

IN THE MATTER OF	:	BEFORE THE
<b>GABLE SIGNS AND GRAPHICS</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 15-004S

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**DECISION AND ORDER**

On November 2, 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 Gable Signs and Graphics (Petitioner) for a variance to erect a freestanding, double-face commercial identification sign a certain distance from the US 40 (Baltimore National Pike) right-of-way (ROW), for a commercial use (Dolly's Car Wash) in a B-2 (Business: General) 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. William Erskine, Esquire, represented the Petitioner. William Lunkenheimer testified in support of the petition. No one appeared in opposition to the petition.

**A Preliminary Matter**

At the outset of the hearing, Petitioner, through counsel, acknowledged the Department of Planning and Zoning's (DPZ) opinion (see Finding of Fact #5, the requested sign variance)

attached to the Department of Inspections, Licensing and Permits (DILP) technical staff report (TSR). In DPZ's opinion, the proposed plan should not be approved because it is not consistent with the overall design intent of the Route 40 Design Manual (the Route 40 Manual).

Perforce of DPZ's comments, Petitioner proffered three sign design alternatives (options) intended to better comport with the Route 40 Manual.

Option A. The proposed sign as submitted with the petition.

Option B. Lowers sign from 20 feet to 17'3", the exact height of the current sign. Sign remains in the same location as the existing sign, with a 38.9sf total signage area.

Option C. A narrower pillbox (the sign area) with smaller lettering (a 6' pillbox instead of a 6'10" pillbox. Pole sign height is 17'3" and in the same location as the existing sign.

Option D. A pylon sign 17'3" in height and located in the exact location of the existing sign (12' from the ROW). The water/splash feature, which was part of the original sign petition (Option A) and sign area is eliminated. The TSR identifies this element as the fourth section, with a total estimated 10.5sf of signage.

The Hearing Examiner rejected the first three options, noting her prior denials of pole sign variance petitions as inconsistent with the Route 40 Manual. The hearing therefore proceeded in reference to Option D, as set forth below. Petitioner introduced Option D, the amendments including the Revised Petition and the Revised Sign, as Petitioner Exhibit C.

Additionally, 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 amendments were not substantive within the meaning of Hearing Examiner Rule 9.5, being intended to comply with DPZ's comments, and therefore could be admitted as evidence during the hearing.

Petitioner introduced into evidence the exhibits as follows.

A1-15. Photographs of existing sign and vicinity and Google satellite images

- B. Letter visibility chart
- C. Revised sign and 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 north side of US 40 (Baltimore National Pike) about 560 feet east of Greenway Drive and lies in the 2<sup>nd</sup> Election District in Ellicott City. It is referenced as Tax Map 0024, Block 0004, Parcel A and known as 9430 Baltimore National Pike (the Property).

2. Property Description. The 78,495sf Property is a pipestem lot with an approximately 200' driveway leading to the irregularly shaped main portion. The driveway runs along the eastern lot line in common with Parcel 493, the site of a First National Bank building and parking lot. A narrow grassy, landscaped berm runs along the common lot line with Parcel 493. On the west side of the driveway is Parcel 973, which is improved with a Midas Muffler building and parking lot. The main portion of the Property sits behind the rear of Parcel 493 and a portion of Parcel 973 and is improved with a car wash operation (Dolly's Car Wash). The Hearing Examiner observed during her site visit that the carwash operation is largely hidden from view by the structures along Baltimore National Pike and only visible when directly in front of the driveway access. Traveling eastbound on Baltimore National Pike, a divided multi-lane highway, there is a U-turn allowing motorists to access the Property.

3. Vicinal Properties. Vicinal properties are improved with single use commercial

buildings or small strip shopping centers.

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 November 26, 2014 TSR issued in this case for the proposed sign (Option A) concluded the pipestem lot and main building set back about 200 feet from the US 40 ROW were unique physical conditions. The TSR also noted the signs along this section of US 40 were staggered for visibility, that the existing sign is obscured somewhat by the First National Bank sign, and would be more obscured if the sign were set back an additional two feet (as originally proposed), that the existing sign is non-conforming, and that no dangerous traffic condition would be created if the digital display sign changes its image once every 24 hours, per DILP policy. Attached to the TSR are a 1969 permit application and photograph of the sign as erected and a 1973 nonconforming sign and photograph of the sign as erected. The TSR concludes the sign is no longer eligible to be repaired and maintained because the proposed sign size has changed.

Also included with the TSR is an October 9, 2015 internal memorandum from Kristin O'Connor Mazerski, Planning Supervisor, DPZ/DCCP, to Ed Marquardt, Jr., a DILP code enforcement officer. Ms. Mazerski states she has reviewed the sign variance petition (Option A) and found that the "proposed sign appears to be fundamentally a 'pole-mounted' design. Staff recommends reducing the sign to the proposed 6' upper portion (with the car, the Car Wash and Touch-less wording) and creating a ground-mounted freestanding sign to provide more consistency with the Manual." A smaller monumental sign is recommended. In her opinion, the

proposed plan is inconsistent with the overall design intent of the Route 40 Manual and should not be approved.

5. The Requested Sign Variance (Option D). Based on Petitioner Exhibit C (the Revised Petition and Revised Sign) Petitioner is seeking the following sign variance.

- The proposed double face, freestanding sign would remain at its current location, 12 feet from the ROW.
- The sign would be mounted on an 11'3" high, 6'-wide, blue pylon.
- The total height of the proposed sign is 17'3".
- The top section is a LED lit cabinet sign designed in the image of a BMW car with the following dimensions: H-2'3" x W-3'10.4". It is 8" thick.
- The second, middle section is also an LED cabinet style sign forming the word CARWASH with the following dimensions: H-1'4" + W-6'.0". It is 12" thick.
- The third, bottom section is a 16mm Visionpro digital display sign forming the word TOUCH-LESS with the following dimensions: H-2'2" + W-5'3". It is 2'8" thick.
- The total proposed signage area is 28.2sf.

6. William Lunkenheimer testified to being a Gable Signs and Graphics employee. He introduced Petitioner Exhibit A1-15, which comprises 13 photographs of the Property (the existing sign, vicinal signs and various area views) and 2 Google satellite images of the area. The photographs show vehicles parked near the front of the adjoining First National Bank building, which, together with the higher elevation of the bank building, would block westbound motorists' view of a small monumental, ground-mounted sign. The photographs also depict the staggered location of existing area signs, which he noted was referenced in the TSR, and which recommends retaining the original proposed sign in its current location. Exhibits A.9 and A.10 depict the Property as seen in Google satellite imagery. These two exhibits are intended to show that the Property is the only pipestem commercial lot in the area, which limits the

carwash's visibility to customers looking for the business, the main operation being set back some 200 feet from the Pike. Owing the Property's configuration, the proposed sign at the proposed location is Petitioner's sole means to identify the business.

7. Mr. Lunkenheimer introduced Petitioner Exhibit C, the Revised Petition and Revised Sign. Upon its introduction, the Hearing Examiner, Petitioner counsel and Mr. Lunkenheimer engaged in a colloquy during which the Hearing Examiner asked a series of questions about the Property, operation and proposed sign going to the issue of whether the proposed sign was the minimal relief necessary. Several of these questions were intended to gauge the visibility of a smaller ground-mounted sign, as was recommended by DPZ. Mr. Lunkenheimer explained the 3-4 foot difference in elevation between the Property's pipestem and the bank would make a smaller sign very difficult for westbound motorists to see, given the limited visibility, which is further decreased when a vehicle parks in front of First National Bank (Exhibit A.1). Referring to Exhibit B, a California Institute of Technology letter visibility chart, he explained the proposed lettering is the ideal height based on westbound motorist distance. He also referenced a DPZ reviewer's comment on the then-proposed First National Bank sign on the adjoining property (Exhibit A.1) that a pylon sign was not inconsistent with the Route 40 Manual.<sup>1</sup> Mr. Lunkenheimer also testified to the Petitioner having signed a DILP affidavit agreeing to change the digital display sign text only once every 24 hours.

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<sup>1</sup> See BOA Case No. 14-005S (decided January 29, 2015) Finding #4: "Attached to the TSR is an October 9, 2014 internal memorandum from DPZ staffer Brad Killiam to Ed Marquardt, Jr., a DILP code enforcement officer. Mr. Killiam states he has reviewed the sign variance petition and concludes the proposed sign is not out of character for the corridor or property location."

## 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 § 3.501.(c), which regulates commercial signs based on their design and location. 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.)

Although neither the TSR nor the Petitioner addressed the issue of the requisite 50-foot lot frontage required for a freestanding sign, the petition includes a 2005 boundary work sheet depicting a 50-foot lot frontage width along Baltimore National Pike.

### II. The Route 40 Design Manual: Signage Guidelines

The Route 40 Manual guidelines are to be used in conjunction with other County, State and Federal documents that regulate development within the corridor, including the Howard County Sign Code. Manual, pg. 1. The Manual's guidelines are mandatory for properties with

the Traditional Neighborhood Center (TNC) overlay zoning district and are recommendations for properties with other zoning district designations. Additionally, the Manual's design recommendations focus on three commercial areas, one of which is the Chatham commercial area, and which includes the Property.

The design of freestanding signs is addressed in Chapter 3, Site Design, Section 9.(pgs. 38-39). The goal of this section is to "[p]rovide a more consistent location, scale and orientation of signage [to] reduce the visual clutter within the corridor." Section 9 requires all properties to comply with the Sign Code. Importantly, the Manual makes several relevant sign design recommendations for non-TNC zoning district properties, including Site Design (SD) recommendation SD-53: Ground-Mounted Signs: Utilize ground-mounted freestanding signs instead of pole mounted signs.

Turning to the Sign Code itself, we look to its purpose statement, as is set forth in §§ 3.500.(a) and (b).

(a) The purpose of this subtitle is to regulate all exterior signs and interior window signs placed for exterior observance so as to protect property values, to protect the character of the various communities in the county, to protect health, safety and morals, and to promote the public welfare.

(b) The principal features are the restriction of advertising to the business or use of the premises on which the sign is located and the restriction of the total sign area permissible per site. Any sign placed on land or on a building for the purpose of identification or for advertising a use conducted thereon or therein shall be deemed accessory and incidental to such land, building or use. It is intended that the display of signs will be appropriate to the land, building or use to which they are appurtenant and be adequate, but not excessive, for the intended purpose of identification or advertisement. With respect to signs advertising business uses, it is specifically intended, among other things, to avoid excessive clutter among displays in their demand for public attention.



Thus, by its plain language, the primary purpose of the Sign Code is aesthetics—the location, size and appearance of signs and their effect on property values and the visual character of communities. The Code also aims to protect property values, the character of the various communities in the county, and the public welfare. Because the Manual's recommendations for signs are intended to be used to implement these purposes, the Hearing Examiner must apply and weigh its recommendations when evaluating the specific Sign Code criteria for granting sign variances.

Of consequence to this case, then, as further discussed below, are the third and fifth variance criteria, which require, respectively, an evaluation of aesthetics considerations and whether the requested variance is the minimum necessary to afford relief without substantial impairment of the Sign Code's intent, purpose and integrity. Thus, when evaluating a sign variance petition, the relevant Manual's signage are considered under §§ 3.513.(b)(3) and (b)(5).

### **III. 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 a pipestem lot and the main building is set back about 200 feet from the

entrance on Baltimore National Pike. It located on a highway that has a dependency on nonlocal use. The Hearing Examiner routinely travels along this segment of US 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.**

Existing signage on neighboring properties and the change in grade interfere with the visibility 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 and design of the proposed sign. According to the October 9, 2015 internal memorandum from Kristin O'Connor Mazerski, Planning Supervisor, DPZ/DCCP to Ed Marquardt, Jr., a DILP code enforcement officer, the proposed sign (Option A, as originally submitted) is a "pole-mounted" design. DPZ recommended reducing the sign to the proposed 6' upper portion (with the car, the Car Wash and Tough-less wording) and creating a ground-mounted freestanding sign to provide more consistency with the Route 40 Manual.

Mindful of this recommendation, Petitioner revised the proposed sign (Option D) as a freestanding pylon sign, with less square footage (through the elimination of the fourth, bottom

existing built environment, including vicinal signage and structures. In these cases, as with the instant petition, the Hearing Examiner must weigh the business's need for identification against the Route 40 Manual recommendations and requirements. Hence the pivotal importance of § 3.513.(b)(5), which instructs the Hearing Examiner to closely evaluate the proposed sign to ensure it is the minimal variation necessary, said variation encompassing both the requirements of the Sign Code and the Route 40 Manual recommendations.

In this case, the Hearing Examiner rejected Options A, B and C as aesthetically incompatible with the Route 40 Manual's recommendations and more than the minimal necessary to afford relief. Option D is an acceptable solution. The proposed sign is higher than DPZ desired and not ground-mounted, but the sign is also smaller in square footage than originally proposed, as DPZ recommended. DPZ has also previously recognized pylon signs as consistent with the Route 40 Manual.

The Hearing Examiner concludes there is no opportunity for adequate identification signage in the main, rear portion of the Property or on the carwash building that would be visible to motorists traveling along the Pike. The proposed sign at the proposed location is the solution. Owing to the change in elevation and the presence of vehicles parked in the front of the First National Bank building, the proposed height and signage area is reasonable, and hence the minimum necessary, 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.**

"splash/water feature"). Mr. Lunkenheimer explained the redesign was based in part on the acceptability of the then-proposed First National Bank pylon sign by DPZ in BOA Case No. 14-005S. 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.**

As explained above, the evaluation of the aesthetic considerations of a requested sign variance under § 3.513.(b)(3) is intertwined with the evaluation of the requested variance as the minimum necessary to afford relief. In the Hearing Examiner's view, the evaluation of a sign variance petition subject to the Route 40 Manual's recommendations necessarily recognizes that any such petition is historically and geographically contextual. That is, a proposed sign at a specific location must contend with the many older, potentially non-conforming signs and structures erected when Baltimore National Pike was a key commercial corridor and the primary east-west federal highway. The existing Dolly's Car Wash sign, a non-conforming sign, is emblematic of this "Route 66" era.

The Route 40 Manual represents the future of the three commercial areas subject to the Route 40 Manual. While redevelopment of these areas proceeds in accordance with the Manual, existing commercial uses, like Dolly's Car Wash, still operate. When such a business seeks to update its signage, the new signage commonly requires a variance because of the

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 **19<sup>th</sup> day of November 2015**, 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 freestanding, double-face commercial identification sign 12 feet from the US 40 (Baltimore National Pike) right-of-way, for a commercial use in a B-2 (Business: General) Zoning District, is **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the Revised Petition and Revised Sign introduced as Exhibit C and not to any other activities, uses, structures, or additions on the Property.
  - The proposed double face, freestanding sign shall be located 12 feet from the ROW.
  - The sign shall be mounted on an 11'3" high, 6-wide, blue pylon.
  - The total height of the proposed sign shall be 17'3".
  - The top section shall be a LED lit cabinet sign designed in the image of a BMW car with the following dimensions: H-2'3" x W-3'10.4". It is 8" thick.
  - The second, middle section shall be an LED cabinet style sign forming the word CARWASH with the following dimensions: H-1'4" + W-6'0". It is 12" thick.
  - The third, bottom section shall be a 16mm Visionpro digital display sign forming the word TOUCH-LESS with the following dimensions: H-2'2" + W-5'3". It is 2'8" thick.
  - The total proposed signage area shall be 28.2sf.
2. The digital display sign image shall be changed only once every 24 hours.
3. 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.