

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(5637 Baltimore National Pike)	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Council District	*	ADMINISTRATIVE HEARINGS
Beard Properties, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
McDonald's Corporation, <i>Lessee</i>		
Petitioners	*	<b>Case No. 2017-0089-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 Beard Properties, LLC, legal owner and McDonald's Corporation, lessee ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to approve the amendment of Zoning Case No. 1999-0140-A. In addition, a Petition for Variance seeks: (1) To permit 39 off-street parking spaces in lieu of the required 70 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 4 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 2 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 Petitioners' Exhibit 5.

Professional engineer Geoff Ciniero and Martin Emmer appeared in support of the requests. Caroline L. Hecker, Esq. and Justin Williams, Esq. represented the Petitioners. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received.

The subject property is approximately 1.006 acres in size and is zoned BM-CCC. A McDonald's restaurant has operated at the site since the 1970s. The current building was constructed in 1999, and Petitioners propose to add a second drive-thru lane and related signage. To do so variances are required.

### SPECIAL HEARING

The special hearing request is simply a "housekeeping" matter, in that Petitioners seek to amend a prior zoning Order to reflect the relief granted herein. As such the request will be granted.

### VARIANCES

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).

Petitioners have met this test. The property has irregular dimensions and is bisected by a private access easement, as shown on the plat admitted as Petitioners' Exhibit 3. As such it is unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to construct the proposed improvements. Finally, as demonstrated by the lack of County and/or community opposition, I do not believe granting the requests would have a detrimental impact upon the community. The requested signage is not excessive and is identical to that in place at numerous other McDonald's restaurants in Baltimore County and surrounding areas. With respect to the parking variance, Petitioners submitted a "Parking Survey" prepared by Traffic Concepts, Inc. which noted that a commercial parking lot is considered "full" when 90 percent of the spaces are occupied. Petitioners'

Exhibit 6. Based upon on-site observations during three different time periods, the study concluded that even at peak periods the parking lot occupancy rate at this location would not exceed 80 percent.

THEREFORE, IT IS ORDERED this 8<sup>th</sup> day of December, **2016**, 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 the amendment of Zoning Case No. 1999-0140-A, in accordance with the relief granted below, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance: (1) To permit 39 off-street parking spaces in lieu of the required 70 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 4 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 2 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. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.

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

JEB/sln

\_\_\_\_ Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County