

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(7923, 7925 and 7927 Belair Road) *	OFFICE OF
14 th Election District	
5 th Council District *	ADMINISTRATIVE HEARINGS
KIMCO Realty Corporation *	FOR BALTIMORE COUNTY
<i>Legal Owner</i>	
Petitioner *	Case No. 2017-0338-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 Corporation, legal owner (“Petitioner”). 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 3 existing pad sites; and (2) to amend prior zoning orders and previously approved plans if deemed necessary.

In addition, a Petition for Variance seeks: (1) To permit two (2) freestanding enterprise signs along the site frontage in lieu of the permitted one (1) per frontage (existing pad #2); (2) To permit a freestanding enterprise sign with a maximum size of 195 sq. ft. in lieu of the permitted 75 sq. ft. (existing pad #1); (3) To permit wall mounted enterprise signs with a total square footage each of up to 4.55 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 (shopping center and fuel kiosk); (4) 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 (Weis Markets); (5) To permit ten (10) wall mounted enterprise signs affixed to a wall without an exterior customer

entrance. (signs L-U); (6) To permit a freestanding enterprise sign with a height of 45 ft. in lieu of the permitted 25 ft. (existing pad #1); (7) To permit three (3) wall mounted enterprise signs on the front wall with a customer entrance in lieu of the permitted one (1) wall mounted sign (Salvo Auto Parts); (8) To permit three (3) wall mounted enterprise signs on the front wall with a customer entrance in lieu of the permitted one (1) wall mounted sign (New Samys Liquor); (9) To permit 53 off street parking spaces in lieu of the required 91 off-street parking spaces (existing pad #2); and (10) To permit 690 off-street parking spaces in lieu of the required 766 off-street parking spaces (shopping center). A 5- sheet site plan (with signage detail) was marked and accepted into evidence as Petitioner's Exhibit 1.

Professional Engineer Michael Gessell appeared in support of the requests. Jennifer R. Busse, Esq. represented the Petitioner. Two neighbors attended the hearing to obtain additional information about the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 18.37 acres in size and split-zoned BR, BL and DR 5.5. The site is improved with a large strip shopping center, and along the periphery of the property are "pad sites" occupied by a fuel service station, restaurants and other retail stores. The center is being renovated, and the primary purpose of the petition is to "legitimize" existing signage. The only new signage proposed is a freestanding joint identification sign at the entrance to the center (which would replace an existing freestanding enterprise sign for the former K-Mart store) and two wall-mounted signs on the front façade of the Weis grocery store.

SPECIAL HEARING

The petition for special hearing seeks confirmation of three existing pad sites along the Belair Road frontage. These sites are occupied by Mr. Tire, Ihop restaurant and McDonalds. The DOP did not object to the special hearing request, and based on a review of the site plan I believe these three sites are far removed from the strip center stores and can be accurately identified as pad sites.

Part of the difficulty in making such a determination is that the zoning regulations do not define “pad site.” In Case No. 2015-0062-SPH, the zoning review office submitted a memorandum which stated the “pad site” definition was removed years ago from the B.C.Z.R. The only references to “pad site” are found in Section 259 of the B.C.Z.R., which concerns the Md. Route 43 overlay district. The Regulations state “[f]reestanding enterprise and freestanding joint identification signs are not permitted on individual pad sites unless the signage is an existing permitted use.” B.C.Z.R. §259.9.D.1. Under familiar principles of statutory construction, the implication is that such signage is permitted on pad sites not located in the Route 43 overlay district. And that is also consistent with the long-standing policy of the zoning office, which permits an owner to seek special hearing relief to approve a sign on a pad site.

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).

The property has an irregular shape and there is a significant grade change at the front of the site. As such it is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to retain the existing signage. Finally, I find that the variances 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 community and/or Baltimore County opposition.

In its ZAC comment, the DOP indicated it did not oppose the relief requested in the petition for a special hearing; i.e., that three pad sites exist on this property. But that agency also stated it opposed freestanding signs for the Ihop restaurant and Mr. Tire store. But, as noted above, county policy permits a freestanding enterprise sign to be erected on a pad site.

THEREFORE, IT IS ORDERED this 9th day of **August, 2017**, 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.”): (1) to permit continuance of 3 existing pad sites; and (2) to amend prior zoning orders and previously approved plans, in accordance with the terms of this order, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) To permit two (2) freestanding enterprise signs along the site frontage in lieu of the permitted one (1) per frontage (existing pad #2); (2) To permit a freestanding enterprise sign with a maximum size of 195 sq. ft. in lieu of the permitted 75 sq. ft. (existing pad #1); (3) To permit wall mounted enterprise signs with a total square footage each of up to 4.55 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 (shopping center and fuel kiosk); (4) 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 (Weis Markets); (5) To permit ten (10) wall mounted enterprise signs affixed to a wall without an exterior customer entrance. (signs L U); (6) To permit a freestanding enterprise sign with a height of 45 ft. in lieu of the permitted 25 ft. (existing pad #1); (7) To permit three (3) wall mounted enterprise signs on the front wall with a customer entrance in lieu of the permitted one (1) wall mounted sign (Salvo Auto Parts); (8) To permit three (3) wall mounted enterprise signs on the front wall with a customer entrance in lieu of the permitted one (1) wall mounted sign (New Samys Liquor); (9) To permit 53 off street parking spaces in lieu of the required 91 off street parking spaces (existing pad #2); and (10) To permit 690 off street parking spaces in lieu of the required 766 off street parking spaces (shopping center), be and is hereby GRANTED.

The relief granted herein shall be subject to 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 submit for approval by Baltimore County landscape and lighting plans for the site.
3. No signage shall be permitted along the Fitch Avenue frontage at the site.

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