

LEROY Y. HAILE

Real Estate and Insurance
418 YORK ROAD
TOWSON 4, MARYLAND

September 26, 1951.

Augustine Mueller, Esq.,
Zoning Commissioner,
Towson 4, Md.

Dear Mr. Commissioner:

Enclosed please find an appeal in the matter of the sign on the roof of the Herzog property at York Road and Joppa Road in Towson, together with my check for \$22000.

Very truly yours,

LeRoy Y. Haile
LeRoy Y. Haile, agent of
John R. and Louise H. Herzog.

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FILED SEP 27 1951

PETITION FOR PERMIT FOR TEMPORARY USE

PROPERTY E. J. York Road, 35 ft. W. Joppa Road - The Advertising Structures John and Louise Herzog, Petitioners

Mr. Augustine J. Muller,
Zoning Commissioner of
Baltimore County,
Towson, Maryland

Mr. Commissioner:

Please enter an appeal in the above entitled case to the Board of Zoning Appeals and transmit all papers to the Board.

John R. Herzog
Louise H. Herzog
Petitioners

10/11
1:30

PETITION FOR PERMIT FOR TEMPORARY USE FOR ERECTION OF TWO ILLUMINATED ADVERTISING STRUCTURES Located between York and Dulany Valley Roads, 35 ft. W. Joppa Road, John R. & Louise H. Herzog, Petitioners The Maryland Advertising Company, Lessee

The property which is the subject of this petition is located between York and Dulany Valley Roads, 35 feet north of Joppa Road, in Towson. It is the intention of the petitioners if a permit is granted to erect two illuminated advertising structures of dimensions 12 feet high by 52 feet long on the roof of the existing structure. One of these signs will face to the south and one to the east.

The intersection of Joppa, Dulany Valley and York Roads is one of the busiest intersections in the County if not in the State. The Chief Engineer of the State Roads Comd on in 1946 stated that Joppa Road, although being only a two lane road, was at that time carrying more traffic than was ordinarily carried by a four lane highway. It is apparent that this traffic has increased in the last five years.

It is felt that the placing of two large illuminated bill-boards at this intersection would tend to aggravate the traffic hazard now existing at this location. The existence of lighted signs, possibly with the lights blinking off and on would be a source of distraction to the drivers of cars and trucks and add to an already dangerous situation.

It is, therefore, the opinion of the Zoning Commissioner of Baltimore County that the granting of a permit for the use of this property for illuminated signs would be detrimental to the safety and welfare of the community and the permit should not be granted.

It is this 21st day of September, 1951, ORDERED by the Zoning Commissioner of Baltimore County that the aforesaid permit be and it so come as hereby denied.

Augustine Mueller
Zoning Commissioner
Baltimore County

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PETITION FOR PERMIT FOR TEMPORARY USE

IN THE MATTER OF
Petition of
John & Louise Herzog
and
The Maryland Advertising Co.,
Lessee

BEFORE THE
ZONING COMMISSIONER OF
BALTIMORE COUNTY

For Permit for
Temporary Use

To the Zoning Commissioner of Baltimore County:

John & Louise Herzog
and
THE MARYLAND ADVERTISING COMPANY
Lessee
Tenant

herby petition for permit for temporary use as prescribed by the Zoning Regulations of Baltimore County and the authority and procedure conferred on said Zoning Commissioner, thereunder, to use

The following described parcel of land, to wit:
To erect (2) illuminated signs on the roof - ea sign 14' x 5'

And the (building) 602-01-06 York Road

For the temporary use as Advertising on Roof

For the period of 7

Subject to the following conditions:

THE MARYLAND ADVERTISING COMPANY
Lessee Tenant
1823 MATHESON BLDG., BALTIM. 2, MD.
Address: Address Towson

John Herzog
Louise H. Herzog
Legal Owner

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LOCHLEY HALL COMPANY, INC., : IN THE CIRCUIT COURT
& body corporate : FOR BALTIMORE COUNTY
VS. :
BOARD OF ZONING APPEALS FOR : AT LAW
BALTIMORE COUNTY :

Mr. and Mrs. John H. Herzog own property on the east side of the York Road about 35 feet north of Joppa Road, in Towson.

The improvements consist of a cinder block building with a brick front and slag roof of irregular dimensions, occupied by several commercial enterprises.

They filed an application with the Zoning Commissioner for permission to erect on the roof of this structure two illuminated advertising signs, 12 feet high and 52 feet long, one of which is to face east and the other south. The zoning Commissioner disapproved this application and his action in doing so was reversed by the Board of Zoning Appeals from whose order an appeal was taken giving rise to this litigation here.

The property is in a commercial zone and in the main business section of Towson. For a distance of at least three blocks to the south and one block to the north there are many commercial advertising signs of all varieties. Immediately south of the Herzog property is a Filling Station illuminated by flood lights, two facing on the York Road and two on the Dulany Valley Road, which parallels the York Road at this point on the East. Across from the subject property is another Filling Station likewise illuminated but perhaps not quite so completely and on the southwest corner of York Road and Alleghany Avenue, somewhat opposite this property, is a Restaurant and Tavern illuminated in the fashion characteristic of those establishments. To the southeast is the new Butzer Store which while not yet completed, nevertheless has a sign running from almost the roof to just above head-level facing south on the York Road and north on the Dulany Valley Road.

PAID
JAN 1 9 1952
COUNTY COMMISSIONERS
BALTIMORE COUNTY
W. W. Webb

MICROFILMED

September 28, 1951

RECEIVED of LeRoy Y. Haile, Agent for John Herzog and wife, the sum of Twenty Two (\$22.00) Dollars, being cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner denying the permit for erection of signs at the intersection of Joppa, York and Dulany Valley Roads, 9th District of Baltimore County.

Zoning Commissioner

PAID
OCT 2 - 1951
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
W. W. Webb

MICROFILMED

January 18, 1952

RECEIVED of Ruth K. Gentruss, the sum of \$6.00 being cost of certified copies of petition and other papers filed in the appeal from the decision of the Board of Zoning Appeals granting a special permit for erection of advertising signs on Herzog property east side of York Road, Towson.

Zoning Commissioner

PAID
JUL 6 - 1951
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
W. W. Webb

MICROFILMED

illuminated but it seems hardly likely it will not be. The whole territory which has been described is Townson's "GREAT WHITE WAY". The illumination for advertising purposes may well be overdone but this is not the test of the legality of this application.

The only regulation for bill-boards or advertising structures which has been adopted by the County Commissioner, under its legislative authority reads as follows:

"In any case a special permit shall be required for a bill-board of advertising structures and such use shall be subject to the following regulation: (a) the special permit may be for an original period not exceeding two years after which it may be re-newed from year to year."

This is the only authority in the Zoning Commissioner or the Board of Zoning Appeals to deal with bill-boards or advertising structures in any way.

It may well be doubted whether under this regulation any authority exists whatever to deny a special permit for such a use. It is not necessary to cite authorities to support the proposition that the lawful use of land by the owner may not be denied nor restricted except upon legal basis, which so far as zoning is concerned means that the restriction of use must be predicated upon defined standards, bearing a reasonable relation to the public health, safety, welfare or morals. No standards at all are set up in this regulation upon which to predicate a refusal for this type of special permit. It may be conceded that a permit for these premises should require somewhat of the same showing as is required for a special permit for other purposes, but until such regulations have been adopted, such a concession lacks the force of law.

The Zoning Commissioner predicated his refusal upon a finding, totally without evidentiary support that,

"The placing of two large illuminated bill-boards at this intersection would tend to aggravate the traffic hazard now existing at this location. The existence of lighted signs, possibly with the lights blinking off and on would be a hazardous distraction to the drivers of cars and trucks and add to an already dangerous situation."

There is no doubt that this location is heavily travelled and congested, but even if the regulation authorized the rejection of such a permit for the reasons indicated in the Commissioner's opinion, there is no testimony in the record whatever to support his findings, except an assumption in which we all may probably indulge, that illuminated signs at least do not aid drivers of motor vehicles.

The protestants are public spirited and civic minded citizens of Towson, whose interest in community problems and community welfare is objective, impartial and commendable. It is their proper desire, and to that end they devote untiring energy to retain the beauty of Towson as a residential community, and to prevent unsightly and unnecessary encroachments, in which category they conceive the proposed signs to be. They call attention to the fact that the Dulaney Valley Road is the entrance to the beautiful Loch Raven Reservoir site, that within a mile of this property is located the National Hampton Historical Shrine and Goucher College and contend that these signs will further aggravate an already unsightly approach to these historical and beautiful areas.

Their objectives find ready sympathy but they are nevertheless an improper basis for the determination of the purely legal rights involved in this proceeding.

The esthetic objection to this application is forceful, but the regulation does not justify its rejection on that ground, even if the regulation attempting to do so would be valid. Although the point was not made in argument the Court has considered also the possibility that the right to erect a bill-board might be restricted to display of advertising matter relating to the business conducted on the premises and does not include advertising foreign to such business. Even though a restriction could be based on that theory, about which in my judgment there is considerable doubt, see Maryland Advertising Company vs. Mayor and City Council of Baltimore, 86, Atlantic (2d) 169, the regulation here involved makes no attempt to do so, and for that reason alone such an objection is inapplicable.

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The regulation here can hardly be said to be a regulation. If it attempts to regulate it fails to define the basis upon which the regulatory action is to be based. Compare for example the regulation on the subject in Baltimore City, where before such a permit may be issued the approval of enumerated governmental agencies must be obtained, in order that an affirmative showing be made that no violations of fire regulations, health regulations or traffic regulations will be involved if the permit is granted. Under our regulation there is just no provision for any of such requirements and no necessity for any showing whatever. It may be that some consideration should be given to the adoption of a comprehensive regulation on this subject but until that is done, the Court must deal as a legal proposition with the regulation as it presently exists.

Even under the City regulation a denial of an application to erect an illuminated poster board was reversed in the Maryland Advertising case (supra) and on March 14th of this year a similar application was likewise reversed by Judge Warnken of the Baltimore City Court in the case of G-Fava Fruit Company vs. the Mayor and City Council of Baltimore.

My conclusion is in Judge Warnken's words:

"That there is no evidence to justify the Board in preventing the applicant from the proposed use of his property, which seems to be a reasonable use under the circumstances."

In other words I conclude that the action of the Board of Zoning Appeals was not arbitrary, that there is no showing on this record that the maintenance of the health, safety, welfare or morals of the community will be jeopardized in any degree by the granting of this application, even if under the regulation, approval thereof could be denied on these grounds, a point not being decided, because it is unnecessary to do so in this case.

The action of the Board approving the application is accordingly affirmed.

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J. Howard Murray,
J. Howard Murray, Judge
ORDERED by the Circuit Court for Baltimore County, this 28th day of October, 1951, that the appeal herein be dismissed and the decision of the Board of Zoning Appeals be affirmed.
J. Howard Murray
J. Howard Murray, Judge.

RE: PETITION FOR PERMIT FOR TEMPORARY USE FOR ERECTION OF TWO ILLUMINATED ADVERTISING STRUCTURES Located between York and Dulaney Valley Roads, 35 Ft. N. Joppa Road, John R. & Louise K. Hersog, Petitioners The Maryland Advertising Company, Lessee

The appeal in the above entitled matter coming on for hearing before the Board of Zoning Appeals of Baltimore County on the 11th day of October, 1951, from an Order of the Zoning Commissioner of Baltimore County dated September 21, 1951, denying the special permit of the property therein described; and it appearing from the facts and evidence adduced at the appeal that the granting of the petition would not be detrimental to the health, safety, and general welfare of the community, therefore

It is this 8th day of November, 1951, ORDERED by the Board of Zoning Appeals of Baltimore County that the petition for a special permit, as aforesaid, be granted and approved.

H. D. Campbell
Chairman
Carl F. Polden
George R. Hummel
Board of Zoning Appeals of Baltimore County

OPINION OF THE BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

This is an appeal by John R. Hersog and Louise K. Hersog, his wife, from an Order of the Zoning Commissioner of Baltimore County dated September 21, 1951, denying a petition for permit for temporary use for erection of two illuminated advertising signs.

The case came on for hearing before the Board and testimony was taken for and against said petition, and counsel for both sides heard.

The property which is the subject of this petition is located between York and Dulaney Valley Roads, 35 feet North of Joppa Road in Towson. The Petitioners are owners of a group of stores fronting on York Road and extending backward in an easterly direction toward the Dulaney Valley Road, and it is upon the roof of this structure that the Petitioners are requesting a permit for the erection of two signs, 12 feet high by 52 feet long, one sign facing the South and one to the East.

Some of the testimony in the case indicated that all such signs were objectionable, but the Board is of the opinion that such an objection is not tenable and especially in this location. This property is located in a distinctly commercial area with other advertising signs in full view from this property. York Road and Dulaney Valley Road, as well as other intersecting streets, are heavily traveled at and near the place of the property in question; yet there was no testimony, nor does the Board believe, that the erection and operation of these signs would impede the flow of traffic or cause an increase in the traffic hazard.

It is the opinion of the Board that the granting of a special permit for erection of two illuminated advertising signs and structures would not be detrimental to the

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health, safety, and general welfare of the community; and, therefore, the Board will sign an order granting the special permit.

H. D. Campbell
Chairman
Carl F. Polden
George R. Hummel
Board of Zoning Appeals of Baltimore County

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District... 9th Date of Posting 8-17-51
Posted for: George R. Hummel
Petitioner: John R. Hersog & Louise K. Hersog
Location of property: on the East side of York Rd. 35 feet North of Joppa Rd.
Location of signs: East side of York Rd. 50 ft. high of 12 ft. x 52 ft. signs
Remarks: in the steel structure facing York Rd.
Posted by: George R. Hummel Date of return: 8-17-51

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NO PLAT
IN
THIS FOLDER