

IN THE MATTER OF \* BEFORE THE  
 THE APPLICATION OF \* COUNTY BOARD OF APPEALS  
CATONSVILLE MELLOR LTD. PART. \*  
 FOR A ZONING VARIANCE ON \*  
 PROPERTY LOCATED ON THE S/S \* OF  
 FREDERICK RD, 125' E OF MELLOR \*  
 AVENUE (749 FREDERICK ROAD) \* BALTIMORE COUNTY  
 1ST ELECTION DISTRICT \*  
 1ST COUNCILMANIC DISTRICT \* CASE NO. 98-226-A

\* \* \* \* \*

O P I N I O N

This case comes to the Board of Appeals based on an appeal by the Protestants of a decision of the Deputy Zoning Commissioner in which a Petition for Variance was granted by his Opinion and Order dated June 4, 1998. The Petitioner was represented by G. Scott Barhight, Esquire. Appearing on behalf of the Office of People's Counsel was Carole S. Demilio, Deputy People's Counsel for Baltimore County. A public hearing was held on December 22, 1998 with appropriate opening statements made by both counsel. At the conclusion of the hearing, counsel requested the filing of Briefs in lieu of final argument. Public deliberation occurred on January 26, 1999.

The facts of the case are relatively simple. There presently exists on the subject site (Petitioner's Exhibit No. 1) a 25-foot high, double-faced sign, which is owned by the Catonsville Mellor Ltd. Partnership, one of whose members is Howard L. Chertkof. The site consists of approximately 2.16 acres +/-, split-zoned B.L.-CCC and B.M.-CCC, with a retail building existing thereon consisting of roughly 900 sq. ft. Also present is an 18,000 sq. ft. combination office /warehouse building in the rear of the premises, and an accessory parking area between the retail building and the office

/warehouse facility.

Mr. Barhight offered two witnesses in support of the variance request, which essentially proposes to raise the current free-standing sign height from 25 feet to 35 feet. Mr. Chertkof described the subject site in detail and the nature of the businesses in the area of the site, his rental of the warehouse, usage by the telephone company for dispatch purposes, a Brinks facility, bakery and various Baltimore County offices. He opined that his investment in the total site was in excess of \$2 million to revitalize 65,000 sq. ft. in an older business community of Catonsville. He again described the nature of the existing sign on Frederick Road. That sign did not specify all of the tenants renting space because of the large number, but simply references all the businesses as one commercial activity known as "The Mews on Mellor Shops." The sign is located at the entrance to the subject site between the retail operation and a building on the adjacent property at 747 Frederick Road.

Mr. Chertkof offered a substantial number of photographs submitted previously at the Deputy Zoning Commissioner's hearing, which were reviewed in detail by the Board during the hearing, and subsequently on an independent basis. Those photos very vividly reflect the existing sign, a subordinate separate free-standing sign offering space for lease within "The Mews," and a separate County "one-way" sign leading to "The Mews" (Petitioner's Exhibit No. 2A). It was Mr. Chertkof's position that the photos clearly indicate that the existing sign is not sufficiently visible for

traffic going west on Frederick Road (Exhibits 2C, 2D, 2E, and 4B), and barely visible as one proceeds going west to east on Frederick Road (2B), with Petitioner's Exhibit 4A reflecting the Mews shops from Frederick Road proceeding toward the shops in the rear.

Petitioner's Exhibit No. 5 represented an exhibit of photos again examined by the Board members. Mr. Chertkof opined that clearly the present signage was simply not viewable to passing vehicular traffic, and the inability of clients /customers to locate the Mews was one of the difficulties he was having attracting tenants. He opined that he did not want to alter the sign but simply wanted to increase its height by 10 feet to attract both customers and potential lessees to the immediate vicinity.

