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New Jersey State Library

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Notice of Application for Writ of Certiorari.

NOTICE.

Filed May 16, 1927.

New Jersey Supreme Court

PARAMOUNT REALTY & CONSTRUCTION Co., INC.,

Prosecutor,

vs.

GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, and the TOWN OF IRVINGTON,

Defendants.

On Application for Writ of Certiorari.

Notice.

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To Charles H. Stewart, Esq., Attorney for Defendants:

Sir:

TAKE NOTICE that on Saturday, the 14th day of May, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, we shall apply to the Honorable William S. Gummere, Chief Justice of the New Jersey Supreme Court, at the Court House, in the City of Newark, New Jersey, for a writ of certiorari to review the proceedings of the Board of Adjustment of the Town of Irvington in denying the application of the above-named prosecutor for a permit to erect a building upon premises owned by the prosecutor on the northwest corner of Sanford avenue and Clinton avenue, Irvington, New Jersey, said

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Petition.

building to contain stores on the ground floor
and apartments on the floor above.

COHEN & KLEIN,
Attorneys for Prosecutor.

Dated, May 9, 1927.

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PETITION.

NEW JERSEY SUPREME COURT.

PARAMOUNT REALTY & CONSTRUCTION Co., INC.,

Prosecutor,

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vs.

GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, and the TOWN OF IRVINGTON,

Defendants.

*On
Certiorari.
Petition.*

30 To the Honorable Justices of the Supreme Court
of the State of New Jersey:

The petition of Paramount Realty & Construction Co., Inc., a corporation of New Jersey, having its principal place of business in the City of Newark, Essex County, New Jersey, respectfully shows:

1. Your petitioner is the owner in fee simple
of a certain tract of land and premises in the
40 Town of Irvington, County of Essex and State

Petition.

of New Jersey, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of Clinton Avenue West with the westerly line of Sandford Avenue and from thence running (1) north twenty-eight degrees fifty-one minutes east along the said westerly line of Sandford Avenue ninety-one feet ten inches to the southerly line of land conveyed to Regina Gasser by Frank I. Voorhees by deed recorded in the Essex County Register's Office in Book L. 25 of Deeds, page 131; thence running along the said line of lands conveyed as aforesaid to Gasser and binding thereon north sixty-one degrees west eighty feet to the westerly line of land formerly belonging to said Voorhees; thence (3) south twenty-eight degrees fifty-one minutes west along line of lands of said Voorhees one hundred and six feet five inches to said northerly line of Clinton Avenue West; thence (4) along said line of Clinton Avenue west southeasterly eighty-one feet four inches to said line of Sandford Avenue and the place of BEGINNING.

2. Petitioner is desirous of erecting upon said premises a two-story brick building containing stores on the ground floor and living apartments on the second floor.

3. On the 1st day of March, 1927, prosecutor applied to George F. Schmitt, Superintendent of Buildings of the Town of Irvington, for a permit for the erection of said brick building, by application duly submitted to said Superintendent of Buildings, said application having been accompanied by the presentation of the plans and specifications as provided for by the building code of the Town of Irvington, and also tendered said Superintendent of Buildings the legal fee

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Petition.

fixed by the said building code. Said plans and specifications were stamped duly approved by the Board of Tenement House Supervision of the State New Jersey.

10 4. Said application was rejected by the said George F. Schmitt, Superintendent of Buildings, who refused to issue a permit, stamped said plans "rejected," and refused said plans for filing, and returned said plans and specifications to the prosecutor, giving as his reasons therefor, that an ordinance of the Town of Irvington, entitled "An Ordinance Establishing Building Zones and Regulations, and Providing Penalties for their Violations," forbids the erection of said building upon the premises owned by the petitioner as aforesaid. Notice was then and there given by
20 prosecutor to said Superintendent of Buildings, George F. Schmitt, advising him that the prosecutor would appeal to the Board of Adjustment of the Town of Irvington from his said decision denying the permit.

30 5. Application was duly made to the Board of Adjustment of the Town of Irvington for a hearing on the appeal, and April 7, 1927, was set down for said hearing. Petitioner conformed with all the requirements of said Board of Adjustment insofar as the sending out of notices to property owners in the vicinity within a distance of 200 feet from prosecutor's said premises, and so far as advertising were concerned.

40 6. Said matter was heard before the said Board of Adjustment on April 7, 1927, and at the hearing of said Board of Adjustment on April 7, 1927, it affirmed the decision of the Superintendent of Buildings and denied the permit to your petitioner, and informed your petitioner

Petition.

that it would file its written findings on said application of the petitioner.

7. Your petitioner further states that said written findings by the Board of Adjustment on the application of the prosecutor were made on May 6, 1927, a copy of which was delivered to the prosecutor on May 7, 1927; a copy of said findings follows: 10

In the matter of the application of the Paramount Realty & Construction Co., Inc., for permission to erect stores and apartments on the Northwest corner of Sanford Avenue and Clinton Avenue, in the Town of Irvington.

Findings.

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The written application of the Paramount Realty & Construction Co., Inc., having come before this Board for hearing, after having been duly advertised, and the Board having heard the applicants, through their attorneys, and both written and verbal objections having been made by resident property owners in the vicinity and both within and without a distance of 200 feet from the premises, and the Board having considered the arguments and evidence of the applicant and of the objectors and the reasons assigned by each as to why an ordinance of the Town of Irvington, entitled, "An Ordinance Establishing Building Zones and Regulations and Providing Penalties for their Violation," should and should not be varied in the respect applied for by the applicant, find as follows: That the said ordinance in view of the evidence submitted tends to promote the safety and welfare of the citizens of the Town of Irvington so far as its restrictive 30
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Petition.

provisions effect the use of the property owned by the applicants and affected by the appeal of the applicants for a variation of the provisions of said ordinance, and that the application should be denied.

Application denied.

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WILLIAM WINDLE,
President.

HARRY E. STANLEY,
Secretary.

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8. Petitioner charges and insists that said ordinance insofar as it purports to prevent the prosecutor, Paramount Realty & Construction Co., Inc., from erecting and constructing the said building as contemplated, is illegal, in that the reservation of the district in which the petitioner's said property is located, to the use prescribed by said ordinance, is beyond the power of the Town of Irvington under the provisions of the statute, and that the Town of Irvington under the statute, has no power to prevent the erection of said building in said district; that the restriction in said ordinance is not designed to promote the public health, safety and general welfare; and that the effect of enforcing the provisions of said ordinance to prevent the said petitioner from erecting the building which it seeks to erect, would be to deprive the said petitioner of a right to possess and protect its property in violation of paragraph 1 of Article I of the Constitution of the State of New Jersey, and would be a taking of the private property of the said petitioner for public use without just compensation in violation of the 16th paragraph of Article I of the Constitution of New Jersey, and would be likewise a violation of the rights secured to the

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said petitioner by the 14th Amendment to the

Petition.

Constitution of the United States, in that it would be a deprivation of the petitioner of its property without due process of law, and would be a denial to it of the equal protection of the law, and that said ordinance is for other reasons illegal and invalid.

9. The evidence submitted before said Board of Adjustment does not justify, in law, its refusal to grant the prosecutor the building permit applied for, for the erection of said building.

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10. That the said action of the Town of Irvington, its Superintendent of Buildings and the said Board of Adjustment as aforesaid, is in said and divers other respects, illegal, unjust and oppressive, and should be set aside and for nothing holden.

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COHEN & KLEIN,
Attorneys for Prosecutor.

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*Affidavit of Fred Nieburg.***Affidavit.**

NEW JERSEY SUPREME COURT.

10	PARAMOUNT REALTY & CONSTRUCTION Co., INC., <div style="text-align: right;"><i>Prosecutor,</i></div>	}	<i>On Certiorari. Affidavit.</i>
	<div style="text-align: center;"><i>vs.</i></div> GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, and the TOWN OF IRVINGTON, <div style="text-align: right;"><i>Defendants.</i></div>		
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

FRED NIEBURG, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am the president of the Paramount Realty & Construction Co., Inc., the above-named prosecutor, and am the one actually in full charge and control of the management of its affairs.

2. Said petitioner is the owner in fee simple of the premises described in paragraph 1 of the foregoing petition, and has been since June 1, 1926.

3. Said petitioner desires to erect upon said premises, a two-story brick building containing stores to be used for business purposes on the ground floor and dwelling apartments on the second floor.

Affidavit of Fred Nieburg.

4. On and before March 1, 1927, the petitioner duly authorized and deputized Rudolph Kruger, a duly licensed architect of the State of New Jersey, with offices located at No. 60 Branford Place, Newark, New Jersey, to draft plans and specifications for the erection of said building and to submit them to the proper authorities for the purpose of obtaining the proper permits for the construction of said building. 10

5. That the said Rudolph Kruger did draft said plans and specifications and after the same were deemed satisfactory to the petitioner, said Rudolph Kruger submitted said plans and specifications to the Board of Tenement House Supervision of the State of New Jersey, and received from said Board of Tenement House Supervision its stamp of approval upon said plans and specification; that thereafter, the said Rudolph Kruger, and on March 1, 1927, presented said plans and specifications to George F. Schmitt, Superintendent of Buildings of the Town of Irvington, and tendered the legal fees therefor; that the said George F. Schmitt refused to accept said plans and specifications for filing, stamped them "rejected" and returned said plans and specifications to the said Rudolph Kruger, giving as his reason for his action, that the zoning ordinance of the Town of Irvington, does not permit the erection of a building to contain stores and dwelling apartments in the district in which this building was to be erected. 20 30

6. That thereupon petitioner appealed to the Board of Adjustment of the Town of Irvington, which after a hearing, also denied said permit on the ground that said zoning ordinance of the Town of Irvington, in view of the evidence sub- 40

Affidavit of Fred Nieburg.

mitted to it, tends to promote the safety and welfare of the citizens of the Town of Irvington so far as its restrictive provisions effect the use of the property owned by the petitioner, and affected by the appeal of the petitioner to the Board of Adjustment for a permit to erect said building.

10 7. That I further depose and say, that the evidence submitted to the Board of Adjustment proved that the erection of said building would not injure the safety, health and general welfare of the citizens of the Town of Irvington.

20 8. I am informed and verily believe that the action of the Superintendent of Buildings and the Board of Adjustment of the Town of Irvington taken pursuant to said ordinance, is illegal and void, and that the said action deprives the petitioner of its constitutional right to possess and enjoy property, and that the said action deprives the petitioner of its property without due process of law, and that said action constitutes the taking of private property for public use without just compensation, all of which is contrary to the Constitution of the State of New Jersey and of the United States.

30 9. There is no restriction in the deed which petitioner holds to said property, restricting the use to which said property may be put, in the manner in which said building ordinance of the Town of Irvington attempts to restrict said property.

FRED NIEBURG.

Sworn to and subscribed before me
this 9th day of May, 1927.

40 FANNY KIRSCHNER,
A Notary Public of New Jersey.

Affidavit of Rudolph Kruger.

Affidavit.

NEW JERSEY SUPREME COURT.

PARAMOUNT REALTY & CONSTRUCTION Co., Inc.,

Prosecutor,

vs.

GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, and the TOWN OF IRVINGTON,

Defendants.

10

*On
Certiorari.
Affidavit.*

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STATE OF NEW JERSEY, }
COUNTY OF ESSEX. }ss.

RUDOLPH KRUGER, being duly sworn upon his oath according to law, deposes and says:

1. I am a duly licensed architect of the State of New Jersey, with offices at No. 60 Branford Place, Newark, New Jersey.

2. On and before March 1, 1927, I was duly retained by the above-named petitioner, Paramount Realty & Construction Co., Inc., to draft plans and specifications for the erection of a building on the property of the petitioner, located on the northwest corner of Sanford avenue and Clinton avenue, Irvington, New Jersey, said building to contain stores on the ground floor for business purposes and dwelling apartments on the second floor.

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Affidavit of Rudolph Kruger.

3. Said plans and specifications were drafted by me in accordance with the instructions of the petitioner, and after the same were deemed satisfactory to the petitioner, I submitted said plans and specifications to the Board of Tenement House Supervision of the State of New Jersey, and received from said Board, its stamp of approval on said plans and specifications for the erection of said building.

4. That said plans and specifications were drafted in accordance with the building code of the Town of Irvington, and complied with all its ordinances, except as I am informed, as to the zoning ordinance of the Town of Irvington.

5. That on March 1, 1927, I submitted said plans and specifications stamped approved by the Board of Tenement House Supervision of the State of New Jersey, to George F. Schmitt, Building Superintendent of the Town of Irvington, and tendered him the legal fee and applied for a permit for the erection of said building; that the said George F. Schmitt stated that he could not accept said plans and specifications to be filed, but had to reject the same; that the said George F. Schmitt then and there stamped upon said plans "rejected" and returned said plans and specifications to me, giving as his reason for his action and his refusal to grant the permit, that the premises of the petitioner on Sanford avenue and Clinton avenue, Irvington, N. J., was in a location restricted by the zoning ordinance of the Town of Irvington against the erection of a building containing stores; that I then and there informed the said George F. Schmitt, that the petitioner would appeal to the Board of Adjustment of the Town of Irvington, and I was in-

Affidavit of Rudolph Kruger.

structed by the said George F. Schmitt to appear before the Board of Adjustment of the Town of Irvington on Thursday evening then next at 8:00 P. M. to present said appeal.

6. Said appeal was duly advertised and all steps duly taken as required by the Board of Adjustment of the Town of Irvington, and the application came on for a hearing before said Board of Adjustment on April 7, 1927; that the evidence adduced at said hearing tended to prove that the erection of said building would not injure or endanger the safety, health or general welfare of the citizens of the Town of Irvington; that at the end of said hearing, the said Board of Adjustment denied the application of the petitioner for a permit to erect said building, and stated that it would file its written findings at some date in the near future.

RUDOLPH KRUGER.

Sworn to and subscribed before me
this 9th day of May, 1927.

FANNY KIRSCHNER,
A Notary Public of New Jersey.

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Affidavit of Philip Klein.

Affidavit.

NEW JERSEY SUPREME COURT.

10	PARAMOUNT REALTY & CONSTRUCTION Co., INC., <div style="text-align: right;"><i>Prosecutor,</i></div>	}	<i>On Certiorari. Affidavit.</i>
	<i>vs.</i>		
20	GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, and the TOWN OF IRVINGTON, <div style="text-align: right;"><i>Defendants.</i></div>		

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

PHILIP KLEIN, being duly sworn according to law, upon his oath deposes and says:

1. I am a counsellor-at-law of the State of New Jersey, and a member of the firm of Cohen & Klein, attorneys for the above-named petitioner.

2. On April 7, 1927, I appeared for the petitioner at the hearing before the Board of Adjustment of the Town of Irvington on the application of the petitioner for a permit to erect a two-story brick building on the northwest corner of Sanford avenue and Clinton avenue, Irvington, New Jersey, more particularly described in the foregoing petition; that at said hearing said Board of Adjustment heard deponent on behalf of the petitioner requesting a permit for the

Affidavit of Philip Klein.

erection of said building to contain ordinary stores for business purposes on the ground floor and dwelling apartments on the second floor; that said Board of Adjustment also heard at said hearing the objections of residents in the vicinity of the proposed building, which objections were that said residents did not desire stores in their immediate vicinity. That at the end of said hearing, the Board of Adjustment denied the application of the petitioner for a permit, and stated that it would file its written findings at a date in the near future; that a copy of said findings was delivered to deponent on May 7, 1927, by Charles H. Stewart, attorney for the above-named defendants; that a copy of said findings is set forth in paragraph 7 of the petition to which this affidavit is annexed.

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PHILIP KLEIN.

Sworn to and subscribed before me
this 9th day of May, 1927.

FANNY KIRSCHNER,
A Notary Public of New Jersey.

Service of a copy of the within Notice, Petition and affidavits is hereby acknowledged this 9th day of May, 1927.

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CHARLES H. STEWART,
Attorney of Defendants.

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Writ of Certiorari.

WRIT OF CERTIORARI.

NEW JERSEY, ss.

The State of New Jersey to George
 F. Schmitt, Superintendent of Build-
 (SEAL) ings of the Town of Irvington, the
 10 Board of Adjustment of the Town of
 Irvington, and the Town of Irvington.

GREETING:

We being willing for certain reasons to be
 certified of a certain decision rendered on May 6,
 1927, by the Board of Adjustment of the Town
 of Irvington in relation to the appeal to said
 Board of Adjustment from the rejection by said
 George F. Schmitt, Superintendent of Buildings
 of the Town of Irvington, of an application for a
 20 permit to erect upon certain premises situate at
 the northwest corner of Clinton avenue and San-
 ford avenue, Irvington, New Jersey, belonging
 to Paramount Realty & Construction Co., Inc., a
 New Jersey corporation, a two-story brick build-
 ing containing stores on the ground floor and
 dwelling apartments on the second floor, in ac-
 cordance with certain plans and specifications
 accompanying said application, do command you
 that you certify and send under your seal to our
 30 Justices of our Supreme Court of Judicature at
 Trenton, on the 3rd day of June, 1927, the said
 decision of said Board of Adjustment above men-
 tioned, together with all things touching and
 concerning the same, as fully and completely as
 they remain before you, together with this our
 Writ, that we may cause to be done thereupon
 what of right and justice and according to the
 Laws of the State of New Jersey ought to be
 done.

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Return to Writ.

WITNESS, HONORABLE WILLIAM S. GUMMERE,
Chief Justice of our Supreme Court at Trenton,
this 14th day of May, 1927.

EDWARD J. KELLEHER,
Clerk.

COHEN & KLEIN, 10
Attorneys for Prosecutor.

I consent to the allowance of the writ.

CHAS. H. STEWART,
Attorney of Respondents.

Allocatur.

WM. S. GUMMERE,
C. J. 20

Service of the original Writ of Certiorari is
hereby acknowledged this 17th day of May, 1927.

CHARLES H. STEWART,
Attorney of Respondents.

RETURN TO WRIT.

Filed June 3, 1927. 30

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

We, the undersigned, Joseph Diebold, Superin-
tendent of Buildings of the Town of Irvington,
successor to George F. Schmitt, the Board of
Adjustment of the Town of Irvington, and the
Town of Irvington, do hereby certify the return
to the Supreme Court of Judicature of the State
of New Jersey, the application made by the Para- 40

Return to Writ.

mount Realty & Construction Co., Inc., to the Board of Adjustment of the Town of Irvington for a variation from the requirements of the Building Zone Ordinance, to erect a two-story store and apartment building in accordance with plans filed with said application; the written objections filed by property owners affected by said application to the granting of the same; extract from the minutes of the Board of Adjustment of the meeting at which the application was considered, so far as they relate to said application; a copy of the decision denying the said application; and a copy of the ordinance (so far as same relates to said application) entitled, "An Ordinance establishing Building Zones and Regulations and providing penalties for their violation," as by the within writ to us directed, we are commanded.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed the official seal of the Town of Irvington, New Jersey, this 2nd day of June, A. D. 1927.

JOSEPH DIEBOLD,
Superintendent of Buildings of
the Town of Irvington.

BOARD OF ADJUSTMENT OF
THE TOWN OF IRVINGTON,
By WILLIAM WINDLE,
President.
HARRY E. STANLEY,
Secretary.

TOWN OF IRVINGTON,
W. H. JAMOUNEAU,
Town Clerk.

(SEAL)

Return to Writ.

BOARD OF ADJUSTMENT
CITY HALL
IRVINGTON, N. J.

Cal. No.....	Filed.....192..	
	Hearing.....192..	10
	Disposition.....	

NOTICE.—This application must be TYPE-WRITTEN, filed within sixty (60) days of the order, accompanied by necessary data, together with a fee of \$2.00.

APPLICATION FOR VARIATION FROM
THE REQUIREMENTS OF THE BUILD-
ING ZONE ORDINANCE

TO THE BOARD OF ADJUSTMENT: 20

Application is hereby made for a variation from the requirements of Sections.....of the Building Zone Ordinance to erect a two-story store and apartment building in accordance with the plans filed herewith.

Attached hereto is a copy of the decision rendered by the Superintendent of Buildings on March 1, 1927, in acting on this matter.

(PROPOSED)

DESCRIPTION OF () BUILDING 30
(EXISTING)

PREMISES AFFECTED known as 1395 Clin-
ton Avenue, Irvington, N. J.

Applicant Paramount Realty & Const. Co. Ad-
dress 60 Branford Place, Newark, N. J.

Owner Paramount Realty & Const. Co. Address
60 Branford Place, Newark, N. J.

Lessee Address

Return to Writ.

Use Dist.....Res..... Height District.....

Area District.....

Occupancy (of each floor) first floor, stores

Second floor, apartments

Size of lot....80'9" x 91'7"....

10 Size of Building: (at street level)...80'9"...feet
front....91'7"....feet deep.Height of Building....two....stories....25....
feet

Set back from front property line.....feet.

From side (if corner lot).....feet.

Has there been any previous appeal involving
these premises?Yes.....If so, state date of filing, character of appeal and
disposition.—Previous application was made to20 Building Superintendent, May 28, 1926; his re-
jection was appealed to the Zoning Board of Ap-
peals and on June 18, 1926, said Board refused
to entertain said appeal. On application to the
Supreme Court, said Court refused to issue a
writ of mandamus on the ground that the board
should exercise jurisdiction.30 ATTACHED HERETO AND MADE A PART
OF THIS APPLICATION, I SUBMIT THE
FOLLOWING:(Note—All these papers must be submitted
with the application.)(a) COPY OF DECISION OR ORDER OF AD-
MINISTRATIVE OFFICIAL on which ap-
plication is based.(b) A TYPEWRITTEN STATEMENT of the
principal points on which I base my applica-
tion, with description of proposed work, if
any.

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Return to Writ.

- (c) ONE COMPLETE SET OF PLANS of the proposed building.
- (d) SIX COPIES OF A BLOCK DIAGRAM with street numbers, showing the character and occupancy of all property within two hundred (200) feet, with points of compass indicated. 10
(Note—These must be blue prints, on paper 8½"x13".)
- (e) A FULL LIST OF NAMES AND ADDRESSES OF OWNERS of all property shown on block diagram, and indicating property owned.
- (f) COPY OF NOTICE to the
(Superintendent of Buildings)
(Inspector, Bureau of Combustibles)
that I have appealed. 20

I hereby depose and say that all of the above statements and the statements contained in the papers submitted herewith are true.

(Signed) JOSEPH DAVIS,
Vice-President of Applicant,
Paramount Realty & Construction Co.

Sworn to before me, this 21st
day of March, 1927. 30

FANNY KIRSCHNER,
A Notary Public of N. J.

Return to Writ.

AFFIDAVIT OF OWNERSHIP.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

10 JOSEPH DAVIS, of full age, being duly sworn according to law, on his oath deposes and says, that he resides at 28 Bock Ave., in the City of Newark, in the County of Essex and State of New Jersey, that the Paramount Realty & Construction Co. is the owner in fee of all that certain lot, piece or parcel of land situated, lying and being in the City of Irvington aforesaid, and known and designated as Number 1395 Clinton Ave., Irvington, New Jersey, and that said Paramount Realty & Construction Co. is authorized to
20 make the annexed application in its behalf, and that the statements of fact contained in said application are true.

(Signed) JOSEPH DAVIS.

Sworn to before me this 21st
day of March, 1927.

FANNY KIRSCHNER,
A Notary Public of N. J.

30 NOTE:—Upon the filing of this application with accompanying papers you will be advised of the date of Hearing and will be furnished a form of notice, copies of which you must send by registered mail to all property owners affected, and you must file affidavit of service within 5 days.

Return to Writ.

Form of Notice supplied.....192..

PARAMOUNT REALTY &
CONSTRUCTION CO.

60 Branford Place
Newark, N. J.

March 21, 1927. 10

Board of Adjustment,
City Hall,
Irvington, N. J.

Gentlemen:

We hereby submit for your consideration plans and specifications for the erection of a two-story brick stores and apartment house building to be located at 1395 Clinton Avenue corner Sanford Avenue, Irvington, N. J., said plans having been rejected by your Superintendent of Buildings, as being contrary to the Zoning Ordinance. 20

We feel this particular neighborhood, which is at the intersection of two important transit highways and all surrounding property having been built up, will make this corner ideal for the erection of this type of building.

We also feel that the appraised value of the land at that point is such, that it is practically impossible to erect any building outside of the type which we are presenting for your consideration that would bring us a reasonable return on our investment. 30

In our opinion, Sanford Avenue in due time is bound to become a business thoroughfare.

Very truly yours,

(Signed) PARAMOUNT REALTY &
CONSTRUCTION CO. INC.

By Joseph Davis,
V.-P. 40

Return to Writ.

Forms for Notification of Property Owners.

BOARD OF ADJUSTMENT
City Hall, Irvington, N. J.

Sir:

10 Your application under the Building Zone Ordinance, in re: premises..... has been given Cal. No. 8-3-23-27.

Below is a copy of a form letter, of which you must make the necessary copies, and then send one to each of the owners of adjoining and neighboring property as prescribed by the Rules of this Board (a copy of procedure which is enclosed), and within ten days you must file in this office a verified statement that you have served by registered mail a copy of this notice on each
20 of such owners, together with the return registered receipts of those so notified.

Further, a public hearing will be held on this application at 8 P. M., in the Commissioners' Chamber, third floor, City Hall on Thursday, April 7, 1927, and you must be present either in person, or by agent, or attorney.

Respectfully,

Secretary.

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Return to Writ.

NOTICE TO BE SERVED ON OWNERS OF
PROPERTY AFFECTED.

Please Take Notice:

That an application has been made by Paramount Realty & Construction Co. on behalf of themselves for a variation from the requirements of the Building Zone Ordinance so as to permit for stores and apartments on the premises, 1395 Clinton Avenue, and this notice is sent to you as an owner of property in the immediate vicinity. This application is now No. 8-3-23-27 on the Clerk's Calendar, and a public hearing has been ordered for Thursday, April 7, 1927, at 8 P. M., in the Commissioners' Chamber, third floor, City Hall; and when the calendar is called you may appear either in person, or by agent, or attorney, and present any objections which you may have to the granting of this application.

This notice is sent to you by the applicant, by order of the Board of Adjustment.

Respectfully,

(Signed)

JOSEPH DAVIS,
Paramount Realty &
Construction Co. Inc.
Applicant.

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Return to Writ.

ATTENTION OF APPLICANTS.

The applicant shall notify on the proper form each of the property owners entitled to notice of the application. Unless otherwise directed by the Board, the property owners entitled to such notice as being immediately affected shall be deemed to be the owners of: 10

(a) every frontage, in a business or residence district, on the same side of the street or streets upon which the proposed building or use shall have a frontage, entrance or exit, in either direction, within a distance of two hundred (200) feet from the frontage, entrance or exit of the proposed building or use;

(b) every frontage, in a business or residence district, directly opposite the frontage specified in paragraph (a), including every frontage opposite the frontage, entrance or exit of such proposed building or use; 20

(c) every frontage, in a business or residence district, of property, any part of which is withinfeet of the rear or any side of the lot or plot on which the proposed building or use is located, and which is not already included under paragraph (a) or (b); 30

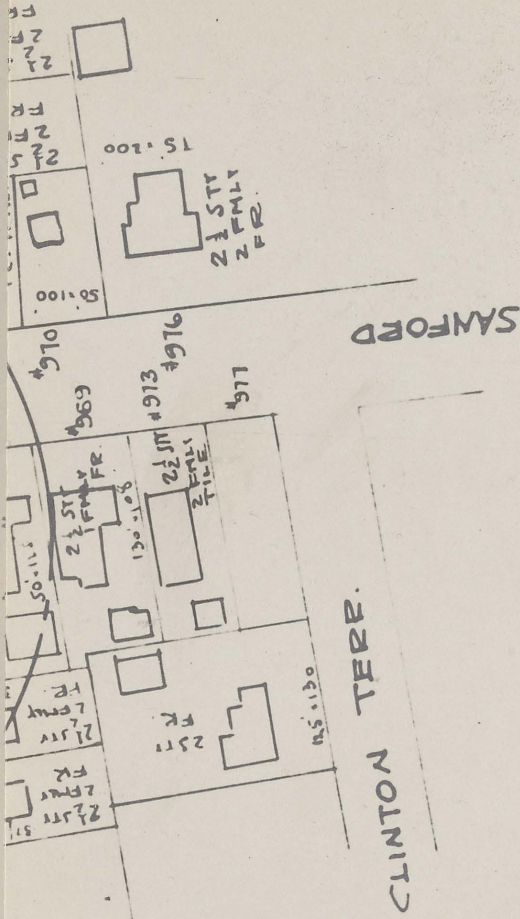
provided the Board may require notice of application sent to the owners of such additional frontage as it may deem to be affected.

Return to Writ.

Names of Property Owners:

#1403	Clinton Ave., Irv.,	Jno. Schrade	Lives:	Within
1409	"	..Geo. W. Mitchell	"	
1413	"	..Gottlb. F. Gansole	"	
1415	"	..M. S. Mc Kenna	"	
1517	"	.. " "	"	
#12	Ridgewood Ave.,	..Vigiano, Rosina	Lives:	#545 Valley St., Orange, N. J.
14-16	"	..Catherine Hill	"	Within
18	"	..Edw. H. Kubler	"	"
22	"	..Mary F. Hopper	"	"
24	"	..Christian Meister	"	"
28	"	..Geo. E. Davis	"	"
#955	Sanford Ave.,	..R. G. C. Gasser	"	"
949	"	..Allwin Schaeffer	"	"
945	"	..Raymd. Vanderhoof	"	"
941	"	..Edw. Zehlein	"	"
937	"	..Allen Cohn	"	"
942	"	..Sam Morill	"	"
936	"	..Geo. F. Fisher	"	"
#1387	Clinton Ave.,	..Filam. Gianrettino	"	"
1383	"	..Roland Larter	"	"
1379	"	..Irving Realty Co.	#1373 Clinton Ave. F. Baab	
1382	"	..Max Meier	"	"
1378	"	..Walter Wilderotter	"	"
#964	Sanford Ave.,	..Henry Pfeiffer	"	"
972	"	..Plueger Constr. Co.	"	"
976	"	..Jos. Reimmer	"	"
980	"	..Michl. Filan	"	"
961	"	..Laura F. Bennett	"	"
969 to 977	"	..Ant. K. Sweetra	"	"
963	"	..Margaret Jensen	"	"
#1406	Clinton Ave.,	..Alfred Hartley	"	"
1410	"	..Elizabeth Rilly	"	"

SKETCH OF
PROPERTIES



RUDOLF KRUGER, ARCHT.,
BRANFORD PL & WASHINGTON ST
NEWARK, NEW JERSEY

SKETCH OF
PROPERTIES
WITHIN 200'-0" RADIUS OF
N.W. CORNER OF CLINTON & SANFORD AVES
IRVINGTON, N. J

SCALE: 1" = 100'-0"
DATE: MAR. 22, 1927



RUDOLF KRUGER, ARCHT.,
BRANFORD PL & WASHINGTON ST
NEWARK, NEW JERSEY

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Return to Writ.

A letter, in the form prescribed by the rules of the Board of Adjustment, was sent to and received by the persons named as the owners of property situate within a radius of 200 feet of the centre of the plot upon which the applicant proposes to erect the structure mentioned in its application to the said Board of Adjustment for a variation of the requirements of the Zoning Ordinance of the Town of Irvington.

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The applicant filed with the Board, United States Post Office Registry Receipts showing that said letter had been received by all property owners within said 200 foot radius, with the exception of Catherine Hill, 14-16 Ridgewood avenue, Irvington; Christian Meister, 24 Ridgewood avenue, Irvington; Laura F. Bennett, 961 Sanford avenue, Irvington.

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TO THE BOARD OF ADJUSTMENT OF THE
TOWN OF IRVINGTON:

Gentlemen:

We, the undersigned, citizens and property owners of property located in the immediate neighborhood of the Northwest corner of Sanford Avenue and Clinton Avenue, Irvington, do hereby protest the variation of the provisions of an ordinance entitled, "An Ordinance establishing Building Zones and Regulations and providing penalties for their violation," under an application made by the Paramount Realty & Construction Company, Inc., for permission to erect stores and apartments on their premises located on said Northwest corner of said streets, for the following reasons:

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Return to Writ.

First. The area in which said property is located is designated on the zoning map of the Town of Irvington as a Class "A" Residence Zone.

10 Second. The character of the neighborhood is established and the houses in the immediate vicinity are all one and two-family houses costing from \$10,000 upwards.

Third. There is no local demand for stores in the neighborhood, ample shopping facilities being provided within a reasonable distance.

20 Fourth. The intersection of Clinton Avenue and Sanford Avenue is already an exceedingly dangerous vehicular crossing, and the erection of stores will add to the congestion and increase the hazard of accident and thereby endanger the life and limb of both pedestrians and occupants of vehicles traveling in the neighborhood.

Fifth. The erection of stores at said location will naturally result in automobiles being parked along the curb line, which will decrease the travel width of the street, and, with the traffic post located as it is at the centre of the intersection of the streets, will be a further element in increasing the hazard of accident.

30 We, therefore, respectfully urge that the application of the Paramount Realty & Construction Company, Inc., be denied.

Yours respectfully,

Loren Jensen, 965 Sanford Ave.

Raymond F. Vanderhoff, 945 Sanford Ave.,
Irvington, N. J.

E. M. Watson, 945 Sanford Ave.

Allwin P. Schaefer, 949 Sanford Ave.

Mary G. Zehlein, 941 Sanford Ave.

40 A. Cohen, 937 Sanford Ave.

Helen S. Harris, 931 Sanford Ave.

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- William J. Moore, Clara J. Moore, 921 Sanford Ave.
- Mrs. J. Albiez, 917 Sanford Ave.
- Mrs. E. Grabach, 915 Sanford Ave.
- Fred C. Toler, 893 Sanford Ave., Irvington,
N. J.
- R. Zwigard, 889 Sanford Ave. 10
- Mrs. John Reino, 900 Sanford Ave.
- Mrs. O. P. Schaller, 920 Sanford Ave.
- Miss M. Karl, 916 Sanford Ave.
- Mrs. H. L. Gebhard, 928 Sanford Ave.
- Mrs. Sam'l G. Morrill, 942 Sanford Ave.
- George F. Fischer, 936 Sanford Ave.
- Karl Schroth, 896 Sanford Ave.
- Henry George Serbe, 888 Sanford Ave.
- John H. Nelles, 884 Sanford Ave.
- Mrs. G. A. Lang, 933 Sanford Ave. 20
- Lena Federolf, 912 Sanford Ave.
- Mrs. C. Berger, 911 Sanford Ave.
- S. O. Slenuel, 883 Sanford Ave.
- Mrs. C. Trahman, Mr. Chas. Trahman, 873
Sanford Ave.
- Edward A. Zusi, Jr., 925 Sandford Ave.
- George Hunkele, 854 Sanford Ave.
- Rudolf Schoewer, 858 Sandfort Ave.
- Hugo Boepple, 892 Sanford Ave.
- Hugo F. Klaus, 1437 Clinton Ave. 30
- Fred O. Harris, 931 Sanford Ave.
- Henry Pfeifer, 964 Sanford Ave.
- Anton K. Sweetra, 12 Clinton Ter.
- Louis Caruso, 987 Sanford Ave.
- Maurice Rogosin, 989 Sanford Ave.
- Joseph H. Weber, 1006 Sanford Ave.
- Mrs. Lina Schaaf, 998 Sanford Ave.
- Frank Fischer, 986 Sanford Ave.
- Michael A. Filan, 980 Sanford Ave.
- Joseph Reimer, 976 Sanford Ave. 40
- Julius Krautter, 997 Sanford Ave.

Return to Writ.

EXTRACT FROM MINUTES
of
BOARD OF ADJUSTMENT MEETING

April 7, 1927.

Irvington, N. J.

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APPLICATION of Paramount Realty Company (Philip Kline, attorney) for construction of stores and apartments, building to be erected on the northwest corner of Clinton Avenue and Sanford Avenue.

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Submitted plans to State Board of Tenement House Supervision, and have received its approval. Plans also submitted to our Building Inspector, and by him rejected. Therefore, Mr. Kline appealed to the Board for permit to construct building.

Mr. Charles H. Stewart was present representing objectors in the immediate vicinity. He presented the following petition:

To the Board of Adjustment
Of the Town of Irvington.

Gentlemen:

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We, the undersigned, citizens and property owners of property located in the immediate neighborhood of the Northwest corner of Sanford Avenue and Clinton Avenue, Irvington, do hereby protest the variation of the provisions of an ordinance entitled, "An Ordinance establishing Building Zones and Regulations and providing penalties for their violation," under an application made by the Paramount Realty & Construction Co., Inc., for permission to erect stores and apartments on their premises located on said

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Return to Writ.

Northwest corner of said streets, for the following reasons:

First: The area in which said property is located is designated on the zoning map of the Town of Irvington as a Class "A" Residence Zone.

Second: The character of the neighborhood is established and the houses in the immediate vicinity are all one and two-family houses costing from \$10,000 upwards.

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Third: There is no local demand for stores in the neighborhood, ample shopping facilities being provided within a reasonable distance.

Fourth: The intersection of Clinton Avenue and Sanford Avenue is already an exceedingly dangerous vehicular crossing, and the erection of stores will add to the congestion and increase the hazard of accident and thereby endanger the life and limb of both pedestrians and occupants of vehicles traveling in the neighborhood.

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Fifth: The erection of stores at said location will naturally result in automobiles being parked along the curb line, which will decrease the travel width of the street, and, with the traffic post located as it is at the centre of the intersection of the streets, will be a further element in increasing the hazard of accident.

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We, therefore, respectfully urge that the application of the Paramount Realty & Construction Company, Inc., be denied.

Yours respectfully,

(Signed by 72 residents.)

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Return to Writ.

Mr. Stewart discussed the situation in regard to traffic, property restriction, congestion from automobiles, and wagons parking at stores, and stated that the neighborhood was well supplied with stores on Stuyvesant and Sanford Avenue and Springfield Avenue.

10 C. Hill, of 16 Ridgewood Avenue, also objected.

A. K. Swetra, of 969 Sanford Avenue, stated that the area of "A" Zone in Irvington is rather small, and that this section around Sanford Avenue is the pride of Irvington. Why spoil it? It was restricted by deed for about fourteen more years.

20 Roland Larter, of 411 Lyons Avenue, with house at 1383 Clinton Avenue, spoke in favor of the apartment house, and also stores. He, however, does not live on Clinton Avenue, but rents his house there.

Margaret Jensen, of 965 Sanford Avenue, objected to apartment houses or stores. She believed there was no need for them, there being plenty a couple of blocks up and down.

M. S. McKenna, of 1415 Clinton Avenue, objected to stores and apartments.

30 Henry Pfeiffer, of 964 Sanford Avenue, was present and said that he did not think it nice to put either apartments or stores there.

Resident of 917 Sanford Avenue objected to apartments or stores in that vicinity.

40 Sam Morill, of 942 Sanford Avenue, spoke, saying that the property was restricted by deed, and he thought it was a shame after Sanford Avenue reaches its height as a residential section, to spoil it now. He asserted that absolutely ninety per cent are against it, and that three-quarters of the property is restricted until about

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1934. This, he said, happens to be one piece of property not restricted when sold.

Henry Gebhard, of 928 Sanford Avenue, was present and objected.

Alfred Hartley, 1406 Clinton Avenue, was present and objected.

George F. Fischer, 946 Sanford Avenue, objected.

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George W. Mitchel, 1409 Clinton Avenue, objected to stores.

J. D. Riley, 1410 Clinton Avenue, objected to apartments or stores in that zone. He stated that he came from Pennsylvania, and one of the reasons which induced him to buy, was the restricted area.

Edward Zehlein, of 941 Sanford Avenue, objected most emphatically. He said it would spoil the neighborhood and there was no justification for it.

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MOTION made and seconded that the application be rejected.

Ays: Windle, Hull, Stanley, Stengel.

No: None.

The application was therefore rejected.

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Return to Writ.

10	<p>In the matter of the application of the Paramount Realty & Construction Co. Inc., for permission to erect stores and apartments on the Northwest corner of Sanford Avenue and Clinton Avenue, in the Town of Irvington.</p>	}	<i>Findings.</i>
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20 The written application of the Paramount Realty & Construction Co., Inc., having come before this Board for hearing, after having been duly advertised, and the Board having heard the applicants, through their attorneys, and both written and verbal objections having been made

30 by resident property owners in the vicinity and both within and without a distance of 200 feet from the premises, and the Board having considered the arguments and evidence of the applicant and of the objectors and the reasons assigned by each as to why an ordinance of the Town of Irvington, entitled, "An Ordinance Establishing Building Zones and Regulations and Providing Penalties for their Violation," should and should not be varied in the respect applied

for the applicant, find as follows: That the said ordinance in view of the evidence submitted tends to promote the safety and welfare of the citizens of the Town of Irvington so far as its restrictive provisions effect the use of the property owned by the applicants and affected by the appeal of the applicants for a variation of the provisions

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of said ordinance, and that the application should be denied.

Application denied.

Milton O. Hull
Robert F. Stengel

WILLIAM WINDLE,
President.

HARRY E. STANLEY,
Secretary.

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(ORDINANCE NO. 378.)

An Ordinance Establishing Building Zones and Regulations and Providing Penalties for their Violation. 20

The Board of Commissioners of the Town of Irvington do ordain as follows:

Section I. Kinds of Zones.

For the purpose of regulating and restricting the location of trades and industries and the location of buildings designed for specified uses, for the purposes of regulating and limiting the height and bulk of buildings hereafter erected and for the purpose of regulating and determining the area of yards, courts and other open spaces for buildings hereafter erected, the Town of Irvington is hereby divided into seven classes of zones: 30

1. "A" residence zones.
2. "B" residence zones.
3. "C" residence zones.
4. "D" residence zones.
5. Business zones. 40

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6. Light industrial zones and

7. Heavy industrial zones.

as shown on the building zone map which accompanies this ordinance and is hereby declared to be a part thereof. The zones designated on said map are hereby established. The zone designations which accompany said building zone map are hereby declared to be a part thereof. No building or premises shall be erected or used for any purpose other than a purpose permitted in the zone in which such building or premises is located. No building or part of a building shall be erected except in conformity with the regulations herein prescribed for the zone in which such building is located.

20 Section II. Use Regulations Controlling Residence Zones:

In any residence zone, no building or premises shall be used and no building shall be erected which is arranged, intended or designed to be used, except for one or more of the following uses:

1. Dwellings or tenements, including the office of a physician, surgeon, dentist, artist, musician or other professions, when situated in the same dwelling or apartment used by such physician, surgeon, dentist, artist, musician or other professions as his private dwellings.

2. Boarding houses.

3. Hotels.

4. Churches.

5. Schools, libraries or public museums.

6. Clubs, except clubs the chief activity of which is a service carried on as a business.

40 7. Philanthropic or eleemosynary uses or institutions, other than correctional institutions.

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8. Railroad passenger stations.

9. Farming, truck gardening, nurseries or greenhouses.

10. Accessory uses customarily incidental to the above uses, the term accessory use, however, not including a business or any building or use not located on the same lot with the building to which it is accessory. A garage or a group of garages for more than three motor vehicles shall not be permitted as an accessory use; but such garage or garages need not be occupied by the motor vehicles owned by the occupant of the premises to come within the definition of an accessory garage. Such garage may not, however, be occupied by any commercial truck except as permitted in Section XIV.

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Section XIV. (As amended November 3, 1926).

BOARD OF ADJUSTMENT.

(a) A Board of Adjustment is hereby established. Said Board shall consist of five members, to be appointed by the Board of Commissioners of the Town. Of the original appointees to such Board, one member shall be appointed for a term of one year, two members for a term of two years, and two members for a term of three years. The successors to the original appointees shall be appointed for a term of three years. All appointees to fill vacancies shall be appointed for the unexpired term of any member whose term becomes vacant. A member may be removed, for cause, by the Board of Commissioners of the Town, upon written charges being filed and after a public hearing had thereon. The members of the Board shall receive no compensation for their services.

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Return to Writ.

(b) The Board of Adjustment shall, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this ordinance, and in harmony with its general purpose and intent, and in accordance with such general or specific rules as are therein contained.

(c) The Board of Adjustment shall adopt rules in accordance with the provisions of this ordinance.

(d) The Board of Adjustment shall have the powers specifically set forth in an act entitled, "An Act to amend an act entitled, 'A supplement to an act entitled, 'An act concerning municipalities,' approved March twenty-seventh, one thousand nine hundred and seventeen,' " approved March eleventh, one thousand nine hundred and twenty-four, (said act being Chapter 58 of the Laws of 1925), and any amendments or supplements thereto; and such further powers as may be contained in "An Act concerning municipalities," approved March twenty-seventh, one thousand nine hundred and seventeen, and the acts amendatory thereof or supplementary thereto.

30 Section XVI. Certificates of Occupancy.

No land shall be occupied or used and no building hereafter erected or altered shall be occupied or used in whole or in part for any purpose whatsoever until a certificate of occupancy shall have been issued by the building inspector, stating that the premises of building complies with all the provisions of this ordinance.

No change or extension of use and no alteration shall be made in a non-conforming use or premises without a certificate of occupancy hav-

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ing first been issued by the building inspector that such change, extension or alteration is in conformity with the provisions of this ordinance.

Certificates of occupancy shall be applied for at the same time that the building permit is applied for and shall be issued within ten days after the erection or alteration of the building shall have been completed. A record of all certificates shall be kept on file in the office of the building inspector and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected. A fee of two dollars shall be charged for each original certificate and one dollar for each copy thereof.

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No permit for excavation for, or the erection of any building shall be issued before application has been made for a certificate of occupancy. No building or premises may be occupied until such certificate shall have been issued.

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Section XX. Interpretation of Regulations:

In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. It is not intended by this ordinance to repeal, abrogate, annul, or in any way to impair or interfere with any existing provisions of law or ordinance or any rules, regulations or permits previously adopted or issued, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this ordi-

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Return to Writ.

10 nance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger yards, courts or other open spaces than are imposed or required by such existing provisions of law or ordinance, or by such rules, regulations or permits, or by such easements, covenants or agreements, the provisions of this ordinance shall control.

Section XXI. Enforcement and Penalties.

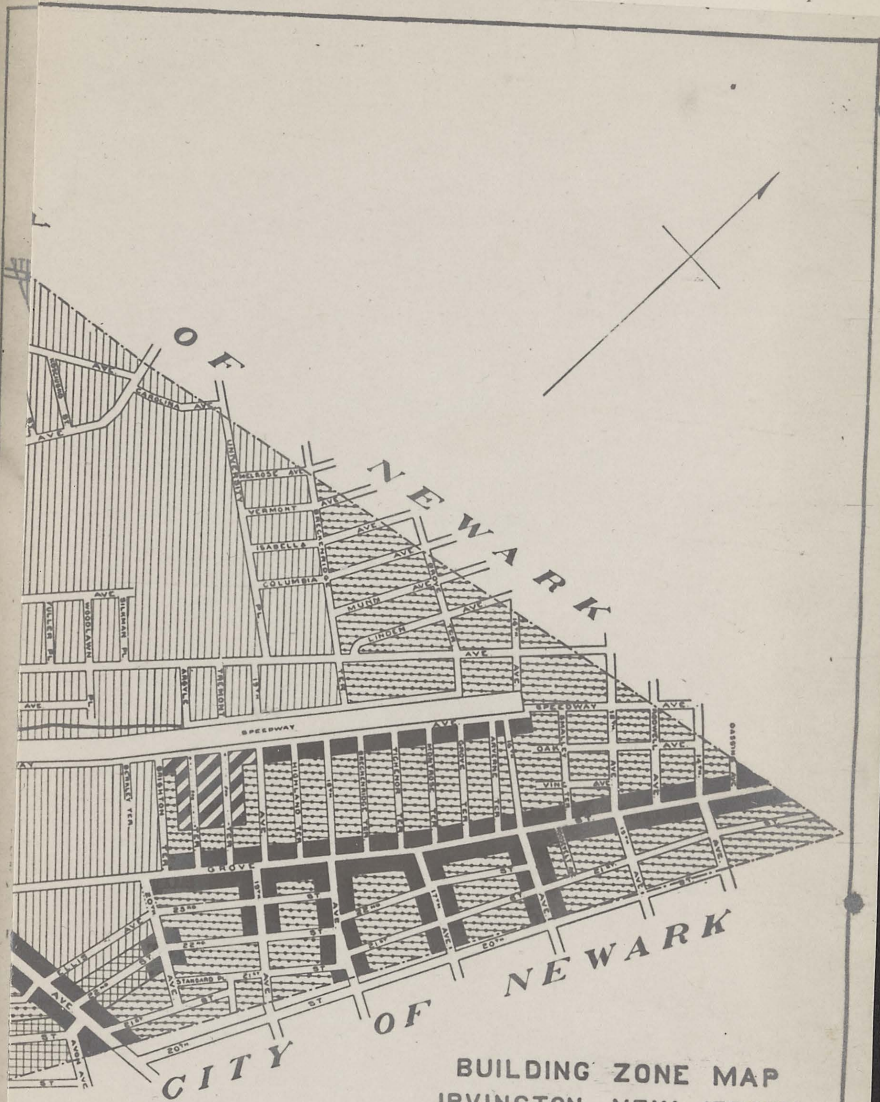
20 This ordinance shall be enforced by the building inspector. The general agent, architect, builder, contractor or any other person who commits, takes part or assists in any violation of this ordinance or who maintains any building or premises in which any violation of this ordinance shall exist, shall, for each and every violation be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00). Each day that a violation is permitted to exist shall constitute a separate offense.

Section XXII. Validity of Ordinance:

30 If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged, and the rest of this ordinance shall remain valid and effective.








Section XXV. This ordinance shall take effect immediately.

Adopted March 3, 1922.

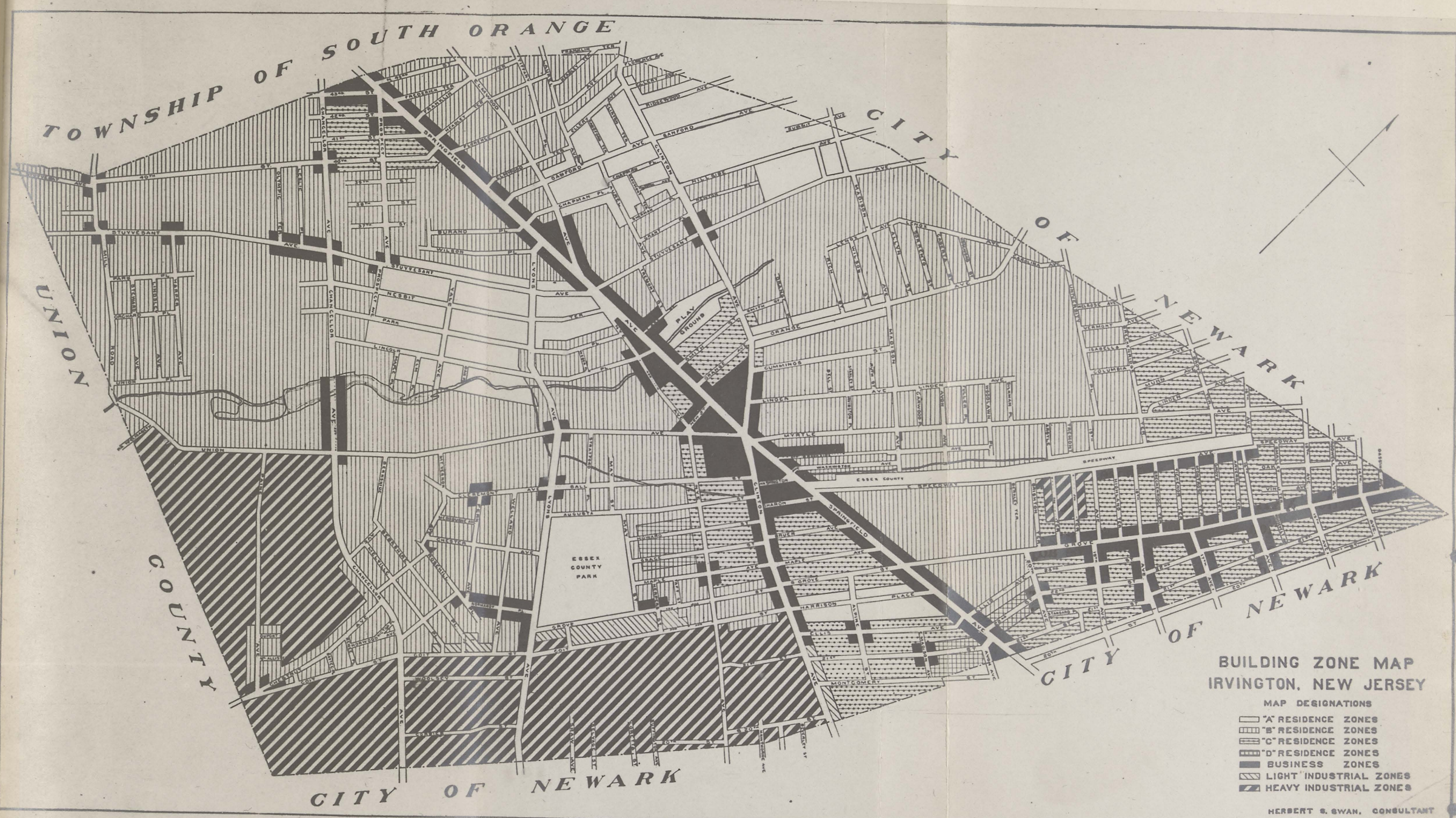


**BUILDING ZONE MAP
IRVINGTON, NEW JERSEY**

MAP DESIGNATIONS

-  'A' RESIDENCE ZONES
-  'B' RESIDENCE ZONES
-  'C' RESIDENCE ZONES
-  'D' RESIDENCE ZONES
-  BUSINESS ZONES
-  LIGHT INDUSTRIAL ZONES
-  HEAVY INDUSTRIAL ZONES

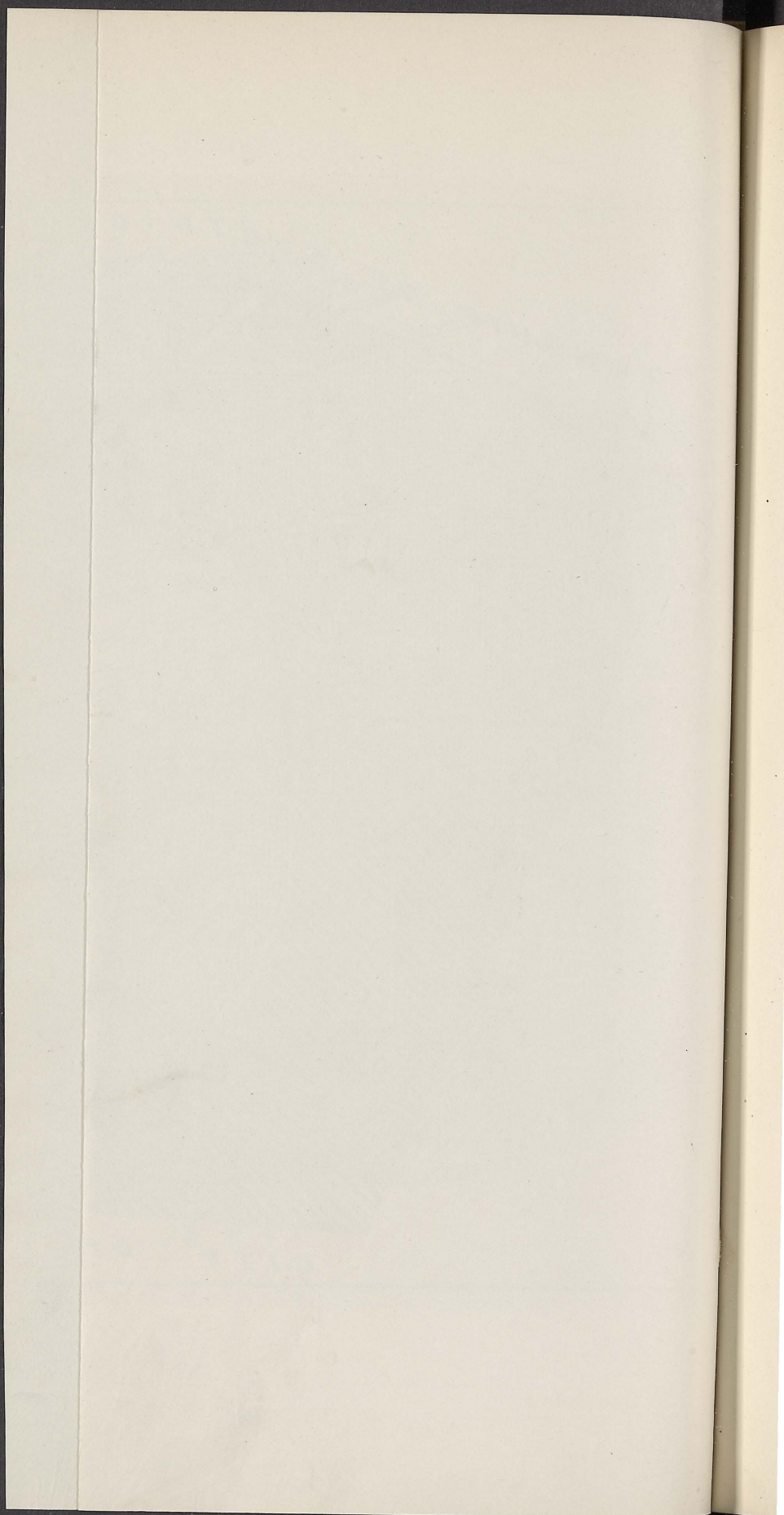
HERBERT S. SWAN, CONSULTANT



**BUILDING ZONE MAP
IRVINGTON, NEW JERSEY**

- MAP DESIGNATIONS
- "A" RESIDENCE ZONES
 - ▨ "B" RESIDENCE ZONES
 - ▩ "C" RESIDENCE ZONES
 - ▧ "D" RESIDENCE ZONES
 - ▦ BUSINESS ZONES
 - ▤ LIGHT INDUSTRIAL ZONES
 - ▥ HEAVY INDUSTRIAL ZONES

HERBERT S. SWAN, CONSULTANT



Return to Writ.

In the matter of the application of the PARAMOUNT REALTY & CONSTRUCTION Co., INC., for permission to erect stores and apartments on the Northwest corner of Sanford Avenue and Clinton Avenue, in the Town of Irvington.

Findings.

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The written application of the Paramount Realty & Construction Co., Inc., having come before this Board for hearing, after having been duly advertised, and the Board having heard the applicants, through their attorneys, and both written and verbal objections having been made by resident property owners in the vicinity and both within and without a distance of 200 feet from the premises, and the Board having considered the arguments and evidence of the applicant and of the objectors and the reasons assigned by each as to why an ordinance of the Town of Irvington, entitled, "An Ordinance establishing Building Zones and Regulations and providing penalties for their violation," should and should not be varied in the respect applied for by the applicant, find as follows: That the said ordinance in view of the evidence submitted tends to promote the safety and welfare of the citizens of the Town of Irvington so far as its restrictive provisions effect the use of the property owned by the applicants and affected by the appeal of the applicants for a variation of the provisions

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of said ordinance, and that the application should be denied.

Application denied.

WILLIAM WINDLE,
President.

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HARRY E. STANLEY,
Secretary.

Delivered May 7, 1927.

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Reasons.

REASONS.

Filed June 7, 1927.

NEW JERSEY SUPREME COURT.

PARAMOUNT REALTY & CONSTRUCTION Co., Inc.,

Prosecutor,

vs.

GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, and the TOWN OF IRVINGTON,

Defendants.

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*On
Certiorari.*

Reasons.

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The said prosecutor by its attorney, comes and prays that the action of the Superintendent of Buildings of the Town of Irvington and the Board of Adjustment of the Town of Irvington, may be set aside, reversed and for nothing holden for the following reasons:

1. The ordinance of the Town of Irvington, known as "An Ordinance establishing Building Zones and Regulations and providing penalties for their violation," adopted March 3, 1922, and the various amendments and supplements thereto, upon which the Superintendent of Buildings of the Town of Irvington and the Board of Adjustment of the Town of Irvington, relied in refusing to grant to the prosecutor a permit to erect a two-story brick building containing stores on the ground floor and dwelling apartments on the second floor, on a plot of ground in the Town

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Reasons.

of Irvington, County of Essex and State of New Jersey, and more particularly described as follows:

10 BEGINNING at the corner formed by the intersection of the northerly line of Clinton avenue West with the westerly line of Sanford avenue and from thence running (1) north twenty-eight degrees fifty-one minutes east along the said westerly line of Sanford avenue ninety-one feet ten inches to the southerly line of land conveyed to Regina Gasser by Frank I. Voorhees by deed recorded in the Essex County Register's Office in Book L. 25 of Deeds, page 131; thence running along the said line of lands conveyed as aforesaid to Gasser and binding thereon north sixty-one degrees west eighty feet to the westerly line of land formerly belonging to said Voorhees; thence (3) south twenty-eight degrees 20 fifty-one minutes west along line of land of said Voorhees one hundred and six feet five inches to said northerly line of Clinton avenue West; thence (4) along said line of Clinton avenue West southeasterly eighty-one feet four inches to said line of Sanford avenue and the place of beginning,

is unconstitutional and violative of both the State and Federal Constitutions, in so far as it attempts to prohibit the erection of said building on said premises, in that it deprives the prosecutor of its right to possess and enjoy its property, 30 thereby violating the first paragraph of Article I of the Constitution of the State of New Jersey, and also paragraph 16 of Article I of the Constitution of the State of New Jersey, in that it takes private property for public use without just compensation, and also is in violation of the rights secured to the prosecutor by the 14th Amendment to the Constitution of the United States.

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Reasons.

2. The said ordinance of the Town of Irvington, upon which the Board of Adjustment of the Town of Irvington relied in its refusal to reverse the action of the Superintendent of Buildings of the Town of Irvington, in refusing to grant the prosecutor a permit to erect a two-story brick building to contain stores on the ground floor and dwelling apartments on the second floor upon the said premises, is unconstitutional insofar as it relates to the application of the prosecutor and the premises in question, prohibiting the erection of said two-story brick building in said location. The enforcement of said ordinance of the Town of Irvington in depriving the prosecutor of the use and enjoyment of its property, is in violation of the 1st paragraph of Article I and the 16th paragraph of Article I of the Constitution of New Jersey.

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3. The evidence submitted before the Board of Adjustment of the Town of Irvington at the hearing of the appeal of the prosecutor from the refusal of the Superintendent of Buildings of the Town of Irvington to grant a permit to the prosecutor for the erection of said building, does not justify in law, the refusal of said Board of Adjustment to grant to the prosecutor the building permit applied for for the erection of said building.

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4. That said action of the Town of Irvington, its Superintendent of Buildings and its Board of Adjustment, as aforesaid, is in divers other respects illegal, unjust and oppressive, and should be set aside and for nothing holden.

COHEN & KLEIN,
Attorneys of Prosecutor.

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Order.

Service of a copy of the within Reasons, is hereby acknowledged this 6th day of June, 1927.

CHARLES H. STEWART,
Atty. of Defendants.

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ORDER.

NEW JERSEY SUPREME COURT.

PARAMOUNT REALTY & CONSTRUCTION Co., INC.,

Prosecutor,

vs.

20 GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, and the TOWN OF IRVINGTON,

Defendants.

*On
Certiorari.*

Order.

30 It being represented to the Court that since the institution of the certiorari proceedings entitled as above, the defendant, George F. Schmitt has been succeeded in office as Superintendent of Buildings of the Town of Irvington, by Joseph Diebold, and it further appearing that the said Joseph Diebold, as successor to the said George F. Schmitt, joined in certifying the return to the writ in this proceeding, and upon reading the consent hereunder written, it is on this 3rd day of September, 1927,

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Order.

ORDERED, that the said Joseph Diebold be, and he is hereby added as a party defendant to these proceedings.

On motion of

COHEN & KLEIN,
Attorneys of Prosecutor.

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We hereby consent to the making and entry of the above order.

COHEN & KLEIN,
Attorneys of Prosecutor.

CHARLES H. STEWART,
Attorney for above-named Defendants
and Joseph Diebold.

Let the above rule be entered on the minutes.

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WM. S. GUMMERE,
Chief Justice.

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Stipulation of Facts.

STIPULATION OF FACTS.

NEW JERSEY SUPREME COURT.

10	PARAMOUNT REALTY & CONSTRUCTION Co., INC., <i>Prosecutor.</i>	}	<i>On Certiorari. Stipulation of Facts.</i>
	<i>vs.</i>		
20	GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, and the TOWN OF IRVINGTON, <i>Defendants.</i>		

Counsel for the respective parties in the above-entitled cause deeming it advisable that the facts in the case be stipulated and made part of the record, the parties do hereby stipulate as follows:

1. That the defendant, the Town of Irvington, New Jersey, is a municipal corporation, and that the defendant, George F. Schmitt, at the times mentioned in the petition of the prosecutor filed herein, was the Superintendent of Buildings of the Town of Irvington, who has been succeeded in office by Joseph Diebold, the present Superintendent of Buildings of the Town of Irvington, and that the Board of Adjustment of the Town of Irvington is a constituted body under the laws of the State of New Jersey.

2. That the prosecutor at the times mentioned in its said petition and at the time of the commencement of the above cause, was and still is the owner in fee of a plot of land in the Town

Stipulation of Facts.

of Irvington, County of Essex and State of New Jersey, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of Clinton Avenue West with the westerly line of Sandford Avenue and from thence running (1) north twenty-eight degrees fifty-one minutes east along the said westerly line of Sandford Avenue ninety-one feet ten inches to the southerly line of land conveyed to Regina Gasser by Frank I. Voorhees by deed recorded in the Essex County Register's Office in Book L. 25 of Deeds, page 131; thence running along the said line of lands conveyed as aforesaid to Gasser and binding thereon north sixty-one degrees west eighty feet to the westerly line of land formerly belonging to said Voorhees; thence (3) south twenty-eight degrees fifty-one minutes west along line of lands of said Voorhees one hundred and six feet five inches to said northerly line of Clinton Avenue West; thence (4) along said line of Clinton Avenue West southeasterly eighty-one feet four inches to said line of Sandford Avenue and the place of BEGINNING.—That there are no restrictions of record against said premises.

3. That the Town of Irvington has adopted a zoning ordinance entitled, "An Ordinance Establishing Building Zones and Regulations and Providing Penalties for their Violation," adopted March 3, 1922, and that under said Ordinance the above described premises of the prosecutor, are located in what is designated by said ordinance as a class "A" residence zone, restricting the use of said premises to the erection and construction of buildings to contain only one or two families and in which residence zone, business structures or structures containing commercial stores are not permitted under the provisions of said zoning ordinance.

Stipulation of Facts.

4. That said ordinance is the one under which the defendants seek to justify their refusal to issue to the prosecutor the building permit applied for by the prosecutor.

10 5. That the prosecutor seeks to erect upon said plot of land a two-story brick building containing on the ground floor eight commercial stores and five living apartments on the second floor.

6. That excepting for the fact that the prosecutor seeks to erect commercial stores in a district where such use is not allowed by said ordinance, the prosecutor has in all respects complied with the requirements of law pertaining to its application and the erection of said building.

20 7. That the action of the Superintendent of Buildings of the Town of Irvington in refusing to issue the permit sought by the prosecutor was sustained by the Adjustment Board of the Town of Irvington.

8. The following was adduced before the Board of Adjustment at its hearing of the application of the prosecutor for a permit to erect said building.

30 Mr. Philip Klein, representing the prosecutor, Paramount Realty & Construction Co., Inc., applied in behalf of the prosecutor for a permit to erect said stores, and stated that, "On March 1, 1927, I, in behalf of the Paramount Realty & Construction Co., Inc., and in the presence of Rudolph Kruger, the Architect of the Paramount Realty & Construction Co., Inc., applied to George F. Schmitt, Superintendent of Buildings of the Town of Irvington, for a permit for the erection of said building by application duly submitted to
40 said Superintendent of Buildings, and submitted

Stipulation of Facts.

to the said George F. Schmitt, the plans and specifications drawn in accordance with the building code of the Town of Irvington, and also tendered said Superintendent of Buildings the payment of any legal fees fixed by the ordinances of the Town of Irvington for the granting of said permit; that said plans and specifications were stamped duly approved by the Board of Tenement House Supervision of the State of New Jersey; that the said George F. Schmitt, Superintendent of Buildings, refused to issue a permit or to accept any legal fees therefor, and wrote across said plans 'Rejected'; that the said George F. Schmitt, Superintendent of Buildings, refused to accept said plans for filing and returned said plans and specifications to me giving as his reasons that the zoning ordinance of the Town of Irvington forbids the erection of said building upon said premises, in that the premises are located in a residence zone prohibiting the construction of any building to contain commercial stores; that notice was given to the Superintendent of Buildings, George F. Schmitt, advising him that the Paramount Realty & Construction Co., Inc., appealed to the Board of Adjustment of the Town of Irvington from his decision denying the permit."

Mr. Klein then presented said plans, which had marked upon them the approval of the State Board of Tenement House Supervision and also the rejection of George F. Schmitt, Superintendent of Buildings of the Town of Irvington, for the consideration of the members of the Board of Adjustment.

Mr. Klein then further stated that the requirements of the Board of Adjustment of the Town of Irvington had been complied with and filed

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Stipulation of Facts.

with the Adjustment Board, United States Post Office Registry Receipts showing that the letters of notice to property owners within a two hundred foot radius of the premises in question had been received by all property owners with the exception of three; that Mr. Klein stated that
 10 letters had been mailed to those three also and had not been returned.

Mr. Charles H. Stewart was present representing objectors in the immediate vicinity of the premises in question, and presented to the Board of Adjustment, the following petition, which he read:

To The Board of Adjustment
 Of the Town of Irvington.

20 Gentlemen:

We, the undersigned, citizens and property owners of property located in the immediate neighborhood of the northwest corner of Sanford Avenue and Clinton Avenue, Irvington, do hereby protest the variation of the provisions of an ordinance entitled, "An Ordinance Establishing Building Zones and Regulations and Providing Penalties for Their Violation," under an application made by the Paramount Realty & Construction Co., Inc., for permission to erect stores and apartments on their premises located on
 30 said Northwest corner of said streets, for the following reasons:

First: The area in which said property is located is designated on the zoning map of the Town of Irvington as a Class "A" Residence Zone.

Second: The character of the neighborhood is established and the houses in the immediate vi-
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Stipulation of Facts.

cinity are all one and two-family houses costing from \$10,000.00 upwards.

Third: There is no local demand for stores in the neighborhood, ample shopping facilities being provided within a reasonable distance.

Fourth: The intersection of Clinton Avenue and Sanford Avenue is already an exceedingly dangerous vehicular crossing, and the erection of stores will add to the congestion and increase the hazard of accident and thereby endanger the life and limb of both pedestrians and occupants of vehicles traveling in the neighborhood. 10

Fifth: The erection of stores at said location will naturally result in automobiles being parked along the curb line, which will decrease the travel width of the street, and, with the traffic post located as it is at the centre of the intersection of the streets, will be a further element in increasing the hazard of accident. 20

We, therefore, respectfully urge that the application of the Paramount Realty & Construction Company, Inc., be denied.

Yours respectfully,

Loren Jensen, 965 Sanford Ave.

Raymond F. Vanderhoff, 945 Sanford Ave.

Irvington, N. J. 30

E. M. Watson, 945 Sanford Ave.

Allwin P. Schaefer, 949 Sanford Ave.

Mary G. Zehlein, 941 Sanford Ave.

A. Cohen, 937 Sanford Ave.

Helen S. Harris, 931 Sanford Ave.

William J. Moore, Clara J. Moore,
921 Sanford Ave.

Mrs. J. Albiez, 917 Sanford Ave.

Mrs. E. Grabach, 915 Sanford Ave.

Stipulation of Facts.

- Fred C. Toler, 893 Sanford Ave.
Irvington, N. J.
- R. Zwigard, 889 Sanford Ave.
- Mrs. John Reino, 900 Sanford Ave.
- Mrs. O. P. Schaller, 920 Sanford Ave.
- 10 Miss M. Karl, 916 Sanford Ave.
- Mrs. H. L. Gebhard, 928 Sanford Ave.
- Mrs. Sam'l G. Morrill, 942 Sanford Ave.
- George F. Fischer, 936 Sanford Ave.
- Karl Schroth, 896 Sanford Ave.
- Henry George Serbe, 888 Sanford Ave.
- John H. Nelles, 884 Sanford Ave.
- Mrs. G. A. Lang, 933 Sanford Ave.
- Lena Federolf, 912 Sanford Ave.
- Mrs. C. Berger, 911 Sanford Ave.
- S. O. Slenuel, 883 Sanford Ave.
- 20 Mrs. C. Trahman
- Mr. Chas. Trahman, 873 Sanford Ave.
- Edward A. Zusi, Jr., 925 Sanford Ave.
- George Hunkele, 854 Sanford Ave.
- Rudolf Schoewer, 858 Sanford Ave.
- Hugo Boepple, 892 Sanford Ave.
- Hugo F. Klaus, 1437 Clinton Ave.
- Fred O. Harris, 931 Sanford Ave.
- Henry Pfeifer, 964 Sanford Ave.
- Anton K. Sweetra, 12 Clinton Ter.
- 30 Louise Caruso, 987 Sanford Ave.
- Maurice Rogosin, 989 Sanford Ave.
- Joseph H. Weber, 1006 Sanford Ave.
- Mrs. Lina Schaaf, 998 Sanford Ave.
- Frank Fischer, 986 Sanford Ave.
- Michael A. Filan, 980 Sanford Ave.
- Joseph Reimer, 976 Sanford Ave.
- Julius Krautter, 997 Sanford Ave.

Mr. Stewart then stated on behalf of himself
and other objecting property owners, "Clinton
40 Avenue was a main artery, running from Irving-

Stipulation of Facts.

ton Center to the center of South Orange, and thus, through South Orange Avenue, constituted a main artery to the western parts of the State; that the grade of said street, as it approached Sanford Avenue going westwardly, was a very steep hill; that it was very heavily traveled; that Sanford Avenue, running approximately north and south and crossing Clinton Avenue at right angles, was a county road and also very heavily traveled, and that at the intersection of the two streets, there was a traffic signal commonly called a 'blinker'; that it was a very dangerous crossing and numerous accidents had occurred there, notwithstanding the traffic signal, some of which had resulted in fatalities to the occupants of cars, and that in many other instances the occupants had been seriously injured; that there was heavy traffic on both streets at all hours of the day and night, and that, by reason thereof, the intersection was an exceedingly dangerous one; that the erection of stores would occasion parking of automobiles in large numbers and the stopping of trucks, for the delivery of goods to stores, at the curbs of both intersecting streets, which would tend to further obstruct the roadway and make it much more dangerous; that stores and shops are amply supplied for all proper purposes of inhabitants of that section and within a very short distance of the location sought to be used by the prosecutor, such stores being located on Stuyvesant Avenue, Sanford Avenue and Springfield Avenue."

The Board of Adjustment then called upon any one present who desired to voice their approval or objection to said application, to state their approval or objections, which request by the Board was made with the following result:

Stipulation of Facts.

C. Hill of 16 Ridgewood avenue also objected.

A. K. Sweetra, of 969 Sanford avenue, stated that the area of "A" Zone in Irvington is rather small, and that this section around Sanford avenue is the pride of Irvington. Why spoil it?

10 It was restricted by deed for about fourteen more years.

Roland Larter, of 411 Lyons avenue, with house at 1383 Clinton avenue spoke in favor of the apartment house, and also stores. He, however, does not live on Clinton avenue, but rents his house there.

Margaret Jensen, of 965 Sanford avenue, objected to apartment houses or stores. She believed there was no need for them, there being plenty a couple of blocks up and down.

20 M. S. McKenna, of 1415 Clinton avenue, objected to stores and apartments.

Henry Pfeiffer, of 964 Sanford avenue, was present and said that he did not think it nice to put either apartments or stores there.

Resident of 917 Sanford avenue objects to apartments or stores in that vicinity.

30 Sam Morrill, of 942 Sanford avenue, spoke, saying that the property was restricted by deed, and he thought it was a shame after Sanford avenue reaches its height as a residential section to spoil it now. He asserted that absolutely ninety per cent. are against it, and that three-quarters of the property is restricted until about 1934. This, he said, happens to be one piece of property not restricted when sold.

Henry Gebhard, of 928 Sanford avenue, was present and objected.

40 Alfred Hartley, 1406 Clinton avenue, was present and objected.

Stipulation of Facts.

George F. Fischer, 946 Sanford avenue, objected.

George W. Mitchel, 1409 Clinton avenue, objected to stores.

J. D. Riley, 1410 Clinton avenue, objected to apartments or stores in that zone. He stated that he came from Pennsylvania, and one of the reasons which induced him to buy, was the restricted area. 10

Edward Zehlein, of 941 Sanford avenue, objected most emphatically. He said it would spoil the neighborhood and there was no justification for it.

The Board of Adjustment then asked Mr. Klein whether he had any more to say, and he replied as follows: "The particular premises in question at the northwest corner of Sanford and Clinton Avenues, Irvington, N. J., was located at the intersection of two important transit highways, and since practically all of the surrounding property had been built up, and since there was on the premises in question an old, dilapidated house, the construction of the building by the Paramount Realty & Construction Co., Inc., of the type outlined in the plans and specifications, would be an ornament and an advantage to the surrounding property, and that the near future would see the development of both Clinton Avenue and Sanford Avenue in that vicinity into a business center, and that the construction of said building would not materially increase traffic at that particular intersection." 20 30

Motion made and seconded that the application be rejected.

Ayes: Windle, Hull, Stanley, Stengel.

No: None. 40

Stipulation of Facts.

The application was, therefore, rejected.

The members of the Board then stated that they would file their decision in writing and would furnish Mr. Klein with a copy of the same as soon as they completed it.

10 August 26, 1927.

COHEN & KLEIN,
Attorneys for Prosecutor.

CHARLES H. STEWART,
Attorney for Defendants.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed June 6, 1928.

NEW JERSEY SUPREME COURT.

No. 205 January Term, 1928.

PARAMOUNT REALTY AND CON-
STRUCTION COMPANY, INC.,
Prosecutor,

vs.

GEORGE F. SCHMITT, Superinten-
dent of Buildings of the Town
of Irvington, THE BOARD OF
ADJUSTMENT OF THE TOWN OF
IRVINGTON, and THE TOWN OF
IRVINGTON, and JOSEPH DIE-
BOLD, Superintendent of Build-
ings of Irvington,
Respondents.

*On
Certiorari.*

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Before Justices Trenchard, Kalisch and Katzenbach.

For the prosecutor, Cohen & Klein.

For the respondents, Charles H. Stewart.

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PER CURIAM:

The facts as stipulated between the parties in this cause disclose, that the prosecutor is the owner of premises located on the northwest corner of Clinton avenue and Sanford avenue in the Town of Irvington; that the prosecutor applied for a permit from the Building Inspector of the Town to erect a two-story brick building containing on the ground floor, eight commercial

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Opinion of Supreme Court.

stores, and on the second floor five living apartments; that the prosecutor has complied in all respects with the requirements for making an application for a permit; that the prosecutor's application is for the erection of a building to contain commercial stores in a district where
10 such use is not allowed by the zoning ordinance of the Town of Irvington. The application for the permit was in consequence of the said zoning ordinance refused.

The prosecutor thereupon appealed to the Board of Adjustment from the refusal of the Building Inspector to grant the application for a permit, which Board, after a hearing, denied the prosecutor's application.

From the stipulated facts in the case it appeared that the prosecutor's property is located
20 in a residential zoning district; that the character of the neighborhood as established is residential and houses therein and in the immediate vicinity are all one-family houses, costing \$10,000 and upwards; that there is no local demand for stores in the neighborhood; that the intersection of Clinton avenue and Sanford avenue is already exceedingly dangerous and the erection of stores will have a tendency to increase the hazards at that point, etc. There was also a protest signed
30 by ninety per cent. of the property owners against the granting of the permit, for the erection of stores.

We think the facts and circumstances which were before the Board of Adjustment had a tendency to establish that it was against the general welfare of the public to have stores erected on the premises in question.

It being a question of fact for the Board of
40 Adjustment to determine whether or not the

Opinion of Supreme Court.

erection of stores in the neighborhood, as contemplated, was or was not against the general welfare of the public, its finding that it was against the general welfare, supported as it is by testimony, will not be disturbed.

The writ is dismissed, but without costs.

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Rule of Affirmance Judgment.

RULE AFFIRMING JUDGMENT.

Filed September 20, 1928.

NEW JERSEY SUPREME COURT.

10 PARAMOUNT REALTY AND CON-
STRUCTION COMPANY, INC.,
Prosecutor,

vs.

GEORGE F. SCHMITT, Superinten-
dent of Buildings of the Town
of Irvington, THE BOARD OF
ADJUSTMENT OF THE TOWN OF
IRVINGTON, THE TOWN OF IRV-
20 INGTON, *et als.*,
Respondents.

*On
Certiorari.*

*Rule
Affirming
Judgment.*

The Court having inspected the transcript and proceedings of the Board of Adjustment of the Town of Irvington, returned with the writ of certiorari in this case, and the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same:

30 It is, on this 20th day of September, 1928, ORDERED, that the judgment of the Board of Adjustment of the Town of Irvington be affirmed and the writ dismissed, but without costs.

Rule entered September 20, 1928.

On motion of

CHARLES H. STEWART,
Attorney for and of Counsel with Respondents.

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Notice and Grounds of Appeal.

NOTICE AND GROUNDS OF APPEAL.

Filed September 24, 1928.

NEW JERSEY SUPREME COURT.

PARAMOUNT REALTY AND CON-
STRUCTION COMPANY, INC.,
Plaintiff-in-Error,

vs.

GEORGE F. SCHMITT, Superinten-
dent of Buildings of the Town
of Irvington, THE BOARD OF
ADJUSTMENT OF THE TOWN OF
IRVINGTON, and THE TOWN OF
IRVINGTON, and JOSEPH DIE-
BOLD, Superintendent of Build-
ings of the Town of Irving-
ton,

Defendants-in-Error.

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*On
Certiorari.*

*Notice and
Grounds of
Appeal from
Judgment of
the Supreme
Court.*

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To Charles H. Stewart, Esq., attorney for de-
fendants-in-error.

SIR:

PLEASE TAKE NOTICE that the plaintiff-in-error, the prosecutor below, appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause, on the following ground:

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Because the Supreme Court erred in affirming the judgment of the Board of Adjustment of the Town of Irvington, and in rendering judgment in favor of the respondents and against the prosecutor, for that:

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Notice and Grounds of Appeal.

1. The ordinance of the Town of Irvington, known as "An Ordinance establishing building Zones and Regulations and providing penalties for their violation," adopted March 3, 1922, and the various amendments and supplements there-
 10 to, upon which the Superintendent of Buildings of the Town of Irvington and the Board of Adjustment of the Town of Irvington relied in refusing to grant to the prosecutor a permit to erect a two-story brick building containing stores on the ground floor and dwelling apartments on the second floor, on a plot of ground in the Town of Irvington, County of Essex and State of New Jersey, and more particularly described as follows:

20 BEGINNING at the corner formed by the intersection of the northerly line of Clinton Avenue West with the westerly line of Sanford Avenue and from thence running (1) north twenty-eight degrees fifty-one minutes east along the said westerly line of Sanford avenue ninety-one feet ten inches to the southerly line of land conveyed to Regina Gasser by Frank I. Voorhees by deed recorded in the Essex County Register's Office in Book L. 25 of Deeds, page 131; thence run-
 30 ning along the said line of lands conveyed as aforesaid to Gasser and binding thereon north sixty-one degrees west eighty feet to the westerly line of land formerly belonging to said Voorhees; thence (3) south twenty-eight degrees fifty-one minutes west along line of land of said Voorhees one hundred and six feet five inches to said northerly line of Clinton Avenue West; thence (4) along said line of Clinton Avenue West south-easterly eighty-one feet four inches to said line
 40 of Sanford Avenue and place of BEGINNING,

Notice and Grounds of Appeal.

is unconstitutional and violative of both the State and Federal Constitutions, insofar as it attempts to prohibit the erection of said building on said premises, in that it deprives the prosecutor of its right to possess and enjoy its property, thereby violating the first paragraph of Article I of the Constitution of the State of New Jersey, and also paragraph 16 of Article I of the Constitution of the State of New Jersey, in that it takes private property for public use without just compensation, and also is in violation of the rights secured to the prosecutor by the 14th Amendment to the Constitution of the United States.

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2. The said ordinance of the Town of Irvington, upon which the Board of Adjustment of the Town of Irvington relied in its refusal to reverse the action of the Superintendent of Buildings of the Town of Irvington, in refusing to grant the prosecutor a permit to erect a two-story brick building to contain stores on the ground floor and dwelling apartments on the second floor upon the said premises, is unconstitutional insofar as it relates to the application of the prosecutor and the premises in question, prohibiting the erection of said two-story brick building in said location. The enforcement of said ordinance of the Town of Irvington in depriving the prosecutor of the use and enjoyment of its property, is in violation of the 1st paragraph of Article I and the 16th paragraph of Article I of the Constitution of New Jersey.

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3. The evidence submitted before the Board of Adjustment of the Town of Irvington at the hearing of the appeal of the prosecutor from the refusal of the Superintendent of Buildings of the Town of Irvington to grant a permit to the prose-

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New Jersey Court of Errors and Appeals

PARAMOUNT REALTY & CON-
STRUCTION Co., INC.,

Plaintiff-in-Error,

vs.

GEORGE F. SCHMITT, Superin-
tendent of Buildings of the
Town of Irvington, the BOARD
OF ADJUSTMENT OF THE TOWN
OF IRVINGTON, and the TOWN
OF IRVINGTON, and JOSEPH DIE-
BOLD, Superintendent of Build-
ings of the Town of Irvington,
Defendants-in-Error.

*On
Certiorari.*

*On Appeal
from the New
Jersey
Supreme
Court.*

BRIEF OF PLAINTIFF-IN-ERROR.

Facts.

This is a zoning case which was before the New Jersey Supreme Court on a writ of certiorari. The case was submitted in the October term of 1927, and on the Court's motion, was put off the term, to be listed, without notice, at the next term. In the January term of 1928, and on January 17, 1928, this case was argued orally before the Supreme Court. Subsequently, and on June 6, 1928, the Supreme Court filed a *per curiam* opinion dismissing the writ of certiorari without costs (State of Case, pp. 61-63). Judgment was thereafter entered in the Supreme Court, affirming the action of the Board of Adjustment of the Town of Irvington, and dismissing the writ of certiorari without costs. From said judgment the prosecutor appeals to this court.

The Prosecutor is the owner of premises located on the Northwest corner of Clinton avenue and Sandford avenue, in the Town of Irvington, New Jersey, running ninety-one feet ten inches along the Westerly line of Sandford avenue, and eighty-one feet four inches along the Northerly line of Clinton avenue (State of Case, p. 50, ll. 37-40, p. 51, ll. 1-27). On said premises the Prosecutor seeks a permit from the Building Inspector and proper authorities of the Town of Irvington, to erect a two-story brick building, containing on the ground floor eight commercial stores, and on the second floor, five living apartments (State of Case, p. 52, ll. 9-12). The Prosecutor has in all respects complied with the laws entitling it to receive such a permit from the authorities of the Town of Irvington, except for the fact that the Prosecutor seeks to erect a building to contain commercial stores in a district where such use is not allowed by the Zoning Ordinance of the Town of Irvington (State of Case, p. 52, ll. 13-18).

The Town of Irvington having a legally constituted Board of Adjustment, the Prosecutor appealed from the refusal of the Building Inspector to grant a permit, to said Board of Adjustment, with the result that after a hearing, the application of the Prosecutor for a permit was denied, said Board embodying its denial in written findings (State of Case, pp. 43-44).

The alleged evidence upon which said Board of Adjustment based its findings denying the application of the Prosecutor, consists of written objections in the form of a signed petition (State of Case, p. 54, l. 12, to p. 56, l. 37), and verbal objections of residents in the vicinity (State of Case, p. 56, l. 38, to p. 59, l. 17).

Said alleged evidence can be divided into two classifications: (1) Objections for esthetic reasons; (2) Objections because the erection of the proposed building by the Prosecutor would increase the traffic at the intersection of the two streets upon which Prosecutor's premises front.

Issues.

The Supreme Court erred in confirming the action of the Board of Adjustment for the following reasons:

1. The evidence adduced before the Board of Adjustment comprising objections for esthetic reasons, was not legally sufficient to entitle it to deny the permit sought by the Prosecutor.

2. The evidence adduced before the Board of Adjustment comprising objections that traffic would be increased at the intersection of the two streets upon which the Prosecutor's premises fronted, was legally insufficient to entitle the Board of Adjustment to deny the permit sought by the Prosecutor.

3. The status of the Prosecutor and the defendants was fixed before the adoption of the Zoning Amendment in New Jersey, and said Constitutional Amendment had no application to the present case.

ARGUMENT.**POINT I.**

The evidence adduced before the Board of Adjustment comprising objections for esthetic reasons was not legally sufficient to entitle it to deny the permit sought by the Prosecutor.

The Board of Adjustment could not legally consider evidence, the purpose of which was to exclude the Prosecutor's contemplated structure from the premises in question because of esthetic reasons. Some of said type of alleged evidence is as follows: A. K. Sweetra, of 969 Sandford avenue, stated that:

"The area of 'A' Zone of Irvington is rather small, and that this section around Sandford avenue is the pride of Irvington. Why spoil it? It was restricted by deed for about fourteen more years" (State of Case, p. 34, ll. 11-16).

Margaret Jensen, of 965 Sandford avenue, objected to apartments or stores because she believed:

"There was no need for them, there being plenty a couple of blocks up and down" (State of Case, p. 34, ll. 23-26).

Henry Pfeiffer, of 964 Sandford avenue, stated that he

"did not think it nice to put either apartments or stores there" (State of Case, p. 34, ll. 29-31).

Sam Morrill, of 942 Sandford avenue, stated that:

"the property was restricted by deed, and he thought it was a shame, after Sandford avenue reaches its height as a residential zone to spoil it now; * * * that 90% are against it, and that three-quarters of the property is restricted until about 1934. This,

(referring to Prosecutor's premises), happens to be one piece of property not restricted when sold" State of Case, p. 34, ll. 34-40 and p. 35, ll. 1-2).

J. D. Riley, of 1410 Clinton avenue, stated that: "he came from Pennsylvania, and one of the reasons which induced him to buy was the restricted area" (State of Case, p. 35, ll. 15-19).

Edward Zehlein, of 941 Sandford avenue, stated that:

"it would spoil the neighborhood, and there was no justification for it" (State of Case, p. 35, ll. 20-23).

With respect to this evidence and similar alleged evidence considered by the Board of Adjustment, the Prosecutor respectfully calls attention to the case of *Soho Park and Land Co. v. Board of Adjustment of the Town of Belleville*, 142 Atl., p. 548, in which case the Supreme Court says, at p. 549:

"The second condition is one imposed for esthetic purposes. A board of adjustment, in our opinion, has no power to impose such a condition. It is unreasonable, and this provision should be excinded.

"This is likewise true of the third condition, relative to the planting of large trees on the north line of the lot. We deem this condition unreasonable, and it should be excinded.

"The fourth condition is a roundabout method of creating a park at the expense of the prosecutor. We deem this likewise unreasonable, and this condition should be excinded."

From this opinion it is apparent that an attempt by a Board of Adjustment to enforce a zoning ordinance will be held to be unreasonable if said action of the Board of Adjustment is

based upon conditions calculated to enhance the vicinity in question from an esthetic point of view. It is to be especially noted that this cited case was decided June 29, 1928, which is subsequent to the decision in the instant case from which the Prosecutor now presses this appeal, and is also subsequent to the adoption of the Constitutional amendment regarding zoning. Neither the Board of Adjustment, therefore, nor the Supreme Court, could legally entertain this type of evidence for the purpose of denying to the Prosecutor its permit for the contemplated building.

POINT II.

The evidence adduced before the Board of Adjustment comprising objections that traffic would be increased at the intersection of the two streets upon which the Prosecutor's premises fronted was legally insufficient to entitle the Board of Adjustment to deny the permit sought by the Prosecutor.

There were statements of objectors before the Board of Adjustment, written and oral, none of which statements constitute legal evidence. The mere statement by the individuals that the intersection of Clinton avenue and Sandford avenue, in the Town of Irvington, was a dangerous one by reason of great vehicular traffic or congestion, does not establish this condition as a fact upon which the Board of Adjustment could legally make a finding adverse to the Prosecutor. There was no evidence before the Board of Adjustment as to how many vehicles passed said intersection during any given period of time; nothing to show that regularly, day by day, or night by night, at any given hour, a given number of

vehicles passed said corner. There was no evidence before the Board to show that in any given period, whether for a week, a month, a year, or five years, such and such a number of accidents occurred at said intersection by reason of vehicular congestion. No statistics were adduced before the Board of Adjustment by the objectors, including Charles H. Stewart, Esq., the attorney for the defendants, who certainly must have had at his command, and for the asking, an opportunity to inspect the police blotters or records of the Town for which he is counsel, which records would or would not have disclosed the conditions that the objectors stated existed. Not a single person was produced before the Board of Adjustment at the hearing to show that he had been in an accident or had ever seen one or more accidents at said intersection, caused by the heavy traffic concentration at that point. The record is entirely barren in this respect of one jot or scintilla of legal evidence to substantiate the contention of the objectors that the intersection is now, and has been a dangerous crossing.

It is respectfully submitted that the Board of Adjustment being a quasi judicial body, functioning in a judicial capacity, the ordinary fundamental rules governing the introduction of evidence upon which such body may base its findings, govern and prevail. *Hendey v. Ackerman, Supervisor of Bureau of Buildings, et al.*, 136 Atl. p. 733, at p. 735:

“It is the undoubted purpose of the statutes, creating boards of adjustment, to make them quasi judicial bodies and that they are to proceed in a judicial manner to pass upon and render judgment in those matters which, by statute, they are given jurisdiction over. The proceedings before us lacked every recognized element of judicial inquiry and adjudication.”

The Prosecutor, at the hearing before the Adjustment Board, presented plans duly approved by the New Jersey Board of Tenement House Supervision, and it complied in all respects with the legal requirements applicable to its proposed building, except the zoning ordinance of the Town of Irvington (State of Case, p. 52, l. 13, 18). Under the decision of *Ignaciuinas v. Risley*, 98 N. J. L., p. 712, affirmed in 99 N. J. L., p. 389, followed in many cases subsequently, it was the then established law of the State that a building such as Prosecutor contemplated, was not injurious to the public welfare, health or safety of the community, and that such contemplated structure, containing stores, could be legally erected in a residence district, any zoning ordinance to the contrary notwithstanding. The Prosecutor, therefore, legally sustained its burden of the proof.

Assuming, however, merely for the purpose of this argument, that the Board of Adjustment found properly the fact to be that the crossing was a dangerous one, then the question arises, what legal evidence was adduced before said Board of Adjustment to prove that the erection of the building contemplated by the Prosecutor would materially enhance the traffic hazard to such an extent as to justify the refusal of a building permit to the Prosecutor? It is respectfully contended, on behalf of the Prosecutor, that no such legal evidence was presented to the Board of Adjustment. There was a statement made to the Board of Adjustment by Charles H. Stewart, Esq., the attorney for the defendants (State of Case, p. 57, ll. 24-29):

“That the erection of stores would occasion parking of automobiles in large numbers, and the stopping of trucks for the de-

livery of goods to stores at the curbs of both intersecting streets, which would tend to further obstruct the roadway and make it much more dangerous.”

This was the only statement made to the Board of Adjustment embodying the thought that the erection of Prosecutor's contemplated building would increase traffic. That this statement is nothing more than mere guess-work, or at the most, a mere opinion, needs no argument. Furthermore, it may be characterized as a conclusion rendering its evidentiary value nil. There was no testimony before the Board to show when deliveries would be made to such stores, whether the present congestion at said crossing occurs at those hours which would coincide with the periods when trucks and automobiles would be parked in front of said stores. It may also be pointed out that if only a one or two-family house were erected at said premises, no guaranty would be forthcoming to the defendants or to the objecting property owners that many automobiles would not be parked in front of said one or two-family house.

Moreover, the Town of Irvington has the legal power to control and regulate the parking of automobiles at or near the intersection of Sandford and Clinton avenues, and the passage of a proper ordinance, and the enforcement thereof would be a complete answer to the contentions of the objectors that the erection of stores would occasion parking of automobiles in large numbers and the stopping of trucks for the delivery of goods to stores at the curbs of both intersecting streets.

Again assuming, merely for the purpose of this argument, that it was sufficiently proved to the Board of Adjustment that the intersection

in question was a dangerous one, even without the erection of the building contemplated by the Prosecutor, then a serious indictment has been drafted by the attorney for the Town of Irvington against its police department, if the statement he made on behalf of himself, and other objecting property owners (State of Case, p. 57, ll. 16-21), constitutes an accurate survey of the condition that has existed and still exists at said intersection. It would seem to need no argument to state that the police department of the Town of Irvington should set about at once to remove the traffic signal commonly called a "blinker," at said crossing, and substitute therefor either a mechanical device which would perform better service, or provide for the presence of a traffic policeman at said point in order that human lives and limbs might properly be safeguarded, and that there be an end to the alleged "fatalities to occupants of cars" and an avoidance of serious injuries to occupants of cars at said intersection, as alleged by the objectors (State of Case, p. 57, ll. 16-21). This, it is respectfully contended, is a primary and fundamental function of the police department of a municipality. If the proper authorities of a municipality have failed in their governmental function, this failure or laxity should not be used by such municipality as the basis for a refusal to grant a permit for the erection of a building by a property owner, to the detriment of the property owner. In the case of *Ingersoll v. Village of South Orange, et al.*, 128 Atl., p. 393, at p. 394, the court, in a *per curiam* decision, said the following:

"We think it is a plain duty resting upon the municipal authorities of the village to furnish and provide to its inhabitants reasonably proper and adequate fire protection.

We think it would be unreasonable to hold that the adequacy of such a department should be maintained by restricting building and construction, but that, on the contrary, such adequacy should be maintained and keep step with increases in buildings, and resulting increase of fire hazards by increasing and enlarging the fire department in men, apparatus, and efficiency."

This quotation is applicable to the instant case, and its significance becomes apparent merely upon the substitution of the words "police protection" for the words "fire protection."

Furthermore, the question of the right of a municipality to refuse a building permit to an applicant on the ground that the applicant's premises are located at a dangerous crossing, has been ruled upon by the court in the case of *Eaton v. Town of Montclair, et al.*, 133 Atl. p. 400, where, in a *per curiam* opinion, it was stated:

"The respondents further contend that the erection on the street line of a store building upon the relator's premises will constitute a menace to the safety and general welfare of the people of the Town of Montclair. It is argued that this corner is an unusually dangerous one; that on one side is the high bank of the railroad, and, if a store be permitted to be erected on the opposite corner, there will be no opportunity for a view in either direction. It is said that this situation is a menace to the safety of the users of the highway, and for this reason it is justifiable to withhold the building permit. In other words, the respondents contend that, if one owns a piece of property at the junction of two roads, for the safety of the public the owner should not be permitted to erect a building thereon, because the erection of such a building would tend to obscure the view of the highway other than the highway

upon which one is at the time traveling. It is insisted that this is a proper exercise of the police power. If this view were adopted, it would result in the owner of a tract of land, presumably worth about \$20,000, being unable to derive any revenue from it, for one kind of a building would be as much of an obstruction of the view as any other. The only thing which the owner would under such circumstances derive from the ownership of the land would be the privilege of paying taxes and assessments thereon. We think this is not what is intended under the statute as in the interest of the safety of the public. This prohibition relative to the use of the property would not be for the safety of the entire public. It would be merely for the safety of the particular members of the public using the highway."

And also in the case of *Tenez Const. Corporation v. Garner, Inspector of Buildings, et al.*, 133 Atl., p. 396, where the Court stated, at p. 397:

"The plans and specifications were rejected upon the sole ground that the zoning ordinance of the Town of Bloomfield had zoned the Town so as to place the relator's property in a residential district. The property is located at the corner of two prominent thoroughfares. The brief of the respondents presents the argument that, if the proposed building is erected, it will shut off the view of the drivers of automobiles driving west on Franklin street and driving north on Berkeley avenue, and thereby increase the danger to life and limb of those riding in the automobiles. Hence the refusal to issue the permit was justified on the ground of public safety.

"This argument is specious because the ordinance does not prevent the erection of residences on the relator's property. Residences would cut off the view of automobile drivers as effectively as an apartment house with stores upon the ground floor. Furthermore, a landowner cannot be deprived of

using his property for the purpose of erecting a building thereon because the erection of the building would cut off the view of approaching automobiles. It is the duty of drivers of automobiles approaching a corner to use reasonable care as to the manner of their approach. If this be done, accidents will not occur."

The Supreme Court, in the case of *Eaton, et al. v. Village of South Orange, et al.*, 130 Atl. Rep., p. 362, at p. 363, stated the following:

"The remaining question is whether or not the provision for a set-back from the street or property line is a valid exercise of the police power. That provision is:

'In residence A and residence C districts, no part of a building shall be higher above the curb level than the distance it sets back from the street line of the street on which it faces and the front yard set-back distance to the main front wall shall not be less than 25 feet, except that on a corner lot the set-back distance from one street line may be reduced to not less than 15 feet.'

"We think that there is nothing in the circumstances of the present case, as presented, from which we would be justified in finding any valid exercise of the police power in the enactment of the provision of the ordinance in question. Such we think to be the result of a consideration of the principles laid down in the case of *Passaic v. Paterson Bill Posting Co.*, 72 N. J. Law, 285, 62 A. 267, 111 Am. St. Rep. 676, 5 Ann. Cas., 995, which held that a city ordinance requiring that sign or bill boards shall be constructed not less than 10 feet from the street line is a regulation not reasonably necessary for the public safety, and cannot be justified as an exercise of the police power.

"The fact, that there is 'considerable traffic,' 'automobile and otherwise,' at the intersection of the streets on which the prop-

erty in question fronts, does not justify the restriction in question.”

This question was also passed upon by the Supreme Court in the case of *Franklin Realty and Mortgage Co. v. Village of South Orange, et al.*, 132 Atl. p. 81:

“The ‘set back’ provision of the zoning ordinance is ineffective and constitutes no reason for denying the permit. *Eaton v. South Orange* (N. J. Sup.) 130 A. 362.

“The contention made in the defendants’ brief that the permit was properly refused because of the testimony as to increased traffic is also answered by the last-mentioned case.

“A peremptory writ of mandamus will be awarded.”

If the Board of Adjustment be correct in its contention that it has the right to refuse an applicant a permit for the construction of a building merely because said structure, when completed and occupied, would increase a traffic hazard, and if this principle be carried out to its logical conclusion, the result would be chaotic. If this is a valid exercise of the police power by governmental agency, then the authorities would have the right to regulate against the erection of buildings, not only at any given point, but also at various other locations, in order to diminish a traffic hazard existing at said point. For example, if the Board of Adjustment have in its power the right to deny a permit to the Prosecutor merely on the ground that there is sufficient traffic now at the intersection of Sandford avenue and Clinton avenue, Irvington, why should it not also have the power to regulate against the erection of other buildings at various points remote from this intersection, on the ground that the occupants of such new buildings would own automobiles, who, in the course of

ordinary events, would find it necessary or desirable to cross the intersection of Sandford avenue and Clinton avenue, Irvington? Where would the exercise of this power stop? Reduced logically thus, the situation is clearly an absurdity.

The position taken by the Adjustment Board in refusing a permit to the Prosecutor in order to avoid an increase in the traffic hazard at the location in question is unsound economically and legally.

It is pertinent to consider the question economically because in attempting to deprive the Prosecutor of the full use of its real estate, the municipality or its agents, must base its prohibitory mandate on the police power of the State. The police power, it is fundamental, may be invoked only for the promotion of the general welfare, safety or health of a community, and these always involve important economic questions.

If, therefore, as an economic proposition, the Board of Adjustment, in its refusal of a permit to the Prosecutor, acted properly, because by its action it prevented an increase of traffic risk at the intersection of Clinton and Sandford avenues, then, if this be sound economically, the City of Newark, for example, could properly say to its taxpayers along Broad street or Market street, "You may not erect an office building on your premises, nor a building to contain stores, nor lofts to be occupied by merchants, wholesalers, retailers, or jobbers, because by doing so, your occupants and their customers will use automobiles and this will increase the traffic along Broad street or Market street, already heavily congested and constituting a very dangerous traffic hazard."

Logically, it is contended, this reasoning applies equally to a residential as well as to a business or industrial section. In other words, the flow of traffic may be as heavy in a residential district or along a residential boulevard, as along a business street. Traffic flow is heavy or light at any given point not only or necessarily because said point is in a residential district or business district, but rather because said given point is located on an important highway, well-paved, connecting important centers, districts or communities. Driving on roads in the open country, miles from any industrial or business center will prove the truth of this assertion, as will automobiling to the sea-shore resorts along the New Jersey coasts, or on the roads leading to favorite spots in Northern New Jersey.

The Prosecutor, therefore, contends that since traffic is already heavy at the intersection of Clinton and Sanford avenues, without the presence of its proposed structure, the presence or absence thereof will have very little effect, if any, on the question of an increase or decrease of such traffic condition.

For the solution of its traffic problem, the Town of Irvington must seek an answer other than in the deprivation of Prosecutor's right to use its property fully and in the manner it desires. The answer does exist, but not in the field of economic control of the use to which Prosecutor intends to put its property. The law furnishes the solution, for the Town of Irvington has the power to pass ordinances preventing the parking of automobiles at the intersection of Clinton and Sandford avenues; the ordinance may contain a provision totally preventing said parking at or near said intersection. The recent traffic act passed by the State Legislature already

restricts the parking of automobiles nearer any intersection than twenty-five feet in some instances, and fifty feet in other instances (P. L. 1928, p. 721, at p. 730). The law has furnished still another answer, which applies to all automobile drivers, to be found in the opinion of *Tenez Construction Corporation v. Garner, et al., supra*,

“It is the duty of drivers of automobiles approaching a corner, to use reasonable care as to the manner of their approach. If this be done, accidents will not occur.”

For these reasons it is respectfully contended by the Prosecutor, that neither the Board of Adjustment nor the Supreme Court could legally deprive the Prosecutor of its right to the permit sought by it.

POINT III.

The status of the Prosecutor and the defendants was fixed before the adoption of the Zoning Amendment in New Jersey, and said constitutional amendment had no application to the present case.

The legal status of the Prosecutor and the defendants was fixed before the adoption of the Constitutional amendment regarding zoning, and therefore said amendment does not affect the rights of the Prosecutor.

In order to ascertain the exact status of the parties to this action, the Prosecutor respectfully calls the attention of this court to a prior proceeding which was instituted by the Prosecutor against the Building Superintendent of the Town of Irvington, *et als.*, on a writ of mandamus, in which proceeding the Supreme Court rendered a *per curiam* opinion, to be found in

135 Atl., p. 789. From the *per curiam* opinion filed by the Supreme Court in said prior proceeding, it appears:

1. Said proceeding was before the Court on a rule to show cause why the writ of mandamus should not issue.

2. That relator's property was located on the Northwest corner of Sandford avenue and Clinton avenue, Irvington, in a residence zone, known as residence 'A.'

3. The proposed building would have stores on the ground floor and apartments above, and is barred by the ordinance of the Town of Irvington.

4. Relator obtained title to said premises on June 1, 1926.

5. That relator's plans submitted to the Building Inspector on May 28, 1926, were rejected by him because of the zoning ordinance.

6. That relator then appeared before the Board of Zoning Appeals and desired to argue the merits of its appeal, but was not allowed to do so, the Board disclaiming jurisdiction to hear relator's appeal.

7. That since the opinion rendered by the Supreme Court in the case of *Chancellor Development Corporation v. Senior*, 134 Atl. 337, relator was not entitled to a writ of mandamus at that time.

8. That the zoning board of Irvington, in declining to hear relator's appeal, acted through ignorance or was unaware of the Act of 1926, p. 526, and so disregarded its plain duty.

9. That relator should again present to said zoning board its appeal, and have the same deter-

mined according to the facts as developed on the evidence.

10. That should the board refuse, after the suggestions made to it by the Supreme Court, that said Court would be open to an application for a mandamus to compel it to perform its duty.

From this outline of the opinion of the Supreme Court in the first proceeding, it appears that the Prosecutor, as early as June 1, 1926, was the owner of the premises in question, and had taken steps to obtain a permit for the erection of its contemplated structure; that at said time, June 1, 1926, its status with relation to the Town of Irvington, was already fixed. That the zoning board of the Town of Irvington failed in its duty with regard to the Prosecutor's first application, cannot be denied after a careful reading of the opinion of the Supreme Court in the prior proceeding. The least that can be said on behalf of the Prosecutor, with reference to said first proceeding, is that it was an unfortunate victim of circumstances over which it had no control, and it is proper argument before this court to state that had the municipal authorities of Irvington performed its plain duty in the first instance, the Prosecutor would long ago have secured to itself its legal rights. It is a proper assumption to make, that, had the Zoning Board of Irvington, in the first instance, exercised jurisdiction over the appeal, which it refused to do, and had said Zoning Board refused to grant to Prosecutor the permit it sought at that time, the application by the Prosecutor to the Supreme Court for a writ of mandamus would undoubtedly have been granted to it. The authority for this statement may be found in the principles of law which at that time governed the situation, and which had been expounded

in the case of *Ignaciunas v. Risley*, 98 N. J. L., p. 712, affirmed in 99 N. J. L., p. 389, and the numerous decisions following this case, all of which affirmed the legal right of a property owner to have been that he may erect upon his premises a building to contain stores in a residential zone.

Following this opinion by the Supreme Court in the prior case of *Paramount Realty & Construction Co., Inc. v. Schmitt, et als.*, 135 Atl., p. 789, the Prosecutor, pursuant to the instructions given to it by the Supreme Court in said opinion, again presented its plans to the Building Inspector of the Town of Irvington (State of Case, p. 53, ll. 30-35), which plans were rejected, and thereupon again appealed to the Board of Adjustment of the Town of Irvington (State of Case, p. 53, ll. 35-36), which, after a hearing consisting of alleged evidence, as hereinbefore stated, denied the Prosecutor a permit on August 26, 1927, and embodied its findings in writing dated May 7, 1927 (State of Case, p. 43, l. 1, to p. 44, l. 11). Thereafter, a notice of an application for a writ of certiorari, accompanied by written petition and affidavits, was served on Charles H. Stewart, Esq., attorney for the defendants, on May 9, 1927 (State of Case, pp. 1-15). Said notice was returnable on May 14, 1927, and on May 14, 1927, a writ of certiorari was allowed by the Honorable William S. Gummere, Chief Justice, consented to by Charles H. Stewart, Esq., attorney for the defendants (State of Case, pp. 16-17). Thereafter, the defendants filed their return to the writ on June 3, 1927 (State of Case, pp. 17, to pp. 44). Subsequently, the Prosecutor diligently took the steps as required by law, to bring on the argument before the Supreme Court; that this matter was duly submitted to the Supreme Court in the October term

of 1927, and on the Court's own motion, this case was put off the term, to be listed, without notice, at the next term; that on January 17, 1928, said case was argued orally before the Supreme Court, and its opinion, confirming the action of the Board of Adjustment, and dismissing the writ of certiorari, was filed on June 6, 1928.

The Constitutional amendment regarding zoning was adopted on October 18, 1927 (P. L. Laws 1928, p. 820). An enabling act was adopted by the Senate and General Assembly of the State of New Jersey, on April 3, 1928 (P. L. Laws 1928, p. 696).

From this recital of the proceedings and the respective dates upon which they were taken, and bearing in mind the dates of the adoption of the Constitutional amendment regarding zoning, and the subsequent enabling act, it is at once apparent that the rights of the Prosecutor, with respect to its application for a permit, and with relation to the defendants, were fixed and determined long before the adoption of said amendment and enabling act. For this reason, and relying upon the statement of law enunciated by this court in the case of *A. G. Construction Co. v. Scott, et al.*, 141 Atl., p. 760, the Prosecutor contends that the issues involved in this case be determined as of the date when its rights were fixed, and prior to the time of the adoption of the Constitutional amendment and its subsequent enabling act.

In the case of *A. G. Construction Co. v. Scott, et al.*, *supra*, this Court, in an opinion by Justice Katzenbach, said at p. 761:

“We are asked by the respondents to consider in dealing with this case the fact that a constitutional amendment regarding zoning has been adopted by the voters of this state. In the present case the status of the parties

was fixed long before the zoning amendment was adopted. The constitutional amendment has, we think, no application to the present case and should not be considered in its disposition.

“The order of the Supreme Court denying a peremptory writ of mandamus is reversed. The case is remitted to the Supreme Court to the end that there may be issued a peremptory writ of mandamus directing the building inspector of the City of East Orange to deliver to the appellant the building permit for which it made application.”

It is the contention of the Prosecutor, the plaintiff-in-error herein, that its rights were fixed as of June 1, 1926, reference being made to its prior proceeding against the Town of Irvington, as hereinbefore stated; that if said first proceeding be deemed to be a nullity; that then the rights of the Prosecutor were fixed as of the time it made its second application to the Board of Adjustment of the Town of Irvington, resulting in a refusal to grant a permit to the Prosecutor, which refusal was made the subject of the certiorari proceeding before the Supreme Court, and in which latter proceeding a writ of certiorari, consented to by Charles H. Stewart, Esq., attorney of the respondents, was allowed by the Honorable William S. Gummere, Chief Justice, on May 17, 1927 (State of Case, p. 16, to p. 17).

When it is considered that the Prosecutor's rights were fixed as of said time, and relying upon the doctrine embodied in the opinion of *A. G. Construction Co. v. Scott, et al., supra*, the only issue remaining to be determined is whether or not Prosecutor's proposed building, for which it seeks a permit, could lawfully be denied to it on the ground that said application for a permit is contrary to public health, morals,

or general welfare of the community as of the date when its rights were fixed, as aforesaid. Answering the question raised by this issue, the Prosecutor respectfully contends that its proposed building was not in any way injurious to the public health, morals, or general welfare of the community in which its premises were located, and the Prosecutor relies for its authority for this statement, upon the law enunciated in the case of *Ignaciunas v. Risley*, 98 N. J. L., p. 712, affirmed in 99 N. J. L., p. 389, wherein it was affirmatively held that a store and dwelling prohibited by a municipal ordinance, was not within the police powers of the state as affecting either the health, safety, or general welfare of the community, as defined by the act authorizing ordinances of this class. The Prosecutor, therefore, contending that its rights with relation to the defendants are to be determined in accordance with the principles of law which existed at the time Prosecutor's rights became fixed, was legally entitled to erect upon its premises a building to contain stores.

Furthermore, the Prosecutor respectfully contends that, its rights having been fixed prior to the adoption of said Constitutional amendment and its enabling act, the action of the Supreme Court affirming the judgment of the Board of Adjustment of the Town of Irvington, was unconstitutional and violative of both the State and Federal Constitutions in so far as it attempts to prohibit the erection of said building on said premises, in that it deprives the Prosecutor of its right to possess and enjoy its property, guaranteed to it by the first paragraph of Article 1 of the Constitution of the State of New Jersey, and also paragraph 16 of Article 1 of the Constitution of the State of New Jersey, and

also in that it takes private property for public use without just compensation, and also is in violation of the rights secured to the Prosecutor by the 14th Amendment to the Constitution of the United States.

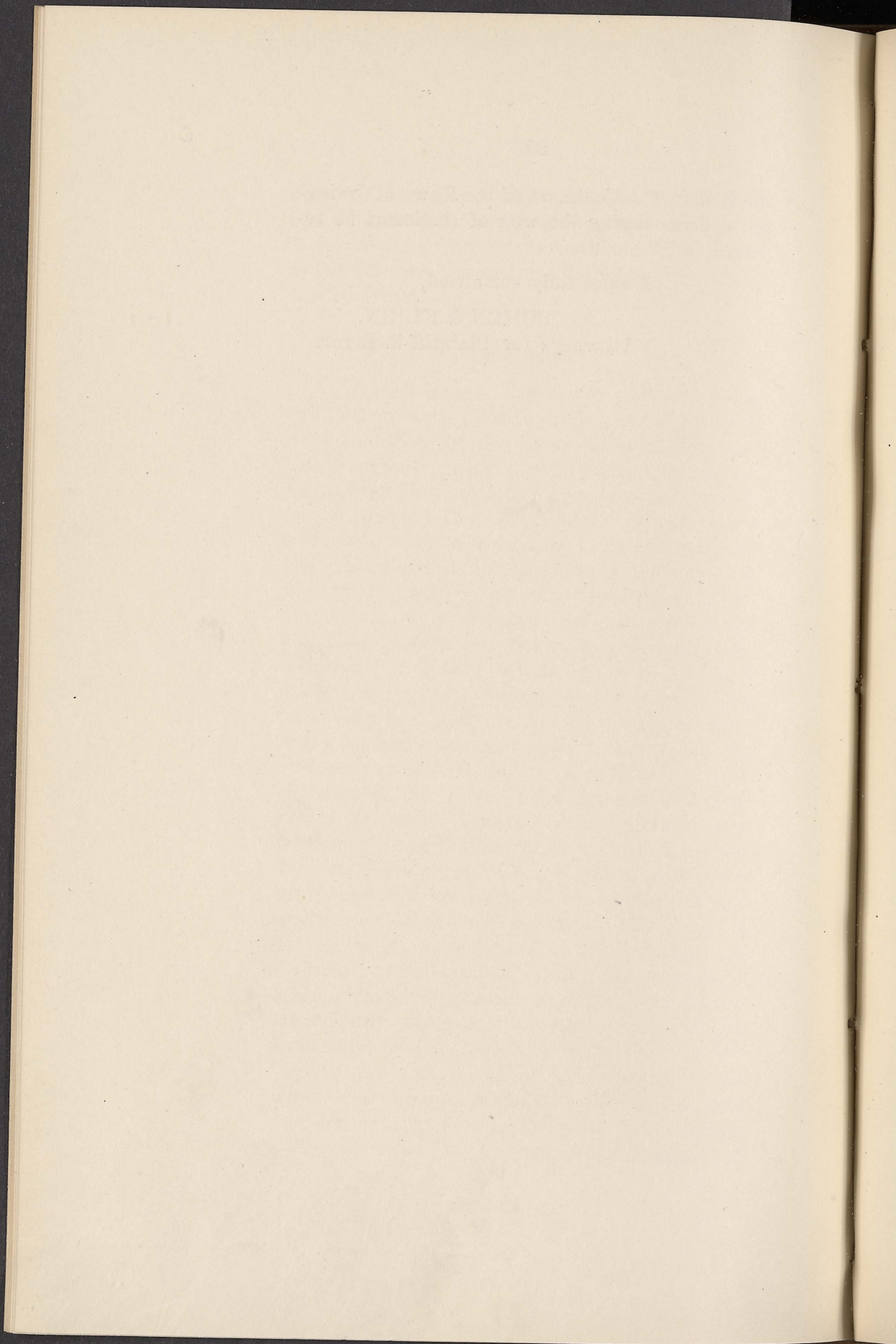
Conclusion.

For these reasons, it is respectfully contended by the Prosecutor, that the action of the Building Superintendent of the Town of Irvington, and its Board of Adjustment, in denying to the Prosecutor its application for a permit, merely on the ground that Prosecutor's premises are located in a residential zone, was contrary to law; that the Zoning Ordinance relied upon by them in refusing to grant to the Prosecutor its application for a permit is unconstitutional and violative of both the State and Federal Constitutions; that said Ordinance, in so far as it applies to Prosecutor's application for a permit, unlawfully and unjustly deprives the Prosecutor of the use and enjoyment of its property; that the evidence submitted before the Board of Adjustment of the Town of Irvington at the hearing of its appeal from the refusal of the Superintendent of Buildings to grant it said permit, does not justify in law the refusal of said Board of Adjustment to grant to Prosecutor its said application; that said action of the Town of Irvington, its Superintendent of Buildings, and its Board of Adjustment, is, in other respects, illegal, unjust and oppressive, and said Prosecutor respectfully submits that said action of the Superintendent of Buildings of the Town of Irvington, and the Board of Adjustment of the Town of Irvington, should be set aside, reversed, and for nothing holden, and that the judgment of the Supreme Court affirming the judgment of

the Board of Adjustment of the Town of Irvington and dismissing the writ of certiorari be reversed and set aside.

Respectfully submitted,

COHEN & KLEIN,
Attorneys for Plaintiff-in-Error.



New Jersey Court of Errors and Appeals

PARAMOUNT REALTY & CONSTRUCTION Co., INC.,
Plaintiff-in-Error,

vs.

GEORGE F. SCHMITT, Superintendent of Buildings of the Town of Irvington, the BOARD OF ADJUSTMENT OF THE TOWN OF IRVINGTON, *et als.*,
Defendants-in-Error.

ON
CERTIORARI.

On Appeal
from the
New Jersey
Supreme Court.

BRIEF OF DEFENDANTS-IN-ERROR.

Statement.

This is a zoning case which was before the New Jersey Supreme Court on a writ of certiorari. The case was submitted to that Court at the October term of 1927 and argued orally at the January term, 1928. On June 6, 1928, the Supreme Court filed a *per curiam* opinion, dismissing the writ of certiorari without costs, and in the opinion filed stated the following:

“From the stipulated facts in the case it appeared that the prosecutor’s property is located in a residential zoning district; that the character of the neighborhood as established is residential and houses therein and in the immediate vicinity are all one-family houses, costing \$10,000 and upwards; that there is no local demand for stores in the neighborhood; that the intersection of Clinton Avenue and Sanford Avenue is already ex-

ceedingly dangerous and the erection of stores will have a tendency to increase the hazards at that point, etc. There was also a protest signed by ninety per cent. of the property owners against the granting of the permit, for the erection of stores.

“We think the facts and circumstances which were before the Board of Adjustment *had a tendency to establish that it was against the general welfare of the public to have stores erected on the premises in question.*

“It being a question of fact for the Board of Adjustment to determine whether or not the erection of stores in the neighborhood, as contemplated, was or was not against the general welfare of the public, its finding that it was against the general welfare, supported as it is by testimony, will not be disturbed” (State of Case, page 62, line 19, *et seq.*).

Judgment was thereafter entered in the Supreme Court, affirming the action of the Board of Adjustment of the Town of Irvington and dismissing the writ of certiorari without costs. From said judgment the plaintiff-in-error is appealing to this Court.

Facts.

The plaintiff-in-error applied to the Superintendent of Buildings of the Town of Irvington on the first day of March, 1927, for a permit for the erection of a two-story brick building, containing stores on the ground floor and living apartments on the second floor. The building was to be erected on a lot on the northwest corner of Sanford and Clinton Avenues. The application was accompanied by plans and specifications as called for by the Building Code of the Town. The Building Superintendent refused to approve the plans or issue a permit, because the location of the building was in contravention of the zoning ordinance of the Town limiting the use, to which prose-

utor's land could be put, to the erection of one and two-family houses (the land being in an "A" Residence Zone), (page 12, State of Case).

On the said refusal of the Superintendent of Buildings, the prosecutor applied to the Board of Adjustment for a variation of the zone to permit the erection of the building (State of Case, pages 19-23; and form of notice sent to adjacent property owners, State of Case, page 25). The Board of Adjustment fixed a night for the hearing (State of Case, page 24, line 23); the prosecutor sent out to the property owners notices of the hearing (State of Case, pages 25 and 26); and a large number of the property owners appeared (pages 34 and 35) and, both by written and verbal statements, objected to the granting of the prosecutor's application (State of Case, pages 29, 32 to 35).

The Board of Adjustment considered the objections and arguments pro and con, and denied the application, filing a written decision (page 36, State of Case), in which they determined:

"That the said ordinance in view of the evidence submitted tends to promote the safety and welfare of the citizens of the Town of Irvington so far as its restrictive provisions effect the use of the property owned by the applicants and affected by the appeal of the applicants for a variation of the provisions of said ordinance, and that the application should be denied" (State of Case, page 36, line 30).

From this finding and decision the prosecutor took a writ of certiorari to the Supreme Court to review the same, and the Supreme Court dismissed the writ as above set forth and affirmed the judgment of the Board of Adjustment (page 64, State of Case). From this judgment of the Supreme Court, the plaintiff-in-error appeals.

LAW.

POINT I.

Before a Board of Adjustment can legally vary a zone requirement or reverse a refusal of a building superintendent to issue a permit, which refusal is based on a zoning law requirement, it must have before it something to show that the ordinance does not tend to promote the public morals, health, safety or welfare of the community.

The only evidence offered by the prosecutor before the Board of Adjustment was:

“Mr. Klein” (for the prosecutor) “presented” the building “plans” (State of Case, page 53, line 30).

Mr. Klein stated:

“The particular premises in question at the northwest corner of Sanford and Clinton Avenues, Irvington, N. J., was located at the intersection of two important transit highways, and since practically all of the surrounding property had been built up and since there was on the premises in question an old dilapidated house the construction of the building by the Paramount Realty & Construction Co., Inc., of the type outlined in the plans and specifications would be an ornament and advantage to the surrounding property and that the near future would see the development of both Clinton Avenue and Sanford Avenue in that vicinity into a business center and that the construction of said building would not materially increase traffic at that particular intersection” (State of Case, page 59, line 20).

We respectfully submit that before the Board of Adjustment can legally vary a zone requirement, it must have something before it to show that the ordinance zoning the Town does not tend to promote the public morals, health, safety or welfare so far as the ordinance affects the use of the property in relation to which an appeal is taken (P. L. 1926, page 526).

Every intendment is made in favor of the reasonableness of an ordinance, and to support it, a construction will be placed on it which will make it reasonable rather than unreasonable. *McGonnell vs. Board of Commissioners*, 121 Atl. 135, 98 N. J. Law 642; *Burg v. Ackerman*, 135 Atl. 672.

In *Biltwell Company, prosecutor vs. Scott, Building Inspector*, N. J. Advance Reports, Vol. 6, No. 28, page 621, decided June 19, 1928, the Court said:

“There was no evidence offered in the present case before the Board of Adjustment to the effect that the provisions of the zoning ordinance were unreasonable. The presumption is that they are reasonable.”

In the case of *Kitay vs. Quigley, Inspector of Buildings*, New Jersey Advance Reports, Vol. 6, No. 28, pages 623-625, decided June 19, 1928, the Court says:

“The situation in the present case, therefore, is that the zoning act relied upon by the City of Paterson in the present controversy is legal. *It was, therefore, the duty of the prosecutor to show that the application of the zoning ordinance to his case was unreasonable. The presumption is that the zoning ordinance is reasonable.* We find nothing in the evidence which, under the circumstances, inclines us to the belief that the ordinance is unreasonable. In order to reverse the action of a Board of Adjustment there must be evidence produced before the court that the action of the Board of Adjustment is wrong.”

In Scharfe vs. Board of Adjustment of East Orange, New Jersey Advance Reports, Vol. 6. No. 39, page 905, the Court said:

“What it” (the Board of Adjustment) “is to do if no testimony is offered is not laid down in that decision; *but we apprehend that to overturn an adverse decision of the building inspector, some evidence should be proffered to show that he was wrong, and to overcome the presumption that the ordinance was reasonable in its application.*”

We respectfully submit that the statement of Mr. Klein, above quoted, which was the only evidence offered on the part of the plaintiff-in-error, does not tend to show that this ordinance does not tend to promote the safety and welfare of the public, and therefore, the decision of the Board of Adjustment should be affirmed.

But it further appears that the objectors proved by petition and oral statement that the intersection of Sanford and Clinton Avenues is already an exceedingly dangerous vehicle crossing, that the erection of stores, with the attendant stopping of trucks and autos for delivery of goods and patrons, would add to the congestion and increase the hazard of accident and endanger life and limb, both of pedestrians and occupants of vehicles traveling these streets, that a traffic signal commonly called a “blinker” was placed at the intersection of these streets, that numerous accidents had occurred there, notwithstanding the signal, some of which resulted in fatalities and others in serious injuries to the occupants of cars, that the streets were heavily traveled at all hours of day and night (page 30, lines 15-19, and page 57, State of Case). With no evidence other than that of Mr. Klein, in behalf of the prosecutors, and with the evidence on the part of the objectors above summarized,

the Board considered the application and rejected it.

We submit that under the cases, if there be any evidence before the Board upon which their finding can be sustained, the Court on certiorari will not set aside the finding.

POINT II.

Were the proceedings before the Board of Adjustment legally regular and was the evidence offered by the defendants-in-error legally received?

Plaintiff-in-error, under its second point, criticizes the legality and the evidential value of the statements made by the citizens who appeared before the Board to object to the granting of a permit, and quotes the case of *Hendey vs. Ackerman*, 136 Atl. 733, at page 735, in support of the proposition "that the Board of Adjustment being a quasi judicial body functioning in a judicial capacity, the ordinary fundamental rules governing the introduction of evidence upon which such body may base its findings govern and prevail." The case, however, does not go as far as the statement in the brief which it is cited to support. The case merely says:

"It is the undoubted purpose of the statutes, creating Boards of Adjustment, to make them quasi judicial bodies and that they are to proceed in a judicial manner *to pass upon and render judgment in those matters which, by statute, they are given jurisdiction over.* The proceedings before us lack every recognized element of judicial inquiry and adjudication."

A simple reading of the case of *Hendey vs. Ackerman* will make it apparent that the proceedings before the Board of Adjustment in that case were in nowise similar to the proceedings in the instant case.

Further, with regard to the testimony offered on behalf of the defendants-in-error before the Zoning Board of Adjustment and criticized by the plaintiff-in-error:

1. Counsel for plaintiff-in-error says: "There were statements of objectors before the Board of Adjustment, written and oral, none of which statements constitute legal evidence."

Whether his objection is that witnesses were not sworn or that the evidence was not given in question and answer form, counsel does not say.

But we say the argument is not valid.

a: Because prosecutor (plaintiff-in-error) was present, represented by counsel, and counsel did not object to the Board considering this form of testimony.

He is now estopped to complain.

b: If this objection is good, then the Board had no evidence before it, for the only testimony in behalf of plaintiff-in-error was that of Mr. Klein, and it was in the same form.

Therefore, under the case of

Scharfe vs. Board of Adjustment of East Orange, supra, the writ would have to be dismissed.

2. If the testimony and evidence is legal, as we affirm, then, if the plaintiff-in-error, or its attorney, doubted the statements made as to the dangerousness of the crossing or that the erection of stores would add to the congestion of traffic, or increase the hazard, or that there had been accidents occurring at the intersection, or whether the

accidents had been fatal or otherwise, plaintiff-in-error had the right of cross-examination and of offering evidence to controvert these statements. They did neither, and, therefore, the facts remain uncontroverted. In fact, in the reasons, filed by the prosecutor with the Board of Adjustment, why the application should be allowed, it said that the premises were located at two important transit highways (State of Case, page 23, line 22).

With regard to the erection of stores at this corner increasing the hazard of accident, plaintiff-in-error contends that there was no evidence to substantiate this, and quotes the statement (page 57, line 24, State of Case).

I presume the Board and this Court will take judicial notice of the fact that eight retail stores have to be supplied with merchandise and have customers come to purchase, in order to maintain their business, and that the modern method of transportation of both is by auto.

The cases of

Eaton vs. Town of Montclair, 133 Atl.
page 400, and
Tenez Construction Company vs. Garner,
133 Atl., page 396,

cited by plaintiff-in-error, are clearly distinguishable.

The case of

Franklin Realty and Mortgage Company
vs. *The Village of South Orange*, 132
Atl., page 81,

so far as it relates to the set-back condition, has no applicability to the case *sub judice*, and as to the rest of that decision, since the adoption of the Constitutional Amendment, it is overruled.

The case of

Eaton vs. Town of Montclair, 133 Atl.
400,

turned on three points: First, upon the question as to the location of a store in a residential zone; secondly, whether, if a piece of property is located at the junction of two roads, the owner should be restrained, by the municipality, in the exercise of police power, from erecting a building thereon because the erection of such building would tend to obscure the view of the highway other than the highway upon which one is at the time traveling; thirdly, that the writ of mandamus should be withheld because the Town of Montclair had passed an ordinance to take the property of the relator by condemnation.

On the first point, it followed the case of *Ignaciunas vs. Risley*, 98 N. J. Law 712. This case is no longer controlling.

On the second point, so far as the instant case is concerned, there is no attempt upon the part of Irvington to prevent the erection of buildings on the property of the plaintiff-in-error, but merely an attempt to regulate the character of the building.

And the third point, of course, has no relevancy to the case at issue.

The case of *Eaton vs. The Village of South Orange*, 130 Atl. 362, so far as it involved the erection of retail stores in a residential neighborhood, followed the case of *Ignaciunas vs. Risley, supra*, which, as above noted, as, by the zoning amendment and the adoption of the Act of 1928, been overruled; and the second point, that of furnishing adequate fire protection, is not involved; and the third question, relating to providing a set-back line to be observed as an exer-

cise of police power, likewise is not involved in the present case, and, therefore, this case had no applicability.

POINT III.

The status of the plaintiff-in-error was not, in legal contemplation, fixed before the adoption of the Constitutional (Zoning) Amendment, and such Constitutional Amendment and the Enabling Act of 1928, page 696, have applicability to the present case.

A history of the steps taken by the plaintiff-in-error in this matter is as follows:

May 28, 1926, application made to the Building Superintendent to approve plans for the erection of stores with apartments above, rejected by him and appealed to the Zoning Board of Appeals.

June 18, 1926, Board refused to entertain the appeal.

Application to the Supreme Court for writ of mandamus.

Court refused to issue same on grounds that Board should exercise its jurisdiction.

March 1, 1927, plaintiff-in-error presented plans and specifications of the building to the Superintendent of Buildings, tendered the legal fees, and the same were rejected because the zoning ordinance of the Town did not permit the erection of a building containing stores, in the district in which the premises were located (State of Case, page 12, line 20).

On or about March 21, 1927, application was made by plaintiff-in-error to Board of Adjustment for a variation from the requirements of the building zone ordinance (page 19, State of Case; verification of application, page 21).

Hearing before Board of Adjustment fixed for April 7, 1927 (page 24, line 23, State of Case).

April 7, 1927, hearing before Board of Adjustment (page 32, State of Case).

Application rejected (page 35; Opinion or Findings, page 36, State of Case).

It is claimed by the plaintiff-in-error—

1. That the issues in this case are to be determined as of the date when its rights were fixed;

2. That its legal status, by reason of the foregoing facts, was fixed before the adoption of the constitutional amendment regarding zoning and before the enactment of Chapter 274 of the Laws of 1928, page 696.

This contention, we submit, is distinctly answered by the following cases:

Koplin vs. Village of South Orange, 142 Atl. 235;

Kastovisky vs. Castles, Inspector, etc., N. J. Advance Reports, Vol. 6, No. 29, page 599;

Losick vs. Green, N. J. Adv. Rep., Vol. 6, No. 28, page 620;

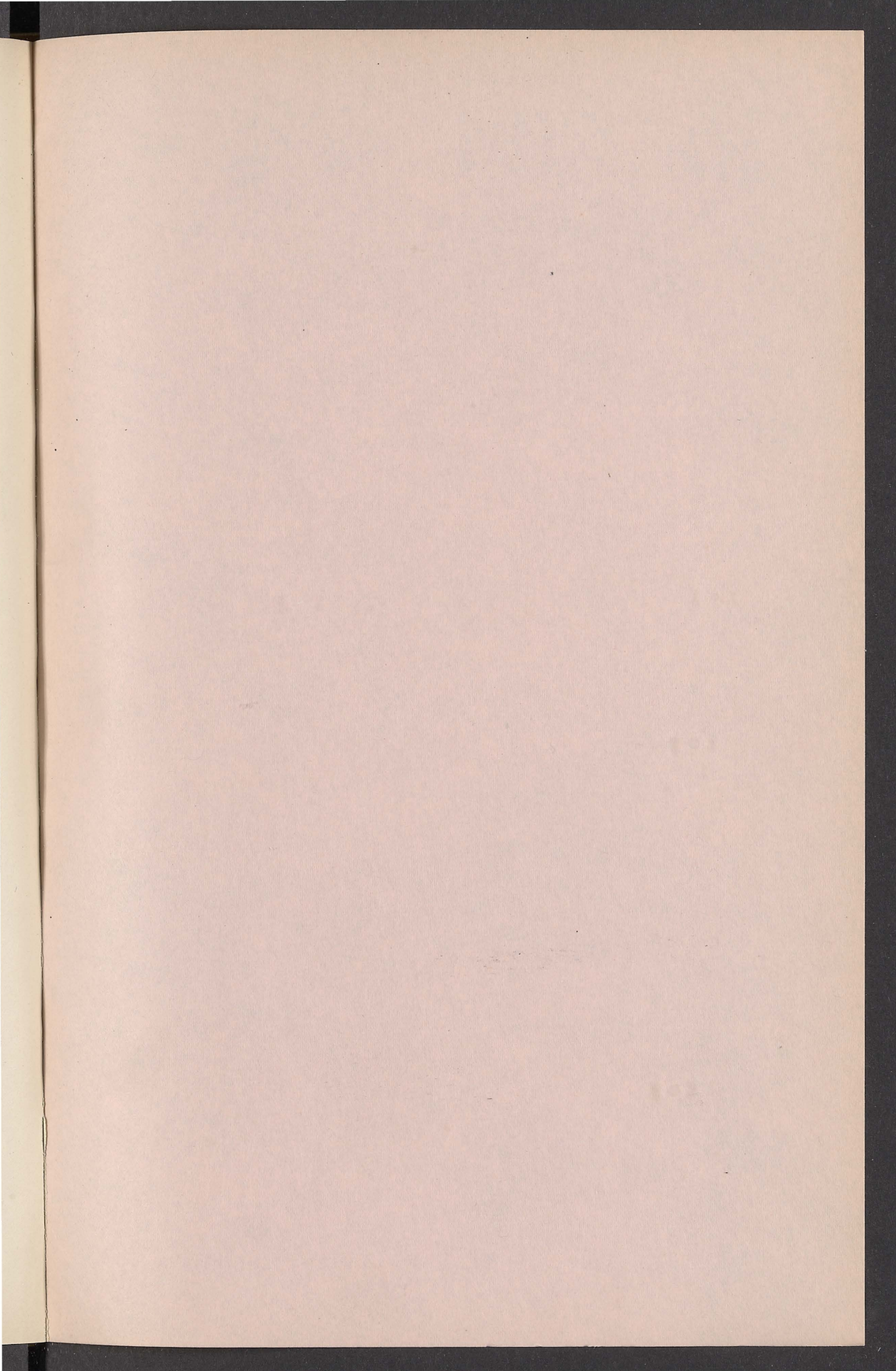
Scharfe vs. Board of Adjustment of East Orange, N. J. Adv. Rep., Vol. 6, No. 39, page 905;

Freeland vs. Sargent, N. J. Adv. Rep., Vol. 6, No. 39, p. 906;

and a long line of cases recently decided.

We, therefore, respectfully submit that the appeal should be dismissed.

CHARLES H. STEWART,
Attorney for and of Counsel with
Defendants-in-Error.



Hearing before Board of Adjustment held for April 7, 1927 (page 24, line 23, State of Case).

April 7, 1927, hearing before Board of Adjustment (page 22, State of Case).

Application rejected (page 35; Opinion on Findings, page 36, State of Case).

It is claimed by the plaintiff in error--

1. That the issues in this case are to be determined as of the date when its rights were fixed.

2. That its legal status, by reason of the foregoing facts, was fixed before the adoption of the constitutional amendment regarding zoning and before the enactment of Chapter 274 of the Laws of 1926, page 694.

This contention, we submit, is distinctly answered by the following cases:

Kaplan vs. Village of South Orange, 149 Atl. 235;

Kastomsky vs. Castle, Inspector, et al., N. J. Advance Reports, Vol. 4, No. 23, page 699;

Louch vs. Grace, N. J. Adv. Rep., Vol. 4, No. 28, page 636;

Scharf vs. Board of Adjustment of East Orange, N. J. Adv. Rep., Vol. 6, No. 26, page 206;

Fremont vs. Surpass, N. J. Adv. Rep., Vol. 6, No. 39, p. 366;

and a long line of cases recently decided.

We, therefore, respectfully submit that the appeal should be dismissed.

CHARLES H. STEWART,
Attorney for and of Counsel with
Defendants in Error.