

INDEX.

	PAGE
Writ of Certiorari	1
Return	2
Zoning Ordinance	3
Building Ordinance	5
Application	7
Approval of Application	9
Resolution to Grant Permit	9
Submission of Plans	10
Permit	12
Resolution Rescinding Permit	13
Reasons	14
Notice of Taking Depositions	16
Depositions for Prosecutor	17
Oath of Stenographer	29
Commissioner's Certificate	30
Stenographer's Oath	39
Commissioner's Certificate	40

DEPOSITIONS FOR PROSECUTOR.

Christian Ziegler	17
Saline Freeman	20
James W. Roberson	22

DEPOSITIONS FOR RESPONDENT.

Joseph Glavin:	
Direct	33
Cross	34
Redirect	37
Recross	38

PROSECUTOR'S EXHIBITS.

	Offered Page	Printed Page
P-1.—Letter, dated March 21, 1928, Leon Smith to James W. Rober- son	23	25
P-2.—Agreement, dated March 28, 1928	23	27
P-3.—Petition of Property Owners	24	28

RESPONDENT'S EXHIBIT.

D-1.—Deed, McElroy to Our Lady of Sorrows Roman Catholic Church	32	...
---	----	-----

Supreme Court Per Curiam	41
Rule for Judgment	44
Notice and Ground of Appeal	45

Writ of Certiorari.

NEW JERSEY, SS.:

The State of New Jersey to FRANK HAGUE, JOHN BEGGANS, MICHAEL I. FAGAN, WILLIAM B. QUINN and ARTHUR POTTERTON, Board of Commissioners of the City of Jersey City and EDWARD J. SPOERER, Superintendent of Buildings. 10

GREETING:

We being willing, for certain reasons, to be certified of a certain resolution adopted April 10th, 1928, by you, the said Frank Hague, John Beggans, Michael I. Fagan, William B. Quinn and Arthur Potterton, as City Commissioners of the City of Jersey City, in and whereby a certain permit theretofore issued by the said Edward J. Spoerer, Superintendent of Buildings, January 17th, 1928, and bearing permit #36249 to Saline Freeman for the erection of a one-story brick garage at 127 Clerk Street, Jersey City, N. J., was rescinded and for nothing holden, do command that you certify and send under your seal to our Justices of our Supreme Court of Judicature, at Trenton, on the seventeenth day of May, next, the record of the said permit of the said Edward J. Spoerer, Superintendent of Buildings, and the said resolution of the said Board of Commissioners above mentioned, together with all things touching and concerning the same, as fully and completely as they remain before you, together with this our writ, that we may cause to be done thereupon what of right and justice and according to the laws of the State of New Jersey ought to be done. 20 30 40

Return.

WITNESS, William S. Gummere, Esq., Chief Justice of our Supreme Court, at Trenton, this fifth day of May, 1928.

FRED L. BLOODGOOD,
Clerk.

10 RICHARD DOHERTY,
Attorney for Prosecutor.

Endorsed:

I allow the within writ. Let it be sealed, May 5/28.

JAMES F. MINTURN,
J. S. C.

Return.

20 NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

SALINE FREEMAN,
Prosecutor,

v.

30 FRANK HAGUE, *et als.*, Commissioners of Jersey City, and
EDWARD J. SPOERER, Superintendent of Buildings,
Respondents.

} On Certiorari

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

40 In obedience to the command of the within writ to us directed, we do certify and send, under our hand and seals, to the Honorable, the Justices of the Supreme Court of the State of New Jersey, the

Zoning Ordinance.

record of the permit of the Building Department of Jersey City and the Resolution of the Board of Commissioners, above mentioned, together with all things touching upon and concerning the same, together with the said writ.

EDWARD J. SPOERER,
Superintendent of Buildings.

10

EDWARD J. HOLLAND,
Clerk.

Zoning Ordinance.

AN ORDINANCE TO AMEND AN ORDINANCE, entitled Ordinance regulating and restricting the location of trades and industries, and the location of buildings designed for specified uses, and regulating and limiting the height and bulk of buildings hereafter erected, and regulating and determining the area of yards, courts and other open spaces surrounding buildings, and establishing the boundaries of districts for the aforesaid purposes and providing penalties for the violation of its provisions, passed March 31st, 1922.

20

THE BOARD OF COMMISSIONERS OF THE MAYOR AND ALDERMEN OF JERSEY CITY DO ORDAIN AS FOLLOWS:

30

SECTION 1—DISTRICTS.

For the purposes of regulating, etc.

SECTION 2—RESIDENTIAL DISTRICTS.

In a Residential District, etc.

SECTION #3, BUSINESS DISTRICT.

In a Business District as designated on the "Use District Map," no building shall hereafter be erected, constructed, altered or used which is ar-

40

Zoning Ordinance.

ranged, intended or designed for, and no premises shall hereafter be used for any of the following specified trades, industries or uses:

1. Any kind of manufacturing, etc.
- 10 2. Blacksmith shop, etc.
3. A milk bottling, etc.
4. A carpet, etc.
5. A coal yard, etc.
6. Any trade, etc.
7. A terminal shed, etc.
- 20 8. A garage for more than five automobile motor vehicles or a group of garages for more than five automobile motor vehicles, or a motor vehicle service station, if any part of such building or buildings or the entrance or exit of same, lies within one hundred and fifty (150) feet as measured along the public street of
 - (a) A public school
 - (b) A duly organized, etc.
 - 30 (c) A hospital, etc.
 - (d) A church
 - (e) A theatre, etc.
 - (f) A public library.
9. A garage, etc.
10. Any garage, etc.

40 This is to certify that the foregoing is a true copy of an ordinance passed by the Board of Commissioners of Jersey City at its meeting held May 31st, 1922.

Building Ordinance.

AN ORDINANCE

entitled

“An ordinance to regulate the erection and alteration of all buildings and structures to be used or designed to be used for any purpose other than as residences or for living apartments.” 10

The Board of Commissioners of the Mayor and Aldermen of Jersey City do ordain as follows:

SECTION 1.—Before any person, firm or corporation shall begin work or obtain from the Building Department of Jersey City any permit for the erection of any building or structure to be used or designed to be used for any purpose other than as a residence or for living apartments, or before any person, firm or corporation shall begin work or obtain from the Building Department of Jersey City any permit for the alteration of any building now used as a residence or for living apartments, if the same is to be used or altered to be used for any other purpose, they must first obtain from the Board of Commissioners permission so to do, said permission to be obtained in the manner hereinafter prescribed. 20

SECTION 2.—All applications to do such work as mentioned in Section 1 of this ordinance shall be made in writing in duplicate on proper printed forms furnished by the Building Department, of which one copy shall be filed with the City Clerk for the Board of Commissioners, and one copy with the Building Department. All questions appearing on such applications shall be answered in detail stating all the facts, and that the statements 30

40

Building Ordinance.

made and set forth are true, shall be duly acknowledged on the affidavit form appended to said application blanks, which shall also bear the date on which they are filed.

10 SECTION 3.—After the Board of Commissioners has inspected or has caused to be inspected the premises mentioned in the applications filed, and if the statements set forth in the applications are found to be true and the judgment of the majority of the Board of Commissioners is that if permission is granted same will not jeopardize life, limb or public health and will not increase the fire hazard in the locality where the proposed erection or alteration is to be made, the Board shall have the power to direct the Building Department to issue
20 all necessary building permits to perform such work as set out in the applications filed with the City Clerk for the Board of Commissioners and with the Building Department.

SECTION 4.—All such buildings or structures as described in this ordinance to be erected, and all such to be altered, shall comply in every respect with all building laws and ordinances that may exist at the time the applications are filed.

30 SECTION 5.—No building permit shall be issued by the Building Department to erect or alter any such building as described in this ordinance to any person, firm or corporation unless the applicant has first complied with all the requirements of this ordinance.

PENALTIES AND FINES

40 SECTION 6.—Any person, firm or corporation violating this ordinance or any part of same, upon

Application.

being found guilty by any Police Court Judge of Jersey City, shall forfeit and pay a penalty of One Hundred Dollars (\$100.00) for each and every offense, and all work on any building or structure being done in violation of this ordinance or any part of same, shall be stopped by the police and remain stopped until this ordinance has been complied with in every respect. 10

SECTION 7.—This ordinance shall take effect immediately upon its final passage.

JOHN SAUL,
MICHAEL I. FAGEN,
WILLIAM B. QUINN,
A. HARRY MOORE,
FRANK HAGUE, 20
Commissioners.

Passed June 3, 1924.

EDWARD J. HOLLAND, City Clerk.

Application.

NEW BUILDINGS

Form No. 23

Application No. 4422

J. C. A. 30
O. K.
E. J. S.

Application to erect brick building where same are to be used or part of same are to be used for any other purpose than for living apartments

Jersey City, Nov. 26, 1927.

TO THE BOARD OF COMMISSIONERS OF JERSEY CITY: 40

Saline Freeman hereby applies for permission to erect brick garage for five pleasure cars, the new brick building to extend across rear of lots.

Application.

The present frame garage now on premises with capacity for two cars to be taken down.

Street Address	Lot No.	Block No.
127 Clerk St.	22	2011

10 STATE IN FULL DETAIL THE FOLLOWING:

What is building to be used for?—Garage for five cars.

Will any part be used for living apartments? If so, state in full—No.

Will building comply with all now existing Building Laws and Regulations?—Yes.

Give size and all dimensions of all buildings above referred to:

20 Length—50' Width—20' Height—10' No. of Stories—1.

Is Building Frame or Brick?—Brick.

Fill out diagram on back showing location of proposed building or buildings and all adjacent buildings on all sides.

State of New Jersey, }
County of Hudson, } ss.:

30 Christian H. Ziegler, residing at 75 Montgomery Street, City of Jersey City, Hudson Co., State of New Jersey, being duly sworn according to law, deposes and says that he is the person who signed the above application and that the matters and things set out in said application are true, and that the plans filed with this application show the true conditions as they do and will exist on the above named premises.

CHRISTIAN H. ZIEGLER.

40 Sworn to and subscribed before me }
this 2nd day of Dec. A. D. 1927. }

J. W. BURKE,
Notary Public of N. J.

Approval of Application.

BY MAYOR HAGUE:

RESOLVED, that this Board of Commissioners concur in the recommendations of the Superintendent of Buildings as per the attached list of applications for building permits received at this meeting of the Board held on December 13th, 1927.

10

(Building Dept. report with recommendations.)

This is to certify that the foregoing is a true copy of a resolution passed by the Board of Commissioners of Jersey City, N. J., at its meeting held Dec. 13, 1927.

EDWARD J. HOLLAND,
City Clerk.

20

Resolution to Grant Permit.

RECOMMENDATIONS.

BY MAYOR HAGUE:

That permission be granted to the following applicants to do such work as is called for in the sketch filed with their respective applications.

ERECT.

Saline Freeman, to erect one brick garage for five pleasure cars, 50' x 20' x 10 ft. high, 127 Clerk St., Lot 22, Block 2011. Present two-story frame garage to be razed.

30

And various other applications.

Dated Dec. 13, 1927.

40

Submission of Plans.

APPLICATION FOR THE ERECTION

**OF ALL
NEW BUILDINGS**

**EXCEPT DWELLINGS AND APARTMENT HOUSES, FIVE
STORIES OR LESS IN HEIGHT**

10

Application is hereby made to erect one brick Building as per subjoined detailed statement of specification for Erection of such Buildings and I herewith submit Plans and drawing of such proposed Building, and I do hereby agree that the provisions of the Building Code will be complied with whether the same are specified herein or not.

Jersey City, Jan. 3, 1928.

20

(Sign here) SALINE FREEMAN
C. H. ZIEGLER, Agt.

- 1. Number of Buildings to be Erected—One.
- 2. Give name of Street or Avenue—Clerk St. and number thereof—127.
- 3. Give Lot Number—22. Block Number—2011. Also fill in diagram on back.

4. Give size of lot, front—50'. rear—50'. depth—125'.

30

5. State Cost of each Building, \$2,000.
State Cost of all Buildings, \$.....

6. Occupancy (in detail)—private garages.

7. Is Building Fireproof?—No.

8. Size of Building: At street level—50 feet front.

20 feet deep

At typical floor level.....feet front.

.....feet deep.

Height—one stories 10' 2'.

40

Submission of Plans.

9. Foundations: Character of ground—hard soil.
- (Footings)
- Depth below curb—3' 6".
- Material on which they rest—hard soil. 10
10. Foundation Walls: Material—gravel concrete (1-2½-5).
- Nature of Mortar
11. Upper Walls: Material—brick.
- Nature of Mortar—lime mortar (mix 1 cem. 3 sand, ½ lime.)
- Thickness of Ashler (if any)
12. Party Walls: Any to be used?—no.
13. Floor Construction: First floors—floor laid on ground, concrete floor, cement top. 20
- Upper Floors
14. Safe Carrying capacity for Floors per square foot—floor laid on ground.
15. Partitions: Interior—hollow tile 4" thick.
- (Material and Thickness)
- Stair Halls—none
- Elevators—none.
- Dumbwaiters—none.
16. Roofing: Material—five ply slag. 30
17. Fireproofing: Columns—none.
- Material and Thickness.
- Girders—none.
- Beams—none.
18. Interior Finish: Floor Surface—brick walls—cement.
- (Materials)
- Trim, Sash, Doors, etc.—wood. 40

Permit.

19. Outside Window Frames and Sash: Materials—wood.

Owner—Saline Freeman. Address—127 Clerk St.

10 Architect—C. H. Ziegler. Address—75 Montgomery St.

Mason—Owner.

Carpenter—Owner.

State of New Jersey, }
County of Hudson, } ss.:

20 CHRISTIAN H. ZIEGLER, being duly sworn according to law, deposes and says that he is the person who signed the above application and that the matters and things set out in said application are true, and that the plans filed with this application show the true conditions as they will exist on the above named premises.

CHRISTIAN H. ZIEGLER,
Applicant.

Sworn to and subscribed before me this }
17th day of January, A. D., 1928. }

J. W. BURKE,
Notary Public of N. J.

30

Permit.

THIS PERMIT MUST BE KEPT ON THE
PREMISES

This Permit Expires One Year from Date of Issue

OFFICE OF SUPERINTENDENT OF BUILDINGS
CITY HALL

No. 36249

40

Jersey City, Jan. 17, 1928.

Application having been made to me by Saline

Resolution Rescinding Permit.

Freeman for permission to Erect 1—1 story brick garage, size 50' x 20' x 10' 2" high; five ply slag roof as per plans filed.

127 Clerk St.

Now therefore, by virtue of the power conferred upon me by the Building Code, APPROVED OCTOBER 1, 1907, and the supplements thereto, I hereby grant permission to the said Saline Freeman to perform such work as is set forth in said application. 10

Plan No. 117 PP

EDW. J. SPOERER,
Superintendent of Buildings.

COST OF
THIS PERMIT \$ _____ 20

Resolution Rescinding Permit.

BY COMMISSIONER FAGEN:

WHEREAS, at a public hearing held this day protestants appeared against the erection of a proposed public garage, as defined by the zoning ordinance of Jersey City; and

WHEREAS, investigation by this Commission discloses the fact that a permit for the erection of said garage was erroneously granted in violation of an ordinance entitled "An Ordinance to regulate the erection and alteration of buildings or structures to be used or designed to be used for any purpose other than as residences or for living apartments" passed June 3, 1924, and 30

WHEREAS, said investigation further discloses that said garage, if built, would be in violation of the zoning ordinance of Jersey City, in that said 40

Reasons.

garage would be located within 150 feet of a church.

10 RESOLVED, that the permit heretofore issued by the Building Department of Jersey City for the erection of said garage at Nos. 125 & 127 Clerk Street be and the same is hereby rescinded and for nothing holden.

This is to certify that the foregoing is a true copy of a resolution passed by the Board of Commissioners of Jersey City, N. J., at its meeting held April 10, 1928.

EDWARD J. HOLLAND,
BUILDING DEPT. City Clerk.

20

Reasons.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

SALINE FREEMAN,
Prosecutor,

v.

30 FRANK HAGUE, JOHN BEGGANS,
MICHAEL I. FAGAN, WILLIAM B. QUINN and ARTHUR POTTERTON,
Board of Commissioners of the City of Jersey City and EDWARD J. SPOERER, Superintendent of Buildings,
Respondents. } In Certiorari.

40 Saline Freeman the above named prosecutor assigns as reasons why the resolution of the Board

Reasons.

of Commissioners of Jersey City adopted April 10th, 1928, rescinding the building permit theretofore, to wit, on January 17th, 1928, issued to the prosecutor should be set aside and for nothing holden the following:

1. The said City Commissioners were without power, express or implied, to revoke the said permit. 10
2. The power to revoke the said permit was not reserved to the said City Commissioners by any statute, any ordinance lawfully passed thereunder, or by the terms of the permit so granted.
3. The said City Commissioners were estopped to declare that the said permit was erroneously granted. 20
4. The ordinance entitled "An ordinance to regulate the erection and alteration of buildings or structures to be used, or designed to be used, for any purpose other than as a residence or for living apartments" passed June 3rd, 1924, to the extent that it reserved to the said City Commissioners the discretionary power to grant or withhold, or to sustain or revoke permits applied for or issued thereunder was discriminatory, unlawful and invalid. 30
5. The reasons assigned by said resolution for the rescission of the said permit were false in fact, illusory and in fraud of the prosecutor.
6. The said revocation of the permit granted to the prosecutor constituted a taking of her property without due process of law and without compensation. 40

Notice of Taking Depositions.

WHEREFORE, the prosecutor says that the said resolution should be set aside and for nothing holden.

RICHARD DOHERTY,
Attorney of Prosecutor.

10

Notice of Taking Depositions.
NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

SALINE FREEMAN,
Prosecutor,

v.

FRANK HAGUE, *et als.,*
Respondents.

} In Certiorari.

20

To Thomas J. Brogan, Corporation Counsel.

SIR:

30

TAKE NOTICE that on Thursday the 31st day of May, 1928, at 11 o'clock in the forenoon before Warren Dixon, a Supreme Court Commissioner of New Jersey, at his office, room 606, 921 Bergen Avenue, Jersey City, I will proceed with the taking of depositions on the part of the prosecutor in the above entitled matter.

Dated May 25, 1928.

Respectfully,

RICHARD DOHERTY,
Attorney of Prosecutor.

40

Depositions for Prosecutor.
NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

<p style="text-align: center;">SALINE FREEMAN, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>FRANK HAGUE, JOHN BEGGANS, MICHAEL I. FAGAN, WILLIAM B. QUINN and ARTHUR POTTERTON, Board of Commissioners of the City of Jersey City and EDWARD J. SPOERER, Superintendent of Buildings,</p> <p style="text-align: right;"><i>Respondents.</i></p>	}	On Certiorari
		10
		20

Pursuant to notice duly given to the respondents and served May 24th, 1928, the following depositions were taken before Warren Dixon, one of the Commissioners of the Supreme Court of New Jersey at his office, Room 606, 921 Bergen Ave., Jersey City, May 31st, 1928, commencing 11:30 A. M.

APPEARANCES :

30

For Prosecutor—RICHARD DOHERTY.
For Respondents—No appearance.

Matilda M. Brauer was first duly sworn, well and truly to take stenographically the testimony of the deponents, and to faithfully and truly transcribe the same.

CHRISTIAN ZIEGLER, a witness produced on the part of the prosecutor, being first duly sworn, testified:

40

Deposition of Christian Ziegler.

I am by profession an architect, and have been practicing as such for 21 years in Jersey City.

10 About November, 1927, Mr. Roberson, representing Saline Freeman, the prosecutor, employed me to draw plans for the erection of a building to contain five (5) individual or private garages on the prosecutor's premises, 125-127 Clerk Street, Jersey City. The premises have a width throughout of 50 feet and a depth of 125 feet. The garages were to be erected on the extreme rear of the lot, transversing the same, and to have a width of 49 feet, 10 inches. The depth of the structure was to be 20 feet so that the front wall thereof would be approximately 105 feet from the front line of the lot. The construction was to be brick with a
20 cement floor.

Beyond drawing the plans I was engaged also to procure from the municipal authorities a permit for the erection. I am entirely familiar with the requirements of the Ordinance of Jersey City passed June 3rd, 1924, and sought in behalf of the prosecutor to obtain a permit in compliance with such Ordinance. The ordinance returned with the writ of certiorari in the present matter is the one to which I refer.

30 For the purpose of obtaining such permit I prepared, executed and filed in the office of the Superintendent of Buildings, applications in duplicate on printed forms #23 furnished by the Building Department, of which one copy was for filing with the City Clerk for the Board of Commissioners and the other copy for the Building Department. All questions appearing on such application forms were answered in detail stating all the facts, and the statements made and set forth were true,
40 and the said applications were duly acknowledged

Deposition of Christian Ziegler.

by me on the affidavit form appended to said application blanks, and which also bore the date on which they were filed.

The Board of Commissioners caused the premises mentioned in the applications to be inspected in accordance with the standing practice of the Commissioners and the Building Department, and in due course the said building inspector on December 13, 1927, recommended to the City Commissioners that permission be granted to the prosecutor to erect one brick garage for five pleasure cars, 50 feet x 20 feet x 10 feet high, 127 Clerk St., lot 22, block 2011, and the Board of Commissioners forthwith on the same date adopted a resolution concurring in the recommendation of the Superintendent of Buildings. Thereafter and in accordance with the requirements and departmental practice of the building superintendent, on or about January 3rd, 1928, or shortly thereafter I furnished upon a form supplied by the building superintendent particular information as to architectural features and construction details of the building. Said information was given on a printed form entitled "application for the erection of all new buildings." After the filing of the same on January 17th, 1928, the superintendent of buildings issued his permit #36249, for the erection of the building as per plans filed. Such plans were deposited by me in the office of the Superintendent of Buildings along with the details of construction above referred to, and remained in the custody of the Building Superintendent until the permit was issued, at which time they were returned endorsed with the stamp of the building inspector containing the number of the permit and his certificate of approval.

10

20

30

40

Deposition of Saline Freeman.

The permit so obtained by me was turned over to Mr. Roberson shortly thereafter, and that ended my professional activity in this matter.

10 In the light of my experience as an architect and my past professional contact with the municipal authorities and the Superintendent of Buildings I can say that there was in the present instance no departure whatever from the usual course followed in such cases, nor was any requirement of the Ordinances of Jersey City disregarded.

CHRISTIAN ZIEGLER.

Sworn to before me this 31st }
day of May, 1928. }

20 Subscribed by Affiant,
WARREN DIXON,
Supreme Court Commissioner of N. J.

SALINE FREEMAN, the prosecutor, being duly sworn on her oath, in her own behalf testified:

30 I am the owner of the premises 125-127 Clerk St., Jersey City, which is situated on the easterly side of the street in a city block, that is bounded on the north by Carteret Ave., on the east by Clerk St., on the south by Claremont Ave., and on the west by Ocean Ave. My property is located somewhat nearer to Claremont Ave. than it is to Carteret Ave. It is located 200 feet north of the northerly line of Claremont Ave. The buildings between my house and Claremont Ave. are exclusively residences, except that the building on the Claremont Ave. corner, which while built originally as a residence, is, I am informed, used as a club. There is no church located within 150 feet of my place and no building dedicated to, or used, for
40 the purpose of religious services.

Deposition of Saline Freeman.

Around the corner on the south side of Claremont Ave. stands a Catholic Church called Our Lady of Sorrows. As measured along the public street one would travel southerly on Clerk Street to Claremont Ave. 200 feet; would then have to traverse Claremont Ave. which has a roadway of about 35 feet and thereafter turn north and travel about 80 feet to reach the easterly or nearest line of the church property. 10

I had nothing to do with the preparation of the plans or the obtaining of the permit for the erection of the garages in the present matter, having entrusted that business entirely to James W. Roberson as my agent, who also attended to to the matter of giving out the contracts for the construction of the garage. 20

About April 2nd, 1928, the work of erection was commenced and continued for four or five days having gotten to the point where the concrete foundation was completed at some points and partially completed at others.

On April 6th the work was stopped and a policeman on that date left word for me at my home to appear at a meeting of the City Commissioners to be held on April 10th for the consideration of the matter of revoking the permit. 30

While I did not actively participate in giving out the contracts for the erection, I know that they have been awarded and that I have assumed obligation thereon to the total extent of \$2,800. I do not know the value of the work already done, and know only that it represents four or five days work

Deposition of James W. Roberson.

on the part of the foundation builder and that the partially completed foundation is visible.

SALINE FREEMAN.

10 Sworn to before me this 31st }
day of May, 1928. }

Subscribed by Affiant,
WARREN DIXON.

Supreme Court Commissioner of N. J.

JAMES W. ROBERSON, being duly sworn, on his oath, and produced on the part of the prosecutor, testified:

20 I am a real estate dealer and for some time past have been acting as the agent of Saline Freeman, the prosecutor, in respect of the management and improvement of her property at 125-127 Clerk St., Jersey City.

30 Last November with her authority I engaged Mr. Ziegler, an architect, to draw plans for the erection of a group of five individual or private garages on the rear of Miss Freeman's premises, the same to be about 49 feet in width and 20 feet in depth. They were to be erected across the extreme rear of the lot so that the frontal wall would be about 105 feet back from the front line of the lot. I left the matter of conforming to all building requirements and obtaining the official approval and permits to Mr. Ziegler.

40 Shortly after December 13th Mr. Ziegler reported to me that the location of the garages had been approved by the City Commissioners and that the Superintendent of Buildings had approved the plans and issued a permit. The permit bearing office number 36249 and dated Jan. 17, 1928 was turned over to me by Mr. Ziegler.

Deposition of James W. Roberson.

Mr. Ziegler's fee, including the official charge for the permit, amounted to \$55.50 for which I gave him a check at once.

Upon obtaining the permit I made contracts with builders for the erection of the building, they to furnish work at the following costs: 10

Leon Smith for excavation and foundation, \$612.00 as per agreement dated March 21st, 1928, which I produce (offered and marked P-1);

March 28th I signed a contract with J. Ciro for the mason work for \$1150.00 which I produce (offered and marked P-2);

The roofing work was contracted for with D. J. Smith orally for \$450.00; 20

In addition I have myself agreed with the owner to supply a heating system, hardware, etc. at a cost of \$575.00.

The total obligations for the construction is \$2787.00.

I know nothing of any disregard of the requirements of any building ordinance or public regulation in this matter. I employed Mr. Ziegler to draw plans and procure a permit for a lawful building on the premises. 30

The property of Miss Freeman is located 315 feet from the nearest church, which is situated around the corner on the south side of Claremont Ave. There is a garage 10 feet distant from the northerly wall of this church, and another located opposite in full view of the worshippers who attend the same.

While the neighborhood of Clerk St. is residential a great many of the houses on the block where the Freeman property is located are sup- 40

Deposition of James W. Roberson.

plied with garages. I should estimate that there were about 12 or 15 of such garages. The property adjoining Miss Freeman's place on the north is owned and occupied by Thomas Bailey, a negro, and on the rear of his property in a position corresponding with that to be occupied by the Freeman garage is a building of the same substantial character, built to accommodate three automobiles.

I do not know the value of the work that was done by the excavation contractor at the time when he was stopped by the police, but would say that he had generally completed about half his contract.

I was present at the meeting of the Board of Commissioners on the occasion when the permit was revoked. Their action was induced by the presentation of a written petition signed by several alleged residents of Clerk St. which was exhibited to the Commissioners, and a copy furnished by the Commissioners to the attorney of the prosecutor. I recognize the copy which was so furnished and which is produced (offered and marked P-3). I am informed that few of the signers are property owners and that they are mostly tenants. Many of the facts contained therein are untrue; the Freeman property is not owned by Sarah and Robert Morgan; the street is not "strictly" residential; Mr. Bailey who has a group of garages next to the Freeman property rents two of them to outsiders; it is purely speculative whether or not Miss Freeman will rent her garages out, and entirely untrue that she will thereby bring into the neighborhood persons who will not have anything in common with the peti-

Exhibits.

tioners (whatever that means). There is no likelihood of abusing the rights of the adjacent property owners by making noises and fouling the air with gaseous fumes from the cars. As heretofore stated there are already 12 or 15 garages on the block. I know nothing about the contemplation to erect a church on the corner of Claremont Ave. and Clerk St., but do know the simple truth that there is no church there now, nor any within the distance from the Freeman property which I have heretofore stated. 10

JAS. W. ROBERSON.

Sworn to before me this 31st }
 day of May, 1928, subscribed }
 by Affiant. } 20

WARREN DIXON,
 Supreme Court
 Commissioner of N. J.

Exhibit P-1.

Jersey City, N. J.,
 March 21st, 1928.

Mr. James W. Roberson, 30
 629 Communipaw Avenue,
 Jersey City, N. J.

Dear Sir:

I hereby agree to furnish all the materials and labor to build the footings and piers for five brick garages to be erected upon property of Selene Freeman, No. 127 Clerk Street, Jersey City, N. J., and to concrete the floors thereof and the driveway therefor, for the sum of Six Hundred and twelve dollars (\$612.00). The cement therefor to 40

Exhibits.

be of best quality portland cement, and all work to be done in a good, substantial workmanlike manner.

10 The trench for said foundation wall to be of the depth and width of 3 feet 6 inches by 1 foot. The excavation for piers to be of the same width and depth. The footings and piers to be made of one part cement, 2½ parts sand and 5 parts gravel. The inside of garages to be excavated to a depth of eleven inches and filled in with six inches of cinders, four inches of concrete, mixed as above stated, and finished with one inch of cement, except that cinders instead of gravel are to be used for said mixture of concrete.

20 The ground in front of said garages for a distance of 12 feet is to be concreted same as floors of garages, except that gravel is to be used for said mixture of concrete instead of cinders.

A concrete driveway is to be laid from existing driveway upon said property to a point in said last mentioned concrete work distant twenty-five feet from the south line of said property, and is to be made of sand, gravel and cement, mixed as above stated.

