

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(11311 Reisterstown Road)	*	OFFICE OF
4 <sup>th</sup> Election District		
2 <sup>nd</sup> Council District	*	ADMINISTRATIVE HEARINGS
Colonial Stoler, LLC		
<i>Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	<b>Case No. 2017-0023-SPHA</b>

\* \* \* \* \*

**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 Colonial Stoler, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to permit a sign of 45 sq. ft. in lieu of the 225 sq. ft. as determined under the County’s interpretation of the required area which includes the entire structure. In the alternative, a Petition for Variance seeks to permit a sign of 225 sq. ft. in lieu of the 50 sq. ft. permitted. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests were Barry Stoler and Mitchell Kellman. Marvin I. Singer, Esq. represented the Petitioner. George Harmon, on behalf of the Reisterstown-Owings Mills-Glyndon Coordinating Council, opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR), concerning landscaping and lighting requirements.

The subject property is 4.085 acres in size and is zoned BR. A Lexus automobile dealership (“Len Stoler Lexus”) is operated at the property. Counsel indicated the manufacturer

has adopted new branding and logos, and that the applicable agreements require franchisees to install new signage at the dealership.

### SPECIAL HEARING

Petitioner's counsel and Mr. Kellman met with County zoning staff to discuss the petition. The County determined - - in keeping with its long-standing policy - - the sign area included the entire 9' x 25' structure shown on the plan. Petitioner contends the sign area should only include the approximate 45 sq. ft. rectangle containing the "Lexus" script and logo, and the special hearing request seeks confirmation of this interpretation.

The resolution of this issue involves several definitions found in the sign regulations, including: "area," "face," "message," and "sign." B.C.Z.R. §450.3. The determination of a sign's "area" involves drawing a rectangle around the "face" of the sign. The face is the flat surface containing the "message of the sign." Under the Regulations the "message" includes not only "written words" and "symbols," but also "colors, illumination or theme comprising the face of a sign." According to Mr. Kellman, County staff believed the color, design and theme of the sign were integral to the message it delivered; i.e., the "Lexus" brand.

While there are reasonable arguments on both sides, I believe under Maryland law I am obliged to defer to the zoning staff's long-standing interpretation of the sign regulations. Mr. Kellman confirmed the calculation of the sign area in this case was consistent with the agency's procedure and determination in similar cases. As Maryland's highest court has held, the "interpretation of a statute by the agency charged with its administration is entitled to great deference, especially when the interpretation has been applied consistently and for a long period of time." *BGE v. Public Service Comm'n.*, 305 Md. 145, 161 (1986).

## VARIANCE

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).

While the dimensions of the property are somewhat irregular, the site does not have any truly inherent characteristics (i.e., size, shape, topography, etc.) that would render it unique under Maryland law. The petitioner must establish the property is unique or peculiar in a way that is unlike other properties in the neighborhood. In a contested case requiring a rigorous application of the variance standard, the petitioner faces an uphill battle. In fact, I was unable to locate a Maryland appellate court opinion from the last twenty years which upheld the grant of a variance. Under Maryland law, variances should be granted “sparingly” since it is “an authorization for [that] ... which is prohibited by a zoning ordinance.” *Cromwell*, 102 Md. App. at 699.

THEREFORE, IT IS ORDERED this 29<sup>th</sup> day of September, **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 permit a sign of 45 sq. ft. in lieu of the 225 sq. ft. under the County’s interpretation of the required area which includes the entire structure, be and is hereby DENIED.

IT IS FURTHER ORDERED the petition for variance to permit a sign of 225 sq. ft. in lieu of the 50 sq. ft. permitted, be and is hereby DENIED.

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

JEB/sln

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County