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| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE |
| 2 nd Election District | | |
| 4 th Councilmanic District | * | OFFICE OF |
| (8227 Liberty Road) | | |
| McDonald's Corporation | * | ADMINISTRATIVE HEARINGS |
| Petitioner | * | FOR BALTIMORE COUNTY |
| | * | CASE NO. 2013-0113-SPHA |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by Lee May, Area Construction Manager, for McDonald's Corporation ("McDonald's"), the owner of the real property known as 8227 Liberty Road (the "Property"). Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

1. Off-Street Parking

- 1.1 Section 409.6.A.2 to permit 49 parking spaces in lieu of the required 68 spaces.
- 1.2 Section 409.8.B.2.c to permit drive-thru lanes, dumpster, and ESD practices where only passenger vehicles are allowed.
- 1.3 Section 409.8.A (1) to permit modifications to landscape manual standards outlined below.
- 1.4 Section 1B01.1.B.1. (e)(5) to permit a 0' buffer and a 6' setback in lieu of the required 50' buffer and 75' setback in a Residential Transition Area.

2. BL-AS Zone Area Regulations

- 2.1 Section 303.2 to permit 43.5' front yard depth in lieu of required 58.9' front yard depth (average front yard depth of existing buildings on adjacent lots is 58.9').

3. Signage Regulations

- 3.1 Section 450.4 Attachment 1, 5(a) (VI) to permit 6 wall-mounted enterprise signs on the building facades in lieu of the permitted 3 signs (Sign #4 and #5).

- 3.2 Section 450.4 Attachment 1, 3(b) (VII) to permit a directional sign of 10.7 ft. in height in lieu of the permitted 6 ft. (sign#1).
- 3.3 Section 450.4 Attachment 1, 3(b) (VII) to permit two directional signs of 9.71 ft. in height in lieu of the permitted 6 ft. (sign #2).
- 3.4 Section 450.4 Attachment 1, 3(II) to permit two canopy-type directional signs in lieu of the permitted wall-mounted or free-standing sign (Sign #3).
- 3.5 Section 450.5.B.3.b to permit erection of the signs above the face of the canopy in lieu of on the face of the canopy (Sign #3).
- 3.6 Section 450.4 Attachment 1, 5(b) (V) to permit a free-standing enterprise sign having a face of 93 sq. ft. in lieu of the permitted 75 sq. ft. (Sign #6).
- 3.7 Section 450.4 Attachment 1, 5(f) (VII) to permit two order boards of 6.75 feet in height in lieu of the permitted 6 feet (Sign #7).

4. Landscape Manual Standards

- 4.1 Part III (Requirements for Project Conditions), Condition B (Parking Lots), Standard #1(b) to allow a four (4) foot landscape strip in lieu of the required six (6) feet.
- 4.2 Part III (Requirements for Project Conditions), Condition B (Parking Lots), Standard #1©(2) to permit the exclusion of the required 10-foot minimum landscape strip or a brick or split face block wall where the minimum 10-foot landscape strip is not feasible.
- 4.3 Part III (Requirements for Project Conditions), Condition F (Service Lanes), Standard #2 to permit 3.7 feet of landscaping in lieu of the required 6 feet.
- 4.4 Part III (Requirements for Project Conditions), Condition F (Service Lanes), Standard #3(b) to permit the exclusion of the required 10-foot minimum landscape strip or a brick or split face block wall where the minimum 10-foot landscape strip is not feasible.

A Petition for Special Hearing was also filed, seeking approval for using land in a residential zone for parking serving a business use.

The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Lee May, Area Construction Manager for McDonald's Corporation, Iwona Rostek-Zarska of Baltimore Land Design Group, Inc., the consulting engineer who prepared the site plan for the Property, and Stanley S. Fine, Esquire, and Caroline Hecker, Esquire, attorneys for Petitioner. No Protestants attended the hearing, nor were any letters of protest or objection received by this Office. Peter Zimmerman, People's Counsel for Baltimore County, attended the hearing, primarily to comment upon an earlier iteration of this case (#2013-006-SPHA) that sought to construct the planned improvements under a "grandfathering" theory. That case remains pending, although Petitioners filed the present case which involves the same improvements to the restaurant, but does so as a Petition seeking Variance and Special Hearing relief.

The case proceeded by proffer, and revealed that the Property is approximately 1.167 acres in size, and is zoned BL-AS, DR 5.5 & DR 16. The McDonald's restaurant was constructed in 1967, and is now deficient in many respects. Petitioners propose to raze this structure and construct a new restaurant on site, with dual drive through lanes and a variety of environmentally sensitive features. The project will involve a \$2.42 million investment, and Petitioners will start construction in June 2013 if they receive the requisite approvals.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

The Petitioner is making a significant investment in the community, and the elevation drawings (admitted as Petitioner's Exhibit 4) reveal that this will be a handsome structure that will improve the look of the area. As noted in the Department of Planning's (DOP) ZAC comment, the site is "small and irregularly shaped." These unique conditions would cause Petitioner to experience practical difficulty or unreasonable hardship if the B.C.Z.R. was strictly enforced, since Petitioner would be unable to construct the planned improvements and position its signage in such a way so as to catch the attention of passing motorists, which is, after all, the purpose of signs.

Finally, I find that the variance 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 county opposition. In fact, the Liberty Road Business Association expressed its support for the project and indicated it looked "forward to the newly constructed McDonald's at the corner of Liberty Road and Rolling Road" (Exhibit 6).

As noted, the Special Hearing request seeks approval for commercial parking in a residential zone. The parking lot at issue has been in place for over forty years, and there was no evidence or indication that the use has had a negative impact upon the community. The parking lot is buffered from adjoining sites by vegetation, and the Petitioner, as shown on the landscape plan approved by Baltimore County (Exhibit 7) will in fact be providing additional landscaping and reducing slightly (See Exhibits 8A and 8B) the size of the parking lot. In these circumstances, the Special Hearing relief seems appropriate.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 9th day of January, 2013 by this Administrative Law Judge that Petitioner's Variance request from the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

1. Off-Street Parking

- 1.1 Section 409.6.A.2 to permit 49 parking spaces in lieu of the required 68 spaces.
- 1.2 Section 409.8.B.2.c to permit drive-thru lanes, dumpster, and ESD practices where only passenger vehicles are allowed.
- 1.3 Section 409.8.A (1) to permit modifications to landscape manual standards outlined below.
- 1.4 Section 1B01.1.B.1. (e)(5) to permit a 0' buffer and a 6' setback in lieu of the required 50' buffer and 75' setback in a Residential Transition Area.

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- 4.4 Part III (Requirements for Project Conditions), Condition F (Service Lanes), Standard #3(b) to permit the exclusion of the required 10-foot minimum landscape strip or a brick or split face block wall where the minimum 10-foot landscape strip is not feasible.

be and are hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Special Hearing relief, to permit the use of land in a residential zone as parking serving a business use, be and hereby is GRANTED, subject to the following:

1. Petitioner may apply for 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 dismiss, without prejudice, the Petition filed in #2013-0006-SPHA within 45 days of the date hereof, provided an appeal is not filed in the present case.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln