

IN THE MATTER OF	:	BEFORE THE
NORRIS-BMP, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 13-009S

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DECISION AND ORDER

On September 15, 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 Norris-BMP, LLC for a variance to erect a three-faced, 18'11", freestanding pole identification sign with a combined height and width of 9'0"x 7'6" and a combined sign face area of 67.5sf, proposed to be located 30 feet from the US 40 right-of-way (ROW), for a commercial use 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").¹

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. Jennifer R. Busse, Esquire, represented the Petitioner. Andrew Franklin and Robert Vogel testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

¹ The height, area and location information is derived from the technical staff report (TSR), which factors in an area above the primary sign face.

1. Photograph, view of motorists traveling west on US 40
2. Photo-shopped proposed sign at proposed location
3. Photograph with conforming sign depicted at required location
4. Travel distance from first entrance to shopping center to gain view of conforming sign

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 in the northwest corner of the intersection of westbound US 40 and Normandy Center Drive, which lies in the 2nd Election District in Ellicott City. It is referenced as Tax Map 18, Parcel 158, Lot 276 and is known as 8528 and 8504 Baltimore National Pike (US 40) (the "Property").

2. Property Description. The 4.14-acre Property is generally rectangular, except along the westerly lot line. The Property was once the site of a Miller Brothers automotive dealership and the current dealership sells and services automobiles. The two-story salesroom and main commercial structure is located in the mid-to rear section of the US 40 property line. To its south is what is called out as a one-story sales trailer. This trailer sits much closer to the US 40 property line than the main building. The vehicle display area occupies most of the area between the main structure and US 40. Because there is no setback from Normandy Center Drive, a private road, vehicles are displayed close to Normandy Center Drive lot line (the northeasterly lot line).

3. Vicinal Properties. To the Property's northwest is a small strip mall. To its east, across Normandy Center Drive, is the Normandy Shopping Center. To the south and southeast,

across US 40, are a gasoline service station and a small commercial strip. To the west, across a heavily wooded lot, is another small commercial structure. There are many automotive dealerships along this portion of US 40.

4. Sign Variance History. In Board of Appeals Case No. 07-006S (decided January 18 2008), the Hearing Examiner granted petitioner Miller Brothers Properties a variance to erect a 23.6-foot high by 8.54-foot wide, 145.44 square-foot, freestanding, internally illuminated, pole identification sign with a 5.5-foot right-of-way setback rather than the 145.44-square foot setback required in relation to the total sign area and the 27-foot setback required in relation to the sign height. A new sign was needed because state law requires automotive dealerships to display identification signs for the makes of cars sold. The variance was granted based on findings that the Property was located along a highway with a dependency on nonlocal use and that existing buildings, signs, several wooded areas, and the steep grade of US 40 impeded motorists' view of a complying sign.

5. The Technical Staff Report and DPZ comments. A Department of Inspections, Licenses and Permits (DILP) technical staff report (TSR) evaluates the proposed sign variance petition against the criteria for granting a variance, but does not make a recommendation. The July 21, 2014 TSR in this case found no physical conditions or exceptional topography and made no comment about the Property's location on a highway with a dependency on nonlocal use. It further concluded there were no obstructions of any type that would affect the visibility of the sign at a complying location.

Attached to the TSR is a December 2, 2013, internal memorandum from DPZ staffer Brad Killiam to Bob Frances, DILP director. Mr. Killiam states he has reviewed the sign variance petition and offers the following comments.

1. The Route 40 Design Manual (Manual) recommends utilizing ground-mounted freestanding signs rather than pole-mounted signs.
2. The Manual recommends that, where practical, wall-mounted signs be used instead of freestanding signs and that such signs be incorporated into the design of the building.

Based on this guidance language, Mr. Killiam reasons the community would be best served if the Property and the cluster of (neighboring) B-2 properties adjacent to the "emerging" Traditional Neighborhood Center (TNC)—the Normandy Shopping Center—were developed in a consistent fashion. In his opinion, the variance petition should not be approved because the proposed combination of size and setback will not comport with the Manual's goal of reducing visual clutter along US 40. He therefore encourages the applicant to select a design standard adhering to the two design comments.

