

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E side of Belair Road, SE corner		
of Rossville Blvd. and Belair Road	*	OFFICE OF ADMINISTRATIVE
(7927 Belair Road)		
14 th Election District	*	HEARINGS FOR
6 th Council District		
	*	BALTIMORE COUNTY
McDonald's Corporation		
<i>Petitioner</i>	*	CASE NO. 2011-0343-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by the lessee of the subject property, McDonald's Corporation ("McDonald's" or "Petitioner"), through its attorneys, Stanley S. Fine, Esquire, and Caroline L. Hecker, Esquire, for the property located at 7927 Belair Road. The Petitioner requests relief from the following sections of the Baltimore County Zoning Regulations (B.C.Z.R.):

- Section 409.6.A.2 to permit 46 parking spaces in lieu of the required 64 parking spaces;
- Section 409.10(B) to permit the drive-thru lane to block entry to or exit from off-street parking spaces and to cross principal pedestrian access to the restaurant;
- Section 409.11 to permit exclusion of a separate loading area;
- 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;
- Section 450.4 Attachment 1, 3(VII) to permit a directional sign of 10.7 feet in height in lieu of the permitted 6 feet;
- Section 450.4 Attachment 1, 3(VII) to permit a directional sign of 9.71 feet in height in lieu of the permitted 6 feet;
- Section 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free-standing sign; and
- Section 450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy.

The subject property and requested relief are more particularly described on the Plat to Accompany Zoning Petition and the color sign elevation drawings which were accepted into evidence as Petitioner's Exhibits 3 and 4, respectively.

Appearing at the public hearing in support of the request were Caroline L. Hecker, Esquire, attorney for McDonald's; Jerry Rush, owner-operator of the existing McDonald's at the subject location; Lee May, Area Construction Manager for McDonald's Corporation; and Iwona Rostek-Zarska of Baltimore Land Design Group, Inc., the engineer who prepared the site plan for this property. No protestants or other interested persons appeared at the hearing.

Testimony and evidence presented at the hearing discloses that McDonald's is the current lessee of a pad site in the Fullerton Plaza Shopping Center, which is owned by FP SUB, LLC. The existing structure is a modular building which has become operationally inadequate and, as a result, McDonald's proposes to demolish the existing structure and rebuild a new restaurant in its place. The proposed structure will be approximately 736 square feet larger than the existing structure to accommodate an enlarged kitchen, storage area, and restroom facilities. The proposed restaurant will seat approximately 70 patrons, whereas the existing restaurant seats approximately 60 patrons.

Ms. Rostek-Zarska was accepted as an expert in site engineering and testified that the unique size, shape and topographical conditions of the site impose certain constraints on the proposed construction that make the requested variances necessary. The existing McDonald's, shown on the ALTA survey and photographs submitted by Petitioner (Petitioner's Exhibits 1 and 2, respectively), is located in the Fullerton Plaza Shopping Center at the intersection of Belair Road and Rossville Boulevard, and is adjacent to an IHOP restaurant that is also part of the shopping center. Due to a significant grade change along Belair Road, the McDonald's restaurant

is situated lower than the portion of Belair Road that it is adjacent to, and only the red mansard roof of the existing McDonald's is visible to traffic on Belair Road approaching the restaurant from the south. In addition, the proximity of the existing IHOP restaurant adjacent to the McDonald's site further limits the development of the McDonald's site. As a result of these unique conditions, it would be impossible to design the site in a manner that would accommodate the required number of parking spaces, provide a separate loading area for the restaurant, or prevent the drive-thru lane from crossing a principal pedestrian path to the restaurant or from blocking entry to or exit from off-street parking spaces. In addition, these unique features necessitate the requested signage variances.

Section 409.6.A.2 of the B.C.Z.R. would require McDonald's to provide 64 parking spaces on the property to accommodate the fast-food restaurant use. McDonald's currently provides 52 off-street parking spaces at this location. 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. (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 35 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. McDonald's currently does approximately 67% of its business at this location through the drive-thru window, and Jerry Rush, the owner and operator of this McDonald's, testified that he expects the percentage of drive-thru business to remain at this level when the new restaurant is constructed. To the extent that demand ever exceeds the parking capacity of the McDonald's pad site, there is ample additional parking available in the Shopping Center's parking lot to serve that demand. Moreover, several bus lines serve this corridor of Belair Road, and many of McDonald's employees take public transportation to work, lessening the

demand for off-street parking. As a result, the proposed reduction in off-street parking to 46 spaces is expected to be sufficient to accommodate the demands of the restaurant.

Likewise, Petitioner requested variances from Section 409.10(B) to permit the drive-thru lane to block entry to or exit from off-street parking spaces and to cross principal pedestrian access to the restaurant, and from B.C.Z.R. Section 409.11 to allow exclusion of a separate loading area. These are existing conditions, as the drive-thru lane currently blocks access to off-street parking spaces and crosses a principal pedestrian route to the restaurant, and the restaurant currently does not have a designated loading area. Loading operations will continue to occur along the side of the building during off-peak hours to minimize impact on patrons of the restaurant.

Petitioner also seeks variances from B.C.Z.R. Section 405.4 Attachment 1, 5(a)(VI) to permit six (6) wall-mounted enterprise signs on building facades in lieu of the permitted three (3) signs; from B.C.Z.R. Section 450.4 Attachment 1, 3(VII) to permit a directional sign of 10.7 feet in height in lieu of the permitted 6 feet; B.C.Z.R. Section 450.4 Attachment 1, 3(VII) to permit a directional sign of 9.71 feet in height in lieu of the permitted 6 feet; B.C.Z.R. Section 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free-standing sign; and B.C.Z.R. Section 450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy. The visibility of the site to motorists traveling along Belair Road is obstructed by the grade change along the side of Belair Road as well as by the many other commercial establishments located along this portion of Belair Road. As a result, these variances are necessary in order for the restaurant to be visible to passersby and in order to safely direct traffic in and around the McDonald's pad site. In addition, 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.

After due consideration of the testimony and evidence presented, it is clear that the requested variances meet the standards set forth in B.C.Z.R. § 307. The Property is unique by virtue of its small size, irregular shape, and the topographic conditions along Belair Road. In light of these unique features of the Property, I find that the Petitioner has satisfied its burden at law. The constraints imposed by these features would create a practical difficulty for the Petitioner if strict compliance with the provisions of the B.C.Z.R. were required. I further find that the relief requested meets the spirit and intent of the B.C.Z.R, and I will therefore grant the requested variances.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE IT IS ORDERED this 19 day of July, 2011 that the Petition for Variance as follows:

- Section 409.6.A.2 to permit 46 parking spaces in lieu of the required 64 parking spaces;
- Section 409.10(B) to permit the drive-thru lane to block entry to or exit from off-street parking spaces and to cross principal pedestrian access to the restaurant;
- Section 409.11 to permit exclusion of a separate loading area;
- 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;
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- Section 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free-standing sign; and
- Section 450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy,

all as shown on Petitioner's Exhibits 4 and 5, be and are hereby GRANTED, subject to the following:

1. Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the thirty (30) day Appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner 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.

Signed _____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz