

COURT OF APPEALS OF MARYLAND

Marek v. Baltimore County Board of Appeals, 218 Md. 351

146 A.2d 875 (1958) · No. No. 26, September Term, 1958 · Decided September 26, 2001

SUMMARY

The Maryland Court of Appeals reviewed approval of a use permit for off-street parking serving a public beach operated as a nonconforming use in a residential zoning district. The court held that the application was not a petition for a special exception, that the zoning ordinance provided sufficient standards for a constitutional delegation of police power, and that the Board's decision was supported by the evidence and was not arbitrary, illegal, or capricious. The court affirmed the lower court's order affirming the Board.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Henry, J., by special assignment; Brune, C.J.; Henderson, J.; Prescott, J.; Horney, J.; Henry, J., Chief Judge of the First Judicial Circuit, specially assigned
JURISDICTION	Maryland
DECIDED	September 26, 2001
DOCKET	No. 26, September Term, 1958
DISPOSITION	affirmed
PROCEDURAL POSTURE	Protestants appealed from an order of the Circuit Court for Baltimore County affirming the Baltimore County Board of Appeals' grant of an off-street parking use permit.
STANDARD OF REVIEW	Review of an administrative zoning decision is narrow. The court may not substitute its judgment for that of the Board, but may set aside the action if it is discriminatory, arbitrary, capricious, or illegal.
PRECEDENTIAL VALUE	Published Maryland Court of Appeals opinion; precedential.
PARTIES	Charles B. Marek and other protestants v. W. Ralph Peddy and Rollin Peddy, Baltimore County Board of Appeals

TOPICS

[zoning](#)[judicial review of agency action](#)[administrative law](#)[municipal law](#)[appellate procedure](#)

PRACTICE AREAS

zoning

administrative law

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constitutional law

QUESTIONS PRESENTED

1. Whether the Peddys' application for an off-street parking permit was effectively an application for a special exception subject to the zoning regulation's eighteen-month bar.
2. Whether section 409.4 of the Baltimore County zoning regulations constituted a valid delegation of the police power.
3. Whether the Board's grant of the off-street parking permit was arbitrary, illegal, invalid, or capricious.
4. Whether the circuit court committed prejudicial error by refusing to admit all of the protestants' proffered testimony.

HOLDINGS

1. The application for an off-street parking permit under section 409.4 was not a petition for a special exception, so the eighteen-month restriction in section 500.12 did not require dismissal.
2. Section 409.4 constituted a valid, lawful, and constitutional delegation of the police power because it supplied sufficient standards to limit administrative discretion.
3. The Board's grant of the off-street parking permit was supported by the evidence and was not arbitrary, illegal, invalid, or capricious.
4. The circuit court did not commit prejudicial error by refusing to admit the balance of the protestants' proffered testimony.

KEY QUOTATIONS

"This Court may not substitute its judgment for that of an Administrative Board, but it may set aside the action of such a Board if such action is discriminatory, arbitrary or illegal." (359)

"There are eight standards set forth in Section 409.4, supra, and we think that they are sufficient to constitute a valid, lawful and constitutional delegation of the police power." (361)

FACTUAL BACKGROUND

The Peddys owned and operated Miami Beach, a public bathing beach on Chesapeake Bay that predated Baltimore County's 1945 zoning and continued as a nonconforming use in an R.6 residential zone. They sought permission to use adjacent land for off-street parking under section 409.4 of the Baltimore County zoning regulations. The Board granted the permit after evidence showed severe traffic congestion and safety problems when beach patrons parked along surrounding roads, and the circuit court affirmed.

PROCEDURAL HISTORY

The Peddys operated a public bathing beach as a nonconforming use in an R.6 residential zone. After an earlier application for an off-street parking permit was denied, the zoning regulation was amended; the Peddys filed a new application, which was initially denied by the Zoning Commissioner but granted by the Board on appeal.

The Circuit Court for Baltimore County affirmed the Board, and the Court of Appeals of Maryland affirmed the circuit court.

DISPOSITION

affirmed

CASES CITED

- Tyrie v. Baltimore County, 215 Md. 135, 137 A.2d 156 (1957)
- State v. Knowles, 90 Md. 646, 45 A. 877 (1900)
- Heath v. M. & C.C. of Baltimore, 187 Md. 296, 49 A.2d 799 (1946)
- Tighe v. Osborne, 150 Md. 452, 133 A. 465 (1926)
- Pressman v. Barnes, 209 Md. 544, 121 A.2d 816 (1956)
- Eckes v. Board of Zoning Appeals, 209 Md. 432, 121 A.2d 249 (1956)
- Root v. City of Erie Zoning Board of Appeals, 180 Pa. Super. 38, 118 A.2d 297 (1955)
- Bishop v. Board of Zoning Appeals, 133 Conn. 614, 53 A.2d 659 (1947)
- Phillips v. Town of Belleville, 135 N.J.L. 271, 52 A.2d 441 (1947)

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