

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(800 Kenilworth Dr.)		
9 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
Kenilworth Limited Partnership	*	HEARINGS FOR
<i>Legal Owner</i>		
About Faces Day Spa	*	BALTIMORE COUNTY
<i>Lessee/Contract Purchaser</i>		
	*	CASE NO. 2019-0391-A
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Kenilworth Limited Partnership, legal owner of the subject property and About Faces Day Spa, lessee/contract purchaser (“Petitioners”). Petitioners are requesting variance relief from Section 450.4 of the Baltimore County Zoning Regulations (“BCZR”) to permit a wall-mounted enterprise sign for a tenant in a multi-tenant building to be located on a façade without a separate exterior entrance. A plan was marked as Petitioners’ Exhibit 1. An overhead site plan of the entire Shops at Kenilworth complex was marked as Exhibit 2.

Helga Surratt, the owner of About Faces Day Spa, and Michael Pieranunzi from Century Engineering appeared in support of the petition. Jason T. Vettori, Esq. represented Petitioners. 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 opposed the request.

The site is approximately 8.12 acres (354,016 square feet) in size and zoned BM. The Shops at Kenilworth shopping center is located at the site. The Petitioner wishes to install a wall mounted enterprise sign but needs the variance relief requested because there is no customer

entrance for their store on the façade where the sign would be installed.

Mr. Vettori proffered the following facts in support of the requested relief: First, he explained that About Faces leases approximately 14,000 square feet of space on the second level of the mall, directly above the Jos. A Bank store. About Faces has several locations in Baltimore County and the Kenilworth location has 120 employees. It is therefore a significant employer and economic driver in the County. They wish to install the sign in question in order to assist their clients, and would-be clients, in finding their location, which is most easily accessed by parking outside the Jos. A Bank store and entering the mall through that store's entrance. Mr. Vettori explained that the clients of the Spa have repeatedly voiced confusion to management regarding where to park and where to enter the mall in order to access the Spa. Mr. Vettori noted that a similar variance was recently granted for the J. Jill store in the Kenilworth mall and he proffered that decision (which was already in the case file) (Case No. 2019-0214-A).

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 a significant grade change (approximately 15 ft.) across the site. In addition, this corner of the mall is bordered by 695 on one side and by a playground on the other (the side facing the façade in question). As such the property is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to have a sign to identify the location of the Spa from the parking lot. Unlike the J. Jill store in Case No. 2019-0214-A, the Petitioner in this case does have a small

sign on the joint identification sign at the corner of the building. However, the unrebutted evidence is that their customers are still having difficulty determining where to park and enter the mall in order to access the Spa. As in the J. Jill case, the proposed sign here will only be visible to persons in that area of the parking lot and would not face any residential properties or front any public street.

The Department of Planning comments that were in the case file at the time of the hearing¹ explain that the property in question is within the Towson Commercial Revitalization Area, and one of the goals of the CRA under the 2020 Master Plan is to improve the physical appearance of businesses within the CRA. In addition, the comments note that there is already “extensive signage” on the property, “including a freestanding joint identification sign with changeable copy, located at the main entrance of the mall [which] is sufficient in its function of identifying the commercial entities located within the mall.” DOP is also of the opinion that “to intensify the signage on the mall facades upsets the overall architectural theme of the building and will set a precedence for additional signage that is contrary to the Master Plan 2020 goals for the CRA.” While I appreciate DOP’s comments I do not believe they justify denying the requested relief in this case. As noted above, although there is changeable copy signage at the front entrance to the mall which identifies all the mall tenants, the evidence in this case is that the Spa’s clients are still experiencing some difficulty locating the best parking and ingress. Further, as also explained above, and as in the J. Jill case, the sign in question will be located in the rear of the mall and will

¹ On the day of the hearing, but *after* the hearing was held, the Department of Planning submitted additional and more detailed comments to the Office of Administrative Hearings. Those additional comments will be placed in the file but cannot be considered in deciding the merits of this petition. Under basic principles of Due Process, litigants are afforded the right to “notice and an opportunity to be heard.” *Reese v. Dept. of Health and Mental Hygiene*, 934 A.2d 1009 (Md. App. 2007). Because the additional DOP comments were submitted after the hearing the Petitioner did not have notice of them, nor an opportunity to address and possibly rebut them.

not face any public street or residences. The plan submitted shows that the sign has an aesthetically attractive font and scale, and does not, in my view, “upset the overall architectural theme of the building.” Further, I do not believe the approval of the requested relief in this case will set a precedent for further signage in the Towson CRA as each case will be judged on its own particular merits.

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. In addition to the facts set forth above, this is further demonstrated by the absence of community opposition.

THEREFORE, IT IS ORDERED, this 15th day of **October, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a wall-mounted enterprise sign for a tenant in a multi-tenant building to be located on a façade without a separate exterior entrance, 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.

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
For Baltimore County

PMM/sln