

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(7732, 7734 Wise Avenue)</b>		
12th Election District	*	OFFICE OF ADMINISTRATIVE
7th Council District		
McDonald’s USA, LLC	*	HEARINGS OF
McDonalds Corporation		
	*	BALTIMORE COUNTY
Legal Owner/Petitioner		
	*	<b>CASE NO. 2020-0300-A</b>

\* \* \* \* \*

**AMENDED OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by McDonald’s Corporation, legal owner of 7734 Wise Avenue (the “Property”) and McDonald’s USA, LLC (the “Petitioners”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”): (1) §409.6.a.2 to allow 42 parking spaces in lieu of the minimum required 75 spaces; (2) §450.4 Attachment 1, 5(a)(VI) to permit 5 wall-mounted enterprise signs on building facades in lieu of the maximum permitted 3 such signs, §450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 7 ft. in height in lieu of the permitted 6 ft., §450.4 Attachment 1.5 (f)(VI) to permit 4 freestanding enterprise order board signs in lieu of the permitted 2 order boards; and (3) §235.1 to permit a front yard of 26 ft. in lieu of the required 45.3 ft. (the average front yard depths of adjacent properties, per BCZR § 303.2).

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. John Eidberger, representative of the Petitioners, appeared at the hearing along with John C. Povalac, PE with Baltimore Land Design Group, Inc. who prepared and sealed a 3-sheet site plan (the “Site Plan”). (Pet. Ex. 1). Adam Baker, Esquire and Rosenberg, Martin, Greenberg, LLP represented the Petitioners. There were no opposing parties or interested citizens in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and Department of Environmental Protection and Sustainability (“DEPS”) and those agencies did not oppose the requested relief. A comment was also received from Development Plans Review (“DPR”) which incorporated comments from Bureau of Traffic Engineering and Transportation Planning and the Storm Drain Design Section of the Department of Public Works who opposed the variance for parking spaces and requested an increase in the size of a pipe, as well as storm water management on-site.

The case proceeded by way of modified proffer from Adam Baker. John C. Povalac, PE was accepted as an expert in professional engineering and in zoning and development regulations of Baltimore County. (Pet. Ex. 6). The Property is approximately 1.12 acres (48,733 sf) and is primarily zoned Business, Major – Commercial, Town-Core District (BM-CT), with a small area zoned Business, Local – Automotive Service District (BL-AS) and Density Residential 5.5 (DR 5.5) on the north eastern corner. The Property fronts on Wise Avenue and is a trapezoidal shape, with the eastern and southern boundary lines longer than the northern and western lines. (Pet. Ex. 1). It is improved with an existing McDonald’s restaurant (4,650 sf), single lane drive-thru, and surface parking lot with 68 parking spaces. (Pet. Ex. 1, C-2). Adjacent to the eastern Property boundary line is a parcel owned by BGE which is used as a parking lot by the existing McDonald’s restaurant. On the northern end of the Property are commercial uses. Bounding on the western Property line is Summit Sign and Graphics addressed as 7732 Wise Ave.

The proposal here is renovate and improve the existing building on the Property and to add a double lane drive-thru. (Pet. Ex. 1, Sheet V-1; Pet. Ex.). The building façade be upgraded with a contemporary architectural style. (Pet. Ex. 2). The Petitioners have obtained a limited exemption under BCC, §32-4-108(b)(8). (Pet. Ex. 4, 5). A new drive-thru access point will be added to

Church Rd. through the BGE property to improve circulation of vehicles via an easement agreement. (Pet. Ex. 1, 7). Mr. Baker explained that many of the McDonald's restaurants are undergoing similar renovations to increase drive-thru aisles to meet the need of its customer demands. Mr. Baker added that 60% of its customers use the drive-thru.

Mr. Povalac testified that the proposed redevelopment of the Property impacts the number of parking spaces but that such spaces are not actually needed here. The proposal here is to allow 42 parking spaces in lieu of the minimum required of 75 spaces. Due to the reduction in parking spaces, the amount of impervious surface is also being reduced. Mr. Povalac explained that the Schematic Landscape Plan was approved by the County. (Pet. Ex. 3). Additional landscaping is shown on that Plan. Mr. Povalac added that a final Landscape Plan, along with a Lighting Plan, will be submitted and reviewed by the County and that it will meet all County regulations. Lastly, Mr. Povalac explained that the existing gravel road leading to Summit Sign and Graphics building on the western adjacent property will be paved and landscaping will be added to that boundary line.

