

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S/Side McCormick Road, NE Corner		
McCormick & Schilling Roads	*	ZONING COMMISSIONER
(11311 McCormick Road)		
8 th Election District	*	OF
3 rd Council District		
	*	BALTIMORE COUNTY
Hunt Valley 75 Limited Partnership,		
<i>Legal Owner</i>	*	
PSA Financial, Inc., <i>Lessee</i>		
Petitioners	*	Case No. 2008-0582-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Hunt Valley 75 Limited Partnership, and PSA Financial, Inc., Lessee, by and through their attorney Edward J. Gilliss, Esquire with Royston, Mueller, McLean & Reid, LLP. The Petitioner requests a variance from Section 450.4.I.5(d) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit two (2) illuminated signs, one on the north elevation on the penthouse directly above the fifth floor wall (the space occupied by the applicant) of the multi-tenant office building with a size of 194.83 square feet and the other on the west elevation on the fifth floor (the space occupied by the applicant) with a size of 226.25 square feet. Both the north and west sides of the building have building entrances, the common space of which is leased by all of the tenants, including PSA Financial, Inc. The subject property and requested relief are more particularly described on the site plan and colorized sign and building elevation drawings, which were submitted into evidence and marked as Petitioners’ Exhibits 2 through 6, respectively.

Appearing at the requisite public hearing in support of the request were Trevor “Chip” Lewis, President and CEO and Justin Hoffman, Marketing Manager in charge of advertising and

promotion on behalf of PSA Financial; Warren Weaver of Gable Signs and Graphics, Inc., and Edward J. Gilliss, Esquire, attorney for the Petitioners. Mary Ellen Morrison, Executive Director, Hunt Valley Business Forum, appeared during the hearing as an interested citizen and expressed an opinion that the proposed signage is attractive and appropriately sized. Also present and participating during the proceedings was Richard Cobert on behalf of the County's Department of Economic Development, who presented a letter in support of the request. *See* Petitioners' Exhibit 1. There were no Protestants or other persons present, however, it is to be noted that letters in opposition to the request were received from Donald Gerding, of the Rogers Forge Community Association, and Nedda Evans, an officer and community leader of the Sparks-Glencoe's Community Planning Council (SGCPC).

Testimony and evidence offered disclosed that the subject property contains approximately 9.281-acres (236,460 square feet) of M.L.-I.M. zoned land in Hunt Valley. The parcel is rectangularly shaped and is located on the northeast corner of McCormick and Schilling Roads improved with a five-story office building that is surrounded by mature trees in the heart of the Hunt Valley's Business Community. Chip Lewis stated that PSA Financial has recently moved to this building and leases space comprising the entire fifth floor (over 44,000 square feet). There, PSA employs over 180 persons in white-collar jobs. PSA has over 15,000 clients (businesses and individuals) for whom it provides services and advice, including insurance, financial planning and employee benefits. On a daily basis, PSA receives guests and visitors; in fact, it has seven (7) conference rooms and two (2) training facilities used by such guests and visitors.

The subject property is owned by Hunt Valley 75 Limited Partnership and is part of the Corporate Office Properties Trust (COPT) properties. PSA's lease is for a term of 12 years. The

property owner has expressly authorized PSA Financial to erect signage and has granted PSA Financial the right to place signage on 11311 McCormick Road during its lease term. In fact, the landlord, an affiliate of COPT, has expressed written support as a part of this proceeding. (*See* Petitioners' Exhibit 7).

Testimony establishes that 11311 McCormick Road sits 275 feet or so off of McCormick Road and is "behind" the Bank of America structures which are located at the corner of Shawan and McCormick. In addition, 11311 McCormick is shielded by landscaping, including trees which mask the perimeter of the five-story office building, as well as a second set of trees that almost completely obscure the bottom two floors of the building. No joint identification sign now exists which marks the structure or identify its tenants. PSA asserts that its guests and visitors have difficulty locating 11311 McCormick Road without new signage.

B.C.Z.R. Section 450 concerns signs. Prior to the County Council's passage of Bill 89-97 in 1997, signs were regulated by Section 413 of the B.C.Z.R. Signs previously regulated by Section 413 must be removed by calendar year 2012 (*See* Section 450.8(D)(1)). Signage at 11311 McCormick Road may be permitted pursuant to the former sign regulations (Section 413); however, neither the new property owner nor County agencies have been able to locate the original plats to determine whether "Notes" include authorization to erect signs consistent with Section 413. Nonetheless, it appears that even in such case, signs erected consistent with Section 413 would need to be removed by 2012.

B.C.Z.R. Section 450.1 confirms that signs are important. They "convey information which is essential for . . . advancing the health of [Baltimore County's] economy." (Section 450.1A.) "Because signage is necessary for the success and growth of businesses in the County, the regulation of signage must reasonably accommodate the needs of the business community."

(Section 450.1B.) However, because excessive and incompatible signage is contrary to the goals of the Master Plan, regulation of signage is appropriate.

Section 450.4 (Table of Sign Regulations) (5)(D) (hereinafter “Table”) controls the use of signs at 11311 McCormick Road. That section details “enterprise” signs and “subject to its regulation, permits wall-mounted and canopy signs.” Canopy signs are defined in Section 450.5(B)(3) as signs on “fixed, roof-like structure, other than an awning which projects from a wall of a building and extends along a majority of the wall’s length to provide shelter over an entrance or a walkway.”

The Table describes that wall-mounted and canopy signs are permitted on “multi-tenant office, retail or industrial building[s].” 11311 McCormick Road satisfied this requirement, as it is a multi-tenant office building. Again, PSA Financial leases the entirety of the top or fifth floor. The Table continues, stating that such signage is permitted where “accessory to separate commercial entity.” Again, PSA Financial is a “separate commercial entity” which will benefit from signage. The Table continues by stating that such an entity must have “exterior customer entrance.” Testimony was offered that there are four (4) separate entrances, one on each face of the commercial structure. It was further stated that PSA Financial leases the common area of the building, including the first floor lobby, which is accessed from the outside on three (3) sides of the building, as well as stairwells and elevators which access the fifth floor. Of course, other tenants, in common with PSA Financial, also lease the first floor lobby. The lobby area, it was explained, is available to all tenants at all times, jointly and severally.

The Table continues with IV detailing that a use permit is required from the Zoning Commissioner before signs can be installed.

The Table, Section V, details that the maximum size of a sign shall be “two times the length of the wall containing the exterior entrance and defining the space occupied by the separate commercial entity.” Here, PSA Financial asserts that it occupies the entire fifth floor and common space. In addition, it has the contract right to place signage on the structure so that it can and should be treated as if it was the owner and/or sole tenant of the entire structure. Testimony was given that the west wall is 242 feet in length; twice that distance is 484 feet. The proposed sign on the west wall is only 194.83 square feet, slightly more than 40% of the maximum permitted sign size. It was testified that the north wall is 252 feet in length; two times that distance is 504 feet. The requested sign is 226.25 square feet, or 45% of the permitted sign size. It should also be noted that the penthouse above the fifth floor is 120 feet in length; twice that distance is 240 feet, again a size less than the requested north wall sign.

The Table continues with VI detailing the number of signs permitted. It permits one canopy and one wall-mounted sign for each “separate exterior customer entrance.” Argument was made that signs are permitted on each face since there are four (4) sides with customer entrances.

Although PSA Financial seeks variance from sign regulations, its Petition states:

“Although signs are permitted, the grant of a variance confirms authority to place a sign on the penthouse level directly above the applicant’s leasehold space . . .”

Had this matter proceeded as a Special Hearing, this Commission would have concluded that the wall-mounted sign is permitted as of right on the west wall. It appears that the Department of Permits and Development Management (DPDM) out of an abundance of caution improvidently denied PSA’s west wall sign request. Had the penthouse sign now sought for the north wall been the subject of a Petition for placement on the west wall, the variance would have been an

appropriate vehicle for determination since the Table “permits one canopy and one wall-mounted sign,” not two (2) wall-mounted signs.

PSA Financial asserts that it satisfies the variance tests and is “unique” because there is no canopy around the commercial structure on which a canopy sign could be erected. Hence, “special circumstances” exist that are peculiar to the structure at 11311 McCormick Road when it is compared to structures with canopies. Strict compliance with the sign regulations would result in practical difficulty and the zoning would impact “disproportionately” 11311 McCormick Road if it was barred from placing a second sign while other buildings with canopies were permitted two (2) signs. Thus, I find that the elements necessary for grant of a variance are presented in this matter.

Moreover, I also agree that the Table permits “one canopy and one wall-mounted sign” for each “separate exterior customer entrance,” as stated in VI. The proposed sign on the north wall, on the penthouse, is, hence, also permitted. Again, it appears that DPDM improvidently denied the north wall sign request. Although Section 450.5B.9(b) contains language restricting wall-mounted signs above eaves or parapets, in this instance, the penthouse or mechanical room structure, is not one which “project[s] above the eaves or parapet” and, hence, is not barred by application of that subsection. The architectural integrity of 11311 McCormick Road is not compromised by the placement of a sign on the penthouse, whereas architectural integrity of a structure may be compromised where a utility mechanism sits behind an eave or parapet.

In light of the exhibits and testimony, and in light of the law, this Zoning Commissioner believes that variances are not required for the requested signs and will grant use permits for their construction. However, in order to permit this matter to proceed based upon the Petition for Variance, I shall also grant the requested variance(s) so there may be no doubt about the lawful

nature of the proposed signs. I find that this relief can be granted within the spirit and intent of the regulations. PSA Financial is the only tenant that has authority to install signage. No other tenant enjoys this privilege.

A literal reading of *Cromwell v Ward*, 102 Md. App. 691 (1995) indicates that there must be something unique about the property before a zoning variance can be granted. The Court in *Cromwell* indicated that the subject property must be peculiar, unique or unusual when compared to other properties in the neighborhood such that the regulations impact the subject property differently than the regulation impacts other properties in the neighborhood. As examples of this situation, the Court indicated that the subject property have inherent characteristics not shared by other properties in the neighborhood, such as shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, *practical restrictions imposed by abutting properties (such as obstructions)* or similar restrictions (emphasis supplied). So the unusual condition does not have to be on site but rather can be on abutting properties. Obstructions, as is the case here, are specific examples of off-site circumstances or conditions, which show uniqueness.

After due consideration of the testimony and evidence presented, I am persuaded to grant the petition for the two (2) illuminated signs. Based on my review of the site plan and elevations, I find the requirements of B.C.Z.R. Section 307.1 to be satisfied. The proposed signage is appropriate, given the uniqueness of the site.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 16th day of September 2008, that the Petition for Variance from Section 450.4.I.5(d) of the

Baltimore County Zoning Regulations (B.C.Z.R.) to permit two (2) illuminated signs, one on the north elevation on the penthouse directly above the fifth floor (the space occupied by the applicant) wall of the multi-tenant office building with a size of 194.83 square feet and the other on the west elevation on the fifth floor (the space occupied by the applicant) with a size of 226.25 square feet, in accordance with Petitioners' Exhibits 2 through 6, respectively, be and is hereby GRANTED, subject to the following restriction:

1. Petitioners may apply for building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County