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ZONING OFFICE

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COUNTY BOARD OF APPEALS

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87-35-A

8-24-87
JRH

88-0418
Case file

IN THE MATTER OF	:	IN THE CIRCUIT COURT
THE APPLICATION OF	:	FOR BALTIMORE COUNTY
JOSEPH R. RUDICK	:	CASE NO. 87-CG-1038

.....

MEMORANDUM OPINION & ORDER

This appeal concerns the granting of a zoning variance by the County Board of Appeals of Baltimore County (Board) to allow two illuminated signs, each 8 feet high by 30 feet wide with letters 6 feet in height, to be placed on the roof of a building located at the southwest side of Interstate 695 (Beltway) and the northwest side of the B. & O. Railroad tracks. The building is approximately 500 to 600 feet from the Beltway and the sign is to rise above the roof line 16 feet. On August 5, 1986, the Zoning Commissioner granted the variance with restrictions. On March 3, 1987, the Board affirmed the variance with restrictions.

Appellant, People's Counsel for Baltimore County, argues that the Board had no legally sufficient evidence before it upon which to base its decision and that the decision was therefore illegal, arbitrary and capricious. Appellant asserts as specific factors that the Appellee Joseph R. Rudick and his tenant, the Maryland Bedding Co. (Sealy)¹, made no effort for a less extreme

1. The Petition for Zoning Variance lists Joseph R. Rudick as the owner and Sealy of Maryland and Virginia, Inc., as the tenant. Photographic evidence introduced at the hearing identifies the tenant as Maryland Bedding Co.

remedy such as giving maps to truck drivers or placing other signs closer to the property.

Appellee argues in its Memorandum, as reasons for affirming the Board's grant of the variance, that Sealy suffered practical difficulty or unreasonable hardship. In particular, delivery people, prospective employees, retail customers and sales seminar participants all had experienced difficulty in locating the plant. Appellee asserts that because the plant is not visible from the Beltway or Washington Boulevard, a sign is necessary to help persons locate the building and to help expedite the delivery process.

The property in question is a manufacturing and distribution center. There is a show-room on the premises used to display products for retailers, and sales seminars are held on the premises for retail sales people. Sealy does not sell directly to the public from this facility.

Section 307 of the Baltimore County Zoning Regulations provides in pertinent part:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, are hereby given the power to grant variances from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said. sign regulation, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare.

STANDARD OF REVIEW

Therefore, in reviewing the ruling of the Board, it must be kept in mind that "[t]he standard for granting a variance . . . is . . . whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship'; and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 Md. 208, 213 (1973). A-3

The scope of judicial review for this court in an appeal asking to restrict or withdraw a variance is limited.

" . . . Where a legislative body, or a board of county officials pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable." Boyce v. Sembly, 25 Md. App. 43 (1975), citing Stratakis v. Beauchamp, 268 Md. 643, 652-53 (1973).

In limiting the scope of inquiry to whether the decision of the Board is fairly debatable, this Court "may not substitute its judgment for that of the Board. The Court is to determine only whether a reasoning mind could have reached the conclusion reached by the Board." Cicala v. Disability Review Board, 288 Md. 254, 260 (1980).

The question therefore is whether it was fairly debatable that the evidence shows that strict compliance with the regulations would result in practical difficulty or unreasonable hardship.

REVIEW OF DECISION OF COUNTY BOARD OF APPEALS

Appellee argues that there exists an unreasonable business hardship because drivers making deliveries and others find it difficult to locate Sealy, and that because of this hardship they are in need of a variance in order to erect a sign near the Baltimore Beltway. Appellee asserts that the sign is solely for directional purposes. After carefully scrutinizing both the arguments and the record, it is the view of this Court that there exists no practical difficulty or unreasonable hardship that makes it necessary to issue a variance, and that the issue is not fairly debatable.

The proposed signs to be located atop the building a few hundred feet from the Beltway near Exit 10, are intended to be landmarks that will help drivers recognize just where the plant is and just where to exit the Beltway. However, this Court is not at all convinced that the signs, as stated, will in any way achieve the very purpose for which the variance is requested. The signs are to display the word "SEALY". No directions at all are to be posted on the signs. Even with these signs, directions will still need to be given. Direction to a visitor to simply "follow the sign" is ludicrous.

There was testimony in the record that when exiting the Beltway, one would at some point lose sight of the signs. The proposed signs are not a beacon that would lead one through a maze of roadways to the building without specific directions. Testimony was also given by Sealy's General Manager as to specific instructions that were customarily given to visitors. It is obvious that with

this proposed sign, those directions would not change. It would still be necessary to give visitors an exit number and specific directions just as before.

While the Appellee has complained of experienced hardships with respect to employment recruiting, delivery delays and other delays with drivers in finding the plant because of the non-visibility of the plant, Appellee has failed to put these complaints into quantitative terms. How many patrons have gotten lost or have been delayed in the twenty (20) year existence of this plant? How many deliveries have been delayed? Approximately how long have the delays been? Are those drivers going to the plant for the first time? Approximately what percentage of the total patrons or deliverers have been delayed or lost even with specific instructions? How much money, if any, has been lost weekly, monthly, or annually by the delays? These and other pertinent points have not been answered in any way, which makes it impossible to judge the severity of the asserted hardship. They are nothing more than generalized complaints.

While it is understandable that there is a degree of difficulty in finding a facility located off of a secondary road, near to but not clearly visible from a major highway, the purposes for variances are when those practical difficulties or unreasonable hardships . . .

"are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree and severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions . . . should

not be made except where the burden of the general rule upon the individual property would not, because of its unique situation, and the singular circumstances, serve the essential legislative policy . . ." McLean v. Soley, 270 Md. 208, 213 (1973) citing Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74 (1952).

Applying this asserted difficulty to out-of-state truckers who are trying to locate the facility for the first time, this still does not present a unique problem. There are, doubtless, numerous businesses in much the same situation as Sealy that are located very near but not visible from the Beltway. There is nothing unique and particular about Sealy's situation when compared with most other businesses. There are certainly many more businesses which are as difficult or more difficult to gain access to than Sealy.

In answering the question of whether it was fairly debatable that strict compliance with the regulations would result in an unreasonable hardship, it helps to use a little common sense. While the company manufactures and sells Sealy mattresses, the name of the company is not Sealy. Yet the sign is to display "Sealy". The sign has no directional markers leading patrons to the plant. Most probably the name "Sealy" would itself instinctively trigger in the mind of drivers on the Beltway, "A mattress! Do I need a new one?" The number of travelers on the Beltway looking for Sealy is puny when compared to all other users of that heavily traveled roadway.

The sign is to be illuminated 24 hours each day of the year, yet business hours are approximately 7:30 a.m. to 5:30 p.m. With the possible exception of the half hour from 5:00-5:30 in Winter

and a part-time night shift depending on seasonal needs, it is not necessary that the sign be illuminated. In fact the record does not reveal that deliveries are made during darkness. The sole purpose of illumination then seems to be for advertising purposes. The sign is also located in such a place that it is very likely for a driver coming from the north side of the Beltway not to see the sign until he is past the exit, which argues against its directional use. The sighting of the sign would in no way indicate which exit to take. One must be told the exit number and if the exit is thus known, what need is there for the sign?

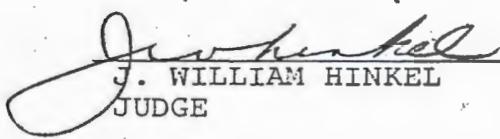
The Board must not have been convinced that the proposed signs were primarily for directional purposes, as evidenced by the last paragraph of its Opinion.

The testimony of Mr. Rudick is that this is an identification sign and not an advertising sign. As such, the Board feels if Sealy Manufacturing Company were to leave this premises, the sign should be removed and any continued use of the sign structure by the new tenants would require a renewed petition for variance.

If Sealy leaves and another tenant moves in, would not the premises be just as difficult to locate?

I am persuaded that there is no unreasonable hardship nor practical difficulty and that this situation is not unique to Appellee. The purpose for the proposed sign is advertising not directional. The issue is not fairly debatable.

Therefore, it is this 7 day of August, 1987,
ORDERED that the decision of the County Board of Appeals
is reversed and the case is remanded with direction to the
Board to deny the Petition for Zoning Variance.


J. WILLIAM HINKEL
JUDGE

JWH/lg

cc: Peter Max Zimmerman, Esquire
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204

Linda M. Richards, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

✓ County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RECEIVED
COUNTY BOARD OF APPEALS
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IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF : FOR BALTIMORE COUNTY
JOSEPH R. RUDICK : CASE NO. 87-CG-1038

MEMORANDUM OPINION & ORDER

This appeal concerns the granting of a zoning variance by the County Board of Appeals of Baltimore County (Board) to allow two illuminated signs, each 8 feet high by 30 feet wide with letters 6 feet in height, to be placed on the roof of a building located at the southwest side of Interstate 695 (Beltway) and the northwest side of the B. & O. Railroad tracks. The building is approximately 500 to 600 feet from the Beltway and the sign is to rise above the roof line 16 feet. On August 5, 1986, the Zoning Commissioner granted the variance with restrictions. On March 3, 1987, the Board affirmed the variance with restrictions.

Appellant, People's Counsel for Baltimore County, argues that the Board had no legally sufficient evidence before it upon which to base its decision and that the decision was therefore illegal, arbitrary and capricious. Appellant asserts as specific factors that the Appellee Joseph R. Rudick and his tenant, the Maryland Bedding Co. (Sealy)¹, made no effort for a less extreme

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remedy such as giving maps to truck drivers or placing other signs closer to the property.

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-2-

STANDARD OF REVIEW

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-3-

REVIEW OF DECISION OF COUNTY BOARD OF APPEALS

Appellee argues that there exists an unreasonable business hardship because drivers making deliveries and others find it difficult to locate Sealy, and that because of this hardship they are in need of a variance in order to erect a sign near the Baltimore Beltway. Appellee asserts that the sign is solely for directional purposes. After carefully scrutinizing both the arguments and the record, it is the view of this Court that there exists no practical difficulty or unreasonable hardship that makes it necessary to issue a variance, and that the issue is not fairly debatable.

The proposed signs to be located atop the building a few hundred feet from the Beltway near Exit 10, are intended to be landmarks that will help drivers recognize just where the plant is and just where to exit the Beltway. However, this Court is not at all convinced that the signs, as stated, will in any way achieve the very purpose for which the variance is requested. The signs are to display the word "SEALY". No directions at all are to be posted on the signs. Even with these signs, directions will still need to be given. Direction to a visitor to simply "follow the sign" is ludicrous.

There was testimony in the record that when exiting the Beltway, one would at some point lose sight of the signs. The proposed signs are not a beacon that would lead one through a maze of roadways to the building without specific directions. Testimony was also given by Sealy's General Manager as to specific instructions that were customarily given to visitors. It is obvious that with

-4-

this proposed sign, those directions would not change. It would still be necessary to give visitors an exit number and specific directions just as before.

While the Appellee has complained of experienced hardships with respect to employment recruiting, delivery delays and other delays with drivers in finding the plant because of the non-visibility of the plant, Appellee has failed to put these complaints into quantitative terms. How many patrons have gotten lost or have been delayed in the twenty (20) year existence of this plant? How many deliveries have been delayed? Approximately how long have the delays been? Are those drivers going to the plant for the first time? Approximately what percentage of the total patrons or deliverers have been delayed or lost even with specific instructions? How much money, if any, has been lost weekly, monthly, or annually by the delays? These and other pertinent points have not been answered in any way, which makes it impossible to judge the severity of the asserted hardship. They are nothing more than generalized complaints.

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The sign is to be illuminated 24 hours each day of the year, yet business hours are approximately 7:30 a.m. to 5:30 p.m. With the possible exception of the half hour from 5:00-5:30 in winter

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and a part-time night shift depending on seasonal needs, it is not necessary that the sign be illuminated. In fact the record does not reveal that deliveries are made during darkness. The sole purpose of illumination then seems to be for advertising purposes. The sign is also located in such a place that it is very likely for a driver coming from the north side of the Beltway not to see the sign until he is past the exit, which argues against its directional use. The sighting of the sign would in no way indicate which exit to take. One must be told the exit number and if the exit is thus known, what need is there for the sign?

The Board must not have been convinced that the proposed signs were primarily for directional purposes, as evidenced by the last paragraph of its Opinion.

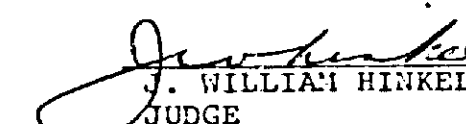
The testimony of Mr. Rudick is that this is an identification sign and not an advertising sign. As such, the Board feels if Sealy Manufacturing Company were to leave this premises, the sign should be removed and any continued use of the sign structure by the new tenants would require a renewed petition for variance.

If Sealy leaves and another tenant moves in, would not the premises be just as difficult to locate?

I am persuaded that there is no unreasonable hardship nor practical difficulty and that this situation is not unique to Appellee. The purpose for the proposed sign is advertising not directional. The issue is not fairly debatable.

-7-

Therefore, it is this 7 day of August, 1987, ORDERED that the decision of the County Board of Appeals is reversed and the case is remanded with direction to the Board to deny the Petition for Zoning Variance.


J. WILLIAM HINKEL
JUDGE

JWH/lg

cc: Peter Max Zimmerman, Esquire
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204

Linda M. Richards, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

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William T. Hackett
William T. Hackett, Chairman
Thomas J. Bollinger
Patricia Phipps



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
September 17, 1987

Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, MD 21204

Re: Case No. 87-35-A
Joseph R. Rudick

Dear Ms. Friedman:

Enclosed is a copy of the Opinion and Order passed today by the County Board of Appeals in accordance with the Circuit Court Order dated August 7, 1987.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Peter Max Zimmerman, Esquire
Mr. Joseph R. Rudick
Gail M. Stern, Esquire
Mr. Bernard Reiss
Norman E. Gerber
Frank H. Fisher
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Margaret E. du Bois



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
March 27, 1987

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

Re: Case No. 87-35-A
Joseph R. Rudick

Dear Mrs. Friedman:

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

The cost of the transcript of the record must be paid by you. Certified copies of 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 file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Jane Holmen
Jane Holmen, Secretary

Enclosures

IN THE MATTER OF THE
APPLICATION OF
JOSEPH R. RUDICK
FOR ZONING VARIANCE
ON PROPERTY LOCATED AT THE
CORNER OF THE SOUTHWEST SIDE
OF I-695 AND NORTHWEST SIDE
OF THE B & O RR (3901 WASHINGTON
BLVD.), 13th District

Zoning File No. 87-35-A

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Docket No. _____
Folio No. _____
File No. _____

PETITION ON APPEAL

The People's Counsel for Baltimore County, Protestant below and Appellant herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of March 3, 1987, in compliance with Maryland Rule B-2(e), files this Petition on Appeal setting forth the grounds upon which this appeal is taken, viz:

That the County Board of Appeals had no legally sufficient evidence upon which to base its Opinion and Order and therefore their Order passed herein is illegal, arbitrary, and capricious.

WHEREFORE, Appellant prays that the Opinion and Order of the Board of Appeals be reversed, and the above-captioned petition be denied by the Circuit Court for Baltimore County.

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

- 2 -

I HEREBY CERTIFY that on this 14th day of March, 1987, a copy of the foregoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to Gail M. Stern, Esquire, and Howard S. Klein, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202.

Peter Max Zimmerman
Peter Max Zimmerman



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
March 27, 1987

Howard S. Klein, Esq.
300 E. Lombard St.
Baltimore, Md. 21202

Dear Mr. Klein:

Re: Case No. 87-35-A
Joseph R. Rudick

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: Joseph R. Rudick
Bernard Reiss
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
October 23, 1986

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. 87-35-A

JOSEPH R. RUDICK
COR. OF SW/S OF I-695 AND NW/S OF
B & O RAILROAD (3901 WASHINGTON BOULEVARD)
13th DISTRICT

RE: PETITION FOR ZONING VARIANCE
§413.6.a.2 - TWO SIGNS TO EXTEND ABOVE
ROOF LINE

8/5/86 - Z.C. GRANTED VARIANCE W/RESTRICTIONS

ASSIGNED FOR:

TUESDAY, FEBRUARY 24, 1987 at 10 a.m.

cc: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.
Mr. Joseph Rudick
Howard S. Klein, Esquire
Mr. Bernard Reiss
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. duBois

Appellant/People's Counsel
Appellee/Petitioner
Counsel for Appellee/Tenant
Appellee/Tenant

Kathi C. Weidenhammer
Administrative Secretary

IN THE MATTER OF THE
APPLICATION OF
JOSEPH R. RUDICK
FOR ZONING VARIANCE
ON PROPERTY LOCATED AT THE
CORNER OF THE SOUTHWEST SIDE
OF I-695 AND NORTHWEST SIDE
OF THE B & O RR (3901 WASHINGTON
BLVD.), 13th District

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Docket No. 37
Folio No. 58
File No. 87CG038

NOTICE OF APPEAL

Please note an appeal from the Opinion and Order of the County Board of Appeals, under date of March 3, 1987, to the Circuit Court for Baltimore County.

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

Handwritten note:
1987 MAR 24 PM 2:19

I HEREBY CERTIFY that on this 14th day of March, 1987, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to Gail M. Stern, Esquire, and Howard S. Klein, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202.

Peter Max Zimmerman
Peter Max Zimmerman

LAW OFFICES

FRANK, BERNSTEIN, CONAWAY & GOLDMAN

8300 GREENSBORO DRIVE
MCLEAN, VIRGINIA 22102
(703) 893-4870

300 EAST LOMBARD STREET
BALTIMORE, MARYLAND 21202

(301) 625-3500
(703) 558-9878

TELECOPIER (301) 625-3702
CABLE FRANKCO
TELEX 87939

AMERICAN CITY BUILDING
COLUMBIA, MARYLAND 21044

(301) 730-9477

WRITER'S DIRECT NUMBER
(301) 925 3733

BY MESSENGER

May 15, 1986

Mr. Carl Richards
Department of Zoning
Room 113
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Petition for Variance for 3901 Washington Boulevard

Dear Mr. Richards:

Thank you for reviewing materials prepared for filing a petition for zoning variance at 3901 Washington Avenue to permit two (2) signs to extend above the roof line of the building.

Enclosed please find three (3) fully-executed petitions, three (3) property descriptions, and ten (10) plats, copies of which you have already reviewed and found satisfactory. Also enclosed please find a check for \$100.00 to cover the filing fee.

Please file the enclosed at the earliest opportunity. Again, we greatly appreciate your taking the time to review this matter with us, both last month and again this week. If you have any questions or problems, please do not hesitate to contact me.

Very truly yours,
Howard S. Klein
Howard S. Klein

HSK:djw

Enclosures

cc: Mr. Bernard Reiss
Gail M. Stern, Esquire

Exhibits
Petitioner's Ex #1 - Plat of subject property
Ex #2 - Photo from Beltway
Ex #3 - Photo - also from Beltway
Ex #4 - Photo - from Washington Blvd. Bridge
Ex #5 - Photo - Property site
Ex #6 - Photo - shows "Andel Tools"
Ex #7 - Plan showing signs
Ex #8 - Photo showing daily sign on Washington Blvd.
Ex #9 - Photo - Ext. 2 - Beltway
Ex #10 - Photo - Sign Ext. 26 -
People Counsel -
Ex #11 - Photos - Sept. 1986 -
Ex #12 - Photo -
Ex #13 - Intro. Office Memo - July 1986 - from Planning Director to J.C.
Ex #14 - Bd. of Appeals Opinion "7-up"

Continued Ex #11 - Photo - "Lushum"
Ex #12 - Photo - "Holiday Inn"

JOSEPH R. RUDICK

#87-35-A

Cor. SW/s of I-695 and NW/s of B & O RR (3901 Washington Blvd.) 13th District
Variance-Two signs to extend above roof line

June 24, 1986	Petitioned filed
Aug. 4	Hearing held on petition by Zoning Commissioner
Aug. 5	Z.C. Order, that the variance to permit two signs to extend above the roof line of the building be GRANTED
Aug. 28	Order for Appeal to C.B. of A. by People's Counsel
Feb. 24, 1987	Hearing before the Board
March 3	Order of the Board GRANTING the variance petitioned for
March 24	Order for Appeal filed in the Cir. Ct. by People's Counsel for Balto. Cty.
March 26	Certificate of Notice sent out
April 23, 1987	Record of proceedings filed in the Circuit Ct. for Baltimore County
July 23	Hearing held in Circuit Court (J. William Hinkel)
August 7	C.B. of A. REVERSED; case remanded "with direction to the Board to deny the Petition for Zoning Variance." (Judge JWH)
Sept 17	Order of the Board DENYING variance in accordance with remand and direction of Circuit Court.

PETITION FOR ZONING VARIANCE
Cor. of SW/s of I-695 and NW/s of B & O RR (3901 Washington Blvd.)
13th Election District
Joseph R. Rudick - Petitioner
Case No. 87-35-A
DATE APPEAL: 8/28/86

- Petition for Zoning Variance/Order of Zoning Commissioner
- Description of Property
- Certificate of Posting
- Certificates of Publication
- Zoning Advisory Committee Comments
- Comments from the Director of Planning
- Order to Enter Appearance
- Notice of Appeal filed by People's Counsel on 8/28/86
- Original Plat, dated 12/5/85
- Petitioner's Exhibit No. 1 - Revised Plans, dated 7/29/86
- Petitioner's Exhibit No. 2a - 2i (9 Black and White Polaroid Photos)
- Plat of Property of Gunther R. Borris, Trustee
- Plat of 7.501 Acre Tract of Maryland Bedding Company, dated 4/21/86
- Letter to all parties from Zoning Commissioner, dated 9/2/86, advising of the filing of an appeal by People's Counsel

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
Peter Max Zimmerman, Esquire
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
(494-2185)

Appellant

Mr. Joseph R. Rudick
3901 Washington Boulevard
Baltimore, Maryland 21227
(247-1400)

Appellee/Petitioner/Owner

Howard S. Klein, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(625-3500)

Attorney for Appellee/Tenant

Mr. Bernard Reiss
President, Sealy of Maryland and Virginia, Inc.
3901 Washington Boulevard
Baltimore, Maryland 21227

Appellee/Tenant

Norman E. Gerber
James Howell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois, Appeals Clerk

Request Notification
" "
" "
" "
" "

Form CM

Jobi Adams - 494-2660
Civil Assignment Commissioner
Settlement Court
Maria Ercolano - 494-2662
Masters Assignment Clerk
Medical Records

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21285-6764
May 22, 1987.

Kathy Rushton - 494-2660
Assignment - Jury - Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers - 494-2661
Assignment - Non-Jury - Motions
Freddie Grove
Assistant Clerk Typist

TO:

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Board of Appeals of Balto Co.

Gail M. Sterne, Esq.
Howard S. Klein, Esq.

RE: NON JURY - 87CG 1036 - IN THE MATTER OF THE APPLICATION OF JOSEPH R. RUDICK ET AL

HEARING DATE: Thursday, July 23, 1987, @ 9:30 a.m.

ON THE FOLLOWING: Appeals: 15 to 30 minutes

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 14 DAYS OF TRIAL should be directed to the attention of Jobi Adams. POSTPONEMENTS WITHIN 14 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

IN THE MATTER OF THE APPLICATION OF JOSEPH R. RUDICK FOR ZONING VARIANCE ON PROPERTY LOCATED AT THE CORNER OF THE SOUTHWEST SIDE OF THE B & O RR (3901 WASHINGTON BLVD.) - 13th DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF

ZONING FILE NO. 87-35-A

CG Doc. No. 37
Folio No. 58
File No. 87-CG-1038

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Thomas J. Bollinger and Patricia Phipps, 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:

No. 87-35-A

June 24, 1986	Petition of Joseph R. Rudick for a variance from Section 413.6.a.2 so as to permit two (2) signs to extend above the roof line of the building.
June 24	Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for August 4, 1986, at 10:15 a.m.
July 8	Certificate of Posting of property - filed
July 17	Certificate of Publication of property - filed
July 15	Comments of Baltimore County Zoning Plans Advisory Committee - filed
July 18	Comments of Baltimore County Director of Planning - filed

#87-35-A

13th District

Corner of SW/s of I-695 and NW/s of B & O RR (3901 Washington Blvd.)

Joseph R. Rudick, Petitioner

1 - SIGN

CASE NO. 87-35-A AT LAW

Joseph R. Rudick, Petitioner
People's Counsel of Baltimore County

RECEIVED FROM THE COUNTY BOARD OF APPEALS, EXHIBITS, BOARD'S ANSWER & TRANSCRIPT FILED IN THE ABOVE ENTITLED CASE, AND ZONING COMMISSIONER'S FILE & EXHIBITS.

Clerk's Office

Date: Apr. 23, 1987

CERTIFICATE OF PUBLICATION

TOWSON, MD., July 17, 1986

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 July 17, 1986

THE JEFFERSONIAN,

Publisher

Cost of Advertising

24.75

PETITION FOR ZONING VARIANCE
13th Election District
Case No. 87-35-A
LOCATION: Corner of Southwest Side of I-695 and Northwest Side of B & O Railroad (3901 Washington Boulevard)
DATE AND TIME: Monday, August 4, 1986, at 10:15 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the petition for Zoning Variance to permit two signs to extend above the roof line of the building.
Being the property of Joseph R. Rudick, as shown on the plat filed with the Zoning Office.
In the event that the Petitioner 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
7/18 July 17, 1986

Joseph R. Rudick
Case No. 87-35-A

August 4, 1986	At 10:15 a.m. hearing held on petition by Zoning Commissioner
August 5	Order of Zoning Commissioner that the Petition for Zoning Variance to permit two signs to extend above the roof line of the building be GRANTED, subject to restrictions.
August 28	Order for Appeal to the C.B. of A. from Phyllis C. Friedman, People's Counsel for Baltimore County.
February 24, 1987	Hearing on appeal before the County Board of Appeals
March 3	Order of the Board ordering that the variance petitioned for be GRANTED with restriction.
March 24	Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County.
March 24	Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County
March 26	Certificate of Notice sent to interested parties
April 23	Transcript of testimony filed Petitioner's Exhibit No. 1 - Plat of subj. property, 1986 " " " 2 thru 12 - Photos and plan People's Counsel's Exhibit No. 1 thru 8 - Photos " " " 9 - Memo, July 1986, from Planning Director to Zoning Commissioner " " " 10 - Board of Appeals Opinion - "7-Up" (Carpenter Realty Corp.)
April 23, 1987	Record of proceedings filed in the Circuit Court for Baltimore County Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

June Holmen
June Holmen, County Board of Appeals



County Board of Appeals of Baltimore County

Room 208 Court House
Towson, Maryland 21201
(301) 494-3180

October 23, 1986

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. 87-35-A

JOSEPH R. RUDICK
COR. OF SW/S OF I-695 AND NW/S OF B & O RAILROAD (3901 WASHINGTON BOULEVARD)
13th DISTRICT

RE: PETITION FOR ZONING VARIANCE
§413.6.a.2 - TWO SIGNS TO EXTEND ABOVE ROOF LINE

8/5/86 - Z.C. GRANTED VARIANCE W/RESTRICTIONS

TUESDAY, FEBRUARY 24, 1987 at 10 a.m.

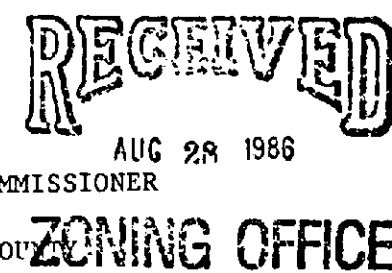
ASSIGNED FOR:

cc: Phyllis Cole Friedman, Esq.	Appellant/People's Counsel
Peter Max Zimmerman, Esq.	" " "
Mr. Joseph Rudick	Appellee/Petitioner
Howard S. Klein, Esquire	Counsel for Appellee/Tenant
Mr. Bernard Reiss	Appellee/Tenant
Norman E. Gerber	" " "
James Howell	" " "
Arnold Jablon	" " "
Jean M. H. Jung	" " "
James E. Dyer	" " "
Margaret E. duBois	" " "

Kathi C. Weidenhammer
Administrative Secretary

RE: PETITION FOR VARIANCE
Corner of SW/S of I-695
& NW/S of B & O RR
(3901 Washington Blvd.)
13th District

JOSEPH R. RUDICK, Petitioner : Case No. 87-35-A



NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of August 5, 1986, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

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 28th day of August, 1986, a copy of the foregoing Notice of Appeal was mailed to Gail M. Stern, Esquire, and Howard S. Klein, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202, Attorneys for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

Gail M. Stern, Esquire
Howard S. Klein, Esquire
300 East Lombard Street
Baltimore, Maryland 21202

June 27, 1986

NOTICE OF HEARING

RE: PETITION FOR ZONING VARIANCE
Cor. of SW/S of I-695 and NW/S of B & O RR
(3901 Washington Blvd.)
13th Election District
Joseph R. Rudick - Petitioner
Case No. 87-35-A

TIME: 10:15 a.m.
DATE: Monday, August 4, 1986
PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

cc: Mr. Joseph R. Rudick
Mr. Bernard Reiss, Sealy of Maryland and Virginia, Inc.
3901 Washington Boulevard
Baltimore, Maryland 21227

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

No. 021634

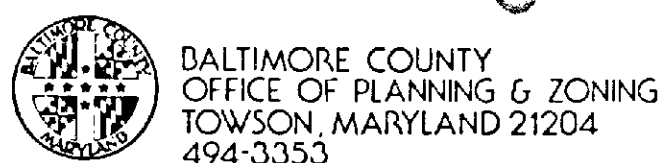
DATE: 8/15/86 ACCOUNT: 61-615-000

AMOUNT: \$ 100.00

RECEIVED FROM: Sealy

FOR: Baltimore # 428

VALIDATION OR SIGNATURE OF CASHIER



ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

September 2, 1986

Mr. Joseph R. Rudick
3901 Washington Boulevard
Baltimore, Maryland 21227

Howard S. Klein, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

Mr. Bernard Reiss
President, Sealy of Maryland
and Virginia, Inc.
3901 Washington Boulevard
Baltimore, Maryland 21227

RE: PETITION FOR ZONING VARIANCE
Cor. of SW/S of I-695 and NW/S of B & O RR
(3901 Washington Blvd.)
13th Election District
Joseph R. Rudick - Petitioner
Case No. 87-35-A

Gentlemen:

Please be advised that on August 28, 1986, an appeal was filed by Appellant, People's Counsel for Baltimore County, from the decision rendered by me in the above-captioned matter.

You will be notified of the date and time of the appeal hearing when it has been scheduled by the Baltimore County Board of Appeals (494-3180).

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

cc: Phyllis Cole Friedman, Esquire
Peter Max Zimmerman, Esquire
Office of People's Counsel for
Baltimore County

Baltimore County Board of Appeals

RE: PETITION FOR VARIANCE
Corner of SW/S of I-695
& NW/S of B & O RR
(3901 Washington Blvd.)
13th District

JOSEPH R. RUDICK, Petitioner : Case No. 87-35-A

ENTRY OF APPEARANCE

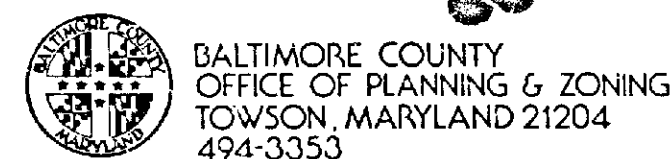
Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

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

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

I HEREBY CERTIFY that on this 3rd day of July, 1986, a copy of the foregoing Entry of Appearance was mailed to Gail M. Stern, Esquire, and Howard S. Klein, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard Street, Baltimore, MD 21202, Attorneys for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman



ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

July 29, 1986

Gail M. Stern, Esquire
Howard S. Klein, Esquire
300 East Lombard Street
Baltimore, Maryland 21202

RE: PETITION FOR ZONING VARIANCE
Cor. of SW/S of I-695 and NW/S of B & O RR
(3901 Washington Blvd.)
13th Election District
Joseph R. Rudick - Petitioner
Case No. 87-35-A

Dear Ms. Stern and Mr. Klein:

This is to advise you that \$74.00 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

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

Sincerely,

Arnold Jablon
Arnold Jablon
Zoning Commissioner

AJmed

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

No. 025832

DATE: 8/6/86 ACCOUNT: 61-615-000

AMOUNT: \$ 74.00

RECEIVED FROM: Sealy

FOR: Baltimore # 428

VALIDATION OR SIGNATURE OF CASHIER

In the matter of Joseph R. Rudick

IN THE CIRCUIT COURT

Vs.

Phyllis C. Friedman, People's Counsel for Balto. Co.

BALTIMORE COUNTY

Docket 37 Folio 58

Case No. 87CG1038

NOTICE OF FILING OF RECORD

TO: Phyllis Cole Friedman June Holmen Mail Stop 2205
Peter Max Zimmerman Mail Stop 2206

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on Apr. 23, 1987.

Angela Stenard
Clerk

RECEIVED
COUNTY BOARD OF APPEALS
FBI APR 27 P 2 25

FILED APR 23 1987

SILBERMANN & ASSOCIATES, INC.

Engineers • Planners • Surveyors

1703 EAST JOPPA ROAD
BALTIMORE, MARYLAND 21224
(301) 661-5888

APRIL 24, 1986

DESCRIPTION OF A PARCEL OF LAND OWNED BY THE MARYLAND BEDDING COMPANY, KNOWN AS #3901 WASHINGTON BOULEVARD, BALTIMORE COUNTY, MARYLAND.

BEGINNING FOR THE SAME AT A POINT OF INTERSECTION OF THE NORTHWESTERN RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD WITH THE WEST RIGHT OF WAY LINE OF THE BALTIMORE COUNTY BELTWAY; SAID PLACE OF BEGINNING BEING ALSO SOUTH 50° 28' 30" WEST 350 FEET FROM THE INTERSECTION OF THE CENTERLINE OF THE BRIDGE AND TRACKS OF THE BALTIMORE AND OHIO RAILROAD AND THE CENTERLINE OF THE BALTIMORE COUNTY BELTWAY AT THE SAID BRIDGE;

THENCE, RUNNING AND BINDING ALONG THE NORTHWESTERN RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD FOR THE THREE FOLLOWING COURSES AND DISTANCES:

1. SOUTH 41° 08' 53" WEST 125.26 FEET
2. SOUTH 54° 31' 27" WEST 199.78 FEET
3. SOUTH 46° 53' 47" WEST 44.71 FEET

THENCE, AROUND THE PROPERTY:

4. SOUTH 88° 43' 00" WEST 214.43 FEET
5. NORTH 00° 11' 12" WEST 379.61 FEET

6. NORTHEASTERLY, WITH THE ARC OF 38.05 FEET AND A RADIUS OF 50.00 FEET ALONG THE CUL-DE-SAC AT THE END OF A FIFTY FOOT WIDE EASEMENT;

7. NORTH 00° 11' 12" WEST 86.60 FEET
8. CURVE TO THE LEFT WITH A RADIUS OF 264.06 FEET AND AN ARC LENGTH OF 41.47 FEET

9. NORTH 09° 11' 00" WEST 182.17 FEET
10. BY A CURVE TO THE RIGHT WITH A RADIUS OF 300.00 FEET AND AN ARC LENGTH OF 19.52 FEET

11. NORTH 89° 48' 48" EAST 457.46 FEET

TO THE SOUTHWESTERN RIGHT OF WAY OF THE BALTIMORE COUNTY BELTWAY; THENCE, RUNNING AND BINDING ON THE SAID SOUTHWESTERN AND WESTERN RIGHT OF WAY OF THE SAID BALTIMORE COUNTY BELTWAY;

APRIL 24, 1986

-2-

DESCRIPTION OF 7.501 ACRE TRACT
3901 WASHINGTON BLVD.

SILBERMANN & ASSOCIATES, INC.

Engineers • Planners • Surveyors

1703 EAST JOPPA ROAD
BALTIMORE, MARYLAND 21224
(301) 661-5888

12. SOUTH 18° 18' 08" EAST 194.37 FEET
13. SOUTH 17° 39' 54" WEST 15.59 FEET
14. SOUTH 00° 01' 32" WEST 297.76 FEET

TO THE PLACE OF BEGINNING.

CONTAINING 7.501 ACRES, MORE OR LESS.

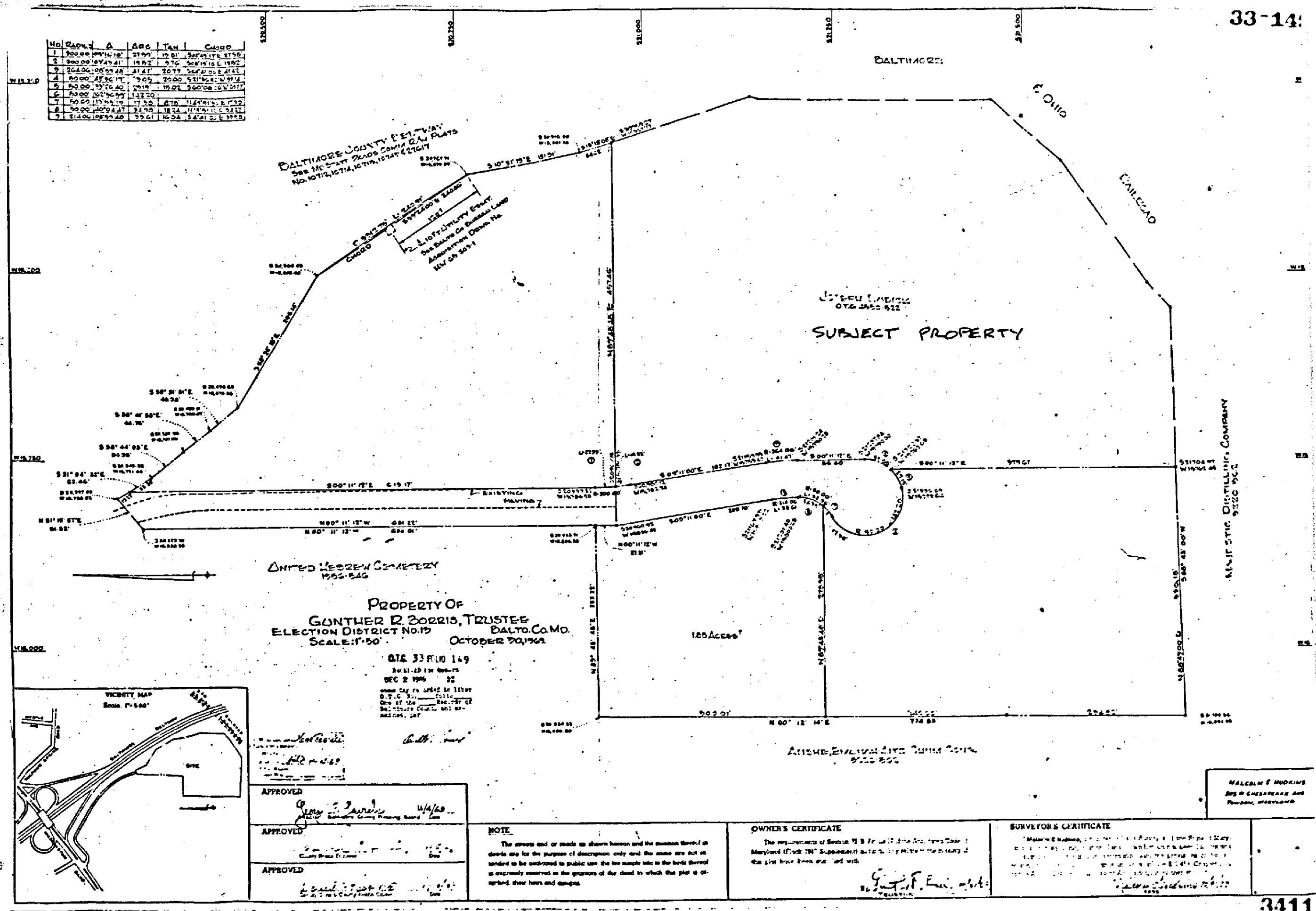
BEING THE SOUTHEASTERN PART OF THE ENTIRE TRACT DESCRIBED IN A DEED FROM MARC-JEFF INC., A BODY CORPORATE OF THE STATE OF MARYLAND, TO GUNTHER R. BORRIS, TRUSTEE, DATED SEPTEMBER 1, 1966, AND RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY IN LIBER 4692, FOLIO 258.

THE TRACT IS DEFINED IN THE FOLLOWING THREE DEEDS:

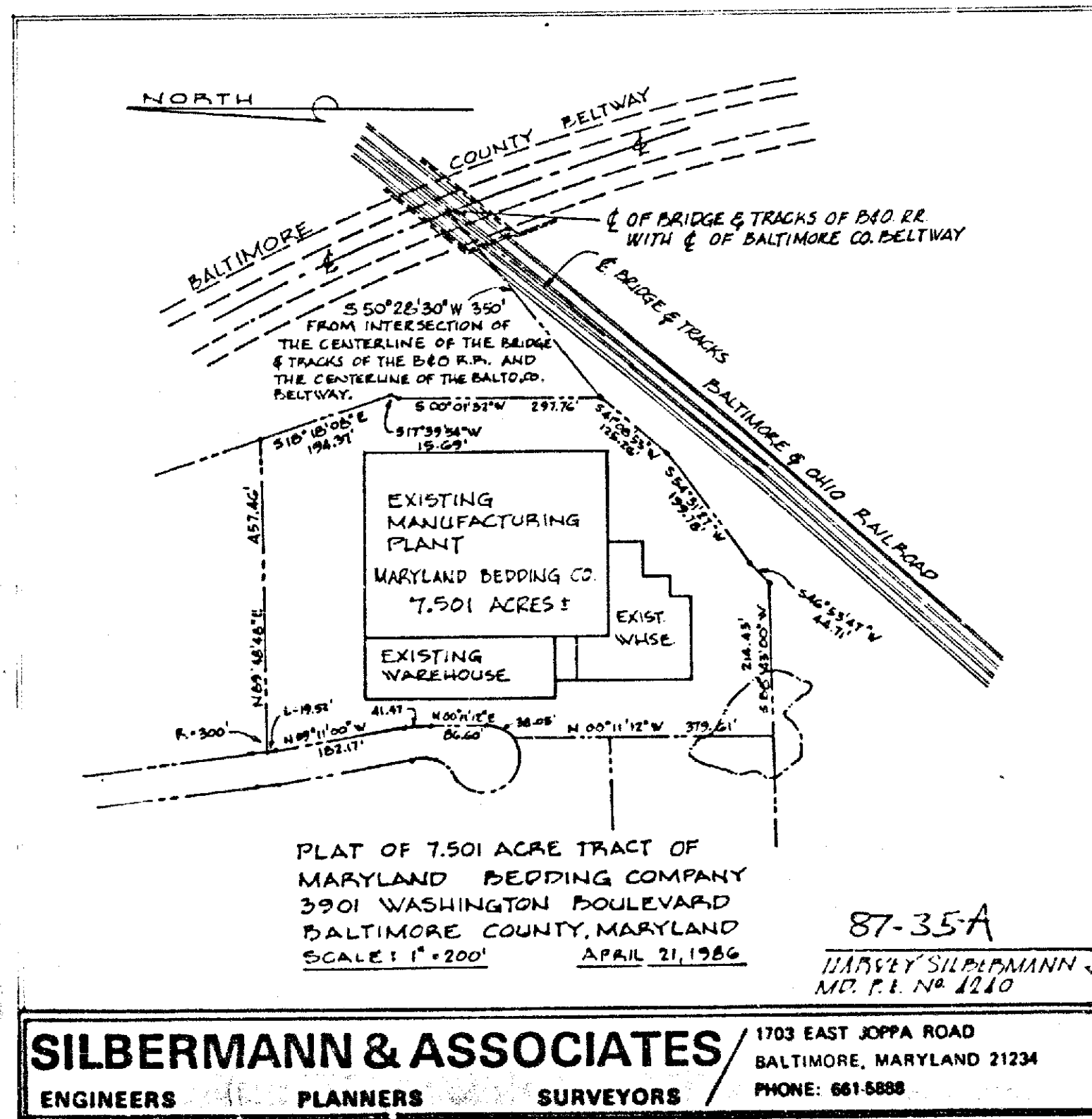
1. LIBER 4469 FOLIO 271 - MARC-JEFF INC. TO RUDICK REALTY, INC. 7.250 ACRES, MORE OR LESS;
2. LIBER 4603 FOLIO 143 - BALTIMORE & OHIO RAILROAD TO JOSEPH R. RUDICK - 0.501 ACRES, MORE OR LESS.
3. LIBER 5050 FOLIO 251 - JOSEPH R. RUDICK & RUTH S. RUDICK, HIS WIFE, TO GUNTHER R. BORRIS, TRUSTEE ET AL. - 0.246 ACRES, MORE OR LESS.



Harvey Silberman
HARVEY SILBERMAN, P.E.
PROFESSIONAL ENGINEER
MARYLAND P.E. # 4240



3411



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 13th Date of Posting: July 5, 1986

Posted for: Varianco

Petitioner: Joseph R. Rudick

Location of property: Cor. of S.W. of 1-685 and N.W. of P.O. RR
(3901 Washington Blvd.)

Location of Signs: Location sign - S/E corner access road to 3901
Varianco sign - E/W of access road approx. 175' from 211th Ave
of subject building

Remarks: _____

Posted by: S.D. Krata Date of return: July 8, 1986

Number of Signs: 2

William T. Hackett
William T. Hackett, Chairman

Thomas J. Bollinger
Thomas J. Bollinger

Patricia Phillips
Patricia Phillips

RECEIVED
COUNTY BOARD OF APPEALS
1981 AUG 11 A 11:11

IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF : FOR BALTIMORE COUNTY
JOSEPH R. RUDICK : CASE NO. 87-CG-1038

MEMORANDUM OPINION & ORDER

This appeal concerns the granting of a zoning variance by the County Board of Appeals of Baltimore County (Board) to allow two illuminated signs, each 8 feet high by 30 feet wide with letters 6 feet in height, to be placed on the roof of a building located at the southwest side of Interstate 695 (Beltway) and the northwest side of the B. & O. Railroad tracks. The building is approximately 500 to 600 feet from the Beltway and the sign is to rise above the roof line 16 feet. On August 5, 1986, the Zoning Commissioner granted the variance with restrictions. On March 3, 1987, the Board affirmed the variance with restrictions.

Appellant, People's Counsel for Baltimore County, argues that the Board had no legally sufficient evidence before it upon which to base its decision and that the decision was therefore illegal, arbitrary and capricious. Appellant asserts as specific factors that the Appellee Joseph R. Rudick and his tenant, the Maryland Bedding Co. (Sealy)¹, made no effort for a less extreme

1. The Petition for Zoning Variance lists Joseph R. Rudick as the owner and Sealy of Maryland and Virginia, Inc., as the tenant. Photographic evidence introduced at the hearing identifies the tenant as Maryland Bedding Co.

remedy such as giving maps to truck drivers or placing other signs closer to the property.

Appellee argues in its Memorandum, as reasons for affirming the Board's grant of the variance, that Sealy suffered practical difficulty or unreasonable hardship. In particular, delivery people, prospective employees, retail customers and sales seminar participants all had experienced difficulty in locating the plant. Appellee asserts that because the plant is not visible from the Beltway or Washington Boulevard, a sign is necessary to help persons locate the building and to help expedite the delivery process.

The property in question is a manufacturing and distribution center. There is a show-room on the premises used to display products for retailers, and sales seminars are held on the premises for retail sales people. Sealy does not sell directly to the public from this facility.

Section 307 of the Baltimore County Zoning Regulations provides in pertinent part:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, . . . are hereby given the power to grant variances . . . from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. . . . Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said. . . . sign regulation, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare.

-2-

STANDARD OF REVIEW

Therefore, in reviewing the ruling of the Board, it must be kept in mind that "[t]he standard for granting a variance . . . is . . . whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship'; and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 Md. 208, 213 (1973).

The scope of judicial review for this court in an appeal asking to restrict or withdraw a variance is limited.

" . . . Where a legislative body, or a board of county officials pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable." Boyce v. Sembly, 25 Md. App. 43 (1975), citing Stratakis v. Beauchamp, 268 Md. 643, 652-53 (1973).

In limiting the scope of inquiry to whether the decision of the Board is fairly debatable, this Court "may not substitute its judgment for that of the Board. The Court is to determine only whether a reasoning mind could have reached the conclusion reached by the Board." Cicala v. Disability Review Board, 288 Md. 254, 260 (1980).

The question therefore is whether it was fairly debatable that the evidence shows that strict compliance with the regulations would result in practical difficulty or unreasonable hardship.

-3-

REVIEW OF DECISION OF COUNTY BOARD OF APPEALS

Appellee argues that there exists an unreasonable business hardship because drivers making deliveries and others find it difficult to locate Sealy, and that because of this hardship they are in need of a variance in order to erect a sign near the Baltimore Beltway. Appellee asserts that the sign is solely for directional purposes. After carefully scrutinizing both the arguments and the record, it is the view of this Court that there exists no practical difficulty or unreasonable hardship that makes it necessary to issue a variance, and that the issue is not fairly debatable.

The proposed signs to be located atop the building a few hundred feet from the Beltway near Exit 10, are intended to be landmarks that will help drivers recognize just where the plant is and just where to exit the Beltway. However, this Court is not at all convinced that the signs, as stated, will in any way achieve the very purpose for which the variance is requested. The signs are to display the word "SEALY". No directions at all are to be posted on the signs. Even with these signs, directions will still need to be given. Direction to a visitor to simply "follow the sign" is ludicrous.

There was testimony in the record that when exiting the Beltway, one would at some point lose sight of the signs. The proposed signs are not a beacon that would lead one through a maze of roadways to the building without specific directions. Testimony was also given by Sealy's General Manager as to specific instructions that were customarily given to visitors. It is obvious that with

-4-

this proposed sign, those directions would not change. It would still be necessary to give visitors an exit number and specific directions just as before.

While the Appellee has complained of experienced hardships with respect to employment recruiting, delivery delays and other delays with drivers in finding the plant because of the non-visibility of the plant, Appellee has failed to put these complaints into quantitative terms. How many patrons have gotten lost or have been delayed in the twenty (20) year existence of this plant? How many deliveries have been delayed? Approximately how long have the delays been? Are those drivers going to the plant for the first time? Approximately what percentage of the total patrons or deliverers have been delayed or lost even with specific instructions? How much money, if any, has been lost weekly, monthly, or annually by the delays? These and other pertinent points have not been answered in any way, which makes it impossible to judge the severity of the asserted hardship. They are nothing more than generalized complaints.

While it is understandable that there is a degree of difficulty in finding a facility located off of a secondary road, near to but not clearly visible from a major highway, the purposes for variances are when those practical difficulties or unreasonable hardships . . .

"are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree and severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions . . . should

-5-

not be made except where the burden of the general rule upon the individual property would not, because of its unique situation, and the singular circumstances, serve the essential legislative policy . . . " McLean v. Soley, 270 Md. 208, 213 (1973) citing Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74 (1952).

Applying this asserted difficulty to out-of-state truckers who are trying to locate the facility for the first time, this still does not present a unique problem. There are, doubtless, numerous businesses in much the same situation as Sealy that are located very near but not visible from the Beltway. There is nothing unique and particular about Sealy's situation when compared with most other businesses. There are certainly many more businesses which are as difficult or more difficult to gain access to than Sealy.

In answering the question of whether it was fairly debatable that strict compliance with the regulations would result in an unreasonable hardship, it helps to use a little common sense. While the company manufactures and sells Sealy mattresses, the name of the company is not Sealy. Yet the sign is to display "Sealy". The sign has no directional markers leading patrons to the plant. Most probably the name "Sealy" would itself instinctively trigger in the mind of drivers on the Beltway, "A mattress! Do I need a new one?" The number of travelers on the Beltway looking for Sealy is puny when compared to all other users of that heavily traveled roadway.

The sign is to be illuminated 24 hours each day of the year, yet business hours are approximately 7:30 a.m. to 5:30 p.m. With the possible exception of the half hour from 5:00-5:30 in winter

-6-

and a part-time night shift depending on seasonal needs, it is not necessary that the sign be illuminated. In fact the record does not reveal that deliveries are made during darkness. The sole purpose of illumination then seems to be for advertising purposes. The sign is also located in such a place that it is very likely for a driver coming from the north side of the Beltway not to see the sign until he is past the exit, which argues against its directional use. The sighting of the sign would in no way indicate which exit to take. One must be told the exit number and if the exit is thus known, what need is there for the sign?

The Board must not have been convinced that the proposed signs were primarily for directional purposes, as evidenced by the last paragraph of its Opinion.

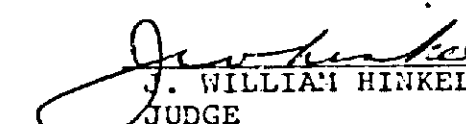
The testimony of Mr. Rudick is that this is an identification sign and not an advertising sign. As such, the Board feels if Sealy Manufacturing Company were to leave this premises, the sign should be removed and any continued use of the sign structure by the new tenants would require a renewed petition for variance.

If Sealy leaves and another tenant moves in, would not the premises be just as difficult to locate?

I am persuaded that there is no unreasonable hardship nor practical difficulty and that this situation is not unique to Appellee. The purpose for the proposed sign is advertising not directional. The issue is not fairly debatable.

-7-

Therefore, it is this 7 day of August, 1987, ORDERED that the decision of the County Board of Appeals is reversed and the case is remanded with direction to the Board to deny the Petition for Zoning Variance.


J. WILLIAM HINKEL
JUDGE

JWH/lg

cc: Peter Max Zimmerman, Esquire
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204

Linda M. Richards, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

-8-

CERTIFICATE OF NOTICE

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

June Holmen
June Holmen
County Board of Appeals of Baltimore
County

Eugene A. Soper
Chief, Current Planning and Development

-004

Unn Deputy Zoning Commissioner
Property inspected 10/11/87, no evidence
of signs extending above roof line
Signs on side of building those of
business for car wash. Signs legal

imb



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
September 17, 1987

Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, MD 21204

Re: Case No. 87-35-A
Joseph R. Rudick

Dear Ms. Friedman:

Enclosed is a copy of the Opinion and Order passed today by the County Board of Appeals in accordance with the Circuit Court Order dated August 7, 1987.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Peter Max Zimmerman, Esquire
Mr. Joseph R. Rudick
Gail M. Stern, Esquire
Mr. Bernard Reiss
Norman E. Gerber
Frank H. Fisher
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Margaret E. du Bois



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
March 27, 1987

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

Re: Case No. 87-35-A
Joseph R. Rudick

Dear Mrs. Friedman:

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

The cost of the transcript of the record must be paid by you. Certified copies of 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 file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Jane Holmen
Jane Holmen, Secretary

Enclosures

IN THE MATTER OF THE
APPLICATION OF
JOSEPH R. RUDICK
FOR ZONING VARIANCE
ON PROPERTY LOCATED AT THE
CORNER OF THE SOUTHWEST SIDE
OF I-695 AND NORTHWEST SIDE
OF THE B & O RR (3901 WASHINGTON
BLVD.), 13th District

Zoning File No. 87-35-A

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Docket No. _____
Folio No. _____
File No. _____

PETITION ON APPEAL

The People's Counsel for Baltimore County, Protestant below and Appellant herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of March 3, 1987, in compliance with Maryland Rule B-2(e), files this Petition on Appeal setting forth the grounds upon which this appeal is taken, viz:

That the County Board of Appeals had no legally sufficient evidence upon which to base its Opinion and Order and therefore their Order passed herein is illegal, arbitrary, and capricious.

WHEREFORE, Appellant prays that the Opinion and Order of the Board of Appeals be reversed, and the above-captioned petition be denied by the Circuit Court for Baltimore County.

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

- 2 -

I HEREBY CERTIFY that on this 14th day of March, 1987, a copy of the foregoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to Gail M. Stern, Esquire, and Howard S. Klein, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202.

Peter Max Zimmerman
Peter Max Zimmerman



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
March 27, 1987

Howard S. Klein, Esq.
300 E. Lombard St.
Baltimore, Md. 21202

Dear Mr. Klein:

Re: Case No. 87-35-A
Joseph R. Rudick

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: Joseph R. Rudick
Bernard Reiss
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
October 23, 1986

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. 87-35-A

JOSEPH R. RUDICK
COR. OF SW/S OF I-695 AND NW/S OF
B & O RAILROAD (3901 WASHINGTON BOULEVARD)
13th DISTRICT

RE: PETITION FOR ZONING VARIANCE
§413.6.a.2 - TWO SIGNS TO EXTEND ABOVE
ROOF LINE

8/5/86 - Z.C. GRANTED VARIANCE W/RESTRICTIONS

ASSIGNED FOR:

cc: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.
Mr. Joseph Rudick
Howard S. Klein, Esquire
Mr. Bernard Reiss
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. duBois

Appellant/People's Counsel
Appellee/Petitioner
Counsel for Appellee/Tenant
Appellee/Tenant

Kathi C. Weidenhammer
Administrative Secretary

IN THE MATTER OF THE
APPLICATION OF
JOSEPH R. RUDICK
FOR ZONING VARIANCE
ON PROPERTY LOCATED AT THE
CORNER OF THE SOUTHWEST SIDE
OF I-695 AND NORTHWEST SIDE
OF THE B & O RR (3901 WASHINGTON
BLVD.), 13th District

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Docket No. 37
Folio No. 58
File No. 87CG038

NOTICE OF APPEAL

Please note an appeal from the Opinion and Order of the County Board of Appeals, under date of March 3, 1987, to the Circuit Court for Baltimore County.

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

Handwritten note:
1987 MAR 26 PM 2:19

I HEREBY CERTIFY that on this 14th day of March, 1987, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to Gail M. Stern, Esquire, and Howard S. Klein, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202.

Peter Max Zimmerman
Peter Max Zimmerman

LAW OFFICES

FRANK, BERNSTEIN, CONAWAY & GOLDMAN

8300 GREENSBORO DRIVE
MCLEAN, VIRGINIA 22102
(703) 893-4870

300 EAST LOMBARD STREET
BALTIMORE, MARYLAND 21202

(301) 625-3500
(703) 558-9878

TELECOPIER (301) 625-3702
CABLE FRANKCO
TELEX 87939

AMERICAN CITY BUILDING
COLUMBIA, MARYLAND 21044

(301) 730-9477

WRITER'S DIRECT NUMBER
(301) 925 3733

BY MESSENGER

May 15, 1986

Mr. Carl Richards
Department of Zoning
Room 113
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Petition for Variance for 3901 Washington Boulevard

Dear Mr. Richards:

Thank you for reviewing materials prepared for filing a petition for zoning variance at 3901 Washington Avenue to permit two (2) signs to extend above the roof line of the building.

Enclosed please find three (3) fully-executed petitions, three (3) property descriptions, and ten (10) plats, copies of which you have already reviewed and found satisfactory. Also enclosed please find a check for \$100.00 to cover the filing fee.

Please file the enclosed at the earliest opportunity. Again, we greatly appreciate your taking the time to review this matter with us, both last month and again this week. If you have any questions or problems, please do not hesitate to contact me.

Very truly yours,
Howard S. Klein
Howard S. Klein

HSK:djw

Enclosures

cc: Mr. Bernard Reiss
Gail M. Stern, Esquire

Exhibits
1 - Plat of subject property
2 - Photo from Beltway
3 - Photo - also from Beltway
4 - Photo - from Washington Blvd. Bridge
5 - Photo - Property site
6 - Photo - shows "Andel Tools"
7 - Plan showing signs
8 - Photo showing double sign on Washington Blvd.
9 - Photo - Ext. 2 - Beltway
10 - Photo - Sign Ext. 26 -
People Counsel -
Ex 1 - Photos - Sept 1986 -
Ex 8 -
9 - Intro. Office Memo - July 1986 - from Planning Director to J.C.
10 - Bd. of Appeals Opinion "7-up"

Continued Ex 11 - Photo - "Lushum"
12 - Photo - "Holiday Inn"

JOSEPH R. RUDICK #87-35-A
Cor. SW/s of I-695 and NW/s of B & O RR (3901 Washington Blvd.) 13th District
Variance-Two signs to extend above roof line
June 24, 1986 Petitioned filed
Aug. 4 Hearing held on petition by Zoning Commissioner
Aug. 5 Z.C. Order, that the variance to permit two signs to extend above the roof line of the building be GRANTED
Aug. 28 Order for Appeal to C.B. of A. by People's Counsel
Feb. 24, 1987 Hearing before the Board
March 3 Order of the Board GRANTING the variance petitioned for
March 24 Order for Appeal filed in the Cir. Ct. by People's Counsel for Balto. Cty.
March 26 Certificate of Notice sent out
April 23, 1987 Record of proceedings filed in the Circuit Ct. for Baltimore County
July 23 Hearing held in Circuit Court (J. William Hinkel)
August 7 C.B. of A. REVERSED; case remanded "with direction to the Board to deny the Petition for Zoning Variance." (Judge JWH)
Sept 17 Order of the Board DENYING variance in accordance with remand and direction of Circuit Court.

- PETITION FOR ZONING VARIANCE
Cor. of SW/s of I-695 and NW/s of B & O RR (3901 Washington Blvd.)
13th Election District
Joseph R. Rudick - Petitioner
Case No. 87-35-A
DATE APPEAL: 8/28/86
1. Petition for Zoning Variance/Order of Zoning Commissioner
 2. Description of Property
 3. Certificate of Posting
 4. Certificates of Publication
 5. Zoning Advisory Committee Comments
 6. Comments from the Director of Planning
 7. Order to Enter Appearance
 8. Notice of Appeal filed by People's Counsel on 8/28/86
 9. Original Plat, dated 12/5/85
 10. Petitioner's Exhibit No. 1 - Revised Plans, dated 7/29/86
 11. Petitioner's Exhibit No. 2a - 2i (9 Black and White Polaroid Photos)
 12. Plat of Property of Gunther R. Borris, Trustee
 13. Plat of 7.501 Acre Tract of Maryland Bedding Company, dated 4/21/86
 14. Letter to all parties from Zoning Commissioner, dated 9/2/86, advising of the filing of an appeal by People's Counsel

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
Peter Max Zimmerman, Esquire
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
(494-2185)
Appellant

Mr. Joseph R. Rudick
3901 Washington Boulevard
Baltimore, Maryland 21227
(247-1400)
Appellee/Petitioner/Owner

Howard S. Klein, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(625-3500)
Attorney for Appellee/Tenant

Mr. Bernard Reiss
President, Sealy of Maryland and Virginia, Inc.
3901 Washington Boulevard
Baltimore, Maryland 21227
Appellee/Tenant

Norman E. Gerber
James Howell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois, Appeals Clerk
Request Notification
" " " " " " " "

Form CM
Johi Adams - 494-2660
Civil Assignment Commissioner
Settlement Court
Maria Ercolano - 494-2662
Masters Assignment Clerk
Medical Records
TO: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.
Board of Appeals of Balto Co.
Gail M. Sterne, Esq.
Howard S. Klein, Esq.
RE: MON JULY - 8700 1036 - IN THE MATTER OF THE APPLICATION OF JOSEPH R. RUDICK ET AL
HEARING DATE: Thursday, July 23, 1987, @ 9:30 a.m.
ON THE FOLLOWING: Appeals: 15 to 30 minutes
Please see the below notations.

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21285-6764
May 22, 1987.

Kathy Rushton - 494-2660
Assignment - Jury - Motions
Marcia Fennell
Assistant Clerk Typist
Irene Summers - 494-2661
Assignment - Non-Jury - Motions
Freddie Grove
Assistant Clerk Typist

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 14 DAYS OF TRIAL should be directed to the attention of Johi Adams. POSTPONEMENTS WITHIN 14 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

IN THE MATTER OF THE APPLICATION OF JOSEPH R. RUDICK FOR ZONING VARIANCE ON PROPERTY LOCATED AT THE CORNER OF THE SOUTHWEST SIDE OF THE B & O RR (3901 WASHINGTON BLVD.) - 13th DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF

CG Doc. No. 37
Folio No. 58
ZONING FILE NO. 87-35-A
File No. 87-CG-1038

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Thomas J. Bollinger and Patricia Phipps, 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:

No. 87-35-A

June 24, 1986 Petition of Joseph R. Rudick for a variance from Section 413.6.a.2 so as to permit two (2) signs to extend above the roof line of the building.

June 24 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for August 4, 1986, at 10:15 a.m.

July 8 Certificate of Posting of property - filed

July 17 Certificate of Publication of property - filed

July 15 Comments of Baltimore County Zoning Plans Advisory Committee - filed

July 18 Comments of Baltimore County Director of Planning - filed

#87-35-A
13th District
Corner of SW/s of I-695 and NW/s of B & O RR (3901 Washington Blvd.)
Joseph R. Rudick, Petitioner
1 - SIGN

CASE NO. 87-35-A AT LAW
Joseph R. Rudick vs. People's Counsel of Baltimore County
RECEIVED FROM THE COUNTY BOARD OF APPEALS, EXHIBITS, BOARD'S ANSWER & TRANSCRIPT FILED IN THE ABOVE ENTITLED CASE, AND ZONING COMMISSIONER'S FILE & EXHIBITS.
Clerk's Office
Date: Apr. 23, 1987

PETITION FOR ZONING VARIANCE
13th Election District
Case No. 87-35-A
LOCATION: Corner of Southwest Side of I-695 and Northwest Side of B & O Railroad (3901 Washington Boulevard)
DATE AND TIME: Monday, August 4, 1986, at 10:15 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing. Petition for Zoning Variance to permit two signs to extend above the roof line of the building.
Being the property of Joseph R. Rudick, as shown on the plat filed with the Zoning Office.
In the event that the Petitioner 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
7/28 July 17

CERTIFICATE OF PUBLICATION
TOWSON, MD., July 17, 1986
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 July 17, 1986
THE JEFFERSONIAN,
Publisher
Cost of Advertising
24.75

Joseph R. Rudick
Case No. 87-35-A
2.
August 4, 1986 At 10:15 a.m. hearing held on petition by Zoning Commissioner
August 5 Order of Zoning Commissioner that the Petition for Zoning Variance to permit two signs to extend above the roof line of the building be GRANTED, subject to restrictions.
August 28 Order for Appeal to the C.B. of A. from Phyllis C. Friedman, People's Counsel for Baltimore County.
February 24, 1987 Hearing on appeal before the County Board of Appeals
March 3 Order of the Board ordering that the variance petitioned for be GRANTED with restriction.
March 24 Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County.
March 24 Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County
March 26 Certificate of Notice sent to interested parties
April 23 Transcript of testimony filed
Petitioner's Exhibit No. 1 - Plat of subj. property, 1986
" " " " 2 thru 12 - Photos and plan
People's Counsel's Exhibit No. 1 thru 8 - Photos
" " " " 9 - Memo, July 1986, from Planning Director to Zoning Commissioner
" " " " 10 - Board of Appeals Opinion - "7-Up" (Carpenter Realty Corp.)
April 23, 1987 Record of proceedings filed in the Circuit Court for Baltimore County
Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.
Respectfully submitted,
June Holmen
June Holmen, County Board of Appeals



County Board of Appeals of Baltimore County
Room 208 Court House
Towson, Maryland 21201
(301) 494-3180
October 23, 1986

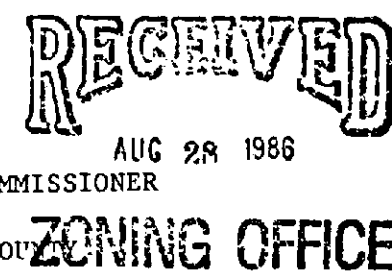
NOTICE OF ASSIGNMENT
NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. 87-35-A
JOSEPH R. RUDICK
COR. OF SW/S OF I-695 AND NW/S OF B & O RAILROAD (3901 WASHINGTON BOULEVARD)
13th DISTRICT
RE: PETITION FOR ZONING VARIANCE 3/13-6.a.2 - TWO SIGNS TO EXTEND ABOVE ROOF LINE
8/5/86 - Z.C. GRANTED VARIANCE W/RESTRICTIONS
TUESDAY, FEBRUARY 24, 1987 at 10 a.m.
ASSIGNED FOR:
cc: Phyllis Cole Friedman, Esq. Appellant/People's Counsel
Peter Max Zimmermann, Esq. " " " "
Mr. Joseph Rudick Appellee/Petitioner
Howard S. Klein, Esquire Counsel for Appellee/Tenant
Mr. Bernard Reiss Appellee/Tenant
Norman E. Gerber
James Howell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. duBois

Kathi C. Weidenhammer
Administrative Secretary

RE: PETITION FOR VARIANCE
Corner of SW/S of I-695
& NW/S of B & O RR
(3901 Washington Blvd.)
13th District

JOSEPH R. RUDICK, Petitioner : Case No. 87-35-A



NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of August 5, 1986, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

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 28th day of August, 1986, a copy of the foregoing Notice of Appeal was mailed to Gail M. Stern, Esquire, and Howard S. Klein, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202, Attorneys for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

Gail M. Stern, Esquire
Howard S. Klein, Esquire
300 East Lombard Street
Baltimore, Maryland 21202

June 27, 1986

NOTICE OF HEARING

RE: PETITION FOR ZONING VARIANCE
Cor. of SW/S of I-695 and NW/S of B & O RR
(3901 Washington Blvd.)
13th Election District
Joseph R. Rudick - Petitioner
Case No. 87-35-A

TIME: 10:15 a.m.
DATE: Monday, August 4, 1986
PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

cc: Mr. Joseph R. Rudick
Mr. Bernard Reiss, Sealy of Maryland and Virginia, Inc.
3901 Washington Boulevard
Baltimore, Maryland 21227

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

No. 021634

DATE 8/15/86 ACCOUNT 61-615-000

AMOUNT \$ 100.00

RECEIVED FROM Sealy

FOR: Baltimore # 428

VALIDATION OR SIGNATURE OF CASHIER



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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

September 2, 1986

Mr. Joseph R. Rudick
3901 Washington Boulevard
Baltimore, Maryland 21227

Howard S. Klein, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

Mr. Bernard Reiss
President, Sealy of Maryland
and Virginia, Inc.
3901 Washington Boulevard
Baltimore, Maryland 21227

RE: PETITION FOR ZONING VARIANCE
Cor. of SW/S of I-695 and NW/S of B & O RR
(3901 Washington Blvd.)
13th Election District
Joseph R. Rudick - Petitioner
Case No. 87-35-A

Gentlemen:

Please be advised that on August 28, 1986, an appeal was filed by Appellant, People's Counsel for Baltimore County, from the decision rendered by me in the above-captioned matter.

You will be notified of the date and time of the appeal hearing when it has been scheduled by the Baltimore County Board of Appeals (494-3180).

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

cc: Phyllis Cole Friedman, Esquire
Peter Max Zimmerman, Esquire
Office of People's Counsel for
Baltimore County

Baltimore County Board of Appeals

RE: PETITION FOR VARIANCE
Corner of SW/S of I-695
& NW/S of B & O RR
(3901 Washington Blvd.)
13th District

JOSEPH R. RUDICK, Petitioner : Case No. 87-35-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

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

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

I HEREBY CERTIFY that on this 3rd day of July, 1986, a copy of the foregoing Entry of Appearance was mailed to Gail M. Stern, Esquire, and Howard S. Klein, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard Street, Baltimore, MD 21202, Attorneys for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman



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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

July 29, 1986

Gail M. Stern, Esquire
Howard S. Klein, Esquire
300 East Lombard Street
Baltimore, Maryland 21202

RE: PETITION FOR ZONING VARIANCE
Cor. of SW/S of I-695 and NW/S of B & O RR
(3901 Washington Blvd.)
13th Election District
Joseph R. Rudick - Petitioner
Case No. 87-35-A

Dear Ms. Stern and Mr. Klein:

This is to advise you that \$74.00 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

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

Sincerely,

Arnold Jablon
Arnold Jablon
Zoning Commissioner

AJmed

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

No. 025832

DATE 8/6/86 ACCOUNT 61-615-000

AMOUNT \$ 74.00

RECEIVED FROM Sealy

FOR: Baltimore # 87-35-A

VALIDATION OR SIGNATURE OF CASHIER

In the matter of Joseph R. Rudick

IN THE CIRCUIT COURT

Vs.

FOR

Phyllis C. Friedman, People's Counsel for Balto. Co.

BALTIMORE COUNTY

Docket 37 Folio 58

Case No. 87CG1038

NOTICE OF FILING OF RECORD

TO: Phyllis Cole Friedman June Holmen Mail Stop 2205
Peter Max Zimmerman Mail Stop 2206

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on Apr. 23, 1987.

Angela Stenard
Clerk

RECEIVED
COUNTY BOARD OF APPEALS
FBI APR 27 P 2 25

FILED APR 23 1987

SILBERMANN & ASSOCIATES, INC.

Engineers • Planners • Surveyors

1703 EAST JOPPA ROAD
BALTIMORE, MARYLAND 21224
(301) 661-5888

APRIL 24, 1986

DESCRIPTION OF A PARCEL OF LAND OWNED BY THE MARYLAND BEDDING COMPANY, KNOWN AS #3901 WASHINGTON BOULEVARD, BALTIMORE COUNTY, MARYLAND.

BEGINNING FOR THE SAME AT A POINT OF INTERSECTION OF THE NORTHWESTERN RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD WITH THE WEST RIGHT OF WAY LINE OF THE BALTIMORE COUNTY BELTWAY; SAID PLACE OF BEGINNING BEING ALSO SOUTH 50° 28' 30" WEST 350 FEET FROM THE INTERSECTION OF THE CENTERLINE OF THE BRIDGE AND TRACKS OF THE BALTIMORE AND OHIO RAILROAD AND THE CENTERLINE OF THE BALTIMORE COUNTY BELTWAY AT THE SAID BRIDGE;

THENCE, RUNNING AND BINDING ALONG THE NORTHWESTERN RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD FOR THE THREE FOLLOWING COURSES AND DISTANCES:

1. SOUTH 41° 08' 53" WEST 125.26 FEET
2. SOUTH 54° 31' 27" WEST 199.78 FEET
3. SOUTH 46° 53' 47" WEST 44.71 FEET

THENCE, AROUND THE PROPERTY:

4. SOUTH 88° 43' 00" WEST 214.43 FEET
5. NORTH 00° 11' 12" WEST 379.61 FEET

6. NORTHEASTERLY, WITH THE ARC OF 38.05 FEET AND A RADIUS OF 50.00 FEET ALONG THE CUL-DE-SAC AT THE END OF A FIFTY FOOT WIDE EASEMENT;

7. NORTH 00° 11' 12" WEST 86.60 FEET
8. CURVE TO THE LEFT WITH A RADIUS OF 264.06 FEET AND AN ARC LENGTH OF 41.47 FEET

9. NORTH 09° 11' 00" WEST 182.17 FEET
10. BY A CURVE TO THE RIGHT WITH A RADIUS OF 300.00 FEET AND AN ARC LENGTH OF 19.52 FEET

11. NORTH 89° 48' 48" EAST 457.46 FEET

TO THE SOUTHWESTERN RIGHT OF WAY OF THE BALTIMORE COUNTY BELTWAY; THENCE, RUNNING AND BINDING ON THE SAID SOUTHWESTERN AND WESTERN RIGHT OF WAY OF THE SAID BALTIMORE COUNTY BELTWAY;

APRIL 24, 1986

-2-

DESCRIPTION OF 7.501 ACRE TRACT

SILBERMANN & ASSOCIATES, INC.

Engineers • Planners • Surveyors

1703 EAST JOPPA ROAD
BALTIMORE, MARYLAND 21224
(301) 661-5888

12. SOUTH 18° 18' 08" EAST 194.37 FEET
13. SOUTH 17° 39' 54" WEST 15.59 FEET
14. SOUTH 00° 01' 32" WEST 297.76 FEET

TO THE PLACE OF BEGINNING.

CONTAINING 7.501 ACRES, MORE OR LESS.

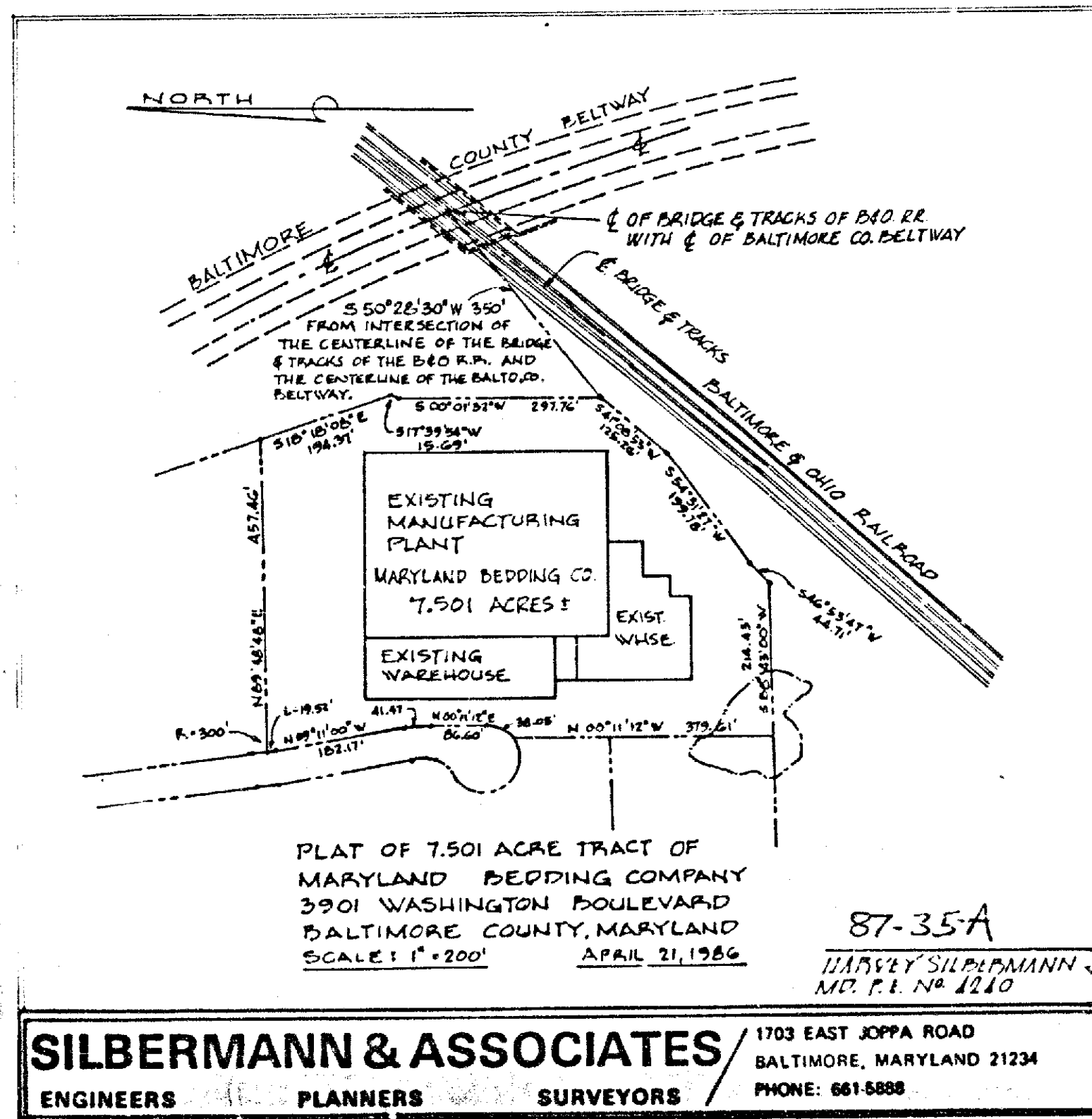
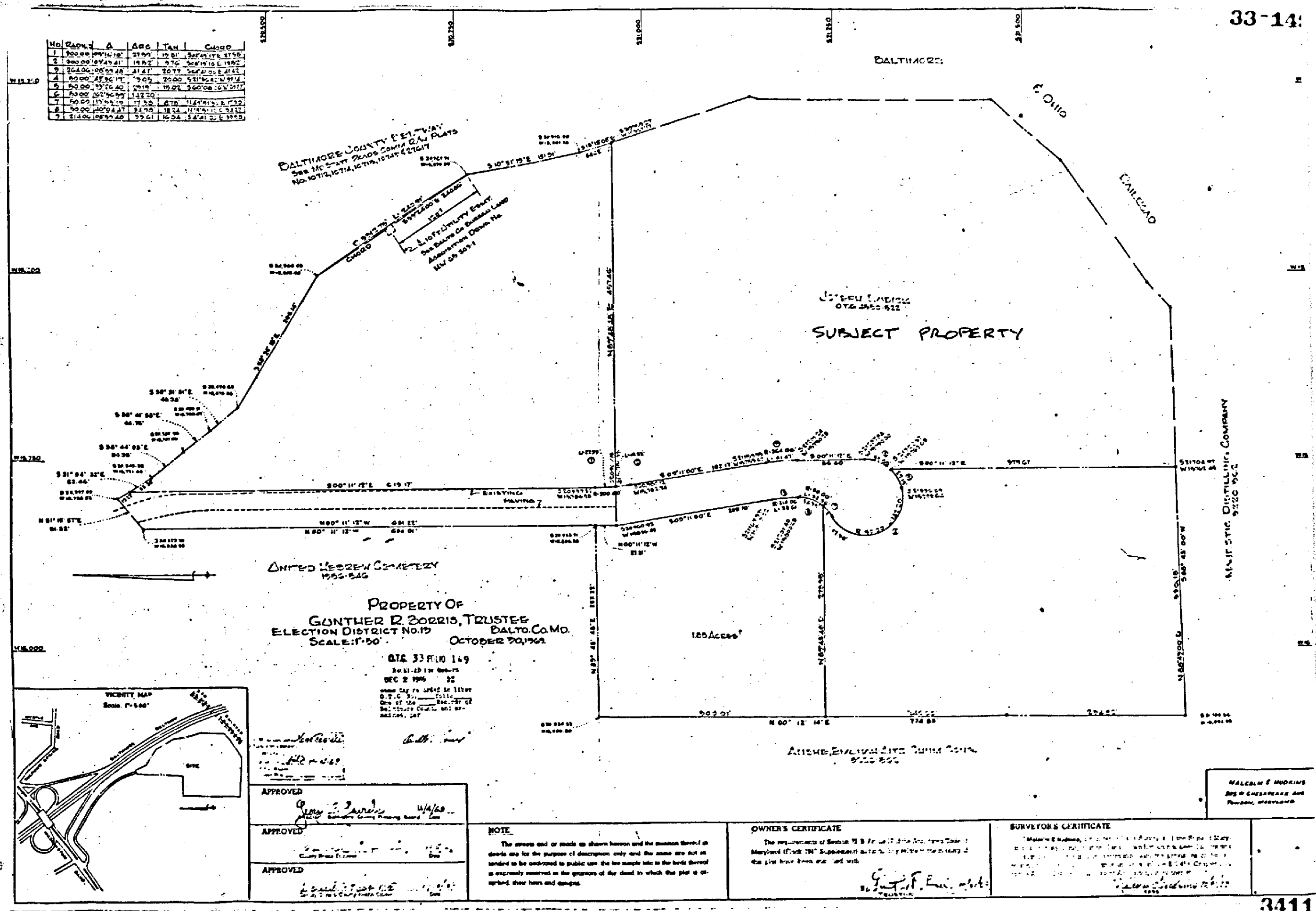
BEING THE SOUTHEASTERN PART OF THE ENTIRE TRACT DESCRIBED IN A DEED FROM MARC-JEFF INC., A BODY CORPORATE OF THE STATE OF MARYLAND, TO GUNTHER R. BORRIS, TRUSTEE, DATED SEPTEMBER 1, 1966, AND RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY IN LIBER 4692, FOLIO 258.

THE TRACT IS DEFINED IN THE FOLLOWING THREE DEEDS:

1. LIBER 4469 FOLIO 271 - MARC-JEFF INC. TO RUDICK REALTY, INC. 7.250 ACRES, MORE OR LESS;
2. LIBER 4603 FOLIO 143 - BALTIMORE & OHIO RAILROAD TO JOSEPH R. RUDICK - 0.501 ACRES, MORE OR LESS.
3. LIBER 5050 FOLIO 251 - JOSEPH R. RUDICK & RUTH S. RUDICK, HIS WIFE, TO GUNTHER R. BORRIS, TRUSTEE ET AL. - 0.246 ACRES, MORE OR LESS.



Harvey Silbermann
HARVEY SILBERMANN, P.E.
PROFESSIONAL ENGINEER
MARYLAND P.E. # 4240



CERTIFICATE OF POSTING
 ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District: 13th Date of Posting: July 5, 1986

Posted for: Varianco

Petitioner: Joseph R. Rudick

Location of property: Cor. of S.W. of 1-685 and N.W. of P.O. RR
(3901 Washington Blvd.)

Location of Signs: Location sign - S/E corner access road to Washington
Varianco sign - E/W of access road approx. 175' from 211th Ave
of subject building

Remarks: _____

Posted by: S.D. Krata Date of return: July 8, 1986

Number of Signs: 2

