

IN RE: PETITION FOR VARIANCE
SW side of Deereco Road at W side
of Padonia Road intersection
8th Election District
3rd Councilmanic District
(9615 Deereco Road)

Deereco Road Associates Ltd. Partnership
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2009-0198-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Deereco Road Associates Limited Partnership. Variance relief is requested as follows:

- From Section 450.4.5.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a second freestanding enterprise sign with no road entrance from road frontage on the north side of the property in lieu of a second freestanding enterprise sign with road frontage; and
- From 450.4.5.d of the B.C.Z.R. to allow 4 enterprise wall signs in lieu of the permitted 1 wall sign.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests on behalf of the legal owner was William B. Russell with Hill Management Services, Inc., the Developer of the hotel site (hereinafter referred to as “Petitioner”), and Josie Fontanazza, the manager of the subject hotel, as well as their attorney, Francis X. Borgerding, Jr., Esquire. Also appearing in support of the requested relief was Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the firm that prepared the site plan, and Tim Wiegard with Gale Signs, the firm hired to erect the proposed new signage on the property. Also appearing on behalf of the Baltimore County Department of Economic

Development was Richard Cobert. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is square-shaped, zoned M.L.-I.M. The property is located at the southwest corner of Padonia Road and Deereco Road, just off Interstate 83 at the Padonia Road exit, in the Timonium/Cockeysville area of Baltimore County. The property is improved with an existing seven story Holiday Inn hotel (formerly Days Hotel) with an attached Chili's restaurant. There are also other commercial uses nearby including several restaurants, retail shopping, and other local businesses along Deereco Road.

In support of the variance requests, Mr. Doak was offered and accepted as an expert in land use and zoning and testified about the particulars of the property in relation to the existing as well as the proposed signage. Mr. Doak entered a series of photographs that were marked and accepted into evidence as Petitioner's Exhibits 2A through 2R, which show the overall property and the hotel and restaurant located on the property. Mr. Doak noted that the signage for the previous hotel franchise, the Days Hotel, included a large 25 foot tall "cage" sign on the roof of the hotel. Said sign is illustrated as sign number 2 on the site plan. Mr. Doak noted that Petitioner, as part of the requested relief before this Commission, has taken down this large signage on the roof of the hotel and is proposing to replace it with smaller and more aesthetically pleasing signage on the façade of the hotel for the newly franchised Holiday Inn. Mr. Doak noted that the Crowne Plaza Hotel located adjacent to Interstate 83, just south of Timonium Road, has signage similar to what is being requested by Petitioner, although Petitioner's property has a greater need for the signage due to the characteristics of the property vis-à-vis travelers on Interstate 83.

In particular, Mr. Doak noted that Petitioner's property topographically sits low -- approximately 30 feet below Interstate 83 -- and the structure on the subject property is oriented in

a way so as not to be parallel with I-83, but rather sits at an irregular angle from the expressway. Further, the exit ramp from Interstate 83 veers off from the expressway in such a way as to create difficult access to Petitioner's property. Additionally, the adjacent property owned by the State Highway Administration in between the exit ramp and the expressway has heavy tree cover which creates a natural screen, and hence limited visibility from the expressway to Petitioner's property.

Mr. Doak expressed his opinion that in light of the physical characteristics of Petitioner's property, the property is unique in a zoning sense. Further, Mr. Doak expressed an opinion that in light of the unique physical characteristics of the property, strict enforcement of the sign regulations would have a disproportionate impact on Petitioner's property. In addition, Mr. Doak testified that Petitioner would suffer practical difficulty if its requested sign variance were not granted to allow for appropriate signage on the hotel to identify the Holiday Inn brand.

The next witness to testify on behalf of Petitioner was William Russell, Vice-President of Hill Management Services, Inc., whose firm manages the hotel on the subject property. Mr. Russell indicated that the property was developed with the aforementioned hotel and restaurant approximately 20 years ago. He indicated that the restaurant on the subject property originally opened as a Denny's and about 10 years ago transferred the operation to a Chili's Restaurant. In addition, the hotel originally opened as a Days Hotel and recently was changed to a Holiday Inn. It was the change from the Days Hotel to the Holiday Inn that necessitates the requested signage and results in the instant variance request.

Mr. Russell indicated that when the hotel changed to a Holiday Inn, Holiday Inn requested appropriate signage to promote its brand name, which includes three wall mounted signs on the façade of the hotel where it faces Deereco Road, Padonia Road, and Interstate 83, and one freestanding sign on Deereco Road. Although the previous operator had a freestanding sign on

Deereco Road, that which is proposed by Petitioner is actually smaller than the previous freestanding sign and would not contain changeable lettering as before. The proposed freestanding sign for Holiday Inn has a smaller sign face and no changeable lettering. In addition, the Days Hotel had a “caged” sign (also referred to as a “birdcage” design) approximately 25 feet in height on the roof of the hotel, which was triangular in shape and towered over the top of the existing hotel. It certainly gave motorists on Interstate 83 and elsewhere in the vicinity a view of where the hotel was located, but was rather unattractive and lacking proportion in size. The Days Hotel also had two wall mounted signs on the façade of the Deereco Road side of the hotel. Mr. Russell made clear that all Days Hotel signage had been removed as part of Petitioner’s requested relief, including the large signage on the roof of the hotel. Accordingly, Mr. Russell indicated the proposed signage would consist of less square footage and would be more aesthetically pleasing than the previous signage on the property. Because of this, Mr. Russell indicated he was surprised when he went to obtain a sign permit from Baltimore County, but was told that the matter would have to proceed for a hearing before this Commission in relation to the sign variance relief.

In any event, Mr. Russell indicated it was his belief the subject property was unique due to its topography as related to the adjacent Interstate 83 and the angled orientation of the hotel on the subject property as related to Interstate 83. Mr. Russell also noted the natural screening on the property owned by the State Highway Administration between the subject property and Interstate 83, as well as the configuration of the nearby exit ramp and roads that give limited access to the property, thus necessitating the freestanding sign for the hotel on Deereco Road. Finally, Mr. Russell testified that Petitioner would suffer practical difficulty if the requested sign variance is not granted, as the physical characteristics of the property dictate the need for the requested relief.

Josie Fontanazza also testified on behalf of Petitioner. Ms. Fontanazza has been the on-site Manager of the hotel since the hotel and restaurant began operation on the subject property 20 years ago. Ms. Fontanazza testified that based upon the property's physical characteristics, appropriate signage such as requested is necessary for identification of the hotel. By way of example, Ms. Fontanazza explained that the nearby streets have some unusual configurations that result in inconsistent labeling. For instance, the subject property is geographically located at the southwest corner of Padonia Road and Deereco Road and bounded to the west by Interstate 83. Although the subject property's physical address lists a location of 9615 Deereco Road, the part of Deereco Road north of Padonia Road is listed as Beaver Dam Road; moreover, as one proceeds further south on Deereco Road from Padonia Road towards Timonium Road, the road becomes Greenspring Drive, thus creating a great deal of confusion for the hotel's existing and potential customers. On a related note, Ms. Fontanazza indicated that if the hotel's address is entered into a global positioning system ("GPS") for "Timonium," the address and directions will not be revealed in patrons' GPS systems. It is necessary to specify "Lutherville" because of how the Lutherville, Timonium, and Cockeysville areas come together geographically. Ms. Fontanazza further indicated that given the lack of visibility of the hotel due to the property's physical characteristics, the signage requested is necessary to allow customers to locate the hotel.

Ms. Fontanazza also explained, pursuant to her experience, that almost all of the customers of the hotel are out of town guests who are not familiar with the subject property and they need appropriate signage to locate the property. The photograph marked and accepted into evidence as Petitioner's Exhibit 2S shows a road sign on Interstate 83 north of the subject property and south of Shawan Road indicating the various hotels which are accessible via the Shawan Road exit. Ms.

Fontanazza indicated that no such sign exists on Interstate 83 for Padonia Road to identify the subject hotel, or even others in the vicinity.

Since the Days Hotel signage has been taken down and the requested signage for the Holiday Inn has not yet been affixed, Ms. Fontanazza indicated that the hotel's occupancy rate is the lowest it has been in her 20 years of managing the property. Based on her experience in the business, Ms. Fontanazza directly attributes the lack of identification signage on the subject property to the low occupancy rate. In fact, Ms. Fontanazza testified that she has recently had to lay off employees for the first time in her 20 years of managing the hotel. Ms. Fontanazza also related several examples of individuals having trouble locating the hotel because of a lack of identification signage. Finally, she introduced several letters written by area businesses indicating that as the hotel's occupancy numbers have gone down, so has their business. These letters were marked and accepted into evidence collectively as Petitioner's Exhibit 7.

Also testifying in support of the variance relief was Tim Wiegard with Gale Signs. Mr. Wiegard was offered and accepted as a sign expert and testified that the signage requested by Petitioner is industry standard hotel signage. He related that the requested signage is smaller in square footage and more aesthetically pleasing than the signage previously on the property for the Days Hotel. Mr. Wiegard testified that the proposed signage was both appropriate and necessary for the operation of the hotel on the subject property. In addition, Mr. Wiegard testified the proposed signage, in his opinion, did not create any safety issues for traffic surrounding the subject property.

The final witness to testify in support of the requested relief was Richard Cobert with the County's Department of Economic Development. Mr. Cobert indicated his Department is supportive of the variance relief for a number of reasons. First, he indicated that the Deereco

Road/Padonia Road corridor is undergoing a significant redevelopment of aging buildings into new and updated retail and service facilities for local businesses. As part of that redevelopment, Petitioner has renovated the former Days Hotel and has opened the hotel under the Holiday Inn brand, investing over \$5 million to upgrade the property and roll out the new Holiday Inn brand logo. Second, the success of this project will have a positive impact on the businesses that are currently being negatively impacted by the hotel's decrease in bookings -- attributable to the lack of visible identifying signage on the hotel. Finally, Mr. Cobert indicated that from a practical and aesthetic viewpoint, the proposed signage will be a noticeable improvement over the "birdcage" style sign on the roof of the hotel, and will complement the adjacent Chili's restaurant. In short, the new signage will give the site a clean, fresh look for the area, as the Crowne Plaza has done at the former Holiday Inn Select at nearby Greenspring Drive, just south of Timonium Road. A copy of a Memorandum from the Department of Economic Development dated March 19, 2009 endorsing Petitioner's variance requests was marked and accepted into evidence as Petitioner's Exhibit 6.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated March 13, 2009 which indicates their support of the additional wall mounted signs provided the roof-mounted signs are removed. They also support the replacement of the freestanding enterprise sign as long as it is not a changeable copy sign. Witnesses on behalf of Petitioner have testified that the previous roof-mounted sign has been removed and the replacement for the freestanding enterprise sign will not contain changeable copy sign, notwithstanding the fact that the previous sign for the Days Hotel contained changeable lettering.

Based upon the testimony and evidence presented, I am persuaded to grant Petitioner's variance requests. I am easily convinced the signage proposed by Petitioner will be of a smaller square footage and be more aesthetically pleasing than the previous signage on the property. I also find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. Testimony indicates that the subject property lies 30 feet lower than the adjacent Interstate 83 and the structure on the subject property is angled away from Interstate 83. In addition, there is natural screening between the hotel and Interstate 83 and access from the expressway is indirect (only from Deereco Road and not Padonia Road) due to the road layout. Indeed, it is the unique physical characteristics of the property which necessitate the variance relief. I also find that these constraints cause the subject property to be disproportionately affected by the Zoning Regulations as compared with other surrounding properties. I further find that if the variance is not granted Petitioner will suffer practical difficulty.

Finally, I find that these variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 3rd day of April, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance requests as follows:

- From Section 450.4.5.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a second freestanding enterprise sign with no road entrance from road frontage on the north side of the property in lieu of a second freestanding enterprise sign with road frontage; and

- From Section 450.4.5.d of the B.C.Z.R. to allow 4 enterprise wall signs in lieu of the permitted 1 wall sign,

be and are hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz