

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NE corner of Dulaney Valley Road and Fairmount Avenue (901 Dulaney Valley Road)	*	ZONING COMMISSIONER
	*	OF
9 th Election District 5 th Councilmanic District	*	BALTIMORE COUNTY
Dulaney Center Business Trust, <i>Legal Owner</i>	*	
Merrill Lynch, <i>Lessee</i> <i>Petitioners</i>	*	Case No. 2011-0144-A
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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, Dulaney Center Business Trust, and its Lessee Merrill Lynch. Petitioners request a variance from Section 450.4. *Attachment*. 1.5(d) of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow one wall-mounted enterprise sign to be located above the tenant space occupied by the applicant, Merrill Lynch Wealth Management, and on a façade without a separate, exterior customer entrance. The subject property and requested relief are more particularly described on the site plan and color sign detail, which were marked and submitted into evidence as Petitioners’ Exhibits 1 and 6, respectively.

Appearing at the requisite public hearing in support of the request were Kathleen McAvoy, Senior Property Manager for Petitioner/legal owner; Sandra I. Liotta, First Vice President-Investments and Senior Resident Director for Merrill Lynch; Tracey Rivell, project manager for Icon Identity Solutions, Petitioner/lessee’s sign manufacturer; Maria Scarfone with CB Richard Ellis, Matthew T. Allen, P.E., with Bohler Engineering, the consultant who prepared the site plan. David H. Karceski, Esquire with Venable LLP appeared as attorney for the requested sign variance. Richard Cobert with Baltimore County’s Department of Economic Development also

attended the public hearing and presented to this Commission a memorandum from his Department's Director in support of the sign variance, which was marked and accepted in evidence as Petitioner's Exhibit 9. There were no other interested persons or protestants.

The testimony and evidence revealed that the subject property, known as the "Dulaney Center," is comprised of approximately 9.8 acres of land situated at the northeast corner of the intersection of Dulaney Valley Road and Fairmount Avenue, in the Towson area of Baltimore County. Dulaney Center is improved with two multi-story commercial buildings with more than 300,000 square feet of gross floor area, a fifteen-story hotel, and seven-level structured parking facility that serves the uses located in these buildings as well as the hotel's patrons. Merrill Lynch's tenant space is located on the fifth floor of the building closest to Dulaney Valley Road, known as "Dulaney Center II"; this particular building contains nine stories. It is important to note that Dulaney Center II as well as the hotel are served by an auto plaza that is completely interior to the Dulaney Center and not visible or accessible from the property's main road frontages on Dulaney Valley Road and Fairmount Avenue. Due to the long and circuitous route from these roadways into the site and regular complaints from Merrill Lynch's clientele that their location is a difficult one to find, Merrill Lynch proposes to install a single wall-mounted sign on the façade of the building that faces Dulaney Valley Road, as shown and indicated on the building elevation with sign detail (Petitioner's Exhibit 6). The legal owner's representative informed this Commission that Merrill Lynch is a major tenant in the Dulaney Center and that the owner is in full support of the requested sign.

The overall site is zoned B.M-C.T. (Business, Major, Commercial, Town-Center Core), as is shown and indicated on Petitioner's Exhibit 1 and the aerial photograph /zoning maps, marked and accepted into evidence as Petitioner's Exhibit 3. Petitioner's Exhibit 3 also reveals that the

C.T. District within which the Dulaney Center is located is much larger than just the Dulaney Center property itself. In fact, this C.T. District is the only such district in the Towson area and is home to numerous other significant commercial properties, including the well-known Towson Town Center, located on the opposite side of Fairmount Avenue from the subject property, and the “Towson Circle” commercial development, located just south of Towson Town Center. Petitioner characterized this area of Towson as an urban one, and this Commission agrees with the description.

Petitioner’s Exhibits 1 and 3 also help demonstrate some of the unique aspects of the property. These include: (1) its frontage on four different public roadways, Dulaney Valley Road, Fairmount Avenue, Towson Gate Drive, and Southerly Road; (2) the elongated and unusual shape of the overall Dulaney Center property dictated in part by the configuration of these surrounding roadways; (3) the absence of any vehicular points of ingress and egress on its main road frontages (Dulaney Valley Road and Fairmount Avenue) into the site; (4) the long and circuitous route from these roadways into the Dulaney Center; and as noted (5) the site’s location within Towson’s C.T. District, an urban town center not like any other in Baltimore County.

The requested relief pertains to Merrill Lynch, who leases space in Dulaney Center II on its fifth floor and would like to install a single wall-mounted sign above its tenant space, as shown on Petitioner’s Exhibit 6. It is significant to note the testimony offered by Merrill Lynch as to why the sign is requested. Ms. Liotta, for Petitioner, indicated that a significant percentage of Merrill Lynch’s clientele is elderly and/or travels from out of town and from as far away as New York and New Jersey to meet with Merrill Lynch employees at Dulaney Center. Clients not familiar with downtown Towson report on a regular basis that they have difficulty finding Merrill Lynch due to the following: (1) its location within the overall Dulaney Center development; (2) the limited

visibility of the Dulaney Center to motorists traveling south on Dulaney Valley Road; (3) the challenge of finding the access point into the property from Dulaney Valley Road due to the change in grade on the road in combination with mature trees that screen the Dulaney Center from the view of motorists; and (4) the urban nature of the immediately surrounding area and confusion it creates for motorists as they approach the intersection of Dulaney Valley Road and Fairmount Avenue. For these reasons, Merrill Lynch requests a sign on the exterior of the building at a location above its tenant space, which would not extend above the building's roofline. Merrill Lynch provided this Commission a photograph of a building in the town center of Columbia in Howard County, on which Merrill Lynch has a wall-mounted sign similar to the one proposed in this case. Merrill Lynch explained that its clientele had the same difficulties finding their location in Columbia that clients do in Towson, and the sign was the remedy for the difficulties there. The photograph of this sign was marked and accepted into evidence at Petitioner's Exhibit 8.

It is important to note that none of the Zoning Advisory Committee comments in this case, including the one issued by the Office of Planning, recommended denial of the variance and that the sign at the location proposed will *not* be visible from I-695. Its purpose is to aide motorists already on Dulaney Valley Road as they approach the site from the north and not for visibility from I-695.

The Zoning Commissioner is permitted to grant variances, pursuant to B.C.Z.R. Section 307, upon finding that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests and that requiring strict compliance with the Zoning Regulations would result in a practical difficulty for Petitioner. Having heard the testimony and considered Petitioner's request, I find that sufficient evidence and justification exists to grant the requested variance. I find that the requested variance relief is appropriate in this

instance, given the property's unique characteristics, which include: (1) frontage on four different public roadways and the irregular configuration of the property; (2) the site's limited visibility from Dulaney Valley Road; (3) the location of the auto plaza and entrance for Dulaney Center completely enclosed from view along the property's main road frontages; (4) the distance from Dulaney Valley Road and Fairmount Avenue to the concealed auto plaza; and (5) the site's unique location in Towson's urban C.T. District. I also find that strict compliance with the applicable Special Sign Regulations would result in a practical difficulty and unreasonable hardship for Petitioner and that the relief requested will not result in any adverse impact on the surrounding area. The proposed sign is tastefully designed and appropriate in the location proposed on the building. Additionally, the proposed sign is not out of character with signage already installed on other properties in close proximity the Dulaney Center, including the Towson Town Center and Towson Circle, and will not have any adverse impact on the surrounding area given its location in Towson's C.T. District. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 20th day of December, 2010 that Petitioner's Variance request from 450.4. *Attachment.1.5(d)* of the Baltimore County Zoning Regulations to allow one wall-mounted enterprise sign to be located above the tenant space occupied by the applicant and on a façade without a separate and exterior customer entrance be and is hereby **GRANTED** in accordance with the Petitioners' site plan

accepted into evidence as Petitioners' Exhibits 1 and 6. The relief granted herein is subject to the following conditions:

ADVISORY: Petitioner is advised that it may apply for any required building 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 the 30-day appeal period from the date of 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.

IT IS FURTHER ORDERED that the decision in this case is not a legal precedent that may be cited as such in any other zoning signage case.

Any appeal of this decision must be taken in accordance with Baltimore County Code (B.C.C.) Section 32-3-401.

SIGNED
WILLIAM J. WISEMAN III
Zoning Commissioner
For Baltimore County

WJW/pz