

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(9100-9106 Belair Road)		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
5 <sup>th</sup> Council District		
McDonald's USA, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2017-0298-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by McDonald's USA, LLC, legal owner of the subject property ("Petitioner"). Petitioner is requesting variance relief from the Baltimore County Zoning Regulations ("B.C.Z.R") as follows: (1) § 409.6.A.2 to permit 50 off-street parking spaces in lieu of the required 76 parking spaces; (2) § 409.8.A.4 to permit parking facilities to be setback 7 feet from the right-of- way line of a public street in lieu of the required 10 ft.; (3) § 1B01.1.B.1.(e)(3) to permit clearance and the installation of a storm water management pond (ESD Practice #1) within the 50-foot landscape buffer; (4) § 450.4 to permit 5 wall-mounted enterprise signs on building facades in lieu of the permitted 3 signs; (5) § 450.4 to permit a directional sign of 10.7 feet in height in lieu of the maximum permitted 6 feet ("Drive-Thru" sign); (6) § 450.4 to permit two directional signs of 9.67 feet in height in lieu of the permitted 6 feet ("Order Here" signs); (7) to permit two canopy-type directional signs in lieu of the requirement that such signs be wall-mounted or freestanding ("Welcome" signs); (8) § 450.5.B.3.b to permit the erection of two canopy-type signs above the face of the canopy in lieu of the requirement that the sign be on the face of the canopy ("Welcome" signs); (9) to permit two order boards of 6.75 feet in height in lieu of the maximum permitted 6 feet; and (10) to permit two projected directional signs in lieu of the

requirement that such signs be wall-mounted or freestanding (“Pay Here/Pick Up Here” signs). A site plan was marked as Petitioner’s Exhibit 3.

Iwona Rostek-Zarska, Valek Zarski, and Lee May appeared in support of the petition. Caroline L. Hecker, Esq. and 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), Department of Planning (DOP), and the State Highway Administration (SHA).

The site is approximately 124,524 square feet (2.859 acres) in size and split-zoned B.L/DR 5.5. The site is improved with a McDonald’s restaurant which has operated at the site since 1980. As it has at many locations throughout Baltimore County, Petitioner proposes to raze the existing restaurant and construct in its place a modern, environmentally sensitive structure. The great majority (i.e., 7 of 10) of the variance relief sought pertains to the new signage at the restaurant, which would be in keeping with the signage approved in other cases involving refurbished or rebuilt McDonald’s restaurants.

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).

The property is irregularly shaped and split-zoned. As such it is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct the proposed improvements. Finally, I find that the variances can be granted in

harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the lack of community and/or Baltimore County opposition.

The second variance request seeks approval for a 7 ft. surface parking setback in lieu of the required 10 ft. However, as shown on the plan McDonald's proposes to install a 20 ft. landscape buffer along the Belair Road frontage. Petitioner seeks this variance in case the SHA moves forward with its plan to widen Belair Road, which could result in a loss of 13 ft. of McDonald's property abutting the roadway.

The third variance request seeks relief from the Residential Transition Area (RTA) regulations to allow a micro-bioretenion pond to be installed within the 50 ft. buffer in the DR-1 zone. Having reviewed this request in greater detail I do not believe the RTA regulations are applicable in the first instance. As an initial matter, those regulations apply when the property to be "developed is zoned D.R." B.C.Z.R. § 1B01.1.B.1.b. Here, the commercial building and parking lot are in the B.L. zone. In addition, a bioretention pond is not a "residential transition use" since it is not enumerated among the uses permitted by right or by special exception in the D.R. zones. B.C.Z.R. §§ 1B01.1.B.1.d; 1B01.1.A; and 1B01.1.C. See, People's Counsel v. Surina, 400 Md. 662, 693 (2007) (recognizing stormwater management devices not among uses listed as permitted in Baltimore County's resource conservation zones). As such, this request will be dismissed as unnecessary.

The DOP ZAC comment included a recommendation Petitioner remove from the plan the parking space nearest to Belair Road. Petitioner indicated it would prefer not to remove the space, and advised the dimensions and positioning of the space satisfy all County regulations. As such I will not include this item as a condition in the final order.

THEREFORE, IT IS ORDERED, this 6<sup>th</sup> day of **July, 2017**, by the Administrative Law Judge for Baltimore County that the Petition for Variance as follows: (1) § 409.6.A.2 to permit 50 off-street parking spaces in lieu of the required 76 parking spaces; (2) § 409.8.A.4 to permit parking facilities to be setback 7 feet from the right-of- way line of a public street in lieu of the required 10 ft.; (3) § 450.4 to permit 5 wall-mounted enterprise signs on building facades in lieu of the permitted 3 signs; (4) § 450.4 to permit a directional sign of 10.7 feet in height in lieu of the maximum permitted 6 feet (“Drive-Thru” sign); (5) § 450.4 to permit two directional signs of 9.67 feet in height in lieu of the permitted 6 feet (“Order Here” signs); (6) to permit two canopy-type directional signs in lieu of the requirement that such signs be wall-mounted or freestanding (“Welcome” signs); (7) § 450.5.B.3.b to permit the erection of two canopy-type signs above the face of the canopy in lieu of the requirement that the sign be on the face of the canopy (“Welcome” signs); (8) to permit two order boards of 6.75 feet in height in lieu of the maximum permitted 6 feet; and (9) to permit two projected directional signs in lieu of the requirement that such signs be wall-mounted or freestanding (“Pay Here/Pick Up Here” signs), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from B.C.Z.R. § 1B01.1.B.1(e)(3) to permit clearance and the installation of a storm water management pond (ESD Practice #1) within the 50-foot landscape buffer, be and is hereby DISMISSED WITHOUT PREJUDICE AS UNNECESSARY.

The relief granted herein shall be subject to 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 obtain from SHA an entrance or access permit for the site.

3. Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.
4. Petitioner must submit to Baltimore County elevation drawings showing dumpster enclosure(s), which shall be constructed primarily of brick.
5. The U.S. Route 1/Belair Road access point shall be right turn in – right turn out only, with appropriate signage to alert motorists to this restriction.
6. The landscape buffer along Route 1/Belair Road shall be 20 ft. wide and shall not be reduced (as contemplated by variance request #2) unless and until the SHA widens Belair Road at this location.
7. Interior vehicular circulation around the restaurant structure shall be one-way in a counter-clockwise direction.

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