

I N D E X

	PAGE
Writ of Certiorari	1
Reasons	2
Return to Writ	4
Report to Inspector of Buildings.....	5
Report of Inspector.....	8
Builder's Permit	8
Letter	9
Appeal from Building Permit.....	10
Notice	12, 13, 14
Minutes	15
Testimony	17
John A. Barnshaw—Direct.....	18
Carlton E. Adams—Direct.....	18
Recalled—Direct	20
W. Harry Jones—Direct	19
Vivian B. Smith—Direct.....	22
Estel D. Rightmire—Direct.....	24
A. J. Purinton—Direct.....	25

	PAGE
Samuel Somerville—Direct	30
John S. Westcott—Direct.....	31
Florence Yerger-Hagan—Direct	31
Richard W. Bucholtz—Direct.....	34
Letter	32
Minutes	35
Notice of Revocation of Permit.....	36
Zoning Ordinance No. 11.....	37
Opinion	61
Rule for Affirming Judgment of the Board of Adjustment of the City of Ventnor City and Dismissing the Writ of Certiorari..	63
Notice of Appeal	65
Map	67

WRIT OF CERTIORARI.

NEW JERSEY, TO WIT:

*The State of New Jersey to the Board
of Adjustments of the City of Ventnor
City, Charles H. Godfrey, Chairman,
(L. S.) J. M. Hewitt, Frank F. Kepler, Harold
W. Faunce and Clark S. Barrett, Mem-
bers of said Board of Adjustments,
Greeting:*

We being willing, for certain reasons, to be cer-
tified of a certain judgment or order made by the Board of Adjustments of Ventnor City, Charles H. Godfrey, Chairman, J. M. Hewitt, Frank F. Hepler, Harold W. Faunce and Clark S. Barrett, members of said Board of Adjustments, on the 24th day of December, 1928, whereby a building permit issued to Richard W. Buchholtz and West Jersey and Seashore Railroad Company, for the erection and construction of a certain building within the City of Ventnor City, was revoked. 10

We do command you, that the application for said permit, said permit, the appeal therefrom to the Board of Adjustments, as well as the order or judgment rendered by you therein, and all other papers touching the granting, the appeal, and the revoking of said permit by you, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton, you do send within twenty (20) days from the date hereof, together with this writ, that therein may be done what, of right and according to the laws of this State, should be done. 20 30

Witness, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, this 12th day of January, 1929.

FRED W. BLOODGOOD,
Clerk.

BOURGEOIS & COULOMB,
Attorneys.

[ENDORSED]

Returnable Feb. 1, 1929. This writ
is allowed; let it be sealed.

Luther A. Campbell,
Justice Supreme Court.

10

REASONS.

NEW JERSEY SUPREME COURT.

20 RICHARD W. BUCHHOLTZ
and WEST JERSEY AND
SEASHORE RAILROAD COM-
PANY,

Prosecutors,

v.

30 THE BOARD OF ADJUST-
MENTS OF THE CITY OF
VENTNOR, CHARLES H.
GODFREY, Chairman, J.
M. HEWITT, FRANK F.
HEPLER, HAROLD W.
FAUNCE and CLARK S.
BARRETT,

Defendants.

On Writ of Certio-
rari.
Reasons.

Prosecutors pray the setting aside of the judg-
ment or order of the Board of Adjustments of the

City of Ventnor, vacating the building permit issued to West Jersey and Seashore Railroad Company, owner, and R. W. Buchholtz, contractor, for the following reasons:

1. Because the lands on which the building is being erected are not restricted by the Zoning Ordinance of Ventnor City, and, therefore, the Board of Adjustments is without jurisdiction touching and concerning said lands and building. 10

2. Because there is no provision in the Zoning Ordinance which inhibits the erection of any building upon said lands.

3. Because there is no provision in the Zoning Ordinance which inhibits the use of any building upon said lands.

4. Because the Board of Adjustments was without authority to make an order vacating the building permit issued. 20

Dated: February 16, 1929.

BOURGEOIS & COULOMB,
Attorneys of Prosecutors.

RETURN TO THE WRIT.
NEW JERSEY SUPREME COURT.

10	R. W. BUCHOLTZ and WEST JERSEY AND SEASHORE RAILROAD COMPANY, <i>Prosecutors,</i>	}	On Certiorari. Return to the Writ.
	v.		
	THE BOARD OF ADJUST- MENT OF THE CITY OF VENTNOR CITY, <i>Defendants.</i>	}	

20 I, Clark Barrett, Secretary of the Board of Ad-
 justment of the City of Ventnor City, do herewith
 send to the Supreme Court of the State of New
 Jersey, judgment, order and all proceedings had be-
 fore the said Board of Adjustment of Ventnor City,
 in the County of Atlantic, wherein the Board of Ad-
 justment heard and determined the appeal of Carl-
 ton E. Adams, Mayor of Ventnor City, from the
 action of the Inspector of Buildings of the City of
 Ventnor City granting a permit upon the application
 30 of the West Jersey and Seashore Railroad Company
 and R. W. Buchholtz for the erection of a building
 in said City of Ventnor City, together with all papers
 and things touching and concerning the same as by
 the writ of certiorari, sealed the 12th day of Jan-
 uary, 1929, before the Honorable William S. Gum-
 mere, Chief Justice of the Supreme Court, I am
 commanded to do.

I certify that I am the secretary of the Board of Adjustment of the City of Ventnor City, in the County of Atlantic, and that the following are true copies of all proceedings, judgments, orders, etc., of the said Board of Adjustment, and that together they constitute the entire record of the proceedings in the above-entitled action.

Signed this 30th day of January, 1929, sealed with the seal of Ventnor City, in the County of Atlantic. 10

CLARK S. BARRETT.

REPORT TO THE INSPECTOR OF
BUILDINGS

of the

Construction of Buildings by the Architect or
Builder and Owner

(Seal)

20

Ventnor City, N. J., 11/19, 1928

The undersigned, in compliance with the Building Ordinance, files the following report of Building, for which permit is asked:

Reported by H. K. Margolf, Agent for A. J. Purinton

Architect, Owner, Builder

The following information is submitted for the Addition, Alteration, Construction of Building: 30

Situate Atlantic Avenue. 32 ft. East of Portland Ave. on Lot 50 ft. 6 in. x 40 ft. (Waiting Room)

Owner West Jersey & Seashore Railways Co.

Builder R. W. Buchholtz

Architect Vivian Smith

Specifications Filed

6 *Return to Writ—Report to Inspector
of Buildings*

Lot Size 50' 6" x 40'
Size of Building 44' 6" x 21' 6"
Materials of Building Frame & Stucco
Stories in Height 8-6-
Footings 10" x 20"
Piers 20" x 20" x 10"
Outside Walls— Base 6" 1st 6" 2nd 6" 3rd
4th
10 Roof Slate
Timber Yellow Pine
Roof Rafters 2" x 8"
Wood Girders 6" x 10"
Iron Girders None
Sills 4" x 10"
Joists — Base..... 1st 2" x 10" 2nd 3" x 10"
3rd 4th
Corner Posts 4" x 6"
Studding 2" x 4"
20 Inside Partitions— Base..... 1st 2" x 4" 2nd 2" x 4"
3rd 4th
Height of Ceilings Base..... 1st 8-6 2nd 8-0 3rd
4th
Fire Places out
Flues 8" x 82"
Garage None
Cost of Running Feet
Estimated Cost 5,000.00

30

(On Back)

Permit No. 5323
Filed Nov. 21, 1928
W. Harry Jones, Clerk
Ventnor City, N. J. 11/19 1928
This certifies that on the above date
I made application at the Building In-

*Return to Writ—Report to Inspector
of Buildings* 7

spector's Office for a permit to erect a building in accordance with this specification and plans filed with the Building Inspector, and I agree to construct said building in conformity with said plans and specifications, and in compliance with all the provisions of the Building Inspector.

Atlantic City & Shore R. R. Co. 10
By H. K. Margolf, Agent Owner
for A. J. Purinton,
R. W. Buchholtz Contractor

REPORT
to
INSPECTOR OF BUILDINGS
Ventnor City, N. J. 20
FOR BUILDINGS

Location 32 ft. East of Portland
Owner West Jersey & Seashore Rail-
ways Co.

Address Inlet Atlantic City
Contractor R. W. Buchholtz
Address 15 S. Wash. Ave.

Mason
Address 30
Architect Vivian Smith
Address Ventnor, N. J.

Office Inspector of Buildings
Ventnor City, N. J., Nov 21, 1928
I have this day received and exam-

8 *Return to Writ—Report of Inspector—
Builder's Permit*

ined the within building plan, and find it is in accordance with the Building Ordinance of the city.

W. Harry Jones
Inspector of Buildings.

10 REPORT OF INSPECTOR

I have visited the within operation on the following dates:

Final visit

I hereby certify that the within operation has been erected to comply with Building Ordinance of Ventnor City.

Inspector.

20 BUILDERS PERMIT

(Seal)

No. 5323

Ventnor City, N. J., Nov. 21, 1928. 19

Permission is hereby granted to West Jersey & Seashore R. R. Co. owner, and R. W. Buchholtz Contractor, for

30 Construction Waiting Room and Office

Moving Fram & Stucco

Raising Hot water heat

Altering

Repairing

building Frame & Stucco for Waiting Room purposes, stories in height Two, size 44 ft, 6 in. x 21 ft, 6 in., roof of Slate, located on lot 50 ft ½ x

40 ft., situated side of N. E. Cor. Portland & Atlantic Avenues ft. of Avenue, in accordance with plans and specification on file in the office of the Building Department of Ventnor City, and in accordance with the provisions of the ordinances of Ventnor City.

Permit fees paid, \$6.00
Cost of Building, \$5,000.00

No. Rooms of
Countersigned

10

Comptroller
W. Harry Jones
Building Inspector

MAYOR'S OFFICE

Ventnor City, N. J.

20

Carleton E. Adams
Mayor

COPY

November 27th, 1928

Mr. William H. Carroll,
4 S. Portland Ave.,
Ventnor City, N. J.
Dear Mr. Carroll,

On the 19th. inst. application for permit to build upon the Portland x x x x Loop property, a building known as a waiting room, was made by the Atlantic City & Shore Railroad Company by H. K. Margolf, Agent for A. J. Purinton, Owner, and R. W. Buchholtz, Contractor. On the 21st. inst. our Building Inspector, Mr. W. Harry Jones issued permit to build as per plans and specifications filed.

30

10 *Return to Writ—Appeal from Building
Permit*

It has been come to our attention that this building is being erected by you directly or indirectly. If such a building is erected I hereby give you notice that same cannot be used for any business purposes whatsoever as same is in our restricted residential zone according to our Zoning Ordinance which is now in full force and effect. According to said ordinance, a waiting room is permitted and Mr. Jones has given permit for such purpose only.

Yours very truly,
(signed) CARLETON E. ADAMS.
CARLETON E. ADAMS

CEA:CVF

Mayor.

20 To W. Harry Jones, Building Inspector of Ventnor City, N. J., and Board of Adjustments of the city of Ventnor City, under the Zoning Ordinance of Ventnor City, N. J.:—

Gentlemen:

I do hereby most respectfully appeal from a building permit issued by W. Harry Jones, building inspector of Ventnor City, N. J., issued by him on November 21, 1928, on application for permit to build, upon the Portland loop property, a building known as a waiting room, made by the Atlantic City & Shore Railroad Company, by H. C. Margolf, agent for A. J. Purinton, owner, and R. W. Buckholtz, contractor, and my reason for appeal is:

30 (1.) That the application made, was not properly signed by an officer of the Atlantic City & Shore Railroad Company, the supposed owner of the prem-

ises, and the one who was to erect the building in said permit specified.

(2) That the plans and specifications filed are not sufficient to properly indicate and limit the uses to which the contemplated building is intended to be put.

(3) That the petition filed, is not true in its contents, that such building for which permit was issued is not being built alone by the Atlantic City & Shore Railroad Company, or A. J. Purinton. 10

(4) That the obtaining of the permit from W. Harry Jones, building inspector of Ventnor City, N. J., was by fraudulent representation.

(5) That the specifications and plans for the building for which permit was issued, were prepared for and at the expense of William H. Carroll. 20

(6) That the building as is contemplated to be erected, is to be erected at the expense and costs of William H. Carroll, and for the use and benefit in whole or in part, for William H. Carroll, for the purpose of conducting therein, the business of a public real estate office.

(7) That one, William H. Carroll, is in possession of the land, upon which the proposed building is to be erected, under and by virtue of some lease or agreement, that the building provided to be erected under the permit issued, is to be erected, paid for, and intended to be occupied by said William H. Carroll, for the purpose of carrying on therein, a pub- 30

lic business, namely, real estate, etc. That the application for permit to build, and the use of the permit issued as aforesaid, was and is a subterfuge and deceit, practiced for the purpose of obtaining the right to build and building, which in truth, in its uses, are intended to be contrary to law.

(8) That the erection of the building for which the permit was issued, and as well the issuing of a permit therefor, and the intended uses of the building, are contrary to the provisions of and in violation of an ordinance of Ventnor City, entitled, "An Ordinance to establish building districts and restrictions appropriate to such districts, relating to the location of dwellings, trades and industries, and the height and bulk of buildings in Ventnor City," passed October 22, 1928, approved October 24, 1928.

CARLTON E. ADAMS

Mayor of Ventnor City

20

COPY

To Atlantic City and Shore Railroad Company,
A. J. Purinton, owners, R. W. Buckholtz, contractor: take notice:

30 That there has been filed with this Board, an appeal from permit issued on the 21st day of November, 1928, by W. Harry Jones, Building Inspector of Ventnor City, N. J., to the Atlantic City and Shore Railroad Company, to build upon the Portland loop property, a building known and designated as a waiting room, by Carleton E. Adams, Mayor of Ventnor City, N. J., on the ground that the said per-

mit was improperly issued, etc., and reasons are hereto attached and made a part hereof.

That pending a determination of this appeal, you, your agents, employees or servants, are required to refrain and desist from any further work to be done or performed in or upon the said property, in the matter of the erection, construction and completion of any building, under the permit issued, and that this Board, has fixed the day of December, 1928, at the hour of o'clock, M., at the Council Chamber in the City Hall of Ventnor City, N. J., as the time and place, when and where, this appeal shall come on to be heard and determined by the Board of Adjustments, for Ventnor City, N. J., under the zoning ordinance of Ventnor City, N. J. 10

Board of Adjustments of Ventnor
City, N. J.

By (signed) Clark S. Barrett,
Secretary. 20

Dated December 5, 1928.

TO WHOM IT MAY CONCERN: Take notice that Carleton E. Adams, Mayor of Ventnor City has taken an appeal from a permit issued November 21st, 1928, by W. Harry Jones, Building Inspector of Ventnor City, N. J., through the Atlantic City & Shore Railroad Co., Owner, of R. W. Buchholtz, Contractor for the erection of a building known and designated as a waiting room upon the Portland loop property on Atlantic and Portland Ave., Ventnor City, N. J. 30

THAT this appeal will come to be heard before this Board at the Council Chamber of the City Hall, Ventnor City, N. J. on Tuesday, December 11th, 1928, at the hour of 8 o'clock P. M. at which time and place any and all persons interested therein will be heard.

Clark S. Barrett,
Secretary.

BOARD OF ADJUSTMENTS.
under virtue of
ZONING ORDINANCE

10

MAYOR'S OFFICE

Ventnor City, N. J.

20 Carleton E. Adams

Mayor

Notices of a Hearing of the Carroll case to be held on Tuesday evening, December 11th, at 8:00 P. M. in the Council Chamber of the City Hall were sent to the following:

DELIVERED PERSONALLY BY OFFICER
SAMUEL SUMMERVILLE.

- 30 Eliz. Leves, c/o Charles S. Moore, Law Bldg., Atl. City, delivered at 2:05 P. M. 12/6/28.
New Jersey Bell Telephone Co., Mt. Vernon Ave., Atl. City, delivered at 2:10 P. M. 12/2/28.
Mrs. Marg. Dun, 18 S. Delaware, Atl. City, delivered at 2:20 P. M. 12/2/28.
Mrs. Grace M. Hogan, 107 S. Victoria, Ventnor, delivered at 2:40 P. M. 12/2/28.

- Mr. Frank Crawford, 6315 Ocean Ave., Ventnor, delivered at 2:45 P. M. 12/2/28.
 Rev. Gregory Moran, Newport & Atl. Ventnor, delivered at 2:50 P. M. 12/2/28.
 Mrs. Mary G. Malia, 7119 Atl. Ave., Ventnor, delivered at 2:55 P. M. 12/2/28.

SENT BY REGISTERED MAIL Time Mailed

Mrs. Marg. T. Doane, 176 Charlton Ave., S. Orange, N. J.	2:30 P. M.	10
Mrs. A. F. Y. Hagan, 13th & Mkt Sts., Phila., Pa.	2:30 P. M.	
Mrs. Rebecca Label, 649 S. 52nd St., Phila., Pa.	2:30 P. M.	
Mr. Wm. A. Hagen, 2915 Kensington Ave., Phila., Pa.	2:30 P. M.	
Mr. John A. Lafferty, F. & Allegheny Ave., Phila., Pa.	2:30 P. M.	
Mr. Gurlando Tumillo, 927 S. 8th St., Phila., Pa.	2:30 P. M.	20

Samuel Summerville,

SS:CF OFFICER SAMUEL SUMMERVILLE

 BOARD OF ADJUSTMENT

Ventnor City, N. J.

December 11, 1928.

30

A meeting of the Board of Adjustment was held on December 11, 1928, at 8 o'clock P. M. in the Council Chamber, City Hall, Ventnor City, New Jersey. Those present were Charles H. Godfrey, Frank P. Hepler, Joseph Hewitt, Harold W. Faunce and Clark S. Barrett.

A public hearing was held upon the appeal of Mayor Carleton E. Adams from the action of W. Harry Jones, building inspector, issuing a permit to the West Jersey & Seashore Railroad Company to erect a waiting room and office upon the block at the Northeast corner of Portland and Atlantic Avenues. Claude H. Myrose was duly sworn as official stenographer for the hearing and the proceedings as reported by him are made a part of the minutes of this meeting.

10 The public hearing having been adjourned with the decision reserved the Board thereupon adjourned the public hearing.

I hereby certify that the foregoing is an extract of the minutes of the Board of Adjustment held on the 11th day of December, 1928.

CLARK S. BARRETT,
Secretary.

20

30

TESTIMONY.

Meeting of THE BOARD OF ADJUSTMENTS OF THE CITY OF VENTNOR CITY, NEW JERSEY, in the Matter of the Building Permit Issued to R. W. BUCHHOLTZ and WEST JERSEY & SEASHORE RAILROAD COMPANY, owner, on November 21st, 1928, by W. HARRY JONES, Building Inspector of the City of Ventnor City. } 10

Hearing held December eleventh, 1928, at eight P. M., in the Ventnor City Hall, Ventnor City, N. J., before the Board of Adjustments of Ventnor City, in the presence of John S. Wescott, Esq., City Solicitor, and George A. Bourgeois, Esq., representing the West Jersey and Seashore Railroad Company. 20

(C. W. Myrose, stenographer, sworn.) 30

Mr. Westcott: I desire to offer in evidence the notice and the reasons for the appeal as filed by the Mayor with the building inspector and this Board, and the service of it.

18 *Return to Writ—John A. Barnshaw—Direct*
—Carlton E. Adams—Direct

JOHN A. BARNSHAW, SWORN.

By Mr. Westcott:

Q. Mr. Barnshaw, you are Director of Welfare?

A. Director of Public Welfare, yes, sir.

10 Q. I show you a notice. Did you serve a copy of that notice anywhere?

A. I did.

Q. When and on whom?

A. I served one on Mr. Carroll, Mr. Margolf and Mr. Purinton on December fourth, 1928.

Q. Did you serve it on the Building Inspector?

A. No. He was notified to be here by the Mayor.

Q. Did you serve a copy of the notice on him?

A. Not on the Building Inspector, no, sir.

20

CARLTON E. ADAMS, SWORN.

By Mr. Westcott:

Q. I show you this notice. Did you serve that upon Mr. Jones, the Building Inspector?

A. I did.

30 Q. When?

A. December fourth.

Mr. Westcott: I offer it in evidence as Exhibit P1. I offer also the application, the building permit, the plans and specifications as turned over to the Board of Adjustments by the Building Inspector. (Notice marked Exhibit P1. Permit and ap-

plication, P2. Specification for material and labor to be used in the erection of a waiting room and office at Portland and Atlantic Avenues, Ventnor City for the West Jersey and Seashore Railroad P3; plot of the ground showing the land and location of the building P4; two sheets of blue-prints showing the plans and elevations of the building, P5.)

10

W. HARRY JONES, SWORN.

By Mr. Westcott:

Q. You are Building Inspector of Ventnor City?

A. I am.

Q. There was filed with you an application, plans and specifications for a building to be erected on what is termed the loop? 20

A. Yes, sir.

Q. Is this the application?

A. That is the application and a copy of the permit.

Q. This was signed in the form in which it is here?

A. Positively.

Q. Atlantic City and Shore Railroad Company by H. K. Margolf for A. J. Purinton, R. W. Bucholtz, contractor? 30

A. I don't think that was signed by Mr. Margolf. I think the whole thing was written by Mr. Bucholtz.

Q. By Mr. Bucholtz?

A. In the presence of Mr. Margolf, yes. I am not sure but I think that is the way that was done. I was busy at the time.

Q. Is this a plan of the lot and are these the plans and specifications that form a part of the application on which the permit was issued?

A. They are.

Q. And these are the specifications?

A. Those are the specifications.

Q. That completes your file as it appears in your office with respect to this?

A. Yes, sir.

10

CARLTON E. ADAMS, recalled.

By Mr. Westcott:

20 Q. Mayor, subsequent to the time of the issuing of this permit did you have a conversation with Mr. Purinton of the Atlantic City and Seashore Railroad in reference to the building then about to be erected on the Loop at Portland Avenue?

A. I did.

Q. In regard to what? What was the conversation as nearly as you can give it?

30 A. It was by telephone. I called Mr. Purinton on the phone and asked if the railroad company was building a waiting room at the Portland Avenue loop property. He said no. I then asked him if the trolley company, and he said no. He said, "There is a building being erected by Mr. William H. Carroll for his office on that lot."

Q. Subsequent to that time did you see Mr. Carroll and have a conversation with him?

A. Only by telephone.

Q. Was it Mr. Carroll on the phone?

A. Yes.

Q. What took place? What was the conversation?

A. I was in Mr. Patzowsky's office in the Guarantee Trust Building, and Mr. Patzowsky said that Mr. Carroll was very much put out at my opposing

Q. Not what Mr. Patzowsky told you.

A. All right. I was giving the reason.

Q. That doesn't matter.

A. Well, Mr. Patzowsky put me on the phone 10
with Mr. Carroll and I told him I wasn't opposing
the putting of the office for any personal reasons
whatever, I was doing it as a duty; exercising my
authority as Mayor I was doing all I could to stop
the erection of his office building, and he made
several statements that I don't think I should re-
peat, but he admitted on the phone that he was
building an office building.

Q. Did you also send to Mr. Carroll after you
received this information a communication? 20

A. I did.

Q. And is this a copy of it?

A. That is.

Mr. Westcott: I offer a communication from the
Mayor to Mr. Carroll, dated November twenty-
seventh, signed Carlton E. Adams as Mayor, ad-
dressed to William H. Carroll, 4 South Portland
Avenue.

(The paper was marked Exhibit P6.)

30

Q. Have you since that time had any personal
conversation with Mr. Carroll?

A. I have not.

Q. Do you know Mr. Bucholtz, the contractor?

A. I do.

Q. Have you had any conversation with Mr. Bucholtz, the contractor, in regard to the building, as to who it was being built by?

A. I have.

Q. What took place and where?

A. On the property that the building was being erected. Mr. Barnshaw was with me.

Q. What was said? What took place?

A. I started the conversation with Mr. Bucholtz
10 and told him I thought it was an outrage putting this building there, and he made some statement, stating that he thought that Mr. Carroll had been misled.

Q. Was anything said as to who the owner of it was and who he was working for?

A. Yes, in that statement itself he said, "Mr. Carroll is misled in putting up this building there." He said, "He is misled."

20 Chairman Godfrey: Who was misled?

A. Mr. Carroll.

Q. That is all you personally know about the matter?

A. That is all.

VIVIAN B. SMITH, sworn.

30 By Mr. Westcott:

Q. Mr. Smith, you are an architect in Atlantic City?

A. Yes, sir.

Q. Did you prepare the specifications marked Exhibit P3?

A. Yes, sir.

Q. Also the plans which went with the specifications, marked P1?

A. Yes, sir.

Q. At whose request were they prepared?

A. Mr. Carrolls.

Q. William H. Carroll's?

A. Yes, sir.

Q. And the property therein described and planned for was to be erected where? 10

A. Portland and Atlantic Avenues.

Q. Have you seen any part of the building since you prepared the plans and specifications?

A. I saw the foundation.

Q. The foundation as per this specification and that plan?

A. Yes.

Q. Where is it located?

A. It is located within a short distance of Portland Avenue. 20

Q. In what is termed the Loop, isn't it?

A. Yes.

Q. I show you the endorsement on these specifications, Mr. Smith, and ask you who told you to make the endorsement on the specifications, "Waiting room and office building, Portland and Atlantic Avenue, Ventnor City, New Jersey, for West Jersey and Seashore Railroad Company"?

A. Mr. Carroll.

Q. At the time was there any statement made by Mr. Carroll as to what this building was to be used for? 30

A. There was a statement made that it was to be used as a waiting room and office.

Q. For him or whom?

A. Well, I understood that he was to have an office in there.

Q. What made you think that he was to have an office in there?

A. Well, he said so.

Q. What?

A. He told me.

ESTEL D. RIGHTMIRE, SWORN.

10

By Mr. Westcott:

Q. Mr. Rightmire, you are City Engineer of Ventnor City?

A. Yes, sir.

Q. Is this a map made by you, marked Exhibit P4?

A. It was made under my directions, yes, sir.

Q. For what purpose and where is the location?

20 A. North side of Atlantic Avenue thirty-two feet east of Portland.

Q. In Ventnor City?

A. Yes, sir.

Q. Is that within what is commonly termed the loop?

A. Yes, sir.

Q. It shows the lot of land and also shows a building on it, does it not, and the dimensions?

A. Yes, sir.

30 Q. From whom did you receive the information to prepare it?

A. Mr. William H. Carroll.

Q. Who is Mr. William H. Carroll? What is his business? Do you know him?

A. Real estate business. Yes.

Q. How long has he been engaged in the real estate business in Ventnor City?

A. A number of years.

Q. Was there anything said to you as to what the building was to be used for?

A. No, sir.

A. J. PURINTON, SWORN.

By Mr. Westcott:

10

Q. Mr. Purinton, you are an official of the Atlantic Shore Railroad Company?

A. No. Atlantic City and Shore Railroad Company.

Q. What is your position, Mr. Purinton?

A. General superintendent.

Q. In charge of the operation of the railroad?

A. Yes.

Q. Does your company have an interest in or control a piece of ground at Portland and Atlantic Avenue, termed the loop?

20

A. Only the part that the track is on.

Q. Do you know Mr. William H. Carroll?

A. I do.

Q. Is he an employee of your company?

A. No, sir.

Q. Did you ever have any talk with him with regard to putting a building on this loop?

A. I did.

30

Q. For what purpose?

A. For an office and waiting room.

Q. For whom or for what?

A. As I understood, the office was for his own use and the waiting room for the use of the trolley patrons.

Q. The railroad company wasn't interested in the building of it?

A. Which railroad company?

Q. The one which you can speak for.

A. No.

Mr. Bourgeois: What do you mean by not interested?

10 Q. Did your company contribute to or build the building or were they to contribute to the building of the building?

A. No.

Q. Financed, so far as you know, by Mr. William H. Carroll?

A. So far as I know, yes.

Q. Do you know under what rights he was there, if at all?

A. Not personally.

20 Q. Did you ever authorize anyone to sign your railroad company's name or your name to an application for the building of a waiting room and office building for your company on that property?

A. I did.

Q. Who?

A. Mr. Margolf.

Q. In whose name was the application to be made?

A. Atlantic City and Shore Railroad Company.

30 Q. What interest had you to authorize the making of the application for that building?

A. I was advised by our counsel to have the application taken out in the name of the operating company.

Q. Didn't you say, Mr. Purinton, a few minutes ago that your company was not interested except within the track line?

A. As far as maintenance.

Q. No, I asked you what interest your company had and what control of the land known as the loop where this building is about to be erected or contemplated.

A. We have nothing to do with the loop except where the track is.

Q. Then, what had your company to do with the matter of the granting of permission to anyone to apply in your name to build a building on the loop or in the loop, which you say you had no jurisdiction over? 10

A. Because I was advised to do that by our counsel.

Q. And yet at the time when you authorized Mr. Margolf to sign it for you and the building to be built as your property, your company had no interest in it?

A. Not as our property.

Q. But the application, Mr. Purinton, is signed, "Atlantic City and Shore Railroad Company, by H. K. Margolf, Agent, A. J. Purinton," and says, "Application is made, owner, West Jersey and Seashore Railroad Company." What connection has the West Jersey and Seashore Railroad Company? 20

A. The West Jersey and Seashore Railroad Company owns the property.

Q. And your company had nothing at all to do with it?

A. No.

Q. And you have nothing to do with the West Jersey? 30

A. No.

By Mr. Bourgeois:

Q. Well, Mr. Purinton, your company is to have

something to do with it when the building is finished, isn't it?

Mr. Westcott: Mr. Purinton said they had no interest in it.

A. I thought you meant financial interest.

Q. I didn't quite understand your answer.

A. I didn't answer.

10 Q. Well, do.

Mr. Westcott: I object to it.

Chairman Godfrey: I might say we men on the committee are not legal men and we cannot follow the technicalities. What we would like to know and find out is what is what about the thing so that we may render our decision upon those grounds.

20 Q. Now, Mr. Purinton, you may tell.

A. We were interested in the use of the waiting room which we were supposed to have in one part of the building.

By Mr. Westcott:

Q. A waiting room in one end of the building?

A. One part of the building.

Q. How much of that building was set apart for your company?

30 A. I don't remember. I have never seen the plans.

Q. Will you look at the plans and tell me what portion of the building is yours?

A. I would rather the architect would do that.

Q. No. You are the man who is interested.

A. I don't know.

Q. You don't know whether it is the porch or any part of that building at all?

A. All I have seen was a pencil sketch that was made some months ago.

Q. Well, I will show you a blue-print showing the plan of the ground floor, the plan of the building, and ask you to indicate there what part was set apart or was said to be set aside for the railroad company's use?

A. It says here, "Waiting room." It says here, 10
"Waiting room." I haven't seen these plans at all.

Q. Which one of those rooms was to be occupied for railroad purposes, or both of them?

A. I don't know.

Q. Were both of them to be used for the railroad?

A. I don't know. When the word, "Waiting room," was used, it was supposed whatever part of the building was built for that was to be used for 20
our patrons. Whether there were two or one I don't know. I saw a pencil sketch about six months ago.

By Chairman Godfrey:

Q. That wasn't like this?

A. It was a pencil sketch.

Q. I mean that pencil sketch didn't show this?

A. I don't remember exactly. It was a good while 30
ago, six months ago.

By Mr. Westcott:

Q. Did you perfect the arrangements with Mr. Carroll?

A. No, we had nothing to do with that at all.

Q. I know, but did you perfect the arrangements with him about building the building there?

A. No, I had nothing to do with it.

Q. Did Mr. Carroll ever tell you from whom he got the privilege of building there?

A. I understood it was from the West Jersey and Seashore Railroad Company.

10 Mr. Westcott: Under the provisions of the appeal we had to give notice to all owners of property within a radius of 200 feet, and I have here postal-cards which were sent to those out of town, and I am also ready to prove the serving of the notice on all property owners within the radius.

SAMUEL SOMERVILLE, SWORN.

20

By Mr. Westcott:

Q. Are you one of the officers of Ventnor City?

A. Yes.

Q. I show you here a list of owners and show you a copy of a subpoena and ask you if you served that paper on the several people who are enumerated on that list?

A. Those are notices.

30 Q. Well, did you serve them?

A. Yes, sir, I served the notices on that list.

Q. And this is a copy of the notice?

A. Yes.

Mr. Westcott: Here is the other part, the registered mail with the return receipt.

JOHN S. WESTCOTT, SWORN.

The Witness: I examined the register in the Tax Collector's office and prepared the list, which I believe is right, of property owners owning property within 200 feet of the proposed location of the building.

10

FLORENCE YERGER-HAGAN, SWORN.

Mr. Westcott: I offer the zoning map and ordinance.

(The paper marked Exhibit P7.)

By Mr. Westcott:

20

Q. You are a property owner in Ventnor City?

A. Yes, sir.

Q. And a member of the New York bar?

A. No; Philadelphia bar.

Q. Was your residence in New York apartment 8-A, 145 West 155th Street?

A. It is.

Q. Do you know Mr. William H. Carroll, of Ventnor?

30

A. I do.

Q. Do you know him well?

A. Well, not well. In a business way I would say I do.

Q. What is his business?

A. Real estate.

Q. Have you recently received a letter from Mr. Carroll or purporting to come from Mr. Carroll?

A. Yes.

Q. Do you know Mr. Carroll's handwriting?

A. I do.

Q. Is that Mr. Carroll's handwriting?

A. Yes.

Q. Is this a letter which was received by you?

10 A. Yes, that was in answer to a response which I made to him when he phoned me to New York.

Q. What did he phone you about?

A. He phoned me on Sunday morning and told me about this prospective office building which he was about to erect, and pleaded that I shouldn't make any objection against it, that he had been a long time in Ventnor and done a great deal for Ventnor and a great deal of objection was being made to the erection of it, and he felt if I would see the plans, etc., I would find they would be a benefit, etc. I told him that he couldn't expect me, who had a property in back of this and naturally wanted the zoning ordinance carried out if it was in my favor, to not object to this building which he was going to put up, and he carried on a long conversation which, of course, I couldn't remember, couldn't repeat exactly, and I told him I thought the best thing for him to do would be to set forth his position in a letter and then I could have it before me.

30 Q. And this is the letter?

A. That is the letter.

Q. Sent by special delivery.

Mr. Westcott: I offer it.

(The letter was marked Exhibit P8, reading as follows: "December 8th, 1928. Mrs. F. A. Yerger-

Hagan, Apt. 8-A, 145 W. 155 St., New York City.

Dear Mrs. Yerger-Hagan: As per my telephone conversation with you this morning, I consulted my attorney, Mr. George A. Bourgeois, in reference to the restrictions on the land belonging to the West Jersey and Seashore Railroad which is in front of your property on Ocean Avenue. He assures me that about two years ago when the city wanted to take over the adjoining block of land to build the City Hall, they made an agreement with the railroad company whereby it could use or sell the land occupied by the loop, and that it is absolutely unrestricted. That we have a perfect right to build a waiting room and office according to our intentions. 10

“I have made arrangements with the railroad company that in consideration of my erecting a building which has met with their approval, containing a waiting room for their use, that I may use the office therein for the transaction of my business, and I can assure you that if you see the plans that you or no other property owner would have any objections whatsoever. The building in question was designed by the same architect that planned the City Hall, and he has planned this building so that it represents a manor house and is in keeping with the same architecture of the City Hall. 20

“The only objectors I know of are Frank Crawford and the Mayor. The other property owners who have seen the plans will be at the meeting Tuesday evening, eight o'clock, and say that they are in favor of this improvement. However, I am advised by my attorney that we have a perfect legal right to erect this building and I sincerely trust you will not permit others to persuade you that we are doing something that is a detriment to adjoining property owners. 30

“I have been in Ventnor thirty years and helped build Ventnor, and I am the last man in the world to do anything detrimental to my clients. We are tearing down the old shack on the corner of Portland and Atlantic Avenues and erecting our new building on the same side. It is not in front of your property.

10 “If you intend to come to Atlantic City to attend the hearing I should like to have you call at our office to inspect the plans before the meeting. If you do not intend to come to Atlantic City for the meeting, we should like to have a letter from you stating you are not opposed to our erecting this building. Very truly yours, William H. Carroll & Co., by William H. Carroll.”)

20 RICHARD W. BUCHHOLTZ, SWORN.

By Mr. Westcott:

Q. Mr. Buchholtz, you are the contractor named in the permit issued by the Building Inspector for the right to build at the loop at Portland Avenue?

A. Yes, sir; I am building the building.

Q. Do you have a contract for the building of it?

A. I have no contract, no, sir. I am building it.

30 Q. You have no contract, no agreement?

A. Yes, sir.

Q. With whom is it?

A. Mr. Carroll.

Q. William H. Carroll?

A. Yes, sir.

Q. That provides for what?

A. Waiting room and offices.

Q. And the building of a building within what is termed the loop?

A. Yes, sir.

I hereby certify that the foregoing is a full and accurate transcript of the testimony taken in the before entitled matter.

C. W. MYROSE, 10
Official Stenographer.

BOARD OF ADJUSTMENT

Ventnor City, N. J.

December 24, 1928.

A meeting of the Board of Adjustment of Ventnor City was held December 24, 1928, at 10 o'clock A. M. at the store of Charles H. Godfrey, #1728 Atlantic Avenue, Atlantic City, New Jersey, at which meeting the following members were present: 20

Charles H. Godfrey, Frank F. Hepler, Joseph Hewitt and Clark S. Barrett.

Mr. Hewitt moved and it was duly seconded by Mr. Hepler that:

In the matter of the building permit applied for by Atlantic City & Shore Railroad Company by H. C. Margolf, agent for A. J. Purinton, owner, and R. W. Buchholtz, contractor. 30

The Board of Adjustment after duly considering the evidence presented at a hearing held December 11, 1928, hereby finds that the building, for which the permit was hereto issued by the building inspector of Ventnor City is to be used, in addition to a passenger waiting room, as a real estate office in violation of the provisions of an ordinance entitled: "An

Ordinance established building districts and restrictions appropriate to such districts relating to the location of dwellings, trades, and industries, and the height and bulk of buildings in Ventnor City," passed October 22, 1928.

We further find that the land on which said building is proposed to be erected is in fact a residential district.

10 It is therefore ordered and directed that the permit dated November 27, 1928, issued by W. Harry Jones, building inspector, to West Jersey & Seashore Railroad Company is hereby revoked.

The vote upon the above motion was as follows: Ayes—Charles H. Godfrey, Frank F. Hepler, Joseph Hewitt and Clark S. Barrett. Naves—None.

I hereby certify that the foregoing is a true copy of the minutes of the Board of Adjustment held on the 24th day of December, 1928.

CLARK S. BARRETT,
Secretary.

20

December 27th, 1928.

To Atlantic City and Shore Railroad Company,
H. K. Margolf, agent for A. J. Purinton, owner,
and R. W. Buchholtz:

30 In the matter of the building permit applied for by Atlantic City & Shore Railroad Company by H. C. Margolf, agent, for A. J. Purinton, owner, and R. W. Buchholtz, contractor, we beg to advise you of the following decision unanimously reached at a meeting held on December 24th, 1928.

The Board of Adjustment after duly considering the evidence presented at a hearing held December 11th, 1928, hereby finds that the permit

applied for and issued was for a waiting room and office for the A. C. S. R. R. Co. and that the building, for which the permit was heretofore issued by the Building Inspector of Ventnor City is in fact to be used, in addition to a passenger waiting room, as a real estate office in violation of the provisions of an ordinance entitled "An Ordinance to establish building districts and restrictions appropriate to such districts, relating to the location of dwellings, trades and industries, and the height and bulk of buildings in Ventnor City," passed October 22, 1928. 10

We further find that the land on which said building is proposed to be erected is in fact a residential district but one in which, under the provisions of the above ordinance, a waiting room and office for a public utility may be erected.

It is therefore ordered and directed that the permit dated November 27th, 1928, issued by W. Harry Jones, Building Inspector, to West Jersey & Seashore Railroad Company is hereby revoked, pursuant to the authority vested in us by said ordinance. 20

Harold W. Faunce
CLARK S. BARRETT
BOARD OF ADJUSTMENT.

J. M. Hewitt
Frank F. Hepler
Chas. H. Godfrey

30

ORDINANCE No. 11
1928
ZONING

Ordinance No. 11, 1928, introduced and passed its first reading at a meeting of Common Council,

held on September 10, 1928, and will be further considered for second and final passage at a meeting of the Common Council of Ventnor City, N. J., to be held in the Council Chamber, City Hall, Ventnor City, New Jersey, on the twenty-second day of October, A. D., 1928, at the hour of eight o'clock P. M., at which time and place any and all persons interested in the consideration and passage of this ordinance will be heard.

10

AN ORDINANCE TO ESTABLISH BUILDING DISTRICTS, AND RESTRICTIONS APPROPRIATE TO SUCH DISTRICTS, RELATING TO THE LOCATIONS OF DWELLINGS, TRADES AND INDUSTRIES AND THE HEIGHT AND BULK OF BUILDINGS:

BE IT ORDAINED BY THE COMMON COUNCIL OF VENTNOR CITY, N. J.

20

Sec. 1.—Districts. For the purpose of this Ordinance, the City of Ventnor City is hereby divided into three classes of districts as follows:

RESIDENCE DISTRICTS

APARTMENT DISTRICTS

BUSINESS DISTRICTS

The boundaries of these districts are hereby established as shown on the Building Zone Map which accompanies and is hereby declared to be a part of this Ordinance.

30

Sec. 2.—GENERAL REQUIREMENTS AND STIPULATIONS: Except as hereinafter specified, no building, structure or premises or part thereof shall hereafter be used, constructed, reconstructed, extended or enlarged or substantially altered in its use or construction, except in conformity with the regulations herein prescribed for the district in which it is located, except that the Board of Adjust-

ment, hereinafter constituted, shall have the power to permit an extension to or a substitution for an existing use or construction within the same lot, under such conditions as will safeguard the neighborhood.

The provisions of this Ordinance shall not apply to existing property or building used or to be used by public utilities, in furnishing service, if upon a petition of the public utility the Board of Public Utility Commissioners shall after a public hearing 10 decide that the present or proposed situation of the building in question is reasonably necessary for the service, convenience or welfare of the public.

The provisions of this Ordinance shall not apply to any existing structure nor to the existing use of any building or premises, nor shall they require any change in the plans, construction or designated use of any building or part thereof, the construction of which shall be lawfully in progress at the time of passage of this Ordinance, or for which a permit 20 shall have been issued pursuant to law or ordinance, provided construction shall be promptly and diligently prosecuted. No non-conforming use, if once changed to a use permitted in the district in which it is located, shall ever be changed back to a non-conforming use. No non-conforming use which shall have been discontinued for a period exceeding twelve months shall be resumed or replaced by any other non-conforming use. Nothing herein shall prevent the restoration of a wall or other structural member 30 of a building which shall have been declared unsafe by the Building Inspector.

Nothing in this Ordinance shall prevent the restoration of a building destroyed less than 50 per cent of its sound value, exclusive of the foundations, by fire, explosion, act of God or act of the public enemy, subsequent to the passage of this Ordinance, or shall

prevent the continuance of the use of such building or any part thereof as such use existed at the time of such destruction: provided that the restoration and resumption shall take place within not more than twelve months from the time of such destruction.

10 No trade, industry or purpose is permitted which, in the opinion of the Board of Adjustment when conducted under proper and adequate conditions and safeguards, may create corrosive, toxic or noisome fumes, gas, smoke or odors or obnoxious dust, vapor or wastes or offensive noise or vibration, detrimental to the public health, safety or general welfare.

A yard or court on the same lot, conforming with all the requirements of this Ordinance, shall be provided wherever necessary to give adequate light and ventilation, by means of a window or other aperture in a vertical wall, opening therefrom, to any room in which persons live, sleep, work or congregate.

20 For the purposes of this Ordinance a lot is defined as a parcel of ground under one sole or undivided ownership separate from that of any adjoining lots. Any lot which is to be occupied for residential purpose shall have a frontage of at least 25 feet on one or more public streets.

No lot shall hereafter be sub-divided so as to reduce its front on any street to less than 30 feet and its depth to less than 62½ feet.

30 Along the whole boundary line between any Business District, any Residence or Apartment District, an open yard at least three feet wide shall be required in the Business District.

Sec 3.—RESIDENCE DISTRICT USES: In any Residence District no building or premises shall be used or arranged or designed to be used in any part for other than one or more of the following specified purposes:

- (1) One detached dwelling for not more than two private families or two private housekeeping units living and entering separately from one another.
- (2) The office of a doctor, dentist, teacher or musician residing on the premises; provided there is no display or advertising except for a small professional name plate.
- (3) Customary home occupations, such as dressmaking, or millinery, conducted by resident occupants only; provided there is no display or advertising visible from outside except for announcement card or sign of not more than two square feet area, and that such uses be confined to the first floor of the residence building excepting where the resident does not occupy the first floor. In no case shall any such occupation be conducted on any story the floor level of which is more than three feet below the established curb level. 10
- (4) Schools, public libraries, churches, parish houses and Sunday school buildings, soldiers' or sailors' memorial buildings; except those a chief activity of which is one customarily carried on as a gainful business. 20
- (5) Real estate signs, referring only to the premises or tract on which they are located, and having an area not exceeding eight square feet.
- (6) Nurseries, truck gardens and greenhouses; provided that any greenhouse heating plant and any building in which farm animals are kept shall be distant not less than 20 feet from any lot line. 30
- (7) Accessory uses customary with or incident to any aforesaid permitted use and located on the same lot therewith, including private garages and private stables, all under conditions herein-

after specified. The term "accessory use" shall not include any activity conducted for gain or commonly so conducted, or any walk or driveway giving access thereto, or any billboard advertising sign or poster, except for public welfare bulletin boards; nor shall any accessory building be occupied for residence purposes, except by servants employed by the occupant of the premises and should such accessory building be occupied by servants, then such use shall not be permitted on any lot having an area of less than 5000 square feet.

10

(8) Railroad or street railroad passenger stations or rights of way; not including switching, storage, or freight yard or sidings, telephone exchanges; provided there is no service yard in connection therewith for storage or trucking.

20

(9) General hospitals not for contagious or infectious diseases or for the insane or feeble-minded, provided the lot area be not less than two acres, that it be not more than 40 per cent occupied by buildings and that no building be within 30 feet of any street line or lot line. Other institutional buildings not of a correctional nature, provided the lot area be not less than ten acres and not more than 20 per cent occupied by buildings, and that no building thereon be within 100 feet of any street line or lot line.

30

(10) Lodging houses, rooming houses and boarding houses are prohibited.

In any apartment district, no building or premises shall be used or arranged or designed to be used in any part for other than one or more of the following specified purposes:

(1) Any use hereinbefore specified as permissible in Residential Districts; or the office of a doctor, dentist, teacher or musician.

- (2) An apartment or tenement house for three or more families, a hotel or boarding house.

Sec. 5.—BUSINESS DISTRICT USES: In any Business District, buildings or premises may be used in any part for any purpose hereinbefore permitted in any Residence District or Apartment District; and also for any office, retail store or stand or other structure where goods are sold or service rendered, primarily for retail trade, including public garages and filling stations under limitations hereinafter prescribed. No wholesale merchandising shall be permitted in a Business District unless it is incidental and subordinate to a primarily retail business. Storage shall be limited to a reasonable supply of those articles which are to be displayed and sold on the premises. No manufacturing, fabricating, converting, altering, finishing or assembling is permitted in any Business District except as a necessary incident to retail trade; and no such uses shall be permitted on a scale requiring more than a total of five horse power, or more than two employees thereon regularly engaged (or four employees, in the case of the needle trades) or more than fifteen pounds of steam pressure except for vulcanizing; or to an extent involving more than one-quarter of the entire floor space of the building, or more than the equivalent of one-half of an entire floor of the building. No internal combustion engine shall be operated except for vehicular traction, or where essential for the emergency use of a public service corporation. No advertising sign or bill board shall be less than two feet above the ground or more than 14 feet high above the ground or more than 25 feet long and if located on the ground shall not be located within 16 feet of any highway. No billboard or advertising sign shall be placed on the roof of, or above any building. No sign shall be placed or erected except

upon approval of the Building Inspector and permit issued therefor. The foregoing shall not affect signs having reference to the premises placed on buildings during course of construction. Signs having reference to premises during course of construction are expressly permitted in the residence, apartment and business districts.

Business signs relating to business conducted on the premises shall be regulated by the Ordinances
10 concerning signs.

No building or premises in any district shall be used or arranged or designed to be used in any part, except as a necessary minor incident to a use hereinbefore permitted, for any of the following specified purposes:

- Abattoir;
- Acetylene gas manufacture or storage, except in quantities not exceeding 50 cubic feet, exclusively for welding operations;
- 20 Acid manufacture;
- Aluminum powder manufacture or storage in quantities exceeding 20 lb.;
- Ammonia manufacture or storage on a commercial scale, except for refrigeration;
- Animal black or animal charcoal manufacture or consumption;
- Arsenal;
- Asphalt manufacture or preparation, except under municipal control;
- 30 Bark mill or bark processing or storage;
- Blacking manufacture;
- Blacksmith shop, except by special permission of the Board of Adjustment;
- Blast furnace;
- Bleaching powder manufacture or use on a commercial scale;
- Boiler factory or boiler shop;

- Bone distillation or processing or bone black manufacture or use;
- Brewery;
- Brick yard;
- titles exceeding 20 lb.;
- Candle manufacture;
- Canning;
- Carbon products manufacture or processing;
- Carborundum manufacture or fabrication;
- Carpet cleaning; 10
- Celluloid manufacture or processing;
- Cellulose products manufacture;
- Cement manufacture or breaking of bulk, except at point of final utilization;
- Cement block manufacture, except at a distance of 50 feet from any street or lot line;
- Ceramic industries;
- Chemical industries;
- Chlorine manufacture or utilization;
- Coal distillation or the manufacture of coal products; 20
- Coke oven;
- Color manufacture or preparation;
- Combustible and inflammable processes;
- Converter furnace;
- Cork products manufacture;
- Cotton gin or picker;
- Cottonseed oil processing;
- Crematory of any kind;
- Creosote manufacture or application; 30
- Crusher or crushing operation, except by special permission of the Board of Adjustment;
- Cupola;
- Curing of hides or foods;
- Destructor;
- Dextrine preparation;
- Disinfectant preparation on a commercial scale;

- Distillation of any organic substances;
- Distillery;
- Dryers operated by power and direct heat;
- Dry kiln, except as provided for planing mills;
- Dye manufacture or processing; dye works;
- Electro-plating;
- Emery cloth manufacture;
- Enamel manufacture;
- 10 Evaporating processes, except under seal;
- Explosive manufacture or explosive processes or the storage of explosives;
- Exterminator preparation;
- Extract manufacture or compounding;
- Fat rendering;
- Fertilizer manufacture; or compounding on a commercial scale;
- Fireworks manufacture or storage;
- Fish smoking or curing or processes involving fish scrap;
- 20 Flavoring extract preparation;
- Food processing;
- Forge shop using proper hammers within 500 feet of any Residence District;
- Foundry;
- Fungicide compounding;
- Furnace, blast or convertor;
- Garbage dump, destructor, incinerator or reduction works, unless controlled by the municipality;
- 30 Gas manufacture;
- Gas storage, except by special permission of the Board of Adjustment, in quantities exceeding 50 cu. ft., or at a pressure exceeding 20 lb. per square inch;
- Gasoline storage, except as specified for oil storage;
- Gelatine manufacture or processing;

- Glass manufacture or fabrication;
- Glucose manufacture;
- Glue manufacture;
- Graphite manufacture or compounding;
- Grease refining, rendering or compounding;
- Grinding processes, except by special permission
of the Boards of Adjustment;
- Gypsum manufacture or use on a commercial
scale;
- Hide processing; 10
- Ice house, except by special permission of the
Board of Adjustment;
- Incinerator;
- Inflammable processes, materials or products;
- Insecticide preparation on a commercial scale;
- Iron foundry;
- Ivory black manufacture or use;
- Junk yard;
- Kiln;
- Lampblack factory or use; 20
- Lard rendering or refining;
- Leather processing;
- Liquid waste producing industries, unless such
waste be disposed of in a manner approved by
the Board of Adjustment;
- Lime kiln and lime products manufacture;
- Linoleum manufacture;
- Linseed oil crushing and refining and the manu-
facture of products therefrom;
- Locomotive works or repair shop; 30
- Match manufacturing or storage in bulk;
- Metal working shop employing punches, presses,
stamps or similar equipment;
- Milk storage or distributing station;
- Mixing processes involving power mixers;
- Monument works;

- Naphtha storage, except as specified for oil storage;
- Nitrating processes;
- Offal processing;
- Oil storage above the ground in quantities exceeding 100 gallons if 35 degrees Beaume' density or lighter, or exceeding 250 gallons in any case, within 30 feet of any lot line or street line or in quantities exceeding 20,000 gallons capacity within 50 feet;
- 10 Oil compounding or refining;
- Oil cloth manufacture;
- Oiled goods manufacture;
- Ore reduction or smelting;
- Organic chemical manufacture;
- Paint grinding or mixing by power machinery;
- Paper manufacture or paper coating;
- Patent leather manufacture;
- Perfumery compounding;
- 20 Petroleum refining;
- Pickling;
- Pipe mill;
- Planing mill, within 200 feet of any district boundary line;
- Plaster or plaster-of-paris manufacture, or use other than for final application in building construction;
- Plating;
- 30 Pneumatic tool operations, except temporarily for construction purposes, by special permission of the Board of Adjustment;
- Poison preparation or the manufacture of poison gases, on a commercial scale;
- Potash preparation or refining;
- Pottery;
- Powder manufacture or preparation;
- Preserving;

- Printing ink manufacture;
- Pulp manufacture or conversion;
- Punching operations;
- Putty mixing or grinding by power;
- Pyroxylyene manufacture or processing or the use of intermediates therefrom;
- Quarry;
- Radium preparation;
- Rag treatment, including sorting, storage, bleaching and boiling; 10
- Rendering, except under municipal control;
- Railway car manufacturing or repairing;
- Railway shops;
- Reciprocating electric or pneumatic tools, except as provided for under pneumatic tools;
- Reclaiming processes from organic refuse except under municipal control;
- Reduction works for garbage or refuse;
- Refining, except by special permission of the Board of Adjustment; 20
- Refuse disposal except under municipal control;
- Riveting operations, except as provided for under pneumatic tools;
- Roasting;
- Rolling mill or rolling processes;
- Rotary kilns or dryers;
- Roofing manufacture or preparation;
- Roundhouse;
- Rubber manufacture, reclaiming or processing;
- Salt manufacture;
- Sand paper manufacture; 30
- Sauerkraut preparation;
- Sausage manufacture;
- Sawmill, except as specified for planing mill;
- Serum preparation, commercial;
- Sewage disposal, unless under municipal control;
- Shellac manufacture;

- Shoe polish or shoe blacking preparation;
- Size manufacture;
- Skin curing, dressing or preparation;
- Slaughtering;
- Sludge-producing processes;
- Smelting;
- Snuff preparation;
- Soap or soap powder manufacture;
- Soda preparation;
- 10 Stamping operations;
- Starch manufacture;
- Stock yard;
- Stone crusher;
- Storage, except within building or by special permission of the Board of Adjustment;
- Stove polish or blacking manufacture;
- Structural steel fabrication or assembly;
- Sugar manufacture or refining.
- Tallow rendering or refining;
- 20 Tank shop;
- Tanning;
- Tar distillation, tar roofing or tar waterproofing manufacture;
- Tile making;
- Tobacco factory;
- Turpentine refining, or use in processes with storage, except as incidental to a retail painting and decorating establishment;
- Varnish making;
- 30 Vinegar preparation;
- Washing compound preparation;
- White lead manufacture;
- Wood distillation;
- Woodworking establishments, except as permitted for planing mills;
- Wool pulling and scouring;
- Yeast manufacture;

Zinc white preparation;

Sec. 6—GARAGES:

The regulations herein for garages shall apply also to stables, except that one horse and one vehicle shall together be deemed the equivalent of one motor vehicle. A private garage in which no business, service or industry is conducted, is a permitted use in any Residence District or Apartment District on the same lot with a principal building to which it is accessory. Private garage space may be provided on any occupied lot in any such district for two motor vehicles; and for one additional motor vehicle for each 200 square feet of area by which the area of the lot exceeds 2400 square feet, except that the maximum number of vehicles housed in a private garage or garages on one lot shall not exceed five unless every part of such garage or garages is distance at least 50 feet from every lot line. The number of vehicles shall not exceed eight in any case. Not more than one vehicle stored on any one lot in such districts shall be a commercial vehicle. No such commercial vehicle shall exceed one and one-half tons capacity. Space for not more than one vehicle may be leased to other than an occupant of the principal building, provided that such vehicle be not a commercial vehicle.

Community or group garages may be permitted in any district, even on an otherwise vacant lot, if the owners of 80 per cent or more of the area of such block plus the areas of lots fronting opposite such lot, and including all owners of lot immediately adjacent to the lot in question, shall consent in writing thereto. Such garages shall conform with all the requirements herein set forth for accessory building in Residence Districts.

Any garage or assembly of garages on one lot, having a capacity for more than five cars, shall be

- subjected to all restrictions herein prescribed for a public garage. No public garage shall have any part of its shop on the first floor within 25 feet of any entrance or exit for vehicles. No commercial work on motor vehicles shall be done out of doors. There shall be no opening (except chimney openings) through the walls or roof of that portion of any building which is used as a public garage, within 15 feet of any party lot line. All openings shall be
- 10 protected with wire glass and mixed metal sashes and frames, or a fire door. There shall be no driveway for vehicles in connection with any public garage within 200 feet of the ground of any church, school, playground, sanatorium, hospital, convalescent home, missionary retreat, public library, or institution for dependents or for children or within 50 feet of any district boundary line, nor shall any filling station or gas pump be located within such distances. No filling station appliance or gas pump
- 20 shall be located within 12 feet of any street line. No part of any building any part of which is used as a public garage shall be occupied for residence purposes, unless the residence portion is completely separated from the garage portion by unpierced fire-proof walls and floors, as defined in the Building Ordinance. Vehicle driveways shall not be less than ten feet wide; and if the capacity of the garage exceeds 15 cars, not less than 12 feet wide.

Sec. 7.—HEIGHTS:

- 30 The height of a building or structure shall be measured from the average natural ground level within ten feet of the building up to the average level of the highest roof thereon.

No story shall be deemed a first story if its floor level is more than nine feet above the ground.

In Residence Districts, no building or structure shall have a height exceeding three stories or 45 feet.

In apartment districts and Business Districts, no building or structure shall exceed four stories or 55 feet in height except buildings or structures of fire proof construction, which shall not exceed eight stories or one hundred feet in height.

The provisions of this Ordinance with respect to height shall not apply to church spires, cupolas, chimneys, flagpoles, radio aerials and their supports, or gas holders; or, if not occupying an area greater than 25 per cent of the lot area to domes, ornamental towers, observation towers; water towers, pent houses, hose towers, water tanks and scenery lofts. 10

Sec. 8.—SETBACK BUILDING LINES, SIDE AND REAR YARDS:

Except as hereinafter specified no building or structure in any residence district shall extend within 12 feet of any street line, excepting that if a corner lot have a frontage of less than 50 feet or a length of less than 80 feet, then no building or structure shall extend within 5 feet of the side street line. 20
For this purpose the narrow end of the lot shall be considered its front.

Except as hereinafter specified no building or structure shall extend within 6 feet of any street line in any Apartment District.

Where in any Residence District there are two or more then existing buildings within the same block front, no building or structure shall extend nearer any street line than the average alignment of such then existing buildings; except that this shall not require any building to set back more than 20 feet. 30

These provisions shall not require any building or structure to set back farther from any street line than the setback of that one of two then existing buildings on immediately adjacent lots which is farthest from such street line.

A one-story open or glass-enclosed porch may extend forward not more than ten feet toward any street line from the setback building lines herein prescribed.

No building or structure in any Residence District or Apartment District shall extend within less than 3 feet of the rear or side property lines nor shall any building together with the accessory buildings in any Residence District occupy more than 70% of the area of the lot, and in any Apartment District no building, together with the accessory buildings, shall occupy more than 70% of the area of an inside lot nor more than 90% of the area of a corner lot.

No accessory building shall be more than 1½ stories or more than 22 feet high or (if in any Residence District or Apartment District) shall extend within less than 3 feet of any side or rear lot lines except that by mutual agreement between adjoining property owners a two car garage may be constructed or completed across their joint lot line.

Nothing herein shall prevent the construction of fence or masonry wall, provided such fence or wall is not more than 4 feet 6 inches in height and such fence not more than 2-3 solid.

Accessory buildings shall be located, while conforming to the requirements hereinabove prescribed, on inside lots on the rear and on corner lots on the rear corner of such lots, provided a masonry wall without openings forming part of a one story fire-proof garage may be erected on the rear and side property line and such garage shall conform to all the requirements of the Building Ordinance.

Sec. 9.—PROJECTIONS INTO YARDS, COURTS OR SETBACKS:

Cornices and eaves may project over any yard, court or setback, provided such cornice or eaves does

not extend within 6 inches of a side or rear boundary line.

Sills, leaders, belt courses and ornamental features may project not more than 6 inches over any yard, court or setback and in any apartment district bay windows not more than 8 feet long may project not more than 3 feet toward any street line.

Front steps may project toward a street over any yard or setback from any building to the street property line, but shall not encroach within 3 feet of the line of any adjoining owner: 10

Sec. 10.—ENFORCEMENT:

Before proceeding with any work of the kind specified in Section 2 of this Ordinance, an application for a building permit shall be filed with the Building Inspector of the City. Applications shall include plans in duplicate drawn to scale in blueprint, giving dimensions, radii and angles of the lot, the heights, dimensions and locations thereon of all buildings whether existing or proposed, their existing and intended uses, the number of families to be housed and such other information as may be necessary to determine and provide for the enforcement of this Ordinance. One copy of any set of approved plans shall be returned to the applicant with such permit as may be granted. The Inspector shall withhold a permit for the construction or alteration of any building, if such building, as constructed or altered, would be in violation of this Ordinance. 20

Sec. 11.—BOARD OF ADJUSTMENT: 30

A Board of Adjustment is hereby established. Its members shall be appointed by the Mayor, subject to confirmation by the City Council. Such Board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this Ordinance in harmony with its

general purpose and intent and in accordance with general or specific rules herein contained.

The Board of Adjustment shall consist of five members, two to be appointed for one year, two for two years and one for three years. Succeeding appointments shall be for three year terms, except that an appointment made to fill a vacancy shall be for the unexpired term. Members shall serve without pay and shall be removable for cause or by the ap-
10 pointing authority, upon written charges and after public hearing.

The Board of Adjustment shall adopt rules in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall
20 keep minutes of its proceedings, showing the vote for each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the Building Inspector. Such appeal
30 shall be taken within a reasonable time as provided by the rules of the Board of filing with the Building Inspector and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Building Inspector shall forthwith transmit to the Board all the papers constituting the record which the action appealed from was taken.

An appeal stays all proceedings in furtherance of

the action appealed from, unless the Building Inspector certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application of notice to the Building Inspector and on due cause shown. 10

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, giving due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appeal in person or by agent or by attorney.

The Board of Adjustment shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Building Inspector in the enforcement of this Ordinance. 20
- (2) To hear and decide special exceptions to the terms of this Ordinance.
- (3) To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done. 30
- (4) To establish appropriate requirements for irregular lots existing as such at the time of passage of this Ordinance.
- (5) To modify the requirements hereof in cases of exceptional topography, under such conditions as will safeguard the neighborhood.

- (6) To permit the extension or alteration of any existing building or use, whether conforming or non-conforming, including the erection of a supplementary non-conforming building on the same lot as such existed at the time of passage of this Ordinance, even into a more restricted district: after notice and public hearing, and under such conditions as will safeguard the neighborhood.
- 10 (7) To grant temporary and conditional permits of limited duration for non-conforming uses and buildings in un-developed sections.
- (8) To determine and establish the true location of district boundaries in any disputed case.
- (9) To permit the erection and use of a building to a height not more than 20 feet in excess of that stipulated in this Ordinance by a public service corporation for public utility purposes, where such construction and use are reasonably necessary for the public convenience or welfare.
- 20

In exercising the above mentioned powers such Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end have all powers of the Building Inspector.

The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

30

Sec. 12.—CERTIFICATE OF OCCUPANCY:

It shall be unlawful to use any part of any building or structure hereafter erected until a Certificate

of Occupancy shall have been issued therefor by the Building Inspector showing that the proposed use and construction are in accordance with this Ordinance.

Sec. 13.—AMENDMENTS:

The City Council may, from time to time, after public notice and hearing, amend, supplement or change these regulations or districts. In case, however, of a protest against such change signed by the owners of twenty per centum or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or of those directly opposite thereto, extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-quarters of all the members of the City Council. 10

No amendment shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in the City of Ventnor. 20

Sec. 14.—VIOLATIONS PENALTIES:

Whoever shall violate any provision of this Ordinance shall, for each offense, and for each and every day that such offense continues, be subject to a fine of not more than One Hundred (\$100) Dollars. 30

Sec. 15.—VALIDITY:

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

Sec. 16.—ORDINANCES REPEALED:

Ordinance No. 8, entitled "An Ordinance fixing and defining the district wherein buildings for pub-

lic garages, the storage or keeping of gasoline for sale to the public shall not be built or hereafter established," approved May 25, 1917, and ordinance No. 10 entitled "An Ordinance to prohibit and restrict the location of and conducting and carrying on of trades or industries and the location, erecting and altering of buildings for the conducting and carrying on of trades or industries within Ventnor City," approved August 23, 1921, are hereby repealed, together with all amendments thereto.

Sec. 17.—IN EFFECT:

This Ordinance shall take effect immediately upon passage and publication as provided by law.

By order of the Common Council of Ventnor City,
N. J.

Dated October 4, 1928.

CHARLES E. REPETTO,

City Clerk.

Printer's fee, \$201.90.

Order No. 31396

20

30

OPINION.

NEW JERSEY SUPREME COURT.

No. 212, May Term, 1929.

	10
—————	
RICHARD W. BUCHHOLTZ,) <i>et als.</i> ,) <i>Prosecutors,</i>)	
v.	
THE BOARD OF ADJUSTMENT) OF THE CITY OF VENT-) NOR, <i>et als.</i> ,) <i>Defendants.</i>)	On Certiorari.

	20
—————	

Argued May 7th, 1929; Decided May 21st, 1929, before JUSTICES PARKER, BLACK and BODINE.

For the prosecutors: MESSRS. BOURGEOIS and COULOMB.

For the defendants: MESSRS. JOHN S. WESTCOTT and HIRAM STEELMAN.

	30
—————	

PER CURIAM:

The certiorari in this case was allowed to review the judgment or order of the Board of Adjustment of the City of Ventnor, dated December 24th, 1928; revoking a building permit, dated Nov. 21st, 1928;

issued by the Inspector of Buildings to the prosecutors. The prosecutors file four reasons for setting aside the order or judgment of the Board of Adjustment. 1st: Because the lands on which the building is being erected are not restricted by the zoning ordinances of Ventnor City, and therefore, the Board was without jurisdiction to act.

10 2nd and 3rd: Because there is no provision in the zoning ordinance which inhibits the erection or use of any building upon said lands.

4th: Because the Board of Adjustment was without authority to make the order vacating the building permit issued.

We find no legal merit in any of these reasons. They call for no extended discussion.

20 It may not be amiss, however, to add, the prosecutors urge and rely principally upon the fact that the building zone map of Ventnor City provides, 1st: Residence districts. 2nd: Apartment districts. 3rd: Business districts; on which is marked "Play Ground," "City Hall," "Loop." The blocks so marked do not come within the designation of any of the restricted districts, as shown upon the map and indicated by the key thereto, therefore, it is argued by the prosecutors, that the Board had no jurisdiction over the land in question, which is in the plot marked "Loop." We think there is no basis for any such construction to be placed upon the Building Zone Map. The purpose of the zoning
30 map was not only to point out the various classes of zoned districts, but it attempts, also, to convey some information concerning locations to the map reader. Its purpose was not to restrict the zoning area by such descriptions. The result we have reached is the order or judgment of the Board of Adjustment is affirmed and the writ of certiorari is dismissed with costs.

*Rule for Affirming Judgment of the Board
of Adjustment of the City of Ventnor
City and Dismissing of the Writ
of Certiorari* 63

RULE FOR AFFIRMING JUDGMENT OF THE
BOARD OF ADJUSTMENT OF THE CITY
OF VENTNOR CITY AND DISMISSING
THE WRIT OF CERTIORARI.

10

NEW JERSEY SUPREME COURT.

RICHARD W. BUCHHOLTZ
and WEST JERSEY AND
SEASHORE RAILROAD COM-
PANY,

Prosecutors,

v.

THE BOARD OF ADJUST-
MENTS OF THE CITY OF
VENTNOR, CHARLES H.
GODFREY, Chairman; J.
M. HEWITT, FRANK F.
HEPLER, HAROLD W.
FAUNCE and CLARK S.
BARRETT,

Defendants.

Writ of Certiorari.
Rule for Affirming 20
Judgment of the
Board of Adjust-
ment of the City of
Ventnor City and
Dismissing
the Writ of Cer-
tiorari.

30

The Court, having inspected the transcript and proceedings of the Board of Adjustment of the City of Ventnor City, return with the writ of certiorari

64 *Rule for Affirming Judgment of the Board
of Adjustment of the City of Ventnor
City and Dismissing of the Writ
of Certiorari*

in this cause and the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same, it is on this 14th day of June, 1929,

10 Ordered that the judgment of the Board of Adjustment of the City of Ventnor City be affirmed and that the writ of certiorari be and the same hereby is dismissed with costs.

Entered June 14th, 1929.

On motion of

HIRAM STEELMAN,
Attorney for Defendants.

20

30

NOTICE OF APPEAL.

(Filed July 6th, 1929.)

NEW JERSEY SUPREME COURT.

RICHARD W. BUCHHOLTZ
and WEST JERSEY AND
SEASHORE RAILROAD COM-
PANY,

Prosecutors,

v.

THE BOARD OF ADJUST-
MENTS OF THE CITY OF
VENTNOR, CHARLES H.
GODFREY, Chairman; J.
M. HEWITT, FRANK F.
HEPLER, HAROLD W.
FAUNCE and CLARK S.
BARRETT,

Defendants.

10

On Certiorari.
Notice of Appeal.

20

To Hiram Steelman, Esq., Attorney for Respon-
dents:

30

Please take notice, that the prosecutors appeal from the whole and every part of the judgment of the Supreme Court entered in the above cause, dismissing the writ of certiorari theretofore allowed

therein, on the ground that the New Jersey Supreme Court erred in giving a judgment in favor of the respondents.

BOURGEOIS & COULOMB,
Attorneys of Prosecutors.

Dated July 5, 1929.

10

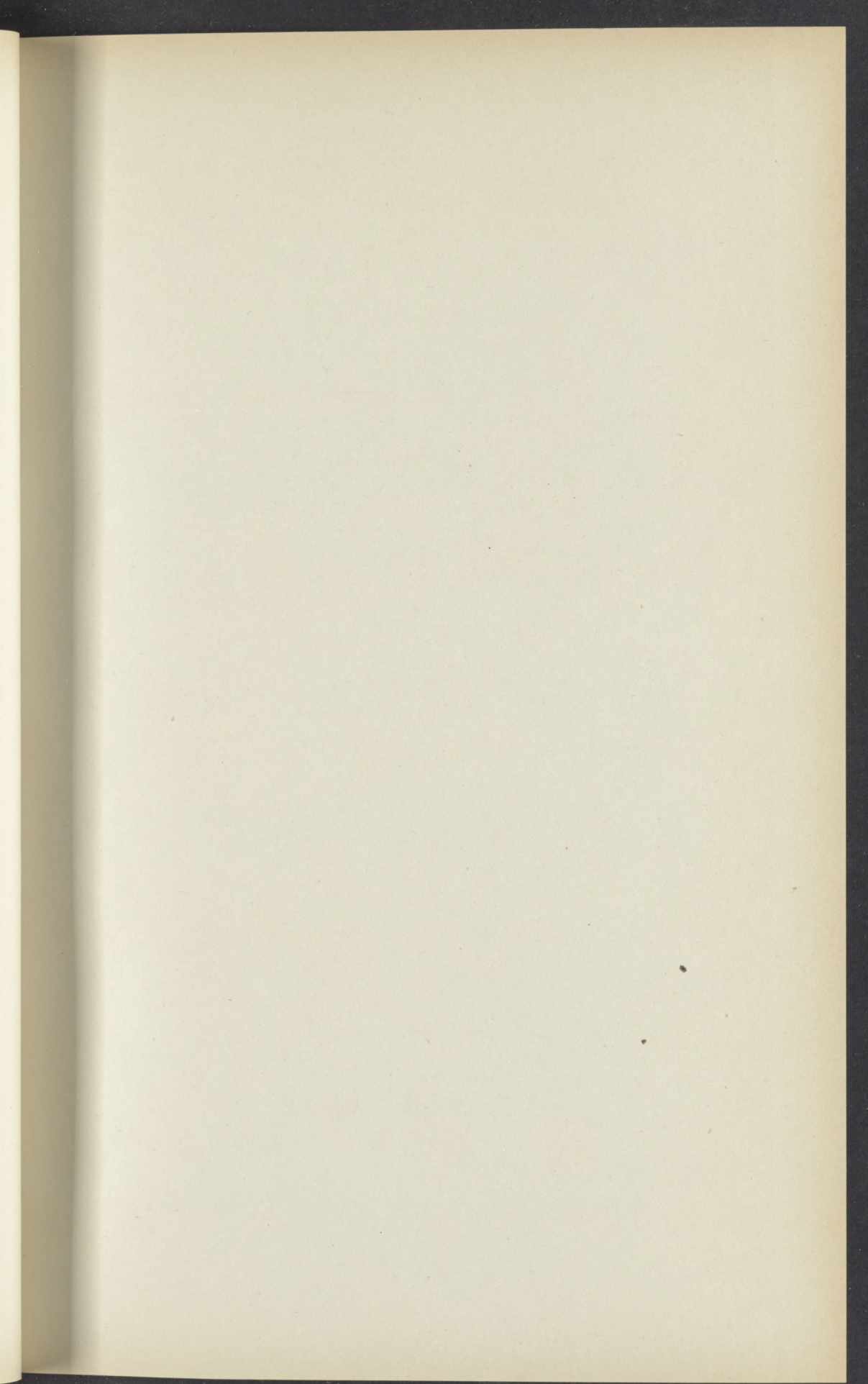
[ENDORSED]

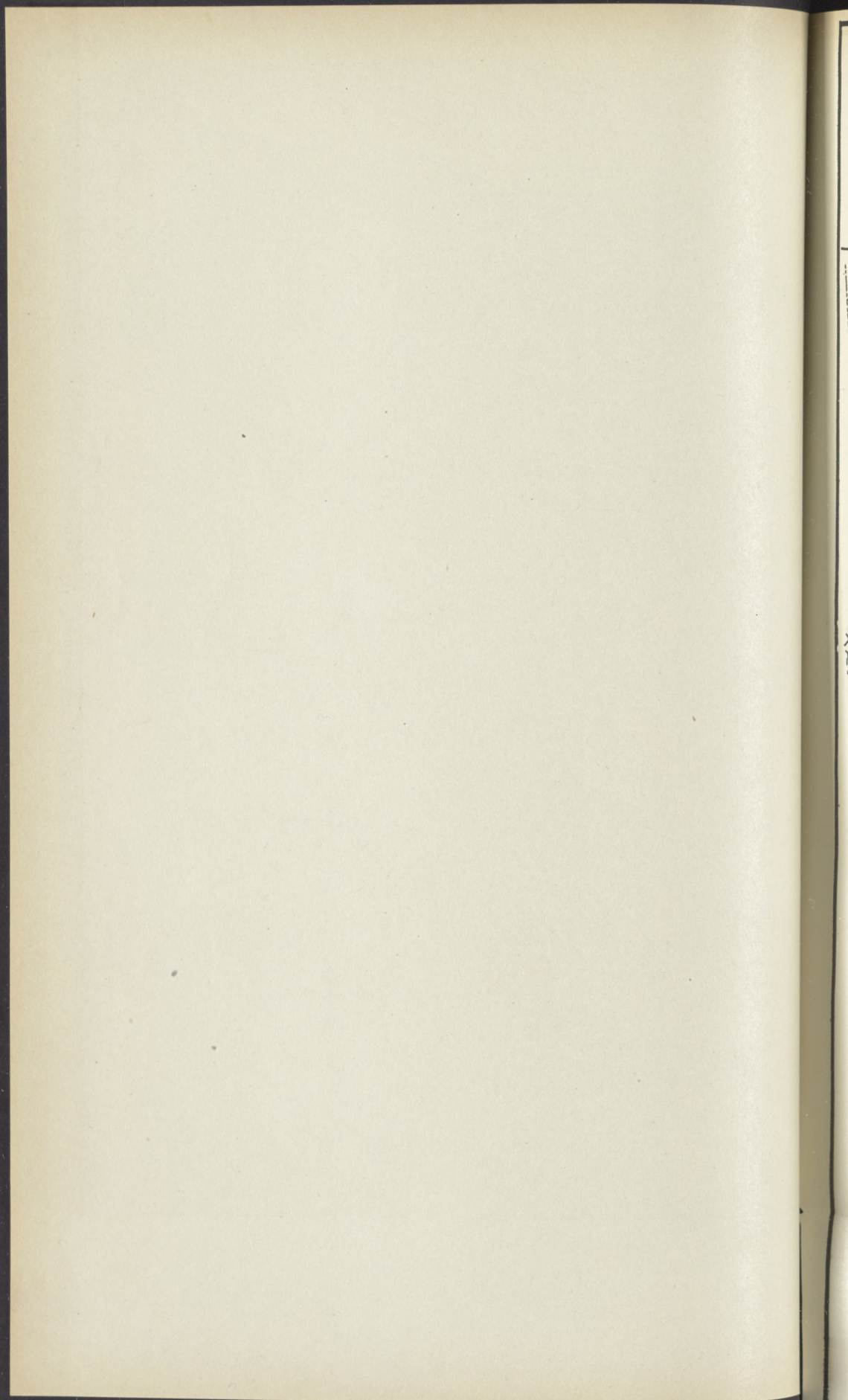
Service of the within notice of appeal is hereby acknowledged this 5th day of July, A. D. 1929.

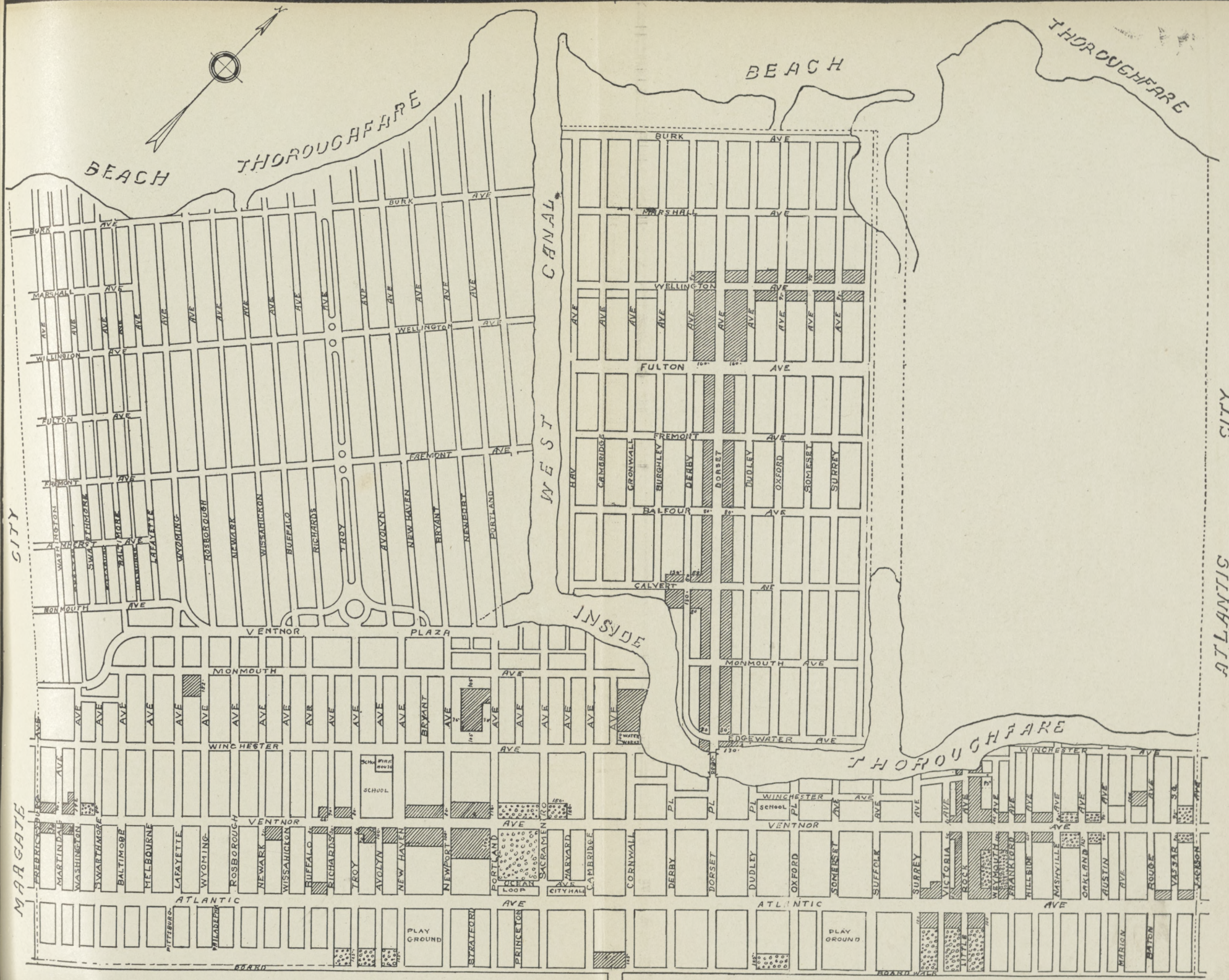
Hiram Steelman,
Attorney for Respondents.

20

30







KEY

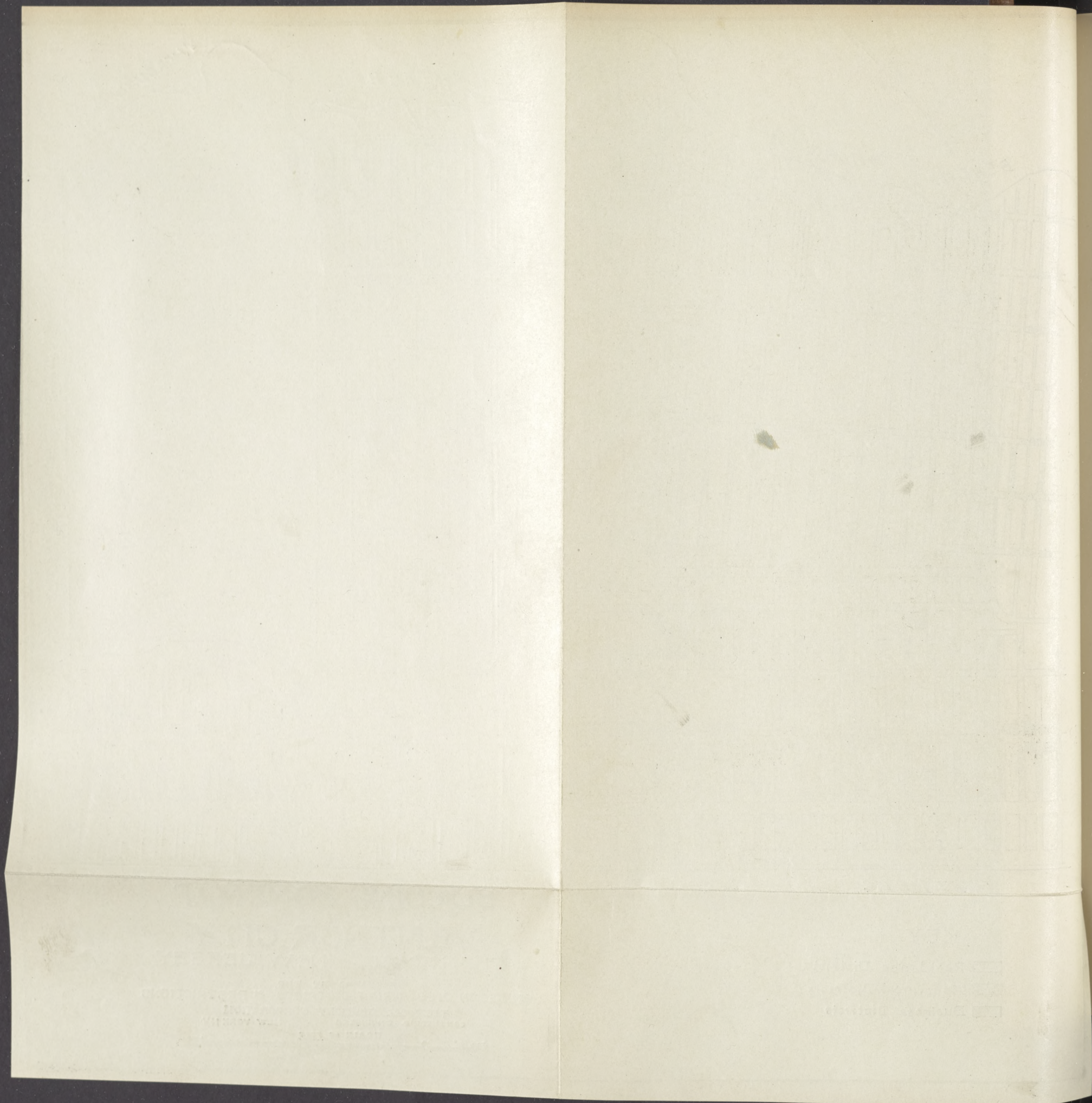
- Residence Districts
- Apartment Districts
- Business Districts

BUILDING ZONE MAP
OF
VENTNOR CITY

ATLANTIC CO NEW JERSEY

PREPARED BY THE
COMMISSION ON BUILDING DISTRICTS & RESTRICTIONS
TECHNICAL ADVISORY CORPORATION
CONSULTING ENGINEERS NEW YORK N.Y.

SCALE OF FEET
1000



NEW JERSEY COURT OF ERRORS
AND APPEALS.

RICHARD W. BUCHHOLTZ, *et al.*,
Appellants,

v.

BOARD OF ADJUSTMENTS OF THE CITY OF VENTNOR,
et al.,
Respondents.

ON APPEAL FROM CERTIORARI TO SUPREME COURT.

BRIEF OF BOURGEOIS & COULOMB,
ATTORNEYS FOR APPELLANTS.

The appeal in this case brings here for review, a judgment of the New Jersey Supreme Court, dismissing a writ of certiorari theretofore allowed, to review the action of the Board of Adjustments of the City of Ventnor, in setting aside a building permit theretofore granted, for the erection of a building upon the land of the West Jersey & Seashore Railroad Company, by Richard W. Buchholtz, builder.

In conformity with the practice in such cases, the sole reason is that the Supreme Court erred in so deciding.

STATEMENT.

For years, the West Jersey & Seashore Railroad Company has maintained a double track railroad over the middle of Atlantic Avenue, through Ventnor City, with a switch from the westbound track, thence to the left, curving to the right over the block of land bounded by Atlantic Avenue, Sacramento Avenue, Ocean Avenue and Newport Avenue, in question, forming a "loop," enabling the cars to be switched from the westbound track to the eastbound track, reversing the front end of the car, as well as changing the track on which the car runs. This loop is used for switching purposes only, and, as stated in respondent's brief, the trolley-cars of the Atlantic City & Shore Railroad Company are operated over it. Within the loop above mentioned, the building in question is located.

On the 4th day of October, 1928, the City Council of Ventnor City enacted a zoning ordinance, which is found on p. 38 of the State of the Case, and pursuant to that ordinance and by the first section thereof (p. 38, l. 20), the City of Ventnor City is divided into three classes of districts, as follows: residence districts, apartment districts and business districts.

The boundaries of those districts are established, as shown on the map which accompanies and is declared to be a part of that ordinance. A copy of the zoning map is found on page 61 of the State of the Case.

On the 19th of November, 1928, the West Jersey & Seashore Railroad Company, owner of a tract of land in Ventnor City, bounded by Atlantic, Sacra-

mento, Ocean and Portland Avenues, by A. J. Purinton, superintendent of the railroad which operates cars thereover, applied for a building permit to erect on said lot a building 44 ft. 6 in. by 21 ft. 6 in. (p. 5, l. 20) and on the 21st day of November, 1928, the Building Inspector of Ventnor City granted a permit for the erection of said building (p. 8, l. 25). Objection was made to the erection of the building (p. 9, l. 20), and a hearing was had before the Board of Adjustments of Ventnor City on December 11th, 1928, the Board of Adjustments being a body created by the zoning ordinance above-mentioned, and on December 24th, 1928, the Board of Adjustments made an order presuming to revoke the building permit granted by the building inspector, as above stated (p. 35, l. 10 and p. 36).

The building inspector was appointed under a general ordinance long antedating the zoning ordinance.

On the 12th of January, 1929, a writ of certiorari was allowed, removing this order of the Board of Adjustments into the Supreme Court for review (p. 1, l. 1). The testimony of Richard W. Buchholtz, the appellant, on p. 34, l. 20, shows that he was, at the time of the hearing, erecting the building.

The reasons (p. 3) urged by the appellant for setting aside the order of the Board of Adjustments all go to the jurisdiction of the Board of Adjustments to pass upon the matter, it being insisted by the appellant that that Board has no jurisdiction, whatever, over the land in question and that its order is void and a nullity.

On reference to the map and to the key, which is made a part of the map by the ordinance, we find that the residence districts are indicated by a parallelogram, with no indication of any sort within its

bounds. The apartment districts are indicated by a parallelogram, with numerous dots within its bounds. The business districts are indicated by a parallelogram, the portion within its bounds being hatched or marked diagonally across. There are some blocks within the city limits which do not come within any of the above-indicated designations—for instance, the block on the south side of Atlantic Avenue near Surrey Avenue is marked "Play Ground;" the block on the north side of Atlantic City, between Cambridge and Sacramento Avenues, is marked "City Hall," on which at the time the permit was granted and the writ of certiorari allowed, there was in course of construction a city hall, at a cost of several hundred thousand dollars, which has since been completed. The block adjoining on the north side of Atlantic Avenue, lying between Sacramento and Portland Avenues, being the land in question, is marked "Loop." Those blocks do not come within the designation of any of the restricted districts, as shown upon said map and indicated by the key thereto, and it is insisted by appellant that the City Council did not zone any of those blocks, and especially the block in question, marked "Loop;" and it is further contended that by marking these blocks as they did, with the words "Play Ground," "City Hall" and "Loop," council intended to indicate that they did not intend to zone those three blocks.

ARGUMENT.

The following reasons were assigned in the Supreme Court why the action of the Board of Ad-

justments of the City of Ventnor City, in revoking the permit, should be set aside:

1. Because the lands on which the building is being erected are not restricted by the Zoning Ordinance of Ventnor City, and therefore, the Board of Adjustments is without jurisdiction touching and concerning said lands and building.

2. Because there is no provision in the zoning ordinance which inhibits the erection of any building upon said lands.

3. Because there is no provision in the zoning ordinance which inhibits the use of any building upon said lands.

4. Because the Board of Adjustments was without authority to make an order vacating the building permit issued.

It will be observed that they all have reference to the lack of jurisdiction in the Board of Adjustments. We contend that nothing, either in the ordinance, itself, or in the key map attached thereto and forming a part thereof, prevented or prohibited the use of the land in question for the erection of the contemplated building.

Appellants contend that the Board of Adjustments acquired no jurisdiction to make the order setting aside or vacating the permit. The power of the Board of Adjustments is found in paragraph 11 of the ordinance, p. 57, of the State of Case, and its powers are enumerated as follows:

1. To hear and decide appeals, where it is alleged "*there is error in any order, requirement, decision*

or determination made by the building inspector in the enforcement of this ordinance.”

Then follows ground 2, 3, 4, 5, 6, 7, 8 and 9, none of which, however, have any bearing whatever upon the question now at issue.

The jurisdiction of the Board is confined to hearing and deciding appeals where it is alleged *there is error in an order, requirement, decision or determination made by the building inspector.*

The issue that was presented to the Board of Adjustments on this appeal, for its determination, was that formed by and resting upon the reasons assigned for such appeal. The Board was without jurisdiction to decide any other question, except that which the appellant put in issue by the reasons. It is submitted that this proposition comes within the case of *Schneider v. Marinelli* (62 N. J. L. 739-741). An examination of the reasons, therefore, becomes necessary. These reasons are found on p. 10 of the State of Case.

The first one alleges that the application made “was not properly signed by an officer of the Atlantic City & Shore Railroad Company, the supposed owner of the premises, and the one who was to erect the building in said permit specified.” That reason applies to the application only, and not to “any error in any order, requirement, decision, or determination of the building inspector.”

The second reason is that the plans and specifications filed are not sufficient to properly indicate and limit the uses to which the contemplated building is intended to be put. That reason likewise applies to the alleged insufficiency of the specifications in the application, but not “to any order, requirement, decision or determination of the building inspector.” There is nothing in the case to indicate or show that

Thomas v. Flammigan
99 E. 717

Reynolds v. Stockton
43 E. 211
140 U. S. 254
(35 L. Ed. 464)

all information that the building inspector required was not furnished to him.

The third reason is *that the petition filed is not true in its contents, that such building for which permit was issued is not being built alone by the Atlantic City & Shore Railroad Company, or A. J. Purinton.* That reason, likewise, applies wholly to the application, and not to "any order, requirement, decision or determination of the building inspector."

The fourth reason is *that the obtaining of the permit from W. Harry Jones, Building Inspector of Ventnor City, was by fraudulent representation.* That allegation goes to the manner or conduct of the applicant in applying for the permit, but not to "any error in an order, requirement, decision or determination of the building inspector." In connection with this reason, however, it is submitted that the Board of Adjustments has no jurisdiction whatever to pass upon or determine questions of fraud; its jurisdiction, insofar as this case is concerned, is confined to *error made by the building inspector.* If the reasons for appeal charge he erred, they have jurisdiction. If the reasons do not charge that he erred in an "Order, requirements, decision or determination," they have not jurisdiction.

The fifth reason is *that the specifications and plans for the building for which permit was issued, were prepared for and at the expense of William H. Carroll.* That is wholly unimportant, and surely does not charge error in "any order, requirement, decision or determination of the building inspector."

The sixth reason is *that the building as is contemplated to be erected, is to be erected at the expense and costs of William H. Carroll, and for the use and benefit in whole or in part, for William H. Carroll, for the purpose of conducting therein the business*

of a public real estate office. This reason is likewise unimportant in this issue, as it contains no allegation of any error made by the building inspector "in any order, requirement, decision or determination."

The seventh reason is *that one, William H. Carroll, is in possession of the land, upon which the proposed building is to be erected, under and by virtue of some lease or agreement; that the building provided to be erected under the permit issued, is to be erected, paid for, and intended to be occupied by said William Carroll, for the purpose of carrying on therein a public business, namely, real estate, &c. That the application for permit to build, and the use of the permit issued, as aforesaid, was and is a subterfuge and deceit, practiced for the purpose of obtaining the right to build and building, which in truth, in its uses are intended to be contrary to law.* That reason likewise charges no error of the building inspector "in any order, requirement, decision or determination." If the allegation in that reason be true, in the absence of error of the building inspector, the remedy is not to be had by appeal to the Board of Adjustments.

The eighth and last reason is *that the erection of the building for which the permit was issued, and as well the issuing of a permit therefor, and the intended uses of the building, are contrary to the provisions of and in violation of an ordinance of Ventnor City, entitled "An Ordinance to establish building districts and restrictions appropriate to such districts, relating to the location of dwellings, trades and industries, and the height and bulk of buildings in Ventnor City," passed October 22nd, 1928, approved October 24th, 1928.* That reason charges no error on the part of the building inspector, in the making of "any order, requirement, decision or de-

ate v Freeholders

56 L. 459

Sheford v McCarroll

72 L. 444

termination," and while it says that the whole proceedings were contrary to the ordinance, it is so general that it fails to bring the matter within the jurisdiction of the Board of Adjustments, which permits an appeal only from error of the building inspector in the making of any "order, requirement, decision or determination." The respondents are seeking to take appellant's land without compensation, and if they succeed without bringing themselves within the jurisdiction of the Board of Adjustments under the ordinance in question that taking will be confiscation, and their procedure will be in violation of the due process clause of the 14th Amendment of the United States Constitution; and the jurisdiction clause of the ordinance points out four particulars in which the Board has jurisdiction, and in this process of taking appellant's land without compensation, appellant is entitled to have the particular ground and the substance of the reason for the setting aside of the permit pointed out to him, which has not been done in this instance.

We therefore submit that none of the reasons set forth by respondent is sufficient to bring the validity of appellant's permit for this building within the jurisdiction of the Board of Adjustments.

APPELLANTS FURTHER CONTEND THAT THE LAND IN QUESTION WAS NOT ZONED.

Appellants contend that the land in question was not zoned, whereas the respondents contend that all the land within the limits of Ventnor City was zoned by this zoning ordinance. A reference to the map will disclose that Ventnor City is bounded on the north by Beach Thoroughfare, on the south by the

Penney v Neff
95-221, 714
(24 L Ed 565)

Atlantic Ocean, on the east by Atlantic City, and on the west by Margate City. A reference to the first paragraph of the ordinance, itself, p. 38, we contend shows that there was no attempt to zone any portion of the city, except those portions corresponding with the three parallelograms annexed to the map as a key. The language of the first section is as follows:

“Districts. For the purpose of this Ordinance, the City of Ventnor City is hereby divided into three classes of districts as follows: RESIDENCE DISTRICTS — APARTMENT DISTRICTS—BUSINESS DISTRICTS.

The boundaries of these districts are hereby established as shown on the Building Zone Map which accompanies and is hereby declared to be a part of this Ordinance.”

This last paragraph limits the various districts, and it is contended that no part of Ventnor City is zoned except those parts which are within the bounds of the parallelograms, as indicated by the key.

The appellants contend that the residence districts are indicated by a perfectly blank figure, as is shown in the key; and the Commissioners, by printing on the parallelogram in question the word “Loop,” shows that the Commissioners intended not to zone it for residence purposes; if they intended to zone it for residence purposes, the word was not necessary, and to so hold is to decide that they did a useless confusing thing where clearness is required.

The respondents contend, and the Supreme Court assumed, that the word “Loop” might be erased from that plot, thus leaving a bare space, and thereupon bring it to be within a residential section; but

respondents have no more right, nor has the Supreme Court any more right, to disregard any part of the Commissioners' map. The word "Loop," in the instance in question, is just as important as any other name thereon, and there is no more justification to disregard the word "Loop" and decide that the land in question is residence district, than it has to disregard the names of the avenues printed on the various streets. If it does disregard one, it is equally bound to disregard the others, and if all names be disregarded, then not only does the land in question become residential district, but all the avenues become residential districts, and the space occupied by the City Hall becomes residential district, and most certainly the Commissioners did not intend that.

We further contend that all of the land was not intended to be zoned. On the easterly end of the city, lying northerly of Inside Thoroughfare, there is an unplotted tract of about nine or ten acres, which is unfilled salt marsh land. It is practically a parallelogram. Its irregularity in figure may be taken care of by the Board of Adjustments, under the ordinance, but it is submitted that the Commissioners never intended that that nine or ten acres of land should be considered as devoted to residential purposes, only. If it can be so construed, because if the land is filled in, the owners would be prohibited from laying out streets over it, because while churches and school houses may be built in residence sections, there is no provision in the ordinance for building streets in residence districts, and it can hardly be assumed that the Ventnor City Commissioners intended either to zone a vast tract of unfilled salt marsh land, or that they intended to zone nine or ten acres of land so that streets could not be laid out over it. Immediately adjoining that

vacant tract of land, there is a narrow strip shown by parallel dotted lines. If the Commissioners intended to zone all of the land within the city limits, then that tract of land, which extends between those dotted lines, otherwise entirely unmarked, and extending from the end of a canal northerly from Inside Thoroughfare, and a little creek that runs on the land at the northerly end, must be construed as having been zoned for residence purposes; when no man could give it consideration without concluding that those two parallel lines on the map did not indicate the boundaries of a residence zone, but did indicate the boundaries of a canal to be dug, extending from the northerly end of the present canal through to Beach Thoroughfare on the north, thus joining the two bodies of water.

Likewise, the land on the westerly side of Ventnor City, adjoining Margate City. One will observe a space about two hundred feet in width, extending from Monmouth Avenue to the Thoroughfare, with the cross streets projecting into it at various lengths, with no marking whatever between the westerly line of Washington Avenue and the easterly line of Margate City. Under the contention of respondents, and the Supreme Court ruling, that land is zoned for residence purposes. We submit that it is not zoned at all, and that the Commissioners purposely left it unzoned, until it should become apparent what use was to be made of the adjoining land in Margate City; and the fact that they did not project the streets across to the Margate City line, thus forming the parallelogram similar to those in the key, is evidence of such intention.

Therefore, we contend that the Commissioners did not intend to zone all the lands within the city limits; that the language of Section 1 indicates it; the map shows it; and that the land in question marked

“Loop,” was not zoned and was not intended to be zoned.

The respondents contend that by virtue of the language of the ordinance, the land in question is zoned for residence purposes, notwithstanding the railroad track thereon, and refer to the first paragraph on p. 39; but the fact that no petition was filed by the company nor demanded by the Commissioners is proof that both regarded the land in question as unzoned.

Appellant contends that by virtue of paragraph 8 of Section 3 of the ordinance, p. 42, and by reason of the admitted use of said lands for the operation of trolley-cars over the switch loop, that it is excluded from residence zoning. Section 3 deals with residence district uses. The language of paragraph 8 is:

“Railroad or street railroad passenger stations or rights of way; not including switching, storage, or freight yard or sidings” * * *

so that when you consider that switching of cars is not permitted in a residence zone, and you consider the fact that this railroad switch has been there for years and years, and that it is used only for switching cars from one track to the other, over this loop on the land in question, it seems to be conclusive that the Commissioners did not intend this block to be residence district. They surely did not zone a tract of land that is, and for years has been, used for switching, only, as a residence zone, and say that you could not do switching in that zone, and thus contradict paragraph 2, on p. 39.

Appellant further contends that:

1. A zoning ordinance must be clear, certain and

unambiguous. It may not leave to caprice or conjecture, whether or not the proposed use is in violation of the terms of the ordinance.

2. All lands similarly situated must be treated alike.

3. The zoning ordinance must operate reasonably.

In this case, the building proposed to be erected upon the land in question, was not in violation of the zoning ordinance. The land was the property of the West Jersey & Seashore Railroad Company. The building was intended to be used for station purposes. Such a use was not prohibited by the ordinance. Section 3, paragraph 8 of the ordinance, at page 42 of the State of the Case, line 13, provides as follows: Having reference to uses permitted in residence districts: "Railroad or street railroad passenger stations or rights of way; not including switching, storage, or freight yard or sidings, telephone exchanges; provided there is no service yard in connection therewith for storage or trucking." It is not contended by respondent that the building itself violated any of the terms of the ordinance. It is contended that in addition to its use as a railroad station, it was to be used as a real estate office, and that such use was prohibited in a residential zone, and that the proposed location of the building was within such a residential zone. The appellant contends that the land upon which the building was to be erected was not in a residential zone.

A zoning ordinance must be clear, definite and unambiguous. *McQuillin on Municipal Corporations*, Sec. Ed., Section 1034, p. 335, states the rule as follows: "As the zoning ordinance must be definite, like all ordinances, the zones or districts

must be described with reasonable certainty, and must have definite boundaries so that the ordinance may be practically applied." In a footnote to the above statement, he refers to Section 687 Id., at page 577, in which he says:

"A municipal ordinance or law may be constitutional, and otherwise valid, and yet void for uncertainty or vagueness. An ordinance must be clear, precise, definite and certain in its terms. If the ordinance is so vague that its precise meaning cannot be ascertained, it will be declared void. An ordinance or statute should be framed in terms sufficiently clear and definite to show what it intends to require or prohibit, and punish, otherwise it is void for uncertainty. By fair and natural construction it must convey a reasonable certainty of meaning; it must be certain to a common intent. 'An ordinance is a law of the municipality, and those who must obey it, as well as those whose duty it is to enforce it, must be able to know when it has been violated.' 'It has been well said that a by-law ought to be expressed in such manner as that its meaning may be unambiguous, and in such language as may be readily understood by those upon whom it is to operate.' "

McQuillin merely states the law as it has been declared in our own courts upon this subject. In the case of *Central R. R. of N. J. v. City of Elizabeth, et al.*, 70 N. J. L. 578:

"A municipal ordinance, passed July 2d, 1903, imposed certain restrictions, under penalty, upon every steam railroad company that 'failed to comply with or observe the provisions

of' a certain Act of the Legislature, approved April 14th, 1864. The act thus referred to at no time prescribed any duties to be performed by any steam railway company. *Held*, that the ordinance was void for uncertainty."

In the ordinance of the City of Ventnor City, under consideration, the municipal authorities attempted to divide the city into three districts, namely: residence districts, apartment house districts, and business districts (p. 38, S. C., l. 20). It will be observed that these districts are not divided or located in the ordinance itself, but can only be determined by reference to the key map attached to and forming part of the ordinance, a copy of which is contained at the end of the State of the Case. From an inspection of this key map, it will appear that the residential zones were indicated by blank spaces; apartment house districts by dotted spaces, and business zones by hatched spaces. In addition to the blank spaces, there appear other spaces, designated "Loop," "City Hall," "Play Ground," "Schoolhouse," "Firehouse," etc. A reading of the ordinance will show that there is no specific provision for any of these uses. There is reference to hospitals, which must be built upon at least two acres of space (p. 42, S. C., l. 18), and other institutions, which must be built upon at least a ten-acre space (p. 42, S. C., l. 23). It will be further observed that the above two exceptions are set forth in that section of the ordinance providing for the character of buildings, etc., which may be erected in residential zones. There is nothing in this section which permits space in residential zones to be used for "Play Grounds," "Schoolhouses," "Firehouses," or other municipal buildings. It is

true that there is an exception in the section pertaining to residential zones, permitting the erection of soldiers' or sailors' memorial buildings, provided they are not used for gainful purposes (p. 41, S. C., l. 22). The appellant contended in the court below, and contends here, that when the municipal authorities designated the various plots above referred to, as "Loop," "City Hall," etc., they disclosed the clear intention not to zone these various plots for residential purposes. Replying to this contention, the Supreme Court said, in its opinion:

"It may not be amiss, however, to add, the prosecutors urge and rely principally upon the fact that the building zone map of Ventnor City provides, 1st: Residence districts. 2nd: Apartment districts. 3rd: Business districts; on which is marked 'Play Ground,' 'City Hall,' 'Loop.' The blocks so marked do not come within the designation of any of the restricted districts, as shown upon the map and indicated by the key thereto, therefore, it is argued by the prosecutors, that the Board had no jurisdiction over the land in question, which is in the plot marked 'Loop.' We think there is no basis for any such construction to be placed upon the building zone map. The purpose of the zoning map was not only to point out the various classes of zoned districts, but it attempts, also, to convey some information concerning locations to the map reader. Its purpose was not to restrict the zoning area by any such descriptions."

We can see no justification for the Supreme Court's assumption that these designations were for the purpose of showing "location." The locations

of all of the areas were much more clearly and accurately defined by reference to the streets, all of which are named on the key map, and to the scale of distances, which would clearly show the portion of the area within any city block intended for a particular zoning district. The map attached to the State of the Case is of course on a reduced scale. It is to be presumed that the map on file with the ordinance would be sufficient to show these distances accurately. In any event, the designations of "Loop," etc., would give no aid in this respect. If it be argued that the designations "Loop," "Play Ground," "City Hall," etc., were for the purpose of indicating the character of the structure already on the premises, and intended to convey the idea that such use could be maintained until discontinued, we find the answer in the ordinance itself, which makes clear and definite provisions for already existing, non-conforming buildings and uses, with a provision governing the situation where the use is discontinued, or the property destroyed. The provision is as follows (p. 39, S. C., l. 14):

"The provisions of this ordinance shall not apply to any existing structure nor to the existing use of any building or premises, nor shall they require any change in the plans, construction or designated use of any building or part thereof, the construction of which shall be lawfully in progress at the time of the passage of this ordinance, or for which a permit shall have been issued pursuant to law or ordinance, provided construction shall be promptly and diligently prosecuted. * * * Nothing in this ordinance shall prevent the restoration of a building destroyed less than 50 per cent of its sound value, exclusive of the foundations, by fire, ex-

plosion, act of God or act of the public enemy, subsequent to the passage of this ordinance, or shall prevent the continuance of the use of such building or any part thereof as such use existed at the time of such destruction; provided that the restoration and resumption shall take place within not more than twelve months from the time of such destruction."

In view of this provision of the ordinance, it was certainly not necessary that these designated uses, such as "Loop," "City Hall" etc., if they were non-conforming uses, should have been so designated for the purpose of legalizing them until their discontinuance under the provisions of the ordinance above referred to.

If it be contended that counsel had in mind the zoning of the block marked "Loop" for residential purposes, what is there in the ordinance to indicate that they intended it for a residential section, rather than for a business or apartment house section? If it were intended for residential purposes, why was the word "Loop" not omitted, leaving the parallelogram unmarked, as was done on the beach-front between Surrey Avenue and Victoria Avenue, where the North American Sanitarium for Crippled Children is located; or as was done between New Haven Avenue and Newport Avenue north of Atlantic Avenue, where the Jewish Seaside Home for Invalids is located; neither of which locations comprise ten acres, or two acres.

Conceding that these designations were for location, it does not logically follow that such designated sections were restricted to residential use, merely because they were left otherwise blank. When it is considered that the map is used to supplement, ex-

plain or act as a key to the accompanying *zoning ordinance*, there was no necessity or even reason for indicating any particular use thereon. The map is exactly what its name implies—"Building Zone Map." The land in question is vacant except for the trolley tracks and a small shed, and there would seem to be no reason why it should be distinguished from the vacant land of any other private owner, except that it was not intended to be within the zoned sections.

An examination of the ordinance will show that there is no provision anywhere in it, either in the sections providing for residential zones or the exceptions thereto, above referred to, or in those sections describing business or apartment house zones, providing for municipal buildings, fire houses, play grounds, loops, or any other of the uses designated on the map. These are all outside of the scope and provisions of the ordinance, and the reasonable inference is, that the lands on which they are located were not intended to be zoned; otherwise, as we have above pointed out, the spaces would have been left blank, and under the provisions of the ordinance, if it were a non-conforming use, it would be permitted until discontinued as above set forth.

The principle that ordinances must be unambiguous and certain, and not vague or doubtful, applies with particular emphasis to zoning ordinances, in view of the fact that such ordinances prevent the otherwise legal use of real property, are in derogation of the common law, and to that extent deprive an owner of property without just compensation or due process, such a situation being legalized under the police power. We submit that cases involving the enforcement of restrictive covenants are apposite.

In the case of *Union Investment Co. v. Fiske* (107 Atl. 65), at p. 66, our Court of Chancery said:

“The most that can be said in favor of complainant’s contention is that the restriction is vague, indefinite and uncertain, and complainant’s right to have it enforced is at least doubtful. * * *

Restrictions of this kind are strictly construed.”

Bill dismissed.

In the case of *Ocean City Land Co. v. Weber* (83 Eq. 476), at p. 478, the Court of Chancery, concerning a restrictive covenant, said:

“Covenants of this nature in the contemplation of the remedial jurisdiction of this Court are to preserve the specific plan defined in the covenant, and not a plan which differs from that defined in the covenant, whether that difference has arisen by popular construction of the covenant or by common consent.”

In the case of *Marsh v. Marsh* (89 Eq. 110), at p. 114, our Court of Chancery said:

“I have considered the cases of *Walker v. Renner, &c.*, and the rules to be applied in the determination of cases such as this as gathered from these cases seem to be clear. The language of the covenant is to be strictly construed. If it has a plain meaning, it is to be enforced in that sense. If it has no meaning, it cannot be enforced. If it may mean either one of two things, it will be construed to mean that which is most favorable to the owner of the property. If complainant’s right to relief be doubtful, equity ought not to intervene.”

In the case of *Hilsinger v. Schwartz* (99 Eq. 288), where the question was whether a restriction against a stable was applicable to a garage, the Court of Chancery said:

“The language of the covenant must, of course, be strictly construed as against the grantor, and those claiming under him. But if there were any doubt in my mind as to the meaning of the word ‘stable’ as here used, I should still be obliged to deny the relief prayed for, because ‘to doubt is to deny.’”

In the case of *Fortesque v. Carroll* (76 Eq. 583), the Court of Errors and Appeals said (pp. 585-586):

“For it is well settled that in cases where the right of a complainant to relief by the enforcement of a restrictive covenant is doubtful, ‘to doubt is to deny.’ * * *

Courts of equity do not aid one man to restrict another in the uses to which he may lawfully put his property unless the right to such aid is clear. * * *

It must be conceded that restrictive covenants must not be vague or uncertain; that the complainant’s right to insist upon the covenant and to invoke the injunctive power of the Court must be clear and satisfactory. * * *

The meaning that has to be placed upon the words ‘one building’ in order to support the result reached in the Court below is, to say the least, doubtful, in that it is not clear that more than one residence on a lot was what was prescribed. To say this is to reverse the decree brought up by this appeal.”

In the case of *Sutcliffe v. Eisele* (62 Eq. 222), at p. 224, wherein the question arose as to what was

or what was not a bay-window, Vice-Chancellor Stevens said:

“The vagueness of the covenant is fatal to the complainant’s case.

The first duty of the Court, in granting an injunction of this kind, is to lay down a clear and definite rule.”

In the case of *Bridgewater v. Ocean City Assn.* (85 Eq. 379), at 383, our Court of Chancery reaffirmed the principle:

“Courts of equity do not aid one man to restrict another in the uses to which he may lawfully put his property unless the right to such aid is clear.”

In the case of *Fenton v. Crook* (88 Eq. 432), at p. 435, which pertained to an injunction restraining uses to which leased premises were to be put, Vice-Chancellor Stevens said:

“The lease is our guide to what the parties intended. * * * At all events, it was not in unambiguous language provided against. It is a well-established rule that in cases where the right of a complainant to enforce a restrictive covenant is doubtful, to doubt is to deny. ‘Courts of equity,’ says Mr. Justice Garrison, in *Fortesque v. Carroll*, ‘do not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear.’”

In the case of *Marsh v. Marsh* (90 Eq. 244), at p. 246, our Court of Errors and Appeals said:

“Of course, the rule is well settled that courts of equity will not aid one man to restrict an-

other in the uses to which he may lawfully put his property unless the right to such aid is clear.

It is also well settled that every doubt and ambiguity in the language of a restricting covenant must be resolved in favor of the owner's right."

In the case at hand, the language of the ordinance and the map renders the meaning, at least, ambiguous and uncertain.

In the case of *Smith v. Reidy* (92 Eq. 586), at p. 588, the Court said:

"I think there can be no doubt, therefore, that if defendant had taken title, and the present suit had been brought by a neighbor seeking an injunction against the breach of these covenants, such relief would be denied. It is thoroughly well settled that 'courts of equity do not aid one man to restrict another in the uses to which he may put his land, unless the right to such aid is clear;' and that where there is any doubt, from the language of the covenants, or from any other reason, whether the restrictions contended for actually apply to the lands in question, equitable relief will be denied."

In the case of *Howland v. Andrus* (81 Eq. 175), which involved the enforcement of a building restriction, our Court of Errors and Appeals, at p. 181, again said:

"Courts of equity do not aid one man to restrict another in the uses to which he may lawfully put his property, unless the right to such aid is clear." Citing the case of *Fortesque v. Carroll*.

“In that case, Mr. Justice Garrison, speaking for this Court, said that ‘it is well settled that in cases where the right of a complainant to relief by the enforcement of a restrictive covenant is doubtful, “to doubt is to deny.”’ The reasons for the rule, as pointed out in the opinion are—first, because restrictions of the lawful uses of property are against common right, and second, because restrictions, in the framing of which a *subsequent purchaser has had no voice*, ought to be so clear that by the acceptance of the deed that declared them he may reasonably be deemed to have understood and acceded to them.”

An important case upon this phase of the subject is that of *Scull v. Eilenberg* (94 Eq. 759), in which Mr. Judge White, in his concurring opinion, at p. 773, says:

“But the language used in the original restriction was not nearly so explicit as it might have been, and, while I think that the decision in *Waters v. Collins*, *supra*, indicates a failure therein to give full significance * * * to the policy of the law which does not favor restrictions upon the free and natural use of lands and does not adopt doubtful constructions to create them * * *.”

We can see no difference in law between the enforcement of a restrictive covenant, and the enforcement of a term of the zoning ordinance. They are both prohibitions against the otherwise lawful use of private property. They both, to that extent, deprive the owner of the use of his property, and whether the instrument under which that use is prohibited or limited be a public ordinance or a private

contract, it would seem that both must be alike clear, certain and unambiguous, otherwise, the use is limited or prohibited when there may have been no intention, either in the mind of the private contracting parties or the municipal authorities, to limit or prohibit such use. A Court has as much right to construe a private contract as it has a public ordinance. The construction, in either case, would have the effect of rendering the provisions in either instrument clear, certain and unambiguous. We have seen, however, that the Courts will not undertake or attempt to make definite a public ordinance in matters involving purely police regulations, nor will it undertake to do so in matters involving the enforcement of private contracts relative to restrictive covenants. It would seem, therefore, that it would not undertake to make certain, clear or unambiguous the provisions of an ordinance that are not otherwise so.

The rule as to the constructions of statutes in derogation of Common Law rights is laid down in *36 Cyc.*, p. 1179, as follows:

“ * * * Where the statute not only effects a change in the common law, but is also in derogation of common rights, it must be construed with especial strictness. Examples of such statutes are those which operate in restraint of personal liberty or civil rights, or the use and enjoyment of public highways; which grant or enlarge special privileges; which grant power to deprive persons of the ownership of property without their consent; which impose restrictions upon the control, management, use, or alienation of private property; which disturb vested rights in property or contracts; or which restrain the freedom of contract, the exercise of any trade or occupation, or the con-

duct of business. The rule to be applied in the construction of all such statutes is that they must not be deemed to extinguish or restrain private rights, unless it appears by express words or plain implication that it was the intention of the Legislature to do so."

The rule thus laid down has been followed in our own State, in the case of *Schwartz v. King Realty Co.* (93 N. J. L., p. 111), in which the Supreme Court held that the Sales in Bulk Act did not apply to an auction sale of a merchant's goods, etc., because the Act did not, by its precise terms, permit of that construction; and in the case, also, of *Edson & Company v. Shuster* (3 N. J. Misc. Rep. 428), where the Supreme Court likewise decided that the Statute regulating the sale of automobiles, requiring bills of sale, etc., did not apply to a sale under judicial process, for the like reason that the Act did not, by its precise terms, apply to such a situation.

While it is true that no point was raised in this case in the Court below as to the reasonableness of the ordinance, we think we have a right to argue that a construction will not be put upon the ordinance which will make it unreasonable, and that the ordinance will not be so construed as to make the property in question zoned for residential purposes, if, when so zoned, the restrictions will not be reasonable. In the case of *Koplin v. South Orange* (6 N. J. Misc. Rep. 489; 142 Atl. 235), the Supreme Court, referring to a section of the zoning statute, said, at page 492:

"The effect of that provision of the statute, adopted pursuant to the constitutional amendment, would seem to be that the provisions of the ordinance of the village of South Orange

(now in question) as to zoning for residential purposes, and as to the height of buildings and set-backs, are deemed to be within the police powers of the State, if made with reasonable consideration 'to the character of the district and its peculiar suitability for particular uses, with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality.' *and not otherwise unreasonable.*" (Italics ours.)

McQuillin on Municipal Corporations, Sec. Ed., Section 1027, at page 317, with regard to zoning ordinances, says:

"The law seeks to accord to the individual the widest possible liberty in the use of his property consistent with the interest of the public. Restriction of the common right in the use of property is allowable on the ground of public necessity (not mere desire, expediency or convenience), hence, such necessity must distinctly appear, and the regulation must be reasonable, non-discriminatory, uniform, and enacted in good faith in the public interest."

To like effect is the case of *Euclid v. Ambler Realty Company* (272 U. S. 365, 71 Law Ed. 303).

As we have seen, therefore, a zoning ordinance, in order to be effective, must treat all property similarly situated alike. In this respect, there appear to be many discrepancies in the present ordinance. It will be observed that along the ocean front there are several tracts of land zoned for apartment houses, while the balance of the block is zoned for residential purposes. There would appear to be no reason for so zoning, as the effect of the method is

to permit the erection of large apartment houses on the ocean front, thus blocking the air from the remaining portions of the lot. The same is true of several blocks of land along Ventnor Avenue. There would appear to be no fair or just reason why part of the land in the block should be permitted to be used for apartment houses or business purposes, while the other portion of the land in the same block be zoned for residential purposes only. Having in mind the particular lot in question, it will be observed that it is bounded by Atlantic Avenue on the south, Portland Avenue on the west, Sacramento Avenue on the east, and Ocean Avenue on the north. Immediately adjoining it to the east, and fronting on Atlantic Avenue, is the plot marked "City Hall." It will further be observed that the balance of the block bounded by Portland, Cambridge, Ventnor and Atlantic Avenues is zoned for apartment houses. A portion of the block facing on Ventnor Avenue, and between Sacramento and Portland Avenues, is likewise zoned for apartment houses, and the corner of the lot immediately to the east is zoned for apartments. All of the land fronting on Ventnor Avenue to the west of Portland Avenue for several blocks is zoned for business uses, and the same thing is true of a considerable portion of the land on the north side of Ventnor Avenue, west of Portland Avenue. It will thus be observed that a large part of the land in the neighborhood of the "Loop" is zoned for other than residential purposes, while the whole of the remainder of the block in which the "Loop" is situated is zoned for apartment house purposes. If it can be successfully contended that it was the intention of the municipal authorities to zone the tract of land marked "Loop" for residential purposes, then we have an unreasonable application of the zoning ordinance to land

similarly situated. It permits the owner of the land lying between Portland, Sacramento, Ventnor and Atlantic Avenues to use his land for apartment houses, while the land forming a part of the same block, and separated only by a street two squares in length, must be used either only for a "Loop" or for residential purposes only. This, in our judgment, is absolutely unfair and unreasonable, and it cannot be considered, therefore, that the land in question was intended to be zoned for residential purposes, only, as such construction would, as we have pointed out, make the zoning ordinances in this particular unreasonable, unfair, unjust and discriminatory.

THE BOARD OF ADJUSTMENTS WAS WITHOUT JURISDICTION.

The land in question was not zoned for residential purposes, nor was it zoned for apartment or business purposes. It is true that the word "Loop" was printed on that block of the map representing the land in question, but there is no provision in the ordinance for any such restriction upon its use. We contend, therefore, that the land was not zoned at all, and that, therefore, the Board of Adjustment had no jurisdiction, under the powers conferred by the ordinance (p. 57, S. C., l. 16).

The jurisdiction of the Board of Adjustments cannot extend beyond the purposes of the zoning ordinance itself. In the case of *Hendey v. Ackerman* (136 Atl. 733), Mr. Justice Campbell, speaking for the Supreme Court, said at page 735:

"An examination of chapter 146, P. L. 1924, entitled 'A supplement to an Act entitled "An Act concerning municipalities," approved

March 27, 1917,' its amendment, P. L. 1925, p. 117, and its supplement, P. L. 1926, p. 526, will show a clear power to create boards of adjustment and clothe them with jurisdiction only with reference to that class of municipal legislation in such statutes provided for, namely, that now generally and commonly known as zoning. The powers of such boards extend no further than this. They have no jurisdiction over matters arising under building codes, unless such codes attempt to legislate in the manner provided for under the zoning statutes, before referred to, and then their jurisdiction extends only so far as such codes legislate in that direction. * * *

In the proceedings under review, therefore, the board of adjustment had jurisdiction over such matters only as arose under the zoning ordinance, and its finding, if good in fact and in law, would have extended only that far.

The proceedings under review are therefore set aside."

It will be observed that under Section 3 of the ordinance (p. 42, S. C., l. 13), respecting residential areas, a railroad company had the right to build upon its own land, a station, etc. It will be observed that the permit applied for in this present case provided for a waiting-room for passengers, and offices. Such a building was clearly legal, and was clearly not within the prohibition of the ordinance, even though it could be successfully contended that the area in question was zoned for residential purposes. After the permit was issued, and before any appeal was taken, the contractor began work on the building. The building being in course of construc-

tion, the owner's rights were vested at the time the appeal was taken, and the Board of Adjustments was without authority to vacate the permit.

In the case of *Montefiore Cemetery Co. v. Newark* (3 Misc. Rep. 1100), the Court said:

"The prosecutor, if the permit was valid, acquired vested rights thereunder which could not be taken from it. *Hudson Telephone Co. v. Jersey City* (49 L. 303); *Phillipsburg Electric Co. v. Phillipsburg* (66 Id. 505); and, even if invalid, it was not for the municipality to pass in judgment upon its own act. This is clearly established by our cases, such as *Phillipsburg Electric Co. v. Phillipsburg*, *supra*; *Decker v. Elizabeth* (57 Id. 603), and *Vanaman v. Adams* (74 Id. 125)."

To like effect is the case of *Peerless Oil v. Hague* (4 Misc. Rep. 148).

It is contended that the permit was obtained by concealing the fact that the building was to be used for a real estate office for Mr. William H. Carroll. We respectfully submit that this defense is without substance, because the use of the building had no bearing upon the right of the inspector to issue the permit, because the land in question was not in fact zoned, and it was therefore unnecessary for the applicant for the permit to set forth in his application either the character of the business which was intended to occupy the office, or the name of the person who was to conduct the business in such office. The railroad company having the right to build a station and office building upon its property, it could use its offices itself, or rent them for any purpose.

Besides, the application for the Permit calls for the erection of a Waiting Room only. In the Permit, and not elsewhere, does the word "Office" appear. Of course, if an effort had been made in the examination of the Building Inspector to show fraud on the part of the applicant, that would have brought a complete explanation as to why the word "Office" appears in the permit.

THE PROHIBITION OF THE USE IS NOT
WITHIN THE TERMS OF THE STATUTE.

Neither the building itself, nor the proposed business to be conducted there, is inimical to public safety, health or morals, and the use of it for the purpose of a real estate office does not in any wise come within the police power. While it is true that the Constitutional Amendment, by its terms, permits the Legislature to pass laws empowering municipalities to zone, etc., and that such zoning will be deemed to be within the police power, and while it might be contended that this will give the municipality power to zone in any way it please, for sentimental, aesthetic or other such reason, nevertheless, the Legislature, in passing the Act under the Amendment, did not give any such power. Section 5 of the Act, being Chapter 274 of the Laws of 1928, provides:

“Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; to secure safety from fire, panic and other dangers, to promote health, morals or the general welfare; to provide adequate light and air; to prevent the overcrowding of land or buildings; to avoid undue concentration of population. Such regulation shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality.”

The effect of the determination of the Board of Adjustments and of the decision of the Supreme Court was to place an interpretation on the ordinance which was not within the power of the City Commissioners to ordain, and thus confiscate Appellant's land in violation of the 14th Amendment of the United States Constitution.

We respectfully submit that neither the building in question, nor the business to be conducted there, namely, a real estate business, can be said to violate any of the purposes for which the Legislature permitted the municipality to zone.

We respectfully submit that for the reasons above discussed, the judgment of the Supreme Court should be reversed.

BOURGEOIS & COULOMB,
Attorneys for Appellants.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

RICHARD W. BUCHHOLTZ, *et al.*,
Appellants,

v.

BOARD OF ADJUSTMENTS OF THE CITY OF VENTNOR
CITY, et al.,
Respondents.

ON APPEAL FROM CERTIORARI TO SUPREME COURT.

BRIEF OF RESPONDENTS.

FACTS.

The facts as set forth in the statement contained in the appellants' brief are substantially correct except in the following particulars, to wit:

The West Jersey and Seashore Railroad Company, owner of the lot in question, made application through Richard W. Buchholtz, a contractor, for a permit to build a waiting room, to be used by the Atlantic City and Shore Railroad Company, which operates its street cars over the West Jersey and Seashore Railroad Company's lines. There was

nothing in the application to indicate that the application was made for a waiting room merely as a subterfuge to disguise the real purpose, which was the building of a real estate office for one William H. Carroll.

Upon the purpose for which the building was to be erected becoming known, William H. Carroll was promptly notified that the building could be erected and used only for the purpose for which the permit was issued, namely, a waiting room (Case, p. 9, l. 20).

An appeal was then forthwith taken to the Board of Adjustments, and at the hearing it developed from the testimony that the building was not to be used as a waiting room, that it was to be used as a real estate office for William H. Carroll, that any use of the building as a waiting room for trolley patrons was merely incidental to its use as a real estate office, and that the architect had endorsed the specifications "Waiting room and office building, Portland and Atlantic Avenues, Ventnor City, New Jersey, for West Jersey and Seashore Railroad Company," at the dictation of William H. Carroll. In other words, a permit was secured for the erection of a building intended for a non-conforming use, through the subterfuge of an application showing a conforming use. The Board of Adjustments revoked the permit, whereupon the appellants secured a writ of certiorari to review the action of the Board of Adjustments. The Supreme Court sustained the action of the Board of Adjustments and dismissed the writ of certiorari.

ARGUMENT.

A great deal of appellants' brief is devoted to a discussion of restrictive covenants and their analogy to zoning ordinances. The cases cited are cases exclusively dealing with restrictive covenants and not with zoning ordinances. It is submitted that there is no analogy whatever between zoning ordinances and restrictive covenants. The former owe their existence to a constitutional amendment adopted by popular vote and are justified as being within the police power of the State, and, hence, are to be liberally construed in favor of the exercise of the power, *Utica v. Hanna*, 202 App. Div. (N. Y.) 610.

A restrictive covenant, on the other hand, owes its existence to the will of an individual or group of individuals who arbitrarily limit the uses to which their own land may be put by language of their own adoption. Hence, the language of the covenant is strictly construed against the covenantor. All of the cases cited in appellants' brief deal with the construing of restrictive covenants, and none of them, therefore, is applicable to zoning ordinances.

It is true that the zoning ordinance under consideration provides for three classes of districts, viz., residence, apartment and business, and that the zoning map adopted by the ordinance uses a key showing a blank parallelogram for residence districts, a dotted parallelogram for apartment districts, and a lined parallelogram for business districts. The appellants' property is in a neighborhood zoned for residences, but through it runs a loop where it turns its cars and maintains a waiting room. For

this reason the word "loop" appears within the blank parallelogram locating the appellants' property, indicating an existing use. But it is none the less zoned as a residence district and the word "loop" is merely descriptive of a condition presently existing on a part of the land. If the railroad company saw fit to do so, a large portion of its block could be utilized for buildings today. If it saw fit to abandon its loop there is nothing to prevent the entire block from being turned into building lots. Can it be seriously contended that the zoning ordinance has failed to designate the kind of buildings thereon to be erected when the key to the zoning map specifically says that this block shall be restricted to residences?

The appellants beg the question when they state that the zoning map also shows a block designated "City Hall" and a block designated "Play Ground." They are municipally owned plots and at the time that the ordinance was adopted were being utilized for the very purpose indicated on the map. The City Hall was already under construction. But unquestionably if it were attempted to utilize the play ground plots for building purposes they would automatically fall into the residence district classification. If the City Hall were to be demolished and the plot disposed of by the city, it would automatically become a residence district.

The zoning map does not undertake merely to point out the various classes of districts. It attempts to convey some information concerning locations to the map reader, and in fact is full of such information. The Boardwalk, the Atlantic Ocean, inside thoroughfare, streets—all are appropriately designated by their names. And it was no more than proper that the map should indicate that the appellants' property, while zoned for residences

only, had located thereon a loop, but that subject to such exceptions as are made in the ordinance for public utilities in furnishing service (Case, page 39, l. 6), the appellants' ground could be used only for residences.

Nor can it be amiss at this point to call to the Court's attention a paragraph of the zoning ordinance that is absolutely dispositive of the appellants' contention that the block in question was not zoned. Section 2 (Case, p. 39, l. 6), is as follows: "The provisions of this Ordinance shall not apply to existing property or building used or to be used by public utilities, in furnishing service, if upon a petition of the public utility, the Board of Public Utility Commissioners shall after a public hearing decide that the present or proposed situation of the building in question is reasonably necessary for the service, convenience or welfare of the public." In other words, the zoning ordinance specifically states that its provisions apply to appellants' lands, but that they may not apply if the Public Utility Commission upon petition presented and public hearing held, decide that the service, convenience or welfare of the public requires that it, *i. e.*, the Public Utilities Commission, should exempt the lands from the application of the ordinance. The appellants do not pretend that such a petition has ever been presented by them to the Public Utility Commission.

Another interesting question injects itself at this point. If the appellants themselves believed that the ordinance did not apply to their lands, why did they not indicate in their application for a permit the real purpose for which the building was intended? Obviously the answer is that they did know that the ordinance applied to their lands and that if a non-conforming use was stated in their application, the permit would be refused, whereas a non-conforming

use of a building already erected might be overlooked.

It is submitted by the appellants that the Board of Adjustments was without authority to pass upon the points raised by the appeal because the building was already under construction and that, therefore, the owner's rights were vested. The record fails to disclose any assertion of such lack of authority when the owner appeared before the Board of Adjustments. Furthermore, an owner who secures a properly issued permit through misrepresentation or fraud cannot invoke the aid of such a principle. The cases cited in the appellants' brief, including *Montefiore Cemetery Co. v. Newark* (3 Misc. Rep. 1100), and *Peerless Oil Co. v. Hague* (4 Misc. Rep. 148), deal with permits that were issued contrary to existing regulations, but under which work had been commenced. The Court very properly held in those cases that the prosecutors' rights had become vested. But the Court in the latter case also said, "And even it (referring to the building permit) invalid by reason of anything but fraud in its procuring or of statutory prohibition, the commission was not the tribunal to pass upon such validity." This expression is clearly indicative that if the permit has been secured by fraud or misrepresentation, as it indubitably was in the principal case, even the common council could have revoked it. If the governing body had such a right, a fortiori, the appellate tribunal, *i. e.*, the Board of Adjustments, had it. And this was true even before the constitutional amendment and the enabling Act were passed. *Ostrowsky v. Newark*, 139 At. Rep. 911 (not in the official reports). And the learned Vice-Chancellor who decided that case also called attention to the fact that where a proper tribunal had been created to hear appeals, appeal should be to that tribunal,

and that the Board of Adjustments was such a tribunal.

The Zoning Act, Chap. 274, P. L. 1928, provides for the creation of a Board of Adjustments and expressly authorizes appeals to it. "Appeals to the Board of Adjustments may be taken by any person aggrieved, or by any officer, department or bureau of the municipality affected by any decision of the administrative officer." And by Section 4 of said Act the board is given authority to reverse the determination appealed from. The ordinance in question through its machinery carries out the provisions of the Act.

The appellants contend that they are entitled to raise upon their appeal to this tribunal a point that they failed to raise below, namely, the question of the reasonableness of the ordinance. Reasonableness is a question of fact, not of law. If that question was to have been raised, it should have been raised at such a point in the proceedings that testimony could have been taken thereon and submitted to the court. It is, therefore, respectfully submitted that this Court cannot be called upon to pass upon a question concerning which there is no testimony and upon which the Court below was asked to express no opinion. Furthermore, zoning ordinance requirements are presumed reasonable. *Feldman & Pivnich v. Board of Adjustments of East Orange* (6 N. J. Misc. R. 520), and the burden of proving unreasonableness of a zoning ordinance is upon the applicant for a permit; *Kanter v. Board of Adjustments of East Orange* (6 N. J. Misc. R. 568). The appellants have not even undertaken this burden, much less sustained it.

We are, therefore, forced to the following conclusions:

1. The appellants' lands are zoned for residential use excepting only and insofar as the appellants' status as a public utility admits a departure therefrom.

2. The permit was obtained through misrepresentation and fraud and no vested rights exist in the appellants because the building had been commenced when the appeal was taken.

3. The Board of Adjustments is a lawfully constituted body having power to hear and decide appeals and revoke determinations of the building inspector.

4. Zoning ordinances are presumed reasonable and unless the person attacking the ordinance produces proof of their unreasonableness before the Court below, he will not be permitted to argue that question on appeal.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

HIRAM STEELMAN,
Attorney for Respondents.

