

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(800 Kenilworth Dr.)		
9 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
Kenilworth Limited Partnership,	*	HEARINGS FOR
<i>Legal Owner</i>		
Trader Joe's, <i>Lessee</i>	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0259-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Kenilworth Limited Partnership, owner of the subject property and Trader Joe's, lessee ("Petitioners"). The variance request pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) seeks approval to permit a wall mounted enterprise sign on an existing wall without a customer entrance. A site plan was marked as Petitioners' Exhibit 2.

Landscape architect Michael Pieranunzi prepared the site plan and appeared in support of the petition. Matthew C. Tedesco, Esq. and Cliff Glover, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency opposed the request, and opined the signage proposed would be excessive.

The subject property is approximately 8.1271 acres in size and is zoned BM. The site is improved with a multi-tenant commercial building occupied by several retail stores and eateries. The mall is currently undergoing a renovation, and Trader Joe's (which recently opened a new grocery store at this location) seeks permission to have a sign on the east-facing façade, which

does not have a customer entrance.

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 I doubt Petitioners would be able to satisfy the requisite standard for variance relief, the petition will be denied for other reasons. Even though variances have in prior cases been granted for the subject property, those were uncontested proceedings and *res judicata* and/or collateral estoppel would not be applicable because the issues of uniqueness or practical difficulty were not “actually litigated.” *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass’n.*, 192 Md. App. 719, 736 (2010).

In any event, a violation currently exists on the property which prevents Petitioners from obtaining zoning relief. By Orders dated November 14, 2016 and November 22, 2016 the owner obtained variances for the freestanding joint identification sign (on which Trader Joe’s is included) at the shopping center. As a condition of that approval, the owner was obliged to remove a rooftop sign on or before January, 2017. As of today’s date, that sign has not been removed, and the petition must therefore be denied.

THEREFORE, IT IS ORDERED, this **23rd** day of **May, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for variance to permit a wall mounted enterprise sign on an existing wall without a customer entrance, be and is hereby DENIED.

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

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

JEB:sln