

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(4138 E. Joppa Road)		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
5th Council District		
Salvo Industrial Park	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2019-0192-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Salvo Industrial Park, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Sections 409 and 450 of the Baltimore County Zoning Regulations (“BCZR”) as follows: **Freestanding Joint Identification Signs:** (1) To permit a maximum of three freestanding joint identification signs in lieu of the permitted one per frontage; (2) To permit a maximum of 17 lines of text in lieu of the permitted 5 for Freestanding Joint ID Sign No. 1, 14 lines in lieu of the permitted 5 for Freestanding Joint ID Sign No. 2, and 15 lines in lieu of the permitted 5 for Freestanding Joint ID Sign No. 3; (3) To permit a minimum copy height of 1.5 inches in lieu of the required 8 inches; (4) To permit a maximum area per face of 175 sq. ft. in lieu of the permitted 107 sq. ft. for Freestanding Joint ID Sign No. 1, 270 sq. ft. in lieu of the permitted 107 sq. ft. for Freestanding Joint ID Sign No. 2, and 115 sq. ft. in lieu of the permitted 107 sq. ft. for Freestanding Joint ID Sign No. 3. **Wall-Mounted Enterprise Signs:** (5) To permit a maximum area per face of 50.75 sq. ft. in lieu of the permitted 40 sq. ft. for Enterprise Sign #5; (6) To permit a maximum area per face of 87 sq. ft. in lieu of the permitted 80 sq. ft. for Enterprise Sign #6; (7) To permit a maximum area per face of 43.75 sq. ft. in lieu of the permitted 40 sq. ft. for Enterprise Sign #8; (8) To permit a wall-mounted enterprise sign on a

façade without a customer entrance for Enterprise Sign #12. **Parking** – (9) To permit a total of 81 parking spaces in lieu of the required 100 spaces.

Landscape architect Matt Bishop appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency (with the exception of one sign discussed below) did not oppose the variance requests.

The site is approximately 1.6 acres in size and is split-zoned BLR-BL. The property is improved with a strip shopping center as shown on the site plan marked as Petitioner’s Exhibit 1. This case concerns signage at the property; Petitioner does not propose any new or additional signs, but requires zoning relief to keep the existing signs at the shopping center.

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 is therefore unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to retain the long-existing signage on site. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. Conditions will be included in the order below which are designed to improve the appearance of the site and the safety of motorists.

A March 14, 2019 letter submitted by Mike Pierce was discussed at the hearing. Therein,

Mr. Pierce raised several issues which merit further analysis. One issue concerned the text of the lettering on the signs, which he believed was too small and could cause a “traffic hazard.” I agree, and believe three inch text height has been the minimum size approved in recent cases (*See, e.g.*, Case No. 2018-0350-SPHA) and the Order below will adopt that standard. Both Mr. Pierce and the DOP expressed concern with temporary signs at the site. Counsel stated Petitioner has removed all temporary signs and a condition will be included prohibiting all such temporary signs, banners and flags at the site.

The other issues raised in that correspondence concerned (for the most part) the freestanding joint identification signs at the site. With regard to the number of “lines” on such signs, Mr. Pierce is correct that the Office of Zoning Review has long interpreted this to correspond to the number of panels identifying each individual tenant. Whether or not that is the only possible interpretation of the sign regulations, I believe it is a reasonable interpretation which is entitled to deference under Maryland case law. 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). Mr. Bishop explained that in preparing the zoning petition he counted the number of individual lines when formulating variance request No. 2, which as noted above is incorrect. The order below will consider the number of panels on each sign, consistent with the County policy.

As discussed at the hearing, the undersigned is unaware of any recent zoning cases wherein a property owner was permitted to have three freestanding joint identification signs on a single road frontage in lieu of one. But based on the exhibits and testimony at the hearing, I believe only two such signs are on the Petitioner’s property, and that variance request will be granted. The third

joint identification sign is located on a small triangle (approximately 256 sq. ft.) of property at the western-most portion of the site, which is technically owned by Petitioner. But by agreement dated February 1, 1989 (Pet. Ex. 2) Petitioner granted to the owners of the adjacent shopping center (known as Joppa Corner Square) at 4134 East Joppa Road a “perpetual easement” to erect a sign in this small triangular area. Petitioner agreed not to construct any improvements upon or otherwise interfere with the sign erected at this location. While legal title may not have passed in these circumstances, the law considers the adjoining shopping center to be the equitable owner of this land, and that entity is entitled pursuant to BCZR Section 450 to have a freestanding joint identification sign. *Burroughs v. State*, 21 Md. App. 648, 655 (1974)(“one may have the record title when, in fact, he may have nothing but the bare, naked legal title, and another may be the equitable owner.”)

THEREFORE, IT IS ORDERED, this 19<sup>th</sup> day of **March, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Sections 409 and 450 of the Baltimore County Zoning Regulations (“BCZR”) as follows: **Freestanding Joint Identification Signs**: (1) To permit a maximum of two freestanding joint identification signs in lieu of the permitted one per frontage; (2) To permit a maximum of 6 lines of text in lieu of the permitted 5 for Freestanding Joint ID Sign No. 1 and 8 lines in lieu of the permitted 5 for Freestanding Joint ID Sign No. 2; (3) To permit a minimum copy height of 3 inches in lieu of the required 8 inches; (4) To permit a maximum area per face of 175 sq. ft. in lieu of the permitted 107 sq. ft. for Freestanding Joint ID Sign No. 1 and 270 sq. ft. in lieu of the permitted 107 sq. ft. for Freestanding Joint ID Sign No. 2. **Wall-Mounted Enterprise Signs**: (5) To permit a maximum area per face of 50.75 sq. ft. in lieu of the permitted 40 sq. ft. for Enterprise Sign #5; (6) To permit a maximum area per face of 87 sq. ft. in lieu of the permitted 80 sq. ft. for Enterprise

Sign #6; (7) To permit a maximum area per face of 43.75 sq. ft. in lieu of the permitted 40 sq. ft. for Enterprise Sign #8; (8) To permit a wall-mounted enterprise sign on a façade without a customer entrance for Enterprise Sign #12. **Parking** – (9) To permit a total of 81 parking spaces in lieu of the required 100 spaces, 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. No temporary signs, banners or flags of any type shall be permitted on the subject premises.
3. Petitioner shall install landscaping at the base of the freestanding joint identification signs, as determined in the sole discretion of the Baltimore County landscape architect.
4. The existing freestanding signs shall within 60 days of the date hereof be painted, repaired or otherwise improved so as to comply with the objectives set forth in Sections 35-2-401 *et. seq.* of the Baltimore County Code, as determined in the sole discretion of the DOP.
5. The existing wall-mounted enterprise sign (which is composed of fabric/vinyl) shown on the site plan as Enterprise Sign #12 shall be removed within 30 days of the date hereof.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln