

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/board.asp](http://www.montgomerycountymd.gov/content/council/boa/board.asp)

**Case No. S-2664**

**PETITION OF DAVCO RESTAURANTS**

OPINION OF THE BOARD

(Opinion Adopted May 9, 2007)

(Effective Date of Opinion: June 1, 2007)

Case No. S-2664 is an application for a special exception, pursuant to the provisions of Section 59-G-2.16 of the Zoning Ordinance, to permit a drive-in restaurant. The application also requests waivers from the provisions of two parking regulations: Section 59-E-2.71 and Section 59-E-2.72. The Hearing Examiner for Montgomery County held a hearing on the application on December 4, 2006, closed the record on April 18, 2007, and on April 23, 2007, issued a Report and Recommendation for approval of the special exception.

The subject property is Lot N-621, Wheaton Plaza Subdivision, located at 11030 Veirs Mill Road, Silver Spring, Maryland, 20902, in the C-2 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 9, 2007. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception, and the requested parking waivers, 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 identified in the report and recommendation and in the opinion of the Board of Appeals.
2. Petitioner shall provide 23 parking spaces on site.

3. The special exception will operate with a maximum of 50 employees, up to 10 of whom may be present at the same time.
4. Petitioner must provide streetscaping and landscaping as specified in its revised site plan (Exhibit 64(a)) and its revised landscape and lighting plan (Exhibit 64(b)), including the full "Wheaton Streetscape" along street frontages, in accordance with the current Wheaton CBD Streetscape Standards.
5. Total interior floor space of the use is limited to 2552 square feet, no more than 917 square feet of which may be devoted to a patron area, and the structure should be designed in accordance with architectural plans submitted in this case.
6. The maximum hours of operation will be from 6:00 o'clock in the morning until 10:00 o'clock in the evening, with the drive-through window open until 2:00 o'clock in the morning, seven days a week.
7. Petitioner shall provide adequate security for the site's late night operation to ensure that there are no gatherings of large, unruly groups at the site. This security force may be provided by Petitioner and/or Westfield Shoppingtown.
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.
9. Petitioner shall submit an annual report to the Board of Appeals detailing any vehicle/pedestrian accidents on the site during the preceding year. The first such report shall be due one year after the use becomes operational. If no accidents have occurred, the annual report must still be filed, so indicating. These reports shall identify the date of any such on-site accident, the names of the involved parties, the nature of any injuries, the precise location of the accident, a brief description of the circumstances and a suggested remedy from Petitioner for any dangerous conditions that are revealed. Petitioner should attach a copy of related police accident reports to its filings. A copy of Petitioner's reports should also be filed with the Office of the People's Counsel and M-NCPPC's Transportation Planning Division, which shall submit remedial recommendations to the Board of Appeals within one month of receiving any report revealing one or more vehicle/pedestrian accidents. The Board shall retain jurisdiction over this matter to review these annual reports and determine what action, if any, is necessary to insure reasonable safety to pedestrians on the subject site.
10. Petitioner shall keep dumpsters and outdoor storage areas for waste, fats, oils and grease covered and located as far from the storm drain inlets as possible.

11. Petitioner should submit a fat, oil and grease (FOG) control plan outlining best management practices (BMPs), and a waste handling and reduction plan to M-NCPPC's Environmental Staff, prior to release of building permits.
12. In connection with the requested waivers from the requirements of Sections 59-E-2.71 and 59-E-2.72, which the Board has granted, Petitioner must provide a minimum 4-foot wide planting strip between the paved parking areas and the adjacent areas of the shopping center on Parcel 9.
13. 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 Catherine G. Titus, seconded by Wendell M. Holloway, with Donna L. Barron, Vice-Chair, Caryn L. Hines and Allison Ishihara Fultz, Chair in agreement, the Board adopts 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.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 1<sup>st</sup> day of June, 2007.

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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.