BOARD OF APPEALS CASE 4983 & 4984	*	BEFORE THE
APPLICANT: Fleming Companies, Inc.	*	ZONING HEARING EXAMINER
REQUEST: Variances to locate a sign within the required setbacks; U. S. Route 1 and MD Route 543, Bel Air	*	OF HARFORD COUNTY
	*	Hearing Advertised
HEARING DATE: December 15, 1999	*	Aegis: 10/27/99 & 11/3/99 Record: 10/29/99 & 11/5/99
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ZONING HEARING EXAMINER'S DECISION

The Applicant is Fleming Companies, Inc. Fleming has filed two applications in this matter. The first is for a parcel shown on Harford County Tax Map 34, Parcel 29, consisting of .77 acres, owned by Charles R. Warfield, leased to Stanley Lloyd, and subleased to Tamberino's, Inc. The second application is for Lot 2, which is owned by Stanley Lloyd and leased to Baltimore County Savings Bank, as shown on Harford County Tax Map 41, as Parcel 185, containing .4973 acres. All of the property which is the subject of this hearing is zoned B3. The Applicant proposes to install signs on Parcels 29 and 185. The applications request variances from Section 219-15(B) to allow "billboard" signs to be located less than 25 feet from the road right-of-way for Parcels 29 and 185, and in the Case involving Parcel 29, a variance to allow the "billboard" to be located within 300 feet of the entrance to Hickory Elementary School and Hickory Missionary Baptist Church.

Mr. Lou Schaffer, an engineering designer employed by Frederick Ward Associates, Inc., was accepted as an expert in site plan design. Using the site plan offered as Applicant's Exhibit No. 14, Mr. Schaffer described the subject property including the lot lines, existing Tamberino's sign, road access and surrounding uses. Mr. Schaffer described the Hickory Village Center as an 8 acre parcel of land which has been divided into four lots. Lot 4 frontage is a small entranceway which will be used as a service entrance for delivery trucks. Lot 2 sits between Goodfellas Bar & Grill (Lot 1) and Burger King (Lot 3). There is a common drive which is located between Baltimore County Savings Bank and Burger King which will also be used for ingress and egress to the grocery store under construction on Lot 4.

Mr. Schaffer testified that Parcel 29 has frontage on U.S. Route 1 and shares a common driveway with the Hickory Missionary Baptist Church. Mr. Schaffer explained that Tamberino's has direct access to U.S. Route 1, has an existing building and sign on property. It is proposed that the existing sign poles already in place for the Tamberino's sign will be used for the new sign panels. The proposed sign to be located on the Tamberino's property will be 17 feet tall and 9 feet wide and will have a total message area of 109.89 square feet. He said the sign will have 4 panels to identify the grocery store, Tamberino's, Baltimore County Savings Bank, and Burger King. Mr. Schaffer went on to testify that the proposed sign to be located on the Baltimore County Savings Bank parcel will be 9.02 feet tall and 4.92 feet wide and will have a total sign area of 34.54 square feet. This sign will have panels to identify the shopping center, the Baltimore County Savings Bank and the grocery store. Mr. Schaffer said the signs are located so that they can be seen by motorists and they could not satisfy the setback requirements unless they were moved to the other side of Tamberino's lot because of the existing building or onto the bank parking lot. He further testified that the signs will not hinder the visibility of persons pulling into or out of the entrances to the food store and that the signs will satisfy sight distance standards. He also testified that the signs will not have an adverse impact on persons traveling on U. S. Route 1 or MD Route 543 or any of the adjacent properties.

Mr. Gordon Halteman testified he is employed as a store development manager for Fleming Companies, Inc., and is in charge of coordinating and management of new stores and related real estate issues. Mr. Halteman testified that any grocery store which occupies Lot 4 will have needs for signage.

Mr. Halteman went on to confirm the testimony of Mr. Schaffer and said that Fleming will be responsible, along with the future owner of the food store, for maintenance and upkeep of both signs. He testified there would be no significant impact on sight, drivers or adjacent properties. He said that if Fleming is unable to install the signs on Lot 2 and Parcel 29, Fleming would suffer practical difficulty since it would be faced with marketing issues of how to get drivers into the Fleming lot and safety issues such as the confusion of drivers who are trying to access the grocery store located on the Fleming lot.

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Mr. Denis Canavan appeared and was accepted as an expert in the field of planning, zoning and land use matters. Mr. Canavan said the current zoning on the subject parcels is B3 and is shown on the 1996 Harford County Land Use Plan as high intensity, industrial/employment and rural residential area. Mr. Canavan testified that commercial signs are permitted in the B3 District and that the proposed signs do not violate the height or coverage regulations of the B3 District. He went on to testify that the signs will not adversely affect adjoining property owners and property owners across U. S. Route 1 and MD Route 543 will only see the thin side of each side.

Mr. Canavan testified that since the proposed signs will be located on the Baltimore County Savings Bank lot and Tamberino's lot but will advertise the grocery store and Burger King, these signs constitute billboards as defined in the Harford County Code because the sign is not located on the same lot as the business being advertised. Mr. Canavan believed that denying the requested area variances would result in practical difficulty to the Applicant. He explained that the proposed signs are reasonable and provide necessary service to the surrounding community and that the unique characteristics of the property, including the arrangements of the lots, the existing sign on Parcel 29, the corner location of the lots at the intersection of heavily traveled highways, U. S. Route 1 and MD Route 543, justify the granting of the variance. Mr. Canavan said that he considered the "Limitations, Guides and Standards" set forth in Section 267-9(I) of the Zoning Code and concluded that none of the "Limitations, Guides and Standards" indicate that the requested relief should be denied.

Mr. Anthony McClune, Manager, Division of Land Use Management, for the Department of Planning and Zoning, appeared and testified that the Staff had reviewed both variance requests and recommended conditional approval to convert the existing free-standing sign on the Tamberino parcel, as well as the variance to the setback requirement to locate the sign on the Baltimore County Savings Bank parcel. Mr. McClune said that the recommendation is subject to the Applicant obtaining all necessary permits for the signs and he further indicated that the approval should not preclude the owner from changing sign panels as tenants change.

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CONCLUSION:

The Applicant is requesting two separate variances to Section 219-15(B) of the Sign Code. The first variance is a request to allow a billboard sign to be located less than 25 feet from the road right-of-way on the Baltimore County Savings Bank parcel and Tamberino's parcel. The Applicant is also requesting a second variance to allow a billboard to be located within 300 feet of the entrance to Hickory Elementary School and Hickory Missionary Baptist Church.

Section 219-15(B) of the Sign Code provides:

> "Location. Billboards shall not be permitted to be erected within three hundred (300) feet of any public square or the entrance to any public park, public, private or parochial school, library, church or similar institution. All such signs shall be set back from the front property line the distance required for a principal building in the zoning district in which located. No billboard shall be permitted to be erected within one hundred (100) feet of a road intersection unless the base of the sign is not less than ten (10) feet above ground level or road surface, whichever is higher. No billboard shall be erected within six hundred sixty (660) feet of any highway which is part of the interstate highway system."

Section 219-17(B) of the Sign Code allows variances and provides:

> "The Board may grant a variance from the provisions of this chapter if, by reason of the configuration or irregular shape of the lot or by reason of topographic conditions or other exceptional circumstances unique to the lot or building, practical difficulty or unnecessary hardship results. The Board shall, before granting the variance, make a written finding as part of the record that the conditions or circumstances described are unique to the lot or building, that the conditions or circumstances cause the difficulty or hardship and that the variance can be granted without impairment of the purpose and provisions of this chapter."

The uncontradicted evidence presented by the Applicant's witnesses and corroborated by the testimony of Anthony McClune of the Department of Planning and Zoning indicated that the subject parcel is unique and that approval of the requested variance will not be substantially detrimental to adjacent properties or materially impair the purpose of the Code. The evidence also indicates that approval of the variance will not impact the "Limitations, Guides and Standards" set forth in Section 267-9(I) of the Zoning Code.

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Therefore, it is the finding of the Hearing Examiner that the subject property is unique for the reasons stated by Applicant's witnesses in their testimony and, further, that denial of the requested area variance will cause practical difficulty. It is, further, the finding of the Hearing Examiner that the variance can be granted without impairment of the purpose and provisions of this Chapter.

Therefore, it is the recommendation of the Hearing Examiner that the requested variances to the Sign Code be approved, subject to the condition that the Applicant obtain all necessary permits and inspections for the signs.

Date FEBRUARY 10, 2000

L. A. Hinderhofer
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Zoning Hearing Examiner