

: BEFORE THE

: HOWARD COUNTY

: BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 17-002S

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On June 26, 2017, 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 Service Neon Signs, Inc./Richard W. Pepper (Petitioner) for a variance to erect a ground-mounted, monument, double-face commercial identification sign 27.0 feet from the Washington Boulevard (Route 1) right-of-way (ROW), for a commercial use (CVS Pharmacy and a future tenant on the same lot) in a B-1-CR (Business: Local: Commercial Redevelopment Overly) zoning district, filed pursuant to § 3.501.(c)(2).c of 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. Richard W. Pepper testified in support of the petition. No one appeared in opposition to the petition.

A Preliminary Matter

At the outset of the hearing, Mr. Pepper stated the sign is redesigned as a ground-mounted monument sign in response to the Department of Planning and Zoning's

recommendation (attached to the technical staff report) the variance be denied because the proposed 20'-high pylon commercial identification sign does not comport with the Route 1 Manual. He introduced two alternative sign designs into evidence. Exhibit 1A & 1B. According to Mr. Pepper, Alternative Sign 1 (Exhibit 1A, reproduced on p. 7) is redesigned as a ground-mounted monument sign and comports with the Sign Code and the Route 1 Manual. Alternative Sign 2 (Exhibit 1B, reproduced on p. 8) is the same as Sign 1 with the addition of a lower sign cabinet for a future second tenant on the undeveloped portion of the Property. After consultation with the Department of Inspections, Licenses, and Permits, the Hearing Examiner determined she could approve Alternative Sign 2 subject to these conditions: 1) that the land area of the future tenant site is wholly within the 4.039-acre Parcel 16A, the site of the CVS Pharmacy, 2) that she could not approve Petitioner's request for the square footage of the future tenant sign be finally determined "by Additional Building Frontage" as noted on Sign B, and, 3) that she could approve the signage only as shown on Exhibit 1B. Were the future tenant site located on another lot, the Sign Code would bar Alternative 2 as impermissible off-site advertising.

The Hearing Examiner concluded the revised sign variances were not substantive within the meaning of Hearing Examiner Rule 9.5, being intended to comply with the Route 1 Design Manual, and therefore could be admitted as evidence during the hearing.

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 on the east side of Washington Boulevard (Route 1) at its intersection with New Montevideo Boulevard and lies in the 1st Election District in Jessup, MD. It is referenced as Tax Map 0043, Grid 0010, Parcel 16A and known as 7105 New Montevideo Road (the Property).
2. Property Description. The 4.039-acre Property is currently being developed with a CVS Pharmacy. Also of import to this petition is the construction of New Montevideo Road on along the Property's southwesterly lot line. According to the TSR, the proposed sign location is 5-8 feet higher in elevation than Washington Boulevard.
3. Vicinal Properties. The two southwesterly properties are undeveloped with overgrown vegetation abutting the edge of the paving.
4. The Requested Sign Variance. Petitioner is requesting a variance to erect a ground-mounted, monument, double face commercial identification sign with two sign cabinets for the CVS pharmacy and a future tenant on the same lot. All specific dimensions are shown on the sign illustrations reproduced on pgs. 7 and 8. (Exhibits 1A & 1B.)
 - The proposed sign would be located 27' from the Washington Boulevard ROW.
 - The total height of the proposed sign is 13'6".
 - The sign would be ground-mounted. The brick base would be 2'8" high and 24" wide (maximum). The mounting section below the future tenant sign is 16" high.
 - The top section is an aluminum sign cabinet containing the standard CVS Pharmacy corporate logo with matching double-sided faces with acrylic letters that will be internally illuminated with LED lights. The main cabinet is 20" thick, 7'4" wide and has a height of 4'0" with a total of 24.67sf of signage.
 - The proposed bottom aluminum sign cabinet for the future tenant is shown on Exhibit 1B (p. 8.)

- The total proposed signage area is 24.67sf plus the area of the future tenant sign.

5. The Technical Staff Report (TSR). 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 recommendations. The May 16, 2017 TSR, updated on June 26, 2017 with new site photographs, issued in this case for the original sign (which, as modified, effected only the type and height of sign) concluded northbound motorists' view of the entrance of the relocated New Montevideo Road and the CVS building would be blocked.

CONCLUSIONS OF LAW

I. Controlling Sign Code Provisions

Freestanding signs are regulated under § 3.501.(c)(2).c.

c. Freestanding signs. The provisions of this paragraph shall not apply in Downtown Columbia. Where a building does not cover the full area of the property, business signs may be freestanding or ground-supported and may be located in the front yard. The height of the sign may not exceed one foot for each two feet the sign is set back from the right-of-way and shall not exceed 26 feet from the grade level to the top of the sign. Freestanding signs shall be permitted only where there is a minimum of 40 lineal feet of lot frontage. The maximum allowable area for a freestanding sign shall be one square foot for each one foot the sign is set back from the road right-of-way. The largest single face of a freestanding sign shall be considered for the purpose of computing allowable area under this section. No part of the sign shall extend beyond a property line or right-of-way line. Signs satisfying requirements for gas price posting are permitted up to an area of 32 square feet per face. Such signs may be affixed to the main freestanding sign and will not be assessed against the allowable area for the facility nor will they be considered for purposes of determining setback in relation to sign area. (Emphasis added.)

II. Specific Sign Variance Criteria (§ 3.513.(b))

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 located on US 1, a six-lane, 50MPH highway with a dependency on nonlocal use. The Hearing Examiner routinely travels along this segment of US 1 and is aware that motorists regularly drive at speeds of 60 MPH or more (although not at rush hour). These conditions lead to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with § 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.

Landscaping on the abutting southwesterly property and the 5' grade change seriously interferes with the visibility of a compliant sign. The petition accords with § 3.513(b)(2).

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

The aesthetic consideration at issue here is the harmony between the Route 1 Manual's signage recommendations and the size and design of the proposed sign. Petitioner has redesigned the original sign as a monument sign to comport with the Route 1 sign guidelines. 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.

There is no evidence of any adverse effect or dangerous traffic condition. The variance complies with § 3.513(b)(4).

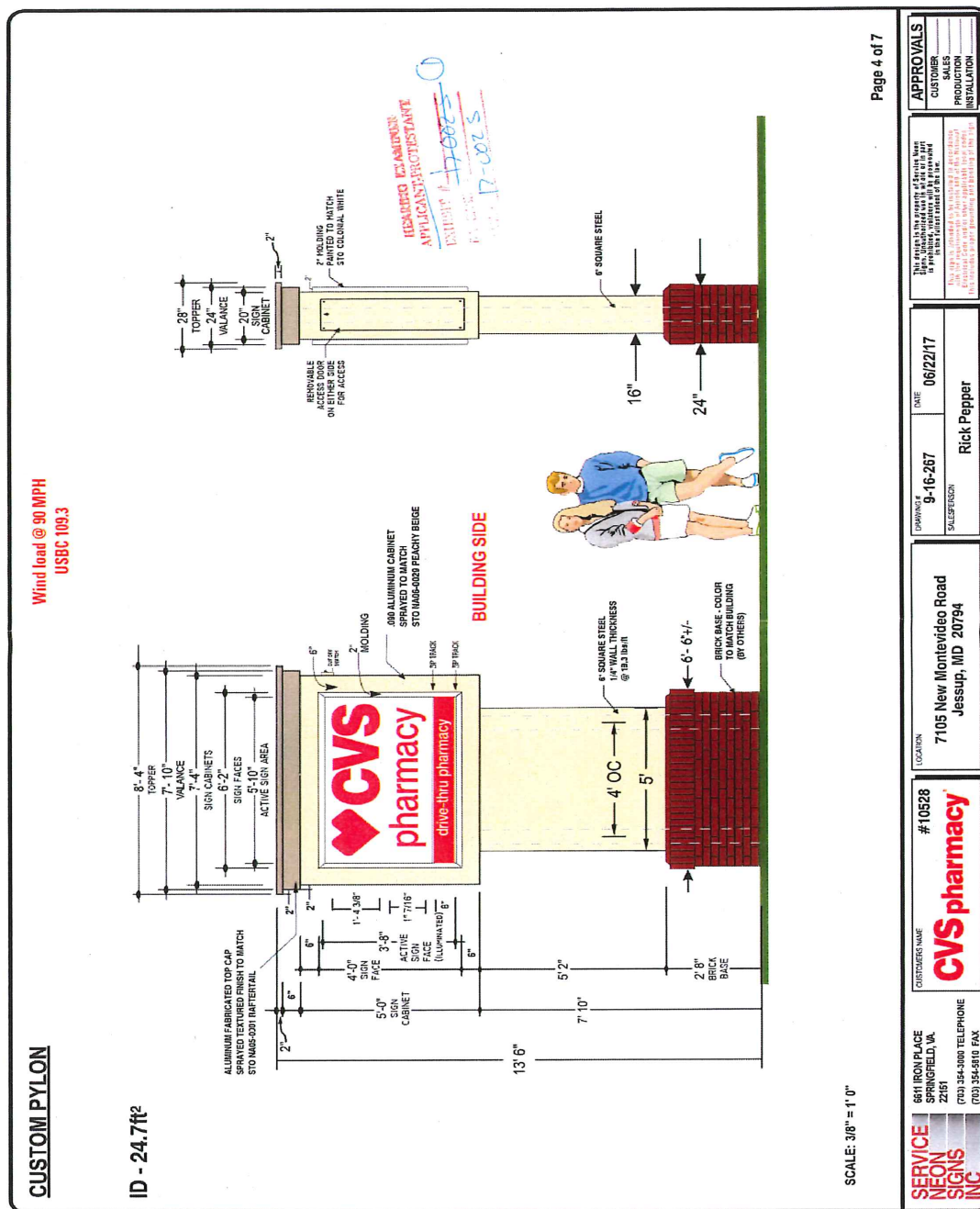
5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

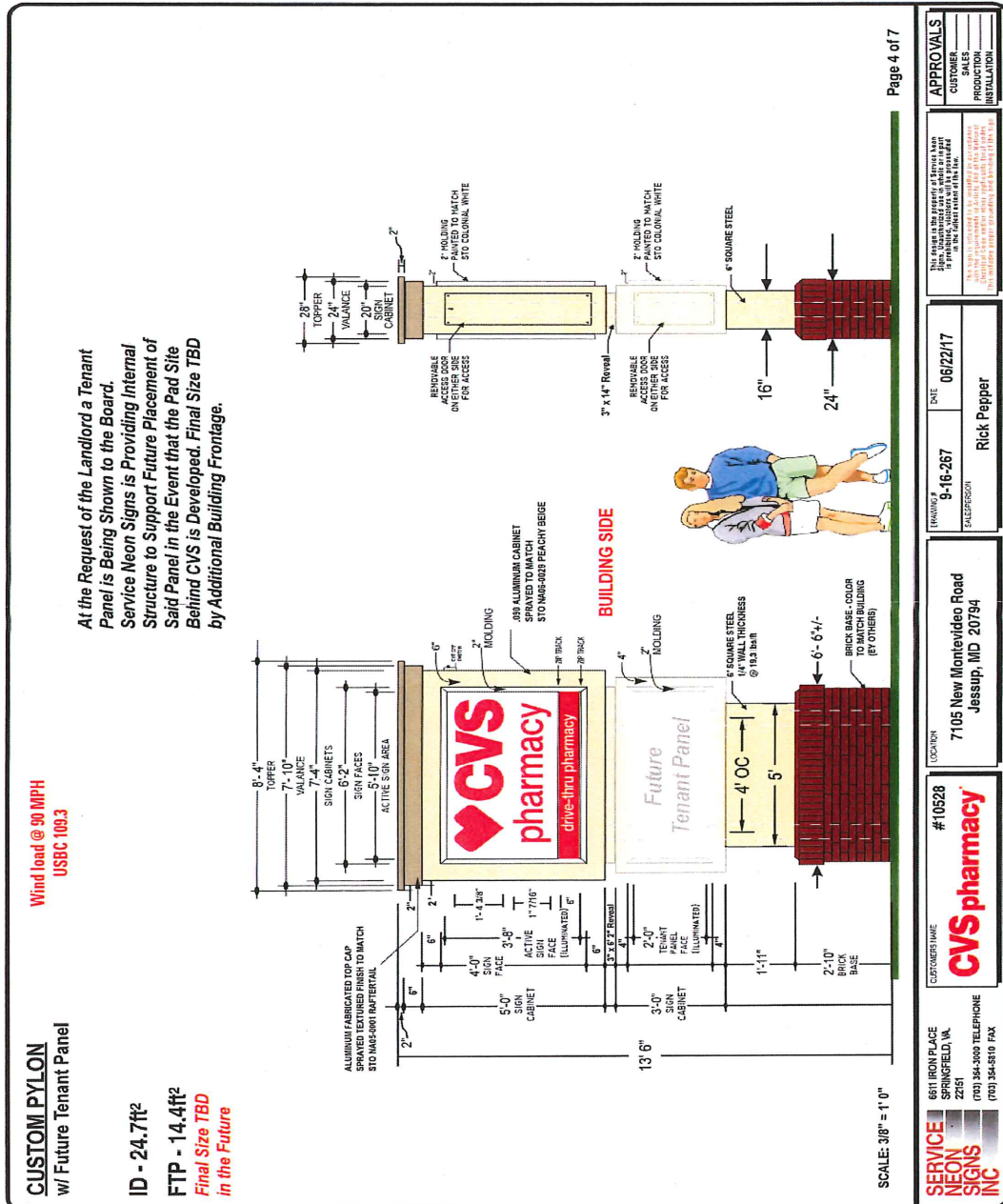
The sign has been reduced in height from 20' to 13'6" and is hence the minimum necessary for a reasonably sized sign, in accordance with § 3.513(b)(5).

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).

Alternative Sign 1





Alternative Sign 2

ORDER

Based upon the foregoing, it is this **20th day of July 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Service Neon Signs, Inc./Richard W. Pepper for a variance to erect a ground-mounted, monument, double-face commercial identification sign 27.0 feet from the Washington Boulevard (Route 1) right-of-way for a commercial use (a CVS Pharmacy and a future tenant on the same lot) in a B-1-CR (Business: Local: Commercial Redevelopment Overly) zoning district, is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the two sign design alternatives introduced as Exhibit 1A & B.
2. Alternative Sign 2 (Exhibit 1B) is approved subject to the condition that the land area of the future tenant site lies wholly within the 4.039-acre Parcel 16A, the site of the CVS Pharmacy. If the Parcel 16A is subdivided, the "future tenant" signage shall be removed.
3. The square footage of the Alternative Sign 2 future tenant sign area is approved as shown as shown on Exhibit 1B. This sign area may not be enlarged.
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 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.