

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/S Baltimore National Pike, 20' W c/line of		
Winters Lane	*	ZONING COMMISSIONER
(6026 Baltimore National Pike)		
1 st Election District	*	OF
1 st Council District		
	*	BALTIMORE COUNTY
Einbinder Properties LLC,		
<i>Legal Owner</i>	*	
GREGG Appliances, Inc.,	*	Case No. 2010-0200-A
<i>Contract Lessee/Petitioner</i>		

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by Petitioner, GREGG Appliances, Inc., through its Vice President of Real Estate, Bruce Dixon, and its attorney, David H. Karceski, Esquire with Venable, LLP. The Petition was also signed by Bertram L. Potemkin, on behalf of Einbinder Properties, LLC. The Petitioner requests a variance from Section 450.4.5(d) of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a wall-mounted enterprise sign on two (2) façades of a tenant space without exterior customer entrances. Specifically, Petitioner seeks the variance in order to install one (1) wall-mounted enterprise sign each on the north and south façades of a multi-tenant retail building. Without a variance, the Sign Regulations contained in Section 450 of the B.C.Z.R. would only permit the Petitioner to install a single sign on the east façade of the building, where this tenant’s only exterior customer entrance is located. The subject site and requested relief are more particularly described on the two-page site plan, which was marked and accepted into evidence as Petitioner’s Exhibits 1A-1B.

Appearing at the requisite public hearing in support of the requested relief were Lindsay Vetzner, Real Estate Manager for GREGG Appliances, Inc., Thomas A. Gianni with ImageOne

Industries, who is preparing the proposed signs for the Petitioner, and Rick Richardson, P.E. with Richardson Engineering, LLC, the professional engineering firm that prepared the site plan for this property. David H. Karceski, Esquire and Kedrick N. Whitmore, Esquire appeared as counsel for Petitioner. There were no Protestants or other interested persons in attendance at the public hearing.

Testimony and evidence revealed that the subject property is an irregularly shaped parcel containing approximately 8.4 acres of land split-zoned B.R. and D.R.5.5. The property is located adjacent to and on the north side of Baltimore National Pike, west of I-695, in the Catonsville area of the County. It should be noted that this petition pertains only to that portion of the property zoned B.R., on which an existing multi-tenant building is located.

The property has been leased by GREGG Appliances, Inc., an electronic and appliance store described as a mix between a Best Buy and a Lowe's with particular emphasis on selling home appliances. Testimony revealed that the company has been expanding across the eastern portion of the United States from Indiana to Florida and will be opening five (5) local stores in Maryland. Petitioner has invested over one million dollars in the subject property and plans to open a store that will employ 40-50 local citizens.

Further testimony revealed that the subject property has an unusual layout with 810 feet of frontage on Baltimore National Pike as well as frontage on two (2) other public roads, Winters Lane to the east and Alexander Avenue to the west. Due to the property's unique shape, namely that it lies across from another commercial property to the north, and contains frontage on three (3) separate roadways, there are multiple ingress/egress points for the site. As shown on the aerial photograph/zoning map marked and accepted into evidence as Petitioner's Exhibit 3, there are three (3) ingress/egress points along the property's Baltimore National Pike frontage as well

as two (2) internal access drives that connect the subject property to the commercially-zoned property to the north. As a result, motorists can enter the site from three (3) different directions: the south, north, and east.

A review of the site plan indicates that the requested variance relates to the façades of the retail building that face the adjacent commercial property to the north and Baltimore National Pike to the south. When the building is viewed from either of these sides, the north or south façade acts as the primary façade and, therefore, the building front. Petitioner will lease approximately 29,000 square feet of the total 58,064 square feet of retail space within the building and, as shown on Petitioner's Exhibit 1, this tenant space will include a significant portion of the building's north and south façades.

Mr. Karceski proceeded to describe the proposed signs and the need for the requested relief. As shown on the site plan and the color sign details marked and accepted into evidence as Petitioner's Exhibits 4A – 4C, Petitioner proposes a total of three (3) wall-mounted enterprise signs on the retail building: one on the south façade facing Baltimore National Pike, one on the north façade facing the adjacent commercial property, and one on the east façade facing on-site customer parking. Though the property fronts on three (3) public roads, strict enforcement of the zoning regulations would only permit the Petitioner to maintain one (1) sign on the east façade of the building.

All of the testimony presented at the public hearing supported the notion that a single wall-mounted sign is inadequate for Petitioner given the unique physical characteristics of the site. Indeed, the east façade of the building is not visible to drivers traveling on Baltimore National Pike, nor is it visible from the majority of the adjacent commercial property's off-street parking. Therefore, Petitioner requests the proposed signs on the north and south façades of the

building in order to provide adequate identification from its primary road frontage and from the adjacent commercial property. Mr. Karceski explained that the Petitioner is requesting signage similar to the adjacent tenant, who maintains three (3) wall-mounted signs on different façades of the building. Additionally, testimony revealed that the former retail tenant that occupied Petitioner's space had signs on the north, south and east façades of the building, just as proposed by Petitioner.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning, dated March 5, 2010, indicating no opposition to the requested relief. The Bureau of Development Plans Review (DPR) and Department of Environmental Protection and Resource Management (DEPRM) similarly submitted comments offering no objection to the requested relief.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The subject site is unique by virtue of its irregular shape, frontage along three (3) public roads, including an extended frontage along Baltimore National Pike, and multiple ingress/egress points for the site on different sides of the property. Unlike a typical shopping center where potential customers will access commercial properties from a single front, the subject property will be approached and accessed from three (3) separate locations.

After reviewing the layout of this property, I find that strict enforcement of the B.C.Z.R. would cause the Petitioner to suffer practical difficulty and undue hardship. The Sign Regulations do not contemplate a shopping center with three (3) frontages, and a strict interpretation of the regulations would prohibit the Petitioner from installing wall-mounted signs

on the north and south façades of the building. Since both of these sides operate as front façades for vehicles approaching from Baltimore National Pike and the commercial property to the north, Petitioner should be permitted to maintain signs on each of these fronts.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. The subject site is located between a major commercial corridor (Baltimore National Pike) and another commercially developed property. It is on these two (2) sides of the site that the requested variance would enable Petitioner to install wall-mounted signage. The proposed signs replicate those maintained by the prior tenant, are appropriate in the context of the surrounding commercial area, and are consistent with signage used by other commercial tenants along Baltimore National Pike. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 17th day of March, 2010, that the Petition for Variance from Section 450.4.5(d) of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a wall-mounted enterprise sign on two (2) façades of a tenant space without exterior customer entrances, in accordance with Petitioner's Exhibits 1A (site plan) and 1B (sign detail), be and is hereby GRANTED, subject to the following restriction:

1. The Petitioner may apply for its permits and be granted same upon receipt of this Order; however, Petitioner is 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.

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