

1 THE PRINCE GEORGE'S COUNTY PLANNING BOARD OF
2 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
3

4
5 DSP-22001 MCDONALD'S AGER ROAD
6 Planning Board Meeting, Item 9
7

8 T R A N S C R I P T
9 O F
10 P R O C E E D I N G S
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12 COUNTY ADMINISTRATION BUILDING
13 Upper Marlboro, Maryland
14 September 26, 2024
15 VOLUME 1 of 1
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BEFORE:

PETER A. SHAPIRO, Chairman
A SHAUNISE WASHINGTON, Commissioner
WILLIAM M. DOERNER, Commissioner

OTHERS PRESENT:

DAVID WARNER, Principal Counsel
NATALIA ROJAS GOMEZ, County Planner
EDWARD GIBBS, Counsel for Applicant

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P R O C E E D I N G S

CHAIRMAN: So we're going to move on to our first regular agenda item that we're going to take up, which is Item 9. Note this is a companion with Item 10. Item 9 is a Detailed Site Plan DSP-22001, McDonald's Ager Road. The companion piece is Item 10, DDS-23001. We have Mr. Gibbs who's representing the applicant. We have Ms. Natalia Gomez Rojas, who'll be giving the staff presentation. This is an evidentiary hearing, so I will be swearing folks in when it is appropriate. And let us start with staff.

Ms. Gomez Rojas, take it away.

MS. GOMEZ ROJAS: Good morning. I'm doing a quick sound check.

CHAIRMAN: Yes, we can hear you fine, thanks.

MS. GOMEZ ROJAS: Good. Good morning, Mr. Chair and members of the Planning Board. For the record, I am Natalia Gomez with the Urban Design Section. Items 9 and 10, DSP-22001, AC-23017 and DDS-23001, titled McDonald's Ager Road, proposed the development of an eating and drinking establishment with a drive-thru service in an integrated shopping center. This application has been reviewed and evaluated in accordance with the superseded zoning ordinance. Next slide please.

MR. SMITH: Mr. Chairman?

CHAIRMAN: Yes?

1 MR. SMITH: I'm sorry to interrupt, but this is
2 Greg Smith speaking. And for the record, I live at 4204
3 Farragut Street in Hyattsville. I'm one of a number of
4 folks who cosigned a letter to the Planning Board asking you
5 to postpone today's hearing and extend the comment deadline
6 and provide more transparency to the process. I also filed
7 a letter request this morning pursuant to Section 27-
8 125.05(A) asking you to postpone by a week because new
9 materials were placed in the record by the applicant and by
10 the agencies after the technical staff report was published
11 on -- on or around September 12th. Do you plan to take up
12 these requests and discuss them or -- or not?

13 CHAIRMAN: I wasn't planning on taking up the
14 requests, no, Mr. Smith.

15 Mr. Warner, anything you want to add on this in
16 terms of our process?

17 MR. WARNER: If Mr. Smith is -- if Mr. Smith is
18 requesting that the Board consider continuance we would, you
19 know, entertain that request. That's our practice. I know
20 that staff and -- and I have -- have reviewed all the
21 materials submitted by him that were submitted prior to the
22 noon deadline and didn't have any grounds to grant a
23 continuance, in our opinion, but it is something he can
24 request and the Board can consider it.

25 CHAIRMAN: I'm a little confused about the

1 process.

2 (Simultaneous conversation)

3 CHAIRMAN: Mr. Smith, hold on one second.

4 MR. SMITH: Right.

5 CHAIRMAN: Thank you.

6 Mr. Warner, I'm a little confused about our
7 process in terms of our process for this hearing, because we
8 -- I've actually opened this hearing.

9 MR. WARNER: Right. Yes. So, you know, it's --
10 it's not going to be a -- some kind of violation of anyone's
11 due process rights if you continue -- if you hear the -- the
12 continuance request at this time, even though you've opened
13 the hearing. That's fine. Proceed with Mr. Smith's
14 request. As I said, staff's reviewed and I have reviewed,
15 and we've both recommended there's no basis for a
16 continuance. The request Mr. Smith made is -- is generally
17 the same request he's made in previous cases where we have
18 denied the continuance, so.

