

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E/Side of f Pulaski Highway, 50 feet		
S of Mohrs Lane	*	OFFICE OF ADMINISTRATIVE
15 th Election District		
6 th Councilmanic District	*	HEARINGS FOR
(9991 Pulaski Highway)		
	*	BALTIMORE COUNTY
DDRTC CP LLC, <i>Legal Owner</i>		
Dollar Tree Stores, Inc., <i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2011-0189-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Mark M. Viani, Esquire and Scott E. Adams, Esquire with McGuire Woods, LLP, on behalf of the legal owner, DDRTC CP LLC, and Dollar Tree Stores, Inc., the contract purchaser. Petitioners are requesting Variance relief from Section 450.4.5(d) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit 2 wall mounted enterprise signs on a multi-tenant retail building for a separate entity on wall that does not contain an exterior customer entrance - 1 on the side wall and 1 on the rear wall, and to permit 3 wall mounted enterprise signs on a multi-tenant retail building for a separate entity with 1 exterior customer entrance in lieu of the 1 sign permitted. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Mark M. Viani, Esquire and Scott E. Adams, Esquire of McGuire Woods, LLP attorneys for the Petitioners, and Bernt C. Petersen, R.L.A. with George William Stephens, Jr. and Associates, Inc., the registered landscape architect who prepared the site plan. Also attending as an interested citizen was Michael Pierce of 7448 Bradshaw Road, Kingsville MD.

Mr. Petersen was called as a witness and, after offering his CV was accepted as an expert in site development, land planning and zoning in Baltimore County.

He proceeded to describe the site in question, one of three lots comprising a 5.8 ± acre subdivision created in 1995 and known at that time as Price Club Plus. The site in question is Lot 2, and all three are zoned B.R.-A.S. and B.R.-I.M. Presenting the plat to accompany, the witness located Lot 2 and noted that Lot 3 is to the east on Pulaski Hwy. and that Lot 1 to the south on Pulaski Hwy. He noted that the façade and front entrance of Lot 2 was located inward, facing the interior parking lot. He also pointed out, due to the constraints of the site, the only visibility was provided on Pulaski Hwy. or to the Mohrs Lane on the site's north side. He noted that the lot had been built under the pre-1977 sign regulations, in which signs were allowed "on any wall". He then described Section 450 of the existing Baltimore County Zoning Regulations, and explained the limitations that now existed as a result of that change in the law.

Photographs were provided showing the previous signage on the site. It included three signs, one on the front, one on the side facing Pulaski Hwy., and one on the rear facing Mohrs Lane. It was pointed out that the signage for this particular site has always been at the same three locations; and is exactly the same as is now being requested under the variance. The witness proceeded to describe the actual signs, which include two signs of 171.73 square feet configured horizontally, one on the west side of the building facing Pulaski Hwy. and one to the south, facing the neighboring use, but likewise visible on Pulaski Hwy. A third sign, considerably smaller at 57.04 square feet and configured vertically would be located on the north side facing Mohrs Lane. He reiterated that these were the same locations and approximate sizes as had existed at the site since prior to the 1977 change in the regulations. Testimony was then elicited from the witness as to the uniqueness of the site's situation and the practical difficulty resulting there from. Referring

to the photographs provided, he pointed that the front entry was not visible from any public thoroughfare. He pointed out that the side wall is obscured by the neighboring Burger King property, and most important of all, that there was a 15 foot height difference in the north and west portions of the site, which was additionally obscured by a growth of mature existing trees. He therefore opined that the rear and side portions of the site, being the only visually accessible directions, were, by virtue of their position the only way that the Petitioners' business could be identified by the public. The screening of the trees and the position of the neighboring businesses, only signs such as those requested were allow for any identification from the right-of-way on Pulaski Hwy. or Mohrs Lane.

He further opined that the viability of the use of the subject site by the Petitioners for a permitted purpose under the Zoning Regulations and these singularly and adversely effected by the topography, existing tree screening, and the already existing adjacent properties' sight line interruptions, and that such conditions would be particularly burdensome to the Petitioners and not to any other users of the adjacent sites. He concluded that the only way to resolve Petitioners' difficulties would be by the granting of the requested variance, and by doing so, allowed to exist those signs which had always been necessary by previous users to deal with the unique restrictions imposed upon the location.

He concluded that it was his opinion that, for all of his given reasons, the requested variance was in strict compliance with the spirit and intent of the B.C.Z.R. Mr. Michael Pierce, a citizen living in Kingsville, also appeared at the hearing and testified. He noted that this stretch of Pulaski Hwy. is well developed and is concerned with temporary signs and parked trucks on the north side of the site facing Mohrs Lane. He had no specific problem with the sign as it is proposed at that location. As a result of his testimony and concerns, the Petitioners agreed that no

temporary or additional signs other than those permanent signs requested would be placed on the site and that trucks would be removed once loading and unloading activities were completed. It was agreed that these restrictions would be made a part of any final Order.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Without a variance, the requested signs and the proposed configuration of enterprise signage would not be permitted by B.C.Z.R. Section 450.4.5(d), which governs commercial signage in multi-tenant centers. The proposed signs are “enterprise” signs which are defined as those which display the identity of a business or advertise products or services associated with a business. *See* B.C.Z.R Section 450.4.5. Section 450.4.5(d) permits only one wall-mounted sign for each tenant having an exterior customer entrance with a maximum square footage for such signs of two times the length of the wall containing the exterior customer entrance. The original construction of the site in question for its commercial use occurred prior to these regulations and at that time allowed the very same signage that has always existed at that site and is presented for approval in the instant case.

I find that the configuration of the subject site in relation to the other structures thereupon and the resultant interrupted sight lines as well as the topographical difference in elevation between the northwest corner and the rest of the site are unique to this property. Moreover, that northwest corner is screened from sight by an already existing stand of trees. In addition, the front entrance faces inward to the parking lot of the site and is not viewable at all from the major traffic source of Pulaski Hwy.

As a result the viability of use of the Petitioners' property for its permitted purpose is singularly adversely effected by the aforesaid topography and screening, as well as the already existing adjacent property sight line interruptions.

Petitioners did not nothing to create these conditions and I find that the existing regulations at this time are overly and particularly burdensome to the Petitioners' use unless a variance is granted. The effect of a variance would simply to allow that which has already and historically be utilized to ameliorate the unique restrictions of the commercial use of Petitioners' property. I further find that strict compliance with the regulations as they exist today would result in practical difficulty and unreasonable hardship upon the Petitioners. Finally, Petitioners' requested variances may be granted without injury to the public health, safety, and general welfare. Thus, the variances requested meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Accordingly, after considering all of the testimony and evidence presented at the hearing, I am persuaded that, pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED this 14th day of February, 2011 by this Administrative Law Judge that Petitioners' Variance request from Section 450.4.5(d) of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit 2 wall mounted enterprise signs on a multi-tenant retail building for a separate entity on wall that does not contain an exterior customer entrance - 1 on the side wall and 1 on the rear wall, and to permit 3 wall mounted enterprise signs on a multi-tenant retail building for a separate entity with 1 exterior customer entrance in lieu of the 1 sign permitted be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners have agreed that they will not utilize any temporary signs of any size or description on the property, and that any trucks utilizing the north side of the property do so only for the loading and unloading of merchandize and would not use the space for truck parking.

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

SIGNED
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz