

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(6503 Baltimore National Pike)	*	OFFICE OF
1st Election District		
1st Council District	*	ADMINISTRATIVE HEARINGS
Combined Properties Limited Partnership	*	FOR BALTIMORE COUNTY
	*	
<i>Legal Owner</i>		
	*	<b>Case No. 2021-0130-SPHA</b>
Chick-Fil-La		

*Contract Purchaser/Lessee*

**Petitioners**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Combined Properties Limited Partnership, legal owner and Chick-Fil-La, Contract Purchaser/Lessee, Petitioners. The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 4A02.4.G to allow the redevelopment of the subject property within the Rolling Road and Route 40 traffic shed (if necessary). Replacement of an existing freestanding enterprise sign for a pad site. In addition, a request for variance relief from BCZR § 409.6 to allow a total of 993 off-street parking spaces in lieu of the required 1,215 parking spaces.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted.

A Substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”), they did not oppose the relief subject to proposed conditions, which will be incorporated into the Order. The Department

of Planning (“DOP”) also submitted a ZAC comment opposing the special hearing relief due to the failing traffic intersection at Rte. 40 and Rolling Road.

Brent Edmiston, an official from Chick-Fil-la, Inc., appeared at the hearing. Christopher Mudd, Esquire represented the Petitioner. Andrew Stine of Bohler Engineering also appeared and was accepted as an expert in engineering and in the BCZR. The redlined site plan he prepared was admitted as Petitioner’s Exhibit 1. Also in attendance was Carl Wilson, an engineer and traffic engineer. He too was accepted as an expert in traffic engineering and the BCZR. Rebecca Scharf, a neighborhood resident also attended and voiced her opposition to the project because of traffic and parking concerns. She also voiced her opposition to some of Chick-fil-A’s political positions. A letter was also received from the Westerlee Homeowner’s Association supporting the project provided that certain improvements were made by the developer.

#### RECORD EVIDENCE

The property is approximately 18 acres and is zoned BR-AS. Mr. Mudd explained that the proposed project is to raze the existing Applebee’s restaurant on the site and replace it with a Chick-fil-A restaurant. Mr. Mudd acknowledged that the site is within the failing traffic shed of the Rte. 40 and North Rolling Road intersection. However, he contended that the project met the exception found at BCZR Section 4A02.4.G.1.

Mr. Stine explained the site plan in detail, including the fact that this is a pad site within the meaning of the BCZR and therefore is entitled to maintain the existing free-standing sign from the Applebee’s – to be replaced of course with a Chick-fil-A sign. This sign will conform to all BCZR requirements. Stine also testified that there is more than the required number of stacking spaces for the drive-thru windows and that the drive-thru traffic will not impact the existing traffic on eastbound Rte. 40. He and Mr. Mudd also noted that the site has been found to be unique in

numerous prior zoning decisions. These cases are documented in the zoning history on the site plan. Mr. Stine explained that his site visits and studies establish that there is more than adequate parking at the site and the adjoining shopping center lot, and that in his expert opinion the variance relief was within the spirit and intent of the BCZR and would not harm the public health, safety or welfare.

Mr. Wilson then addressed the traffic issue in detail. The traffic impact study that he produced was admitted as Petitioner's Exhibit 9. Wilson explained that the cause of the Rte. 40 and Rolling Road's "F" grade is primarily the southbound traffic on Rolling Road as it intersects Rte. 40. Page 2 of Appendix A to his report confirms that this aspect of the intersection has a 100% load cycle from 7:00 a.m. to 8:00 a.m. However, as Wilson further explained and as the same chart confirms, the eastbound traffic on Rte. 40 as it intersects Rolling Road has only a 19% load cycle. And this is the traffic flow that will be primarily impacted by the proposed Chick-fil-A. He also demonstrated that the southbound traffic on Rolling Road has a dedicated right turn only lane that is uncontrolled by the traffic light at the intersection so any vehicles going from that direction to the Chick-fil-A would be unencumbered by the traffic backed up to turn left onto Rte. 40 or going straight through on Rolling Road. *See*, Exhibit 9, p. 9. In sum, in his expert opinion the expected traffic impacts from the proposed Chick-fil-A will be "less than that assumed by the district standard" and the project is therefore entitled to the BCZR §4A02.4.G.1.a exception. He also confirmed that there are no other pending development proposals within this traffic shed and therefore this approval would have no adverse impacts within the meaning of BCZR §4A02.4.G.1.b.

As noted above, Rebecca Scharf, a neighbor from one of the communities across Rte. 40 from this site also testified. She described the existing traffic and parking issues in the vicinity and

voiced her belief that the proposed Chick-fil-A would exacerbate these problems. She also criticized Chick-fil-A's corporate culture and stance on societal issues such as the LGBTQ movement.

### DECISION

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

As noted above, this site has been found to be unique in a zoning sense in several prior cases. Since the site has not changed in any substantial way I am bound by those prior findings. I find that the Petitioner would suffer practical difficulty and hardship if the variance relief was denied because they would be unable to proceed with their project. I further find that the variance is within the spirit and intent of the BCZR and that it will not harm the public health, safety or welfare. Indeed, this proposed restaurant is simply replacing an existing restaurant.

I also find that the special hearing relief should be granted. The un rebutted testimony of Mr. Wilson, the traffic engineering expert, is that the proposed Chick-fil-A will have minimal impacts on the traffic in the vicinity and that it meets the requirements of BCZR §4A02.4.G.1.a. While I appreciate Ms. Scharf's concerns, and may well share her feelings about Chick-fil-A's corporate policies, I certainly cannot and would not deny them zoning relief on that basis.

THEREFORE, IT IS ORDERED this 18<sup>th</sup> day of **June 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR § 4A02.4.G to allow the redevelopment of the subject property within the Rolling Road Route 40 traffic shed (if necessary). Replacement of an existing freestanding enterprise sign for a pad site is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Variance from BCZR, § 409.6 to allow a total of 993 off-street parking spaces in lieu of the required 1,215 parking spaces is hereby **GRANTED**

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
- Petitioners must comply with the DEPS ZAC comment, a copy of which is attached hereto and made a part hereof.
- Petitioners shall obtain approval of a landscape plan from the Baltimore County Landscape Architect.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

PMM/dlm

Signed  
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PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County