

# PETITION FOR SPECIAL EXCEPTION 84-93-X

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and Mr. A. P. Walker, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for One 12' x 25' illuminated outdoor advertising structure (sign).

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

FOSTER & KLEISER

3001 REMINGTON AVE

BALTIMORE, MD 21211

City and State

Attorney for Petitioner:

(Type or Print Name)

Address

City and State

Signature

Address

City and State

Name

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FILED NOV 29 1984

IN THE MATTER OF THE APPLICATION OF EUCLAY REALTY FOR A SPECIAL EXCEPTION ETC. APPEAL FROM THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY File No. 84-93-X

## ORDER

This Appeal having come on for a hearing in open Court on November 26, 1984, after the submission of the memoranda allowed by Rule B12, and the reasons for this Court's judgment having been set forth on the record during the proceedings on November 26, 1984, it is this 29th day of November, 1984, ADJUDGED, ORDERED and DECREED that the Order of the County Board of Appeals dated July 11, 1984 is reversed and the Special Exception petitioned for by Appellants be and the same is hereby granted.

Approved as to form:

Joseph F. Murphy, Jr.

Peter Max Zimmerman

Deputy People's Counsel

Room 223, Court House

Towson, MD 21204

M. Albert Figinski

Melnicove, Kaufman, Weiner &

Smouse, P.A.

36 S. Charles Street

Baltimore, MD 21201

0848f/1

# APPLICATION FOR PERMIT BALTIMORE COUNTY MARYLAND OFFICE OF THE BUILDING ENGINEER TOWSON, MARYLAND 21204

BLDG ADDRESS: 120 EASTERN AVENUE  
OWNER'S NAME: EUCLAY REALTY  
ADDRESS: 619 S. CAROLINE ST., BALTO., MD. 21231  
PERMIT NO.: 59552  
DATE: 12-12-83  
FOSTER AND KLEISER, 3001 REMINGTON AVE., BALTO., MD.  
AS ABOVE.

C. TYPE OF USE  
RESIDENTIAL  
1. NEW BUILDING CONSTRUCTION  
2. ADDITION  
3. ALTERATION  
4. REPAIR  
5. WRECKAGE (ENTER NO. UNITS DEDUCTED)  
6. MOVING  
7. OTHER  
8. TYPE OF IMPROVEMENT  
9. 1 AND 2 FARM CODE  
10. 1678 BOLD CODE  
11. TYPE OF IMPROVEMENT  
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592. 5. SWIMMING POOL

413 which was acted upon as the law at least from 1955 until after the Gold Book was published and, later, after Metromedia was decided. See Petitioners' Exhibits 15A, B & C.

Long acquiescence in a statute as printed and distributed by proper authorities, amounts, under the teaching of Pease v. Peck, to a ratification of the contemporaneous printed version or raises an estoppel against the denial of the validity of the contemporaneously printed version. Edel v. Filer Township, Manistee County, 211 N.W.2d 547, 549 (Mich. App. 1973); O. P. Corporation v. Village of North Palm Beach, 278 So.2d 593 (Fla. 1973); City of Creston v. Center Milk Products Co., 51 N.W.2d 463, 465 (Iowa, 1952); Taylor v. Schlemmer, 183 S.W.2d 913, 916 (Mo. 1944). In each of these cases, a printed, published or long acted upon zoning ordinance was challenged on technical grounds relating to enactment or publication. In each of these cases, the challenge failed because the time that had elapsed between publication and challenge, i.e., in each case, more than ten years. Each of these cases supports Petitioners' position.

4. Compliance With Statutory Notice and Hearing Requirements Are Essential to Valid Amendment.

In Petitioners' Memorandum, the argument is clearly made that, after Metromedia declared what version of Section 413 was in effect, the County had to do more than simply republish the judicially rejected version of Section 413 in order to amend that which had been declared to be the law. See Petitioners' Memorandum, pages 10-11. The required "more" -- never done in regard to the turquoise book version of Section 413--was to a. ord notice and hearing under Section 22-21 and 22-22.

- 7 -

The regulations which control interpretation of Section 413 are the "consistent version of Section 413"<sup>4/</sup> found in the mimeographed version disseminated to the public<sup>5/</sup> in 1957 and published and republished -- and acted upon<sup>6/</sup>--as law in the Black<sup>7/</sup> and Blue<sup>8/</sup> Books. In those versions, "B.R." is included within Section 413.3 as a zone in which, as a Special Exception, outdoor advertising signs are allowed. That was the unmistakable ruling by Judge Raine in Metromedia.

Petitioners continue to rely upon Judge Raine's Opinion and Order in the Metromedia case.<sup>9/</sup> Since that decision, although the turquoise book has been published and the book bears the Council's Secretary's attestation, there has been, according to the uncontroverted testimony,<sup>10/</sup> no notice and hearings that are essential to a modification of the zoning regulations. Therefore, Judge Raine's declaration of the law has not been effectively altered by publication of the turquoise book.

4/ See Petitioners' Exhibit 8, p. 2.

5/ See Petitioners' Exhibit 1.

6/ Mr. Dyer testified that the Black Book version was used "extensively". Indeed, it so clearly was the effective publication that when the Red Book appeared, the Red Book version of Section 413 was disregarded on the belief that, according to Mr. Dyer's testimony, there had been a "typographical error" omitting B.R. from the Red Book version of Section 413. The Red Book version is Petitioners' Exhibit 4.

7/ Petitioners' Exhibit 2.

8/ Petitioners' Exhibit 3.

9/ Petitioners' Exhibit 8; Equity No. 103167 in the Circuit Court for Baltimore County.

10/ Mr. Toporovich unequivocally testified that there were no hearings or notice of change regarding Section 413 or any other item in the turquoise book.

- 3 -

The Maryland cases make clear that notice and hearing on amendments to zoning regulations are mandatory. Failure to give notice required by law, for example, is fatal to the jurisdiction to conduct a hearing. See Cassidy v. County Board of Appeals of Baltimore County, 218 Md. 418, 421, 422 (1958).

Indeed, even if initial notice is given, substantial change from what was announced is also abhorrent. See Ransake v. Board of County Commissioners, 268 Md. 295 (1973); Von Lusich v. Board of County Commissioners, 268 Md. 445, 454 (1973).

In the case at bar, there was neither notice nor hearing after the decision in Metromedia. The County simply ignored that decision and ignored compliance with Sections 22-21 and 22-22. That inaction is fatal to the Section 413 version in the turquoise book.

CONCLUSION

People's Counsel's Memorandum provides no valid argument for denial of the relief and orders sought by Petitioners' Memorandum.

Respectfully submitted,

*M. Albert Figinski*  
M. Albert Figinski  
Melnicove, Kaufman, Weiner & Smouse, P.A.  
36 S. Charles Street  
6th floor  
Baltimore, MD. 21201 301-332-8500  
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 27<sup>th</sup> day of March, 1984, a copy of the foregoing Reply Memorandum was mailed, postage prepaid, to Peter Max Zimmerman, Esq., Deputy People's Counsel, Baltimore County, Room 223 Court House, Towson, MD. 21204.

*M. Albert Figinski*  
M. Albert Figinski

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- 8 -

Petitioners expect that People's Counsel may seek to rely on the Board's decision in the "Schneider" case.<sup>11/</sup> Such reliance would be misplaced because the evidence absent in "Schneider" was surely supplied here.<sup>12/</sup>

Additionally, Petitioners expect People's Counsel to argue either that the "public's lawyer" is not bound by the Metromedia decision or that Petitioners are somehow estopped because of the delay between publication of the Gold Book and the Metromedia case. Neither argument has validity but both arguments shall be dealt with hereinafter.<sup>13/</sup>

The History of Section 413, Prior to the Turquoise Book

It is perfectly clear that, after about two decades<sup>14/</sup> of treating B.R. as a zone in which outdoor advertising signs were allowed as Special Exceptions under certain conditions, the County zoning officials altered the rules and, according to their version of history, went back to the "true" enacted version of Section 413 of the Zoning Code. There is, however, absolutely no doubt that B.R. was a zone in which signs were allowed up to the time of the publication of the Gold Book in late 1975 or 1976.<sup>15/</sup>

11/ Petitioners' Exhibit 13; No. 82-226XSPH before the County Board of Appeals.

12/ That is, Mr. Toporovich's testimony that there had been no notice of hearings. See footnote 10, above.

13/ See pages 11-12 and 12-13, infra.

14/ 1955 to 1976 according to the testimony of Messrs. Walker and Dyer.

15/ See footnote 6, supra.

- 4 -

RE: PETITION FOR SPECIAL EXCEPTION ) BEFORE THE  
W/S of Eastern Avenue ) COUNTY BOARD  
401' E. of the c/l of Terrace Rd. )  
15th District ) OF APPEALS  
EUCLAY REALTY, Petitioner )  
RE: PETITION FOR SPECIAL EXCEPTION ) OF  
NE/S of Reisterstown Road ) BALTIMORE COUNTY  
510' NW of c/l of Kingsley Rd. )  
4th District ) No. 84-93X  
GEORGE MEHRING, Petitioner ) No. 84-109X  
Consolidated for  
hearing and heard  
March 1, 1984

PETITIONERS' MEMORANDUM

These two appeals, consolidated for hearing, were brought by People's Counsel. In 84-93X, the Petitioner seeks a Special Exception for one 12' x 25' illuminated outdoor advertising structure (sign). On October 14, 1983, the Deputy Zoning Commissioner granted the petition. In 84-109X, the Petitioner seeks a Special Exception for one 12' x 25' double faced illuminated outdoor advertising structure (sign). On October 25, 1983, the Zoning Commissioner, on the basis of a written opinion, granted the petition. Each sign would be located in a B. R. zone.

The parties to this appeal have stipulated that each sign meets the Special Exception requirements of Section 502 of the County Zoning Regulations. The sole issue -- albeit a substantial and significant one -- is whether an outdoor advertising sign may be located in a B. R. zone.

The Turquoise Book<sup>1/</sup>

In November, 1981, the Secretary of the County Council, Thomas Toporovich, certified the publication of the

1/ The term "turquoise" is used to differentiate the 1981 version of the Regulation from the 1963 version which appeared in a blue loose leaf binder.

Metromedia, Inc. is the corporate descendant of Donnelly Outdoor Advertising and Foster and Kleiser. Under whatever name, the corporate entity is the principal, if not sole, outdoor advertising enterprise in Baltimore County. After publication of the Gold Book, the outdoor advertising enterprise brought <sup>16/</sup> the variations in the publications to the attention of Baltimore County, People's Counsel and the zoning officials in the so-called "Roll" case.<sup>17/</sup> After an adverse decision by the Board of Appeals, the appellate intercession of the Circuit Court for Baltimore County was invoked. In January, 1978, Judge Raine ruled in favor of the outdoor advertising enterprise on the ground that, while recognizing that there had been differing published versions of Section 413, the Special Exception in Roll should be granted under any of the various forms of Section 413. See Judge Raine's Memorandum Opinion in Joint Exhibit 2.

The outdoor advertising enterprise persevered. When its B.R. applications were rejected for processing in November, 1979,<sup>18/</sup> Metromedia prepared and filed suit in January, 1980,<sup>20/</sup> Metromedia sought a declaratory judgment<sup>21/</sup> under

16/ A suit or appeal may only be based on a contested case. The outdoor advertising enterprise could not proceed to the appeal process or to the courts until it was thwarted in its applications. So long as permits could be achieved, there was no harm to the outdoor advertising enterprise.

17/ No. 76-59X. See Joint Exhibits 1 and 2. Testimony at the hearing also disclosed that, in 1976, an official of the County's Planning Department had advised Metromedia's agents that the Gold Book version was based on something that was found in the County's vault.

18/ The versions are compared in Petitioners' Exhibit 6.

19/ See Paragraph 10, Petitioners' Exhibit 7.

20/ Petitioners' Exhibit 7.

21/ See pages 9 and 10, Petitioners' Exhibit 7.

- 5 -

County's Zoning Regulations.<sup>2/</sup> Subsequently, in March, 1982, the regulations were available for purchase in a turquoise colored book, in loose leaf form.

As published, Section 413.3 (and subsections 413.3 e and f) omits the B. R. zone in the enumeration of zones in which outdoor advertising signs "are allowed ... as Special Exceptions" under certain conditions.

The turquoise book also appears to exclude such signs in a B. R. zone as a Special Exception (Section 270, p. 138) while in another place (Section 236.4, p. 109) seemingly permitting "Signs--Outdoor Advertising" in a B. R. zone.

The face of the turquoise book, therefore, shows some confusion on the issue before the Board. While the reason for that confusion may not be proven in this record, it may be reasonable to suggest that the confusion arises from a failure to give proper import to the decision of the Circuit Court for Baltimore County in Equity No. 103167, Metromedia, Inc. v. Baltimore County, the so-called "Raine decision" (Petitioner's Exhibit 8).

Petitioner's Argument Capsulized

In brief, Petitioners urge that reliance upon the turquoise book is misplaced and that the binding regulations allow<sup>3/</sup> outdoor advertising signs in a B. R. zone as Special Exceptions.

2/ The import of this "certification" is discussed at pages 8-11, infra.

3/ Indeed, because it is stipulated that Section 502's requirements are met, the signs are mandated upon a determination that they are allowable in the B.R. zone.

- 2 -

Title 3 of the Courts and Judicial Proceedings Article, Md. Code. Section 3-406, thereof, provides:

"Any person...whose rights...or legal relations are affected by a statute, municipal ordinance, administrative rule or regulation...may have determined any question of construction or validity arising under the ...statute, ordinance, administrative rule or regulation...and obtain a declaration of rights...or other legal relations under it."

The broad purpose of the Declaratory Judgment Act is set out in Section 3-402, thereof:

"[The] purpose is to settle and afford relief from uncertainty and insecurity with respect to rights...and other legal relations. [The Act] shall be liberally construed...."

Metromedia asked for broad relief<sup>22/</sup> and, on July 1, 1981, Judge Raine granted it in a two page Memorandum Opinion, which is in evidence here as Petitioners' Exhibit 8. Therein, Judge Raine described the history of Section 413. In pertinent part, Judge Raine wrote:

"In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions."

22/ See Petitioners' Exhibit 7, pages 9 and 10.

People's Counsel sought to intervene in this case. Its intervention was rejected by the Circuit Court and that decision was affirmed by the Court of Special Appeals in an unreported opinion. See People's Counsel's Exhibit 2.

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"The Plaintiff cried foul: The County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Gold Book and that its long adherence to and dissemination of the old Section 413 constituted a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites *Pense v. Peck*, 18 How. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitutes a ratification of that law, even though the promulgated version differs from the original text.

"The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code."

Petitioners' Emphasis supplied.  
Exhibit 8, p. 1-2.

Judge Raine, then, declared the law and issued an Order, to wit:

This Court will declare that the Defendant [i.e., Baltimore County] must accept application for special exceptions submitted by the Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and to no other regulation."

Petitioners' Exhibit 8, p. 2.  
Emphasis supplied.

In effect, Judge Raine, in *Metromedia*, declared that the version of Section 413 that appears as Petitioners' Exhibits 1, 2, and 3 was the law of Baltimore County. No appeal was taken. B.R. was confirmed as a zone in which outdoor advertising signs were authorized as Special Exceptions.

- 7 -

To change that, the County had to do more than republish a different version of Section 413--it had to afford notice and hearing under Sections 22-21 and 22-22 of the Code. Without affording notice and hearing, there was no substantial compliance with the law, *Crozier v. County Commission of Prince George's County*, 202 Md. 501, 506 (1953), and the publication of Section 413 by the turquoise book's adoption of the repudiated Gold Book version was invalid.

It must also be noted that the Black Book was "in extensive use"<sup>32/</sup> when the County enacted Section 22-31<sup>33/</sup> of the Code in 1960. That provisions purported to declare "in full force and effect" the zoning regulations that had been adopted by the County. The only regulations to be treated as adopted at that time (1960) were those in the Black Book.

People's Counsel is Bound by Metromedia.

People's Counsel may argue that, because it was not allowed to intervene in *Metromedia*, that decision does not "bind" it. Such argument is chimeric.

In *Metromedia*, Baltimore County was the Defendant. As People's Counsel Exhibit 2 makes clear, the office of People's Counsel was created by the County Charter. It is a creature of the County having no independent status aside from the County.

<sup>32/</sup> Recall Mr. Dyer's testimony. Recall also Mr. Walker's testimony. The Black Book version, according to both, was the only utilized and known version of Section 413 until 1976, when, in Petitioners' view, and the view of the *Metromedia* opinion, "some county employees found, secreted away in a vault, the original version", i.e., People's Counsel's Exhibit 1.

<sup>33/</sup> "The zoning regulations adopted by the county on March 30, 1955, as amended on July 25, 1960, are hereby declared to be in full force and effect; provided, however, that in the case of any conflict between such regulations and the provisions of this title, these provisions shall control. (Bill No. 80, 1960; Balto. Co. Code, 1968, §22-26)."

- 11 -

#### Section 413 After the Turquoise Book

In November, 1981, the Secretary of the County Council certified<sup>23/</sup> the printing that eventually appeared in March, 1982 as the turquoise book. Section 413, despite Judge Raine's decision in *Metromedia*, remained in the form it had achieved in the Gold Book; B.R. did not appear in Section 413. Nevertheless, on three separate and distinct occasions thereafter (see, Petitioners' Exhibits 15 A, B, and C), *Metromedia* was allowed to locate outdoor advertising structures (signs) in B.R. zones. In the "Schneider" case,<sup>24/</sup> however, the Board ruled the *Metromedia* decision was not applicable after publication of the turquoise book, writing, in part:

"*Metromedia* was decided on July 1, 1981. The case at bar was decided by the Deputy Zoning Commissioner on December 2, 1982. This Board determines, as a fact, that the zoning regulations applicable to the case at bar are the Baltimore County Zoning Regulations certified pursuant to Section 22-34 of the County Code in November, 1981. No evidence has been produced to persuade this Board that the notice and hearing requirements mandated by Section 22 of the County Code were not met prior to the November, 1981, certification."

Petitioners' Exhibit 13, p. 3.

The record in this case contains the "evidence" lacking in "Schneider".<sup>25/</sup> Under examination by Petitioners' counsel, Mr. Toporovich admitted no notice was given by the Council

<sup>23/</sup> Petitioners' Exhibit 12. The certification is five months after the Court decided *Metromedia*.

<sup>24/</sup> Petitioners' Exhibit 13.

<sup>25/</sup> Whatever this Board decides in this case, it will not be able to find "as a fact"--as "Schneider" purported to do--that notice was given and hearing was held. All of the evidence is contrary.

- 8 -

Given that status, if the County is bound by *Metromedia*, how can People's Counsel not be bound by it? Surely, the County was bound. See Petitioners' Exhibit 8.

The Restatement, Judgments 2d (1982) §33 may provide some guidance. The black letter rule set out there is:

"A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action."

The supporting text, Restatement, Judgments, 2d(1982), p. 334, further provides:

"If a declaratory judgment is valid and final, it is conclusive, with respect to the matters declared, as to all persons who are bound by the judgment. This conclusive effect applies even as to a party who makes no appearance in the action." But in order to be bound, a person must have been an adversary of the prevailing party with respect to the matter declared."

If a non-appearing party were not concluded as to matters declared by the judgment, a defendant might abort all possible effects of the declaratory action by simply defaulting."

Surely, People's Counsel was, and is, adverse to Petitioners. The Position of the Restatement has been followed in Maryland. See *Bankers & Ship Ins. v. Electro. Enter.*, 287 Md. 641, 652-5 (1980).

There is no doubt that *Metromedia* has conclusive effect.

No Estoppel Theory Bar Petitioners' Relief.

The history of the "Roll" and *Metromedia* cases, see pages 5-7, *supra*, make crystalline that Petitioners never failed to pursue relief in having Section 413 construed.

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pertaining to the publication of the turquoise book or Section 413, thereof. He also admitted, that, prior to publication, no hearings by the Council were held. Likewise, Mr. Walker denied that notice was given and hearings held. Mr. Dyer gave no contrary testimony.

#### ARGUMENT

Mr. Toporovich, rather than suggest that notice and hearings were afforded, stressed that his belief was that none were required.<sup>26/</sup> In that belief, he erred in this instance.

Section 22-21 of the County Code provides that zoning regulations are recommended by the planning board. Specifically, subsection (b) thereof<sup>27/</sup> authorizes the board to "recommend for adoption amendments or supplements to" the regulations. Certain procedural steps, at the board level, are required, including notice and hearing.<sup>28/</sup> Thereafter, the board makes final recommendations<sup>29/</sup> to the County Council. The Council's duties, thereafter, are specified in the Code, Section 22-22(a):

"After the county council has received a final report of the planning board recommending adoption of any zoning regulations or zoning maps, the county council shall hold one or more public hearings thereon, giving at least twenty (20) days' notice thereof in at least two (2) newspapers of general circulation in the county. During such twenty (20) day period, the final report of the planning board with

<sup>26/</sup> Mr. Toporovich, in response to questions from Petitioners' counsel, admitted that, when there is a change to existing zoning provisions, the Council does afford notice and hearing as required by Section 22-22(a) of the County Code. See Petitioners' Exhibit 9.

<sup>27/</sup> See Petitioners' Exhibit 9.

<sup>28/</sup> See Petitioners' Exhibit 10, Sec. 22-21(c).

<sup>29/</sup> *Ibid.*

- 9 -

Since publication of the "turquoise book", three Special Exceptions in B.R. zones have been granted. See Petitioners' Exhibits 15 A, B, C. In none of those matters was Section 413 applied contrary to *Metromedia*. Petitioners could hardly have appealed from the issuance of the permits.

In "Schneider", People's Counsel attacked. Without facts in the record the outdoor advertising enterprise could not proceed successfully. Here, they have supplied the lacuna missing in "Schneider" and urge that the Special Exceptions be granted and People's Counsel's appeals be rejected.

#### Conclusion

For the foregoing reasons--particularly, (1) that in the *Metromedia* case there was a declaration that the Black Book and Blue Book versions of Section 413 were the effective zoning law of Baltimore County; (2) that, thereafter, the turquoise book republished the Gold Book version without substantial compliance with Section 22-21 and Section 22-22 of the County Code; and (3) that B.R. was in Section 413 of the Black Book and Blue Book as a zone where an outdoor advertising sign could be located as a Special Exception -- Petitioners urge that the pending Special Exceptions be granted.

Respectfully submitted,

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Attorneys for Petitioners  
(301) 332-8500

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accompanying maps and supporting exhibits, if any, together with any minority report and maps from any dissenting members of the planning board shall be shown and exhibited in the county office building, in each councilmanic district and at such other public place as the county council may designate for public inspection. After the expiration of such period of notice, and following the public hearing or hearings, the county council may by an ordinance adopt such regulations or maps subject, however, to such changes or amendments therein as the county council may deem appropriate.

The Code is, therefore, clear. To amend regulations, the County must afford notice and hearing in a certain manner.

When *Metromedia* was decided, it declared that the Black Book and the Blue Book versions of Section 413 had "become effective and controlling law" and that, without affording notice and hearing as required by the Code, the County could "not validly" change the regulations by merely promulgating or publishing a set of regulations. After *Metromedia*, Section 413 of the Black Book and Blue Book were the law and Special Exceptions were to be "determined" by resort to them.<sup>30/</sup> On the record in this case, there was no notice and hearing afforded to alter Section 413, after *Metromedia* or prior to publication of the turquoise book. The turquoise book, therefore, faces the same dilemma that constrained the Gold Book, insofar as Section 413 is concerned.

Quite simply put, *Metromedia*, under the Declaratory Judgment Act, settled the law<sup>31/</sup>--it declared what Section 413 was in effect, i.e., the Black Book and Blue Book version.

<sup>30/</sup> *Metromedia* did not hold, as People's Counsel may argue, that it applied only to instances before the Court there or to applications in process. The Court ruled that its decision applied prospectively, not merely retroactively.

<sup>31/</sup> See Sections 3-402 and 3-406, Courts Article, Md. Code set out, in pertinent part, at page 6, *supra*.

- 10 -

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13<sup>th</sup> day of March, 1984, a copy of the foregoing Petitioners' Memorandum was mailed, postage prepaid, to Peter Max Zimmerman, Esquire, Deputy People's Counsel, Baltimore County, Room 223 Court House, Towson, MD. 21204.

*M. Albert Figinski*  
M. Albert Figinski

0135f

- 14 -

IN THE \* BEFORE THE  
MATTER OF \* BALTIMORE COUNTY  
EUCLAY REALTY \* BOARD OF APPEALS  
SE-ONE OUTDOOR ADVERTISING SIGN \* CASE NO. 84-93X

ENTRY OF APPEARANCE

Please enter my appearance in the above-referenced appeal on behalf of Petitioner/Appellee.

*M. Albert Figinski*  
M. ALBERT FIGINSKI  
36 S. Charles Street  
6th Floor  
Baltimore, Maryland 21201  
332-8520

CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of January, 1984, a copy of the foregoing Entry of Appearance was mailed to Peter Max Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, Maryland, 21204.

*M. Albert Figinski*  
M. ALBERT FIGINSKI

LAW OFFICES OF  
MELNICOVE, KAUFMAN,  
WEINER & SMOUSE, P.A.  
36 S. CHARLES STREET  
BALTIMORE, MD  
21201-8520

Rec'd 1-17-84  
11:53 AM

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE  
N/S of Eastern Avenue : COUNTY BOARD  
401' E. of the c/l of Terrace Rd. :  
15th District :  
EUCLAY REALTY, Petitioner : OF APPEALS

RE: PETITION FOR SPECIAL EXCEPTION : OF  
NE/S of Reisterstown Road : BALTIMORE COUNTY  
510' NW of c/l of Kingsley Rd. :  
4th District :  
GEORGE MEHRING, Petitioner : No. 84-93X  
No. 84-109X

Consolidated for  
hearing and heard  
March 1, 1984

MOTION TO SUPPLEMENT RECORD

Petitioners, by M. Albert Figinski, their attorney, respectfully move for the supplementation of the record in these cases by inclusion therein of the attached "Proffered Supplemental Exhibit" which is a re-photocopied page from the original of Petitioners Exhibit 1. As grounds for the supplementation of the record, Petitioners say:

1. Page 2 of Petitioners Exhibit 1, as received in evidence, contained certain marginal notes. The photocopying of the exhibit, as received, appeared, however, to fail to reproduce the entirety of said marginal notes.
2. On cross-examination by Deputy People's Counsel, the witness -- Wilbur R. Walker -- was questioned, at some length, about said marginal notes.
3. After the hearing, Mr. Walker dug out the original of page 2 of Petitioners Exhibit 1. The original contained all of the marginal notes.
4. The "Proffered Supplemental Exhibit" is a copy of page 2 of Petitioners Exhibit 1 which shows the marginal notes in their entirety.

RECEIVED  
COUNTY BOARD OF APPEALS  
FEB MAR 21 P 2:55 E

LAW OFFICES OF  
MELNICOVE, KAUFMAN,  
WEINER & SMOUSE, P.A.  
36 S. CHARLES STREET  
BALTIMORE, MD  
21201-8520

WHEREFORE, in the interests of accuracy, and to relieve any question as to what is written in the margin of Petitioners Exhibit 1, page 2, Petitioners ask that the Board include in the record of these proceedings, the attached "Proffered Supplemental Exhibit."

*M. Albert Figinski*  
M. ALBERT FIGINSKI  
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P.A.  
36 S. CHARLES STREET, 6th floor  
Baltimore, MD. 21201  
301-332-8500  
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 27<sup>th</sup> day of March, 1984, the foregoing Motion to Supplement Record was mailed, postage prepaid, to Peter Max Zimmerman, Esq., Deputy People's Counsel, Baltimore County, Room 223 Court House, Towson, MD. 21204.

*M. Albert Figinski*  
M. ALBERT FIGINSKI

LAW OFFICES OF  
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-2-

b. In any business zone a sign affixed to any part of a building including a penthouse shall not extend more than 16 feet in height above any part of the roof or parapet and shall not exceed in square feet four times the length of the front building wall.

c. A sign attached to the building and projecting approximately at right angles to it shall not exceed a total area of two square feet for every foot of height of the wall to which it is attached.

d. No sign described in 413.2 a, b and c above shall project more than 42 inches from the building.

e. An identification sign for a shopping center or other integrated group of stores or commercial buildings, not exceeding 150 square feet in area. Multiple-faced signs shall be considered as one sign. If the commercial center has access from more than one street, one such identification sign may be allowed for each street provided the latter is officially recognized as a thoroughfare; also provided that no such identification signs shall be located within 100 feet of any existing principal building on adjoining residential premises on the same side of the street. No such sign, however, shall be permitted unless the land on the opposite side of such thoroughfare is zoned Commercial from the corner of a point opposite any portion of such sign.

f. Other business signs (not exceeding three on any premises) may be used if limited to a total area of 100 square feet in Business Zones, and 200 square feet in M.L. and M.H. Zones.

g. Multiple face sign shall be considered as one sign.

413.3 - Outdoor advertising signs as defined in Section 101 are allowed only in B.L., B.M., B.R., M.L., and M.H. Zones as Special Exceptions, under the following conditions, as limited by Section 413.5:

a. The total surface area of any such sign, exclusive of structural supports, and trim shall not exceed 300 square feet, except that a hand-painted custom-built sign may have a total surface area of not exceeding 500 square feet. The provisions of this sub-paragraph referring to hand-painted custom-built signs shall permit only one single face unit.

b. No such sign shall be permitted to front a face or be located within 250 feet of the right-of-way of any expressway or other controlled-access-type highway.

c. No such sign shall be located closer to the street right-of-way line than the minimum front yard requirement for a commercial building as determined by these Regulations for the zone involved.

d. No such sign shall be located on unimproved land within 100 feet at any street intersection involving a dual highway, or within 50 feet of any other intersection.

e. No outdoor advertising sign shall be erected in any B.L., B.M., or B.R. Zones if at least 50% of the available frontage between streets, or that side of the street on which the sign is proposed to be located, is improved with dwelling uses.

f. In any B.L., B.M., B.R. Zones, all outdoor advertising signs on vacant land shall be located not less than 500 feet apart; all such signs placed on improved commercial properties shall be spaced not less than 100 feet apart. The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous. No signs placed approximately at right angles to the street right-of-way, either back to back or end to end, are permitted. Provisions as to spacing and location of signs shall apply separately to each side of a street.

g. In any M.L. or M.H. Zone, signs shall be placed at least 1,000 feet apart on the same side of the street or highway except that 2 signs may be placed, approximately back to back, totalling 4 signs on one structure, when located approximately at right angles to the right-of-way line.

h. No outdoor advertising sign erected on a roof may extend more than 16 feet above any part of the roof or parapet, except that the 16 foot limitation shall not apply to any such roof sign existing as of the date of adoption of these regulations.

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 4, 1983

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

cc  
Nicholas B. Commodari  
Chairman

MEMBERS  
Bureau of  
Engineering  
Department of  
Traffic Engineering  
State Roads Commission  
Bureau of  
Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial  
Development

Mr. W. Walker  
Foster & Kleiser  
3001 Remington Avenue  
Baltimore, Maryland 21211

RE: Case No. 84-93-X (Item No. 31)  
Petitioner - Euclay Realty  
Special Exception Petition

Dear Mr. Walker:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

*Nicholas B. Commodari*  
NICHOLAS B. COMMODARI  
Chairman  
Zoning Plans Advisory Committee

NBC:bsc

Enclosures



BALTIMORE COUNTY  
DEPARTMENT OF PUBLIC WORKS  
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.  
DIRECTOR

September 2, 1983

Mr. Arnold Jablon  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Re: Item #31 (1983-1984)  
Property Owner: Euclay Realty  
N/S Eastern Ave. 401' E. from centerline  
of Terrace Rd.  
Acres: 15 X 30  
District: 15th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Eastern Boulevard (Md. 150) is a State Road; therefore, all improvements, intersections, entrances and drainage requirements as they affect the road come under the jurisdiction of the Maryland State Highway Administration. Any utility construction within the State Road right-of-way will be subject to the standards, specifications and approval of the State in addition to those of Baltimore County.

Baltimore County highway and utility improvements are not directly involved.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 31 (1983-1984).

Very truly yours,

*Robert A. Merton*  
ROBERT A. MERTON, P.E., Chief  
Bureau of Public Services

RAM:EM:PM:iss

1-SW Key Sheet  
3 NE 25 & 26 Pos. Sheets  
NE 1 G Topo  
97 Tax Map



Maryland Department of Transportation  
State Highway Administration

Lorrell K. Brivall  
Secretary  
M. S. Calisher  
Administrator

August 3, 1983

Mr. William Hammond  
Zoning Commissioner  
County Office Bldg.  
Towson, Md. 21204

Re: ZAC Meeting of 8-2-83  
ITEM: #31.  
Property Owner: Euclay Realty  
Location: N/S Eastern Ave.  
(Route 150) 401' E. from  
centerline of Terrace Road  
Existing Zoning: B.R.  
Proposed Zoning: Special  
Exception for one double  
faced 12' x 25' illuminated  
outdoor advertising structure  
(sign).  
Acres: 15 x 30  
District: 15th

Attention: Mr. N. Commodari

Dear Mr. Hammond:

On review of the site plan and field inspection, the State Highway Administration finds the plan generally acceptable.

Very truly yours,

*Charles Lee*  
Charles Lee, Chief  
Bureau of Engineering  
Access Permits

By: George Wittman

CL:GW:ivrd

cc: Mr. J. Ogle  
Mr. M. Stein (w-attachment)

My telephone number is (301) 659-1350  
Teletypewriter for impaired hearing or speech  
383-7555 Baltimore Metro - 555-0431 D.C. Metro - 1-800-482-5082 Statewide Toll Free  
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

FEB 28 1984

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Zoning Commissioner  
Office of Planning and Zoning  
Date: August 31, 1983

FROM: Len J. Forrest  
Zoning Variance Items

SUBJECT: Zoning Variance Items

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any health hazards at this time regarding these items.

- Item # 27 - Dr. George C. and Marianna Abraham
- Item # 31 - Euclay Realty
- Item # 34 - Reisterstown Shopping Center Limited Partnership

*Len J. Forrest*  
Len J. Forrest, Director  
BUREAU OF ENVIRONMENTAL SERVICES

LJF/td

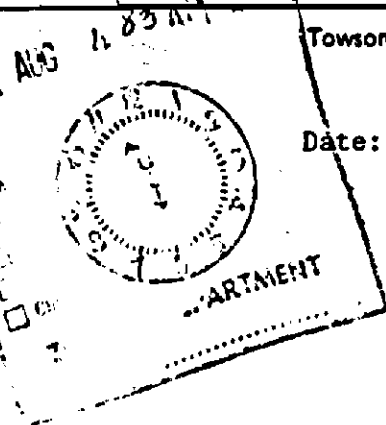
## BALTIMORE COUNTY PUBLIC SCHOOLS

Robert V. Dubel, Superintendent

Towson, Maryland - 21204

Date: August 1, 1983

Mr. William E. Hammond  
Zoning Commissioner  
Baltimore County Office Building  
1111 West Chesapeake Avenue  
Towson, Maryland 21204



Z.A.C. Meeting of: August 2, 1983

RE: Item No: 26, 27, 28, 29, 30, 31, 32, 33  
Property Owner:  
Location:  
Present Zoning:  
Proposed Zoning:

District:  
No. Acres:

Dear Mr. Hammond:

The above item numbers have no bearing on student population. As far as Item 34 is concerned, we wish to draw your attention to the fact that this property is in close proximity to the Franklin Senior High School and could be an inducement to the students.

Very truly yours,

*Wm. Nick Petrovich*  
Wm. Nick Petrovich, Assistant  
Department of Planning

WNP/bp



BALTIMORE COUNTY  
DEPARTMENT OF TRAFFIC ENGINEERING  
TOWSON, MARYLAND 21204  
494-3550

STEPHEN E. COLLINS  
DIRECTOR

September 1, 1983

Mr. William Hammond  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Item No. 26, 27, 28, 29, 31, 32, 33, 34. ZAC - Meeting of August 2, 1983  
Property Owner:  
Location:  
Existing Zoning:  
Proposed Zoning:

Acres:  
District:

Dear Mr. Hammond:

The Department of Traffic Engineering has no comments for item numbers 26, 27, 28, 29, 31, 32, 33, and 34.

*Michael S. Flanagan*  
Michael S. Flanagan  
Traffic Engineering Assoc. II

MSF/ccm



BALTIMORE COUNTY  
DEPARTMENT OF PERMITS & LICENSES  
TOWSON, MARYLAND 21204  
494-3550

August 24, 1983

Mr. William E. Hammond, Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond  
Comments on Item # 31 Zoning Advisory Committee Meeting

Property Owner: Euclay Realty  
Location: N/S Eastern Avenue 401' E. from centerline of Terrace Rd.  
Existing Zoning: R-1  
Proposed Zoning: Special Exception for one double faced 12 x 25' illuminated outdoor advertising structure (sign).

Acres: 15 x 30  
District: 15th

The items checked below are applicable:

- 1A. All structures shall conform to the Baltimore County Building Code 1981/ Council Bill 1-82 unless an exception is granted in writing and other applicable codes.
- 1B. A building and other miscellaneous permits shall be required before beginning construction.
- 1C. Residential: Three sets of construction drawings are required to file a permit application. Architect/engineer seal is/ is not required.
- 1D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.
- 1E. An exterior wall erected within 6'0" of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0" of lot lines. A firewall is required if construction is on the lot line, see Table 167, line 2, Section 1607 and Table 1602.
- 1F. Requested variance conflicts with the Baltimore County Building Code, Section 1602.
- 1G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.
- 1H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, for a structure for which a proposed change in use is proposed, comply with the height/area requirements of Table 505 and the required construction classification of Table 401.
- 1I. Comments:

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 2122 (Plans Review) at 111 West Chesapeake Ave., 21204.

Very truly yours,

*Charles E. Dumbach*  
Charles E. Dumbach, Chief  
Plans Review

CDB:rrj

FORM 01-82

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon  
Zoning Commissioner  
Date: September 21, 1983

FROM: Norman E. Gerber  
Director of Planning and Zoning

SUBJECT: Euclay Realty  
84-93-X

There are no comprehensive planning factors requiring comment on this petition.

*Norman E. Gerber*  
Norman E. Gerber  
Director of Planning and Zoning

NEG:JQH:cav

## PROPERTY DESCRIPTION

BEGINNING AT A POINT LOCATED ON THE NORTH SIDE OF EASTERN AVENUE (70 FEET WIDE), 401 FEET EAST OF THE CENTERLINE OF TERRACE ROAD (40 FEET WIDE) AND 62.5 FEET FROM THE CENTERLINE OF EASTERN AVENUE AND THENCE RUNNING THE FOLLOWING COURSES AND DISTANCES: NORTHWESTERLY A DISTANCE OF 30 FEET, TO A POINT; THENCE SOUTHWESTERLY A DISTANCE OF 15 FEET TO A POINT; THENCE SOUTHEASTERLY A DISTANCE OF 30 FEET TO A POINT; THENCE A DISTANCE OF 15 FEET TO THE BEGINNING POINT.

## PETITION FOR SPECIAL EXCEPTION

15th Election District

ZONING: Petition for Special Exception

LOCATION: North side of Eastern Avenue, 401 ft. East of the centerline of Terrace Road

DATE & TIME: Tuesday, October 11, 1983 at 10:15 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

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

Petition for Special Exception for one 12' x 25' illuminated outdoor advertising structure (sign)

All that parcel of land in the Fifteenth District of Baltimore County

Being the property of Euclay Realty, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF  
ARNOLD JABLON  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

September 26, 1983

Foster & Kleiser  
c/o Mr. Walker  
3001 Remington Avenue  
Baltimore, Maryland 21211

Re: Petition for Special Exception  
N/S of Eastern Ave., 401' E of the  
E/W of Terrace Road  
Euclay Realty - Petitioner  
Case No. 84-93-X

Dear Sir:

This is to advise you that \$50.99 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 121567

DATE: 10/11/83  
R-01-615-000

AMOUNT: \$50.99

RECEIVED FROM: Foster & Kleiser  
FOR: Advertising & Posting Case #84-93-X  
(Euclay Realty)

6 508\*\*\*\*\*509910 8126A

VALIDATION OR SIGNATURE OF CASHIER

FEB 28 1985

September 12, 1983

Euclay Realty  
619 S. Caroline Street  
Baltimore, Maryland 21231

**NOTICE OF HEARING**  
Re: Petition for Special Exception  
N/S Eastern Ave., 401' E of the  
c/l of Terrace Rd.  
Euclay Realty - Petitioner  
Case No. 84-93-X

TIME: 10:15 A.M.

DATE: Tuesday, October 11, 1983

PLACE: Room 106, County Office Building, 111 West Chesapeake  
Avenue, Towson, Maryland

cc: Foster & Kleiser  
c/o Mr. Walker  
3001 Remington Avenue  
Baltimore, Maryland 21211

Zoning Commissioner  
of Baltimore County

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 119488  
DATE: 7-21-83 ACCOUNT: 84-415-00  
AMOUNT: 103.00  
RECEIVED FROM: Foster & Kleiser  
FOR: Euclay Realty - Petitioner  
05666661000010 8228A  
VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

November 17, 1983

Euclay Realty  
619 S. Caroline Street  
Baltimore, Maryland 21231

Re: Petition for Special Exception  
N/S of Eastern Ave., 401' E of the  
c/l of Terrace Rd.  
Euclay Realty - Petitioner  
Case No. 84-93-X

Dear Sir:

Please be advised that an appeal has been filed by John W. Hessian, III,  
People's Counsel for Baltimore County, from the decision rendered by the  
Deputy Zoning Commissioner of Baltimore County, in the above-referenced  
matter.

You will be notified of the date and time of the appeal hearing when it  
is scheduled by the County Board of Appeals.

Very truly yours,

Arnold Jablon  
Zoning Commissioner

AJ:aj

cc: Foster & Kleiser  
c/o Mr. W. Walker  
3001 Remington Avenue  
Baltimore, Maryland 21211

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

October 14, 1983

Euclay Realty  
619 South Caroline Street  
Baltimore, Maryland 21231

Re: Petition for Special Exception  
N/S of Eastern Ave., 401' E of  
the center line of Terrace Rd.  
15th Election District  
Euclay Realty - Petitioner  
NO. 84-93-X (Item No. 31)

Gentlemen:

I have this date passed my Order in the above captioned matter  
in accordance with the attached.

Very truly yours,

JEAN M.H. JUNG  
Deputy Zoning Commissioner

JMHJ/mc

Attachments

cc: Mr. W. Walker  
Foster & Kleiser  
3001 Remington Avenue  
Baltimore, Maryland 21211

John W. Hessian, III, Esquire  
People's Counsel

IN THE MATTER OF THE  
APPLICATION OF  
GEORGE MEHRING  
FOR A SPECIAL EXCEPTION,  
ETC.  
APPEAL FROM THE COUNTY  
BOARD OF APPEALS OF  
BALTIMORE COUNTY  
File No. 84-109-X

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AT LAW  
Case 2/134/84CG843

IN THE MATTER OF THE  
APPLICATION OF  
EUCLAY REALTY  
FOR A SPECIAL EXCEPTION,  
ETC.  
APPEAL FROM THE COUNTY  
BOARD OF APPEALS OF  
BALTIMORE COUNTY  
File No. 84-93-X

Case 2/135/84CG435

**APPELLANTS' REPLY MEMORANDUM**

On July 1, 1981, the Circuit Court for Baltimore  
County, per Raine, J., issued a clear opinion in Metromedia,  
Inc. v. Baltimore County, Eq. No. 103167. This Court  
declared that applications for special exceptions for outdoor  
advertising signs, under Section 413.3 of the County's Zoning  
Regulations, must be determined under the provisions published  
in the regulations as printed in 1957 and 1963. The 1975 Gold  
Book version of Section 413 was found inapplicable. Further,  
this Court, in declaring what law applied pursuant to Maryland's  
Declaratory Judgment Act,<sup>1</sup> reasoned that amendments to the

1. See excerpt quoted verbatim in Appellants'  
Memorandum, p. 3-4.
2. See §§3-402, 3-406, & 3-411, Courts Article, Md.  
Code.

LAW OFFICE OF  
MELINDOYE, KAUFMAN,  
WEINER & BRUNER, P.A.  
88 S. CHARLES STREET  
BALTIMORE, MD  
21201-0000

zoning regulations had to adhere to Section 22 of the County  
Code, which requires notice and hearing prefatory to  
amendment. Because no notice or hearings preceded the Gold  
Book amendment at bar in Metromedia, the publications of 1957  
and 1963 — long thereafter applied in the County — were  
declared binding.

Despite Metromedia, within months of that clear  
declaration, the County merely republished Section 413 in the  
same fashion declared fouled in Metromedia. In these appeals,  
People's Counsel now argues that this Court should ignore  
Metromedia or avoid deciding this case at all. Neither course  
would be the appropriate judicial response.

**I. METROMEDIA IS APT AUTHORITY  
CONTROLLING THESE CASES.**

People's Counsel has continually asserted that it is  
not bound by Metromedia because that office was not allowed to  
intervene in Metromedia. That argument is without merit.

As Appellants have previously argued,<sup>2</sup> Baltimore  
County was the Defendant in Metromedia. The Office of People's  
Counsel is a creature of the County's Charter, a part of the  
county structure, without status independent of the County.  
When Metromedia was decided against the County, its inferior  
creature — the Office of People's Counsel, was surely likewise

3. See Appellants' Memorandum, p. 18-19.

LAW OFFICE OF  
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BALTIMORE, MD  
21201-0000

bound. Cf., Holt v. Moxley, 157 Md. 619, 621-3 (1929); B. v. C.  
& A. Ry. Co. v. Wisconsin County, 93 Md. 113, 121-2 (1901).

The applicable legal principle has been variously  
expressed. The leading case is Sunshine Anthracite Coal Co. v.  
Adkins, 310 U.S. 381, 402-3, 60 S.Ct. 907, 917 (1940) which  
held that "a judgment in a suit between a party and a  
representative of the United States is res judicata in  
relitigation of the same issue between that party and another  
officer of government." Given this lodestar, various courts  
have bound state or local agencies that were not party to a  
preceding suit. The Supreme Court of Arizona, binding a state  
racing commission in a second suit to a decision in a prior  
suit in which the State of Arizona was a party, wrote:

"The rule is that a judgment which binds the  
sovereign also binds its subordinate  
officials."

Arizona Downs v. Superior  
Court of Ariz., 623 P.2d  
1229, 1232 (Ariz. 1981).

Accord: Mandarin v. Pollard, 718 F.2d 845, 850 (7th Cir.  
1983); Nash City Bd. of Ed. v. Baltimore Co., 640 F.2d 484,  
493-7 (4th Cir. 1981), cert. den. 102 S.Ct. 359. Similarly,

4. Even lack of knowledge of the first suit by the  
particular official interested in the second matter would not  
inhibit application of the rule. River Valley, Inc. v. Dubuque  
County, 507 F.2d 582, 586 (8th Cir. 1974). People's Counsel  
cannot even claim ignorance of Metromedia since it tried to  
intervene and was rejected. See People's Counsel Exhibit 2  
which is the opinion of the Court of Special Appeals affirming  
this Court's rejection of People's Counsel in the Metromedia  
case.

LAW OFFICE OF  
MELINDOYE, KAUFMAN,  
WEINER & BRUNER, P.A.  
88 S. CHARLES STREET  
BALTIMORE, MD  
21201-0000

the Supreme Court of Illinois wrote:

"The effect of the [prior] litigation is the  
same whether the suit is brought against the  
state agency or the official charged with  
the responsibility of administering the  
provisions of the challenged statute."

Consolidated Distilled  
Products v. Alphin, 382  
N.E.2d 217, 220 (Ill., 1978).

Likewise, in People v. Grainger, 324 N.W.2d 762, 767 (Mich.App.  
1982), it was held that:

"The doctrine of collateral estoppel  
precludes relitigation of an issue in a  
subsequent suit involving the same parties  
based upon a different cause of  
action. [Citation omitted.] Although the  
prior circuit court case involved the  
licensing board, whereas the present case  
involves the Wayne County Prosecutor, these  
parties are sufficiently identical for  
purpose of application of collateral  
estoppel. Each is a creature of the same  
sovereign, the State of Michigan."

A successor zoning authority was held bound by a prior decision  
involving a predecessor authority in City of Columbia v. Union  
Cemetery Assn., 341 N.E.2d 298, 301-2 (Ohio, 1976).

The opinion of Senior Judge Butzner for the Fourth  
Circuit in Kutzik v. Young, 730 F.2d 149, 152 (4th Cir. 1984)  
aptly states the rule in its Maryland permutation:

"Although the defendants in the state and  
federal actions are not identical, they are  
in privity. In the state action, the  
defendants were Young and the university's  
Board of Regents."

LAW OFFICE OF  
MELINDOYE, KAUFMAN,  
WEINER & BRUNER, P.A.  
88 S. CHARLES STREET  
BALTIMORE, MD  
21201-0000

In the federal action, the defendants  
are Young, individually and in his capacity  
as dean; Kuhn, individually; and Toll,  
individually and in his capacity as president  
of the university.

\*\*\*

In Maryland, the test to determine  
whether nominally different parties are the  
same is one of substance, not form.  
Sterling v. Local 438, 207 Md. 144, 113  
A.2d 389, 394-95 (1955). Maryland recognizes  
that a principal and his agent are in  
privity. McKinzie v. Baltimore & Ohio R.R.,  
28 Md. 161 (1866). Also, officers of the  
same government, who have authority to act  
on behalf of the government, are in  
privity. Similarly, a subordinate official,  
who is controlled by and authorized to  
represent a government agency, is in privity  
with the agency. See Washington Suburban  
Sanitary Comm'n v. TKU Assoc., 281 Md. 1,  
19-20, 376 A.2d 505, 514-15 (1977) (by  
implication). Application of these  
principles demonstrates that the defendants  
in the federal action — Young, Kuhn, and  
Toll — who were acting as agents of the  
board, are in privity with the board, which  
was a defendant in the state suit.

All elements of the Maryland doctrine  
of claim preclusion have been established."

[Emphasis supplied.]

Even if People's Counsel is somehow not a County  
official and bound thusly by privity running from the  
Metromedia case, People's Counsel would nevertheless be bound  
because "where the public right has been litigated and the  
public officials are bound by the judgment [as in Metromedia],  
the neighbors and other citizens are also bound." Morganelli  
v. Bldg. Inspector of Canton, 388 N.E.2d 708, 715 (Mass.App.

LAW OFFICE OF  
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21201-0000

1979). See also, Wade's Dairy, Inc. v. Town of Fairf. A.2d. 24 (Conn.1980).

The essential point is that Metromedia decided what was the applicable law; it declared Section 413 as published in 1957 and 1963 to be the law in the County, subject only to amendment by resort to Section 22 of the County Code. That decision of this Court was not appealed<sup>1</sup> and the County simply republished, without adhering to Section 22,<sup>2</sup> the discarded version of Section 413. The Metromedia decision binds the County and, as well, People's Counsel; it should be followed in these appeals.

THIS CASE IS RIPE FOR DECISION; THIS COURT SHOULD DECIDE, NOT DEFER DECISION.

People's Counsel has asked this Court to "defer further review of this litigation," citing "the pending legislative process,"<sup>3</sup> and relying upon the Yorkdale rule.<sup>4</sup> Two reasons compel rejection of this dilatory

5. When a County does not appeal a trial court's decision, it is bound by it. Probasco v. Sykes, 307 F.2d 817, 823 (Wyo. 1957).

6. See Appellants' Memorandum, p. 15-17.

7. County Council Resolution No. 93-84, October 15, 1984, recites that "some confusion" exists as to where the law allows outdoor advertising signs and requests — not mandates — the County Planning Board to review the situation and to recommend amendments.

8. Yorkdale v. Powell, 237 Md. 121 (1964).

request: first, the Yorkdale rule is inapposite, because, second, the legislative process noted has hardly begun with no legislative resolution preordained or even required.

The Yorkdale rule, quite simply, demands that a court reviewing a zoning case apply the law in effect at the time of the review. It most certainly does not ask a reviewing Court to stay judgment while the legislative process is initiated.

In respect to the applicable law, the County Council has simply asked the Planning Board to study the situation — termed by the legislative body to be confusing — and to recommend amendments. The Resolution of the Council does not mandate amendments, nor does it, of course, suggest that the Council will rubber stamp whatever the Board may recommend. Reliance, therefore, on the Yorkdale rule is totally misplaced. The legislative process has not even begun; there has been no Council enactment. Moreover, at issue here in these appeals is what law shall apply, not whether, as in Yorkdale, there was an intervening legislative enactment. At issue here, additionally, is the value or credence to be accorded a prior declaration of the law by this Court, i.e., the effect of the Metromedia decision.

Because Council sessions are televised, and susceptible to recording, there is no need to guess what the legislative body was doing when Resolution 93-84 was adopted. Its sponsor, Councilman Gallagher, stated that the "business roadside zone", i.e., B.R. at issue in these appeals, "dropped

out somewhere ... maybe in reprinting of the Code..." He noted these pending cases; he did not suggest that this Court stay its judgment. The sponsor merely opined that there was "considerable confusion on this issue" and the resolution suggested no "special direction." Councilman Lauenstein asked when a report could be anticipated and the Planning Board's spokesman responded that staff recommendations were not due until February, 1985 and a Board report was not due until June, 1985. There was no suggestion, either on the face of the Resolution or in the Council dialogue, that the Resolution should or would accelerate this process.

