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Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-965
Permit # 05-3524

Variance Request: For a variance from the required minimum setback of 100 feet to 75 feet for a freestanding pylon sign from both sides of the property at 3240 Baltimore Boulevard, Finksburg, MD in Election District 04 by Casi R. Lauer, American Sign Company. The property owner is John Neteler.

Basis for Variance: § 223-138 F and § 223-181 of the Carroll County Code of Public Local Laws and Ordinances.

Decision: Denied

Basis for Decision:

In making this determination, the Zoning Administrator finds that the following criteria provided in Section 223-191 of the Carroll County Code that:

- There would be a detrimental effect on the people working or residing in the area
- There would a negative impact on the orderly growth of the community

Appearing before the Zoning Administrator as applicants were Mr. Rick Zeigler for American Sign Company; Mr. John Neteler, property owner; and Mr. Dan Walsh representing AvanelAuto Group.

It was explained at the onset of this hearing that a variance from the front yard setback would be needed in addition to the side yard requirements; that the existing and proposed sign sit only a few feet from the front property boundary. The front yard requirement for structures or buildings in the IR zone is 50 feet. The requirement to meet the front yard setback is established in § 223-138 F of the Carroll County Code of Public Local Laws and Ordinances.

Mr. Zeigler presented 8 photographs of the subject property and existing sign. It should be noted that the existing sign was recognized as non-conforming and allowed an enlargement in a decision by the Board of Zoning Appeals in case # 2068, dated February 1, 1984. Mr. Zeigler described the sign as being 48 square feet with a maximum height of 16 feet above grade and of a combination backlit panel and light emitting diode (LED) sign. The letters on a portionof the sign would be LED changeable message type and there would be a LED motion-type panel display. A diagram of the sign is included in evidence for this case. Mr. Neteler feels it is impractical to locate the new sign within the required setback area. Mr. Dan Walsh testified that he felt the sign would not be a distraction to drivers; that he is more distracted by the numerous small signs along this roadway. Mr. Zeigler stated that he felt that the used car lot / repair facility was difficult to find in the congestion along MD Rt. 140; that drivers frequently drove past the property while looking for it.

Mr. Donald Hoffman of Finksburg testified in opposition to the variance on the basis that an LED type sign would be a distraction to the 44,000 vehicles which pass the property daily, not unlike a similar LED sign located at a restaurant to the East of this site. He felt that there was already

sufficient signage for this property and that signage in general in the Finksburg / Rt. 140 corridor is already excessive. [N.B. the aforementioned sign lies in Baltimore County]

Mr. John Lopez of Finksburg appeared in opposition as the spokesperson for the Finksburg Planning and Citizens Council. Mr. Lopez said that the sign would not be in keeping with the community's desires to improve business appearances along the Finksburg Corridor andfurther that the Carroll County Planning Commission was in the process of creating a new Finksburg Corridor Plan to that end. That plan has not been adopted at the time of this writing. Mr. Lopez also stated that he has been appointed to the county "Scenic Carroll" Committee and that this type signage and the proximity of signs to the roadway are a concern of that committee.

In rebuttal, Mr. Zeigler stated that he feels the property is unique in that it needs the increased visibility which the proposed sign would provide; that the sign would be an improvement over the existing sign in its attractiveness and modern design. He feels that the hardship presented to the dealership is that the lot width itself prevented the sign from being 100 feet from either side.

In deciding this case the Zoning Administrator has focused on the guidelines offered in the decision in *Cromwell v. Ward, 102 MD. App. 691, 651 A.2d 424 (1995)* as interpreted by Stanley Abrams in *Guide to Maryland Zoning Decisions.* This case provides the fundamental case law on the issue of variances. This case cites the primary two-prong requirement for variances in Maryland – that being a substantiation that the property whereon structures are to be placed is unique and unusual in a manner different from the nature of the surrounding properties and that an unreasonable hardship (or practical difficulty) resulting from the disproportionate impact of the ordinance [the setback requirement] caused by the property's uniqueness exists. Both prongs of the test must pass muster and a self-created hardship is never considered grounds for a variance.

The most substantial matter at hand is the requested reduction in the front yard setback. The fact that the front pylon of the existing sign sets exactly at the curb line is not reason to allow a new, substantially larger sign (the existing sign consists of two, two-sided panels totaling 64 square feet as opposed to the proposed 105.6 square foot plus logo panels) to be placed at the same location. In fact, that is a matter which cannot be heard by the Zoning Administrator since the proposed sign would be a structural alteration or enlargement of the existing non-conforming sign and thus must be brought before the Board of Zoning Appeals for consideration, in accordance with § 223-9A of the County Code.

The property is not unique to any of the other business sites along this section of MD Rt 140That there is heavy traffic or congestion or the alleged inability to find the business on the highway does not meet the uniqueness test in *Cromwell v Ward* or that intended in § 223-181.2 of the Carroll County Code. As to practical hardship, there is adequate room on the site forthe sign to meet the setback requirement of fifty feet by placing a sign where used cars are currently parked. There are many businesses, including auto dealerships and service facilities along MD Rt. 140 where signs are located back from the roadway; where cars are parkedalong the roadway in front of a sign. New business, such as the Highs / Citgo stationat Sandymount Rd. and Rt. 140 are set significantly back from the road, as are those for existing businesses such as the adjoining business center which installed a new sign in April of 2004 (case ZA 816).

An inability to physically meet the side yard setbacks does not constitute a reason for a variance from the front yard setback, in fact, § 223-138 of the County Code anticipates the need for such front yard setbacks where the side yards are reduced. In this instance the side yard setbacks cannot be met to either side.

10 November 2005

Neil M. Ridgely
Zoning Administrator

Per Section 223-182 or the Carroll County Code of Public Local Laws and Ordinances, appeals of this decision must be made within 30 days of the date of the decision to the Board of Zoning Appeals pursuant to Section 223-188 of the Carroll County Code. Unless timely appealed, parties may not thereafter contest the Zoning Administrator's decision.