

**ARB ACTION MEMO**

**Date:** June 9, 2003

**Time:** 1:30 PM

**Meeting Room:** # 241

**Members:**

M. Kirk Train, AIA, Chairman: Present  
Marcia Joseph, ASLA, AICP, Vice-Chairman: Present  
Katie Hobbs: Absent  
Candace M.P. Smith, A.I.A.: Present  
Charles T. Lebo: Present

**Staff:**

Margaret Maliszewski: Present  
Janet L. Miller: Present

**CALL TO ORDER**

A quorum was established and Mr. Train called the meeting to order at 1:00 p.m.

**PUBLIC MEETING**

**DRAFT SIGN GUIDELINES**

Mr. Train stated that today's special ARB meeting was specifically to receive comments and suggestions from the public on the draft Sign Guidelines. He stated that the time limitation would be increased to five minutes per person due to the small size of the audience. He asked that each speaker should provide their written statements to the Clerk.

**Speakers:**

Ben Foster, owner of Hightech Signs, spoke about aesthetics and the constitutionality issues regarding signs. He opposed the County requiring "cookie cutter" signs. He stated that Ed Birckhead was absent and had asked him to speak for him.

Peter Foster, of High Tech Signs, stated that his main concern was that it still seemed arbitrary. He pointed out that he was unable to design a sign and know before hand whether the ARB would approve the sign or not.

There being no further public comment, Mr. Train asked Mr. Foster to come back and speak for Mr. Birckhead.

Ben Foster, owner of High Tech Sign, stated that he represented Mr. Birckhead who could not be present. He lent the ARB a book entitled, "Sign Design Gallery" by Rockport Publishers that includes examples of good signage. He pointed out that probably none of the signs in the book would be passed by the ARB. He asked that the ARB try to encourage creativity to get better and more beautiful signs and not put more restrictions on them which discourages this.

Mr. Train stated that the ARB had received three sets of comments as follows:

- Email dated 6-7-03 to Ms. Maliszewski from Michael Mathews with comments and suggestions regarding the Sign Guidelines.
- Email dated 6-9-03 to Ms. Maliszewski from Steve Edwards with comments and suggestions.

- Memo dated 6-9-03 to the ARB from Ms. Maliszewski to the ARB regarding comments received by telephone from Dennis Rooker.  
He closed the public hearing and asked for discussion by the ARB.

Ms. Joseph stated that they would look at the Sign Guidelines in relation to the comments that they received and see if it needs to be amended further.

Mr. Train asked that the speakers summarize their points and turn them in to staff in writing.

Ms. Maliszewski extended the deadline for submittal of written comments from today to Friday at 5:00 p.m.

Mr. Train stated that the next two meetings would start at 1:00 p.m. in order that they could discuss the Sign Guidelines.

**Next Meetings:** June 16, 2003 and June 23, 2003 (special meeting)

**Adjourn:** The meeting adjourned at 1:53 p.m.

(Recorded and transcribed by Sharon Claytor Taylor)

EMAIL MESSAGE

FROM: Michael Matthews  
TO: Margaret Maliszewski  
SENT: Saturday, June 7, 2003  
SUBJECT: Signage Guidelines

Margaret,

I will not be able to attend the June 9 hearing on the new sign guidelines, and I have not really studied them in great detail, but I did see with interest that internal illumination is being discouraged on freestanding signs. I am hopeful that, as guidelines, this is not an edict but a general recommendation. There are some beautiful internally illuminated signs, like the ones at the Martha Jefferson campus in the city. They are usually more expensive than external illumination, so it will help project cost to go to mostly external illumination, but I hope the ARB does not take these guidelines as a blanket veto of internal illumination. I suppose what you are going for is to get rid of glowing plastic cabinets that do exist around town, so I definitely support that concept.

Michael Matthews  
Matthews Development Company LLC  
One Boar's Head Pointe  
Charlottesville, VA 22903  
434-972-7764 tel  
434-972-7769 fax  
[mikem@matthewsdevelop.com](mailto:mikem@matthewsdevelop.com)

EMAIL MESSAGE

FROM: Steve Edwards  
TO: Margaret Maliszewski  
SENT: Monday, June 9, 2003  
SUBJECT: ARB Sign Guidelines Comments

Margaret,

As of right now, I can't attend the meeting today. I appreciate you taking the time earlier to briefly discuss several of my questions. I would appreciate if you would pass these comments onto the Board in spite of my absence today.

