

IN RE: PETITION FOR VARIANCE
(11275 Reisterstown Road)
4th Election District
2nd Councilman District
Stoler Properties, LLC
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2014-0120-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Marvin I. Singer, Esquire on behalf of Stoler Properties, LLC, 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)** to permit a free-standing sign (Hyundai #1) of 87.5 sq. ft. in lieu of the permitted 50 sq. ft., pursuant to §450.4(5)(g)IX; **(2)** to permit three free-standing signs (#1, #5 & #6) in lieu of the permitted two, pursuant to §450.4(f)(g)VI; **(3)** to replace two of the four existing wall-mounted signs and to permit four wall-mounted signs (#2, #3 & #7 two signs), pursuant to §450.4(5)(a)VI; **(4)** to permit one of the wall-mounted signs (Hyundai #2) on the Reisterstown Road façade to extend 1.4 feet below the wall, pursuant to §450.5.B.3.b; **(5)** to permit the existing Ford free-standing sign (#5) of 133 sq. ft. to remain in lieu of the permitted 50 sq. ft., pursuant to §450.4(5)(g)IX; **(6)** to permit the existing “Used Car Superstore” free-standing sign (#6) of 103.6 sq. ft. to remain in lieu of the permitted 50 sq. ft., pursuant to §450.4(5)(g)IX; and

(7) to permit replacement of the existing wall-mounted directional service sign (#4) with a sign of 23.75 sq. ft. (approximately the same size as the existing sign) in lieu of the permitted 8 sq. ft.; pursuant to §450.4¹. 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 Albert Sholz, facilities manager for Petitioner. Marvin I. Singer, Esquire, appeared and represented the Petitioner. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A neighboring owner (Dennis Orr) attended the hearing and opposed the petition. There were no substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is approximately 5.05± acres, and is zoned BR. Several auto dealerships are operated at the location, although this case concerns just the Hyundai dealership. The Hyundai company has embarked upon a nationwide "rebranding" campaign, and all franchised dealers - - including Petitioner - - are obliged by contract to install updated signage. Variance relief is required in order for the Petitioner to erect the proposed signs shown on the plan.

Based upon the testimony and evidence presented, I will grant the petition for variance.

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).

¹ At the hearing, the petition was amended, such that Petitioner no longer seeks approval for sign nos. 5, 6, & 7, as shown on the plan. The Order which follows will therefore address only sign nos. 1, 2 & 4, pertaining to the Hyundai dealership.

Petitioner has met this test. The property is irregularly shaped and is situated along Reisterstown Road. The Petitioner noted the property sits at a “low point” between two hills on that roadway. As such, the property is unique.

If the B.C.Z.R. were strictly interpreted, the Petitioner would indeed suffer a practical difficulty, given it would be unable to sufficiently identify its dealership along a busy and crowded commercial corridor. 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.

Mr. Orr, who has lived in the area for 27 years, indicated that his community has had somewhat of a tenuous relationship with Stoler through the years. Mr. Orr is resigned to the fact that the area is now commercialized, but he stated he was concerned with this stretch of Reisterstown Road turning into an “ugly corridor” similar to Ritchie Highway. He presented photos (Citizens Exhibit #1) showing that the fencing along Kingsley Road is in disrepair, and also noted that the dealership frequently parks vehicles for sale immediately along the roadway (see photos, Citizens Exhibit #3), a practice about which his community has complained for many years.

Petitioner’s counsel noted the parcels situated along Kingsley Road may in fact be owned by a corporate entity other than Petitioner. While that may be, I do not believe the corporate organization of Stoler’s dealerships is the decisive factor. As an initial matter, it seems clear that each of the automobile dealerships is owned and/or operated by Stoler or entities under its control, and they may in that sense be corporate “alter egos.”

In any event, courts have indicated that it is permissible to require an owner to make “off site” improvements in exchange for development/zoning approvals, provided there exists a

“reasonable nexus” between the cost imposed and the impacts upon the locality. Howard County v. JJM, Inc., 301 Md. 256, 279 (1984). The Supreme Court recently decided a case where it found that requiring a developer to make improvements to land “several miles away” from its project lacked a “reasonable nexus” to the impact of the proposed construction. Koontz v. St. Johns Water Mngmt. Dist., 133 S. Ct. 2586 (2013). This is not such a case. In addition, BCZR § 502.2 grants to the Zoning Commissioner discretion to impose conditions upon the grant of special exception relief for “the protection of surrounding and neighboring properties.”

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 with respect to the **Hyundai signs only**. The other signs shown on the plan (Petitioner’s Ex. # 1) will be marked with an “X,” (as requested by the zoning office) to indicate they were not approved in this case.

THEREFORE, IT IS ORDERED, this 13th day of January, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief as follows: **(1)** to permit a free-standing sign (Hyundai #1) of 87.5 sq. ft. in lieu of the permitted 50 sq. ft., pursuant to §450.4(5)(g)IX; **(2)** to permit one of the wall-mounted signs (Hyundai #2) on the Reisterstown Road façade to extend 1.4 feet below the wall, pursuant to §450.5.B.3.b; and **(3)** to permit replacement of the existing wall-mounted directional service sign (Hyundai #4) with a sign of 23.75 sq. ft. (approximately the same size as the existing sign) in lieu of the permitted 8 sq. ft.; pursuant to §450.4, be and is hereby GRANTED.

IT IS FURTHER ORDERED, that the Petition for Variance with respect to Sign Nos. 5, 6 & 7 as shown on the Plan (Petitioner’s Ex. # 1), be and is hereby DISMISSED WITHOUT PREJUDICE.

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.
- Petitioner must, prior to the issuance of permits, submit for approval by the County's landscape architect a plan detailing sufficient screening (to include fencing and vegetative buffers) of the subject property along Kingsley Road.
- The Petitioner shall not at any time display for sale/lease vehicles immediately adjacent to the roadways and/or sidewalks which border the site.

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