

IN THE MATTER OF	:	BEFORE THE
5782 Main Street, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	BA Case No. 18-003S

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DECISION AND ORDER

The Howard County Board of Appeals convened on September 19, 2019 to deliberate on the petition of the 5782 Main Street, LLC (Petitioner) for a variance to erect a new commercial freestanding identification sign in a B-1 (Business: Local) zoning district, filed pursuant to § 3.513(b), Subtitle 5 of Title 3 of the Howard County Code (the Sign Code).

Board members James Howard, Neveen Kurtom, John Lederer, Steven Hunt and William Santos listened to a recording of the June 7, 2019 hearing held before the Howard County Hearing Examiner and reviewed all the evidence submitted at that hearing. Barry M. Sanders, Assistant County Solicitor served as legal advisor to the Board.

The Board members indicated that they had viewed the property as required by the zoning regulations. The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code.

The Petitioner was represented by counsel, William Erskine. The following individuals appeared in support of the petition:

- John O’Connor, 6360 Hanover Road, Elkridge; the owner of the petitioner.
- MJ Wojewodzki, 5858 Montgomery Street, Elkridge; architect who developed the site plan and community resident.

No one appeared in opposition to the petition.

Petitioner introduced in evidence these exhibits:

- Exhibit A, sign variance plan
- Exhibit B, local zoning map
- Exhibit C, local map illustrating sight obstructions
- Exhibit D, elevation of freestanding sign
- Exhibit E, electrical & footer detail of freestanding sign
- Exhibits F, south elevation depicting additional proposed signs
- Exhibit G, east elevation depicting additional proposed signs
- Exhibit H-1, photograph of accessible van parked on main street
- Exhibit H-2, photograph of view obstructed by accessible van, parked vehicles
- Exhibit I, conceptual rendering of redeveloped building and freestanding sign
- Exhibit J, photograph of obstructed view from Levering Avenue intersection
- Exhibit K-1, photograph of freestanding Rathskeller sign – front view
- Exhibit K-2, photograph of freestanding sign – side view

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 in the First Election District at the intersection of Main Street with Railroad Avenue in Elkridge. It is referenced as Tax Map 38, Block

4, Parcel 589 and Parcel 590 and is known as 5782 Main Street (the Property).

2. Property Description. The 0.259-acre Property is the site of 2-story commercial building. The building is set back approximately 9 feet from the street, which is typical for structures in this area. The Property is situated at the intersection of Main Street and Railroad Avenue in Elkridge.

3. Vicinal Properties. Main Street in this area is narrow, approximately 23 feet wide, with traffic allowed in each direction, but lacks lane markings, and with parking allowed on one side. The TSR shows the presence of vehicles parked along Main Street. The immediate neighborhood is a mix of commercial and residential uses. The narrow roadway, parked vehicles, and small setbacks would severely limit the viewing of code compliant signage on the Property.

4. Proposed Sign. The proposed sign is an open oval sculptural casting made of bronze. The face of the sign would include "Rathskeller" and the edges of the sign would include busts of "Father Rhine" and "Daughter Moselle". On either side of the sign, a natural gas lantern would provide illumination.

5. Requested Sign Variance. Petitioner requests variance relief from Section 3.501(c)(2)(c) of the County Code, which governs signs in this district. Section 3.501(c)(2)(c) provides:

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.

A compliant sign at the location proposed, therefore, could be no more than 5.6 feet tall and not exceed 11 square feet of signage. The proposed sign is to be 12 feet 10 inches tall and 25 square feet of signage. A variance is needed to install the sign as proposed.

6. The Technical Staff Report. The Department of Inspections, Licenses, and Permits (DILP) TSR evaluated the proposed sign variance petition against the criteria for granting a variance. The April 11, 2019, TSR made the following findings:

- there are unique conditions peculiar to the property, namely, that the streets in this area were designed before the use of motor vehicles and the streets are narrow and unmarked;
- the buildings along Main Street have very narrow setbacks, have fences, and have mature vegetative growth;
- the proposed sign is of a style and made of materials that is very much in keeping with the historical character of Elkridge;
- the proposed sign will be so dimly illuminated that it will not present a danger to motorists and the illumination will be at a height that would not shine into windows of nearby residences;
- a variance is required and may be granted without substantially impairing the intent,

purposes, and integrity of the Code;

- the applicant did not create the practical difficulties that led to the need for a variance.

The TSR also discussed Section 3.508(a) of the County Code, which provides:

(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.

The proposed sign would include a natural gas lantern on each side of the sign. Because the natural gas lanterns would be dim and set at a level above first floor windows and below second floor windows, there is no adverse effect on surrounding or facing premises and no adverse effect on operators of vehicles. Therefore, a variance from Section 3.508 was not requested and is not required.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts, the Board of Appeals 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 subject property consists of two parcels, Parcel 589 and Parcel 590. Parcel 589 contains a building that is currently undergoing redevelopment for creating commercial office space, a wine bar, and a café. Parcel 590 is proposed to be utilized primarily for parking in support of the commercial uses on Parcel 589. The freestanding sign is, however, proposed to be located

entirely on Parcel 589 which is known as 5782 Main Street. The purpose of the freestanding sign is to identify a proposed wine bar (the "Rathskeller") and attract customers to the subject property. Most of potential customer traffic will pass through the intersection of Levering Avenue and Main Street. At this high-traffic intersection, visibility of the subject property is severely obstructed by adjacent buildings, parked vehicles and vegetation. Due to these off-site conditions, if the freestanding sign is designed and located in strict compliance with the setback and height limitations prescribed by the sign code, it will not be visible at all to customers from this location. Furthermore, if the height of the proposed sign were limited to 5-feet, 6-inches tall in accordance with the sign code, its visibility would be entirely obscured to motor vehicles approaching the site on Main Street due to the presence of vehicles parked along Main Street. This condition is exacerbated by the presence of an accessible van belonging to an adjacent property owner which is routinely parked on Main Street in front of the residence. This accessible van is larger than most passenger vehicles parked along the road.

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.

Main Street in Elkridge is a narrow commercial street because it was originally laid out and designed during the early settlement of Howard County before the advent of modern motor vehicles. Consequently, the buildings along Main Street have very shallow setbacks. Additionally, there is on-street parking on the north side of Main Street. The primary opportunity for people to see the proposed freestanding sign and to recognize that there is a business at the subject property occurs from the vantage point of the Levering Avenue and Main Street

intersection. If the freestanding sign is set back in strict compliance with the sign code, it will not be visible from this intersection or from motor vehicles approaching the subject property on Main Street. The three buildings between 5782 Main Street and Levering Avenue together with the existing off-site vegetation and on-street parking severely obstructs the visibility of the proposed freestanding sign. Similarly, if the proposed freestanding sign is restricted to the height prescribed by the sign code, its visibility will be severely obstructed by vehicles parked on the street, including an accessible van.

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

The historic relevance of the area was considered in the design of this ornamental freestanding sign. The design is influenced by the old-style patina bronze signs with natural gas lanterns in keeping with the historic character of Elkridge.

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 that the requested variance would adversely affect the appropriate use or development of adjacent properties or result in a dangerous traffic condition. The proposed freestanding sign at the proposed location and height will not interfere with traffic safety in any way since the intersections of public roadways are significantly setback from the proposed sign location. Traffic safety is enhanced by the increased height of the proposed freestanding sign because it is above the line of sight of the drivers of motor vehicles.

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 proposed sign is a reasonable height and size and therefore the minimum necessary.

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. The practical difficulties present here are a result of the inherent building conditions on the historic Main Street, existing off-site vegetation and on-street parking of motor vehicles along the north side of Main Street.

ORDER

Based upon the foregoing, it is this 19th Day of September 2019, by the Howard

County Board of Appeals, **ORDERED:**

That the petition of 5782 Main Street, LLC for a variance to erect a new commercial freestanding identification sign in a B-1 (Business: Local) zoning district, is **GRANTED;**

Provided, however, that:

1. The sign variance shall apply only to the sign described in the petition and plan as described in this Decision and Order.
2. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.
3. The Petitioner shall obtain all necessary permits.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS

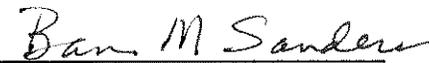

Robin Regner, Secretary

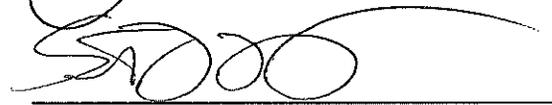
ABSENT
James Howard, Chairperson

PREPARED BY:
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