7/24/09

IN THE MATTER OF
THE APPLICATION OF
HIGH FALCON REALTY CORP.
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SE/S HIGH FALCON
ROAD, 89' NE OF C/L REISTERSTOWN
ROAD (11317 REISTERSTOWN ROAD)

4TH ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT

- * BEFORE THE
- * COUNTY BOARD OF APPEALS
- * OF
- * BALTIMORE COUNTY
- * CASE NO. 05-308-A

ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by Marvin I. Singer, Attorney for the Petitioner, High Falcon Realty Corp, by Leonard Stoler, one of the principals of the corporation; on an appeal from a decision of the Deputy Zoning Commissioner in which the requested variance relief for a sign for the Petitioner's business was denied. He was requested variance relief for the property located at 11317 Reisterstown Road in Baltimore County. The relief is requested from § 450.4 of the *Baltimore County Zoning Regulations* (BCZR) to permit the erection of a double-faced, illuminated freestanding business sign with a size of 55 sq. ft. per side in lieu of the 50-square-foot sign now permitted by the regulations.

WHEREAS, the Board of appeals convened for a hearing on August 23, 2005 and issued its Opinion on January 20, 2006.

WHEREAS, a Petition for Judicial Review was filed in this matter by Marvin I. Singer, Attorney for the Petitioner, High Falcon Realty Corp, on February 13, 2006.

WHEREAS, a Memorandum Opinion and Order was issued by the Honorable Thomas J.

Bollinger, remanding the matter to the Board of Appeals for further consideration as to the issue of uniqueness.

High Falcon Realty Corp. Case No.: 05-308-A

WHEREAS, a Public Deliberation was scheduled for July 21, 2009 in accordance with the Remand Order.

WHEREAS, the Board is in receipt of a letter filed on July 17, 2009, withdrawing the Petition filed in this case (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Petitioner/Appellant requests that the appeal taken in this matter be withdrawn and dismissed as of July 17, 2009.

IT IS ORDERED this 24th day of July, 2009 by the Board of Appeals of Baltimore County that the appeal taken in Case No. 05-308-A be and the same is hereby DISMISSED.

BOARD OF APPEALS OF BALTIMORE COUNTY

Wendell, H. Grier, Panel Chairman

Edward W. Crizer,

Robert W. Witt



County Board of Appeals of Baltimore County

JEFFERSON BUILDING SECOND FLOOR, SUITE 203 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND, 21204 410-887-3180 FAX: 410-887-3182

July 24, 2009

Marvin I. Singer, Esquire 10 E. Baltimore Street Suite 901 Baltimore, MD 21202

RE: In the Matter of: High Falcon Realty Corp-Legal Owner/Petitioner Case No.: 05-308-A

Dear Mr. Singer:

Enclosed please find a copy of the Order of Dismissal issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa R. Shelton
Administrator

Theresa Shelton/kc

TRS/klc Enclosure

c: High Falcon Realty Corp.
Barry Stoler
Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning
John E. Beverungen, County Attorney

10/2/06

PETITION OF JUDICIAL REVIEW OF

IN THE

THE OPINION AND ORDER OF THE

CIRCUIT COURT

COUNTY BOARD OF APPEALS IN THE *

FOR

MATTER OF HIGH FALCON REALTY

BALTIMORE COUNTY

CORPORATION

Case No. 03-C-06-001550

MEMORANDUM OPINION AND ORDER

This matter comes before the Court pursuant to Maryland Rule 7-207, et seq. as an appeal from a January, 20, 2006 County Board of Appeals decision denying Petitioner's request for a variance from Section 450.4.5(g) of the Baltimore County Zoning Regulations. This Court has carefully considered the legal memoranda presented, the Board's decision, and the applicable statutory and case law in reaching its decision in this matter.

STATEMENT OF FACTS

The relevant facts of this case are not in dispute. This matter arises out of an appeal from a January 20, 2006 decision of the County Board of Appeals in which the requested variance relief for a sign for the Petitioner's Hyundai automotive dealership was denied. A Petition for Variance was filed on behalf of the High Falcon Realty Corporation, by Leonard Stoler, one of the principals of the corporation. The requested variance relief was for a property located at 11317 Reisterstown Road in Baltimore County. The relief sought was to permit the erection of a double-faced illuminated freestanding business sign with a size of 55 square feet per side in lieu of the 50-square-foot sign permitted by § 450.4 of the Baltimore County Zoning Regulations. The County

Co. Marvind Surger, 195 Country Bear of appeals

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Board of Appeals affirmed the Zoning Commissioner and denied Petitioner its requested variance.

QUESTION PRESENTED FOR REVIEW

Whether the Board erred by applying the "unreasonable hardship" standard as opposed to the "practical difficulty" standard for purposes of considering Petitioner's requested variance for the Hyundai sign at issue.

SCOPE OF REVIEW

In reviewing a decision of the Board of Appeals, the Circuit Court is limited to whether that decision is "in accordance with the law." Maryland Code Annotated, Article 25A § 5(U) (1957, 1994 Repl. Vol.). The Circuit Court may correct any abuse of discretion by an administrative agency, such as the Commission of Human Relations. The Court may also reverse or modify the Board's actions when they are unsupported by facts, arbitrary, illegal, capricious, or unreasonable. *Heaps v. Cobb*, 185 Md. 372 (1945); *Art Woods Enterprises v. Wiseburg Community Assoc.*, 88 Md. App. 723, 727 (1991). However, the scope of judicial review of decisions by administrative agencies is narrow, recognizing that the Board members have expertise in a particular area and, ultimately, should be free to exercise their discretion as such. *Finney v. Halle*, 241 Md. 224 (1966).

Thus a reviewing court will not substitute its judgment for that of an administrative board where the issue is freely debatable and the record contains substantial evidence supporting the administrative decision. *Montgomery County v. Woodward and Lothrop, Inc.*, 280 Md. 686 (1977). Accordingly, the Circuit Court's role is limited to determining whether or not there is substantial evidence in the record as a whole to support the agency's finding and conclusions, and to determine whether or not

the agency's decision is premised upon a proper construction of the law. *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994).

ANALYSIS

At issue before this Court is whether the Petitioner is entitled to its requested variance for Petitioner's Hyundai dealership. The applicable law, Section 301 of the Baltimore County Zoning Regulations provides, in pertinent part that:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and 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. (emphasis added.)

A reading of the Board's opinion discloses that it gave no consideration to the existence of nearby obstructions, in evaluating the "uniqueness" of the property. The Board's opinion reveals a mechanical application of the restrictions in the zoning regulations without regard to the ability to apply the variance provisions. The Board's finding that the property in question is not unique is not supported by any meaningful factual reference; it only points to other properties "in other valleys of Reisterstown Road along the full extent of the road." Opinion, at 3. The variance provision, Section 307.1 of the Zoning Regulations, is not framed in such a stringent manner.

In Cromwell v. Ward, 102 Md. App. 691, 710, 651 A.2d 424 (1995), the Court of Special Appeals of Maryland held that zoning matters, including sign variance requests, depend upon the unique facts and circumstances of a particular location and must be analyzed individually. (emphasis supplied.) Further, citing North v. St. Mary's County,

99 Md. App. at 512, 638 A.2d 1175, *Cromwell* defined "uniqueness" of property for zoning purposes as having an inherent characteristic not shared by other properties in the area, specifically pointing to practical restrictions imposed by abutting properties (*such as obstructions*) or other similar restrictions. (*emphasis added*.)

The undisputed facts before this Court clearly provide evidence that satisfy the Cromwell requirement of uniqueness. In addition to the rolling topography that makes recognition of the site difficult, the Goodwill Store sign clearly demonstrates the visual obstructions any prospective customer would encounter traveling from the north. Moreover, from the south side, there are several Len Stoler and Chrysler-Plymouth automobile dealerships, each with a prominent sign of their own, and a large American flag, that could likewise inhibit the site's recognition. The difficulties in locating the Hyundai dealership by motorists on Reisterstown Road, coupled with the dealership's inability to erect a sign that complies with its franchise agreement, suggest both a practical difficulty and unique circumstance so as to warrant a variance.

CONCLUSION

Accordingly, on this day of October, 2006, by the Circuit Court for Baltimore County, the decision of the Board of Appeals in the Petition of High Falcon Realty Corp. is hereby REMANDED for further consideration as to the issue of uniqueness and its applicability to visual obstructions on abutting properties as outlined in the *Cromwell* case.

THOMAS J. BOLLINGER, JUDGE

5/1/06

PETITION OF HIGH FALCON REALTY CORP. FOR JUDICIAL REVIEW OF THE OPINION AND ORDER OF THE COUNTY BOARD OF APPEALS

IN THE MATTER OF HIGH FALCON REALTY CORP. FOR A VARIANCE ON THE PROPERTY LOCATED ON THE SE/S OF HIGH FALCON ROAD, 89' NE OF C/L OF REISTERSTOWN ROAD 11317 REISTERSTOWN ROAD

4th ELECTION DISTRICT
2nd COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO. 05-308-A

IN THE

* CIRCUIT CCOURT

FOR

BALTIMORE COUNTY

CASE NO. 03-C-06-001550

MOTION FOR EXTENSION OF TIME

Petitioner, High Falcon Realty Corp., by its attorney, Marvin I. Singer, pursuant to Maryland Rule 7-207, respectfully requests an extension of time in which to file its memorandum herein, and in support thereof states as follows:

- 1. This is an appeal from an Order of the County Board of Appeals denying a request for a variance in the size of a commercial sign for an automobile dealership.
- 2. The record of proceedings before the Board of Appeals was filed in this Court on March 20, 2006.
- 3. Counsel for Petitioner has been on vacation and out of the office from March 18, 2006 through April 6, 2006. Additional time is needed in which to research and prepare a proper and adequate memorandum, addressing, *inter alia*, the question whether the decision of the County Board of Appeals was arbitrary and capricious, in refusing to recognize and apply the principles applicable to a request for a variance, under the circumstances of this case.
- 4. No hearing date has been scheduled in this case, and the requested extension of time should not delay any such hearing.



WHEREFORE, Petitioner respectfully requests a sixty day extension of time, dating from the present due date of April 19, 2006, in which to file its memorandum herein.

10 East Baltimore Street Suite 901 Baltimore, Maryland 21202 (410) 685-111

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Extension of Time was mailed this /o / day of April, 2006 by first-class mail, postage prepaid, to the County Board of Appeals, Room 49, Old Court House, 400 Washington Avenue, Towson, Maryland 21204.

ORDER

UPON CONSIDERATION of Petitioner's Motion for Extension of Time, day of April 2006 by the Circuit Court for it is hereby ORDERED this 1 Baltimore County that said Motion is hereby granted, and that Petitioner's memorandum shall be filed in these proceedings on or before June 19, 2006.

True Copy Test

SUZANNE MĒNSH, Clerk

Assistant Clerk

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-06-001550

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse Room 49 400 Washington Avenue Towson, MD 21204



PETITION OF HIGH FALCON REALTY CORP. FOR JUDICIAL REVIEW OF THE OPINION AND ORDER OF THE COUNTY BOARD OF APPEALS

IN THE MATTER OF HIGH FALCON REALTY CORP. FOR A VARIANCE ON THE PROPERTY LOCATED ON THE SE/S OF HIGH FALCON ROAD, 89' NE OF C/L OF REISTERSTOWN ROAD 11317 REISTERSTOWN ROAD

4th ELECTION DISTRICT
2nd COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO. 05-308-A

IN THE

* CIRCUIT CCOURT

• FOR

BALTIMORE COUNTY

CASE NO. 03-C-06-001550

MOTION FOR EXTENSION OF TIME

Petitioner, High Falcon Realty Corp., by its attorney, Marvin I. Singer, pursuant to Maryland Rule 7-207, respectfully requests an extension of time in which to file its memorandum herein, and in support thereof states as follows:

- 1. This is an appeal from an Order of the County Board of Appeals denying a request for a variance in the size of a commercial sign for an automobile dealership.
- 2. The record of proceedings before the Board of Appeals was filed in this Court on March 20, 2006.
- 3. Counsel for Petitioner has been on vacation and out of the office from March 18, 2006 through April 6, 2006. Additional time is needed in which to research and prepare a proper and adequate memorandum, addressing, *inter alia*, the question whether the decision of the County Board of Appeals was arbitrary and capricious, in refusing to recognize and apply the principles applicable to a request for a variance, under the circumstances of this case.
- 4. No hearing date has been scheduled in this case, and the requested extension of time should not delay any such hearing.

WHEREFORE, Petitioner respectfully requests a sixty day extension of time, dating from the present due date of April 19, 2006, in which to file its memorandum herein.

MARVIN I. SINGER

10 East Baltimore Street Suite 901 Baltimore, Maryland 21202

(410) 685-111

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Extension of Time was mailed this /o day of April, 2006 by first-class mail, postage prepaid, to the County Board of Appeals, Room 49, Old Court House, 400 Washington Avenue, Towson, Maryland 21204.

{

MARVINI SINGER

ORDER '

UPON CONSIDERATION of Petitioner's Motion for Extension of Time, it is hereby ORDERED this day of April, 2006 by the Circuit Court for Baltimore County that said Motion is hereby granted, and that Petitioner's memorandum shall be filed in these proceedings on or before June 19, 2006.

JUDGE	

MARVIN I. SINGER

SUITE 901 10 East Baltimore Street Baltimore, Maryland 21202

FACSIMILE (410) 685-2372

(410) 685-1111

April 10, 2006

Clerk, Circuit Court for Baltimore County County Courts Building 401 Bosley Avenue Towson, Maryland 21204

Attn: Civil Dept.

Re: In The Matter of High Falcon Realty Corp. Case No. 03-C-06-001550

Dear Clerk:

Please file the enclosed Motion for Extension of Time and proposed Order in the above-entitled case.

Yours very truly,

Marvin I. Singer

Copy to: County Board of Appeals (w/encl.)

MIS/m

Encl.

2/16/06

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: HIGH FALCON REALTY CORP 11275 REISTERSTOWN ROAD

OWINGS MILLS, MD 21117

FOR JUDICIAL REVIEW OF THE OPINION THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MD 21204

IN THE MATTER OF: HIGH FALCON REALTY CORP. FOR A VARIANCE ON THE PROPERTY LOCATED ON THE SE/S HIGH FALCON ROAD, 89'NE OF C/L REISTERSTOWN ROAD (11317 REISTERSTOWN ROAD)

4TH ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 05-308-A

CIVIL ACTION NO. **3-C-06-001550**

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Marvin I Singer, Esquire
10 East Baltimore Street – Suite 901
Baltimore, MD 21201
Attorney for Petitioner

RECEIVED AND FILED

OFFEB 16 PH 2: 21

CLERK OF THE CIRCULARY

HIGH FALCON REALTY ORP.

BOARD OF APPEALS (E NO.: 05-308-A CIRCUIT COURT CASE NO.: 3-C-06-001550

Peter Max Zimmerman, Esq. and Carole S. Demilio, Esq. Office of People's Counsel for Baltimore County, Old Courthouse, Room 47 400 Washington Avenue, Towson, Maryland 21204

Barry Stoler 11275 Reisterstown Road Owings Mills, MD 21117

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that on this \(\frac{1}{2} \) day of February, 2006, a copy of the foregoing Certificate of Notice has been mailed to: Marvin I Singer, Esquire, 10 East Baltimore Street - Suite 901, Baltimore, MD 21201, Attorney for Petitioner and Peter Max Zimmerman, Esq. and Carole S. Demilio, Esq., Office of People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, Barry Stoler, 11275 Reisterstown Road, Owings Mills, MD 21117.

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 410-887-3180 FAX: 410-887-3182

February 16, 2006

Peter Max Zimmerman, People' Counsel for Baltimore County 400 Washington Ave. – Rm. 47 Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-06-1550

Petition for Judicial Review High Falcon Realty Corp.

Board of Appeals Case No.: 05-308-A

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on February 13, 2006 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, <u>must be filed under Civil Action No. 3-C-06-1550.</u>

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

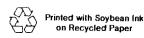
Linde To-Fliegel Dinda B. Fliegel

Legal Secretary

/lbf Enclosure

c:

Zoning Commissioner/
Deputy Zoning Commissioner
Timothy Kotroco, Dir. of PDM
Marvin I. Singer, Esquire
Barry Stoler
High-Falcon Realty Corp. —
c/o Len Stoler





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 410-887-3180

FAX: 410-887-3182

February 16, 2006

Marvin I. Singer, Esquire 10 East Baltimore Street – Suite 901 Baltimore, MD 21202

RE: Circuit Court Civil Action No. 03-C-06-1550

Petition for Judicial Review High Falcon Realty Corp.

Board of Appeals Case No.: 05-308-A

Dear Mr. Singer:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The hearing in this case, which was held on August 23, 2005, was recorded on tape. In order to obtain a copy of this tape for transcribing, by a court reporter of your choice and at your expense, promptly remit a check in the amount of \$25.00, payable to Baltimore County, Maryland, at the address shown above.

Once the transcription has been completed, the court reporter must then forward the original transcript to the Board of Appeals, no later than April 7, 2006, so an extract of this case can be timely filed with the Circuit Court for Baltimore County.

Enclosed please find a copy of the Certificate of Notice filed in the above-captioned case.

Very truly yours,

Linda B. Fliegel Legal Secretary

/lbf

c:

Peter M. Zimmerman, People's Counsel

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF HIGH FALCON REALTY CORP. 11275 Reisterstown Road Owings Mills, Maryland 21117

2/13/06

FOR JUDICIAL REVIEW OF THE DECISION OF THE

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse Room 49 400 Washington Avenue C-66-001550 Towson, Maryland 21204

IN THE CASE OF THE MATTER OF THE APPLICATION OF HIGH FALCON REALTY CORP. FOR A VARIANCE ON PROPERTY LOCATED ON THE SE/S HIGH FALCON ROAD, 89' NE OF C/L REISTERSTOWN ROAD (11317 REISTERSTOWN ROAD)

4th ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT CASE NO. 05-308-À

CIVIL ACTION

PETITION FOR JUDICIAL REVIEW

Petitioner, High Falcon Realty Corp., by its attorney, Marvin I. Singer, pursuant to Maryland Rules 7-201 et seq, hereby requests judicial review of the Opinion and Order dated January 20, 2006 in the above-entitled case, and in connection therewith states as follows:

- 1. Petitioner was a party to the proceeding before the County Board of Appeals.
- 2. The decision sought to be reviewed is the Opinion and Order of the County Board of Appeals of Baltimore County dated January 20, 2006, denying the requested relief.

H10-529-1991

MARVIN I. SINGER
10 East Baltimore Street Suite 901
Baltimore, Maryland 21202
(410) 6855-1111

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2006 a copy of the foregoing Petition for Judicial Review was delivered to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204, and a copy was mailed to Peter Max Zimmerman, Esq. and Carole S. Demilio, Esq., Office of the People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

MARVIN I. SINGER Attorney for Petitioner CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-06-001550

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21204



1/20/06

HIGH FALCON REALTY CORP. FOR A VARIANCE ON PROPERTY

LOCATED ON THE SE/S HIGH FALCON ROAD, 89' NE OF C/L REISTERSTOWN

ROAD (11317 REISTERSTOWN ROAD)

2ND COUNCILMANIC DISTRICT

BEFORE TH

COUNTY BOARD OF APPEALS

BALTIMORE COUNTY

CASE NO. 05-308-A

OPINION

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner in which the requested variance relief for a sign for the Petitioner's business was denied. A Petition for Variance was filed by High Falcon Realty Corp., by Leonard Stoler, one of the principals of the corporation. He was requested variance relief for the property located at 11317 Reisterstown Road in Baltimore County. The relief is requested from § 450.4 of the Baltimore County Zoning Regulations (BCZR) to permit the erection of a double-faced, illuminated freestanding business sign with a size of 55 sq. ft. per side in lieu of the 50-square-foot sign now permitted by the regulations. Petitioner was represented by Marvin Singer, Esquire. A hearing was held on August 23, 2005. No one appeared in opposition to the request. A public deliberation was held on October 26, 2005.

Background

The Petitioner presented Jim Collins, the District Sales Manager for the Baltimore District for Hyundai Motor Company of America. Mr, Collins testified that the Hyundai Motor Company offered various types of signs for their dealers. The standard size sign, HP-100 and HP-150, is 55 sq. ft. in area. He stated that he was familiar with the leasing agreement required of their dealers by Hyundai and that the leasing agreement on page 13, which was entered into evidence, indicates that 'subject to applicable law, dealer agrees to purchase from sources designated by HMA and to erect and maintain at the dealership locations, entirely at dealer's expense, standard product and service signs of types authorized by HMA (Hyundai Motor America) as well as such other authorized signs. as are necessary to identify the dealership operations effectively and as recommended by HMA.

Dealer shall in no way alter or modify such authorized signs without obtaining prior written approval from HMA."

Nothing in the agreement between Hyundai and its dealers indicates that, if the sign is smaller than 55 sq. ft., Hyundai will revoke or refuse to grant the dealership.

The second witness was Leonard Stoler, one of the principals of High Falcon Realty. He introduced various photographs of the property which is on Reisterstown Road. The dealership is near Mr. Stoler's Ford, Lexus, and Mitsubishi dealerships. He contends that the property is unique in that the dealership is in a valley of Reisterstown Road and that coming over the hill prior to reaching the dealership, someone going 50 to 55 miles per hour could not see the Hyundai sign. Mr. Stoler stated that if he was unable to erect a 55 sq. ft. sign it would cause him practical difficulty. He did not state what that practical difficulty would be.

Decision

This matter was before the Board previously in Case No. 00-559-A in which the present Petitioner sought a variance from the sign regulations to erect a freestanding sign of 96.85 sq. ft. per side in lieu of the permitted 50 sq. ft. per side. At that time, the Board held that the property was not unique and that under *Cromwell v. Ward*, 102 Md.App. 691 (1995), the Board would not consider a variance since the property did not meet the first prong of Cromwell, which is uniqueness.

The Board stated at that time:

...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. The 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 sq. ft. 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 signs in Baltimore County. While the Petitioners testified there is no 50 sq. ft. sign available from Hyundai to display at dealerships, there has been no testimony that one could not be constructed to meet the requirements of the County law.

As in the previous case, the Petitioner submitted a previous case of this Board, Case No. 90-160-A, decided in August of 1991 and affirmed by the Circuit Court in May of 1992, wherein the Board granted a sign variance. These cases were decided before the passage of § 450.4(g) of the BCZR in 1998.

The Board finds that there has been no change in the topography of Reisterstown Road since the previous decision of the Board on April 18, 2002. Reisterstown Road is still a rolling road with many peaks and valleys, and this property is not unique in that other properties on Reisterstown Road are subject to the same conditions. The agreement which the Petitioner has with the Hyundai Motor Company specifies that the sign should be subject to applicable law. The Board relies on its previous decision and the fact that there has been no change in the circumstances to warrant a granting of a variance. The fact that the requested sign is 55 sq. ft. rather than 50 sq. ft. does not influence the Board in its decision. If a company is granted a variance because their sign is

only 10% larger than allowed by the law, where does the allowance stop. This Board feels that the Council has passed the sign regulation in order to curtail the use of signs in the County. We see no basis for overturning the previous decision of the Board and allowing a variance to permit a 55 sq. ft. sign rather than a 50 foot sign that is allowed. Therefore, the variance will be denied.

ORDER

THEREFORE, IT IS THIS 20 day of January, 2006 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 55 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, Chairman

John P./Quinn

Edward W. Crizer, Jr.

1/20/06

IN THE MATTER O FOR A VARIANCE ON PROPERTY LOCATED ON THE SE/S HIGH FALCON * OF ROAD, 89' NE OF C/L REISTERSTOWN ROAD (11317 REISTERSTOWN ROAD)

BEFORE TH

COUNTY BOARD OF APPEALS

BALTIMORE COUNTY

CASE NO. 05-308-A

4TH ELECTION DISTRICT

OPINION

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner in which the requested variance relief for a sign for the Petitioner's business was denied. A Petition for Variance was filed by High Falcon Realty Corp., by Leonard Stoler, one of the principals of the corporation. He was requested variance relief for the property located at 11317 Reisterstown Road in Baltimore County. The relief is requested from § 450.4 of the Baltimore County Zoning Regulations (BCZR) to permit the erection of a double-faced, illuminated freestanding business sign with a size of 55 sq. ft. per side in lieu of the 50-square-foot sign now permitted by the regulations. Petitioner was represented by Marvin Singer, Esquire. A hearing was held on August 23, 2005. No one appeared in opposition to the request. A public deliberation was held on October 26, 2005.

Background

The Petitioner presented Jim Collins, the District Sales Manager for the Baltimore District for Hyundai Motor Company of America. Mr. Collins testified that the Hyundai Motor Company offered various types of signs for their dealers. The standard size sign, HP-100 and HP-150, is 55 sq. ft. in area. He stated that he was familiar with the leasing agreement required of their dealers by Hyundai and that the leasing agreement on page 13, which was entered into evidence, indicates that "subject to applicable law, dealer agrees to purchase from sources designated by HMA and to erect and maintain at the dealership locations, entirely at dealer's expense, standard product and service signs of types authorized by HMA (Hyundai Motor America) as well as such other authorized signs as are necessary to identify the dealership operations effectively and as recommended by HMA.

Dealer shall in no way alter or modify such authorized signs without obtaining prior written approval from HMA."

Nothing in the agreement between Hyundai and its dealers indicates that, if the sign is smaller than 55 sq. ft., Hyundai will revoke or refuse to grant the dealership.

The second witness was Leonard Stoler, one of the principals of High Falcon Realty. He introduced various photographs of the property which is on Reisterstown Road. The dealership is near Mr. Stoler's Ford, Lexus, and Mitsubishi dealerships. He contends that the property is unique in that the dealership is in a valley of Reisterstown Road and that coming over the hill prior to reaching the dealership, someone going 50 to 55 miles per hour could not see the Hyundai sign. Mr. Stoler stated that if he was unable to erect a 55 sq. ft. sign it would cause him practical difficulty. He did not state what that practical difficulty would be.

Decision

This matter was before the Board previously in Case No. 00-559-A in which the present Petitioner sought a variance from the sign regulations to erect a freestanding sign of 96.85 sq. ft. per side in lieu of the permitted 50 sq. ft. per side. At that time, the Board held that the property was not unique and that under *Cromwell v. Ward*, 102 Md.App. 691 (1995), the Board would not consider a variance since the property did not meet the first prong of Cromwell, which is uniqueness.

The Board stated at that time:

...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. The 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 sq. ft. 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 signs in Baltimore County. While the Petitioners testified there is no 50 sq. ft. sign available from Hyundai to display at dealerships, there has been no testimony that one could not be constructed to meet the requirements of the County law.

As in the previous case, the Petitioner submitted a previous case of this Board, Case No. 90-160-A, decided in August of 1991 and affirmed by the Circuit Court in May of 1992, wherein the Board granted a sign variance. These cases were decided before the passage of § 450.4(g) of the BCZR in 1998.

The Board finds that there has been no change in the topography of Reisterstown Road since the previous decision of the Board on April 18, 2002. Reisterstown Road is still a rolling road with many peaks and valleys, and this property is not unique in that other properties on Reisterstown Road are subject to the same conditions. The agreement which the Petitioner has with the Hyundai Motor Company specifies that the sign should be subject to applicable law. The Board relies on its previous decision and the fact that there has been no change in the circumstances to warrant a granting of a variance. The fact that the requested sign is 55 sq. ft. rather than 50 sq. ft. does not influence the Board in its decision. If a company is granted a variance because their sign is

only 10% larger than allowed by the law, where does the allowance stop. This Board feels that the Council has passed the sign regulation in order to curtail the use of signs in the County. We see no basis for overturning the previous decision of the Board and allowing a variance to permit a 55 sq. ft. sign rather than a 50 foot sign that is allowed. Therefore, the variance will be denied.

ORDER

THEREFORE, IT IS THIS 20 day of January, 2006 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 55 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, Chairman

Edward W. Crizer, Jr.

