

**REGULAR MEETING  
ZONING BOARD OF APPEALS**

Nyack Village Hall  
Nyack, New York

July 30, 2012

Present: Catherine H. Friesen, Chair  
Mary Ann Armano (June 25<sup>th</sup>)  
John Dunnigan  
Robert Knoebel, Sr.  
Roger Cohen (alternate)

**In Memoriam:**  
Raymond O'Connell

Absent: Ellyse Berg (June 25<sup>th</sup> and July 30<sup>th</sup>)  
Mary Ann Armano (July 30<sup>th</sup>)

The following resolution was offered by Member Cohen, seconded by Member Dunnigan, and carried based upon a review of the evidence presented at the public hearings held on June 25, 2012 and July 30, 2012.

**BOARD OF APPEALS  
VILLAGE OF NYACK, COUNTY OF ROCKLAND**  
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In the Matter of the application of 55 Rte 59 (McDonalds USA, LLC) for two Special Permits in accord with VON Code Section 360-3.1 (Table of Permitted Uses) to allow a fast food restaurant as a principal use and a drive-thru facility as an accessory use, and for area variances from various Code provisions for the following:

- (a) To permit 24-hour operation of a drive-thru facility on a lot adjacent to a residential lot where such operation is permitted between 9:00 am and 9:00 pm;
- (b) To permit 3 flat wall signs on the north façade (Route 59) where 1 is permitted, 2 flat wall signs on the east façade (Waldron Avenue) where 1 is permitted; and 2 flat wall signs on the west façade where none is permitted;
- (c) To permit a setback of a freestanding identification sign on Route 59 of 4.92 feet, and to permit a

second free standing identification sign at the property line on Waldron Avenue, with a setback to Waldron Avenue of 10.01 feet and to the side lot line of 0.23 feet, where 15 feet of setback is required to the property line, and 1 freestanding identification sign is permitted;

- (d) To permit 5 drive-thru related signs (2 menu board, 1 pre-sell board, and 2 Three-Sided Confirming Order Display signs a/k/a COD Trio Sign), where none are permitted;
- (e) To permit 8 types of directional signs (22 directional signs total), having sign areas ranging from 2.13 square feet to 12 square feet each, where 2 sq. feet of sign area is permitted;
- (f) To permit an intercom on the canopy column of the “Order Here” sign, where exterior signs that emit noise are not permitted; and
- (g) To permit maximum light levels to the property line (at Waldron Avenue) of 5.7 foot candles where 2.0 foot-candles are permitted, maximum light level in the parking lot of 10.1 foot candles where 5.0 foot candles are permitted; and a maximum light level in pedestrian walkways of 6.5 foot candles where 3.0 foot-candles are permitted.

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The Zoning Board of Appeals held a public meeting on the 25<sup>th</sup> Day of June, 2012, and the 30<sup>th</sup> day of July, 2012, and due deliberations having been made on the 30<sup>th</sup> day of July, 2012;

Now, upon said hearing and upon the evidence adduced thereat, it is hereby found and determined that:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

**FIRST:** Applicant, 55 Rte 59 (McDonalds USA LLC) petitions the Zoning Board for two Special Permits in accord with VON Code Section 360-3.1 (Table of Permitted Uses) to operate a fast food restaurant as a principal use and a drive-through facility as an accessory use, and a total of 40 variances from various Code provisions, specifically § 360-3.2E(2)(b); § 360-4.11E(1)(a); § 360-4.11E(2)(b); § 360-4.11E(3); §360-4.11G(7); and § 360-4.10C, to install lighting and related signage.

**SECOND:** The ZBA, in reaching its Findings of Fact and Conclusions of Law has taken the following factual testimony and evidence under consideration:

1. The applications for special permits and area variances, and supporting documents submitted, including:
  - a. letter from Howard D. Geneslaw to the Village of Nyack Building Department dated June 8, 2012;
  - b. Statement in Support of Application to the Village of Nyack ZBA for special permits and area variances dated June 7, 2012;
  - c. Table of requested variances dated June 7, 2012, a copy of which is annexed hereto and incorporated herewith;
  - d. Two sheets (A2 and A2.1) dated March 8, 2012, containing elevation-related information about the proposed structure;
  - e. A set of fourteen drawing sheets prepared by Bohler Engineering containing plans and specifications, numbered 1 through 14 (last revised June 7, 2012), and a boundary and topographic survey.
2. Testimony of the following individuals on behalf of the applicant:
  - a. Howard Geneslaw
  - b. Ken MacKenzie, senior project manager
  - c. Bradford A. Bohler, PE
  - d. Joe Kless, Project manager
  - e. Paul Going, PE, ATDE
  - f. Nellie Thomas, co-owner.
3. ZBA members' knowledge of the site in question and site visits by all members of the ZBA.
4. Building Inspector's Plan Review Summaries dated June 25, 2012 and July 30, 2012.
5. Planning Board minutes dated March 5, 2012, June 4, 2012 and July 2, 2012.
6. ARB minutes dated March 21, 2012 and June 20, 2012.
7. Positive recommendation to the ZBA from the Planning Board and the ARB with respect to the grant of the variances.
8. Letters to the Building Department from State of New York Department of Transportation dated June 1, 2012 and June 22, 2012.
9. Letter to Zoning Board of Appeals from County of Rockland Department of Planning dated June 25, 2012.
10. Letter to Village of Nyack Planning Board from Atlantic Traffic & Design Engineers, Inc. dated June 14, 2102.
11. Letter to the Village of Nyack Zoning Board of Appeals from Howard D. Geneslaw dated July 12, 2012, with enclosures, including:
  - a. Letter to the Village of Nyack Zoning Board of Appeals from Atlantic Traffic and Design Engineers dated July 5, 2102; and
  - b. Table of illumination of proposed signage.
12. Letter dated July 27, 2012, from Thomas R. Pickett, Senior Counsel, US Legal Department, McDonald's Corporation, to the ZBA.
13. There was no testimony from members of the public in connection with the application on either June 25, 2012 or July 30, 2012.

**THIRD:** The site in question is located in the “CC” zoning district, and is owned by the McDonald’s Real Estate Company, a subsidiary of the McDonald’s Corporation, which leases it to the Applicant, McDonald’s USA, LLC, and which consents to the application. A McDonald’s has operated on the site, which is located at the intersection of Route 59 and Waldron Avenue, since the early 1970’s, and a 24 hour drive-thru was subsequently added. As a result of changes to the Village’s zoning regulations over time, the restaurant has certain non-conformities with respect to the existing zoning regulations. An adjacent lot to the south, from which the existing commercial restaurant is separated by an unimproved portion of the lot owned by McDonald’s Real Estate Company, contains the residential properties of Waldron Terrace.

**FOURTH:** On or about February 14, 2012, the Applicant submitted an application for a building/demolition permit seeking site plan approval to demolish the existing restaurant and to replace it with a slightly larger McDonald’s at the same location (3,901 square feet proposed versus 3,540 square feet existing) which is ADA compliant and which has an improved site layout and landscaping. The application was thereafter referred to both the Planning Board and the Architectural Review Board, as well as to this Board. The Planning Board declared itself lead agency under the State Environmental Quality Review Act (SEQRA) and issued a Negative Declaration on June 4, 2012. On that same day, the Planning Board also gave a positive recommendation to the ZBA with respect to the grant of the variances required by the application.

**FIFTH:** Following public hearings held on March 5, 2012, June 4, 2012 and July 2, 2012, and input from its own consultants, the Planning Board granted the Applicant a demolition permit and conditional site plan approval. The minutes of the Planning Board hearing held on July 2<sup>nd</sup> reflect that the Planning Board made extensive findings of fact in connection with the application including that the project will replace the existing, aging building with a modern, attractive building, and will improve traffic flow and circulation by: eliminating left turn ingress and egress to and from Route 59; installing new identification signage; reconfiguring the site circulation lane in front of the building so that customers entering from Waldron Avenue can circulate around the building in order to access the drive-thru queue; creating a side-by-side ordering system which will increase the efficiency of the drive-thru lane and avoid traffic back-ups onto Route 59; reducing the width of the access aisle and driveway to Waldron Avenue which has the effect of eliminating an existing non-conformity and increasing green space; and adding parking islands to the rear lot which will eliminate an existing non-conformity and increase green space. The Planning Board further found that the proposed plan will decrease impervious cover and add a mechanical treatment unit for storm water treatment, that it will increase the energy efficiency of the building, and that it will be a benefit to the community because it represents a substantial investment in a site with aging improvements, because it will improve traffic safety and circulation and because a more attractive building will be constructed.

**SIXTH:** Following public hearings held on March 21, 2012 and June 20, 2012, the ARB also granted conditional approval of the building designs as shown in the color elevations of 3-21-2012 and the drawings R1.3 and A2.0 and A2.1 dated March 8, 2012. The traffic signs on the

sign drawings revised as of June 7, 2102, were accepted as presented to the ARB with a positive recommendation to the ZBA with respect to the grant of the necessary size variances. The other signs on the site plan and sign drawings dated June 7, 2012 and on the drawings for the buildings were also accepted as presented except for a sign which said “Please Have Your Payment Ready” (Cut #12, on Drawing 11 out of 14) which the ARB considered unnecessary and which the Applicant agreed to withdraw. The approvals and positive recommendation to the ZBA took into account that that the project is a replacement of an existing building and that the variances reflect the pre-existing conditions on the property or revisions to improve access and security.

**FAST FOOD RESTAURANT WITH DRIVE-THRU (Special permits and variance):**

**SEVENTH:** The proposed construction of the fast food restaurant with a 24 hour drive-thru facility requires two special permits and one area variance. Per Von Code § 360-3.1 (Table of Permitted Uses), a fast food establishment is allowed in the “CC” zone by special permit, and no use specific standards apply. Per VON Code 360-3.2B(7), a drive-thru facility is an accessory use that requires an additional special permit in the “CC” zone in accordance with the use specific standards set forth in Von Code § 360-3 .2E(2). Among other criteria, that section limits the hours of operation of a drive-thru facility from 9:00 am to 9:00 pm when located on a site adjacent to a residential lot unless separated from the residential structure by an intervening building, alley or street. Because the Applicant proposes to continue operating its drive-thru facility 24 hours a day and it is located on a site adjacent to a residential lot from which it is not separated by an intervening building, alley or street, a variance from this provision is required.

**EIGHTH:** The Applicant contends that all the criteria for the issuance of a special permit have been satisfied because the new structure simply replaces the existing facility with an improved design and safer layout, and because all the use specific standards for a drive-thru facility set forth in VON Code 360-3.2E(2) – with the exception of the proposed hours of operation – are satisfied. The site plan demonstrates that the proposed drive-thru lanes do not overlap with parking and loading areas and are not located within a required front yard. The Planning Board found that the drive-thru queue as modified did not interfere with handicap parking.

**NINTH:** With respect to the requirement that the length of the drive-thru be sufficient to accommodate 100% of the anticipated volume on site during peak hours of operation [VON Code 360-3.2(E)(2)(d)], the Applicant submits based on the analysis performed by Atlantic Traffic & Design Engineers (ATDE) that the drive-thru lane has been designed to accommodate 100% of anticipated volume on site during peak hours of operation by incorporating a double order point which can accommodate a queue of 14 vehicles without impacting on-site circulation and parking areas. The Planning Board retained its own traffic expert (Adler Consulting) to review the applicant’s traffic impact study and found that the stacking space for the drive-thru was sufficient to avoid back-ups onto Route 59. In response to the ZBA’s concern articulated at its June 25<sup>th</sup> meeting that information about the “average” length of peak drive-thru queues contained in ADTE’s letter of June 14, 2012, does not eliminate the possibility of longer queues or establish that 100% of volume will be accommodated at all times, ADTE submitted a letter

dated July 5, 2012, stating that the proposed drive-thru and site layout accommodates 14 vehicles in a side-by-side layout and that, in its observations of 23 McDonald's locations with drive-thru service in New York, New Jersey and Pennsylvania, ATDE observed an absolute maximum of 14 queued vehicles in a drive-thru. ATDE further noted that this occurred at a traditional single menu board drive-thru, and that queues at a side-by-side drive-thru would not be as long as 14 vehicles, although the proposed site plan has been designed to accommodate that many vehicles. Mr. Going of ATDE appeared at the ZBA hearing on July 30, 2012 and provided additional information about this.

**TENTH:** With respect to the proposed hours of operation of the drive-thru facility, the Applicant contends that a variance is warranted because it simply seeks to continue its existing 24 hour operation which has had no adverse impact on the adjacent residential apartments; because the facility is separated from the residential apartments by an unimproved portion of the lot which it does not seek to develop; and because limiting the hours would have a substantial adverse economic impact on its business that would render redevelopment economically unfeasible. Neither the Building Inspector nor the Village Attorney was aware of any noise-related complaints related to the current 24 hour per day operation of the drive-thru facility. With respect to undeveloped portion of the lot that separates the facility from the residential building, the Applicant does not propose at this time to disturb the existing unimproved portion of the lot which was described by Mr. Geneslaw as "fairly undevelopable" because of its steep slope and which may, in fact, not be developable because of Nyack's steep slope law. That portion of the lot has naturally developed as a wooded buffer since being clear cut some years ago and has not been maintained by the Applicant. With respect to the economic necessity of for a 24 hour per day operation, the Applicant submitted a letter dated July 27, 2012, from McDonald's Corporation legal counsel indicating that, in June 2012, the total drive thru transactions were 18,459, of which approximately a third (6,380) were during overnight hours.

### **LIGHTING:**

**ELEVENTH:** A variance is also required per VON Code § 360-4.10C for the proposed lighting, which exceeds the maximum light levels at the property line (5.7 foot-candles where 2 is permitted); parking areas (10.1 foot-candles where 5.0 foot-candles is permitted) and pedestrian walkways (6.5 foot-candles where 3.0 is permitted). According to the Applicant, lighting standards are exceeded only where necessary to provide adequate lighting for the safety of customers entering and exiting the site. The County of Rockland confirms that the proposed light levels requiring a variance will not impact the State road, the Town of Clarkstown or the Long Path Regional Hiking Trail, and remanded that matter for local determination. The Planning Board issued a positive recommendation with respect to the grant of this variance. The minutes of the Planning Board dated June 4, 2012, reflect that the Applicant was directed to install down facing lighting to prevent spillage on residential neighbors and that Waldron Avenue lights were to be angled away from residential areas. These concerns were subsequently addressed in the Applicant's revised plans and Mr. Bohler confirmed that that the lighting conforms to these specifications.

## **INTERCOM:**

**TWELTH:** Per Von Code § 360-4.11G(7), a variance is also required for the proposed intercom on the canopy column of the “Order Here” sign, where the existing condition is an intercom on a menu board, and where exterior signs that emit noise are not permitted. No change from existing noise levels is proposed, and the Applicant submitted proof that the noise level of the intercom can be adjusted if it is bothersome to adjacent properties. The Planning Board issued a positive recommendation with respect to the grant of this variance.

## **OTHER SIGNS**

**THIRTEENTH:** Numerous variances are required from VON Code §§ 360-4.11E(1)(a)(number of flat wall signs), 360-4.11E(2)(b) (setback, number of freestanding signs) and 360-4.11E(3)(surface area of directional signs). Both the ARB and the Planning Board have issued positive recommendations with respect to the granting of variances discussed herein.

**FOURTEENTH:** VON Code § 360-4.11E(1)(a) permits not more than two identification signs per wall fronting a street, provided that only one flat wall sign may be erected parallel to the face of the building and one projecting wall sign may be erected perpendicular to the building. The Applicant proposes to install three flat wall signs on the north (Rte 59) side of the building (where 1 is permitted), two on the east (Waldron) side (where 1 is permitted) and two on the west side (where none is permitted), requiring five variances from this Code provision. The proposed signs are as follows:

1. Internally illuminated Arch “M” logo sign on northern façade (depicted as #5 on detail sheet 11 of 14)
2. Internally illuminated Arch “M” logo sign on eastern façade (depicted as #5 on detail sheet 11 of 14)
3. Internally illuminated Arch “M” logo sign on western façade (depicted as #5 on detail sheet 11 of 14)
4. Internally illuminated McDonald’s fascia sign on northern façade (as depicted in A2.0 and A2.1 elevation drawings)
5. Internally illuminated McDonald’s fascia sign on eastern façade (as depicted in A2.0 and A2.1 elevation drawings)
6. “Welcome” sign (not illuminated) on northern façade (depicted as #1 of detail sheet 11 of 14)
7. “Welcome” sign (not illuminated) on western façade (depicted as #1 of

The applicant contends that, although the total number of signs exceeds what the Zoning Code permits, the area of each sign is less than what the Code allows, and that they have been designed to complement the building's character. One welcome sign was added at the request of the ARB in order to better identify the building for persons and vehicles entering the site from Waldron Avenue. The County of Rockland recommends disapproving the requested variances for greater than allowed number of wall signs because they are substantial, will set a precedent, and result in a proliferation of signs that will have an adverse effect on the safe and efficient flow of traffic along a State road, and a negative impact on aesthetics. Both the Planning Board and the ARB, however, issued a positive recommendation with respect to the grant of the variances necessary for the signs.

**FIFTEENTH:** At the ZBA's request, the Applicant submitted additional information about the proposed illumination of the signs described in paragraph 14 above. No signs on the site (except the menu board signs and the pre-sell board signs) will utilize LED illumination as per note number 5 on sheet 4 of 14. The "M" arch logos will have 35 watt bulbs that will have a light reading of 1.8 footcandles at a distance of 15 feet from the sign. The McDonald's fascia signs will have 104 watt bulbs and will have a light reading of 5 footcandles at a distance of 15 feet from the sign. Mr. Bohler testified that these light levels are similar to the currently existing conditions.

**SIXTEENTH:** The Applicant proposes to replace 2 existing legally nonconforming illuminated freestanding identification signs with new slightly larger signs (depicted as numbers 2 and 3 on detail sheet 11 of 14) at the same locations. Replacing those signs requires a variance from the Code provisions contained in 360-4.11E(2)(b) relating to both the allowable number (1 per lot) and permissible setbacks (minimum 15 feet from property line) of freestanding signs. Both the existing and the proposed signs are conforming with respect to size and height. According to Mr. Bohler, the proposed locations at the noncompliant setbacks are necessary to provide adequate visibility for motorists to enter the site safely, and that locating the Route 59 sign within the required setback would encroach on the recirculation lane. The signs will be illuminated by bulbs of similar wattage (263 watts) as those currently existing and will have a light reading of 0.1 footcandles at a distance 15 feet from the sign. The Planning Board found that that the identification sign located on Waldron Avenue will guide motorists leaving the Thruway to use that entrance which will improve traffic flow and circulation.

**SEVENTEENTH:** The Applicant further proposes to erect five freestanding illuminated signs in connection with the operation of the drive-thru facility. There is currently one freestanding menu board sign at the site. Installation of the proposed freestanding signs requires variances from 360-4.11E(2)(b) because they exceed the maximum allowable per lot (1). Specifically, the Applicant proposes to install 2 internally illuminated menu board signs (depicted as number 4 of detail sheet 11 of 14) each of which is 43.66 sf, 1 illuminated pre-sell board sign (depicted as number 7 on detail sheet 11 of 14) which is 10.19 square feet, and 2 non-illuminated COD trio signs (depicted as number 11 on sheet 11 of 14), each of which will be 2.13 square feet. The Applicant notes that, although the Code allows drive-thrus by special permit, no provision in the

Code addresses appropriate signage for such facilities. The proposed freestanding signage is intended to safely direct customers on the property and is not intended to be viewed, nor is it generally visible to, persons not within the property. Both the Menu board and the pre-sell board signs will be illuminated with the LED equivalent 168 watt bulbs which have a light reading of 7.6 footcandles at a distance of 15 feet from the sign. Mr. Bohler, the Applicant's engineer, testified that the signs will be angled in such a manner that they will not be visible to traffic on Route 59 or to residential properties.

**EIGHTEENTH:** The County of Rockland recommends that the variance requests for greater than the allowed number of wall and free-standing identification signs, as well as the setbacks from the property lines, be disapproved because they are substantial in number, will set a precedent, and result in a proliferation of signs that will have an adverse effect on the safe and efficient flow of traffic along a State road, and a negative impact on aesthetics. Both the ARB and Planning Boards, however, also issued a positive recommendation with respect to the grant of the variances for these signs. The only evidence received by the ZBA suggesting that any particular sign might cause safety concerns is the letter from the Department of Transportation dated June 22, 2012, noting that "the entrance sign pointing to the right of the McDonalds sign may be confusing causing vehicles to turn right off the thruway" and suggesting that the Applicant considering modifying this sign. The Applicant subsequently appeared before the Planning Board on July 2, 2012 at which time this issue was considered. The Applicant has now modified this sign by eliminating the arrow so that vehicles are not confused, thus alleviating the potential safety issue identified by the DOT. In its June 22<sup>nd</sup> letter, the DOT also recommended that additional signage be added to enforce the no-left-hand-turn restriction out of the parking lot. The Planning Board subsequently discussed this issue with the Applicant and did not require additional signage because the plan already includes no-left-hand turn signs and a stop sign. Finally, the DOT recommended that stop signs at the driveway should be removed because it is state law that vehicles stop when exiting a driveway to a main road. The Applicant's engineer, Mr. Bohler, testified, however, that these stop signs were required by good engineering practice and the Planning Board did not require their removal.

**NINETEENTH:** The Applicant proposes to install a total of 22 directional signs in connection with the operation of the facility, each of which in area will exceed the 2 square feet permitted by VON Code § 360-4.11E(3). The County recommends that the number of total directional signs that do not meet the maximum size standard and the degree to which they do not meet the standard should be reduced to more closely comply with the Village Code. According to the testimony of the Applicant's engineer, Mr. Bohler, good engineering practice as set forth in the Manual on Uniform Traffic Control Devices (MUTCD) requires that such signs be larger in order to maximize traffic and pedestrian safety, and that each sign is necessary for safe movement of pedestrians and vehicles on the site. The Planning Board issued a positive recommendation with respect to the grant of these variances. The following signs require a variance in this regard:

1. 1 "Drive Thru" clearance bar sign (4.5 square feet where 2 square feet is permitted)(number 9 on detail sheet 11 of 14)

2. 2 “Order here” signs (4.5 square feet where 2 square feet is permitted)(depicted as number 13 on detail sheet 11 of 14)
3. 1 “no right turn sign (4 square feet, where 2 square feet is permitted)(depicted as number 1 on detail sheet 12 of 14)
4. 3 “ Do not enter signs (6.25 square feet each where 2 square feet is permitted) (depicted as number 1 on detail sheet 12 of 14)
5. 6 “Stop” signs (5.14 square feet where 2 square feet is permitted)(depicted as number 1 on detail sheet 12 of 14)
6. 2 “no left turn” signs (4 square feet where 2 square feet is permitted)(depicted as number 1 on detail sheet 12 of 14)
7. 1 “Any Lane, Any Time” sign (2.13 square feet where 2 square feet is permitted)(depicted as number 8 on detail sheet 11 of 14)
8. 6 “Stop Here for Pedestrians” signs (12 square feet each where 2 square feet is permitted)(depicted as number 8 on detail sheet 12 of 14)

**TWENTIETH:** Although the County of Rockland recommends that a review be completed by the New York-New Jersey Trail Conference prior to any decision on the application for special permits and certain variances, the Planning Board overrode a similar recommendation upon finding that the Trail Conference was provided with an opportunity to participate in the SEQRA process and was provided a full set of plans on at least two occasions, as well as notice of the Planning Board’s public hearings on this matter, but did not submit comments or concerns. According to the applicant, the Town of Clarkstown was also provided notice of the hearings and a full set of plans, and also failed to submit any comments or concerns. Both the Trail Conference and the Town of Clarkstown were given notice of the proceedings before the ZBA.

The above Findings were moved and passed. (4-0)

## **CONCLUSIONS OF LAW:**

### **I. Fast Food Restaurant with Drive-Thru Facility**

#### **A. Special Permits:**

On oral motion, the ZBA decided to consider the 2 special permit applications required to operate a fast food restaurant with a drive-thru facility together.

As to these applications for Special Permits, the Zoning Board of Appeals has considered the factors set forth in VON Code 360-5.9C and makes the following Conclusions of Law:

**FIRST:** That the applicant has shown that all proposed structures, equipment and material will be readily accessible for fire and police protection.

**SECOND:** That the applicant has shown that the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.

**THIRD:** The applicant has shown that the location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with said district or conflict with the normal traffic of the neighborhood.

**FOURTH:** The applicant has shown that the location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

**FIFTH:** With the exception of the proposed 24 hour per day operation of the drive-thru facility (for which the request for variance is considered next), the application is consistent with the use-specific standards requirements for drive-thru facilities set forth in VON Code 360-3.2B(7), specifically that:

(a) Existing parking or loading stalls must not be utilized as part of a drive-through lane.

(b) Each drive-in or drive-through facility located on a lot or site adjacent to a lot containing a residential use must be limited to operate between the hours of 9:00 a.m. to 9:00 p.m. unless the drive-in or drive-through facility is separated from the residential structure by an intervening building, alley or public street.

(c) No portion of a drive-in or drive-through facility may be located in a required front yard except as required to access the drive-in or drive-through facility.

(d) The length of the drive-in or drive-through shall be sufficient to accommodate 100% of the anticipated volume on site during peak hours of operation. In no case shall such a facility be designed so that peak activity will

result in cars stacking onto the adjacent public street.

**SIXTH:** The ZBA has considered the recommendations of the Rockland County Department of Planning with respect to the issuance of the special permits and overrides the recommendations for the reason that the proposed use is the same as the current use on the same land, and the New York-New Jersey Trail Conference had adequate opportunity to review the application (4-0).

The Board has weighed the findings of fact and the conclusions of law as required under VON Code Section VON Code 360-5.9C *et. seq.* and finds in the interest of justice that the Special Permits should be GRANTED with the following conditions:

1. That all applicable regulations and laws be fully complied with prior to the issuance of the Special Permits;
2. The conditions placed by the ARB and the Planning Board on this application be followed. Any deviation from, or failure to adhere to such conditions will void the special permits.

#### **B. Variance for 24 Hour Per day Operation**

With respect to the application for a variance in connection with the operation of a drive-thru facility, the Zoning Board considered the factors set forth in Section 7-712-b of the Village Law of the State of New York as follows:

**FIRST:** That the proposed variance does not create an undesirable change in the neighborhood. (4-0)

**SECOND:** That no detriment to nearby properties will result from granting the variance. (4-0).

**THIRD:** That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variance. (4-0)

**FOURTH:** That the variance is not substantial in light of the current conditions on the site. (4-0)

**FIFTH:** That the hardship is not self-created. (4-0)

The Board has weighed the findings of fact and the conclusions of law against one another as required under Section 7-712-b of the Village Law of the State of New York and finds in the interest of justice that the variance(s) applied for should be GRANTED with the following conditions:

1. All conditions set forth above in connection with the issuance of the special permits be followed.
2. Absent a further site development plan, the Applicant will leave the buffer zone to the southwest in its natural state to the extent practicable.

## II. Remaining Variances

On oral motion, the Board voted to consider the remaining variances pertaining to lighting, intercom use, and signs in an omnibus fashion:

With respect to the application for the remaining variances, the Zoning Board considered the factors set forth in Section 7-712-b of the Village Law of the State of New York as follows:

**FIRST:** That the proposed variances do not create an undesirable change in the neighborhood in that the proposed signage is intended to improve traffic flow, safety and navigation. (4-0)

**SECOND:** That no detriment to nearby properties will result from granting the variances. (4-0)

**THIRD:** That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variances in that the number and size of the signs are necessary to ensure safety and improve traffic flow. (4-0)

**FOURTH:** That the variances are substantial in light of the current conditions on the site, but are positive improvements over existing conditions. To the extent that the motion on the variances results in any override of the County of Rockland Department of Planning recommendations, these overrides are due to the Board's finding that the overall improvement on the site is a benefit to the health, safety and welfare. (4-0)

**FIFTH:** That, on balance, the hardships are not self-created. (4-0)

The Board has weighed the findings of fact and the conclusions of law against one another as required under Section 7-712-b of the Village Law of the State of New York and finds in the interest of justice that the variance(s) applied for should be GRANTED with the following conditions:

1. All conditions set forth above in connection with the issuance of the special permits be followed.
2. The conditions placed by the ARB and the Planning Board on this application be followed. Any deviation from, or failure to adhere to such conditions will void

the variances.

3. The wattage of the illuminated signs shall not exceed the levels set forth below:
  - a. Freestanding signs (2 totals) – 263 watts with a lighting reading of 0.1 footcandles at 15 feet
  - b. Yellow arch – 263 watts with a light reading of 1.6 footcandles at 15 feet
  - c. M Arch Logo – 35 watts with a light reading of 1.8 footcandles at 15 feet
  - d. McDonald’s fascia – 104 watts with a light reading of 5 footcandles at 15 feet
  - e. Menu Board – 168 watts (LED equivalent) with a light reading of 7.6 footcandles at 15 feet
  - f. Pre-Sell Board – 168 watts (LED equivalent) with a light reading of 7.6 footcandles at 15 feet.

The hours of operation of the lighting will be from dusk to dawn, except for the menu board and pre-sell board/COD trio signs which may be illuminated 24 hours.

4. The five freestanding illuminated signs erected in connection with the operation of the drive-thru facility (#4 – 2 Menu Board signs; #7 – 1 pre-sell Board sign; and #11 – 2 COD trio signs) will be installed in such a manner that that light emitted from the signs will not be visible to traffic on Route 59 or adjacent residential properties.
5. Volume from the intercom will conform with Nyack’s noise ordinance and will be adjustable so that it can be lowered if bothersome to adjacent properties.

On a roll call, the vote was as follows:

Ayes: 4 (Friesen, Dunnigan, Knoebel and Cohen)

Nays: 0

Abstain: 0

Catherine H. Friesen  
CATHERINE H. FRIESEN, Chairperson  
Zoning Board of Appeals, Nyack