This Court, consequently, has no legislative amendments to consider and none are due in the immediate future. In these circumstances, this Court should do what courts exist to do, i.e., decide the cases presented.

#### CONCLUSION

For the reasons stated herein, as well as those expressed in Appellants' Petitions and Memorandum, the relief prayed in said Petitions should be afforded.

M. Albert Figinski  
M. Albert Figinski  
Melnicove, Kaufman, Weiner  
& Smouse, P.A.  
36 S. Charles Street, 6th Floor  
Baltimore, MD 21201  
301-332-8520  
Attorney for Appellants, the  
Petitioners and Contract Lessee.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of November, 1984, I mailed, postage prepaid, a copy of the foregoing Appellants' Reply Memorandum to the County Board of Appeals of Baltimore County, Room 200, Court House, Towson, MD 21204 and to Peter Max Zimmerman, Esq., Deputy People's Counsel, Room 223, Court House, Towson, MD 21204.

M. Albert Figinski  
M. Albert Figinski

0802f

RECEIVED  
COUNTY BOARD OF APPEALS  
FEB. 15 1985

LAW OFFICES OF  
MELNICOVE, KAUFMAN,  
WEINER & SMOUSE, P.A.  
36 S. CHARLES STREET  
BALTIMORE, MD  
21201-2000

In the matter of Euclay Realty 84CG435 and

In the matter of George Mehling 84CG434

IN THE CIRCUIT COURT

Vs.

FOR

County Bd. of Appeals of Balto. Co.

BALTIMORE COUNTY

Docket 2 Folio 134- 135

Case No. 84CG435 & 434

#### NOTICE OF FILING OF RECORD

TO: M. Albert Figinski  
Melnicove, Kaufman, Weiner Smouse  
36 S. Charles St. Balto. MD. 21201

June Holman  
Co. Bd. of Appeals of Balto. Co.  
Mail Stop 2205

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on Aug. 22, 1984

Edward H. Folline, Jr.  
Clerk

FILED AUG 22 1984

IN THE MATTER OF  
THE APPLICATION OF  
GEORGE MEHLING  
FOR A SPECIAL EXCEPTION  
ON PROPERTY LOCATED ON  
THE NORTHEAST SIDE OF  
REISTERSTOWN RD., 510'  
NORTHWEST OF THE CENTERLINE  
OF KINGSLEY RD., 4th District  
Zoning File No. 84-109-X

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AT LAW  
File No. 84-CG-434

IN THE MATTER OF  
THE APPLICATION OF  
EUCLAY REALTY  
FOR A SPECIAL EXCEPTION  
ON PROPERTY LOCATED ON  
THE NORTH SIDE OF EASTERN  
AVE., 401' EAST OF THE  
CENTERLINE OF TERRACE RD.,  
15th DISTRICT  
Zoning File No. 84-93-X

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AT LAW  
File No. 84-CG-435

#### ANSWER TO PETITION ON APPEAL

People's Counsel for Baltimore County, Protestant below and Appellee herein, answers the Petition on Appeal heretofore filed by the Appellant, viz:

1. That People's Counsel agrees to the consolidation of the above cases and is filing this Answer upon the basis that the Court will sign the Order of Consolidation in due course.
2. That the Appellee admits the allegations made and contained in the first paragraph of said Petition on Appeal.
3. That Appellee denies the allegations made and contained in the second paragraph of the Petition on Appeal and each and every subparagraph thereof.
4. Further answering, Appellee states affirmatively that the decision of the County Board of Appeals herein was proper and justified by the evidence before it and that the decision of the Board should therefore be sustained as being properly and legally made.

- 3 -

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 6th day of September, 1984, a copy of the foregoing Answer to Petition on Appeal was mailed to M. Albert Figinski, Esquire, 36 S. Charles Street, 6th Floor, Baltimore, MD 21201.

Peter Max Zimmerman  
Peter Max Zimmerman

RECEIVED  
COUNTY BOARD OF APPEALS  
FEB SEP - 6 A D 1984

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bayley Avenue  
P.O. Box 9754  
Towson, Maryland 21204-0754  
August 31, 1984.

TO: M. Albert Figinski, Esq.  
County Board of Appeals of Balto. Co.  
Thomas J. Ballinger, Esq.

RECEIVED  
COUNTY BOARD OF APPEALS  
FEB SEP - 6 A D 1984

IN THE MATTER OF  
EUCLAY REALTY  
VS.  
BALTIMORE COUNTY

IN THE MATTER OF  
GEORGE MEHLING  
VS.  
BALTIMORE COUNTY

FILE NO. 84-CG-434 & 84-CG-435

DATE OF FILING: AUGUST 22, 1984

DATE OF HEARING: SEPTEMBER 26, 1984, @ 9:30 AM

APPEAL: 2 hours

NOTES: Cases assigned as companion cases pending consolidation.

UPON RECEIPT OF THIS NOTICE, Counsel shall contact each other immediately to confer and determine the date of the hearing.

POSTPONEMENTS: If the above date is not acceptable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 10 DAYS OF TRIAL must be made to the satisfaction of the Director of Court Administration - Courtroom - 494-2188.

SETTLEMENT CONFERENCE: In an effort to effect a binding settlement, including client and insurance representatives, THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. COUGHLIN, Jr. to the settlement conference of John Adams.

SETTLEMENT: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record in the form of a stipulation or a settlement agreement filed prior to trial.

ON THE FOLLOWING:

HEARING DATE:

ON THE FOLLOWING:

ON THE FOLLOWING:

ON THE FOLLOWING:

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ON THE FOLLOWING:



IN THE MATTER OF THE APPLICATION OF EUCLAY REALTY FOR A SPECIAL EXCEPTION ON THE PROPERTY LOCATED ON THE NORTH SIDE OF EASTERN AVE., 401' EAST OF THE CENTER LINE OF TERRACE RD. 15th DISTRICT NO. 84-93-X

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

RECEIVED  
COUNTY BOARD OF APPEALS  
JUN 10 AM 10:30

Appeal from the County Board of Appeals of Baltimore County, No. 84-93-X

ORDER FOR APPEAL BY PETITIONER AND CONTRACT LESSEE

MR. CLERK:

Please enter an appeal on behalf of Euclay Realty, Petitioner, and Foster & Kleiser, Contract Lessee, from the Order of the County Board of Appeals of Baltimore County, passed in Case No. 84-93X on July 11, 1984.

*M. Albert Figinski*  
M. Albert Figinski  
Melnicove, Kaufman, Weiner & Smouse,  
P.A.  
36 S. Charles Street  
Baltimore, MD. 21201  
(301) 332-8520  
Attorney for Petitioner and Contract Lessee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Md. Rule B2, prior to filing this order for appeal, I mailed pursuant to Md. Rule 1-321, on this 9th day of August, 1984, a copy of the foregoing to the County Board of Appeals for Baltimore County, Room 200, Court House, Towson, MD. 21204. As well, on this 9th day of August, 1984, a copy of the foregoing was mailed to Peter Max Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, MD. 21204.

*M. Albert Figinski*  
M. Albert Figinski

IN THE MATTER OF THE APPLICATION OF EUCLAY REALTY FOR A SPECIAL EXCEPTION ON THE PROPERTY LOCATED ON THE NORTH SIDE OF EASTERN AVE., 401' EAST OF THE CENTER LINE OF TERRACE RD. 15th DISTRICT NO. 84-93-X

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

Appeal from the County Board of Appeals of Baltimore County, No. 84-93-X

APPEAL PETITION

Pursuant to Md. Rule B 2e., Appellants, by M. Albert Figinski and Melnicove, Kaufman, Weiner & Smouse, P.A., their attorneys, join with their order for appeal, this petition:

1. On July 11, 1984, the County Board of Appeals of Baltimore County passed an Order reversing an order of the Deputy Zoning Commissioner, dated October 14, 1983, and denying the Special Exception petitioned for, i.e., a 12' x 25' outdoor advertising sign. A copy of the Board's Opinion and Order is attached hereto as Exhibit 1 and incorporated herein by this reference.

2. The Board committed numerous errors in denying the Special Exception as shall be more fully addressed in the Memorandum permitted hereafter under Md. Rule B12. Those errors include:

A. Although the parties appearing below at the Board's hearing had stipulated that the proposed outdoor advertising sign met the requirements of Section 502 of the County Zoning Regulations, the Board's Opinion was silent

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MELNICOVE, KAUFMAN,  
WEINER & SMOUSE, P.A.  
36 S. CHARLES STREET  
BALTIMORE, MD  
21201-0000

thereon except to suggest "that the facts incident to the case at bar are conducive to the location of the proposed structure". There is no inhibition, under Section 502, to the granting of a Special Exception for the requested outdoor advertising sign.

B. The sole, substantial issue presented to the Board was whether, under Section 413.3 of the Zoning Code, an outdoor advertising sign may be located in a B. R. zone, the zone assigned to the property in question. In determining that issue, the Board failed to read properly the decision of this Court in Metromedia, Inc. v. Baltimore County, Eq. No. 103167, a copy of which is attached hereto as Exhibit 2. As well, the Board ignored the import of the requirements of Sections 22-21 and 22-22(a) of the Baltimore County Code.

C. After about two decades (i.e. 1955 to 1976) of treating B. R. as a zone in which outdoor advertising signs were allowed as Special Exceptions under certain conditions, the County zoning officials altered the rules and went back, according to their version of history, to the true enacted version of Section 413 of the Zoning Code when a "Gold" cover version of the Zoning Regulations was published in 1976. Thereafter, challenges were mounted to the Gold Book. In one (see Joint Exhibits 1 and 2 introduced below), this Court declined to choose which version of Section 413.3 applied. However, on July 1, 1981, this Court ruled (see Exhibit 2), in a declaratory judgment action, that:

- 2 -

requirements of Section 502 of the County's Zoning Regulations, the entry of an order granting the Special Exception;

c. an order directing the County to process special exceptions for outdoor advertising signs in accord with the Metromedia decision until and unless an ordinance modifying the declared law is enacted in accord with Section 22 of the County Code, particularly Sections 22-21 and 22-22(a); and

d. Such other and further relief as may be appropriate.

MELNICOVE, KAUFMAN, WEINER  
& SMOUSE, P.A.

*M. Albert Figinski*  
M. Albert Figinski  
36 S. Charles Street  
Baltimore, MD. 21201  
(301) 332-8520  
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 9th day of August, 1984, I mailed, postage prepaid, a copy of the foregoing Appeal Petition to Peter Max Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, MD. 21204.

*M. Albert Figinski*  
M. Albert Figinski

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- 6 -

"The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

This Court will declare that the Defendant [i.e., Baltimore County] must accept application for special exceptions submitted by Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963."

The Board below spoke confusingly about this decision (see page 3 of Exhibit 1) but surely ignored its declaration of the law. The Board erroneously refused to apply the Black and Blue Book versions of Section 413.3 to the Special Exception at issue.

D. Instead, the Board relied on the publication, several months after Metromedia was decided, of the existing "turquoise" book which, in the manner of the Gold Book, was not promulgated after notice and hearing required by Section 22 of the County Code, the same defect as perceived in Metromedia. What the County has done is repeat the same error that led to the ruling in Metromedia and, then, unabashedly retorted that Metromedia does not apply because of the re-publication. This is utter chimeria. If Metromedia means anything, it means that, in 1981, the Black and Blue Book versions (Petitioners Exhibits 2 & 3 below) of Section 413 were

- 3 -

declared to be the law which, as Metromedia said, could be altered in accord with Section 22 of the County Code. The uncontroverted but ignored testimony below was that, prior to publication of the "turquoise" book, there were neither notice nor hearings pursuant to Section 22. Without adherence to Section 22, the republished error of the Gold Book -- in the "turquoise" book -- remains fatally flawed. Metromedia means that, because of the admitted failure to adhere to Section 22 when the "turquoise" book was published, the Metromedia declaration of law is applicable. Under the Black and Blue Book versions declared law in Metromedia, an outdoor advertising sign may be located in a B. R. zone. The Board erred in refusing to read B. R. as a zone in which outdoor advertising signs are permitted as a Special Exception.

E. The face of the Board's opinion (Exhibit 1), when read in light of the evidence presented below, demonstrates that the Board's ruling is unsupported by substantial evidence, is capricious or arbitrary and is in violation of constitutional provisions.

F. When the Board opined that "In November, 1981, the present B. C. Z. R. book was officially adopted by the Baltimore County Council," it clearly erred because the record below is devoid of substantial evidence to substantiate "official adoption". At most, the Secretary of the County Council certified that there was an accurate printing. What

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the Board ignored was the Secretary's uncontroverted testimony, elicited on cross-examination, that there were neither hearings nor notice prior to the publication. The publication, insofar as Section 413 is concerned, was in defiance of Metromedia, see paragraph 2D hereof.

G. The Board's make-weight reliance on the enactment of Bill 7-84 (see Exhibit 1, p. 2) is totally misplaced. Indeed, because the enactment thereof recites (see Exhibit 3, attached hereto and incorporated herein by this reference):

"Whereas, the Baltimore County Council has received a final report from the Planning Board concerning the subject legislation and has held a public hearing thereon...."

while as to the "turquoise book" there is no such legislation or legislative recitation, the enactment of Bill 7-84 endorses Appellants' position, see 2D hereof.

H. The Board wholly ignored uncontroverted evidence presented below by Appellants.

WHEREFORE, in light of the errors recited in paragraphs 2A through 2H, as shall be more precisely addressed in the Memorandum to be filed herein pursuant to Md. Rule B 12, Appellants seek the following relief:

a. reversal of the order denying the special exception;

b. because the parties below stipulated that the requested outdoor advertising sign meets the

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BALTIMORE, MD  
21201-0000

- 5 -

requirements of Section 502 of the County's Zoning Regulations, the entry of an order granting the Special Exception;

c. an order directing the County to process special exceptions for outdoor advertising signs in accord with the Metromedia decision until and unless an ordinance modifying the declared law is enacted in accord with Section 22 of the County Code, particularly Sections 22-21 and 22-22(a); and

d. Such other and further relief as may be appropriate.

MELNICOVE, KAUFMAN, WEINER  
& SMOUSE, P.A.

*M. Albert Figinski*  
M. Albert Figinski  
36 S. Charles Street  
Baltimore, MD. 21201  
(301) 332-8520  
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 9th day of August, 1984, I mailed, postage prepaid, a copy of the foregoing Appeal Petition to Peter Max Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, MD. 21204.

*M. Albert Figinski*  
M. Albert Figinski

0512F

- 6 -

IN THE MATTER OF EUCLAY REALTY FOR A SPECIAL EXCEPTION ON THE PROPERTY LOCATED ON THE NORTH SIDE OF EASTERN AVE., 401' EAST OF THE CENTER LINE OF TERRACE RD. 15th DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

No. 84-93-X

OPINION

This case comes before this Board on appeal from a decision of the Deputy Zoning Commissioner granting the requested Special Exception for the erection of a 12' x 15' outdoor advertising sign. The sign proposed, however, is to be located in a B. R. zone and the matter before this Board not only concerns the Special Exception requirements delineated in the Baltimore County Zoning Regulations (B.C.Z.R.) Section 502.1, but whether in fact such a sign is permitted at all in a B. R. zone.

Testimony and evidence produced this day indicated a very confused and conflicting history of the B.C.Z.R., Section 413, which section regulates signs in Baltimore County. On March 30, 1955, the Baltimore County Commissioners passed an ordinance to regulate signs in Baltimore County. Section 413 of this ordinance allowed outdoor advertising billboards by Special Exception in B.L., B.M., M.L. and M.H. zones. No mention is noted of such signs in a B.R. zone. This ordinance was known as the "gray book" and was apparently enforced until some time in 1957. In 1957, there was published a "black book" codifying the zoning regulations and laws, as in 1963, a "blue book" updating these regulations. These two official zoning regulating ordinances included the B.R. zoning classification in Section 413.3. In 1969, a "red book" was published again updating zoning regulations, and in this printing, the B.R. classification was omitted from Section 413.3. Until 1975, however, outdoor advertising signs were still permitted in the B.R. zones by Special Exception. In 1975, a "gold book" was published, and the omission of the B.R. zones in Section 413.3 was noted, and the Zoning Office notified interested parties that the "gold book" would now be enforced and no petitions for Special Exception for outdoor advertising signs in any B.R. zone would be accepted.

Exhibit 1

County Council of Baltimore County  
Maryland

Legislative Session 1984, Legislative Day No. 2  
BILL NO. 7-84

Mr. James T. Smith, Jr., Councilman

By the County Council, January 16, 1984

A BILL  
ENTITLED

AN ACT concerning

Signs in Manufacturing Zones

FOR the purpose of amending the Baltimore County Zoning Regulations in order to permit business signs in certain manufacturing zones of the County under certain conditions.

BY repealing and re-enacting, with amendments,

Subsection 413.2  
Baltimore County Zoning Regulations, as amended.

BY adding

Subsection 413.6  
Baltimore County Zoning Regulations, as amended.