John P./Ouinn



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 410-887-3180 FAX: 410-887-3182

January 20, 2006

Marvin I. Singer, Esquire 10 E. Baltimore Street Suite 901 Baltimore, MD 21202

> RE: In the Matter of: High Falcon Realty Corporation by Leonard Stoler Case No. 05-308-A

Dear Mr. Singer:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

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 of Procedure*, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco

Administrator

Enclosure

c: High Falcon Realty Corp.
by Leonard Stoler
Barry Stoler
Edwin Howe III /KCW Engineering Technologies, Inc.
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

2/16/05





IN RE: PETITION FOR VARIANCE SE/S of High Falcon Road, 89 ft. NE centerline of Reisterstown Road 4th Election District 2nd Councilmanic District (11317 Reisterstown Road)

> High Falcon Realty Corp. By: Leonard Stoler Petitioners

- BEFORE THE
- * DEPUTY ZONING COMMISSIONER
- * FOR
- * BALTIMORE COUNTY
- * CASE NO. 05-308-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by High Falcon Realty Corp., by Leonard Stoler, the Petitioners. The Petitioners are requesting variance relief for property located at 11317 Reisterstown Road in Baltimore County. Variance relief is requested from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the erection of a double-faced, illuminated, freestanding business sign with a size of 55 sq. ft. per side, in lieu of the 50 sq. ft. now permitted.

The property was posted with Notice of Hearing on January 21, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on January 20, 2005 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 307 of the B.C.Z.R. – *Variances*.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and 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. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such









variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: None.

Interested Persons

Appearing at the hearing on behalf of the variance request was Barry Stoler for the corporate Petitioner. Mark I. Singer, Esquire represented the Petitioners. There were no protestants or citizens who attended the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Mr. Singer proffered that the subject property was the site of a defunct fast food restaurant, which the Petitioner corporation extensively renovated and rebuilt to house the Len Stoler dealership franchise of Hyundai Automobiles. The dealership has been at this location for several years in its renovated surroundings. The request in this case is to approve an identification sign with a slightly larger face area than allowed by the regulations. Mr. Singer proffered that the smallest standard identification sign allowed by the Hyundai dealership agreement is the HP 50. This would seem to indicate the sign to be 50 sq. ft. but in fact the sign is 55 sq. ft. The County regulations allow 50 sq. ft.

Mr. Singer proffered that the subject property is between two hills on Reisterstown Road also known as State Route 140. This is a heavy commercial road as shown on the extensive

photographs marked Petitioners' Exhibits 4 and 5. As such, the Petitioner would like his customers to be able to find his location amid the myriad of free standing signs and signs on commercial buildings along the road. In addition, he notes that the two hills on either side of the property cut off customers' views of the road and businesses located along it. Consequently, he believes that a slightly larger sign than that allowed by the regulations would enhance the safety of his customers.

The Petitioner noted that the issue of sign variance had been raised once before. The Deputy Zoning Commissioner approved a 98 sq. ft. sign at this location for this Petitioner in Case No. 00-559-A. This case was appealed to the Board of Appeals who reversed the Deputy Zoning Commissioner's decision and denied the variance. The Board of Appeals decision was affirmed by the Circuit Court in Case No. 03-C-02-5291. Mr. Singer distinguished the prior case from the subject case by noting that the request in the former case was for a sign twice the allowed size. In this case the sign requested is only 10% larger than allowed and the smallest allowed by the Hyundai dealership agreement. He also noted that the prior case theory was simply to replace the existing fast food restaurant sign with the same size Hyundai sign. This sign happened to be 98 sq. ft. In the meantime, corporate Hyundai revised its signage program and that the proposed sign must meet national corporate standards.

Finally, Mr. Singer proffered that the property is unique in a zoning sense because of the series of car dealerships and business uses immediately around the subject property and the rolling hills on each side of the site which greatly limit customer's views along heavily traveled Reisterstown Road. He noted that there would be a hardship on the customers and travelers of Reisterstown Road if the variance were denied. Finally, he noted that the larger sign would be

compatible with the commercial neighborhood and would not in any way adversely affect the health, safety, or welfare of the community.

Findings of fact and conclusions of law

In the prior case, the Petitioner simply asked to replace the existing 100 sq. ft. sign that stood on Reisterstown Road. In reading the Board of Appeals Opinion, which denied the request, I detect some annoyance on the part of the Board that the Petitioner had done little to try to conform to the sign law but simply felt some entitlement to replace the existing sign. The fact that that sign was twice the size allowed under the law seemed not terribly significant to the Petitioners in that case. Consequently, the Board found that the Petitioner would not suffer a hardship. This decision was confirmed by the Circuit Court.

I have no problem distinguishing the subject case from the prior case on the facts. The Petitioner has shown that the minimum size allowed by corporate Hyundai in their national signage campaign is that proposed. Unfortunately, the HP 50 is in fact 55 sq. ft., which exceeds the allowed face size by 10 %. Otherwise they would not need a variance. Not to allow this sign would be a hardship not only to the customers trying to find the dealership but the dealership as well since, according to the proffer, a 50 sq. ft. sign would violate the dealership agreement. There is not a hint of entitlement here but rather an honest effort to comply with the County regulations. I feel confident that if this case were appealed to the Board of Appeals the Board would find a hardship in this case.

However, the Board also found that the property was not unique in a zoning sense in the prior case. This was part of the decision that was affirmed by the Circuit Court. The reasons for uniqueness given in the prior case and this case are nearly identical. Nothing has changed regarding the property's location between hills, the many commercial uses along Reisterstown



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Road, and the physical characteristics of the property. I note that there is a large utility easement, which traverses the property along Reisterstown Road side, but I have no reason to believe that this interferes with either the location or size of the sign. Consequently, I must deny the request on the basis of uniqueness.

A literal reading of *Cromwell v Ward*, 102 Md App 691 (1995) indicates that there must be something unique about the property before a zoning variance can be granted. The facts of the *Cromwell* case involved a Petitioner who erected a garage that exceeded the height limitations of the regulations. The Court of Special Appeals clearly wanted to send a message in this case that practical difficulty or unnecessary hardship for zoning purposes could not generally be self- inflicted. This is precisely what the Petitioner in *Cromwell* did and argued. The garage was up already and it would be a hardship to remove it. Therefore it was a unique situation. The Court of Special Appeals was not amused.

To illustrate the point that the zoning authorities must find something unique first and not back into uniqueness by first finding a hardship, the Court of Special Appeals described what would constitute uniqueness of property for zoning purposes. They indicated that the subject property must be peculiar, unique or unusual when compared to other properties in the neighborhood such that the regulations impact the subject property differently than the regulation impacts other properties in the neighborhood. As a further illustration of this principle, the Court directed that the subject property have inherent characteristics not shared by other properties in the neighborhood, such as 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 similar restrictions (emphasis supplied).

After the *Cromwell* decision, it seemed to most zoning authorities that unless a property had a "river running through it", it could not be unique from a zoning standpoint. As importantly, it seemed that the subject property and only the subject property could be considered. So what is physically unusual about the subject property? Nothing is unusual, compared to others in the commercial corridor of Reisterstown Road. And what environmental or physical feature could ever be found to be unusual in a sign variance case anyway? Surely the sign does not have a river running through it and, if the property on which the sign was to be erected had a river, what relevance would this have to the size of the face of the sign?

In my view, there is only one example given in *Cromwell*, which is useful in sign cases. The *Cromwell* Court cited, "practical restrictions imposed by abutting properties (such as obstructions) or similar restrictions" as an example of a unique circumstance or condition that could justify granting a variance. The unusual condition does not have to be on site but rather can be on abutting properties. Obstructions are specific examples of off-site circumstances or conditions, which show uniqueness. The Board of Appeals in Case No. 00-559-A looked offsite to examine the fact that the property is situated in a valley. However, the Board went on in this case to find that Reisterstown Road has many hills and valleys and that the valley in which the subject site is located is no different from the others along the highway. Therefore, the Board found the property was not unique.

I believe I am bound by that decision of the Board regarding uniqueness and must deny this variance. I respectfully suggest, however, that the Board might reasonably revisit the issue of uniqueness in sign cases. I suggest the Board consider visual obstructions on abutting properties are evidence of uniqueness as outlined in the *Cromwell* case.

VEH RECEIVED FOR FILING

I suggest further that the proper inquiry as to uniqueness in sign cases might start with the Council's findings in Section 450.1, signs. The Council found:

- 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.
 - 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.

So, signs are important to public safety but there are too many signs and they are often of poor quality especially along commercial strips such as those existing along Reisterstown Road. Section 307 of the B.C.Z.R. requires that in order to grant a variance the Zoning Authority must find "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". What circumstances, what conditions would be relevant to a request to allow a larger sign than the regulations allow?

It seems to me that visual obstructions to seeing a sign on abutting properties such as free standing signs and commercial buildings could be evidence that would satisfy the *Cromwell* requirement of uniqueness. This, of course, does not answer the matter of hardship, spirit and intent, or adverse impact on the community, all of which have to be satisfied in order to grant a variance. In regard to the last two criteria, I would imagine that the Council's call to eliminate unneeded signs and improve the quality of signs along commercial corridors would be important.

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 Petitioners, I find that the Petitioners' variance requests should be denied.

THEREFORE, IT IS ORDERED, this 15 day of February, 2005, by this Deputy Zoning Commissioner, that the Petitioners' request for variance relief from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the erection of a double-faced, illuminated, freestanding business sign with a size of 55 sq. ft. per side, in lieu of the 50 sq. ft. now permitted, be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

DER RECEIVED FOR FILING



Suite 405, County Courts Building 401 Bosley Avenue Towson, Maryland 21204 Tel: 410-887-3868 • Fax: 410-887-3468



Baltimore County

James T. Smith, Jr., County Executive William J. Wiseman III, Zoning Commissioner

February 16, 2005

Marvin I. Singer, Esquire 10 E. Baltimore Street, Suite 901 Baltimore, Maryland 21202

> Re: Petition for Variance Case No. 05-308-A Property: 11317 Reisterstown Road

Dear Mr. Singer:

Enclosed please find the decision rendered in the above-captioned case. The petition for variance has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

c: High Falcon Realty Corp.c/o Len StolerP. O. Box 21117Owings Mills, MD 21117

Barry Stoler 11275 Reisterstown Road Owings Mills, MD 21117





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 Permitsowner(s) of the property situate in Baltimore County and which made a part hereof, hereby petition for a Variance from Section	I is described in the describition and plat attached here and
of the Zoning Regulations of Baltimore County, to the zoning landship or practical difficulty)	law of Baltimore County, for the following reasons: (indicate
See attached statement	
Property is to be posted and advertised as prescribed by the z I, or we, agree to pay expenses of above Variance, advertising, postegulations and restrictions of Baltimore County adopted pursuant to	ting, etc. and further agree to and are to be bounded by the form's
Contract Purchaser/Lessee:	Legal Owner(s):
Name - Type or Print Signature	HIGH FALCON REALTY CORP Name - Type or Print By: Signature (Coxim) STours
Address Telephone No.	Name - Type or Print c/o Len Stoler
City State Zlp Code	Signature
Attorney For Petitioner:	P.O. Box 21117 (410) 356-7000 Address Telephone No.
MARVIN I. SINGER Name - Type or Print	Owings Mills MD 21117 City State Zip Code
3 - Sun	Representative to be Contacted:
Signature (410) 685-1111 Company	<u>Marvin I. Singer</u> Name
10 E Baltimore St. Suite 901 Address Telephone No.	10 E. Baltimore St. 685-1111 Address
Baltimore, MD 21202 State Zip Code	Baltimore MD State 21202 Zip Code City
	OFFICE USE ONLY
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Case No. <u>25-308</u>	UNAVAILABLE FOR HEARING Date 12-20-09

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 55 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, and is the smallest sized identification sign made available by the manufacturer. 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.

308



KCW Engineering Technologies, Inc. 3106 Lord Baltimore Drive, Suite 110 Baltimore, MD 21244

(410) 281-0030 Fax (410) 298-0604 www.KCW-ET.com

William K. Woody President and CEO

Douglas L. Kennedy
Senior Vice President

J. Peter McDonnell Vice President

Ronald J. Lind

** Associate Vice President

Edwin S. Howe, III

Associate Vice President

Joseph P. Wood Associate

Reginald C. Roberts
- Associate



Re: High Falcon Realty Corp.

C/O Leonard Stoler

11317 Reisterstown Road

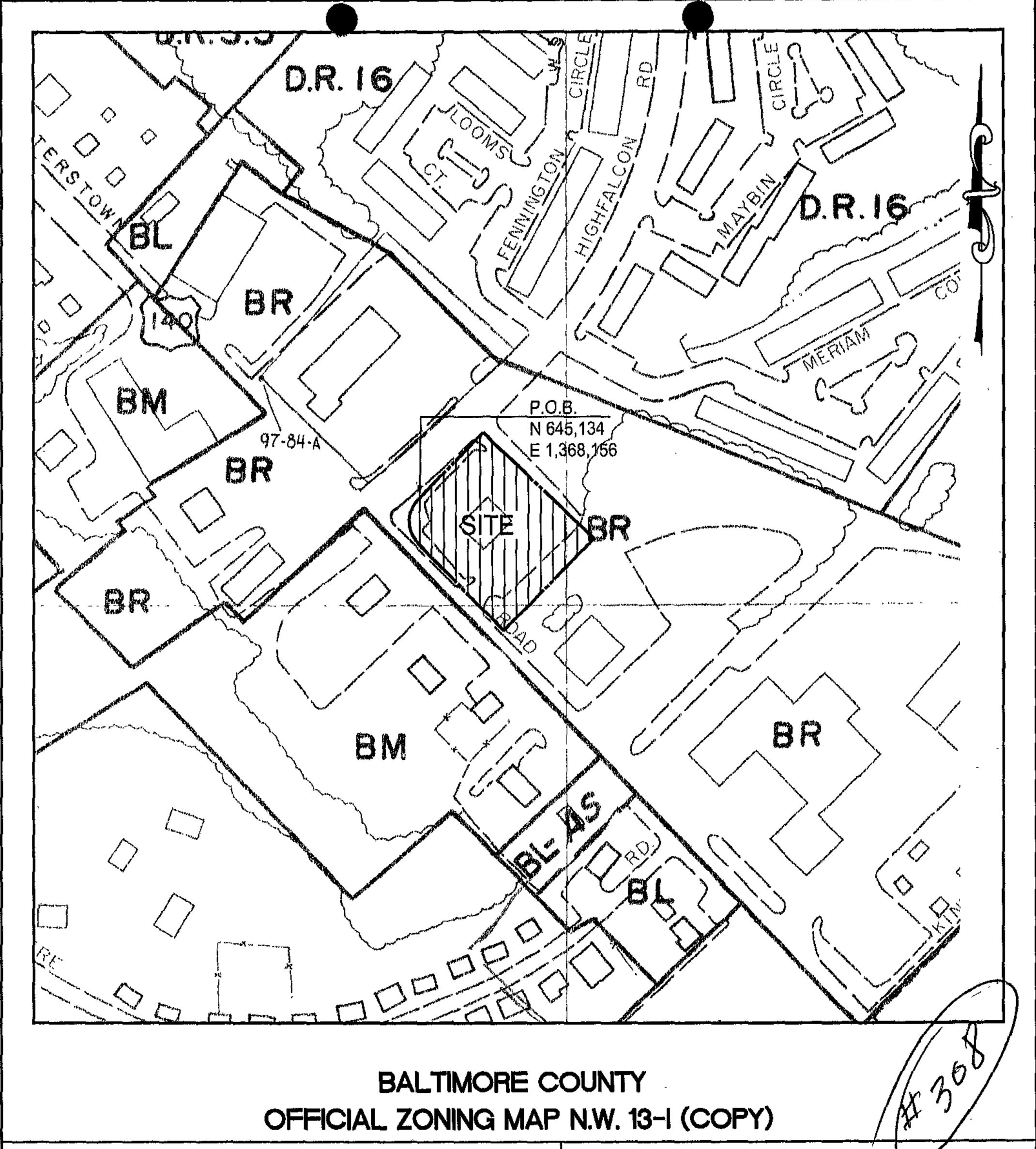
Zoning Description

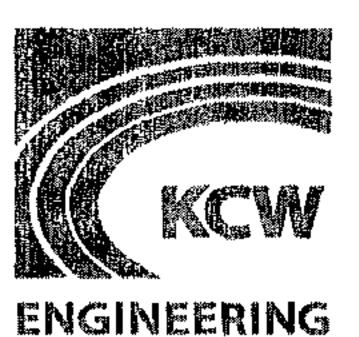
Beginning at a point on the Southeasterly Right-of-Way line of High Falcon Road (70 feet Right-of-Way) at the distance of 89 feet Northeast from the centerline intersection of Reisterstown Road (66 feet Right-of-Way) and High Falcon Road thence leaving said point and running with and binding on the Southeasterly Right-of-Way line of High Falcon Road:

- 1. North 44 degrees 23 minutes 10 seconds East 144.74 feet, thence leaving said High Falcon Right-of-Way line;
- 2. South 45 degrees 36 minutes 50 seconds East 238.11 feet, thence;
- South 46 degrees 00 minutes 20 seconds West 200.00 feet, thence running with and binding on the northeasterly Right-of-Way line of Reisterstown Road sixty(66) feet wide,
- 4. North 43 degrees 59 minutes 40 seconds West 183.95 feet, thence;
- 5. By a curve to the right with a radius of 50.00 feet and an arc length 77.14 feet, said curve having a chord bearing North 00 degrees 12 minutes 00 seconds East 69.71 feet,

To the place of beginning. Containing 1.05 acres of land more or less. As recorded in Deed liber 12432 folio 90.







TECHNOLOGIES

KCW Engineering Technologies, Inc. 3106 Lord Baltimore Drive, Suite 110 Baltimore, Maryland 21244 Tele (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 ELECTION DISTRICT - 04 SCALE: 1"= 200' COUNCILMANIC DISTRICT - C2

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DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing

Zoning Review will ensure that the legal requirements for advertising are satisfied However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

Item Number or Case Number 05-308 A	
Petitioner High Falcon Realty CORF	
Address or Location: 11317 Reisternstown Apr	,
PLEASE FORWARD ADVERTISING BILL TO	
•	
PLEASE FORWARD ADVERTISING BILL TO Name: MARYIN I Singer, ESR. Address 10 E. BALTIMERE ST	
PLEASE FORWARD ADVERTISING BILL TO Name: MARYIN I Singer, ESQ. Address 10 E. BALTIMORE ST BALTON Md, 21202	

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in <u>Towson</u>, <u>Maryland</u> on the property identified herein as follows:

Case: #05-308-A

11317 Reisterstown Road

S/east side of High Falcon Road, 89 feet n/east of Reisterstown Road

4th Election District - 2nd Councilmanic District

Legal Owner(s): High Falcon Realty, Corp., Leonard Stoler Variance: to permit the erection of a double-faced, illuminated, freestanding business sign with a size of 55 square feet per side, in lieu of the 50 sq. ft. permitted. Hearing: Monday, February 7, 2005 at 10:00 a.m. in

Hearing: Monday, February 7, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM WISEMAN

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410)*887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

1/254 Jan. 20 ______

6222

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each of successive weeks, the first publication appearing
on 120 ,20 <u>05</u> .
The Jeffersonian
☐ Arbutus Times
☐ Catonsville Times
☐ Towson Times
Owings Mills Times
☐ NE Booster/Reporter
☐ North County News
,

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

Date JANUARY 24, 2005

RE: Case Number 05-308-A

Petitioner/Developer MARVIN SINGER ESQ./ETAL

Date of (Hearing) Closing FEBRUARY 7, 2005

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 11317 REISTERSTOWN ROAD

The sign(s) were posted on

JANUARY 21, 2005



Linda O'Keefe (Printed Name of Sign Poster)

523 Penny Lane (Street Address of Sign Poster)

Hunt Valley Maryland 21030 (City, State, Zip Code of Sign Poster)

410-666-5366

(Telephone Number of Sign Poster)



CASE NO. 05-308-A

HIGH FALCON REALTY CORP.

11317 REISTERSTOWN ROAD

^{4TH} ELECTION DISTRICT

APPEALED: 3/08/2005

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

COMPLETE AND RETURN BELOW INFORMATION*

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals

400 Washington Avenue, Room 49

Towson, MD 21204

Attention: Kathleen Bianco

Administrator

CASE NO.: 05-308-A

Legal Owners: HIGH FALCON REALTY CORP. by Leonard Stoler

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

11317 REISTERSTOWN ROAD

The sign was posted on	, 2005	
By: July Treus (Signature of Sign Poster)		
GARY FREUND	grade and the second	
(Print Name)		

LAW OFFICES MARVIN I. SINGER

SUITE 901 10 East Baltimore Street Baltimore, Maryland 21202

(410) 685-1111

FACSIMILE (410) 685-2372

> February 21, 2006

County Board of Appeals Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204

> Re: Petition of High Falcon Realty Corp. Board of Appeals Case No. 05-308-A Circuit Court Case No. 03-C-06-1550

Gentlemen:

In accordance with your letter of February 16th, which was received today, I enclose my check in the amount of \$25.00 in payment of the fee for a copy of the transcription of the proceedings. Please forward the tape at your earliest convenience.

If anything else is required please contact me. Thank you for your attention to this matter.

Yours very truly,

11 25 m

Marvin I. Singer

Copy to: Peter Max Zimmerman, Esq.

MIS/m Encl.

RECEIVED)
FEB 2 2 2006

BALTIMORE COUNTY BOARD OF APPEALS

	B'S o'Chirth g' chirth a mich g.	doc ninje nit See ba	ck, for details for	The second secon	
	MARVIN I. SINGER ATTORNEY AT LAW 10 E BALTIMORE ST. STE 901 BALTIMORE, MD 21202-1649	04-98			8264
PAY TO THE ORDER OF BOLLAGO TOPHY-FINE OR	- County, Md		DATÉ <u>AS</u>	*g· y 2/200 \$ 2	
Bank of America					LLARS di securi nunciano de monaco d
FOR <u>// / Feleon</u> No.	14 (04 -608° 705-308) B 7 G 4 11 11 0 5 700 1 G 3) 311	B. 1-3-6-6-9-4-10		Mr.

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

DATE 2/23/06 ACCOUNT R-001-7/20

AMOUNT \$ 2500

RECEIVED Maryin I. Singer, Esa

FOR: a tape of the hearing m

DISTRIBUTION
WHITE-CASHIER PINK-AGENCY YELLOW-CUSTOMER

No. 42304

No. 42304

CASHIER'S VALIDATION

TO: PATUXENT PUBLISHING COMPANY

Thursday, January 20, 2005 Issue - Jeffersonian

Please forward billing to:

Marvin Singer, Esq. 10 E. Baltimore St., Ste. 901 Baltimore, MD 21202 410-685-1111

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 05-308-A 11317 Reisterstown Road

S/east side of High Falcon Road, 89 feet n/east of Reisterstown Road 4th Election District – 2nd Councilmanic District

Legal Owners: High Falcon Realty, Corp., Leonard Stoler

<u>Variance</u> to permit the erection of a double-faced, illuminated, freestanding business sign with a size of 55 square feet per side, in lieu of the 50 sq. ft. permitted.

Hearing: Monday, February 7, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM WISEMAN

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Department of Permits and Development Management

Director's Office County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204 Tel: 410-887-3353 • Fax: 410-887-5708



Baltimore County

James T. Smith, Jr., County Executive Timothy M. Kotroco, Director

January 4, 2005

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 05-308-A

11317 Reisterstown Road

S/east side of High Falcon Road, 89 feet n/east of Reisterstown Road

4th Election District – 2nd Councilmanic District

Legal Owners: High Falcon Realty, Corp., Leonard Stoler

<u>Variance</u> to permit the erection of a double-faced, illuminated, freestanding business sign with a size of 55 square feet per side, in lieu of the 50 sq. ft. permitted.

Hearing: Monday, February 7, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Boslev Avenue, Towson 21204

Timothy Kotroco

Director

TK:klm

C: Marvin Singer, 10 E. Baltimore St., Ste. 901, Baltimore 21202 Len Stoler, High Falcon Realty Corp., P.O. Box 21117, Owings Mills 21117

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JANUARY 22, 2005.

- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



Visit the County's Website at www.baltimorecountyonline.info





OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 410-887-3180 FAX: 410-887-3182

Hearing Room - Room 48 Old Courthouse, 400 Washington Avenue

June 3, 2005

NOTICE OF ASSIGNMENT

CASE #: 05-308-A

IN THE MATTER OF: HIGH FALCON REALTY CORP., by

Leonard Stoler 11317 Reisterstown Road 4th Election District; 2nd Councilmanic District

2/16/05 -D.Z.C.'s Decision in which requested variance relief was DENIED.

ASSIGNED FOR:

TUESDAY, AUGUST 23, 2005 at 10:00 a.m.

NOTICE:

This appeal is an evidentiary hearing; therefore, parties should consider the

advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco Administrator

c:

Counsel for Appellant /Petitioner Appellant /Petitioner : Marvin I. Singer, Esquire

: High Falcon Realty Corp. by Leonard Stoler

Barry Stoler

Edwin Howe III /KCW Engineering Technologies, Inc.

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM



OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 410-887-3180

FAX: 410-887-3182

September 30, 2005

position to late los OTICE OF DELIBERATION

IN THE MATTER OF:

HIGH FALCON REALTY CORP. by Leonard Stoler Case No. 05-308-A

Having heard this matter on 8/23/05, public deliberation has been scheduled for the following date /time:

DATE AND TIME

TUESDAY, OCTOBER 18, 2005 at 9:00 a.m.

LOCATION

Hearing Room 48, Basement, Old Courthouse

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

> Kathleen C. Bianco Administrator

c:

Counsel for Appellant /Petitioner Appellant /Petitioner : Marvin I. Singer, Esquire : High Falcon Realty Corp. by Leonard Stoler

Barry Stoler

Edwin Howe III /KCW Engineering Technologies, Inc.

Office of People's Counsel William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM

FYI: 3-6-7





OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 410-887-3180 FAX: 410-887-3182

October 12, 2005

NOTICE OF REASSIGNMENT - DELIBERATION

IN THE MATTER OF:

HIGH FALCON REALTY CORP. by Leonard Stoler

<u>Case No. 05-308-A</u>

which was assigned to be deliberated on 10/18/05 has been administratively POSTPONED at the Board's request for scheduling reasons; and has been reassigned to the following date and time:

DATE AND TIME

WEDNESDAY, OCTOBER 26, 2005 at 9:00 a.m.

LOCATION

Hearing Room 48, Basement, Old Courthouse

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco Administrator

¢:

Counsel for Appellant /Petitioner
Appellant /Petitioner

: Marvin I. Singer, Esquire : High Falcon Realty Corp.

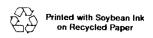
by Leonard Stoler

Barry Stoler

Edwin Howe III /KCW Engineering Technologies, Inc.

Office of People's Counsel William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM

FYI: 3-6-7





JEFFERSON BUILDING SECOND FLOOR, SUITE 203 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND, 21204 410-887-3180 FAX: 410-887-3182

April 1, 2009

NOTICE OF DELIBERATION
ON REMAND ORDER FROM THE CIRCUIT COURT

IN THE MATTER OF:

HIGH FALCON REALTY CORP. by Leonard Stoler Case No. 05-308-A

DATE AND TIME

THURSDAY, MAY 28, 2009 at 9:00 a.m.

LOCATION

Hearing Room #2, Jefferson Building 105 W. Chesapeake Avenue, Second Floor

(adjacent to Suite 203)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Theresa R. Shelton Administrator

c:

Counsel for Appellant /Petitioner

Appellant /Petitioner

: Marvin I. Singer, Esquire

: High Falcon Realty Corp. by Leonard Stoler

Barry Stoler

Edwin Howe III /KCW Engineering Technologies, Inc.

Office of People's Counsel William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM Nancy West, Assistant County Attorney John Beverungen, County Attorney Left Message for Mr. Singer re: One Bd Member unable to attend & deliberation will be rescheduled for a later date. Please call client.

f Baltimore County

JILDING SUITE 203 AKE AVENUE ND, 21204 |80 -3182

109

DELIBERATION
THE CIRCUIT COURT

OM 9:00 A.M. TO 9:30 A.M.)

RP. by Leonard Stoler 08-A

DATE AND TIME

<u>тпикэрат, үчаҮ 28, 2009 at 9:30 а.т.</u>

LOCATION

Hearing Room #2, Jefferson Building 105 W. Chesapeake Avenue, Second Floor (adjacent to Suite 203)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; NOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Theresa R. Shelton Administrator

c.

Counsel for Appellant /Petitioner Appellant /Petitioner

Barry Stoler

Edwin Howe III /KCW Engineering Technologies, Inc.

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy West, Assistant County Attorney
John Beverungen, County Attorney

: Marvin I. Singer, Esquire

: High Falcon Realty Corp. by Leonard Stoler



JEFFERSON BUILDING SECOND FLOOR, SUITE 203 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND, 21204 410-887-3180 FAX: 410-887-3182

July 2, 2009

NOTICE OF DELIBERATION ON REMAND ORDER FROM THE CIRCUIT COURT

IN THE MATTER OF:

HIGH FALCON REALTY CORP. by Leonard Stoler Case No. 05-308-A

DATE AND TIME

TUESDAY, JULY 21, 2009 at 9:30 a.m.

LOCATION

Hearing Room #2, Jefferson Building 105 W. Chesapeake Avenue, Second Floor

(adjacent to Suite 203)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Theresa R. Shelton Administrator

٥.

Counsel for Appellant /Petitioner Appellant /Petitioner : Marvin I. Singer, Esquire : High Falcon Realty Corp. by Leonard Stoler

Barry Stoler

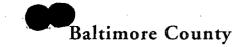
Edwin Howe III /KCW Engineering Technologies, Inc.

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy West, Assistant County Attorney
John Beverungen, County Attorney

Department of Permits a Development Management

Development Processing County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204





James T. Smith, Jr., County Executive Timothy M. Kotroco, Director

February 2, 2005

Marvin I. Singer 10 E. Baltimore Street, Ste. 901 Baltimore, Maryland 21202

Dear Mr. Singer:

RE: Case Number: 05-308-A, 11317 Reisterstown Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on December 20, 2004.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel

High Falcon Realty Corp. Leonard Stoler P.O. Box 21117 Owings Mills 21117



Visit the County's Website at www.baltimorecountyonline.info

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: January 21, 2005

Department of Permits & Development Management

Robert W. Bowling, Supervisor Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For January 10, 2005 Item Nos. 305, 306 308 309, 310, 311, 313, 314, 315, 316, 317, and

318

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

RWB:CEN:jrb

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

Zoning Advisory Petition(s): Case(s) 5-308

DATE: January 14, 2005

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark Cunningham in the Office of Planning at 410-887-3480.

Division Chief:

MAC/LL

Fire Department



700 East Joppa Road Towson, Maryland 21286-5500 Tel: 410-887-4500



Baltimore County

James T. Smith, Jr., County Executive John J. Hohman, Chief

County Office Building, Room 111 Mail Stop #1105 111 West Chesapeake Avenue Towson, Maryland 21204 January 4, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: January 10, 2005

Item No.:

305,306,(308)-309,311-318

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The Fire Marshal's Office has no comments at this time.

Lieutenant Franklin J. Cook Fire Marshal's Office (O)410-887-4881 (C)443-829-2946 MS-1102F

cc: File



Visit the County's Website at www.baltimorecountyonline.info





Robert L. Ehrlich, Jr., Governor Michael S. Steele, Lt. Governor Robert L. Flanagan, Secretary Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: 1.3.05

Ms. Kristen Matthews Baltimore County Office of Permits and Development Management County Office Building, Room 109 Towson, Maryland 21204 RE:

Baltimore County

Item No.

308

115

Dear Ms. Matthews:

We have reviewed the referenced item and have no objection to approval. Our review has determined that no construction is required within the State Highway Administration's right-of-way.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chief

P. J. Double

Engineering Access Permits Division

esal ibination de dinamentale de desamble de la company de

TO:

Tim Kotroco

PDM

FROM:

John D. Oltman, Jr Job

DEPRM

DATE:

February 3, 2005

SUBJECT:

Zoning Items # See List Below

Zoning Advisory Committee Meeting of January 3, 2005.

X The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

05-305

05-306

95-308

05-309

05-310

05-312

05-313

05-316

05-317

05-317

Reviewers:

Sue Farinetti, Dave Lykens

RE:	PETITION FOR VARIANCE
	11317 Reisterstown Road; SE/side High
•	Falcon Rd, 89' NE Reisterstown Rd
	4 th Election & 2 nd Councilmanic Districts
	Legal Owner(s): High Falcon Realty Corp.,
	by Leonard Stoler

* BEFORE THE

ZONING COMMISSIONER

* FOR

Petitioner(s) * BALTIMORE COUNTY

05-308-A

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and 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

People's Counsel for Baltimore County

RECEIVED

JAH 07 2005

Per.....

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 7th day of January, 2005, a copy of the foregoing Entry of Appearance was mailed to, Marvin L. Singer, Esquire, 10 E. Baltimore Street, Suite 901, Baltimore, MD 21202, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Department of Permits and Development Management

Director's Office County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204 Tel: 410-887-3353 • Fax: 410-887-5708



Baltimore County

James T. Smith, Jr., County Executive Timothy M. Kotroco, Director

March 24, 2005

Marvin I. Singer, Esq. 10 E. Baltimore Street, Ste. 901 Baltimore. MD 21202

Dear Mr. Singer:

RE: Case: 05-308-A, 11317 Reisterstown Road

Please be advised that we received your appeal of the above-referenced case in this office on March 8, 2005. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco

Director

TK:klm

c: William Wiseman, Zoning Commissioner
 Timothy Kotroco, Director of PDM
 People's Counsel
 High Falcon Realty Corp., c/o Len Stoler, P.O. Box 21117, Owings Mills 21117
 Barry Stoler, 11275 Reisterstown Road, Owings Mills 21117



APPEAL

Petition for Variance
11317 Reisterstown Road
SE/s High Falcon Rd., 89' NE c/line Reisterstown Rd.
4th Election District – 2nd Councilmanic District
Legal Owners: High Falcon Realty Corp., by Leonard Stoler

Case No.: 05-308-A

V	Petition for Variance (December 20, 2004)	
	Zoning Description of Property	
V	Notice of Zoning Hearing (January 4, 2005)	
/	Certification of Publication (January 20, 2005 – The Jeffersonian)	
1	Certificate of Posting (January 21, 2005) by Linda O'Keefe	
/	Entry of Appearance by People's Counsel (January 7, 2005)	
/	Petitioner(s) Sign-In Sheet – One Sheet	. `~
	Protestant(s) Sign-In Sheet None	DECEIVEN
	Citizen(s) Sign-In Sheet None	MAR 2 8 2005
	Zoning Advisory Committee Comments	BALTIMORE COUNTY
	Petitioners' Exhibit 1. Hyundai Facility Branding Program 2. Sign Specifications 3. Location Requirements 4. Photos (a-d) 5. Photos (a-d) 6. Letter dated October 8, 2001 to Len Stoler	BOARD OF APPEALS
	Protestants' Exhibits - None	•
	Miscellaneous (Not Marked as Exhibit) 1. Memo To File 2. Opinion for 00-559-A 3. Findings of Fact & Conclusions of Law for Case 00- 4. Opinion & Order for Case 03-C-02-5291	559-A
V	Deputy Zoning Commissioner's Order (February 16, 2005)	
V	Notice of Appeal received on March 2005 from Marvin Singer fo	r Petitioners
	c: People's Counsel of Baltimore County. MS #2010	

People's Counsel of Baltimore County, MS #2010
 Zoning Commissioner/Deputy Zoning Commissioner
 Timothy Kotroco, Director of PDM
 Marvin Singer
 High Falcon Realty Corp., Len Stoler
 Barry Stoler

date sent March 24, 2005, klm

3/28/00 Dodat book & comp. "

HIGH FALCON REALTY CORP. C/O LEN STOLER P.O. BOX 21117 OWINGS MILLS, MD 21117

BARRY STOLER 11275 REISTERSTOWN ROAD OWINGS MILLS, MD 21117

MARVIN I. SINGER, ESQUIRE 10 E. BALTIMORE STREET – STE 901 BALTIMORE, MD 21202

APPEAL

Petition for Variance
11317 Reisterstown Road
SE/s High Falcon Rd., 89' NE c/line Reisterstown Rd.
4th Election District – 2nd Councilmanic District
Legal Owners: High Falcon Realty Corp., by Leonard Stoler

Case No.: 05-308-A

Petition for Variance (December 20, 2004)

Zoning Description of Property

Notice of Zoning Hearing (January 4, 2005)

Certification of Publication (January 20, 2005 - The Jeffersonian)

Certificate of Posting (January 21, 2005) by Linda O'Keefe

Entry of Appearance by People's Counsel (January 7, 2005)

Petitioner(s) Sign-In Sheet - One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet - None

Zoning Advisory Committee Comments

Petitioners' Exhibit

- 1. Hyundai Facility Branding Program
- 2. Sign Specifications
- 3. Location Requirements
- 4. Photos (a-d)
- 5. Photos (a-d)
- 6. Letter dated October 8, 2001 to Len Stoler

Protestants' Exhibits - None

Miscellaneous (Not Marked as Exhibit)

- 1. Memo To File
- 2. Opinion for 00-559-A
- 3. Findings of Fact & Conclusions of Law for Case 00-559-A
- 4. Opinion & Order for Case 03-C-02-5291

Deputy Zoning Commissioner's Order (February 16, 2005)

Notice of Appeal received on March 8, 2005 from Marvin Singer for Petitioners

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Marvin Singer
High Falcon Realty Corp., Len Stoler
Barry Stoler

date sent March 24, 2005, klm

Case No. 05-308-A

In the Matter of: High Falcon Realty Corp by Leonard Stoler 11317 Reisterstown Road

VAR – To permit erection of a double-faced illuminated freestanding business sign with a size of 55 sq. ft. ilo permitted 50 sq. ft.

2/16/05 –D.Z.C.'s Decision in which requested variance relief was DENIED.

6/03/05 -Notice of Assignment sent to following; assigned for hearing on Tuesday, August 23, 2005 at 10 a.m.:

Marvin I. Singer, Esquire
High Falcon Realty Corp.
by Leonard Stoler
Barry Stoler
Edwin Howe III /KCW Engineering Technologies, Inc.
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

8/23/05 - Board convened for hearing (Wescott, Quinn, Crizer); concluded hearing this date (no CP; record on tape); no briefs to be filed; public deliberation to be scheduled and notice to be sent.

9/30/05 – Notice of Deliberation sent to parties; deliberation assigned for Tuesday, October 18, 2005 at 9:00 a.m. FYI copy to 3-6-7).

10/12/05 – Notice of Reassignment – Deliberation sent to parties this date and to the panel members (3-6-7); deliberation postponed from 10/18/05 date at the request of the Board; reassigned to Wednesday, October 26, 2005 at 9:00 a.m. Confirmed date with panel members.

10/26/05 Board convened for public deliberation (Wescott, Quinn, Crizer); unanimous decision – requested variance relief is DENIED; written Opinion/Order to be issued; appellate period to run from date of written Order. (3)

High Falcon Realty Corp 11317 Reisterstown Road 4th E; 2nd C 05-308-A

December 20, 2004

Petition for Variance – request is to permit the erection of a double-faced, illuminated, free-standing business sign with a size of 55 sq. ft. per side, ilo the 50 sq. ft. now permitted.

February 15, 2005

Deputy Zoning Commissioner DENIED request.

March 8, 2005

Appeal filed with PDM by Marvin I. Singer, Esq. on behalf of the Petitioner.

March 28, 2005

Received in BOA.

January 20, 2006

Opinion and Order processed and mailed to pertinent parties. The Board *DENIED* the Petitioner's request for a larger/illuminated sign.

Case History as of 4/1/09

4/1/09 - Notice of Deliberation sent re: Remand from CCT

4/29/09 – Amended Notice as to Time only sent to all parties. Schedule updated.

5/25/09 Received telephone call from Ed that he has been injured and unable to come in for Deliberation. L/M for Mr. Singer, Petitioner's Counsel.

Mr. Singer telephoned the office at 4 PM stating that he will check with client and that it is possible that the sign is the req dimension. If so, he will withdrawal the Petition and dismiss the matter. Follow up on June 15th.

6/17/09 - Sent letter to Mr. Singer inquiring about withdrawal of petition.

FOLLOW UP 6/30 AND SET PUBLIC DELIBERATION IF NO RESPONSE.

7/2/09 No response from Mr. Singer – Re-scheduled Deliberation for 7/21/09 at 9. Notices sent. Panel notified.

7/17/09 Telephone call from Mr. Singer, what to do to make case 'go away'.

Received fax from Mr. Singer withdrawing the Petition.

Notified the Board

7/20/09 Prepared Order of Dismissal for signature. Notified PC.

CIRCUIT COURT FOR BALTIMORE COUNTY Suzanne Mensh

Clerk of the Circuit Court County Courts Building 401 Bosley Avenue P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

01/13/09

Case Number: 03-C-06-001550 AE OTH

Date Filed: 02/13/2006 Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

CTS Start : 02/13/06 Target : 08/12/07

In The Matter of: High Falcon Realty Corp

CASE HISTORY

OTHER REFERENCE NUMBERS

Description Number

Administrative Agency 05-308-A
Case Folder ID C06001550V01

INVOLVED PARTIES

Type	Num Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET	001 High Falcon Realty Corp		BT DO 10/04/06	02/13/06

Party ID: 0997530

Capacity : Petitioner

Mail: 11275 Reisterstown Road 02/13/06 02/13/06 TRY

Owings Mills, MD 21117

Attorney: 0014781 Singer, Marvin I Appear: 02/13/2006 02/13/06

10 East Baltimore Street

Suite 901

Baltimore MD 21202

(410)685-1111

ITP 001 County Board Of Appeals Of Baltimore County BT DO 10/04/06 . 02/13/06

Party ID: 0997533

03-C-06-001550

Date:

01/13/09

Time: 13:59

Capacity : Agency

Mail: Old Courthouse Room 49

400 Washington Avenue Towson, MD 21204 02/13/06

02/13/06 TRY

Page:

CALENDAR EVENTS

Date	Time	Fac	Event Descripti	ion	7	Text SA	Jdg	Day	0f	Notice	User	ID
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09/27/0	06 09:30A	CR13	Civil Non-Jury	Trial	,	· · ·	ТЈВ	01	/01		JMO	
He	ld/Conclu	ided	09/27/06 E	T.Bollinger	r. Sr.	Υ				*		

Stenographer(s): Court Smart

DISPOSITION HISTORY

Disp	Disp		Stage			Activity
Date '	Code	Description	Code	Description	User	Date
10/04/06	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	DR	10/04/06

JUDGE HISTORY

JUDG	E ASSIGNED .	•	Type	Assign Date	Removal RSN

TBA	To Be Assigned,		J	02/13/06	

DOCUMENT TRACKING

Num/Seq Description	Filed ·	Entered	Party	Jdg Ruling ,	Closed	User ID
0001000 Petition for Judicial Review	02/13/06	02/13/06	PET001	ТВА	10/04/06	TRY DR
0002000 Notice of Service of Discovery*	02/16/06	,02/27/06	000	.ТВА	10/04/06	TRY DR
0003000 Transcript of Record from Adm Agency *	03/20/06	03/21/06	ITP001	ТВА	10/04/06	EMH DR
0004000 Notice of Transcript of Record Sent	03/21/06	03/21/06	ITP001	ТВА	03/21/06	EMH
0005000 Notice of Transcript of Record Sent	03/21/06	03/21/06	PET001	ТВА	03/21/06	EMH .
0006000 Motion and Order to Extend Time to file memorandum on or before June 19, 2006	05/02/06	05/02/06	PET001	TJB Granted	05/01/06	DR DR
0007000 Scheduling Order	06/13/06	06/13/06	000	ТВА	06/13/06	JMO .

03-C-06-001550 Date: 01/13/09 Time: 13:59 Page: 3

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	Usei	r.ID
0008000 Memorandum on behalf of petitioner statement of the case	06/19/06	06/21/06	PET001	ТВА	 06/21/06	EMH	
0009000 Open Court Proceeding September,27,2006 Hon. Thomas J. Bolling re: admininistrative appeal Court's opin		earing had		ТЈВ	10/04/06	ED	DR
0010000 Memorandum Opinion and Order of the Court remanding the decision of the Boar of Appeals for further consideration as uniqueness and its' applicability to vis abutting properties etc	d to the iss	sue of		TJB Ruled	10/02/06	DR	DR
0011000 Docket entries sent to Board of Appeals of Baltimore County	10/06/06	10/06/06	000	ТВА		CVM	

TICKLE

Code Tickl	e Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Туре	Num	Seq
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SLTR Set L	ist For Trial	CANCEL	03/20/06	0	yes	no	DTRA	D	003	000

EXHIBITS

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DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 06/13/06 Order Date: 06/13/06

Start Date : 06/13/06 Remove Date:

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: HIGH FALCON REALTY CORP 11275 REISTERSTOWN ROAD OWINGS MILLS, MD 21117

CIVIL ACTION NO. **3-C-06-001550**

FOR JUDICIAL REVIEW OF THE OPINION THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MD 21204

IN THE MATTER OF: HIGH FALCON REALTY CORP. FOR A VARIANCE ON THE PROPERTY LOCATED ON THE SE/S HIGH FALCON ROAD, 89'NE OF C/L REISTERSTOWN ROAD (11317 REISTERSTOWN ROAD)

4TH ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 05-308-A

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the following original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

RECEIVED AND FILED

06 MAR 20 AM 11: 11

CLERK OF THE CASE AND SONT BALTIMORE COUNTY

	age to the control of
 HIGH FALCON REALT BOARD OF APPEALS CIRCUIT COURT CASE	SE NO.: 05-308-A
Dec. 20, 2004	Petition for Variance.
Jan. 3, 2005	Letter from Steven D. Foster, Chief Engineering Access Permits Division of the State Highway Administration.
Jan. 4, 2005	Letter from Lieutenant Franklin J. Cook of the Fire Dept. to Zoning Review Planners.
Jan. 4, 2005	Notice of Zoning Hearing.
Jan. 14, 2005	Inter-Office Memo from Dir. of Planning to Dir. of Permits and Development Management.
Jan. 7, 2005	Entry of Appearance by People's Counsel.
Jan. 20, 2005	Certificate of Publication.
Jan. 21, 2005	Inter-Office Memo from Robert W. Bowling, Supv., Bureau of Utilities to Timothy M. Kotroco, Dir., Permits & Dev. Mgmt.
Jan. 24, 2005	Certificate of Posting.
Feb. 2, 2005	Letter to Marvin I. Singer, Esq. from W. Carl Richards, Jr., Supv., Zoning Review.
Feb. 7, 2005	Petitioner's Sign-In Sheet.
Feb. 7, 2005	Hearing before the Hearing Officer.
Feb. 16, 2005	Findings of Fact and Conclusion of Law by the Deputy, Zoning Commissioner.
Mar. 7, 2005	Letter from attorney, Michael I. Singer, entering an appeal.
Mar. 24, 2005	Letter from Timothy M. Kotroco, Dir. Permits & Dev. Mgmt. To Michael I. Singer, Esq. acknowledging receipt of his appeal.
May 10, 2005	Sign posting acknowledgement.
June 3, 2005	Notice of Assignment
Aug. 23, 2005	Hearing before the Board.

ISE NO.: 05-308-A CIRCUIT COURT CASE NO.: 3-C-06-001550

Petitioner's Exhibits

- Dealer Sales & Service Agreement.
- Picture of Roy Rogers sign.
- Picture of Lazy Boy store.
- Pictures of Reisterstown Road (a m)
- Pictures (a d)
- COMAR regs. 6.
- CBA Case No.: 90-160-A. 7.
- Circuit Court Case No.: 91-CV-4539.

Sept. 30, 2005	Notice of Assignment for Public Deliberation lined through. Postponement at request of Board. Case reset to Oct. 26, 2005.
Oct. 26, 2005	Minutes of Deliberation.
Oct. 26, 2005	In house notes
Jan. 20, 2006	Opinion & Order issued by the Board.
Feb. 13, 2006	Received copy of the Petition for Judicial Review filed by Marvin I. Singer, Esq. filed with the Circuit Court for Baltimore County.
Feb. 15, 2006	Copy of the Petition for Judicial Review from the Circuit Court.
Feb. 16, 2006	Certificate of Notice filed with the Circuit Court by the Board.
Feb. 21, 2006	Letter paying \$25.00 to receive a copy of the tape of the hearing from the Board.
Mar. 10, 2006	Transcript received from Marvin I. Singer, Esq.
March 17, 2006	Letter from Marvin I. Singer, Esq. and copy of transcription bill from Irwin Reporting and Video, LLC.
Mar. 20, 2006	Record of Proceedings file in the Circuit Court for Baltimore County, Maryland.

Record of Proceedings pursuant to which said Order was entered and upon which said

HIGH FALCON REALTY CORP.

BOARD OF APPEAL ASE NO.: 05-308-A CIRCUIT COURT CASE NO.: 3-C-06-001550

Board acted are hereby forrwarded to the Court, together with exhibits entered into evidence.

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410)887-3180

Marvin I Singer, Esquire 10 East Baltimore Street – Suite 901 Baltimore, MD 21201 Attorney for Petitioner

Peter Max Zimmerman, Esq. and Carole S. Demilio, Esq. Office of People's Counsel for Baltimore County, Old Courthouse, Room 47 400 Washington Avenue, Towson, Maryland 21204

Barry Stoler 11275 Reisterstown Road Owings Mills, MD 21117

High Falcoln

10/2/06 Remanded to BOA by CCT BOA received copy of CCT Opin 10/10/06 2/11/09 Retrieved file from CCT

Copy of CCT Opinion is in BOA file.



County Board of Appeals of Baltimore County

JEFFERSON BUILDING SECOND FLOOR, SUITE 203 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND, 21204 410-887-3180 FAX: 410-887-3182

June 17, 2009

Marvin I. Singer, Esquire 10 E. Baltimore Street Suite 901 Baltimore, MD 21202

Re: In the Matter of: High Falcon Realty Corp. Case No. 00-559-A

Dear Mr. Singer:

c:

This matter was scheduled for a Public Deliberation on Remand from the Circuit Court, on Thursday, May 28, 2009 and was postponed. It is my understanding that your client may be in compliance and if so, the Petition would be Withdrawn.

Please contact me upon receipt of this letter, or in the alternative, please file a withdrawal of the Petition.

I appreciate your time and assistance in this matter.

Very truly yours,

Theresa R. Shelton

resu A. Shelton

Administrator

Peter M. Zimmerman, People's Counsel

PETITION OF:

HIGH-FALCON REALTY

CIVIL ACTION NO.: 3-C-06-001550

MATTER OF:

HIGH-FALCON REALTY

RECEIVED FROM THE COUNTY BOARD OF A SUPPLEMENTAL

EXTRACT AND TRANSCRIPT

CLERK'S OFFICE

DATE:

BALTIMORE COUNTY, MARYLAND Board of Appeals of Baltimore County Interoffice Correspondence

TO:

Larry W.

Ed

Bob

DATE:

April 1, 2009

FROM:

Theresa

RE:

Remand from Circuit Court / High Falcon Realty

This matter was remanded from the Circuit Court in October 2006 for the Board to re-consider the issue of uniqueness.

John Quinn was on the original panel and Bob will be replacing him on this deliberation.

Attached please find a copy of the transcript, the Board's Order and the Remand Order.

The deliberation has been scheduled for May 28, 2009 at 9:00. Notices have been sent.

Thank you.

Τ©

BOARD OF APPEALS OF BALTIMORE COUNTY MINUTES OF DELIBERATION

IN THE MATTER OF:

High Falcon Realty Corp. by Leonard Stoler

Case No. 05-308-A

DATE

Wednesday, October 26, 2005

BOARD /PANEL

Lawrence S. Wescott

(LSW)

Edward W. Crizer, Jr.

(EWC)

John P. Quinn

(JPQ)

RECORDED BY

Kathleen C Bianco / Administrator

PURPOSE: To deliberate Case No. 05-308-A /sign variance; 55 sq. ft. in lieu of permitted 50 sq. ft. for dealership; said relief denied by Deputy Zoning Commissioner.

Opening comments by Mr. Wescott:

Case was before CBA previously; no exact case, but a request for a sign variance was before this Board; sign was then much larger; was denied at that time and taken to the Circuit Court.

Current request is 55 sq. ft. sign in lieu of the permitted 50 sq. ft.

Discussion / Deliberation:

- Regulations are clear; while 5 sq. ft. does not seem like much, the law is 50 sq. ft.; concerned with exceptions look at spirit and intent of the regulations; the reason for the regulation and why it was instituted. Whether 5 sq. ft. or 1 sq. ft. or 50 sq. ft., the same law applies; this does not comply with the law
- No evidence that the property is unique; discussed regulations and burden of proof for a variance
- Additional discussion topography which was argued previously
- Topography has not changed since last decision where same argument was made
- As for the argument of coming over the hill and not seeing the dealership with smaller sign it's a Len Stoler franchise, including Lexis, Audi, Porche, etc.; not just one dealership
- 55' no more visible than 50'
- As to agreement Mr. Stoler has with Hyundai includes statement "subject to local laws"; will not lose dealership because of size of sign; also no hardship
- Additional comments re operation: Runs a nice operation; no balloons, etc. But has not changed since the last time the variance was denied
- As to argument re other signs in violation reason why regulation exists; those signs will come down eventually as part of legislation

- Mr. Wescott Request must be denied for reasons discussed and deliberated
- Mr. Crizer No exception can be made at this time; must be denied; no change; nothing unique and no hardship
- Mr. Quinn Regulations /requirements no met; must be denied

Final decision:

Unanimous decision of the Board – variance relief as requested by Petitioner in this matter for a 55 sq. ft. sign in lieu of the maximum permitted 50 sq. ft. is **DENIED.** Does not meet requirements of the regulations nor the spirit and intent; fails under Cromwell v. Ward.

Petition for Variance is DENIED; appellate period to run from date of written Order and not today's date.

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted

Kathleen C. Bianco, Administrator

County Board of Appeals

SUITE 901 10 East Baltimore Street Baltimore, Maryland 21202

(410) 685-1111

FACSIMILE (410) 685-2372

March 7, 2005

Timothy M. Kotroco Director, Dept. of Permits and Development Management County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

> Re: Petition for Variance Case No. 05-308-A 11317 Reisterstown Road High Falcon Realty Corp.

Dear Mr. Kotroco:

Please enter an appeal on behalf of the Petitioner in the above-entitled case from the Findings of Fact and Conclusions of Law, and Order thereon, entered by the Deputy Zoning Commissioner on February 15, 2005.

Enclosed is my check for the sum of \$325.00 in payment of the applicable filing costs.

Please have the enclosed copy of this letter dated stamped and returned to me in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter.

Yours very truly,

Marvin I. Singer

Copy to: Peter Max Zimmerman, Esq. and Carole S. Demilio, Esq.

MIS/m

SUITE 901 10 East Baltimore Street Baltimore, Maryland 21202

FACSIMILE (410) 685-2372

(410) 685-1111

February 13, 2006

County Board of Appeals Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204

Re: Petition of High Falcon Realty Corp. Case No. 05-308-A

Gentlemen:

On behalf of the Petitioner in the above-entitled case, I hereby request that the proceedings and testimony before the Board be transcribed, and included in the record forwarded to the Circuit Court. If anything further is required please contact me.

Thank you for your attention to this matter.

Yours very truly,

Marvin I. Singer

Copy to: Peter Max Zimmerman, Esq. and Carole S. Demilio, Esq.

MIS/m



SUITE 901 10 East Baltimore Street Baltimore, Maryland 21202

BALTIMORE STREET FACSIMILE (410) 685-2372

(410) 685-1111

March 10, 2006

County Board of Appeals Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204

> Re: Circuit Court Civil Action No. 03-C--06-1550 Petition for Judicial Review High Falcon Realty Corp. Board of Appeals Case No. 05-308-A

Gentlemen:

Enclosed for filing is the transcript of testimony before the Board, transcribed from the tape obtained from your office. Please advise me if anything further is needed in order to perfect this appeal.

Thank you for your attention to this matter.

Yours very truly,

Marvin I. Singer

MIS/m Encl.

RECEIVEU)
MAR 1 3 2006

BALTIMORE COUNTY BOARD OF APPEALS

SUITE 901 10 East Baltimore Street Baltimore, Maryland 21202

(410) 685-1111

FACSIMILE (410) 685-2372

March 16, 2006

County Board of Appeals Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204

> Re: Petition for Judicial Review Circuit Court Civil Action No. 03-C-06-1550 High Falcon Realty Corp. Board of Appeals Case No. 05-308-A

Gentlemen:

I hereby certify that the enclosed copy of the bill from Irwin Reporting and Video in the amount of \$188.40 represents the true and accurate cost of preparation of the transcript of testimony in the above entitled case.

Yours very truly,

Marvin I. Singer

MIS/m

Encl:

RECEIVED MAR 1 7 2006

BOARD OF APPEALS

IRWIN REPORTING & VIDEO LLC 301 W. Pennsylvania Avenue Towson, MD 21204 (410) 494-1880

We've moved
Please note new address

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

DATE 03/08/2006 INVOICE 2006162 Client 516 Job 2190

Re: High Falcon Realty Corporation

Assignment Date: February 22, 2006

Transcribing: Board of Appeals, August 23, 2005

Original 48.0 Pages @ 3.30 158.40
Transcription - tape 1.0 Hour @ 25.00 25.00
Delivery 5.00

Total Amount \$ 188.40

Case No. 05-308-A

THANK YOU.

PLEASE RETURN COPY WITH PAYMENT.
Payment due upon receipt. Monthly Finance Charge: 1.5%



Please Make Checks Payable To: IRWIN REPORTING & VIDEO LLC Federal Tax Id#: 52-1859591

SUITE 901 10 East Baltimore Street BALTIMORE, MARYLAND 21202

FACSIMILE (410) 685-2372

(410) 685-1111

July 17, 2009

Theresa R. Shelton Administrator County Board of Appeals Jefferson Building, Suite 203 105 West Chesapeake Avenue Towson, Maryland 21204

Re: In the Matter of High Falcon Realty Corp.

Case No. 00=559-A 05 - 308 - A f-Os

Dear Ms. Shelton:

In accordance with our telephone conversation, please withdraw the petition in the aboveentitled case. Thank you.

Yours very truly,

Marvin I. Singer

VIA FAX ONLY - (410) 887-3182

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PLEASE PRINT CLEARLY

CASE NA	ME HIGH FAI	LON MEALIY CORP.
CASE NU		
DATE	2-7-05	

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
MARVIN SINGER	10 E. BALTIMORE ST SUITER	BALTO- MD- 21202	
BARRY STOLER	11275 REISTENSTOWN RD.	OWINES MILLS 21117	· · · · · · · · · · · · · · · · · · ·
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EXHIBITS

HIGM FALCON REALTY CORP. BOARD OF APPEALS CASE NO.: 05-308-A CIRCUIT COURT CASE NO.: 3-C-06-001550

MISCELLANEOUS (NOT MARKED AS EXHIBIT)

- Memo to File Dated Dec. 20, 2004 1.
- Copy of Opinion & Order, case no. 03-C-02-5291, signed by The Honorable J. Norris Byrnes, dated March 28th, 2003. (Filed Apr. 1, 2003) Copy of Opinion & Order issued by the Board on April 18th, 2002 in case no. 00-2.
- 3. 559-A.
- 4. Findings of Fact and Conclusion of Law issued by the Board on Sept. 8, 2000.

DECEMBER 20, 2004

MEMO TO FILE

TO: ZONING COMMISSIONER/DEPUTY ZONING COMMISSIONER

FROM: JOHN SULLIVAN, ZONING REVIEW

SUBJECT: ZONING VARIANCE CASE NO: 05-308-A

AT THIS AFTERNOON'S PETITION FILING APPOINTMENT, I INFORMED MR. MARVIN SINGER, ATTORNEY FOR THE PETITIONER, THAT THE PROPOSED SIGN AS SHOWN ON THE SITE PLAN APPEARS TO PROJECT INTO THE (80FT.) ULTIMATE RIGHT-OF-WAY OF REISTERSTOWN ROAD. AS SUCH, IF AND WHEN THE STATE WIDENS THE ROAD, THE SIGN WOULD HAVE TO BE MOVED. MR. SINGER STATED THAT HE WISHED TO PROCEED WITH THIS PETITION WITH THE SIGN LOCATION AS SHOWN.

JOHN & SULLIVAN, JI

PLANNER II ZONING REVIEW

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)

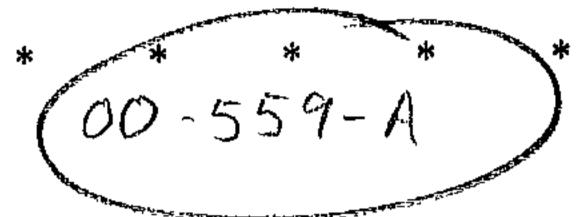
IN THE

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.

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.

al C: Zemmernen, Luxer

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

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 prongwhether 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 signag
 - 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 28 day of Mail, 2003 in the Circuit Court for Baltimore County.

J. NORRISBYRNES

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

- * 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

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

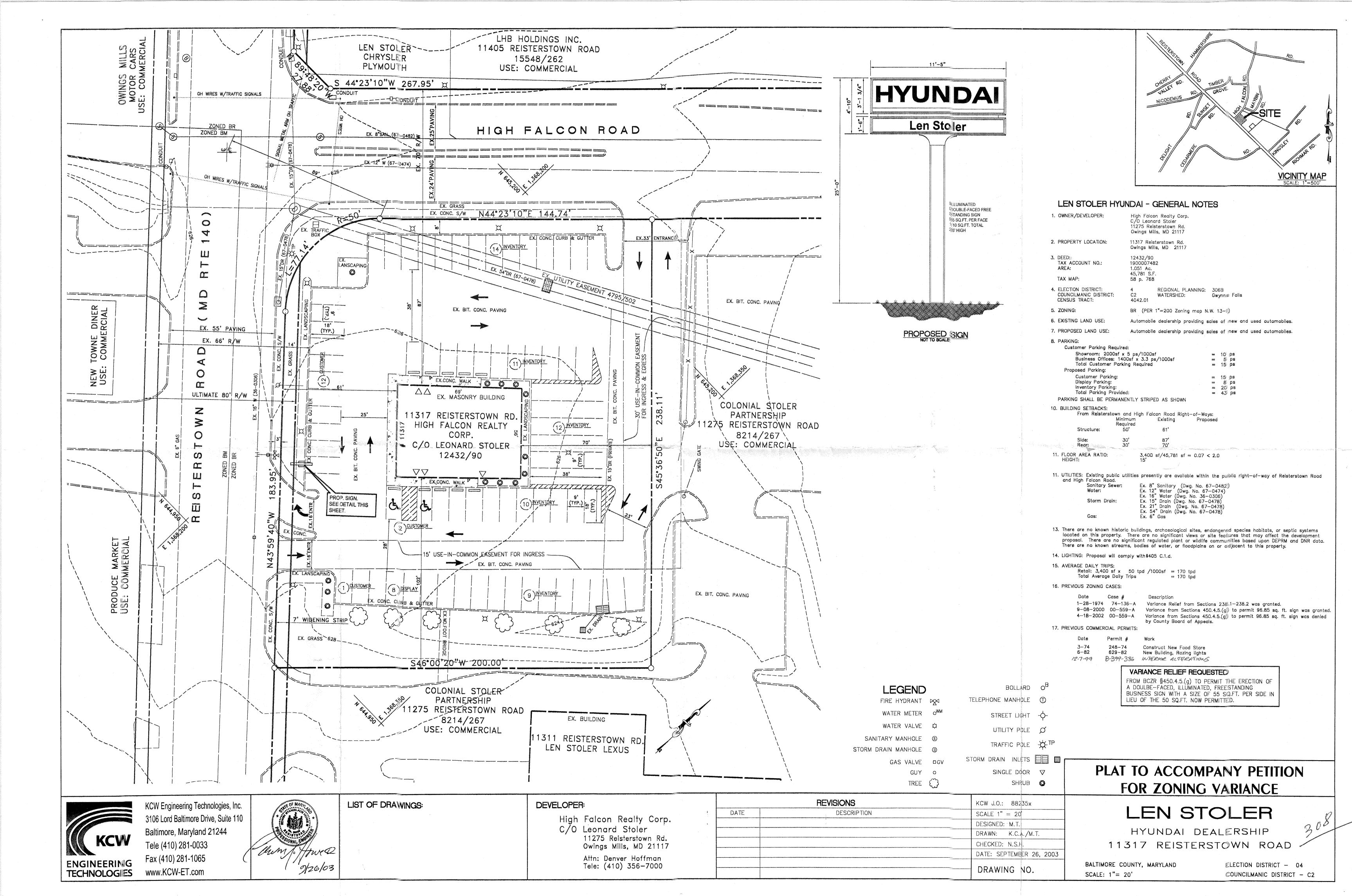
FINDINGS OF FACT AND CONCLUSIONS OF LAW


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

CHOISE WED FOR FILMS





High 308A Petitioners Exhibits 8-23-05 Dealer Sales + Service Agreement Circuit Court case # 91 CV 4539

Pet. Ex. #1

Hyundai Motor America

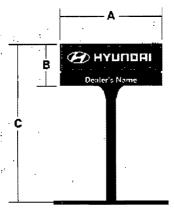
Dealer
Sales and Service
Agreement



3017769777

FACILITY BRANDING PROGRAM

Hyundai Pylon Signs & Monument Signs



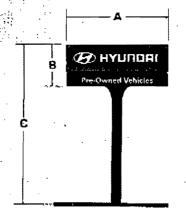
HP50 Dealer Pylon

Dealer Pylon Dimensions

HP50	11'-5"	4'-10"	18'-6"	
HP70	13'-0"	5'-8"	22'-6"	
HP100	15'-0"	6'-5"	25'-0"	
HP150	18'-0"	8'-0"	30'-0"	
HP200	19'-0"	10'-6"	60'-0"	

Dealer's Name Panels (only order if dealership name has changed)				
DNP50	Dealer Name panels for HP50			
DNP70	Dealer Name panels for HP70			
DNP100	Dealer Name panels for HP100			
DNP150	Dealer Name panels for HP150			
DNP200	Dealer Name panels for HP200			
All annual and in	-11			

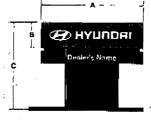
All panel sets include routed pluminum panels and white back-up panels



POV50 Pre-Owned Vehicles Pylon

Pre-Owned Vehicles Pylon Dimensions

POV50	11'-5"	4'-10"	18'-6"
POV70	13'-0"	5'-8"	226,
POV100	15'-0"	6'-5"	25'-0"
POV150	18'-0"	8'-0"	30'-0"



HM30
Dealer Monument

Dealer Monument Dimensions

HIM30	8'-0"	3'-4"	7'-0"	
HM40	10'-0"	4'-4"	7'-0"	

Dealer's Name Panels (only order if dealership name has changed)

DNP30	Dealer Name panels	for HM30
DNP40	Dealer Name panels	for HM40

All panel sets include routed aluminum panels and white back-up panels.



HP200 Dealer Pylon

Refurbishment

Refurbishment applies to existing main brand signs that have not been updated to the new image under the Hyundai Reimage Program.

- Repainting the exterior of the sign cabinet and cladding (pole)
- Replacement of all lamps and ballasts
- Two logo face main brand panels
- Two "Dealer's Name" panels
- Removal and disposal of all replaced lamps, ballasts and face panels.

The HP200 sign refurbishment includes two vinyl flex faces instead of two main brand panels and "Dealer's Name" panels due to differences in sign construction,

Aug 01 03 02:45p

Wendy Rahn

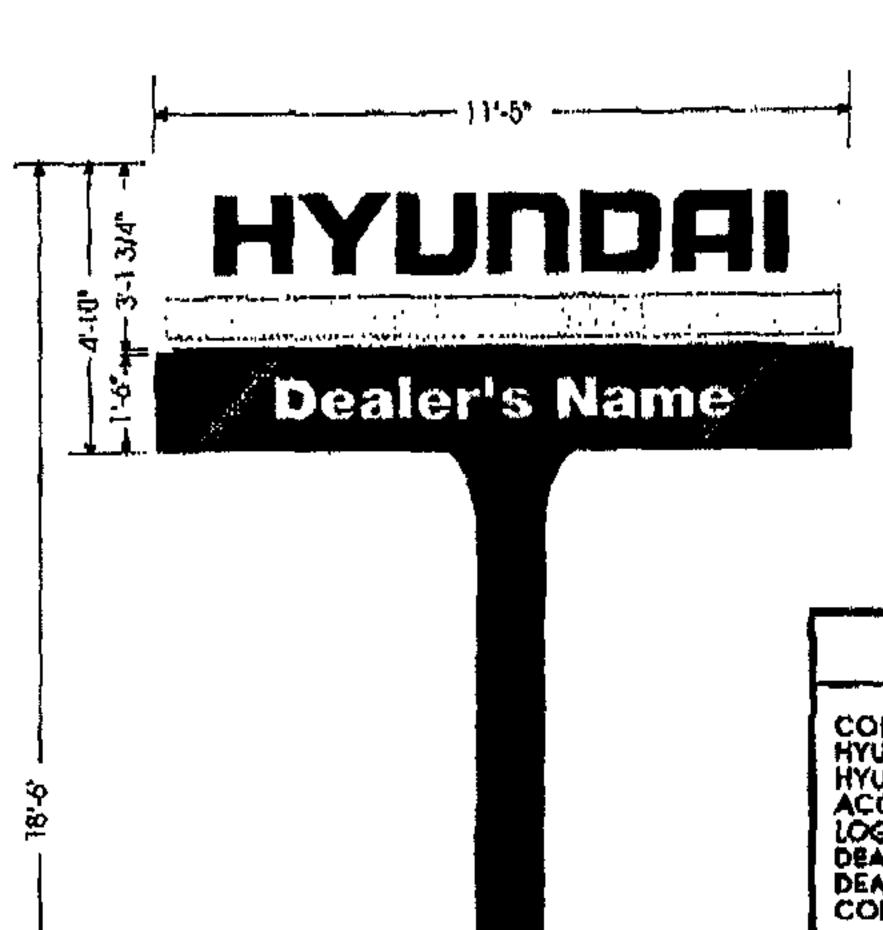
KEN GOLDER

609 395-7379

PAGE

p.5

Freestanding Sign



SPECIFICATIONS:

COLOR STANDARDS: HYUNDAI LOGO SIGN FACE: WHITE HYUNAI NAME: MATCH TO ROHM and HAAS #2050 BLUE ACCENT STRIP: MATCH TO ROHM and HAAS #2329 BLUE LOGO SIGN CABINET AND RETAINERS: WHITE DEALER NAME: MATCH TO ROHM and HAAS #7328 WHITE DEALER SIGN CABINET AND BACKGROUND FACE: HYUNDAI GRAY COLUMN COVER: HYUNDAI GRAY

SIGN CONSTRUCTION:

CABINETS: 13' WIDE . 188 PAINTED ALUMINUM FRAME

FACES: HYUNAI: PAN FORMED SCREEN DECORATED POLYCARBONATE DEALER: ROUTER OUT ALUMINUM BACKED WITH PLEXIGLAS COLUMN COVER:

.090 PAINTED ALUMINUM

TOTAL SIGN AREA: 55 square feet

ELECTRICAL: TOTAL LINELOAD 10.0 AMPS (ONE- 20 AMP 120 VOLT CIRCUIT)

HYUNDA!:

LINELOAD: 6.0 AMPS BALLAST: 2-256-648 MAGNETEK

LAMPS: 12- F36T12 HQ D/L

SWITCH: 1- WEATHERPROOF CUTOFF

DEALER: LINELOAD: 4.0 AMPS

BALLAST: 1-256-672 MAGNETEK

LAMPS: 2- U48T12 HO D/L

4- F84112 HO D/L

BULLT TO UL SPECIFICATIONS CARRIES UL LABEL

E 00195 B







Everbrite, inc. 4949 South 110th Street P.O. Box #20020 Greenfield, Wi 53220-0020 (414) 529-3500

11.12.01.02

.02 Location Requirements.

- A. Each location shall be subject to inspection by an authorized representative of the Administration before approval of application for dealer registration.
- B. Following approval of the application, the location shall be maintained in accordance with the applicable provisions of Transportation Article, Annotated Code of Maryland, and the regulations promulgated by the Administration. Licensees are subject to reinvestigation by authorized representatives of the Administration.
- C. Only one license for the type of vehicle being offered for sale will be permitted at any one location, and once the location has been licensed, it may not be subdivided for the purpose of establishing other businesses, under separate licenses for the same type of vehicle being offered for sale, without the prior approval of the Administration. This prohibition also applies to a licensee doing business under more than one corporate structure.
- D. A dealer may do business in a name or under any title or designation other than the corporation name, provided that the title or designation is not misleading. A trade or corporate name that falsely states or implies that a dealer has a special relationship or connection with a manufacturer that other dealers do not have is misleading, and an example of a title or designation that may not be adopted by a dealer. The dealer's application for license shall state the full corporate name and all "trading as" or "doing business as" names. Example: ABC Pontiac----GMC-----Nissan------Volvo, Inc.; T/A ABC Volvo, T/A ABC Nissan, T/A ABC Pontiac-----GMC.
- E. A dealer may hold multiple licenses, for example, new or used vehicle, motorcycle, and trailer dealers' licenses, provided that all licenses are issued in the same dealership name.
- F. The dealership shall face, adjoin, and be fully visible from an improved street or highway that is accessible to the public and that is identifiable by name or postal number. The street or highway shall be used by the public for vehicular travel.
- G. The location shall be of a size to adequately and safely permit the display of a minimum of ten vehicles and space for customer parking.
- H. The location shall meet all local zoning regulations.
- I. The location shall be fully lighted.
- J. The display and customer parking areas shall be adequately surfaced with an appropriate covering, subject to approval by the Administration.
- K. The additional locations shall be inspected and approved by the Administration.
- L. Additional locations shall meet the minimum standards set forth in applicable provisions of the Transportation Article, Annotated Code of Maryland, and the regulations promulgated by the Administration.
- M. Additional locations may use registration plates issued to the primary location provided the trade name and ownership are identical to that of the primary location.
- N. Signs.
- (1) Appropriate dealership signs shall be permanently affixed.
- (2) The signs shall be of a size as to make them reasonably legible from the street or highway.
- (3) The signs shall clearly identify the business conducted at the dealership and shall adequately direct the customers to the dealership office.
- (4) As to wholesale dealers, a sign is not required. However, if a sign is displayed, it:
- (a) Shall be displayed at the dealership entrance;
- (b) May not be larger than 6 inches in height and 18 inches in length; and
- (c) May not contain any language which implies the dealership will sell to or exchange vehicles with a retail buyer.
- O. As to wholesale dealers, the location shall be in a permanent building and the space used shall be:
- (1) Owned or leased by the wholesale dealer;
- (2) Regularly occupied and exclusively used by the wholesale dealer for dealership purposes.

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ge at the

99 TARGET ONE HOUR PHOTO







Pet. Ex. 4a



Pet.Ex 46



Pet. Ex 40



PeTEX 4d



Pet. Ex 4e



Pet. Ex 47

1001100



Pet. Ex 49



Pet. Ex 4h



Pet. Ex. 4i



Bet. Ex 45



Ret. Ex 4 K



Pet.Ex. 4L



Pet. Ex. 4m

100



























Baltimore County Zoning Commissioner Office of Planning Suite 405, County Courts Eldg. 401 Bosley Avenue Towson, Maryland 21204



n.t. Et. #6

.02 Location Requirements.

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- B. Following approval of the application, the location shall be maintained in accordance with the applicable provisions of Transportation Article, Annotated Code of Maryland, and the regulations promulgated by the Administration. Licensees are subject to reinvestigation by authorized representatives of the Administration.
- C. Only one license for the type of vehicle being offered for sale will be permitted at any one location, and once the location has been licensed, it may not be subdivided for the purpose of establishing other businesses, under separate licenses for the same type of vehicle being offered for sale, without the prior approval of the Administration. This prohibition also applies to a licensee doing business under more than one corporate structure.
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- G. The location shall be of a size to adequately and safely permit the display of a minimum of ten vehicles and space for customer parking.
 - H. The location shall meet all local zoning regulations.
 - I. The location shall be fully lighted.

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER, FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF

REISTERSTOWN ROAD, 270' + SOUTHEAST OF HIGH FALCON ROAD *

(11309-11311 REISTERSTOWN

ROAD) 4TH ELECTION DISTRICT

3RD COUNCILMANIC DISTRICT

BEFORE THE

OF

COUNTY BOARD OF APPEALS

BALTIMORE COUNTY

CASE NO. 90-160-A

OPINION

This matter comes before the Board on an appeal from the decision of the Zoning Commissioner of Baltimore County dated December 15, 1989, granting the property owner's Petition for zoning variances in setbacks, signs and display parking, with restrictions.

Protestants in this matter were the Reisterstown-Owings Mills-Glyndon Coordinating Council, represented by Counsel, who are satisfied with the granted variance setbacks, but opposed to the variances requested for the size of the sign locating the property and for a parking area to display new cars. The appeal to the Board was heard in its entirety on this day.

By way of perspective to this case, the Petitioner/Property Owner, Leonard Stoler, owns a number of automobile dealerships extending along the northeast side of Reisterstown Road in the Third Councilmanic District. Since 1968, the area has become the location of several competing dealerships existing on both sides of the road, all identified by a sign or group of signs. The Appellants in this matter commend Mr. Stoler for the improvements he has brought to a formerly unattractive commercial zone, yet are



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) 887-2847

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,

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY, MARYLAND

RE: HIGH FALCON REALTY, CORP.

CASE NO.: 05-308-A

DATE: AUGUST 23, 2005

Transcriptionist: Rose M. Bukovsky

Proceedings recorded by taped recording; transcript produced by transcription service.

IRWIN REPORTING & VIDEO, LLC

(410) 494 - 1880

CIRCUIT COURT FOR BALTIMORE COUNTY Suzanne Mensh Clerk of the Circuit Court County Courts Building 401 Bosley Avenue P.O. Box 6754 Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

04/02/03

Case Number: 03-C-02-005291 AE Date Filed: 05/13/2002

Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

In The Matter of: High Falcon Realty Corp

OTHER REFERENCE NUMBERS

Number_ Description Administrative Agency Case Folder ID

00-559-A C02005291V

INVOLVED PARTIES

Type Num Name(Last.First,Mid,Title)

Disposition

Addr Update

Entered

001 High Falcon Realty Corp

BT DO 04/01/03

05/13/02

Party ID: 0497499

Appear: 05/13/2002

Addr Str/End

Mail: 11275 Reisterstown Road

PET

ITP

Owings Hills MD 21117 05/13/02

Attorney, 0014781 Singer, Marvin I

10 East Baltimore Street

Suite 901

21202 Baltimore, MD

(410)685-1111

001 County Board Of Appeals Of Baltimore County

BT DO 04/01/03

05/13/02

05/13/02

Party ID: 0497500

03-C-02-005291

Date: 04/02/03

Time: 13:34

Page:

Mail: Old Courthouse Rm 49

05/13/02

08/16/02 DR

400 Washington Ave Towson, MD 21204

Attorney. 0029075 Zimmerman, Peter M

Appear: 05/28/2002

05/28/02

People's Counsel For Baltimore County

Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188

Appear: 05/28/2002 0804268 Demilio, Carole S

05/28/02

Deputy Peoples Counsel 01d Courthouse Room 47 400 Washington Ave Towson, MD 21204 (410)887-2188

CALENDAR EVENTS

)ate	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	0f	Rslt	Ву	ResultDt	Jdg	Ŧ	Notice	Rec	User !	IU
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11/07/02	09:30A		yes	CIVI	S		TBA	01	/01	POS	E	09/09/02	JGT	P			KLS GE	3
ງ2/27/03 Stenogr			-				JNB	01	/01	CON	С	02/28/03	JNB	Р		Y	GB	

JUDGE HISTORY

JUDGE ASSIGNED	Туре	Assign Date	Removal	RSN
TBA To Be Assigned	J	05/13/02		

DOCUMENT TRACKING

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	user	. 10
0001000 Petition for Judicial Review	05/10/02	05/13/02	PETO01	TBA	04/01/03	JM	PH
0001001 Response to petition for judicial Review	05/24/02	05/28/02	ITP001	TBA	04/01/03	AR	PH
0002000 *Transcript of Record from Adm Agency	07/09/02	07/18/02	ITP001	TBA	04/01/03	DR	PΗ
0003000 Notice of Transcript of Record Sent	07/18/02	07/18/02	ITP001	TBA	07/18/02	DR	DR
0004000 Notice of Transcript of Record Sent	07/18/02	07/18/02	PET001	TBA	07/18/02	DR	DR

03-C	-02-005291 Date:	04/02	/03	Time	: 13	: 34			Page:
Num/Seq	Description		Filed	Entered	Party	Jdg Ruling	Closed	User	ID
0005000	Scheduling Order		07/31/02	07/31/02	000	TBA	07/31/02	KLS	KLS
0006000	Stipulation of Time for Filing Memoranda	of	08/14/02	08/16/02	000	TBA	08/16/02	DR	DR
0007000	Scheduling Order		09/09/02	09/09/02	000	TBA	09/09/02	GB	GB
0008000	Memorandum on Behalf Of Petitio Statement Of The Case	ner	12/10/02	12/13/02	ITP001	TBA	12/13/02	NW	NW
0009000	Affidavit of Service Served on 12/9/02 Notice for Posting on 1516 Beck	ford Road		12/13/02	000	TBA	12/13/02	N₩	NW
0010000	Affidavit of Service Served on 12/9/02 Notice for Posting on 41 Wiltsh		12/10/02	12/13/02	000	TBA	12/13/02	NW	NW
0011000	Affidavit of Service Served on 12/9/02 Notice For Posting on Property	on 906 Vir		12/13/02 ive Lot 4	000	TBA	12/13/02	NW	NW
0012000	Memorandum		01/30/03	02/05/03	PET001	TBA	02/05/03	C\$	CS
0013000	Open Court Proceeding February 27 2003. Hon. J. Norm Administrative Appeal. Opinion	ris Byrnes	s. Hearir			T8A	04/01/03	GI	PH
0014000	Opinion and Order affirming dec	ision	04/01/03	04/01/03	000	JNB Granted	04/01/03	РН	PH
0015000	Docket entiles sent to Board of for Baltimore County	Appeals	04/02/03	04/02/03	000	TBA		CVM	CVM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Туре	Num	Seq
1ANS	1st Answer Tickle	CLOSED	05/24/02	0	no	no	DANS	D	001	001
1YRT	One Year Tichle (Jud	CLOSED	05/10/03	365	no	no	DAAA	D	001	000
35AS	35 Day Tickle After	CLOSED	01/14/03	35	no	no	DAFS	D	009	000
EXPU	Exhibit Pickup Notic	CLOSED	05/31/03	30	no	no			000	000
SLIL	Set List - Informati	CANCEL	08/16/02	0	no	no			000	000
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EXHIBITS

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DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

rack: R1 Description: EXPEDITED APPEAL TRACK Custom. Yes

Assign Date: 07/31/02 Order Date: 07/31/02

Start Date . 07/31'02 Remove Date:

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Motions to Dismiss under MD. Rule 2-322(08/15/02 04/01/03 CLOSED

NI Motions (excluding Motions in Limine 01/18/03 04/01/03 CLOSED

RIAL DATE is 02/27/03 10/29/02 02/28/03 REACHED

PUBLIC NOTE TITLES

1) 9/5/02 JOINT M/O TO REVISE SCHED ORDER

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

- * 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

Case No. 00-559-A /High Faicon Realty Corp. - Petitioner

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 is 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:

Case No. 00-559-A / High Falcon Realty Corp. - Petitioner

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.

THEREFORE, IT IS THIS /8th day of Upril, 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

5/7/or

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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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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:

- 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 anduly 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 $\frac{8}{2}$ 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.

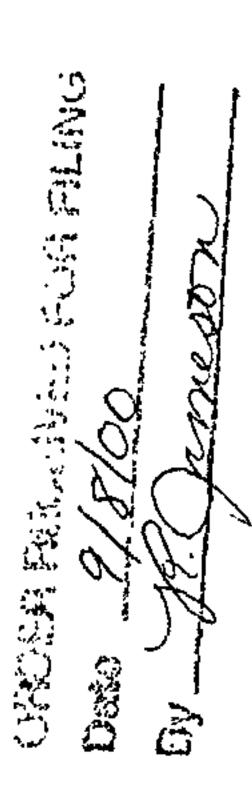
IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.

TIMOTHY M. KOTROCO

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

TMK:raj



HYUNDAI

Hyundai Motor America 1100 Cranbury South River Road Jamesburg, NJ 08831 Fax 609 395 8602 Tolophone 609 385 7000

October 8, 2001

Mr. Len Stoler Len Stoler Hyundai 11317 Reistertown Road Owings Mills, MD 21117

Dear Mr. Stoler:

This letter is to confirm our conversation regarding your current signage. As you know, Hyundai Motor America states clearly in your Sales and Service Agreement that its dealers are required to display an authorized franchise brand sign. We believe that your current signage is acceptable for your current location.

We have asked and encouraged Len Stoler Hyundai to Install our larger sign. We understand that this has not been possible. Our smaller sign is inappropriate to a metro location. It is only recommended for small, rural locations.

We believe that your current sign is an acceptable compromise and is competitive with other automotive brand signs in your area.

Sincerely,

Douglas K. Jeffery

Market Representation Manager

Hyundai Motor America

Eastern Region

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