19 CHAIRMAN: Okay. Thank you.

20 Mr. Smith, back to you. Yes.

21 MR. SMITH: Yeah. So -- so in the past, the
22 decision on whether or not to continue has been made by the
23 Board not by staff. The staff can make a recommendation.
24 It's unfortunate we submitted that -- that request probably
25 over a week ago and -- and received no response. In the

1 past, whenever I've been part of a process where an
2 organization or an individual has asked for a continuance,
3 that -- that matter, that question has been taken up by the
4 board, not simply dismissed by staff. And there are two
5 requests here. One -- actually, there are several. There
6 was one that submitted -- I forgot the date -- maybe
7 September 17th or so -- where multiple community members
8 signed the request, asking the Board to postpone beyond
9 October 3rd, if possible, without automatically approving
10 the case, extending the comment deadline -- written comment
11 deadline and also posting relevant materials online. We
12 never received a response, and I'd think maybe to
13 acknowledge receipt. There were also letters making similar
14 requests submitted by individuals in the community about the
15 same time. This morning, I submitted a request pursuant to
16 Section 27-125(v)(a), which states that if the applicant or
17 any government agency puts new information in the record --
18 submits new information after the publication of the
19 Technical Staff Report, then if any person of record
20 requests a continuance, they will be granted a continuance
21 of seven days. I filed that letter this morning because the
22 file in which those new submissions were presented was
23 posted by the Planning Board on its website only yesterday
24 morning, and it contains letters from Mr. Gibbs on behalf of
25 the applicant, and it contains three technical referral

1 memos submitted by county agencies. So clearly new
2 information has been placed in the record after the TSR was
3 published. I don't think that's -- I don't think there's a
4 question there. And the fact that that -- that file was
5 posted online without notice, basically 24 hours before this
6 hearing time, we couldn't have weighed in before the -- the
7 Tuesday noon deadline anyway on that. And by the way, I had
8 asked for copies of some of those technical referral memos a
9 while back and not received them. I was told they would be
10 provided, so and in any of these requests, we said we were
11 told, you can bring these questions up with the Planning
12 Board at the hearing. So I leave it to you. The requests
13 are on the record.

14 UNIDENTIFIED SPEAKER: Seven -- seven of us signed
15 that request, sir.

16 MR. WARNER: Right. So I'll just -- just clarify.
17 So we -- like I said, we have all the materials from Mr.
18 Smith requesting the continuance and the other individuals
19 whose names are attached to the letter. Board has that.
20 Mr. Smith has made the request. The applicant, of course,
21 has a right to provide his opinion on this, and Mr. Gibbs is
22 here, so he should be provided the opportunity to speak now
23 and then the Board can make its decision.

24 MR. SMITH: And just to be clear, there's two
25 different kinds of requests on -- on -- on somewhat

1 different grounds. One, the letter I submitted this
2 morning, and I apologize for submitting it so close to the
3 hearing time, but again, the file was made available only
4 yesterday. So it's somewhat different grounds but a similar
5 request. Thanks.

6 CHAIRMAN: All right. Thank you, Mr. Smith.

7 So we'll hear from -- anything else we want to
8 hear from staff, counsel, then we'll hear from Mr. Gibbs and
9 then Commissioners, we can -- we'll take this up.

10 So Mr. Warner, do you want to hear from Mr. Gibbs
11 first, or do you and/or Ms. Connor and the staff have
12 anything else that you want to say on this issue?

13 MR. WARNER: No, I don't have anything else to
14 advise the Board on. With regard to the request for
15 continuance, I would allow Mr. Gibbs to speak now and then
16 Ms. Connor can follow up if she has anything additional to
17 add.

18 CHAIRMAN: Okay. Thank you.

19 Mr. Gibbs, if you could introduce -- come online,
20 introduce yourself for the record.

21 MR. GIBBS: Yes. Thank you. Good morning, Mr.
22 Chairman, members of the Board. Edward Gibbs, an attorney
23 with offices in Largo, and I am here today representing
24 McDonald's USA, LLC, the applicant in this case. We -- we
25 would oppose any request for a continuance in this case.

1 This case -- this case has been pending for virtually a
2 year, and in fact, when Mr. Smith opposed my last case on
3 September 12th, he made reference to this case and the fact
4 that it was pending. It's difficult to understand how he
5 could feel surprised or need additional time because he
6 referenced the McDonald's case in his testimony two weeks
7 ago and said that that case had been on a permanent
8 deferral, so -- so nothing is new to anybody here. I think
9 there's a reference in the Staff Report to one of the
10 persons who signed the letter and who has signed up where
11 they indicate they interfaced with staff in March of 2024
12 and said they were going to be signing up to testify. So --
13 so there's -- there's -- there's nothing here that's new.
14 There's nothing here that's a surprise. The thing that
15 surprises me is that the opposition would put 300 pages into
16 the record that we just got yesterday, and they complain
17 about 10 or 15 pages of letters that have been filed and
18 which are appropriate, in my estimation and my belief, to be
19 filed with the Planning Board in advance of the hearing and
20 should not be covered by any continuance request. They
21 mainly deal with the request to call the case first due to
22 witness constraints that we have and also deal with requests
23 to revise or delete Condition 3 from the Staff Report. So
24 with that being said, we just don't find that there is any
25 basis for a continuance. It's just, in my opinion, a delay

1 technique -- technique and tactic on behalf of the
2 opposition. Thank you.

3 CHAIRMAN: Thank you.

4 Ms. Connor?

5 MS. CONNOR: Good morning. Yes, Sherri Connor.

6 CHAIRMAN: And Ms. Connor and -- and -- and
7 perhaps Mr. Gibbs as well. The one thing that catches my
8 attention is our -- Mr. Smith's point that the -- anything
9 that was added within 24 hours of this -- that came in after
10 the fact -- after the Technical Staff Report was already
11 submitted. I just want to make sure that we are doing
12 things by the book.

13 MS. CONNOR: Yes. So the information that has
14 been uploaded is in -- is supplemental to this. It does not
15 change the recommendation in the case at all. It's
16 additional supporting documentation which the applicant does
17 have the opportunity to provide prior to the Tuesday noon
18 deadline, as do the opponents in the case or any citizens.
19 So we do find that the information provided does not
20 necessarily introduce new information into the record that
21 has any impact on the recommendations that are being
22 provided.

23 CHAIRMAN: Thank you, Ms. Connor.

24 MR. WILPERS: If I could just ask a question as a
25 upcoming witness, and I concurred with Mr. Smith's record.

1 CHAIRMAN: If you could introduce yourself for the
2 record, sir.

3 MR. WILPERS: For the record, my name is Michael
4 Wilpers. I'll be representing Friends of Sligo Creek.
5 Isn't it simply a matter that the -- the Board -- the
6 Planning Commission violated its own rules with the Tuesday
7 noon deadline by allowing a whole raft of new documents to
8 be posted 24 hours after the deadline? Isn't that the only
9 issue here to be considered?

10 CHAIRMAN: Not -- not according to staff and our
11 counsel, no, Mr. Wilpers.

12 MS. CONNOR: Just to clarify, we did receive all
13 of these documents prior to the Tuesday noon deadline. They
14 are not posted immediately at Tuesday at noon because we do
15 have to gather all of them. As you can see, the additional
16 backup is over 300 pages received. So that does take us
17 some time to organize and ultimately post to the web, but it
18 was received in proper order.

19 CHAIRMAN: Thank you, Ms. Connor
20 Mr. Smith?

21 Thank you, Mr. Wilpers. I'm sorry, Mr. Wilpers.
22 Anything else from you?

23 MR. SMITH: Yeah. Thank you, Mr. Chair. The
24 question isn't whether or not these.

25 MR. WILPERS: No, thank you.

1 MR. SMITH: Sorry. The question isn't whether or
2 not these new submissions or -- or documents that were
3 placed in the record after the TSR was published change your
4 recommendations. That's not the question. The language in
5 27-125.05(A) is quite clear. If -- if the applicant or any
6 government agency submits new information into the record,
7 if a person of record requests a continuance, that person of
8 record will be granted a continuance of seven days. That's
9 clear language. It's pretty mandatory. And we went -- we
10 did this dance back in July of 2018 where the -- the
11 Planning Board had violated 27-125 in a different way by
12 filing the TSR late, and that was -- that was grounds for
13 remand by the District Counsel to the Planning Board. So,
14 you know, the language is clear in -- in the law. I think
15 the facts are clear. It doesn't matter whether Mr. Gibbs is
16 surprised that we're surprised or that I raised this two
17 weeks ago in the context of another hearing issue, so. All
18 right. That's all I have to say. You can do as you wish.

19 CHAIRMAN: Thank you, Mr. Smith.

20 MR. GIBBS: Mr. -- Mr. Chairman, if I might. I
21 mean, I'm looking at Section 27-125. Perhaps Mr. Smith has
22 mis-cited the section he's relying on. 27-125 of the prior
23 -- of the prior ordinance does not say anything about a
24 continuance. At least not the section I'm looking at.

25 MR. WARNER: Right. So -- so I can clarify. So

1 27-125.01 -- it's the section that -- that the Ms. Connor
2 identified explained very clearly why there isn't new
3 information that justifies an extension for one week. So
4 she's made that very clear, and the second request for a
5 general continuance to have more time to review the record
6 for the other reasons Mr. Smith gave, staff also is
7 recommending denial, so that's where we stand, and I think
8 it should proceed to the board for its decision at this
9 point.

10 CHAIRMAN: Thank you.

11 Mr. Smith, do you have anything else you want to
12 add?

13 MR. SMITH: Yeah, one -- one last word. I'm
14 looking at the ordinance as posted online, and it says if
15 new information is provided by the applicant or any
16 governmental agency after the Technical Staff Report is
17 published -- in this case, the applicant did submit new
18 material after the TSR was published, and three technical
19 referral memos were -- were provided in the file posted
20 yesterday -- let me continue. If new information is
21 provided by the applicant or any government agency --
22 governmental agency after the Technical Staff Report is
23 published, any person -- any party of record shall be
24 allowed a one week postponement if such party so requests.
25 I'm not sure what -- what -- what Section 125 Mr. -- 27-125

1 Mr. Gibbs is reading, but that's -- that's straight off of
2 the copy of the code posted online at Unicode.

3 MR. WARNER: And I misspoke. It's 27-125.05 and
4 is the correct cite.

5 MR. SMITH: All right, so there you have it.

6 CHAIRMAN: Thank you.

7 All right, Commissioners, I'm -- I'm comfortable
8 with staff's recommendation. Hello.

9 MR. BOADO: This is this is Alexi Boado. I live
10 in -- I live in Hyattsville. I think it's very
11 disappointing. I live in Hyattsville, and I'm -- I'm here
12 with a group of neighbors that are opposing this
13 development. I think it's very disappointing that you're
14 not giving us an opportunity to -- to digest information
15 that was put in after the fact by this law firm. We're here
16 -- we're here on our own accord as an -- as a -- as a group
17 of volunteers to try to do what's best for us, and we are
18 requesting another week to digest this information as per
19 your regulations.

20 CHAIRMAN: Thank you, Mr. Boado.

21 So I -- I hear the concerns of the community. I
22 am hearing loud and clear from staff and from counsel that
23 we have followed our procedures appropriately. I don't have
24 any concerns around that, but we certainly heard this case
25 before. I think staff is clear that we're well within our

1 bounds. This case has been floating around for a while, so
2 I don't have any concerns around it. But I'm curious where
3 you are, Commissioners, with this as well?

