

IN RE: PETITION FOR VARIANCE

SE corner of Joppa Road and
Perring Parkway
9th Election District
5th Council District
(1955 Joppa Road)

Shopping Center Associates, et al
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2012-0284-A**

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by David Karceski, Esquire on behalf of the legal owners, Shopping Center Associates, Pennsylvania Shopping Center Associates, Ltd. Partnership, and Federal Realty Investment Trust (the “Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

- Section 450.4 Attachment 1, 7(b)(V) and 7(b)(VII), to allow a freestanding joint identification sign with a sign face/area of 230 square feet and a height of 28' in lieu of the three freestanding signs with a sign face/area of 100 square feet and a height of 25 (Sign BB)';
- Section 450.4 Attachment 1, 7(b)(IX), for a freestanding joint identification sign to display 13 lines of text with a sign copy a minimum of 3" in height in lieu of the permitted five lines of text and required 8" height for sign copy (Sign BB);
- Section 450.4 Attachment 1, 7(a)(VI), to allow a wall-mounted joint identification sign on a side of building without frontage on a public street (Sign O);
- Section 450.4 Attachment 1, 5(a)(IX) and 5(a)(VI), to allow three wall-mounted enterprise signs with maximum sign face/areas of 290 square feet each in lieu of the maximum

permitted 150 square feet each and to allow a total of four wall-mounted enterprise signs on a single tenant building in lieu of the three signs permitted (Signs T, U, V, W);

- Section 450.4 Attachment 1, 5(d)(V), to allow wall-mounted enterprise signs for a tenant within a multi-tenant building to exceed the permitted sign/face area of two times the length of the wall containing the exterior entrance defining the space occupied by the separate commercial entity (Signs D [350 square feet in lieu of 320 square feet], E [350 square feet in lieu of 262 square feet], P [135 square feet in lieu of 106 square feet]);
- Section 450.4 Attachment 1, 5(d)(VI), to allow up to seven wall-mounted enterprise signs on a building façade with a single separate, exterior customer entrance (Signs D, F, P) and to allow wall-mounted enterprise signs on a building façade without a separate, exterior customer entrance (Signs A, B, J, L, S, X);
- Section 450.4 Attachment 1, 5(d)(V) and (d)(VI), to allow a wall-mounted enterprise sign to be installed in a different location than the tenant space (Sign S);
- Section 450.4 Attachment 1, 3(a)(VII), to allow a directional sign height of 7' feet in lieu of the permitted 6' (Sign G);
- Section 450.5.B.9.a, to allow canopy signs to extend no more than 3' above the face of the canopy (Signs M, N, P, Q, Y, Z, AA), in lieu of on the face of a canopy, and
- Section 450.5.B.1.b, to allow a tenant logo that is 9 square feet in size on the vertical surface of an awning (Sign Y), in lieu of the permitted 8 square feet.

The subject property and requested relief is more fully depicted on the redlined, four sheet site plan that was marked and accepted into evidence as Petitioners' Exhibits 1A-1D.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Planning, dated June 18,

2012, indicating that department does not oppose the variances subject to the following:

1. Petitioner has agreed that the existing sign “J” and the existing sign “O” will be removed.
2. The dimensions on proposed sign “S” as shown on the site plan appears to be smaller than the sign to be constructed. Revise the dimension notation to reflect the correct dimensions.

Petitioners’ Counsel indicated his clients were amenable to these changes, and the site plan was amended to reflect the removal of signs “J” and “O”. See Exhibit 1C.

Appearing at the public hearing in support for this case were Chris Weber with Federal Realty and A. Volanth with Bohler Engineering, the consulting firm that prepared the site plan. David Karceski, Esquire appeared as counsel and represented Petitioners. There were no Protestants or interested citizens at the hearing, and the file does not contain any letters of opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Testimony and evidence revealed that the subject property is 29+/- acres zoned BL-CCC. The property is improved with a strip shopping center and a “big box” Home Depot store, and it is positioned at the crossroads of four thoroughfares: I-695, Joppa Road, Perring Parkway and Satyr Hill Road. The center was developed in or about 1963, and the Petitioners filed the petition in this case to update the signage in contemplation of the abatement provisions of the sign regulations.

Based upon the testimony and evidence presented, I will grant the request for variance relief. The shopping center is very large and has a number of different tenants, and the relief sought is reasonable in light of these factors.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and

- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test.

Petitioners presented the testimony (via proffer) of Adam Volanth, P.E., who was accepted as an expert in land use matters and the Baltimore County sign regulations. Mr. Volanth testified the site was uniquely shaped (almost like an amoeba) and it was constructed before the modern sign regulations. Mr. Volanth also testified that the topography presented a challenge, as shown on the photos marked as Exhibits 5A-C, because the shopping center was at a higher elevation than Joppa Road, which prevents motorists or pedestrians from identifying the particular retailers located in the center. Finally, Mr. Volanth mentioned a 1993 zoning case involving the subject property (#93-179-A), in which the Zoning Commissioner found the property to be "unique," and the witness also stressed the site was large (29 acres) yet had only a small frontage along Joppa Road (the main thoroughfare access point).

Petitioners would suffer a hardship if relief was denied, since they would need to dismantle and remove several signs that have been present for many years without complaint. Counsel stressed that the center has numerous tenants, and that each sign therefore serves a specific purpose. This is in fact one of the principle tenets of the sign regulations; i.e., that signage not be excessive or cluttered.

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

THEREFORE, IT IS ORDERED, this 27 day of June, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

- Section 450.4 Attachment 1, 7(b)(V) and 7(b)(VII), to allow a freestanding joint identification sign with a sign face/area of 230 square feet and a height of 28' in lieu of the three freestanding signs with a sign face/area of 100 square feet and a height of 25 (Sign BB)';
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- Section 450.4 Attachment 1, 5(d)(V) and (d)(VI), to allow a wall-mounted enterprise sign to be installed in a different location than the tenant space (Sign S);
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- Section 450.5.B.9.a, to allow canopy signs to extend no more than 3' above the face of the canopy (Signs M, N, P, Q, Y, Z, AA), in lieu of on the face of a canopy, and
- Section 450.5.B.1.b, to allow a tenant logo that is 9 square feet in size on the vertical surface of an awning (Sign Y), in lieu of the permitted 8 square feet,

be and are hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.

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

 Signed
 JOHN E. BEVERUNGEN
 Administrative Law Judge for
 Baltimore County

JEB:pz