

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2235 York Road)		
8 th Election District	*	OF ADMINISTRATIVE
3 rd Councilman District		
Eugene Lipman, Authorized Representative *		HEARINGS FOR
York Road 2301, Inc.		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0017-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Jason T. Vettori, Esquire, on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) pursuant to §450.4 Attachment 1.5(a)(vi) to permit seven (7) enterprise signs in lieu of the permitted three (3); (2) to permit three (3) enterprise signs on the west façade in lieu of the permitted two (2)¹; (3) pursuant to §450.5.B.6.b to permit a projecting enterprise sign which extends 6 feet from the wall to which it is attached in lieu of the maximum 4 foot extension; and (4) pursuant to §450.5.B.6.e to permit a projecting enterprise sign with visible structural framework and supporting elements. 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 of the requests was James Lenchner, Joel McLaren, Eugene Lipman and Mitch Kellman from Daft McCune Walker, Inc., the firm that prepared the site plan. Jason Vettori, Esquire with Smith, Gildea & Schmidt, LLC, appeared as

¹ With respect to variance requests numbers 1 and 2, Mr. Kellman noted that the B.C.Z.R. in fact allows only one (1) enterprise sign on a parcel zoned MR. As such, the Order to follow will use that figure.

counsel and represented the Petitioner. The file reveals that the Petition was properly advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance.

There were no substantive Zoning Advisory Committee (ZAC) comments received.

Testimony and evidence revealed that the subject property is approximately 6.17+/- acres and is zoned MR. The site is located in the Timonium area, and was the subject of a recent zoning case (2012-178-SPHA) wherein Special Hearing and Variance relief was granted. The opinion in that case discussed certain unusual aspects of the property (including its MR zoning designation) and ultimately approved commercial uses at the site. One aspect of the former case concerned the orientation on the lot of a “proposed restaurant,” the front entrance of which faces north and is angled away from York Road. The present case concerns that restaurant (Famous Dave’s Bar-B-Que), which requires zoning relief to install the signage package shown on the second sheet of the site plan. Exhibit 1B.

Based upon the testimony and evidence presented, I will grant the request. 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. As noted in the prior case, the subject property is unique in that it is separated from York Road by a service road, and the restaurant entrance also does not front onto the roadway.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given it would be unable to install the proposed signs. 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 County and/or community opposition.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 11th day of September, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to permit seven (7) enterprise signs in lieu of the permitted one (1); (2) to permit three (3) enterprise signs on the west façade in lieu of the permitted one (1); (3) pursuant to §450.5.B.6.b to permit a projecting enterprise sign which extends 6 feet from the wall to which it is attached in lieu of the maximum 4 foot extension; and (4) pursuant to §450.5.B.6.e to permit a projecting enterprise sign with visible structural framework and supporting elements, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate 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, Petitioner 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:sln