall take an appeal from the Zoning Commissioner to the Board of Zoning Appeals, Mr. Grinnalds, the Secretary to your Board, advised me that one of my predecessors, several years ago, verbally advised the Board that the language in the section:

"Any person or persons who may be dissatisfied with any order, requirement \* \* of the Board of Zoning Appeals \* \* \* may \*\* appeal \* \* to the Baltimore City Court \* \* "

was likewise applicable to appeals from the Zoning Commissioner. That is to say, any person dissatisfied with anything the Zoning Commissioner did could appeal to the Board of Zoning Appeals. Whether or not that is a proper legal construction of the ordinance is a question which is not now presented, and I pass no opinion on it. I am simply assuming for the purposes of this opinion that that is a proper construction.

CITY SOLICITOR'S OFFICE

-2-

Mr. C. Morgan Marshall, Chairman.

Section 22 of Ordinance 1922 provides that an appeal from the Zoning Commissioner to the Board of Zoning Appeals "stays all proceedings in furtherance of the action appealed from". The only exception provided for is that when the Zoning Commissioner certifies to the Board that by reason of the facts a stay would cause "imminent peril to life or property". A certification to that effect is not before the Board.

You recite that the R. B. Construction Company continues to operate under the permit of the Zoning Commissioner, notwithstanding the appeal and you ask me whose duty it is to direct the R. B. Construction Company to cease work; to wit, the Zoning Commissioner or the Board of Zoning Appeals?

Section 21, Paragraph A, of the ordinance provides that,

"It shall be enforced by the Inspector of Buildings \* \* \* hereinafter referred to as the Zoning Commissioner \* \* \*. In case any building or structure \* \* \* or land is used in violation of this ordinance, the Zoning Commissioner, in addition to other remedies may institute other appropriate action or proceeding to prevent such unlawful erection \* \* or use \* \* or to prevent any illegal act \* \* \*."

Certainly, when the ordinance provides that an appeal shall act as a stay, the grantee of a permit by the Building Inspector has no rights thereunder unless and until its issuance is finally approved by the Board of Zoning Appeals. The appeal acting as a stay, the grantee, in my opinion, is certainly using the land, or constructing buildings thereon, in violation of the ordinance. The Inspector of Buildings, acting in the capacity of Zoning Commissioner, is charged with the enforcement of the provisions of the ordinance, and also is given authority to prevent illegal construction and use.

Accordingly, I express the opinion that it is clear from the provisions of the ordinance that it is the duty of the Building Inspector, acting as the Zoning Commissioner, to adopt such means as may be necessary to prevent the R. B. Construction Company, grantee of a permit, from operating under that permit pending a de-

CITY SOLICITOR'S OFFICE

COPY

CITY SOLICITOR

v/n

Very truly yours,

Inspector.

I have sent a copy of this opinion to the Building

Division by the Board of Zoning Appeals.

Mr. C. Morgan Marshall, Chairman.



ADDRESS ALL COMMUNICATIONS TO  
BOARD OF ZONING APPEALS  
CITY HALL

REFERRING TO  
CALENDAR No. ....

BOARD  
C. MORGAN MARSHALL  
CHAIRMAN  
JAMES J. CARMODY  
BERNARD L. CROZIER  
WALTER R. HOUGH  
DR. C. HAMPSON JONES  
THOMAS J. LINDSAY  
WALLACE MACWILLIAMS

JEFFERSON C. GRINNALDS  
SECRETARY-ENGINEER

CITY OF BALTIMORE  
BOARD OF ZONING APPEALS

June 30th, 1927.

Charles C. Wallace, Esq.,  
City Solicitor,  
217 Court House, Baltimore, Md.

Dear Mr. Wallace:-

Enclosed is a copy of a letter from the President of the North Forest Park Improvement Association in which he states that Mr. Osborne had advised them that it was the duty of the Board of Zoning Appeals and not his office to stop work under a permit issued by the Buildings Engineer, and from which action an appeal had been filed with and is now pending before this Board.

Will you kindly advise whether or not it is the duty of this Board to take such action, and if it is not the duty of this Board will you kindly advise Mr. Osborne as to whose duty it is?

Yours very truly,

*C. Morgan Marshall*  
Chairman.

smg/mcm

Enc-1.

C O P Y

Baltimore, Md., June 30, 1927

Board of Zoning Appeals,  
City Hall,  
Baltimore, Md.

Gentlemen:

In regard to the permit granted by the Zoning Commissioner to the R-B Construction Company to erect thirteen brick houses on Granada Avenue near Barrington Road, and on which appeal was granted us by your good selves, for some reason or other it appears impossible to stop the work on these premises.

Officials of our organization communicated with Mr. Osborne on several occasions, and also with his office asking that the work be stopped in accordance with our understanding of the Zoning Ordinance pending an appeal.

We received several indefinite answers from that office. Mr. Osborne personally stated that it was up to the Board of Zoning Appeals to stop the work and not his office.

Other answers we received were that we had no right to appeal, that your Board had no right to grant one to us, that "They didn't know what arrangements Mr. Osborne had made with the construction company", and other similar ones.

In the meanwhile the work continued.

We appealed to the Mayor. His office called Mr. Osborne personally and was told no appeal had been taken and we had no right to take one.

The Mayor's office communicated with your office and was informed the appeal had been granted and due notice sent Mr. Osborne.

They again communicated with the latter who stated that he would stop the work immediately.

This letter is being written at 2.30 p.m. and the work still continues.

We therefore take the liberty of appealing to you in the case, and hope you will be able to exert the necessary to stop the work without further delay.

Respectfully yours,

(Signed) Emanuel A. Human  
President  
NORTH FOREST PARK IMPROVEMENT ASSN

4020 Barrington Road.

C O P Y

CITY SOLICITOR'S OFFICE

July 1, 1927.

Mr. Charles H. Osborne,  
Buildings Engineer,  
City Hall,  
Baltimore, Maryland.

Dear Sir:

I transmit copy of an opinion which I have this  
day forwarded to the Board of Zoning Appeals.

Very truly yours,

w/h  
Encl.

City Solicitor.