

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND OFFICE OF
THE ZONING HEARING EXAMINER**

**APPLICATION TO AUTHORIZE THE ISSUANCE OF A BUILDING PERMIT IN
CONJUNCTION WITH DETAILED SITE PLAN**

DECISION

Request:	Authorization to Issue Building Permit for Structures within a Proposed Right-of-Way
Applicant:	Chick-Fil-A, Inc.
Opposition:	None
Hearing Date:	May 30, 2018
Examiner:	Joyce B. Nichols
Recommendation:	Approval

NATURE OF REQUEST

- (1) The instant Application is for authorization to construct 22 parking spaces, a drive aisle, a retaining wall and a required Landscape Strip within the proposed right-of-way for A-61, a proposed arterial service road until such time as Crain Highway (US 301) is upgraded to an expressway, Upper Marlboro, Maryland. (Exhibit 3) The Applicant has also submitted a Detailed Site Plan (DSP-18019) (Exhibit 6) for an eating and drinking establishment (Chick-FilA) to the Planning Board for its review. The subject property consists of approximately 5 acres of land in the I-1 (Light Industrial) and I-2 (Heavy Industrial) Zones, Lot 2, Block A in the Chrysler Realty Subdivision located on the west side of Crain Highway (US 301) at its intersection with Chrysler Drive, also identified as 5301 Southwest Crain Highway, Upper Marlboro, Maryland. The Applicant has leased approximately 1.46 acres of the subject property for development of an eating and drinking establishment (the subject site).
- (2) No one appeared in opposition to the request.
- (3) At the conclusion of the evidentiary hearing the record was closed on June 1, 2018.

FINDINGS OF FACT

- (1) The subject property is currently improved with a single story structure utilized as a vehicle repair facility. The subject site is improved with an asphalt parking lot and is located almost entirely within the 100-year floodplain.

(2) The Applicant is proposing to develop the subject site with a 4,889 square foot eating and drinking establishment with drive-through service. The building will be located on the northern portion of the site adjacent to Chrysler Drive. The Applicant is also proposing to provide 54 parking spaces and one loading space, a retaining wall, and required landscaping.

(3) The 1993 Approved Subregion 6 Master Plan and Sectional Map Amendment designates A-61 as an arterial service road until such time as Crain Highway (US 301) is upgraded to an expressway. Crain Highway (US 301) is ultimately proposed to be upgraded to a 6 to 8 lane freeway with a parallel arterial roadway. The Master Plan recommends that the Crain Highway (US 301) freeway be located along most of the existing US 301 right-of-way or relocated for short distances to avoid or minimize impacts. The local functions provided by the existing Crain Highway (US 301) will be maintained by parallel arterial roadways designated as A-61 and A-62.

(4) The Subregion 6 Master Plan and Sectional Map Amendment, adopted by the District Council on July 24, 2013, designates the proposed A-61 arterial road as following the alignment of existing Crain Highway (US 301), with an “interchange” of the realigned F-10 freeway, the extension of E-6 (Largo Road) and F-61 (Pennsylvania Avenue/MD Route 4) located approximately 1,000 feet east of the existing interchange of Crain Highway (US 301) with Pennsylvania Avenue (MD 4). (Exhibits 12(c) and (d))

(5) The Countywide Master Plan of Transportation, adopted by the District Council in 2009, at Map 27, also delineates the configuration of the A-61 as following the alignment of existing Crain Highway (US 301). (Exhibit 12(e))

(6) PG Atlas, a GIS land planning tool which, while being an excellent tool for planning purposes, has no legal force or effect. PG Atlas is frequently updated and digitally modified by a variety of operators. PG Atlas depicts the location of the A-61 to the west of the alignment adopted by the District Council in the Master Plan of Transportation and the Subregion 6 Master Plan and Sectional Map Amendment. PG Atlas shows the A-61 alignment to be west of the current Crain Highway (US 301) and on the subject site. (Exhibits 12(a) and (b))

(7) The Greater Upper Marlboro Revitalization and Development Strategy (Exhibit 13) also depicts the A-61 as coterminous with the existing Crain Highway (US 301). The 2013 Subregion 6 Master Plan and Sectional Map Amendment, at pages 92 and 93, incorporates by reference this Revitalization and Development Strategy. (Exhibit 14)

APPLICABLE LAW

(1) Pursuant to §27-259(g)(1) of the Zoning Ordinance, the District Council may authorize the issuance of permits for structures located within a proposed right-of-way shown on an approved Master Plan if it finds:

(g) Criteria for approval.

- (1) The District Council shall only approve the request if it finds that:
- (A) The entire property cannot yield a reasonable return to the owner unless the permit is granted;
 - (B) Reasonable justice and equity are served by issuing the permit;
 - (C) The interest of the County is balanced with the interests of the property owner; and
 - (D) The integrity of the Functional Master Plan of Transportation, General Plan, and Area Master Plan is preserved.

CONCLUSIONS OF LAW

(1) DSP-18019 shows 22 parking spaces, a drive aisle, a retaining wall and landscape strip all located within the A-61 proposed right-of-way as depicted on PG Atlas but not within the A61 right-of-way as adopted by the District Council in the Master Plan of Transportation or in the Subregion 6 Master Plan and Sectional Map Amendment.

(2) According to PG Atlas the right-of-way for A-61 occupies approximately 9,800 square feet of the subject property and if these improvements were to be relocated outside of the proposed right-of-way it would be difficult to develop and utilize the subject property as proposed. The construction of the proposed pylon sign and portions of the proposed parking, vehicular access, site lighting, storm drainage/stormwater management facilities, and the retaining wall and grading which are necessary to raise the proposed building and parking areas out of the 100-year floodplain are alleged by PG Atlas as to be within the A-61 right-of-way. As testified by the Applicant's engineer, the relocation of the stormwater management facilities which are necessary to raise the building site out of the 100-year floodplain would leave no viable area for the construction of a building. §27-259(g)(1)(A)

(3) The proposal for A-61 has been planned for over 25 years and remains unfunded with little or no progress in bringing A-61 into existence. During this time there have been no improvements made to upgrade Crain Highway (US 301) to freeway status or to convert the current Crain Highway (US 301) to an arterial road. It would be inequitable to continue to burden the subject property and property owner with a proposed right-of-way which is no closer to construction than it was 25 years ago. Additionally, given the restrictions arising out of the 100-year floodplain's presence and the associated mitigation measures, the site is not developable without the issuance of a permit for construction in a proposed right-of-way, as insufficient area remains on the site on which a building could be constructed after the construction of those flood-related improvements. §27-259(g)(1)(B)

(4) The proposed redevelopment will balance the interest of the County with that of the property owner as follows:

1. The County will benefit by the receipt of increased property taxes during the tenure of Applicant's use of the future right-of-way area. The term of this use is likely to be substantial: The freeway realignment and upgrade project is not even included in the current 2018-2023 Consolidated Transportation Plan other than as a corridor-

wide study, and the furtherance of the project was not one of the County's priorities in its most recent available MDOT Priority Letter. (Exhibit 22)

2. The published Master Plan Maps indicate that the A-61 arterial component of US 301 is, in the area of the subject site, planned to use the existing alignment of US 301. When the plat for the Home Depot and Wendy's site was recorded in 2003, no additional right-of-way was required to be dedicated or reserved.
3. The interests of the property owner will be served by the grant of the subject permit Application.

§27-259(g)(1)(C)

(5) The integrity of the 2013 Approved Subregion 6 Master Plan will be preserved since it supports efforts to focus efforts on strengthening existing commercial and concentrate commercial development rather than allowing it to sprawl along major roadways in Subregion 6. In this case, the subject property is located one of the four quadrants on the intersection of US 301 and MD Route 4. Each of the quadrants was developed with commercial uses. In recent years, the car dealerships located on the subject property as well as the properties located in the northeast quadrant have closed. The introduction of this commercial use to the subject property will help revitalize this major commercial area in the Subregion and therefore preserve the integrity of the 2013 Approved Subregion 6 Master Plan. §27-259(g)(1)(D)

(6) Both the Subregion VI Master Plan and the Generalized Future Land Use Map in the Plan Prince George's 2035 General Plan indicate continued commercial use in the vicinity of the intersection. Furthermore, the site's spilt I-1/I-2 zoning was retained at the subject site by the 2013 Sectional Map Amendment.

The Master Plan text does not identify the appropriate time frame for the buildout of the proposed relocation of the F-10 freeway component of US 301; it does state, however, that,

“The proposed road facilities in Table 10 show the road network that will be needed to accommodate traffic at buildout – when no additional land capacity exists to accommodate additional homes or businesses. However, not all of these facilities will be needed as this master plan's horizon year (2030) approaches.

“To ensure that funding is prioritized for new road improvements for both state and county roads the following roads are top priority in Subregion 6:

“State road – MD 4 Corridor, Pennsylvania Avenue widening and interchange improvements to:

1. Suitland Parkway
2. Westphalia Road
3. Dower House Road
4. MD 223/Woodyard Road

“Improvements to MD223/Woodyard Road from MD 4 to Subregion 5, and MD 725/Water Street.

“County roads:

1. Whitehouse Road between Beltway and MD 4
2. Dower House Road between MD 4 and Foxley Road.”¹

From this statement of pre-2030 priorities, it is clear that the US 301 upgrade to Freeway classification and the resultant need for the A-61 is not immediate, and potentially even “not...needed by this master plan’s horizon year (2030).” Given that uncertainly-proposed A-61 realignment is therefore somewhat long-range, allowing a commercial user a reasonable length of time to implement the Master Plan’s land use recommendation and obtain a reasonable return to the owner which will also preserve the integrity of the Master Plan of Transportation, General Plan, and Area Master Plan. §27-259(g)(1)(D)

(7) The webmasters for PG Atlas do not have any legal authority to modify the actions of the District Council, in its adoption of Master Plans or in any other matter. It is unclear what supervising or regulatory checks and balances are in place but it is abundantly clear that PG Atlas cannot be relied upon for any legal authorization in land use matters and certainly cannot override the legislative actions of the District Council. Since the Master Plan of Transportation and the Master Plan for Subregion 6 both provide that the proposed alignment of A-61 is not on the subject site, A-61 has no impact on the proposed development. However, out of an abundance of caution since M-NCPPC is applying the PG Atlas location in lieu of the Council’s adopted Master Plans, authorization to construct should be granted to alleviate any future issues arising out of PG Atlas’s error in placing the A-61 alignment on the subject site.

RECOMMENDATION

It is the recommendation of the Zoning Examiner that any and all permits be authorized for the subject property in conjunction with DSP-18019 for an eating and drinking establishment with drive-through.

¹ M-NCP&PC, Approved Subregion 6 Master Plan and Sectional Map Amendment (July, 2013), p. 89.