

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3423 Eastern Boulevard)	*	OFFICE OF
15th Election District		
6th Council District	*	ADMINISTRATIVE HEARINGS
McDonald's Corporation	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>	*	
Petitioner	*	Case No. 2021-0146-SPHA
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of McDonald’s Corporation, the Petitioner for the property located at 3423 Eastern Blvd., Middle River (the “Property”). The Special Hearing relief was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”), §500.7 to amend the parking variance previously granted in Case No. 1989-0427-A; and for Variance relief from BCZR, §409.6.A.2 to permit 79 parking spaces in lieu of the required 94 parking spaces and from BCZR, §450.4 Attachment 1, 5(f)(VI) to permit 4 order boards in lieu of the permitted 2 order boards.

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. Edward Mack, the Area Construction Manager for McDonald’s appeared in support of the Petition along with Valek Zarski, Project Manager with Baltimore Land Design Group, Inc. which company prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). Adam Baker, Esquire and Rosenberg, Martin and Greenberg, LLP represented McDonald’s. 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”) which agencies did not oppose the requested relief.

The case proceeded by way of modified proffer by Adam Baker. Valek Zarski was admitted as an expert in zoning and development having spent more than 30 years in development and engineering. (Pet. Ex. 3). The Property is approximately 2.849 acres (124,102 sf) and fronts on Eastern Blvd. near the bend for Carroll Island Rd. It is zoned Business, Local (BL). Mr. Baker explained that a McDonald’s restaurant currently sits on the Property along with a parking lot. (Pet. Ex. 2A). According to the DOP Comment, the property is devoid of landscaping. DOP noted that a mature but dead tree needs to be removed. The McDonald’s currently has a drive-thru which already splits into two (2) lanes.

As shown on the Site Plan and Aerial Photograph with Proposed Conditions, Adam Baker explained that the proposal here is to request approval for 4 order boards in lieu of the permitted 2 order boards to provide a more efficiently and safe drive-thru service to its customers. (Pet. Exs. 1, 2B). Mr. Baker added that 70-80% of customers at this restaurant use the drive thru. The increased customer use of the drive thru services has been a trend over the years at this and other McDonald’s restaurants in Baltimore County. The Aerial Photograph with Proposed Conditions as compared to the Aerial Photograph with Existing Conditions, shows the removal of parking spaces in the rear of the restaurant in the location where the dual drive-thru lanes were installed.

Mr. Baker described the irregular shape of the Property as depicted on the Site Plan. (Pet. Ex. 1). He proffered that McDonald’s would suffer a practical difficulty if variance relief for the additional order boards and for the parking spaces was not granted because this McDonald’s would not be consistent with other McDonald’s restaurants in Baltimore County. This, he asserts, will

cause confusion with customers. He added that upgrading this McDonald's will improve the surrounding community, particularly because it is located at the gateway intersection to Eastern Blvd. and Carroll Island Rd. Improvements to this McDonald's will promote the health, safety and general welfare of the neighborhood.

Mark Keeley, PTP, the Lead Transportation Planner with Traffic Concepts, Inc., who was accepted as an expert in traffic engineering in Baltimore County, prepared a Peak Hour Parking Demand Study. (Pet. Ex. 5). The Parking Study used actual parking lot counts at nine (9) McDonald's restaurants that have a drive-thru window between 2014-2016 (pre-Covid). The Parking Study concluded that the average weekday peak hour parking demand and average Saturday peak hour parking demand indicates that 78 spaces are needed. Mr. Keeley indicated that the 79 spaces proposed adequately meet the parking needs of this McDonald's.

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).

I find that the Property is unique due to its irregular shape. The evidence revealed that this McDonald's restaurant has successfully operated at the Property for years. The increased need for customers to use drive thru services has been shown at this McDonalds and others throughout Baltimore County driving the need to add a second drive thru lane which, by default, eliminates parking spaces. I find that the irregular shape, combined with the reduced in-restaurant dining has led to the requested variances. Providing a dual drive thru is more efficient for neighboring businesses, and more specifically, for customers because cars will not stack up the drive thru onto

surrounding roads. McDonald's is adapting its business model to meet the needs of its customers. Conversely, the BCZR parking regulations have not changed to meet changing commercial demands.

As reflected in the Parking Study (Pet. Ex. 5), 94 parking spaces are not needed for a business which has transitioned to drive-thru facilities as opposed to in-person dining. Requiring 94 parking spaces on this Property would eliminate the dual drive-thru and cause traffic back-ups. I also find the requested 4 order board signs are necessary for the efficient use of the dual lane drive thru as the signs allow for customers to identify food choices and place orders more decisively. I find that the variances requested here are in strict harmony with the spirit and intent of the BCZR, and can be granted without causing injury to the health, safety and general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED this 22nd day of **July, 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR §500.7 to amend the parking variance previously granted in Case No. 1989-0427-A be, and it is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Variance relief from BCZR, §409.6.A.2 to permit 79 parking spaces in lieu of the required 94 parking spaces. BCZR, §450.4 Attachment 1, 5(f)(VI) to permit 4 order boards in lieu of the permitted 2 order boards be, and they are each hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would be required to return the subject property to its original condition.

2. Petitioner must comply with the DOP ZAC comment; a copy of which is attached hereto and make a part thereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm