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TESTIMONY.

NOTE: The following testimony taken in another case is printed pursuant to the stipulation contained in agreed state of facts. Prosecutor's building is different, but it was agreed that testimony would apply so far as the question of increased fire risk, increased immorality, police protection, school facilities, sewer, etc., is concerned

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Writ of Certiorari.

WRIT OF CERTIORARI.

NEW JERSEY, ss.

The State of New Jersey to the
Board of Adjustment of the City of
(SEAL) Newark, N. J., and Frederic Bige-
low, Superintendent of Buildings of
the City of Newark, GREETINGS: 10

We being willing for certain reasons to be certified of a certain decision rendered September 3, 1925, by the Board of Adjustment of the City of Newark, New Jersey, relative to the appeal to said Board by E. & M. Land Co. from the rejection by Frederic Bigelow, Superintendent of Buildings of the City of Newark, of an application for a permit to erect upon said premises, on the south side of Custer Place, 100 feet west of Meeker avenue, being known and designated as 10 Custer Place, Newark, New Jersey, belonging to the said E. & M. Land Co., a three-story brick apartment house to be occupied by twelve families, in accordance with certain plans and specifications filed with the Building Inspector at the time of said application, and subsequently, with the Board of Adjustment of the City of Newark, in connection with said appeal, do command that you certify and send under your seal, to our Justices, of our Supreme Court of Judicature, at Trenton, on the second day of October, 1925, the said decision of said Board of Adjustment above mentioned, together with all things touching and concerning the same, as fully and completely as they remain before you, together with this our writ, and that we may cause to be done thereupon what of right and justice and according to the laws of the State of New Jersey ought to be done. 20
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WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court at Trenton, this 12th day of September, in the year of our Lord one thousand nine hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

10

CHARLES JONES,
Attorney for Prosecutor.

Allocatur.

WILLIAM J. GUMMERE,
C. J.

20

RETURN TO WRIT.

In obedience to the command of the within writ to us directed, we, the Board of Adjustment of the City of Newark, and Frederic Bigelow, Superintendent of Buildings of the City of Newark, do hereby certify and send to the Honorable the Justices of the Supreme Court of Judicature of the State of New Jersey, a certain decision rendered September 3, 1925,
30 by said Board of Adjustment of the City of Newark, relative to the appeal to said Board by E. & M. Land Company from the rejection by Frederic Bigelow, Superintendent of Buildings of the City of Newark, of an application for a permit to erect upon premises on the south side of Custer Place, 100 feet west of Meeker avenue, being known and designated as No. 10 Custer Place in said City of Newark, a three-story brick apartment house to be occupied by
40 twelve (12) families, in accordance with plans

Return to Writ.

and specifications therefor filed with said Superintendent of Buildings, with all things touching and concerning the same, as fully and entirely as before us they remain, together with the said writ, as within we are commanded.

IN WITNESS WHEREOF, we have caused this return to be signed by said Frederic Bigelow, Superintendent of Buildings, as aforesaid, this 30th day of September, 1925. 10

FREDERIC BIGELOW,
Superintendent of Buildings.

WHEREAS, ZABOR ROTH, on behalf of the E. & M. LAND Co., owner, filed on April 27, 1925, an application under the Building Zone Ordinance to permit in an "E" area district and a 30-foot height district the construction of a building in violation of the area and height requirements, premises #10 Custer Place; and 20

WHEREAS, public hearings were held on this application by the Board of Adjustment after due notice by publication in the public press; and

WHEREAS, the area district map accompanying the Building Zone Ordinance shows these premises to be within the "E" district; and the Height District Map accompanying said ordinance shows these premises to be within the "30-foot" district; and 30

WHEREAS, the decision of the Superintendent of Buildings rendered April 22, 1925, reads:

"Rejected: Height exceeded; area of lot exceeded; number of families exceeded, side yard to be provided";

and

WHEREAS, the proposed building is to be of non-fireproof construction, three stories (40 feet) 40

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in height, with a frontage of 50 feet and a depth of 78 feet; to be occupied as a tenement house for thirteen families (making a maximum congestion of 105 families per acre, instead of 25 as required in "E" area districts); and

10 WHEREAS, the testimony taken in the case of Reuben Fishman for a permit to build a tenement house at Elizabeth avenue and Keer avenue having been stipulated as the testimony in this case as though taken herein and proofs having been submitted and argument had, thereupon the Board of Adjustment found as follows:

1. That no testimony whatsoever was presented by the applicant to show that it would be contrary to the public interests to grant the variation in the zoning ordinance applied for or
20 that it would result in unnecessary hardship to him to deny the permit nor was there any proof offered by the applicant to show that the spirit of the ordinance would be observed and substantial justice done by granting the variation applied for.

2. That timely objection was made by counsel for the objectors to the effect that no such proof had been offered by the applicant.

30 3. That subject to such objections the objectors proceeded and supplied testimony from which the Board found as a fact that it would be contrary to the public interests to grant such a variation as applied for and that no unnecessary hardship would be imposed upon the applicant in denying his application for a variation for the following reasons which the Board finds as the facts from the testimony and evidence in the case.

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4. That the property upon which it is desired to build the tenement house in question is part of a tract of land extending from Benner avenue on the north to the street line on the south, and from Elizabeth avenue on the east to Bergen street and the line paralleling it on the west which was laid out as restricted property about twenty years ago, restricted to one, and on a few streets, to two-family houses. 100

(b) That the City of Newark planned and developed its water, sewer, streets, police and fire facilities in accordance with the planned and proposed restricted residence development.

(c) That the tract has been developed in accordance with the proposed development. Of the 700 or more lots contained in the development all but about 200 lots scattered over this area have been built upon, and the type as residential territory created. 20

(d) That the water, sewer, fire and police facilities are adequate for the present needs and to the development of this tract in accordance with the original scheme but that the variance of that scheme by permitting the erection of multi-family tenements throughout this tract would result in an undue strain upon the said water, sewer, fire and police facilities and require very extensive and costly expansion. 30

(e) That while the erection of a single apartment of itself might not require such extensive and costly expansion the granting of a permit for one apartment building would of necessity require the granting of permits throughout the tract and already six applications aggregating 121 families are pending before this Board.

(f) That to extend and expand the water, sewer and fire facilities would require in many 40

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10 instances the tearing up of existing pavements to lay larger water and sewer pipes, the erection of additional fire houses, the installation of a higher pressure water system, a large part of the cost of which would fall upon the city at large for the advantage of a relatively few individual property owners, all of whom have purchased the said tracts of land in anticipation of the expiration of building restrictions and with full knowledge of the existing zoning regulations of the City of Newark prohibiting buildings of this type from said zone, which zoning restrictions are in effect but a continuance of the building restrictions theretofore existing and of which building restrictions the said applicant was aware at the time of the purchase of his lot.

20 (g) That upon only a part of said development have the restrictions expired, property to the north and to the south of said tract upon which the restrictions have expired, being still restricted as originally planned; and that the zoning law was adopted to continue the development of this segregated section of the City of Newark in accordance with the plans of the original owners of the tract and the development by the City of Newark of the governmental facilities therein over a period of about twenty
30 years.

(h) That the police facilities are adequate to the present resident character of this community, but that the erection upon the present application, throughout the tract, or a part thereof, of tenements of the kind applied for in this case would result in the need of expensive police facilities.

40 (i) That the testimony shows that tenements of this character are more difficult to police, are

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productive of more vice and crime and therefore undesirable in a residence locality. That they bring into a residence locality persons of a type and character different from those who own or live in one or two family houses, and that no particular care is or can be exercised by owners of such tenements in the selection of occupants of such tenements. 10

(j) That the school facilities in this section are now greatly overtaxed by the existing population, the existing school serving this territory being an alternating school where the children go but part of the day. That the new school in the course of erection, despite an increase in its size in the course of its erection, will be full when completed, and that as a consequence with the acquisition of numerous tenements with the many families per lot instead of the one or two families, as would ordinarily be the case, the new school will be overtaxed just as the existing school is and the children now in the community instead of being able to go to school all day as would be the case if the community is permitted to develop as heretofore, will be denied that right and will be compelled to go to school only on part time. 20

(k) That no plans are under way and no appropriation in existence for the construction of any additional school in this community and that as a consequence a considerable period of time must elapse before any such facilities can be supplied. 30

(l) That the building in question violates the height, area and other provisions of the zoning ordinance of the City of Newark and also violates the Building Code of the City of Newark as to its construction. 40

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(m) That under the testimony, tenements of this type constitute a fire menace both to the neighborhood as a whole, constructed as it is largely of frame, and to the occupants of the building itself on account of the non-fireproof structure of the building.

- 10 (n) That said tenement house in particular violates the Building Code of the City of Newark in the provision for stairways in said building, the plans and specifications not complying with the requirements of the Building Code for multi-family tenements in this regard, and that under the evidence the erection of a multi-family tenement of this type will subject the tenants of said building to a very real hazard in the event of fire in the building, particularly as panic is more likely to ensue in a building of that character than in a one or two-family residence.
- 20

In view of the facts found above, we find that the health, safety and welfare of this community will be seriously interfered with as a result of this tenement house and that a variation from the said ordinance should not be permitted as applied for;

- 30 THEREFORE, BE IT RESOLVED, that the decision of the Superintendent of Buildings be and it hereby is affirmed and the application be and it hereby is denied.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Adjustment at its meeting of September 3, 1925.

R. B. Rankin,
Secy.

Reasons.

REASONS.

New Jersey Supreme Court

E. & M. LAND CO.,

*Prosecutor,**vs.*THE BOARD OF ADJUSTMENT OF
THE CITY OF NEWARK, N. J.,
and FREDERIC BIGELOW, Su-
perintendent of Buildings of
the City of Newark.*Respondents.*

10

*On
Certiorari.
Reasons.*

E. & M. Land Co., prosecutor of the above writ of certiorari, by Charles Jones, its attorney, comes and prays that the ordinance under which the respondents assumed to act may be declared null and void, and the resolution adopted by the Board of Adjustment of the City of Newark, denying the appeal of the prosecutor, be declared null and void, set aside, and for nothing holden, insofar as the same applies to this prosecutor, for the following reasons, namely:

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a. Because said ordinance provides an exception of uses existing at the time of the passage of the ordinance, such exception is discriminatory; because Section 7A and Section 16 arbitrarily divide the city into districts, and attempts to make the regulations as to height, size of yards and number of families apply to one district more stringent than to other districts, and is discriminatory.

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Reasons.

- b. Is without statutory authority.
 - c. Does not serve to promote the health, safety or morals of the community.
 - d. Is not within the police power.
 - e. Takes private property without just compensation.
 - 10 f. Takes property without due process of law.
2. A general prohibition as to the erection of a building as the one that prosecutor desires to build may not be lawfully enacted unless the building is structually of such a character as to be detrimental to the public health, safety or morals.
- a. Such a prohibition is not within the police power.
 - 20 b. The effect of such prohibition is to take private property without just compensation.
 - c. Takes property without due process of law.
3. The City of Newark had no statutory authority to enact an ordinance as the one in question.
4. Said ordinance is unconstitutional for the following reasons:
- 30 a. As it conflicts with the first clause of Article One of the Constitution of the State of New Jersey.
 - b. Sixteenth paragraph of Article One of the Constitution of the State of New Jersey.
 - c. Said ordinance is unconstitutional for the reason that it violates the rights secured to the prosecutor by the 14th Amendment to the Constitution of the United States, as it deprives
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Reasons.

the prosecutor of its property without due process of law, and would be a denial to it of the equal protection of the law.

5. Said ordinance is illegal for the reason that it attempts to prohibit and not to regulate and control the use of private property.

6. Said ordinance is illegal because the provisions of said ordinance prohibiting the erection of a building of the character desired to be erected by the prosecutor does not promote public health, safety and morals and general welfare.

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7. The provisions of said ordinance are broader than the statute authorizing municipalities of this State to enact ordinances regulating the uses of buildings, etc.

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8. That the resolution adopted by the Board of Adjustment of the City of Newark denying prosecutor's application is invalid for the following reasons:

a. That there was no legal evidence justify-Adjustment to adopt said resolution.

b. No facts were presented to the Board of Adjustment by any one authorizing the Board of Adjustment to adopt said resolution.

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c. That said resolution is contrary to law, as the Board of Adjustment had no legal authority to adopt and pass said resolution.

CHARLES JONES,
Attorney of Prosecutor.

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*Stipulation of Facts.***STIPULATION OF FACTS.**

NEW JERSEY SUPREME COURT.

10	E. & M. LAND Co., <div style="text-align: right;"><i>Prosecutor,</i></div>	}	<i>On</i>
	<i>vs.</i>		<i>Certiorari.</i>
	THE BOARD OF ADJUSTMENT OF THE CITY OF NEWARK, N. J., and FREDERIC BIGELOW, Su- perintendent of Buildings of the City of Newark, <div style="text-align: right;"><i>Respondents.</i></div>		<i>Stipulation of Facts.</i>
			<i>Custer Place.</i>

20 It is stipulated and agreed that the facts in-
 volved in this cause are as follows:

1. E. & M. Land Co., a corporation duly or-
 ganized and existing under the laws of the State
 of New Jersey, the prosecutor, on the 5th day
 of March, 1925, was, and ever since, has been
 the owner in fee simple of the lands and premises
 situated on south side of Custer Place, 100 feet
 west of Meeker avenue, in the City of Newark,
 and more particularly described by metes and
 30 bounds as follows:

FIRST TRACT: BEGINNING at the intersec-
 tion of the northwesterly line of Elizabeth
 Avenue with the northeasterly line of Custer
 Avenue, as the same are laid down on the
 map of the property of the Weequahic Park
 Land and Improvement Company revised
 in 1909 by George H. Gardner surveyor re-
 vised in 1912 by John E. Laird, surveyor;
 thence along Custer Avenue north 21 de-
 40 grees 23 minutes west two hundred and

Stipulation of Facts.

seven feet and fifty hundredths of a foot to Custer Place; thence running along Custer Place north 84 degrees 45 minutes east three hundred and eighteen feet and thirty-eight hundredths of a foot to Meeker Avenue; thence running along Meeker Avenue South 50 degrees 15 minutes east one hundred and forty-one feet and forty-two hundredths of a foot to the northwesterly line of lot number 1028 on said map; thence running south 84 degrees 45 minutes west along the northwesterly line of said lot number 1028 eighty-nine feet and forty-six hundredths of a foot to the southwesterly line of said lot number 1028; thence running along the same south 21 degrees 23 minutes east one hundred and fifteen feet and thirty-five hundredths of a foot to Elizabeth Avenue; thence southwesterly along Elizabeth Avenue on an arc of a curve with a radius of six hundred and four feet and nineteen hundredths of a foot, forty-five feet and three hundredths of a foot to point of tangent; thence still along Elizabeth Avenue south 87 degrees 16 minutes West two hundred and fifty-eight feet and sixty-four hundredths of a foot to Custer Avenue and point and place of BEGINNING. Being lots numbers 1023, 1024, 1025, 1026, 1027, 1029, 1030, 1031, 1032, 1033 and 1034 on said map.

SECOND TRACT: BEGINNING at the intersection of the southwesterly line of Elizabeth Avenue with the Southeasterly line of Custer Avenue, as the same are laid down on the map of the property of the Weequahic Park Land and Improvement Company, revised in 1909 by George H. Gardner

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Stipulation of Facts.

10 surveyor, revised in 1912 by John E. Laird
 surveyor; thence along Custer Avenue north
 21 degrees 23 minutes west one hundred and
 thirty-five feet and thirty-seven hundredths
 of a foot to the northwesterly corner of
 lands now or formerly belonging to Marcus
 L. Bock; thence running South 68 degrees
 57 minutes west one hundred feet to the
 northeasterly line of a right-a-way; thence
 running south 21 degrees 23 minutes east
 along the same one hundred feet and sixty-
 four hundredths of a foot to the said south-
 westerly line of Elizabeth Avenue; thence
 running north 87 degrees 16 minutes East
 along the same one hundred and five feet
 and fifty-four hundredths of a foot to the
 20 said Southeasterly line of Custer Avenue
 and point and place of BEGINNING. Being
 lot number 1022 and part of 1021.

Being known and designated as 10 Custer
 Place, Newark, New Jersey.

2. The prosecutor engaged Nathan Siegler,
 a duly licensed and practicing architect in the
 City of Newark, to prepare the plans and speci-
 fications for the erection of a three-story brick
 apartment house, designed for the occupation of
 30 twelve families. The said plans were prepared
 as ordered, and submitted as required by law, to
 the State Board of Tenement House Supervision,
 and were approved by that body.

3. That thereafter, and on the 22nd day of
 April, 1925, the prosecutor made a written ap-
 plication for a building permit to the Building
 Department of the City of Newark on said plans,
 presenting thereto application in duplicate, and
 40 two sets of plans duly approved by the Board

Stipulation of Facts.

of Tenement House Supervision. Application was made to Frederic Bigelow, Superintendent of Buildings of the City of Newark, and the fees required by law for the issuance of the permit were duly tendered.

4. The said Frederic Bigelow as Superintendent of Buildings of the City of Newark, declined to issue a permit for the erection of said building in accordance with the said plans, on the ground that the said premises were in a 30-foot height district and an "E" area district, and wrote on the back of the said plans "Rejected, area exceeded for number of families, height exceeded, lot area exceeded, side yard to be provided." That said notation is based upon Section 7, paragraph (a) and Section 16 of the so-called Zoning Ordinance of the City of Newark.

5. The City of Newark has adopted an ordinance commonly known as the "Building Zone Ordinance of the City of Newark" and more particularly known as

"An ordinance regulating and restricting the location of trades and industries and the location of buildings designed for specified uses, and regulating and limiting the height and bulk of buildings hereafter erected, and regulating and determining the area of yards, and establishing the boundaries of districts for the said purposes and providing penalties for the violation of its provisions."

For the purpose of regulating and restricting the location of trades and industries and the location of buildings designed for specified uses,

Stipulation of Facts.

the City of Newark is divided by said ordinance into four classes of districts:

- (1) Residence Districts.
- (2) Business Districts.
- (3) Industrial Districts.
- (4) Heavy Industrial Districts.

10 Said districts are shown on what is known as "The Use District Map" which accompanies said ordinance, and is declared in said ordinance to be a part thereof. The Use District Map designations which accompany said Use District Map are also declared to be a part of said ordinance. Said ordinance further provides that no building or premises other than for a purpose permitted in the use district in which said building or premises are located shall be erected.

20 6. The said ordinance, by means of the said Use District Map, places the said premises, owned by prosecutor, in its entirety, in the first class of the districts above enumerated, to wit, in the Residence District.

7. Section 7 of said ordinance divides the City of Newark into five districts, for the purpose of limiting the height and bulk of buildings as follows:

- 30
- (a) 30-Foot Districts.
 - (b) 50-Foot Districts.
 - (c) 125-Foot Districts.
 - (d) 150-Foot Districts.

as shown on a height district map, which accompanies and is made part of the ordinance, forbids the erection of any structure, except in conformity therewith.

40 8. The premises of the prosecutor are in the first of the above districts, which reads as fol-

Stipulation of Facts.

lows: (a) "In a 30-Foot District, no building shall be erected to an excess of 30 feet."

9. For the purpose of regulating and determining the area of yards, courts and other open spaces for the buildings, the ordinance divides the city into five classes of area districts, namely, a, b, c, d and e, as shown on an Area District Map, which accompanies and is made part of the ordinance and no structure which violates the regulations prescribed as to area shall be built. 10

10. Section A provides that the least dimension of a side yard shall be $3\frac{1}{2}$ feet, on a lot not more than 25 feet in average width; that the least dimension of an inner court should not be less than 4 feet, and in no case less than $1\frac{1}{2}$ inches for each foot of building height; the least dimension of the outer court shall be $3\frac{1}{2}$ feet; that the building shall not occupy more than 90% of the area of an interior lot. 20

11. B Districts are still more stringent, so far as regulations of area are concerned, and in addition, provide that no dwelling or tenement house shall be built in said district to accommodate more than 140 families on any acre of land, nor more than a proportional number of families on a fractional part of any acre of land. 30

12. C Districts are still more stringent, so far as the dimensions of the various courts are concerned, and provides that no dwelling house or tenement for more than 105 families on any acre of land, nor more than a proportional number of families on a fractional part of any acre of land.

Stipulation of Facts.

10 13. D Districts are still more stringent than the foregoing, so far as the size of the courts are concerned, and provide that the dwelling or tenement house shall not have more than 35 families on any acre of land, nor more than a proportional number of families on a fractional part of any acre of land.

14. Section 16—E Districts, in which the proposed structure is located, is the strictest of all and provides as follows:

Rear Yards.

20 The least dimension of a rear yard at its lowest level shall be not less than twenty-five per cent. of the depth of the lot, but need not exceed twenty-five feet at such level. In no case shall such least dimension be less than six inches for each foot of building height. For each one foot that such rear yard, however, exceeds a depth of ten feet, there may be substituted one foot of unoccupied space across the whole width of the front of the lot between the street line and the street wall of the building.

Side Yards.

30 The least dimension of a side yard at its lowest level shall be not less than three and one-half feet. On a lot not more than twenty-five feet in mean width a side yard shall be not less than three inches in least dimension for each foot of building height nor less than one and one-half inches in least dimension for each foot of building length. On a lot more than twenty-five feet in mean width a side yard shall be not less than four inches in least dimension for each

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Stipulation of Facts.

foot of building height nor less than two inches in least dimension for each foot of building length. At least one side yard shall be provided on lots located in residence districts as designated on the use district map.

Inner Courts.

The least dimension of an inner court at its lowest level shall be not less than four feet. In no case shall such least dimension be less than four inches for each foot of building height. The minimum area of an inner court shall be not less than twice the square of its required least dimension. 10

Outer Courts.

The least dimension of an inner court of its lowest level shall be not less than three and one-half feet. In no case shall such least dimension be less than four inches for each foot of building height nor less than four inches for each foot of length from the closed end. Where in a residence district as designated on the use district map at least one-half of the buildings situated on either side of a street between two intersection streets conform to a minimum setback line no new building shall be erected and no existing building shall be reconstructed or altered to project beyond such setback line unless an open space be left on each side of the building beyond such setback line. Each of these open spaces shall have a minimum width at every point beyond such setback line equal to at least one per cent. of the width of the lot on which the building is situated for each one per cent. that the building projects beyond such minimum setback line. 20 30 40

Stipulation of Facts.

Building Area.

10 No building shall occupy more than thirty-five per cent. of the area of the lot, if an interior lot, nor more than forty-five per cent. if a corner lot. This limitation shall apply at the curb level in the case of a building located in a residence district as designated on the use district map and at the sill level of the second story windows, but not more than twenty feet above the curb level in the case of a building located in a district other than a residence district as designated on the use district map.

Number of Families Housed.

20 No dwelling or tenement house shall hereafter be erected or altered to accommodate or make provision for more than twenty-five families on any acre of land nor more than a proportional number of families on a fractional part of any acre of land. The maximum number of families which may hereafter be housed on any plot of ground shall not exceed the integral number obtained by multiplying the acreage of such plot, exclusive of the area within street lines, by twenty-five. The limitation imposed by this section shall, however, not prohibit the erection of a one-family house on any plot containing at the time of the passage of this ordinance an area of less than one-twenty-fifth of an acre.

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15. A few days after the rejection by the Superintendent of Buildings, the prosecutor appealed to the Board of Adjustment of the City of Newark, from the ruling of Frederic Bigelow, Superintendent of Buildings of the City of

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Stipulation of Facts.

Newark, and due notice was given to all parties in interest, as required by the ordinance of the City of Newark, of said appeal, and the date for hearing was fixed for May 21, 1925, at 2:00 P. M., at the Council Chambers of the City of Newark. That the matter was publicly adjourned several times until July 16, 1925. At least two of the hearings, a number of property owners appeared in objection to said permit being granted. Thereupon a stipulation was entered into agreeing that the testimony of in re. Reuben Fischmann (which it is agreed will be printed herewith) was to be taken as the testimony in this case, but only so far as the zoning part was concerned. The objectors contended that the applicant had the burden of showing that he was entitled to a variance from the letter of the ordinance, and that he had offered no testimony to support that view. Thereupon the objectors urged and introduced in evidence oral testimony that apartment houses bring together a large number of families, tended to promote immorality; also that because large numbers of people lived in one building it was less healthful; that the building of apartment houses in that district would make it harder to take care of the water supply and sewerage facilities; that the school facilities were not designed in that section for a large increase of population, such as would be brought by apartment houses, and were already inadequate; and that it was harder to protect an apartment house against fire. That upon considerations of public health, safety and welfare, and based upon the attached testimony, the Board of Adjustment passed a formal resolution September 3, 1925, rejecting said ap-

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Stipulation of Facts.

peal and sustaining the Building Department in the refusal to grant said permit, a copy of which resolution is attached and made a part hereof.

10 16. Said premises are located near Elizabeth avenue, which is a main thoroughfare of the City of Newark, running from Newark to Elizabeth. It is a very wide thoroughfare, and heavy and constant traffic passes over it, and the Elizabeth, Union and Mt. Prospect trolleys pass over it. There are also two lines of jitneys which constantly pass over it, and leads directly to the shore resorts, and is always crowded with traffic.

20 17. The prosecutor's premises are located on the east side of Custer Place, 100 feet south of Meeker avenue. Meeker avenue adjoins the business zone; at the northwest corner of Elizabeth avenue and Meeker avenue, there is a four-story brick apartment, containing thirty-six families and eight stores. Next north of the apartment house is a public garage, and across the street, on the northeast corner of Elizabeth avenue and Meeker avenue, there is a structure that was for many years used as a saloon and bowling alley, and it is now used for business.
30 On the east side of Elizabeth avenue, next adjoining this corner structure, are four stores, and next north of the stores is a public garage, and immediately adjoining this is the industrial section. Upon the southwest corner of Elizabeth avenue and Meeker avenue, just behind this property, is a one-family dwelling on a restricted plot.

40 18. Near the prosecutor's property is a trolley station, and across the park, a few hundred feet from the prosecutor's property, is the rail-

Stipulation of Facts.

road station of the Lehigh Valley, but on the north side of Meeker avenue the property is all restricted to one-family residences, while west for several blocks and south for almost a mile from this property, a one and two family residence development instituted more than twenty years ago and practically completed, exists. 10

19. It is further stipulated that the prosecutor will print with this case the testimony taken in the matter of the application of Reuben Fischman for a permit to erect an apartment house on 815-829 Elizabeth avenue, Newark, N. J. This testimony is produced only as a basis in part support of the arguments advanced by the respondents to uphold the zoning ordinance in this vicinity. Anything in said testimony relating to the particular building has nothing to do with the present case, except so far as it relates to the zoning principle. 20

CHARLES JONES,
Attorney for the Prosecutor.

JEROME CONGLETON,
Corporation Counsel,
Attorney for the Defendants.

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*Testimony.***NOTE.**

The following testimony taken in another case is printed pursuant to the stipulation contained in agreed state of facts. Prosecutor's building is different, but it was agreed that testimony would apply so far as the question of increased fire risk, increased immorality, police protection, school facilities, sewer, etc., is concerned.

In the matter of the application of REUBEN FISCHMANN for a permit to construct an apartment house at Nos. 815-829 Elizabeth avenue, Newark, New Jersey.

Transcript of testimony taken in the above matter before Dr. Charles V. Craster, James J. Fitzsimmons, Chief M. P. A. McDermitt, Harrison R. Van Duyne, and Frank Higgins, Board of Adjustments, at Commission Chambers, City Hall, Newark, New Jersey, on Thursday, February 26, 1925, at 2 P. M.

Appearances:

Mr. Joseph G. Wolber for the City of Newark.
 Mr. Abraham Henig for the applicant.
 Judge Fred G. Stickel, Jr., for objectors:
 Harry A. Braelow,
 Pearce R. Franklin,
 Dr. William R. Ward,
 John Giesinger,
 Charles P. Peckham,
 A. K. Moering,
 Elwood S. MacNabb,

Testimony.

H. F. Peal,
 Neil MacKay,
 E. H. Schulze,
 Charles Tag,
 William Banta,
 George S. Andrews,
 Thomas Diggett, 10
 Philip Sievering,
 Mrs. Bennie Elsky,
 Mrs. Charles Miller,
 Mrs. Harry Sautter,
 Weequahic Civic Association.

(John D. Masterton sworn as stenographer.)

Chairman Van Duyne: This is a special meeting of the Board of Adjustments called for the purpose of considering the matter of the application of Reuben Fischmann for a permit to construct an apartment house at 815-829 Elizabeth avenue, in the City of Newark. 20

I have ascertained that none of the members of the Board of Adjustments owns property in the vicinity.

Inasmuch as this is a special meeting, I think we can dispense with the reading of the minutes of the previous meeting.

Will someone so move? 30

Mr. Fitzsimmons: I move that the reading of the minutes of the previous meeting be dispensed with.

Chief McDermitt: I second the motion.

(Roll call; minutes of the meeting dispensed with.)

(Mr. Henig: Representing the application for the permit.)

Chairman Van Duyne: We are ready to hear the representative of the applicant. 40

Testimony.

Mr. Henig: In this matter application was made by Mr. Fischmann for a permit to erect at location 815-829 Elizabeth avenue an apartment house, to be used for residential purposes only, with a height of thirty-five feet, to be occupied by twenty families.

10 The usual matters with reference to the application are contained in the application. I think the best thing would be to offer the application in evidence.

(Application marked Exhibit A. 1.)

I also offer in evidence the plans.

(Plans marked Exhibit A. 2.)

I offer the record of the building department so far as the plans are concerned, in evidence.

20 (Record of the Building Department marked Exhibit A. 3.)

With these offers, I don't think there is anything more at the present time for the applicant to submit. The building is an ordinary apartment house building, and there is absolutely no reason on the face of the plans which would disable this body to grant a permit for the erection of such a building. It is a building that is safe, so far as the public is concerned, and is not a
30 menace to the community in any way, and under the circumstances I would ask that a permit issue.

Chairman Van Duyne: Is there any person present who objects?

Judge Stickel: I appear to represent the objectors, and I want at the outset to point out to the Board that as I understand the method of review, the proponent must show something beyond what was before the administrative officer to justify a modification or change by this
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Testimony.

Board in the act of the administrative officer. Nothing has been shown of that character at all. The petitioner relies here upon the same material that he relied upon before the administrative officer.

I make that objection and reserve my right to it. I don't want to rest there. I desire to offer evidence to support the finding of the building inspector in declining to grant this permit, and to demonstrate, if I can, that in so denying it, he was doing it in the interest of the health, safety and welfare of the community affected. 10

Mr. Wolber: You didn't want the commission to rule on your objection at this point?

Judge Stickel: I don't want them to rule at this point; I just want to reserve my right to the objection at this time. 20

Chairman Van Duyne: You don't care to offer and further testimony, than the presentation of the application at this time, Mr. Henig?

Mr. Henig: I can't offer any testimony at the present time, until there is some testimony offered to show that there is a reason why the permit should not be granted.

Chairman Van Duyne: You are merely making the application to this Board. 30

Mr. Wolber: You want to reserve the right to rebut any testimony offered by the objectors?

Mr. Henig: Yes.

Judge Stickel: I don't want to assent to that procedure by silence. I think the burden is on him to sustain his case at this time.

Louis Fred Schoenewolf, direct.

LOUIS FRED SCHOENEWOLF, sworn for objectors.

Direct examination by Judge Stickel.

10 Q Mr. Schoenewolf, what is your business with the city? A Surveyor to the Newark Tax Board.

Q And did you examine the restrictions affecting the property from Renner avenue to the city line, bounded by Elizabeth avenue on the east and Bergen street on the west? A I did. I went one step further. I went as far as Meeker avenue.

20 Q I should have said Meeker avenue—that is correct. Grumman avenue, on the south? A To the county line.

Q What character of restrictions did you find covering that property, and over what period? A The Weequahic Tract was opened in 1904. That is a restriction for one-family houses up to Bergen street. There is some streets set aside for two-family houses, but it is a general one-family restriction.

30 Q There is no instance in which more than two-family houses may be constructed in that tract? A No, there is no instance that I know of.

Q And beyond that, beyond the Weequahic Tract, what did you find? A There is what was called the Weequahic Park Front Realty Company. They have a restriction that refers to one-family houses, and no tenements.

Q They prohibit tenement houses? A They prohibit tenement houses.

40 Q From Meeker avenue to the city line and over the territory I have spoken of, the land

Louis Fred Schoenewolf, direct.

was restricted as early as 1904 to one and two-family residence development? A Mostly to one, along Elizabeth avenue there.

Q And the restrictions also placed limitations on height, did they not? A They did.

Q And the restrictions also had to do with the size of the lot, did they not? A In most cases. 10

Q In most cases, a one or two family house was permitted to be constructed only on a fifty-foot lot? A Right.

Q And the height of the building was limited to two and one-half stories and a flat roof? A Flat roof, yes.

Q Where, with reference to Keer avenue and Elizabeth avenue, are the restrictions which prohibit the erection of tenements? A Keer avenue, Grumman avenue and Bergen street. Right next to the county line. 20

Q Do you know whether any of these restrictions have expired? A I do.

Q What restrictions have expired? A The Weequahic tract has expired.

Q That is down to what point? A Down to Pomona avenue. 30

Q Beyond that the restrictions are still in force, with some exceptions? A Well, the Clinton Park section would be the next adjoining tract, and I think they are run out.

Q Do you know that section of your own knowledge? A I do.

Q The section is pretty substantially built up in accordance with the restricted development? A It has followed out the restricted development. 40

Louis Fred Schoenewolf, cross.

Cross examination by Mr. Henig.

Q Do you know of your own knowledge as to whether there are any restrictions covering the lot upon which these premises are sought to be built? A Yes, there is one on Grumman avenue.

10 Q Does it cover this particular lot? A I can tell you in a minute.

Q I would like to have the question answered. A This is a property on the north side of Grumman avenue, 100 feet westerly from the westerly line of Elizabeth avenue; then it runs north 100 feet, thence westerly 100 feet, thence southerly, parallel with the first course, 100 feet to Grumman avenue; thence easterly 100 feet to the beginning. That is known and designated as lots 87 and 88 on the property of the Weequahic Front Realty Company, surveyed by John E. Laird, 1909.

20 Q That restriction does not cover the present lot? A It covers 100 feet from Elizabeth avenue.

Q Well, this lot is only 100 feet from Elizabeth avenue. A This is the adjoining piece, then.

30 Q Have you any record—anything to show whether there is any restrictions covering this particular property? A This is the adjoining property.

Q You made a general search with reference to the restrictions on the surrounding property, and is that the only restrictions you found covering the property in that neighborhood? A No, I have one on Keer avenue.

40 Q Was it one particular lot? A Yes.

Louis Fred Schoenewolf, cross.

Q Have you found any general restriction covering the entire tract? A This is the Weequahic Park Front Realty Company.

Judge Stickel: It covers the property in that neighborhood?

The Witness: It covers the property in that vicinity. 10

Q In looking over your records have you found an agreement taking these restrictions off? A No agreement.

Q In going over these records, have you found a release of restrictions covering the property of the Weequahic Park Front Realty Company recorded in the Register's Office on January 3, 1913, in Book D 52 of Releases, page 157? A I didn't go into releases. I went into restrictions. 20

Q You were told to find out whether or not there were any restrictions covering this property? A In that vicinity.

Q If you didn't look for releases, you wouldn't know whether the restrictions covered that property or not? A Restrictions are not releases, are they?

Q They might be. You didn't make any search to see whether these restrictions were released? 30

Judge Stickel: I will consent to that; he has not. I am trying to show this neighborhood was a one and two family development.

Mr. Henig: I understood the purpose of offering the testimony was to show that this property was restricted to one and two family. 40

Will F. Meyerend, direct.

Judge Stickel: The purpose was to show that this property was a one and two family neighborhood, according to restrictions, and that the development had gone that way.

10 Mr. Henig: I object to the testimony of this witness, because he is not in a position to tell whether there are restrictions or not.

Judge Stickel: The objection made now comes after the testimony is in, and he has had a chance to pick out the testimony, and now when he finds he doesn't like it; he wants to reserve his objection.

20 Mr. Henig: The question is, he is a witness produced to testify to certain facts; he can't testify to something he doesn't know about. If he knows whether there are restrictions, that is his testimony.

Judge Stickel: That argument goes to the weight of his testimony, which is for the Board.

Chairman Van Duyne: The objection is overruled, and the testimony will go in evidence.

30 Mr. Henig: Then I will ask for an exception.

WILL F. MEYEREND, sworn for the objectors.

Direct examination by Judge Stickel.

Q Mr. Meyerend, are you the secretary of the Weequahic Civic Association? A Yes, sir.

40 Q And my request, did you go through the territory from Meeker avenue to Grumman ave-

Will F. Meyerend, direct.

nue, with the object in mind of ascertaining the vacant lots in that territory? A Yes, sir.

Q Can you tell us the approximate number of vacant lots in that territory?

Mr. Henig: I would like to know just what territory he is confining himself to.

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Q What territory did you cover? A I am confining myself to the strip of lots lying broadside to the park, between Bergen street and the park, and from Meeker avenue to the city line, and a personal inspection made by me this morning reveals that there are 213 vacant lots in that area, and an inspection of the map of the Weequahic Land and Improvement Company and of the Weequahic Park Front Realty Company reveal to me that there are a total of 727 lots in that area. The difference between 727, the total, and the vacant lots to the number of 213, constitutes one-family construction for the most part, although in that area there is about 100 two-family houses, though the rest are one-family houses.

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Q There are something over 500 one and two family houses? A Yes.

Q Built in accordance with the restrictions in that development? A Yes, sir.

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Mr. Henig: I object to any reference to the restrictions, on the ground that he doesn't know about them.

The Witness: I made a survey of the Elizabeth avenue frontage.

Q I was just going to ask that. A The maps indicate that there is 4,012—in round numbers, 4,000 feet of frontage, from Meeker avenue along

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Frederic Bigelow, direct.

Elizabeth avenue to the city line, and 1,290 feet of that consists of vacant lots.

Q Practically every corner from Meeker avenue to the city line is at present vacant, is it not? A No.

10 Q How many of them, do you know? A I will tell you, if you will let me refer to a map.

Q Well, just approximately? A The corners of Custer avenue are vacant, and the whole block from Meeker to Custer is vacant, and the northwest corner of Porter and Elizabeth is vacant, and the southwest corner of Lyons and Elizabeth is vacant, together with two inside lots adjoining, and the northwest corner of Wilbur and Elizabeth is vacant, and the southwest corner of—
20 in fact, the whole block on Elizabeth avenue, from Hansbury to Keer, is vacant, and the whole block on Elizabeth from Keer to Grumman is vacant, and then the corner of Grumman and Elizabeth, seventy feet to the city line, is vacant.

Judge Stickel: That is all.

Mr. Henig: No questions.

30 FRED BIGELOW, sworn for the objectors.

Direct examination by Judge Stickel.

Judge Stickel: I want to offer the zoning ordinance in evidence.

40 The Witness: I have a copy of the building zone ordinance of Newark, New Jersey, if that is what you wish. There are certain amendments to this ordinance which affect this particular plot.

Frederic Bigelow, direct.

Mr. Henig: I have no objection to that at all.

Q Mr. Bigelow, what is your business with the City of Newark? A Superintendent of Buildings.

Q And, as such, was application made to you to grant a permit for an apartment house on Keer avenue and Elizabeth avenue? A Yes, on November 22, 1924, Mr. Frank Grad, architect, for Mr. R. Fischmann, filed plans and made application with the Division of Buildings for a permit to erect a twenty-family house, located on the corner of Elizabeth avenue and Keer avenue. 10

Q What action did you take? A The application was directed, under the requirements of the zoning ordinance, which I shall read. Section 25, Enforcement, in part reads: "The Superintendent of Buildings shall enforce the provisions herein contained insofar as they relate to the erection of new buildings or the structural alteration of existing buildings." 20

Q What was the specific reason for the revocation? A The property at the corner of Elizabeth and Keer avenue is zoned by a map and ordinance as an E Residence District and a thirty-foot height district. The ordinance, section 7, height district, has been amended, whereas in this printed copy, it says, "For the purpose of regulating and limiting the height and bulk of buildings hereafter erected, the City of Newark is hereby divided into five classes of districts: (a) thirty-five foot districts, (b) fifty foot districts, (c) eighty-five foot districts, (d) one hundred and twenty-five foot districts, and (e) one hundred and fifty foot districts." That 30 40

Frederic Bigelow, direct.

10 first district has been changed to thirty feet. We found that the plans as filed exceeded the height limit, inasmuch as it showed an elevation of approximately thirty-eight feet high; that the E area district was violated in that the building covered sixty per cent. of the lot, although their application says fifty-three per cent.; it is incorrect. The plan shows it would cover sixty feet. An E District, "No building shall occupy more than thirty-five per cent. of the area of the lot, if an interior lot, nor more than forty-five per cent. if a corner lot." This being a corner lot, forty-five per cent., would be allowed, but they wished to cover sixty per cent. The limitation of the number of families in an E District is regulated as follows: "No dwelling or tenement house shall hereafter be erected or altered to accommodate or make provision for more than twenty-five families on any acre of land nor more than a proportional number of families on a fractional part of any acre of land. The maximum number of families which may hereafter be housed on any plot of ground shall not exceed the integral number obtained by multiplying the acreage of such plot, exclusive of the area within the street lines, by 20 twenty-five. The limitation imposed by this section shall, however, not prohibit the erection of a one-family house on any plot containing at the time of the passage of this ordinance an area of less than one-twenty-fifth of an acre." There are twenty families proposed in this house, and it is approximately a quarter of an acre. In other words, twenty-five are limited on an acre. So that they violate that section, which is section 16. It, therefore, became our 30 duty to reject those plans.

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Frederic Bigelow, direct.

Q This rejection was based on the interference with the health, safety and welfare of the community?

Mr. Henig: That is a leading question.

The Witness: If counsel wishes me to testify as an expert on the reasons for this ordinance, I can. 10

Judge Stickel: I press my question.

Mr. Henig: I ask for a ruling on my objection.

Judge Stickel: I withdraw the question.

Q How long have you been in the building business, the line you are now in? How long have you been superintendent of buildings? A I have been superintendent of buildings since about two and a half years ago. 20

Q And an architect for how long? A I have been a practicing architect in Newark, I should say, for approximately twenty years—a licensed architect of the State of New Jersey.

Q Did you have anything to do with the laying-out of this E District? A I was secretary of the whole City Plan Commission, which brought forward, I believe, the idea of zoning for the City of Newark. 30

Q Were you familiar with the reasons for the laying out of this district as an E District? A Yes, I am familiar with the reasons for that.

Q Would you tell us what the reasons are?

Mr. Henig: I object; I don't think that is material, as to what the reasons were.

Chairman Van Duyne: We are sitting somewhat informally; and it is the desire of 40

Frederic Bigelow, direct.

this board to give all the scope and leeway that can be given to the testimony that is offered, and I am in favor of admitting this evidence for what it is worth.

10 The Witness: The plot in question is located at the southwest corner of Elizabeth avenue and Keer avenue. That is opposite Weequahic Park, and it is the second street within the southerly boundary line of the City of Newark. All of that portion of Newark along Weequahic Park is residential in character. At the time of the passage of this zoning ordinance, in 1919, the general character of each particular district in the City of Newark was allowed to remain. In other words, this plan commission and the zoning commission and the city commissioners did not make any radical changes in the established character of any district. The character of this district is one which was particularly adhered to, because it was so distinct in character. There was no question about its being a residential neighborhood. There were no business activities anywhere for some distance in the City of Newark from this particular plot. It is, as you all know, a one and two-family house district, and it is zoned as an E Residence District to maintain that character more or less. The purpose, in my opinion, which is evident in all city planning and all zoning, the primary principle of it all is to permit of a stable, economical development of a community; it is also intended in that development to ultimately reach the ideals of public welfare and safety and health. Now, no community

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Frederic Bigelow, direct.

can look toward the things which are mentioned in the law as public welfare and safety, and so on, unless they have some definite line along which they can work. You don't mind my giving my opinion on this thing, do you?

Judge Stickel: No, we all desire to have it. 10

Chairman Van Duyne: I think Mr. Bigelow has made a sufficient study and has been connected long enough with this particular subject, and its development, to have an opinion practically that of an expert.

Mr. Henig: It is only offered as his opinion, though.

The Witness: It is also stated in the law that zoning public property on those grounds, and this general map of Newark is Newark zoned as an ultimate map to achieve those particular ends. It is for the public welfare that we have permitted in that neighborhood, and only public welfare, and no other reason whatever, that we permit in the City of Newark frame dwellings. If we were to regulate dwellings in the same way we do factory and store buildings, we would prohibit the frame building, but to promote public welfare, we allow frame buildings, and only for that reason, because they are not good. This locality is largely built up in frame dwellings. To offset the hazard of fire, it is reasonable to exclude all other hazards of use, which they have done in the zoning ordinance. Also, they have limited the area permissible to be covered on the lot, and the height. Height limitations, especially in frame districts, are 20
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Frederic Bigelow, direct.

10 necessary as a fire precaution. The city in furnishing the necessary public work to take care of this neighborhood is enabled to put in sewers and water mains of smaller capacity than they would in zones which were intended to accommodate factories and congested living quarters, such as tenement neighborhoods. We find that the water mains in Elizabeth avenue and Keer avenue are six-inch mains at this corner, and that the sewer is a ten-inch sewer; that such size mains and sewers are adequate to take care of a thinly populated district, but would be inadequate to accommodate a number of multi-family houses, say one hundred to the acre, such as this would become—one hundred families to the acre. In other words, it is wise to reject this plan, because it would not only put more families to the acre, and possibly give them less light and air—though I don't think this is a question of light and air—but it would make inadequate the established facilities for fighting fire; it would entirely disrupt the facilities for carrying off sewage, and it would also strain the fire department in the location of its fire houses. They are based on the number of dwellings and families in an area, I believe. It would be detrimental to health, for the necessary water for bathing and toilet facilities would be inadequate in the district. It would be detrimental to the public welfare, because it would be an enormous expense to replace all these utilities.

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40 Q All those facts you had in mind when you rejected this permit? A I had the code in mind only, but I have always been connected to

Frederic Bigelow, cross.

some extent with zoning and city planning. I started out in 1911 as secretary to the City Plan Commission, and was chairman of the old zoning board. I know the purpose underlying the things which I am enforcing.

Cross examination by Mr. Henig.

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Q Now, you say that when you rejected these plans the only thing you had in mind was the provision of the zoning ordinance? A That was all.

Q And it was on the basis of the violation of the zoning ordinance that you rejected the plans? A Exactly.

Q Now, what kind of buildings do the plans call for? A They call for a twenty-family dwelling, known as a tenement house.

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Q To be constructed of what material? A To be constructed with brick exterior wall and interior wooden floors, and construction, and so on. That is all outlined more or less in the application here. The first floor will be constructed of 2x10 wood beams, longest space sixteen feet, twelve inches on center. Second floor, 2x10; third floor, 2x10, sixteen feet, twelve inches on the center. Only the exterior walls are to be of brick. All other partitions would be of 2x4 studs. Some of the bearing partitions would have 2x6 inch studs. Excepting the roof covering above the roof boarding, and the exterior walls and cellar floor, all the buildings would be of inflammable material.

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Q And as far as the exterior walls are concerned, they would be entirely of different construction than the ordinary dwelling in that neighborhood is at the present time? A Most of them are frame up there now.

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Frederic Bigelow, re-direct.

Q The vast majority are frame dwellings?

A Yes, sir.

Q And as a fire risk this building would be of a less serious nature? A No, I think not. To multiply the hazard in this building.

10 Q Are you familiar with the insurance rates?

Judge Stickel: Let him finish his answer.

The Witness: The affair inside of this building is a very large mass. If it once gets going it will make a good deal more heat than a small dwelling, and the windows are nearer the property line than most of the dwellings.

20 Q You are not familiar with the insurance rates covering the various properties in that neighborhood, are you? A No.

Q You say that the water mains are six-inch mains in this neighborhood and the sewer is a ten-inch sewer? A Yes, sir.

30 Q Would the construction of this particular building affect the carrying off of the sewage or the water supply in that neighborhood? A I believe that the water and sewer would be adequate for this particular building, but it would not—

Mr. Henig: That is all I asked. That is all.

Re-direct examination by Judge Stickel.

40 Q But if this section were developed as an apartment development, as distinguished from its present one and two-family development, there would be an increased drain and strain

Frederic Bigelow, re-cross.

upon the sewer and water facilities? A Yes, sir.

Mr. Henig: I object to that question.

The Witness: I stated that before.

Mr. Henig: That is, in your opinion, you stated that before. 10

Chairman Van Duyne: The objection is overruled.

Judge Stickel: I think I am entitled to have him explain the other answer.

Q The zoning restrictions, generally speaking, are in harmony with the prior restrictions?

A Yes, so far as I know; it is in harmony with the evident existing character of the locality.

Re-cross examination by Mr. Henig. 20

Q You are familiar with this neighborhood?

A Yes, sir.

Q How far is this particular lot from the city line? A I should say about three to five hundred feet.

Q And are you familiar with the character of the buildings right across the line from this neighborhood—from the city line? A In Hillside? 30

Q I think so; I don't know whether it is Hillside or not—or Elizabeth. A You mean out of Newark?

Q Yes. A I never paid much attention to it except my general impression of it.

Herman Rosenfetter, direct.

HERMAN ROSENFETTER, sworn for the objectors.

Direct examination by Judge Stickel.

10 Q What is your connection with the City of Newark, Mr. Rosenfetter? A Engineer in charge of the distribution system, water department.

Q What type—what size water pipes have they in the Weequahic section? A Well, in the immediate neighborhood which you are talking of, six inches.

Q And is that a water system of pipe consonant with the residential development? A Yes, sir; the whole system is.

20 Q Has the water system been developed in that section in line with the residential development that exists there? A Yes; my memory is originally they were fifty-foot lots and were to be either single-family houses or two-family houses; that is, in other words, you wouldn't have over one or two families on every fifty-foot front.

30 Q Were you with the Water Department when this development was laid out? A I came there in 1907.

Q And was the system developed in accordance with the tract? A Yes.

Q The water system? A Yes, sir.

Q So that the system of water supply down there is one which has been designed and carried out to supply a residential development? A Yes.

Q What would be the effect if that residential development was changed into an apartment or tenement house development?

40 Mr. Henig: I object to that.

Herman Rosenfetter, direct.

Chairman Van Duyne: On account of leeway in the testimony expressed by the board the objection is overruled.

Mr. Henig: I should like to have an exception.

Q All I have in mind is that you know this to be a one and two-family residential development. What I am trying to find out, in view of your experience in the department, having been there since 1907 and in charge of the distribution system, is what effect would the changing of this development into a tenement house residence development have on the water system? 10

Mr. Henig: The same objection.

A It would have to be enlarged. We would have to put in larger mains and additional feeders than what we have now. 20

Q If the tract were to continue to be developed—if the vacant lots were developed in accordance with the present development, would that be necessary? A No, not in that particular neighborhood.

Q To enlarge your system, what would that mean—what would you have to do? 30

Mr. Henig: I object to that. I think it is immaterial in this case.

Chairman Van Duyne: The objection will be overruled.

Mr. Henig: I desire an exception.

A We would have to put in additional feeders and enlarge the pipes in some of the streets—that would cost money. 40

Herman Rosenfetter, cross.

Q Would that mean the tearing up of the street? A Yes, certainly.

Q And what would be the first effect felt upon the water system by the erection of tenement houses in that section?

10 Mr. Henig: I object to that on the same ground.

Chairman Van Duyne: Objection overruled.

Mr. Henig: Exception.

A Why, if you built enough of them, the first effect would be that people in other houses would not have sufficient water.

20 Q It would mean lower pressure? A The more you draw on it, the lower your pressure, and the less adequate is the service.

Q And that necessarily would have an effect upon the fire-fighting facilities? A Yes.

Q Is the pressure adequate under existing conditions in Weequahic Park? A Yes, in that section.

Q Have you had any trouble in that section, even under existing conditions, with the water pressure? A No.

30 Q In any part of the tract? A No, not east of Bergen street.

Q Have you had it west of Bergen street? A We have had some complaints.

Cross examination by Mr. Henig.

Q Do you know when these water pipes were installed in that neighborhood? A I remember when the one in Elizabeth avenue was installed.

40 Q Were you connected with the department at that time? A Yes, sir.

Herman Rosenfetter, re-direct.

Q When was that? A That was built in 1907, from Lyons avenue down to the city line.

Q And the other water pipes, were they installed later or before that time? A I should say a very small portion of them were laid before 1907.

Q At the time these pipes were laid, in 1907, there were practically no residences at all in that neighborhood, were there? A Yes, sir, there were some residences of course. 10

Q Compared to what they are today? A No.

Q Would the fact that this one particular building was being erected on this particular plot compel the city to change any of the water pipes, or would it in any way affect the water supply in that neighborhood? A No. 20

Q Does the water supply, so far as the consumption of water is concerned and the water supply in so far as fire-fighting facilities are concerned, come from the same source? A Well, in the beginning, yes, but by the time they get down to the city we change them to different levels.

Q So that one would not affect the other? A Yes, it is a rather complicated thing to go into with you now. 30

Q Would the fact that this particular building if erected upon this particular plot affect the fire-fighting facilities in so far as the water is concerned? A No.

Re-direct examination by Judge Stickel.

Q It would if other residences were built throughout the tract? A These large buildings with ten and twenty families in, certainly. 40

Chief William J. Fischer, direct.

CHIEF WILLIAM J. FISCHER, sworn for the objectors.

Direct examination by Judge Stickel.

10 Q Chief, how long have you been identified with the department? A I am in my twenty-ninth year.

Q In what department are you? A In the Newark City Fire Department.

Q Will you tell us what experience you have had in that period of time?

Mr. Henig: I don't think that is necessary. I will admit his qualifications.

20 Q Do you know the locality that is here in issue, the section from Meeker avenue to Gruman avenue, in the Weequahic section of Newark? A Yes.

Q You know it as a one and two-family residence development? A Yes, sir.

Q You have been connected with the Fire Department for twenty-four years, you say? A Yes, sir.

30 Q And you have held positions from fireman to your present position? A Up to my present rank.

Q Where is the fire house located in this territory? A There is one at Bergen and Custer avenue.

Q And what territory does that serve? A That would serve in that neighborhood.

40 Q Can you tell us approximately the territory it serves? A Well, just what 28 covers—all our engine companies are located in localities and cover certain distances on first

Chief William J. Fischer, direct.

alarms, and certain distances on second alarms, and so forth. They try to keep fire houses according to localities. In a congested section you have to have more fire companies there to answer on first, second and third alarms, than in a district that is not so congested.

Q Then this service is developed upon the character of the development that it serves? A 10
As the city develops, the service is so situated.

Q A residence territory would be larger—a fire house would have to serve a larger distance than it would in a congested territory? A Absolutely, and we would send less companies. In the one that was congested, and where the buildings are larger, not only does a battalion chief go, but in addition, one of our deputy chiefs goes to the fire; that is, in a congested district there is a deputy chief always goes, and then you have 20
two truck companies and four engine companies, and sometimes a squad company.

Q In this territory now served by the fire house, the existing fire house, developed as a one and two-family residence district, will the present fire facilities be adequate? A Well, at the present time, it is adequate; if the city will grow, we will naturally need more. There is no city that is adequately covered. 30

Q Then if this section were developed as a tenement house development, as distinguished from its present one and two-family development, the fire facilities would certainly not be sufficient?

Mr. Henig: I object to that question.

Chairman Van Dyne: The objection is overruled.

A No, sir. 40

Chief William J. Fischer, direct.

Q Would they be sufficient? A If that were a tenement district, we would have to increase the fire houses and truck houses. We would have to send more companies on first alarms, and more truck companies. You cannot go into a tenement house district and do the same work as you can on one and two-family houses. You have the element of danger in your tenements that does not exist in one and two-family houses. There is a difference between brick and frame. When you take a brick tenement house and the windows are frame, it is not much more protected than if it were all frame. There is exposure exists in there. If you can take and look over the list averaged by the fire underwriters, you will see that fire losses have gone to \$535,000,000—the largest number in the history of time, and you will find several hazards that exist in tenement houses. You have your stoves and ranges. Twenty stoves is more dangerous than one or two. The same thing exists with the number of floors in the house. Then you have electricity in the house, and that has caused a loss of two hundred million in this country. Electricity is put in; after it is put in and inspected, somebody interferes with it, and we never know it. It means re-inspection, and the city would have to increase the electrical department to take care of that. In addition to that people heat. We know in these tenement houses how they are heated; they start off all right, and after a while the neighborhood is run down, the congestion is in there. The heat will be turned on on the fifteenth of November or the fifteenth of October, until a certain date in April, and previous to that time, no matter how hot or cold it is, that heat does not go on. We find a number of oil

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stoves and also gas stoves. We find in the cellar of those places a large quantity of stores. The cellars are cut up into a number of bins. Those are the things we have to contend with. In addition to the electricity and the other fire hazards, you have a number of gas meters in there, and in a tenement house of that kind, the carbon-monoxide and carbon-dioxide is apt to kill. You can find people there who have not a mark on them— They are simply smothered. In those tenements our greatest danger is panic. They have a number of children, and if a fire occurs in the middle of the night, you go there and have to get them out, and sometimes it is hard to get those people out; life comes first with us. 10

Q You consider a tenement house of this kind a fire hazard? A I certainly do. 20

Mr. Henig: I would like to be excused for a few moments. Mr. Jacob Lubetkin is here to take care of my case.

Q Would the water facilities be sufficient?
A No. There is a recommendation of the Board of Fire Underwriters that in sections like that they run in a 24-inch main, and also there have been recommendations on Elizabeth avenue of a 12-inch main. That will be a tremendous cost to the city. 30

Q So that a development along the line of this tenement house would mean the destruction of the present mains? A In my opinion, if you permit this you are going to have a lot of trouble in there; it is the greatest evasion of a tenement house law I ever saw in a building. It is the first building that I ever saw for twenty families three stories high. Over two stories we consider 40

Chief William J. Fischer, cross.

10 it absolutely dangerous for a person to jump. If a person jumps more than two stories, it results in death, in the majority of cases. This is the first one that has come to my attention for twenty families. If you permit this, you will have five and six-story apartments up there. They can build them if they make them fire-proof, and if they are sixty-five feet high, they are compelled by law to put in a four-inch stand pipe. Then you will need the pressure to meet the stand pipe, which you haven't got there. It is the pressure and the size of a main that counts. Mains never get larger lying in the street; they get smaller; they get filled up with rust and dirt and other stuff.

20 Q So that the height of the building has considerable to do with the fire hazard? A Size has a lot to do with it in the fire department.

Q What would be necessary in order to supply adequate fire facilities should this tract be developed as a tenement house development? A It would mean more companies, larger mains, and fire-proof buildings.

Q Fire hydrants? A Fire hydrants, of course.

30 *Cross examination by Mr. Lubetkin.*

Q Do you consider any apartment house a fire hazard? A A hazard?

Q Yes. A I consider them more of a hazard than I do a one or two-family house, yes.

Q You have described this particular house as a fire hazard. Do you refer to this particular house or apartment houses in general? A I refer to tenement houses in general.

40 Q You refer to them as being hazardous? A More hazardous than a one and two-family house.

Chief William J. Fischer, cross.

Q And that would naturally increase the fire risk? A Where there are twenty families, it would increase the danger in that house.

Q So in your opinion apartment houses should not be constructed at all? A I don't say that. I have not said that they should not be constructed. I believe they should be constructed where there are proper facilities to meet it. If it is a tenement house district and all tenement houses are built in the district, you know how to regulate your facilities for that particular hazard. 10

Q Would this one particular building in that particular neighborhood increase the hazard? A I think that building is an increased hazard in that neighborhood.

Q Would you have to change your facilities because of the building of this particular building? A Not for that building, but for a number of buildings you would. 20

Q As a matter of fact the water mains have been increased in the Weequahic Park section in the past fifteen years, have they not? A No.

Q When was the fire house up there constructed? A That hasn't been so long.

Q That was built because the section was growing and naturally they needed more fire facilities? A Yes, sir. 30

Q Would the erection of an apartment house itself—this particular apartment or any other apartment—be a menace or fire hazard to any of the other houses in that neighborhood? A It would.

Q In what way? A Why, in the number of families there; there is more hazard because of twenty families than there is with one or two families. 40

Chief William J. Fischer, cross.

Q How would it endanger the neighbors? A There is more danger of a larger fire and the sparks flying.

