

RE: PETITION FOR SPECIAL HEARING
to determine whether or not the
Zoning Commissioner should approve
an application for a building permit
to be issued without complying with
Sections 200.15 and 203.2 of the
Baltimore County Zoning Regulations.
Special Hearing will be held to de-
termine whether or not a special
exception is required.
N/S Welford Road 162.5' West of
Margate Road (202 Welford Road)
8th District
Heinrich N. Putzchi,
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 64-137-SPH

This case comes before the Board on appeal from an Order of the Zoning Commissioner dated May 13, 1964 following a special hearing conducted by the Zoning Commissioner. In his Order the Commissioner ordered that the entry made on Building Permit Application No. 14469, reassigned as No. 15767, be disregarded as not approved by the Zoning Commissioner, and that permit 15767 is in violation of the Zoning Regulations and that the antenna proposed to be erected should not be constructed.

The facts in this matter are not disputed by either the petitioner (appellant) or Baltimore County. Mr. Putzchi applied for a building permit to erect an antenna (ham) antenna on his property, which is zoned R-10, early in 1964. The Building Engineer, an advice of the Zoning Commissioner, refused to issue the permit on the basis that the proposed antenna would require a special exception under Section 200.15 of the Regulations. This denial was subsequently appealed to the Board of Appeals on case No. 14469, and on February 13, 1964 the Board of Appeals (differently constituted from the present Board) filed an opinion that in essence determined that the proposed antenna would not require a special exception, ruling that, in their opinion, a special exception would be required if the structure would be used commercially. Subsequently the permit was issued and the antenna constructed in accordance with the permit that had been filed. This decision of the Board was not appealed to the Circuit Court. On May 13, 1964 the Zoning Commissioner, following the aforementioned special hearing, again ruled the building permit in violation and, in effect, attempted to override the decision of the Board of Appeals.

The Assistant County Solicitor contends that the decision of the prior Board, dated February 13, 1964, was so potentially in error as to be illegal and ultra vires. With this contention the Board cannot agree. We feel that the Board has the power to interpret the Zoning Regulations and to determine legislative intent in the Zoning Regulations, and the matter of interpretation of the meaning of the words "wireless transmitting and receiving structure" in Section 200.15 of the Regulations is a proper matter for consideration by the

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Charles D. Wheeler, Jr. Date: April 16, 1964.
FROM: Office of Law
SUBJECT: Miscellaneous Application #15767 (#14469)

You have asked our opinion as to whether the above captioned permit should be issued.

It is our understanding that a hearing was held before the zoning commissioner, at which the application was denied. Subsequently an appeal was taken by the applicant to the Board of Appeals and as a result of the hearing before said board, the decision of the zoning commissioner was overruled and it was ordered that the permit should be granted. Since the time for filing an appeal to the Circuit Court for Baltimore County has now expired, it is our opinion that you must grant the permit.

William J. Bland, Jr.
Assistant County Solicitor

Approved:

E. Scott Moore
County Solicitor

ESM:WJB:rlp

cc Mr. John C. Rose

RECEIVED
OFFICE OF THE COUNTY SOLICITOR
APR 16 1964
3:00 PM

Board. The meaning of that phrase, like other parts of the Zoning Regulations, is subject to reasonable differences of opinion.

We do not make any decision here as to the correctness or incorrectness of the previous Board's Order of February, 1964 as we do not think that this is properly before us. If the County felt that the aforementioned Board's decision was incorrect, then the proper remedy would have been an appeal to the Circuit Court for a final determination of the matter. Since no appeal was taken the Board feels that the matter was finally determined in February of 1964, and it is to us seems incomprehensible that the Zoning Commissioner can hold a hearing and, in effect, reverse the decision of the Board of Appeals without any change in parties, circumstances, or proposed use of the property. If this were true there could never be any finality in the administrative process.

After the issuance of a building permit has been decided, a post-mortem finding of violation by the Zoning Commissioner under Sections 500.6 and 500.7 adds nothing new to the case. We simply cannot hold a man entitled to a permit, and then turn around and tell him that he is in violation for building under that permit.

Therefore, the Order of the Zoning Commissioner must be reversed.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

R. Bruce Alderman

Paul T. McHenry, Jr.

DATE: July 27, 1965



RE: PETITION FOR SPECIAL HEARING:
202 Welford Road, 8th Dist.,
Application for Building Permit
Heinrich N. Putzchi and wife,
Applicants

BEFORE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 64-137-SPH

NOTICE OF APPEAL

To the ZONING COMMISSIONER OF BALTIMORE COUNTY:

Please note an appeal on behalf of Heinrich N. Putzchi and wife from the Order of the Zoning Commissioner rendered May 13, 1964 in the above captioned cause and transmit the record of the proceedings to the Board of Appeals.

Walter B. Swinski
Attorney for Heinrich N.
Putzchi and wife
206 W. Pennsylvania Ave.
Towson 4, Maryland
VA. 5-4200

LAW OFFICES
WALTER B. SWINSKI
206 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

June 8, 1965

County Office of Appeals
County Office Building
Towson, Maryland 21204

Attention: Mr. William S. Baldwin

Re: Zoning File No. 64-137-SPH
Heinrich N. Putzchi

Dear Mr. Baldwin:

I am in receipt of your letter of May 27, 1965 together with the enclosed questionnaire.

I do not anticipate at this time calling any witnesses because the questions raised in this appeal are questions of law only, all facts having been stipulated by the Zoning Commissioner of Baltimore County.

It is my impression that this matter, which was initiated by the Zoning Commissioner of Baltimore County, is a moot question as to my client for the reason that the Board of Appeals issued a memorandum opinion and order on February 13, 1964 granting the miscellaneous building permit for the erection of a radio transmitting and receiving antenna. As a result of this opinion and order, Permit No. 15767 was issued on April 20, 1964.

May I invite your close attention and study of these proceedings which appear in your file No. 14469?

Very truly yours,

Walter B. Swinski
WBS:RZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Appeal was served upon the County Solicitor of Baltimore County, this day of January, 1965, in accordance with the requirements of Baltimore County Code, Section 5-5 (a).

Walter B. Swinski

BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY

HEINRICH N. PUTZCHI
Applicant and Appellant
vs.
BUILDINGS ENGINEER OF BALTIMORE COUNTY

APPEAL FROM
DENIAL OF BUILDING PERMIT
8TH ELECTION DISTRICT
Miscellaneous Application
No. 14469

PETITION FOR APPEAL

TO THE BOARD OF APPEALS OF BALTIMORE COUNTY:

The Petitioner of HEINRICH N. PUTZCHI, Applicant and Appellant, by WALTER B. SWINSKI, his attorney, under the provisions of the Charter of Baltimore County, Maryland, Section 602 (c), and the Baltimore County Code, Section 5-5 (a), respectfully represents unto the members of the Board of Appeals as follows:

1. That he is a citizen and resident of Baltimore County, Maryland, and a taxpayer of said County, residing at 202 Welford Road, 8th Election District of Baltimore County.
2. That he is the owner of the said property wherein he resides at 202 Welford Road, having acquired said property in fee simple by purchase on July 15, 1962 by deed from Highfield Land Company, a corporation, recorded among the Land Records of Baltimore County on July 25, 1962, in Liber W.J.R. No. 4021, folio 105; that the aforementioned property is located in a development in the 8th Election District of Baltimore County known as "Terk Manor" and is described as Lot No. 75, Block 3, Plat 1 of Terk Manor, said plat being duly recorded among the Land Records of Baltimore County in Plat Book W.J.R. No. 27, folio 26.
3. That, by profession, your Petitioner is an electronics engineer, being employed in the defense industry in Baltimore County; that your Petitioner is and has been a radio amateur, being duly qualified and licensed under the regulations pertaining thereto as promulgated by the Federal Communications Commission.
4. That, acting through his agent and attorney, your Petitioner did, on December 10, 1962, file a miscellaneous application for a building permit with the Buildings Engineer of Baltimore County for the erection of an amateur radio transmitting and receiving antenna, said miscellaneous application having been designated by the Buildings Engineer as No. 14469.
5. That, by letter dated December 17, 1962 and received by your Petitioner's agent and counsel on December 18, 1962, your Petitioner was advised by the Assistant Buildings Engineer that the application aforementioned was denied by the Assistant Buildings Engineer because the same

