

PETITION FOR SPECIAL EXCEPTION 84-109-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 made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the

herein described property for ILLUMINATED/ADVERTISING STRUCTURE.

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 235-8924

(Type or Print Name)

Signature

Address

BALTIMORE, MD 21211

City and State

Attorney for Petitioner:

(Type or Print Name)

Address

BALTIMORE, MD 21117

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address

Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 16th day of August, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 20th day of October, 1983, at 11:00 o'clock A.M.

By Bel Jan Zoning Commissioner of Baltimore County.

3.C.O.-No. 1 (over)

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 KINGSLY RD., 4th DISTRICT

GEORGE MEHRING and FOSTER & KLEISER, PLAINTIFFS

Zoning File No. 84-109-X

AND AT LAW

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

File No. 84-CG-435 & 434

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. Hockett 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

RE: PETITION FOR SPECIAL EXCEPTION BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

GEORGE MEHRING, Petitioner Case No. 84-109-X

ORDER TO ENTER APPEARANCE

Mr. Commissioner: Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman John W. Hession, III
Deputy People's Counsel People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 3rd day of October, 1983, a copy of the foregoing Order was mailed to Mr. George Mehring, 11311 Reisterstown Road, Baltimore, MD 21117, Petitioner; and Mr. Wilbur R. Walker, Foster & Kleiser, 3001 Remington Avenue, Baltimore, MD 21211, Lessee.

John W. Hession, III

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

RE: PETITION FOR SPECIAL EXCEPTION BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

GEORGE MEHRING, Petitioner Case No. 84-109-X

ORDER FOR APPEAL

Mr. Commissioner:

Please note an appeal from your decision in the above-entitled matter, under date of October 25, 1983, to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

Peter Max Zimmerman John W. Hession, III
Deputy People's Counsel People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 16th day of November, 1983, a copy of the foregoing Order for Appeal was mailed to Mr. George Mehring, 11311 Reisterstown Road, Baltimore, MD 21117, Petitioner; and Mr. George Arconti, Real Estate Manager, Foster & Kleiser, 3001 Remington Avenue, Baltimore, MD 21211, Lessee.

John W. Hession, III

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. 221

" 10 - Copy of Cumulative Supplement of Balto. Co. Code Sec. 221 (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 Metromedia 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

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 7th day of September, 1984.

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

Joseph F. Murphy
JUDGE

FILED SEP-7-1984

True Copy Test
ELMER H. KAHN, JR., Clerk
Per Gloria Butler
Deputy Clerk

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.

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,

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County

cc: Albert Figinski, Esq.
People's Counsel

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
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 27th 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
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

-2-

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHRING :
FOR A SPECIAL EXCEPTION : FOR
ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF : BALTIMORE COUNTY
REISTERSTOWN RD., 510' :
NORTHWEST OF THE CENTER : AT LAW
LINE OF KINGSLEY RD. :
4th DISTRICT : CG Doc. No. 2
FOSTER & KLEISER and : Folio No. 134
FOSTER & KLEISER, PLAINTIFFS :
Zoning File No. 84-109-X : File No. 84-CG-434

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 8-2(d) of the Maryland Rules of Procedure, William T. Hackett and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, George Mehring, 11311 Reisterstown Rd., Owings Mills, Md. 21117, 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 flr., Baltimore, Md. 21201, Counsel for Petitioner and Contract Lessee; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

-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 113.2 a, b and c above shall project more than 12 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.

113.3 - Outdoor advertising signs as defined in Section 101 are allowed in B.L., B.M., B.R., M.L., and M.H. Zones as Special Exceptions, under the following conditions, as limited by Section 113.5:

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 on, 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, on 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 paired, approximately back to back, totalling 1 sign 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.

B.L. - Bus. Local
B.M. - Bus. Major
B.R. - Bus. Road
M.L. - Mid. Local
M.H. - Mid. Highway

George Mehring
Case No. 84-109-X

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to George Mehring, 11311 Reisterstown Rd., Owings Mills, Md. 21117, 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 flr., 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.

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County

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 : 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

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
MAR 21 P 2 56

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

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 : 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

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.

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
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 27th 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

-2-

RECEIVED
COUNTY BOARD OF APPEALS
MAR 21 P 2 56

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

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 12 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 on, 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, on 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. Two 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 1 sign 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.

there was no judicial decision that the version of the statute sought to be enforced was not in effect,^{8/} and there was no failure, after judicial declaration of the law, to adhere to the statutory requirements for amending the law.^{9/}

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^{10/} 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 testify 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

Code.^{11/} 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.

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,^{1/} 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,^{2/} the Black Book^{3/} and Blue Book^{4/} "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^{5/} 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. Seifert, 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

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.^{6/} 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;^{7/}

6/ "...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.

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 afford notice and hearing under Section 22-21 and 22-22.

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 Lusch 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 27th 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

0178f

- 8 -

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

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.^{13/}

The History of Section 413, Prior to the Turquoise Book

It is perfectly clear that, after about two decades^{14/} 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.^{15/}

^{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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 4 -

RE: PETITION FOR SPECIAL EXCEPTION) BEFORE THE
N/S of Easton Avenue) COUNTY BOARD
401' E. of the C/I 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/I 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^{1/}

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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

original in file #84-93-X

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 ^{16/} the variations in the publications to the attention of Baltimore County, People's Counsel and the zoning officials in the so-called "Roll" case.^{17/} 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,^{19/} Metromedia prepared and filed suit in January, 1980.^{20/} Metromedia sought a declaratory judgment^{21/} 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 version: 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 5 -

County's Zoning Regulations.^{2/} 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^{3/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 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:

"[T]he 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^{22/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 6 -

The regulations which control interpretation of Section 413 re the "consistent version of Section 413^{4/} found in the mimeographed version disseminated to the public^{5/} in 1957 and published and republished -- and acted upon^{6/} -- as law in the Black^{7/} and Blue^{8/} 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.^{9/} 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,^{10/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 3 -

"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 Soft 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 Pease 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 7 -

FEB 27 1985

Section 413 After the Turquoise Book

In November, 1981, the Secretary of the County Council certified^{23/} 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,^{24/} 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".^{25/} Under examination by Petitioners' counsel, Mr. Toporovich admitted no notice was given by the Council

^{23/} Petitioners' Exhibit 12. The certification is five months after the Court decided Metromedia.

^{24/} Petitioners' Exhibit 13.

^{25/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 12 -

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.^{26/} 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^{27/} 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.^{28/} Thereafter, the board makes final recommendations^{29/} 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

^{26/} 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.

^{27/} See Petitioners' Exhibit 9.

^{28/} See Petitioners' Exhibit 10, Sec. 22-21(c).

^{29/} Ibid.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 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,

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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 13 -

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.^{30/} 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^{31/}--it declared what Section 413 was in effect, i.e., the Black Book and Blue Book version.

^{30/} 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.

^{31/} See Sections 3-402 and 3-406, Courts Article, Md. Code set out, in pertinent part, at page 6, supra.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 10 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13th 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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 14 -

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"^{32/} when the County enacted Section 22-31^{33/} 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.

^{32/} 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, the view of the Metromedia opinion, "some county employee found, secreted away in a vault, the original version", i.e., People's Counsel's Exhibit 1.

^{33/} "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)."

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 11 -

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	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' OPPOSITION TO MOTION TO INTERVENE

Petitioners, by undersigned counsel, acknowledge that, on March 12, 1984, counsel received Leonard Stoler's Motion to Intervene in Case No. 84-109-X and in opposition to said Motion state:

1. There is no Rule of the Board of Appeals, published in the turquoise book, which allows the intervention requested.
2. Movant has failed to protect his rights by failing to appear before the Zoning Commissioner who held a hearing as provided by law and by failing to appeal to this Honorable Board.
3. Prior to the hearing in this matter--which was held on March 1, 1984--84-109-X had been consolidated with 84-93X, a matter in which Movant has no interest.
4. The hearing of this appeal has already been held before this Board.
5. Movant's claim that he was "unaware" of proceedings and "had no knowledge of the hearings" is undercut by several facts (a) Mr. Walker spoke with Movant's agent in January, 1984; (b) Mr. Walker confirmed the conversation by letter which is attached hereto and incorporated herein; and

Out of copy
FEB 15 1984

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

FEB 27 1965

George Mehring
Case No. 84-109-X

In 1980, the Petitioner, Metromedia, did bring litigation in the Circuit Court for Baltimore County, a Bill of Complaint for Declaratory Judgment, 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.

George Mehring
Case No. 84-109-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 Zoning Commissioner, dated October 25, 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 P. Hackett
William F. Hackett, Chairman

Diana K. Vincent
Diana K. Vincent

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 2/135/84CG434

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 of November 26, 1984, it is this 28th 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 Exceptions petitioned for by Appellants be and the same is hereby granted.

Approved as to form:

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

M. Albert Figinski
M. Albert Figinski
Melnicove, Kaufman, Weiner &
Smouse, P.A.
36 S. Charles Street
Baltimore, MD 21201

FILED NOV 29 1984

COUNTY BOARD OF APPEALS
NEW DEC 4 P 113

CIRCUIT COURT FOR BALTIMORE COUNTY

LAW

CIVIL - MISCELL

DOCKET 2 PAGE 134 CASE NO. 84CG434 CATEGORY APPEAL

IN THE MATTER OF THE
APPLICATION OF GEORGE MEHRING
FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON
THE NORTHEAST SIDE OF
REISTERSTOWN RD.,
NORTHWEST OF THE CENTER
LINE OF KINGSLEY RD.
4th DISTRICT, NO. 84-109-X
FOSTER & KLEISER, Contract Lessee

ATTORNEYS
M. Albert Figinski, Melnicove,
Kaufman, Weiner, & Smouse, P.A.
36 S. Charles St. (1) 332-8520

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Phyllis Cole Friedman
Peter Max Zimmerman
Rm. 223 Court House (04) 454-2168

CENTRAL ASSIGNMENT

- (1) August 10, 1984 Order for appeal from the decision of the County Board of Appeals, Petition & Exhibits fd.
- (2) Aug. 13, 1984 - Certificate of Notice fd.
- (3) Aug. 16, 1984 Appellants' Motion to Consolidate case with case 84CG435 fd.
- Aug. 22, 1984 - Transcript of Record fd. (see 84CG435 for Record)
- Aug. 22, 1984 - Notice of Filing of Record fd.
- (4) Sept. 7, 1984 - App. of Phyllis Cole Friedman & Peter Zimmerman for the Pet. (People's Counsel) & Same Day Answer to Petition on Appeal fd.
- (5) Sept. 7, 1984 - Order of Court that case 84CG434 & Case 84CG435 be consolidated fd. (JN)
- (6) Sept. 20, 1984 - Appellants' Memorandum fd.
- Nov. 26, 1984 Hon. Joseph F. Murphy, Jr. Hearing had. Judgment to be filed.
- Nov. 29, 1984 - Order of Court that the Order of the County Board of Appeals dated July 11, 1984 is reversed & the Special Exceptions petitioned for by Appellants be & the same is hereby granted fd. (JN)

COSTS

CV GEN 84434 #

CV CLK 70.00

B LBY 5.00

JUV # 0 #

CKCHECK, TL 75.00

25393 COOL R02 T12:26

03/10/84

DOCKET 2 PAGE 134 CASE NO. 84 CG 434

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 14, 1983

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

Chairman
Nicholas B. Commodari

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. George Mehring
11311 Reisterstown Road
Owings Mills, Maryland 21117

RE: Item NO. 44 - Case No. 84-109-X
Petitioner - George Mehring
Special Exception Petition

Dear Mr. Mehring:

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, for
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: Foster & Kleiser
3001 Remington Avenue
Baltimore, Md. 21211



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

September 16, 1983

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

Re: Item #44 (1983-1984)
Property Owner: George Mehring
N/ES Reisterstown Rd. 510' N/W from centerline
Kingsley Rd.
Acres: 15 X 30 District: 4th

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:

Reisterstown Road (Md. 140) 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.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

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 44 (1983-1984).

Very truly yours,

Robert A. Morton, P.E., Chief
Bureau of Public Services

RAM:EW:FW:iss



Maryland Department of Transportation
State Highway Administration

Louise K. Bridwell
Secretary
M. S. Calhoun
Administrator

September 2, 1983

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

Attention: Mr. N. Commodari

Re: ZAC Meeting of 8-16-83
ITEM: #44.
Property Owner: George Mehring
Location: N/ES Reisterstown Road, Route 140, 510' N/W from centerline Kingsley Road
Existing Zoning: B.R.
Proposed Zoning: Special Exception for one 12 X 25 double faced illuminated advertising structure
Acres: 15 X 30
District: 4th

Dear Mr. Jablon:

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

However, any additional information or comments regarding the proposed advertising structures should be through Mr. Morris Stein, Chief of Outdoor Advertising at 659-1642.

Very truly yours,

Charles Lee, Chief
Bureau of Engineering
Access Permits

By: George Wittman

CL:GW:maw

Attachment

cc: Mr. M. Stein
Mr. J. Ogle

My telephone number is (301) 659-1350
Teleprinter for impaired hearing or speech
363-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-482-5062 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

introduced and accepted into evidence as Petitioner's Exhibit 1, be and is hereby GRANTED, from and after the date of this Order, subject to the following:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that his proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

[Signature]
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

DATE *Oct 25 1983*
BY *John P. Dwyer*
ADMINISTRATIVE ASSISTANT

- 3 -

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

JOSEPH E. KAUFMAN
AROLD W. WEINER
ROBERT E. KAUFMAN
FREDERICK W. KAUFMAN
LOUIE E. KAUFMAN
J. JAMES KAUFMAN
ISAC H. KAUFMAN
DAVID L. KAUFMAN
RICHARD V. KAUFMAN
JOHN L. KAUFMAN
AVRUM H. KAUFMAN
NATHAN L. KAUFMAN
GALVIN E. KAUFMAN
HAROLD E. KAUFMAN

D. CHRISTOPHER OHLY
GEORGE F. KAUFMAN
RICHARD W. KAUFMAN
STEPHEN F. KAUFMAN
STEPHEN E. KAUFMAN
PATRICK H. KAUFMAN
JAMES D. KAUFMAN
PATRICK W. KAUFMAN
ROBERT L. KAUFMAN
JOHN H. KAUFMAN
HAROLD E. KAUFMAN
KENNETH D. KAUFMAN

30 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060
TELEPHONE (301) 332-8800
TELECOPIER (301) 332-8804
TELEX 710-824-2414
(WRITER'S DIRECT DIAL NO.)
332-8520

January 16, 1984

County Board of Appeals
Room 219
Court House
Towson, Maryland 21204

Re: 84-93X - SET 3/1/84 *BUCLAY*
84-109X - *MEHRING*

To The Honorable Board:

Enclosed please find the entry of my appearance as counsel for Petitioner/Appellee in each of the above-referenced matters.

I note that 84-93X has been set for a hearing on March 1, 1984. I have discussed both cases with Mr. Zimmerman of the Office of People's Counsel, the Appellant in each case. We agree that both matters contain common issues and I suggest, with Mr. Zimmerman's concurrence, that both matters be heard on March 1, 1984 at 10 a.m., the time when 84-93X is now scheduled. Mr. Zimmerman has authorized me to say that he agrees that consolidation of the cases for hearing on March 1 is agreeable to him.

Very truly yours,

M. ALBERT FIGINSKI

MAP:vll
Enc.

cc: Peter Max Zimmerman, Esquire

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

*OK - WITH - not a case
for 3/1/84*

1/18/84 - NOTIFIED OF APPEAL HEARING SCHEDULED FOR THURSDAY, MARCH 1, 1984 at 10 a.m.

M. Albert Figinski, Esquire
George Mehring
Foster & Kleiser
Phyllis Friedman

494-3180

County Board of Appeals

Room 200, Court House
Towson, Maryland 21204
January 18, 1984

Hearing Room #218

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 POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 84-109-X

GEORGE MEHRING

FOR - SE-12' x 25' DOUBLE FACED ILLUMINATED
OUTDOOR ADVERTISING STRUCTURE

NE/S REISTERSTOWN ROAD 510'
NW OF C/L OF KINGSLEY ROAD

4th DISTRICT

10/25/83 - ZC GRANTED PETITION W/RESTRICTIONS

ASSIGNED FOR:

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

cc: M. Albert Figinski, Esquire
George Mehring
Foster & Kleiser
Phyllis Friedman
N. E. Gerber
J. G. Hoswell
A. Jablon
Jean M. H. Jung
J. E. Dyer

Counsel for Petitioner
Petitioner
Contract Lessee
People's Counsel

Edith T. Eisenhart, Adm. Secretary

March 15, 1984

Marvin I. Singer, Esquire
Ten East Eager
Baltimore, Maryland 21202

Re: Case No. 84-109-X
George Mehring

Dear Mr. Singer:

Please be advised that Your Motion to Intervene filed in the above entitled case is hereby denied. However, the Board will accept a Memorandum, on legal issues only providing same is received by this Board and counsel for the parties on or before March 22, 1984.

Very truly yours,

[Signature]
Joseph L. Suder,
Acting Chairman

JLS:6

cc: M. Albert Figinski, Esq.
Peter Max Zimmerman, Esq.

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 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.

- 3 -

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-KSPH) 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.

FEB 27 1984

PETITION FOR SPECIAL EXCEPTION 84-109-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 made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the

herein described property for ILLUMINATED/ADVERTISING STRUCTURE.

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 235-8924

(Type or Print Name)

Signature

Address

3001 REMINGTON AVE.

BALTIMORE, MD 21211

City and State

Attorney for Petitioner:

(Type or Print Name)

Address

BALTIMORE, MD 21117

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address

Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 16th day of August, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 20th day of October, 1983, at 11:00 o'clock A.M.

By Bel Jan Zoning Commissioner of Baltimore County.

3.C.O.-No. 1 (over)

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 KINGSLY RD., 4th DISTRICT

GEORGE MEHRING and FOSTER & KLEISER, PLAINTIFFS

Zoning File No. 84-109-X

AND AT LAW

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. Hockett 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

RE: PETITION FOR SPECIAL EXCEPTION BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

GEORGE MEHRING, Petitioner Case No. 84-109-X

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman John W. Hession, III

Peter Max Zimmerman John W. Hession, III

Peter Max Zimmerman John W. Hession, III

Peter Max Zimmerman John W. Hession, III

I HEREBY CERTIFY that on this 3rd day of October, 1983, a copy of the foregoing Order was mailed to Mr. George Mehring, 11311 Reisterstown Road, Baltimore, MD 21117, Petitioner; and Mr. Wilbur R. Walker, Foster & Kleiser, 3001 Remington Avenue, Baltimore, MD 21211, Lessee.

John W. Hession, III

George Mehring, Case No. 84-109-X

Euclay Realty, Case No. 84-93-X

Case No. 84-109-X

August 16, 1983

September 29, 1983

September 30, 1983

October 7, 1983

October 14, 1983

October 20, 1983

October 25, 1983

November 16, 1983

March 1, 1984

July 11, 1984

August 9, 1984

August 9, 1984

August 13, 1984

August 14, 1984

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

RE: PETITION FOR SPECIAL EXCEPTION BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

GEORGE MEHRING, Petitioner Case No. 84-109-X

ORDER FOR APPEAL

Mr. Commissioner:

Please note an appeal from your decision in the above-entitled matter, under date of October 25, 1983, to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

Peter Max Zimmerman John W. Hession, III

Peter Max Zimmerman John W. Hession, III

Peter Max Zimmerman John W. Hession, III

I HEREBY CERTIFY that on this 16th day of November, 1983, a copy of the foregoing Order for Appeal was mailed to Mr. George Mehring, 11311 Reisterstown Road, Baltimore, MD 21117, Petitioner; and Mr. George Arconti, Real Estate Manager, Foster & Kleiser, 3001 Remington Avenue, Baltimore, MD 21211, Lessee.

John W. Hession, III

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. 221

10 - Copy of Cumulative Supplement of Balto. Co. Code Sec. 221 (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 Metromedia 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

George Mehring, Case No. 84-109-X

Euclay Realty, Case No. 84-93-X

Case No. 84-109-X

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 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

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

ORDER

On the Motion of Appellants, it is this 17th day of September, 1984.

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

Joseph F. Murphy

FILED SEP-7-1984

True Copy Test

ELMER H. KAHN, JR., Clerk

Per Gloria Butte

George Mehring, Case No. 84-109-X

Euclay Realty, Case No. 84-93-X

Case No. 84-93-X

August 2, 1983

August 2, 1983

September 22, 1983

September 25, 1983

September 21, 1983

October 4, 1983

October 11, 1983

October 14, 1983

November 9, 1983

March 1, 1984

July 11, 1984

August 9, 1984

August 9, 1984

August 13, 1984

August 14, 1984

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 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 fac. 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. Farr, 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

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

RECEIVED
COUNTY BOARD OF APPEALS
MAR 26 1984

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

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. TKU, 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,

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
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 14th 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

Baltimore 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. Peck 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

all original Memos in file #84-109-X

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 fac. 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. Farr, 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

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

RECEIVED
COUNTY BOARD OF APPEALS
MAR 26 1984

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

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. TKU, 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,

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
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 14th 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



Baltimore 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. Peck 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

all original Memos in file #84-109-X



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 11, 1984

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

Re: Case No. 84-109-X
George Mehrling

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,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: George Mehrling
Foster & Kleiser
M. Albert Figinski, Esq.
N. E. Gerber
J. Jewell
A. Johnson
J. Jung
J. Dyer

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHLING :
FOR A SPECIAL EXCEPTION : FOR
ON PROPERTY LOCATED ON : BALTIMORE COUNTY
THE NORTHEAST SIDE OF :
REISTERSTOWN RD., 510' :
NORTHWEST OF THE CENTER :
LINE OF KINGSLEY RD. :
4th DISTRICT :
NO. 84-109-X :
Appeal from the County
Board of Appeals of
Baltimore County, No. 84-109-X
2/13/84 84-66-134

ORDER FOR APPEAL BY PETITIONER AND CONTRACT LESSEE

MR. CLERK:

Please enter an appeal on behalf of George Mehrling,
Petitioner, and Foster & Kleiser, Contract Lessee, from the
Order of the County Board of Appeals of Baltimore County,
passed in Case No. 84-109-X 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
B-321, a copy of the foregoing to the County Board of Appeals
for Baltimore County, Room 200, Court House, Towson, MD. 21204.
As well, a copy of the foregoing was mailed to Peter Max
Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court
House, Towson, MD. 21204 and to Marvin I. Singer, Esquire,
10 E. Eager Street, Baltimore, MD. 21202. Said mailings were
made this 7th day of August, 1984.

M. Albert Figinski
M. Albert Figinski

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHLING :
FOR A SPECIAL EXCEPTION : FOR
ON THE PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF :
REISTERSTOWN ROAD, 510' :
NORTHWEST OF THE CENTER LINE :
OF KINGSLEY ROAD :
4TH DISTRICT :
NO. 84-109-X :
Appeal from the County
Board of Appeals of
Baltimore County, No. 84-109-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
Zoning Commissioner, dated October 25, 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

LAW OFFICES OF
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 -

"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 chimeras. If Metromedia means
anything, it means that, in 1981, the Black and Blue Book
versions (Petitioners Exhibits 2 & 3 below) of Section 413 were

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

- 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

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

- 4 -

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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
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, and to
Marvin I. Singer, Esq., 10 E. Eager Street, Baltimore, Md.
21202, Counsel for putative intervenor.

M. Albert Figinski
M. Albert Figinski

0517f

- 6 -

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHRING : FOR
FOR A SPECIAL EXCEPTION :
ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF :
REISTERSTOWN RD., 510' : BALTIMORE COUNTY
NORTHWEST OF THE CENTER :
LINE OF KINGSLEY RD. : Board of Appeals of
4th DISTRICT : Baltimore County, No. 84-109-X
NO. 84-109-X

ORDER FOR APPEAL BY PETITIONER AND CONTRACT LESSEE

MR. CLERK:

Please enter an appeal on behalf of George Mehring, Petitioner, and Foster & Kleiser, Contract Lessee, from the Order of the County Board of Appeals of Baltimore County, passed in Case No. 84-109-X 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 his order for appeal, I mailed, pursuant to Md. Rule 1-321, a copy of the foregoing to the County Board of Appeals for Baltimore County, Room 200, Court House, Towson, MD. 21204. As well, a copy of the foregoing was mailed to Peter Hax Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, MD. 21204 and to Marvin I. Singer, Esquire, 10 E. Eager Street, Baltimore, MD. 21202. Said mailings were made this 9th day of August, 1984.

M. Albert Figinski
M. Albert Figinski

IN THE MATTER OF : BEFORE
GEORGE MEHRING : COUNTY BOARD OF APPEALS
FOR A SPECIAL EXCEPTION :
ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF :
REISTERSTOWN RD., 510' : BALTIMORE COUNTY
NORTHWEST OF THE CENTER :
LINE OF KINGSLEY RD. : No. 84-109-X
4th DISTRICT

OPINION

This case comes before this Board on appeal from a decision of the Zoning Commission granting the requested Special Exception for the erection of a 12' x 25' 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 indicates 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 made 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, 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.

Exhibit 1

George Mehring
Case No. 84-109-X

In 1980, the Petitioner, Metromedia, did bring litigation in the Circuit Court for Baltimore County, a Bill of Complaint for Declaratory Judgment, 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. Rakin in this case, *Metromedia Inc. vs. Baltimore County*, found for the Plaintiff. 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 Rakin'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.

George Mehring
Case No. 84-109-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 enacted 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 deferring 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 Rakin 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 Zoning Commission, dated October 25, 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 F. Hackett
William F. Hackett, Chairman
Diane K. Viscusi
Diane K. Viscusi

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 1963, 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 1969, 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 employees found, secured 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 Red 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 the 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 *Peare v Peck*, 15 Md. (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 publications 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 1963. This ruling is applicable only to Section 413 and to no other regulation.

John E. Rakin
JUDGE

JULY 1, 1984

-2-

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 purposes 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

(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 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 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 SET-BACK 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: 3-2-84

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: 3-2-84

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.



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. 84-109-X
George Mehring

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,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: N. 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 in Case No. 84-109-X \$ 20.00
George Mehring
NE's Reisterstown Rd., 510' NW of c/l of Kingsley Rd.
4th 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. 84-109-X
George Mehring

In accordance with Rule 8-7 (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 8-7 (a).

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

Very truly yours,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: George Mehring
Foster & Kleiser

IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF : FOR BALTIMORE COUNTY
GEORGE MEHRING : AT LAW
ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF :
REISTERSTOWN RD., 510' : File No. 84-CG-434
NORTHWEST OF THE CENTERLINE :
OF KINGSLEY RD., 4th District :
Zoning File No. 84-109-X : : : : :

IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF : FOR BALTIMORE COUNTY
EKLAY REALTY : AT LAW
ON PROPERTY LOCATED ON :
THE NORTH SIDE OF EASTERN :
AVE., 401' EAST OF THE : File No. 84-CG-435
CENTERLINE OF TERRACE RD., :
15th DISTRICT :
Zoning File No. 84-93-X : : : : :

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 on 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.

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
SEP 19 1984

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF * CASE: 84CG434
THE APPLICATION OF * DOCKET: 2
GEORGE MEHRING * FOLIO: 134
FOR A SPECIAL EXCEPTION, *
ETC. *
APPEAL FROM THE *
COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *
No. 84-109-X *

IN THE MATTER OF * CASE: 84CG435
THE APPLICATION OF * DOCKET: 2
EUGENE REALTY * FOLIO: 135
FOR A SPECIAL EXCEPTION, *
ETC. *
APPEAL FROM THE *
COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *
No. 84-93-X *

APPELLANTS' MEMORANDUM

In response to the requirement of Rule B12, Appellants file this Memorandum of facts and law in regard to the two above-captioned appeals which have been consolidated, pursuant to Rule 2-503, for all purposes, by Order of this Court dated September 7, 1984.

PREFACE

The cases at bar do not raise the usual issues arising in an appeal from a denial of a special exception. Indeed, below, it was agreed that the signs petitioned for would not run afoul of Section 502.1 of the zoning regulations (Tr. p. 6,

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

lines 3-21). The core -- and unusual -- issue at bar in these cases is whether, when promulgating its current edition of the zoning regulations (i.e., the Turquoise Book) which leaves out of Section 413.3 the B. R. (Business Roadside) zone, the County could ignore this Court's ruling in *Metromedia, Inc. v. Baltimore County*, Eq. No. 103167 and Sections 22-21 and 22-22(a) of the Baltimore County Code. This case, therefore, requires this Court to determine, again, what "version" of Section 413.3 is applicable to outdoor advertising signs petitioned for by the contract lessee appellant.

In order to assist this Court in understanding the issue(s) presented, the Appellants set out, in pertinent part, the Opinion of Judge Raine in *Metromedia* and the two relevant sections of the County Code. In addition, Appellants present the following "Table of Contents":

PREFACE.....	1
Except from <i>Metromedia v. Baltimore County</i> , Eq. No. 103167.....	3
Excerpts from the County Code.....	4
PROCEDURAL HISTORY OF THESE APPEALS.....	5
QUESTION PRESENTED.....	6
STATEMENT OF FACTS.....	7
ARGUMENT.....	12
A. What <i>Metromedia</i> Declared.....	13
B. The Publication of the Turquoise Book Flouts <i>Metromedia</i>	15

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

C. Misplaced Reliance on Bill 7-84.....	17
D. Miscellaneous Matters.....	18
CONCLUSION.....	20

EXCERPT FROM *METROMEDIA V. BALTIMORE COUNTY*, EQUITY NO. 103167

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 1963, 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 1969, 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 hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

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 Soft 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 *Pease v. Peck*, 16 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 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 1963. This ruling is applicable only to Section 413 and to no other regulation.

(issued July 1, 1981, by Raine, J.)

EXCERPTS FROM BALTIMORE COUNTY CODE

Sec. 22-21. Preparation of zoning regulations and zoning maps.

(a) The planning board shall from time to time recommend to the county council for adoption, zoning regulations and zoning maps, showing the boundaries of the proposed districts, divisions or zones into which the county is divided pursuant to this title.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations.... All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in accordance with the same procedure herein specified for the original adoption of such regulations and maps.

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 22-7. During the period of such notice, the preliminary report of the planning board, with accompanying

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearings have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations, or maps, as the case may be; and, in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning board as to any part of the proposed zoning map or regulations, the dissenting member or members shall be entitled to file with the county council one (1) or more minority reports stating the basis for their disagreement with the majority, which shall be included with the final report of the majority.

Sec. 22-22. Action by county council on adoption of zoning regulations and zoning maps.

(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 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 by an ordinance adopt such regulations or maps subject, however, to such changes or amendments therein as the county council may deem appropriate.

PROCEDURAL HISTORY OF THESE APPEALS

In two separate instances, petitions were filed pursuant to the zoning regulations of Baltimore County. Each asked that certain "illuminated outdoor advertising" signs be allowed, as Special Exceptions, in B. R. zones. In each instance, the first level of administrative review, i.e., the

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Zoning Commissioner or the Deputy Zoning Commissioner, granted the Special Exception. Thereafter, appeals were noted by People's Counsel. The two matters were consolidated for hearing on March 1, 1984 before the County Board of Appeals for Baltimore County. On July 11, 1984, the Board filed two opinions (nearly identical in content) which reversed the previous administrative orders and denied the respective Special Exceptions.

On August 9, 1984, Appellants, through counsel, appealed and filed the required (by Rule B2e) Appeal Petitions. People's Counsel for Baltimore County, as "Protestant below and Appellee herein," answered on September 6, 1984.

On August 22, 1984, the Clerk of the Circuit Court noted that the Board of Appeals had filed the record in each appeal.

On August 31, 1984, the Assignment Office set the cases in for hearing on November 26, 1984.

On September 7, 1984, Judge Murphy signed an Order consolidating the cases "for all purposes," pursuant to Md. Rule 2-503.

QUESTION PRESENTED

After the Circuit Court for Baltimore County declared, in *Metromedia v. Baltimore County*, Equity No. 103167, what was the effective version of Section 413 of the Baltimore County

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Zoning Regulations, may the County ignore the decision, and republish a different version of Section 413, so that outdoor advertising signs may not be granted as a Special Exception in a B. R. zone?

STATEMENT OF FACTS

The curious, bedeviled history of the County's zoning regulations, as they pertain to outdoor advertising signs, was outlined in this Court's opinion in *Metromedia* (see page 3, *supra*). At the outset of the hearing before the Board, Appellants introduced, as exhibits in these cases, the pleading (Petitioners' Exhibit 7) and the exhibits (Petitioners' Exhibits 1-6) in *Metromedia*. In that case, a declaratory judgment was sought -- requesting this Court to decide which version of Section 413 was validly in force in Baltimore County. Petitioners' Exhibit 6 sets out, side-by-side, the core, conflicting versions. As to Section 413.3 (the provision which generally defines in what zones an outdoor advertising sign may be placed as a Special Exception), Petitioners' Exhibit 6 shows graphically that the "B.R." zone was left out of the Gold Book publication in 1975.¹

1. See *Metromedia* opinion, *supra*, p. 3-4. That opinion was reversed below as Petitioners' Exhibit 8 (Tr. p.12, line 19 to p.16, line 9), and was appended to the Appeal Petition as Exhibit 2. Various publications of the regulations are demonstrated in Petitioners' Exhibits 1-5. The allegedly true original version is People's Counsel Exhibit 1.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Thereafter, the principal outdoor advertising sign company ought to correct the error, by correspondence (See Joint Exhibit 1) and an appeal (See Joint Exhibit 2).⁴ The issue was brought to this Court in the Metromedia suit for declaratory judgment (Petitioners' Exhibit 7). In that case, People's Counsel was precluded from intervening, ultimately, by decision of the Court of Special Appeals (People's Counsel Exhibit 2). The Court's decision, declaring as the law the so-called Black Book version,⁵ was not appealed by the County.⁶

Approximately five months after this Court's decision, the County, through Thomas Toporovich, the Secretary and

2. After an adverse ruling by the Board of Appeal, an appeal was taken to the Circuit Court. On January 10, 1978, the Court reversed the Board and decreed that the Special Exception for the sign there at issue must be granted. The Court filed a two page opinion which noted the differing versions of Section 413 (Tr. 110) but concluded that, under either version, the sign at issue was permitted as a Special Exception. This effort to get a court to decide which version of the regulations applied went awry (Tr. 110-111).

3. The B. R. zone was included in Section 413.3 in the versions declared to be the law in Metromedia. See Petitioners' Exhibits 1, 2, and 3.

4. The date of the Order was July 1, 1981. Thirty days later said declaration became an enrolled decree. Rule 671.

Under §3-406, Courts Article, Md. Code, a county ordinance, i.e., the zoning regulations, may be subject to construction in order to declare rights so that matters, in the words of §3-402, id., are settled and relief afforded from "uncertainty." A declaration of rights "has the force and effect of a final judgment or decree," §3-411, id.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Administrator to the County Council, certified and attested (Petitioners' Exhibit 12; People's Counsel Exhibit 3) the publication of yet another set of the County's zoning regulations. This set -- termed the Turquoise Book by Appellants -- published Section 413.3 in the same fashion as had appeared in the 1975 Gold Book printing. Compare, Petitioners' Exhibit 14 (Section 413.3, as published in the Turquoise Book) with Petitioners' Exhibit 5 (the Gold Book version of said Section).

Aside from the certificate and attestation, there were no documents which were relevant to the attestation and certification of the current edition of the regulations (Tr. 29). Mr. Toporovich testified (Tr. 30, lines 12-15):

"Q. Would it be fair to say that in certifying in accordance with Section 22-24 you took no account of the [Metromedia] Decision?

A. That's correct."

The attestation and certification in 1981 were almost identical to that made in regard to the Gold Book in 1975 (Tr. p. 27, line 10 to p. 28, line 8; p. 32, lines 7 to 10). As to the 1981 publication of the Turquoise Book, there were no documents which show what steps were taken to meet the notice and hearing requirements of Section 22 of the County Code (Tr. p. 30, line 19 to p. 31, line 17). Mr. Toporovich testified that Section 22-22 has never been applied to any book of regulations (Tr. p.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

35, lines 12-13)⁷ because the individual regulations, if changed, were the subject of notice and hearing (Tr. p. 35, lines 14-21; Tr. p. 41, lines 9 to 19).

Nevertheless, before the Turquoise Book was published, no notice or hearings were held with respect to Section 413.3 (Tr. p. 48, lines 2 to 5).

After the publication of the Turquoise Book, the County processed and granted at least three Special Exceptions for outdoor advertising signs in B. R. zones (Petitioners' Exhibits 15A, 15B and 15C).⁸ This occurred despite the absence of B.R. in Section 413.3 of the Turquoise Book. These occurrences were similar to the practice between 1969 and 1975 when, despite the garbled version of Section 413.3 in the Red Book, the zoning authorities continued to recognize B.R. as a zone in which an outdoor advertising sign could be located as a Special Exception (Tr. 85).

James E. Dyer, a person with twenty-five years in the County's employ dealing with zoning regulations, testified to

5. People's Counsel introduced correspondence related to the certification and attestation of the 1975 Gold Book (People's Counsel Exhibits 4 and 5). No such correspondence was produced with respect to the certification and attestation of the 1981 Turquoise Book, and apparently, none exists since no such documents were produced in response to Petitioners' Subpoena Duces Tecum.

6. Prior to these appeals, the Board had rejected a Special Exception for an outdoor sign in B.R. zone (Petitioners' Exhibit 13).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

the jaundiced history relating to outdoor advertising signs (Tr. 84 - 108). He made clear that, after the publication in 1975 of the Gold Book (Tr. p. 85, lines 16-18; Tr. p. 100, lines 5-10), a review was undertaken which uncovered a Soft-Cover Book which was never, theretofore, "utilize(d)...for application of the zoning regulations" (Tr. p. 87, lines 1-2). The Book was given to him and placed in a "drawer" (Tr. 87, line 10). From that Book, Dyer testified "it is very clear that B.R. zone was not in the original adopted version of the 1955 Zoning Regulations" (Tr. p. 87, lines 17-19). After relying on the publication of the Black and Blue Books to govern outdoor advertising signs in B.R. zones from 1957 to 1975 (Tr. p. 85, lines 8 to 15; p. 99, line 9 to p. 100, line 4; p. 104, line 7 to p. 105, line 1), the County ceased acknowledging B.R. as a zone in which an outdoor advertising sign could be located as a Special Exception until the Metromedia decision (Tr. p. 92, lines 17-21). Mr. Dyer acknowledged, however, that the B.R. zone was the most rural zone, one "where you are likely to find" outdoor advertising signs (Tr. p. 101, line 18 to p. 102, line 4); indeed, Mr. Dyer testified that in his opinion the B.R. zone is the commercial zone where it "is a logical place to have a sign" (Tr. p. 102, lines 7-10).

The Black Book which was deemed inferior to the Soft Cover Book bears the same attestation and certification as the alleged superior (Tr. p. 98, lines 8 to 13).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Both the Gold Book and Turquoise Book print in Section 236 that B. R. is a zone in which an outdoor advertising sign may be granted as a Special Exception (Tr. p. 94, line 7 to p. 12; p. 100, lines 13 to 16).

ARGUMENT

The essence of the Board's decision is that, despite Metromedia, the "official adoption" of the Turquoise Book in November, 1981 -- at least four months after Metromedia was decided by this Court -- is controlling and that, since the new publication does not include B.R. among the zones in Section 413.3⁹ in which an outdoor advertising sign may be located by Special Exception, the petitions at bar must be denied. This analysis by the Board is flawed for several reasons:

A. It ignores what Metromedia declared and decided;

B. It erres in concluding that, in the wake of Metromedia, the County could "officially adopt" the Turquoise Book -- leaving B.R. out of Section 413.3 -- without compliance with Sections 22-21 and 22-22 of the County Code;

C. It misperceives the relevance of Bill 7-84; and

D. It has an arbitrary and capricious basis and is contrary to uncontroverted evidence.

We turn now to a seriatim discussion of the specific flaws.

7. The Board's opinion never addressed Section 236. See, however, the first paragraph in the text on this page.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

A. What Metromedia Declared.

Both the Metromedia decision (supra, p.3-4) and the Board's opinion (see pages 1-2 of Exhibit 1 to the Appeal Petition in each case at bar) portray the "very confused and conflicting history"¹⁰ of Section 413 of the zoning regulations. In that context, the Metromedia case was initiated and pursued under Subtitle Four of Title 3 of the Courts Article, Md. Code. A suit for declaratory judgment seeks "to settle and afford relief from uncertainty"¹¹ rights under a County ordinance.¹² The court's declaration, moreover, "has the force and effect of a final judgment."¹³

This Court, in Metromedia, relying upon venerable authority,¹⁴ determined that the version of Section 413 set

8. This was the characterization attached by the Board's Opinions below.

9. §3-402, Courts Article, Md. Code; Cockran v. Zoning Comm'r, 41 Md. App. 437, 439-440 (1979); Marriott Corp. v. Village Realty & Inv., Md. App. , 472 A.2d 510, 513 (1984). See also Restatement, Judgments, 2d (1982), p. 334 (quoted infra, p. 18-19).

10. See §3-406, Courts Article, Md. Code.

11. §3-411, Courts Article, Md. Code.

12. Pease v. Peck, 18 How. (59 U.S.) 595 (1855). See, particularly, 18 How. (59 U.S.) at 596-7.

For similar rulings, see Town of Pacific v. Seifert, 79 Mo. 210, 213 (1883); Wade v. Woodward, 145 So. 737 (Miss. 1933); Edel v. Filer Township, Mainstay 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).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

out in Petitioners' Exhibits 1, 2, and 3 "became effective and controlling law by publication, dissemination, ratification and long acquiescence [Emphasis supplied]." This law, the Metromedia opinion continued, "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."¹⁵ Consequently, Metromedia declared that the County must apply the version of Section 413 contained in Petitioners' Exhibits 1, 2 and 3 to "applications for special exception submitted by" Appellants.¹⁶ These versions include B.R. as a zone in which an outdoor advertising sign may be placed as a Special Exception.

In sum, Metromedia declared, as the applicable law, the versions of Section 413.3 which included B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be erected. Further, Metromedia holds that the "applicable law" could not be amended except in accord with Section 22 of the County Code.

13. The evidence below unequivocally demonstrates that no hearings or notice of amendment preceded publication of the Turquoise Book. See p. 9-10, supra.

14. There is no doubt that the contract lessee Appellant in these cases is a division of Metromedia, Inc., the plaintiff in the Metromedia case.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

B. The Publication of the Turquoise Book Flouts Metromedia.

The record below reveals unequivocally that, prior to publication of the Turquoise Book in 1981, no notice of amending Section 413.3 was given and no hearings were held on such subject. Indeed, the official attester was unaware of Metromedia at the time he certified the Turquoise Book. See pages 9-10, supra.

The Board, while recognizing that it is bound by Metromedia, refuses to "extend its logic" because "the applicable law (i.e., the Turquoise Book) was certified in November of 1981." The Board, regrettably, has failed to understand what Metromedia did. That decision declared Petitioners' Exhibits 1, 2 and 3 to be the "applicable law" and rejected the mere publication, without notice and hearing of amendment, as a valid method of amending that law. Rather than simply failing to extend the logic of Metromedia, the Board has completely ignored its declaration of the "applicable law" and its holding as to the necessary means of altering or amending the "applicable law."

What the County did in publishing and "attesting" the Turquoise Book is to repeat the identical error that was a predicate for the ruling in Metromedia. The Board, for its part, has now unabashedly ruled that Metromedia does not govern the cases at bar because of the re-publication. Unfortunately, the Board has misperceived Metromedia and its effect. If the

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Board's view has merit, any statutory interpretation, by declaratory judgment, could be nullified by simply re-enacting¹⁵ the statute. That, simply, cannot be the law because such construction would be repugnant to §§3-402, 3-406, and 3-411, Courts Article, Md. Code, and the concept of declaratory judgments generally.¹⁶ Unfortunately, however, such construction was applied by the Board, clearly erroneously.¹⁷

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 not proper. See Ransake v. Board of County Commissioners, 268 Md. 295 (1973); Von Lusch v. Board of County Commissioners, 268 Md. 445, 454 (1973). Without affording notice and hearing, there was no substantial

15. Note, however, that, here, there was not even a re-enactment but only a republication and an attestation.

16. Cf., Kracke v. Weinberg, 197 Md. 339, 343-7 (1951); Davis v. State, 183 Md. 385, 389-392 (1944); 8 M.L.E., Declaratory Judgments, §§22 and 42.

17. If an Orphan's Court could not ignore a decision of a Circuit Court, see Mingett v. State, 132 Md. 243, 249-250 (1918), surely a county administrative body may not ignore a circuit court decision of the Circuit Court for that county. Indeed, the Board here acknowledged this doctrine, while surely ignoring it.

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

- 16 -

compliance with the "applicable law." Crozier v. Co. Comm. Pr. George's Co., 202 Md. 501, 506 (1953), and the publication in the Turquoise Book of the repudiated Gold Book version of Section 413.3 was invalid.

C. Misplaced reliance on Bill 7-84.

After erroneously discounting Metromedia and accrediting the Turquoise Book's version of Section 413.3, the Board made reference to an enactment on February 21, 1984¹⁸ of Bill 7-84. The Board's reliance on that Bill is totally misplaced.

The Bill is attached as Exhibit 3 to the Appeal Petition. Its enactment carefully recites:

"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...."

No such preface and no such enactment accredits the Turquoise Book or, more particularly, its version of Section 413.3. In essence, Bill 7-84 shows clearly what should have occurred if the declaration of "applicable law" in Metromedia was to be amended. Rather than supporting the Board's decision, Bill 7-84 demonstrates the form for what should have occurred if Section 413.3 was to be returned validly to its Gold Book form.

18. This date is approximately two weeks prior to the consolidated hearing before the Board of the cases on appeal. Neither party at the hearing had made reference to this enactment and the Bill was not introduced in the record.

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

- 17 -

D. Miscellaneous matters

At the Board level, People's Counsel grudgingly noted Metromedia but really ignored that decision in his arguments to the Board, discounting it as precedent. Appellants contend, however, that precedent may be found from unappealed nisi prius decision, Cf., Placido v. Citizens Bank & Tr. Co., 38 Md. App. 33, 44 (1977). People's Counsel further seemed to argue that, because that office had not been allowed to intervene in Metromedia (People's Counsel, Exhibit 2), Metromedia did not "bind" it. Such argument is without foundation.

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. 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:



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

ARNOLD JABLON
ZONING COMMISSIONER

October 25, 1983

Mr. George Arconti
Real Estate Manager
Foster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

IN RE: Petition Special Exception
NE/S of Reisterstown Road, 510'
NW of the centerline of Kingsley
Road - 4th Election District
George Mehring, Petitioner
Case No. 84-109-X

Dear Mr. Arconti:

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

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ/srl

Attachments

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



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

ARNOLD JABLON
ZONING COMMISSIONER

November 18, 1983

Mr. George Mehring
11311 Reisterstown Road
Owings Mills, Maryland 21117

Re: Petition for Special Exception
NE/S of Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehring - Petitioner
Case No. 84-109-X

Dear Mr. Mehring:

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 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
ARNOLD JABLON
Zoning Commissioner

AJ:aj

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

Salisbury Beauty Schools, however, arose in a very different context than is presented in the cases at bar. In Salisbury Beauty Schools, unlike the situation here, there was never a publication of the statute in differing forms.²⁰ There was no judicial decision that the version of the statute sought to be enforced was not in effect,²¹ and there was no failure, after judicial declaration of the law, to adhere to the statutory requirements for amending the law.

As a final miscellaneous matter, Appellants incorporate by this reference all allegations and arguments submitted in their respective Appeal Petitions.

CONCLUSION

Appellants respectfully request the relief prayed in their respective Appeal Petitions.

M. Albert Figinski
M. Albert Figinski
36 S. Charles Street
Baltimore, MD. 21201
301-332-8520
Attorney for Appellants,
the Petitioners and Contract Lessee

20. Although, as shown in Petitioners' Exhibit 6, Section 413 has been published in varying forms, each publication bore the same attestation of validity (Tr. p. 98, lines 8-13).

21. 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.

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

- 20 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September,

1984, I mailed, postage prepaid, a copy of the foregoing Appellants' Memorandum to:

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

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

M. Albert Figinski
M. Albert Figinski

0621f

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

- 21 -



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

October 13, 1983

Re: Petition for Special Exception
NE/S Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehling - Petitioner
Case No. 84-109-X

Dear Sir:

This is to advise you that \$60.15 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
Zoning Commissioner

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

No. 122912

DATE 10-26-83 ACCOUNT R-01-615-000

AMOUNT \$60.15

RECEIVED FROM Foster & Kleiser
FOR Advertising & Posting
Case # 84-109-X

035*****601510 9202A
VALIDATION OR SIGNATURE OF CASHIER

Mr. George Mehling
1111 Reisterstown Road
Owings Mills, Md. 21117

Foster & Kleiser
3001 Remington Ave
Baltimore, Md. 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
11th day of August, 1983

ARNOLD JABLON
Zoning Commissioner

Petitioner George Mehling
Petitioner's Attorney

Received by Nicholas S. Commodari
Chairman, Zoning Plans
Advisory Committee

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., Sept. 29, 1983

THIS IS TO CERTIFY that the annexed Reg. #154593, P.O. #84-109-X was published for one (1) week previous to the 29th day of Sept., 1983, in the

- ☐ Carroll County Times, a daily newspaper published in Westminster, Carroll County, Maryland.
☐ South Carroll Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland.
☒ Community Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per [Signature]

September 2, 1983

Mr. George Mehling
1111 Reisterstown Road
Owings Mills, Maryland 21117

NOTICE OF HEARING
Re: Petition for Special Exception
NE/S of Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehling - Petitioner
Case No. 84-109-X

TIME: 11:00 A.M.

DATE: Thursday, October 20, 1983

PLACE: Room 106, County Office Building, 111 West Chesapeake

Avenue, Towson, Maryland

cc: Foster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

Zoning Commissioner
of Baltimore County

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

No. 119438

DATE 8/18/83 ACCOUNT 01-615-000

AMOUNT \$100.00

RECEIVED FROM Foster & Kleiser
FOR Filing Petition #99
/ 1061

035*****109438 9022A
VALIDATION OR SIGNATURE OF CASHIER

PROPERTY DESCRIPTION

11311 REISTERSTOWN ROAD

BEGINNING AT A POINT LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD (80 FEET WIDE), 510 FEET NORTHWEST OF THE CENTERLINE OF KINGSLEY ROAD (16 FEET WIDE) AND 88 FEET FROM THE CENTERLINE OF REISTERSTOWN ROAD, THENCE RUNNING THE FOLLOWING COURSES AND DISTANCES: 1) NORTHEASTERLY A DISTANCE OF 30 FEET TO A POINT, THENCE 2) NORTHWESTERLY A DISTANCE OF 15 FEET TO A POINT, THENCE 3) SOUTHWESTERLY A DISTANCE OF 30 FEET TO A POINT, THENCE 4) SOUTHEASTERLY A DISTANCE OF 15 FEET TO THE BEGINNING POINT

PETITION FOR SPECIAL EXCEPTION

4th Election District

ZONING:

Petition for Special Exception

LOCATION:

Northeast side of Reisterstown Road, 510 ft. Northwest of the centerline of Kingsley Road

DATE & TIME:

Thursday, October 20, 1983 at 11:00 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' double-faced illuminated outdoor advertising structure

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

Being the property of George Mehling, 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

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, the last publication appearing on the 27th day of September, 1983.

THE JEFFERSONIAN,
[Signature]
Manager

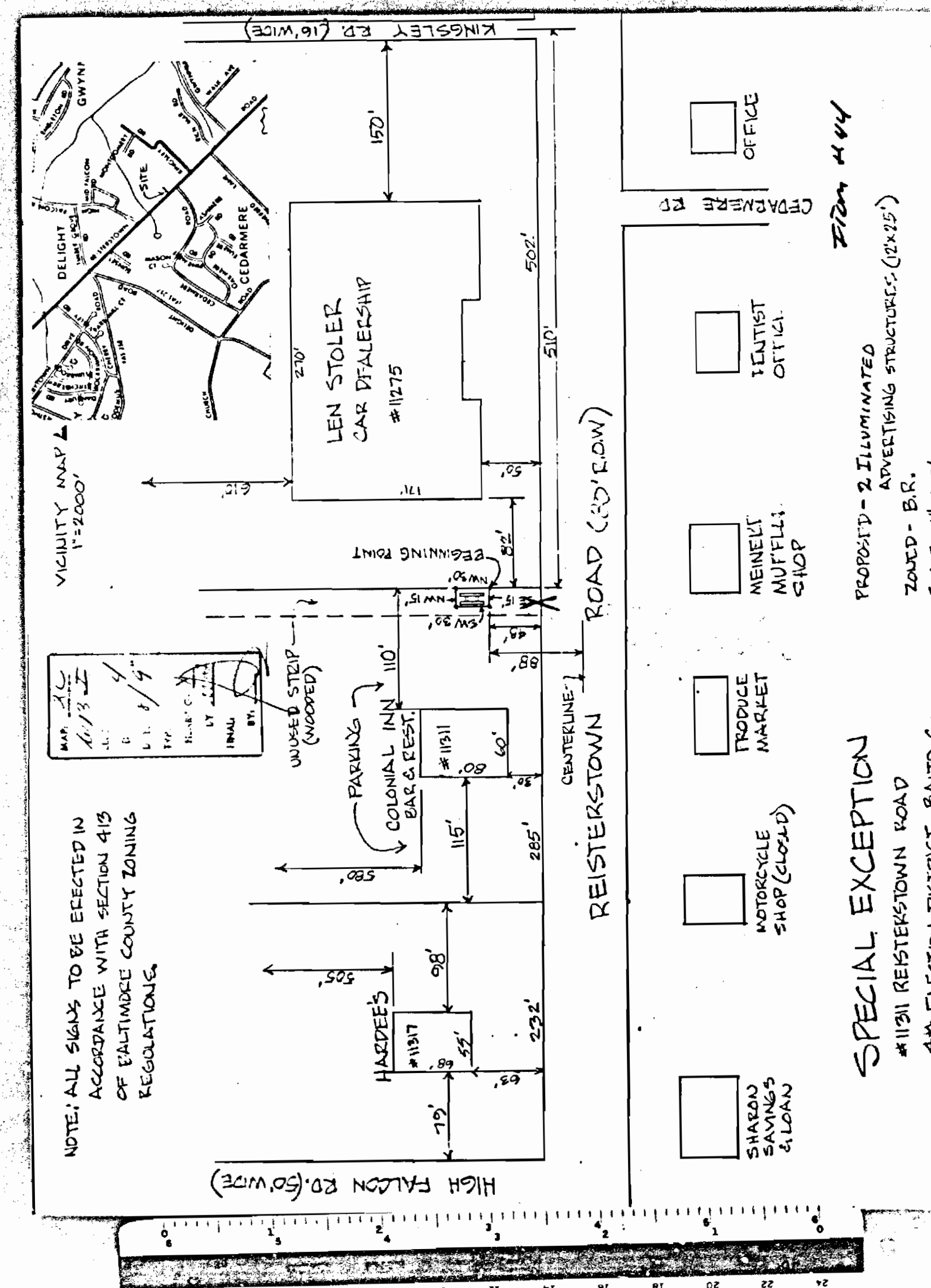
Cost of Advertisement, \$ 22.75

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting Sept. 30, 1983
Posted for: Special Exception
Petitioner: George Mehling
Location of property: NE/S of Reisterstown Road, 510' NW of
the c/l of Kingsley Road
Location of Signs: NE side of Reisterstown Road approx. 510' NW of
the c/l of Kingsley Road
Remarks: [Signature]
Number of Signs: 1

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting 11-25-83
Posted for: Appeal
Petitioner: George Mehling
Location of property: NE/S of Reisterstown Road, 510' NW of
the c/l of Kingsley Road
Location of Signs: NE/S of Reisterstown Road, approx. 510' NW of
Kingsley Road
Remarks: [Signature]
Number of Signs: 1



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,

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County

cc: Albert Figinski, Esq.
People's Counsel

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
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 27th 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
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

-2-

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHRING :
FOR A SPECIAL EXCEPTION : FOR
ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF : BALTIMORE COUNTY
REISTERSTOWN RD., 510' :
NORTHWEST OF THE CENTER : AT LAW
LINE OF KINGSLEY RD. :
4th DISTRICT : CG Doc. No. 2
FOSTER & KLEISER and : Folio No. 134
FOSTER & KLEISER, PLAINTIFFS :
Zoning File No. 84-109-X : File No. 84-CG-434

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 8-2(d) of the Maryland Rules of Procedure, William T. Hackett and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, George Mehring, 11311 Reisterstown Rd., Owings Mills, Md. 21117, 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 flr., Baltimore, Md. 21201, Counsel for Petitioner and Contract Lessee; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

-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 113.2 a, b and c above shall project more than 12 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.

113.3 - Outdoor advertising signs as defined in Section 101 are allowed in B.L., B.M., B.R., M.L., and M.H. Zones as Special Exceptions, under the following conditions, as limited by Section 113.5:

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 on, 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, on 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 paired, approximately back to back, totalling 1 sign 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.

B.L. - Bus. Local
B.M. - Bus. Major
B.R. - Bus. Road
M.L. - Mid. Local
M.H. - Mid. Highway

George Mehring
Case No. 84-109-X

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to George Mehring, 11311 Reisterstown Rd., Owings Mills, Md. 21117, 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 flr., 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.

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County

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 : 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

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
MAR 21 P 2 56

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

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 : 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

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.

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
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 27th 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

RECEIVED
COUNTY BOARD OF APPEALS
MAR 21 P 2 56

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

-2-

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

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 12 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 on, 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, on 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. Two 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 1 sign 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.

there was no judicial decision that the version of the statute sought to be enforced was not in effect,^{8/} and there was no failure, after judicial declaration of the law, to adhere to the statutory requirements for amending the law.^{9/}

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^{10/} 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 testify 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

Code.^{11/} 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.

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,^{1/} 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,^{2/} the Black Book^{3/} and Blue Book^{4/} "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^{5/} 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. Seifert, 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

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.^{6/} 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;^{7/}

6/ "...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.

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 afford notice and hearing under Section 22-21 and 22-22.

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 Lusch 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 27th 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

0178f

- 8 -

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

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.^{13/}

The History of Section 413, Prior to the Turquoise Book

It is perfectly clear that, after about two decades^{14/} 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.^{15/}

^{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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 4 -

RE: PETITION FOR SPECIAL EXCEPTION) BEFORE THE
N/S of Easton Avenue) COUNTY BOARD
401' E. of the C/I 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/I 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^{1/}

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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

original in file #84-93-X

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 ^{16/} the variations in the publications to the attention of Baltimore County, People's Counsel and the zoning officials in the so-called "Roll" case.^{17/} 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,^{19/} Metromedia prepared and filed suit in January, 1980.^{20/} Metromedia sought a declaratory judgment^{21/} 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 version: 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 5 -

County's Zoning Regulations.^{2/} 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^{3/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 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:

"[T]he 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^{22/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 6 -

The regulations which control interpretation of Section 413 re the "consistent version of Section 413^{4/} found in the mimeographed version disseminated to the public^{5/} in 1957 and published and republished -- and acted upon^{6/} -- as law in the Black^{7/} and Blue^{8/} 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.^{9/} 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,^{10/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 3 -

"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 Soft 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 Pease 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 7 -

FEB 27 1985



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 11, 1984

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

Dear Mrs. Friedman: Re: Case No. 84-109-X
George Mehrling

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,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: George Mehrling
Foster & Kleiser
M. Albert Figinski, Esq.
N. E. Gerber
J. Jewell
A. Johnson
J. Jung
J. Dyer

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHLING :
FOR A SPECIAL EXCEPTION : FOR
ON PROPERTY LOCATED ON : BALTIMORE COUNTY
THE NORTHEAST SIDE OF :
REISTERSTOWN RD., 510' :
NORTHWEST OF THE CENTER :
LINE OF KINGSLEY RD. :
4th DISTRICT :
NO. 84-109-X :
Appeal from the County
Board of Appeals of
Baltimore County, No. 84-109-X
2/13/84 84-66-134

ORDER FOR APPEAL BY PETITIONER AND CONTRACT LESSEE

MR. CLERK:

Please enter an appeal on behalf of George Mehrling,
Petitioner, and Foster & Kleiser, Contract Lessee, from the
Order of the County Board of Appeals of Baltimore County,
passed in Case No. 84-109-X 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
B-321, a copy of the foregoing to the County Board of Appeals
for Baltimore County, Room 200, Court House, Towson, MD. 21204.
As well, a copy of the foregoing was mailed to Peter Max
Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court
House, Towson, MD. 21204 and to Marvin I. Singer, Esquire,
10 E. Eager Street, Baltimore, MD. 21202. Said mailings were
made this 7th day of August, 1984.

M. Albert Figinski
M. Albert Figinski

IN THE MATTER OF : IN THE
OF THE APPLICATION : CIRCUIT COURT
OF GEORGE MEHLING :
FOR A SPECIAL EXCEPTION : FOR
ON THE PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF :
REISTERSTOWN ROAD, 510' :
NORTHWEST OF THE CENTER LINE :
OF KINGSLEY ROAD :
4TH DISTRICT :
NO. 84-109-X :
Appeal from the County
Board of Appeals of
Baltimore County, No. 84-109-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
Zoning Commissioner, dated October 25, 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

LAW OFFICES OF
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 -

"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 chimera. If Metromedia means
anything, it means that, in 1981, the Black and Blue Book
versions (Petitioners Exhibits 2 & 3 below) of Section 413 were

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

- 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

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

- 4 -

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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
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, and to
Marvin I. Singer, Esq., 10 E. Eager Street, Baltimore, Md.
21202, Counsel for putative intervenor.

M. Albert Figinski
M. Albert Figinski

0517f

- 6 -

Section 413 After the Turquoise Book

In November, 1981, the Secretary of the County Council certified^{23/} 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,^{24/} 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".^{25/} Under examination by Petitioners' counsel, Mr. Toporovich admitted no notice was given by the Council

^{23/} Petitioners' Exhibit 12. The certification is five months after the Court decided Metromedia.

^{24/} Petitioners' Exhibit 13.

^{25/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 12 -

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.^{26/} 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^{27/} 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.^{28/} Thereafter, the board makes final recommendations^{29/} 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

^{26/} 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.

^{27/} See Petitioners' Exhibit 9.

^{28/} See Petitioners' Exhibit 10, Sec. 22-21(c).

^{29/} Ibid.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 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,

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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 13 -

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.^{30/} 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^{31/}--it declared what Section 413 was in effect, i.e., the Black Book and Blue Book version.

^{30/} 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.

^{31/} See Sections 3-402 and 3-406, Courts Article, Md. Code set out, in pertinent part, at page 6, supra.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 10 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13th 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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 14 -

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"^{32/} when the County enacted Section 22-31^{33/} 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.

^{32/} 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, the view of the Metromedia opinion, "some county employee found, secreted away in a vault, the original version", i.e., People's Counsel's Exhibit 1.

^{33/} "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)."

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 11 -

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	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' OPPOSITION TO MOTION TO INTERVENE

Petitioners, by undersigned counsel, acknowledge that, on March 12, 1984, counsel received Leonard Stoler's Motion to Intervene in Case No. 84-109-X and in opposition to said Motion state:

1. There is no Rule of the Board of Appeals, published in the turquoise book, which allows the intervention requested.
2. Movant has failed to protect his rights by failing to appear before the Zoning Commissioner who held a hearing as provided by law and by failing to appeal to this Honorable Board.
3. Prior to the hearing in this matter--which was held on March 1, 1984--84-109-X had been consolidated with 84-93X, a matter in which Movant has no interest.
4. The hearing of this appeal has already been held before this Board.
5. Movant's claim that he was "unaware" of proceedings and "had no knowledge of the hearings" is undercut by several facts (a) Mr. Walker spoke with Movant's agent in January, 1984; (b) Mr. Walker confirmed the conversation by letter which is attached hereto and incorporated herein; and

Out of copy
FEB 15 1984

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

FEB 27 1965

George Mehring
Case No. 84-109-X

In 1980, the Petitioner, Metromedia, did bring litigation in the Circuit Court for Baltimore County, a Bill of Complaint for Declaratory Judgment, 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.

George Mehring
Case No. 84-109-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 Zoning Commissioner, dated October 25, 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 P. Hackett
William T. Hackett, Chairman

Diana K. Vincent
Diana K. Vincent

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 2/135/84CG434

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 of November 26, 1984, it is this 28th 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 Exceptions petitioned for by Appellants be and the same is hereby granted.

Approved as to form:

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

M. Albert Figinski
M. Albert Figinski
Meincove, Kaufman, Weiner &
Smouse, P.A.
36 S. Charles Street
Baltimore, MD 21201

FILED NOV 29 1984

COUNTY BOARD OF APPEALS
NEW DEC 4 P 1:13

CIRCUIT COURT FOR BALTIMORE COUNTY LAW CIVIL - MISCELL

DOCKET 2 PAGE 134 CASE NO. 84CG434 CATEGORY APPEAL

IN THE MATTER OF THE
APPLICATION OF GEORGE MEHRING
FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON
THE NORTHEAST SIDE OF
REISTERSTOWN RD.,
NORTHWEST OF THE CENTER
LINES OF KINGSLEY RD.
4th DISTRICT, NO. 84-109-X
FOSTER & KLEISER, Contract Lessee

ATTORNEYS
M. Albert Figinski, Meincove,
Kaufman, Weiner, & Smouse, P.A.
36 S. Charles St. (1) 332-8520

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Phyllis Cole Friedman
Peter Max Zimmerman
Rm. 223 Court House (04) 454-2168

CENTRAL ASSIGNMENT

- (1) August 10, 1984 Order for appeal from the decision of the County Board of Appeals, Petition & Exhibits fd.
- (2) Aug. 13, 1984 - Certificate of Notice fd.
- (3) Aug. 16, 1984 Appellants' Motion to Consolidate case with case 84CG435 fd.
- Aug. 22, 1984 - Transcript of Record fd. (see 84CG435 for Record)
- Aug. 22, 1984 - Notice of Filing of Record fd.
- (4) Sept. 7, 1984 - App. of Phyllis Cole Friedman & Peter Zimmerman for the Pet. (People's Counsel) & Same Day Answer to Petition on Appeal fd.
- (5) Sept. 7, 1984 - Order of Court that case 84CG434 & Case 84CG435 be consolidated fd. (JN)
- (6) Sept. 20, 1984 - Appellants' Memorandum fd.
- Nov. 26, 1984 Hon. Joseph F. Murphy, Jr. Hearing had. Judgment to be filed.
- Nov. 29, 1984 - Order of Court that the Order of the County Board of Appeals dated July 11, 1984 is reversed & the Special Exceptions petitioned for by Appellants be & the same is hereby granted fd. (JN)

COSTS
CV GEN 84434 #
CV CLK 70.00
B LBY 5.00
JUN # 0 #
CKCHECK, TL 75.00
25393 COOL R02 T12:26
03/10/84

DOCKET 2 PAGE 134 CASE NO. 84 CG 434

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 14, 1983

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

Chairman
Nicholas B. Commodari

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. George Mehring
11311 Reisterstown Road
Owings Mills, Maryland 21117

RE: Item NO. 44 - Case No. 84-109-X
Petitioner - George Mehring
Special Exception Petition

Dear Mr. Mehring:

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, for
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: Foster & Kleiser
3001 Remington Avenue
Baltimore, Md. 21211



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

September 16, 1983

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

Re: Item #44 (1983-1984)
Property Owner: George Mehring
N/ES Reisterstown Rd. 510' N/W from centerline
Kingsley Rd.
Acres: 15 X 30 District: 4th

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:

Reisterstown Road (Md. 140) 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.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

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 44 (1983-1984).

Very truly yours,

Robert A. Morton, P.E., Chief
Bureau of Public Services

RAM:EW:FW:ISS



Maryland Department of Transportation
State Highway Administration

Louise K. Bridwell
Secretary
M. S. Calhoun
Administrator

September 2, 1983

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

Attention: Mr. N. Commodari

Re: ZAC Meeting of 8-16-83
ITEM: #44.
Property Owner: George Mehring
Location: N/ES Reisterstown Road, Route 140, 510' N/W from centerline Kingsley Road
Existing Zoning: B.R.
Proposed Zoning: Special Exception for one 12 X 25 double faced illuminated advertising structure
Acres: 15 X 30
District: 4th

Dear Mr. Jablon:

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

However, any additional information or comments regarding the proposed advertising structures should be through Mr. Morris Stein, Chief of Outdoor Advertising at 659-1642.

Very truly yours,

Charles Lee, Chief
Bureau of Engineering
Access Permits

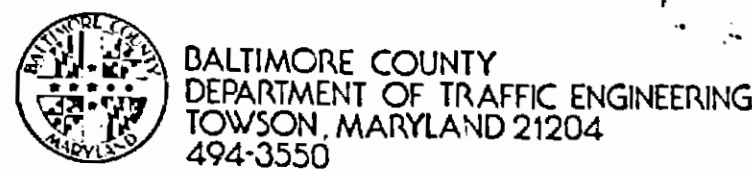
By: George Wittman

CL:GW:maw

Attachment

cc: Mr. M. Stein
Mr. J. Ogle

My telephone number is (301) 659-1350
Teleprinter for impaired hearing or speech
363-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-482-5062 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717



STEPHEN E. COLLINS
DIRECTOR

September 1, 1983

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

Item No. 43, 44, 45, 46, 47, and 48 ZAC - Meeting of August 16, 1983
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Hammond:

The Department of Traffic Engineering has no comments for item numbers 43, 44, 45, 46, 47, 48.

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Assoc. II

MSF/ccm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

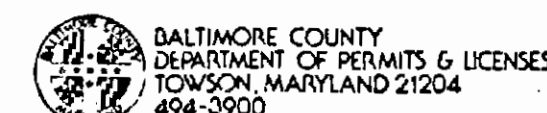
Arnold Jablon, Zoning Commissioner
TO: Office of Planning and Zoning Date: September 20, 1983
FROM: Ian J. Forrest
SUBJECT: Zoning Variance Items

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 # 44 - George M. King
- Item # 45 - Edward I. & Sharon Klawansky
- Item # 48 - Michael Rife

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

LJF/fth



TED ZALESKI, JR.
DIRECTOR

September 21, 1983

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

Dear Mr. Hammond:

Comments on Item # 44 Zoning Advisory Committee Meeting

Property Owner: George Mehring
Location: 8655 Reisterstown Road 510' NW from centerline Kingsley Road
Existing Zoning: B.R.
Proposed Zoning: Special Exception for one 12 x 25 double faced illuminated advertising structure.

Acres: 1.5 x 30
District: 440

The items checked below are applicable:

X A. All structures shall conform to the Baltimore County Building Code 1981/ Council Bill 4-82 ~~Special Exception Code for the Reisterstown Road~~

X B. A building and other miscellaneous permits shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0" of an adjacent lot line shall be of one hour fire resistant construction, no openings permitted within 7'0" of lot line. A firewall is required if construction is on the lot line, see Table 401, Line 2, Section 1407 and Table 1402.

F. Requested variance conflicts with the Baltimore County Building Code, Section 4.

G. 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.

H. 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 the structure for which a proposed change in use is proposed complies with the height/area requirements of Table 505 and the required construction classification of Table 401.

I. Comments:

NOTES: 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 #122 (Plans Review) at 111 West Chesapeake Ave., 21204.

Very truly yours,

Charles E. Burdum
Charles E. Burdum, Chief
Plans Review

CEB:rrj
PUBS 01-82

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: August 15, 1983

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

Z.A.C. Meeting of: August 16, 1983

RE: Item No: 43, 44, 45, 46, 47, & 48
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Hammond:

The above referenced item numbers have no bearing on student population.

Very truly yours,

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

WNP/bp

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
Zoning Commissioner
TO: Date: October 7, 1983
FROM: Norman E. Gerber
SUBJECT: George Mehring
84-109-X

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

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

NEG:JGH:cav

LAW OFFICES
MARVIN I. SINGER, P. A.
TEN EAST EAGER
BALTIMORE, MARYLAND 21202

TELEPHONE
742-1022
695-1111
AREA CODE 301

March 9, 1984

County Board of Appeals
Court House
Towson, Maryland 21204

Re: Request for Special Exception,
George Mehring, Petitioner
Case No. 84-109-X

Gentlemen:

I enclose for your consideration a Motion to Intervene in the above-entitled case.

Yours very truly,

Marvin I. Singer

Marvin I. Singer

MIS:mfm
Enclosure

cc: M. Albert Figinski, Esq.
Peter Max Zimmerman, Esq.

SEP 13 P 2:18

IN RE: PETITION SPECIAL EXCEPTION
NE/S of Reisterstown Road,
510' NW of the centerline
of Kingsley Road - 4th
Election District
George Mehring,
Petitioner
* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 84-109-X

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner, by Foster & Kleiser, its Lessee, requests a special exception to place an outdoor advertising sign on the Petitioner's property, as more particularly described on the site plan marked Petitioner's Exhibit 1.

The Lessee appeared by its representative, George Arconti, Real Estate Manager, who testified. Also appearing was Barry Freedman, Director of Public Affairs. No Protestants appeared.

The Lessee presented testimony that the outdoor advertising sign would be 12' x 25' and be for general advertising. It would be constructed of steel, on steel posts with a steel face. It would be an illuminated sign lighted by fluorescent light, which would be directed onto the face of the sign and with no glare resulting elsewhere. The property is zoned B.R. There are only two other such signs within a radius of one mile from the proposed sign. The sign's height would be 2 feet from ground to its highest point.

The Petitioner meets all of the relevant requirements as directed by Sections 413.1 and 413.5 of the Baltimore County Zoning Regulations (BCZR).

The Petitioner seeks relief from Section 413.3, pursuant to Section 502.1, BCZR as directed by *Metromedia, Inc. v. Balto. County*, Equity No. 103167 (July 1, 1981).

It is clear, therefore, that the zoning regulations permit the use requested by the Petitioner in a B.R. Zone by special exception. It is equally clear that

the proposed use would not be detrimental to the primary business uses in the vicinity of the proposed sign. Therefore, it must be determined whether the conditions as delineated by Section 502.1 are satisfied by the Petitioner.

After reviewing all of the testimony and evidence presented, it appears that the special exception as applied for by the Petitioner should be granted.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest. The facts and circumstances of the use proposed by the Petitioner do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *Schultz v. Pritts*, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the zoning regulations.

Pursuant to the advertisement, posting of property, and public hearing held, and it appearing that by reason of the requirements of Section 502.1 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 Zoning Commissioner of Baltimore County, this 25th day of October, 1983, that the Petition for Special Exception for a 12' x 25' illuminated outdoor advertising sign, in accordance with the site plan

introduced and accepted into evidence as Petitioner's Exhibit 1, be and is hereby GRANTED, from and after the date of this Order, subject to the following:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that his proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

[Signature]
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

DATE *Oct 25 1983*
BY *John P. Dwyer*
ADMINISTRATIVE ASSISTANT

- 3 -

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

JOSEPH E. KAUFMAN
AROLD W. WEINER
ROBERT E. KAUFMAN
FREDERICK W. KAUFMAN
LOUIE B. KAUFMAN
J. JAMES KAUFMAN
ISAC H. KAUFMAN
DAVID L. KAUFMAN
RICHARD V. KAUFMAN
JOHN L. KAUFMAN
AVRUM H. KAUFMAN
NATHAN L. KAUFMAN
GALVIN E. KAUFMAN
HAROLD E. KAUFMAN

D. CHRISTOPHER OHLY
GEORGE F. KAUFMAN
RICHARD R. KAUFMAN
STEPHEN F. KAUFMAN
STEPHEN E. KAUFMAN
PATRICK H. KAUFMAN
JAMES D. KAUFMAN
PATRICK W. KAUFMAN
ROBERT L. KAUFMAN
JOHN H. KAUFMAN
HAROLD E. KAUFMAN
KENNETH D. KAUFMAN

30 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060
TELEPHONE (301) 332-8800
TELECOPIER (301) 332-8804
TELEX 710-824-2414
(WRITER'S DIRECT DIAL NO.)
332-8520

January 16, 1984

County Board of Appeals
Room 219
Court House
Towson, Maryland 21204

Re: 84-93X - SET 3/1/84 *BUCLAY*
84-109X - *MEHRING*

To The Honorable Board:

Enclosed please find the entry of my appearance as counsel for Petitioner/Appellee in each of the above-referenced matters.

I note that 84-93X has been set for a hearing on March 1, 1984. I have discussed both cases with Mr. Zimmerman of the Office of People's Counsel, the Appellant in each case. We agree that both matters contain common issues and I suggest, with Mr. Zimmerman's concurrence, that both matters be heard on March 1, 1984 at 10 a.m., the time when 84-93X is now scheduled. Mr. Zimmerman has authorized me to say that he agrees that consolidation of the cases for hearing on March 1 is agreeable to him.

Very truly yours,

M. ALBERT FIGINSKI

MAP:vll
Enc.

cc: Peter Max Zimmerman, Esquire

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

*OK - WITH - not a case
for 3/1/84*

1/18/84 - NOTIFIED OF APPEAL HEARING SCHEDULED FOR THURSDAY, MARCH 1, 1984 at 10 a.m.

M. Albert Figinski, Esquire
George Mehring
Foster & Kleiser
Phyllis Friedman

494-3180

County Board of Appeals

Room 200, Court House
Towson, Maryland 21204
January 18, 1984

Hearing Room #218

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 POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 84-109-X

GEORGE MEHRING

FOR - SE-12' x 25' DOUBLE FACED ILLUMINATED
OUTDOOR ADVERTISING STRUCTURE

NE/S REISTERSTOWN ROAD 510'
NW OF C/L OF KINGSLEY ROAD

4th DISTRICT

10/25/83 - ZC GRANTED PETITION W/RESTRICTIONS

ASSIGNED FOR:

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

cc: M. Albert Figinski, Esquire
George Mehring
Foster & Kleiser
Phyllis Friedman
N. E. Gerber
J. G. Hoswell
A. Jablon
Jean M. H. Jung
J. E. Dyer

Counsel for Petitioner
Petitioner
Contract Lessee
People's Counsel

Edith T. Eisenhart, Adm. Secretary

March 15, 1984

Marvin I. Singer, Esquire
Ten East Eager
Baltimore, Maryland 21202

Re: Case No. 84-109-X
George Mehring

Dear Mr. Singer:

Please be advised that Your Motion to Intervene filed in the above entitled case is hereby denied. However, the Board will accept a Memorandum, on legal issues only providing same is received by this Board and counsel for the parties on or before March 22, 1984.

Very truly yours,

[Signature]
Joseph L. Suder,
Acting Chairman

JLS:6

cc: M. Albert Figinski, Esq.
Peter Max Zimmerman, Esq.

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 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.

- 3 -

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-X3PH) 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.

FEB 27 1984

PETITION FOR SPECIAL EXCEPTION 84-109-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 made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the

herein described property for ILLUMINATED/ADVERTISING STRUCTURE.

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 235-8924

(Type or Print Name)

Signature

Address

BALTIMORE, MD 21211

City and State

Attorney for Petitioner:

(Type or Print Name)

Address

BALTIMORE, MD 21117

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address

Phone No.

Attorney's Telephone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 16th day of August, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 20th day of October, 1983, at 11:00 o'clock A.M.

Carl Jahn
Zoning Commissioner of Baltimore County.

S.C.O.-No. 1

(over)

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 KINGSLY RD., 4th DISTRICT

GEORGE MEHRING and FOSTER & KLEISER, PLAINTIFFS

Zoning File No. 84-109-X

AND AT LAW

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. Hockett 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

RE: PETITION FOR SPECIAL EXCEPTION BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
NE/S of Reisterstown Rd., 510' NW of Centerline of Kingsley Rd., 4th District
GEORGE MEHRING, Petitioner Case No. 84-109-X

ORDER TO ENTER APPEARANCE

Mr. Commissioners:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, III
John W. Hession, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 3rd day of October, 1983, a copy of the foregoing Order was mailed to Mr. George Mehring, 11311 Reisterstown Road, Baltimore, MD 21117, Petitioner; and Mr. Wilbur R. Walker, Foster & Kleiser, 3001 Remington Avenue, Baltimore, MD 21211, Lessee.

John W. Hession, III
John W. Hession, III

RE: PETITION FOR SPECIAL EXCEPTION BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
NE/S of Reisterstown Rd., 510' NW of Centerline of Kingsley Rd., 4th District
GEORGE MEHRING, Petitioner Case No. 84-109-X

ORDER FOR APPEAL

Mr. Commissioner:

Please note an appeal from your decision in the above-entitled matter, under date of October 25, 1983, to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, III
John W. Hession, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 16th day of November, 1983, a copy of the foregoing Order for Appeal was mailed to Mr. George Mehring, 11311 Reisterstown Road, Baltimore, MD 21117, Petitioner; and Mr. George Arconti, Real Estate Manager, Foster & Kleiser, 3001 Remington Avenue, Baltimore, MD 21211, Lessee.

John W. Hession, III
John W. Hession, III

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

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 Metromedia 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

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 7th day of September, 1984.

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

Joseph F. Murphy
JUDGE

0529E

FILED SEP-7-1984

True Copy Test

ELMER H. KAHN, JR., Clerk

Per *Glenn Butler*
Deputy Clerk

RECEIVED
COUNTY BOARD OF APPEALS
NEW SEP 10 A 11:14 E

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.

FEB 27 1985

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 fac. 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. Farr, 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

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE COUNTY BOARD OF APPEALS
W/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

RECEIVED
COUNTY BOARD OF APPEALS
MAR 26 1984

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

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. TKU, 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,

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
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 14th 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



Baltimore 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. Peck 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

all original Memos in file #84-109-X



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 11, 1984

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

Re: Case No. 84-109-X
George Mehring

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,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: George Mehring
Foster & Kleiser
M. Albert Figinski, Esq.
N. E. Gerber
J. Jewell
A. Jodon
J. Jung
J. Dyer

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHRING :
FOR A SPECIAL EXCEPTION : FOR
ON PROPERTY LOCATED ON : BALTIMORE COUNTY
THE NORTHEAST SIDE OF :
REISTERSTOWN RD., 510' :
NORTHWEST OF THE CENTER :
LINE OF KINGSLEY RD. :
4th DISTRICT :
NO. 84-109-X :
Appeal from the County
Board of Appeals of
Baltimore County, No. 84-109-X
2/13/84 84-66-134

ORDER FOR APPEAL BY PETITIONER AND CONTRACT LESSEE

MR. CLERK:

Please enter an appeal on behalf of George Mehring,
Petitioner, and Foster & Kleiser, Contract Lessee, from the
Order of the County Board of Appeals of Baltimore County,
passed in Case No. 84-109-X 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
3-321, a copy of the foregoing to the County Board of Appeals
for Baltimore County, Room 200, Court House, Towson, MD. 21204.
As well, a copy of the foregoing was mailed to Peter Max
Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court
House, Towson, MD. 21204 and to Marvin I. Singer, Esquire,
10 E. Eager Street, Baltimore, MD. 21202. Said mailings were
made this 7th day of August, 1984.

