



The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

Revision of Site Plan Alternative Compliance McDonald's Forest Heights

ROSP-4196-01
AC-20004

REQUEST	STAFF RECOMMENDATION
ROSP: Revision of a site plan to reconstruct an eating and drinking establishment with drive-through service.	DISAPPROVAL
AC: Section 4.2, Requirements for landscape strips along streets.	APPROVAL
Section 4.7, Buffering incompatible uses.	DISAPPROVAL

Location: At the southeast intersection of Indian Head Highway (MD 210) and Livingston Road.	
Gross Acreage:	0.77
Zone:	C-M
Dwelling Units:	N/A
Gross Floor Area:	4,700 sq. ft.
Lots:	0
Parcels:	1
Planning Area:	76A
Council District:	08
Election District:	12
Municipality:	N/A
Applicant/Address: McDonald's USA, LLC. 6903 Rockledge Drive, Suite 110 Bethesda, MD 20817	
Staff Reviewer: DeAndrae Spradley Phone Number: 301-952-4976 Email: DeAndrae.Spradley@ppd.mncppc.org	



Planning Board Date:	07/15/2021
Planning Board Action Limit:	N/A
Staff Report Date:	06/30/2021
Date Accepted:	10/30/2020
Informational Mailing:	10/18/2019
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The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.

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THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board
The Prince George's County District Council

VIA: Jeremy Hurlbutt, Supervisor, Zoning Section
Development Review Division

FROM: DeAndrae Spradley, Planner Coordinator, Zoning Section
Development Review Division

SUBJECT: Revision of Site Plan ROSP-4196-01
McDonald's Forest Heights

REQUEST: Revision of a site plan to reconstruct an eating and drinking establishment with
drive-through service.

RECOMMENDATION: **DISAPPROVAL**

NOTE:

The Planning Board has scheduled this application on the consent agenda for transmittal to the Zoning Hearing Examiner on the agenda date of July 15, 2021.

You are encouraged to become a person of record in this application. The request must be made in writing and addressed to the Prince George's County Office of the Zoning Hearing Examiner, County Administration Building, Room 2184, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

FINDINGS:

- 1. Location:** The property is located southwest of the intersection of Indian Head Highway (MD 210) and Livingston Road. The property address is 5501 Livingston Road, Oxon Hill, MD 20745. The property is known as Parcel D, recorded in the Prince George's County Land Records in Plat Book WWW 74-91, recorded in 1970.
- 2. History and Previous Approvals:** In 1958, the original McDonald's restaurant was established on the property. At the time, the restaurant was in the General Commercial, Existing Zone and an eating and drinking establishment was a permitted use. The property was rezoned to Commercial Miscellaneous (C-M) in 1984, with the adoption of the Subregion VII Sectional Map Amendment. When fast-food restaurants became a defined use in the Prince George's County Zoning Ordinance (Prince George's County Council Bill CB-102-1986), they also became a special exception use in the C-M Zone. At that time, the McDonald's restaurant became a non-conforming use, as no special exception had been approved for the site. The use was certified as non-conforming on June 12, 1987, per permit number 2161-87-U.

In 1988, McDonald's sought to build a minor addition to the existing building to provide a vestibule around the entrance and a freezer facility. The Prince George's County Planning Board approved Nonconforming Fast-Food Restaurant NCFFR-1 on February 11, 1988 (PGCPB Resolution No. 88-54), to allow those minor additions.

In 1992, McDonald's proposed to add a soft play area to the property and consequently, on November 23, 1992, Special Exception SE-4085 was approved by the Zoning Hearing Examiner and declared final by the Prince George's County District Council, to allow the alteration of the nonconforming use. A Departure from Parking and Loading Standards, DPLS-145, was also approved by the Planning Board on October 15, 1992 (PGCPB Resolution No. 92-279), as a companion to SE-4085, to remove 3 of the 33 parking spaces on-site for construction of the play area.

McDonald's then sought to enclose the play area, and on October 12, 1995, the Planning Board approved DPLS-204 (PGCPB Resolution No. 95-321) for the purpose of waiving 10 parking spaces required to enclose the play area on-site, leaving the parking requirement at 30 parking spaces that remained on-site. A special exception to alter the nonconforming use (SE-4196) was approved by the Zoning Hearing Examiner and declared final by the District Council on March 27, 1997, for the play area enclosure.

In 2010, CB-19-2010 amended the table of uses to permit eating and drinking establishments with drive-through service to be permitted in the C-M Zone, subject to detailed site plan (DSP) approval. Because the property owner does not have a DSP approved for the site, the property owner contends that the use is currently a certified non-conforming use, pursuant to permit number 2161-1987-U. However, staff finds that since the use is an allowed use in the C-M Zone, and the applicant plans to fully reconstruct the use, a DSP is required by the Zoning Ordinance.

- 3. Neighborhood and Surrounding Uses:** The general neighborhood is bounded to the north by Livingston Road and Arapahoe Drive, a service road of MD 210, with MD 210 beyond to the west. The neighborhood of the property is the area located south and west of Livingston Road, north of the Capital Beltway, and east of MD 210. This area is defined by staff and the

property owner. This area includes commercial areas along Livingston Road and residential areas in the Town of Forest Heights. Near the property but outside of the neighborhood, as defined, are office uses and apartments. The surrounding neighborhood includes primarily commercial, and one-family detached residential uses. The immediate uses surrounding the property are as follows:

- North—** Office building in the Commercial Office Zone.
- South—** Community Center in the One-Family Detached Residential.
- East—** Auto Repair in the C-M Zone.
- West—** Arapahoe Drive and MD 210.

4. **Request:** The property owner is requesting a major revision of a special exception site plan to reconstruct an eating and drinking establishment with drive-through service. The site plan revision is requesting to raze an existing McDonald’s restaurant and rebuild a new McDonald’s restaurant with drive-through service, including reconstruction of parking and pavement areas and the on-site dumpster pad and enclosure. Per the site plan, the entire property will be disturbed for the upgraded McDonald’s restaurant.

A new eating and drinking establishment with drive-through service is currently permitted in the C-M Zone, subject to DSP approval. A DSP is the appropriate case to file for this development. However, the property owner contends that the case should be treated as a major revision to a special exception site plan for the alteration or reconstruction of a certified nonconforming use, as indicated in the statement of justification (SOJ) provided with the acceptance of this case on October 30, 2020. The applicability of the requirements of the Zoning Ordinance are discussed further in this report.

5. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	C-M	C-M
Use(s)	Eating and drinking establishment with drive-through service	Eating and drinking establishment with drive-through service
Acreage	0.77	0.77
Parcels	1	1
Gross Floor Area	3,428 sq. ft.	4,700 sq. ft.

6. **Required Findings:** The property owner is requesting to raze and rebuild the existing use and building, in accordance with Part 3 and 4 of Subtitle 27 the County Code, as outlined below. The applicant’s SOJ suggests the following:

- that the use is non-conforming, as it was certified in 1987;

- that the subsequent approved special exceptions for the site were for alterations of the certified non-conforming use and the special exceptions did not remove the certified non-conforming status, and
- that the existing use remains non-conforming, as there has been no DSP approval for the site.

For Nonconforming uses, the following criteria apply:

Section. 27-242. - Alteration, extension, or enlargement.

(a) In general.

(1) A nonconforming building or structure, or a certified nonconforming use (except as provided for in this Section) may be altered, enlarged, or extended, provided that:

(A) The alteration, enlargement, or extension conforms to the building line setback, yard, and height regulations of the zone in which the use is located; and

(B) A special exception has been approved by the District Council, in accordance with Part 4 of this Subtitle.

Per Section 27-462(b) of the Zoning Ordinance, the minimum setback requirements for all structures for commercial zones are 10 feet from the street and 25 feet for the rear yard (that abuts residentially zoned property), or where the setback requirement of the 2010 *Prince George's County Landscape Manual* (Landscape Manual) is greater, the Landscape Manual setback shall apply. It is noted that the Zoning Ordinance defines a structure as anything built or constructed. There is a parking lot drive isle that extends into the required 10-foot setback along the site's frontage along Livingston Road, parking that encroaches in the required 12-foot side setback along the eastern property lines, and parking that encroaches in the required 25-foot rear yard setback. Section 27-555 of the Zoning Ordinance provides that surface parking may be provided in any yard. While parking may be permissible in the side and rear yards, the table provided in Section 27-462(b) does not prescribe a front yard and only provides that the setback for all structures be 10 feet from a street. Therefore, the development is noncompliant with the setback requirements along the abutting streets. A variance to the setback requirements has not been requested by the property owner.

The site plan also reflects a 12-foot-wide setback along the eastern property line (side yard); however, the abutting property is zoned C-M, and therefore, no setback in accordance with Section 27-462(b) applies and the requirements are set by the Landscape Manual. In addition, a 12-foot-wide setback is shown on the site plan along the

MD 210/Arapahoe Drive right-of-way. However, the required setback should be shown as 10 feet and the plans should be revised to clearly demonstrate the parking structures located outside of the required setback. The requirements of the Landscape Manual are evaluated further in this report.

Section 27-243. Reconstruction, reestablishment, and restoration.

(a) Without enlargement, extension, or relocation.

(1) The restoration, reconstruction, or reestablishment of a nonconforming building or structure, or a certified nonconforming use, which has either been unintentionally destroyed by fire or other calamity, has temporarily ceased operation for the sole purpose of correcting Code violations, or has temporarily ceased operation due to the seasonal nature of the use, may be permitted without relocation, enlargement, or extension, provided that:

(A) Where the building, structure, or use has been unintentionally destroyed by fire or other calamity, a building permit for restoration or reconstruction shall be issued within one (1) calendar year from the destruction date, and construction pursuant to the permit has begun within six (6) calendar months after the date of issuance (or lawful extension) of the permit, and proceeds to completion in a timely manner. If it has been destroyed for more than one (1) calendar year, the reconstruction, reestablishment, or restoration may only be permitted upon approval of a Special Exception in accordance with Part 4 of this Subtitle.

(B) Where a certified nonconforming use has temporarily ceased operation, either for the sole purpose of correcting Code violations or because the nature of the nonconforming use is seasonal, such use shall be reestablished within one (1) calendar year from the date upon which operation last ceased.

Per the applicant's SOJ, the existing eating and drinking establishment with drive-through service is currently operating and the building has not been unintentionally destroyed by fire or other calamity, temporarily ceased operation for the sole purpose of correcting Code violations, or temporarily ceased operation due to the seasonal nature of the use. Furthermore, the property owner is exempt from this requirement because reconstruction is proposed with enlargement.

(2) The intentional demolition and reconstruction, reestablishment, or restoration of a certified nonconforming use on the same lot, which does not involve relocation, enlargement, or extension, is prohibited within the Safety Zones of the Military Installation Overlay Zone, but may be permitted outside of the Safety Zones of the Military

Installation Overlay Zone only upon approval of a Special Exception in accordance with Part 4 of this Subtitle.

The property is located outside of the Military Installation Overlay Zone. The site plan intends to raze the existing McDonald's restaurant building and construct a new larger McDonald's restaurant building on the property. The property owner has not filed the special exception case in accordance with this requirement as enlargement is proposed and the criteria below would be applicable.

(b) With enlargement, extension, or relocation.

- (2) The intentional demolition and reconstruction of a certified nonconforming use on the same lot, which involves relocation, enlargement, or extension, is prohibited within the Safety Zones of the Military Installation Overlay Zone, but may be permitted outside of the Safety Zones of the Military Installation Overlay Zone only upon approval of a Special Exception in accordance with Part 4. The requirement for a Special Exception shall not apply to the replacement of a mobile home, provided the new mobile home does not exceed one thousand and fifty (1,050) square feet in size.**

The site plan intends to raze the existing McDonald's restaurant building and construct a new larger McDonald's restaurant building on the property. The property owner has not filed a special exception application in accordance with the provision above. Instead, this application is a revision to a previously approved special exception. The criteria for special exception approval are provided below.

SUBDIVISION 10. - AMENDMENTS OF APPROVED SPECIAL EXCEPTIONS.

Section. 27-322. - In general.

- (a) No use allowed as a Special Exception, and no building or structure used in connection with that use, shall be erected, enlarged, altered, or extended beyond the limits authorized in the approval of the Special Exception, unless provided for in this Subdivision.**
- (b) If a use other than one allowed by Special Exception is proposed for property on which there is an existing approved Special Exception use, and if the other use involves any changes to improvements shown on the approved site plan for the Special Exception use, the site plan must still be revised in accordance with this Subdivision in order for the Special Exception use to continue.**

The property owner has filed this case under Revision of Site Plan ROSP-4196-01, and this is indicative of an amendment to an approved special exception. However, the SOJ also indicates that the use is not approved by special exception and the certified non-conforming status is applicable. As such, this case should not be considered an amendment of an approved special exception, and instead, processed

as a new special exception, notwithstanding staff's position that a DSP should be filed for the development.

A special exception must conform to the general findings for approval of all special exceptions contained in Section 27-317(a) of the Zoning Ordinance. Part 4 of the Zoning Ordinance also includes additional required findings for specific uses. The analysis of all the required findings for approval are provided below.

In support of the case, the property owner filed a SOJ and included site, landscape, signage, architecture, and photometric plans that are adopted herein by reference.

General Special Exception Findings—Section 27-317(a) provides the following:

(a) A Special Exception may be approved if:

(1) The proposed use and site plan are in harmony with the purposes of this Subtitle.

The purposes of Subtitle 27 of the Prince George's County Code, as set forth in Section 27-102(a)(1) through (15) of the Zoning Ordinance, are generally to protect the health, safety, and welfare of the public; to promote compatible relationships between various land uses; to guide orderly development; and to ensure adequate public facilities and services. Specific to the C-M Zone, as set forth in Section 27-459(a)(1) of the Zoning Ordinance, the purposes are:

(A) To provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas;

(B) To provide these locations, where possible, on nonresidential streets; and

(C) To provide concentrations of these uses which are relatively far apart.

The use as an eating and drinking establishment with drive-through service will be in harmony with the purposes of this Subtitle, as it is a permitted use in the C-M Zone. However, the property owner should file a DSP, as required by the use table in Section 27-461(b) of the Zoning Ordinance, for eating and drinking establishments with drive-through service in the C-M Zone and demonstrate conformance with the zoning regulations, as set forth herein. An eating and drinking establishment is a permitted use and requires a DSP approval in the C-M Zone, in accordance with Section 27-461(b)(1)(A)(i). Footnote 24 from the Table of Uses in Section 27-461(b) indicates the following for fast-food restaurants in the C-M Zone:

Subject to Detailed Site Plan approval in accordance with Part 3, Division 9, of this Subtitle. Any fast-food restaurant operating pursuant to an approved Special Exception as of the effective date of CB-49-2005 shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use. Such fast-food restaurants and their underlying special exceptions may be modified pursuant to the existing provisions relating to revisions or amendments to special exceptions generally and fast-food restaurants specifically as they exist in the Zoning Ordinance. The requirement for Detailed Site Plan approval does not apply to eating or drinking establishments within, and sharing the same points of vehicular access as, an integrated shopping center having six individual businesses (including the fast-food restaurant) and a minimum 50,000 square foot gross floor area.

The property owner contends that the current use is a nonconforming use since the property does not have a DSP approval, as required, in accordance with Footnote 24. Footnote 24 also provides that any fast-food restaurant operating pursuant to an approved special exception as of the effective date of CB-49-2005 shall remain valid, be considered a legal use, and the use shall not be deemed a nonconforming use.

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle.

The provided site plan does not demonstrate conformance with the minimum setback requirements and regulations of the Zoning Ordinance. Furthermore, the property owner has not demonstrated conformance with the parking and loading requirements of the Zoning Ordinance that are discussed further in this report.

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or in the absence of a Master Plan or Functional Map Plan, the General Plan.

The property is in the Established Communities Growth Policy Area of the 2014 *Plan Prince George's 2035 Approved General Plan* (Plan 2035). Plan 2035 describes these areas as most appropriate for context-sensitive infill and low- to medium-density development, and recommends maintaining and enhancing existing public services, facilities, and infrastructures to ensure that the needs of residents are met.

The property is also in the 2014 *Approved Eastover/Forest Heights/Glass Manor Sector Plan and Sectional Map Amendment* (sector plan). The sector plan recommends commercial/retail uses for the property. The sectional map amendment retained the property in the C-M Zone, and this allows the

use as an eating and drinking establishment with drive-through service, subject to the approval of a DSP.

The McDonald's restaurant on the property does not impair the integrity of any master plan, functional plan, or Plan 2035.

(4) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area.

As a permitted use, the request for an eating and drinking establishment with drive-through service will not adversely affect the health, safety, or welfare of residents and workers in the area, subject to compliance with Zoning Regulations.

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.

The requested use as an eating and drinking establishment with drive-through service will not be detrimental to the use or development of adjacent properties, or the general neighborhood. However, the property owner has not demonstrated compliance with all zoning regulations, namely the parking requirements, and therefore, it is unknown if this would cause infringement upon neighboring properties.

(6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

The property was issued a Standard Letter of Exemption (S-135-2019) from the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance dated September 30, 2019, with an expiration of September 30, 2021, and therefore, conforms to this requirement.

(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

The property does not contain any regulated environmental features and therefore, conforms to this requirement.

Special Exception Findings specific for Reconstruction of a Nonconforming Use

Section 27-384 of the Zoning Ordinance provides the following:

- (a) The alteration, enlargement, extension, or reconstruction of any nonconforming building or structure, or certified nonconforming use (except those certified nonconforming uses not involving buildings, those within the Chesapeake Bay Critical Area Overlay Zones as specified in paragraph 7, below, unless otherwise provided, and except for outdoor advertising signs), may be permitted subject to the following:**

- (1) A nonconforming building or structure, or a building or structure utilized in connection with a certified nonconforming use, may be enlarged in height or bulk, provided that the requirements of Part 11 are met with respect to the area of the enlargement.**

The existing building is to be razed and a new, larger building is requested on the site plan. Part 11 of the Zoning Ordinance sets forth the parking and loading requirements. Enlargement of the existing building is not requested by the property owner, rather reconstruction of a nonconforming use is requested and the requirements for reconstruction are outlined in sub item (3) below.

- (2) A certified nonconforming use may be extended throughout a building in which the use lawfully exists, or to the lot lines of the lot on which it is located, provided that:**

- (A) The lot is as it existed as a single lot under single ownership at the time the use became nonconforming; and**
- (B) The requirements of Part 11 are met with regard to the extended area.**

Extension throughout the existing building is not requested on the site plan. The existing building is to be razed and construction of a new eating and drinking establishment with drive-through service of a larger size, including reconstruction of the parking areas is requested by the property owner. The provisions applicable to reconstruction of a nonconforming use are set forth in sub item (3) below.

- (3) A certified nonconforming use may be reconstructed, provided that:**

- (A) The lot on which it is reconstructed is as it existed as a single lot under single ownership at the time the use became nonconforming;**

The lot is a single lot, platted as Parcel D in 1970, under single ownership that existed at the time the use became non-conforming.

- (B) Either the nonconforming use is in continuous existence from the time the Special Exception application has been filed through final action on the application, or the building was destroyed by fire or other calamity more than one (1) calendar year prior to the filing date;**

The SOJ indicates that the use as an eating and drinking establishment with drive-through service is still in operation.

(C) The requirements of Part 11 are met with respect to the entire use; and

The requirements of Part 11, Off-Street Parking and Loading Requirements, are not met for the entire use. The applicant is requesting to use outdated parking requirements for the property. It is noted in the provisions above that the enlargement of a nonconforming use must meet the provisions of Part 11 for the enlarged area. Therefore, staff believes where reconstruction is requested by the property owner, this provision is meant to require conformance with the current parking and loading standards for the entire use. Conformance with the parking and loading standards has not been met and is addressed further in this report.

(D) The Special Exception shall terminate unless a building permit for the reconstruction is issued within one (1) calendar year from the date of Special Exception approval, construction in accordance with the building permit begins within six (6) months from the date of permit issuance (or lawful extension), and the construction proceeds to completion in a timely manner.

The SOJ indicates that the property owner intends to comply with this provision.

(4) When not otherwise allowed, a certified nonconforming use may be otherwise altered by the addition or relocation of improvements, such as fencing, landscaping, off-street parking and loading areas, and outdoor trash enclosures, or the relocation of buildings or other improvements within the boundary lines of the lot as it existed as a single lot under single ownership at the time the use became nonconforming.

All improvements are within the lot as it exists when it became nonconforming.

(5) Any new, or any addition to, or alteration or relocation of an existing building or other improvement (which is either nonconforming or utilized in connection with a certified nonconforming use), shall conform to the building line, setback, yard, and height regulations of the zone in which the certified nonconforming use is located. The District Council may further restrict the location and bulk of the building or structure where the evidence so warrants. If the use is presently permitted by Special Exception in the zone, the new building, improvement, or addition shall conform to all of the physical requirements of the specific Special Exception use.

The 10-foot setback requirement for all structures fronting the streets is not met, as discussed further in the Zone Standards finding of this report.

- (6) **The District Council may grant this Special Exception for property within a one hundred (100) year floodplain only after it has determined that the proposed enlargement, extension, reconstruction, or alteration will:**
- (A) **Not require additional filling in the floodplain;**
 - (B) **Not result in an increase in elevation of the one hundred (100) year flood; and**
 - (C) **Conform with all other applicable requirements of this Subtitle and of Division 2 of Subtitle 4, "Building," of this Code, entitled "Construction or Changes in Floodplain Areas."**

The property is not located within a floodplain.

- (7) **In a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted where the existing lot coverage in the CBCA exceeds that allowed by Section 27-548.17, and which would result in a net increase in the existing lot coverage in the CBCA. In addition, a Special Exception shall not be granted which would result in converting a property which currently meets the lot coverage in the CBCA requirements of Section 27-548.17 to a nonconforming status regarding lot coverage in the CBCA, except if a finding of extenuating circumstances is made, such as the necessity to comply with other laws and regulations.**

The property is not located within the Chesapeake Bay Critical Area.

- (b) **Applications for this Special Exception shall be accompanied by a copy of the Use and Occupancy Permit for the certified nonconforming use, as provided for in Section 27-241(b).**

The SOJ indicates that a copy of the Use and Occupancy Permit (2161-1987-U) for the certified nonconforming use was provided in the submittal package for this case. However, a copy of the permit has not been included by the property owner. A copy of the permit has been included in the back-up of this report. However, subsequent permits for the site were issued based on special exceptions approved for the site.

Section 27-320.01. - Effect of Zoning Text Amendment on an Approved Special Exception.

- (a) **When an amendment to the text of the Zoning Ordinance is enacted that negates the need for a Special Exception which has previously been approved, the Special Exception shall terminate and all current provisions of the zone shall apply to further use and development of the property, in accordance with the procedures set forth below.**

In 2010, CB-19-2010 amended the table of uses to permit eating and drinking establishments with drive-through service in the C-M Zone, subject to DSP approval. Per Section 27-281.01(a)(2) of the Zoning Ordinance, permits cannot be issued for any requested use where the Planning Board or District Council has expressly required approval of a DSP. In this instance, the approval of CB-19-2010 required DSP approval.

Because the property owner does not have a DSP approved for the site, the property owner contends that the use is currently a certified non-conforming use, pursuant to permit number 2161-1987-U, and is intending to use the special exception process to redevelop the site and maintain the nonconforming status. However, the filing of a special exception is counter to Section 27-320.01 of the Zoning Ordinance, which intends to nullify special exceptions when uses become permitted, and Section 27-281.01(a)(2), which requires approval of a DSP. Since the use is an allowed use in the C-M Zone, and the property owner plans to fully reconstruct the use, it is staff's position that a DSP is required by the Zoning Ordinance.

7. **Zone Standards:** An eating and drinking establishment with drive-through service is a permitted use in the C-M Zone, as set forth in Section 27-461, subject to approval of a DSP. The property owner has not filed the appropriate plan to permit the requested use. As previously indicated, the proposed site plan has included parking and drive isle improvements within the required setback along the abutting streets. Therefore, the request to raze an existing McDonald's restaurant and rebuild a new McDonald's restaurant does not conform to the adopted regulations for the C-M Zone.
8. **Parking Regulations:** Per Section 27-568(a)(5)(D) of the Zoning Ordinance, the parking requirements for eating and drinking establishment (including drive-through service or carryout) requires a minimum of 1.0 parking spaces per 3 seats plus 1.0 parking space for every 50-square-foot of gross floor area (excluding any area used exclusively for storage or patron seating, and any exterior patron service area). One loading space is also required, in accordance with Section 27-582 of the Zoning Ordinance.

At the Subdivision and Development Review Committee meeting, staff requested the property owner to provide detailed measurements of the seating and gross floor areas of the new McDonald's restaurant to calculate the required parking standards and to demonstrate compliance with parking regulations. The property owner indicated that the restaurant was built in 1958, and therefore, the property may utilize the parking requirements that were in place at the time the use was established by the County. Section 27-584 of the Zoning Ordinance sets forth exclusions from the parking requirements for previously existing uses as follows:

- (a) **The following shall not be required to comply with the provisions of this Part:**
 - (1) **Any legally existing use that complies with the previous requirements for parking and loading areas (in effect at the time the use began). If the use is a certified nonconforming use, the parking lot or loading area used with it shall not be reduced, except in accordance with this Part;**

- (2) Any legally existing use for which any of the parking or loading requirements had previously been waived or reduced by the District Council or the Board of Zoning Appeals, not including departures granted under Section 27-588; and
- (3) Any future use occupying the same premises as either of the above, provided there is no expansion or change of use that would require a greater number of parking or loading spaces (per Sections 27-568 and 27-582) than the number of spaces legally existing under the prior regulations. If the use began prior to the establishment of parking or loading regulations for that use, the phrase "number of spaces legally existing under the prior regulations" shall mean the current regulations of this Part (for the prior legally existing use). In both cases, where additional spaces are created, only the area occupied by the additional spaces shall be required to conform to the Design Standards.