On cross-examination by Mr. Zimmerman, Mr. Chertkof indicated the present sign was approximately 120 sq. ft., and he believed it to be in compliance with the current Baltimore County signage legislation. The real estate sign was a temporary one, pending leasing of current vacancies. About 450 sq. ft. extended from Frederick Road to the first building to the Mews. He described the nature of the existing shops, those vacancies and parking facilities in addition to ownership of the properties.

Ms. Melanie Moser also testified in support of the Petitioner's request. She is currently employed with Daft-McCune-Walker as a vice president. She related her educational background and experience in land planning and landscape design and was accepted by all parties as an expert in those fields. While she had not prepared the site plan, she acknowledged visiting the area

and indicated she was familiar with the businesses along Frederick Road and those which occupy the Mews. In her opinion, the current sign was legal. Her main focus was in the poor visibility of the existing signage as to passing traffic, and its limited visibility caused much traffic to pass by without any knowledge of the existence of the Mews shops. The present signage, clutter, and frontage of buildings along Frederick Road, in her opinion, make it virtually impossible to see the present sign. The witness was familiar with the recommendations of the Department of Permits & Development Management that suggested a re-designed sign (4 ft. by 10 ft.) to be moved forward 2.8 feet to the right-of-way line, listing all the individual tenants by name which would not require a variance and which would be supported by Baltimore County. It was her considered opinion that this would not solve the visibility problem or make it more noticeable for the passing motorists. Ms. Moser was familiar with the streetscape plan, and felt that these improvements with the road revitalization plan would help but that the increased height would be of greater benefit to the Petitioner. She opined that the property was unique due to several reasons:

- ~ The property and related Mellor shops were an integral part of the Catonsville shopping area, but suffered from visibility because they did not front on Frederick Road.
- ~ The topography was different.
- ~ The accessibility to the shop was a proper "pipe stem," only 50 feet wide.
- ~ The adjoining structures have a minor setback.

She also went into the practical difficulty aspect of the case and

indicated that in her opinion practical difficulty existed due to:

- ~ Lack of visibility to the present sign.
- ~ Safety issues -- individuals driving have a limited time factor to see the sign, and react to it in an adequate timeframe.
- ~ The spirit and intent of the sign legislation calls for the protection and safety of citizens, which the new sign would afford.
- ~ A reasonable accommodation of business needs.
- ~ In the health, safety and general welfare issue, the general public would be better served in locating the goods and services offered by the increased height in signage.

On cross-examination by Mr. Zimmerman, the witness acknowledged two additional access points from Mellor Avenue and the existence of a traffic light at Mellor Avenue and Frederick Road. This witness concluded the Petitioner's case-in-chief.

People's Counsel offered several witnesses in opposition to the variance request. Mr. Raymond Heil related his considerable experience in community conservation areas, streetscape work, and educational background. He was accepted by all parties as an expert in landscape planning and architectural design. The witness testified as to the County's efforts to rehabilitate the older commercial /retail areas of the County which included Catonsville. That function involves the extensive use of public funding to enhance commercial /retail activity in areas of decline. An exhibit of the proposed revitalization area was reviewed in detail, with two-thirds of the property owners agreeing to make necessary improvements and pay additional assessments to maintain the improvements. The ultimate goal of the program is to render

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physical conditions more favorable for business, improve appearance of existing buildings, increase property values, and conserve surrounding residential communities. He described the "village core" and signs that would be wall-mounted on a perpendicular basis, and if a variety of signs were permitted, visual clutter would result. He opined as to approximately \$1 million being spent to eliminate present lighting poles, and for sidewalks that would be more user-friendly. He stated to permit an increase in the present size would not be consistent with the County's conservation goals and objectives, and an increase in its present size would only aggravate the situation. He described the new "Frederick Road" and how it was to be adapted to fit in with conservation efforts. The residents are concerned with an issue of traffic safety at Frederick Road and Mellor Avenue if the sign were heightened.

On cross-examination, the witness explained how the assessment procedure would work. He acknowledged that no plans were present to take away the present sign, and that a unique situation was present in that at no other area along the core area was there a frontage situation like this one, but that in his opinion the increase in height would not substantially add to the business volume along Mellor.

Ms. Diane Itter, Senior Planner for the First Councilmanic District, also testified. She was accepted as an expert in the field of community planning. She also described the area in general and presently existing signs. She opined that the proposal

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was generally inconsistent with the revitalization plan and described an alternate sign proposal made by Baltimore County to the Appellee which had been turned down.

Two local residents also testified, Cheryl Wasmund and Christine Brennan, long-time residents in proximity to the shopping area. Both witnesses again described the area in general and indicated that most cars avoid the turn at Frederick and Mellor, and at a regulated speed of 25-30 miles per hour, the present sign was visible. Both believed the variance to be inappropriate and would only exacerbate present signage and clutter in the Catonsville core.

Mr. Norman Gerber was also accepted as an expert in planning and zoning, and stated he was familiar with the area. He opined that the sign in question was the only free-standing in the retail core, and was easily visible, in his opinion. The sign only identifies the Mellor area and not specific businesses. The sign itself was unusual in that respect, and essentially functioned as an advertisement or billboard, with most of the latter being eliminated by Baltimore County. He testified that a 35-foot sign is out of context with the plan, and that signs should be related to the buildings and business usage. Essentially, the sign as presently existing is permitted. He related the legislative findings concerning the new signage laws which were to bring signs to reasonable level compatibility. He did not believe the variance to be consistent with the goals of the community conservation efforts, and that the sign stands out as an anomaly.

On cross-examination, Mr. Gerber did acknowledge that the new signage was to encourage business development, and make it easier for the public to locate businesses.

This was not an easy case for the Board members to deliberate and render a final decision. While the facts are relatively simple, they are such that the application of statutory and case law need to be carefully applied. Because of the facts, reasoning minds can see different shades of interpretation in applying the facts to the law in close situations. The Appellee currently has a free-standing sign on Frederick Road in the core Catonsville shopping area. The existing sign is 25 feet in height and legal under existing zoning laws. The Appellees desire to increase its height by 10 feet to a height of 35 feet and have argued that the present sign is not visible to vehicular traffic on Frederick Road. Hence, its current position does not serve the purpose for which it was intended. The sign itself identifies "Mews at Mellor" with a directional arrow pointing down a one-way access to the Mews facilities, which are approximately 450 feet from Frederick Road. In that area, on the east side, are two warehouse-style Mews and Mellor buildings, one at the northeast corner of Mellor and Bloomingdale and one at the southeast corner. On the west side of Mellor, various concerns exist, including a deli shop, an electronic business, veterinary hospital, and other businesses and offices in former residences. There are entrances from Mellor Avenue to the general area of the north building, and access from Bloomingdale Avenue to the south building.



The sign in question is located at 749 Frederick Road on property owned by the Appellee, and leased to a consignment shop. That property has to the east a driveway easement that leads to the "Mews" area, as part of an area of approximately 2.5 acres owned by the Hudson Realty Company (a Chertkof family-owned company). There are two other contiguous properties that together constitute the subject property. Other CMLP (Catonsville-Mellor L.P.) properties exist on the north side of Bloomingdale Avenue, along with a presently vacant building further down on Mellor Avenue.

Both sides to the hearing offered substantial photographs of the site and general area, along with the site plan -- all of which were reviewed in depth following the hearing by individual and independent analysis by the Board members prior to the deliberation.

Counsel for the Appellees' main contention was that (1) the present sign, while legal, does not serve its intended purpose to direct customers of the Mews to its location because of visibility problems; (2) raising the sign by 10 feet was not inconsistent with the statutory or case law; and (3) based on the testimony and evidence produced at the hearing, the Board could find adequate justification for approving the requested variance.

The witnesses provided by People's Counsel disagreed, citing that the Catonsville commercial core is at Frederick Road and Mellor Avenue. The Appellees' sign is the only one on the south side of the street. While several roof signs are prevalent, these are nonconforming, and must be removed within 15 years (BCZR

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450.5.B.7). Presently existing telephone poles will also be removed. They argue that an increase in the sign is inconsistent with the goals of the Catonsville Plan (adopted by the County Council in 1991); and the County's overall revitalization and streetscape programs, the Capital Budget for which has been approved by the Council (\$2.5 million). Both Diane Itter, Area Planner for the First District, and Raymond Heil, streetscape manager, testified at length concerning the objectives and goals of both projects. Norman Gerber, an expert witness in planning and zoning, offered the Board testimony concerning Baltimore County's signage regulations, and why he believed the variance should be denied since no particular uniqueness existed, and what he opined as the goals of the County's rehabilitation process has to relate to the older shopping areas.

The Board also noted that the objections raised by local community residents and activists who essentially contend the inconsistency of the variance with the Catonsville Plan and streetscape plan, and what were perceived to be issues of traffic safety along Frederick Road.

The Board acknowledges the excellent Briefs written by both counsel. In reaching its conclusion, however, the Board is mindful of its responsibility, and in this "de novo" hearing, the Appellee has the burden of proving his case by the weight or preponderance of evidence. The granting of variances is governed by Section 307 of the Baltimore County Zoning Regulations (BCZR) and standards set forth by the Court of Special Appeals in Cromwell v. Ward, 102

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Md.App. (1995).

"The variance process is at least a two step process. The first step required a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variances denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance."

While People's Counsel offered a number of strong arguments concerning the "uniqueness" or "unusualness" of the site, relative to the sign itself, its visibility, location and other factors, also referring to the elements of variance law, the Board has to conclude that the Petitioner has met his burden of proof under the law to support the three elements of uniqueness as referenced in North v. St. Mary's County, 99 Md.App. 502 (1994). These specific elements were: (1) the shape of the site; (2) its topography; and (3) practical restrictions imposed by abutting properties (such as obstructions, or similar situations). The documented evidence reflects a panhandle property, unusual in nature, with relatively limited frontage on Frederick Road. There is a defined grade sloping as one progresses toward the retail facilities in the Mews. It is without dispute that the subject properties are not along Frederick Road but lie 450-500 feet away and are not visible from

the Catonsville core area. While other means are available to the Mews, there is availability to the site at the driveway, which is virtually impossible to see based on the physical evidence at the present time by vehicular traffic, upon which the Mews depends for its support.

Additionally, the present clutter of signs, along with existing buildings and their posture, make it difficult, if not impossible, for cars turning in a westerly direction to see the existing sign in sufficient time to make a rational decision to turn left into the driveway leading to the Mews.

Mr. Norman Gerber, the expert offered by People's Counsel, acknowledged that the existing sign was primarily for vehicular traffic, and that you had to be very close in order to be able to see it. Having concluded that the first prong of the Cromwell test had been satisfied, the Board examined the two requirements of practical difficulty and/or unwarranted hardship. To that end, the Board is mindful of Easter v. Mayor & City Council, 195 Md 395 (1950):

"The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood."

Additionally, the Board is constrained to follow the requirements established by McLean v. Soley, 270 Md 208, 1214-15 (1973):

"1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions

unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

It is within the parameters of #1 and #2 that the Board has difficulty. The Board is aware of the improvements that the Petitioner has made to recondition the Mews. The north building is currently 70 percent leased, and the south building 85 percent leased. No evidence was provided that denial of the variance relative to the 10-foot increase would reasonably prevent the owner from using the property for its permitted purpose, or would render conformity with such restrictions unnecessarily burdensome. The hearing produced sufficient testimony and evidence that the Mews may be considered a separate and distinct shopping area not physically attached to the Frederick Road /Catonsville core area. Indeed, the center is referred to as "The Mews at Mellor." Mellor Avenue is a well-travelled roadway with commercial uses on both sides of the street in the immediate area. On one corner there exists a Pinocchio Restaurant and office building. Mr. Chertkof did not offer any evidence that the Mews was experiencing financial difficulty or losing money. There was sufficient testimony presented to the Board to determine that normal vehicle access comes from Frederick Road and Mellor Avenue, where there is a

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traffic light signal. There is sufficient area on Mellor Avenue for signage if the Appellee is seeking greater identification, but the denial of the variance does not unreasonably prevent the owner from using the property for its permitted purposes.

The Board also considered that the granting of the variance might well provide the Appellee with identification that might provide an advantage not available to other property owners along the Mellor Avenue corridor who do not have the positive factor of having an existing sign on Frederick Road. While the Board is not concerned that the height of the sign would be in conflict with the public health, safety and welfare of the community, there is concern that the requirement is not within the spirit and intent of the zoning law. While the Board concurs with the Appellee's observations relative to the zoning laws and purposes that relate to being an information source for possible clients, the same laws contemplate the scope of the Catonsville revitalization plan and streetscape plans, along with the County's efforts to rehabilitate the area, and that to approve the variance would be contrary to such efforts. A benefit that may be gained by a select group of businesses must be offset by the greater good that the laws afford to both the community and other businesses in the area.

For the reasons specified, the Board must deny the request for variance submitted by the Petitioner.

O R D E R

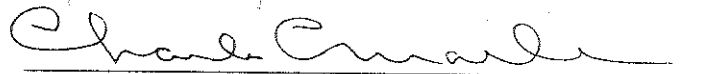
THEREFORE, IT IS THIS 3rd day of March, 1999 by  
the County Board of Appeals of Baltimore County

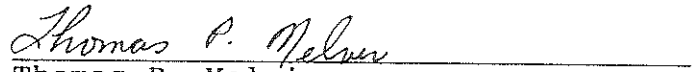
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ORDERED that the Petition for Variance seeking relief to permit the existing free-standing sign at 749 Frederick Road to be raised from its present height of 25 feet to a proposed height of 35 feet be and is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

  
\_\_\_\_\_  
Charles L. Marks, Chairman

  
\_\_\_\_\_  
Thomas P. Melvin

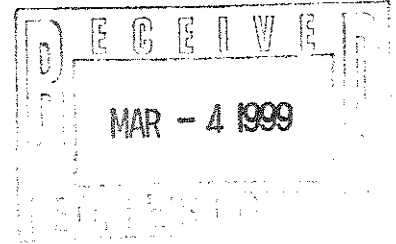
  
\_\_\_\_\_  
Donna M. Felling



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
410-887-3180

March 3, 1999



Peter Max Zimmerman  
People's Counsel  
for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: In the Matter of Catonsville Mellor  
Ltd Partnership /Case No. 98-226-A

Dear Mr. Zimmerman:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

*Charlotte E. Radcliffe for*  
Kathleen C. Bianco  
Administrator

encl.

cc: Bill Bauman  
Cheryl Wasmund  
Pam Fetsch  
Gail and Michael Shochet  
G. Scott Barhight, Esquire  
Julie D. Wright, Esquire  
Howard L. Chertkof /Catonsville  
Mellor Ltd Partnership  
Diana Itter /Office of Planning  
Raymond Heil /Office of Community Conservation  
Pat Keller, Director /Planning  
Lawrence E. Schmidt /Z.C.  
Arnold Jablon, Director /PDM  
Virginia W. Barnhart, County Attorney

Chris Brennan  
Kathy Kelso  
Dirk Griffin



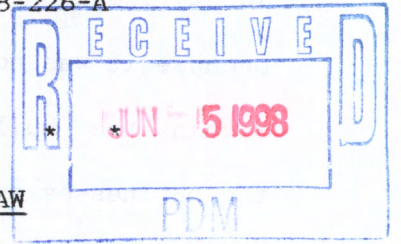


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IN RE: PETITION FOR VARIANCE  
S/S Frederick Road, 125' E of  
the c/l Mellor Avenue  
(749 Frederick Road)  
1st Election District  
1st Councilmanic District  
  
Catonsville Mellor Ltd. Part.  
Petitioners

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 98-226-A



\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Catonsville Mellor Limited Partnership, by Catonsville Mellor Operating Company, LLC, General Partner, by Howard L. Chertkof, Member, through Julie D. Wright, Esquire, attorney for the Petitioners. The Petitioners seek relief from Section 450.4.I.7.II(b)(VII) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a freestanding sign height of 35 feet in lieu of the permitted 25 feet. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Howard L. Chertkof, a member of the partnership which owns the subject property, Paul Lee, Professional Engineer who prepared the site plan for this property, and Julie D. Wright, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were Bill Bauman, a nearby resident of the area, and Diana Itter with the Baltimore County Office of Planning and Raymond Heil, with the Baltimore County Office of Community Conservation.

Testimony and evidence offered revealed that the subject property consists of a gross area of 2.16 acres, more or less, split zoned B.L.-C.C.C. and B.M.-C.C.C., and is improved with a 900 sq.ft. retail building

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on the front portion of the lot, an 18,000 sq.ft. office/warehouse building to the rear of the property, and accessory parking areas between the two buildings. At issue in this case is an existing 25-foot high double-faced identification sign on the subject property. Testimony revealed that because it was not possible to list all of the tenants who occupy space within the buildings on this property, the Petitioners chose to identify the businesses as one commercial complex known as the Mews On Mellor Shops. The sign is located on Frederick Road, at the entrance to the subject site, between the retail building on the subject property and a building on the adjacent property located at 747 Frederick Road. However, due to the height of several buildings along this section of Frederick Road, and in particular, the building at 747 Frederick Road, it is almost impossible to see the sign when travelling west on Frederick Road. Testimony indicated that the majority of the traffic coming to the Mews on Mellor Shops comes by way of the Frederick Road exit off of the Baltimore Beltway (I-695), which travels in a westerly direction. The commercial buildings along this stretch of Frederick Road sit in close proximity to the street; therefore, the sign is virtually blocked from the view of approaching motorists. The Petitioners assert that the difficulty in finding the Mews On Mellor Shops has resulted in a low occupancy rate of tenants and confusion of customers trying to locate the businesses within this complex. Therefore, the Petitioners propose to raise the existing sign from its present height of 25 feet to a height of 35 feet in order that the sign will be visible above surrounding buildings and approaching motorists.

As noted above, Mr. Bill Bauman, a nearby resident of the area, and Ms. Diana Itter and Mr. Raymond Heil, representatives of two Baltimore County agencies, all appeared at the hearing in opposition to the relief

requested. Their cumulative testimony was that Catonsville is presently undergoing revitalization efforts and a large amount of funding is being provided to renovate and upgrade the commercial core of Catonsville. Street trees and street lighting will be installed as well as the elimination of many telephone poles that exist along Frederick Road. It is agreed that this revitalization project will certainly improve the aesthetics of the commercial core of Catonsville. The Protestants assert that increasing the height of the subject sign will be out of character with the revitalization of Catonsville and will detract from these renovation efforts. They believe that the sign is at an appropriate height at this time and should not be raised.

In order to better understand the issues raised in this case, I made two site visits to the property. On my first visit, I was unable to see the Petitioners' sign approaching from the Beltway heading west on Frederick Road. Even knowing where the sign was located by virtue of the testimony and evidence presented at the hearing as well as my general familiarity with Catonsville, I was unable to see the sign until the last minute, and nearly passed by the entrance to this commercial center. In addition to driving to the site, I parked my vehicle and walked both sides of Frederick Road in order to ascertain the visibility of the Petitioners' sign from that perspective. After driving Frederick Road and walking along the sidewalk on both sides of the street, I find that the Petitioners' request to raise the subject sign is warranted. The existing sign at its present height is virtually useless in that it offers little, if any, assistance to motorists to alert them of the entranceway to the Mews On Mellor Shops. In addition, while studying the many other signs that exist along Frederick Road, all of which will remain after the revitalization of

Catonsville, I find that raising the Petitioners' sign to a height of 35 feet will not be out of character with other signs along Frederick Road.

As previously stated, the Protestants believe that granting the requested variance will be contrary to the revitalization efforts taking place in Catonsville. I find from the testimony and evidence presented at the hearing that Mr. Chertkof has made extensive contributions towards the revitalization of Catonsville, by virtue of the improvements he has made to the subject property, which has been in his family for many years. From my observations during my site visit to the property, it is apparent that Mr. Chertkof has invested a considerable amount of money into renovating the old warehouse buildings and accessory parking areas that exist on his property. The revitalization of any commercial core in Baltimore County is dependent upon a cooperative effort between private business owners as well as local government. Mr. Chertkof has certainly done his part to improve the subject property. In my view, he has made a considerable investment to the commercial core of Catonsville and has not detracted from the revitalization efforts of this Frederick Road corridor. Moreover, I believe that the relief requested is appropriate in this instance and that the variance should be granted.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser

relaxation than that applied for would give sufficient relief; and,

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28  
(1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the subject property and that strict compliance with the zoning regulations will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

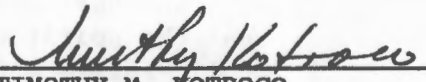
Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 4<sup>th</sup> day of June, 1998 that the Petition for Variance seeking relief from Section 450.4.I.7.II(b)(VII) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a freestanding sign height of 35 feet in lieu of the permitted 25 feet for an existing sign, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioners may apply for their sign permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day

appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

TMK:bjs



TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

226



# Petition for Variance

## to the Zoning Commissioner of Baltimore County

for the property located at 749 Frederick Road a.k.a. 15-35 Mellor Ave

which is presently zoned BL-CCC *P.L.*  
~~BM-CCC~~

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 450.4.I.7.II(b)(VII) of the Baltimore Co. Zoning Regulations

*TO ALLOW A 35 FT. HIGH SIGN IN LIEU OF 25 FT. P.L.  
(FOR JOINT I.D.)*

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

To increase the height of a sign identifying the commercial development known as "The Mews on Mellor Avenue," from 25± feet to 35± feet so that the sign may be seen above the building located at 747 Frederick Road. The building located at 747 Frederick Road entirely blocks the view of this sign to all Northwest-bound traffic on Frederick Road.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

N/A  
(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

Julie D. Wright, Esq. & Whiteford, Suite 200, 106 Old Court Rd. (410) 48-4100  
Taylor & Preston L.L.P.

*Julie D. Wright*  
Signature

210 W. Pennsylvania Ave., Suite 400  
(410)832-2084

Address Phone No.

Towson MD 21204  
City State Zipcode

Legal Owner(s):

Catonsville Mellor Ltd. Partnership  
By: Catonsville Mellor Operating Co., LLC, General Partner  
(Type or Print Name)

By: \_\_\_\_\_  
Signature

Howard L. Chertkof, Member  
(Type or Print Name)

*Howard L. Chertkof*  
Signature

Suite 200, 106 Old Court Rd. (410) 48-4100  
Address Phone No.

Baltimore, Maryland 21208  
City State Zipcode

Name, Address and phone number of representative to be contacted.

Julie D. Wright  
Name  
210 W. Pennsylvania Ave. 410/832-2084  
Address Phone No.

Towson MD 21204  
OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 HR  
unavailable for Hearing

the following dates AFTER JAN 22 Next Two Months

ALL ~~OTHER~~  OTHER  
REVIEWED BY: *JDR* DATE 12/11/97



*SCHEDULE AFTER JAN 22, 98 98-226-A*