M. Albert Figinski
M. Albert Figinski

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHRING :
FOR A SPECIAL EXCEPTION : FOR
ON THE PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF :
REISTERSTOWN ROAD, 510' :
NORTHWEST OF THE CENTER LINE :
OF KINGSLEY ROAD :
4TH DISTRICT :
NO. 84-109-X :
Appeal from the County
Board of Appeals of
Baltimore County, No. 84-109-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
Zoning Commissioner, dated October 25, 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

LAW OFFICES OF
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 -

"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 chimera. If Metromedia means
anything, it means that, in 1981, the Black and Blue Book
versions (Petitioners Exhibits 2 & 3 below) of Section 413 were

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

- 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

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

- 4 -

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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
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, and to
Marvin I. Singer, Esq., 10 E. Eager Street, Baltimore, Md.
21202, Counsel for putative intervenor.

M. Albert Figinski
M. Albert Figinski

0517f

- 6 -

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHRING : FOR
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 :
NO. 84-109-X :
BALTIMORE COUNTY
Board of Appeals of
Baltimore County, No. 84-109-X

ORDER FOR APPEAL BY PETITIONER AND CONTRACT LESSEE

MR. CLERK:

Please enter an appeal on behalf of George Mehring, Petitioner, and Foster & Kleiser, Contract Lessee, from the Order of the County Board of Appeals of Baltimore County, passed in Case No. 84-109-X 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 his order for appeal, I mailed, pursuant to Md. Rule 1-321, a copy of the foregoing to the County Board of Appeals for Baltimore County, Room 200, Court House, Towson, MD. 21204. As well, a copy of the foregoing was mailed to Peter Hax Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, MD. 21204 and to Marvin I. Singer, Esquire, 10 E. Eager Street, Baltimore, MD. 21202. Said mailings were made this 9th day of August, 1984.

M. Albert Figinski
M. Albert Figinski

IN THE MATTER OF : BEFORE
GEORGE MEHRING : COUNTY BOARD OF APPEALS
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 :
No. 84-109-X

OPINION

This case comes before this Board on appeal from a decision of the Zoning Commission granting the requested Special Exception for the erection of a 12' x 25' 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 indicates 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 made 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, 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.

Exhibit 1

George Mehring
Case No. 84-109-X

In 1980, the Petitioner, Metromedia, did bring litigation in the Circuit Court for Baltimore County, a Bill of Complaint for Declaratory Judgment, 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. Rakne in this case, *Metromedia Inc. vs. Baltimore County*, found for the Plaintiff. 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 Rakne'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.

George Mehring
Case No. 84-109-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 enacted 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 deferring 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 Rakne 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 Zoning Commission, dated October 25, 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 F. Hackett
William F. Hackett, Chairman
Diane K. Viscusi
Diane K. Viscusi

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 1963, 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 1969, 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 employees found, secured 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 Red 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 the 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 *Peare v Peck*, 15 Md. (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 publications 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 1963. This ruling is applicable only to Section 413 and to no other regulation.

John E. Rakne
JUDGE

JULY 1, 1984

-2-

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 purposes 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

(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 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 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 SET-BACK 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: 3-2-84

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

(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: 3-2-84

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.

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.



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. 84-109-X
George Mehring

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,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: N. 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 in Case No. 84-109-X \$ 20.00
George Mehring
NE's Reisterstown Rd., 510' NW of c/l of Kingsley Rd.
4th 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. 84-109-X
George Mehring

In accordance with Rule 8-7 (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 8-7 (a).

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

Very truly yours,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: George Mehring
Foster & Kleiser

IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF : FOR BALTIMORE COUNTY
GEORGE MEHRING : AT LAW
ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF :
REISTERSTOWN RD., 510' : File No. 84-CG-434
NORTHWEST OF THE CENTERLINE :
OF KINGSLEY RD., 4th District :
Zoning File No. 84-109-X : : : : :

IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF : FOR BALTIMORE COUNTY
EKLAY REALTY : AT LAW
ON PROPERTY LOCATED ON :
THE NORTH SIDE OF EASTERN :
AVE., 401' EAST OF THE : File No. 84-CG-435
CENTERLINE OF TERRACE RD., :
15th DISTRICT :
Zoning File No. 84-93-X : : : : :

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 on 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.

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHRING : FOR
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 :
NO. 84-109-X :
BALTIMORE COUNTY
Board of Appeals of
Baltimore County, No. 84-109-X

ORDER FOR APPEAL BY PETITIONER AND CONTRACT LESSEE

MR. CLERK:

Please enter an appeal on behalf of George Mehring, Petitioner, and Foster & Kleiser, Contract Lessee, from the Order of the County Board of Appeals of Baltimore County, passed in Case No. 84-109-X 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 his order for appeal, I mailed, pursuant to Md. Rule 1-321, a copy of the foregoing to the County Board of Appeals for Baltimore County, Room 200, Court House, Towson, MD. 21204. As well, a copy of the foregoing was mailed to Peter Hax Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, MD. 21204 and to Marvin I. Singer, Esquire, House, Towson, MD. 21202. Said mailings were made this 9th day of August, 1984.

M. Albert Figinski
M. Albert Figinski

IN THE MATTER OF : BEFORE
GEORGE MEHRING : COUNTY BOARD OF APPEALS
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 :
No. 84-109-X

OPINION

This case comes before this Board on appeal from a decision of the Zoning Commission granting the requested Special Exception for the erection of a 12' x 25' 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 indicates 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 made 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, 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.

Exhibit 1

George Mehring
Case No. 84-109-X

In 1980, the Petitioner, Metromedia, did bring litigation in the Circuit Court for Baltimore County, a Bill of Complaint for Declaratory Judgment, 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. Rakne in this case, *Metromedia Inc. vs. Baltimore County*, found for the Plaintiff. 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 Rakne'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.

George Mehring
Case No. 84-109-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 enacted 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 deferring 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 Rakne 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 Zoning Commission, dated October 25, 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 F. Hackett
William F. Hackett, Chairman
Diane K. Viscusi
Diane K. Viscusi

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 1963, 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 1969, 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 employees found, secured 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 Red 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 the 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 *Pease v. Peck*, 15 Md. (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 publications 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 1963. This ruling is applicable only to Section 413 and to no other regulation.

John E. Rakne
JUDGE

JULY 1, 1984

-2-

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 purposes 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

(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 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

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
SEP 19 1984

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF * CASE: 84CG434
THE APPLICATION OF * DOCKET: 2
GEORGE MEHRING * FOLIO: 134
FOR A SPECIAL EXCEPTION, *
ETC. *
APPEAL FROM THE *
COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *
No. 84-109-X *

IN THE MATTER OF * CASE: 84CG435
THE APPLICATION OF * DOCKET: 2
EUGENE REALTY * FOLIO: 135
FOR A SPECIAL EXCEPTION, *
ETC. *
APPEAL FROM THE *
COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *
No. 84-93-X *

APPELLANTS' MEMORANDUM

In response to the requirement of Rule B12, Appellants file this Memorandum of facts and law in regard to the two above-captioned appeals which have been consolidated, pursuant to Rule 2-503, for all purposes, by Order of this Court dated September 7, 1984.

PREFACE

The cases at bar do not raise the usual issues arising in an appeal from a denial of a special exception. Indeed, below, it was agreed that the signs petitioned for would not run afoul of Section 502.1 of the zoning regulations (Tr. p. 6,

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

lines 3-21). The core -- and unusual -- issue at bar in these cases is whether, when promulgating its current edition of the zoning regulations (i.e., the Turquoise Book) which leaves out of Section 413.3 the B. R. (Business Roadside) zone, the County could ignore this Court's ruling in *Metromedia, Inc. v. Baltimore County*, Eq. No. 103167 and Sections 22-21 and 22-22(a) of the Baltimore County Code. This case, therefore, requires this Court to determine, again, what "version" of Section 413.3 is applicable to outdoor advertising signs petitioned for by the contract lessee appellant.

In order to assist this Court in understanding the issue(s) presented, the Appellants set out, in pertinent part, the Opinion of Judge Raine in *Metromedia* and the two relevant sections of the County Code. In addition, Appellants present the following "Table of Contents":

PREFACE.....	1
Except from <i>Metromedia v. Baltimore County</i> , Eq. No. 103167.....	3
Excerpts from the County Code.....	4
PROCEDURAL HISTORY OF THESE APPEALS.....	5
QUESTION PRESENTED.....	6
STATEMENT OF FACTS.....	7
ARGUMENT.....	12
A. What <i>Metromedia</i> Declared.....	13
B. The Publication of the Turquoise Book Flouts <i>Metromedia</i>	15

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

C. Misplaced Reliance on Bill 7-84.....	17
D. Miscellaneous Matters.....	18
CONCLUSION.....	20

EXCERPT FROM *METROMEDIA V. BALTIMORE COUNTY*, EQUITY NO. 103167

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 1963, 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 1969, 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 hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

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 Soft 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 *Pease v. Peck*, 16 How. (59 US) 595 (1853) 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 1963. This ruling is applicable only to Section 413 and to no other regulation.

(issued July 1, 1981, by Raine, J.)

EXCERPTS FROM BALTIMORE COUNTY CODE

Sec. 22-21. Preparation of zoning regulations and zoning maps.

(a) The planning board shall from time to time recommend to the county council for adoption, zoning regulations and zoning maps, showing the boundaries of the proposed districts, divisions or zones into which the county is divided pursuant to this title.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations.... All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in accordance with the same procedure herein specified for the original adoption of such regulations and maps.

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 22-7. During the period of such notice, the preliminary report of the planning board, with accompanying

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearings have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations, or maps, as the case may be; and, in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning board as to any part of the proposed zoning map or regulations, the dissenting member or members shall be entitled to file with the county council one (1) or more minority reports stating the basis for their disagreement with the majority, which shall be included with the final report of the majority.

Sec. 22-22. Action by county council on adoption of zoning regulations and Zoning maps.

(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 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 by an ordinance adopt such regulations or maps subject, however, to such changes or amendments therein as the county council may deem appropriate.

PROCEDURAL HISTORY OF THESE APPEALS

In two separate instances, petitions were filed pursuant to the zoning regulations of Baltimore County. Each asked that certain "illuminated outdoor advertising" signs be allowed, as Special Exceptions, in B. R. zones. In each instance, the first level of administrative review, i.e., the

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Zoning Commissioner or the Deputy Zoning Commissioner, granted the Special Exception. Thereafter, appeals were noted by People's Counsel. The two matters were consolidated for hearing on March 1, 1984 before the County Board of Appeals for Baltimore County. On July 11, 1984, the Board filed two opinions (nearly identical in content) which reversed the previous administrative orders and denied the respective Special Exceptions.

On August 9, 1984, Appellants, through counsel, appealed and filed the required (by Rule B2e) Appeal Petitions. People's Counsel for Baltimore County, as "Protestant below and Appellee herein," answered on September 6, 1984.

On August 22, 1984, the Clerk of the Circuit Court noted that the Board of Appeals had filed the record in each appeal.

On August 31, 1984, the Assignment Office set the cases in for hearing on November 26, 1984.

On September 7, 1984, Judge Murphy signed an Order consolidating the cases "for all purposes," pursuant to Md. Rule 2-503.

QUESTION PRESENTED

After the Circuit Court for Baltimore County declared, in *Metromedia v. Baltimore County*, Equity No. 103167, what was the effective version of Section 413 of the Baltimore County

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Zoning Regulations, may the County ignore the decision, and republish a different version of Section 413, so that outdoor advertising signs may not be granted as a Special Exception in a B. R. zone?

STATEMENT OF FACTS

The curious, bedeviled history of the County's zoning regulations, as they pertain to outdoor advertising signs, was outlined in this Court's opinion in *Metromedia* (see page 3, *supra*). At the outset of the hearing before the Board, Appellants introduced, as exhibits in these cases, the pleading (Petitioners' Exhibit 7) and the exhibits (Petitioners' Exhibits 1-6) in *Metromedia*. In that case, a declaratory judgment was sought -- requesting this Court to decide which version of Section 413 was validly in force in Baltimore County. Petitioners' Exhibit 6 sets out, side-by-side, the core, conflicting versions. As to Section 413.3 (the provision which generally defines in what zones an outdoor advertising sign may be placed as a Special Exception), Petitioners' Exhibit 6 shows graphically that the "B.R." zone was left out of the Gold Book publication in 1975.¹

1. See *Metromedia* opinion, *supra*, p. 3-4. That opinion was reversed below as Petitioners' Exhibit 8 (Tr. p. 12, line 19 to p. 16, line 9), and was appended to the Appeal Petition as Exhibit 2. Various publications of the regulations are demonstrated in Petitioners' Exhibits 1-5. The allegedly true original version is People's Counsel Exhibit 1.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
26 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Thereafter, the principal outdoor advertising sign company ought to correct the error, by correspondence (See Joint Exhibit 1) and an appeal (See Joint Exhibit 2).⁴ The issue was brought to this Court in the Metromedia suit for declaratory judgment (Petitioners' Exhibit 7). In that case, People's Counsel was precluded from intervening, ultimately, by decision of the Court of Special Appeals (People's Counsel Exhibit 2). The Court's decision, declaring as the law the so-called Black Book version,⁵ was not appealed by the County.⁶

Approximately five months after this Court's decision, the County, through Thomas Toporovich, the Secretary and

2. After an adverse ruling by the Board of Appeal, an appeal was taken to the Circuit Court. On January 10, 1978, the Court reversed the Board and decreed that the Special Exception for the sign there at issue must be granted. The Court filed a two page opinion which noted the differing versions of Section 413 (Tr. 110) but concluded that, under either version, the sign at issue was permitted as a Special Exception. This effort to get a court to decide which version of the regulations applied went awry (Tr. 110-111).

3. The B. R. zone was included in Section 413.3 in the versions declared to be the law in Metromedia. See Petitioners' Exhibits 1, 2, and 3.

4. The date of the Order was July 1, 1981. Thirty days later said declaration became an enrolled decree. Rule 671.

Under §3-406, Courts Article, Md. Code, a county ordinance, i.e., the zoning regulations, may be subject to construction in order to declare rights so that matters, in the words of §3-402, id., are settled and relief afforded from "uncertainty." A declaration of rights "has the force and effect of a final judgment or decree," §3-411, id.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Administrator to the County Council, certified and attested (Petitioners' Exhibit 12; People's Counsel Exhibit 3) the publication of yet another set of the County's zoning regulations. This set -- termed the Turquoise Book by Appellants -- published Section 413.3 in the same fashion as had appeared in the 1975 Gold Book printing. Compare, Petitioners' Exhibit 14 (Section 413.3, as published in the Turquoise Book) with Petitioners' Exhibit 5 (the Gold Book version of said Section).

Aside from the certificate and attestation, there were no documents which were relevant to the attestation and certification of the current edition of the regulations (Tr. 29). Mr. Toporovich testified (Tr. 30, lines 12-15):

"Q. Would it be fair to say that in certifying in accordance with Section 22-24 you took no account of the [Metromedia] Decision?

A. That's correct."

The attestation and certification in 1981 were almost identical to that made in regard to the Gold Book in 1975 (Tr. p. 27, line 10 to p. 28, line 8; p. 32, lines 7 to 10). As to the 1981 publication of the Turquoise Book, there were no documents which show what steps were taken to meet the notice and hearing requirements of Section 22 of the County Code (Tr. p. 30, line 19 to p. 31, line 17). Mr. Toporovich testified that Section 22-22 has never been applied to any book of regulations (Tr. p.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

35, lines 12-13)⁷ because the individual regulations, if changed, were the subject of notice and hearing (Tr. p. 35, lines 14-21; Tr. p. 41, lines 9 to 19).

Nevertheless, before the Turquoise Book was published, no notice or hearings were held with respect to Section 413.3 (Tr. p. 48, lines 2 to 5).

After the publication of the Turquoise Book, the County processed and granted at least three Special Exceptions for outdoor advertising signs in B. R. zones (Petitioners' Exhibits 15A, 15B and 15C).⁸ This occurred despite the absence of B.R. in Section 413.3 of the Turquoise Book. These occurrences were similar to the practice between 1969 and 1975 when, despite the garbled version of Section 413.3 in the Red Book, the zoning authorities continued to recognize B.R. as a zone in which an outdoor advertising sign could be located as a Special Exception (Tr. 85).

James E. Dyer, a person with twenty-five years in the County's employ dealing with zoning regulations, testified to

5. People's Counsel introduced correspondence related to the certification and attestation of the 1975 Gold Book (People's Counsel Exhibits 4 and 5). No such correspondence was produced with respect to the certification and attestation of the 1981 Turquoise Book, and apparently, none exists since no such documents were produced in response to Petitioners' Subpoena Duces Tecum.

6. Prior to these appeals, the Board had rejected a Special Exception for an outdoor sign in B.R. zone (Petitioners' Exhibit 13).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

the jaundiced history relating to outdoor advertising signs (Tr. 84 - 108). He made clear that, after the publication in 1975 of the Gold Book (Tr. p. 85, lines 16-18; Tr. p. 100, lines 5-10), a review was undertaken which uncovered a Soft-Cover Book which was never, theretofore, "utilize(d)...for application of the zoning regulations" (Tr. p. 87, lines 1-2). The Book was given to him and placed in a "drawer" (Tr. 87, line 10). From that Book, Dyer testified "it is very clear that B.R. zone was not in the original adopted version of the 1955 Zoning Regulations" (Tr. p. 87, lines 17-19). After relying on the publication of the Black and Blue Books to govern outdoor advertising signs in B.R. zones from 1957 to 1975 (Tr. p. 85, lines 8 to 15; p. 99, line 9 to p. 100, line 4; p. 104, line 7 to p. 105, line 1), the County ceased acknowledging B.R. as a zone in which an outdoor advertising sign could be located as a Special Exception until the Metromedia decision (Tr. p. 92, lines 17-21). Mr. Dyer acknowledged, however, that the B.R. zone was the most rural zone, one "where you are likely to find" outdoor advertising signs (Tr. p. 101, line 18 to p. 102, line 4); indeed, Mr. Dyer testified that in his opinion the B.R. zone is the commercial zone where it "is a logical place to have a sign" (Tr. p. 102, lines 7-10).

The Black Book which was deemed inferior to the Soft Cover Book bears the same attestation and certification as the alleged superior (Tr. p. 98, lines 8 to 13).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Both the Gold Book and Turquoise Book print in Section 236 that B. R. is a zone in which an outdoor advertising sign may be granted as a Special Exception (Tr. p. 94, line 7 to p. 12; p. 100, lines 13 to 16).

ARGUMENT

The essence of the Board's decision is that, despite Metromedia, the "official adoption" of the Turquoise Book in November, 1981 -- at least four months after Metromedia was decided by this Court -- is controlling and that, since the new publication does not include B.R. among the zones in Section 413.3⁹ in which an outdoor advertising sign may be located by Special Exception, the petitions at bar must be denied. This analysis by the Board is flawed for several reasons:

A. It ignores what Metromedia declared and decided;

B. It erres in concluding that, in the wake of Metromedia, the County could "officially adopt" the Turquoise Book -- leaving B.R. out of Section 413.3 -- without compliance with Sections 22-21 and 22-22 of the County Code;

C. It misperceives the relevance of Bill 7-84; and

D. It has an arbitrary and capricious basis and is contrary to uncontroverted evidence.

We turn now to a seriatim discussion of the specific flaws.

7. The Board's opinion never addressed Section 236. See, however, the first paragraph in the text on this page.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

A. What Metromedia Declared.

Both the Metromedia decision (supra, p.3-4) and the Board's opinion (see pages 1-2 of Exhibit 1 to the Appeal Petition in each case at bar) portray the "very confused and conflicting history"¹⁰ of Section 413 of the zoning regulations. In that context, the Metromedia case was initiated and pursued under Subtitle Four of Title 3 of the Courts Article, Md. Code. A suit for declaratory judgment seeks "to settle and afford relief from uncertainty"¹¹ rights under a County ordinance.¹² The court's declaration, moreover, "has the force and effect of a final judgment."¹³ This Court, in Metromedia, relying upon venerable authority,¹⁴ determined that the version of Section 413 set

8. This was the characterization attached by the Board's Opinions below.

9. §3-402, Courts Article, Md. Code; Cockran v. Zoning Comm'r, 41 Md. App. 437, 439-440 (1979); Marriott Corp. v. Village Realty & Inv., Md. App. , 472 A.2d 510, 513 (1984). See also Restatement, Judgments, 2d (1982), p. 334 (quoted infra, p. 18-19).

10. See §3-406, Courts Article, Md. Code.

11. §3-411, Courts Article, Md. Code.

12. Pease v. Peck, 18 How. (59 U.S.) 595 (1855). See, particularly, 18 How. (59 U.S.) at 596-7.

For similar rulings, see Town of Pacific v. Seifert, 79 Mo. 210, 213 (1883); Wade v. Woodward, 145 So. 737 (Miss. 1933); Edel v. Filer Township, Mainstay 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).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

out in Petitioners' Exhibits 1, 2, and 3 "became effective and controlling law by publication, dissemination, ratification and long acquiescence [Emphasis supplied]." This law, the Metromedia opinion continued, "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."¹⁵ Consequently, Metromedia declared that the County must apply the version of Section 413 contained in Petitioners' Exhibits 1, 2 and 3 to "applications for special exception submitted by" Appellants.¹⁶ These versions include B.R. as a zone in which an outdoor advertising sign may be placed as a Special Exception.

In sum, Metromedia declared, as the applicable law, the versions of Section 413.3 which included B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be erected. Further, Metromedia holds that the "applicable law" could not be amended except in accord with Section 22 of the County Code.

13. The evidence below unequivocally demonstrates that no hearings or notice of amendment preceded publication of the Turquoise Book. See p. 9-10, supra.

14. There is no doubt that the contract lessee Appellant in these cases is a division of Metromedia, Inc., the plaintiff in the Metromedia case.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

B. The Publication of the Turquoise Book Flouts Metromedia.

The record below reveals unequivocally that, prior to publication of the Turquoise Book in 1981, no notice of amending Section 413.3 was given and no hearings were held on such subject. Indeed, the official attester was unaware of Metromedia at the time he certified the Turquoise Book. See pages 9-10, supra.

The Board, while recognizing that it is bound by Metromedia, refuses to "extend its logic" because "the applicable law (i.e., the Turquoise Book) was certified in November of 1981." The Board, regrettably, has failed to understand what Metromedia did. That decision declared Petitioners' Exhibits 1, 2 and 3 to be the "applicable law" and rejected the mere publication, without notice and hearing of amendment, as a valid method of amending that law. Rather than simply failing to extend the logic of Metromedia, the Board has completely ignored its declaration of the "applicable law" and its holding as to the necessary means of altering or amending the "applicable law."

What the County did in publishing and "attesting" the Turquoise Book is to repeat the identical error that was a predicate for the ruling in Metromedia. The Board, for its part, has now unabashedly ruled that Metromedia does not govern the cases at bar because of the re-publication. Unfortunately, the Board has misperceived Metromedia and its effect. If the

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Board's view has merit, any statutory interpretation, by declaratory judgment, could be nullified by simply re-enacting¹⁵ the statute. That, simply, cannot be the law because such construction would be repugnant to §§3-402, 3-406, and 3-411, Courts Article, Md. Code, and the concept of declaratory judgments generally.¹⁶ Unfortunately, however, such construction was applied by the Board, clearly erroneously.¹⁷

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 not proper. See Ransake v. Board of County Commissioners, 268 Md. 295 (1973); Von Lusch v. Board of County Commissioners, 268 Md. 445, 454 (1973). Without affording notice and hearing, there was no substantial

15. Note, however, that, here, there was not even a re-enactment but only a republication and an attestation.

16. Cf., Kracke v. Weinberg, 197 Md. 339, 343-7 (1951); Davis v. State, 183 Md. 385, 389-392 (1944); 8 M.L.E., Declaratory Judgments, §§22 and 42.

17. If an Orphan's Court could not ignore a decision of a Circuit Court, see McIntire v. State, 132 Md. 243, 249-250 (1918), surely a county administrative body may not ignore a circuit court decision of the Circuit Court for that county. Indeed, the Board here acknowledged this doctrine, while surely ignoring it.

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

- 16 -

compliance with the "applicable law." Crozier v. Co. Comm. Pr. George's Co., 202 Md. 501, 506 (1953), and the publication in the Turquoise Book of the repudiated Gold Book version of Section 413.3 was invalid.

C. Misplaced reliance on Bill 7-84.

After erroneously discounting Metromedia and accrediting the Turquoise Book's version of Section 413.3, the Board made reference to an enactment on February 21, 1984¹⁸ of Bill 7-84. The Board's reliance on that Bill is totally misplaced.

The Bill is attached as Exhibit 3 to the Appeal Petition. Its enactment carefully recites:

"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...."

No such preface and no such enactment accredits the Turquoise Book or, more particularly, its version of Section 413.3. In essence, Bill 7-84 shows clearly what should have occurred if the declaration of "applicable law" in Metromedia was to be amended. Rather than supporting the Board's decision, Bill 7-84 demonstrates the form for what should have occurred if Section 413.3 was to be returned validly to its Gold Book form.

18. This date is approximately two weeks prior to the consolidated hearing before the Board of the cases on appeal. Neither party at the hearing had made reference to this enactment and the Bill was not introduced in the record.

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

- 17 -

D. Miscellaneous matters

At the Board level, People's Counsel grudgingly noted Metromedia but really ignored that decision in his arguments to the Board, discounting it as precedent. Appellants contend, however, that precedent may be found from unappealed nisi prius decision, Cf., Placido v. Citizens Bank & Tr. Co., 38 Md. App. 33, 44 (1977). People's Counsel further seemed to argue that, because that office had not been allowed to intervene in Metromedia (People's Counsel, Exhibit 2), Metromedia did not "bind" it. Such argument is without foundation.

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. 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:



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

ARNOLD JABLON
ZONING COMMISSIONER

October 25, 1983

Mr. George Arconti
Real Estate Manager
Foster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

IN RE: Petition Special Exception
NE/S of Reisterstown Road, 510'
NW of the centerline of Kingsley
Road - 4th Election District
George Mehring, Petitioner
Case No. 84-109-X

Dear Mr. Arconti:

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

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ/srl

Attachments

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



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

ARNOLD JABLON
ZONING COMMISSIONER

November 18, 1983

Mr. George Mehring
11311 Reisterstown Road
Owings Mills, Maryland 21117

Re: Petition for Special Exception
NE/S of Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehring - Petitioner
Case No. 84-109-X

Dear Mr. Mehring:

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 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
ARNOLD JABLON
Zoning Commissioner

AJ:aj

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

Salisbury Beauty Schools, however, arose in a very different context than is presented in the cases at bar. In Salisbury Beauty Schools, unlike the situation here, there was never a publication of the statute in differing forms.²⁰ There was no judicial decision that the version of the statute sought to be enforced was not in effect,²¹ and there was no failure, after judicial declaration of the law, to adhere to the statutory requirements for amending the law.

As a final miscellaneous matter, Appellants incorporate by this reference all allegations and arguments submitted in their respective Appeal Petitions.

CONCLUSION

Appellants respectfully request the relief prayed in their respective Appeal Petitions.

M. Albert Figinski
M. Albert Figinski
36 S. Charles Street
Baltimore, MD. 21201
301-332-8520
Attorney for Appellants,
the Petitioners and Contract Lessee

20. Although, as shown in Petitioners' Exhibit 6, Section 413 has been published in varying forms, each publication bore the same attestation of validity (Tr. p. 98, lines 8-13).

21. 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.

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

- 20 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September,

1984, I mailed, postage prepaid, a copy of the foregoing Appellants' Memorandum to:

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

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

M. Albert Figinski
M. Albert Figinski

0621f

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

- 21 -



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

October 13, 1983

Re: Petition for Special Exception
NE/S Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehling - Petitioner
Case No. 84-109-X

Dear Sir:

This is to advise you that \$60.15 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
Zoning Commissioner

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

No. 122912

DATE 10-26-83 ACCOUNT R-01-615-000

AMOUNT \$60.15

RECEIVED FROM Foster & Kleiser
FOR Advertising & Posting
Case # 84-109-X

035*****601510 9202A
VALIDATION OR SIGNATURE OF CASHIER

Mr. George Mehling
1111 Reisterstown Road
Owings Mills, Md. 21117

Foster & Kleiser
3001 Remington Ave
Baltimore, Md. 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
11th day of August, 1983

ARNOLD JABLON
Zoning Commissioner

Petitioner George Mehling
Petitioner's Attorney

Received by Nicholas S. Commodari
Chairman, Zoning Plans
Advisory Committee

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., Sept. 29, 1983

THIS IS TO CERTIFY that the annexed Reg. #154593, P.O. #84-109-X was published for one (1) week previous to the 29th day of Sept., 1983, in the

- ☐ Carroll County Times, a daily newspaper published in Westminster, Carroll County, Maryland.
☐ South Carroll Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland.
☒ Community Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per [Signature]

September 2, 1983

Mr. George Mehling
1111 Reisterstown Road
Owings Mills, Maryland 21117

NOTICE OF HEARING
Re: Petition for Special Exception
NE/S of Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehling - Petitioner
Case No. 84-109-X

TIME: 11:00 A.M.

DATE: Thursday, October 20, 1983

PLACE: Room 106, County Office Building, 111 West Chesapeake

Avenue, Towson, Maryland

cc: Foster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

Zoning Commissioner
of Baltimore County

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

No. 119438

DATE 8/18/83 ACCOUNT 01-615-000

AMOUNT \$100.00

RECEIVED FROM Foster & Kleiser
FOR Filing Petition # 99
/ 100

035*****100000 9022A

VALIDATION OR SIGNATURE OF CASHIER

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 19th day of October, 1983, the next publication appearing on the 27th day of September 1983.

THE JEFFERSONIAN,
[Signature]
Manager

Cost of Advertisement, \$ 22.75

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

No. 122980

DATE 11/18/83 ACCOUNT R-01-615-000

AMOUNT \$105.00

RECEIVED FROM People's Counsel
FOR Appeal fee on Case #84-109-X
(George Mehling)

035*****105000 1802A

VALIDATION OR SIGNATURE OF CASHIER

PROPERTY DESCRIPTION

11311 REISTERSTOWN ROAD

BEGINNING AT A POINT LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD (80 FEET WIDE), 510 FEET NORTHWEST OF THE CENTERLINE OF KINGSLEY ROAD (16 FEET WIDE) AND 88 FEET FROM THE CENTERLINE OF REISTERSTOWN ROAD, THENCE RUNNING THE FOLLOWING COURSES AND DISTANCES: 1) NORTHEASTERLY A DISTANCE OF 30 FEET TO A POINT, THENCE 2) NORTHWESTERLY A DISTANCE OF 15 FEET TO A POINT, THENCE 3) SOUTHWESTERLY A DISTANCE OF 30 FEET TO A POINT, THENCE 4) SOUTHEASTERLY A DISTANCE OF 15 FEET TO THE BEGINNING POINT

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting 10-30-83

Posted for: Special Exception

Petitioner: George Mehling

Location of property: NE/S of Reisterstown Road, 510' NW of

the c/l of Kingsley Road

Location of Signs: NE side of Reisterstown Road approx. 540' NW of the c/l of Kingsley Road

Remarks: [Signature]

Number of Signs: 1

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting 11-25-83

Posted for: Appeal

Petitioner: George Mehling

Location of property: NE/S of Reisterstown Road, 510' NW of

the c/l of Kingsley Road

Location of Signs: NE/S of Reisterstown Road, approx. 540' NW of Kingsley Road

Remarks: [Signature]

Number of Signs: 1

PETITION FOR SPECIAL EXCEPTION

4th Election District

ZONING: Petition for Special Exception

LOCATION: Northeast side of Reisterstown Road, 510 ft. Northwest of the centerline of Kingsley Road

DATE & TIME: Thursday, October 20, 1983 at 11:00 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:

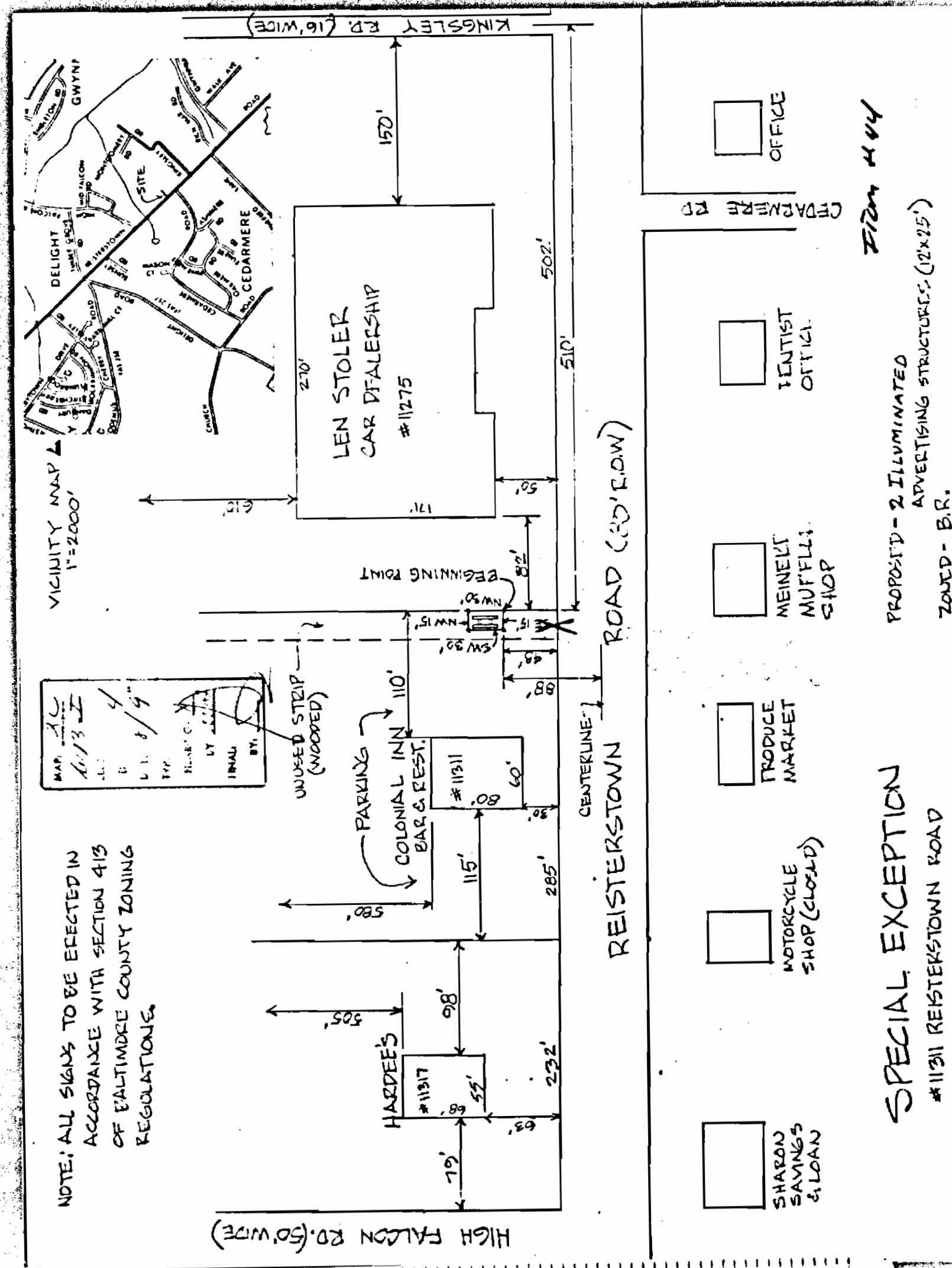
Petition for Special Exception for one 12' x 25' double-faced illuminated outdoor advertising structure

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

Being the property of George Mehling, 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



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,

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County

cc: Albert Figinski, Esq.
People's Counsel

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
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 27th 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
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

-2-

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
GEORGE MEHRING :
FOR A SPECIAL EXCEPTION : FOR
ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF : BALTIMORE COUNTY
REISTERSTOWN RD., 510' :
NORTHWEST OF THE CENTER : AT LAW
LINE OF KINGSLEY RD. :
4th DISTRICT :
CG Doc. No. 2
GEORGE MEHRING and : Folio No. 134
FOSTER & KLEISER, PLAINTIFFS :
Zoning File No. 84-109-X : File No. 84-CG-434

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 8-2(d) of the Maryland Rules of Procedure, William T. Hackett and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, George Mehring, 11311 Reisterstown Rd., Owings Mills, Md. 21117, 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 flr., Baltimore, Md. 21201, Counsel for Petitioner and Contract Lessee; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

-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 113.2 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.

113.3 - Outdoor advertising signs as defined in Section 101 are allowed in B.L., B.M., B.R., M.L., and M.H. Zones as Special Exceptions, under the following conditions, as limited by Section 113.5:

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 on, 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, on 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 paired, 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.

B.L. - Bus. Local
B.M. - Bus. Major
B.R. - Bus. Road
M.L. - Med. Local
M.H. - Med. Highway

George Mehring
Case No. 84-109-X

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to George Mehring, 11311 Reisterstown Rd., Owings Mills, Md. 21117, 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 flr., 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.

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County

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 : 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

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
MAR 27 P 2 56

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

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 : 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

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.

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
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 27th 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

RECEIVED
COUNTY BOARD OF APPEALS
MAR 27 P 2 56

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3300

-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 12 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 on, 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, on 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. Two 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 1 sign 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.

there was no judicial decision that the version of the statute sought to be enforced was not in effect,^{8/} and there was no failure, after judicial declaration of the law, to adhere to the statutory requirements for amending the law.^{9/}

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^{10/} 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 testify 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

Code.^{11/} 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.

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,^{1/} 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,^{2/} the Black Book^{3/} and Blue Book^{4/} "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^{5/} 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. Seifert, 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

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.^{6/} 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;^{7/}

6/ "...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.

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 afford notice and hearing under Section 22-21 and 22-22.

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 Lusch 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 27th 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

0178f

- 8 -

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

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.^{13/}

The History of Section 413, Prior to the Turquoise Book

It is perfectly clear that, after about two decades^{14/} 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.^{15/}

^{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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 4 -

RE: PETITION FOR SPECIAL EXCEPTION) BEFORE THE
N/S of Easton Avenue) COUNTY BOARD
401' E. of the C/I 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/I 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^{1/}

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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

original in file #84-93-X

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 ^{16/} the variations in the publications to the attention of Baltimore County, People's Counsel and the zoning officials in the so-called "Roll" case.^{17/} 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,^{19/} Metromedia prepared and filed suit in January, 1980.^{20/} Metromedia sought a declaratory judgment^{21/} 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 version: 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 5 -

County's Zoning Regulations.^{2/} 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 & 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^{3/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 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:

"[T]he 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^{22/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 6 -

The regulations which control interpretation of Section 413 re the "consistent version of Section 413^{4/} found in the mimeographed version disseminated to the public^{5/} in 1957 and published and republished -- and acted upon^{6/} -- as law in the Black^{7/} and Blue^{8/} 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.^{9/} 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,^{10/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 3 -

"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 Soft 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 Pease 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3000

- 7 -

FEB 27 1985

Section 413 After the Turquoise Book

In November, 1981, the Secretary of the County Council certified^{23/} 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,^{24/} 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".^{25/} Under examination by Petitioners' counsel, Mr. Toporovich admitted no notice was given by the Council

^{23/} Petitioners' Exhibit 12. The certification is five months after the Court decided Metromedia.

^{24/} Petitioners' Exhibit 13.

^{25/} 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 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.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 12 -

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.^{26/} 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^{27/} 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.^{28/} Thereafter, the board makes final recommendations^{29/} 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

^{26/} 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.

^{27/} See Petitioners' Exhibit 9.

^{28/} See Petitioners' Exhibit 10, Sec. 22-21(c).

^{29/} Ibid.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 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,

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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 13 -

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.^{30/} 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^{31/}--it declared what Section 413 was in effect, i.e., the Black Book and Blue Book version.

^{30/} 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.

^{31/} See Sections 3-402 and 3-406, Courts Article, Md. Code set out, in pertinent part, at page 6, supra.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 10 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13th 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

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 14 -

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"^{32/} when the County enacted Section 22-31^{33/} 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.

^{32/} 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, the view of the Metromedia opinion, "some county employee found, secreted away in a vault, the original version", i.e., People's Counsel's Exhibit 1.

^{33/} "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)."

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

- 11 -

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	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' OPPOSITION TO MOTION TO INTERVENE

Petitioners, by undersigned counsel, acknowledge that, on March 12, 1984, counsel received Leonard Stoler's Motion to Intervene in Case No. 84-109-X and in opposition to said Motion state:

1. There is no Rule of the Board of Appeals, published in the turquoise book, which allows the intervention requested.
2. Movant has failed to protect his rights by failing to appear before the Zoning Commissioner who held a hearing as provided by law and by failing to appeal to this Honorable Board.
3. Prior to the hearing in this matter--which was held on March 1, 1984--84-109-X had been consolidated with 84-93X, a matter in which Movant has no interest.
4. The hearing of this appeal has already been held before this Board.
5. Movant's claim that he was "unaware" of proceedings and "had no knowledge of the hearings" is undercut by several facts (a) Mr. Walker spoke with Movant's agent in January, 1984; (b) Mr. Walker confirmed the conversation by letter which is attached hereto and incorporated herein; and

Out of copy
FEB 15 1984

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SMOUSE, P.A.
36 S. CHARLES STREET
BALTIMORE, MD
21201-3080

FEB 27 1965

George Mehring
Case No. 84-109-X

In 1980, the Petitioner, Metromedia, did bring litigation in the Circuit Court for Baltimore County, a Bill of Complaint for Declaratory Judgment, 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.

George Mehring
Case No. 84-109-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 Zoning Commissioner, dated October 25, 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 P. Hackett
William F. Hackett, Chairman

Diana K. Vincent
Diana K. Vincent

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 2/135/84CG434

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 of November 26, 1984, it is this 28th 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 Exceptions petitioned for by Appellants be and the same is hereby granted.

Approved as to form:

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

M. Albert Figinski
M. Albert Figinski
Meincove, Kaufman, Weiner &
Smouse, P.A.
36 S. Charles Street
Baltimore, MD 21201

FILED NOV 29 1984

COUNTY BOARD OF APPEALS
NEW DEC 4 P 1:13

CIRCUIT COURT FOR BALTIMORE COUNTY LAW CIVIL - MISCELL

DOCKET 2 PAGE 134 CASE NO. 84CG434 CATEGORY APPEAL

IN THE MATTER OF THE
APPLICATION OF GEORGE MEHRING
FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON
THE NORTHEAST SIDE OF
REISTERSTOWN RD.,
NORTHWEST OF THE CENTER
LINES OF KINGSLEY RD.
4th DISTRICT, NO. 84-109-X
FOSTER & KLEISER, Contract Lessee

ATTORNEYS
M. Albert Figinski, Meincove,
Kaufman, Weiner, & Smouse, P.A.
36 S. Charles St. (1) 332-8520

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Phyllis Cole Friedman
Peter Max Zimmerman
Rm. 223 Court House (04) 454-2168

CENTRAL ASSIGNMENT

- (1) August 10, 1984 Order for appeal from the decision of the County Board of Appeals, Petition & Exhibits fd.
- (2) Aug. 13, 1984 - Certificate of Notice fd.
- (3) Aug. 16, 1984 Appellants' Motion to Consolidate case with case 84CG435 fd.
- Aug. 22, 1984 - Transcript of Record fd. (see 84CG435 for Record)
- Aug. 22, 1984 - Notice of Filing of Record fd.
- (4) Sept. 7, 1984 - App. of Phyllis Cole Friedman & Peter Zimmerman for the Pet. (People's Counsel) & Same Day Answer to Petition on Appeal fd.
- (5) Sept. 7, 1984 - Order of Court that case 84CG434 & Case 84CG435 be consolidated fd. (JN)
- (6) Sept. 20, 1984 - Appellants' Memorandum fd.
- Nov. 26, 1984 Hon. Joseph F. Murphy, Jr. Hearing had. Judgment to be filed.
- (8) Nov. 29, 1984 - Order of Court that the Order of the County Board of Appeals dated July 11, 1984 is reversed & the Special Exceptions petitioned for by Appellants be & the same is hereby granted fd. (JN)

COSTS

CV GEN 84434 #
CV CLK 70.00
B LBY 5.00
JUN # 0 #
CKCHECK, TL 75.00
25393 COOL R02 T12:26 03/10/84

DOCKET 2 PAGE 134 CASE NO. 84 CG 434

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 14, 1983

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

Chairman
Nicholas B. Commodari

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. George Mehring
11311 Reisterstown Road
Owings Mills, Maryland 21117

RE: Item NO. 44 - Case No. 84-109-X
Petitioner - George Mehring
Special Exception Petition

Dear Mr. Mehring:

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, for
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: Foster & Kleiser
3001 Remington Avenue
Baltimore, Md. 21211



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

September 16, 1983

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

Re: Item #44 (1983-1984)
Property Owner: George Mehring
N/ES Reisterstown Rd. 510' N/W from centerline
Kingsley Rd.
Acres: 15 X 30 District: 4th

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:

Reisterstown Road (Md. 140) 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.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

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 44 (1983-1984).

Very truly yours,

Robert A. Morton, P.E., Chief
Bureau of Public Services

RAM:EW:FW:iss



Maryland Department of Transportation
State Highway Administration

Louise K. Bridwell
Secretary
M. S. Calhoun
Administrator

September 2, 1983

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

Attention: Mr. N. Commodari

Re: ZAC Meeting of 8-16-83
ITEM: #44.
Property Owner: George Mehring
Location: N/ES Reisterstown Road, Route 140, 510' N/W from centerline Kingsley Road
Existing Zoning: B.R.
Proposed Zoning: Special Exception for one 12 X 25 double faced illuminated advertising structure
Acres: 15 X 30
District: 4th

Dear Mr. Jablon:

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

However, any additional information or comments regarding the proposed advertising structures should be through Mr. Morris Stein, Chief of Outdoor Advertising at 659-1642.

Very truly yours,

Charles Lee, Chief
Bureau of Engineering
Access Permits

By: George Wittman

CL:GW:maw

Attachment

cc: Mr. M. Stein
Mr. J. Ogle

My telephone number is (301) 659-1350
Teleprinter for impaired hearing or speech
363-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-482-5062 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

(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 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 SET-BACK 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: 3-2-84

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

(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: 3-2-84

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.

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.



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. 84-109-X
George Mehring

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,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: N. 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 in Case No. 84-109-X \$ 20.00
George Mehring
NE's Reisterstown Rd., 510' NW of c/l of Kingsley Rd.
4th 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. 84-109-X
George Mehring

In accordance with Rule 8-7 (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 8-7 (a).

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

Very truly yours,

Jane Holmen
Jane Holmen, Secretary

Encl.
cc: George Mehring
Foster & Kleiser

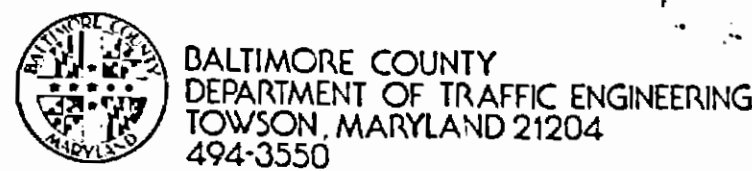
IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF : FOR BALTIMORE COUNTY
GEORGE MEHRING : AT LAW
ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF :
REISTERSTOWN RD., 510' : File No. 84-CG-434
NORTHWEST OF THE CENTERLINE :
OF KINGSLEY RD., 4th District :
Zoning File No. 84-109-X : : : : :

IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF : FOR BALTIMORE COUNTY
EKLAY REALTY : AT LAW
FOR A SPECIAL EXCEPTION :
ON PROPERTY LOCATED ON :
THE NORTH SIDE OF EASTERN :
AVE., 401' EAST OF THE : File No. 84-CG-435
CENTERLINE OF TERRACE RD., :
15th DISTRICT :
Zoning File No. 84-93-X : : : : :

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 on 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.



STEPHEN E. COLLINS
DIRECTOR

September 1, 1983

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

Item No. 43, 44, 45, 46, 47, and 48 ZAC - Meeting of August 16, 1983
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Hammond:

The Department of Traffic Engineering has no comments for item numbers 43, 44, 45, 46, 47, 48.

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Assoc. II

MSF/ccm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

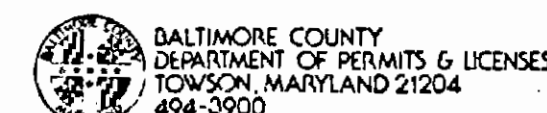
Arnold Jablon, Zoning Commissioner
TO: Office of Planning and Zoning Date: September 20, 1983
FROM: Ian J. Forrest
SUBJECT: Zoning Variance Items

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 # 44 - George M. King
- Item # 45 - Edward I. & Sharon Klawansky
- Item # 48 - Michael Rife

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

LJF/fth



TED ZALESKI, JR.
DIRECTOR

September 21, 1983

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

Dear Mr. Hammond:

Comments on Item # 44 Zoning Advisory Committee Meeting

Property Owner: George Mehring
Location: 8655 Reisterstown Road 510' NW from centerline Kingsley Road
Existing Zoning: B.R.
Proposed Zoning: Special Exception for one 12 x 25 double faced illuminated advertising structure.

Acres: 1.5 x 30
District: 440

The items checked below are applicable:

X A. All structures shall conform to the Baltimore County Building Code 1981/ Council Bill 4-82 ~~Special Exception Code for the Reisterstown Road~~

X B. A building and other miscellaneous permits shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0" of an adjacent lot line shall be of one hour fire resistant construction, no openings permitted within 7'0" of lot line. A firewall is required if construction is on the lot line, see Table 401, Line 2, Section 1407 and Table 1402.

F. Requested variance conflicts with the Baltimore County Building Code, Section 4.

G. 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.

H. 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 the structure for which a proposed change in use is proposed complies with the height/area requirements of Table 505 and the required construction classification of Table 401.

I. Comments:

NOTES: 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 #122 (Plans Review) at 111 West Chesapeake Ave., 21204.

Very truly yours,

Charles E. Burdum
Charles E. Burdum, Chief
Plans Review

CEB:rrj
PUBS 01-82

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: August 15, 1983

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

Z.A.C. Meeting of: August 16, 1983

RE: Item No: 43, 44, 45, 46, 47, & 48
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Hammond:

The above referenced item numbers have no bearing on student population.

Very truly yours,

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

WNP/bp

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
Zoning Commissioner
TO: Date: October 7, 1983
FROM: Norman E. Gerber
SUBJECT: George Mehring
84-109-X

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

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

NEG:JGH:cav

LAW OFFICES
MARVIN I. SINGER, P. A.
TEN EAST EAGER
BALTIMORE, MARYLAND 21202

TELEPHONE
742-1022
695-1111
AREA CODE 301

March 9, 1984

County Board of Appeals
Court House
Towson, Maryland 21204

Re: Request for Special Exception,
George Mehring, Petitioner
Case No. 84-109-X

Gentlemen:

I enclose for your consideration a Motion to Intervene in the above-entitled case.

Yours very truly,

Marvin I. Singer

Marvin I. Singer

MIS:mfm
Enclosure

cc: M. Albert Figinski, Esq.
Peter Max Zimmerman, Esq.

SEP 13 P 2:18

IN RE: PETITION SPECIAL EXCEPTION
NE/S of Reisterstown Road,
510' NW of the centerline
of Kingsley Road - 4th
Election District
George Mehring,
Petitioner
* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 84-109-X

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner, by Foster & Kleiser, its Lessee, requests a special exception to place an outdoor advertising sign on the Petitioner's property, as more particularly described on the site plan marked Petitioner's Exhibit 1.

The Lessee appeared by its representative, George Arconti, Real Estate Manager, who testified. Also appearing was Barry Freedman, Director of Public Affairs. No Protestants appeared.

The Lessee presented testimony that the outdoor advertising sign would be 12' x 25' and be for general advertising. It would be constructed of steel, on steel posts with a steel face. It would be an illuminated sign lighted by fluorescent light, which would be directed onto the face of the sign and with no glare resulting elsewhere. The property is zoned B.R. There are only two other such signs within a radius of one mile from the proposed sign. The sign's height would be 2 feet from ground to its highest point.

The Petitioner meets all of the relevant requirements as directed by Sections 413.1 and 413.5 of the Baltimore County Zoning Regulations (BCZR).

The Petitioner seeks relief from Section 413.3, pursuant to Section 502.1, BCZR as directed by *Metromedia, Inc. v. Balto. County*, Equity No. 103167 (July 1, 1981).

It is clear, therefore, that the zoning regulations permit the use requested by the Petitioner in a B.R. Zone by special exception. It is equally clear that

the proposed use would not be detrimental to the primary business uses in the vicinity of the proposed sign. Therefore, it must be determined whether the conditions as delineated by Section 502.1 are satisfied by the Petitioner.

After reviewing all of the testimony and evidence presented, it appears that the special exception as applied for by the Petitioner should be granted.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest. The facts and circumstances of the use proposed by the Petitioner do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *Schultz v. Pritts*, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the zoning regulations.

Pursuant to the advertisement, posting of property, and public hearing held, and it appearing that by reason of the requirements of Section 502.1 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 Zoning Commissioner of Baltimore County, this 25th day of October, 1983, that the Petition for Special Exception for a 12' x 25' illuminated outdoor advertising sign, in accordance with the site plan

introduced and accepted into evidence as Petitioner's Exhibit 1, be and is hereby GRANTED, from and after the date of this Order, subject to the following:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that his proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

[Signature]
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

DATE *Oct 25 1983*
BY *John P. Dwyer*
ADMINISTRATIVE ASSISTANT

- 3 -

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

JOSEPH E. KAUFMAN
AROLD W. WEINER
ROBERT E. KAUFMAN
FREDERICK W. KAUFMAN
LOUIE E. KAUFMAN
J. JAMES KAUFMAN
ISAC H. KAUFMAN
DAVID L. KAUFMAN
RICHARD V. KAUFMAN
JOHN L. KAUFMAN
AVRUM H. KAUFMAN
NATHAN L. KAUFMAN
GALVIN E. KAUFMAN
HAROLD E. KAUFMAN

D. CHRISTOPHER OHLY
GEORGE F. KAUFMAN
RICHARD W. KAUFMAN
STEPHEN F. KAUFMAN
STEPHEN E. KAUFMAN
PATRICK H. KAUFMAN
JAMES D. KAUFMAN
PATRICK W. KAUFMAN
ROBERT L. KAUFMAN
JOHN H. KAUFMAN
HAROLD E. KAUFMAN
KENNETH D. KAUFMAN

30 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060
TELEPHONE (301) 332-8800
TELECOPIER (301) 332-8804
TELEX 710-824-2414
(WRITER'S DIRECT DIAL NO.)
332-8520

January 16, 1984

County Board of Appeals
Room 219
Court House
Towson, Maryland 21204

Re: 84-93X - SET 3/1/84 *BUCLAY*
84-109X - *MEHRING*

To The Honorable Board:

Enclosed please find the entry of my appearance as counsel for Petitioner/Appellee in each of the above-referenced matters.

I note that 84-93X has been set for a hearing on March 1, 1984. I have discussed both cases with Mr. Zimmerman of the Office of People's Counsel, the Appellant in each case. We agree that both matters contain common issues and I suggest, with Mr. Zimmerman's concurrence, that both matters be heard on March 1, 1984 at 10 a.m., the time when 84-93X is now scheduled. Mr. Zimmerman has authorized me to say that he agrees that consolidation of the cases for hearing on March 1 is agreeable to him.

Very truly yours,

M. ALBERT FIGINSKI

MAF:vll
Enc.

cc: Peter Max Zimmerman, Esquire

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

*OK - WITH - not a case
for 3/1/84*

1/18/84 - NOTIFIED OF APPEAL HEARING SCHEDULED FOR THURSDAY, MARCH 1, 1984 at 10 a.m.

M. Albert Figinski, Esquire
George Mehring
Foster & Kleiser
Phyllis Friedman

494-3180

County Board of Appeals

Room 200, Court House
Towson, Maryland 21204
January 18, 1984

Hearing Room #218

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 POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 84-109-X

GEORGE MEHRING

FOR - SE-12' x 25' DOUBLE FACED ILLUMINATED
OUTDOOR ADVERTISING STRUCTURE

NE/S REISTERSTOWN ROAD 510'
NW OF C/L OF KINGSLEY ROAD

4th DISTRICT

10/25/83 - ZC GRANTED PETITION W/RESTRICTIONS

ASSIGNED FOR:

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

cc: M. Albert Figinski, Esquire
George Mehring
Foster & Kleiser
Phyllis Friedman
N. E. Gerber
J. G. Hoswell
A. Jablon
Jean M. H. Jung
J. E. Dyer

Counsel for Petitioner
Petitioner
Contract Lessee
People's Counsel

Edith T. Eisenhart, Adm. Secretary

March 15, 1984

Marvin I. Singer, Esquire
Ten East Eager
Baltimore, Maryland 21202

Re: Case No. 84-109-X
George Mehring

Dear Mr. Singer:

Please be advised that Your Motion to Intervene filed in the above entitled case is hereby denied. However, the Board will accept a Memorandum, on legal issues only providing same is received by this Board and counsel for the parties on or before March 22, 1984.

Very truly yours,

[Signature]
Joseph L. Suder,
Acting Chairman

JLS:6

cc: M. Albert Figinski, Esq.
Peter Max Zimmerman, Esq.

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 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.

- 3 -

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-KSPH) 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.

FEB 27 1984

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
SEP 19 1984

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF * CASE: 84CG434
THE APPLICATION OF * DOCKET: 2
GEORGE MEHRING * FOLIO: 134
FOR A SPECIAL EXCEPTION, *
ETC. *
APPEAL FROM THE *
COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *
No. 84-109-X *

IN THE MATTER OF * CASE: 84CG435
THE APPLICATION OF * DOCKET: 2
EUGENE REALTY * FOLIO: 135
FOR A SPECIAL EXCEPTION, *
ETC. *
APPEAL FROM THE *
COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *
No. 84-93-X *

APPELLANTS' MEMORANDUM

In response to the requirement of Rule B12, Appellants file this Memorandum of facts and law in regard to the two above-captioned appeals which have been consolidated, pursuant to Rule 2-503, for all purposes, by Order of this Court dated September 7, 1984.

PREFACE

The cases at bar do not raise the usual issues arising in an appeal from a denial of a special exception. Indeed, below, it was agreed that the signs petitioned for would not run afoul of Section 502.1 of the zoning regulations (Tr. p. 6,

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
24 S. CHARLES STREET
BALTIMORE, MD
81801-0000

lines 3-21). The core -- and unusual -- issue at bar in these cases is whether, when promulgating its current edition of the zoning regulations (i.e., the Turquoise Book) which leaves out of Section 413.3 the B. R. (Business Roadside) zone, the County could ignore this Court's ruling in *Metromedia, Inc. v. Baltimore County*, Eq. No. 103167 and Sections 22-21 and 22-22(a) of the Baltimore County Code. This case, therefore, requires this Court to determine, again, what "version" of Section 413.3 is applicable to outdoor advertising signs petitioned for by the contract lessee appellant.

In order to assist this Court in understanding the issue(s) presented, the Appellants set out, in pertinent part, the Opinion of Judge Raine in *Metromedia* and the two relevant sections of the County Code. In addition, Appellants present the following "Table of Contents":

PREFACE.....	1
Except from <i>Metromedia v. Baltimore County</i> , Eq. No. 103167.....	3
Excerpts from the County Code.....	4
PROCEDURAL HISTORY OF THESE APPEALS.....	5
QUESTION PRESENTED.....	6
STATEMENT OF FACTS.....	7
ARGUMENT.....	12
A. What <i>Metromedia</i> Declared.....	13
B. The Publication of the Turquoise Book Flouts <i>Metromedia</i>	15

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
24 S. CHARLES STREET
BALTIMORE, MD
81801-0000

C. Misplaced Reliance on Bill 7-84.....	17
D. Miscellaneous Matters.....	18
CONCLUSION.....	20

EXCERPT FROM *METROMEDIA V. BALTIMORE COUNTY*, EQUITY NO. 103167

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 1963, 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 1969, 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 hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

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 Soft 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 *Pease v. Peck*, 16 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 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 1963. This ruling is applicable only to Section 413 and to no other regulation.

(issued July 1, 1981, by Raine, J.)

EXCERPTS FROM BALTIMORE COUNTY CODE

Sec. 22-21. Preparation of zoning regulations and zoning maps.

(a) The planning board shall from time to time recommend to the county council for adoption, zoning regulations and zoning maps, showing the boundaries of the proposed districts, divisions or zones into which the county is divided pursuant to this title.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations.... All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in accordance with the same procedure herein specified for the original adoption of such regulations and maps.

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 22-7. During the period of such notice, the preliminary report of the planning board, with accompanying

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
24 S. CHARLES STREET
BALTIMORE, MD
81801-0000

maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearings have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations, or maps, as the case may be; and, in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning board as to any part of the proposed zoning map or regulations, the dissenting member or members shall be entitled to file with the county council one (1) or more minority reports stating the basis for their disagreement with the majority, which shall be included with the final report of the majority.

Sec. 22-22. Action by county council on adoption of zoning regulations and Zoning maps.

(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 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 by an ordinance adopt such regulations or maps subject, however, to such changes or amendments therein as the county council may deem appropriate.

PROCEDURAL HISTORY OF THESE APPEALS

In two separate instances, petitions were filed pursuant to the zoning regulations of Baltimore County. Each asked that certain "illuminated outdoor advertising" signs be allowed, as Special Exceptions, in B. R. zones. In each instance, the first level of administrative review, i.e., the

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
24 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Zoning Commissioner or the Deputy Zoning Commissioner, granted the Special Exception. Thereafter, appeals were noted by People's Counsel. The two matters were consolidated for hearing on March 1, 1984 before the County Board of Appeals for Baltimore County. On July 11, 1984, the Board filed two opinions (nearly identical in content) which reversed the previous administrative orders and denied the respective Special Exceptions.

On August 9, 1984, Appellants, through counsel, appealed and filed the required (by Rule B2e) Appeal Petitions. People's Counsel for Baltimore County, as "Protestant below and Appellee herein," answered on September 6, 1984.

On August 22, 1984, the Clerk of the Circuit Court noted that the Board of Appeals had filed the record in each appeal.

On August 31, 1984, the Assignment Office set the cases in for hearing on November 26, 1984.

On September 7, 1984, Judge Murphy signed an Order consolidating the cases "for all purposes," pursuant to Md. Rule 2-503.

QUESTION PRESENTED

After the Circuit Court for Baltimore County declared, in *Metromedia v. Baltimore County*, Equity No. 103167, what was the effective version of Section 413 of the Baltimore County

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
24 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Zoning Regulations, may the County ignore the decision, and republish a different version of Section 413, so that outdoor advertising signs may not be granted as a Special Exception in a B. R. zone?

STATEMENT OF FACTS

The curious, bedeviled history of the County's zoning regulations, as they pertain to outdoor advertising signs, was outlined in this Court's opinion in *Metromedia* (see page 3, *supra*). At the outset of the hearing before the Board, Appellants introduced, as exhibits in these cases, the pleading (Petitioners' Exhibit 7) and the exhibits (Petitioners' Exhibits 1-6) in *Metromedia*. In that case, a declaratory judgment was sought -- requesting this Court to decide which version of Section 413 was validly in force in Baltimore County. Petitioners' Exhibit 6 sets out, side-by-side, the core, conflicting versions. As to Section 413.3 (the provision which generally defines in what zones an outdoor advertising sign may be placed as a Special Exception), Petitioners' Exhibit 6 shows graphically that the "B.R." zone was left out of the Gold Book publication in 1975.¹

1. See *Metromedia* opinion, *supra*, p. 3-4. That opinion was reversed below as Petitioners' Exhibit 8 (Tr. p.12, line 19 to p.16, line 9), and was appended to the Appeal Petition as Exhibit 2. Various publications of the regulations are demonstrated in Petitioners' Exhibits 1-5. The allegedly true original version is People's Counsel Exhibit 1.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & SHOUSE, P.A.
24 S. CHARLES STREET
BALTIMORE, MD
81801-0000

Thereafter, the principal outdoor advertising sign company ought to correct the error, by correspondence (See Joint Exhibit 1) and an appeal (See Joint Exhibit 2).⁴ The issue was brought to this Court in the Metromedia suit for declaratory judgment (Petitioners' Exhibit 7). In that case, People's Counsel was precluded from intervening, ultimately, by decision of the Court of Special Appeals (People's Counsel Exhibit 2). The Court's decision, declaring as the law the so-called Black Book version,⁵ was not appealed by the County.⁶

Approximately five months after this Court's decision, the County, through Thomas Toporovich, the Secretary and

2. After an adverse ruling by the Board of Appeal, an appeal was taken to the Circuit Court. On January 10, 1978, the Court reversed the Board and decreed that the Special Exception for the sign there at issue must be granted. The Court filed a two page opinion which noted the differing versions of Section 413 (Tr. 110) but concluded that, under either version, the sign at issue was permitted as a Special Exception. This effort to get a court to decide which version of the regulations applied went awry (Tr. 110-111).

3. The B. R. zone was included in Section 413.3 in the versions declared to be the law in Metromedia. See Petitioners' Exhibits 1, 2, and 3.

4. The date of the Order was July 1, 1981. Thirty days later said declaration became an enrolled decree. Rule 671.

Under §3-406, Courts Article, Md. Code, a county ordinance, i.e., the zoning regulations, may be subject to construction in order to declare rights so that matters, in the words of §3-402, id., are settled and relief afforded from "uncertainty." A declaration of rights "has the force and effect of a final judgment or decree," §3-411, id.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Administrator to the County Council, certified and attested (Petitioners' Exhibit 12; People's Counsel Exhibit 3) the publication of yet another set of the County's zoning regulations. This set -- termed the Turquoise Book by Appellants -- published Section 413.3 in the same fashion as had appeared in the 1975 Gold Book printing. Compare, Petitioners' Exhibit 14 (Section 413.3, as published in the Turquoise Book) with Petitioners' Exhibit 5 (the Gold Book version of said Section).

Aside from the certificate and attestation, there were no documents which were relevant to the attestation and certification of the current edition of the regulations (Tr. 29). Mr. Toporovich testified (Tr. 30, lines 12-15):

"Q. Would it be fair to say that in certifying in accordance with Section 22-24 you took no account of the [Metromedia] Decision?

A. That's correct."

The attestation and certification in 1981 were almost identical to that made in regard to the Gold Book in 1975 (Tr. p. 27, line 10 to p. 28, line 8; p. 32, lines 7 to 10). As to the 1981 publication of the Turquoise Book, there were no documents which show what steps were taken to meet the notice and hearing requirements of Section 22 of the County Code (Tr. p. 30, line 19 to p. 31, line 17). Mr. Toporovich testified that Section 22-22 has never been applied to any book of regulations (Tr. p.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

35, lines 12-13)⁷ because the individual regulations, if changed, were the subject of notice and hearing (Tr. p. 35, lines 14-21; Tr. p. 41, lines 9 to 19).

Nevertheless, before the Turquoise Book was published, no notice or hearings were held with respect to Section 413.3 (Tr. p. 48, lines 2 to 5).

After the publication of the Turquoise Book, the County processed and granted at least three Special Exceptions for outdoor advertising signs in B. R. zones (Petitioners' Exhibits 15A, 15B and 15C).⁸ This occurred despite the absence of B.R. in Section 413.3 of the Turquoise Book. These occurrences were similar to the practice between 1969 and 1975 when, despite the garbled version of Section 413.3 in the Red Book, the zoning authorities continued to recognize B.R. as a zone in which an outdoor advertising sign could be located as a Special Exception (Tr. 85).

James E. Dyer, a person with twenty-five years in the County's employ dealing with zoning regulations, testified to

5. People's Counsel introduced correspondence related to the certification and attestation of the 1975 Gold Book (People's Counsel Exhibits 4 and 5). No such correspondence was produced with respect to the certification and attestation of the 1981 Turquoise Book, and apparently, none exists since no such documents were produced in response to Petitioners' Subpoena Duces Tecum.

6. Prior to these appeals, the Board had rejected a Special Exception for an outdoor sign in B.R. zone (Petitioners' Exhibit 13).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

the jaundiced history relating to outdoor advertising signs (Tr. 84 - 108). He made clear that, after the publication in 1975 of the Gold Book (Tr. p. 85, lines 16-18; Tr. p. 100, lines 5-10), a review was undertaken which uncovered a Soft-Cover Book which was never, theretofore, "utilize(d)...for application of the zoning regulations" (Tr. p. 87, lines 1-2). The Book was given to him and placed in a "drawer" (Tr. 87, line 10). From that Book, Dyer testified "it is very clear that B.R. zone was not in the original adopted version of the 1955 Zoning Regulations" (Tr. p. 87, lines 17-19). After relying on the publication of the Black and Blue Books to govern outdoor advertising signs in B.R. zones from 1957 to 1975 (Tr. p. 85, lines 8 to 15; p. 99, line 9 to p. 100, line 4; p. 104, line 7 to p. 105, line 1), the County ceased acknowledging B.R. as a zone in which an outdoor advertising sign could be located as a Special Exception until the Metromedia decision (Tr. p. 92, lines 17-21). Mr. Dyer acknowledged, however, that the B.R. zone was the most rural zone, one "where you are likely to find" outdoor advertising signs (Tr. p. 101, line 18 to p. 102, line 4); indeed, Mr. Dyer testified that in his opinion the B.R. zone is the commercial zone where it "is a logical place to have a sign" (Tr. p. 102, lines 7-10).

The Black Book which was deemed inferior to the Soft Cover Book bears the same attestation and certification as the alleged superior (Tr. p. 98, lines 8 to 13).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Both the Gold Book and Turquoise Book print in Section 236 that B. R. is a zone in which an outdoor advertising sign may be granted as a Special Exception (Tr. p. 94, line 7 to p. 12; p. 100, lines 13 to 16).

ARGUMENT

The essence of the Board's decision is that, despite Metromedia, the "official adoption" of the Turquoise Book in November, 1981 -- at least four months after Metromedia was decided by this Court -- is controlling and that, since the new publication does not include B.R. among the zones in Section 413.3⁹ in which an outdoor advertising sign may be located by Special Exception, the petitions at bar must be denied. This analysis by the Board is flawed for several reasons:

A. It ignores what Metromedia declared and decided;

B. It erres in concluding that, in the wake of Metromedia, the County could "officially adopt" the Turquoise Book -- leaving B.R. out of Section 413.3 -- without compliance with Sections 22-21 and 22-22 of the County Code;

C. It misperceives the relevance of Bill 7-84; and

D. It has an arbitrary and capricious basis and is contrary to uncontroverted evidence.

We turn now to a seriatim discussion of the specific flaws.

7. The Board's opinion never addressed Section 236. See, however, the first paragraph in the text on this page.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

A. What Metromedia Declared.

Both the Metromedia decision (supra, p.3-4) and the Board's opinion (see pages 1-2 of Exhibit 1 to the Appeal Petition in each case at bar) portray the "very confused and conflicting history"¹⁰ of Section 413 of the zoning regulations. In that context, the Metromedia case was initiated and pursued under Subtitle Four of Title 3 of the Courts Article, Md. Code. A suit for declaratory judgment seeks "to settle and afford relief from uncertainty"¹¹ rights under a County ordinance.¹² The court's declaration, moreover, "has the force and effect of a final judgment."¹³

This Court, in Metromedia, relying upon venerable authority,¹⁴ determined that the version of Section 413 set

8. This was the characterization attached by the Board's Opinions below.

9. §3-402, Courts Article, Md. Code; Cockran v. Zoning Comm'r, 41 Md. App. 437, 439-440 (1979); Marriott Corp. v. Village Realty & Inv., Md. App. , 472 A.2d 510, 513 (1984). See also Restatement, Judgments, 2d (1982), p. 334 (quoted infra, p. 18-19).

10. See §3-406, Courts Article, Md. Code.

11. §3-411, Courts Article, Md. Code.

12. Pease v. Peck, 18 How. (59 U.S.) 595 (1855). See, particularly, 18 How. (59 U.S.) at 596-7.

For similar rulings, see Town of Pacific v. Seifert, 79 Mo. 210, 213 (1883); Wade v. Woodward, 145 So. 737 (Miss. 1933); Edel v. Filer Township, Mainstay 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).

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

out in Petitioners' Exhibits 1, 2, and 3 "became effective and controlling law by publication, dissemination, ratification and long acquiescence [Emphasis supplied]." This law, the Metromedia opinion continued, "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."¹⁵ Consequently, Metromedia declared that the County must apply the version of Section 413 contained in Petitioners' Exhibits 1, 2 and 3 to "applications for special exception submitted by" Appellants.¹⁶ These versions include B.R. as a zone in which an outdoor advertising sign may be placed as a Special Exception.

In sum, Metromedia declared, as the applicable law, the versions of Section 413.3 which included B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be erected. Further, Metromedia holds that the "applicable law" could not be amended except in accord with Section 22 of the County Code.

13. The evidence below unequivocally demonstrates that no hearings or notice of amendment preceded publication of the Turquoise Book. See p. 9-10, supra.

14. There is no doubt that the contract lessee Appellant in these cases is a division of Metromedia, Inc., the plaintiff in the Metromedia case.

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

B. The Publication of the Turquoise Book Flouts Metromedia.

The record below reveals unequivocally that, prior to publication of the Turquoise Book in 1981, no notice of amending Section 413.3 was given and no hearings were held on such subject. Indeed, the official attester was unaware of Metromedia at the time he certified the Turquoise Book. See pages 9-10, supra.

The Board, while recognizing that it is bound by Metromedia, refuses to "extend its logic" because "the applicable law (i.e., the Turquoise Book) was certified in November of 1981." The Board, regrettably, has failed to understand what Metromedia did. That decision declared Petitioners' Exhibits 1, 2 and 3 to be the "applicable law" and rejected the mere publication, without notice and hearing of amendment, as a valid method of amending that law. Rather than simply failing to extend the logic of Metromedia, the Board has completely ignored its declaration of the "applicable law" and its holding as to the necessary means of altering or amending the "applicable law."

What the County did in publishing and "attesting" the Turquoise Book is to repeat the identical error that was a predicate for the ruling in Metromedia. The Board, for its part, has now unabashedly ruled that Metromedia does not govern the cases at bar because of the re-publication. Unfortunately, the Board has misperceived Metromedia and its effect. If the

LAW OFFICES OF
MELNICOVE, KAUFMAN,
WEINER & BROUSE, P.A.
24 N. CHARLES STREET
BALTIMORE, MD
21201-3080

Board's view has merit, any statutory interpretation, by declaratory judgment, could be nullified by simply re-enacting¹⁵ the statute. That, simply, cannot be the law because such construction would be repugnant to §§3-402, 3-406, and 3-411, Courts Article, Md. Code, and the concept of declaratory judgments generally.¹⁶ Unfortunately, however, such construction was applied by the Board, clearly erroneously.¹⁷

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 not proper. See Ransake v. Board of County Commissioners, 268 Md. 295 (1973); Von Lusch v. Board of County Commissioners, 268 Md. 445, 454 (1973). Without affording notice and hearing, there was no substantial

15. Note, however, that, here, there was not even a re-enactment but only a republication and an attestation.

16. Cf., Kracke v. Weinberg, 197 Md. 339, 343-7 (1951); Davis v. State, 183 Md. 385, 389-392 (1944); 8 M.L.E., Declaratory Judgments, §§22 and 42.

17. If an Orphan's Court could not ignore a decision of a Circuit Court, see McIntire v. State, 132 Md. 243, 249-250 (1918), surely a county administrative body may not ignore a circuit court decision of the Circuit Court for that county. Indeed, the Board here acknowledged this doctrine, while surely ignoring it.

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

- 16 -

compliance with the "applicable law." Crozier v. Co. Comm. Pr. George's Co., 202 Md. 501, 506 (1953), and the publication in the Turquoise Book of the repudiated Gold Book version of Section 413.3 was invalid.

C. Misplaced reliance on Bill 7-84.

After erroneously discounting Metromedia and accrediting the Turquoise Book's version of Section 413.3, the Board made reference to an enactment on February 21, 1984¹⁸ of Bill 7-84. The Board's reliance on that Bill is totally misplaced.

The Bill is attached as Exhibit 3 to the Appeal Petition. Its enactment carefully recites:

"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...."

No such preface and no such enactment accredits the Turquoise Book or, more particularly, its version of Section 413.3. In essence, Bill 7-84 shows clearly what should have occurred if the declaration of "applicable law" in Metromedia was to be amended. Rather than supporting the Board's decision, Bill 7-84 demonstrates the form for what should have occurred if Section 413.3 was to be returned validly to its Gold Book form.

18. This date is approximately two weeks prior to the consolidated hearing before the Board of the cases on appeal. Neither party at the hearing had made reference to this enactment and the Bill was not introduced in the record.

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

- 17 -

D. Miscellaneous matters

At the Board level, People's Counsel grudgingly noted Metromedia but really ignored that decision in his arguments to the Board, discounting it as precedent. Appellants contend, however, that precedent may be found from unappealed nisi prius decision, Cf., Placido v. Citizens Bank & Tr. Co., 38 Md. App. 33, 44 (1977). People's Counsel further seemed to argue that, because that office had not been allowed to intervene in Metromedia (People's Counsel, Exhibit 2), Metromedia did not "bind" it. Such argument is without foundation.

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. 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:



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

ARNOLD JABLON
ZONING COMMISSIONER

October 25, 1983

Mr. George Arconti
Real Estate Manager
Foster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

IN RE: Petition Special Exception
NE/S of Reisterstown Road, 510'
NW of the centerline of Kingsley
Road - 4th Election District
George Mehring, Petitioner
Case No. 84-109-X

Dear Mr. Arconti:

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

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ/srl

Attachments

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



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

ARNOLD JABLON
ZONING COMMISSIONER

November 18, 1983

Mr. George Mehring
11311 Reisterstown Road
Owings Mills, Maryland 21117

Re: Petition for Special Exception
NE/S of Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehring - Petitioner
Case No. 84-109-X

Dear Mr. Mehring:

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 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
ARNOLD JABLON
Zoning Commissioner

AJ:aj

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

Salisbury Beauty Schools, however, arose in a very different context than is presented in the cases at bar. In Salisbury Beauty Schools, unlike the situation here, there was never a publication of the statute in differing forms.²⁰ There was no judicial decision that the version of the statute sought to be enforced was not in effect,²¹ and there was no failure, after judicial declaration of the law, to adhere to the statutory requirements for amending the law.

As a final miscellaneous matter, Appellants incorporate by this reference all allegations and arguments submitted in their respective Appeal Petitions.

CONCLUSION

Appellants respectfully request the relief prayed in their respective Appeal Petitions.

M. Albert Figinski
M. Albert Figinski
36 S. Charles Street
Baltimore, MD. 21201
301-332-8520
Attorney for Appellants,
the Petitioners and Contract Lessee

20. Although, as shown in Petitioners' Exhibit 6, Section 413 has been published in varying forms, each publication bore the same attestation of validity (Tr. p. 98, lines 8-13).

21. 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.

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

- 20 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September,

1984, I mailed, postage prepaid, a copy of the foregoing Appellants' Memorandum to:

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

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

M. Albert Figinski
M. Albert Figinski

0621f

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

- 21 -



October 13, 1983

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

Re: Petition for Special Exception
NE/S Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehling - Petitioner
Case No. 84-109-X

Dear Sir:

This is to advise you that \$60.15 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
Zoning Commissioner

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

No. 122912

DATE 10-26-83 ACCOUNT R-01-615-000

AMOUNT \$60.15

RECEIVED FROM Foster & Kleiser
FOR Advertising & Posting
Case # 84-109-X

035*****601510 920A
VALIDATION OR SIGNATURE OF CASHIER

Mr. George Mehling
11311 Reisterstown Road
Owings Mills, Md. 21117

Foster & Kleiser
3001 Remington Ave
Baltimore, Md. 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
11th day of August, 1983

ARNOLD JABLON
Zoning Commissioner

Petitioner George Mehling
Petitioner's Attorney

Received by Nicholas S. Commodari
Chairman, Zoning Plans
Advisory Committee

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., Sept. 29, 1983

THIS IS TO CERTIFY that the annexed Reg. #154593, P.O. #84-109-X was published for one (1) week previous to the 29th day of Sept., 1983, in the

- ☐ Carroll County Times, a daily newspaper published in Westminster, Carroll County, Maryland.
☐ South Carroll Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland.
☒ Community Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per [Signature]

September 2, 1983

Mr. George Mehling
11311 Reisterstown Road
Owings Mills, Maryland 21117

NOTICE OF HEARING
Re: Petition for Special Exception
NE/S of Reisterstown Rd., 510' NW of
the c/l of Kingsley Rd.
George Mehling - Petitioner
Case No. 84-109-X

TIME: 11:00 A.M.

DATE: Thursday, October 20, 1983

PLACE: Room 106, County Office Building, 111 West Chesapeake

Avenue, Towson, Maryland

cc: Foster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

Zoning Commissioner
of Baltimore County

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

No. 119438

DATE 8/18/83 ACCOUNT 01-615-000

AMOUNT \$100.00

RECEIVED FROM Foster & Kleiser
FOR Filing Petition #99
/ 1061

035*****109438 922A

VALIDATION OR SIGNATURE OF CASHIER

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, the last publication appearing on the 27th day of September, 1983.

THE JEFFERSONIAN,
[Signature]
Manager

Cost of Advertisement, \$ 22.75

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

No. 122980

DATE 11/18/83 ACCOUNT R-01-615-000

AMOUNT \$105.00

RECEIVED FROM People's Counsel
FOR Appeal fee on Case #84-109-X
(George Mehling)

035*****105010 182A

VALIDATION OR SIGNATURE OF CASHIER

PROPERTY DESCRIPTION

11311 REISTERSTOWN ROAD

BEGINNING AT A POINT LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD (80 FEET WIDE), 510 FEET NORTHWEST OF THE CENTERLINE OF KINGSLEY ROAD (16 FEET WIDE) AND 88 FEET FROM THE CENTERLINE OF REISTERSTOWN ROAD, THENCE RUNNING THE FOLLOWING COURSES AND DISTANCES: 1) NORTHEASTERLY A DISTANCE OF 30 FEET TO A POINT, THENCE 2) NORTHWESTERLY A DISTANCE OF 15 FEET TO A POINT, THENCE 3) SOUTHWESTERLY A DISTANCE OF 30 FEET TO A POINT, THENCE 4) SOUTHEASTERLY A DISTANCE OF 15 FEET TO THE BEGINNING POINT

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting 10-26-83

Posted for: Special Exception

Petitioner: George Mehling

Location of property: NE/S of Reisterstown Road, 510' NW of

the c/l of Kingsley Road

Location of Signs: NE side of Reisterstown Road, approx. 540' NW of the c/l of Kingsley Road

Remarks: [Signature]

Number of Signs: 1

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting 11-25-83

Posted for: Appeal

Petitioner: George Mehling

Location of property: NE/S of Reisterstown Road, 510' NW of

the c/l of Kingsley Road

Location of Signs: NE/S of Reisterstown Road, approx. 540' NW of Kingsley Road

Remarks: [Signature]

Number of Signs: 1

PETITION FOR SPECIAL EXCEPTION

4th Election District

ZONING: Petition for Special Exception

LOCATION: Northeast side of Reisterstown Road, 510 ft. Northwest of the centerline of Kingsley Road

DATE & TIME: Thursday, October 20, 1983 at 11:00 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' double-faced illuminated outdoor advertising structure

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

Being the property of George Mehling, 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

