



FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING

Zoning Evaluation Division

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V I R G I N I A

October 22, 2003

Mary Theresa Flynn
Holland & Knight LLP
1600 Tysons Boulevard, Suite 700
McLean, VA 22102-8610

Re: Interpretation for SE 2000-B-009, McDonald's Restaurant
Tax Map 69-4 ((1)) 49 Pt. B1: DVD Vending Machine Location

Dear Ms. Flynn:

This is in response to your letters of October 3, 16 and 20, 2003, requesting an interpretation of the Special Exception (SE) Plat and development conditions approved by the Board of Supervisors in conjunction with SE 2000-B-009. As I understand it, the question is whether the proposed location of a DVD vending machine inside the fast food restaurant building would be in substantial conformance with the approved SE Plat and development conditions. This determination is based on the plan and drawing attached to your October 20, 2003 letter, entitled, "A1 Floor Plan, 4379 FB/98 Building, McDonald's Corporation," and "Kiosk Design 1," respectively. Copies of the referenced letters and a reduction of the plan are attached.

A DVD vending machine is located on the property outside of the building, which was determined not to be in substantial conformance with the SE. A notice of violation was issued on January 13, 2003, and subsequently appealed. The proposed DVD vending use was previously determined by the Zoning Administrator on August 21, 2002, to be a permitted accessory use to a fast food restaurant provided it is in substantial conformance with the governing SE.

You have indicated that the proposed DVD vending machine would be located completely inside the fast food restaurant, would be accessible only from the interior of the building and would operate only within the hours permitted by the SE. No other changes to the building elevation, exterior, parking and landscaping are proposed.

It is my determination that the proposed location of the DVD vending machine as shown on the submitted floorplan would be in substantial conformance with the SE Plat and development conditions provided that the machine is located inside of the building and is only accessible from the interior of the fast food restaurant and only during the permitted hours of operation of the restaurant (including all returns of DVD rentals). The DVD vending machine located external to the building must be completely removed from the special exception property before the interior vending machine is operationalized. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.

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October 3, 2003

MARY THERESA FLYNN
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VIA FACSIMILE & FIRST CLASS MAIL

Mr. Kevin Guinaw
Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway
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Fairfax, Virginia 22035-5505

Re: McDonald's Corporation - Request for Determination of Substantial
Conformance with Special Exception and Special Exception Plat
8976 Burke Lake Road, Springfield, Virginia
Kings Park Shopping Center, Parcel B1

Dear Kevin:

This letter requests a determination of substantial conformance to Special Exception 00-B-009 (the "SE") and the accompanying plat (the "SE Plat") for a drive-through restaurant for the McDonald's Restaurant at 8976 Burke Lake Road, Springfield, Virginia, Kings Park Shopping Center, Parcel B1. As you know, we filed an appeal to the notice of violation dated January 13, 2003. That appeal is currently pending.

The County has made a determination that the DVD vending machine that is the subject of the notice of violation cannot be placed outside of the restaurant without violating the conditions of the SE Plat. Moreover, the County has determined that, as an accessory use to the restaurant, the vending machine must operate within the same hours of operation permitted the restaurant by virtue of the development conditions adopted as a part of the approval of the SE.

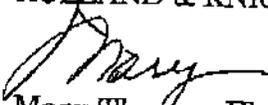
Mr. Kevin Guinaw
October 3, 2003
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In order to resolve the County's concerns, we propose to remove the current DVD vending machine from its current location and place the vending machine (or, more likely, smaller one) inside the restaurant. You have stated that, in order to do so, we must request that the County determine that the placement of a DVD vending machine (already determined to be an accessory use to the restaurant) is in substantial conformance with the SE and the SE Plat.

The DVD vending machine proposed to be placed inside the restaurant will be accessible only from the interior of the building and will operate within the hours that the restaurant is permitted to operate pursuant to the development conditions of the SE. Accordingly, there will be no change to the exterior of the building or, for that matter, to the SE Plat. We therefore seek a determination that the placement of a DVD vending machine wholly within the interior of the restaurant, operating in conformance with the development conditions of the SE, is in substantial conformance with the SE and the SE Plat.¹

Please let me know if you have any questions with regard to this request. I would be happy to answer any questions that you may have.

Sincerely,

HOLLAND & KNIGHT LLP

Mary Theresa Flynn

cc: James Frattini
Christopher Collins

¹ We are seeking this request for a Determination of Substantial Conformance as part of the ongoing resolution of McDonald's appeal 2003-BR-013. As you know, Mr. Griggs stated at page 2 of his notice of violation that: "The DVD vending machine, if placed inside the restaurant, would be in substantial conformance with SE 00-B-009 and would be permitted." At page 3 of the same notice, Mr. Griggs again states that "[c]ompliance can be accomplished by...relocating the machine to the interior of the of this fast food restaurant,...." He directs the addressee to accomplish "compliance" within 72 hours of receipt of his notice, clearly too short a time in which to obtain a determination of substantial conformance, which in any event he did not require. The statement that compliance can be achieved simply by placing the machine inside (with no additional requirement of seeking the determination of substantial conformance) was not appealed within the requisite 30 days, and is therefore "a thing decided." We therefore reserve the right to assert this issue upon appeal (and any other appealable issue) in the event that our request for a determination of substantial conformance is denied.

KIOSK DESIGN 1

REV.4 (9/24/03)

