

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(11131 Pulaski Highway)		
11 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
Williamsburg Restaurant and Motel, LLC	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0048-A

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

Now pending is the Petitioner’s motion for reconsideration, and an opposition thereto has been filed by Michael Pierce. As an initial matter, it seems clear that under long-standing Maryland law Mr. Pierce has sufficient “standing” to enable him to contest the zoning relief. In Dorsey v. Bethel A.M.E. Church, 375 Md. 59, 72 (2003), the court of appeals held that the “requirements for administrative standing under Maryland law are not very strict.” Essentially, one who attends and testifies or advances arguments at an administrative hearing (regardless of their proximity to the property at issue) has sufficient standing to participate in the proceedings. As such, I do not believe that issue merits any additional discussion.

The crux of this case turns on whether the Petitioner can have both a joint identification and enterprise sign on the property, under the theory that the restaurant and lounge are two separate “uses” within one building (and are entitled to a joint identification sign), while the motel is an entirely separate use housed in a freestanding building on site (entitled to an enterprise sign). The regulations, as is often the case, are not especially helpful in resolving the question. Petitioner’s counsel notes that the Zoning Commissioner’s Policy Manual (ZCPM), which was referenced in the December 17, 2013 Order, is inapplicable in this scenario, given that the sign regulations were revised after the ZCPM was adopted. I think that point is probably well taken,

but I do not believe it alters the outcome of this case.

I also do not believe that the Lan Lea Realty case attached to Petitioner's motion is particularly helpful or relevant. As Mr. Pierce notes, that case did not involve the same issue. It is also clear that in the strip shopping center at issue in that case, the Best Buy store is a separate entity/use/occupant, and the Petco store is the second such entity/use/occupant in the center. But here, there is only one legal entity (the LLC which filed the Petition), although there may very well be 3 separate "uses" on the property; i.e., motel, restaurant & lounge.

The BCZR, however, does not refer to either "uses" or "users" when it defines a joint identification sign. Instead, it provides that such a sign is "an accessory sign displaying the identity of a multi-occupant nonresidential development such as a shopping center, office building or office park." BCZR §450.4, Table.

Here, as noted in the original order, I do not believe there are multiple "occupants" on the site. There may indeed be separate uses, but the regulations do not make reference to "uses" in defining the joint-identification sign. To the extent there is ambiguity on the point, I think the doctrine of ejusdem generis would compel a similar result.

Specifically, the BCZR provides three examples of when a joint identification sign may be warranted: shopping centers, office buildings and office parks. While it does not state that this is an exhaustive list, the statutory construction principle of ejusdem generis indicates that the regulation should be interpreted to include things "of the same class or general nature as those specifically antecedently mentioned." Rucker v. Harford County, 316 Md 275, 295 (1989). Here, I do not believe the Petitioner's business operation bears any resemblance to the types of enterprises listed in the definition.

THEREFORE, IT IS ORDERED, this 29th day of January, 2014, by the Administrative Law Judge for Baltimore County, for the foregoing reasons, that Petitioners' Motion for Reconsideration be

and is hereby DENIED.

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