

Case No. BZA 41-85 - McDonald's Corp. -
% Rex Jones, 11880 College Blvd., Over-
land Park, Ks. - requests a variance to
permit an increase in the permitted
gross surface area of a pole sign from
257 sq. ft. to 330 sq. ft. on property

POSTED
6-26-85/EL

ACTION

BZA. 4185 Denied 4-0 7-23-85
DATE

July 26, 1985

McDonald's Corporation
§ Rex Jones
11880 College Blvd.
Overland Park, Ks. 66210

Re: BZA-41-85 - Request for Variance

Dear Mr. Jones:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on July 23, 1985.

This Resolution reflects the official action of the Board to deny your request. It is forwarded to you for your information and files.

If you have questions concerning this matter, please call our office.

Sincerely,

Glen E. Lytle
Assistant Secretary

GEL:sad
Encl.

cc: Everett Fettis, 120 South Market, #504, Wichita, Ks. 67202
Monty Robson, Superintendent of Central Inspection (2)
Jon Gisick, City Clerk

RESOLUTION NO. BZA 41-85

WHEREAS, McDonald's Corporation, & Rex Jones, 11880 College Blvd., Overland Park, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to increase the gross surface area of a pole sign from 257 square feet to 330 square feet on property zoned the "LC" Light Commercial District and legally described as follows:

Lot 2, Branson 2nd Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Rock Road and north of Harry.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of July 23, 1985, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance does not arise from such condition which is unique to the property in question and is not ordinarily found in the same zone or district; and has been created by an action or actions of the property owner or the applicant inasmuch as the property is rectangular in shape with frontage on a major street that has no physical features that limit the visibility of an identification sign that conforms to the area limitation of the ordinance;

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will adversely affect the rights of adjacent property owners or residents inasmuch as the variance would allow a sign 20% larger than other properties of the same size along the street; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will not constitute unnecessary hardship upon the property owners represented in the application inasmuch as the applicant is now permitted to erect a sign that is 80 square feet more than is presently installed to identify the use; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that any increase in the size of the sign will not interfere with any right-of-way or easements; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the ordinance is specific in the permitted gross surface area for signs to be located adjacent to a major street and this would exceed that limitation; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted have not been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to increase the gross surface area of a pole sign from 257 square feet to 330 square feet on property zoned the "LC" Light Commercial District and legally described as follows:

Lot 2, Branson 2nd Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Rock Road and north of Harry.

be denied.

ADOPTED AT WICHITA, KANSAS, this 23rd day of July, 1985.


William J. Goebel, President

ATTEST:


Glen E. Lytle, Assistant Secretary

THE CITY OF WICHITA

OFFICE OF Citizen Participation DATE July 23, 1985

TO Glen Lytle, Special Assistant for Zoning

FROM Barry L. Carroll, Administrative Aide III

SUBJECT BZA 41-85: West side of Rock Road
and North of Harry

On Monday, July 22, CPO Council "H" considered the above captioned case, a request for a variance to permit an increase in the permitted gross surface area of a pole sign from 257 square feet to 330 square feet on property zoned "LC" Light Commercial District. Council members were provided the notice to adjoining property owners, a map of the area, and MAPD staff comments. After extensive discussion, the Council voted 4-1 (Allen abstain) to recommend approval of the request.

Agents, Everett Fettis and Rex Jones, were present to describe the request and respond to questions from the Council. Both stated that the City had initially issued a permit but later found that the permit had been issued in error and later rescinded. There were no area residents present to either speak in favor or oppose this request.

Council members generally felt that since the City had initially made a "mistake" in this case, that the variance should be approved as presented.

Please provide the Council's recommendation to the Board of Zoning Appeals when case BZA 41-85 is considered.

Barry L. Carroll
Barry L. Carroll
Administrative Aide III

BLC:dm

Noted:

Annie K. Montgomery
Annie K. Montgomery
CRS Director

RECEIVED

JUL 23 1985

METROPOLITAN PLANNING

ROUTE

RE: AGENDA ITEM NO. 6

SECRETARY'S REPORT
CASE NO. BZA 41-85

APPLICANT: McDonald's Corporation, % Rex Jones, 11880 College Blvd., Overland Park, Kansas.

AGENT: Everett Fettis, 120 South Market, #504, Wichita, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to increase the gross surface area of a pole sign from 257 square feet to 330 square feet.

GENERAL LOCATION: On the west side of Rock Road and north of Harry (1219 South Rock Road).

ZONING: Subject property is zoned the "LC" Light Commercial District as are the properties to the north, east and south. To the west is "C" Commercial District.

LAND USE: Subject property is a fast food restaurant. To the north a TBA store and the south and east are commercial development. To the west are mini-storage units.

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions as required by the State Statutes are found to exist.

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance to permit an increase in the permitted gross surface area of a pole sign from 257 square feet to 330 square feet. This request is being made in addition to the previously requested variance to increase the height of the sign from 30 feet to 35 feet in height that was granted by Resolution BZA 31-85.

The applicant's agent states that justification for the variance is the fact that the sign is required to be located five feet west of the property line in order to provide clearance for a gas line in order to provide clearance for a gas line in Rock Road. In addition, a permit for the sign was issued in January for a gross area of 320 square feet exceeding the permitted 257 square feet based on the limitation of two square feet for each linear foot of frontage of the lot. The sign to be erected calculates to be 326 square feet in accordance with the provisions established in the ordinance.

It is the Secretary's opinion that it is difficult to find any uniqueness to the property in order to justify an increase in the permitted gross surface area of the sign. The property is rectangular in shape and has a frontage on Rock Road of 128½ feet. Adjacent properties are also regulated in sign area by the same limitation that applies to this property. The granting of the height variance on May 22, 1985 resolved any conflict created by the gas line easement.

It should also be noted that an identification sign has been installed on the property in compliance with the area limitations that in the opinion of the Secretary provides more than adequate visibility. It is difficult to find this property any different than any other property on a major street. There are no physical barriers that create any visibility of the present sign such as a bridge or overpass.

UNIQUENESS:

It is the opinion of the Secretary that this property is not unique inasmuch as the property is rectangular in shape with frontage on a major street that has no physical features that will limit the visibility of an identification sign that conforms to the area limitation of the ordinance.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will adversely affect the rights of adjacent property owners inasmuch as the variance will allow the erection of a sign that will be 20% larger than other properties of the same size along the street.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance will not constitute an unnecessary hardship upon the applicant inasmuch as the applicant is permitted to erect a sign that may be up to 257 square feet on the property that will adequately identify the use.

PUBLIC INTEREST:

It is the opinion of the Secretary that the requested variance would not adversely affect the public interest inasmuch as any increase in the permitted sign area will not interfere with any right-of-way or easements.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested would be opposed to the general spirit and intent of the zoning ordinance inasmuch as the ordinance is specific in the permitted gross surface area for signs to be located on commercial and industrial properties when located on a major street.

RECOMMENDATION:

It is the opinion of the Secretary that all five conditions necessary to the granting of a variance cannot be found to exist, and the application should be denied.

BZA CASE NO. 41-85

<u>2</u>	NOTICES SENT TO APPLICANT/AGENT
<u>10</u>	LEGAL ADVERTISEMENT SENT TO MAPC
<u>1</u>	NOTICES SENT TO CPO
<u>9</u>	NOTICES SENT TO ADJOINING PROPERTY OWNERS
<u>12</u>	TOTAL NOTICES SENT <u>7-3-85</u>

BOARD OF ZONING APPEALS
Tenth Floor - City Hall
455 North Main, Wichita, Kansas 67202

July 3, 1985

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 41-85

As required by law, all property owners of record, within 200 feet of a property to be considered for an exception or variance by the Board of Zoning Appeals, are to be notified of the public hearing. An application has been filed by McDonald's Corporation, 8 Rex Jones, 11880 College Blvd., Overland Park, Kansas, requesting a variance.

Pursuant to Section 2.12.590.B, of the Code of the City of Wichita, the applicant is requesting a variance to permit an increase in the permitted gross surface area of a pole sign from 257 square feet to 330 square feet on property zoned "LC" Light Commercial District. A legal description of the applicant's property is as follows:

Lot 2, Branson 2nd Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Rock Road and north of Harry.

This application has been assigned Case BZA 41-85. It will be considered by the Board of Zoning Appeals on July 23, 1985 at 1:30 p.m. in the Board Room, First Floor of City Hall, 455 North Main Street, Wichita, Kansas. If you have no interest or objections regarding the requested variance, you have no obligation to appear or comment. If you desire to appear at the Board meeting, you are invited to do so, either in person or by agent or attorney.

It should be noted that the Citizen Participation Organization Area Council may consider this case at its next meeting. Additional information about such a meeting may be obtained by calling the CPO Office, 268-4516.

if you have any questions about the application, please feel free to call the Wichita-Sedgwick County Metropolitan Area Planning Department at 268-4421.

Jack H. Galbraith
Secretary

BOARD OF ZONING APPEALS

CASE NO. 41-85

CITY OF WICHITA, KANSAS

FILED 6-24-85

APPLICATION FOR VARIANCE

I. Name of Applicant McDonald's Corporation
 Mailing Address Rex Jones, 11880 College Blvd. Overland Park, Ks 66210 Phone 913/492-0200
 Name of Authorized Agent EVERETT C. FETTIS
 Mailing Address 120 S. Market #504, Wichita, Ks Phone 267-7251
 Relationship of applicant to property is that of _____
 (Owner, Tenant, Lessee, Other)

II. The variance requested is to allow a variance in the square
foot area of a sign from 257 sq. feet to 330 sq. feet.

for property located on the west side of back boulevard south
Reek Road & Harry.

and legally described as: Lot 2 Branson 2nd Addn.
to City of Wichita

in the City of Wichita; and which is presently zoned LC.

III. The applicant herein, or his authorized agent, acknowledges:

- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
- b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 36-596) and that the appropriate fee is herewith tendered;
- c. That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.
- d. That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Applicant MCDONALD'S CORPORATION

Authorized Agent *Everett C. Fettes*
 EVERETT C. FETTIS

OFFICE USE ONLY: Received in Office of Secretary, Board of Zoning Appeals, 4:00 (p.m.), June 24, 1985 together with appropriate fee of \$150.00

Signed *H. Lytle*

Applicant requests a variance in the area of its sign located at Rock Road and Harry for the reason that the area limitation of said sign was improperly calculated and a permit was previously granted by the City of Wichita. That it was later discovered that the square foot area of said sign exceeds the area limitations.

That the variance requested arises from such condition which is unique to the property in question for the reason that the original calculations were based upon the need for a larger sign which was, in effect, mistakenly approved by the City.

Further, the sign also needs to be moved back five feet (5') because of the pipeline proximity. This is a change which was not originally provided for in this area and was not created by the actions of the applicant but by those of the pipeline company and a mistake set forth in the application.

That the properties along this area are all zoned commercial, and that this variance will not adversely affect the rights of property owners in this area.

That strict application of the provisions of Title 28 will constitute unnecessary hardship upon the property owner represented in this application because of the necessity to change the location of the sign and because of the need demanded by the application for the size of the sign.

That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, and that granting the variance desired will not be opposed to the general spirit and intent of Title 28.

LAW OFFICES
FETTIS & McCLURE
120 SOUTH MARKET
SUITE 504
WICHITA, KANSAS 67202
316-267-7251

OWNERSHIP LIST

Lot	Addition	Property Owner
Lot 1	Branson 2nd Addition	✓ James J. Hying ✓ Sherry F. Hying 16290 Tower Lane Wichita, KS 67230
Lots 2 & 3	"	D McDonald's Corporation 11880 College Blvd. Overland Park, KS 66210
East 163.22' of Lots 4 & 5	"	✓ Carl A. Nelson, Trustee of the Rebecca B. Rounds Living Trust #2, Robert S. Rounds Living Trust #2 & Steven C. Rounds Living Trust #2 660 Sutton Place 209 E. William Wichita, KS 67202
Lots 4 & 5, except the East 163.22'	"	✓ Longfellow-Ventures, a general partnership 3705 E. Douglas Wichita, KS 67218
Lot 5	Captain's 2nd Addition	✓ Keith a/k/a Keith L. Anderson ✓ Lois Anderson 6002 Grace Lane Wichita, KS 67208
Lot 2 & Lot 3, except the South 25' of the West 200'	Triple "J" Addition	✓ Woodlawn Properties 5900 E. Central Wichita, KS 67208
That part of Lots 3 & 4, Triple "J" Addition, Wichita, Kansas, described as beginning at the front corner common to Lots 4 & 5 in said Triple "J" Addition; th. East along the line common to said Lots 4 & 5 & extended a distance of 200'; th. North parallel with the West line of said Lots 3 & 4, 125.32' to a point 25' North of the South line of said Lot 3; th. West parallel with the South line of said Lot 3, 200' to the West line of said Lot 3; th. South 125' to beg., Sedg. Co., KS.		✓ K. Gregg Fuson Linda J. Fuson 343 S. Fountain Wichita, KS 67218
Lot 5	Triple "J" Addition	✓ Merle Jean Hefley & Harvey W. Hefley, Co-Trustees of Merle Jean Hefley Living Trust 8232 E. Douglas Wichita, KS 67206
North 100' of the South 275' of Lot 17, Blk. 4	Lynnecrest Heigh.s.	✓ Lori J. Gonzales 6443 S. Wilson Tempe, AZ 85283 AND ✓ Edythe S. Flynn 698 Wetmore Dr. Wichita, KS 67209

Page 2

We hereby certify the foregoing to be a true and correct list of the property owners of the hereinbefore described lots within a 200 foot radius of:

Lot 2, Branson 2nd Addition, Wichita, Kansas,
Sedgwick County, Kansas.

as shown by the last deed of record on file in the Office of the Register of Deeds, Sedgwick County, Kansas, on the 22nd day of April, 1985, at 7:00 o'clock A.M.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.

Mary Gable

By

Sr. Vice-President

Order No: 345749
ns

MICROFILMED
FROM THE BEST
AVAILABLE COPY

FORM 021

PAYMENT NOTICE
 City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Plbg	Exam Fees	Sewer	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.
	Planning		

DESCRIPTION	AMOUNT
City PWA Lic	\$100.00
NAME: Everett C. FORTIS	
ADDRESS: 1200 S. MILA W. K	
FUND: 155-60700-003	DUE DATE:
COMMENTS:	
DATE: June 24 1945	BY: [Signature]