

IN THE MATTER OF	*	BEFORE THE
COLONIAL STOLER, LLC -LEGAL OWNERS	*	BOARD OF APPEALS
AND PETITIONERS FOR SPECIAL HEARING	*	
AND VARIANCE FOR THE PROPERTY	*	OF
LOCATED AT 11311 REISTERSTOWN ROAD	*	
4 TH ELECTION DISTRICT	*	BALTIMORE COUNTY
2 ND COUNCILMANIC DISTRICT	*	
	*	CASE NO. 17-023-SPHA

* * * * *

OPINION

This matter comes before the Board of Appeals for Baltimore County (the “Board”) as a *de novo* appeal from an original hearing before Administrative Law Judge John E. Beverungen. The Petitioner (hereinafter “Stoler”) seeks permission to replace its sign at its Lexus dealership on Reisterstown Road. As an initial matter, Stoler sought a ruling that the definition of sign size in the BCZR means that its proposed new sign is permitted by right. Assuming, however, that the proposed sign is not permitted by right under the current regulations, Stoler alternatively seeks a variance from the zoning regulations to allow the construction of its proposed sign. Judge Beverungen found that the County’s standing interpretation of the definitions of “area”, “face”, “message”, and “sign” in BCZR § 450.3 precludes the Stoler sign. In addition, he found that Stoler’s request for a variance does not meet the requirements under *Cromwell v. Ward*, 102 Md. App. 691 (1995). Stoler thereafter noted a timely appeal to the Board of Appeals.

A *de novo* hearing before the Board was held on January 19, 2017. As an initial matter, Stoler sought to amend its request for a variance to include a request for a variance for its present sign, which is much smaller than Stoler’s proposed new sign, but which is presently nonconforming. People’s Counsel objected on procedural grounds. We determined that Stoler’s amended request for variance relief is simply a “lesser included” version of its original variance

request. As such, we held that it is not the kind of amendment which constitutes a substantive change, requiring separate notice, petition, and hearing at the ALJ level. *See e.g. McLean v. Soley*, 270 Md. 208 (1973). Accordingly, we allowed Stoler to pursue its additional variance request at the Board of Appeals level.

Stoler's counsel made an excellent presentation, and if this were simply a matter of aesthetics, the Board would rule in Stoler's favor. Further, as Stoler's counsel pointed out, there are a number of automobile dealership signs on Reisterstown Road which are similar in size and appearance to the sign Stoler seeks in this case, lending a level of equitable appeal to Stoler's position. Nonetheless, the Board believes that the law clearly requires it to rule against Stoler on all three substantive grounds for relief sought in its Petition.

Stoler called two witnesses, Mitchell Kellman and Michael Meagher. Mr. Kellman is Director of Zoning Services for Daft-McCune-Walker, Inc, an entity which provides support services to businesses seeking zoning relief. In brief, Mr. Kellman established that the present Lexus sign was erected in 1992. It stands 27 feet high and, under the prevailing size definition in the BCZR, it is 70 square feet. Today's zoning requirements limit such signs to 50 square feet. BCZR § 450.5(g). Because the zoning requirements limiting the size of signs, like Stoler's, to 50 square feet came into effect in 1997, the Stoler sign was pre-existing and nonconforming. The BCZR provides a 15-year grace period for businesses to bring their signs into compliance. Since Stoler erected its sign in 1992, it has not altered the sign, and the BCZR grace period expired in 2012.

In his testimony, Mr. Kellman described Stoler's proposed new sign. It is to be a large solid structure in the shape of the Lexus device used in the automobile in place of the ignition key (hereinafter referred to as "key"). The proposed "key sign" is 25 ft. high and 9 ft. wide, amounting

to 225 square feet. In the middle of the proposed key sign, in white letters, is to be the word “Lexus”. If one were to draw a perimeter around the portion of the sign that contained only the word “Lexus”, the area inside that perimeter would be 45 square feet. Later testimony by Mr. Meagher, the general manager of the Stoler dealership on Reisterstown Road, established that this key shape is, in effect, a Lexus icon or insignia and the branding symbol by which Stoler’s customers, and any possible Lexus customer nationwide, could identify this, or any, Lexus dealership.

The BCZR § 450.3 defines the “area” of sign as “[t]he number of square feet within the perimeter of one contiguous rectangle enclosing the face of the sign”. The definition further states that the “area” is “. . . differentiated from the structure supporting it or upon which it is erected.” The “face” is the flat surface “within a continuous perimeter enclosing the outer limits of the message of a sign.” The sign’s message is “[a] communication, statement or display of information or ideas through written words, letters, numerals, images, illumination or theme comprising the face of the sign”. The definition further indicates that the message is “distinguishable” from the structure and the supporting apparatus of the sign. Finally, for our purposes, a “sign” is “[a]ny structure or other object, or part thereof, which displays any word, illustration, decoration or other symbolic representation which: A. Is used or intended to inform, advertise or otherwise attract attention or convey a message regarding a . . . commercial. . . place. . .”

Clearly, the entirety of proposed structure is a “sign.” More to the point, under the County interpretation, the proposed new sign would be 225 square feet instead of the permitted 50 square feet, because, in this instance, the entire structure itself is the “message”. The entire sign is in the symbolic shape of a Lexus key. It is the icon by which Lexus is to be identified nationwide. As

such, in this instance, the “face” and the “message” are the same. Thus, according to the County, the new sign was not permitted.

Stoler argued that only the word Lexus on this new sign was the “message”. An imaginary perimeter could be drawn around that word, and the area inside that perimeter is only 45 square feet. Thus, according to Stoler, its proposed sign is permitted by right because it is less than the 50 square feet maximum allowed by law. According to Stoler, the balance of the edifice – namely, the Lexus key-shaped object upon which the word “Lexus” was imposed – was simply a “supportive element” without message content or meaning.

Stoler’s position is incorrect. The testimony from Stoler’s own witnesses established, without question, that the entire piece was intentionally shaped like the Lexus key so that the sign in its entirety would be, and become, the symbolic representation of the Lexus brand. There is, according to the testimony, a nationwide Lexus effort to make the shape of this entire sign into a symbolic representation of the Lexus brand. On this issue, Mr. Meagher stated: “[The sign’s purpose is] the branding... There is a difference between advertising and branding . . . The car key that you get is that sign...” This testimony established that under any definition of area, face, and message, the entire Lexus sign – in the shape of the Lexus key – is the message; it is the symbol being communicated. Thus, the testimony established beyond all doubt that the entire edifice is the sign, and not simply the small area created by a perimeter around the word Lexus. As a result, any claim that there is ambiguity in the definition of “area”, “size”, “message” or the application of those definitions is irrelevant. Even if one were to accept the Stoler interpretation on the critical definitions – and this Board does not – the proposed sign is unpermitted because, as established factually by the Stoler testimony, the entire edifice is the message rather than it being a supporting structure for the single word “Lexus”.

As an alternative, Stoler has requested a variance that would permit construction of the sign. Again, if this were solely a question of aesthetics, the Board would happily grant a variance. Unfortunately, the Board is required to apply the variance principles as stated in *Cromwell v. Ward*, 102 Md. App. 691 (1995) and codified in BCZR § 307.1. A basic requirement is that the proponent of the variance demonstrate that the lot is unique and the “uniqueness” creates a practical difficulty in the use of the lot without the grant of a variance. In this matter, there is absolutely nothing about Stoler’s lot that makes it unique. Further, the testimony established that Stoler’s customers have had no difficulty in finding the Stoler Lexus dealership and there has been no apparent impediment to its business (even if financial hardship could satisfy the practical difficulty requirement, which, under *Cromwell*, it cannot). See *Cromwell*, 102 Md. App. at 703-21. The Board thus concludes that Stoler has failed to carry its burden of proof to show uniqueness and practical difficulty that are requirements for variance relief.

Finally, as indicated above, Stoler has requested a more limited variance for its present sign. This variance would allow for Stoler to continue to use a sign, as it has since 1992, which is 70 square feet in size, rather than the permitted 50 square feet, and which is 27 feet high in lieu of the permitted 25 foot height. Again, however, Stoler cannot show that its site is unique and that that uniqueness causes a practical difficulty, as required under *Cromwell*. Accordingly, the amended request for a variance must also be denied.

ORDER

THEREFORE, IT IS THIS 9th day of June, 2017 by the
County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing pursuant to BCZR § 500.7 to permit a sign of 45 square feet in lieu of the 225 square feet as determined by the County is hereby **DENIED**; and it is further

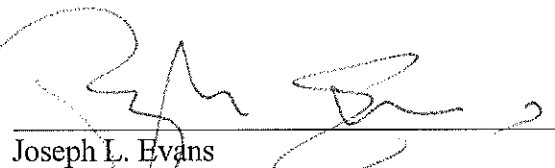
ORDERED that the Petition for Variance to permit erection of the aforementioned 225 square feet sign in lieu of the 50 square feet permitted is **DENIED**; and it is further

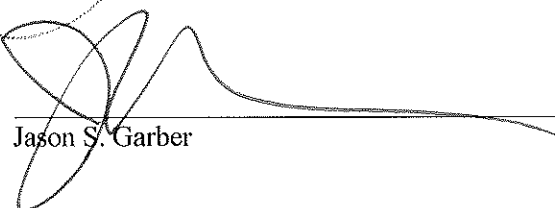
ORDERED that the oral amendment requesting a Variance to permit a sign that is 70 square feet in lieu of the permitted 50 square feet and that is 27 feet high in lieu of the 25 feet permitted, is **DENIED**.

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**


James H. West, Panel Chairman


Joseph L. Evans


Jason S. Garber



Board of Appeals of Baltimore County

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June 9, 2017

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RE: In the Matter of: *Colonial Stoler, LLC*
Case No.: 17-023-SPHA

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 tam".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Barry Stoler/Colonial Stoler, LLC
George Harman/Reisterstown-Owings Mills-Glyndon Coordinating Council
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
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