The latest plan approval, SE-4196, indicated that the existing building is 2,768 square feet with a request to enclose an additional 800 square feet, that was the play area. This plan approval noted that a requirement of 30 parking spaces and one loading space were applicable to the site based on prior approvals and, to expand the gross floor area of the development by 800 square feet, a departure (DPLS-204) of the additional parking spaces (10) that would have been required by the 800 square foot addition was also approved by the County.

The current site plan is requesting a new and larger building of 4,700 square feet (based on the landscape plan building labeling), noting 1,741 square feet is for seating area. The general notes on the site plan coversheet, note 7, does not accurately state the gross floor area of the new building. Given that the existing building is to be reconstructed and enlarged beyond the previously approved development, and that the site plan includes the removal of a loading space previously approved on the site, staff does not believe the above exclusions are met. Staff disagrees with the property owner and believes that the property owner will need to meet the current parking requirements of Section 27-568(a)(5)(d) and the loading space requirement of Section 27-582. Accordingly, staff finds that the requested site plan does not meet the County's parking regulations.

- 9. **2010 Prince George's County Landscape Manual Requirements:** The development will need to comply to the requirements of the Landscape Manual. An overview of each of the required sections of the Landscape Manual is featured below.

Section 4.2, Requirements for Landscape Strips Along Streets

Per Section 4.2(b)(1) of the County's Landscape Manual, the required landscape strip should not include any paved area, except pedestrian sidewalks or trails that cross the landscape strip. The plans show parking and drive isle improvements located within the Section 4.2 Landscape Strip along Livingston Road. As such, the property owner requested approval of alternative compliance from this requirement.

Along Livingston Road, the property owner requested alternative compliance from Section 4.2(c)(3)(A)(iv), that requires a minimum four-foot-wide landscape strip abutting the street adjacent to three- to four-foot-high brick, stone, or finished stamped concrete masonry wall. The property owner requested alternative compliance from this section to allow a reduction width of the landscape strip. The landscape plan is requesting to construct the three-foot-high wall, but the landscape strip will vary from two to ten feet in width. The landscape plan includes 1 tree and 26 shrubs in the landscape strip along Livingston Road.

Along Arapahoe Drive, the property owner requested alternative compliance from Section 4.2(c)(3)(A)(i), that requires a minimum 10-foot-wide landscape strip to be planted, with a minimum of 1 shade tree and 10 shrubs per 35 linear feet of frontage, excluding driveway openings. The landscape plan shows a 9-foot-wide landscape strip with 1 shade tree and 136 shrubs in the landscape strip along Arapahoe Drive. Section 4.2 Landscape Schedule on the plans indicates that a three-foot-wide landscape strip is provided, however, this width does not comply with the landscape plan or the width of the approved alternative compliance landscape strip and should be revised in the schedule and dimensioned on the plans.

The Alternative Compliance Committee found the property owner's plans to be equally effective as normal compliance with Section 4.2, Requirements for Landscape Strips Along Streets, as the requested solution essentially meets the requirements of the width of the required landscape strip and the number of plantings required on the property. In total, the optional design solution provides 50 percent more planting units than is normally required for the property. Notwithstanding the recommendation of disapproval for this application, staff would recommend approval of the alternative compliance proposal from Section 4.2 of the Landscape Manual along Livingston Road and Arapahoe Drive.

Section 4.3, Parking Lot Requirements

Per Section 4.3(c)(1)(C)(i), a minimum 3-foot-wide landscape strip is required between the parking lot and any adjacent property line, where the abutting use is compatible with the property, to be planted with 15 shrubs per 35 linear feet of parking lot line to create a solid hedge. It is noted that the site plans indicate the abutting property to the east is a commercial garage which is not a use listed in the use table. The property appears to be developed with an auto repair facility which is considered compatible with the eating and drinking establishment with drive-through service use requested on the property. The use of the abutting property should be shown on the site plan in accordance with the Zoning Ordinance list of uses. Along the eastern property line, the site plan features parking areas within the required three-foot-wide landscape strip area and no plantings. The landscape schedule for this Section indicates a three-foot-wide landscape strip and 60 shrubs are provided in the landscape strip and this does not conform with the Landscape Manual. The property owner has not requested alternative compliance from this section of the Landscape Manual. Compliance with this requirement along the eastern property line must be demonstrated on the landscape plan.

Interior parking lot plantings are required to be provided in accordance with Section 4.3(c)(2) of the Landscape Manual. Section 4.3(c)(2) schedule on the landscape plan indicates the correct requirement that four shade trees must be provided on the landscape plan. However, the landscape plan shows only three of the required shade trees. The landscape plan should be revised to demonstrate conformance with this requirement by providing four shade trees within the designate parking lot landscape areas.

Section 4.4, Screening Requirements

The site plan has included a dumpster enclosure with an eight-foot-high masonry wall in the southwestern portion of the property and this enclosure meets the requirements of Section 4.4.

Section 4.7, Buffering Incompatible Uses

Per Table 4.7-1, an eating and drinking establishment with drive-through service is considered a High Impact Use. The community center located adjacent to the southern portion of the property line is considered a Medium Impact Use; therefore, the uses are deemed incompatible, and a Type B Buffer Yard is required between the incompatible uses. The property owner requested alternative compliance from Section 4.7 to reduce the width of the required landscape yard area. The site plan requested to install a six-foot-high sight-tight fence along the top of the retaining wall located along the parking area that is about 20 feet from the southern property line, in accordance with Section 4.7-3(c)(4)(F), and therefore, a 50 percent reduction in the landscape yard, plant units, and setback is permitted by the Landscape Manual. The required and provided landscape requirements are as follows:

REQUIRED: Section 4.7, Buffering Incompatible Uses, along the southern property line, adjacent to existing Community Center

Length of bufferyard	140 feet
Minimum building setback	30 feet
Landscape yard width	20 feet
Fence or wall	Yes
Percent with existing trees	1
Plant units (80 per 100 l. f.)	112

PROVIDED: Section 4.7, Buffering Incompatible Uses, along the southern property line, adjacent to existing Community Center

Length of bufferyard	140 feet
Minimum building setback	80 feet
Landscape yard width	0 feet
Fence or wall	Yes
Percent with existing trees	1
Plant units (80 per 100 l. f.)	0

The Alternative Compliance Committee recommended disapproval of the request for alternative compliance from Section 4.7 of the Landscape Manual. The applicant has filed for a departure from the requirements of Section 4.7 of the Landscape Manual, given the recommendation of disapproval. A Departure from Design Standards application, DDS-678, is currently in process, and tentatively scheduled to be heard by the Planning Board on September 9, 2021.

Section 4.9, Sustainable Landscape Requirements

There are no invasive species included on the landscape plan and all native shade and ornamental trees are included on the landscape plan. Forty percent of the shrubs on the landscape plan are native. The landscape plan has met the sustainable landscape requirements for Section 4.9. The landscape plant list on the landscape plan should indicate all plant material as native or nonnative.

- 10. Tree Canopy Coverage:** Subtitle 25, Division 3, of the Tree Canopy Coverage Ordinance, requires a minimum percentage of tree canopy coverage (TCC) on developments that request more than 5,000 square feet of disturbance. This property is zoned C-M and is required to provide a minimum of 10 percent of the gross tract area to be covered by tree canopy. The subject site is 0.76 acre in size and resulting in a TCC requirement of 0.08 acre (3,310 square feet). Therefore, the total TCC on the site, 3,625 square feet, exceeds the requirement.

- 11. Signage Regulations:** Per Section 27-613(3)(a) of the Zoning Ordinance, the area of all of the signs on a building shall be not more than two (2) square feet for each one (1) lineal foot of width along the front of the building (measured along the wall facing the front of the lot or the wall containing the principal entrance to the building, whichever is greater), to a maximum of 400 square feet. The site plan has 46 linear feet of building frontage along Livingston Road and 108 linear feet of building frontage along Arapahoe Drive, so the maximum sign area allowed by right is up to 92 square feet along Livingston Road, and up to 216 square feet along Arapahoe Drive. The site plan proposes 42 square feet of signage frontage along Livingston Road and there are no signs included on the building frontage along Arapahoe Drive. Therefore, the proposed plan meets the sign requirements established in Section 27-613(3)(a). The site plan will need to provide a table indicating the maximum allowable sign area (including building mounted and freestanding signs), the area of each sign, and the total sign area on-site to demonstrate compliance with the County's Signage Regulations.

- 12. Referral Comments:** The following referrals were received and are included herein by reference; all comments are addressed on the site plan, or as part of this report:
 - a. Community Planning Section dated November 24, 2020 (Lester to Spradley);
 - b. Historic Section dated November 20, 2020 (Stabler to Spradley);
 - c. Transportation Planning Section dated December 17, 2020 (Howerton to Spradley);
 - d. Environmental Planning Section dated November 13, 2020 (Schneider to Spradley);
 - e. Urban Design Section dated December 15, 2019 (Bishop to Spradley);
 - f. AT&T dated November 18, 2020 (Abdulkader to Spradley);
 - g. Prince George's County Department of Permitting, Inspections and Enforcement dated November 3, 2020 (Anthony Branch to Spradley); and
 - h. Prince George's County Fire Department dated March 28, 2021 (Reilly to Spradley).

RECOMMENDATION

Based on the applicant's statement of justification, the analysis contained in the technical staff report, associated referrals, and materials in the record, the site plan for Revision of Site Plan ROSP-4196-01, McDonald's Forest Heights, has not demonstrated conformance with the required special exception findings, as set forth in Section 27-317 (in general) and Section 27-384, for reconstruction of a nonconforming use, of the Prince George's County Zoning Ordinance, in this instance. Compliance with Commercial Miscellaneous Zone regulations, conformance with Part 11 and Part 12 of the Zoning Ordinance, and the requirements of the 2010 *Prince George's County Landscape Manual* have also not been demonstrated by the site and landscape plans. Therefore, staff recommends **DISAPPROVAL** of Revision of Site Plan ROSP-4196-01, McDonald's Forest Heights. Specifically, the following site plan deficiencies for zoning conformance are noted below:

1. The required setbacks have not been accurately reflected on the plans.
2. The parking schedule does not specify the seating area, gross floor area, and storage areas of the building for the purpose of calculating the current parking and loading space requirements.
3. Conformance with Section 4.3 of the 2010 *Prince George's County Landscape Manual* has not been demonstrated on the plans for the parking lot perimeter landscape strip along the eastern property line and the interior parking lot planting requirements.
4. The Section 4.2 landscape schedules should reflect "shades trees" instead of "canopy trees" and reflect the provided landscape strip width, in accordance with the 2010 *Prince George's County Landscape Manual*.
5. The Section 4.2 landscape schedules need to be updated on the landscape plan.
6. A sign area table has not been provided on the site plan to demonstrate the maximum required sign area. The site plan will need to provide sign area calculations to show conformance to Part 12 of the Prince George's County Zoning Ordinance.
7. The plant schedule on the landscape plan should indicate all plant materials as native or non-native.
8. The existing use of the abutting property to the east should be indicated on the site plan, in accordance with the uses provided in the Prince George's County Zoning Ordinance.

Per Section 27-322(a) of the Prince George's County Zoning Ordinance, no use is allowed as a special exception and no building or structure used in connection with that use shall be erected, enlarged, altered, or extended beyond the limits authorized in the approval of the special exception, unless provided for in this subdivision. The site plan does not meet the requirements of Section 27-322(a) because the proposal to raze the existing 3,428-square-foot McDonald's restaurant building to construct a new 4,700-square-foot McDonald's restaurant building exceeds the scope, intent, and limits authorized in the approval for Special Exception SE-4196. Therefore, the case shall be subject to the zoning regulations as provided for in Section 27-459, Commercial Miscellaneous Zone, of the Zoning Ordinance, the Regulations and Minimum Setback Requirements in Section 27-462 of the Zoning Ordinance, the Off-Street Parking and Loading Requirements in

Part 11 of Subtitle 27, the Signs requirements in Part 12 of Subtitle 27, and the 2010 *Prince George's County Landscape Manual*.

Per Section 27-568(a)(5)(d,) of the Prince George's County Zoning Ordinance, the parking requirements for an eating and drinking establishment (including drive-through service or carryout) requires a minimum of 1.0 parking spaces per 3 seats plus 1.0 parking spaces for every 50 square feet of gross floor area (excluding any area used exclusively for storage or patron seating, and any exterior patron service area). The site plan does not meet the requirements of Section 27-568(a)(5)(d) because the detailed gross floor area calculations were not provided so that staff could calculate the required parking standards for the property.

Per Section 4.3(C)(1)(c)(i) of the 2010 *Prince George's County Landscape Manual*, a minimum 3-foot-wide landscape strip is required between the parking lot and any adjacent property line. The landscape strip is required to be planted with 15 shrubs per 3 linear feet of parking lot adjacent to a property line to create a solid hedge, or a 3- to 4-foot-high masonry wall may be provided. The site plan does not meet the requirements of Section 4.3(C)(1)(c)(i) because the plan includes parking improvements along the western property line within the required three-foot-wide landscape strip area, and the property owner has not applied for alternative compliance from this section to comply with the regulations.

An eating and drinking establishment is a permitted use and requires detailed site plan approval in the Commercial Miscellaneous Zone, in accordance with Section 27-461(b)(1)(A)(i) of the Prince George's County Zoning Ordinance. The applicant contends that the current use is nonconforming because it does not have detailed site plan approval, as required, in accordance with Footnote 24. Footnote 24 also provides that any fast-food restaurant operating pursuant to an approved special exception as of the effective date of Prince George's County Council Bill CB-49-2005 shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use.

The existing McDonald's use was certified as nonconforming on June 12, 1987 (Permit No. 2161-87) because, after construction in 1958, the Commercial Miscellaneous zoning was adopted requiring special exception approval for a fast-food use and the site did not have the requisite special exception approval. Subsequently, this site was granted special exception approval for alterations of the nonconforming use and the applicant contends that the existing special exception approvals did not operate to approve the use but only to allow alteration of a nonconforming use, and so the site does not have an approved special exception for the use. Notwithstanding the following determinations, staff finds the applicants filing of a revision to a special exception (ROSP-4196-01) is inappropriate, in accordance with the applicant's own justification that they do not have an approved special exception for the use, and in accordance with Section 27-243(b)(2) of the Zoning Ordinance, which requires a special exception (not a revision to a special exception) for intentional demolition and reconstruction with enlargement of a nonconforming use.

While it appears the applicant may have two avenues for filing, a special exception or detailed site plan, the special exception would serve to extend and validate a nonconforming use. However, complete demolition and redevelopment of a site will require the development to come into conformance with all applicable zoning requirements and regulations. Given the use is permitted, it should no longer be considered and continue as a nonconforming use, which requires the additional findings for approval of the use through the special exception process to be met (Section 27-317). The additional findings of a special exception are for uses requiring particular

oversight, conditions and/or consideration because of the detrimental impact they may have on surrounding uses and/or because they are not permitted or do not conform to the Zoning Ordinance requirements. These findings should not be applied in this instance where the use is permitted, and the Zoning Ordinance has provided specific provisions for its permission. Staff finds that the appropriate application for filing is a detailed site plan, as required, in accordance with Section 27-461(b)(1)(A)(i) and Section 27-27-281.01(a)(2) of the Prince George's County Zoning Ordinance, and that a special exception would be nullified in accordance with Section 27-320.01 of the Zoning Ordinance.