

Mr. & Mrs. Peter A. Synodinos
11702 Larch Road
White Marsh, Maryland 21162

NOTICE OF HEARING

Re: Petition for Variance
NW/S Larch Rd., 200' NE Ranelagh Rd.
(11702 Larch Rd.)
11th Election District
Peter A. Synodinos, et ux - Petitioners
Case No. 86-246-A

TIME: 10:30 a.m.

DATE: Wednesday, December 11, 1985

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

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

No. 012312

DATE: 7/21/86 ACCOUNT: 801-615-000

AMOUNT: \$ 35.00

RECEIVED Synodinos

FOR: fly for the 11th

8065*****3200 3200

VALIDATION OR SIGNATURE OF CASHIER

NEWS

FEDERAL COMMUNICATIONS COMMISSION
1915 M STREET, N.W.
WASHINGTON, D.C. 20554

Report No. ACTION IN DOCKET CASE January 14, 1986

FCC ADOPTS LIMITED PREEMPTION OF LOCAL ZONING OR OTHER REGULATION OF SATELLITE EARTH STATIONS (CC Docket 85-87)

The Commission has adopted limited preemption of local zoning or other regulation of satellite earth stations.

The FCC ruled that state and local zoning and other regulations which differentiate between satellite receive-only antennas and other types of antenna facilities are preempted unless such regulations:

- have a reasonable and clearly defined health, safety or aesthetic objective; and,
- do not operate to impose unreasonable limitations on, or prevent, reception of satellite-delivered signals by receive-only antennas, or to impose costs on the users of such antennas that are excessive in light of the purchase and installation cost of equipment.

Regulation of satellite transmitting antennas is preempted in the same manner, except that state and local health and safety regulation is not preempted.

The Commission noted this action ensures that state and local regulations will not interfere unreasonably with the federal right to construct and use antennas to receive satellite-delivered signals.

Under the adopted rule, local governments may impose non-discriminatory regulations on earth stations as long as the same regulations are applied to all antennas. Thus, a community may preserve its historic character by limiting construction of all external antennas without singling out satellite facilities for different treatment.

If an ordinance or regulation differentiates in the treatment of antennas, the community must show that the ordinance or regulation has a reasonable and clearly defined health, safety or aesthetic objective. In addition, the regulation must not limit or prevent reception unreasonably, nor impose unreasonable costs on an antenna user.

PETITIONER'S
EXHIBIT 3 86-246-A

LAW OFFICES
BROWN & FINN
CHARTERED

SUITE 510

1920 N STREET, N.W.

WASHINGTON, D.C. 20036

(202) 687-0000

MEMORANDUM

To: Local Government Officials
From: Brown & Finn, Chartered
Re: Local Regulation of Satellite Dish Antennas

This firm represents SPACE, the Satellite Television Industry Association, Inc., a non-profit industry association representing the interests of manufacturers, distributors, retailers and consumers of satellite earth station reception equipment throughout the United States.

In our capacity as counsel for SPACE, we are frequently asked to assist local officials who are contemplating the adoption of regulations governing the placement of satellite dish antennas. To fairly address the legal and political issues raised by local regulations governing home satellite antennas, one must be familiar with the technology of satellite communications. The purpose of this memorandum and accompanying materials is to provide illumination in these areas and, it is hoped, to encourage the enactment of ordinances representing reasonable attempts to accommodate community concerns with the Constitutional rights of individual dish owners.

A Word About the Technology

Dish Size

Most communications satellites operating today operate in the "C-Band" (3.7-4.2 billion cycles per second or 3.7-4.2 "gigahertz" (GHz)). The satellites use a very small amount of energy (about 5-8 watts, about the same amount of energy used by a citizens' band radio) to transmit signals nearly 50,000 miles from their transmission points to satellites orbiting approximately 22,000 miles above the equator) and back to reception points on earth. Because of this, satellite signals are generally quite weak by the time they return to the earth's surface and satellite antennas, which are reflective collecting dishes, must be fairly large to collect enough signal to produce an intelligible picture. Generally, dishes between 10 and 12 feet in diameter are necessary in many parts of North America to receive usable satellite signals. Dishes which are smaller in diameter may not be able to obtain a quality picture for all the major satellites. A normally installed satellite antenna with a dish diameter of 12 feet, will be at least 15 feet in pole-mounted installations at greater heights. At some point in the future, higher powered satellites at higher frequencies may enable use of smaller diameter dishes. However, this development will not occur for a long time. We do not anticipate any

PETITIONER'S
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changes in technology in the predictable future that would permit the installation and operation of antennas significantly smaller in size. Overly restrictive size and height limitations imposed by a zoning ordinance could effectively prohibit the installation and operation of usable dish antennas. As discussed below, such ordinances are unconstitutional.

Location and Screening Requirements

Unlike regular radio and TV signals which can bend somewhat over the horizon, satellite signals are microwave signals which must travel in a straight line from transmitter to receiver. Because of this, a direct "line of sight" between a dish antenna and the orbiting communications satellites is required for reception. Obstruction of this line of sight by a hill, a building, or even a tree, could eliminate reception. Because of factors such as topography, foliage or building obstructions, many homeowners would be unable to install and operate a usable dish antenna if they were required to comply with a rigid location requirement (such as, for example, a requirement that dish antennas be installed only in rear yards). Similarly, overly restrictive screening and landscaping requirements (such as, for example, a requirement that dish antennas be totally screened from "public view") could likewise interfere with or prevent successful installation or reception. In this respect, a rigid screening requirement would be analogous to a requirement that solar panels be installed only in the shade.

Dish Owners Have Constitutional Rights

A homeowner's right to install and operate a usable satellite dish antenna is protected by the First Amendment of the United States Constitution. *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969); *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61 (1981). As a Ninth Circuit court judge noted in a recent case:

Regulation of satellite dish antennas... involves First Amendment rights that typically are not a consideration in determining the validity of zoning ordinances. As a consequence the Court has the duty to scrutinize to insure that the asserted state interest is achieved by the least restrictive means.

Because satellite dish antennas provide users with the unique ability to receive scores of programming services, some of which are not available through any other means, an ordinance severely restricting or effectively banning dish antennas would leave consumers without adequate alternative means of receiving these services.

People of Canton Township v. Antoinette Benner, No. 85 CT 3551 (Dist. Ct., 35th Jud. Dist., Mich., Sept. 26, 1985), Slip op. at 3-10, 11. Zoning ordinances that expressly or effectively prevent home owners from installing and operating usable satellite dish antennas infringe upon these rights. Such ordinances will not survive judicial scrutiny.

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... [T]he presumption of validity that traditionally attends a local government's exercise of its zoning powers carries little, if any, weight where the zoning regulation trenches on rights of expression protected under the First Amendment.

Schad v. Borough of Mt. Ephraim, supra, 452 U.S. at 77 (Blackmun concurring).

It must be remembered that home satellite antennas can receive a variety of programming that cannot be obtained from any other source. The fact that some satellite programming may be received by an alternative means, such as by subscribing to cable television systems, will not validate an unconstitutional prohibition of access through the use of dish antennas. *Virginia State Board of Pharmacy v. Virginia Citizens' Consumer Council*, 425 U.S. 748, 757 n.15 (1976); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 518 n.24 (1981).

Similarly, courts have held that zoning restrictions may not be justified by a desire to control or eliminate commercial competition. *Cord Meyer Development Co. v. Bell Bay Drugs, Inc.*, 229 N.E.2d 44 (N.Y. 1967); *Swin v. County of Winnebago*, 250 N.E.2d 438 (Ill. App. 1969) ("it is not the function of the county zoning ordinances to provide economic protection for existing businesses.") Furthermore, if zoning restrictions upon dish antennas are at all motivated by a community's interest in insuring the financial success of its franchised cable operator, such restrictions may be construed as a conspiracy between the community and the cable operator to foreclose competition:

Cable TV franchisors should exercise great caution in imposing restraints on noncable TV video vendors. Given [a community's] obvious interest in ensuring the financial success of its franchised cable TV operator to foreclose competition. Thus, for example, a zoning ban on satellite dish antennas would be highly suspect and might not be covered by state action immunity.

Opinion No. 34-009, 69 Ops. Atty. Gen. (Md. Feb. 21, 1984), n.20. A finding of such a conspiracy could lead to an assessment of treble damages and attorneys' fees under the antitrust laws.

Zoning Ordinances Must Serve Legitimate Objectives

To withstand challenge under the due process clause of the Fourteenth Amendment, zoning ordinances must not be enacted or enforced arbitrarily or capriciously. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Such ordinances must "substantially advance legitimate state interests" and must not deny a property owner the economically viable use of his or her land. *Agins v. City of Tiburon*, 447 U.S. 225 (1980); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

Health and safety concerns, for example, have long been held sufficient to justify land use restrictions. The validity of zoning regulations adopted to promote subjective aesthetic goals is less clear. The courts in many states continue to hold that zoning ordinances based solely or predominantly upon aesthetic considerations are invalid. See, e.g., *Mendiner Appeal*, 104 A.2d 118 (Pa. 1954); *Detroit Edison Co. v. City of Wixom*, 172 N.E.2d 382 (Mich. 1969); *Euclid v. Fitzthum*, 48 Ohio App.2d 297 (1976); *Duckworth*

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V. City of Bonney Lake, 586 P.2d 860 (Wash. 1978); *Mayor and City Council of Baltimore v. Swartz*, 299 A.2d 828 (Md. 1973); *Peck v. Kennedy*, 168 S.E.2d 117 (Va. 1969).

Zoning Ordinances May Not Discriminate Against Dish Antennas

Local officials frequently consider and enact zoning ordinances that subject dish owners and prospective dish owners to procedural and substantive requirements that are not imposed upon other persons in similar circumstances. For example, an ordinance may require a dish owner to pay a special fee to submit to a special hearing, prepare and submit special drawings, surveys or certifications, or comply with other requirements that do not apply to persons desiring to install functionally or physically similar devices such as traditional rooftop television antennas, basketball backboards or backyard swing sets. These types of ordinances are discriminatory and have been held to violate the Fourteenth Amendment of the Constitution. See e.g., *Morgan & Brockway v. City of Coral Gables*, Case Nos. 83-42793, CA 22, et al. (11th Jud. Cir. for Dade Co., Fla., June 18, 1984).

Zoning Ordinances May Not Ban Dish Antennas

Because of the constitutional considerations discussed above, it seems probable that a zoning ordinance expressly banning satellite dish antennas, even for limited periods of time (i.e., a "moratorium") would not survive challenge in the courts. Although many local officials are aware of this and have no desire to impose outright prohibitions, many are willing to consider and sometimes enact restrictions that have the same practical effect.

Dish Antennas May Not Be Banned By "Consent" Ordinances Or Referendums

In a similar vein, some communities have adopted ordinances requiring persons desiring to install satellite dish antennas to obtain the consent of all or a certain percentage of abutting or neighboring property owners. Other communities have drafted ordinances giving persons in the neighborhood the right to object to and thereby prevent or effectively prevent a satellite dish installation. These ordinances most likely violate the due process clause of the Fourteenth Amendment. *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116 (1928); *Eubank v. Richmond*, 228 U.S. 137 (1912); *Grindle's Den v. Goodwin*, 495 F. Supp. 761 (D. Mass. 1980); aff'd sub nom. *Larkin v. Grindle's Den*, 459 U.S. 116 (1982).

Some communities may consider submitting the issue of satellite dish antenna installations to referendums of their voters. While this procedure is generally valid, local officials should be aware that use of the referendum process will not validate a restriction that would be invalid if the officials adopted it directly.

If the substantive result of the referendum is arbitrary and capricious, bearing no relation to the police power, then the fact that the voters... wish it so would not save the restriction.

City of Eastlake, et al. v. Forest City Enterprises, Inc., 426 U.S. 688 (1976).

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The sovereignty of the people is itself subject to those constitutional limitations which have been duly adopted and remain unrepelled.

Hunter v. Erickson, 393 U.S. 385, 392 (1969).

Reasonable Regulation Can Be Achieved

Many communities across the nation have addressed reasonable community concerns about the installation and operation of satellite dish antennas and have enacted ordinances fairly accommodating those concerns with the constitutional and property rights of dish owners. On behalf of SPACE, we will be happy to provide you with any assistance you may need in drafting such an ordinance. To this end, enclosed with these materials is a copy of *The Satellite Earth Station Zoning Book*, which contains a discussion of some general legal and practical issues presented in this area. Also enclosed is an updated model ordinance that, we believe, is a reasonable attempt to accommodate community and individual concerns. Additionally, we are providing a copy of a recent *Notice of Proposed Rulemaking*, issued by the Federal Communications Commission (in which the F.C.C. proposed to preempt local ordinances that discriminate against satellite dish antennas), a copy of a recent *Report and Order*, released by the Commission, that preempts ordinances that discriminate against the installation of amateur radio towers; and copies of the *Coral Gables* case, the *Canton Township* case and the Maryland Attorney General's Opinion referred to above.

If, after reviewing these materials, you have any questions, please do not hesitate to contact us.

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SUITE 510

1920 N STREET, N.W.

WASHINGTON, D.C. 20036

(202) 687-0000

January 22, 1986

Mr. Walt Frazier

Stansbury-International

6330 Frankford Avenue

Baltimore, MD 21206

Re: Synodinos Variance

Dear Walt:

I reviewed the material you forwarded concerning the Synodinos installation. It seems to me that testimony at the hearing that the Synodinos can not obtain acceptable reception except from the location and at the height installed, coupled with arguments based upon the First Amendment and the F.C.C. preemption, should entitle the Synodinos to a variance almost as a matter of law. If the County denies the variance, it is, in effect, telling the Synodinos that they cannot install or operate a usable satellite dish antenna on their property. Such an edict would run counter to the First Amendment and the F.C.C.'s rule.

I am enclosing a copy of our Zoning Memorandum to Local Government Officials, the Canton Township and Coral Gables cases, and the F.C.C.'s News Release on its preemption. These materials may be of assistance to the Synodinos or their attorney in preparing their case.

Let me know if there is anything else we can do. Particularly, do you think that it would be appropriate for us to write another letter to Mr. Huchison?

Sincerely,

Walt Frazier

Enclosures: Zoning Memorandum to Local Government Officials
F.C.C. News Release
Canton Township Decision
Coral Gables Decision

LSH:em

PETITIONER'S
EXHIBIT 2

5

Good only w/ tall pole
Front side yard

SITE CHECK

DATE: 7/5/85

NAME: Peter Synodinos

ADDRESS: 11702 Larch Rd
White Marsh, Md. 21162

PHONE: 296-3587

LINE OF SITE: ROOF - GOOD FAIR POOR - NOCO
GROUND - GOOD FAIR POOR - NOCO OVER →
TALL POLE - GOOD FAIR POOR
TREES TO BE TRIMMED NONE IF TALL POLE IS USED

OPEN LNA (Micro Wave Check) - GOOD FAIR POOR

NUMBER OF WHITE OUTS -
NUMBER OF BLACK OUTS -
NUMBER OF SCRAMBLED -
NUMBER OF CLEAN NBC -
METER STRENGTH -

MICRO WAVE CHECK (GOOD CHANNELS) 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,
17,18,19,20,21,22,23,24
* All are good
(FAIR CHANNELS) 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,
17,18,19,20,21,22,23,24

N/A ROOF: Flat, Peak (; degree slope)
STORYS

LADDERS NEEDED - 6', 10', 16', 32', 40'

* TALL POLE: Height (13 1/2 FT.) CBC pole telescopic
LADDERS NEEDED - 6', 10', 16' 32', 40'

N/A SCAFFOLDING (FT.)

DIFFICULTY FACTOR 3 OUT OF 5

PETITIONER'S

EXHIBIT 4

- 1 No Line of Site From Background, or side yard
 - 2 No Line of Site From Roof
- The only site possible would be front side yard w/ 10FT pole out of ground.
- Neighbor wants to hook up to dish in the future this location is the only spot on the entire property and no other location will have any access to satellite Beel.

86-246-A

CERTIFICATE OF PUBLICATION

TOWSON, MD., November 21, 1985

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on November 21, 1985

THE JEFFERSONIAN

B Venetouli

Publisher
Cost of Advertising

22.00

PETITION FOR VARIANCE

11th Election District

LOCATION: Northwest side of Larch Road, 200' Northeast of Ransleigh Road (11702 Larch Road)
DATE AND TIME: Wednesday, December 11, 1985 at 10:30 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 Variance from Section 400.1 to permit an accessory structure (14 foot satellite dish) to be located in the front yard in lieu of the required rear yard.

Being the property of Peter A. Synodinos, et ux as shown on the plat filed with the Zoning Office.

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
Nov. 21.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

86-246-A

District: 1124

Date of Posting: 11/19/85

Posted for: Variance

Petitioner: Peter A. Synodinos, et ux

Location of property: NW 1/4 Larch Rd., 200' NE Ransleigh Rd.

11702 Larch Rd.

Location of Signs: Facing Larch Rd., between 10' E. & 100' S. W.

are property of Petitioner

Remarks:

Posted by: M. J. Hickey

Date of return: 11/22/85

Number of Signs: 1