

**IN RE: PETITION FOR VARIANCE
(5401 Baltimore National Pike)**
Catonsville Plaza, LLC
Petitioner

* BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
* CASE NO. 2013-0030-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Jeffrey H. Scherr, Esquire, on behalf of the legal owner, Catonsville Plaza, LLC. The Petitioner is requesting Variance relief from § 450.4 Attachment 1.7(b) as follows:

- (1) To permit two free standing joint identification signs along the same frontage at Baltimore National Pike (US Route 40) in lieu of the permitted one per frontage,
- (2) To permit six lines of copy for the display of tenant names on the existing lower level joint identification sign in lieu of the permitted five lines of tenant copy, and
- (3) To permit an existing double faced, 241.08 sq. ft. per face joint identification sign (lower level) and an existing double faced, 232.96 sq. ft. per face joint identification sign (upper level) in lieu of the permitted one per frontage at 150 sq. ft per face.

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 1.

Appearing at the public hearing in support for this case was Jeffrey H. Scherr, Esquire and David L. Taylor, Jr. with Dewberry & Davis, LLC, the consulting firm that prepared the site plan. 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 approximately 15.33 acres in size, and is zoned BM-CCC. The site is improved with a shopping center, that has been in existence for approximately 50 years. In 1989, former Zoning Commissioner Haines granted variance relief allowing two freestanding joint identification signs at the site. See Order 09-384-A, Exhibit 2. In light of the County's sign abatement laws, the Petitioner required variance relief to continue using the two signs in question, which were erected 22 years ago.

Based upon the testimony and evidence presented, I will grant the request for variance relief, and do so on the same grounds recited in Zoning Commissioner Haine's Order. 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).

Petitioner has met this test.

Petitioner's engineer David Taylor, who was accepted as an expert, testified via proffer that the site is unique in that it is over 15 acres in size, while surrounding parcels are much smaller. There is also a 30' topographical change along Route 40, onto which the center fronts. In addition, Mr. Taylor noted that the buildings on site face each other rather than the roadway. In other words, the buildings in the center are perpendicular to Route 40, which reduces visibility into the site.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship. The Petitioner would be unable to use the signs which were erected

over 20 years ago. 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 opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

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

THEREFORE, IT IS ORDERED, this 11th day of October, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 450.4 Attachment 1.7(b) as follows:

- (1) To permit two free standing joint identification signs along the same frontage at Baltimore National Pike (US Route 40) in lieu of the permitted one per frontage,
- (2) To permit six lines of copy for the display of tenant names on the existing lower level joint identification sign in lieu of the permitted five lines of tenant copy, and
- (3) To permit an existing double faced, 241.08 sq. ft. per face joint identification sign (lower level) and an existing double faced, 232.96 sq. ft. per face joint identification sign (upper level) in lieu of the permitted one per frontage at 150 sq. ft per face,

be and is hereby GRANTED.

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

JEB:dlw

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County