

IN THE MATTER OF : BEFORE THE  
HUSEYIN OZCAN & : HOWARD COUNTY  
HASAN OZCAN : BOARD OF APPEALS  
 : HEARING EXAMINER  
Petitioner : BA Case No. 13-005S

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**DECISION AND ORDER**

On November 26, 2013 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 Huseyin Ozcan & Hasan Ozcan for retroactive Sign Code variances to maintain a 1'2" (H) x 10' (W), 11.6 S.F wall sign (Sign A) and a 4.0' (H) x 4.0' (W), 16.0 s.f. freestanding sign (Sign B) set back 100 ft. from the Baltimore National Pike right-of-way (ROW) at a residential building used as a beauty parlor and located in an R-20 (Residential: Single Family) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

Petitioners 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. The Petitioners were not represented by counsel. Hasan Ozcan testified on his own behalf. No one appeared to testify in opposition to the petition.

**A Preliminary Matter**

During the proceeding, the Hearing Examiner learned Petitioners had not received the

TSR recommending denial and so informed of Mr. Ozcan of his right to request a continuance, which he declined.

#### 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 US 40 near Centennial Lane. It is referenced as Tax Map 24, Parcel 760 and is also known as 9125 Baltimore National Pike.

2. Property Description. The 0.60-acre Property is improved with a one-story single-family dwelling located about 19 feet from the west property line and 51 feet from the front property line. To the east of the residence is a detached garage. To the rear of this garage is a shed and in-ground pool. A paved driveway near the northeast corner of the Property provides access to the garage. In the Property's front section is a recently established paved parking area with nine striped parking spaces. Access to the Property is provided via a dead-end service road, which is accessible only from the eastbound lane of US 40. The Property is the last lot on this service road. Frederick Road terminates immediately east of the Property.

3. Vicinal Properties. All properties to the east, west and south are zoned R-20. Lot 106 to the west is improved with a single-family detached dwelling. Signage on the building indicates a hair salon operating on the property. To the east is the strip of land identified as Orchard Lane. Properties to the south are each improved with a single-family detached dwelling. Across Frederick Road, to the northeast, are B-2 (Business: General) zoned properties.

The closest, Parcel 420, is the site of a gasoline service station. Properties across US 40 are zoned B-1 (Business: Limited) and are improved with commercial buildings.

4. Motorists' Views. Motorists traveling east and west on US 40 are unable to view a complying sign owing to the Property's location along a service road.

5. Speed Limit. The speed limit on US 40 is 45 MPH. It is the Hearing Examiner's experience that motorists regularly exceed the limit.

6. The Sign Variance Requests. Sign A: Petitioner is requesting a variance to maintain a 1'2" (H) x 10' (W), 11.6 s.f. wall sign on the residential building. The existing sign is located below an upper story window and features the words "Salon O'ZHEA." Sign B: Petitioner is also requesting a variance to maintain and a 4.0' (H) x 4.0' (W), 16.0 s.f. freestanding sign set back 100 ft. from the Baltimore National Pike right-of-way (ROW). This sign contains the words "Salon O'ZHEA 410.750.8070 WELCOME."

7. The Department of Inspections, Licenses & Permits (DILP) technical staff report (TSR) notes the Hearing Examiner granted the Petitioners a conditional use for the Property in Board of Appeals Case No. 12-023C on February 14, 2013 for a home-based beauty parlor.<sup>1</sup> The signs therefore violate Section 3.501(b)(1) of the Sign Code, which restricts home occupation signs to a maximum of two square feet each per single-family dwelling.<sup>2</sup> Such signs must be

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<sup>1</sup> On December 11, 2013, the Hearing Examiner in Board of Appeals Case No. 13-025C granted a modification of Condition No. 2 of Board of Appeals Case No. 12-023C, authorizing a 200 s.f. addition for an existing ADA compliant bathroom. The October 6, 2013 Zoning Regulations re-characterized "beauty parlors" as "hair salons."

<sup>2</sup> Sec. 3.501. Sign standards by district.

(a) General. The following sign standards by district shall apply to every existing district and to every new zoning district classification hereafter created in Howard County; to commercial or industrial uses permitted as

east six feet from the nearest property line and shall not be over five feet above the ground, whether freestanding or on a building. The TSR included a November 13, 2013 memorandum to DILP Director Bob Francis from Bran Killian, a planner in the Comprehensive and Community Planning Comprehensive Division of the Department of Planning and Zoning. This memorandum concludes the two signs are inconsistent with the goals and recommendations of the Route 40 Design Manual and recommends denial. The memorandum also recommends denial because the Property is adjacent to a federally designated scenic byway.

8. Mr. Hasan Ozcan testified needing the signs because his patrons have trouble finding the service road access to the salon from US 40.

#### 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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conditional uses under section 131 of the zoning regulations unless the Board of Appeals shall expressly provide for stricter conditions for signs or billboards in granting such uses; and to the separate areas of residential, multifamily commercial and industrial uses in multiuse districts such as new town district (outside Downtown Columbia), planned community district and similar districts; and to all areas in Downtown Columbia which the Downtown Columbia Plan specifies as being the urban center of the County and therefore is determined to necessitate unique treatment under this subtitle. The districts are defined by the zoning regulations and official zoning maps. Only signs as described herein and as may be described under section 3.502 "signs permitted in all districts," or section 3.503 "exemptions," shall be permitted in each particular district.

(b) Residential Districts and Residential Areas.

(1) Single-family. Two home occupation signs not exceeding two square feet each in area shall be permitted per single-family dwelling. Such signs shall be set back at least six feet from the nearest property line and shall not be over five feet above the ground, whether freestanding or on a building. Other signs for single-family dwellings shall be subject to the standards set forth in subsection 3.503(g). Illumination shall be in accordance with the restrictions set forth in section 3.508.

**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 sign would be located on a highway that has a dependency on nonlocal use, in accordance with Section 3.513(b)(1). 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.**

The Petitioner presented no evidence of such obstructions, only that his patrons have trouble finding the salon owing to its location along a service road. The petition does not comply with Section 3.513(b)(2).

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

As found above, the Property is adjacent to a federally designated scenic byway, the Historic National Road.<sup>3</sup> The National Road was America's first federally funded highway. It began in 1806 to open trade and communication with the growing frontier in the Ohio River

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Section 3.508 exempts certain signs and does apply to the requested conditional use signs.

<sup>3</sup> Source: Maryland State Highway, Maryland's ByWays.

See <http://www.marylandroads.com/oed/MarylandScenicByways.pdf>. America's Byways® are a collection of routes recognized by the U.S. Secretary of Transportation as the most significant routes throughout the country, based on their scenery, culture, history, archaeology, and recreational opportunities.

Valley and runs, with large gaps, from downtown Baltimore to the Cumberland Gap and beyond. Given the significant historical importance of the Historical National Road, the Hearing Examiner concludes the signs for which Petitioners are seeking variances are incompatible with the national historic treasure and should be denied. The petition does not comply 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.**

The signs are located on residentially zoned property in a long-established community. The principal use of the Property is residential and the Hearing Examiner granted Petitioners a hair salon conditional use in Board of Appeals Case No. 12-023C on February 14, 2013, as modified by Board of Appeals Case No. 13-025C on December 11, 2013. Because the signs are not permitted as a matter of law, the Hearing Examiner necessarily concludes the variances, if granted, will adversely affect the appropriate use of adjacent properties.<sup>4</sup> The petition does not comply with Section 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 signs are not the minimum necessary because they violate Section 3.501(b)(1) of the Sign Code. The petition does not comply 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**

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<sup>4</sup> As the TSR explains, a hair salon on adjacent property has only an 8" (H) x 3" (wide), 2.0 s.f. home-based business freestanding sign erected, which is compliant to the Sign Code.

**restrictions sought to be varied shall not itself constitute a self-created hardship.**

The Petitioners have created the practical difficulties or hardships by erecting two signs in violation of the Howard County Sign Code. The petition does not comply with Section 3.513(b)(6).

**ORDER**

Based upon the foregoing, it is this **12<sup>th</sup> day of December 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition Huseyin Ozcan & Hasan Ozcan for retroactive Sign Code variances to maintain a 1'2" (H) x 10' (W), 11.6 S.F wall sign (Sign A) and a 4.0' (H) x 4.0' (W), 16.0 s.f. freestanding sign (Sign B) set back 100 ft. from the Baltimore National Pike right-of-way (ROW) at a residential building used as a home-occupation hair salon and located in an R-20 (Residential: Single Family) Zoning District, is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

*MICHELE LEFAIVRE*

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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.