

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>PETROS &amp; KAREN KARRAS</b>	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 16-002S

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**DECISION AND ORDER**

On August 8 and October 13, 2016, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Petros and Karen Karras (Petitioners) for a variance to erect a ground-mounted, monument, double-face, commercial identification sign one-foot five inches from the US 40 (Baltimore National Pike) right-of-way (ROW), for a commercial use (Checker's Restaurant) in a B-2 (Business: General) Zoning District, filed pursuant to § 3.501.(c)(2).c of Subtitle 5 of Title 3 of the Howard County Code (the "Sign Code").

Petitioners certified to compliance with the notice and advertising requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Petitioners were not represented by counsel. Wayne Newton testified in support of the petition. No one appeared in opposition to the petition.

**A Preliminary Matter**

At the outset of the hearing, Mr. Newton stated he had not received a copy of the July 14, 2016 sign variance technical staff report (TSR), which included the Department of Planning and Zoning's recommendation that the variance be denied because the proposed pylon

commercial identification sign does not comport with the Route 40 Design Manual. For these reasons, the Hearing Examiner continued the hearing to permit Petitioners to review the TSR and redesign the sign.

At the October 13, 2016 continuation hearing, Wayne Newton introduced into evidence Petitioners' Exhibit 1, a revised sign variance plan. This plan proposed an 11.25' ground-mounted, monument, commercial identification sign as further described in the Findings of Fact. Petitioner's Exhibit 2 is a photographic mock-up of the proposed sign at the proposed, unchanged location.

The Hearing Examiner determined the amendments were not substantive within the meaning of Hearing Examiner Rule 9.5, being intended to comply with the Route 40 Design Manual, and therefore could be admitted as evidence during the hearing.

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**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the south side of US 40 (Baltimore National Pike) about 273 feet west of Plumtree Drive and lies in the 2<sup>nd</sup> Election District in Ellicott City. It is referenced as Tax Map 0024, Block 0004, Parcel 79 and known as 9441 Baltimore National Pike (the Property).
2. Property Description. The 1.33-acre Property is improved with two restaurants, Tongamoo House (9445 Baltimore National Pike) and Checkers (9441 Baltimore National Pike),

a fast food restaurant with drive-through service. Tongamoo House is located in the western portion of the Property. In front of Tongamoo House is a row of parking spaces perpendicular to the Pike. Checkers is located in the eastern section. In front of the Checkers restaurant is the exit internal driveway for the drive-through. The two uses share the same access driveway, which is located between the two restaurants. There is a deceleration lane and an acceleration lane.

3. Vicinal Properties. Vicinal properties are improved with single use commercial buildings or small strip shopping centers.

4. The Requested Sign Variance. Petitioners are requesting a variance to erect a ground-mounted, monument, commercial identification sign with two sign cabinets and electronic changeable text for the Checkers Restaurant.

- The proposed double face sign would be located one-foot five inches from the Baltimore National Pike ROW.
- The sign would be ground-mounted.
- The total height of the proposed sign is 11.25'.
- The top section is an LED-illuminated, aluminum sign cabinet containing the standard Checkers corporate logo with matching double-sided acrylic faces with acrylic letters. The cabinet is 8 in. thick, 7 ft. /1 in. wide and has a height of 3 ft. /9 in. with a total of 26.6 sq. ft. of signage.
- The middle proposed sign section is comprised of an aluminum sign cabinet containing a digital reader board. The digital reader board is 8 in. thick, 7 ft. /1 in. wide and has a height of 2 ft. /4 in. with a total of 16.5 sq. ft. of signage.
- The ground-mounting consists of black and white tile repeating the design on the restaurant facade and a large, white block area with the address "9441".
- The total proposed signage area is 43.1sf.

5. Signage History. The TSR contains a thorough history of the freestanding signage on the Property, including multiple supporting documents. Petitioners have owned the

Property since the 1970s, when they operated the Hartkopfs Cheshire Inn where the Tongnamoo House restaurant is now located. In March 1973, Howard County notified Petitioners that their existing double pole pylon "Hartkopfs Cheshire Inn" sign was in violation of the new sign code. DILP issued Petitioners a nine-year temporary sign permit under the grandfather clause of the code, which Petitioners were required to remove sometime after March of 1982. Instead, the Petitioners changed the original 1973 "Hartkopfs Cheshire Inn" sign to a "Peking Garden Restaurant" sign, and later, to a "Tongnamoo House" sign.

In January 1997, Checkers (Mar-Chek, Inc.) applied for and was granted a permit for the removal of three lower signs from the existing "Tongnamoo House" pylon sign. The three removed signs were then replaced with two unapproved (no permit) new signs totaling the same square footage as the original three signs. One of the new signs was a "Checkers" corporate logo sign. Below the "Checkers" logo sign was an internally illuminated, manual changeable text sign.

On April 10, 2013, DILP opened a complaint case pertaining to the "Tongnamoo House" restaurant signage, the temporary sign permit having long expired. On July 23, 2013, the Department of Inspections, Licenses and Permits issued civil citation #2Z39936332 to Zach Lee ZDR Food Services, Inc. On January 31, 2014, the District Court Judge issued a fine along with an order of abatement to the owners of "Tongnamoo House." After this abatement order, Mar-Chek, Inc., submitted a sign permit application and sign variance petition, but DILP rejected the submittal on July 24, 2014 when the petitioner failed to submit a revised application package. Petitioners having failed to submit all required/revised information. To satisfy the civil citation

abatement order, Petitioners removed the sign on February 2, 2015. They also removed the two Checkers signs on the same signposts.

This history is germane to the petition because the TSR emphasizes the granting of a variance could affect/limit the future use or redevelopment of the adjacent Tongnamoo House portion of the Property, and particularly, would limit signage options for any future tenant. For this reason, and as concluded below, the Hearing Examiner is imposing these approval conditions: any freestanding sign for any future use at 9445 Baltimore National Pike shall be located in that portion of the sign below the digital reader board and where the "9441" address is located. No new freestanding sign is permitted on the Property, either for 9445 Baltimore National Pike or elsewhere on the Property. Should the Property be subdivided, the Checkers sign shall be removed within sixty calendar days of final subdivision approval by the Department of Planning and Zoning. Any new freestanding signage for the subdivided properties shall require new sign permit applications.

6. The Technical Staff Report. All Department of Inspections, Licenses and Permits (DILP) TSRs evaluate a proposed sign variance petition against the criteria for granting a variance, but do not make recommendations. The November 26, 2016 TSR issued in this case for the original sign (which, as modified, effected only the type of sign) concluded the sign at the proposed location, 1'5" from the US 40 ROW, would allow only a sign height of 0.0' / 6" and 1.0sf of signage. The TSR also requires that the proposed electronic sign message face labeled "Checkers Ellicott City Digital Reader" may change only once within a 24-hour period, per DILP policy. With respect to the Sign Code standards for granting a variance, the TSR concludes that

a large freestanding, Mr. Tire pylon sign on the eastern adjoining property would likely block the view of any sign on the Property for westbound motorists. To the west of the Property is a two-story commercial building that appears to be located within the US 40 ROW and which blocks the view of a conforming sign.

Based on the original sign submission, and DPZ's recommendation of denial, the TSR further concludes the requested variance is not the minimum necessary to afford relief because the size and location of a sign at this location could affect or limit the future use or redevelopment of the adjacent Tongnamoo House portion of the Property, and particularly, would limit signage options for any future tenant.

7. Wayne Newton testified to being a civil engineer and the president of Messick & Associates. It was his testimony that the only change to the revised sign is its conversion to an 11-foot, 2 ½ inch high, ground-mounted monument sign. He further testified to having met with Kristin O'Connor Mazerski, Chief, DPZ/DCCP, and that the revised sign addresses the concerns in the DPZ memorandum prompting the department's recommendation that the variance be denied.

## **CONCLUSIONS OF LAW**

### **I. Controlling Sign Code Provisions**

Freestanding signs are regulated under § 3.501.(c)(2).c.

*c. Freestanding signs.* The provisions of this paragraph shall not apply in Downtown Columbia. Where a building does not cover the full area of the property, business signs may be freestanding or ground-supported and may be located in the front yard. The height of the sign may not exceed one foot for each two feet the sign is set back from the right-of-way and shall not exceed 26 feet from the grade level to the top of the sign. *Freestanding signs shall be permitted only where there is a minimum of 40 lineal feet*

*of lot frontage.* The maximum allowable area for a freestanding sign shall be one square foot for each one foot the sign is set back from the road right-of-way. The largest single face of a freestanding sign shall be considered for the purpose of computing allowable area under this section. No part of the sign shall extend beyond a property line or right-of-way line. Signs satisfying requirements for gas price posting are permitted up to an area of 32 square feet per face. Such signs may be affixed to the main freestanding sign and will not be assessed against the allowable area for the facility nor will they be considered for purposes of determining setback in relation to sign area. (Emphasis added.)

