

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
S Side of Baltimore National Pike, 1,450'		
NW of the c/line of Geipe Road	*	OFFICE OF ADMINISTRATIVE
1 <sup>st</sup> Election District		
1 <sup>st</sup> Councilmanic District	*	HEARINGS FOR
<b>(6459 Baltimore National Pike)</b>		
	*	BALTIMORE COUNTY
Combined Properties Limited Partnership,		
<i>Legal Owner</i>	*	
Five Below, Inc., <i>Contract Purchaser</i>		
Petitioners	*	<b>CASE NO. 2011-0290-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by David H. Karceski, Esquire with Venable, LLP on behalf of Combined Properties Limited Partnership, legal owner, and Five Below, Inc., contract lessee, Petitioners. Petitioners request Variance relief from Section 450.4 Attachment 1.5(d) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a wall-mounted enterprise sign on a side façade of a multi-tenant building without a separate exterior customer entrance in lieu of the one canopy sign permitted on the side façade. 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 Matthew T. Allen, a professional engineer with Bohler Engineering and David H. Karceski, Esquire, attorney for Petitioners. John Van Fossen from the sign company hired to construct the subject sign was also in attendance. There were no Protestants or other interested parties in attendance.

Testimony and evidence offered revealed that the property is located on the south side of Baltimore National Pike and west of its intersection with Rolling Road. The subject property has

an address of 6459 Baltimore National Pike. The property comprises 18.65 acres more or less split zoned BR-AS and BR. The property is the site of the 40 West Plaza Shopping Center which contains a number of retail and restaurant uses. At issue in the case before me is a vacant retail building which formerly housed the Hollywood Video rental business. Hollywood Video has gone out of business and the site is vacant at this time. The landlord has secured a new retail use for this vacant space which is known as 5 Below. 5 Below has moved into this vacant space and is now desirous of constructing signage on the façade of the corner of their building. The signage that is to be installed pursuant to this request replaces the Hollywood Video sign that previously existed. However, in order to proceed with the construction of the signage, the variance request is necessary.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request.

Additionally, I find that strict enforcement of the B.C.Z.R. would cause the Petitioners to suffer practical difficulty and undue hardship.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. 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 established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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 12 day of May, 2011 by this Administrative Law Judge that Petitioners' Variance request from Section 450.4 Attachment 1.5(d) of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a wall-mounted enterprise sign on a side façade of a multi-tenant building without a separate exterior customer entrance in lieu of the one canopy sign permitted on the side façade, 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.

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

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Signed  
TIMOTHY M. KOTROCO  
Administrative Law Judge  
for Baltimore County

TMK:pz