WHEREAS, the Baltimore County Council has received a final report from the Planning Board concerning the subject legislation and has held a public hearing thereon; now, therefore

SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that Subsection 413.2 of the Baltimore County Zoning Regulations, as amended, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Exhibit 3

Eurley Realty  
Case No. 84-93-X

However, it is important to note that this Board considers the decision rendered in Metromedia as binding in its application of the law. This Board does not consider the holding in Metromedia as evidence. This Board further notes that although the law enunciated in Metromedia is binding on this Board, we do not believe that a similar decision in another jurisdiction would be binding on this Board unless, of course, that decision was afforded the appropriate appellate review. Obviously, the distinction this Board applies to Metromedia surrounds the fact that the regulations involved are Baltimore County regulations, and the judgment rendered with respect thereto was declaratory in nature. Although this Board suggests that the facts incident to the case at bar are conducive to the location of the proposed structure, it would appear, in this Board's opinion, that the vehicle through which the Appellant should pursue relief is legislative. The Board cannot disregard the will and the wisdom of the legislative body in deleting the B.R. zone from those zones in which outdoor advertising can be located. Again, inasmuch as the applicable law was certified in November of 1981, this Board cannot extend the reasoning of Metromedia to the subject matter. To do so, in our opinion, extends the logic of Metromedia beyond the scope Judge Raine intended.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 11th day of July, 1984, by the County Board of Appeals, ORDERED that the Order of the Deputy Zoning Commissioner, dated October 14, 1983, be REVERSED and that the Special Exception petitioned for be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Diana K. Vincent

METROMEDIA, INC.  
Plaintiff  
v  
BALTIMORE COUNTY, MARYLAND  
et al  
Defendants

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
EQUITY NO. 103167

MEMORANDUM OPINION

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1958, the County republished this same version in the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1959, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold Book). In this edition, Section 413 followed the Red Book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or

Exhibit 2

hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

The Plaintiff avers that the County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Soft Book and that its long adherence to and dissemination of the old Section 413 constitutes a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites Paxa v. Peak, 15 Nov. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitutes a ratification of that law, even though the promulgated version differs from the original text.

The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

This Court will declare that the Defendant must accept application for special exceptions submitted by the Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1958. This ruling is applicable only to Section 413 and to no other regulation.

Del. E. Raine  
JUDGE

JULY 1, 1981

-2-

(Page 2 — Bill No. 7-84)

Section 413 — SIGNS

413.2 — Business signs as defined in Section 101 are permitted in Business and Industrial Zones under the following conditions, as limited by Section 413.5; HOWEVER, FOR BUSINESS SIGNS IN THE M.L.R. AND M.L. ZONES, THE PROVISIONS OF SUBSECTION 413.6 SHALL APPLY:

a. In any business zone, a sign affixed parallel to a wall of a building shall not exceed in square feet four times the length of the wall to which it is affixed, and if it adjoins the eave of the roof, shall extend not more than four feet in height above such eave.

b. In any business zone a sign affixed to any part of a building including a penthouse shall not extend more than 16 feet in height above any part of the roof or parapet and shall not exceed in square feet four times the length of the front building wall.

c. A sign attached to the building and projecting approximately at right angles to it shall not exceed a total area of two square feet for every foot of height of the wall to which it is attached.

d. No sign described in 413.2.a, b and c above shall project more than 42 inches from the building.

e. An identification sign for a shopping center or other integrated group of stores or commercial buildings, not exceeding 150 square feet in area. Multiple-faced signs shall be considered as one sign. If the commercial center has access from more than one street, one such identification sign may be allowed for each street provided the latter is officially recognized as a thoroughfare; also provided that no such identification signs shall be located within 100 feet of any existing principal building or adjoining residential premises on the same side of the street. No such sign, however, shall be permitted unless the land on the opposite side of such thoroughfare is zoned commercial from the corner to a point opposite any portion of such sign.

f. Other business signs (not exceeding three on any premises) may be used if limited to a total area of 100 square feet in Business Zones, and 200 square feet in M.L. and M.H. Zones.

SECTION 2. And be it further enacted, that new Subsection 413.6 be and it is hereby added to the Baltimore County Zoning Regulations, as amended, to follow immediately after Subsection 413.5, and to read as follows:

413.6 — BUSINESS SIGNS AS DEFINED IN SECTION 101 ARE PERMITTED IN THE M.L.R. AND M.L. ZONES UNDER

(Page 3 — Bill No. 7-84)

THE FOLLOWING CONDITIONS AND AS LIMITED BY SECTION 413.5 EXCEPT AS HEREIN MODIFIED.

A. STATIONARY BUSINESS SIGNS ARE PERMITTED ON A BUILDING, PROVIDED THAT—

1. NO SIGN PROJECTS MORE THAN TWELVE (12) INCHES FROM THE BUILDING;

2. NO SIGN EXTENDS ABOVE THE ROOF LINE OF THE BUILDING; AND

3. THE TOTAL SURFACE AREA OF SIGNS AFFIXED TO EACH WALL OF THE BUILDING DOES NOT EXCEED, IN SQUARE FEET, 1/4 TIMES THE LENGTH OF THE WALL.

B. ONE STATIONARY FREESTANDING BUSINESS SIGN IS PERMITTED FOR EACH STREET TO WHICH A LOT HAS DIRECT VEHICULAR ACCESS, PROVIDED THAT—

1. ITS SURFACE AREA DOES NOT EXCEED 25 SQUARE FEET PER FACE; AND

2. NO PART OF THE SIGN IS MORE THAN SIX (6) FEET ABOVE THE GRADE LEVEL OF THE STREET UPON WHICH IT FACES OR SIX (6) FEET ABOVE THE GRADE LEVEL OF THE LOT ON WHICH IT IS ERECTED, WHICHEVER MEASUREMENT PERMITS THE GREATER ELEVATION OF THE SIGN.

C. IN ADDITION TO THE SIGNS PERMITTED IN SUBSECTION 413.6, PARAGRAPH A, ONE STATIONARY IDENTIFICATION SIGN IS PERMITTED AT EACH EXTERIOR ENTRANCE TO A USE WITHIN A BUILDING, PROVIDED THAT—

1. IT IS NOT ILLUMINATED OTHER THAN BY ILLUMINATION THAT MAY BE PROVIDED FOR THE BUILDING OR SITE;

2. IT DOES NOT PROJECT MORE THAN TWO (2) INCHES FROM THE BUILDING; AND

3. ITS SURFACE AREA DOES NOT EXCEED ONE (1) SQUARE FOOT.

D. ONE STATIONARY FREESTANDING SIGN IS PERMITTED AT EACH VEHICULAR ENTRANCE TO AN INDUSTRIAL AND/OR OFFICE PARK PROVIDED THAT—

1. ITS SURFACE AREA DOES NOT EXCEED FIFTY (50) SQUARE FEET PER FACE; AND

2. NO PART OF THE SIGN IS MORE THAN TWELVE (12) FEET ABOVE THE GRADE LEVEL OF THE STREET

(Page 4 — Bill No. 7-84)

UPON WHICH IT FACES OR TWELVE (12) FEET ABOVE THE GRADE LEVEL OF THE LOT ON WHICH IT IS ERECTED, WHICHEVER MEASUREMENT PERMITS THE GREATER ELEVATION OF THE SIGN.

E. IN ADDITION TO THE SIGNS PERMITTED IN SUBSECTION 413.6, PARAGRAPHS A, B, C AND D, STATIONARY DIRECTORY SIGNS IDENTIFYING THE NAMES AND LOCATIONS OF TENANTS ARE PERMITTED FOR EACH MULTI-TENANT BUILDING, PROVIDED THAT—

1. 75 PERCENT OR MORE OF THE TENANTS IDENTIFIED ON THE SIGN(S) HAVE INDEPENDENT OUTSIDE ACCESS;

2. THE SIGN(S) ARE PLACED WITHIN THE BUILDABLE AREA OF THE SITE AND DO NOT PROJECT BEYOND THE REQUIRED MINIMUM BUILDING SETBACK LINE; AND

3. LETTERING INDICATING NAMES AND SUITE NUMBERS OF TENANTS DOES NOT EXCEED ONE INCH IN HEIGHT AND ALL OTHER LETTERING DOES NOT EXCEED THREE INCHES IN HEIGHT.

F. ONE STATIONARY FREESTANDING PARK IDENTIFICATION SIGN IS PERMITTED FOR ANY INDUSTRIAL AND/OR OFFICE PARK PROVIDED THAT ITS SURFACE AREA DOES NOT EXCEED ONE HUNDRED FIFTY (150) SQUARE FEET PER FACE.

G. THE LIGHT FROM ANY ONE LIGHT SOURCE PERMITTED BY THIS SUBSECTION SHALL BE SHIELDED OR DIRECTED SO THAT THE LIGHT INTENSITY OR BRIGHTNESS SHALL NOT ADVERSELY AFFECT SURROUNDING OR FACING PREMISES.

SECTION 3. And be it further enacted, that this Act shall take effect forty-five days after its enactment.

(Page 5 - Bill No. 7-84)

READ AND PASSED this 21st day of February, 1984.

By Order

Thomas Toporovich, Secretary  
PRESENTED to the County Executive for his approval this  
22nd day of February, 1984.

Thomas Toporovich, Secretary

APPROVED AND ENACTED: 3:284

Donald P. Hutchinson,  
County Executive

I HEREBY CERTIFY THAT BILL NO. 7-84 IS TRUE AND  
CORRECT AND TOOK EFFECT ON APRIL 16, 1984.

Ronald B. Hickernell,  
Chairman, County Council

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter stricken from existing law.  
Strike-out indicates matter stricken from bill.  
Underlining indicates amendments to bill.

(Page 5 - Bill No. 7-84)

READ AND PASSED this 21st day of February, 1984.

By Order

Thomas Toporovich, Secretary  
PRESENTED to the County Executive for his approval this  
22nd day of February, 1984.

Thomas Toporovich, Secretary

APPROVED AND ENACTED: 3:284

Donald P. Hutchinson,  
County Executive

I HEREBY CERTIFY THAT BILL NO. 7-84 IS TRUE AND  
CORRECT AND TOOK EFFECT ON APRIL 16, 1984.

Ronald B. Hickernell,  
Chairman, County Council

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter stricken from existing law.  
Strike-out indicates matter stricken from bill.  
Underlining indicates amendments to bill.

LAW OFFICES OF  
MELNICOVE, KAUFMAN, WEINER & SMOUSE, P. A.

38 SOUTH CHARLES STREET

SIXTH FLOOR

BALTIMORE, MARYLAND 21201-3080

TELEPHONE 1208 332-8500

TELEFAX 710-834-8416

WRITER'S DIRECT DIAL NO.

332-8520

August 15, 1984

Clerk  
Circuit Court for Baltimore County  
County Courts Building  
P.O. Box 6754  
Towson, MD. 21204-0754

Re: Case 84CG434  
and Case 84CG435

Dear Mr. Clerk:

Please find enclosed an original and one copy of  
a motion to consolidate the above-captioned appeals from  
the County Board of Appeals. Also enclosed is an original  
and copy of an Order.

I would appreciate it if you would docket and  
file the originals in Case 84CG434 and the copies in Case  
84CG435. I would also appreciate having the Order presented  
to the Court for execution. The opposing side at the County  
Board of Appeals, i.e., People's Counsel, does not oppose  
the motion (see paragraph 5 of the motion).

Thank you.

Very truly yours,

M. Albert Figinski

MAF/s

Encls.

cc: County Board of Appeals  
Peter Max Zimmerman, Esq.

RECEIVED  
COUNTY BOARD OF APPEALS  
FEB 22 1984

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF  
THE APPLICATION OF  
GEORGE MEHRING  
FOR A SPECIAL EXCEPTION,  
ETC.

APPEAL FROM THE  
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
No. 84-109-X

CASE: 84CG434

DOCKET: 2

FOLIO: 134

IN THE MATTER OF  
THE APPLICATION OF  
EUCLAY REALTY  
FOR A SPECIAL EXCEPTION,  
ETC.

APPEAL FROM THE  
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
No. 84-93-X

CASE: 84CG435

DOCKET: 2

FOLIO: 135

MOTION FOR CONSOLIDATION OF TWO  
APPEALS FROM THE COUNTY BOARD OF APPEALS

Appellants in cases 84CG434 and 84CG435, by their  
undersigned attorney, move, pursuant to Md. Rule 2-503, for the  
consolidation of the two above-captioned appeals from the  
County Board of Appeals for Baltimore County. As grounds  
therefor, they say:

1. The two appeals are each from a petition for  
special exception to allow the placement and construction of an  
outdoor advertising sign on a parcel of land zoned B.R.
2. At the County Board of Appeals, the two petitions  
were joined, i.e., consolidated, for hearing and were heard  
together, there being one transcript and one set of exhibits.

3. The opinions and orders of the County Board of  
Appeals, although filed separately as to each petition, were  
identical, except for the specification of such incidental  
matters as the location of the property, the owner thereof,  
the date of the hearing before the zoning commissioner or his  
deputy, etc. Likewise, the appeal petitions in each case are  
identical save for incidental matters.

4. In each appeal, there is presented the overriding  
issue of whether, in light of this Court's opinion and order in  
Metromedia v. Baltimore County, Eq. No. 103167 (a copy of which  
is attached as Exhibit 2 to each appeal petition), the location  
of an outdoor advertising sign is governed by the "turquoise"  
book published by the County after said decision.

5. Below, Appellants were opposed by People's  
Counsel in each matter. Appellants are authorized to advise  
this Court that Deputy People's Counsel does not oppose this  
request for consolidation.

6. The staff of the County Board of Appeals has  
expressed to counsel for Appellants the hope that the two  
appeals will be consolidated so as to facilitate their filing  
of the single record (i.e., transcript and exhibits) created  
before the County Board of Appeals.

WHEREFORE, Appellants, with approval of Deputy  
People's Counsel, move that this Court Order that these cases  
be consolidated for all purposes, including filing of the

- 2 -

Administrative record, briefing pursuant to Rule B12, argument,  
hearing and disposition, and that the attached order be signed.

MELNICOVE, KAUFMAN, WEINER  
& SMOUSE, P. A.

M. Albert Figinski  
M. Albert Figinski  
36 S. Charles Street  
Baltimore, MD. 21201  
301-332-8520  
Attorney for Appellants

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of August,  
1984, I mailed, postage prepaid, a copy of the foregoing  
Motion for Consolidation of Two Appeals from the County Board  
of Appeals to:

County Board of Appeals  
of Baltimore County  
Room 200  
Court House  
Towson, MD. 21204

Marvin I. Singer, Esq.  
10 E. Eager Street  
Baltimore, MD. 21202

Peter Max Zimmerman, Esq.  
Deputy People's Counsel  
Room 223  
Court House  
Towson, MD. 21204

M. Albert Figinski  
M. Albert Figinski

0529f/1

- 3 -

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF  
THE APPLICATION OF  
GEORGE MEHRING  
FOR A SPECIAL EXCEPTION,  
ETC.

APPEAL FROM THE  
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
No. 84-109-X

CASE: 84CG434

DOCKET: 2

FOLIO: 134

IN THE MATTER OF  
THE APPLICATION OF  
EUCLAY REALTY  
FOR A SPECIAL EXCEPTION,  
ETC.

APPEAL FROM THE  
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
No. 84-93-X

CASE: 84CG435

DOCKET: 2

FOLIO: 135

ORDER

On the Motion of Appellants, it is this \_\_\_\_ day of

\_\_\_\_, 1984.

ORDERED, that case 84CG434 and case 84CG435 be and  
hereby are consolidated, pursuant to Md. Rule 2-503, for all  
purposes.

JUDGE

0529f

LAW OFFICES OF  
MELNICOVE, KAUFMAN, WEINER & SMOUSE, P. A.

38 SOUTH CHARLES STREET

SIXTH FLOOR

BALTIMORE, MARYLAND 21201-3080

TELEPHONE 1208 332-8500

TELEFAX 710-834-8416

WRITER'S DIRECT DIAL NO.

332-8520

August 21, 1984

Ms. June Holman  
Secretary  
County Board of Appeals  
of Baltimore County  
Room 200  
Court House  
Towson, MD 21204

Re: Case No. 84-93-X  
Euclay Realty  
Case No. 84-109-X  
George Mehring

Dear Ms. Holman:

By letters dated August 13, 1984, you requested  
an \$18.00 payment re the appeal of Case No. 84-93-X and a  
\$20.00 payment re the appeal of Case No. 84-109-X. You  
requested check payable to Baltimore County.

Enclosed please find this firm's check #13523 in  
the amount of \$38.00 to cover payment for both Case No.  
84-93-X and Case No. 84-109-X. Recall that I phoned you  
today and advised that a single check to cover the cost  
of both appeal records would be forthcoming.

If there is anything further that I need to do to  
perfect the appeals of both cases, please advise.

Very truly yours,

M. Albert Figinski  
M. Albert Figinski

MAF/s

Encl.

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COUNTY BOARD OF APPEALS  
FEB 22 1984

FEB 28 1985



County Board of Appeals of Baltimore County  
Room 200 Court House  
Towson, Maryland 21204  
(301) 494-3180  
August 13, 1984

Phyllis C. Friedman  
People's Counsel  
Court House  
Towson, Md. 21204

Dear Mrs. Friedman:

Re: Case No. 84-93-X  
Euclay Realty

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.  
cc: N. E. Gerber  
J. Howell  
A. Jablon  
J. Jung  
J. Dyer

August 13, 1984

BILLED TO: M. Albert Figinski, Esq.  
36 S. Charles St., 6th fl.  
Baltimore, Md. 21201

Cost of certified documents: Case No. 84-93-X . . . . . \$ 18.00  
Euclay Realty  
N/S Eastern Ave., 401' E of c/l of Terrace Rd.  
15th District

MAKE CHECKS PAYABLE TO: Baltimore County, Md.

REMIT TO: County Board of Appeals  
Rm. 200, Court House,  
Towson, Md. 21204



County Board of Appeals of Baltimore County  
Room 200 Court House  
Towson, Maryland 21204  
(301) 494-3180  
August 13, 1984

M. Albert Figinski, Esq.  
36 S. Charles St., 6th fl.  
Baltimore, Md. 21201

Dear Mr. Figinski:

Re: Case No. 84-93-X  
Euclay Realty

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.  
cc: Euclay Realty  
Foster & Kleiser



Attorney County, Maryland  
PEOPLE'S COUNSEL  
OLD COURT HOUSE  
TOWSON, MARYLAND 21204

PHYLIS COLE FRIEDMAN  
People's Counsel  
PETER MAX ZIMMERMAN  
Deputy People's Counsel

TEL. 494-2188

March 30, 1984

The Honorable  
William T. Hackett, Chairman  
County Board of Appeals  
Room 200, Court House  
Towson, MD 21204

RE: Euclay Realty, Petitioner  
Case No. 84-93-X; and  
George Mehring, Petitioner  
Case No. 84-109-X

Dear Chairman Hackett:

I want to address briefly some new matters raised for the first time in Petitioner's Reply Memorandum. The case of *Pease v. Beck* is distinguishable. There, the published law had been applied consistently for thirty years, been settled by court decisions, and relied on by all of the citizens. The properly enacted version never saw the light of day.

In the present case, the properly enacted version was applied 1956-57, published from 1969 on, and applied from 1975-80. There was no court decision until 1981, which is Judge Raine's decision under question here.

Therefore, there is no reason to distinguish from the "general rule" announced in *Pease* "that the mistake of a transcriber or printer cannot change the law." Moreover, Petitioners can cite no Maryland case legitimizing such an error of law.

As to the alleged lack of notice and hearing in connection with the turquoise book, Petitioners overlook that there was no proper notice and hearing in connection with the publications upon which they rely. This is the double standard hidden in their argument. The only properly enacted version is the gray book, upon which we rely.

Very truly yours,

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel

cc: M. Albert Figinski, Esquire  
PMZ:sh

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COUNTY BOARD OF APPEALS  
FEB MAR 30 P 2 39 E



County Board of Appeals of Baltimore County  
Room 200 Court House  
Towson, Maryland 21204  
(301) 494-3180  
July 11, 1984

Mrs. Phyllis C. Friedman  
People's Counsel for Baltimore County  
Court House  
Towson, Md. 21204

Dear Mrs. Friedman:

Re: Case No. 84-93-X  
Euclay Realty

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.  
cc: Euclay Realty  
Foster & Kleiser  
M. Albert Figinski, Esq.  
N. E. Gerber  
J. Howell  
A. Jablon  
J. Jung  
J. Dyer

LAW OFFICES OF  
MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A.  
38 SOUTH CHARLES STREET  
SIXTH FLOOR  
BALTIMORE, MARYLAND 21201-3080  
TELEPHONE (301) 332-8800  
TELECOPIER (301) 332-8884  
TELEX 70-854-0000  
(WRITER'S DIRECT DIAL NO.)  
332-8520

March 13, 1984

County Board of Appeals  
Room 219  
Court House  
Towson, MD. 21204

Re: 84-93X  
84-109X

To the Honorable Board:

Enclosed please find the original and three copies of the Petitioners' Memorandum in regard to the above referenced appeals which were consolidated for hearing and heard on March 1, 1984.

Very truly yours,

*M. Albert Figinski*  
M. Albert Figinski

MAF/s  
Encls.  
cc: Peter Max Zimmerman, Esq.

FEB MAR 13 P 2 35

RE: PETITION FOR SPECIAL EXCEPTION: BEFORE THE COUNTY BOARD OF APPEALS  
N/S of Eastern Ave., 401' E of  
the Centerline of Terrace Rd., : OF BALTIMORE COUNTY  
15th District

EUCLAY REALTY, Petitioner : Case No. 84-93-X  
and :  
PETITION FOR SPECIAL EXCEPTION :  
NE/S Reisterstown Rd. 510' NW :  
of Centerline of Kingsley Rd., :  
4th District :  
GEORGE MEHRING, Petitioner : Case No. 84-109-X  
: : : : :  
: : : : :

PEOPLE'S COUNSEL'S REPLY MEMORANDUM

Metromedia, in its Memorandum, suggests that Judge Raine's Opinion in 1981 is the touchstone for the current decision, and that it is binding on the People's Counsel. It is then claimed that the turquoise book is merely the gold book reincarnated, and that its provisions are invalid under the reasoning of the earlier case.

But Metromedia overlooks several key points. The present case is an entirely new case. It involves different properties and special exceptions from any referred to in the case before Judge Raine. It involves different parties. And it involves a different book of regulations. Moreover, because of these differences combined, the County Board of Appeals has now had an opportunity to review an ample evidentiary record so that, for the first time, a correct decision on the merits may be reached.

As to the properties, while Metromedia may have an interest in establishing the billboards, the affected property owners in the current cases were not involved in any prior court case and, therefore, can neither benefit nor suffer directly from Judge Raine's ruling. Simply put, zoning cases involve property, and new properties are before the Board for review. At most, the present applicants can look to Judge Raine's Opinion for such

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FEB MAR 25 P 2 14 E

- 2 -

reasoning as they may claim is persuasive but in no way are they entitled to any rights based on a concept that the earlier decision is binding.

As to the parties, it has been established that Metromedia successfully opposed the People's Counsel's Petition to Intervene in the court case. Pursuant to Maryland Rule 208a, intervention as of right must be allowed when "the applicant is or may be bound by a judgment in the action." The Court of Special Appeals found that Judge Raine correctly disallowed intervention because the proceeding was not directly a petition for special exception. It follows from that reasoning, together with the rule, that the Court did not intend to bind the People's Counsel in any subsequent special exception proceeding. If the Court had thought that there was any impairment to the ability of the People's Counsel to represent the public interest in special exception cases, it certainly would have allowed intervention. See *Citizens Coordinating Committee v. TVU*, 276 Md. 705, 713, 351 A.2d 133 (1976).

In this connection, any suggestion or implication that the office of People's Counsel may be identified with, or somehow merged, into the representation provided by the County Law Office, is wrong from every point of view. The People's Counsel and County Attorney operate under different charter provisions with differently defined responsibilities. Compare Charter Section 524.1(b) with Section 508. See *People's Counsel v. A. V. Williams*, 45 Md. App. 617, 415 A.2d 585 (1980). As the Board of Appeals knows from experience, the differing functions of the two offices cause those offices to appear in different types of zoning cases and to take differing positions. Indeed, it is no accident that the County Law Office has not appeared in the present case. It never does in special exception cases. In some cases, such as those arising from the County Review Group,

FEB 28 1985

the People's Counsel and County Office of Law have taken adverse positions.\* As to the legislation under consideration, there is no dispute that a new book is under consideration, further differentiating this case.

There is no reason, therefore, to avoid or escape a fair and complete review of the evidence presented to this Board and a final clarification from the expert administrative body which is best positioned to do it.

A careful review of Metromedia's current argument reveals a failure to confront the doctrine that estoppel cannot operate against enforcement of a public law. Furthermore, they fail to acknowledge the period of time during which the gold book was enforced and/or was not challenged directly in any court or administrative proceeding.

It is apparent that Judge Raine did not have the opportunity to consider the pertinent facts and law, but there is no reason for this Board to overlook either the record or the pertinent case law.

To accept the Opinion of Judge Raine as written in stone would not only be to repeat an error of law, but also to accept an unfair attempt at legal maneuvering. It was Metromedia which deliberately sought to exclude the participation of People's Counsel from the earlier case, and successfully. Having done that, they want to hold the opinion obtained over the head of People's Counsel and prevent People's Counsel from having its fair opportunity to advocate a position. This is a kind of "divide and conquer" tactic which, if permitted, would result in prejudice to the ability of the People's Counsel to carry out its publicly assigned function to represent the public interest.

Accordingly, the County Board of Appeals has both the opportunity and responsibility to exercise its judgment in interpreting the law and facts

\*The representation of the public by different attorneys for different purposes is not unique to Baltimore County. It commonly occurs at the federal and state levels, where agencies more often find themselves in conflicting positions.

applicable to this case. It is submitted that if Judge Raine had had the opportunity to consider the facts and argument presented here, the outcome would have been different.

For the reasons stated in our initial Memorandum, the present provisions of the turquoise book should be upheld.

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 223, Court House  
Towson, MD 21204  
494-2188

I HEREBY CERTIFY that on this 26th day of March, 1984, a copy of the foregoing People's Counsel Reply Memorandum was mailed to M. Albert Figinski, Esquire, Melnicove, Kaufman, Weiner & Smouse, P.A., 36 South Charles Street, Sixth Floor, Baltimore, MD 21201-3060.

Peter Max Zimmerman  
Peter Max Zimmerman

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE COUNTY BOARD OF APPEALS  
N/S of Eastern Ave., 401' E of  
Centerline of Terrace Rd., : OF BALTIMORE COUNTY  
15th District  
EUCRAY REALTY, Petitioner : Case No. 84-93-X  
and :  
PETITION FOR SPECIAL EXCEPTION :  
N/S Reisterstown Rd. 510' NW :  
of Centerline of Kingsley Rd., :  
4th District :  
GEORGE MEHRING, Petitioner : Case No. 84-109-X  
: : : : :  
PEOPLE'S COUNSEL'S MEMORANDUM

The question presented is whether Baltimore County should be estopped (or prevented) from enforcing a zoning ordinance validly enacted in 1955 solely because of the mistaken failure of County officials to enforce the law from 1957 to 1975. The facts are essentially undisputed; and it is submitted that the law does not allow such an estoppel.

Statement of Facts

On March 30, 1955, the Baltimore County Commissioners passed an ordinance to regulate signs in Baltimore County. Section 413 of the zoning regulations included, among other provisions, Section 413.3, allowing outdoor advertising billboards by Special Exception in B.L., B.M., M.L., and M.H. zones. Such billboards were excluded from B.R. zones. These provisions, in the so-called "gray book" were enforced at least until the latter part of 1956 and probably into 1957. At about that time, there was published a "black book," purporting to codify the various zoning regulations (1957), and later a "blue book" (1963), updating these regulations. Through inadvertence, Section 413.3 was said to cover B.R. zones. The history is still murky, but it appears the mistake may have been due to a belief that some proposal to amend the regulations had been adopted. The record is clear, however, that the 1955 ordinance was never

amended.

The black and blue books were enforced. In 1969, a "red book" was published, which corrected the mistake and properly omitted the B.R. zone from Section 413.3. Nevertheless, the zoning officials continued mistakenly to allow such billboard petitions in B.R. zones. In 1975, upon the publication of the "gold book," the provision drew attention. The Planning Office did a thorough review and traced the matter back to show the mistakes of the black and blue books. The Zoning Office then informed the predecessor of Metromedia, Petitioner here, that the gold book would be enforced. At that time, as has been the case since 1957, Metromedia was represented by Wilbur R. Walker, Esquire.

From 1975 to 1980, Metromedia did not file a petition for a special exception in a B.R. zone. Metromedia's attorney has stated that this was due to the lack of any proper cases to file. The evidentiary record is unclear, however, as to whether Metromedia chose to avoid locating its billboards in B.R. zones, whether it voluntarily complied with the gold book, or whether, by accident, there didn't happen to be any occasion to place a new billboard in a B.R. zone between 1975 and 1980.

It is clear that the County had announced to Metromedia that the gold book would be enforced; that the gold book operated upon billboards generally around the County, whether belonging to Metromedia or any other party; and that Metromedia did not bring a Declaratory Judgment action in Court during that five year period.

Finally, in 1980, Metromedia did bring litigation in the Circuit Court for Baltimore County and was successful in obtaining a Decree invalidating the gold book provision in 1981. The People's Counsel sought to intervene in that case, but Metromedia also successfully prevented that intervention.

In 1981, the "turquoise book" was published, which retained Section 413.3 consistent with the gold book and the original gray book, but inconsistent with Judge Raine's Decree. As had been the case with the gold book, and preceding publications, the County Council approved the turquoise book by resolution. It was further noted that in connection with the resolution approving the gold book, the County Solicitor had undertaken an investigation and had been satisfied that its provisions were accurate.

Following publication of the turquoise book, the Zoning Commissioner did apparently follow Judge Raine's Decree in several cases. The question did not reach the County Board of Appeals in any form until the Anna E. E. Schneider case (No. 82-226-XSPH) decided in favor of People's Counsel, on July 1, 1983. Metromedia did not appeal that case.

Following that result, the People's Counsel appealed the present cases. At the hearing on March 1, 1984, the Board had the opportunity to hear Mr. Walker; James Dyer, Zoning Supervisor; and Thomas Toporovich, Secretary to the County Council; together with an ample set of exhibits. It appears now that the record on this subject is as complete as it ever will be, and certainly fuller than the record presented in any previous administrative case on the subject, or in the case presented to Judge Raine.

Therefore, the County Board of Appeals now can take a hard look at the history, so that we are in a position to settle the matter once and for all.

Argument

THE DOCTRINE OF EQUITABLE ESTOPPEL GOVERNS THIS CASE; AS A MATTER OF LAW, THE DOCTRINE DOES NOT OPERATE TO PREVENT BALTIMORE COUNTY FROM ENFORCING VALIDLY ENACTED ZONING REGULATIONS; IN ANY EVENT, THE DOCTRINE IS FACTUALLY INAPPLICABLE BECAUSE THE "GOLD BOOK" WAS IN EFFECT AND ENFORCED FROM 1975 TO 1980.

In this context, Metromedia seeks to avoid a properly enacted zoning ordinance by relying on the mistaken action of officials in publishing and enforcing an incorrect version of the law (the black and blue books). Ironically, Metromedia seeks also to avoid the properly published versions (the red, gold and turquoise books) on the ground that they were not properly enacted under Title 22 of the Baltimore County Code. This is certainly a bizarre twist and a double standard. Fortunately, the doctrine of estoppel can help us cut through this convoluted argument and find a clear answer.

In Salisbury Beauty Schools v. State Bd. of Cosmetologists, 268 Md. 32, 61-68, 300 A.2d 367 (1973), the Court of Appeals rejected a similar attempt to avoid regulation on the basis of governmental inaction. There, the Board of Cosmetologists had failed from 1947 to 1962 to promulgate proper regulations or to enforce a clearly enacted prohibition against the charging of money for work by students. In an extensive discussion, the Court stated that estoppel does not operate against actions by the state done in a governmental capacity. The statute was self-enforcing, and it would be wrong "to permit administrative officers of the state by inactivity or apathy to effectively bring about a repeal of a validly enacted statute..." 268 Md., at 67.

As an additional reason for rejecting the statutory challenge, the Court said that knowledge of the law would be imputed to the challenger. Accordingly, there was no change in the position of the parties as a result of the failure of predecessor boards to enforce compliance.

Upon the facts here, the argument for overturning validly enacted legislation is weaker. The record shows that the regulations were properly implemented from 1955 to 1957; that the regulations were again properly

published and enforced from 1975 to 1980; and that the petitioners neither lost any rights nor were prejudiced by the period of mistaken failure of enforcement. Indeed, Metromedia gained benefits to which it was not entitled, and could have requested a change in the law, at the very least, from 1969 through 1980, the time of the red and gold books. Otherwise stated, Petitioners never had the right to construct billboards in B.R. zones and didn't gain any rights by administrative mistake. Furthermore, even if it is assumed that any rights were gained from 1957 to 1969, they were lost from 1969 to 1980.

It should be underlined that the Salisbury case applies as well to municipalities and counties, and carries on a well-established tradition. See Lipsitz v. Parr, 164 Md. 222, 164 A. 743 (1933). More recently, in City of Hagerstown v. Long Meadow Shopping Center, 264 Md. 481, 287 A.2d 242 (1972), the Court held that the mistaken issuance of a building permit, in violation of the zoning ordinance, created no vested rights in the permittee. It should be underlined that, under these cases, the estoppel doctrine cannot be invoked even where a substantial amount of work is done without official interference. 264 Md., at 496.

Of course, in the present case, Baltimore County has not up to this point requested Metromedia to take down the various billboards constructed from 1957 through 1983 in contravention of the proper terms of the law. We are only speaking, in this case, of the question of whether property owners will continue to be permitted to obtain zoning approvals in clear violation of the language of the legislature.

Conclusion

For the foregoing reasons, it is submitted that the County Board of Appeals should, and must, deny the requests for special exceptions in these cases.

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 14th day of March, 1984, a copy of the foregoing People's Counsel's Memorandum was mailed to M. Albert Figinski, Esquire, Melnicove, Kaufman, Weiner & Smouse, P.A., 36 South Charles Street, Sixth Floor, Baltimore, MD 21201-3060.

Peter Max Zimmerman  
Peter Max Zimmerman

12/16/83 - Following have been notified of a hearing set for Thursday, March 1, 1984, at 10 a.m.:

Euclay Realty  
Foster & Kleiser  
J. Hession  
N. Garber  
J. Howell  
A. Jablon  
J. Jung  
J. Dyer

Also -- M. Albert Figinski, Esq. - Entered 1/17/84

**CERTIFICATE OF POSTING**  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District 15 Date of Posting 11/27/83  
Posted for: Board of Appeals  
Petitioner: Euclay Realty  
Location of property: N/S Eastern Ave., 401' E of  
the c/c of Terrace Rd.  
Location of Sign: front of property facing Eastern  
ave.  
Remarks: See 2. Column  
Posted by: Signature Date of return: 12/2/83  
Number of Signs: 1

Mr. V. Walker  
Foster & Kleiser  
3001 Kensington Avenue  
Baltimore, Maryland 21211

**BALTIMORE COUNTY OFFICE OF PLANNING & ZONING**

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your petition has been received and accepted for filing this  
2nd day of August, 1983.

ARNOLD JABLON  
Zoning Commissioner

Petitioner: Euclay Realty  
Petitioner's Attorney:

Received by: Signature  
Nicholas B. Commodari  
Chairman, Zoning Plans  
Advisory Committee

**CERTIFICATE OF PUBLICATION**

TOWSON, MD., September 22, 1983.

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 22nd  
day of September, 1983, before the 11th day of October,  
1983, the 22nd day of September, 1983.

THE JEFFERSONIAN  
L. Frank Struth  
Manager

Cost of Advertisement, \$.....21.00

494-3180

**County Board of Appeals**  
Room 219, Court House  
Towson, Maryland 21204  
December 16, 1983  
**NOTICE OF ASSIGNMENT**

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT  
REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN  
STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONE-  
MENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEAR-  
ING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 84-93-X

EUCLAY REALTY

1/5 of Eastern Ave., 401' E of the c/c  
of Terrace Rd.