had been disapproved by the Zoning Department, expressed in the manner following:

- "This application has been disapproved by the Zoning Department. Their reason is in Section 200.2 of their regulations, which calls for a special exception to the regulations for such antenna."
6. That your Petitioner is aggrieved by the action of the Buildings Engineer on his application for miscellaneous building permit as aforementioned, and hereby petitions the Board of Appeals for a review of the action of the Buildings Engineer and, as a ground therefor, asserts that the action of the Buildings Engineer of Baltimore County was arbitrary and unlawful for the following reasons:
 - (a) That the zoning regulations of Baltimore County pertaining to wireless transmitting and receiving structures are arbitrary, unreasonable and unlawful because they bear no reasonably or direct relationship to public health or general welfare, nor do said regulations bear any reasonable relationship to any of the other standards for zoning regulations as set forth in the Baltimore County Code, Section 23-18.
 - (b) That the zoning regulations of Baltimore County pertaining to wireless transmitting and receiving structures, as applied to the instant case, are unlawful and void because they are vague, indefinite and ambiguous.
 - (c) That the zoning regulations of Baltimore County pertaining to wireless transmitting and receiving structures, as applied in this particular case, are unnecessary or incidental to a residential use, are unlawful, void and of no legal effect because they deprive your Petitioner of his property without due process of law.
 - (d) That the zoning regulations of Baltimore County pertaining to wireless transmitting and receiving structures, as applied in this particular case, are void, unlawful and of no legal effect because they offend the Constitution of the United States in that they discriminate against your Petitioner and deny him equal protection under the law.
 - (e) And, for such other and further reasons to be shown at the hearing hereof.
- WHEREFORE your Petitioner prays that the action of the Buildings Engineer of Baltimore County in denying your Petitioner's application for a building permit be reversed, and that the permit applied for by your Petitioner be granted.

AND, AS IN DUTY BOUND, ETC.

Walter B. Swinski
Attorney for Petitioner
206 W. Pennsylvania Ave.
Towson 4, Maryland
VA. 5-4200

HEINRICH N. PUTSCHI
202 Welford Road
NO. 64-137-SPH
8th District

SH to determine whether or not the Z.C. should approve an application for a building permit to be issued without complying with Section 200.15 and 203.2 of the Zoning Regulations. SH will be held to determine whether or not a special exception is required

May 13, 1964 Building Permit DENIED by Z.C.
" 18 Order of Appeal to County Board of Appeals
July 27, 1965 Building Permit GRANTED by the Board
(Baldwin, Alderman & McHenry)

GRANTED



LAW OFFICES
WALTER B. SIWINSKI
200 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

April 29, 1964

Mr. John G. Rose
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Special Hearing No. 64-137-SPH
Heinrich N. Putsch

Dear Mr. Rose:

After having our telephone conference on Tuesday, April 28, 1964 in connection with your letter to me of April 24, I feel that not only the dictates of good practice but also the demands of courtesy require me to state the position which I must take on behalf of my client, Mr. Putsch, in response to the petition which you have filed and the hearing which you have arranged under the above captioned file number.

I perused the petition rather briefly and discovered that you have filed a petition on my client's behalf, naming him as a petitioner and have arranged a hearing and in connection therewith, ordered the posting of my client's property giving notice of the hearing.

It is my impression, and therefore I must take the legal position that this action, at least in the form which it has taken, is unlawful. My client has not appointed anyone except myself as his attorney in this matter and has therefore not authorized anyone else, including the Zoning Commissioner, to initiate proceedings in his name and apparently on his behalf. In addition to this, he has not expressly or implicitly given his authority to any officers or agents of Baltimore County to enter upon his property and to post signs thereon.



LAW OFFICES
WALTER B. SIWINSKI
200 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

April 21, 1964

Mr. John G. Rose
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Special Hearing No. 64-137-SPH
Heinrich N. Putsch

Dear Mr. Rose:

I have your notice as above referred to, but I am not specifically advised about the nature of this petition for special hearing.

In view of the fact that the Department of Permits and Licenses has issued Mr. Putsch permit No. 15767 dated April 28, 1964, and this under legal advice from the County Solicitor, I cannot imagine that the special hearing as scheduled would purport to discuss and decide the question of Mr. Putsch's right to proceed in accordance with the permit.

In any event, I should like to be advised of the nature of the matters to be considered under this petition so that I might advise my client seasonably.

It is not my purpose, nor is it my client's, ever to ignore the courtesy of a notice from any department or agency of Baltimore County, and it is for this reason that I should like to have, if possible, a copy of the petition, or at least a resume of the same, so that I can decide what, if any, position we must take in response thereto.

Very truly yours,

Walter B. Siwinski

Mr. John G. Rose
Zoning Commissioner

April 29, 1964
Page 2

I am inclined to the opinion that the entry upon Mr. Putsch's property and the posting of the sign constitutes a trespass, and in accordance with this opinion I have caused the sign to be removed. Because the sign is the property of Baltimore County it will be kept intact for delivery to the agents of Baltimore County at such time as will suit the mutual convenience of all concerned.

It is my further impression that under the provisions of the zoning regulations, Regulation 500.2c, the only time that property can be conspicuously posted is upon the filing of an application by the owner of the property for a change in or reclassification of use. It does not appear that there are any other provisions for the posting of property for hearings which are initiated by other than the property owner. Nothing of the sort is provided in Sec. 500.6, dealing with alleged zoning violations, nor Sec. 500.7, when action is instituted by the petition of any interested person, etc. This latter section provides for a public hearing after "advertisement and notice". There does not appear to be any authority whatever permitting the posting of property except on petitions filed by a person with a legal interest in the land itself.

If I should be mistaken in my observations concerning the legality of this proceeding, at least in the form it has taken, and the regulations applicable to the posting of property, I should be most grateful if you would so advise me, with specific reference to regulations, public local laws, ordinances of the County Council, and case law.

As I stated in my telephone conversation with you I shall, God willing, attend the scheduled hearing on May 13, 1964 at 1:00 P.M., it being understood from the tenor of our conversation that the presence of Mr. Putsch would not be required.

Mr. John G. Rose
Zoning Commissioner

April 29, 1964
Page 3

With kindest personal regards, I am

Very sincerely yours,

Walter B. Siwinski

WBS:WZ
c.c. Mr. Heinrich N. Putsch

Walter B. Siwinski, Reguire
206 West Pennsylvania Avenue
Towson, Maryland 21204

Re: Special Hearing No. 64-137-SPH
Heinrich N. Putsch

Dear Mr. Siwinski:

I received your letter yesterday pertaining to the above entitled matter.

I want to make it very clear to you that you have attempted to circumvent the interpretation of the Baltimore County Zoning Regulations by the Zoning Commissioner. The County Solicitor does not interpret the zoning regulations but may only give an opinion concerning them.

I believe I made it very clear to you when you first approached me on this matter that a Special Exception for the use proposed by your client was necessary.

My I also make it clear to you that I shall consider any use of permit 15767 as being a possible violation of the Baltimore County Zoning Regulations and I shall thence not set that matter down for hearing as an alleged violation.

If this is not clear enough I shall be glad to meet with you and explain still further. You should have availed yourself of Section 500.7 of the Baltimore County Zoning Regulations and petitioned the Zoning Commissioner for an interpretation of any regulations you and your client did not understand or with which you did not agree.

The proper procedure in these matters is to have an opinion and order of the Zoning Commissioner, as yet to appeal to the County Board of Appeals and then onto the Circuit Court, etc. The first interpretation must be made by the Zoning Commissioner.

Sincerely yours,
Walter B. Siwinski
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: May 1, 1964

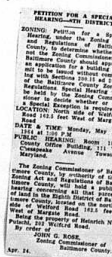
FROM: Mr. George E. Gavrilis, Acting Director

SUBJECT: 64-137-SPH - Special Hearing to determine whether or not the Zoning Commissioner of Baltimore County should approve an application for a building permit to be issued without complying with Sections 200.15 and 203.2 of the Baltimore County Regulations. Special Hearing will be held by the Zoning Commissioner to decide whether or not a Special Exception is required. Northside of Welford Road, 162.5 feet West of Margate Road, being property of Heinrich N. Putsch.

8th District

HEARING: Monday, May 11, 1964 (1:00 P.M.)

The Planning staff does not have sufficient information on the subject petition to offer objective comment thereon.



CERTIFICATE OF PUBLICATION

TOWSON, MD. April 21, 1964

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md. once in each week. I received the advertisement before the 11th day of May, 1964. The first publication appearing on the 11th day of May, 1964.

THE JEFFERSONIAN,

Frank M. Smith
Manager

Cost of Advertisement, \$.....

PETITION FOR A SPECIAL
HEARING—8TH DISTRICT

NOTICE: Petition for a Special Hearing, under the Zoning Law and Regulations of Baltimore County, to determine whether or not the Zoning Commissioner of Baltimore County should approve an application for a building permit to be issued without comply- ing with Sections 150.11 and 151.2 of the Baltimore County Zoning Regulations. Special Hearing will be held by the Zoning Comma- dessor to decide whether or not a Special Exception is required. LOCATION: North side of Waldorf Road 142.5 feet West of Surrogate Road. DATE & TIME: Monday, May 11, 1964 at 1:00 P.M. PUBLIC HEARING: Room 104, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Law and Regulations of Baltimore County, will hold a public hearing concerning all the parcels of land in the Eighth District of Baltimore County, located on the north side of Waldorf Road 142.5 feet West of Maryland Road, listing the property of Heinrich N. Putzsch, 212 Waldorf Road. By order of
ZONING G. ROSE,
Zoning Commissioner of
Baltimore County.
Apr. 24.

DUPLICATE

CERTIFICATE OF PUBLICATION

TOWSON, MD. April 24, 1964

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on ~~March 24~~

at 1 time ~~successive~~ before the 11th day of May 1964, the first publication appearing on the 24th day of April 1964.

THE JEFFERSONIAN,

Frank Sturtevant
Manager.

Cost of Advertisement, \$.....

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District *8th* Date of Posting *4/25/64*
Posted for *Heinrich N. Putzsch* at *1:00 P.M.*
Petitioner: *Heinrich N. Putzsch*
Location of property: *202 Waldorf Rd.*
Location of Signs: *On front lawn of 202 Waldorf Rd. and on 6 ft. driveway to house - flag and sign.*
Remarks: *2 ft. from sidewalk of Waldorf Rd.*
Posted by *Robert G. Ruhl* Date of return *4/29/64*
Signature

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District *8th* Date of Posting *5/28/64*
Posted for: *Heinrich N. Putzsch*
Petitioner: *Heinrich N. Putzsch*
Location of property: *202 Waldorf Rd.*
Location of Signs: *On front lawn of 6 ft. from driveway and 5 ft. from walkway of Waldorf Rd.*
Remarks:
Posted by *Robert G. Ruhl* Date of return *6/4/64*
Signature

NO PLAT
IN
THIS FOLDER

MICROFILM