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AND VARIANCE

Southwest Side of Liberty Road, 490' +/-

South Centerline of Brenbrook Drive

2nd Election District

4th Councilmanic District

(8729 Liberty Road/Brenbrook Plaza)

RELP Randallstown LLC **Petitioners** 

**BEFORE THE** 

DEPUTY ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

CASE NO. 06-386-SPHA

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by the legal owners of the subject property, RELP Randallstown LLC. The Petitioners are requesting Special Hearing and Variance relief for property owned at 8729 Liberty Road/Brenbrook Plaza in the Liberty Road area of Baltimore County.

The Special Hearing request is filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (BCZR), to determine whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a BM zone.

In the alternative, the Petitioner request a variance pursuant to Section 450.4 of the Baltimore County Zoning Regulations (BCZR), to permit one freestanding enterprise sign for a multi-tenant retail building.

The property was posted with Notice of Hearing on March 6, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on March 2, 2006, to notify any interested persons of the March 13, 2006 hearing.

### Applicable Law

Section 500.7 of the B.C.Z.R. Special Hearings

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Section 307 of the B.C.Z.R. - Variances.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

#### **Zoning Advisory Committee Comments**

The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated February 23, 2006, a copy of which is attached hereto and made a part hereof.

#### Interested Persons

Appearing at the hearing on behalf of the requested Special Hearing and Variance relief were Valek Zarski, Baltimore Land Design Group, Inc., who prepared the site plan, for the corporate Petitioner. Sebastian A. Cross, Esq. represented the Petitioners. Peirce Macgill attended the hearing representing the Office of Economic Development. There were no

protestants or citizens at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

#### Testimony and Evidence

The Petitioner requests to be allowed to erect an enterprise sign on the Liberty Road frontage of the Brenbrook Shopping Center for a pad site tenant. The Center has frontage on both Liberty Road and Brenbrook Drive and is zoned BM as shown on Exhibit 1. The site presently has a vacant K-Mart store into which the Petitioner indicates Home Depot will locate as well as a separate multi tenant retail building and pad site. Mr. Cross proffered that the Center has one free standing joint identification sign on Liberty Road, which lists the tenants of the anchor store and multi tenant building. A Ruby Tuesday franchise restaurant will occupy the pad site. Ruby Tuesday wants its own enterprise sign on Liberty Road separate from and in addition to the shopping center's joint identification sign. Mr. Cross proffered that the proposed sign will meet all County sign regulations such as size, etc.

The Petitioner filed for a special hearing to determine if the separate enterprise sign is allowed by right under the regulations. See Section 450.4 I 5 b of the BCZR. Specifically, this section excludes enterprise signs for "multi tenant office, retail or industrial building". Mr. Cross noted that the Department of Permits and Development Management (PDM) interprets this exclusion to include shopping centers including pad sites. Mr. Cross presented a Memorandum giving the Petitioner's arguments why the second sign should be allowed and legislative history as shown in Exhibit 2. In the alternative, the Petitioner asks a variance to allow the enterprise sign as proposed; however, he noted that this precise issue had been presented to Commissioners Schmidt and Wiseman in Case Nos. 02-522-SPHA and 05-101-SPHA. Both cases confirmed the right of pad sites to separate enterprise signs on shopping centers.

Mr. Macgill from the Office of Economic Development indicated that this property is within the County designated commercial revitalization area along Liberty Road and recounted the efforts the County and community has made to attract a big box retailer and restaurant to this older commercial corridor. He noted that the County would be building a community center nearby which along with private development such as being proposed would be the catalysts to invigorate the redevelopment of the area. He expressed his Office's support for the request. He noted with approval that the developer redesigned the proposed sign replacing the pole-mounted design with stone base design.

#### Findings of Fact and Conclusions of Law

#### Special Hearing

I accept and follow my fellow Commissioner's reasoning that shopping centers may erect one separate enterprise sign in addition to the joint identification sign allowed under the regulations. I am persuaded particularly by the legislative history provided by the Petitioner which shows that when the Council passed Bill 89-97, they initially listed shopping centers as being excluded from enterprise signs. However, as shown on the amended Bill, they specifically struck "shopping centers" from the exclusion leaving multi tenant retail buildings. The Council clearly differentiated shopping centers from multi tenant retail buildings.

On the other hand, I suspect PDM's position that enterprise signs are not allowed, if there is a joint identification sign on the shopping center, is based on their worry that in another setting with multiple pad sites, a great proliferation of signs would result. I agree with PDM that these decisions should be site specific. However, in this case there is little danger signage will become a problem.

IN THE MATTER OF 8729 Liberty Road/Brenbrook Plaza SW side Liberty Road, 490 feet +/-South of centerline of Brenbrook Drive 2nd Election District – 4th Councilmanic

District

Legal Owner: RELP Randallstown LLC

Petition for Special Hearing and Variance

BEFORE THE

**ZONING COMMISSIONER** 

FOR

BALTIMORE COUNTY

Case No.: 06-386-SPHA

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### MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL HEARING

This Memorandum is in support of RELP Randallstown's ("RELP") Petition for Special Hearing to determine whether a padsite within a shopping center is permitted to have one freestanding enterprise sign per frontage in a BM zone. This Special Hearing is scheduled to be heard by the Deputy Zoning Commissioner on March 21, 2005 and resulted from RELP's proposal for a restaurant use within the Brenbrook Plaza Shopping Center. This Memorandum will address the issues RELP believes are pertinent in determining this restaurant be permitted one freestanding enterprise sign per frontage as provided by the Baltimore County Zoning Regulations ("BCZR").

#### I. INTRODUCTION

RELP has submitted a signage package consisting of a monument freestanding enterprise sign located at the northwest corner of its restaurant pad site within the Brenbrook Plaza Shopping Center ("the Property"). The Property is zoned BM. This sign will provide the restaurant's moniker "Ruby Tuesday" on a 64 square foot identifying panel. The height of the ground mounted freestanding enterprise sign is 10 feet.

Baltimore County Department of Permits and Development Management ("PDM"), through administrative practice, incorrectly interprets the BCZR by mandating such signs in planned shopping centers are prohibited. As such, RELP has filed this Petition for a Special Hearing to determine its restaurant pad site is permitted one ground mounted freestanding enterprise sign per frontage as provided under the BCZR. In the alternative, RELP has also filed a Petition for Variance of Section 450.4 of the BCZR to allow one ground mounted freestanding enterprise sign for this site.

#### II. BACKGROUND

RELP is currently the owner of the Brenbrook Plaza Shopping Center which exists in Baltimore County as a "planned shopping center," as provided under Section 101 of the BCZR. This shopping center contains an abandoned K-Mart store, presently planned to be converted into a Home Depot, another building of in-line retail and the vacant pad site. Brenbrook Shopping Center currently has one joint identification sign along the southeast side of the entrance off of Liberty Road displaying the identification of Brenbrook Plaza and the other in-line retailers. RELP is permitted a restaurant use as of right in a BM zone pursuant to Sections 233.1 and 230.4 of the BCZR.

RELP now submits its signage package to be included with the approved development plan consisting of one ground-mounted enterprise sign displaying the restaurant name, "Ruby Tuesday". The sign, as currently proposed, is comprised primarily of stone and metal. The entire monument enterprise sign will be 64 square feet in area in conformance with the BCZR.

Upon inquiry with PDM as to the signage package, it was revealed the current administrative practice in Baltimore County is to prohibit such enterprise signs from padsites within planned shopping centers. This prohibition is due to PDM's misinterpretation of the signage regulations of the BCZR. The BCZR prohibits enterprise signs for multi-tenant retail buildings and, as such, PDM has incorrectly classified RELP's restaurant pad site as comprising as part of a multi-tenant retail building. This position from PDM has necessitated RELP to file a

Petition for Special Hearing and Petition for Variance in order to seek approval for its proposed sign.

This similar issue was previously ruled upon by Zoning Commissioner Lawrence E. Schmidt through Case No. 02-522-SPHA and again by Commissioner Wiseman through Case No. 05-101-SPHA. Both of these cases granted approval for a proposed pad site to maintain a freestanding enterprise sign in the subject shopping center. *See Attachment* 1. The language of "subject center" has been determined by PDM to be site specific and has therefore required the current Special Hearing.

#### III. ARGUMENT

A. Joint Identification and Enterprise Signs are both Permitted in the BM Zone as Provided by the BCZR.

As the Brenbrook Plaza Shopping Center and restaurant pad site exist in a BM zone, both a joint identification and enterprise sign are permitted in this zone as provided by the BCZR. Section 450.4 of the BCZR specifically defines a joint identification sign as:

An accessory sign displaying the identity of a multi-occupant non-residential development such as a **shopping center**, office building or office park.

This Section goes on to state that the maximum number allowed per premises is one per frontage. <u>See</u> BCZR Section 450.4.I.7. (emphasis added).

As stated previously, the current sign located at Brenbrook Plaza Shopping Center contains the name of the shopping center as well as the in-line tenants. By the definition previously cited, this sign serves as a joint identification sign for the multi-occupant development within the shopping center. The fact that joint identification signs are specifically permitted for "shopping centers" also demonstrates the correct classification of the existing sign at the Ingleside Shopping Center as a joint identification sign.

The padsite for the proposed restaurant is also permitted an enterprise sign under Section 450.I.5(b). An enterprise sign is defined in the zoning code as:

An accessory sign which displays the identity and which may otherwise advertise the products or services associated with the individual organization.

The proposed sign for Ruby Tuesday displays solely this type of identity and, as such, is classified as an enterprise sign. These enterprise signs are also allowed one per frontage in a BM zone as provided under Section 450.I.5(b).

# B. Prohibition for Freestanding Enterprise Signs Not Applicable to Padsites Within A Shopping Center Development.

# 1. Freestanding Enterprise Signs Are Prohibited from Multi-Tenant Retail Buildings in BM zones.

BCZR Section 450.I.5(b) provides that freestanding enterprise signs are permitted in BM zones, "excluding MULTI-TENANT OFFICE, RETAIL, OR INDUSTRIAL BUILDING." *See* BCZR Section 450.I.5(b). PDM has interpreted this section to extend prohibition for freestanding enterprise signs to shopping center padsites ignoring the fact that this limitation only attaches to multi-tenant retail buildings. As will be demonstrated, shopping centers and padsites do not share the same characteristics as the more limited definition of multi-tenant retail buildings and, as such, padsites within shopping centers are exempt from the prohibition of one freestanding enterprise sign per frontage.

## 2. Multi-Tenant Retail Buildings in the Signage Regulations of the BCZR.

Although there is not a precise definition contained within the BCZR of a "multi-tenant retail building," the Zoning Code specifically defines "building" in its General Provisions

Section 101 of the BCZR. This Section defines building as:

A structure enclosed with exterior walls or firewalls for the shelter, support or enclosure of persons, animals or property of any kind.

Therefore, for a padsite to be defined as a building, it would have to be attached to the same enclosed exterior walls of other multi-tenant uses which is not the situation *sub justice*.

3. Shopping Centers as Developments Rather Than Buildings in the Zoning Code.

Section 450.I.5(b) of the BCZR states that one freestanding enterprise sign is allowed in an BM zone with a maximum number of one per frontage. Frontage is defined in Section 450.3 of the BCZR as:

A lot line of a premises which is coterminous with a right-of-way line of a highway to which the premises has or would be allowed pedestrian or vehicular access.

Therefore, when determining the maximum number of signage per frontage one must look to the definition of premises, also defined under Section 450.3 of the BCZR. Premises is defined as:

A recorded lot, or in the case of a multi-occupant lot, such as a shopping center, office park, or industrial park, the total area of the development under common ownership or control.

Therefore, the premises would be seen as the entire shopping center development and not simply one large building as PDM would find. The Brenbrook Plaza Shopping Center therefore has frontage along Liberty Road and Brenbrook Road, as this is the property line adjacent to a right-of-way for the entire development. Freestanding enterprise signs are allowed in BM zones of one per frontage. These definitions are important because shopping centers encompass the entire development boundary of the property, containing within their boundaries separate padsites and multi-tenant retail buildings, both of which are distinct entities within the shopping center itself.

Although a shopping center development may have a multi-tenant building within its confines, this does not convert all open space, parking lots and padsites of the entire development into one enclosed building. Therefore, viewing a padsite as a building connected directly to other retail uses cannot be seen as valid both in light of the physical separation between the padsite and any building, and the fact that shopping centers exist as the entire development made up of several separate parts. Only one of a shopping center's parts is comprised of multi-tenant buildings.

- C. Separate Treatment of Shopping Centers, Multi-Tenant Retail Buildings, and Individual Padsites in the Zoning Code.
  - 1. Amendments made to the signage regulations of the BCZR.
    - a. Signage Regulations of 1997.

On September 19, 1996, the Baltimore County Planning Board submitted a report entitled, "Proposed Revisions to the Baltimore County Zoning Regulations Concerning Signs" ("Report"), assigned as legislative project number 96-01. As a result of this report and the corresponding recommended amendments to the signage regulations, Baltimore County Council passed Bill No. 89-97 on August 4, 1997 which amended the Zoning Code Regulations for all signage in Baltimore County. These amendments created what substantially exists as the present Zoning Regulations today. It is within these current Zoning Regulations where treatment for signage for shopping centers and multi-tenant retail buildings are clearly distinguished.

b. Planning Commission's Recommendations Deliberately Altered by the County Council.

In the original recommendation to the Baltimore County Council, the Planning Board stated freestanding enterprise signs should be allowed in BM districts, "excluding shopping centers." Legislative Project No. 96-10, p. 25, *See Attachment* 2. Although retaining the rest of

the recommendations for freestanding enterprise signs in BM zones, the Baltimore County Council specifically eliminated shopping centers from the prohibition of these signs on their premises. Balt Co. Bill No. 89-97, *See Attachment* 3. Instead of maintaining the prohibition on freestanding enterprise signs for shopping centers, this recommendation was altered to prohibit freestanding enterprise signs only for multi-tenant office, retail or industrial buildings. Through this amendment, the County Council ensured that only multi-tenant retail buildings, and not shopping centers, be subjected to a freestanding enterprise sign prohibition. This separate treatment of shopping centers and multi-tenant retail buildings is also reflected elsewhere in the signage regulations amended in 1997.

## 2. Other Distinctions Between Shopping Centers and Multi-Tenant Retail Buildings Within the Code.

The only other section of the BCZR dealing specifically with signage regulations for shopping centers and multi-tenant retail buildings can be seen in Section 259 of the BCZR. Particularly, Section 259.9D (which deals with development standards for H and H1 overlay districts) demonstrates the disparate treatment granted to shopping centers and multi-tenant retail buildings. This Section was also a part of the original amended signage Bill passed in 1997. See Attachment 4.

Section 259.9.D.4 imposes requirements for both shopping centers and multi-tenant buildings, and does so by clearly separating each entity into the own category in the regulation which states:

Only one freestanding joint identification sign of no more than 12 feet in height and not more than 100 square feet in area for each shopping center <u>or</u> multi-tenant building is permitted. (emphasis added).

This clear separation is repeated in Section 259.9.D.5 where it states:

This is signified by the text "shopping centers" being stricken out and the amended text being added below.

Only one wall-mounted joint identification sign, which for each shopping center <u>or</u> multi-tenant building identifies the center or building and which does not exceed the greater of 100 square feet or 12% of the wall upon which it is mounted, is permitted.

These provisions of the BCZR demonstrate the regulations apply to both shopping centers and multi-tenant retail buildings, but these entities could not both be listed under a common definition. Rather, the Code provision explicitly lists both individually due to a "shopping center" and a "building" existing as two distinctively different formations. A shopping center and multi-tenant retail building are not seen as synonymous under the Code and, therefore, Baltimore County Council's deliberate omission of shopping centers from the prohibition on freestanding enterprise signs demonstrates these signs were to be permitted for shopping centers - one per frontage.

### 3. Padsites Distinguished in the Signage Regulations of the BCZR.

In 1999, the Baltimore County Council again amended Section 259.9.D.1 of the signage regulations dealing with shopping centers and multi-tenant retail buildings through Bill No. 73-1999. Originally, the 1997 regulations stated that signage in the H and H1 districts were to be subjected to Section 450 and:

1. Freestanding enterprise and freestanding joint identification signs are not permitted.

See Attachment 4.

In 1999, the Baltimore County Council amended this section to create the regulation that:

1. Freestanding enterprise and freestanding joint identification signs are not permitted on individual padsites unless the sign is an existing permitted use. (Additional text highlighted)

See BCZR 259.9.D.1.

This additional language of the current regulation now prohibited freestanding and joint enterprise signs only for padsites, distinguishing these padsites from both shopping centers and

multi-tenant retail buildings. As stated previously, BCZR Sections of 259.9.D.4 and 5 both treated shopping centers and multi-tenant retail buildings separately and now the 1999 amendments also add the distinctive category of "padsite" as receiving unique treatment under the Code.

With the County Council recognizing padsites as a separate portion of an overall development, this same type of prohibition for signage on padsites could have been placed upon shopping centers in Section 450. As of the date of the writing of this Memorandum, this prohibition specifically for shopping centers has not been made. As such, the decision of the County Council to handle shopping centers, multi-tenant retail buildings and padsites as separate entities is demonstrated through an analysis of the Code. With these separate classifications controlling the regulations, PDM cannot blindly classify a padsite within a shopping center as a multi-tenant retail building.

## D. PDM's Interpretation of the Signage Regulations is Incorrect.

As demonstrated *supra*, the BCZR clearly separates what can be defined as a shopping center, multi-tenant retail building and padsite. While a building is defined as one enclosed area made up of adjoining walls, a planned shopping center is defined as:

An integral retail shopping **development** for which an overall plan has been approved by the Office of Planning and which: is under common ownership or control; has a site at least three acres in net area; has vehicular access to physically separate buildings on the site by means of interior service drives or ways; and has no more than two points of vehicular access from the site to public streets ...

BCZR Section 101.

Stated previously, a building is one enclosed area, while a shopping center encompasses an entire development under common control. Padsites exist within this area of common control without sharing the common walls or being enclosed with other uses in the same building.

PDM has interpreted these padsites within a shopping center development (and indeed the entire shopping center development itself) as being synonymous with a multi-tenant retail building. This attempt to categorize an expansive development into a smaller specific definition of one building is a misinterpretation of the Zoning Code and goes against the purpose and intent of the County Council. Denying padsites freestanding enterprise signs of one per frontage is an administrative practice that attempts to legislate a prohibition for signage which the County Council did not.

Although it was proposed by the PDM that shopping centers be prohibited from having freestanding signs, the amendments made in 1997 specifically disregarded this recommendation and, instead, changed the prohibition for shopping centers to affect only multi-tenant retail buildings. PDM intends, with their interpretation, to merge the classifications of a building with that of a shopping center by relying on the fact that RELP applied for a restaurant in a planned shopping center. Although this restaurant is in planned shopping center, this does not transform a padsite into a multi-tenant retail building. The physical separation, as well as the Zoning Code's separate treatment of these entities, demonstrate the error of PDM's administrative practice, a practice that should be rectified.

#### IV. CONCLUSION

RELP proposes a Ruby Tuesday restaurant to be located in the BM zone within the Brenbrook Plaza Shopping Center. As part of its development proposal, RELP has included a signage package consisting of one monument enterprise sign 64 square feet in area. This type of enterprise sign is permitted under Baltimore County Zoning Regulations. Baltimore County Department of Permits and Development Management has misinterpreted the Baltimore County Zoning Regulations in determining that these types of freestanding enterprise signs are banned

from padsites within shopping centers. However, upon analysis of the Zoning Code itself and the spirit and intent of the legislative history surrounding signage regulations in Baltimore County, this interpretation from the Department of Permits and Development Management is invalid. In fact, this exact issue was previously argued in Zoning Case No. 02-522-SPHA and 05-101-SPHA whereby it was determined that such padsites are permitted one freestanding enterprise sign per frontage. As such, RELP should be permitted to maintain its signage package as submitted and receive approval for its Petition for Special Hearing.

Sebastian A. Cross

Gildea and Schmidt LLC

300 E. Lombard Street, Suite 1440

Baltimore, MD 21202

(410)234-0070

Attorney for RELP Brenbrook, LLC



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at	8729 Liberty Road/Brenbrook Plaza	
_ ·	is presently zoned <u>BM</u>	_

This Petition shall be filed with the Department of Permits and 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 Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

To determine whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a BM zone.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s):

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.

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING \_\_\_

Reviewed By \_ CTM

#### Contract Purchaser/Lessee:

Case No. 06-386-SPHA

#### RELP, Randallstown LLC Name - Type or Print Name - Type or Print Signature Signature Richard Birdoff, President Address Telephone No. Name - Type or Print City Zip Code State Signature 810 7th Avenue, 28th Floor **Attorney For Petitioner:** (212)265-6600 Address Telephone No. Sebastian A. Cross New York NY 10019 Name - Type or Pripty City State Zip Code Representative to be Contacted: Signature Scheulen A Cross Gildea & Schmidt, LLC Sebastian A. Cross Company Name 300 East Lombard Street, Suite 1440 300 East Lombard Street Suite 1440 410-234-0070 410-234-0070 Address Telephone No. Address Telephone No. Baltimore MD 21202 Baltimore 21202 MD City City State Zip Code State Zip Code OFFICE USE ONLY

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REV 9/15/98



# Petition for Variance

## to the Zoning Commissioner of Baltimore County

for the property located at: 8729 Liberty Road/Brenbrook Plaza which is presently zoned: BM

This Petition shall be filed with the Department of Permits and 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 of the Baltimore County Zoning Regulations to permit one freestanding enterprise sign for a multi-tenant retail building.

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

To be presented at hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded 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:

#### Legal Owner(s):

			_	RELP, Randallstown LLC	2	
Name - Type or Print			Name -	Type or Print		
Signature	<del></del>	· <del>····································</del>	•	Signature		<del></del>
		·	_	Richard Birdoff, Presiden	ıt	
Address		Telephone No		Name - Type or Print		
City	State	Zip Code	•	Signature Wayne M. Rush	<del></del>	. <del></del>
Attorney For Petitione	r:			810 7th Avenue, 28th Fl.		(212)265-6600
	<del></del>			Address		Telephone No.
Sebastian A. Cross			_	New York,	NY	10019
Name - Type or Print-	4		City		State	Zip Code
	11	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	_	Representative to b	e Contacted:	
Signature  Gildea & Schmidt, LLC	•			Sebastian A. Cross		
Company		<del></del>	-	Name	<del></del>	······
300 East Lombard Street, Su	ite 1440	410-234-0070		300 East Lombard Street	Suite 1440	410-234-0070
Address		Telephone No.	-	Address	<del></del>	Telephone No.
Baltimore	MD	21202		Baltimore	MD	21202
City	State	Zip Code	-	City	State	Zlp Code
				OFFICE	USE ONLY	1
Case No	36 - Sf	24-1A	·	ESTIMATED LENGTH OF HE	E- 100 1-010	· · · · · ·
RFV 9/15/98	·	Reviewed	Ву	UNAVAILABLE FOR HEARIN	2/8/06	<del></del>

3-7-10-2

#### LEASE AREA FOR RUBY TUESDAY

## DESCRIPTION TO ACCOMPANY ZONING PETITION BRENBROOK PLAZA, RANDALLSTOWN, MARYLAND 21133 2<sup>ND</sup> ELECTION DISTRICT

February 6, 2006

Beginning at a point on the southwest side of Liberty Road (80 feet wide) said point being southerly 490 feet, more or less, from the center line of Brenbrook Drive (70 foot right of way) 70 feet wide thence running the following courses and distances:

- 1. Southeasterly, by a curve to the right having a radius of 22,878.31 feet for and arc length of 103.57 feet, said curve being subtended by a chord bearing South 64°47'45" East 103.57 feet, more or less, to a point; thence,
- 2. South 64°39'54" East 64.44 feet, more or less, to a point; thence,
- 3. South 25°20'06" West 212.00 feet, more or less, to a point; thence,
- 4. North 64°39'54" West 171.85 to a point, more or less; thence,
- 5. North 26°22'30" East 211.80 feet, more or less, to the point of beginning.

Containing 36,017 square feet or 0.8268 acres of land, more or less. Known as Lease Area for Ruby Tuesday within Brenbrook Plaza located in the 2<sup>nd</sup> Election District of Baltimore County, Maryland.

This description is intended for zoning purposes only and shall not be used for conveyance of land.



#### NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #08-386-SPHA

Case: #06-386-SPHA
8729 Liberty Road/Brenbrook Piaza
Southwest side of Liberty Road, 490 feet +/- south
centerline of Brenbrook Drive
2nd Election District - 4th Councilmanic District
Legal Owner(s): RELP Randalistown, LLC
Special Hearing: to determine whether a pad site within a
shopping center is permitted to have one freestanding
enterprise sign per frontage in a BM zone. Variance: to
permit one freestanding enterprise sign for a multi-tenant
retall building.
Hearing: Tuesday, March 21, 2006 at 11:00 a.m. in
Room 407, County Courts Building, 401 Bosley
Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.

(2) For Information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

3/035 Mar. 2

## CERTIFICATE OF PUBLICATION

32,2006
THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing on 3 2,20 <u></u>
The Jeffersonian
☐ Arbutus Times
☐ Catonsville Times
☐ Owings Mills Times
☐ Owings Mills Times ☐ NE Booster/Reporter
☐ North County News
S. Wilkings
LEGAL ADVERTISING

		VALIDATION	
		CASHIER'S	
2		CUSTOMER	
TY, MARYLAND FRANCE RECEIPT ACCOUNT	MO CANA	AGENCY YELLOW	
ALTIMORE COUN		DISTREUTION WHITE CASHIER PINK	

# CERTIFICATE OF POSTING

RE: Case No.: O6-386-5PHA

Petitioner/Developer: RECP

RANDALLS TOWN, LLC Date of Hearing/Closing: 3-21-04

Baltimore County Department of Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, Maryland 21204

ATTN: Kristen Matthews {(410) 887-3394}

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: / BRENBROOK 8729 LIBERTY

3-6-06 The sign(s) were posted on (Month, Day, Year)

Sincerely,

ZONING NOTICE CASE #06-386-SPHA A PHRITIC HEARING WILL BE RELO BY THE TONING COMMISSIONER IN TOWSON, MO POOM HOT COUNTY COURTS BUILDED PLACE: 401 BEALEY MY TOWSON, MD 21204 DATE AND THE TOPSON, MINCH 21, 2006 AT 1500 A. TO REQUESTION AL HUARING TO DETERMINE WHITER A FIND BOTE WITHIN A MEDITAL CONTRA IS PERSONALLY TO HAVE OME TARGETHOUSE EXTENSION SHOW FIRE FROMFICE IN A BIT ZONE.

8729 CIBOUTY RD

3-700 (Date) (Signature of Sign Poster) SSG Robert Black (Print Name) 1508 Leslie Road (Address) Dundalk, Maryland 21222 (City, State, Zip Code) (410) 282-7940 (Telephone Number)

# DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

#### ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

#### OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:	$\sim 0.11 A_{-}$
Item Number or Case Number:	-5PHA
Petitioner: KELP, Bandalls Journ	dallstown
Address or Location: 8729 Cherty	Rd
PLEASE FORWARD ADVERTISING BILL TO:  Name:	50:4e 1440
Balt: more Md	2/202
Telephone Number: 410 234-0070	2
	Revised 7/11/05 - SC

# Department of Permits Development Management

Director's Office County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204 Tel: 410-887-3353 • Fax: 410-887-5708





James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

February 21, 2006

#### NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulation's of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

#### CASE NUMBER: 06-386-SPHA

8729 Liberty Road/Brenbrook Plaza
Southwest side of Liberty Road, 490 feet +/- south centerline of Brenbrook Drive
2nd Election District, 4th Councilmanic District
Legal Owners: RELP Randallstown, LLC

Special Hearing to determine whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a BM zone.

Variance to permit one freestanding enterprise sign for a multi-tenant retail building.

Hearing: Tuesday, March 21, 2006 @ 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD 21204

Timothy Kotroco

Director

TK:raj

c: Sebastian A. Cross, Esq., Gildea & Schmidt, LLC, 300 E. Lombard St., Ste. 1440, Baltimore, MD 21202 RELP, Randallstown LLC, by Richard Birdoff, President, 810 7th Avenue, 28th Floor, New York, NY 10019

## NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, MARCH 6, 2006.

- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



TO: PATUXENT PUBLISHING COMPANY

Thursday, March 2, 2006 Issue - Jeffersonian

Please forward billing to:

Gildea & Schmidt, LLC (410-234-0070)

300 E. Lombard Street, Ste. 1440

Baltimore, MD 21202

#### NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

#### CASE NUMBER: 06-386-SPHA

8729 Liberty Road/Brenbrook Plaza
Southwest side of Liberty Road, 490 feet +/- south centerline of Brenbrook Drive
2nd Election District, 4th Councilmanic District
Legal Owners: RELP Randallstown, LLC

Special Hearing to determine whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a BM zone.

Variance to permit one freestanding enterprise sign for a multi-tenant retail building.

Hearing: Tuesday, March 21, 2006 @ 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD 21204

WILLIAM J. WISEMAN, III

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-3868.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

## Department of Permits and Development Management

Development Processing County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204





James T Smith, Jr., County Executive Timothy M. Kotroco, Director

March 13, 2006

Sebastian A. Cross Gildea & Schmidt, LLC 300 East Lombard Street, Suite 1440 Baltimore, Maryland 21202

Dear Mr. Cross:

RE: Case Number: 06-386-SPHA, 8729 Liberty Road/Brenbrook Plaza

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 8, 2006.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

Supervisor, Zoning Review

WCR:amf

**Enclosures** 

c: People's Counsel RELP, Randallstown LLC Richard Birdoff, President 810 7<sup>th</sup> Avenue, 28<sup>th</sup> Floor New York 10019



Visit the County's Website at www.baltimorecountyonline.info





DATE: February 23, 2006

### INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III Director, Office of Planning

SUBJECT:

8729 Liberty Road

INFORMATION:

Item Number:

6-373, 06-386-

Petitioner:

RELP, Randallstown LLC

Zoning:

 $\mathbf{BM}$ 

Requested Action:

Special Hearing

#### SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request to allow a free standing enterprise sign, as the subject property is located within a Baltimore County Revitalization district.

For further information concerning the matters stated here in, please contact Kevin Gambrill at 410-887-3480.

Prepared by:

Division Chief:

AFK/LL: CM

W:\DEVREV\ZAC\6-373,doc







Robert L. Ehrlich, Jr., Governor Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary Nell J. Pedersen, Administrator

#### Maryland Department of Transportation

Date: 2.17.01

Ms. Kristen Matthews
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE:

**Baltimore County** 

Item No.

386

LTM

Dear Ms. Matthews:

We have reviewed the referenced item and have no objection to approval. Our review has determined that no construction is required within the State Highway Administration's right-of-way.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chief

Engineering Access Permits Division

1. J. Smill

## BALTIMORE COUNTY, MARYLAND

#### INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: February 27, 2006

Department of Permits & Development Management

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

for February 27, 2006

Item Nos. 375, 376, 377, 378, 379, 380,

381, 382, 384, 385, and 386

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

DAK:CEN:clw

cc: File

ZAC-NO COMMENTS-02272006.doc



Office of the Fire Marshal 700 East Joppa Road Towson, Maryland 21286-5500 410-887-4880

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

February 24,2006

ATTENTION: Zoning Review planners

Distribution Meeting of: February 20, 2006

Item No.: Item Numbers 375 through 386

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

6. The Fire Marshal's Office has no comments at this time.

LT. Roland P. Bosley Jr. Fire Marshal's Office PHONE 887-4881 MS-1102F

cc: File



RE: PETITION FOR SPECIAL HEARING AND VARIANCE

8729 Liberty Road; SW/S Liberty Road, 490' S c/line Brenbrook Drive 2<sup>nd</sup> Election & 4<sup>th</sup> Councilmanic Districts Legal Owner(s): RELP, Randallstown LLC Petitioner(s) BEFORE THE

\* ZONING COMMISSIONER

\* FOR

\* BALTIMORE COUNTY

\* 06-386-SPHA

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/documentation filed in the case.

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2006, a copy of the foregoing Entry of Appearance was mailed Sebastian A. Cross, Esquire, Gildea & Schmidt LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202, Attorney for Petitioner(s).

RECEIVED

FEB 2 7 2006

Per. M.

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

mmortia

IN RE: PETITIONS FOR SPECIAL HEARING
AND VARIANCE – SE/S Belair Road,
490' NE of Chapel Hill Road
(9633 Belair Road, Perry Hall Mrktplc.)
11<sup>th</sup> Election District
5<sup>th</sup> Council District

Perry Hall Center, LLC, Owner; Safeway, Inc., Lessee

- BEFORE THE
- ZONING COMMISSIONER.
- OF BALTIMORE COUNTY
- Case No. 02-522-SPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Perry Hall Center, LLC, and Safeway, Inc., through their attorney, Sebastian A. Cross, Esquire. The Petitioners request a special hearing to determine whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a B.L. zone. In the alternative, the Petitioners request a variance from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building. The subject property and requested relief are more particularly described on the two-page site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Kenneth Hornbeck, Director of Real Estate for Safeway, Inc., Contract Lessees; Daniel Duke, Professional Engineer with Bohler Engineering, the consultants who prepared the site plan for this property; and, Sebastian Cross, Esquire, attorney for the Petitioners. Also appearing in support of the request was Dennis Eckard, on behalf of the Perry Hall Improvement Association. There were no Protestants or other interested persons present.

The subject property is a rectangular shaped parcel with frontage on the north side of Belair Road, opposite Glen Park Road in Perry Hall. The overall tract contains 22.52 acres in area, zoned B.L., and is improved with a 55,256 sq.ft. strip shopping center, known as Perry Hall

Marketplace. The primary tenant is a Safeway food and drug store; however, there are other retail and service stores within the center.

Although the subject tract encompasses 22.52 acres, the subject of the Petitions actually relates to a small area in the southwest corner of the property, identified as a "pad" site. The pad site actually contains .47 acres in area and is proposed for development as a fuel service station. There will be a 352 sq.ft. Kiosk and six (6) multi-service fuel dispensers. There will be no direct access from Belair Road; however, there are curb cuts leading to the fuel service station from the shopping center. The pad site is more particularly shown on Petitioner's Exhibit 1B and it is designed so as to be an independent business within the property.

The instant request relates to a proposed identification sign for the business on the pad site. There are actually two signs that exist along the property's frontage on Belair Road. The primary sign is a 20' high by 9½' wide sign advertising the site as the Perry Hall Marketplace shopping center. It also advertises the Safeway food and drug store and lists the names of the smaller retail and service tenants. At issue is the second sign, which will be located on the frontage of the property on Belair Road. This sign will be a 10' high by 14'2" wide, ground-mounted sign that will advertise the Safeway gasoline service center and its fuel prices. The majority of the sign will be brick; however, a 10' x 5' area near the top of the sign features the name Safeway, its corporate logo, and the prices of the three grades of gasoline offered.

The issue brought about in this case is to classify the two signs and determine whether both are permitted as a matter of right or whether variance relief is needed. An examination of the definitions found in the sign regulations set forth in Section 450 of the B.C.Z.R. is in order. Therein are definitions of the various signs that are permitted in Baltimore County. The larger sign appears to be a "joint identification sign," which is defined as "An accessory sign displaying the identity of a multi-occupant, non-residential development, such as a shopping center, office building or office park." (Emphasis added). Obviously, the entire site has been developed as a shopping center and the structure in which the Safeway store and other retail tenants are located is a multi-occupant, non-residential building. Additionally, the larger sign advertises the names of

many of the multi-tenants therein. For all of these reasons, I find that the large sign is a "joint identification sign" as defined. It is likewise a freestanding sign, as it is not attached to a building. Finally, it meets all the requirements contained within Section 450 of the B.C.Z.R. in terms of height and dimension, and size of lettering, and is therefore permitted by right.

The second sign to be considered is the pad site sign that will advertise the Safeway gasoline service station and the fuel prices. A review of the definitions found in Section 450 of the B.C.Z.R. leads to the conclusion that this sign should be characterized as an enterprise sign. An enterprise sign is defined as "An accessory sign which displays the identity and which may otherwise advertise the products or services associated with the individual organization." It is to be noted that although part of the overall shopping center, the pad site operates as an independent use. The sign does not advertise any of the tenants within the shopping center, but the fuel service station, only. Because the sign does not identify more than one tenant and is specifically for the purpose of identifying the fuel service station use on the pad site, it is an enterprise sign and not a joint identification sign. Section 450 of the B.C.Z.R. also provides that one such sign is permitted frontage in the B.L. zone.

These findings are consistent with the language found in the B.C.Z.R. and the legislative history of Section 450 as described in Petitioners' memorandum. Based upon the testimony and evidence offered, I am persuaded to dismiss the Petition for Variance and grant the Petition for Special Hearing. I find that the one sign is a joint identification sign and the other, an enterprise sign, both of which are permitted in the B.L. zone, which allows one sign of each type per frontage. Although both signs will front on Belair Road, they are classified differently and as such, both are permitted.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13 day of August, 2002 that the proposed pad site within the subject shopping center is

permitted to have one freestanding enterprise sign per frontage in a B.L. zone, and as such, the Petition for Special Hearing be and is hereby GRANTED, subject to the following restrictions:

- 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.
- 2) The proposed pad site sign shall be constructed substantially in accordance with the sign elevation drawings submitted into evidence as Petitioner's Exhibit 1B.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the alternative Petition for Variance seeking relief from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building, be and is hereby DISMISSED AS MOOT.

AWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs

IN RE: PETITIONS FOR SPECIAL HEARING
AND VARIANCE – N/S Baltimore National
Pike, 270' E of the c/l Ingleside Avenue
(5660 Baltimore National Pike)

1<sup>st</sup> Election District
1<sup>st</sup> Council District

KIMCO Realty, Owners; Safeway, Inc., Lessees BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 05-101-SPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

\*

This matter comes before the Zoning Commissioner for Baltimore County for consideration of Petitions for Special Hearing and Variance filed by the owners of the subject property, KIMCO Realty and the Contract Lessees, Safeway, Inc., through their attorney, Sebastian A. Cross, Esquire. The Petitioners request a special hearing seeking a determination as to whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a B.M. zone. In the alternative, variance relief is requested from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Brad Rollser on behalf of Safeway, Inc., Greg Reed, with Bohler Engineering, the consultants who prepared the site plan for this property, and Sebastian Cross, Esquire, attorney for the Petitioners. Appearing as an interested citizen was Riaz Ahmad, a business proprietor in the area. Mr. Ahmad was represented by Michael P. Tanczyn, Esquire.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located near the northeast corner of the intersection of Baltimore National Pike and Ingleside Avenue in Catonsville, not far from the Baltimore Beltway. The property contains a gross area of 10.555 acres, more or less, zoned B.M.-C.T. and is improved with a small strip retail center known as

the Ingleside Shopping Center. The primary tenant is a Safeway food and drug store; however, there are other retail and service stores within the center.

The subject of the instant Petitions relates to a small area in the southwest corner of the property, identified as a "pad site." The pad side contains approximately 0.72 acres, more or less, and is proposed for development with a fuel service station/convenience store, which will feature a 400 sq.ft. kiosk and eight (8) multi-product fuel dispensers. There will be no direct access from Baltimore National Pike; however, there are curb cuts leading to the fuel service station from within the shopping center. The fuel station use has been designed so as to be an independent business within the shopping center. The pad site and proposal are more particularly shown on Petitioner's Exhibit 1. It is also to be noted that Safeway submitted a fuel service station development plan and received original approval for same on February 4, 2004. The Petitioner now seeks approval of its sign package, which includes a proposed identification sign for the fuel service station use. It is this sign that is the subject of the instant request.

The proposed sign will provide pricing information and incorporate a 30.75 sq.ft.-identifying banner stating the name "Safeway" with a corresponding corporate logo at the top of the sign. The sign will also display language pertaining to discounts with the use of a Safeway Club Card. At issue is whether the proposed sign is permitted on a pad site within the shopping center. In the alternative, variance relief is requested to permit one ground-mounted freestanding enterprise sign.

In support of its request, the Petitioner testified that there is currently one joint identification sign located at the main entrance to the center off of Baltimore National Pike, approximately 600 feet east of the pad site. This sign identifies all of the existing tenants, including the Safeway store, and lists the names of the smaller retail and service tenants. The proposed sign will be a ground-mounted sign that will advertise the Safeway gasoline service center and its fuel prices. The majority of the sign will be brick; however a 10' x 5' area near the top of the sign will feature the name Safeway, its corporate logo, and the prices of the three grades of gasoline offered.

As noted above, Riaz Ahmad appeared in opposition to the request. Mr. Ahmad owns and operates a BP Gasoline Service Station, which is located in close proximity to the subject site at 5612

Baltimore National Pike. He argued that the proposed sign should not be permitted given the fact that there are several other pad site businesses in the vicinity who do not have signs. He further argued that the proposed business will increase traffic congestion and that pedestrian safety was a concern in that the sign will be located in the vicinity of a pedestrian walkway and may distract motorists. He also indicated that there are 17 other gas stations within ½ mile of the subject site.

Although the public hearing in this matter concluded on October 15, 2004, the record of the proceedings was held open for three weeks by agreement of the parties during which time they had the opportunity to submit legal memoranda in support of their respective positions.

I have considered the various arguments presented by the parties. I am not persuaded that the sign at its proposed location will create safety concerns for pedestrians utilizing the sidewalk adjacent to Baltimore National Pike or create a distraction to motorists as opined by the Protestant. Any potential obstruction or distraction, if one would result, would be so momentary or brief in nature as to be negligible. Vehicles on the favored highway are constantly moving and their positions to one another (vehicles/pedestrians) are constantly changing.

The issue brought about in this case is to classify the two signs and determine whether both are permitted as a matter of right or whether variance relief is needed. A review of the definitions found in Section 450 of the B.C.Z.R. leads to the conclusion that the proposed sign should be characterized as an "enterprise sign." An enterprise sign is defined as "An accessory sign which displays the identity and which may otherwise advertise the products or services associated with the individual organization." Although part of the overall shopping center, the pad site operates as an independent use. The sign does not advertise any of the tenants within the shopping center, but the fuel service station, only. Because the sign does not identify more than one tenant and is specifically for the purpose of identifying the fuel service station use on the pad site, it is an enterprise sign and not a joint identification sign. Section 450 of the B.C.Z.R. also provides that one such sign is permitted frontage in the B.M. zone.

These findings are consistent with the language found in the B.C.Z.R. and the legislative history of Section 450 as described in Petitioners' memorandum. Based upon the testimony and

evidence offered, I am persuaded to dismiss the Petition for Variance and grant the Petition for Special Hearing. I find that the one sign is a joint identification sign and the other, an enterprise sign, both of which are permitted in the B.M. zone, which allows one sign of each type per frontage. Although both signs will front on Baltimore National Pike, they are classified differently and as such, both are permitted.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of November 2004 that the proposed pad site within the subject shopping center is permitted to have one freestanding enterprise sign per frontage in a B.L. zone, and as such, the Petition for Special Hearing be and is hereby GRANTED, subject to the following restrictions:

- 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.
- 2) The proposed pad site sign shall be constructed substantially in accordance with the sign elevation drawing shown on Petitioner's Exhibit 1.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

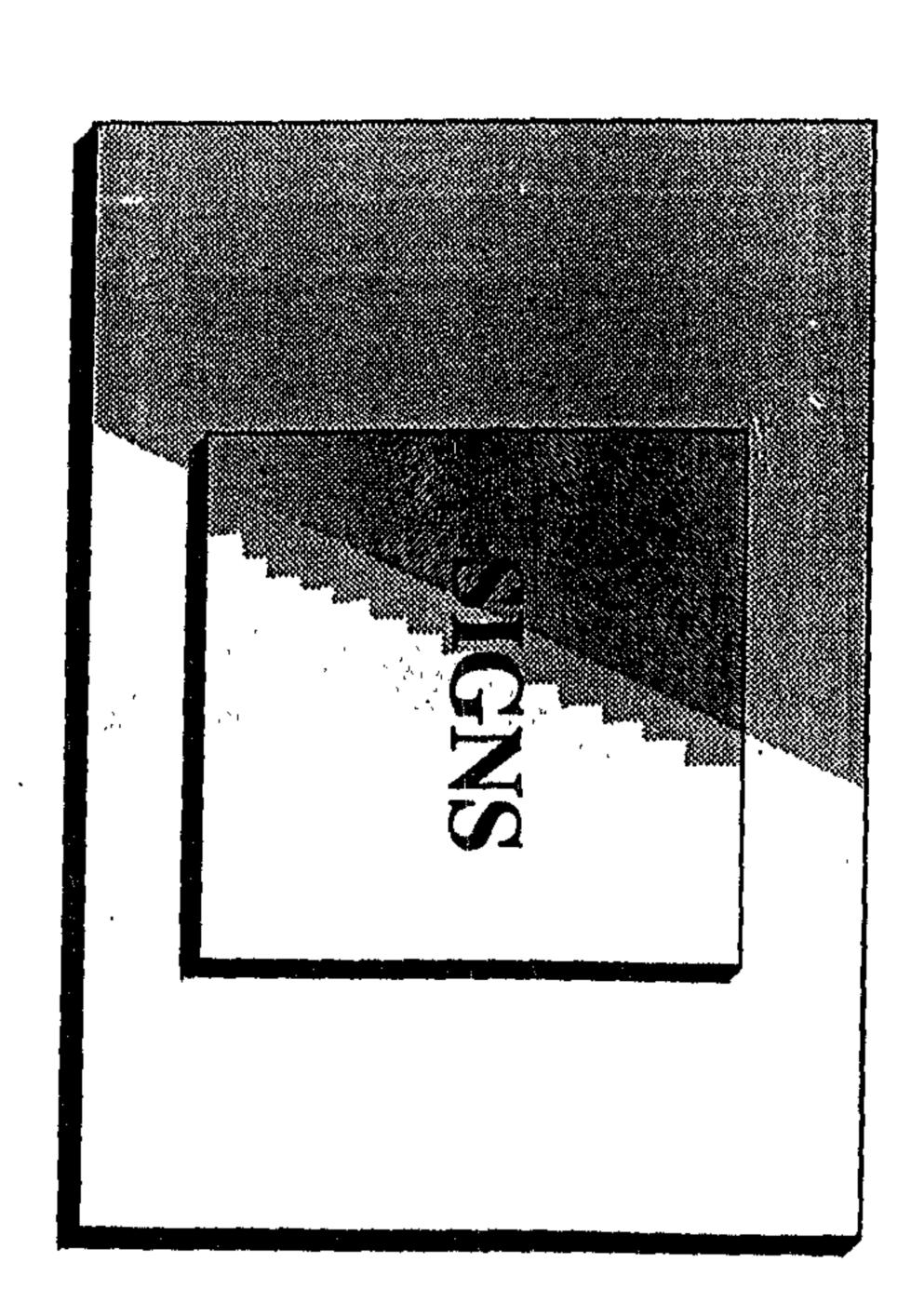
IT IS FURTHER ORDERED that the alternative Petition for Variance seeking relief from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building, be and is hereby DISMISSED AS MOOT.

WJW:bjs

Zoning Commissioner for Baltimore County

Legislative Project No. 96-01
Part 1

# REVISION REGUL TO THE BALTIMORE COUNTY ZONIN ATIONS CONCERNING:



A Final Report of the Baltimore County Planning Board

September 19, 1996

	ίω	4.	t	
which may otherwise advertise the products or services associated with the individual commercial entity	ENTERPRISE, meaning an accessory, commercial sign which displays the identity and	meaning an accessory sign displaying the identity and location of the nonresidential occupants of a building or development	Class	
(b) Free- standing	(a) Wall- mounted; project- ing; canopy	- Wall- mounted; free- standing	Structural Type	11
BLR, BM, BL, BR,, MLR,MR ML, MH, exclud- ing shopping centers	BL, BM, BR, CB, BLA excluding shopping centers	All zones; See Section 450.6.A	Zone or Use	111
Bidg.	Bldg.	Bidg.	Permit Req.	N.
75 sq. ft.; 100 sq. ft. if premise has more than 300 ft. of frontage	Twice the length of the wall to which the signs are affixed	Not regulated, except 25 sq. ft. fin S-E zone	Area/Face	<
One per frontage	One in CB, otherwise three, no more than two on each facade	Not regulated	No/prem.	۷ı
25 ft.	Not applicable	6 †.	¥	VIII
Yes	Yes, but No in CB when use to which sign is accessory is open	Yes	[llumination	IIIA
25 sq. ft. for dealer- ship also displaying one or more new motor vehicle signs; see	No single sign larger than 50 sq. ft.;150 sq ft otherwise.	See Sec. 450.6.A	Additional Limitations	×
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# COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND Legislative Session 1997, Legislative Day No. 15

Bill No. 89-97

### All Councilmembers

By the County Council, August 4, 1997

# A BILL ENTITLED

AN ACT concerning

Signs

FOR the purpose of updating and amending the Baltimore County Zoning Regulations concerning permanent and temporary on-premises signs and permanent off-premises signs; defining certain terms; identifying classes and structural types of signs; establishing use, area, height, number, illumination and other limitations; establishing general prohibitions and exceptions; establishing special requirements for particular classes of signs; establishing County policies concerning compliance with sign regulations; permitting certain exemptions; requiring the submission of signage information as part of the development review and approval process; and generally relating to the regulation of signs.

**EXPLANATION:** 

: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.

Strike out indicates matter stricken from bill.

Underlining INDICATES AMENDMENTS TO BILL.

l	11	III	iv	V	VI	VII	vm	IN.
<del></del>	Structural	Zone	Permit	Area/	No./		<del></del>	 
Class	Туре	or Use	Req.	Face	Prem.	HL	Illumination	Addim'l Limits
ENTERPRISE,	(a) Wali-	BL, BM	Bldg USE	Twice the	One in CB,	Not	Yes, when	Non a series
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locialed with the	(b) Free-	BLR, BM	Didg- USE	75 sq ft.,	One per	25 N	Yes	See
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		MH, excluding		has more				
		shopping-contact		than 300 ft				
		MULTI-TENANT		of frontage				
		OFFICE RETAIL OR		or meanings				
		INDUSTRIAL BLDG						
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	(c) Awning	BL, BM,	Didg- USE	See	See	Not	No	
		BR, CB,		Section	Section	applicable	<del>-</del>	
		BLR		450 5.B.1	450 5 B 1	, ,		
		<del></del>	<del></del>	<del></del>			~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	<del></del>
	(d) Wali-	On multi-	Blog USE	Turn times	P	• 1		
	mounted,	tenant office,	man. Nuc	Two sines	Enuty with	Not	Yes, but	In CB area
	салору			the length	rebrute	applicable	in CB only	shall not
	CEN <sub>P</sub> ,	retail, or		of the wall	101107149		when use to	exceed 100
		industrial		containing	customer		which sign is	sq ft
		building, acces-		the exterior	entrance		Accessory is	
		sory to sep-		entrance and	may cred		open	
4		arate commercial		defining the	one canopy			
		entity with		<b>Space</b>	and one			
		erreates entitiouses		occupied by	wait-			
		cuprince		the teparate	mounted			
				മാനനമാലച്ച	#)gn			
	<del></del>			entity	•			
	(c) Service	Fuel	Dier USE	25 aq fl	Six		* ·	······································
	Station	Service	B <u></u>		JIL	Not	Yes	Permanent
	canopy	#Ustion		per canopy		applicable		¥igna <b>ş</b> €
	• •	V		sign				under the
								canopy, on
								pumps or
								aupports.
								shall not
								be counted
								towards the
								canopy, free-
								standing or
								wall-mounted
								inkuelle jimitr
					i			Except for
								Windows
								commercial
					1			special
								באנון נונות
			ŕ	-				shall not be
								permitted on
								the premites

the premises

# COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND Legislative Session 1997, Legislative Day No. 15

Bill No. <u>89-97</u>

# All Councilmembers

By the County Council, August 4, 1997

### A BILL ENTITLED

AN ACT concerning

Signs

FOR the purpose of updating and amending the Baltimore County Zoning Regulations concerning permanent and temporary on-premises signs and permanent off-premises signs; defining certain terms; identifying classes and structural types of signs; establishing use, area, height, number, illumination and other limitations; establishing general prohibitions and exceptions; establishing special requirements for particular classes of signs; establishing County policies concerning compliance with sign regulations; permitting certain exemptions; requiring the submission of signage information as part of the development review and approval process; and generally relating to the regulation of signs.

EXPLANATION:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter stricken from existing law.

Strike out indicates matter stricken from bill.

Underlining INDICATES AMENDMENTS TO BILL.

1	after a hearing; and
2	d. Display of goods, vehicles, and equipment is permitted in the front yard, but
3	not more than five feet in front of the required front building line.
4	259.9 Development Standards - H and H1 Overlay Districts.
5	D. Signage standards. SIGNS ARE PERMITTED, SUBJECT TO SECTION 450;
6	EXCEPT THAT THE FOLLOWING SIGN CLASSES ARE ALSO LIMITED AS FOLLOWS
7	AND THE FOLLOWING ADDITIONAL RESTRICTIONS:
8	1. Freestanding ENTERPRISE AND FREESTANDING JOINT
9	IDENTIFICATION SIGNS [business signs, as defined in Section 413.5 of these regulations,] are
10	not permitted.
11	2. [Miscellaneous temporary signs, as defined in Section 413.4 of these
12	regulations,] COMMERCIAL SPECIAL EVENT SIGNS are not permitted.
13	3. Outdoor advertising signs[, as defined in these regulations,] are not permitted.
14	4. Only one freestanding JOINT identification sign of no more than 12 feet in
15	height and no more than 100 square feet in area for each shopping center or multi-tenant building
16	is permitted.
17	5. Only one wall-mounted JOINT identification sign, which for each shopping
18	center or multi-tenant building identifies the center or building and which does not exceed the
19	greater of 100 square feet or 12% of the wall upon which it is mounted, is permitted.
20	6. Only one wall-mounted [business] ENTERPRISE sign, for each commercial
21	establishment with an exterior entrance where the sign does not exceed, in square feet, two times
22	the length of the wall upon which it is mounted, is permitted.

1	Section 402Conversion of Dwellings for Residential Use:
2	402.3To be converted for tea room or restaurant use in a R.40 or R.20 zone as a Specia
3	Exception, the following requirements must be met:
4	c. [Only one business sign shall be permitted (see Section 413.1.d);] SIGNS ARE
5	PERMITTED, SUBJECT TO SECTION 450;
6	Section 402BAntique Shops in Residential Zones
7	402B.3[One sign in addition to those permitted under Subsection 413.1 may be
8	displayed, provided that it shall show only the name of the business; shall be single-faced,
9	stationary, and non-illuminated; and shall not exceed 5 square feet in area.] SIGNS ARE
0	PERMITTED, SUBJECT TO SECTION 450.
1	Section 402CResident Art Salons.
2	402C.3[One sign in addition to those permitted under Subsection 413.1 may be
3	displayed, provided that it shall show only the name of the establishment or its proprietor, shall
4	be single-faced, stationary, and non-illuminated, and shall not exceed 5 square feet in area.]
5	SIGNS ARE PERMITTED, SUBJECT TO SECTION 450.
6	Section 402DConversion of Dwellings to a Bed and Breakfast Home or Bed and Breakfas
7	in D.R. or R.C. Zones.
8	402D.5{One sign in addition to those permitted under Subsection 413.1 may be
9	displayed, provided that it shall show only the name of the business, shall be single-faced,
(0	stationary, and non-illuminated; and shall not exceed five (5) square feet in area.] SIGNS ARE
11	PERMITTED, SUBJECT TO SECTION 450.

# PLEASE PRINT CLEARLY

CASE NAME CASE NUMBER DATE

PETITIONER'S SIGN-IN SHEET

E-MAIL			vzavski & 6ldginc. con	7									
CITY, STATE, ZIP	3alt 21201	Tourson 2/204	1 Hout Valle UD 21030										
ADDRESS	300 E. Cambird 5t. 1440	Co. Econ. Dev.	2225chilling Could Swite 100										
NAME	Sebastian Cross	Heire Marsill	1918 242 Jan										



Pet #3



Pet #4



Pet #15



5

OG. 385- SPU