

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. S-2839

PETITION OF PLAMONDON ENTERPRISES, INC.

OPINION OF THE BOARD

(Opinion Adopted September 12, 2012)

(Effective Date of Opinion: September 21, 2012)

Case No. S-2839 is an application for a special exception, under Section 59-G-2.16 of the Zoning Ordinance, to permit a drive-through restaurant. The subject property is a free-standing pad site of 16,413 square feet, located at 15662 Old Columbia Pike, Towne Square Shopping Center, Burtonsville, Maryland, 20866 in the C-2 and R-C Zones.

The Hearing Examiner for Montgomery County held a hearing on the application on June 29, 2012, closed the record in the case on July 16, 2012, and on August 9, 2012, issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special Exception **Granted** Subject
to the Conditions Enumerated Below.

The Board of Appeals considered the Report and Recommendation at its Worksession on September 12, 2012. The Board had also received, and considered correspondence from Robert L. Sylwester, dated September 11, 2012 and from Dennis Holden, of the Fairland Coalition, dated September 11, 2012. Mr. Sylwester and Mr. Holden express concern that the required sign, which serves as part of the public notice of the application was either not posted or was improperly posted. Mr. Holden also expressed concern that an insufficient number of citizens' associations received written notice of the application, and particularly that the Fairland Coalition did not receive a notice.

The Board notes that the record contains a sworn, Affidavit of Posting, signed by the Petitioner, attesting to posting of the sign in conformance with the requirements of Section 59-A-4.43 of the Zoning Ordinance. The Board finds this convincing evidence that the

sign was properly posted.

Section 59-A-4.46(a) requires the Board office to mail notice of a special exception application to,

- (5) “the owners, as specified by the applicant at the time of filing, of all properties:
 - (A) contiguous to the property with which the case is concerned, and
 - (B) opposite the property measured at right angles to the intervening street or streets;
- (6) the president or other designated representative, as shown by the records of the Board of Appeals or the County Planning Board, of any local citizens association or associations..”

It is the Board’s long-standing administrative practice to mail notices to citizens’ and homeowners’ associations, registered with the Montgomery County Planning Department database and located within ½ mile of a subject property. A search of that database both within ½ and 1 mile of the subject property did not reveal the Fairland Coalition. The Board finds that there has been no error in either the posting or provision of notice of the application. Therefore, on a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement, and Walter S. Booth necessarily absent, the Board adopts the Hearing Examiner’s Report and Recommendation and grants the special exception subject to the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel to the extent that such testimony and evidence are identified in the Hearing Examiner’s Report and Recommendation and in this opinion.
2. Petitioner must limit development on the property to a drive-in restaurant with 3,327 square-feet of floor area. Physical improvements must be consistent with those shown on submitted plans.
3. Petitioner must conform to relevant conditions associated with Preliminary Plan 120041090 for the Burtonsville Towne Square shopping center, and the Forest Conservation Plan approved in conjunction therewith.
4. Petitioner must provide 11 parking spaces on site, with access to 113 shared parking spaces on shopping center property adjacent to the site.
5. The restaurant may have up to 40 employees, and during peak-hour shifts (11 a.m. to 2 p.m. and 5 p.m. to 7 p.m.) may have up to 15 employees on site. Non-peak hours may have up to 6 employees on site. A manager must be on site at all times.
6. The restaurant may be open seven days a week, 363 days out of the year, closing only on Thanksgiving and Christmas. Permitted hours of operation are Sunday

through Thursday from 6:00 a.m. to 10:00 p.m. and Friday and Saturday nights from 6:00 a.m. to 11 p.m.

7. Sign permits must be obtained for the signs proposed by Petitioner (Exhibit 6), and a copy of the permits for the approved signs must be submitted to the Board of Appeals before the signs are posted. If required by the Department of Permitting Services, Petitioner must obtain sign variances for the proposed signs or amend the design of the proposed signs to have them conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.
8. Petitioner shall keep dumpsters and outdoor storage areas for waste, fats, oils and grease covered and located so as not to impact upon the storm drain inlets.
9. Deliveries, trash pickup and recycling pickup must be scheduled outside of the peak traffic hours of 6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.
10. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of September 2012.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.