

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(12012 Reisterstown Road)</b>		
4 <sup>th</sup> Election District	*	OFFICE OF
3 <sup>rd</sup> Councilmanic District		
Lee May, Area Construction Mgr.	*	ADMINISTRATIVE HEARINGS
McDonald's Corporation		
Petitioner	*	FOR BALTIMORE COUNTY
	*	<b>Case No. 2013-0189-A</b>

\* \* \* \* \*

**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 Corporation, legal owner. The Variance was filed pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") as follows:

**Parking Regulations:**

1.1 To permit 29 parking spaces in lieu of the required 66 parking spaces.

**Signage Regulations:**

2.1 To permit 5 wall-mounted enterprise signs on the building facades in lieu of the permitted 3 signs (Signs #4 and #5 on Plat to Accompany Zoning Petition).

2.2 To permit a directional sign of 10.67 ft. in height in lieu of the permitted 6 ft. (Sign #1 on Plat to Accompany Zoning Petition).

2.3 To permit two directional signs of 9.71 ft. in height in lieu of the permitted 6 ft. (Sign #2 on Plat to Accompany Zoning Petition).

2.4 To permit two canopy-type directional signs in lieu of the permitted wall-mounted or freestanding signs (Sign #3 on Plat to Accompany Zoning Petition).

2.5 To permit erection of the two signs above the face of the canopy in lieu of on the face of the canopy (Sign #3 on Plat to Accompany Zoning Petition).

2.6 To permit a free-standing enterprise sign having a face of 93 sq. ft. in lieu of the permitted 75 sq. ft. (Sign #6 on the Plat to Accompany Zoning Petition).

2.7 To permit two free-standing order boards of 6.75 ft. in height in lieu of the permitted 6 ft. (Sign #7 on Plat to Accompany Zoning Petition).

2.8 To permit two projecting directional signs in lieu of the permitted wall-mounted or free-standing sign (Sign #8 on Plat to Accompany Variance Petition).

Appearing at the public hearing in support of the requests was Lee May, Construction Manager and Iwona Zarski, the engineer who prepared the plans. 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 29,400 square feet and is zoned BL. The Petitioner has operated a McDonald's restaurant on site for over 42 years. Petitioner proposes to demolish the existing restaurant and rebuild a new (more modern and energy efficient) restaurant in the same location. In connection with the project, the Petitioner requests variance relief to install a signage package consistent with the other McDonald's restaurants in Baltimore County, and also seeks a reduction in the number of parking spaces. Though 64 spaces are required under B.C.Z.R. §409, Mr. May testified (via proffer) that the restaurant has operated since 1990 with only 34 parking spaces. Both Mr. May and Ms. Zarski opined that the requested reduction (to 29 spaces) would not be detrimental in any way to the surrounding community. In addition, Petitioner submitted a parking survey conducted by Traffic Concepts, Inc., which concluded that the site would provide sufficient parking supply even with the requested reduction. Exhibit 7.

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 property is small and has a substantial grade change, sloping downward towards the rear of the site. Thus, it is unique for zoning purposes. The Petitioner would experience a practical difficulty if relief were denied, given it would be unable to construct the planned improvements, and would have difficulty identifying the new restaurant to passing motorists, especially considering the trees lining the roadway as one approaches the restaurant.

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 not only by Ms. Zarski's proffered testimony, but also by the lack of community and county opposition. In addition, Ms. Hecker indicated she had spoken to members of the Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG), which eagerly awaits the new facility.

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 5<sup>th</sup> day of April, 2013, by the Administrative Law Judge that the Petition for Variance filed pursuant to B.C.Z.R. as follows:

**Parking Regulations:**

1.1 To permit 29 parking spaces in lieu of the required 66 parking spaces.

Signage Regulation:

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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.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln