

M E M O R A N D U M

DATE: July 10, 2012
TO: Zoning Review Office
FROM: Office of Administrative Hearings
RE: Case No. 2012-0231-SPHA - Appeal Period Expired

The appeal period for the above-referenced case expired on June 29, 2012. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: ✓ Case File
Office of Administrative Hearings

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S side of Belmont Avenue; 720' from the	*	OFFICE OF ADMINISTRATIVE
c/line of Security Boulevard		
1 st Election District	*	HEARINGS FOR
1 st Council District		
(1655 Belmont Avenue)	*	BALTIMORE COUNTY
Archland Property I, LLC	*	CASE NO. 2012-0231-SPHA
Petitioner		

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owner of the property, Archland Property I, LLC. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to confirm the following interpretations of the B.C.Z.R.:

- The reader board and enterprise sign are not considered to be a continuous (sic) sign because the two signs are separated by more than 1';
- The area of the face of the enterprise sign is calculated separately from the area of the reader board when both signs are located on the same support structure but are separated by more than 1'; a) the maximum area of the changeable copy reader board is 50% of the area of the enterprise sign;
- An enterprise sign and changeable copy reader board constitute one free-standing sign when they are located on the same support structure; and
- The height of the changeable copy sign is measured from the ground to the top of the changeable copy sign as shown on the attached plan.

The Petitioner also seeks Variance relief from the B.C.Z.R. as follows:

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Date 5-30-12

By [Signature]

- Section 450.4 Attachment 1,5(a)(VII) to permit six wall-mounted enterprise signs on building facades in lieu of the permitted three signs;
- Section 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 10.7' in height in lieu of the permitted 6';
- Section 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 9.71' in height in lieu of the permitted 6';
- Section 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free standing directional sign; and
- Section 450.5.B.3.b to permit the erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy.

If the special hearing request is denied, the Petitioner requested the following additional variance:

- Section 450.4 Attachment 1, 5(b)(V) to permit a free standing enterprise sign having a face of 94 square feet in lieu of the permitted 75 square feet.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 2.

Appearing at the public hearing held for this case was Lee May, Area Construction Manager, and Iwona Rostek-Zarska with Baltimore Land Design Group, Inc., the professional engineer who prepared the site plan. Also attending were Stanley S. Fine, Esquire, and Caroline Hecker, Esquire, counsel for the Petitioner. There were no Protestants or other interested persons in attendance, although the file contains two letters from People's Counsel (dated May 7 and 8, 2012) indicating that office opposed the special hearing relief sought by Petitioner.

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Date 5-30-12

By DJ

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. Comments were received from the Department of Planning dated April 23, 2012, indicating that agency did not support the special hearing relief sought by Petitioner. The Department of Planning further commented that it did not oppose Petitioner's variance requests 1 through 5, though it did oppose request #6 (which would only be considered if special hearing relief was denied).

Testimony and evidence revealed that the subject property is improved with a McDonald's restaurant, constructed in 1980. Petitioner proposes to raze that structure and in its place construct a smaller restaurant (approximately 5,962 square feet currently, and approximately 4,377 square feet as proposed). The restaurant will also have fewer seats (88 versus 110 at present) and would feature a newer, more upscale look. Petitioner proposes to replace an existing freestanding sign (the subject of the special hearing case) and also proposes six enterprise signs in lieu of the eight enterprise signs that currently exist. The capital investment for the project is approximately \$2.45 million, and the construction would include "green building" elements.

VARIANCES 1 - 5

Based on the evidence presented, which is discussed below, I find that variance requests 1 through 5 can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

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By aw

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Specifically, Mr. May testified – via proffer (*See* Exhibit 5) – that the variances for the signage would make the restaurant visible to passing motorists on Security Boulevard. In addition, several McDonald's in the area have been similarly "upgraded," and the signage variances would provide for a consistent look and appearance for the brand. Mr. May also indicated the signage would allow customers to quickly and safely navigate through the site and the drive-thru lanes.

The Petitioner's next witness (who also testified via proffer, see Exhibit 5) was Iwona Zarska, who was accepted as an expert in site engineering. She opined the site was irregularly shaped and though it fronted on Security Boulevard, the only entrance to the restaurant was on Belmont Avenue. She also opined Petitioner would suffer a hardship if the B.C.Z.R. were strictly enforced, because trees and other businesses along Security Boulevard obstruct the view of the McDonald's. Finally, she opined that the grant of variance relief would likely improve property values in the area, since the new structure will be more modern and attractive. The building is being constructed in essentially the same footprint as the current restaurant, and she therefore did not believe the community would suffer any additional impacts beyond those associated with the McDonald's operating presently.

SPECIAL HEARING

As noted above, Petitioner proposes to construct a new (smaller) freestanding enterprise sign (83 square feet versus 212 square feet existing). As shown on the plans (Exhibits 3 and 4),

Petitioner proposes to have the "McDonald's" name (i.e., enterprise sign) on the top portion of the

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4

By [Signature]

pole, and approximately 2' beneath would be positioned a changeable copy sign. As noted by Petitioner's counsel, these signs are of different classes, and therefore would not constitute a "contiguous sign," as that term is used in B.C.Z.R. § 450.3.

The second issue raised by Petitioner concerns the definition of "area" under the B.C.Z.R. The regulations exclude from the definition "air spaces" between signs of different classes located on a common support structure. It is clear the proposed freestanding enterprise sign and the changeable copy sign are on the same structure, and are also different classes of signs. Hence, the "area" of the signs does not include the "air space" between them. But the heart of this case lies in the interpretation of B.C.Z.R. § 450.7.B, which permits a freestanding changeable copy sign only when it is an "integral part" of an enterprise sign. And though it begs the ultimate question, it is clear that if the changeable copy sign is an "integral part" of the freestanding enterprise sign, then the changeable copy portion may be 50% of the area of the enterprise portion, per B.C.Z.R. § 450.7.

So when is a sign an "integral part" of another sign? The B.C.Z.R. is really of no assistance, since it doesn't define the term. The dictionary defines "integral" as "organically joined or linked ... form[ing] a whole ... formed as a unit with another part." See Petitioner's Memorandum of Law, p. 3. There is also no Maryland case law addressing the issue, although in a fairly recent federal case involving a patent infringement claim with respect to certain scientific lab equipment, the court noted that "depending on the context, courts have construed the term 'integral' to broadly mean forming a unit or to narrowly refer to being formed in one piece." Scientific Specialties, Inc. v. Thermo Fisher, 684 F. Supp. 2d 1187, 1191 (N.D. Calif. 2010). The court's holding is particularly apropos here, where the parties have argued for broad (i.e., the

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By aw

Petitioner contends that “integral” means on the same support structure) and narrow (i.e., People’s Counsel argues the term means “joined together”) interpretations of the term.

The B.C.Z.R. provides that its sign law provisions are to be “strictly construed.” B.C.Z.R. § 450.8; See also, Trinity Assembly of God v. People’s Counsel, 407 Md. 53, 73 (2008). Thus, I believe that the definition of “integral part” must incorporate some concept of one-piece construction, such that the changeable copy sign may be said to be a “component” of the enterprise sign. But I do not believe that means they must be touching or in physical contact. Rather, and as seen in the “Mr. Burger” example provided by People’s Counsel, the changeable copy portion must in a sense form a component part or unit of the larger overall sign. Indeed, the signs in the “Mr. Burger” example are not touching (though it is impossible to determine just how much space exists between the “enterprise” portion and the “changeable copy” portions), just as they are not in the example from the Zoning Commissioner’s Policy Manual (ZCPM) attached as Exhibit A to Petitioner’s memorandum. The space – and whether it is a matter of inches or 1 or 2 feet – is not what is important. Rather, it is the sign viewed in its entirety which reveals that the reader board is an “integral part” of the enterprise sign.

In the “Mr. Burger” example, the integration is achieved by the support structures on both sides of the signs, which makes the sign a single unit. While this interpretation of § 450.7.B relies on admittedly subjective factors, I believe that is a consequence of the language used in the regulation (“integral part”) which is an imprecise term susceptible to several interpretations. That is why, in my opinion, zoning ordinances are best framed in terms of feet and/or inches. In any event, I do not believe the changeable copy board is an “integral part” of the enterprise sign (i.e., the familiar arches and McDonald’s name) in the freestanding signs proposed by Petitioner. It

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By [Signature]

simply lacks the cohesiveness found in the "Mr. Burger" example, and does not appear to be a single unit. As such, this aspect of the special hearing relief is denied.

VARIANCE NO. 6

Since the dispositive portion of the special hearing relief was denied, Petitioner seeks variance relief to allow a freestanding enterprise sign with a face area of 94 square feet in lieu of the permitted 75 square feet. The existing sign is 212 square feet, and the proposed enterprise sign would be less than half that size. The sign regulations are designed to reduce visual clutter, and I believe they will have served that purpose in this case even if the variance relief is granted. The Petitioner seeks an approximate 20% increase in the permitted area, which I believe is a modest request. McDonald's is a well known brand, and the new restaurant will be an improvement for the community, and the proposed 94 square feet sign will be appropriate for the location and much smaller than what exists at present.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions, and for the reasons set forth above, the relief requested shall be granted in part and denied in part.

THEREFORE, IT IS ORDERED, this 30th day of May, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to confirm that the enterprise sign and changeable copy reader board constitute one free-standing sign when they are located on the same support structure, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance relief from the B.C.Z.R. as follows:

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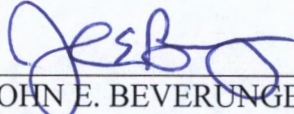
By [Signature]

- Section 450.4 Attachment 1,5(a)(VII) to permit six wall-mounted enterprise signs on building facades in lieu of the permitted three signs;
- Section 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 10.7' in height in lieu of the permitted 6';
- Section 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 9.71' in height in lieu of the permitted 6';
- Section 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free standing directional sign;
- Section 450.5.B.3.b to permit the erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy; and
- Section 450.4 Attachment 1, 5(b)(V) to permit a free standing enterprise sign having a face of 94 square feet in lieu of the permitted 75 square feet,

be and are hereby GRANTED.

The relief granted herein shall be conditioned upon and subject to the following:

1. The Petitioner may apply for any required building permits and may be granted same upon receipt of this Order, however the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.


 JOHN E. BEVERUNGEN
 Administrative Law Judge for
 Baltimore County

JEB:dlw

ORDER RECEIVED FOR FILING

Date 5-30-12 8

By DLW



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

May 30, 2012

Stanley Fine, Esquire
Caroline Hecker, Esquire
Rosenberg Martin Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, Maryland 21201

RE: Petitions for Special Hearing and Variance
Case No.: 2012-0231-SPHA
Property: 1655 Belmont Avenue

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over a horizontal line.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 1655 Belmont Avenue which is presently zoned BM & BM-AS
Deed References: 20914/62 10 Digit Tax Account # 1 8 0 0 0 0 5 2 1 5
Property Owner(s) Printed Name(s) Archland Property I, LLC

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. X a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

PLEASE SEE ATTACHED.

2. a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3. X a **Variance** from Section(s)

PLEASE SEE ATTACHED.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Stanley S. Fine Esq.

Name, Type or Print

Signature Stanley S. Fine/esq
Rosenberg Martin Greenberg, LLP

25 S. Charles St., Suite 2115, Baltimore, MD

Mailing Address City State sfine@

21201

410-727-6600

rosenbergmartin.com

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

Archland Property I, LLC

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

c/o McDonald's Corp. Suite 1100, Bethesda, MD

Mailing Address

City

State

20817

301-651-9998

lee.may@us.mcd.com

Zip Code

Telephone #

Email Address

Representative to be contacted:

Lee May, Area Construction Manager

Name - Type or Print

Signature

6903 Rockledge Dr., Suite 1100, Bethesda, MD

Mailing Address

City

State

20817

301-651-9998

lee.may@us.mcd.com

Zip Code

Telephone #

Email Address

CASE NUMBER 2012-0231-SPHA Filing Date 3/26/2012

Do Not Schedule Dates: _____

Reviewer Tu

Petition for Special Hearing and Variance

**1655 Belmont Avenue
Tax Acct. No. 1800005215
Archland Property I, LLC
c/o McDonald's Corporation
6903 Rockledge Drive, Ste. 1100
Bethesda, Maryland 20817**

Special Hearing Request:

To confirm the following interpretation of the Baltimore County Zoning Regulations:

1. The reader board and enterprise sign are not considered to be a continuous sign because the two signs are separated by more than one foot.
2. The area of the face of the enterprise sign is calculated separately from the area of the reader board when both signs are located on the same support structure but are separated by more than one foot.
 - a. The maximum area of the changeable copy reader board is 50% of the area of the enterprise sign.
3. An enterprise sign and changeable copy reader board constitute one free-standing sign when they are located on the same support structure.
4. The height of the changeable copy sign is measured from the ground to the top of the changeable copy sign, as shown on the attached plan.

Variance Requests:

1. Section 450.4 Attachment 1, 5(a)(VII) to permit 6 wall-mounted enterprise signs on building facades in lieu of the permitted 3 signs;
2. Section 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 10.7 feet in height in lieu of the permitted 6 feet.
3. Section 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 9.71 feet in height in lieu of the permitted 6 feet.
4. Section 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free-standing directional sign.

2012-0231-SPHA

5. Section 450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy.

If the Special Hearing Request is denied, the following additional variance is requested:

6. Section 450.4 Attachment 1, 5(b)(V) to permit a free-standing enterprise sign having a face of 94 square feet in lieu of the permitted 75 square feet.

**DESCRIPTION TO ACCOMPANY PETITION
FOR SPECIAL HEARING
1655 BELMONT AVENUE
BALTIMORE COUNTY, MARYLAND
1ST ELECTION DISTRICT; 1ST COUNCILMANIC DISTRICT**

March 14, 2012

Beginning at the point located on the south side of Belmont Avenue having a 60 feet right-of-way, said point being located northeasterly 720 feet, more or less, from the intersection of centerlines of Belmont Avenue with Security Boulevard, thence running the following courses and distances:

1. South 04° 15' 37" East, 483.23 feet; thence,
2. North 80° 21' 21" West, 143.67 feet; thence,
3. Along the curve to the left having a radius of 4660.66 feet, 60.06 feet; thence,
4. North 04° 47' 49" East, 234.51 feet; thence,
5. North 50° 08' 26" West, 96.83 feet; thence,
6. North 39° 51' 34" East, 60.03 feet; thence,
7. Along the curve to the right, having a radius of 330.00 feet, 216.71 feet, to the point of beginning.

Containing 79,810 square feet or 1.832 acres, more or less.

This description is intended for zoning purposes only and shall not be used for conveyance of land.



2012-0231-SPHA

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2012-0231-SPHA
Petitioner: ARCHLAND PROPERTY I, LLC
Address or Location: 1655 BELMONT AVE

PLEASE FORWARD ADVERTISING BILL TO:

Name: ROSENBERG, MARTIN, GREENBERG, LLP.
Address: 25 S. CHARLES ST, SUITE 2112, MD 21201
Attn Stanley Fine
Telephone Number: 410-727-6600

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **81370**

Date: **3/23/12**

PAID-RECEIPT

BUSINESS ACTUAL TIME DEW
 3/21/2012 3/26/2012 10:08:34 5

RECEIPT # 582050 3/26/2012 OFLN

5 52B ZONING VERIFICATION
 NO. 081370

Receipt Tot \$770.00
 \$770.00 CK \$1.00 CA
 Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/Obj	Sub Rev/Obj	Dept	Obj	BS Acct	Amount
001	806	0000		6150					770. ⁰⁰

Total: **770.⁰⁰**

Rec From: **McDonald's**

For: **JP Morgan Chase Bank**

FOR McDonald's
1655 Belmont Ave

2012-0231-SPHA

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

Certificate of Posting

519

RE: Case NO. 2012-0231-SPHA

Petitioner/Developer _____

Ashland Property, I. LLC

Date of Hearing/Closing 5/9/12

Baltimore County
Department of Permits and Development Managements
County Office Building – Room 111
111 W. Chesapeake Ave.
Towson, Md. 21204

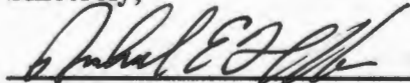
Attention:

This letter is to certify, under penalties of perjury, that the necessary sign as required by law, was posted conspicuously on the property located at _____

1655 Belmont Avenue

The sign(s) were posted on 4/24/12
(Month, Day, Year)

Sincerely,

 4/24/12
(Signature of sign Poster and date)

Richard E. Hoffman
(Printed Name)

904 Dellwood Drive
(Address)

Fallston, Md. 21047
(City, State, Zip Code)

410-879-3122
(Telephone Number)

See Attached
Photograph

John E. Hall 4/24/12
(Signature and date of sign poster)

Certificate of Posting

RE: Case NO. 2012-0231-SPHA

Petitioner/Developer _____

Ashland Property, I. LLC

Date of Hearing/Closing 5/9/12

Baltimore County
Department of Permits and Development Managements
County Office Building – Room 111
111 W. Chesapeake Ave.
Towson, Md. 21204

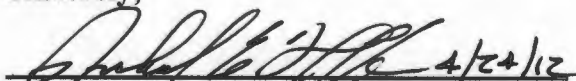
Attention:

This letter is to certify, under penalties of perjury, that the necessary sign as required by law, was posted conspicuously on the property located at _____

1655 Belmont Avenue

The sign(s) were posted on 4/24/12
(Month, Day, Year)

Sincerely,

 4/24/12
(Signature of sign Poster and date)

Richard E. Hoffman
(Printed Name)

904 Dellwood Drive
(Address)

Fallston, Md. 21047
(City, State, Zip Code)

410-879-3122
(Telephone Number)

See Attached
Photograph

Certificate of Posting
Photograph Attachment

Re: 2012-0231-SPHA

Petitioner/Developer: _____

Ashland Property I, LLC

Date of Hearing/Closing: 5/9/12



1655 Belmont Avenue

Posting Date: 4/24/12

Julius E. Hoff 4/24/12
(Signature and date of sign poster)

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2012-0231-SPHA

1655 Belmont Avenue

S/s of Belmont Avenue, 720 feet +/- from the centerline of Security Boulevard

1st Election District - 1st Councilmanic District

Legal Owner(s): Archland Property I, LLC

Special Hearing: to confirm the following interpretation of the BCZR: the reader board enterprise signs are not considered to be a continuous sign because the two signs are separated by more than one foot; the area of the face of the enterprise sign is calculated separately from the area of the reader board when both signs are located on the same support structure but are separated by more than 1 foot. (A) the maximum area of the changeable copy reader board is 50% of the area of the enterprise sign. An enterprise sign and changeable copy reader board constitute one free-standing sign when they are located on the same support structure; the height of the changeable copy sign is measured from the ground to the top of the changeable copy sign, as shown on the attached plan. **Variance:** to permit 6 wall-mounted enterprise signs on building facades in lieu of the permitted 3 signs; to permit a directional sign of 10.7 feet in height in lieu of the permitted 6 feet; to permit a directional sign of 9.71 feet in height in lieu of the permitted 6 feet; to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free-standing directional sign.

Hearing: Wednesday, May 9, 2012 at 11:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS
AND INSPECTIONS FOR
BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

IT/4/763 Apr. 24

302582

CERTIFICATE OF PUBLICATION

4/26/, 2012

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 4/24/, 2012.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

RE: PETITION FOR SPECIAL HEARING * BEFORE THE OFFICE
AND VARIANCE * OF ADMINISTRATIVE
1655 Belmont Avenue; S/S Belmont Avenue *
720' from c/line of Security Boulevard * HEARINGS FOR
1st Election & 1st Councilmanic Districts *
Legal Owner(s): Archland Property I, LLC * BALTIMORE COUNTY
Petitioner(s) *
* 2012-231-SPHA

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED

APR 02 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 2012, a copy of the foregoing Entry of Appearance was mailed to Lee May, Area Construction Manager, 6903 Rockledge Drive, Suite 1100, Bethesda, MD 20817 and Stanley Fine, Esquire, Rosenberg, Martin, Greenburg, LLP, 25 S. Charles Street, Suite 2115, Baltimore, Maryland 21201, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



KEVIN KAMENETZ
County Executive

April 17, 2012

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

NOTICE OF ZONING HEARING

The Administrative Law Judges of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2012-0231-SPHA

1655 Belmont Avenue

S/s of Belmont Avenue, 720 feet +/- from the centerline of Security Boulevard

1st Election District – 1st Councilmanic District

Legal Owners: Archland Property I, LLC

Special Hearing to confirm the following interpretation of the BCZR: the reader board enterprise signs are not considered to be a continuous sign because the two signs are separated by more than one foot; the area of the face of the enterprise sign is calculated separately from the area of the reader board when both signs are located on the same support structure but are separated by more than 1 foot. (A) the maximum area of the changeable copy reader board is 50% of the area of the enterprise sign. An enterprise sign and changeable copy reader board constitute one free-standing sign when they are located on the same support structure; the height of the changeable copy sign is measured from the ground to the top of the changeable copy sign, as shown on the attached plan. Variance to permit 6 wall-mounted enterprise signs on building facades in lieu of the permitted 3 signs; to permit a directional sign of 10.7 feet in height in lieu of the permitted 6 feet; to permit a directional sign of 9.71 feet in height in lieu of the permitted 6 feet; to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free-standing directional sign.

Hearing: Wednesday, May 9, 2012 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Stanley Fine, 25 S. Charles Street, Ste. 2115, Baltimore 21201
Jamie Grossman, Archland Property, I, LLC, 6903 Rockledge Dr., Ste. 1100, Bethesda 20817

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, APRIL 24, 2012.**
(2) **HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.**
(3) **FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.**

TO: PATUXENT PUBLISHING COMPANY
Tuesday, April 24, 2012 Issue - Jeffersonian

Please forward billing to:

Stanley Fine
Rosenberg, Martin & Greenberg, LLC
25 S. Charles Street, Ste. 21201
Baltimore, MD 21201

410-727-6600

NOTICE OF ZONING HEARING

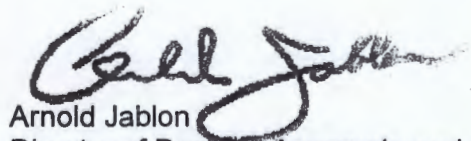
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CASE NUMBER: 2012-0231-SPHA

1655 Belmont Avenue
S/s of Belmont Avenue, 720 feet +/- from the centerline of Security Boulevard
1st Election District – 1st Councilmanic District
Legal Owners: Archland Property I, LLC

Special Hearing to confirm the following interpretation of the BCZR: the reader board enterprise signs are not considered to be a continuous sign because the two signs are separated by more than one foot; the area of the face of the enterprise sign is calculated separately from the area of the reader board when both signs are located on the same support structure but are separated by more than 1 foot. (A) the maximum area of the changeable copy reader board is 50% of the area of the enterprise sign. An enterprise sign and changeable copy reader board constitute one free-standing sign when they are located on the same support structure; the height of the changeable copy sign is measured from the ground to the top of the changeable copy sign, as shown on the attached plan. Variance to permit 6 wall-mounted enterprise signs on building facades in lieu of the permitted 3 signs; to permit a directional sign of 10.7 feet in height in lieu of the permitted 6 feet; to permit a directional sign of 9.71 feet in height in lieu of the permitted 6 feet; to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free-standing directional sign.

Hearing: Wednesday, May 9, 2012 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Case No.: 2012-231-SPHA

Exhibit Sheet

Petitioner/Developer

Protestant

2/10/12 B3
5/30/12 DW

No. 1	Photos of Site + Store	
No. 2	Site Plan	
No. 3 + 3A	Plan to Accompany Petition 3A - Plan	
No. 4 + 4A	Plan showing proposed Signs	
No. 5	Lee May Testimony	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		











BALTIMORE COUNTY ZONING HEARING OUTLINE

MCDONALD'S – 1655 BELMONT AVE.

May 9, 2012

LEE MAY – TESTIMONY

Name: Lee May

Address:

Employer, employer's address: McDonald's Corporation
6903 Rockledge Drive, Ste. 1100
Bethesda, MD 20817

Your job title and responsibilities at McDonalds: Area Construction Manager

Are you familiar with the petition before the Office of Administrative Hearings? Yes

What is the location that is the subject of the petition? 1655 Belmont Ave.

What is your interest in the property? McDonald's, through an affiliated entity, owns the subject property.

What is at this location currently?

There is an existing McDonald's at this location that was constructed in May 1980.

EXHIBIT – PHOTOS

What is McDonald's proposing to do at this location?

Demolish the existing restaurant and build a new McDonald's restaurant.

Describe existing conditions at the McDonalds.

EXHIBIT – PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING (SH-1)

(Explain access, parking, location of improvements, size and shape of property)

EXHIBIT

tabbles

5

Describe the location of this McDonald's.

The McDonald's site fronts on Security Blvd., but is accessed from the rear on the Belmont Avenue side and from the adjacent property which is used as a Best Buy.

Why are you proposing a new McDonald's?

The existing structure is 32 years old and is operationally inadequate. The proposed new restaurant will be a much more efficient building, both operationally and in terms of energy usage.

What is the square footage of the existing McDonald's?

4,650 sq. ft. + 1,312 sq. ft. basement = 5,962 sq. ft. total

How many seats does the existing restaurant have? 110 seats

What is being proposed at this location?

EXHIBIT – PLAT TO ACCOMPANY ZONING PETITION

We are proposing to demolish the existing McDonald's restaurant and rebuild a new McDonald's restaurant in the same location.

The new restaurant will have two drive-thru lanes to improve operational efficiency.

There is an existing freestanding McDonald's sign on Security Blvd. which is proposed to be replaced and which is the subject of the Special Hearing in this matter.

The existing sign is 212 sq. ft., and it will be replaced with a new sign that is 83 sq. ft.

There is ample off-street parking on this site, and we are providing more parking spaces than are required.

What is the square footage of the new McDonald's restaurant? 4,377 sq. ft.

How many seats will the new restaurant have? 88 seats

EXHIBIT – ELEVATIONS / SIGNAGE DETAILS (V-2)

- Contemporary, upscale look – moving away from the bright, plastic look of the old McDonald's restaurants.

- “Café”-type customer area - tasteful colors and materials; limited branding.
- Brick exterior (as opposed to painted red and white).
- No mansard roof with (lighted) white roof beams.
- “Green building” features: (now standard for new McDonald’s)
 - High-efficiency HVAC system
 - TPO reflective roof to reduce energy costs
 - Canopy – reduce solar heat gain
 - Masonry walls – thermal properties
 - Two-speed grill exhausts
 - Auto-sensor lavatory faucets
 - LED lighting throughout the building
 - Cardboard recycling
 - All internally lit signs are LED
 - Induction lot light fixtures
- The new building will be entirely ADA-compliant.

Explain the sign package:

What is proposed?

We are proposing 6 enterprise signs on the faces of the buildings: 2 signs on the front of the building; 2 signs on the drive-thru side of the building; 1 sign on the non-drive-thru side of the building; and 1 sign on the rear of the building.

This is a reduction from the 8 enterprise signs that currently exist on the building.

We are proposing a “canopy”-style directional sign on the front side of the building. This sign will have the word “Welcome” above the face of the canopy, rather than printed directly on the face of the canopy.

We are also proposing a directional sign over each of the drive-thru lanes which, because they are intended to go over the drive-thru lanes, are higher than what would otherwise be permitted.

Finally, we are proposing a new freestanding sign, which will be 83 sq. ft. and which will replace the existing 212 sq. ft. sign.

Why are you proposing these signage variances?

We have requested these signage variances to make the building visible to passing motorists along Security Blvd. and to safely direct traffic in and around the site.

These signage variances will also permit the appearance of this restaurant to be consistent with other McDonald's restaurants in Baltimore County.

Similar signage packages have been approved by variances granted by the Baltimore County Administrative Law Judge for other McDonald's restaurants located at 502 Reisterstown Road, 2116 York Road, 2222 Dundalk Avenue, 6650 Security Boulevard, 2107 E. Joppa Road, 934 York Road, 7927 Belair Road, 1472 Martin Blvd., 7801 Eastern Ave., and 6830 Loch Raven Blvd.

Describe how proposed construction will improve the operation.

The proposed construction will modernize the building and improve the efficiency and functionality of the restaurant. Additionally, we are implementing as many "green building" items in our design as possible, which will make the new building much more energy efficient than the existing one.

What is the amount of capital investment for this project?

Approximately \$ 2.45 million

What is the construction schedule for the new restaurant?

If the variances are approved, construction is expected to begin in June and will be completed in October of this year.



BALTIMORE COUNTY ZONING HEARING OUTLINE

MCDONALD'S – 1655 BELMONT AVENUE

May 9, 2012

IWONA ZARSKA – TESTIMONY

Name: Iwona Zarska

Address:

Employer, employer's address: Baltimore Land Design Group, Inc.
230 Schilling Circle, Suite 364
Hunt Valley, MD 21031

What is your job title?

Please describe the nature of the services you provide.

Have you ever testified as an expert witness in the field of site engineering before the Zoning Commissioner of Baltimore County?

Yes.

Have you ever been accepted an approved as such an expert witness?

Yes.

I offer Ms. Zarska as an expert witness in site engineering.

Are you familiar with the petition before the Zoning Commissioner? Yes.

What has been your involvement with this project?

What is the subject of the Petition for Special Hearing?

The Petition for Special Hearing relates to the free-standing enterprise sign located on Security Blvd.

We have received conflicting interpretations from the Zoning Office as to how to calculate the size of these enterprise signs at different locations, so we have requested confirmation of our reading of the Baltimore County Zoning Regulations concerning these signs.

MEMORANDUM OF LAW

1. The Zoning Regulations define a "contiguous sign" as "a sign having any part located within one foot from any part of another sign in the same class, except that, in the case of a freestanding sign, 'contiguous sign' means a sign having its support structure integral to the support structure of another sign in the same class."
 - a. The proposed freestanding sign is not a contiguous sign because the enterprise sign portion and the changeable copy portion are not two signs of the same class and are not located within one foot of each other.
 - b. In addition, the Zoning Commissioner's Policy Manual expressly contemplates an enterprise sign and electronic message board sharing a support structure.
 - c. **We therefore request confirmation that the proposed freestanding sign is not a contiguous sign under the BCZR.**
2. The definition of "area" under the BCZR explicitly excludes "air spaces located between freestanding signs of different classes which are erected on a common or shared supporting structure."
 - a. **Because the freestanding sign is not a contiguous sign, we would like to confirm that the areas of the enterprise sign and the changeable copy sign are calculated separately, rather than by drawing a box around both of them.**
3. Section 450.7.B provides that "a freestanding changeable copy sign may be erected only as an integral part of an otherwise permitted enterprise or joint identification sign" and that "up to 50% of the erected sign area of a permitted enterprise or joint identification sign may be devoted to changeable copy."
 - a. **We would therefore like to confirm that the area of the changeable copy portion of the sign may be up to 50% of the size of the enterprise sign portion.**

4. Only one freestanding sign is permitted per frontage under Section 450.4 Attachment 1, Section 5(b)(IV).
 - a. **We therefore would like to confirm that the enterprise sign and the changeable copy reader board constitute one freestanding sign when they are located on the same support structure.**
5. Finally, the height of the changeable copy sign is permitted to be 25' under Section 450.4 Attachment 1, Section 1(c)(VII).
 - a. **We would like to confirm that the height of the changeable copy sign is measured to the top of the changeable copy portion of the freestanding sign, not to the top of the enterprise sign.**

As one of our requested variances depends on the result of the Special Hearing, we request that a decision be made on the Special Hearing before we proceed with the requested variances.

If the Special Hearing requests are granted:

As a result of the Petitioner's application, what variances are being requested?

- 405.4 Attachment 1, 5(a)(VI) to permit 6 wall-mounted enterprise signs on the building facades in lieu of the permitted 3 signs (Sign #4 and #5 on Plat to Accompany Zoning Petition);
 - This is a reduction from the 8 wall-mounted enterprise signs that are currently on the building facades.
- **SEE EXHIBIT – PHOTOS**
- 450.4 Attachment 1, 3(b)(VII) to permit a directional sign of 10.7 ft. in height in lieu of the permitted 6 ft. (Sign #1 on Plat to Accompany Zoning Petition);
- 450.4 Attachment 1, 3(b)(VII) to permit two directional signs of 9.71 ft. in height in lieu of the permitted 6 ft. (Sign #2 on Plat to Accompany Zoning Petition);
- 450.4 Attachment 1, 3(II) to permit a canopy-type directional sign in lieu of the permitted wall-mounted or free-standing sign (Sign #3 on Plat to Accompany Zoning Petition);
- 450.5.B.3.b to permit erection of the sign above the face of the canopy in lieu of its erection on the face of the canopy (Sign #3 on Plat to Accompany Zoning Petition);

If the Special Hearing relief is denied:

There is one additional variance request if the Special Hearing relief is denied:

- **A variance to Section 450.4 Attachment 1, 5(b)(V) to permit a freestanding enterprise sign of 94 sq. ft. in lieu of the permitted 75 sq. ft.**
 - The existing sign is 212 sq. ft., so the proposed sign will be less than half the size of the existing sign.
 - **EXHIBIT – ALTERNATIVE PLAT TO ACCOMPANY VARIANCE PETITION & ELEVATIONS/SIGNAGE DETAILS**

Please identify the requested variances on the Plat to Accompany Zoning Petition.

SEE EXHIBIT – ELEVATIONS / SIGNAGE DETAILS

Is the subject property peculiar, unusual, or unique when compared to other properties in the neighborhood?

Yes. The property is unique due to its irregular shape and due to the fact that, although it fronts on Security Blvd., the entrance to the property is in the rear on Belmont Ave. In addition, trees and other commercial establishments along Security Blvd. obstruct the view of this property from Security Blvd. in both directions.

SEE EXHIBIT – PHOTOS (FREESTANDING SIGN)

Since you have indicated that the property is peculiar, unusual, or unique, would strict compliance with the Baltimore County Zoning Regulations result in a practical difficulty or unreasonable hardship to the Petitioner?

Yes.

The irregular shape and the fact that the property does not have access to Security Blvd., as well as the fact that trees and other commercial establishments along Security Blvd. obstruct the view of the property and the freestanding sign, create practical difficulties in identifying the building and safely directing traffic in and around the site.

Currently, the well known mansard roof, which is visible from Security Blvd., helps to identify the building as a McDonald's.

With the updated design of the new McDonald's restaurant, additional signage is necessary to identify the restaurant as a McDonald's to those who may not be familiar with the new design.

The additional wall-mounted enterprise signs identify the building as a McDonald's restaurant from all sides, and will permit motorists to more easily identify the building as a McDonald's from Security Blvd.

In addition, the proposed signage identifies the drive-thru lane and the entrances to the restaurant in order to safely direct traffic in and around the site.

This McDonald's would also differ from McDonald's standard signage plan that has been implemented on other restaurants in Baltimore County if the requested variances were not permitted.

Would the granting of the variance be injurious to the use and enjoyment of the other property owners in the immediate vicinity, or substantially diminish and impair property values in the neighborhood?

The granting of the variance will likely improve property values in the vicinity, as the new restaurant will be more modern and attractive than the existing one and represents a significant private investment in the County.

As the requested variances will permit McDonald's to rebuild a new restaurant in the same location as the existing one, there will be no greater impact on the use and enjoyment of the neighboring properties than that created by the existing restaurant.

Would the granting of the variances impair an adequate supply of light and air to adjacent property, or overcrowd the land, or create an undue concentration of population, or substantially increase the congestion of the streets, or create hazardous traffic conditions, or increase the danger of fire, or otherwise endanger the public safety?

The granting of the variances will not impair the supply of light and air to the adjacent properties any more than the existing restaurant does, nor will these variances cause an overcrowding of the land. Similarly, the granting of the variances will have no affect on the concentration of population, congestion of the streets, traffic conditions, or the danger of fire, nor will they endanger the public safety in any manner.

Would the granting of the variances adversely affect transportation or unduly burden water, sewers, school, park, or other public facilities?

The granting of the variances will not have any impact on transportation, nor will they burden water, sewers, school, park, or other public facilities.

Would the granting of the variances be in strict harmony with the spirit and intent of the BCZR?

The granting of these variances is in harmony with the purpose of the Zoning Regulations, as they will promote the health, security, comfort, convenience, orderly development and other aspects of the general welfare of the community by permitting McDonald's to replace an outdated restaurant with a more modern, attractive one. This will improve the general welfare of the surrounding neighborhood.

Would the granting of the variances cause any injury to the public health, safety, or general welfare?

The granting of the variances will not cause any injury to the public health, safety, or general welfare.

CONCLUSION

For these reasons, we respectfully request that the signage variances be granted.

EXHIBIT – OUTLINE OF TESTIMONY

The district court ruled, on review of the '034 specification, the prosecution history, and a dictionary definition of "integral," that the claimed gasket shield is not limited to manufacture by co-extrusion. The court instructed the jury as follows:

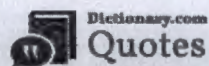
"Integral" is used here in its ordinary sense to mean formed as a unit with another part, and therefore, "integral therewith" means that the outer layer of the gasket is formed as a unit and in direct contact with the inner layer of the gasket.

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contiguous [kuhn-tig-yoo-uhs] ⓘ

Main Entry: **contiguous** [kuhn-tig-yoo-uhs] ⓘ [Show IPA](#)

Part of Speech: *adjective*

Definition: adjacent, in contact

Synonyms: abutting, adjoining, approximal, beside, bordering, close, contactual, conterminous, juxtaposed, juxtapositional, meeting, near, near-at-hand, nearby, neighboring, next, next door to, next to, touching

Antonyms: divided, separated

Main Entry: adjoining

Part of Speech: *adjective*

Definition: being next to

Synonyms: abutting, adjacent, approximal, bordering on, connecting, conterminous, **contiguous**, coterminous, impinging, interconnecting, joined, joining, juxtaposed, near, neighboring, next door, touching, verging

Antonyms: detached, divided, separate

Main Entry: approximate

Part of Speech: *adjective*

Definition: near

Synonyms: adjacent, bordering, close together, **contiguous**, nearby, neighboring

Antonyms: away, far

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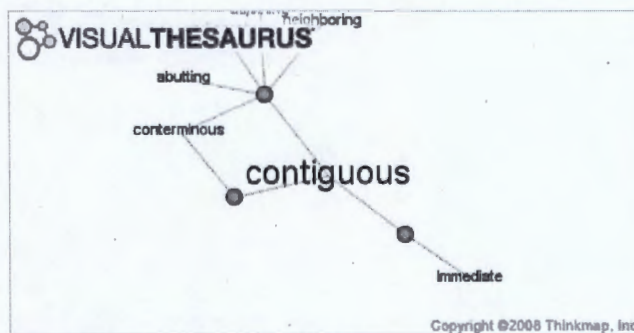
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Main Entry: bounded

Part of Speech: *adjective*

Definition: limited, confined

Synonyms: belted, bordered, boundaried, circumscribed, compassed, **contiguous**, defined, definite, delimited, determinate, edged, encircled, enclosed, encompassed, enveloped, fenced, finite, flanked, fringed, girdled, hedged, hog-tied, liminary, restricted, rimmed, ringed, surrounded, walled

Antonyms: free, loose, unbounded, unconfined, unlimited

Main Entry: close

Part of Speech: *adjective*



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
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PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 8, 2012

HAND DELIVERED-SUPPLEMENTAL LETTER

John Beverungen, Administrative Law Judge/Hearing Officer
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED

MAY 08 2012

OFFICE OF ADMINISTRATIVE HEARINGS

Re: Archland Properties I, LLC
1655 Belmont Avenue
Case No.: 2012-231-SPHA

Dear Judge Beverungen,

Supplementing our letter dated yesterday, May 7, 2012, we enclose an excerpt describing "Changeable Copy Signs" from the September 19, 1996 Final Report of the Planning Board on Legislative Project 96-01, entitled "PROPOSED REVISION TO THE BALTIMORE COUNTY ZONING REGULATIONS CONCERNING SIGNS." This Report became the basis for Bill 89-97, the comprehensive sign legislation enacted the next year. The preamble of the Bill refers specifically to this Final Report.

The excerpt on page 61 includes the changeable copy sign language which became BCZR Section 450.7.B, describing such a free-standing sign as "an integral part of an otherwise permitted Enterprise or Joint Identification sign." Most significant, please note the adjoining "Mr. Burger" sketch, which shows the enterprise and changeable copy signs physically together, integrated, and virtually merged on the structure. This is consistent with the views expressed in our May 7 correspondence.

Sincerely,

Peter Max Zimmerman

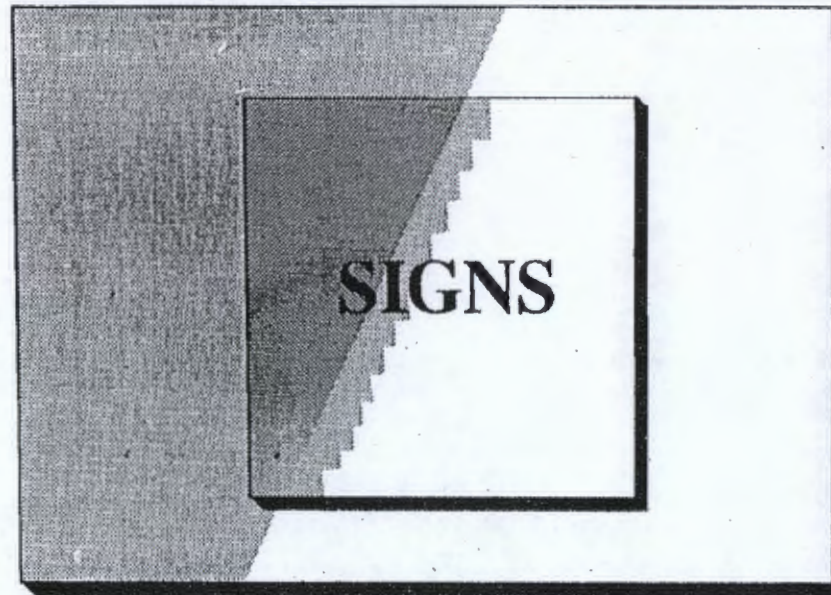
Peter Max Zimmerman
People's Counsel for Baltimore County

Enclosure

cc: Stanley Fine, Esquire
Leonard Wasilewski, Zoning Review
Andrea Van Arsdale, Planning Director
Dennis Wertz, Area Planner

Legislative Project No. 96-01
Part 1

**PROPOSED REVISION TO THE BALTIMORE COUNTY ZONING
REGULATIONS CONCERNING:**



A Final Report of the Baltimore County Planning Board

September 19, 1996

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**PROPOSED REVISION TO THE BALTIMORE
COUNTY ZONING REGULATIONS CONCERNING:**

SIGNS

INTRODUCTION

PROJECT DESCRIPTION

In its Final Report dated February 17, 1994 the Planning Board recommended to Council that the County's Zoning Regulations regarding signs be comprehensively revised. The Council held a public hearing on the Planning Board's recommendations in June, 1995. In response to comments made at the public hearing, the Council requested in Resolution 7-96 that the Planning Board prepare a comparison of Baltimore County's sign regulations with those of other jurisdictions and that the Planning Board presents its recommendations in parts.

This report includes the comparison of Baltimore County's sign regulations with those of other jurisdictions. It also includes recommendations regarding permanent and temporary on-premises signs and permanent off-premises signs. A report concerning temporary off-premises signs will follow.

COMPARISON WITH OTHER JURISDICTIONS

Provisions of the County's sign regulations are compared with the sign regulations of the other jurisdictions in the region, in two tables (see Appendix). Table 1 is a comparison to Baltimore City, Anne Arundel and Harford Counties; Table 2 is a comparison to Howard, Carroll, Montgomery and Prince George's Counties. The table includes Baltimore County's existing regulations and the recommended changes. A comparison of Baltimore County's regulations regarding temporary off-premises signs to those of other jurisdictions in the region will be developed in Part 2 of the response to this Resolution.



EXISTING CONDITIONS



IN CONFORMANCE WITH PROPOSED
SIGN REGULATIONS

A reduction in the number of lines of copy will increase the readability of signs from moving vehicles.



EXISTING CONDITIONS



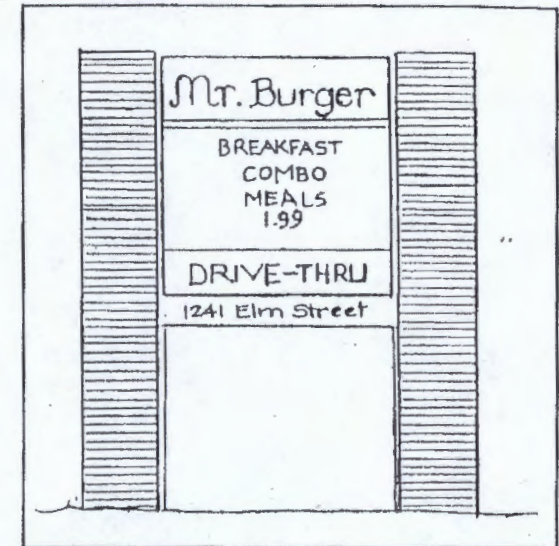
**IN CONFORMANCE WITH PROPOSED
SIGN REGULATIONS**

The proposed sign regulations will eliminate streamers and pennants which account for a large percentage of the visual clutter caused by signage.

B. Changeable Copy Signs

Pursuant to Section 450.3. Class 1.c, changeable copy signs may be erected, subject to the following additional requirements:

1. A free-standing changeable copy sign shall be erected only as an integrated part of an otherwise permitted Enterprise or Joint Identification sign.
2. Up to 50% of the erected sign area of the permitted Enterprise or Joint Identification sign may be devoted to changeable copy.
3. Except for time or temperature signs, the message of the sign may be changed no more than four times in any one 24-hour period, starting at midnight.



A Changeable Copy Sign

C. Outdoor Advertising Signs

Pursuant to Section 450.3. Class 11, outdoor advertising signs may be erected, subject to the following additional requirements:

1. An outdoor advertising sign shall not be erected:
 - a. outside the Urban-Rural Demarcation Line; or
 - b. so as to be visible, as determined by the Director of the Office of Planning and Zoning, from a scenic route designated in the Master Plan; or
 - c. less than 200 feet, measured along the adjoining road, from a residential zone; or more than 50 feet from the right-of-way line of the highway along which the sign will be erected, contrary provisions of

Debra Wiley - Certificate of Posting: 1655 Belmont Ave.

From: "Williams, Elizabeth" <ewilliams@rosenbergmartin.com>
To: "dwiley@baltimorecountymd.gov" <dwiley@baltimorecountymd.gov>
Date: 5/3/2012 10:02 AM
Subject: Certificate of Posting: 1655 Belmont Ave.
CC: "Fine, Stanley" <SFine@rosenbergmartin.com>
Attachments: Cert. of Posting - 1655 Belmont.pdf

Hi Debbie:

As we discussed, I have attached the certificate of posting from Dick Hoffman. I will contact him to make sure he has provided the executed copy to you this week. Please let me know if you need anything else. Thank you

Elizabeth A. Williams, Paralegal



Rosenberg
Martin
Greenberg
LLP

25
Celebrating 25 Years

Rosenberg Martin Greenberg, LLP
25 South Charles Street, 21st Floor
Baltimore, Maryland 21201
410-649-4988 p
410-727-1115 f
www.rosenbergmartin.com

Certificate of Posting

RE: Case NO. 2012-0231-SPHA

Petitioner/Developer _____

Ashland Property I, LLC

Date of Hearing/Closing 5/9/12

Baltimore County
Department of Permits and Development Managements
County Office Building – Room 111
111 W. Chesapeake Ave.
Towson, Md. 21204

Attention:

This letter is to certify, under penalties of perjury, that the necessary sign as required by law, was posted conspicuously on the property located at _____

1655 Belmont Avenue

The sign(s) were posted on 4/24/12
(Month, Day, Year)

Sincerely,

(Signature of sign Poster and date)

Richard E. Hoffman
(Printed Name)

904 Dellwood Drive
(Address)

Fallston, Md. 21047
(City, State, Zip Code)

410-879-3122
(Telephone Number)

See Attached
Photograph

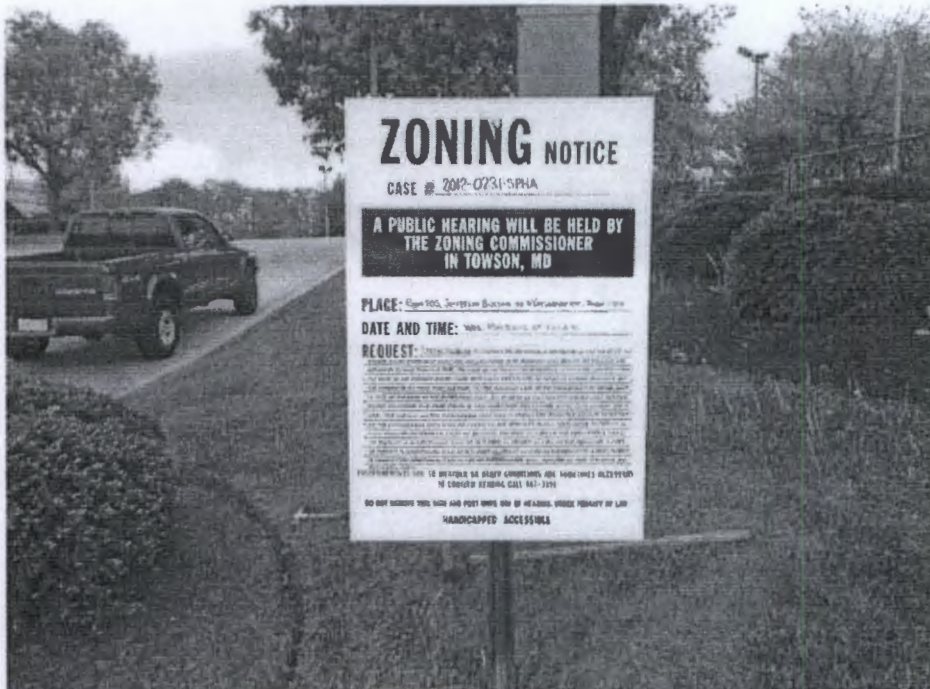
Certificate of Posting
Photograph Attachment

Re: 2012-0231-SPHA

Petitioner/Developer: _____

Ashland Property I, LLC

Date of Hearing/Closing: 5/9/12



1655 Belmont Avenue

Posting Date: 4/24/12

(Signature and date of sign poster)

5-9 @ 11am, 205

CASE NO. 2012- 0231-SPHA

CHECKLIST

<u>Comment Received</u>	<u>Department</u>	<u>Support/Oppose/ Conditions/ Comments/ No Comment</u>
<u>4-10</u>	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	<u>NC</u>
_____	DEPS (if not received, date e-mail sent _____)	_____
_____	FIRE DEPARTMENT	_____
<u>4-23</u>	PLANNING (if not received, date e-mail sent _____)	<u>Comments</u>
<u>4-3</u>	STATE HIGHWAY ADMINISTRATION	<u>No objection</u>
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 4-24-12

SIGN POSTING Missing 5/2 Date: _____ by _____

5/3 9:41am Spoke to Mr. Fine; will be over

PEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☒ No ☐ 5-7-12

Comments, if any: See memo from Washington (3-26-12)
People's Counsel

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

CAROLE S. DEMILIO
Deputy People's Counsel



PETER MAX ZIMMERMAN
People's Counsel

May 7, 2012

RECEIVED

MAY 07 2012

OFFICE OF ADMINISTRATIVE HEARINGS

AND DELIVERED

John Beverungen, Administrative Law Judge/Hearing Officer
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Archland Properties I, LLC
1655 Belmont Avenue
Case No.: 2012-231-SPHA

Concu
business
freestand
permitted

Corr
them as fol

"450.

A. In g
the struc
general st
the table in
limitations o

5. Integral sign: a
as in stone, bronze
of the building to
commemorative cita
Section 450.8 pertaini

In this setting, what is th
sign be "an integral part of a
sign?" More specifically, what i
the changeable copy sign may be
sign? In addition, is the size of the s
area and the rest of the enterprise sign

Dear Judge Beverungen,

Upon review of the petition, site plan, Zoning Review memorandum
Wasilewski; March 26, 2012), and the Office of Planning correspondence (Andrea V
Lynn Lanham, Curtis Murray, Dennis Wertz; April 26, 2012), it appears that there
of first impression regarding interpretation of the sign law. The question concern
and size of changeable copy signs within an enterprise sign, and focuses on th
application of the "integral part" language in BCZR Section 450.7.B.1.

The petitioner requests a determination of law, via BCZR Section 500
for its proposed a changeable copy sign below the familiar McDonald's arch
Woodlawn area restaurant on Belmont Avenue near Security Boulevard
apparently replacing a bulletin board, is separated more than 1 foot
McDonald's arch. The two are on and connected only by a single mono
plan does not disclose the distance between the changeable copy sign
drawing SH-1 is anywhere near scale, the distance between the signs
the full width of the changeable copy) as exceeding the maximum 75 s
(enterprise and changeable copy) as exceeding the maximum 75 s
clearly to be correct. Remarkably, the site plan does not indicate an

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

DATE: April 18, 2012

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

Andrea Van Arsdale
Director, Department of Planning
1655 Belmont Avenue

RECEIVED

APR 23 2012

OFFICE OF ADMINISTRATIVE HEARINGS

Division of
AVA/LL: CM

SUBJECT:
REFERENCE: 12-231
Item Number: Archland Property I, LLC
Petitioner: BM & BM-AS
Zoning: Special Hearing and Variance
Requested Action:

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request, accompanying site plan, proposed elevations and memo to the Zoning Commissioner dated March 26, 2012 from Permits Approvals and Inspections (PIA) Zoning, regarding free-standing enterprise sign with an electronic message board (EMB). McDonalds wants to establish a prototype for use at their facilities within Baltimore County. The decision on the petitioner's special hearing request could set a precedent for not only this special hearing and other McDonalds, but also for many other enterprise signs in Baltimore County.

This department does not support the special hearing requests. An enterprise sign and an electronic message board should not constitute one freestanding enterprise sign just because it is affixed to a support structure. The proposed freestanding pylon sign illustrated on Drawing No. SH-1 clearly shows two separate signs (the "golden arches" and the message board beneath it). The electronic message board sign that is shown on that illustration is not an integral part of the enterprise sign as required by Section 450.7.B.1 of the Baltimore County Zoning Regulations.

The intent of Section 450.7.B.2 of the Baltimore County Zoning Regulations as determined by the department is that the area of the electronic message board is included in the calculation of the enterprise sign when it is erected as an integral part of an enterprise sign.

This department agrees with the interpretation of PIA Zoning in the above referenced decision.

This department does not oppose the petitioner's variance requests one (1) through three (3). The department opposes the request to permit an enterprise sign that exceeds the permitted height. The department does not support that request in alternative to the denial of the special hearing. The site has good visibility from Security Boulevard and a sign that meets the area requirements is easily visible.

5-9 11Am, 205

Debra Wiley - ZAC Comments - Distribution Meeting of March 26, 2012

From: Debra Wiley
To: Kennedy, Dennis; Lanham, Lynn; Livingston, Jeffrey; Lykens, David; M...
Date: 4/4/2012 1:55 PM
Subject: ZAC Comments - Distribution Meeting of March 26, 2012

Good Afternoon,

Please see the cases listed below and the hearing date, if assigned. If you wish to submit a ZAC comment, please be advised that you must do so before the hearing date. If it's not received by the hearing date, it will not be considered in our decision.

2012-0229-A - 11206 Ridgeway Avenue South Avenue
Administrative Variance - Closing Date: No closing date reflected in data base 4/4

2012-0230-XA - 6216 Ebenezer Road
No date reflected in data base 4/4

2012-0231-SPHA - 1655 Belmont Avenue
No date reflected in data base 4/4

2012-0232-A - 2420 Bulls-Sawmill Road
No date reflected in data base 4/4

2012-0233-X - 6709 White Stone Road
No date reflected in data base 4/4

2012-0234-A - 311 Railroad Avenue
No date reflected in data base 4/4

2012-0235-A - 1218 Elm Ridge Avenue
No date reflected in data base 4/4

2012-0236-SPHA - 16928 York Road
No date reflected in data base 4/4

Thanks.

Debbie Wiley
Legal Administrative Secretary
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

May 1, 2012

Archland Property I LLC
Jamie Grossman
c/o McDonald's Corporation
6903 Rockledge Drive Suite 1100
Bethesda MD 20817

RE: Case Number: 2012-0231 SPHA, Address: 1655 Belmont Avenue

Dear Mr. Grossman:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on March 26, 2012. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaf

Enclosures

c: People's Counsel
Lee May, Area Construction Manager, 6903 Rockledge Drive, Suite 1100, Bethesda MD 20817
Stanley S. Fine, Esq., 25 S. Charles Street, Suite 2115, Baltimore MD 21201

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor



Beverley K. Swaim-Staley, Secretary
Melinda B. Peters, Administrator

Date: 4-3-12

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No 2012-0231-SPHA.
Special Hearing Variance
Archland Property I, LLC
Jamie Grossman c/o McDonald's Corp.
1655 Belmont Ave.

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2012-0231-SPHA.

Should you have any questions regarding this matter, please contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may E-mail him at (rzeller@sha.state.md.us).

Sincerely,

A handwritten signature in blue ink, appearing to read "Steven D. Foster".

Steven D. Foster, Chief
Access Management Division

SDF/raz

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: April 10, 2012

FROM: Dennis A. Kennedy^{DAK}, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For April 09, 2012
Item Nos. 2012-218, 229, 231, 232, 233, 235
And 236

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

DAK:CEN

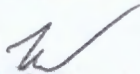
cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-04092012-NO COMMENTS.doc

BALTIMORE COUNTY, MARYLAND
Interoffice Memorandum

DATE: March 26, 2012

TO: Zoning Commissioner and File

FROM: Leonard Wasilewski 
Planner II, Zoning Review

SUBJECT: McDonald's Corp.
2012-0231-SPHA

- A. For clarification, this office accepted a Special Hearing and Variances for a free standing Enterprise Sign with an Electronic Message Board (EMB) on a Pad Site.
- B. An EBM must be part of and integral to either an Enterprise or a Joint Identification Sign. Integral in this instance means on the same structure and contiguous. See Definitions (Section 450.3)
- C. Since the sign Area (Section 450.3) is defined as one continuous rectangle around the sign that includes air spaces for signs of the same class. Therefore, an enterprise sign and EMB must be contiguous to be of the same class and not more than a foot apart.
- D. This has been the zoning review interpretation since October 19, 1997.
- E. Please call me if you have any questions. (410-887-3391)

LW

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: April 18, 2012

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 1655 Belmont Avenue

INFORMATION:

Item Number: 12-231

Petitioner: Archland Property I, LLC

Zoning: BM & BM-AS

Requested Action: Special Hearing and Variance

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request, accompanying site plan, proposed sign elevations and memo to the Zoning Commissioner dated March 26, 2012 from Permits Approvals and Inspections (PIA) Zoning, regarding free-standing enterprise sign with an electronic message board (EMB). McDonalds wants to establish a prototype for use at their facilities within Baltimore County. The decision on the petitioner's special hearing request could set a precedent for not only this specific site and other McDonalds, but also for many other enterprise signs in Baltimore County.

This department does not support the special hearing requests. An enterprise sign and an electronic message board should not constitute one freestanding enterprise sign just because it is affixed on the same support structure. The proposed freestanding pylon sign illustrated on Drawing No. SH-1 clearly shows two separate signs (the "golden arches" and the message board beneath it). The electronic message board sign that is shown on that illustration is not an integral part of the enterprise sign as required by Section 450.7.B.1 of the Baltimore County Zoning Regulations.

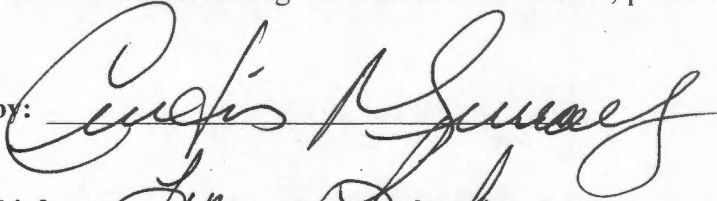
The intent of Section 450.7.B.2 of the Baltimore County Zoning Regulations as determined by this department is that the area of the electronic message board is included in the calculation of the area of the enterprise sign when it is erected as an integral part of an enterprise sign.

This department agrees with the interpretation of PIA Zoning in the above referenced memo.

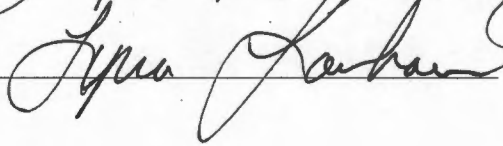
This department does not oppose the petitioner's variance requests one (1) through five (5). However, the department opposes the request to permit an enterprise sign that exceeds the permitted 75 square feet (this department does not support that request in alternative to the denial of the special hearing request). The site has good visibility from Security Boulevard and a sign that meets the area requirements would be easily visible.

For further information concerning the matters stated here in, please contact Dennis Wertz at 410-887-3480.

Prepared by:

A handwritten signature in cursive script, appearing to read "Curtis R. Gurney", written over a horizontal line.

Division Chief:
AVA/LL: CM

A handwritten signature in cursive script, appearing to read "Lynn L. Lohan", written over a horizontal line.

684 F.Supp.2d 1187, 2010 Markman 199699
(Cite as: 684 F.Supp.2d 1187)

H

United States District Court,
N.D. California,
San Jose Division.
SCIENTIFIC SPECIALTIES INC., Plaintiff,
v.
THERMO FISHER SCIENTIFIC INC., Defendant.

No. C-08-05224 RMW.
Jan. 13, 2010.

Background: Owner of patent for integral assembly of hollow reagent tubes and seal caps used in scientific research brought action against competitor, alleging infringement. Parties sought construction of terms and competitor moved for summary judgment.

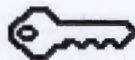
Holdings: The District Court, Ronald M. Whyte, J., held that:

- (1) term "integral" meant a number of spaced reagent tubes arranged in an elongated series with a corresponding number of individually manipulable seal caps, the spacing of the seal caps corresponding to the spacing of the reagent tubes, all joined so as to form a unit;
- (2) fact issues existed as to whether competitor's product was an infringing integral assembly; and
- (3) patent was not equivalently infringed by accused devices with seal caps having a flat or planar closed end.

Motion granted in part and denied in part.

West Headnotes

[1] Patents 291



314(5)

291 Patents

291XII Infringement

291XII(B) Actions

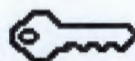
291k314 Hearing

291k314(5) k. Questions of law or fact.

Most Cited Cases

Construction of a patent, including terms of art within a claim, is exclusively within the province of the court.

[2] Patents 291



165(3)

291 Patents

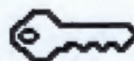
291IX Construction and Operation of Letters Patent

291IX(B) Limitation of Claims

291k165 Operation and Effect of Claims in General

291k165(3) k. Construction of language of claims in general. Most Cited Cases

Patents 291



167(1)

291 Patents

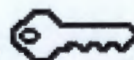
291IX Construction and Operation of Letters Patent

291IX(B) Limitation of Claims

291k167 Specifications, Drawings, and Models

291k167(1) k. In general. Most Cited Cases

Patents 291



168(2.1)

291 Patents

291IX Construction and Operation of Letters Patent

291IX(B) Limitation of Claims

291k168 Proceedings in Patent Office in General

291k168(2) Rejection and Amendment of Claims

291k168(2.1) k. In general. Most Cited Cases

In determining the meaning of a disputed claim limitation in a patent infringement action, the intrinsic evidence, including the claim language, written description, and prosecution history, is the most significant.

684 F.Supp.2d 1187, 2010 Markman 199699
(Cite as: 684 F.Supp.2d 1187)

[3] Patents 291 161

291 Patents

291IX Construction and Operation of Letters Patent

291IX(A) In General

291k161 k. State of the art. Most Cited Cases

Words of a patent claim are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art.

[4] Patents 291 167(1)

291 Patents

291IX Construction and Operation of Letters Patent

291IX(B) Limitation of Claims

291k167 Specifications, Drawings, and Models

291k167(1) k. In general. Most Cited Cases

Patent claims are read in view of the specification, which is the single best guide to the meaning of the disputed term.

[5] Patents 291 168(2.1)

291 Patents

291IX Construction and Operation of Letters Patent

291IX(B) Limitation of Claims

291k168 Proceedings in Patent Office in General

291k168(2) Rejection and Amendment of

Claims

291k168(2.1) k. In general. Most Cited

Cases

In construing a patent claim, a court should consider the patent's prosecution history, if it is in evidence.

[6] Patents 291 101(2)

291 Patents

291IV Applications and Proceedings Thereon

291k101 Claims

291k101(2) k. Construction in general. Most Cited Cases

Term "integral" in patent for integral assembly of hollow reagent tubes and seal caps used in scientific research meant a number of spaced reagent tubes arranged in an elongated series with a corresponding number of individually manipulable seal caps, the spacing of the seal caps corresponding to the spacing of the reagent tubes, all joined so as to form a unit.

[7] Patents 291 101(2)

291 Patents

291IV Applications and Proceedings Thereon

291k101 Claims

291k101(2) k. Construction in general. Most Cited Cases

Term "open ends of the adjacent tubes integrally connected by a series of aligned tethers," in patent for integral assembly of hollow reagent tubes and seal caps used in scientific research, meant adjacent tubes joined so as to form a unit by a series of aligned tethers that attached at the plane of the open ends of each respective tube.

[8] Patents 291 165(5)

291 Patents

291IX Construction and Operation of Letters Patent

291IX(B) Limitation of Claims

291k165 Operation and Effect of Claims in General

291k165(5) k. Construction of particular claims as affected by other claims. Most Cited Cases

While interpretations that render some portion of a patent's claim language superfluous are disfavored, where neither the plain meaning nor the patent itself commands a difference in scope between two terms, they may be construed identically.

[9] Patents 291 226.6

291 Patents

684 F.Supp.2d 1187, 2010 Markman 199699
(Cite as: 684 F.Supp.2d 1187)

291XII Infringement

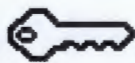
291XII(A) What Constitutes Infringement

291k226.5 Substantial Identity of Subject Matter

ter

291k226.6 k. Comparison with claims of patent. Most Cited Cases

Patents 291



237

291 Patents

291XII Infringement

291XII(A) What Constitutes Infringement

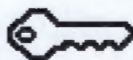
291k233 Patents for Machines or Manufactures

291k237 k. Substitution of equivalents.

Most Cited Cases

To prove infringement, a patentee must show that an accused device meets each claim limitation, either literally or under the doctrine of equivalents.

[10] Patents 291



323.2(2)

291 Patents

291XII Infringement

291XII(B) Actions

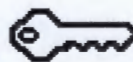
291k323 Final Judgment or Decree

291k323.2 Summary Judgment

291k323.2(2) k. Presence or absence of fact issues. Most Cited Cases

Summary judgment of non-infringement is proper when no reasonable jury could find that the accused device contains every limitation recited in the properly construed claim.

[11] Patents 291



323.2(3)

291 Patents

291XII Infringement

291XII(B) Actions

291k323 Final Judgment or Decree

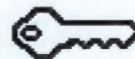
291k323.2 Summary Judgment

291k323.2(3) k. Particular cases. Most Cited Cases

Genuine issue of material fact as to whether competi-

tor's product, in its assembled form, was an "integral assembly," with open ends integrally connected by tethers, and seal caps integrally connected to associated reagent tubes, precluded summary judgment on competitor's claim that its product did not infringe on patent for integral assembly of hollow reagent tubes and seal caps used in scientific research.

[12] Patents 291



237

291 Patents

291XII Infringement

291XII(A) What Constitutes Infringement

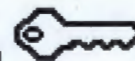
291k233 Patents for Machines or Manufactures

291k237 k. Substitution of equivalents.

Most Cited Cases

Patent for integral assembly of hollow reagent tubes used in scientific research having seal caps with semi-spherically domed closed ends was not equivalently infringed by accused devices with seal caps having a flat or planar closed end.

[13] Patents 291



237

291 Patents

291XII Infringement

291XII(A) What Constitutes Infringement

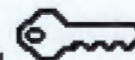
291k233 Patents for Machines or Manufactures

291k237 k. Substitution of equivalents.

Most Cited Cases

The accused device is not equivalent if the asserted equivalence would entirely vitiate a particular patent claim element.

[14] Patents 291



237

291 Patents

291XII Infringement

291XII(A) What Constitutes Infringement

291k233 Patents for Machines or Manufactures

291k237 k. Substitution of equivalents.

Most Cited Cases

A corollary to the rule against vitiating a patent claim

684 F.Supp.2d 1187, 2010 Markman 199699
(Cite as: 684 F.Supp.2d 1187)

element is that equivalency cannot embrace a structure that is specifically excluded from the scope of the claims.

[15] Patents 291  237

291 Patents

291XII Infringement

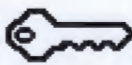
291XII(A) What Constitutes Infringement

291k233 Patents for Machines or Manufactures

291k237 k. Substitution of equivalents.

Most Cited Cases

Patent claim that contains detailed recitation of structure is properly accorded correspondingly limited recourse to doctrine of equivalents.

Patents 291  328(2)

291 Patents

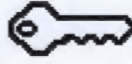
291XIII Decisions on the Validity, Construction, and Infringement of Particular Patents

291k328 Patents Enumerated

291k328(2) k. Original utility. Most Cited

Cases

2,949,203, 3,139,208. Cited.

Patents 291  328(2)

291 Patents

291XIII Decisions on the Validity, Construction, and Infringement of Particular Patents

291k328 Patents Enumerated

291k328(2) k. Original utility. Most Cited

Cases

5,722,553. Construed and Ruled Not Infringed in Part by.

*1189 Tam Thanh Thi Pham, Colby B. Springer, Robert Joseph Yorio, for Plaintiff.

J. Robert Chambers, Charles S. Crompton III, Tracey Lynn Orick, for Defendant.

ORDER CONSTRUING CLAIMS OF UNITED STATES PATENT NO. 5,722,553 AND GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT

RONALD M. WHYTE, District Judge.

Scientific Specialties Inc. ("SSI") brings this suit against Thermo Fisher Scientific Inc. ("TFS") alleging infringement of United States Patent No. 5,722,553 ("'553 patent'"), which is directed to an integral assembly of hollow tubes and seal caps. TFS asserts counterclaims for declaratory judgment of non-infringement and invalidity. The parties seek construction of seven phrases in the '553 patent. TFS also moves for summary judgment of non-infringement. The court held a claim construction hearing and heard argument on the summary judgment motion on November 3, 2009. After consideration of the claims, specification, prosecution history, and other relevant evidence, and after hearing the arguments of the parties, the court construes the disputed language of the patent-in-suit and grants in part and denies in part TFS's motion for summary judgment.

I. BACKGROUND

Both SSI and TFS design and manufacture plastic products, including reagent tubes, that are used in scientific research. The '553 patent' is directed to a strip of reagent tubes wherein each tube has an independently tethered seal cap. Reagent tubes are small, about an inch long, which makes them difficult to manipulate individually. '553 Patent' at 3:20–30. To solve this problem, tubes are connected side-by-side in a strip. *Id.* at 2:24–26, 3:20–30. The seal caps may also be connected in a strip that fits on top of the tube strip. However, it is advantageous to provide each tube with an independently tethered seal cap, which allows each tube to be sealed or unsealed without affecting the other tubes in the strip. *Id.* at 3:29–34. The seal caps are attached at an angle to the row of tubes to minimize the overall width of the assembly. *Id.* at 1:48–52.

The '553 patent' has 18 claims. Claims 1, 15, and 17 are independent claims. For illustration, claim 1 is reproduced below:

An integral assembly of a multiplicity of spaced reagent tubes arranged in an elongated aligned series, said tubes each having an open end and a closed end, the open ends of adjacent tubes integrally connected by a series of aligned tethers, and a corresponding multiplicity of correspondingly spaced independent seal caps, each

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seal cap having a tubular seal skirt portion symmetrical about a central axis and adapted to selectively sealingly engage the open end of an associated*1190 reagent tube, each said seal cap being independently pivotally connected integrally and angularly to an associated one of said reagent tubes at an angle other than 90 degrees to the elongated aligned series in which said reagent tubes are arranged and independently selectively manipulable in relation to the open end of said associated reagent tube to superimpose said seal cap thereover to selectively effect sealing penetration of said tubular skirt portion into or out of said open end to seal or unseal the open end of said associated reagent tube.

TFS makes and sells a line of products called AB-gene EasyStrip Snap Tubes ("EasyStrip"). SSI contends that the products designated AB-1502, AB-1502/w, and AB-1504 infringe at least claims 1, 15, and 17 of the '553 patent. All three products consist of two pieces: a reagent tube strip and a strip of rings and caps. Declaration of Jeffrey Coulling ("Coulling Decl.") ¶ 2. Each cap is independently connected to an associated ring, and the rings are joined by tethers. *Id.* ¶¶ 6-7. The rings are designed to be press-fit at an upper region of the tubes. *Id.* ¶ 8. The products are different in that the AB-1502 and AB-1502/w products have flat caps while the AB-1504 prod-

uct has a domed cap. *Id.* ¶ 2. The AB-1502 and AB-1502/w products are identical except in color. *Id.*

II. ANALYSIS

A. Construction of Disputed Language

[1][2][3][4][5] Construction of a patent, including terms of art within a claim, is exclusively within the province of the court. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 388, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). In determining the meaning of a disputed claim limitation, the intrinsic evidence, including the claim language, written description, and prosecution history, is the most significant. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed.Cir.2005). Words of a claim "are generally given their ordinary and customary meaning" as understood by a person of ordinary skill in the art. *Id.* at 1312-13. Claims are read in view of the specification, which is the "single best guide to the meaning of the disputed term." *Id.* at 1315. A court "should also consider the patent's prosecution history, if it is in evidence." *Id.* at 1317.

1. "An integral assembly of a multiplicity of spaced reagent tubes arranged in an elongated ... series ... and a corresponding multiplicity of correspondingly spaced independent seal caps" (Claims 1, 15, and 17)

SSI's Proposed Construction

a contiguous component comprising a series of reagent tubes spaced apart ... a series of [aligned]¹ components where the length of the series is greater than the dimensions of the individual components ... individually manipulable seal caps that correspond in number to the reagent tubes, the spacing of the seal caps corresponding to a spacing of the reagent tubes, the number of seal caps and reagent tubes each being more than one

FN1. SSI omits the word "aligned" in its proposed construction for this language as it appears in claim 15.

[6] The '553 patent repeatedly refers to the claimed invention as an "integral assembly," and the terms "integral" and "integrally" appear frequently in the specification and claims.^{FN2} At the core of many *1191 of the disputed terms is a disagreement between the parties about the meaning of the word "integral." SSI contends that "integral" means (circularly) "forming a unit such as to be complete and composed of integral parts" and that "integral assembly" refers to a series of individual elements

TFS's Proposed Construction

a one-piece article of manufacture of a number of spaced reagent tubes arranged in an elongated series and a corresponding number of spaced independent seal caps and excludes an article of manufacture where the reagent tubes and seal caps are formed separately in two pieces and then physically joined

coming together (i.e. assembled) to function as a contiguous component (i.e. operating in an integral manner). TFS contends that "integral assembly" refers to a one-piece article of manufacture.

FN2. Indeed, the words appear so frequently in some places that it is difficult to see how they are not redundant or circular. *See, e.g.*, ' 553 Patent at 1:67 to 2:4 ("an integral 'live' hinge integrally interposed in the tether ... enabling flexible manipulation of each ... cap ... from an angularly related integral extended condition to an integral superimposed tube-sealing condition"); *id.* at 4:56-57 ("the thin hinge portion is integral with the remainder of the strap with which it is inte-

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grally formed”).

Despite the terms' frequent usage, neither “integral” nor “integrally” is defined in the patent. In discussing the background of the invention, the inventor states:

It is particularly advantageous in the handling of reagent-containing vials or tubes, such as microcentrifuge tubes, that the tubes and the independently tethered caps for sealing the tubes constitute a unitary assembly. Accordingly, it is one of the objects of the present invention to provide a unitary assembly of multiple hollow tubes integrally connected to one another and to a corresponding number of seal caps independently tethered to an associated tube so that the integral assembly of tubes and caps may be handled as a unit while enabling each of the seal caps to be independently sealed or unsealed from the tube to which it is independently integrally tethered.

'553 Patent at 1:36–47 (emphasis added). Thus, it appears that the goal of providing for an “integral assembly” is to allow the apparatus to be handled as a unit. This is similar to SSI's definition of “integral,” but the proposed construction “contiguous component” is seemingly too broad. The terms “integral” and “integrally” frequently modify words that already imply that two pieces are contiguous, such as in the phrases “integrally connected,” “integrally tethered,” “integral connection,” and “merges integrally.” *E.g., id.* at 1:41–42, 2:27, 2:55–56, 3:60, 3:65, 4:26. Thus, “integral” and “integrally” must mean something more than “contiguous.”

Depending on the context, courts have construed the term “integral” to broadly mean forming a unit or to narrowly refer to being formed in one piece. *See, e.g., Vanguard Prods. Corp. v. Parker Hannifin Corp.*, 234 F.3d 1370, 1371, 1373 (Fed.Cir.2000) (“formed as a unit with another part”);

In *re Hotte*, 647 (C.C.P.A.1973) (“sufficiently broad to embrace constructions united by such means as fastening and welding”); *Am. Piledriving Equip., Inc. v. Bay Mach. Corp.*, 632 F.Supp.2d 956, 965 (N.D.Cal.2009) (“formed or cast of one piece”); *Parker-Hannifin Corp. v. Wix Filtration Corp.*, 2008 WL 697510 at *10, 2008 U.S. Dist. LEXIS 24540 at *27 (E.D.Cal. Mar. 14, 2008) (“formed in a single piece”). TFS urges the court to follow *Parker-Hannifin*, which construed “integral” to mean “formed in a single piece.” The patent at issue in *Parker-Hannifin* used language such as “integral end cap assem-

bly” and “an annular flange integral with said first end cap.” 2008 WL 697510, at *7, 2008 U.S. Dist. LEXIS 24540 at *19–20. The specification stated that the flange should be molded as a single unit with the top end cap. *Id.* at *8, 2008 U.S. Dist. LEXIS 24540 at *22. The court held that such single-unit construction was consistent with the term “integral,” and “[t]here is nothing in the claims or specifications that indicate that ‘integral’*1192 requires more than one part.” *Id.* at *8, 2008 U.S. Dist. LEXIS 24540 at *22–23. Thus, like other cases that limit “integral” to a one-piece article, *Parker-Hannifin* involved a patent that clearly indicated the elements should be formed in one piece. While the only embodiment discussed in the '553 patent involves a one-piece article of manufacture, the specification does not explicitly limit the invention to that structure, nor is it clear that “integral” refers only to a single injection-molded piece as described in the preferred embodiment.

TFS argues that the specification uses “integral assembly” synonymously with “unitary assembly” and uses “unitary” in the sense of a single structure. The only language regarding a single structure is the statement, describing the preferred embodiment, that “the flexible hinge straps, the integrally connected tubes, and the seal caps are all preferably formed as a single unitary structure by injection molding from a suitable synthetic resinous material.” '553 Patent at 4:30–33 (emphasis added). Far from limiting either “integral” or “unitary” to a single structure, this language suggests that the apparatus is preferably a single unitary structure but need not be. TFS's argument that “preferably” modifies “injection molding” rather than “single unitary structure” is unpersuasive. Although the inventor was often liberal with his use and positioning of adverbs, TFS's interpretation greatly strains the rules of grammar. Moreover, the inventor earlier states that the preferred embodiment “comprises a multiplicity ... of tubes, injection molded from a suitable plastic,” *id.* at 3:25–37, suggesting that the new preference being expressed is that of forming the entire article, from tubes through seal caps, as a single structure.

