

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. S-2313**

**PETITION OF MCDONALD'S CORPORATION**

RESOLUTION TO MODIFY SPECIAL  
(Resolution adopted November 17, 2010)  
(Effective Date of Resolution: February 2, 2011)

The Board of Appeals has received correspondence, dated November 4, 2010, from Christopher M. Ruhlen, Esquire, on behalf of McDonald's Corporation. Mr. Ruhlen requests administrative modification of the captioned special exception to allow the following changes:

- Refreshed Building Exterior
- New Drive-Thru Canopy and Gateway Post
- New Masonry Trash Corral
- Installation of a sidewalk along the northeastern edge of the restaurant

Mr. Ruhlen submits plans and drawings to illustrate the requested changes.

The subject property is comprised of three parcels for a total of 1.09 acres of land, at 5214 River Road, Bethesda, Maryland, in the C-4 Zone.

The Board of Appeals considered the modification request at its Worksession on November 17, 2010. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the requested changes are essentially cosmetic and that they will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. The Board further finds that it would be beneficial for the Department of Permitting Services to inspect the special

exception. Therefore, on a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with Walter S. Booth and Catherine G. Titus, Chair, in agreement and David K. Perdue, Vice-Chair, necessarily absent:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2313, Petition of McDonald's Corporation, is re-opened to receive Christopher Ruhlen's letter dated November 4, 2010, with attachments; and


**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is granted; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the Board requests that within one year of the issuance of the building permit for the modification the Department of Permitting Services inspect the special exception; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

  
Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 2nd day of February, 2011.

  
Katherine Freeman  
Executive Director

**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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.

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240-777-6600

Case No. S-2313

PETITION OF MCDONALD'S CORPORATION

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution adopted December 7, 1999)

(Effective date of Resolution, December 10, 1999)

The Board received a letter dated October 15, 1999, from Patricia A. Harris, attorney for the special exception holder. The letter states in part:

"On behalf of McDonald's, the applicant in Special Exception Case No. S-2313, we respectfully request the Board of Appeals' consideration in eliminating Condition of Approval No. 4 of the Board's Opinion (attached). ... It is our belief that Condition No. 4 which provides '[t]he holder of the special exception must obtain approval of a site plan by the Montgomery County Planning Board as per Division D-3 of the Zoning Ordinance.' was inadvertently incorporated into the Board's conditions of approval.

"Our position that Condition No. 4 was imposed inadvertently is based on the following factors:

1. There is nothing in the Zoning Ordinance which requires Site Plan approval in this instance. ...
2. The Maryland-National Capital Park and Planning Commission ('M-NCPPC') Staff Report to the Board of Appeals is silent on the issue of Site Plan approval and nothing therein suggests that this additional process would be necessary.
3. ... we have no recollection whatsoever of the subject of Site Plan approval being discussed at the Board of Appeals hearing.
4. The imposition of Site Plan approval would be duplicative and redundant. ... the property has been subject to Preliminary Plan approval by M-NCPPC. Further, the issues which are typically addressed in connection with the Site Plan process are currently being coordinated with M-NCPPC Staff, pursuant to Condition No. 3 of the Special Exception approval which requires that the applicant 'submit a landscape and lighting plan to Technical Staff for review and approval."

The Board considered the request at its worksession on October 26, 1999, and asked Technical Staff at M-NCPPC to review the request and provide its recommendation to the Board. On November 23, 1999, the Board received a memorandum from Margaret Kaii-Ziegler, Planner Coordinator, M-NCPPC. It states:

"The Park and Planning staff concur with the letter to the Board of Appeals from Patricia A. Harris dated October 15, 1999 to eliminate condition 4 which requires site plan approval for Special Exception Case No. S-2313, River Road McDonald's. In addition, the landscape and lighting plan for the project has been reviewed and approved by staff."

The Board, after careful consideration of the correspondence and a review of the record in the above-referenced case, finds that the request to modify the above-referenced special exception can be granted without the necessity of a public hearing, because the request will have no effect on the traffic and on the immediate neighborhood.

THEREFORE, in accordance with the provisions of Section 59-G-1.3(c) of the Zoning Ordinance, BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. S-2313, Petition of McDonalds' Corporation, shall be and hereby is reopened to receive Ms. Harris' letter and Ms. Kaii-Ziegler's memorandum; and

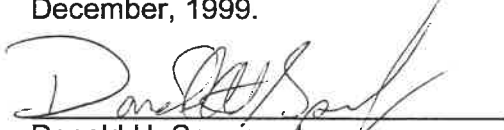
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Board grants the modification to the special exception to eliminate Condition No. 4 of the Board's Opinion dated March 26, 1998, and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that, except as modified herein, all terms and conditions of the original special exception for a drive-in restaurant shall remain in full force and effect.

The subject property is comprised of three parcels for a total of 1.09 acres of land, at 5214 River Road, Bethesda, Maryland, in the C-4 Zone.

On a motion by Angelo M. Caputo, seconded by Louise M. Mayer, with Donna L. Barron, Mindy Pittell Hurwitz, and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Entered in the Opinion Book of the Board of Appeals for Montgomery County, Maryland, this 10<sup>th</sup> day of December, 1999.



Donald H. Spence, Jr.,  
Chairman of the Board

Note:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision.

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**Case No. S-2313**

**PETITION OF MCDONALD'S CORPORATION  
(Hearing held February 11, 1998)**

**OPINION OF THE BOARD  
Effective date of Opinion: March 26, 1998**

Case No. S-2313 is the petition of McDonald's Corporation for a special exception, pursuant to Section 59-G-2.16 (Drive-In Restaurant) of the Zoning Ordinance.

The proposed special exception is to permit the demolition and reconstruction of a drive-in restaurant with a drive-through window and to extend the hours of operation to 12:00 midnight, Sunday through Thursday, and to 1:00 a.m., Friday and Saturday.

The subject property is comprised of three parcels for a total of 1.09 acres of land, at 5214 River Road, Bethesda, Maryland, in the C-4 Zone.

Decision of the Board: Special exception GRANTED, subject to conditions enumerated below.

Patricia Harris, Esq. represented McDonald's Corporation. Testifying in support of the special exception were Mike Lopez and Sue Wolford of the McDonald's Corporation; Kathy Foster, franchise owner of the McDonald's at the River Road site; and Steve Peterson, traffic engineer. Testifying either in opposition or to provide additional information were: Stuart Martens of Marten's Volvo; James R. Clifford, Esquire, representing Mr. Chester A. Hogentogler, the property owner; Peter Frank, co-owner of and representing the adjacent business; and Virginia Mitz representing the Joint Committee on the Westbard Plan.

**PETITIONER'S CASE**

The applicant, McDonald's Corporation has recently acquired the existing Roy Rogers Restaurant and requests permission to demolish and reconstruct the restaurant in order to facilitate its use of the site and to better accommodate its customers without adversely impacting neighboring uses. The lease that Roy Rogers has held for this property has been assigned to McDonald's. At present, the applicant is negotiating with the property owner to extend the lease beyond its current six year limit.

The property is located in the southwest quadrant of the intersection of River Road (MD 190) and a service road used to access other uses immediately behind the subject property. This service road runs parallel to the west side of the Capital Crescent Trail (former B&O Railroad right-of-way). The existing Roy Rogers restaurant had been located on the property since at least 1970, preceding the special exception requirement for a drive-in restaurant and is therefore non-conforming.

