

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. S-2736

PETITION OF DAVCO RESTAURANTS, INC.

OPINION OF THE BOARD

(Opinion Adopted: May 20, 2009)

(Effective Date of Opinion: May 29, 2009)

Case No. S-2736 is an application for a special exception, pursuant to Section 59-G-2.16 of the Zoning Ordinance, to permit a drive-through restaurant. The Hearing Examiner for Montgomery County held a hearing on the application on February 9, 2009, closed the record in the case on March 30, 2009, and on April 21, 2009 issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 22, George W Acorns Addition to Colesville Subdivision, located at the intersection of Randolph Road and Vital Way, Silver Spring, Maryland, 20904, in the C-1 Zone.

Decision of the Board: Special Exception **Granted** Subject
To Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on May 20, 2009. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in the Opinion of the Board of Appeals.
2. The Applicant must limit development on the property to a drive-in restaurant with 2,552 square-feet of floor area. The use may have no more than 917 square feet of indoor patron area, and there may be no more than 128 square feet of outdoor patron area.

3. The Applicant must provide 25 parking spaces on site.
4. The restaurant must not have more than 50 employees (including a manager), and not more than 10 employees on site at any given time.
5. The hours of operation for the restaurant are from 10:00 a.m. to 11:00 p.m., seven days a week, for the dining room, and 10:00 a.m. to 2:00 a.m., seven days a week, for the drive-through.
6. The adequacy of public facilities must be determined by the Planning Board at the time of subdivision review in this case. Therefore, subdivision approval is a condition of approval of this special exception.
7. Petitioner must meet the specifications of its revised site plan (Exhibit 59(a)) and provide streetscaping and landscaping as specified in its revised landscape plan (Exhibit 59(c)).
8. Petitioner may not post the signs it proposes until it obtains a permit therefore from DPS. A copy of the permit should be filed with the Board of Appeals. Any changes to the signage details shown on Exhibits 55, 59(a) and 59(b) must be submitted to the Board of Appeals for review following Site Plan Review by the Planning Board.
9. Petitioner shall keep dumpsters and outdoor storage areas for waste, fats, oils and grease covered and located so as not to impact upon the storm drain inlets.
10. Deliveries, trash pickup and recycling pickup must be scheduled outside of the peak traffic hours of 6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.
11. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with Walter S. Booth, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of May, 2009.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.