



# VARIANCE

January 20, 2005

FILE: VA 05-01-01 & VA 05-01-02

<b>Property Information</b>	
<b>Tax ID</b>	Tax Map 074E Parcel 077 & 078
<b>Location/address</b>	<b>426 S. Belair Road</b>
<b>Parcel Size</b>	1.2 acres
<b>Current Zoning</b>	C-2 (general commercial)
<b>Existing Land Use</b>	Undeveloped
<b>Proposed Land Use</b>	Commercial
<b>Request</b>	Variances to sign size, height and number of signs
<b>Commission District</b>	District 2 (Mercer)
<b>Recommendation</b>	Disapprove

## Summary and Recommendation

Ray Peters of AAA Sign Company is requesting variances to the county's sign regulations for the property owner, M. B. Jones Oil. There are two petitions for variances:

- One application seeks a variance to 90-135(7) to permit a free standing sign to exceed the size and height allowed for a commercial use in the community sign overlay (CSO) district.
- The second application seeks a variance to 90-135(4)(a) to permit a second free standing sign, and further seeks a variance to 90-135(7) to permit size and height variances in the CSO district for this sign as well.

The property is located in the C-2 (general commercial) zoning district, and is located in the community sign overlay (CSO) district. With this combination of zoning district and sign overlay district, the sign sizes and heights permitted and requested (in feet) are as follows:

	Permitted	Requested	Increase	Percent Increase
<b>Monument Sign:</b>				
<b>Sign size</b>				
Sign face	100	175	75	75%
Sign structure	175	300	125	71%
<b>Sign Height</b>	25	30	5	20%
<b>Pole Sign:</b>				
<b>Sign size</b>				
Sign face	100	300	200	200%
Sign structure	175	300	125	71%
Sign Height	25	120	95	380%



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There are two issues with these requests. First, the requests are asking for much greater sign area and sign height than are allowed in the district. The requests seek increases in sign area from 71 percent to as much as 200 percent. The requests seek height increases from 20 percent to 380 percent. The second issue is that the petitioner is seeking permission for a second sign when the ordinance clearly allows only one free standing sign.

The staff has advised the planning commission on previous occasions that variances allow preferential treatment. A variance allows the petitioner certain privileges or permissions that are not given to other people or businesses. Therefore, in order to ensure fair and equitable treatment to all people and businesses, the zoning ordinance requires that granting a variance must be based upon a demonstrated hardship, a hardship that is brought about by some peculiar, physical difficulty with the property, a hardship that is unique to that property and does not apply generally to other properties. If the variance can be shown to be based upon the uniqueness of the property, that forms the basis for granting preferential treatment to the one property without establishing a precedent to extend the same exception to other properties.

Staff cannot identify any physical features unique to this property that justify variances to the number of signs, their size or their height. The petitioner does not stipulate any characteristics of the property that would justify variances to the number of signs, their size or their height. The petitioner's application states their reason for requesting the variances:

"[I]ncrease the visibility for this location; therefore, allowing Sprint Foods to complete [sic] with the other competitors on this interchange which have as much or more signage (Square footage) than we are requesting."

"[Since] this location is next to the ISO (Interstate Sign Overlay) district...we are requesting to be allowed to permit the attached monument sign under the ISO criteria."

The petitioner provides no information of what competitors at this interchange have as much or more signage.

It is clear from the petitioner's application that there is no hardship that results from physical characteristics of the property in question. It is clear the petitioner is seeking to obtain sign size and height based upon the interstate sign overlay (ISO) district that is nearby, even though the property in question is not within that sign overlay district. In no case and in no zoning district or sign overlay district would a second free standing be allowed. Therefore the variances to sign size, sign height and to the number of signs permitted are not justified.

Staff would point out to the planning commission that nearby properties that lie within 660 feet of the interstate right-of-way are within the interstate sign overlay (ISO) district, and are allowed larger and substantially higher signs because of their orientation to the interstate. The property in question lies about 836 feet from the interstate, or less than 200 feet outside of the ISO district. As a result of this additional separation from the interstate this property falls within the CSO district that has considerably more restrictive size and height regulations for signs.

There would be logic in making a more gradual transition from the ISO sign overlay district to the CSO district by interjecting an area of general sign overlay (GSO) district between the other two districts. If that were done, the property in question would fall within the GSO district and would be allowed **one** free standing sign as follows:



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	Permitted	Requested	Increase	Percent Increase
Pole Sign:				
Sign size				
Sign face	250	300	50	20%
Sign structure	300	300	0	0%
Sign Height	40	120	80	200%

Staff would suggest to the planning commission that some more gradual step down in size and height regulations could be considered. However, if the planning commission were open to this suggestion, the solution would lie in an amendment to the sign regulations, and not in granting a variance to sign size and height for this one property.

If this amendment to the zoning ordinance were made in text form, the area in question could be placed within the GSO sign district which would allow one free standing sign with 250 square feet of sign face (less than requested), sign structure of 300 square feet (the amount requested), with a maximum height of 40 feet (one-third the height requested).

Staff recommends disapproval of the variances requested. There is no hardship to justify the variances and the petitioner has not asserted any hardship exists. If greater sign area and sign height are justified in this area, that should be provided as a general rule to the appropriate area through an ordinance revision that would apply to all properties similarly situated.



## Interdepartmental Review

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No Comments on the variances.



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## Criteria for Evaluation of a Variance Request

Criteria Point	Comment
<p>There are special circumstances or conditions unique to the property that do not generally apply in the district.</p>	<p>There are no special circumstances unique to the property.</p>
<p>The special circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of any reasonable use of his land. Mere loss in value shall not justify a variance. There must be a deprivation of beneficial use of land.</p>	<p>There is no loss of use for the property in question.</p>
<p>Topographical or other conditions peculiar and particular to the site are such that strict adherence to the requirements of this chapter would cause the owner unnecessary hardship, and would not carry out the intent of this chapter, and that there is no feasible alternative to remedy the situation.</p>	<p>There are no topographical or other conditions peculiar to this property that cause hardship to the land owner.</p>
<p>If granted, the variance shall be in harmony with the general purpose and intent of this chapter, and shall not be injurious to the neighborhood or detrimental to the public welfare.</p>	<p>The granting of this variance would not be in harmony with the intent of the chapter. The intent of the chapter is to limit larger and taller signs to a smaller area that is defined. This property is not within that area.</p>
<p>In reviewing an application for a variance, the burden of showing that the variance should be recommended and/or granted shall be upon the person applying for the variance</p>	<p>The applicant has not shown, even alleged, any hardship on which to base the granting of the variance.</p>
<p>When recommending a variance, the planning commission, or the board of commissioners, may establish reasonable conditions concerning the use of the property and may establish an expiration date for such variance</p>	<p>The variance is not recommended by staff.</p>