

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E/S York Road (MD Rte. 45), 270' S of		
Greenridge Road	*	ZONING COMMISSIONER
(1209 York Road)		
	*	OF
9 th Election District		
3 rd Council District	*	BALTIMORE COUNTY
Greenridge M-10, LLC, <i>Owner</i>	*	Case No. 2010-0006-A
Advanced Radiology, <i>Lessee</i>		
<i>Petitioners</i>	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Greenridge M-10, LLC, through its attorney, Joseph C. LaVerghetta, Esquire and Sebastian A. Cross, Esquire, and Ken Ames on behalf of the Lessee, Advanced Radiology. Petitioners request a variance from Section 450.4.5(m) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit two (2) 115 square foot wall mounted enterprise signs in lieu of the permitted 8 square feet and to permit 4 signs per premises in lieu of 1 allowed, and to permit a total square footage for four (4) signs of 588.81 square feet in lieu of 8 square feet [*358.81 square feet previously approved in Case No. 07-427-A that permitted 2 wall-mounted signs of 133.13 square feet and 225.68 square feet in lieu of the permitted 8 and to allow 2 signs on the premises in lieu of the 1 allowed*]. The subject property and requested relief are more particularly described on the colorized sign detail and the two-page site plan which were submitted into evidence and marked as Petitioners' Exhibits 7 and 8, respectively.

Appearing at the requisite public hearing in support of the request were Joseph C. LaVerghetta, Esquire on behalf of the Mangione family and Greenridge M-10, LLC, property owner; Ken Ames, Vice President, of Advanced Radiology, and Wayne Belsinger, of the

Belsinger Sign Group. Sebastian A. Cross, Esquire, appeared on behalf of Petitioner, Advanced Radiology. There were no Protestants. Todd Huff, President, and Maxwell R. Collins, II, Esquire, of the Dulaney Valley Improvement Association, Inc., appeared and participated at the hearing.

The testimony and evidence establishes that the specific need for the variance is generated by the uniqueness of the property. The 2.5-acre parcel at issue is zoned R.O. and located in Lutherville/Timonium on the east side of York Road just north of the Baltimore Beltway (I-695) exit for northbound traffic on York Road (Exit 26). The site is improved by a three-story, Class B Office Building known as 1209 York Road. *See* Case No. 05-583-SPHXA (Petitioners' Exhibit 3) for the historical circumstances leading to the development of the site that consists of a three-lot assemblage of 5.70 acres with an adjacent four-story office building fronting on York Road known as 1205 York Road. An aerial photograph, submitted as Petitioners' Exhibit 1, helps to demonstrate the irregular shape of the property and its unique positioning at the southeast corner of the intersection of Greenridge Road and York Road in the heart of Lutherville.

The requested variance relief pertains to Advanced Radiology who leases space in the three-story office building and would like to erect two wall mounted identification signs as shown on Petitioners' Exhibit 7. This Commission approved similar relief to the Katzen Eye Group in Case No. 07-427-A ¹, *See* Petitioners' Exhibits 3 and 4. Messrs. Cross, Collins and Huff indicated that Petitioners have worked in concert with the Dulaney Valley Improvement Association over the years to allow medical offices, the new building and signage shown on

¹ The Findings of Fact and Conclusions of Law set forth by then Deputy Zoning Commissioner John V. Murphy in his Order, dated May 29, 2007, and the visual studies performed by Dr. Richard Edlow are adopted by reference and incorporated herein. At the very least, Case No. 07-427-A creates a presumption of correctness as to the signage issues that are essentially the same as in this case.

photographic exhibits collectively submitted as Petitioners' Exhibit 6. Advanced Radiology proposes to erect two (2) signs matching the Katzen Eye Group signs in both size and scale. One will be installed on the west façade below the Katzen sign and face York Road providing identification and location for travelers on York Road which is heavily traveled with a speed limit of 40 miles per hour. It is significant to note that the building in question is set back from York Road and behind and to the side of the SEBCO Credit Union Building. The second sign will be on the building's east façade and will identify the building for travelers coming off York Road via Greenridge Road and into the large parking field in front of the building. Both signs will be illuminated, however, the sign facing east - towards the residential community - will be illuminated only during office hours, which Mr. Ames indicated were as late as 9:00 PM. As in the Katzen Eye Group case, the Dulaney Valley Improvement Association wanted any approval conditioned on a restriction that assured the east façade sign(s) would only be illuminated during building office hours and no later than 8:00 PM. On behalf of Advanced Radiology, Mr. Ames agreed.

On behalf of Petitioners, Mr. Cross opined that the property was unique from a zoning standpoint due to its "L" shape and the location of the new office building which, as noted, is located 304 feet off York Road behind the Credit Union building. He indicated that the letter size proposed for the sign facing York Road had been calculated based on (1) the distance from the roadway to the sign, (2) the height of the sign from ground level, (3) minimum eyesight for driving, and (4) speed of travel on York Road. The letter size is needed to safely identify Advanced Radiology's building location for travelers along heavily traveled York Road. Having identified the building from York Road, those desiring to find the offices would see the second sign as they enter the parking lot off Greenridge Road. The size is commensurate with its location on the first floor of the building.

Mr. Cross noted that Case No. 05-583-SPHXA allowed a three story office building in this R.O. zone but that the sign regulations of Section 450.4.I.5(m) allowed only signs of 8 square feet. This size sign may be reasonable for the conversion of a residential dwelling into a Class A office as envisioned in the R.O. zone but does not adequately provide for the larger new Class B office building which is also allowed in this zone. Again, he noted that one sign is adequate for the typical residential to office conversion but not adequate for the case as here where travelers are coming from two directions.

At first glance one may find this to be a difficult request to grant. The Petitioners propose signs some twenty times larger than the regulations allow. As stated, Mr. Cross and Mr. Belsinger emphasize that the 8 square foot sign size was intended for the conversion of dwellings to offices, not for a three-story office building. I agree with Messrs. Cross and Belsinger that there may well have been an oversight in the sign regulations in cases in which new Class B offices are allowed by special exception. The maximum size for wall-mounted signs in office zones is 150 square feet. In Case No. 07-427-A, Dr. Richard Edlow's calculations were accepted by this Commission establishing that the minimum letter size that can be safely read from York Road is 22 inches considering the large setback from York Road, the speed of travel, minimum sight for driving etc.

I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. *Cromwell v Ward*, 102 Md App 691 (1995) indicates that there must be something unique about the property before a zoning variance can be granted. The Court of Special Appeals indicated that the subject property must be peculiar, unique or unusual when compared to other properties in the neighborhood such that the regulations impact the subject property differently than the regulation impacts other properties in the neighborhood. The Court directed that the subject property have inherent characteristics not

shared by other properties in the neighborhood, such as shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, *practical restrictions imposed by abutting properties (such as obstructions)* or similar restrictions (emphasis added). The unusual condition does not have to be on site but rather can be on abutting properties. Obstructions are specific examples of off-site circumstances or conditions, which show uniqueness. In the subject case, the new building which needs to be identified by the public from York Road physically sits 304 feet off York Road and is behind the SEBCO building of York Road. The existing four story office which fronts on York Road also blocks the view of the new building for travelers coming off the Beltway.

In addition, the subject property is “L” shaped and the newer Class B Office Building located in the rear portion of the property is on Lot 2. Together with the noted obstructions, I find the configuration of the property and abutting obstructions qualify the property as unique. Strict compliance with the Zoning Regulations would result in practical difficulty and an unreasonable hardship. The hardship will be on the public who needs to find the new medical facility if a sign of only eight square feet is allowed.

Finally, I find this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. The Dulaney Valley Improvement Association is content with the proposed signs although they request a condition on approval regarding the time the sign facing the residential community will be lit. I find this request most reasonable and will impose this condition.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners’ variance request should be granted.

THEREFORE, IT IS ORDERED, this 25th day of November 2009 by the Zoning Commissioner of Baltimore County, that the Petition for Variance seeking relief from Section 450.4.5(m) to permit two (2) 115 square foot wall mounted enterprise signs in lieu of the permitted 8 square feet and permit 4 signs per premises in lieu of 1 allowed; and to permit a total square footage for four (4) signs of 588.81 square feet in lieu of 8 square feet [*358.81 square feet previously approved in Case No. 07-427-A that permitted 2 wall-mounted signs of 133.13 square feet and 225.68 square feet in lieu of the permitted 8 and to allow 2 signs on the premises in lieu of the 1 allowed*], in accordance with Petitioners' Exhibits 7 and 8, is hereby GRANTED subject to the following conditions:

1. The Petitioners may apply for their permits and be granted same upon receipt of this Order; however, Petitioners are 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, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The east façade elevation sign facing the residential community (Petitioners' Exhibit 7B) may be illuminated only during building office hours or until 8:00 PM, whichever is first to occur.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County