

IN THE MATTER OF : BEFORE THE

HIGH'S OF BALTIMORE : HOWARD COUNTY

Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-001S

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DECISION AND ORDER

On October 17, 2011, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of High's of Baltimore for a variance to erect an 8'3/8" (height) x 8'6" (width) freestanding sign zero feet from the Rogers Avenue right-of-way (ROW) in a B-2 (Business: General) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Andrew Robinson, Esq., represented the Petitioner. Brian Darnell and Wayne Newton testified in support of the petition. Francis Rura and Susan Ann Williams Rura appeared in opposition to the petition.

A Preliminary Matter

At the outset of the hearing, the Petitioner introduced into evidence an amendment to

the sign variance petition. The amendment corrects a specification error by restating the sizing of the routed-out windows and the square footage of the sign face dedicated to gasoline pricing. Hearing Examiner Rule 9.4 requires a Petitioner who proposes an amendment during the course of the proceedings to submit the amendment as an exhibit. The Hearing Examiner determined the amendment was not substantive within the meaning of Hearing Examiner Rule 9.5 and therefore could be admitted as evidence during the hearing.

The Petitioner introduced into evidence the exhibits as follows.¹

1. Amendment to sign variance petition
2. Photograph of old High's operation with existing sign
3. Photograph of existing High's operation
4. Photograph of existing High's operation taken from Rogers Avenue

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. Property Identification. The subject property is located in the 2nd Election District and is bordered by Rogers Avenue on the west and Normandy Center Drive (a private road) on the south. It is referenced as Tax Map 18, Parcel 75B and is also known as 3045 Rogers Avenue (the Property).

2. Property Description. The irregularly shaped Property was recently redeveloped with a gasoline service station and convenience store. The convenience store is now oriented toward Rogers Avenue.

3. Vicinal Properties. The remainder of Parcel 75B is also zoned B-2 and is improved with an office building on the north side of Normandy Center Drive and a retail/commercial center, fitness center, and various other businesses on the drive's south side. Parcel 75A to the northeast is zoned B-2 and is improved with the Normandy Shopping Center. The properties across Rogers Avenue are predominately zoned R-A-15 (Residential: Apartments), including the large Howard Crossing Apartments complex (formerly Town and Country Apartments). To their south are two R-A-15-zoned properties, each improved with a single-family detached dwelling.

4. Speed Limit. The speed limit on Rogers Road is 30 MPH.

5. The Sign Variance Request. The Petitioner is requesting a variance under Section 3.501.C of the Sign Code to erect an 8'6" (height) x 8'3/8"(width), double faced, freestanding sign zero feet from the Rogers Avenue right-of-way (ROW) rather than the 17' setback required in relation to the aggregate sign area and the 28'6" setback required in relation to the sign height. The sign would have a brick base. The 6'6" high x 8'3/8" wide cabinet would contain a Shell gasoline icon, two gasoline pricing windows, a 1st Mariner Bank ATM sign and a High's dairy store sign. The proposed sign will be internally illuminated. At night, the illumination will be minimized.

6. Brian Darnell testified to being the vice-president of High's of Baltimore. He testified that High's has operated a store at the site since 1992. In 2008, High's rebuilt the site, which was dysfunctional from an internal circulation process and the store needed upgrading. The

¹ The petition included several photographs, which the Petitioner identified as exhibits. In this decision and order, they are denoted as Exhibits P1-8.

store opened ten days ago.

7. It was Mr. Darnell's further testimony that the previous 22-foot high sign was located 27 feet from the Rogers Avenue ROW. Due to the site's reconfiguration, the building was reoriented towards Rogers Avenue and the sign had to be removed because it was in the parking area. Petitioners Exhibit P4 depicts the prior sign. The proposed sign would be located zero feet from Rogers Avenue, at the intersection with Normandy Center drive. It would have a two-foot brick base and a six and one-half foot sign cabinet. It is less intense than Shell Oil would like High's to use. High's has installed the same proposed signage in other communities.

8. As Mr. Darnell testified, the site is located in a valley and the vicinal properties are heavily vegetated. These conditions reduce visibility of a complying sign. For this reason, the sign needs to be closer to the road for identification. Referring to Petitioner's Exhibits P7.1-7.6, Mr. Darnell testified that the photographs depict the vegetation to the north and south of the site. The grassy area in Exhibit P7.2 is the ROW, not the Petitioner's Property. Referring to Petitioner's Exhibit 2, 3 and 4, Mr. Darnell explained they depict the old site and the new site. In his opinion, the requested variance is the minimum necessary because it is reduced in area to the maximum extent and the proposed sign is less intense than the old sign.

9. During cross-examination by Mrs. Rura, Mr. Darnell testified that the prior store was oriented toward Normandy Center Drive. He believed the location of the proposed sign was depicted on the conditional use plan for the site's redevelopment. Mr. Darnell also testified that a gasoline service station had been located on the Property for about 30 years. In his opinion, the new sign is better for the community from an aesthetic perspective than the old

sign because the height is reduced. The site layout dictated the location of the proposed sign, which is about 20 feet closer to Rogers Avenue.

10. In response to a question by the Hearing Examiner, Mr. Darnell testified that all lights on the Property would be turned off at 11:00 p.m.

11. Wayne Newton testified to being the engineer in charge of the project. The site is bounded on three sides by slopes, so it sits in a bowl, the bottom of the valley. The sign is actually about 15 feet from Rogers Avenue. A conforming sign would have to be located in the area of the fuel tanks. The building allows for 140 square feet of signage and about 83 square feet of signage now installed. Rogers Avenue is a tunnel from the perspective of a motorist traveling north on Rogers Avenue. The sign at its proposed location would allow a motorist to make a safe turn into the site.

12. On cross-examination by Mrs. Rura, Mr. Newton testified that the location of the sign was determined by the difficulty of the site and surrounding location. The previous sign was not really visible until a motorist reached the intersection. The current plantings are low-lying so allow for the new sign's visibility.

13. In response to questions from the Hearing Examiner about whether the proposed sign could be set back further from the ROW, Mr. Newton testified the site could not accommodate a further setback.

14. Mr. Rura testified to residing further up and on the opposite side of Rogers Avenue. He appreciates the new LED lighting but disagrees that the site is not visible because the shopping center regularly cuts down some of the surrounding vegetation. He is concerned the

location of the sign will set a precedent for other signs along Rogers Avenue. In his opinion, placing the sign on Rogers Avenue impinges on a residential area and is not allowed, which is why the Petitioner is applying for a variance. The sign would change his neighborhood in a manner that is not appropriate.

15. On cross-examination, Mr. Rura testified that one of the houses he owns sits higher up the hill and has a direct view of Rogers Avenue during certain times of the year. He cannot see the entire site from this residence. He sees less light due to the new LED lighting.

16. Susan Ann Williams Rura testified that she lives at 3252 and 3012 Rogers Avenue. She is concerned about the placement of the sign because it continues the reorientation of the High's operation toward Rogers Avenue, which is contrary to the residential area. In her view, a different sign that was higher would be better because it could be set back further on Rogers Avenue. A commercial sign is not appropriate for a residential neighborhood. On cross-examination, she testified that she could not see the Property from the farther residence (3012). The lights can be seen from the bottomland at 3252 Rogers Avenue.² The house on this property sits at a 400-foot elevation.

17. In response to a question by the Hearing Examiner, Mrs. Rura testified that she did not want the redevelopment to be oriented toward Rogers Avenue.

² The Hearing Examiner takes notice that the two Rura properties are denoted on the plan submitted with the sign variance petition. Their nearest property line appears to be about 225 feet from the High's property line.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Property is located in the valley of a section of Rogers Avenue and is surrounded by steep slopes. No other property in the area has such features. The Hearing Examiner therefore concludes these conditions lead to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

The presence of extensive landscaping on vicinal properties impedes motorists' view of a complying sign, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

Although the Ruras testified that they might be able to see the sign, the potential visibility of a commercial sign, in and of itself, is not an adverse effect. Their main concern relates the reorientation of the operation toward Rogers Avenue. Although the Hearing Examiner appreciates this concern, the operation's orientation toward Rogers Avenue is not a matter the Hearing Examiner may revisit in this decision and order. The Hearing Examiner concludes that granting the variance would not adversely affect the appropriate use of development of adjacent properties, nor result in a dangerous traffic condition.

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The proposed sign is the minimum needed for motorists to identify the use while traveling along Rogers Avenue and the record indicates that less information will appear on the proposed sign than the prior sign. The Hearing Examiner therefore concludes the proposed sign is the minimum necessary to afford relief and can be granted with substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant;

provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique Property condition and vicinal obstructions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this 3rd day of November 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of High's of Baltimore to erect an 8'6" (height) x 8'3/8"(width), double face, freestanding sign zero feet from the Rogers Avenue right-of-way (ROW) rather than the 17' setback required in relation to the aggregate sign area and the 28'6" setback required in relation to the sign height, is hereby **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.