

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(7801 Eastern Avenue)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Councilman District		
LBUBS 2006-C37839 Mall LLC,	*	HEARINGS FOR
Rudolfo S. Lauredo, <i>Legal Owners</i>		
Rose Casual Dining, L.P,	*	BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	<b>CASE NO. 2013-0259-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by David H. Karceski, Esquire, on behalf of the legal owners, LBUBS 2006-C37839 Mall LLC and lessee Rose Casual Dining, L.P. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) § 450.4 Attachment 1 #5(a) to allow a total of 2 wall-mounted enterprise signs on a building façade with a separate exterior customer entrance in lieu of the permitted 1 sign. 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 requests was Jack Cannon, Jennifer Wolfe, Kim Graham and David Woessner from Bohler Engineering, the firm that prepared the site plan. David H. Karceski, Esquire 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 only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), dated May 29, 2013, indicating that Petitioners shall remove the wall mounted sign located west of the red canopy/awning. Mr. Karceski confirmed that sign (shown in the photo marked as Exhibit 4A) will be removed.

Testimony and evidence revealed that the subject property is approximately 66 acres, zoned BM-CT, and is known as the Eastpoint Mall. The Petitioners operate on a pad site at the mall an Applebee's restaurant. Applebee's is undergoing a rebranding, and proposes to install a more modern and attractive sign package at the site. In its comment, DOP indicated the proposed signage would be an improvement to the property, and as counsel noted, there will be fewer signs (2 instead of 3) on the exterior façade after the improvements are completed.

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 large (66 +/- acres) and is irregularly shaped, somewhat like a triangle. Thus, it is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, since they would be unable to effectively identify the restaurant to potential customers. This task is made more difficult by the fact that the restaurant is set back over 500' from the roadway, and several other pad site restaurants (including Arby's and Chick-Fil-A) also obscure the view from Eastern Avenue. See color photos, Exhibits 4B & 4C. 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 absence of County and/or community opposition.

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 21st day of June, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) § 450.4 Attachment 1 #5(a) to allow a total of 2 wall-mounted enterprise signs on a building façade with a separate exterior customer entrance in lieu of the permitted 1 sign on a wall containing the exterior customer entrance and defining the space occupied by the separate entity, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would 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.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB: sln