

IN THE MATTER OF : BEFORE THE
Howard Community College : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. BA19-004S

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DECISION AND ORDER

On November 12, 2020, 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 Howard Community College (“HCC”), Petitioner, filed under Section 3.513(b), Subtitle 5 of Title 3, Signs, of the Howard County Code, for a variance to install one double-sided freestanding monument style identification sign with an electronic message board.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. The following persons testified in support of the Petition: Lynn C. Coleman, Vice President of Administration and Finance, HCC; Bob R. Marietta, Environmental Health & Safety Supervisor, HCC; Charles W. Nightingale, Executive Director of Capital Projects and Facilities, HCC; Nick Barrick, Design & Const., HCC; Kristin Russell, Director, Office of Planning and Community Affairs, Columbia Association; Joan Lancos, Land Use Liaison, Hickory Ridge Community Association; Anne Paulus, Star Neon Signs, Agent for HCC; Rob Banks, Stewart Signs. Others attended the online hearing but did not testify. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

A. Property. The subject property, 10901 Little Patuxent Pkwy, Columbia, MD 21044, is located in Election District 15 (Tax Map 0035, Lot 0047, Parcel B). The Property is owned by the Board of Trustees of HCC and is used by HCC. The Property is comprised of 97.46 acres and is in the POR Zoning District. The Property is not located in the designated "Downtown Columbia" area.

B. Vicinal Properties. To the north is Little Harpers, LLC, located in the NT zoning district and used for office and commercial. To the west is Howard County Hospital located in the NT zoning district and used for commercial and medical office buildings. To the south are single family homes located in the NT zoning district. To the east is land used by Howard County, Maryland and located in the NT zoning district.

C. Proposal and Variances Requested. The Petitioner originally submitted its Sign Variance Petition on or around November 11, 2019, for Sign Permit Applications #S19000215 and #S19000330. The original petition was revised on or around March 16, 2020. On October 23, 2020, HCC withdrew Sign Permit Application #S19000330 and the Sign Permit Application and Petition were further revised on October 28, 2020 to include only a request for a variance for Sign Permit Application #S19000215 (herein, "Petition" shall refer to this revised application and petition).

The Petition requests a variance of the Howard County Sign Code to install one double-sided freestanding monument style identification sign with an electronic message board. This sign will consist of an upper full color LED digital electronic message board and a lower ID Cabinet. ("Howard Community College" with logo.) This doubled-sided sign is mounted on top of a five foot one and a quarter inch "Cornerstone" base with a white stucco finish.

The manufacturer's description for the sign is *Modular DayStar-LED (upper) Cabinet with (lower) ID Cabinet, Freestanding LED Sign*. The digital sign message will change once every 24 hours. Each sign cabinet would have a width of 10 ft./6 in. and a height of 9 ft./10.75 in. with a total of 107.35 square feet of signage. (Only one side of the double-sided identification sign is counted for the total amount of signage.) The bottom of the combined sign cabinets would be 5 ft./1.25 in. from finished grade. The total height from grade to the top of the sign cabinet would be 15 ft./0 in.

Due to the proposed location of the proposed sign and the fact that it will be illuminated with changing messages, the proposed sign per the Sign Permit Application would be in violation of, and/or must comply with, **Section 3.501(c)(2)c** and **Section 3.508** of the Howard County Sign Code:

- **Section 3.501(c)(2)c:**

Section 3.501 -- Sign standards by district

...

(c) *Commercial Districts, Commercial Areas, all Areas within Downtown Columbia, Industrial Districts, and Industrial Areas*

...

(2) *Location*

...

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. . .

Based on Photo Attachment (C) in the October 29, 2020 Memorandum from the Department of Inspections, Licenses and Permits (which is a drawing dated 10/27/20 by KCI Technologies attached to the Petition and titled “HCC ENTRY SIGN MAIN ENTRANCE”), the proposed sign cabinet front edge would be located about 2 ft./ 6 in. from the closest edge of the 10 ft. wide downtown Columbia bike/walkway. This is approximately 20 ft./ 4 in. from the Property line. Little Patuxent Parkway runs parallel along the front of the Property line. At this proposed location, the sign code would only allow for a total sign height of 10 ft./ 4 in. and a total of 20.33 sq. ft. of signage, yet the proposed sign at this location would be 15 ft./0 in. above finished grade and have 107.35 sq. ft. of total signage area (only one side of the double-sided identification sign is counted for the total amount of signage allowed per permit/code). Thus, the sign is 4 ft./8 in. over the allowable sign height permitted and would contain 87.02 sq. ft. of signage more than the code allows. Accordingly, a variance under Section 3.513, to allow the proposed sign at the proposed location in Photo Attachment (C) to exceed both the **height** and **area** limitations, is needed for the sign permit to be approved.

- **Section 3.508. – Illumination**

- (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.
- (b) *Blinking or Flashing.* Except as provided in section 3.502A of this subtitle, a sign shall not have blinking, flashing or fluttering lights or other illuminating devices which have a changing light operated as to create an appearance or illusion of writing or printing. A variance may be granted by the Board of Appeals for movement showing the date, the time and the temperature exclusively. Nothing contained in this section shall, however, be construed as preventing the use of lights or decorations related to religious and patriotic festivities. Beacon lights or search lights shall not be permitted as a sign for advertising purposes.

- (c) *Strobe and Incandescent Lamps.* No exposed reflective type bulbs and no strobe lights or incandescent lamps which exceed 15 watts shall be used on the exterior surface of any sign so as to expose the face of the bulb, light or lamp to any public street or adjacent property.

The proposed sign will include certain illumination and messaging features which are not permitted without a variance. Thus, a variance to allow the proposed sign under Section 3.513 is needed for the sign permit to be issued.

D. Documents. No documents were submitted at the hearing. Thus, the only documents in the record are those that were filed with the Petition.

E. Testimony.

1. **Lynn Coleman.** Ms. Coleman testified that the amended submission is the result of questions that arose regarding the initial submission. She stated that HCC desires a sign to notify those coming onto campus and those driving by of certain information such as HCC events, class registrations, job fairs, etc. In the past, HCC has used vinyl banners hung in the front of the campus. She stated that HCC needs to prioritize and install and remove the banners constantly. So, HCC is looking for a more professional and efficient way to provide information to HCC's students, staff, faculty, visitors and the public passing or driving by the HCC campus.
2. **Bob Marietta** testified that this effort is the culmination of a 10 year endeavor that the college has had to establish a communications method at the front entrance that will "serve both our students and the larger community to let people know what's going on on campus, containing both current events, activities at the college, as well as emergency notifications." Mr. Marietta stated that HCC wants the ability to allow the sign to broadcast emergency notifications: "The public relations department has

people designated as a crisis communications manager and they're on duty 24/7.

And if an emergency arose, they would be the first ones notified and they would be able to activate the message on the sign board and have it dissolve and show the whatever the emergency message was, it was a tornado alert to take shelter, for example. They would post that message.” The purpose would be to provide information for the students, staff, faculty, visitors who are coming onto the campus.

Mr. Marietta explained that while the general messages can only be changed one time every 24 hours, HCC wants the emergency messages to be able to supersede the general messages. Those emergency messages would stay on the sign until the emergency has subsided and the sign would go back to the standard message protocol.

3. **Anne Paulus.** Ms. Paulus testified that “the college is seeking to have basically an illuminated, changeable message side, and there's nothing there's nothing more specific that they want. There are many businesses that are already using this type of signage throughout the county, and they just want to be allowed to have the same opportunity.”
4. **Kristen Russell.** Ms. Russell testified that when Columbia Association saw the initial plans, they had some concerns about the sign location and how close it was to Little Patuxent Parkway. “We thought it had a negative impact on the street scape there. It was, in our opinion, quite overwhelming and really just didn't advance the scenic parkway look that Little Patuxent Parkway has and that we wish to maintain. So we reached out to the college and they met with us and were open to our

suggestions. . . . We find the new location of the sign less intrusive and we're supportive of the revised location.”

5. **Joan Lancos.** Ms. Lancos stated that “we think that this electronic sign would be an addition, a positive improvement to the main entrance of the campus. We very much appreciate the comments and the work done by the Columbia Association because the original signs as proposed were really were a visual impairment to the area. . . . And I think that its new location makes more sense.”

CONCLUSIONS OF LAW

The standards for sign variances are contained in Title 3, Signs, Section 3.513, Variances, of the Howard County Code. That section states:

(b) The Board of Appeals may grant variances outside of Downtown Columbia from the provision of this subtitle where the following determinations are made:

(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; **or**

(2) 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; **or**

(3) That there are historical, architectural or aesthetic characteristics which shall be considered; **and**

(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; **and**

(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; **and**

(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.

Under Section 3.513(b), at least one of the first three criteria and criteria 4, 5 and 6 must be met. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variances comply with Section 3.513 Title 3, Signs, of the Howard County Code and therefore may be granted.

1. Section 3.513 (b)(1). The first criterion for a variance is that there 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. Section 3.513 (b)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the code. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The desired sign location would be in the area of the main front entrance of Campus Drive. This area has limited locations for any proposed sign location because it consists of a narrow section of land approximately 36ft. wide. This narrow section of/and runs from the edge of the Little Patuxent Parkway roadway curb to a decorative metal fence that runs along a 10 ft. wide asphalt pedestrian walkway. At the steepest point along the outside edge of this walkway, there is a 6ft. steep drop-off. The walkway and fence are held up by two stone retaining walls. The steepest part of this hill runs parallel with the original proposed two sign locations on either side of the (HCC) bus stop. Beyond these retaining walls, on either side, there continues a hill with a steep grade that runs down to the (HCC) front parking lot.

Thus, I find that there are unique physical conditions or exceptional topographical conditions peculiar to the Property, including the location of existing structures, irregularity, narrowness or shallowness of the lot and irregularity of the road right-of-way, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

This criterion is met.

2. Section 3.513 (b)(2). The second criterion is that there are obstructions, such as excessive grade, electrical sub-station structure, deciduous trees, utility poles and lines 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.

On the south side of the main entrance to HCC, the Little Patuxent Parkway median and right side of its roadway becomes a more heavily wooded and overgrown natural area. These two natural wooded areas consist of overgrown bushes and mature deciduous trees. There does not

appear to be another clearly visible sign site below the south side of the main HCC entrance.

Thus, I find that that there are obstructions, such as excessive grade, electrical sub-station structure, deciduous trees, utility poles and lines on abutting property or properties which seriously interfere with the visibility of the proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

This criterion is met.

3. Section 3.513 (b)(3). The third criterion is that there are historical, architectural or aesthetic characteristics which shall be considered.

Howard County Community College and the rest of Columbia has been changing its original architectural design and aesthetic characteristics. In the last few years, one of the changes that has been made is in the style and type of materials used for signs in Columbia in general. This type of sign is more mainstream and can fit in with the surroundings.

Further, the Columbia Association and the Hickory Ridge Community Association provided valuable input regarding the aesthetics of the proposed sign.

This criterion is met.

4. Section 3.513 (b)(4). Fourth, the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

The proposed digital sign will not create a dangerous traffic condition at the proposed location as long as the double-sided Modular DayStar-LED message board meets the requirements of Sec. 3.508 of the Howard County Sign Code: The permit, if issued, would require that the sign not change more than once in any 24-hour period so as not to distract drivers passing by.

One of the main intended uses for the proposed LED digital sign would be to display information to advise the general public of any current emergency, traffic and/or weather-related

events for both the HCC student population and travelers along Little Patuxent Parkway, a main thoroughfare in Columbia.

Thus, I find that the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

This criterion is met.

5. Section 3.513 (b)(5). Fifth, 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.

A sign any smaller or farther from the roadway would not be able to be seen as clearly by passersby and those entering the HCC campus. Further, a sign without the proposed illumination and messaging features would not fulfill the needs of HCC to provide information to HCC's students, staff, faculty, visitors and the public passing or driving by the HCC campus, which is the main purpose of the sign.

Thus, I find that the requested variance is the minimum necessary to afford relief.

This criterion is met.

6. Section 3.513 (b)(6). Sixth, 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 or hardships were not caused by HCC.

This criterion is met.

ORDER

Based upon the foregoing, it is this **2nd day of December 2020**, by the Howard County Board of Appeals Hearing Examiner, ORDERED:

That the request of Howard Community College, Petitioner, filed under Section 3.513 Title 3, Signs, of the Howard County Code, for a variance to install one double-sided freestanding monument style identification sign with an electronic message board, as set forth in the Sign Permit Application and Petition which were revised on October 28, 2020 to include a request for a variance for Sign Permit Application #S19000215 (“Petition”), shall be and hereby is **GRANTED**.

Provided, however, that:

- a. The variance will apply only to the sign as described in the Petition and placed in the location depicted on Photo Attachment (C) in the October 29, 2020 Memorandum from the Department of Inspections, Licenses and Permits.
- b. The sign must comply with Sec. 3.508 of the Howard County Sign Code which will require that the permit, if issued, would require that the daily sign message will not change more than once in any 24-hour period so as not to distract drivers passing by.
- c. Notwithstanding the requirement that the regular daily messages may not change more than once in a 24-hour period, HCC may use the sign to publish bona fide public emergency messages directed to and/or affecting persons driving by or onto campus when the HCC public relations department crisis communications manager (or a comparable person, position or function) is notified of a public emergency. In such a situation, the regular daily

message may be changed to the emergency message when the emergency is determined to exist and the sign should be placed back into its normal 24-hour operation for regular daily messages immediately after the emergency subsides.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Katherine L. Taylor

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.