

APPLICANT:
KBL Mercedes LLC and
Chesapeake Spice LLC

BEFORE THE
ZONING HEARING EXAMINER

REQUEST: A variance pursuant to
§ 267-26C(6) of the Harford County Code
to allow a sign to be located within a recorded
easement and a variance to § 219-5B to allow
a 50% reduction of the minimum sign setback

FOR
HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: March 2, 2005

Case No. 5465

ZONING HEARING EXAMINER'S DECISION

APPLICANT: KBL Mercedes LLC

CO-APPLICANT: Chesapeake Spice LLC

LOCATION: 4613 Mercedes Lane, Belcamp, Maryland 21017
Riverside Business Park
Tax Map: 58 / Grid: 4A / Parcel: 245 / Lot: 30
Election District: First (1st)

PRESENT ZONING: GI / General Industrial

REQUEST: A variance pursuant to § 267-26C(6) of the Harford County Code to allow a sign to be located within a recorded 25' Draining and Utility Easement; and a variance to § 219-5B of the Harford County Code to allow a 50% reduction of the minimum sign setback in the GI District (8' required-4' requested).

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant first testified Dennis Allgeier, who identified himself as being employed by Morris & Ritchie Associates, Inc. Mr. Allgeier is responsible for the development of the site plan which accompanies this request, and is familiar with the subject property.

Mr. Allgeier, and the application itself, describe the subject property as being 8.09 acres in size, currently improved by an approximately 70,000 square foot, one story concrete warehouse/office building. The Applicants' site plan is marked as Attachment 3 to the Staff Report.

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Mr. Allgeier described an existing 25' Drainage and Utility Easement which runs along the entire frontage of the property on Mercedes Drive. Mercedes Drive, which dead-ends at a cul-de-sac at the southeastern corner of the subject property, provides the only means of access to the subject property. Code § 267-26C(6) prohibits any accessory use, such as a sign, from being located within this 25' Drainage and Utility Easement area. Furthermore, the Applicants frontage is made even less usable by virtue of the fact that much of the area within the existing 25' Drainage and Utility Easement is improved for parking, with only approximately the first 10' being partially in grass, and functioning as an unimproved "island". Accordingly, the subject property's frontage along Mercedes Drive is impacted by a 25' Water and Sewer Utility Easement, which in turn is impacted by a 15' deep parking area and 10' " deep improved curb and grass area.

The Applicants desire to construct an identification sign on the subject property and within this easement. Due to § 219-5B of the Harford County Sign Code, that sign must be no less than 1/3 of the required setback, which is 25' total. Accordingly, the sign must be set back 8-1/3' from the curb, which would place the sign not more than 1-2/3' from the beginning of the parking area, and which would cause it to extend into the parking area. Obviously, this is not a practical location for a sign.

The Applicants are requesting variances to allow them to construct a 4' sign, placed slightly at an angle to on-coming traffic along Mercedes Drive. The sign would be 8' wide, 4' tall, and approximately 36 square feet. The sign will be an identification sign. It will be of the same color scheme as the building. Mr. Allgeier indicated that because of the extensive parking areas in the front of the building and between Mercedes Drive, there is no other practical location for the sign. Furthermore, the location proposed is the only practical one in order to accomplish its intended purpose of notifying motorists, particularly truck drivers, of the identity and use of the building. There is no other place on the property in which to locate such a sign and accomplish the purposes desired by the Applicants.

Mr. Allgeier believes that the sign will compliment the neighborhood. There are other similar signs in the area.

For the Applicants next testified David Lessans, who identified himself as a representative of the Applicant. Mr. Lessans indicated that the Applicant would comply with the recommended conditions of the Harford County Department of Planning and Zoning. He also indicated that he was aware of the Department of Public Works request that the sign be located a minimum of 10' from the existing storm drain pipe, and that if future relocation is necessary, the sign be relocated at the owner's expense. Mr. Lessans indicated that the Applicant would agree to comply with those requests.

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For the Harford County Department of Planning and Zoning testified Nancy Lipski. Ms. Lipski stated that the extensive 25' Drainage and Utility Easement along the subject property's frontage with Mercedes Drive was platted as a requirement of the Harford County Department of Public Works at the time of the recordation of the original plat. However, an easement of that size is no longer necessary for the subject property. The easement was originally sized in order to contain water vaults. However, the water vaults are located elsewhere on the property, and are within the 25' Drainage and Utility Easement.

Furthermore, Harford County Emergency Operations is now requesting that all buildings have proper building identification. The subject property is not properly identified at the present time because of the owners inability to locate a sign on the property. Ms. Lipski stated that the requested variance would allow a sign which would comply with Emergency Operations' request.

The Department supported the requested variance.

There was no testimony or evidence received in opposition.

APPLICABLE LAW:

The Applicants are requesting a variance to § 267-26C(6) of the Harford County Code which states:

“(6) No accessory use or structure, except fences shall be located within any recorded easement area.”

§ 219-5B of the Harford County Code states:

“Freestanding Signs. A freestanding sign shall include any sign supported by uprights or braces placed upon the ground and not attached to any building. Business signs may be freestanding if the property has a minimum of forty (40) feet of road frontage. The sign area shall be calculated on the basis of one (1) square foot of sign for every foot of property road frontage. However, the maximum area of any freestanding sign shall not exceed two hundred (200) square feet. The setback measured to the edge of the sign shall be equal to one third (1/3) of the required building setback. Unless otherwise provided herein, the maximum height allowed for any freestanding sign is thirty-five (35) feet above the nearest public road grade.” [Amended by Bill no. 86-28]

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§ 219-17 of the Harford County Code which states:

“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 provision of this chapter.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is an approximately 8 acre parcel improved by a 70,000 square foot, one story concrete structure used for an office and warehouse. The building is located in an industrial park in which other similar buildings are located. Because of its nature, the building is obviously the destination of a considerable volume of heavy truck traffic.

The property has frontage on Mercedes Drive, which dead-ends at a cul-de-sac directly at the corner of the subject property. The subject property is unusually impacted as its entire frontage along Mercedes Drive is impacted by a 25' Drainage and Utility Easement. Evidence and testimony of record indicated that at the time of the creation of the lot, Harford County required such an easement. However, due to the construction of water vaults at other locations on the property, there is no longer a need for such a large Drainage and Utility Easement. Indeed, approximately 15' of the Drainage and Utility Easement is encumbered by the parking lot and is apparently used for both parking and as a drive aisle. Furthermore, the first 10' of that Drainage and Utility Easement is improved by a curbed, grass covered island.

Normally, a sign for a similar property would be located on the improved grass covered island, and not, obviously, within the parking lot itself. However, because of the location of the parking areas, combined with the Code requirement of a minimum 8-1/3' setback, only approximately 1-1/2' of the remaining improved island is available for the location of such a sign. Obviously, it would be difficult to construct any sort of a practical identification sign in such a small area.

The Applicant must accordingly first contend with § 267-26C(6) of the Harford County Code which prohibits any accessory use (which would include a sign) from being located within an recorded easement area. The proposed sign would be located within the 25' Drainage and Utility Easement area, and a variance is requested.

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The property is accordingly found to be unique in that its entire frontage, within which a sign would normally be located, is impacted by the Drainage and Utility Easement. That easement was at one time necessary, but is no longer so because of a change in the location of certain utilities. As a result of this unusual situation, the Applicant suffers practical difficulty in being unable to construct a building identification sign anywhere along its road frontage. Obviously, the location of such a building identification sign, if it is to be useful and practical, must be located along the street frontage of the property. The practical difficulty suffered by this uniqueness is the Applicants' inability to construct a sign similar to others in its business district.

There is further no suggestion that if such a variance were granted there would be an adverse impact. Accordingly, it is found that such a variance would have no adverse impact on the adjoining properties or property owners.

The Applicant must now contend with the prohibition against constructing a free-standing sign any closer to the street than one-third (1/3) of the distance of the minimum setback. The Applicants' compliance with the minimum setback requirement would potentially result in the Applicants being unable to construct any sign, as the minimum setback would place the sign approximately 8.33' off the street line, or virtually in the Applicants' parking lot. The Applicants can construct the sign requested, which should be an attractive sign fully in keeping with the nature of the area, provided that requested setback is reduced to 4'. This would give the Applicant approximately 6' within the grass covered 10' island in which to construct its sign.

The applicable section is § 269-17 which allows the variance to be granted if, by reason of the configuration of the property, practical difficulty would result. It is accordingly found that the conditions and circumstances of the Applicants' property, which is substantially impacted by an extensive Drainage and Utility Easement, island, and parking area combine to form a configuration which create a hardship if a variance were not granted.

It is further found that there would be no adverse impact if the requested variances were granted. The existing island on the subject property extends into the right-of-way of Mercedes Drive by approximately 8'. Accordingly, the actual visible setback of the sign from the Mercedes Drive pavement would be, approximately, 12'. Furthermore, the identification of the subject property with the sign is desired by Emergency Operations of Harford County, and certainly would seem to be in the best interest of Harford County citizens.

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CONCLUSION:

For the above reasons it is recommended that the requested variances be granted, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the construction of the sign.
2. The sign shall be located 10' from the existing storm drain pipe.
3. If the sign needs to be relocated in the future to accommodate any drainage or utility use, it shall be relocated at the expense of the owners.

Date: April 1, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner