

**RE: Appeals from Decisions of the
Planning & Zoning Officer**

BOHLER ENGINEERING VA, LLC

Petitioner

* **BEFORE THE**
* **COUNTY BOARD OF APPEALS**
* **OF ANNE ARUNDEL COUNTY**
* **CASE NO.: BA 7-25A, 8-25A,**
* **9-25A, 10-25A, 11-25A,**
* **12-25A & 13-25A**
* **(C2022-0013-01-PP, Mod#16820R,**
* **Mod#16821R)**

* Hearing Dates: **July 1, September**
* **9, 11, 16, & 18, October 1 & 16,**
* **Dec. 2 & 4, 2025**

MEMORANDUM OF OPINION

Summary of Pleadings

These are appeals of the granting of a Preliminary Plan for the construction of a 2,852 square foot Chick-fil-A restaurant with a two-lane drive-thru, and associated parking and landscaping, and appeals of the conditional approval of modification requests to Article 17-6-306(c), Retention Below the Threshold, and to Article 17-6-303(b), Priority Retention Areas, on property known as 1500 Ritchie Highway, Arnold.

Summary of Evidence

Mr. Austin Whitley, the Senior Principal Development Lead for Chick-fil-A, described the property and how the parcel was chosen, including size, zoning, access and visibility. This site is split zoned C3-Commercial and R2-Residential. The entire parcel comprises approximately 6 acres of land. The proposed Chick-fil-A restaurant would measure approximately one-fifth the size of the CVS on the adjacent site. The C3 zone permits a drive-thru restaurant by right. The Petitioner believes that this site will work well with the existing Sevema Park Chick-fil-A restaurant. Mr. Whitley described the site selection process utilized by

Chick-fil-A and the operation of the restaurant. One of the benefits of the proposed drive-thru operation is to absorb some of the traffic using the Sevema Park location. This site would have two lanes of drive-thru for order stacking with a total length of 565 feet. Approximately 20 vehicles will be able to queue in each order lane at any time. There will be no eat-in service, but there will be drive-thru, curbside, walk-up, and third-party pick-up service available. The site plan shows 42 parking spaces, 20 for team members, five stalls for mobile pick-up, two to five for third-party pick-up service, four for restaurant-owned vehicles, three spaces for ADA parking, five for carryout, and two drive-thru reserve spaces. This provided parking is typical for a Chick-fil-A drive-thru focused restaurant. Existing forest conservation areas surround the site. The delivery trucks service the restaurants after hours. A pre-submission meeting was conducted. The witness explained that it is Chick-fil-A's model that the operator owns only one restaurant (with few exceptions) and it is their sole livelihood. The operators are empowered to make operational changes. Chick-fil-A owns the buildings. Currently, the drive-thru represents most of the restaurant business with third party delivery becoming an increasing user of the restaurant. The various parking types are indicated by signage.

Mr. Andrew Stine, a licensed professional engineer and supervisor of Bohler Engineering in Maryland, was accepted as an expert engineer. Mr. Stine described the development process. The Petitioner requested an evaluation of adequacy of public facilities as part of the Preliminary Plan process instead of waiting for Site Development Plan review. Modification requests are typical in a development project. Two modifications were requested here: (1) to forest conservation requirements; and (2) to permit the removal of specimen trees. The Preliminary Plan application was submitted. Generally, comments are provided to the Petitioner from the government, and the Petitioner responds after asking any questions. Here, there were three rounds of comments, with approval on the fourth submission. The witness presented the Board

with all the submissions and resubmissions to the County. The Office of Planning and Zoning approved two modifications, denied one and approved the Preliminary Plan subject to conditions imposed. The Petitioner has one year to submit the Site Development Plan. Any approvals made at Preliminary Plan follow into the Site Development Plan. The Site Development Plan process will occur over a time frame similar to the Preliminary Plan process. There is nothing unusual about the Preliminary Plan approval here. The conditions imposed would be addressed as part of Site Development Plan review.

Mr. Eric McWilliams, an expert in land planning and environmental site design, has reviewed this property since it was developed by CVS in 2009. There is a 1.6-acre easement for forest conservation on the residential portion of the property. Generally, only forest is allowed within a forest conservation easement. When the property was originally reviewed, the remaining commercial portion of the property was reserved for future development. The forest conservation area was not optimal for residential development. The forest conservation area is 70 feet wide along the boundary with the Arnold Manor subdivision. Mr. McWilliams is a registered landscape architect with Bohler Engineering. He described his experience with the Maryland Forest Conservation Act and expert designations in other counties. He and his team prepared the modification applications. The witness discussed the forest conservation area and forest priority area. The forest priority area must comprise at least 10,000 square feet and be 30 feet wide. The County determined that there was no forest priority area on site. The County requires a developer to conserve at least 15% of a site. If more land is cleared, then mitigation must be provided at a two to one ratio. Here, the bulk of the property is commercially zoned. The witness explained that a specimen tree is defined as a tree having a 30-inch diameter at breast height. The removal of a specimen tree requires permission via the modification process. Across this six-acre site, approximately 1.6 acres would be preserved. It is common to seek

modification for the removal of a specimen tree during land development in the County. The required mitigation for removal of a specimen tree is calculated by taking the product of the diameter of the tree at breast height multiplied by 218 square feet. In this instance, a contractor provided the field work and the forest stand delineation. Aside from the forest on site, there are no other sensitive environmental features on the property. The forest stand delineation found 26 specimen trees with seven proposed for removal. A forest stand delineation is valid for five years and the current delineation is valid. The tulip poplars on site are very common trees and they are very fast-growing hardwoods. The property is within a priority funding area for development. The forest conservation worksheet shows that the residential portion of the site preserves ample trees. However, the commercially zoned portion of the site will be almost entirely cleared. The Petitioner and County worked to increase the amount of preserved forest on the commercial piece to 4,147 square feet. The required commercial mitigation is 54,781 square feet of land to be mitigated off-site at a mitigation bank, in perpetuity. Without a modification to permit the clearing below the threshold and to remove specimen trees, this property cannot be used commercially. The modifications will not be detrimental to the public welfare because some of the trees are already in poor health and will fail. The mitigation bank will be preserved in perpetuity, and water quality will be preserved. The 1.65 acres of residential land and the 4,000 square feet of commercial land will be preserved. The mitigation will not nullify the intent of the GDP. The request was discussed at a community meeting and proper notice was sent. The area is entirely within a priority funding area for growth. The property cannot be developed if the maximum clearing threshold is met. The Petitioner has maximized tree preservation on site by limiting the use to drive-thru only and by proposing retaining walls.

Mr. Carl Wilson, an expert traffic engineer in Anne Arundel County, explained that his team prepared the Traffic Impact Analysis for this application. There are more than 50 trips per

day to be generated from the proposed use, thus a TIA is required, and the Petitioner must show that the relevant intersections function at a level of service “D” or better with a road rating of 70 or better. The impact area to be analyzed is the road network to the first arterial intersection to the next arterial intersection. Since this site is proposed for a restaurant with no seating area, Mr. Wilson's team increased the traffic generation rate to 1.5 times the standard restaurant rate. There will be 155 trips anticipated during the a.m. peak period and 267 trips during the p.m. peak. He noted that there is a difference between pass by traffic stopping as a convenience versus traffic to the restaurant as a unique trip. He believes that 50 percent of the a.m. peak traffic and 55 percent of the p.m. peak traffic will be convenience trips. Therefore, the use is expected to add 77 new trips to the a.m. peak period and 120 new trips in the p.m. peak period. The ITE Manual was used to determine the trip generation rates. All intersections analyzed operate at a “C” level of service or better. The determination of traffic volumes was based on traffic counts taken on April 3, 2024, which was a Wednesday when school was in session. County regulations require that traffic counts may only be taken on Tuesday through Thursday while school is in session. The a.m. peak period here is between 7 a.m. to 9 a.m. The p.m. peak period is between 4 p.m. and 6 p.m. He utilized a building size of 2,666 square feet in his study, but the proposed restaurant will be 2,852 square feet. He examined the study and determined that the larger restaurant will not fail the adequacy of public facilities test required by County Code. There will be two access points to the site, one on Arnold Road and one on Route 2. The Petitioner posted cameras on Friday, September 5, 2025, in the evening to capture the traffic, which showed no traffic stacking issues. The videos of the traffic were presented to the Board.

Mr. Dan Haney, an expert professional engineer, testified that he has visited the site on many occasions. He described the steep slopes on the property. He explained that the Petitioner requested a modification to the steep slope requirements of the Code in an abundance of caution.

The County determined that the steep slopes on site do not meet the threshold for prohibiting impact. He noted that water was found at nine feet below ground, but that water was not true “groundwater”.

Ms. Elizabeth Rosborg, one of the managing members of 18 Severn Way LLC, a Protestant, testified in opposition to the proposed Chick-fil-A. She is concerned regarding traffic and the proposed reconfigurations of road lanes. She feels that it will not be safe for the community. The bike trail is 75 feet from the proposed restaurant. Many users of the bike trail use commercial resources in the area. She feels that the County is not responding to her concerns and is frustrated. She is part of the Arnold Preservation Council.

Mr. David Humphreys, an expert traffic engineer, reviewed The Traffic Group's Traffic Impact Study. He faulted the study because there was no assessment of accidents in the report. Additionally, there is no assessment of access points along Route 2 as the new driveway is added. He noted that there is speeding in the area. The proposed access point onto Route 2 may not be approved and then access to the site will be different. He does not agree with the conclusions of the Petitioner's Traffic Impact Study due to his safety concerns and unpermitted access to Route 2. He is also concerned regarding the weaving traffic pattern in the area. He feels that the property is steeply sloped.

Mr. Jon Korin, a bicycling advocate, described his experience with the area. He described the County's plans for bicycling and transport. He is concerned that the Chick-fil-A will be a destination for traffic on the B&A Trail. He sees no safe access to the trail on the plan.

Ms. Cynthia Wofford stated that she has no questions for the Petitioner's witnesses and would defer to her husband's (Mr. Warren Wofford) statement.

Mr. Warren Wofford, on behalf of Arnold Manor at Arnold Heights Homeowner's Association and himself, described his community and residence. He lives at 103 Charlton Way.

Some of his family members own Chick-fil-A franchises. However, he appealed the grant of the Preliminary Plan and the modification for clearing below the threshold. He is mostly concerned regarding traffic and safety. He is also concerned about the Chick-fil-A's impact on noise, microplastics, environmental hazards, etc., in his community.

Ms. Kaitlin Landolf, the representative of the Ashcroft Community Association, testified that the proposal will impact traffic. The proposed use would be the only Chick-fil-A in Anne Arundel County that bounds on two residentially zoned parcels. She is concerned about the pollution and other effects of cars idling.

Ms. Elizabeth Nardi, the County's planner, described the reason for denial of certain modifications and the grant of the others. She described the approval of the Preliminary Plan. The Petitioner originally also requested a modification regarding steep slopes, but that request was denied because it was determined to be unnecessary. The stormwater management, septic, traffic, etc. were all approved by the applicable agencies as to adequacy of public facilities.

Mr. Joseph Noble lives in Pines on the Severn and described his community involvement and job history. He has knowledge of the traffic in the area and is concerned about the speed of traffic and stacking of cars. Mr. Noble explained that travelers avoid Route 2 traffic by cutting through his community. These drivers impact the safety of residents, school children and people using the park and swimming pool. This site is very close to Route 50 and the Chesapeake Bay Bridge. He is concerned about decreased sound attenuation from the removal of trees from the site and the smells that will emanate from the restaurant. There are many running events that use the B&A Trail. Emergency response times may be negatively impacted by the development. There are three swimming meets each year in the community.

Ms. Rachel Brinson lives in the Ashcroft community and is concerned about safety for her children and pets. She is concerned about the impact to the crosswalk. She explained the traffic patterns in the community.

Ms. Beverly Rucker lives in Pines on the Severn. She described the history of Arnold. She thinks that a drive-thru only restaurant is not within the definition of restaurant in the County Code. Ms. Rucker feels that the CVS site has not been appropriately examined from a traffic conflict perspective. Chick-fil-A should be considered a public nuisance. She believes that the bypass rates for this restaurant are flawed. She does not believe that critical lane volume is the appropriate standard to consider in traffic. She wants a standard restaurant with outdoor seating that celebrates the community.

Mr. Paul Traynham, a Protestant, testified that Chick-fil-A is very successful and will impact traffic greatly. Also, the traffic signal cycles to assist the nearby fire station during emergencies that impacts traffic flow.

Mr. John Gugliotti, an area resident, testified in opposition to the request. He presented the Board with a draft report of subsurface exploration, laboratory testing and geotechnical engineering analyses that found some volatile organic compounds in the property. He is concerned that the contaminated materials will remain on site. He wants the Health Officer to reject the installation of the septic system.

Ms. Sue Ricciardi, Vice President of the Arnold Preservation Council, explained that the council is concerned with safety and traffic issues. She presented the Board with a statement detailing the issues.

Mr. Sean Corson is not opposed to Chick-fil-A, in general, but at this location, he has concerns regarding traffic and safety.

Dr. Ira Weinstein, a neighbor and pulmonologist, testified that fast-food restaurants produce particulates that impact childhood asthma.

Ms. Jennifer Troy expressed her concern about pedestrian and bicycle safety due to traffic. She is concerned about the merging maneuvers on Ritchie Highway. She feels that the government was misled by the Petitioner's experts who gave the impression that road improvements were funded. The wrong number for square footage of the restaurant was used in the Traffic Impact Analysis. She disagrees with the Petitioner's proposal to create a shared left-turn lane on Arnold Road. She is also concerned regarding tree removal.

Mr. Brett Griswold with the Broadneck Community testified regarding his concerns about traffic and fire service response times.

Ms. Rebecca Edmond testified that she is a direct neighbor to the Petitioner's site. She is concerned that her quality of life will be negatively impacted by the Chick-fil-A. She uses the Arnold Road traffic light to access her property. Traffic will be even more difficult to control. The trees in the area have been removed between her lot and Ritchie Highway. She is concerned about her health from the effects of development. There will be more light and noise pollution.

Mr. Jim Scott lived in the Pines on the Severn for 50 years and recently moved to Cape St. Claire. Chick-fil-A is very successful and will impact the community with traffic and safety issues.

Ms. Susan Ridenhour testified in opposition to the request. She feels that pollution will increase at her house. Traffic impacts and light pollution are also a concern. She believes that the Traffic Impact Analysis failed to evaluate the correct dinner hour traffic. She is concerned about the parking space configuration and wants more trees preserved.

Mr. Steven Kendall lives in the Pines on the Severn and is opposed to the request. He is concerned about traffic impacts.

Mr. Mary Carkhuff lives on Winchester Road and she is opposed to the plan. She described the history of her neighborhood. When traffic along Route 2 gets difficult, a lot of traffic diverts through her community.

Mr. Jim Carkhuff presented the Board with a photograph of Winchester Road.

Ms. Helen Cornett lives in the Pines on the Severn and walks her dog three times a day. She is concerned about traffic.

Mr. Robert Moran is a neighbor who loves Chick-fil-A and businesses. However, he is concerned about home values. He thinks that home values may not rise as high as they should due to traffic. Mr. Moran is also concerned regarding traffic in his neighborhood that does not have sidewalks.

Mr. Ross Powers, the President of Pines on the Severn, explained his community's concerns about restaurant patrons going through their property to eat. They are concerned about air quality and traffic.

Mr. Gary James lives in the Pines on the Severn. He lives between two speed bumps and has two security cameras. He walks and bikes through the neighborhood and on the B&A Trail. He walks in the road since there are no sidewalks. Residents are careful but other drivers are not courteous. He explained that morning traffic is very difficult.

Mr. Noble Hetherington, III, a neighbor opposed, testified as a resident of Pines on the Severn and on behalf of the Chase Creek Swim Club. The swimming club hosts practices and meets. The meets have 300 to 500 attendees. Increased traffic will further impact safety. He cited traffic incidents where children were hurt.

Ms. Elizabeth Totah, a neighbor opposed, has concerns regarding drive-thru only establishments. She opposes such restaurants as not good for society. She enjoys the sitting and sharing a meal at a Chick-fil-A and connecting with her friends and family. She is concerned

regarding public transit users and a bus stop without a place to sit and eat. She moved to the Pines on the Severn in part for its walkability.

Ms. Kimberlee Fenn, a neighbor opposed, lives with her husband in Pines on the Severn and is concerned about excessive traffic and safety. She wants traffic mitigation from the County. The area roads are too narrow for other mitigation efforts.

Ms. Kathryn Burroughs, a neighbor opposed, has lived in Winchester on the Severn for 17 years. She is concerned about safety. Her community has a small neighborhood feel. She believes that speed humps should be installed to control the cut through traffic. She is concerned that traffic will delay emergency responders if an accident occurs. There may be noise, environmental, and stormwater impacts in the community from the Chick-fil-A.

Mr. Robert Potter, a neighbor opposed, lives in the Pines on the Severn. The lighting on the site will impact the community. If wind was correct, the particulates may come over his home and may impact his health.

Ms. Chere Trehey, a neighbor opposed, does not think that the drive-thru is friendly to the community. There is no safe way to walk to Chick-fil-A. She is concerned about the effects of tree removal and stormwater management issues. She doesn't want to smell cooking chicken all the time.

Mr. Chris Schenck owns several Chick-fil-A locations including the Severna Park location and expressed his care for the community and safety.

Mr. Sean Raistrick manages the Severna Park and Jacobsville locations of Chick-fil-A. He described the number of employees, DoorDash and carryout customers at the restaurants. He feels the parking spaces proposed are appropriate. The employment opportunities support the community.

Ms. Kirsten Bodnarchuck, a neighbor opposed and a local business owner, is concerned about property values and flooding on her property. She is concerned that traffic will increase and affect her business.

Ms. Jane Belew, a neighbor opposed, lives in the Pines on the Severn. The studies meet the County Code requirements, but she is concerned about how long it will take for her to leave her community. The neighborhood has very narrow streets and she has safety concerns.

Mr. Alex Fernandez, a neighbor opposed, moved into the Pines on the Severn in 1996. There are no sidewalks, and he walks his dog all over the community. He feels that the application is not good for the community

Ms. Jessica Ring, a neighbor opposed, moved in two years ago. She has experienced extreme drainage issues in her yard. She is concerned that the restaurant will cause more flooding.

Mr. James Knox, a neighbor opposed, lives right down the street from the proposed restaurant. He is concerned regarding traffic impacts and how the employees will get to the site. He is also concerned about stormwater runoff and property values. He wants a popular vote taken.

Mr. Joseph Rutter, an expert in Anne Arundel County planning and zoning, testified on rebuttal for the Petitioner. He worked on the zoning and subdivision regulation comprehensive revamp in 2005. He reviewed the file, listened to the testimony and visited the property. The property is zoned C3 and R1 and within a village center designation in Plan 2040. Commercial land use is noted for each corner of the intersection. This property was zoned commercial in 1952. In 1973, the property was placed in the C3 District, where it remains. A restaurant is permitted in the C3 zone and does not require a special exception. Drive-in restaurant was part of the definition for a restaurant in prior versions of the County Code. Mr. Rutter explained the

current definition of restaurant. There are other drive-thru restaurants in Anne Arundel County, e.g. Sonic in Edgewater. He explained that the Preliminary Plan is the first of a two-step process. The Preliminary Plan recommendation authorizes an applicant to proceed to Site Development Plan. After the Preliminary Plan is approved, the applicant has one year to apply for a Site Development Plan. Preliminary Plan is not an approval of the proposed development. The Preliminary Plan process is where the applicant demonstrates that all Code provisions can be met. The Petitioner then proceeds to the more detailed Site Development Plan process and then to grading permit review.

Mr. Carl Wilson testified in rebuttal regarding the traffic engineering improvements near the site. Arnold Road is sufficiently wide with 33 feet of pavement to accommodate restriping to permit dedicated left turns from Arnold Road into the site. He noted that the traffic along Route 2 and cut through traffic concerns by the neighbors. In the Traffic Impact Study, his firm did not allocate any trips off Route 2 through the 2.9+ mile bypass route described by Protestants. All trips to and from CVS in the a.m. and p.m. peak periods were accounted for in the Traffic Impact Study, 37 morning and 84 evening trips. He explained that a pass by trip is a car already on the route that makes an intervening stop at the proposed location. Those trips are accounted for in the counts. The ITE trip generation data shows that 50% of morning trips and 55% of evening trips are pass by trips. Pass by trips are difficult to account for because the driver needs to be interviewed to determine destination. He described his methodology for determining the likely trip generation rates for the proposed Chick-fil-A. The trip generation rates were developed from 2016 to 2019. In addition to utilizing ITE and government generated traffic trip data, he used Chick-fil-A traffic rates since the proposed use will be a drive-in only. The rates used for the Traffic Impact Study at 1.5 times the SHA/MDOT rates per 1,000 are more conservative than the Chick-fil-A rates, and the ITE 11* and 12* Edition. Mr. Wilson examined more

intersections in the area and found no instances where the Critical Lane Volume would rise to the level of needing improvement. Even if we assume that the generation rates are incorrect, there are still hundreds of trips of available capacity in the roadway network. If road mitigation is required, an applicant would need to develop a mitigation plan for traffic. The use passes the adequacy of public facilities test.

Mr. Michael Bell, an expert environmental consultant, has visited the site several times. He prepared a draft report of the preliminary design plans. Once the plan is finalized, his report will be finalized. His company prepared a geotechnical report and a Phase II Environmental Site Assessment. He finds that Chick-fil-A is more careful than many developers. He used a Photoionization Detector (PID) which screens Volatile Organic Compounds (VOC). From the PID, he located areas for sampling. Initially, there were positive indications for VOC's by PID, but the Phase II (soil sample collection report) did not reveal any VOC's upon closer analysis. Vapor samples were also collected and no VOC's were found. The Maryland Department of the Environment's (MDE) Oil Control Program (OCP) noted no nearby OCP cases impacting the site. All nearby OCP cases were properly closed. His company's 2019 geotechnical report was submitted and reviewed by the MDE and MDE will not be issuing a site status letter for this site. No remediation is required here. The septic system will not impact human health.

Mr. Eric McWilliams testified on rebuttal. He is a landscape architect and a registered on-site wastewater professional who described the forest conservation plan. There are seven specimen trees to be removed. Approximately 0.4 acres of the commercial portion of the site and 1.65 acres of the residential portion of the site is to be preserved. Off-site mitigation will be provided and preserved in perpetuity. He discussed the removal of priority forest and specimen trees. The Code requires approval of a modification to remove Section 17-2-108. If the modification requests are not granted, the Petitioner will suffer an unwarranted hardship due to

special features and unique shape of the property. The forest is a “toothpick” shaped area in the middle of the commercial portion of the site. The use simply cannot be accommodated elsewhere on site. The Petitioner tried to place forest conservation area on site, but the topography of the land requires the installation of a retaining wall and fill to render it suitable for use. The modification will not adversely impact water quality because the environmental site design and infiltration trenches will clean stormwater. There will be approximately two acres of forest conservation on site, the stormwater management will provide the same level of runoff post development, and the mitigation bank will have approximately seven acres of preserved forest in the County. The modification will not nullify the intent and purpose of the Code and General Development Plan, particularly since mitigation provided exceeds the size of the site and this site cannot be developed without modifications because the remaining area is too small for commercial development. **This property was always** planned for commercial development during the development of the adjoining CVS site.

Mr. Austin Whitley, testified on rebuttal, and described the drive-thru through concept. There are 93 drive-thru Chick-fil-A restaurants nationwide. There is a traditional Chick-fil-A nearby and this restaurant is proposed as a relief location to assist with the Severna Park demand. Drive-thru restaurants have 14% fewer transactions than dine-in locations. The corporate Chick-fil-A data shows that the traffic generation numbers determined by the traffic engineer exceed actual usage. The 42 parking spaces will be adequate. At this location, there will be 20* workers per shift, with transient food delivery services and Chick-fil-A delivery. There will be no dine-in customers. Some of the witnesses have claimed that Chick-fil-A will “scrape and rebuild.” He explained that this is where the improvements are knocked down and rebuilt. There is no automatic economic figure that triggers the rebuild as asserted by witnesses. The owner-operators are independent owners, and they are responsible for the restaurant's operation.

Chick-fil-A provides support to operators. The site measures over six acres with 2.33 acres proposed to be disturbed, including area within the Route 2 right of way. Without the removal of specimen trees, the property could not be developed. Any of the uses listed as possibilities by neighbors would require tree clearing, parking, stormwater management, driveways and installation of septic. Forest mitigation is common in development across jurisdictions. This mitigation is the largest or near the largest of any mitigation provided as part of a development.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusion

These are appeals of the granting of a Preliminary Plan for the construction of a 2,852 square foot, Chick-fil-A restaurant with a two-lane drive-thru, and associated parking and landscaping, and appeals of the conditional approval of modification requests to Article 17-6-306(c), Retention Below the Threshold, and to Article 17-6-303(b), Priority Retention Areas for property known as 1500 Ritchie Highway in Arnold. This property is split zoned C3 and R2 and comprises a total of 6.13 acres of land. Approximately one-third of the site is developed with a CVS Pharmacy, 1.65 acres is permanently preserved through a forest conservation easement, and the remaining 2.33+ acres is proposed for the Chick-fil-A. The approval of the Preliminary Plan is not the final step in the development process. Once an applicant receives Preliminary Plan approval, they next apply for Site Development Plan approval. An applicant may choose to test for adequacy of public facilities at the Preliminary Plan or Site Development Plan phase. Here, the applicant chose to test for adequacy of public facilities at the Preliminary Plan stage.

Preliminary Plan review requires compliance with many sections of the County Code, including Article 18, Zoning, stormwater management, forest conservation, landscape manual, Department of Public Works, etc. The Petitioner presented adequate evidence that many of the

Preliminary Plan requirements were met. Indeed, we agree that the application complies all of the Code criteria, but for the modification requests. It is here where the Petitioner's application fails.

Simply put, the Petitioner chose a site that contains 26 specimen trees and proposes to destroy all those trees (not previously preserved) and clear cut the commercially zoned portion of the property leaving no room for the required forest conservation. Chick-fil-A now seeks modifications to avoid compliance with testimony and evidence that amounts to little more than modifications are common. If true, that modifications are common and easily obtained from the Planning and Zoning Officer without careful compliance with the statute, then it appears that the intent of the County Council has been nullified by regulatory fiat.

Modifications are controlled by Anne Arundel County Code, Section 17-2-108, which provides:

17-2-108. Modifications.

(a) **Generally.** The Planning and Zoning Officer may approve an application for a modification to any provision of this article other than § 17-2-107 or one contained in Titles 5, 8, or 9, except as allowed by §§ 17-5-203(b), 17-5-205(b), 17-8-201(b), 17-8-203(c), 17-8-403, 17-8-601(b)(2), 17-8-601(c), 17-8-901, or 17-9-401, and to any applicable regulations, manuals, or specifications, including the DPW Design Manual, upon making specific findings, enumerated in writing, that the modification request satisfies each of the following criteria:

(1) practical difficulties or unnecessary hardship will result from strict application of this article or, for a modification relating to forest conservation, unwarranted hardship will result due to special features of the site or other circumstances;

(2) the purposes of this article, including minimization and mitigation of environmental impacts through the use of clustering or other available design alternatives to preserve the character of the impacted area, will be served by an alternative proposal;

(3) the modification is not detrimental to the public health, safety, or welfare, is not injurious to other properties, or, if the modification relates to forest conservation, does not adversely affect water quality;

(4) the modification does not have the effect of nullifying the intent and purpose of this article, the General Development Plan, or Article 18 of this Code; and

(5) the applicant has submitted written verification to the Office of Planning and Zoning that:

(i) the requested modification was disclosed and discussed at a community meeting required under this article; or

(ii) a notice explaining the reason for the modification, along with a copy of the request for modification, was mailed to:

1. all owners of property located within 300 feet of the affected property; and

2. the president of any community or homeowners' association of any subdivision that is located within 300 feet of the affected property subject to the application that are on the list of community associations, persons, and organizations maintained in the Office of the County Executive.

The Petitioner fails simply to minimize the environmental harm in its proposal of development. Section 17-2-108(a)(2). While the Chick-fil-A portion of the site measures 2.33 acres, the Petitioner proposes the retention of only 4,147 square feet of forest on site. If the modification is granted, less than 5% of the site will be preserved. The proposed off-site mitigation does nothing to protect the public health in this community. These citizens will simply bear all burden of the Petitioner's proposal, with no trees, and left with bright lights, sounds, smells, idling traffic waiting in the queue and traffic congestion bearing upon them. Chick-fil-A, in contrast, will profit from its admittedly well loved and popular eating establishment.

Additionally, the citizens presented evidence that their communities are inundated by traffic now. When traffic congestion occurs, the residents bear the burden of cut through traffic that ignores their health, safety and welfare. The intersection of Arnold Road and Route 2 does not function for the community and placing more traffic from a high-volume fast-food restaurant will negatively impact their health, safety and welfare. Not only has Chick-fil-A failed to

minimize the environmental impact on site, but the broader effects of the proposal are also clearly a heartbreaker for this community as evidenced by the voices raised in opposition. We found those voices compelling.

Typically, the analysis stops here. However, the County Council's legislation continues, providing specifically that modifications may be denied by Section 17-2-108(c):

When modification may be denied. An application for a modification may be denied if requested solely because compliance would add significantly to development costs or if requested solely for the convenience of the developer, such as when the land is not usable because of error or poor assumptions on the part of the developer.

We find that, here, the request for modification is simply for the convenience of the developer putting the proposal squarely in opposition to the spirit and letter of the modification standards in Section 17-2-108. The Petitioner assumed that this property would be useable without regard to the sensitive priority retention areas on site and would have us adopt a capricious interpretation solely to further their commercial interests. We stand firmly athwart that effort. Adherence to regulatory requirements does not inherently create a constitutional taking. The Petitioner's proposal to denude this site of mature specimen trees on the assumption that this Board will rubber stamp this action is wrong. Therefore, we must deny.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this ____ day of ____ JULY ____, 2026, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's request for Preliminary Plan approval for the construction of a 2,852 square foot Chick-fil-A restaurant with a two-lane drive-thru, and associated parking and landscaping, and approval of modification requests to Article 17-6-306(c), Retention Below the Threshold, and to Article 17-6-303(b), Priority Retention Area are hereby **DENIED**.

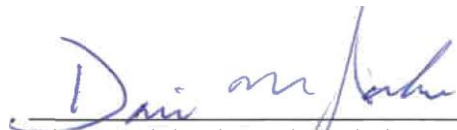
Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Deana L. Bussey, Clerk.

NOTICE: This Memorandum of Opinion does not constitute a building or grading permit and may be valid for a limited time period. In order for the applicant to construct or retain any structures allowed by this opinion, or to perform or retain any grading allowed by this opinion, the applicant must apply for and obtain the necessary building or grading permit and any other approval that may be required to perform the work described herein within the time allotted by law or regulation.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY


Din Michael Jacobs, Chair
Phillip D. Bissett, Member
John R. Fury, Member

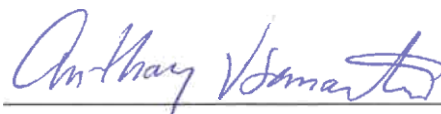
CONCURRING

I have been a resident of the Broadneck Peninsula for more than 30 years and I have watched in dismay as unchecked wanton development has destroyed the quality of life in what was once one of the most bucolic and pastoral communities in Anne Arundel County. The Chick-fil-A proposal in this community is simply one more scar. Despite the Petitioner's well-presented prevarications regarding traffic, this site is certain to absolutely aggravate what is already an unsustainable traffic load in this part of Route 2. The Arnold Road/Route 2 intersection is much more complicated than the Petitioner's facile presentation portrays. The roads in the area are narrow and winding with short approaches to the intersections. These roads are atypical and deserve careful analysis. I have witnessed vehicles as small as normal pickup trucks have difficulty turning onto Arnold Road from Route 2. While the Petitioner claims that Arnold Road can be re-striped to make a dedicated left turn lane, such a reconfiguration will further narrow Arnold Road and make the turn-in movement even more difficult. Since pickup trucks already have difficulty with the turn, Chick-fil-A delivery vehicles will not be able to make the turn. Also, the unique interchanges between the various Baltimore Annapolis Boulevard iterations in this neighborhood were not discussed and analyzed by the Petitioner's expert. These Baltimore Annapolis Boulevard configurations make traffic and "short cut" movements along Route 2 unusual. Lastly, the Route 2 southbound traffic is a hotbed of quick lane change movements as drivers attempt to navigate traffic flows on the approach to the Route 50 split—particularly at beach traffic time. Without Chick-fil-A presenting information on these atypical transportation issues, I am not convinced that the development of a Chick-fil-A restaurant on the property will not harm the traffic patterns and harm the public welfare. Without an understanding on the impact on the true road network in this area, the Board is ill-

prepared to render a decision and, therefore, the Petitioner has failed to meet the adequacy of public facilities test for traffic.

Additionally, the Petitioner proposes to develop a heavily treed and sloped site that will require the destruction of forest and substantial grading to render it useful for commercial development of this scale. These natural features will be forever lost if this restaurant and attendant facilities are constructed. Instead, there are other suitable building sites for this restaurant on the same side of Route 2 that will not require clearing or present the access issues that plague this property. For example, there is larger site that is currently developed with a vacant Rite Aid store. No vegetation would be impacted, and the site is appropriately graded for commercial use.

This Petitioner seems to have a very short memory as to the true needs of their restaurant patrons. I recall that cars queued onto Route 2 at the Severna Park Chick-fil-A due to clearly poor site selection and design. It was not until that restaurant closed for several days while the site was reconfigured that the traffic issue abated. Given Chick-fil-A's history of poor site selection so close to the Arnold market, the Petitioner should more carefully review its potential locations. This site is small, contains steep slopes and is oddly shaped. The traffic queue will share the egress with CVS and certainly negatively impact potential patrons of the pharmacy—while negatively impacting their own patrons and the residents traversing Arnold Road. Surely, the Petitioner can find an appropriate, larger site with easy access and with less environmental harm while also meeting corporate goals.



Anthony V. Lamartina, Member

DISSENT

Over the course of multiple hearings, the Petitioner's expert witnesses presented careful testimony and voluminous evidence detailing compliance with the relevant County Code sections. The County then presented the professional comments of the various governmental reviewers confirming the application's compliance with the County Code. Together, the information received represents overwhelming evidence that the Petitioner's requests meet all standards to obtain Preliminary Plan and modification approval.

Mr. Andrew Stine, the Branch Manager for Bohler Engineering, testified how his team created the application for Preliminary Plan and related modifications. He detailed the requirements of the Preliminary Plan, the checklist, the adequacy of public facilities testing, and modification requirements. The plans provided to this Board and the County reviewers measure 24” by 36” at the appropriate scale and all documents required by the Preliminary Plan Checklist were submitted for review. The submission included the required Traffic Impact Study, minutes of the required community meeting, comments therefrom and responses thereto. The Petitioner addressed all the comments from the various reviewing agencies. The County witness and governmental comment letters confirmed adequacy of public facilities for fire suppression, roads, sewerage, and water as demonstrated with the Petitioner's first Preliminary Plan submission. Later iterations of the plans and reports addressed all comments from the earlier submissions.

The community witnesses complained that traffic impacts all their activities in the neighborhood—from walking, driving, shopping and recreating. While we understand the concerns, the adequacy of public facilities test is the only standard that the County and this Board may apply to the proposal. Despite the protestations, there was simply no evidence presented that reasonably countered the Petitioner's case. Mr. Carl Wilson, an expert in traffic

engineering, explained that the Traffic Impact Study met all County Code requirements and the full compliance with the County's traffic scoping letter. Despite meeting all Code requirements, the Petitioner went well above and beyond regarding its evidence on traffic. To account for the drive-thru nature of the proposed restaurant, Mr. Wilson based his trip generation on a factor of 1.5 of expected restaurant traffic volume to render his Traffic Impact Study more conservative. He then examined the ITE's category of "high-volume fast-food restaurant" and the local roadway network continued to function at adequate levels of service. Not satisfied that he left all stones untuned, he examined Chick-fil-A's own traffic data from drive-thru Chick-fil-A sites. All traffic intersections continued to operate at acceptable levels of service. The Protestants presented their concerns that Friday evening beach traffic overwhelms the road network. In response, the Petitioner presented video of Friday evening traffic on September 8. The traffic functioned normally at the intersection of Arnold Road and Route 2 depicted in the video. Applicants for Preliminary Plan (and all adequacy of public facilities traffic tests) are required to meet the standardized test related to traffic regarding critical lane volume and road rating. The Petitioner's evidence shows that even with generation rates increased by a factor of 1.5, or by examining traffic generation rates for a high-volume fast-food restaurant or using Chick-fil-A proprietary information, there is excess capacity in the road network. By any rational assessment, the Petitioner not only meets the only applicable County traffic standard, but the proposal also meets even more stringent testing.

The citizens also raised concerns that the planned septic system would expose the community to dangers from subsoil environmental contamination. However, Mr. Michael Bell, an expert environmental consultant, explained that there are no environmental hazards on site. His company prepared a geotechnical report and a Phase II Environmental Site Assessment. He carefully sampled the site for Volatile Organic Compounds (VOC) using soil and vapor samples.

None were found. While the septic system is not a “public facility” in the typical sense, we find that the plan to utilize a septic system here is adequate and will not negatively impact human health. Despite the fears that the Petitioner will release a Godzilla of environmental harm from beneath the ground, the environmental testing puts that fear to rest.

Having met the adequacy of public facilities test, we must next turn to the two modifications requested, both relating to forest conservation (Mod#16820R and Mod#16821R). As explained by Mr. Eric McWilliams, all forest, that is any forest area at least 35 feet wide and with a total area of 10,000 square feet, is a “priority retention area.” Additionally, any “specimen trees” are considered priority retention areas. There are 26 specimen trees on site and the Petitioner proposes to remove only seven, three being off site on the State highway right of way whose removal is required to provide safe egress from the property. If just one of these trees is removed, the Petitioner must obtain a modification. To obtain the requested modifications, an applicant must show compliance with Code, Section 17-2-108.

The first criteria that must be met to obtain a modification relating to forest conservation is that an “unwarranted hardship will result due to special features of the site or other circumstances.” Section 17-2-108(a)(1). Mr. McWilliams explained that he worked on the development application for the adjacent CVS Pharmacy site. At that time, the driveway was designed to connect with this portion of the property, and 1.65 acres of land was placed in permanent conservation in anticipation of the development of the subject site. The Anne Arundel County Code was subsequently amended and the prior, overgenerous 1.65-acre conservation area on site could not benefit this application. He testified further that without the removal of specimen trees and forest, the site cannot be developed. The topography requires the construction of retaining walls to permit commercial use and the drive aisles and required parking require priority retention area to be removed. When the regulations prevent development

of a parcel, taking private property without compensation would occur if no relief is given. The prevention of development by the action of the ordinance is certainly an undue hardship warranting modification relief. Additionally, poor tree health and need for three specimen trees in the Route 2 right of way to be removed to provide safe egress represent “other circumstances” that contribute to the undue hardship here. We cannot find that a constitutional taking in the overzealous application of regulatory restriction is either warranted or appropriate. The County, despite substantial pressure from neighborhood groups and political interests, agrees with our assessment.

The proposed modifications to permit the removal of the priority retention areas (forest and specimen trees) will meet the purposes of Article 17, including minimization and mitigation of environmental impacts through the proposed design alternatives as required by Section 17-2-108(a)(2). The 2.33-acre site of the Chick-fil-A will have 4,147 square feet area of forest conservation easement within the commercially zoned portion of the site and 1.65 acres of forest on the adjacent residentially zoned site will remain in permanent forest conservation. The Petitioner will mitigate the removed forest and specimen trees by planting 5.5 acres of trees off-site or through participation in a forest mitigation bank. In total, more than seven acres of forest will remain permanently conserved if this development occurs. The resulting conserved area substantially surpasses the requirements for mitigation. Clearly, the Petitioner has met the requirements of Section 17-108(a)(2).

Next, the Petitioner proved that the modifications would not adversely impact water quality. Section 17-2-108(a)(3). Again, the development will lead to the permanent preservation of more than seven acres of forest with less than 2.33 acres of forest impacted. The Petitioner also described the stormwater management plan that will provide quality and quantity controls on stormwater flow. The area residents raised concerns regarding stormwater impacts to their

properties during storm events. We find that given the stormwater management to be implemented, the stormwater flows from the site will not increase and the stormwater control devices will improve water quality throughout the neighborhood.

The modifications requested do not nullify the intent and purpose of Article 17, the General Development Plan or Article 18 of the County Code. As discussed previously, the development of this property will result in a net gain of permanent forest in conservation. Mr. Joseph Rutter, the Petitioner's expert land planner, explained that this site was placed in the commercial district with the first comprehensive zoning of Anne Arundel County in 1952. Since then, this site has been retained in a commercial district for nearly 75 years, having received C3 District designation in 1973 and reconfirmed in the C3 zone as recently as 2024. It should come as no surprise that the property owner would use it for commercial purposes. Plan 2040 places this property as village center with commercial use at each corner of the intersection. The Zoning Ordinance permits restaurants by right in the C3 District. This property is in a priority funding area for Maryland's Smart Growth initiative. This proposal is completely aligned with the County's and State's stated and memorialized objectives for this site.

Lastly, the Petitioner submitted the written verification related to the proper notification to citizen groups regarding the requested modifications as required by Section 17-2-108(a)(5).

This Board often is called upon to make decisions in close cases; this is not one of those times. The Petitioner presented a cogent and complete case fully compliant with the statutory and regulatory requirements for a proposal that will be exceptionally beneficial for the County. Well-meaning opposition notwithstanding, this Board's singular responsibility is to ensure that development proposals are compliant with the Code. Here the Protestants argue that a different standard should be applied, we absolutely decline to do so.



Lade R. Akinbolaji, Vice Chair



William A. Dax, Member



James Stepp, Member