Q So then your opinion is that no section in the city should be developed by the erection of apartment houses? A I didn't say that.

10 Q You believe that apartment houses are a necessity today? A I think an apartment house with twenty families should be fire-proof construction throughout, not an ordinary brick construction. I think an ordinary brick constructed building for twenty families is a fire-trap.

Q That is your own personal opinion; that does not apply to apartment houses in this particular neighborhood, but it applies to apartment houses in general? A I say so, yes.

20 Q So that you think that apartment houses all over the city should be made fire-proof? A Yes, sir.

Q And if this particular apartment house were made fire-proof, it would not increase the fire hazard to adjoining property? A No.

30 Q The only objection you have is that the facilities for fighting the fire are not as great as they should be, but that the city would have to increase them? A I stated to you very specifically that this one building—that for this one building they would not have to be increased, but if they are going to make that neighborhood into a tenement district, it requires more facilities, and if they build this building they are going to build more, and I think this is the time to stop it, and I hope the Board does.

40 Q You are not concerned with the fact as to whether there may be other appropriate places for the construction of apartment houses in Newark? A There may be plenty so long

Chief William J. Fischer, cross.

as it does not interfere with the zoning. I believe the city has the right to zones, and somebody should not be able to upset it.

Q Why do you use the word "tenement house"? A Because it is a tenement house.

Q It is not the tenement house in the proper sense of the word? A It is a tenement house in the ordinary sense of the word. Here is your State Tenement House Law. You can take the definition as they define it, and it is a tenement house, pure and simple. It can't be anything else—there can't be anything else made out of it. 10

Q The fire-fighting facilities all over the city have been increased during the past fifteen years, have they not? A Yes, sir.

Q That has been due to the erection of buildings? A Yes, sir. 20

Q And even assuming that the Weequahic section should develop by the erection of more one and two family houses, the fire-fighting facilities would have to develop, would they not, even though you didn't have apartment houses there? A What buildings?

Q Even the erection of more two-family frame houses and business properties on Lyons avenue—the building of those things would naturally require more fire-fighting facilities, would they not? A Yes. 30

Q And if the city grows, no matter what is being constructed, the fire-fighting facilities would have to grow? A Yes, sir.

Q You say the erection of apartment houses in that neighborhood would put the city to the expense of putting in new mains. The tax rates would increase, too, would they not, by the erection of these houses? A I am not con- 40

Chief William J. Fischer, cross.

cerned in the tax rating; the Tax Board will take care of that.

Q You are putting the expense on the city; we want to see if the city can make it up. A I say this, when you bring in about the tax rate, there is an awful kick every time about the tax
10 rate, and when people are allowed to build just as they want to build, they have no right to put the city to the trouble of increasing the tax rate.

Judge Stickel: I don't want to go into that line, because if the additional apartment houses increase the value, they decrease the value of the adjoining properties; for that reason I do want to object to going on with this line of testimony. Your city
20 ratables would increase on one hand, and your existing valuations would be decreased.

Q If you say a building of this type is a fire hazard, wouldn't it be more of a fire hazard if it were built in a neighborhood where there are other apartment houses? A Wouldn't it be more?

Q Yes. A No; a number of apartment houses would make the district what we call a
30 tenement district. A tenement district is a hazardous district, but that doesn't have any weight on the question with me. If you have a number of tenement houses to do with, one or more does not make much difference, because the way we have the district laid out, so many engines respond at first alarm, and so many on second alarm, and so many on third alarm, and we can take care of it. The same is true of a factory district. A number of engines respond
40 and also a battalion chief and a deputy chief.

Edward S. Rankin, direct.

There is a board of engineers to take care of that, and in this particular district they have about three engine companies to respond, and if it is built up into a tenement house district, they will have to increase that to four.

Q So that if apartment houses are built in this section, the city will have to increase the means of fighting fire, would it not? A Absolutely. 10

Q And if they do that, they are acting in a degree commensurate with the risk? A Yes.

Re-direct examination by Judge Stickel.

Q But while they would have to increase the fire facilities in case the one and two-family houses were built throughout the section, they would not have to change the fire facilities, as they would if the district were changed into a tenement house development, would they? A No, sir. 20

EDWARD S. RANKIN, sworn for objectors.

Direct examination by Judge Stickel.

Q Mr. Rankin, what is your official position with the city? A Engineer in charge of sewers. 30

Q And how long have you been in such position? A About twenty-three years.

Q Are you familiar with the sewer facilities in the Weequahic section of Newark from Meeker avenue to Grumman avenue, and east of Bergen street? A I am.

Q And what character of sewer development is there? A In this particular section there is 40

Edward S. Rankin, direct.

what we call the separate system; the domestic sewage goes through one sewer and the storm water through another.

10 Q And is there a different dimension of sewers for a residence development than there is a business section? A There is not a different character, but always in designing sewers we have to assume a certain character of development. Where we know there will be an apartment development with a good many families to the acre, we have to build the sewers a little larger; and where we are expecting a one-family or two-family development, we can make them smaller. In a one-family development they run about twelve families to the acre, whereas with an apartment house development, such as this would become, it would run up to one hundred
20 families to the acre.

Q Are the facilities in this section sufficient for a tenement house development? A These sewers were designed on the assumption that there would be about twelve families to the acre.

Q And the city developed those sewer facilities with that situation in mind? A Yes, sir.

Q And the existing sewer facilities have met that demand? A Yes, sir.

30 Q Would they be adequate to meet a development of the vacant lots in this section into a tenement house district?

Mr. Lubetkin: I object to that.

Q Would these present sewer facilities be adequate to meet a tenement house development in that section?

40 Mr. Lubetkin: I object.

Edward S. Rankin, direct.

Chairman Van Duyne: Objection over-ruled.

Mr. Lubetkin: Exception.

A It would depend entirely upon the number of the tenements that were put there. It is difficult to say exactly what population could be served by the sewers. It is not only the size, but also the grades at which they are laid, and the underground waters have a great deal to do with it. There is always a certain amount of seepage into a pipe, no matter how carefully you lay it. So, as I stated before, the sewers were designed for that class of development. 10

Chairman Van Duyne: May I just interject a question? The Forest Hill restricted section, that extends from Second avenue on the south to Elwood avenue on the north, and from Clifton avenue on the east to Branch Brook Park, there exists title restrictions, which call for a development of the property so that single-family houses go on each fifty-foot lot. Now, in designing sewers for property of that kind, where you necessarily have a knowledge of the proposed development as well as the present development, those sewers are designed smaller than if there were no restrictions and you had to prepare for a possible tenement house development? 20 30

The Witness: Those things are all considered, but we get the same condition down there. Such development as there was and such restrictions as there were, indicated that the Weequahic tract was to be a one and two family development, and these sewers were built along that line. 40

Edward S. Rankin, cross.

Q Are the connections in that section, the taps, for one and two family houses? A Yes, the connections are laid to the curb line.

Q For one and two family houses? A Yes, sir.

10 Q Would they be adequate for a tenement house? A Well, it would depend on the size of the house.

Q What sizes are they? A Six inches, the standard.

Q And what is the tap used for a tenement house of twenty families? A The probabilities are that the six-inch would be large enough. Of course, all the families are not using water at the same time.

20 *Cross examination by Mr. Lubetkin.*

Q Hawthorne avenue was laid out for one and two family houses, was it not? A Hawthorne avenue is built on the curb system, where we take in sewage water and surface water. Surface water is so greatly in excess of sewage water that we did not consider the sewage at all.

Q How was Lyons avenue laid out? A The same way.

30 Q Bergen street? A The same way.

Q How was Bergen street laid out? A The same way.

Q There are a number of houses on Bergen street today, aren't there? A I couldn't say—I don't know.

Q And if the volume of water or sewage is increased, the city will have to enlarge the sewers, will it not? A Yes, if it is necessary.

40 Q You would not have to change the sewage system there because of the erection of this one

Andrew J. Brady, direct.

particular house, would you? A No, I don't think so.

Q It would require the erection of quite a few houses of this type before the city would be obliged to change the size of the sewer pipe? A I think so.

10

ANDREW J. BRADY, sworn for the objectors.

Direct examination by Judge Stickel.

Q What is your connection with the city? A Chief sanitary inspector of the Health Department.

Q How long have you been in that position? A Over thirty-two years.

20

Q Would the same size tap be required in a one-family house as would be required in a twenty-family house, according to the health regulations? A According to the number of families and the height of the building they will be larger.

Q And assuming that the sewage facilities and water facilities in the Weequahic section were inadequate for a tenement house development, would or would not the health be affected to a greater degree than in the case of a one and two-family development? A It would, yes, in case that the sewer was not adequate to carry off the waste from that building, and in storms, why, there may be a backage from the sewer which would carry the soiled matter back into the cellar.

30

Q The health hazard would be greater in a twenty-family house than it would in a one or

40

Andrew J. Brady, cross—re-direct.

two-family house? A It would, surely, under those conditions.

Cross examination by Mr. Lubetkin.

Q As any section develops, the sewerage facilities have to be increased? A Yes, sir.

10 Q Are you familiar with Springfield avenue, Irvington? A I have some knowledge of it, yes.

Q Do you know that the sewerage facilities there are inadequate and water backs into the cellars of the various houses? A Yes, sir.

Q And for that reason there is the construction of a sewer for storm water now going on? A Yes, sir.

20 Q So that if these various apartments are erected the city will be obliged to increase the sewerage facilities, and that will take off the sewage? A You mean if the present sewer system were large enough?

Q If the present sewer system was not large enough and the section increased the city would be obliged to put in larger sewers? A They would have to, to care for the health of the people in those localities.

30 Q But if the city supplied larger sewer facilities? A Under the present sewer system there I don't think that would be necessary.

Re-direct examination by Judge Stickel.

Q You think the present sewer system is adequate for the present development? A I think anything added in the way of tenement houses would have a great effect on the sewer system of that section.

40

Andrew J. Brady, re-cross—re-direct.

Re-cross examination by Mr. Lubetkin.

Q Would the sewer system there be sufficient if this particular house was erected? A Well, that is a question that I would be unable to answer now.

Re-direct examination by Judge Stickel.

10

Q If there is a six-inch tap there, that isn't sufficient, is it? A A six-inch tap would be all right, but the other risers would not be enough; a six-inch tap would carry more waste to the sewer, but perhaps there would be a backage in stormy weather or heavy rains which would actually flow that sewage back into the building.

Re-cross examination by Mr. Lubetkin.

20

Q An owner can change the size of his tap at any time, can he not? A Providing the sewer in the street is a certain size.

Q Do you know the size of the sewer in the street that is there now? A Ten inches.

Q And you don't know whether a ten-inch sewer is sufficient to carry off the waste of this house? A It would not be carrying off the waste of that particular house.

30

Q With the other houses as well? A I doubt it.

Q But you can't say positively? A No.

40

Elmer K. Sexton, direct—cross.

ELMER K. SEXTON, sworn for the objectors.

Direct examination by Judge Stickel.

Q What is your connection with the City of Newark? A Assistant superintendent of schools.

10 Q How long have you been assistant superintendent of schools? A Thirteen years.

Q Are you familiar with the school facilities in the Weequahic section, the section from Meeker avenue to Grumman avenue? A Quite familiar, yes.

Q What is the condition of the Berkeley School now? A It is overcrowded.

Q That is, it has alternating classes? A Alternating classes, and has day classes, both.

20 Q There is a new school in the course of construction in that section, isn't there? A On Maple avenue.

Q And recently the size of that school was increased, was it not? A Yes, sir.

Q That school, it is contemplated, will be sufficient to meet the needs of the community? A It is very doubtful. It might not be open before September of next year, and the excess number of classes at the present time indicate that it will be filled or nearly filled to its utmost capacity.

30 Q Are there any other plans under way looking forward to the construction of schools up in that neighborhood at the present time? A There is not.

Cross examination by Mr. Lubetkin.

40 Q You say that the probabilities are that that new school will be overcrowded. That was not

Joseph K. Ebert, direct.

caused by the erection of any apartment houses in the Weequahic section, was it?

Judge Stickel: No; we don't so contend, either.

Q The Peshine Avenue School has been increased from time to time in size, has it not? A It has. 10

Q Was that caused by the erection of any apartment houses in the Weequahic section?

Judge Stickel: No. We have got all we can take care of at the present time.

Q The same condition exists in other parts of the city, due to the growth of the city—the city is required to build new schools? A They are building this one now. 20

Q Isn't there that congestion in all the sections of Newark today? A The school population changes from year to year.

JOSEPH K. EBERT, sworn for the objectors.

Direct examination by Judge Stickel. 30

Q You are identified with the Police Department, captain? A Yes, sir.

Q How long have you been with the Police Department? A More than twenty-nine years.

Q And where are you assigned at present? A The First Precinct.

Q Do you know the territory that has been here in issue, from Meeker avenue to Grumman 40

Joseph K. Ebert, direct.

avenue? A I know it from having driven by and having walked through that section.

Q Do you know where the police precinct is that is particularly designed to take care of this section? A Yes, sir.

10 Q Where is it? A West Bigelow and Hunterdon street.

Q What territory is it designed to serve? A It takes care of all the territory south of Lehigh avenue, Avon avenue, city line and adjoining Elizabeth and Hillside.

Q Can you tell us approximately the number of men assigned to cover that territory? A About seventy, all told.

20 Q Do you know whether the number of men assigned to cover this territory has any connection with the character of the development? A In a residence section, where the territory is comprised of one and two-family houses, the posts are larger, because there is less demand on the police for police action.

Q What is the situation where there is a tenement house section? A The posts are smaller.

30 Q Why? A Because of a greater number of people living on the post, and the congested character of the neighborhood.

Q Then, more surveillance is necessary; is that the idea? A Yes.

40 Q And what do you base that on? A I base that on my experience with the general run of apartment houses. In this precinct in particular we have apartment houses where we have to detail plainclothesmen; sometimes we have to put uniformed men out in plain clothes for the purpose of watching people who are residents of those apartment houses.

Joseph K. Ebert, cross.

Q Then, there is apt to be more vice in tenement houses of this character than in the ordinary one and two-family houses? A There is.

Cross examination by Mr. Lubetkin.

Q That does not apply to all apartment houses, does it? A Not all, but a majority of them. 10

Q It does not apply to 299 Clinton avenue, does it? A That I haven't had occasion to watch yet.

Q You say you have seventy men there now—how many men did you have ten years ago? A I can't answer that question; I was not in command of that precinct.

Q There was not a Sixth Precinct ten years ago, was there? A Yes, I think the Sixth Precinct was in existence more than ten years ago. 20

Q That came into existence because of the development of that section? A Because of the growth of that section. The idea of having a precinct down there is to facilitate the automobile patrol, when called upon, without having the men take an hour to get down there, or an hour or two to come back when their tour of duty was ended. 30

Q The erection of this particular building will not occasion the sending of more men down there, will it? A It depends who the tenants are.

Q Captain, isn't it a fact that the tenement house, in the common meaning of the word, is a cold-water apartment house, where a poor class of people live—isn't it true that that requires more police surveillance than the better class 40

Joseph K. Ebert, cross.

apartment house? A No, there is more vice in the higher class of apartments than there is in the poor ones.

Q Is that based upon your own personal opinion or police records and actual statistics?

A That is based on my personal knowledge.

10 Q Then in your opinion those people that live in apartment houses are not responsible?

A I wouldn't say that, but I will say this—

Q You said on your direct examination that the majority of apartment houses are nuisances?

A I said there is more vice in the majority of apartment houses than there is in one and two-family houses.

20 Q That is because of the fact that in an apartment house there are thirty or forty families, whereas in one and two-family houses you are going to have less people? A The majority of one and two-story houses are usually inhabited by the owner and one tenant, and the owner is particular whom he lets the other apartment to, but in an apartment house, you don't know who your next-door neighbor is or what his character might be.

30 Judge Stickel: That is all the testimony I wish to offer.

Mr. Henig: I desire to put in some testimony on rebuttal.

The further hearing of this matter is adjourned until March 12, 1925, at 2:30 P. M.

Ralph Zirpoli, direct.

SECOND DAY.

Appearances as before stated.

RALPH ZIRPOLI, being duly sworn according to law, on his oath testifies as follows:

Q What position do you hold with the city? 10

A Plan examiner.

Q And have you examined the plans and specifications attached to the application of Reuben Fischmann, to construct an apartment house at Keer avenue and Elizabeth avenue?

A 815-829 Elizabeth avenue.

Q And will you tell me whether there are any violations of the building code?

Mr. Henig: I object to that at this time 20 because you have had the testimony of the Superintendent of Buildings, who testified that the only reason that the plans were rejected was because of the zoning ordinance, and for no other reason.

Mr. Van Dyne: I don't think the precedent is wrong; we will hear the witness' testimony.

A The stairs is not enclosed with fire-proof 30 material, the corridors are not enclosed in fire-proof construction. There are additional stairways required. The hallways and passageways should be enclosed with fire-proof enclosures, with the walls and ceilings to be of fire-proof materials, and the area, according to the zoning ordinance, is exceeded, and the height.

Q Have there been any other applications for permits to erect apartment houses in what is known as the Weequahic Park section? 40

Ralph Zirpoli, cross.

Mr. Henig: I object to that question. It is entirely irrelevant and immaterial so far as this case is concerned.

Judge Stickel: I am trying to show there was another application made to erect an apartment house within this district.

10 Mr. Van Duyne: As I stated at the former hearing, it is the desire of this board to give all the latitude that counsel for either side may wish, within proper reason, and I think, Judge Stickel, you may proceed.

Mr. Henig: Exception, please?

Mr. Van Duyne: Exception granted.

A Yes, sir, at Lyons avenue and Potter avenue.

20 Q Was the permit granted or refused? A Rejected.

Cross examination by Mr. Henig.

Q When did you discover these different defects in the plans and specifications you have just testified to? A When the plans were filed with our department.

30 Q Was there any record made of them at the time the plans were rejected? A Here is the record right here.

Q Is that attached to the plans? A The plans are right here; yes, sir.

Q Were there two different plans? A No; one set of plans.

Q Are these the plans marked in evidence before? A Exactly the same, or a copy of the same; this is a different copy.

40

Discussion.

Mr. Van Duyne: Your testimony would apply similarly to the plans which are marked as part of the records of this case?

The Witness: Yes, sir, both plans were filed at the same time.

Judge Stickel: That is all the testimony we have to offer. 10

Mr. Van Duyne: Have you anything further to offer, Mr. Henig?

Mr. Henig: There is only one thing I wish to offer. There was some testimony introduced with reference to the restrictions on the property, claiming all this property was located in a restricted neighborhood, and one of the witnesses testified there were restrictions on this particular property, restricting it to a one-family house. I want, with the consent of Judge Stickel, to offer on the record an agreement made between the Weequahic Park Front Realty Company, the original owner of the entire tract in that neighborhood, and the original owner of this particular property, at the time the restrictions were first put on record, and Otto J. Karst, who was the first purchaser of this particular property from the Weequahic Park Front Realty Company, in which agreement it was agreed between him and other adjoining owners of the property that the restrictions—it was agreed as follows: “That the property conveyed to these various property owners subject to the restrictions, shall be free from the said restrictions, and all mutual obligations created thereby, and the parties further agree that no person shall have any rights by reason of the restrictions placed on the said property, as they are declared to be null and void.” 20 30 40

Discussion.

Mr. Wolber: Do you claim that that agreement was entered into by all the owners of the other property on this tract?

Mr. Henig: Affected at that particular date. I claim that the Weequahic Park Front Realty Company was the owner of the entire tract.

10 Mr. Wolber: The tract from Chancellor avenue to the Union County line.

Mr. Henig: I am talking only about this particular tract. I claim that the Weequahic Park Front Realty Company owned all the property. They had many other conveyances to other people, and I claim that all the people to whom they made conveyances, and the Weequahic Park Front Realty Company, made this agreement.

20 Mr. Wolber: That was a release of the restrictive scheme between that company and all persons owning any lands there?

Mr. Henig: Yes, sir.

Judge Stickel: Assuming that it affects only this particular tract I have no objection to putting it in. I do not admit that is so or that it has the effect he contends.

30 Mr. Van Duyne: I believe we have in our records an adequate description of just what territory this particular tract comprises. That, of course, will be considered.

Mr. Henig: I am through, with this exception; in view of the testimony just offered on behalf of the objections with reference to the fire-proof walls and fire-proof stairways and so on, I want to make an offer at this time, that the plans be amended so that they conform to these requirements, with the exception of the requirements of the zoning ordinance.

Discussion.

Mr. Van Duyne: You want to correct them if they are defective?

Mr. Fitzsimmons: What about the height?

Mr. Henig: That is in the zoning ordinance.

Mr. Wolber: You would amend your plans to that extent?

Mr. Henig: So that they should conform to the requirements of the building code, but not to the requirements of the zoning ordinance. 10

Mr. Van Duyne: It is the desire of this board to consider and weigh the evidence that has been submitted in the testimony and we will not be able to do that until we have a complete transcript of the shorthand notes.

Mr. Henig: May we file a brief?

Mr. Wolber: The board may consider the evidence to be offered by both sides as closed and we are now to the point where it will be argued. 20

Judge Stickel: As I understand the authority and jurisdiction of this board, it is set forth on page 328 of the Laws of 1924:

“To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.” 30

Mr. Henig represents the appellant and appeals and for his relief must rely on this and the two succeeding sections. No testimony has been offered by the appellant to indicate there is any error in the decision made by the Superintendent of Buildings. The burden is upon the appellant to show that there is some error, and he has not made any effort so to do, and has submitted no evidence on that point whatsoever.

Discussion.

The second section relating to the jurisdiction of the board is:

“To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.”

10 Admittedly there is no effort to say there should be an exception in this particular case, and this apartment house should be permitted, but if there is an effort to work under that section, and again I say there has been no evidence adduced to support that view, and, on the contrary, the objectors have offered a mass of evidence, all uncontradicted, to show there should be no exception from the terms of the ordinance, and to show that the erection of this particular apartment house would be a menace to the health, safety and welfare of the community.

20 The third section relating to the board's powers is:

“To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.”

20 This case does not come within the terms of that section, but assuming it does, no proof has been offered, and on the contrary the objectors have offered evidence, uncontradicted, to show that it does a hardship to the community, and from the standpoint of health, fire, water and sewer facilities the erection of this apartment house, in setting the precedent that would be set, would be a distinct detriment.

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Discussion.

For those reasons, and upon those grounds, and also upon the ground that the application clearly shows that the provisions of the zoning ordinance relating to area and height are plainly and clearly violated by this contemplated building, and also that there is no proof that the approval of the Tenement House Commission has been obtained to the erection of this tenement house. Those are the points upon which I rely. I would like the board if they find it within their jurisdiction—I would like the board to find as a fact that the construction of this building would be a menace to the health, safety and welfare of the community. 10

Mr. Henig: I will submit my brief within two weeks.

(Case closed.) 20

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

No. 212, January Term, 1926.

10	<p>E. & M. LAND Co., <i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE BOARD OF ADJUSTMENT OF THE CITY OF NEWARK, N. J., and FREDERIC BIGELOW, Super- intendent of Buildings of the City of Newark, <i>Respondents.</i></p>
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20 Argued January 20, 1926; decided May 13, 1926.

On Certiorari, etc.

Before Justices Trenchard and Katzenbach.

For the prosecutor, Charles Jones.

For the respondents, Jerome T. Congleton and Charles M. Myers (Fred. G. Stickel, Jr., on the brief).

30 *Per Curiam:*

This is a certiorari bringing up "a certain decision rendered September 3, 1925, by the Board of Adjustment of the City of Newark, New Jersey, relative to an appeal to said board by E. & M. Land Company from the rejection by Frederic Bigelow, superintendent of buildings of the City of Newark, of an application for a permit to erect on Custer Place, 100 feet west of Meeker avenue, on a lot known and designated as 10

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Opinion of Supreme Court.

Custer Place, Newark, belonging to the said company, a three-story brick apartment house to be occupied by 12 families."

The resolution brought up affirmed "the decision of the superintendent of buildings" and denied the application for a permit.

It appears that the apartment house in question was to be 40 feet high, and in the Weequahic Park section of Newark. The plans were approved by the tenement house commission. The superintendent declined to grant the permit because it violated the limitation of the zoning ordinance as to height, percentage of lot to be occupied, and number of families to be housed. We think that these limitations, in the particular circumstances of the present case, are illusory and arbitrary and are ineffective to bar the building in question. *Scola v. Senior*, 130 Atl. 882; *Plymouth Co. v. Bigelow*, 129 Atl. 203; *Jersey Land Co. v. Scott*, 126 Atl. 173. They obviously bore no relation to the public health, safety or the general welfare.

In the brief it is argued that these zoning limitations were within the police power, and are justified by increased fire hazard, alleged lack of school facilities, and alleged lack of sewerage facilities. These contentions, in circumstances like the present case, have been in effect hitherto decided to be without merit. *Ingersoll v. South Orange*, 128 Atl. 393, *affd.* 130 Atl. 721.

It is further said that the zoning against apartment houses is justified because they promote immorality. But we are unwilling to say as a matter of law, and without proof, that apartment houses may be discriminated against in a zoning ordinance solely on the theory that they promote immorality.

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Opinion of Supreme Court.

10 The action of the board of adjustment in sustaining the refusal of the superintendent of buildings to grant the permit will be set aside. This action, however, does not give to the prosecutor the right to which he is entitled, namely, a building permit for the erection of the building in question. Certiorari is not the proper remedy to secure the prosecutor his rights. *Falco v. Kaltenbach*, 128 Atl. 394. The proper remedy is mandamus. It seems probable that it will not be necessary for the prosecutor to apply to this court for such a writ in view of the position of the respondents, which, as we understand it, is to the effect that if this court holds that the action of the board of adjustment was unwarranted, a permit will be forthwith granted to the prosecutor. The
20 action of the board in affirming the action of the superintendent of buildings of the City of Newark in refusing to issue the permit to the prosecutor is set aside, with costs.

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*Order Reversing Judgment.***ORDER REVERSING JUDGMENT.**

NEW JERSEY SUPREME COURT.

No. 213, January Term, 1926.

E. & M. LAND Co.,
Prosecutor,

vs.

THE BOARD OF ADJUSTMENT OF
THE CITY OF NEWARK, N. J.,
and FREDERIC BIGELOW, Su-
perintendent of Buildings of
the City of Newark,
Respondents.

On Writ of 10
Certiorari.

Rule Re-
versing Judg-
ment of the
Board of
Adjustment
of the City of
Newark.

The Court, having inspected the transcript and
the proceedings of the Board of Adjustment of
the City of Newark, a municipal corporation in
the County of Essex, returned with the certiorari
in this cause, and the reasons for reversing the
decision of the Board of Adjustment of the City
of Newark, below, and having heard and con-
sidered the arguments of the respective counsel
therein, and having duly considered the same, it
is on this day of May, 1926,

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ORDERED, that the decision of the Board of Ad-
justment of the City of Newark, herein reviewed,
be reversed, set aside, made void and for nothing
holden, with costs of the prosecutor to be taxed,
and that the prosecutor herein be restored in all
things wherein it has lost by reason of the said
judgment.

Entered May 26, 1926.

On motion of

CHARLES JONES,

Attorney for Prosecutor.

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Notice and Ground of Appeal.

NOTICE AND GROUND OF APPEAL.

NEW JERSEY SUPREME COURT.

10	<p>E. & M. LAND CO., <i>Prosecutor-Appellee,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE BOARD OF ADJUSTMENT OF THE CITY OF NEWARK, N. J., and FREDERIC BIGELOW, Su- perintendent of Buildings of the City of Newark, <i>Respondents-Appellants.</i></p>	<p><i>On</i> <i>Certiorari.</i> <i>Notice of</i> <i>Appeal.</i></p>
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20 TAKE NOTICE, that the respondents appeal from the whole of the judgment entered in this cause to the Court of Errors and Appeals on the following ground:

The Supreme Court of the State of New Jersey erred in granting a writ of certiorari to the appellee instead of dismissing the application therefor.

Dated May 27, 1926.

30 Respectfully,
 JEROME T. CONGLETON,
 Attorney of Appellants.

Stipulation.

STIPULATION.

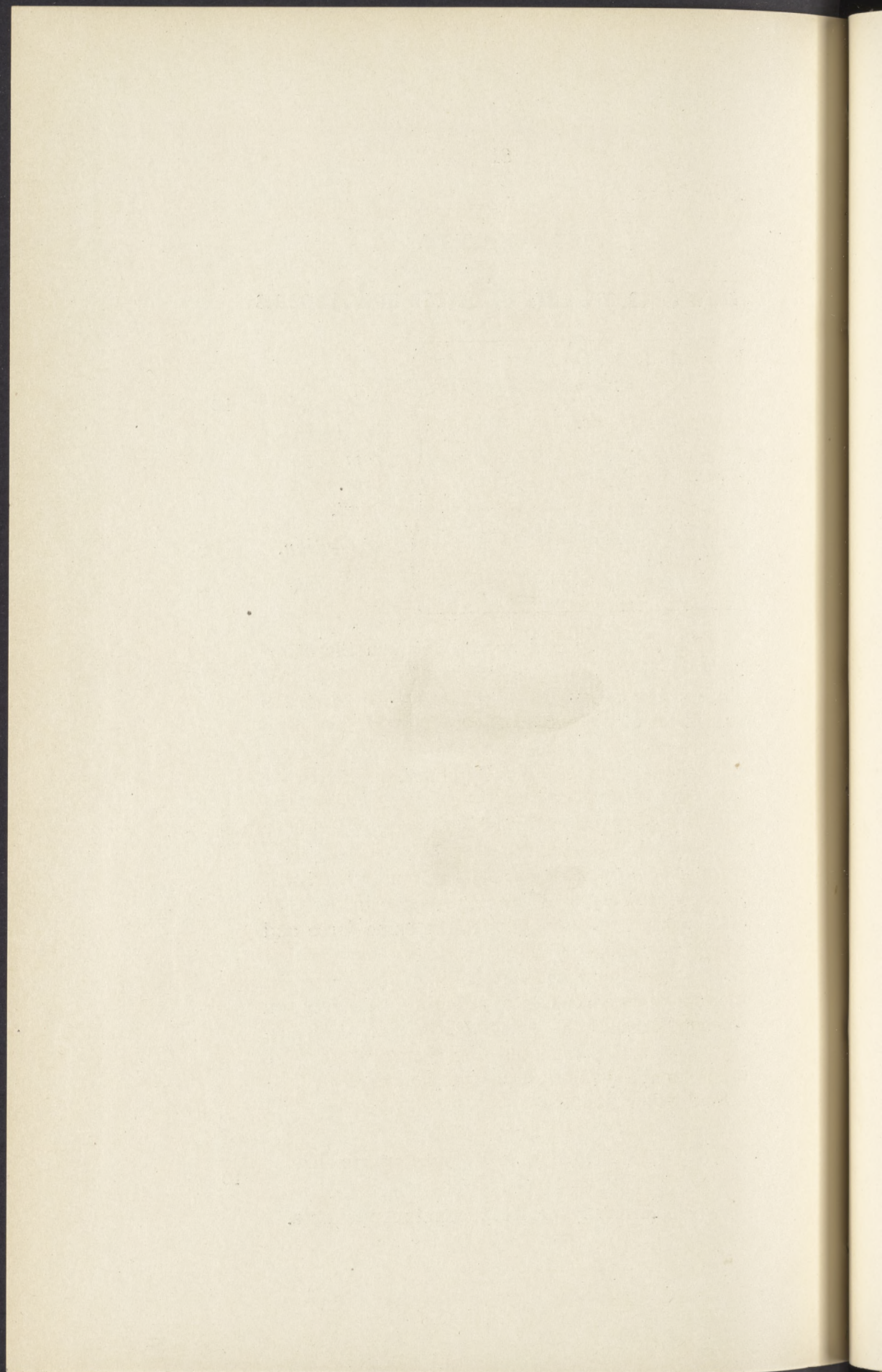
New Jersey Court of Errors and Appeals

E. & M. LAND Co., <i>Prosecutor-Appellee,</i> <i>vs.</i> BOARD OF ADJUSTMENT OF THE CITY OF NEWARK and FRED- ERIC BIGELOW, Superintendent of Buildings of the City of Newark, <i>Respondents-Appellants.</i>	}	<i>On Certiorari. On Appeal from Supreme Court. Stipulation.</i>	10
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It is stipulated and agreed between the attorneys of the respective parties hereto that the state of the case and the briefs to be used on the argument of the above-entitled cause may also be used on the argument of the case of the E. & M. Land Co., Prosecutor-Appellee, *v.* Board of Adjustment of the City of Newark and Frederic Bigelow, Superintendent of Buildings of the City of Newark, Respondents-Appellants, on certiorari, on appeal from the Supreme Court, affecting property on Elizabeth avenue in the City of Newark, New Jersey, with the same force and effect as though printed in the above-entitled cause; and that the judgment of the Court in the above-entitled cause affecting property on Custer Place in the City of Newark, New Jersey, shall be considered the judgment of the Court in the cause last above mentioned.

September 24, 1926.

CHARLES JONES, Attorney of Prosecutor-Appellee.	40
JEROME T. CONGLETON, Attorney of Respondents-Appellants.	



New Jersey Court of Errors and Appeals

LORETTA REALTY COMPANY, a
corporation,

Prosecutor-Respondent,

vs.

FREDERIC BIGELOW, Superin-
tendent of Buildings of the
City of Newark, County of
Essex, and THE BOARD OF
ADJUSTMENT OF THE CITY OF
NEWARK,

Defendants-Appellants.

On Certiorari.

*On Appeal
from
Supreme
Court.*

BRIEF ON BEHALF OF PROSECUTOR- RESPONDENT.

Preliminary Statement.

This action was originally commenced by mandamus, after the Superintendent of Buildings of the City of Newark had refused the prosecutor a building permit to erect a three-story brick apartment house on the northeast corner of Lyons avenue and Porter Place, in the City of Newark, New Jersey, because the same does not comply with the Zoning Ordinance of the City of Newark governing the regulations as to height, area and number of families to be housed. Said proceedings were superseded by certiorari proceedings, that having been thought to be the proper procedure under *Steinberg v. Bigelow*, 131 Atl. 114, and *Herman v. Board of Adjustment*, 131 Atl. 116. Counsel for both litigants, however, agreed, when this case was before the Supreme Court, that the remedy, if any, afforded prosecutor be in accordance with mandamus proceedings.

Statement of Facts.

By written stipulation filed in this Court, it is agreed that the facts in the case of *E. & M. Land Company v. The Board of Adjustment of the City of Newark*, now pending in this Court, be considered as part of the record in the present case.

ARGUMENT OF THE LAW.

This case was argued before the Supreme Court in connection with the case of the *E. & M. Land Company v. Superintendent of Buildings of the City of Newark*, at the January, 1926, Term of court.

The Supreme Court ordered that the action of the Board of Adjustment, which affirmed the action of the Superintendent of Buildings, in refusing a permit to the prosecutor, *Loretta Realty Company*, be set aside. See opinion in 133 Atl. 414, which follows the opinion in the case of *E. & M. Land Company v. Superintendent of Buildings of the City of Newark*, reported in 133 Atl. 413. In addition to the cases cited in that opinion, see also the following cases, which bear upon and cover the questions at issue:

Mishel v. Village of South Orange, 127 Atl. 794;

Eaton v. Village of South Orange, 130 Atl. 362;

Steinberg v. Bigelow, 131 Atl. 114;

Herman v. Board of Adjustment, 131 Atl. 116;

Franklin Realty Co. v. South Orange, 132 Atl. 81;

Bowen v. Jersey City, 132 Atl. 334;

Rudnevitz v. Bigelow, 133 Atl. 174.

The prosecutor herein, therefore, respectfully insists that, as the very questions involved have been so frequently decided by our Supreme Court adversely to the contention made by the appellants, the decision of the Supreme Court in the case *sub judice*, in setting aside the actions of the Board of Adjustment and Superintendent of Buildings of the City of Newark, should be affirmed with costs.

Respectfully submitted,

BENJAMIN M. WEINBERG,
Attorney for Prosecutor-Respondent.

New Jersey Court of Errors and Appeals

LORETTA REALTY COMPANY, a
corporation,
Prosecutor-Respondent,

vs.

FREDERIC BIGELOW, Superin-
tendent of Buildings of the
City of Newark, County of
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On Certiorari.

*On Appeal
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Respectfully submitted,

BENJAMIN M. WEINBERG,
Attorney for Prosecutor-Respondent.