



Department of Land Use

**NOTICE OF DECISION**

REFERENCE: Application 2010-0753-A      DATE DECISION FILED: January 18, 2011

APPLICANT: **McDonald's Corporation**

PUBLIC HEARING DATE: December 9, 2010      DATE OF DECISION: January 13, 2011

REQUESTED: Area variances to reconstruct a restaurant: 1. to permit 24 parking spaces (51 parking spaces required); 2. to permit 13.8 percent Landscape Surface/Open Space Ratio (20 percent required OSR/LSR); 3. to permit a 0.574-acre lot area (1 acre minimum lot area); 4. to maintain an existing .4-foot paving setback along East Grant Avenue (40-foot street yard paving setback); 5. to maintain an existing .8-foot paving setback along North DuPont Highway (40-foot street yard paving setback); 6. to maintain an existing .4-foot paving setback along Stahl Avenue (40-foot street yard paving setback); 7. to maintain a 3.5-foot paving setback along the rear property line (10-foot street yard setback); 8. to maintain 0 buffyard opacity along DuPont Highway, Stahl Avenue, and East Grant Street (0.4 required bufferyard opacity); 9. to permit a .472 bufferyard opacity along the rear property line (0.9 required bufferyard opacity); 10. to relocate an existing 395 square foot ground sign 1 foot from the DuPont Highway right-of-way (40-foot sign setback); and 11. to permit 510 square feet of aggregate signage on the subject parcel (130 square foot maximum sign aggregate).

**700 North DuPont Highway**      Parcel Number: 10-019.10-178 & 184      Zoned CN      CD7

The Board of Adjustment may grant a variance from the area or dimensional or other requirements of the New Castle County Unified Development Code [hereinafter "UDC"] where it finds the applicant or property owner is experiencing exceptional practical difficulty, rather than routine difficulty, in complying with the specific provisions of the UDC applicable to the subject property.

The Applicant appeared through William Rhodunda, Esq. and presented the testimony of Bill Zuccarello, William Sveen, and Brian Zappala and presented the following: The Applicant requested to amend their variance request. The Board heard and **granted** the request for amendment. The Applicant proposed to reconstruct an existing McDonald's restaurant. The proposed changes will include the following; 1. reduction of parking space due to the decrease in dine-in customers. The Applicant performed a parking study on a Thursday, Friday, and Saturday from 6:00 am to 8:00 pm. The parking study indicated that during the peak days and times only 17 spaces were utilized. The Applicant further testified that 75 percent of sales are from drive-through customers. 2. increasing the Landscape Surface/Open Space ratio to 7.3 percent; 3. maintaining the existing paving setback along North DuPont Highway; 4. currently the paving is right up to the property line and will be changed to maintain a 3.5 foot paving setback creating additional green space; 5. the Applicant will improve the bufferyard opacity

along the rear property line by improving the height and type of fence. The Applicant will install a new 8-foot opaque fence between the restaurant and the residential properties along Stahl and East Grant Ave and provide additional landscaping at this location to provide better screening of the property; 6. reconfiguring of the parking lot and drive-through for safety; 7. renovating the dumpster area; 8. renovating of the restaurant and bathrooms; 9. relocating the existing ground sign closer to DuPont highway ; and 10. reducing the amount to signage needed from 560 square feet to 510 square feet. The Applicant is improving the existing conditions or requesting that nonconforming condition be maintained. In response to public comment the Applicant indicated that the encroachment of the fence will be resolved. The new layout of the restaurant will eliminate the need for delivery trucks to use the residential streets. The Applicant also testified that the new entrance and exits will help to reduce the traffic concerns in the neighborhood.

Public comment was invited by the Board. Mr. Shannon Godlewski and Mr. McNeal testified that they were not opposed to the variance but had discussions with applicant regarding the encroachment of Applicant's fence on Mr. Godlewski's property. Mr. Godlewski also had issue with delivery trucks blocking the roads in the neighborhood and traffic concerns.

The Department of Land Use recommended that the Board approve the requested variances.

### DECISION

The Board votes to **grant** the: "Area variances to reconstruct a restaurant: 1. to permit 24 parking spaces (51 parking spaces required); 2. to permit 13.8 percent Landscape Surface/Open Space Ratio (20 percent required OSR/LSR); 3. to permit a 0.574-acre lot area (1 acre minimum lot area); 4. to maintain an existing .4-foot paving setback along East Grant Avenue (40-foot street yard paving setback); 5. to maintain an existing .8-foot paving setback along North DuPont Highway (40-foot street yard paving setback); 6. to maintain an existing .4-foot paving setback along Stahl Avenue (40-foot street yard paving setback); 7. to maintain a 3.5-foot paving setback along the rear property line (10-foot street yard setback); 8. to maintain 0 buffyard opacity along DuPont Highway, Stahl Avenue, and East Grant Street (0.4 required bufferyard opacity); 9. to permit a .472 bufferyard opacity along the rear property line (0.9 required bufferyard opacity); 10. to relocate an existing 395 square foot ground sign 1 foot from the DuPont Highway right-of-way (40-foot sign setback); and 11. to permit 510 square feet of aggregate signage on the subject parcel (130 square foot maximum sign aggregate)."

The requested variances will unlikely adversely affect surrounding properties as the variance is will increase the amount of green space on the property. The land itself is burdened by restrictions of the UDC, rather than the landowner being burdened personally thereby. "A literal interpretation of the zoning law results in exceptional practical difficulties of ownership." Kwik-Check Realty, Inc. v. Board of Adjustment of New Castle Cty., 369 A.2d 694, 698 (Del. Super. 1977), aff'd 389 A. 2d 1289 (Del. 1978).

By granting the variance, and removing the restriction, the neighboring properties will not be seriously affected. If the variance was denied, and the restriction not removed, "the restriction would create...exceptional practical difficulty for the owner in relation to his/her efforts to make normal improvements on the character of that use of the property which is a permitted use under

the use provisions of the ordinance [involved].” Board of Adjustment of New Castle Cty. V. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978). The granting of this variance will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the zoning code.

**VOTE: 4-0 (Grant: Ciabattoni, Collins, Hudson, and McCann)**

BOARD OF ADJUSTMENT  
OF NEW CASTLE COUNTY

A handwritten signature in black ink, appearing to read "MICHAEL CIABATTONI".

Michael Ciabattoni  
*Vice-Chair*

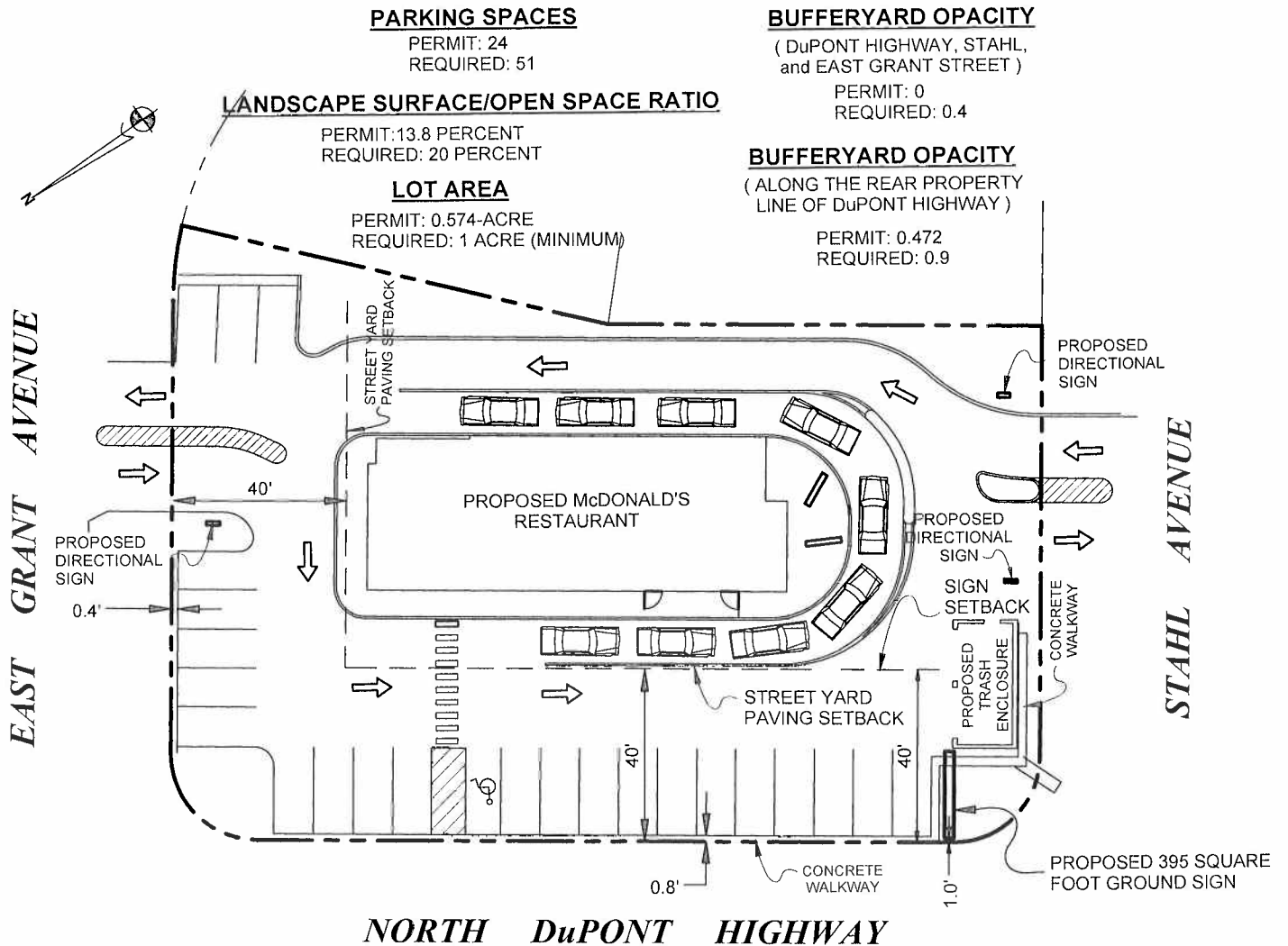
NOTE: Variances are neither building permits nor Certificates of Occupancy. Appropriate permits must be obtained from the Division of Development and Licensing prior to construction or establishment of the use. This decision should be kept in a safe place with the property deed. This decision may be appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the office of the Board of Adjustment.

NOTE: A variance becomes void if the variance is not put into effect within two (2) years of the filing date of this decision.

PUBLIC HEARING DATE: December 9, 2010  
COUNCILMAN DISTRICT: 7

ZONING: CN

APP. NO. 10-0753-A  
TAX PARCEL: 10019.10-178&-184



**BOARD OF ADJUSTMENT  
NEW CASTLE COUNTY, DELAWARE**

**Applicant:** McDonald's Corporation  
**Address of Subject Property:** 700 North DuPont Highway  
New Castle, DE 19720

**Applicant seeks:** VARIANCE: Various

**DECISION:**  
**DATE OF DECISION:** SCALE: 1" = 40'