

Petition for a Variance to
permit an extension on property
W/S Sherwood Road 800 feet
South of Register Avenue -
9th District - Salvador
Vazquez - Petitioner

HEARING
BEFORE THE
DEPUTY ZONING COMMISSIONER
CASE NO. 65-56-A

A hearing was held at 10:50 A.M. on August 24, 1964, concerning a Variance to permit an extension of a non-conforming use of 41% instead of the permitted 25% and also seeks variances to the parking and front yard setback requirements in the Zoning Regulations. These Variances would be necessary if the petitioner desires to enlarge his existing barber shop.

During the course of the hearing, the attorney representing the protestors moved for a dismissal of the petition on the grounds that the Zoning and/or Deputy Zoning Commissioner lacks the authority to grant a Variance to permit an extension of non-conforming use in excess of the permitted 25% expansion. With this contention the Deputy Zoning Commissioner agrees.

The extension of a non-conforming use is the exercise of a power different from and more limited than the variance power. 101 C.J.S., Zoning, Sec. 270 at 1033. The power of zoning authorities to extend non-conforming uses is limited by the Zoning Ordinance (23 M.L.R., Zoning, Sec. 18 at 458), and Section 104.1 of the Zoning Regulations specifies that no non-conforming use shall be extended by more than 25 per cent.

In *Kenyon v. Board*, Daily Record, July 21, 1964, the zoning ordinance authorized the extension of a non-conforming use, but not in excess of 25 per cent of the existing floor area. The Court of Appeals held that this limitation precluded the Board from issuing a permit authorizing an extension of approximately 62 per cent.

Based on the foregoing authority, it is the opinion of the Deputy Zoning Commissioner that he lacks authority to grant a Variance to Section 104.1 Zoning Ordinance of a non-conforming use in excess of the permitted 25% expansion. In view of this holding, it is unnecessary to discuss the merits of the petitioner's request for Variances to Section 409.2 (b) Paragraph (b) parking and Section 211.2 (front yard setback).

For the foregoing reasons, it is ORDERED by the Deputy Zoning Commissioner of Baltimore County this 10th day of September, 1964, that the above Variances be and the same are DENIED.

Edward D. Hardesty
Deputy Zoning Commissioner
of Baltimore County

65-56-A

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edward D. Hardesty
Deputy Zoning Commissioner
Date: September 1, 1964

FROM: Office of Law

SUBJECT: Zoning File #65-56-A

You requested of this office an opinion as to two questions raised in the above matter.

1. Whether the Zoning and/or Deputy Zoning Commissioner lacks the authority to grant a variance to Section 104.1 to permit an extension of a non-conforming use in excess of the permitted 25 per cent expansion.

The extension of a non-conforming use is the exercise of a power different from and more limited than the variance power. 101 C.J.S., Zoning, Sec. 270 at 1033. The power of zoning authorities to extend non-conforming uses is limited by the Zoning Ordinance (23 M.L.R., Zoning, Sec. 18 at 458), and Section 104.1 of the Zoning Regulations specifies that no non-conforming use shall be extended by more than 25 per cent. It is my opinion that this limitation precludes the Zoning and/or Deputy Zoning Commissioner from authorizing an use in excess thereof.

In *Kenyon v. Board*, Daily Record, July 21, 1964, the zoning ordinance authorized the extension of a non-conforming use, but not in excess of 25 per cent of the existing floor area. The Court of Appeals held that this limitation precluded the Board from issuing a permit authorizing an extension of approximately 62 per cent.

2. Whether the Zoning and/or Deputy Zoning Commissioner lacks the authority to grant variances to area and parking requirements so far as they apply to non-conforming uses.

RECEIVED
BALTIMORE COUNTY
100 S. of REGISTER
Ave.
9th
DISTRICT

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: E. Scott Moore, Esquire
Office of Law
FROM: Edward D. Hardesty
Deputy Zoning Commissioner
SUBJECT: Zoning File No. 65-56-A

Date: August 25, 1964

The petitioners have requested a Variance to Section 104.1 to permit an extension of a non-conforming use of 41% instead of the permitted 25%, to Section 109.2 (b) Paragraph (b) to permit a front yard setback for another principal building of 20 feet from the front property line instead of the required 30 feet and 50 feet from the center line of the street instead of the required 50 feet and 50 feet from the center line of the street instead of the required 50 feet.