The land use and zoning pattern of the surrounding neighborhood reflects a mixture of uses. Adjoining the subject property to the south in the I-1 Zone is the two-story headquarters of WDCA/UPN20 Television with Martens Volvo auto parts and service located farther south; to the southeast across the Capital Crescent Trail is the Storage USA, a self-storage facility in the C-4 Zone; west of the subject property is a liquor store known as Talbert's Ice and Beverage in the C-4 Zone; and confronting to the north across River Road is a Mobil service station in the C-4 Zone. Adjoining the service station to the west is a shopping center known as Kenwood Station which includes a Fresh Fields grocery store and Crown Books. Other uses located nearby include a Texaco service station in the C-4 Zone located to the northeast of the subject property across River Road.

The applicant proposes to raze the current structure and construct a new building with a drive-through window. The new building will contain 4,065 square feet of which 980 square feet is devoted to a patron area with 80 seats. The seating area is reduced from an existing 149. The building will be located approximately 57 feet from the northern and southern property lines in order to accommodate a drive-through lane along the rear southern facade of the building. The structure will be located approximately 55 feet from the western property line and 113 feet from the eastern property line. An outdoor eating area is proposed immediately adjacent to the building.

A total of 36 parking spaces will be provided, which will exceed the minimum requirement by nine spaces.

An enclosed trash corral will be located in the southwest corner of the site near a designated loading zone at the rear of the restaurant. Deliveries will occur once a week. The trash corral will be completely enclosed. Trash will be picked up twice per week and will be scheduled between the franchisee and the trash collection business.

Two existing entrances off of River Road will be consolidated into one entrance-way with a 10 foot wide dividing median. A secondary entrance off the service road will be closed and replaced with a landscape buffer. The landscape buffer will work to limit off-site parking. To satisfy the Adequate Public Facilities (APF) test, the transportation planning staff recommended dedication of 25 feet of additional right-of-way along River Road and sufficient right-of-way to provide 50 feet for a future public street adjacent to the Capital Crescent Hiker-Biker Trail. (Exhibit #19(a))

Stormwater management will be underground and will be handled totally on-site.

Mike Lopez, project architect for McDonald's explained that the existing building is old and out-dated and does not conform to the company's specifications and drive-through requirements. Ventilation and filtration systems will be "state of the art." A new facility with modern equipment will eliminate any odors.

A double mansard roof covers the building. Exterior walls have a brick wainscot below and glass and stucco material above the glass. There are no adverse consequences as per the zoning requirements.

Employees proposed for the use are as follows: 10-12 during the breakfast shift, 12-16 during the lunch shift and 8-10 during the dinner shift. Deliveries will be once every five to seven days.

The drive-through will be a three window system: 1-place order, 2-pay, 3-pick up food. Typically the drive-in queue is 4-5 cars.

Hours of operation are proposed to be McDonald's standard hours: Sunday through Thursday: 5:00 a.m. - midnight and Friday and Saturday: 5:00 a.m. to 1:00 a.m. Hours are determined by customer demand and are a company standard.

Steve Petersen testified as an expert in traffic engineering and transportation planning. Mr. Petersen concluded that conversion can be accomplished with no impact on traffic in the area. Very few of the new trips to the site are new trips on the road. Between 45% and 55% of the patrons will be drive-through customers. The stacking area for the drive-through lane is adequate to store eight cars.

With regard to parking, Mr. Petersen stated that the parking requirement is based on patron seating requirements. His view was that parking will be ample, particularly due to the use of the drive-through window operation. Further, he felt that the parking will deter large landscaping vehicles from parking off premises behind the site. By closing off the service road entrance, there will likely be less foot traffic by owners of parked oversized vehicles.

### ADDITIONAL TESTIMONY

Stuart Martens of Martens Volvo testified that his objection to the proposal involves a current problem with the restaurant. At the present time, patrons of the existing Roy Rogers frequently park their oversized vehicles blocking access to the Volvo dealer access road. Martens Volvo has approximately 70-140 customers daily and needs easy access on the access road. Mr. Martens was assured that the new parking configuration would steer potential problem vehicles away from the current problem area.

Speaking on behalf of Talberts beverage store, Peter Frank expressed concern that the property landscaping plan and fencing would limit truck access for deliveries to Talberts. The store uses a rear delivery area, and he was concerned that the fence would limit access for large trucks. The applicant represented that there would be ample maneuvering space for vehicles.

James Clifford, Esquire, representing the property owner, expressed concern about the possibility that the owner's property rights would be hindered by the dedication of 6,000 square feet to the County. The owner had not been made aware of the special exception application and was concerned about two points, future access and of dedication of River Road right-of-way. Mr. Clifford stated that while the property was under lease to McDonald's for a short period of time, the long-term effects were of concern to the property owner. Further, the long-term lease negotiations were still underway and would not conclude until these two issues were resolved. Mr. Clifford was adamant about his concern that his client's property rights be protected.

After an extended conversation on this subject, Mr. Clifford agreed to support approval by the Board of Appeals for the special exception with the condition that the issues of dedication and access to the property for future development would be agreed to by the property owner prior to any action on resubdivision when the adequate facilities issues would be resolved. Mr. Clifford and the applicant will be conducting their own negotiations prior to the applicant moving forward should the special exception be granted.

Virginia Mitz spoke on behalf of the Joint Committee on the Westbard Plan, which neither supports nor opposes the special exception. The Committee's ongoing concern relates to the construction of deceleration lanes along River Road and the enhancement of pedestrian access. These issues will be addressed at the Planning Board during the consideration of the preliminary plan of subdivision.

### FINDINGS OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Both the Planning Board and its Technical Staff recommended approval of S-2313 with conditions (Exhibit No. 19(a)-(b)).



**FINDINGS OF THE BOARD**

Based on the testimony and exhibits in the record, the Board finds that the proposed special exception meets all the requirements found in Section 59-G-2.16 of the Zoning Ordinance and the general requirements for special exceptions contained in Section 59-G-1.21 of the Ordinance.

In reaching its findings, the Board found that the use is permitted in the zone, and it complies with the requirements and standards set forth in Section 59-G-2.16. The special exception will not substantially change the nature, character or intensity of use and will not change the effect on traffic, or adversely affect the immediate area.

The Board further agreed that the determination about access and property dedication were issues to be negotiated by the property owner and applicant and eventually with the Planning Board. The Board felt that its jurisdiction was limited to the issues regarding the general and specific standards and was sufficiently satisfied that the outstanding concerns would be resolved by the parties involved in their determination.

Accordingly, the Board grants the requested modification subject to the following conditions:

1. As required by Section 59-A-1.27, the holder of the special exception is bound by all of its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys, to the extent that such evidence and representations are identified in this Opinion and except as altered by compliance with the following conditions.
2. The holder of the special exception must obtain approval of access permits by Maryland State Highway Administration and the Montgomery County Department of Public Works and Transportation, prior to issuance of a use and occupancy permit.
3. The holder of the special exception must submit a landscape and lighting plan to Technical Staff for review and approval. One copy of the approved plan must be submitted to the Zoning Supervisor at the Department of Permitting Services. One copy must be submitted to the Board for its records. All plant material must be installed according to plan and maintained and replaced as necessary.
4. The holder of the special exception must obtain approval of a site plan by the Montgomery County Planning Board as per Division D-3 of the Zoning Ordinance.
5. The holder of the special exception must conform to the requirements of Chapter 50.
6. Construction must conform to Exhibit Nos. 6(a) - (b), 7 and 24.
7. Petitioner must obtain all necessary sign permits from the Department of Permitting Services before installation of all proposed signs.

The Board adopted the following Resolution:

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

On a motion by Donna Barron , seconded by Angelo Caputo, with Louise Mayer, Wendell Holloway and Susan W. Turnbull, Chair in agreement, the Board adopted the foregoing Resolution.

I do hereby certify that the foregoing opinion was officially entered in the Opinion Book of the County Board of Appeals this 26th day of March, 1998.



Tedi S. Osias  
Executive Secretary to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four-months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

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 Procedures.

See the Board's Rules of Procedure for information about the process for requesting reconsideration.