

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
 AND VARIANCE *
 Southwest Side of Liberty Road, 490' +/- * DEPUTY ZONING COMMISSIONER
 South Centerline of Brenbrook Drive *
 2nd Election District * FOR
 4th Councilmanic District *
 (8729 Liberty Road/Brenbrook Plaza) * BALTIMORE COUNTY
 RELP Randallstown LLC * CASE NO. 06-386-SPHA
 Petitioners

* * * * *

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*

ORDER RECEIVED FOR FILING
 Date 3-27-06
 By [Signature]

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

DATE 3-27-06
BY [Signature]

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.

3-27-01
rate
by

P

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

