

File No. 100108

November 24, 1958

Mr. Franklin W. Aschemeier, Jr.
Acting Zoning Enforcement Officer
Bureau of Building Inspection
Municipal Office Building

Dear Mr. Aschemeier:

This will confirm the opinion given to you on the telephone, the verbal opinion being necessitated by the fact that it was needed immediately in connection with a pending application for a building permit.

In answer to your Question No. 1, it is our opinion that under Section 31 M of the Zoning Ordinance, having to do with the determination of the number of families which may be housed on a lot in connection with the construction of garden type apartments, land which may be given or dedicated to the Mayor and City Council of Baltimore by the owner for the purpose of "creating a street or alley within the lot or tract" cannot be included as a part of the area of such lot or tract of land. Section 31 M is, in effect, a special exception under which land given or dedicated to the Mayor and City Council of Baltimore by the owner "for the purpose of widening a street or alley abutting the lot or tract involved, shall be included in the area of such lot or tract of land." We do not see how the provision in the Ordinance pertaining to land given for the widening of a street or alley abutting on a tract of land can in any way be construed to include the land given for the creating of a street or alley within the tract of land. Special exceptions are strictly construed by the Courts and, as a matter of fact, the Court of Appeals in the case of Sommers v. Mayor and City Council of Baltimore, et al., 215 Md. 1, recognized that streets and alleys are not to be included in determining yard requirements and population density requirements unless there is a special exception specifically permitting such inclusion. Therefore, the answer to your Question No. 1 is in the negative.

In answer to your Question No. 2, it is our opinion that under Section 25 N of the Zoning Ordinance, yard requirements