

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(2116 York Road)	*	OFFICE OF
8 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	ADMINISTRATIVE HEARINGS
McDonald's Corporation		
<i>Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	<b>Case No. 2017-0078-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of McDonald's Corporation, LLC, legal owner ("Petitioner"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to approve an amendment to Zoning Case No. 2008-0574-A. In addition, a Petition for Variance seeks: (1) To permit 40 off-street parking spaces in lieu of the required 71 parking spaces; (2) To permit a directional sign of 11.67 ft. in height in lieu of the permitted 6 ft. (Double Arm Gateway); (3) To permit 2 directional signs of 10.17 ft. in height in lieu of the permitted 6 ft. ("Order Here" Signs); (4) To permit 2 order boards of 6.75 ft. in height in lieu of the maximum permitted 6 ft.; (5) To permit 2 projected directional signs in lieu of the permitted wall-mounted or free standing directional signs ("Window Position Signs" Signs); and (6) To permit 4 stacking spaces behind the order board in lieu of the minimum required 5 stacking spaces. A site plan was marked and accepted into evidence as Petitioner's Exhibit 4.

Appearing at the public hearing in support of the requests was Mark Furr and Martin Emmer. Justin Williams, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of

Development Plans Review (DPR) and the Department of Planning (DOP). Neither agency opposed the requests, although they did indicate certain landscape and site improvements should be completed. With one exception, these will be included as conditions in the Order which follows. The DOP had initially requested Petitioner to remove paving at the rear of the site and replace the area with a pervious surface. Petitioner's engineer expressed concern this could cause a pooling of water in this location, and the DOP agreed to waive that requirement. Petitioner's Exhibit 7.

The subject property is 40,536 square feet and zoned BR-IM. A McDonald's restaurant was first opened at this site in 1970. In 2008, Petitioner razed that building and constructed in its place a modern, upscale McDonald's restaurant more in keeping with the character of this commercial corridor in the Timonium area of the County. At present, Petitioner proposes to upgrade and expand the drive through operation at the restaurant, for which certain zoning relief is required.

#### SPECIAL HEARING

The special hearing request merely seeks to amend the Order and site plan from a 2008 case involving this property. That request will be granted, to reflect the relief granted in this case.

#### VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioner has met this test. The property is wide and shallow, as noted by the Zoning Commissioner in the 2008 case. In addition, Petitioner must contend with existing site conditions.

As such the property is unique. Petitioner would experience practical difficulty if the regulations were strictly interpreted because it would be unable to complete the proposed improvements. Finally, I do not believe granting the requests would have a detrimental impact upon the community. The proposed enhancements will improve the efficiency of the site, which will enable customers to more easily enter and exit the restaurant.

THEREFORE, IT IS ORDERED this **19<sup>th</sup>** day of **January, 2017**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to approve an amendment to Zoning Case No. 2008-0574-A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance: (1) To permit 40 off-street parking spaces in lieu of the required 71 parking spaces; (2) To permit a directional sign of 11.67 ft. in height in lieu of the permitted 6 ft. (Double Arm Gateway); (3) To permit 2 directional signs of 10.17 ft. in height in lieu of the permitted 6 ft. ("Order Here" Signs); (4) To permit 2 order boards of 6.75 ft. in height in lieu of the maximum permitted 6 ft.; (5) To permit 2 projected directional signs in lieu of the permitted wall-mounted or free standing directional signs ("Window Position Signs" Signs); and (6) To permit 4 stacking spaces behind the order board in lieu of the minimum required 5 stacking spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must submit for approval by Baltimore County landscape and lighting plans for the property.

3. Petitioner must comply with the ZAC comment submitted by the DOP (a copy of which is attached hereto), although Petitioner shall not be required to remove pavement at the rear of the site.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:dlw