

IN THE MATTER OF	:	BEFORE THE
GGT OXFORD VENTURE MD, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 15-003S

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DECISION AND ORDER

On September 10, 2015, 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 GGT Oxford Venture MD, LLC (Petitioner) for variances to erect a double-face, internally illuminated (embedded LED) projecting sign to be located on the northwest side of Building #2 of the Woodfield Oxford Square Townhomes project and about 122 feet from the Coca Cola Drive right-of-way (ROW) in a TOD (Transit Oriented Development) Zoning District, filed pursuant to Section 3.513.(b), Subtitle 5 of Title 3 of the Howard County Code (the "Sign Code").

Petitioner certified to compliance with the notice and advertising requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Petitioner was not represented by counsel. Joshua Kilrain appeared for the hearing in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Site plan and photographs of Building #2
2. Photographs of existing monument sign and projecting signs erected by the apartment

- developer in other residential projects
3. Sample of curtain blackout cloth
 4. Email copied to Josh Kilrain from Tana Gondesen, Rockville Mallory Square Property Manager, September 9, 2015
 5. Email copied to Joshua Kilrain from Mickey Harnois, Regional Manager, Bell Partners, September 4, 2015

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located at the intersection of Coca Cola Drive and Saint Margarets Boulevard and lies in the 1st Election District. It is referenced as Tax Map 38, Block 0020, Parcel/Lot 761(K) and known as 7020 Southmoor Street (the Property).
2. Property Description. The 9.031-acre, irregularly shaped Property is in the mid-stages of construction as Woodfield Oxford Square Townhomes, which is part of a transit-oriented development (TOD) known as Oxford Square. The proposed sign would be mounted on the northwest side of Building #2, which has an address of 7020 Southmoor Street and would be located in the southern, corner section of Parcel K. The sign would lie about 122 feet from the Coca Cola Drive ROW.
3. Vicinal Properties. All vicinal properties are part of the Oxford Square TOD.
4. The Requested Sign Variance. Petitioner is proposing to install a deep, rectangular aluminum, double-sided sign cabinet on the northwest side of Building #2. Each cabinet side would consist of a ¾" thick, translucent design panel with ¾" thick, translucent acrylic push through letters. The letters spell out "Woodfield Oxford Square." Routed into the fabricated

aluminum sign cabinet is a "Leaf Branch" feature. The letters and leaf branch would be internally illuminated with embedded LEDs.

Each proposed sign panel has a height of 10'.0" and a 2'/6.25" width and a 25.21sf total signage area. The combined signage area of both panels is 50.42sf. The bottom of the sign cabinet is 15'.0" from the finished grade. The total sign height is 25'.0" from finished grade to the top of the sign. The rooftop of Building #2 is 30'6" above the top of Sign B. The combined height of the Building #2 roof is 55'/6" from finished grade.

For this sign, Petitioner is requesting variances from two sections of the Sign Code.

1. Sign Code § 3.501.(c)(2)b.(i). Sign standards by district.
(c) Commercial Districts, Commercial Areas, all Areas Within Downtown Columbia, Industrial Districts and Industrial Areas.
 - (2) Location.*
 - b. Projecting signs.*
 - (i) The provisions of this paragraph shall not apply in Downtown Columbia. Projecting signs may project over public rights-of-way only where there is no building setback, and then it may project no more than 42 inches beyond the right-of-way line. It may be no closer than eight feet to a curbline without variance from the Board of Appeals, except that on commercial properties within the Ellicott City Historic District it may be no closer than three feet to a curbline without variance from the Board of Appeals, and must have a minimum clearance of ten feet above the finished grade of a sidewalk and 18 feet above any road, driveway or alley. No projecting sign or supporting structure shall project more than 42 inches from the wall of a building, nor be less than ten feet from the ground level at the base of the building, nor be higher than 25 feet from the ground level to the top of the sign on a multistory building, and above the first floor, no window or part of a window shall be situated within the area, or surface area, as defined herein, of such sign, or its supporting structure, nor shall any such sign or part of such sign or its supporting structure cover any window or part of a window. Furthermore, no projecting sign or supporting structure shall be located in such a manner as to obstruct the light and vision of a window. Every face of a projecting sign shall be considered as a separate sign for the purposes of computing the allowable area, and the sum of the areas to all faces of a projecting sign shall not exceed 25 square feet. No projecting sign or supporting sign or supporting structure shall extend above the top of the wall.

2. Sign Code § 3.508(a). Illumination.

(a) *Shading*. The light from any illuminated sign or billboard or from any light source, including interior of a building, shall be so shaded, shielded or directed that the light intensity or brightness shall not adversely affect surrounding or facing premises nor adversely affect safe vision of operators of vehicles moving on public or private roads, highways or parking areas. Light shall not shine or reflect on or into residential structures.

Because Sign Code § 3.501.(c)(2)b.(i) limits the total area of projecting signs to 25sf, Petitioner is requesting a variance to increase the total signage area to 50.42sf. (Each panel is 25.21sf.) Because the Sign Code § 3.508(a) & (b) prohibits light from shining on or into residential structures, Petitioner is seeking a variance for the illuminated sign, which would be mounted next to certain apartment windows.

5. The Technical Staff Report (TSR) and DPZ Comments. All Department of Inspections, Licenses and Permits (DILP) TSRs evaluate a proposed sign variance petition against the criteria for granting a variance, but do not make a recommendation. The August 24, 2015 TSR in this case found unique physical and topographical conditions (the Property's 10-15 foot rise in elevation, which allows only one side of the sign to be viewed for a very short distance); distance (despite being twice the legal size allowed, the sign would still be difficult to read from either Coca Cola Drive or St. Margarets Blvd.) and; important historical, architectural and aesthetic considerations (the Oxford Square owner/master developer disallows a ground-mounted sign for the apartment complex).

Attached to the TSR is an August 11, internal memorandum from Department of Planning and Zoning planner Dace Blaumanis. The planner notes concern about the projecting sign being lit at night, which may adversely affect the use of adjacent second floor apartments. The planner

also recommends certain changes to the sign to make it more readable without increasing its size, or possible alternative designs.

6. Joshua Kilrain testified to the proposed sign's design and location being driven by the developer's prohibition against a ground-mounted sign for the apartment complex and the distance from Coca Cola Drive and St. Margarets Blvd.

7. The Hearing Examiner and Mr. Kilrain discussed at length DPZ's concern that the lit sign may adversely affect the use of adjacent second floor apartments. To demonstrate the proposed sign would not adversely affect the use these apartments, Mr. Kilrain introduced into evidence four exhibits. Exhibit 1 depicts the proposed location of the projecting sign from several viewpoints. Exhibit 2 contains photographs of the existing illuminated monument sign intended to prove a lack of light intrusion from the proposed sign. In one Exhibit 2 photograph, someone's hand is placed a short distance from the sign and there is no light shining onto the hand. Other photographs depict examples of other projecting signs on the apartment developer's properties. Exhibits 3 and 4 are emails copied to Mr. Kilrain from Tana Gondesen, Rockville Mallory Square Property Manager (September 9, 2015) and Mickey Harnois, Regional Manager, Bell Partners (September 4, 2015), wherein the apartment developer's representatives attesting to residents not finding projecting signs problematic, including light intrusion.

8. Mr. Kilrain also introduced Exhibit 3, a swatch of window blind material, and shined a flashlight through it. The purpose of this demonstration was to proffer Petitioner's offer to make available such blackout window treatments if certain apartment residents so desired it. In

consultation with the Hearing Examiner, Mr. Kilrain marked Exhibit 1 to indicate which apartment units would be offered the treatment. The Hearing Examiner stated that as a condition of approval, the leases for these units must include a separate addendum expressly discussing the presence of the projecting sign and offering the affected lessees the option of the blackout window treatment. The apartments marked on Exhibit 1 as subject to this addendum are reproduced in this Decision and Order on Page 8.

9. Mr. Kilrain also explained the proposed sign lighting would be controlled to turn on at dusk and turn off in the daytime. On this issue, the Hearing Examiner discussed her practice of approving variances for illuminated signs near residential uses subject to the condition that the signs be turned off at 11:00 pm and that she would require the same in this case as a condition of approval.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts, the Board of Appeals Hearing Examiner concludes 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 not located on a highway that has a dependency on nonlocal use. In the Hearing Examiner's view, the TSR photographs intended to show a rise in elevation do not evince evidence of practical difficulties. There are no unique physical conditions, exceptional

topographical conditions or unique lot conditions. The proposed sign is not located on a highway that has a dependency of nonlocal use.

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.

There or no obstructions causing practical difficulty.

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

The architectural and aesthetic characteristics in this case is the apartment developer's bar against a ground-mounted sign for the apartment complex. The petition accords with § 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.

Subject to all conditions of approval, the variance complies with § 3.513.(b)(4).

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.

In the Hearing Examiner's view, the proposed sign is a reasonable size, based on its scale and distance from Coca Cola Drive and St. Margarets Blvd., in compliance with § 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 Petitioner did not create the practical difficulties or hardships pertaining to §§ 3.513.(b)(1) & (2).



ORDER


Based upon the foregoing, it is this **28th Day of September 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of GGT Oxford Venture MD, LLC (Petitioner) for variances to erect a double-face, internally illuminated (embedded LED) projecting sign to be located on the northwest side of Building #2 of the Woodfield Oxford Square Townhomes project and about 122 feet from the Coca Cola Drive right-of-way (ROW) in a TOD (Transit Oriented Development) Zoning District, and consisting of two sign panels, each with height of 10'.0" and a 2'/6.25" width and a 25.21sf total signage area, a combined signage area of both panels is 50.42sf, with the bottom of the sign cabinet 15'.0" from the finished grade and the total sign height 25'.0" from finished grade to the top of the sign, is **APPROVED**.

Provided, however, that:

1. The variances 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.
2. The leases for the units shown on Page 9 of this decision and order shall include a separate addendum expressly discussing the presence of the projecting sign and offering the affected lessee the option of a blackout window treatment.
3. The signage illumination shall be turned off at 11:00 pm.
4. The Petitioner shall obtain all necessary permits.

**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 calendar 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.