

**IN RE: PETITION FOR VARIANCE**

SW side of York Road; 225 feet SE of the  
c/l of Fairmount Avenue  
9<sup>th</sup> Election District  
5<sup>th</sup> Councilmanic District  
(934 York Road)

**McDonald’s Corporation**  
*Legal Owner*

\* BEFORE THE  
\* DEPUTY ZONING  
\* COMMISSIONER  
\* FOR BALTIMORE COUNTY  
\* **CASE NO. 2010-0236-A**

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by Jeffrey Bell, Area Construction Manager, on behalf of the legal property owner, McDonald’s Corporation. Variance relief is requested as follows:

- From Section 409.6.A.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit 42 parking spaces in lieu of the required 56 parking spaces; and
- From Section 409.10(B) of the B.C.Z.R. to permit a drive-thru lane to cross the principal pedestrian access to the restaurant; and
- From Section 409.11 of the B.C.Z.R. to allow exclusion of a separate loading area; and
- From Section 409.4(C) of the B.C.Z.R. to permit a one-way 12 foot drive aisle in lieu of the required 16 foot drive aisle.

The subject property and requested relief are more particularly described on the site plan and elevation drawings for the proposed addition, which were marked and accepted into evidence as Petitioner’s Exhibits 2 and 3, respectively.

Appearing at the requisite public hearing in support of the variance requests were Stanley S. Fine, Esquire, and Caroline L. Hecker, Esquire, attorneys for Petitioner McDonald’s Corporation; Jeffrey Bell, Area Construction Manager for McDonald’s Corporation; and Iwona Rostek-Zarska and Walenty Zarski of Baltimore Land Design Group, Inc., the consulting engineers who prepared the site plan for this property. In addition, Mr. Richard Parsons of the

Greater Towson Council of Community Associations attended the hearing as an interested citizen, but did not participate. No Protestants or other interested persons appeared at the hearing.

Testimony and evidence presented at the hearing revealed that the subject property is slightly irregular in shape and consists of approximately 0.711 acre, more or less, zoned B.R. The property is located on the west side of York Road, just north of downtown Towson, in Baltimore County. The area is a mix of commercial retail, fast food restaurants, and automotive service uses. The subject property is improved with an existing McDonald's fast food restaurant with drive-thru service and parking. At this time, McDonald's proposes to construct a 296 square foot addition to the rear of the restaurant in order to add a second drive-thru window. The existing structure was constructed in 1978 and does approximately 65% of its business at the drive-thru, often creating significant queuing problems as cars in the drive-thru lane are frequently stacked all the way to York Road. McDonald's anticipates that the addition of a second drive-thru window and the relocation of the menu board will improve the efficiency of the drive-thru operation and alleviate some of the overflow problems that the site currently experiences. The proposed addition will not increase the seating area or capacity of the restaurant as shown on the floor plan that was marked and accepted into evidence as Petitioner's Exhibit 4. In connection with the proposed addition and relocation of the drive-thru menu board, McDonald's proposes to reconfigure its parking area to create parallel parking spaces along the west side of the property and to relocate the handicap accessible parking spaces from the north side of the property to the east side of the property along York Road to provide a safer means of access to the restaurant. These changes are reflected on the site plan.

In support of its request, Petitioner submitted a letter of support from the Baltimore County Department of Economic Development, as well as email correspondence from Nancy Pivec, President of the Towson Park Community Association, which were marked and accepted into evidence as Petitioner's Exhibits 6 and 7, respectively. Ms. Rostek-Zarska was accepted as an expert in site engineering and testified that the property is unique by virtue of its small size and narrowness, as well as the limitations imposed by the size and location of the existing building. Ms. Rostek-Zarska further testified that the proposed addition could not be constructed if the B.C.Z.R. were strictly applied because the lot cannot accommodate the amount of parking that would be required, as well as a separate loading area, a 16 foot drive aisle, and a principal pedestrian access to the restaurant that does not cross the drive-thru lane. The unique features of the property would therefore create a practical difficulty and prevent the construction of the proposed addition if strict application of the B.C.Z.R. were required.

The existing restaurant has 43 off-street parking spaces. Under the current regulations, however, McDonald's would be required to provide 56 parking spaces on the property to accommodate the fast food restaurant use under Section 409.6.A.2 of the B.C.Z.R. A variance was previously granted for the property in Case No. 98-72-A to reduce the number of required off-street parking spaces from the 69 spaces that would have been required to 50 spaces. McDonald's never implemented that plan, however, and the site continues to have the original 43 parking spaces. With the proposed reconfiguration of the parking area described above, however, the site will ultimately end up with 42 parking spaces, with a net loss of one space. In support of its request for a variance from the off-street parking requirements, McDonald's submitted a parking study conducted by Traffic Concepts, Inc., which was marked and accepted into evidence as Petitioner's Exhibit 5. This study examined the use of the existing McDonald's

parking lot during its peak hours and found that a maximum of 38 cars were parked in the parking lot at any one time. The study therefore concluded that adequate parking exists at this site to accommodate peak demand periods. In addition, this McDonald's does approximately 65% of its business at the drive-thru. With the addition of a second drive-thru window, McDonald's expects to increase the amount of drive-thru business by approximately 5-10%. This increase in drive-thru business would likely lessen the demand for off-street parking.

Petitioner has also requested a variance from Section 409.10(B) of the B.C.Z.R. to permit a drive-thru lane to cross the principal pedestrian access to the restaurant. Due to the small size and narrowness of the lot, as well as the size and location of the existing structure, the principal pedestrian access to the restaurant must cross the drive-thru lane on the north side of the building. This is an existing condition and is not created by the proposed addition. Likewise, Petitioner has requested a variance from Section 409.11 of the B.C.Z.R. to allow exclusion of a separate loading area. This is also an existing condition, as the restaurant currently does not have a designated loading area. Loading operations will continue to occur along the south side of the building during off-peak hours to minimize impact on patrons of the restaurant.

Finally, Petitioner requests a variance from Section 409.4(C) of the B.C.Z.R. to permit a one way 12 foot wide drive aisle in lieu of the required 16 foot drive aisle. The distance between the drive-thru lane and the face of the curb along the north property line is 33 feet. The B.C.Z.R. requires that parking spaces angled at 60 degrees must have a depth of 21 feet. If the angled parking spaces are to comply with this requirement, there will only be 12 feet left for the drive aisle, as the total distance between the drive-thru lane and the face of the curb along the north property line is limited to the existing 33 feet. Ms. Rostek-Zarska testified that the relocation of the menu board as proposed will lengthen the drive-thru lane, and the addition of a second

window will increase the efficiency of the drive-thru operation. As a result, fewer cars will queue along the north side of the property and any traffic conflicts that might occur as a result of the reduced drive aisle width will be minimized. In response to the Zoning Advisory Committee (“ZAC”) comment of the Department of Permits and Development Management, McDonald’s considered parallel parking spaces along the north side of the property, but ultimately determined that this would require a significant reduction in off-street parking and may not successfully alleviate traffic conditions within the parking lot due to the difficulty of parallel parking by customers. In addition, the proposed reconfiguration of the parking area will allow the relocation of the accessible parking spaces from the north side to the east side of the building, which will significantly improve pedestrian traffic and safety between those spaces and the restaurant. McDonald’s has therefore determined that the benefits of reconfiguring the parking area as proposed, including the 12 foot drive aisle, outweigh the potential traffic conflicts that may occur due to the reduced drive aisle width. I agree and find that Petitioner has considered the comments of the Department of Permits and Development Management and that the variance to permit a one-way 12 foot drive aisle in lieu of the required 16 foot drive aisle is appropriate and should be granted.

As to the other ZAC comments, the Office of Planning comment dated April 8, 2010 indicates that Petitioner has agreed to re-landscape the site and has submitted a landscape plan to the Office and Avery Harden to address concerns. The Director of the Office of Planning has also granted a waiver of the Design Review Panel due to the limited nature of the improvements and subsequent to architectural review. The text of the waiver should be placed on the site plan. The Office of Planning supports the requested relief subject to the landscape plan.

After due consideration of the testimony and evidence presented, it is clear that the requested variances meet the standards set forth in Section 307.1 of the B.C.Z.R. The property is unique by nature of its small size, its narrowness, and the limitations imposed by the size and location of the existing structure. These different features of the property drive the need for variance relief, and I find that Petitioner has satisfied its burden at law. The constraints imposed by these features would create a practical difficulty for Petitioner if strict compliance with the B.C.Z.R. were required. I also find that the variance relief can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variance request can be granted in such a manner as to meet the requirements of Section 307.1 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

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 27<sup>th</sup> day of April, 2010 by this Deputy Zoning Commissioner, that Petitioner's Variance requests as follows:

- From Section 409.6.A.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit 42 parking spaces in lieu of the required 56 parking spaces; and
- From Section 409.10(B) of the B.C.Z.R. to permit a drive-thru lane to cross the principal pedestrian access to the restaurant; and
- From Section 409.11 of the B.C.Z.R. to allow exclusion of a separate loading area; and
- From Section 409.4(C) of the B.C.Z.R. to permit a one-way 12 foot drive aisle in lieu of the required 16 foot drive aisle,

be and are hereby **GRANTED**. The relief granted herein shall be subject to the following:

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.
2. Petitioner shall prepare a Landscape Plan for review and approval by the Office of Planning and Avery Harden, Landscape Architect, for the County.
3. Petitioner shall place the text of the approved waiver of the Design Review Panel on the site plan.

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