

4067
199 VA 263

Record No. 4705

In the
Supreme Court of Appeals of Virginia
at Richmond

WICKER APARTMENTS, INCORPORATED

v.

CITY OF RICHMOND

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p. m.

199 VA 263

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4705

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 6th day of March, 1957.

WICKER APARTMENTS, INCORPORATED, Appellant,
against

CITY OF RICHMOND, Appellee.

From the Law and Equity Court of the City of Richmond.

Upon the petition of Wicker Apartments, Incorporated, an appeal is awarded it from a decree entered by the Law and Equity Court of the City of Richmond on the 3rd day of October, 1956, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and City of Richmond was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Law and Equity Court in the penalty of one thousand dollars, with condition as the law directs.

RECORD

* * * * *

Received and Filed Jul. 6, 1956.

Teste:

LUTHER LIBBY, JR., Clerk.
By EDW. G. KIDD, D. C.

PETITION.

To the Honorable Judges of said Court:

1. Your petitioner, Wicker Apartments, Incorporated, an existing Virginia corporation, represents to the Court that it is much aggrieved by a decision of the Board of Zoning Appeals of the City of Richmond, Virginia, entered July 2, 1956 in its case No. 56-56, whereby said Board granted a variance in zoning to defendant as to 10.6 acres of land located at the intersection of Old Brook Road and Forest Lawn Cemetery Road, generally known as 4201 Old Brook Road from A-1 Residential to permit defendant to erect a detention home for delinquent children on said property.

2. Jurisdiction is conferred by Section 17.22, 17.23 and 17.24 of "The Charter of the City of Richmond Granted by the General Assembly of Virginia By Chapter 116 of the Acts of the General Assembly of 1948 (Acts 1948, pages 175-275)," as amended.

3. Your petitioner alleges that it verily believes that said decision of the Board is contrary to law and that its decision was arbitrary and constituted an abuse of discretion on the grounds and for the reasons hereinafter set forth.

4. Section 17.20 (c) of said Charter is the Ordinance controlling said Board's decision in this case, and provides as follows:

(c) To permit, when reasonably necessary in the public interest, the use of land, or the construction or use of buildings or structures, in any district in which they are prohibited by the ordinance, by any agency of the city, county or state or the United States, provided such construction or use shall adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property, shall

not unreasonably impair an adequate supply of light and air to adjacent property, shall not increase congestion in streets, and shall not increase public danger from fire or otherwise affect public safety.

page 2 } 5. The City of Richmond was represented by J. Elliott Drinard, City Attorney, and in his statement to the Board cited also Section 17.20 (d) of said Charter, which provides as follows:

(d) To permit the following exceptions to the district regulations and restrictions, provided such exceptions shall by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property, shall not unreasonably impair an adequate supply of light and air to adjacent property, shall not increase congestion in streets and shall not increase public danger from fire or otherwise unreasonably affect public safety (and shall not diminish or impair the established property values in surrounding areas:) ✓

6. Mr. Drinard, acting in his capacity as City Attorney, and as such, legal advisor to said Board, instructed said Board that in view of the provisions of said Section 17.20 (d), the depreciation of property values could not be considered under Section 17.20 (c) by said Board as an element in their determination of whether or not the "welfare of the occupants of the adjoining and surrounding property" would be safeguarded, which such affirmative finding is necessary under section 17.20 (c) before said Board can grant a variance.

7. Counsel for petitioner took issue with said statement of the City Attorney and was immediately advised by the Chairman of said Board that the Board were not attorneys and must of necessity rely upon the opinion of their attorney, the City Attorney, who was acting in the dual capacity of advocate for the City of Richmond and legal advisor to said Board.

8. Your petitioner therefore alleges that the decision of said Board based upon the City Attorney's erroneous interpretation and construction of Section 17.20 (c) of said Charter was erroneous in that the depreciation of property values is an element to be considered along with many other elements constituting "welfare," and to remove any element of welfare is to fail to give due consideration to "welfare" as all the elements make the whole.

9. Your petitioner further alleges that his attorney was advised by a member of said Board subsequent to said decision that said member attached great weight to the City Attorney's said statement that depreciation of property value could not be considered under said Section 17.20 (c), and that such statement influenced his decision to such an extent that but for said City Attorney's statement, page 3 } he personally would have voted against granting the variance, and felt that other members of said Board would have, also.

10. Your petitioner showed to said Board that it alone would suffer a depreciation of its property value of between \$375,000.00 and \$500,000.00, which evidence was uncontroverted. It further showed through H. Powell Seward, Regional Director of F. H. A., whose testimony was uncontroverted, that the Government would not insure mortgages within an area of several blocks of the detention home if it was permitted to be constructed on the proposed site, which such refusal in and of itself would depreciate petitioner's property value and property values in the adjoining and surrounding area.

11. Your petitioner alleges and has good grounds for verily believing that by virtue of the City Attorney's aforesaid instruction to said Board, said Board rendered its decision without properly considering the depreciation of property values in their determination of whether or not the "welfare" of the occupants of the adjoining and surrounding property would be adequately safeguarded.

12. Your petitioner further alleges that the decision of said Board was arbitrary and constituted an abuse of discretion in that said decision by its very terms is obviously a compromise decision intended to placate both parties hereto rather than a decision based upon the law and the evidence presented.

13. Your petitioner alleges that it verily believes that said decision of said Board is contrary to law, was arbitrary, and constituted an abuse of discretion; that the defendant, City of Richmond, unless restrained and enjoined, pending a determination of this case by the Court, will proceed to erect said detention home on said site to the irreparable damage of petitioner.

WHEREFORE, petitioner prays:

(1) that the defendant, City of Richmond, its employees, agents, servants, and independent contractors acting for it

be temporarily restrained and enjoined from doing any act or thing on the 10.6 acres of land at the intersection of Old Brook Road and Forest Lawn Cemetery Road in the City of Richmond, Virginia, generally known as 4201 Old Brook Road, in furtherance of the construction of a detention home on said property until further order of the Court;

(2) that the Court judicially determine whether or not under Section 17.20 (c) of the Charter of the City of Richmond, the Board of Zoning Appeals should consider page 4 } the depreciation of property values as an element, along with many other elements, of the "welfare" to be safeguarded, as said word is used in said Section;

(3) that said decision of the Board of Zoning Appeals of the City of Richmond, Virginia be reversed on the grounds and for the reasons set forth herein; and

(4) that the Court grant petitioner such other, further, and general relief as to equity may seem just.

WICKER APARTMENTS, INCORPORATED.
By E. H. WICKER, President.

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Received and Filed Aug. 31, 1956.

Teste:

LUTHER LIBBY, JR., Clerk.
By EDW. G. KIDD, D. C.

STIPULATION.

It is stipulated by counsel for Wicker Apartments, Incorporated, and for the City of Richmond, acting through its Director of Public Works, that evidence can be produced on behalf of Wicker Apartments, Incorporated, to the following effect:

§1. That counsel for the City of Richmond in his opening statement to the Board of Zoning Appeals read to the Board the provisions of §17.20(c) of the city charter and referred the Board to the provisions of §17.20(d) of the charter, pointing out that the phrase "shall not diminish or impair the established property values in surrounding areas" appears

in §17.20(d) but does not appear in §17.20(c), the section under which the Board was empowered to grant the permit for the use of the property for a detention home, and argued to the Board that the diminution in property values
 page 16 } was not an element that the Board could consider in deciding whether a permit should or should not be granted.

§2. That counsel for Wicker Apartments, Incorporated, took issue with such argument and in his turn argued that the diminution in property values was an element to be considered by the Board in deciding whether a permit should or should not be granted.

§3. That counsel for Wicker Apartments, Incorporated, presented as evidence for consideration by the Board 155 cards signed by persons purporting to be owners and occupants of property surrounding the proposed detention home site, all of which cards contained a statement "I am opposed to the Detention Home being located on the Pine Camp Site because it will adversely affect property values and create an undesirable influence on the children in the area".

§4. That counsel for the City of Richmond objected to the admission of such cards in evidence as they related to property values for the reason that the diminution in property values was not an element that the Board could consider in deciding whether a permit should or should not be granted.

§5. That H. Powell Seward, the Regional Director of the Federal Housing Administration, testified that that agency had approximately \$1,000,000 in insured loans in the area of the proposed detention home site that, in his opinion, would be jeopardized by the proposed use, and that if the detention home was permitted to be erected on the site, that agency, in his opinion, would not in the future insure any loans in an area within two or three blocks of the site or in an area within sight of the detention home.

page 17 } §6. That counsel for the City of Richmond objected to such testimony for the reason that the diminution in property values was not an element that the Board could consider in deciding whether a permit should or should not be granted; and stated to the Board that he desired such objection to run to all testimony with respect to the diminution in property values for the same reason.

§7. That A. L. Blake, Jr., President of Alfred L. Blake & Sons, Incorporated, a real estate brokerage firm in Richmond, Virginia, testified that in his opinion, based on his familiarity with real estate values, including apartment house projects, the value of the property owned by Wicker Apartments, In-

corporated, consisting of 144 dwelling units was \$800,000, and that if the detention home was permitted to be constructed on the proposed site, the property would be depreciated to the extent of \$375,000 within three years. He further testified that in his opinion the property immediately fronting the proposed site would suffer a reduction in rental of 25% and a proportionately less reduction in rent would result to the property farther removed from the proposed site until the property farthest away from the proposed site would suffer a 10% reduction, resulting in an overall average reduction in rent of 15%. He further testified that the valuation he made of the property was based upon the rate of return, which, with overhead remaining constant, would reduce the net return. He further testified that by capitalizing the reduced net return based on 6.5%, it was his opinion that the property would only be worth \$425,000 or a loss of \$375,000. He further testified that if the detention home was moved 200 feet farther from the property his testimony would be the same, but if it was moved a quarter of a mile away his testimony would be different.

page 18 } §8. The objection of counsel for the City of Richmond to all evidence as to the diminution in property values ran to the testimony of Blake.

§9. That K. I. Doran, Vice-President of Mortgage Investment Corporation of Richmond, Virginia, testified that in his opinion that corporation would not lend money secured by deeds of trust on any property located within a radius of two or three blocks of the proposed site and that he knew of no mortgage company in this area that would, if the proposed site was approved for such use. He further testified that his company had a great many loans on property in the immediate area, including the mortgage on the property of Wicker Apartments, Incorporated, and that, in his opinion, the security for such loans would be seriously jeopardized if the proposed site was approved for such use.

§10. The objection of counsel for the City of Richmond to all evidence as to the diminution in property values ran to the testimony of Doran.

§11. That Ernest Mayo, who had been in the building business for a number of years and who is a member of the Board of Review of Real Estate Assessments provided for by chapter 261 of the Acts of the General Assembly of Virginia of 1936, as amended by chapter 422 of the Acts of the General Assembly of 1950, testified that in his opinion the value of the property of Wicker Apartments, Incorporated, would be reduced 25% to 30%; that the cost of maintaining

the property would be increased; and that the City of Richmond would lose in taxes if the detention home was permitted to be constructed on the proposed site.

page 19 } §12. The objection of counsel for the City of Richmond to all evidence as to the diminution in property values ran to the testimony of Mayo.

JOHN W. KEITH, JR.,
DAVID C. RICE,
Counsel for Wicker Apartments, Inc.
J. E. DRINARD,
City Attorney,
Counsel for the City of Richmond.

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STIPULATION WITH RESPECT TO CERTAIN FINDINGS AND CONCLUSIONS OF THE BOARD OF ZONING APPEALS.

It is stipulated by counsel for the City of Richmond and Wicker Apartments, Inc., that the findings and conclusions of the Board of Zoning Appeals, set forth in the minutes of the meeting of the Board of July 2, 1956, to the effect that the

location of the detention home on the Pine Camp property will not unreasonably impair an adequate supply of light and air to adjacent property, will not increase congestion in streets and will not increase public danger from fire,

are not in issue upon this appeal.

J. E. DRINARD,
City Attorney and Counsel for the
City of Richmond.
DAVID C. RICE,
Counsel for Wicker Apartments, Inc.

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OBJECTIONS OF CITY OF RICHMOND TO EVIDENCE
MADE SUBJECT OF STIPULATION.

Counsel for the City of Richmond objects to all of the evidence made subject of the stipulation for the following reasons:

(a) The permit issued by the Board of Zoning Appeals was issued pursuant to the power conferred on the Board by section 17.20(c) of the charter of the City of Richmond, which provides that the Board shall have the power and it shall be its duty to permit, when reasonably necessary in the public interest, the use of land, or the construction or use of buildings or structures, in any district in which they are prohibited by the zoning ordinance by any agency of the City of Richmond provided certain conditions and circumstances are found by the Board to exist. The fact that the diminution in the value of property may or may not result from a permitted use is not a factor that the Board can or may consider in permitting such use of property by the city, as is the case when the Board exercises the power granted in section 17.20(d) of the charter.

page 26 } (b) The Board of Zoning Appeals found that it was reasonably necessary in the public interest to locate the detention home on the parcel of land described in the application of the Director of Public Works for the permit, but denied the application of the City of Richmond to erect the detention home on the site selected by the officials of the city for the purpose, (132 feet more or less from the closest point on the eastern line of Old Brook Road) which is the proposed site referred to in the stipulated evidence, on the ground that the welfare and safety of the occupants of the adjoining and surrounding property was not adequately safeguarded. (Minutes of the Board of July 2, 1956)

(c) The Board of Zoning Appeals granted a permit to erect the detention home on another site on the property 440 feet from the closest point on the eastern line of Old Brook Road upon the condition that a double fence be erected around the play areas connected with the detention home with a minimum of 20 feet between the two fences. (Minutes of the Board of July 2, 1956)

(d) The cards presented as evidence as set out in §3 of the stipulation are inadmissible under the best evidence rule, but irrespective of such inadmissibility, the Board demonstrated that it gave due consideration to the welfare of such

owners or occupants of adjoining and surrounding property by rejecting the site applied for and issuing the permit for the erection of the detention home farther from the eastern line of Old Brook Road conditioned upon the erection of two fences around the play areas with a minimum distance of 20 feet between the two fences. Furthermore, the statement appearing on the cards to the effect that the detention home will adversely affect property values and create an undesirable influence on the children in the area, is not supported with any evidence tending to show why or how such values will be adversely affected or such influence will be created.

(e) The testimony of the witness Seward in §5 of the stipulation is nothing more than an expression of his opinion. There is nothing to indicate what action the Federal Housing Administration will take with respect to future loans within the areas he referred to. The same is true with respect to the testimony of the witness Doran in §9 of the stipulation. It is nothing more than an expression of his opinion. There is nothing to indicate what action his corporation would take about future loans in the areas he referred to. The fact that he did not know of a mortgage company that would loan money on property within the areas referred to does not mean that there may not be companies who would.

(f) The testimony of Blake and Mayo in §§7 and 11 of the stipulation is inadmissible because under §17.20(c) of the charter the diminution in property values was not an element the Board could consider in deciding whether a permit should or should not be granted. Furthermore, the evidence of Mayo to the effect that the City of Richmond would lose in taxes if the detention home is permitted to be constructed on the proposed site is wholly irrelevant and immaterial.

(g) It is the health, safety and welfare of the *occupants* of the adjoining and surrounding property that the Board was directed by §17.20(c) of the charter to consider, and not the claims of Wicker Apartments, Incorporated. Under §17.24 of the charter, the court may reverse or modify the decision of the Board, in whole or in part, only when the court is satisfied that the decision is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion. Unless it is made to appear that the decision is contrary to law or is arbitrary and constitutes an abuse of discretion the court must affirm the decision. The record of the Board shows that is con-

sidered every element it was empowered to consider under §17.20(c) of the charter. There is nothing to indicate arbitrary action or abuse of discretion. On the contrary the record shows that the Board rejected the application to erect the detention home on the site selected because the Board felt that the welfare and safety of the occupants of the adjoining and surrounding property was not adequately safeguarded. It issued the permit to erect the home a much greater distance from Old Brook Road and the property of Wicker Apartments, Incorporated, conditioned upon the erection of two fences at least 20 feet apart. The court can do nothing but affirm the decision of the Board.

J. E. DRINARD,
City Attorney, Counsel for City
of Richmond.

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* * * * *

September 27, 1956.

Honorable J. Elliott Drinard
City Attorney
City Hall
Richmond, Virginia

Messrs Rice, Shaeffer and Keith
Attorneys at Law
18 North 8th Street
Richmond, Virginia

In re: Wicker Apartments, Incorporated
v.
City of Richmond

Gentlemen:

After due consideration of the oral arguments and briefs of counsel for the respective parties to these proceedings,

and independent study of the authorities by the court, it has reached the conclusion that the decision of The Board of Zoning Appeals must be affirmed.

The adverse effect of the decision upon the appellant, Wicker Apartments, Inc., aroused the sympathies of the court, but in spite of them, it feels that the authorities are binding upon it and it cannot do otherwise than as above indicated. The legislation and the case law is now so firmly established, it is not within the power of this court to change, nor proper for it to criticize it. Should any change be desirable the legislature is the proper arm of the government to make the change.

The court does not believe any good purpose would be served by delivering a written opinion, for to serve any good purpose, it must be comprehensive, and therefore lengthy. Time is a vital element in the proper administration of justice, while delays thwart it. That is particularly so in this case.

Both parties have indicated that an appeal would be taken in event of an adverse decision, and the interests of both the City of Richmond and the appellant would be best served by entering judgment in accordance with this letter as promptly as possible to the end that the appeal, if it is to be taken, may be perfected and the case disposed of promptly.

Counsel will please prepare the necessary decree carrying this decision into effect, and if the matter is to be appealed the Court is of the opinion that the suspending bond should be in the same amount as the present injunctive bond. The suspending bond may, if the parties wish, serve also as a *supersedeas*.

Very truly yours,

J. H. RIVES, JR., Judge.

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This cause came on this day to be heard upon the petition of Wicker Apartments, Incorporated; the order entered

herein on July 6, 1956, granting a temporary injunction against the respondent, which expired by its own terms and limitations on October 1, 1956; the record and documents certified by the Board of Zoning Appeals pursuant to the order entered herein on July 10, 1956; the amended petition of Wicker Apartments, Incorporated; the answer of the respondent to the original and amended petition; the stipulation of counsel with respect to certain findings and conclusions of the Board of Zoning Appeals; the stipulation of counsel with respect to certain evidence that could be produced on behalf of Wicker Apartments, Incorporated; the objections of the respondent with respect to such evidence filed in writing; and was argued by counsel.

Upon consideration whereof, the court being of the opinion that the decision of the Board of Zoning Appeals should be affirmed, it is adjudged, ordered and decreed that such decision be and is hereby affirmed; and that the respondent do recover of Wicker Apartments, Incorporated, all loss and damages suffered and sustained by it for or on account of the temporary injunction granted by the order entered herein on

July 6, 1956, together with all costs about its de-
page 32 } fense by it in this behalf expended, and that the
respondent do recover of Wicker Apartments, Incorporated, all loss and damages suffered and sustained by it for or on account of the suspension of this judgment, together with all costs if this judgment is suspended as herein-after provided, to which action of the court Wicker Apartments, Incorporated, excepted.

And Wicker Apartments, Incorporated, having indicated its intention to apply for an appeal from this judgment and decree, it is further ordered that the effect of this judgment and decree in affirming the decision of the Board of Zoning Appeals and awarding costs be stayed for a period of sixty days from this date, provided that prior to the expiration thereof, Wicker Apartments, Incorporated, has duly filed a notice of appeal and its assignments of error herein, and thereafter until such further time as the Supreme Court of Appeals of Virginia shall have finally acted on such appeal, if a petition for an appeal is filed within the time required by law, and further provided that, Wicker Apartments, Incorporated, enter into a bond within fifteen days from the date of the entry of this judgment and decree in the amount of \$100,000.00 with surety approved by the clerk of this court and conditioned to perform and satisfy the judgment awarded by this decree in case the judgment be affirmed or the appeal be dismissed, and also to pay all damages, costs and fees which

may be awarded against or incurred by Wicker Apartments, Incorporated, in the Supreme Court of Appeals, and all actual damages incurred by the respondent in consequence of the suspension of this judgment and decree.

We ask for this:

J. E. DRINARD,
City Attorney
C. B. MATTOX, JR.,
Assistant City Attorney

Seen: We object and except to this:

JOHN W. KEITH, JR.,
DAVID C. RICE,
Counsel for Wicker Apartments, Incorporated.

Enter Oct. 3, 1956.

J. H. R.

Entered O. B. 56, p. 178.

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Received and Filed Nov. 30, 1956.

Teste:

LUTHER LIBBY, JR., Clerk.
By EDWARD G. KIDD, D. C.

ASSIGNMENTS OF ERROR.

(1) The Court erred in affirming the decision of the Board of Zoning Appeals for the reason that said decision of said Board and said Court constituted an unconstitutional exercise of the power of eminent domain in violation of Section 58 of the Constitution of Virginia because petitioner's damage is so large in comparison to the negligible benefit to be derived by defendant's use of said site as a juvenile detention home that it constitutes a damaging within the meaning of

said Section 58 for which compensation must, and is not being paid to petitioner.

page 34 } (2) The Court erred in affirming the decision of the Board of Zoning Appeals because under the evidence adduced before said Board, petitioner's damages loomed so large in comparison to the negligible benefits to be derived by defendant's use of said site as a juvenile detention home that said decision was contrary to law, arbitrary, and an abuse of discretion in that it was an unconstitutional denial to petitioner of due process of law in violation of Article 11 of the Constitution of Virginia and of the Fourteenth Amendment to the Constitution of the United States.

(3) The Court erred in affirming the decision of the Board of Zoning Appeals because said Board was sitting as a court of special and limited jurisdiction with only the powers contained in Section 17.20 of the Charter of the City of Richmond; that as a court of special and limited jurisdiction, it lacks the power to exercise the legislative function of zoning except insofar as strictly limited by the terms and spirit of said Section 17.20; that under the evidence presented, said Board's decision exceeded its power and jurisdiction and is, therefore, contrary to law, arbitrary, and an abuse of discretion.

(4) The Court erred in affirming the decision of the Board of Zoning Appeals because said Board was sitting as a court of special and limited jurisdiction with only the powers conferred by Section 17.20 of said Charter; that under the evidence before said Board, its decision that a juvenile detention home in an area zoned "A-Single-Family Dwelling District" was reasonably necessary in the public interest and adequately safeguarded the welfare of the occupants of the adjoining and surrounding property is contrary to law, arbitrary, and an abuse of discretion.

(5) The Court erred in entering its order in this cause of October 3, 1956 over the objection and exception of your petitioner by including in said order the last paragraph thereof, because your petitioner informed the Court that it did not desire that said order be stayed as provided in the last paragraph of said order.

(6) The Court erred in entering its order in this cause of October 3, 1956 over the objection and exception of your petitioner by including in said order the second
page 35 } paragraph thereof by virtue of the following facts: The "Certificate of Record and Documents *In Re: City of Richmond By Director of Public Works v. Commissioner of Buildings of City of Richmond*," filed by

the Director of Public Works with and in support of his position before the Board of Zoning Appeals, and certified by said Board to the Court, contains a report from the City Planning Commission to the City Manager dated December 22, 1954, which appears correct and legal on its face and has a plat attached thereto, which plat shows the site contemplated to be used for the construction of said home to be at the intersection of Forest Lawn Road and Old Brook Road. Your petitioner discovered on or about October 31, 1956 and more than twenty-one days after the rendition of final judgment by the Court, that in fact, the plat attached to said report contained in said "Certificate of Record" was not the plat attached to said report at the time said report was submitted to the City Manager of the City of Richmond, Virginia and, in turn, recommended by him to the Council of the City of Richmond and approved by them by Resolution No. 55-R6-7 on January 24, 1955, but that the plat originally attached to said report showed the said site to be on the Pine Camp Tract opposite the intersection of Westbrook Avenue and Old Brook Road, which such site is approximately 1,000 feet north of the site now proposed to be utilized, that the site now proposed to be utilized at the intersection of Forest Lawn Road and Old Brook Road has not been approved by the Council of the City of Richmond as required by Ordinance No. 54-90-113 of said Council; that your petitioner had a right to rely upon the statements, plats, and documents contained in said "Certificate of Record"; that had your petitioner had the slightest reason to question the correctness of said plat, it would have done so to the Court; and had the Court had knowledge of the fact that said plat was not the correct plat, the Court would probably, on a new trial of the matter, render an opposite decision from that rendered by it on October 3, 1956.

Dated this 30th day of November, 1956.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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