

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(1734 York Road)		
Windsor Mercy Holdings, II, LLC,	*	OFFICE OF ADMINISTRATIVE
<i>Legal Owner</i>		
Mercy Medical Center, Inc.,	*	HEARINGS FOR
<i>Lessee</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0022-A

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by David H. Karceski, Esquire with Venable, LLP, on behalf of the legal owner, Windsor Mercy Holdings, II, LLC, and the lessee, Mercy Medical Center, Inc. (the “Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

- (1) From § 450.4 Attachment 1, 7(b)(VII), to allow an existing freestanding joint identification sign height of 30' in lieu of the permitted 25',
- (2) From § 450.4 Attachment 1, 7(b)(V), to allow an existing freestanding joint identification sign with a sign face/area of 219 square feet in lieu of the permitted 100 square feet, and
- (3) From § 450.4 Attachment 1, 7(b)(IX), to display 16 lines of sign text with sign copy a minimum of 6" in height in lieu of the permitted 5 lines of text and required 8" height for sign copy.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibits 1A and 1B.

Appearing at the public hearing in support for this case was Leigh Howe, Ryan Potter, and David Woessner with Bohler Engineering, the consulting firm that prepared the site plan. David

H. Karceski, Esquire with Venable, LLP appeared as counsel and represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. There were no adverse ZAC comments received from any of the County review agencies.

Testimony and evidence revealed that the subject property is 5 ½ acres in size and is zoned BL-CCC. The site is improved with a strip shopping center and large medical clinic building. The site has one (1) freestanding enterprise sign, approved in Case No. 1995-0207-A. The Petitioners want to continue using the sign, but to do so requires variance relief given the County's sign abatement regulations.

Based upon the testimony and evidence presented, I will grant the request for variance relief. 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 David Woessner, who was accepted as an expert, testified via proffer that the shopping center is located along a busy commercial corridor, and he referred to a photo (Exhibit 3A) showing that the center is set back from York Road, and the sign is hard to identify among other signs and utility poles. Mr. Woessner opined that the site is irregularly shaped and that for its size (5 ½ acres) it has a small amount of frontage on York Road. Finally, due to a topographical change along York Road, the site is not easily identified, especially by motorists traveling southbound.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, since they would need to dismantle and replace a sign that has been in use for over 15 years without complaint. 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 demonstrated by the lack of community or Baltimore County opposition.

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

THEREFORE, IT IS ORDERED, this 5th day of October, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R."), as follows:

- (1) From § 450.4 Attachment 1, 7(b)(VII), to allow an existing freestanding joint identification sign height of 30' in lieu of the permitted 25',
- (2) From § 450.4 Attachment 1, 7(b)(V), to allow an existing freestanding joint identification sign with a sign face/area of 219 square feet in lieu of the permitted 100 square feet, and
- (3) From § 450.4 Attachment 1, 7(b)(IX), to display 16 lines of sign text with sign copy a minimum of 6" in height in lieu of the permitted 5 lines of text and required 8" height for sign copy,

be and is hereby GRANTED.

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