

IN THE MATTER OF : BEFORE THE

CHICK-FIL-A : HOWARD COUNTY

Petitioner : BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 13-020C

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DECISION AND ORDER

On September 26, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, the Hearing Examiner heard the petition of Chick-fil-A to modify Condition No. 1 of the original Decision and Order BA 99-13E&V to permit an addition to an existing fast food restaurant and increase the Conditional Use area by approximately 0.20 acres, in a B-1 (Business: Local) Zoning District, filed pursuant to Section 131.H.4 of the Howard County Zoning Regulations (the Regulations).

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

William Erskine, Esquire, represented the Petitioner. Andrew Stine and Joe Dinoto testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property has frontage on MD 100 (with no direct access) and Executive Park Drive, It is located in the 2nd Election District and referenced as Tax Map 30, Grid 12, Parcel 406, Lot P-1 (the Property). The Property has a street address of 4905 Executive Park Drive.

2. Property Description. The generally rectangular Property is located to the south and southwest. The Narrative attached to the petition states the original decision and order identified the Property as 1.074 acres in size. During a later subdivision of two parcels, including the subject parcel, the Property was enlarged to 1.27 acres. The Property is the site of a Chick-fil-A restaurant approved under Board of Appeals Case No. BA 99-013E&V. There is access from Executive Park Drive via a wide private road located in the Property's southwest corner. This entrance becomes a combined vehicle circulation lane and angled perimeter parking area. A drive-through service lane wraps around the rear of the building to the pickup area on the north side. The main parking lot exit is located in the Property's northwest corner.

3. Vicinal Properties. The properties to the north, west, and south are zoned POR (Planned Office Research). To the Site's north, across Executive Park Drive, is a Bob Evans restaurant. To the west is a one-story brick building. Directly east is the elevated MD Route 100. To the northwest is an R-A-15 (Residential: Apartments) townhouse development. It does not adjoin the Property.

4. Roads. Executive Park Drive has two travel lanes and a westbound left turn lane into the Property. There is about 43 feet of paving within an existing 60-foot wide right-of-way.

The posted speed limit is 30 MPH.

5. General Plan. PlanHoward2030 designates the Property as an Established Community on the Designated Place Types Map and as Retail on the Land Use Map. The Transportation Map designates Executive Park Drive as a Major Collector.

6. The Petition Request. The Petitioner proposing to construct an addition onto the rear of the restaurant, an approximately 759-square foot enlargement of the commercial kitchen, including a larger cooler and freezer, multi-purpose use areas and an office. The petition Narrative also states a later subdivision created a total Property area of 1.274 acres; therefore, Petitioner is also requesting that the Conditional Use area be enlarged to account for the true lot area.

7. Mr. Stine testified that existing landscaping would be maintained except for a very small section to accommodate a Fire Department connection. No lighting changes are proposed. Some 22 percent of the land will be landscaped. The outside ordering speakers will be located along the Route 100 façade, away from residentially zoned land, and not audible. He also introduced into evidence as Petitioner's Exhibit 1 a parking survey depicting parking counts during peak hours of operation. According to the survey, about 97 percent of all parking spaces are in during Saturday peak hours.

8. Mr. Dinoto, the Chick-fil-A operator, testified that the expansion is intended to increase the size of the kitchen, make the food preparation more efficient, and accommodate an office. The increase will not result in an increase in staffing nor will it increase the customer

service area.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows.

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires the Hearing Examiner to evaluate whether the proposed enlargement of an approved conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In Howard County, the Zoning Regulations provide two policy standards by which to evaluate harmony with the General Plan.

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

The proposed small addition and subsequent increase in Conditional Use Area will not change the nature and intensity of the existing fast food restaurant use and no change to the access is proposed. The fast food restaurant is the sole use on the site.

B. Adverse Effect

Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

The assessment of a proposed conditional use under these criteria recognizes the potential for adverse impact from virtually every human activity. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in a B-1 zoning district. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception (conditional) use irrespective of its location within the zone. People's Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 956 A.2d 166 (2008); Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981); Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and subject to appropriate conditions of approval, the Hearing Examiner concludes the Petitioner has met its burden under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with an expansion of a fast food restaurant.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The proposed addition will involve a predominately-indoor use. The outdoor service/ordering speaker system will be located closer to Route 100, the roadbed of which sits

several feet above the Property, and there is no indication that this location will have an adverse impact on the residential properties to the northwest. There is no evidence of inordinate noise, dust, fumes, odors or vibrations.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

With the exception of a very small section of existing landscaping to be removed per the fire code, the landscaping will remain the same as approved in Board of Appeals Case No. 99-13E&V. The proposed addition therefore will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

There are 63 parking spaces and 70 are required. Petitioner's parking survey (Exhibit 1) indicates that parking is tight during Saturday peaking hours. The TSR concludes additional parking spaces are unnecessary because the addition does not enlarge the customer seating area. On balance, in the Hearing Examiner's view, the increase in kitchen efficiency resulting from the addition will facilitate customer turnaround times, with the result that parking spaces will open up more quickly. For these reasons, the Hearing Examiner concludes the parking area

will be of adequate size to serve the expanded Conditional Use without atypical adverse impacts on adjacent properties. The loading areas, driveways and refuse area are unchanged.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing ingress and egress drives have served the existing fast food restaurant for many years and will continue to provide safe access, with adequate sight distance.

II. Specific Criteria for Fast Food Restaurants (Section 131.N.21)

A conditional use may be granted for a fast food restaurant in the B-I, M-I or M-2 Districts, provided that:

a. At least 20 percent of the site area will be landscaped. The landscaping plan must include plantings which enhance the appearance of the site from public roads and provide buffering for adjacent uses.

Approximately 22 percent of the site area will remain landscaped, as was approved under BA 99-13E&V and as approved on the Site Development Plan. The petition accords with Section 131.N.21.a.

b. The petition demonstrates that noise generated by speakers for drive-through service lanes will not be audible from residentially zoned land.

The drive-through service lane is located on the eastern side of the Conditional Use site, a substantial distance from the residentially zoned land to the northwest and is buffered by the restaurant building and landscape, in accordance with Section 131.N.21.b.

c. If the site borders a residential district:

(1) A detailed lighting plan must be approved by the Hearing Authority.

(2) Solid walls such as masonry or wood and masonry may be required by the Hearing Authority. When solid walls are required, landscape planting is required between the wall and the property line.

The Property does not adjoin a residential district. This section is inapplicable.

ORDER


Based upon the foregoing, it is this 7th day of October 2013 by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Chick-fil-A to modify Condition No. 1 of the original Decision and Order for BA 99-13E&V to permit an addition to an existing fast food restaurant and increase the Conditional Use area by approximately 0.20 acres in a B-1 (Business: Local) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed enlarged fast food restaurant as described in the petition and as depicted on the Conditional Use Plan and not to any other activities, uses or structures on the Property.
2. The Petitioner shall comply with comments from the Department of Fire and Rescue Services on the Site Development Plan.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.