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Notice.

(Filed December 11, 1945.)

New Jersey Supreme Court

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
specter of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.
Notice.

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*To John B. Molineux, Attorney of The Borough of
Metuchen:*

Dear Sir:

PLEASE TAKE NOTICE that on Saturday, the first
day of December, 1945, at 9:30 o'clock in the fore-
noon of said day or as soon thereafter as counsel
can be heard, at the Court House in the City of
Elizabeth, Union County, New Jersey, we shall
make application to the Honorable Clarence E.
Case, Supreme Court Justice, for the issuance of a
writ of certiorari or a rule to show cause why
certiorari should not issue against the above
named defendants, in order to set aside and de-
clare null and void and invalid certain proceedings
had by the Borough Council of said Borough of
Metuchen on the 15th day of October, 1945, pur- 30
40

Notice.

10 porting to revoke a building permit issued by the
building inspector of said Borough to the above
named prosecutors or either of them for the con-
struction of buildings at Durham Avenue, Me-
tuchen, New Jersey; to declare unlawful and in-
valid as against prosecutors Article IV Section 1,
Paragraph D of Amendment of February 5, 1935
20 to zoning ordinance of said Borough and to dis-
miss ten certain complaints made by said Howard
Krogh, as building inspector of said Borough
against the said Jacob Bass, for alleged violation
of said Article IV, Section 1, Paragraph D of the
Amendment of said zoning ordinance.

20 At said time and place we shall also apply for a
stay of any and all further proceedings on said
complaints before said recorder pending a deter-
mination of this matter, and for an order for leave
to take depositions to be used under said writ of
certiorari or rule to show cause.

Dated: November 29, 1945.

KOESTLER & KOESTLER,
Attorneys for Prosecutors in
Certiorari.

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Affidavit on Application for Writ.

(Filed December 1, 1945.)

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

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vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
specter of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.
Affidavits on
Application
for Writ.

20

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.:

JACOB BASS, of full age, being duly sworn, according to law, on his oath, deposes and says:

I reside in the Borough of Metuchen, in the County of Middlesex, and State of New Jersey. 30

My mother-in-law, prosecutor Fannie Weininger, is the owner of a certain parcel of land located on the southerly side of Durham Avenue between Central Avenue and the Lehigh Valley Railroad, in the Borough of Metuchen, County of Middlesex and State of New Jersey, said land having a frontage of 200 feet on Durham Avenue and a depth of 200 feet. Said property was vacant, and desiring to build residences upon the same, Mrs. Weininger arranged with me to make a set of 40

Affidavit on Application for Writ.

plans and specifications for the construction of buildings to be thereon erected for residence purposes.

10 The Borough of Metuchen has a building ordinance and also has a zoning ordinance, which I am informed was adopted in the month of July, 1923. Under said zoning ordinances so adopted the municipality is divided into three districts: (a) residence, (b) business and light manufacturing, and (c) manufacturing. By the Amendment of February 5, 1935, a new Article IV was adopted and the municipality was again divided into three districts retaining the same designation of residence being district (a), business and light manufacturing being district (b), and manufacturing being district (c). Copies of said ordinance and
20 amendment will be produced as a part of this affidavit. The property in question owned by Mrs. Weininger is in district (c).

Having prepared a plan and specification on July 28, 1945, on behalf of Mrs. Weininger, I applied to Howard Krogh, building inspector of the Borough of Metuchen, for a building permit to construct upon said property three one-story buildings containing a total of twenty dwelling units of three rooms each. Said plan and specification and application for building permit were filed
30 with said building inspector and he thereupon issued a building permit. As the agent of Fannie Weininger I proceeded to get ready for the construction of said buildings which called for the outside walls to be of cement blocks, but soon ascertained that it would be difficult and practically impossible to obtain said materials. Thereupon I found it would be necessary to resort to a different method of construction. I explained and demonstrated this method of construction to the build-
40

Affidavit on Application for Writ.

ing inspector, who approved of the same, and told me to go ahead with the construction as I proposed. Said work proceeded in the ordinary course for a number of weeks, and as the work progressed it was inspected by said building inspector at least once in each week, and he expressed approval of the work being done. Substantial work and progress had been made in the construction of said buildings so that walls were up for the greater part, a portion of the roof on, and the work done had entailed an expenditure of several thousands of dollars. 10

On October 15, 1945, at a meeting of the Borough Council of the Borough of Metuchen, without any previous notice thereof having been given to prosecutors and without any hearing afforded to them whatsoever, the said Borough Council purported to pass a resolution revoking the building permit theretofore granted for the construction of said buildings. 20

The following day, October 16, 1945, the building inspector and the Chief of Police of the Borough came to the site of the buildings and chased all of the workmen off threatening to arrest them if they stayed on the job and did further construction work, and said building inspector served upon me a notice that I must immediately stop all work, as the same was not in conformity with the Building Code. 30

On or about October 23, 1945, Fannie Weininger filed in the Court of Chancery of New Jersey her bill of complaint against the Borough and the Chief of Police and the building inspector to restrain them from interfering with said construction work, and said suit is still pending and undetermined. In said Chancery suit a preliminary injunction was issued as prayed, but by order made 40

Affidavit on Application for Writ.

on the 20th day of November, 1945, the same was modified so as to allow the defendants, their representatives, agents, servants and attorneys to bring any proceeding in any court of law for the purpose of enforcing the said zoning ordinance of the said Borough of Metuchen.

10 On October 20, 1945, two notices were served upon me, one by Howard Krogh as zoning inspector, advising that the buildings in question were nonconforming buildings under the provisions of Article IV, Section 1, paragraph D of the zoning ordinance as amended February 4, 1935, and the second of said notices by Howard Krogh as building inspector, making certain claims that the buildings are not conforming to certain provisions of the Building Code of said Borough.

20 While the building code provides for a certain procedure that might be taken in the event of a violation, no proceeding as defined or provided to be taken under said building code has in fact been initiated by the defendants.

30 On or about November 27, 1945, under oath the said Howard Krogh filed with the Recorder of the Borough ten complaints against Jacob Bass, one of said complaints being that the said Bass did on October 16, 1945, erect a three or more family dwelling or apartment house without having first obtained from the Zoning Board of Adjustments of the Borough of Metuchen a permit therefor, in violation of Article IV, Section 1, paragraph D of said zoning ordinance. The other nine complaints are for continuing in existence on said premises a three or more family apartment house, said buildings having been constructed without first obtaining from the Zoning Board of Adjustments a permit, in violation of Article IV, Section 1,

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Affidavit on Application for Writ.

paragraph D of said zoning ordinance on each of the days of October 17, 18, 19, 20, 22, 23, 24, 25 and 26, respectively, and seeking the penalty of \$200.00 for each day of violation. Upon the filing of said complaints ten warrants were issued as against the said Jacob Bass, and a proceeding thereon is set for hearing before said Recorder, Holger G. Holm, for Friday, December 7, 1945. 10

Said Article IV, Section 1, paragraph D of said zoning ordinance upon which said ten complaints are based is wholly invalid, void and of no effect and is not authorized by the Zoning Statute R. S. 40:55-30, *et seq.*; that said section is not a valid zoning regulation and it is not within the police power of said municipality to prevent an owner from constructing a three or more family apartment house within the limits of the Borough; that said Article IV, Section 1, paragraph D is unconstitutional in that it is the taking of property without due process of law and infringes the constitutional rights of both prosecutors; that said Article IV, Section 1, paragraph D is wholly unreasonable in toto and is an arbitrary invasion of private property and the use thereof; it is not the valid exercise of any power or authority committed to, vested in or delegated with the Council of the Borough of Metuchen and that therefore the Recorder of the Borough of Metuchen has no right, authority or jurisdiction to entertain or to enter proceedings upon the ten complaints filed with him by the said Howard Krogh as building inspector of the Borough of Metuchen against the prosecutor, Jacob Bass. 20 30

Affiant therefore prays on behalf of himself and of the property owner, Fannie Weininger, that all 40

Writ of Certiorari.

of said actions and proceedings be set aside and
declared null and void.

JACOB BASS.

Sworn and subscribed to before me }
this 29 day of November, 1945. }

10

ROSE I. LAPIDUS,
Notary Public of N. J.

Writ of Certiorari.

(Filed with Return December 27, 1945.)

NEW JERSEY, SS.:

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THE STATE OF NEW JERSEY TO THE BOROUGH OF METUCHEN IN THE COUNTY OF MIDDLESEX, HOWARD KROGH, (L. S.) Building Inspector of said Borough, and HOLGER G. HOLM, Recorder of said Borough—GREETING:

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We being willing, for certain reasons, to be certified of a certain ordinance adopted by the Borough of Metuchen, New Jersey, entitled Zoning Ordinance of 1923, and all acts amendatory and supplemental thereof and particularly the amendment of February 5, 1935, and of ten certain oaths and complaints against Jacob Bass filed by said Howard Krogh before said Recorder and pending before said Recorder together with all warrants, other papers and records concerning the same and also of a certain plan, specification and application made by Jacob Bass on behalf of Fannie

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Weininger for a building permit for the erection

Writ of Certiorari.

and construction of buildings on the property of said Fannie Weininger located on Durham Avenue in said Borough of Metuchen, filed on or about July 28, 1945, and all records and proceedings of said building inspector in relation to the construction of said buildings and the issuance of said building permit, also all petitions, minutes, records and proceedings had and taken before the Borough Council of the Borough of Metuchen on October 15, 1945 relating to or in connection with the revocation of the said building permit aforesaid. 10

We hereby command you, the said Borough of Metuchen in the County of Middlesex, Howard Krogh, Building Inspector of said Borough and Holger G. Holm, Recorder of said Borough, that you and each of you send under your seals to our Justices of the Supreme Court of Judicature of the State of New Jersey on the 20th day of December, 1945, all of the certain ordinance adopted by the Borough of Metuchen, New Jersey, entitled Zoning Ordinance of 1923, and all acts amendatory and supplemental thereof and particularly the Amendment of February 5, 1935, and of ten certain oaths and complaints against Jacob Bass filed by said Howard Krogh before said Recorder and pending before said Recorder together with all warrants, other papers and records concerning the same and also of a certain plan, specification and application made by Jacob Bass on behalf of Fannie Weininger for a building permit for the erection and construction of buildings on the property of said Fannie Weininger located on Durham Avenue in said Borough of Metuchen, filed on or about July 28, 1945, and all records and proceedings of said building inspector in relation to the construction of said buildings and the issuance of 20 30 40

Allocatur.

10 said building permit, also all petitions, minutes, records and proceedings had and taken before the Borough Council of the Borough of Metuchen on October 15, 1945 relating to or in connection with the revocation of the said building permit aforesaid, and all things touching and concerning the same as fully and entirely as before you and each of you they remain, to our Justices of the Supreme Court of Judicature, at Trenton, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

WITNESS, THOMAS J. BROGAN, Chief Justice of our Supreme Court at Trenton this 3rd day of December, Nineteen Hundred and Forty-five.

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JAMES J. GAVIN,
James J. Gavin,
Clerk.

KOESTLER & KOESTLER,
Koestler & Koestler,
Attorneys for Prosecutors.

Allocatur.

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This writ is allowed; let it be sealed.

CLARENCE E. CASE,
Justice of Supreme Court.

Dated: December 1, 1945.

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Reasons.

(Filed December 27, 1945.)

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
specter of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.
Reasons.

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Prosecutors assign the following reasons for
setting aside the ordinance and proceedings
brought up by the writ:

1. That the ordinance of said Borough of Me-
tuchen in the County of Middlesex purporting to
regulate zoning in said municipality does not
create any zone in which three or more family
houses are permitted as lawful structures. 30

2. That said zoning ordinances of said munici-
pality do not define any zone within the munici-
pality within which three or more family houses
may be lawfully erected.

3. That the zoning ordinances of said Bor-
ough do not by any of the terms therein set forth
classify a three or more family dwelling as a non- 40
conforming use.

Reasons.

4. That the zoning ordinances of said Borough do not set forth any regulations for the construction of three or more family dwellings.

10 5. By said zoning ordinances of said Borough the "C" District is created which merely prohibits therein certain types of manufacturing, trades or industries which are highly dangerous, noxious or offensive, but does not prohibit the construction therein of any type of dwelling or residence.

6. Article 4, paragraph 1, subdivision D of the amendment of February 5, 1935 of the zoning ordinances of said Borough is unlawful for the following reasons:

20

(a) It is not a zoning regulation.

(b) It is not within the power of the Borough Council of Metuchen to exclude three or more family dwellings.

(c) It is not within the power of the Borough Council of Metuchen to grant a permit to one person for a three or more family dwelling and to deny the same to another.

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(d) There is no delegation of authority from the Legislature to the Borough of Metuchen empowering said Borough to enact said provision.

(e) Said provision is *ultra vires*.

(f) Said provision is wholly unlawful.

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(g) Said provision is wholly arbitrary and has no reasonable basis or foundation relating to health, safety or general welfare of the community.

Reasons.

(h) That it takes away property of prosecutrix without due process of law and in violation of her constitutional rights.

7. That the complaints made by Howard Krogh, Building Inspector or Zoning Inspector before Holger G. Holm, Recorder of said Borough of Metuchen do not vest any jurisdiction in said Recorder for the reason that they are based upon an unlawful ordinance of said Borough, to wit, Article 4, paragraph 1, subdivision D of the Amendment of February 5, 1935 to the zoning ordinance of said Borough. 10

8. There is no jurisdiction in said Recorder because the zoning ordinances of the Borough of Metuchen and particularly the amendment of February 5, 1935 do not prohibit the construction of the three or more family dwelling house in the "A" District, "B" District or "C" District which are designated and defined by said ordinance and amendment, and therefore, said complaints as filed by said Recorder do not set forth any violation for which the prosecutor, Jacob Bass, is punishable by fine or otherwise. 20

9. Article 4, paragraph 1, subdivision D of the amendment of February 5, 1935 to the Zoning Ordinance of said Borough of Metuchen is null and void because it does not create define or legislate as to a uniform regulation respecting the class or kind of buildings or structures mentioned therein; that said subdivision D violates the mandate of R. S. 40:55-31. 30

10. The Zoning Ordinance of the Borough of Metuchen does not authorize any complaint to be 40

Reasons.

made for violation of Zoning Ordinance by the
Zoning Inspector.

KOESTLER & KOESTLER,
Koestler & Koestler,
Attorneys for Prosecutors in
Certiorari.

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Dated: December 27, 1945.

Service of a copy of the within Reasons is here-
by acknowledged this 27th day of December, 1945.

JOHN B. MOLINEUX,
Attorney for Defendants in
Certiorari.

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Return to Writ by William E. Schultz.

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
specter of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.
Return to
the Writ.

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I, WILLIAM E. SCHULTZ, Clerk of the Borough of Metuchen, in the County of Middlesex, do herewith send to the Supreme Court of the State of New Jersey the zoning ordinance of the Borough of Metuchen dated July, 1923, together with all subsequent zoning ordinances of said Borough, as by the writ of certiorari sealed the 3rd day of December, 1945, before the Honorable Thomas J. Brogan, Chief Justice of the Supreme Court, I am commanded to do.

30

I certify that I am the Clerk of the Borough of Metuchen in the County of Middlesex, and that the following are true copies of the zoning ordinance of the Borough of Metuchen, dated July, 1923, together with all subsequent zoning ordinances of said Borough, and that together they constitute the entire record of the proceedings in the above entitled action.

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Zoning Ordinance, July 1923.

Signed this 26th day of December, 1945, and sealed with the seal of the Borough of Metuchen, in the County of Middlesex.

(Seal)

WILLIAM E. SCHULTZ.
William E. Schultz.

10

Borough of Metuchen.

Zoning Ordinance.

July, 1923.

20 An ordinance to regulate and restrict the subsequent location of trades and industries and of buildings designed for specified uses in certain areas and to create districts for the aforesaid purposes.

WHEREAS, the Commission on Building Districts and Restrictions have presented their final report concerning the regulation, restriction and subsequent location of trades and industries and of buildings designed for specified uses in certain areas and have recommended for creation of certain districts for the aforesaid purposes, and;

30 WHEREAS, the Mayor and Council of the Borough of Metuchen have examined the same and approved the recommendations therein contained;

THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Metuchen:

ARTICLE I.

Short Title.

40 (1) This ordinance shall be known and may be cited and referred to as "Zoning Ordinance 1923" to the same effect as if the full title were stated.

Zoning Ordinance, July 1923.

ARTICLE II.

Definitions.

(1) The following words and terms used in this Ordinance shall be construed as hereinafter set forth, unless otherwise expressly provided.

(a) Words used in the present tense include the future; also the singular number includes the plural; and the plural the singular. 10

(b) The word "Person" includes individuals, firms, co-partnerships and corporations.

(c) A "non-conforming building" or "non-conforming use" is one that does not conform with the regulations herein made for the district in which such building or use is located. 20

(d) A "Conforming building" or "Conforming use" is one that does conform with the regulations herein made for the district in which such building or use is located.

(e) The term "adjoining lands" as used herein, means lands which are contiguous and are not separated by any street, avenue or public place.

(f) "Accessory Buildings" are stables, garages or other out buildings used in connection with the principal building on any lot. 30

(g) "Area" means the superficial contents measured in a horizontal plane.

(h) A "family" is any number of individuals living together as a single housekeeping unit, including boarders and roomers.

(i) The term "trades and industries" includes manufacturing and business of all kinds; also amusements and occupations conducted for profit; 40

Zoning Ordinance, July 1923.

but does not include the professions. Neither does it include churches or religious corporations nor a duly incorporated golf club or tennis club.

10 (j) "Manufacture" as used herein, is defined as the converting of raw, unfinished or finished materials or products, or any or either of them, into an article or articles or substance of a different character or for use for a different purpose; also laundries cleaning and pressing establishments and industries furnishing labor in the course of manufacture, or the refinishing of manufactured articles.

20 (k) The term "business" as used herein shall be defined as the sale or dealing in goods, ware and merchandise or property of any kind, either at wholesale or retail; also banking and any occupation conducted for compensation; but does not include manufacturing or the practice of a profession by a member of such profession, unless said member shall be assisted by more than two persons as assistants or associates, nor the operation of a duly incorporated golf club or tennis club.

30 (l) "Storage warehouse" is a building used either in whole or in part for the storing of goods, wares, or merchandise or other property while awaiting sale, shipment or other use, for compensation or in connection with manufacturing or business, but does not include banking institutions or safe deposit vaults.

40 (m) "Garage" is a place for the storage keeping, cleaning or repairing of motor vehicles, for compensation, or for the sale or rental thereof. The term, however, does not include a show room in which motor vehicles are on exhibition but not operated, cleaned or repaired.

Zoning Ordinance, July 1923.

(n) "Dwelling" is a building used exclusively for living purposes other than an apartment house, a hotel or a rooming house.

(o) "One family dwelling" is a dwelling designed for the occupants of one family only.

(p) "Two-family dwelling" is a dwelling designed for occupancy by two families and no more. 10

ARTICLE III.

Districts.

1. For the purpose of regulating and restricting the location hereafter of trades and industries and the subsequent location of buildings designed for specified uses, the Borough of Metuchen is hereby divided into districts which shall be designated and known as follows, to wit: 20

A, B and C, respectively. Such districts shall have the boundaries and area as shown on the map accompanying this ordinance, and made a part hereof, and entitled "Zoning Map of Metuchen, N. J. Accompanying Zoning Ordinance of 1923" and the several districts as thereon laid out are hereby established.

2. The districts created by section 1 of this article may be changed or altered by an ordinance supplemental to this ordinance. 30

3. In case the boundary line of any district shall run through any lot, the regulations and restrictions of the less restricted district shall apply to the portion of the lot lying within 25 feet at right angles from such boundary line.

Zoning Ordinance, July 1923.

ARTICLE IV.

Regulations and Restrictions.

1. A Districts—Within the districts designated as “A” no trades or industries, except the construction of one or two-family dwellings and accessory buildings, farming, gardening or horticulture, shall hereafter be carried on, conducted or located; and no building designed for the following uses shall hereafter be located or constructed therein, to wit:

- (a) Manufacturing.
- (b) Business except farming, gardening or horticulture.
- 20 (c) Buildings designed for occupation as a dwelling for more than two families.
- (d) Barns, stables, or garages, other than accessory buildings to two-family dwellings.
- (e) Hotel or rooming house.
- (f) Freight station or freight depot.
- (g) Car barns.
- (h) Gas tanks or power stations.
- 30 (i) Private schools, libraries, museums, Theatres, concert halls, dance halls, lodge rooms, club rooms, private hospitals, sanitariums or buildings for philanthropic or eleemosynary uses.

All houses erected in District A shall be situated one-half of the width of the front street back from the property line.

2. B. Districts—Within the districts designated as B the trades or industries hereinafter set

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Zoning Ordinance, July 1923.

forth shall not hereafter be carried on, conducted or located; and no buildings designated for the uses hereinafter set forth hereafter be located or constructed therein, to wit:

- (a) Manufacturing.
- (b) Barns, stables, or garages other than accessory buildings to dwellings on the same lot. 10
- (c) Freight station or freight depot.
- (d) Car barns.
- (e) Gas tanks or power stations.
- (f) Slaughter house.
- (g) Oil or gasoline tanks having a capacity of more than 200 gallons. 20
- (h) Lumber yards, coal yards or accessories.
- (i) Coal pockets.
- (j) Storage warehouse.
- (k) Theatres.

3. C. Districts—Within the districts designated as "C" the trade or industries hereinafter set forth shall not hereafter be carried on conducted or located; and no building designed for the uses hereinafter set forth shall hereafter be located or constructed therein, to wit: 30

- (a) The manufacture of nitro glycerine, gun cotton, gun powder, dynamite or other high explosives.
- (b) The manufacture of fertilizer from animal substance.
- (c) The refining of crude oil or petroleum. 40

Zoning Ordinance, July 1923.

(d) No trade of industry that is noxious or offensive by reason of the omission of odor or gas.

4. Nothing herein contained shall be constructed to authorize or permit the creation or maintenance of a nuisance.

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ARTICLE V.

Enforcement.

The superintendent of buildings shall not issue any building permit or certificate of occupancy for any building or use which does not conform with the provisions of this ordinance. It shall be the duty of the superintendent of buildings upon the filing with him of any plans for the construction, alteration or repair of any building, to require the owner of such building or proposed building, or his agent to certify in writing the use or intended use of any building so to be constructed, altered or repaired and the superintendent of buildings shall thereupon determine if such building or such use is one permitted by the provisions of this ordinance, and in case he shall determine that such building or use, or both, is a non-conforming building or use, he shall notify such owner or his agent in writing to that effect, stating in what respect such building or use is a non-conforming building or use. Such owner or his agent may within five (5) days thereafter notify the superintendent of buildings in writing that he appeals from such determination of the superintendent of buildings to the Commission on Building Districts and Restrictions of the Borough of Metuchen, and it shall thereupon be the duty of the superintendent of buildings to deliver the plans, specifications, application for permit, cer-

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Zoning Ordinance, July 1923.

tificate of use or intended use of such building or proposed building, and a copy of his notification to the owner or to his agent that such building or use is a non-conforming building or use, or both together with any other papers or information in his possession to the Clerk of the Commission on Building Districts and Restrictions of the Borough of Metuchen, shall within thirty days thereafter and upon five days notice in writing to the said owner or his agent, review the determination of the superintendent, and by resolution adopted by a majority of the members of the Commission either affirm or reverse the determination of the superintendent of buildings. 10

2. It shall be the duty of the superintendent of buildings to enforce the provisions of this ordinance. It shall also be the duty of the members of the Fire Department and the Police Department to report any violations of the provisions of this ordinance in writing to the superintendent of buildings and at the same time to send a copy of such report to the Clerk of the Commission on Building Districts and Restrictions of the Borough of Metuchen. 20

3. Every day that a use prohibited by this ordinance is continued in any building or location, shall be a separate and distinct violation thereof. Every day that a non-conforming building is permitted to exist shall constitute a separate and distinct violation of the ordinance. 30

4. Any person who shall violate any of the provisions of this ordinance shall upon conviction pay a fine not exceeding \$200 for each offense, in the discretion of the magistrate before whom such conviction shall be had, and in default of the payment of such fine any individual may be impris- 40

Zoning Ordinance, 1925.

oned in the county jail for a term not exceeding ninety days in the discretion of such magistrate.

ARTICLE VI.

1. This ordinance shall create no vested rights in property or otherwise.
2. This ordinance shall take effect immediately upon the publication thereof as required by law.

Zoning Ordinances.**1925.**

AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED, "ZONING ORDINANCE 1923" PASSED JULY 2nd 1923.

An Ordinance amending the regulating and restricting of the subsequent location of trades and industries and of buildings designed for specified uses in certain areas and the creating of districts for the aforesaid purposes.

WHEREAS, THE ZONING COMMISSION has presented its final report concerning the regulation, restriction and subsequent location of trades and industries and of buildings designed for specified uses in certain purposes, have recommended the creation of certain districts for the aforesaid purposes, and

WHEREAS, THE MAYOR AND COUNCIL OF THE BOROUGH OF METUCHEN have examined the same and approved the recommendations therein contained:

THEREFORE BE IT ORDAINED, BY THE MAYOR AND COUNCIL OF THE BOROUGH OF METUCHEN, IN THE COUNTY OF MIDDLESEX, AS FOLLOWS:

That the Zoning Ordinance of 1923, is hereby amended, to read as follows:

Zoning Ordinance, 1925.

ARTICLE I.

Short Title.

(1) This Ordinance shall be known and may be cited and referred to as "Zoning Ordinance 1925" to the same effect as if the full title were stated.

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ARTICLE II.

Definitions.

(1) The following words and terms used in this Ordinance shall be construed as hereinafter set forth, unless otherwise expressly provided.

(a) Words used in the present tense include the future; also the singular number includes the plural, and the plural the singular.

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(b) The word "Person" includes individuals, firms, co-partnerships and corporations.

(c) A "Non-conforming building" or "conforming use" is one that does not conform with the regulations herein made for the district in which said building or use is located.

(d) A "Conforming building" or "Conforming Use" is one that does conform with the regulations herein made for the district in which such building or use is located.

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(e) The term "Adjoining lands" as used herein, means lands which are continuous and are not separated by any street, avenue or public place.

(f) "Accessory Buildings" are stables, garages or other out buildings used in connection with the principal building on any lot.

(g) "Area" means the superficial contents measured in a horizontal plane.

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Zoning Ordinance, 1925.

(h) A "family" is any number of individuals living together as a single housekeeping unit, including boarders and roomers.

10 (i) The term "trades and industries", includes manufacturing and business of all kinds; also amusements and occupations conducted for profit, but does not include the professions, neither does it include churches or religious corporations not a duly incorporated golf club or tennis club.

20 (j) "Manufacture, as used herein, is defined as the converting of raw, unfinished or finished materials or products, or any or either of them, into an article or articles or substance of a different character, or for use for a different purpose; also laundries, cleaning and pressing establishments and industries furnishing labor in the course of manufacture, or the refinishing of manufactured articles.

30 (k) The term "Business" as used herein shall be defined as the sale or dealing in goods, ware and merchandise or property of any kind, either at wholesale or retail; also banking and any occupation conducted for compensation; but does not include manufacturing or the practise of a profession by a member of such profession, unless said member shall be assisted by more than two persons, as assistants or associates, nor the operation of a duly incorporated golf club or tennis club.

40 (l) "Storage Warehouse" is a building used either in whole or in part for the storing of goods, wares or merchandise or other property while waiting sales, shipment or other use, for compensation or in connection with manufacturing or business, but does not include banking institutions or safe deposit vaults.

Zoning Ordinance, 1925.

(m) "Garage" is a place for the storage, keeping, cleaning or repairing of motor vehicles, for compensation, or for the sale or rental thereof. The term, however, does not include a show room in which motor vehicles are on exhibition, but not operated, cleaned or repaired.

(n) "Dwelling" is a building used exclusively for living purposes other than an apartment house, a hotel or a rooming house. 10

(o) "One Family Dwelling" is a dwelling designed for the occupants of one family only.

(p) "Two family Dwelling" is a dwelling designed for occupancy by two families and no more.

ARTICLE III.

Districts. 20

1. For the purpose of regulating and restricting the location hereinafter, of trades and industries and the subsequent location of buildings designed for specified uses, the Borough of Metuchen is hereby divided into districts, which shall be designated and known as follows, to-wit:

A, B and C respectively. Such districts shall have the boundaries and area as shown on the map accompanying this Ordinance, and made a part hereof and entitled "Zoning Map of Metuchen, N. J. accompanying Zoning Ordinance of 1925" and the several districts as thereon laid out are hereby established. 30

2. The districts created by Section 1 of this article may be changed or altered by an Ordinance supplemental to this Ordinance.

3. In case the boundry line of any district shall run through any lot, the regulations and restric- 40

Zoning Ordinance, 1925.

tions of the less restricted district shall apply to the portion of the lot lying within 25 feet at right angles from such boundry line.

ARTICLE IV.

Regulations and Restrictions.

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1. A Districts—Within the districts designated as "A" no trades or industries except the construction of one and two family dwellings, apartment houses and hotels, and accessory buildings, farming, gardening or horticulture shall hereafter be carried on, conducted or located; and no building designed for the following uses shall hereafter be located or constructed therein, to-wit:

20

(a) Manufacturing.

(b) Business except farming, gardening, horticulture, hotel or apartment.

(c) Barns, stables or garages, other than accessory buildings to one and two family dwellings, apartment houses and hotels.

(d) Freight station or freight depot.

(e) Car barns.

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(f) Municipal gas tanks, power generating stations, public garages, gas or filling stations.

(g) Theatres, public concert halls, public dance halls, private hospitals, sanitariums or buildings for philanthropic or eleemosynary uses.

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All houses or dwellings erected in District A shall be situated one-half the width of the front street back from the property line and if said

Zoning Ordinance, 1925.

building is situated upon a corner tract or plot of ground, also one-quarter the width of the side street back from the property line, and that all accessory buildings shall be constructed and located at least the width of the front street back from the property line and at least one-half of the width of the said street back from the property line. 10

2. B. Districts—Within the districts designated as “B” the trades or industries hereinafter set forth shall not hereafter be carried on, conducted or located; and no buildings designated for the uses hereinafter set forth shall hereafter be located or constructed therein, to-wit:

(a) Heavy Manufacturing. 20

(b) Barns, stables, or garages other than accessory buildings to dwellings or other buildings permitted in this district, on the same lot.

(c) Freight station or freight depot.

(d) Car Barns.

(e) Municipal gas tanks or power generating stations. 30

(f) Slaughter house.

(g) Oil or gasoline tanks having a capacity of more than 200 gallons.

(h) Gas or filling stations.

3. C. Districts—Within the districts designated as “C” the trade or industries hereinafter set forth shall not hereafter be carried on, conducted or located; and no building designed for the uses 40

Zoning Ordinance, 1925.

hereinafter set forth shall hereafter be located or constructed therein, to-wit:

(a) The manufacture of nitro glycerine, gun cotton, gun powder, dynamite, or other high explosive.

10 (b) The manufacture of fertilizer from animal substances.

(c) The refining of crude oil or petroleum.

(d) No trade or industry that is noxious or offensive by reason of the omission or odor or gas.

4. Nothing herein contained shall be constructed to authorize or permit the creation or maintenance of a nuisance.

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*ARTICLE V.**Enforcement.*

The Zoning Inspector shall not issue any building permit or certificate of occupancy for any building or use which does not conform with the provisions of this Ordinance. It shall be the duty of the Zoning Inspector upon the filing with him of any plans for the construction, alterations or repair of any building, to require the owner of such building or proposed building, or his agent, to certify in writing the use or intended use of any buildings, to be constructed, altered or repaired and the Zoning Inspector shall thereupon determine if such building or such use is one permitted by the provisions of this Ordinance, and in case he shall determine that such building or use or both, is a non-conforming building or use, he shall notify such owner or his agent in writing to

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Zoning Ordinance, 1925.

that effect, stating in what respect such building or use is a non-conforming building or use.

2. It shall be the duty of the Zoning Inspector to enforce the provisions of this Ordinance. It shall be also the duty of the Fire Department and Police Department to report any violations of the provisions of this Ordinance in writing to the Zoning Inspector and at the same time to send a copy of such report to the clerk of the Zoning Commission of the Borough of Metuchen. 10

3. Every day that a use prohibited by this Ordinance is continued in any building or location, shall be a separate and distinct violation thereof, every day that a non-conforming building is permitted to exist shall constitute a separate and distinct violation of the Ordinance. 20

4. Any person who shall violate any of the provisions of this Ordinance shall upon conviction pay a fine not exceeding \$200 for each offense, in the discretion of the magistrate before whom such conviction shall be had and in default of the payment of such fine any individual may be imprisoned in the County Jail for a term not exceeding ninety days in the discretion of such magistrate. 30

ARTICLE VI.

1. This Ordinance shall create no vested rights in property or otherwise.

ARTICLE VII.

Board of Adjustment.

1. A Board of Adjustment as authorized by Chapter 146 of the Laws of 1924 is hereby established. The words, "The board" when used in this section refer to the Board of Adjustment. 40

Zoning Ordinance, 1925.

The board shall consist of five citizens of the Borough to be appointed by the Mayor and Borough Council of the Borough of Metuchen, and shall serve for a term of five years each, and until their successors shall be appointed and qualify, except that of the members of the board first appointed one shall be appointed for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years and one for the term of five years. Nothing herein contained shall prevent the appointment to said board of persons, in the employ of or holding office under the Mayor and Council of the Borough of Metuchen.

2. The members of the said board may be removed for cause, upon written charges and after public hearing by the Mayor and Borough Council of the Borough of Metuchen. Any vacancy in said board shall be filled for the unexpired term of the member whose term shall become vacant. Upon its appointment and yearly thereafter the board shall organize by the selection of one of the members as chairman thereof.

3. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The board may fix by rule the manner in which the chairman shall issue any such call for a meeting and the amount of notice required of any such call. The board may also fix by rule the manner, including the amount of notice required, in which meetings other than those at the call of the chairman may be held. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes

Zoning Ordinance, 1925.

of its proceedings, showing the vote of each member, upon each question, or failing to vote, indicating such fact, and shall keep records of its examination and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

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Appeals.

4. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau effected by any decision of an administrative officer, such appeal shall, taken within a reasonable time as provided by the rules of the board of filing with the officer from whom the appeal is taken and with the clerk of the Board of Adjustment a notice of the appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

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4-A An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from which the appeal is taken certifies to the board after the notice of the appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life of property. In such case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board, or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

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The board of adjustment shall fix a reasonable time for the hearing of the appeal, giving due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing any

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Zoning Ordinance, 1925.

party may appear in person or by agent or by attorney.

5. The Board of Adjustment shall have the following powers:

10 (1) 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 Ordinance.

(2) To hear and decide special exceptions to the terms of this Ordinance.

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

30 6. In exercising the above mentioned powers the board may reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from and may such order, requirement, decision or determination as ought to be made and to that end and shall have all the powers of the officer from whom the appeal is taken. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant, on any matter upon which it is required to pass under this Ordinance or to effect and deviation in this Ordinance or in any other ordinance adopted pursuant to the provisions of Chapter 146 of the Laws of 1924.

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Zoning Ordinance, 1925.

7. The board shall have power to adopt rules and regulations for its own government and relating to the holding of meetings and the giving of notice thereof.

It shall have power to adopt rules and regulations fixing the time within which appeals from the decision of any administrative office shall be taken and for the fixing of the time and manner of giving notice to the parties in interest in any such appeal. It shall also have power to adopt such other rules and regulations as it may deem necessary to interpret and carry into effect the provisions of this Ordinance. 10

ARTICLE VIII.

Filing Fee.

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1. Every owner of a proposed building, or his agent, shall pay a fee of Five (\$5.00) Dollars to the Zoning Inspector at the time the plans with respect to the proposed building and certificate of use with the said Zoning Inspector.

All Ordinances and parts of Ordinances inconsistent with this Ordinance are hereby repealed.

This Ordinance shall take effect immediately upon the publication thereof, as required by law. 30
Adopted: June 1st 1925.

Approved: June 2nd 1925.

FREDERICK L. CLARKSON,
Mayor.

Attest: EDWARD A. BURROUGHS,
Borough Clerk.

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*Zoning Ordinance, 1927.***1927.****AN ORDINANCE.**

An Ordinance to amend an Ordinance entitled,
 "Zoning Ordinance of 1925, approved June 2nd,
 One Thousand Nine Hundred and Twenty Five.

10 BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE
 BOROUGH OF METUCHEN, COUNTY OF MIDDLESEX:

1. That Section 1 under article VIII of the
 Ordinance to which this Ordinance is an amend-
 ment be and the same is hereby amended to read
 as follows:

ARTICLE VIII.*Filing Fee.*

20 1. Every owner of a proposed building, or
 buildings, or his agent shall pay a fee of Five
 Dollars (\$5.00) to the Zoning Inspector at the
 time the plans with respect to the proposed build-
 ing, or buildings and certificates of use are filed
 with the said Zoning Inspector; and the permis-
 sion, if granted, shall be good or effective for one
 year from the date of issuance.

30 This Ordinance shall take effect immediately
 upon its publication as required by Statute.
 Adopted: March 21, 1927.

Approved: March 22, 1927.

FREDERICK L. CLARKSON,
 Mayor.

Attest: EDWARD A. BURROUGHS,
 Borough Clerk.

Zoning Ordinance, 1927.

1927.

AN ORDINANCE.

AN ORDINANCE TO AMEND AN ORDINANCE
ENTITLED "ZONING ORDINANCE 1925,"

PASSED JUNE 1ST, 1925.

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WHEREAS, application has been made to the governing body of the Borough of Metuchen for the purpose of amending the Zoning Ordinance of 1925 in order to permit manufacturing upon the following described tract of land;

Beginning at the Northeasterly corner of Prospect Street and High Street, thence running along the Easterly line of Prospect St. 705.72 Ft. more or less to a point in the southerly line of lot #1 —Block #131, as shown upon tax map of the Borough of Metuchen, thence Easterly along the Southerly line of lot #1—65.83 feet to a point, thence Easterly along the Southerly line of lot heretofore conveyed by Campbell to Mathilda Herr 290.04 feet more or less to a point in the Westerly line of lot #3—Block #131 of aforesaid Tax Map, now or formerly belonging to Manning Freeman, thence along Westerly line of property now or formerly belonging to Manning Freeman in a Southerly direction 268.82 feet more or less to a point, thence in an Easterly direction along the southerly line of property now or formerly belonging to Manning Freeman 127.10 feet more or less to westerly line of right-of-way of Bonhamtown Branch of the Pennsylvania Railroad, thence along the Westerly line of the right-of-way of the Bonhamtown Branch of the Pennsylvania Railroad, thence along the Westerly line of the right-of-way of the Bonhamtown Branch of the

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Zoning Ordinance, 1927.

Pennsylvania Railroad, 521.5 feet more or less to the Northerly line of High Street, thence Westerly along the Northerly line of High Street, 185.80 feet more or less to the point or place of Beginning. (Containing approximately 5.23 acres) and

10 WHEREAS, the governing body after considerations is of the opinion that the application should be granted.

THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF METUCHEN:

1. That Section 1 under article 3 in the Zoning Ordinance 1925 together with Zoning Map accompanying said Ordinance and made a part thereof be and the same are hereby amended so that manufacturing will be permitted upon the following described tract of land:

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Same description as above.

2. BE IT FURTHER ORDAINED that all Ordinances or parts of Ordinances inconsistent with the terms of this Ordinance are hereby repealed.

This Ordinance shall take effect immediately upon its publication as required by statute.

30 Adopted: May 2, 1927.

Approved: May 3, 1927.

FREDERICK L. CLARKSON,
Mayor.

Attest: EDWARD A. BURROUGHS,
Borough Clerk.

*Zoning Ordinance, 1935.***1935.**

Book 2.

AN ORDINANCE TO FURTHER AMEND AN
ORDINANCE ENTITLED "ZONING ORDINANCE
1923" AMENDMENTS THEREOF AND SUP-
PLEMENTS THERETO (ALSO CITED AND RE-
FERRED TO AS "ZONING ORDINANCE OF
1925") AND REPEALING CERTAIN PROVI-
SIONS THEREOF. 10

BE IT ORDAINED By the Council of the Borough of
Metuchen that an Ordinance entitled "Zoning
Ordinance 1923" amendments thereof and supple-
ments thereto (also cited and referred to as "Zon-
ing Ordinance of 1925") be and the same is hereby
further amended to read as follows: 20

ARTICLE III.

Districts.

1. For the purpose of regulating and restrict-
ing the location hereafter of trades and industries
and the subsequent location of buildings designed
for specific uses, the Borough of Metuchen is
hereby divided into districts, which shall be desig-
nated and known as A, B and C Districts. 30

Such districts shall have the boundaries and
areas as shown on a revised Zoning Map accom-
panying this Ordinance, and made a part hereof,
and entitled "Zoning Map of Metuchen, New Jer-
sey revised, 1935."

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Zoning Ordinance, 1935.

ARTICLE IV.

Regulations and Restrictions.

1. GENERAL.

10 (A) No lot hereafter may be used and no building or part thereof hereafter may be constructed, moved, extended, altered or used except in conformity with the provisions of this Ordinance and the Statutes pertaining to Zoning.

20 (B) No building designed for residential purposes shall hereafter be erected in or moved to the rear of any existing building nor shall any building designed for residential purposes hereafter be erected or altered unless such building shall front upon a street; provided however, that the foregoing shall not apply to living quarters in stables and garages appurtenant to the dwelling occupying the front of the lot on which said stable or garage is located.

(C) No part of any filling station or of any public garage shall be located within 100 feet of any lot upon which is located a church, hospital, school, institution, theatres, club or public assembly seating more than 30 persons.

30 (D) An application for a permit for construction of or remodeling to a three or more family dwelling, apartment house, hotel, hospital, club house, sanitarium, or a cemetery, shall be made first to the Zoning Board of Adjustment who shall hear the application in the same manner and under the same procedure as the Zoning Board of Adjustment is empowered by law and Ordinance to hear cases and make exceptions to the provisions of a Zoning Ordinance, and the Zoning Board of
40 Adjustment may thereafter recommend in writ-

Zoning Ordinance, 1935.

ing to the Borough Council that a permit be granted, if in its judgment the said building or cemetery as it is proposed to be located, will not be detrimental to the health, safety, and general welfare of the community and its reasonably necessary for the convenience of the community.

Whereupon the Borough Council may, by resolution, approve or disapprove such recommendation and in case such recommendation shall be approved, the Zoning Inspector shall issue a permit for such structure or use. 10

2. "A" DISTRICT—RESIDENCE.

A. Within any residence district no building or structure shall be used, or erected to be used, in whole or in part for any industrial, manufacturing or commercial purpose or for any other than residence except the following specified purposes: 20

(1) A residence containing the professional office of its resident owner or lessee.

(2) Home occupations such as dressmaking, millinery, hair-dressing, manicuring, boarding and home cooking, provided that occupations shall be conducted solely by resident occupants of the building, and that no display of products shall be visible from the street. 30

(3) Church or any place of worship, including the parish house and Sunday School Building.

(4) School or other educational institutions including playgrounds and accessory buildings. 40

Zoning Ordinance, 1935.

(5) Public Library, Museum, Art Gallery or community center building.

10 (6) Building used exclusively by the Federal, State, County or Local government for public purposes, but not including workshops or warehouse.

(7) Buildings used for private horticultural or agricultural purposes, provided that no green-house heating plant shall be operated within 10 feet of any lot line.

(8) Stables, housing horses not more than four in number, and dog kennels for private use.

20 (9) Private garages will be permitted as follows: Housing not more than two cars for a one family house, or housing not more than four cars for a two family house, except where more cars are owned by members of the same family.

B. Within any residence district, no building or structure shall be erected or used in whole or in part for any use of the following purposes:

30 (1) Manufacturing.

(2) Business.

(3) Barns, stables, or garages other than accessory buildings as permitted above.

(4) Freight Station or freight depot.

(5) Illuminating gas tanks, power generating stations, public garages, gasoline filling stations.

40 (6) Theaters, public concert halls, public dance halls.

Zoning Ordinance, 1935.

C. All buildings erected or located in any residence district shall be situated one half the width of the front street back from the front property line.

All buildings erected, or to be located in any residence district on a corner lot shall be situated a distance of one quarter the width of the side street inside the property line of the side street. 10

Open porches, one story in height may project outside of the established building line provided the columns supporting the roof present the minimum of obstruction of the view.

Porches may be enclosed during the winter season provided the sash is glazed with clear glass.

Permanent enclosure of porches which project outside the building line will not be permitted except by approval of the Zoning Board of Adjustment. 20

Accessory buildings shall be located at least the width of the front street back of the front property line, and in the case of a corner lot also at least one half the width of the side street back from the property line of the side street.

3. "B" DISTRICT—BUSINESS AND LIGHT MANUFACTURING. 30

A. Within the districts designated as "B" the trades or industries hereinafter set forth shall not hereafter be carried on, conducted or located; and no building designed for the uses hereinafter set forth shall hereafter be located or constructed therein, to wit:

(1) Heavy Manufacturing.

(2) Barns, stables, or garages other than accessory buildings to dwellings or other 40

Zoning Ordinance, 1935.

buildings permitted in this district, on the same lot.

- (3) Freight station or freight depot.
- (4) Car barns.
- 10 (5) Municipal gas tanks or power generating stations.
- (6) Slaughter house.
- (7) Oil or gasoline tanks having a capacity of more than 550 gallons.
- (8) Gas or filling stations.

4. "C" DISTRICT—MANUFACTURING.

- 20 A. Within the districts designated as "C" the trade of industries hereinafter set forth shall not hereafter be carried on, conducted or located; and no building designated for the uses hereinafter set forth shall hereafter be located or constructed therein, to wit:

- (1) The manufacture of nitro-glycerine, gun cotton, gunpowder, dynamite or other high explosives.
- 30 (2) The manufacture of fertilizer from animal substances.
- (3) The refining of crude oil or petroleum.
- (4) No trade or industry that is noxious or offensive by reason of the omission of odor or gas.

- 5. Nothing herein contained shall be construed to authorize or permit the creation or maintenance of a nuisance.
- 40

Zoning Ordinance, 1935.

ARTICLE VIII.

Filing Fees.

BE IT FURTHER ORDAINED by the Council of the
Borough of Metuchen that Article VIII be and
the same is hereby repealed.

BE IT FURTHER ORDAINED that this Ordinance
shall take effect immediately upon its publication
as required by law.

F. L. CLARKSON,
Mayor.

Adopted: February 4, 1935.

Approved: February 4, 1935.

Attest: THOMAS F. O'NEILL,
Borough Clerk.

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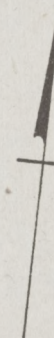
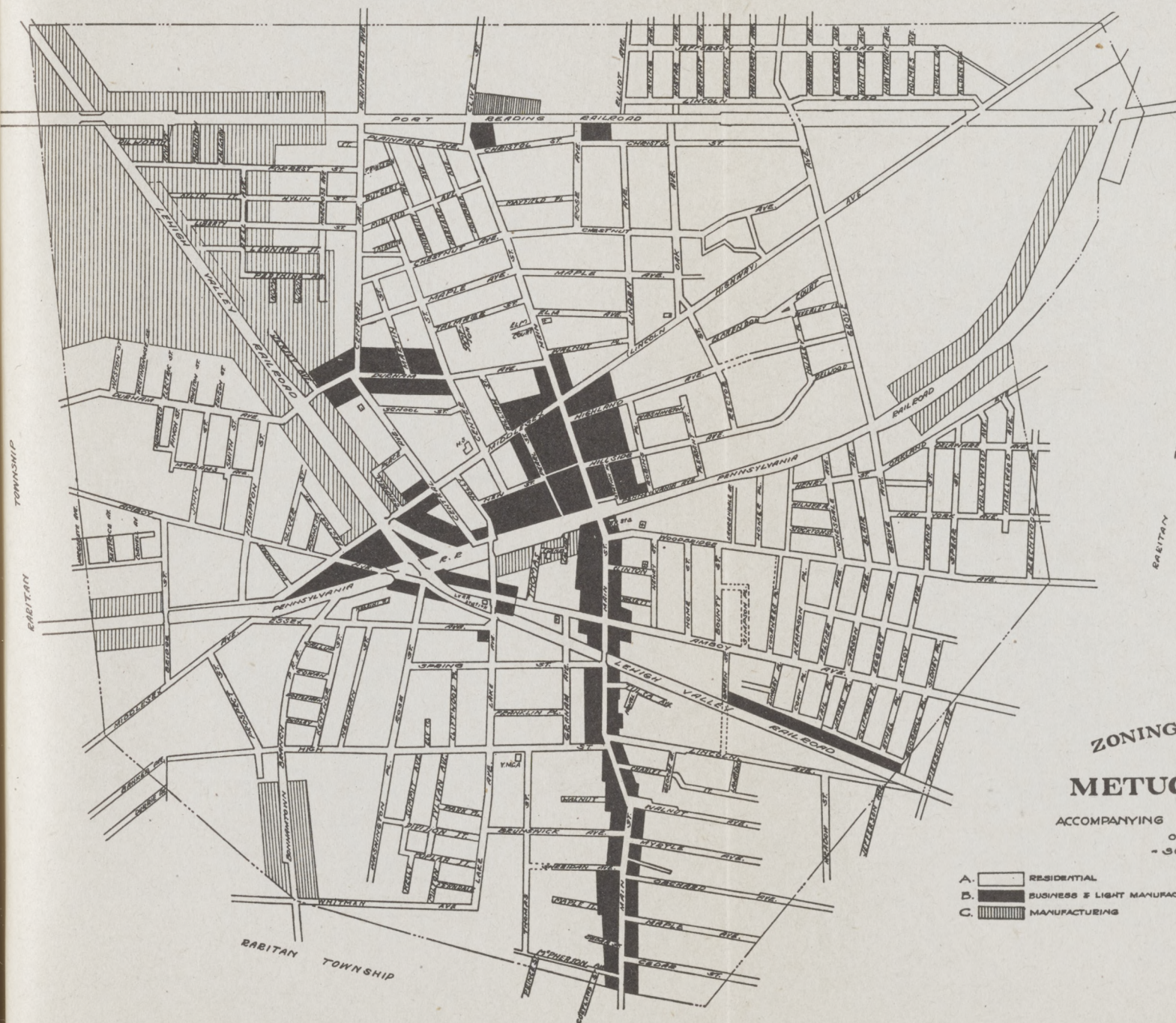
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Zoning Map of Metuchen, N. J.

(Opposite )

RABITAN TOWNSHIP



ZONING MAP OF METUCHEN N.J.

ACCOMPANYING ZONING ORDINANCE
OF 1925
SCALE - 1" = 500'

- A. RESIDENTIAL
- B. BUSINESS & LIGHT MANUFACTURING
- C. MANUFACTURING

REVISED JAN. 1935

M.F. BUCHANAN C.E.
CIVIL ENGINEER

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX AND TILDEN FOUNDATIONS

500 N. 5TH ST. NEW YORK, N. Y.

1911

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Board of Adjustment

that the building is a single-story structure with a flat roof and is located on a lot of approximately 10,000 square feet. The building is situated on the east side of the lot and is approximately 20 feet wide and 30 feet deep. The building is constructed of brick and has a gabled roof. The building is located on a street that is 20 feet wide and is adjacent to a residential area. The building is used as a residence and is occupied by a family of four. The building is in good condition and is well-maintained. The building is located on a street that is 20 feet wide and is adjacent to a residential area. The building is used as a residence and is occupied by a family of four. The building is in good condition and is well-maintained.

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*Zoning Ordinance, 1942.***1942.**

10 AN ORDINANCE TO FURTHER AMEND AN ORDINANCE ENTITLED "ZONING ORDINANCE 1923" AMENDMENTS THEREOF AND SUPPLEMENTS THERETO, (ALSO CITED AND REFERRED TO AS "ZONING ORDINANCE OF 1925"): AND REPEALING CERTAIN PROVISIONS THEREOF, AND AMENDING ORDINANCE ADOPTED FEBRUARY 4, 1935.

Be it ordained by the Mayor and Council of the Borough of Metuchen:

1. Article LV, Section 2-C of the ordinance of which this ordinance is amendatory, is hereby amended to read as follows:

20 Section 2-C. All buildings erected or to be located in any residence district shall be situated one half the width of the front street back from the front property line.

All buildings erected, or to be located in any residence district on a corner lot shall be situated a distance of one quarter the width of the side street inside the property line of the side street.

30 Open porches one story in height may project outside of the established building line, provided the columns supporting the roof present the minimum of obstruction of the view.

Porches may be enclosed during the winter season provided sash is glazed with clear glass.

Permanent enclosure of porches which project outside the building line will not be permitted except by approval of the Zoning Board of Adjustment.

40

Zoning Ordinance, 1942.

Accessory buildings shall be located at least the width of the front street back of the front property line, and in the case of a corner lot also at least one half the width of the side street back from the property line of the side street.

A side yard or court shall be provided on 10
both sides of all buildings on the lot on which
the building shall be erected or located, in
order to give adequate light and ventilation
to any room in which persons live, sleep, work
or congregate, and to facilitate fire protec-
tion and control thereof. Such side yard shall
be not less than three (3) feet wide along each
side lot line, not a street line, of each lot, and
shall extend open to the sky and unobstructed,
through from the street line or the front yard 20
to the rear yard, if such exists, or to the rear
property line of the lot.

2. That all ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

3. This ordinance shall take effect after its publication accordang to law.

CHARLES TAYLOR, 30
Mayor.

Passed: May 4, 1942

Approved: May 4, 1942

Attest: WILLIAM E. SCHULTZ,
Borough Clerk.

*Zoning Ordinance, 1945.***1945.**

10 AN ORDINANCE TO FURTHER AMEND AN ORDINANCE ENTITLED "ZONING ORDINANCE OF 1923" AS AMENDED BY AN ORDINANCE ENTITLED "ZONING ORDINANCE OF 1925" AND AS FURTHER AMENDED BY AN ORDINANCE ENTITLED "AN ORDINANCE TO FURTHER AMEND AN ORDINANCE ENTITLED 'ZONING ORDINANCE 1923' AMENDMENTS THEREOF, (ALSO CITED AND REFERRED TO AS 'ZONING ORDINANCE OF 1925')": AND REPEALING CERTAIN PROVISIONS THEREOF", ADOPTED FEBRUARY 5, 1935.

Be it ordained by the Mayor and Council of the Borough of Metuchen:

20 Section 1. Article LV; Paragraph 1, General; subparagraph (c) of an ordinance entitled "Zoning Ordinance of 1923" amended by an ordinance entitled "Zoning Ordinance of 1925" and further amended by an amending ordinance of February 5, 1935, is hereby amended to read as follows:

(c) No part of any gasoline filling station, public garage or of any automobile or airplane body repair establishment shall be located within 200 feet of any church, hospital, or public or private school.

30 Section 2. Article IV: Paragraph 3 "B" District-Business and Light Manufacturing, of an Ordinance entitled "Zoning Ordinance of 1923" amended by an ordinance entitled "Zoning Ordinance of 1925" and further amended by an amending ordinance of February 5, 1935, is hereby amended to read as follows:

40 3. "B" District—Business and light manufacturing.

Zoning Ordinance, 1945.

Within the Districts designated as "B" the trades or industries hereinafter set forth shall not hereafter be carried on, conducted or located and no buildings, designated for the uses hereinafter set forth shall hereafter be located or constructed thereon, to wit:

- (1) Heavy Manufacturing. 10
- (2) Barns or stables other than accessory buildings to dwellings or other buildings permitted in this district on the same lot.
- (3) Freight Station or freight depot.
- (4) Car Barns.
- (5) Power generating or transformer stations.
- (6) Slaughter houses.
- (7) Oil, gasoline or fuel storage tanks for storage purposes of those and like commodities for wholesale purposes. 20
- (8) Machine shops.
- (9) Laundries
- (10) Dry Cleaning establishments.
- (11) Storage warehouses
- (12) Auto body and fender repair establishments.

Section 3. All ordinances or parts of ordinance inconsistent herewith be and the same are hereby repealed. 30

Section 4. This ordinance shall take effect immediately upon its publication as required by law.

JOHN C. STOCKEL,
Acting Mayor.

Approved: August 20, 1945.

Return to Writ by William E. Schultz.

(Filed February 4, 1946.)

NEW JERSEY SUPREME COURT.

10 FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
spector of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
20 Defendants-in-Certiorari.

On Certiorari.

Return to
the Writ.

30 I, WILLIAM E. SCHULTZ, Clerk of the Borough of
Metuchen, in the County of Middlesex, do here-
with send to the Supreme Court of the State of
New Jersey the record of the proceedings held
and taken before the Borough Council of the Bor-
ough of Metuchen on October 15, 1945, relating to
or in connection with the revocation of a building
permit issued by Howard Krogh, Building Inspec-
tor of said Borough, to Jacob Bass, as by the writ
of certiorari sealed the 3rd day of December, 1945,
before the Honorable Thomas J. Brogan, Chief
Justice of the Supreme Court, I am commanded to
do.

40 I certify that I am the Clerk of the Borough of
Metuchen, in the County of Middlesex, and that
the following is a true copy of the petition filed
with me and of the minutes of the meeting of the

Petition.

Mayor and Council of the Borough of Metuchen, held on October 15, 1945, and that it constitutes the entire record of the proceedings in the above entitled action.

Signed this 7th day of January, 1946, and sealed with the seal of the Borough of Metuchen, in the County of Middlesex.

10

WILLIAM E. SCHULTZ.
William E. Schultz.

Petition.

October 8th, 1945.

To the Honorable Mayor &
Members of the Borough Council

20

Gentlemen:

We the undersigned taxpayers and citizens of the Borough of Metuchen hereby protest to the apartments now being built on Durham Avenue between Central Avenue and Lehigh Valley Railroad for the following reasons.

We do not believe it is being built according to Zoning Board requirements. It is a detriment to our own property lowering its valuation, is a fire hazard, being built of boxes which formerly contained explosives. Boxes not even being taken apart, just nailed together.

30

Does this concur with the Borough of Metuchen Building Code?

Thereafter appears the signatures of ninety-nine persons, together with their addresses.

40

*Minutes.***Minutes.**

A protest was made by a number of residents from Durham Avenue and read by the Borough Clerk and a motion was made and duly seconded that the communication be received and placed on file.

10 The protest had to do with the Construction by Jacob Bass on the south side of Durham Avenue of houses built with ammunition boxes. Attorney George Pearce explained to the Council that his investigation showed that the houses were being constructed by Jacob Bass in violation of the Building Code.

20 Mr. Howard Krogh, the Building Inspector, advised the Council that his investigation reveals that the buildings that were being constructed were contrary to the application of plans and specifications submitted by Jacob Bass on the basis of which application of plans and specifications he issued the permit.

A general discussion followed and it appeared that misrepresentations were made by the applicant to Mr. Krogh.

30 A motion was made and seconded that because of the misrepresentations and violations of the Building Code by Jacob Bass the permit be revoked. Carried.

•Return to Writ by Holger G. Holm.

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
spector of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.
Return to
the Writ.

10

20

I, Holger G. Holm, Recorder of the Recorder's Court of the Borough of Metuchen, do herewith send to the Supreme Court of the State of New Jersey, all complaints taken before me by Howard Krogh, Zoning Inspector of the Borough of Metuchen in the County of Middlesex, against Jacob Bass, and all warrants thereon now pending before me, together with all papers and things touching and concerning the same, as by the writ of certiorari sealed the 3rd day of December, 1945, before the Honorable Thomas J. Brogan, Chief Justice of the Supreme Court, I am commanded to do.

30

I certify that I am the Recorder of the Recorders' Court of the Borough of Metuchen, and that the following are true copies of two complaints taken before me against Jacob Bass, and that there were eight additional complaints which

40

Complaint.

were in all respects the same as the second complaint hereto attached, except that a different date was given as the date of violation, to wit: October 18, 19, 20, 22, 23, 24, 25 and 26. I further certify that ten warrants were issued, one in the form of the first warrant hereto attached, and
 10 nine in the form of the second warrant hereto attached.

Signed this 26th day of December, 1945, and sealed with the seal of the Borough of Metuchen in the County of Middlesex.

HOLGER G. HOLM
 Holger G. Holm.

(Seal)

20

Complaint.

IN THE RECORDER'S COURT.

BOROUGH OF METUCHEN. COUNTY OF MIDDLESEX.

STATE OF NEW JERSEY.

30

STATE OF NEW JERSEY

vs.

JACOB BASS.

Complaint.

Violation of
 Ordinance.

40

Personally appeared before me, Holger G. Holm, Recorder of the Borough of Metuchen, County and State aforesaid, this 27th day of November, A. D. 1945, Howard Krogh, Zoning Inspector of said Borough of Metuchen, who, being
 40 duly sworn according to law, upon his oath com-

Complaint.

plains that Jacob Bass, of the Borough of Metuchen, County of Middlesex and in the State of New Jersey did, on the 16th day of October, A. D. 1945, and in said Borough of Metuchen, on the south side of Durham Avenue, between Central Avenue and the Lehigh Valley Railroad, did erect on said premises a three or more family dwelling and apartment house, without first having obtained from the Zoning Board of Adjustment of the said Borough of Metuchen, a permit therefor, 10

All of which was contrary to and in violation of Article IV, Section 1, paragraph D of an Ordinance of the Borough of Metuchen entitled "An Ordinance to further amend an ordinance entitled 'Zoning Ordinance 1923' and amendments thereof and supplements thereto (also cited and referred to as 'Zoning Ordinance of 1925'), and repealing certain provisions thereof" approved February 4, 1935, together with the various ordinances amendatory thereof, 20

By reason of which violation, the said defendant forfeited and became liable to pay unto the said Borough of Metuchen a penalty of \$200.00. Said Complainant therefore prays that the said defendant may be apprehended to answer to said complaint and be further dealt with as the above named ordinance demands in cases of such violations as the one particularly described above. 30

HOWARD KROGH,
Complainant.

Subscribed and sworn to before me
in my Court in the Borough of Metuchen, this 27 day of November,
A. D. 1945.

HOLGER G. HOLM,
Recorder.

*Complaint.***Complaint.**

IN THE RECORDER'S COURT.

BOROUGH OF METUCHEN. COUNTY OF MIDDLESEX.

STATE OF NEW JERSEY.

10

STATE OF NEW JERSEY

vs.

JACOB BASS.

Complaint.

Violation of
Ordinance.

20 Personally appeared before me, Holger G. Holm, Recorder of the Borough of Metuchen, County and State aforesaid, this 27th day of November A. D. 1945, Howard Krogh, Zoning Inspector of said Borough of Metuchen, who, being duly sworn according to law, upon his oath complains, that Jacob Bass, of the Borough of Metuchen, County of Middlesex and in the State of New Jersey, did, on the 17th day of October A. D. 1945, and in said Borough of Metuchen, on the south side of Durham Avenue, between Central

30 Avenue and the Lehigh Valley Railroad, did continue in existence on said premises a three or more family dwelling or apartment house, said building having been constructed without first having obtained from the Zoning Board of Adjustment of the said Borough of Metuchen, a permit therefore, all of which was contrary to and in violation of Article IV, Section 1, Paragraph D of an Ordinance of the Borough of Metuchen Entitled "An Ordinance to further amend an ordinance entitled

40 'Zoning Ordinance 1923' and amendments thereof

Complaint.

and supplements thereto (also cited and referred to as 'Zoning Ordinance of 1925'), and repealing certain provisions thereof" approved February 4, 1935, together with the various ordinances amendatory thereof, and Article V, Section 3 of an ordinance entitled "An Ordinance to amend an Ordinance entitled 'Zoning Ordinance 1923' passed July 2, 1923," approved June 2, 1925, together with the several ordinances amendatory thereof. 10

By reason of which violation, the said defendant forfeited and became liable to pay unto the said Borough of Metuchen a penalty of \$200.00. Said Complainant therefore prays that the said defendant may be apprehended to answer to said complaint and be further dealt with as the above named Ordinance demands in cases of such violations as the one particularly described above. 20

HOWARD KROGH,
Complainant.

Subscribed and sworn to before me
in my Court in the Borough of Metuchen this 27 day of November
A. D. 1945. 30

HOLGER G. HOLM,
Recorder. 40

Warrant.

Warrant.

IN THE RECORDER'S COURT.

BOROUGH OF METUCHEN. COUNTY OF MIDDLESEX.

STATE OF NEW JERSEY.

10

STATE OF NEW JERSEY

vs.

JACOB BASS.

Warrant of
Arrest.

THE PEOPLE OF THE STATE OF NEW JERSEY,

20 To the Sheriff, Constable, Marshal or Police-
man of said County:

Complaint upon oath having been this day made
before me, Holger G. Holm, Recorder of said Bor-
ough of Metuchen, County and State aforesaid by
Howard Krogh, Zoning Inspector, that the offense
of Article IV, Section 1, Paragraph D of an Ordi-
nance of the Borough of Metuchen, entitled "An
Ordinance to further amend an Ordinance entitled
30 'Zoning Ordinance 1923' and amendments thereof
and supplements thereto (also cited and referred
to as 'Zoning Ordinance of 1925') and repealing
certain provisions thereof" approved February
4, 1935, together with the various ordinances
amendatory thereof, has been committed, and ac-
cusing Jacob Bass hereof:

You are therefore commanded forthwith to
arrest the above-named Jacob Bass and bring him
before me forthwith, at my office in the Borough
Hall, Borough of Metuchen in said County of
40

Warrant.

Middlesex, N. J., to be dealt with according to law.

WITNESS my hand and seal this 27th day of November, A. D., 1945.

HOLGER G. HOLM,
Recorder of the Borough 10
of Metuchen, County of
Middlesex, N. J.

I HEREBY CERTIFY that I received the above warrant on the.....day of....., A. D., 19..., and served the said warrant by arresting the within-named defendant....., and bringing.....into Court thisday 20 of....., A. D., 19....

.....of.....County, N. J.

30

40

Warrant.

Warrant.

IN THE RECORDER'S COURT.

BOROUGH OF METUCHEN. COUNTY OF MIDDLESEX.

STATE OF NEW JERSEY.

10

STATE OF NEW JERSEY

vs.

JACOB BASS.

Warrant of
Arrest.

THE PEOPLE OF THE STATE OF NEW JERSEY,

20 To the Sheriff, Constable, Marshal or Policeman
of said County:

30 Complaint upon oath having been this day made
before me, Holger G. Holm, Recorder of said Bor-
ough of Metuchen, County and State aforesaid by
Howard Krogh, Zoning Inspector, that the offense
of violating Article IV, Section 1, Paragraph D
of an Ordinance of the Borough of Metuchen en-
titled "An Ordinance to further amend an ordi-
nance entitled 'Zoning Ordinance 1923' and
amendments thereof and supplements thereto
(also cited and referred to as 'Zoning Ordinance
of 1925') and repealing certain provisions there-
of" approved February 4, 1935, together with the
various ordinances amendatory thereof, and Ar-
ticle V, Section 3 of an Ordinance entitled "An
ordinance to amend an Ordinance entitled 'Zon-
ing Ordinance 1923' passed July 2, 1923" ap-
proved June 2, 1925, together with the several or-

40

Warrant.

dinances amendatory thereof, has been committed, and accusing Jacob Bass hereof:

You are therefore commanded forthwith to arrest the above-named Jacob Bass and bring him before me forthwith, at my office in the Borough Hall, Borough of Metuchen in said County of Middlesex, N. J., to be dealt with according to law. 10

WITNESS my hand and seal this 27th day of November, A. D., 1945.

HOLGER G. HOLM,
Recorder of the Borough
of Metuchen, County of
Middlesex, N. J.

20

I HEREBY CERTIFY hat I received the above warrant on the.....day of....., A. D., 19..., and served the said warrant by arresting the within-named defendant....., and bringing.....into Court thisday of....., A. D., 19....

30

.....of.....County, N. J.

40

Return to Writ by Howard Krogh.

NEW JERSEY SUPREME COURT.

10 FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
specter of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.

Return to
the Writ.

20

30 I, HOWARD KROGH, am the Zoning and Building
Inspector of the Borough of Metuchen in the
County of Middlesex, and do herewith send to the
Supreme Court of the State of New Jersey, the
application of Fannie Weininger, by Jacob Bass,
contractor, for a building permit for the erection
of certain buildings located on Durham Avenue in
the Borough of Metuchen, together with the plans
and specifications filed with me for the same, and
the record of the issuance of a permit therefore,
as by the writ of certiorari sealed the 3rd day of
December, 1945, before the Honorable Thomas J.
Brogan, Chief Justice of the Supreme Court, I am
commanded to do.

40 I certify that I am the Zoning and Building in-
specter of the Borough of Metuchen, in the County
of Middlesex, and that the following are true
copies of the said application, plans and specifica-
tions and record of issuance of said permit, and

Return to Writ by Howard Krogh.

that together they constitute the entire record of the proceedings in the above entitled action.

Signed this 26 day of December, 1945, and sealed with the seal of the Borough of Metuchen, in the County of Middlesex.

HOWARD KROGH 10
Howard Krogh

BUILDING DEPARTMENT
Metuchen, N. J.

Application is hereby made for a permit to construct a building as follows:

1. LOCATION: 20
 Block No. 82, Lot No. 51-53-55-57 on the South side of Durham Ave., 50' east of Lehigh Valley R. R. Street Place
2. Intended Use Residence.
3. Number of families 20 units.
4. Size of lot 200' x 200'. 30
5. Distance from front property line to front line of building 15' feet 0" inches.
 Zoning Ordinance requirement isfeet.
6. Construction
 - A. Foundation Cinder block.
 - B. Main portion of building Cinder block.
 - C. Roof Gypsum block. 40

Return to Writ by Howard Krogh.

7. Contract price \$12,500.00.

Owner Mrs. Fannie Weininger.

Address by J. Bass, contractor.

Dated July 27, 1945.

10

NOTE:

1. Application *must* be signed by the owner of the property or *must* be accompanied by written authorization from the owner to the person signing.

2. This Department *must* be notified in writing of any changes in original plans as filed. When changes involve an increase in cost, a permit for the additional work is necessary.

20

Application No. 523

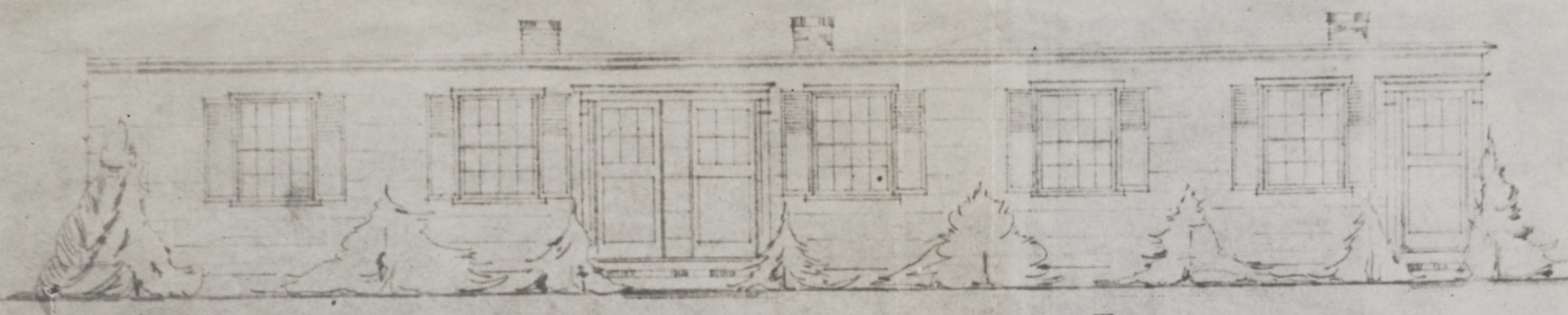
New Construction.

Plan of Plot.

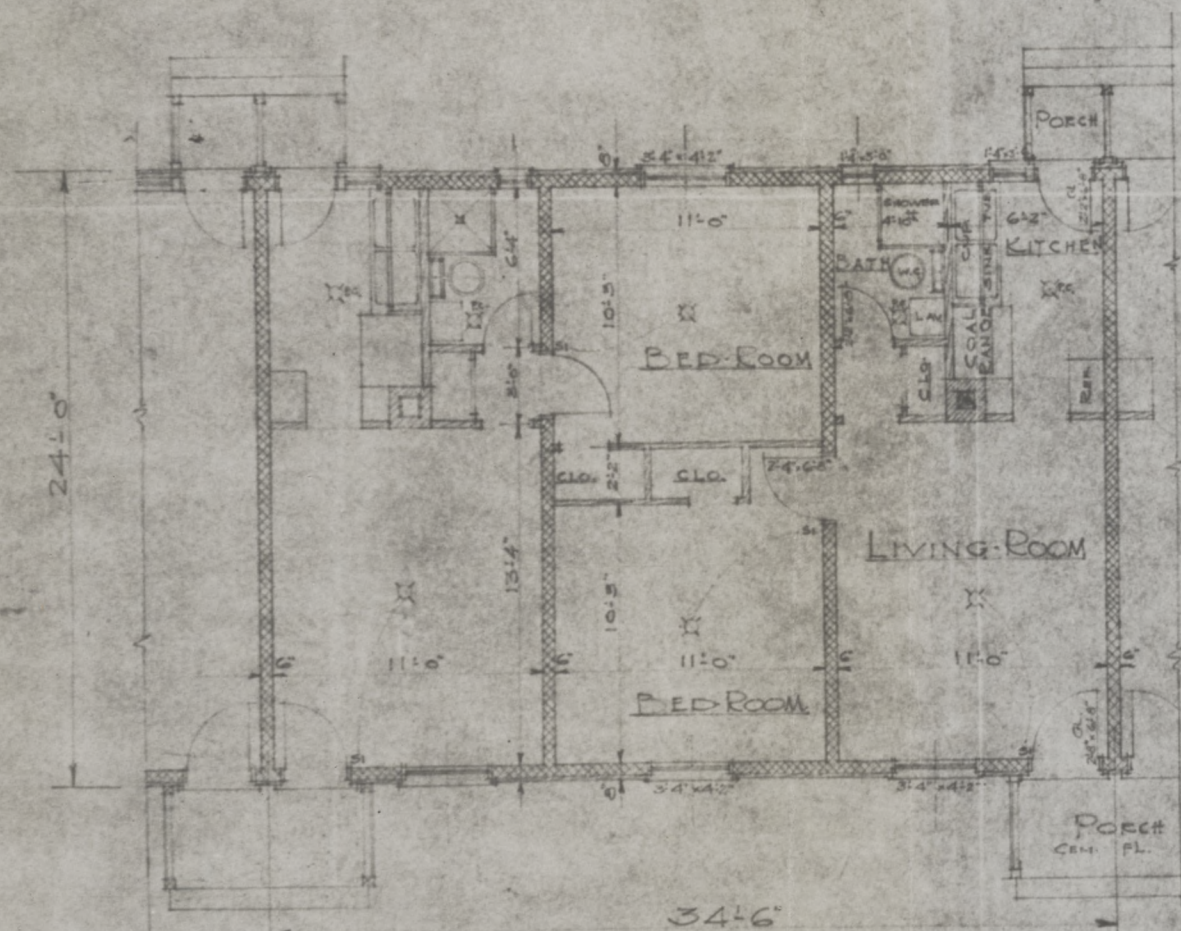
(Opposite )

30

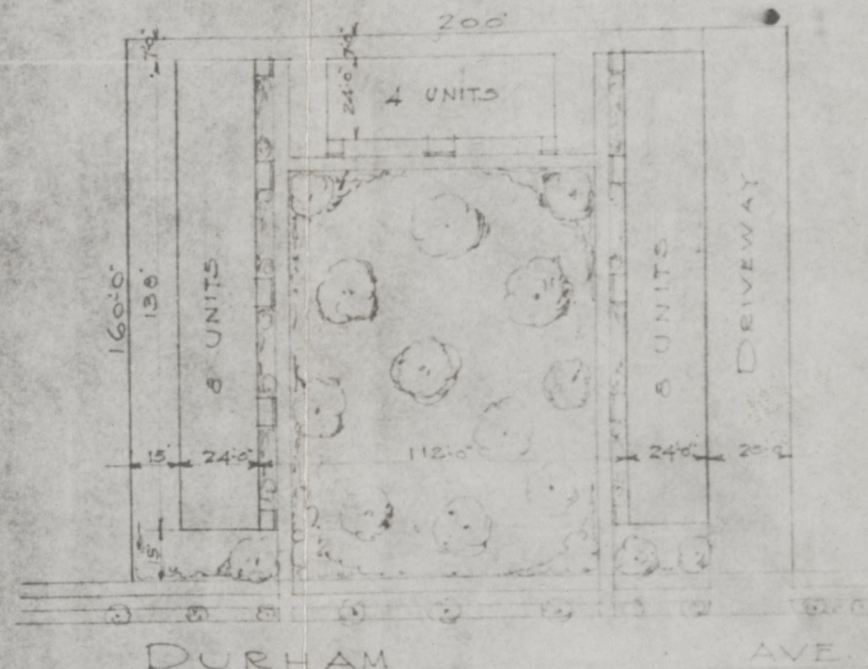
40



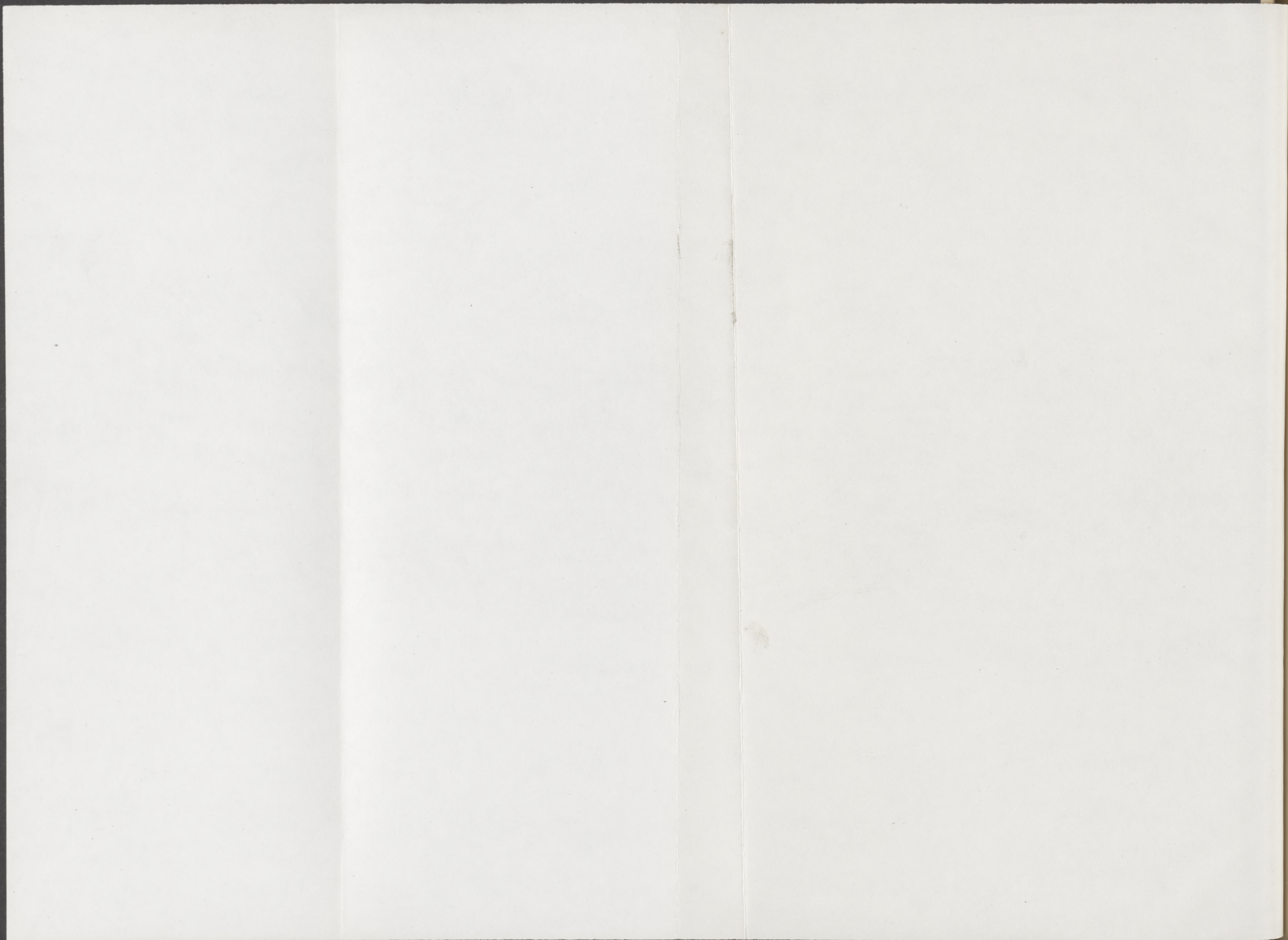
ELEVATION OF FRONT
SCALE $\frac{1}{4}'' = 1'-0''$



FLOOR PLAN
SCALE $\frac{1}{4}'' = 1'-0''$



PLAN OF PLOT
SCALE $1'' = 30'$



Return to Writ by Howard Krogh.

Following are the specifications appearing on the reverse side of the plans filed by Fannie Weininger, by Jacob Bass, Contractor:

- footing concrete—foundation 8 in. block outside walls 8 ins. cinder block
- 10 party walls 5 in. concrete roof gypsum composition

AS APPEARS ON RECORD BOOK FOR ISSUANCE OF PERMITS
BY THE BUILDING INSPECTOR OF THE BOROUGH OF
METUCHEN, N. J.

	Date:	7-27-45
	No. Permit:	523
	Lot:	51-53-55-57
	Block:	82
20	Location:	S. Side Durham Ave.
	Owner:	Fannie Weininger
	Contractor:	J. Bass
	Construction:	frame
	Use:	20 units
	Application Rec'd.:	7-27-45
	Permit Issued:	7-27-45
	Estimated Cost:	\$12,500.00
	Fee:	27.00

30

40

Order for Leave to Take Depositions.

(Filed December 1, 1945.)

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

10

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
spector of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.

Order for
Leave to Take
Depositions.

20

Writ of certiorari having been issued in the
above entitled cause and application being made
to this Court,

It is thereupon on this first day of December,
Nineteen Hundred and Forty-five ORDERED that
leave be and is hereby granted to either or any of
the parties hereto to take depositions to be used
on the hearing of this certiorari before any Su-
preme Court Commissioner on 4 days' notice to
the other party.

30

CLARENCE E. CASE,
Justice of Supreme Court.

On Motion of:

KOESTLER & KOESTLER,
Attorneys for Prosecutors.

40

Notice of Taking Depositions.

(Filed January 8, 1946.)

NEW JERSEY SUPREME COURT.

10. FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
spector of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
20 Defendants-in-Certiorari.

On Certiorari.
Notice
of Taking
Depositions.

To Mr. John B. Molineux, Attorney of Defend-
ants:

Dear Sir:

30 PLEASE TAKE NOTICE that the prosecutors will
proceed to take depositions before Mr. Julius
Kwalick, a Supreme Court Commissioner, at his
office, 1139 East Jersey Street, Elizabeth, New
Jersey, on Thursday the 27th day of December,
1945 at 10 o'clock in the forenoon of said day, at
which time and place you may attend and cross
examine the witnesses so produced on the part of
the prosecutors.

Dated: December 14th, 1945.

Yours truly,

40

KOESTLER & KOESTLER,
Attorneys for Prosecutors.

Opinion of Supreme Court.

(Filed January 22, 1946.)

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB BASS, Prosecutors-in-Certiorari.	10
<i>vs.</i>	
BOROUGH OF METUCHEN IN THE COUNTY OF MIDDLESEX and HOWARD KROGH, Building In- spector of said Borough, and HOLGER G. HOLM, Recorder of said Borough, Defendants-in-Certiorari.	20

On Writ of
Certiorari.

Argued orally January 5, 1946.

Briefs submitted January 12, 1946. Decided
, 1946.

Before CASE, *J.* sitting as a single justice pur-
suant to the statute.

For prosecutors, SAMUEL KOESTLER; KOESTLER & KOESTLER. 30

For defendants, JOHN B. MOLINEUX.

Opinion by CASE, *J.*

The nub of the dispute is whether the follow-
ing provision of the Borough of Metuchen zoning
ordinance is constitutional:

Article IV 1(d): "An application for a
permit for construction of or remodeling to a 40

Opinion of Supreme Court.

three or more family dwelling, apartment house, hotel, hospital, club house, sanitarium, or a cemetery, shall be made first to the Zoning Board of Adjustment who shall hear the application in the same manner and under the same procedure as the Zoning Board of Adjustment is empowered by law and ordinance to hear cases and make exceptions to the provisions of a Zoning Ordinance, and the Zoning Board of Adjustment may thereafter recommend in writing to the Borough Council that a permit be granted, if in its judgment, the said building or cemetery as it is proposed to be located, will not be detrimental to the health, safety and general welfare of the community and is reasonably necessary for the convenience of the community. Whereupon the Borough Council may, by resolution, approve or disapprove such recommendation and in case such recommendation shall be approved, the Zoning Inspector shall issue a permit for such structure or use."

Weininger is the owner of and Bass the contractor for the erection in question. They have begun the building of a low-rental housing project in District "C", a "heavy" manufacturing zone, and have been made defendants in numerous suits by the municipality for failure to obtain the zoning permit required by the ordinance. The only prohibitions set up by the ordinance in District "C" are the manufacture of nitroglycerine and other high explosives, the manufacture of fertilizer from animal substances, the refining of crude oil or petroleum and a trade or industry that is noxious or offensive by reason of the emission of odor or gas. The development instituted

Opinion of Supreme Court.

by prosecutors consists of three one-story buildings comprising in all 20 three-room units intended to house twenty families. The ordinance nowhere prohibits such a construction or use. It nowhere prohibits the construction of any of the erections enumerated in the quoted section. Further, it does not, except under the conditions named in Section 1(d), *supra*, authorize the construction in any zone. In effect it excludes three-family houses except upon (1) the recommendation of the Zoning Board of Adjustment that (a) the particular building will not be detrimental to the health, safety and general welfare and (b) that it is reasonably necessary for the convenience of the community and (2) approval by the borough council of such recommendation. Respondents contend that the disputed provision is within the general police powers of a municipality, cite *Schnell vs. Township Committee*, 120 N. J. L. 194, approved by the Court of Errors and Appeals in *First Church vs. Board of Adjustment*, 128 N. J. L. 376, in support of their contention and frankly admit that the ordinance provision is faulty unless it comes within the principle so enunciated. The issue is not made to depend upon the details of the proposed structures beyond the fact that they involve anticipated occupancy by three or more families. The controversy narrows down to the significance of a three-family use and whether that use and pertinent erections may be negatively excluded from all parts of a municipality except upon a successful address by a property owner to the discretion of two municipal bodies.

Prior to the 1927 zoning amendment to our constitution there was much uncertainty about and dissatisfaction with the extent to which municipalities could control the character of structures

Opinion of Supreme Court.

and uses. The question was how far government could, under its police powers, protect the public welfare by limiting the uses of private property against the will of the owner. The legislature passed chapter 146, P. L. 1924, which by its terms gave municipalities the authority *inter alia* “to

10 regulate * * * the location and use of buildings, structures and land for trade, industry, residence or other purposes.” But the courts whittled down the effective working of the statute upon the theory that “a legislature cannot confer upon a municipality any power the exercise of which will deprive one of the rights guaranteed him by the constitution.” *H. Krumgold & Sons vs. Mayor &c. Jersey City* (decided October 19, 1925), 102 N. J. L. 170. See also *Ignaciunas vs. Risley*, 98 N. J. L.

20 712; *State vs. Nutley*, 99 N. J. L. 389; *Frank J. Durkin vs. Fitzsimmons*, 106 N. J. L. 183. It was not seriously disputed that the legislature might authorize and a municipality might enact an ordinance which would so restrict the owner of property as that “within proper limits his use thereof will be controlled for the promotion of the safety, health, morals or general welfare of the community” (the *Krumgold* case, *supra*), but the

30 “proper limits” as viewed by the courts did not have the scope desired by the public. The opinion of the Courts as to constitutional limitations led to the introduction of the zoning amendment at the legislative session next following the *Krumgold* decision and the incorporation of the same in due course into our fundamental law. That enactment provided (*italics inserted*) that “The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting *to specified districts* and regulating *therein*, buildings

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Opinion of Supreme Court.

and structures, according to their construction, and the nature and extent of their use, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature." By authority of it the legislature enacted the zoning statute, ch. 274, P. L. 1928, which in large part was a reenactment of the 1924 law, *supra*, and which, following the constitutional language, begins (R. S. 40:55-30): "Any municipality may by ordinance limit and restrict *to specified districts* and may regulate *therein* buildings and structures according to their construction, and the nature and extent of their use", etc. If our decisions which precede and induced the constitutional amendment were sound and unless the business of adopting an amendment to the constitution and passing enabling legislation thereunder was a useless gesture, the present comprehensive zoning ordinances draw most of their authority, not from ancient and inherent police powers, but from the powers which flowed from the 1927 amendment—distinctly a zoning enactment—as translated into statutory law by the 1928 statute, namely, R. S. 40:55-30, *et seq.*

The Schnell decision was upon an ordinance which acknowledged the necessity for gasoline stations but stated that such a use "may be inimical to the public safety and general welfare if located without due consideration of conditions and surroundings", and, therefore, because of this potential menace, required that all applications for permits should be made first to the Board of Adjustment for recommendation and then, if favorably recommended, to the governing body for final action; with an expressed prohibition, however, against issuing a permit for use in a residence

Opinion of Supreme Court.

zone. The last mentioned provision was a partial zoning, a prohibition against the use in a residence zone, which has no counterpart in the ordinance now under review. The Court of Errors and Appeals in *First Church vs. Board of Adjustment*, *supra*, said of the *Schnell* case: "The ordinance in *Schnell vs. Ocean* * * * did not purport to be an exercise of the zoning power but of the general police power to regulate gasoline stations and kindred structures and uses because of their peculiar characteristics". We have it, therefore, both from the *Schnell* decision itself and from the analytical distinction expressed thereon by our court of last resort that the subject matter of the ordinance was given its respective treatment because of its allegedly peculiar characteristics and that the ordinance provisions addressed to that potentially inimical use were grounded, not in the zoning power, but in the general police power. I am aware that there are cases in our books which tend to accord gasoline stations a proper place in zoning ordinances and I make no issue with them. I am giving the reason why a decision which is cited as a controlling precedent is not in fact such.

The present ordinance deals with dwellings, the sole differentiation between them and other dwellings being that the former are for three or more families. Height, number of stories, size, percentage of lot occupied, location—all these and other regulations and restrictions are specifically within the legislative scheme for an ordinance, but none of them is utilized. Dwelling houses are in an entirely different category from gasoline stations. The authority to prohibit such structures as three-family houses depends, I believe, upon the power to control neighborhood developments drawn from

Opinion of Supreme Court.

the zoning amendment and the related statute and not upon any inherent danger to the public so obvious as to justify their total exclusion except upon special application and the extended effort set forth in our disputed ordinance. It does not appear that a three-family dwelling has any such inherent or obvious danger, and the proofs submitted do not show that the Borough of Metuchen has conditions which create an unusual problem. Abstractly, it is said that three families in a house make a heavier load on the public services than is created by one family—produce more sewage, use more water and gas, add more fire hazard, more traffic and parking difficulties. The same may be said of most stores and manufacturing plants; but these uses are provided for and zoned, and the owners are not under compulsion to demonstrate that the uses are reasonably necessary for the convenience of the community. If living quarters, simply because they are equipped for three or more families, are to be removed from the purview of the zoning power, then it would seem that zones have little purpose. Further, I do not understand upon what authority it is made necessary for a property owner to convince the municipal authorities, as is implicit in the ordinance, that a three-family house which he proposes to build is reasonably necessary for the convenience of the community. I consider that the primary function of a zoning ordinance is to regulate structures and uses by zones, and that the public in general and property owners, actual or prospective, in particular have a right to expect that the *status* of properties will normally be established in that fashion. The ordinance under review does not do that with respect to three-family houses, and no reason sufficient to justify the omission is shown.

Opinion of Supreme Court.

The Borough of Metuchen has a building code and no violation of it is charged. Prosecutors obtained, and have, a building permit which is not in dispute. The controversy which led up to this proceeding was that the municipal authorities caused the arrest of prosecutors because they undertook to build a dwelling for three or more families without first obtaining a zoning permit as required by the zoning ordinance; to which the prosecutors replied that the zoning ordinance was in that respect unconstitutional.

I conclude that the power of a municipality to determine whether, and where, three-family houses shall be permitted depends upon the zoning amendment and the zoning statute passed thereunder and that the ordinance provision does not comply with the design of those enactments. Section IV 1(d) will, therefore, insofar as it relates to the subject matter, be set aside as will also the proceedings brought against the prosecutors herein for violations thereof; with costs.

A true copy,

JAMES J. GAVIN,
Clerk.

Order for Partial Judgment.

(Filed January 15, 1946.)

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
spector of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

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On Certiorari.

Order for
Partial
Judgment.

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Writ of certiorari having been allowed and issued in the above entitled cause for the review, among other matters, of certain proceedings had and taken before the Borough Council of the Borough of Metuchen, relating to or in connection with the revocation of a building permit heretofore issued to the prosecutors for the erection and construction of buildings on property of the said prosecutor, Fannie Weininger, located on Durham Avenue in said Borough of Metuchen, and the resolution and action of said Borough Council revoking said building permit; and said defendants now confessing error in said proceedings and revocation of said building permit and consenting to the making and entry of this Order,

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It is, thereupon, on this 14th day of January, 1946, ORDERED, that the proceedings of the Bor-

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Order for Partial Judgment.

ough Council of the Borough of Metuchen, in the County of Middlesex, relating to and in connection with the building permit issued by Howard Krogh, building inspector of said Borough, on July 28, 1945, on application made by Jacob Bass on behalf of Fannie Weininger, for the erection and construction of buildings on the property of said Fannie Weininger, located on Durham Avenue, in said Borough of Metuchen, and the action taken by said Borough Council and the resolution adopted by said Borough Council at its meeting held October 15, 1945, be and the same are hereby set aside, made null and void and for nothing holden.

It is further ORDERED that the question of costs be reserved until the further Order of this Court.

It is further ORDERED that proceedings upon the other matters directed to be brought up by said writ of certiorari, proceed in usual course according to the practice of this Court.

CLARENCE E. CASE,
J. S. C.

Consent is hereby given to the making and entry of the foregoing Order.

KOESTLER & KOESTLER,
Koestler & Koestler,
Attorneys for Prosecutors.

JOHN B. MOLINEUX,
John B. Molineux,
Attorney for Defendants.

Order for Judgment.

(Filed February 2, 1946.)

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
spector of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.
Order for
Judgment.

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A writ of certiorari having been allowed and having issued in the above entitled cause for the review of a certain ordinance adopted by the Borough of Metuchen, New Jersey, entitled Zoning Ordinance of 1923, and all acts amendatory and supplemental thereof and particularly the Amendment of February 5, 1935, and of ten certain oaths and complaints against Jacob Bass filed by said Howard Krogh before said Recorder and pending before said Recorder together with all warrants, other papers and records concerning the same and also of a certain plan, specification and application made by Jacob Bass on behalf of Fannie Weininger for a building permit for the erection and construction of buildings on the property of said Fannie Weininger located on Durham Avenue in said Borough of Metuchen, filed on or about July

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Order for Judgment.

28, 1945, and all records and proceedings of said building inspector in relation to the construction of said buildings and the issuance of said building permit, also all petitions, minutes, records and proceedings had and taken before the Borough Council of the Borough of Metuchen on October 15, 1945, relating to or in connection with the revocation of the said building permit aforesaid, and all things touching and concerning the same; and return having been made to said writ by the defendants; and depositions having been taken by the parties upon due notice pursuant to leave granted by a certain order made herein; and said matter having been brought on for argument before Hon. Clarence E. Case, sitting as a single justice pursuant to the statute; and the defendants having confessed error in respect to the revocation of said building permit and having consented to the entry of partial judgment setting aside the proceedings and resolution of the Borough Council of the Borough of Metuchen revoking said building permit; and the Court having heard argument of counsel respecting the other matters brought up for review by said writ, and having considered said writ, return, depositions and the briefs of counsel;

It is on the 1st day of February, 1946, ORDERED that Article IV 1 (d) of the ordinance of the Borough of Metuchen, New Jersey, entitled Zoning Ordinance of 1923, as amended and supplemented, and particularly as amended by amendment of February 5, 1935, in so far as it relates to the subject matter of this writ, and the ten complaints against the prosecutor, Jacob Bass, filed by the defendant Howard Krogh before said Recorder of the Borough of Metuchen, and the warrants and

Order for Judgment.

all other proceedings thereon, be and the same are hereby set aside, made null and void and for nothing holden; and

It is further ORDERED that the defendants pay unto the prosecutors their costs of suit to be taxed, including all sums paid by said prosecutors for the taking, transcribing and certifying and the furnishing of copies of the depositions herein. 10

CLARENCE E. CASE,
J. S. C.

Order actually entered
January , 1946

on motion of

KOESTLER & KOESTLER,
Attorneys for Prosecutors. 20

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Notice and Grounds of Appeal.

(Filed March 27, 1946.)

NEW JERSEY SUPREME COURT.

10 FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

20 BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
specter of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.

Notice of
Appeal from
Judgment of
Supreme Court.

*To: Koestler & Koestler,
125 Broad Street,
Elizabeth 4, New Jersey.*

Sirs:

30 PLEASE TAKE NOTICE that the defendants below
appeal to the Court of Errors and Appeals, from
the whole of the order for judgment entered in
the above stated cause on the First Day of Febru-
ary, 1946, on the following grounds:

40 1. Because the Supreme Court erred in setting
aside Article IV, 1(d) of the ordinance of the Bor-
ough of Metuchen, N. J., entitled "Zoning Ordi-
nance of 1923" as amended and supplemented,
and particularly as amended by amendment of
February 5, 1935, and in setting aside the ten

Notice and Grounds of Appeal.

complaints against the prosecutor, Jacob Bass, filed by the defendant, Howard Krogh, before the defendant, Holger G. Holm; Recorder of the Borough of Metuchen, and the warrants and all other proceedings therein.

Respectfully,

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JOHN B. MOLINEUX,
Attorney for and of Counsel
with the Appellants.

Sat Below:

CLARENCE E. CASE,
Then Justice of the Supreme Court.

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Depositions.

(Filed February 4, 1946.)

NEW JERSEY SUPREME COURT.

10 FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

vs.

20 BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
specter of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

On Certiorari.
Depositions.

30 I JULIUS KWALICK, a Supreme Court Commis-
sioner of the State of New Jersey, do hereby cer-
tify and send to his Honor Clarence E. Case, Jus-
tice of the New Jersey Supreme Court, a true and
correct transcript of the depositions of witnesses
taken by me at my office, 1139 East Jersey Street,
Elizabeth, New Jersey, on Thursday, December
27, 1945, commencing at 10 A. M., pursuant to an
order entered in the above entitled cause on De-
cember 1, 1945, and notice given by the attorneys
for the prosecutors to the attorney for the de-
fendants.

40 I do further certify that I did faithfully and
truly take stenographically the testimony so
given, which was then reproduced in typewriting
and the typewritten transcript compared with my
original shorthand notes; and I believe that the

Howard O. Krogh, for Prosecutors—Direct.

said depositions accurately state the evidence given.

Dated: January 2, 1946.

JULIUS KWALICK,
Julius Kwalick,
A Supreme Court Commissioner
of New Jersey. 10

Appearances:

MESSRS. KOESTLER & KOESTLER, by Mr. SAMUEL
KOESTLER, for the prosecutors.

Mr. JOHN B. MOLINEUX, for the defendants. 20

HOWARD O. KROGH, a witness produced on behalf of the prosecutors, having first been duly sworn according to law, on his oath, testified as follows:

Direct examination by Mr. Koestler:

Q. Mr. Krogh, where do you live? A. 14 Eg- 30
gert Avenue, Metuchen.

Q. How old are you? A. Thirty-four.

Q. Have you any trade or occupation? A.
Building contractor.

Q. How long have you been engaged in business
as a building contractor? A. Eight years.

Q. Do you hold any official position in the Bor-
ough of Metuchen? A. I do.

Q. What? A. I hold the position of Building
Inspector and Zoning Inspector. 40

Howard O. Krogh, for Prosecutors—Direct.

Q. How long have you held that position? A. I think it was, let me see now, since 1940.

Q. Since 1940? A. That is as Building Inspector. As Zoning Inspector, I think that was since the middle of 1941. I think May or June.

10 Q. And since the time of your respective appointments as Building Inspector and Zoning Inspector, you have continuously held both offices? A. Yes.

Q. Where is your office as Building or Zoning Inspector? A. Well I usually conduct it from my home.

Q. Have you been subpoenaed to bring certain documents and records here? A. That is right.

20 Q. Have you brought with you the application of Fannie Weininger for a building permit? A. I have.

Q. Will you produce it please? A. Here it is.

Q. Is this it? A. This is it.

Q. What you produce is a mimeographed form with a number of blanks in it? A. That is right.

Q. And this has handwriting in pen and ink? A. That is right.

Q. Whose handwriting is that? A. Mine.

30 Q. This application is No. 523? A. That is right.

Mr. Koestler: I offer this application in evidence.

The Commissioner: There being no objection, the offer is received and marked Exhibit P-1 in evidence.

Mr. Koestler: It is stipulated by counsel that a photostatic copy shall be used and marked in evidence in lieu of the original.

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Mr. Molineux: That is correct.

Howard O. Krogh, for Prosecutors—Direct.

By Mr. Koestler:

Q. At the time that application P-1 was made to you, was there also submitted a blueprint plan showing the layout of the apartment and the front elevation and general surrounding? A. Yes, sir.

Q. Is this blueprint which you produce, the one that was sent to you? A. That is right. 10

Q. Now I observe something written in pen and ink on the reverse side of the plan. Whose handwriting is that? A. Mr. Bass's.

Q. And that reads: "Footing, concrete; foundation, eight inch blocks; outside walls, eight inch cinder blocks; party walls, five inch concrete; roof, gypsum composition"? A. That is right.

Mr. Koestler: I offer this plan in evidence. Mr. Molineux, do you object if I use a copy of it? 20

Mr. Molineux: No.

The Commissioner: The offer is received and marked Exhibit P-2 in evidence.

Mr. Koestler: It is stipulated that a copy of the filed blueprint may be used with a photostatic copy of the notation on the back thereof in lieu of the original.

By Mr. Koestler:

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Q. When this application and the plan were submitted to you, did you examine the zoning ordinances and the zoning map? A. I examined the zoning map.

Q. You were familiar with the ordinance? A. I was familiar with the ordinance.

Q. Did you not thereupon issue a building permit which I now show you? A. That is right.

Q. That is your signature (indicating)? A. That is right. 40

Howard O. Krogh, for Prosecutors—Direct.

Mr. Koestler: I offer the permit in evidence as Exhibit P-3.

The Commissioner: The offer is received and marked Exhibit P-3 in evidence.

By Mr. Koestler:

10 Q. How soon after you granted the permit, did you observe that any construction work had commenced at the site? A. As near as I can remember, I would say it was about a week or ten days.

Q. And from the time that you observed the first construction a week or ten days after the granting of the permit, how often did you visit the site? A. Well, I would say maybe once every two weeks, or so.

20 Q. Not oftener than that? A. No.

Q. Did you keep any record or notations of the dates when you visited the site? A. No, I did not.

Q. Did you make any record of what you observed going on there? A. I did not.

Q. You knew that Mr. Jacob Bass was acting as the agent and contractor for the owner Fannie Weininger? A. That is right.

Q. And all of your talks in connection with this were not with Mrs. Weininger but with Mr. Bass?

30 A. That is right.

Q. After the construction was started, did Mr. Bass ever come to you and tell you he would have to make certain changes in the construction?

A. He called me on the phone and told me that due to the scarcity of labor, cinder blocks could not be obtained and he would have to change it to frame construction, with cement stucco on the outside.

40 Mr. Molineux: I enter an objection here to any testimony involving the change in

Howard O. Krogh, for Prosecutors—Direct.

the type of construction, on the ground that it is immaterial to the issues here presented.

The Commissioner: This objection as well as all others which may be made, will be noted and certified to the court for disposition.

10

By Mr. Koestler:

Q. You observed the construction as it went on, didn't you? A. That is right.

Q. And you knew it was frame instead of cinder block? A. That is right.

Q. When you issued this permit, Exhibit P-3, did you make any record anywhere of the issuance of that permit? A. I did.

20

Q. Have you that record with you? A. Yes.

Q. Please turn to page 68 of your book.

(The witness complies.)

Q. Under date of July 27, 1945, you have an entry which says "Permit No. 523." A. That is right.

Q. And then you have under lot numbers "51-53-55 and 57." A. That is right.

Q. And then under the heading "Block" you have written "82" and under "Location" you have written "south side of Durham Avenue." A. That is right.

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Q. And under the column headed "Owner" you have the name "Fannie Weininger." A. That is right.

Q. Under "Contractor" you have the name "Jacob Bass." A. That is right.

Q. Then in lead pencil there are the initials "N. F." Is that correct? A. Yes, but I didn't put it there.

40

Howard O. Krogh, for Prosecutors—Direct.

Q. Do you know who put it there? A. I do not.

Q. When did you first observe that? A. Right now. It might be the Tax Assessor's notation.

Q. You don't know what it means and it wasn't put in by your authority? A. That is right.

10 Q. In the next line it says "Construction, frame"? A. That is right.

Q. The next title is "Use" and we have "20 units"? A. That is right.

Q. Under the title "application received" you have "July 27, 1945"? A. That is right.

Q. That indicates the date on which you received the application? A. That is right.

20 Q. That indicates the date on which you received the application? A. That is right.

Q. Under the next heading you have "Permit issued, July 27, 1945"? A. That is right.

Q. That means you issued the permit on July 27, 1945? A. That is right.

Q. Now I call your attention to Exhibit P-3, the building permit itself which bears the date July 28, 1945. Is there any question in your mind that the building permit Exhibit P-3, is the one which you have noted here in your record? A. You mean is there any question but that that is the right date?

30

Q. Was there one permit issued or two? A. One.

Q. So that notwithstanding that the dates differ, that is the permit? A. That is right.

Q. The next column is "Estimated cost" and you have the figure "\$12,500"? A. That is right.

40 Q. In the last column "Fee" and that shows that you received \$27 as the fee for issuing this permit? A. That is right.

Howard O. Krogh, for Prosecutors—Direct.

Q. You indicated that at the time this application was presented to you and that you issued the building permit, you looked at the zoning map?

A. That is right.

Q. Did you look at the original zoning map or a reduced copy of it? A. A reduced copy of it.

Q. I show you a reduced copy of the zoning map and ask you if this is identical with the copy you looked at? A. Yes, it is. 10

Q. And this is the type of map, this reduced photostat, that you hand to the public as being the zoning map of the municipality? A. That is right.

Q. This says: "Zoning map of Metuchen, N. J., accompanying zoning ordinance of 1925, scale one inch equals 500 feet." That is the designation on it? A. That is right. 20

Q. Now as a matter of fact, this notation is what appears on the original map, is it not? A. That is right.

Q. Which is on a much larger scale than this? A. That is right.

Q. So that this photostatic copy is not really on the scale of 500 feet to the inch, is it? A. I didn't measure it. You mean it isn't exactly to the scale? This map isn't accurate as far as scale is concerned, is that what you mean? 30

Q. The original map is a much larger map? A. That is right.

Q. This is a photostat? A. That is right.

Q. And the designation which says "One inch equals 500 feet" is what appears on the original map and does not mean that this photostat is on that scale; this is a reduced scale? A. Yes, it is a reduced scale.

Q. Would you judge that the original zoning map is at least twice as large as this? A. I think it is larger. 40

Howard O. Krogh, for Prosecutors—Direct.

Q. Probably three times as large? A. Yes.

Q. So that if it were three times as large, then this map would scale about 1,500 feet to the inch, wouldn't it? A. Yes, sir.

10 Q. The Weininger property is on what we will call the southerly side of Durham Avenue? A. That is right.

Q. And on the block bounded on the west by the Lehigh Valley Railroad Company and on the east by the street known as Central Avenue? A. That is right.

Q. Now according to the map there are designations as symbols of the zones, A, B and C, aren't there? A. That is right.

20 Q. The A zone is shown as pure white? A. That is right.

Q. The B zone is solid black? A. That is right.

Q. And the C zone is shown with diagonal parallel lines? A. That is right.

Q. When Mr. Bass made the application to you on behalf of Fannie Weininger, you determined that the property was in the C zone, didn't you? A. That is right.

30 Q. And the C zone is under the ordinance, a manufacturing zone? A. That is right.

Mr. Koestler: I will offer in evidence the photostatic copy of the zoning map from which the witness has just testified.

The Commissioner: There being no objection, the offer is received and marked Exhibit P-4 in evidence.

By Mr. Koestler:

40 Q. You continued to visit this Weininger property and observed the progress of the buildings

Howard O. Krogh, for Prosecutors—Direct.

from early in August 1945 until about the 20th of October, 1945, did you not? A. That is right.

Q. That was quite regular, your inspection? A. Well I wouldn't say it was. I had been there quite a few times during that length of time.

Q. Is this record book which you produced and to which we referred on page 68, etc., a record of the issuance of your building permits? A. That is right. 10

Q. Now have you a similar record of the issuance of zoning permits as a record which you keep of building permits? A. No I don't.

Q. Do I understand that as Zoning Inspector you have no record of the zoning permits you issue? A. I have the original copy of the zoning application in each case.

Q. Now in this case of Fannie Weininger, when the application was made to you for a building permit, you granted it? A. That is right. 20

Q. I show you a paper dated October 20, 1945 directed to Jacob Bass agent for Fannie Weininger, and ask you if the signature "Howard Krogh" on there (indicating) is your signature? A. That is right.

Q. This notice you served on Mr. Bass, did you not? A. That is right.

Q. And that is the first notice that you, as Zoning Inspector, gave to Mr. Bass for Mrs. Weininger? A. I believe it is. 30

Mr. Koestler: I offer it in evidence.

Mr. Molineux: May I look at it please? (Mr. Koestler hands the paper to Mr. Molineux who examines it.)

The Commissioner: There being no objection, the offer is received and marked Exhibit P-5 in evidence. 40

Howard O. Krogh, for Prosecutors—Direct.

By Mr. Koestler:

Q. You have been subpoenaed to produce here the zoning ordinance and amendments thereof, of the Borough of Metuchen. Have you produced them? A. I haven't got them.

10 Q. I show you a photostat of the zoning ordinance of 1923 of the Borough of Metuchen passed July 2, 1923 and which is amended by amendment adopted June 1, 1925 and approved June 2, 1925 and ask you if that is a true photostatic copy of the original ordinance.

Mr. Molineux: I object on the ground that this man is not the custodian of the original ordinance and doesn't know whether they are complete.

20

A. I wouldn't know that.

Mr. Molineux: I am willing to stipulate that copies of the ordinances attached to the return are a complete set of all the zoning ordinances and all amendments of the Borough of Metuchen.

Mr. Koestler: I will accept that stipulation in lieu of the production of the original papers.

30

By Mr. Koestler:

Q. In this notice of October 20, 1945, Exhibit P-5, you say "Take notice that the buildings now being constructed on the South side of Durham Avenue, between Central Avenue and L. V. R. R. are non-conforming buildings under the provisions of Article IV Section 1D of the ordinance entitled 'An ordinance entitled, an ordinance to further amend an ordinance entitled Zoning Ordinance 1923 etc., adopted February 4, 1935'."

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Howard O. Krogh, for Prosecutors—Direct.

Q. When did you first ascertain that these buildings were as you state in that notice, non-conforming buildings? A. As far as I can remember, it was a day before this letter was written.

Q. Don't you mean that one of the councilmen by the name of Stockel so informed you at the Council meeting on October 15, 1945?

10

Mr. Molineux: I object to the question on the ground that the attorney is leading his witness. Mr. Krogh is his witness.

Mr. Koestler: This gentleman is the official of the defendant and I have the right to ask him a direct question.

Mr. Molineux: You are suggesting what his testimony should be.

Mr. Koestler: He can answer that, "yes" or "no".

20

A. I don't believe so. Let me see. This was * * * may I see that letter? (The witness examines Exhibit P-5.) This pertains to the zoning ordinance. What was the question again, sir?

The Commissioner: Don't you mean that one of the councilmen by the name of Stockel so informed you at the Council meeting on October 15, 1945?"

30

A. I don't believe so.

By Mr. Koestler:

Q. You say in this notice that the buildings are non-conforming buildings under the zoning ordinance and you previously stated that you think you ascertained that the day before you served this notice? A. As far as I remember.

40

Howard O. Krogh, for Prosecutors—Direct.

Q. From what source did you ascertain that they were non-conforming buildings? A. I don't know whether it was the building committee or the Borough attorney who informed me that any house, housing more than three families, should come before the Zoning Board.

10 Q. You are familiar with the restrictions in zones A, B and C, aren't you? A. Yes, sir.

Q. Do any one of those restrictions as set forth in the ordinance A, B and C districts prohibit three family buildings?

Mr. Molineux: I object on the ground that the ordinance speaks for itself.

A. It doesn't prohibit three family buildings. It
20 regulates them.

By Mr. Koestler:

Q. I show you what purports to be an amendment of the Zoning Ordinance of February 5, 1935, and ask you if you are familiar with that ordinance? A. I am.

Q. Will you look at this and tell me whether this is a true and correct copy of that ordinance?

30 Mr. Molineux: I object to that question on the ground that this witness doesn't necessarily know.

Mr. Koestler: I am asking him if he knows.

A. It is the same copy I have home.

By Mr. Koestler:

40 Q. Is this copy that you produce the one used in deciding the granting of permits? A. That is right.

Howard O. Krogh, for Prosecutors—Direct.

Q. We will use your copy. Now under paragraph two, A district, residence, will you look at that and tell me if there is anything which prohibits construction of a three or more family building?

Mr. Molineux: I object to the question on the ground that the ordinance is part of the record and speaks for itself. 10

A. It has to go before the Zoning Board.

By Mr. Koestler:

Q. Is there anything in this paragraph two which mentions restrictions against three or more family buildings? A. Not that I can see.

Q. Paragraph three relates to B district, business and light manufacturing. Is there anything in that paragraph which prohibits the erection of a three or more family dwelling? 20

Mr. Molineux: Same objection.

A. No.

By Mr. Koestler:

Q. Now, paragraph four, C districts, manufacturing. Is there anything in that paragraph which prohibits the erection of a three or more family dwelling? 30

Mr. Molineux: Same objection.

A. No.

By Mr. Koestler:

Q. Now, as a matter of fact, the only provision which has a mention of a three or more family 40

Howard O. Krogh, for Prosecutors—Cross.

dwelling is subdivision D of paragraph one of Article four?

Mr. Molineux: Same objection.

A. That is right.

10 *Cross examination by Mr. Molineux:*

Q. Referring to Exhibit P-1, you testified that this was in your handwriting? A. That is right.

Q. Is that your signature or the signature of Jacob Bass? A. The signature of Jacob Bass.

Q. You didn't sign it? A. No, sir.

Q. Mr. Bass signed it? A. Yes, sir.

Q. In your presence? A. Yes, sir.

20 Q. Mr. Krogh, referring to the normal procedure that you have in issuing a permit, you get an application signed by the applicant in the form of Exhibit P-1? A. That is right.

Q. Do you get normally any other application? A. Yes.

Q. What sort of an application is that? A. Application for zoning permit.

Q. Is this the form (indicating)? A. That is right.

30 Q. Was any application of this type signed by Mr. Bass on this occasion? A. No, sir.

Q. Referring again to your normal procedure, do you issue what is called a zoning permit as distinguished from a building permit? A. That is right.

Q. Is this the form that is normally issued? A. That is right.

Mr. Molineux: I would like to offer that in evidence.

40 Mr. Koestler: On cross examination as your witness?

Howard O. Krogh, for Prosecutors—Cross.

Mr. Molineux: I offer it in evidence.

Mr. Koestler: I object on the ground that it isn't cross examination.

Mr. Molineux: We have a right to show that a zoning permit is usually issued but was not done in this case.

Mr. Koestler: You have the right to make this gentleman your witness on anything new. I object unless you make him your own witness.

Mr. Molineux: On this particular thing, I make him my own witness and offer in evidence a form of zoning permit.

The Commissioner: There being no objection, the offer is received and marked Exhibit D-1 in evidence.

Mr. Molineux: I also offer this form of application.

The Commissioner: There being no objection, the offer is received and marked Exhibit D-2 in evidence.

By Mr. Molineux:

Q. Referring to the form D-2, was any such application filed by Mr. Bass or Mrs. Weininger or anybody representing either of them? A. No, sir.

Q. Referring to Exhibit D-1. Was any zoning permit issued to Fannie Weininger or Jacob Bass or anyone as their agent? A. No, sir.

Q. You testified that you have been Building and Zoning Inspector for many years. As Zoning Inspector has it ever been necessary for you to turn down an application or a zoning permit for three or more family dwellings?

Howard O. Krogh, for Prosecutors—Cross.

Mr. Koestler: I object. It is incompetent, irrelevant and immaterial and not binding on the prosecutors.

10 Mr. Molineux: The purpose of the testimony is to show that the zoning ordinance of the Borough of Metuchen has been interpreted by its properly constituted officials as an ordinance which does not prohibit three or more family dwellings, but regulates their construction and location, etc., etc.

Mr. Koestler: Same objection.

A. Yes.

20 Q. Subsequent to the turning down of such applications, have any appeals ever been made to the Zoning Board of Adjustment?

Mr. Koestler: Same objection.

A. Yes.

Q. Has the Zoning Board of Adjustment thereafter approved such permits?

Mr. Koestler: Same objection.

A. Yes it has.

30 Q. Have such recommendations of the Zoning Board of Adjustment then been referred to the Borough Council?

Mr. Koestler: Same objection.

A. Yes.

40 Q. And pursuant to the direction of the Zoning Board of Adjustment and of the Borough Council, have you thereafter then issued zoning permits for three or more family dwellings?

Howard O. Krogh, for Prosecutors—Re-direct.

Mr. Koestler: Same objection.

A. Yes.

Re-direct examination by Mr. Koestler:

Q. Mr. Krogh, you have testified over my objection that in certain cases you turned down an application for a three or more family house, that an appeal was then taken to the Zoning Board of Adjustment and thereafter the Borough Council directed you to issue permits. A. That is right. 10

Q. In what part of the Borough of Metuchen were those buildings constructed, to which you refer.

Mr. Molineux: I object to the question on the ground that it is immaterial and that the testimony of Mr. Krogh was given to show the interpretation of the ordinance's regulation and not for showing any particular application was or was not proper under the ordinance. 20

A. They were granted for residential districts.

Q. That is an A district? A. An A district.

Q. Have you ever turned down an application as either Building Inspector or Zoning Inspector for a three or more family dwelling in a manufacturing district? A. This is the first one that I have come in contact with. 30

Q. And this one you granted? A. I granted this one.

Q. You have produced here a form Exhibit D-2 and you also produced this morning the original application made by Mr. Bass on behalf of Mrs. Weininger. You, as Building Inspector and Zoning Inspector, have the blanks, haven't you? What was the reason you didn't ask Mr. Bass to sign 40

Howard O. Krogh, for Prosecutors—Re-cross.

one of these forms D-2 for a zoning permit? A. When Mr. Bass came for the permit I approved the plans and gave him a building permit. I didn't have the zoning applications on hand at the time, but I said it wasn't necessary being it was in a manufacturing district.

10 Q. Now this yellow card, Exhibit D-1, zoning permit, you didn't have any of those on hand at the time? A. Yes, I had them on hand.

Q. Did you then conclude that it wasn't necessary to issue a zoning permit because the building was in a manufacturing district? A. That is right.

Q. And that is the reason that you did not have Mr. Bass fill out the form D-2 and that you didn't issue the form D-1? A. That is right.

20 *Re-cross examination by Mr. Molineux:*

Q. You testified that this application in this particular case, was the first one you ever had for a three or more family dwelling in a manufacturing district? A. That is right.

Q. And that you granted the permit? You mean you granted the building permit? A. Yes.

Q. You did not issue any zoning permit? A. That is right.

30 By Mr. Koestler:

Q. Let me ask you this: Isn't it a fact that the only times when you have an applicant for a zoning permit also sign an application for a zoning permit, is where you, as the Building Inspector in the first instance, refuse to grant the permit? A. I have them sign an application for zoning permit and a building permit.

40 Q. And that is in cases where there is an application for a building in a residence district, isn't it? A. Mostly all cases.

Jacob Bass, for Prosecutors—Direct.

Q. In all districts? You didn't think that was necessary in this particular case because it was for a dwelling house in a manufacturing district?
A. That is right.

Mr. Koestler: That is all.

10

JACOB BASS, one of the prosecutors, offering himself as a witness on behalf of the prosecutors, having first been duly sworn according to law, on his oath, testified as follows:

Direct examination by Mr. Koestler:

Q. Mr. Bass, where do you live? A. Metuchen.

Q. What is your business? A. Contractor. 20

Q. Building contractor? A. Yes, sir.

Q. How long have you been engaged in that business? A. Over 30 years.

Q. As such contractor, have you constructed a number of buildings in Metuchen? A. Yes, quite a number.

Q. Are you related to the prosecutrix Fannie Weininger? A. She is my wife's mother.

Q. Is she the owner of the property in question on Durham Avenue? A. She is. 30

Q. I show you a deed to Fannie Weininger recorded July 25, 1945 in book 1280 of deeds for Middlesex County, on page 241 and ask you if by that deed Mrs. Weininger obtained title to the property in question? A. That is so.

Mr. Koestler: I offer the deed in evidence.

By the Commissioner: The offer is received and marked Exhibit P-6 in evidence. 40

Jacob Bass, for Prosecutors—Direct.

By Mr. Koestler:

Q. Did you on or about July 27, 1945, on behalf of Fannie Weininger, make an application to Howard Krogh, Building Inspector of the Borough of Metuchen, for a building permit? A. I did.

10

Q. I show you a photostat of Exhibit P-1 and ask you if the photostat of the signature "Jacob Bass" is of your signature? A. That is right.

Q. Accompanying that application, did you submit anything else to the Building Inspector? A. A plan.

Q. What was done by the Building Inspector upon your submitting the application and plan to him? A. He took out the zoning map and the zoning ordinance. He checked the map and determined that it was industrial. We looked at the page of C and there was nothing against a twenty-family house and he issued the permit.

20

Q. How soon after the granting of the permit P-3 did you, on behalf of Fannie Weininger, commence construction work? A. Within a day or so.

Q. You were her contractor for the building? A. That is right.

Q. And you had entire charge of the work? A. Entire charge of everything.

30

Q. When you got along to a certain stage, did you find it necessary to change the method or type of construction?

Mr. Molineux: I object on the ground that it is immaterial as to whether or not any change was necessary.

A. It became necessary to change the construction from blocks to frame and I so informed the Build-

40

Jacob Bass, for Prosecutors—Direct.

ing Inspector and he consented and I made the change.

Q. Did you demonstrate to the Building Inspector at any time what that construction would be?

Mr. Molineux: Same objection.

A. I did.

10

Q. Did the work proceed in the manner in which you demonstrated to the Inspector that the change would be made? A. That is right. It proceeded until the 16th of October.

Q. And approximately how often did the Inspector come to visit the place and observe the construction as it was progressing? A. As I remember, he was there about once a week.

Q. Did he at any times speak with you? A. Yes.

20

Q. Did he at any time make any objection? A. No.

Q. What type of building is this that you are putting up? A. They are low-cost housing. They are two units of eight apartments each, consisting of three rooms and a bath. Each apartment has two entrances, one to the front and one to the rear. They would have all modern improvements. They would be highly fire-resisting and it would make it possible for people to live in there at an average cost of \$22 to \$23 a month.

30

Q. For rental? A. For rental.

Q. How high are these buildings in stories? A. One story high and you can walk right out from the door to the ground outside, one step.

Q. Have you had any applicants for rentals? A. There have been so many applicants that we even refused to take them because there are just too many.

Q. Were these white or black people?

40

Jacob Bass, for Prosecutors—Direct.

Mr. Molineux: I object to the question on the ground that it is immaterial.

A. Both, mostly white, and a great many veterans particularly, right now.

10 Mr. Molineux: I object to that and move that it be stricken on the ground that it is immaterial.

Q. What is the character of the neighborhood there?

Mr. Molineux: I object on the ground that it is immaterial as to whether or not this particular construction is or is not properly located in this particular place.

20 A. Manufacturing.

Q. Along Durham Avenue to the east of Mrs. Weininger's property, there are two small houses, aren't there? A. On each side there is a small house.

Q. Are these modern houses? A. No, they are probably twenty or twenty-five years old but they are cheap houses.

30 Mr. Molineux: I object to the question and move that the answer be stricken on the ground that it is immaterial.

Q. Now the zoning map Exhibit P-4 shows the Lehigh Valley Railroad. How close is your construction to the Lehigh Valley Railroad? A. About 100 feet from the railroad.

Q. What type of railroad is that? A. Freight line.

40 Q. Now on October 20, 1945, when Mr. Krogh served this notice P-5 upon you, how far had the

Jacob Bass, for Prosecutors—Direct.

construction of these buildings progressed? A. One building, the roof was almost complete and the other building, all of the framing material was made up.

Q. Was the one building that had the roof almost complete, was that enclosed? A. About, I would say, seven-eighths enclosed at that time, or maybe three-fourths enclosed on the sides. There were some sections that had to be completed, but the material for the other building was made up. 10

Q. How far was the other building progressed? A. The material was made up. All we had to do was assemble it.

Q. What is the condition of the construction at this time? A. Both roofs are on and both buildings are enclosed and one building has part of the stucco on and the other has no stucco on yet. 20

Q. What was the condition of the second building at the time that this notice of October 20, 1945 was served upon you? A. The foundation and sub-floor were ready and all of the material was made up and ready for assembly.

Q. Were there any walls up? A. Yes some sections of the walls were set up.

Q. About what percentage? A. I would say about fifty per cent of the walls. 30

Q. Your original plan as I understand it, called for three units? A. That is right.

Q. Two units of eight? A. That is right.

Q. And toward the rear of the lot running between the two eight units, there was supposed to be a four unit house? A. That is right.

Q. The four unit house has never been constructed? A. No, but the material is made up already. 40

Jacob Bass, for Prosecutors—Direct.

Q. Now at the place where your plan shows a four unit house there is now an old building? A. Yes, it is to be demolished.

Q. But the two eight unit houses are now located at the places as indicated on the plan? A. That is correct.

10 Q. And the lot is 200 feet wide? A. That is right.

Q. Now each of these units has a length of 130 feet? A. Approximately.

Q. And a width of 24 feet? A. That is correct.

Q. And each unit comprises three rooms? A. Each apartment comprises three rooms.

Q. Mr. Bass, although the first notice given to you by the Zoning Inspector was this Exhibit P-5
20 dated October 20, 1945, was your work interfered with by anyone from the Borough before October 20th? A. Yes. On October 16th I came on the job and found the Building Inspector, the Chief of Police and John C. Bowers, who is some kind of a special officer. He was running around exhibiting his badge and was threatening to arrest everybody who raised as much as a hammer and the job was stopped.

30 Mr. Molineux: I object to that as immaterial and move that it be stricken.

By Mr. Koestler:

Q. Now, before this notice of October 20th, Exhibit P-5, was served on you, did you serve on anybody connected with the Borough of Metuchen notice that you were going to apply to the Court of Chancery for an injunction? A. I did. I served Mr. Krogh, Mr. Schultz and the Chief of Police.

40 Mr. Schultz is the Borough Clerk.

Jacob Bass, for Prosecutors—Direct.

Q. Did you file a bill in the Court of Chancery?

A. I did.

Q. In the name of Mrs. Weininger? A. Correct.

Q. And after the proceedings in Chancery you did some additional work on these buildings? A. We assembled materials that we made up. 10

Q. Did you some time toward the end of October stucco a portion of the building? A. We did.

Q. Did you take photographs? A. We did.

Q. I show you two photographs and ask you if these are correct representations of the portion of the building which you stuccoed. A. That is correct.

Q. This one was taken facing northwest, which I offer as P-7 and this one was taken facing east, which I offer as P-8. 20

Mr. Molineux: May I ask a question before these are offered in evidence? Do you know exactly when these pictures were taken?

A. I recall they were taken on a Saturday just after we stuccoed it. We had the photographer wait until the picture was ready to be taken.

Q. At what time was it with relation to the notice of October 20th? A. It was after that. 30

Q. How long? A. I think probably about a week after that.

Q. But you are not sure when? A. Not the exact date. That was taken on a Saturday before the Tuesday that we had the hearing in Trenton.

Mr. Molineux: I object to the offer on the ground that the testimony is not clear as to when the photographs were taken. 40

Jacob Bass, for Prosecutors—Direct.

By Mr. Koestler:

Q. Do I understand Mr. Bass, that your best recollection is that these were taken approximately a week after the notice of October 20th was served upon you? A. That is correct.

10 Mr. Koestler: I offer the photographs in evidence.

The Commissioner: The offers are received and marked Exhibits P-7 and P-8 respectively, in evidence.

The Witness: Wait a minute. I think I was wrong about that date.

By Mr. Koestler:

20 Q. Mr. Bass, do you want to correct your testimony as to the approximate time when the two pictures P-7 and P-8 were taken? A. I would say it was two weeks after the 20th of October.

Q. Why do you change your testimony? A. Because it seems to me that we could not have gotten all that work done between the first hearing in the Court of Chancery and the first Saturday, so it must have been the second Saturday after the first hearing.

30 Q. Mr. Bass, you have testified that Mr. Bowers and the Building Inspector, and Chief of Police came to the site on October 16th? A. That is correct.

Q. Were any photographs taken by any representative of the Borough of Metuchen that time? A. A photographer was there taking pictures and I asked him for whom he was taking them and he refused to tell me and I ordered him off the premises and the Chief of Police told him to tell me and he told me he was taking them on behalf of
40 Mr. Stockel of the Borough of Metuchen.

Jacob Bass, for Prosecutors—Cross.

Q. Were you subsequently furnished with any of those pictures by counsel of the Borough of Metuchen? A. They were given to my counsel.

Q. You saw them given to me? A. I did.

Q. I show you a photograph and ask if it was furnished by them? A. Yes, sir.

Mr. Koestler: I offer this in evidence. 10

The Commissioner: The offer is received and marked Exhibit P-9 in evidence.

By Mr. Koestler:

Q. Is this another photograph that was furnished by the Borough? A. That is right.

Mr. Koestler: I offer this one as P-10.

The Commissioner: The offer is received and marked Exhibit P-10 in evidence. 20

By Mr. Koestler:

Q. And these two pictures Exhibits P-9 and P-10 show the state of construction on the morning of October 16th? A. That is correct.

Q. Are you the Jacob Bass against whom ten complaints have been made by Howard Krogh as either a Building Inspector or Zoning Inspector before Mr. Holger Holm, Recorder of the Borough of Metuchen? A. That is right. 30

Cross examination by Mr. Molineux:

Q. Mr. Bass, you say that when you applied for your permit you and Mr. Krogh examined the zoning ordinances of the Borough of Metuchen? A. No, he did that because I didn't have my glasses and I couldn't read so well.

Q. Then the testimony you gave on direct examination was incorrect. Do you want to change 40

Jacob Bass, for Prosecutors—Cross.

that? A. No, I do not. He did the reading, I stood by.

Q. You testified on direct examination that the two of you examined the zoning ordinance. A. That is correct. He did the reading. I could read some of it.

10 Q. Are you familiar with the zoning ordinance of the Borough of Metuchen? A. Right now I am.

Q. Were you familiar with them at the time you made this application? A. I thought I was. Apparently I wasn't.

Q. Have you ever had occasion to read the zoning ordinances of the Borough of Metuchen insofar as they regulate the erection of three or more family dwellings?

20

Mr. Koestler: I object on the ground that it is irrelevant, immaterial, incompetent and not cross examination.

A. I looked at the map, then I would look at the zones and see what was prohibited and assumed that that which was not prohibited, was permissible.

30 Q. Did you ever have occasion to read that part of the ordinance which is not directly setting up zones A, B and C? A. No, I didn't study the ordinance that way. I only looked at the part of the ordinance to see the thing in which I would be interested and naturally when I look at the zoning ordinance I look at the map to see what is permissible and when I talk to the Inspector I assume he is the man who ought to know.

40 Q. You never read any of the other provisions of the ordinance? A. Not unless I had special reason to read it.

Jacob Bass, for Prosecutors—Cross.

Q. Did you ever have any special reason to read it? A. No.

Q. At any time? A. I had been to the Inspector and had been refused a permit and I appealed to the Zoning Board and when the Zoning Board granted my request I would go to the Council and the Council at times confirmed and at times arbitrarily refused and there was an occasion when the Zoning Board refused a permit for a six-family house and at the next meeting granted a permit for two six families on the very same location. 10

Q. You are now referring to other applications? A. Yes, just what you asked me.

Q. When you appeared before the Zoning Board at these various times, were you representing the owners of the property? A. In most cases I was representing the owner and in some cases I had an interest in them. 20

Q. Did anyone else appear with you on those occasions or were you representing the owners yourself? A. Sometimes I would have someone appear with me.

Q. And you appeared before the Zoning Board in those cases without having read the zoning ordinance? A. That is correct, because I saw the way they operate that it was just a matter of how they felt and not whether you were justified or unjustified. It was more a question of who you were, or where you belonged, or where you came from. 30

Q. Did you ever find in the provisions of the ordinance setting up districts A, B and C anything about the construction of a three or more family dwelling? A. All I know is that when I came to the Inspector and told him I wanted to build a six-family house in the A district, he told me I would have to go before the Zoning Board and 40

Jacob Bass, for Prosecutors—Cross.

file an application and they would hold a hearing when they got ready.

Q. And you appeared at those hearings without ever having read the provisions of the zoning ordinance with reference to three or more family dwellings? A. That is correct. I couldn't understand why they made me go before the Zoning Board even in an A zone. I assume that that was the way they did it but they granted it and I didn't care how they did it.

Q. But sometimes they refused you, is that right? A. On one occasion I applied for a permit for 539 Main Street, a six-family frame building. It was turned down by the Zoning Board and I demanded an explanation as to why and after a little huff after the meeting, I was told to re-submit the application, but in order that there would be no after-effects on the fact that they reversed themselves, they asked me to file an application for two buildings on that corner which I did and at the next meeting it was granted. I built the original building and still had another permit.

Q. So you had a controversy with the Zoning Board of Adjustment about the issuance of a permit for a three or more family dwelling? A. I wouldn't consider it a controversy. I just considered that they were acting arbitrarily to show their authority and when I threatened to go to court they changed their minds and gave me a permit for two buildings at the next meeting; and if that is not arbitrary, I don't know what is.

Q. Do I understand that during this time you never read the zoning ordinances to find out what they said about granting permits for three or more family dwellings? A. I said to you before that when I read an ordinance I read the part that

Jacob Bass, for Prosecutors—Cross.

affects me. When I take a map I look at the zoning map, I look at the residence zone, the business and the manufacturing. We look at each zone as to what is prohibited and we know that what is not prohibited is permissible. That is the only method I know of of determining what we can build and what you cannot build. 10

Q. So you never bothered to read the balance of the ordinance, is that correct? A. Well, if you want to know whether I read the entire ordinance word for word, I would say no.

Q. So you made no effort to ascertain the reason why the Zoning Board of Adjustment was hearing the case except to read those parts of the ordinance that referred to zones A, B and C? A. I did only what a reasonable individual was supposed to do. I went to the Building Inspector and asked for a permit. When he refused it I wanted to know why. When he told me I had to go to the Zoning Board, I would go. I was only interested in one thing: When I go for a Building permit I want a permit and nothing else. 20

Mr. Molineux: I ask that the Commissioner read the question and instruct the witness to answer it.

The Commissioner: "Q. So you made no effort to ascertain the reason why the Zoning Board of Adjustment was hearing the case, except to read those parts of the ordinance that referred to zones A, B and C?" 30

A. It all depends on what you consider an effort. I asked for a permit and was refused, and asked the Building Inspector why and he said I had to go before the Zoning Board and I went before the Zoning Board. 40

Jacob Bass, for Prosecutors—Cross.

Q. Did you or did you not read the balance of the ordinance? A. Word for word, no.

Q. Do you recall having appeared on or about May 14, 1942, before the Zoning Board in connection with an application for a three or more family dwelling? A. If you tell me which building it is I

10 can verify it, but I don't remember the date.

Q. Application of Ethel Avidan for permission to alter the Vander Pool property to provide six three-room apartments. A. That is right.

Q. On the same night, application of the Metuchen Garden Apartments, to build a garden apartment on the southeast corner of Main Street and Christol Street? A. That is right. Mr. Daly was there representing us.

Q. Do you recall having appeared on May 22, 20 1941 in connection with the application of Oscar Bass to erect two six-unit garden apartments at the southwest corner of Main Street and Elm Court? A. That is right. That is the same one that I am referring to, but these were all in A zone.

Q. Do you recall appearing on May 1, 1941 for Oscar Bass for a six family unit to be erected at 537 Main Street which was denied on the ground that the building does not face on the street? A. 30 Yes, I appeared there and they used this as an excuse, but it was not a genuine excuse for the reason that at the next meeting the permit was granted and the building is in the same location and I was asked that I take a permit for two buildings instead of one.

Mr. Molineux: I move that so much of the answer as is not responsive be stricken.

Q. Was that subsequently built? A. The six 40 family? Of course it was built.

Jacob Bass, for Prosecutors—Cross.

Q. Does the building face on the street? A. It does not. It faces the way it was to be originally. It was only a phoney excuse to put in their minutes.

Q. Do you recall a hearing before the Board of Adjustment on November 6, 1940 in connection with an application for Oscar Bass for a six-unit apartment dwelling to be located on the west side of Main Street, about 100 feet north of Durham Avenue? A. That is right. But they were all in A zone. 10

Q. Do you recall appearing on February 15, 1939 before the Zoning Board of Adjustment in connection with an application of Mid-State Rental Homes, Inc., for a twenty-four family apartment house facing on Main Street between Elm Terrace and Talmadge Avenue? A. That is right. Subsequently we built a twelve family house on it instead of a twenty-four. 20

Q. Keeping in mind that you have made all of these appearances before the Metuchen Board of Adjustment in connection with applications for construction of three or more family dwellings, is it still your testimony that you have never read the zoning ordinances of the Borough of Metuchen—those provisions of the zoning ordinances which apply to the construction of three or more family dwellings? A. I could never understand why they would insist that we come before the Board even in A zone, but we took it for granted that that was the way they wanted it and that is the way we did it to get the permit with the least resistance. 30

Mr. Molineux: Commissioner, please read the question.

(The last question was re-read.) 40

Jacob Bass, for Prosecutors—Cross.

A. I always maintained that they had no right to make us go before the Zoning Board even in A zone matters because there was no prohibition against it in the zoning ordinance, but rather than go to court about it we were content to go before the Zoning Board inasmuch as they would grant us a permit without litigation.

10

Mr. Molineux: I am asking the Commissioner to direct the witness to answer the question.

Mr. Koestler: It seems to me that the witness has answered this question several times.

20

Mr. Molineux: I think if you will go over the testimony, it will show that he has refused to answer whether he has read those provisions of the zoning ordinance of the Borough which cover the issuing of permits for three or more family dwellings.

Mr. Koestler: He has answered that he has not read the ordinance word for word.

By Mr. Molineux:

30

Q. Is your answer then that your answer is no? A. That particular provision, no, not until it was called to my attention when this notice was served on me, that particular provision.

Q. These units that you propose to build, are there any provisions for garages? A. No. There is room if they want them in the back but we are not going to build them.

Q. The property is 160 feet by 200 feet? A. No, it is 200 feet by 200 feet.

Q. There are twenty units in all? A. That is right.

40

Q. Each unit has separate cooking facilities? A. That is right.

Jacob Bass, for Prosecutors—Cross.

Q. It consists of a bath * * *? A. Bathroom, kitchen, living room and bedroom.

Q. You testified that the property is 100 feet from the Lehigh Valley Railroad. A. That is right.

Q. Do I understand that 100 feet from the Lehigh Valley Railroad will bring you to the west- 10
erly side of the property? A. Approximately.

Q. And that the property then continues in an easterly direction a distance of 200 feet? A. That is right.

Mr. Koestler: I would like to ask a further question.

Q. Mr. Bass, you have been asked by Mr. Molineux relative to various appearances before the Board of Zoning Adjustment of the Borough of Metuchen. Is it or is it not a fact, that all of the buildings for which those applications were made are within what is designated on the zoning map of the Borough of Metuchen as "Residence A"? 20
A. That is correct.

Q. And the present buildings of Fannie Weininger are in the district known as "Manufacturing C"? A. That is right.

Mr. Koestler: That is all.

The Commissioner: Gentlemen, is there a stipulation that the signature of the witnesses are waived? 30

Mr. Koestler: I so stipulate.

Mr. Molineux: The signatures will not be required and I waive them.

The Commissioner: The hearing is closed.

Exhibit P-1.

Same as application for Building Permit attached to Return of Howard Krogh and printed herein at page 65.

10

Exhibit P-2.

Same as plan and notation attached to Return of Howard Krogh and printed herein at page 67.

Exhibit P-3.

20

BUILDING PERMIT

Metuchen, N. J.

Number 523

Location: South Side of

Dated 7-28-45

Durham Avenue

(Signed) HOWARD KROGH
Inspector of Buildings

30

This PERMIT must be attached to a conspicuous place on premises.

Exhibit P-4.

Same as Zoning Map attached to Return of William Schultz and printed herein at page 47.

40

Exhibit P-5.

BOROUGH OF METUCHEN
MIDDLESEX COUNTY, NEW JERSEY

Office of the Borough Clerk

October 20th, 1945. 10

Jacob Bass Agent for
Fannie Weininger
Main St.,
Metuchen, N. J.

Dear Sir:

Take Notice that the buildings now being constructed on the South side of Durham Ave., between Central Ave., and L.V.R.R. are non conforming Buildings under the provisions of Article IV Sec. 1D of the Ordinance entitled "An Ordinance entitled, "An Ordinance to further amend an Ordinance entitled Zoning Ordinance 1923 etc., adopted Feb. 4th, 1935". 20

Truly yours,

HOWARD KROGH,
Zoning Inspector. 30

Exhibit P-6.

THIS INDENTURE, made the 19th day of July in the year one thousand nine hundred and forty-five,

10 BETWEEN Mary Gianvito and Mario Gianvito, her husband, of the Borough of Metuchen, in the County of Middlesex and State of New Jersey, party of the first part;

AND Fannie Weininger, residing at No. 1 Victory Court in the Borough of Metuchen, in the County of Middlesex and State of New Jersey, party of the second part,

20 WITNESSETH that the said party of the first part for and in consideration of one (\$1.00) dollar and other good and valuable consideration lawful money of the United States of America, to them well and truly paid by the said party of the second part at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said
30 party of the second part and to her heirs and assigns, forever.

ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Metuchen in the County of Middlesex and State of New Jersey.

40 BEGINNING at a point formed by the intersection of Durham Avenue and Dempsey's line running thence easterly about 210 feet along said Durham

Exhibit P-6.

Avenue; thence southerly about 200 feet to the line of A. H. Campbell; thence westerly along said Campbell's line about 226 feet to the aforesaid Dempsey's line and thence northeasterly along said Dempsey's line to Durham Avenue, the point or place of BEGINNING. Said premises being formerly owned by Anne E. Pease, deceased, and Catherine Campbell, deceased. 10

BEING the same premises conveyed to Mary Gianvito by deed of Amy Acken et al dated June 14, 1944 and recorded in the Middlesex County Clerk's Office in Book 1255 of Deeds for said County at page 379.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof: 20

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part her heirs and assigns, to her and their own proper use, benefit and behoof forever. 30

AND the said Mary Gianvito for herself, her heirs and assigns, does covenant, grant and agree, to and with the said party of the second part, her heirs and assigns, that the said Mary Gianvito, at the time of the sealing and delivery of these presents, is lawfully seized in her own right of a good, 40

Exhibit P-6.

absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

10 AND that the said party of the second part, her heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to
20 claim the same.

 AND that the same now are free, clear, discharged and unencumbered of and from all, former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature and kind soever.

 AND ALSO, that the said party of the first part and their heirs or assigns, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of,
30 in or to the hereinbefore granted premises, by, from, under or in trust for it or them, shall and will at any time or times hereafter, upon the reasonably request, and at the proper costs and charges in the law, of the said party of the second part, her heirs and assigns, make, do and execute, or cause or procure to be made done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the
40 law for the better and more effectually vesting and confirming the premises hereby intended to be

Exhibit P-6.

granted, in and to the said party of the second part, her heirs and assigns forever, as by the said party of the second part, her heirs or assigns, or counsel learned in the law, shall be reasonably advised or required.

AND the said Mary Gianvito, her heirs or assigns, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, her heirs and assigns, against the said party of the first part and their heirs or assigns, and against all and every person or persons whomsoever, lawfully claiming or to claim the same SHALL AND WILL WARRANT and by these presents FOREVER DEFEND. 10

IN WITNESS WHEREOF the party of the first part 20
have set their hands and seals the day and year
first above written.

Mary Gianvito (L. S.)

Mario Gianvito (L. S.)

Signed, sealed and delivered }
in the presence of }

Sherwood H. Mundy
U. S. Rev. Stamps \$1.10 cancelled

30

Exhibit P-6.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX. } ss.:

10 BE IT REMEMBERED That on this 19th day of July
in the year One Thousand Nine Hundred and
forty five before me, the subscriber, an Attorney
at Law of New Jersey, personally appeared Mary
Gianvito, and Mario Gianvito, her husband, who, I
am satisfied are the grantors mentioned in the
within Instrument, to whom I first made known
the contents thereof and thereupon they acknowl-
edged that they signed, sealed and delivered the
same as their voluntary act and deed for the uses
and purposes therein expressed.

20 SHERWOOD H. MUNDY,
Attorney at Law of New Jersey.

Received and recorded July 25, 1945 at 9:00 A. M.
in Book 1280 at page 241 etc.

EDWARD J. PATTEN,
Clerk, Middlesex County.

30

Exhibit P-7.

(Opposite )

40



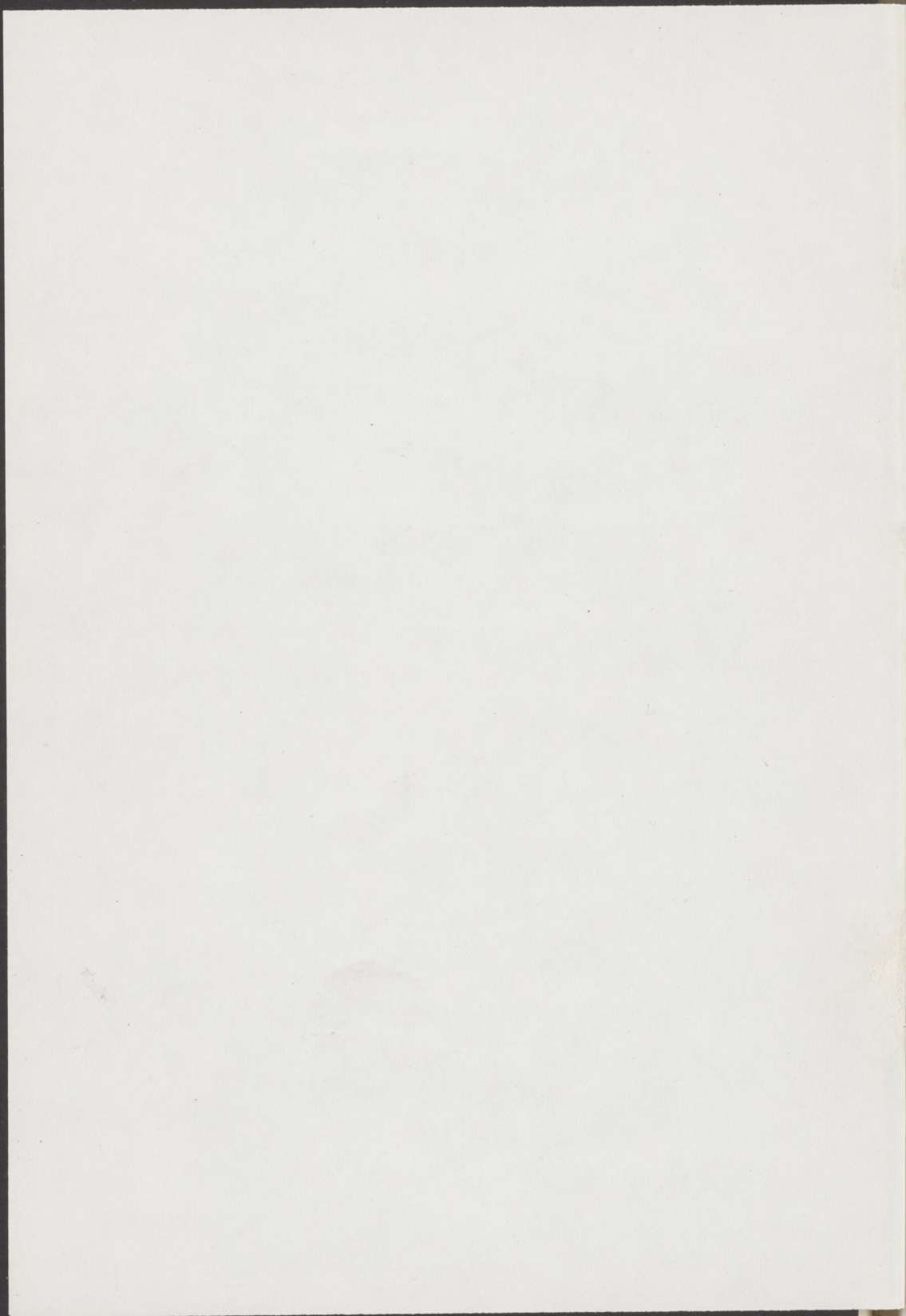


Exhibit P-8.

(*Opposite* )



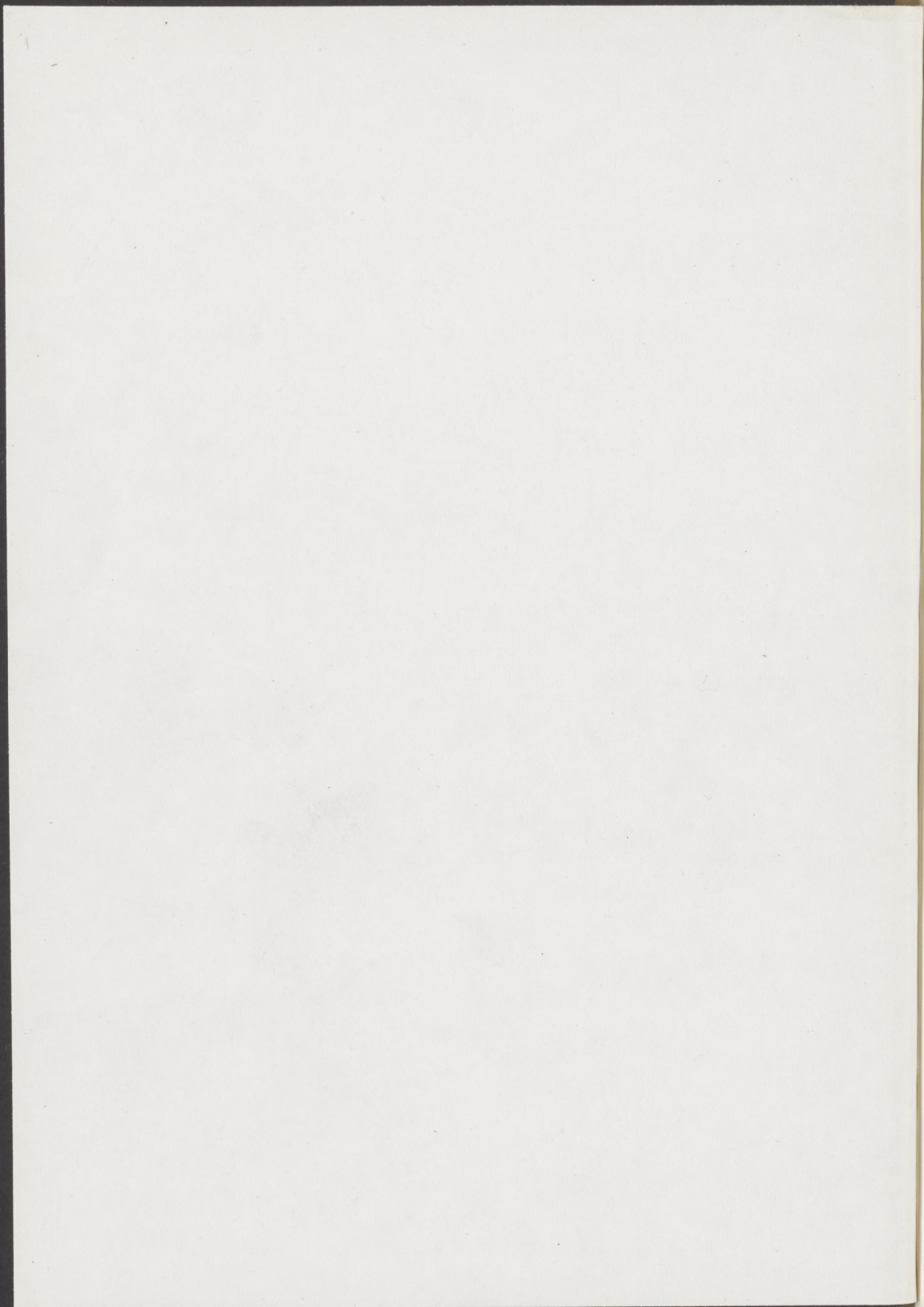


Exhibit P-9.

(*Opposite* )



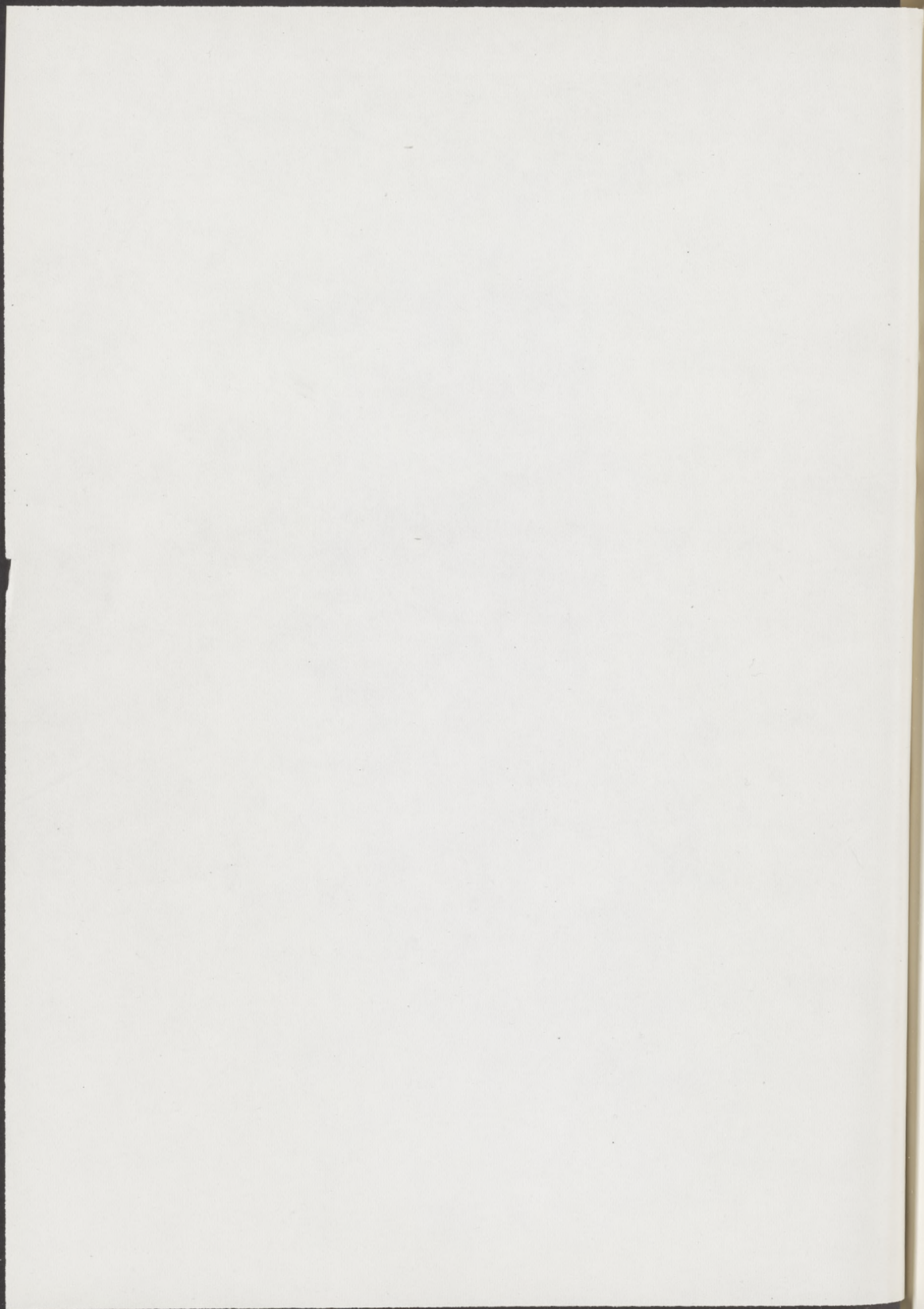


Exhibit P-10.

(*Opposite* )



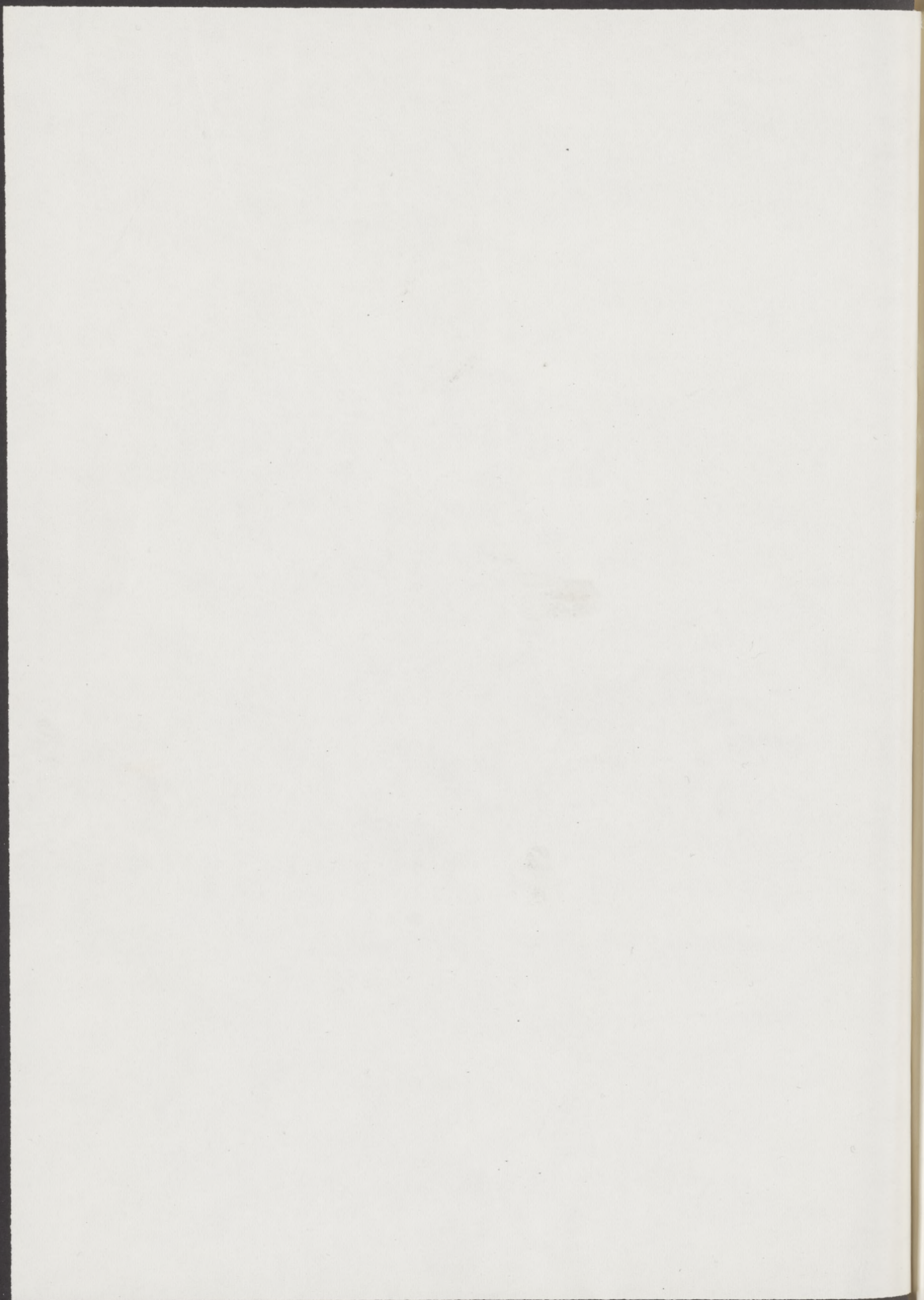


Exhibit D-1.

ZONING PERMIT

BOROUGH OF METUCHEN, N. J.

.....is hereby granted
(Name of Owner)

10

permission to ☐ Use a
☐ Construct (Type of Construction)

Building forpurpose on
Lot No..... in Block No.....
(Borough Assessment Map).

20

This Permit is issued on the basis of informa-
tion contained in application and shall be auto-
matically cancelled if statements made in said ap-
plication are found to be false or inaccurate.

Dated....., 19....

.....
ZONING INSPECTOR

30

40

Exhibit D-2.

APPLICATION FOR ZONING PERMIT

BOROUGH OF METUCHEN, N. J.

The undersigned hereby applies for a Permit to

☐ CONSTRUCT

☐ ALTER

☐ USE

the following described building:

10

1. Location:

.....
House No. Name of Street Lot No. Block No.

On the side of
Name of Street

.....ft. from 20
Name of Nearest Cross-Street

2. Intended use is:

(a) Residential, ☐ ONE ☐ TWO FAMILY,
☐ PRIVATE GARAGE, ☐ ACCESSORY BLDG.

(b) Apartment House or Hotel.

(c) Light Manufacturing.....
Description

(d) Heavy Manufacturing..... 30
Description

(e) Business
Description

(f) Gasoline Service Station or Public
Garage.

3. The front line of the building will be.....ft.
from the front property line.

The side line of the building will be.....ft.
from the side street property line. 40

Exhibit D-2.

4. Building of.....construction.
Material

I certify that the above information is true and
the construction and use will conform with the
Zoning Ordinance requirements, if a Permit is
granted.

10

SIGNED.....
Owner

.....
Address

Witnessed By.....

Date....., 19....

20 Permit Issued....., 19....

.....
Zoning Inspector

30

40

Depositions.

January 4, 1946.

NEW JERSEY SUPREME COURT.

FANNIE WEININGER and JACOB
BASS,
Prosecutors-in-Certiorari.

10

vs.

BOROUGH OF METUCHEN IN THE
COUNTY OF MIDDLESEX and
HOWARD KROGH, Building In-
spector of said Borough, and
HOLGER G. HOLM, Recorder of
said Borough,
Defendants-in-Certiorari.

20

Transcript of stenographer's notes of evidence
in the above entitled matter, taken before SCHUY-
LER C. VAN CLEEF, Esq., Supreme Court Commis-
sioner, at his offices, 5 Elm Row, in the City of
New Brunswick, New Jersey, on the fourth day
of January, A. D., 1946, at 10.00 a. m.

Appearances:

30

MESSRS. KOESTLER & KOESTLER,
SAMUEL KOESTLER, Esq. (Present),
Attorneys for the Prosecutors.

JOHN B. MOLINEUX, Esq.,
Attorney for the Defendants.

(George D. Ziegler sworn as steno-
graphic reporter).

By consent of both counsel, signatures to 40
the depositions are waived.

William E. Schultz, for Defendants—Direct.

WILLIAM E. SCHULTZ, a witness produced on behalf of the Defendants, being duly sworn, according to law, on his oath, saith:

Direct examination by Mr. Molineux:

10 Q. Mr. Schultz, are you clerk of the Borough of Metuchen? A. Yes.

Q. Do you have under your control the ordinances of the Borough of Metuchen? A. Yes.

Q. Have you got the building code here? A. I have it in the book.

Mr. Molineux: I offer the building code in evidence.

20 Mr. Koestler: I object on the ground it is immaterial, irrelevant, incompetent, and has no bearing upon the issues involved in this proceeding.

The Commissioner: It will be received and marked.

Mr. Molineux: Have you any objection to my using copies?

Mr. Koestler: Subject to my objection you may use either a sworn copy, or a copy which he says is a copy.

30 (Building Code entered in evidence and marked Exhibit D-3).

Mr. Molineux: I offer an amendment to the Building Code.

Mr. Koestler: I object to that on the ground that I am informed that was passed recently, and even after the building permit in this case was granted. And, therefore, it is wholly irrelevant.

40 (Amendment to Building Code entered in evidence and marked Exhibit D-4).

William E. Schultz, for Defendants—Cross.

Q. Mr. Schultz, I show you the Exhibits marked D-3 and D-4, and ask you if they constitute the entire Building Code of the Borough of Metuchen, as it exists to-day? A. I think it would be, yes.

Cross examination by Mr. Koestler:

Q. Mr. Schultz, when was this amendment to the Building Code adopted? 10

Mr. Molineux: In order to save time I will admit that the amendment to this ordinance was passed subsequent to the issuance of the permit.

Q. What is the date? A. I don't know the exact date now. It isn't so long ago.

Q. How long ago? A. Well, maybe two weeks ago. Something like that. 20

Q. At the last meeting of the Borough Council? A. No. The last meeting we had was just an organization meeting.

Q. It was the last meeting in 1945, is that it? A. No, it was not the last meeting in 1945. The last meeting in 1945 was part of an adjourned meeting.

Q. Can you tell me when this was passed? A. I don't exactly know. I would have to go and look at my minutes to find out just exactly what date. Listen, you know, it is brought upon first reading, and second reading, and it is published, and finally passed under third reading. I think it must have been about the third week in December. Something like that. I wouldn't want to say positive. 30

Q. That is as near as you can tell me? A. That is as near as I can guess at it now, yes.

Q. And the Building Code which you produce was revised in 1934? A. I wouldn't know that. It was before my time. 40

Alfred F. Larkin, for Defendants—Direct.

Q. That is what it says on here. A. Well, if it says that, it is all right, but I had nothing to do with it in 1934.

Q. And as far as you know there has been no amendment or revision of the Building Code from October 15th, 1934, until this amendment was introduced about two or three weeks ago? A. I think that is correct.

Mr. Koestler: That is all.

ALFRED F. LARKIN, a witness produced on behalf of the Defendants, being duly sworn, according to law, on his oath, saith:

20 *Direct examination by Mr. Molineux:*

Q. Mr. Larkin, where do you reside? A. 90 Woodbridge Avenue, Metuchen.

Q. What position, if any, do you hold in the Borough of Metuchen? A. I am president of the Zoning Board of Adjustment.

Q. How long have you been president? A. I would say offhand about nine years.

Q. Were you a member of the Board before you were president? A. Yes.

30 Q. For how many years were you a member of the Board before you were elected president? A. About seven and one-half.

Q. During that period have you had applications for zoning permits to build three or more family dwellings? A. We have.

Q. Have any such permits been issued? A. Yes.

Q. Have any been denied? A. Yes.

Q. Is it a fact that the Zoning Board of Adjustment has interpreted the Zoning Ordinance of the

40

Alfred F. Larkin, for Defendants—Cross.

Borough of Metuchen so as to prohibit the construction of three or more family dwellings?

Mr. Koestler: I object on the ground that their construction is immaterial. The construction is for the Court, and not for that Board.

The Commissioner: Answer the question.

10

A. You say does the zoning ordinance prohibit?

Q. Has it been interpreted so as to prohibit?

A. No.

Q. How has it been interpreted?

Mr. Koestler: Same objection.

A. It has been interpreted to give the Zoning Board discretion if, in their opinion, the need was great enough to warrant it, and it didn't incur any hardship, or create anything that was objectionable, why, it was granted.

20

Mr. Molineux: That is all.

Cross examination by Mr. Koestler:

Q. Do I understand you have been a member of the Board, as individual and president, for nine years, or nine years as president? A. I would say thereabouts. No. About a year and a half as president. I think it was about nine years altogether. I can't remember offhand. I think there was one full five year term, and part of a term, and then I am on my second five year term now.

30

Q. You say your Board has made a construction of the Zoning Ordinance. I guess what you mean is this amendment that was passed in 1935, don't you, in reference to three or more family houses? A. That is right.

40

Alfred F. Larkin, for Defendants—Cross.

Q. So that you are familiar with the terms of the original ordinance, aren't you? A. The original ordinance was passed, I believe, in 1923. I am not familiar with the original ordinance of 1923.

10 Q. Are you familiar with the entire amendment which was passed in 1935? A. Yes, sir.

Q. Under that ordinance the municipality is divided into how many different zoning districts? A. Three.

Q. I refer you to District A: What is District A? A. That is residential.

20 Q. Does that division in itself prevent the construction, according to your construction of the language, of three family or more houses—three or more family houses in District A? A. That in itself does not, no.

Q. What is District B? A. Light manufacturing.

Q. Does that ordinance, as to District B, prevent the construction of three or more family houses in District B? A. Not in itself, no.

Q. What is District C? A. Heavy manufacturing. Manufacturing area entirely.

30 Q. Are three or more family houses prohibited in that district? A. No, sir; not according to the District regulation.

Q. Do you construe the act that in the event of the building inspector denying a permit for a three or more family house, that there is a right of appeal to your Board? A. As I understand the regulations, the zoning inspector has not any jurisdiction.

40 Q. Then there is no right of appeal to your Board from a decision of the zoning inspector? A. It is not a question of appeal from the zoning

Alfred F. Larkin, for Defendants—Cross.

inspector. It is a question of making application to the zoning board.

Q. Won't you please answer my question, Mr. Larkin? A. What was your question again?

(Question repeated by stenographic reporter)

A. Well, I can't answer that that way, because in this particular case, as I understand it, the zoning inspector has not any jurisdiction in that particular case. 10

Q. Then it is not a question of zoning, is it?

A. Yes. According to the regulations it is. Article 4—

Q. Isn't it a question of the will of your Borough Council in each individual case? A. The final say is vested in them.

Q. Your Board has no power, has it? A. Yes.

Q. What power? A. Power to reject an application. 20

Q. It has no power to grant? A. It has a power to recommend.

Q. It only has a power to recommend an approval, or rejection? A. It has a power to recommend an approval. It has the power to reject, which is final.

Q. Now, this sub-division D does not apply to any particular district, does it? A. It does not specify any particular district, no. 30

Q. It applies to the entire municipality, and all the property in the municipality? A. That is our interpretation.

Q. Now, this objection to three or more family houses is given to all the land in the entire municipality of the Borough of Metuchen, is it not? A. That is my interpretation of it, yes.

Q. Do you or do you not consider it, under your interpretation, as an exception to the general 40

Alfred F. Larkin, for Defendants—Cross.

terms of the ordinance, the zoning ordinance?

A. I don't quite understand what you mean by that.

(Question repeated by stenographic reporter)

A. Consider what as an exception?

10 Q. I will give you a new question. When an application comes before your Board for the construction of a three or more family house, within the limits of the Borough of Metuchen, under your construction of the Zoning Ordinance and the amendment thereto, do you and your Board consider that you are giving an exception to the general terms of the zoning ordinance, as amended in 1935? A. If we give the permit we feel that we are allowing an exception to the ordinance.

20 Q. You as a member of the Board of Adjustment, had nothing to do with the adoption of the amendment in 1935, did you? A. Not to my knowledge.

Q. You merely, as a Board, take it as you find it? A. We are governed by it, as it is handed to us.

30 Mr. Koestler: I now move to strike out the evidence of this witness on direct examination, relating to the Board's interpretation of the provisions of the Zoning Ordinance, on the ground that that evidence is irrelevant, incompetent, and that the matter of construction is for the Court, and not for the Board.

Mr. Koestler: That is all on my cross examination.

Mr. Molineux: That is all.

Raymond P. Wilson, for Defendants—Direct.

RAYMOND P. WILSON, a witness produced on behalf of the Defendants, being duly sworn, according to law, on his oath, saith:

Direct examination by Mr. Molineux:

Q. Mr. Wilson. where do you reside? A. New Brunswick, New Jersey. 10

Q. What is your profession? A. Civil engineering.

Q. Are you engineer for any municipalities in and around here? A. Several.

Q. Will you name them? A. Raritan Township, Highland Park, Franklin Township.

Q. How long have you held these positions? A. Twenty odd years.

Q. How long have you been an engineer? A. Thirty-nine years. 20

Q. In your experience as an engineer, and as engineer for these municipalities, have you had anything to do with the construction of three or more family dwellings? A. Well, not directly with the construction. I have been involved in improvements resulting from the construction.

Q. Can you tell us whether or not there are any special problems of any sort that arise in the construction of a three or more family dwelling house, that do not arise in the construction of a single family dwelling house? 30

Mr. Koestler: I object, on the ground the qualification of this witness has not been disclosed. I object that he has not been qualified as an expert in this particular line on which he is being interrogated.

Q. Well, as engineer of these municipalities have you been called upon to give advice as to the 40

Raymond P. Wilson, for Defendants—Direct.

construction, or the type of construction used, or the location of three or more family dwellings?

Mr. Koestler: I object on the ground it is immaterial, irrelevant and incompetent.

Mr. Molineux: I am just asking what his experience is.

10

Mr. Koestler: I understand that. I am just objecting.

A. I have.

Q. Have you ever been called upon to give advice in connection with the passage of building codes and zoning ordinances? A. I have.

20

Q. Has that advice been directed towards the provisions of those ordinances involving construction of three or more family dwellings? A. That would have been part of the general subject matter under discussion.

Q. Have you, as borough engineer, or engineer of these municipalities, ever been called upon to pass upon the location of streets, generally? A. I don't think I understand what you mean by the location of streets.

Mr. Molineux: I will withdraw the question.

30

Q. Have you ever constructed, for any municipality, a sewer system? A. I have indeed. All over the years of municipal experience we have become involved in construction of all types relative to municipalities. Problems relative to municipalities.

Q. Have you ever been involved in problems involving automobile traffic? A. Yes.

40 Q. From your experience are you familiar with any problems which may arise in the construction

Raymond P. Wilson, for Defendants—Direct.

of three or more family dwelling houses, that do not arise in the construction of a single family dwelling?

Mr. Koestler: I object, on the ground it is immaterial, irrelevant and incompetent, and the witness has not shown any qualifications. 10

The Commissioner: Answer the question.

A. I have.

Q. What are these problems?

Mr. Koestler: I object on the ground it is wholly irrelevant, and has no relation to the subject matter here involved, and the witness has not shown qualification. 20

A. One of the most important problems that arises is centered around the traffic problem, by reason of the fact that there are a greater number of cars centered in one locality. Sometimes garages are provided, and sometimes outdoor garages are provided, or used. This always creates a problem of handling the particular traffic, for parking, as well as moving traffic. Which condition does not exist, in the acute sense, in a private dwelling. 30

Q. This parking problem you speak of, is it limited to the occupants of the building? A. No, it is not alone the occupants of the building. There are those who have deliveries to make to the building, or guests, visitors. It creates a greater concentration of cars than would be the case with the individual dwelling.

Q. What other problems arise, if any? A. Well, there is a sewer problem which arises. Customarily connections are left for the use of vacant 40

Raymond P. Wilson, for Defendants—Direct.

- lots, if, as and when they are built. I mean, connections in the original sewer in the center of the street. Those connections are usually spotted twenty-five, thirty-five, fifty feet apart, depending upon the neighborhood. With the multi-family house it frequently involves the necessity of
- 10 cutting into the sewer, which is always objectionable. If it happens to be on a paved street, it is customary to run connections, both for water and sewer and gas, to a point behind the curb, so that the pavement does not have to be disturbed. Usually we find, with multi-family houses, it is necessary to open the pavement, which we consider—is generally considered to be highly undesirable. It is difficult to replace it in the condition that existed previously. The same problem,
- 20 to a lesser extent, arises on the water connections. There again, if the street is paved, and the connections have been run behind the curb, the services would be too small for a multi-family house. This also involves the construction of a new service, a larger size service, from the main. There is always, of course, consideration given to the fire hazard, which may be of entirely different character from that which prevails with a single family house. That always has to be given thought. And,
- 30 of course, the police angle also arises.

Q. Does the type of construction have anything to do with the fire hazard? A. Oh, very decidedly. What would be a very grave hazard, possibly, in one location, would not be in another. Or, one type of construction obviously presents much more of a hazard than another type of construction would present.

- Q. Have you any other problems? A. Well, of course, there is always the problem of the noise.
- 40 The question of the effect on adjoining property,

Raymond P. Wilson, for Defendants—Cross.

from value standpoint. But I think I have covered what would occur to me as being the main points that would be normally problems.

Mr. Molineux: Cross examine.

Cross examination by Mr. Koestler:

Q. You are not a zoning expert, are you? A. I don't claim any special ability as a zoning expert, no. 10

Q. You are not a builder? A. I am not a builder. Except as it applies to my profession. Designing structures, yes. Not in the sense of residential building.

Q. You have no official connection with the Borough of Metuchen, have you? A. I have not.

Q. You have not been consulted as an engineer with any engineering problems relating to the Borough of Metuchen, have you. A. Not for some years? 20

Q. How many years? A. Well, I would say roughly twenty years.

Q. Now, as a matter of fact, let us assume that you have a parcel of land on which there are constructed three three-family houses, and on that same parcel of land, as against the three three-family houses, there are constructed four two-family houses, would you say that the one proposition, as against the other, creates any great difference in the problems? A. Well, it would be relative matter entirely. Of course, you can see the difference between three families, and four families, or four and five. Every step would increase the problems. 30

Q. In other words, what you mean is two pigs under a stile create more noise than one? A. That is exactly the case. 40

Raymond P. Wilson, for Defendants—Cross.

Q. Now, you realize that people living in a one-family residence would probably be of a higher type, financially, than people living in a three or four-family house, is that what you mean? A. Well, I think generally speaking that might be expected, quite probably.

10 Q. Isn't it more likely that a family living in a nice one-family house would have as many automobiles as three families living in a three-family house? A. Well, they might, and they might not. Generally speaking I don't think that would hold true. On the other hand, in the case of the individual house, it is very much more probable that garage facilities would be provided to keep the cars off the streets.

20 Q. Do you know that there is an ordinance in Metuchen which prohibits the parking of cars on the streets over night? A. I am not familiar with the ordinance at all.

Mr. Koestler: That is all.

Mr. Molineux: That is all.

30 Mr. Molineux: Can we agree on a stipulation that there was a bill filed October 23rd, 1945, in the Court of Chancery, and that on that day there was an order restraining the Borough of Metuchen from in any wise interfering with this work, and that that restraint was modified on November 20th, 1945, by——

Mr. Koestler: I will consent that you may offer in evidence copies of the original restraint, and the order of modification. If you will produce them I will admit that they are copies.

40 Mr. Koestler: We can stipulate bill of complaint was filed by Fannie Weininger in the Court of Chancery of New Jersey, to re-

Certificate of Supreme Court Commissioner.

strain the officials from interfering with the construction. That on that day a preliminary restraint was issued, of which a copy will be produced and offered in evidence by the respondents, and that on the respondents' application that restraining order was modified by order made October 30th, 1945, copy of which will also be produced by the respondents. And further modified by order of November 20th, 1945, copies of which will be produced and offered in evidence by respondents. 10

Mr. Molineux: I offer these in evidence.

(Order to Show Cause, and Ad Interim Restraint entered in evidence and marked Exhibit D-5). 20

(Order of Continuance entered in evidence and marked Exhibit D-6).

(Order Modifying Restraint entered in evidence and marked Exhibit D-7).

Certificate of Supreme Court Commissioner.

I, SCHUYLER C. VAN CLEEF, a Supreme Court commissioner, do hereby certify that the foregoing depositions were taken by George D. Ziegler, a stenographer selected by me, and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting the testimony given, and that such depositions were taken in my immediate presence and hearing by said stenographer, and I believe that they accurately state the said evidence. 30

SCHUYLER C. VAN CLEEF,
Supreme Court Commissioner. 40

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BOROUGH OF METUCHEN****INDEX**

10 Revised to October 15, 1934.

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20

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 PART 1—AN ORDINANCE.

30 An Ordinance of the Borough of Metuchen to be known as the Building Code Ordinance, which is designed to regulate and control the construction, alteration, repair and removal of buildings and their inspection. Be it ordained by the Mayor and Council of the Borough of Metuchen:

PART 2—ADMINISTRATION.

BUILDING ADMINISTRATION COMMITTEE.

40 *Section 1.* That a committee of three Councilmen to be known as the "Building Administration Committee", shall be appointed by the Mayor and confirmed by the Council in the same manner

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as other appointed officers, immediately upon the adoption of this ordinance. The said members of the aforesaid Building Administrative Committee shall hold office until January 1, 1930, or until their successors shall have been duly appointed and have qualified. Thereafter all members of the Committee shall be appointed at the first regular meeting of the Borough Council in January, and shall hold office for the term of one year, or until their successors shall have been duly appointed as aforesaid and have qualified. 10

BUILDING INSPECTOR.

Section 2. That there shall be appointed by the Borough Council immediately upon the adoption of this ordinance an officer to be known as the "Building Inspector", who shall hold office until the second regular meeting of the Borough Council in January, 1930, or until his successor has been duly appointed and qualified. Thereafter the Building Inspector shall be appointed at the second regular meeting in January and shall hold office for the term of one year, or until his successor shall have been duly appointed and qualified. 20

DUTIES OF BUILDING INSPECTOR.

Section 3. That the Building Inspector shall be a competent engineer, architect, mechanic or builder. He shall within ten (10) days after receipt of proper application issue permits for the erection, repair, alteration or removal of building, providing the plans and specifications comply with the provisions of this ordinance. He shall make a careful inspection of all buildings in the course of erection, alteration or removal. He shall inspect 40 30

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buildings which he considers unsafe and compel proper precaution to be taken for the protection of life and property. It shall be the duty of the Inspector to notify the owner or the owner's representative in writing that a building or part of any building is being altered, repaired or removed contrary to the requirements of this ordinance, and that the work complained of must be immediately stopped.

BUILDING INSPECTOR NOT TO ACCEPT
REMUNERATION.

Section 4. That any Building Inspector or his authorized agent or agents who shall solicit, accept or receive any money or other remuneration for enforcing or for modifying or changing any requirement or requirements of this ordinance shall be guilty of a misdemeanor.

REPORT OF BUILDING INSPECTOR.

Section 5. The Building Inspector shall make and file an itemized monthly report with the Chairman of the Building Administrative Committee of all fees received by his office.

30 APPEAL DECISION OF BUILDING INSPECTOR.

Section 6. That each and every applicant shall have the right, authority and power to appeal from the decision of the Building Inspector to the "Building Administrative Committee". The Building Administrative Committee shall within ten (10) days after the completion of the appeal by the applicant, hear the matters complained of an appeal and make its report. The party appealing may be permitted to further appeal from the
40 decision of the Building Administrative Commit-

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tee to the Governing Body of the Borough. All appeals shall be made by filing the required and necessary documents with the Clerk of the Borough.

PART 3—PLANS AND MATERIALS.

NEW MATERIALS.

10

Section 7. That the Building Inspector shall before a new material is used, obtain sufficient proof that said material will meet the requirements in all respects of this Building Code or Ordinance. If the data in any recognized Bureau of Standards give sufficient proof that the new material will meet the requirements, said proof shall be deemed sufficient. It is recommended to the Inspector that he examine the new materials used in a building in the vicinity. 20

BUILDING CONSTRUCTION TO CONFORM TO CODE.

Section 8. No structure, building or part thereof, shall hereafter be built or constructed except in accordance with this code.

OBTAINING PERMIT.

Section 9. No building already erected or hereafter to be erected, shall be built, altered repaired, moved, raised or demolished, where the cost of the work contemplated is in excess of \$500.00, without first obtaining a permit. The fees charged for such permit shall be in accordance with Section 16 of the Building Code as revised January 6th, 1930. 30

Where the total cost of the work contemplated is \$500.00 or less, no permit shall be required, but the owner or his authorized agent shall file with 40

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the building inspector a "Notice of Intention", for which no filing fee shall be charged.

All applications for building permits and the filing of a notice of Intention shall be made before any work is commenced.

10

FILING PLANS AND STATEMENTS.

Section 11. Before the erection, alteration or construction of any building is begun, there shall be submitted to the Building Inspector an application in duplicate on blanks furnished by the Inspector, containing a statement of the work to be performed and the estimated cost.

20

A complete copy in duplicate of all the necessary plans and specifications of such proposed work shall accompany each application, where the additional cost of said work shall be in excess of Five Hundred (\$500.00) dollars. In each and every case where the alteration pertains to the removal of a stairway, exit or any support of any character, plans and specifications in detail shall be filed regardless of the cost of said work. If the plans are approved each sheet of one set is so marked by the Building Inspector by a suitable stamp formally approved by the Building Administrative Committee. This set is to be retained by the owner or his representatives and to be kept on the premises of the building operation so that the same may be accessible to the Building Inspector. The other set to be kept on file in the office of the Building Inspector.

30

APPLICATION TO BE MADE BY OWNER OR
REPRESENTATIVE.

40

Section 12. The application and statement shall be made by the owner, or by his architect or engineer or by the owner's representative providing

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such representative shall have a written order from the owner so stating that the bearer is a legally authorized agent. Said order to be kept on file with the plans and statements. All applications shall be made in the name of the owner.

PERMIT.

10

Section 13. No construction, alteration or erection of any building shall be commenced without a permit issued by the Building Inspector. The said Inspector shall have suitable Building Permit Cards on hand to read as follows.

BUILDING PERMIT.

Granted
 Date..... 20
 Number of Permit.....
 Address
 Signed
 Building Inspector

This card must be kept in a conspicuous place on or in the structure for which permit is granted. All work on this building to comply with the code of the Borough of Metuchen, New Jersey. 30

RECORD OF PERMITS.

Section 14. The Building Inspector shall keep a book approved by the Building Administrative Committee, which shall be a ready reference and a public record, showing the number of the permit, the date issued, date or dates of inspections by the Building Inspector, the location of the building, the estimated as shown on the Statement made by 40

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the owner, the approximate cost of all additional work, the name and address of owner, cost of permit, a synopsis of any or all matters in issue which may have arisen and such other data as the Building Inspector shall deem advisable to insert.

10

LIMITATION OF PERMIT.

Section 15. All permits shall remain in force for the space of one year, that is, if the owner does not proceed with the work for the space of one year after the permit shall have been issued, said permit shall be void.

FEES.

Section 16. Fees shall be charged as follows:
 20 Ten (\$10.00) Dollars shall be charged for a permit to move any building through or across any street within the limits of this Borough.

For all construction and (or) alteration permits, a fee of three (\$3.00) Dollars shall be charged and paid for the first One thousand (\$1,000.00) Dollars or less of actual building costs, an additional fee of Two (\$2.00) Dollars per thousand shall be charged and paid on actual building cost above One Thousand (\$1,000.00) Dollars up
 30 to and including Fifty Thousand (\$50,000.00) Dollars and an additional fee of One (\$1.00) Dollar per thousand shall be charged and paid on all building costs in excess of Fifty thousand (\$50,000.00) Dollars.

Fee shall be paid to the Building Inspector in the form of a check or cash made payable to the Collector of the Borough of Metuchen. The Building Inspector shall make a monthly report to the Building Administrative Committee of the fees
 40

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collected and all money shall be turned over monthly to the Borough Treasurer.

No fee shall be charged for a permit to demolish a building.

BOND OF BUILDING INSPECTOR.

Section 17. The Borough Council may, if it 10
deems advisable demand the Building Inspector furnish a surety bond issued by a reputable surety company authorized to transact business in the State of New Jersey, to the amount agreed by the Borough Council.

VIOLATION OF CODE.

Section 18. Whenever the Building Inspector has evidence that there exists in any building 20
erected subsequent to the passage of this ordinance, or in the course of erection or alteration, a violation of this code, it shall be his duty to so notify in writing the owner or the owner's representative and demand that the same be rectified in accordance with this code. The owner shall be allowed ten (10) days in which to make the necessary changes. If at the expiration of ten days, the terms of this ordinance have not been fully complied with, it shall be the duty of the Inspector to 30
report the said violation to the Building Administrative Committee. The Building Administrative Committee may then instruct the Building Inspector in writing to notify in writing the owner or the owner's representative that work on said building shall cease until such time as the defects have been rectified. If the owner then refuses to comply with this demand, the Borough Council may authorize the Borough Attorney to institute 40
proceedings at law or in equity to restrain correct

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or to remove such violation and to prevent further work upon the building, require its removal, or prevent the occupation or use. The statutory costs of such proceedings shall be paid by the owner. If the owner refuses to pay, the Borough Council may direct the Borough Attorney to collect said amount from the owner by suit in court.

CONDEMNED BUILDINGS.

Section 19. It shall be the duty of the Building Inspector to examine any building or structure which may seem to him to be unsafe, and if he considers the same to be unsafe, he shall report his findings in writing to the Building Administrative Committee. If the Building Administrative Committee concurs with the Building Inspector, the said Committee shall in writing notify the Building Inspector and he shall in writing notify the owner, or his representative, and tenant that the building is unsafe. The owner shall commence within thirty (30) days to either make all necessary repairs or alterations that will make the building safe or shall take it down. In cases of extreme emergency the Building Administrative Committee shall use its own discretion. If the owner refuses to comply with this demand, the Borough Council may authorize the Borough Attorney to institute proceedings against the owner. The statutory costs of such proceedings shall be paid by the owner. If the owner refuses to pay, the Borough Council may direct the Borough Attorney to collect said amount from the owner by suit in court.

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PART 4—CONSTRUCTION.

EXCAVATION.

Section 20. Where possible the excavation shall extend at least 8" beyond the foundation in order that all seems or joints may be properly plastered and an opportunity be given to thoroughly inspect. If, in the judgment of the Inspector, there is a possibility of the soil caving in and injuring life or property, the inspector may order that suitable protection be taken. 10

PROTECTING ADJOINING PROPERTY.

Section 21. If the excavation is such that it is liable to interfere with adjoining property, then the owner of the adjoining property or his representative shall be notified and shall immediately take measures to protect same. If the excavation shall be responsible for damages to the adjoining property. The owner making the excavation shall permit the adjoining owner to enter upon the excavation for the purpose of constructing a suitable foundation under the building endangered. 20

BEARING CAPACITY OF SOIL.

Section 22. The following table showing the allowable weight in tons per square foot shall act as a guide for determining the bearing capacity of soil: 30

Soft Clay	1 Ton	
Wet sand, firm clay, or sand and clay mixed in layers.....	2 Tons	
Fine dry sand.....	3 Tons	
Compact coarse sand.....	4 Tons	
Coarse gravel or poor rocks.....	6 Tons	
Hard pan or hard shale.....	10 Tons	40

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10 When a doubt arises as to the safe sustaining power of the soil upon which a building or structure is to be erected, the Building Inspector may direct that borings or tests be made by and at the expense of the owner of the proposed building or structure to determine the sustaining power of the soil. Whenever such a test is made the Building Inspector shall be notified so that he may be present. A complete record of the test shall be filed with the Building Inspector.

No foundation of a building or structure shall be placed on filled ground until the Building Inspector has fixed the safe sustaining power that may be assumed.

FOUNDATION WALLS AND PIERS

20

*Section 23.**A. General Requirements:*

30 Except when erected upon solid rock, foundation walls shall be carried to a depth of not less than 2 ft. 6 inches below the ground surrounding the building, and shall rest on solid ground, leveled rock, piles, or ranging, when solid earth or rock are not found. When one story buildings of frame construction, ordinary masonry construction or unprotected metal construction to not exceed 750 sq. ft. in area, such foundation walls shall not be required.

B. Footings:

1. Masonry Footings shall be provided under foundation walls that rest on earth.

40 2. Footings shall be so designed that the pressure on the soil per unit of area shall, so far as possible, be uniform under all parts of the building or structure.

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3. Footings shall be designed for depth and width according to the load they are to carry but in no case shall be less than 6 inches in thickness or less than 6" wider than the wall supported.

C. Pile Foundations:

When pile foundations are found to be necessary, the size, quality, material, loading, and method of placing shall be in accordance with Sect. 802—Article 5, Page 89 etc.. of the Building Code recommended by the National Board of Fire Underwriters, New York, 1932," a copy of which shall be on file in the office of the Building Inspector.

10

D. Foundation Walls:

Foundation walls shall be built of stone, brick, concrete, solid or hollow masonry units, or steel encased in masonry. No hollow blocks of burnt clay shall be used unless they are vitrified or are salt glazed, except for surfaces in contact with mortar. Hollow blocks shall be of load bearing quality.

20

Foundation walls shall be of adequate strength and thickness to resist lateral pressures from adjacent earth and to support their vertical loads, provided that in no case shall their thickness be less than the walls immediately above them.

30

When built of brick, coursed stone, solid or hollow masonry units, the thickness of foundation walls shall be not less than 12 inches. When such walls are used in dwellings, and do not extend more than 7 feet below the adjacent ground level, the minimum thickness of solid brick, solid masonry units, or coursed stone walls may be 8 inches if included within the allowable height of 8 inches

40

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walls. When built of concrete cast in place, foundation walls shall be at least 8 inches in thickness.

Foundation walls for frame construction shall extend at least 8" above the adjoining ground surface.

- 10 A foundation supporting a frame building of 2½ stories or less shall be not less than 8 inches thick and shall be made of concrete, concrete block, brick or hollow tile plastered one inch on the outside.

E. Piers:

- 20 A masonry pier supporting a girder, arch or column, or a lintel carrying a wall over an opening of more than ten feet, shall be built of brick, concrete, hollow block, solid block or other material approved after test; provided that isolated piers or posts on the interior of the buildings shall not be built of stone; and provided further that isolated piers shall not be built of hollow block masonry in buildings of fire proof construction, semi-fireproof construction, or heavy timber construction.

- 30 Piers having less than four sq. ft. of cross-sectional area located at an intersection with a wall, shall be bonded into and built as part of this wall. Isolated piers shall not exceed in height ten times their least dimensions.

Footings for piers shall be designed for the loads they are to carry but in no case shall they be less than 6 inches in thickness and 6 inches wider on all sides, than the piers supported.

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THICKNESS OF WALLS.

Section 24:

Thickness of walls in Inches									
Height	Stories under Construction								
	1	2	3	4	5	6	7	8	
1	8								10
2	8	8							
3	12	12	8						
4	16	12	12	8					
5	16	16	12	12	8				
6	16	16	16	12	12	8			
7	20	16	16	16	12	12	8		
8	20	20	16	16	16	12	12	8	

No eight inch wall shall be over 13 ft. high or 25 ft. long, unless reinforced by pilasters to be built or constructed of hard brick, or unless re-enforced by cross walls for spans or more than 18 feet. Furring strips or plaster shall not constitute a part of the thickness of the wall. All brick walls must be built with Portland cement and lime mortar, the lime content not to exceed 25%.

THICKNESS OF WALLS MAINTAINED.

Section 25. The walls of each story shall be built up the full thickness to the top of the beams above.

WALLS REINFORCED.

Section 26. All walls supporting trusses or heavy girders shall be reinforced by pilasters constructed as aforesaid, placed directly under the load. All brick work to be slushed, weather permitting.

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HEIGHT OF BUILDING.

Section 27. Brick or concrete buildings having a frame interior shall not exceed four stories.

WALL SUPPORTING LONG SPAN.

- 10 *Section 28.* Walls supporting a span of 25 feet or over shall be increased four inches that specified unless a sufficient number of pilasters shall be equally distributed to carry the additional load.

MASON WORK IN FREEZING WEATHER.

- 20 *Section 29.* No masonry work shall be done in freezing weather unless proper precaution is taken to protect the same from freezing. Mason work damaged by freezing shall be removed.

STRENGTH OF WALL IMPAIRED.

Section 30. The strength of no wall shall be impaired by recesses, chases, or channeling unless reinforced sufficiently to counter-balance the strength lost.

WOODEN SUPPORT NOT PERMITTED.

- 30 *Section 31.* No concrete or masonry wall or pier or steel column shall be built upon any wooden support whatsoever.

EXISTING WALLS INCREASED.

- 40 *Section 32.* All walls increased to the required thickness by an additional wall shall be tied together by suitable tie rods or bolts. The Building Inspector shall strictly enforce this clause. The total thickness of the wall after the increase shall not be less than the thickness of such a wall similarly placed in a new building. All cracks or loose

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joints shall be properly pointed up before the wall is increased in thickness. If in the judgment of the Building Inspector the cracks are beyond repair, that portion of the wall shall be removed and rebuilt.

WALLS NOT TO BE CARRIED UP MORE THAN ONE
STORY IN ADVANCE. 10

Section 33. No wall or walls shall be carried up more than one story in advance of any other wall.

HEIGHT OF STORIES.

Section 34. The height of stories for all given thickness of walls shall not exceed the following unless such walls shall be proportionately increased: 20

First story16 feet in the clear
Second story14 feet in the clear
Third Story12 feet in the clear
Additional stories11 feet in the clear

DIVISIONAL WALLS.

Section 35. In all apartment houses the division walls or partitions between the apartments provided for each family shall be of a fireproof wall composed of brick, hollow tile, or concrete block, not less than six inches in thickness. If this partition wall is a bearing wall the same dimensions as described under "Thickness of Wall" mentioned elsewhere in this code will govern, unless the wall is reinforced by columns or girders. 30

The partition wall of a double house shall be of brick, hollow tile, or concrete block not less than 8 inches thick and shall extend from the cellar bottom to the roof. 40

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WALL OF HOUSE OF THREE OR MORE FAMILIES.

Section 36. All exterior walls of any house or dwelling of any description housing three or more families shall be built of brick, hollow tile, concrete or concrete block.

10

SUBDIVISION OF STORIES.

Section 37. If one-story stores are subdivided the partitions shall be of an incombustible material. If the stores are two or more stories in height all bearing partition walls shall be of brick, hollow tile, concrete or concrete block extending from the basement to the roof.

20

STAIRWAY TO DWELLING OVER STORE.

Section 38. If a dwelling or dwellings shall be over a store or stores the stairway shall be completely protected by a non-combustible material. The underside of the stairway shall be metal lath plastered on a concrete slab firmly anchored into the walls, if the walls are not frame. Any doorway leading under the stairway shall be protected by a metal covered door approved by the Building Inspector.

30

WOODEN FLOOR JOISTS.

Section 39. Floor joists shall be designed according to the species and grade of lumber to be used, and according to the loads to be carried. This information may be obtained by referring to Volume IV, chapters 4 and 7 of the "Construction Information Series" of the National Lumber Manufacturers Association or to "Kidder-Parker Architects and Builder's Hand-book".

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SAFE FLOOR AND ROOF LOADS.

Section 40. The following table shall be a guide to the Inspector for safe live floor and roof loads. (The live load is that weight imposed upon the structure and does not include any part of the structure.)

10

ROOFS

Slope under 20°	30	lbs	per	sq.	ft.
Slope over 20°	20	"	"	"	"

FLOORS

Dwellings	50	"	"	"	"
Assembly Halls	100	"	"	"	"
Theatres	100	"	"	"	"

Office Buildings

First floor	100	"	"	"	"	20
Other floors	60	"	"	"	"	
Stores—Minimum	100	"	"	"	"	
Hotels	75	"	"	"	"	
Sidewalks	300	"	"	"	"	

Schools, apartment and tenement houses, and factories shall conform with the floor loading regulation of the State Department having control over the building under consideration.

30

FLOOR JOIST, CROSS BRACING AND TIE RODS.

Section 41. All floor joists over eight feet long shall be cross braced and the bracing between bridging and wall shall not exceed eight feet. The cross bracing shall be not less than 1" x 2" in thickness. Not less than every fourth joist shall be anchored into the brick or concrete wall by suitable iron anchors.

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BEAMS WEAKENED.

Section 42. Beams cut out for piping or for any other purpose shall be reinforced sufficient to equalize the strength of the original beam.

10

BEAMS FIRE CUT.

Section 43. Beams supported by fire walls shall be "fire cut" or beveled on the ends or otherwise located so that there shall be at least 4" of fire-proof material between the two beams.

CHIMNEYS.

Section 44. No chimney shall be constructed without a flue lining of terra cotta or of fire brick.
20 All interior joints shall be thoroughly pointed up. No flue shall be less than 8 inches interior measurement, and for a fire place not less 8" x 12", and not less than four inches of brick or concrete block shall surround the flue lining or fire brick. A chimney shall not be used as a support, and there shall be at least one-inch clearance between a chimney and the woodwork. All chimneys shall rest upon a concrete footing at the cellar bottom,
30 if an outside chimney, the bottom of the footing shall be at least 3 feet 3 inches below the surface of the ground. No wood or any other combustible material shall support or be within six inches of a metal stack.

FIRESTOPS.

Section 45. There shall be a firestop on every floor. If the walls are of masonry construction, the same material shall be used for firestops; if of
40 frame, the firestops shall be at least $\frac{7}{8}$ inches in thickness.

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ENCROACHMENTS ON STREETS.

Section 46. No part of any building shall encroach on the street or over the building line unless it is a coping, lintel or sill which shall not extend over the street line or building line more than six (6) inches. A coping over a doorway or entrance may extend over the street line or building line not to exceed two (2) feet providing the same is at least nine (9) feet above the street elevation. A special permit issued by the Building Administrative Committee shall be obtained before a canopy or marquise is permitted. A canopy or marquise shall be at least nine (9) feet above the street elevation. 10

A cellar or basement entrance may be constructed in the sidewalk, but it shall not extend into the street more than four feet beyond the property line or building line, and shall be covered by a suitable iron door which shall be rough on top to prevent pedestrians from slipping. The entire door shall be counter-sunk into an iron frame which shall be flush with the sidewalk, and no part of the door including the hinges and locks shall project above the sidewalk. All such entrances shall be constructed so as to protect the public when the doors are open. 20 30

WINDOW.

Section 47. Every room must have a window to outer air. Window area in a water-closet or bath room shall not be less than three (3) square feet and not less than one (1) foot in width. The window area in any living or bed room shall be at least one-tenth (1/10) of the area of the floor. The upper half of at least one window shall be made so as to open the full width. 40

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10 *Section 48.* There shall be at least one room containing not less than one hundred twenty (120) square feet, and no room excepting a bath room shall be less than seventy-two (72) square feet of floor area. No alcove (an alcove is an off-set in any room) shall be closed by a door or in any other manner.

AIR SPACE UNDER ROOF.

20 *Section 49.* In all dwellings there shall be an airspace between the ceiling of the upper story and the roof, which airspace shall average eighteen (18) inches between beams; and such space shall be properly ventilated with louvers. The louver to be covered on the inside with fine copper wire mesh.

AIR SPACE UNDER BUILDING.

30 *Section 50.* In all dwellings where there are no cellars or basements, there shall be an air space underneath; such an air space shall be at least two (2) feet in height extending over its entire area. This air space shall be enclosed by a masonry wall. There shall be provided an outside door opening to such an air space not less than eighteen (18) inches square. There shall be windows or louvers in this wall to admit circulation. All louvers shall be covered on the inside with a fine copper wire mesh.

SKYLIGHTS.

Section 51. Wire-glass only shall be permitted in skylights.

LIGHT IN STAIRWAYS AND SHAFTS.

40 *Section 52.* There shall be a window opening to the outside air in all halls, stairways and shafts.

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LIGHT IN ELEVATORS.

Section 53. All elevators shall be well lighted by windows opening to the outside or by a skylight. Interior windows shall not be permitted. An electric light shall be installed for night or dark days.

10

EXITS OR FIRE ESCAPES.

Section 54. All buildings three stories in heights or higher, and all assembly halls holding 200 or more people, shall have not less than two exits which shall be placed on opposite sides of the building, or nearly so. One of the exits may be a non-combustible fire escape not less than two (2) feet wide, and the access to be from a hallway or room, but not from a bath room.

20

GARAGES.

Section 55. All public garages shall be properly ventilated and shall have at least one (1) square foot of ventilation to every thousand (1000) square feet of floor area at the highest point of the roof or ceiling.

No heating apparatus or furnace shall be permitted on the floor of the garage. The heating plant may be constructed in a cellar or outside building of fire proof material.

30

DWELLING OVER GARAGE.

Section 56. When a garage is located beneath or attached to a dwelling, the following regulations as to its construction shall be observed:

A. The floor and ceiling construction above the garage when it is located beneath the building, or the roof when it is attached to the building, shall

40

Exhibit D-3.

be unpierced and shall be of fire-resistive construction, consisting of wood joists, fire stopped, with a double board floor having an insulating layer between the boards, and with a ceiling of at least $\frac{3}{4}$ inch gypsum plaster on metal lath, or any other construction having an ultimate fire resistance of at least one hour.

B. Walls and partitions between the garage and dwelling shall be a fire-resistive wall or partition consisting of wood studs covered on both sides with at least three-fourths inch gypsum or portland cement plaster on metal lath or any other construction having an ultimate fire resistance of at least one hour.

C. Openings from a dwelling into a garage shall be restricted to a single doorway; such opening shall be protected by an approved self closing fire door with approved fire-resistive frame and hardware. No glass shall be permitted in such door. The door sill shall be raised at least 4" above the garage floor level.

D. Garage floors shall be made of concrete or equally fire-resistive and impervious material.

SHEATHING.

Section 57. All frame buildings shall be sheathed on the exterior with boards not less than $\frac{7}{8}$ inches in thickness and covered with a building paper or with $\frac{7}{16}$ " pulpwood with wood finish on the outside. Lath placed directly on the studding and then shingled, weather boarded or plastered will not be permitted.

Exhibit D-3.

STEEL.

Section 58. All steel shall be standard structural steel. The strength shall be calculated in accordance with the best practices as laid down in text books or Structural Steel Hand Books. All built-up columns, girders or trusses shall be riveted. All exposed steel shall be painted at least two (2) coats. 10

HOT AIR PIPES.

Section 59. All heater pipes from hot air furnaces where passing through combustible partitions or floors must be protected by a covering of non-combustible material and there shall be an air space between the covering and the wood. All horizontal hot air pipes shall be not less than six (6) inches from any woodwork, unless the woodwork or pipe is covered by a non-combustible material. Hot air pipes in combustible partitions shall be covered with a non-combustible material in such a manner that there shall be an air space between the wrapping and the partition. A metal lath shall be used between the studding at these places. 20

CONCRETE MIX.

Section 60. For the guidance of the Inspector a good mix for bulk concrete, that is foundations and piers, is one by volume of cement, two and one-half by volume of sand, and five by volume of slag, stone or gravel (1:2½:5). 30

For concrete slabs, stills, lintels, floors, columns, a one by volume of cement, two by volume of sand, and four by volume of slag, stone or gravel is recommended (1:2:4). 40

Exhibit D-3.

For this type of concrete it is further recommended that the slag, stone, or gravel be of the size known as three-quarter ($\frac{3}{4}$) inch.

PART 5—FIRE DISTRICTS.

BUILDINGS IN FIRE DISTRICTS.

10

Section 61. No building or part of building shall be permitted to be erected and no existing building shall be altered in the fire district (the boundaries of the fire district shall hereafter be determined) unless the same shall have exterior walls of brick, hollow tile, concrete or concrete block. The roof to be either metal, tile, asphalt or slag covering over roof boards or of concrete. All windows fifteen (15) feet or closer to other buildings shall be of wire-glass.

20

STATE REQUIREMENTS.

Section 62. Permits for buildings which shall be constructed according to State Requirements shall not be issued by Building Inspector unless the plans shall have been approved by the State authority having jurisdiction over such construction. In such case the Borough Building Inspector shall work in conjunction with the State Inspector. The usual building fee shall be charged for all such class of buildings.

30

PART 7.

UNDERWRITERS' REQUIREMENTS.

Section 63. All electric wiring or electrical fixtures or oil burners shall be installed and inspected in accordance with the Board of Fire Underwriters.

40

Revised October 15, 1934.

Exhibit D-4.

An Ordinance to Amend an Ordinance Entitled
“An Ordinance of the Borough of Metuchen to
be known as the Building Code Ordinance, which
is designed to regulate and control the con-
struction, alteration, repair and removal of
buildings and their inspection” adopted No- 10
vember 5, 1928.

Be it ordained by the Mayor and Council of the
Borough of Metuchen:

SECTION 1.

That Part 3, Section 18 of an ordinance entitled
“An Ordinance of the Borough of Metuchen to be
known as the Building Code Ordinance, which is
designed to regulate and control the construction, 20
alteration, repair and removal of buildings and
their inspection” adopted November 5, 1928, be
and the same is hereby amended to read as fol-
lows:

“The owner or owners of any lot or build-
ing or part thereof, upon which any building
violation of this ordinance may be placed or
shall exist, any architect, contractor, builder,
carpenter, plumber or mason or any other 30
person who may be employed or assist in the
commission of any such violation, and any
and all persons who shall violate any of the
provisions of this ordinance or fail to comply
therewith, or any requirement thereof, or who
shall violate or fail to comply with any order
or regulation made thereunder, or who shall
build in violation of any detailed statement of
specifications or plans submitted and ap-
proved thereunder, or of any certificate or 40

Exhibit D-4.

10 permit issued thereunder, shall severally for each and every such violation and non-compliance, respectively forfeit and pay a fine not exceeding Two Hundred Dollars (\$200.00) and in default of payment of such fine to be imprisoned in the County jail for not more than twenty (20) days. Every twenty four (24) hours of maintenance of prohibited conditions shall constitute a separate offence."

SECTION 2.

20 That an ordinance entitled "An Ordinance of the Borough of Metuchen to be known as the Building Code Ordinance, which is designed to regulate and control the construction, alteration, repair and removal of buildings and their inspection" adopted November 5, 1928, be and the same is hereby amended so as to add thereto part 8—CERTIFICATE OF OCCUPANCY, Section 64, to read as follows:

PART 8—CERTIFICATE OF OCCUPANCY

30 "Section 64. It shall be unlawful to use or permit the use of any building or premises or part thereof, hereafter created, erected or enlarged, or of any building or premises or part thereof hereafter changed or converted to a different use, until a Certificate of Occupancy shall have been issued to the owner by the Building Inspector. Such certificate shall show that such building or premises or part thereof and the proposed use thereof are in conformity with the provisions of this Ordinance. It shall be the duty of the Building Inspector, within five days after a written request for a certificate of occupancy shall have
40 been filed with him by any owner, to either

Exhibit D-4.

(a) issue such certificate of occupancy, or (b) deny in writing the issuance of such certificate of occupancy, if the Building Inspector shall be of the opinion that the owner shall not be entitled thereto."

SECTION 3.

10

Ordinances and parts of ordinances inconsistent herewith, shall be and the same are hereby repealed.

SECTION 4.

This ordinance shall take effect immediately after its publication as required by law.

Signed: JOHN C. STOCKEL,
Acting Mayor.

20

Passed: Dec. 3, 1945

APPROVED: Dec. 17, 1945

Attest: WILLIAM E. SCHULTZ
Borough Clerk

30

40

Exhibit D-5.

IN CHANCERY OF NEW JERSEY.

10	Between FANNIE WEININGER, Complainant, <i>and</i> THE BOROUGH OF METUCHEN IN THE COUNTY OF MIDDLESEX, <i>et als.</i> , Defendants.	On Bill, etc. Order to Show Cause and <i>Ad Interim</i> Restraint.
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20 This matter being opened to the Court by Koestler & Koestler, Esquires, (Melvin J. Koestler appearing), solicitors of the complainant in the presence of John B. Molineux, solicitor of the defendants upon complainant's application for an order to show cause with ad interim restraint, and it appearing by proof of service filed herein that a copy of the bill of complaint and affidavits together with a written notice of the making of this application have been served upon the defendants as required by the rule of this Court in such case

30 made and provided, and the Court having considered the bill of complaint and affidavits and having heard argument of counsel and it appearing that an ad interim restraint should be granted herein;

It IS THEREUPON on this 23rd day of October, 1945, ORDERED that the defendants, the Borough of Metuchen in the County of Middlesex, and Howard Krogh, building inspector of said borough and Enos J. Fouratt, chief of police of said borough,

40 and each of them show cause before the Chancellor

Exhibit D-5.

on Tuesday, the 30th day of October, 1945 at 10:30 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, at the Chancery Chambers, State House Annex in the City of Trenton, New Jersey, why said defendants and each of them and their representatives, agents, servants and attorneys should not be restrained and enjoined as prayed in said bill of complaint; and

10

It is further ORDERED that the defendants, the Borough of Metuchen in the County of Middlesex, and Howard Krogh, building inspector of said borough, show cause at the aforesaid time and place why they and each of them should not make discovery as prayed in the bill of complaint; and

It is further ORDERED that in the meantime and until the further order of the Court the said defendants, the Borough of Metuchen in the County of Middlesex, and Howard Krogh, building inspector of said borough and Enos J. Fouratt, chief of police of said borough, and each and every one of them, and their representatives, agents, servants and attorneys, be restrained and enjoined from interfering with or preventing complainant, her agents and servants, from meanwhile constructing upon her lands and premises referred to in the bill of complaint the buildings now in course of erection thereon.

20

30

It is further ORDERED that a true copy of this order, which may be certified as such by the solicitor of the complainant, be served upon each of the defendants within two days from and after the date hereof.

Respectfully advised.

WILFRED H. JAYNE,
V. C.

LUTHER A. CAMPBELL,
C.

40

Exhibit D-6.

IN CHANCERY OF NEW JERSEY.

148-641.

10

Between

FANNIE WEININGER,
Complainant,*and*THE BOROUGH OF METUCHEN IN
THE COUNTY OF MIDDLESEX,
et als.,
Defendants.On Bill, &c.
Order of
Continuance.

20

This matter coming on to be heard by the Court in the presence of Messrs. Koestler & Koestler (Melvin J. Koestler, Esq. appearing), solicitors of the complainant, and John B. Molineux, Esq., solicitor of the defendants, upon the return of said complainant's Order to show cause made herein on October 23, 1945 and upon said defendants' notice of motion to strike the bill of complaint, and said solicitors having consented to the making of this Order

30

It is, thereupon, on this 30th day of October, 1945, ORDERED, that the hearing upon said Order to show cause and said notice of motion be and the same is hereby continued to Tuesday, the 13th day of November, 1945, at the same hour and place as stated in said Order to show cause; and

40

It is further ORDERED that in the meantime and until the further Order of the Court, the restraints contained in said Order to show cause, dated Octo-

Exhibit D-7.

ber 23, 1945, be and the same are hereby continued in full force and effect, except that the defendants, The Borough of Metuchen, in the County of Middlesex, and Howard Krogh, building inspector of said Borough, and their representatives, agents, servants and attorneys, may bring a proceeding in this Court for the enforcement of the Building Code and Zoning Ordinance of said Borough and may serve any notice which it or they may deem a prerequisite to the bringing of such proceedings. 10

Respectfully advised,

WILFRED H. JAYNE,
V.-C.

LUTHER A. CAMPBELL,
C.

20

Exhibit D-7.

IN CHANCERY OF NEW JERSEY.

148-641.

Between

FANNIE WEININGER,
Complainant,

and

THE BOROUGH OF METUCHEN IN
THE COUNTY OF MIDDLESEX,
et als.,
Defendants.

On Bill, &c. 30

Order
Continuing
Restraints.

This matter coming on to be heard by the Court in the presence of Messrs. Koestler & Koestler (Melvin J. Koestler appearing), solicitors of the 40

Exhibit D-7.

complainant, and John B. Molineux, Esq., solicitor of the defendants, upon the adjourned return day of the Order to show cause made herein on October 23rd, 1945, and the Court having considered the verified bill of complaint and the affidavits presented on behalf of the defendants and the reply affidavits on behalf of the complainant, filed by leave of Court, and having heard argument of said solicitors and being of the opinion that the restraints heretofore made in this cause should be continued until final hearing;

It is on this 13th day of November, 1945, ORDERED, that pending the final hearing in the above entitled cause and until the further Order of the Court the restraints contained in the Order to show cause made herein on October 23, 1945, as expressly modified by the Order made herein on October 30, 1945, be and the same are hereby continued in full force and effect.

Respectfully advised,

WILFRED H. JAYNE,
V.-C.

LUTHER A. CAMPBELL,
C.

New Jersey Court of Errors and Appeals

FANNIE WEININGER and JACOB BASS, Prosecutors-Appellees, <i>vs.</i> THE BOROUGH OF METUCHEN, etc., <i>et al.</i>, Defendants-Appellants.	}	On Appeal from New Jersey Supreme Court.
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BRIEF ON BEHALF OF
DEFENDANTS-APPELLANTS.

Facts.

This is an appeal from a judgment of the Supreme Court in certiorari, by which Article IV-1(D) of an ordinance of the Borough of Metuchen was set aside. Article IV-1(D) provides as follows:

ARTICLE IV. Regulations and Restrictions.

1. GENERAL

(D) An application for a permit for construction of or remodeling to a three or more family dwelling, apartment house, hotel, hospital, club house, sanitarium, or a cemetery, shall be made first to the Zoning Board of Adjustment who shall hear the application in the same manner and under the same procedure as the Zoning Board of Adjustment is empowered by law and Ordinance to hear cases and make exceptions to the provisions of a Zoning Ordinance, and the Zoning Board of Adjustment may thereafter recommend in writing to the Borough Council that

a permit be granted, if in its judgment the said building or cemetery as it is proposed to be located, will not be detrimental to the health, safety, and general welfare of the community and is reasonably necessary for the convenience of the community.

Whereupon the Borough Council may, by resolution, approve or disapprove such recommendation and in case such recommendation shall be approved, the Zoning Inspector shall issue a permit for such structure or use (State of the Case, p. 40, l. 30 etc.).

The prosecutor Jacob Bass, as agent for the prosecutor Fannie Weininger, commenced the construction of three three-or-more family dwellings on certain lands and premises in the Borough of Metuchen, without first having made application to the Board of Adjustment for a permit as provided for in the above quoted section of the Borough's ordinance. After work was commenced, the Building Inspector of the Borough of Metuchen swore out complaints in the Recorder's Court of the Borough of Metuchen against the prosecutor Jacob Bass, for violation of the Borough ordinance. Before trial, a writ of certiorari was obtained by the prosecutors in the Supreme Court to review the legality of such complaints, on the ground that the aforementioned section of the ordinance was unconstitutional and not within the municipal power as provided for by statute. The court below found the aforementioned section of the ordinance to be unconstitutional and set aside the complaints and all proceedings in the Recorder's Court. This is an appeal from such judgment.

It is admitted that the construction was in a so-called "C" District, provided for by the ordinance, which allowed virtually all types of construction in such district; that there is no general

prohibition in the ordinance against three or more family dwellings in any district of the Borough; and that all districts of the Borough, under the terms of the ordinance, require a permit from the Board of Adjustment, approved by the Borough Council, before any three or more family dwellings can be constructed. The case involves no issue as to whether or not the rejection of a permit to build a three or more family dwelling on the particular site in question is unreasonable. The sole issue is as to whether or not the procedure set forth in the ordinance above quoted, when applied to three or more family dwellings, is within the power of the governing body of the Borough of Metuchen.

L A W .

I .

The ordinance of the Borough of Metuchen requiring application for a permit for a three or more family dwelling to be made first to the Board of Adjustment is a valid exercise of statutory power granted to a municipality and such statutory powers may constitutionally be given to municipalities.

The pertinent statutes here involved are the General Zoning Act, R. S. 40:55-30, etc., and Paragraph 13 of R. S. 40:48-1, which latter statute gives municipalities the right to regulate the construction of buildings of any kind within its boundaries.

Can a municipality, in the exercise of its power to regulate buildings, appropriate the machinery created by the zoning statute and require one who proposes to build a three or more family building

to apply to the Zoning Board of Adjustment for a permit, subject to approval by the governing body, with action of both bodies to be subject to the test provided for in the ordinance?

Appellants in these proceedings rely squarely upon the case of *Schnell vs. Township Committee of Ocean* (Sup. Ct. 1938), 120 N. J. L. 194, the principle of which was expressly approved by the Court of Errors and Appeals in the case of *First Church vs. Newark* (Ct. E. & A. 1942), 128 N. J. L. 376. In the *Schnell* case the ordinance of the Township regulated the erection of gasoline stations, auto filling stations and public garages, in precisely the same method the ordinance of the Borough of Metuchen regulates the erection of three or more family dwellings. We quote the ordinance in the *Schnell* case, so far as it is set forth in the opinion of the Court:

“* * * no permit therefor shall be issued ‘except upon application first made to the board of adjustment,’ who is directed to hear the same ‘in the same manner and under the same procedure as the board of adjustment is empowered by law and ordinance to hear cases and make exceptions to the provisions of a zoning ordinance,’ and empowered to ‘recommend in writing to the township committee that a permit’ for such use be granted, if, in its judgment, it ‘will not be detrimental to the health, safety and general welfare of the community, and is reasonably necessary for the convenience of the community.’”

We invite comparison of the aforesaid with the ordinance of the Borough of Metuchen.

“An application for a permit for construction of or remodeling to a three or more family, apartment house, * * * shall be made first to the Zoning Board of Adjustment who shall hear the application in the same manner and under the same procedure as the Zoning

Board of Adjustment is empowered by law and ordinance to hear cases and make exceptions to the provisions of a Zoning Ordinance, and the Zoning Board of Adjustment may thereafter recommend in writing to the Borough Council that a permit be granted, if in its judgment the said building * * * as it is proposed to be located, will not be detrimental to the health, safety, and general welfare of the community and is reasonably necessary for the convenience of the community."

The *Schnell* case holds that that ordinance was a proper exercise of the powers given to municipalities. In *First Church vs. Board of Adjustment, supra*, the Court of Errors and Appeals approves of the theory of the *Schnell* case.

"The ordinance in *Schnell v. Ocean, supra*, did not provide for any zone in which these structures might be erected or used and did not purport to be an exercise of the zoning power but of the general police power to regulate gasoline stations and kindred structures and uses because of their peculiar characteristics and it laid down a standard for the guidance of the board of adjustment, which was whether, in its judgment the structure and use would be detrimental to the health, safety, and general welfare and was reasonably necessary for the convenience of the community. It was held that this was property delegated to the adjustment board under subdivision 4 of section 9 of the Zoning Act, Pamph. L. 1928, p. 698; R. S. 1937, 40:55-39 et seq. This finding is approved and adopted by us."

Justice Parker, while writing a minority opinion in which Chief Justice Brogan concurred, nevertheless was in accord with the majority opinion on this particular point. His dissent from the opinion of Chancellor Campbell was only in the interpretation of the ordinance of the City of

Newark. The majority felt that the ordinance of Newark prohibited all gasoline stations and therefore was void. The minority opinion said that this latter holding of the majority was contrary to the case of *Schnell vs. Township Committee of Ocean*, in the belief that the Newark ordinance and the Ocean Township ordinance were precisely the same and that neither should have been interpreted as a complete prohibition. The minority, having found that the ordinance in the City of Newark was not a complete prohibition, applied the principle of the *Schnell* case, to wit: that an ordinance providing for application first to be made to the Zoning Board of Adjustment was a proper exercise of the power of the municipality. The minority then said that as a factual matter, the refusal of the Board of Adjustment in the *Newark* case was unreasonable, and therefore voted with the majority to affirm the decision of the Court below. All eleven judges therefore voted to affirm the holding in the *Schnell* case that an ordinance requiring application in certain instances first to be made to the Board of Adjustment was a proper exercise of the power of the municipality.

Unless this court is prepared to overrule the principles of the *Schnell* case, as affirmed by the Court of Errors and Appeals in the *First Church* case, the issue involved herein is reduced to the question of whether or not what can be done by municipalities in reference to gasoline filling stations can not be done in the case of three or more family dwellings.

The Court below attempted to distinguish the two situations on the ground that in the *Schnell* case the municipality was apparently exercising its general police power, while in the instant case

the Borough of Metuchen was exercising its zoning power. The court below said:

"If our decisions which preceded and induced the constitutional amendment were sound and unless the business of adopting an amendment to the constitution and passing enabling legislation thereunder was a useless gesture, the present comprehensive zoning ordinances draw most of their authority, not from ancient and inherent police powers, but from the powers which flowed from the 1927 amendment—distinctly a zoning enactment—as translated into statutory law by the 1928 statute, namely, R. S. 40:55-30, et seq." (State of the Case, p. 75, l. 17, etc.).

The Court said again:

"We have it, therefore, both from the *Schnell* decision itself and from the analytical distinction expressed thereon by our court of last resort, that the subject matter of the ordinance was given its respective treatment because of its allegedly peculiar characteristics and that the ordinance provisions addressed to that potentially inimical use were grounded, *not in the zoning power, but in the general police power*. I am aware that there are cases in our books which tend to accord gasoline stations a proper place in zoning ordinances and I make no issue with them. I am giving the reason why a decision which is cited as a controlling precedent is not in fact such" (State of the Case, p. 76, l. 14, etc.).

While we believe that it may be contended with force that the constitutional amendment allowing for the enactment of zoning legislation referred to in the opinion of the court below (State of the Case, p. 74, l. 30 etc.) merely enlarged the police power of the state so as to include within that power the right to effectively zone municipalities and did not in fact, as suggested by the court

below, create a new power, nevertheless a determination of this case does not involve the establishment of the proposition that the police power and the zoning power are inherently the same. On either theory as to the true nature of the zoning power, the ordinance of the Borough of Metuchen, under the authority of the *Schnell* case, is a proper enactment. Whether the ordinance of the Borough of Metuchen is an exercise of the zoning power or the police power, makes no difference. Whatever power the Township of Ocean exercised in the ordinance under review in the *Schnell* case, a like power was exercised by the Borough of Metuchen in the ordinance here under review. Under Paragraph 13 of R. S. 40:48-1 municipalities have the authority to regulate three or more family dwellings. Surely the police power extends to such construction. The propriety of the classification can not be questioned in the light of the fact that the legislature itself has set up three or more family dwellings as a proper subject matter of regulation. See: R. S. 50:1-24. From the aforementioned, it appears beyond question that the right to regulate three or more family dwellings exists. If this power exists, then the only question is the propriety of the method here employed, that is, the appropriation of the machinery set up under the zoning act for the exercise of an admitted power. That such method may be appropriated is clearly approved in the *Schnell* case and in the *First Church* case. One is forced to the conclusion that the opinion of the court below is in effect an attempt to limit the application of that decision by drawing an arbitrary distinction arising out of the fact that one case deals with gasoline stations and the instant case deals with three or more family dwellings. It might well be, if the question arose

in this case for the first time, as to the propriety of the appropriation by a municipality, in the exercise of its police power, of the machinery set up under the zoning statute, that this court might find such appropriation was improper. However, we have the decision of the *Schnell* case and of the *First Church* case, which approves of this method and unless these cases are to be in effect reversed, then the decision of the court below should be reversed.

At the risk of seeming to be repititious, we insist that the only issue in this case is the effect of the method to be used in exercising an admitted power. Surely municipal building ordinances and more particularly their provision in relation to three or more family dwellings are not to be set aside on the ground that municipalities have no authority to regulate in this field. Likewise, municipalities have the authority to regulate gasoline stations. Both powers exist. The method used in the *Schnell* case is precisely the same method used by the *Borough of Metuchen* in the case of three or more family dwellings. No cogent reason is suggested by the court below for distinguishing between these two situations. The reason suggested by the Court below, that in one case we are dealing with a police power and in the other case we are dealing with the zoning power, is the substitution of sound legal reasoning for a play on words.

It may be noted that in the *Schnell* case the ordinance on its face appeared to be an attempt to exercise the zoning power. It prohibited gasoline filling stations in one district of the municipality. Notwithstanding this obvious provision for "zoning", this court stated that the balance of the ordinance requiring an application to be made first to the zoning Board of Adjustment for the

erection of any gasoline filling station in any other part of the municipality was the exercise of a police power. It is hard to understand how the ordinance here under review can be called an exercise of the "zoning power" when it makes no reference to zones, insofar as three or more family dwellings are concerned, and requires in all such instances an application first made to the Zoning Board of Adjustment for three or more family dwellings.

If, as in the *Schnell* case, an ordinance which in fact zones one district against a certain type of construction and regulates such construction as to the balance of the municipality by requiring an application to be made to the Zoning Board of Adjustment is held to be the exercise of a police power, how can another ordinance which has no prohibition against a certain type of construction but requires all applications to be made to the Zoning Board of Adjustment, be called the exercise of the zoning power? If what was done in the *Schnell* case is proper, then what was done by the ordinance of the Borough of Metuchen is proper, unless this court is prepared to say that there is no power in a municipality to regulate three or more family dwellings. Such a result would strike down many provisions of many municipal building codes. It should be noted that the court below does not deny the power of a municipality to regulate three or more family dwellings. It condemns the method used. And its condemnation is based solely on the finding that the Borough of Metuchen is using a "zoning" power. Yet the ordinance in the *Schnell* case, on its face much more a "zoning" ordinance, was declared in this court to be an exercise of the "police" power. *First Church vs. Bd. of Adjustment, supra*. And so we return to the fundamental

proposition that whatever power was being exercised in the ordinance approved in the *Schnell* case, it is the same power exercised by the ordinance under review in this case. However one may denote the power, the method used sanctioned by the Supreme Court in the *Schnell* case and approved by this court in the *First Church* case, is, by virtue of the decisions in these cases, legally without fault. The decision of the Court below in effect is a reversal of the *Schnell* case as approved by this Court in the *First Church* case. To sustain the court below means that one can regulate one class of property by one method and yet in using the same basic power you may not use such method in regulating another class of property.

To sustain the ordinance of the Borough of Metuchen it is not necessary for the appellants to prove or the court to hold that the problems arising in the construction of three or more family dwellings are as dangerous or as serious or as important to the health and safety and welfare of the public as the problems which arise in the construction of gasoline stations. The existence of the problems justifies the regulation. Police powers are not dependent upon the equal seriousness of the problems in each instance.

We are not arguing that appellees can not solve these problems satisfactorily in the instant case. All that is asked is that they do so before the proper authority as created by the ordinance.

If such problems are less serious than in the case of filling stations, that fact will be reflected in the determination by the Supreme Court in any certiorari proceedings which may result from refusals of Boards of Adjustments to recommend permits for the construction of apartment houses.

The fundamental position of the defendants is that the municipality may lawfully, in the exercise of its powers, regulate three or more family dwellings, that is, apartment houses, and that it may appropriate Zoning Boards of Adjustments as such Boards are established under the Zoning Statute, a method approved by this court.

Conclusion.

Under the authority of *Schnell vs. Township Committee, supra*, and of *First Church vs. Board of Adjustment, supra*, a municipality may lawfully exercise its power to regulate three or more family dwellings by a method which appropriates the machinery as set up and created under the authority of the zoning statute.

Respectfully submitted,

JOHN B. MOLINEUX,
Attorney for and of Counsel
with Defendants-Appellants.

14 MAY T. 1946

New Jersey Court of Errors and Appeals

FANNIE WEININGER and JACOB
BASS,
Prosecutors in Certiorari-
Appellees,

vs.

THE BOROUGH OF METUCHEN, *et*
als.,
Defendants in Certiorari-
Appellants.

On Appeal.

BRIEF FOR WEININGER AND BASS.

This appeal brings before this Honorable Court a judgment entered in certiorari on February 1, 1946, on the order of the present Chief Justice, the Hon. Clarence E. Case, (C., pp. 81, 82, 83).

Statement of Facts.

The facts as stated by appellants are entirely misleading and, therefore, we relate the same concisely and in chronological order.

On July 27, 1945, Bass as agent and contractor of Mrs. Weininger submitted to Howard O. Krogh, Building Inspector of the Borough of Metuchen, plans and specifications (Exhibit P-2, C., pp. 67, 68, 89) for the construction of three buildings to comprise twenty three-room units to house twenty families (C., p. 107). The application (Exhibit P-1, pp. 65, 88, 122) was filled in by Krogh and signed by Bass.

Upon payment of the fee \$27.00 (C., p. 92) the building permit (Exhibit P-3) was issued (C., p. 92) and construction commenced. Difficulty in obtaining materials necessitated a change to which the Building Inspector acquiesced (C., pp. 90, 91, 92) and work and construction progressed to October 16, 1945, (C., pp. 95, 107).

At the Metuchen Borough Council meeting held on the night of October 15, 1945, without any notice to prosecutors or affording them any semblance of a hearing, on a petition of alleged objections then and there presented to council, that body immediately adopted a resolution purporting to rescind and cancel the building permit granted by its Building Inspector (C., p. 54). The following morning the Chief of Police, the Building Inspector, and others came to the premises, ordered all work stopped, and threatened to arrest any workman who would not immediately stop work and get off the job (C., pp. 110, 111).

On October 19, 1945, notice was given to the Borough and its agents that an injunction bill would be filed in the Court of Chancery on Tuesday, October 23rd, to restrain unlawful interference with said building construction (C., p. 110). On October 20, 1945, Krogh served Bass with notice that the zoning ordinance was being violated (Exhibit P-5, C., p. 123). On October 23rd Chancery awarded temporary restraint (C., p. 84) and protective construction was performed as disclosed by Exhibits P-7, P-8, P-9 and P-10 (C., pp. 129-135). After modification of the restraining order (C., p. 186) Metuchen instituted ten complaints against Bass alleging violation of Article IV, Section 1, Subdivision (D), of the 1935 Amendment of its zoning ordinance (C., pp. 55-63).

The writ of certiorari allowed by Chief Justice Case (C., p. 10) attacked not only the zoning ordinance and particularly the 1935 Amendment as well as the ten complaints against Bass, but the action of the Borough Council in revoking on October 15, 1945, the building permit granted by its Building Inspector on July 27 (28), 1945.

Admitting and conceiving the viciousness of the action of council in revoking this permit, the consent order was entered in the certiorari proceedings setting aside said revocation (C., pp. 79, 80).

No appeal was taken from that order but the appeal is limited strictly to the order of February 1, 1946, setting aside Article IV, 1, (D), of the 1935 Amendment to the ordinance and the ten complaints (C., pp. 82, 84).

Article IV, 1, (D) of the Ordinance of the Borough of Metuchen as Amended February 5, 1935, is unconstitutional and Void.

This amended ordinance which was brought before the Supreme Court by the writ of certiorari allowed by Chief Justice Case is set forth in full in the return to the writ commencing on page 39 of the printed case and is printed on pages 40 and 41 under the Subdivision (D). It is also set forth in extenso in the beginning of appellants' brief and does not, therefore, require repetition in this brief.

The original Metuchen ordinance provided that in the residential district only one or two-family houses might be constructed. This zone was known as zone "A". Zone "B" related to business and had no such residence dwelling restric-

tion. In the "C", manufacturing, likewise had no such restriction. In the Amendment of 1935, in establishing the residential zone "A" there was in that part of the ordinance itself no restriction against any particular type of residential building, but the restriction or prohibition was attempted to be imposed by Article IV, Paragraph 1, Subdivision (D) cited in full (C., pp. 40, 41). The following cases will demonstrate the invalidity of this particular Subdivision (D):

In *Leonard Investment Co. vs. Trenton*, 122 N. J. L., 309, the matter came on, on certiorari before the Chief Justice Brogan and Justices Bodine and Heher, Justice Heher writing the opinion. The certiorari brought up for review the action of the Board of Adjustment revoking a permit granted by the Building Inspector on March 15, 1938, for the erection of a one-story brick building for store purposes. After the granting of the permit the neighbors, being in a largely residential section, claimed that the purpose was to have a large self-service food market employing about 50 people. Neighboring property owners objected and took an appeal to the Board of Adjustments which after hearing revoked the permit. The court held that the action was *coram non judice*. It appeared that the property in question was zoned No. 1—Business zone. The board revoked on the ground that the ordinance provided minimum requirements for promotion of public health, safety, comfort, convenience and general welfare. The opinion says:

"The residential character of the surrounding territory is beside the point. After all, the lands are in an area zoned for business, with certain definite exceptions not embracing of the use under consideration; and there must be uniformity of application. Arbitrary distinctions are inadmissible."

In *Brookdale Homes, Inc. vs. Johnson*, 123 N. J. L. 602, the certiorari came on before Justices Parker, Bodine and Perskie, the latter writing the opinion. The zoning ordinance placed the property in the Small Volume Residential Zone A, limiting buildings to the height of 35 feet and provided that the roof ridge must be not less than 26 feet above the building foundation. The application for the permit showed that the ridge was only 21 feet above the foundation and the Building Inspector refused the permit, whereupon the Chief Justice allowed the certiorari to review the ordinances. The opinion reads:

"It is settled that an ordinance under the Zoning act must bear a reasonable relation to the powers conferred by that act * * * Restrictions imposed pursuant to the Zoning act must tend at least in some degree to promote the public good; they must bear a 'substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense.' * * * such ordinance to be valid must be designed to promote public health, safety and general welfare. The mere power to enact an ordinance such as the one here involved does not carry with it the right arbitrarily or capriciously to deprive a person of the legitimate use of his property. We fail to see, in the case before us, how the ordinance in question promotes public health, safety and the general welfare."

The ordinance was set aside.

It will be noticed that in the *Leonard* case, *supra*, Justice Heher refers to the Statute of 1924. In like manner the Supreme Court in its *per curiam* opinion in *Bowen vs. Jersey City*, 132 Atl. 334 said:

"It must be borne in mind that the power to regulate by zoning within the police power

is derived by the municipalities from the Legislature. There is no inherent power in a local governmental agency such as a city, borough, or town to regulate the construction or type of buildings within its boundaries. In the act of 1924, chapter 146, p. 324, the Legislature has specifically conferred the power to zone, but the manner in which this power should be exercised is also defined, viz., by official action of the governing body after public hearing of which public notice is required to be given. It cannot be exercised at the will of the commissioners on each individual application. In the present case the city respondent has adopted an ordinance on the subject, but it has not in that ordinance prohibited the construction contemplated by the relator."

And so it is here.

R. S. 40:55-34 provides for zoning by ordinance after hearing. Neither the ordinance nor the amendment to the ordinance as adopted by the Borough of Metuchen defines a district in which a three or more family house may be constructed or in which the construction of such a building is prohibited. The ordinance does not lay down a uniform rule under which in any portion of the municipality a building of that type is permitted to be constructed but endeavors to impose on the property owner the obligation in each individual case to make application first to the Board of Zoning Adjustment and upon their approval to the governing body. What Metuchen is endeavoring to do is not to zone but to interfere with the constitutional right of a property owner to use his or her property for a legitimate purpose unless they come with their hat in hand to the council and receive a special favor. This sort of legislation opens the door to fraud and dishonesty and is surely not the intention of the constitutional provision relating to zoning.

What is said by Vice-Chancellor Backes in *South Orange vs. Heller*, 92 N. J. E. 506, is quite pertinent, notwithstanding that the decision was before our Constitutional Amendment of 1927 and related to an ordinance that was passed pursuant to the Act P. L. 1920, page 455. The learned Vice-Chancellor said:

“The power delegated to municipalities by the legislature is to fix zones within which certain supposedly obnoxious businesses are not to be carried on and buildings intended for these purposes are not to be erected, and the restrictions imposed are to be uniform and obligatory upon all persons and property alike throughout the zone. The ordinance, the basis of this suit, forbids infringement except, to use the language of the ordinance, ‘without a special permit to be granted only upon resolution of the board of trustees and after a hearing.’ The discretionary powers reserved to the trustees to give to one and withhold from another the privilege of violating the ordinance is not conferred by the act and is without legal force, and upon certiorari it would be declared without legislative authority and void.”

This is exactly the situation with which we are confronted by the Ordinance Amendment of 1935. Firstly, the Constitutional Amendment does not give power to prohibit, it merely gives power to limit and restrict to specified districts, buildings and their uses. Secondly, the Statute of 1928, now R. S. 40:55-30, *et seq.* follows the constitutional provision and gives the municipality authority to regulate and restrict within its designated districts construction and use of buildings.

Next, as stated by Mr. Justice Heher in *Leonard vs. Trenton*, *supra*.

“There must be uniformity of application. Arbitrary distinctions are inadmissible.”

The language of this learned jurist is strictly in conformity with the provision of the Second Paragraph, Section 30 "all such regulations must be uniform", etc. Therefore, what Vice-Chancellor Backes said in the *Heller* case is particularly appropriate and applicable. Here, under Section (D), Paragraph 1, Article IV of the Amendment of 1935 the Borough Council by *resolution* may approve or disapprove of an affirmative recommendation of the Zoning Board of Adjustment. Thus, it is the resolution of council which gives the right to construct or withholds that right. There is no ordinance of Metuchen which defines a district in which a three or more family house may be constructed or which limits or restricts the construction thereof to a specified district. In other words, the ordinance prohibits or attempts to prohibit three or more family houses in the entire Borough unless the property owner is fortunate enough to have council pass a special favoring resolution.

In *First Church vs. Newark*, 127 N. J. L. 325, it was held that the ordinance prohibits gasoline stations throughout the city without any reference to districts. It was therefore unlawful and set aside. Decision was unanimously affirmed in this Court, 128 N. J. L. 376 on the ground that the zoning ordinance, prohibiting public garages including gasoline stations throughout the city, is an unlawful exercise of its power of legislation under the Constitution.

There, Chancellor Campbell, in writing the opinion for this Court, said:

"There are certain structures and uses that have peculiar and unusual characteristics, such as those here under consideration, that put them in a class apart from other structures and uses and, while public necessities, may have a particular bearing upon the public

safety and general welfare, if not located with due consideration of conditions, surroundings, necessity and convenience, necessitating and requiring a proper method of regulation but not warranting an absolute prohibition."

The opinion also distinguishes the decision of the Supreme Court in *Schnell vs. Ocean*, 120 N. J. L. 194, stating that that case did not purport to be an exercise of the zoning power but of the general police power to regulate gasoline stations and similar structures.

Appellants in their brief and argument before the Supreme Court as well as upon their appeal here before this Court rely solely and squarely upon what they think was the determination of the Supreme Court in *Schnell vs. Ocean*, 120 N. J. L. 194, as expounded by this Honorable Court in the decision of *First Church vs. Newark*, 128 N. J. L. 376. It would be futile on our part to enlarge or to in any manner presume to improve upon the learned explanation and analysis of those decisions by Chief Justice Case in his opinion in the Supreme Court.

The distinction between the instant case and the *Schnell* case is outstanding and most readily apparent. The attempt here is to zone without zoning while in the *Schnell* case there was a decided and distinct exercise of general police power.

This is conclusively shown by the language of Chancellor Campbell in writing the opinion for this Court in *First Church vs. Newark*. When in referring to the *Schnell* cases the Chancellor said:

"The ordinance * * * did not purport to be an exercise of the zoning power but of the general police power to regulate gasoline stations and kindred structures and used because of their peculiar characteristics * * *"

It, therefore, follows that the import of the decision in *Schnell v. Ocean, supra*, is to limit it to general police power as distinguished from zoning. The distinctions present here are these:

(a) The permit for building was granted and property owners have not by certiorari attacked the granting of the permit.

(b) Here we have no gasoline station, but a one-story structure designed to house more than three families.

(c) The municipality has not limited or restricted three or more family houses with reference to any specific district.

(d) The 1935 Amendment does not create a uniform practice.

(e) The 1935 Amendment purports to legislate by resolution, whereas, by statute zoning can only be made effective by ordinance.

In the *Heller* case Vice-Chancellor Backes referred to the 1920 Statute. That Statute is a supplement to the Municipalities Act. The 1924 Statute referred to in *Leonard vs. Trenton* is also a supplement to the Municipalities Act, but it will be found that many of its provisions are copied word for word into the Zoning Statute of 1928, Chapter 274, adopted pursuant to the Constitutional Amendment.

We urge that Subdivision (D), Paragraph 1, Article IV of the 1935 Zoning Amendment of the Borough of Metuchen is not in fact a zoning regulation, but is an arbitrary attempt to prevent a person from making an appropriate and proper use of private property, in violation of the Fourteenth Amendment of the United States Consti-

tution and that that provision is void in same manner as Newark Airport zoning ordinance was held to be void in *Yara Engineering Corp. vs. Newark*, 132 N. J. L., 370.

There is no reasonable basis for excluding a three or more family house from either a business zone or a manufacturing zone and it is conceded that the property in question is in a manufacturing zone and that the Ordinance of 1925 as amended in 1935 does not prohibit by its express terms the construction of any type of residence within a manufacturing zone. Zoning law passed by the Legislature under the constitutional provision requires the legislation to be by ordinance. The law requires the ordinance to define districts; it further requires that the provision as to all should be uniform and not permissive to one and prohibitive to others. The provisions must be reasonable and not arbitrary or capricious.

Chief Justice Case in his opinion mentions *State vs. Nutley*, 99 N. J. L. 389, *Krumgold vs. Jersey City*, 102 N. J. L. 170, and *Durkin Lumber Company vs. Fitzsimmons*, 106 N. J. L. 183. All of these are decisions of this Court and they certainly point out that prior to the Constitutional Zoning Amendment of 1927 under police power government could not prevent the use of private property for legitimate purposes.

Neither the 1927 Constitutional Amendment nor P. L. 1928, Chapter 274, now incorporated in our laws as R. S. 40:55-30, *et seq.*, did any more than to give a municipality the right to zone the municipality and to make restrictions within the respective zones.

Section IV, 1, (D) of the 1935 Amendment to the zoning ordinance of the Borough of Metuchen is violative of the constitutional right of the

appellees to use the property in question for a legitimate housing project in a manufacturing district.

Conclusion.

In order to give municipalities greater police power than as defined by the above mentioned three decisions of this Honorable Court, the Constitutional Amendment of 1927 was adopted in the following language:

“The legislature may enact general laws under which municipalities, other than counties may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the exercise of such authority shall be deemed to be within the police power of the State.”

Pursuant to this constitutional authority P. L. 1928, Chapter 274, was adopted and is now incorporated in our laws as R. S. 40:55-30, *et seq.* Said Section 30 provides:

“Any municipality may by ordinance, limit and restrict to specified districts and may regulate therein, buildings and structures according to their construction, and the nature and extent of their use, and the exercise of such authority, subject to the provisions of this article, shall be deemed to be within the police power of the state.”

The Borough of Metuchen does not by its ordinance create *specified districts* nor does it *regulate therein* the construction of three or more family residences.

Chief Justice Case in his opinion said:

“I conclude that the power of a municipality to determine whether, and where, three-

family houses shall be permitted depends upon the zoning amendment and the zoning statute passed thereunder and that the ordinance provision does not comply with the design of those enactments.”

It must be clear that the Metuchen ordinance does not create the specified districts nor regulate therein the type of building in question; therefore, it follows that police power to control or prohibit within the Borough three or more family houses was never acquired by the Borough of Metuchen. The ordinance attempts to create the power in a different manner than as provided by the Constitution and the enabling statute, and therefore the purported action as well as the ten complaints to enforce that action interfere with the vested constitutional right of the appellees to use their property for a lawful project, to wit, the construction of a low rental housing project in a heavy manufacturing district.

It is, therefore, respectfully submitted that the judgment of the Supreme Court should be in all things affirmed with costs.

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