

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

Re: In re McDonald's Corporation, Rutland, Vermont
Land Use Permit #1R0477-5-EB

MEMORANDUM OF DECISION ON MOTION TO ALTER

I. Introduction

Pending before the Environmental Board is a Motion to Alter filed by McDonald's Corporation ("Permittee"), which seeks to amend Condition 3 of Land Use Permit #1R0477-5-EB issued by the Board on December 7, 2000.

For the reasons stated below, the Board denies the motion.

II. Procedural History

The procedural history of this matter up to December 7, 2000 appears in *In re McDonald's Corporation, Rutland, Vermont, #1R0477-5-EB*, Findings of Fact, Conclusions of Law, and Order at 1-2 (Dec. 7, 2000).

On December 7, 2000, the Board issued Land Use Permit #1R0477-5-EB ("Dash 5 EB Permit") and accompanying Findings of Fact, Conclusions of Law, and Order.

On January 8, 2001, the Permittee filed a Motion to Alter, seeking to amend certain aspects of Condition 3 of the Dash 5 EB Permit.

On January 23 and 24, 2001, Earl and Pauline Richardson, parties to the Dash 5 EB Permit proceeding, filed a response to the Permittee's motion.

The Board deliberated on the motion on January 24, 2001.

III. Discussion

Condition 3 of the Dash 5 EB Permit states:

On or before March 1, 2001, the Permittees shall submit a landscaping plan to the District 1 Environmental Commission for the Commission's review and approval, for the planting and maintenance of a hedge, or other such evergreen vegetation, sufficient to entirely screen views of the restaurant from properties to its north. Planting shall be completed at the earliest feasible date, but in any event no later than June 1, 2001.

The Permittee asks the Board to alter Condition 3 to allow the Commission the flexibility and discretion to approve "a landscaping plan that adequately buffers the project in light of all of the circumstances." *Motion to Alter at 2.*

The Permittee argues that "full screening" is unreasonable, because the planting of evergreens of a height sufficient to immediately screen the roof is too expensive. The Permittee argues second that "full screening" is unnecessary because "landscaping plans that buffer, soften and distract the eye" should be favored over vegetative barriers. Third, the Permittee asks that some time frame should be allowed for the evergreens to grow, rather than require that a full screen be in place on June 1, 2001. *Id at 3.*

The Permittee also requests the Board to modify Condition 3 to require that the evergreen vegetation screen views of the restaurant only from the Richardson and Jones homes and not from all properties to its north. *Id. at 4.*

Lastly, the Permittee asks, if it chooses to or cannot meet the landscaping requirements of Condition 3, as an alternative, to meet such requirements by "returning to earth tone colors on the north roof of the building." *Id. at 5.*

In the Findings of Fact, Conclusions of Law, and Order which accompanied the Dash 5 EB Permit, the Board noted that the initial permit issued to the Permittee for this restaurant, Land Use Permit #1R0477 ("Original Permit"), includes Condition 15, which reads:

If the buckthorn trees planted along the northern perimeter of the parking area do not spread and join to fill in and form a dense hedge by September 1, 1984, they shall be replaced with or supplemented by evergreens before the end of the fall planting season of 1984. Plans for any necessary revisions of the "hedge" must be submitted to the District Environmental Commission for review, possible modification and approval prior to planting.

The Board further noted that the planting of the hedge was an important part of the Commission's decision to grant the said permit:

Mr. Coughlin, operator of this and other McDonald's, has won awards for landscaping one of his other McDonald's facilities. He plans to add planting annually. He will replace any landscaping which does not survive. The Rutland Zoning Board required the planting of a "hedge." The Commission finds a "hedge" is necessary to screen the development from nearby

properties and will condition this permit to insure adequate landscaping on the perimeter of the development.

McDonald's Corporation, 1#R0477, Findings of Fact, Conclusions of Law, and Order at 8 (March 16, 1983).

The Board found that the hedge required by Condition 15 of the Original Permit was "only partially carrying out the function for which it was planted" as the restaurant's new red roof and repainted walls were visible over the top of and through the hedge. While this failure was not noticeable when the restaurant was painted with earth tone colors, with the repainted roof, "this failure is apparent." This was the impetus for the screening requirements of Condition 3 of the Dash 5 EB Permit. *McDonald's Corporation, Rutland, supra, at 22-23.*

The Board sees no reason to alter Condition 3.

The Board's intent in Condition 3 is to insure full compliance with the terms of Condition 15 of the Original Permit. The hedge that was required 17 years ago is even more of a necessity today, and the Permittee provides no sound arguments for the Board to step back from the requirements of the Original Permit.

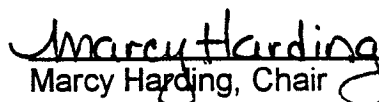
It is not the Board's intent, however, to dictate to the Commission the specifics of the hedge. Condition 3's language which requires the Permittee to submit plans for the Commission's "review and approval" leaves all questions as to the extent, nature and timing of the screen (and any other alterations to the restaurant's exterior) to the discretion of the Commission or the District Coordinator, as the case may be.

IV. Order

The Permittee's Motion to Alter is denied.

Dated at Montpelier, Vermont, this 2nd day of February 2001.

ENVIRONMENTAL BOARD



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