

ANZA PARKING CORPORATION, Plaintiff and Appellant,  
v.  
CITY OF BURLINGAME, Burlingame Planning Commission, Defendants and  
Respondents.

Oct. 26, 1987.

Grantee of conditional use permit applied for writ of mandate requiring city to enforce conditional use permit, and sought damages against city. The Superior Court, San Mateo County, Thomas M. Smith, J., denied requested relief, and grantee appealed. The Court of Appeal, Elkington, J., held that: (1) conditional use permit could not lawfully be conditioned upon grantee having no right to transfer permit with land, and (2) Government Code section requiring proceeding to attack conditional use permit to be brought within 180 days after date of decision relates to conditions lying within discretion of city's zoning authority, and did not apply to condition beyond authority's power.

Affirmed.

\*857 ELKINGTON, Associate Justice.

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The Anza Shareholder's Liquidating Trust was the owner of land (the land) in the City of Burlingame. It leased the land to an affiliate, Anza Parking Corporation, as an airport parking facility, which lease was to terminate January 6, 1986. Anza Parking Corporation applied to the City of Burlingame for a conditional use permit authorizing use of the land as a parking facility. The conditioned use permit was granted. Among other things its conditions were (1) that it would terminate in 10 years, May 15, 1988, and (2) that it was "nontransferable " by Anza Parking Corporation. Anza Parking Corporation thereupon commenced its parking operations.

Thereafter the Anza Shareholder's Liquidating Trust, then the land's owner, sold parcels of the land to persons who, with their successors, consisted of more than 20 individuals or corporate entities (the new owners). And Anza Parking Corporation

(the land's lessee) subleased the land to, or entered into a management contract with, one whom we shall call the Metropolitan Parking Corporation, which thereupon continued parking operations on it. Thereafter some of the new owners had a dispute with Anza Parking Corporation over the rent which was to be paid. They endeavored, unsuccessfully, to negotiate a new lease with Anza Parking Corporation. They then entered into a new lease with Metropolitan Parking Corporation which by its terms commenced January 7, 1986, following expiration of the existing lease to Anza Parking Corporation.

Anza Parking Corporation thereupon demanded of the City of Burlingame that it "enforce " the "nontransferable" condition of the conditional use permit. The City of Burlingame took no action on the demand, apparently because its attorney advised that the "nontransferable clause" was \*858 invalid. Anza Parking Corporation then commenced the instant action, by which it sought a writ of mandate compelling the City of Burlingame to "enforce " the above noted "nontransferable" condition of the conditional use permit. By its judgment the superior court denied the requested relief. The instant appeal is from that judgment. The principal issue of the appeal may be stated as: Does a municipal zoning authority have power to condition a conditional use permit upon its nontransferability by the person to whom it is granted?

We state the applicable law.

\*\*177 It is the policy of this state that all property, and personal rights of any kind, are freely transferable, unless expressly prohibited by law. ([Civ.Code, §§ 1039, 1040, 1044](#); [Cockerell v. Title Ins. & Trust Co. \(1954\) 42 Cal.2d 284, 292, 267 P.2d 16](#); [Mission Valley East, Inc. v. County of Kern \(1981\) 120 Cal.App.3d 89, 96, 174 Cal.Rptr. 300](#); [United California Bank v. Behrends \(1967\) 251 Cal.App.2d 720, 725, 60 Cal.Rptr. 128.](#))

And it is widely held that a conditional use permit creates a right which runs with the land; it does not attach to the permittee.

[Government Code section 65909](#) provides: "No local governmental body, or any agency thereof, may condition the issuance of any ... use permit ... for any purpose not reasonably related to the use of the property for which the ... use permit is requested." Contrary local law or rulings "are deemed inoperative ([§ 65909](#))." (Our emphasis; [Wiltshire v. Superior Court \(1985\) 172 Cal.App.3d 296, 305, 218 Cal.Rptr. 199.](#))

[County of Imperial v. McDougal \(1977\) 19 Cal.3d 505, 510, 138 Cal.Rptr. 472, 564 P.2d 14](#): "Such permits run with the land...."

"A ... special or conditional use permit runs with the land, [and] with respect to the privileges intended to be conferred, the permittee is chargeable with knowledge of existing zoning ordinances [and statutes] at the time of the issuance and of the fact

that county or city officers and agents have no power to go behind them." (Our emphasis; 66 Cal.Jur.3d (Zoning and Other Land Contracts) §§ 128, 129, pp. 473-474.)

[Cohn v. County Board of Supervisors \(1955\) 135 Cal.App.2d 180, 185, 286 P.2d 836:](#) " 'A variance for the use of property in a particular manner is not personal to the owner at the time of the grant, but is available to any subsequent owner....' "

\*859 The same rule prevails throughout the nation. We quote from a few authorities of sister states.

[Olevson v. Zoning Board of Review \(1945\) 71 R.I. 303, 44 A.2d 720, 722:](#) "It seems clear, speaking generally, that under the terms of the statute and of the ordinance applicable in this cause the respondent zoning board of review is given a broad discretion in fixing conditions and safeguards when variances or exceptions are permitted. That discretion, however, is not unlimited. We have already held that any such condition and safeguard must be reasonable.... The variation or exception as granted is made applicable to Duffy ... himself, instead of being attached to the use of the Thompson property as such. It appears that the decision of the board, rather than providing for a condition relating to that real estate in connection with the type of zoning to be applied thereto, is an attempt to grant Duffy himself a license to operate a boarding and rooming house in the Thompson property as long as he so desires, but that such license is to be entirely personal to him and is to terminate when he ceases to so occupy such property. [¶] In our opinion it does not come within the proper functions of the respondent board to grant the variation or exception in question solely on the basis of the above condition because it amounts really to a mere license or privilege to an individual and does not relate in its proper sense to the use of the property and the zoning thereof. We find, therefore, that the condition imposed by the respondent board is, under all the circumstances and by reason of its nature, beyond the power of the board to impose in connection with the granting of the variation or exception." (Our emphasis.)

[Vlahos v. Little Boar's Head District \(1958\) 101 N.H. 460, 146 A.2d 257, 260:](#) "It is generally recognized that zoning restrictions are constitutional [ly] subject to the qualification that they cannot be unreasonable or arbitrary.... In the present case the variance was not only conditional, which it had a right to be, but the conditions included the requirement of an annual permit, which was also revocable and nontransferable because limited to the specific owner or lessee who was operating the premises for that particular year (condition 9). While this condition might make zoning enforcement easier and has administrative \*\*178 merit, it has been pointed out that it would place the emphasis on the regulation of the person rather than the land, and tend to make it an ad hominem privilege rather than a decision regulating

the use of property. Although the decisions are not numerous, it has been held that such a restriction is invalid because zoning conditions and restrictions are designed to regulate the land itself and its use and not the person who owns or operates the premises by whom such use is to be exercised." (Our emphasis.)

**860 [Guenther v. Zoning Board of Review \(1956\) 85 R.I. 37, 125 A.2d 214, 217:](#)**

**"The action of the zoning board is concerned basically with the land and its use and not with the person who owns or occupies it."**

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...[W]e hold that a conditional use permit may not lawfully (and perhaps may not constitutionally--see [Vlahos v. Little Boar's Head District, supra, 146 A.2d 257, 260](#)) be conditioned upon the permittee having no right to transfer it with the land. Such a condition, if imposed, is beyond the power of the zoning authority, and void.

It will be remembered that another statute, [Government Code section 65909](#), states: "No local governmental body, or any agency thereof, may condition the issuance of any ... use permit ... for any purpose not reasonably related to the use of the property for which the ... use permit is requested." The judgment is affirmed.

RACANELLI, P.J., and NEWSOM, J., concur.

Cal.App. 1 Dist., 1987.

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