

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>

**Case No. A-6828**

**APPEAL OF GTTCE FAIRCHILD LLC**

**OPINION OF THE BOARD**

(Hearing held October 18, 2023.

Effective Date of Opinion: November 17, 2023.)

Case No. A-6828 is an administrative appeal filed July 14, 2023 by Matthew M. Walters on behalf of GTTCE Fairchild LLC (the "Appellant"). The Appellant charges error on the part of the Sign Review Board ("SRB") of the Montgomery County Department of Permitting Services ("DPS") in its denial of their request for a roof sign as part of a sign concept plan at the Fairchild Apartments. The subject Property is located at 20013 Century Boulevard, Germantown, Maryland (the "Property"), in the CR-2.0 zone.

Pursuant to section 59-7.4.1.F and 59-7.6.1 of the Zoning Ordinance<sup>1</sup>, the Board held a public hearing on October 18, 2023. Peter J. Henry, Esquire appeared on behalf of and testified for the Appellant. Assistant County Attorney Elana M. Robison represented Montgomery County.

Decision of the Board: Requested roof sign **GRANTED**.

**FINDINGS OF FACT**

**The Board finds by a preponderance of the evidence that:**

1. The Property is located at 20013 Century Boulevard, Germantown, Maryland, 20874, and is zoned CR-2.0.
2. On June 24, 2023, the SRB denied a proposed roof sign as part of a sign concept plan for the Property. See Exhibit 3(a). The reasoning for the denial was: 1. The sign was considered redundant and excessive; 2. A freestanding

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<sup>1</sup> All references to the Zoning Ordinance refer to the 2014 Ordinance, unless otherwise indicated.

"gateway" sign had already been approved by the SRB for site identification; 3. The sign would create unnecessary visual clutter; 4. The Appellant did not present evidence of economic hardship; and 5. Approval of the sign would create a precedent creating the potential for visual clutter. See Exhibit 3(a). The denial letter was sent to the Appellant on July 7, 2023. See Exhibit 3(a).

3. On July 14, 2023, the Appellant timely filed this appeal to the Board of Appeals. See Exhibit 1.

4. Mr. Roger Waterstreet testified that he has been employed with DPS for 39 years and is a Permitting Services Specialist. He testified that in the course of his employment he conducts building and sign permit reviews to ensure compliance with the Zoning Ordinance. Mr. Waterstreet testified that he serves as the staff liaison to the SRB and reviews sign variance applications to ensure they are complete, then schedules hearings before the SRB. He testified that he provides administrative support to the SRB.

Mr. Waterstreet testified that he is familiar with the Property. He testified that the Property is used as an apartment building. Mr. Waterstreet testified that the area depicted in grey on Exhibit 6, p. 428 is the Fairchild Apartments. He testified that the Property is zoned commercial residential ("CR") and that the multiple parcels that surround the Property are also zoned CR. Mr. Waterstreet testified that he is familiar with the sign variance application submitted for the Property, which was originally submitted to DPS by Mr. Walters on October 15, 2022. See Exhibit 5, p. 1.

Mr. Waterstreet testified that a sign concept plan was submitted with the roof sign application for Fairchild Apartments. See Exhibit 5, p. 2-10. He testified that sign drawings of proposed signs for Fairchild Apartments were also submitted. See Exhibit 5, p. 11-21. Mr. Waterstreet testified that the application was for several signs including five freestanding signs and five building signs. See Exhibit 5, p. 1-21. He testified that the proposed roof sign was at that time proposed to be 5 feet tall and 43 feet in length with face-lit lettering, and that the sign would be made of aluminum and vinyl with structural steel supports. See Exhibit 5, p. 7. Mr. Waterstreet testified that the SRB conducted a hearing on the application on November 23, 2022 and, at the request of the applicant, approved all proposed signs except the roof sign.

Mr. Waterstreet testified that Fairchild Apartments then amended their sign concept plan in a submission also dated October 15, 2022 to remove the roof sign. See Exhibit 5, p. 22-30. He testified that he discussed the denial of the roof sign with the applicant, and Fairchild Apartments then submitted, on May 3, 2023, another revision that reduced the size of the roof sign. See Exhibit 5, p. 31-46. Mr. Waterstreet testified that the amended sign concept plan was solely for the roof sign and was submitted with the amended application. See Exhibit 5, p. 31-41. He testified that the applicant also submitted revised drawings. See Exhibit 5, p. 42-46. Mr. Waterstreet testified that, while the amended application included other

signs besides the roof sign, the only sign at issue at that time was the roof sign because the other signs had already been approved.

Mr. Waterstreet testified that the amended application proposed the same design for the roof sign as the original application and that the sign would be reduced in size to 4 feet 8 inches tall and 41 feet 5 inches in length. See Exhibit 5, p. 37. He testified that the SRB held a hearing on this amended application on June 14, 2023 and denied approval of the roof sign. Mr. Waterstreet testified that this denial is what has been appealed to the Board.

Mr. Waterstreet testified that the County's sign ordinance (found in § 59-7.4 and 59-6.7 of the Zoning Ordinance) was subject to a Zoning Text Amendment ("ZTA") effective October 10, 2022, ZTA 22-05. See Exhibit 5, p. 47-76. He testified that, in 2021, the County launched an initiative titled Speed-to-Market to streamline business development and growth in the County, and that as part this initiative there was a comprehensive review of the County's sign ordinance, which resulted in ZTA 22-05 to update the ordinance. Mr. Waterstreet testified that he was part of the sign ordinance rewrite committee responsible for reviewing the sign ordinance. He testified that the committee reviewed current laws and made recommendations on items to change.

Mr. Waterstreet testified that ZTA 22-05 changed the law regarding roof signs. He testified that roof signs were previously listed in the prohibited sign section and one of the revisions under ZTA 22-05 was to relocate roof signs to a new subsection titled Sign Concept Plans and Variances. See Exhibit 5, p. 54, 57. Mr. Waterstreet testified that this change provided flexibility for these types of signs to be reviewed by the SRB, where in the past they were prohibited and could not be reviewed at all. He testified that now approval of a roof sign is not automatic because, under that Sign Concept Plan and Variances section, a roof sign is allowed only when approved as part of a sign concept plan for an optional method development project approved by the SRB.

Mr. Waterstreet testified that when the SRB receives a sign concept plan, they hold a hearing that is open to the public. He testified that there are no specific guidelines for the approval of roof signs but that sign area measurement requirements should be applied to roof signs. Mr. Waterstreet testified that sign area is defined as the entire portion of the sign that can be enclosed in a rectangle. Section 59-6.7.6.A of the Zoning Ordinance. He testified that the sign area of a permanent sign, such as this proposed roof sign, has a maximum sign area of 100 square feet if the sign is within 150 feet of a residential use. Section 59-6.7.9.A.2 of the Zoning Ordinance. Mr. Waterstreet testified that this proposed roof sign is located within 150 feet of a residential use because it would be located on top of an apartment building, and therefore the sign area is limited to 100 square feet.

Mr. Waterstreet testified that another provision in the Zoning Ordinance pertaining to wall signs provides that the maximum sign area for a wall sign is 100 square feet per sign. Section 59-6.7.12.B.1.b of the Zoning Ordinance. He testified

that this proposed roof sign could instead be a wall sign located near the top of the building and that the sign area for that wall sign would be limited to 100 square feet.

Mr. Waterstreet testified that this proposed roof sign was properly denied for several reasons. First, he testified that no other buildings in the area surrounding the Property have a roof sign. Mr. Waterstreet testified that no other apartment buildings in the County have a roof sign. He testified that the only roof sign he is familiar with in the County is a historic roof sign. In response to further questions from the Board, Mr. Waterstreet acknowledged the current lack of roof signs anywhere in the County was likely because they were prohibited prior to the October 10, 2022 ZTA.

Next, Mr. Waterstreet testified that there is adequate identification of the apartment building without the roof sign. He testified that the SRB approved all the other signs in the Appellant's sign concept plan, which resulted in nine signs that were approved including four wall signs on the apartment building. Mr. Waterstreet testified that the proposed roof sign is not necessary to promote the identity of the building. In response to further questions from the Board, Mr. Waterstreet acknowledged that his expertise was primarily construction and application of the County's sign ordinance, not the advertising needs of a commercial business.

Mr. Waterstreet testified that he discussed finding alternative locations for the roof sign with Mr. Walters. He testified that at the November 23, 2022 SRB hearing, the SRB suggested the Appellant rethink the roof sign and come up with an alternative sign. Mr. Waterstreet testified that the SRB gave the Appellant the opportunity to return for review of an alternative sign. He testified that the proposed changes in the Appellant's amended sign concept plan was just a reduction of approximately 18 square feet for the roof sign. Mr. Waterstreet testified that he had further discussion and a meeting with Mr. Walters at the suggestion of DPS to better understand what the issue was and to try to mediate a possible redesign of the roof sign on the building. He testified that Mr. Walters said he would talk to others on his team and give an alternative location some consideration, but that an alternate location was never proposed.

Mr. Waterstreet testified that, in his opinion, the proposed roof sign is not a good fit for this location. He testified that it is not compatible with the surrounding land uses, which are commercial in nature. Mr. Waterstreet testified that the Property is surrounded by a bank, restaurants, and a gas station, none of which have a roof sign. He testified that even if the Planning Board or their staff had discussed and approved this roof sign, any approval would be considered a recommendation but not binding on the SRB. Mr. Waterstreet testified that in his opinion this roof sign does not fall within the intent of the sign ordinance. Mr. Waterstreet did not deny that the apartment building for which the roof sign was proposed was also commercial.

In response to questions from the Board, Mr. Waterstreet testified that the requirement that a wall sign have a maximum sign area of 100 square feet for

each sign was not a new requirement that was part of ZTA 22-05. See Exhibit 5, p. 70. He testified that the SRB did not state that size was a reason for the denial of this roof sign. See Exhibit 3(a). Mr. Waterstreet testified that he discussed with the applicant placing the sign on Fairchild Apartments building wall, but that a wall sign was not suggested by the SRB. He testified that the SRB's only direction to the applicant was to consider a redesign of the roof sign, and that they left this redesign open to the applicant to use their creativity.

In response to further questions from the Board, Mr. Waterstreet testified that ZTA 22-05 was enacted to streamline the County's redevelopment process. He testified that a roof sign could be appropriate where a building is obstructed from view from the outside, perhaps in industrial area. Mr. Waterstreet testified that ZTA 22-05 enabled the SRB to have the opportunity to review roof signs, but that in this case, the fact that Fairchild Apartments is not visible from Route 118 is not a sufficient basis to grant a roof sign.

In response to further questions from the Board, Mr. Waterstreet testified that the ZTA's October 10, 2022 amendment allowing for the first time roof signs in the County may explain why there are not currently a lot of roof signs in the County, since ZTA 22-05 took roof signs out of the prohibited signs section and they are now allowed under certain conditions. See Exhibit 5, p. 54. He testified that another change under ZTA 22-05 occurred under the "Intent" section of the ordinance, wherein "avoiding visual clutter" was deleted as part of the intent of the sign ordinance. See Exhibit 5, p. 73.

Counsel for the County advised that because the Board's review was de novo, the County was not necessarily relying on the SRB's reasons for denying the sign. Upon this advice and further questions from the Board, Mr. Waterstreet testified that, although the SRB denied the roof sign for various reasons, the primary reason in his view and apart from the SRB's reasons was that the sign was too large. He testified that the denial of this roof sign was not meant to be a message that all roof signs would be denied, but that for this specific location and design, denial was the SRB's decision. Mr. Waterstreet noted that the intent of the sign ordinance also has an objective to provide increased flexibility in the number, size, location, design, and operating characteristics of signs. Section 59-6.7.1.G of the Zoning Ordinance.

In response to further questions from the Board, Mr. Waterstreet reiterated that this proposed roof sign was not compatible with the surrounding area, where it would be located on a six-story building. He testified that the size of the sign is 197 square feet and that the sign is limited to a size of 100 square feet. Mr. Waterstreet testified that wall signs are permitted on all four walls if a building is greater than four stories. He testified that the Fairchild Apartments are six stories, so that a wall sign could be 100 square feet per sign, for a total of 400 square feet if a sign was located on all four walls. Mr. Waterstreet testified that four wall signs were never a consideration in this case. He testified that the impact of four wall signs totaling 400 square feet would be less than the proposed 197-foot roof sign because a person would not see all four wall signs at once. In response to further

questions from the Board, Mr. Waterstreet acknowledged that, from many directions, 200 square feet of four 100 square foot wall signs on a building would be visible, even though only 100 square feet would be visible from other directions. Mr. Waterstreet testified that this roof sign itself is not clutter, but that it is the conglomeration of all signs taken together that constitutes clutter.

5. Peter Henry, one of the developers for the Germantown Town Center where the Fairchild Apartments are located, reviewed slides depicting the development of the town center beginning in 1991. See Exhibit 7. He testified that the town center includes the Upcounty library and the Blackrock Arts Center, which is in the back of the Property, and that there is a digital sign on Route 118 which provides advertising for the library and Blackrock. Mr. Henry reviewed problems in the Germantown area, noting that the area deals with homelessness and that the area wants an apartment building.

Mr. Henry stated that the Fairchild Apartments are in the CR-2.0 zone. He read § 6.7.12.A of the Zoning Ordinance, which states that, in a commercial zone, for a base sign area, "[t]he maximum total area of all permanent signs on a lot or parcel in a Commercial/Residential, Employment, or Industrial zone is 800 square feet, excluding the additional area allowed by other provisions of Division 6.7, without submitting a sign concept plan to DPS. The maximum sign area for an individual sign in these zones is 200 square feet." He testified that the roof sign was for building identification and that because the roof sign is under 200 square feet, and total signage for the Property is under 800 square feet, the roof sign meets the technical size requirements of the Zoning Ordinance.

In response to questions from the Board, Mr. Henry testified that Exhibit 7, p. 1 was a rendering of the proposed roof sign. He testified that the sign was designed so that the structural support can't be seen. Mr. Henry testified that this rendering is depicted to scale, that the building has currently been built, and that the sign will be lit at night.

In response to further questions from the Board, Mr. Henry testified that he discussed this roof sign with the Planning Board and that it was included in the site plan, the Planning Board staff report, and with the building permit application. He testified that every level of approval endorsed the roof sign except the SRB. Mr. Henry testified that the structural support is what holds up the roof sign. He testified that, if the sign was placed on the wall, people would not notice it. Mr. Henry testified that the walls of the apartment building were not built to support a sign.

In response to further questions from the Board, Mr. Henry acknowledged that the roof sign was an integral part of the art deco design of the apartment building. He testified that, without lights, it is a passive black sign, and when the lights are turned on the sign turns white and gives a soft glow. Mr. Henry testified that there is only one sign on that side of the building. See Exhibit 7, p. 1.

In response to further questions from the Board, Mr. Henry testified that a freestanding gateway sign was approved at the Property. Mr. Henry testified that the sign on Route 118 was approved in the 1990s, and that the changing nature of the message contained on the sign was specifically designed for Blackrock and the library and to advertise events.

### **CONCLUSIONS OF LAW**

1. Section 59-7.4.2.E of the Zoning Ordinance provides that “[a]ny party of record may appeal any final decision of the Sign Review Board within 30 days after the action to the Board of Appeals under Section 7.6.1.” Section 59-7.6.1.C.3 provides that “Board of Appeals review of any action, inaction, decision or order of a department of the County government must be de novo.” When an appeal from a quasi-judicial body is heard “de novo,” the matter is to be tried anew as if it had not been heard before and as if no prior decision had been rendered. In effect, the Board is exercising what amounts to original jurisdiction. *Pollard’s Towing, Inc. v. Berman’s Body Frame & Mech., Inc.*, 137 Md. App. 277 (2001); *Boehm v. Anne Arundel County*, 54 Md. App. 497 (1985); *Lohrmann v. Arundel Corp.*, 65 Md. App. 309 (1985); *Hill v. Baltimore County*, 86 Md. App. 642 (1991). The burden is on the Appellant to show by a preponderance of the evidence that the criteria have been met.

2. Section 59-6.7.1 of the Zoning Ordinance provides the intent of the sign ordinance and outlines that “[t]he requirements are intended to protect the health safety, and welfare of the community through the following objectives:

- A. encourage the effective use of signs;
- B. maintain and enhance the aesthetic environment of the County;
- C. promote the use of signs to identify buildings and geographic areas;
- D. improve pedestrian, vehicle, and bicycle traffic safety;
- E. promote the compatibility of signs with the surrounding land uses;
- F. promote the economic development and marketing of businesses;
- G. provide increased flexibility in the number, size, location, design, and operating characteristics of signs; and
- H. implement the recommendations of approved master plans and design guidelines”.

3. Section 59-6.7.5 of the Zoning Ordinance outlines the requirements for sign concept plans and variances, and provides in relevant part:

#### **A. Generally**

If not exempt under Section 6.7.3, Exempt Signs, the following signs are allowed only when approved as part of a sign concept plan for an optional method development project approved by the Sign Review Board. Before approving any sign concept plan the Sign Review Board must hold a public hearing on the sign concept plan after giving the public 30 days notice and verifying that the applicant has satisfied all applicable variance notice requirements.

##### **1. Roof Sign**

A sign painted on the roof of a building or supported by poles, uprights, or braces extending from or attached to the roof of a building or projected above the roof of a building. A wall sign is not a roof sign, and for the purposes of Division 6.7 a roof surface constructed at an angle of within 15 degrees of vertical is regarded as wall space. Screening that encloses equipment such as heating, ventilating and air conditioning unit, an elevator shaft, and stairs located on a roof are also considered wall space.

#### **B. Variances**

Except for signs that are prohibited under Section 6.7.4, a permanent sign not listed as allowed in a specific zone or that does not satisfy this Division must obtain a variance from the Sign Review Board.

4. Section 59-6.7.6.A of the Zoning Ordinance provides how to measure the area of a sign, and outlines that "[t]he sign area is the entire portion of the sign that can be enclosed within a rectangle."

5. Section 6.7.9.A of the Zoning Ordinance governs permanent signs in general and provides that:

##### **A. Sign Area**

1. Unless otherwise provided in Division 6.7, the maximum total sign area of all permanent signs on any lot or parcel is the maximum sign area allocated for the zone in which the sign is located.
2. The maximum sign area for a sign on a lot or parcel within 150 feet of a residential use is 100 square feet.

6. Section 6.7.12.A of the Zoning Ordinance governs base sign area for signs in the Commercial/Residential, Employment, and Industrial zones, and states that:

##### **A. Base Sign Area**

The maximum total area of all permanent signs on a lot or parcel in a Commercial/Residential, Employment, or Industrial zone is 800 square feet, excluding the additional area allowed by other provisions of Division 6.7, without submitting a sign concept plan to DPS. The maximum sign area for an individual sign in these zones is 200 square feet.

7. The Board finds, based on the testimony and the evidence of record, that the requested roof sign can be granted. First, the Board finds that it is undisputed that the Property is located in the CR-2.0 zone, which is a Commercial zone, and therefore the area of the sign is governed by § 59-6.7.12.A of the Zoning Ordinance, which permits the sign to have a maximum sign area of 200 square feet. In so finding, the Board notes that § 59-6.7.9.A of the Zoning Ordinance, which limits sign area to a 100 square foot maximum if the sign is within 150 feet of a residential use, states that "unless otherwise provided in Division 6.7, the maximum total sign area of all permanent signs on any lot or parcel is the maximum sign area allocated for the zone in which the sign is



located." Therefore, § 59-6.7.12, which governs signs in a CR zone, and not § 59-6.7.9, applies in this case, and at 197 square feet the proposed roof sign meets the requirements of the Zoning Ordinance.

The Board further finds the revisions made to the sign ordinance under ZTA 22-05 to be instructive in the Board's decision to grant the roof sign. ZTA 22-05 took roof signs out of the prohibited sign category so that they are now permissible. See Exhibit 5, p. 54. Because ZTA 22-05 became effective on October 10, 2022 (almost exactly one year before the Board's hearing), that explains why there are no roof signs except one historic roof sign in the County. Further, the Board notes that ZTA 22-05 removed, as part of the intent of the sign ordinance, the avoidance of visual clutter. See Exhibit 5, p. 51. Accordingly, the Board finds the SRB's findings that the sign would create "the potential for visual clutter" an invalid reason to deny the sign, as the consideration of clutter has been purposefully removed from the intent of the sign ordinance.

The Board finds that this sign is not redundant and excessive because it is the sole building signage designed to be visible from Route 118 and therefore is necessary to promote the identity of the Fairchild Apartments. The Board finds that the sign has an effective and unique purpose and that the ground level digital gateway sign which was approved in the 1990s is intended to serve the entire Germantown Town Center and to provide signage for the surrounding businesses, but not for the subsequently constructed Fairchild Apartments.

8. For all of the foregoing reasons, the requested roof sign on the roof of the Fairchild Apartments is **GRANTED**.

On a motion by Chair John H. Pentecost, seconded by Vice Chair Richard Melnick, with Member Caryn Hines, Member Laura Seminario-Thornton, and Member Alan Sternstein, in agreement, the Board voted 5 to 0 to adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 17<sup>th</sup> day of November, 2023.

  
Barbara Jay  
Executive Director

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).

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 (see Section 2-114 of the County Code).