

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2623 Rolling Road)		
2nd Election District	*	OF ADMINISTRATIVE
4 th Council District		
Crosswinds at Rolling Road Apartments	*	HEARINGS FOR
Owner, LLC		
Legal Owner	*	BALTIMORE COUNTY
Petitioner	*	CASE NO. 2020-0102-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Crosswinds at Rolling Road Apartments Owner, LLC legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 450.4.6(A) of the Baltimore County Zoning Regulations (“BCZR”) to allow a freestanding identification sign with a sign area/face of 240 sq. ft. (comprised of three [3] single-sided panels) and height of 19.5 ft. in lieu of the permitted 25 sq. ft. and 6 ft. in height.

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 was marked and accepted into evidence as Petitioner’s Exhibit 1.

A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”) dated June 1, 2020. That agency did not oppose the requested relief.

Mike Hartnett from Crosswinds at Rolling Road Apartments Owner, LLC appeared in support of the petition. Petitioner is a subsidiary of Morgan Properties. Lauren Werkhiser, the Design Director for Morgan Properties, also attended, as did David Thaler, the Professional Engineer, who supervised the preparation of the site plan. Mr. Thaler was accepted as an expert

in engineering, site design, and the BCZR. David H. Karceski, Esq. represented Petitioner. Lisa Evans, the President of the Sheffield Glen Homeowners Association (SGHA), attended to voice the SGHA's opposition to the scale of the proposed sign.

RECORD EVIDENCE

The site where the sign is proposed is approximately 0.119 acres in size and is zoned DR 16. Mr. Thaler explained that the property at large is approximately 152 acres and contains almost two thousand rental apartments and townhouses which make up the Diamond Ridge community. He testified that this may be the largest apartment/townhouse community in Baltimore County. He further explained that before being purchased by Morgan Properties in 2017 the complex was made up of five separately owned and managed communities. Morgan has consolidated these five into the Diamond Ridge community. Mr. Thaler explained that the property is unique because it is sprawling and irregularly shaped and is divided by five different public roads. He stated that it is also unique in that it was previously five different communities that are now part of the larger Diamond Ridge complex, and that this fact necessitates the need for larger signage to direct motorists looking for the complex. Mr. Thaler testified that he did a site line analysis of the intersection and determined that the site distance at this intersection (Rolling Road and Tudsbury Road) far exceeds the minimum of 550 ft. required by the American Association of State Highway and Transportation Officials (AASHTO). He opined that the proposed sign is needed to assist motorists in locating the Diamond Ridge community, and further opined that it would help traffic safety at the location.

Ms. Werkiser testified that Morgan Properties purchased the five separate communities in 2017 and has invested over \$21,000,000 in interior and exterior improvements at what is now the Diamond Ridge community. She testified that Morgan Properties owns and manages almost 300

such communities in 15 states, including 25 other apartment communities in Baltimore County. She testified that she worked with Rick Crawford of Bartush Signs to design the proposed 3 panel, 19.5 foot tall sign. She testified that she believes a sign this size, at this location, is necessary to direct motorists to this large 2000 unit complex. Mr. Crawford testified that the “Diamond Ridge” lettering on the sign will be back lit with “subtle” LED lighting, and that there will be no other graphics on the sign other than the “Morgan Properties” name at the top of the two side panels. A detail of the site plan and architectural elevations of the sign were admitted as Petitioner’s Exhibits 5A and 5B.

Ms. Evans testified that she is the President of the Sheffield Glen Community Association, which is a community of 100 single family homes immediately adjacent to the Diamond Ridge complex on the other side of Tudsbury Road. She explained that the SGCA – and she personally – strenuously oppose a sign of this scale at the entrance to their residential community. She pointed out that the variance relief requested was for a sign many times the height and square footage as that permitted by the BCZR. She explained that the only ingress and egress into her community was the intersection where the proposed sign will be located. In the SGCA’s view the existing signage is perfectly adequate to enable motorists to locate the Diamond Ridge community. Ms. Evans also pointed out that there is separate signage for each of the separate communities within Diamond Ridge. On cross-examination by Mr. Karceski she acknowledged that there are commercial uses along Rolling Road in this general vicinity that have large signs – some with changeable copy. However, Ms. Evans stressed that *this* intersection is the gateway to her *residential* community and that a sign of this magnitude is incompatible.¹

¹ Subsequent to the hearing the Office of Administrative Hearings received numerous emails from other neighbors voicing the same concerns raised by Ms. Evans. Because they were not timely submitted I cannot make them a part of the record.

CONCLUSIONS OF LAW

The general rule is that “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. 43, 71(2007). This is because “a variance is an authorization for that which is prohibited by a zoning ordinance.” *Cromwell v. Ward*, 102 Md. App. 691, 699 (1995). And because “citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, “[t]he burden is on the applicant to show facts to warrant a variance,” and “the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. at 70.

Under BCZR Sec. 307.1 and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, summarized as follows:

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

Cromwell v. Ward, supra.

Based on the record evidence and the expert opinion of Mr. Thaler I find that the subject property is unique within the legal meaning of the term. Mr. Thaler testified that this large and sprawling tract may be the largest apartment/townhome community in the County, and that until recently it was five distinct communities known by different names. Further, it is intersected by five different roads. He further testified that these unique features require the proposed larger signage that is the subject of the variance request. Petitioner has therefore satisfied the first prong of the legal analysis.

I also find that Petitioner would suffer practical difficulty and hardship if *some* variance relief from the sign regulations is not afforded. However, as explained below, I do not believe it is within the spirit and intent of the BCZR in general, and the sign regulations in particular, to allow signage as large as that proposed here.

Section 450.1 of the BCZR governs signage in the County. The legislative purpose is stated as follows:

Statement of general findings and policies.

A. Signs convey information which is essential for protecting the safety of Baltimore County's citizens, maintaining order within its communities and advancing the health of its economy.

B. Businesses, small and large, established and new, contribute to Baltimore County's economic welfare by creating jobs and job opportunities, developing under-utilized and revitalizing depressed areas, and providing an expanded tax base. Because signage is necessary for the success and growth of businesses in the county, the regulation of signage must reasonably accommodate the needs of the business community.

C. *The amount of signage in Baltimore County is excessive. Excessive signage unduly distracts drivers and pedestrians, thereby creating traffic and safety hazards, impairing the utility of the highway system, and reducing the effectiveness of signs and other devices necessary for directing and controlling traffic.*

D. *Baltimore County's appearance is marred, property values and public investments are jeopardized, scenic routes are diminished, and revitalization and conservation efforts are impeded by excessive signage and incompatible signage.*

E. The existence of excessive and incompatible signage is contrary to the goals of the County Master Plan, as adopted and amended. Included among those goals are:

1. Improved quality of commercial corridors, including signage.
2. Improved compatibility between industrial and residential uses, including signage.
3. Enhanced control of placement, size and design of commercial corridor signage.

F. In light of the above, Baltimore County has a substantial interest in promoting the public health, safety and general welfare by reducing or eliminating excessive and incompatible signage.

G. To that end, these regulations are intended to be the least restricting means to achieve the following:

1. Eliminate and restrict signs which constitute an actual or potential distraction or other hazard to the safe operation of motor vehicles or the safe passage of pedestrians.
2. Encourage sound practices in signage, thereby assisting the public to locate facilities, goods and services without undue difficulty, danger, or confusion.
3. *Eliminate unsightly, incongruous signs which tend to depreciate or diminish private and public investments in buildings, sites and highways or hinder or discourage the improvement of residential, business and industrial properties.*
4. *Enhance and conserve the attractiveness of natural, landscaped and built environments in Baltimore County, particularly where such attractiveness contributes materially to the stability of communities and the promotion of tourism.*

BCZR § 450.1 (emphasis added).

The Petitioner in this case is seeking to construct signage that it is nearly ten times as large as that allowed by BCZR § 450.4.6(A) (240 sq. ft. in lieu of 25 sq. ft.); and more than three times as tall (19.5 ft. in lieu of 6 ft.). A sign of these proposed dimensions at the entrance to these residential neighborhoods would be at odds with several of the legislative purposes highlighted above, including the goals of traffic safety, aesthetic compatibility, and preservation of residential property values. All of these points were convincingly made by Ms. Evans, a long-time homeowner in the community, and President of the SGCA.

As noted above, the burden is on the party seeking a variance to show the need for the full relief they are seeking because, “the specific need for the variance must be substantial and urgent

and not merely for the convenience of the applicant.” *Mueller, supra*, 177 Md. App. at 70. In the instant case I am convinced that a larger sign is necessary and appropriate, but not one on the scale of Stonehenge. In my view a smaller, more compatible sign will fully serve Petitioner’s need to identify the Diamond Ridge community, while preserving the residential feel of the larger residential community, including the single family homes in Sheffield Glen.

THEREFORE, IT IS ORDERED, this **2nd** day of **October, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from BCZR § 450.4.6(A) be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.
- The three panel design depicted on the site plan shall be maintained.
- The total sign area shall be no larger than 100 square feet and the sign shall be no taller than 10 feet.
- The existing signage at this location shall be removed.

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