

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5656

**APPEAL OF OLNEY BAPTIST CHURCH
(by John S. Templin, Chairman, Board of Trustees)**

RESOLUTION TO GRANT IN PART AND DENY IN PART

(Resolution Adopted October 3, 2001)

(Effective Date of Resolution: January 22, 2001)

Case No. A-5656 is an administrative appeal in which the Olney Baptist Church charges administrative error by the Montgomery County Sign Review Board in its denial of the church's application for a sign variance.

Pursuant to Section 59-A-4.3 of the Montgomery County Zoning Ordinance, the Board of Appeals held a public hearing on the appeal on October 3, 2001. Robert R. Hudson appeared on behalf of the Olney Baptist Church. Malcolm Spicer, Esquire appeared on behalf of Montgomery County. He called as a witness Delvin Daniels, Department of Permitting Services.

Decision of the Board: Administrative appeal granted
in part and denied in part.

EVIDENCE PRESENTED

1. The subject property is Parcel A, Block 1, Highlands of Olney Subdivision, located at 17525 Georgia Avenue, Olney, Maryland, in the R-200 Zone.
2. Pursuant to Section 59-F-4.2(a)(3)(B) of the Zoning Ordinance, the Olney Baptist Church applied for a permit for a 7 1/2 foot, freestanding, illuminated sign, elevated 2 1/2 feet above the ground, and located approximately 100 feet from the driveway. [Exhibit Nos. 4, 5, 7 and 11(i)].
3. Robert Hudson testified that the Church requested the size and location of the sign in order for it to be visible to passing cars on Georgia Avenue, where the speed limit is 40 miles per hour. He testified that the sign contractor that the

church consulted recommended letters six inches high, which dictated the proposed 40 square foot size of the sign. In addition Mr. Hudson testified that because of the topography of the subject property, a sign placed near the driveway would not be visible to an approaching car. He stated that the church proposes to elevate the sign 2½ feet to make it more visible and more aesthetically appealing [Transcript, October 3, 2001, p. 25]. He testified that the church proposes to illuminate the sign, in accordance with Section the requirements of Sections 59-F-4.2(a)(3)(B)(4) and 59-F-4.1(e). Finally, Mr. Hudson testified that, at the proposed location, the sign would be blocked from the view of the closest neighboring property by a 16-foot wide Evergreen and that the property owner does not object to the proposed location for the sign. [Transcript, October 3, 2001, p.26, Exhibit Nos. 12(d), 12(e)].

4. The Department of Permitting Services advised the Church that because of the sign's proposed location and elevation, the sign would not be permitted without a variance. The Church then applied to the Montgomery County Sign Review Board for a sign variance.
5. On July 12, 2001 the Sign Review Board held a hearing on the Church's application for a sign variance. The Board denied the variance, finding that the proposed sign would "produce unwanted glare in [a] residential area." [Exhibit No. 11(a)].

FINDINGS OF THE BOARD

1. Section 59-F-2 defines a ground sign as follows:

A sign erected on the ground or with its bottom edge within 12 inches of the ground, that has its support structure as an integral part of the sign, and where the dimension closest to the ground is greater than the height.

The Board finds that the sign as proposed would be more than 12 inches off the ground and would therefore require a variance for height.

2. Section 59-F-4.2(a)(3)(B) of the Zoning Ordinance, pertaining to Entrance Signs, provides in pertinent part:

Public Facilities and Places of Assembly Location Sign. *Additional sign area is permitted for a permanent location sign for public facilities or places of assembly, such as places of worship, schools, libraries, museums, and hospitals. The sign must be a ground sign or a wall sign located at an entrance to the building or driveway to identify the location of the building for users of the facility.*

* * * *

2. *Area. The sign area must not exceed 40 square feet.*

3. *Placement.*

(i) Location. The sign must be set back at least 5 feet from the property line, or, if the driveway entrance to the subdivision is located in the right-of-way, a revocable permit issued jointly by the Sign Review Board and the appropriate transportation jurisdiction in accordance with Section 59-F-7.1(g) must be obtained to erect the sign.

* * * *

4. *Illumination. The sign may be illuminated in accordance with the requirements of Section 59-F-4.1(e).*

The Board finds that the sign as proposed also requires a variance for the proposed location, 100 feet from the driveway.

3. Section 59-F-4.1(e) provides:

(e) Illumination. When illumination of a sign is permitted it must comply with the following restrictions:

* * * *

(2) Prevention of Glare. Sign illumination must use an enclosed lamp design or indirect lighting from a shielded source in a manner that prevents glare from beyond the property line. Glare is a direct or reflected light source creating a harsh brilliance that causes the observer to squint, shield or avert the eyes.

The Board finds that the proposed illumination of the sign complies with the requirements of Sections 59-F-4.1 and 4.2.

4. Section 59-G-10.2 of the Zoning Ordinance, pertaining to the Sign Review Board, provides at subsection (d) that:

Any final decision by the Sign Review Board may be appealed by any aggrieved party to the Board of Appeals within 30 days of the decision.

Section 59-F-10.2(C) of the Zoning Ordinance sets out the criteria for the grant or denial of a sign variance. Applying the criteria set forth in Section 59-G-10.2(C), the Board finds as follows:

1. *the strict application of the sign regulation results in a particular or unusual practical difficulty, exceptional or undue hardship, or significant economic burden upon an applicant.*

A. Location Variance

The Board finds that because of the topography of the subject property, strict application of Section 59-F-4.2(a)(3)(B), pertaining to the location of the proposed sign, would impose a particular or unusual practical difficulty, exceptional or undue hardship, or significant economic burden upon the applicant. If the sign were located near the driveway, it would not be visible to passing cars.

B. Height Variance

The Board finds that at the location on the property proposed by the Church, the sign will be visible to passing cars at no more than 12 inches off the ground. Therefore, with respect to the proposed height of the sign, strict application of the sign regulation would impose no unusual practical difficulty, exceptional or undue hardship or significant economic burden upon the applicant. For this reason, the requested height variance must be denied.

2. *the variance is the minimum reasonably necessary to overcome any exceptional conditions; and*

The Board finds that with respect to the proposed location of the sign, the variance request is the minimum reasonably necessary.

3. *the variance can be granted without substantial impairment of the intent, purpose, and integrity of the requirements of this Article. A variance decision must be based on consideration of:*
 - (i) *one or more of the following elements: size, shape, color, design elements, location, or cost of the sign;*
 - (ii) *the compatibility of the proposed sign with the surrounding property, the proximity of other signs, and the characteristics of the area; and*
 - (iii) *the recommendations of the Maryland National Capital Park and Planning Commission or technical staff, if requested by the Sign Review Board or offered by the Commission.*

The Board finds that at the proposed location, the sign is compatible with surrounding properties. Located at the side of a busy four-lane road, it will be well buffered from the view of the nearest neighboring property. Therefore,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that in Case No. A-5656, Appeal of the Olney Baptist Church, with respect to the church's request for a sign variance to locate a 7 1/2 foot, freestanding, illuminated sign, approximately 100 feet from the driveway, the appeal is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that in Case No. A-5656, Appeal of the Olney Baptist Church, with respect to the church's request for a variance to elevate the sign 2 1/2 feet above the ground, the appeal is **denied**.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Allison I. Fultz and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the foregoing Resolution. Board member Donna L. Barron was necessarily absent and did not participate in the Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 22nd day of January, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2A-10(f) of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

