

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(11310 York Road)		
8 th Election District	*	OFFICE OF
3 rd Councilmanic District		
Shelly Z. Hurta, Senior Counsel	*	ADMINISTRATIVE HEARINGS
McDonald's USA, LLC		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0124-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Variance filed by Stanley S. Fine, Esquire, on behalf of McDonald's USA, LLC, legal owner. The Variance was filed pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") as follows:

1. Section 405.4 Attachment 1, 5(a)(VI) to permit 5 wall-mounted enterprise signs on the building facades in lieu of the permitted 3 signs (Sign A on Plat to Accompany Zoning Petition).
2. Section 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 10.67 ft. in height in lieu of the permitted 6 ft. (Sign B on Plat to Accompany Zoning Petition).
3. Section 450.4 Attachment 1, 3(b)(VII) to permit two directional signs of 11' 3" ft. in height in lieu of the permitted 6 ft. (Sign C on Plat to Accompany Zoning Petition).
4. Section 450.4 Attachment 1, 3(a) to permit two canopy-type directional signs in lieu of the permitted wall-mounted or free-standing signs (Sign D on Plat to Accompany Zoning Petition).
5. Section 450.5.B.3.b to permit erection of the signs above the face of the canopy in lieu of on the face of the canopy (Sign E on Plat to Accompany Zoning Petition).
6. Section 450.4 Attachment 1, 5(f)(VII) to permit two order boards of 6.75 feet in height in lieu of the permitted 6 feet (Sign F on Plat to Accompany Zoning Petition).

Appearing at the public hearing in support of the requests was Jeff Bell, Area Construction Manager, and architect Robert Goldman. Caroline Hecker, Esquire appeared as counsel and represented the Petitioner. 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.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies.

The subject property is 1.3725 acres and is zoned ML-IM. The property is improved with a McDonald's restaurant, constructed in 1996. In an effort to modernize the facility, and incorporate certain "green" environmentally-sensitive features into the operation, the Petitioner made certain improvements to the structure in late 2012. The improvements included a new interior with additional seating, expanded drive-thru lanes and a contemporary "sign package" similar to the ones installed recently in other McDonald's restaurants in the County. It is the "sign package" that was the subject of the hearing, and for which variance relief was requested.

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). The site is located along an extremely busy section of York Road, and the topography somewhat obscures the restaurant, which renders the property unique and heightens the need for adequate signage. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship, given that the Petitioner (which is making a \$970,000 capital investment) would be unable to "modernize" this location.

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. In addition, the site is situated in an entirely commercial corridor, and the new signage will not adversely affect the neighborhood.

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

THEREFORE, IT IS ORDERED this 17th day of January, 2013, by the Administrative Law Judge that the Petition for Variance filed pursuant to B.C.Z.R. as follows:

1. Section 405.4 Attachment 1, 5(a)(VI) to permit 5 wall-mounted enterprise signs on the building facades in lieu of the permitted 3 signs (Sign A on Plat to Accompany Zoning Petition).
2. Section 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 10.67 ft. in height in lieu of the permitted 6 ft. (Sign B on Plat to Accompany Zoning Petition).
3. Section 450.4 Attachment 1, 3(b)(VII) to permit two directional signs of 11' 3" ft. in height in lieu of the permitted 6 ft. (Sign C on Plat to Accompany Zoning Petition).
4. Section 450.4 Attachment 1, 3(a) to permit two canopy-type directional signs in lieu of the permitted wall-mounted or free-standing signs (Sign D on Plat to Accompany Zoning Petition).
5. Section 450.5.B.3.b to permit erection of the signs above the face of the canopy in lieu of on the face of the canopy (Sign E on Plat to Accompany Zoning Petition).
6. Section 450.4 Attachment 1, 5(f)(VII) to permit two order boards of 6.75 feet in height in lieu of the permitted 6 feet (Sign F on Plat to Accompany Zoning Petition),

be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, 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
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln