
IN THE MATTER OF THE
REVOCATION OF
APPEAL NO. 2019-400

Baltimore City Board of Municipal
& Zoning Appeals

5002-5004 York Rd
(BLOCK 5053D, LOT 33)



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Appeal No. 2019-400
Hearing Date: March 8, 2022

RESOLUTION

Background

This matter comes before the Baltimore City Board of Municipal & Zoning Appeals (“Board”), referred by the Zoning Administrator for Baltimore City under the provisions of City Code Article 32 § 5-409.

The Board held a public hearing on March 8, 2022, to take testimony on the question of whether the conditions, restrictions, or limitations imposed by the Board under the conditional use authorization to add a drive-through to the existing restaurant at 5002-5004 York Road (“the Property”) have been violated, and, if so, whether the authorization should be revoked. Notice of this hearing was sent to the owner and operator of the Property, AP Northeast Property, LLC (“Owner/Operator”). A Baltimore City housing inspector and several community members testified regarding the alleged violations of the Board’s conditions. No representative of the Owner/Operator appeared at the hearing or submitted any evidence for the Board’s consideration. Following deliberations and for the reasons set forth below, the Board voted to revoke the drive-through conditional use at the Property by a unanimous 5-0 vote.

Facts

Gregory Fox, Assistant Counsel to the Baltimore City Department of Housing and Community Development (DHCD), presented the case with David McGinnis, Director of Special Investigations for DHCD.

Mr. Fox proffered the following facts and submitted corroborating exhibits to the Board. At a public hearing on December 3, 2019, the Board approved a drive-through conditional use at an existing restaurant at the Property, subject to the conditions listed in an executed Memorandum of Understanding (MOU), signed by a representative of the Owner/Operator and a representative of the Radnor Winston Improvement Association (RWIA).¹ The Board incorporated the MOU’s conditions, restrictions, and limitations by reference into the Board’s written resolution dated January 6, 2020, approving the conditional use for the drive-through at the Property.

The MOU contains eighteen (18) conditions, but the conditions raised during the March 8, 2022 hearing were the following: (1) Litter control: The Owner/Operator agreed to litter control measures, including the installation of two trash cans near the customer parking area and one trash can in the drive-through area, as well as installing “no littering” signs. (2) Vehicle idling prevention: The Owner/Operator agreed to post “no idling” signs and to inform customers and

¹ Exhibit I, the Board’s resolution for Appeal Number 2019-400, with a copy of the MOU incorporated by reference and attached.

delivery drivers of the prohibition of idling vehicles on the premises. (3) Landscape Plan: The Owner/Operator agreed to install and maintain landscaping according to a Landscaping Plan agreed to by both parties.

On or around April 2021, community members complained to DHCD that the Owner/Operator of the Property was not following through on the conditions. The matter was referred to DHCD for investigation.

On April 28, 2021, Mr. McGinnis inspected the Property and documented his findings through the Baltimore City housing inspection log. The landscaped beds contained dead plants, and there were no outdoor trash cans or “no littering” and “no idling” signs.² McGinnis issued Violation Notice Number 1994433A to the Owner/Operator of the property on May 12, 2021, citing the violations of the conditions of the MOU that the inspector had seen on his visit.³ On May 25, 2021, McGinnis posted the notice of violation on the front door of the Property.⁴ When McGinnis attempted to give a copy of this violation notice to the manager on duty at the time, the manager refused to sign for it. Mr. McGinnis explained the situation to this manager and left his contact information with the manager.

On August 30, 2021, Mr. McGinnis inspected the Property a second time; the Property was in the same condition as his first visit, and the violations had not been cured.⁵ He issued a second violation notice, which was sent via first class and certified mail to the Owner/Operator of the Property

On November 2, 2021, Mr. McGinnis inspected the Property a third time, and the Property once again was in the same condition, and the violations had not been cured.⁶ He issued a third violation notice, which was sent via first class and certified mail to the Owner/Operator of the Property. DHCD then referred this matter to the Office of the Zoning Administrator.

On November 18, 2021, Zoning Administrator Geoffrey Veale sent a letter via first class and certified mail to the Owner/Operator of the Property, notifying them that there was an active Code violation at the Property, which the Owner/Operator would have thirty (30) days to correct before the matter was referred to the Board.⁷ A copy of this letter was sent to adjoining property owners and to RWIA, as required by City Code Art. 32 § 5-409(b). Mr. McGinnis brought the Zoning Administrator’s letter to the Property and posted it on the front door;⁸ he also gave a copy of the letter to the manager on duty.

On January 11, 2022, Mr. McGinnis made one final inspection of the Property, which was in the same condition as his prior visits. The violations had not been cured.⁹ McGinnis spoke with the manager again and told him that these violations could result in the permanent revocation of the drive-through use if they were not corrected. McGinnis testified that the manager told McGinnis that he had passed on McGinnis’s messages to his superiors and had not heard back from them.

On February 24, 2022, the Board sent notice of the March 8, 2022, scheduled hearing to the Owner/Operator via first class and certified mail.¹⁰ Mr. McGinnis personally served the

² Exhibits 2A-2G, photographs of the site taken by Mr. McGinnis on April 28, 2021.

³ Exhibit 3A.

⁴ Exhibits 3B and 3C, photographs taken by Mr. McGinnis on May 25, 2021.

⁵ Exhibits 4A-4I, photographs taken by Mr. McGinnis on August 30, 2021.

⁶ Exhibits 5A-5G, photographs taken by Mr. McGinnis on November 2, 2021.

⁷ Exhibit 6A.

⁸ Exhibit 6B-6E, photographs taken by Mr. McGinnis on November 18, 2021.

⁹ Exhibit 7A-7F, photographs taken by Mr. McGinnis on January 11, 2022.

¹⁰ Exhibit 8A.

resident agent for the Owner/Operator at their office located at 1811 N. Rolling Road, Baltimore, Maryland, 21244. The Board's notice was also posted at the Property on the front door.¹¹

Mr. Fox concluded that DHCD has provided ample evidence that the Owner/Operator has violated the conditions referred to in the Board's resolution and has failed to take corrective action or even respond to any of the city notices. There were four inspections, resulting in four violation notices and four conversations with employees. The Owner/Operator ignored all of these. Given the Owner/Operator's complete lack of communication or any attempt to improve the conditions at the site, Mr. Fox recommended, on behalf of DHCD, that the drive-through conditional use be revoked.

Several community members also testified that the Owner/Operator of the Property had initially been responsive to community feedback but had stopped responding to any community complaints after the Board granted the conditional use. Of the eighteen conditions that the Owner/Operator agreed to, the Owner/Operator only followed three.

The Owner/Operator did not appear at this hearing, nor was any evidence submitted in writing before or after the hearing in support of the Owner/Operator.

The Department of Planning did not provide comment on this matter.

Standard of Review

Notice from Zoning Administrator: Under City Code, Article 32 § 5-409, whenever the Zoning Administrator learns of a violation of a condition, restriction, or limitation imposed under this subtitle, the Zoning Administrator must attempt to resolve the violation informally and promptly. If the Zoning Administrator is unable to resolve the violation, the Zoning Administrator must issue a notice of proposed revocation to: the owners of record of the property, as shown on the tax records of Baltimore City; the persons to whom the conditional use approval was granted or the current operator; the owners of record of the properties immediately adjacent to the property; and the community, neighborhood, or improvement association listed with the Department of Planning for the area in which the property lies. The notice must specify the nature of the violation; and warn the recipient that, unless the violation is corrected within 30 days, or such other time as is specified in the notice, the matter will be referred to the Board for potential modification, suspension, or revocation of the conditional use.

