

IN THE MATTER OF

REVAL KINSLEY WATERLOO LLC

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 13-002S

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DECISION AND ORDER

On September 9, 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 Reval Kinsley Waterloo LLC (Petitioner) for a variance to locate a 15'3"(H) x 10.0' (W), 152'5" square foot, freestanding monument sign 20 feet from the Waterloo Road right-of-way (ROW) and 17'6"from grade to sign top rather than the 152'5" setback required in relation to the total sign area and the 35' setback required by the sign's height, in an NT (New Town) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

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

Andrew Robinson, Esquire, represented Petitioner. 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. Sign Variance Plan, June 2013

2. Plat of Waterloo Crossing
- 3.1-.7 Photographs
4. Aerial Image of Site
5. Proposed 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 on the south side of Waterloo Road and is identified as Tax Map 37, Block 7/8, Parcel/Lot A (f/k/a 548/227) and has a street address of 5904/5910 Waterloo Road.

2. Property Description. The Property is about 198 feet wide along Waterloo Way. At about 350 feet into the lot, the Property widens considerably. It was originally developed as a group home and bus storage facility. There is a dense stand of trees in the northwesterly corner of the Property and a row of evergreen trees and vegetation along the northerly property line.

Motorists traveling north and west along Waterloo Road, beyond the intersection with Old Montgomery Road would be unable to see a conforming sign owing to a curvature in the road. Exhibit 7. Their view of a conforming sign is also impeded by a long row of utility lines and monument signage. Exhibits 1, 2, 3 & 4. Motorists traveling south and east on Waterloo Road would be unable to see a conforming sign owing to the same utility lines and the exiting landscaping in the Property's northwesterly corner. Exhibit 5 & 6.

3. Vicinal Properties. To the Property's north is a commercial office building. To the south

is the Waterloo Elementary School. A fence runs along the common lots lines of the Property and the school. The land behind the Property is densely vegetated. Exhibit 4.

4. Variance Request. Petitioner is requesting a variance to locate a 15'3"(H) x 10.0 (W), 152'5" square foot, freestanding monument sign 20 feet from the Waterloo right-of-way (ROW) and 17'6"from grade to sign top rather than the 152'5" setback required in relation to the total sign area and the 35' setback required by the sign's height, in an NT (New Town). The double-sided sign would have a concrete base and a dark blue internally illuminated sign cabinet with a polycarbonate face and translucent vinyl graphics. The top section of the proposed sign cabinet would contain the words "Waterloo Crossing: a Medical Community" with the address "5890" and "5900" below. The bottom section of the sign cabinet would list tenant names.

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, I conclude 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 Property is located along a section of Waterloo Road where a curvature in the road prevents north and westbound motorists from viewing a conforming sign. The road's curvature leads to practical difficulty and unnecessary hardship in complying strictly with the setback

requirements of the Sign Code, in accordance 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.

Utility poles, existing signage and landscaping seriously interfere with the visibility of a conforming sign from these roads, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

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

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under 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 adverse affects from the existing sign on the use of adjacent properties, nor any evidence of a dangerous traffic condition resulting from the proposed sign. The Hearing Examiner concludes the proposed site of the sign is unlikely to produces adverse effects on the use or development of adjacent properties.

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 use and size. The Hearing Examiner therefore concludes the sign is the minimum necessary to afford relief and can be granted without substantial

impairment of the intent, purpose and integrity of the Sign Code, in accordance 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 practical difficulties are a result of unique road conditions and existing utility poles, signs and landscaping. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this 17th day of September 2013 by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Reval Kinsley Waterloo LLC (Petitioner) for a variance to locate a 15'3"(H) x 10.0' (W), 152'5" square foot, freestanding monument sign 20 feet from the Waterloo Road right-of-way and 17'6"from grade to sign top in an NT (New Town) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The sign shall not be erected, altered, or relocated without a sign permit issued by the Department of Inspections, Licenses, and Permits, in accordance with Section 3.509 of the Howard County Sign Code.

**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 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.