The counsel for the protestors has raised the following points of objection:

- (1) The Zoning and/or Deputy Zoning Commissioner lacks the authority to grant a Variance to Section 104.1 to permit an extension of a non-conforming use in excess of the permitted 25% expansion.
- (2) The section of the Zoning Regulations dealing with area and parking requirements does not apply to non-conforming uses and therefore cannot be the subject of a petition for variances in the subject design. In the alternative, the Zoning and/or Deputy Zoning Commissioner lacks the authority to grant Variances to area and parking requirements so far as they apply to non-conforming uses.

I would appreciate an opinion from your office with respect to the objections as set forth above.

EDWARD D. HARDESTY
Deputy Zoning Commissioner

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Edward D. Hardesty

- 2 -

September 1, 1964

Initially, it is difficult, in principle, to reconcile how an owner of a non-conforming use, who is entitled to the restrictive aspects of the zoning ordinance, can be entitled to the beneficial aspects thereof (by applying for and obtaining a variance). The spirit underlying zoning regulations is to restrict rather than increase non-conforming uses. 23 M.L.R., Zoning, Sec. 18 at 457. Yet, there can be no doubt that the owner of a non-conforming use enjoys a vested right and is entitled to constitutional protection. *Amerzahn v. Kottas*, 194 Md. 591, 601.

I have found no case holding the owner of a non-conforming use is, by virtue of that fact alone, precluded from applying for and obtaining (in a proper case) a variance. I have found many cases which consider such an owner's right to apply for a variance, and either grant it (*In re Pierce's Appeal* (Pa.), 119 A.2d 566) or deny it (*Brand v. Board* (N.Y.), App. 1, 44 A.2d 18; *Cleland v. Baltimore City*, 198 Md. 440). Unfortunately, however, these cases cannot control our question because they pivot on ordinances different from Baltimore County's.

In view of the foregoing, I believe the law to be aptly set forth in 101 C.J.S., Zoning, Sec. 286 at 1057-1058:

"Since the spirit of the zoning act has been to restrict, rather than to increase, nonconforming uses, the power to grant variances or exceptions should, or must, be exercised sparingly, or very moderately, lest the power to grant variances or exceptions should be abused."

Accordingly, I conclude that the Zoning and/or Deputy Zoning Commissioner has the authority to grant variances to area and parking requirements so far as they apply to non-conforming uses but that this authority must be exercised with the extreme restraint called for by C.J.S.

Approved:

E. Scott Moore
County Solicitor

HG:vm

Harriet James George
Assistant County Solicitor

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Salvador A. Maria Vazquez, legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 104.1 to permit an extension of a non-conforming use of 41% instead of the permitted 25%. Section 409.2b, Paragraph (b). To permit zero off-street parking spaces instead of required two spaces. Section 211.2. To permit a front yard setback for another principal building of 20 feet from the front property line instead of the required 30 feet and 50 feet from the center line of the street instead of the required 50 feet and 50 feet from the center line of the street. The Zoning Regulations of Baltimore County, in the Zoning Law of Baltimore County for the following reasons: ~~understandably~~ practical difficulty.

Practical difficulty - This has been a barrier shop on a non-conforming use for twenty-five years. This expansion is needed to accommodate customer's requirements due to population growth of the neighborhood.

See Attached Description

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, hereby agree to show, advertise, post, etc. upon filing of this petition, and further agree to be and to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law of Baltimore County.

Contract purchaser
Address
Witness
Notary Public
Address

ORDERED BY The Zoning Commissioner of Baltimore County, this 14th day of July, 1964, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County, Room 100, County Office Building in Towson, Baltimore County, on the 21st day of August, 1964, at 10:00 o'clock A.M.



(over)

Zoning Commissioner of Baltimore County

OFFICE OF THE BALTIMORE COUNTEAN

THE COMMUNITY NEWS
Baltimore, Md.

THE HERALD - ARGUS
Catonville, Md.

No. 1 Newburg Avenue

CATONVILLE, MD.

August 11, 19 64.

THIS IS TO CERTIFY, that the enclosed advertisement of John G. Moore, Zoning Commissioner of Baltimore County

was inserted in the BALTIMORE COUNTEAN, a group of three weekly newspapers published in Baltimore County, Maryland, once a week for one week ~~successive weeks~~ before the 11th day of August, 1964, that is to say the same was inserted in the issues of

August 7, 1964.

THE BALTIMORE COUNTEAN

By: *Paul J. Morgan*
Editor and Manager

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Moore, Zoning Commissioner
Date: August 14, 1964

FROM: Mr. George E. Garver, Director

SUBJECT: 65-56-A. Variance to permit an extension of a non-conforming use of 41% instead of the permitted 25%; to permit 0 off-street parking spaces instead of the required 2 spaces; to permit a front yard setback for another principal building of 20 feet from the front property line instead of the required 30 feet and 50 feet from the center line of the street instead of the required 50 feet. West side of Sherwood Road 800 feet South of Register Avenue. Being property of Salvador Vazquez.

9th District

HEARING: Monday, August 24, 1964. (10:00 A.M.)

The planning staff has reviewed the subject petition for a series of variances dealing with a nonconforming barber shop use. It offers no comment regarding the dimensional aspects of the petition. How is parking being handled now for the commercial use? Are there off-street parking facilities in the area? Is on-street parking allowed or prohibited during certain times on Sherwood Road?

093:bms

PETITION FOR ZONING VARIANCE

I, or we, Salvador A. Maria Vazquez, legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 104.1 to permit an extension of a non-conforming use of 41% instead of the permitted 25%. Section 409.2b, Paragraph (b). To permit zero off-street parking spaces instead of required two spaces. Section 211.2. To permit a front yard setback for another principal building of 20 feet from the front property line instead of the required 30 feet and 50 feet from the center line of the street instead of the required 50 feet and 50 feet from the center line of the street. The Zoning Regulations of Baltimore County, in the Zoning Law of Baltimore County for the following reasons: ~~understandably~~ practical difficulty.

DATE & TIME: MONDAY, AUGUST 24, 1964 at 8:00 A.M. PUBLIC HEARING: Room 100, County Office Building, in Towson, Maryland. The Zoning Regulations are adopted as follows: Section 104.1 - 25 percent. Section 109.2 (b) - 20 feet. 40 feet from the front lot line and 50 feet from the center line of the street. Section 211.2 (b) - 1 foot each 200 square feet of total floor area.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing.

Concerning all that parcel of land situate in Baltimore County, to-wit: the parcel of land situate on the west side of Sherwood Road (50' wide), at the distance of 800'-0" from the intersection of the west side of Sherwood Road with the south side of Register Avenue and running thence S-40°-0' W bearing on the west side of Sherwood Road 800' thence N-40°-0' W bearing on the west side of Sherwood Road 50' thence S-40°-0' W bearing on the west side of Sherwood Road 50' thence S-40°-0' W bearing on the west side of Sherwood Road 50' to the place of beginning.

Being the property of Salvador A. Maria Vazquez, as shown on plat plan filed with the Zoning Department.

BY ORDER OF JOHN G. MOORE, ZONING COMMISSIONER OF BALTIMORE COUNTY

PHONE
3-3000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 25283

DATE 8/24/64

TO: Mr. Salvador Vasquez,
6406 Sherwood Road,
Baltimore 12, Md.

BILLED BY: Office of Planning & Zoning
119 County Office Bldg.,
Towson 1, Md.

DEPOSIT TO ACCOUNT NO.	QUANTITY	TOTAL AMOUNT
01-622		
DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE		
	Cost of advertising and posting property Petition No. 65-56-A	\$2.50
PAID - Baltimore County, Md. - Office of Finance		
8-24-64 6283 • 25283 TTP - \$250		

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

TELEPHONE
823-3000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 25216

DATE 7/24/64

TO: Money Order #184076

BILLED BY: Zoning Department of
Baltimore County

DEPOSIT TO ACCOUNT NO.	QUANTITY	TOTAL AMOUNT
01-622		\$25.00
DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE		
	Petition for Variance for Salvador Vasquez	25.00
PAID - Baltimore County, Md. - Office of Finance		
7-27-64 6175 • 25216 TTP - 25.00		

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

PETITION FOR ZONING VARIANCE, 9TH DISTRICT.

ZONING: Petition for Variance to the Zoning Regulations of Baltimore County to permit an extension of a non-conforming use of 41% instead of the permitted 24%; and to permit 9 off-street parking spaces instead of the required 2 spaces; to permit a front yard setback for another principal building of 26 feet from the front property line instead of the required 40 feet and 56 feet from the center line of the street instead of the required 65 feet.

LOCATION: West side, Sherwood Road 800 feet South of Register Avenue.

DATE & TIME: Monday, August 24, 1964 at 10:00 A. M.

PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Regulation to be excepted as follows:

Section 104.1--32%
Section 211.2--Front Yard--40 feet from the front lot line and 56 feet from the center line of the street

Section 409.2 (b)--1 for each 200 square feet of total floor area. The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing concerning all that parcel of land in the Ninth District of Baltimore County:

Beginning for the same on the west side of Sherwood Road (50' wide), formerly called Register Avenue, at the distance of 800' S 63' W from the intersection of the south side of Register Avenue and running thence S 03' W binding on the west side of Sherwood Road N 03' E parallel with Sherwood Road 50', thence N 83' 57' W 200', thence S 03' E parallel with Sherwood Road 50', thence S 83' 57' E 200' to the place of beginning.

Being the property of Salvador and Maria Vasquez, as shown on plat plan filed with the Zoning Department.
By Order of
JOHN G. ROSE
Zoning Commissioner of Baltimore County.
Aug. 7.

CERTIFICATE OF PUBLICATION

TOWSON, MD., August 7, 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 the 1st time of publication before the 21st day of August, 1964, the 7th publication appearing on the 7th day of August 1964.

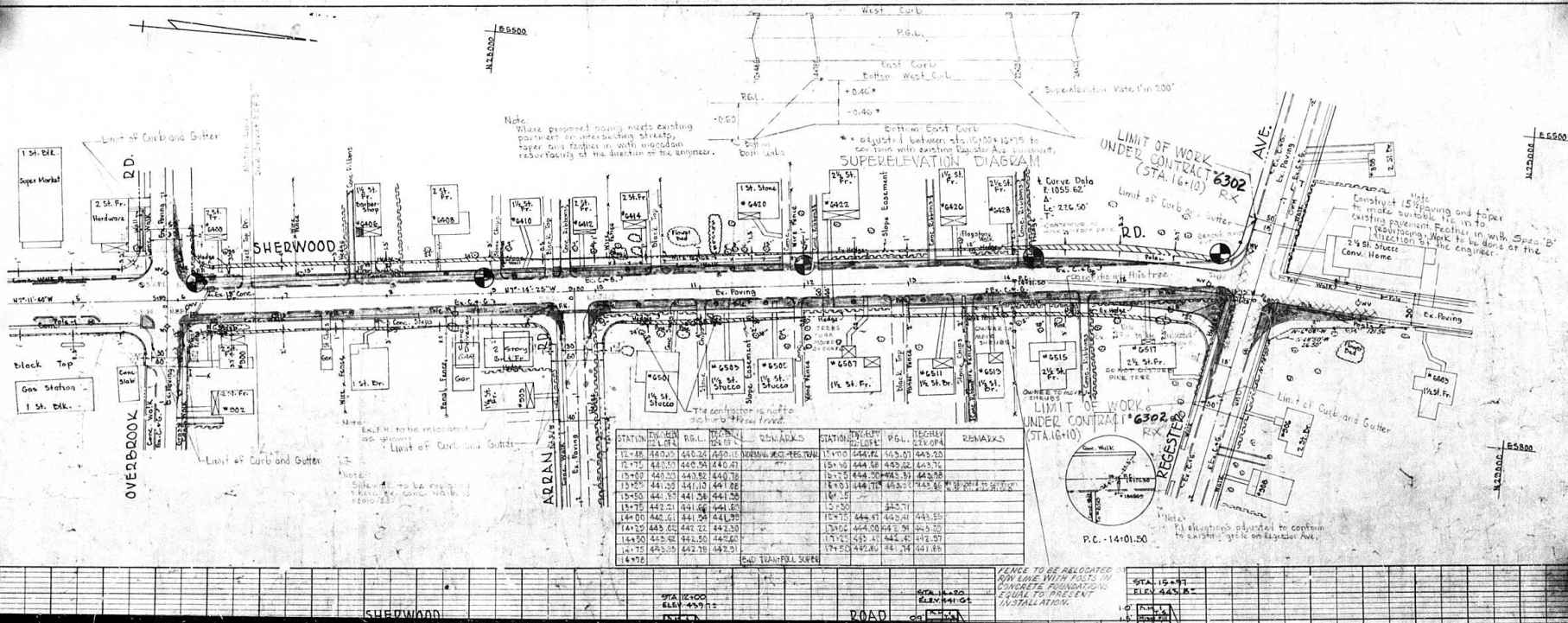
THE JEFFERSONIAN,

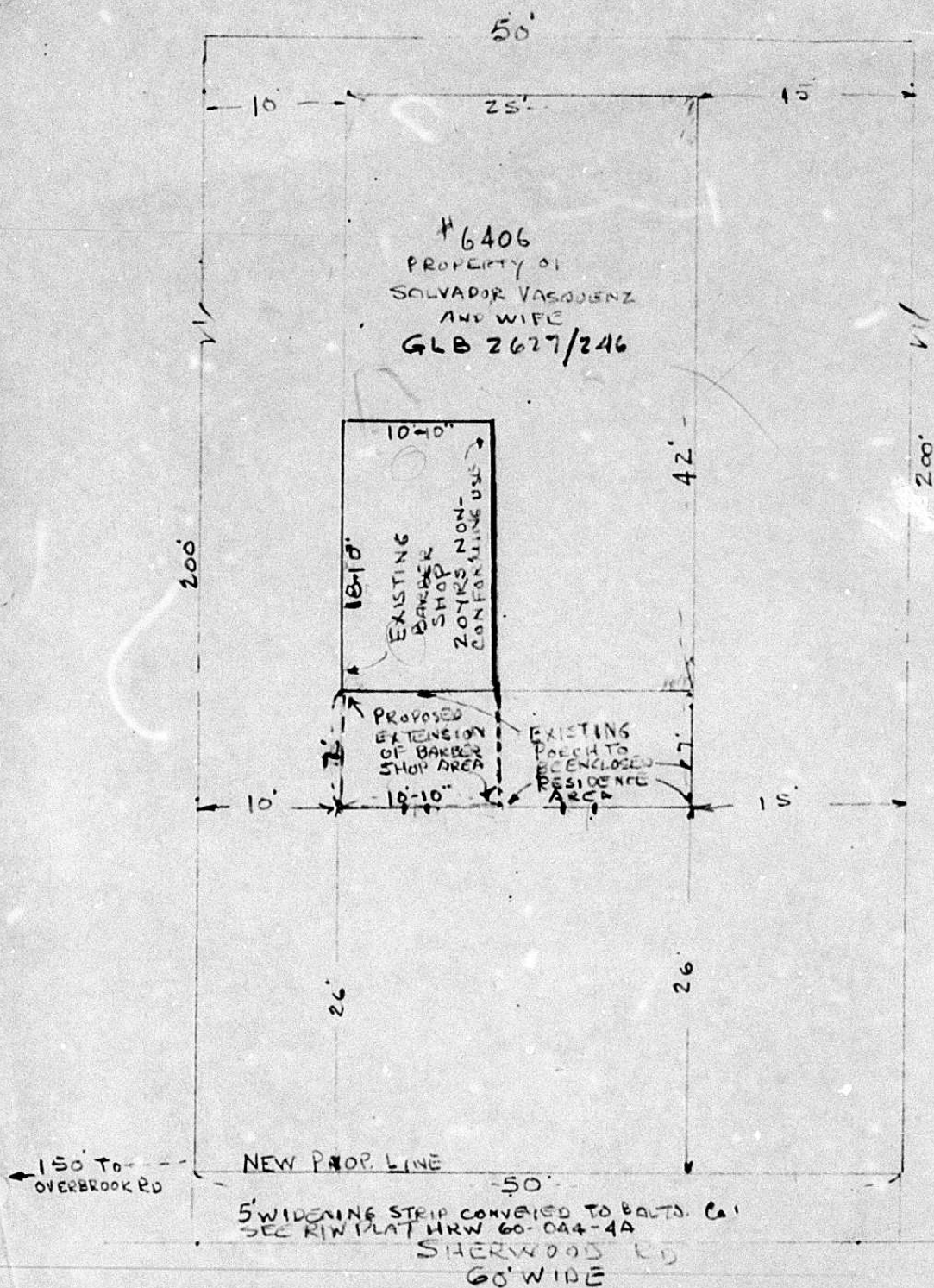
L. Frank Strickland
Manager.

Cost of Advertisement, \$

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9th
Posted for: Hearing Mon. Aug. 24-64 at 10:00 A.M.
Petitioner: Salvador Vasquez
Location of property: W/S Sherwood Rd. Sec. 8 of Register Ave.
Location of Signs: 2 copies 15 ft. from Barber Shop and 9 ft. from Walkway.
Remarks:
Posted by: Robert Lee Bull, Jr.
Signature
Date of return: 8/13/64





SCALE 1"=10'
JULY 7-1964

