

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1730 Merritt Blvd.)	*	OFFICE OF
12 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
MP63, LLC, <i>Owner</i>		
Choice One Urgent Care, <i>Lessee</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2016-0131-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of MP63, LLC, legal owner and Choice One Urgent Care, Lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve signage for a standalone lot (Pad site) that is located on a separate lot of record from the adjacent shopping center and which maintains its own unique address and Tax Identification Number. In addition, an amended Petition for Variance seeks: (1) to permit one free standing illuminated enterprise sign (identified as sign PS-1 in the enclosed plan) with a total area of +/- 99.375 sq. ft. in lieu of the 82.5 sq. ft. maximum; and (2) to permit one free standing illuminated enterprise sign (identified as sign PS-1 in the enclosed plan) with a height of +/- 30.188 ft. in lieu of the 25 ft. maximum. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Scott Baratta and Kenneth Wells with kj Wells, Inc. Christopher W. Corey, Esq. with Smith, Gildea & Schmidt LLC, attended and represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the

Department of Planning (DOP). That agency opposed the request for the sign height variance, and believed it would cause “visual clutter.”

The subject property is approximately ½ acre and is zoned BM-CT. The property is improved with a 5,280 sq. ft. commercial building constructed in 1963. A Choice One Urgent Care facility recently opened, and Petitioners request zoning relief to construct a freestanding enterprise sign. The Petitioners submitted a color sign detail exhibit which provides additional details regarding the appearance and proposed location of the sign. Petitioners’ Exhibit 3.

The Petition for Special Hearing seeks a determination that this property, which is within the overall boundaries of The Merritt Park Shopping Center, is entitled to a sign independent of the Center’s joint identification sign located at the access points to the shopping center. Under longstanding policy, Baltimore County permits signage for “pad sites” that are freestanding enterprises within an overall shopping center. Petitioners note this property has its own address and Tax Identification Number issued by the State (Petitioners’ Exhibit 4), and the plan (Petitioners’ Exhibit 1) reveals it is situated at the outskirts of the site, apart from the other retail and commercial tenants comprising the center. As such, the petition for Special Hearing will be granted.

VARIANCES

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The property is of irregular dimensions and is therefore unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because

the urgent care facility would be unable to have appropriate signage to direct its patients (many of whom are ill or under a great deal of stress) to the appropriate location. While I appreciate the DOP's concern for visual clutter in this area, I do not believe I am authorized to insist Petitioners install a monument sign as opposed to a freestanding sign, which is a permitted sign type in the zone. 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.

THEREFORE, IT IS ORDERED this 12th day of **January, 2016**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to approve signage for a standalone lot (Pad site) that is located on a separate lot of record from the adjacent Shopping Center and which maintains its own unique address and Tax Identification Number, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit one free standing illuminated enterprise sign (identified as sign PS-1 in the enclosed plan) with a total area of +/- 99.375 sq. ft. in lieu of the 82.5 sq. ft. maximum; and (2) to permit one free standing illuminated enterprise sign (identified as sign PS-1 in the enclosed plan) with a height of +/- 30.188 ft. in lieu of the 25 ft. maximum, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must provide landscaping at the base of the proposed sign, as determined in the sole discretion of the Baltimore County Landscape Architect.

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