

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(1238 Putty Hill Avenue)		
9th Election District	*	OFFICE OF ADMINISTRATIVE
5th Council District		
Talisman Towson LP,	*	HEARINGS OF
c/o Kimco Realty Corporation		
Legal Owner	*	BALTIMORE COUNTY
Caren Garfield, Authorized Agent		
Contract Purchaser	*	CASE NO. 2021-0068-A

Petitioners

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Talisman Towson LP, c/o Kimco Realty Corporation, Legal Owner and Caren Garfield, Authorized Agent, Contract Purchaser for property located at 1238 Putty Hill Avenue. The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations, as follows:

VARIANCE:

(Freestanding Joint Identification Signs) – From the Baltimore County Zoning Regulations (“BCZR”) § 450.4 Attachment 1.7 (B) to permit two (2) freestanding joint identification signs (Signs V and KK) per frontage in lieu of one. From BCZR § 450.4 Attachment 1.7 (B) to permit a freestanding joint identification sign (Sign M) with a face area of 189.54 sq. ft. in lieu of the maximum 150 sq. ft.

(Directory Signs) – From BCZR § 450.4 Attachment 1.4 to permit directory signs with a height of 14.9 ft. (Sign G) in lieu of 6 ft. From BCZR § 450.4 Attachment 1.4 to permit directory signs with a height of 10.8 ft. (Sign EE) in lieu of 6 ft.

(Wall-Mounted Enterprise Signs) From BCZR § 450.4 Attachment 1.4 to permit wall-mounted

single enterprise signs greater than two times the length of the wall or 150 sq. ft. as follows: (a) Sign A: 128.15 sq. ft., (b) Sign B: 40.32 sq. ft., (c) Sign C: 37.52 sq. ft., (d) Sign D: 72.40 sq. ft., (e) Sign H & I: 366.7 sq. ft., (f) Sign J: 247.9 sq. ft., (g) Sign K: 342.79 sq. ft., (h) Sign L: 580.72 sq. ft., (i) Sign N, O & P: 363.49 sq. ft., (j) Sign R: 184.23 sq. ft., (k) Sign S: 479.12 sq. ft., (l) Sign U: 283.86 sq. ft., (m) Sign X, Y & Z: 418.6 sq. ft., (n) Sign AA: 132.00 sq. ft., and (o) Sign CC, FF, GG & HH: 670.3 sq. ft.

From BCZR § 450.4 Attachment 1.5 (A) to permit three (3) wall-mounted single enterprise signs (Signs FF, GG & HH) in lieu of the permitted one (1) such sign per facade. From BCZR § 450.4 Attachment 1.5 (A) to permit two (2) wall-mounted single enterprise signs (Signs S & T) in lieu of the permitted one (1) such sign per facade. From BCZR § 450.4 Attachment 1.5 (A) to permit two (2) wall-mounted single enterprise signs (Signs Q & R) in lieu of the permitted one (1) such sign per facade. From BCZR § 450.4 Attachment 1.5 (D) to permit one (1) wall-mounted single enterprise signs (Signs H, N, O, X, Z, CC, NN & OO) on a wall of a multi-tenant building without a customer.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan and red-lined site plan prepared by Michael Gesell of Bohler Engineering were marked and accepted into evidence as Petitioners' Exhibit 1 and 2, respectively. Petitioners were represented by Adam Baker, Esq. of Rosenberg Martin Greenberg, LLP.

Substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"). They opposed only one of the variance requests and Petitioners have withdrawn it, as depicted on Petitioners' Exhibit 2 (withdrawing the proposal for joint enterprise sign "KK").

Mr. Baker gave an overview of the requested relief. The subject property is approximately 43.12 acres and is zoned BL-CCC (ML-IM,DR 10.5) The specific site in question is a “pad site” within the Towson Place Shopping Center at the corner of Goucher Boulevard and Putty Hill Road. It was formerly occupied by a GameStop store that is being replaced by three new tenants. He noted that DOP concurs that the majority of the variance requests are simply to bring existing conditions into conformance with the current zoning regulations. The remainder of the requests stem from the fact that the fronts of these new businesses face inward on the rest of the shopping center so that the side and rear of the structure face the adjoining streets and signage is needed in order to identify these businesses to travelers on these roads. Greg Reed, the V.P. of development and construction for Kimco Realty testified that Kimco owns and operates over 400 commercial properties across the United States, and has 12 in Baltimore County alone. He explained all of the substantial aesthetic improvements that Kimco is making to the building and site, as depicted on the architectural renderings that were admitted as Petitioners’ Exhibit 3. He and Mr. Baker explained that they worked on the design plan with the affiliated community associations, and that the existing Covenant Agreement between Kimco and these associations has been amended to allow for the requested variances.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The site is unique for a variety of reasons, including that it is a site pad and that the existing structure faces away from the adjoining streets. If the variance relief were denied the Petitioners

would suffer practical difficulty and hardship because they would not be able to install the signage needed to identify and advertise these new retail businesses. I find that the variance relief is within the spirit and intent of the BCZR and that it will not harm the public health, safety, or welfare. In fact, I believe that the proposed enhancements and signage will improve both the aesthetics of the site and the traffic safety and flow at the location.

THEREFORE, IT IS ORDERED, this **11th** day of **May 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR

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IT IS FURTHER ORDERED, that the variance request for sign “KK” is dismissed, without prejudice, as **MOOT**.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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

PMM/dlm