

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(8200 Perry Hall Boulevard)	*	OFFICE OF
14 <sup>th</sup> Election District		
6 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
White Marsh Mall, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Dave & Busters of Maryland, Inc.	*	<b>Case No. 2017-0355-SPHA</b>
<i>Lessee</i>		
Petitioners	*	

\* \* \* \* \*

**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 White Marsh Mall, LLC, legal owner and Dave & Busters of Maryland, Inc. Lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to: (1) amend the site plan approved in Case No. 1998-0416-SPHA; and (2) approve a freestanding sign to be located approximately 900 ft. from Perry Hall Blvd.

In addition, a Petition for Variance seeks the following: (1) To allow a maximum of 7 wall-mounted and/or canopy enterprise signs for a single tenant in a multi-tenant building, in lieu of the one wall-mounted and one canopy sign permitted (Sign Nos. A, B, C, D, J, K and L); (2) To allow up to 3 wall-mounted and/or canopy enterprise signs on a façade of a building with a single separate, exterior customer entrance in lieu of the permitted 1 wall-mounted and 1 canopy sign (Sign Nos. B, C, and D); (3) To allow a sign height of 33.75 feet and a face area of 717 sq. ft. in lieu of the permitted 25 feet in height and face area of 100 sq. ft. for a freestanding joint identification sign (Sign Nos. E, F, and M); and (4) To allow two directional signs with sign area/faces of 240 and 194 square feet in lieu of the permitted 8 square feet for each sign

(Sign Nos. G1 and G2). A four-sheet site plan was marked and accepted into evidence as Petitioners' Exhibit 1A-1D.

Mitch Kellman, Lisa Warren and Joe Mueller appeared in support of the requests. David H. Karceski, Esq. and Neill Thupari, Esq. represented the Lessee. 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 country reviewing agencies.

This case concerns the White Marsh Mall, a property which in the aggregate is over 100 acres in size. The specific parcel at issue here is approximately 6.64 acres in size and zoned BM-CT. Dave & Buster's plans to open an entertainment and dining establishment at the site and will occupy the space previously used for a Sports Authority store. The zoning requests concern proposed signage at the property.

#### SPECIAL HEARING

The first special hearing request is essentially a housekeeping matter, in that Petitioners seek to amend a prior zoning order to reflect the relief granted herein. While I believe this occurs automatically by operation of law, I will grant the request so the record is clear the site plan and order in the 1998 case are amended to reflect the relief granted below.

The other request is somewhat novel in that it seeks approval for a freestanding sign to be located approximately 900 feet from the nearest roadway, rather than immediately adjacent thereto as is usually the case. As counsel noted, the Regulations do not expressly state a freestanding sign must be situated near the roadway.

In this case, the Mall is essentially the "bullseye" inside two concentric circles. The first circle is the private road which surrounds the Mall and some distance beyond that are the public roadways

(i.e., White Marsh, Perry Hall and Honeygo Boulevards) which border the site. Due to these unique physical attributes of the property the proposed freestanding sign will be located at the entrance to Dave & Busters, rather than over 900 feet away on Perry Hall Blvd. Such a sign on the roadway would be of little or no use to patrons, who would have to navigate a series of internal roadways and parking lots in a quest to find Dave & Busters. The request is in my opinion a reasonable one which will also reduce the visual clutter of excessive signage along public roadways.

### 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).

Mitchell Kellman, a land use planner accepted as an expert, testified the property has an irregular shape and is located approximately 1,000 feet from the nearest public roadway. As such it is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to provide adequate signage for this “destination” establishment. 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 County and/or community opposition.

THEREFORE, IT IS ORDERED this **23rd** 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”) to: (1) amend the site plan approved in Case No. 1998-0416-

SPHA; and (2) approve a freestanding sign to be located approximately 900 ft. from Perry Hall Blvd., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance : (1) To allow a maximum of 7 wall mounted and/or canopy enterprise signs for a single tenant in a multi-tenant building, in lieu of the one wall mounted and one canopy sign permitted (Sign Nos. A, B, C, D, J, K and L); (2) To allow up to 3 wall mounted and/or canopy enterprise signs on a façade of a building with a single separate, exterior customer entrance in lieu of the permitted 1 wall mounted and 1 canopy sign (Sign Nos. B, C, and D); (3) To allow a sign height of 33.75 feet and a face area of 717 sq. ft. in lieu of the permitted 25 feet in height and face area of 100 sq. ft. for a freestanding joint identification sign (Sign Nos. E, F, and M); and (4) To allow two directional signs with sign area/faces of 240 and 194 square feet in lieu of the permitted 8 square feet for each sign (Sign Nos. G1 and G2), be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners 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

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