

IN THE MATTER OF	*	BEFORE THE
SEMINARY GALLERIA, LLC, LEGAL OWNERS	*	BOARD OF APPEALS
AND PETITIONERS FOR VARIANCE ON	*	
THE PROPERTY LOCATED AT 1407, 1411,	*	OF
1419, 1421, 1429, 1433, AND 1447 YORK ROAD	*	
9 TH ELECTION DISTRICT	*	BALTIMORE COUNTY
3 RD COUNCILMANIC DISTRICT	*	
	*	Case No.: 16-106-A

* * * * *

OPINION

This matter comes to the Board of Appeals on appeal by Protestants of approval of a Petition for Variance that was granted on February 26, 2016 by the Administrative Law Judge (“ALJ”) in accordance with the Baltimore County Zoning Regulations (B.C.Z.R.) §450.4.

Petitioner submitted a redlined petition seeking only two (2) variances:

1. From Section 450.4, Attachment 1, Section 7(b)(IX) for a freestanding joint identification sign with sign copy a minimum of 3 inches in height in lieu of the required 8 inches in height for sign copy; and
2. From Section 450.4, Attachment 1, Section 7(b)(IX) to permit a third joint identification sign on a property with 2 frontages.

Hearings were held before the Board on November 16, 2016 and April 5, 2017. The Petitioner was represented by David Karceski, Esquire and Adam Rosenblatt, Esquire of Venable, LLC. The Protestants were represented by J. Carroll Holzer, Esquire. Deputy People’s Counsel, Carole Demilio also participated in the hearing in opposition to the requested relief. A public deliberation was held on April 26, 2017.

PRODECURAL HISTORY

In 2015, Petitioner filed a request for variance and special hearing to keep three (3) signs that existed on the property at issue. *See* Case Number 2015-0226-SPHA. At that time, the Administrative Law Judge (“ALJ”), granted variances for two (2) freestanding joint identification signs but denied relief for the third sign, ruling that it was an individual tenant or “enterprise sign”

not permitted in combination with a joint identification sign on the same frontage of a multi-tenant shopping center. *Id.* That ruling was not appealed.

In the case at bar, Petitioner requests variance relief to convert the enterprise sign to a joint identification sign, alleging that it will help identify the location of less visible tenants in the rear of the property. When originally filed in Case No. 16-106-A, the Petitioner proposed to enlarge the size of the sign and, in turn, requested an additional variance for more than five (5) lines of text. At the hearing before this Board, Petitioner explained that they were reducing the size of the sign back to the existing 26 square feet and were withdrawing the request for additional lines of text.

ARGUMENTS

I. UNIQUENESS

As is well established in the tenets of Maryland zoning jurisprudence, before a variance may be granted, there must be a determination that the property at issue is unique. *See Trinity Assembly of God of Balt. City, Inc. v. People's Counsel for Balt. County*, 407 Md. 53 (2008); *Cromwell v. Ward*, 102 Md. App. 691 (1995). As enunciated in *Trinity Assembly of God*, to be deemed unique, a property must "have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, sub-surface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions." *Id.* at 81.

Petitioners presented testimony from Mitchell Kellman, a land use and zoning expert, to make its argument that the property at issue was unique. Mr. Kellman testified that the property is of an irregular shape, describing it as a "boot" shape not present on other properties in the immediate area. Additionally, Mr. Kellman explained that the property has an unusually long depth on the Seminary Avenue side of the property, away from York Road, the main arterial roadway on which the shopping center fronts. Addressing the topography of the property, Mr.

Kellman testified that the property has more than a fifty (50) foot change in elevation from the northwest corner down to the southeast corner in the rear of the site. *See* Petitioner's Exhibit 9. Mr. Kellman addressed the contention by Protestants that the slope affects a number of properties on the east side of York Road in Timonium, by stating that this property is uniquely affected by the significant change in grade that runs directly through the center of the site. Mr. Kellman testified that neighboring properties had a gentler slope. He further clarified that because of this drastic elevation change, it causes tenant spaces to be completely hidden from York Road.

Mr. Kellman further testified that the property's frontage on York Road, which is approximately 450 feet, is unusually long and allows this property to have three (3) separate freestanding signs without violating Section 450.5.B.4.a of the BCZR, which requires spacing of at least 100 feet between freestanding signs on a single premises. Additionally, the Seminary Avenue frontage, which is over 600 feet in length, is bordered by residential zoning, which zones do not permit installation of a commercial sign, thus requiring all of the properties signage for the 1000+ feet of the property's frontage must be placed along York Road in the commercially zoned portion of the site.

Protestants presented the testimony of Mr. Max Collins to dispute the Petitioner's claim that the slope on the site is a unique feature under variance standards. Mr. Collins testified that the slope at issue was at the site of the Galleria Tower and not near the basement space which is located underneath the row of shops and Atrium which the Petitioner claims requires the additional signage due to its location. While the Board finds Mr. Collins' description of the property to be factually correct, we do not find the factual distinction to defeat the argument that the sloping grade of the property is a unique topographical condition, which satisfies the requirements enunciated in *Trinity Assembly of God*.

II. PRACTICAL DIFFICULTY

In order for a sign variance to be approved, in addition to a finding of uniqueness, the Petitioner must also show that strict compliance with the Zoning Regulations would result in practical difficulty. *Cromwell v. Ward*, 102 Md. App. 691, 698 (1995).

The Petitioner presented testimony from Lori Kapruan and Ashley Zito, respectively the Property Manager and Leasing Representative for the property, which attempted to explain the difficulty in leasing certain parts of this shopping center without the sign at issue. Ms. Kapruan testified that there are 25 more tenant spaces than panels on the existing signs. She also explained that this particular sign serves the special purpose of providing visibility to some of the center's more challenged tenant spaces.

Ms. Zito testified that sign placement is often the first question a potential tenant asks when viewing the lower level space of the Atrium building. Ms. Zito alleged that this space is completely hidden from both York Road and Seminary Avenue, and without a guaranteed panel on this smaller, separate sign, it has been impossible to lease the lower level space. She further testified that placement on the existing joint identification signs, even if panels were available, would be insufficient to lease this space.

Mr. Kellman argued that the practical difficulty is a direct result of the property's unique physical characteristics and is not due to any actions of the owner. Specifically, when the property was first developed under Baltimore County's County Review Group ("CRG") process, a substantial portion of the northern half of the property had a residential zoning designation. Consequently, the former owners were forced to construct the building perpendicular to York Road, rather than parallel, where each tenant space would have been more easily visible to motorists on York Road.

Mr. Kellman further testified that the visibility of the lower level Atrium space is significantly hampered by the topography of the site. Petitioners offered photos into evidence. Those photos reveal that portions of the Galleria tower building face the same difficulty due to the

topography of the site, as the parking area and entrance are located approximately 40-50 feet below York Road in the rear of the property. *See* Petitioner's Exhibits 11A-C.

Protestants raise the point that the Petitioner has failed to clearly explain why a tenant occupant of the basement space could not have its name on signs already existing on the property. Protestants argue that there is no legal requirement granting every occupant of a property, individual signage. Additionally, Protestants make the point that how space in a property is divided among tenants is a private matter between landlord and tenant. Just because a landlord has created a large basement space, not visible from the road, does not translate into the automatic granting of a sign variance. While the Board does recognize the validity of these points, the Petitioner has not recently rearranged space in the building creating this need for additional signage for the basement space. The basement space has been in existence for some time. The sign at issue, though previously a changeable copy sign, was in existence to serve that space. The Board finds compelling the testimony provided by the Petitioner as to the hardship in leasing the space at issue without the availability of additional signage, and further finds that strict compliance with the zoning regulations regarding signage would result in practical difficulty as contemplated in *Cromwell*.

III. STRICT HARMONY WITH THE SIGN REGULATIONS AND THE IMPACT ON THE SURROUNDING NEIGHBORHOOD

Petitioner further argues that the sign in question has been in place for many years pursuant to a valid permit. Petitioner notes that as the sign permit reveals, the sign was previously an electronic "changeable copy" sign where the wording could be changed on the face of the sign. Petitioner is now proposing to keep the sign the same size, but to remove the changeable copy element, which they argue will reduce "clutter" along York Road. Petitioners argue that this proposal balances the interest in advertising tenant spaces that are located in the heart of the York Road commercial corridor with the interest in decreasing the amount of artificial light and wording that previously existed on the changeable copy sign. Petitioners also note that the spacing of the

Petitioner's signs matches the spacing of the three (3) businesses across the street (Lutherville Car Care, Friendly's and Exxon). In conclusion Petitioners contend that the proposed sign is not "excessive or incompatible" within the meaning of Section 450.1.D of the BCZR, and complies with the spacing requirements in Section 450.5.B.4.a of the BCZR.

Protestants take issue with Mr. Kellman's contention that the sign at issue does not cause visual clutter and they believe that the three signs on properties across York Road have the same spacing as the signs on the property at issue, is irrelevant. The Board agrees with the Petitioners and is not persuaded that the use of the sign that was previously used on the property creates injury to public health, safety and welfare.

IV. COLLATERAL ESTOPPEL AND RES JUDICATA

During the first day of hearing, the Board considered that since there was a Final Order declaring that the property at issue in this matter was unique for purposes of granting a sign variance (Case No. 2015-0226-SPHA), whether the Petitioner was required to prove uniqueness again in this case in light of the tenets of *collateral estoppel* and *res judicata*. After arguments and case law were presented by Deputy People's Counsel arguing that *collateral estoppel* and *res judicata* did not apply, Petitioners chose to submit evidence of uniqueness in their case. In finding that the evidence presented by the Petitioners met the burden established in *Cromwell*, the Board will not address the *collateral estoppel* and *res judicata* issues.

CONCLUSION

The Board finds that the property at issue is unique and that the Petitioner would experience a practical difficulty due to the reason stated above if it would be required to remove the existing sign. Additionally, the Board finds that the variance can be granted in harmony with the spirit and the 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.

ORDER

THEREFORE, IT IS THIS 17th day of August, 2017 by the
Board of Appeals of Baltimore County

ORDERED that the redlined Petition for Variances:

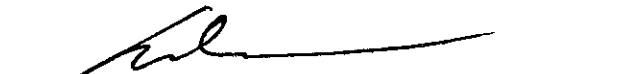
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2. From Section 450.4, Attachment 1, Section 7(b)(IX) to permit a third joint identification sign on a property with 2 frontages;

be and the same are hereby GRANTED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Andrew M. Belt

Benfred B. Alston was a Board member and participated in the hearings in this matter on November 16, 2016, and April 5, 2017 and the public deliberation held on April 26, 2017.



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

August 17, 2017

David H. Karceski, Esquire
Adam M. Rosenblatt, Esquire
Venable LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

RE: In the Matter of: *Seminary Galleria, LLC*
Case No.: 16-106-A

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: Anthony Giulio/Seminary Galleria, LLC
Andrea Van Arsdale, Director/Department of Planning
Lawrence Stahl, Managing Administrative Law Judge
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Dulaney Valley Improvement Association, Inc.
Maxwell R. Collins, II, Esquire
Michael Pierce
Robert Cordes, M.D.
Lori Kapraun/Hill Management