

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(8867, 8903 & 8905 Belair Road)	*	OFFICE OF
11 <sup>th</sup> Election District		
5 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
W Arc Centre Owner VIII, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case No. 2019-0253-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 W Arc Centre Owner VIII, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to allow a freestanding enterprise sign for a pad site. In addition, a Petition for Variance was filed pursuant to BCZR Section 409.10, to allow a total of three (3) stacking spaces for a drive-thru facility for a bank in lieu of the 5 stacking spaces required. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Professional engineer Joseph Ucciferro, Zack Bosse, Jen Bass and Drew Robinson appeared in support of the requests. David H. Karceski, Esq. appeared and represented the Petitioner. There were no protestants or interested citizens in attendance at the hearing. The Petition was advertised and posted as required by the BCZR. There were no adverse ZAC comments received from any of the County reviewing agencies.

**SPECIAL HEARING**

The zoning petition was amended at the hearing and the petition for special hearing was withdrawn. Counsel explained Chase Bank will have a tenant panel on the shopping center’s (Perry Hall Center) freestanding joint identification sign. As such, under long-standing County

policy the bank would not also be permitted to have a freestanding enterprise sign on its pad site, which was the relief sought in the special hearing petition.

Chase Bank will soon open a branch at the shopping center and also proposes to construct on the subject property a freestanding drive-thru ATM kiosk, which is becoming more common at banks in the area. *See, e.g.* Case No. 2019-0054-A (approving signs for ATM kiosk). Since the structure would qualify as a single-tenant building the bank would be permitted to have three enterprise signs. Petitioner proposes three signs for the kiosk, although their sizes are slightly larger than permitted by the BCZR which necessitated to filing of the petition.

#### 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).

The property has irregular dimensions and the portion of the site on which the kiosk would be constructed is constrained by a County easement and a use-in-common driveway through the shopping center parking lot, which connects to an adjoining Chick-Fil-A restaurant. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to place signage on the walls of the kiosk. 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. This is demonstrated by the lack of County and/or community opposition.

THEREFORE, IT IS ORDERED this 29<sup>th</sup> day of **April, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief from Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to allow a freestanding enterprise sign for a pad site, be and is hereby DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow a total of three (3) stacking spaces for a drive-thru facility for a bank in lieu of the five (5) stacking spaces required; and (2) to allow three (3) enterprise signs on a bank kiosk, two of which will be installed on opposite sides of the kiosk and one of which will be installed on top of the kiosk with sign face areas of 5.59 sq. ft. in lieu of the permitted 3.67 sq. ft. and 2.79 and 3.89 sq. ft. (total of 6.68 sq. ft.) in lieu of the permitted 5.83 sq. ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.

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