

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020 – 12
:
McDonald’s USA, LLC :
:
:
: PREMISES LOCATION:
: 611 East Main Street
: Hummelstown, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of McDonald’s USA, LLC with regard to its property, located at 611 East Main Street, Hummelstown, Derry Township. A hearing in this matter was held on November 18, 2020, by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. At that time, Rich Ault, who is employed by the franchisee, Rawden Joint Ventures Corp., appeared, with the applicant’s attorney, Donald M. Lewis III, was sworn, and testified at the hearing. No other members of the public testified. Zoning Board Member Dean Morgan disclosed that he represented the owner of the KFC, a neighboring property owner. While the applicant had no present objection to Mr. Morgan’s participation in the hearing of this matter, Mr. Morgan recused himself from the deliberation and voting with respect to this matter.

The application indicates that the subject property is located in the General Commercial and General Sign Overlay zoning districts. The property is improved with a McDonald’s quick serve restaurant with a two lane drive through for take-out service, and the applicant proposes to continue that use. The applicant obtained relief from the Zoning Hearing Board with respect to signs at the property by decisions dated, December 15, 2010, and April 20, 2011. The current

application seeks a special exception, for sign area relief to allow two signs in each of the two drive through lanes. In addition, the application seeks variances regarding the illumination type to allow LED signs, in which the applicant agreed that the images would change no more than three times per day, and restrictions regarding screen brightness.

Rich Ault is employed as the Director of Construction of Rawden Joint Ventures Corp., the franchisee of the applicant. He is in charge of the day-to-day maintenance of equipment at the applicant's properties, specifically including new stores and updates to existing stores. With respect to menu boards, his job is to get them installed by coordinating the scheduling of a company to install the signs.

The property is located among other commercial establishments, such as the KFC, Wendy's, and a gas station. The lot is narrow and contains road frontages on opposite side of the property, and it is a tight fit for the existing two lane drive through. The existing signs for the drive through consist of a single presell sign and two menu board signs that total 103.86 square feet. The existing signs are 10 years old. These signs are changed manually three times a day. To change the signs, an employee has to go outside, open the frame, and change the insert. These signs are illuminated with a steady light with no adjustment for the time of day. When McDonald's stops producing the menu and point of purchase inserts for the signs, the applicant will have to print the inserts at its own expense. The older boards would impede the franchisee's ability to participate in nationally advertised programs, which would confuse customers. More importantly, the parts for repair or replacement of the existing signs are becoming more difficult

to locate. One of the existing menu boards was damaged when it was hit by a car and has not been repaired.

The applicant submitted a letter, dated October 21, 2020, from Christian Rawden, the owner/operator of Rawden Joint Ventures Corp. regarding McDonald's efforts to update its presell and menu boards at all McDonald's locations in the United States by the end of 2021. The letter, along with the application, photographs, site plans, and sign specifications, were all admitted into the record. Because of the COVID-19 pandemic, the use of the drive through has increased, and the need for more efficient signs has similarly increased.

The applicant proposes to install one presell sign and one menu board sign in each drive through lane. Therefore, there would be a total of 4 signs. The first sign in the drive through lane would be located prior to the order location. That sign is a presell sign, which is designed to give the customer information about new or featured menu items. The second sign in the drive through lane is a menu board at the order location. It would have the available menu and an order confirmation, which would speed up traffic and improve wait time. Each presell sign is 11.71 square feet, and each menu sign is 21.80 square feet for a total of 67.02. Therefore, the proposed signage would reduce the total sign area by feet 36.84 square feet. Because the proposed signs are digital, they can be changed with a computer. The color displays would change three times a day. The images would be static except for the order confirmation changes and the menu changes three times per day.

The technology for the new signs would reduce the glare. The signs would monitor the brightness and adjust themselves automatically based on the ambient light. Therefore, the signs

would not be overly bright at night. The range of illumination for the proposed signs is 2,500 Nit (full brightness) to 500 Nit.

Mr. Ault argued that the proposed signs would not adversely impact the neighborhood because the proposed signs are smaller than the existing signs. In addition, the proposed digital signs would generate less waste because there would be no menu inserts, which change every month to six weeks, to dispose of that the existing signs use. The proposed signs also use less energy. It is not feasible to use one presell sign for both drive through lanes because it would have to straddle both lanes and would be on the passenger side of the first lane, which tends to be the lane that more customers use.

The Ordinance permits one sign per drive through lane. *See* Ordinance, §225-401.4, Table 36. The Zoning Board may grant a special exception to allow a greater number of signs than otherwise permitted in a given district provided that the applicant can demonstrate compliance with the following specific criteria applicable to the special exception:

1. The applicant must demonstrate that unique conditions exist on the property or in the immediate area of the property which would cause signs of the normally prescribed areas of size or location to be of lower communication value than that which would exist on another property in the same Sign District.
2. The modification of the sign regulations must be the least necessary to afford the relief.
3. The proposed signage is not the type of a sign that would otherwise be permitted in non-street fronting conditions.

See Ordinance, §225-502.10.

In this matter, the Board finds that the applicant is entitled to the relief requested. Initially, this Board has often held that special exceptions are neither special, nor exceptions, but are instead permitted uses so long as the applicant can demonstrate compliance with the specific criteria associated with the special exception request. Here, the Board finds that the applicant is entitled to the special exception. The property is narrow and is part of a neighborhood with other fast food restaurants and commercial properties. Consequently, the Board finds that the applicant has demonstrated the unique character of the property and that character reduces the communicative value of signage that might be sufficient on another property lacking these characteristics. Lastly, the Board finds that the requested relief is the minimum relief necessary.

The Ordinance requires “a white, steady, internal or external stationary light directed at the sign.” *See Ordinance, §225-401.4.F.B.5.e.* In addition, the Ordinance requires illumination of signs of reasonable intensity, which is considered a maximum luminance level of 750 Nits at least one-half hour before apparent sunset. *See Ordinance, §225-401.4.F.B.5.f.* The criteria for issuing zoning variances are set forth in §225-1007.9.A of the Derry Township Zoning Ordinance. The Zoning Board may grant a variance provided that all of the following findings are made where relevant:

1. There are unique physical circumstances or conditions of the lot in question, and due to these conditions, an unnecessary hardship results to the property owner;
2. That because of the physical circumstances, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance,

and that the authorization of the variance is necessary to enable the reasonable use of the property;

3. The unnecessary hardship has not been created by the applicant;
4. The variance will not alter the essential character of the neighborhood or otherwise impair the appropriate use or development of adjacent property or be detrimental to the public welfare; and
5. That the variance if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

In this matter, the Board finds that the applicant is entitled to the requested relief.

Initially, as noted above, the Board finds that the property is unique because it is narrow. There is no evidence on the record that the applicant created this hardship. Most significantly, the Board finds that the proposed relief will not have a detrimental impact on any other property in the area or the public welfare. The Board finds that the proposed relief will not alter the essential character of the neighborhood. There is no testimony in the record to indicate that the requested variances would negatively impact surrounding properties. No neighbors testified in opposition to the application. Finally, the Board finds that this represents minimum relief necessary.

In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of the Pennsylvania Municipalities Planning Code, and the Ordinance. *Ordinance*, §§225-1007.10.A and 225-1007.9.B. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 16th day of December, 2020:

1. The applicant's request for a special exception pursuant to §225-502.10 regarding the sign area relief is **GRANTED**. The applicant may install two signs in each of the two drive through lanes with one being a pre-sell sign of 11.71 square feet each and one being a menu board of 21.80 square feet each for a total sign area of 67.02 square feet.

2. The applicant's request for a variance from §225-401.F.B.2.c regarding the number of signs per drive through lane is **MOOT** as a result of the special exception being granted.

3. The applicant's request for a variance from §225-401.F.B.5.e regarding the use of a color display and changing images is **GRANTED**. The applicant may use a color display that changes images up to four times a day, excluding the area of the sign used for confirmation of orders.

4. The applicant's request for a variance from §225-401.F.B.5.f regarding the brightness is **GRANTED**. The signs may have variable screen brightness from 2,500 Nit (full brightness) to 500 Nit to prevent glare in low-light or nighttime conditions.

5. The relief granted herein is strictly contingent on the requested signs automatically adjusting and shall not contain animated images.

6. The applicant shall construct the improvements in strict compliance with the plans and specifications submitted to the Board during the hearing of this matter, provided, however,

that if the improvements that are the subject of this hearing, as finally constructed, require less relief than granted by the Board herein, no additional relief from this Board shall be required.

7. Except as extended by applicable law, the relief granted herein shall be valid for one (1) year from the date hereof. In the event the applicant has not, within the time period provided herein, commenced operations, applied for a building permit relative to the improvements where permits are necessary, or constructed the improvements not requiring permits, the relief granted herein shall be deemed to have expired, and the applicant shall be required to comply with the then existing terms of the Zoning Ordinance.

8. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.

Adopted by 2 – 0 vote as indicated by the Chairman’s signature as authorized by the Zoning Hearing Board.

A handwritten signature in cursive script, appearing to read "Steven Seidl", written over a horizontal line.

Steven Seidl, Chairman