

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/S Martin Boulevard; 100' W of		
c/l of Middle River Road	*	OFFICE OF ADMINISTRATIVE
(1472 Martin Boulevard)		
15 th Election District	*	HEARINGS FOR
6 th Council District		
	*	BALTIMORE COUNTY
Martin Financial Associated, LLLP		
<i>Legal Owner</i>	*	
McDonald's Corporation		
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2012-0077-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 USA, LLC ("McDonald's" or "Petitioner"), through its attorneys, Stanley S. Fine, Esquire, and Caroline L. Hecker, Esquire, for the property located at 1472 Martin Blvd. The Petitioner requests relief from the following sections of the Baltimore County Zoning Regulations ("B.C.Z.R."):

- 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; and
- 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.; and
- Section 450.4 Attachment 1, 3(b)(VII) to permit two (2) directional signs of 9.71 ft. in height in lieu of the permitted 6 ft.; and
- 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 submitted and the color sign elevation drawings which were accepted into evidence as Petitioner's Exhibits 1 and 3, respectively.

Appearing at the requisite public hearing in support of the request were Caroline L. Hecker, Esquire, attorney for McDonald's; 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 Martin Plaza Shopping Center, which is owned by Martin Financial Associated Limited Partnership. The existing structure is over 30 years old and has become operationally inadequate. As a result, McDonald's has demolished the existing structure and is rebuilding a new restaurant in its place. The new structure will be approximately 500 sq. ft. smaller than the former structure, as it will not have a basement. In addition, the new restaurant will have approximately 78 seats, whereas the former restaurant had approximately 95 seats.

Ms. Rostek-Zarska was accepted as an expert in site engineering and testified that the unique size and shape of the site impose certain constraints on the proposed construction that make the requested variances necessary. The McDonald's site, shown on the photographs submitted by Petitioner (Petitioner's Exhibit 2), is located in the Martin Plaza Shopping Center at the intersection of Martin Boulevard and Middle River Road. Although the site fronts on two busy streets, it does not have direct access to either one. Rather, patrons must enter the Martin Plaza Shopping Center in order to reach the McDonald's site. Ms. Zarska testified that the small size and irregular shape of the McDonald's pad site, and the fact that it is located at an intersection with frontage on two busy streets, make this property unique. Due to these unique features of the site, the requested signage variances are necessary in order to identify the McDonald's restaurant to passing motorists and to safely direct traffic in and around the site.

Petitioner 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(b)(VII) to permit a directional sign of 10.7 ft. in height in lieu of the permitted 6 ft.; B.C.Z.R. Section 450.4 Attachment 1, 3(b)(VII) to permit two (2) directional signs of 9.71 ft. in height in lieu of the permitted 6 ft.; 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. Although the site is located at the busy intersection of Martin Boulevard and Middle River Road, patrons must enter the Martin Plaza Shopping Center parking lot in order to access the site as there is no direct access from the McDonald's pad site to either Martin Boulevard or Middle River 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 and irregular shape. 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 ____1st____ day of December, 2011, that the Petition for Variance relief from the following sections of the Baltimore County Zoning Regulations (“B.C.Z.R.”):

- 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; and
- 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.; and
- Section 450.4 Attachment 1, 3(b)(VII) to permit two (2) directional signs of 9.71 ft. in height in lieu of the permitted 6 ft.; and
- 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,

be and are hereby GRANTED, subject to the following:

1. Petitioners are hereby made aware that proceeding at this time is at their 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 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.

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK:pz