

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(1300 York Road)</b>		
9th Election District	*	OFFICE OF ADMINISTRATIVE
3rd Council District		
York Green Limited Partnership	*	HEARINGS OF
Legal Owner	*	BALTIMORE COUNTY
<b>Petitioner</b>	*	<b>CASE NO: 2021-0144-A</b>
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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by York Green Limited Partnership (the “Petitioner”) for property located at 1300 York Road, Lutherville (the “Property”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §450.4, Attachment 1.5.(m) to permit 1 freestanding enterprise sign of 69.7 sf per face with a maximum height of 13.7 ft, located on a principle arterial with an R-O Zone, in lieu of the permitted 1 freestanding enterprise sign of 15 sf per face, with a maximum height of 6 ft.

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. Gary Gill, Manager of the Petitioner and President of MacKenzie Properties, Inc. appeared in support of the Petition along with James Matis, PE, of Matis, Warfield, Inc. who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 2). Jennifer Busse, Esquire and Whiteford, Taylor and Preston represented the Petitioner. There were no Protestants or interested citizens who appeared at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and from Department of Environmental Protection and Sustainability (“DEPS”) which agencies did not oppose the requested relief.

The case proceeded by way of modified proffer by Ms. Busse. The Property is 4.46 acres +/- (195, 278 sf.) and is primarily zoned Residential-Office (RO) with a small area of and Density Residential (DR 5.5) on the south-western end of the Property. The Property fronts on York Rd. and is directly north of the I-695 exit heading west. Mr. Gill, who has been the President of Mackenzie Properties, Inc. for 44 years, testified that in or about 1986, Mackenzie built four (4) connecting 2-3 story brick office buildings (the ‘building’) on the Property. The building is set back from York Rd. (Pet. Ex. 6M). Parking spaces surround the building in a circular fashion. (Pet. Ex. 2).

A rendering of the Site Plan provided useful information as to the amount of green space on the outer boundary of the Property as well as between and around the building. (Pet. Ex. 3). Photographs of the existing sign for the building along York Rd. revealed that it rests on green lawn adjacent to bushes within a manicured landscape that includes mature trees. (Pet. Ex. 6A, 6C, 6D). The existing sign is tastefully constructed with a brick base, a green sign and minimal information other than the name of the building and the address. Compared to other signs along York Rd. near the Property, the existing sign for the building is short in height. As reflected in the photographs of the signs for neighboring businesses, those are taller, contain more information for tenants in those buildings, and some even have changeable copy.

Petitioner is proposing to replace the existing sign with an updated, taller sign which will have space for several tenant identifications as depicted in the proposed sign rendering provided. (Pet. Ex. 5). The proposed sign will be illuminated, but will not have changeable copy. It will be located slightly west toward the interior of the Property as the existing sign is now located in a highway widening area. Mr. Gill highlighted that the requested height of 13.7 ft. is due to its position on a brick base retaining wall which will also have a blue stone cap. Mr. Gill stressed

the importance of having a sign which compliments the brick on the building. The base of the sign will have planter for a flowers and/or landscaping.

Mr. Gill mentioned that some tenants are interested in having sign identification frontage along York Rd. He also testified that MacKenzie has invested and will continue to invest funds for the renovation and modernization of the building include replacement of all windows, renovation of restrooms, and updating of 3 elevators.

Mr. Matis, who was accepted as an expert in civil engineering, testified that the Property is unique in that it is larger than other commercial properties at over 4 acres and has 64,000 sf. of office space. To the west of the Property are homes which were built at the same time as the building here but are buffered by vegetation. The R-O zoning designation provides for only 1 freestanding sign whereas a property zoned Business-Local (BL) is permitted to have more signage. In 1986, a variance was granted for the Property to have a 25 sf. sign in lieu of a 15 sf. sign.

Mr. Matis opined that the Petitioner would suffer a practical difficulty and unreasonable hardship if the variance relief for the proposed replacement sign is not granted because the building, set within a commercial area, becomes less marketable to tenants who want signage on York Rd. Because the R-O zoning has been applied to this otherwise commercial property, the limit on signage in this particular location, places the Petitioner at an obvious disadvantage in leasing the building.

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 Property is unique due to its size and peculiar shape. Uniqueness was previously found in Case No. 1986-407-A and as such, the finding will be applied in this case under the doctrine of collateral estoppel. The configuration of the office buildings constructed in 1986 and its surrounding parking and green space, along with its proximity to I-695, makes this R-O zoned Property (which functions commercially) different from other commercial properties along York Rd. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed freestanding, enterprise sign was not granted because it is reasonable to expect that tenants will want signage along York Rd. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition. I find that the proposed sign compliments the existing features on the Property and will not clutter York Rd. or distract passerby or drivers.

THEREFORE, IT IS ORDERED, this **20th** day of **July 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §450.4, Attachment 1.5.(m) to permit 1 freestanding enterprise sign of 69.7 sq. ft. per face with a maximum height of 13.7 ft., located on a principle arterial with an R-O Zone, in lieu of the permitted 1 freestanding enterprise sign of 15 sq. ft. per face, with a maximum height of 6 ft. is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. 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 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, Petitioner would be required to return the subject property to its original condition.

2. The Petitioner shall comply with the DOP ZAC Comments which are attached hereto and incorporated herein.
3. The proposed sign shall not have changeable copy.

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

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Signed \_\_\_\_\_  
MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm