

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Mohrs Lane, 453.59' E of the		
c/line of Pulaski Highway	*	OFFICE OF ADMINISTRATIVE
15 th Election District		
6 th Council District	*	HEARINGS FOR
(9955 Pulaski Highway)		
	*	BALTIMORE COUNTY
HD Development of MD, Inc.		
<i>Petitioner</i>	*	CASE NO. 2012-0152-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by HD Development of MD, Inc. The Petitioner is requesting variance relief under Section 450.4 Attachment 1, 5(a)(IX) of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit two (2) wall-mounted enterprise signs with sign face/areas of 305 square feet each, in lieu of the maximum permitted 150 square feet each (Sign Nos. 1 and 3 shown on Exhibit 1B). The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1A.

Appearing at the public hearing in support of the variance request was Michael Linde with ImageCare Maintenance Services and Matthew T. Allen, P.E. with Bohler Engineering, the consultant who prepared the site plan. David H. Karceski, Esquire represented the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition or protest.

Testimony and evidence revealed that the subject property is 11.66 acres and is split-zoned BR-IM/MH-IM. The Petitioner operates a Home Depot store on the site, which is situated among other “big box” retailers in a 30 acre retail plaza. The Home Depot opened in 2000, and has had the same three signs since that time. The Petitioner wants to update and refresh the appearance of the signs (*See Exhibit 5*) and is going to replace Sign Nos. 1 and 3 with signs of almost the same size. The new signs will be backlit LED signs, which are both more attractive and energy efficient than the existing neon signs. While the signs complied with the B.C.Z.R. when they were originally erected, the sign regulations have in the interim become more stringent, and hence Petitioner required variance relief for the new signs, even though they are nearly identical in size and number.

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

Based upon the testimony and evidence presented, I will grant the request for 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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People’s Counsel, 407 Md 53, 80 (2008).

The Petitioner has met this test. As seen on the site plan, the 11 acre parcel is of an irregular shape, and is part of a much larger retail center. *See Exhibit 1A*. In addition, the Home Depot

store sits nearly 700 feet from Pulaski Highway, and is also obstructed from view by other retail stores that are positioned between it and the roadway.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the lack of any neighborhood opposition or negative comments from County agencies. In addition, Mr. Allen (Petitioner's engineer, Exhibit 3) who was accepted as an expert in the B.C.Z.R. and sign regulations, opined that the variance relief would have no adverse impact upon the community, as evidenced by the fact that the signs have been in place for over 10 years without complaint.

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

THEREFORE, IT IS ORDERED, this 9th day of February, 2012 by this Administrative Law Judge that Petitioner's Variance request from Section 450.4 Attachment 1, 5(a)(IX) of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit two (2) wall-mounted enterprise signs with sign face/areas of 305 square feet each, in lieu of the maximum permitted 150 square feet each, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw