

FEB 2 4 1987

OPETITION FOR SPECIAL HEARING \mathbb{C} 0 1st Election District BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER TOWSON, MARYLAND 21204 SE Corner of Frederick Ave. & Bishop's La. (585 Frederick: OF BALTIMORE COUNTY LOCATION: Southeast corner of Frederick Avenue and Rd.), 1st District Bishop's Lage (585 Frederick Avenue) ARNOLD JABLON JEAN M. H. JUNG DEPUTY ZONING COMMISSIONER ZONING COMMISSIONER Case No. 86-101-SPH JOHN G. WEST, JR., et al., Petitioners DATE AND TIME: Tuesday, September 10, 1985 at 10:30 a.m. March 13, 1995 CERTIFICATE OF PUBLICATION :::::: PUBLIC HEARING: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland PETITION FOR SPECIAL ENTRY OF APPEARANCE M. Albert Figinski, Esquire The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing: 36 South Charles Street March 6 LOCATION: Southeast Corner of Frederick Avenue and Bishop's Lane (385 Frederick Avenue) DATE AND TIME: Tuesday, March 6th Floor Please enter the appearance of the People's Counsel in the Baltimore, Maryland 21201 THIS IS TO CERTIFY, that the annexed advertisement was 25, 1986, at 10:00 a.m. PUBLIC HEARING: Room 106 above-captioned matter. Notices should be sent of any hearing dates or RE: PETITION FOR SPECIAL HEARING published in THE JEFFERSONIAN, a weekly newspaper printed County Office Building, 111 W. Chesapeake Avenue, Towson, SE/cor. Frederick Ave. and Bishop's Lane Petition for Special Hearing under Section 500.7 for the continuance of other proceedings in this matter and of the passage of any preliminary (585 Frederick Ave.) the existing illuminated 12' x 25' sign structure located in a B.L. zone, The Zoning Commissioner of Balti-more County, by authority of the Zon-ing Act and Regulations of Baltimore and published in Towson, Baltimore County, Md., appearing on 1st Election District as a non-conforming use which predates the zoning ordinance. or final Order. John H. West, Jr., et al - Petitioners Case No. 86-101-SPH County, will hold a public hearing: Petition for Specie, Hearing for the rentions for Speem, Freshing use of the existing illuminated 12' x 25' sign structure located in a B.L. Zone. Being the property of John H. West, Jr., et al, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal Phyllis Cole Friedman Dear Mr. Figinski: Phyllis Cole Friedman THE JEFFERSONIAN, People's Counsel for Baltimore County Reing the property of John G. West, Jr., et al the plat filed with the Zoning Office. This is to advise you that \$15.90 is due for advertising issued within the thirty (30) day appear period. The Zoning Commissioner and posting of the above property. This fee must be paid before an will, however, entertain any request for a stay of the issuance of said perm Peter Max Zumenn 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, enterduring this period for good cause shows. Such request must be received THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON in writing by the date of the hearing set above or made at the hearing. tain any request for a stay of the issuance of said permit during this period for Peter Max Zimmerman THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED. Deputy People's Counsel Rm. 223, Court House By Order Of ARNOLD JABLON, good cause shown. Such request must be received in writing by the date of the Cost of Advertising Zoning Commissioner of Baltimore County hearing set above or made at the hearing. Do not remove sign from property from the time it is placed by Towson, MD 21204 this office until the day of the hearing itself. 494-2188 BY ORDER OF Please make the chark parable to be County, Maryland, and remit ARNOLD JABLON ZONING COMMISSIONER I HEREBY CERTIFY that on this 15th day of August, 1985, a copy ding, Towson, Maryland OF BALTIMORE COUNTY No. 018539 BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION of the foregoing Entry of Appearance was mailed to M. Albert Figinski, MISCELLANEOUS CASH RECEIPT Esquire, 36 S. Charles St., Baltimore, MD 21201, Attorney for Petitioner; and William R. Walker, Foster & Kleiser, P. O. Box 4868, Baltimore, MD 2421,6 Lessed SICS & POSE TO BE DETURATED RECEIVED Baster & Kleiner wrong amit ZONING DEPARTMENT ----Balling And Ash And Care VALIDATION OR SIGNATURE OF CASHIER CERTIFICATE OF POSTING ر معد معقدود با فيتر من معقد معتمد معتمد معتمد معتمد بالمعتمد المعتمد الله المعتمد الله المعتمد الله المعتمد ا ZONING DEPARTMENT OF BALTIMORE COUNTY 86-101-5PH Date of Posting 3 - 5-86 M. Albert Figinski, Esquire August 10, 1985 Petitioner: Lotan To West It al Location of property: SE/ Corner of Frederick are and Buships Low (585 Frederich are) 36 S. Charles St. Balto., Md. 21201 Publishing Corp. M. Albert Figinski, Esquire February 21, 1986 10750 Little Patuxent Pkwy Columbia, MD 21044 36 South Charles Street Baltimore, Maryland 21201 Location of Signe Un front of 585 Frederich areme 19 ₈₆ March 6 NOTICE OF HEARING NOTICE OF HEARING RE: PETITION FOR SPECIAL HEARING RE: PETITION FOR SPECIAL HEARING SE corner of Frederick Avenue and SE/cor. Frederick Ave. and Bishop's Lane Ms:*1 25, 1985, at 10:00 a.m. PUBLIC HEARING: Poom 108, County Office Building, 111 West Cheeapaster Avenue, Torson, Man-Bishop's Lane (585 Frederick Ave.) (585 Frederick Ave.) lst Election District 1st Election District, Petitioners: John H. West, Jr., et al John G. West, Jr., et al - Petitioners ytend.
The Zoning Commissioner of
Bettinore County, by authority of
the Zoning Act and Regulations of
Bettimore County, will hold a public Case No. 86-101-SPH THIS IS TO CERTIFY, that the annexed advertisement of Case No. 86-101-SPH PETITION FOR SPECIAL HEARING TIME: 10:00 a.m. the continuence as a noncontenta-ing use of the ecoting illuminated 12' x 25' sign structure incaled in a DATE: Tuesday, September 10, 1985 12' x 25' sign selecture reclaims at al.

B.L. Zone.

Being the property of John 14.

West, Jr., et at, as shown on plat
plan find with the Zoning Office.

In the event Call this Publich(s)
is granted, a building permit may be
imused within the thirty (30) day
appeal period. The Zoniny Commissioner will, framewor, collectain
any request for a stay of the in-Tuesday, March 25, 1986 PLACE: Room 106, County Office Building, 111 West Chesapeake was inserted in the following: PLACE: Room 106, County Office Building, 111 West Chesapeake **PURCHASE REQUISITION** BALTIMORE COUNTY, MARYLAND Avenue, Towson, Marvland PLEASE ORDER THE FOLLOWING FOR: Zoning Office - Arnold Jablon □ Arbutus Times Avenue, Towson, Maryland 86-101-SPH_{DATE} 8/10/85 suance of said pornet during was period for good cause shows. Such request must be received as writing by the chie of the bearing set above. weekly newspapers published in Baltimore County, Maryland BUDGET CODE once a week for _____ successive weeks before 02 🕤 or made at the hearing.

BY ORDER OF
ARNOLD MALCH
ZOUSET COMMUNICATIONER
OF BALLMATTRE COUNTY the ____8 __day of ___March____ 19_86__, that is to say, PURCHASE GRDER NO. QUANTITY DESCRIPTION OF MATERIAL the same was inserted in the issues of SE corner Frederick Ave. & Bishop's March 6, 1986 No. 008539 BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION Hearing: Tuesday, September 10, 1985 at 10:30 a.m. - Petition for Special MISCELLANEOUS CASH RECEIPT flearing of John G. West, Jr., et al - 1st Election District PATUXENT PUBLISHING CORP. Issue: August 22, 1985

COMMODITY CODE PURCHASE FROM

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Ms. Mary Ginn

606 Horncrest Road

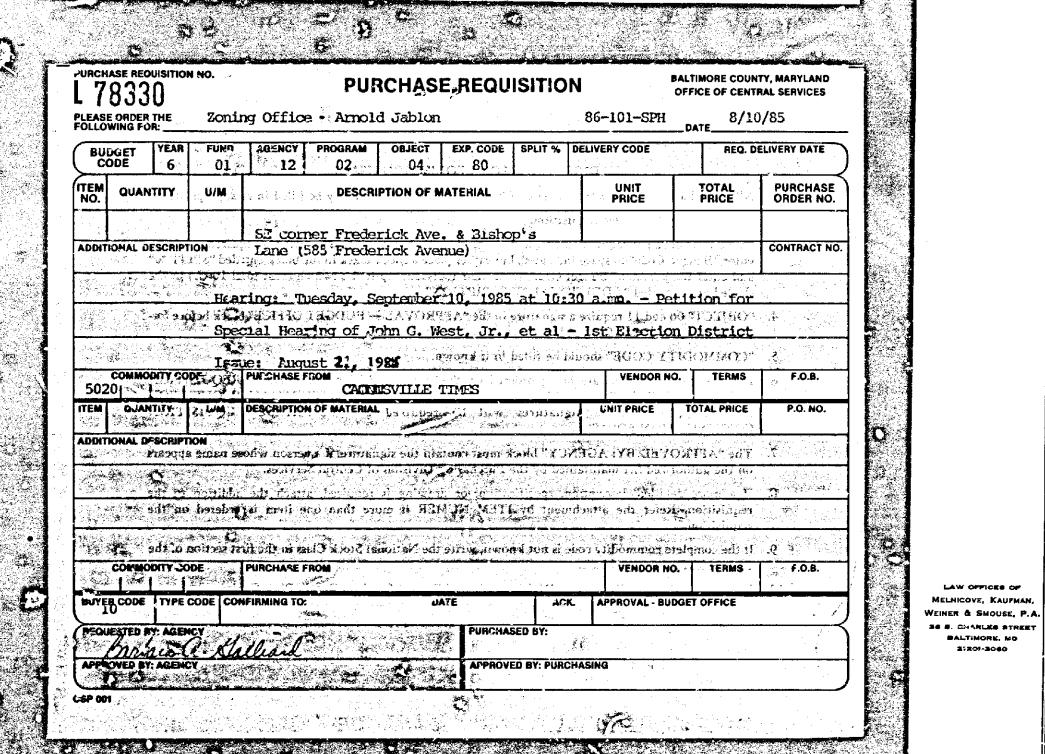
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MELNICOVE, KAUFMAN, WEINER & SMOUSE, P. A. 36 SOUTH CHARLES STREET SIXTH FLOOR SALTIMORE, MARYLAND 21201-3060 TELEPHONE GOU 332-6500 TELECOPIER 1304 332-8594 TELEX 710-234-2414

BERNARD S. MELNICOVE

332-8520 April 15, 1986

(WRITER'S DIRECT DIAL NO.)

HAND DELIVERED

Jean M. H. Jung Deputy Zoning Commissioner Baltimore County Office Of Planning & Zoning Room 109 County Office Building Towson, Maryland 21204

> RE: Petition For Special Hearing S.E. Corner of Frederick Avenue and Bishop's Lane (585 Frederick Avenue) 1st Election District John H. West, Jr., et al., Petitioners Case No.: 86-101-SPH

Dear Ms. Jung:

Pursuant to your instructions, please accept in the above-captioned Petition for Special Hearing, the enclosed Petitioners' Memorandum in Support of the Continuance of the Existing Sign Structure as a Non-Conforming Use.

> Very truly yours, M. Albert Figinski

MAF:sjc

LAW OFFICES OF

MELNICOVE, KAUFMAN,

36 S. CHARLES STREET

Enclosure

cc: James E. Crawford, Esq.

PETITION FOR SPECIAL HEARING * S.E. Corner of Frederick Avenue and Bishop's Lane DEPUTY ZONING COMMISSIONER (585 Frederick Avenue), 1st Election District JOHN H. WEST, JR., et al. - * BALTIMORE COUNTY

Petitioners * Case No.: 86-101-SPH

OF THE EXISTING SIGN STRUCTURE AS A NON-CONFORMING USE The Petitioners have sought, through a Special Hearing, the continuance of the existing illuminated 12' X 25' sign structure located in a BL zone, as a non-conforming use.

PETITIONERS' MEMORANDUM IN SUPPORT OF THE CONTINUANCE

The Special Hearing was held on March 25, 1986 before the Deputy Zoning Commissioner. At the conclusion of the Special Hearing, the Deputy Zoning Commissioner requested all interested parties to file memoranda of law regarding the above-captioned matter. Instead of rehashing all of the testimony, arguments and furor of the lengthy hearing, Petitioners, by this Memorandum, focus on several legal issues raised which compel particular response.

At the hearing, W. R. Walker, Real Estate Development Manager for Foster & Kleiser testified on behalf of the Petitioners that the sign at issue was built by the Morton Advertising Company. Petitioners' Exhibit 3, a letter dated October 26, 1953, established that the Morton Company would use the sign for general advertising purposes. In 1955, Donnolly

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

BERNAND S. MELNICOVE

August 13, 1985

36 SOUTH CHARLES STREET

SIXTH FLOOR BALTIMORE, MARYLAND 21201-3060

TELEPHONE (30) 332-8500

TELECOPIER (301 332-8594

TELEX 710-234-2414 (WRITER'S DIRECT DIAL NO.)

332-8520

The Honorable Arnold Jablon Zoning Commissioner of Baltimore County

> Re: PETITION FOR SPECIAL HEARING SE corner of Frederick Avenue and Bishop's Lane (585 Frederick Ave.) lst Election District John G. West, Jr., et al. - Petitioners Case No. 86-101-SPH

Dear Commissioner Jablon:

County Office Building

Towson, MD 21204

I am in receipt of the notice announcing a hearing in the above-referenced matter for Tuesday, September 10, 1985, at 10:30 a.m.

As you know, I am counsel of record for Fester and Kleiser which is a party or interested person in the above proceeding. Unfortunately, I have an unavoidable conflict which will cause me to be in Annapolis at 10:00 a.m. on September 10. Since January, 1985, I have been the registered lobbyist for Maryland General Hospital. On September 10, the Senate Finance Committee will hold a hearing on proposed regulations dealing with efforts to reduce hospital capacity by voluntary efforts, mergers, consolidations and/or closures. This is a vital interest to Maryland General, and I expect to testify in Annapolis at these General, and I expect to testify in Annapolis at these hearings. I should also advise you that the Annapolis hearing has been scheduled since mid-July.

I, therefore, respectfully request that the hearing scheduled for September 10 in the above-referenced matter be postponed. I recognize that my client will have to bear

Advertising Company acquired the assets of the Morton

in its present location in 1947 during the course of his

until 1946, Mr. Walker testified that he did not have the

employment for the National Outdoor Advertising Bureau.

Donnolly Advertising Company.

the premises.

Advertising Company. Thereafter, Foster & Kleiser purchased

Further, inasmuch as he was not released from military service

occasion to visit or work in the Baltimore area until October,

The Petitioners presented two affidavits from

individuals who observed the sign at 585 Frederick Avenue prior

to Mr. Walker's first recollection of the sign in 1947.

Petitioners' Exhibit Six, an affidavit of J. Carroll Busick,

station located on the Southeast Corner of Frederick Avenue and

Bishop's Lane from the Atlantic Refining Company, there was a

large billboard positioned along the eastern property line of

Exhibit Seven, affirmed that Mr. Kight lived in Catonsville,

the property located at the Southeast Corner of Frederick

Maryland from 1943-1960. As a result, he is very familiar with

Avenue and Bishop's Lane known as 585 Frederick Avenue. On the

- 2 -

basis of the familiarity, he is aware of a large sign that is

An affidavit of Donald Lawrence Kight, Petitioners'

affirms that, in 1940, when Mr. Busick leased the service

Mr. Walker testified that he first observed the sign

MELNICOVE, KAUFMAN, WEINER & SMOUSE, P. A

The Honorable Arnold Jablon August 13, 1985 Page Two

the cost of a second notification and publication and that you cannot guarantee me what the new date will be. I do, however, find it necessary to ask that the September 10 date be postponed.

> Very truly yours, M. Albert Figinski

MAF/ko

currently located at the corner of the above-referenced address. Significantly, his affidavit indicates that the billboard was in its present location when he moved to Catonsville in 1943.

It is well settled that a landowner's right to use his property in a particular manner is determined by the legal state of facts which exist at the time a use is commenced. 4 Rathkopf, The Law of Zoning and Planning at 51-36 (4th ed. 1978). If at that time, by reason of the nonexistence of a restrictive ordinance, it is determined that the landowner had the right to operate the particular use and that the municipality would have no right to stop him from doing so, then the landowner's rights to use his land in the particular manner are vested. Id.

The Baltimore County Commissioners adopted a comprehensive set of zoning regulations which took effect in Baltimore County on January 2, 1945. Calhoun v. County Bd. of Appeals, 262 Md. 265, 266, 277 A.2d 589 (1971); Kahl v. Cons. Gas El. Lt. & Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); McKemy v. Baltimore County, 39 Md. App. 257, 259, 385 A.2d 96 (1978). Section XI of the original regulations provided for the continuance of existing lawful non-conforming uses. As such, Section XI, entitled non-conforming uses, provided that:

A lawful non-conforming use existing on the effective date of the adoption of these regulations may continue, provided, nowever upon any change from such non-conforming use

LAW OFFICES OF MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A 26 S. CHARLES STREET SALTIMORE, MO

LAW OFFICES OF

WEINER & SMOUSE, P.A.

36 S. CHARLES STREET

MELNICOVE, KAUFMAN

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to a conforming use, or any attempt to change from such nan-conforming use to a different non-conforming use or any discontinuance of such non-conforming use for a period of one year ... the right to continue to resume such non-conforming use shall terminate, provided, however, that any such lawful non-conforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original non-conforming use. 1945 Baltimore County Zoning Regulations [Emphasis supplied].

Existence Of A Billboard Prior To 1945

The initial issue is whether a lawful non-conforming use existed with respect to the sign at 585 Frederick Avenue on January 2, 1945. The burden of proving the non-conforming use is on the Petitioners to establish the existence of a non-conforming use at the time of the passage of the prohibiting zoning ordinance. Calhoun v. County Bd. of Appeals, supra, 262 Md. at 267; Vogl v. Mayor & C. C. of Balto., 228 Md. 283, 288, 179 A.2d 693 (1962); Lapidus v. Balt. City, 222 Md. 260, 262, 159 A.2d 640 (1960). It is well settled that the way of meeting this burden is to show that the existence of the use was known to the neighbors at the critical time. Calhoun v. County Bd. of Appeals, supra, 262 Md. at 267; Richmond Corp. v. Board of County Comm'rs for Prince George's County, 254 Md. 244, 256, 255 A.2d 398, (1969); Feldstein v. Lavale Zoning Bd., 246 Md. 204, 210, 227 A.2d 731 (1967); Voql v. Mayor & C. C. of Balto., supra, 228 Md. at 288.

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The Petitioners have satisfied their burden of proving that the existence of the sign was known to the neighbors of the surrounding area by January 2, 1945. Mr. Walker testified that he first observed the sign in 1947, although he never had the opportunity to view the sign before October, 1947. Further, Mr. Busick, who currently resides in Catonsville, maintains that there was a large billboard positioned along the eastern property line of the subject premises when he leased the property in 1940. Finally, Mr. Kight, who moved to Catonsville in 1943, maintains that the billboard at issue was at its present location when he moved to Catonsville in 1943.

The Question Of Extension

The second issue is whether the non-conforming use has been changed or extended. It is well established that the provisions of the applicable local zoning ordinances and regulations govern whether a non-conforming use can be changed, extended, enlarged, altered, repaired, restored or recommenced after abandonment. Pr. Geo's Co. v. E. L. Gardner, Inc., 293 Md. 259, 268, 443 A.2d 114 (1982); Feldstein v. Lavale Zoning Board, supra, 246 Md. at 211; Phillips v. Zoning Commissioner, 225 Md. 102, 109, 169 A.2d 410 (1961); Board of Zoning Appeals of Baltimore County v. Gue, 217 Md. 16-21-22, 141 A.2d 510 (1958). To that end, Section 104 of the current Baltimore County Zoning Regulations, entitled "nonconforming uses" provides that:

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Maryland Courts generally disapprove, as a substantial

A nonconforming use [defined in Section 101 as "[a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use] may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more ... the right to continue or resume such nonconforming use shall terminate.

1985 Baltimore County Zoning Regulations, Section 104.

departure from a vested non-conforming use, a change from a specific use to another use. Phillips v. Zoning Commissioner, supra, 225 Md. at 110. The justification for "disallowing a change from one nonconforming use to another is because the lawful nonconforming use of land 'must be held to contemplate only a continuation of substantially the same use which existed at the time of the adoption of the ordinance, and not some other and different kind of nonconforming use which the owner of land subsequently finds to be profitable or advantageous.'" Id. at 111-12, citing, In Re Botz v. Garrett, 159 S.W.2d 367, 372 (Mo. 1942) [Emphasis Supplied].

Thus, while Maryland Courts permit the continuation of a non-conforming use, they do not "permit the transmogrification of an approved non-conforming use into a new and different use." Nat'l Inst. Health Fed. Cr. Un. v. Hawk, 47 Md. App. 189, 200, 422 A.2d 61 (1980). The latter constitutes an unlawful extension of a non-conforming use. The Baltimore

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County Zoning Regulations specifically prohibit any extension of a lawful non-conforming use. Section 102.1 expressly provides that "no land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use." [Emphasis supplied]. The question, however, as to what is an extension or enlargement of a non-conforming use is typically one of fact. And, each case must stand on its own facts. Phillips v. Zoning Commissioner, supra, 225 Md. at 109-10; Wilson v. Town of Elkton, 35 Md. App. 417, 425-26, 371 A.2d 443

In contrast, an intensification of a non-conforming use is permissible "so long as the nature and character of the use is unchanged and substantially the same facilities are used." Jahnigen v. Staley, 245 Md. 130, 137, 225 A.2d 277 (1967); Wilson v. Town of Elkton, supra, 35 Md. App. at 425. Unquestionably, the use of the sign at issue has not

changed. Mr. Walker testified that, when he observed a 12' X 25' poster panel in 1947, it was used for displaying general advertising. The sign now is still used for the display of general advertising. Indeed, testimony was presented that, for four decades, the size of billboards has met a national standard, i.e., the 12' X 25' size. Inasmuch as substantially the same facilities have remained in use, it is clear that the nature and character of the use has remained unchanged. In

MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A. 34 S. CHARLES STREET

MELNICOVE. KAUFMAN,

WEINER & SMOUSE, P.A.

36 \$, CHARLES STREET

Nyburg v. Solmson, 205 Md. 150, 106 A.2d 483 (1954), the area of the property at issue, which was under a prior non-conforming use as a parking area for a garage was not enlarged, but the volume of cars parked thereon was increased from a small number to about thirty or fifty. Accordingly, the Nyburg Court held that the use was merely an intensification of the non-conforming use instead of an extension. See also <u>Jahnigen v. Staley</u>, 245 Md. 130, 225 A.2d 277 (1967) (increase in the number of rowboats rented held to be an intensification of a non-conforming use); Green v. Garrett, 192 Md. 521, 66 A.2d 412 (1949) (agreement for the use of the Baltimore stadium for the playing of professional baseball at night, produced a use greatly in excess of the former use, but still an

Similarly, there has been no expansion of the original use of the sign located at 585 Frederick Avenue. In fact, there has not even been an intensification of the non-conforming use. Prior to 1945, the sign was erected and used for general advertising purposes. Testimony at the Special Hearing revealed that the sign today is still being utilized for the same purpose.

intensification, not an extension of a use).

In deciding whether the current activity is within the scope of the non-conforming use, the following factors should be considered:

> To what extent does the current use ... reflect the nature and purpose of the original non-conforming use;

MELNICOVE, KAUFMAN.

WEINER & SMOUSE, P.A

36 S. CHARLES STREET

BALTIMORE, MD 21201-3060

2. Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

3. Does the current use have a substantially different effect on the

4. Is the current use a "drastic enlargement or extension" of the original non-conforming use. 1

With regard to the first factor, the current use of the sign at issue certainly reflects the nature and purpose of the original non-conforming use, i.e. an outdoor advertising sign. To that end, the current use clearly constitutes the same character, nature and kind as the original non-conforming use. Further, the current use does not have a substantially different effect on the neighborhood. The entire surrounding area of 585 Frederick Avenue is zoned BL. Similarly, in 1945, the subject area was zoned E-Commercial. As the plat of 585 Frederick Avenue indicates, the entire block surrounding the property features four gas stations, three Savings and Loan Associations, two "fast-food" establishments and several stores. The continuance of the existence of one outdoor advertising sign does not have a different effect on this neighborhood, because the neighborhood has been abundant with

Appeals in McKemy v. Baltimore County, supra, 39 Md. App. at 269-70, as those that the Board of Appeals should have

considered in deciding whether current activity is within the

- 9 -

scope of a non-conforming use.

BALTIMORE, MO

These factors were cited by the Court of Special

LAW OFFICES OF

MELNICOVE, KAUFMAN

WEINER & SMOUSE, P.

36 8. CHARLES STREE

BALTIMORE, MO

commercial uses for quite some time. Finally, as discussed on Pages 5-9, supra, the current use does not constitute a drastic enlargement or extension of the original non-conforming use. Indeed, Protestants' own witness testified that the sign's wood and steel show that it had been in place since 1960, maybe even since 1955.

Conclusion

The Petitioners respectfully request that the Deputy Zoning Commissioner approve the continuance of the existing illuminated 12' X 25' sign structure located in a BL zone, as a non-conforming use which predates the 1945 zoning regulations. Respectfully submitted,

MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A. 600 Charles Center South 36 South Charles Street Baltimore, Maryland 21201-3060 301-332-8520

Attorneys for the Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 TH day of April, 1986, a copy of the foregoing Petitioners' Memorandum in Support of the Continuance of the Existing Sign Structure as a Non-Conforming Use was mailed, postage prepaid, to James E. Crawford, Esquire, 405 Frederick Avenue, Suite 163, Baltimore, Maryland 21228.

Stuart R. Berger

2859£

MELSICOVE, KAUFMAN,

BALTIMORE: MO 21201-5060

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MELNICOVE, KAUFMAN,

WEINER & SMOUSE, P.A.

BALTIMORE, NO

Outdoor Advertising License I HEREBY CERTIFY that on this Take day of September, AFFIDAVIT 1985, before me, the subscriber, a Notary Public in and for the STATE OF MARYLAND STATE OF MARYLAND, BALTIMORE CITY. To with To Whom It May Concern: State of Maryland, personally appeared DCNALD LAWRENCE KIGHT, COUNTY OF ANNE ARUNDEL This is to Certify, That a License is hereby granted In 1940, I leased the service station located on the Southeast Corner and made oath in due form of law that the matters and facts of Frederick Avenue and Bishop's Lane, Catonsville, from the Atlantic I, DONALD LAWRENCE KIGHT, having made oath in due form Refining Company. There was a large billboard positioned along the contained herein are true and correct to the best of his eastern property line of the premises. In 1948 I purchased the service of law that I am over twenty-one (21) years of age, competent station, all equipment including the billboard and the fee simple knowledge, information and belief. to engage in the business generally known as outdoor advertising for profit gained interest in this property from the Atlantic Refining Company. to testify and have personal knowledge of the matters and facts from rentals or other compensation received for the erection, use or maintenance of The billboard was continued in place and was rented from me by the billboards, or any other structures, signs, posters, or display advertising of any kind contained herein, state as follows: Morton Advertising Company and was serviced by the Morton Company or nature whatsoever, upon real property, for which the licensee herein has paid during my years of ownership of the property. 1. My date of birth is April 23, 1917. From to the State of Maryland. Recently, I noticed that the billboard is still on the property. 1943-1960, I resided at 12 Locust Drive in Catonsville, My Commission expires: under and by virtue of Article 56, Section 3, of the Annotated Code of Maryland. Harrice Busick Maryland 21228. During that time period, I was Commander of the American Legion Post in Catonsville. I currently reside at This license to continue in force until the 30th day of April next. J. Carroll Busick 711 Maiden Choice Lane 4209 Crest Place in Ellicott City, Maryland. Apartment 2312 Catonsville, Maryland 21228 (Date: Ouc. 4 1986) 2. As a result of my living in Catonsville for meventeen (17) years, I am familiar with this section of STATE ROADS COMMISSION OF MARYLAND Baltimore County. Moreover, I am very familiar with the property located at the Southeast corner of Frederick Road and Bishop's Lane known as 585 Frederick Road. 3. I am aware of a large sign that is currently located at the corner of the above-referenced address. This billboard was at its present location when I moved to Catonsville in 1943. Accordingly, the existence of the sign at 585 Frederick Road was known to me, as a neighbor of the property, prior to January 2, 1945. MELNICOVE, KAUFMAN, MELNICOVE, KAUPMAN, PETTIONER'S WEINER & SMOUSE, P.A. WEINER & SMOUSE, P.A. 36 S. CHARLES PTREET 36 S. CHARLES STREET EXHIBIT 6 STATE ROADS COMMISSION OF MARELAND TATE RODS COMMISSION OF MANYLAND BALTIMORE, MARYLAND 21203 BALTIMORE, MARYLAND 21203 MORTON OUTDOOR ADVERTISING SECTION OUTDOOR ADVERTISING SECTION AGENCY APPLICATION FOR RENEWAL AND INVOICE <u>05/01/78</u> Outdoor Advertising License APPLICATION FOR RENEWAL AND INVOICE COMPANY 0053 FOR SIGN TAG PERMITS FOR SIGN TAG PERMITS 3001 REMINGTON AVENUE • BELMONT 5-8820 • BALTIMORE PAGE 00012 ____ DONNELLY ADVERTISING CORP. OF MD. October 21, 1953 DONNELLY ADVERTISING CORP. OF MD. 3001 REMINGTON AVE. BALTIMORE, MD. 21211 STATE OF MARYLAND, BALTIMORE CITY, To wit: 3001 REMINGTON AVE. BALTIMORE, MD. 21211 This is to Certify, That a License is hereby grante Danielly also Corp. of Minglion LOCATION OF SIGN, SHOWING STANCE N.E.S.W. OF NEAREST CITY, TOWN, VILLAGE, OR INTERSECTION LOCATION OF SIGN, SHOWING DISTANCE N.E.S.W. OF NEAREST CITY, TOWN, VILLAGE, OR INTERSECTION TAG FEE NUMBER to engage in the business generally known as outdoor advertising for profit gained TOTAL SIGN PERMIT FEES 1-376-50 THE MORTON COMPANY FORT MEADE & 16TH ST.
ANNAPOLIS RD. NEAR WELHAM AVE.
ANNAPOLIS RD. N/O DORSEY RD. from rentals or other compensation received for the erection, use or maintenance of billboards, or any other structures, signs, posters, or display advertising of any kind Mr. J. Carroll Busick Frederick Road and Bishops Lane Catonsville - 28, Maryland or nature whatsoever, upon real property, for which the licensee herein has paid ANNAPOLIS RD. N/O DORSEY RD.
ANNAPOLIS RD. N/O DORSEY RD.
ANNAPOLIS RD. N/O DORSEY RD.
ANNAPOLIS RD. AND POWERLINE Total of your Check No. 3467 = Dear Mr. Busick: \$ 1,482.50 This is to confirm our conversation of October 21, 1953 with regards to the use of your premises, Frederick Road and Bishops Lane, for advertising purposes. It is understood and agreed that we have the use of these premises for maintaining and posting one 12: x 25: poster panel. on a month to month basis at the rate of \$6.00 a month. under and by virtue of Article 56, Section 234, of the Annotated Code of Maryland Deduction for Tag No. 7985 200 CRAIN HWY. CRAIN HIGHWAY NEAR FURNACE BRANCH RD. CRAIN HIGHWAY NEAR RITCHIE HIGHWAY CRAIN HIGHWAY NEAR RITCHIE HIGHWAY Total of Tag Nos. 1293,1296 & 1300 (no paid with/or This license to continue in force until the 30th day of April next. CRAIN HIGHWAY NEAR RITCHIE HIGHWAY

ANNAPOLIS RD, N/O DORSEY RD,

ANNAPOLIS RD, N/O DORSEY RD,

1 MI, N/O DORSEY ROAD

7924 BELAIR RD, FULLERTON

7824 BELAIR RD, FULLERTON

COLUMBIA PIKE ELLICOTY CITY E/O

COLUMBIA PIKE ELLICOTY CITY E/O

CASTERN AVE: C OLD DAGK RIVER ORIOGE

EASTERN AVE: C OLD DAGK RIVER CRIDGE AMOUNT DUE In Testimony whereof the Seal of the Comptroller's Office is hereto affixed. \$-6.50 This agreement shall remain in effect until terminated by either party upon the receipt of thirty (30) days notice in writing. Very truly yours, THE MORTON COMPANY EASTERN AVE, 1/2 HI. S/D CHASE CONS. SCH James G. Busick

> James C. Busick Lease Department

Back Land Land Service

EXHIBIT 3

Accepted By: Carrel Devicek

CHICALITY OF THE PROPERTY OF T

PLEASE SIGN ORIGINAL AND DUPLICATE COPIES, RETURNING BOTH WITH YOUR

RECEIVED PAYMENT

4/27/76

CHECK No

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EASTERN AVE. EW/D WAGNERS LANE
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EDMONDSON AVE. E/O OLD FREDERICK RD.
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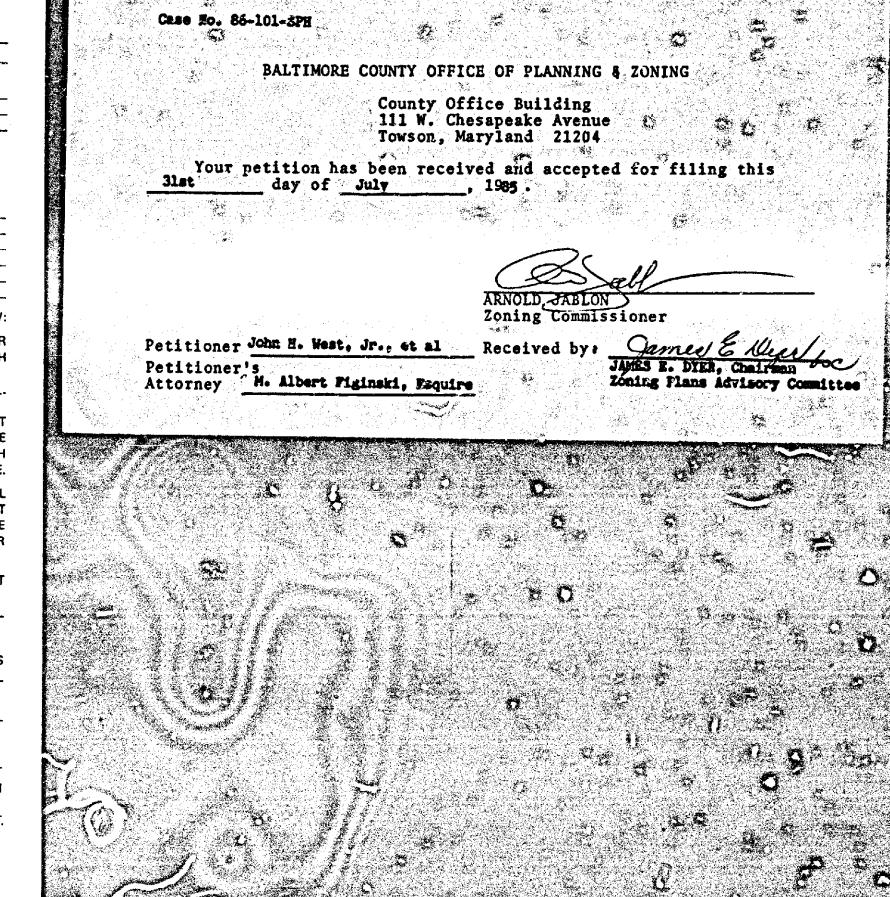
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| BALTIMORE COU | JNT | Y, MAI | lYLA | ND | | | | - A | | ва | IMORE COU | NT | Y. MA | RY |

OF MARYLAND 05/31/85 CITATION FOR CIVIL ZONING VIOLATION 85-145-CV CITATION NUMBER 88na3 585 Frederick Road ADDRESS OF PROPERTY ON WHICH VIOLATION WAS OBSERVED. NAME OF OWNER IF OTHER THAN PERSON NAMED: IT IS CHARGED BY THE ZONING COMMISSIONER OF BALTIMORE COUNTY THAT THE ABOVE NAMED PERSON DID COMMIT A ZONING VIOLATION CONTRARY TO THE PROVISIONS OF THE BALTIMORE COUNTY ZONING REGULATIONS, AS FOLLOWS: _ 5 | เมองอว| กอ. อก SECTION(S) VIOLATED: (101) -"Sign. Outdoor Advertising": 102.1-General requirements: 230-Uses
Permitted as of Right in B.L. zones: 413.3-Outdoor advertising sign/Special Exception

NATURE OF VIOLATION __Erection of an outdoor advertising sign without a special exception \$ | 00389 | DE.OO LOCATION AND TIME OF VIOLATION: 585 Frederick Road February 25, 1985 through Present 250 5 | 60373 | 02.07 250 5 00394 TO RESPOND TO THE ABOVE CIVIL VIOLATION ALLEGED AGAINST YOU, YOU MUST CHECK ONE OF THE BOXES BELOW: 250 S 60395 08.60 YOU MAY PAY A FINE OF \$ 100.00 BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH 250 \$ 00397 08.00 1250 S 110396 06.00 PAYMENT TO: DIRECTOR OF FINANCE, FIRST FLOOR, COURT HOUSE, TOWSON, MARYLAND 21204. 7250 \$ 87399 08.00 0250 \$ 88400 06.00 3250 5 00401 08.00 YOU MAY ELECT TO STAND TRIAL IN THE DISTRICT COURT OF MARYLAND. TO DO THIS, YOU MUST 250 5 00405 D3.60 0250 5 00404 B6.00 NOTIFY THE ZONING COMMISSIONER BY FILLING IN THE BOTTOM PORTION AND RETURNING IT TO THE ZONING COMMISSIONER AT LEAST FIVE (5) DAYS BEFORE THE DATE OF PAYMENT OF THE FINE SET FORTH IN THE PAYMENT ELECTION SECTION ABOVE. THE DISTRICT COURT WILL NOTIFY YOU OF A TRIAL DATE. 3 06407 08.00 n250 S | 00406 | 08.00 NOTICE OF VIOLATION AFTER WHICH YOU WILL HAVE FIFTEEN (15) DAYS TO PAY THE ORIGINAL FINE. AFTER THAT 250 5 60410 06.00 DATE, THE FINE WILL BE \$ 200.00 ... IF NOT PAID WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE OF THE \$ 00411 65.00 \$ 00412 08.00 FORMAL NOTICE OF VIOLATION, THE DISTRICT COURT MAY SCHEDULE THE CASE FOR TRIAL IF YOU FAIL TO APPEAR AT THE TRIAL, A BENCH WARRENT MAY BE ISSUED FOR YOUR ARREST. 00413 08.00 S | 55414 | 58.JD I DO SOLEMNLY DECLARE AND AFFIRM THAT THE MATTERS AND FACTS STATED ABOVE ARE TRUE AND CORRECT 50 5 40415 03.00 S | 55416 | 58.45 S 39418 08-08 50 S 60419 08.00 BASED ON THE SWORN STATEMENT OF THE JAMES H. THOMPS 19 95 Ath, 8th DAY OF ______ March_April___, 19 \$ | 60421 08.05 FACKNOWLEDGE RECEIPT OF A COPY OF THIS CITATION AND HEREBY PROMISE TO PAY THE FINE OR REQUEST A TRIAL DATE AS REQUIRED BY LAW. I UNDERSTAND THAT THE ACCEPTANCE OF THIS CITATION IS NOT AN ADMISSION 314.00 NOTICE OF INTENTION TO STAND TRIAL 85-145-CV E CERTIFY THAT ALL SIGNS COMPLY WITH ALL LEGAL EQUIREMENTS AS WELL AF BULES AND REQUATIONS ROMULGATED BY THE STATE HIGHWAY ADMINISTRATIONS TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: I HEREBY ELECT TO STAND TRIAL IN THE DISTRICT COURT OF MARYLAND FOR THE ABOVE CITED VIOLATIONS. I UNDERSTAND THE DISTRICT COURT WILL NOTIFY ME OF THE DATE AND TIME OF TRIAL, AT THE ADDRESS



INTER-OFFICE CORRESPONDENCE Arnold Jablon TO Zoning Commissioner Date August 26, 1985 Norman E. Gerber, Director FROM Office of Planning and Zoning SUBJECT Zoning Petition No. 86-94-SpH, 86-96-SpH and 86-101-SpH In view of the subject of this petition, this

AND INTER-OFFICE CORRESPONDENCE Date January 22, 1986 FROM Jim Thompson Case No. 86-101-SPH SUBJECT Property Owner - John H. West, Jr., et al Please be advised that this matter is the subject of an active violation case, 85-145-CV, 585 Frederick Road, within the District Court of Maryland. When this matter is rescheduled for a hearing please notify: Michael Reagan c/o R & C Contractors 405 Frederick Road Baltimore, Maryland 21228 JT/ls

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE August 21, 1985 M. Albert Figinski, Esquire COUNTY OFFICE BLDG. 111 W. Chesapeake Ave. Towson, Maryland 21204 36 South Charles Street Baltimore, Maryland 21201 RE: Item No. 413 - Case No. 86-101-SPH Petitioners - John H. West, Jr., et al Special Hearing Petition MEMBERS Dear Mr. Figirski: Bureau of Engineering The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments Department of Traffic Engineering are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or State Roads Commissio Bureau of 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 Health Department Project Planning the requested zoning. Building Department Enclosed are all comments submitted from the members of the Board of Education 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 Zoning Administration Industrial scheduled accordingly. Very truly yours,

JAMES E. DYER

Zoning Plans Advisory Committee

Chairman

JED:nr

Enclosures

Maryland Department of Transportation July 18, 1985 Re: Item # 413 Mr. A. Jablon Property Owner:
John H. West, Jr. et al Zoning Commissioner County Office Building Towson, Maryland 21204 Location: S/E corner Frederick Ave. (Route 144) and Bishop's Lane Existing Zoning: B.L. Proposed Zoning: Att: N. Commodari Special hearing for the continuance of the existing illuminated 12' x 25' sign structure located in a B.L. zone as a non-conforming use which predates teh zoning ordinance. District: 1st Dear Mr. Commodari: On review of the submittal showing the existing (12' x 25') sign outside the State Highway Administration Right of Way, the State Highway Administration finds the plan generally acceptable. Very truly yours, Charles Lee, Chief Bureau of Engr. Access Permits by: George Wittman

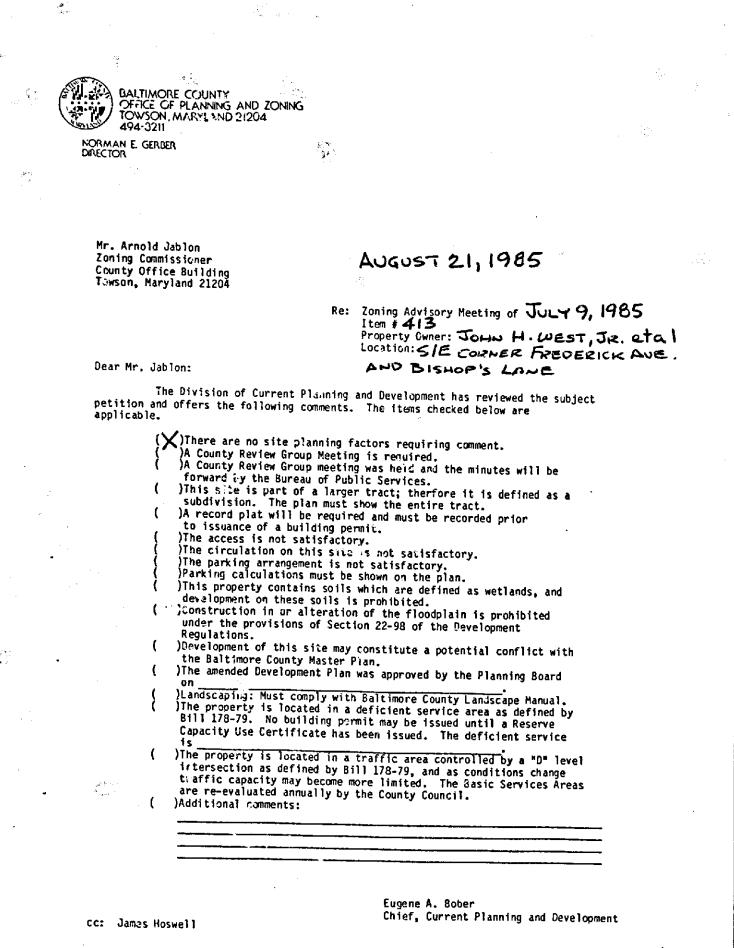
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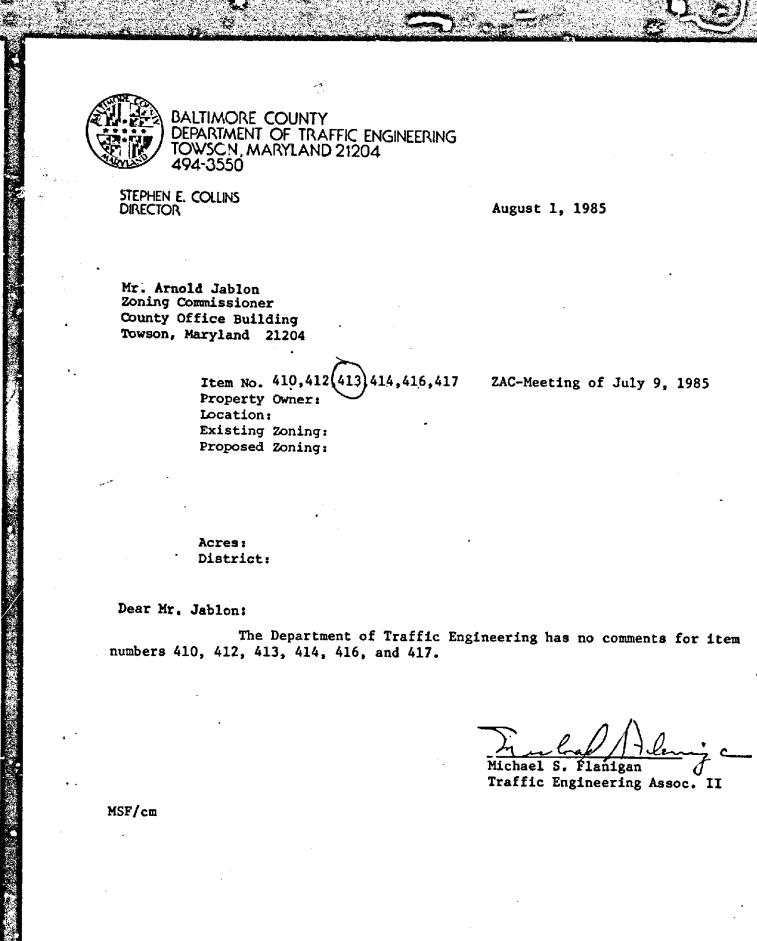
cc: J. Ogle

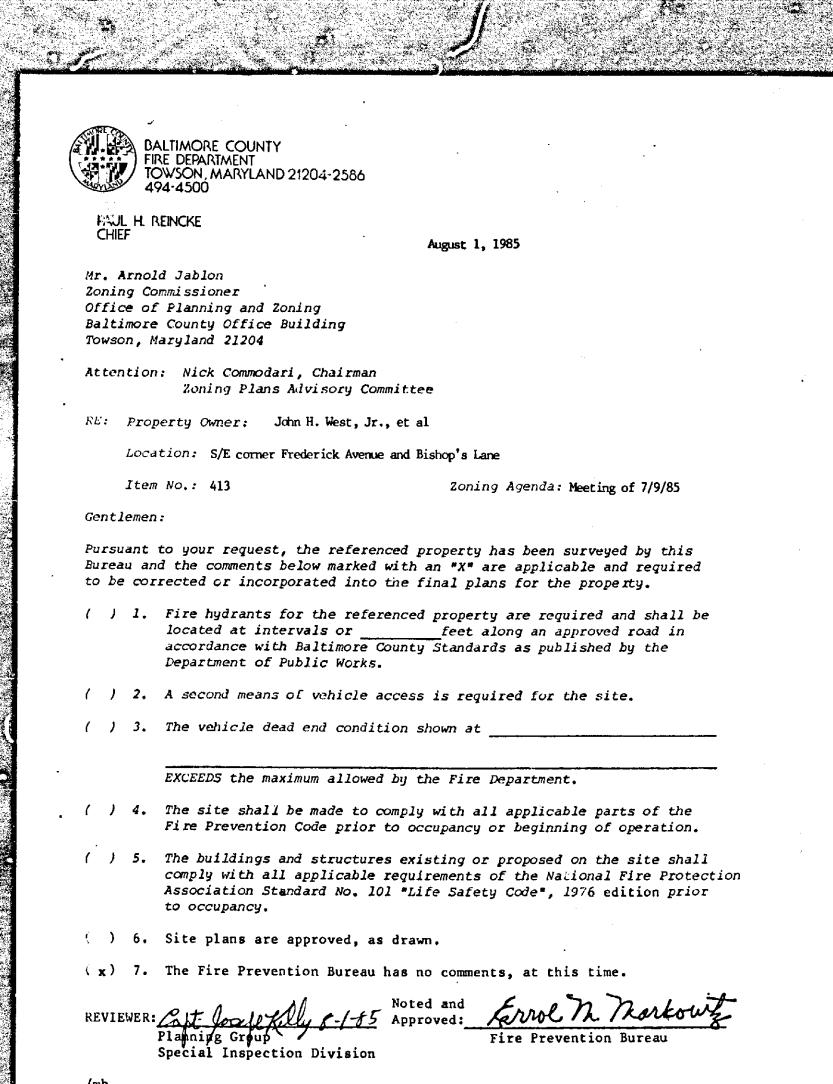
My telephone number is 301-659-1350 Feletypecritier for Impaired Hearing or Speech 383-7555 Baitimore Metro — 565-0451 D.C. Metro — 1-800-492-5032 Statewide Tolf 🖻

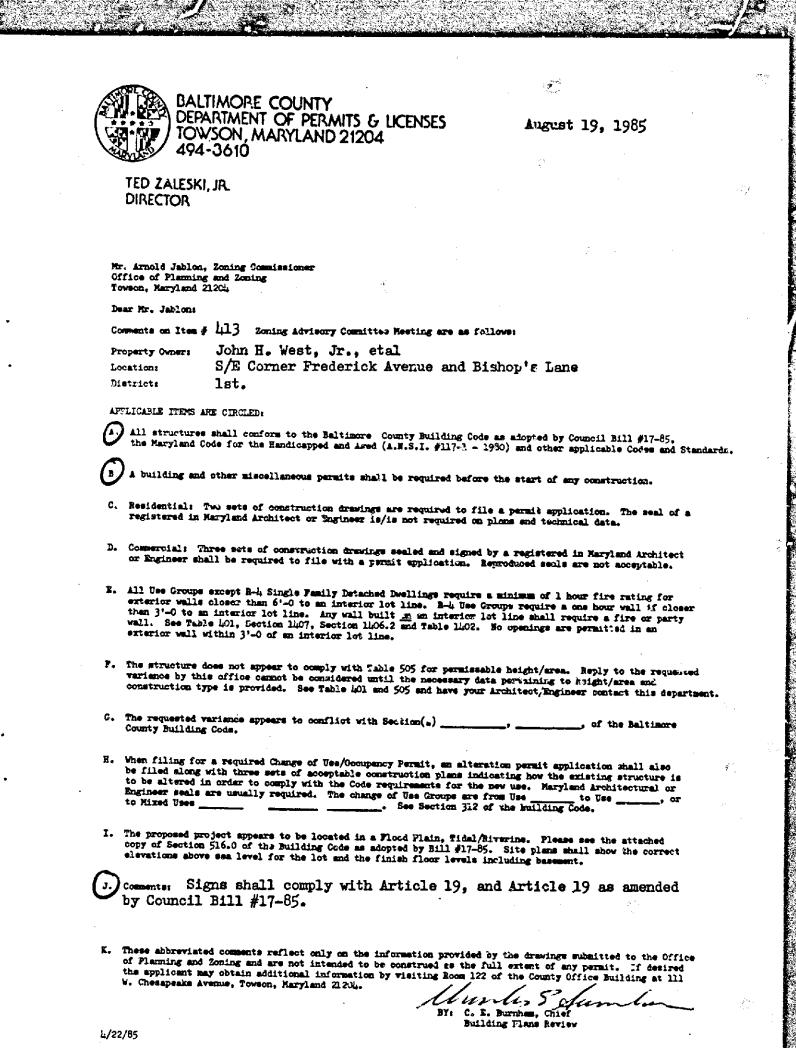
P.O. Lox 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

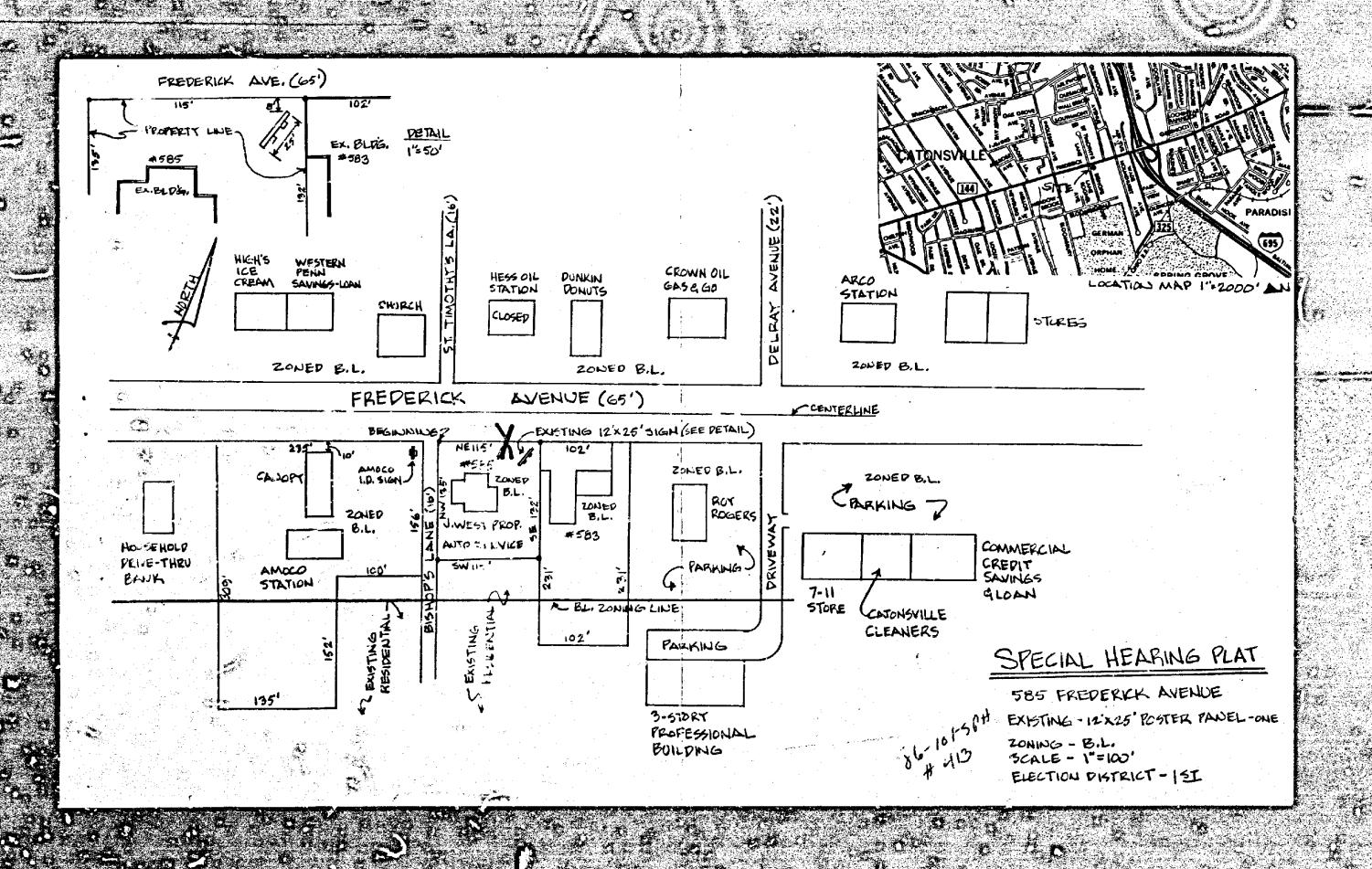
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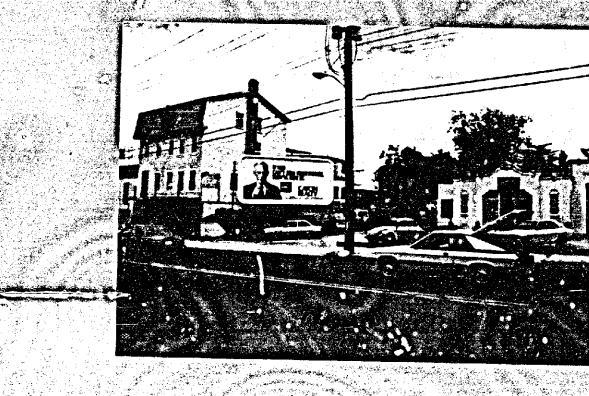














IN RE: PETITION - SPECIAL HEARING
SE corner of Frederick
Avenue and Bishop's Lane
(585 Frederick Avenue)
1st Election District

John G. West. Jr., et ux

Petitioners

* BEFORE THE

DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

Case No. 86-101-SPH

The Petitioners herein request a special hearing to determine whether or not the existing illuminated 12' by 25' sign structure at the above referenced location, which is in a BL zone, may continue as a non-conforming use which pre-

dates the zoning ordinance. Testimony on behalf of the Petitioners indicated that since 1940, a large billboard has existed in the northeast corner of the property identified as 585 Frederick Avenue. A former lessee and owner of the subject property submitted an affidavit, identified herein as Petitioner's Exhibit 6 and dated June 4, 1986, which states that he leased the property in 1940 and at that time a large billboard was "positioned along the eastern property line of the premises". He further stated that the billboard continued in place during his years of ownership of the property, and he noticed "Recently" that the billboard was still on the property. Another affidavit submitted by an area resident, identified as Petitioner's Exhibit 7, stated "I am aware of a large sign that is currently located at the corner of the above-referenced address. This billboard was at its present location when I moved to Catonsville in 1943." The real estate development manager for the current lessee testified that he first observed the sign, definitely 12' by 25' in size, in 1947. He has viewed the sign each and every year since 1949 or 1950. He is unsure as to whether or not the original sign was illuminated. The sign dimensions have remained the same, although the face, trim, molding and platform have changed through the years.

A contractor, currently remodeling the adjacent building, testified in protest as to the age of the materials in the present sign. In his opinion, no part of the sign pre-dates 1950. At the earliest, the electrical work was done when the sign was erected and dates from around 1960. He was familiar with the site in 1950, but does not remember the sign. He first noticed a billboard approximately 1960. A co-owner of the adjacent property vaguely remembers the sign in the 1960's and 1970's.

After a thorough review of the evidence and memorandum submitted, and after due consideration of the testimony presented, in the opinion of the Deputy Zoning Commissioner, a 12' by 25' sign has existed prior to 1945 at the subject location, as indicated on the plan submitted. It is unclear as to when the sign was first illuminated.

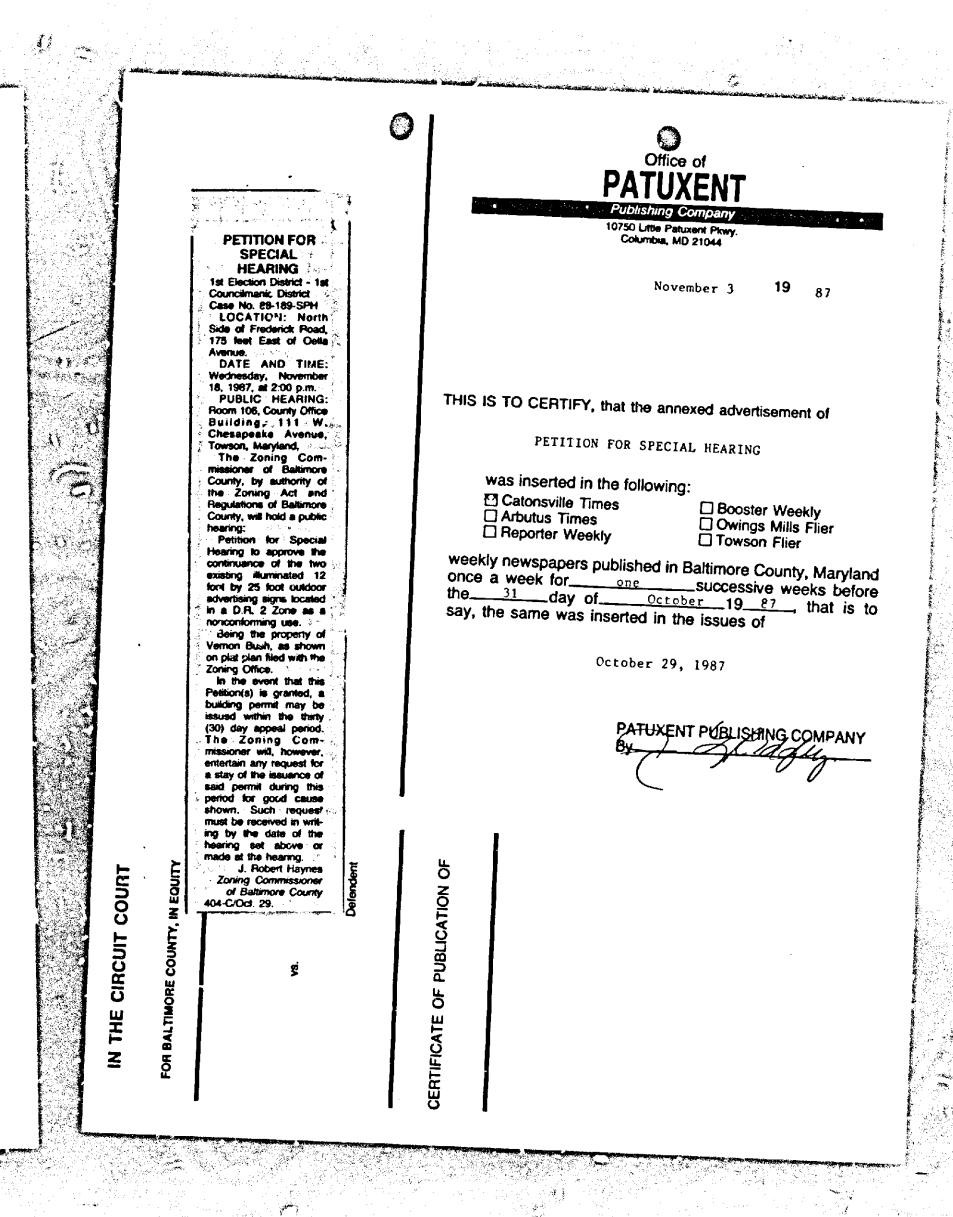
Pursuant to the advertisement, posting of property, and public hearing on the Petition and after due consideration of the testimony and evidence presented, in the opinion of the Deputy Zoning Commissioner, the granting of the special hearing would be in strict harmony with the spirit and intent of the Baltimore County Zoning Regulations (BCZR) and would not be detrimental to the health, safety and general welfare of the community. The special hearing should therefore be granted.

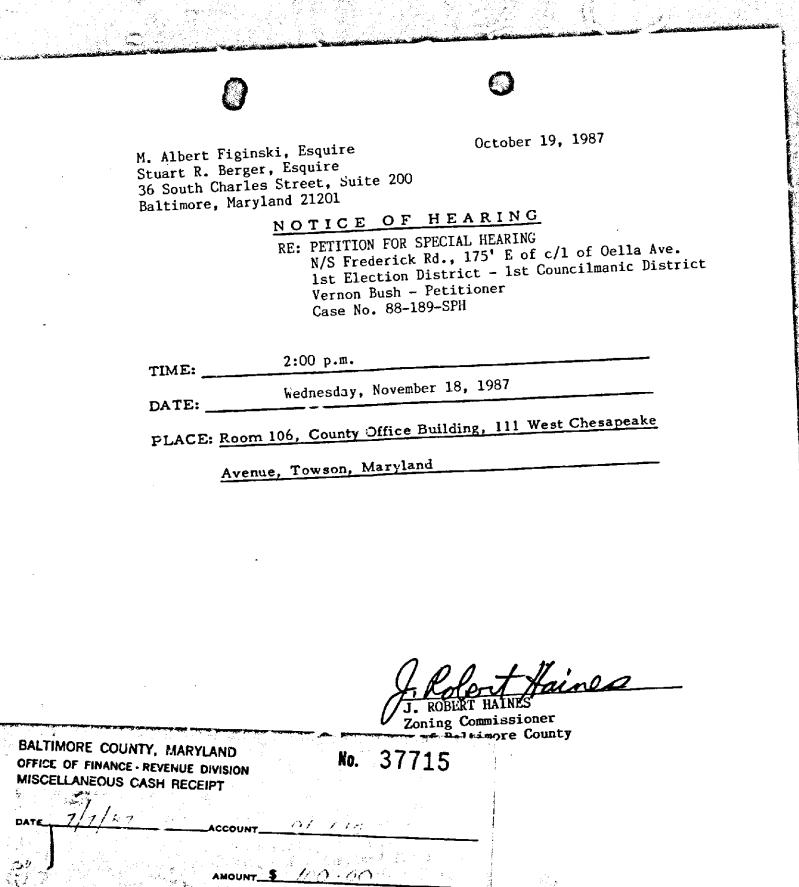
Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this day of August, 1986 that approval of a non-conforming use for a 12' by 25' non-illuminated sign structure in the location indicated on the plan submitted, as requested in the instant Petition for Special Hearing, is hereby GRANTED in part, from and after the date of this Order, in accordance with the following continued modes of operation:

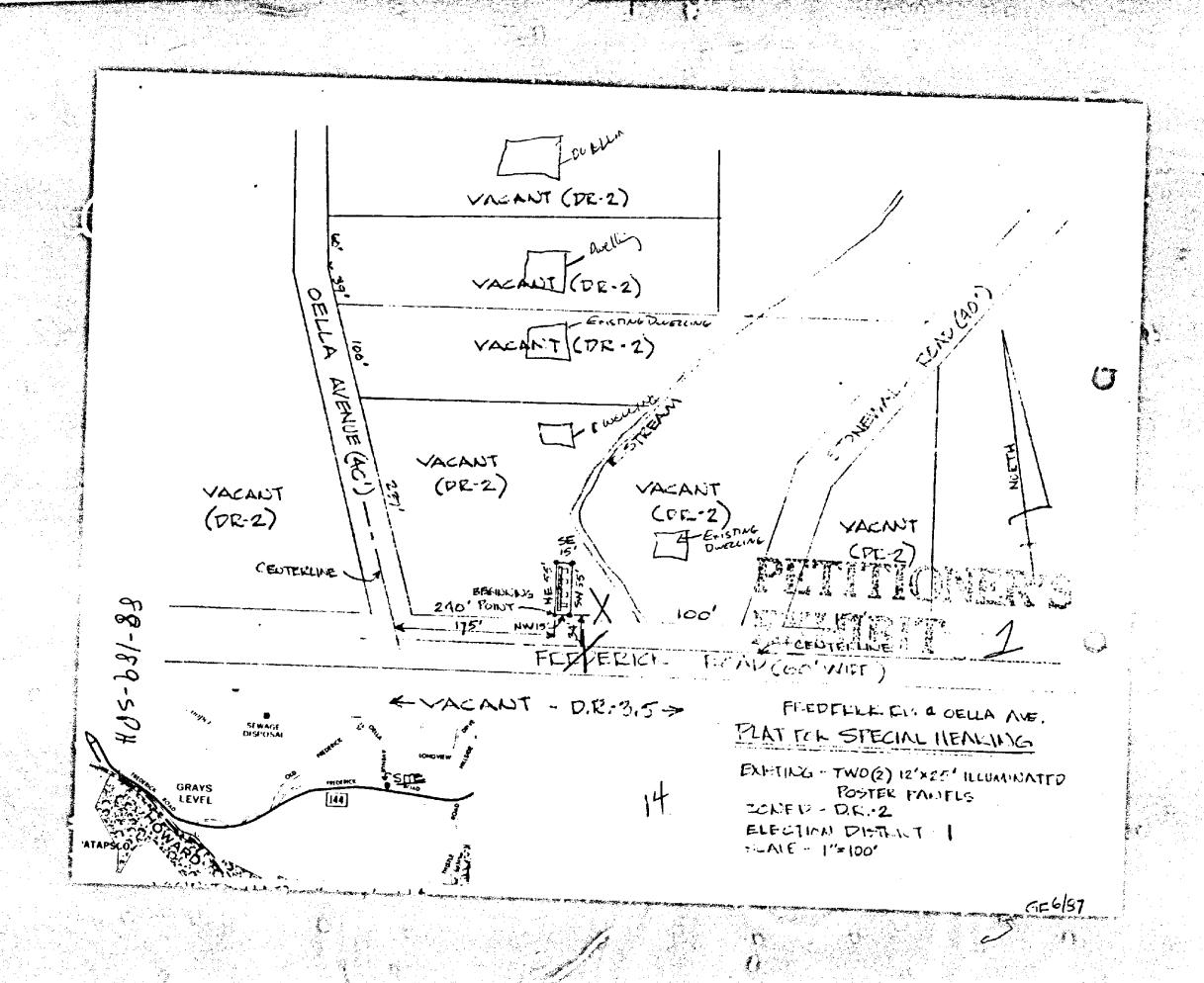
The sign shall not exceed 12' by 25' in size.

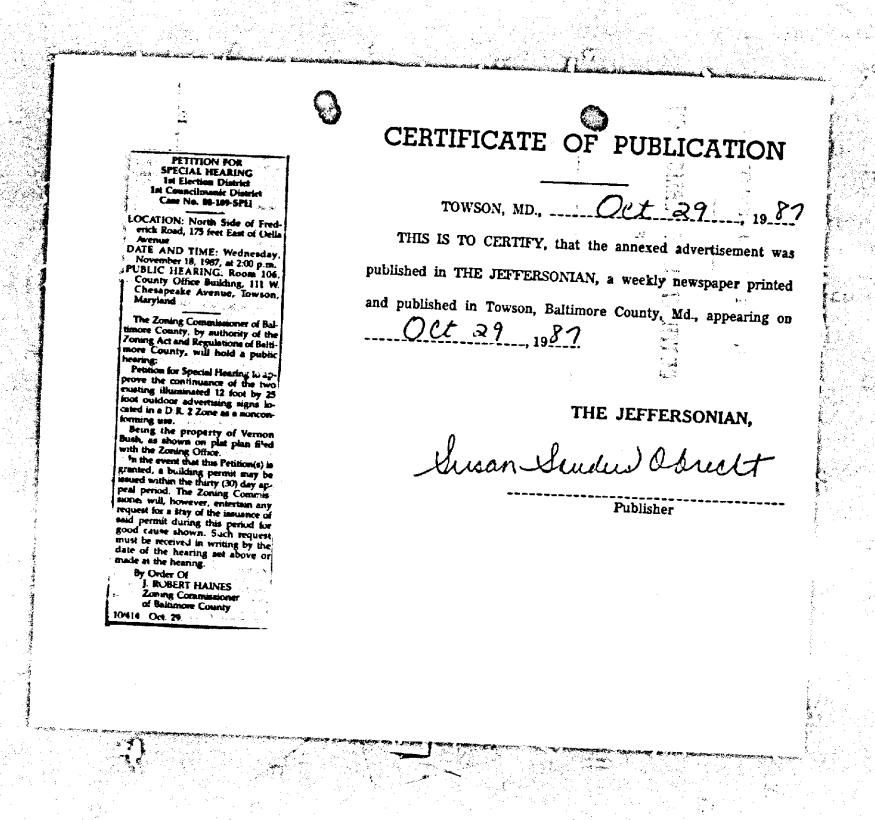
2) The sign shall be located as indicated on the plan substitued, i.e., no closer than 8 1/2 feet from the eastern property line at the end of the sign closest to Frederick Road, and 22 feet at the southers, end of the sign.

Deputy Zoning Commissioner of Baltimore County to the sign close to the sign.









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