

IN RE: PETITION FOR VARIANCE
(20-22 W. Timonium Road)
Schaefer Timonium, LLC
Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0023-A**

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by David H. Karceski, Esquire with Venable, LLP, on behalf of the legal owner, Schaefer Timonium, LLC. The Petitioner is requesting Variance relief from § 450.4 Attachment 1.5(g) of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow two (2) freestanding enterprise signs with sign face areas of 42 square feet and 38 square feet, in lieu of the one permitted 50 square foot freestanding enterprise sign. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support for this case was Leslie M. Pittler, Esquire and Kenneth J. Colbert with Colbert, Matz, Rosenfelt, Inc., the consulting firm that prepared the site plan. David H. Karceski, Esquire with Venable, LLP, appeared as counsel and represented Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. There were no adverse ZAC comments received from any of the County review agencies.

Testimony and evidence revealed that the subject property is approximately 2.66 +/- acres in size, and is split-zoned BM, BR, and MR-IM. The Petitioner operates an Infiniti auto dealership on site, and currently has two (2) freestanding enterprise signs. The sign abatement provisions in the B.C.Z.R. have necessitated the zoning relief, and Petitioner proposes to continue using one existing sign (shown as sign "A" on Exhibit 1) and to replace an antiquated sign (shown as sign "B" on the plan) with a new sign (sign "D") containing more modern corporate branding. Neither sign exceeds the permitted height, and one sign will identify new car sales while the other sign indicates where used vehicles are sold on site.

Based upon the testimony and evidence presented, I will 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).

Petitioner has met this test.

Petitioner's engineer Kenneth Colbert, who was accepted as an expert, testified via proffer that the site is unique in that it is surrounded on three (3) sides by the State Fairgrounds, which are approximately 88 acres in size. In addition, as shown on Exhibit 3, the fair property contains several large horse stables which are situated approximately 20' from West Timonium Road, and this serves to limit visibility into the site.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship. The Petitioner would be unable to properly identify the new and used car lots on the site. 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. This is demonstrated by the lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

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

THEREFORE, IT IS ORDERED, this 5th day of October, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 450.4 Attachment 1.5(g) of the Baltimore County Zoning Regulations ("B.C.Z.R."), to allow two (2) freestanding enterprise signs with sign face areas of 42 square feet and 38 square feet, in lieu of the one permitted 50 square foot freestanding enterprise sign, be and is hereby GRANTED.

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

1. The Petitioner may apply for its appropriate permits and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at its 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:dlw