

IN THE MATTER OF : BEFORE THE  
  
**GARY BRENT** : HOWARD COUNTY  
  
Petitioner : BOARD OF APPEALS  
 : HEARING EXAMINER  
 : BA Case No. 11-002S

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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 Gary Brent for a variance to erect a 5' 51/4" (height) x 7'41/4"(width) sign 28 feet from the Baltimore National Pike 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 that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Gary Brent testified in support of the petition. No one appeared in opposition to the petition.

**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 on the south side of US Route

40, along a service road, with an address of 8431 Baltimore National Pike (the "Property"). The Property is located in the 2<sup>nd</sup> Election District in Ellicott City and is referenced as Tax Map 18, Block 19, Parcel 322.

2. Property Description. The 2.18-acre Property is improved by Infinity automotive dealership buildings set back from the service drive.

3. Vicinal Properties. The property to north is currently zoned B-2 (Business: General) and it is improved by the Normandy Shopping Center. To the west is the B-2 zoned single-story structure known as the Adult Video Store. The main Infinity dealership building is hardly visible from the west, owing to the crest in the hill, heavy power lines and multiple state road signs to the west. To the south is the R-A-15 (Residential: Apartments) zoned Charleston Place, a multi-family complex. To the east is the B-2 zoned, single-story structure known as the Brunswick Zone. The main Infinity dealership building is not visible until about 200 feet before the dealership property.

4. Speed Limit. The speed limit on US 40 is 45 MPH. In the Hearing Examiner's experience, the actual travel speed is higher.

5. The Sign Variance Request. The Petitioner is requesting a variance under Section 3.501.C of the Sign Code to erect a 5' 51/4" (height) x 7'41/4"(width) freestanding sign 28 feet from the Baltimore National Pike right-of-way rather than the 40'1" setback required in relation to the aggregate sign area and the 44'4" setback required in relation to the sign height. The sign would be located 2 feet behind the service road curb. The proposed sign will be internally illuminated.

At its top, on both sides, a 65.25-square foot section will contain the words "INFINITI" below the brand logo. The sign would be located near the driveway, as indicated on the plan submitted with the petition.

**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 along US 40, a highway with a dependency on nonlocal use. The section of US 40 is also significantly sloped. I therefore conclude 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.**

Existing buildings, signs, and the steep grade of US 40 impede 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.**

There is no evidence that granting of the variance would 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 a motorist to identify the dealership. 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 conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

**ORDER**

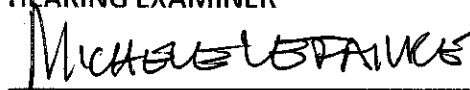
Based upon the foregoing, it is this 1<sup>st</sup> day of November 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Gary Brent for a variance under Section 3.501.C of the Sign Code to erect a 5' 51/4" (height) x 7'41/4" (width) sign 28 feet from the Baltimore National Pike right-of-way ("ROW") in a B-2 (Business: General) Zoning District, rather than the 40'1" setback required in relation to the aggregate sign area and the 44'4" setback required in relation to the sign height, and 2 feet behind the service road curb, 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.