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Notice of Appeal.

(Filed January 7, 1930.)

NEW JERSEY SUPREME COURT.

J. SIDNEY ADAMS and GLADYS
TOWNSEND,
Prosecutors,

10a

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, EDWARD SPOERER,
Superintendent of Buildings of
Jersey City, HARRY GOLDOWSKY
and ANNA B. MALONE,
Defendants.

On Certiorari.
Notice of Appeal.

To:

20a

FRANK REARDON, Esq.,
Atty. for Mayor and Aldermen of Jersey
City and Edward Spoerer, Supt. of
Buildings of Jersey City,
921 Bergen Avenue,
Jersey City, N. J.

MARK SULLIVAN, Esq.,
Atty. for Harry Goldowsky and
Anna B. Malone,
15 Exchange Place,
Jersey City, N. J.

30a

SIRS:

TAKE NOTICE that the Prosecutors herein hereby
appeal to the Court of Errors and Appeals from
the judgment entered herein dismissing the writ
of certiorari and state as their ground of appeal
that the New Jersey Supreme Court erred in dis-
missing the writ of certiorari.

40a

MARK TOWNSEND, JR.,
Attorney for Prosecutors.

Dated October 7th, 1929.

Judgment of Supreme Court.

(Filed October 4, 1929.)

NEW JERSEY SUPREME COURT.

10b

J. SIDNEY ADAMS and GLADYS
TOWNSEND,
Prosecutors,

v.

MAYOR AND ALDERMEN OF JERSEY
CITY, EDWARD SPOERER, Superin-
tendent of Buildings of Jersey
City, HARRY GOLDOWSKY and
ANNA B. MALONE,
Defendants.

On Certiorari.
Order Dismissing
Writ.

20b

This matter coming on for hearing in the October Term of this Court, in the presence of counsel for the respective parties, and the Court having considered the same; it is

ORDERED that the Writ of Certiorari herein be dismissed, with costs.

By the court

30b

THOMAS W. TRENCHARD,
J. S. C.

Dated October 2nd, 1929.

Entered October 4, 1929,

On Motion of
MARK A. SULLIVAN,
Attorney for Harry Goldowsky
and Anna B. Malone.

40b

A true copy.

FRED L. BLOODGOOD,
Clerk.

Writ of Certiorari.

(Filed July 31, 1929.)

10

STATE OF NEW JERSEY: TO THE MAYOR AND ALDER-
MEN OF JERSEY CITY, EDWARD SPOERER,
[L. S.] SUPERINTENDENT OF BUILDINGS OF JERSEY
CITY, HARRY GOLDOWSKY and ANNA B.
MALONE, GREETING:

We being willing for certain reasons to be certified of a resolution passed by the Board of Commissioners of the Mayor and Aldermen of Jersey City on or about the 18th day of June, 1929, granting a permit to Harry Goldowsky for the erection of a five story brick elevator apartment on the premises known as 168-172 Jewett Avenue, Jersey City, being also known as lots 25B and 25C in Block 1823 on the official assessment map of Jersey City, and any permit issued under said resolution or by authority thereof, we command you, the said Board of Commissioners of the Mayor and Aldermen of Jersey City, Edward Spoerer, Superintendent of Buildings of Jersey City, Harry Goldowsky and Anna B. Malone, that the aforesaid resolution passed by the Board of Commissioners of the Mayor and Aldermen of Jersey City on or about the 18th day of June, 1929, together with the records of all proceedings taken by the aforesaid Board of Commissioners of the Mayor and Aldermen of Jersey City concerning the passing and approving of the said resolution or in any way touching the same, including all petitions, notices, communications, protests and

20

30

40

Writ of Certiorari.

10 other papers pertaining thereto, presented to the
 said Board of Commissioners of the Mayor and
 Aldermen of Jersey City, or filed with the City
 Clerk of said City of Jersey City, and any permit
 issued under or by authority of said resolution,
 as fully and entirely as before you they remain,
 or are in your custody and control, you do certify
 and send together with this writ to our Justices
 of our Supreme Court of Judicature at Trenton,
 on the 20th day of July, 1929, that therein may
 be caused to be done what of right and according
 to law ought to be done.

20 WITNESS, the Honorable William S. Gummere,
 Chief Justice of our said Supreme Court at Tren-
 ton, this 1st day of July, 1929.

FRED L. BLOODGOOD,
 Clerk.

MARK TOWNSEND, JR.,
 Attorney.
 A true copy.

FRED L. BLOODGOOD,
 Clerk.

30

40

Return to Writ.

(Filed July 31, 1929.)

NEW JERSEY SUPREME COURT.

J. SIDNEY ADAMS and GLADYS
TOWNSEND,
Prosecutors,

10

v.

THE MAYOR AND ALDERMEN OF JER-
SEY CITY, EDWARD SPOERER, Su-
perintendent of Buildings of
Jersey City, HARRY GOLDOWSKY
and ANNA B. MALONE,
Defendants.

On Certiorari.

20

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

In obedience to the command of the within writ
to us directed, we, Edward J. Holland, City Clerk,
and Edward J. Spoerer, Superintendent of Build-
ings of The Mayor and Aldermen of Jersey City,
do certify and send the resolution, permit, and all
of the proceedings taken by the Board of Com-
missioners of The Mayor and Aldermen of Jersey
City with respect to the application of Harry
Goldowsky for a permit to erect a five-story brick
elevator apartment on the premises known as 168-
172 Jewett Avenue, Jersey City, said premises being
also known as Lots 25B and 25C in Block 1823.

30

THE MAYOR AND ALDERMEN OF JERSEY CITY,
By EDWARD J. HOLLAND,
City Clerk.
(Seal)

EDWARD J. SPOERER,
Superintendent of Buildings of Jersey City.

40

Return to Writ.

BY MAYOR HAGUE:

10 RESOLVED, that permission be and the same is hereby granted to Harry Goldowsky to erect a five-story brick elevator apartment house on Lots 25b and 26c, Block 1823, known as 168-172 Jewett Avenue, provided said building will be set back at least seven feet from the Jewett Avenue building line and that the plans for same comply with all requirements of the building laws.

Adopted

Yeas: Commissioners Beggans, Fagen,
Potterton and Mayor Hague.

Nays: None.

20 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 June 18th, 1929.

[SEAL] B. J. ROSENGARD,
Acting Deputy City Clerk.

30 THIS PERMIT MUST BE KEPT ON THE PREMISES
This Permit Expires One Year From Date of Issue
OFFICE OF SUPERINTENDENT OF BUILDINGS
CITY HALL

(COPY)

No. 38104

Jersey City July 1, 1929

40 Application having been made to me by Harry Goldowsky for permission to Erect 1-5 Sty brick (32) Apartment size 99' 10" x 118' 3" x 58' high, 5 ply tar & gravel roof as per plans filed Lot Nos. 25B, 25C Block 1823 168-172 Jewett Ave.

Return to Writ.

COST OF THIS PERMIT \$491

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 Harry Goldowsky to perform such work as is set forth in said application. 10

Plan No. 98 R R

(S) EDW. J. SPOERER
Superintendent of Buildings

MINUTES.

Mr. H. Goldowsky appeared before the Board and requested a reconsideration of the application for permission to erect a five story apartment house at 168-172 Jewett Ave. He stated that there is a condition where an apartment has been put up right in the rear of his plot and also with the bank and apartment on the opposite corner; that the apartment that went up on the rear of his property has been very successful in renting, showing that there is a demand there for apartments; that before the owner finished his apartment it was all rented and that he is merely asking for a reconsideration of the application. 20

The Mayor asked Mr. Goldowsky if the section is going over to apartments. Mr. Goldowsky replied that there is a great demand for apartments; that alongside of his plot there is another plot which is fit for an apartment only and taking all that into consideration and without injuring that street in any way, shape or form, it is an apartment location. 30

Thereupon the Mayor moved that the application be reconsidered and granted. 40

Seconded by Commissioner Beggans and Carried.

Reasons.

THIS IS TO CERTIFY that the foregoing is a true copy of an extract from the minutes of the meeting of the Board of Commissioners of Jersey City, N. J., held on June 18th, 1929.

10 (Seal) B. J. ROSENGARD,
Acting Deputy City Clerk.

Reasons.

(Filed August 9, 1929.)

NEW JERSEY SUPREME COURT.

20	<p style="text-align: center;">J. SIDNEY ADAMS and GLADYS TOWNSEND, <i>Prosecutors,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">THE MAYOR AND ALDERMEN OF JER- SEY CITY, EDWARD SPOERER, Su- perintendent of Buildings of Jersey City, HARRY GOLDOWSKY and ANNA B. MALONE, <i>Defendants.</i></p>	} On Certiorari.
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30 The prosecutors in certiorari will rely upon the following reasons on the argument of the writ of certiorari granted herein :

40 1. On November 30th, 1928, Anna B. Malone and Harry Goldowsky, two of the defendants, obtained from the New Jersey Supreme Court, an alternative writ of mandamus, said writ of mandamus having for its object the procuring of a permit to erect the same building on the same property for which the permit now under review was issued. A return was duly made on said writ,

Reasons.

and thereafter the prosecutors in this proceeding intervened by order of the Court, filed briefs, and the matter was argued (reference is hereby made to the said proceeding). The said mandamus proceeding was pending before this Court at the time the permit now under certiorari was granted.

10

2. The Mayor and Aldermen of the City of Jersey City had no authority to grant or approve the issuance of the building permit while the mandamus proceeding of Anna B. Malone and Harry Goldowsky, relators, against the Mayor and Aldermen of the City of Jersey City and Edward Spoerer, Superintendent of Buildings of Jersey City, was pending in this Court.

3. No notice of the application for the permit issued herein was given to the prosecutors or any other persons, the interest of the prosecutors being adversely affected by the action of the Mayor and Aldermen of the City of Jersey City in authorizing the issuance of the permit and by the action of Edward Spoerer, Superintendent of Buildings of Jersey City, in issuing the same.

20

4. The Mayor and Aldermen of the City of Jersey City and Edward Spoerer, Superintendent of Buildings of Jersey City, had no right or authority to grant said building permit without notice to the prosecutors.

30

5. The petition upon which the permit was issued was not executed in accordance with the provisions of the Building Code of the City of Jersey City in that it bears no signature, does not state the full name and residence of the owner of the building, and the person purporting to verify the same does not state whether he did so as owner,

40

Reasons.

lessee or in any other representative capacity, or that he is duly authorized to perform the work.

6. The petition upon which the permit was issued is not verified by the petitioner.

10 7. The Mayor and Aldermen of the City of Jersey City and Edward Spoerer, Superintendent of Buildings of Jersey City, are without authority under law to grant said permit.

20 8. The issuance of the permit herein was invalid and illegal in that the Mayor and Aldermen of Jersey City and Edward Spoerer, Superintendent of Buildings of Jersey City, did not comply with the ordinances of the City of Jersey City, adopted pursuant to the provisions of Chapter 240 of the Laws of 1920, and Chapter 274 of the Laws of 1928, and the acts amendatory thereof and supplemental thereto.

MARK TOWNSEND, JR.,
Attorney for Prosecutors.

30

40

Depositions.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">J. SIDNEY ADAMS and GLADYS TOWNSEND, <i>Prosecutors,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">THE MAYOR AND ALDERMEN OF JER- SEY CITY, EDWARD SPOERER, Su- perintendent of Buildings of Jersey City, HARRY GOLDOWSKY and ANNA B. MALONE, <i>Defendants.</i></p>	}	On Certiorari.	10
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Depositions in the above entitled cause, taken before me, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, at the office of Mark Townsend, Jr., Esquire, 921 Bergen Avenue, Jersey City, New Jersey, this fifth day of September, 1929, at eleven o'clock in the forenoon, pursuant to notice. 20

APPEARANCES:

MARK TOWNSEND, JR., Esq. (Mr. SLEIGH),
Attorney for Prosecutors. 30

FRANK J. REARDON, Esquire, Attorney for
Jersey City and Superintendent of
Buildings of Jersey City.

MARK A. SULLIVAN, Esquire, Attorney for
Harry Goldowsky and Anna B. Malone.

It is stipulated that the depositions be taken stenographically and the signatures of the witnesses waived.

Subject to the objection on the part of counsel 40

Depositions.

for the respondents that the evidence is immaterial, irrelevant and incompetent to the issues in this action, counsel for the respective parties agree as follows:

- 10 1. That the sketch of survey made by Frederick Dunham, dated May 5, 1929, is a true and correct sketch showing the location of premises owned by Gladys Townsend, known as Lot A-4 in Block 1823, in the City of Jersey City, together with the building thereon; and that said survey indicates that the building erected on the said premises is set back from the lot line of Jewett Avenue to the extent of approximately 26 feet; that the porch indicated on the said survey is set back from the lot line of
20 Jewett Avenue approximately 19 feet; that the building erected thereon is a one-family residence; and that the street number is 164 Jewett Avenue.

(Subject to the same objections, the survey was offered in evidence and marked Exhibit P-1.)

- 30 Mr. Sleigh: I offer in evidence certified copy of resolution of the Board of Commissioners of Jersey City with reference to the creation of a Zoning Commission, adopted June 11, 1929; and also a certified copy of a resolution of the Board of Commissioners of Jersey City with reference to increasing the membership in the said Zoning Commission, adopted June 18, 1929.

Mr. Sullivan: We object to both resolutions on the ground that they are immaterial and irrelevant.

- 40 Mr. Reardon: We object to that as immaterial, irrelevant and incompetent, and particularly on the ground that none of the persons mentioned as appointees to the Zoning Commission had or could

Depositions.

have had any jurisdiction with relation to the application in question.

(Subject to the objections the certified copies of resolutions were marked Exhibits P-2 and P-3, respectively.)

10

Mr. Sleigh: I also desire to offer in evidence a copy of the alternative writ of mandamus allowed upon the application of Anna B. Malone and Harry Goldowsky by Justice Minturn on December 1, 1928, directed to the Mayor and Aldermen of Jersey City and the Superintendent of Buildings of Jersey City; also the return to the said writ made by the City Clerk of Jersey City; also the minutes of hearing on the application of Harry Goldowsky to erect an apartment house at 168-172 Jewett Avenue, which minutes were taken of the meeting of the City Commissioners of Jersey City held on November 27, 1928; also a copy of the resolution adopted at the said meeting denying the application for a permit to erect the said apartment house.

20

Mr. Sullivan: We object to the writ of mandamus and the return thereof, and also the resolution passed by the City Commissioners on November 27, 1928, on the ground that they are immaterial and irrelevant. I have no objection to the minutes of the hearing of November 27, 1928.

30

(Subject to the objections the writ, return, minutes and copy of resolution were marked Exhibit P-4 as one exhibit.)

Mr. Sleigh: I take it, Mr. Reardon, that this paper that you handed to me is the original application for a permit, filed with the Superintendent of Buildings.

Mr. Reardon: Yes.

40

Mr. Sleigh: I offer the application in evidence,

Depositions.

the application bearing date and sworn to on October 29, 1928, signed by Maurice Kraut.

(Without objection the application for permit was marked Exhibit P-5 in Evidence.)

10

Mr. Sleigh: This paper that you handed me, Mr. Reardon, is the original of the application to the City Commission for a permit to erect this apartment house on Jewett Avenue?

Mr. Reardon: Yes.

Mr. Sleigh: I offer in evidence the application to the City Commission for a building permit.

(Without objection the application for permit was marked Exhibit P-6 in evidence.)

20

Mr. Sleigh: Have you the Zoning Ordinance of Jersey City?

Mr. Reardon: Yes.

Mr. Sleigh: The book you have just handed me contains the minutes of the Board of Commissioners of Jersey City from June, 1921, to June, 1922; and as I understand it, in the minutes of the meeting of March 21, 1922, immediately following "Ordinance hearing" is contained the Zoning Ordinance of Jersey City as it now stands, and as it was at the time the application was made in this case and at the time it was granted.

30

Mr. Reardon: Yes.

Mr. Sleigh: I offer the Zoning Resolution in evidence.

Mr. Reardon: I object to that on the ground that it is immaterial; and on the further ground that the Zoning Ordinance does not in any way deal with the subject of apartment houses.

40

(Subject to the objection the copy of ordinance was marked Exhibit P-7.)

Joseph C. Glavin, direct.

Mr. Sleigh: Pursuant to the subpoena duces tecum served on Edward Spoerer, Superintendent of Buildings, and on Edward Holland, City Clerk of Jersey City, I call upon Mr. Reardon to produce the originals or true copies of all notices sent to property owners, notifying them that on June 18th, 1929, the City Commissioners of Jersey City would reconsider the application of Anna Malone and Harry Goldowsky for a permit to erect the apartment house building at 168-172 Jewett Avenue. 10

Mr. Reardon: There being no legal requirements, either by statute or ordinance, for the notification of parties on applications of this kind, we have no record of any notification to any persons with respect to this application, other than what appears at the hearings themselves as set out in the minutes of the other hearings. 20

Mr. Sleigh: Mr. Reardon, were there any other applications for permit filed for the apartment house in question than the ones that have been produced here.

Mr. Reardon: No.

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

JOSEPH C. GLAVIN, being first duly sworn, according to law, on his oath deposes and says: 30

Direct examination by Mr. Sleigh:

Q. Glavin, are you in the employ of the City of Jersey City? A. Yes, sir.

Q. In what capacity? A. As clerk and custodian of building code records in the Building Department.

Q. I show you Exhibit P-6 and ask you if that application to the City Commission for a permit 40

Joseph C. Glavin, direct.

to erect an apartment house has been in your custody and is now in your custody? A. Yes.

10 Q. Referring to the sketch appearing on the reverse side of the application, what does that sketch indicate with respect to the set-back of the apartment house contemplated to be erected? A. It indicates that the apartment contemplated will be erected seven feet back from the lot line of Jewett Avenue.

20 Q. And what does that sketch indicate with respect to the distance between the Easterly lot line of the premises on which the apartment house is contemplated to be erected and the house standing on the premises now owned by Gladys Townsend immediately to the East of the said lot line?

Mr. Sullivan: I object to that on the ground that it is immaterial and irrelevant.

A. It does not indicate any distance.

30 Q. Directing your attention to the figure "3" appearing on that sketch, what does that figure indicate to you? A. It has no meaning to me; it might mean that distance, but from my experience in reading plans it does not indicate the distance between the apartment house and the house on the East.

Q. Do you have the plans of the apartment house contemplated to be erected on this plot with you? A. Yes.

Q. Do those plans indicate at any point the distance between the house contemplated to be erected and the house on the premises owned by Gladys Townsend immediately to the East?

40 Mr. Sullivan: I object to that as immaterial and irrelevant.

A. Yes, sir.

Thomas A. Ryer, direct.

Q. What does that plan indicate with respect to that distance?

Mr. Sullivan: I object to that as immaterial and irrelevant.

A. The plan indicates that the apartment house will be erected three feet West of the Westerly lot line of the lot on which the house owned by Gladys Townsend is erected. 10

No Cross Examination.

It is stipulated for the purpose of the record that Harry Goldowsky has agreed to pay the sum of \$60,000 for the plot on which the proposed apartment house is contemplated to be erected. It is further stipulated on the record that the premises indicated as lot A-4 on Exhibit P-1 are owned by Gladys Townsend; and that the premises known as 177 Jewett Avenue, which is on the opposite of the street to that on which the apartment is contemplated to be erected, namely, on the Southerly side of Jewett Avenue, is owned by the prosecutor, J. Sidney Adams. 20

State of New Jersey }
County of Hudson } ss: 30

THOMAS A. RYER, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Sleigh:

Q. Mr. Ryer, where do you reside? A. 107 Kensington Avenue, Jersey City.

Q. What is your business? A. Real estate.

Q. How long have you been engaged in the real 40

Thomas A. Ryer, direct.

estate business? A. Continuously for the past 28 years.

Q. In the City of Jersey City? A. In the City of Jersey City.

10 Q. Have you made appraisals in and around the Bergen section of Jersey City during that time? A. I have.

Q. Have you testified in legal proceedings with respect to the valuations of real estate before this? A. In many cases.

Q. Whom have you testified for; who has retained your services, among others? A. The City of Jersey City, the County of Hudson, the State of New Jersey, the Federal Government, all of the railroads in Hudson County, the Public Service Corporation and many individuals and other corporations.

20 Q. Are you familiar with the street known as Jewett Avenue in the City of Jersey City, between Bergen Avenue and the Hudson Boulevard? A. I am.

Q. What is the character of the buildings erected on that street? A. Dwelling houses.

30 Q. Are they one- or two-family houses, or how would you describe them? A. A greater number of them are one-family houses, and there are some two-family houses, but more one-family than two.

Q. Do you know, or are you familiar with the premises known as 164 Jewett Avenue, being lot A-4 in Block 1823, designated on Exhibit P-1? A. I am; I have been in it frequently.

Q. What, in your opinion, Mr. Ryer, is the fair market value of that plot?

40 Mr. Sullivan: I object to that is immaterial, irrelevant and incompetent.

A. As of the present time, I should say \$25,000.

Thomas A. Ryer, direct.

Q. How much frontage does that property have on Jewett Avenue? A. 25 feet.

Q. How deep is the plot? A. 136½ feet.

Q. Are you familiar with the plot immediately adjoining the Townsend property on the West, having a frontage of approximately 100 feet on Jewett Avenue? A. I am. 10

Q. What is the depth of that plot, approximately? A. 136½ feet.

Q. Now, Mr. Ryer, assuming that the property immediately adjoining the premises designated on Exhibit P-1 to the West, having a frontage of approximately 100 feet on Jewett Avenue and a depth of approximately 136½ feet, is used for apartment house purposes; and assuming further that there is contemplated to be erected thereon a five-story brick apartment house, in size 99.10 feet along Jewett Avenue and a depth of 118.3 feet, said building to be equipped with elevators and to have a setback from the lot line of Jewett Avenue of seven feet, and said building to be erected so that the Easterly wall thereof will be three feet from the building now appearing on Exhibit P-1; and further assuming that the premises on which the apartment house is contemplated to be erected was purchased, or is about to be purchased by Harry Goldowsky for the sum of \$60,000; what, in your opinion, will be the effect on the fair market value of the premises now owned by Mrs. Townsend and designated on Exhibit P-1, by the erection of the said apartment house? 20 30

Mr. Sullivan: I object to that question, first, on the ground that it is immaterial and irrelevant, I object to the question further on the ground that it does not contain all of the elements of the apartment house that 40

Thomas A. Ryer, direct.

is shown on the plan on the back of the application, Exhibit P-6.

10 Q. To meet that objection I will amend the question by asking you to consider and to assume, in making your answer, all of the facts and conditions indicated on the sketch of the apartment house appearing on the reverse side of Exhibit P-6.

Mr. Sullivan: I object to it further on the ground now that it does not show the character of the apartment house.

Mr. Sleigh: I will withdraw the question for the moment. May I have the plans?

20 Q. I will repeat the question, and you may consider all of the conditions and facts as shown on the plans produced by the Superintendent of Buildings of Jersey City for the erection of the apartment house.

30 Mr. Sullivan: I object to the question now on the ground that manifestly this witness has not shown any familiarity with the reading of plans for apartment houses, and that necessarily he can not, by merely looking at the mass of blueprints that are now presented to him, form any judgment that is worth anything.

Q. Are you qualified to read plans of an apartment house? A. With time, yes; I couldn't read them in a few minutes; I have read plans of an apartment house in making appraisals and have done so on numerous occasions.

40 Q. I ask you now to look at the plans produced, and ask you to state whether there is anything indicated on those plans which would affect your

Thomas A. Ryer, direct.

opinion as to the effect that this apartment house would have on the property now owned by Gladys Townsend ?

Mr. Reardon: He hasn't testified that it would have any effect; he hasn't given any opinion. 10

A. The only things shown here—I have got to assume, of course, the character of the building from the plans—I am living in one of the apartments built by Mr. Goldowsky at the present time; from these plans it would seem he is going to build a similar building on Jewett Avenue; they look very similar.

Q. I will repeat the hypothetical question, asking you what your opinion is with respect to the effect that the erection of that apartment house will have on the value of the premises now owned by Mrs. Townsend as designated on Exhibit P-1? 20

Mr. Sullivan: I repeat the same objections.

A. In my opinion, it would reduce the value of the Townsend property by forty per cent.

Q. After the erection of the apartment house, what would the value be in dollars and cents, as nearly as you can tell, in your opinion? 30

Mr. Sullivan: I object to that on the same grounds; immaterial and irrelevant.

A. \$15,000.

Q. Mr. Ryer, are you familiar with the depth of properties on the Southerly side of Jewett Avenue; that is the depth from the street line? A. I am.

Q. What is the depth of those properties, approximately? A. Why, they run around seventy feet; a little more in some cases, or a little less. 40

Thomas A. Ryer, direct.

Q. The Southerly side of Jewett Avenue is the opposite side, is it not, to that on which the proposed apartment house is to be erected? A. It is.

10 Q. What is your opinion, Mr. Ryer, with respect to the availability of properties on the Southerly side of Jewett Avenue for apartment house purposes?

Mr. Sullivan: I object to that on the ground that it is immaterial and irrelevant what his opinion is.

20 A. In my opinion it would not be as available for an apartment house site as the North side of the street, unless property on the North side of the street in the rear could be obtained; this property would have to be joined up with other property in the rear to make it as available.

Q. When you speak of property in the rear, on what street is that? A. That would be on the Northerly side of Kensington Avenue.

Q. Kensington Avenue is the street, is it not, immediately next and to the South of Jewett Avenue?

A. It is.

30 Q. Upon what do you base your opinion that the value of the premises shown on Exhibit P-1 would be depleted because of the erection of this apartment house?

Mr. Sullivan: I object to that as immaterial and irrelevant.

40 A. At the present time this is a residential street and the values of the residential properties are practically fixed. If an apartment house is built upon this side of the street next to that house, the Townsend lot, in my opinion, will only become valuable for apartment house use, or \$600 a front foot,

Thomas A. Ryer, cross.

which is the same price paid for the Malone property. Apartment house sites in that location are running from six to seven hundred dollars a front foot; Goldowsky paid \$700 a front foot on Kensington Avenue backing up on the park, which is a little better location, in my opinion.

10

Q. How will the erection of this apartment house affect, if it will affect it at all, the value of properties immediately adjoining that shown on Exhibit P-1 to the East thereof?

Mr. Sullivan: I object to that as immaterial and irrelevant and as merely speculation on the part of this witness.

A. I think they would be affected. I doubt very much if they would be some as homes; they would have to be sold as apartment house sites, and as such, in a great many cases, would be worth less money.

20

Cross examination by Mr. Sullivan:

Q. Are there any other apartment houses on this block at the present time? A. There are.

Q. Where are they located? A. On Bergen Avenue and on Fairview Avenue.

Q. Is there an apartment house on the same side of Jewett Avenue as this property is located, and in the same block? A. Yes; on the Northwest corner of Bergen and Jewett.

30

Q. How big an apartment house is that? A. I should say that is about thirty families; it is a large apartment house, five story brick.

Q. How much along Jewett Avenue, and what depth? A. Do you want me to guess, or can we get a map? I think it runs back a little over 100 feet.

40

Thomas A. Ryer, cross.

Q. On Jewett Avenue? A. On Jewett Avenue, yes. (Referring to map) it is 113 feet.

Q. On Jewett Avenue? A. On Jewett Avenue, yes.

10 Q. Along Jewett Avenue? A. Along Jewett Avenue.

Q. How far back from the lot line of Jewett Avenue is it? A. That is set on the building line.

Q. On the building line? A. On both Bergen and Jewett Avenues.

Q. Immediately adjoining the property of Anna Malone on the rear, Mr. Ryer, is there an apartment house? A. There is; it has just been constructed.

20 Q. What character of apartment house is that? A. I should say that would be similar to the one that is to be erected on Jewett Avenue.

Q. That is a five story brick apartment house? A. I don't know whether it is five, but I think it is a five story brick apartment.

Q. Do you know how near to the rear line of Anna B. Malone's plot that new apartment house is located? A. I do not.

Q. Approximately. A. I should say from ten to fifteen feet.

30 Q. And that apartment is right across the whole rear of the Malone plot, is it not?

Mr. Sleigh: I object to that question on the ground that what the situation may be with respect to apartment houses erected on Fairview Avenue, which is the street adjoining Jewett Avenue to the South, has no bearing on the issues.

A. I should say yes.

40 Q. On the same side of Jewett Avenue as the Prosecutor's property and the Malone property,

Thomas A. Ryer, cross.

and to the West thereof, is there any building erected? A. There is A. M. Henry's garage or stable, that is next to the property in question, a 100 foot plot; and on the corner is the new bank building.

Q. The Hudson City Savings Bank building? A. 10
The Hudson City Savings Bank building.

Q. What frontage has that on Jewett Avenue?
A. 24 feet.

Q. How high is it? A. Two stories.

Q. With reference to the building line of Jewett Avenue, where is that building placed? A. It is on the building line.

Q. When you say the bank is two stories high, approximately how many feet is it? A. I should say about 25 feet, roughly. Now I am guessing, of course. 20

Q. This Hudson City Savings Bank has a frontage of 25 feet on Jewett Avenue, and how many feet frontage on the Boulevard, approximately?
A. About 136.

Q. Immediately adjoining the bank on the Boulevard, what is there erected? A. A five story brick apartment house, Alban Court; it has been there for a number of years.

Q. What frontage has that on the Boulevard and what frontage has it on Fairview Avenue? 30

Mr. Sleigh: I object to that on the ground that the conditions which may be existing on the Boulevard North of Jewett Avenue and on Fairview Avenue has no bearing on the issues in this case.

A. 143 feet, according to the map; I think it is about correct; on the Boulevard; and 152 feet on Fairview Avenue. 40

Thomas A. Ryer, redirect.

Q. And does that apartment that you are now testifying about immediately adjoin the other five story apartment on Fairview Avenue, that is approximately in the rear of the Malone property?

10 Mr. Sleigh: The same objection.

A. It does; it adjoins it on the West.

Q. All of these apartment houses are in the same square block? A. Yes.

Q. As a matter of fact, with the exception of the apartment house on Bergen Avenue, they are all within 225 feet of the Boulevard? A. Yes.

Q. And the Malone property is included in that 225 feet of the Boulevard? A. Yes.

20 Q. When you give a value of \$25,000 to the Townsend property at the present time, how much of that is land value, Mr. Ryer? A. Well now, I don't know; I should say that that lot would be worth, that is, if you had a vacant lot in there, a single vacant lot for dwelling house use, I should say it would be worth about \$7,500.

Q. The lot itself? A. Yes, a single lot, for dwelling house use. If it could be used for apartment house purposes I estimate it to be worth twice that, or \$15,000.

30 Q. So that, in your opinion, the building that is erected on it at the present time increases the value of the plot approximately seventeen or eighteen thousand dollars? A. Yes.

Redirect examination by Mr. Sleigh:

Q. Now, Mr. Ryer, I recollect you mentioned a barn or some building owned by Mr. Henry on Jewett Avenue. A. Yes; it adjoins the Malone property on the West.

40 Q. Can you describe that building; what is the

Thomas A. Ryer, recross.

type of it? A. Why, it is an old two story barn which has been used as a garage, and his home is directly connected with it, it goes across to the Boulevard, on the corner of the Boulevard, and it runs through to Kensington Avenue.

Q. How far does that building set back? A. 10
Right on the rear of the lot.

Q. How far is the front of that building from Jewett Avenue? A. I should say pretty close to 100 feet; say 75 or 80 feet.

Q. In front of that, or at least on the land between the garage and Jewett Avenue, what is that land now used for? A. Between where?

Q. Between the front of the garage or the stable and Jewett Avenue. A. I think he has a garden there; a vegetable garden. 20

Q. With respect to the Hudson City Savings Bank which is on the plot at the corner of Jewett Avenue and the Hudson County Boulevard, does that immediately adjoin the plot on which Mr. Henry's garage now stands? A. It does.

Q. Where is the entrance to that bank building? A. On the Boulevard.

Q. Is there any entrance to that building on Jewett Avenue? A. There is not. 30

Recross examination by Mr. Sullivan:

Q. In addition to the apartment houses that you have already testified to, do you know of any other apartment house on that square block? A. Well, I could tell you by referring to the map again. May I refer to the map? A. Yes, refer to it.

Mr. Sleight: I object to that question on the ground that whatever apartment houses there may be on Fairview Avenue, Bergen Avenue or the Hudson Boulevard has no 40

Thomas A. Ryer, redirect.

bearing on Jewett Avenue, which is the subject matter of this proceeding.

10 A. On the Southerly side of Fairview Avenue, about three-quarters of the way up the block from the Boulevard, is an apartment house.

Q. What is the size of that? A. I think there is 90 feet in that, the plot is, and the apartment covers pretty nearly the entire plot. Then East of that and nearer to Bergen Avenue, directly back of the Old Ladies' Home, is another apartment house.

Q. Of approximately what size? A. I should say about 75 by 80 feet, the plot—75 by 143.

20 Q. Yes. A. Then on Bergen Avenue is the Princess Apartment house, between Jewett Avenue and Fairview Avenue, on the West side of the street, and that is on a plot 75 by about 200 feet.

Q. These are all five-story brick apartment houses, are they not? A. They are all five-story brick apartment houses; the Princess Apartment sets up on a terrace; it is next to the Bergen Lyceum.

Redirect examination by Mr. Sleight:

30 Q. How far is the apartment you have just designated as the Princess Apartments, on Bergen Avenue, from the premises designated on Exhibit P-1? A. The apartment on the corner of Bergen Avenue and Jewett Avenue is about 500 feet from the property of Townsend; about 500 feet Easterly.

Q. Now, the apartment which you say is toward Bergen Avenue, on Fairview Avenue, how far is that from the Townsend property? A. That is North of and 200 feet East of the Townsend property.

40 Q. Neither of the apartments which you just named have any means of access or egress from or

Thomas A. Ryer, redirect.

to Jewett Avenue, have they? A. I would like to modify that first distance to 600 feet instead of 500 feet; that first distance I gave you; from the Townsend property to the property on Bergen Avenue and Jewett Avenue is 600 feet.

Q. (Last question repeated.) A. Yes; the apartment house on the corner of Jewett Avenue and Bergen Avenue has an entrance on Jewett Avenue as well as on Bergen Avenue. 10

Q. That is the apartment which you have designated as being about 600 feet East? A. 600 feet East, yes.

Q. Between that apartment and the Townsend property on the Northerly side of Jewett Avenue are there any other apartment houses? A. Nothing but private houses; each and every lot is built up to a private house, or a two-family house. 20

Subject to the objection by counsel for the respondents that it is immaterial and irrelevant, it is agreed that Mrs. Townsend owns no other property in Jersey City than the premises in question.

Mr. Sleight: I offer in evidence the blueprints filed with the building department upon the application for a permit to erect the apartment house in question. 30

(Without objection the blueprints were admitted and marked Exhibit P-8 in evidence.)

The taking of further depositions was continued by agreement of counsel to September 12, 1929, at 11 A. M.

Patrick J. Kennedy, direct.

Continuation of depositions in the above entitled cause, taken before me, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, at the office of Mark Townsend, Jr., Esquire, 921 Bergen Avenue, Jersey City, New Jersey this sixteenth day of September, 1929, at eleven o'clock in the forenoon, pursuant to agreement of counsel.

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

PATRICK J. KENNEDY, being duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Sleigh:

20 Q. Mr. Kennedy, where do you live? A. 38 Kensington Avenue, Jersey City.

Q. Are you a member of the Zoning Commission of Jersey City? A. Yes, sir; Chairman of the Board.

Q. Who appointed you as a member of the Zoning Commission?

30 Mr. Sullivan: I object to that as immaterial and irrelevant.

A. In June we were appointed by the City Commissioners.

Q. In June, 1929, you were appointed? A. Yes, sir.

Q. Since that time has the Zoning Commission held meetings?

40 Mr. Sullivan: I object to that as immaterial and irrelevant.

Mr. Sleigh: I will withdraw the question.

Q. Has the Zoning Commission held any public

Patrick J. Kennedy, direct.

meetings; that is, meetings that are open to the public?

Mr. Sullivan: I object to that as immaterial and irrelevant.

Mr. Reardon: I join in that objection.

10

A. No; we had no public meetings; we haven't had an opportunity to go into the work, owing to the fact that we haven't had the maps, which are necessary to district the city; we have not had the proper maps for that purpose; but we have had meetings privately among ourselves, to determine what should be done and what time we should start.

Q. Has any time been fixed for the holding of public meetings?

20

Mr. Sullivan: I object to that as immaterial and irrelevant.

A. Now that we are all ready—

Mr. Sullivan: Have you fixed any time for your first public hearing?

A. No; we haven't fixed any time for that.

Q. How many times has the Zoning Commission met privately since your appointment in June, 1929?

30

Mr. Sullivan: I object to that as immaterial and irrelevant.

Mr. Reardon: I join in that objection.

A. About half a dozen since June.

Q. What is the purpose of the meeting for the coming Wednesday, that is the meeting to be held on September 18, 1929?

40

Patrick J. Kennedy, direct.

Mr. Sullivan: I object to that as immaterial and irrelevant.

Mr. Reardon: I join in that objection.

A. The purpose is to go to work for the zoning.

10 Q. The zoning of what? A. of the City of Jersey City.

Q. Was there any condition that existed which prevented you from going to work before this coming Wednesday?

Mr. Sullivan: I object to that as immaterial and irrelevant.

A. The only condition was to get the maps printed; we had a delay in that.

20 Q. Are the maps printed now?

Mr. Sullivan: I object to that as immaterial and irrelevant.

A. Yes.

Q. Is there any plan of the Zoning Commission with reference to where the zoning will be first started?

Mr. Sullivan: I object to that as immaterial and irrelevant.

30

A. We would start at the Greenville section and wind up at the Twelfth Ward; first we would start in the Seventh Ward on Wednesday and continue on until we got up to the other end.

Mr. Reardon: Starting at the Southern end of the City and coming up.

A. Yes.

40 Q. What is the purpose of the Commission after you have covered the entire City?

Patrick J. Kennedy, direct.

Mr. Sullivan: I object to that as immaterial and irrelevant, and that manifestly this man can only conjecture what the purpose could be of his colleagues.

A. When we have the field map in shape, then we would hold public hearings in each district, or ward, or section, where we have it already laid out for residence purposes, apartment house sites, industrial and various others, we would restrict those streets for those purposes, and then we will have noticed posted up here and there as to where we will have a hearing—we expect to use the schools—and the objectors, if there be any, will have a hearing at a convenient school which will be most convenient for them. 10

Q. After the public hearings have been completed, what will the Zoning Commission then do, if anything? 20

Mr. Sullivan: I object to that as immaterial and irrelevant.

A. Well, of course, we haven't gone that far yet; we will have an ordinance adopted which will make it binding.

Q. All of the proceedings of the Zoning Commission, of which you are the Chairman, have been taken pursuant to a resolution of the City Commissioners appointing the Zoning Commission on June 11, 1929, and the resolution appointing two additional commissioners on June 18, 1929, have they not? A. I guess that was the case. 30

By Mr. Reardon:

Q. All of your testimony relates to the function- 40

Patrick J. Kennedy, cross.

ing of the Board that was appointed in June, 1929?

A. Yes. I have been a member of the board for two years prior to that.

By Mr. Sleigh:

10 Q. Prior to June, 1929, were you a member of any other Zoning Commission? A. Yes.

Q. How did you obtain membership in that commission; how were you appointed?

Mr. Sullivan: I object to that as immaterial and irrelevant.

A. I was appointed by the City Commission.

Q. Do you remember when? A. Well, I couldn't say.

20 Q. Tell us as nearly as you can. A. Oh, about a year and a half or two years, possibly; no, about a year and a half, I would say.

Q. Is that Zoning Commission in existence now, the one that you were appointed to about a year and a half ago? A. Why, I wouldn't imagine so; that would mean that we would have two zoning commissions.

30 Q. Have you held any meetings of the Zoning Commission to which you were appointed a year and a half ago since June, 1929? A. No; there is only the one Zoning Commission; that is the present one.

Cross examination by Mr. Reardon:

Mr. Reardon: I want it to appear on the record that by participating in this cross examination I am not waiving in any way my objections heretofore made, but am doing so in order to enlighten the Court on the facts of the situation with relation to the

40

Patrick J. Kennedy, cross.

establishment of the new Zoning Commission.

Q. Mr. Kennedy, the old Zoning Commission that functioned prior to the resolution of June, 1929, had no authority or jurisdiction whatsoever over apartment house sites, did it? 10

Mr. Sleigh: I object to that on the ground that it calls for a conclusion and his own interpretation.

Q. You didn't pass on apartment house sites for zoning purposes, did you?

Mr. Sleigh: The same objection.

A. No; I don't think we did. 20

Q. The present Zoning Commission ordinance of Jersey City, as it exists today, doesn't deal with the subject of apartment houses at all, does it?

Mr. Sleigh: The same objection.

A. They deal with the lay-out of the City streets.

Q. No; I am talking about the construction of apartment houses; it doesn't deal with that? A. I suppose that would come under our jurisdiction, would it not? 30

Q. I am talking about the old ordinance that you had. A. Yes.

Q. It doesn't deal with apartment houses at all in the ordinance. A. No.

Mr. Sleigh: I make the same objection to all of these questions, on the ground that that is calling for the witness's interpretation of the ordinance.

Q. With respect to your duties under this new ordinance creating the new Board of Zoning Com- 40

Patrick J. Kennedy, cross.

missioners, you have testified that you have held several private meetings and that some delay has been occasioned by the delay in procuring your maps? A. Yes.

10 Q. Isn't it a fact, Mr. Kennedy, that before you can hold a public hearing at all, that your commission, among yourselves, will have to go onto the field all over the city to examine the actual physical lay-out of Jersey City, and then come back and hold your conferences and discuss what character and kind of buildings are to be permitted in certain districts? A. That is what we expect to do; we were appointed to do that.

Mr. Sleight: I have no objection to that.

20 Q. And that will take some time, won't it? A. Yes.

Q. After you do that, you will have these various discussions among yourselves? A. Yes, sir.

Q. And I presume that will result in a difference of opinion as to what locality shall have this kind of building, or what kind of building should be permitted in that locality; isn't that so?

30 Mr. Sleight: I object to that as purely a matter of speculation.

A. Yes.

Q. That has been your experience in the past, hasn't it?

Mr. Sleight: I object to that on the ground that his experience in the past doesn't make any difference.

A. Yes.

40 Q. Then, after that is done, you will have to hold public hearings in the various sections of the city that will be affected by the contemplated or-

Patrick J. Kennedy, cross.

dinance? A. Yes. Well, we will no doubt have objectors and we will give them a hearing in the nearest school.

Q. After these hearings you will then have to go into conference again to determine the objections and the soundness of those objections, will you not? A. Yes; we will have to do that. 10

Q. After this is all done it will then be necessary for you to refer to the law department of the City your views in a report, as well as to the City Commission, so that a zoning ordinance might be prepared in accordance with the result of your conferences and hearings?

Mr. Sleigh: I object to that on the same grounds. 20

A. Yes; undoubtedly that is the outlay and routine.

Q. Then there will be hearings held on that ordinance itself when introduced, will it not?

Mr. Sleigh: The same objection.

A. There will be; yes. To make it a substantial law.

Mr. Sullivan: I move to strike out all the testimony of this witness on the ground that the commission of which Mr. Kennedy, the witness, is chairman, and which was appointed in June, 1929, and their subsequent actions, all came later in time to the application for the erection of the apartment house in question in this matter, and that consequently anything that they did would have no reference whatever to the rights of the applicant. 30 40

Thomas F. Shallis, direct.

By Mr. Sullivan:

Q. As a member of the old Zoning Commission did you hold meetings for the purpose of zoning Jersey City? A. No.

10

Continuation of depositions in the above entitled cause, taken before me, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, at the office of Mark Townsend, Jr., Esquire, 921 Bergen Avenue, Jersey City, New Jersey, this nineteenth day of September, 1929, at eleven o'clock in the forenoon, pursuant to agreement of counsel.

20

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

THOMAS F. SHALLIS, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Sleigh:

Q. Mr. Shallis, where do you reside? A. Jersey City, New Jersey.

Q. Are you in the employ of the City of Jersey City? A. Yes, sir.

30

Q. In what capacity? A. Deputy to the City Clerk.

Q. You appeared here today in response to a subpoena served upon the City Clerk? A. On the City Clerk, yes.

Q. Do you have a record in the Minutes of a meeting of the City Commissioners of Jersey City on August 28, 1928, at which an application for permit to erect an apartment house on Jewett Avenue was considered? A. Yes, sir.

40

Q. Will you produce it? A. (Producing Minutes) The August 28th Minutes.

Thomas F. Shallis, direct.

(Minutes of City Commissioners of Jersey City of August 28, 1928, on application for permit to erect apartment house on Jewett Avenue offered in evidence, admitted and marked Exhibit P-9.)

Q. I show you a letter dated August 21, 1928, signed by Edward J. Holland, City Clerk, together with what purports to be proof of service by the Police Department, and ask you if that is the notice and record of the service thereof on the property owners, of the hearing of August 28, 1928?
A. Yes, sir.

10

Mr. Sleight: I offer this in evidence.

Mr. Sullivan: I object to that as immaterial and irrelevant, and ask that my objection be noted to this entire line of examination.

20

(Marked Exhibit P-10.)

Q. How long have you been employed as deputy to the City Clerk of Jersey City? A. For the past ten years.

Q. During that time have you been in charge of the proceedings, or are you familiar with the proceedings with reference to applications for permits and the manner in which they are considered by the City Commissioners? A. I don't understand the question.

30

Q. What has been the practice, if you know, in reference to notifying surrounding property owners of hearings upon applications for building permits?

Mr. Sullivan: I object to that as immaterial and irrelevant.

40

A. My experience before the City Commissioners' meetings has been that on applications—

Martin Murphy, direct.

10 Q. I mean with respect to notice? A. When an application is brought into the Building Department or before the City Commission, a notice of hearing is customarily sent out to the property owners; that is taken to our office and submitted to the Director of Public Safety, who, I understand, in turn sends it to the precinct commander, and a report is made to us of what he did and what he didn't do.

Q. That was the practice that was followed in this instance? A. That is the practice that has been followed in many instances.

Q. And it was in this instance? A. Yes.

No Cross Examination.

20

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

MARTIN MURPHY, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Sleigh:

Q. Where do you live? A. 63 Tuers Avenue, Jersey City.

30 Q. By whom are you employed? A. Jersey City Police Department.

Q. You are a Lieutenant of Police, attached to the Seventh Precinct? A. Yes, sir.

Q. I show you page 57 of the book marked "Record," and ask you if that is a record of notice given to property owners of a hearing concerning the application of Harry Goldowsky to erect an apartment house at 168-172 Jewett Avenue, Jersey City? A. Yes, sir.

40

Mr. Sleigh: I offer that in evidence.

Martin Murphy, direct.

Mr. Sullivan: I make the same objection to that as immaterial and irrelevant.

Subject to the objection the record was read into the testimony, as follows:

“Investigated application of Harry Goldowsky for permission to erect a five story brick elevator apartment building with a set back of seven feet at 168-172 Jewett Avenue; notified all property owners in that vicinity that at 11 A. M. on Tuesday, October 9, 1928, a public hearing would be held on said application, and if they have any protest to make to be there and make it at that time and place.” 10

Q. Lieutenant, referring to the letter of October 3rd, 1928, signed by Edward J. Holland, is that a copy of the notice that was served on the property owners there named? A. No; this is a notice that comes from the Director of Public Safety to the precinct; I take that and read it to all the property owners in the vicinity, and here is my written report to my superior. 20

Mr. Sleigh: I offer that in evidence. Notice and report marked Exhibit P-11 in evidence, subject to the objection on the part of Mr Sullivan that the same is immaterial and irrelevant. 30

No Cross Examination.

Mr. Sleigh: I offer in evidence five photographs on the back of which is endorsed a notation of what the photograph represents. (Photographs admitted, without objection, and marked Exhibits P-12 to P-16, respectively.) 40

George J. Wolf, direct.

Mr. Sullivan: I offer in evidence three photographs of the Malone property and the lands immediately surrounding it, each photograph bearing on its back a designation of what it represents.

10

(Photographs admitted, without objection, and marked Exhibits D-1 to D-3, respectively.)

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

GEORGE J. WOLF, being first duly sworn according to law, on his oath deposes and says:

20

Direct examination by Mr. Sullivan:

Q. What is your business, Mr. Wolf? A. Real Estate.

Q. Where is your office? A. 389 Jackson Avenue, Jersey City.

Q. How long have you been in the real estate business? A. For the past twenty years.

Q. Are you familiar with the property and the development of the so-called Bergen Section of Jersey City? A. I am.

30

Q. Are you familiar with the property located on Jewett Avenue between the Hudson Boulevard and Bergen Avenue? A. I am.

Q. And the values thereof? A. I am.

Q. Do you know the property owned by Anna B. Malone, situated on the North side of Jewett Avenue, approximately 125 feet East of the Boulevard? A. Yes.

40

Q. Will you describe that plot? A. That is a plot measuring 100 feet by 135 and a fraction more in depth; it is a hundred and some odd feet East

George J. Wolf, direct.

of the Boulevard, being between the Boulevard and Bergen Avenue.

Q. What is erected thereon? A. A private dwelling.

Q. Immediately adjoining the Malone property on the West, what is there? A. A vacant plot and a garage. 10

Q. What is the size of that plot? A. That is about 100 feet front, by the same depth.

Q. Do you know who is the owner of that? A. Mr. A. M. Henry.

Q. And immediately adjoining the Henry property on the West, what is there? A. That is a bank; the Hudson City Savings Bank.

Q. That is on the corner of the Boulevard? A. On the corner of the Boulevard and Jewett Avenue. 20

Q. What is there immediately adjoining the Malone property in the rear? A. An apartment house.

Q. Fronting on what street? A. On Fairview Avenue.

Q. And next to that apartment house, to the West, what is there? A. There is another apartment house; Alban Court.

Mr. Sleight: I would like an objection noted to the examination of the witness with respect to the character of buildings erected on any streets other than Jewett Avenue, on the grounds that the buildings that he is now describing are located on Fairview Avenue and the Hudson Boulevard. 30

Q. Does Alban Court adjoin the Hudson City Savings Bank building on the Boulevard? A. It does. 40

George J. Wolf, direct.

Mr. Sleigh: I make the same objection to all this line of questions.

Q. In your opinion, Mr. Wolf, what is the normal use to which the Malone property could be put?

10 Mr. Sleigh: I object to that on the ground that it is not a proper subject of expert testimony; I further object to the form of the question, in that what the normal use might be is subject to speculation.

A. I would say, owing to the dimensions of this particular plot on Jewett Avenue, it is best adapted for a large apartment house.

Q. What in your opinion is the highest use that it could be put to? A. Apartment house.

20 Q. If used for an apartment house site, what in your opinion would be the land value? A. Well, taking it as a plot 100 feet in front, that property is worth between fifty-five and sixty thousand dollars.

Q. For an apartment house? A. For an apartment house.

Q. What would you say with regard to the A. M. Henry plot immediately adjoining it on the West?

A. You mean in reference to the value?

30 Q. Yes. A. Or in reference—

Q. In reference to its availability and to its use for its best value? A. The same thing as the Malone property.

Q. If the Malone property were restricted to one or two family dwellings, would that effect the present land value of it? A. Oh, yes.

Q. In your opinion what effect would it have?

40 Mr. Sleigh: I object to that on the ground that the question contains an unwarranted assumption of fact, namely, that if the prem-

George J. Wolf, cross.

ises were restricted to a one or two family house.

A. If this property was restricted for a one or two family house, the value of that land would be a little over half.

Q. Of what you have testified would be its value for an apartment house? A. Yes.

10

Q. If by reason of the action of the City Commissioners the owner were prevented from using the Malone property for putting up an apartment house, would that affect the same with regard to the value?

Mr. Sleigh: I object to that on the ground that it contains an unwarranted assumption of fact.

20

A. Why, certainly; if the land were restricted and it could only be used for one or two family houses, the value of it would be just about half the price that I have mentioned.

Q. Would that same conclusion obtain with regard to the A. M. Henry property? A. Yes, sir.

Cross examination by Mr. Sleigh:

Q. Mr. Wolf, with respect to the properties directly to the East of the Malone property, on the Northerly side of Jewett Avenue, to what use are those properties now being put? A. One and two families, with the exception of the corner of Bergen Avenue, which is an apartment house.

30

Q. How far is the corner of Bergen Avenue from the Malone property? A. About 550 feet.

Q. Between the Malone plot and the corner of Bergen Avenue, toward the East from the Malone plot, are there any apartment houses other than the one at the corner? A. No.

40

Daniel E. C. Somers, direct.

Q. On the Southerly side of Jewett Avenue, between the Hudson Boulevard and Bergen Avenue, to what use are those properties put? A. One and two families.

10 Q. Alban Court is not on Jewett Avenue, is it?
A. No; it is on the corner of Fairview Avenue and the Boulevard.

Q. And the other apartment that you mentioned as being next to Alban Court, is that on Jewett Avenue? A. No; it is on Fairview Avenue, directly in the rear of the Malone property.

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

20 DANIEL E. C. SOMERS, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Sullivan:

Q. What is your business, Mr. Somers? A. Real Estate.

Q. Where is your office? A. 700 Bergen Avenue, Jersey City.

30 Q. How long have you been in the real estate business? A. Fifteen years.

Q. Are you familiar with property in the Bergen Section of Jersey City? A. Yes, sir.

Q. Are you familiar with the Malone property; the property of Anna B. Malone; on the North side of Jewett Avenue? A. Yes, sir.

40 Q. Will you describe it? A. The property is situated on the North side of Jewett Avenue between Bergen Avenue and the Boulevard, the dimensions of which are 100 feet front and rear, by 136½ feet in depth; these dimensions are taken from the plat book of G. M. Hopkins & Company.

Daniel E. C. Somers, direct.

Q. How far is it from the Hudson Boulevard, approximately? A. Approximately 124 feet.

Q. What adjoins the Malone property on the West? A. A vacant plot of the same dimensions as the Malone plot; that is also taken from the same plat book.

10

Q. Owned by whom? A. Archibald M. Henry.

Q. Immediately adjoining the Henry property on the West, what is there? A. There is a bank building; the Boulevard branch of the Hudson City Savings Bank.

Q. Immediately adjoining the Malone property on the North, that is on its rear, what is there? A. On the North, on its rear line, during the last three months there has been a new apartment house constructed.

20

Q. About how high; how big? A. It is five stories.

Mr. Sleigh: I want to make objection to that question on the ground that it does not refer to Jewett Avenue.

A. A brick elevator apartment.

Q. How wide, approximately? A. The width of the plot itself is 86 feet on Fairview Avenue by an average depth of 143 feet; these dimensions taken from Hopkins' plat book.

30

Q. In your opinion, Mr. Somers, what is the highest and best use that the Malone property could be put to at the present time?

Mr. Sleigh: I object to that on the ground that the highest and best use is a matter of speculation.

A. A multi-family dwelling or apartment house.

40

Q. And in your opinion, what is the Malone

Daniel E. C. Somers, direct.

property worth for that purpose? A. About \$60,000.

Q. If the owner of the property be prevented from building an apartment house on that site, would it affect the value of that land?

10

Mr. Sleigh: I object to that on the ground that it contains an unwarranted assumption of fact.

A. Yes, it would.

Q. How much in your opinion would the value be affected? A. About \$35,000.

Q. That is, the property would be worth \$35,000 less? A. Approximately \$35,000.

20

Q. Would the same reasoning obtain with reference to the A. M. Henry property? A. Yes, sir.

No Cross Examination.

Mr. Sullivan: I offer in evidence three photographs that were used on the application for the writ of mandamus referred to in the testimony.

Mr. Sleigh: I will object to them on the ground that they do not show the conditions on Jewett Avenue.

30

(Photographs marked Exhibits D-4 to D-6, respectively, subject to the objection.)

I, HARRY SCHIRMER, a Supreme Court Examiner of the State of New Jersey, do certify that the foregoing is a true and accurate transcript of depositions in the above entitled cause, taken by and before me at the times and in the place hereinbefore mentioned; and I believe said transcript fairly and accurately states the testimony given.

40

HARRY SCHIRMER,
Supreme Court Examiner.

Stipulation.

(Filed September 28, 1929.)

NEW JERSEY SUPREME COURT.

J. SIDNEY ADAMS and GLADYS
TOWNSEND,
Prosecutors,

v.

MAYOR AND ALDERMEN OF JER-
SEY CITY, EDWARD SPOERER, Su-
perintendent of Buildings of
Jersey City, ANNA B. MALONE
and HARRY GOLDOWSKY,
Respondents.

On Certiorari

10

20

It is hereby stipulated by and between the at-
torneys for the respective parties hereto, that the
following is a true copy of Sections 3 and 4 of the
Building Code of the City of Jersey City, and that
the introduction in evidence by the Prosecutors
of certified copies thereof or by testimony of the
proper city officials of Jersey City is hereby waived
and that the following may be included in the rec-
ord in the place and stead of certified copies:

30

PART II

PRELIMINARY REQUIREMENTS.

SECTION 3.

NEW BUILDINGS AND BUILDINGS TO BE ALTERED.

New Buildings to conform with Code.

No wall, structure, building or part thereof, shall

40

Stipulation.

hereafter be built or constructed, nor shall the drainage, piping, or wiring of any building, structure, or premises to be constructed or altered in the City of Jersey City except in conformity with the provisions of this Code.

10

Alterations to buildings to conform with Code.

No building already erected, or hereafter to be built in the City, shall be raised, altered, moved or built upon in any manner that would be in violation of any of the provisions of this Code, or the approval issued thereunder.

SECTION 4.

FILING PLANS AND STATEMENTS.

20

Preliminary requirements.

Before erection, construction or alteration of any building, structure, or part of any structure, or wall, or any platform, staging or floor to be used for standing or sitting purposes, and before the construction or alteration of the drainage, piping, or wiring of any building, structure or premises is commenced.

30

Persons authorized to act.

The owner or lessee, or agent of either, or the architect or builder employed by such owner or lessee in connection with the proposed erection or alteration, shall submit to the Superintendent of Buildings a detailed statement in duplicate of the specifications on appropriate blanks to be furnished to applicants by the Department of Buildings, and a full and complete copy of the plans of such proposed work: And such structural detail drawings of the said proposed work as the Super-

40

Stipulation.

intendent of Buildings may require together with a plot plan of property upon which structure is to be erected showing upon said plot plan the front of adjacent buildings when within 26 feet on either side; and line of adjacent buildings if within 6 in. of side or rear line. The position of the proposed new structure shall be shown upon the plot plan; also location of sewer; water main and gas mains to each house drain; water supply pipes and gas pipes are to be respectively indicated. The location of street opening or openings which it is proposed to make for such connections shall also be shown upon the plot plans. 10

Legal grades and surface elevation and grade of water run of sewer shall also be indicated and if it is contemplated building upon filled in or soft ground, the depth to hard bottom or good foundation shall be indicated or the Superintendent of Buildings may require boring to be taken and the result of said boring shall be indicated upon said plot plan. 20

All of which shall be accompanied with a statement in writing sworn to before a notary public or commissioner of deeds giving full name and residence; street and number of the owner or of each of the owners of said building or proposed building; structure or proposed structure, premises, wall, platform, staging or flooring, also a statement of the costs of the structure shall be required duly sworn to as aforesaid. 30

When by a lessee or other than an owner.

If such erection, construction or alteration, drainage, piping or wiring, or the alteration thereof, is proposed to be made or executed by any other person than the owner or owners of the land 40

Stipulation.

10 in fee, the person or persons intending to make such erection or alteration, or to construct such drainage, piping or wiring shall accompany said detailed statement of the specifications and copy of the plans with a statement in writing, sworn to as aforesaid, giving the full name and residence, street and number of the owner or owners of the land, or proposed building, structure or proposed structure, premises, wall, platform, staging or flooring, either as owner, lessee, or in any representative capacity, and that he or they are duly authorized to perform or have performed said work.

Architect or agent may make statement.

20 Such statement may be made by the agent or architect of the person or persons hereinbefore required to make the same.

Statements and plans to be kept on file.

Said sworn statement, and detailed statement of specifications, and copy of the plans shall be kept on file in the office of the Superintendent of Buildings.

30 **Work not to be commenced until statements and plans are approved.**

40 And the erection, construction, or alterations and repairs of said building, structure, wall, platform, staging or flooring or any part thereof, and the construction or alteration of the said drainage, shall not be commenced or proceeded with until said statements and plans and specifications shall have been so filed and approved by the Superintendent of Buildings, and the erection, construction or alteration of such building, structure, plat-

Stipulation.

form, staging or flooring and the construction or alteration of such drainage when proceeded with shall be constructed in accordance with such approved detailed statement of specifications and copy of plans.

Nothing in this section shall be construed to prevent the Superintendent of Buildings from granting his approval for the erection of any part of a building or any part of a structure when plans and detailed statement have been presented for the same before the entire plans and detailed statement of said building or structure have been submitted. 10

MARK TOWNSEND, JR.,
Attorney for Prosecutors. 20

FRANK REARDON,
Attorney for Respondents Mayor
and Aldermen of Jersey City
and Edward Spoerer, Superintendent of Buildings.

MARK SULLIVAN,
Attorney for Respondents Anna
Malone and Harry Goldowsky. 30

Exhibits.

10

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Exhibit P-1.

(See photograph opposite.)

30

40

JEWETT

AVE

BOULEVARD

HUDSON

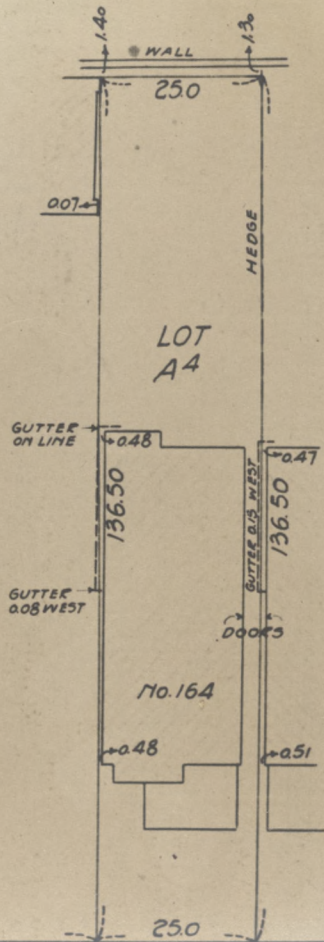
BLOCK
1823

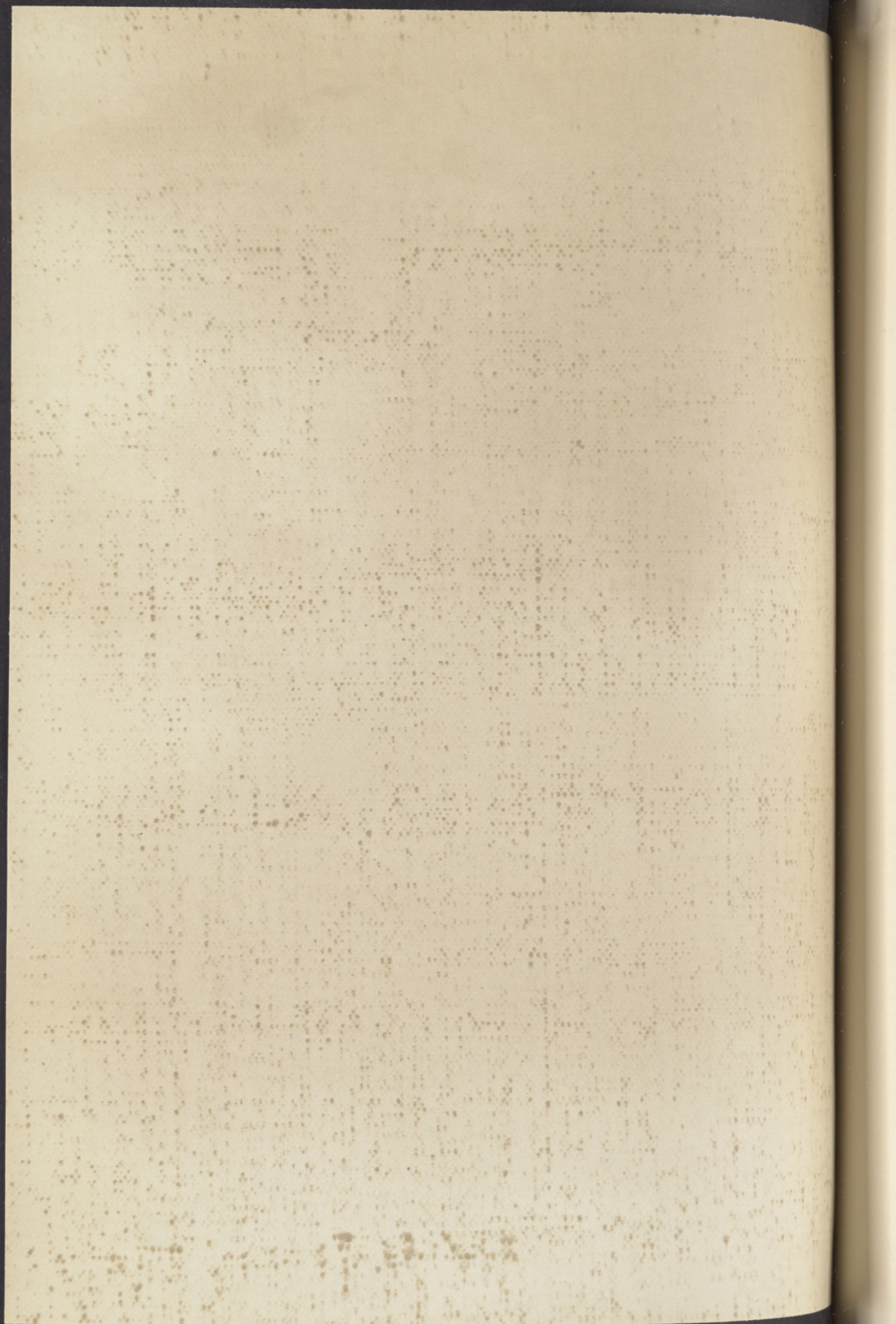
Survey
At Jersey City
for
GLADYS O. TOWNSEND
20 feet
Surveyed by F. Shunham
Per. C. Shunham
May 5, 1925.

228.12
224.58 BY CITY MAP
3.54 SURPLUS

JEWETT

AVE





*Exhibits.***Exhibit P-2.**

BY MAYOR HAGUE:

RESOLVED that in accordance with the provisions of Chapter 274, Laws of 1928, the following named citizens, Joseph Meli, Theodore Smith, Patrick Kennedy, Albert Sidler, Frederick Koerner and Benjamin Robbins be and they hereby are appointed as Zoning Commissioners of Jersey City to recommend the boundaries of various districts in Jersey City and appropriate regulations to be enforced therein; and, be it

10

FURTHER RESOLVED that such Commission in accordance with the statute shall make a preliminary report and thereafter hold public hearings thereon before submitting its final report to the governing body.

20

FURTHER RESOLVED, that said appointments shall take effect at once.

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 JUN 11 1929.

EDWARD J. HOLLAND, 30
City Clerk.

Exhibit P-3.

BY MAYOR HAGUE:

WHEREAS, at a regular meeting of the Board of Commissioners, held on Tuesday, June 11, 1929, a resolution was adopted appointing a Zoning Commission consisting of six citizens of Jersey City; and

40

Exhibits.

10 WHEREAS, after a conference and consideration, it became apparent that the task of recommending boundaries of various districts in Jersey City, in accordance with the terms of the Act known as Chapter 274 of the Laws of 1928, contemplated so great an amount of detail and so many public hearings that it was decided that the membership of said Board, in the interest of a speedy and efficient completion of said work, demanded that the membership of the said Zoning Commission be increased from six members to eight members, therefore, in compliance therewith, be it

20 RESOLVED: That in addition to those named in the resolution of June 11, 1929, above mentioned, that John Noonan and Harry Goldowsky, citizens of Jersey City be and they are hereby appointed as members of said Zoning Commission for the purposes expressed in the aforesaid resolution.

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 JUN 18, 1929.

City Clerk.

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*Exhibits.***Exhibit P-4.**

ALTERNATIVE WRIT OF MANDAMUS.

NEW JERSEY SUPREME COURT.

NEW JERSEY, SS.:

10

STATE OF NEW JERSEY to the MAYOR
AND ALDERMEN OF JERSEY CITY and
(SEAL) EDWARD SPOERER, Superintendent of
Buildings of Jersey City:

GREETING:

WHEREAS, Anna B. Malone is the owner of and
Harry Goldowsky has a contract for the purchase
of premises known as 168-172 Jewett Avenue,
Jersey City, being also known as Lots 25-B and
25-C in Block 1823 on the Official Assessment Map
of Jersey City; and

20

WHEREAS, said Harry Goldowsky did apply to
the Mayor and Aldermen of Jersey City and the
Superintendent of Buildings of said City for a
permit to erect upon said premises, for dwelling
purposes only, a brick apartment house to house
forty-six families and has filed with the said
Superintendent of Buildings of said City, plans
and drawings for such apartment house, which
said plans and drawings comply with all exist-
ing building laws and regulations; and

30

WHEREAS the said Mayor and Aldermen of Jer-
sey City and the Superintendent of Buildings of
said City have refused to issue a permit for the
erection and construction of such building; and

WHEREAS said erection and construction of such
building is not detrimental to the public health,
safety or well-being;

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Exhibits.

10 WE, THEREFORE, being willing that due and
 speedy justice should be done in this behalf, com-
 mand and strictly enjoin you, that immediately
 after the receipt of this Writ, you do issue a per-
 mit to said Harry Goldowsky for the erection and
 construction of such building as heretofore ap-
 20 plied for by him upon the premises 168-172
 Jewett Avenue, Jersey City, also known as Lots
 25-B and 25-C in Block 1823, or cause to us to the
 contrary signify, lest in your default, complaint
 should come to us repeated and how you shall exe-
 cute this, our command, certify to our Justices of
 our Supreme Court of Judicature, at Trenton, on
 the third Tuesday of January, 1929, together with
 this, our Writ, and this in no wise omit at your
 20 peril.

WITNESS, WILLIAM S. GUMMERE, Chief Justice
 of our Supreme Court at Trenton, this thirtieth
 day of November, 1928.

FRED L. BLOODGOOD,
 Clerk.

MARK A. SULLIVAN,
 Attorney.

30

 ALLOCATUR.

I allow the within writ. Let it be sealed Dec. 1,
 1928.

JAMES F. MINTURN,
 J. S. C.

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Exhibits.

RETURN TO WRIT.

NEW JERSEY SUPREME COURT.

ANNA B. MALONE and HARRY
GOLDOWSKY,
Relators,

10

v.

THE MAYOR AND ALDERMEN OF JER-
SEY CITY and EDWARD J. SPOERER,
Superintendent of Buildings of
Jersey City,

Defendants.

On Mandamus.

Return to Writ.

The said defendants, The Mayor and Aldermen
of Jersey City, by Edward J. Holland, its City
Clerk, and Edward J. Spoerer, Superintendent of
Buildings of Jersey City, do hereby make return
to the writ heretofore granted in this cause, and
say that The Mayor and Aldermen of Jersey City
and said Edward J. Spoerer, Superintendent of
Buildings of Jersey City, did decline to issue a
permit to erect upon the premises known as 168-
172 Jewett Avenue in Jersey City, also known as
Lots 25B and 25C in Block 1823 on the Official
Assessment Map of Jersey City, a brick apartment
house to accommodate forty-six families, in the
manner and form as the same is stated and set
forth, and that they are not bound by the law
of the land to obey the command of the said writ
of mandamus or grant the permit aforesaid, as
by said writ they are commanded to do, and the
said defendants, according to the statute in such
cases made and provided, do show to this Honorable
Court the following reasons why they are

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Exhibits.

justified in withholding the granting of said permit, that is to say:

10 1. That the class of property located on this particular street, which is a residential street, is such as to justify the exercise of discretion on the part of the defendants in the granting or withholding of a permit for the construction of the type of apartment house sought by the relator as a valid exercise of the police power.

20 2. Due consideration being had to the number and character of the protestants in this residential street justifies the refusal of the defendant to grant relator's application for a permit on the ground of a valid exercise of police power.

20 WHEREFORE, the defendants pray that the said writ be set aside and that they and each of them be relieved from obeying the said command.

THE MAYOR AND ALDERMEN OF JERSEY CITY,

By EDW. J. HOLLAND,
City Clerk.

EDW. J. SPOERER,
Superintendent of Buildings of
Jersey City.

30

(Seal)

HEARING ON APPLICATION.

Hearing on the application of H. Goldowsky for permission to erect an apartment house at 168-172 Jewett Avenue, having been adjourned and continued to this time and place, the City Clerk called for anyone who might desire to be heard.

40

Counsellor Mark Sullivan appeared with Mr.

Exhibits.

John Malone and Mr. H. Goldowsky for the application.

No one appeared to protest.

The City Clerk read a communication from Counsellor Mark Townsend, addressed to the Mayor, setting forth the attitude of the Commission and the Law Department in Court litigation in connection with apartment house applications also urging the Board that the spirit of the zoning law and the representations made to the Supreme Court be carried out by the enacting of a zoning ordinance. 10

Mr. Sullivan stated that he does not think that the cases are similar at all as far as the Jewett Avenue application is concerned and the Gifford Avenue application; that in Gifford Avenue there are no apartment houses at all in the neighborhood; that on Jewett Avenue there are apartments at the corner of Bergen Avenue, one being erected directly back of the property in question, also the bank building at the corner of Jewett Avenue and the Boulevard; that photographs produced at the hearing showed the blank wall of the bank building; on Jewett Avenue; that certainly to say that no one on this block can utilize their property except for single family houses, is going to do great injuries to the owners of the real estate; that at the last hearing there were about four people who lived on this block who protested; that there were a number who lived on the block across the street, but as he understands that it has been taken by this Commission that the protests will not be taken from the people across the street; that on the block in question they have been unable to muster more than thirty per cent of the frontage against the application; that here is a parcel of ground 100 feet wide and running back to the middle of the 20 30 40

Exhibits.

block; that it cannot be sold for one family houses in that neighborhood; that to try and break it up into small lots will take away the value of the property; that value is given to the property by reason of its size.

10 The Mayor stated that he is sure, and so is the Commission that there was more than forty per cent protesting on the side of the street in question; that after the first hearing, he advised the applicant to go and see the people who objected; that on the petitions filed by Mr. Townsend, there was much more than forty per cent; that it appears rather unfair to discuss the question in the absence of the opposition. Mr. Sullivan replied that it is no fault of the applicants because they have been
20 here week after week.

 The Mayor then stated that it was understood that the Board was to render a decision and there was no time set for anyone to come in and argue the case; that Mr. Townsend took it for granted that he was entitled to come in and argue; that the Board has reached a decision and are going to deny the application. He then called Mr. Reardon of the Law Department and stated that Mr.
30 Townsend in his request wants the Board to consider the advisability of deferring action on the application because we are not ready to adopt the zoning ordinance. He then asked Mr. Reardon what has been the rule in denying the application and whether the resolution he had requested him to prepare is the proper method. Mr. Reardon replied that the resolution complies with the Board's ruling in the past.

40 The Mayor advised that Mr. Sullivan's client was entitled to the Board's judgment, in his opinion, as has every other applicant that has been acted on;

Exhibits.

that if Mr. Sullivan objects to the resolution, the Board will hear his argument.

Mr. Sullivan stated that they feel that the resolution is an injustice; that concerning the unfairness of hearing the case without the other side being present, the day of the hearing the Commission took the matter under advisement; that then the other side appeared with another petition with entirely different names. 10

No further argument being presented, the Mayor moved that the City Clerk read and call the roll on the following resolution denying the application.

CARRIED.

WHEREAS Harry Goldowsky has heretofore applied for a permit to erect an apartment house on the plot of land known as 166 Jewett Avenue, Jersey City, New Jersey, and 20

WHEREAS hearing has been held upon said application and numerous objectors constituting owners of property in the vicinity of the proposed apartment house have manifested their unwillingness to permit the construction of said apartment and have protested to this Commission against the granting of a permit. 30

THEREFORE BE IT RESOLVED that said application for a permit to erect said apartment house as aforesaid be and the same is hereby denied.

BUILDING DEPT.:

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 Nov. 27, 1928.

(s) EDW. J. HOLLAND, 40
City Clerk.

COPY.

Exhibits.

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20

Exhibits P-5 and P-6.
(See photographs opposite.)

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BRICK BUILDINGS

Application for Erection of Buildings

Application is hereby made to erect One Brick Building as per subjoined detailed specification for Erection of Buildings and I herewith submit Plans and drawings of 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.

City, Oct. 29, 1928 (Sign here) Maurice Kraut (Agent)

State how many Brick Buildings to be erected One

How occupied; if for dwelling, state number of families 32

Give name of street or avenue Jewett Ave. and number thereof 168-172

Give lot number. 25B & 25C Block number 1823 Also fill in diagram on back.

Give size of lot, front 100'0" rear 100'0" depth 136'6"

Give size of Building, front 99'10" rear 99'10" depth 118'3" No. stories in height 5

Give height of building from curb level to highest point of roof beams 58'0"

State cost of each Building, \$ 245,000 State cost of all Buildings, \$ 245,000

Give depth of foundation walls from grade or curb level to base of same 4'

Will footings be laid on earth, rock, timber or piles Earth

Of what material will footing be built? Stone Conc. If concrete, state mixture 1-2 $\frac{1}{2}$ -5

Give thickness of footing 12" Give width of same 2'8"

Of what material will foundation be built? Stone If concrete, state mixture

Will foundation walls be laid in cement below grade Yes

Give thickness of foundation walls 20"

Give thickness of all walls, Basement 16" inches, 1st story 12" inches, 2nd story 12"

inches, 3rd story 12" inches, 4th story 12" inches, 5th story 12" inches.

Of what materials will upper walls be built Brick

Give height of parapet walls above roof at lowest point 2'0"

Give thickness of same 8" & 12" and material used for coping same Glazed Tile & Terra Cotta

Are any party walls to be used? If so give thickness _____ inches.

Give size of piers _____ give thickness _____

Give size of footing under piers, _____ give thickness _____

What will be the material of front? Face Brick If of stone, what kind _____

Give thickness of front ashler _____ and thickness of backing in each story _____

Will chimney be lined with flue lining? Yes state size 24" x 24"

Will outside walls be corbelled out two inches to full height of beam? Yes

Will fore and aft partitions be brick filled between beams and six inches above? Yes

Will the roof be flat, peak or mansard? Flat

What will be the material used for roofing? 5 Ply Tar & Gravel

What will be the material used for cornices and gutters? Copper

State material of floor beams Spruce or Fir roof beams Spruce or Fir

Give size of floor beams—1st tier 3" x 8" 2nd tier 3" x 8" 3rd tier 3"

x 8" 4th tier 3" x 8" 5th tier 3" x 8" roof tier 3" x 8"

Headers 4" x 8" Trimmers 4" x 8"

State distance from centers—1st tier 16" 2nd tier 16" 3rd tier 16" 4th tier 16"

5th tier 16" roof tier 20"

Will headers and tail beams be hung in 2 in. x $\frac{3}{8}$ in. bridle irons? Yes

Will all headers and trimmers be framed away from all chimneys? Yes

Will all beams be crossed bridged every 8 feet? Yes

If floors are to be supported by columns and girders give the following information—size and materials of girders and columns under each floor _____

See Basement Plan

Owner	<u>Harry Goldowsky</u>	Address <u>23 Warner Ave. Jersey City, NJ</u>
Architect	<u>Maurice Kraut</u>	Address <u>3010 Boulevard, "</u>
Mason		Address _____
Carpenter	<u>Owner</u>	Address _____

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.

Maurice Kraut

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.

Sworn to and subscribed before me this

29th day of October

A.D. 1928

(s) George K. Levy,
Notary Public

(s) Maurice Kraut

Applicant

Permit No. 38104 Plan No. 98 R.C.

Permit No. 38104 Plan No. 98 RR

Ward...9

Superintendent of Buildings

491 JERSEY CITY

DETAILED STATEMENT OF SPECIFICATION

For

NEW BRICK BUILDINGS

LOCATION

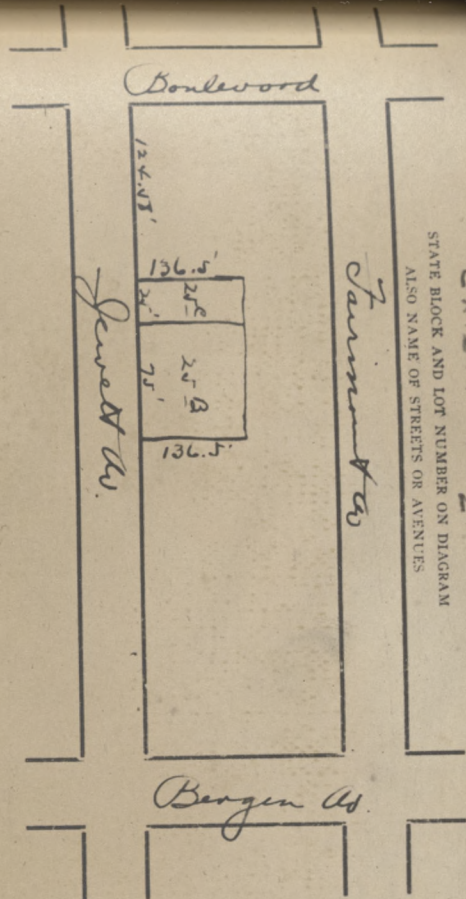
168-172 Jewett St

OWNER Harry Goldowsky

Architect M. Kraus

Permit Granted 7/1 1929

Office: CITY HALL



STATE BLOCK AND LOT NUMBER ON DIAGRAM
ALSO NAME OF STREETS OR AVENUES

EXHIBIT P 52

Appli
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Street A

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NEW BUILDINGS

Application No. 5030

Application to erect One buildings where same are to be used or parts of same are to be used for any other purpose than for living apartments

Jersey City, Aug 17 1928

TO THE BOARD OF COMMISSIONERS OF JERSEY CITY:

Harry Galdowsky hereby applies for permission to erect a 5 story brick elevator apartment house

Street Address 168-172 Jewett Av. Lot No. 25^B-25^C Block No. 1823

STATE IN FULL DETAIL THE FOLLOWING:

What is building to be used for? Dwelling purposes only.

Will any part be used for living apartments? If so, state in full yes 46 families

Will building comply with all now existing Building Laws and Regulations? } yes

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

LENGTH 119'-6" WIDTH 100'-0" HEIGHT 60'-0" NO. OF STORIES 5

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.

Maurice Kraut Residing at 3010 Boulevard City of Jersey City State of NJ, 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 above named premises.

Sworn to and subscribed before me this

17th day of August

A. D., 1928

Maurice Kraut

Mary E. Mc Mahon
Notary Public of NJ

BUILDING

Application No. 111

buildings where same are
to be used for any other

[Signature]

NEW YORK CITY



ALL THE ABOVE

Appli. Rec. Aug 21
[Signature]

Application No. 5030 Ward 9

Board of Commissioners
JERSEY CITY

APPLICATION FOR PERMISSION
TO
ERECT

5th Story Brick Apt.

LOCATION

168-172 Jewett Av

Owner Harry Goldowsky

Permission Granted 192

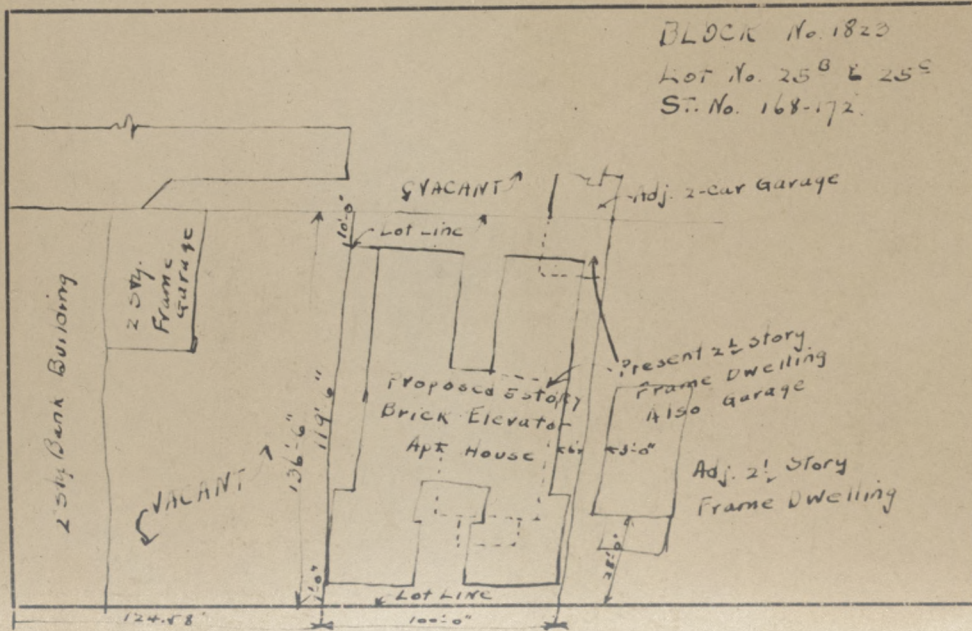
Office: CITY HALL

Appli. Rec. Aug 21 1928

Fairview Av

BLOCK No. 1820
Lot No. 25^B & 25^C
St. No. 168-172

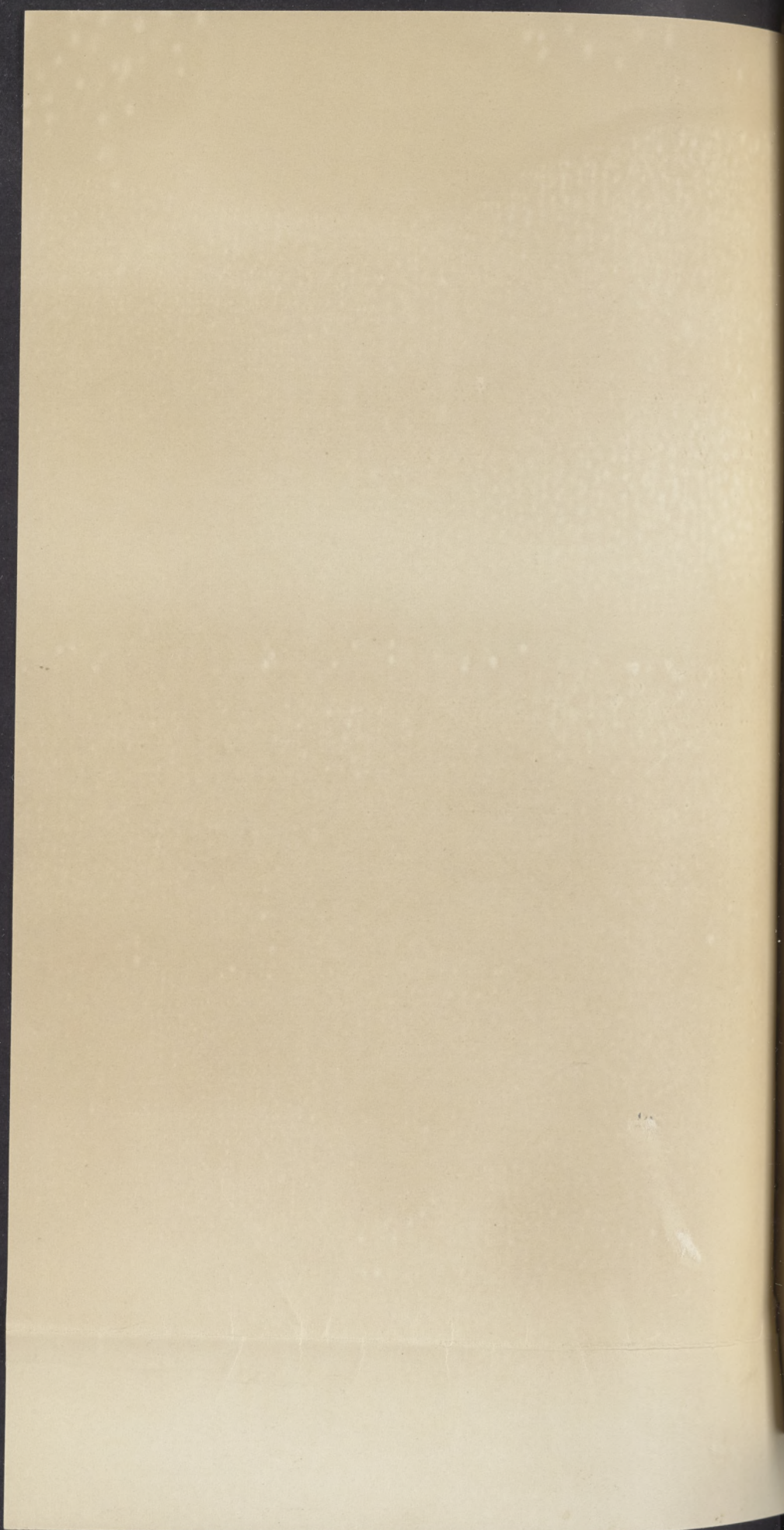
Boylward



Jewett Av.

Bryant Av.

Indicate and give size of plot on diagram, giving distance from nearest street, also name of all streets or avenues.



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*Exhibits.***Exhibit P-7.**

Resolved, That the following ordinance do now pass:

An ordinance regulating and restricting the location of trades and industries, and the location of buildings designed for specified uses, and regulating and limiting the height and bulk of buildings hereafter erected, and regulating and determining the area of yards, 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. 10

The Board of Commissioners of the Mayor and Aldermen of Jersey City do ordain as follows: 20

Section 1. Districts.

For the purposes of regulating and restricting the location of trades and industries and the location of buildings designed for specified uses, the City of Jersey City is hereby divided into four districts, to-wit: residential, business, commercial and manufacturing, and industrial, as shown on the "Use District Map," which map is hereby made part hereof. 30

"Use District Map" is hereby defined to mean the map prepared and adopted by the Commission on Building Districts and Restrictions for the purpose of showing the division of the City into districts.

"Use District" is hereby defined to mean that are or territory of the City within the boundaries as shown on the "Use District Map."

40

Exhibits.

Section 2. Residential Districts.

10 In a residential district, as designated on the "Use District Map," no building shall hereafter be erected, constructed, altered or used which is intended or designed for, and no premises shall hereafter be used for:

1. Business, trade, commercial or industrial purposes, the manufacture or sale of any commodity.

2. Any use excluded by sections 3, 4 and 5 of this ordinance.

3. Storing any automobile or automobiles within or under any dwelling house.

20 4. A private garage or group of private garages, the front wall of which shall be nearer than eighty (80) feet to the front line of the lot.

5. A group of private garages on a lot twenty-five (25) feet in width, to accommodate more than three automobiles.

30 "Private garage" is hereby defined to mean a building not more than twelve and a half (12½) feet in width, not more than twenty (20) feet in depth, not more than eleven (11) feet in height, erected on the rear line of the lot, to store a pleasure automobile.

6. A public garage, or for storing business or commercial automobiles.

Section 2 (a). Areas and Heights.

40 The requirements and limitations of the New Jersey Board of Tenement House Supervision and the Jersey City Building Code shall govern the findings of the Commission on Building Districts and Restrictions as to the height and bulk of buildings, the percentage of lot that may be occupied, the area of yards, courts and other open spaces.

Exhibits.

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 arranged, intended or designed for, and no premises shall hereafter be used for any of the following specified trades, industries or uses: 10

1. Any kind of manufacturing, other than the manufacture of products, the major portion of which are to be sold at retail on the premises where manufactured to the ultimate consumer.

2. Blacksmith shop or horseshoeing establishment.

3. A milk-bottling or distributing station.

4. A carpet or bag-cleaning establishment. 20

5. A coal yard or lumber yard or masons' material yard.

6. Any trade, industry or use excluded by section 4 of this ordinance.

7. A terminal shed for public conveyances, unless the Public Utilities Commission deems it necessary for the public convenience.

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 the lot or plot in question is situated within a distance of one hundred and fifty (150) feet as measured along the public street of or in any case within any portion of a street between two intersecting streets in which portion there exists: 30

(a) A public school.

(b) A duly organized school, other than a public school, conducted for children un- 40

Exhibits.

der sixteen years of age and giving regular instruction at least five days a week for eight or more months a year.

(c) A hospital maintained as a charitable institution.

10

(d) A church.

(e) A theatre containing at least three hundred seats.

(f) A public library.

9. A garage or group of garages for automobiles or motor vehicles nearer than five feet to the rear line of a corner lot, nor nearer than five feet to the side street line of a corner lot the rear of which abuts on a residential district lot.

20

SECTION 3 (a)—AREAS

The requirements of all State and municipal laws and ordinances shall govern as to the bulk of buildings, the percentage of lot that may be occupied, and the area of yards, courts and other open spaces.

SECTION 3 (b)—HEIGHTS

30

No building shall hereafter be erected which is less than three stories in height on the following streets: West Side Avenue, Communipaw Avenue, Jackson Avenue, Ocean Avenue, Grand Street, Monticello Avenue, Bergen Avenue, Summit Avenue, Central Avenue, Sip Avenue, Montgomery Street, Grove Street, Coles Street, Pacific Avenue, Hudson Boulevard, Newark Avenue, Old Bergen Road, Danforth Avenue or on any street or avenue within the following boundaries, which upon the "Use District Map" is zoned for business;

40

north, the north side of West Newark Avenue from the west side of West Side Avenue to the

Exhibits.

Five Corners, continuing easterly along the north side of Newark Avenue to the east side of Baldwin Avenue; south, the south side of Communipaw Avenue; west, the west side of West Side Avenue; east, the east side of Baldwin Avenue from the north side of Newark Avenue to Summit Avenue and the east side of Summit Avenue from the junction of Summit and Baldwin Avenues to the north side of Grand Street; nor on the north side of Grand Street up to its junction with Communipaw Avenue, except garages where permissible. 10

SECTION 4—COMMERCIAL AND MANUFACTURING
DISTRICT

In a commercial and manufacturing district, as designated on the "Use District Map," no building shall hereafter be erected, constructed, altered or used which is arranged, intended or designed for and no premises shall hereafter be used for any of the following specified trades, industries or uses: 20

1. Ammonia, bleaching powder or chlorine manufacture.
2. Asphalt manufacture or refining.
3. Brick, concrete products, terra cotta or tile manufacture. 30
4. Celluloid manufacture or treatment.
5. Cement, lime or plaster of paris manufacture.
6. Crematory, other than a crematory located in a cemetery.
7. Creosote treatment or manufacture.
8. Dyestuffs manufacture.
9. Electric Central station power plant.
10. Fat rendering. 40
11. Fertilizer manufacture.

Exhibits.

12. Gas manufacture or storage in excess of one thousand (1,000) cubic feet.
13. Grease, lard or tallow manufacture or refining.
14. Hydrochloric, nitric, sulphuric, sulphurous or other acid manufacture.
- 10 15. Incineration or reduction of garbage, offal, refuse or dead animals.
16. Junk or scrap iron storage.
17. Lamp black manufacture.
18. Linoleum or oil cloth manufacture.
19. Petroleum, refining or storage in excess of one thousand (1,000) gallons.
- 20 20. Planing mill or saw mill.
21. Pyroxylin plastic manufacture or articles therefrom.
22. Rags and scrap paper—storage or baling.
23. Railroad yards or roundhouses.
24. Rolling mill.
25. Slaughtering of animals or fowl.
26. Stock yards.
27. Stone crushing.
28. Sugar refining.
29. Tar distillation or manufacture.
- 30 30. Any trade, industry or use that is noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise.
31. Distillation of bones, coal or wood.

SECTION 4 (a)—AREAS AND HEIGHTS

The requirements of all State and municipal laws and ordinances shall govern as to the height and bulk of buildings, the percentage of lot that may be occupied, and the area of yards, courts and other open spaces.

Exhibits.

SECTION 5—INDUSTRIAL DISTRICT

In an industrial district as designated on the "Use District Map," no building shall hereafter be erected, constructed, altered, arranged or designated in whole or in part for any of the following purposes: 10

1. Celluloid manufacture or treatment.
2. Cement, lime or plaster of paris manufacture.
3. Crematory, other than a crematory located in a cemetery.
4. Fat rendering.
5. Fertilizer manufacture.
6. Incineration or reduction of garbage, offal, refuse or dead animals. 20

SECTION 5 (a)—AREAS AND HEIGHTS

The requirements of all State and Municipal Laws and ordinances shall govern as to the height and bulk of buildings, the percentage of lot that may be occupied, and the area of yards, courts and other open spaces.

SECTION 6—"USE DISTRICT" EXCEPTIONS

Any non-conforming use existing at the time of the passage of this ordinance may be continued. 30

"Non-conforming use" is defined to mean a use which is excluded by the regulations and restrictions of the "use district" in which it is located.

SECTION 7—DISTRICT BOUNDARIES

Unless otherwise indicated, the boundary of a business district is the building line of the street shown and a line drawn one hundred (100) feet from and parallel thereto. 40

Exhibits.

When the majority of the lots fronting on a business street, in a business district, are deeper than one hundred (100) feet, the business district may extend to the full depth of the lots.

10

SECTION 8—PLANS AND STATEMENT

Before the erection, construction or alteration of any building or any part thereof, the owner, lessee, agent, architect or builder actually engaged in the management or performance of such erection, construction, alteration or conversion shall submit to the Commission on Building Districts and Restrictions a complete copy of the plans of the proposed work and file a statement, duly subscribed by the owner or his agent on blank to be furnished by the said Commission, reciting the use intended to be made of the building or structure designated in said plans.

20

SECTION 9—APPROVAL OF PLANS AND STATEMENT

It shall be the duty of the Commission on Building Districts and Restrictions to approve the plans and statement within a reasonable time after filing of the same, and to mail its decision on the application to the applicant, provided, however, said plans and statement shall be approved by a majority of the members of said Commission, and provided further that the said approval of the said Commission shall be ratified by the governing body of the city.

30

If, on any inspection by the Commission on Building Districts and Restrictions, the conditions of a building or premises or its use or occupancy are found not to conform to the requirements of this ordinance or the plans and statement as approved, the inspector shall at once issue written

40

Exhibits.

notice to the owner or his agent, specifying the manner in which the building or premises or its use or occupancy fails to so conform, and directing said owner or his agent to comply with the provisions of the aforesaid written notice within five (5) days from the date of the service thereof upon him. 10

SECTION 10—PENALTIES

Any person or persons violating the provisions of this ordinance or taking part or assisting in any violation of this ordinance, or who maintains any building or premises in which any violation of this ordinance shall exist, shall for each and every violation be imprisoned in the Hudson County Jail for a period not exceeding thirty days or be fined not exceeding fifty dollars, or both. Each day that a violation is permitted to exist shall constitute a separate offense. 20

SECTION 11—VALIDITY OF ORDINANCE

In case, for any reason, any section or portion of this ordinance shall be questioned in any court, and shall be held to be unconstitutional or invalid, the same shall not affect any section of this ordinance, except so far as the section so declared unconstitutional or invalid shall be inseparable from the remainder or any portion thereof. 30

SECTION 12—APPEAL

An Appeal Board is hereby established, which shall consist of the Board of Commissioners of the Mayor and Aldermen of Jersey City. Said Board of Commissioners, acting as such Appeal Board, may in a specific case, after a public hearing and subject to appropriate conditions and safeguards, determine and vary the application 40

Exhibits.

of the regulations herein established in harmony with the general purpose and intent, without changing the boundaries of the respective zones. Any citizen who is aggrieved by the decision of the Commission on Building Districts and Restrictions may appeal to the said Appeal Board within fifteen days.

10

SECTION 13—WHEN EFFECTIVE

This ordinance is passed under and by virtue of the authority conferred by Chapter 152 of the Laws of 1917 and the various supplements thereto and amendments thereof, and Chapter 229 of the Laws of 1920 and the various amendments thereof and supplements thereto, and this said ordinance shall take effect immediately upon its final passage.

20

The City Clerk read the foregoing ordinance as ready for final passage.

The roll being called, the ordinance was passed by the following vote:

Yeas: Commissioners Bentley, Fagen, Gannon and Mayor Hague.

Nays: None.

30

By Commissioner Fagen:

Resolved, That the hearing on the foregoing ordinance do now close.

Adopted.

Yeas: Commissioners Bentley, Fagen, Gannon and Mayor Hague.

40

*Exhibits.***Exhibit P-9.**

This time and place having been fixed by the Board of Commissioners for the purpose of holding a public hearing on the application of Harry Goldowsky for permission to erect a five story elevator apartment building at 166-72 Jewett Avenue, the City Clerk advised the Board that he had requested the Police Department to notify all persons in that vicinity who might be interested in the application, to attend the hearing. Commissioner Beggans submitted a police report showing the names of the persons so notified. 10

Benjamin Schlossberg and architect M. Kraut, appeared for the application.

The following persons appeared and objected to the proposed building: Counsellor Mark Townsend, 158 Jewett Ave., Mrs. Helen Dineen, 159 Jewett Ave., Chas. Smith, 155 Jewett Ave., Frank Older, 157 Jewett Ave., J. W. Hood, 161 Jewett Ave., Mr. G. A. Jackson, for B. F. Moore, 160 Jewett Ave., H. E. Nilan, 169 Jewett Ave., Mrs. J. B. Hamilton, 173 Jewett Ave. and Mrs. W. Lomerson, 171 Jewett Ave. 20

The City Clerk read a letter from John C. Enders, 164 Jewett Ave., stating that this is a very inopportune time for such a hearing because most of the taxpayers of Jewett Avenue, himself included are out of town, and requesting that his letter be recorded as being opposed most emphatically to the erection of any apartment house on the block. 30

Mr. Townsend requested that an adjournment be granted until the property owners return and are able to appear. The Mayor advised that Mr. Townsend proceed with the hearing in view of the fact 40

Exhibits.

10 that a fair representation of the property owners were present and for the reason that he does not want to inconvenience these people and bring them again before the Board; that the people have a perfect right to protect their property if they don't want the street turned into an apartment house block.

The objectors stated that there are no apartments on that side of the street at all.

20 Mr. Townsend stated that most of the people are away from the City and the people present are the ones who happen to be at home; that they feel it is a strictly residential street; that many of them in fact all of them have their own private homes there; that there has been considerable money spent in the last few years in private houses on that street; that there are no apartments on that side and it simply means that if the street continues as an apartment street, many of the property owners will have to move out in the country.

30 Mr. Nilan stated that he bought a vacant plot and erected a new house directly opposite the proposed apartment; that the street is narrow and the tenants will park their cars in front of the proposed apartment during all hours of the night; that he has a private home and the apartment will cause a serious depreciation in his property.

40 The Mayor stated that he could see no reason for a postponement and the hearing will proceed; that it has been the policy of the Board to rule in favor where there is a group of objectors as is appearing today and is seeking to protect their street; that he thinks the Commission is functioning in the proper direction when they advise the property owners to regulate their own street; that

Exhibits.

the Board appreciates it is a very embarrassing proposition to the Commission when a man wants to come in and spend a half million dollars and then have to advise him that he cannot do it; that as business people running the affairs of Jersey City, the Board is desirous of obtaining as much revenue as possible for the City, but the Board must realize that in their efforts to obtain revenues, it cannot destroy the property of others. 10

Mrs. Hamilton stated that they probably are all able to move out of the city, but they don't want to; that they like their street and want to live in a private home; that their street has always been a charming street with nice neighbors who are a credit to the City.

The Mayor stated that it is an unfortunate situation confronting the property owners and a great deal of sympathy can be extended; that he does not like to see the City lose the apartment building, but the Board has got to do it's duty. 20

Mr. Schlossberg stated that he appreciates the feelings of the property owners and the embarrassment of the Commission; that there is an apartment house on the corner of Bergen and Jewett Avenue and the bank just built a large building on the corner of Boulevard and Jewett Avenue, so that it is not strictly residential street. 30

The Mayor replied that the property owners are interested in the interior of that block that the apartment was constructed some years ago prior to the zoning regulations; that under the present zoning laws, the Board could have stopped the bank construction and forced them back to the line heretofore established, but the Board thinks the bank building is a big improvement on that corner. 40

Exhibits.

10 Mr. Schlossberg stated that he knows Mr. Goldowsky does not want to do anything that will embarrass the property owners and he knows that the Mayor has always acted fairly in such matters and that if the Board desires to protect the people, he will withdraw the application on one condition that is, his concern sold the property to Mr. Goldowsky, and it would be unfair for another applicant to come in and build an apartment within say six months; that if this Commission will rule that there will be no apartment on this site, he will withdraw the application.

Mr. Townsend stated that the people and himself will agree to always appear against any such apartment on that block.

20 The Mayor stated that where the people come in and say that they are willing to turn over their property for apartment sites, the Board will agree; that we must keep in mind that this Section is in the zone of the Journal Square district and a short walk to the Tube Station and it is a desirable site for apartments, but for the present, the people of that particular street are opposed to the apartments and if they are, the Board is also opposed. He then asked Mr. Schlossberg if he is going to
30 withdraw the application.

Mr. Schlossberg then stated that in the interest of harmony and the Mayor's ruling, he withdraws the application.

In conclusion the Mayor moved that the hearing close in view of the withdrawal of the application by Mr. Schlossberg.

CARRIED.

*Exhibits.***Exhibit P-10 (1)**

Office of
CITY CLERK
 CITY HALL
 Jersey City, N. J. 10
 EDWARD J. HOLLAND, Clerk

Aug. 21, 1928.

Hon. John Beggans
 Director, Dept. of Public Safety
 Jersey City, N. J.

Dear Sir:

The Board of Commissioners of Jersey City have fixed TUESDAY, AUGUST 28th, 1928, at 11:15 A. M. Daylight Saving Time, in the Assembly Chamber, City Hall, Jersey City, N. J., for the purpose of holding a public hearing on the application of Harry Goldowsky for permission to erect a five story brick elevator apartment building at 166-172 Jewett Avenue. 20

Will you be kind enough to instruct the Police Precinct Commander having jurisdiction in that vicinity to have a canvass made of the residents and property owners living in that section and ascertain if there are any objections to the proposed five story apartment house, and also notify any persons who might be interested in the application, to appear at the hearing. 30

When the investigation has been made, kindly forward report to me so that I may present it to the Board at the time of hearing.

Yours very truly,

EDWARD J. HOLLAND 40
 City Clerk

7th

Withdrawn

*Exhibits.***Exhibit P-10 (2)**

THIS BLANK TO BE USED IN MAKING ALL REPORTS
RELATING TO POLICE DEPT.

DEPARTMENT OF PUBLIC SAFETY
POLICE
Precinct Seventh

10

SUBJECT Report

Jersey City, N. J. August 23, 1928.

To Harry W. Walsh
Captain Commanding 7th Pct.

SIR:

20

The request of Harry Goldowsky for permission
to erect a five story brick elevator apartment at
166-172 Jewett Ave.

I canvassed the entire vicinity and have notified
the following residents and property owners that
on Tuesday, Aug. 28th, at 11:15 A. M. daylight sav-
ing time, The Board of City Commissioners will
hold a public hearing on said application.

30

A. M. Henry.....	178	Jewett Ave.
Out of town.....	164	“ “
“ “ “	162	“ “
B. F. Moore.....	160	“ “
Out of town.....	158	“ “
“ “ “	156	“ “
“ “ “	154	“ “
James Nilan.....	152	“ “
Walter Fred.....	150	“ “
John C. Enders....	146	“ “
Out of town.....	144	“ “
“ “ “	142	“ “
“ “ “	140	“ “
Mrs. Jelliffe.....	138	“ “
Jos. S. Singer.....	136	“ “
Out of town	130	“ “
Mrs. Brinkerhoff...	126	“ “

40

Exhibits.

out of town.....	124	“	“	
Mrs. E. G. Waters..	123	“	“	
Mrs. E. Brophy....	127	“	“	
Out of town.....	131	“	“	
Mrs. Brodman.....	135	“	“	
Out of town.....	139	“	“	
“ “ “	143	“	“	10
“ “ “	147	“	“	
“ “ “	151	“	“	
G. D. DAVIDSON....	153	“	“	
Out of town.....	155	“	“	
Susan B. Older....	157	“	“	
Mrs. Dineen.....	159	“	“	
E. Y. Hood.....	161	“	“	
Out of town.....	163	“	“	
“ “ “	165	“	“	
H. E. Nilan.....	169	“	“	
Out of town.....	171	“	“	20
“ “ “	173	“	“	
J. H. Adams.....	177	“	“	

Respectfully

WM. J. WALSH SHIELD 635

30

40

*Exhibits.***Exhibit P-11 (1)**Office of
CITY CLERK

CITY HALL

Jersey City, N. J.

EDWARD J. HOLLAND

City Clerk

10

Oct. 3, 1928.

Hon. John Beggans
Director, Dept. of Public Safety
Jersey City, N. J.

Dear Sir:

20

The Board of Commissioners of Jersey City have fixed TUESDAY, OCTOBER 9th, 1928, at 11 A. M. in the Assembly Chamber, City Hall, Jersey City, N. J., for the purpose of holding a public hearing on the application of Harry Goldowsky for permission to erect a five story brick elevator apartment building with a set back of seven feet, at 168-172 Jewett Avenue.

30

Will you be kind enough to instruct the Police Precinct Commander having jurisdiction in that vicinity to have a canvass made of the residents and property owners living in that section and ascertain if there are any objections to the proposed apartment building, and also notify any persons who might be interested in the application, to appear at the hearing.

When the investigation has been made, kindly forward report to me so that I may present it to the Board at the time of hearing.

40

Yours very truly,

EDWARD J. HOLLAND
City Clerk.

*Exhibits.***Exhibit P-11 (2)**

THIS BLANK TO BE USED IN MAKING ALL REPORTS
RELATING TO POLICE DEPT.

DEPARTMENT OF PUBLIC SAFETY
POLICE
Precinct 7th

10

SUBJECT Application of Harry Goldowsky

Jersey City, N. J. October 6th, 1928.

To Harry W. Walsh

Captain Commanding of 7th Precinct.

SIR:

I respectfully submit the following report of my
investigation including the names and addresses
of all persons visited by me concerning the appli-
cation of Harry Goldowsky to erect a five story
brick elevator apartment building with a set back
of seven feet at 168-172 Jewett Ave. All persons
mentioned in this report were notified by me that
at 11 A. M. on Tuesday, October 9th, 1928, a Public
Hearing would be held in the Assembly Chamber
City Hall, on this application and if they have any
protest to make to be there, and make it at that
time and place.

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Exhibits.

	A. M. Henry.....	174	Jewett Ave.
	“ “ “	176	“ “
	“ “ “	178	“ “
	Mark Townsend...	164	“ “
	W. H. Clark.....	158	“ “
10	J. D. Sears.....	156	“ “
	Mrs. Martin.....	154	“ “
	James Nilan.....	152	“ “
	C. Galvin.....	150	“ “
	J. Enders.....	146	“ “
	Clifford Spoerl....	144	“ “
	Jane Campbell....	142	“ “
	R. Vogkengall....	140	“ “
	M. F. Jellisse.....	138	“ “
	Joseph Holsey....	136	“ “
	J. S. Singer.....	134	“ “
	Isador Heilbrunn..	130	“ “
20	Dr. Brinkerhoff....	126	“ “
	D. Gilliam.....	124	“ “
	E. Markush.....	122	“ “
	E. Brophy.....	127	“ “
	D. Schenck.....	131	“ “
	A. Broadman.....	135	“ “
	J. H. Watson.....	139	“ “
	Miss Mills.....	143	“ “
	R. Dougherty.....	147	“ “
	R. Tumulty.....	151	“ “
	C. Smith.....	155	“ “
	D. Older.....	157	“ “
30	Mrs. Denine.....	159	“ “
	J. W. Hood.....	161	“ “
	Dr. Burke.....	163	“ “
	Dr. Stout.....	165	“ “
	Mrs. T. Hughes....	169	“ “
	J. S. Adams.....	177	“ “
	A. M. Henry.....	181	“ “

Exhibits.

Boulevard:
2540 Boulevard

	Fairview Avenue:		
	123 Fairview Ave.		
	117	"	"
	115	"	"
	113	"	"
	111	"	"
A. Bellezza.....	109	"	"
H. Shick.....	107	"	"
A. Sandler.....	105	"	"
C. Cyde.....	103	"	"
C. Ruffer.....	101	"	"

10

Respectfully

WALTER MURPHY Lieutenant.

20

30

40

*Exhibits.***Exhibit P-12.**

(See photograph opposite.)

10 Indicating the north side of Jewett Avenue, showing premises owned by Gladys Townsend on the right and premises owned by Anna B. Malone on left.

Exhibit P-13.

(See photograph opposite.)

20 From a point fronting Townsend property and facing west toward Hudson County Boulevard, showing north side of Jewett Avenue.

Exhibit P-14.

(See photograph opposite.)

From a point fronting Townsend property and facing west toward the Hudson County Boulevard and showing the southerly side of Jewett Avenue.

Exhibit P-15.

30 (See photograph opposite.)

From a point fronting the Townsend property and facing east toward Bergen Avenue showing the north and south sides of Jewett Avenue.

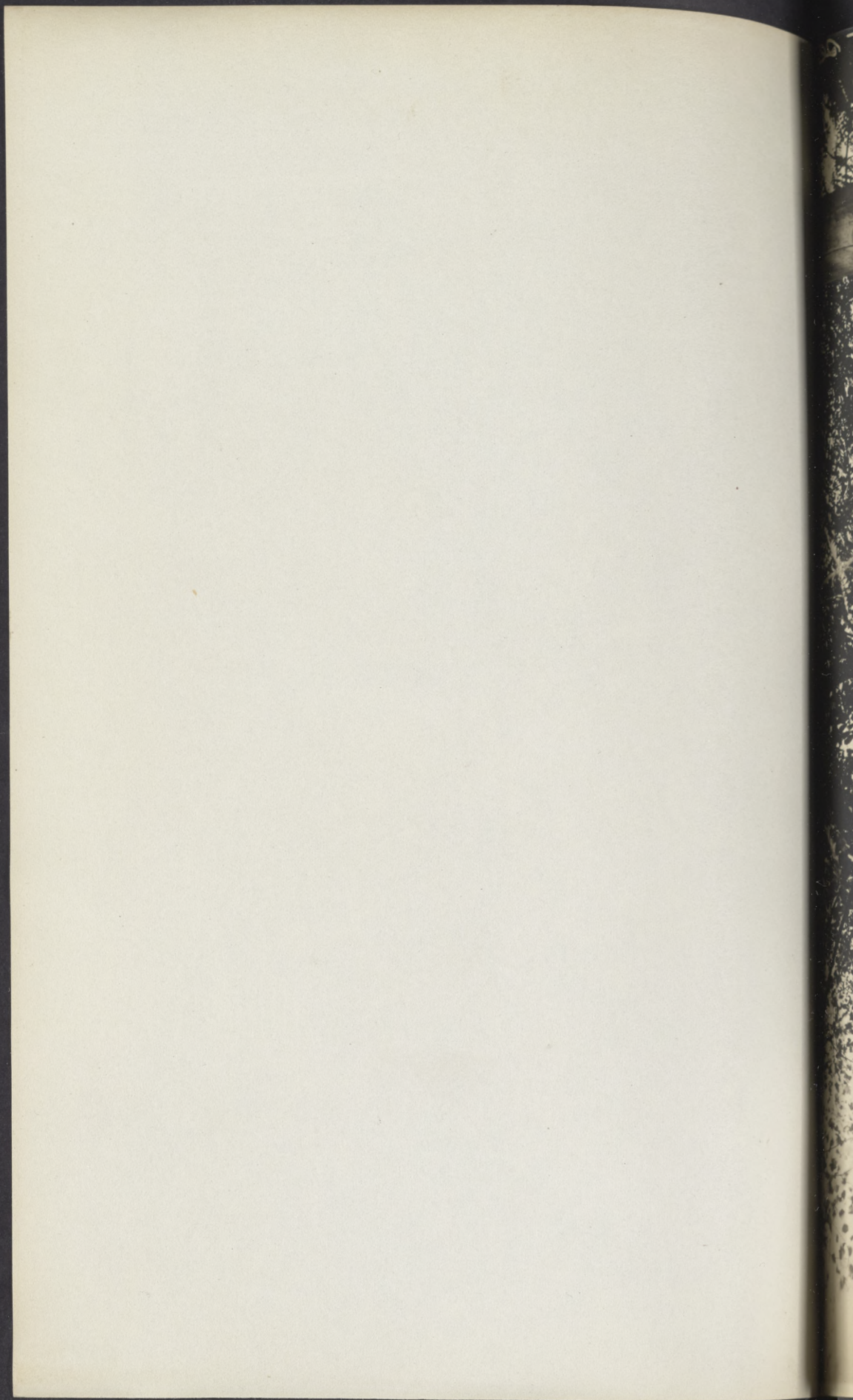
Exhibit P-16.

(See photograph opposite.)

40 From a point west of Townsend property facing toward Bergen Avenue and showing the north side of Jewett Avenue.

[Exhibits P-12 to P-15, inclusive, are photos of Jewett Ave., Jersey City, between Boulevard and Bergen Ave.]

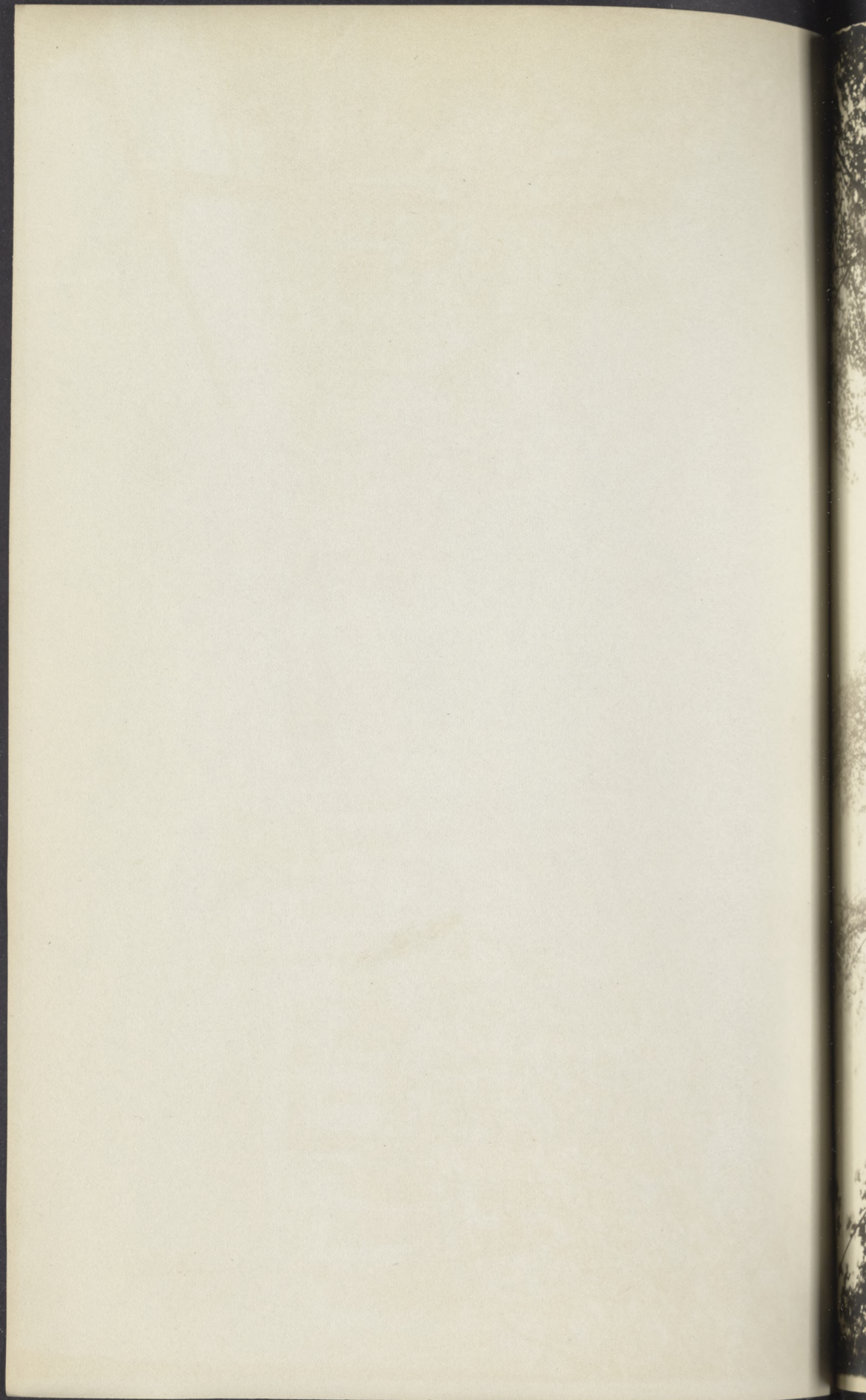








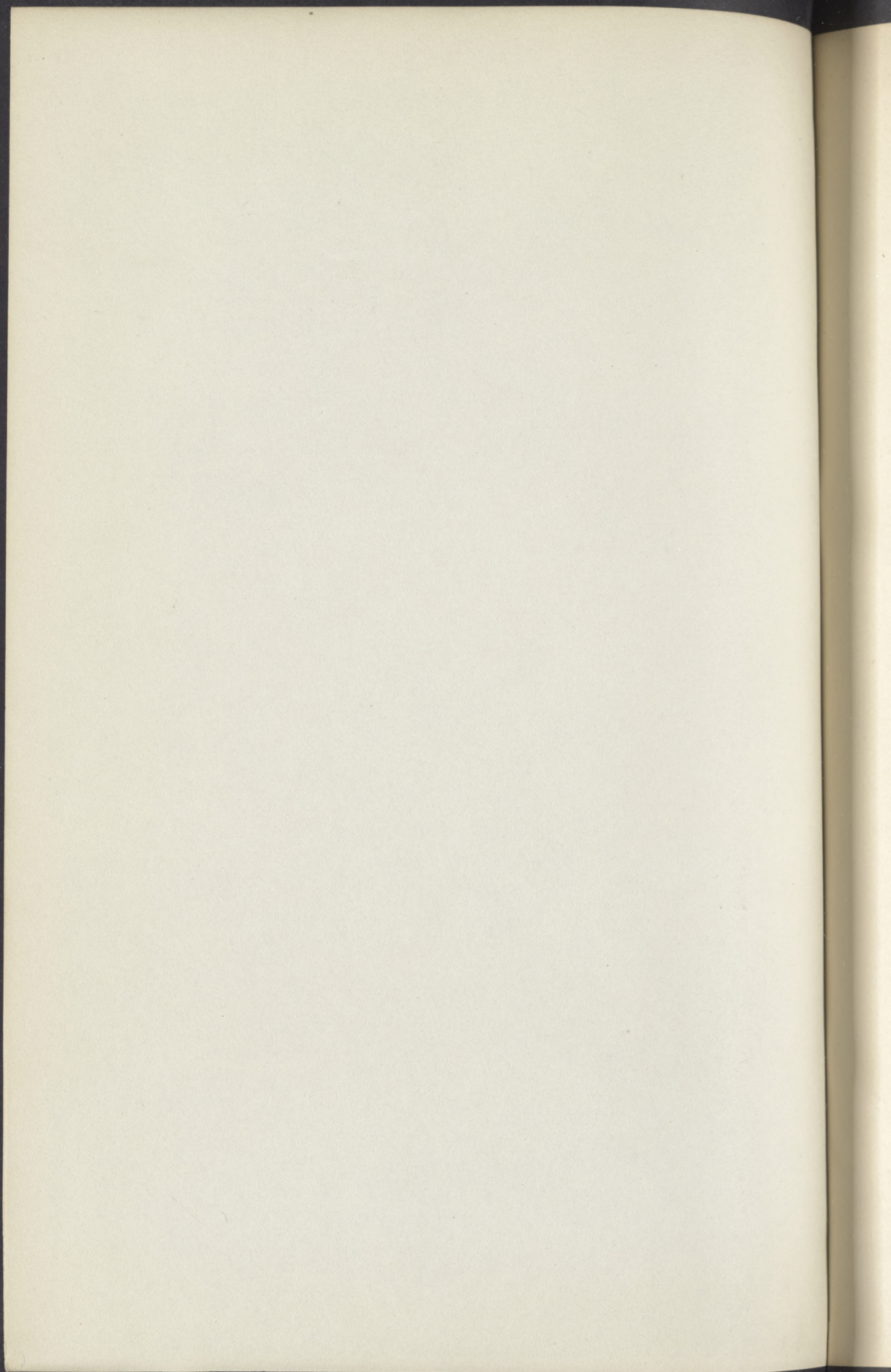














*Exhibits.***Exhibit D-1.**

(See photograph opposite.)

10 From a point west of the Malone property showing the Malone property on the right and the rear of apartment house directly in rear of same fronting on Fairview Ave.

Exhibit D-2.

(See photograph opposite.)

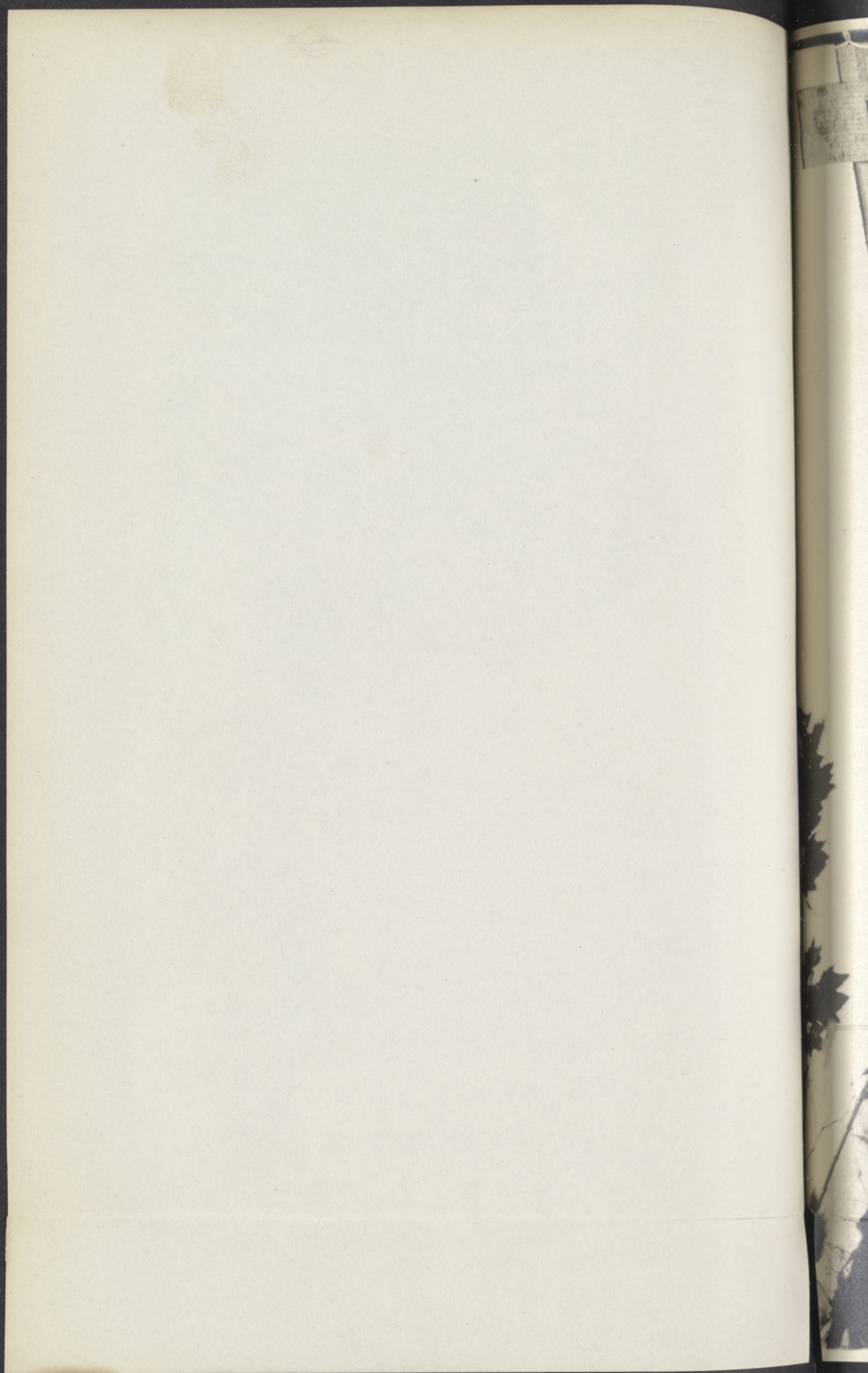
20 From a point in front of A. M. Henry property directly west of Malone property and showing on the left the wall of the Bank building on the north east corner of Jewett Ave. and Hudson Boulevard, in the center the building on the Henry property and in the rear of said building the apartment house known as Alban Court.

Exhibit D-3.

(See photograph opposite.)

30 From a point west of Malone property showing on the right apartment directly in rear of Malone property and on the left apartment known as Alban Court on the south east corner of Fairview Ave. and Hudson Boulevard.

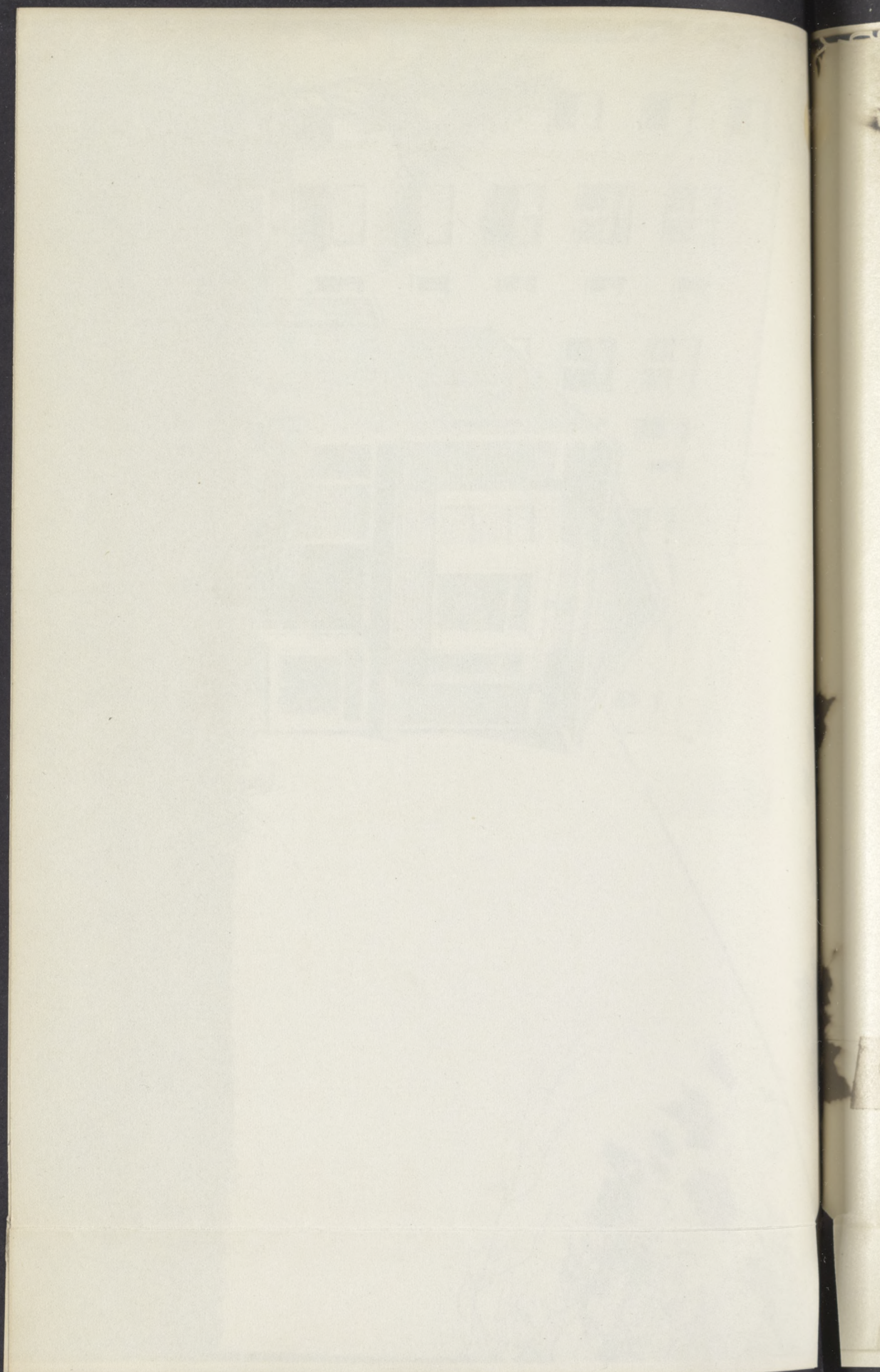




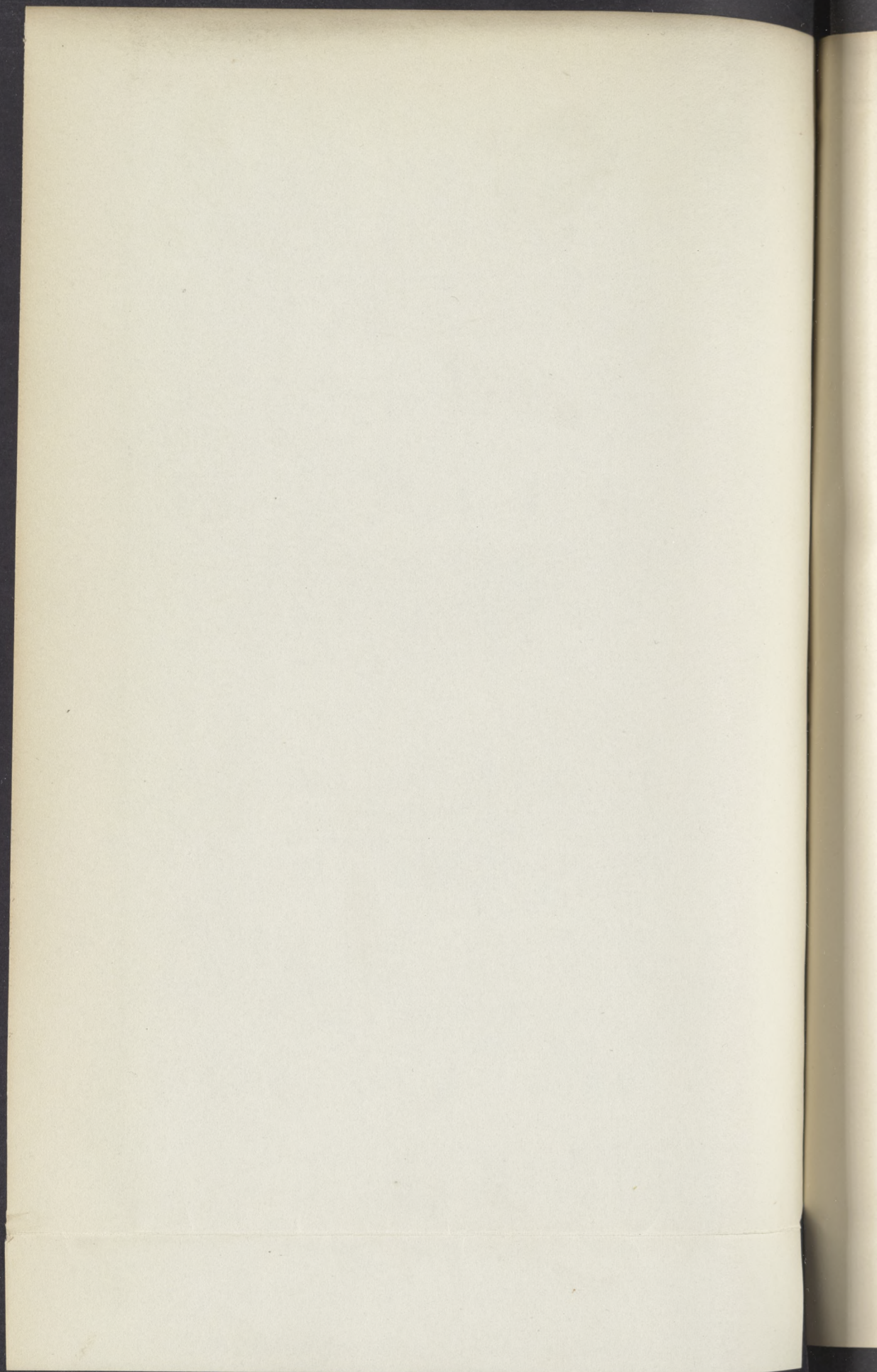


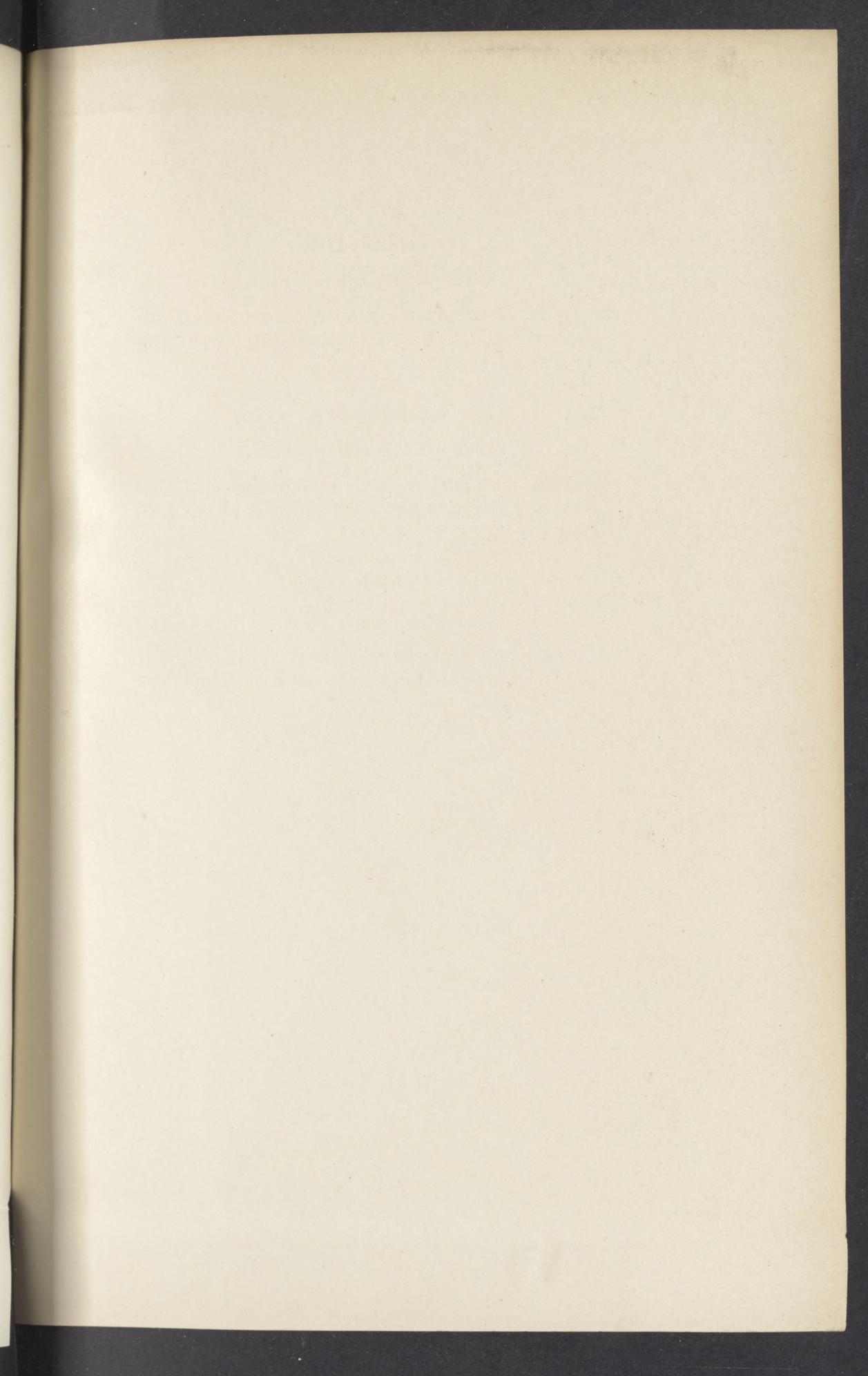
2361

2361









*Exhibits.***Exhibit D-4.**

(See photograph opposite.)

10 A. M. Henry property on north side of Jewett Ave. showing wall of bank building on left and Apartment House in rear.

Exhibit D-5.

(See photograph opposite.)

Bank building on north east corner of Jewett Ave. and Hudson Boulevard showing Jewett Ave. frontage.

Exhibit D-6.

20

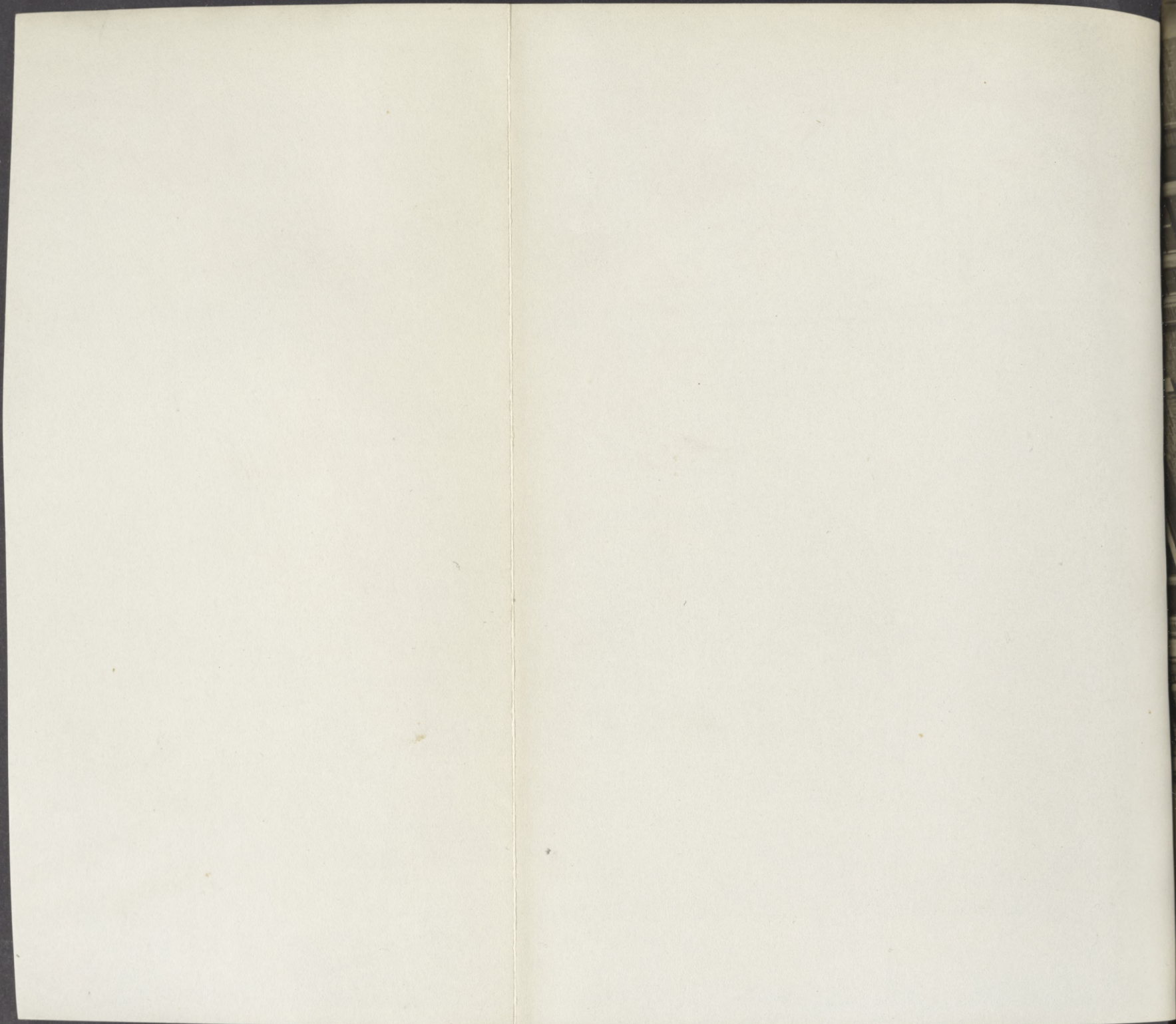
(See photograph opposite.)

Apartment house on north west corner of Jewett and Bergen Aves. showing Jewett Ave. frontage.

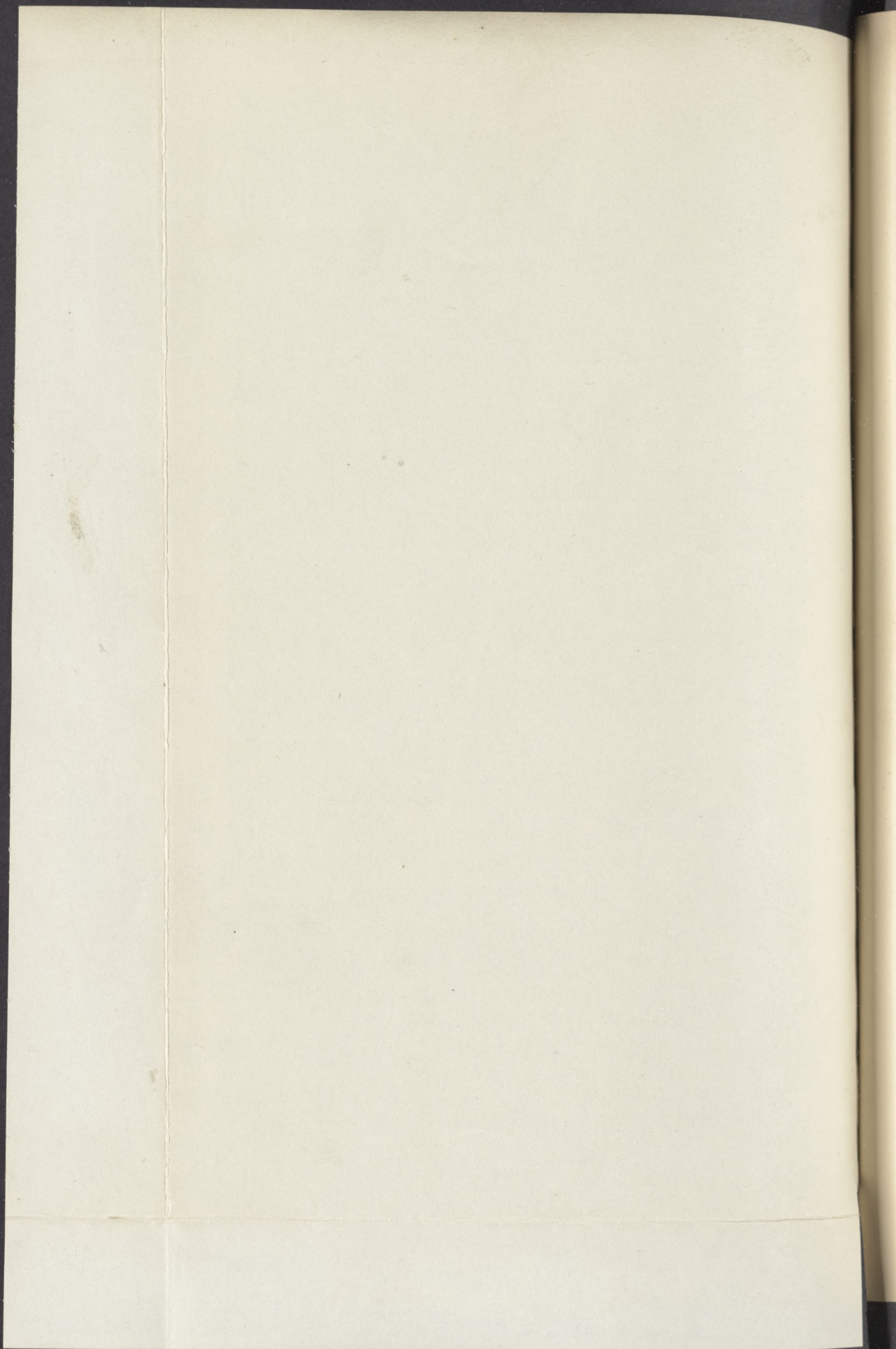
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New Jersey Court of Errors and Appeals

J. SIDNEY ADAMS and GLADYS
TOWNSEND,
Prosecutors-Appellants,

vs.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, EDWARD SPOERER,
Superintendent of Buildings
of Jersey City, HARRY GOL-
DOWSKY and ANNA B. MALONE,
Defendants-Respondents.

ON
CERTIORARI.

**BRIEF FOR RESPONDENTS HARRY GOL-
DOWSKY AND ANNA B. MALONE.**

Facts.

This is an appeal from the judgment of the Supreme Court dismissing a Writ of Certiorari which had brought before that Court for review a resolution of the Board of Commissioners of Jersey City granting to Harry Goldowsky permission to erect a five-story brick elevator apartment house on the premises known as 168-172 Jewett Avenue, Jersey City, together with the building permit issued by Edward J. Spoerer, Superintendent of Buildings of Jersey City. (See Writ, pp. 1 and 2; Return, pp. 4 and 5, State of Case.)

Appellant Gladys Townsend is the owner of the premises adjoining on the easterly side of said

premises 168-172 Jewett Avenue, and appellant J. Sidney Adams is the owner of premises 177 Jewett Avenue, which are on the opposite side of the street (p. 14, ll. 15-40; p. 15, ll. 1-30; Exhibit P-1, p. 52; Exhibit P-12, p. 84, State of Case).

The Appellants have no right or interest of any kind in the premises on which the proposed apartment house is to be constructed, viz., 168-172 Jewett Avenue, and they claim none. The erection of an apartment house upon the premises 168-172 Jewett Avenue is not prohibited by any zoning or other ordinance of Jersey City. (See Reasons, pp. 6, 7 and 8, State of Case.)

Appellants' only rights or interests affected by the aforesaid resolution and building permit are those of property owners in the immediate neighborhood of the property upon which the said resolution and permit allows the erection of an apartment house. The proposed apartment house is to be a five-story brick building for dwelling purposes only and is to comply with all the building laws and regulations of Jersey City. (Exhibits P-5 and P-6, p. 62, State of Case.)

ARGUMENT.

POINT I.

Appellants have no right or interest affected by the resolution and building permit here under review sufficient to give them the right to challenge the validity thereof, and their appeal should therefore be dismissed.

Appellants do not challenge the validity of the said resolution and building permit because of any right or interest in the premises upon which the proposed apartment house is to be built. (See

Reasons, pp. 6, 7 and 8, State of Case.) They are property owners in the neighborhood of the premises on which the proposed apartment house is to be built (p. 14, ll. 15-40; p. 15, ll. 1-30, Exhibit P-1, p. 52; Exhibit P-12, p. 84, State of Case). As such property owners they claim the right to prosecute the writ herein.

The law has been definitely settled that owners of property adjacent to or in the neighborhood of the premises upon which a permit allows the erection of a building have no right or interest which is specially and injuriously affected so as to allow them to prosecute a writ of certiorari testing the validity of such permit.

- Levy v. Mravlag*, 96 N. J. L. 367;
Reimer v. Dallas, Mayor, et al., 129 Atl. 390;
Songar Realty Corp. v. Axford, etc., 136 Atl. 164, 5 N. J. Mis. R. 220;
Margolis v. Maplewood Twp., et al., 135 Atl. 662, 5 N. J. Mis. R. 131; affirmed 104 N. J. L. 177.

Whenever it appears that the prosecutors of a Writ of Certiorari have no right or interest which is specially and injuriously affected by the action of the public officials sought to be reviewed the Writ should be dismissed.

Fallon v. Hoboken, 60 N. J. L. 212.

Answering Point I of Appellants' Brief.

This contention cannot legally be raised by Prosecutors. The Municipality might raise it in a mandamus proceeding when it was being attempted to force the City to grant a permit, as was done in the two cases cited under this Point

in Appellants' brief, or Respondent Anna B. Malone might raise it because of her interest in the premises affected, but if both of these parties choose to waive the informality, if it be such, no stranger has the right to raise the question. Not only do the Municipality and Anna B. Malone not raise the question, but they are here in court actively defending the legality of the resolution and permit here under review. As far as Anna B. Malone is concerned, can anything more strongly demonstrate her consent to such use of the property? The two cases cited by Appellants under this Point do not support their contention. They are both mandamus proceedings in which it was attempted to force the City to grant a permit. These cases merely hold that municipal officials charged with the duty of issuing building permits are justified in refusing permits to applicants who fail to show a right to erect a building on the land mentioned in the application.

Answering Point II of Appellants' Brief.

An examination of the application (p. 62, State of Case) will reveal that it is in correct form as required by the Building Code of Jersey City (p. 48, ll. 30-40; p. 49, ll. 1-40; p. 50, ll. 1-22). The only alleged defect particularly pointed out by Appellants is that the application bears no signature. The application referred to in the Building Code, quoted in Appellants' brief under this Point, appears opposite page 62 of the State of Case. It is signed about the fifth line from the top "Maurice Kraut (Agent)". It is verified at the bottom by the same person. It shows the name and address of the owner and also shows that Maurice Kraut who signed it is the Architect, all of which is permitted by the Building

Code. This point of Appellants is a plain misstatement of fact.

Moreover, "mere informalities in the proceedings not amounting to jurisdictional defects do not affect the validity of the permit; as for instance informalities or irregularities in the application or notice. * * * Defects in the application for a permit may be waived, as for instance by granting the permit". 43 C. J. 259, Sec. 263.

Answering Point III of Appellants' Brief.

The argument of Appellants in support of this Point has no relevancy to the Point itself. He says that because the City Commission refused a permit in November, 1928, and while the legality of such refusal was being tested in the Supreme Court on mandamus granted such permit in June, 1929, that, therefore, they acted arbitrarily. It does not follow. The situation in June, 1929, might have been entirely different from that obtaining in November, 1928. This was the fact. Between these dates a new apartment had been erected immediately in the rear of the premises in question and the colloquy of the Mayor and the applicant appearing in the minutes (State of Case, p. 5, ll. 18-40) shows that a change had taken place in the locality. In fact, that was the basis of the application to reconsider (State of Case, p. 5, ll. 18-40).

The mere pendency of the mandamus action did not take away from the City its right to act in the matter. As a matter of fact, the alternative writ commanded the City to grant the permit or to show cause. It replied by showing cause, but it could have abandoned that defense and granted the permit at any time. It is rather a novel idea that it was in some way restrained from granting the permit. What specifically restrained it?

Irrespective of the mandamus action, however, let us see if there was arbitrary action in granting the permit.

At least three hearings were held on the application for the permit here under review by the Board of Commissioners of Jersey City, one on August 28, 1928 (p. 36, ll. 25-40; p. 37, ll. 1-10; Exhibit P-9, p. 73, State of Case), another on October 9, 1928 (Exhibit P-11, p. 80, State of Case) and the last one on June 18, 1929, when the permit was granted (Return, pp. 4 and 5, State of Case).

At the hearing on June 18, 1929, it appeared that a new apartment had been erected immediately in the rear thereof and that there was a demand for apartments in the section in which the premises 168-172 Jewett Avenue is located and that that section was going over to apartments. For that reason the application for said permit was reconsidered and granted (p. 5, ll. 15-40, State of Case).

It appears therefore that the said Board had the entire situation in mind and had considered fully all the matters, things and interests involved before granting the permit.

The resolution grants permission to erect the apartment house provided "the plans for same comply with all requirements of the building laws" (p. 4, ll. 1-15, State of Case). The proposed apartment house is to comply with all existing building laws and regulations (Exhibits P-5 and P-6, p. 62, State of Case) and the erection of an apartment house on the property is not prohibited by any zoning or other ordinance.

In view of the foregoing the action of the public officials here under review was not arbitrary.

Answering Point IV of Appellants' Brief.

The surrounding property owners were not entitled to any notice of a hearing on the application for permission to erect the apartment house nor to be heard in opposition to the granting of such a permit.

See Point I of this Brief.

Furthermore, it appears from the record that the surrounding property owners had been given full opportunity to state their objections to the granting of the permit here under review at the hearings held before the Board of Commissioners of Jersey City on August 28, 1928 and October 9, 1928 (p. 36, ll. 25-40; p. 37, ll. 1-10; Exhibits P-9, pp. 73-76; P-10 (1), p. 77; P-10 (2), p. 78; P-11 (1), p. 80; P-11 (2), pp. 81 and 82, State of Case). It will be presumed that the City had in mind all of the objections presented at these hearings, particularly as it was a *reconsideration* that was asked.

It is respectfully submitted that the appeal should be dismissed.

MARK A. SULLIVAN,
Attorney for Respondents, Harry
Goldowsky and Anna B. Malone.

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF

THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

VOLUME THE SECOND

THE HISTORY OF THE

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VOLUME THE SECOND

97 FEB.T.1930

New Jersey Court of Errors and Appeals

J. SIDNEY ADAMS and GLADYS
TOWNSEND,
Prosecutors-Appellants,

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, EDWARD SPOERER,
Superintendent of Buildings
of Jersey City, HARRY GOLDOW-
SKY and ANNA B. MALONE,
Defendants-Respondents.

BRIEF FOR APPELLANTS.

Statement.

The Board of Commissioners of the City of Jersey City adopted a resolution on the 18th of June, 1929, permitting Harry Goldowsky to erect a five-story apartment house at #168-172 Jewett Avenue, in said city. These proceedings seek a review in that action (Resolution, State of Case, p. 5).

The prosecutor, J. Sidney Adams, owns and occupies the residence directly across the street from the site of the proposed building, and the prosecutor, Gladys Townsend, owns and occupies the residence immediately adjoining it (State of Case, pp. 15-17).

Jewett Avenue is a residential street, the buildings erected thereon being mostly one-family

houses, and some two-family houses. They have a setback of about twenty (20) feet from the building line, as indicated by Prosecutors' Exhibit 1 (State of Case, p. 52—p. 10). A fair description of the type building on Jewett Avenue may be obtained by an examination of the photographs (Prosecutors' Exhibits 12-16, State of Case, p. 84).

At the intersection of the northerly side of Jewett Avenue, with the westerly side of Bergen Avenue, there is a thirty-family apartment house as indicated by Respondents' Exhibit 6, which is, however, some six hundred (600) feet distant from the proposed apartment house building, and at the intersection of the southerly side of Jewett Avenue with the easterly side of the Hudson County Boulevard there is a banking house as stated in Respondents' Exhibit 4. With these exceptions the entire block between Bergen Avenue and the Boulevard on Jewett Avenue has been subjected to a uniform residential use.

The apartment house indicated on Respondents' Exhibits 2 and 3 are on Fairview Avenue, and the other on the Hudson County Boulevard. Neither of them are on Jewett Avenue.

The respondent Anna B. Malone is the owner of the plot upon which the apartment is to be erected, and the respondent Harry Goldowsky has contracted to purchase this plot from her. *Respondent Goldowsky holds only a contract of purchase* (State of Case, p. 15).

The plot upon which the apartment is to be erected has a frontage of one hundred (100) feet on Jewett Avenue and a depth of one hundred thirty-six (136) feet, and the new building will cover the entire plot except for areaways, and will have a setback from the building line of about seven (7) feet (State of Case, p. 14). The easterly wall of the building will be distant but three (3)

feet from the westerly wall of the one-family residence of the prosecutor, Gladys Townsend. A general outline of the proposed building is attached to Exhibit P-6 (State of Case, p. 62).

This original application was filed on the 21st day of August, 1928, by one Kraut. Notice was given by the city to all the property owners in the vicinity that the application would be considered at a meeting of the Board of Commissioners on the 28th day of August, 1928 (Exhibit P-10, State of Case, pp. 77-79).

After the objections to the erection of the building had been heard, the application was withdrawn (Exhibit 9, State of Case, p. 76). Subsequently thereto, and on the 29th of October, 1928, Kraut again filed with the Superintendent of Buildings a new application (Prosecutors' Exhibit P-5, State of Case, p. 62), and again notice was given to the property owners on Jewett Avenue of a hearing thereon, before the Board of Commissioners of Jersey City (Prosecutors' Exhibit 11, State of Case, pp. 80-81). At this hearing numerous property owners again voiced their objections (State of Case, pp. 58-61), and the Board of Commissioners adopted a resolution refusing it. Thereupon Anna B. Malone and Harry Goldowsky upon an alternative writ of mandamus sought to compel the issuance of a permit, and the prosecutors, Gladys Townsend and J. Sidney Adams were permitted to intervene and file briefs in the mandamus proceedings. It was argued at the January, 1929, term of the New Jersey Supreme Court, and although no opinion had been filed therein, and the issues raised had not been determined by the New Jersey Supreme Court, the Board of Commissioners, without notice to the prosecutors, or any one of the property owners on Jewett Avenue, did on the 18th day of June, 1929, without a public hearing adopt a reso-

lution authorizing the issuance of the permit. The prosecutors thereupon procured a writ of certiorari in the Supreme Court, and it is from the dismissal of that writ by the Supreme Court that this appeal is now taken. After the dismissal of the certiorari proceedings, the Supreme Court filed an opinion in the mandamus proceeding, holding that the City Commission properly refused to grant the permit in the first instance.

POINT I.

The respondent Goldowsky was not the owner of the apartment house site and does not have such an interest therein as would entitle him to erect the proposed building.

Goldowsky merely held a contract of purchase from Mrs. Malone (State of Case, p. 15). The original contract was never produced by the respondent, and there is nothing in the testimony indicating that Goldowsky had the present right to erect any building on the premises. The witnesses for the respondents referred to the property throughout as the Malone property.

Prosecutors' Exhibit 5 (State of Case, p. 62), which is the application for the building permit, named Harry Goldowsky as the owner, but this permit was not signed by Mrs. Malone or any one representing her. Mrs. Malone was not called as a witness in the proceeding, and there is no testimony that she consented to the erection of an apartment house on the premises.

The Supreme Court has filed an opinion in the mandamus proceeding, *Malone v. Mayor and Aldermen of Jersey City*, 7 Misc. 955, in which the respondents herein appeared as the relator. In that case the Court said:

“As has already been stated, the applicant for the permit was not the owner of the land but merely held a contract for its purchase. *Normally no one but the owner or a person authorized by him to do so has a right to erect a building upon a plot of ground owned by the former.* No such right vests in a person holding a contract for the purchase of the tract. He may default in the performance of his contract. So too the owner may for good cause refuse to perform it on his part. In order to entitle an applicant to the granting of a permit to erect a building upon the land of another, it is necessary for him to show that he has a present right to erect such a building on that land. This case is barren of any proof that such a right was conferred upon Goldowsky by Mrs. Malone; and such fundamental fact not having been shown to exist, the refusal to grant the permit was proper.”

The New Jersey Supreme Court in the case of *Krieger v. Scott*, reported at 4 Misc., page 942 (134 Atl. 901), where a similar question arose in a mandamus proceeding said:

“Our examination of the record discloses that neither the alternative writ nor the agreed state of facts show that the relators are the owners of the property on which they proposed to erect the building referred to in their application, or that they had any interest therein. It is hardly necessary to say that, unless they were the owners of the property, or had such an interest therein as would entitle them to erect the proposed building thereon, the inspector was justified in refusing to issue a permit, although the reason for his refusal afforded no support for his action.”

POINT II.

The action of the City Commission of Jersey City in granting the permit was improper because the petition therefor was defective.

The Building Code of Jersey City required *inter alia* that before any building shall be constructed, a permit shall be granted by the Building Department of the City after an application for that purpose has been made to it. The provisions hereof in respect to this application are as follows:

“All of which shall be accompanied with a statement in writing, sworn to before a Notary Public or Commissioner of Deeds, giving full name and residence, street and number of the owner or of each of the owners of said building, * * * also a statement of the costs of the structure shall be required, duly sworn to as aforesaid.

“If such erection, construction or alteration * * * is proposed to be made or executed by any other person than the owner or owners of the land in fee, the person or persons intending to make such erection or alteration, * * * shall accompany said detailed statement of the specifications and copy of the plans with a statement in writing, sworn to as aforesaid, giving the full name and residence, street and number of the owner or owners of the land, or proposed building, * * * either as owner, lessee, or in any representative capacity, and that he or they are duly authorized to perform or have performed said work” (Part II, Sec. 4, par. 5) (State of Case, p. 49).

Paragraph 1, Section 3, Part II, of the Code states:

“No wall, structure, building or part thereof shall hereafter be built * * * except in conformity with the provisions of this code.”

By reference to the application (State of Case, p. 62) it will be perceived that it does not comply with these requirements. It bears no signature, although it is verified by one Maurice Kraut. The fact that he may act in any representative capacity or that he is authorized to make the affidavit and perform the work etc., does not appear therein.

It is therefore readily apparent that the application is defective and that the City Commission should have rejected the application on this ground.

This point was also presented by the prosecutors herein in the interveners' brief in the mandamus proceedings in the Supreme Court.

POINT III.

The action of the City Commissioners of Jersey City in granting the permit while the mandamus proceedings were pending and undetermined in the Supreme Court was arbitrary.

Reference in the statement has been made to the fact that upon the adoption of the resolution of November 28th, refusing to grant the permit, Anna B. Malone and Harry Goldowsky obtained an alternative writ of mandamus in which proceeding the prosecutors in this cause were permitted to intervene and file briefs. This matter was argued at the January, 1929, Term of the Supreme Court before Part I thereof, and after the argument was referred to the general conference. Anna B. Malone, the owner of the property, and Harry Goldowsky, who desires to erect the apartment house, were the relators in that proceeding and the Mayor and Aldermen of the City of Jersey New and Edward

Spoerer, the Superintendent of Buildings of Jersey City, were the respondents. Yet Goldowsky obtained the permits in June, 1929.

The effect of the granting of the permit without notice to the prosecutors herein, who had been permitted to intervene in the mandamus suit, was to decide adversely to the interveners the litigated questions arising in the mandamus proceeding relating to the right of Harry Goldowsky to erect the apartment house and to the power of the City Commission to grant him a permit to do so. This resolution, granting the very permit which had been refused on November 28, 1928, the legality of which refusal had been submitted by counsel for the owner of the building, the City of Jersey City and the interveners, to the Supreme Court. The permit was granted in the face of the fact that the Supreme Court had not decided the question submitted to it of whether the prior refusal to grant the permit was or was not legal.

In the case of *Concord Development Co. v. Dowling* (6 Misc. 552) this Court said:

“As has been repeatedly stated in like cases which have come before this court for adjudication, we again reiterate that the Board of Adjustment in deciding such applications sits and acts in a judicial capacity and its determination on questions of fact is a finality *unless it clearly appears that the action has been arbitrary.*” (Italics ours.)

The facts in this case demonstrate clearly that the City Commission which acts as the board of adjustment where none has been appointed, acted arbitrarily in granting the permit under the circumstances as outlined above.

POINT IV.

The action of the City Commission of the City of Jersey City in granting the permit was improper in that notice was not given to surrounding property owners of the intention of the Commission to reconsider their previous action.

The application in question was considered on three separate occasions, at meetings of the City Commissioners; first, in August, 1928, at which time the applicant was withdrawn; second, on November 28th, at which time the permit was refused; and again on June 18th, 1929, at which time it was granted.

On the first two occasions full and complete notice of the intention of the Commissioners to consider the application was given to the surrounding property owners (Prosecutors' Exhibits 10 and 11, pp. 77 to 83). Further, it appears that it had been the custom for ten years last past of the City Commission to give notice to all surrounding property owners in all cases where applications for the erection of apartment houses are filed, of the intention of the Commission to consider whether or not the permit should be granted (State of Case, pp. 37 and 38). Such custom having been followed for such period of time, the prosecutors were entitled to rely upon the fact that notice would again be given in the event that the applicant attempted to reopen the matter.

Yet the City Commission on June 18, 1929, without notice to the surrounding property owners or to any one else (State of Case, p. 13) at a public meeting, there being no one of the interested parties present or represented except Mr. Goldowsky,

reconsidered their previous action and granted the permit (State of Case, p. 5).

Such a course of procedure, it is urged, falls within the condemnation of arbitrary action named in the case of *Concord Development Co. v. Dowling (supra)*.

Respectfully submitted,

MARK TOWNSEND, Jr.,
Attorney of Prosecutors.

WILLIAM E. DECKER,
Of Counsel.

THOMAS J. BROGAN
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MORRIS BARISON
LEGAL ASSISTANTS

CITY OF JERSEY CITY

LAW DEPARTMENT

JERSEY CITY, N. J.

February 10, 1930.

J. Sidney Adams and Gladys Townsend

-VS-

The Mayor and Aldermen of Jersey City
Edward Spoerer, Superintendent of Buildings
of Jersey City, Harry Goldowsky and Anna B.
Malone.

To the Justices of the New Jersey Court
of Errors and Appeals,

Honored Sirs:

The Mayor and Aldermen of Jersey City, one of
the respondents in this case had prepared a brief in
answer to the Prosecutor-Appellants.

Today I received copies of the brief for Re-
spondents, Harry Goldowsky and Anna B. Malome, and after
reading the same have come to the conclusion that all of
the argument and cases cited therein constitute the same
identical subject matter which the City intended to use
in its brief. The very nature of this case so far as
the City is concerned makes the answer of the City identical
with the points used in the brief of the respondents,
Goldowsky and Malone, and therefore, to avoid repetition
and save the time of the Court, the City with the consent
of the attorney for the respondents, Goldowsky and Malone,
adopts his brief as and for the brief of The Mayor and
Aldermen of Jersey City and Edward Spoerer, Superintendent
of Buildings of Jersey City.

Respectfully submitted,

Frank J. Reardon

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THOMAS G. BROWN
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CITY OF JERSEY CITY

OFFICE OF THE CITY CLERK

Jersey City, N.J.

1870

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