

IN THE MATTER OF : BEFORE THE
McDONALD'S CORPORATION : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 08-008C&V

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DECISION AND ORDER

On May 27, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of McDonald's Corporation for a conditional use to raze the existing fast food restaurant and construct a new one and for a variance to reduce the 30-foot setback for parking from an external public street right-of-way to 12.55 feet an M-2 (Manufacturing: Heavy), filed pursuant to Sections 131.N.21 and 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. Matthew Allen and Jeff Taylor testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 6th Election District on the north side of Pocomoke Avenue at its intersection with MD 175 (Waterloo Road). It is referenced as Tax Map 43, Grid 15, Parcel 652, Lot A-4 and is also known as 7878 Pocomoke Avenue (the "Property").

2. The M-2 zoned, generally trapezoid shaped Property is 1.22 acres in size. It has about 135 feet of frontage on Pocomoke Avenue and about 265 feet of frontage on MD 175. The Site is lower in elevation than the paving of MD 175, which creates a steep embankment along the MD 175 frontage.

3. The Property is currently improved with a McDonald's Restaurant and drive-through facility with stacking spaces starting at the building's rear and northeast side and wrapping around the building past the drive-through windows on the west side. Two 20-foot wide ingress and egress driveways off Pocomoke Avenue provide access.

4. Vicinal Properties. Parcel 652 to the north is B-2 zoned and is improved with the redeveloped Columbia Marketplace retail facility. The other surrounding properties are zoned M-2. To the west, Parcel 652/A-2, is improved with a banking facility. The Greater Baltimore Consolidated Wholesale Food Market lies beyond the bank, across Assateague Road. Across MD 175, Parcels 543, 660 and 545 are the site of the Maryland House of Corrections.

5. Roads. MD 175 has two travel lanes in each direction divided by a concrete median and right and left-hand turn channels within a 150- foot right-of-way. The Pocomoke Avenue/MD 175 intersection is signalized. Access to Pocomoke Avenue, an internal street, is gained from a right turn only lane from eastbound MD 175. The posted speed limit on MD 175 is 40 miles MPH.

6. The Property is served by public water and sewer facilities.

7. Policies Map 2000-2020 of the 2000 General Plan designates the Property as an "Employment Area/Redevelopment Corridor." Transportation Map 2000-2020 of the 2000 General Plan depicts MD 175 as a Minor Arterial and Pocomoke Avenue as a local road.

8. The existing fast food restaurant was approved in BA 954-C (1978). According to the Technical Staff Report, the approval was conditioned on compliance with the parking plan, which depicted 49 spaces, including 14 spaces set back 10 feet from the MD 175 property line.

9. The Petitioner proposes to raze the existing facility and replace it with a 4,252 square foot, 18'3" high building and drive-through. It would be situated about 58 feet from the west lot line and 82 feet from the east lot line, with the drive-through wrapping around the buildings' rear and west sides. The menu and speakers would be located to the building's rear. The new restaurant and drive-through would operate 24 hours a day. The Petitioner is also proposing a 20-foot wide, right-turn access lane from MD 175 in the Property's northeast corner, which requires State Highway Administration approval.

10. The restaurant would employ about 75 employees under the following schedule: 11:00 p.m. to 4:00 a.m., six employees; 4:00 a.m. to 11:00 a.m., 12-15 employees; 11:00 a.m. to 2:00 p.m., 18 employees; 2:00 p.m. to 5:00 p.m., 10 employees; 5:00 p.m. to 8:00 p.m., 15 employees, and 8:00 p.m. to 11:00 p.m., 8 employees.

11. Parking. Sixty parking spaces are proposed. The Conditional Use Plan depicts 16 angled parking spaces adjacent to the MD 175 property line, with the closest situated about 12.55 feet from the property line. Because the external street parking use setback is 30 feet, the Petitioner is also requesting a variance to reduce the setback to 12.55 feet. The additional parking spaces would continue around the Site's perimeter, with 9 angled spaces at the entrance, including 4 disabled spaces.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

General Plan. The Property has frontage on two roads and is located in an existing commercial and industrial manufacturing area. The use has operated on the Site for about twenty years. The Site is adequate to support the proposed use and its location with respect to streets giving access to it are such that it is consistent with and in harmony with the redevelopment uses and policies proposed for the area in the General Plan. Accordingly, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.

Adverse Effect: The Petitioner has met its burden in presenting sufficient evidence to establish the existing and proposed uses will not have adverse effects on vicinal properties beyond those ordinarily associated with a fast food restaurant and drive-through in an M-2 district.

1. Physical Conditions. A building with the identical use has existed on the Site for 20 years. The proposed structure will be buffered by landscaping and sufficiently distant from adjacent properties, dwellings, and roadways. The petition states that fast food restaurants do not give off discernable odors and that lighting is low level and will not shine into adjacent properties. There are no nearby residences. The use will operate indoors, for the most part and has been in operation for about 20 years. Any noise, odor, or light generated by the uses will be attenuated by distance and will not be greater than that ordinarily associated with a fast food restaurant, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. The proposed structure complies with structure and height setbacks and will be located in the Site's central area. Landscaping will buffer the building. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner proposes to install 60 parking spaces based on the 4,252 square foot size of the building. The number of spaces therefore complies with Section 133.D.44.k's requirement that 14 spaces be provided per 1,000 parking spaces. Although the parking spaces will encroach into the setback adjacent to a Minor Arterial, there have been parking spaces in the same location, with a greater encroachment, since the use began operation in 1979. The refuse area will be located the northwest corner and enclosed and screened. The existing driveways will be retained and the Petitioner is seeking State Highway Administration approval for a right-in access driveway from MD 175. Consequently, parking areas, driveways, and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Sections 131.B.2.c and 131.B.2.d.

II. Specific Criteria for Structures Used Primarily for Fast Food Restaurants

(Section 131.N.21)

1. Section 131.N.21.a requires 20 percent of the site area to be landscaped. The petition states that 27 percent of the Site is now landscaped and the landscape plan shows proposed plantings to buffer adjacent uses and roads, in compliance with Section 131.N.21.

2. Section 131.N.21.b requires the petition to demonstrate that noised generated by drive-through speakers will not be audible from residentially zoned property. Because there are no such properties, this section is inapplicable.

3. Section 131.N.21.c is also inapplicable because the site does not border a residential district.

III. The Petitioner's Request for a Variance (Section 130.B.2.a)

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section

130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's narrowness and relatively small size compared to most M-2 zoned properties, in combination with the 30-foot parking use setback, are exceptional relative to neighboring M-2 properties. A variance to reduce the same setback was granted in BA 954-C. The proposed 12.55-foot setback is less than the current encroachment. I therefore conclude the Property's unique shape and size cause the Petitioner practical difficulties in complying with the 30-foot structure setback requirement, in accordance with Section 130.B.2.a(1).

2. The encroaching parking spaces would be situated about 12.55 from MD 175, but their visibility will be reduced by the grading difference between the Site and MD 175. I conclude the granting of the variance will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's narrowness and small size and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The requested variance applies only to a small section of the parking area. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

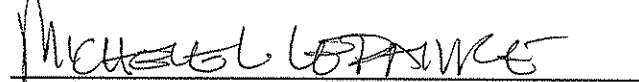
Based upon the foregoing, it is this 19th day June 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

1. That the petitions of McDonald's Corporation for a fast food restaurant conditional use and a variance to reduce the 30-foot parking use setback from an external public street right-of-way to 12.55 feet in an M-2 (Manufacturing: Heavy) zoning district is hereby **GRANTED;**

Provided, however, that:

1. The conditional use and variance shall be conducted in conformance with and shall apply only to the fast food restaurant described in the petition and depicted on the plan included in the petition, and not to any other activities, uses, or structures on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 6/20/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.