

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E side of Perry Hills Court; 126.6'		
S of the c/l of White Marsh Boulevard	*	OFFICE OF ADMINISTRATIVE
14 th Election District		
6 th Council District	*	HEARINGS FOR
(8118 Perry Hills Court)		
	*	BALTIMORE COUNTY
Steven L. Michael, Rita Marie Ritrovato,		
and William J. Wade		
<i>Petitioners</i>	*	CASE NO. 2012-0217-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 Steven L. Mitchael, Rita Marie Ritrovato, and William J. Wade, representatives of Wal-Mart Stores, Inc. The Petitioners are requesting Variance relief as follows:

- From Section 450.4 Attachment 1, 5(a) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a total of 6 enterprise wall signs in lieu of the maximum 3 permitted under the zoning regulations;
- To permit 4 signs on the front façade of the store building in lieu of the maximum 2 permitted under the zoning regulations.

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 public hearing in support of the variance request were Petitioners Jason Dhuy with Bowman Consulting, who prepared the site plan, and attorney Thomas C. Kleine with Troutman Sanders, LLP, who represented the Petitioners. There were no Protestants or other interested parties in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R., and the file does not contain any letters of

opposition or protest.

Testimony and evidence revealed that the subject property is an existing Wal-Mart store located in the White Marsh area. The store has recently undergone a series of renovations and improvements, and the Petitioners would like to install new signage as part of the project. To do so requires variance relief.

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

Based upon the testimony and evidence presented, I am persuaded to 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).

Petitioners have met this test.

Petitioners' engineer testified (via proffer) that the site is unique, in that the store sits on top of a prominent ridge, with fairly steep topographical features on all sides of the property. Mr. Dhuy testified that the store is barely visible to motorists on White Marsh Boulevard, especially when leaves are on the many trees and bushes surrounding the site. Customers entering the store need to ascend Perry Hills Court, and it is not until the top of that thoroughfare that the Wal-Mart store itself comes into view.

The other element of uniqueness in this case concerns how the sign ordinance in question impacts the Petitioners. Specifically, under B.C.Z.R. § 450.4, any sign with lettering or other advertising features which are separated on the sign by more than 1 foot shall be construed as two signs. In this case, the Wal-Mart signs with the “spark” corporate logo (as shown on Exhibit 2) therefore count as two signs. Petitioners note that the signage proposed does not exceed the square foot limitations under the B.C.Z.R., but due to the unique nature of the County’s ordinance, variance relief is necessitated.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship. Specifically, Petitioners would be unable to attract the attention of passing motorists, and their customers would also have difficulty successfully navigating through the site to locate the discrete areas of the store; i.e., the food market or the outdoor living sections.

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 community opposition, as well as the absence of comments by County reviewing agencies. In addition, as noted by Petitioners at the hearing, the only real impact of the additional signage – to the extent there is any such impact – would be upon the Wal-Mart site itself, which is both insular and screened from adjacent properties by mature vegetation.

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

THEREFORE, IT IS ORDERED, this 9th day of May, 2012, by this Administrative Law Judge that Petitioners’ Variance request as follows:

- From Section 450.4 Attachment 1, 5(a) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a total of 6 enterprise wall signs in lieu of the maximum 3 permitted under the zoning regulations;
- To permit 4 signs on the front façade of the store building in lieu of the maximum 2 permitted under the zoning regulations,

be and are hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioners may apply for any permits and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their 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 Petitioners 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