

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(11131 Pulaski Highway)</b>		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Councilman District		
Williamsburg Restaurant and Motel, LLC	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2014-0048-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 Howard L. Alderman, Esq., on behalf of the legal owner of the subject property, Williamsburg Restaurant and Motel, LLC. The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.), Sections 450.4.E and 450.4, Attachment 1, #7(b), as follows: (1) For a replacement, accessory, illuminated, freestanding Joint Identification Sign together with as integrated changeable copy sign having a total area of 208 sq. ft. (replacing existing signage of 160 sq. ft.) in lieu of the allowable 150 sq. ft., (2) Retention of an existing, accessory, illuminated freestanding Enterprise sign having a total area of 145 sq. ft in lieu of the 110 sq. ft. allowed; and (3) For such additional relief as the Plan to accompany this Petition and the nature of this case may require. 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 2.

Appearing at the public hearing in support of the requests was Ron Parker, Barbara Pollitt, Kathy McCourry, Sheree Opdyke, and Mitchell J. Kellman, with Daft McCune and Walker, whose firm prepared the site plan. Howard L. Alderman, Esq. with Levin & Gann, PA appeared and represented the Petitioner. Mike Pierce attended the hearing and opposed the relief. The

Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the relief.

Testimony and evidence revealed that the subject property is approximately 7.06 acres and is zoned BM. The Petitioner recently purchased the business, and has invested over \$700,000 in renovations. The Petitioner indicated that it requires updated and additional signage (i.e., a changeable copy sign) in order to attract customers, but variance relief is required.

The case presents an interesting legal issue: whether a joint identification and an enterprise sign (on the same premises owned by the same legal entity) are mutually exclusive under the B.C.Z.R. Mr. Pierce contends that the Petitioner is a business entity (an LLC) and that there are not separate tenants or businesses operating on the property. As such, he does not believe a “joint” identification sign is permitted, and that Petitioner is entitled to an enterprise sign of 100 square feet, though he conceded the site layout would justify a sign of at least twice this size.

Mr. Alderman contends that the motel on site is entirely separate from the tavern/restaurant operation, and is entitled to its own enterprise sign (i.e., the existing motel sign shown on the Plan, Exhibit 2). Counsel argues that the restaurant and tavern are also separate uses, which justifies the joint identification sign depicted on the Plan

I believe that Mr. Pierce has the better of the argument here. The entire parcel and the business thereon are owned by one business entity: Williamsburg Restaurant and Motel, LLC. The table of sign regulations indicates a “joint identification” sign is one “displaying the identity of a multi-occupant nonresidential development such as a shopping center ...” Here, as noted, I believe the LLC is the sole occupant. In addition, the Zoning Commissioner’s Policy Manual (ZCPM) notes that there must be a “minimum of three separate and distinct uses” to qualify for a

joint identification sign. ZCPM, p. 4-69.6.

Finally, it is frequently the case that a hotel/motel will also have an adjoining restaurant and/or lounge on the premises. If Petitioner's argument was adopted, it would then mean that a multitude of signs could be erected on such premises, which would clearly be contrary to the intent of the sign regulations. I believe the sign referenced in the first variance request is in fact an Enterprise Sign (with a changeable copy component), and it will be referred to as such in the Order which follows. Only one Enterprise sign is permitted "per frontage."

Having resolved that issue, I will grant (in part) the petition for variance. 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. Mr. Kellman noted the large property is shaped like a trapezoid, and is improved with iconic buildings known throughout the community. He opined it was therefore unique. I agree.

If the B.C.Z.R. were strictly interpreted, the Petitioner would indeed suffer a practical difficulty, given it would be unable to attract patrons to its business. 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 County agency opposition, and the support of business and civic groups in the area. Exhibit 8A – 8C.

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 in part and denied in part.

THEREFORE, IT IS ORDERED, this 17<sup>th</sup> day of December, 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”) as follows: (1) For a replacement, accessory, illuminated, freestanding Enterprise Sign, together with an integrated changeable copy sign, having a total area of 208 sq. ft. (replacing existing signage of 160 sq. ft.) in lieu of the allowable 100 sq. ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking to retain an existing, accessory, illuminated freestanding Enterprise sign having a total area of 145 sq. ft in lieu of the 110 sq. ft. allowed, be and is hereby DENIED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permit 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.
- Petitioner must remove within thirty (30) days of the date hereof (or obtain variance relief for same) the directional sign on the premises, depicted in Protestant’s Exhibit 1.

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:dlw