

9/5/03

IN THE COURT OF SPECIAL APPEALS

HIGH FALCON REALTY CORPORATION

Vs.

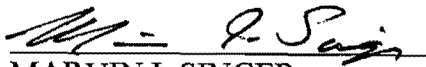
September Term, 2003

BALTIMORE COUNTY, MARYLAND

No. 00365

NOTICE OF DISMISSAL

Please dismiss the above-entitled appeal entered by High Falcon Realty Corporation.



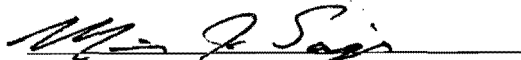
MARVIN I. SINGER

10 East Eager Street Suite 901
Baltimore, Maryland 21202
(410) 685-1111

Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Dismissal was mailed this 5th day of September, 2003 by first class mail, postage prepaid to Peter Max Zimmerman, Esq. and Carole S. Demilio, Esq., Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, attorneys for Appellee.


MARVIN I. SINGER

CO
PMTV

LAW OFFICES
MARVIN I. SINGER

SUITE 901
10 EAST BALTIMORE STREET
BALTIMORE, MARYLAND 21202

(410) 685-1111

FACSIMILE
(410) 685-2372

September 5, 2003

Clerk, Court of Special Appeals
Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

Re: High Falcon Realty Corporation vs.
Baltimore County, Maryland
September Term, 2003
No. 00365

Dear Ms. Gradet:

Enclosed for filing in the above-entitled case is Appellant's Notice of Dismissal.

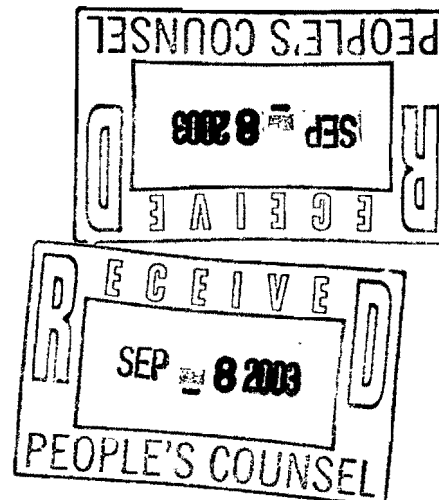
Sincerely,



Marvin I. Singer

Copies to: Peter Max Zimmerman, Esq. and
Carole S. Demilio, Esq. (w/encl.)
Leonard Stoler

MIS/m
Encl.



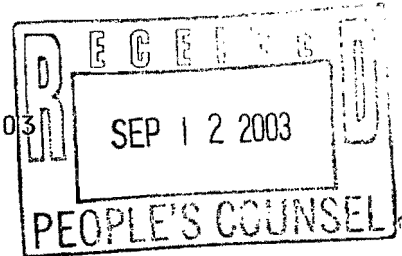


MD
Maryland Relay Service
1-800-785-2258
TT/VOICE

MANDATE

Court of Special Appeals

No. 00365, September Term, 2003



High Falcon Realty Corporation
vs.
Baltimore County, Maryland

JUDGMENT: September 9, 2003: Notice of Dismissal filed
by counsel for appellant. Appeal dismissed.

September 09, 2003 Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
00003C025291

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	60.00
Steno Costs of Appellant-	192.00
Filing Fee of Appellant-	50.00

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **ninth** day of **September** **2003**

Leslie D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

5/30/03
In the Matter of High Falcon Realty
Corporation

cd /
FILED
JUN - 2 2003
RECORDED
IN THE
COURT OF SPECIAL APPEALS

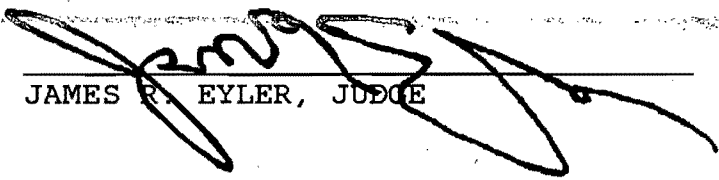
No. 00365
September Term, 2003

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O R D E R

The Court of Special Appeals, pursuant to Maryland Rule
8-206(a)(1), orders and directs that the above captioned
appeal proceed without a Prehearing Conference.

BY THE COURT


JAMES R. EYLER, JUDGE

Date: May 30, 2003

SUZANNE MENSCH, CLERK
CIRCUIT COURT FOR BALTIMORE COUNTY
(See attached Mailing List)

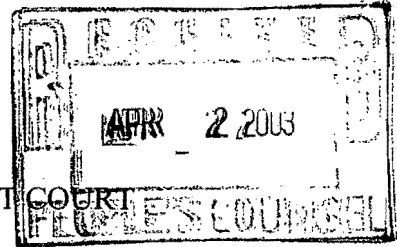
Dear Clerk: Will you kindly place this order with the record
in this cause (00003C025291). The date of this Order
establishes commencement of the 10 day period under Md. Rule
8-411(b) and the 60 day period for transmittal of the record
under Md. Rule 8-412(a).

3/28/03

IN THE MATTER OF
HIGH FALCON REALTY
CORPORATION
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTHEAST
CORNER OF REISTERSTOWN AND
HIGH FALCON ROADS
(11317 REISTERSTOWN ROAD)

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IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 03-C-02-5291



* * * * *

OPINION AND ORDER

This matter is before the Court on High Falcon Realty Corporation's (High Falcon) petition for judicial review of the decision of the County Board of Appeals of Baltimore County (CBA) denying a variance from §450.4.5 (g) of the Baltimore County Zoning Regulations (BCZR) for property located at 11317 Reisterstown Road¹.

On June 29, 2000, High Falcon Realty filed a petition for a variance from §450.4.5(g) of the BCZR, seeking permission to erect a 25 foot high double-faced illuminated free-standing commercial identification sign with an area of 96.9 square feet per side in lieu of the maximum 50 square feet permitted by §450.4.5(g). On September 8, 2000, the Deputy Zoning Commissioner for Baltimore County granted Petitioner's request for variance from §450.4.5(g) of the BCZR. Subsequent to the Commissioner's decision, Petitioner erected its sign. On September 29, 2000, The People's Counsel for Baltimore County appealed the Deputy Zoning Commissioner's decision to grant the variance. A de novo hearing was held on October 10, 2001, and a public deliberation was held on November 16, 2001. On April 18, 2002, the CBA issued its decision denying Petitioner's request for variance. For the reasons set out below the Court affirms the CBA's decision.

¹ High Falcon, a corporation owned and operated by Leonard Stoler, holds title to 11317 Reisterstown Road.

FILED APR 1 2003

BACKGROUND

The subject property consists of approximately 1.051 acres and is located on the southeast corner of the intersection of High Falcon Road and Reisterstown Road (Route 140) in the Reisterstown area of Baltimore County and is zoned Business Roadside (B.R.). The property was formerly the site of an abandoned Roy Roger's/Hardee's fast-food restaurant which was converted into a Hyundai dealership². After converting the Roy Roger's/ Hardee's, Petitioner, High Falcon, requested a variance to permit a double-faced illuminated free-standing sign for the Hyundai dealership owned and operated by Leonard Stoler. Leonard Stoler, the principal in High Falcon, owns and operates additional dealerships next to and or near the subject property including Lexus and Chrysler/ Plymouth dealerships which comprise approximately 12 acres.

Reisterstown Road is a rolling road and active commercial corridor that extends from Baltimore City to Carroll County. The high concentration of commercial enterprises in the immediate vicinity, in addition to Petitioner's, include the Heritage dealerships, a Target Department Store, a Metro Food Market and other smaller commercial shops and restaurants.

The Hyundai manufacturer recommends three different sign sizes for its dealers, but none are mandatory. The signs range from 73 square feet to 147 square feet in area. High Falcon chose a middle size sign with an area of 96.9 square feet claiming that since the dealership sits in a trough or valley, the dealership property is unique and disadvantaged and thus requires a sign larger than that permitted as a matter of right.

THE STANDARD OF REVIEW

² Leonard Stoler testified that the purchase price of the land was \$1,050,000 and the cost to develop the building was "another million plus." T. p. 52-53.

When reviewing an appeal from an order of a County or zoning authority, this Court is to determine whether the findings by the Board were premised upon a correct application of the law and whether the findings of fact and conclusions reached by the Board are fairly debatable and based upon substantial evidence. *Umerly v. Peoples Counsel*, 108 Md. 497, 672 A.2d 173, *cert denied*, 342 Md. 584, 678 A.2d 1049 (1996). The Court in *Sembly v. County Board of Appeals*, 269 Md. 177 (1973) noted “the correct test to be applied is whether the issue before the administrative body is ‘fairly debatable,’ that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions. If the questions involved are fairly debatable and the facts presented are sufficient to support the Board's decision, it must be upheld...” Id. at 182. For the decision to be fairly debatable, the administrative body must have “substantial evidence” on the record supporting its decision. *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383 (1979); See also *Board of Physician Quality Assurance v. Banks*, 354 Md. 59 (1999); *Marzullo v. Kahl*, 366 Md. 158 (2001).

DISCUSSION

Petitioner raises the following issues:

1. Was the decision of the Board of Appeals erroneous as a matter of law?
2. What limitations exist upon exercise of the police powers?
3. Were the constitutional principals of equal protection and due process violated and were the zoning regulations applied in an uneven and discriminatory manner?
4. Does the variance procedure provide an essential means of implementing public policy?

Petitioner first argues that the decision by the CBA was erroneous as a matter of law. Petitioner claims that Reisterstown Road has hills and valleys making its property unique and therefore leaving Petitioner in a position where strict compliance with the regulation would result in an unreasonable hardship or practical difficulty. (Petitioner's Brief pp.15-16).

Section 307.1 of the BCZR grants the Zoning Commissioner of Baltimore County and the County Board of Appeals the authority to grant zoning variances "from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land... and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship." BCZR §307.1 (2001). Therefore, the first inquiry or prong is whether the subject property is unique. *Cromwell v. Ward*, 102 MD.App 691 (1995). If the property is deemed to be unique or have conditions that are peculiar to the land the inquiry then turns to the second prong-whether the unique condition results in "practical difficulty." *McLean v. Soley*, 270 MD. 208, 213-215 (1973); *Red Roof Inns v. People's Counsel*, 96 Md. App. 219, 225, 624 A.2d. 1281 (1993), *Cromwell v. Ward*, 102 Md.App 691 (1995).

The Court in *Cromwell* stated that "[u]niqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by the other properties, i.e. its...topography..." 102 Md.App. at 710. The CBA, in their opinion, was "unable to find that the property in question is unique. There is no question that Reisterstown Road is a rolling road which has many peaks and valleys. The property is located in a trough of Reisterstown Road, along with several other properties." (CBA Decision, p.4). The CBA's findings that the Reisterstown Road road is "a rolling road" are supported by Petitioner's own engineer, Edwin S. Howe, III, who testified that Reisterstown Road has "various topography" and that it is "up and down. It's not flat." T. p. 45. The CBA's finding that Reisterstown Road is a rolling road is further bolstered by a

GIS aerial map that shows the various elevations of Reisterstown Road. (P.C. Ex. #1). Petitioner argues that its property is unique solely due to the topography and location of its dealership. There is nothing “unique” about a rolling road; there is nothing “unique” about this section of Reisterstown Road. Petitioner has failed to meet its burden to show that deviations in topography shared with its neighbors equate uniqueness. The issue is fairly debatable. There was substantial evidence before the CBA to support its conclusion. See also *Red Roof Inns v. People’s Counsel*, 96 Md. App. 219 (1993).

The CBA addressed the second prong, whether practical difficulty would result from the zoning regulation, and determined that no practical difficulty would result from Petitioner’s compliance with the zoning regulation. (CBA Decision, p.4). The test or criteria for practical difficulty was laid out by the Court of Appeals in *McLean v. Soley*, 270 Md. 208:

- 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. 270 Md. at 214-215

The CBA did “not find that the failure to grant the variance would be an unreasonable hardship on Mr. Stoler and his Hyundai operation. There is no indication that failure to have a larger sign would cause Mr. Stoler to lose the Hyundai dealership.” (CBA Decision, p. 4).

Petitioner does not elaborate, in the record or in its memorandum, how a practical difficulty would result if the variance was denied. Further, the record does not support Petitioner’s contention that it

would lose its dealership or suffer a practical difficulty if a larger sign was not permitted. To the contrary, High Falcon admits that the Hyundai Manufacturer Association (Manufacturer) does not say that Petitioner would lose its dealership, and hints that the Manufacturer may allow some alteration with prior approval but that they simply prefer to have a larger sign. T. p. 92. & Pet. Ex. 12. Though Petitioner argues that Hyundai recommends the three different sizes of signs the CBA found that “while the Petitioner has testified that there is no 50 square foot sign available from Hyundai..., there has been no testimony that one could not be constructed...” (CBA Decision, p. 4). The Court finds that there was substantial evidence for the Board to conclude that Petitioner will be able to continue using his property for its permitted purpose, that a sign variance would not do substantial justice to Petitioner and surrounding property owners, and the spirit of the ordinance would not be observed if the variance was granted.

Petitioner also argues that the CBA improperly denied the introduction of evidence which demonstrated the existence of larger signage for the Heritage dealerships. The record proves that the CBA considered the evidence irrelevant because the Board evaluates each request individually:

Mr. SINGER: I'd like to introduce past decisions with respect to signs in other locations...

Ms. DEMILIO: I'm going to object. I believe it's also been the policy of this Board that every site should be looked at individually and not dependent on what was granted or denied on the other side.

I could bring in ten cases saying these are all denied, and the Board is no further ahead than it would have been.

THE CHAIRMAN: I'm inclined to agree with that.

T. p. 101-102

Additionally, the CBA noted that “the decisions submitted by the Petitioners where sign variances were granted were all decided prior to the passage of § 450.4(g).” (CBA Decision at p. 4).

The CBA's decision to exclude past decisions and take each request on a case by case basis is supported by *Red Roof Inns v. People's Counsel*, 96 Md. App. 219 at 227-28 (1993). In *Red Roof*

Inns, the Court discussed this issue and stated that “[z]oning matters, including sign variance requests, depend upon the unique facts and circumstances of a particular location and must be analyzed individually.” Therefore, the Court finds that the ruling excluding past zoning decisions as irrelevant was proper.

Petitioner argues that the regulation of signs is either not within the police power or is an abuse of the police power. This argument is without merit. Zoning is based on the state’s police power, which is delegated to the counties by the state. The Supreme Court established the constitutionality of zoning to regulate land use. See *Reinman v. Little Rock*, 237 U.S. 171 (1915) (stables); *Cusack Co. v. City of Chicago*, 242 U.S. 526. (1917) (signs). These cases establish that zoning ordinances will be upheld unless “shown to be clearly unreasonable, arbitrary or discriminatory.” *Cusack* at 529.

In Maryland, the Court of Appeals upheld the state’s exercise of police powers regarding signage. In *Grant v. City of Baltimore*, 212 Md. 301 (1957) the Court noted that “[m]any Courts have said that classification of billboards for purposes of regulation and prohibition is valid and constitutional.” *Grant* at 323. The Court has upheld similar zoning regulations as the one before the Court. See *Tighe v. Osborne*, 150 Md. 452 (1926); *Jack Lewis, Inc. v. Baltimore*, 164 Md. 146 (1933).

There is no evidence that the CBA has been arbitrary, capricious or unreasonable. The goals of the BCZR are to try to eliminate the excessive signage in Baltimore County and improve the quality of the commercial corridors. BCZR at §450.1. The CBA is simply enforcing the BCZR, which is permissible and legal. Therefore, the Court finds that Petitioner has failed to meet its burden, the evidence before the CBA was fairly debatable, and there was substantial evidence to support the CBA’s decision.

Petitioner next argues that the CBA has been partial by approving larger signs for other businesses in the area before the enactment of §450.4.5 (b) of the BCZR and claims that the existence of these signs violate the equal protection clause. The statement of general findings of BCZR § 450.1 state:

- E. The existence of excessive and incompatible signage is contrary to the goals of the County Master Plan, as adopted and amended. Included among these goals are:
 - 1. Improved quality of commercial corridors, including signage
 - 2. Improved compatibility between industrial and residential uses, including signage.
 - 3. Enhanced control of placement, size and design of commercial corridor signage.
- F. In light of the above, Baltimore County has a substantial interest in promoting the public health, safety and general welfare by reducing or eliminating excessive and incompatible signage.

BCZR §450.1 E-F

In *Donnelly Adv. Corp. v. City of Baltimore*, 279 Md. 660 (1977), a case involving sign ordinances, the Appellants challenged the ordinance on equal protection grounds. The Court stated that “[b]ecause neither fundamental rights nor suspect classifications are involved, only a rational relationship to a permissible state objective need be shown.” 279 at 669. Therefore, in order to pass constitutional muster, the State must show that the regulation is rationally related to a permissible state objective.

Unquestionably, the goals set out in §450.1 of the BCZR are at least rationally related to a permissible state objective. In fact, §450.1 of the BCZR states, “Baltimore County has a **substantial interest** in promoting the public health, safety and general welfare by reducing or eliminating excessive and incompatible signage.” BCZR §450.1(E) (Emphasis added). There is no different application of the sign zoning regulations among new car dealerships or other commercial entities in Baltimore County. All entities that apply for a sign variance after the enactment of BCZR §450 must conform to the rigors of section 450 of the BCZR. Petitioner has failed to meet

its burden, the evidence before the CBA was fairly debatable, and there was substantial evidence to support the CBA's decision. Therefore there is no denial of equal protection.

Lastly, Petitioner argues that the variance procedure is an essential means of implementing public policy and cites to the "Master Plan" adopted by the County Council in February of 2000. Petitioner claims that the variance procedure was implemented to help new development and foster growth. Petitioner is correct, however, the overall purpose of the BCZR is to plan and manage the growth. As stated above, the goals of §450 of the BCZR are to promote the welfare and public safety. BCZR §450.1(F). Further, as discussed above, there are rules and requirements that need to be satisfied in order to obtain a variance. The CBA found that Petitioner failed to meet the requirements set forth in §307.1 of the BCZR. (CBA Decision, p.3-4). The CBA clearly considered the policy implications of the Master Plan and found that "[a] 50 square foot sign would certainly be visible along Reisterstown Road in addition to the signs for his other dealerships." (CBA Decision, p. 4). The Court finds that the CBA evaluated the issues and concluded that Petitioner failed to meet its burden. Again, at a minimum the issues were fairly debatable. *Umerly*, supra.

This Court finds that the issues involving the zoning variance are fairly debatable and that there was substantial evidence before the CBA to support its decision. Accordingly, the decision will be AFFIRMED.

It is so ORDERED this 28th day of March, 2003 in the Circuit Court for Baltimore County.

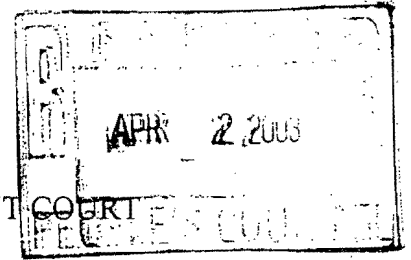
True Copy Test
SUZANNE MENSCH, Clerk

Per Pamela O'Hall
Assistant Clerk

J. Norris Byrnes
J. NORRIS BYRNES

3/28/03 ✓
IN THE MATTER OF
HIGH FALCON REALTY
CORPORATION
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTHEAST
CORNER OF REISTERSTOWN AND
HIGH FALCON ROADS
(11317 REISTERSTOWN ROAD)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 03-C-02-5291



* * * * *

OPINION AND ORDER

This matter is before the Court on High Falcon Realty Corporation's (High Falcon) petition for judicial review of the decision of the County Board of Appeals of Baltimore County (CBA) denying a variance from §450.4.5 (g) of the Baltimore County Zoning Regulations (BCZR) for property located at 11317 Reisterstown Road¹.

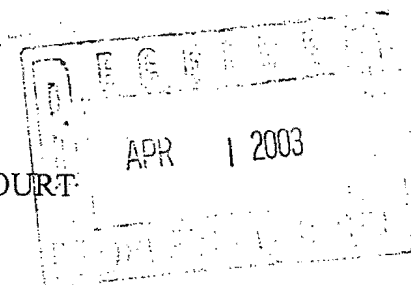
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¹ High Falcon, a corporation owned and operated by Leonard Stoler, holds title to 11317 Reisterstown Road.

FILED APR 1 2003

IN THE MATTER OF
HIGH FALCON REALTY
CORPORATION
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTHEAST
CORNER OF REISTERSTOWN AND
HIGH FALCON ROADS
(11317 REISTERSTOWN ROAD)

IN THE
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* * * * *

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1/30/03

COPY

RE: PETITION OF HIGH FALCON REALTY CORP. * IN THE
FOR JUDICIAL REVIEW OF THE DECISION *
OF THE COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY * CIRCUIT COURT
IN THE CASE OF THE APPLICATION OF *
HIGH FALCON REALTY CORP. *
FOR A VARIANCE on property located on the * FOR
S/E corner Reisterstown Rd and High Falcon Rd *
(11317 Reisterstown Road) *
4th Election District, 3rd Councilmanic District *
Before the County Board of Appeals * BALTIMORE COUNTY
Case No. 00-559-A *
Case No. 3-C-02-005291

* * * * *

PEOPLE'S COUNSEL OF BALTIMORE
COUNTY MEMORANDUM

STATEMENT OF THE CASE

High Falcon Realty Corporation is the owner of a 1+ acre of commercial property on the southeast corner of Reisterstown Road at the intersection of High Falcon Road. It is the site of a Hyundai dealership. The corporation is owned by Len Stoler, who operates several dealerships, on adjoining parcels. The site is zoned Business Roadside (B.R.).

High Falcon filed a Petition for Variance to erect a 97 square foot, double-faced illuminated sign, 24 feet high. The Baltimore County Zoning Regulations (BCZR) permit a 50 square foot, double-faced illuminated sign, 24 feet high for new car dealerships in Baltimore County. The Deputy Zoning Commissioner granted the Petition. A *de novo* appeal to the County Board of Appeals ("CBA") by People's Counsel for Baltimore County. People's Counsel is authorized to file an appeal in accordance with its Charter authority.

RECEIVED
2003 JAN 30
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

A evidentiary hearing was held before the CBA on October 10, 2001. High Falcon presented witnesses, Len Stoler and Edwin Howe, a civil engineer. The CBA decided the case in open deliberations on November 15, 2001, and denied the variance. A written Opinion and Order was issued by the CBA on April 18, 2002. An appeal was filed with this Court by High Falcon on or about May 10, 2002.

Standing of People's Counsel

Under Baltimore County Charter Sec. 524.1(b), People's Counsel is responsible to defend the comprehensive zoning maps and master plan in the public interest. In determining the public interest, the office must look to the law. The courts have approved or recognized the standing of the People's Counsel in many published cases: People's Counsel v. A.V. Williams 45 Md. App. 617 (1980); People's Counsel v. Webster 65 Md. App. 694 (1986); People's Counsel v. Mockard 73 Md. App. 340 (1987); People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989); People's Counsel v. Mangione 85 Md. App. 738 (1991); Red Roof Inns v. People's Counsel 96 Md. App. 219 (1993); United Parcel Service v. People's Counsel 336 Md. 569 (1994); Security Management Co. v. Baltimore County 104 Md. App. 234 (1995), cert. denied; People's Counsel v. Beachwood 107 Md. App. 627 (1995), cert. denied; Umerley v. People's Counsel 108 Md. App. 496 (1996), cert. denied; People's Counsel v. Prosser 119 Md. App. 150 (1998); Riffin v. People's Counsel 137 Md. App. 90 (2001), cert. denied; Marzullo v. Kahl 366 Md. 158 (2001); and People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002). These have included not only reclassifications (Williams,

Mockard, Beachwood, Prosser), special exceptions (Webster, Mangione, Umerley, Country Ridge), variances (Red Roof Inns, Riffin), and the master plan (again, Webster), but also cases involving mainly legal interpretation of the applicable zoning regulations and maps, usually involving “special hearings.” (Maryland Marine, Harker, United Parcel Service, Marzullo) and cases involving constitutional issues (Security Management).

FACTS

Petitioner, High Falcon Corp, is owned by Len Stoler, (“Stoler”), the high profile, and long-time owner of several car dealerships located on Reistertown Road in Owings Mills, Maryland. It is doubtful there is anyone in the metropolitan Baltimore area who has not seen his television and print ads describing the site “5 miles north of Baltimore Beltway Exit 20”. (T. 95). Stoler has purchased land adjoining his current operations in order to add a Hyundai dealership to this megaplex, the site of the many other dealerships in the Stoler group. The entire complex, including the instant site, contains approximately 12 ½ acres.

Stoler requests a sign twice as large in area than is permitted by the zoning regulations.

Stoler wants the largest sign possible, as a perceived commercial advantage *vis a vis* other businesses in the area. Every businessman in Baltimore County can make this claim. If a variance is permitted for every perceived commercial advantage for the property owner, the sign regulations become meaningless. Stoler also claims Hyundai does not make a 50 square foot sign.

Reistertown Road is an active north-south commercial corridor that extends from Baltimore City to Carroll County (becoming Westminster Pike in northern Baltimore County). Its topography is uniform throughout its stretch in Baltimore County. There are small hills and small valleys, none of which have hampered the success of the numerous commercial businesses, restaurants, etc. that line the corridor. Its desirability is evident because Stoler chose to invest \$2,000,000 to purchase and renovate the site to add to his current dealerships, which are located on contiguous property on the east side of Reistertown Road, to the immediate north and south of the subject site. Stoler claims to have invested \$2,000,000 in the site but refuses to commission a sign that conforms to the zoning regulations.

Active and varied retail uses and restaurants are located all along the east and west sides of Reisterstown Road, including the "hills and dales".

The sign law was enacted prior to Stoler's purchase of the site in October, 1997.

The subject parcel itself is a corner lot on 1.05 acres at the intersection of Reistertown Road and High Falcon Road. There is nothing unique about the site. It is identical to the many other lots zoned Business Roadside (B.R.) on this corridor. The B.R. zone is the most intense of all the business zones in the County, permitting hundreds of uses, including all the uses in the Business Local (B.L.) and Business Major (B.M.) zones.

While many uses on Reisterstown Road rely on spontaneous business, an automobile dealership is more destination driven. Stoler acknowledges his ads provide detailed directions from all points in the Metropolitan Baltimore area. His dealership has been located here for 34 years and he is well known. Apparently, the site serves him well since he continues to expand at the site rather than move elsewhere. (T. 67).

The Hyundai manufacturer recommends 3 sign sizes for its dealers but none is mandatory. (T.92). But they are cookie-cutter recommendations for dealers nation-wide, with no consideration for local zoning laws. Since all the signs have the same style of lettering, it appears the logo identity is the important factor, not the face size. (T. 103). Stoler chose the middle size and expects to be rewarded for not choosing the largest. But like Goldilocks, he too wants what he is not entitled to have. No state law requires a sign larger than permitted under local zoning laws. Most new car dealers are located along busy commercial corridors in the County. They are all subject to the same sign laws. The sign regulations are applied uniformly to automobile dealerships throughout the County.

THE LAW

BCZR 450 and BCZR 307

A. After a multi-year extensive study, with input from citizens, county agencies and businesses, the Baltimore County Council amended the regulations for all signs in the County. The comprehensive statute was enacted in 1997 as BCZR 450. The legislation may be the most detailed zoning statute in the Regulations. It includes definitions, policies and findings, a 9 page chart, administrative provisions, and an abatement requirement for existing signs. All signs are regulated by the zone in which they are proposed, or by the specific type of business they serve. New car dealerships have their own separate category on the Chart:

“A new motor vehicle dealership may display one sign not to exceed 50 square feet.” BCZR 450.4.5.(g).

This provision allows for illumination of the double-faced sign. Only one sign is permitted for a new car dealership. But the provision also recognizes that nowadays, most dealers own more than one franchise. BCZR permits one 50 ft. sign for each franchise. If the

franchise signs are combined on a single pole, each franchise sign may be 75 feet, for a total of 300 square feet of signage.

Stoler operates multi-franchises but displays separate signs.

B. The variance statute is found in BCZR 307.1:

“ . . . the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from . . . sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. . . . Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said . . . sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare.”

The sign law itself contains further restrictions on requests for sign variances. This is extraordinary and must be considered an important restriction on granting sign variances. Along with the size of the sign requested, it was a significant factor in People's Counsel's appeal from the Deputy Zoning Commisisoner's decision.

“A. Interpretation.

1. In considering requests for special exceptions and variances, the provisions of this section shall be strictly construed, unless the demonstrable effect of a liberal construction will prevent or reduce the confusion and visual clutter caused by excessive signage.” BCZR 450.8 A.

The sign standards are the minimum required. People's Counsel knows of no other state or local regulation that would permit a sign larger than 50 ft at this site. Stoler did not

cite any other regulation that would entitle him to a larger sign. Even so, the zoning regulations would prevail:

“ Interpretation. In their interpretation and application, these regulations shall be held to the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of . . . land . . . or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation, or private agreement, these regulations shall control. . . .” BCZR 600.

STANDARD OF REVIEW

The appellate courts have emphasized on numerous occasions the Circuit Court’s narrow and limited scope of review of an administrative agency decision. The source for the authority of the County Board of Appeals (CBA) in zoning matters is set forth in the Baltimore County Code (“BCC”) 602:

“The county board of appeals shall have and may exercise the following functions and powers: (a) *Appeals from orders relating to zoning.* The county board of appeals shall have and exercise all the functions and duties relating to zoning described in Article 25A of the Annotated Code of Maryland ...”

Article 25A provides the CBA shall hear **“...An application for a zoning variation or exception. . . and shall file an opinion which shall include a statement of the facts found and the grounds for its decision.”**

The case at hand involves a typical CBA zoning decision, requiring factual findings and application of the law to the facts. Appellate Courts have held the agency’s fact-finding

involves the drawing of inferences, and the agency may consider the “legislative intent” when interpreting and applying the zoning regulations. Marzullo v Kahl, 366 Md 158 (2001).

The CBA in the instant case recognized the applicable variance standards for signs in BCZR 450.8 and the general variance standards as described in the more recent seminal variance case in the Court of Special Appeals – Cromwell v. Ward, 102 Md. App 691 (1995). (CBA Opinion, p. 3-4).

Appellate courts recognize and support the CBA’s role in interpretation of zoning regulations in discussing the deference given to the agency’s decision: **“The interpretation of a statute by those officials charged with administering the statute is ... entitled to weight.”** Board of Physician Quality Assurance v. Banks, 354 Md. 59 (1999). **“Thus, an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. . . As stated in *Banks*, even though the decision of the Board of Appeals was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was “premised upon an erroneous conclusion of law.”** Marzullo, supra 173.

The “fact-finding” role of the administrative agency is long-standing, and nearly unassailable by the reviewing court. If there is substantial evidence in the record to support the Board’s factual findings, the decision must be upheld on appeal. A “clearly erroneous” standard, also known as the “fairly debatable rule”, applies to the agency’s findings of fact. It is described as “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached”, but does not permit under any circumstances “judicial fact-

finding or a substitution of judicial judgment for agency judgment. Enviro-Gro v. Bockelman, 88 Md. App. 323 (1991).

Judge Cathell, in Bockelman, also reaffirmed the language of Judge Hammond in Snowden v. City of Baltimore, 224 Md. 443 (1961), on an aspect of fact finding – drawing of inferences:

“The heart of the fact finding process is often the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. The Court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness not rightness.”

The Court of Special Appeals could not be clearer: **“Stated another way, substantial evidence pushes the Board’s decision into the unassailable realm of a judgment call, one for which we may not substitute our own exercise of discretion.”** Eastern AD v. Baltimore, 128 Md. App. 494 (1999).

The Court of Appeals has supported a consistent threshold of agency discretion in fact finding. **“... a reviewing court, be it a circuit court or an appellate court, shall apply the substantial evidence test to the final decisions of an administrative agency, but it must not itself substitute its judgment for that of the agency.”** Baltimore Lutheran High School Association Inc. v Employment Security Administration, 302 Md. 649 (1985).

More recently, in People’s Counsel v. Country Ridge, 144 Md. App. 580, 593 (2002), the Court of Special Appeals also reaffirmed the deference due the administrative agency. **“We need not necessarily agree that the Board of Appeals was correct in its**

interpretation of its earlier decision. We will affirm its interpretation if there is any reasonable basis that could have supported it.”

See also Harford County v. Bel Air Realty, 148 Md. App. 244 (2002), where the CSA upheld the zoning agency's decision and reversed the Circuit Court on the limited scope of review for an appellate court.

The agency's findings of facts can be reversed in only those rare instances of illegality, arbitrariness and unreasonableness.

The CBA's decision here is commendable for its (i) identification of the issues, (ii) interpretation of the zoning laws, and (iii) assessment and application of the facts. In its factual analysis, the CBA reviewed the testimony of Petitioner's witnesses, the approximately 23 pictures submitted, and the aerial map with elevation markings (T. 42-45) to find the following:

- The site is not unique because Reisterstown Road is a “rolling road which has many peaks and valleys” and many other nearby businesses work with the same topography. (Opinion, p. 4).
- Petitioner's 10+ acre site of various new car dealerships makes the site easily recognizable. (Opinion, pp. 3,4).
- There is no evidence of practical difficulty or hardship because the permitted 50 square foot sign would be visible along Reisterstown Road, in addition to the other Stoler dealerships' signs at the complex. (Opinion, p. 4).
- Stoler presented no evidence that he would lose his Hyundai dealership if the variance for the larger sign is not granted. (Opinion, pp. 3,4).
- There was no evidence that a 50 sq. ft. sign could not be constructed. (Opinion, p. 4).

The CBA decision is correct on both of the required fronts. First, there is no doubt the CBA interpreted and applied the proper variance regulations under BCZR. Second, the factual findings cannot be reversed on appeal, absence a finding of arbitrariness. Clearly, the findings by the CBA here were made after a careful review of the evidence. The CBA was not persuaded the site is unique or that hardship or practical difficulty would result. Its decision must be affirmed under the standards for judicial review.

**STOLER IS NOT ENTITLED TO A VARIANCE UNDER THE
STATUTE AND CASE LAW**

BCZR 307.1 states that the CBA may grant variances:

“... from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.”

This standard requires proof of the following by Stoler:

1. That the land or structure is “unique,” a zoning term of art;
2. That the uniqueness “results” in “practical difficulty” pertinent to zoning compliance;
3. That there is true “practical difficulty,” another zoning term of art; and
4. That any such “practical difficulty” is not self-created.

The purpose of variance law is to allow relief so that a property owner has some reasonable use of his property. See 3 Young, Anderson’s American Law of Zoning 4th, Sec. 20.02 (1996):

The underlying purposes of administrative relief have been discussed in an earlier chapter, but specifically, with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation.'

The first inquiry here is whether the property is peculiar or "unique." If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. Cromwell v. Ward 102 Md. App. 691 (1995); Umerley v. People's Counsel 108 Md.App. 497 (1996); Riffin v. People's Counsel 137 Md. App. 90 (2001). If this threshold is passed, the further question is whether the unique condition results in "practical difficulty." McLean v. Soley 270 Md. 208, 213-15 (1973).

The word "unique" is defined strictly. Otherwise, anyone could make some sort of claim. In Cromwell, 102 Md.App. at 710 (1995), the Court stated:

"In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.

'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

Applied properly to the evidence, the uniqueness and practical difficulty standards are intended to limit the grant of variances. As Judge Cathell pointed out in Cromwell, supra:

"The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. See, e.g., A. Rathkopf, 3 The Law of Zoning and Planning Section 38 (1978)." Id. 651 A.2d 424,430.

Stoler has the burden of proving he meets the standards for a variance. His evidence falls well short of the uniqueness requirement. Stoler presented no evidence that the site's size, shape, subsurface conditions, or environmental factors make it unique. There is no issue of historical significance, navigable waters, or restrictions from abutting properties. Stoler argues the topography makes his site unique. He claims the site sits in a trough on Reisterstown Road. But other businesses also operate nearby within the same topography. Also, much of Reisterstown Road in the County is a series of hills and troughs. Mr. Howe, the engineer, described Reisterstown Road as "Up and down. It's not flat." (T.15). The CBA also had in evidence the GIS (aerial) map (P.C. Exh. # 1), which confirming the CBA's findings.

The CBA was not persuaded. It stated in its Opinion: **"In reviewing the facts of this case, the Board is unable to find that the property in question is unique. There is no question that Reisterstown Road is a rolling road which has many peaks and valleys. This property is located in a trough of Reisterstown Road, along with several other properties. There are other properties in other valleys of Reisterstown Road along the full extent of the road."** (Opinion, p.4).

The CBA's decision is consistent with a similar case decided in 1993. The CBA rejected a variance for a larger sign in Red Roof Inns v. People's Counsel, 96 Md. App. 219,

624 A.2d 1281 (1993). Petitioner Red Roof Inn argued the low elevation of the site at the intersection of Timonium and Greenspring Roads made it unique under variance law. The CBA rejected the uniqueness argument and denied the variance. The Circuit Court for Baltimore County (Judge Cahill) and the CSA affirmed the Board of Appeals. Even before the decision in Cromwell, emphasized the high standards required for a variance, the CBA and the Courts did not treat a topographical feature common to all the others in the area as a “uniqueness.”

The CBA here found no uniqueness, and its decision is based on its analysis of the evidence. The variance could have been denied based on this finding alone. In the interest of completeness and in response to the evidence presented by Petitioner on the second prong, the CBA also addressed the practical difficulty standard.

Practical Difficulty Defined and Analyzed

The Court of Appeals listed the criteria in McLean v. Soley, 270 Md. 208, 214-15 (1973):

“1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.”

These criteria are interrelated and must be analyzed together.

Stoler’s main arguments - (i) The Hyundai manufacturer prefers bigger signs and offers 3 sizes, all of which exceed the limit under BCZR; (ii) Other signs in the area are larger; (iii) Customers will not be able to locate the Hyundai dealership - are not criteria for a variance.

(i) Stoler admitted his letter from Hyundai (Pet. Exh. 12) did not say he would lose the dealership if he did not use one of the three signs suggested by Hyundai. (T. p.92). Nor did Stoler produce any written evidence of such a threat from Hyundai.

The CBA noted that Stoler tried to speculate on this but there was no evidence to that effect. (Opinion, pp. 3,4). Moreover, the CBA correctly pointed out that manufacturers do not control zoning in Baltimore County. **“In addition, the Board does not feel that large corporations should be in the position of being able to dictate the size of the signage in Baltimore County.”** (Opinion, p. 4).

The CBA took a similar position in denying a variance In the Matter of Alban Tractor Co., Inc. supra.

(ii) The CBA was correct to dismiss the evidence of other and/or larger signs in the area. Although the engineer was asked to render an opinion on the need for the sign variance, he admitted he was not even aware of the abatement requirement under the zoning regulations. He admitted having no knowledge as to whether other signs in the area were non-conforming or illegal. The CBA correctly noted that the zoning variances granted on

other sites were rendered prior to enactment of the new standards under BCZR 450 (T. 128). They were irrelevant to the relief requested in the instant case.

Stoler wants a bigger sign for commercial advantage. This is not an element of practical difficulty. His position was rejected by the CBA and appellate Courts in Red Roof, supra at 1283:

“The Board’s conclusion rested, in part, on its belief that the testimony clearly demonstrated that appellant wants the taller sign ‘principally for advertising purposes to attract motorists on Interstate 83 [and] to be able to compete with other motels in the area.’”

(iii) The evidence that Stoler would suffer hardship and practical difficulty because customers would not be able to locate the Hyundai dealership was unfounded.

Both Stoler and his engineer described the 10-12 acre complex of Stoler automobile dealerships, complete with a multitude of illuminated freestanding and wall-mounted signs, as having a recognizable identity. Howe stated: **“Certainly, Mr. Stoler’s automobile complex takes up a good portion of this area.”**(T. 15, 34, 35, 50,51). Stoler has been operating from this location since 1968. He advertises the location, complete with exact directions, on radio and television.

Howe attempted to use the busy commercial site as evidence that the Hyundai dealership would be difficult to locate. But he admitted other commercial areas of the County such as York Road have similar commercial businesses and traffic (T. 40). As the CBA pointed out on page 3 of its Opinion, this is the only Hyundai dealership in the northwest County.

Stoler cannot use his own repeated expansions at the locale as a basis for the “clutter” that justifies a larger sign. The Court of Appeals has rejected variance requests for expansion whose essence is relative advantage or convenience to the property owner. Pem Constr. Co. v. City of Baltimore, 233 Md. 372 (1964), Cleland v. City of Baltimore, 198 Md. 440 (1951) and Marino v. City of Baltimore, 215 Md. 206 (1957).

The appellate courts have also rejected variance claims based on financial or revenue considerations. Burns v. Mayor & City Council, 251 Md. 554 (1968), Daihl v. County Board of Appeals, 258 Md. 157 (1970) and Cromwell, supra, quoting Xanthos v. Board of Adjustment, 685 P.2d 1032, 1037 (1985):

Hardship is not demonstrated by economic loss alone . . . Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program.”

The CBA weighed the evidence and was not persuaded that having a 50 square foot sign instead of a 96 square foot sign resulted in hardship and practical difficulty. That is all that is needed to affirm the agency decision. Judge Moylan said in Pollard’s v. Berman’s, 137 Md. App.277, 768 A.2d 131,137 (2001):

“ . . . all that was required was that the Board be not persuaded . . . ‘Mere non-persuasions . . . requires nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard.’ ” (citations omitted).

The CBA’s findings, and the application of the law to those findings, cannot be ignored, rejected, or subordinated. The variance must be denied and the decision of the CBA should be affirmed.

EXERCISE OF POLICE POWERS

Stoler's suggestion that the regulation of signs is not within the police power or is an abuse of the power is contrary to prevailing law.

The Supreme Court established the constitutionality of zoning to regulate land use. See Reinman v. Little Rock, 237 U.S. 371 (stables); Cusack Co. v. City of Chicago, 212 U.S. 526 (signs); Hadacheck v. Sabaastian, 239 U.S. 394 (brick manufacturing). The Court sustained comprehensive zoning in Euclid v. Amber Realty Co., 272 U. S. 365. Later Supreme Court cases include Village of Belle Terre v. Boraas, 416 U.S. 1 (rooming houses); and Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (landmark restrictions).

The Maryland Court of Appeals has likewise sustained zoning as an exercise of the police power. See Tighe v. Osborne, 150 Md. 452 (1926), Jack Lewis, Inc. v. Baltimore, 164 Md. 146 (1933), Grant v. City of Baltimore, 212 Md. 301 (1957), City of Baltimore v. Borinsky, 239 Md. 611 (1965).

EQUAL PROTECTION

Stoler claims the existence of larger business signs in the area, approved under zoning regulations in effect at the time, creates an unacceptable disadvantage for him and violates the equal protection clause. He offered no testimony or evidence on the equal protection issue at the CBA hearing. He made a vague, but far from emphatic, reference to equal protection in his closing argument. It is questionable that he preserved the issue for appeal.

The validity of a zoning ordinance cannot be raised for the first time on appeal. Bowie v. Board of County Comm's of Howard Co., 253 Md. 602, cert. denied 90 S. Ct. 264.

Administrative agencies have authority to decide Constitutional issues, and the issues must be raised at that level. This is discussed at length by Judge Eldridge in Insurance Commissioner v. Equitable, 339 Md. 596, 615 (1995).

“ It is sometimes said, . . . that an administrative agency or official has no authority ‘to declare’ a statute unconstitutional. This is a correct statement of Maryland law in the sense that an administrative agency or official is not empowered to render a declaratory judgment with respect to the constitutionality of a statute. . . . Nevertheless, the lack of authority to issue a declaratory judgment or ruling on the constitutionality of a statute does not mean that an administrative agency or official, in the course of rendering a decision in a matter falling within the agency’s jurisdiction, must ignore applicable law simply because the source of that law is the state or federal constitution. . . . Moreover, over the past fifty years, when many statutes have provided for quasi-judicial administrative proceedings to resolve the innumerable controversies and problems associated with our modern age, this Court has consistently taken the position that constitutional issues, including the constitutionality of applying particular statutes, can and often must be raised and initially decided in the statutorily prescribed administrative proceedings.”

Judge Eldridge, at 619, referred to Poe v. Baltimore City, 241 Md. 302 (1966).

“It is particularly within the expertise of an administrative body such as the Board to marshal and sift the evidence presented in a hearing . . . and to make and administrative finding as to whether, on the evidence, the application of the ordinance to the property involved deprives the owner of any reasonable use of it. Such a finding is subject to court review on the question of constitutionality, as a matter of law.”

A. NONCONFORMING USES

Stoler's equal protection claim is based on a complete mischaracterization and misunderstanding of the "nonconforming use" in land use law.

A nonconforming use is defined in BCZR:

"A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use."

BCZR: 101

" A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate." BCZR 104.

Signs approved under prior regulations that do not conform to the current law are non-conforming. BCZR 450 provides for these nonconforming signs to be removed, or "abate" no later than 15 years from the enactment of law in 1997. (See attached BCZR).

The Court of Appeals discussed nonconforming billboard signs and abatement in Grant v. City of Baltimore, 212 Md. 301. The first zoning laws in the City prohibited billboards in residential districts, although existing billboards could remain as nonconforming uses. Later a City Council resolution established an abatement period of 5 years to remove the nonconforming billboards. Judge Hammond gives a nice summary of the history of nonconforming uses in zoning law:

“Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could no thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to recuse nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use. . . . In Dorman v. Mayor and C.C. of Baltimore, 187 Md. 678, 684, the issue was whether a nonconforming use had been abandoned. Judge Markell said for the Court, in speaking of the aim of bringing about general conformity: ‘The right under Paragraph 11 to ‘continue’ a non-conforming use is not a perpetual easement to make a use on one’s property detrimental to his neighbors and forbidden to them.’ (citations omitted).

This comports with the earlier case of Beyer v. City of Baltimore, 182 Md. 444 (1943) where Judge Marbury discussed nonconforming uses at page 453:

“Non-conforming , as the word itself indicates, means something different from the use which the municipal authorities consider best for the public health, welfare, morals and safety in that area. It is to avoid injustice that zoning ordinances generally except existing non-conforming uses. Some permit their extension to a limited extent, but the public effort is not to extend, but rather to permit to exist as long as necessary, and then to require conformity for the future.”

Later in 1982, Judge Davidson in County Council of PG Co. v. E.L. Gardner, Inc., 443 A.2d 114, 119 reaffirmed the spirit of these earlier cases in discussing interpretation of nonconforming use statutes: **“These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses.”**

Stoler’s position that he should be able to erect the same size sign as nonconforming signs along Reisterstown Road turns zoning law completely upside down. It conflicts with the conventional treatment of nonconforming uses and structures in Maryland and other jurisdictions. The plethora of zoning treatises and appellate cases support the elimination, not the creation, of non-conforming uses.

Judge Marbury states this in City of Baltimore v. Byrd, 191 Md.632, 637 (1948), after recognizing the authority of a subdivision to enact zoning law:

“Zoning is an exercise of police power which, for the public good, takes away some of the rights of individuals to use their property as they please, and at the same time gives them rights to restrict injurious uses of the property of others. This cannot be done by piecemeal legislation. It can only be upheld as part of a general plan for a community which sets apart certain areas for residence purposes, and permits commercial business in other areas where it is established or where such use is

obviously suitable. Such a plan must be attuned to the public health, welfare and safety. It must not be arbitrary, nor can it be discriminating, except insofar as is necessary for the proper establishment of the various kinds of districts permitted... authority is given the local legislative bodies to divide their municipalities into districts and within such districts, to regulate and restrict the erection or use of buildings, structures or land. All such regulations must be uniform for each class or kind of building throughout any district, but the regulations in one district may vary from those in other districts.

In the Baltimore City Zoning ordinance are provisions for non-conforming uses which existed at the time of its passage, and there are provisions for the extension of these uses. We have held that these last provisions should be strictly construed, as the intention of the ordinance is not to allow them to multiply.”

See also Anderson's Law of Zoning, 4th Edition. Section 6.01 et seq. for a general discussion of cases nationwide, all of which emphasize the need to eliminate nonconforming uses, and support reasonable abatement periods to cease the use.

Even so, the presence of nonconforming signs in the area does not entitle Stoler to ignore zoning standards. In Minor v. Shifflett, 252 Md. 158, 167 (1969), Judge Smith wrote for the majority of the court that refused to rezone a site because nonconforming uses existed in the area:

“The presence of a nonconforming use in an area would not and could not be evidence of error in original zoning requiring a change of classification. To so hold would defeat the very purpose of zoning. Ordinarily, planners expect that nonconforming uses will wither on the vine, so to speak, and ultimately disappear.”

B. CURRENT LAW APPLIES

Stoler's position that applying the current sign law to him is a denial of equal protection conflicts with the well-settled administrative law principle that current law applies to new applicants and pending cases.

It is axiomatic that current zoning laws apply to a new application. Stoler's application for the sign was made 3 years after the sign legislation was enacted. It's not even a close call. It is not up to the property owner to decide which zoning laws he will follow and which he will ignore.

Moreover, property owners with a pending zoning case must abide by legislation enacted after the application is made. **"Until all necessary approvals, including all final court approvals, are obtained"** is the standard described by Judge Cathell in Powell v. Calvert County, 368 Md. 400, 409, 795 A.2d 96,101 (2002).

The only exception is the rarely applicable "vested rights". Vested rights requires a valid permit or occupancy permit and sufficient construction so that the public is aware that the land is committed to the use. Vested rights will not apply if there is no final court approval. Powell, supra. See also Marzullo v. Kahl, 366 Md. 158 (2001). Even Stoler recognizes no vested rights exist here, and does not claim the sign is vested.

Stoler's attempts to avoid application of a 3-year-old law are groundless, even frivolous. He turns on its head the well-established zoning principles pertaining to (i) non-conforming uses and structures, and (ii) the law applicable to a variance request.

C. THERE IS NO EQUAL PROTECTION ISSUE HERE

Sign regulation is a valid zoning consideration and serves a legitimate state objective. The general findings and policies in BCZR 450.1 (attached) states clearly the sign laws support the County's interest in public safety, economic viability and protection of resources.

The Appellants in Donnelly Adv. Corp. v. City of Balto., 279Md. 660 (1977) challenged a sign ordinance on equal protection grounds. The City ordinance prohibited billboards in the Oldtown section of Baltimore, although other types of advertising signs were permitted. The Court noted: "**Because neither fundamental rights nor suspect classifications involved only a rational relationship to a permissible state objective need be shown.** Id at 669.";

"As to appellants' claim that the distinction in Oldtown between on- and off-premises advertising violates equal protection, we think that Railway Express Agency v. New York, 336 U.S. 106 . . . (1949) is dispositive. There, the Supreme Court upheld a New York City traffic regulation prohibiting vehicles from carrying any commercial messages other than those advertising the business of the vehicle's owner. In concurrence, Mr. Justice Jackson articulated the rationale we find persuasive in this case as well: "I think the answer has to be that the hireling may be put in a class by himself and may be dealt with differently than those who act on their own . . ." Id.

In other words, the legislature can differentiate among types of signs permitted in an area.

The Court in Donnelly also found the sign ordinance promoted public health, security, general welfare, and morals and was thus a valid exercise of the police power. Furthermore, the Court rejected Appellant's claim that the sign prohibition constituted a

taking for which it was entitled to compensation because the Appellant was not deprived of all beneficial use of its property. Id. 670-671.

Likewise, in Massage Parlors v. Mayor & City Council, etc., 398 A.2d 52 (1979), where Appellants claimed a licensing ordinance violated equal protection, the Court pointed out that for equal protection purposes, legislative classification is “**presumed to be constitutional.**” The Court, recognizing that the equal protection clause guarantees that similar persons will be treated in a similar manner, pointed out: “**However, it does not deny to a state or local government the power to treat different classes of persons differently, provided those classifications are based upon permissible criteria and are not arbitrarily used to burden a group of individuals. If the government classification relates to a legitimate government purpose the classifications will be permitted.**” (citations omitted).

In the instant case there is no prohibition of signs for new car dealerships, but only a reasonable limitation on size. There is no different application of zoning regulations within a class or use. Stoler is not treated differently from other new car dealers, nor from any other commercial enterprise in Baltimore County. All are subject to BCZR 450, and all have similar size limitations.

The cases cited by Stoler involve facts and statutes that differ markedly from the instance case. His arguments produce convoluted and twisted results. Stoler suggests a future compliance date for all signs to be uniform and in conformity with the law. In the interim, he claims the prior law, and not the new law, would apply to new signs. In addition to turning the zoning laws on its head, the consequences of this scenario present disastrous

choices for a property owner and additional expenses. If Stoler's position is adopted, irrational consequences would result:

1. Erection of a new sign in accordance with the former law would have to be removed by the compliance date, requiring the property owner to end up purchasing two signs. Additionally, the life span of the first sign would vary, depending on how far out from the compliance date the sign was purchased. A property owner or tenant that opted to spend once for a sign that complies with the new law would still have a smaller sign than someone who was willing to purchase two signs, one before and one after the compliance date.
2. Existing signs under the former law would have to be replaced by the compliance date. Disparity in size would still exist for the transition period until the compliance date.

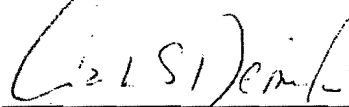
If Stoler's variance is granted, his sign would not be subject to abatement; those who comply or must abate would have a smaller sign; the disparity would continue, but Stoler would have the larger sign. If the law is applied without exception, all signs would be uniform when the abatement period expires.

Stoler is not limited to one sign for the nine types of cars he sells at his complex. Other businesses are limited to a single sign, even if they offer different services. In the Matter of Alban Tractor Co., Inc., before the CBA, (1999), the Alban Tractor company argued it was entitled to a larger sign to include both tractor sales and its new rental division, because the manufacturer recommended it. The CBA applied BCZR 450 and denied a variance for a larger sign to accommodate the additional services.

The CBA in the instant case concluded that a 50ft sign for the Hyundai franchise would provide adequate notice of a Hyundai dealership to potential customers on Reisterstown Road. There is no denial of equal protection.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 2003, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to: Marvin I Singer, Esquire, 10 E. Baltimore Street, Suite 901, Baltimore, MD 21202.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

- C. Residential uses, except for housing for the elderly, are not permitted in areas where elementary, middle or high schools are over capacity, as determined by the Board of Education.
 - D. A PUD-C is not exempt from the provisions of Article 4A, Growth Management.
- 440.8 Review. Proposals for a PUD-C shall be submitted and reviewed in accordance with the procedures specified in Section 430.11.

**Sections 441 through 449
(Reserved)**

**Section 450
Signs
[Bill No. 89-1997]**

- 450.1 Statement of general findings and policies.
- A. Signs convey information which is essential for protecting the safety of Baltimore County's citizens, maintaining order within its communities and advancing the health of its economy.
 - B. Businesses, small and large, established and new, contribute to Baltimore County's economic welfare by creating jobs and job opportunities, developing under-utilized and revitalizing depressed areas, and providing an expanded tax base. Because signage is necessary for the success and growth of businesses in the county, the regulation of signage must reasonably accommodate the needs of the business community.
 - C. The amount of signage in Baltimore County is excessive. Excessive signage unduly distracts drivers and pedestrians, thereby creating traffic and safety hazards, impairing the utility of the highway system, and reducing the effectiveness of signs and other devices necessary for directing and controlling traffic.
 - D. Baltimore County's appearance is marred, property values and public investments are jeopardized, scenic routes are diminished, and revitalization and conservation efforts are impeded by excessive signage and incompatible signage.
 - E. The existence of excessive and incompatible signage is contrary to the goals of the County Master Plan, as adopted and amended. Included among those goals are:
 - 1. Improved quality of commercial corridors, including signage.
 - 2. Improved compatibility between industrial and residential uses, including signage.
 - 3. Enhanced control of placement, size and design of commercial corridor signage.

- Calling a sign
- transcription
topography
High Falcon case

RE: PETITION OF HIGH FALCON REALTY CORP.	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION	*	
OF THE COUNTY BOARD OF APPEALS	*	
OF BALTIMORE COUNTY	*	CIRCUIT COURT
IN THE CASE OF THE APPLICATION OF	*	
<u>HIGH FALCON REALTY CORP.</u>	*	
FOR A VARIANCE on property located on the	*	FOR
S/E corner Reisterstown Rd and High Falcon Rd	*	
(11317 Reisterstown Road)	*	
4 th Election District, 3 rd Councilmanic District	*	BALTIMORE COUNTY
Before the County Board of Appeals	*	
Case No. 00-559-A	*	
	*	Case No. 3-C-02-005291

* * * * *

PEOPLE'S COUNSEL OF BALTIMORE
COUNTY MEMORANDUM

STATEMENT OF THE CASE

High Falcon Realty Corporation is the owner of a 1+ acre of commercial property on the southeast corner of Reisterstown Road at the intersection of High Falcon Road. It is the site of a Hyundai dealership. The corporation is owned by Len Stoler, who operates several dealerships, on adjoining parcels. The site is zoned Business Roadside (B.R.).

High Falcon filed a Petition for Variance to erect a 97 square foot, double-faced illuminated sign, 24 feet high. The Baltimore County Zoning Regulations (BCZR) permit a 50 square foot, double-faced illuminated sign, 24 feet high for new car dealerships in Baltimore County. The Deputy Zoning Commissioner granted the Petition. A *de novo* appeal to the County Board of Appeals ("CBA") by People's Counsel for Baltimore County.

5/24/02

RE: PETITION OF HIGH FALCON REALTY CORP.	*	IN THE
	*	
FOR JUDICIAL REVIEW OF THE	*	
DECISION OF THE COUNTY BOARD	*	
OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT
	*	
IN THE MATTER OF THE APPLICATION OF	*	
<u>HIGH FALCON REALTY CORP.</u> FOR A	*	FOR
VARIANCE on property located on the	*	
S/E corner Reisterstown Rd and High Falcon Rd	*	
(11317 Reisterstown Road)	*	
4th Election District, 3rd Councilmanic District	*	BALTIMORE COUNTY
	*	
Case No. 00-559-A before the	*	
County Board of Appeals of Baltimore County	*	
	*	Civil No. 3-C-02-5291

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by High Falcon Realty Corp., and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

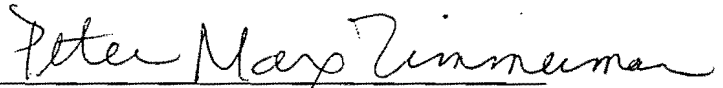
Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel For Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED AND FILED
2002 MAY 24 P 3:03
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2002, a copy of the foregoing Response to Petition for Judicial Review was mailed to Marvin I. Singer, Esq., 10 E. Baltimore Street, Suite 901, Baltimore, MD 21202, attorney for Petitioner.


PETER MAX ZIMMERMAN

4/13/02

✓

IN THE MATTER OF
THE APPLICATION OF
HIGH FALCON REALTY CORP.
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTHEAST COR
REISTERSTOWN AND HIGH FALCON
ROADS (11317 REISTERSTOWN ROAD)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

4/18/02

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 00-559-A

* * * * *

OPINION

Background

This is an appeal by the Office of People's Counsel from a decision of the Deputy Zoning Commissioner granting a variance to High Falcon Realty Corporation for property located at 11317 Reisterstown Road in the Fourth Election District of Baltimore County. The property is zoned BR. The variance granted was from § 450.4.5(g) of the *Baltimore County Zoning Regulations* (BCZR) to permit a double-faced illuminated free standing sign with an area of 96.85 sq. ft. per side in lieu of the permitted 50 sq. ft. per side. A hearing was held in this matter on October 10, 2001. The Petitioners were represented by Marvin I. Singer, Esquire. The Office of People's Counsel was represented by Deputy People's Counsel Carole S. Demilio. A public deliberation was held on November 16, 2001.

The variance request is to permit a double-faced illuminated freestanding sign for the Hyundai dealership operated by Mr. Leonard Stoler. The property which is the subject of the variance request consists of approximately 1.051 acres and is located on the southeast corner of the intersection of High Falcon Road and Reisterstown Road in the Reisterstown area of Baltimore County. The property was formerly the site of an abandoned Hardee's /Roy Rogers' fast-food restaurant. Mr. Stoler is in the business of selling automobiles in this area of Baltimore County and has other dealerships adjacent to the property in question, where he sells Lexus, Mitsubishi, and Ford automobiles.

The Petitioners presented Edmund S. Howe, a registered professional engineer, who testified with respect to the high concentration of business in the area. Mr. Howe testified that the requested sign is 96.9

sq. ft. and is erected on a pole which is 25 feet high. The sign was erected subsequent to the decision of the Deputy Zoning Commissioner. Mr. Howe testified that the Hardee's sign located near the Hyundai dealership is considerably larger than that permitted under the current County law. He admitted that the Hardee's sign was erected prior to the passage of the current County sign law. Mr. Howe testified that, in approaching the site from the south, Reisterstown Road is on rolling topography and that the Hyundai site is located at the low point of a trough of Reisterstown Road at the intersection of High Falcon Road. Reisterstown Road then begins to climb to another crest. It is the contention of the Petitioners that any customers coming from the south would have difficulty seeing the Hyundai dealership without the large sign requested. In addition, customers coming from the north would come over the crest of the road and not be able to see a smaller sign in time to turn into the intersection at High Falcon Road where the entrance to the Hyundai dealership could be made from the north. There is an entrance to the dealership off of Reisterstown Road coming from the south. The Petitioners submitted a number of photographs into evidence as well as topographical maps and a plat of the proposed site showing the configuration of the proposed sign.

Petitioners also presented Mr. Len Stoler, who is the principal in High Falcon Real Estate Company, the owner of the Hyundai site. Mr. Stoler testified about refurbishing the old Roy Rogers operation which was previously located on the site, and he testified that the sign that was previously on the site for the Roy Rogers operation was 50 to 60 percent larger than the Hyundai sign he proposed to erect.

Mr. Stoler testified that he also owned the Lexus and Mitsubishi dealerships which are immediately south of the Hyundai site and cover 4.2 acres. He also owns a Nissan and Porsch, Audi and Ford dealership which are south of the Lexus and Mitsubishi dealerships and which cover approximately 6 acres. He indicated that the only way to get from the Lexus dealership to the Hyundai dealership was by a set of stairs going down a steep hill between the properties. In addition, someone could drive around the Hyundai

building to reach the Lexus dealership. Mr. Stoler felt that it would be a great hardship on his Hyundai dealership if he was not allowed to have the larger sign. Mr. Stoler submitted copies of the various available Hyundai signs, as well as the Hyundai financial facility sign as standards. He also submitted a letter from Hyundai Motor America indicating that they favored installation of a larger sign and had encouraged Mr. Stoler to install that sign.

Contrary to Mr. Stoler's speculation, there was nothing that indicated that, if a smaller sign than those recommended by Hyundai was erected, Mr. Stoler would lose the dealership. In addition, it was clear that Mr. Stoler's Hyundai operation was the only Hyundai dealership in the northwest area of the County. Mr. Stoler also testified that, in addition to signs, the Stoler group advertises in newspapers, on television, and also radio. His advertisements indicate that its operations are located 5 miles north of the Baltimore Beltway on Reisterstown Road.

Decision

Section 450.8 of the BCZR states:

a. Interpretation

1. In considering requests for special exceptions and variances, the provisions of this section shall be strictly construed, unless the demonstrable effect of a liberal construction will prevent or reduce the confusion and visual clutter caused by excessive signage.

2. No special exception or variance may be granted if it will result in the authorization of a sign class which is not otherwise permitted for a particular zone or use by § 405.4.

Section 405.4.5(g) covers free standing signs for an enterprise and states that "a new motor vehicle dealership may display one sign not to exceed 50 sq. ft."

The initial requirement for the granting of a variance is that the property must be considered unique under the decision of *Cromwell v. Ward*, 102 Md.App. 691 (1995). The burden to establish special circumstances or conditions was clarified by the Court of Special Appeals in *North v. St. Mary's County*, 99 Md.App. 502 (1994). The Court stated:

An applicant for variance bears the burden of overcoming the assumption that the proposed use is unsuited. That is done, if at all, by satisfying fully the doctrines of the statute authorizing the variance.

In reviewing the facts of this case, the Board is unable to find that the property in question is unique. There is no question that Reisterstown Road is a rolling road which has many peaks and valleys. This property is located in a trough of Reisterstown Road, along with several other properties. There are other properties in other valleys of Reisterstown Road along the full extent of the road. In addition, the property is located within a cluster of automobile dealerships owned by the Len Stoler Group. There is no question that the operation can be identified as, and is advertised as, being located 5 miles north of the Baltimore Beltway on Reisterstown Road. All of the other Stoler dealerships are located in that area, as well as other operations across Reisterstown Road and across High Falcon Road. The signs in the area which are larger than that permitted under the current law must be removed after the 15-year grace period allowed by the law.

In addition, the Board does not find that the failure to grant the variance would be an unreasonable hardship on Mr. Stoler and his Hyundai operation. A 50 square foot sign would certainly be visible along Reisterstown Road in addition to the signs for his other dealerships. There is no indication that failure to have the larger sign would cause Mr. Stoler to lose the Hyundai dealership. In addition, the Board does not feel that large corporations should be in the position of being able to dictate the size of the signage in Baltimore County. While the Petitioner has testified that there is no 50 square foot sign available from Hyundai for display at dealerships, there has been no testimony that one could not be constructed to meet the requirements of the current County law.

Finally, the Board notes that the decisions submitted by the Petitioners where sign variances were granted were all decided prior to the passage of § 450.4(g).

Therefore, the Board concludes that the Petition for Variance must be denied.

ORDER

THEREFORE, IT IS THIS 18th day of April, 2002 by the County Board of Appeals of Baltimore County

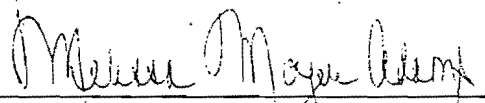
ORDERED that the Petitioners' request for variance from § 450.4.5(g) of the *Baltimore County Zoning Regulations* (BCZR) to allow a double-faced illuminated free standing sign with an area of 96.85 square feet per side in lieu of the permitted 50 square feet per side is hereby **DENIED**; and it is further

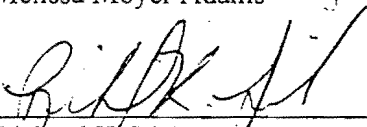
ORDERED that the Petitioners shall have sixty (60) days from the date of this Order to bring the subject property into compliance with all applicable zoning laws and regulations of Baltimore County.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence S. Wescott, Panel Chairman


Melissa Moyer Adams


Richard K. Irish

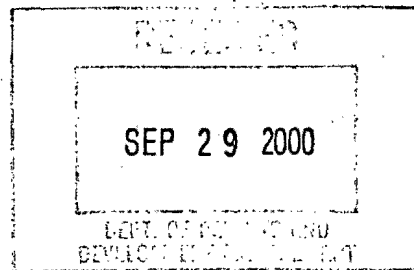


Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188



PETER MAX ZIMMERMAN
People's Counsel

September 29, 2000

CAROLE S. DEMILIO
Deputy People's Counsel

Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR VARIANCE
11317 Reisterstown Road, S/E corner Reisterstown
Road and High Falcon Road,
4th Election Dist., 3rd Councilmanic
High Falcon Realty Corp., Petitioners
Case No.: 00-559-A

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated September 8, 2000 of the Baltimore County Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: Marvin I. Singer, Esq., 10 E. Baltimore Street, Suite 901, Baltimore, MD 21202,
Attorney for Petitioners

9/8/00

9/8/00

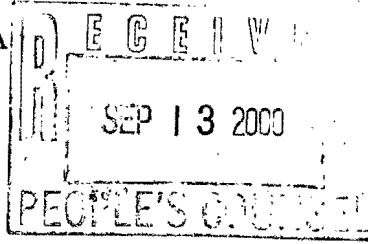
IN RE: PETITION FOR VARIANCE

SEC Reisterstown Road
and High Falcon Road
4th Election District
3rd Councilmanic District
(11317 Reisterstown Road)

High Falcon Realty Corporation
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 00-559-A

* * * * *



FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, High Falcon Realty Corporation, by and through Barry Stoler, its Vice-President. The variance request is for property located at 11317 Reisterstown Road. The property is zoned BR. The variance request is from Section 450.4.5.(g) of the Baltimore County Zoning Regulations (B.C.Z.R), to permit a double-faced illuminated free standing sign with an area of 96.85 sq. ft. per side in lieu of the permitted 50 sq. ft. per side.

Appearing at the hearing on behalf of the variance request were Len Stoler, on behalf of High Falcon Realty Corporation, Edwin Howe, professional engineer who prepared the site plan of the property, Don Burley, representing Hyundai and Marvin Singer, attorney representing the Petitioner. There were no protestants in attendance.

Testimony revealed that the property, which is the subject of this variance request, consists of 1.051 acres, more or less. The subject property is located on the southeast corner of the intersection of High Falcon Road and Reisterstown Road in the Reisterstown area of Baltimore County. The property was formerly the site of an old abandoned Hardee's/Roy Rogers fast food restaurant. Mr. Stoler, who is in the business of selling automobiles, particularly in this area of Baltimore County, purchased the subject property approximately 2 years ago. He has made extensive renovations to the site and has converted the old fast food restaurant building into a

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9/8/00
[Signature]

Hyundai new car dealership. He has made substantial improvements to the property, both in its appearance and its landscaping. He has turned an abandoned property into a viable commercial entity. His Hyundai dealership has been operating for approximately 90 days. He is now in the process of constructing the proper identification sign on the property in the area depicted on the site plan. The sign in question, while it exceeds that which is permitted by the Baltimore County Zoning Regulations, is considerably smaller than the Hardee's and the Roy Rogers sign which was on the property prior to Mr. Stoler's purchasing same. In order for the sign to be constructed on the property, the variance request is necessary.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and their property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. Of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

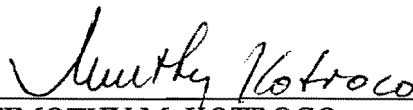
After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel.

In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 8th day of September, 2000, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from Section 450.4.5.(g) of the Baltimore County Zoning Regulations (B.C.Z.R), to permit a double-faced illuminated free standing sign with an area of 96.85 sq. ft. per side in lieu of the permitted 50 sq. ft. per side, be and is hereby GRANTED.

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
Date 9/8/00
By J.R. Johnson



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 11317 Reisterstown Rd.

which is presently zoned BR

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 450.4.5.(g) to permit a double-faceted

illuminated, free-standing sign with an area of 96.85 sq. ft. per side in lieu of the permitted 50 sq. ft. per side.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

See attached statement.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

MARVIN I. SINGER

Name - Type or Print

Signature

(410) 685-1111

Company

10 E. Baltimore St. Suite 901

Address

Telephone No.

Baltimore, MD

21202

City

State

Zip Code

Legal Owner(s):

HIGH FALCON REALTY CORP

Name - Type or Print

By: Barry Stoler VP
Signature

Name - Type or Print

c/o Len Stoler

Signature

P.O. Box 21117

(410) 356-7000

Address

Telephone No.

Owings Mills

MD

21117

City

State

Zip Code

Representative to be Contacted:

Marvin I. Singer

Name

410-367-0030 ext.

10 E. Baltimore St.

Address

410-685-1111 ext.

Telephone No.

Baltimore

MD

21202

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Reviewed By BR

Date 6/29/00

Case No. 00-559-A

REV 9/15/98

STATEMENT TO ACCOMPANY PETITION FOR ZONING VARIANCE
HIGH FALCON REALTY CORP.

This request is to permit the erection of a double-faced, illuminated, free-standing business sign with a size of 96.85 square feet per side, in lieu of the 50 square feet now permitted.

The variance is requested in order to permit erection of a standardized sign in the format required by the manufacturer, of a type that may be readily and safely seen and identifiable from an adequate distance, giving due consideration to the surrounding area, the topography of the site and of Reisterstown Road. The site is located at the intersection of High Falcon Road, at the low point between two hills along Reisterstown Road, thereby creating limited sight lines along the major artery. The larger size is needed to provide adequate visibility for prospective customers. Such variance is needed in order to afford relief from undue hardship and practical difficulty. A brand identification sign is required by applicable State regulations in connection with operation of an automobile dealership; the absence of which precludes the sale of the identified make of automobile from the subject premises.

The variance is required in order to make reasonable use of the property, and to prevent conformance with the Zoning Regulations from being unnecessarily burdensome. The proposed sign replaces a sign previously existing on the site in connection with an earlier commercial use thereon.

Further, the applicable Zoning Regulation is arbitrary, capricious, and discriminatory, and is written in a vague and confusing manner. The imposition of the size limitation contained therein is illogical, and fails to properly serve a public purpose.

68

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: July 21, 2000

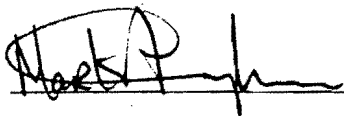
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 336-Revised, ~~553~~, 555, 559, 560 & ~~004~~

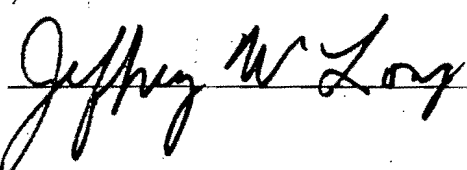
The Office of Planning has reviewed the above referenced case and has no comments to offer.

For any further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared by:



Section Chief:



AFK/JL:MAC

RE: PETITION FOR VARIANCE
11317 Reisterstown Road, S/E corner Reisterstown Rd
and High Falcon Rd
4th Election District, 3rd Councilmanic

Legal Owner: High Falcon Realty Corp.
Petitioner(s)

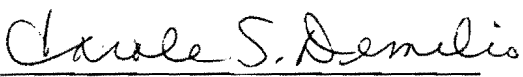
* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 00-559-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2000 a copy of the foregoing Entry of Appearance was mailed to Marvin I. Singer, Esq., 10 E. Baltimore Street, Suite 901, Baltimore, MD 21202, attorney for Petitioner(s).


PETER MAX ZIMMERMAN



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

October 19, 2004

COPY

CAROLE S. DEMILIO
Deputy People's Counsel

Marvin Singer, Esquire
Law Offices of Marvin I. Singer
10 East Baltimore Street, Suite 901
Baltimore, MD 21202

Re: High Falcon Corporation
11317 Reisterstown Road
Case Nos.: 00-559-A & 03-C-02-5291

Dear Marvin:

The CBA denied the variance for the Hyundai sign at 11317 Reisterstown Road in an Order dated April 18, 2002. The Circuit Court for Baltimore County affirmed the CBA's denial in an Order dated March 28, 2003. Your appeal to the Court of Special Appeals was withdrawn on September 5, 2003. The Hyundai sign is in violation and has been so for 2 ½ years. It must be removed immediately.

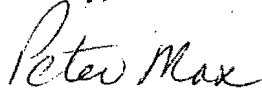
Furthermore, your client has defaulted on its intentions in this matter. On December 22, 2003 you advised Mr. Kotroco that you expected to file a variance for a new modest sign package for Hyundai "within the very near future." You have filed nothing in the last ten months. We do not appreciate your client's persistent disregard of the County's zoning laws and exploiting the heretofore patient and cooperative spirit of our office.

Your recent letter of October 6th asking us to agree to the illegal Hyundai sign is both presumptuous and preposterous. We wish to make it very clear that we will not agree, under any circumstances, that the Hyundai sign can remain. Your client erected the Hyundai at its own risk. The CBA and the Circuit Court denied your variance request. It is time for High Falcon to respect these decisions.

As to the Mitsubishi sign, which apparently is nonconforming, its removal is not an excuse to allow an illegal sign. Nonconforming signs must be removed, in any event, by 2012. The law does not offer a reward to permit illegal signs as a tradeoff to remove nonconforming signs or any other signs.

We see no need to meet with you regarding your proposal and reiterate that the Hyundai sign is in violation of BCZR and must be removed immediately.

Sincerely,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Timothy Kotroco, Director of PDM



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

October 19, 2004

CAROLE S. DEMILIO
Deputy People's Counsel

Marvin Singer, Esquire
Law Offices of Marvin I. Singer
10 East Baltimore Street, Suite 901
Baltimore, MD 21202

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11317 Reisterstown Road
Case Nos.: 00-559-A & 03-C-02-5291

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We see no need to meet with you regarding your proposal and reiterate that the Hyundai sign is in violation of BCZR and must be removed immediately.

*Kathy -
Forward to Gary Freund
we must immediately proceed w/
a violation case. Have Gary
read this letter &
proceed accordingly
Tim*

*Tim's
response*

ad

LAW OFFICES
MARVIN I. SINGER
SUITE 901
10 EAST BALTIMORE STREET
BALTIMORE, MARYLAND 21202

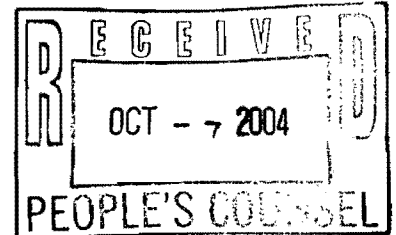
(410) 685-1111

FACSIMILE
(410) 685-2372

October 6, 2004

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Stoler Hyundai Sign
11317 Reisterstown Road



Dear Peter:

The sign at the above-mentioned location which, as you know, was the subject of litigation, has not yet been removed. Among the several dealerships operated by Len Stoler is the Mitsubishi showroom, whose sign will now be removed and not be replaced. In view of that action, it is requested, and hoped, that consideration can be given to permitting the Hyundai sign to remain in its present form, which would result in a net reduction in signage.

I am aware that the Stoler operation of several dealerships is viewed by some as too intense. However, the history of those operations over the years does reveal an actual reduction in the area of signage from that previously existing before all the dealerships were established.

I appreciate your consideration and would be glad to meet with you at your convenience to discuss the matter further, if you wish.

Sincerely,

Marvin I. Singer

*No way!
write strong
letter back*

MIS/m

LAW OFFICES
MARVIN I. SINGER
SUITE 901
10 EAST BALTIMORE STREET
BALTIMORE, MARYLAND 21202

(410) 685-1111

FACSIMILE
(410) 685-2372

January 3, 2003

Carole S. Demilio, Esq.
Deputy People's Counsel
Old Courthouse
Room 47
400 Washington Avenue
Towson, Maryland 21204

*10 photographs +10 +3
1 2.6 acres for the
Complex -*

Re: Petition of High Falcon Realty Corp.
Civil Case No. 03-C-02-005291 AE

2-27-03

Dear Carole:

Per our telephone conversation, I have enclosed a copy of the transcript of the proceedings before the County Board of Appeals. There is no need to return it.

Best wishes for the New Year.

*get red roof on
tape copying*

Sincerely,



Marvin I. Singer

MIS/m
Encl.

IN THE MATTER OF: * BEFORE THE

HIGH FALCON REALTY CORP. * COUNTY BOARD OF APPEALS

FOR A VARIANCE ON PROPERTY * OF

LOCATED ON THE SOUTHEAST COR. * BALTIMORE COUNTY

REISTERSTOWN AND HIGH FALCON * CASE NO. 00-559-A

ROADS (11317 REISTERSTOWN ROAD)* October 10, 2001

* * * * *

The above-entitled matter came on for hearing

before the County Board of Appeals of Baltimore County at

the Old Courthouse, 400 Washington Avenue, Towson,

Maryland 21204 at 10 a.m., October 10, 2001.

* * * * *

Reported by:

C.E. Peatt

Page 1

Page 3

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

IN THE MATTER OF HIGH FALCON REALTY

VERSUS CASE NO. 03C02-005291

/ FEBRUARY 28, 2003

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE J. NORRIS BYRNES, JUDGE

APPEARANCES

ON BEHALF OF THE PETITIONER:

MARVIN I. SINGER, ESQUIRE

ON BEHALF OF THE DEFENDANT:

CAROLE S. DEMILIO, ESQUIRE
PETER MAX ZIMMERMAN, ESQUIRE

REPORTED BY:

Rita M. E. Taggart
Official Court Reporter
402 Bosley Avenue, Room M-08
Towson, Maryland 21204

1 MR. SINGER: I'm sorry, it is my appeal.
2 THE COURT: I thought -- wait. For a moment I
3 thought that I had the wrong case here.
4 MR. SINGER: Too much snow, Your Honor. It's
5 getting to me. My appeal.
6 THE COURT: I'm sorry. Starting with you, Mr.
7 Singer.
8 MS. DEMILIO: Start with you.
9 MR. ZIMMERMAN: Peter Max Zimmerman, People's
10 Counsel for Baltimore County.
11 MS. DEMILIO: Carole Demilio, People's Counsel
12 for Baltimore County.
13 THE COURT: Mr. Singer.
14 MR. SINGER: Your Honor, Marvin Singer on behalf
15 of the Petitioner.
16 THE COURT: Okay. Now, --
17 MR. SINGER: I go first?
18 THE COURT: Yeah, you wanted to erect a double
19 faced, an illuminated free standing commercial
20 identification sign --
21 MR. SINGER: Yes, sir.
22 THE COURT: -- they said no, it's too big.
23 MR. SINGER: Yes, sir.
24 THE COURT: Something like that.
25 MR. SINGER: The Deputy Zoning Commissioner said

Page 2

Page 4

PROCEEDINGS

THE COURT: All right. Mr. Singer. Let me call the case. This is the petition of High Falcon Realty for judicial review of an opinion and order of the County Board of Appeals relative to property known -- a request for a variance --

MR. SINGER: Yes, sir.

THE COURT: -- for property located at 11317 Reisterstown Road. It's 03 C 025291 and Mr. Singer presents several questions which he'll now address.

MR. SINGER: Point of procedure, Your Honor. It's People's Counsel's appeal. Do they go first or do I go first?

THE COURT: Well --

MR. SINGER: It doesn't matter --

THE COURT: -- I guess it would make it easier if they did.

MS. DEMILIO: Your Honor, it's -- this appeal to this Court --

MR. SINGER: Doesn't make any difference.

MS. DEMILIO: Just appeal to the Court --

THE COURT: You lost below. They said no to you, not to them?

MS. DEMILIO: Right. That's right, Your Honor. Mr. Singer is --

1 yes, the Board said no.
2 THE COURT: We are here from the Board?
3 MR. SINGER: Yes, sir.
4 THE COURT: Your victory was sweet but short.
5 MR. SINGER: Extremely short, Your Honor.
6 THE COURT: Okay, go ahead.
7 MR. SINGER: Thank you, sir. It's really a two
8 pronged argument that I would present to the Court
9 today. First, the effect of the Board's action is a
10 denial of due process and equal protection. The zoning
11 regulations limit the size of the sign to fifty square
12 feet for a new automobile dealership.
13 Now, not to repeat what has been said in our
14 memorandum, impartiality is really touchstone of the
15 application of this kind of action, zoning ordinance,
16 which is ultimately an exercise of the police powers of
17 the State.
18 THE COURT: I'm listening.
19 MR. SINGER: What we have here, Your Honor, is a
20 dealership, a new dealership which is located on
21 Reisterstown Road about a quarter of a mile north -- I
22 have used the reference of Reisterstown Road going
23 north and south, from the Heritage group of dealerships
24 which have pre-existing signs for which variances were
25 granted. Under the zoning regulation all signs must

4A

IN RE: PETITION FOR VARIANCE * BEFORE THE
NE/S Reisterstown Road, 131.5'E
of the c/l of High Falcon Road * DEPUTY ZONING COMMISSIONER
(11405 Reisterstown Road)
4th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District

* Case No. 97-84-A
John R. W. Seymour, Sole Remaining Trustee of the Mary J. Seymour
Marital Trust and the John W. Seymour Residuary Trust - Owners;
and Colonial Stoler Partnership, Contract Purchasers - Petitioners
* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Variance for that property known as 11405 Reisterstown Road, located in the vicinity of Delight Road in Reisterstown. The Petition was filed by the owners of the property, the Mary J. Seymour Marital Trust and the John W. Seymour Residuary Trust, through John R. W. Seymour, the Sole Remaining Trustee, and the Contract Lessees, Colonial Stoler Partnership, by Leonard Stoler, through their attorney, Marvin I. Singer, Esquire. The Petitioners seek relief from Section 413.2.f of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a double-faced, illuminated business sign of 160 sq.ft. total (80 sq.ft. per side) in lieu of the maximum permitted 100 sq.ft. The subject property and relief requested are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 10.

Appearing at the hearing on behalf of the Petition were Leonard Stoler, Contract Lessee, Edwin Howe, Professional Engineer with KCW Consultants, Inc., who prepared the site plan for this property, and Marvin I. Singer, Esquire, attorney for the Petitioners. Appearing as a Protestant in the matter was Dennis R. Orr, a nearby resident of the area.