Although neither the TSR nor the Petitioner addressed the issue of the requisite 50-foot lot frontage required for a freestanding sign, the Checkers portion of the Property is called out as being some 85 feet in width along the Property frontage.

## **II. Specific Sign Variance Criteria (§ 3.513.(b))**

Based upon the foregoing Findings of Facts, the Board of Appeals Hearing Examiner concludes as follows.

**1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.**

The Property is located on US 40, a divided highway with a dependency on nonlocal use. Additionally, the location of the Checkers east side drive-through exit lane precludes a sign in this location. The Hearing Examiner routinely travels along this segment of US 40 and is aware that motorists regularly drive at speeds of 50-60MPH. These conditions lead to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with § 3.513.(b)(1).

**2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility**

**of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.**

Existing signage on a neighboring property and a building close to the paved area of US 40 interferes with the visibility of a conforming sign. The petition accords with § 3.513.(b)(2).

**3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.**

The aesthetic consideration at issue here is the harmony between the Route 40 Manual's signage recommendations and the size and design of the proposed sign. Petitioners have redesigned the original sign as a monument sign to comport with the Route 40 Design Manual sign guidelines. The petition accords with § 3.513.(b)(3).

**4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.**

There is no evidence of any adverse effect or dangerous traffic condition. The variance complies with § 3.513.(b)(4).

**5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.**

Although the sign has been reduced in height from 18'6" to 11'2 1/2", the proposed monument sign is still rather high. Part of the height is due to what in the Hearing Examiner's view is an atypical size for the Property address area. As discussed supra, DILP recognizes the size and location of a sign at this location is not the minimum variance necessary because it could affect or limit the future use or redevelopment of the adjacent Tongnamoo House portion of the Property, and particularly, would limit signage options for any future tenant.

The Hearing Examiner agrees; hence, the above conditions of approval. Subject to this



condition of approval, the proposed height, signage area and location is reasonable, and hence the minimum necessary, in accordance with § 3.513.(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The Petitioner did not create the practical difficulties or hardships pertaining to §§ 3.513.(b)(1) & (2).

**ORDER**

Based upon the foregoing, it is this **14<sup>th</sup> day of November 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Petros and Karen Karras for a variance to erect a ground-mounted, monument, double-face, commercial identification sign one foot six inches from the US 40 (Baltimore National Pike) right-of-way, for a commercial use (Checker's Restaurant) in a B-2 (Business: General) Zoning District, is **GRANTED**;

**Provided, however, that:**


1. The variance shall apply only to the sign variance petition and the amended sign variance plan introduced as Exhibit 1.
2. The proposed double face, freestanding monument sign shall be located one foot five inches from the right-of-way.
3. The proposed sign shall be ground-mounted and no higher than 11 feet 2 ½ inches.
4. The total proposed signage area shall be 27.69 square feet.
5. The digital display sign image shall be changed only once every 24 hours.
6. Petitioners shall submit a signed DILP affidavit agreeing to change the digital display sign text only once every 24 hours.
7. No other freestanding sign is allowed on the Property. Any additional freestanding signage for a use other than Checkers, including any new use, change in restaurant use from the Tongnamoo Restaurant use to another restaurant use, or redevelopment of the Tongnamoo House restaurant use to another, shall be located in the area of the sign below that portion of the sign below the digital reader board and where the "9441" address is located.
8. If the Property is subdivided, the Checkers sign shall be removed within sixty calendar days of the final subdivision plan/plat approval by the Department of Planning and Zoning. Any such resubdivision plans/plats shall contain a note referencing this Decision and Order and shall list all ten approval conditions. Any new freestanding signs for the subdivided properties shall

require new sign permit applications.

9. All site development plans or alternative compliance plans for the Property in its current configuration or subsequent to any subdivision of the Property shall contain a note referencing this Decision and Order and shall list all ten approval conditions.

10. The Petitioner shall obtain all necessary permits, including all revised permit applications.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER



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Michele L. LeFaivre

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.