

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(3327 Hollins Ferry Road)	*	ADMINISTRATIVE HEARINGS
13 th Election District	*	FOR BALTIMORE COUNTY
1 st Council District	*	
Merritt-017, LLC	*	
<i>Legal Owner</i>	*	
Petitioner	*	Case No. 2019-0387-XA
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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 3327 Hollins Ferry Road. The Petitions were filed on behalf of Merritt-017, LLC, legal owner of the subject property (“Petitioner”). The Special Exception petition seeks approval to allow the continued use of an outdoor advertising sign in the BM Zone, pursuant to Baltimore County Zoning Regulations (“BCZR”) Sections 450.8.D.2 and 450.4. The Petition for Variance seeks: **(1)** to allow continued use of a freestanding outdoor advertising sign with a sign area/face of 768 sq. ft. and height of 50 ft. in lieu of the permitted 300 sq. ft. and height of 35 ft.; **(2)** to allow the continued use of a freestanding outdoor advertising sign a distance of 122 ft. from a residential zone in lieu of the minimum required 200 ft.; **(3)** to allow the continued use of an outdoor advertising sign a distance of 0 ft. from the right-of-way of a controlled-access highway (Baltimore Washington Parkway) in lieu of the minimum required 250 ft.; and **(4)** to allow the continued use of an outdoor advertising sign a distance of 776 ft. from another outdoor advertising sign on the same side of a highway in lieu of the minimum required 1,000 ft. A two-sheet site plan was marked as Petitioner’s Exhibit 1A & 1B.

Appearing in support of the petitions was professional engineer John Povalac. Arnold Jablon, Esq. and David Karceski, Esq. represented the 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 did not oppose the request.

The subject property is approximately 4.460 acres in size and zoned BM. The property is improved with a large commercial/warehouse building (90,440 SF) and on the periphery of the property adjoining the Baltimore Washington Parkway a large outdoor advertising sign (*i.e.*, billboard). This case concerns the billboard sign, which has apparently been in a place for 50+ years. Counsel indicating they searched county records but were unable to locate any permits or zoning history for the sign. The state recently constructed sound attenuation walls along the highway, which partially obscures the billboard. Petitioner seeks special exception relief to “legitimize” the sign and a variance to increase its height so the sign is visible to motorists.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. Mr. Povalac testified via proffer that Petitioner satisfied the requirements for special exception relief

and he opined granting the request would not have an adverse impact upon the community. In the absence of any evidence to the contrary the request will be granted.

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 the grade changes across the site. As such the property is unique. If the BCZR were strictly interpreted Petitioner would suffer a practical difficulty since the sign would not be visible to passing motorists. Finally, I find that the variances 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.

In its ZAC comment the DOP indicated it would not support a request for an electronic changeable copy component of this sign. Counsel confirmed the billboard would not have a changeable copy component, and that if in the future the Petitioner sought such a sign a public hearing would be required to amend the relief granted herein.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 20th day of **August, 2019**, that the Petition for Special Exception to allow the continued use of an outdoor advertising sign in the BM Zone, pursuant to Baltimore County Zoning Regulations (“BCZR”) Sections 450.8.D.2 and 450.4, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow continued use of

a freestanding outdoor advertising sign with a sign area/face of 768 sq. ft. and height of 50 ft. in lieu of the permitted 300 sq. ft. and height of 35 ft.; (2) to allow the continued use of a freestanding outdoor advertising sign a distance of 122 ft. from a residential zone in lieu of the minimum required 200 ft.; (3) to allow the continued use of an outdoor advertising sign a distance of 0 ft. from the right-of-way of a controlled-access highway (Baltimore Washington Parkway) in lieu of the minimum required 250 ft.; and (4) to allow the continued use of an outdoor advertising sign a distance of 776 ft. from another outdoor advertising sign on the same side of a highway in lieu of the minimum required 1,000 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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.

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