Section II: Freestanding Signs, #7

I would like to suggest that the wording be revised to state, "External illumination is preferred, but internal illumination shall be considered."

The reason is, externally lit signs seem to be less complicated and require less time to review, I don't need to specify another fixture type and/or color and required less coordination and changes in final revisions of plans. Furthermore, it reduces light pollution by containing the light rather than having the possibility of it being misdirected and covered by the surrounding landscape in the future.

Under Internal, please ask the Board to differentiate between channel lettering and a "halo" effect, particularly in the instance where the text says "no light spills outward from the top, bottom, sides or back."

Case in the point, the new Martha Jefferson Fiduciary sign approved (on the building) using the LED's type of lighting submitted by Mike Matthews. Also, please ask the Board to allow or differentiate between single and double-sided signage, particularly in the cabinet sign section.

These cabinets can also be suggested for the other sections such as Wall Signs, Wall Signs for Multiple Business Centers and Fuel Pump Canopy Signs.

If either you or the Board have additional questions please feel free to call.

Steven W. Edwards, CLA  
McKee Carson  
301 East High Street  
Charlottesville, VA 22902  
434-979-7522 (tele)  
434-977-1194 (fax)

# THE RUTHERFORD INSTITUTE

JOHN W. WHITEHEAD  
Founder and President

INTERNATIONAL HEADQUARTERS  
Post Office Box 7482  
Charlottesville, VA 22906-7482  
U.S.A.  
Telephone 434 • 978 • 3886  
Facsimile 434 • 978 • 1789  
E-Mail • [tristaff@rutherford.org](mailto:tristaff@rutherford.org)  
Internet • [www.rutherford.org](http://www.rutherford.org)

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Budapest, Hungary

June 9, 2003

Albemarle County Architectural Review Board  
401 McIntire Road, Room 218  
Charlottesville, VA 22902-4596

**Re: Proposed Sign Guidelines**

Members of the Architectural Review Board:

As you are aware, The Rutherford Institute is assisting several individuals and local businesses affected by Albemarle County zoning ordinances addressing commercial signs. The Rutherford Institute is also presently serving on the Focused Sign Committee which is reviewing several of the Albemarle County zoning ordinance provisions relating to commercial signage. I write to express a few of our concerns with the Architectural Review Board's proposed sign guidelines.

Despite some efforts by the Architectural Review Board to make the guidelines more objective, the proposed guidelines continue to grant broad and unfettered discretion to the Board. For example, the proposed guidelines state that lettering and typeface for signs should "not be overwhelming or distracting" and "balanced to enhance visual clarity." Moreover, sign colors "must be harmonious with each other, and not clash with other elements on the site." The guidelines would also prohibit "overly intense" colors. Similarly, the guidelines state that the materials used in freestanding signs "should support the aesthetics of the building" and that the sign's structure "should not overwhelm the sign."

No objective criteria are established for determining whether a sign meets the above criteria. Rather, business owners must simply submit their proposed sign for a subjective determination by the Architectural Review Board as to whether the typeface is "overwhelming" or "balanced to enhance visual clarity," or whether the colors used in the sign "clash with other elements of the site." We remain concerned about the lack of objective, quantifiable criteria in the proposed guidelines. The lack of such criteria continues to provide the Architectural Review Board with excessive, and in some cases

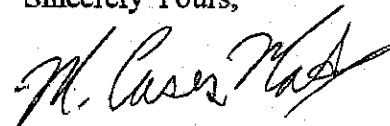
Architectural Review Board

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unbridled, discretion. The lack of clear and objective limitations on the Board's discretion raises questions about the proposed guidelines' constitutional viability. *See, e.g., Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988) ("a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship."). We request that the Architectural Review Board reconsider its guidelines and include objective, quantifiable requirements that would place limits on the Board's discretion.

Sincerely Yours,



M. Casey Mattox  
Staff Attorney  
The Rutherford Institute

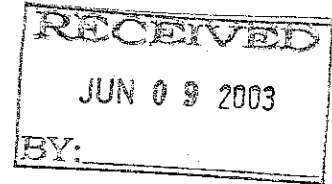


# GREAT EASTERN MANAGEMENT COMPANY

DEVELOPMENT ■ CONSTRUCTION ■ FINANCE ■ MANAGEMENT

HAND DELIVERED- JUNE 9, 2003

June 9, 2003



Architectural Review Board  
Attention: Margaret Maliszewski  
Department of Planning & Community Development  
401 McIntire Road, Room 218  
Charlottesville, Virginia 22902-4596

Re: Architectural Review Board Sign Guidelines

Ladies and Gentlemen of The Board:

As managers of Shopping Centers in Albemarle County, we too are concerned with a protecting and enhancing the visual qualities that make our county unique. When Entrance Corridors and commercial areas meet, problems can arise and signage needs of businesses may appear to conflict with the guidelines. It is extremely important that the Architectural Review Board recognizes the importance of signage to the survival of its revenue and tax producing businesses.

We applaud the County's efforts to revise its regulatory structure, to make available its services to the general public and to provide this service in a consistent, clear and timely manner to all. To these ends, we believe that work still needs to be accomplished, but are also greatly encouraged that the ARB is asking for the input of various community members. We are ready to help you in your monumental task and hope that you will take advantage of the wealth of knowledge we have collected over years of operating businesses in the county.

In reviewing the 5/21/2003 Draft Amendment Proposal for Design Guidelines, we noted some inconsistencies and have some recommendations concerning potential issues that may arise. The following are points of concern that need to be addressed:

1. We agree wholeheartedly with the overall Philosophy expressed on page 1, but have two comments specific to paragraphs 2 and 4
  - a. Paragraph 2 states that "*Entrance Corridors are established to implement the Comprehensive Plan goal of protecting and conserving the County's wealth of natural and built resources.*" While we agree with the underlying concept, we believe that the Comprehensive Plan main objective should be to give access to businesses and homes, as well as protecting and conserving the County's wealth of natural and built resources.
  - b. Paragraph 4 states that the "*guidelines ....seek to establish a visual balance*

*between commercial needs and the aesthetic priorities of our community...*"  
Surely they seek to establish more than a visual balance - they seek to establish concrete, viable and understandable regulations applicable to all.

2. We request clarification on several issues raised by the various types of signage:

a. WINDOW SIGNS-

- i. Concerning the regulation of a sign located in front of the window face, behind the window face, or within three feet of a window, you must understand that every single business will then be required (ad nauseum) to request the Board's permission for the placement of signs such promotional signs advertizing the sale of merchandise, posters which non profit groups often bring to businesses promoting such off premises events as a walk-a-thon or cultural event such as the Oratorio Society may hold. Are you certain that restricting such promotional signage is desirable?
- ii. The proposed guidelines state that window *"signs...that can be viewed from the Entrance Corridor are regulated by the Review Board."*
  - (1) We suggest that "viewed from the Entrance Corridor" be further clarified. For example, it is well known that 4" letters are generally visible from approximately 75 feet. Does this guideline, then, indicate that 75 feet is the distance for proper "viewing?" Or might the Board have a different "viewing" process in mind? And just "who" or "what entity" will do the drive-by viewing?
- iii. Building owners and landlords periodically require "For Lease" signs or sale signs placed on their window fronts in order to attract tax revenue generating businesses. These types of signs must be allowed.
- iv. That the ARB may require that businesses deviate their well established and often copyrighted trademarks and logos may be viewed as an infringement upon the First Amendment Rights of the citizenry. We suggest further review.

b. FREESTANDING SIGNS

- i. We could find no "Grandfathering" language in the guidelines which would exempt extant signage.
  - (1) There is a huge opportunity for the County to give businesses who presently have aging freestanding signs which have deteriorated over time and that are not in keeping with the present goals of the

ARB the opportunity to update and improve the visual aesthetics. In order to update these signs, it may be necessary to reinforce the existing structure to accommodate the improvements.

- (2) Concerning the color restrictions of freestanding signage, we believe that further clarification would be helpful. Monument signs, especially those made of the brick materials that the ARB favors, are often multicolored and therefore should not be considered in the limiting number (3) of allowable colors.
- (3) In the discussion of "Materials" we suggest use of a word other than "complimentary" since one connotation is "at no charge" and we are fairly certain that the ARB does not mean that. Additionally, when using the word "support" as used in terms of signage, it may be construed to be dealing with the foundation of the sign rather than an adjunct of aesthetics.

c. Wall Signs

- i. We would like a clarification that "raceway-mounted channel letter" signs are, in fact, considered to be neon signs.

d. Wall Signs for Multiple Business Centers

- i. First, we request clarification that a "group of buildings located in close proximity to each other" could also be a definition of a shopping or strip center, and that "close proximity" means only those buildings owned by one entity. Otherwise, buildings along a road which are in close proximity to each other may be construed as a single entity and limited to the same type of signage, when, in fact, they are very different and should not be lumped together.
- ii. As shopping center owners and managers, we are concerned with the statement that *"the first sign installed in a multiple business center will establish the standard for all future signs for that center."*
  - (1) First, we question the wisdom of requiring a sign for a business of 50,000 square feet to be the same size, type and color as that of a small, 1,500 square foot merchant. Obviously, if Nordstrom's comes to town and is in "close proximity" to a present business (the "first" business in the center) which was allowed only a small sign, it should be apparent that the larger merchant will rightly require more visible signage exposure. This right can not be denied not can the absence of a logo in the first store's sign in a center

preclude the right of another merchant to incorporate its copyrighted logo into its signage.

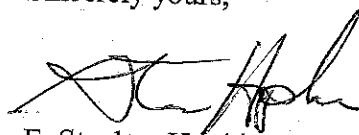
(2) We do agree, however, with the intent of this section that a center should have uniformity of aesthetics and that a hodgepodge of signage be avoided.

e. Fuel Pump Canopy Signs

i. You will surely be pleased to learn that we have no further comments to make for this type of signage review - we are not in the gas business!

In conclusion, in reading the draft document, there seems to be a great deal of subjectivity and less than optimum objectivity in it. As the Board changes membership in the future from its present makeup, the understanding gleaned by the present members will be lost if the guidelines are not firmly clarified. We appreciate the invitation to submit our comments and look forward to future draft reviews.

Sincerely yours,



E. Stephen Hopkins, Jr. Vice President



July 23, 2004

Wayne Cilimborg  
Planning Department

Proposed ARB Guidelines

I regret to tell you that if you wish to produce guidelines that comply with the requirements of the Constitution, many changes are necessary. Apart from the Constitutional issues, the Guidelines are also full of "puffery", repetition and superfluous restrictions. The following are specific comments

1. The goal of the Albemarle County ARB (and the Guidelines) is very simply to improve the aesthetics of the entrance corridors. It really does not require two pages to explain the goal.
2. It is perfectly acceptable to establish restriction that serve to accomplish the above objective. However it is necessary to be able to say **HOW** the restrictions contributes to achieving that objective. Moreover, that explanation of HOW has to be expressing an opinion that would be supported by a majority of people knowledgeable about the aesthetics of sign design. It cannot be the unsupported opinion of a tiny uninformed segment of the local population..

Under General Signs Guidelines, it is stated, for instance, that "the use of three colors or less is appropriate for signs in the entrance corridors". To the best of my knowledge, there is no generally accepted aesthetic principle that justifies this restriction. In fact all evidence is exactly to the contrary. It is not in keeping with the "historic" tradition of sign making (historically, signs have been multi-colored) and in recent times probably 75% of all award winning signs (with knowledgeable and qualified panels of judges) have also been multi-colored). The restriction makes no more sense than saying that "in entrance corridors, plantings in flower beds should be restricted to three colors or less". When digital printing and therefore photographic reproduction is becoming more and more prevalent in sign making, the restriction is akin to insisting that black and white photographic images are the only sort suitable for the entrance corridors (it is impossible to restrict true photographic images to three colors (unless you argue that all images are three color anyway, namely RGB, which makes the restriction superfluous).

The guidelines state that "when illumination is required, the preferred solution is to externally illuminate the sign" The guidelines claim that it is preferred because it "allows consistency with the daytime image of the sign" and "because it allows "the focus of the sign to be the original overall shape color and complete design of the sign". Despite this claim, the guidelines go on to insist that the background of all internally illuminated cabinet signs shall be made opaque (which, of course, means that "the focus of the sign shall be as far removed as possible from the original overall shape color and complete design of the sign"; a complete reversal of the argument previously posited as desirable).



Similarly, another claim is that "internal lighting produces a fragmented image at night compared to external lighting" while, presumable blacking out the background so that only a fragment of the sign is visible, does not create a "fragmented image". These supposed "justifications" are totally illogical.

Another justification for blacking out the background of cabinet signs is said to be to "reduce glare, visual clutter and distraction along the streetscape (whatever that may be)". When channel letter signs (where the total light and the intensity of light may be four or five times that of cabinet signs), are the preferred method of internal illumination, this makes about as much logical sense as the other justifications quoted above.

If the logic of the ARB were justified and the majority of the population shared the Albemarle County ARB's view of aesthetics, all currently internally illuminated advertising displays in airports, banks, movie theaters, etc. would either be externally illuminated or would have everything except the text made opaque. That is absolutely not the case.

The objective of the ARB should be to make signs as readable as possible (the entire focus of the Americans with Disabilities Act as it applies to signs). Numerous independent studies have concluded that internally illuminated signs are more readable at night than externally illuminated signs (I would be happy to provide the ARB with the conclusions of an independent survey performed by Pennsylvania University on behalf of the Department of Transportation, confirming this assertion). The end result of this particular ARB restriction is that many illuminated cabinet signs in Albemarle County are unreadable by night (because national sign policy for franchises etc. gives no leeway for colors, very often the text has to be red or some other dark color. At night, therefore, the text is red on black; see Arby's on US29N. Seminole Commons, etc.), or where there is some leeway, the attempts to make signs readably by night has resulted in them being ugly by day also (which is obviously totally counter productive).

3. Because of "Due Process" requirements, it is necessary for any restriction or regulation to be stated in sufficiently specific terms "that any person of normal intelligence can tell ahead of time whether his application will be approved or not". For this reason any guideline that states that some type of sign, color, illumination or whatever is "preferred" robs the applicant of his "Due Process" rights.

Under Design Compatibility, the guidelines state "the design of a building's walls, window locations, parapets and other architectural features shall influence the Board's evaluation of appropriate signage. This means that the applicant has no way of knowing ahead of time if his application will be approved because the decision to approve or deny is exclusively at the



“arbitrary and capricious whim” of the ARB members (which has also been held, in many precedent cases, to be totally unconstitutional)..

This vague “subject to interpretation” approach is prevalent throughout the whole text and renders much of the guidelines unconstitutional (“colors must be harmonious with each other and not clash with other elements of the site”, “Overly intense color, such as but not limited to dayglo or fluorescent colors are prohibited”, “additional colors may be approved if they contribute to a balanced and unified sign design”).

4. Much of what is written into the guidelines is also totally superfluous. Shopping Centers, for instance, are invariably built with clearly defined areas designated for the placement of signs and it is unnecessary to define this in the Guidelines. Similarly, nobody goes to the expense of providing exterior lighting to illuminate a sign only to point the light away from the signs. No professional sign maker builds cabinet or channel letter signs so that the light escapes in all directions. The sign ordinance prohibits blinking signs so there is no need to repeat this in the ARB Guidelines. What is written under General Sign Guidelines is laboriously repeated under Guidelines for Specific Sign Types, etc., etc. Is this to try and make the Guidelines appear comprehensive (and therefore Constitutional?) or to add to their apparent importance.

To Summarize. From the foregoing comments, you can easily see that it is virtually impossible to have an Architectural Review Board that makes judgmental decisions and still comply with the requirements of the Constitution of the United States.

“Due Process” requires that the guidelines be written in sufficient specificity that “any person of reasonable intelligence can determine ahead of time, with reasonable certainty, whether his application will be approved or not”. Virtually ALL precedent cases have held that if the approval or rejection of an application is at the sole discretion of members of an ARB, it is unconstitutional (in other words, “does a particular sign comply with the guidelines? If it complies, it should be approved. If it does not comply, it may be rejected.

The other important requirement is that the Guidelines themselves must be justifiable by generally accepted standards, of qualified knowledgeable persons familiar, with the aesthetics of sign design. These Guideline would fail miserably in that requirement for all of the reasons stated.

I can quote many precedent cases to support the above conclusion and will be happy to provide them on request.

Sincerely,

Ben Foster

2165 Seminole trail                      Charlottesville, Virginia                      22901  
434-974-7900 x-102                      BFOSTER@HTSVA.COM                      434-974-6898 (fax)