

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 13902-A of McDonald’s Corporation, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the conditions of BZA Order No. 13902 regarding parking requirements, to permit a fast food restaurant in the C-2-C District at premises 1916 M Street N.W. (Square 117, Lot 82).

The original application (No. 13902) was pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7205.3 to permit required off-street parking spaces serving a restaurant to be located elsewhere than on the site where the structure is located for a proposed addition and conversion of an office building to be used as a restaurant in a C-3-C District, at premises 1916 M Street, N.W. (Square 117, Lot 862).¹

HEARING DATE (Case No. 13902):	January 26, 1983
DECISION DATE (Case No. 13902):	February 2, 1983
ORDER ISSUANCE DATE (Case No. 13902):	May 23, 1983
MODIFICATON DECISION DATE:	April 4, 2018

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On February 2, 1983, in Application No. 13902, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by McDonald’s Corporation (the “Applicant”) for a special exception pursuant to §§ 7205.3 and 8207.2 of the 1958 Zoning Regulations, to permit the required accessory off-street parking spaces serving the Applicant’s restaurant to be located elsewhere than on the site where the structure is located in a C-3-C District, at premises 1916 M Street, N.W.

¹ The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the “1958 Zoning Regulations”) but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the “2016 Regulations”). Also, all of the zone district names have been changed in the 2016 Zoning Regulations. In this case, the Lot No. also changed some time after Order No. 13902 was issued. Other than the description of the original application and its caption, the other references in this Order to provisions contained in Title 11 DCMR are to the 2016 Regulations. The repeal of the 1958 Regulations and change of zone district name has no effect on the validity of the Board’s decision in Application No. 13902 or the validity of this order.

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(Square 117, Lot 862). In that approval, the Board granted special exception relief to provide, off-site, the three accessory parking spaces that were required by the 1958 Zoning Regulations for the Applicant's employees. The Board issued Order No. 13902 on May 23, 1983. The approval in Case No. 13902 was subject to three conditions:

1. Three parking spaces located in the parking garage of the building at 1911 M Street, N.W. shall be reserved for the exclusive use of the customers and employees of McDonald's restaurant and shall be available and accessible for McDonald's use at all times that the restaurant is open.
2. A sign indicating that the existence and location of a limited number of accessory parking spaces shall be conspicuously displayed in the window of the McDonald's restaurant.
3. The certificate of occupancy for the restaurant use shall be issued for a period of time not to exceed the term of the lease for the accessory parking space.

(Exhibit 3.)

MOTION FOR MODIFICATION OF CONSEQUENCE

On February 19, 2018, the Applicant submitted a request for a modification of consequence to the eliminate the conditions approved by the Board in Order No. 13902 (the "Order"). (Exhibits 1-6.) Pursuant to 11 DCMR Subtitle Y § 703, the Applicant is requesting that the Order be modified or extinguished to permit the Applicant to operate under the 2016 Zoning Regulations, which do not require accessory parking spaces in the D zones.

In the Order, the Board approved relief for three accessory parking spaces that were required under the then applicable Zoning Regulations to be located off site from the lot on which the restaurant was located, subject to three conditions. (Exhibit 3.) A special exception from §§ 7205.3 and 8207.2 of the 1958 Zoning Regulations (11 DCMR) was proposed and approved by the Board, with the support of the Office of Planning ("OP") for conditional approval. The affected Advisory Neighborhood Commission ("ANC"), ANC 2B made no recommendation at that time.

As noted, the original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the "1958 Zoning Regulations") but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the "2016 Regulations"). When the Board approved the zoning relief in 1983, the accessory parking spaces were required for the Applicant's employees. The Applicant no longer intends to provide any off-site parking spaces and requests the Board's approval to eliminate the conditions in the Order, for the reason that the accessory parking spaces are not required for the use under the 2016 Zoning Regulations. (Exhibit 1.)

The Merits of the Request for Modification of Consequence

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The Applicant's request complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a "proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board."

In the application herein, the Applicant is requesting a modification of consequence to the Order as the Applicant is requesting that the Order be modified or extinguished to allow the Applicant to operate under the 2016 Zoning Regulations whereby the accessory parking spaces that were the subject of the Board's approval in Case No. 13902 would no longer be required. With this modification, the Applicant now seeks the Board's approval in having its accessory parking requirement be governed by the 2016 Zoning Regulations, which do not require accessory parking in this location.

Pursuant to Subtitle Y §§ 703.8-703.9, the request for a modification of consequence shall be served on all other parties to the original application and those parties are allowed to submit comments within 10 days after the request has been filed with the Office of Zoning and served on all parties. The Applicant provided proper and timely notice of the request for modification of consequence to Advisory Neighborhood Commission ("ANC") 2B, the only other party to Application No. 13902. (Exhibit 7.) ANC 2B submitted a report dated March 19, 2018, in support of the Applicant's request for a modification to the Order. The ANC's report stated that at a duly noticed, properly scheduled public meeting on March 14, 2018, at which a quorum was in attendance, the ANC voted 6-0-0 to recommend approval of the Applicant's request for modification of its original approval. (Exhibit 9.)

The Applicant also served its request on the Office of Planning ("OP"). OP submitted a report dated March 23, 2018, recommending approval of the requested modification. OP noted that the modification would be consistent with the intent of the 2016 Zoning Regulations for the Downtown zones and encouraged the Applicant to continue to pay for its employees' transit benefits. (Exhibit 10.)

As directed by 11 DCMR Subtitle Y § 703.4, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of consequence. Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a modification of consequence to the special exception relief approved in Case No. 13902 the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Therefore, pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board

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be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of consequence of the Board's approval in Application No. 13902 is hereby **GRANTED, ELIMINATING ALL CONDITIONS**.

In all other respects, Order No. 13902 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON FEBRUARY 2, 1983: 4-0
(Carrie L. Thornhill, Walter B. Lewis, William F. McIntosh, and Charles R. Norris to GRANT; Douglas J. Patton not voting.)

VOTE ON MODIFICATION OF CONSEQUENCE ON APRIL 4, 2018: 4-0-1
(Anthony J. Hood, Carlton E. Hart, Lorna L. John, and Lesylleé M. White to APPROVE; Frederick L. Hill, not participating or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 5, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.