Referral to the Board for public hearing: If the violation is not corrected within the time specified, the Zoning Administrator must forward the record of this matter to the Board and request the Board to schedule a hearing. On receipt of the request, the Board must promptly schedule the matter for a hearing, to be held as soon as practicable. If, after notice to the parties and an opportunity to be heard, the Board finds that a condition, restriction, or limitation imposed under this subtitle has been violated, the Board may take any one or a combination of the following actions: revoke the conditional use; suspend the conditional use subject to completion of corrective action or other condition set by the Board; or affirm the conditional use, subject to a schedule for corrective action, with provision for automatic termination if the schedule is not met. The Board's findings must be specifically documented in the record.

Discussion

After a thorough review of the file, evidence and testimony submitted in support of this application, the Board evaluated this application under the revocation standards found in City Code Article 32 and Maryland law.

¹¹ Exhibits 8B, 8C.

Notice: The Board found, first, that the Code's notice requirements found in City Code Article 32 § 5-409 to the Property Owner/Operator were met. A city inspector visited the property four times over ten months between April 2021 and January 2022, speaking to a manager on site during each visit and issuing a notice of violation after each visit. The Zoning Administrator also issued a notice of proposed revocation to the Owner/Operator of record of the Property, which specified the nature of the violation. The Zoning Administrator sent this notice to adjacent properties and the community association. The Board then sent notice of the March 8, 2022, hearing via certified mail and even had the notice hand-delivered to the resident agent for the Owner/Operator.

Violations of Conditions: Second, the Board found, by competent evidence, including testimony from Mr. McGinnis and photographs taken at the site, that the Owner/Operator of the Property had violated the conditions of the drive-through conditional use issued by the Board on January 6, 2020. There was uncontroverted evidence presented that the Owner/Operator had not followed the Landscape Plan agreed to by both parties; the Owner/Operator did not install the required number of trash cans or no littering signs; the Owner/Operator also did not install the required no idling signs. There was also undisputed evidence from nearby neighbors that the Owner/Operator at the Property regularly received late night and early morning deliveries, which are forbidden by the MOU. Because no representative of the Owner/Operator appeared at the hearing and or submit any evidence in writing, all of this testimony was undisputed in the record, and there was no evidence or testimony submitted in support of the Owner/Operator.

Outcome: Third, the Board then deliberated about what the consequences of the Owner/Operator's violation of the conditions should be. There are three options listed in the Code: revocation, suspension, or continuation of the use subject to a corrective action plan. The DHCD counsel and the community members present at the virtual hearing requested that the Board revoke the use, due to the complete lack of response from the Owner/Operator to all efforts to communicate. The Board unanimously concluded that, because the Owner/Operator had shown no inclination to improve or to communicate with anyone involved, from city officials to community residents and leaders, that a revocation of the use was appropriate, and the Board voted unanimously to revoke the drive-through conditional use.

Conclusion

For the reasons set forth above, and after giving public notice, reviewing the zoning records, holding a public hearing, considering all data submitted, and by authority of City Code Article 32, it is this 19th day of April, 2022, by the Baltimore City Board of Municipal and Zoning Appeals, hereby:

RESOLVED, that the Board finds sufficient evidence in the record to support the revocation of the drive-through conditional use authorized in its January 6, 2020 resolution for Appeal No. 2019-400; and it is further,

RESOLVED, that the drive-through conditional use granted by Appeal No. 2019-400 is **REVOKED**, as of ten (10) calendar days from the date of this Resolution, or April 29, 2022

DO NOT START WORK OR USE THE PROPERTY UNTIL YOU OBTAIN A BUILDING OR A USE & OCCUPANCY PERMIT FROM THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT. YOU HAVE ONE YEAR FROM THE DATE OF THIS RESOLUTION TO OBTAIN A BUILDING PERMIT OR A USE & OCCUPANCY PERMIT.



Kathleen Byrne
Acting Executive Director