Testimony and evidence offered revealed that the subject property consists of a gross area of 1.8 acres, more or less, split zoned B.R. (1.6



40

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(301) 837-2647

IN THE MATTER OF	*	IN THE
THE APPLICATION OF	*	CIRCUIT COURT
LEONARD STOLER, et al	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO.91 CV 4539

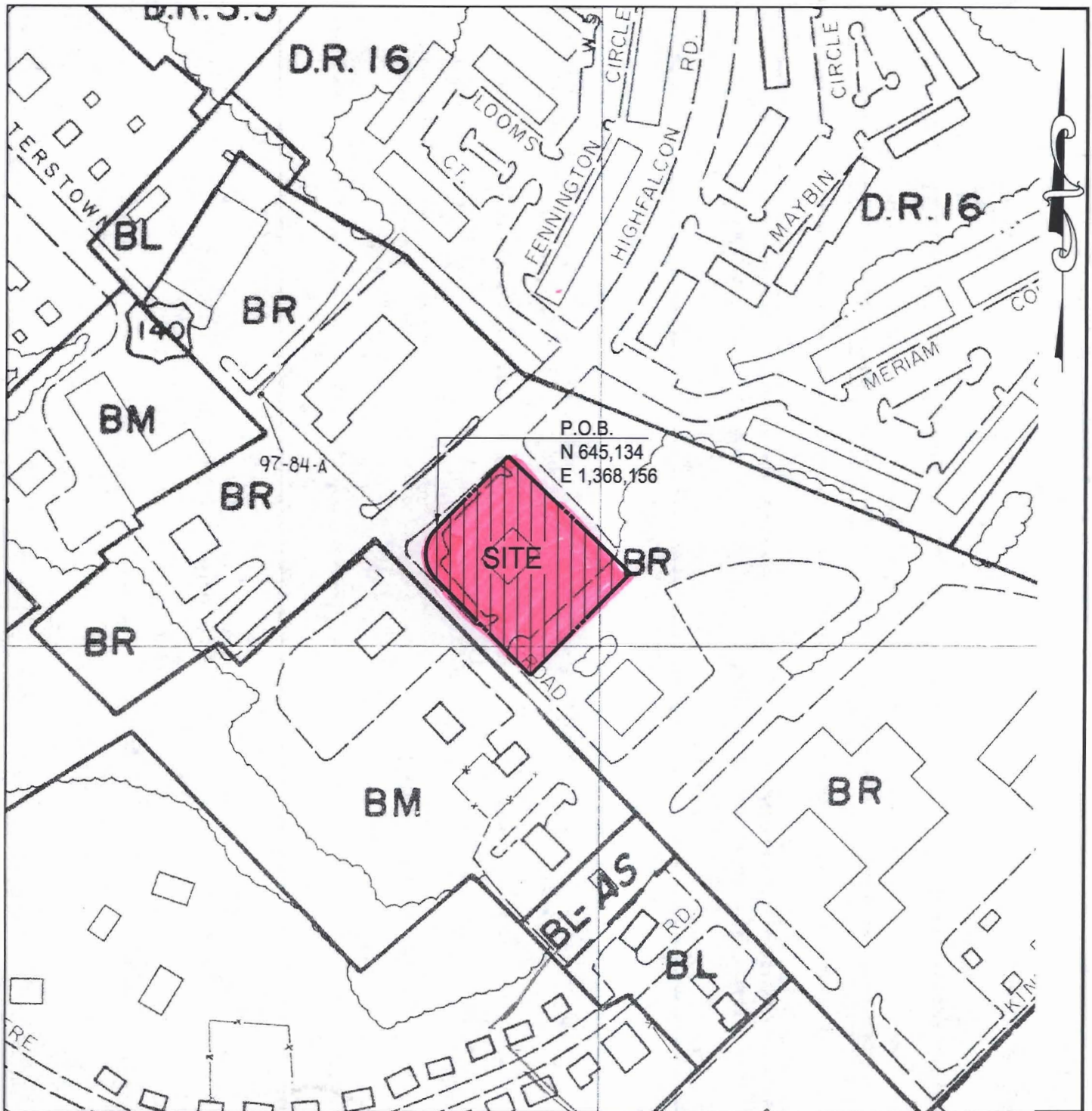
* * * * *

OPINION AND ORDER

This is an appeal from the Baltimore County Board of Appeals. The Board heard the matter on appeal from a decision of the Zoning Commissioner. The Appellants, herein, are the Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG) and Reverend Frederick Hannah (Hannah). The Appellee, herein, is Leonard Stoler.

This case was set for a hearing before this Court on April 7, 1992. Before proceeding to the merits of the appeal, this Court must first rule on Appellee's Motion to Dismiss the appeal. As grounds for which, Appellee presents two points.

First, Appellee argues that Appellants' failure to file a memorandum in support of their appeal within thirty days after being notified by the Clerk of the filing of the record,



**BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP N.W. 13-I (COPY)**



KCW Engineering Technologies, Inc.
3104 Timanus Lane, Suite 101
Baltimore, MD 21244
(410) 281-0033
Fax (410) 281-1065
www.KCW-ET.com

**PLAT TO ACCOMPANY PETITION
FOR ZONING VARIANCE
LEN STOLER - HYUNDAI DEALERSHIP**

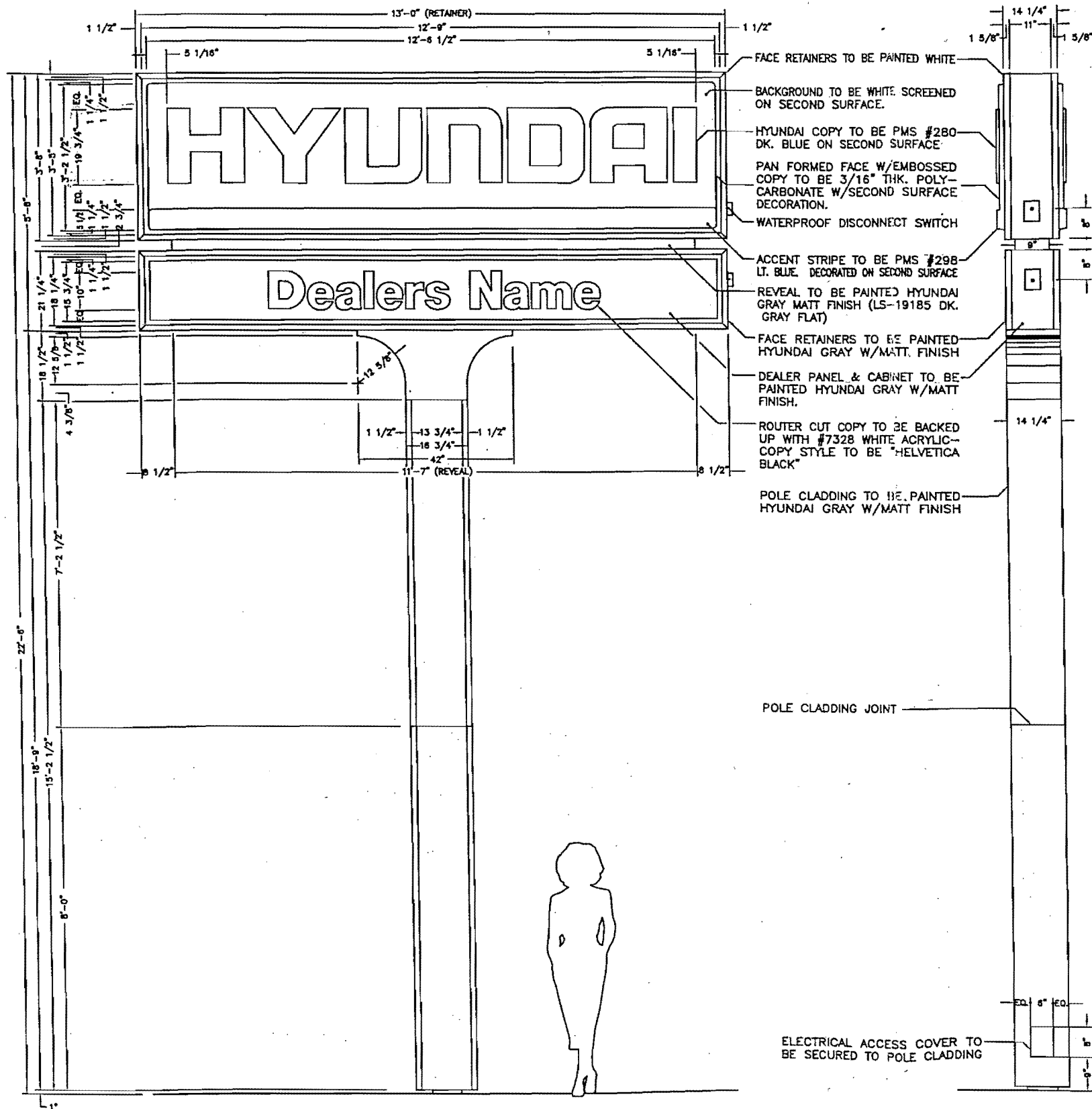
11317 REISTERSTOWN ROAD

BALTIMORE CO., MARYLAND
SCALE: 1" = 200'

ELECTION DISTRICT - 04
COUNCILMATIC DISTRICT C3

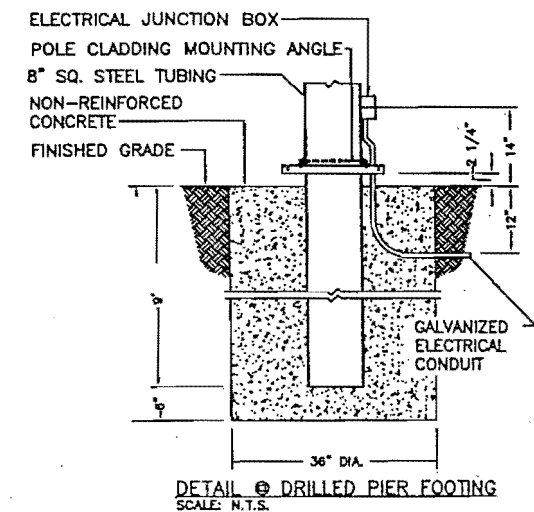
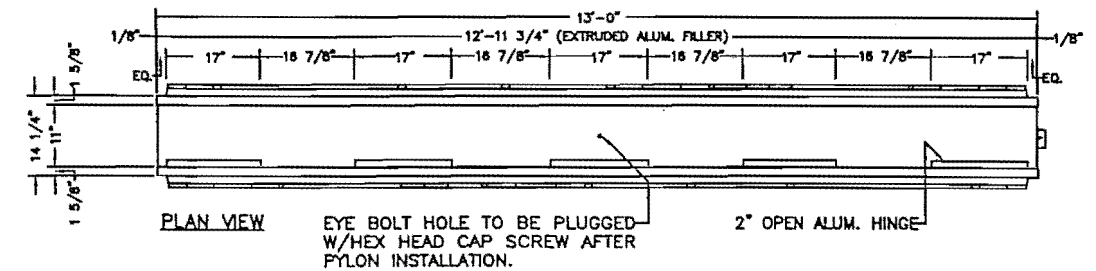
00-559-A

#559



ELEVATION © HP-70 PYLON
SCALE: 3/8"=1'-0"

END VIEW



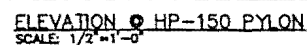
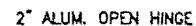
- SHEET LEGEND:**
- 1 "ELEVATION & FOOTING DETAIL"
 - 2 "VERTICAL SECTION & FACE DETAILS"
 - 3 "HORIZONTAL SECTION"
 - 4 "ALUM. FILLER CABINET DETAIL"
 - 5 "STEEL COLUMN DETAIL"
 - 6 "STRUCTURAL & LAMPING DETAIL"

ELECTRICAL:
8.00 TOTAL AMPS
(1) 20 AMP CIRCUIT REQ'D. • 120 V

ITEM NO. E 001948

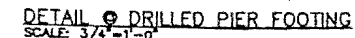
REVISION
LEVEL
D

		1800 St. Julian Place Suite 2000 COLUMBIA, SC 29204	
		Phone: (803) 254-2181 Fax: (803) 254-0038	
THIS IS AN ORIGINAL UNPUBLISHED DESIGN, CREATED BY EVERBRITE CO., IT IS SUBMITTED FOR YOUR PERSONAL USE IN CONNECTION WITH THE PROJECT PLANNED FOR YOU BY EVERBRITE CO., IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE OF YOUR ORGANIZATION, NOR IS IT TO BE USED REPRODUCED, COPIED, OR EXHIBITED IN ANY FASHION WHATSOEVER. ALL OR ANY PART OF THIS DESIGN (EXCEPTING REGISTERED TRADEMARKS) REMAIN THE PROPERTY OF EVERBRITE CO.,			
TITLE: ELEVATION/FOOTING DETAIL © HP-70 PYLON SIGN		DRAWING NUMBER E 001948	
CUSTOMER: HYUNDAI		SHEET 1 OF 6	
LOCATION: VARIOUS		DATE: 09/24/98	
DRAWN BY: R. ROOF		PROJECT MANAGER: STEVE BRUNN	
CHECK BY:			

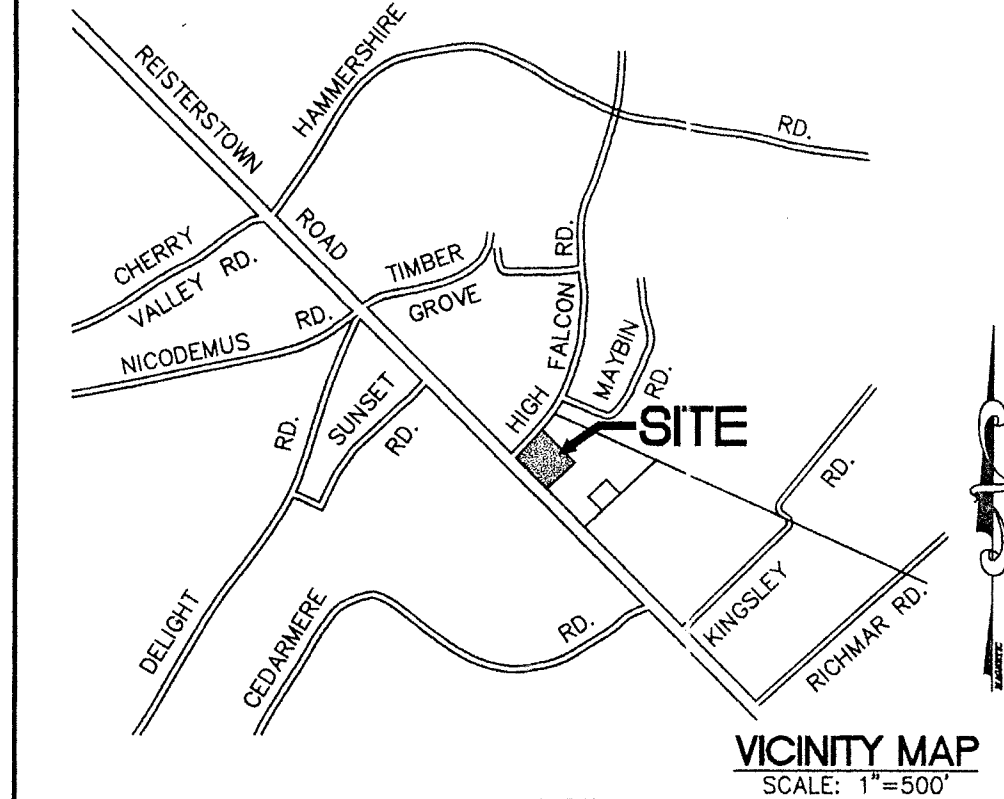
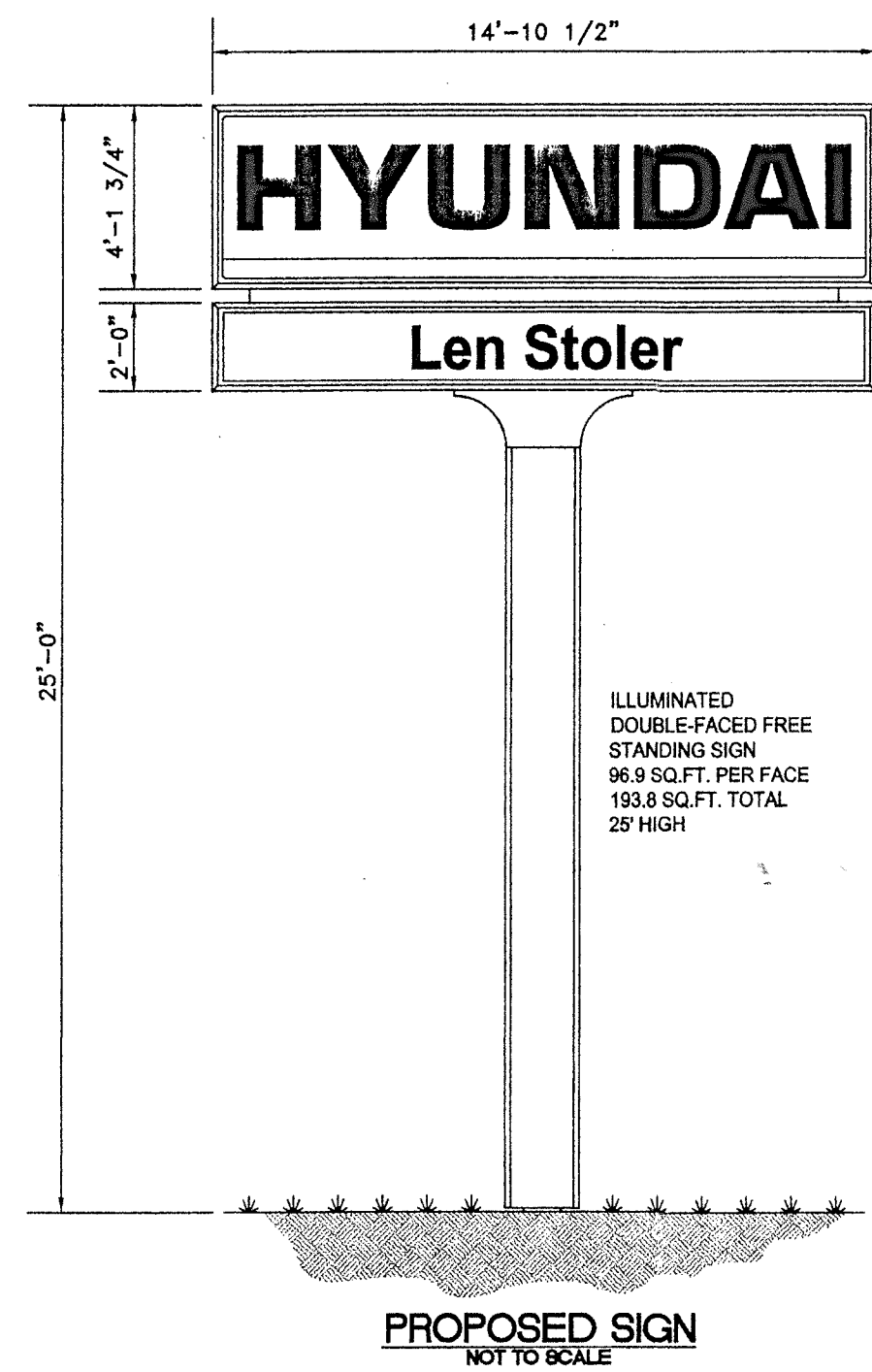
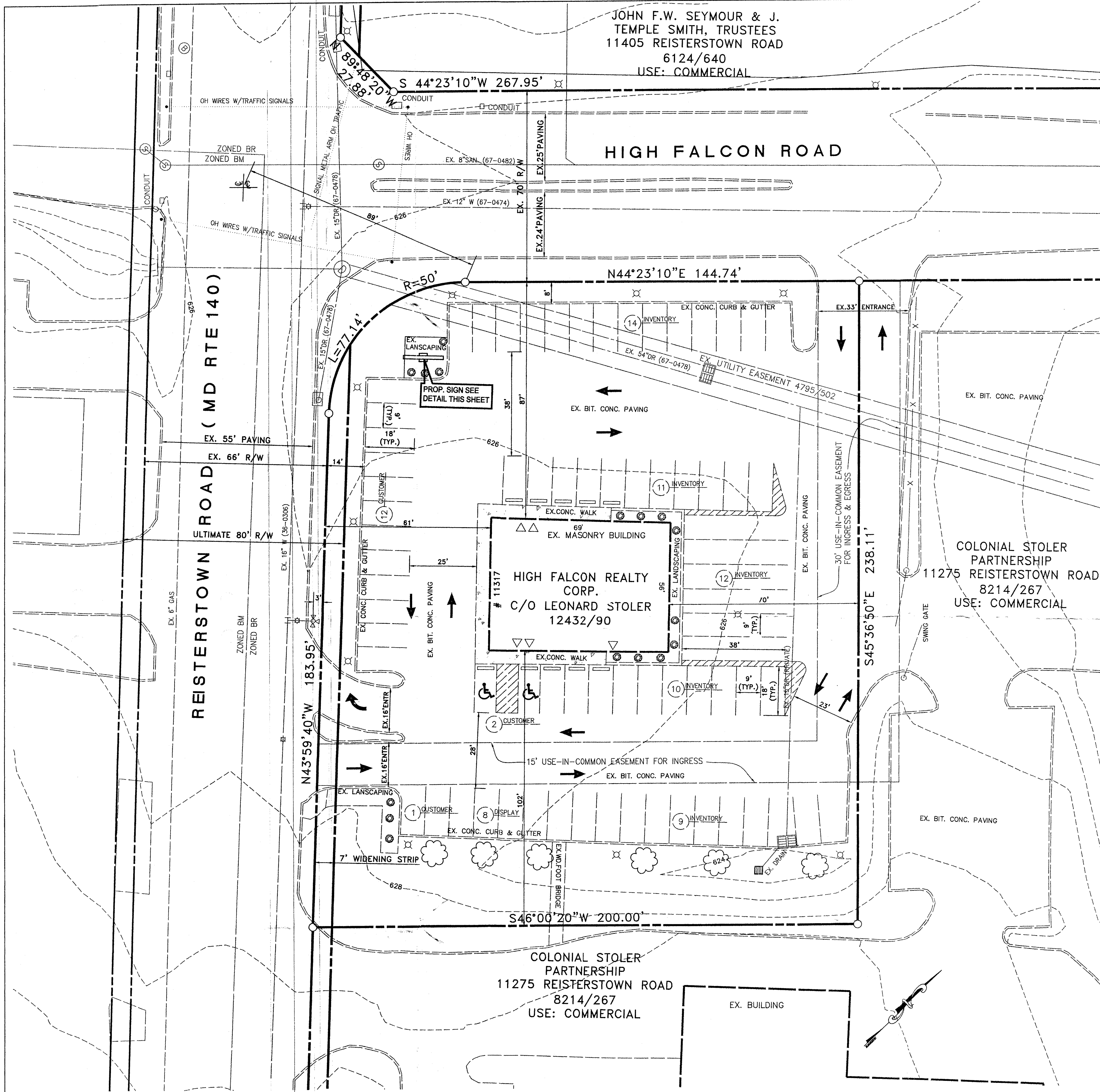


ELECTRICAL ACCESS COVER TO
BE SECURED TO POLE CLADDING

POLE CLADDING JOINT



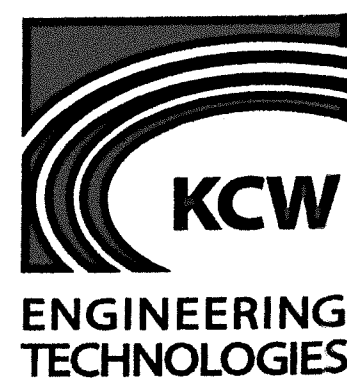
	Everbrite Architectural Signage Group	1800 St. Julian Place Suite 2000 COLUMBIA, SC 29204
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TITLE: ELEVATION/FACE DETAIL • HP-150 PYLON SIGN		DRAWING NUMBER
CUSTOMER: HYUNDAI		E 00192B
LOCATION: VARIOUS		SHEET
DATE: 05/30/96	DRAWN BY: R. ROOF	PROJECT MANAGER: STEVE BRUNN
CHECK BY:		OF 6



- LEN STOLER HYUNDAI - GENERAL NOTES**
- OWNER/DEVELOPER: High Falcon Realty Corp.
C/O Leonard Stoler
11275 Reisterstown Rd.
Owings Mills, MD 21117
 - PROPERTY LOCATION: 11317 Reisterstown Rd.
Owings Mills, MD 21117
 - DEED: 12432/90
TAX ACCOUNT NO.: 1900007482
AREA: 1.051 Ac.
TAX MAP: 45,781 S.F.
58 p. 768
 - ELECTION DISTRICT: 4 REGIONAL PLANNING: 306B
COUNCILMANIC DISTRICT: C3 WATERSHED: Gwynns Falls
CENSUS TRACT: 4042.01
 - ZONING: BR (PER 1"=200 Zoning map N.W. 13-1)
 - EXISTING LAND USE: Automobile dealership providing sales of new and used automobiles.
 - PROPOSED LAND USE: Automobile dealership providing sales of new and used automobiles.
 - PARKING:
Customer Parking Required:
Showroom: 2000sf x 5 ps/1000sf = 10 ps
Business Offices: 1400sf x 3.3 ps/1000sf = 5 ps
Total Customer Parking Required = 15 ps
Proposed Parking:
Customer Parking: = 15 ps
Display Parking: = 8 ps
Inventory Parking: = 20 ps
Total Parking Provided: = 43 ps
PARKING SHALL BE PERMANENTLY STRIPED AS SHOWN
 - BUILDING SETBACKS:
From Reisterstown and High Falcon Road Right-of-Ways:
Minimum Existing Proposed
Structure: 50' 61' 0'
Sign: 0' 87' 0'
Side: 30' 87' 0'
Rear: 30' 70' 0'
 - FLOOR AREA RATIO: 3,400 sf/45,781 sf = 0.07 < 2.0
HEIGHT: 15'
 - UTILITIES: Existing public utilities presently are available within the public right-of-way of Reisterstown Road and High Falcon Road.
Sanitary Sewer: Ex. 8" Sanitary (Dwg. No. 67-0482)
Water: Ex. 12" Water (Dwg. No. 67-0474)
Ex. 16" Water (Dwg. No. 36-0306)
Storm Drain: Ex. 15" Drain (Dwg. No. 67-0478)
Ex. 21" Drain (Dwg. No. 67-0478)
Ex. 54" Drain (Dwg. No. 67-0478)
Gas: Ex. 6" Gas
 - There are no known historic buildings, archaeological sites, endangered species habitats, or septic systems located on this property. There are no significant views or site features that may affect the development proposal. There are no significant regulated plant or wildlife communities based upon DEPRM and DNR data. There are no known streams, bodies of water, or floodplains on or adjacent to this property.
 - LIGHTING: Proposal will comply with §405 C.1.d.
 - AVERAGE DAILY TRIPS:
Retail: 3,400 sf x 50 tpd /1000sf = 170 tpd
Total Average Daily Trips = 170 tpd
 - PREVIOUS ZONING CASES:
Date Case # Description
1-28-74 74-136-A Variance Relief from Sections 238.1-238.2 was granted.
 - PREVIOUS COMMERCIAL PERMITS:
Date Permit # Work
3-74 248-74 Construct New Food Store
6-82 629-82 New Building, Razing lights

- LEGEND**
- | | | | |
|---------------------|---|--------------------|---|
| FIRE HYDRANT | ⊗ | BOLLARD | ⊙ |
| WATER METER | ⊙ | TELEPHONE MANHOLE | ⊕ |
| WATER VALVE | ⊙ | STREET LIGHT | ⊕ |
| SANITARY MANHOLE | ⊙ | UTILITY POLE | ⊕ |
| STORM DRAIN MANHOLE | ⊙ | STORM DRAIN INLETS | ⊕ |
| GAS VALVE | ⊙ | SINGLE DOOR | ⊕ |
| GUY | ⊙ | SHRUB | ⊕ |
| TREE | ⊕ | | |

VARIANCE RELIEF REQUESTED
FROM BCZR §405.4.5.0 TO PERMIT THE CREATION OF A DOUBLE-FACED, ILLUMINATED, FREE-STANDING BUSINESS SIGN WITH A SIZE OF 96.85 SQ.FT. PER SIDE IN LIEU OF THE 50 SQ.FT. NOW PERMITTED.



KCW Engineering Technologies, Inc.
3104 Timanus Lane, Suite 101
Baltimore, MD 21244
(410) 281-0033
Fax (410) 281-1065
www.KCW-ET.com



LIST OF DRAWINGS:

DEVELOPER:
High Falcon Realty Corp.
C/O Leonard Stoler
11275 Reisterstown Rd.
Owings Mills, MD 21117
Attn: Denver Hoffman
Tele: (410) 356-7000

REVISIONS

DATE	DESCRIPTION

KCW J.O.: 88255x
SCALE 1" = 20'
DESIGNED: K.C.A.
DRAWN: K.C.A.
CHECKED: N.S.H.
DATE: JUNE 8, 2000
DRAWING NO.

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCE

LEN STOLER
HYUNDAI DEALERSHIP
11317 REISTERSTOWN ROAD

BALTIMORE COUNTY, MARYLAND
SCALE: 1"= 20'

ELECTION DISTRICT - 04
COUNCILMANIC DISTRICT C3

00.559-A