

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
15 <sup>th</sup> Election District	*	OFFICE OF
6 <sup>th</sup> Councilmanic District		
<b>(1472 Martin Boulevard)</b>	*	ADMINISTRATIVE HEARINGS
Martin Financial Limited Partnership,		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
McDonald's USA, LLC, <i>Lessee</i>		
Petitioners	*	<b>Case No. 2013-0043-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Stanley S. Fine, Esq., on behalf of the legal owners, Martin Financial Associated Limited Partnership, and the lessee, McDonald's USA, LLC ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to determine whether or not the Administrative Law Judge should approve the retention of a free-standing enterprise sign on the McDonald's pad site of the Martin Plaza Shopping Center. In addition, a Petition for Variance was filed pursuant to § 450.4 Attachment 1.5(b)(v) of the B.C.Z.R., to permit a free-standing enterprise sign having a face of 108.7 square feet in lieu of the required 75 square feet. 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 was Lee May with McDonald's Corporation, and Iwona Rostek-Zarska with Baltimore Land Design Group, Inc., the consulting firm that prepared the site plan. Stanley S. Fine, Esquire and Caroline Hecker, 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.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS) on October 2, 2012, which indicates development of this property must comply with the Forest Conservation Regulations (§§ 33-6-101 through §§ 33-6-122) of the Baltimore County Code (B.C.C.).

The subject property is 4,372 square feet and is zoned BM-CCC. The property is improved with a McDonald's restaurant, which was recently reconstructed and modernized in appearance and environmental features. This case, like others recently, was necessitated by the sign abatement provisions of B.C.Z.R., which require the Petitioners to obtain variance relief in order to retain their existing freestanding enterprise sign. The sign will largely remain "as is," although (depending on whether covenants in the shopping center lease agreement prohibit such signs) the Petitioners propose to replace the existing "reader board" with an electronic reader board similar to that used in other McDonald's restaurants in the area. In addition, the new reader board (whether of the basic or electronic variety) will be positioned within one foot of the enterprise sign with the familiar McDonald's "arches," while at present there is 3 feet of air space between the signs.

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. Indeed, the property is uniquely shaped, and though it has frontage on both Martin Boulevard and Middle River Road, it is

accessible from neither of these thoroughfares. Rather, patrons must enter through the shopping plaza entrance, which creates the need for the larger sign to steer customers in the right direction. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship, given that Petitioners would need to dismantle a sign that has been in place without complaint for over 30 years. 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 7<sup>th</sup> day of November, 2012, 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 approve the retention of a free-standing enterprise sign on the McDonald's pad site of the Martin Plaza Shopping Center, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request from § 450.4 Attachment 1.5(b)(v) of the B.C.Z.R., to permit a free-standing enterprise sign having a face of 108.7 square feet in lieu of the required 75 square feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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