

IN RE: PETITIONS FOR SPECIAL HEARING,	* BEFORE THE
SPECIAL EXCEPTION & VARIANCE -	* ZONING COMMISSIONER
SW/S York Road, 470' SE of the	* OF BALTIMORE COUNTY
c/l of Beaver Run Lane	* Case No. 97-550-SPHXA
(10926 York Road)	
8th Election District	
4th Councilmanic District	
George Casper	*
Petitioner	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by George Casper, owner of the subject property, and the Contract Lessee, Lamar Advertising, by Steve Southern, General Manager, through their attorney, Stanley Fine, Esquire. The Petitioners seek approval of an outdoor advertising sign to be located on the subject property, zoned M.L., a distance of less than 1,000 feet, but more than 100 feet, from an existing outdoor advertising sign located in a B.R. zone, on the same side of the street, or, in the alternative, a variance from Section 413.3.G of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an outdoor advertising sign to be located 330 feet from an existing sign on the same side of the street in lieu of the required 1,000 feet. Special exception relief is also requested to permit one (1), hand-painted, custom built outdoor advertising sign, 11' x 40' in dimension, pursuant to Section 413.3 of the B.C.Z.R. The subject property, known as 10926 York Road, is located on the southwest side of York Road near Beaver Dam Run in Cockeysville. The property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

At the time of filing these Petitions, Lamar Advertising was the

ORDER RECEIVED FOR FILING
 Date 8/1/97
 By [Signature]

Contract Lessee; however, at the hearing, Universal Outdoor Advertising was identified as the Lessee. As the result of a corporate reorganization, the Petition was amended in open hearing to reflect the proper corporate tenant. Universal Outdoor Advertising seeks approval to erect a custom built, 11' x 40' outdoor advertising sign on the subject site. The proposed sign will be a single-faced sign, directed towards southbound traffic on York Road. It will not be visible to northbound traffic.

Appearing at the hearing on behalf of the Petitions were Nathan J. Sterner, a representative of Lamar Advertising, William P. Monk, a Land Planning and Zoning Consultant who prepared the site plan for this property and Stanley Fine, Esquire, attorney for the Petitioners. There were no Protestants or other interested persons present.

Mr. Monk testified and presented the site plan, describing the subject property, proposed use and surrounding locale. The property is an irregularly shaped parcel, consisting of approximately .48 acres, zoned M.L.-I.M. The property has frontage on the west side of York Road in Cockeysville, and is improved with two structures, one a smaller building, and the second, a one-story block building.

Mr. Monk testified about the character of the York Road corridor in this area. He indicated that York Road is improved with a series of structures used as offices, retail uses, and commercial operations in this vicinity. A review of the zoning maps for this locale indicate that York Road is generally zoned B.L., B.M., and M.L. In Mr. Monk's judgment, the closest residence to the subject site is approximately 600 to 700 feet away.

As to the Petition for Special Exception, it is clear that the proposed sign must be considered an outdoor advertising sign, as defined in Section 101 of the B.C.Z.R. as "A sign which draws attention to a busi-

RECEIVED
8/14/69
By

ness, commodity, service, entertainment, or other activity, conducted, sold or offered elsewhere than on the premises upon which the sign is located." Clearly, the nature of the advertisement to be shown on the sign will not be for any commodity, good, or service which will be offered at this site. Moreover, Section 413.3 of the B.C.Z.R. provides that outdoor advertising signs are permitted by special exception in the M.L. zone.

Consideration of the Petition for Special Exception is governed by Section 502.1 of the B.C.Z.R. Therein, a series of factors are listed which must be applied to the proposed special exception use. Generally, that Section requires that the Zoning Commissioner consider whether the proposed use will be detrimental to the health, safety and general welfare of the surrounding locale. Section 502 requires a finding as to whether the use will cause adverse traffic impact, be detrimental to the environment, place an undue burden on public utilities and conveniences, etc.

Moreover, special exceptions have been the subject of frequent consideration by the appellate courts of this State. The seminal case is Schultz v. Pritts, 291 Md. 1 (1981). In that case, the Court found that special exception uses, as part of the comprehensive zoning scheme, are presumptively proper. Furthermore, it was observed that special exception uses should not be permitted at a particular location proposed, only, if the use would have an adverse effect above and beyond that ordinarily associated with such use. (See Schultz, infra, at Pg. 21-22.)

Special exception uses have been evaluated more recently by the Court of Special Appeals in Mossburg v. Montgomery County, 107 Md. App. 1 (1995). In that case, the Court noted that it is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are applied in the first instance by making the use permissible by

special exception rather than permitted by right), it is whether the adverse effects in a particular location would be greater than those effects elsewhere in the zone. Thus, the question presented here is not whether the proposed sign will have an adverse impact. To a certain extent, it will, in terms of its aesthetic character and its impact on traffic, for example. The key question, however, is whether those impacts would be greater here than elsewhere in the zone.

This standard of law is particularly relevant in view of the comment offered in this case by the Office of Planning. Their comment states, in essence, that the property is located within the Hunt Valley/Timonium redevelopment area, which was the subject of a study adopted by the Baltimore County Planning Board on April 15, 1993. The comment goes on to state that the study recommends that the area continue to be an attractive and desirable place in which to live and work. Clearly, these are noble and appropriate goals. The comment concludes that every effort must be maintained to preserve and improve the image of the area, and therefore, the Petitioners' requests should be denied.

Taken to its logical conclusion, the Office of Planning would therefore contend that there should be no outdoor advertising signs in the Timonium, Cockeysville, or Hunt Valley area. If the Office of Planning's comment is to be followed, such signs would be nowhere permitted within that vicinity in an effort to improve that portion of the York Road corridor. This comment is clearly at odds with the existing state of the law, as originally set forth in Schultz, infra, and more recently, in Mossburg, infra. The Planning comment nowhere suggests or identifies any specific impact which would be greater at this particular location than it would be elsewhere in the zone.

To the contrary, Mr. Monk testified that the proposed location is a significant distance from the nearest residential structure. Moreover, his uncontradicted testimony was that the York Road corridor in this vicinity is exclusively devoted to retail/commercial/office uses and that the sign would not be inappropriate with those uses. Furthermore, as he observed, the sign will be directed only to southbound traffic, thereby limiting its impact on all traffic which utilizes York Road.

Outdoor advertising signs are not popular with Planners and Environmentalists. However, based on the current state of the law, I feel compelled to grant the special exception here. If the County Council wishes to impose a moratorium on signs in the Hunt Valley/Timonium/Cockeysville area, based on the findings of the redevelopment study, it may do so. However, unless and until such a moratorium is imposed, I am obligated to follow the requirements of Section 502.1 of the B.C.Z.R. as construed by the case law. The Petition for Special Exception will therefore be denied.

The Petition for Special Hearing presents an interesting issue. Testimony and evidence presented was that there exists another outdoor advertising sign approximately 330 feet from the subject site. This second sign is also located on the west side of York Road. The sign is visible in several photographs submitted during the hearing and presently advertises the McDonald's restaurant. Additionally, that sign is apparently located on property zoned B.L.

Section 413.3 of the B.C.Z.R. regulates outdoor advertising signs. Section 413.3.F requires that in any B.L. or B.M. zone, all outdoor advertising signs on vacant land shall be located not less than 500 feet apart. Section 413.3.C states "In any M.L. or M.H. zone, signs shall be placed at least 1,000 feet apart on the same side of the street or highway..."

ORDER OF THE COURT FOR FILING
Date 8/12/07
JEP

Interestingly, the wording of these Sections is such that it is unclear as to whether these requirements apply to nearby signs located in different zones. That is, Section 413.3.F appears to govern the relationship of signs, one to another, located within a B.L. or B.M. zone. Section 413.3.G governs signs located entirely within an M.L. or M.H. zones. The regulations are silent as to the situation here, where one sign is located in an M.L. zone and a second sign located in the B.L. zone.

Apparently, however, this question was raised and addressed in a prior case on the subject property. Specifically, a Petition for Special Exception was granted by then Commissioner John G. Rose in prior Case No. 67-16-X, to permit construction of the sign which presently exists and advertises the McDonald's products. At that time, there apparently existed a sign at or near the location which is the subject of the instant case. That sign apparently has since been removed. The question presented in that older case was whether a sign was permitted in the M.L. zone when same was erected within 1,000 feet of another billboard located in the B.L. zone. Although, Commissioner Rose's opinion was issued in summary fashion and therefore has little discussion, his approval of the Petition for Special Exception and granting of the relief to allow the sign apparently constitutes an affirmative response to that question. That is, he ruled in that case, relating to the subject site, that the two billboards were allowed. Thus, in that such is the law of this case, I will not disturb his prior findings and shall therefore, grant the Petition for Special Hearing. The request for variance to allow a sign within 330 feet of an existing sign in lieu of the required distance of 1,000 feet is unnecessary and is therefore, moot.

ORDER RECEIVED FOR FILING

Date 8/14/97

By [Signature]

Pursuant to the advertising, posting of the subject property, and public hearing on these Petitions held, and for the reasons set forth above, the special exception and special hearing relief shall be granted, and the alternative variance request dismissed as moot.

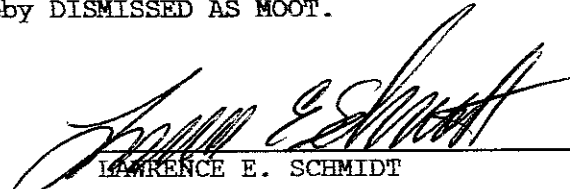
THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14th day of August, 1997 that the Petition for Special Hearing seeking approval of an outdoor advertising sign in an M.L. zone, a distance of less than 1,000 feet, but more than 100 feet, from an existing outdoor advertising sign in a B.R. zone, on the same side of the street, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to permit one (1), hand-painted, custom built outdoor advertising sign, with a single face, 11' x 40' in dimension, pursuant to Section 413.3 of the B.C.Z.R., in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

IT IS FURTHER ORDERED that the Petition for Variance seeking alternative relief from Section 413.3.G of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an outdoor advertising sign to be located 330 feet from an existing sign on the same side of the street in lieu of the required 1,000 feet, be and is hereby DISMISSED AS MOOT.

LES:bjs


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County



Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

August 14, 1997

Stanley Fine, Esquire
20 S. Charles Street
Baltimore, Maryland 21201

RE: PETITIONS FOR SPECIAL HEARING. SPECIAL EXCEPTION & VARIANCE
SW/S York Road, 470' SE of the c/l of Beaver Run Lane
(10926 York Road)
8th Election District - 4th Councilmanic District
George Casper - Petitioner
Case No. 97-550-SPHXA

Dear Mr. Fine:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Special Exception have been granted and the Petition for Variance dismissed as moot, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. George Casper
10926 York Road, Cockeysville, Md. 21030

Mr. Steve Southern, Lamar Advertising
3001 Remington Avenue, Baltimore, Md. 21211

Mr. William P. Monk
222 Bosley Avenue, C6, Towson, Md. 21204

People's Counsel; Case Files

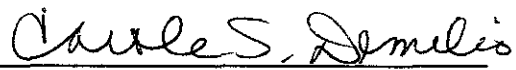


RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
PETITION FOR SPECIAL EXCEPTION		
PETITION FOR VARIANCE	*	ZONING COMMISSIONER
10926 York Road, SW/S York Road, 470'		
SE of c/l Beaver Run Lane	*	OF BALTIMORE COUNTY
8th Election District, 4th Councilmanic	*	
	*	CASE NO. 97-550-SPHXA
Legal Owner(s): George Casper		
Contract Purchaser(s): Lamar Advertising	*	
Petitioners		
* * * * *		

ENTRY OF APPEARANCE

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


PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County


CAROLE S. DEMILIO
 Deputy People's Counsel
 Room 47, Courthouse
 400 Washington Avenue
 Towson, MD 21204
 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 1997, a copy of the foregoing Entry of Appearance was mailed to Stanley Fine, Esq., 20 S. Charles Street, Baltimore, MD 21201, attorney for Petitioners.


PETER MAX ZIMMERMAN

550



Petition for Special Hearing 97-550-SPHXA & POSSIBLE VARIANCE to the Zoning Commissioner of Baltimore County

for the property located at

10926 York Road

which is presently zoned

ML

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

an outdoor advertising sign to be located in an ML zone a distance less than 1000' but more than 100' from an existing outdoor advertising sign located in a BR zone on the same side of the street or in the alternative a variance from Section 413.3 G to permit an outdoor advertising sign to be located 330' from an existing sign on the same side of the street in lieu of the required 1000'.

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

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

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

Contract Purchaser/Lessee

Lamar Advertising

Steve Southern - General Manager

(Type or Print Name)

Steve Southern

Signature

3001 Remington Avenue

Address

Baltimore

MD

21211

City

State

Zipcode

Attorney for Petitioner

Stanley Fine

(Type or Print Name)

Stanley Fine

Signature

20 S. Charles St.

410-539-6967

Address

Phone No

Baltimore

MD

21201

City

State

Zipcode

Legal Owner(s)

George Casper

(Type or Print Name)

George Casper

Signature

(Type or Print Name)

10926 York Road

410-666-1015

Address

Phone No

Cockeysville

MD

21030

City

State

Zipcode

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

William Monk

410-494-8931

Name

222 Bosley Ave, C6, Towson, MD 21204

Address

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

ORDER RECEIVED FOR FILING

Date

By

DROP OFF
NO REVIEW
6/11/97
UCR



550



Petition for Special Exception

97-550-SPAXA
to the Zoning Commissioner of Baltimore County

for the property located at 10926 York Road
which is presently zoned ML

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

- (1) hand painted, custom built outdoor advertising sign (11' x 40')
per Section 413.3.

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

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

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

Contract Purchaser/Lessee

Lamar Advertising

Steve Southern - General Manager
(Type or Print Name)

Steve Southern
Signature

3001 Remington Avenue

Address

Baltimore MD 21211
City State Zipcode

Attorney for Petitioner

Stanley Fine

(Type or Print Name)

Stanley Fine
Signature

20 S. Charles St. 410-539-6967

Baltimore MD 21201
City State Zipcode

Legal Owner(s)

George Casper

(Type or Print Name)

George Casper
Signature

(Type or Print Name)

Signature

10926 York Road 410-666-1015

Address

Phone No

Cockeysville

MD

21030

City

State

Zipcode

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

William Monk

410-494-8931

Name

222 Bosley Ave, C6, Towson, MD 21204

Address

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

ORDER RECEIVED FOR FILING

Date

By

DROP - OFF
No Review
6/11/97 ucr



**ZONING DESCRIPTION
GEORGE CASPER PROPERTY
10926 YORK ROAD
8TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
(SIGN EASEMENT AREA)**

94-550-SPAXA

BEGINNING FOR THE SAME on the westernmost side of York Road 470 feet, more or less, south of the center line of Beaver Run Lane; (1) South 84 degrees 34 minutes 00 seconds West 69.00 feet, (2) South 05 degrees 26 minutes 00 seconds East 2.91 feet, (3) South 87 degrees 00 minutes 00 seconds East 50.90 feet, (4) North 75 degrees 54 minutes 00 seconds East 20.00 feet, (5) North 14 degrees 06 minutes 00 seconds West 7.44 feet, to the place of beginning.

Containing 505.46 square feet of land, more or less.



**ZONING DESCRIPTION
GEORGE CASPER PROPERTY
10926 YORK ROAD
8TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND**

94-550-SPHXA

BEGINNING FOR THE SAME at the centerline of York Road 470 feet, more or less, south of the center line of Beaver Run Lane; (1) South 84 degrees 34 minutes 00 seconds West 160.00 feet, (2) South 30 degrees 43 minutes 00 seconds West 85.5 feet, (3) South 30 degrees 24 minutes 00 seconds West 54.92, (4) South 88 degrees 36 minutes 00 seconds East 103.25 feet, (5) North 15 degrees 43 minutes 00 seconds East 24.75 feet, (6) North 62 degrees 32 minutes 00 seconds East 51.08 feet, (7) South 88 degrees 36 minutes 00 seconds East 94.52, (8) North 14 degrees 06 minutes 00 seconds West 88.90 feet, to the place of beginning.

Containing 0.48 acres of land, more or less.



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No.

038120

DATE 6/11/97 ACCOUNT 001-6151

AMOUNT \$ 650.00

RECEIVED
FROM:

Penn Advertising of Baltimore, Inc. - \$550.00
William Monk, Inc. - \$100.00

FOR:

10926 York Road **ITEM #550**
Special Exception, Special Hearing, Variance
—Maximum Fee—

drop-off petition — no review

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

PROCESS ACTUAL TIME
6/13/1997 6/13/1997 11:29:25

REG MS06 CASHIER KNOWN DRAWER 6

MISCELLANEOUS CASH RECEIPT

Receipt # 001255

DFLN

CR NO. 038120

\$650.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case #37-350-SPHX
10926 York Road
SW/S York Road, 470' SE of
c/1 Beaver Run Lane
8th Election District
4th Councilmanic
Legal Owner(s):
George Casper

Contact Purchaser(s):
Lamar Advertising

Special Hearing: to approve an outdoor advertising sign in a M.L. zone less than 1,000 feet but more than 180 feet from an existing outdoor advertising sign in a B.P. zone on the same side of the street, or in the alternative, a Variance to permit an outdoor advertising sign to be located 330 feet from an existing sign on the same side of the street in lieu of the required 1,000 feet.

Special Exception: for an outdoor advertising sign 111 feet by 40 feet.

Hearing: Wednesday, July 16, 1997, 7:00 PM, Room 407, County Administration Center, 4001 Towson Road, Towson, Maryland 21204

4001 Towson Road, Towson, Maryland 21204
Lamar Advertising, Inc.
Zoning Commission of Baltimore County

NOTES: (1) Hearings are Handicapped Accessible. For special accommodations Please Call (410) 887-3353.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

6/4/02 June 26 C153890

CERTIFICATE OF PUBLICATION

TOWSON, MD.,

6/26, 1997

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 6/26, 1997.

THE JEFFERSONIAN,

A. Henickson

LEGAL AD. - TOWSON



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

June 13, 1997

97-550-
SPHXA

Stanley Fine, Esquire
20 South Charles Street
Baltimore, MD 21201

RE: Drop-Off Petition (Item #550)
10926 York Road
8th Election District

Dear Mr. Fine:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. Once a detailed review has been completed by the staff, those comments will be forwarded to you (hopefully before the hearing).

As Baltimore County is no longer responsible for posting properties, I have enclosed the proper forms pertaining to this. There is a form indicating the posting standards required by Baltimore County, as well as a list of vendors serving the Baltimore County area. The sign must contain the wording indicated on the "Zoning Notice" form and the certificate of posting must be completed by the poster and returned to Gwendolyn Stephens.

If you have any questions regarding the sign posting, please do not hesitate to contact Gwendolyn Stephens at 410-887-3391.

Very truly yours,

W. Carl Richards Jr. /scj

W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:scj

Enclosures



Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than *

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 97-550-SPHXA

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: *

DATE AND TIME: *

REQUEST: SPECIAL EXCEPTION FOR AN OUTDOOR ADVERTISING
SIGN (11 FT. BY 40 FT.). SPECIAL HEARING TO APPROVE AN
OUTDOOR ADVERTISING SIGN IN A M.L. ZONE LESS THAN
1,000 FT. BUT MORE THAN 100 FT. FROM AN EXISTING
OUTDOOR ADVERTISING SIGN IN A B.R. ZONE ON THE SAME

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

SIDE OF THE STREET, OR IN THE ALTERNATIVE, A
VARIANCE TO PERMIT AN OUTDOOR ADVERTISING SIGN
TO BE LOCATED 330 FT. FROM AN EXISTING SIGN
ON THE SAME SIDE OF THE STREET IN LIEU OF
THE REQUIRED 1,000 FT.

CERTIFICATE OF POSTING

RE: Case No.: 97-550SPHXA

Petitioner/Developer: _____

LAMAR ADVERTISING

Date of Hearing/Closing: _____

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at 10926 YORK RD

The sign(s) were posted on 10/6/97
(Month, Day, Year)

Sincerely,

Gary Freund 10/6
(Signature of Sign Poster and Date)

GARY FREUND
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

TO: PUTNEY PUBLISHING COMPANY
June 26, 1997 Issue - Jeffersonian

Please forward billing to:

William Monk
222 Bosley Avenue, #C6
Towson, MD 21204
410-494-8931

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-550-SPHXA
10926 York Road
SW/S York Road, 470' SE of c/l Beaver Run Lane
8th Election District - 4th Councilmanic
Legal Owner(s): George Casper
Contract Purchaser(s): Lamar Advertising

Special Hearing to approve an outdoor advertising sign in a M.L. zone less than 1,000 feet but more than 100 feet from an existing outdoor advertising sign in a B.R. zone on the same side of the street, or in the alternative, a Variance to permit an outdoor advertising sign to be located 330 feet from an existing sign on the same side of the street in lieu of the required 1,000 feet.

Special Exception for an outdoor advertising sign (11 feet by 40 feet).

HEARING: WEDNESDAY, JULY 16, 1997 at 9:00 a.m., Room 407 Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

June 20, 1997

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-550-SPHXA
10926 York Road
SW/S York Road, 470' SE of c/l Beaver Run Lane
8th Election District - 4th Councilmanic
Legal Owner(s): George Casper
Contract Purchaser(s): Lamar Advertising

Special Hearing to approve an outdoor advertising sign in a M.L. zone less than 1,000 feet but more than 100 feet from an existing outdoor advertising sign in a B.R. zone on the same side of the street, or in the alternative, a Variance to permit an outdoor advertising sign to be located 330 feet from an existing sign on the same side of the street in lieu of the required 1,000 feet.
Special Exception for an outdoor advertising sign (11 feet by 40 feet).

HEARING: WEDNESDAY, JULY 16, 1997 at 9:00 a.m., Room 407 Courts Building, 401 Bosley Avenue.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon
Director

cc: George Casper
Lamar Advertising
Stanley Fine
William Monk

- NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY July 1, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

November 21, 1997

NOTICE OF ASSIGNMENT

CASE #: 97-550-SPHXA

IN THE MATTER OF: GEORGE CASPER -Petitioner /Owner;
LAMAR ADVERTISING -Contract Lessee
10926 York Road 8th E; 4th C

(Petition for Special Hearing GRANTED; Petition for
Special Exception GRANTED; Petition for Variance
dismissed as moot /Z.C.)

ASSIGNED FOR:

THURSDAY, MARCH 19, 1998 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the
advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C,
Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient
reasons; said requests must be in writing and in compliance with Rule
2(b) of the Board's Rules. No postponements will be granted within 15
days of scheduled hearing date unless in full compliance with Rule
2(c).

Kathleen C. Bianco
Administrator

cc: Appellant : Peter Max Zimmerman, People's Counsel
for Baltimore County
: Carole S. Demilio, Deputy People's Counsel

Counsel for Petitioner : Stanley Fine, Esquire
Petitioner : George Casper
: Steve Southern /Lamar Advertising

William Monk

Pat Keller, Director /Planning
Lawrence M. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

*Received
argument on PC's
Motion only this
date, filed on 4/16/98*





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

May 20, 1998

Stanley S. Fine, Esquire
KAPLAN, HEYMAN, GREENBERG,
ENGELMAN & BELGRAD, P.A.
Tenth Floor, Sun Life Building
20 S. Charles Street
Baltimore, MD 21201-3220

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

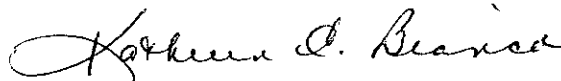
RE: Case No. 97-550-SPHXA
George Casper -Legal Owner;
Laymar Advertising -Contract Lessee

Dear Counsel:

Pursuant to confirmation with counsel, and at the Board's suggestion, the hearing in the subject matter has been reassigned to an earlier time on the originally scheduled date of May 26, 1998. The Board, therefore, will convene for hearing in this matter at 11:30 a.m. on Tuesday, May 26th.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,


Kathleen C. Bianco
Administrator



May 20, 1998

NOTICE OF REASSIGNMENT /CHANGE IN TIME ONLY

CASE #: 97-550-SPHXA IN THE MATTER OF: GEORGE CASPER -Petitioner /Owner;
LAMAR ADVERTISING -Contract Lessee
10926 York Road 8th E; 4th C

(Petition for Special Hearing GRANTED; Petition for Special Exception GRANTED; Petition for Variance dismissed as moot /Z.C.)

The above matter, upon confirmation with counsel, has been reassigned to an earlier time on the originally-scheduled date; and has been

REASSIGNED FOR: TUESDAY, MAY 26, 1998 at 11:30 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

cc: Appellant : Peter Max Zimmerman, People's Counsel
for Baltimore County
: Carole S. Demilio, Deputy People's Counsel

Counsel for Petitioner : Stanley Fine, Esquire
Petitioner : George Casper
: Steve Southern /Lamar Advertising

William Monk

Pat Keller, Director /Planning
Lawrence M. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



TRANSMISSION VERIFICATION REPORT

TIME: 05/20/1998 15:49
NAME: BOARD OF APPEALS
FAX: 4108873182
TEL: 4108873180

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
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MODE

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*Copy of 5/20 letter
and charge in time
only reassignment notice
to D. Fine
(copy to P.C. hard-delivered)*

RE: PETITION FOR SPECIAL HEARING
PETITION FOR SPECIAL EXCEPTION
10926 York Road, SW/s York Rd.
470' SE of c/l Beaver Run Lane
8th Election District
4th Councilmanic District

Legal Owner: George Casper
Lessee : Eller Media Company
Petitioners

* BEFORE THE
* COUNTY BOARD
* OF APPEALS OF
* BALTIMORE COUNTY
* Case No. 97-550-SPHXA

* * * * *

CONDITIONAL DISMISSAL AND ORDER

Upon review of the record and conditional stipulation of dismissal of appeal entered in open hearing, it is this 26th day of May, 1998, ORDERED by the County Board of Appeals of Baltimore County that:

1. The conditional stipulation of dismissal of appeal be, and hereby is, approved.

2. The appeal by People's Counsel for Baltimore County be, and hereby is, dismissed.

3. In consideration of the dismissal, Petitioner hereby amends its Petition for Special Exception by deleting its request to permit one hand-painted, custom built outdoor advertising sign, 11' x 40' in dimension (440 square feet), and substituting in lieu thereof one single-faced outdoor advertising sign, 12' by 25' in dimension (300 square feet), and the Board approves this amendment.

4. The parties' counsel have stipulated their consent to this Order by their undersigned signatures.

APPROVED:

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for
Baltimore County

Stanley Fine
Stanley Fine
Attorney for Petitioner

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl
Lawrence M. Stahl, Acting Chairman

Margaret Worrall
Margaret Worrall

Thomas P. Melvin
Thomas P. Melvin



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

May 26, 1998

Stanley S. Fine, Esquire
KAPLAN, HEYMAN, GREENBERG,
ENGELMAN & BELGRAD, P.A.
Tenth Floor, Sun Life Building
20 S. Charles Street
Baltimore, MD 21201-3220

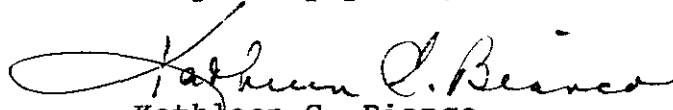
Peter Max Zimmerman
People's Counsel for
Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Case No. 97-5550-SPHXA
George Casper /Eller Media Company

Dear Counsel:

Enclosed please find a copy of the Conditional Dismissal and Order issued this date by the County Board of Appeals of Baltimore County in Case No. 97-550-SPHXA pursuant to agreement of the parties to this matter.

Very truly yours,


Kathleen C. Bianco
Administrator

Enclosure

cc: George Casper, et al /Petitioners
William Monk
Pat Keller, Director /Planning
Lawrence M. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

RECEIVED
COUNTY BOARD OF APPEALS
98 APR -9 PM 2:35

RE: PETITION FOR SPECIAL HEARING
PETITION FOR SPECIAL EXCEPTION
PETITION FOR VARIANCE

10926 York Road, SW/S York Road, 470'
SE of c/l Beaver Run Lane
8th Election District, 4th Councilmanic

Legal Owner: George Casper
Lessee: Universal Outdoor, Inc.

Petitioner

* BEFORE THE
* COUNTY BOARD
* OF APPEALS FOR
* BALTIMORE COUNTY
* Case No. 97-550-SPHXA

*

* * * * *

POST-HEARING MEMORANDUM

Petitioner Universal Outdoor, Inc., by its undersigned counsel, hereby submits this post-hearing memorandum in support of its opposition to the Motion to Dismiss Petition, and further states as follows:

INTRODUCTION

In a written opinion issued August 14, 1997, the Zoning Commissioner of Baltimore County granted a special exception to Petitioner for the construction of an outdoor advertising sign in an M.L. zone, less than 1,000 feet, but more than 100 feet, from an existing sign on the same side of York Road in an adjacent B.R. zone. See Findings of Fact and Conclusions of Law, at 7 (hereinafter "Zon. Comm. Op."). The Commissioner analyzed the law then in effect, and found that there had been no showing that the adverse effects at the proposed location would be greater than at any other location in the zone, nor had the Baltimore County Council (the "County Council") imposed a moratorium on all outdoor advertising signs in the area. Zon. Comm. Op. at 4-5. The Commissioner also relied on the fact that his predecessor had granted a special exception under almost identical circumstances at the same location in 1966. Zon. Comm. Op. at 6.

Shortly after the Commissioner rendered his decision, new sign regulations enacted by the County Council went into effect (hereinafter, the "Act"). The Act provides, inter alia, that "[a] sign for which a special exception . . . has been approved prior to the effective date of Bill

89-97 may be erected in accordance with the sign provisions in effect at the time of said approval" B.C.Z.R. § 450.8.A.3 (1997) (hereinafter the "grandfather clause").

At the hearing on this matter, the People's Counsel argued that the grandfather clause did not apply to the special exception granted to Petitioner. According to the People's Counsel, the County Council's intent was to protect only "final" grants of special exceptions (i.e., those for which all appeals had been exhausted prior to the enactment of the new regulations). Not only was such an intent not manifested in the Act (either expressly or impliedly), furthermore, such an inference flies in the face of established principles of statutory construction.

The People's Counsel also argued that this Board must treat this de novo appeal, "as if the Zoning Commissioner decision does not exist." Motion to Dismiss Petition, ¶ 4 at 1. This is contrary to the provisions set forth in the Baltimore County Code governing appeals from decisions of the Zoning Commissioner.

ARGUMENT

I. The Provisions for De Novo Appeal do not Affect the Enforceability of Commissioner Schmidt's Opinion

The People's Counsel argued in his motion and at the hearing that the Board's charge in this de novo appeal is to address this matter as if the Zoning Commissioner's decision does not exist. While arguably the Board must consider the appeal as if there have been no prior proceedings, there is no authority for the proposition that a valid prior judgment becomes null and void during the course of a pending a de novo appeal. Moreover, the authorities cited by the People's Counsel in connection with this issue are distinguishable.

A. The Original Decision Remains in Effect Pending Appeal

According to Commissioner Schmidt's opinion, his grant of the special exception had the

force and effect of law until such time, if ever, that his decision is reversed on appeal:

“The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.”

Zon. Comm. Op. at 7. The Baltimore County Department of Permits and Development Management agreed that the Petitioner has a valid and enforceable special exception; that office issued a building permit for the outdoor advertising sign at issue on March 23, 1998. A copy of the permit is attached hereto as Exhibit 1.

If, as the People’s Counsel believes, the filing of an appeal has the effect of negating the decisions of the Zoning Commissioner, the Zoning Commissioner would serve no functional role in the zoning process. This was not the intent of the County Council, as demonstrated by the provision in section 602(a) of the Baltimore County Charter that zoning matters are within the Board’s appellate jurisdiction, not its original jurisdiction. If the decisions of the Zoning Commissioner did not have the force and effect of law, petitions for variance and special exceptions would be heard in the first instance by the Board. Furthermore, opponents of unfavorable zoning decisions would file appeals in every case, regardless of their merits, thereby nullifying every decision of the Zoning Commissioner and forcing each zoning petitioner to start over before the Board. Opponents could then withdraw the appeals and force each zoning petitioner to start over before the Zoning Commissioner. These results are illogical and would make the zoning process in Baltimore County a farce.

The de novo appellate procedure in circuit court from judgments of the district court provides a useful analogy. De novo appeals from district court judgments, like de novo appeals to the Board, are heard “afresh.” Pinkett v. State, 30 Md. App. 458, 469, 352 A.2d 358, 365 (1976) (quoting Black’s Law Dictionary (1951)). Maryland law, however, provides that the judgment of the district court remains in effect pending the de novo appeal “unless and until — superseded by a judgment of the circuit court.” Md. Rule 7-112(b). There is no justification for

concluding that the procedure governing the instant appeal to the Board is any different. The People's Counsel confuses the scope of the Board's appellate review (de novo -- as if for the first time) to mean that in reality, the Zoning Commissioner's decision is a nullity. There is no authority in support of such an illogical theory.

**B. The Cases Cited by the
People's Counsel are
Distinguishable**

The Court of Appeals has "never clearly defined the scope of the de novo powers of a county board of appeals in zoning cases." Halle Cos. v. Crofton Civic Assoc., 339 Md. 131, 146, 661 A.2d 682, 689 (1995). The People's Counsel argues that section 603 of the Baltimore County Charter mandates that the Board decide this appeal "as though the zoning officer had made no decision." Motion to Dismiss Petition, at 3 (quoting Lohrmann v. Arundel Corp., 65 Md. App. 309, 319 (1985)). While the cases cited by People's Counsel may support the argument that the Board should conduct its appeal as if there had been no prior decision, they do not support the proposition that the prior decision no longer has the force and effect of law.

None of the authorities cited by the People's Counsel concern appeals from decisions of the Zoning Commissioner of Baltimore County, under the applicable provisions of the County Charter and County Code discussed herein. See Hill v. Baltimore County, 86 Md. App. 642, 587 A.2d 1155, cert. denied, 323 Md. 185, 592 A.2d 178 (1991) (appeal from decision of Baltimore County Medical Board); Lohrmann v. Arundel Corp., 65 Md. App. 303, 500 A.2d 344 (1985) (appeal from decision of Anne Arundel County Office of Planning and Zoning); Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590 (1983) (same).

Section 603 of the Anne Arundel County Charter, the statute that controlled the decisions in Lohrmann and Boehm, provides for a de novo appeal, but does not include the language contained in Section 603 of the Baltimore County Charter mandating a de novo appeal “unless otherwise provided by legislative act of the County Council” (emphasis added). Thus, the County Council is free to restrict the conduct of the de novo appeal. In the case at bar, the County Council has regulated the scope of the de novo appeal in two ways.

First, the County Council has placed limitations on zoning appeals in sections 26-128 and 26-129 of the County Code. Section 26-128 provides that Commissioner Schmidt’s opinion is to be included in the file of the proceedings before the Zoning Commissioner. Baltimore County Code § 26-128(a)(4). The County Code further provides that in any appeal of a Zoning Commissioner’s decision to the Board, “the zoning commissioner’s file and all of the documents contained therein as required by section 26-128 shall be considered in evidence by the board” unless a party objects. Id. § 26-129 (emphasis added). Even if a party objects, the Board may hear the evidence through a “proper witness.” Id. The County Council has thus expressed its intent that the Board consider the opinion of the Zoning Commissioner.

Second, the County Council has limited this de novo appeal through the grandfather clause, which provides that “[a] sign for which a special exception . . . has been approved prior to the effective date of Bill 89-97 may be erected in accordance with the sign provisions in effect at the time of said approval” B.C.Z.R. § 450.8.A.3 (1997). The Zoning Commissioner determined that under the sign provisions in effect at the time, the Petitioner was entitled to a special exception for the installation of the outdoor advertising sign at issue. In enacting the grandfather clause, the County Council expressed its intent that the Zoning Commissioner’s decision be given due effect. This the Board must do.

As demonstrated above, the position taken by the People’s Counsel ignores the clear intent expressed by the County Council in the Act’s grandfather clause and in the relevant provisions of the County Code. Thus, the appeal from the grant of the special exception must be decided under the law as it existed at the time that the Zoning Commissioner rendered his

opinion, and the Board should consider that opinion in reaching its decision.

**II. The New Law Specifically
Exempts the Special Exception
Granted to Petitioner**

People's Counsel argues that the Board must look only to the law as it now exists, without any consideration of the prior law as interpreted by the Zoning Commissioner. The position of the People's Counsel is summarized by the holding of the Court of Appeals that "a change in the law after a decision below and before final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent." Yorkdale Corp. v. Powell, 237 Md. 121, 124, 205 A.2d 269, 271 (1964) (emphasis added). Again, however, through the grandfather clause the County Council evinced a clear intent that the Petitioner may proceed with the construction of its outdoor advertising sign in accordance with the law in effect at the time that the Zoning Commissioner granted the special exception.

The People's Counsel attempts to circumvent this unavoidable result by arguing that the grandfather clause only applies to "final" approvals of special exceptions. This position is refuted by basic principles of statutory construction.

**A. Applicable Principles of
Statutory Construction**

Under Maryland law, "the cardinal rule of statutory construction is to seek and carry out the true intention of the" legislative body, in this case, the County Council. Amalgamated Casualty Ins. Co. v. Helms, 239 Md. 529, 535, 212 A.2d 311, 315-16. "[T]he primary source for determining that intent is the language of the statute." Department of Economic and Employment Development v. Taylor, 108 Md. App. 250, 267, 671 A.2d 523, 532 (1996), aff'd, 344 Md. 687, 690 A.2d 508 (1997). The reviewing body need look no further than the language of the statute when the words of the statute, read with their "ordinary and common meaning," are clear. Polomski v. Mayor & City Council of Baltimore, 344 Md. 70, 75, 684 A.2d 1338, 1340

(1996).

The reviewing body “may not read a meaning into the statute that is not expressly stated or clearly implied.” Rouse-Fairwood Ltd. Partnership v. Supervisor of Assessments, 1998 Md. App. LEXIS 45, *27 (Md. App. 1998); see also Taylor, 108 Md. App. at 267, 671 A.2d at 532 (“Courts are not ‘at liberty to gather a legislative intention contrary to the plain words of the statute or to insert words to express an intention not shown in the original form.’”) (quoting Allen v. Core Target City Youth Program, 275 Md. 69, 77, 338 A.2d 237, 242 (1975) (citing Celanese Corp. v. Davis, 186 Md. 463, 47 A.2d 379 (1946))). Thus, the People’s Counsel, by requesting that the Board ignore clear statutory language, “bears an ‘exceptionally heavy burden’ . . . [and] must show that it is ‘manifest that the legislature could not possibly have meant what it said in that language . . . or that a natural reading of the statute would lead to an absurd result.’” Id. (citations omitted).

**B. Application of the
Principles of Statutory
Construction**

The grandfather clause is abundantly clear. It provides that changes effected by the Act do not apply to special exceptions “approved prior to the effective date” of the Act. B.C.Z.R. § 450.8.A.3. On August 14, 1997, more than thirty days before the effective date of the Act, Commissioner Schmidt in no uncertain terms approved the special exception here at issue. Zon. Comm. Op. at 7. Thus, pursuant to the grandfather clause, the law in effect prior to the Act, (i.e., the law that formed the basis for Commissioner Schmidt’s decision), governs the Board’s review in this case.

By arguing that the Act exempts only those previously approved special exceptions for which all appeals have been exhausted, the People’s Counsel asks the Board to read additional language into the grandfather clause. The People’s Counsel, however, has not overcome the heavy burden against such an interpretation, nor has the People’s Counsel demonstrated that the plain language of the statute leads to an absurd result. To the contrary, the statutory construction advocated by the Petitioner merely recognizes that the Petitioner is entitled to rely on the law as

it existed when Commissioner Schmidt approved the special exception. If this construction is absurd, then, by implication, the same is true of all grandfather clauses.

The language of other grandfather clauses supports the Petitioner's argument that the County Council said what it meant. Grandfather clauses in other zoning bills reveal that the County Council is entirely capable of drafting clauses that are more expansive or more restrictive. Compare County Council Bill No. 30-98, § 5 (1998) (exemption from provisions concerning construction of cellular telephone towers extended "to any person who has had a hearing on a proposed tower before the Zoning Commissioner before the effective date of this Act") with County Council Bill No. 114-94, § 26-565 (1994) (exemption from provisions concerning building moratorium extended only to developers who obtained a building permit or started construction). In fact, the zoning act amended by Bill No. 30-98 contained the very language that the People's Counsel urges the Board to infer in this case. See B.C.Z.R. § 502.7.B ("Paragraph 502.7.A does not apply to a wireless transmitting or receiving facility which is: . . . Authorized by grant of special exception that is final and unappealable on the effective date of this act.") (emphasis added).

The County Council, had it so chosen, could have extended the exemption to anyone whose petition for special exception had merely been heard before the effective date of the Act, or it could have limited the exemption only to those who obtained a building permit in reliance on the grant of a special exception. The County Council could have granted the exemption to anyone whose special exception had survived all appellate attacks (as in former section 502.7.B), as the People's Counsel would prefer, or the County Council could have provided that no one was exempt. In this case, however, the County Council did none of these things. Rather, the County Council, in its legislative capacity, decided to exempt from the Act those Petitioners whose applications for special exceptions had already been approved before the effective date of the Act. The County Council had the necessary language at its command to effect a different result, if it so desired. Since the language is clear, the Board need look no further than the words of the grandfather clause to glean the County Council's intent, and must not interpret that

language in a way contradictory to that clear expression of intent.

Based on the arguments above, the County Council has expressed its intent that the Board look to the law in effect at the time that Commissioner Schmidt approved the special exception. If, through its independent analysis of that law, the Board finds that the Petitioner was entitled to the special exception, the Board should affirm Commissioner Schmidt's decision.

WHEREFORE, for the foregoing reasons Petitioner Universal Outdoor, Inc. respectfully requests that the Board deny the Motion to Dismiss Petition.

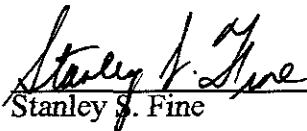


Stanley S. Fine
ROSENBERG PROUTT FUNK
& GREENBERG, LLP
2115 First Maryland Building
25 S. Charles St.
Baltimore, Maryland 21201
(410) 727-6600

Attorneys for Petitioner,
Universal Outdoor, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 1998, a copy of the foregoing Post-Hearing Memorandum was sent via first-class mail, postage prepaid to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, 400 Washington Avenue, Towson, Maryland 21204.



Stanley S. Fine

EXHIBIT 1

**BALTIMORE COUNTY, MARYLAND**

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

DIRECTORBUILDING PERMIT

BUILDINGS ENGINEERPERMIT #: B334106 CONTROL #: SI DIST: 08 PREC: 01
DATE ISSUED: 03/23/98 TAX ACCOUNT #:
CLASS: 07PLANS: CONST 0 PLOT 1 R FLAT 0 DATA 0 ELEC YES PLUM NO
LOCATION: 10926 YORK RD
SUBDIVISION:

OWNERS INFORMATION

NAME: CASPER, GEORGE
ADDR: 10909 YORK RD., 21030

TENANT:

CONTR: UNIVERSAL OUTDOOR, INC.

ENGR:

SELLR:

WORK: CONSTRUCT & ERECT (1) 40'X11'=440SF. FREE-
STANDING, OUTDOOR ADVERTISING SIGN, ILLUMINATED
APPROVED AS PER CASE #97-550-SFHXA, SUBJECT TO
APPEAL OF 4/16/98.

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: STORAGE AND SIGN
EXISTING USE: STORAGE

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION

USE: SIGN

FOUNDATION:

BASEMENT:

SEWAGE:

WATER:

LOT SIZE AND SETBACKS

SIZE: 0000.00 X 0000.00

FRONT STREET:

SIDE STREET:

FRONT SETB: 25'

SIDE SETB: NC

SIDE STR SETB:

REAR SETB: NC

ROSENBERG PROUTT FUNK & GREENBERG, LLP

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

2115 FIRST MARYLAND BUILDING

25 SOUTH CHARLES STREET

BALTIMORE, MARYLAND 21201

(410) 727-6600

FACSIMILE: (410) 727-1115

April 9, 1998

STANLEY S. FINE

E-MAIL ADDRESS

stanley@rpfgr.com

VIA HAND DELIVERY

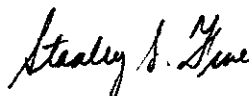
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 97-550-SPHXA
Legal Owner: George Casper
Lessee: Universal Outdoor, Inc.
10926 York Road

Dear Honorable Board:

On behalf of Petitioner, Universal Outdoor, Inc., I am enclosing herewith an original and three copies of a Post-Hearing Memorandum.

Sincerely,



Stanley S. Fine

SSF:sac

0098298.01

Enclosure

cc: Peter Max Zimmerman, Esquire (w/enclosure)
Universal Outdoor, Inc. (w/enclosure)

RECEIVED
COUNTY BOARD OF APPEALS
98 APR -9 PM 2:35

RE: PETITION FOR SPECIAL HEARING
PETITION FOR SPECIAL EXCEPTION
PETITION FOR VARIANCE

10926 York Road, SW/S York Road, 470'

SE of c/l Beaver Run Lane

8th Election District, 4th Councilmanic

Legal Owner: George Casper

Lessee: Lamar Advertising/Universal Outdoor
Advertising

Petitioners

* BEFORE THE
* COUNTY BOARD OF
* APPEALS FOR
* BALTIMORE COUNTY
* Case No. 97-550-SPHXA

* * * * *

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98 APR -9 AM 9:52

PEOPLE'S COUNSEL'S SUPPLEMENTAL MEMORANDUM

In this additional Memorandum, we will approach the appellate issues from a different direction.

First of all, as to choice of law on appeal, we underline that new sign standards apply. Bill 89-97.

Secondly, this conclusion is reinforced because the Zoning Commissioner decision is not final, as that term is understood in legal doctrine.

Thirdly, the de novo character of zoning appeals reinforces the more basic contention that a nonfinal administrative case is subject to the new law.

Fourthly, the clause which allows construction under old standards for "approved" signs sensibly refers to "final" approvals, and protects these from loss under the "vested rights" doctrine. This accords with the canon of statutory interpretation that a law must be read as a whole and in relation to other relevant laws.

Fifthly, as Petitioner (necessarily) concedes that the de novo appeal does exist, it would be absurd to try the appeal under sign standards which no longer exist.

Sixthly, the CBA has recognized these essential points in J.R. Brothers, Inc., Case No. 91-206-X (1992). The clause here which allows construction of finally approved signs does not affect or alter the conclusion as to application of the new law on appeal.

I. Application of Present Law

To illustrate the application of new law to pending cases (Motion to Dismiss, discussion at page 4), we underline O'Donnell v. Bassler, 289 Md. 501 (1981). There, the Howard County CBA approved an airfield special exception. While on appeal, the County Council passed a new law which abolished the use. The Circuit Court nevertheless applied the earlier 1961 regulations. The Court of Special Appeals found that the 1977 law would apply, but that, because "validly granted under the 1961 Regulations," the use could continue as a lawful nonconforming use. 289 Md., at 507.

But, the Court of Appeals reversed, stating that the 1977 law would apply, in the absence of vested rights, and that there was no nonconforming use. 289 Md., at 508. In essence, the CBA approval was not a final approval, and conferred no benefits to the property owner.

As to vested rights generally, a classic case is Rockville Fuel & Feed Co. v. Gaithersburg, 266 Md. 117 (1972). There, the Court sustained a new zoning text amendment which eliminated the special exception, even though finally approved in the earlier Rockville Fuel & Feed case, 257 Md. 183 (1970). Despite both final approval and the expenditure of over \$375,000.00, there was lacking the valid permit and substantial construction necessary to qualify for vested rights.

Clearly, there are no vested rights in the present case.

Moreover, the Maryland rule to require application of new law to pending administrative appeals is consistent with the federal rule. See Ziffrin v. United States, 318 U.S. 73, 78 (1943):

"A change in the law between a *nisi prius* (lower) and an appellate court decision requires the appellate court to apply the changed law."

Both Ziffrin and the later Burlington Truck Lines v. U.S., 371 U.S. 156 (1962) were cited in Yorkdale Corp. v. Powell, 237 Md. 121 (1964).

II. Finality

Here, as in O'Donnell, there is not a valid final administrative approval.

The Supreme Court recently wrote:

"As a general matter, two conditions must be satisfied for agency action to be 'final': First, the action must mark the 'consummation' of the agency's decisionmaking

process, Chicago & Southern Air Lines Inc. v. Waterman S.S. Corp., 333 U.S. 103, 113, 68 S.Ct. 431, 437, 92 L.Ed. 568 (1948)—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow,’ Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic, 400 U.S. 62, 71, 91 S.Ct. 203, 209, 27 L.Ed.2d 203 (1970).”

Bennett v. Spear, 117 S.Ct. 1154, 1168 (1997). This accords with Maryland law articulated in Md. Comm. on Human Relations v. BG&E Co., 296 Md. 46, 56 (1983):

“All of these cases lead to the conclusion that ordinarily the action of an administrative agency, like the order of a court, is final if it determines or concludes the rights of the parties, or if it denies the parties means of further prosecuting or defending their rights and interests in the subject matter in proceedings before the agency, thus leaving nothing further for the agency to do. Courts in other jurisdictions that have considered the precise question here have applied this general principle and have held that an administrative agency appeal board’s order of remand to a hearing examiner is not final because further agency proceedings are required in order to determine the rights of the parties.”

Moreover, Cooper, in his leading text on State Administrative Law, states:

“Similarly, it is held that orders of inferior officers (*e.g.*, deputy commissioners) which are subject to administrative review, are not final for purposes of judicial review.”

2 Cooper, *op.cit.*, 591 (1965).

Clearly, a zoning commissioner decision on de novo appeal is not a final administrative action.

III. De Novo Appeals

The Boehm, Lohrmann, and Hill cases have been reviewed in the Motion to Dismiss. They stand for the proposition that a zoning appeal under Charter Sec. 603 and Code Sec. 26-132 begins the case as a matter of original jurisdiction. It is more than a fresh look, or even a new exercise of discretion. It is a new case; and the Zoning Commissioner trial record is of no concern.

A zoning commissioner approval, once appealed, simply does not count at all. It is nowhere close to meeting any element of finality.

The CBA then naturally applies in its proceeding the law currently in existence.

IV. The Impact of BCZR §450.8

Petitioner relies on BCZR 450.8.A.3 to secure survival of its approval. BCZR §450.8A provides, in pertinent part:

“450.8 ADMINISTRATION AND COMPLIANCE.

A. Interpretation.

1. In considering requests for special exceptions and variances, the provisions of this section shall be strictly construed unless the demonstrable effect of a liberal construction will prevent or reduce the confusion and visual clutter caused by excessive signage.”

* * *

“3. A sign for which a special exception, development plan, use permit or variance has been approved prior to the effective date of Bill 89-97 may be erected in accordance with the sign provisions in effect at the time of said approval, subject to the abatement provisions of Section 450.8.D.”

The inclusion of the “strict construction” provision is a signal of a statutory purpose to implement the new standards to the extent feasible.

Even under normal canons of statutory construction, the provision to allow construction of signs with “approved” special exceptions must be read, in conjunction with Charter and Code appeal provisions, to mean final approval.

It is often said that “the context” surrounding the enactment of a statute...” is pertinent “... to determine the intention of the legislature.” Comptroller v. Jameson, 332 Md. 723, 733 (1993).

Otherwise stated,

“The statutory language is not read in isolation, but ‘in light of the full context in which [it] appear[s], and in light of external manifestations of intent or general purpose available through other evidence.’”

Stanford v. Md. Police Training, 346 Md. 374, 380 (1997).

It is also elementary that “... statutes are to be read ‘so that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless or migatory.’” Wesley Chapel v. Baltimore County, 347 Md. 125, 148 (1997).

In conjunction with the de novo appeal procedure, the BCZR 450.8.A.3 grandfather clause allows sign construction based on special exceptions finally approved under the old law, giving protection from the vested rights standard. But it does not go so far as to immunize or inscribe in stone preliminary approvals which remain in the appeal pipeline. If it went that far, it would negate the de novo appeal.

V. Petitioner's Concession

Petitioner necessarily concedes that the de novo appeal rights remain in place. Indeed, bill 89-97 in no way affects such rights.

This concession leads to the same conclusion arrived at above. With a new hearing to be convened, the trial must proceed according to the new zoning law in existence, not the old zoning law made extinct.

It would be absurd to try the case de novo under a nonexistent set of legal standards. Moreover, it undermines the purpose of the County Council's enactment of stronger sign standards.

VI. The J.R. Brothers Case

This CBA has recognized the general rule which requires application of newly enacted zoning standards to cases on appeal. J.R. Brothers, *supra*, citing Yorkdale.

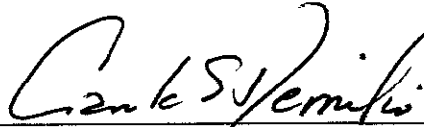
There is nothing in Bill 89-97 in BCZR 450.8 which warrants departure from the well-established rule. Moreover, there is no more "equity" in favor of Petitioner here than there was in J.R. Brothers.

Conclusion

For the foregoing reasons, the Petitions for Special Hearing, Special Exception and Variance should be dismissed.



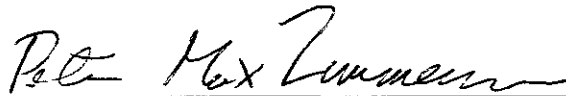
Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demiko
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I hereby certify that on this 9 day of April, 1998 a copy of the foregoing People's Counsel's Supplemental Memorandum was mailed to Stanley Fine, Esq., 20 S. Charles Street, Baltimore, MD 21201, attorney for Petitioners.



Peter Max Zimmerman



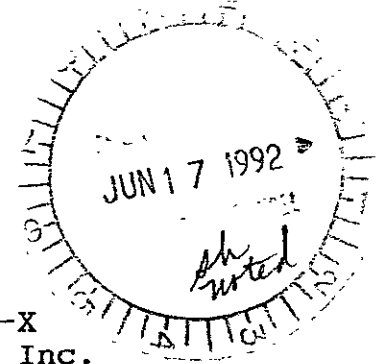
County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

PCF: _____
PMZ: _____

June 17, 1992

Michael T. Wyatt, Esquire
404 Allegheny Avenue
Towson, MD 21204



RE: Case No. 91-206-X
J. R. Brothers, Inc.

Dear Mr. Wyatt:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Sincerely,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Kevin A. Dunne, Esquire
J. R. Brothers, Inc. /Penn Advertising
of Baltimore, Inc.
Andrew Janquitto, Esquire
✓ People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning Admin.

IN THE MATTER OF THE
THE APPLICATION OF
J.R. BROTHERS, INC.
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED ON THE WEST
SIDE YORK ROAD, 78' NORTH OF
CENTERLINE OF LANDSTREET ROAD
(2306 YORK ROAD)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* * * *

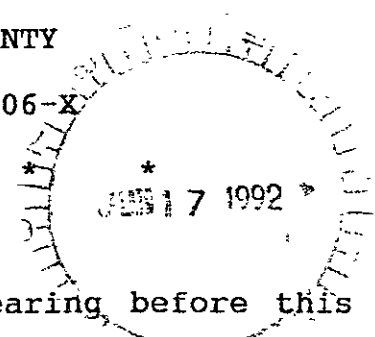
* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 91-206-X

* * *

O P I N I O N

The above-entitled matter came on for hearing before this Board on December 18, 1991 as a result of an appeal filed by the Maryland State Fair and Agricultural Society, Inc. (Timonium Fairgrounds). Before the Zoning Commissioner for Baltimore County, the Petitioner, J. R. Brothers, Inc., was granted a special exception for a 12-foot by 25-foot back-to-back sign at the subject property located at 2306 York Road in the northern section of Baltimore County. The Protestants did not appear or participate before the Zoning Commissioner and now appear before this Board represented by Michael T. Wyatt, Esquire. The Petitioner appeared represented by Kevin A. Dunne, Esquire. Also, Phyllis C. Friedman, People's Counsel for Baltimore County, participated in the proceedings. Appeals to this Board are de novo.

It was the intention of the Board to take testimony on the issue of the special exception. However, Mr. Wyatt filed an oral Motion to Dismiss and made legal argument to the Board contending that the Board had no authority to proceed to take testimony since the issue of granting a special exception for this particular sign in a B.R. zone was moot. The Board was referred to the recent



passage of Council Bill No. 87-91. This bill prohibits outdoor advertising signs in B.R. zones and contains no language for grandfathering. The subject property is located in a B.R. zone.

A review of the file, the documents contained therein, and the memorandums filed by the parties clearly discloses to this Board that the bill was passed after the granting of the special exception for the sign by the Zoning Commissioner below but before the beginning of the taking of testimony before this Board.

The Board has received and reviewed all of the legal memorandums submitted by the parties in this case. After a thorough and complete review of these memorandums, it is the opinion of this Board that the law is well-settled that this Board may not proceed to take testimony for the purpose of granting a special exception for the requested sign by reason of the passage of Council Bill No. 87-91. The law is set out in detail in the case of Yorkdale Corporation v. Powell, 237 Md. 121 (1963) decided by the Court of Appeals. This case is dispositive of this Board's ruling and leaves the Board with no right to exercise any administrative discretion in making this ruling. The Board agrees with Counsel for Protestants that the issue before it is moot by reason of the passage of Bill 87-91.

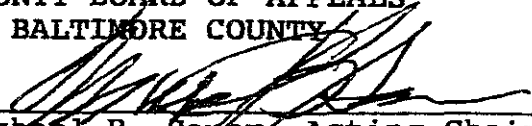
O R D E R

FOR THE AFOREGOING REASONS, IT IS THEREFORE this 17th day of June, 1991 by the County Board of Appeals of Baltimore County ORDERED that the Motion filed by the Protestants be and is hereby GRANTED; and it is further

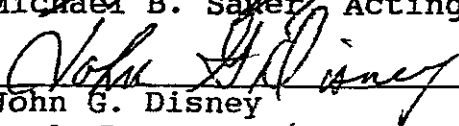
ORDERED that the Petition for Special Exception is DENIED.

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

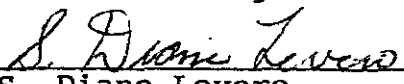
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



Michael B. Saker, Acting Chairman



John G. Disney



S. Diane Levero

RE: PETITION FOR SPECIAL HEARING
PETITION FOR SPECIAL EXCEPTION
PETITION FOR VARIANCE

10926 York Road, SW/S York Road, 470'
SE of c/l Beaver Run Lane
8th Election District, 4th Councilmanic

Legal Owner: George Casper
Lessee: Universal Outdoor, Inc.

Petitioners

* BEFORE THE
* COUNTY BOARD
* OF APPEALS FOR
* BALTIMORE COUNTY
* Case No. 97-550-SPHXA

RECEIVED
COUNTY BOARD OF APPEALS
98 MAR 11 PM 12:36

* * * * *

OPPOSITION TO MOTION TO DISMISS PETITION

Petitioners George Casper and Universal Outdoor, Inc., by their undersigned counsel, hereby oppose the Motion to Dismiss Petition filed by the People's Counsel for Baltimore County, and further state as follows:

INTRODUCTION

In a written opinion issued August 14, 1997, the Zoning Commissioner of Baltimore County granted a special exception to Petitioners for the construction of an outdoor advertising sign in an M.L. zone, less than 1,000 feet, but more than 100 feet, from an existing sign on the same side of York Road in an adjacent B.R. zone. See Findings of Fact and Conclusions of Law, at 7 (hereinafter "Zon. Comm. Op."). The Commissioner analyzed the law then in effect, and found that there had been no showing that the adverse effects at the proposed location would be greater than at any other location in the zone, nor had the County Council imposed a moratorium on all outdoor advertising signs in the area. Zon. Comm. Op. at 4-5. The Commissioner also relied on the fact that his predecessor had granted a special exception under almost identical circumstances at the same location in 1966. Zon. Comm. at 6.

Shortly after the Commissioner rendered his decision, new sign regulations enacted by the Baltimore County Council went into effect. Those regulations provide, inter alia, that, without regard to zones, an outdoor advertising sign may not be installed within 1,000 feet of another outdoor advertising sign on the same side of the highway. B.C.Z.R. § 450.7.C.1.D

(1997). The People's Counsel argues that the Petition at issue is subject to the new regulations, and therefore must be dismissed. As demonstrated below, the logic of the People's Counsel is flawed as it ignores a crucial provision in the new regulations.

ARGUMENT

The position of the People's Counsel is summarized by the holding of the Court of Appeals that "a change in the law after a decision below and before final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent." Yorkdale Corp. v. Powell, 237 Md. 121, 124, 205 A.2d 269, 271 (1964) (emphasis added). With this proposition the Petitioners wholeheartedly agree. In this case, however, the legislative body has evinced a clear intent that the Petitioners may proceed with the construction of their outdoor advertising sign in accordance with the ruling of the Zoning Commissioner.

The new sign regulations advanced by the People's Counsel in support of its position provide that "[a] sign for which a special exception . . . has been approved prior to the effective date of Bill 89-97 may be erected in accordance with the sign provisions in effect at the time of said approval" B.C.Z.R. § 450.8.A.3 (1997). The Zoning Commissioner determined that under the sign provisions in effect at the time, the Petitioners were entitled to a special exception for the installation of the outdoor advertising sign at issue. In enacting section 450.8.A.3, the County Council expressed its intent that the Zoning Commissioner's decision be given due effect. The Board must do the same.

People's Counsel further argues that since the Board must hear the appeal de novo, the Board must look only to the law as it now exists. Again, this ignores the clear intent expressed by the County Council in section 450.8.A.3 that previously granted special exceptions be governed by the law in effect at the time they were granted. Thus, the appeal from the grant of the special exception must be decided under the law as it existed at the time that the Zoning Commissioner rendered his decision. This exception to the retroactive application of the new

requirements of section 450 is authorized by both the legislative and judicial bodies. See Baltimore County Charter § 603 (1997) ("All hearings held by the board shall be heard de novo, unless otherwise provided by legislative act . . .") (emphasis added); Boehm v. Anne Arundel County, 54 Md. App. 497, 511, 459 A.2d 590, 599 (1983) ("[U]nless otherwise limited by statute or court rule, a de novo hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered.") (emphasis added).

WHEREFORE, for the foregoing reasons Petitioners George Casper and Universal Outdoor, Inc. respectfully request that the Board deny the Motion to Dismiss Petition.

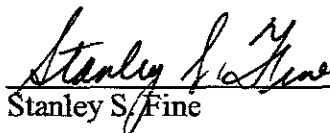


Stanley S. Fine
ROSENBERG PROUTT FUNK
& GREENBERG, LLP
2115 First Maryland Building
25 S. Charles St.
Baltimore, Maryland 21201
(410) 727-6600

Attorneys for Petitioners, George Casper
and Universal Outdoor, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 1998, a copy of the foregoing Opposition to Motion to Dismiss Petition was sent via first-class mail, postage prepaid to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, 400 Washington Avenue, Towson, Maryland 21204.



Stanley S. Fine

98 MAR -3 PM 3: 06

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
PETITION FOR SPECIAL EXCEPTION	*	COUNTY BOARD OF
PETITION FOR VARIANCE	*	APPEALS FOR
10926 York Road, SW/S York Road, 470'	*	BALTIMORE COUNTY
SE of c/A Beaver Run Lane	*	Case No. 97-550-SPHXA
8 th Election District, 4 th Councilmanic	*	
Legal Owner: George Casper	*	
Lessee: Lamar Advertising/Universal Outdoor	*	
Advertising	*	
Petitioners	*	

* * * * *

MOTION TO DISMISS PETITION

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY moves to dismiss the Petition filed by GEORGE CASPER and LAMAR ADVERTISING/UNIVERSAL OUTDOOR ADVERTISING, and for reasons states:

1. Petitioners applied for a zoning special exception, special hearing, and variance for an outdoor advertising sign on property zoned M.L. at 10926 York Road pursuant to BCZR 413.3.
2. The Zoning Commissioner approved the special exception on August 14, 1997. At the same time, he ruled that the M.L./M.H. 1000 feet and the B.L./B.M. 500 feet minimum distance requirements do not apply where the proposed M.L. sign is located only 330 feet from a B.L. zoned sign, so that there was no need for a variance.
3. People's Counsel appealed, on the basis that the Commissioner's interpretation conflicts with the legislative intent.
4. The appeal is de novo under Charter Sec. 603 and Code Sec. 26-127, so that it is as if the Zoning Commissioner decision does not exist.
5. On September 4, 1997, there was enacted Bill 89-97, which dramatically amended the sign regulations and replaced BCZR 413 with new BCZR Sec. 450.
6. The new law applies to this case.
7. Under BCZR 450.4 and 450.7C, the outdoor advertising special exception is subject to

new and additional limitations. These include:

a. New language in BCZR 450.C1D making it clear beyond debate that no new sign may be erected "less than 1000 feet from another outdoor advertising sign on the same side of a highway";

b. Other provisions in BCZR 450.7C1 relating, inter alia, to distance from residential zones, distance from the highway and intersecting highway right of way, and to town centers and revitalization areas;

c. New provisions in BCZR 450.7C2 requiring removal of an existing lawfully erected outdoor advertising sign or other eligible on-premises sign of equal size, in a designated priority area for sign removal.

8. The petition, as filed, fails to meet the clear BCZR 450.C1d 1000 feet minimum distance from adjoining signs, which applies regardless of zone.

9. The petition understandably does not address the new sign removal criteria.

10. The petition is also subject to review for compliance with all of the other new legal requirements.

11. Therefore, the petition should be dismissed, without prejudice to petitioners' filing of a new petition directed at the currently applicable legal requirements.

WHEREFORE, People's Counsel prays that the petition be dismissed because, as filed, it does not qualify under now applicable Bill 89-97.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

Statement of Points and Authorities

De Novo Appeals

Under Baltimore County Charter Sec. 603 and Code Sec. 26-132, the appeal is de novo. It starts the case anew. The case then proceeds as if the Zoning Commissioner opinion did not exist.

Judge Paul Alpert analyzed the CBA appeal system in Boehm v. Anne Arundel Co., 54 Md. App. 497, 511, cert. den. 297 Md. 108 (1983). He wrote:

"A trial or hearing 'de novo' means trying the matter anew as if it had not been heard before and as if no decision had been previously rendered. Thus, it is said that where a statute provides that an appeal shall be heard de novo such a hearing is in no sense a review of the hearing previously held, but is a complete trial of the controversy, the same as if no previous hearing had ever been held..."
(Am.Jur. 2d)

* * * * *

"As such, unless otherwise limited by statute or court rule, a *de novo* hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered."

Judge Adkins wrote in Lohrmann v. Arundel Corp. 65 Md. App. 309, 319 (1985):

"In effect, then, in this case the Board was exercising what amounts to original jurisdiction. It was as though the zoning officer had made no decision."

In Hill v. Baltimore County 86 Md. App. 642 (1991), the CSA added the "...de novo hearing is for all intents and purposes the first hearing of the case..." Other courts are in accord. Pawtucket Sch. Comm. v. Bd. of Regents 513 A.2d 13 (R.I. 1986); Sallee v. State Bd. of Ed.

828 S.W. 2d 742 (Tenn. App. 1991); In re Bushey-Combs 628 A.2d 641 (Vt. 1993); Ann Arbor Bd. of Ed. v. Abrahams 507 N.W. 2d 802 (1993).

Burden of Proof

Accordingly, although the CBA exercises appellate jurisdiction, the burden of proof in the de novo appeal remains with the petitioner to satisfy all legal requirements. As in any zoning hearing, the petitioner has the burden to produce evidence and to generate a prima facie case.

Application of Existing Law

For half a century, the Court of Appeals has canonically held that zoning law or map amendments prevail over any contrary zoning petition, pending appeal or final, in the absence of vested rights -- substantial above-ground construction under a valid building permit. Under de novo appeal here, Casper has no vested rights.

In Yorkdale Corp. v. Powell 237 Md. 121 (1964), Judge Hall Hammond wrote:

"Maryland consistently has followed the rule that 'an appellate court is bound to decide a case according to existing laws, even though a judgment rendered by the court below should be reversed as a consequence...' [citations omitted]... See also for this proposition that a change in the law after a decision below and before final decision by the appellate court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent... [again, citations omitted]." 237 Md., at 124.

Judge Hammond cited Banner v. Home Sales Company D 201 Md. 425 (1953); Lake Falls Ass'n. v. Board of Zoning Appeals 209 Md. 561(1956); and Grau v. County Board of Zoning Appeals 210 Md. 19 (1956), where comprehensive rezoning superseded similar agency zoning decisions in litigation. Banner stated:

"The zoning contested in this case has been superseded by the zoning authorities... Upon consideration of this and of all of the circumstances of the case, we have concluded that the proper course for the court is to dismiss the appeal." 210 Md., at 428-29.

The Court accordingly has sustained legislative changes to maps or regulations which disallow a use in controversy, even where substantial effort and funds had been invested, and/or permits obtained. Mandel v. Bd. of Co. Comm'rs 238 Md. 208 (1965); Ross v. Montgomery Co. 252 Md. 497 (1969); Richmond Corp. v. Bd. of Co. Comm'rs 254 Md. 244 (1969); Malmar Assoc. v. Bd. of Co. Comm'rs 260 Md. 292 (1971); Rockville Fuel & Feed Co. v. Gaithersburg 266 Md. 117 (1972).

In Dal Maso v. Bd. of Co. Comm'rs 264 Md. 691 (1972), a rezoning case, a new ordinance prompted Judge Barnes to write: "...so that this action is entirely ineffective under the presently applicable law without regard to the other questions raised..." 264 Md., at 695. The Court reiterated in O'Donnell v. Bassler 289 Md. 501, 508 (1981):

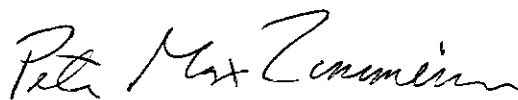
"An appellate court must apply the law in effect at the time the case is decided, provided that its application does not affect intervening vested rights."

Major recent cases reinforcing the traditional vested rights doctrine include P.G. County v. Sunrise Dev. L.P. 330 Md. 297 (1993) and Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996). The case law is based on fundamental legislative power and the subordinate nature of delegated agency authority.


PETER MAX ZIMMERMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 1998, a copy of the foregoing Motion to Dismiss Petition was mailed to Stanley Fine, Esq., 20 S. Charles Street, Baltimore, MD 21201, attorney for Petitioners.


PETER MAX ZIMMERMAN

Case No. 97-550-SPUXA

George Casper - Owner; Lamar Advertising - C.L.

SW/s York Road, 470' SE of c/v of Beaver
Run Lane (10926 York Road)

8th Election District

Appealed: 8/27/97

(see attached Plat -
Pet.'s Ex. No. 1)



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

July 14, 1997

Stanley Fine, Esquire
20 S. Charles Street
Baltimore, MD 21201

RE: Item No.: 550
Case No.: 97-550-SPHXA
Petitioner: George Casper

Dear Mr. Fine:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on June 11, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

W. Carl Richards, Jr.
W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

Date: July 1, 1997

FROM: Arnold F. "Pat" Keller, III, Director
Office of Planning

SUBJECT: 10926 York Road

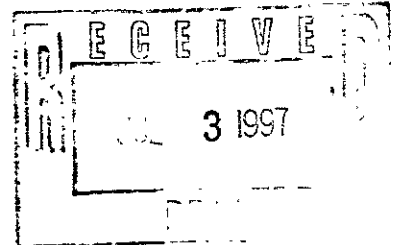
INFORMATION

Item Number: 550

Petitioner: Lamar Advertising

Zoning: ML

Requested Action: Special Hearing & Special Exception



Summary of Recommendations:

The applicant requests a special exception for a hand painted, custom built advertising sign (11 x 40 feet) per Section 413.3 of the Baltimore County Zoning Regulations, and a special hearing to permit an outdoor advertising sign to be located in an ML zone a distance less than 1,000 feet but more than 100 feet from an existing outdoor advertising sign

The subject property is located within the confines of the Hunt Valley/Timonium Redevelopment Study area, which was adopted by the Baltimore County Planning Board on April 15, 1993. As the study indicates, design quality controls can help assure that the Hunt Valley/Timonium area continues to provide an attractive, desirable environment in which to work, live and shop, and to help maintain its important status in the County as a major economic development area. The County has recently been very successful in terms of encouraging corporations to locate in the Hunt Valley area, and it is equally important to retain other major employers. These economic opportunities are important to the County's tax base. Therefore, it is abundantly clear that every effort must be maintained to preserve and improve the image of the Hunt Valley/Timonium area. For this reason, we strongly recommend that the applicant's request be denied at this high profile site within the Hunt Valley/Timonium area.

Prepared by:

Jeffrey W. Long

Division Chief:

Caryl L. Kerns

AFK/JL

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

June 25, 1997

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF June 23, 1997

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

9. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

550, 551, 552, 553, 555, 556, 557, 558, 560, 561, and 562

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office, PHONE 987-4881. MS-1102F

cc: File



BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director Date: July 1, 1997
Department of Permits & Development
Management

FROM: Robert W. Bowling, Chief **ROBERT W. BOWLING**
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for June 30, 1997
Item Nos 550, 551, 552, 554, 555,
556, 557, 558, 559, 560, & 562

The Development Plans Review Division has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM

DATE: Jan 25, 97

FROM: R. Bruce Seeley.
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: June 23, 97

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s:

556	559
554	560
555	561
556	
558	

RBS:sp

BRUCE2/DEPRM/TXTSBP



Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Parker F. Williams
Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 6.20.97
Item No. 550 WCR

Dear Ms. Eubanks:

We have reviewed the referenced item and we have no objection to approval, as a field inspection reveals the existing entrance(s) onto MD/US are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.
Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

August 28, 1997

RECEIVED
COUNTY BOARD OF APPEALS
97 SEP -3 AM 10:04

Stanley Fine, Esquire
20 S. Charles Street
Baltimore, MD 21201

RE: Petitions for Special
Hearing, Special
Exception, & Variance
10926 York road, 470' SE
of the c/l of Beaver Run
Lane
(10926 York Road)
8th Election District
4th Councilmanic District
George Casper - Petitioner (owner)
Case No. 97-550-SPHXA

Dear Mr. Fine:

LAMAR ADVERTISING (CONTRACT
LESSEE)

Please be advised that an appeal of the above-referenced case was filed in this office on August 27, 1997 by Peter Max Zimmerman and Carole S. Demilio on behalf of the People's Counsel of Baltimore County. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call 410-887-3180.

Sincerely,

ARNOLD JABLON
Director

AJ:rye

c: People's Counsel





Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

August 25, 1997

CAROLE S. DEMILIO
Deputy People's Counsel

Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

27 357

Hand-delivered

Re: PETITIONS FOR SPECIAL HEARING, SPECIAL
EXCEPTION & ZONING VARIANCE
10926 York Road, SW/S York Road, 470'
SE of c/l Beaver Run Lane, 8th Election
District, 4th Councilmanic
Legal Owner: GEORGE CASPER
Contract Purchaser: LAMAR ADVERTISING/
UNIVERSAL OUTDOOR ADVERTISING,
Petitioners
Case No. 97-550-SPHXA

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Order dated August 14, 1997 of the Baltimore County Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

A handwritten signature in cursive script that reads "Peter Max Zimmerman".

Peter Max Zimmerman
People's Counsel for Baltimore County

A handwritten signature in cursive script that reads "Carole S. Demilio".

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: Stanley Fine, Esq., 20 S. Charles Street, Baltimore, Md. 21201

APPEAL

Petitions for Special Hearing, Special Exception & Variance
SW/S York Road, 470' SE of the c/l of Beaver Run Lane
(10926 York Road)
8th Election District - 4th Councilmanic District
George Casper - Petitioner
Case No. 97-550-SPHXA

Petitions for Special Hearing and Possible Variance (on same form) and
Special Exception

Description of Property

No Certificate of Posting Found

No Certificate of Publication Found

Entry of Appearance of the People's Counsel

Zoning Advisory Committee Comments

Petitioners Sign-In Sheet

Petitioners' Exhibits:

- 1 - Plat to Accompany Special Exception and Special Hearing
- 2A-D - Four Photographs
- 3 - 1996 Comprehensive Zoning Map
- 4 - Two Photographs
- 5 - Two Photographs
- 6 - Three Photographs
- 7 - One Photograph
- 8 - Copy of Zoning Commissioner's Order, dated July 27, 1966, for Case #67-16-X

Zoning Commissioner's Order dated August 14, 1997 (Granted in Part, Dismissed as Moot in Part)

Notice of Appeal received on August 27, 1997 from Peter Max Zimmerman
and Carole S. Demilio on behalf of the People's Counsel

c: Stanley Fine, Esquire, 20 S. Charles Street, Baltimore, MD 21201
Mr. George Casper, 10926 York Road, Cockeysville, MD 21030
Mr. Steve Southern, Lamar Advertising, 3001 Remington Avenue,
Baltimore, MD 21211
Mr. William Monk, 222 Bosley Avenue, C6, Towson, MD 21204
People's Counsel of Baltimore County, M.S. 2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

June 27, 1997

Stanley Fine, Esquire
20 South Charles Street
Baltimore, MD 21201

RE: Drop-Off Petition Review (Item #550)
10926 York Road
8th Election District

Dear Mr. Fine:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed no unaddressed zoning issues and/or incomplete information. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "m. J. Kellman".

Mitchell J. Kellman
Planner II
Zoning Review

MJK:scj

Enclosure (receipt)

c: Zoning Commissioner



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Larry
7/10/97

TO: Arnold Jablon, Director
Department of Permits
and Development Management

Date: July 1, 1997

FROM: Arnold F. "Pat" Keller, III, Director
Office of Planning

SUBJECT: 10926 York Road

INFORMATION

Item Number: 550

Petitioner: Lamar Advertising

Zoning: ML

Requested Action: Special Hearing & Special Exception

Summary of Recommendations:

The applicant requests a special exception for a hand painted, custom built advertising sign (11 x 40 feet) per Section 413.3 of the Baltimore County Zoning Regulations, and a special hearing to permit an outdoor advertising sign to be located in an ML zone a distance less than 1,000 feet but more than 100 feet from an existing outdoor advertising sign

The subject property is located within the confines of the Hunt Valley/Timonium Redevelopment Study area, which was adopted by the Baltimore County Planning Board on April 15, 1993. As the study indicates, design quality controls can help assure that the Hunt Valley/Timonium area continues to provide an attractive, desirable environment in which to work, live and shop, and to help maintain its important status in the County as a major economic development area. The County has recently been very successful in terms of encouraging corporations to locate in the Hunt Valley area, and it is equally important to retain other major employers. These economic opportunities are important to the County's tax base. Therefore, it is abundantly clear that every effort must be maintained to preserve and improve the image of the Hunt Valley/Timonium area. For this reason, we strongly recommend that the applicant's request be denied at this high profile site within the Hunt Valley/Timonium area.

Prepared by:

Jeffrey W. Long

Division Chief:

Gary L. Kerns

AFK/JL



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

March 19, 1998

NOTICE OF DELIBERATION

Having received argument at hearing on People's Counsel's Motion to Dismiss Petition, the following date and time has been scheduled for the purpose of deliberating the grant or denial of the Motion to Dismiss in the matter of:

GEORGE CASPER -OWNER; LAMAR ADVERTISING -C.L.
/PETITIONERS -- Case No. 97-550-SPHXA

DATE AND TIME : Thursday, April 16, 1998 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

NOTE: Memorandums are due from Counsel (ORIGINAL AND THREE COPIES) on Thursday, April 9, 1998.

Contact: Kathleen C. Bianco
Administrator
410-887-3180

cc: Appellant : Peter Max Zimmerman, People's Counsel
for Baltimore County
: Carole S. Demilio, Deputy People's Counsel

Counsel for Petitioner : Stanley Fine, Esquire
Petitioner : George Casper
: Steve Southern /Lamar Advertising

William Monk

Pat Keller, Director /Planning
Lawrence M. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copied: L.W.M.



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

March 19, 1998

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

Stanley S. Fine, Esquire
KAPLAN, HEYMAN, GREENBERG,
ENGELMAN & BELGRAD, P.A.
Tenth Floor, Sun Life Building
20 S. Charles Street
Baltimore, MD 21201-3220

RE: Case No. 97-550-SPHXA
George Casper /Legal Owner;
Lamar Advertising - C.L.
(Motion to Dismiss Petition)

Dear Counsel:

Enclosed is a copy of the Notice of the deliberation scheduled for Thursday, April 16, 1998 at 9:30 a.m. in the subject matter.

In addition, the date of Tuesday, May 26, 1998 (10:00 a.m.) is being held on the Board's docket should this case go forward on the merits. In the event further hearing is necessary, a Notice of Assignment will be sent after the April 16th deliberation.

If you require any additional information, please call me at 410-887-3180.

Very truly yours,

A handwritten signature in cursive script, reading "Kathleen C. Bianco".
Kathleen C. Bianco
Administrator

Enclosure



BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl
T. Melvin
M. Worrall

DATE: April 9, 1998

FROM: Kathi

SUBJECT: In the Matter of George Casper, Legal Owner; Lamar Advertising/Universal Outdoor Advertising, Lessee -Petitioners / Memorandums

Attached for your review and information are copies of the following documents which were filed in the subject matter, as requested by the Board at the conclusion of its Motion hearing on March 19, 1998:

- 1) People's Counsel's Supplemental Memorandum filed this date by Peter Max Zimmerman; and
- 2) Post-Hearing Memorandum filed by Stanley S. Fine, Esquire, on behalf of Universal Outdoor, Inc., Petitioner.

Deliberation in this matter is scheduled for Thursday, April 16, 1998 at 9:30 a.m. A copy of the Notice of Deliberation was forwarded to you on March 19th.

Should you have any questions, please let me know.

kathi

Attachments

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION /Motion to Dismiss

IN THE MATTER OF: George Casper, Owner; Lamar Advertising -
C.L. -Petitioners; Case No. 97-550-SPHXA

DATE : April 16, 1998 @ 9:30 a.m.

BOARD /PANEL : Lawrence M. Stahl (LMS)
Margaret Worrall (MW)
Thomas P. Melvin (TPM)

SECRETARY : Kathleen C. Bianco
Administrator

Those present included Stanley Fine, Esquire, on behalf of Petitioner; and Peter M. Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, Appellant.

PURPOSE --to deliberate Motion to Dismiss Petition filed by People's Counsel for Baltimore County.

LMS: Good morning. This is the deliberation session of the Board of Appeals. Today is the 16th and we are here in matter 97-550-SPHXA. We are here today on a preliminary motion and this is the public deliberation of that motion. The form and effect of the motion's granting or dismissal for the record -- if the motion is granted, subject to further appeal, this matter would come to an end today. If the motion is denied, the matter will go forward, and if we get to that point -- the time has been set out for hearing. We will deal with it at that point.

Since this is an open deliberation, we have not spoken among ourselves. Since this is a technical point, I am going to go first and go through the Briefs of counsel and go through some of the facts and circumstances and see where we go with it.

This is a Motion to Dismiss. I will do this in no particular order. I've read through everything and the cases, and I'll go through the notes I have here, and go through the Motion. If it leads me to a conclusion, and I think it does.... It's more technical than factual.

The Motion to Dismiss is based on the premise that the Zoning Commissioner's decision, in essence, ceases to exist when an appeal is taken from it. The logic behind that from People's Counsel's point of view is that since the nature of an appeal from the Zoning Commissioner is de novo, that that fact in essence negates the lower decision, if you will, of the Zoning Commissioner.

Deliberation /Motion to Dismiss /George Casper -
Owner; Lamar Advertising -C.L. /Petitioners

Why obviously that is important in this case is because we have two different laws. The law under which the Petitioner believes he is entitled to do something and a new law which changes the parameters sufficiently that if the new law applies, that will alter the ability of the Petitioner to put that sign up.

Normally, and People's Counsel goes through it and I have no difficulty with the premise that there is a lot of case law that says, when a new law comes into effect in the middle of the process, the new law takes effect. Counsel has mentioned a number of cases. I take no quarrel - understand the premise. Sections 603 and 26-132 set forth that appeals are de novo, as if from scratch; from the beginning.

But the question becomes -- does the new law apply in the context of this particular piece of statutory law?

Neither counsel argues with the language of the new statute. Let me take it from somebody's memo -- It says -- sign for which a special exception "...has been approved" prior to the effect date of 89-97 may be erected.

Counsel for the other side argues that because that language "has been approved" is in there, that changes the nature of his rights under which law he gets to go under. Petitioner says "has been approved" means the Zoning Commissioner has approved it. Therefore, it's what they talk about in the bill.

People's Counsel takes the position that "has been approved" means final approval because People's Counsel's Motion makes the jump from that language to a discussion of what final approval is.

And since the final approval, in People's Counsel's idea, is a process that has been completed, then their position is that the approval called for in the new law does not allow Petitioner to go back and use the old law. He has to use the new law.

And I think that pretty much describes the dilemma; describes the position.

Let's go down some of my notes and see where we get to. People's Counsel's Motion to Dismiss - there is the factual stuff; don't quarrel with any of that. Let's get to the statement of points and authorities -- talk about Boehm matter; here's where my view of it may lead me to the

Deliberation /Motion to Dismiss /George Casper -
Owner; Lamar Advertising -C.L. /Petitioners

conclusion. Read from Boehm regarding trying a hearing de novo; where statute - no review of the previous hearing but complete trial of controversy. "As if" no previous hearing had been held -- A trial or hearing de novo. To me, de novo is an adjective referring to "hearing." Means trying, presenting, the case anew; from the beginning, "as if" - means manner in which you are going to deal with it; and "as if" no decision had been previously rendered. Now, as I look at those words -- "hearing de novo," "trying as if," and "as if" -- Judge Alpert is talking about the manner in which the case is tried. That the trial, the hearing called this thing de novo means the process you follow is "as if" -- is making believe it had never happened before so you hear everything again, and "as if" no decision had been previously rendered.

The process by which you use is process by which you naturally say "we will hear it all from scratch and there is no decision for the purpose of my decision making as a member of a new body hearing something de novo from somebody below."

Thus, it is said that where statute provides that an appeal shall be heard de novo - "hearing" is very important word -- means "have taken place in front of you" -- have it actually happen, and to me when a statute provides that appeal shall be heard -- perfectly consistent with the first sentence - talking about trial, hearing and methodology -- when an appeal shall be heard de novo -- talking about procedurally, about methodology by which you hear the case.

Such a hearing is in no sense a review of the hearing previously held but complete trial of controversy -- exactly consistent with other two sentences - process by which you use de novo process -- starting from scratch "as if" it never happened before-- "as if" no decision had been made -- not rubber-stamping of what happened before but opportunity to hear the whole thing again; put all the evidence once again in front of somebody.

It seems to me - the same as if no prior hearing -- seems they are defining the procedure, the attitude that court should take and the process it should utilize in making a decision.

And when you look at something like this, it's almost, in my mind, something called "legal fiction" -- something not true in reality but is true because people who decide what is true or not decide it is true. Legal fiction is a way to own real estate -- tenants by entireties -- each member of the marriage can own a piece of the property 100 percent at the same time exclusive of the other -- but the law says it is - "legal

Deliberation /Motion to Dismiss /George Casper -
Owner; Lamar Advertising -C.L. /Petitioners

fiction" invented so that if one spouse dies, the other automatically owns the whole thing.

So the law will simply declare that something is to be done "as if" to tell people doing it how they are to view something -- act as something. It happens in a courtroom when something is stricken -- judge hears it but does not take it into account. Judge will tell the jury that "you cannot include that" -- he's in essence saying to them -- "You must conduct and do this case as if those words were never said." It does not mean anything different than an admonition that procedurally that is what is not to be considered in deliberations.

Judge Alpert says that a de novo hearing is a process as if you were hearing the trial for the first time. You will hear the complete story and you will be able to weigh evidence -- the process by which you will function.

I think that's important -- I think Judge Alpert really does define what is going on. The whole idea is procedural in nature and "as if" and "as though" - the language is very telling in what the intent of all this is.

We get to the section of application of existing law -- talks about when things have been vested -- we have nothing vested here. My feeling is it is not an issue of vesting but under the language - where variance "has been approved prior to effective date" is really the central part of this. We have to determine what that means and whether Petitioner's desire to put up a sign falls under auspices of that law. No question that nothing is vested here.

The burden that counsel talks about -- Counsel talks about the burden of proof in these cases - to me the whole idea of burden of proof is procedural idea -- page 4 of Motion to Dismiss -- burden of proof is a procedural issue -- who has to go forward. Who has to prove or not prove something. Petitioner has the burden of proof - before the Zoning Commissioner and here, if in fact we hear the case.

Burden is a procedural concept. The Petitioner in a de novo hearing has the burden of going forward but that burden of going forward is once again procedural in nature. Found nothing that says it's substantive in nature.

Going back to the language of the statute itself -- Mr. Fine cites, right at the end of his memo - the wireless /tower case - and he reads what the paragraph says -- "that is final and

Deliberation /Motion to Dismiss /George Casper -
Owner; Lamar Advertising -C.L. /Petitioners

unappealable on effective date of this date" -- that's very, very clear. Having had to deal with and write statutes in my career -- the wording that could have been there "final and unappealable" - they could write - "and all appeals having been exhausted"; "having not been appealed"; or "unless an appeal is pending."

There is no use of the word "final" in the statute -- only the jump made in People's Counsel's Memo. All of those words could have been used but were not. The County Council has no reticence putting those words in their statutes. We have to believe that it means what it says.

If the language could be used and has been used more specifically, and now it has not been used, you can take the position that if they wanted to use it, they could have but didn't.

Going to the Supp Memos -- two supp memos - first as to the Petitioner -- I agree that this has more of an effect than just this case if we choose to go one particular way.

When the Zoning Commissioner makes a ruling, subject to it being overturned on appeal, when the Zoning Commissioner makes a ruling, things can happen. You can get permits; begin to do things. Can get an injunction or stay - then someone has said you cannot do it until somebody else makes a decision. A judge decides if that is appropriate.

But failing that having happened, what the Zoning Commissioner does has real legal effect and gives people who have gotten approval -- not final approval but approval -- they've done it at their own risk because it can be changed by appellate process.

But barring it being overturned and barring there being some change in it, the person, after the Zoning Commissioner's approval, can go ahead, get permits, and begin to do something.

If in fact the Zoning Commissioner's activity does not allow legal actions to be taken -- then all they are is fact-finding body limited to minor position in the process of land use. Totally aside from whether I agree with that concept, which is not really the issue here -- trying to narrow down what the statute means -- whether or not I'm happy with what the Zoning Commissioner does -- they are what they are because the County Council says what they are and because the Baltimore County Code says what they are and what they do.

Deliberation /Motion to Dismiss /George Casper -
Owner; Lamar Advertising -C.L. /Petitioners

I don't think they are set up as a preliminary fact-finding body with final decision to be made by other people; intended them to make a decision and people to go forward subject to chance that if it is appealed, and however procedurally it may be handled on appeal, if it changes they are out of luck.

Only people who can change that is the County Council, or the Circuit Court or someone acting above that. Comment made by Mr. Fine that appeal could be filed and then withdrawn -- as a practical matter, you could not do that for very long; from theoretical point of view - maybe.

It seems to me that if the decisions of the Zoning Commissioner did not have full and final force of law -- petitions would be heard in the first instance by the Board -- if nothing more than preliminary fact-finder - I don't think that's the intent of what we have now.

Section 7-112(b) - provides that judgements of the District Court remain in effect unless or until substituted by judgements of Circuit Court.

Example is that of traffic ticket - if appeal is dismissed then the lower court ruling remains. That's the context in which that section is talking about it.

Seems to me that also shows what Maryland law is -- only place where there was an actual comment as to what filing of de novo appeal would have on ultimate survivability of lower decision.

District Court judgement remains in effect pending Circuit Court appeal, unless or until it is superseded. It does not say the act of appeal negates; from my point of view, it says it stays and unless appeal in de novo manner supersedes or changes it.

And if that's what it is, then if we harken back to the statute that says "approve" - maybe therein lies the answer.

It remains in effect after approval until an appeal determines to supersede or not. That's why people can get permits, etc., at risk of being overturned, but they can do it. I think the issue here is not finality -- is effect of the approval and effect of a de novo appeal.

I think it's clear, to me at least, that the County Council could have done something different. I'm not prepared to determine that the nature of a de novo appeal is to have the force and effect simply upon its filing and existence that

Deliberation /Motion to Dismiss /George Casper -
Owner; Lamar Advertising -C.L. /Petitioners

People's Counsel suggests we give it. I don't think it's the intent of the law. Again, we go back to Judge Alpert -- clearly procedural in nature to give litigants at a higher level the right to have the entire matter heard.

In development cases, we are not trying it de novo -- limited scope of review, and they have limited scope. But when they use "de novo" -- this legal section -- telling us to give litigants opportunity to put on the whole case.

Because it's a procedural event, does it overturn or negate or in any way affect the standing of the decision below -- because it could simply be dismissed. And upon dismissal, the Zoning Commissioner's decision would remain. Margaret?

MW: Now that you have gotten through all that, do we use existing law? Is it the old law or the new law?

LMS: Let me go to the bottom line -- the cases don't say that filing of an appeal negates, supersedes, renders inoperative the lower opinion. I feel the filing of a de novo appeal here did not do any of those things to the lower level Zoning Commissioner approval. And if the approval existed, then the specific language of the statute in question -- counts for everybody unless you got approval before the date of the act -- means this Petitioner got approval before the date of the act -- and the filing of the de novo appeal did not change that. It simply allowed litigants to do what they were allowed to do -- told them the procedural manner in which they could do that.

We are in the old law, not the new law. I'm satisfied that de novo is a procedural concept. Whether in civil or criminal, does not confer anything particularly substantive.

The County Council can be more circumspect -- if "approved but not appealed" were added, then we would not be here. It would not fall under the old law. Simple insertion of that phrase -- and none of us would be here. It could be changed, but I don't think it will be, by the upper courts. I think it makes filing of appeal to negate something and takes procedural and makes it substantive, and we have both in the law. One is how you do things and the other is what things stand for.

MW: There is no doubt in my mind that when the Board of Appeals hears a case appealed from the Zoning Commissioner that we are instructed to hear the whole case afresh as if it had never been heard before, with perhaps new and even different evidence, so there are three more people who get to look at

Deliberation /Motion to Dismiss /George Casper -
Owner; Lamar Advertising -C.L. /Petitioners

the evidence and make a decision and sometimes agree with the Zoning Commissioner and sometimes not agree.

I cannot agree with People's Counsel that the Zoning Commissioner's order does not carry the force of law until a decision is rendered by the Board of Appeals which would then not have the force of law until the Circuit Court and then on and on.

I agree with Petitioner's Counsel that if this were not true, then all sorts of havoc might occur. Whether it's a technique or not, what struck me is that if a case is decided by the Zoning Commissioner and the opposing side does not agree and they appeal it, and then they dismiss the appeal the day of the hearing, and we have no jurisdiction to hear it -- and the Zoning Commissioner's Order has no force of law -- then where would the Petitioner be at that point? They would not be allowed to do it.

For example, if a special exception for a church is granted on R.C. 2 land and the neighbors don't like the decision and feel they have reasons to appeal, and then maybe it was on a small issue and they worked this out and come in and dismiss the appeal, does that mean that the church cannot build on that land without going through the process again? I do not believe that would be the case.

I would agree with you on those grounds, Larry. I believe the Zoning Commissioner's decision would stand.

The grandfather clause -- I think it was ultimately what at least took me -- was the most thought-provoking for me. I believe that the County Council intended to put grandfathering clause in this bill as I read it to set the standard for the Zoning Commissioner's decisions prior to the effective date of 89-97. A sign for which a special exception "has been approved" prior to the effective date of 89-97 may be erected in accordance with the sign regulations in effect at the time of approval.

You went through the reasoning of language, and I'm certainly not going to go through any more of that, except that your reasoning was very much the way I looked at it as well.

My conclusion is that the Board of Appeals should hear this case de novo as a procedure and that we should use the law which was applicable at the time the Zoning Commissioner made his decision, and therefore I would deny the Motion before us to dismiss the case.

Deliberation /Motion to Dismiss /George Casper -
Owner; Lamar Advertising -C.L. /Petitioners

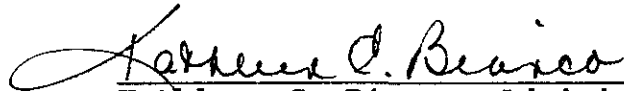
TPM: I looked at the grandfathering clause also in determining this, and I am in complete agreement.

LMS: The Motion to Dismiss is denied. We will go ahead with the hearing on the merits. We have a, I believe, a date of May 26 at 1:00 p.m.

We will issue one opinion for both the merits of the case and this deliberation - at one and the same time, in one opinion and order.

Thank you.

~~~~~  
Respectfully submitted,

  
\_\_\_\_\_  
Kathleen C. Bianco, Administrator  
County Board of Appeals

Case No. 97-550-SPHXA

SPH -Approval of outdoor advertising sign in M.L. zone, a distance of less than 1,000' but more than 100' from existing outdoor advertising sign in B.R. zone on same side of street; SE -to permit one hand-painted, custom-built outdoor advertising sign with single face 11 x 40' in dimension; Alternative VAR -sign to be located 330' from existing sign on same side of street ilo req'd 1,000'.

8/14/97 -Z.C.'s Order in which Petition for Special Hearing was GRANTED; Petition for Special Exception GRANTED; Variance DISMISSED AS MOOT.

11/21/97 - Notice of Assignment for hearing scheduled for Thursday, March 19, 1998 at 10:00 a.m. sent to following:

Peter Max Zimmerman, People's Counsel  
for Baltimore County  
Carole S. Demilio, Deputy People's Counsel  
Stanley Fine, Esquire  
George Casper  
Steve Southern /Lamar Advertising  
William Monk  
Pat Keller, Director /Planning  
Lawrence M. Schmidt /Zoning Commissioner  
Arnold Jablon, Director /PDM  
Virginia W. Barnhart, County Attorney

3/03/98 -Motion to Dismiss Petition filed by P. Zimmerman. Awaiting response from Stanley Fine, Counsel for Petitioner.

3/11/98 -Opposition to Motion to Dismiss Petition filed by Stanley Fine, Esquire, on behalf of Petitioner. (Copies of both documents to scheduled panel this date.)

3/18/98 -Conversations with S. Fine (by telephone) and P. Zimmerman regarding hearing scheduled for Thursday, 3/19/98 and Motion filed; Board will receive argument only on People's Counsel's Motion to Dismiss; there will be no testimony or evidence as to the merits of the case. The Board will schedule this matter for a hearing on the merits upon deliberation of the Motion, should that be necessary.

3/19/98 -Motion only hearing concluded; counsel to submit supplemental memos to the Board April 9, 1998; deliberation on Motion scheduled for April 16, 1998 at 9:30 a.m. (notice to be sent); and will hold Tuesday, May 26, 1998 at 10:00 a.m. for hearing of this matter on the merits, depending upon final decision of Board as to Motion to Dismiss. (L.W.M.0

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- Notice of Deliberation sent this date to parties; scheduled for Thursday, April 16, 1998 at 9:30 a.m. Memos due Thursday, April 9, 1998 from Counsel. P. Zimmerman 4/09/98

S. Fine 4/09/98

- Letter to Counsel this date advising of hold on May 26th for hearing on merits if needed.

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4/16/98 -Deliberation on Motion; D -Motion to Dismiss. Case to be heard on merits under regulations in effect at time of Zoning Commissioner's approval. At conclusion of hearing on merits and deliberation of same, Board will issue one opinion /order to include both the findings and decision denying the Motion as well as the Board's final decision on the merits of the case. (L.W.M.)

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- Notice of Assignment /Hearing on Merits sent to parties; scheduled for Tuesday, May 26, 1998, 1:00 p.m.

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5/04/98 - Conference w/S. Fine and P. Zimmerman; settlement negotiations and agreement between parties in process; will probably present same on the record at scheduled time of hearing on 5/26/98. Dismissal of appeal would then result from said agreement.

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5/19/98 -At the suggestion of L. Stahl, and with agreement and confirmation by S. Fine and P. Zimmerman, this matter has been reassigned to an earlier start time on 5/26/98 (from a 1:00 p.m. start time to 11:30 a.m.) for the purpose of putting settlement on the record.

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5/20/98 -Letter to Counsel and Notice of Reassignment sent to parties; reassigned to 11:30 a.m. on originally scheduled date of Tuesday, May 26, 1998.

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5/26/98 -Stipulation entered by parties at hearing; agreement reached; PC withdrew appeal pursuant to same. Condition Dismissal and Order to be issued by the Board; same approved by parties as to contents. (L.W.M.)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director                      DATE: March 19, 1999  
Permits & Development Management

FROM: Charlotte E. Radcliffe   
County Board of Appeals

SUBJECT: Closed File: 97-550-SPHXA /George Casper

Since the above captioned matter was dismissed by Order dated May 26, 1998, we are hereby closing the file and returning same to you herewith.

Attachment (Case File No. 97-550-SPHXA)



# *Baltimore County, Maryland*

## OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse  
400 Washington Ave.  
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN  
People's Counsel

CAROLE S. DEMILIO  
Deputy People's Counsel

March 18, 1998

Mrs. Kathleen C. Bianco  
Legal Administrator  
County Board of Appeals  
of Baltimore County  
401 Washington Avenue, Room 49  
Towson, MD 21204

Hand-delivered

RECEIVED  
COUNTY BOARD OF APPEALS  
98 MAR 18 PM 3:09

Re: PETITION FOR SPECIAL HEARING  
PETITION FOR SPECIAL EXCEPTION  
PETITION FOR VARIANCE  
10926 York Road, SW/S York Rd.,  
470' SE of c/l Beaver Run Lane  
8<sup>th</sup> Election Dist., 4<sup>th</sup> Councilmanic  
GEORGE CASPER / LAMAR ADVERTISING/  
UNIVERSAL ADVERTISING, Petitioners  
Case No. 97-550-SPHXA  
CBA Hearing Date: March 19, 1998

Dear Ms. Bianco:

Enclosed for your file please find the relevant portions of County Council Bill No. 89-97, referred to in our Motion to Dismiss Petition.

Also enclosed please find letter received this date from neighbor/Protestant Ms. Bettie Clark in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Peter Max Zimmerman".

Peter Max Zimmerman  
People's Counsel for Baltimore County

PMZ/caf  
Enclosures  
cc: Stanley Fine, Esq. (via facsimile)

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND  
Legislative Session 1997, Legislative Day No. 15

Bill No. 89-97

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All Councilmembers

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By the County Council, August 4, 1997

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A BILL  
ENTITLED

AN ACT concerning

Signs

FOR the purpose of updating and amending the Baltimore County Zoning Regulations concerning permanent and temporary on-premises signs and permanent off-premises signs; defining certain terms; identifying classes and structural types of signs; establishing use, area, height, number, illumination and other limitations; establishing general prohibitions and exceptions; establishing special requirements for particular classes of signs; establishing County policies concerning compliance with sign regulations; permitting certain exemptions; requiring the submission of signage information as part of the development review and approval process; and generally relating to the regulation of signs.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter stricken from existing law.  
~~Strike-out~~ indicates matter stricken from bill.  
Underlining INDICATES AMENDMENTS TO BILL.

2043.C.1, 2053.C.1  
1  
BY repealing

Section 101 - Definitions, the definitions of "Sign," "Sign, Business" and "Sign, Outdoor Advertising" and Section 413  
Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

Sections 101, alphabetically, the definition of "Sign," 1A05.2.F.3, 1A06.3.C, 1B01.1.A.14.h, 200.2.B.4, 201.2.B.4, 202.3.C.1, 204.3.C.1, 205.3.C.3, 206.3.C.2, 209.3.B.2, 210.3.C.2, 219, 228.A, 229.6, 230.11, 230.13, 233.2B, 233.4, 253.1.F.8, 253.2.D.1, 256.4, 259.3.C.7, 259.9.D, 402.3.C, 402B.3, 402C.3, 402D.5, 402E.5, 404.1.D, E, F and G, 404.4.B, 405.4.C.2, 424.6 and 432.5.B.1.a.  
Baltimore County Zoning Regulations, as amended

Sections 26-202(c)(1) and 26-203(d)(21)  
Title 26 - Planning, Zoning and Subdivision Control  
Baltimore County Code, 1988, as amended

BY adding

Sections 104.7, 1A01.2.B.7.k, 1A02.2.A.10.h, 1A03.3.A.6.g, 1A04.2.A.11.h, 236.4, alphabetically, the special exception of "Signs, Outdoor Advertising," 450.1, 450.2, 450.3, 450.4, 450.5, 450.6, 450.7 and 450.8  
Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report from the Planning Board, dated September 19, 1996, concerning the subject legislation, and has held a public hearing thereon on November 18, 1996, now, therefore,

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE  
2 COUNTY, MARYLAND, that Section 101 - Definitions, the definitions of "Sign," "Sign,  
3 Business" and "Sign, Outdoor Advertising" and Section 413 be and they are hereby repealed  
4 from the Baltimore County Zoning Regulations, as amended

5 SECTION 2. AND BE IT FURTHER ENACTED, that Sections 101, alphabetically, the  
6 definition of "Sign," 1A05.2.F.3, 1A06.3.C, 1B01.1.A.14.h, 200.2.B.4, 201.2.B.4, 202.3.C.1,

204.3.C.1, 205.3.C.3, 206.3.C.2, 209.3.B.2, 210.3.C.2, 219, 228.A, 229.6, 230.11, 230.13,  
233.2B, 233.4, 253.1.F.8, 253.2.D.1, 256.4, 259.3.C.7, 259.9.D, 402.3.C, 402B.3, 402C.3,  
402D.5, 402E.5, 404.1.D, E, F and G, 404.4.B, 405.4.C.2, 424.6 and 432.5.B.1.a of the  
Baltimore County Zoning Regulations, as amended, and Sections 26-202(c)(1) and 26-  
203(d)(21) of Title 26 - Planning, Zoning and Subdivision Control, of the Baltimore County  
Code, 1988, as amended, be and they are hereby repealed and re-enacted, with amendments, to  
read as follows:

Section 101 -- Definitions.

Sign: [Any structure, part thereof, or device attached thereto or painted or represented  
thereon, which displays or includes any numeral, letter, word, model, banner, emblem, insignia,  
device, trademark, or other representation used as, or in the nature of, an announcement,  
advertisement, direction, warning, or designation of any person, firm, group, organization, place,  
commodity, product, service, business, profession, enterprise, or industry which is located upon  
any land, on any building, or on the outside of a window. The flag, emblem, insignia, poster or  
other display of a nation, political unit, educational, charitable, religious, or similar group,  
campaign, drive, or event shall not be included in this definition.] FOR THE DEFINITION OF  
"SIGN" AND ALL RELATED TERMS. SEE SECTION 450.

Section 1A05--R.C. 20 and R.C. 50 Zones.

1A05.2--Table of Land Use Regulations.

F. Accessory Uses.

- |                                               |   |   |
|-----------------------------------------------|---|---|
| 3. Other customary or required accessory      | P | P |
| buildings, structures and uses including      |   |   |
| parking areas; <u>SIGNS. SUBJECT TO</u>       |   |   |
| <u>SECTION 450</u> ; uncontrolled excavations |   |   |
| as defined in Section 101A; private, non-     |   |   |
| commercial piers, wharves, and buildings      |   |   |
| subject to the provisions of Section 417.     |   |   |

1A06--R.C.C. (Commercial) Zones.

1A06.3 Use Limitations. All of the uses in Section 1A06.2 are subject to the following

| I     | II              | III         | IV          | V         | VI        | VII | VIII         | IX             |
|-------|-----------------|-------------|-------------|-----------|-----------|-----|--------------|----------------|
| Class | Structural Type | Zone or Use | Permit Req. | Area/Face | No./Prem. | Ht. | Illumination | Addit'l Limits |

|                                                                                                                                                                                                                                    |                             |                    |    |             |     |        |     |                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------|----|-------------|-----|--------|-----|---------------------|
| 11 OUTDOOR ADVERTISING.<br>meaning a non-accessory sign which is commercially maintained principally for calling attention to place, businesses, products, services or activities which are located or offered on another premises | Wall-mounted, free-standing | BL, BM, BR, ML, MH | SE | 300 sq. ft. | One | 25 ft. | Yes | See Section 450.7 C |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------|----|-------------|-----|--------|-----|---------------------|

## TEMPORARY SIGNS

|                                                                                                                     |                             |           |                                                                    |                                 |                                                 |        |    |                                                      |
|---------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------|--------------------------------------------------------------------|---------------------------------|-------------------------------------------------|--------|----|------------------------------------------------------|
| 12 CONSTRUCTION.<br>meaning a temporary accessory sign announcing a building project other than a subdivision       | Wall-mounted, free-standing | All zones | <del>None</del> <u>USE for free-standing, two for wall-mounted</u> | 150 sq. ft. total for all signs | Three                                           | 15 ft. | No | See Section 450.7 D                                  |
| 13 SUB-DIVISION CONSTRUCTION.<br>meaning a temporary accessory sign advertising development of a subdivision        | Wall-mounted, free-standing | All zones | <del>None</del> <u>USE</u>                                         | 100 sq. ft.                     | One plus one additional per 500 ft. of frontage | 15 ft. | No | See Section 450.7 D                                  |
| 14 PERSONAL MESSAGE.<br>meaning an accessory sign displaying a political, religious or other non-commercial message | Wall-mounted, free-standing | All zones | None                                                               | 8 sq. ft.                       | One                                             | 6 ft.  | No | Definition does not include political campaign signs |

1 SECTION 450.4, CHANGEABLE COPY SIGNS ACCESSORY TO A PLANNED SHOPPING  
2 CENTER OR TO ANY SEPARATE COMMERCIAL ESTABLISHMENT IN A BUSINESS  
3 ZONE ARE SUBJECT TO THE FOLLOWING:

4 1. A FREE-STANDING CHANGEABLE COPY SIGN MAY BE ERECTED  
5 ONLY AS AN INTEGRAL PART OF AN OTHERWISE PERMITTED ENTERPRISE OR  
6 JOINT IDENTIFICATION SIGN.

7 2. UP TO 50% OF THE ERECTED SIGN AREA OF A PERMITTED  
8 ENTERPRISE OR JOINT IDENTIFICATION SIGN MAY BE DEVOTED TO CHANGEABLE  
9 COPY.

10 ~~3. EXCEPT FOR TIME OR TEMPERATURE SIGNS, THE MESSAGE OF A~~  
11 ~~CHANGEABLE COPY SIGN MAY NOT BE MODIFIED MORE THAN FOUR TIMES IN~~  
12 ~~ANY ONE 24 HOUR PERIOD, STARTING AT MIDNIGHT.~~

13 C. OUTDOOR ADVERTISING SIGNS. IN ADDITION TO THE LIMITATIONS  
14 OF SECTION 450.4, OUTDOOR ADVERTISING SIGNS ARE SUBJECT TO THE  
15 FOLLOWING:

16 1. AN OUTDOOR ADVERTISING SIGN MAY NOT BE ERECTED IN THE  
17 FOLLOWING LOCATIONS:

18 A. OUTSIDE THE URBAN-RURAL DEMARCATION LINE;

19 B. IN A PLACE WHERE IT CAN BE SEEN FROM A SCENIC ROUTE  
20 DESIGNATED IN THE MASTER PLAN, AS DETERMINED BY THE DIRECTOR OF THE  
21 OFFICE OF PLANNING;

22 C. LESS THAN 200 FEET FROM A RESIDENTIAL ZONE, MEASURED

1 ALONG THE ADJOINING ROAD, OR MORE THAN 50 FEET FROM THE RIGHT-OF-WAY  
2 LINE OF THE HIGHWAY ALONG WHICH THE SIGN IS ERECTED,  
3 NOTWITHSTANDING CONTRARY PROVISIONS OF THESE REGULATIONS  
4 REGARDING FRONT YARD SETBACKS;

5 D. LESS THAN 1,000 FEET FROM ANOTHER OUTDOOR  
6 ADVERTISING SIGN ON THE SAME SIDE OF A HIGHWAY;

7 E. LESS THAN 100 FEET, MEASURED ALONG THE ADJOINING  
8 ROAD, FROM THE RIGHT-OF-WAY OF ANY INTERSECTING HIGHWAY;

9 F. LESS THAN 250 FEET FROM THE RIGHT-OF-WAY OF ANY  
10 CONTROLLED-ACCESS-TYPE HIGHWAY, OR LESS THAN 100 FEET FROM THE  
11 RIGHT-OF- WAY OF ANY OTHER DUAL HIGHWAY; AND

12 G. WITHIN A TOWN CENTER OR REVITALIZATION AREA, EXCEPT  
13 AT SITES DESIGNATED AS APPROPRIATE FOR OUTDOOR ADVERTISING SIGNS IN  
14 AN OFFICIALLY ADOPTED PLAN FOR THAT AREA.

15 ~~2. A BUILDING PERMIT FOR THE ERECTION OF A NEW OUTDOOR~~  
16 ~~ADVERTISING SIGN MAY NOT BE ISSUED UNLESS THE APPLICANT, AT NO COST TO~~  
17 ~~THE COUNTY, REMOVES EXISTING OUTDOOR ADVERTISING OR~~  
18 ~~NON-CONFORMING ON-PREMISES SIGNS FROM SITES WITHIN THE COUNTY. FOR~~  
19 ~~EACH NEW SIGN TO BE ERECTED, ONE EXISTING OUTDOOR ADVERTISING SIGN~~  
20 ~~OR ON-PREMISES SIGNS EQUAL IN AREA TO THE OUTDOOR ADVERTISING SIGN TO~~  
21 ~~BE ERECTED MUST BE REMOVED.~~

22 ~~A. IF THE APPLICANT CHOOSES TO REMOVE ON-PREMISES SIGNS,~~

1 THE FOLLOWING LIMITATIONS APPLY:

2 (1) ~~PRIOR TO THE SPECIAL EXCEPTION HEARING FOR THE NEW~~  
3 ~~SIGN, THE APPLICANT SHALL MEET WITH THE DIRECTOR OF THE OFFICE OF~~  
4 ~~PLANNING TO DETERMINE THE PRIORITY AREAS FOR SIGN REMOVAL, BASED ON~~  
5 ~~THE MASTER PLAN, AS AMENDED. THE ZONING COMMISSIONER SHALL~~  
6 ~~CONSIDER RECOMMENDATIONS AT THE SPECIAL EXCEPTION HEARING.~~

7 (2) ~~ONLY LEGALLY NON-CONFORMING SIGNS WHICH WOULD~~  
8 ~~BE CLASSIFIED AS ENTERPRISE OR JOINT IDENTIFICATION SIGNS UNDER SECTION~~  
9 ~~450 ARE ELIGIBLE FOR REMOVAL.~~

10 (3) ~~AT THE TIME OF THE SPECIAL EXCEPTION HEARING, THE~~  
11 ~~APPLICANT SHALL PROVE THAT HE HAS MADE AN IRREVOCABLE COMMITMENT~~  
12 ~~TO THE OWNER TO REASONABLY COMPENSATE THE OWNER AND REMOVE THE~~  
13 ~~SIGNS IF THE SPECIAL EXCEPTION IS APPROVED. IN DETERMINING REASONABLE~~  
14 ~~COMPENSATION, THE ZONING COMMISSIONER SHALL CONSIDER THE VALUE OF~~  
15 ~~THE EXISTING SIGN AND THE COST OF REPLACING THE SIGN.~~

16 B. ~~IF THE APPLICANT CHOOSES TO REMOVE AN OUTDOOR~~  
17 ~~ADVERTISING SIGN, THE APPLICANT SHALL INDICATE THE SITE FROM WHICH THE~~  
18 ~~OUTDOOR ADVERTISING SIGN WILL BE REMOVED AT THE TIME THE APPLICANT~~  
19 ~~APPLIES FOR A BUILDING PERMIT.~~

20 2 A NEW OUTDOOR ADVERTISING SIGN MAY BE ERECTED SUBJECT  
21 TO THE FOLLOWING LIMITATIONS:

22 A. A NEW OUTDOOR ADVERTISING SIGN MAY NOT BE ERECTED

1 UNTIL AFTER THE REMOVAL OF: (1) ONE LAWFULLY ERECTED OUTDOOR  
2 ADVERTISING SIGN; OR (2) LEGALLY NON-CONFORMING ON-PREMISES SIGNS  
3 EQUAL IN AREA TO THE NEW OUTDOOR ADVERTISING SIGN.

4 B. REMOVAL OF ELIGIBLE SIGNS SHALL OCCUR IN DESIGNATED  
5 PRIORITY AREAS, AS DETERMINED BY THE DIRECTOR OF PLANNING. THE  
6 DIRECTOR ANNUALLY IN JANUARY SHALL SUBMIT A MAP TO THE COUNTY  
7 COUNCIL FOR APPROVAL WHICH DELINEATES PRIORITY AREAS OF THE COUNTY  
8 FOR SIGN REMOVAL BASED ON THE MASTER PLAN. THE COUNCIL MAY AMEND  
9 THE PROPOSED MAP.

10 C. IF AN APPLICANT CHOOSES TO REMOVE ON-PREMISES SIGNS,  
11 ONLY SIGNS CLASSIFIED AS ENTERPRISE OR JOINT IDENTIFICATION SIGNS UNDER  
12 SECTION 450 ARE ELIGIBLE FOR REMOVAL.

13 D. AT A SPECIAL EXCEPTION HEARING, AN APPLICANT SHALL  
14 PROVE THE EXISTENCE OF AN IRREVOCABLE COMMITMENT TO REMOVE  
15 ELIGIBLE SIGNS WITHIN A DESIGNATED PRIORITY AREA.

16 E. A USE PERMIT FOR THE ERECTION OF THE NEW OUTDOOR  
17 ADVERTISING SIGN MAY NOT BE ISSUED UNLESS AN APPLICANT PROVES THAT  
18 THE REQUIRED OUTDOOR ADVERTISING OR ON-PREMISES SIGNS WERE  
19 REMOVED.

20 3. OUTDOOR ADVERTISING SIGNS ERECTED WITHIN 500 FEET OF A  
21 STATE HIGHWAY SHALL COMPLY WITH THE LICENSE AND PERMIT  
22 REQUIREMENTS OF THE ANNOTATED CODE OF MARYLAND, TRANSPORTATION

1 ARTICLE, TITLE 8, SUBTITLE 7 - REGULATION OF OUTDOOR ADVERTISING.

2 4. THE OWNER OF A LAWFULLY ERECTED AND MAINTAINED  
3 OUTDOOR ADVERTISING SIGN WHICH IS REMOVED OR REQUIRED TO BE  
4 REMOVED BY THE COUNTY SHALL BE COMPENSATED PURSUANT TO THE  
5 ANNOTATED CODE OF MARYLAND, ARTICLE 25, SECTION 122E.

6 5. ON THE DATE A PROPERTY IS POSTED FOR A SPECIAL EXCEPTION  
7 HEARING, THE APPLICANT SHALL SEND A LETTER BY CERTIFIED MAIL TO THE  
8 OWNERS OF ALL RESIDENTIALLY ZONED PROPERTY WITHIN 100 FEET OF THE  
9 PROPOSED OUTDOOR ADVERTISING SIGN, INCLUDING THE DATE, SUBJECT,  
10 PLACE, TIME AND PURPOSE OF THE SPECIAL EXCEPTION HEARING.

11 6. OUTDOOR ADVERTISING SIGNS WITH TRI-VISION MAY BE  
12 ERECTED SUBJECT TO THE FOLLOWING LIMITATIONS:

13 A. AN OUTDOOR ADVERTISING SIGN WITH TRI-VISION MAY NOT  
14 BE ERECTED UNTIL AFTER THE REMOVAL OF: (1) TWO LAWFULLY ERECTED  
15 OUTDOOR ADVERTISING SIGNS; OR (2) LEGALLY NON-CONFORMING ON-  
16 PREMISES SIGNS EQUAL TO TWICE THE AREA OF THE TRI-VISION SIGN.

17 B. REMOVAL OF SIGNS MUST OCCUR IN DESIGNATED PRIORITY  
18 AREAS. SET FORTH IN THE ANNUAL MAP SUBMITTED BY THE DIRECTOR OF  
19 PLANNING AND APPROVED BY THE COUNCIL.

20 C. THERE SHALL BE A MAXIMUM OF SEVEN OUTDOOR  
21 ADVERTISING SIGNS WITH TRI-VISION WITHIN THE COUNTY.

22 D. AN OUTDOOR ADVERTISING SIGN WITH TRI-VISION SHALL BE

1 ERECTED ONLY WHERE AN EXISTING, LAWFULLY ERECTED OUTDOOR  
2 ADVERTISING SIGN IS LOCATED AS OF JULY 1, 1997.

3 E. AN OUTDOOR ADVERTISING SIGN WITH TRI-VISION MAY NOT  
4 BE LARGER THAN THE OUTDOOR ADVERTISING SIGN IT IS REPLACING.

5 F. AN OUTDOOR ADVERTISING SIGN WITH TRI-VISION MAY NOT  
6 ROTATE FROM ONE SIGN FACE TO ANOTHER LESS THAN EVERY TEN SECONDS.  
7 THE ACTUAL ROTATION PROCESS MUST BE COMPLETED IN AT LEAST FOUR  
8 SECONDS.

9 G. THE ZONING COMMISSIONER MAY DENY AN APPLICANT'S  
10 REQUEST FOR SPECIAL EXCEPTION UPON A FINDING THAT AN OUTDOOR  
11 ADVERTISING SIGN WITH TRI-VISION WOULD CREATE A TRAFFIC HAZARD.

12 D. CONSTRUCTION AND SUBDIVISION CONSTRUCTION SIGNS. IN  
13 ADDITION TO THE LIMITATIONS UNDER SECTION 450.4, CONSTRUCTION AND  
14 SUBDIVISION SIGNS ARE SUBJECT TO THE FOLLOWING:

15 1. TWO CONSTRUCTION SIGNS ERECTED AS A CONTIGUOUS SIGN  
16 CONSTITUTE ONE SIGN.

17 2. THE DISTANCE BETWEEN ANY TWO CONTIGUOUS SIGN  
18 STRUCTURES MAY NOT BE LESS THAN 1,000 FEET.

19 3. ON THE SAME SIDE OF THE HIGHWAY, NO CONSTRUCTION OR  
20 SUBDIVISION CONSTRUCTION SIGN MAY BE ERECTED WITHIN:

21 A. 15 FEET FROM A LOT LINE OF A PREMISES NOT CONTAINED IN  
22 THE CONSTRUCTION SITE OR SUBDIVISION FOR WHICH THE SIGN IS ERECTED; OR

1                   B. 100 FEET FROM A DWELLING OR OTHER PRINCIPAL BUILDING  
2 ON A PREMISES NOT CONTAINED IN THE CONSTRUCTION SITE OR SUBDIVISION  
3 FOR WHICH THE SIGN IS ERECTED, EXCEPT THAT IF THE SIGN DOES NOT EXCEED  
4 64 SQUARE FEET IN AN AREA, IT MAY BE PLACED NOT LESS THAN 75 FEET. AND IF  
5 THE SIGN DOES NOT EXCEED 32 SQUARE FEET, IT MAY BE PLACED NOT LESS  
6 THAN 35 FEET FROM SUCH A DWELLING.

7                   4. CONSTRUCTION AND SUBDIVISION CONSTRUCTION SIGNS SHALL  
8 BE REMOVED SEVEN DAYS AFTER COMPLETION OF CONSTRUCTION OR AFTER  
9 THE SALE OF THE LAST UNIT OR LOT IN THE SUBDIVISION, WHICHEVER IS LATER.

10                  E. OTHER TEMPORARY SIGNS. IN ADDITION TO THE LIMITATIONS OF  
11 SECTION 450.4, THE FOLLOWING REQUIREMENTS APPLY:

12                  1. NO REAL ESTATE SIGN MAY BE DISPLAYED FOR MORE THAN  
13 SEVEN DAYS AFTER THE LEASING OF THE PREMISES TO WHICH THE SIGN  
14 PERTAINS OR THE TRANSFER OF TITLE TO THE PREMISES ON WHICH THE SIGN IS  
15 ERECTED. A REAL ESTATE SIGN MAY STATE "SOLD" OR "UNDER CONTRACT"  
16 FOLLOWING SIGNING OF A CONTRACT FOR SALE OF THE PREMISES. OR MAY  
17 STATE "LEASED" FOLLOWING LEASING OF THE PREMISES.

18                  2. NO SPECIAL EVENT OR COMMERCIAL SPECIAL EVENT SIGN MAY  
19 BE DISPLAYED FOR MORE THAN 30 DAYS BEFORE OR FIVE DAYS AFTER THE  
20 EVENT TO WHICH IT PERTAINS. NO PREMISES MAY DISPLAY A SPECIAL EVENT  
21 OR COMMERCIAL SPECIAL EVENT SIGN FOR MORE THAN 60 DAYS IN ANY  
22 CALENDAR YEAR.

1           3. A SPECIAL EVENT OR POLITICAL CAMPAIGN SIGN MAY BE  
2     ERECTED AS AN OFF-PREMISES SIGN ON PRIVATE PROPERTY WITH THE  
3     PERMISSION OF THE PROPERTY OWNER.

4           F. TEMPORARY SIGNS IN GENERAL. A USE PERMIT MUST BE ISSUED FOR  
5     ALL TEMPORARY SIGNS AND MUST INCLUDE THE DATES FOR DISPLAY, SUBJECT  
6     TO TERMS AND CONDITIONS ESTABLISHED BY THE DIRECTOR OF PERMITS AND  
7     DEVELOPMENT MANAGEMENT. ANY ENTITY IDENTIFIED ON A TEMPORARY SIGN  
8     MAY BE HELD RESPONSIBLE FOR REMOVAL OF THE SIGN.

9           450.8 ADMINISTRATION AND COMPLIANCE.

10          A. INTERPRETATION.

11               1. IN CONSIDERING REQUESTS FOR SPECIAL EXCEPTIONS AND  
12     VARIANCES, THE PROVISIONS OF THIS SECTION SHALL BE STRICTLY CONSTRUED.  
13     UNLESS THE DEMONSTRABLE EFFECT OF A LIBERAL CONSTRUCTION WILL  
14     PREVENT OR REDUCE THE CONFUSION AND VISUAL CLUTTER CAUSED BY  
15     EXCESSIVE SIGNAGE.

16               2. NO SPECIAL EXCEPTION OR VARIANCE MAY BE GRANTED IF IT  
17     WILL RESULT IN THE AUTHORIZATION OF A SIGN CLASS WHICH IS NOT  
18     OTHERWISE PERMITTED FOR A PARTICULAR ZONE OR USE BY SECTION 450.4.

19               3. A SIGN FOR WHICH A SPECIAL EXCEPTION, DEVELOPMENT PLAN,  
20     ~~BUILDING~~ USE PERMIT OR VARIANCE HAS BEEN APPROVED PRIOR TO THE  
21     EFFECTIVE DATE OF BILL 89-97 MAY BE ERECTED IN ACCORDANCE WITH THE  
22     SIGN PROVISIONS IN EFFECT AT THE TIME OF SAID APPROVAL. SUBJECT TO THE

1 ABATEMENT PROVISIONS OF SECTION 450.8.D.

2 ~~4. NOTWITHSTANDING ANY PROVISION OF SECTION 450 TO THE~~  
3 ~~CONTRARY, THE CLASS, TYPE, AREA, HEIGHT, NUMBER AND ADDITIONAL LIMITS~~  
4 ~~FOR SIGNS PERMITTED UNDER SECTION 450.4 MAY BE EXCEEDED BY SPECIAL~~  
5 ~~EXCEPTION IF A PROPOSED SIGN IS ASSOCIATED WITH AN ENCLOSED SHOPPING~~  
6 ~~CENTER GREATER THAN 750,000 GROSS SQUARE FEET IN BL, BM OR BR ZONES.~~

7 B. ABANDONED SIGNS. IN ORDER TO PREVENT BLIGHT IN ESTABLISHED  
8 COMMUNITIES, DIMINUTION OF PROPERTY VALUES, HAZARDS OF PERSONAL  
9 INJURY OR DAMAGE TO ADJACENT PROPERTIES, THE PROVISIONS OF 450.8.B  
10 SHALL BE CONSTRUED, TO THE GREATEST EXTENT POSSIBLE, TO REQUIRE THE  
11 REMOVAL OF ABANDONED SIGNS AT THE EARLIEST POSSIBLE MOMENT.

12 1. A TEMPORARY SIGN IS CONSIDERED ABANDONED ON THE  
13 SEVENTH CONSECUTIVE DAY FOLLOWING THE CONCLUSION OF THE EVENT OR  
14 ACTIVITY TO WHICH IT PERTAINS.

15 2. A PERMANENT SIGN IS CONSIDERED ABANDONED ONE YEAR  
16 AFTER THE COMMERCIAL OR NON-COMMERCIAL ORGANIZATION TO WHICH IT  
17 WAS ACCESSORY PERMANENTLY CEASES OPERATING.

18 3. AN OUTDOOR ADVERTISING SIGN IS CONSIDERED ABANDONED  
19 180 DAYS AFTER ITS OWNER HAS CEASED TO DISPLAY A MESSAGE THEREON.

20 4. AN ABANDONED SIGN SHALL BE REMOVED BY THE OWNER OF  
21 THE PREMISES OR THE OWNER OF THE SIGN IF DIFFERENT FROM THE OWNER OF  
22 THE PREMISES. IF AN ABANDONED SIGN IS NOT REMOVED, IT MAY BE REMOVED

1 BILL 89-97 IF THE SIGN:

2 A. VIOLATES SECTION ~~450.6.A.7~~ 450.6.A.8 BY HAVING ILLEGAL  
3 MOVING OR CHANGEABLE PARTS; OR

4 B. VIOLATES SECTION 450.6.B BY HAVING IMPROPER  
5 ILLUMINATION; OR

6 C. IS AN ENTERPRISE SIGN IN A RESIDENTIAL ZONE OR A  
7 TEMPORARY SIGN.

8 5. UNLESS PRECLUDED BY STATE LAW, ~~REQUIRED REMOVAL OF A~~  
9 ~~SIGN MUST BE PERFORMED BY ITS OWNER, AS DEFINED IN SECTION 450.3, OR THE~~  
10 ~~SIGN MAY BE REMOVED BY THE COUNTY IN A MANNER PROVIDED BY LAW. THE~~  
11 DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY HOLD THE  
12 OWNER OF A SIGN OR ANY ENTITY IDENTIFIED ON A SIGN RESPONSIBLE FOR  
13 REMOVAL OF THE SIGN IF REMOVAL IS REQUIRED UNDER THESE REGULATIONS.  
14 THE SIGN MAY ALSO BE REMOVED BY THE COUNTY IN ANY MANNER PROVIDED  
15 BY LAW.

16 SECTION 4 AND BE IT FURTHER ENACTED, THAT IF ANY PORTION OF THIS  
17 ACT OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID  
18 FOR ANY REASON IN A COURT OF COMPETENT JURISDICTION OR BY AN OPINION  
19 OF THE ATTORNEY GENERAL, THE INVALIDITY SHALL NOT AFFECT ANY OTHER  
20 PROVISION OR APPLICATION OF THIS ACT WHICH CAN BE GIVEN EFFECT  
21 WITHOUT THE INVALID PROVISION OR APPLICATION, AND FOR THIS PURPOSE  
22 THE PROVISIONS OF THIS ACT ARE DECLARED SEVERABLE.

23 SECTION 5. AND BE IT FURTHER ENACTED, that this Act shall take effect forty-five  
24 days after its enactment.

READ AND PASSED this 2nd day of September, 1997.

BY ORDER

Thomas J. Peddicord, Jr.

Thomas J. Peddicord, Jr.  
Secretary

PRESENTED to the County Executive for his approval this 3rd day  
of September, 1997.

Thomas J. Peddicord, Jr.

Thomas J. Peddicord, Jr.  
Secretary

APPROVED AND ENACTED:

9-4-97

C. A. Dutch Ruppersberger, III

C. A. Dutch Ruppersberger, III  
County Executive

I HEREBY CERTIFY THAT BILL NO. 89-97 IS TRUE AND CORRECT  
AND TOOK EFFECT ON October 19, 1997.

Joseph Bartenfelder

Joseph Bartenfelder  
Chairman, County Council

C.1. A sign attached to the building and projecting approximately at right angles to it shall not exceed a total area of two square feet for every foot of height of the wall to which it is attached. [B.C.Z.R., 1955., Bill No. 147, 1990.]

2. Notwithstanding any provisions of these regulations to the contrary, a sign for a striptease business, as defined in Section 101, Baltimore County Zoning Regulations, shall be attached to the building in which it is located and shall not exceed 25 square feet and shall not be permitted to extend above the roof line. All such signs shall be approved by the zoning commissioner, upon petition by the legal owner, pursuant to Section 500.7, Baltimore County Zoning Regulations, who may impose such other restrictions as would safeguard the health, safety, morals and general welfare of the locality involved. [Bill No. 137, 1990.]

D. No sign described in 413.2A, B and C above shall project more than 42 inches from the building. [B.C.Z.R., 1955.]

E. An identification sign for a shopping center or other integrated group of stores or commercial buildings, not exceeding 150 square feet in area. Multiple-faced signs shall be considered as one sign. If the commercial center has access from more than one street, one such identification sign may be allowed for each street provided the latter is officially recognized as a thoroughfare; also provided that no such identification signs shall be located within 100 feet of any existing principal building or adjoining residential premises on the same side of the street. No such sign, however, shall be permitted unless the land on the opposite side of such thoroughfare is zoned commercial from the corner to a point opposite any portion of such sign. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

F. Other business signs (not exceeding three on any premises) may be used if limited to a total area of 100 square feet in business zones, and 200 square feet in M.H. zones. [B.C.Z.R., 1955; Bill No. 7, 1984.]

✓ 413.3--Outdoor advertising signs as defined in Section 101 are allowed only in B.L., B.M., M.L., and M.H. zones as special exceptions, under the following conditions, as limited by Section 413.5: [B.C.Z.R., 1955.]

- ✓ A. The total surface area of any such sign, exclusive of structural supports, shall not exceed 300 square feet, except that a hand-painted custom-built sign may have a total surface area of not exceeding 500 square feet. The provisions of this subparagraph referring to hand-painted custom-built signs shall permit only one single face unit. [B.C.Z.R., 1955]
- B. No such sign shall be permitted to front on, face or be located within 250 feet of the right-of-way of any expressway or other controlled-access-type highway, or within 100 feet of the right-of-way of any other dual highway. [B.C.Z.R., 1955.]
- C. No such sign shall be located closer to the street right-of-way line than the minimum front yard requirement for a commercial building as determined by these regulations for the zone involved. [B.C.Z.R., 1955.]
- D. No such sign shall be located within 100 feet of any street intersection involving a dual highway, or within 50 feet of any other intersection. [B.C.Z.R., 1955.]
- E. No outdoor advertising sign shall be erected in any B.L. or B.M. zone unless at least 50% of the available frontage between streets, on that side of the street wherein the sign is proposed to be located, is improved with commercial uses. [B.C.Z.R., 1955.]
- ✓ F. In any B.L. or B.M. zone, all outdoor advertising signs on vacant land shall be located not less than 500 feet apart; all such signs placed on improved commercial properties shall be spaced not less than 100 feet apart. The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous. Two signs placed approximately at right angles to the street right-of-way, either back to back or end to end, are permitted. Provisions as to spacing and location of signs shall apply separately to each side of a street. [B.C.Z.R., 1955.]
- ✓ G. In any M.L. or M.H. zone, signs shall be placed at least 1,000 feet apart on the same side of the street or highway except that 2 signs may be paired, approximately back to back, totalling 4 signs on one structure, when located approximately at right angles to the right-of-way line. [B.C.Z.R., 1955.]
- H. No outdoor advertising sign erected on a roof may extend more than 16 feet above any part of the roof or parapet, except that the 16 foot limitation shall not apply to any such roof sign existing as of the date of adoption of these regulations.1 [B.C.Z.R., 1955.]



BETTIE CLARK, R.N. • 10916 YORK ROAD • COCKEYSVILLE, MARYLAND 21030 • (410) 527-1779

3/16/98

Office of the Peoples Council - Attention: Carole DeMillio, Attorney  
Opposition: Casper Zoning Hearing on 3/19/98

Dear Ms. De Millio -

I am unable to come to the hearing on 3/19/98. I am opposed to Mr. Casper displaying/erecting a "bill board type sign" on his building north of my business.

My understanding is that Baltimore County is making an effort to clean up the county with removal of signs and banners, etc that do not follow their 72 pages (36 pages - 2 sides) "rules, regulations and restrictions" for displaying signs.

I was going to be fined \$200.00 per day for having a 4' x 4' sign out by York Rd. I have used this sign for almost 14 years and originally obtained a permit for its use.

I was forced to comply with Baltimore County's law as have many other business owners. The consequence I pay is loss of business because my new sign is not as visible to traffic on York Road.

Why should someone be allowed to erect (display) a billboard type sign covering a building and collect a lot of rent from the advertiser when I am limited to a 4' x 4' sign?

Thanking you,

Bettie Clark

MAR 18 1998

vided by Article 25A of the Annotated Code of Maryland (1957 Edition), as amended, or by legislative act of the county council not inconsistent therewith.

- (e) The county board of appeals shall have original and exclusive jurisdiction over all petitions for reclassification. (Bill No. 85, 1978, § 3) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

### Sec. 603. Rules of practice and procedure.

Subject to the approval of the county council, the county board of appeals shall have authority to adopt and amend rules of practice and procedure to cover the conduct of its proceedings. Such rules may include matters relating to filing fees, meetings and hearings conducted by the board, the manner in which the chairman of the board shall be selected and the term for which he shall serve as chairman, and all other matters deemed appropriate or necessary for the board to conduct its proceedings. Said rules and regulations when approved by the county council shall have the force and effect of law. All decisions of the county board of appeals shall be made after notice and opportunity of hearing upon the issues before said board.

All hearings held by the board shall be heard de novo, unless otherwise provided by legislative act of the County Council, and shall be open to the public. The board shall cause to be maintained complete public records of its proceedings, with a suitable index.

(Bill No. 85, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

### Sec. 604. Appeals from decisions of the board.

Within thirty days after any decision by the county board of appeals is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the circuit court of Baltimore County, which shall have power to affirm the decision of the board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing, as justice may require. Whenever such appeal is taken, a copy of the notice of appeal shall be served on the board by the clerk of said

court, and the board shall promptly give notice of the appeal to all parties to the proceeding before it. The board shall, within fifteen days after the filing of the appeal, file with the court the originals or certified copies of all papers and evidence presented to the board in the proceeding before it, together with a copy of its opinion which shall include a statement of the facts found and the grounds for its decision. Within thirty days after the decision of the circuit court is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the court of appeals of this state. The review proceedings provided by this section shall be exclusive.

*Annotation*—One must be a taxpayer or a "party aggrieved" to seek review by the circuit court of a decision of the board of zoning appeals and to appeal from the circuit court to the court of appeals. *Southland Hills Improvement Assn. v. Raine*, 220 Md. 213, 151 A.2d 735 (1959).

Cited in *Prince George's County v. Donohue*, 220 Md. 372, 152 A.2d 560 (1959).

Referred to in *Renz v. Bonfield Holding Co.*, 223 Md. 34, 158 A.2d 615 (1960); and in *Jobar Corp. v. Rodgers Forge*, 236 Md. 106, 202 A.2d 612 (1964).

Certain persons owning property near property proposed for rezoning constitute "parties aggrieved" within the meaning of this section. *Wier v. Witney Land Company*, 257 Md. 600, 263 A.2d 833 (1970).

### Sec. 605. Employees of the board.

The board may appoint such employees, and the county executive shall make available to the board such services and facilities of the county as are necessary or appropriate for the proper performance of its duties. The county attorney or some member of the legal staff whom the county attorney designates shall serve as counsel to the board.

(Bill No. 172, 1981, § 1) (Approved by voters Nov. 2, 1982; effective Dec. 3, 1982)

### Sec. 606. Furthering legislation.

The county council shall have the power to enact furthering legislation not inconsistent with the provisions of this article to implement and define the powers and functions of the county board of appeals as herein specified. To the extent permitted by the public general laws of this state, the county council shall also have the power, by legislative act, to prescribe other appeals to be heard

(b) The zoning commissioner shall furnish with reasonable promptness a copy of any paper or record in his office to any person applying for same upon payment in advance of the sum of fifty cents (\$0.50) per page or as otherwise established by the administrative officer for transcribing, photographing, or otherwise reproducing such paper. Such reproduction when so made and certified under the seal of the zoning commissioner shall be evidence in any court or before any county board, commission, or official.

(c) The zoning commissioner shall permit any resident of the county or representative of the press to inspect and examine, as soon as received for filing or at any time thereafter, all papers filed in the zoning commissioner's office and to make memoranda or notes therefrom for any lawful purpose whatsoever, without payment of fees therefor, and also to examine the records and indexes in his office, free of charge. It shall be the duty of the zoning commissioner to afford such person immediate access to such papers or records and a full opportunity to examine the same and make memoranda therefrom.

(d) All records kept by the zoning commissioner shall be open to inspection by the county executive or any member of the county council at all reasonable times, whether or not such records are required to be kept by statute or ordinance. The zoning commissioner is authorized, in his discretion, to permit other county officials to remove a zoning file from his office; provided such official signs a regular receipt book to be kept by the zoning commissioner as a permanent record which shall show the date and time that such file is taken and returned. When the file is returned, the receipt book must be signed by the person who had withdrawn the file and countersigned by the zoning commissioner or his deputy.

(e) Nothing contained in this title or elsewhere shall prevent the zoning commissioner from transferring any file in his official custody to the board of appeals or to any circuit court or to the state court of appeals while review of proceedings is pending, and upon making such transfer the zoning commissioner is hereby relieved from any duties or responsibilities in connection therewith until such file is returned to him.

(f) The provisions of this section shall be executed by the deputy zoning commissioner as well as the zoning commissioner, and they may delegate to their chief clerk the performance of the daily duties and responsibilities in connection therewith.

(Code 1978, § 22-30; Bill No. 18, 1990, § 2; Bill No. 4, 1992, § 1)

#### Sec. 26-132. Appeals to county board of appeals.

(a) Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the zoning commissioner or the director of zoning administration and development management shall have the right to appeal therefrom to the county board of appeals. No official, office, department, or board of the county aggrieved or feeling aggrieved by any decision of the zoning commissioner shall have the right to appeal therefrom to the county board of appeals without the prior approval of the administrative officer and the county attorney. People's counsel is not subject to such prior approval. Notice of such appeals shall be filed, in writing, with the director within thirty (30) days from the date of any final order appealed, together with the required fee as provided in the zoning regulations. Such appeals shall be heard and disposed of by the county board of appeals as may be provided in the Charter and the board's own rules of procedure. Any reclassification when granted by the county board of appeals shall, in the absence of an appeal therefrom, have the force and effect of law.

(b) For purposes of this section, the term "person aggrieved or feeling aggrieved" includes a duly constituted civic, improvement, or community association if:

- (1) The property or issue which is the subject of the final order being appealed is:
  - a. Located within the geographic limits of the association, said limits to be defined and determined by the first of the following criteria found applicable:
    1. If incorporated, any geographic description contained in the associa-

6/9/97

RE: 10926 YORK ROAD

PDM

THIS IS A DROP OFF APPLICATION FOR  
A SPECIAL ~~EXCEPTION~~ + SPECIAL HEARING.

THERE ARE NO OUTSTANDING <sup>Violations</sup> ~~VIOLATIONS~~  
ON THIS PROPERTY.

NO STAFF MEMBER HAS REVIEWED  
THIS PLAN.

IF YOU HAVE ANY QUESTIONS, PLEASE  
CONTACT ME.

ok - wcr  
6/9/97

Variance / Exemption  
package OK - but  
if requesting a  
special hearing  
only for special hearing  
They should pay fees  
m. 41

#550

# WILLIAM MONK, INC.

PLANNING • LANDSCAPE DESIGN  
ENVIRONMENTAL RESOURCE MANAGEMENT

COURTHOUSE COMMONS, SUITE B-7  
222 BOSLEY AVENUE, TOWSON, MD 21204

## LETTER OF TRANSMITTAL

|                        |                    |
|------------------------|--------------------|
| DATE<br>6-9-97         | OUR JOB NO.<br>550 |
| FILE NO.               | YOUR JOB NO.       |
| ATTENTION              |                    |
| RE:<br>10926 YORK ROAD |                    |
|                        |                    |
|                        |                    |

TO

FDM

GENTLEMEN:

WE ARE SENDING YOU ☒ Attached ☐ Under separate cover via \_\_\_\_\_ the following items:

- ☐ Shop drawings    ☐ Prints    ☐ Plans    ☐ Samples    ☐ Specifications  
☐ Copy of letter    ☐ Change order    ☒ OTHER

| DRAWING NO. | FILE NO. | DESCRIPTION                   | ACTION |
|-------------|----------|-------------------------------|--------|
| 12          |          | PLAN                          |        |
| 3           |          | SPECIAL EXCEPTION APP FORM    |        |
| 3           |          | SPECIAL HAZARDOUS APP FORM    |        |
| 3           |          | ZONING DESCRIPTION - SIGN     |        |
| 3           |          | ZONING DESCRIPTION - PROPERTY |        |
| 1           |          | ZONING MAP                    |        |
| 1           |          | CHECK                         |        |
|             |          |                               |        |
|             |          |                               |        |

THESE ARE TRANSMITTED as checked below:

- ☐ For approval    ☐ As requested    ☐ Submit \_\_\_\_\_ copies for distribution  
☐ For your use    ☐ Resubmit \_\_\_\_\_ copies for approval    ☐ Return \_\_\_\_\_ corrected prints  
☐ For review and comment    ☐ \_\_\_\_\_  
☐ FOR BIDS DUE \_\_\_\_\_ 19 \_\_\_\_    ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS:

COPY TO: \_\_\_\_\_

SIGNED:

W. F. Monk

If enclosures are not as noted, kindly notify us at once.

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

NATHAN J. STERNER

3001 REMINGTON AVE. BALT, MD 21211

BILL MONK

222 BOSLEY AVE

STANLEY FINE

SUITE C-6  
TOWSON, MD 21204







Baltimore County  
Zoning Commissioner  
Office of Planning

Pet. #1

Suite 405, County Courts Bldg.  
401 Bosley Avenue  
Towson, Maryland 21204  
410-887-4386

August 14, 1997

Stanley Fine, Esquire  
20 S. Charles Street  
Baltimore, Maryland 21201

RE: ~~PETITIONS FOR SPECIAL HEARING. SPECIAL EXCEPTION & VARIANCE~~  
SW/S York Road, 470' SE of the c/l of Beaver Run Lane  
(10926 York Road)  
8th Election District - 4th Councilmanic District  
George Casper - Petitioner  
Case No. 97-550-SPHXA

Dear Mr. Fine:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Special Exception have been granted and the Petition for Variance dismissed as moot, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

cc: Mr. George Casper  
10926 York Road, Cockeysville, Md. 21030

Mr. Steve Southern, Lamar Advertising  
3001 Remington Avenue, Baltimore, Md. 21211

Mr. William P. Monk  
✓ 222 Bosley Avenue, C6, Towson, Md. 21204

People's Counsel; Case Files

IN RE: PETITIONS FOR SPECIAL HEARING,  
SPECIAL EXCEPTION & VARIANCE -  
SW/S York Road, 470' SE of the  
c/l of Beaver Run Lane  
(10926 York Road)  
8th Election District  
4th Councilmanic District

George Casper  
Petitioner

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 97-550-SPHXA

\*

\* \* \* \* \*

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by George Casper, owner of the subject property, and the Contract Lessee, Lamar Advertising, by Steve Southern, General Manager, through their attorney, Stanley Fine, Esquire. The Petitioners seek approval of an outdoor advertising sign to be located on the subject property, zoned M.L., a distance of less than 1,000 feet, but more than 100 feet, from an existing outdoor advertising sign located in a B.R. zone, on the same side of the street, or, in the alternative, a variance from Section 413.3.G of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an outdoor advertising sign to be located 330 feet from an existing sign on the same side of the street in lieu of the required 1,000 feet. Special exception relief is also requested to permit one (1), hand-painted, custom built outdoor advertising sign, 11' x 40' in dimension, pursuant to Section 413.3 of the B.C.Z.R. The subject property, known as 10926 York Road, is located on the southwest side of York Road near Beaver Dam Run in Cockeysville. The property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

At the time of filing these Petitions, Lamar Advertising was the

~~Contract Lessee; however,~~ at the hearing, Universal Outdoor Advertising was identified as the Lessee. As the result of a corporate reorganization, the Petition was amended in open hearing to reflect the proper corporate tenant. Universal Outdoor Advertising seeks approval to erect a custom built, 11' x 40' outdoor advertising sign on the subject site. The proposed sign will be a single-faced sign, directed towards southbound traffic on York Road. It will not be visible to northbound traffic.

Appearing at the hearing on behalf of the Petitions were Nathan J. Sterner, a representative of Lamar Advertising, William P. Monk, a Land Planning and Zoning Consultant who prepared the site plan for this property and Stanley Fine, Esquire, attorney for the Petitioners. There were no Protestants or other interested persons present.

Mr. Monk testified and presented the site plan, describing the subject property, proposed use and surrounding locale. The property is an irregularly shaped parcel, consisting of approximately .48 acres, zoned M.L.-I.M. The property has frontage on the west side of York Road in Cockeysville, and is improved with two structures, one a smaller building, and the second, a one-story block building.

Mr. Monk testified about the character of the York Road corridor in this area. He indicated that York Road is improved with a series of structures used as offices, retail uses, and commercial operations in this vicinity. A review of the zoning maps for this locale indicate that York Road is generally zoned B.L., B.M., and M.L. In Mr. Monk's judgment, the closest residence to the subject site is approximately 600 to 700 feet away.

As to the Petition for Special Exception, it is clear that the proposed sign must be considered an outdoor advertising sign, as defined in Section 101 of the B.C.Z.R. as "A sign which draws attention to a busi-

ness, commodity, service, entertainment, or other activity, conducted, sold or offered elsewhere than on the premises upon which the sign is located." Clearly, the nature of the advertisement to be shown on the sign will not be for any commodity, good, or service which will be offered at this site. Moreover, Section 413.3 of the B.C.Z.R. provides that outdoor advertising signs are permitted by special exception in the M.L. zone.

Consideration of the Petition for Special Exception is governed by Section 502.1 of the B.C.Z.R. Therein, a series of factors are listed which must be applied to the proposed special exception use. Generally, that Section requires that the Zoning Commissioner consider whether the proposed use will be detrimental to the health, safety and general welfare of the surrounding locale. Section 502 requires a finding as to whether the use will cause adverse traffic impact, be detrimental to the environment, place an undue burden on public utilities and conveniences, etc.

Moreover, special exceptions have been the subject of frequent consideration by the appellate courts of this State. The seminal case is Schultz v. Pritts, 291 Md. 1 (1981). In that case, the Court found that special exception uses, as part of the comprehensive zoning scheme, are presumptively proper. Furthermore, it was observed that special exception uses should not be permitted at a particular location proposed, only, if the use would have an adverse effect above and beyond that ordinarily associated with such use. (See Schultz, infra, at Pg. 21-22.)

Special exception uses have been evaluated more recently by the Court of Special Appeals in Mossburg v. Montgomery County, 107 Md. App. 1 (1995). In that case, the Court noted that it is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are applied in the first instance by making the use permissible by

~~special exception rather than permitted by right~~), it is whether the adverse effects in a particular location would be greater than those effects elsewhere in the zone. Thus, the question presented here is not whether the proposed sign will have an adverse impact. To a certain extent, it will, in terms of its aesthetic character and its impact on traffic, for example. The key question, however, is whether those impacts would be greater here than elsewhere in the zone.

This standard of law is particularly relevant in view of the comment offered in this case by the Office of Planning. Their comment states, in essence, that the property is located within the Hunt Valley/Timonium redevelopment area, which was the subject of a study adopted by the Baltimore County Planning Board on April 15, 1993. The comment goes on to state that the study recommends that the area continue to be an attractive and desirable place in which to live and work. Clearly, these are noble and appropriate goals. The comment concludes that every effort must be maintained to preserve and improve the image of the area, and therefore, the Petitioners' requests should be denied.

Taken to its logical conclusion, the Office of Planning would therefore contend that there should be no outdoor advertising signs in the Timonium, Cockeysville, or Hunt Valley area. If the Office of Planning's comment is to be followed, such signs would be nowhere permitted within that vicinity in an effort to improve that portion of the York Road corridor. This comment is clearly at odds with the existing state of the law, as originally set forth in Schultz, infra, and more recently, in Mossburg, infra. The Planning comment nowhere suggests or identifies any specific impact which would be greater at this particular location than it would be elsewhere in the zone.

To the contrary, Mr. Monk testified that the proposed location is a significant distance from the nearest residential structure. Moreover, his uncontradicted testimony was that the York Road corridor in this vicinity is exclusively devoted to retail/commercial/office uses and that the sign would not be inappropriate with those uses. Furthermore, as he observed, the sign will be directed only to southbound traffic, thereby limiting its impact on all traffic which utilizes York Road.

Outdoor advertising signs are not popular with Planners and Environmentalists. However, based on the current state of the law, I feel compelled to grant the special exception here. If the County Council wishes to impose a moratorium on signs in the Hunt Valley/Timonium/Cockeysville area, based on the findings of the redevelopment study, it may do so. However, unless and until such a moratorium is imposed, I am obligated to follow the requirements of Section 502.1 of the B.C.Z.R. as construed by the case law. The Petition for Special Exception will therefore be denied.

The Petition for Special Hearing presents an interesting issue. Testimony and evidence presented was that there exists another outdoor advertising sign approximately 330 feet from the subject site. This second sign is also located on the west side of York Road. The sign is visible in several photographs submitted during the hearing and presently advertises the McDonald's restaurant. Additionally, that sign is apparently located on property zoned B.L.

Section 413.3 of the B.C.Z.R. regulates outdoor advertising signs. Section 413.3.F requires that in any B.L. or B.M. zone, all outdoor advertising signs on vacant land shall be located not less than 500 feet apart. Section 413.3.C states "In any M.L. or M.H. zone, signs shall be placed at least 1,000 feet apart on the same side of the street or highway..."

Interestingly, the wording of these Sections is such that it is unclear as to whether these requirements apply to nearby signs located in different zones. That is, Section 413.3.F appears to govern the relationship of signs, one to another, located within a B.L. or B.M. zone. Section 413.3.G governs signs located entirely within an M.L. or M.H. zones. The regulations are silent as to the situation here, where one sign is located in an M.L. zone and a second sign located in the B.L. zone.

Apparently, however, this question was raised and addressed in a prior case on the subject property. Specifically, a Petition for Special Exception was granted by then Commissioner John G. Rose in prior Case No. 67-16-X, to permit construction of the sign which presently exists and advertises the McDonald's products. At that time, there apparently existed a sign at or near the location which is the subject of the instant case. That sign apparently has since been removed. The question presented in that older case was whether a sign was permitted in the M.L. zone when same was erected within 1,000 feet of another billboard located in the B.L. zone. Although, Commissioner Rose's opinion was issued in summary fashion and therefore has little discussion, his approval of the Petition for Special Exception and granting of the relief to allow the sign apparently constitutes an affirmative response to that question. That is, he ruled in that case, relating to the subject site, that the two billboards were allowed. Thus, in that such is the law of this case, I will not disturb his prior findings and shall therefore, grant the Petition for Special Hearing. The request for variance to allow a sign within 330 feet of an existing sign in lieu of the required distance of 1,000 feet is unnecessary and is therefore, moot.

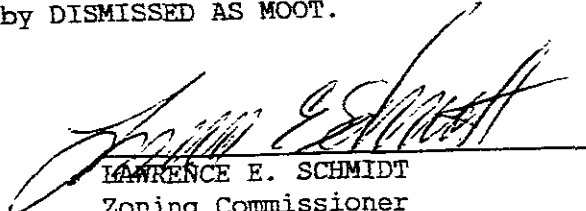
Pursuant to the advertising, posting of the subject property, and public hearing on these Petitions held, and for the reasons set forth above, the special exception and special hearing relief shall be granted, and the alternative variance request dismissed as moot.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14th day of August, 1997 that the Petition for Special Hearing seeking approval of an outdoor advertising sign in an M.L. zone, a distance of less than 1,000 feet, but more than 100 feet, from an existing outdoor advertising sign in a B.R. zone, on the same side of the street, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to permit one (1), hand-painted, custom built outdoor advertising sign, with a single face, 11' x 40' in dimension, pursuant to Section 413.3 of the B.C.Z.R., in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

IT IS FURTHER ORDERED that the Petition for Variance seeking alternative relief from Section 413.3.G of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an outdoor advertising sign to be located 330 feet from an existing sign on the same side of the street in lieu of the required 1,000 feet, be and is hereby DISMISSED AS MOOT.

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

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crime could have occurred at any time over a 42 hour period that weekend. Non-accomplice evidence put defendant in the company of the two confessed criminals in the vicinity of their "home base" during the period of time the alleged accomplices said the crime was committed. The non-accomplice testimony was held not to be corroborative of the accomplices as putting the defendant in their company at the time of the crime because the accomplice testimony could not be used in part to corroborate itself as to the crucial element of the time of the offense. 34 Md. App. at 111-112.

Likewise, in the case sub judice, the accomplice's testimony cannot pull itself up by its own bootstraps, or corroborate itself as to appellant's knowledge of the presence of the stolen goods in the trunk of the car. In the absence of non-accomplice evidence to corroborate that appellant even knew of the existence of the adding machine and citizen's band radio in the trunk, there is nothing other than Johnson's testimony to connect him with the housebreaking.

Because we reverse appellant's conviction of housebreaking for insufficiency of the evidence, he may not be retried on that charge. *Jackson v. Virginia*, 443 U.S. 307 (1979); *Mackall v. State*, 283 Md. 100, 387 A.2d 762 (1978). With respect to the conviction for transporting a handgun, there is no constitutional impediment to a retrial on that charge. Counsel for appellant suggests to us that appellant should not be retried on any charge because he probably will have served his full sentence before our mandate issues. That, however, is not properly before us.

Judgment in Case No. 81-596 reversed.

Judgment in Case No. 81-597 reversed and remanded for a new trial.

Costs to be paid by Prince George's County.

BOEHM v. ANNE ARUNDEL COUNTY

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Syllabus.

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LOUIS A. BOEHM v. ANNE ARUNDEL COUNTY, MARYLAND ET AL.

[No. 916, September Term, 1982.]

Decided May 4, 1983.

ADMINISTRATIVE LAW — *De Novo* Administrative Appeal — Absent Statute Or Rule To Contrary *De Novo* Hearing Is Entirely New Proceeding In Which All Aspects Of Case Are Heard Anew As If No Prior Decision Had Been Rendered — Board Of Zoning Appeals In No Manner Bound By Prior Decision Of Zoning Agency — Effect Of *De Novo* Hearing Is To Purge Potential Error From Earlier Decision Of Zoning Agency. pp. 506-507, 511

ZONING — APPEAL — EVIDENCE — Admission Of Evidence Outside Record On Appeal From Zoning Board — Generally, Review Of Evidence By Court Limited By Record Before Zoning Board From Which Appeal Is Taken — Trial Court's Refusal To Permit Additional Evidence Of Comparable Decisions To Support Claim Of Discrimination In Board's Decision Held Not Erroneous Where Decisions Sought To Be Introduced Were Issued By Different Administrative Zoning Agencies; Refusal to allow additional evidence outside record purporting to establish "thought processes" of administrative agent whose testimony before Zoning Board apparently contradicted earlier statement supportive of grant of non-conforming use was held by the Court as properly denied for such probing into mental processes of witness to determine basis of his conclusions is impermissible. Trial court's observation that agent's testimony before Board, although contrary to his prior conclusion, did not taint Board's decision held proper where agent's new conclusion was based primarily on a modification of facts which only became known to him subsequent to initial decision of Zoning agency. p 503

ZONING — JUDICIAL REVIEW — Standard — Fairly Debatable Test — Quantity And Quality Of Evidence In Instant Case Held Sufficient To Make Issues Before Board Fairly Debatable. Where, as here, there was substantial evidence in record to support Board's decision denying non-conforming use, Court on appeal will not substitute its judgment for that of Board whose expertise in zoning is presumed. pp. 514-515

H. E. F.

Appeal from the Circuit Court for Anne Arundel County (THIEME, J.).

Proceedings instituted by Louis A. Boehm to have property reclassified as non-conforming landfill. From a grant of

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reclassification. Anne Arundel County, Maryland and other local resident protestants appealed to the Zoning Board. Feeling aggrieved of the Board's decision reversing the Zoning Office's grant of a non-conforming use, petitioner appealed to the circuit court.

Judgment affirmed; appellant to pay the costs.\*

The cause was argued before MOWLAN, BISHOP and ALPERT, JJ.

Stephen J. Kleeman, with whom were Irwin M. Sussman and Leonard Z. Bulman on the brief, for appellant.

Kathryn J. Dahl for appellee Anne Arundel County, Maryland. Edwin A. Lechowicz for other appellees.

ALPERT, J., delivered the opinion of the Court.

On April 11, 1979 the Anne Arundel County Office of Planning and Zoning ("the Zoning Office") issued an Administrative Decision in response to an application by Louis A. Boehm, the appellant, for recognition of a nonconforming landfill on approximately 198 acres of his property. The decision granted nonconforming use for approximately 18.8 of the acres and provided for certain other conditions and restrictions of usage. Signatories to this decision were Florence Beck Kurlle, Planning and Zoning Officer, and Owen K. White, Zoning Administrator.

Apparently no one affected by the decision was satisfied. Boehm appealed to the Anne Arundel County Board of Appeals ("the Board") as did neighboring landowners ("the protestants"). The hearing before the Board involved over forty hours of testimony from thirty-eight witnesses over a period of six hearing dates. Boehm presented evidence to support his contention that a nonconforming landfill had existed on his property prior to July 1, 1952 as required in order to establish nonconforming use status under §13-310 and §13-311 of the Anne Arundel County Code (1972). The protestants produced witnesses whose testimony essentially attempted to refute that of the applicant. They generally

\*Note: Certiorari denied. Court of Appeals of Maryland, September 14, 1983.

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testified that there were no dumping and landfilling activities on the Boehm property prior to July, 1952 and that the landfilling activities had only begun in the late 1960's and early 1970's. According to county witnesses, the county became aware of the landfilling and dumping on the Boehm property in 1976. At this time the county had sent violation notices to Boehm requesting he apply for a nonconforming use or bring his property into compliance with the law.

In response, Boehm submitted a plat, map and several affidavits to show the limits of his operation. This plat had been the basis for the April, 1979 Zoning Office decision that limited the Boehm property to 15 acres of nonconforming use as landfill. Owen White of the Office of Planning and Zoning in his testimony before the Board indicated, however, that his initial decision was based upon vague and incomplete information. He stated that after hearing the additional testimony before the Board, he believed Boehm had not met his burden of proof on the question of prior use and implied that his initial decision appeared incorrect.

The Board issued a written Opinion and Order on October 23, 1980. The findings concluded "[t]he Board was not convinced that a landfill or excavation operation existed on the property prior to July, 1952. On the contrary, the Board is convinced by the evidence that there was no excavation and little more than sporadic dumping on a few occasions prior to July, 1952." The Board's Order declared the Office of Planning and Zoning decision null and void and determined that the lawful non-conforming status of the subject property was to be denied.<sup>1</sup>

1. The full text of the operative portion of the Board's findings is as follows:

Testimony by numerous witnesses was presented on behalf of both petitioners and protestants. In most instances this testimony was in direct conflict as to whether or not a landfill and excavation operation existed on this property prior to July 1, 1952, and has been an ongoing operation, without a consecutive twelve-month interruption, since.

The County witnesses all indicated there is no proof of this operation having been in existence prior to July 1, 1952, nor of its having continued without interruption since Owen White, Office

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the jury. The jury found that appellees had a prescriptive easement over appellants' property. Once the jury found the existence of the easement, we believe any doubt as to title was sufficiently cleared up so as to permit the presiding judge to "declare the rights" of appellees to use and improve the roadway.

[5] Appellants' final contention is that the trial court should have submitted the issues surrounding the scope of the easement to the jury because the issues were common to appellants' tort claims for injurious falsehood and civil conspiracy. In their brief, appellants concede that the question in common between the declaratory judgment and damage claims was the existence of the easement. As the record indicates, the jury did, in fact, decide the legal issue of whether the easement existed. As a result, appellants cannot now claim that "for the jury to properly determine whether the Mahoneys were guilty of injurious falsehood and civil conspiracy, it was necessary for the court to submit questions on the extent of the easement" to the jury.

#### JUDGMENT AFFIRMED.

#### COSTS TO BE PAID BY APPELLANTS.

587 A.2d 1155

Randy L. HILL.

v.

BALTIMORE COUNTY, MARYLAND.

No. 822, Sept. Term, 1990.

Court of Special Appeals of Maryland.

April 2, 1991.

County employee appealed from order of the Circuit Court, Baltimore County, Dana M. Levitz, J., affirming

administrative denial of disability retirement benefits. The Court of Special Appeals, Rosalyn B. Bell, J., held that: (1) employee was not denied due process; (2) county's procedure for evaluating disability retirement applications did not violate equal protection; and (3) substantial evidence supported denial of benefits.

Affirmed.

#### 1. Counties $\S$ 69(3)

On an administrative appeal from decisions of county medical board and county board of trustees that county employee was not totally disabled and was not entitled to disability retirement benefits, county board of appeals could decide issue of disability, and was not limited to determining whether employee's disability was ordinary or accidental, where county charter provided for de novo hearing and ability to decide all issues before board of appeals, and did not limit how board could decide issues. Const. Art. 11-A, § 2; Code 1957, Art. 25A, § 5.

#### 2. Administrative Law and Procedure $\S$ 453, 470

Constitutional Law  $\S$  278.4(5)  
Counties  $\S$  69(3)

County employee who had no notice or hearing before medical board or board of trustees in disability retirement case was not denied due process, where final administrative determination was made at de novo hearing before county board of appeals, and employee received notice of that hearing. U.S.C.A. Const. Amend. 14; Const. Art. 11-A, § 2; Code 1957, Art. 25A, § 5.

#### 3. Administrative Law and Procedure $\S$ 453, 470

Constitutional Law  $\S$  318(1)

Individual is provided due process of law even if he or she is not given notice of or hearing at initial administrative levels, when he or she is afforded de novo hearing at county board of appeals. U.S.C.A. Const. Amend. 14; Const. Art. 11-A, § 2; Code 1957, Art. 25A, § 5.

4. Constitutional Law  $\S$  238.5  
 Counties  $\S$  69(3)

County's procedure for evaluating disability retirement applications, which afforded ordinary disability retirement applicants examination of medical board but did not require similar examination of accidental disability retirement applicants was supported by rational basis and did not violate equal protection; applicants for ordinary disability retirement were not subjected to thorough medical diagnosis that generally followed accidental injury. U.S.C.A. Const. Amend. 14.

5. Constitutional Law  $\S$  213.1(2)

Equal protection clause of the Constitution does not preclude municipality from resorting to legislative classifications provided classifications rest on distinction which bears rational relationship to legitimate state interest. U.S. C.A. Const. Amend. 14.

6. Constitutional Law  $\S$  213.1(2)

Rational relationship test is usual standard of judicial review in equal protection case, and is applicable when fundamental rights or suspect class are not involved. U.S. C.A. Const. Amend. 14.

7. Constitutional Law  $\S$  48(6)

Under rational basis test, if any state of facts can reasonably be conceived to sustain classification challenged on equal protection grounds, they will be presumed to have existed at time law was enacted. U.S.C.A. Const. Amend. 14.

8. Counties  $\S$  69(3)

Physician's opinion that employee did not suffer from permanent disability could be considered by county board of appeals in disability retirement case, even though opinion did not consider report of another physician, who found employee to be 20% permanently partially disabled, where physician utilized her own examinations, as well as findings and conclusions of other medical professionals.

9. Evidence  $\S$  555.4(1)

Expert witness may base his or her opinion, not only on personal observations, but on facts and even opinions contained in report or examinations made by third party.

10. Evidence  $\S$  555.4(5)

Expert witness may give greater credence to one physician's conclusions than another's.

11. Administrative Law and Procedure  $\S$  313

Administrative agencies are not bound by technical, common-law rules of evidence; evidence must, however, be competent.

12. Administrative Law and Procedure  $\S$  791

When reviewing decisions of administrative agency, Court of Special Appeals must determine whether they are supported by substantial evidence.

13. Administrative Law and Procedure  $\S$  791

In applying substantial evidence standard, Court of Special Appeals must not engage in judicial fact-finding or substitute its judgment for that of agency.

14. Counties  $\S$  69(3)

Substantial evidence supported conclusion of county board of appeals that accidental disability pension was not warranted as result of "line of duty" injury to county employee's right arm; medical evidence indicated that employee had only 20% impairment to his right arm, that he could perform his duties, and that he was left handed.

15. Administrative Law and Procedure  $\S$  744, 791

Substantial evidence standard, rather than de novo standard, applied in reviewing administrative denial of disability retirement benefits.

Benjamin Lipsitz, Baltimore, for appellant.

Michael J. McMahon, Towson, for appellee.

Argued before ALPERT, ROSALYN B. BELL, and FISCHER, JJ.

ROSALYN B. BELL, Judge.

The County Code for Baltimore County establishes a statutory scheme governing the retirement of public employees. The interpretation of that scheme is the focus of this appeal.

Randy L. Hill was injured in the "line of duty" and sought disability retirement through the County Employees retirement and pension system. The administrative agencies of the county rejected his claim. He appealed to the Circuit Court for Baltimore County, which affirmed the agency's decision. Hill noted a timely appeal to this Court.

Five issues are raised by this appeal:

—Whether the County Board of Appeals erred in making a finding that Hill was not totally disabled because the County Code exclusively reserves to the Medical Board the issue of disability.

—Whether the administrative procedures utilized in this case violated due process and equal protection.

—Whether Hill was entitled to disability benefits.

—Whether the County Board of Appeals should have excluded certain opinion testimony about Hill's incapacity because the opinion failed to consider reports of a particular doctor who treated Hill.

—Whether the trial court erred in declining to apply a *de novo* standard of review in deciding Hill's appeal from the decision of the Board of Appeals.

We conclude that Hill has misinterpreted the statutory scheme. For that and other reasons set out below, we will affirm.

#### BACKGROUND

Hill sustained a "line of duty" injury to his right arm in 1985 when he fell from the back of a truck while employed at the Baltimore County Department of Recreation and

Parks as a maintenance worker. He tore tendons in his right arm, requiring surgical repair and rehabilitation. After returning to work for the County, Hill complained of an inability to perform his job and sought reassignment to light or desk-type work. No desk position was available, however. Until Hill stopped work altogether, he missed most of the working days available.

Eventually, Hill sought disability retirement through the County Employees retirement and pension system. To initiate the process, Hill filed an "Employee's Statement of Disability" with the Board of Trustees of the Employees' Retirement System of Baltimore County (Trustees). The Trustees, in compliance with the County Code, referred the case to the County Medical Board (Medical Board) for its determination of whether Hill was sufficiently injured to warrant retirement. The Medical Board concluded Hill was not totally disabled. Based on this information, the Trustees determined that he was not entitled to disability retirement benefits.

Hill appealed to the Board of Appeals of Baltimore County (Board of Appeals). That Board, after notice and an opportunity to be heard, affirmed the Trustees' decision. Hill appealed to the Circuit Court for Baltimore County which also affirmed the decision.

#### STATUTORY SCHEME

Before we examine appellant's contentions, we need to explain the statutory scheme. The Baltimore County Charter and Code establish a two-step administrative process to secure retirement based on disability. The first step consists of the administrative-investigative procedures. The second step consists of the administrative-appellate process before the County Board of Appeals. We will discuss each in turn.

#### —Administrative-Investigative Procedure—

Title 20 of the Baltimore County Code specifies the process to be followed to secure retirement benefits. Section

20-1 authorizes the County to establish and maintain a pension/retirement system for its employees. It authorizes the County to establish terms for admission into the system and different classifications for such admission. In accord with § 20-1, two classifications for disability benefits are established: § 20-20, *Ordinary disability retirement benefit*, and § 20-22, *Accidental disability benefit*. The distinction that exists between these two classes gives rise to appellant's equal protection argument and will be discussed fully later.

Section 20-34 establishes the composition, term and election of the Board of Trustees. Section 20-44 provides that the Board of Trustees establish a Medical Board to "participate in the retirement system." The Medical Board is required to arrange and "pass upon" all examinations required under the article. § 20-44. Moreover, the Medical Board is required to report to the Board of Trustees its "conclusions and recommendations" on all matters referred to it. The determination of whether an applicant is disabled is the province of the Medical Board. Determining whether the applicant's disability is work related is the province of the Board of Trustees.

—Administrative-Appellate Process—

Maryland's Constitution, Art. XI-A, § 2 requires the General Assembly to provide a grant of express powers to counties that form a charter under the auspices of the Article. The General Assembly provided this express grant in Art. 25A, § 5 (1957, 1990 Repl.Vol.), in the Maryland Code, known as the Express Powers Act. *Anne Arundel County v. Bowen*, 258 Md. 713, 715, 267 A.2d 168 (1970). Subsection 5(U) of the Act authorizes "Chartered Counties" to enact local laws allowing for the creating of a County board of appeals. The subsection also provides for the Board's composition, rules of procedure, and "decision by the board on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board...." As the Court of Appeals

recognized in *Hope v. Baltimore County*, 288 Md. 656, 657-59, 421 A.2d 576 (1980), this enactment, along with provisions in the Baltimore County Charter, effectively changed the way administrative appeals occur in Baltimore County.

In accord with these constitutional and statutory provisions, Baltimore County established its Board of Appeals. After enumerating several specific areas of appeal not applicable here, § 602(d) of the County Charter expressly provides that the Board of Appeals must "hear and decide appeals from all other administrative and adjudicatory orders...." Importantly, § 603, the practice and procedure section, mandates that the decisions of the Board of Appeals can be made only after "notice and opportunity for a de novo hearing." Finally, § 604 provides a right of appeal to the Baltimore County Circuit Court for any party "aggrieved" by the Board of Appeals decision.

Thus, the normal course of procedure in an application for disability retirement benefits requires the Medical Board to first determine whether the applicant is disabled. The Board of Trustees then determines whether the disability is work related. If the decision of either Board is adverse to the applicant, he or she may receive a de novo hearing before the Board of Appeals. If that decision is adverse, the applicant may appeal to the circuit court.

THE ADMINISTRATIVE PROCEDURE

Appellant challenges the administrative procedure leading to the adverse decision on his claim for disability retirement and the constitutionality of the statutory scheme. First, appellant alleges that the Board of Appeals must limit its function to determining the nature of Hill's disability, i.e., whether it was ordinary or accidental. He argues that the Board of Appeals erred in determining the existence or extent of his disability. Second, appellant argues that, although he was afforded a hearing before the Board of Appeals, he was given neither notice of a hearing nor an

opportunity to be heard before the Medical Board or the Board of Trustees. This, he contends, was a denial of due process of law. Third, appellant argues that failure to require a medical examination for accidental disability retirement benefits violates equal protection when such an examination is required for ordinary disability retirement benefits.

—Statutory Misinterpretation—

[1] Appellant contends that the Board of Appeals usurped a function of the Medical Board when it decided the issue of disability instead of limiting itself to the nature, ordinary or accidental, of appellant's disability. Appellant relies on *Board of Trustees of the Fire and Police Employees Retirement System of the City of Baltimore v. Ches*, 294 Md. 668, 452 A.2d 422 (1982). In *Ches*, the Court of Appeals reiterated the conclusion of the Court of Special Appeals in *Board of Trustees of the Fire and Police Employees Retirement System of the City of Baltimore v. Ches*, 50 Md.App. 200, 207, 436 A.2d 1131 (1981), that "[t]he determination of whether appellee was disabled is a function within the province of the medical board, not the Board of Trustees. Here, the Board invaded the bailiwick of the medical board, which proved to be its Achilles' heel."

The Court of Appeals agreed that the two boards served separate functions.<sup>1</sup>

"This Court has repeatedly stated that in cases arising under then Baltimore City Code, Art. 22, § 34(e), it is the

1. While the Court of Appeals acknowledged the different roles of these bodies, contrary to what appellant seems to imply in his brief, the Court did not add "its own support to [the] proposition" that the Board of Trustees "invaded the bailiwick of the medical board...." In *Ches*, the Court of Appeals makes it clear it believed the Board of Trustees decision "was unsupported by the record and was, therefore, arbitrary." *Ches*, 294 Md. at 679, 452 A.2d 422 (emphasis added). The Court indicated that it was not following the conclusion of our Court that the Board of Trustees had usurped the Medical Board's role. *Ches*, 294 Md. at 676-80, 452 A.2d 422.

function of the Medical Board to determine that an applicant is physically disabled, that his disability is likely to be permanent, and that he ought to be retired. After those decisions have been made by the Medical Board, the only issue to be determined by the Board of Trustees is whether the applicant's disability was the natural and proximate result of 'an injury arising out of and in the course of the actual performance of duty, without willful negligence on his part.'"

*Ches*, 294 Md. at 677, 452 A.2d 422 (citations omitted). On the basis of this language, appellant contends that the Board of Appeals cannot reverse the decision of the Medical Board.

Appellant's reliance on *Ches* is misplaced. As stated earlier, the statutory scheme provides a two-step process. *Ches* refers only to the first half of the process, the investigative, code-created proceedings. *Cf. Ches*, 294 Md. at 678-80, 452 A.2d 422. In the first half of the process, the administrative bodies, here, the Board of Trustees and the Medical Board, have distinct, reserved statutory roles relative to each other. *Ches*, 294 Md. at 677-78, 452 A.2d 422. The Medical Board determines the applicant's disability, if any, while the Board of Trustees determines whether the applicant's disability was causally related to a work accident. Baltimore County Code § 20-22. *Ches* applies solely to the first half of the process and has no relationship to the function of the Board of Appeals. The second half of the process deals with the administrative-appellate procedure, and due process requirements under the Charter; these halves are distinct. Sections 602 and 603 of the Charter provide for a *de novo* hearing and the ability to "decide" all the issues before the Board of Appeals. The Charter does not limit how the Board of Appeals may decide the issues. Thus, the Board of Appeals may fully decide the case and even reverse without remand.

When confronted with two proposed interpretations—one rendering legislation valid and the other invalid—courts generally attempt to read the enactment in a manner to

render it valid. *City of College Park v. Cotter*, 309 Md. 573, 589, 525 A.2d 1059 (1987). To interpret the provisions of the Code and Charter to mean that the Board of Appeals could not decide all the issues would render these provisions violative of due process. The Board of Appeals is the first administrative level at which appellant receives full notice and an opportunity to be heard. If the Board of Appeals was required to remand as appellant asserts *Ches* and the Code require, the Medical Board and the Board of Trustees would be the ultimate or dispositive decision maker. Because an applicant does not have the opportunity to participate at these levels, due process would be violated. We conclude that the Board of Appeals may decide all the issues before it and that *Ches* does not require a remand to the Medical Board.<sup>2</sup>

We next examine appellant's due process argument to ensure the administrative process utilized here comported with constitutional requirements.

#### —Due Process—

[2] The Medical Board determined that there was insufficient medical evidence to conclude appellant was totally disabled. Based on this, the Board of Trustees denied appellant's request for accidental disability retirement. Appellant's request for accidental disability retirement.

2. A comment by the Chair of the Board of Appeals indicates that they also were confused about their role as it related to the first step of the process. The Chair said:

"[I]n line with the Chess [sic] decision and the section of the code, if, in fact, we make a determination that he is disabled, Chess [sic] seems to require us to remand this to the Board of Trustees for, at that time, to make a decision as to whether or not this disability is a result of an in line of duty or ordinary disability."

This and other remarks made at the Board of Appeals hearing indicate it erroneously believed it could not decide all the factual issues. It did, however, in fact, consider the evidence *de novo*. The Board of Appeals indicated in its opinion that it considered the testimony produced before it as well as the voluminous medical reports filed with it. Moreover, it noted that it had the "opportunity to observe the demeanor of the witnesses." These statements are clear indications that the Board of Appeals did reach the medical issues in making its decision to affirm.

pellant divides his due process argument into two parts: (1) that he was denied due process because the Medical Board and Board of Trustees made the ultimate determination, therefore, he was entitled to notice and a hearing at those levels; and (2) that he was denied due process simply because he had no input into the process at each stage. Because we have already held that the Board of Appeals makes the ultimate decision on a case appealed to them, we need only deal with the second part of appellant's argument.

We agree with appellant that he is entitled to notice and the opportunity to be heard at some stage in the administrative process. As we noted in *Maryland-National Capital Park & Planning Commission v. Friendship Heights*, 57 Md.App. 69, 82, 468 A.2d 1353 (1984), the general rule is: "Where an administrative body is resolving disputed questions of adjudicative facts concerning particular parties, it is engaged in a quasi-judicial function which requires a hearing."

We part company with appellant, however, on when and how often such a hearing is required in order to comport with the requirements of due process.

Admittedly, appellant had no notice or hearing before the Medical Board or Board of Trustees.<sup>3</sup> He cites no specific case law, however, to support his contention that due process requires notice and a hearing at these initial stages or at all stages where the final administrative determination is made at a *de novo* hearing.

In *Quesenberry v. Washington Suburban Sanitary Commission*, 311 Md. 417, 419, 535 A.2d 481 (1988), suit was brought to obtain accidental disability under a retirement plan. The Court of Appeals concluded that the admin-

3. We cannot help but note that this actually serves to help an applicant. If the Medical Board finds him or her qualified and the Board of Trustees finds him or her eligible, the applicant may be awarded a pension without the need to do anything further. If unsuccessful at either of these earlier stages, the applicant can then proceed. This process is more economical for applicants and government alike.

istrative process had not been completed because no decision regarding the claim had been made and that additional review was required. In reaching this conclusion, the Court of Appeals stated:

"We do not suggest that each official considering the claim or appeal must afford Appellant a hearing. We note, however, that when an agency performs an adjudicative function involving property rights of this nature, the right to a hearing *at some stage* of the process may be required to accommodate the constitutional requirement of due process."

*Quisenberry*, 311 Md. at 425, 535 A.2d 481 (footnote omitted) (emphasis added).

The United States Supreme Court was more explicit in its statement of the rule. In concluding that proceedings before the Administrator of the Wage and Hour Division of the Department of Labor met the requirements of due process, the Supreme Court stated:

"The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective."

*Opp Cotton Mills v. Administrator of the Wage and Hour Division of the Department of Labor*, 312 U.S. 126, 152-53, 61 S.Ct. 524, 536, 85 L.Ed. 624 (1941).

Academics have reached a similar conclusion. In his administrative law treatise chapter on trial-type hearings, Professor Davis states, as the "main principle," that an individual "whose interest is protected by due process is entitled to opportunity for a trial-type hearing on disputed adjudicative facts...." Davis, 2 *Administrative Law Treatise* § 12:1, at 406 (2d ed. 1979). Professor Davis enumerates several exceptions to this rule. One applicable here is that no trial-type hearing is necessary when a *de novo* administrative or judicial review is available. Davis, *supra* at 406; see Cooper, 1 *State Administrative Law*, at 139 (1965).

[3] We hold that an individual is provided due process of law even if he or she is not given notice of or a hearing at the initial administrative levels when he or she is afforded a *de novo* hearing at the County Board of Appeals. Appellant received notice of the hearing, appeared with counsel, presented evidence, cross-examined witnesses and had a complete record that formed the basis of the Board of Appeals decision. Under its *de novo* review, the Board of Appeals could have decided the case completely. Here, it decided to affirm the decisions of the Medical Board and the Board of Trustees. Furthermore, we noted in *Boehm v. Anne Arundel County*, 54 Md.App. 497, 511, 459 A.2d 590, *cert. denied*, 297 Md. 108 (1983), that a *de novo* hearing is for all intents and purposes the first hearing of the case and cures any error existing in earlier administrative decisions.

—Equal Protection—

[4] Appellant's second constitutional argument is that the failure of the Medical Board to provide him a medical examination violated his right to equal protection of the law. This is also an attack on the first step of the two-step process. As mentioned earlier, two classifications are set out in the Code. Section 20-20 entitled *Ordinary disability retirement benefit* requires that the Medical Board "pass upon" a medical examination before determining whether an employee is incapacitated. Section 20-22 entitled *Accidental disability benefit* does not require a medical examination before determining whether an employee is incapacitated.

In his application for disability retirement benefits, appellant was not required to state whether he sought accidental or ordinary disability benefits.<sup>4</sup> His application was treated

4. At the *de novo* hearing before the Board of Appeals, argument occurred over whether appellant or the Board of Trustees was required to set out whether the disability was accidental or ordinary. As the Board of Appeals noted, it is "probably in the employee's interests" not to have to choose because this leaves either type available depending on the administrative body's decision.

as one for accidental disability benefits, under Baltimore County Code, § 20-22 (1978). Therefore, a medical examination was not conducted as a prerequisite to the Medical Board's decision.

Appellant argues that no reasonable basis exists for the distinction which affords ordinary disability retirement applicants an examination by the Medical Board but does not require a similar examination of accidental disability retirement applicants. Appellant asserts that the distinction is arbitrary and discriminatory, and amounts to a denial of equal protection because it does not afford a similar examination to both classes.<sup>5</sup> We are not persuaded by appellant's contention.

[5, 6] The equal protection clause of the Constitution does not preclude a municipality from resorting to legislative classifications provided the classifications rest on a distinction which bears a rational relationship to a legitimate State interest. See *Abbott v. Administrative Hearing Board, Prince George's County*, 38 Md.App. 681, 688, 366 A.2d 756 (1976), cert. denied, 280 Md. 727 (1977); see also *Bowie Inn, Inc. v. City of Bowie*, 274 Md. 230, 241, 335 A.2d 679 (1975). This is the "usual standard of judicial review" and is applicable when fundamental rights or a suspect class are not involved. See *Board of Supervisors of Elections of Prince George's County v. Goodsell*, 284 Md. 279, 286, 396 A.2d 1033 (1979).

[7] Under this "rational basis test," if any state of facts can reasonably be conceived to sustain the classification, they will be presumed to have existed at the time the law was enacted. *Goodsell*, 284 Md. at 286, 396 A.2d 1033. A reasonable state of facts for the distinction does exist.

5. We are not at all certain that, as appellant alleges, § 20-20 requires the Medical Board to conduct the examination. In fact, such a position seems contraindicated in § 20-44, which provides that "[t]he Medical Board shall arrange for and pass upon all medical examinations..." (Emphasis added.) Simply put, if the intent were for the Medical Board to conduct these examinations, the emphasized language would be replaced with the word "perform."

Applicants for ordinary disability retirement under § 20-20 have not suffered an "in line of duty trauma." Thus, applicants for ordinary disability retirement may not have been subjected to the thorough medical diagnosis that generally follows an accidental injury. In this case, Hill did receive a medical examination at the time of the accidental injury through the Baltimore Employees' Health Services which referred him to a Dr. Becker. Dr. Becker and a Dr. Reichmister, of his office, saw Hill several times as he continued to be monitored by the employees' health services over a substantial period of time.

A medical examination would be required to certify that ordinary disability retirement applicants lack the capacity to perform their duties. Unlike the employee who seeks accidental disability, ordinary disability retirement applicants have not received a diagnosis of, or scrutiny for, an "in line of duty" accident. As a consequence, the examination required in § 20-20 may be necessary to decide the question of the incapacity of ordinary disability applicants, but not of accidental disability applicants. The Code does not preclude a medical examination of accidental disability applicants, however, if the Medical Board deems one advisable. In light of this, we cannot say there is no reasonable basis for the distinction or that the equal protection clause is violated.

#### EVIDENCE

Appellant raises two issues based on evidentiary matters: (1) whether the Board of Appeals should have excluded certain opinion testimony about appellant's incapacity and (2) whether the record established that Hill was entitled to disability benefits.

#### —Opinion Testimony—

[8] Dr. Barbara McLean testified that, pursuant to her examination, knowledge of appellant's position of employment, and the findings and conclusion of Dr. John Fahey's examination, in her opinion, appellant suffered no perma-

nent disability. In his report, Dr. Fahey concluded that appellant had a "very excellent repair of his torn triceps, that he had a full range of motion of the elbow with a little limitation of internal rotation of the right shoulder." Dr. Reichmister found to the contrary, namely a 20 percent permanent disability. Appellant contends that it was error to receive Dr. McLean's opinion because it failed to consider Dr. Reichmister's reports.

[9, 10] An expert witness may base his or her opinion, not only on personal observations, but on facts and even the opinions contained in reports or examinations made by third parties. Moreover, an expert witness may give greater credence to one physician's conclusions than another's. See *McLain, Maryland Evidence* § 703.1 at 237-39 & nn. 6-10. As Professor McLain has noted, while case law intimates that

"the piggybacking of the witness' opinion on another's inference or conclusion is precluded . . . [a] close analysis of the cases shows that the courts have required merely that the basis for expert opinion be sufficiently trustworthy to be reliable and that the opinion have probative value of its own.

"Experts' use of hearsay information has been held proper most often with regard to valuation of real estate and *diagnosis and prognosis of personal injuries.*"

*McLain, supra*, § 703.1 at 239 (footnotes omitted) (emphasis added). Certainly, Dr. McLean's opinion had probative value. Furthermore, after reviewing the record, we cannot say the basis of her opinion was not "sufficiently trustworthy to be reliable." Dr. McLean utilized her own examinations as well as the findings and conclusions of other medical professionals, a common practice in the medical community.

[11] Moreover, administrative agencies are not bound by the technical, common-law rules of evidence. *Commission on Medical Discipline of the State of Maryland v. Stillman*, 291 Md. 390, 422, 435 A.2d 747 (1981). The evidence

must, however, be competent. *Department of Public Safety and Correctional Services v. Scruggs*, 79 Md.App. 312, 322, 556 A.2d 736 (1989). In reviewing the record, we cannot say that Dr. McLean's testimony was incompetent simply because it did not agree with Dr. Reichmister's reports.

—Record Evidence as to Disability—

Appellant next argues that the record clearly shows that he lacks the capacity to perform his duties as a maintenance worker in the County's Department of Recreation and Parks.

[12, 13] When reviewing the decisions of an administrative agency, we must determine whether they are supported by substantial evidence. In this regard, our duty is to determine "whether a reasoning mind reasonably could have reached the factual conclusion that the agency reached." *St. Leonard Shores Joint Venture v. Supervisor of Assessments of Calvert County*, 307 Md. 441, 447, 514 A.2d 1215 (1986) (citations omitted). In applying this standard, we are mindful that we must not engage in judicial fact-finding or substitute our judgment for that of the agency. *St. Leonard Shores*, 307 Md. at 447, 514 A.2d 1215.

[14] Our review of the record convinces us that there was relevant and substantial evidence to support the conclusion of the Board of Appeals that an accidental disability pension was not merited. Rather than summarize this evidence, we will quote the opinion of the Board:

"The Board has carefully considered the testimony solicited at the hearing on this matter and the lengthy and voluminous medical reports submitted by both sides. The Board has had the opportunity to observe the demeanor of the witnesses at the hearing and determine their credibility. This is particularly relevant in this case in view of the past history of Mr. Hill's employment with Baltimore County. As was adduced at the hearing, Mr.

Hill has had frequent run-ins with his supervisors and the medical clinic staff which serves County employees. We do not judge the merits of this dispute, only the issue before us.

"After carefully considering all the evidence before us, we are persuaded that Mr. Hill is not totally disabled within the meaning of the statute. Clearly, the statute provides total and permanent incapacity for duty. We do not feel Mr. Hill has met his burden in this regard. Dr. Reichmister, upon whose reports the employee relies, has determined that only a 20 percent impairment to the right upper extremity exists. Dr. Fahey has opined that the employee can return to work without restriction. A review of the Appellant's Exhibit = 5, the description of Mr. Hill's job duties, is particularly relevant. Despite Mr. Hill's claims to the contrary, the medical reports do not substantiate his claim that he cannot perform all of the duties as described in Appellant's Exhibit = 5. Frankly, Mr. Hill's testimony that he could not perform many of the simplest tasks which could be accomplished by the use of only one arm is not credible. It is particularly relevant that his injury was to his right arm and Mr. Hill is left-handed."

#### DE NOVO STANDARD

[15] Appellant acknowledges, as we set out earlier, that a court reviewing an administrative decision ordinarily applies the substantial evidence test. Nonetheless, appellant argues that *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 109 S.Ct. 948, 103 L.Ed.2d 80 (1989), requires a *de novo* review of this case and, accordingly, that the trial court erred.

In *Bruch*, 109 S.Ct. at 956, the Supreme Court held, "[c]onsistent with established principles of trust law ... that a denial of benefits challenged under § 1132(a)(1)(B) [of the Employee Retirement Income Security Act of 1974] is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary dis-

cretionary authority to determine eligibility for benefits or to construe the terms of the plan." (Emphasis in original.)

Appellant urges that an analogous situation is presented here and that we should set aside the substantial evidence standard of administrative review. We disagree.

First, the Supreme Court makes clear that the *Bruch* decision is limited specifically to the applicable ERISA section. "The discussion which follows is limited to the appropriate standard of review in § 1132(a)(1)(B) actions challenging denials of benefits based on plan interpretations." *Bruch*, 109 S.Ct. at 953. Second, as the Supreme Court points out, ERISA law and the *Bruch* decision are inexorably bound to the language and principles of trust law. *Bruch*, 109 S.Ct. at 954. Here, the question is not about trust law and review of trust decisions, but about administrative law and review of administrative decisions.<sup>6</sup> Third and most important, ERISA applied only to private plans and its language expressly precludes its application to any governmental employee benefit plans.<sup>7</sup> 29 U.S.C. §§ 1002(32) & 1003(b)(1) (1988); see *Chauser v. Commissioners of the Employees' Retirement System of City of Newark*, 150 N.J.Super. 379, 375 A.2d 1205, 1207 (N.J. Super.Ct.App.Div.1977).

Appellant would have us overturn a well-established and logical principle of administrative law on the basis of one *ERISA* decision that is directly tied to a statute that is

6. Neither will semantics provide a safe haven for this proposition. We do not believe that administration of a trust falls within the ambit of administrative law. Black's defines administrative law as a "Body of law created by administrative agencies in the form of rules, regulations, orders, and decisions." *Black's Law Dictionary* 43 (5th ed. 1979).

7. Certain requirements for qualification for both public and private plans have since been adopted. 26 U.S.C.A. § 401 *et seq.* (West Supp.1990). At this time, they are not being enforced on government plans.

inapplicable to governmental retirement plans and based on the law of trusts. We decline to do so.

# JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

587 A.2d 1164

In re KEITH G.

No. 838, Sept. Term, 1990.

Court of Special Appeals of Maryland.

April 2, 1991.

The District Court, Montgomery County, Juvenile Division, Douglas H. Moore, J., dismissed delinquency petition charging juvenile with felony theft and related offenses. The state appealed. The Court of Special Appeals, Robert M. Bell, J., held that trial court did not abuse its discretion in dismissing petition, for failure of intake officer to make recommendation with regard to its filing within time prescribed by statute and without having obtained extension of time from court.

Affirmed.

## Infants ¶202

Trial court did not abuse its discretion in dismissing delinquency petition charging juvenile with felony theft and related offenses, based on failure of intake officer to make a recommendation with regard to whether formal delinquency petition should be filed within the time prescribed by statute and without having obtained extension of time from court. Code, Courts and Judicial Proceedings, § 3-810(d)(2).

Cathleen C. Brockmeyer, Asst. Atty. Gen. (J. Joseph Curran, Jr., Atty. Gen., Baltimore, and Andrew L. Sonner, State's Atty. for Montgomery County, Rockville, on the brief), for appellant.

Robert M. McCarthy, Assigned Public Defender, Bethesda (Stephen E. Harris, Public Defender, on the brief, Baltimore), for appellee.

Argued before BISHOP and ROBERT M. BELL, JJ., and LEONARD S. JACOBSON, Judge Specially assigned.

ROBERT M. BELL, Judge.

The State has noted this appeal from the judgment of the District Court of Maryland for Montgomery County, Juvenile Division, dismissing a delinquency petition charging appellee Keith G. with felony theft and related offenses. A single issue is presented for our review:

Where the Juvenile Services Intake Officer's preliminary inquiry exceeded twenty-five days, without a court order, is dismissal of the delinquency petition the proper sanction?

Finding no error, we will affirm.

A complaint against Keith G. was filed with the Department of Juvenile Services ("DJS") on February 1, 1990. Twenty-six days later, on February 27, 1990, a conference, involving Keith G., his parents, and the intake officer, was held. Immediately following that conference, the intake officer recommended that a formal delinquency petition be filed in Juvenile Court against Keith G. That petition having been filed, Keith G. moved to dismiss it on the ground that, because a court had not authorized an extension of the time, the intake officer's recommendation was not timely filed pursuant to Maryland Cts. & Jud.Proc.Code Ann., § 3-810(d)(2). The court agreed, thus precipitating the State's appeal.

216 Md. 110, 112 [139 A.2d 707] (1958); *Shipley v. State*, 220 Md. 463, 466 [154 A.2d 708] (1959); *Benton v. State*, 228 Md. 309, 311 [179 A.2d 718] (1962). The rule is almost universally recognized. See Underhill, *Criminal Evidence* (5th ed.) § 608, p. 1474; Wigmore, *Evidence* (3rd ed.) § 176; 2 Wharton, *Criminal Evidence* (12th ed.) § 550. The cases are collected in an exhaustive note, 37 A.L.R.2d 967. Wigmore, in an often quoted passage, seems to take the position that an owner is qualified *per se* and that any lack of knowledge goes only to the weight of the evidence.

*Barber v. State*, 23 Md.App. 655, 657, 329 A.2d 760, cert. denied 274 Md. 725 (1974), quoting from *Coffin v. State*, 230 Md. 139, 142, 186 A.2d 216 (1962).

Within *Barber, supra*, we further discussed modifications of these rules. Specifically, in quoting from 2 *Wigmore on Evidence* § 716 (1970), we noted that "the general test, that *any one familiar* with the values in question may testify, is liberally applied, and with few attempts to lay down detailed minor tests." 23 Md.App. at 658, 329 A.2d 760 (emphasis supplied). The jury was thus free to find the value of the television set to be as claimed.

We hold that Mr. Flood, the owner of the television set, could properly testify as to its value.

#### B. Merger

[4] Appellant next claims that the trial judge improperly failed to merge the malicious destruction charge with that of breaking and entering. As appellant correctly notes, "If each offense required proof of a fact which the other does not, the offenses are not the same and do not merge." *Newton v. State*, 280 Md. 260, 268, 373 A.2d 262 (1977).

We need go no further than an examination of the first element, the required intent, to distinguish the offenses. Malicious destruction requires proof that the accused had a specific intent to destroy, injure, deface or molest the real or personal property of another. The crime of breaking and entering requires proof of the accused's specific intent to

break and enter the dwelling house of another. Clearly, the intent to break and enter is different from an intent to destroy, injure, deface or molest the property of another.

#### C. The Jury's Verdict

[5] Appellant further avers that the evidence was insufficient to support the jury's verdict of conviction. Specifically, he contends that, because one of the State's witnesses observed three perpetrators and the other saw only two, the evidence lacked probative force. Such a determination, however, is a matter within the sole province of the jury. The conflicting testimony was a factual issue for the jury to weigh. *McLaughlin v. State*, 3 Md.App. 515, 526, 240 A.2d 298 (1968).

#### D. Transcribing Discrepancies

Finally, appellant alleges that the court reporter failed to transcribe portions of the record. We are unable to discern any deficiencies in the record as alleged. The record appears complete. At worst, any such failure would appear to be harmless error. See, e.g., *Dorsey v. State*, 276 Md. 638, 659, 350 A.2d 665 (1976).

#### JUDGMENTS AFFIRMED.

#### COSTS TO BE PAID BY APPELLANT.

500 A.2d 344

Vernon E. LOHRMANN, Sr., et al.

v.

The ARUNDEL CORPORATION, et al.

No. 253, Sept. Term, 1985.

Court of Special Appeals of Maryland.

Nov. 18, 1985.

Appeal was taken from order of the Circuit Court, Anne Arundel County, Bruce C. Williams, J., granting spe-

cial zoning exemption. The Court of Special Appeals, Adkins, J., held that evenly divided vote by county board of zoning appeals operated as denial of special exception previously granted by zoning hearing officer.

Reversed.

### 1. Declaratory Judgment § 392

Order entered in declaratory judgment action which expressly directed that "summary judgment be granted in favor of defendants" and embodied declaration on question before it was an appealable final judgment. Code, Courts and Judicial Proceedings, § 3-411.

### 2. Declaratory Judgment § 209

Section of county charter providing for appeal by party aggrieved by decision of county board of zoning appeals did not preclude action seeking declaratory relief where zoning board's split decision made it unclear as to which party was "aggrieved" and declaratory judgment action was brought to determine what it was that board had decided. Code, Courts and Judicial Proceedings, § 3-409(b).

### 3. Zoning and Planning § 548

Evenly divided vote by county board of zoning appeals operated as denial of special exception previously granted by zoning hearing officer where county charter provided that decisions by zoning board would be made after *de novo* hearing, thus making board's action an exercise of original jurisdiction in which applicant had burden of proof.

Ronald G. Dawson (Smith, Somerville & Case on the brief), Annapolis, for appellants.

Sharon B. Benzil (Harry C. Blumenthal and Blumenthal, Wayson, Downs & Offutt, P.A. on the brief), Annapolis, for appellee, Arundel Corp.

Stephen R. Beard, County Sol. and Eileen E. Powers, Asst. County Sol., Annapolis, on the brief for appellee, Anne Arundel County.

Argued before MOYLAN, ADKINS and KARWACKI, JJ.

ADKINS, Judge.

The principal question presented by this case is whether an evenly-divided vote by the Anne Arundel County Board of Appeals operates as a denial of a special exception previously granted by a zoning hearing officer or as an affirmation of the hearing officer's decision. The question arises in this context:

Appellee The Arundel Corporation (Arundel) requested a special exception to permit the operation of a cemetery, funeral home, and crematory on certain lands in Anne Arundel County.<sup>1</sup> The request was opposed by appellants Vernon E. Lohrmann, Sr., and Boyd Walton, Jr. (appellants), but was granted by a zoning hearing officer. Appellants appealed to the County Board of Appeals. The Board, with six members sitting, held a *de novo* hearing. It rendered the following "decision":

There being the same number of members voting to grant the special extension as there are members voting to deny the special exception, the Board is unable to issue a majority Opinion and Order to do either.

The County Office of Planning and Zoning announced that it would give effect to the zoning officer's decision to grant the special exception. Appellants appealed the Board's "decision" to the Circuit Court for Anne Arundel County. In a separate action in that court, they sought a declaratory judgment "that the split decision entered by the Board of Appeals . . . is deemed to be and constitutes a denial of the application . . . ." The circuit court stayed the appeal from the Board and proceeded with the declaratory judgment case. It declared

that since the Board of Appeals refused to decide the case either way, the decision rendered by the Zoning Hearing Officer, which granted the special exception, remains in

<sup>1</sup> The other appellee in this court is Anne Arundel County (the County).

effect at this time. Since there is no genuine dispute between the parties as to any material facts, the Court grants summary judgment in favor of [Arundel and the County]. . . .

Appellants appealed to this court. We hold that the trial court erred and reverse. But before we explain our reasons for this decision, we must dispose of some preliminary matters.

#### *Preliminary Matters*

[1] The first of these problems is raised by appellees' motion to dismiss for lack of a final judgment. Citing *Felger v. Nichols*, 30 Md.App. 278, 352 A.2d 330 (1976), they argue that appellants have appealed from the mere granting of a motion for summary judgment, not from an actual judgment entered thereon.

In *Felger* the defendant moved for summary judgment. The trial court signed a paper that read, in pertinent part: "Motion for Summary Judgment Granted." A note attached to the paper read: "Counsel will prepare order." The docket showed that the motion for summary judgment had been granted. No judgment was entered or noted on the docket. No order was ever prepared by counsel. Under those circumstances we dismissed the appeal. We held: "There is no right of appeal from the grant of a motion for summary judgment," reasoning that the grant of the motion is nothing more than a determination that the moving party is entitled to a judgment. It does not itself constitute the entry of final judgment. 30 Md.App. at 279, 352 A.2d 330 [footnote omitted].

In the case now before us, the trial judge, at the conclusion of his memorandum opinion, signed an order reading thus:

WHEREFORE, for all the foregoing reasons, it is this 18th day of January, 1985, by the Circuit Court for Anne Arundel County, ORDERED that Summary Judgment be granted in favor of Defendants and declare [sic] that the

Zoning Hearing Officer's approval of the requested special exception is to remain in effect.

This order is reflected in the docket. We hold it constitutes an appealable final judgment for purposes of § 12-301 of the Courts and Judicial Proceedings Art.<sup>2</sup> This case differs from *Felger* in at least two respects.

In *Felger* no order was ever entered, although the docket showed that one was contemplated. There was nothing more than the grant of a motion preliminary to the intended order. Here, the court signed an order expressly directing that "Summary Judgment be granted in favor of Defendants. . . ." It would have been better, no doubt, to direct that "Summary Judgment be *entered*" or even to say that "Summary Judgment is *entered*" but that is a matter of semantics; the judge's intention, as embodied in his order, is clear.

Furthermore, we are dealing here with a declaratory judgment action. The essence of the judgment in this type of proceeding is a declaration of the rights of the parties in order "to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Courts Art. § 3-402. Section 3-411 instructs that a "declaration may be affirmative or negative in form and effect *and has the force and effect of a final judgment or decree*" [emphasis supplied]. As we have seen, the circuit court did issue a declaration on the question before it, and it embodied that declaration in an order. We hold that this was an appealable final judgment by virtue of the express language of § 3-411.

[2] The second preliminary problem arises out of § 3-409(b): "If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a [declaratory judgment proceeding]." There is, of course, a statutory remedy for a party aggrieved

2. In pertinent part, § 12-301 provides that "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court."

ed by a decision of the Anne Arundel County Board of Appeals. That remedy is an appeal from the Board to the circuit court. Anne Arundel County Charter, § 604. Indeed, as we have noted, appellants took an appeal under that provision. The question is whether § 604 provides "a statutory remedy" that bars appellants from also seeking declaratory relief. Under the circumstances of this case, we hold it does not.

In the first place, § 604 applies only to "a party aggrieved" by the Board's decision. The issue now before us is whether the effect of that decision was to affirm the hearing officer or to deny the special exception. Until that has been determined, no one really knows who was aggrieved by the Board's action. Thus, while appellants' appeal may have been prudent as a means of preserving their appeal rights in the event of an adverse decision in this case, it is far from clear that the appeal route would provide them with a complete and adequate resolution of the basic question: the effect of the Board's decision.

That fact leads to a second conclusion. This case is not an appeal from the Board, and it is not designed to raise for review the usual issues in an administrative appeal: whether the agency misapplied the law and whether its factual determinations were fairly debatable and see Code, State Government Art. 10-215(g); *Gerzenko v. County Board of Appeals of Baltimore County*, 257 Md. 706, 711, 264 A.2d 825 (1970); and *Harford Memorial Hospital v. Health Services Cost Review Commission*, 44 Md.App. 489, 410 A.2d 22 (1980). Instead, the circuit court was asked what it was the Board had decided, and that same question is before us. We hold that the declaratory judgment process is available to appellants. *Washington Suburban Sanitary Commission v. Mitchell & Best*, 303 Md. 544, 559, 495 A.2d 30 (1985) (special statutory remedy does not bar declaratory relief when declaratory judgment issue not embraced within statutory remedy).

### *The Merits*

[31] We now proceed to consider the effect of the Board's evenly-divided "decision." Did it affirm the hearing officer's grant of the special exception or did it amount to a denial of the special exception? We examine this question in the context of § 603 of the Anne Arundel County Charter, which provides: "All decisions by the County Board of Appeals shall be made after ... hearing *de novo* upon the issues before said Board."

The trial judge treated the Board's decision as a nullity—"The Board of Appeals refused to decide the case either way"—and for that reason he concluded that the zoning officer's decision "remains in effect at this time." Appellants agree with this conclusion, but eschew the reasoning. They analogize to judicial appellate review, and observe that in that situation an equal division on an appellate court results in affirmance of the lower court. *Attorney Grievance Commission v. Mandel*, 294 Md. 560, 572, 451 A.2d 910 (1982). See also Md. Const. Art. IV, § 14. Moving into the zoning arena, appellees cite *Levy v. Seven Slade, Inc.*, 284 Md. 145, 198 A.2d 267 (1964) and *Stocksdale v. Barrard*, 239 Md. 541, 212 A.2d 282 (1965) as supportive of their position. We do not read these cases as helpful to appellees.

In *Levy* the Baltimore County Zoning Commissioner denied an application for change in zoning classification and a special exception. The applicant appealed to the County Board of Appeals, which split 1-1. The applicant appealed to the circuit court. That court "felt there was no presumption of the correctness of the denial of the application which resulted" and that it should, therefore, "make its own independent determination of the facts as the record disclosed them." 234 Md. at 148, 198 A.2d 267. Having done so, the court granted the application. *Id.*

The Court of Appeals reversed and reinstated the zoning commissioner's denial. It said that "[t]he inability of the Board to act affirmatively ... produced a continuance of

the denial of the application which the Zoning Commissioner had ordered....” 284 Md. at 152, 198 A.2d 267. It held that the Board’s quasi-legislative action was entitled to a presumption of correctness and that the circuit court had erred in, in effect, substituting its judgment for that of the Board. *Id.* The facts and the holding in *Stocksdale* are virtually identical.

Both of these cases lend facial support to appellees’ position. And we agree with appellees that the “split decision” zoning cases cited by appellants do not undercut the holdings of *Levy* and *Stocksdale*. They deal with a different problem. In *Montgomery County Board of Appeals v. Walker*, 228 Md. 574, 180 A.2d 865 (1962), the Court of Appeals held that a 2-2 decision of the Board of Appeals “constituted an effective denial of appellees’ application....” 228 Md. at 584, 180 A.2d 865. But that case had nothing to do with an appeal from a hearing officer to the Board. The case involved an exercise of the Board’s original jurisdiction under a Montgomery County Code provision requiring any action of the Board to be “taken by resolution, in which at least three members must concur.” 228 Md. at 581, 180 A.2d 865. The scenario is essentially that involved in *Gorin v. Anne Arundel County*, 244 Md. 106, 223 A.2d 237 (1966) (when county commissioners split 4-4 on rezoning application, the application is denied). The fact that *Walker* and *Gorin* dealt with the exercise of original (as opposed to appellate) administrative or legislative jurisdiction may be of some help here, however. This is because in the case *sub judice*, the Anne Arundel County Board of Appeals was acting *de novo*—a situation closely akin to the exercise of original jurisdiction. It is this that distinguishes *Levy* and *Stocksdale* from the instant case. In neither of those cases, in which the Court of Appeals treated an administrative “appellate” split decision somewhat like the action of an evenly-divided appellate court, was a *de novo* “appeal” considered. Neither opinion makes

any reference to *de novo* action by the administrative appellate body.<sup>3</sup>

Here, as we have seen, we do have a *de novo* provision. We think that provision is decisive, for it tells us that the Board was not acting in a true appellate capacity; it was not functioning as does this court or the Court of Appeals in reviewing the action of a lower judicial tribunal. It was, in effect, exercising original jurisdiction.

There are many provisions in Maryland law for what are loosely termed *de novo* “appeals.” Some of these appeals are less “*de novo*” than others in that the action of the body subject to review retains some vitality and must be considered in the reviewing process. For example, although appeals from the Workmen’s Compensation Commission are “essentially *de novo*,” *Maryland Bureau of Mines v. Powers*, 258 Md. 379, 382, 265 A.2d 860 (1970), “the decision of the Commission shall be presumed to be correct and the burden of proof shall be upon the party attacking the same.” Art. 101, § 56. Because of that presumption and that burden, if “the mind of the trier of facts is in equal balance on the evidence in the record, the finding of the Commission should be affirmed.” *Blake Construction Co. v. Wells*, 245 Md. 282, 286, 225 A.2d 857 (1967). A similar situation pertains with respect to judicial review of Health Claims Arbitration cases. *Attorney General v. Johnson*, 282 Md. 274, 280, 385 A.2d 57 (1978); Courts Art. § 3-2A-06(d). See also *Insurance Service Management, Inc. v. Muhl*, 65 Md.App. 217, 218-226, 500 A.2d 297, 298-302 (1985) (dealing with appeals from the Insurance Commission under Art. 48A, § 40). In these contexts there is some aspect of review of the administrative or quasi-judicial action when the “appeal” is taken; the slate is not

3. In both *Levy* and *Stocksdale de novo* appeal provisions were involved. But examination of the briefs filed in both cases reveals that in neither one was an issue raised as to the effect of a split decision on a *de novo* administrative appeal. No doubt for that reason the Court of Appeals did not address that issue, instead treating the cases as though they involved non-*de novo* appeals.

wiped clean. But it is otherwise in different types of *de novo* "appeals." In this second category of proceedings, the use of the word "appeal," to the extent it denotes review of the action of a lower tribunal, is a misnomer, for there is no review.

Perhaps the best example of proceedings in this category is that of *de novo* "appeals from the District Court to the circuit courts." Section 12-401(d) of the Courts Art. provides: "In every . . . case [other than a civil case in which the amount in controversy is more than \$1,000] an appeal shall be filed *de novo*." In *Hardy v. State*, 279 Md. 489, 493, 369 A.2d 1043 (1977), the Court of Appeals observed that "[t]his Court has consistently treated *de novo* appeals [from courts of limited jurisdiction to circuit courts] as wholly original proceedings, that is, as if no judgment had been entered in the lower court." See also, e.g., *Harding v. State*, 250 Md. 188, 242 A.2d 135 (1968), *Montgomery Ward & Co. v. Herrmann*, 190 Md. 405, 58 A.2d 677 (1948), and *Pinkett v. State*, 30 Md.App. 458, 352 A.2d 358, cert. denied, 278 Md. 730 (1976). When such an appeal is abandoned by the appellant, the judgment of the District Court is not revived; instead, the circuit court enters "as its judgment the judgment of the lower court." Md. Rule 1314 c. In short, when this type of *de novo* "appeal" is involved, there is no review of the decision of the lower tribunal. Instead, the case proceeds in most respects as an original proceeding, with the burdens of proof and persuasion allocated as an original proceeding, and with the entry of a new judgment at the conclusion of the trial.<sup>4</sup>

We find similar reasoning in cases dealing with *de novo* appeals from Orphans' Courts under § 12-502 of the Courts Art.; *Lowenthal v. Rome*, 45 Md.App. 495, 413 A.2d 1360 (1980), *aff'd*, 290 Md. 38, 428 A.2d 75 (1981). And see the

4. These principles are not modified by *Stanton v. State*, 290 Md. 245, 428 A.2d 1224 (1981), which held only that for purposes of consecutive sentencing in a separate proceeding, a District Court conviction remains in effect despite a pending *de novo* appeal from that conviction.

provisions of former Art. 89B, § 18 dealing with appeals from boards of property review in condemnation cases. In interpreting that provision the Court of Appeals noted that "not even a presumption" of the correctness of a prior award is carried into the new condemnation case. *Volz v. State Roads Commission*, 221 Md. 209, 214, 156 A.2d 671 (1959). In *Volz*, the Court of Appeals applied the non-technical meaning of the word "appeal," explaining that it means simply that "either party to the review board proceeding, who is dissatisfied with the findings and award of that board, has the right . . . to 'apply for' a condemnation case to be filed in court and heard *de novo* as the new and independent action it is." 221 Md. at 215, 156 A.2d 671.

That is the sort of proceeding that is contemplated by § 603 of the Anne Arundel County Charter. Indeed, we so held in *Boehm v. Anne Arundel County*, 54 Md.App. 497, 459 A.2d 590, cert. denied, 297 Md. 108 (1983). There, Judge Alpert explained that the *de novo* hearing contemplated by § 603, Anne Arundel County Charter, "is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision has been previously rendered" [emphasis supplied], 54 Md.App. at 511, 459 A.2d 590.

In effect, then, in this case the Board was exercising what amounts to original jurisdiction. It was as though the zoning officer had made no decision. In that situation, Arundel had the same burden it had before the zoning officer—"the burden of proof (including the burden of going forward with the evidence and the burden of persuasion) of all questions of fact." Anne Arundel County Code, Title 13, § 13-341.2(a). See also Anne Arundel County Code § 2-200, Rule 11(e): "In appeals from the zoning hearing officer, evidence presented at the public hearing shall be presented first by the applicant requesting . . . the special exception, . . . then by the persons in opposition." The evenly-divided Board decision demonstrates that it did not meet that burden. Accordingly, the effect of the

[65 Md.App. 309 (1985).]

Board's action was to deny Arundel's request for a special exception. *See Walker and Gorn, both supra.*

For these reasons we reverse the judgment of the trial court. We remand with direction that the judgment be entered declaring that the Board's evenly-divided decision constitutes a denial of Arundel's application.

MOTION TO DISMISS DENIED. JUDGMENT REVERSED. CASE REMANDED FOR ENTRY OF DECLARATORY JUDGMENT CONSISTENT WITH THIS OPINION. APPELLEES TO PAY THE COSTS.

[65 Md.App. 321 (1985).]

500 A.2d 650

Clinton W. ELLISON

v.

STATE of Maryland.

No. 1450, Sept. Term, 1984.

Court of Special Appeals of Maryland.

Dec. 4, 1985.

Certiorari Granted March 12, 1986.

Defendant was convicted in the Circuit Court, Baltimore City, Joseph I. Pines, J., of murder in the first degree and robbery and he appealed. The Court of Special Appeals, Moylan, J., held that: (1) for purposes of Maryland Declaration of Rights, incrimination is completed when verdict of guilty is rendered; (2) for purposes of Federal Constitution, possible incrimination is terminated when sentence is pronounced; (3) possibility that witness, convicted of murder of the victim, might be charged with conspiracy to commit murder or offenses related to homosexual relationship with defendant presented sufficient possibility of incrimination to permit him to assert the privilege; (4) jury instructions were proper; and (5) defendant's statement to investigating officer was not improperly induced.

Affirmed.

Witnesses ⇌ 292

Testimonial privileges are exceptional and should be discounted, with the court tilting toward finding the privilege inapplicable.

Witnesses ⇌ 297(13)

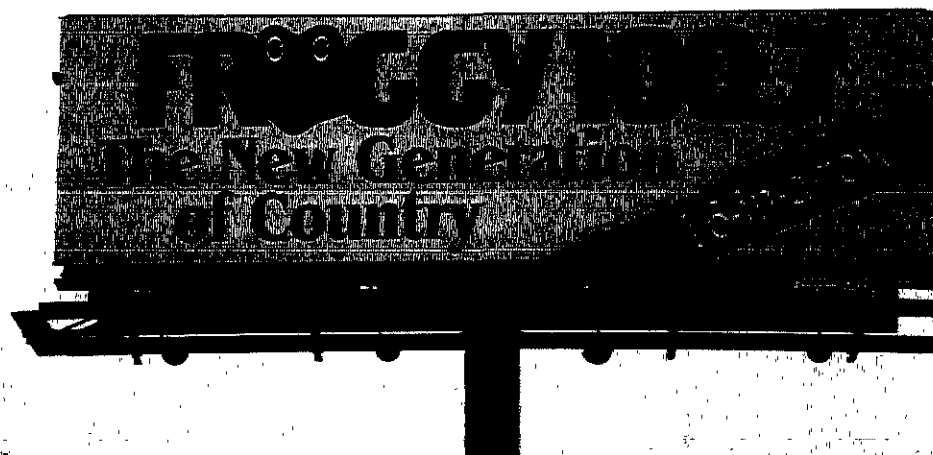
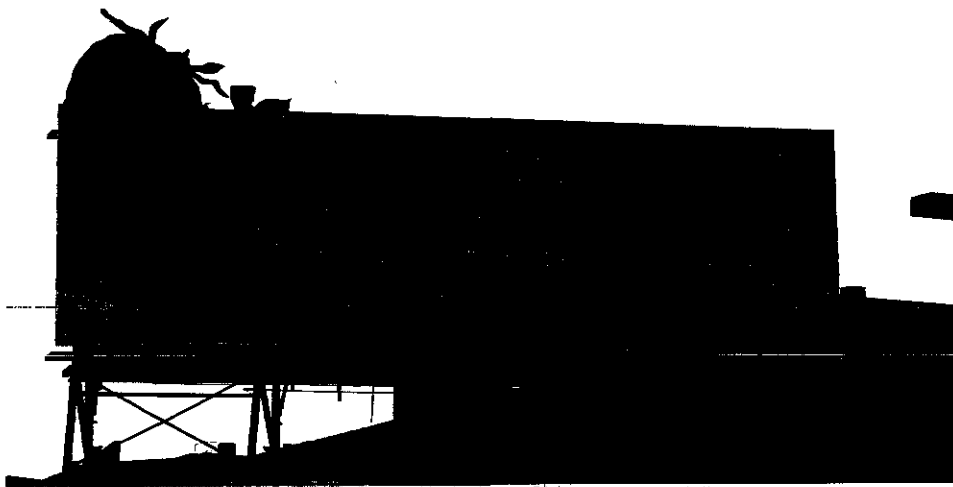
One who has already been incriminated for an offense past the point of no return in terms of risk of incrimination insofar as asserting the privilege against self-incrimination is concerned.

Petitioner's  
Exhibits  
2A-20

photographs

97-550-5A/XA







**YORK ROAD VIEW SOUTH**



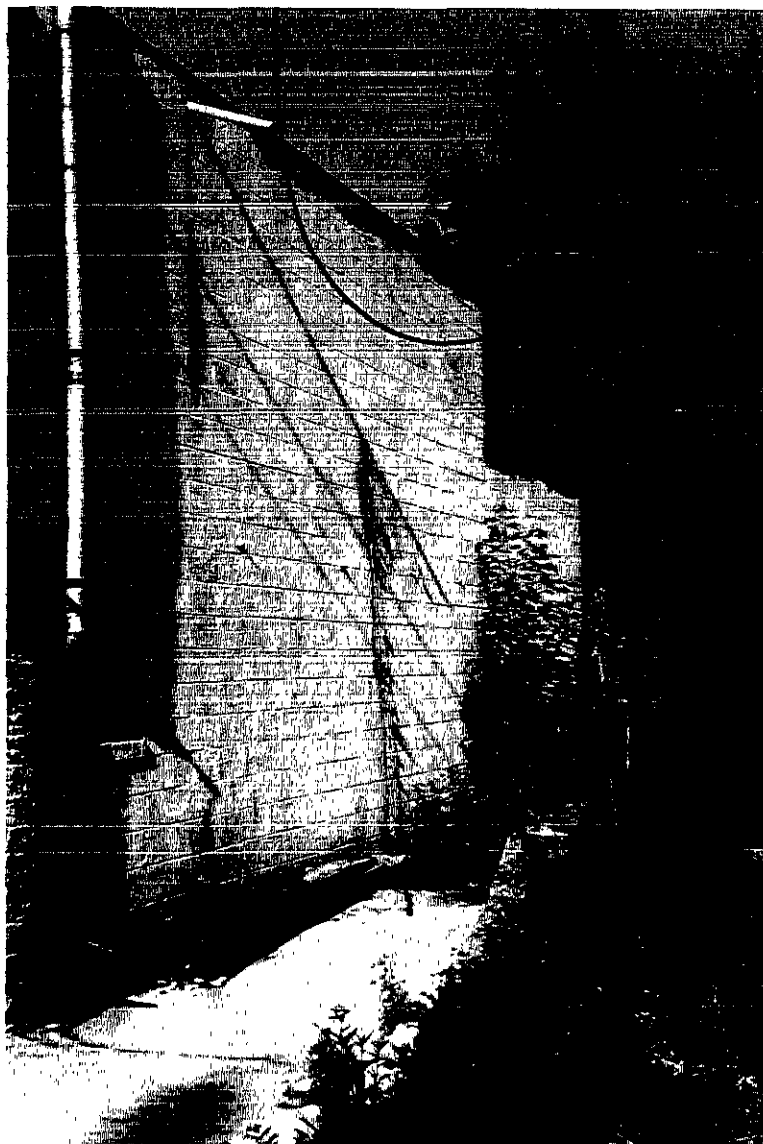
**VIEW NORTH**

Petitioner's Exhibit  
No. 4

Petitioner's Exhibit

No. 5

**PROPOSED BILLBOARD LOCATION ADJACENT  
TO NORTH FACE OF BUILDING**



**VIEW LOOKING SOUTH APPROACHING PROPOSED BILLBOARD LOCATION**



Petitioner's Exhibit

No. 6



CASE # 67-16 X

**PETITION FOR ~~ZONING RE CLASSIFICATION~~  
AND/OR SPECIAL EXCEPTION**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

I, or we, Wm. & Beata legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) ~~that the zoning status of the herein described property be maintained, pursuant to the zoning law of Baltimore County, from its present zoning to~~  
~~and for the following reasons:~~

See attached description

Petitioner's Exhibit

No. 8

and (2) ~~that a Special Exception under the said Zoning Law and Zoning Regulations of Baltimore County be granted for the herein described property for~~

and that it be posted and advertised as prescribed by Zoning Regulations

and that I pay the cost of above ~~re-classification~~ and of Special Exception advertising, and I agree to and am to be bound by the zoning regulations of Baltimore County adopted pursuant to the Zoning Law for Baltimore

Wm. & Beata  
Joint Purchasers

Beata Miller  
Legal Owner

Petitioner's Attorney

Protestant's Attorney

Witness

BEFORE ME, the Zoning Commissioner of Baltimore County, this 21st day of

1967, I read the contents of the petition for advertisement of the herein described property and the proposed reclassification of the same, and I find that the same is in conformity with the zoning regulations of Baltimore County, and I hereby certify that the same may be heard before the Zoning Commission of Baltimore County on the 21st day of June, 1967.

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations having been met

the above reclassification should be had, and it further appearing that because of

a Special Exception for one 12' x 25' illuminated advertising structure should be granted

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 27 day of July 1966, that the herein described property or area should be and the same is hereby reclassified from a

zone and of a Special Exception for one 12' x 25' illuminated advertising structure should be and the same is hereby granted from and after the date of this order, subject to approval of the Planning and Zoning Commission of Public Services and the Office of Planning and Zoning.

Edward D. [Signature]  
Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above re-classification should NOT BE HAD, and or the Special Exception should NOT BE GRANTED

IT IS ORDERED by the Zoning Commissioner of Baltimore County this day of 1966 that the above re-classification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued to remain a zone and or the Special Exception for

be and the same is hereby DENIED

657-16-X

PLANNING

ORDER REC'D

# BALTIMORE COUNTY, MARYLAND

## INTER OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: July 15, 1966

FROM: George E. Gargalis, Director of Planning

SUBJECT: Petition #67-16-X, West side of York Road 125 feet South of Beaver Run Lane.  
Petition for Special Exception for one 12' x 25' illuminated advertising structure.  
Arnold Gember, Petitioner

8th District

HEARING: Wednesday, July 27, 1966 (10:30 A.M.)

The planning staff of the Office of Planning and Zoning has reviewed the subject petition and offers the following comments:

Paragraph g in Subsection 413.3 of the Zoning Regulations requires that outdoor advertising signs in M-L Zones be placed at least 1000 feet apart on the same side of the street or highway. We have been advised by Mr. Anadee Raphael, of the Zoning Administration Division, that there is an existing sign approximately 270 feet to the south of the location in which the subject structure is proposed. Although the existing sign happens to be located in a B-L Zone, the proposed sign would, in fact, be located in an M-L Zone. We question that it was the intent of the Zoning Regulations to allow intervening zoning to operate against the intent of the 1000-foot requirement. Can a billboard in this M-L Zone be erected within 1000 feet of another billboard?