

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(3950 & 3954 Northpoint Blvd.)		
15 th Election District	*	OFFICE OF
7 th Councilmanic District		
Golden Arch Realty/Mann Holding	*	ADMINISTRATIVE HEARINGS
Company, LLC/ <i>Legal Owner</i>		
McDonald's USA, LLC/ <i>Lessee</i>	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0105-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Variance filed by Caroline L. Hecker, Esquire, of Rosenberg, Martin, Greenberg, LLP, on behalf of McDonald's Corporation and Golden Arch Realty Corp. ("Petitioners"). The Variance was filed pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") as follows:

Off-Street Parking:

1. Section 409.6.A.2 to permit 58 parking spaces in lieu of the required 74 spaces.

Signage Regulations:

1. Section 405.4 Attachment 1, 5(a) (VI) to permit 6 wall-mounted enterprise signs on the building facades in lieu of the permitted 3 signs (Signs #3 and #4 on Plat to Accompany Zoning Petition).
2. Section 450.4 Attachment 1, 3(a) (VII) to permit a directional sign of 10.7 ft. in height in lieu of the permitted 6 ft. (Sign #1 on Plat to Accompany Zoning Petition).
3. Section 450.4 Attachment 1, 3(a) (VII) to permit two directional signs of 9.67 ft. in height in lieu of the permitted 6 ft. (Sign #2 on Plat to Accompany Zoning Petition).
4. Section 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or freestanding signs (Sign #5 on Plat to Accompany Zoning Petition).
5. Section 450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of on the face of the canopy (Sign #5 on Plat to Accompany Zoning Petition).

6. Section 450.4 Attachment 1, 5(f)(VII) to permit two permit two order boards of 6.75 feet in height in lieu of the permitted 6 feet (Sign #7 on Plat to Accompany Zoning Petition)

7. Section 450.4 Attachment 1.3(II) to permit two (2) projected directional signs in lieu of the permitted wall-mounted or free standing directional signs (Sign #6 on Plat to Accompany Zoning Petition).

Appearing at the public hearing in support of the requests was Lee May, Christopher Mann and Iwona Zarska from Baltimore Land Design Group, Inc., the firm which prepared the site plan. Caroline Hecker, Esquire, and Eric Kunimoto, Esquire appeared as counsel and represented the Petitioners. The file reveals that the Petition was properly posted and advertised 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. In fact, the Wells-McComas community association submitted a letter of “unanimous support” for the project. Exhibit 10.

Substantive Zoning Advisory Committee (ZAC) comments were received from State Highway Administration (SHA) dated November 15, 2013, Bureau of Development Plans Review (DPR) dated November 20, 2013, and the Department of Environmental Protection and Sustainability (DEPS), dated January 17, 2014. The SHA noted an access permit will be required, while DPR will require a landscape plan. The DEPS indicated Petitioners must comply with the Critical Area regulations.

The subject property is approximately 1.398 acres and is zoned BR-AS and ML-IM. The Petitioners have operated a McDonald’s restaurant at the premises for forty years. Petitioners proposes to raze the existing structure and construct in its place a modern facility, as shown in the elevation drawings marked as Exhibit 7. The zoning relief sought pertains to the sign package and off street parking, and counsel noted that similar requests have been granted for eighteen (18) other McDonald’s locations in the County.

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). As Ms. Zarska testified (via proffer), the property is irregularly shaped, and the site is also constrained by environmental features which dictate somewhat the available building envelope.

The Petitioners would experience a practical difficulty if relief were denied, given they would be unable to install the proposed signage, which is in place at 18 other McDonald's locations in the County.

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 County and/or community opposition.

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

THEREFORE, IT IS ORDERED this 27th day of January, 2014, by the Administrative Law Judge that the Petition for Variance filed pursuant to B.C.Z.R. as follows:

Off-Street Parking:

1. Section 409.6.A.2 to permit 58 parking spaces in lieu of the required 74 spaces.

Signage Regulations:

1. Section 405.4 Attachment 1, 5(a) (VI) to permit 6 wall-mounted enterprise signs on the building facades in lieu of the permitted 3 signs (Signs #3 and #4 on Plat to Accompany Zoning Petition).
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3. Section 450.4 Attachment 1, 3(a) (VII) to permit two directional signs of 9.67 ft. in height in lieu of the permitted 6 ft. (Sign #2 on Plat to Accompany Zoning Petition).

4. Section 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or freestanding signs (Sign #5 on Plat to Accompany Zoning Petition).
5. Section 450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of on the face of the canopy (Sign #5 on Plat to Accompany Zoning Petition).
6. Section 450.4 Attachment 1, 5(f)(VII) to permit two permit two order boards of 6.75 feet in height in lieu of the permitted 6 feet (Sign #7 on Plat to Accompany Zoning Petition)
7. Section 450.4 Attachment 1.3(II) to permit two (2) projected directional signs in lieu of the permitted wall-mounted or free standing directional signs (Sign #6 on Plat to Accompany Zoning Petition),

be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for 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.
2. Petitioners must comply with the ZAC comments of the SHA (dated 11-15-2013), DPR (dated 11-20-2013) and DEPS (dated 1-17-2014).

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