

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1000 Merritt Blvd.)		
12 th Election District	*	OF ADMINISTRATIVE
7 th Councilman District		
Thompson Motor Sales, Inc.	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0251-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Timothy M. Kotroco, Esquire, on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from Sections 450.4 Attachment 1 #5(a) and 450.4 Attachment 1 #5(g) of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit: (1) 6 wall signs on the same façade in lieu of the permitted 2 wall signs; and (2) one double faced freestanding new auto dealership sign of 117 square feet in lieu of the permitted 50 square feet.

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 of the requests was Don Mitten, the engineer who prepared the site plan. Timothy M. Kotroco, Esquire represented the Petitioner. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. 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 substantive Zoning Advisory Committee (ZAC) comments received.

Testimony and evidence revealed that the subject property is approximately 4.6 acres and

is zoned DR, BL & BM. The Petitioner has for over 62 years at this location operated a car dealership. At present, the Petitioner is renovating its dealership, which is an investment of over \$3 million. The Petitioner needs to update its “sign package,” and to do so requires variance relief.

This case, like many others heard by the Office of Administrative Hearings (OAH), involves a large corporation (Hyundai Motors) whose franchise agreements mandate that dealers like the Petitioner install certain signs on the dealership that will promote brand identity and familiarity. As even a casual observer will note, every Wal-Mart store throughout the country uses the same lettering and logo on its signs, and the same is true for automobile manufacturers and their franchisees.

The Petitioner is one of six Hyundai franchises in Baltimore County, and apparently each of these dealerships is in the process of updating its signs. Mr. Kotroco indicated he has discussed this case with the Office of People’s Counsel, which expressed concern with the variance for the 117 square foot freestanding sign. Apparently, Mr. Zimmerman would not oppose a variance for a 73 square foot sign (depicted in Exhibit 7) that would include the Hyundai name and logo but not the franchisee (Thompson) name.

Following these discussions, counsel amended the petition in this case with respect to the freestanding sign. Counsel explained that relief is now being sought for a 73 square foot sign, while conditional or alternative relief is sought for a 117 square foot sign. The Petitioner explained that it wanted to avoid becoming embroiled in protracted litigation, especially since a grand reopening is planned for the near future. At the same time, Petitioner wants to ensure that its dealership signage is similar to that of other dealers in the vicinity, which will apparently seek to have the franchisee/dealer name included on the freestanding sign. The Petitioner indicated it

would initially install the 73 square foot sign (assuming the petition is granted), and would only seek to include the dealership name (which, according to a somewhat unorthodox procedure for measuring sign face area, would cause the sign to measure 117 square foot) if other Hyundai dealerships in Baltimore County are permitted to do so.

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. The property is irregularly shaped and has over 800' of frontage on Merritt Boulevard. In addition, the roadway curves and begins to slope downward near the property. As such, it is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given they would be unable to install appropriate signage along the busy 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.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 14th day of June, 2013, by the Administrative Law Judge for Baltimore County, that the Amended Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") to permit: (1) 6 wall signs on the same façade in lieu of the permitted 2 wall signs; (2) one double faced freestanding new auto dealership sign of

117 square feet in lieu of the permitted 50 square feet; and (3) one double faced freestanding new auto dealership sign of 73 square feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- The Petitioner shall at the present time be permitted to install a freestanding sign with a face area of 73 square feet, as depicted on Exhibit 7 attached hereto. Though relief was granted to install a freestanding sign of 117 square feet, as depicted on Exhibit 6 attached hereto, such relief is conditional in nature, such that the Petitioner will only be permitted to install the larger sign as shown on Exhibit 6 if other Hyundai new car dealerships in Baltimore County are permitted to install freestanding signs including the name of the franchisee/dealership.

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:sln