

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(2145 & 2159 York Road) *	OFFICE OF
8 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Kimco Realty	
	FOR BALTIMORE COUNTY
Petitioner	
	Case No. 2015-0244-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to “permit continuance of existing pad site”; and (2) to “abandon previously approved special exceptions which are no longer being utilized.” In addition, a Petition for Variance seeks relief concerning the size, location and number of signs in the shopping center. A four-sheet site plan was marked and accepted into evidence as Petitioner’s Exhibit 1, and the plan contains a chart (sheet 2) which describes in detail the size and location of each sign.

Appearing at the public hearing in support of the requests was Greg Reed and professional engineer Michael Gesell, whose firm prepared the plan. Jennifer R. Busse, Esq. appeared and represented the Petitioner. No protestants or interested citizens attended. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and Department of Planning (DOP). Both agencies noted that landscaping was required.

PETITION FOR SPECIAL HEARING

As counsel noted, the special hearing requests are essentially matters of “housekeeping,” and were included at the request of the zoning office. The special exceptions granted in five previous zoning cases will be formally abandoned, and the pad site (now used as a bank) will be acknowledged as lawful.

VARIANCES

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. The property is irregularly shaped and is therefore unique. If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given it would be unable to retain the signage that has been in place for several 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 absence of County and/or community opposition.

THEREFORE, IT IS ORDERED this 7th day of June, 2015, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations: (1) to permit continuance of existing pad site; and (2) to abandon previously approved special exceptions (granted in Case Nos. 72-238-X, 76-103-X, 82-272-X, 83-174-X and 99-519-XA) which are no longer behind utilized, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to: (1) permit a wall mounted enterprise sign affixed to a wall without an exterior customer entrance (Bldg. 6S as shown on site

plan); (2) permit a wall mounted enterprise sign affixed to a wall without an exterior customer entrance (Bldg. 4W); (3) permit three (3) wall mounted enterprise signs on the front wall with a customer entrance in lieu of the permitted one (1) (Bldg. 4N); (4) permit wall mounted enterprise signs with a total square footage each of up to three times the length of the wall to which the sign is affixed converted to square footage in lieu of the permitted two times the length of the wall converted to square footage; (5) permit twelve (12) wall mounted enterprise signs on a front wall with a customer entrance in lieu of the permitted one (1) (Bldg. 3); (6) permit two (2) freestanding joint identification signs in lieu of the permitted one (1), per frontage; (7) permit two (2) freestanding joint identification signs with a height of 35 ft. each in lieu of the permitted 25 ft. each; and (8) permit two (2) freestanding joint identification signs with an area of 217.01 square feet and 233.52 square feet, respectively, in lieu of the permitted 150 square feet each, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must provide street trees, shrubs or other vegetative materials along the York Road frontage to screen the parking area. The specific location(s) and types of screening required shall be determined in the sole discretion of the County's landscape architect.

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

JEB/sln

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