15th District

SE - One 12' x 15' illuminated outdoor  
advertising sign

ASSIGNED FOR:

THURSDAY, MARCH 1, 1984, at 10 a.m.

cc: Euclay Realty

Petitioner

Foster & Kleiser

Contract Lessee

J. W. Hession, Esq.

People's Counsel

N. E. Garber

J. Howell

A. Jablon

J. Jung

J. Dyer

M. Albert Figinski, Esq.

Counsel for Petitioner

June Holmen, Secretary

**PROPERTY DESCRIPTION**

BEGINNING AT A POINT LOCATED ON THE NORTH SIDE OF EASTERN AVENUE (70 FEET WIDE),  
401 FEET EAST OF THE CENTERLINE OF TERRACE ROAD (40 FEET WIDE) AND 62.5 FEET  
FROM THE CENTERLINE OF EASTERN AVENUE AND THENCE RUNNING THE FOLLOWING COURSES  
AND DISTANCES: NORTHWESTERLY A DISTANCE OF 30 FEET TO A POINT; THENCE SOUTHWESTERLY  
A DISTANCE OF 15 FEET TO A POINT; THENCE SOUTHEASTERLY A DISTANCE OF 30 FEET  
TO A POINT; THENCE A DISTANCE OF 15 FEET TO THE BEGINNING POINT.

**CERTIFICATE OF POSTING**  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District 15 Date of Posting 9/25/83  
Posted for: Euclay Realty  
Petitioner: Euclay Realty  
Location of property: N/S Eastern Ave., 401' E of the c/c  
of Terrace Rd.  
Location of Sign: front of property facing Eastern  
ave.  
Remarks: See 2. Column  
Posted by: Signature Date of return: 9/30/83  
Number of Signs: 1

**The Times**

Middle River, Md., Sept 22, 1983

This is to certify, that the annexed

was inserted in The Times, a newspaper printed  
and published in Baltimore County, once in each  
of one successive  
weeks before the 22nd day of  
September, 1983.  
Publisher.

**BALTIMORE COUNTY, MARYLAND**  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE Aug. 22, 1984 ACCOUNT 01.712

AMOUNT \$ 38.00

RECEIVED FROM: M. Albert Figinski, Esq., 36 S. Ches. St. (21201)  
FOR: Certified copies of documents in Case #84-93-X, Euclay  
Realty, and Case #84-109-X, Geo. Mailing

VALIDATION OR SIGNATURE OF CASHIER

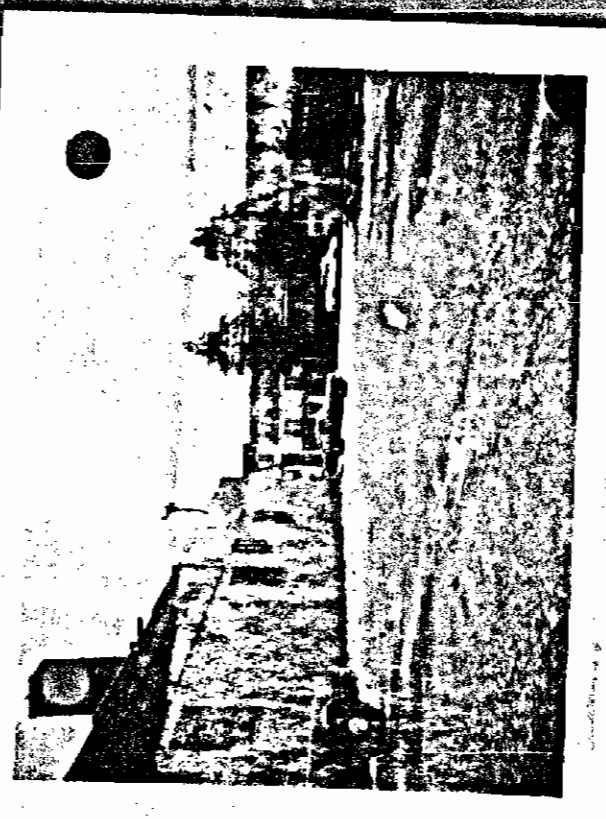
**BALTIMORE COUNTY, MARYLAND**  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE 11/19/83 ACCOUNT R-01-615-000

AMOUNT \$105.00

RECEIVED FROM: People's Counsel  
FOR: Appeal Fee on Case #84-93-X  
(Euclay Realty)

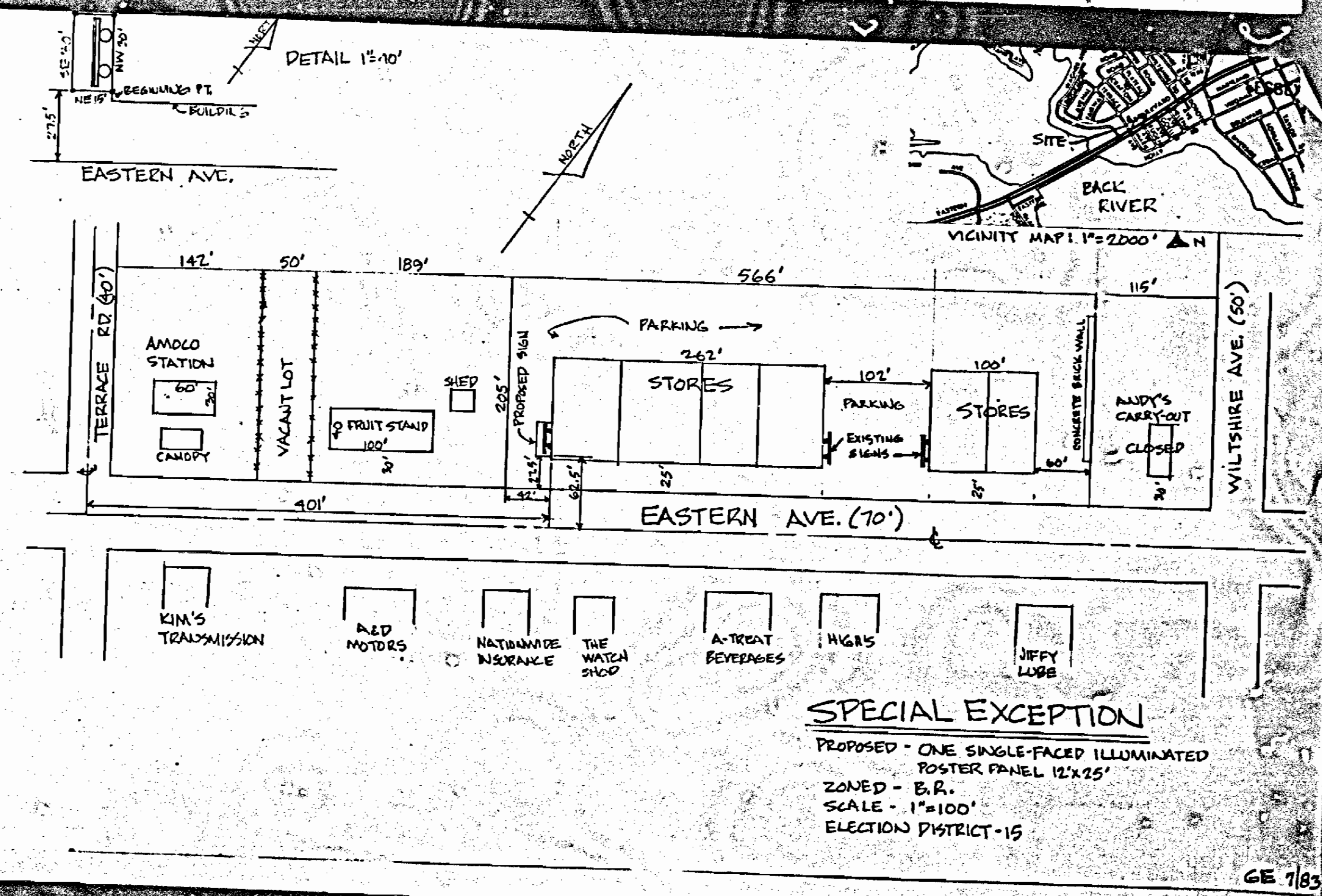
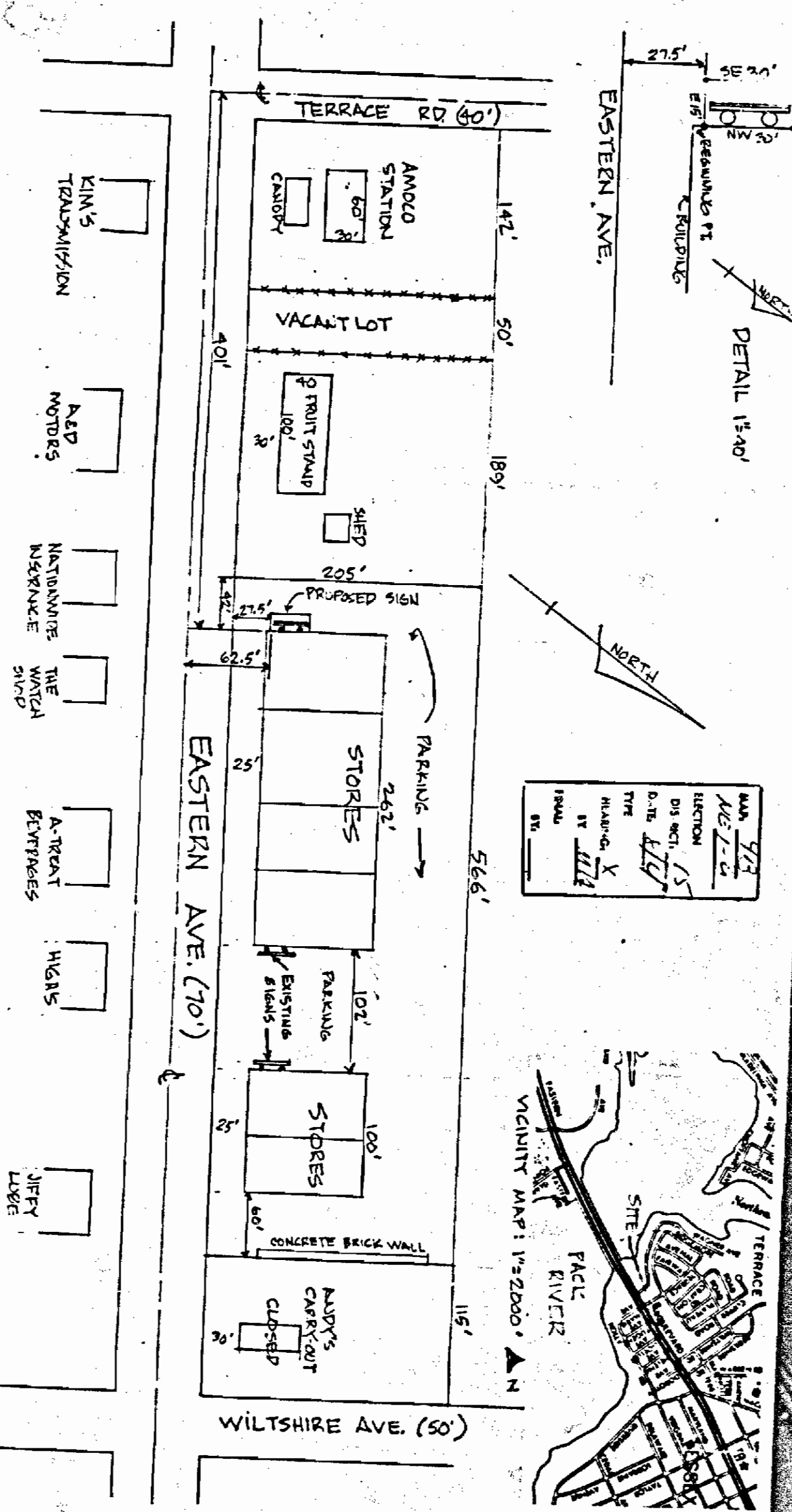
VALIDATION OR SIGNATURE OF CASHIER



84-93-X  
N/S Eastern Ave. 401' E of c/c  
of Terrace Rd.  
Euclay Realty  
11/15/83

**PETITIONER'S**  
**EXHIBIT 1**

**SPECIAL EXCEPTION**  
PROPOSED - ONE SINGLE-FACED ILLUMINATED  
POSTER PANEL 12'x25'  
ZONED - B.R.  
SCALE - 1"=100'  
ELECTION DISTRICT - 15



**SPECIAL EXCEPTION**  
PROPOSED - ONE SINGLE-FACED ILLUMINATED  
POSTER PANEL 12'x25'  
ZONED - B.R.  
SCALE - 1"=100'  
ELECTION DISTRICT - 15

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the requirements of Section 502.1, of the Baltimore County Zoning Regulations having been met and the health, safety, and general welfare of the community not being adversely affected, the special exception should be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 14<sup>th</sup> day of October, 1983, that the Petition for Special Exception for one 12' x 25' illuminated outdoor advertising structure (sign), in accordance with the site plan filed herein, marked Petitioner's Exhibit 1, should be and the same is GRANTED, from and after the date of this Order, subject, however, to no building permits being issued until the expiration of any and all appeal periods.

*Jan M. Holman*  
Deputy Zoning Commissioner of  
Baltimore County

George Mehring, Case No. 84-109-X  
Euclay Realty, Case No. 84-93-X

Case No. 84-109-X

Petitioner's Exhibit No. 8 - Opinion issued by Judge Raine in Equity 103 167

- 9 - Excerpt copy from 1978 Balto. Co. Code, Sec. 2221
- 10 - Copy of Cumulative Supplement of Balto. Co. Code Sec. 2221 (1982)
- 11 - a) Zoning plat - page 1  
b) Page 2 & 3 - Deputy Zoning Commissioner's Opinion
- 12 - Attestation/certification page of turquoise book signed by T. Toporovich
- 13 - Case 82-225-XSPH decision by Board of Appeals
- 14 - Pages 202 & 203 of the B.C.Z.R., turquoise book, Sec. 413.3
- 15 - A. 11/3/82, petition applied for and granted; in BR zoning  
B. 7/8/82, petition applied for and granted; in BR zoning  
C. 10/5/82, petition applied for and granted; in BR zoning

People's Counsel's Exhibit No. 1 - Copy of pertinent section of B.C.Z.R., 1955, Sec. 413.

- 2 - Unreported Court of Special Appeals opinion Metro Media vs. Balto. Co.
- 3 - T. Toporovich's certification of the Gold Book, 4/3/75
- 4 - Letter 3/3/75 from Toporovich to Holzer
- 5 - Opinion letter 3/27/75 from Holzer to Toporovich

Joint Exhibit No. 1 - Letter, 10/6/76 from Chas. Koonitz, Dep. People's Counsel to Robt. Gilland, with attachments.

- 2 - File 76-59-X, microfilm

Euclay Realty  
File No. 84-93-X

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Euclay Realty, 619 S. Caroline St., Baltimore, Md. 21231, Petitioner; Foster & Kleiser, c/o Mr. W. Walker, 3001 Remington Ave., Baltimore, Md. 21211, Contract Lessee; M. Albert Figinski, Esq., 36 S. Charles St., 6th floor, Baltimore, Md. 21201, Counsel for Petitioner and Contract Lessee; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 13th day of August, 1984.

*June Holman*  
June Holman  
County Board of Appeals of Baltimore County

George Mehring, Case No. 84-109-X  
Euclay Realty, Case No. 84-93-X

Case No. 84-93-X

August 2, 1983

Petition of Euclay Realty for special exception for one 12' x 25' illuminated outdoor advertising structure (sign) on property located on the north side of Eastern Ave., 401' east of the center line of Terrace Rd., 15th District

August 2, 1983

Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for Oct. 11, 1983, at 10:15 a.m.

September 22, 1983

Certificate of Publication in newspaper - filed

September 25, 1983

Certificate of Posting of property - filed

September 21, 1983

Comments of Baltimore County Director of Planning - filed

October 4, 1983

Comments of Baltimore County Zoning Plans Advisory Committee - filed

October 11, 1983

At 10:15 a.m. hearing held on petition by Deputy Zoning Commissioner

October 14, 1983

Order of Dep. Zoning Commissioner GRANTING the special exception subj. to restrictions

November 9, 1983

Order for Appeal to County Board of Appeals from Order of Dep. Zoning Commissioner by People's Counsel for Balto. County

March 1, 1984

Hearing on appeal before County Board of Appeals

July 11, 1984

Order of County Board of Appeals ordering that the Order of the Dep. Zoning Commissioner, dated Oct. 14, 1983, be REVERSED and that the special exception petitioned for be DENIED

August 9, 1984

Order for Appeal filed in the Circuit Ct. for Baltimore County by M. Albert Figinski, Esq., on behalf of Petitioner and Contract Lessee

August 9, 1984

Petition to accompany Order for Appeal filed in the Circuit Ct. for Balto. County

August 13, 1984

Certificate of Notice sent to all interested parties

August 14, 1984

Transcript of testimony filed

Petitioner's Exhibits - (Same as in Case No. 84-109-X, George Mehring)

People's Counsel's Exhibits - (Same as in Case No. 84-109-X, George Mehring)

Joint Exhibits - (Same as in Case No. 84-109-X, George Mehring)

August 16, 1984

Motion for Consolidation of Two Appeals from the County Board of Appeals filed in the Circuit Ct. for Balto. County by M. Albert Figinski, Esq., Counsel for Plaintiffs.

IN THE MATTER OF  
THE APPLICATION OF  
GEORGE MEHRING  
FOR A SPECIAL EXCEPTION  
ON PROPERTY LOCATED ON  
THE NORTHEAST SIDE OF  
REISTERSTOWN RD., 510'  
NORTHWEST OF THE CENTER  
LINE OF KINGSLEY RD.,  
4th DISTRICT

GEORGE MEHRING and  
FOSTER & KLEISER, PLAINTIFFS

Zoning File No. 84-109-X

AND

IN THE MATTER OF THE  
APPLICATION OF  
EUCLAY REALTY  
FOR A SPECIAL EXCEPTION  
ON PROPERTY LOCATED ON  
THE NORTH SIDE OF EASTERN  
AVE., 401' EAST OF THE CENTER  
LINE OF TERRACE RD.,  
15th DISTRICT

EUCLAY REALTY and  
FOSTER & KLEISER, PLAINTIFFS

Zoning File No. 84-93-X

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE  
ZONING COMMISSIONER AND THE BOARD OF  
APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF  
BALTIMORE COUNTY

Case No. 84-109-X

August 16, 1983

Petition of George Mehring for special exception for one 12' x 25' double faced illuminated outdoor advertising structure on property located on the northeast side of Reisterstown Rd., 510' northwest of center line of Kingsley Rd., 4th District

George Mehring, Case No. 84-109-X  
Euclay Realty, Case No. 84-93-X

August 22, 1984 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

*June Holman*  
June Holman  
County Board of Appeals of Baltimore County

cc: M. Albert Figinski, Esq.  
People's Counsel

George Mehring, Case No. 84-109-X  
Euclay Realty, Case No. 84-93-X

Case No. 84-109-X

August 16, 1983

Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for Oct. 20, 1983, at 11 a.m.

September 29, 1983

Certificate of Publication in newspaper - filed

September 30, 1983

Certificate of Posting of property - filed

October 7, 1983

Comments of Baltimore County Director of Planning - filed

October 14, 1983

Comments of Baltimore County Zoning Plans Advisory Committee - filed

October 20, 1983

At 11 a.m. hearing held on petition by Zoning Commissioner

October 25, 1983

Order of Zoning Commissioner GRANTING the special exception w/restrictions

November 16, 1983

Order for Appeal to County Board of Appeals from Order of Zoning Commissioner by People's Counsel for Balto. County

March 1, 1984

Hearing on appeal before County Board of Appeals

July 11, 1984

Order of County Board of Appeals ordering that the Order of the Zoning Commissioner, dated Oct. 25, 1983, be REVERSED and that the Special Exception petitioned for be DENIED.

August 9, 1984

Order for Appeal filed in the Circuit Ct. for Balto. County by M. Albert Figinski, Esq., on behalf of Petitioner and Contract Lessee

August 9, 1984

Petition to accompany Order for Appeal filed in the Circuit Ct. for Balto. County

August 13, 1984

Certificate of Notice sent to all interested parties

August 14, 1984

Transcript of testimony filed

Petitioner's Exhibit No. 1 - Mimeo sheet circulated by Zoning Office in 1955

- 2 - "Black Book" published 1957
- 3 - Blue Book published 1963
- 4 - Excerpt from 1965 Red Book
- 5 - 1975 Gold Book
- 6 - Summary showing difference between Ex. #1, #2, and #5
- 7 - Law suit filed Metro Media vs. Balto. County, et al

IN THE MATTER OF  
EUCLAY REALTY  
FOR A SPECIAL EXCEPTION  
ON PROPERTY LOCATED ON  
THE NORTH SIDE OF EASTERN  
AVE., 401' EAST OF THE  
CENTER LINE OF TERRACE RD.,  
15th DISTRICT

BEFORE  
COUNTY BOARD OF APPEALS  
OF  
BALTIMORE COUNTY  
No. 84-93-X

#### OPINION

This case comes before this Board on appeal from a decision of the Deputy Zoning Commissioner granting the requested Special Exception for the erection of a 12' x 15' outdoor advertising sign. The sign proposed, however, is to be located in a B.R. zone and the matter before this Board not only concerns the Special Exception requirements delineated in the Baltimore County Zoning Regulations (B.C.Z.R.) Section 502.1, but whether in fact such a sign is permitted at all in a B.R. zone.

Testimony and evidence produced this day indicated a very confused and conflicting history of the B.C.Z.R. Section 413, which section regulates signs in Baltimore County. On March 30, 1955, the Baltimore County Commissioners passed an ordinance to regulate signs in Baltimore County. Section 413 of this ordinance allowed outdoor advertising billboards by Special Exception in B.L., B.M., M.L. and M.H. zones. No mention is noted of such signs in a B.R. zone. This ordinance was known as the "gray book" and was apparently enforced until some time in 1957. In 1957, there was published a "black book" codifying the zoning regulations and later, as in 1963, a "blue book" updating these regulations. These two official zoning regulating authorities included the B.R. zoning classification in Section 413.3. In 1969, a "red book" was published again updating zoning regulations, and in this printing, the B.R. classification was omitted from Section 413.3. Until 1975, however, outdoor advertising signs were still permitted in the B.R. zones by Special Exception. In 1975, a "gold book" was published, and the omission of the B.R. zones in Section 413.3 was noted, and the Zoning Office notified interested parties that the "gold book" would now be enforced and no petitions for Special Exception for outdoor advertising signs in any B.R. zone would be accepted.

In 1980, the Petitioner, Metromedia, did bring litigation in the Circuit Court for Baltimore County, a Bill of Complaint for Declaratory Judgement, seeking that its Special Exception petitions for outdoor advertising signs be accepted and that the Black Book and Blue Book versions of Section 413 be binding on Baltimore County. On July 1, 1981, Judge John E. Raine in this case, *Metromedia Inc. vs. Baltimore County*, found for the Plaintiffs. His Order found the "Black Book" and the "Blue Book" containing the B.R. zoning in Section 413.3, to be controlling and further stated, "This Court will declare that the Defendant must accept application for Special Exceptions submitted by the Plaintiff, and after hearing, determine the merits of the application based upon Section 413, as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and no other regulation." In November, 1981, the present B.C.Z.R. book was officially adopted by the Baltimore County Council. This adoption is enacted after review by all proper county authorities, as attested to during this hearing. The Board must note that Judge Raine's decision is dated July 1, 1981, and the adoption of the present B.C.Z.R. was dated October 29, 1981. There are allegations that the notice and hearing requirements mandated by Section 22 of the County Code were not met prior to the November 1981 certification, but there has been produced no evidence to persuade this Board that such is the case. In the currently adopted B.C.Z.R., the language of Section 413.3 is clear and unambiguous, and this Board is persuaded that outdoor advertising signs, except for those which the regulations specifically allow, are prohibited as a Special Exception in a B.R. zone. The Board will further note that on February 21, 1984, Bill 7-84 was enacted by the Baltimore County Council and became effective April 16, 1984. This Bill amended the zoning regulations in Section 413 to permit business signs in manufacturing zones under certain conditions, but made no changes in Section 413.3, which denies outdoor advertising signs in a B.R. zone.

Because this matter involves a Baltimore County zoning regulation, this Board does believe and, therefore, does determine that we are bound by a decision of the Circuit Court for Baltimore County until such time as that decision is overturned by one of the Appellate Courts of this State.

provisions were ignored. Because of this inaction, the version of Section 413 declared to be the law in the *Metromedia* case was not effectively amended by the publication of the turquoise book. Without adherence to Sections 22-21 and 22-22 after the Court's declaration of law, the Black Book and Blue Book version of Section 413--which includes B.R. as a zone in which an outdoor advertising structure (sign) may be located as a Special Exception--must be applied to the cases at bar.

2. The Inapposite "Authorities"  
Cited by People's Counsel.

People's Counsel cites and relies primarily upon *Salisbury Beauty Schools v. St. Bd.*, 268 Md. 32(1973). In that case, although the General Assembly had enacted a statute allowing the cosmetology board to regulate charges at beauty schools, no effort at enforcement was made for decades.<sup>5/</sup> Despite that, the Court held the delayed enforcement was proper.

*Salisbury Beauty Schools*, however, arose in a context very different than the situation before the Board. In *Salisbury Beauty Schools*, unlike the situation here, there was never a publication of the statute in differing forms;<sup>2/</sup>

5/ "...notwithstanding the existence of the statutory prohibition since 1947, no attempt was made, prior to March 6, 1962, by the members of former Boards, to enforce its provisions due solely to inaction." 268 Md. at 61.

7/ It is clear, on the record before this Board, that the Black Book and Blue Book, as published, had the same cover page and attestation of validity recitation as the Gold and turquoise books. Recall Mr. Dyer's testimony on cross-examination.

As delineated in Petitioners' Exhibit 6, publication of Section 413 occurred in varying forms.

However, it is important to note that this Board considers the decision rendered in *Metromedia* as binding in its application of the law. This Board does not consider the holding in *Metromedia* as evidence. This Board further notes that although the law enunciated in *Metromedia* is binding on this Board, we do not believe that a similar decision in another jurisdiction would be binding on this Board unless, of course, that decision was afforded the appropriate appellate review. Obviously, the distinction this Board applies to *Metromedia* surrounds the fact that the regulations involved are Baltimore County regulations, and the judgment rendered with respect thereto was declaratory in nature. Although this Board suggests that the facts incident to the case at bar are conducive to the location of the proposed structure, it would appear, in this Board's opinion, that the vehicle through which the Appellant should pursue relief is legislative. The Board cannot disregard the will and the wisdom of the legislative body in deleting the B.R. zone from those zones in which outdoor advertising can be located. Again, inasmuch as the applicable law was certified in November of 1981, this Board cannot extend the reasoning of *Metromedia* to the subject matter. To do so, in our opinion, extends the logic of *Metromedia* beyond the scope Judge Raine intended.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 11th day of July, 1984, by the County Board of Appeals, ORDERED that the Order of the Deputy Zoning Commissioner, dated October 14, 1983, be REVERSED and that the Special Exception petitioned for be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Diana K. Vincent  
Diana K. Vincent

there was no judicial decision that the version of the statute sought to be enforced was not in effect;<sup>8/</sup> and there was no failure, after judicial declaration of the law, to adhere to the statutory requirements for amending the law.<sup>2/</sup>

Similarly, the other two cases cited by People's Counsel--*Lipsitz v. Parr*, 164 Md. 22 (1933) and *City of Hagerstown v. Long Meadow*, 264 Md. 481 (1972) -- are not controlling here. In each, the Court held that illegally issued building permits could not prevail over the enacted zoning codes. In each, the propriety of the enactment of the zoning codes was conceded. There was no confusion in the history of the zoning law to be applied as to what version had been disseminated and published. In neither, as here, had there been a prior judicial declaration that the law was in a version allowing the challenged permit.

3. *Pease v. Peck*, Relied Upon by Judge Raine in *Metromedia*, Was Apt Authority.

Without varnish, People's Counsel's argument is that the County could ignore the publications of the Black and Blue Books, "find" a soft cover book version of Section 413 (People's Counsel's Exhibit 1) in 1975<sup>10/</sup> in some file drawer, and, then, publish the "found" version without compliance with Sections 22-21 and 22-22 of the County

8/ In *Salisbury Beauty Schools*, the litigation was the first on the issue. Here, as much as People's Counsel would like to ignore it, *Metromedia, Inc. v. Baltimore County* did judicially declare the law on July 1, 1981.

9/ See footnote 5, *supra*.

10/ Mr. Dyer clearly testified that the Black Book version of Section 413 had been extensively used for about twenty years.

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE  
N/S of Eastern Avenue : COUNTY BOARD  
401' E. of the C/I of Terrace Rd. :  
15th District :  
EUCLAY REALTY, Petitioner : OF APPEALS  
RE: PETITION FOR SPECIAL EXCEPTION : OF  
NE/S of Reisterstown Road : BALTIMORE COUNTY  
510' NW of C/I of Kingsley Rd. :  
4th District : No. 84-93X  
GEORGE MEHRING, Petitioner : No. 84-109X

Consolidated for  
hearing and heard  
March 1, 1984

PETITIONERS' REPLY MEMORANDUM

This Reply Memorandum will address, pursuant to the Board's admonition at the close of the March 1, 1984 hearing, the arguments raised by People's Counsel's Memorandum. That presentation is subject to attack on at least four distinct grounds. First, People's Counsel's entire presentation, erroneously, gives not an iota of credence to the decision of the Circuit Court for Baltimore County in Equity No. 103167, *Metromedia, Inc. v. Baltimore County* (Petitioners' Exhibit 8). Second, instead, People's Counsel, erroneously, relies on three Maryland decisions which, as shall be shown, are distinguishable from the cases on appeal. Third, People's Counsel, erroneously, gives no effect to the venerable authority, *Pease v. Peck*, 18 How. (59 U.S.) 595 (1855), cited by Judge Raine in *Metromedia* in the course of holding that the Black Book and Blue Book "became effective and controlling law by publication, dissemination, ratification and long acquiescence." Petitioners' Exhibit 8, p. 2. Fourth, People's Counsel does not argue that any required statutory notice and hearing were provided after *Metromedia* was decided and before the turquoise

RECEIVED  
COUNTY BOARD OF APPEALS  
FEB 21 P 2 55

LAW OFFICES OF  
MELINDOYE, KAUFMAN,  
WEINER & BROUSE, P.A.  
88 S. CHARLES STREET  
BALTIMORE, MD  
21201-0000

Code.<sup>11/</sup> That version of how zoning law is made is, frankly, without precedent.

Apt precedent, rather, is that relied upon by Judge Raine in *Metromedia*, i.e., the United States Supreme Court's decision in *Pease v. Peck*, 18 How. (59 U.S.) 595 (1855).

At issue in *Pease v. Peck* was a statute of limitations of the State of Michigan. There, the published version of that statute differed from the manuscript of enactment found among the public archives in Michigan. In *Metromedia*, and here, the factual situation is even stronger since the county officials distributed three separate consistent versions of Section 413 (i.e., Petitioners' Exhibits 1, 2, and 3), all of which differed in exactly the same way from the Soft Cover Book version of Section 413 (People's Counsel Exhibit 1) which had always been out of public view and which was never disseminated to the public. In *Pease v. Peck*, the Supreme Court held that the territorial law which had been received and acted upon for thirty years, "in the words of the published statute," would control as against "a manuscript statute differing from the known public law," which "is disinterred from the lumber room of obsolete documents;..." 18 How. (59 U.S.) at 599.

Mr. Justice Grier, for the United States Supreme Court, expressed the reasoning for the holding in the case in a manner as applicable today as when written and in such fashion

11/ People's Counsel implies that the outdoor advertising enterprise delayed challenging the Gold Book. That insinuation is belied by the facts. Note, first, that the varying versions of Section 413 were challenged in 1976 in the "Roll" case which was decided on alternate grounds in January, 1978. See Joint Exhibit 2. Thereafter, when its B.R. applications were rejected for processing in November, 1979 (See Paragraph 10, Petitioners' Exhibit 7), *Metromedia* filed suit in January, 1980 and got the *Metromedia* decision.

LAW OFFICES OF  
MELINDOYE, KAUFMAN,  
WEINER & BROUSE, P.A.  
88 S. CHARLES STREET  
BALTIMORE, MD  
21201-0000

book was published. Indeed, in light of the uncontroverted testimony, no required notice and hearing were afforded.

1. *Metromedia's* import.

Although People's Counsel grudgingly notes that *Metromedia, Inc. v. Baltimore County* was decided (see People's Counsel's Memorandum, p. 2), he totally ignores that decision in his argument. Petitioners have described that litigation at length,<sup>1/</sup> and the Exhibits 1 through 8 in these cases are all from that Circuit Court declaratory judgment case.

Simply stated, that case decided that the early disseminated mimeographed version,<sup>2/</sup> the Black Book<sup>3/</sup> and Blue Book<sup>4/</sup> "became effective and controlling law by publication, dissemination, ratification and long acquiescence." Petitioners' Exhibit 8, p.2. *Metromedia*, by its terms, was limited to a declaration of what version of Section 413 was the law.

The existence of this declaration of law<sup>5/</sup> means that, in order for the County to amend Section 413 of the zoning law, the dictates of Sections 22-21 and 22-22 of the County Code would have to be followed. In publishing the turquoise book, after *Metromedia* was decided, the notice and hearing

1/ See Petitioners' Memorandum, pages 5-7.

Precedent, Petitioners contend, may be found either by appellate decision or by unappealed nisi prius decision. Cf., *Placido v. Citizens Bank & Tr. Co.*, 38 Md. App. 33,44 (1977).

2/ Petitioners' Exhibit 1.

3/ Petitioners' Exhibit 2.

4/ Petitioners' Exhibit 3.

5/ See Petitioners' Memorandum, p. 10, and Sections 3-402 and 3-406, Courts Article, Md. Code, set out, in pertinent part, at page 6 of Petitioners' Memorandum

that it applies to the factual situation in *Metromedia* and here almost as if Mr. Justice Grier had written his opinion for this present factual situation. He wrote:

"It is no doubt true, as a general rule, that the mistake of a transcriber or printer cannot change the law; and that when the statutes published by authority are found to differ from the original on file among the public archives, that the courts will receive the latter as containing the expressed will of the legislature in preference to the former. Yet, as the people who are governed by the laws, and the courts who administer them, practically know the law only from the authorized publication of them, the propriety of recurring to ancient, altered, and erased manuscripts, for the purpose of changing their construction after a lapse of thirty years and after their construction has been long settled by the courts, and has entered as an element into the contracts and business of the citizens, may well be doubted. The reception and long acquiescence in them, as printed and distributed by authority, by those who had it always in their power to alter or annul them, and did not, may justly be treated as a ratification of them in that form by the sovereign people. The maxim 'communis error facit jus' though said to be dangerous in its application, 'because it sets up a misconception of the law, for destruction of the law, might here find a safe and proper application, and make it one of the 'some cases' in which it is said the law so favors the public good, that it will permit a common error to pass for right." (Emphasis supplied) 18 How. (59 U.S.) at 596-7.

Two cases citing *Pease v. Peck* have also applied the maxim "Communis error facit jus" (common error sometimes passes current as law) to factual situations similar to the Baltimore County confusion. *Town of Pacific v. Selfert*, 79 Mo. 210, 213 (1883); and *Wade v. Woodward*, 145 So. 737 (Miss. 1933). The maxim is sometimes stated "the law so favors the public good, that it will permit a common error to pass for right." *Pease v. Peck*, 18 How. 595, 597 (1855). The public good here is served by giving effect to the consistent version of Section