

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
W side of Dundalk Avenue, 20 feet N of		
the c/l of Sunship Road	*	DEPUTY ZONING
12 <sup>th</sup> Election District		
7 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(2222 Dundalk Avenue)		
	*	FOR BALTIMORE COUNTY
<b>McDonald's Corporation</b>		
<i>Petitioner</i>	*	<b>CASE NO. 2010-0099-A</b>

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by Lee May, Area Construction Manager, for the legal owner of the subject property, McDonald's Corporation. Petitioner is requesting Variance relief as follows:

- From Section 450.4.5.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow 5 enterprise signs on the building facades in lieu of the allowed 3 signs; and
- From Section 450.4.3 of the B.C.Z.R. to allow canopy-type directional signs in lieu of the allowed wall-mounted or free-standing signs; and
- From Section 450.5.8.3.b of the B.C.Z.R. to allow erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy; and
- From Section 409.6.A.2 of the B.C.Z.R. to allow 42 parking spaces in lieu of the required 69 spaces; and
- From Section 409.8.A(1) of the B.C.Z.R. to allow modifications to the landscape standards including:
  - Part II, Standard B.1 to allow landscape strip of 1.0 and 5.5 feet in lieu of the required 10 feet; and
  - Part III, Condition A, Standard #4 to allow landscape strip for commercial interior road adjacent to residential zone or uses of 5.5 feet in lieu of required 10 feet; and
  - Part III, Condition B, Standard #1(c)(2) to not provide the brick or split-face block wall for redevelopment in commercial corridors as an alternative where the minimum 10 foot landscape strip is not feasible; and
  - Part III, Condition B; Standard #2(c) to allow parking lot landscape island width of 5 feet in lieu of the required 9 feet; and

- Part III, Condition H, Standard #2 to allow placement of dumpster enclosure 0 and 5.5 feet from rights-of-way in lieu of the required 10 feet; and
- From Section 409.8.A of the B.C.Z.R. to allow parking spaces from public street right-of-way lines of 0 feet in lieu of the required 10 feet.

The subject property and requested relief are more particularly described on the exterior elevations, landscape plan, signage details, and the Plat to Accompany Zoning Petition (“site plan”), which were marked and accepted into evidence as Petitioner’s Exhibits 4, 5, 6, 7, and 13, 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 McDonald’s; Christopher Mann, owner-operator of the existing McDonald’s at the subject location; Lee May, Area Construction Manager for McDonald’s Corporation; Iwona Rostek-Zarska and Walenty Zarski with Baltimore Land Design Group, Inc., the consulting engineers who prepared the site plan for this property; and George Wischhusen, President of the St. Helena Neighborhood Association. In addition, Christopher McCollum with the Baltimore County Department of Economic Development appeared in support of the Petition. No Protestants or other interested persons appeared at the hearing.

Testimony and evidence presented at the hearing revealed that the subject property is triangular-shaped and consists of approximately 37,341 square feet or 0.857 acre, more or less, zoned B.L. The property is located on the west side of Dundalk Avenue just south of that road’s intersection with Willow Spring Road in the Dundalk area of Baltimore County. The property also has road frontage to the south on Sunship Road. As depicted in the Existing Conditions sheet that was marked and accepted into evidence as Petitioner’s Exhibit 1 and a series of photographs that were marked and accepted into evidence as Petitioner’s Exhibits 2A through 2M, the property is presently improved with an existing one-story building consisting of 3,826

square feet (including a 750 square foot basement) that comprises a McDonald's fast food restaurant. The existing structure opened for business in June of 1972. Having operated continuously since that time, the existing restaurant has become operationally inadequate and out-of-date. At this juncture, McDonald's proposes to demolish the existing restaurant and rebuild a new restaurant in its place. The proposed structure would be located in approximately the same location as the existing structure, which is shown on the Proposed Conditions Sheet that was marked and accepted into evidence as Petitioner's Exhibit 3, and would be a modern facility that would operate more efficiently than the current restaurant. Elevations illustrating the proposed structure were marked and accepted into evidence as Petitioner's Exhibits 4 and 5 and show McDonald's newer, modern appearance. Mr. May, Area Construction Manager for McDonald's Corporation, testified that the new structure would have a contemporary, upscale look, with a "café" style interior customer area decorated with tasteful colors and materials. The structure would have a brick exterior, and the mansard roof with the traditional white beams would be removed. The structure would also include a variety of "green building" features, including a high-efficiency HVAC system, a ThermoPlastic Olefin (TPO) reflective roof, awnings to reduce solar heat gain, masonry walls, and two-speed grill exhausts, among others. The new building would also be entirely ADA compliant.<sup>1</sup>

Ms. Rostek-Zarska was accepted as an expert in site engineering, and testified that the small size and irregular shape of the lot are unique and impose restraints on the proposed new construction that would create a practical difficulty and prevent the construction of the new restaurant if strict application of the B.C.Z.R. were required. In fact, even if McDonald's

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<sup>1</sup> The Americans with Disabilities Act of 1990 ("ADA") is a wide-ranging civil rights law that prohibits, under certain circumstances, discrimination based on disability. As part of its provisions, it requires that all "new construction" (construction, modification or alterations) after the effective date of the ADA (approximately July 1992) must be fully compliant with the Americans With Disabilities Act Accessibility Guidelines ("ADAAG") found in the Code of Federal Regulations at 28 C.F.R., Part 36, Appendix "A."

proposed to rebuild an identical building in the same location as the existing one, the same variances would be required because the requirements of the B.C.Z.R. have changed since 1972 when the existing building was constructed. The existing building includes a drive-thru lane that was added after the building was constructed. As a result, the stacking lane for the drive-thru extends into the parking area for the restaurant, creating interior circulation conflicts between vehicles that are in line for the drive-thru and those attempting to enter or leave parking spaces. The new building would therefore be situated in such a way that the stacking lane for the drive-thru will wrap around the building and remain clear of the parking area.

Ms. Rostek-Zarska also identified the loading area for the restaurant at the rear of the drive-thru lane and testified that loading operations will occur during off-peak hours to avoid interfering with the stacking spaces in the drive-thru lane. As a result, no variance is required for the restaurant's loading area. Finally, Ms. Rostek-Zarska testified that a pedestrian crosswalk would be provided between the tenth and eleventh stacking spaces in the drive-thru lane to provide access between the restaurant and the parking area along the Willow Spring Road side of the property.

Section 409.6.A.2 would require McDonald's to provide 69 parking spaces on the property to accommodate the fast-food restaurant use. McDonald's currently provides 55 spaces. 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 9. This study examined the use of the existing McDonald's parking lot during its peak hours, and found that a maximum of 29 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 currently does approximately 54% of its business at the drive-thru. Mr. Mann, owner-operator of the existing

McDonald's at this location, testified that with the more efficient new restaurant, he expects an increase in the amount of drive-thru business to approximately 65%. This increase in drive-thru business would lessen the demand for off-street parking. McDonald's also seeks a variance under Section 409.8.A of the B.C.Z.R. to permit parking spaces 0 feet from public street right-of-way lines in lieu of the required 10 feet, which would permit the maximum amount of parking to be constructed on site. Finally, McDonald's is working with Baltimore County to construct an additional nine (9) parking spaces on Willow Spring Road. These additional spaces, while not on the McDonald's site, would provide additional parking both for McDonald's patrons and the surrounding community.

Petitioner has also requested several variances to the landscape standards established under the Baltimore County Landscape Manual. In particular, McDonald's seeks variances under Section 409.8.A(1) of the B.C.Z.R. to permit modifications to the landscape standards as follows: Part II, Standard B.1 to allow landscaped strips of 1.0 and 5.5 feet in lieu of the required 10 feet; Part III, Condition A, Standard #4 to permit a landscaped strip for a commercial interior road adjacent to residential zones or uses of 5.5 feet in lieu of the required 10 feet; Part III, Condition B, Standard #1(c)(2) to not provide the brick or split-face block wall for redevelopment in commercial corridors as an alternative where the minimum 10-foot landscape strip is not feasible; Part III, Condition B, Standard #2(c) to allow a parking lot landscape island width of 3.5 feet in lieu of the required 9 feet; and Part III, Condition H, Standard #2 to allow placement of dumpster enclosure 0 and 5.5 feet from rights-of-way in lieu of the required 10 feet. Neither the existing restaurant nor the proposed new restaurant could meet these standards in light of the small size and irregular shape of the property.

Finally, Petitioner seeks variances from Section 450.4.5.A of the B.C.Z.R. to permit 5 enterprise signs on building facades in lieu of the permitted 3 signs; from Section 450.4.3 of the

B.C.Z.R. to permit a “canopy” style directional sign in lieu of the permitted wall-mounted or free-standing sign; and from Section 450.5.B.3.b of the B.C.Z.R. to permit the erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy. These signs are McDonald’s standard signage plan, and the restaurant at this location would deviate from the standard style of other McDonald’s restaurants if the proposed signs were not permitted.

The Office of Planning issued a Zoning Advisory Committee (“ZAC”) comment expressing several concerns relating to the Dundalk Avenue elevation of the proposed building, landscaping, and pedestrian access. In response to these comments, Petitioner has revised the Dundalk Avenue elevation to add two simulated windows made of spandrel glass, and has submitted a three dimensional elevation and landscape plan to the Office of Planning. These items were also submitted at the hearing and marked and accepted into evidence as Petitioner’s Exhibits 5 and 6. In addition, Petitioner submitted letters of support from the Dundalk Renaissance Corporation, St. Helena Neighborhood Association, and Old Dundalk Neighborhood Association, which were marked and accepted into evidence as Petitioner’s Exhibits 10, 11, and 12, respectively, indicating that they have reviewed the proposal and support the granting of the requested variances to permit the construction of the new restaurant. It appears that the revised elevations and landscape plan address the concerns raised in the ZAC comment, but Planning’s recommendations shall still be incorporated as conditions in this Order.

Considering all the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. The property is unique by nature of its small size and irregular, triangular shape. The property also has frontage on three public roads. These different features of the property pinch the available building area and drive the need for variance relief, and I find that Petitioner has satisfied its burden at law. The constraints

imposed by these features would also create a practical difficulty and undue hardship for Petitioner if strict compliance with the B.C.Z.R. were required.

Finally, I 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 requests 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 by Petitioner, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 23<sup>rd</sup> day of December, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance relief requests as follows:

- From Section 450.4.5.A of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow 5 enterprise signs on the building facades in lieu of the allowed 3 signs; and
- From Section 450.4.3 of the B.C.Z.R. to allow canopy-type directional signs in lieu of the allowed wall-mounted or free-standing signs; and
- From Section 450.5.8.3.b of the B.C.Z.R. to allow erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy; and
- From Section 409.6.A.2 of the B.C.Z.R. to allow 42 parking spaces in lieu of the required 69 spaces; and
- From Section 409.8.A(1) of the B.C.Z.R. to allow modifications to the landscape standards including:
  - Part II, Standard B.1 to allow landscape strip of 1.0 and 5.5 feet in lieu of the required 10 feet; and
  - Part III, Condition A, Standard #4 to allow landscape strip for commercial interior road adjacent to residential zone or uses of 5.5 feet in lieu of required 10 feet; and

- Part III, Condition B, Standard #1(c)(2) to not provide the brick or split-face block wall for redevelopment in commercial corridors as an alternative where the minimum 10 feet landscape strip is not feasible; and
- Part III, Condition B; Standard #2(c) to allow parking lot landscape island width of 5 feet in lieu of the required 9 feet; and
- Part III, Condition H, Standard #2 to allow placement of dumpster enclosure 0 and 5.5 feet from rights-of-way in lieu of the required 10 feet; and
- From Section 409.8.A of the B.C.Z.R. to allow parking spaces from public street right-of-way lines of 0 feet in lieu of the required 10 feet,

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

1. Petitioner may apply for its 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. Elevation drawings shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit.
3. Petitioner shall provide landscaping to screen the parking and drive through lanes.
4. Pedestrian access shall be provided from both Dundalk Avenue and Willowspring Road.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz