

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(5198 Campbell Blvd.)</b>		
14 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
Retail Properties Business Trust	*	HEARINGS FOR
<i>Legal Owner</i>		
Chick-Fil-A, Inc.	*	BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	<b>CASE NO. 2016-0011-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Retail Properties Business Trust, the legal owner of the subject property, and Chick-Fil-A, Inc., Lessee (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§ 409.6 and 409.10.B (1) to allow 66 off-street parking spaces in lieu of the required 80 parking spaces; and (2) to allow a drive-thru lane to cross principal pedestrian access to the building, if necessary. The subject property and requested relief is more fully depicted on the site plan that was marked as Petitioners’ Exhibit 1.

Rex Powell of Chick-Fil-A appeared in support of the petition. David H. Karceski, Esq. represented the Lessee. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. There were no substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is approximately 1.3 acres and is zoned BM. The property is improved with a Chick- Fil-A restaurant which has operated at the location for over ten years. The restaurant plans to add a second drive-thru lane and construct a small addition to the kitchen and storage areas, as shown on the site plan. Exhibit 1. To do so zoning relief is required.

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test. The pad site on which the restaurant is located is part of an overall White Marsh Community plan, a sprawling land area with many different uses and owners. Exhibit 6. In addition, the White Marsh Run is adjacent to the site which imposes a variety of environmental constraints upon the property. Therefore, the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they could not construct the proposed improvements. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 1<sup>st</sup> day of October, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") §§ 409.6 & 409.10.B: (1) to allow 66 off-street parking spaces in lieu of the required 80 parking spaces; and (2) to allow a drive-thru lane to cross principal pedestrian access to the building, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:slh