

IN THE MATTER OF	:	BEFORE THE
HOWARD COUNTY DEPARTMENT OF RECREATION AND PARKS	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 15-006S

:.....:

DECISION AND ORDER

On January 11, 2016, 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 the Howard County Department of Recreation and Parks (Petitioner or HCR&P) for a variance to erect a 15.0-foot tall, 55.5sf, freestanding, double-sided, double-pole pylon identification sign three feet from the Route 40 (Baltimore National Pike) right-of-way (ROW), in an R-20 (Residential: Single Family) 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. The Petitioner was not represented by counsel. Paul Delerme, Baub Salam, Bernie Dennison, Richard Funke and Gus Katsameis 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, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the south side of Frederick Road about 711 feet south of the US 144 (Frederick Road) and Norberts Way intersection, and lies in the 2nd Election District in Ellicott City. It is referenced as Tax Map 0023, Block 0006, Parcel 147 and known as 3300 Norberts Way (the Property).

2. Property Description and Vicinal Properties. The 0.978-acre Property is somewhat triangular, with property frontage along Frederick Road and Baltimore National Pike. It is the site of the Kiwanis-Wallas Park. The park entrance on Norberts Way is located off Frederick Road, just before this road's intersection with Baltimore National Pike. The Howard County Youth Program, Inc. (HCYP) operates softball and baseball programs in the Park. Norberts Way also functions as a parking area for the sports fields and recreation center where HCYP has a small office.

3. The Requested Sign Variance. Petitioner is seeking a variance for this proposed sign.
- The proposed sign is to be located three feet from the Baltimore National Pike (US 40) ROW.
 - Petitioner is requesting a variance to erect a freestanding, double-sided, double-pole pylon identification sign comprising three sections, with matching sign faces on both sides.
 - The top section has three parts. The top part contains an arched aluminum sign cabinet with the words "Kiwanis-Wallis Park." Below this cabinet is a thin, rectangular aluminum sign cabinet containing the words "Howard County Youth Program." The lettering in the top section is white acrylic and LED illuminated. The combined square footage is 19.5sf.
 - The middle section is a rectangular, Daktronics full-color LED changeable message, digital sign 24sf in area. This sign will be used to update periodic events for the Kiwanis Club and daily events for HCYP.
 - The bottom sign cabinet is also aluminum with white acrylic letters, LED illuminated with full-color graphics. This cabinet would contain the three logos for the park operating organizations, HCR&P, HCYP and Kiwanis International. The combined square footage is 10.0sf.
 - The proposed sign will have a 3.0' tall x 1'.4" wide, brick pillar at the bottom of each of the

two steel poles. Each pillar will have a set of inlaid embossed name plaques.

- The proposed pylon sign will be 15.0' in height from finished grade to the top of the sign with a combined signage area of 53.5sf (measured on one side). The 53.5sf sign would be 21.5sf more than the Sign Code allows for this type of sign.

4. The Technical Staff Report 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 December 1, 2015 TSR issued for the proposed sign concluded there are no unique physical conditions, that the Property is located along a highway with a dependency on nonlocal use (Baltimore National Pike) and that the existing sign in the same location is not readily visible to motorists traveling in either direction along this section of Baltimore National Pike due to surrounding hemlock trees. The TSR also noted a grade elevation distance of about five feet between the proposed sign location and the Baltimore National Pike road elevation. This heavily traveled section of Route 40 is a four-lane highway with a posted speed limit of 45 MPH.

Also included with the TSR is a November 13, 2015 internal memorandum from Kristin O'Connor, Chief, DPZ/DCCP, to Ed Marquardt, Jr., a DILP code enforcement officer. Ms. O'Connor states she has reviewed the sign variance petition and recommends approval of the proposed sign in its proposed location. The proposed sign is located within the Route 40 study area and was reviewed by the Design Advisory Panel. The DPZ Planning Director rejected the panel's recommendation and endorsed the project architect's proposed sign.

5. Bernie Dennison testified to being a member of the HCYP and being concerned about the Hearing Examiner's discussion about approval based on the changeable message sign

being turned off when the field lights go off after games. The Hearing Examiner clarified that she was requiring only that the changeable message portion of the sign should be turned off, not the entire sign.

6. Richard Funke testified to being a representative of the Kiwanis Organization, which supports the petition.

7. Gus Katsameis testified to being a member of the Kiwanis Club and serving on the Club's 75th anniversary committee. The Club decided to celebrate the anniversary by making a donation for the proposed sign upon learning that many persons were not aware of the club due to its location. The Sign would benefit all the organizations using the park and would identify the fields. The sign is a partnership between HCYP, the Club and HCR&P.

CONCLUSIONS OF LAW

I. Controlling Sign Code Provisions

According to the petition, Petitioner is seeking variance relief from Sign Code § 3.513.(b)(1-6). This section, however, contains the standards for granting a variance from the code. The Sign Code regulates signs by zoning district and imposes specific sign standards for each district. Petitioner is actually seeking relief from the sign standards for a commercial district contained in § 3.502.(e)(1), which regulates permanent identification signs as follows.

(e) Permanent Identification Signs.

(1) Signs of a permanent nature setting forth the names of religious facilities, communities, subdivisions, apartments, schools, public/quasi-public institutions and neighborhoods shall be permitted and are exempt from the setback requirements established in subsection 3.501(c)(2)c. Illumination shall be in accordance with restrictions set forth in section 3.508. Except as provided in paragraph (2), of this subsection, *such signs shall not exceed 32 square feet in area or six feet in height*. Signs that are in existence on November 2, 1981, identifying a subdivision, apartment, condominium, village or

neighborhood, which have been inventoried by the Department of Inspections, Licenses and Permits by March 1, 1982, shall be permitted and shall be exempt from the provisions of subsection 3.505(a)(5) of this subtitle. Within Downtown Columbia, potential locations of permanent identification signs shall be indicated on the Neighborhood Concept Plan. Final locations must be approved as part of a site development plan. (Emphasis added.)

Additionally, all proposed internally LED signs must comply with Sign Code § 3.508.(a).

(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.

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 a highway that has a dependency on nonlocal use. The Hearing Examiner routinely travels along this segment of Route 40 and is aware that motorists regularly drive at speeds of 50-60MPH. This condition leads 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.

The proposed sign would be located in an area of the Property that is about five feet lower in elevation than the roadbed along this section of Route 40 and a stand of tall hemlock trees blocks motorists' view of a conforming 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 40 Manual's signage recommendations and the size of the proposed sign. According to the November 13, 2015 internal memorandum from Kristin O'Connor, the DPZ Planning Director endorses the proposed sign, which would be located within the Route 40 study area.

The Hearing Examiner noted during the hearing that the proposed sign references historic ballpark signage, which in her view justifies the double-pole design, and which the Route 40 Manual discourages. 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.

At the hearing, the Hearing Examiner explained her policy of approving signs with changeable message digital signs subject to the condition that they be turned off at night to prevent driver distraction and to support "Dark Skies" sign design guidelines. Upon being informed that the ball field lights are turned off at 10:00 pm, the Hearing Examiner stated she would grant the variance subject to the condition that the changeable message portion of the sign also be turned off at 10:00 pm. No light shall shine or reflect on or into residential structures. The petition accords 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 proposed sign is a reasonable size and therefore the minimum necessary to afford relief, 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).

ORDER


Based upon the foregoing, it is this **21st day of January 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Gable Signs and Graphics (Petitioner) for a variance to erect a 15.0-foot tall, 55.5sf, freestanding, double-sided, double-pole pylon identification sign three feet from the Route 40 (Baltimore National Pike) right-of-way (ROW), in an R-20 (Residential: Single Family) zoning district, is **GRANTED**;

Provided, however, that:

1. The sign variance shall apply only to the use and structure as described in the petition and this decision and order and not to any other activities, uses, structures, or additions on the Property.
2. The electronic changeable message, mid-section of the sign shall be programmed to be turned off between 10:00pm and 7:00am.
3. The text displayed in the electronic changeable message, mid-section of the sign shall be changed once every 24 hours only, in accordance with DILP policy.
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.