

IN THE MATTER OF	:	BEFORE THE
<b>MANGIONE ENTERPRISES OF TURF VALLEY</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 13-008S

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**DECISION AND ORDER**

On January 27, 2014, 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 Mangione Enterprises of Turf Valley for a Sign Code variance to erect four 1.0' (H) x 8' (W) community identification signs 28 feet above the finished grade on the 60-foot high Turf Valley Gateway entrance tower in a PGCC (Planned Golf Course Community) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

Petitioner certified to compliance with the notice of advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Louis Mangione testified on behalf of the Petitioner. Ron Luzon, Charles Hill, and Phil Philips testified in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. lettering depicting the words "TURF VALLEY" on the entrance tower
2. photograph of vegetation along Marriottsville Road
3. distances to Marriottsville and Resort Roads from proposed tower sign location
4. Planning Board Technical Staff Report (TSR) for proposed addition of an entrance monument
5. landscape plan depicting location of entrance monument
6. Turf Valley master plan

**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 about east of Marriottsville and south of Resort Road. It is referenced as Tax Map 16, Grid 16, Parcel 50. The sign address is 2705 Marriottsville Road.

2. Property Description. The 15.68-acre Property is the part of the Turf Valley planned golf course community. In 2013, the Planning Board approved a 60-foot entrance monument tower adjacent to the Marriottsville Road intersection with Resort Road for the Turf Valley Resort. This monument tower is currently under construction.

3. Vicinal Properties. The area to the south will be developed as the Turf Valley Professional Buildings. To the east is an environmental open space parcel. According to Petitioner Exhibit 4, the Planning Board technical staff report (TSR) for the 60-foot entrance monument, no existing dwelling units adjoin the monument.

4. Motorists' Views. Motorists traveling north on Marriottsville Road are unable to view a complying sign owing to existing vegetation, as evidenced by Petitioner's Exhibit 2.

5. Speed Limit. The speed limit on Marriottsville Road is 45 MPH.

6. The Sign Variance Requests. Petitioner is requesting four variances to erect four 1.0' (H) x 8.0' (W) community identification signs 28 feet above the finished grade on the 60-foot high Turf Valley Gateway entrance tower. Each sign is identical, features the words "TURF

VALLEY” and all would be located 28 feet from finished grade instead of the six-foot height imposed by Section 3.502.(e), as explained in the TSR.<sup>1</sup>

7. Louis Mangione testified that Turf Valley comprises some 800 acres and includes several residential areas, two golf courses, a pro shop, clubhouse, hotel, town square, grocery store, restaurants and various services. Professional offices and other uses have also been approved for development. The practical difficulty of locating the identification signs at six feet includes obstructing vegetation along Marriotsville Road, as depicted on Petitioner Exhibit 2 (northbound Marriotsville Road).

8. Ron Luzon testified in opposition to the requested variance, contending the Tower itself will be lit and people will look at the signs while driving along Marriotsville Road. He believes the proposed wording is overkill and will distract motorists as they get closer to the tower.

#### 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, the Hearing Examiner concludes as follows:

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<sup>1</sup> Section 3.502(e)(1) permits permanent identification signs setting forth the names of religious facilities, communities, subdivisions, apartments, schools, public/quasi-public institutions and neighborhoods, and are exempt from the setback requirements established in subsection 3.501(c)(2)c. Such signs shall not exceed 32 square feet in area or six feet in height.

Mr. Oh explained that while one of the petition documents gives the requested height as 26.6” feet, the petition itself requests a 28-foot height.

**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 proposed signs would be located on an existing structure set back about 100 feet from Marriotsville Road and about 39 feet from Resort Road. These conditions lead to practical difficulties and unnecessary hardships in complying strictly with the provisions of this subtitle. The petition complies 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 vegetation along Marriotsville Road blocks the visibility of a complying sign, and it appears that proposed landscaping depicted in Exhibit 5 would have the same effect, resulting in practical difficulties and unnecessary hardship in complying strictly with eh provisions of this subtitle, in compliance with Section 3.513(b)(2).

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

There are no historical or characteristics to be considered. Mr. Mangione testified that the location of the signs on the monument tower is preferred, aesthetically. The petition complies with 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 of any adverse effect on the appropriate use of development of adjacent properties, nor of any resultant 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 signs are small in size (1.0' (H) x 8.0' (W) and feature only the words "TURF VALLEY." At 28 feet above finished grade on a 60-foot high entrance tower, the size is such that anything smaller would be difficult to read, in the Hearing Examiner's view. The petition complies 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 signs would be located on monument entrance tower now under construction. Admittedly, Petitioner sought and gained approval to erect the tower at its current location. This condition, however, is not a self-created hardship warranting denial, as the tower's height and location complies with what the Planning Board approved. Exhibit 4. Self-created hardships under this standard mean those arising through a property owner's actions, such as construction, that do not comply with all of the setback requirements of a zoning ordinance. Ad + Soil, Inc. v. County Com'rs of Queen Anne's County, 307 Md. 307, 316, 513 A.2d 893, 898 (1986).

**ORDER**

Based upon the foregoing, it is this **20<sup>th</sup> day of February 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

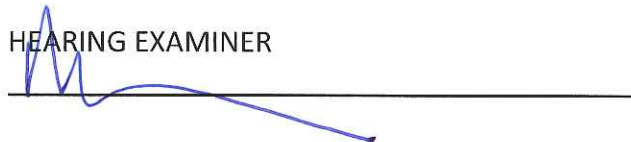
That the petition of Mangione Enterprises of Turf Valley for a Sign Code variance to erect four 1.0' (H) x 8' (W) community identification signs 28 feet above the finished grade on the 60-foot high Turf Valley Gateway entrance tower in a PGCC (Planned Golf Course Community) Zoning District, **is GRANTED:**

**Provided, however, that:**

1. 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.