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| IN THE MATTER OF | : | BEFORE THE |
| RUTH EISENHAUER/LEGEND MANAGEMENT GROUP | : | HOWARD COUNTY |
| Petitioner | : | BOARD OF APPEALS |
| | : | HEARING EXAMINER |
| | : | BA Case No. 17-005S |

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DECISION AND ORDER

On February 28, 2018, 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 Ruth Eisenhauer/Legend Management Group (Petitioner) for variances to erect a real estate leasing wall sign for the "Elms at Montjoy Apartments" complex in an R-A-15 (Residential Apartments) zoning district, filed pursuant to Section 3.513(b), Subtitle 5 of Title 3 of the Howard County Code (the Sign Code).

Petitioner certified to compliance with the notice and advertising requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Petitioner was not represented by counsel. Ruth Eisenhauer appeared for the hearing 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, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located south of Walking Stick Road

and East of Executive Park Drive, and lies in the 2nd Election District. It is referenced as Tax Map 0030, Block 0012, Parcel 260 and is known as 5010 Walking Stick Road (the Property).¹

2. Property Description. The 1.00±acre Property and three-story apartment building is located on the edge of the 330+ unit, "Montjoy" apartment development and sits about 460 feet from Route 100. The technical staff report (TSR) contains several photographs depicting a 460'± buffer and a 30'± elevation/grade change in the buffer area between the apartment building and Route 100.

3. Vicinal Properties. The apartment building where the proposed sign would be located is the northernmost building of the Montjoy apartment complex. The Property is otherwise surrounded by Open Space Lot 126.

4. The Requested Sign Variances. Based on the TSR, Petitioner is proposing to mount a real estate leasing sign on the center of the third floor, west facing end wall of building #5010 Walking Stick Road, a tenant occupied structure. The proposed sign comprises an aluminum sign cabinet four inches deep, containing two signs, "Elms at Montjoy" and "NOW LEASING." The aluminum sign cabinet has aluminum faces with routed acrylic letters that will be internally illuminated with LED lights. The proposed sign itself is 15 ft./4 in. wide and has a height of 6 ft./4 in. for a signage total of 97.11sf, 65.11sf larger than the Sign Code allows. For this sign, the TSR states Petitioner is requesting variances from two sections of the Sign Code.

¹ The TSR explains Petitioner identified the address of the sign as 4900 Walking Stick Road, which is the location of the leasing office. The proposed sign is going to be located on the third floor, west facing, end wall of building #5010 Walking Stick Road, which is a tenant occupied structure.

Sign Code § 3.502(b)(1). Signs permitted in all districts.

(b) Real Estate Signs.

(1) One temporary real estate sign not exceeding 32 square feet in area and located on the property shall be allowed for each lot, parcel or tract two acres or over. If the lot, parcel or tract has multiple front ages, one additional sign, not exceeding 32 square feet in area, shall be allowed in the property, to be placed facing the additional frontage. Under no circumstances shall more than a maximum of two signs be permitted on the property. Signs shall be removed within seven days of the sale. Freestanding temporary real estate signs shall be exempt from the setback requirements of this subtitle applicable to freestanding signs.

Petitioner requests a variance from the 32sf maximum sign area to increase this area by 65.11sf for the proposed 97.11sf real estate leasing sign.

Sign Code § 3.508(a). 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.

Because this prohibits light from shining on or into residential structures, Petitioner is seeking a variance for the illuminated sign to be mounted next to certain apartment windows.

5. The Technical Staff Report (TSR). All Department of Inspections, Licenses and Permits (DILP) TSRs evaluate a proposed sign variance petition against the criteria for granting a variance, but do not make a recommendation. The December 5, 2017 TSR in this case found unique physical and topographical conditions (the Property's 30'± change in elevation between the apartment building where the sign would be placed, and distance from Route 100 (460± feet.)

6. The Hearing Examiner discussed her concern that the lit sign may adversely affect the use of adjacent apartments and provided Petitioner with a copy of BA 15-003S, where the Hearing Examiner granted a variance for an illuminated sign for an apartment complex subject

in part to two approval conditions: 1) the leases for the units shown on Page 9 of the decision and order shall include a separate addendum expressly discussing the presence of the projecting sign and offering the affected lessee the option of a blackout window treatment, and 2) signage illumination shall be turned off at 11:00pm. Petitioner agreed to similar approval conditions.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts, the Board of Appeals Hearing Examiner 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 west side of the large apartment complex sits parallel to State Route 100. The proposed real estate leasing sign would be located about 460± feet from the closest travel lanes of Route 100, a six-lane wide, heavily travelled highway with a posted speed limit of 55MPH. The TSR concludes Route 100's width, the heavy traffic volume, and the posted speed limit the visibility of a smaller, Sign Code compliant sign for both southbound and northbound motorists traveling on Route 100.

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 30'+ grade elevation difference between the building where the proposed sign would be located causes practical difficulty.

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

There are no architectural and aesthetic characteristics to be considered.

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.

Subject to all conditions of approval, the variance will not adversely affect the appropriate use or development of adjacent properties, nor 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.

In the Hearing Examiner's view, the proposed sign is a reasonable size, based on its scale and distance from Route 100.

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 pertaining to Sign Code §§ 3.502(b)(1) & 3.508(a).

ORDER

Based upon the foregoing, it is this **5th Day of April 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Ruth Eisenhauer/Legend Management Group to erect a wall identification/ real estate leasing wall sign for the "Elms at Montjoy Apartments" complex in an R-A-15 (Residential Apartments) zoning district, and as specifically described in Finding of Fact #4 (the Requested Sign Variances) is **GRANTED**;

Provided, however, that:

1. The variances 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 leases for the units on the west facing end wall of building #5010 Walking Stick Road where the sign is to be located shall include a separate addendum expressly discussing the presence of the projecting sign and offering the affected lessee the option of a blackout window treatment.
3. The signage illumination shall be turned off at 11:00 pm.
4. The Petitioner shall obtain all necessary permits.

**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.