In regard to the alleged undersized pipe mentioned by DPR in its comment, Mr. Povalac opined that the storm water management plans were amended to show the requested pipe size. He testified that DEPS approved the Storm Water Management Concept Plan and that the improvements will not increase the site runoff onto either Wise Ave. or Church Rd. He added that currently, there is no existing storm drain on the Property.

Mr. Baker stated that the Petitioners prepared a Parking Study through Traffic Concepts, Inc. dated February 24, 2021. (Pet. Ex. 8). Toward that end, Mark Keeley was accepted as an expert in traffic engineering. (Pet. Ex. 9). This Traffic Study indicates that the proposed 42 parking spaces are adequate for the proposed McDonald's use particularly in light of the customer demand

for fast food restaurants with increased drive-thru facilities. The Traffic Study was based on parking counts conducted at other McDonald's restaurants between 2010-2016 and based on the ITE Manual which confirmed that 37 parking spaces is needed but 42 spaces will be provided. Mr. Baker added that DPR, and specifically Traffic Engineering Department of DPW, has not been provided with the Traffic Study which explains the objection to the 42 parking spaces.

Pertaining to the requested sign variance relief, Mr. Baker highlighted the proposed signs are part of and necessary for identification of this business as well as for directing traffic. (Pet. Ex. 1, Sheet V-2; Pet. Ex. 2). Those signs compliment the architectural style and function for the double access drive-thru aisles and are necessary to identify the renovated restaurant and to direct customers within the site.

Mr. Baker summarized that the Property is unique due to its odd shape. He stated that this existing McDonald's is one of the oldest in Maryland and is obsolete in terms of both design and function. Mr. Baker stressed that the Petitioners would suffer a practical difficulty and unreasonable hardship if the requested variances were not granted because the improvements could not be made to the building façade and the double lane drive-thru cannot be added to accommodate its customers. If the Petitioners were required to have 75 parking spaces or to meet the front yard setback, redevelopment of the Property would not be possible for this use. He added that the new and improved McDonald's will be a benefit to the existing community and will provide a more efficient and safe traffic flow on site as well as on Wise Avenue and Church Rd.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

The Property is unique in terms of its trapezoidal shape. I find that the Petitioners would suffer a practical difficulty and unreasonable hardship if the Property were required to meet the existing parking regulations under BCZR, §409.6.a.2, the signage requirements under BCZR, 450.4 and the front yard setback under BCZR, §235.1. As the evidence revealed, this McDonald's restaurant is one of the oldest ones in Maryland and its design is obsolete to meet current customer demands. As reflected in the Traffic Study (Pet. Ex. 8), 75 parking spaces are not needed for a business which has transitioned to drive-thru facilities as opposed to in-person dining.

While I understand DPR/DPW's concerns that adequate parking be required for a fast food restaurant, the restaurant model has changed but the BCZR parking requirements remain the same. Requiring 75 parking spaces and required front yard setback would prevent the double drive-thru, proposed landscaping and improved traffic flow from the new drive-thru access point on Church Rd. BGE is willing to permit this access through its Property. I find this new access point is a better design for traffic flow and will benefit the community. I also find the requested signs are necessary to identify the same restaurant with its improved building façade and to direct customers within the new traffic patterns on-site. I find that the variances are in strict harmony with the spirit and intent of the BCZR, and without causing injury to the health, safety and general welfare.

THEREFORE, IT IS ORDERED, this 26th day of **March 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from BCZR:

(1) §409.6.a.2 to allow 42 parking spaces in lieu of the minimum required 75 spaces be, and it is hereby **GRANTED**;

(2) §450.4 Attachment 1, 5(a)(VI) to permit 5 wall-mounted enterprise signs on building facades in lieu of the maximum permitted 3 such signs, §450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 7 ft. in height in lieu of the permitted 6 ft., §450.4 Attachment 1.5 (f)(VI) to permit 4 freestanding enterprise order board signs in lieu of the permitted 2 order boards be, and

they are hereby **GRANTED**; and

(3) §235.1 to permit a front yard of 26 ft. in lieu of the required 45.3 ft. (the average front yard depths of adjacent properties, per BCZR § 303.2) be, and it is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must comply with the DOP ZAC comment, a copy of which is attached hereto and make a part thereof.
3. Petitioners must comply with the DPR/DPW ZAC comment, a copy of which is attached hereto and make a part thereof.

Signed \_\_\_\_\_  
MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm