IN THE MATTER OF	:	BEFORE THE
M&T BANK	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 09-002S

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DECISION AND ORDER

On December 7, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of M&T Bank for a variance to erect a 3'8"x10'10", 39.64-square foot, 37-foot high, freestanding pylon sign to be located 60'6" from the Route 100 right-of-way rather than the 39.64-foot setback required in relation to the total sign area and the 74-foot setback required in relation to the sign height in a B-1 (Business: Local) Zoning District, in accordance with Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice, advertising, and posting requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Joan Becker, Esquire, represented the Petitioner. No one appeared in opposition to the petition. At the outset of the proceeding, Ms. Becker stated the Petitioner agreed with the Technical Staff Report and would present no additional testimony or evidence.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 2nd Election District on the southeast corner of Executive Park Drive and Columbia 100 Parkway. It is referenced as Tax Map 30, Block 12, part of Parcel 406 and is also known as 4915 Executive Park Drive (the "Site"). The B-1 zoned, generally square Site is about 1.350 acres in size.

2. Vicinal Properties. To the Site's north is the B-1 zoned Chick-Fil-A restaurant. The POR-zoned property to the west is improved by a one-story business center. To the south, the POR-zoned property is an extended stay hotel. To the east and across MD 100 is a residential subdivision.

3. MD 100 to the east is an elevated highway with a retaining wall. This retaining wall creates a 25-foot grade difference between the MD 100 roadbed and the Site.

4. The speed limit on MD 100 is 55 MPH. It is my experience that the average speed is generally higher.

5. The Requested Sign Variance. The proposed sign, as described above, would be located near the east side of the Site, about 60'6" behind the MD right-of-way. The double-sided pylon sign would identify the business as an M&T bank.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Site has frontage along MD 100, which has a dependency on nonlocal use. This condition leads to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

The 25-foot grade change between the MD 100 and the Site impedes motorists' ability to see a conforming sign in a safe manner, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

There is no evidence of adverse effects from the proposed sign on the use of adjacent properties, nor any evidence of a dangerous traffic condition resulting from the proposed sign. I conclude the proposed sign is unlikely to produce adverse effects on the use or development of adjacent properties.

> **That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.**

The proposed sign is a reasonable size and the minimum necessary to comply with the restaurant's signage requirements. I therefore conclude the sign is the minimum necessary to afford relief and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

> **That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this **17th day December 2009,** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of M&T Bank for a variance to erect a 3'8"x10'10", 39.64-square foot, 37-foot high, freestanding sign to be located 60'6" from the Route 100 right-of-way rather than the 39.64-foot setback required in relation to the total sign area and the 74-foot setback required in relation to the sign height in a B-1 (Business: Local) Zoning District is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the sign as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.

2. The sign shall not be erected, altered, or relocated without a sign permit issued by the Department of Inspections, Licenses, and Permits, in accordance with Section 3.509 of the Howard County Sign Code.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

_____
Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.

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HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

Michele L. LeFaivre

Date Mailed: 12/21/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.