

SAYS APPEAL BOARDS ESSENTIAL IN ZONING

Statement of Regional Planning Association Urges Necessity of Bodies

The newspapers have recently carried reports of statements in the City Council of Chicago that boards of appeal are now useless, in view of recent decisions of the Supreme Court of Illinois. These reports make desirable a statement regarding the position and powers of such boards under zoning ordinances. Boards of appeal are substantially necessary under the Illinois zoning statutes. They exist, not only in Chicago, but in the 70 zoning ordinances adopted by other municipal bodies in the Chicago region.

Under the Illinois statute, the functions of zoning boards of appeal are two-fold:

Two-Fold Function

(1) to review determinations of building authorities granting or refusing building permits, where the board of appeals thinks the determination of such officers are improperly made under the terms of the ordinance; (2) upon appeal from the building authorities to vary or modify the provisions of the ordinance "where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance."

The constitutionality of the first of these powers has never been questioned, and the appeal so provided is a wise safeguard. The constitutionality of the power to vary the provisions of the ordinance was attacked in *Welton v. Hamilton*, now on rehearing in the Supreme Court of Illinois. In this case the court took the view in the original hearing that the power to vary the application of the ordinance is an unconstitutional delegation of legislative power.

Value of Appeal Board

Zoning experience throughout the country demonstrates the value of boards of appeal, both for the purpose of reviewing determinations of building authorities, and for the purpose of making reasonable variations from the terms of a zoning ordinance in cases of peculiar hardship. Possible abuses of such powers are guarded against in Illinois and elsewhere by provisions for court review of determinations by the boards of appeal.

The specific value of a zoning board of appeals in a particular community depends upon the personnel of the board and upon its intelligent understanding of the scope and legal limitations of its powers. Some of the boards of appeal in the Chicago region have met rarely, and when functioning at all have been largely ineffective. Others have paid little attention to their duties. Still other boards of appeal have permitted wide variations from the letter and spirit of the zoning ordinance, by determinations which by no means could be brought within the limits of their powers under the Illinois statute.

From the beginning of its zoning activities, the Regional Planning association has advised the establishment of boards of appeal in each municipality adopting a zoning ordinance. The association has also sought to advise such boards of appeal specifi-

cally as to their powers and duties. The suburban boards of appeal have on the whole acted efficiently and within their statutory powers. The powers of such boards have been made somewhat doubtful by the recent case of *Welton v. Hamilton*. Until the final disposition of this case by the Supreme Court of Illinois, the following suggestions are made:

1. As to certain of the important powers of boards of appeal there is no constitutional question. Such boards have been created as bodies to review certain determinations of the local building authorities and their functions in this connection are important.

2. The power of zoning boards of appeal to make variations from the strict letter of the zoning ordinance is now unsettled, but until the final decision of the Supreme Court, the zoning boards of appeal should continue to exercise the powers conferred by statute in this respect. However, in allowing variations from the strict letter of the ordinance, the hardships justifying such variation must be shown to be unusual and practical, and the variation so allowed must not be permitted to depart from the spirit and intent of the

zoning scheme. In making such variations, a zoning board of appeal should be certain that sufficient evidence is presented to it in its hearing, and is preserved in its record to sustain its determinations if they are challenged through judicial proceedings.

Should be Possible

It should be possible under the constitution to sustain limited powers of boards of appeal granted by the present statute, subject as such powers are to review by the courts. If

these limited powers are sought to be used to make what really constitute changes in the zoning ordinance, or is sought to be used for purposes running contrary to the purposes of the zoning ordinance, actions thereunder will and should be declared improper by the courts.

The zoning board of appeals is an essential and useful part of the zoning plan. But the usefulness of the board of appeals depends upon the intelligent exercise of the powers conferred upon it.

SENATOR —

HAROLD C. KESSINGER

Senate Leader, Orator, and Editor of Illinois' Great Magazine

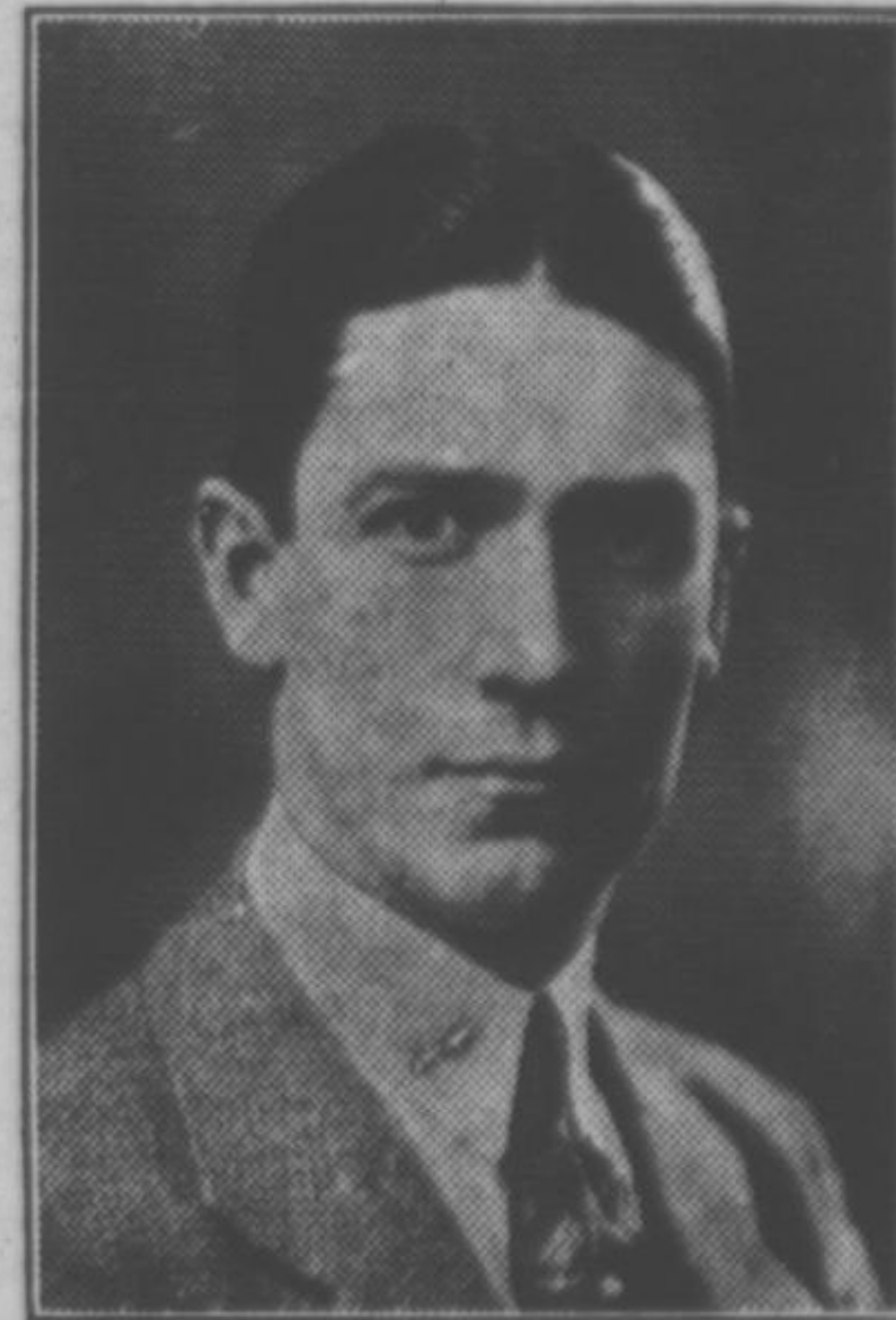
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