LEON SMITH

30 I, as agent of said Selene Freeman, hereby accept said offer of said Leon Smith to do the above mentioned work, and furnish the materials therefor, and agree and bind myself to pay him therefor said sum of Six Hundred and twelve dollars (\$612.00) in manner following, that is to say:

40 Three Hundred and six dollars (\$306.00) when foundation walls are build ready for buildings, and Three Hundred and six dollars (\$306.00) when

Exhibits.

said Leon Smith's work is completely finished to my satisfaction.

JAS. W. ROBERSON.

Exhibit P-2.

Jersey City, N. J.,
March 28th, 1928.

10

We hereby agree to furnish all the materials for and to do all of the work necessary to build five garages upon the property of Selene Freeman at No. 127 Clerk Street, Jersey City, N. J., for the sum of Eleven Hundred and fifty dollars (\$1150.00). Said work to be done in a first class workmanlike manner, according to plans made for said garages by Christian H. Ziegler, architect, Jersey City, N. J. The front of said garages to be built of pressed brick; the rear wall and north wall to be built of cement blocks, and the south wall to be built of common red brick.

20

The payments therefor to be made to us in manner following, that is to say:

When the work upon said buildings is half completed the sum of Five hundred and seventy-five dollars (\$575.00), and the balance thereof within ten days after said work is finished to the satisfaction of Mr. James W. Roberson, agent of said Selene Freeman. This agreement does not include any iron, or carpenter work and materials therefor.

30

G. LINO
JAMES CIRONE

I, as agent of said Selene Freeman, hereby accept said offer of said James Cirone and Gaetano Lino to do the above mentioned work and furnish

40

Exhibits.

materials therefor, and agree and bind myself to pay them therefor at the times and in the amounts above stated.

JAS. W. ROBERSON.

10

Exhibit P-3.

HONORABLE MAYOR HAGUE AND COMMISSIONERS OF
THE CITY OF JERSEY CITY.

The petition of the subscribers, citizens of Jersey City, property owners and residents of Clerk Street, Between Carteret and Claremont Avenues, respectfully shows that:

20 Recently a permit for the erection of five garages at 125 and 127 Clerk Street, was granted to one Selena Freeman. This property is owned by Sarah and Robert Morgan, who reside therein.

This street is strictly residential, your petitioners owning their own homes.

30 The owners of this property on which the garages are to be erected do not own a car, and will only rent these garages out, and thereby bring persons into this neighborhood who will not have anything in common with your petitioners, and are liable by making noises, and fouling the air with gaseous fumes from the cars.

Further, it is within contemplation that a Church is to be erected on the corner of Claremont Avenue and Clerk Street, which is just south of this property.

For the reasons above set forth, your petitioners respectfully request the permit for the question of these garages be denied.

40 (38 Signatures).

Oath of Stenographer.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">SALINE FREEMAN, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">FRANK HAGUE, <i>et al.</i>, Board of Commissioners, etc., <i>Defendants.</i></p>	}	<p>On Certiorari. 10</p> <p>Affidavit.</p>
--	---	---

State of New Jersey, }
County of Hudson, } ss.:

MATILDA M. BRAUER, being duly sworn on her oath, according to law, says that she will faithfully and impartially record and transcribe the testimony taken in the above matter this thirty-first day of May, Nineteen Hundred and Twenty-eight, at eleven-thirty in the forenoon, before Warren Dixon, Supreme Court Commissioner of New Jersey. 20

MATILDA M. BRAUER.

Subscribed and sworn to before me }
this 31st day of May, 1928. } 30

WARREN DIXON,
Supreme Court Commissioner
of New Jersey.

Commissioner's Certificate.

10 I, WARREN DIXON, a Supreme Court Commissioner of the State of New Jersey, do hereby certify that on the thirty-first day of May, Nineteen Hundred and Twenty-eight, at eleven-thirty o'clock in the forenoon, there appeared at my office, No. 921 Bergen Avenue, Jersey City, SALINE FREEMAN, CHRISTIAN ZIEGLER and JAMES W. ROBERSON, who, each being duly sworn according to law, did make their respective depositions before me in the manner and form above set forth; that the said depositions were taken stenographically by MATILDA M. BRAUER and transcribed by her; that prior to the taking and transcribing of said depositions, the said MATILDA M. BRAUER was by me first duly sworn to faithfully and impartially record and transcribe
20 the same.

Dated

WARREN DIXON,
Supreme Court Commissioner
of New Jersey.

30

40

Depositions for Respondent.
NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

<p style="text-align: center;">SALINE FREEMAN, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>FRANK HAGUE, JOHN BEGGANS, MICHAEL I. FAGAN, WILLIAM B. QUINN and ARTHUR POTTERTON, Board of Commissioners of the City of Jersey City and EDWARD J. SPOERER, Superintendent of Buildings,</p> <p style="text-align: center;"><i>Respondents.</i></p>	}	On Certiorari.
		10
		20

Depositions produced on the part of the respondents before Warren Dixon, Supreme Court Commissioner, July 12, 1928, at his office, 921 Bergen Ave., Jersey City, pursuant to stipulation.

APPEARANCES.

For Prosecutor—RICHARD DOHERTY.

For Respondents—THOMAS J. BROGAN (by
Frank J. Reardon).

30

Matilda M. Brauer previously sworn, acted as stenographer.

It was stipulated that signatures of witnesses be waived.

Attorney for respondents produced and offered in evidence a certified copy of deed by George A. McElroy and wife to Our Lady of Sorrows Roman

40

Depositions for Respondent.

10 Catholic Church, dated May 15, 1923, recorded in the office of the Register of Hudson County in Book 1482 of Deeds, p. 245, conveying to the said grantee premises situate on the corner formed by the north-easterly side of Claremont Avenue and the north-

10 westerly side of Clerk Street, running northeasterly along Clerk Street, one hundred and fifty feet (150') and northwesterly along Claremont Avenue eighty feet (80').

(Received and marked D-1.)

20 It is stipulated and agreed that Our Lady of Sorrows Roman Catholic Church is the record holder of title to a parcel, the northerly line of which is fifty feet (50') southerly from the most southerly line of the prosecutor's land.

30 It is further stipulated and agreed that an architect has been recently employed by the Pastor of Our Lady of Sorrows Roman Catholic Church and has prepared plans for the erection and construction of a church edifice upon the land owned by Our Lady of Sorrows Roman Catholic Church, which plans have not yet been submitted to said Pastor, nor been filed with the Building Superintendent, nor approved by either said Pastor, Bishop or Building Superintendent; that the erection of said church was not approved by the Bishop of the Diocese of Newark as required by statute as of the date of the rescinding of the permit in this proceeding, April 10, 1928, nor at any time.

40 It is further stipulated that the attorney for the respondents may produce at the argument of this cause any episcopal approval for the erection and construction of said church edifice if the same be hereafter granted by the said Bishop.

Joseph Glavin, direct.

JOSEPH GLAVIN being duly sworn, testified:

Direct examination by Mr. Reardon:

Q. You're employed in the Building Department of Jersey City? A. I am.

Q. I show you a resolution of April 10, 1928, attached to form #23 in which resolution it is recited that an investigation by this Commission (meaning the City Commission) discloses the fact that a permit for the erection of said garage was erroneously granted in violation of an ordinance "An ordinance to regulate the erection and alteration of buildings or structures to be used, or designed to be used, for any purpose other than as residences, or for living apartments, passed June 1924" and ask you if you can explain what is meant by the paragraph that I have just recited in the resolution? 10
20

Mr. Doherty: Objected to as being incompetent, and that the resolution is, and should be, self-expositive.

A. When application is made to the City Commission through the Building Department for the erection of any building other than a residence, the Building Department submits the application to the City Clerk and the City Clerk in turn submits it to the Board of Commissioners. The Board of Commissioners in some instances approve applications where they are regular on their face. In other instances they call a public hearing in which the residents of the neighborhood or the property owners appear if they desire to protest against the erection of the proposed building or buildings. 30

By Mr. Reardon:

Q. Will you state whether there was a public 40

Joseph Glavin, cross.

hearing held on this application according to the records of your department? A. No, there was no public hearing held on this application.

10 (It is stipulated that the resolution concerning which the witness has been examined is the same resolution shown by the return on the writ as having been adopted by the Board of Commissioners, April 10, 1928.)

Q. I show you an ordinance returned with the writ of certiorari in this case and passed June 3, 1924, and ask you if that is the ordinance which by its terms called for a public hearing on all applications for permits other than living apartments or dwelling houses? A. Yes, this is the ordinance under which all public hearings on such buildings are required.

20 Q. Was that ordinance complied with by your Department when it issued a permit for the erection of these garages? A. No, the ordinance was not complied with.

Cross examination by Mr. Doherty:

Q. Will you point out the part of the ordinance which requires a public hearing? A. (Reads.)
30 "After the Board of Commissioners has inspected, or has caused to be inspected, the premises mentioned in the applications filed, and if the statements set forth in the applications are found to be true and the judgment of the majority of the Board of Commissioners is that if permission is granted same will not jeopardize life, limb or public health and will not increase the fire hazard in the locality where the proposed erection or alteration is to be made, the Board shall have power to direct the
40 Building Department to issue all necessary building permits to perform such work as set out in the

Joseph Glavin, cross.

applications filed with the City Clerk for the Board of Commissioners and with the Building Department.”

Q. Is that your answer, and is that the part which calls for a public hearing? A. Yes.

Q. The only error in granting this permit, that you can inform us, is the failure to have a public hearing—is that right? A. Yes.

Q. And no public hearing is required by the ordinance which you have read? A. No.

Q. How about compliance with the mandate of the ordinance as to the inspection in this case? Was there an inspection? A. Why—I am not prepared to say definitely, but no doubt there was an inspection.

Q. Are you familiar with the fact that your department reported that there was an inspection, and recommended that a permit be granted? A. No, I am not.

Q. Are you familiar with the adoption of this resolution by the Commission, and returned with the writ—(Reads): “By Mayor Hague—RESOLVED that this Board of Commissioners concur in the recommendations of the Superintendent of Buildings as per attached list of applications for building permits received at this meeting of the Board held on December 13, 1927”? And that included in those recommendations was the recommendation that this erection be permitted? A. Yes, I am familiar with it.

Q. Then there was an investigation by your Department? A. No doubt—therein lies the error of which the Building Department is guilty, in not calling for a public hearing before this recommendation was made.

Q. You say that it is the office of the Building

Joseph Glavin, cross.

Department to call for a public hearing? A. Not directly—it is the office of the Board of Commissioners.

10 Q. Would you say the error in not calling for a public hearing was the error of the Building Department or the Commission? A. I would say that it was the error of the Building Superintendent or someone employed in the Building Department.

Q. You can see that the ordinance does not impose on the Building Superintendent the duty of calling a meeting of residents, don't you? A. Yes.

Q. There is nothing in the ordinance which imposes upon the Commissioners that obligation? A. I should think there was.

20 Q. Find something in the ordinance that requires the Commissioners or Superintendent to call a public hearing. A. (Reads.) "After the Board of Commissioners has inspected, or has caused, etc." (See page 3.)

Q. You construe that in every case when a permit is granted without a meeting of the residents of the neighborhood it is an erroneous action of the officials? A. Yes I do—that is the procedure adopted by the City Commission and followed in every instance.

30 Q. Will you reconcile your last testimony with your earlier statement that frequently the permit is given without any hearing of the residents? A. Yes—for instance, if a person proposed to put up a single garage in the rear of their own residence that comes within the provisions of the zoning ordinance, and in that case the application will be approved on the recommendation of the Superintendent of Buildings without any investigation by the Board of Commissioners or any public hearing,

40

Joseph Glavin, redirect.

the investigation will be done by the Building Department.

Q. Where it is not a private person putting up a private garage, then what happens? A. I merely use that as an instance.

Redirect examination by Mr. Reardon:

10

Q. Is every application for the construction or erection of a building other than a dwelling or living apartment approved by the City Commission? A. Not directly.

Q. Is such approval done as a matter of form, in some cases, without a public hearing? A. Yes.

Q. Is the case in question under which this writ has been sued out that class of case? A. No.

Q. In the class of case such as we are dealing with, what is the practice as required by the rules of the Building Department? A. In a case such as this, when applications are filed, Mr. Duff goes out and examines the premises where the proposed erection is to be made. The application is then addressed to the City Commission for one hearing and no action is taken at that hearing. At the second hearing the residents and property owners in the neighborhood are notified by the police of the proposed erection and the date of the hearing. At that meeting if they care to protest they go down before the City Commission and they are given an opportunity to be heard. The City Commission then acts on the application, and either grants it or denies it.

20

30

Q. Now in this case was there a hearing on this application, and, if so, was it before or after the permit had been issued? A. There was no hearing before the permit was issued. After the permit had been issued there was a hearing through

40

Joseph Glavin, recross.

the voluntary appearance on the part of the residents and property owners in the neighborhood who appealed to the City Commission against the erection of these buildings.

10 Q. Is it a fact that but for the voluntary appearance of the objectors this error of the Building Department in not calling a public hearing would not have been discovered? A. No.

Recross examination by Mr. Doherty:

Q. It was the error of the Commissioners, was it not? A. It was the error of the Building Department.

20 Q. Is this procedure which you have outlined as being followed by the Building Department in some cases, a procedure that is required by ordinance, or is it one that is arbitrarily pursued by the department itself? A. I should say that it was required by ordinance.

Q. And that is the ordinance which you have just examined? A. Yes.

Q. And in which you have failed to find any specific requirement of a public hearing? A. Yes.

30 Q. Is it required by the language of the ordinance? A. I don't think I am qualified to interpret the ordinance.

Q. Are you a lawyer? A. Yes.

Stenographer's Oath.

NEW JERSEY SUPREME COURT.

SALINE FREEMAN, <i>Prosecutor,</i>	}	On Certiorari. Affidavit.	10
<i>v.</i> FRANK HAGUE, <i>et al.</i> , Board of Commissioners, etc., and ED- WARD J. SPOERER, Superintendent of Buildings, <i>Respondents.</i>			

State of New Jersey, }
 County of Hudson, } ss.:

MATILDA M. BRAUER, being duly sworn on her oath, according to law, says that she will faithfully and impartially record and transcribe the testimony taken in the above matter this twelfth day of July, Nineteen Hundred and Twenty-eight, before Warren Dixon, Supreme Court Commissioner of New Jersey. 20

MATILDA M. BRAUER.

Subscribed and sworn to before me }
 this 12th day of July, 1928. }

WARREN DIXON,
 Supreme Court Commissioner
 of New Jersey.

Commissioner's Certificate.

10 I, WARREN DIXON, a Supreme Court Commissioner of the State of New Jersey, do hereby certify that on the twelfth day of July, Nineteen Hundred and Twenty-eight, there appeared at my office, No. 921 Bergen Avenue, Jersey City, Joseph Glavin, who, being duly sworn according to law, did make his depositions before me in the manner and form above set forth; that the said depositions were taken stenographically by Matilda M. Brauer and transcribed by her; that prior to the taking and transcribing of said depositions, the said Matilda M. Brauer was by me first duly sworn to faithfully and impartially record and transcribe the same.

20 Dated July 12th, 1928.

WARREN DIXON,
Supreme Court Commissioner
of New Jersey.

30

40

PER CURIAM

PER CURIAM

NEW JERSEY SUPREME COURT

No. 228. October Term, 1928

SALINE FREEMAN,
Prosecutor,

vs.

FRANK HAGUE, JOHN BEGGANS,
MICHAEL I. FAGAN, WILLIAM B.
QUINN and ARTHUR POTTERTON,
Board of Commissioners of Jer-
sey City, and EDWARD J. SPOERER,
Superintendent of Buildings,
Respondents.

ON
CERTIORARI

Submitted October Term, 1928: Decided Janu-
ary 4th, 1929.

Before Justices Minturn, Black and Campbell.

For the Prosecutor: Richard Doherty, Esq.

For the Defendants: Thomas J. Brogan, Esq.

PER CURIAM:

The certiorari in this case was allowed to review a resolution adopted April 10th, 1928, by the Board of Commissioners of Jersey City, rescinding a permit theretofore issued by Edward J. Spoerer, Superintendent of Buildings, on January 17th, 1928; being permit No. 36,249; to the prosecutor, Saline Freeman, for the erection of a one-story

PER CURIAM

brick garage, for five pleasure cars, 50 x 20 x 10 feet high, at No. 127 Clerk Street, Jersey City, N. J.

The facts out of which the controversy arose are these: The Board of Commissioners passed a blanket resolution on December 13th, 1927, concurring in the recommendation of the Superintendent of Buildings; "as per the attached 'list of applications for building permits'; 'that permission be granted to the following applicants to do such work,'" &c. This was done, apparently, because these enumerated applications, on their face seem to be of the type, that would not require a public hearing. This application was erroneously included in the recommendation of the Building Department.

After the permit had been issued, a petition, signed by thirty-eight of the property owners or residents in the vicinity, i.e. on Clerk Street, between Carteret and Claremont Avenues, opposed the construction of the building or garage. The Board of Commissioners ordered a public hearing to be held.

The prosecutor was notified to appear at the meeting of the City Commissioners, to be held on April 10th, 1928, for the consideration of the matter of revoking the permit, Record p. 21. The work was commenced about April 2nd, 1928; on April 6th work was stopped. The facts, that developed at the hearing resulted in the passage of the resolution under review rescinding the permit. Record p. 13.

The resolution rescinding the permit recites, that an investigation by the Commission discloses the fact, that the permit was erroneously granted in

PER CURIAM

violation of the ordinance passed June 3rd, 1924. The only question involved in the case is, whether the City Commission had the power and a right to rescind the permit under the ordinance passed June 3rd, 1924?

The title of the ordinance is, "An ordinance to 'regulate the erection and alteration of all buildings' and 'structures to be used or designed to be used for any purpose other than as residences or for living apartments'." The third section provides, "after the Board of Commissioners has inspected or has caused to be inspected the premises mentioned in the application filed," &c. This, as stated above, through an error, was not done. It also provided, "that if permission is granted same will not jeopardize "life, limb or public health and will not increase the fire "hazard in the locality," &c., "the board shall have the power to direct the Building Department to issue all necessary 'building permits'." &c. The prosecutor argues, that under the ordinance, the Board of Commissioners had no power to revoke the permit.

It seems to us, that under the facts, as stated above, the Board of Commissioners had an implied power to revoke what had been granted through a mistake and to correct the error. The case of *Citizens Holding Co. vs. The Board of Adjustment*, of the City of Newark, No. 249, the present October Term of the Supreme Court is distinguished from this on the facts.

The resolution, dated April 10th, 1928, by the Board of Commissioners of Jersey City rescinding a permit theretofore issued by Edward J. Spoerer is affirmed and the writ of certiorari is dismissed.

RULE FOR JUDGMENT
RULE FOR JUDGMENT
 NEW JERSEY SUPREME COURT

SALINE FREEMAN,
 Prosecutrix,

vs.

FRANK HAGUE, JOHN BEGGANS,
 MICHAEL I. FAGAN, WILLIAM B.
 QUINN and ARTHUR POTTERTON,
 Board of Commissioners of Jer-
 sey City, and EDWARD J. SPOERER,
 Superintendent of Buildings,
 Respondents.

On Certiorari
**RULE FOR
 JUDGMENT**

The writ of certiorari in this cause coming on to be heard before the New Jersey Supreme Court in the October Term, 1928, and the court on January 4th, 1929, having considered the same, it is on this 31st day of January, 1929

ORDERED AND ADJUDGED that the said writ of certiorari be dismissed.

On motion of

THOMAS J. BROGAN,
 Corporation Council.

NOTICE AND GROUND OF APPEAL
NOTICE AND GROUND OF APPEAL
 NEW JERSEY SUPREME COURT

SALINE FREEMAN,
 Prosecutrix-Appellant,

vs.

FRANK HAGUE, JOHN BEGGANS,
 MICHAEL I. FAGAN, WILLIAM B.
 QUINN and ARTHUR POTTERTON,
 Board of Commissioners of Jer-
 sey City, and EDWARD J. SPOERER,
 Superintendent of Buildings,
 Respondent-Appellees.

On Certiorari
 NOTICE AND
 GROUND OF
 APPEAL FROM
 JUDGMENT OF
 SUPREME
 COURT

NOTICE AND GROUND OF APPEAL

To Thomas J. Brogan, Corporation Counsel.

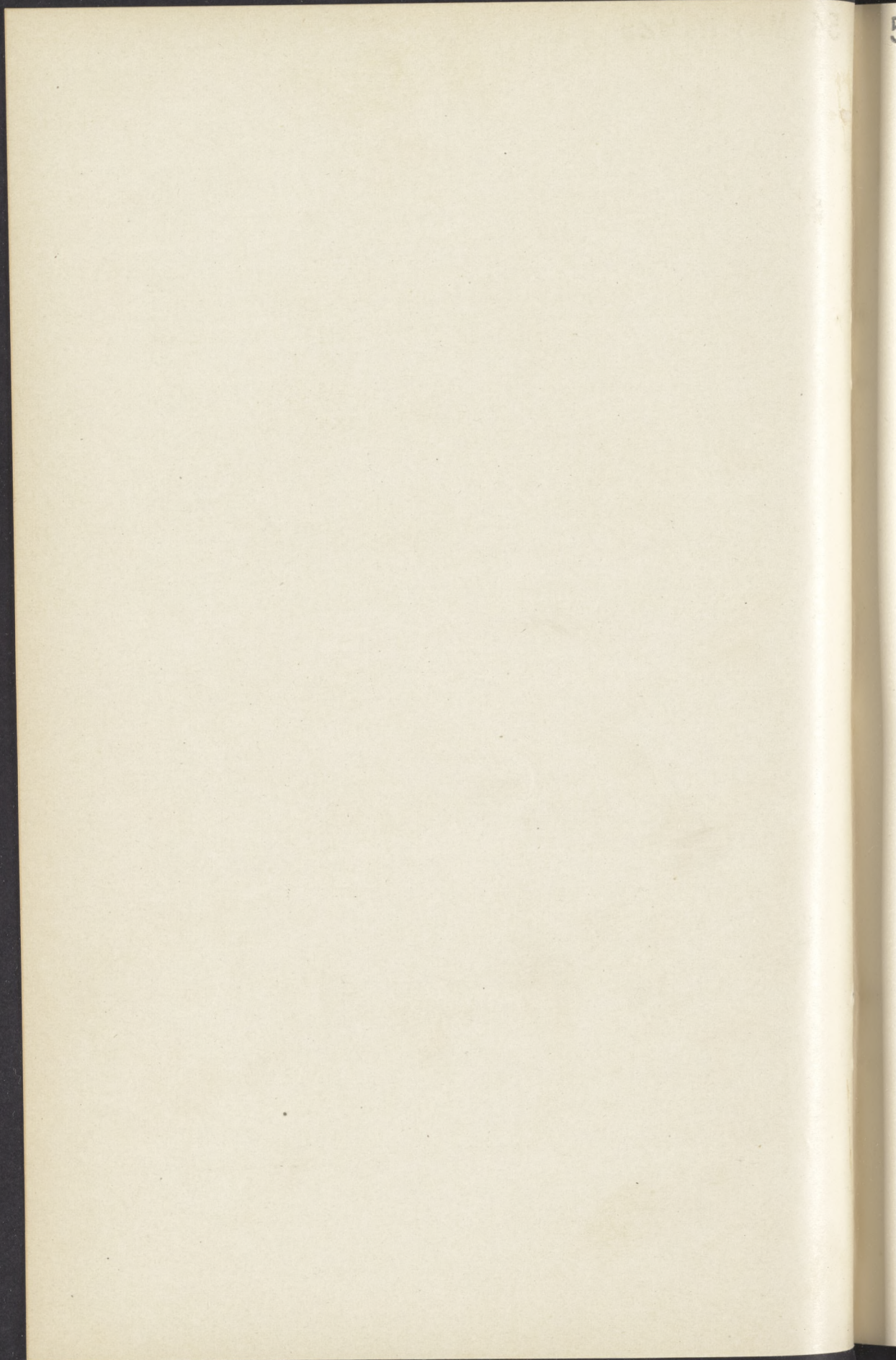
Sir:

PLEASE TAKE NOTICE that the prosecutrix-appellant appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above stated cause on the following ground:

1. Because the New Jersey Supreme Court erred in giving judgment for the respondents dismissing the writ of certiorari, instead of giving judgment for the prosecutrix setting aside the resolution of the Board of Commissioners of Jersey City rescinding a building permit theretofore issued to the prosecutrix.

Dated January 30, 1929.

RICHARD DOHERTY,
 Attorney for and of counsel
 with appellant.



New Jersey Court of Errors and Appeals.

SALINE FREEMAN,
Prosecutor-Appellant,

v.

FRANK HAGUE, JOHN BEGGANS,
MICHAEL I. FAGEN, WILLIAM B.
QUINN and ARTHUR POTTERTON,
Board of Commissioners of the
City of Jersey City, and ED-
WARD J. SPOERER, Superintend-
ent of Buildings,
Respondents-Appellees.

On Appeal
from Supreme
Court.

BRIEF FOR
APPELLANT

FACTS

The appellant was allowed a writ of certiorari to review a resolution (p. 13) of the Commissioners of Jersey City adopted April 10, 1928, whereby a building permit (p. 12) to erect a brick garage, which had been issued to the appellant by the Superintendent of Buildings January 17, 1928, was revoked. The revocation was made in the midst of the work of construction (p. 21, L. 20) and after the appellant had incurred obligations for the construction to the extent of \$2,787.00 (p. 23, L. 25).

The appellant, through her architect, made an application to the Board of Commissioners as required by the ordinance of the city (p. 7); submitted plans (p. 10); the Board of Commissioners caused the premises mentioned in the application

to be inspected by the Superintendent of Buildings (p. 19, L. 5) ;the latter after such inspection recommended that the permit be granted (p.9) ; the Commissioners passed a resolution granting the same (p. 9) and the permit was actually issued about a month thereafter (p. 12).

After the work was under way residents in the vicinity filed a petition objecting that the permitted use was liable to abuse the rights of adjacent property owners by causing noises and fouling the air with gaseous fumes, and that it was within contemplation that a church would later be erected nearby (p. 28). A public hearing was held on this petition, after which a resolution rescinding the permit was adopted. The latter contained a preamble that the permit "was erroneously granted in violation of an ordinance entitled 'An ordinance to regulate the erection and alteration of buildings or structures to be used, or designed to be used, for any purpose other than as residences or for living apartments' passed June 3, 1924." A second preamble recited that "the garage, if built, would be in violation of the zoning ordinance of Jersey City in that said garage would be located within 150 feet of a church" (p. 13). Among the reasons stated by the prosecutor below was that the grounds of revocation so laid were false in fact, illusory and in fraud of the prosecutor (p. 15, Reason 5).

Depositions were taken through which it was disclosed on the part of the appellant that every requirement of the ordinance was meticulously observed by the appellant, the Building Superintendent and the Commissioners (pgs. 18-19), and that there was no church within the range of 150 feet as inhibited by the zoning ordinance of the city (zoning ordinance p. 4; p. 20, lines 35-40; p. 21,

lines 1-12; p. 23, lines 30-35). This state of proof was not questioned by any evidence worthy of the name, and the case was submitted to the Supreme Court upon undisputed facts. As to the church, it was stipulated that no such edifice exists, but that a nearby plot was owned by a church whose pastor contemplated an ecclesiastical construction in the future, but who had not yet either approved or filed plans, nor secured the approval of his bishop which is indispensable under both state and canonical law (p. 32). It was further stipulated that if such episcopal approval was forthcoming pending the argument, it might be represented to the court; on the contrary the bishops' approval was refused and that fact was brought to the courts' attention.

The only other evidence submitted was that of an employee of the Building Department who testified that the only unusual circumstance in the granting of the present permit was the failure to hold a public hearing on the application which is sometimes done by the Commissioners, and sometimes omitted (p. 33, lines 30-39). Over objection, he testified that the ordinance of June 3, 1924, was not complied with because of the lack of a public hearing (p. 34, L. 25); he was unable to point out any such requirement in the ordinance (p. 34, lines 30-40; p. 35, lines 1-15); admitted that the ordinance did not require a public hearing, and finally agreed that he was not qualified to interpret it at all; (p. 38, lines 25-31). This witness was a further voucher of the fact that the Building Department made all necessary inspection before recommending the granting of the permit.

The Supreme Court affirmed the resolution on the following astounding findings of fact:

1. The Commissioners passed a blanket resolution concurring in the recommendation of the Superintendent of Buildings that permission be granted to several applicants; that the appellant's application was granted only because it was erroneously included in the recommendation of the Building Department along with other applications of a type that would not require a public hearing.
2. That the Commissioners did not inspect, or cause to be inspected, the premises mentioned in the application.

In *Lehigh Valley Railroad Co. vs. Jersey City*, 144 At. 578, subsequently decided by the same Justices, they made reference to the case sub judice, and vindicated their holding on the crucial ground that "the structure contemplated was, or might reasonably said to be, in violation of the provisions of an existing zoning ordinance, and its inclusion with a number of others in a report of the Building Superintendent was clearly an error." Speaking of the case then decided the court said "therefore the elements of error and prohibition under the zoning ordinance presenting the dominant and controlling elements in *Freeman v. Hague*, are lacking here."

POINT I

There was no competent evidence before the Supreme Court that (a) the recommendation was erroneously included with others of a different type; (b) that the ordinance was violated by the failure of the Commissioners to make, or cause, an inspection; or (c) that the zoning ordinance was in anyway involved.

A finding of fact by the Supreme Court in certiorari is a finality and unreviewable by the Court of Errors only when it is supported by competent and substantial testimony.

D. L. & W. R. R. Co. v. Newark, 63 N. J. L. 310.

George v. Board of Excise, 74 N. J. L. 816.

Kohn v. Tilt, 134 Atl. 658.

