

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(7309 McClean Blvd.)	*	OFFICE OF
9 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
AMCB Perring, LLC, c/o Acadia		
Realty Trust, <i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
McDonald's USA, LLC, <i>Lessee</i>		
Petitioners	*	Case No. 2013-0319-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Caroline L. Hecker, Esquire with Rosenberg, Martin, Greenberg, LLP, on behalf of AMCB Perring, LLC, the legal owners, and McDonalds USA, LLC, Lessee, (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit a freestanding enterprise sign within an existing shopping center pad site (McDonald's) on a frontage without road access (Sign H on Plat to Accompany Zoning Petition). In addition, a Petition for Variance was filed as follows: (1) pursuant to § 450.4 Attachment 1.5(a)(VI) of the B.C.Z.R., to permit five (5) wall-mounted enterprise signs on the building facades in lieu of the permitted three (3) signs (Signs A & B on Plat to Accompany Zoning Petition); (2) pursuant to § 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 10.67 ft. in height in lieu of the permitted 6 ft. (Sign C on Plat to Accompany Zoning Petition); (3) pursuant to §450.4 Attachment 1, 3(b)(VII) to permit two (2) directional signs of 11.2 ft. in height in lieu of the permitted 6 ft. (Sign D on Plat to Accompany Zoning Petition); (4) pursuant to §450.4 Attachment 1, 3(a) to permit one (1) canopy-type directional sign in lieu of the permitted wall-mounted or freestanding sign (Sign E on Plat to Accompany Zoning Petition); (5) pursuant to §450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of on the face canopy (Sign E on Plat to Accompany

Zoning Petition); (6) ¹pursuant to §450.4 Attachment 1, 5(f)(VII) to permit (2) two free-standing order boards of 6.75 feet in height in lieu of the permitted 6 feet (Sign F on Plat to Accompany Zoning Petition); and (7) pursuant to §450.4 Attachment 1.3(a) to permit two (2) projected directional signs in lieu of the two (2) wall-mounted or free-standing directional signs (Sign G on Plat to Accompany Zoning Petition). The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the requests from McDonald's were Scott Rardin, Owner/Operator of 7309 McClean Blvd., and Jeff Bell, Area Construction Manager. Also in appearance was Robert Goldman, Architect with Chesapeake Design Group. Caroline Hecker, Esquire and Eric Kunimoto, Esquire, both with Rosenberg, Martin and Greenberg, LLP, appeared and represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the file does not contain any letters of protest or opposition.

There were no Zoning Advisory Committee (ZAC) comments received.

The subject property is zoned BM-CCC, and is improved with a McDonald's restaurant which has been at this location since 1986. As with other locations in the County, the Petitioners have constructed a more modern restaurant facility, and propose to install a new sign package, which requires variance relief.

Before addressing the variance requests, the Petitioners seek special hearing relief to erect at the site a freestanding enterprise sign. Although the McDonald's is technically part of the overall Parkway Crossing Shopping Center, it is at the same time situated on a "pad site" lot that is separated from the main portion of the center by internal roads and curbs. Simply put, the site

¹ Counsel withdrew at the hearing variance request #6 pertaining to the order boards.

has the look and appearance of an individual business enterprise; indeed, the McDonald's is in no way identified on the large freestanding joint enterprise sign at the entrance of this shopping center. As such, I believe the Petition for Special Hearing should be granted.

Based on the evidence presented, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, the pad site is small and mature and dense trees and vegetation along Perring Parkway limit visibility into the site. Thus, the property is unique.

I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship, given that Petitioners would be unable to install the proposed signage. 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 absence of opposition from the community and County reviewing agencies.

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

THEREFORE, IT IS ORDERED this 4th day of September, 2013, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit a freestanding enterprise sign within an existing shopping center pad site (McDonald's) on a frontage without road access (Sign H on Plat to Accompany Zoning Petition), be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request as follows: (1) pursuant to § 450.4 Attachment 1.5(a)(VI) of the B.C.Z.R., to permit five (5) wall-mounted enterprise signs on the building facades in lieu of the permitted three (3) signs (Signs A & B on Plat to Accompany Zoning Petition); (2) pursuant to § 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 10.67 ft. in height in lieu of the permitted 6 ft. (Sign C on Plat to Accompany Zoning Petition); (3) pursuant to §450.4 Attachment 1, 3(b)(VII) to permit two (2) directional signs of 11.2 ft. in height in lieu of the permitted 6 ft. (Sign D on Plat to Accompany Zoning Petition); (4) pursuant to §450.4 Attachment 1, 3(a) to permit one (1) canopy-type directional sign in lieu of the permitted wall-mounted or freestanding sign (Sign E on Plat to Accompany Zoning Petition); (5) pursuant to §450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of on the face canopy (Sign E on Plat to Accompany Zoning Petition); and (6) pursuant to §450.4 Attachment 1.3(a) to permit two (2) projected directional signs in lieu of the two (2) wall-mounted or free-standing directional signs (Sign G on Plat to Accompany Zoning Petition), be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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

JEB/dlw

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County