

File No. 86325

April 25, 1951

Board of Municipal and Zoning Appeals  
Municipal Office Building  
Baltimore - 2, Maryland

Gentlemen:

With reference to the recently decided case of Benjamin Flaks, et al. v. Meyer Ostrowsky and Mayor and City Council of Baltimore, I understand your Board would appreciate my opinion as to the effect of Judge Smith's decision in the two following instances:

1. Can the Zoning Commissioner (Building Inspection Engineer) issue a permit for the housing of the maximum number of families, as provided in Section 24 A, Article 40, Baltimore City Code, 1950 Ed. (Par. 22 of the Zoning Ordinance)?
2. What effect does the opinion have on Section 31 - "Special Area Exceptions" (Par. 29 of the Zoning Ordinance)?

As regards the first point, I do not consider this to have been an issue before Judge Smith and I am of the opinion that inasmuch as this is purely a ministerial function governed by a table which requires no interpretation, the Zoning Commissioner can issue a permit for the housing of the maximum number of families as provided in Section 24 A of Article 40.

As regards the second question, I do not believe the opinion has any effect on Section 31 inasmuch as this was not an issue before Judge Smith and therefore in appropriate instances Section 31 may be applied by your Board.

If there is any further opinion that you wish from me with regard to the effect of Judge Smith's decision, will you kindly advise me.

Very truly yours,

/s/ THOMAS N. BIDDISON

City Solicitor

TNB/rra