

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
15 th Election District *	OFFICE OF
7 th Councilmanic District	
(7938 Eastern Avenue) *	ADMINISTRATIVE HEARINGS
Baltgem Development Corp., et al,	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
Golden Ring Hip Hop Fish & Chicken LLC,	
<i>Lessee</i> *	Case No. 2013-0161-SPHA
Petitioners	
* * * * *	

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Francis X. Borgerding, Jr., Esquire, on behalf of the legal owners, Baltgem Development Corp., et al, and the lessee, Golden Ring Hip Hop Fish & Chicken, LLC (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve an existing pad site within a shopping center. In addition, a Petition for Variance was filed pursuant to § 450.4 Attachment 5(b) of the B.C.Z.R., to permit an existing enterprise sign on a pad site in a shopping center in addition to the permitted joint identification sign in lieu of the permitted 0 enterprise signs. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Noor Hammad and Mohammed Mufti with Mufti & Associates, Inc., the firm that prepared the site plan. Francis X. Borgerding, Jr., Esquire appeared and represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

There were no substantive Zoning Advisory Committee (ZAC) comments received from any County agencies.

The subject property is approximately .7 acres, and is situated within a 19.4 acre shopping center (Eastpoint Center). The property is zoned BM-AS.

The Petitioner operates a Hip Hop Chicken restaurant at the location, in the space formerly occupied by a KFC. The Petitioner wants to erect a freestanding enterprise sign within the same support structure and the same size as that previously used by the KFC. *See* Petitioners' Exhibit 2. The Petitioner indicated the County also requested it obtain confirmation that the premises qualifies as a pad site under the B.C.Z.R. Finally, there was some question as to whether Petitioner would be entitled to be included on the joint identification sign for the overall strip center, and County zoning officials apparently advised that six (6) tenants already were identified on the sign, and that the regulations would not permit any other tenant signs.

With respect to the petition for Special Hearing, it seems readily apparent the property qualifies as a "pad site." Although (as is frequently the case) "pad site" is not defined in the regulations, the photographs and plan demonstrate that the premises are in fact a freestanding "pad site," as that term is commonly understood. The site for many years accommodated a KFC restaurant, and a nearly identical use is proposed in this case. As such, the Petition for Special Hearing will be granted.

Based upon the testimony and evidence presented, I will also grant the request for variance relief. 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).

The Petitioners have met this test. The property has irregular dimensions and is shaped like a “dog leg.” Petitioners’ Exhibit 1. As such, the property is unique for zoning purposes. If the regulations were strictly construed, the Petitioners would experience a practical difficulty, given they would be unable to erect a sign announcing the location of this new business.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. The sign would simply replace the former one at the location, and the relief would in no way lead to clutter or confusion, which are the evils the sign legislation aims to address.

The final issue concerns the joint identification sign shown in the photographs. Petitioners’ Exhibit 2. As I explained at the hearing, whether or not the landlord/shopping center owner will allow the Petitioner to be listed on the joint identification sign is a private matter in which the County is not involved. But assuming the owner was willing to accommodate the Petitioner and list his business on the sign, I do not believe anything in the B.C.Z.R. would prevent it from doing so. The table of sign regulations (Class 7) provides height and size limitations for freestanding joint identification signs in the BM zone (including a requirement that each tenant name listed use copy at least 8 inches high, with no more than 5 lines of copy); there is no limitation on the number of tenant names that may be listed.

Pursuant to the advertisement, posting of the property, and the public hearing, and after considering the testimony and evidence offered, I find that Petitioners’ Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 19th day of April, 2013, by this Administrative Law Judge, that Petitioners’ request for Special Hearing filed pursuant to § 500.7 of the Baltimore

County Zoning Regulations (“B.C.Z.R.”), to approve an existing pad site within a shopping center, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners’ Variance request from § 450.4 Attachment 5(b) of the B.C.Z.R., to permit an existing enterprise sign on a pad site in a shopping center in addition to the permitted joint identification sign in lieu of the permitted 0 enterprise signs, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would 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/dlw