

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of York Road, 30' S of SW		
Corner of c/line of Industry Lane	*	OFFICE OF ADMINISTRATIVE
8 th Election District		
3 rd Council District	*	HEARINGS FOR
(10142 York Road)		
	*	BALTIMORE COUNTY
The A. Berman Family, LLC,		
<i>Legal Owner</i>	*	CASE NO. 2012-0123-A
Chick-fil-A, Inc., <i>Contract Purchaser/Lessee</i>		
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the subject property, The A. Berman Family, LLC, and Chick-fil-A, Inc., contract purchaser/lessee, (“Petitioners”), by and through their attorney, David H. Karceski, Esquire with Venable, LLP. Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) or Zoning Regulations (“Zoning Regulations”) as follows:

- Section 409.6 to permit 228 off-street parking spaces in lieu of the required 250 parking spaces, and
- Section 409.10.B to allow drive-through lanes to cross pedestrian access from off-street parking spaces to the building.

The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

David Karceski, Esquire, appeared at the requisite public hearing as attorney for Petitioner. Also appearing in support of the requested relief were: Rex Powell and Mike Hutton, on behalf of Petitioner; Joseph Ucciferro, P.E., with Bohler Engineering, the engineer who prepared the site

plan; and Mark Keeley, a transportation planner with Traffic Concepts, Inc. The file reveals that the Petition was properly advertised and the property was properly posted as required by the Baltimore County Zoning Regulations. No Protestants or other parties were present, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the State Highway Administration (SHA), dated November 14, 2011, and from the Bureau of Development Plans Review (DPR), dated November 18, 2011, confirming that neither reviewing agency has an objection to the requested variances. No other ZAC comments were received in this case.

Testimony and evidence revealed that the subject property is comprised of 4.07± acres of land, located at the intersection of York Road and Industry Lane in the Cockeysville area of Baltimore County. The property is a single parcel of land, split-zoned M.L.-I.M. (Manufacturing, Light – Industrial, Major) and B.R.-I.M. (Business, Roadside – Industrial, Major), and is improved with two motel buildings, a one-story strip retail building, and a Chick-fil-A restaurant equipped with a single customer drive-through lane. The subject of the public hearing in this case is the existing Chick-fil-A restaurant and the request to add a second drive-through lane.

Petitioner's Exhibit 1 and a site photograph accepted into evidence as Petitioner's Exhibit 6 indicate the location of the existing drive-through lane and corresponding vehicle stacking spaces along the north side of the restaurant building. Petitioner's Exhibit 6 also shows the location of seven existing off-street parking spaces within the restaurant lease area to be eliminated for construction of the second drive-through lane. According to Mr. Hutton, franchisee for this restaurant, more than fifty percent (50%) of the restaurant's customers are now served by the existing drive-through lane. Due to the volume of customers served in this manner, customers

that would otherwise use drive-through service, are parking and entering the restaurant for over-the-counter service. Construction of the second-drive through lane would accomplish more efficient service to Mr. Hutton's patrons and lessen the demand for parking spaces. Petitioner's Exhibit 7 is a set of photographs that indicate the typical layout for a Chick-fil-A restaurant with dual drive-through lanes. According to Mr. Powell, Petitioner's Construction Manager, it is this typical layout that Petitioner plans for the subject site.

Due to existing site constraints, Petitioner is not able to construct the second drive-through lane and, at the same time, provide on the subject property the number of off-street parking spaces required by the parking regulations contained in B.C.Z.R. Section 409. Additionally, due to these same constraints, Petitioner is not able to construct the additional drive-through lane in a location that would otherwise comply with Section 409.10.B of the parking regulations without the need for a variance.

Petitioner's witnesses explained that the requested variances will allow the restaurant to better serve its customer base. At the same time, there will continue to be adequate off-street parking within the Chick-fil-A lease area alone as well as for the overall commercial center. Petitioner's transportation planner, Mr. Keeley, conducted a traffic analysis during the peak afternoon and evening hours for the Chick-fil-A restaurant on multiple days. His findings revealed that there would continue to be more than adequate off-street parking with the addition of a second drive-through lane. Mr. Ucciferro, Petitioner's professional engineer, also visited the site on multiple occasions and concurred with Mr. Keeley's findings.

Therefore, I find that the variance requested can be granted in strict harmony with the spirit and intent of the said regulations, and in such a manner as to grant relief without injury to the public, health, safety, and general welfare. In all manner and respect, the variance requested meet

the requirements of Section 307 of the B.C.Z.R. as well as those requirements established in *Cromwell v. Ward*, 102 Md. App. 691 (1995) and *McLean v Soley*, 270 Md. 208 (1973).

Moreover, I find that, due to these unique conditions, strict enforcement of the B.C.Z.R.'s parking regulations and the B.C.Z.R. provision related to drive-through lane location (Section 409.10.B) would cause the Petitioner to suffer a practical difficulty as it would not be able to add a second drive-through lane. The purpose of Section 409 of the B.C.Z.R. is to provide for an adequate amount of off-street parking and to allow for proper on-site vehicular circulation. With the site improvements proposed by Petitioner, there will continue to be more than adequate parking within Petitioner's lease area to serve the Chick-fil-A restaurant and the larger commercial center as a whole. Additionally, the vehicle circulation patterns within Petitioner's lease area, with the second drive-through lane, will remain as they now exist on the site and will continue to function adequately.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Moreover, I find that strict enforcement of the B.C.Z.R. would cause the Petitioners to suffer practical difficulty and undue hardship.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 1st day of February, 2012 by this Administrative Law Judge that Petitioner's Variance requests from the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- Section 409.6 to permit 228 off-street parking spaces in lieu of the required 250 parking spaces, and
- Section 409.10.B to allow drive-through lanes to cross pedestrian access from off-street parking spaces to the building,

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner shall submit a landscape plan for the lease area for the Chick-fil-A restaurant to Avery Harden, the County's landscape architect, for review and approval prior to issuance of building permit.

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

Signed
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:dlw