

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
N/S Eastern Avenue; 37' NE c/l	*	OFFICE OF
of North Point Boulevard		
(7801 Eastern Avenue)	*	ADMINISTRATIVE HEARINGS
15 th Election District		
7 th Council District	*	FOR
Thor East Point Mall, LLC,	*	BALTIMORE COUNTY
<i>Legal Owner</i>		
McDonald's USA, LLC,	*	
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2012-0078-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and 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 7801 Eastern Avenue. The Petitioner requests a Special Hearing to determine whether a separate, free-standing enterprise sign on the McDonald's pad site is permitted. If it is determined that McDonald's is permitted to have a separate, free-standing enterprise sign on its pad site, McDonald's seeks 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.

In the alternative, if McDonald's is not permitted to have a separate, free-standing enterprise sign on its pad site, then McDonald's requests an additional variance from Section 450.4, Attachment 1, to permit two free-standing enterprise signs on the North Point Boulevard frontage of Eastpoint Mall. The subject property and requested relief are more particularly described on the Plat to Accompany Zoning Petition, color sign elevation drawings, and the Plat to Accompany Special Hearing, which were accepted into evidence as Petitioner's Exhibits 2A, 2B, 4A, 4B, and 5, 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 Eastpoint Mall Shopping Center, which is owned by Thor Eastpoint Mall, LLC. There is an existing McDonald's restaurant located on North Point Boulevard across from Eastpoint Mall, which has been in operation since October 1987. McDonald's lease at that location is now expiring, and McDonald's has elected to relocate the restaurant to a new pad site at Eastpoint Mall for improved visibility, access, and operational efficiency. The new restaurant will be approximately 4,164 sq. ft. and will have approximately 69 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 new restaurant that make the requested special hearing and variances necessary. The McDonald's site, shown on the site plan

and photographs submitted by Petitioner (Petitioner's Exhibits 1 and 3, respectively), is located on a pad site at the intersection of North Point Boulevard and the I-695 exit ramp. Although the site fronts on two busy streets, it does not have direct access to either one. Rather, patrons must enter the Eastpoint Mall 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 special hearing relief to permit the installation of a free-standing enterprise sign on the McDonald's pad site. Ms. Zarska testified that this sign would be similar in size and character to an existing Chick-Fil-A sign located on another pad site at Eastpoint Mall, which was approved by letter dated July 28, 2008 from the Baltimore County Department of Permits and Development Management. Ms. Zarska testified that although the new McDonald's will be located at a pad site at Eastpoint Mall, it will not be identified on the Eastpoint Mall identification signs and therefore will not benefit from the existing free-standing signs at the mall. Like the Chick-Fil-A restaurant at Eastpoint Mall, the new McDonald's restaurant will be surrounded by curb islands and separated from Eastpoint Mall by the ring road. As a result, the McDonald's, like the Chick-Fil-A, will function as its own independent site.

After due consideration of the testimony presented on the Petition for Special Hearing, I find that McDonald's is permitted to have its own free-standing enterprise sign at its pad site. The McDonald's site functions independently from the rest of Eastpoint Mall and is physically separated from the mall by curb islands and the ring road. The fact that McDonald's will not be advertised on the Eastpoint Mall identification signs further demonstrates the need for independent

signage on the McDonald's pad site. For these reasons, I will grant the Petition for Special Hearing and approve the free-standing enterprise sign on the McDonald's pad site as shown on Petitioner's Exhibit 5.

Petitioner also seeks variance relief 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 North Point Boulevard and the I-695 exit ramp, patrons must enter the Eastpoint Mall Shopping Center parking lot in order to access the site as there is no direct access from the McDonald's pad site to either street that it abuts. 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. As I have granted Petitioner's special

hearing request, Petitioner's alternative variance request from B.C.Z.R. Section 450.4, Attachment 1, to permit two free-standing enterprise signs on the North Point Boulevard frontage of Eastpoint Mall is now moot and will be dismissed.

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 Special Hearing relief from Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to have a free-standing enterprise sign within the McDonald's lease area, as shown on Petitioner's Exhibit 5, be and is hereby GRANTED.

IT IS FURTHER ORDERED 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, all as shown on Petitioner's Exhibits 2A and 4A,

be and are hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from B.C.Z.R. Section 450.4, Attachment 1, to permit 2 free-standing enterprise signs on the North Point Boulevard frontage of Eastpoint Mall is moot and is hereby DISMISSED.

The relief is 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