

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11317 York Road)	*	OFFICE OF
8 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Kimco Realty Corp.		
<i>Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2016-0178-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 Kimco Realty Corp., legal owner (“Petitioner”). The subject property is approximately 11.49 acres and is split-zoned BR (Business Roadside) and RC-6. The site contains the Shawan Plaza Shopping Center and all site improvements are located in the BR zoned portion of the property.

The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to confirm that the parking variance approved in Case No. 05-270-SPHA is applicable to the current and future development during the phased construction of the improvements as long as the minimum number of parking spaces approved by that variance is maintained for the shopping center.

In addition, a Petition for Variance seeks: **(1)** to permit wall mounted enterprise signs with a total square footage each of up to three (3) times the length of the wall to which the sign is affixed converted to square footage in lieu of the permitted two (2) times the length of the wall converted to square footage; **(2)** to permit two (2) wall-mounted enterprise signs on the front wall with a customer entrance in lieu of the permitted one (1) wall-mounted sign (Bldg.1, space 'E'); **(3)** to permit two (2) free standing joint identification signs with electronic reader board in lieu of the

permitted one (1) per frontage; and (4) to permit an electronic reader board with multiple lines of text in lieu of the permitted five (5) lines of text and with sign copy height less than the required eight (8) inches. At the hearing an amended petition was filed which included a fifth variance request pertaining to the signs at the Giant grocery store which were approved in Case No. 2011-0295-A. A four-sheet site plan with sign elevations was marked and accepted into evidence as Petitioner's Exhibit 1A-1D.

Appearing at the public hearing in support of the requests was Michael Ogden on behalf of Kimco and professional engineer Michael Gesell, whose firm prepared the plans. Jennifer R. Busse, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the county agencies.

SPECIAL HEARING

Petitioner in 2005 (Case No. 2005-0270-SPHA) was granted variance relief under B.C.Z.R. §409.6.A.2, permitting 406 off-street parking spaces in lieu of the required 523 spaces. The plan (Ex. 1A, note 8) indicates 406 parking spaces are in fact provided at the site, although Mr. Gesell testified some of those spaces could in the future be relocated such that they would not be in exactly the same location as shown on the plan approved in the 2005 case. Counsel indicated special hearing relief was sought to simply confirm that relocating off-street parking spaces at the center—provided those spaces remain accessible to customers--was permissible as long as the same number of spaces is provided. This is a reasonable request and the petition for special hearing will be granted.

VARIANCES

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioner has met this test. The parcel is irregularly shaped and Mr. Gesell noted the shopping center sits approximately 15-20 feet lower than York Road, which limits to some extent a motorist's view into the site. As such the property is unique. Petitioner would experience practical difficulty if the regulations were strictly interpreted because it would be unable to provide appropriate signage for its current and future tenants. 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 and/or community opposition.

THEREFORE, IT IS ORDERED this 29th day of **June, 2016**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to confirm that the parking variance approved in Case No. 05-270-SPHA is applicable to the current and future development during the phased construction of the improvements as long as the minimum number of parking spaces approved by that variance is maintained for the shopping center, be and is hereby GRANTED.

IT IS FURTHER ORDERED the Petition for Variance: **(1)** to permit wall mounted enterprise signs with a total square footage each of up to three **(3)** times the length of the wall to which the sign is affixed converted to square footage in lieu of the permitted two **(2)** times the

length of the wall converted to square footage; **(2)** to permit two (2) wall-mounted enterprise signs on the front wall with a customer entrance in lieu of the permitted one (1) wall-mounted sign (Bldg. 1, space 'E'); **(3)** to permit two (2) free standing joint identification signs with electronic reader board in lieu of the permitted one (1) per frontage; **(4)** to permit an electronic reader board with multiple lines of text in lieu of the permitted five (5) lines of text and with sign copy height less than the required eight (8) inches; and **(5)** to permit twelve (12) wall mounted enterprise signs on a front wall with a customer entrance in lieu of the permitted one (1) wall-mounted sign (Bldg. 1, space 'A'), 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.

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