

IN THE MATTER OF

: BEFORE THE

UDR, INC.

: HOWARD COUNTY

Petitioner

: BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 08-003S

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DECISION AND ORDER

On September 2, 2008, 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 UDR, Inc., for a variance to erect a 10-foot high freestanding, double-faced sign 1 foot from the Baltimore National Pike right-of-way ("ROW") in an R-A-15 (Residential: Apartments) 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. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Alan Nathan testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located on the south side of US Route 40 east of Governors Run and has an address of 3008-B Autumn Branch Lane (the "Property"). The Property is located in the 2nd Election District in Ellicott City and is referenced on Tax Map 18, Block 19, as Parcels 312 and 317.

2. The 21.278-acre, irregular shaped Property has about 839 feet of frontage on US 40. It is improved by an apartment complex. The current sign is located 1 foot from the right-of-way on the northeast side of an ingress/egress easement located in the southwesterly section of the US 40 frontage.

3. Vicinal Properties. The properties to the north are zoned R-20 (Residential: Single Family) and are improved with single-family dwellings, an open space parcel (# 376), and unimproved parcels 265 and 59. The western, RA-15 zoned property is improved by the Ellicott Grove apartment complex. To the Property's east, the R-20-zoned Parcel 321 is an open space lot.

4. The Petitioner is requesting a variance under Section 3.501.C of the Sign Code to erect an 8'2" high, 4'10" wide, 39.47 square foot, freestanding, double-faced sign with an overall height of 10 feet, 1 foot from the US 40 right-of-way, rather than the 10-foot setback required in relation to the total sign area and the 20-foot setback required in relation to the sign height.

5. The proposed sign will be internally illuminated. At its top, the sign area will contain the words "ELLCOTT GROVE" in large letters, with the "I" graphically depicted as a tree. Below these words in smaller letters are the words "APARTMENT HOMES." The bottom section will state the phone number "410-465-6500" and the complex's internet address, www.EllicottGrove.com.

6. Allen Nathan testified the sign would be located in the same location as the existing sign.

This sign is black, lower, and more horizontal in shape, which makes it difficult to see.

7. This section of US 40 has a steep grade. Motorists' view of the current sign is blocked by a dense row of deciduous trees, road signs, and a berm that is elevated some 25-30 feet above the road surface of US 40.

8. Petitioner's Exhibit 1 is a photograph depicting the obstructing foliage.

9. According to the Sign Plan, the speed limit on US 40 in this area is 45 miles per hour.

10. It is my frequent experience that motorists often drive 55-60 miles an hour along this section of 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, 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 US 40, a highway with a dependency on nonlocal use. The section of US 40 is also significantly sloped. I therefore conclude these conditions lead 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.

Existing wooded areas 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 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.

The proposed sign will better alert motorists to the Property's ingress and egress and the existing sign does not affect the use or development of adjacent properties. I therefore conclude the sign will be generally separated from vicinal commercial and residential properties and will not result in a dangerous traffic condition.

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 will be placed in the same location as the existing sign. While it will be larger in height, this height will increase its readability. I therefore conclude the proposed sign is the minimum necessary to afford relief and can be granted with 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 Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this **8th day of September 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of UDR, Inc., for a variance under Section 3.501.C of the Sign Code to erect an 8'2" high, 4'10" wide, 39.47 square foot, freestanding, double-faced identification sign with an overall height of 10 feet, 1 foot from the US 40 right-of-way in an R-A-15 (Residential: Apartments) 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.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 9/9/08

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.