TFS also relies on the prosecution history to argue that the invention must be a single structure. During prosecution, the examiner rejected certain claims under 35 U.S.C. § 103 as being unpatentable over Irwin, et al. (United States Patent No. 3,139,208) in view of Berg (United States Patent No. 2,949,203). Springer Decl., Ex. F ¶ 4. Specifically, the examiner found “[i]t would have been obvious to one of ordinary skill in the art to have employed the cap open position taught by Berg, Fig. 2, in

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the construction of the device of Irwin, et. al., motivated by the ease of molding such.” *Id.* In response, the inventor argued:

the flat plate 8 of Irwin et al is integral with the tubes 6, the flat plate configuration being chosen specifically to retain the associated receptacles 6 for paint materials associated with one another to permit “paint by the numbers” facility to the user of the assembly. Additionally, the Berg structure illustrated in FIG. 2 is a *separate manufacture* from the container 10, and is disposed removably on the neck of the container 10 for purposes of convenience. Thus, attempting to mold the injection molded part of Berg as illustrated in FIG. 2 into the structure of Irwin et al, which presumably is also injection molded, would serve no useful purpose revealed by Irwin et al, would not be simpler or more easy, but much more complex, and certainly therefore a logical inference cannot be deduced that the molding process and structure resulting therefrom would be facilitated by the proposed re-design and reconstruction. If anything it would be made more complex and difficult, therefore *teaching away* from the proposed reconstruction.

Springer Decl., Ex. G at 14. TFS argues that this excerpt (1) uses “integral” to refer to the one-piece unit in Irwin and (2) states that converting the inventor’s one-piece unit of manufacture into a structure with parts of separate manufacture would be teaching away from the

invention. It is *1193 true that Irwin describes a one-piece unit and in fact touts his invention as “lend[ing] itself to inexpensive production as a unitary molding ... by reason of the fact that the [pieces] are all formed integrally with one another.” Irwin at 1:21–25. However, using the word “integral” to refer to a one-piece unit of manufacture does not imply that “integral” cannot also describe something else. In addition, the inventor never argues that a structure with parts of separate manufacture were not contemplated by his invention. He argued that there was no motivation to combine Irwin with Berg, i.e. that the invention was non-obvious. This is fully consistent with an argument that the invention included multi-part units. Thus, the prosecution history does not support TFS’s narrow definition of “integral.”

In conclusion, the ‘553 patent uses “integral” to mean more than a one-piece article but less than anything that is contiguous. The court finds that “integral” and “integrally” refer to pieces joined in such a way as to form a single unit. Thus, the court construes the language at issue as “a number of spaced reagent tubes arranged in an elongated series with a corresponding number of individually manipulable seal caps, the spacing of the seal caps corresponding to the spacing of the reagent tubes, all joined so as to form a unit.”

2. “the open ends of the adjacent tubes integrally connected by a series of aligned tethers” (Claim 1)

<i>SSI's Proposed Construction</i>	<i>TFS's Proposed Construction</i>
the components of the series are joined in a contiguous manner by a series of tethers oriented in a common direction	adjacent tubes are connected together by tethers at their open ends (i.e., at the plane of the element 7 in Fig. 6) and excludes an assembly where the adjacent tubes are connected by tethers spaced below their open ends

The parties dispute two aspects of this claim language. First, the parties dispute the scope of the term “integrally,” which the court resolves above. Second, the parties dispute the location of the tethers that connect the adjacent tubes. Under TFS’s construction, the tethers must be at the open ends of the tubes and the language excludes an assembly the adjacent tubes are connected by tethers spaced below their open ends. At the claim construction hearing, counsel for SSI agreed that claim 1 requires that there be tethers at the open ends of the tubes. However, SSI argues, there is no basis for excluding an assembly that *also* has tethers at other locations.

[7] As SSI points out, claim 1 does not use closed-ended claim language that would exclude additional elements not described. In addition, claim 18 provides “[t]he integral assembly according to claim 17 ... whereby said tethers comprise the only interconnection between said reagent tubes.” Thus, the inventor used clear language when he required the tethers at the open ends to be the *only* tethers. There is no basis for a similar limitation in claim 1. Thus, the court construes the disputed language to mean “adjacent tubes are joined so as to form a unit by a series of aligned tethers that attach at the plane of the open ends of each respective tube.”

3. “tether means coincident with the plane of the open

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ends of the multiplicity of tubes integrally interconnecting adjacent tubes, said tether means being coincident with the plane including the central axes of said

multiplicity of spaced reagent tubes ... said tether means integrally connecting the annular flanges of adjacent reagent tubes" (Claim 15)

<i>SSI's Proposed Construction</i>	<i>TFS's Proposed Construction</i>
the components of the series are joined in a contiguous manner by a series of tethers coincident with the 'open end plane'; the plane of the tether is coincident with the plane of the central axes ... tethers connect the annular flange of adjacent tubes in a contiguous manner	adjacent tubes are connected together by tethers at their open ends (i.e., at the plane of element 7 in Fig. 6) and excludes an assembly where the adjacent tubes are connected by tethers spaced below their open ends
*1194 As above, the key portions of this disputed language are the term "integrally" and the location of the tethers relative to the open ends of the tubes. This language is clear as to the location of the tethers ("coincident with the plane of the open ends"), and as with claim 1 discussed above, there is no basis for excluding structures that have additional tethers not at the open ends. The parties agree that the language "tether means" does not invoke the means plus function provisions of 35 U.S.C. § 112, ¶ 6. Thus, the court finds that, except for the term "integrally," this language does not require construction.	
	4. "the open ends of adjacent tubes integrally connected directly by a series of aligned tethers" (Claim 17)

<i>SSI's Proposed Construction</i>	<i>TFS's Proposed Construction</i>
individual tubes are contiguously connected to adjacent tubes by members aligned in a common direction	adjacent tubes are connected together by tethers at their open ends (i.e., at the plane of the element 7 in Fig. 6) and excludes an assembly where the adjacent tubes are connected by tethers spaced below their open ends
[8] This language has the same import as the language construed in Part II.A.2 above, except that it has the additional word "directly." The parties' proposed constructions do not account for this difference, i.e. they are identical to the proposed constructions above. At the claim construction hearing, counsel for TFS represented that the term "directly" does not affect the infringement analysis in this case. "[W]hile interpretations that render some portion of the claim language superfluous are disfavored, where neither the plain meaning nor the patent itself commands a difference in scope between two terms, they may be construed identically." <i>Power Mosfet Techs., LLC v. Siemens AG</i> , 378 F.3d 1396, 1410 (Fed.Cir.2004) (finding "the addition of the term 'directly' to an existing requirement of physical contact imposes no additional restrictions on the phrase"). Thus, the court construes this language to have the same meaning as the language in Part II.A.2, i.e. "adjacent tubes are joined so as to form a unit by a series of aligned tethers that attach at the plane of the open ends of each respective tube."	
	5. "each said seal cap being independently pivotally connected integrally ... to an associated one of said reagent tubes" (Claims 1 and 15)

<i>SSI's Proposed Construction</i>	<i>TFS's Proposed Construction</i>
an individual seal cap is contiguously connected to each tube by a flexible member at an angle to the common direction of the elongated series	each seal cap is independently and pivotally connected to an associated reagent tube in a one piece construction and excludes a construction in which each seal cap is pivotally connected to a ring which is then physically connected to a reagent tube
As with other claim language, this dispute turns on the construction of the term "integrally." Consistent with the meaning of "integrally" as discussed above, the court construes this language to mean "each seal cap is independently and pivotally joined so as to form a unit with an associated reagent tube."	
	6. "each said seal cap being independently pivotally directly connected integrally ... to an associated one of

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said reagent tubes” (Claim 17)

<i>SSI's Proposed Construction</i>	<i>TFS's Proposed Construction</i>
an individual seal cap is contiguously connected to each tube by a flexible member at an angle to the common direction of the elongated series	each seal cap is independently and pivotally connected to an associated reagent tube in a one piece construction and excludes a construction in which each seal cap is pivotally connected to a ring which is then physically connected to a reagent tube

***1195** This language is identical to that construed in the preceding section, except that it has the additional word “directly.” As with the claim language construed in Part II.A.4 above, the parties apparently agree that the word “directly” has no import. Thus, the court construes this language to have the same meaning as the language in the preceding section.

**7. “each said seal cap including a semi-spherically domed wall portion constituting said closed end”
(Claim 15)**

The parties agree that this phrase should have the construction “each said seal cap has a rounded end in the shape of a semi-spherically domed wall portion and excludes a seal cap having a flat or planar closed end.” Thus, the court adopts this construction.

B. TFS's Motion for Summary Judgment of Non-Infringement

[9][10] To prove infringement, the patentee must show that the accused device meets each claim limitation, either literally or under the doctrine of equivalents. *Deering Precision Instruments, L.L.C. v. Vector Distrib. Sys., Inc.*, 347 F.3d 1314, 1324 (Fed.Cir.2003). Summary judgment of non-infringement is proper when no reasonable jury could find that the accused device contains every limitation recited in the properly construed claim. *PC Connector Solutions LLC v. SmartDisk Corp.*, 406 F.3d 1359, 1362 (Fed.Cir.2005). SSI and TFS have stipulated that “if a claim term is not designated for construction that said element is present in the accused product(s).” Scheduling Order at 4. Thus, the non-infringement analysis reduces to whether the seven phrases construed above are present in the accused products.

1. “Integral” and “Integrally”

TFS argues that the EasyStrip products do not literally infringe any claims of the ‘553 patent under its proposed constructions. Specifically, TFS argues that “integral” and “integrally” refer to a one-piece article of manu-

facture and thus could not read on EasyStrip's two-piece design. Thus, TFS argues, EasyStrip lacks three limitations that are present in all of the independent claims: (1) an “integral assembly,” (2) open ends integrally connected by tethers, and (3) seal caps integrally connected to associated reagent tubes.

[11] Because the court rejects TFS's narrow definition of “integral,” these arguments fail. A jury could find that the two pieces of the EasyStrip design are meant to join so as to form a unit and that, in their assembled form, the three limitations are present. Thus, summary judgment of non-infringement on the basis of the terms “integral” and “integrally” is denied.

2. Semi-Spherically Domed Seal Caps

With respect to claim 15, TFS also argues that the AB-1502 and AB-1502/w products do not infringe because their caps do not have a semi-spherically domed wall portion and SSI may not assert infringement under the doctrine of equivalents. SSI concedes that the AB-1502 and AB-1502/w products do not literally infringe, as their caps are flat instead of semi-spherically domed. Rather, SSI argues that these products infringe under the doctrine of equivalents because “[b]oth caps with domed portions and caps with flat portions are configured to seal an open end of a reagent tube,” i.e. they perform substantially the same function in substantially the same way to obtain the same result. SSI's Claim Construction Brief at 23–24.

***1196** [12][13][14][15] A court may render summary judgment that the accused device is not equivalent if the asserted equivalence would entirely vitiate a particular claim element. *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 39, 117 S.Ct. 1040, 137 L.Ed.2d 146 (1997). A corollary to the rule against vitiating a claim element is that “equivalency cannot embrace a structure that is specifically excluded from the scope of the claims.” *Athletic Alternatives v. Prince Mfg.*, 73 F.3d 1573, 1582 (Fed.Cir.1996). Here, the parties' agreed-upon construction of the language “each said seal cap including

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a semi-spherically domed wall portion constituting said closed end" in claim 15 specifically excludes "a seal cap having a flat or planar closed end." Thus, SSI is barred from regaining this excluded structure through the doctrine of equivalents. Even if the construction did not explicitly exclude a flat cap, "[a] claim that contains a detailed recitation of structure is properly accorded correspondingly limited recourse to the doctrine of equivalents." *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 955 (Fed.Cir.2006) (finding recitation of a frusto-spherical basal surface excluded "distinctly different and even opposite shapes"). Claim 15's recitation of a domed seal cap is specific enough that it cannot reach flat seal caps through equivalence. Moreover, SSI's theory that both shapes perform the function of sealing a reagent tube would extend to *any* shape of seal cap. A result in which

any shape is equivalent to a specific shape limitation is "impermissible under the all-elements rule of *Warner-Jenkinson*." *Tronzo v. Biomet, Inc.*, 156 F.3d 1154, 1160 (Fed.Cir.1998). Thus, as a matter of law, the AB-1502 and AB-1502/w products do not infringe claim 15.

III. ORDER

For the foregoing reasons, the court:

1. Grants summary judgment that the AB-1502 and AB1502/w products do not infringe claim 15 and denies the remainder of TFS's motion for summary judgment of non-infringement; and

2. Construes the disputed claim language as follows:

CLAIM LANGUAGE	CONSTRUCTION
"An integral assembly of a multiplicity of spaced reagent tubes arranged in an elongated ... series ... and a corresponding multiplicity of correspondingly spaced independent seal caps"	a number of spaced reagent tubes arranged in an elongated series with a corresponding number of individually manipulable seal caps, the spacing of the seal caps corresponding to the spacing of the reagent tubes, all joined so as to form a unit
"the open ends of the adjacent tubes integrally connected by a series of aligned tethers"	adjacent tubes are joined so as to form a unit by a series of aligned tethers that attach at the plane of the open end of each respective tube
"tether means coincident with the plane of the open ends of the multiplicity of tubes integrally interconnecting adjacent tubes, said tether means being coincident with the plane including the central axes of said multiplicity of spaced reagent tubes ... said tether means integrally connecting the annular flanges of adjacent reagent tubes"	"integrally" refers to being joined so as to form a unit; "tether" means is not in means plus function format
"the open ends of adjacent tubes integrally connected directly by a series of aligned tethers"	adjacent tubes are joined so as to form a unit by a series of aligned tethers that attach at the plane of the open end of each respective tube
"each said seal cap being independently pivotally connected integrally ... to an associated one of said reagent tubes"	each seal cap is independently and pivotally joined so as to form a unit with an associated reagent tube
"each said seal cap being independently pivotally directly connected integrally ... to an associated one of said reagent tubes"	each seal cap is independently and pivotally joined so as to form a unit with an associated reagent tube
"each said seal cap including a semi-spherically domed wall portion constituting said closed end"	each said seal cap has a rounded end in the shape of a semi-spherically domed wall portion and excludes a seal cap having a flat or planar closed end

*1197 3. Schedules a case management conference for February 5, 2010 at 10:30 AM.

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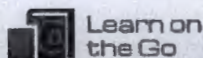
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[in-ti-gruhl, in-teg-ruhl] ?

Main Entry: **integral** [in-ti-gruhl, in-teg-ruhl] ? [Show IPA](#)

Part of Speech: *adjective*

Definition: necessary, basic

Synonyms: component, constituent, elemental, essential, fundamental, indispensable, intrinsic, requisite

Antonyms: extrinsic, secondary, supplemental, unnecessary

Main Entry: **built-in**

Part of Speech: *adjective*

Definition: included

Synonyms: congenital, constitutional, deep-seated, essential, implicit, in-built, inborn, inbred, incorporated, indwelling, ingrained, inherent, innate, inseparable, **integral**, part and parcel

Antonyms: added, extra, not included

Main Entry: **complementary**

Part of Speech: *adjective*

Definition: filling, completing

Synonyms: commutual, complemental, completing, comptory, conclusive, correlative, correspondent, corresponding, crowning, equivalent, fellow, **integral**, integrative, interconnected, interdependent, interrelated, interrelating, matched, mated, paired, parallel, reciprocal

Notes: something is **complimentary** when it has the property embodied in such an expression; **complementary** describes an addition that produces completeness or perfection in something

Antonyms: independent, unrelated

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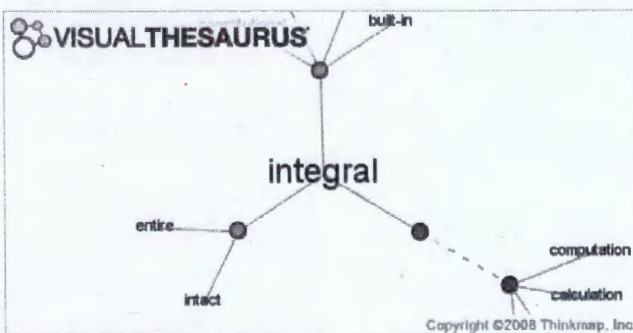
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Word of the Day



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Main Entry: **complete**

Part of Speech: *adjective*

Definition: total, not lacking

Synonyms: all, entire, exhaustive, faultless, full, full-dress, gross, hook line and sinker, imperfectate, intact, **integral**, integrated, lock stock and barrel, organic, outright, plenary, replete, the works, thorough, thoroughgoing, unabbreviated, unabridged, unbroken, uncondensed, uncut, undiminished, undivided, undocked

203 A.D.2d 210, 611 N.Y.S.2d 171
(Cite as: 203 A.D.2d 210, 611 N.Y.S.2d 171)

C

Supreme Court, Appellate Division, First Department,
New York.

In the Matter of the Arbitration between
INSURANCE COMPANY OF NORTH AMERICA,
Respondent,
For an Order, etc.,
and
Martin CARROZO, Appellant.

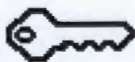
April 28, 1994.

Insurer filed petition against insured, seeking permanent stay of arbitration respecting insured's insurance claim. The Supreme Court, Nassau County, Roberto, J., granted petition. On review, the Supreme Court, Appellate Division, held that there was no "physical contact," within meaning of statute governing hit and run causes of action, so as to allow insured to pursue claim against insurer, absent showing that insured's vehicle collided with unidentified vehicle or that metal gear box, which was propelled into insured's vehicle, was integral part of unidentified vehicle.

Affirmed.

West Headnotes

Insurance 217



2784

217 Insurance

217XXII Coverage—Automobile Insurance

217XXII(D) Uninsured or Underinsured Motorist Coverage

217k2781 Necessity of Tort Liability

217k2784 k. Physical contact requirement. Most Cited Cases
(Formerly 217k467.51(6))

There was no "physical contact," within meaning of statute governing hit and run causes of action, so as to allow insured to pursue claim against insurer, absent showing that insured's vehicle collided with unidentified vehicle or that metal gear box, which was propelled into insured's vehicle, was integral part of unidentified vehicle. McKinney's Insurance Law § 5217.

****171** Before ROSENBERGER, J.P., and ROSS, RUBIN, NARDELLI and TOM, JJ.

MEMORANDUM DECISION.

210** Judgment, Supreme Court, Nassau County (Robert Roberto, J.), entered December 4, *172** 1989, which, inter alia, granted the petition seeking a permanent stay of arbitration, and order of said court and justice entered September 3, 1992, which denied respondent's motion to vacate the December 4, 1989 judgment, unanimously affirmed, without costs.

As the evidence does not establish that petitioner's insured's vehicle collided with an unidentified vehicle or that the metal gear box, which was propelled into Carrozo's vehicle, was an integral part of the unidentified vehicle, there was no "physical contact" within the meaning of Insurance Law § 5217 (Matter of Allstate Ins. Co. v. Killakey, 78 N.Y.2d 325, 329, 574 N.Y.S.2d 927, 580 N.E.2d 399).

N.Y.A.D. 1 Dept., 1994.

Matter of Insurance Co. of North America (Carrozo)
203 A.D.2d 210, 611 N.Y.S.2d 171

END OF DOCUMENT

35 A.D.3d 1284, 826 N.Y.S.2d 869, 2006 N.Y. Slip Op. 09918
(Cite as: 35 A.D.3d 1284, 826 N.Y.S.2d 869)

C

Supreme Court, Appellate Division, Fourth Department, New York.

Matter of NEW YORK CENTRAL MUTUAL FIRE INSURANCE COMPANY, Petitioner–Respondent,

v.

Tammy A. McLEARY, Respondent–Appellant.

Dec. 22, 2006.

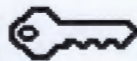
Background: Insurer filed petition against insured, seeking permanent stay of arbitration respecting insured's claim for uninsured motorist benefits. The Supreme Court, Erie County, Joseph D. Mintz, J., granted the petition. Insured appealed.

Holding: The Supreme Court, Appellate Division, held that insured was not entitled to arbitration of claim.

Affirmed.

West Headnotes

[1] Insurance 217



2784

217 Insurance

217XXII Coverage—Automobile Insurance

217XXII(D) Uninsured or Underinsured Motorist Coverage

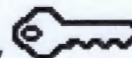
217k2781 Necessity of Tort Liability

217k2784 k. Physical Contact Requirement. Most Cited Cases

Boat, which slipped from a trailer on a boat launch adjacent to the boat launch where insured, who injured her ankle as she pushed the boat away from her, was standing, was not an “integral part” of the vehicle within meaning of statute providing for

coverage for victims of hit-and-run vehicles and requiring physical contact with an unidentified vehicle, or an integral part of an unidentified vehicle. McKinney's Insurance Law § 5217.

[2] Insurance 217



2784

217 Insurance

217XXII Coverage—Automobile Insurance

217XXII(D) Uninsured or Underinsured Motorist Coverage

217k2781 Necessity of Tort Liability

217k2784 k. Physical Contact Requirement. Most Cited Cases

Physical contact occurs, within meaning of statute providing for coverage for victims of hit-and-run vehicles, when the accident originates in collision with an unidentified vehicle, or an integral part of an unidentified vehicle. McKinney's Insurance Law § 5217.

****870** Law Office of Richard S. Binko, Cheektowaga, for Respondent–Appellant.

Brown & Kelly, LLP, Buffalo (Renata Kowalczyk of Counsel), for Petitioner–Respondent.

PRESENT: MARTOCHE, J.P., SMITH, CENTRA, AND GREEN, JJ.

***1284 MEMORANDUM:**

Supreme Court properly granted the petition seeking a permanent stay of arbitration. Respondent was injured when a boat slipped from a trailer on a boat launch adjacent to the boat launch where she was standing. Respondent observed the boat approaching and pushed it away from her, but she fell to the ground and injured her ankle. Although the trailer was attached to a vehicle, respondent left the scene without obtaining information concerning the vehicle. Respondent served a demand for arbitration

35 A.D.3d 1284, 826 N.Y.S.2d 869, 2006 N.Y. Slip Op. 09918
(Cite as: 35 A.D.3d 1284, 826 N.Y.S.2d 869)

of uninsured motorist benefits from petitioner, her insurer, whereupon petitioner commenced this proceeding.

[1][2] The policy at issue defines an uninsured motor vehicle as one "for which ... [n]either owner nor driver can be identified (including a hit-and-run vehicle)" and, in accordance with Insurance Law § 5217, the policy provides coverage for bodily injury caused by physical contact with an unidentified vehicle. " '[P]hysical contact' occurs within the meaning of the statute [] when the accident originates in collision with an unidentified vehicle, or an integral part of an unidentified vehicle" (Matter of Allstate Ins. Co. v. Killakey, 78 N.Y.2d 325, 329, 574 N.Y.S.2d 927, 580 N.E.2d 399). Here, it cannot be said that the boat was an integral part of the *1285 vehicle (see Matter of Insurance Co. of N. Am. [Carrozo], 203 A.D.2d 210, 611 N.Y.S.2d 171; cf. Allstate Ins. Co., 78 N.Y.2d at 329-330, 574 N.Y.S.2d 927, 580 N.E.2d 399).

It is hereby ORDERED that the order so appealed from be and the same hereby is unanimously affirmed without costs.

N.Y.A.D. 4 Dept., 2006.
New York Cent. Mut. Fire Ins. Co. v. McLeary
35 A.D.3d 1284, 826 N.Y.S.2d 869, 2006 N.Y. Slip Op. 09918

END OF DOCUMENT

CASE NAME 1655 BELMONT AVENUE
CASE NUMBER 2012-0231-SPHA
DATE 5/9/11

[illegible]

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
S/s of Belmont Ave		
720 feet from centerline of	*	ZONING COMMISSIONER
Security Boulevard		
(1655 Belmont Avenue)	*	OF
1 st Election District	*	BALTIMORE COUNTY
1 st Council District		
	*	Case No. 2011-0231-SPHA
McDonald's USA, LLC,		
Petitioner	*	

* * * * *

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR SPECIAL HEARING

This case involves the interpretation of the Baltimore County Zoning Regulations (the "BCZR") relating to freestanding signs. McDonald's USA, LLC ("McDonald's" or "Petitioner"), by its undersigned counsel, hereby submits this Memorandum of Law in support of its Petition for Special Hearing regarding the freestanding sign to be erected in connection with the reconstruction of the existing McDonald's restaurant located at 1655 Belmont Avenue (the "Property"). As set forth in more detail below, McDonald's seeks confirmation that the proposed freestanding sign complies with the requirements of the BCZR.

FACTUAL BACKGROUND

McDonald's, through an affiliate entity, owns the real property known as 1655 Belmont Avenue, a 79,810 sq. ft. parcel (1.83 acres) located in the BM and BM-AS Zoning Districts. The property is improved with an existing 5,962 sq. ft. restaurant, which McDonald's proposes to demolish and replace with a new restaurant in approximately the same location. The new restaurant will be 4,377 sq. ft. and will provide 74 parking spaces.

The proposed new McDonald's restaurant will conform to McDonald's current design standards for new restaurants, which incorporate modern features including a more neutral color palette and a more contemporary look. The new design replaces the traditional mansard roof and the "plastic" appearance of older McDonald's restaurants, and incorporates many "green" building features, including a high-efficiency HVAC system, a thermoplastic polyolefin roof,

and canopies and masonry walls designed to reduce energy usage. The new design standards also include a standard signage package which requires certain variances to the BCZR. New McDonald's restaurants incorporating these new design standards and the new signage package have been approved by the Zoning Commissioner and Office of Administrative Hearings and have been constructed at 502 Reisterstown Road, 2116 York Road, 2222 Dundalk Avenue, 6650 Security Boulevard, 2107 E. Joppa Road, 934 York Road, 7927 Belair Road, 1472 Martin Boulevard, 7801 Eastern Avenue, and 6830 Loch Raven Boulevard.

The existing McDonald's restaurant at 1655 Belmont Avenue includes a freestanding sign along Security Boulevard which McDonald's proposes to replace. The existing sign includes a 196-sq. ft. enterprise sign and a 16-sq. ft. manual changeable copy sign, which are located on the same support structure and are separated by a distance of two feet. The total area of the existing freestanding sign is 212 sq. ft. (excluding the two-foot air space separating the enterprise and changeable copy signs).

McDonald's proposes to replace the existing freestanding sign with a new, smaller freestanding sign. Like the existing sign, the proposed freestanding sign will include an enterprise sign and a changeable copy sign, both located on the same support structure and separated by a distance of more than one foot. The new changeable copy sign will be electronic rather than manual and will comply with the BCZR regulations governing electronic message displays. The enterprise sign will be 59.05 sq. ft. in area, and the changeable copy sign will be 24 sq. ft. in area. The total area of the freestanding sign will therefore be 83.05 sq. ft. (excluding the air space separating the enterprise and changeable copy signs). As McDonald's has developed its signage package for this and other similar sites, however, it has received conflicting interpretations from Baltimore County regarding the changeable copy portion of the sign and the methodology to be used in calculating the area of the freestanding sign. As a result, McDonald's filed this Petition for Special Hearing to obtain a definitive interpretation of these signage regulations. Specifically, McDonald's requests confirmation that (1) the proposed changeable copy sign is an integral part of the freestanding enterprise sign, and is therefore

permitted; (2) the proposed freestanding sign, which includes both enterprise sign and changeable copy elements, is not a "contiguous sign" under the BCZR; (3) because the proposed freestanding sign is not a "contiguous sign," the areas of the enterprise sign and the changeable copy sign are calculated separately; (4) the changeable copy portion of the sign may be up to 50% of the size of the enterprise portion of the sign; (5) the enterprise sign and changeable copy sign constitute one freestanding sign when they are located on the same support structure; and (6) the height of the changeable copy sign is measured to the top of the changeable copy portion of the freestanding sign, not to the top of the enterprise sign.

ARGUMENT

1. The Proposed Changeable Copy Sign Constitutes An Integral Part Of The Proposed Freestanding Enterprise Sign.

The BCZR expressly authorize a freestanding sign that contains both enterprise and changeable copy elements, providing that "[a] freestanding changeable copy sign may be erected only as an integral part of an otherwise permitted enterprise or joint identification sign." § 450.7.B.1. There is no dispute that a freestanding enterprise sign is permitted on this property pursuant to § 450.4. Moreover, the definition of the word "integral" makes clear that the proposed changeable copy sign constitutes an integral part of the enterprise sign.

Although "integral" is not defined in the BCZR, § 101.1 provides that "[a]ny word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of *Webster's Third New International Dictionary of the English Language, Unabridged*." That dictionary defines "integral" as:

- 1a. of, relating to, or serving to form a whole: essential to completeness: organically joined or linked
- 1b. of, being, or relating to a mathematical integer...
- 1c. formed as a unit with another part (as the main part) – often used with *with*; used esp. of a part of a tool mechanism
- 2. composed of constituent parts making a whole; composite; integrated

3. having nothing omitted or taken away; lacking nothing that belongs to it

Webster's Third New International Dictionary of the English Language, Unabridged at 1173. The proposed changeable copy sign clearly meets this definition, as it "serv[es] to form a whole" and is "organically joined" with the enterprise sign through the shared support structure. Further, the changeable copy sign is "formed as a unit with another part (the main part)" of the enterprise sign. The freestanding sign is "composed of constituent parts making a whole," *i.e.*, the changeable copy and enterprise signs, both of which are "integrated" into the freestanding sign because they share a common support structure. Accordingly, the proposed enterprise and changeable copy signs constitute integral parts of the freestanding sign because they are connected and joined together by the support structure, and thereby constitute two parts of the same whole.

Moreover, the changeable copy sign is integral in nature to the enterprise sign, as it only serves an accessory function to the enterprise sign and would not be installed independently of the enterprise sign. Contrary to the People's Counsel's unreasonably narrow construction of the word "integral," the definition of the term does not require that the two portions of the sign "must be placed physically together." Letter from People's Counsel to Judge Beverungen dated May 7, 2012 at p. 3. Rather, the fact that they are located on the same sign structure and functionally connected makes them integral to one another.

This reading of the word "integral" is consistent with the definition of the word "area" under the BCZR, which provides that "[a]rea' does not include...[a]ir spaces located between freestanding signs of different classes which are erected on a common or shared supporting structure." § 450.3. This definition explicitly contemplates two different classes of signs (*i.e.*, an enterprise sign and a changeable copy sign) which are erected on a common support structure and provides that, in such a case, the air space between the two signs is not to be included in the calculation of the total area of the sign. As the Court of Appeals has noted, "when two provisions relate to the same subject matter, and are not inconsistent with each other, they should be construed together and harmonized where consistent with their general object and scope." 120

W. Fayette St., LLLP v. Mayor & City Council of Baltimore City, 413 Md. 309, 331 (2010) (internal citations omitted). Similarly, “when two statutes appear to apply to the same situation, this Court will attempt to give effect to both statutes to the extent that they are reconcilable.” *Id.* Accordingly, the BCZR’s provisions relating to changeable copy signs must be read in harmony with the definition of “area,” which establishes a clear methodology for calculating the area of two signs located on the same support structure.

Likewise, an interpretation of “integral” which includes the proposed enterprise and changeable copy signs on a shared support structure is also consistent with the BCZR’s definition of “contiguous.” The BCZR define a “contiguous sign” as “a sign having any part located within one foot from any other part of another sign in the same class, except that, in the case of a freestanding sign, ‘contiguous sign’ means a sign having its support structure integral to the support structure of another sign in the *same class*.” § 450.3. The proposed freestanding sign therefore is not a “contiguous” sign because its support structure is integral to the support structures of two signs of *different classes*. The use of the word “integral” to refer to the connection between the support structures of a freestanding “contiguous sign,” however, indicates that the location of two signs on a shared support structure makes them “integral” to one another.

Moreover, the People’s Counsel acknowledges the “slightly more lenient interpretation” the Zoning Review Office has accorded the definition of “integral” as it relates to the signage regulations, as the Zoning Review Office has determined that two signs with “a separation of as much as one foot” constitute “contiguous,” and therefore “integral,” signs. Letter from People’s Counsel at 4. This interpretation, however, is inconsistent with the definition of “contiguous,” under which the permitted one-foot separation expressly does not apply to freestanding signs or to two signs of different classes. As the plain language of the definition of “contiguous” makes clear, the proposed enterprise and changeable copy signs do not constitute a contiguous sign under the BCZR.

The proposed construction of the term “integral” to include the component parts of one freestanding sign is supported by the only Maryland case that addresses the term “integral” in relation to signage, although not in precisely the same context as it is used in this case. In *Eller Media Co. v. Montgomery County*, the Court of Special Appeals addressed the question of the fair market value of certain outdoor advertising signs that were required to be removed by a series of zoning ordinances enacted by the local jurisdiction. 143 Md.App. 562 (2002). There, the ordinance in question defined “fair market value” as “a value, determined by a schedule adopted by the Department of Transportation (DOT) that includes the value of the integral parts of the outdoor advertising sign, less depreciation.” *Id.* at 584. The Court held that the trial judge erred by failing to include the value of the billboard company’s leasehold interest in the signs in determining the value of the signs to be \$470,000. *Id.* at 585. Although not discussed in any detail, the \$470,000 value assigned to the billboards appears to have included the “integral,” component parts of the signs in question but, as the Court noted, not the leasehold value of the property. Likewise, the “integral” parts of the McDonald’s freestanding sign would include the sign structure, the enterprise sign, and the changeable copy sign.

The People’s Counsel concedes that its proposed construction of the word “integral” is inconsistent with the BCZR’s definition of “area” and posits, without any legal support, that “any space between the two [signs]... must be counted.” Letter from People’s Counsel at p. 4. This construction, however, directly contradicts the BCZR definition of “area.” Moreover, the cases cited by the People’s Counsel provide little support for its proposed construction of “integral.” The only Maryland case cited defines “integral” in the context of an insurance policy as “the final and complete expression of the agreement,” providing no insight into the use of the term as it relates to signage. *Bankers & Shippers Ins. Co. of New York v. Urie*, 38 Md. App. 232 (1977). Of the four other cases cited by the People’s Counsel, two provide absolutely no discussion of the term “integral,” but use it merely in passing. See *New York Cent. Mut. Fire Ins. Co. v. McLeary*, 826 N.Y.S.2d 869 (N.Y. App. 2006); *Matter of Ins. Co. of North America (Carrozo)*, 611 N.Y.S.2d 171 (N.Y. App. 1994).

Rather than support the People's Counsel's construction of "integral," the remaining two cases indicate that "integral" relates more closely to the function of the object in question than its tangible, physical elements. In *Auto-Ordnance Corp. v. U.S.*, the United States Court of Appeals for the Federal Circuit held that "[i]n customs classification cases, for an article to be considered a 'part,' rather than an accessory, it must be an *integral*, constituent, or component part, without which the article to which it is to be joined could not function." 822 F.2d 1566, 1570 (Fed.Cir.1987) (emphasis added). This definition indicates that the changeable copy sign is an integral part of the freestanding enterprise sign because the changeable copy sign would serve no purpose independently of the enterprise sign. The changeable copy sign is a component part of the freestanding enterprise sign and therefore is integral to that sign. Likewise, *Nalley v. Mayor and City Council of Baltimore* dealt with the application of a four-factor test set forth in the governing regulations to determine whether the plaintiff Emergency Medical Services personnel were an "integral part" of fire protection activities for purposes of overtime benefits. 796 F.Supp. 194 (1992). Denying the City's motion for summary judgment, the United States District Court for the District of Maryland noted that "courts have emphasized the primacy of function over form," and that to be an "integral part" under the relevant regulation, "the work of ambulance personnel must be substantially related to 'fire protection activities.'" *Id.* at 199. Similarly, the changeable copy sign at issue in this case is "substantially related" to the enterprise sign to which it is attached through a common support structure, and is therefore an "integral part" of the support structure under the District Court's decision in *Nalley*.

Finally, to the extent that the People's Counsel argues that the sole means by which a changeable copy sign can be an integral part of a freestanding enterprise sign is by being physically attached to the enterprise portion of the sign, the People's Counsel is simply wrong. Although the example included in the legislative history submitted by the People's Counsel to this Office by letter dated May 8, 2012 shows a freestanding sign where the enterprise and changeable copy portions of the sign are physically connected, this serves only as an example and is not the sole situation in which a changeable copy sign can be deemed to be an integral part

of a freestanding enterprise sign. In fact, the Zoning Commissioner's Policy Manual includes a sketch example of an enterprise sign with a changeable copy sign attached to the same support structure but physically separated from the enterprise sign. An excerpt from the Policy Manual is attached hereto as Exhibit A. Like the example in the Zoning Commissioner's Policy Manual, the McDonald's changeable copy sign is physically connected to the enterprise sign through the shared support structure and therefore is "an integral part of an otherwise permitted enterprise ... sign." This construction is consistent with the BCZR definitions of "area" and "contiguous" sign, and comports with judicial interpretations of the word "integral."

2. The Proposed Freestanding Sign Is Not A Contiguous Sign.

Likewise, as discussed above, the proposed freestanding sign does not constitute a contiguous sign under the BCZR because the enterprise and changeable copy portions of the sign are two different classes of signs. The BCZR define a "contiguous sign" as "a sign having any part located within one foot from any other part of another sign in the same class, except that, in the case of a freestanding sign, 'contiguous sign' means a sign having its support structure integral to the support structure of another sign in the same class." § 450.3. Here, the changeable copy and enterprise portions of the sign share a support structure; however, "changeable copy" and "enterprise" signs are categorized as different classes of signs under § 450.4. As a result, the definition of "contiguous sign" as related to freestanding signs expressly excludes the proposed sign, as the sign consists of two signs of different classes sharing a support structure. The proposed freestanding sign therefore is not a contiguous sign.

3. Because The Freestanding Sign Is Not A Contiguous Sign, The Areas Of The Enterprise Sign And The Changeable Copy Sign Are Calculated Separately.

As the freestanding sign is not a "contiguous sign" under the BCZR, the areas of the enterprise and changeable copy portions are calculated separately. As discussed above, the definition of "area" under the BCZR explicitly excludes the air space between the signs, providing that "[a]rea' does not include...[a]ir spaces located between freestanding signs of different classes which are erected on a common or shared supporting structure." § 450.3.

Accordingly, the area of the enterprise portion of the sign should be calculated separately from the area of the changeable copy portion of the sign and should not include the air space between them.

4. The Area Of The Changeable Copy Portion Of The Sign May Be Up To 50% Of The Size Of The Enterprise Sign.

As discussed above, the changeable copy sign shares a support structure and therefore is an integral part of the enterprise sign, which is otherwise permitted under § 450.4. As a result, the changeable copy sign is permitted. Moreover, § 450.7.B.2 provides that “[u]p to 50% of the erected sign area of a permitted enterprise or joint identification sign may be devoted to changeable copy.” Accordingly, the permitted area of the changeable copy portion of the sign is 50% of that of the enterprise sign. Here, the enterprise sign is 59.05 sq. ft., which would permit a changeable copy sign of up to 29.52 sq. ft. The changeable copy sign in this case is 24 sq. ft., which is less than the permitted 29.52 sq. ft.

5. The Enterprise Sign And The Changeable Copy Sign Constitute One Freestanding Sign Under the BCZR Because They Share A Single Support Structure.

The BCZR expressly contemplates the treatment of an enterprise sign and changeable copy sign which share the same structure as a single freestanding sign. As discussed above, Section 450.7.B.1 provides that “[a] freestanding changeable copy sign may be erected only as an integral part of an otherwise permitted enterprise or joint identification sign.” There is therefore no merit to the Department of Planning’s contention that “[a]n enterprise sign and an electronic message board should not constitute one freestanding sign just because it is affixed on the same support structure.” See Inter-Office Correspondence from Andrea Van Arsdale, Director, Department of Planning to Arnold Jablon, Deputy Administrative Officer and Director of Permits, Approvals and Inspections dated April 18, 2012. Rather, the language of the regulation makes clear that the *only* way a freestanding changeable copy sign may be erected is as an integral part of an enterprise or joint identification sign. Here, the changeable copy sign shares a support structure with and is therefore an integral, connected part of, the enterprise sign

permitted under § 450.4. The two signs sharing one support structure therefore constitute a single freestanding sign.

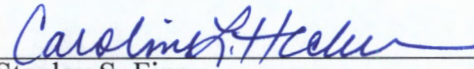
6. The Height Of The Changeable Copy Sign Is Measured To The Top Of The Changeable Copy Portion Of The Freestanding Sign.

Finally, although the changeable copy sign and the enterprise sign are located on the same support structure, the height of each portion of the sign is measured to the top of that portion. Section 450.4 Attachment 1, Section 1(c)(VII) provides that a freestanding changeable copy sign accessory to a commercial establishment in a business zone may not exceed 25 feet in height. Although there is no explanation in the BCZR as to how the heights of two signs on the same support structure are to be measured, it is logical that the height of each sign should be measured separately. As a result, the height of the changeable copy sign is designated on the Plat to Accompany Special Hearing as "G," and the height of the total freestanding sign is designated as "H." In any event, the total height of the entire freestanding sign in this case is 25 feet, so both the changeable copy portion and the entire freestanding sign comply with the 25-foot height limit.

CONCLUSION

For the reasons stated above, we respectfully request confirmation that (1) the proposed changeable copy sign is an integral part of the freestanding enterprise sign, and is therefore permitted; (2) the proposed freestanding sign, which includes both enterprise sign and changeable copy elements, is not a "contiguous sign" under the BCZR; (3) because the proposed freestanding sign is not a "contiguous sign," the areas of the enterprise sign and the changeable copy sign are calculated separately; (4) the changeable copy portion of the sign may be up to 50% of the size of the enterprise portion of the sign; (5) the enterprise sign and changeable copy sign constitute one freestanding sign when they are located on the same support structure; and (6) the height of the changeable copy sign is measured to the top of the changeable copy portion of the freestanding sign, not to the top of the enterprise sign.

Respectfully submitted,



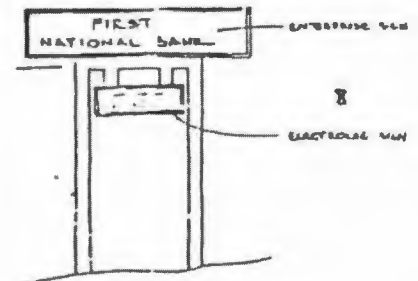
Stanley S. Fine
Caroline L. Hecker
Rosenberg | Martin | Greenberg, LLP
25 S. Charles Street, 21st Floor
Baltimore, Maryland 21201
(410) 727-6600

Attorneys for Petitioner

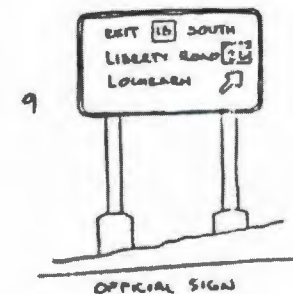
TABLE OF SIGN REGULATIONS

Information/Identification Signs

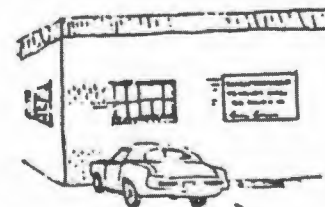
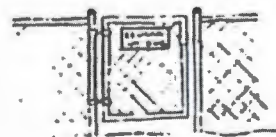
A	B	C	D	E	F	G	H	I
Class	Type	Zone or Use	Permit Req.	Area/Face	No./Prem.	Ht.	Illumination	Special Conditions
8. Electronic, means a sign displaying electrically-controlled, changeable message regarding time, date or temperature information	Wall-mounted; free-standing	All office, business and manufacturing zones; see Column I	Bldg.	See Column I	Not regulated	Not applicable	Yes	May be included only within the maximum area, otherwise permitted for a commercial sign on the premises



9. Official, meaning a sign that is erected by a Federal, State or County agency or that is required by law or other regulation or order to be displayed	Wall-mounted; free-standing	All zones	Bldg.	Not regulated	Not regulated	Not regulated	Not regulated	
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10. Notice, meaning a non-commercial sign that is authorized, but is not mandated by law or other regulation, for displaying cautionary information regarding the use or ownership of the property	Wall-mounted; free-standing	Accessory, in all zones	Bldg., if more than 1 sq. ft.	Not regulated	Not regulated	Not regulated	See Column I	May be illuminated only if required by law or regulation
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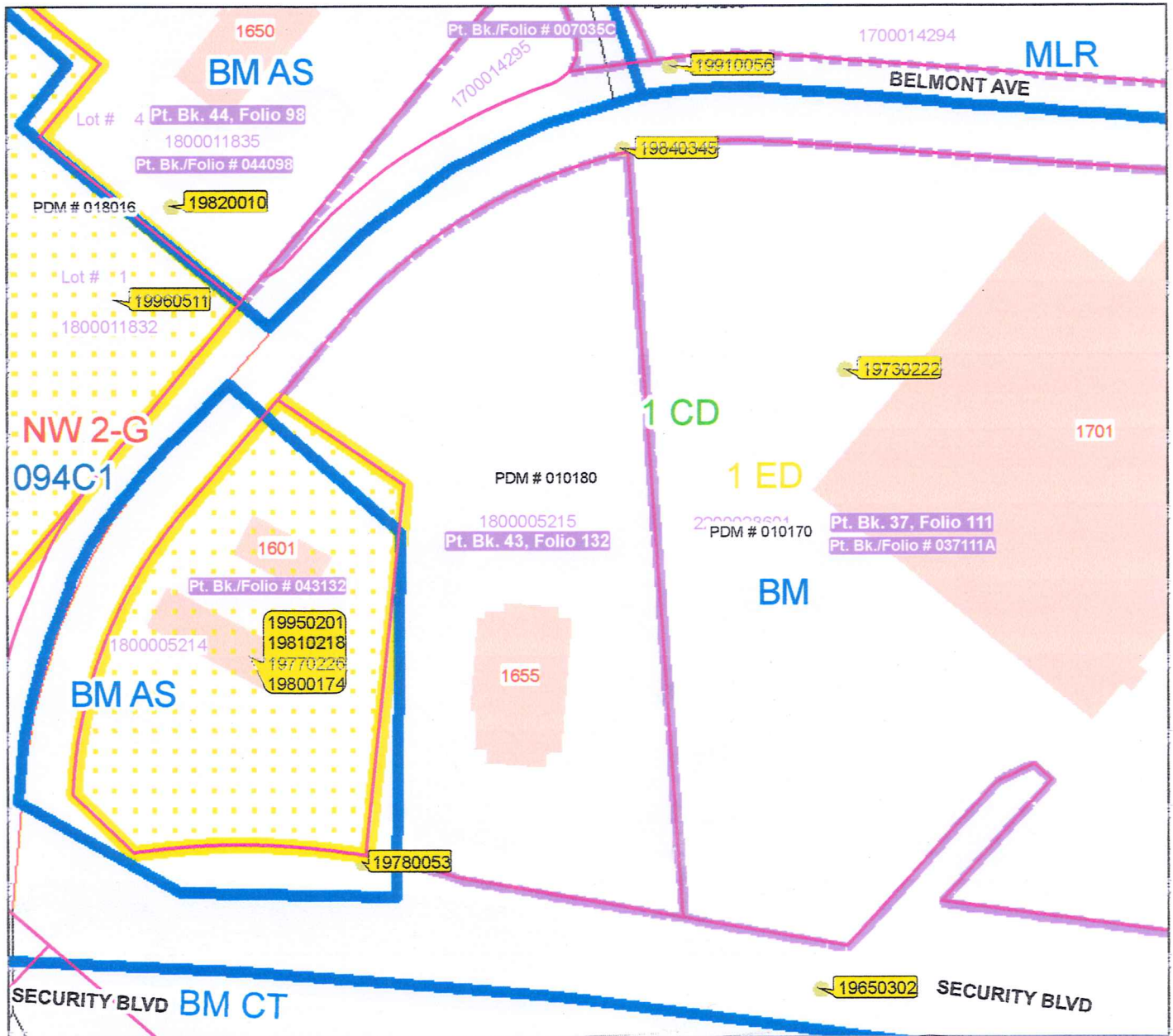


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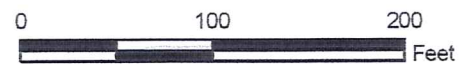
EXHIBIT

McDonald's 1655 Belmont Avenue 2012-0231-SHPA

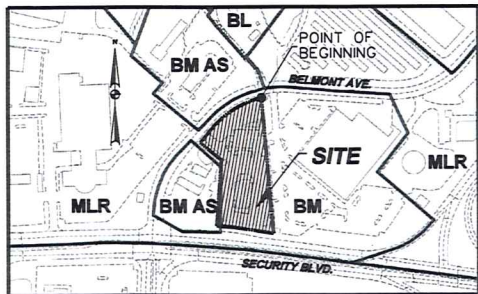


Publication Date: March 26, 2012
 Publication Agency: Department of Permits & Development Management
 Projection/Datum: Maryland State Plane,
 FIPS 1900, NAD 1983/91 HARN, US Foot

DQ Map Notes



1 inch = 100 feet

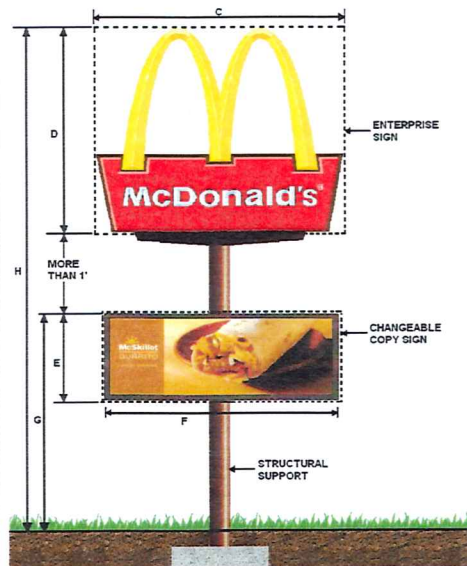


ZONING MAP

SCALE: 1" = 200'
(MAP 94 C1)

LEGEND

- RIGHT-OF-WAY LINE
PROPERTY LINE
ZONING LINE
EX. CONCRETE CURB AND GUTTER
EX. CURB AND GUTTER TO BE REMOVED
EX. CONCRETE
TO BE REMOVED DESIGNATION
EX. BUILDING
EX. SIGN
EX. TREE
"EXISTING" DESIGNATION
BUILDING RESTRICTION LINE
LANDSCAPE RESTRICTION LINE
PR. CONCRETE CURB & GUTTER
PR. STORM DRAIN, MANHOLE & INLET
PR. SANITARY SEWER & CLEANDOUT
PR. WATER MAIN, VALVE & FIRE HYDRANT
PR. LIGHTS
PR. SIGN
PR. PARKING COUNT
"PROPOSED" DESIGNATION



EXISTING FREE-STANDING ENTERPRISE SIGN

N.T.S.

SPECIAL HEARING REQUEST

- TO CONFIRM CORRECTNESS OF OUR INTERPRETATION OF THE FOLLOWING BALTIMORE COUNTY ZONING REGULATIONS:
- THE READER BOARD AND ENTERPRISE SIGN ARE NOT CONSIDERED TO BE A CONTINUOUS SIGN BECAUSE THE TWO SIGNS ARE SEPARATED BY MORE THAN ONE (1) FOOT.
 - THE AREA OF THE FACE OF THE ENTERPRISE SIGN IS CALCULATED SEPARATELY FROM THE AREA OF THE CHANGEABLE COPY READER BOARD WHEN BOTH SIGNS ARE LOCATED ON THE SAME SUPPORT STRUCTURE BUT ARE SEPARATED BY MORE THAN ONE (1) FOOT.
 - THE MAXIMUM AREA OF THE CHANGEABLE COPY READER BOARD IS 50% OF THE AREA OF THE ENTERPRISE SIGN.
 - AN ENTERPRISE SIGN AND CHANGEABLE COPY READER BOARD CONSTITUTE ONE FREE-STANDING SIGN WHEN THEY ARE LOCATED ON THE SAME SUPPORT STRUCTURE.
 - THAT THE HEIGHT OF THE CHANGEABLE COPY SIGN IS MEASURED FROM THE GROUND TO THE TOP OF THE CHANGEABLE COPY SIGN AS SHOWN ON THE ATTACHED PLAN.

THIS PLAN IS INTENDED FOR ZONING PURPOSES ONLY AND SHALL NOT BE USED FOR ANY OTHER PURPOSE.

BLDG

Baltimore Land Design Group Inc.
Consulting Engineers

230 SCHILLING CIRCLE SUITE 364 • HUNT VALLEY, MARYLAND 21081
PHONE: 410.229.9851 • FAX: 410.229.9865 • BLDG@BLDGC.COM

PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21245, EXPIRATION DATE: JUNE 9, 2012.

OWNER

ARCHLAND PROPERTY I, LLC
c/o McDONALD'S CORPORATION
BALTIMORE - WASHINGTON REGION
6903 ROCKLEDGE DRIVE, SUITE 1100
BETHESDA, MARYLAND 20817
PHONE (240) 497-3626

DEVELOPER / APPLICANT

McDONALD'S USA, LLC
BALTIMORE - WASHINGTON REGION
6903 ROCKLEDGE DRIVE, SUITE 1100
BETHESDA, MARYLAND 20817
PHONE (240) 497-3626

REVISIONS			
DATE	NO.	DESCRIPTION	BY

PLAN TO ACCOMPANY ZONING PETITION FOR SPECIAL HEARING

McDONALD'S RESTAURANT

1655 BELMONT AVENUE
WOODLAWN, MARYLAND 21244

BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 30'

ELECTION DISTRICT 01.C1
DATE: JANUARY, 2012

DRAWING NO.

SH-1

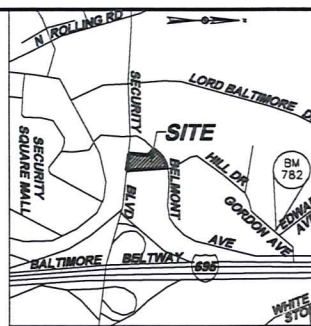
SHEET 1 OF 1

DEVELOPMENT APPROVAL

LIMITED EXEMPTION UNDER SECTION 32-4-106(b)(1)(B) OF THE BALTIMORE COUNTY DEVELOPMENT REGULATIONS (MINOR DEVELOPMENT THAT DOES NOT EXCEED A TOTAL OF THREE LOTS) FOR PROPOSED McDONALD'S RESTAURANT WAS GRANTED BY DRC ON 6/24/11, DRC #061411A.

ZONING HISTORY

NONE KNOWN



VICINITY MAP

SCALE: 1" = 1,000'

BENCH MARK

ELEVATIONS ARE BASED ON NAVD 88 DATUM PER BALTIMORE COUNTY CONTROL POINTS:

CONTROL POINT 782: N 601.478.79; E 1.384.132.40; EL. 389.49
DESCRIPTION: SPIKE IN PAVING ON GORDON AVE, 41 FT +/- SOUTHWEST FROM INTERSECTION OF GORDON AVE. AND EDWARDS AVE.

SITE DATA

- AREA OF TRACT: 79,810 SF OR 1.832 AC.
- OWNER: ARCHLAND PROPERTY I, LLC
C/O McDONALD'S CORPORATION
BALTIMORE - WASHINGTON REGION
6903 ROCKLEDGE DRIVE, SUITE 1100
BETHESDA, MARYLAND 20817
- TAX MAP REFERENCES:
T.M. 94: G. 06: P. 355; TAX ID: 1800005215
- DEED REFERENCES: L. 20914: F. 52
- PLAT REFERENCES: LAND OF BELTWAY PROPERTIES
L. 43: F. 132
- ELECTION DISTRICT: 1: COUNCILMANIC DISTRICT: 1
- EXISTING ZONING: BM (BUSINESS, MAJOR) AND BM-AS, MAP #094 C1
- EXISTING USE: EX. McDONALD'S TO BE RAZED
PROPOSED USE: NEW McDONALD'S RESTAURANT
- MINIMUM SETBACK REQUIREMENT:
FRONT: 15 FT FROM PROPERTY LINE AND
NOT LESS THAN 40 FT FROM CL OF STREET.
SIDE & REAR: NONE REQUIRED
- F.A.R. ALLOWED: 4.0 MAX.
PROPOSED: 4.377 / 79,810 = 0.05
- BUILDING HEIGHT:
PERMITTED: 40 FT
PROPOSED: 23.3 FT
- ADT:
(550 X 4.377 SF) / 1,000 = 2,408 DAILY TRIPS
- CENSUS TRACT: 401501
WATER SERVICE AREA: CATONSVILLE FOURTH ZONE
SEWER SHED: 70
TRANSPORTATION ZONE: 0673
ZIP CODE: 21244
WATERSHED: GWYNNS FALLS
- LANDSCAPE REQUIREMENTS:
LANDSCAPING WILL BE PROVIDED AS PER THE MOST RECENT BALTIMORE COUNTY LANDSCAPE MANUAL.
- STORM WATER MANAGEMENT (SWM):
THIS SITE IS A RE-DEVELOPMENT. SWM SHALL BE ADDRESSED IN ACCORDANCE WITH THE FOLLOWING CRITERIA:
- REDUCTION OF EX. IMPERVIOUS AREAS WITHIN LIMIT OF DISTURBANCE (LDD) BY 50%
- IMPLEMENTATION OF ESD PRACTICES TO MEET TO PROVIDE WATER QUALITY TREATMENT FOR AT LEAST 50% OF EX. IMPERVIOUS AREA WITHIN LDD OR
- USE A COMBINATION OF IMPERVIOUS AREA REDUCTION AND ESD IMPLEMENTATION FOR AT LEAST 50% OF EX. IMPERVIOUS AREAS
- USE OF ALTERNATIVE SWM MEASURES
SINCE THE FULL REDUCTION OF EXISTING IMPERVIOUS AREA COULD NOT BE ACHIEVED FOR PROPOSED DEVELOPMENT, THEREFORE ESD PRACTICE MICRO BIOTRETENTION FACILITY OR EQUIVALENT, WILL BE PROVIDED TO MEET SWM REQUIREMENTS.
- THERE ARE NO EXISTING OR PROPOSED WELL OR SEPTIC AREAS.
- PUBLIC WATER AND SANITARY SEWER FACILITIES EXIST.
- THERE ARE NO KNOWN WETLANDS REQUIRING REGULATION, CRITICAL AREAS, ARCHEOLOGICAL SITES, ENDANGERED SPECIES HABITATS, OR HAZARDOUS MATERIALS ON SITE.
- THE DEVELOPER IS REQUESTING A VARIANCE TO SECTION 33-6-109 (IN PART) OF THE BALTIMORE COUNTY CODE TO RESTRICT APPLICABILITY OF THE FOREST CONSERVATION REGULATIONS TO THE PROPOSED LIMIT OF DISTURBANCE. THE RESULTING 0.2 ACRE AFFORESTATION OBLIGATION WILL BE MET BY PURCHASE OF CREDIT IN A COUNTY APPROVED FOREST RETENTION BANK.
- ANY SIGNS SHALL COMPLY WITH SECTION 450 OF THE B.C.Z.R. AND ALL SIGN POLICIES. ZONING VARIANCES ARE BEING REQUESTED.
- THERE ARE NO HISTORIC BUILDINGS ON THIS PROPERTY.
- FLOOD MAP INFORMATION:
PREMISES IS SHOWN ON MAP ENTITLED "FIRM FLOOD INSURANCE RATE MAP, BALTIMORE COUNTY, MARYLAND, UNINCORPORATED AREAS, PANEL 378 OF 580 COMMUNITY PANEL NUMBER 2400100378 F. MAP EFFECTIVE DATE: SEPTEMBER 26, 2008 AND IS LOCATED IN ZONE X (OTHER AREAS).
- THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
- LIGHTING SHALL BE ERECTED AS NOT TO REFLECT INTO ANY ADJOINING RESIDENTIAL AREAS AND PUBLIC ROADS.
- THE BOUNDARY SHOWN HEREON WAS TAKEN FROM ALTA/ACSM LAND TITLE SURVEY PREPARED BY BOHLER ENGINEERING MD, DATED MARCH 9, 2011.
- "BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION PLANNING" HAS CONFIRMED THAT THE SUBJECT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.

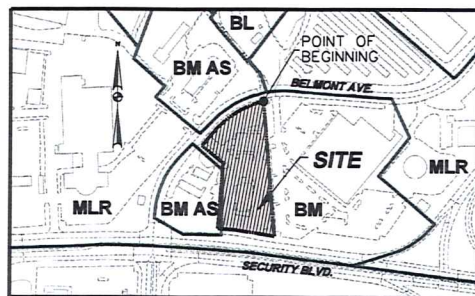
PARKING REQUIREMENTS

PARKING SPACES REQUIRED: 4,377 SF @ 16 PS / 1000 SF = 71 PS
PARKING SPACES PROVIDED: 74 PS (INCL. 3 HDOP)

EXHIBIT

2

PAI NO. 1-180



ZONING MAP

SCALE: 1" = 200'
(MAP: 94 C1)

LEGEND

RIGHT-OF-WAY LINE	---
PROPERTY LINE	---
EX. EASEMENT	---
ZONING LINE	---
EX. CONCRETE CURB OR CURB AND GUTTER	---
EX. CURB OR CURB AND GUTTER TO BE REMOVED	---
EX. CONCRETE	---
EX. BUILDING	---
EX. SIGN	---
EX. CHAIN LINK FENCE	---
EX. STORM DRAIN, MANHOLE & INLET	---
EX. RIP-RAP	---
EX. SANITARY SEWER, MANHOLE & CLEANOUT	---
EX. WATER MAIN, VALVE & FIRE HYDRANT	---
EX. ELECTRIC LINE	---
EX. GAS LINE	---
EX. TELEPHONE LINE, POLE & BOX	---
EX. POLE WITH LIGHT	---
EX. INDEX COUNTOURS	---
EX. INTERMEDIATE COUNTOURS	---
EX. TREE	---
"EXISTING" DESIGNATION	EX.
EXISTING PARKING COUNT	(8)
BUILDING RESTRICTION LINE	BRL
LANDSCAPE RESTRICTION LINE	LRL
PR. EASEMENT	PR.C&G
PR. CONCRETE CURB OR CURB & GUTTER	PR.C&G
PR. MAC. PAVING	PR.C&G
PR. CONCRETE	PR.C&G
PR. STORM DRAIN, MANHOLE & INLET	PR.15"D
PR. SANITARY SEWER & CLEANOUT	PR.4"S
PR. WATER MAIN, VALVE & FIRE HYDRANT	PR.6"W
PR. INDEX COUNTOURS	440
PR. INTERMEDIATE COUNTOURS	442
PR. SIGN	PR.
PR. BOLLARD	PR.
PR. PARKING COUNT	(8)
"PROPOSED" DESIGNATION	PR.

ZONING VARIANCE REQUESTS

- SECTION 450.4 ATTACHMENT 1.5(d) (VI) TO PERMIT 5 WALL-MOUNTED ENTERPRISE SIGNS ON BUILDING FACADES IN LIEU OF THE PERMITTED 3 SIGNS. (SIGN #4,5)
- SECTION 450.4 ATTACHMENT 1.3(d)(VII) TO PERMIT A DIRECTIONAL SIGN OF 10.7 FEET IN HEIGHT IN LIEU OF THE PERMITTED 6 FT. (SIGN #1)
- SECTION 450.4 ATTACHMENT 1.3(d)(VIII) TO PERMIT A DIRECTIONAL SIGN OF 9.71 FEET IN HEIGHT IN LIEU OF THE PERMITTED 6 FT. (SIGN #2)
- SECTION 450.4 ATTACHMENT 1.3(d) TO PERMIT A CANOPY-TYPE DIRECTIONAL SIGN IN LIEU OF THE PERMITTED WALL-MOUNTED OR FREE-STANDING SIGN. (SIGN #3)
- SECTION 450.5.B.3.5 TO PERMIT ERECTION OF THE SIGN ABOVE THE FACE OF THE CANOPY IN LIEU OF ITS ERECTION ON THE FACE OF THE CANOPY. (SIGN #3)

THIS PLAN IS INTENDED FOR ZONING PURPOSES ONLY AND SHALL NOT BE USED FOR ANY OTHER PURPOSE.

BLDG

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Consulting Engineers

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PHONE: 410.229.9851 • FAX: 410.229.9865 • BLDG@BLDGCINC.COM

PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21245, EXPIRATION DATE: JUNE 9, 2012.

OWNER

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c/o McDONALD'S CORPORATION
BALTIMORE - WASHINGTON REGION
6903 ROCKLEDGE DRIVE, SUITE 1100
BETHESDA, MARYLAND 20817
PHONE (240) 497-3626

DEVELOPER / APPLICANT

McDONALD'S USA, LLC
BALTIMORE - WASHINGTON REGION
6903 ROCKLEDGE DRIVE, SUITE 1100
BETHESDA, MARYLAND 20817
PHONE (240) 497-3626

DATE	NO.	DESCRIPTION	BY

PAI NO. 1-180

PLAN TO ACCOMPANY ZONING PETITION FOR ZONING VARIANCES

McDONALD'S RESTAURANT

1655 BELMONT AVENUE
WOODLAWN, MARYLAND 21244

BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 30'

ELECTION DISTRICT 01 C1
DATE: JANUARY, 2012

DRAWING NO.

V-1

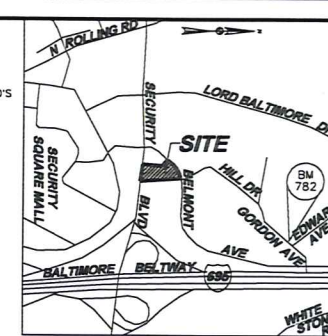
SHEET 1 OF 2

DEVELOPMENT APPROVAL

LIMITED EXEMPTION UNDER SECTION 32-4-106(b)(8) OF THE BALTIMORE COUNTY DEVELOPMENT REGULATIONS (MINOR DEVELOPMENT THAT DOES NOT EXCEED A TOTAL OF THREE LOTS) FOR PROPOSED McDONALD'S RESTAURANT WAS GRANTED BY DRC ON 6/24/11, DRC #08141A.

ZONING HISTORY

NONE KNOWN



VICINITY MAP

SCALE: 1" = 1,000'

BENCH MARK

ELEVATIONS ARE BASED ON NAVD 88 DATUM PER BALTIMORE COUNTY CONTROL POINTS:

CONTROL POINT 782: N 601,478.79; E 1,384,132.40; EL. 389.49
DESCRIPTION: SPIKE IN PAVING ON GORDON AVE., 41 FT +/- SOUTHWEST FROM INTERSECTION OF GORDON AVE. AND EDWARDS AVE.

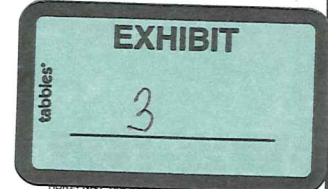
SITE DATA

- AREA OF TRACT: 79,810 SF OR 1.832 AC.
- OWNER: ARCHLAND PROPERTY I, LLC
C/O McDONALD'S CORPORATION
BALTIMORE - WASHINGTON REGION
6903 ROCKLEDGE DRIVE, SUITE 1100
BETHESDA, MARYLAND 20817
- TAX MAP REFERENCES: T.M. 941 C.06 P.355; TAX ID: 1800005215
- DEED REFERENCES: L. 20914; F.62
- PLAT REFERENCE: LAND OF BELTWAY PROPERTIES L. 43; F.132
- ELECTION DISTRICT: 1; COUNCILMANIC DISTRICT: 1
- EXISTING ZONING: BM (BUSINESS, MAJOR) AND BM-AS, MAP #094 C1
- EXISTING USE: EX. McDONALD'S TO BE RAZED
PROPOSED USE: NEW McDONALD'S RESTAURANT
- MINIMUM SETBACK REQUIREMENT:
FRONT: 15 FT FROM PROPERTY LINE AND NOT LESS THAN 40 FT FROM CL OF STREET.
SIDE & REAR: NONE REQUIRED
- F.A.R. ALLOWED: 4.0 MAX.
PROPOSED: 4.377 / 79,810 = 0.05
- BUILDING HEIGHT:
PERMITTED: 40 FT
PROPOSED: 23.3 FT
- ADT: (550 X 4,377 SF) / 1,000 = 2,408 DAILY TRIPS
- CENSUS TRACT: 401501
WATER SERVICE AREA: CATONSVILLE FOURTH ZONE
SEWER SHED: 70
TRANSPORTATION ZONE: 0673
ZIP CODE: 21244
WATERSHED: GWYNNS FALLS
- LANDSCAPE REQUIREMENTS:
LANDSCAPING WILL BE PROVIDED AS PER THE MOST RECENT BALTIMORE COUNTY LANDSCAPE MANUAL.
- STORM WATER MANAGEMENT (SWM):
THIS SITE IS A RE-DEVELOPMENT. SWM SHALL BE ADDRESSED IN ACCORDANCE WITH THE FOLLOWING CRITERIA:
- REDUCTION OF EX. IMPERVIOUS AREAS WITHIN LIMIT OF DISTURBANCE (LOD) BY 50%
- IMPLEMENTATION OF ESD PRACTICES TO MEET TO PROVIDE WATER QUALITY TREATMENT FOR AT LEAST 50% OF EX. IMPERVIOUS AREA WITHIN LOD OR
- USE A COMBINATION OF IMPERVIOUS AREA REDUCTION AND ESD IMPLEMENTATION FOR AT LEAST 50% OF EX. IMPERVIOUS AREAS
- USE OF ALTERNATIVE SWM MEASURES
SINCE THE FULL REDUCTION OF EXISTING IMPERVIOUS AREA COULD NOT BE ACHIEVED FOR PROPOSED DEVELOPMENT, THEREFORE ESD PRACTICE MICRO BIOTRETION FACILITY OR EQUIVALENT, WILL BE PROVIDED TO MEET SWM REQUIREMENTS.
- THERE ARE NO EXISTING OR PROPOSED WELL OR SEPTIC AREAS.
- PUBLIC WATER AND SANITARY SEWER FACILITIES EXIST.
- THERE ARE NO KNOWN WETLANDS REQUIRING REGULATION, CRITICAL AREAS, ARCHEOLOGICAL SITES, ENDANGERED SPECIES HABITATS, OR HAZARDOUS MATERIALS ON SITE.
- THE DEVELOPER IS REQUESTING A VARIANCE TO SECTION 33-6-109 (IN PART) OF THE BALTIMORE COUNTY CODE TO RESTRICT APPLICABILITY OF THE FOREST CONSERVATION REGULATIONS TO THE PROPOSED LIMIT OF DISTURBANCE. THE RESULTING 0.2 ACRE AFFORESTATION OBLIGATION WILL BE MET BY PURCHASE OF CREDIT IN A COUNTY APPROVED FOREST RETENTION BANK.
- ANY SIGNS SHALL COMPLY WITH SECTION 450 OF THE B.C.Z.R. AND ALL SIGN POLICIES. ZONING VARIANCES ARE BEING REQUESTED.
- THERE ARE NO HISTORIC BUILDINGS ON THIS PROPERTY.
- FLOOD MAP INFORMATION:
PREMISES IS SHOWN ON MAP ENTITLED "FIRM FLOOD INSURANCE RATE MAP, BALTIMORE COUNTY, MARYLAND, UNINCORPORATED AREAS, PANEL 378 OF 580 COMMUNITY PANEL NUMBER 2400100378 F. MAP EFFECTIVE DATE, SEPTEMBER 26, 2008 AND IS LOCATED IN ZONE X (OTHER AREAS).
- THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
- LIGHTING SHALL BE ERECTED AS NOT TO REFLECT INTO ANY ADJOINING RESIDENTIAL AREAS AND PUBLIC ROADS.
- THE BOUNDARY SHOWN HEREON WAS TAKEN FROM ALTA/ACSM LAND TITLE SURVEY PREPARED BY BOHLER ENGINEERING MO, DATED MARCH 9, 2011.
- "BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION PLANNING" HAS CONFIRMED THAT THE SUBJECT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.

PARKING REQUIREMENTS

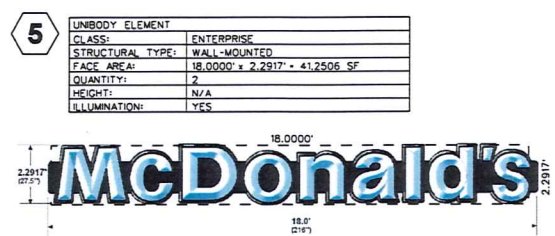
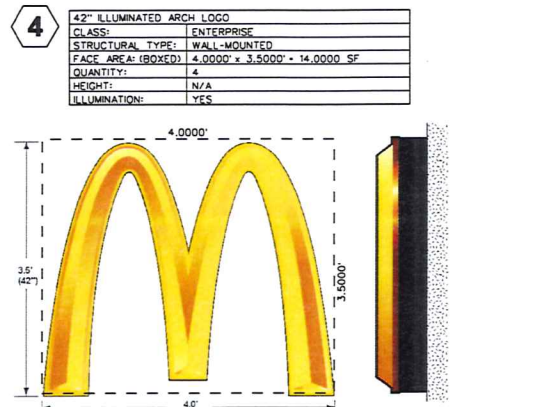
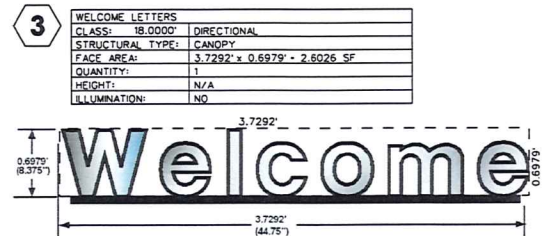
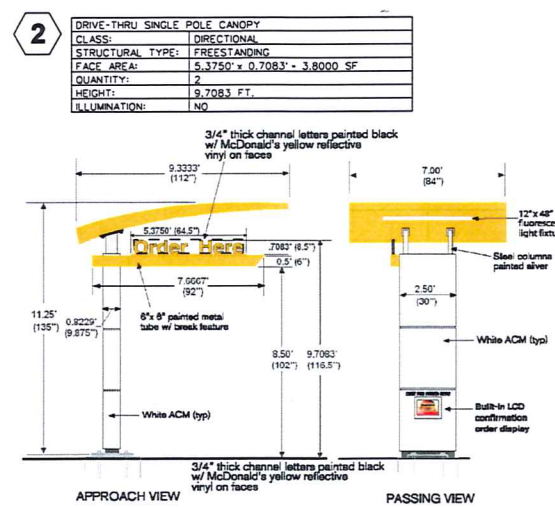
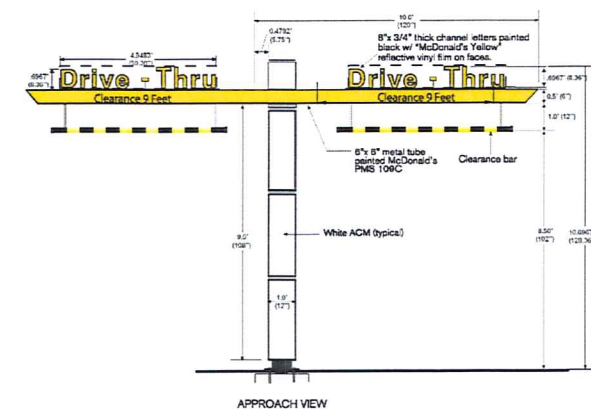
PARKING SPACES REQUIRED: 4,377 SF @ 16 PS / 100 SF = 71 PS

PARKING SPACES PROVIDED: 74 PS (INCL. 3 HOPI)



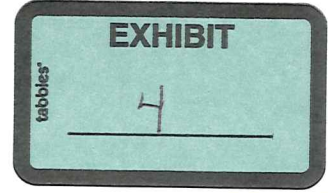
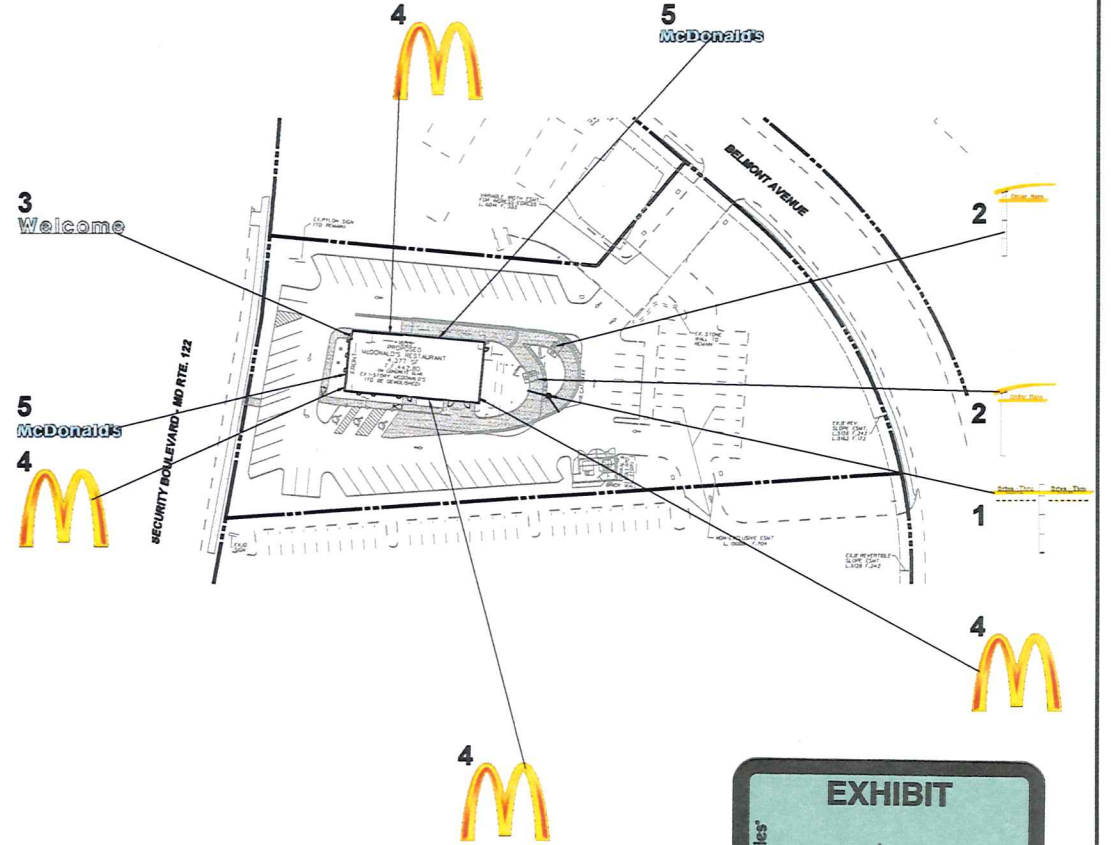


1	WELCOME POINT GATEWAY
	CLASS: DIRECTIONAL
	STRUCTURAL TYPE: FREESTANDING
	FACE AREA: 2 x 0.6967' x 4.9483' = 6.8950 SF
	QUANTITY: 1
	HEIGHT: 10.6967 FT.
	ILLUMINATION: NO



- I. ENTERPRISE SIGN ON THE BUILDING FACADES
1. AREA / FACE OF THE ENTERPRISE SIGNS ON THE SINGLE FACADE:
- A. FRONT FACADE (LENGTH = 44.3')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 44.3' x 88.6 SF
 - AREA / FACE PROPOSED: SIGN #3 = 41,250 SF
 - SIGN #4 = 14,000 SF
 - TOTAL = 55,250 SF < 88.6 SF
 - B. NON-DRIVE-THRU FACADE (LENGTH = 96.33')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 96.33' x 192.66 SF
 - AREA / FACE PROPOSED: SIGN #4 = 14,000 SF
 - TOTAL = 14,000 SF < 192.66 SF
 - C. DRIVE-THRU FACADE (LENGTH = 96.33')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 96.33' x 192.66 SF
 - AREA / FACE PROPOSED: SIGN #5 = 41,250 SF
 - SIGN #4 = 14,000 SF
 - TOTAL = 55,250 SF < 192.66 SF
 - D. REAR FACADE (LENGTH = 44.3')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 44.3' x 88.6 SF
 - AREA / FACE PROPOSED: SIGN #4 = 14,000 SF
 - TOTAL = 14,000 SF < 88.6 SF
2. NUMBER OF ENTERPRISE SIGNS:
- A. NUMBER OF SIGNS PERMITTED: THREE (3) ON PREMISES, NO MORE THAN TWO ON EACH FACADE.
 - B. NUMBER OF ENTERPRISE SIGNS PROPOSED:
 - SIGNS ON FRONT FACADE: 2 (SIGNS #4 & #5)
 - SIGN ON NON-DRIVE-THRU FACADE: 1 (SIGN #4)
 - SIGNS ON DRIVE-THRU FACADE: 2 (SIGNS #4 & #5)
 - SIGN ON REAR FACADE: 1 (SIGN #4)
 - TOTAL NUMBER OF PROPOSED ENTERPRISE SIGNS: 6

- II. DIRECTIONAL SIGNS ON THE BUILDING FACADES
- 1. MAX. AREA / FACE ALLOWED: 8 SF / SIGN
 - 2. AREA / FACE PROPOSED: SIGN #3 = 2.60 SF < 8 SF ALLOWED
 - 3. STRUCTURAL TYPE ALLOWED: WALL-MOUNTED
 - STRUCTURAL TYPE PROPOSED: SIGN #3 - CANOPY
- III. DIRECTIONAL FREESTANDING SIGNS
- 1. MAX. AREA / FACE ALLOWED: 8 SF / SIGN
 - 2. AREA / FACE PROPOSED: SIGN #1 = 6.8950 SF < 8 SF ALLOWED
 - SIGN #2 = 3.8000 SF < 8 SF ALLOWED
 - 3. STRUCTURAL TYPE ALLOWED: FREESTANDING
 - STRUCTURAL TYPE PROPOSED: FREESTANDING (SIGNS #1 & #2)
 - 4. MAX. HEIGHT ALLOWED: 6 FT
 - MAX. HEIGHT PROPOSED: SIGN #1 = 10.70 FT
 - SIGN #2 = 9.71 FT



THIS PLAN IS INTENDED FOR ZONING PURPOSES ONLY AND SHALL NOT BE USED FOR ANY OTHER PURPOSE.

PAI NO. 1-180

BLDG
Baltimore Land Design Group Inc.
Consulting Engineers
230 SCHILLING CIRCLE SUITE 364 • HUNT VALLEY, MARYLAND 21031
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PHONE (240) 497-3626

DATE	NO.	DESCRIPTION	BY

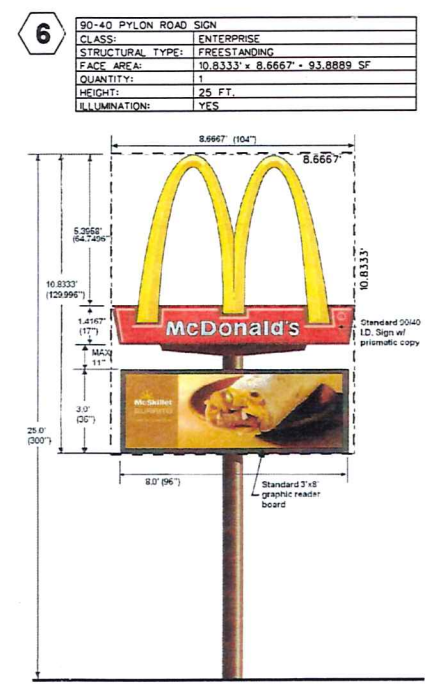
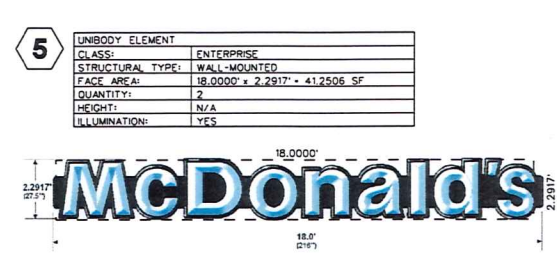
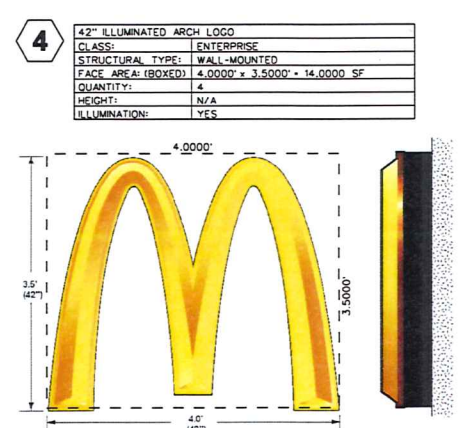
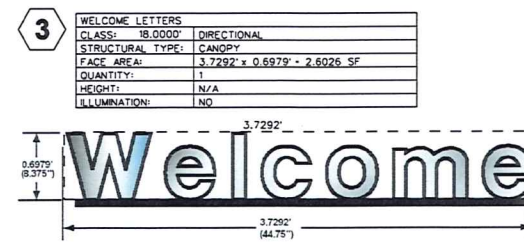
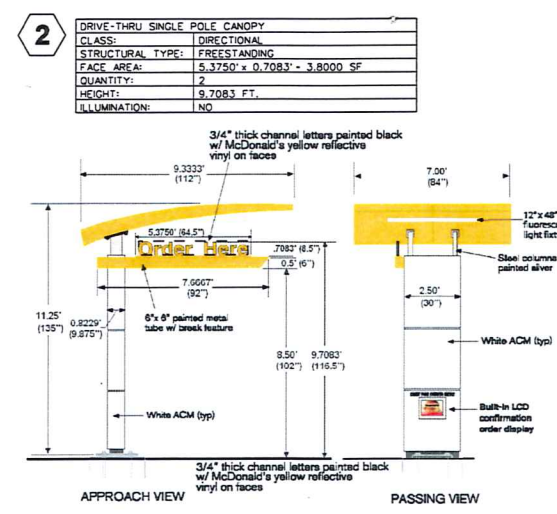
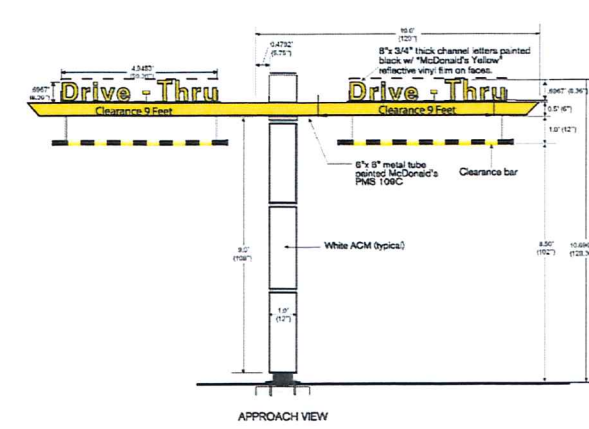
PLAN TO ACCOMPANY ZONING PETITION
SIGNAGE DETAILS AND DATA
McDONALD'S RESTAURANT
1655 BELMONT AVENUE
WOODLAWN, MARYLAND 21244
BALTIMORE COUNTY, MARYLAND
SCALE: N.T.S.
ELECTION DISTRICT 01, C1
DATE: JANUARY, 2012

DRAWING NO.
V-2
SHEET 2 OF 2

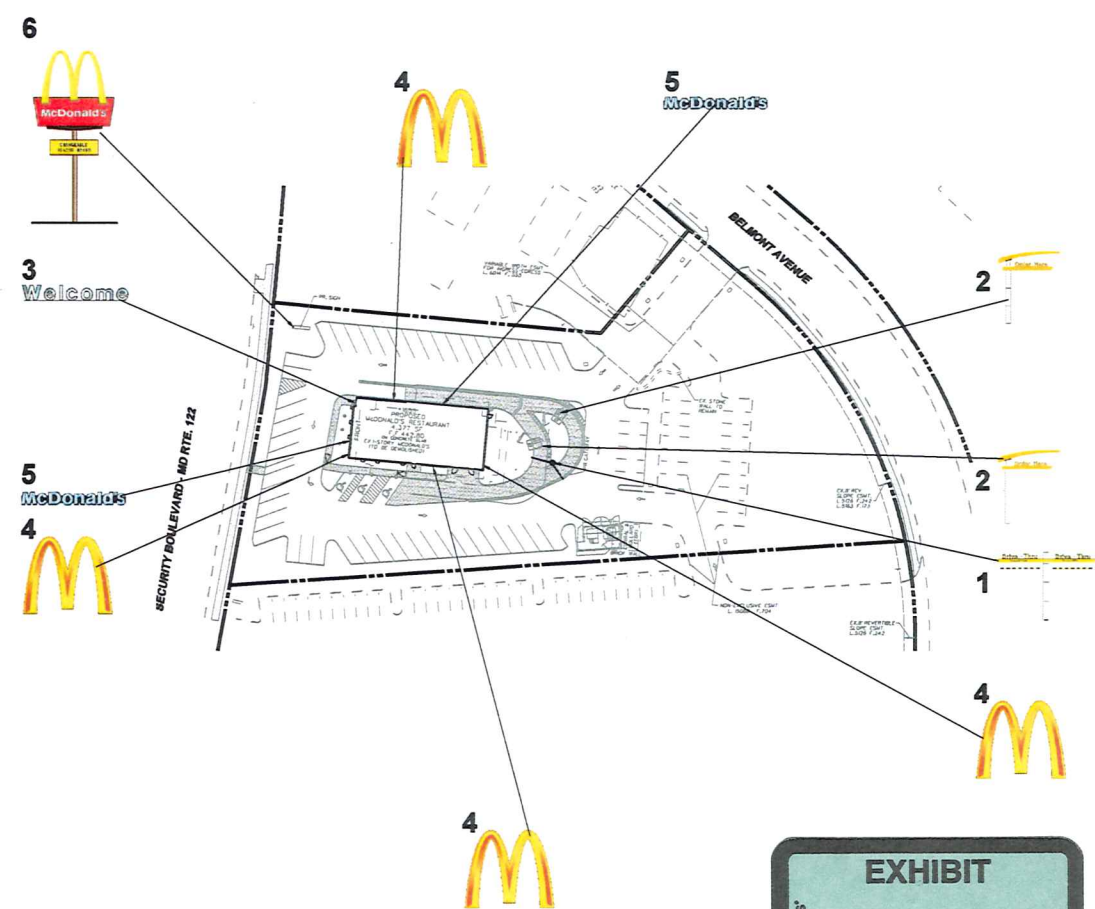


1

WELCOME POINT GATEWAY	CLASS:	DIRECTIONAL
	STRUCTURAL TYPE:	FREESTANDING
	FACE AREA:	2 x 0.6967' x 4.9483' = 6.8950 SF
	QUANTITY:	1
	HEIGHT:	10.6967 FT.
	ILLUMINATION:	NO



- I. ENTERPRISE SIGN ON THE BUILDING FACADES**
- AREA / FACE OF THE ENTERPRISE SIGNS ON THE SINGLE FACADE:
 - FRONT FACADE (LENGTH = 44.3')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 44.3' = 88.6 SF
 - AREA / FACE PROPOSED: SIGN #3 = 41.2506 SF
 - SIGN #4 = 14.0000 SF
 - TOTAL = 55.2506 SF < 88.6 SF
 - NON-DRIVE-THRU FACADE (LENGTH = 96.33')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 96.33' = 192.66 SF
 - AREA / FACE PROPOSED: SIGN #4 = 14.0000 SF
 - SIGN #5 = 41.2506 SF
 - TOTAL = 55.2506 SF < 192.66 SF
 - DRIVE-THRU FACADE (LENGTH = 96.33')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 96.33' = 192.66 SF
 - AREA / FACE PROPOSED: SIGN #4 = 14.0000 SF
 - SIGN #5 = 41.2506 SF
 - TOTAL = 55.2506 SF < 192.66 SF
 - REAR FACADE (LENGTH = 44.3')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 44.3' = 88.6 SF
 - SIGN #4 = 14.0000 SF
 - TOTAL = 14.0000 SF < 88.6 SF
 - NUMBER OF ENTERPRISE SIGNS:
 - NUMBER OF SIGNS PERMITTED: THREE (3) ON PREMISES, NO MORE THAN TWO ON EACH FACADE.
 - NUMBER OF ENTERPRISE SIGNS PROPOSED:
 - SIGNS ON FRONT FACADE: 2 (SIGNS #4 & #5)
 - SIGN ON NON-DRIVE-THRU FACADE: 1 (SIGN #4)
 - SIGNS ON DRIVE-THRU FACADE: 2 (SIGNS #4 & #5)
 - SIGN ON REAR FACADE: 1 (SIGN #4)
 - TOTAL NUMBER OF PROPOSED ENTERPRISE SIGNS: 6
- II. DIRECTIONAL SIGNS ON THE BUILDING FACADES**
- MAX. AREA / FACE ALLOWED: 8 SF / SIGN
 - AREA / FACE PROPOSED: SIGN #3 = 2.60 SF < 8 SF ALLOWED
 - STRUCTURAL TYPE ALLOWED: WALL-MOUNTED
 - STRUCTURAL TYPE PROPOSED: SIGN #3 - CANOPY
- III. DIRECTIONAL FREESTANDING SIGNS**
- MAX. AREA / FACE ALLOWED: 8 SF / SIGN
 - AREA / FACE PROPOSED: SIGN #1 = 6.8950 SF < 8 SF ALLOWED
 - SIGN #2 = 3.8000 SF < 8 SF ALLOWED
 - STRUCTURAL TYPE ALLOWED: FREESTANDING
 - STRUCTURAL TYPE PROPOSED: FREESTANDING (SIGNS #1 & #2)
 - MAX. HEIGHT ALLOWED: 6 FT
 - MAX. HEIGHT PROPOSED: SIGN #1 = 10.70 FT
 - SIGN #2 = 9.71 FT
- IV. ENTERPRISE FREESTANDING SIGN (SIGN #6)**
- MAX. AREA / FACE ALLOWED: 75 SF
 - MAX. AREA / FACE PROPOSED: 93.8889 SF
 - AREA / FACE OF EXISTING SIGN TO BE REMOVED: 198 SF -/-
 - MAX. HEIGHT ALLOWED: 25 SF
 - MAX. HEIGHT PROPOSED: 25 SF
 - MAX. NUMBER / PERMITS ALLOWED: 1 PER FRONTAGE
 - NUMBER OF PROPOSED SIGNS: 1 PER PERMISE



EXHIBIT

4A

THIS PLAN IS INTENDED FOR ZONING PURPOSES ONLY AND SHALL NOT BE USED FOR ANY OTHER PURPOSE.

BLDG

Baltimore Land Design Group Inc.

Consulting Engineers

230 SCHILLING CIRCLE SUITE 364 • HUNT VALLEY, MARYLAND 21031

PHONE: 410.229.9851 • FAX: 410.229.9865 • BLDG@BLDGINC.COM

OWNER

ARCHLAND PROPERTY I, LLC

McDONALD'S CORPORATION

BALTIMORE - WASHINGTON REGION

6903 ROCKLEDGE DRIVE, SUITE 1100

BETHESDA, MARYLAND 20817

PHONE (240) 497-3626

DEVELOPER / APPLICANT

McDONALD'S USA, LLC

BALTIMORE - WASHINGTON REGION

6903 ROCKLEDGE DRIVE, SUITE 1100

BETHESDA, MARYLAND 20817

PHONE (240) 497-3626

REVISIONS			
DATE	NO.	DESCRIPTION	BY

PAI NO. 1-180

PLAN TO ACCOMPANY ZONING PETITION

SIGNAGE DETAILS AND DATA

McDONALD'S RESTAURANT

1655 BELMONT AVENUE

WOODLAWN, MARYLAND 21244

BALTIMORE COUNTY, MARYLAND

SCALE: N.T.S.

ELECTION DISTRICT D1, C1

DATE: JANUARY, 2012

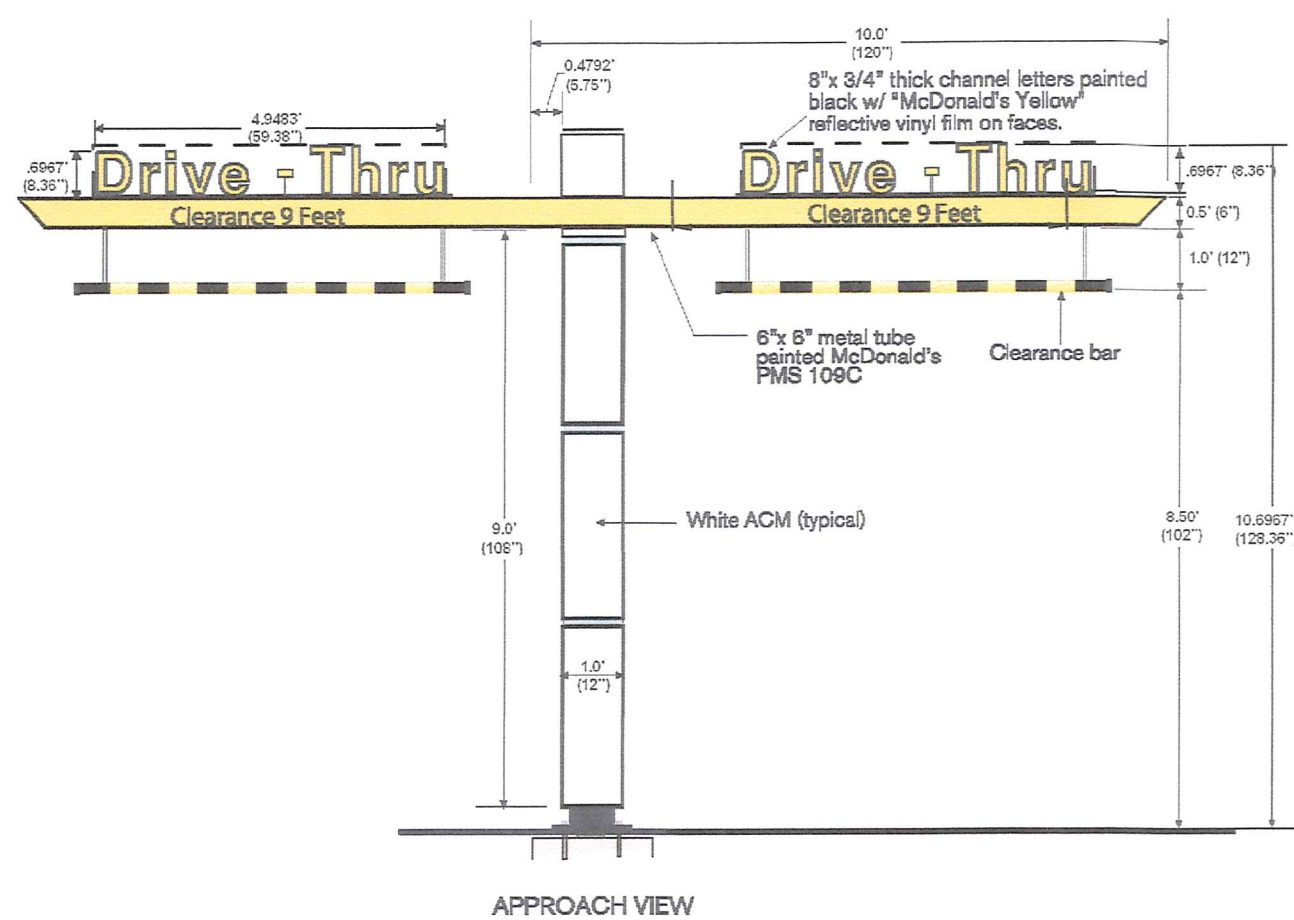
DRAWING NO.

V-2A

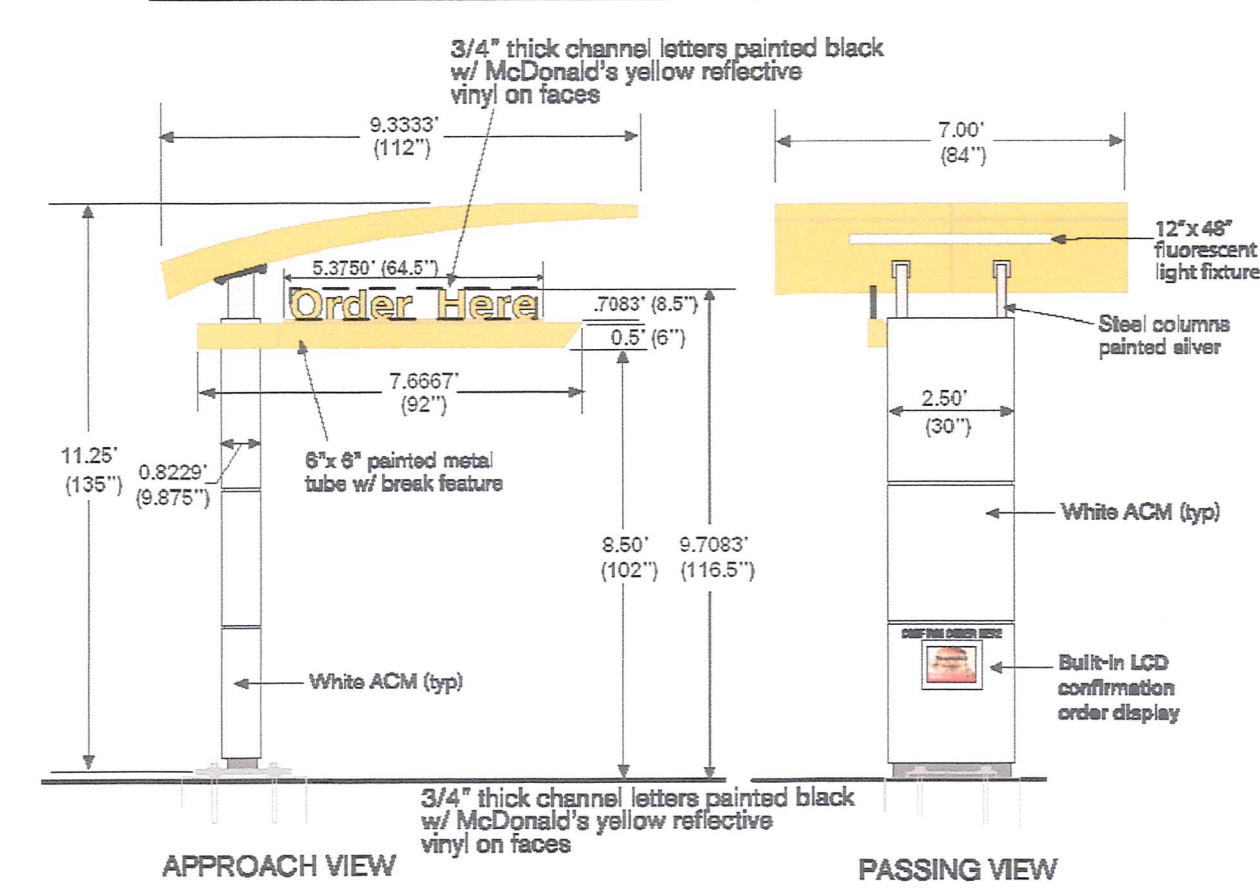
SHEET 2 OF 2



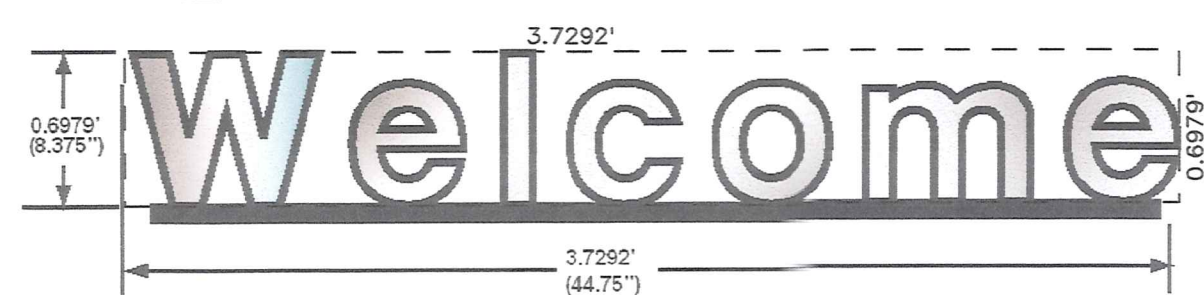
1	WELCOME POINT GATEWAY
CLASS:	DIRECTIONAL
STRUCTURAL TYPE:	FREESTANDING
FACE AREA:	2 x 0.6967' x 4.9483' = 6.8950 SF
QUANTITY:	1
HEIGHT:	10.6967 FT.
ILLUMINATION:	NO



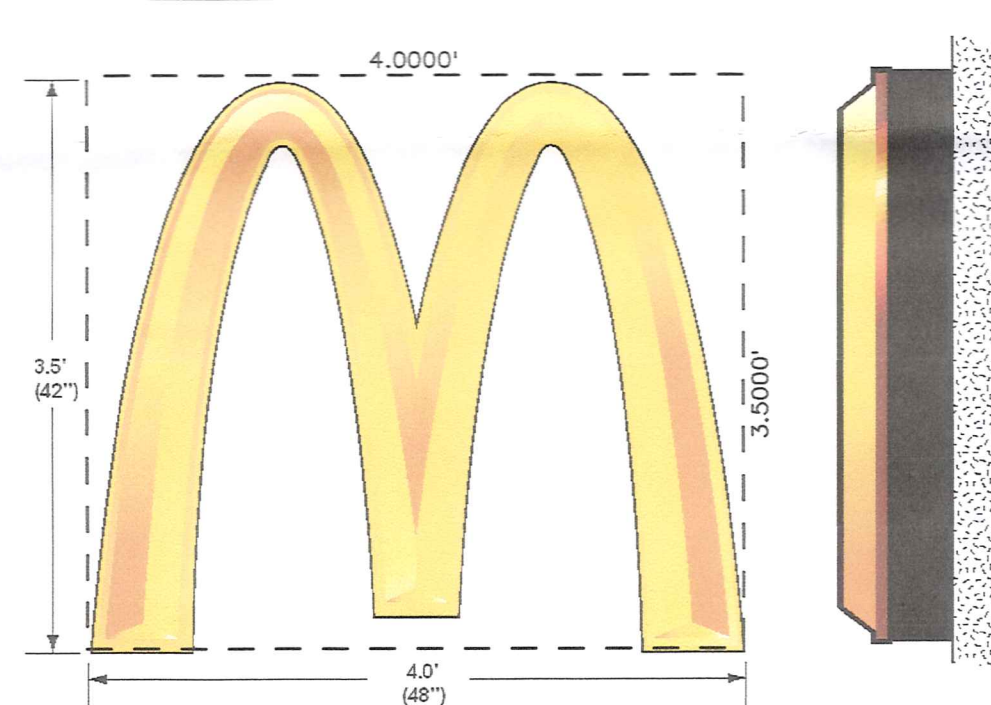
2	DRIVE-THRU SINGLE POLE CANOPY
CLASS:	DIRECTIONAL
STRUCTURAL TYPE:	FREESTANDING
FACE AREA:	5.3750' x 0.7083' = 3.8000 SF
QUANTITY:	2
HEIGHT:	9.7083 FT.
ILLUMINATION:	NO



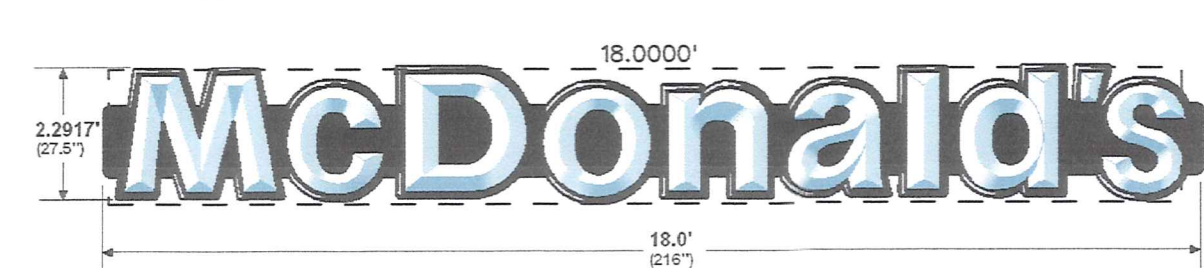
3	WELCOME LETTERS
CLASS:	18.0000' DIRECTIONAL
STRUCTURAL TYPE:	CANOPY
FACE AREA:	3.7292' x 0.6979' = 2.6026 SF
QUANTITY:	1
HEIGHT:	N/A
ILLUMINATION:	NO



4	42" ILLUMINATED ARCH LOGO
CLASS:	ENTERPRISE
STRUCTURAL TYPE:	WALL-MOUNTED
FACE AREA (BOXED):	4.0000' x 3.5000' = 14.0000 SF
QUANTITY:	4
HEIGHT:	N/A
ILLUMINATION:	YES



5	UNIBODY ELEMENT
CLASS:	ENTERPRISE
STRUCTURAL TYPE:	WALL-MOUNTED
FACE AREA:	18.0000' x 2.2917' = 41.2506 SF
QUANTITY:	2
HEIGHT:	N/A
ILLUMINATION:	YES



I. ENTERPRISE SIGN ON THE BUILDING FACADES

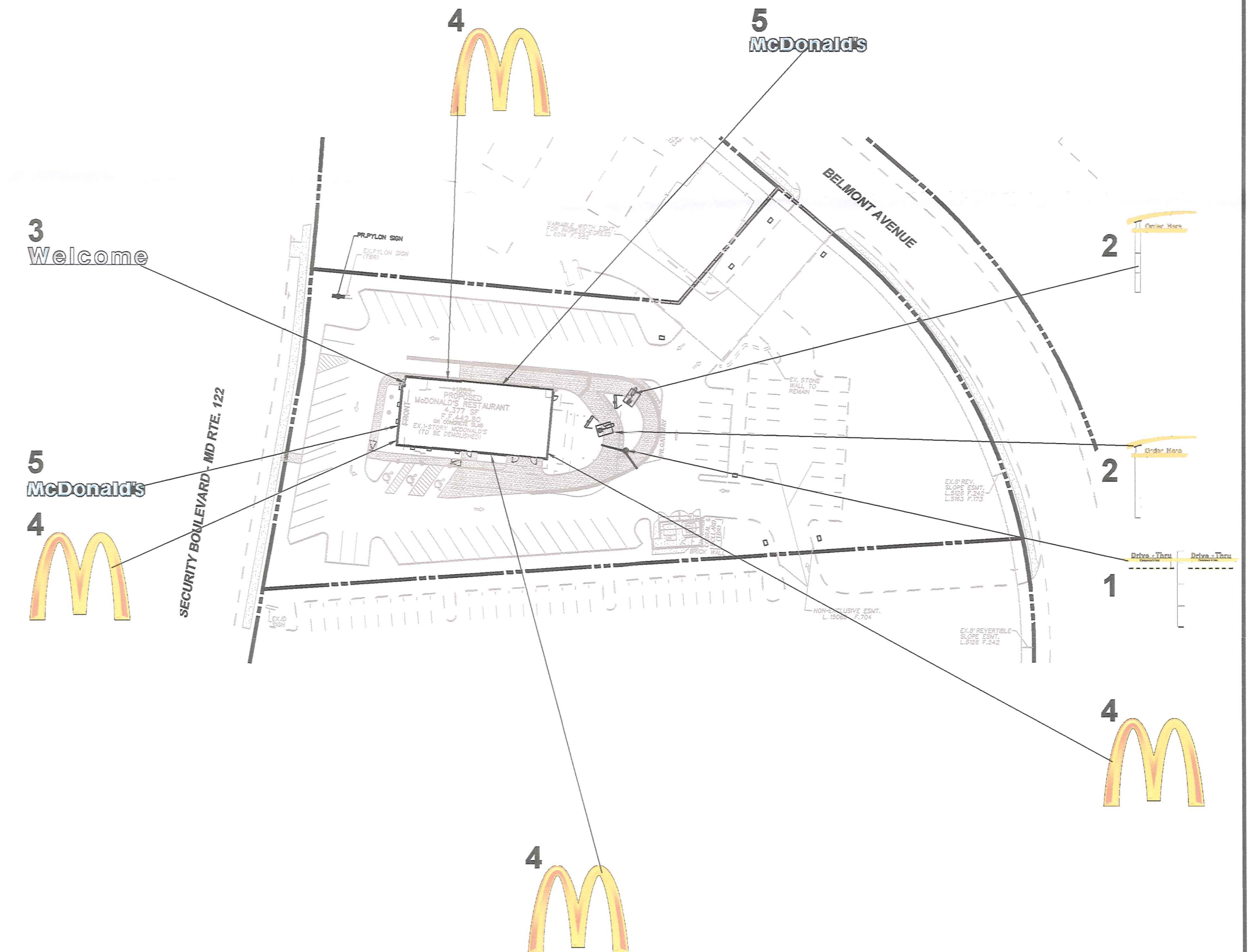
- AREA / FACE OF THE ENTERPRISE SIGNS ON THE SINGLE FACADE:
 - FRONT FACADE (LENGTH = 44.3')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 44.3' = 88.6 SF
 - AREA / FACE PROPOSED:
 - SIGN #5 = 41.2506 SF
 - SIGN #4 = 14.0000 SF
 - TOTAL = 55.2506 SF < 88.6 SF
 - NON-DRIVE-THRU FACADE (LENGTH = 96.33')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 96.33' = 192.66 SF
 - AREA / FACE PROPOSED:
 - SIGN #4 = 14.0000 SF
 - TOTAL = 14.0000 SF < 192.66 SF
 - DRIVE-THRU FACADE (LENGTH = 96.33')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 96.33' = 192.66 SF
 - AREA / FACE PROPOSED:
 - SIGN #5 = 41.2506 SF
 - SIGN #4 = 14.0000 SF
 - TOTAL = 55.2506 SF < 192.66 SF
 - REAR FACADE (LENGTH = 44.3')
 - MAXIMUM AREA / FACE ALLOWED: 2 x 44.3' = 88.6 SF
 - AREA / FACE PROPOSED:
 - SIGN #4 = 14.0000 SF
 - TOTAL = 14.0000 SF < 88.6 SF
- NUMBER OF ENTERPRISE SIGNS:
 - NUMBER OF SIGNS PERMITTED:
 - THREE (3) ON PREMISES, NO MORE THAN TWO ON EACH FACADE.
 - NUMBER OF ENTERPRISE SIGNS PROPOSED:
 - SIGNS ON FRONT FACADE: 2 (SIGNS #4 & #5)
 - SIGN ON NON-DRIVE-THRU FACADE: 1 (SIGN #4)
 - SIGNS ON DRIVE-THRU FACADE: 2 (SIGNS #4 & #5)
 - SIGN ON REAR FACADE: 1 (SIGN #4)
 - TOTAL NUMBER OF PROPOSED ENTERPRISE SIGNS: 6

II. DIRECTIONAL SIGNS ON THE BUILDING FACADES

- MAX. AREA / FACE ALLOWED - 8 SF / SIGN
- AREA / FACE PROPOSED:
 - SIGN #3 = 2.60 SF < 8 SF ALLOWED
- STRUCTURAL TYPE ALLOWED: WALL-MOUNTED
 - STRUCTURAL TYPE PROPOSED: SIGN #3 = CANOPY

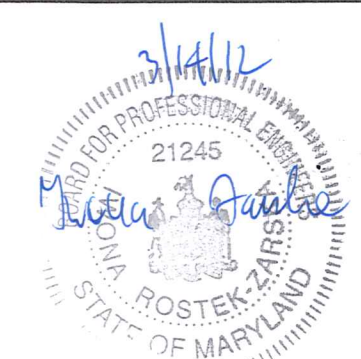
III. DIRECTIONAL FREESTANDING SIGNS

- MAX. AREA / FACE ALLOWED: 8 SF / SIGN
- AREA / FACE PROPOSED:
 - SIGN #1 = 0.8950 SF < 8 SF ALLOWED
 - SIGN #2 = 3.8000 SF < 8 SF ALLOWED
- STRUCTURAL TYPE ALLOWED: FREESTANDING
 - STRUCTURAL TYPE PROPOSED: FREESTANDING (SIGNS #1 & #2)
- MAX. HEIGHT ALLOWED: 6 FT
 - MAX. HEIGHT PROPOSED:
 - SIGN #1 = 10.70 FT > 6 FT
 - SIGN #2 = 9.71 FT > 6 FT



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REVISIONS			
DATE	NO.	DESCRIPTION	BY

PAI NO. 1-180

PLAN TO ACCOMPANY ZONING PETITION
SIGNAGE DETAILS AND DATA
McDONALD'S RESTAURANT
1655 BELMONT AVENUE
WOODLAWN, MARYLAND 21244

BALTIMORE COUNTY, MARYLAND
SCALE: N.T.S.

ELECTION DISTRICT 01, C1
DATE: MARCH, 2012

DRAWING NO.

V-2

SHEET 2 OF 2



POINT OF BEGINNING
N 600,182.56
E 1,383,392.80

SITE

2012-0231-SPHA

Plan Sheet: **094C1**

Note:
 The zoning depicted in this application incorporates the actions associated with 2008 Comprehensive Zoning Map Process, zoning changes associated with an adopted Community Plan and Baltimore County Board of Appeals actions through December 31, 2008.

Legend

- Buildings
- Streams
- Vegetation
- Zoning
- Roads
- Rail Lines

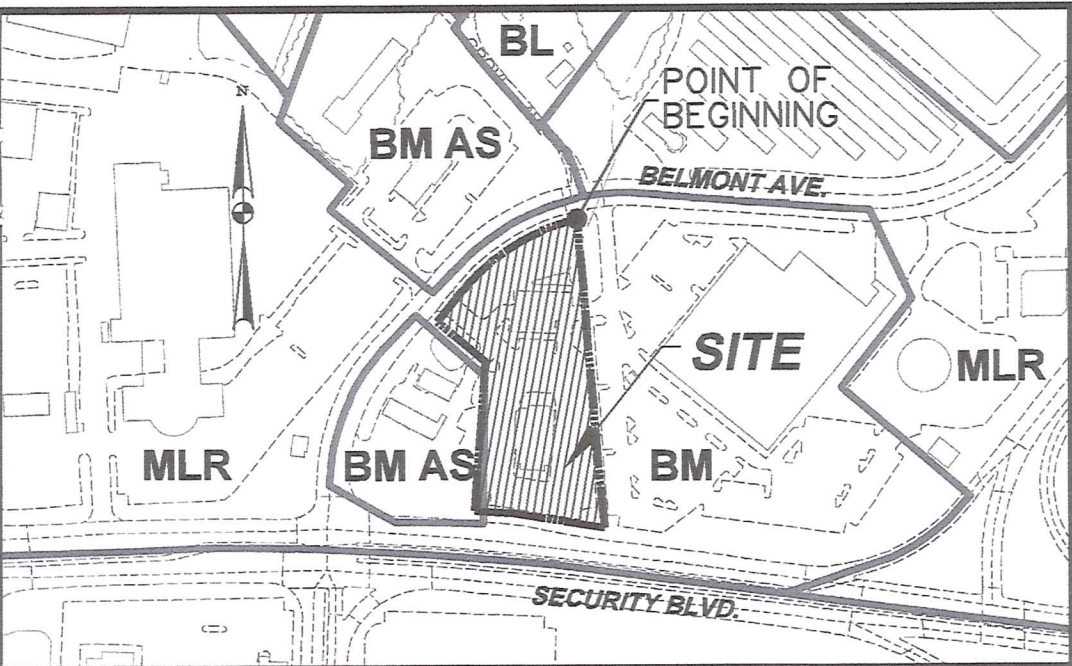
Baltimore County
Office of Planning and Zoning
Official Zoning Map

087A3	087B3	087C3	088A3	088B3
094A1	094B1	094C1	095A1	095B1
094A2	094B2	094C2	095A2	095B2

Scale
 1" = 200'
 0 100 200 400 Feet



Data Sources:
 Planimetric Data - Baltimore County
 OIT/GIS Services Unit
 1:2400, from 1995/96 photography
 Zoning - Baltimore County Office of Planning
 1:2400, 2008



ZONING MAP

SCALE: 1" = 200'
(MAP: 94 C1)

LEGEND

RIGHT-OF-WAY LINE	---
PROPERTY LINE	---
EX. EASEMENT	---
ZONING LINE	---
EX. CONCRETE CURB OR CURB AND GUTTER	---
EX. CONCRETE	---
EX. BUILDING	---
EX. SIGN	---
EX. CHAIN LINK FENCE	---
EX. STORM DRAIN, MANHOLE & INLET	---
EX. RIP-RAP	---
EX. SANITARY SEWER, MANHOLE & CLEANOUT	---
EX. WATER MAIN, VALVE & FIRE HYDRANT	---
EX. ELECTRIC LINE	---
EX. GAS LINE	---
EX. TELEPHONE LINE, POLE & BOX	---
EX. OVERHEAD LINE	---
EX. POLE WITH LIGHT	---
EX. UTILITY POLE & GUY WIRE	---
EX. INDEX COUNTOURS	---
EX. INTERMEDIATE COUNTOURS	---
EX. TREE	---
"EXISTING" DESIGNATION	---
EXISTING PARKING COUNT	---
BUILDING RESTRICTION LINE	---
LANDSCAPE RESTRICTION LINE	---
PR. EASEMENT	---
PR. CONCRETE CURB OR CURB & GUTTER	---
PR. MAC. PAVING	---
PR. CONCRETE	---
PR. STORM DRAIN, MANHOLE & INLET	---
PR. SANITARY SEWER & CLEANOUT	---
PR. WATER MAIN, VALVE & FIRE HYDRANT	---
PR. INDEX COUNTOURS	---
PR. INTERMEDIATE COUNTOURS	---
PR. SIGN	---
PR. BOLLARD	---
PR. PARKING COUNT	---
"PROPOSED" DESIGNATION	---

ZONING VARIANCE REQUESTS

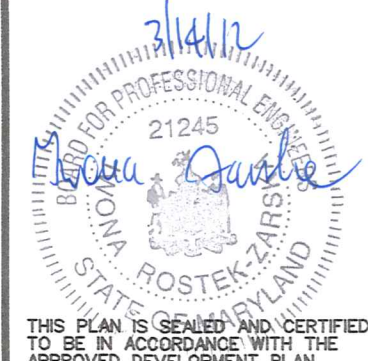
- SECTION 450.4 ATTACHMENT 1.5(a) (VI) TO PERMIT 6 WALL-MOUNTED ENTERPRISE SIGNS ON BUILDING FACADES IN LIEU OF THE PERMITTED 3 SIGNS. (SIGN #4,5)
- SECTION 450.4 ATTACHMENT 1.3(b)(VII) TO PERMIT A DIRECTIONAL SIGN OF 10.7 FEET IN HEIGHT IN LIEU OF THE PERMITTED 8 FT. (SIGN #1)
- SECTION 450.4 ATTACHMENT 1.3(b)(VII) TO PERMIT A DIRECTIONAL SIGN OF 9.71 FEET IN HEIGHT IN LIEU OF THE PERMITTED 8 FT. (TWO SIGNS, SIGN #2)
- SECTION 450.4 ATTACHMENT 1.3(d) TO PERMIT A CANOPY-TYPE DIRECTIONAL SIGN IN LIEU OF THE PERMITTED WALL-MOUNTED OR FREE-STANDING SIGN. (SIGN #3)
- SECTION 450.5.B.3.b TO PERMIT ERECTION OF THE SIGN ABOVE THE FACE OF THE CANOPY IN LIEU OF ITS ERECTION ON THE FACE OF THE CANOPY. (SIGN #3)

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PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21245, EXPIRATION DATE: JUNE 9, 2012.

OWNER

ARCHLAND PROPERTY I, LLC
c/o McDONALD'S CORPORATION
BALTIMORE - WASHINGTON REGION
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DEVELOPER / APPLICANT

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6903 ROCKLEDGE DRIVE, SUITE 1100
BETHESDA, MARYLAND 20817
PHONE (240) 497-3626

REVISIONS			
DATE	NO.	DESCRIPTION	BY

PAI NO. 1-180

2012 - 0231-SPHA

PLAN TO ACCOMPANY ZONING PETITION FOR ZONING VARIANCES McDONALD'S RESTAURANT

1555 BELMONT AVENUE
WOODLAWN, MARYLAND 21244

BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 30'

ELECTION DISTRICT 01, C1
DATE: MARCH, 2012

DRAWING NO.

V-1

SHEET 1 OF 2

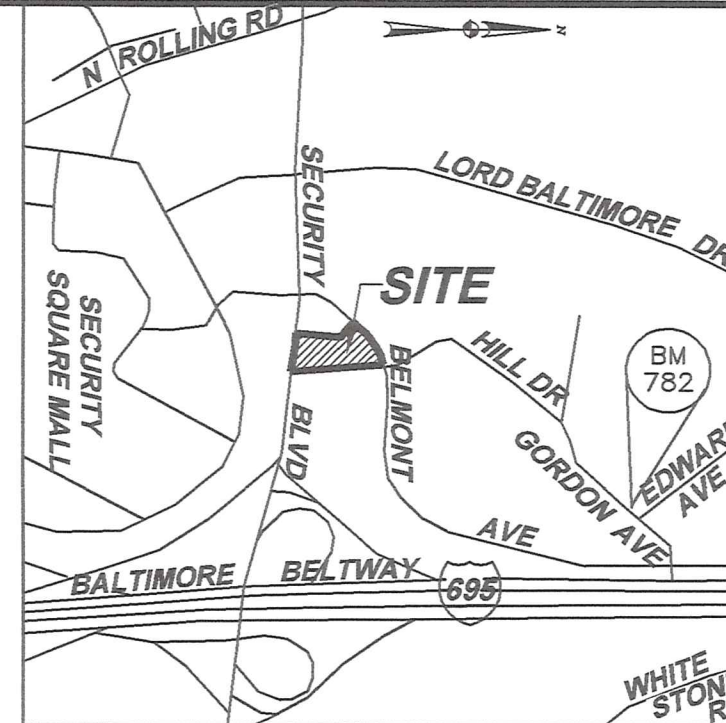
DEVELOPMENT APPROVAL

LIMITED EXEMPTION UNDER SECTION 32-4-106(b)(8) OF THE BALTIMORE COUNTY DEVELOPMENT REGULATIONS (MINOR DEVELOPMENT) THAT DOES NOT EXCEED A TOTAL OF THREE LOTS) FOR PROPOSED McDONALD'S RESTAURANT WAS GRANTED BY DRC ON 6/24/11, DRC #061411A.

LIMITED EXEMPTION DEVELOPMENT PLAN WAS APPROVED ON JANUARY 18, 2012.

ZONING HISTORY

NONE KNOWN



VICINITY MAP

SCALE: 1" = 1,000'

BENCH MARK

ELEVATIONS ARE BASED ON NAVD 88 DATUM PER BALTIMORE COUNTY CONTROL POINTS:

CONTROL POINT 782: N 601,478.79; E 1,384,132.40; EL. 389.49
DESCRIPTION: SPIKE IN PAVING ON GORDON AVE, 41 FT +/- SOUTHWEST FROM INTERSECTION OF GORDON AVE AND EDWARDS AVE.

SITE DATA

- AREA OF TRACT: 79,810 SF OR 1.832 AC.
- OWNER: ARCHLAND PROPERTY I, LLC
C/O McDONALD'S CORPORATION
BALTIMORE - WASHINGTON REGION
6903 ROCKLEDGE DRIVE, SUITE 1100
BETHESDA, MARYLAND 20817
- TAX MAP REFERENCES: T.M. 94: G. 06: P. 355; TAX ID. # 1800005215
- DEED REFERENCES: L. 20914: F. 82
- PLAT REFERENCE: LAND OF BELTWAY PROPERTIES L. 43: F. 132
- ELECTION DISTRICT: 1; COUNCILMANIC DISTRICT: 1
- EXISTING ZONING: BM (BUSINESS, MAJOR) AND BM-AS, MAP #094 C1
- EXISTING USE: EX. McDONALD'S TO BE RAZED
PROPOSED USE: NEW McDONALD'S RESTAURANT
- MINIMUM SETBACK REQUIREMENT: FRONT: 15 FT FROM PROPERTY LINE AND NOT LESS THAN 40 FT FROM CL OF STREET. SIDE & REAR: NONE REQUIRED
- F.A.R. ALLOWED: 4.0 MAX.
PROPOSED: 4.377 / 79,810 = 0.05
- BUILDING HEIGHT: PERMITTED: 40 FT
PROPOSED: 23.3 FT
- ADT: (550 X 4,377 SF) / 1,000 = 2,408 DAILY TRIPS
- CENSUS TRACK: 401501
WATER SERVICE AREA: CATONSVILLE FOURTH ZONE
SEWER SHED: 70
TRANSPORTATION ZONE: 0673
ZIP CODE: 21244
WATERSHED: GWYNNS FALLS
- LANDSCAPE REQUIREMENTS: LANDSCAPING WILL BE PROVIDED AS PER THE MOST RECENT BALTIMORE COUNTY LANDSCAPE MANUAL.
- STORM WATER MANAGEMENT (SWM):

THIS SITE IS A RE-DEVELOPMENT. SWM SHALL BE ADDRESSED IN ACCORDANCE WITH THE FOLLOWING CRITERIA:
- REDUCTION OF EX. IMPERVIOUS AREAS WITHIN LIMIT OF DISTURBANCE (LOD) BY 50%
- IMPLEMENTATION OF EX. PRACTICES TO HELP TO PROVIDE WATER QUALITY TREATMENT FOR AT LEAST 50% OF EX. IMPERVIOUS AREA WITHIN LOD OR
- USE A COMBINATION OF IMPERVIOUS AREA REDUCTION AND ESD IMPLEMENTATION FOR AT LEAST 50% OF EX. IMPERVIOUS AREAS
- USE OF ALTERNATIVE SWM MEASURES

SINCE THE FULL REDUCTION OF EXISTING IMPERVIOUS AREA COULD NOT BE ACHIEVED FOR PROPOSED DEVELOPMENT, THEREFORE ESD PRACTICE, MICRO BIORETENTION FACILITY OR EQUIVALENT, WILL BE PROVIDED TO MEET SWM REQUIREMENTS.

- THERE ARE NO EXISTING OR PROPOSED WELL OR SEPTIC AREAS.
- PUBLIC WATER AND SANITARY SEWER FACILITIES EXIST.
- THERE ARE NO KNOWN WETLANDS REQUIRING REGULATION, CRITICAL AREAS, ARCHEOLOGICAL SITES, ENDANGERED SPECIES HABITATS, OR HAZARDOUS MATERIALS ON SITE.
- THE DEVELOPER IS REQUESTING A VARIANCE TO SECTION 33-6-109 (IN PART) OF THE BALTIMORE COUNTY CODE TO RESTRICT APPLICABILITY OF THE FOREST CONSERVATION REGULATIONS TO THE PROPOSED LIMIT OF DISTURBANCE. THE RESULTING 0.2 ACRE AFFORESTATION OBLIGATION WILL BE MET BY PURCHASE OF CREDIT IN A COUNTY APPROVED FOREST RETENTION BANK.
- ANY SIGNS SHALL COMPLY WITH SECTION 450 OF THE B.C.Z.R. AND ALL SIGN POLICIES. ZONING VARIANCES ARE BEING REQUESTED.
- THERE ARE NO HISTORIC BUILDINGS ON THIS PROPERTY.
- FLOOD MAP INFORMATION: PREMISES IS SHOWN ON MAP ENTITLED "FIRM FLOOD INSURANCE RATE MAP, BALTIMORE COUNTY, MARYLAND, UNINCORPORATED AREAS, PANEL 378 OF 550 COMMUNITY PANEL NUMBER 240010378 F. MAP EFFECTIVE DATE, SEPTEMBER 26, 2008 AND IS LOCATED IN ZONE X (OTHER AREAS).
- THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
- LIGHTING SHALL BE ERECTED AS NOT TO REFLECT INTO ANY ADJOINING RESIDENTIAL AREAS AND PUBLIC ROADS.
- THE BOUNDARY SHOWN HEREON WAS TAKEN FROM ALTA/ACSM LAND TITLE SURVEY PREPARED BY BOHLER ENGINEERING MD, DATED MARCH 9, 2011.
- "BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION PLANNING" HAS CONFIRMED THAT THE SUBJECT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.

PARKING REQUIREMENTS

PARKING SPACES REQUIRED: 4,377 SF @ 16 PS / 1000 SF = 71 PS
PARKING SPACES PROVIDED: 74 PS (INCL. 3 HDPC)

THE COORDINATE SYSTEM OF ALL DRAWINGS IS BASED ON THE NORTH AMERICAN DATUM OF 1983. THE ELEVATION SYSTEM OF ALL DRAWINGS IS BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988.
HORZ: NAD 83/91; VERT: NAVD 88