In the present case there was not only a lack of legitimate testimony tending to support the Supreme Court's finding, but the undisputed testimony supported contrary conclusions. At no stage of the proceedings, in their brief, or otherwise, did the appellees contend that the Superintendent of Buildings failed to make an inspection, or that the erection of the garage would be a present violation of the zoning ordinance; these suggestions originated with the Supreme Court's announcements.

At the October, 1928, term of court at which the case was submitted there was pending before the same branch the case of *Citizens Holding Co. v. Board of Adjustment* involving the identical question of the right of a public board to revoke a permit after the construction commenced. The present case is reported in 144 Atl. 328 and the *Citizens Holding Co. v. Board of Adjustment* follows on the next page. The same Justices sat in each case, and took occasion in the respective decisions to state that the cases were distinguishable on the facts. In deciding the present matter the opinion states "It seems to us that *under the facts as stated above* the Board of Commissioners had an implied power to revoke." Thus assenting to the appellant's

contention as to the law, it is obvious that the justice of the holding turns on whether its conclusions of fact were justified.

In the Citizens Holding Co. case it was ruled that where applicant had entered into contract for construction work after the granting of a permit, the Board could not subsequently reconsider the granting of the permit and deny the same where there was no fraud or deception by the applicant, or anyone in procuring the application to be granted.

In *Lehigh Valley R. Co. v. Jersey City*, decided January 31, 1929, and reported in 144 Atl. 578, the *Citizens Holding Co. v. Board of Adjustment* was followed, and the statement was made that the facts were distinguishable from the present case because the latter turned on the question of a zoning violation.

In the decision of the present matter the court made no reference whatever to a zoning infraction, and indeed could not have properly done so, in view of the admitted fact that the church referred to was merely in contemplation by the pastor and its erection forbidden by his superior.

At the time of deciding the Lehigh Valley case the Justices themselves inclined to the view that the reasons actually stated by them in the present matter were insufficient. In the Citizens Holding case and Lehigh Valley case the public authorities were held to be estopped after the expenditure of money or the incurrance of liability, except where the applicant, either personally or vicariously, was guilty of fraud or deception in the procuring of a permit.

In the present case the holding was the aston-

ishingly harsh doctrine that the permittee should lose her permit, the fee therefor, her expenditure and future liability on her contracts because of the clumsiness of the Superintendent of Buildings in comingling his recommendations, the failure of the Commissioners to inspect and the latter's inattention to the course of their official obligations. The doctrine of the Citizens Holding and Lehigh Valley cases on the one hand, and that of the present case on the other are wholly irreconcilable and mutually self-destructive, even though the Supreme Court had some scintilla of evidence to support its conclusion of fact.

Nowhere in the testimony is it suggested that in the granting of the permit was the Board of Commissioners led astray by the supposed fact that the Superintendent of Buildings included the present application in his omnibus recommendation. In the resolution rescinding the permit (p. 13) there is a recital that the permit "was erroneously granted" in violation of an ordinance without hint of the character of the error. No commissioner who voted for the granting of the permit was produced to testify as to his deception in so voting; the Superintendent of Buildings did not appear to testify to his own actual intention, or to his error. All that was offered to the Supreme Court was the testimony of a clerk in the building department that, by his interpretation of the ordinance, a public hearing should have preceded the Superintendent's recommendation, which view he retracted to the extent of admitting that the ordinance contained no such provision, and that the practice of the Board of Commissioners as to public hearings was wholly unsettled and arbitrary.

In the Lehigh Valley case the contention was again made, in some sort, that a public hearing

under the ordinance was a necessary prerequisite to the granting of the permit, and that the Board should first find that the proposed erection would not jeopardize life, limb or public health, or increase the fire hazard. The court disposed of the claims in the following emphatic language:

"The answers to this are:

1. There is nothing in such ordinance requiring a public hearing, such as was held on December 4, 1928,
2. The application in question was first made to the Board of Commissioners, and by that body referred to the Superintendent of Buildings, who, by reporting it to the Commissioners at a subsequent date with a resolution directing the issuance of the permit, without any showing to the contrary, must be considered as a recommendation from that officer that the permit be granted, (and) is we think, in entire consonance with the provision of Section 3 of the ordinance in question providing that 'after the Board of Commissioners has inspected, or caused to be inspected, the premises mentioned in the applications filed.'"

In the Lehigh Valley case there was no showing that the Superintendent of Buildings made any inspection in behalf of the Commissioners; in the present case there is direct and uncontradicted proof that he did make the inspection.

In the Lehigh Valley case it was recognized that the ordinance did not require a public hearing; in the present case the ordinance was construed as

requiring such hearing and the failure of the Commissioners to hold it was blamed upon the appellant.

In the early portion of its opinion the court pointed out as the fatal error the blunder of the Superintendent of Buildings in including the present application in a recommendation that enumerated other applications, which did not require a public hearing. (In passing, it may be mentioned that there was not one word of testimony in the record as to the type of the other applications). Later in the decision the court used the following language: "The third section provides: 'After the Board of Commissioners has inspected or caused to be inspected the premises mentioned in the application filed' etc. This, as stated above, through an error, was not done." It is contended that at this point the Supreme Court showed entire confusion as to the state of facts not only because the evidence affirmatively showed that an inspection was made, but also because in the opinion the previous reference was to the erroneous inclusion of the application, and not to any failure to inspect.

In support of her right to relief the appellant relies upon the law as correctly expounded in the Citizens Holding and Lehigh Valley cases above referred to.

POINT II

The application of law to a finding of fact wholly unsupported by evidence is reversible error.

The long train of decisions to the point that an appellate court will not interfere with the findings of the lower court on controverted or disputed

questions of fact, introduces the corollary that where the facts are admitted, or uncontroverted, it will reverse where the law is misapplied to such a factual situation. Ordinarily, the matter is presented to the appellate tribunal on an exception to refusal to non-suit or to direct a verdict, and the instances where reversal has resulted on account of the misapplication of the correct legal principle to undisputed facts are too numerous and familiar to require citation.

D. L. & W. R. R. Co. v. Newark and *Kohn v. Tilt*, supra, are controlling of the view that where the finding of fact is not justified by competent and substantial testimony, error is committed to which the Court of Errors and Appeals will animadvert and do justice through reversal. By the prescribed forms in certiorari no opportunity is furnished prosecutor or respondent to move for dismissal or judgment except through the medium of final argument, and where the court disregards the evidence and arrives at an unjustified conclusion the error is legal and reversible in the Court of Errors and Appeals.

POINT III

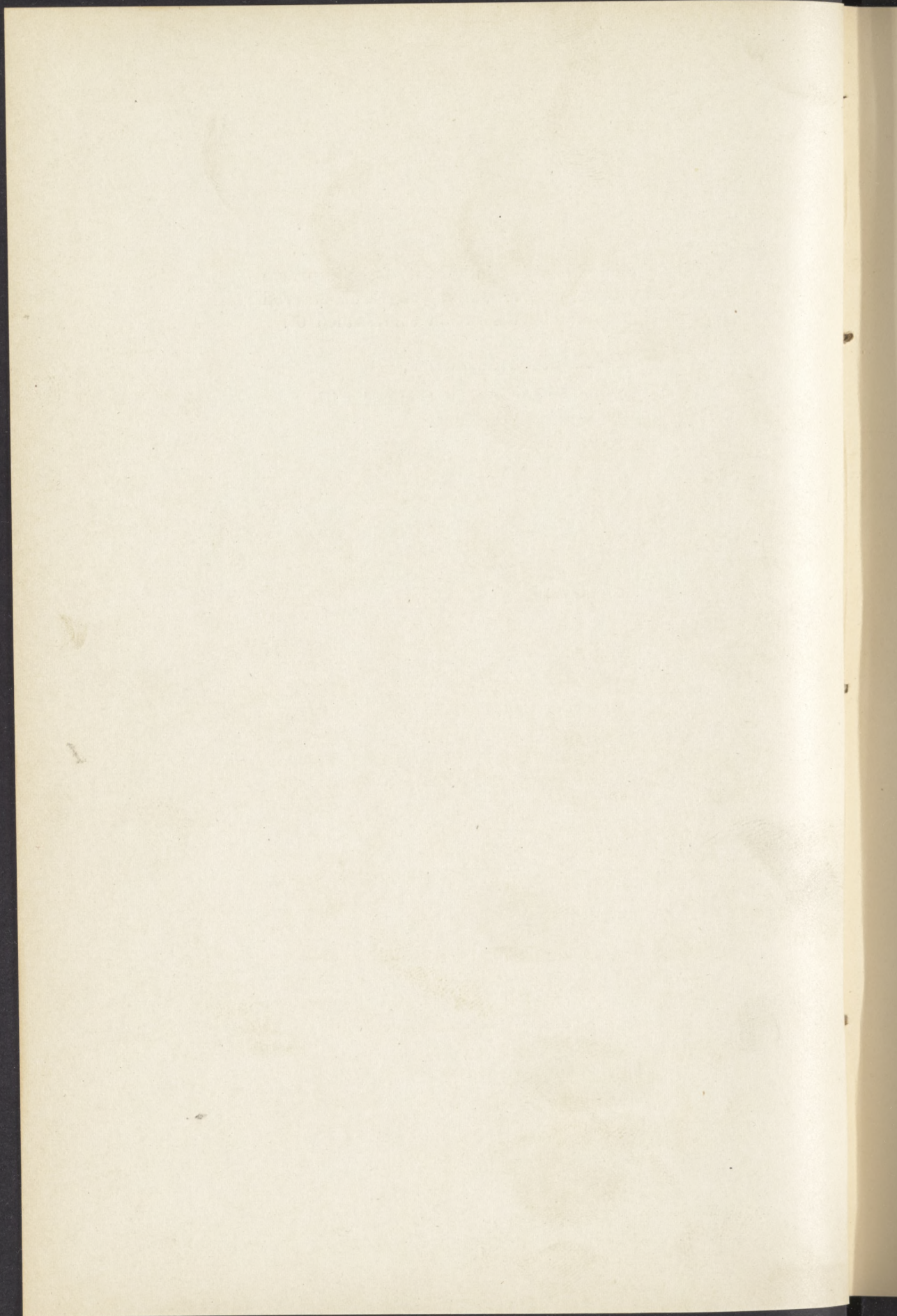
The Court of Errors and Appeals Should Render Judgment that the Revoking Resolution be set aside.

