

Central Kitsap Fire District
Central Kitsap School District
Bremerton School District
Puget Sound Energy
City of Bremerton Planning Director
Water Purveyor - WATER DIST - NORTH PERRY
Sewer Purveyor - WATER DIST - NORTH PERRY
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Skokomish Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-SEPA
WA State Dept of Transportation
Interested Parties: Connor Rains, conner.l.rains@gmail.com

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BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY

Phil Olbrechts, Hearing Examiner

RE: Chick-Fil-A Zoning Variance File No. 23-03055	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
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INTRODUCTION

Chick-Fil-A Inc. requests approval of a variance to increase the maximum 72 parking spaces authorized by KCC 17.490.030 to 98 spaces for a new Chick-Fil-A restaurant to be located at 1460 NE Vena Ave Bremerton, WA 98311. The variance is approved subject to conditions.

ORAL TESTIMONY

A computer-generated transcript of the hearing has been prepared to provide an overview of the hearing testimony. The transcript is provided for informational purposes only as Exhibit 31. The transcript should not be construed as evidence, but it rather designated as Exhibit 31 for purposes of the County’s document filing system. The transcript is not accurate, especially as to identification of speakers and is provided as a courtesy only for ease of testimony reference. A recording of the hearing can be acquired from Kitsap County should an accurate rendition of hearing testimony be necessary.

EXHIBITS

Exhibits 1-29 listed in the Index to the Record prepared by County staff were admitted during the hearing. An April 1, 2024 staff memo identifying no SEPA appeal was timely filed is admitted as Ex. 30.

FINDINGS OF FACT

Procedural:

1. Applicant. Chick-Fil-A Inc. 5200 Buffington Rd, Atlanta, GA 30349 .

1 2. Hearing. The Hearing Examiner conducted a virtual hearing on the
2 application at 9:00 am on March 28, 2024. The hearing was left open through April 1,
3 2024 to receive notice on whether any SEPA appeals had been filed by the March 29,
4 2024 expiration date.

5 **Substantive:**

6 3. Site/Proposal Description. Chick-Fil-A Inc. requests approval of a variance
7 to increase the maximum 72¹ parking spaces authorized by KCC 17.490.030 to 98
8 spaces for a new Chick-Fil-A restaurant to be located at 1460 NE Vena Ave Bremerton,
9 WA 98311.

10 Kitsap County Code (KCC) Section 17.490.030 provides that 1 parking stall per 80-
11 square-feet of gross floor area, or (66) stalls for the subject Chick-fil-A site, are
12 required.

13 The 5,233-square foot Chick-fil-A fast-food restaurant will have a double drive-thru,
14 an outdoor dining area and indoor playground. Additional site improvements will
15 include new site access from NE Fuson Road and NE Vena Avenue, new asphalt paving
16 and striping, new curb cuts, lot lights, perimeter landscaping, surface parking for
17 ninety-eight (98) vehicles, stormwater improvements, and new utility connections (see
18 Attachment A: Site Plan). The 2.20 acre project site is developed with an existing
19 single-family residence that will be demolished for the project.

20 4. Characteristics of the Area. The project area is surrounded on all sides by
21 property zoned Commercial. Retail uses are located to the north and east and vacant
22 and single-family residences to the south and west.

23 5. Adverse Impacts. No significant adverse impacts are anticipated from the
24 proposed variance. According to the staff report, the project site will still meet the
25 zoning code required limitation of 85% impervious surface despite the added parking.
No critical areas are located on or within 200 feet of the project site except for a critical
aquifer recharge area. As noted in the staff report, the County's critical area regulations
don't require any measures to be taken for proposed restaurants in critical aquifer
recharge areas.

The Suquamish Tribe in its public comment, Ex. 18, noted that the proposal should be
designed to maintain infiltration rates since the project is within a critical aquifer
recharge area that could affect stream flows. As previously noted, the County's critical
areas ordinance doesn't require a hydrogeological study for restaurants. However,

¹ KCC Section 17.490.030 A.2. requires a variance for any proposed parking that is
10% greater than the parking required by KCC 17.490.030. The staff report notes that
KCC 17.490.030 requires 66 parking spaces for the project. Thus a maximum of 72
spaces is authorized without a variance.

1 since the requirement for a study is based upon proposed use as opposed to amount of
2 impervious surface, it appears that the aquifer recharge regulations are focused upon
3 water quality impacts as opposed to maintenance of infiltration rates. The Tribe's
4 commentator, Mr. Malcolm, is a biologist/ecologist. According to Mr. Malcolm, the
5 impervious surface of the project site could adversely affect stream flows. There is no
6 evidence to the contrary. Since infiltration rates can be adversely affected by the
7 increase in impervious surface associated with the requested parking variance, a
8 condition of approval requires this issue to be addressed.

9 Surrounding residential uses will be adequately buffered from the added parking.
10 Attachment A to the staff report shows that residential uses to the south will be
11 separated from the project site by NE Vena Avenue. Attachment A shows adjoining
12 residential uses on the west side will be separated by what the site plan describes as a
13 17-foot building and landscaping setback. The staff report notes that a solid screening
14 buffer will be required within this setback. Landscaping overall takes up 23.7% of the
15 project site.

16 A condition of approval minimizes lighting impacts from the additional parking by
17 requiring that landscape buffers shall shield offsite areas from headlight glare from all
18 drive aisles and parking lots.

19 A couple neighbors expressed concern over site access and trip generation. Since the
20 increase in requested parking will not result in any changes to trip generation or parking
21 access, those concerns are beyond the scope of the variance application and are left to
22 staff to consider in their site plan review.

23 6. Special Circumstances. Special circumstances apply to the proposal due to the
24 project's location adjacent to a state road, SR 303. The absence of surrounding
25 restaurants is also a special circumstance based upon location. SR 303 is a principal
arterial with four lanes of travel. As such it is a major thoroughfare for the County. As
testified during the hearing, Chick-Fil-As are unusually high volume fast food
restaurants with business models that involve significantly more employees as typically
associated with fast food restaurants, with three to four times more employees working
in the drive-through area. These factors thus lead to greater parking demand for both
patrons and employees than are contemplated in the County's parking standards.
Inadequate parking can lead to increased use of the drive through, which in turn can
lead to queuing spill-over onto SR 303. Also as noted by the Applicant, there are not
any other restaurants in the vicinity, thereby increasing the demand for in-house dining
at the project site.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. KCC Section 21.04.100 Review Authority Table requires a Hearing Examiner approval for a zoning variance request greater than

1 25%. KCC Section 17.490.030 A.2. requires a variance for any proposed parking that
2 is 10% greater than the parking required by KCC 17.490.030. The Applicant requests
a 48% increase in parking over that required by KCC 17.490.030.

3 **Substantive:**

4 2. Zoning Designation. The property is currently zoned Commercial.

5 3. Review Criteria. KCC 17.560.010A governs the criteria for zoning
6 variances. Pertinent criteria are quoted below and applied via corresponding
7 conclusions of law.

8 **Variance**

9 **KCC 17.560.010A:** *A variance may be granted to any numerical standard of this title,
10 excluding housing density, only when unusual circumstances relating to the property
11 cause undue hardship in the application of this title. The granting of such a variance
12 shall be in the public interest. A variance shall be made only when all of the following
conditions and facts exist:*

13 *A. There are special circumstances applicable to the subject property, including size,
14 shape, topography, location or surroundings, that were not created by the applicant
and do not apply generally to other property in the same vicinity or zone;*

15 10. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
16 6.

17 **KCC 17.560.010B:** *Such variance is necessary for the preservation and enjoyment
18 of a substantial property right or use of the applicant possessed by the owners of other
properties in the same vicinity or zone;*

19 11. Criterion met. The criterion is met. The Applicant simply wishes to have enough
20 parking to accommodate its patrons, a right enjoyed by most other land uses in the
21 County. As discussed during the hearing, it is somewhat questionable whether as many
22 as 98 spaces are necessary to adequately serve the site. However, in the absence of any
23 countervailing evidence, the Applicant's assessment of its parking needs is reasonably
reliable. The Applicant will likely not choose to take on the added expense of
additional parking unless necessary for its operations.

24 **KCC 17.560.010C:** *The authorization of such variance will not be materially
25 detrimental to the public welfare or injurious to property in the vicinity or zone in which
property is located; and*

12. Criterion met. The criterion is met for the reasons identified in Finding of
Fact No. 5.

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2 **KCC 17.560.010D:** *The variance is the minimum necessary to grant relief to the*
3 *applicant.*

4 13. Criterion met. The criterion is met. As determined in Conclusion of Law No. 11,
5 the Applicant is in the best position to determine the amount of parking it needs and its
6 assessment is credible.

7 **DECISION**

8 Based upon the conclusions of law above, the zoning variance application is approved
9 subject to the conditions of the March 20, 2024 staff report and the following added
10 condition:

- 11 1. If not otherwise addressed by the County’s stormwater regulations, the Applicant
12 shall take reasonable measures to minimize changes in infiltration rates caused by
13 the requested increase in parking.
- 14 2. The number of parking spaces authorized by this decision is a maximum number
15 only. The number may have to be reduced as necessary to conform to site plan
16 review and other development review permits.
- 17 3. Landscape buffers shall shield offsite areas from headlight glare from all drive
18 aisles and parking lots.
- 19 4. This Variance approval shall automatically become void if no building permit
20 application is accepted as complete by the Department of Community Development
21 within four years of the Notice of Decision date or the resolution of any appeals.
- 22 5. All required permits shall be obtained prior to commencement of land clearing
23 construction and/or occupancy.
- 24 6. The authorization granted herein is subject to all applicable federal, state, and local
25 laws, regulations, and ordinances. Compliance with such laws, regulations, and
ordinances is a condition to the approvals granted and is a continuing requirement
of such approvals. By accepting this/these approvals, the applicant represents that
the development and activities allowed will comply with such laws, regulations,
and ordinances. If, during the term of the approval granted, the development and
activities permitted do not comply with such laws, regulations, or ordinances, the
applicant agrees to promptly bring such development or activities into compliance.
7. The project shall comply with KCC 17.500 regarding landscape buffer
requirements and the 15% landscaping requirement. The project shall provide

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partial separation roadside buffers on Highway 303, NE Fuson Road, and NE Vena Avenue. The project shall provide solid screening buffers around trash enclosures and the western edge of the project.

- 8. The project shall comply with KCC 17.500 regarding landscape buffer requirements and the 15% landscaping requirement. The project shall provide partial separation roadside buffers on Highway 303, NE Fuson Road, and NE Vena Avenue. The project shall provide solid screening buffers around trash enclosures and the western edge of the project.
- 9. Parking lot design must comply with KCC 17.490.040.
- 10. The project shall meet the 85% impervious surface requirement in KCC Section 17.420.054.
- 11. Pedestrian circulation across drive aisles must be painted designations, different material/color, or other method that clearly identifies how a pedestrian should navigate the parking lot.

Dated this 15th day of April, 2024.

Phil Olbrechts
 Phil Olbrechts,
 Kitsap County Hearing Examiner

Appeal Right and Valuation Notices

Pursuant to KCC 21.4.100 and KCC 21.04.110, this decision is a final land use decision of Kitsap County and may be appealed to superior court within 21 days as governed by the Washington State Land Use Petition Act, Chapter 36.70C RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.