6. The Requested Sign Variance. Petitioner is seeking a variance to erect a three-faced, 18'11", freestanding pole identification sign with a combined height and width of 9'0" x 7'6" and a combined sign face area of 67.5sf to be located 30 feet from the US 40 ROW. The sign would be located in the southeast corner of the Property near the intersection of US 40 and Normandy Center Drive. The top of the proposed sign would identify the commercial use through an oval Form with the letter "N," and the word "NORRIS" in large letters below. Below this logo, an identification sign with two illuminated LED message panels is proposed. The sign pole would feature a decorative truss on either side of a steel square tube.

Section 3.501.(c)(2).c of the Sign Code limits the height of a sign in a commercial district to one foot for each two feet the sign is set back from the right-of-way, not to exceed 26 feet from the grade level to the top of the sign. These signs are 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. Because the proposed freestanding pole identification sign would be located 30 feet from the US 40 ROW, this section limits the sign to a height of 15 feet and a total sign area of 37.5 sf. Petitioner is therefore requesting a variance for an 18'11" high sign with a total sign area of 67.5sf.

Section 3.508.(b) prohibits blinking or flashing signs. Per internal policy, DILP will approve illuminated LED message panel signs if the property owner submits a signed agreement that the LED sign will change text only once every 24 hours. Petitioner has signed a statement of compliance to this effect.

7. Robert Vogel testified to being the project engineer. He explained the main building sits further back from US 40 than area dealerships. The speed limit is about 40 or 45 MPH. Traveling west on US 40, the Property is downhill from a crest to the east of the Normandy Shopping Center. Here US 40 drops in elevation to a stream valley running near or through the wooded portion of the Property and under US 40. Just west of the crest is the Normandy Shopping Center sign, which screens or blocks the view of the Property. The consultants looked at the old location, but determined that a sign further back would be more visible. He further

testified that owing to the main building's setback, the wall-mounted signage is not visible from US 40.

8. Petitioner Exhibit 1 shows the difficulty of locating the Property while traveling west on US 40 owing to the congestion caused by utility poles and the Normandy Shopping Center Drive. Petitioner Exhibit 2 photoshops the proposed sign at the proposed location. As Mr. Vogel explained, motorists would have difficulty seeing a lower sign. Petitioner Exhibit 3 depicts the relative location of a conforming sign, the view of which would be blocked by the shopping center sign. He had to move 240 feet east of the shopping center sign to view the location of a conforming sign. Petitioner Exhibit 4. He also referenced the large, blinking cautionary red-light alert located just below the crest of the hill and just east of the shopping center property line.

CONCLUSIONS OF LAW

I. Controlling Sign Code Provisions

According to the petition, Petitioner is seeking variance relief from Sign Code § 3.513(b). 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. As noted in the TSR and Finding No. 6, 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.

II. US 40 Design Manual Signage Recommendations and the Sign Code²

The US 40 Design Manual guidelines are intended 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 are focused on three commercial areas, one of which is the Normandy commercial area, which, exclusive of the Normandy Shopping Center now subject to the TNC district overlay, includes the area between Governors Run and US 40. The Property lies within the Normandy commercial area.

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 district properties.

- Wall-Mounted Signs: Where practical, integrate building or wall-mounted signs into the building designs instead of using freestanding signs.
- Multiple Business Sign Consolidation: Consolidate multiple business signs onto one ground mounted sign located where they have a shared access point.
- Design Coordination between Buildings and Signs: Reference the materials, colors and

² In BA 10-002S, decided February 28, 2011, the Hearing Examiner addressed the Route 1 Manual's signage recommendations in the context of the Sign Code's sign variance standards. The evaluation of the requested variance developed in that case has become a benchmark for assessing all sign variance petitions within the US 1 and US 40 Manual corridors.

design elements from the adjacent building architecture in the design of the 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 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. We turn now to the criteria for granting a sign variance, where we consider the Manual's signage recommendations with respect to the proposed sign.

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 grade along westbound US 40 is exceptional topography. The Property is located along a highway with 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. Owing to this topography and travel speeds, a blinking signal alerts motorists to a potential red light at Normandy Center Drive. The main building is set back farther from US 40 than most other buildings in the area. 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.

An existing sign, telephone poles 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 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 disharmony between the Manual's signage recommendations and the design of the proposed sign. Petitioner is to be credited with a general design echoing the façade and signage on the main building. Concerning DPZ's recommendation that the property be developed in a consistent fashion, the evidence of record is devoid of any information that the cluster of B-2 properties are being currently redeveloped such that a consistent sign theme could be considered. With respect to the adjacent, "emergent" TNC, the Hearing Examiner takes notice that it may be years before any construction begins, owing to protracted litigation. The Hearing Examiner concludes there are no aesthetic, historical or architectural characteristics to be considered. 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.

The record is generally devoid of any evidence that the variance would adversely affect the use and development of adjacent properties, because the redevelopment of area properties is too distant in time to factor in. This conclusion is also based on the absence of any information in the DPZ recommendation that any future TNC uses in proximity to the proposed sign location would be adversely affected.

This matter notwithstanding, the Hearing Examiner has concerns about the proposed illumination, including an LED electronic message center. An attachment to the petition states the sign would be equipped with automatic dimming capability that adjusts the luminance of the displayed information based on ambient light conditions so as not to exceed 5,000 NTS (candelas per square meter) during daylight hours and a maximum illumination of 500 NTS between dusk and dawn. It is unclear to the Hearing Examiner why the sign would be illuminated at night during non-business hours. Had the petition been granted, the Hearing Examiner would have conditioned approval on the entirety of the sign being illuminated during business hours only, which would bring the requested variance into full compliance with § 3.513.(b)(3).³

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.

In the Hearing Examiner's view, the key issue in this case is whether the requested variance is the minimum necessary to afford relief. Based on the evidence of record, the Hearing Examiner concludes the Petitioner has not sustained its burden of production and persuasion that the physical sign itself is the minimum necessary.

This section mandates that a sign variance shall be issued only upon a determination that the variance is the "minimum necessary to afford relief," which the Hearing Examiner reads as meaning relief with a minimum deviation from the requirements of the Sign Code and

³ It is the Hearing Examiner's consistent policy to approve sign variances for illuminated signs subject to the condition that the sign be illuminated during business hours only. See the October 7, 2014 Reconsideration Order

from the recommendations of the US 40 Design Manual. By this language, the Hearing Examiner need grant a petitioner approval to erect a sign only to the height, location and physical design she believes will provide minimum relief and preserve the integrity of the Sign Code and the Manual.

In this case, Mr. Vogel testified to the need for requested relief in relation to the first two variance tests, physical conditions and obstructions causing practical difficulty and unnecessary hardship. Mr. Franklin's testimony reveals additional reasons for the sign: the business is a new venture, potential customers are unsure if the business is a new or pre-owned automotive dealership, and the business needs to compete with area dealerships.

In the Hearing Examiner's view, these additional reasons explain the proposed electronic message panel, which comprises the main portion of the sign. Its location, height and design are intended less to identify or advertise the business, as the Sign Code requires, than to satisfy the Petitioner's desire to compete with area businesses and for the visual attention and impulses of motorists traveling along US 40.

Given that the variance requested is not the minimum necessary, the Hearing Examiner believes there are alternatives that could limit the extent of the variance, if not obviate the need for one, without significant deviation from the Manual. But as proposed, the sign will not protect the visual character of the US 40 community; it will instead contribute to the visual clutter the Sign Code and Route 1 Manual sign recommendations are intended to prevent. The

proposed sign does not accord 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 14th day of October 2014, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Norris-BMP, LLC for a variance to erect a three-faced, 18'11", freestanding pole identification sign with a combined height and width of 9'0"x 7'6" and a combined sign face area of 67.5sf, proposed to be located 30 feet from the US right-of-way, for a commercial use in a B-2 (Business: General) Zoning District is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 10/14/14

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.