Where a dismissal by the Supreme Court of a certiorari to review a municipal proceeding is reversed by the Court of Errors and Appeals, it will render such judgment as the Supreme Court should have given on the merits.

Levy v. City of Elizabeth, 81 N. J. L. 643.

It is submitted that the judgment of the Supreme Court should be reversed, and judgment entered here setting aside the resolution complained of.

RICHARD DOHERTY,
Attorney for and of Counsel with
Prosecutor-Appellant.



New Jersey Court of Errors and Appeals

SALINE FREEMAN,
Prosecutor-Appellant,

vs.

FRANK HAGUE, JOHN BEGGANS,
MICHAEL I. FAGAN, WILLIAM B.
QUINN and ARTHUR POTTERTON,
Board of Commissioners of the
City of Jersey City, and ED-
WARD J. SPOERER, Superintend-
ent of Buildings,
Respondents-Appellees.

On Appeal
From
Supreme
Court.

BRIEF FOR RESPONDENTS-APPELLEES.

Facts.

The prosecutor applied for a permit to construct a brick garage for the accommodation of five pleasure cars, and the permit for the construction of same was issued, although the respondents contend that the permit was erroneously issued. A public hearing was held and a resolution was passed April 10th, 1928 (see p. 13, State of the Case), rescinding the permit on the grounds that it was granted in violation of an ordinance (p. 5, State of the Case) and on the further grounds that said garage would be in violation of the zoning ordinance, in that it would be located within a hundred and fifty feet of a church.

The respondents had lawful authority for rescinding the permit. Under an ordinance entitled

“An Ordinance to regulate the erection and alteration of buildings and structures to be used or designed to be used for any purpose other than as residences or for living apartments” (p. 5, State of the Case) it is provided that “after investigation if the Board of Commissioners believe that permission will not jeopardize life, limb or public health and will not increase the fire hazard in the locality where the proposed erection is to be made, the Board shall have power to direct the Superintendent of Buildings to issue all necessary permits.” This was done in this case, but the City contends that the permit was erroneously issued, because of the failure to hold a public hearing as is the practice in this sort of case. Counsel for the prosecutor attempts to discredit the witness, Glavin, by showing that there is nothing in the ordinance which specifically calls for a public hearing, but the witness, Glavin, construes that ordinance in accordance with the practice followed by the Building Department, which interprets the language “After the Board of Commissioners have inspected or caused, etc.” (see lines 10-30, p. 36, State of the Case) to mean that investigation is analogous to public hearing. In other words, the operation of the ordinance is to cause an investigation to be made and when such investigation indicates to the Superintendent of Buildings, who is actually charged with the investigation mentioned in the ordinance, that a public hearing should be held, the application is set down for a public hearing before the Board of Commissioners. That this is the true practice followed is evident from the resolution originally granting the permit. Because of these applications which on their face seem to be of the type that would not require a public hearing, the Board of Commissioners passed a blanket resolution so

that the letter of the ordinance requiring every application to be considered by the Board of Commissioners for buildings other than dwelling or living apartments is in fact complied with. It will be noted that in the resolution recommending the granting of this permit (p. 9, State of the Case) there are various other applications embodied in the same resolution (Note the words "that permission be granted to the following applicants") and this application was erroneously included in the recommendation of the Building Department to the Board of Commissioners.

After the permit had been issued, a petition signed by thirty-eight of the property owners or residents in the vicinity opposed the construction of these garages (see Exhibit P-3, State of the Case, p. 28) and the Board of Commissioners ordered a public hearing to be held. The prosecutor was notified to appear at the meeting of the City Commissioners to be held on April 10th, 1928, for the consideration of the matter of revoking the permit (see lines 25-30, p. 21, State of the Case), and the facts that developed at the hearing resulted in the passage of the resolution rescinding the permit (lines 20-40, pp. 13-14, State of the Case).

The respondents in that resolution recite that the permit was erroneously granted and also allege as a further reason the fact that the garages, if constructed, would be located within a hundred and fifty feet of a church. In this connection it must be admitted that a church edifice does not now stand on the property covered by the deed marked "Exhibit D-1" and referred to at p. 31, lines 35-40 and p. 32, lines 1-15.

PART I.

Where the judgment of the Supreme Court in certiorari is supported by substantial testimony, a review of the facts cannot be had.

Appellant admits that in certiorari, a finding of fact by the Supreme Court is a finality and unreviewed by the Court of Errors and Appeals only when it is supported by competent and substantial testimony, but appellant argues that in the case *sub judice* such substantial testimony is lacking. The fact is that the Supreme Court, in its opinion, says:

“It seems to us that under the facts, as stated above, the Board of Commissioners had an implied power to revoke what had been granted through a mistake and to correct the error.”

and by this very announcement the Supreme Court has said that it has found substantial testimony to give it the view that the resolution should be affirmed. Therefore, the Supreme Court did find in the case substantial testimony upon which to base its conclusion.

The appellant seems to believe that it is necessary for the Supreme Court to have had before it definite and affirmative testimony to the effect that the Superintendent of Buildings failed to make an inspection. Such is not the law for in the case of *Kohn v. Tilt et als.* 134 Atl. 658, the Court of Errors and Appeals has said:

“Those adjudications (referring to case cited by the Court, to wit, *Devault v. Camden*, 48 N. J. L., and others) therefore, are entirely applicable to a situation where in the judgment of the reviewing court the record presented a substantial basis for the con-

clusion reached, but where, as in this instance, in the opinion of the reviewing court, the record is devoid of such substantive testimony, this court will not, in view of the clear trend of legislation, review that conclusion for the purpose of reversing upon an issue of fact."

In other words, under the language of the court in this case, the Court of Errors and Appeals will not review the question of whether or not the Supreme Court has erroneously arrived at its conclusion where such conclusion is predicated upon a factual situation once the Supreme Court has announced it has found substantial testimony upon which to base its findings of fact.

Appellant's argument for reversal is based principally upon the fact that the Supreme Court at the same term decided this case contrary to its ruling in the case of *Lehigh Valley Railroad Co. v. Jersey City*, 144 Atl. 578 and *Citizens Holding Co. v. Board of Adjustment*, 144 Atl. 329, and argues that the opinions conflict, but a careful reading of both of these cases, as well as the case *sub judice*, will show that there is not any conflict.

In the Lehigh Valley Co. case, the Court says that the situation was and is controlled by the findings of the Court in the Citizens Holding Company case, *supra*, and took pains to distinguish these two cases from the Freeman case No. 228 of the same term of the Court. In the case of *Citizens Holding Company v. Board of Adjustment*, there was no erroneous issuance of the permit. The Board of Assessment Commissioners were fully cognizant of the individual application then before it and passed upon its merits with full knowledge of its locality, applicability and intended useability. Subsequently, however, they discovered that the same application had been before them at another time and that they, the Commissioners of Adjustment, had refused it.

This was no mistake of fact or of law. It only involved a reversal not predicated upon their decision as to the merits of the application but simply because they had heretofore refused the permit.

In the Freeman case, the Freeman application as such was never before the Board of Commissioners in accordance with the ordinance cited heretofore mentioned. It must be remembered that Section 1 of the ordinance (p. 5, State of the Case) requires permission of the Board of Commissioners for any permit for any building to be used for any purpose other than as a residence or living apartment, and Counsel for the appellant makes the point that because the ordinance does not specifically require a public hearing to be held that the holding of such hearing is not warranted or justified, but counsel for the appellant loses sight of the fact that since the ordinance requires that all applications for buildings other than for dwelling purposes shall be approved by the City Commission, that the City Commission can prescribe its own rules as to the manner in which the applications themselves may be handled and that such regulations have been determined is evident from the testimony of the witness Glavin, as follows:

“Q. Is every application for the construction or erection of a building other than a dwelling or living apartment approved by the City Commission? A. Not directly.

Q. Is such approval done as a matter of form, in some cases, without a public hearing? A. Yes.

Q. Is the case in question under which this writ has been sued out that class of case? A. No.

Q. In the class of case such as we are dealing with, what is the practice as required by the rules of the Building Department? A. In a case such as this, when applications are

filed, Mr. Duff goes out and examines the premises where the proposed erection is to be made. The application is then addressed to the City Commission for one hearing and no action is taken at that hearing. At the second hearing the residents and property owners in the neighborhood are notified by the police of the proposed erection and the date of the hearing. At that meeting if they care to protest they go down before the City Commission and they are given an opportunity to be heard. The City Commission then acts on the application, and either grants it or denies it.

Q. Now in this case was there a hearing on this application, and, if so, was it before or after the permit had been issued? A. There was no hearing before the permit was issued. After the permit had been issued there was a hearing through the voluntary appearance on the part of the residents and property owners in the neighborhood who appealed to the City Commission against the erection of these buildings.

Q. Is it a fact that but for the voluntary appearance of the objectors this error of the Building Department in not calling a public hearing would not have been discovered? A. No."

P. 37, ll. 10 to 40; p. 38, ll. 1 to 10, State of the Case.

A reading of this testimony clearly shows that the application in question was erroneously included in a batch of applications which, under the practice and regulations of the Board of Commissioners of Jersey City, were of the nature that would not require public hearings, but which nevertheless, had a resolution passed affecting them so as to comply with the letter of Section 1 of the Building Ordinance (p. 5, State of the Case).

This is evident from the form of resolution itself (see p. 9, State of the Case, which is a blanket

resolution relative to various applications and among which group appellant's application was included erroneously).

It is, therefore, respectfully submitted that since the appellant's application, under the practice adopted by the Board of Commissioners, was erroneously included in the resolution granting permission that the Board of Commissioners were vested with the power to rescind its former resolution for if this contention is not sustained, it would mean that under the ordinance every single application for permission to erect any kind of a structure, other than a building for dwelling purposes, would have to be handled individually by the Board of Commissioners and they would be devoid of the power to regulate the method of procedure which they might adopt and which is a necessary corollary of the power vested by the first section of the ordinance, before referred to.

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

Respectfully submitted,

THOMAS J. BROGAN,
Respondents-Appellees Attorney.

FRANK J. REARDON,
Of Counsel.