4 COMMISSIONER WASHINGTON: Yeah, I'm similarly
5 situated, Mr. Chairman, and I do think it appropriate for us
6 to at least officially take action on the request for
7 continuance. And I'm happy to, if so inclined, to make a
8 motion in that regard at this time.

9 CHAIRMAN: Sure.

10 COMMISSIONER WASHINGTON: Mr. Chairman. I'm
11 sorry, Commissioner?

12 COMMISSIONER DOERNER: I was just going to say I
13 don't think it's a huge deal for us to delay this for one
14 more week if there's such opposition and such community
15 concern about this. It's been sitting around for a year.
16 It's not going to kill the process to go for another week.
17 I -- I don't like the idea of -- of regulations delaying
18 cases substantially, but it's only one more week, and we're
19 still within the action limit date, so I don't think it
20 would be terrible to delay it one more week if that would
21 just help out the citizens.

22 CHAIRMAN: Can we hear from staff and/or Mr. Gibbs
23 on that? Or counsel? What are the implications of delaying
24 this for a week?

25 MR. WARNER: I would defer to Ms. Connor because.

1 CHAIRMAN: We're all -- we're all reading the --
2 we're all reading the things here. This isn't going to
3 happen without three votes. So -- so staff, Ms. Connor,
4 others, Mr. Gibbs, what's the implications from continuing
5 this a week?

6 MS. CONNOR: Staff does not have any concern with
7 continuing this one week and takes no position and would
8 defer to the applicant.

9 MR. GIBBS: Mr. chairman, may I have 30(s) to talk
10 to my client, please?

11 CHAIRMAN: Sure. Let's take a five-minute break,
12 actually. If you can put five minutes on the clock, and
13 we'll take a five-minute recess. We'll be -- we'll be back.

14 MR. GIBBS: I do not believe that anything in
15 Section 27-125.05 would require a continuance. I don't
16 think that that's what the intent of that section was meant
17 to embrace. That being said -- that being said, I am going
18 to consent to the continuance because I don't want an issue
19 like that floating out there. So I would consent to a one-
20 week continuance.

21 CHAIRMAN: Mr. Gibbs. Mr. Gibbs, I appreciate
22 that, and I'm actually, for what it's worth, I'm in the same
23 place. I don't read this as we need to do this for
24 technical reasons. I do not buy -- I do not agree with this
25 argument. I also want to get some -- I don't think the

1 extra week is a huge problem. I want to be respectful of
2 that, and -- and I want to get a little bit of clarity from
3 staff about how we clean up this process, so it's more of a
4 procedural thing for me, so Mr. Gibbs, I -- I appreciate you
5 being a bit flexible on this. I really do.

6 So Commissioners, I'm fine with having a motion to
7 continue this for one week, if that is your pleasure, and --
8 and what is your pleasure?

9 COMMISSIONER WASHINGTON: Mr. Chairman, I move
10 that we approve the request to continue DSP-22001 for one
11 week to Planning Board hearing date of October the 3rd.

12 COMMISSIONER DOERNER: Second.

13 CHAIRMAN: We got a motion by Commissioner
14 Washington. Second by Commissioner Doerner. Is there no
15 further discussion on the motion? I will call roll.
16 Commissioner Washington?

17 COMMISSIONER WASHINGTON: I vote aye.

18 CHAIRMAN: Commissioner Doerner?

19 COMMISSIONER DOERNER: I vote aye.

20 CHAIRMAN: I vote I as well. The ayes have it
21 three zero. We will see you all next week. Thanks,
22 everybody.

23

24 **(Whereupon, the proceedings were concluded.)**

25

DIGITALLY SIGNED CERTIFICATE

ESCRIBERS, LLC, hereby certified that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Planning Board in the matter of:

DSP-22001 MCDONALD'S AGER ROAD

Planning Board Meeting, PPS

By:  Date: March 3, 2025

Carrie Johnson, Transcriber