

ATTACHMENT TO APPEAL
ZA-2017-4754-CU-SPPA-SPP-PA1

Appellant: Encino Property Owners Association, Inc. “EPOA”) is an organization of homeowners and residents in the community of Encino who since 1965 have been an advocate for protecting the community in land use and zoning matters. Its members are directly impacted by the subject Conditional Use Permit and Plan Approval determination.

The Zoning Administrator erred as follows:

1. Finding that the Applicant, Chick-Fil-A, was in substantial compliance with the Drive-Thru CUP; and
2. Failing to make findings supported by uncontested, overwhelming evidence that the Drive-Thru Use has resulted in daily public safety hazards; traffic violations (illegal U Turns); blocked driveways of homeowners; and other adverse impacts on surrounding properties, the local neighborhood and the community at large.

Summary of Factual Background

The subject Conditional Use Permit (“CUP”) was granted in 2018 to allow a “Drive Thru” – not otherwise permitted by the Zoning Code at the site – in connection with a proposed Chick-Fil-A fast food restaurant.

It is undisputed that the Drive Thru CUP was approved based on erroneous assumptions including:

- A. Vehicle ingress into the Drive Thru from Ventura Boulevard would be by **Left Turn** into the driveway of the Drive Thru from southbound White Oak Avenue;
- B. Based on representations from Chick-Fil-A’s traffic consultant and the City’s Department of Transportation (“DOT”), the Zoning Administrator (“ZA”) made the required CUP findings including *that the Drive Thru use would not adversely impact surrounding properties and that there would not be any traffic impacts.*

Immediately prior to the opening of the Drive Thru in November, 2019, DOT – without notice, without hearing – without any due process – decided to prohibit Left Turns from southbound White Oak Avenue because of concerns that vehicles would back up into and blocking the intersection of Ventura Boulevard.

As a result of DOT's action, all traffic ingress into the Drive Thru from Ventura Boulevard required drivers to go past the Drive Thru and then make dangerous and illegal U Turns and pull in and out of driveways on White Oak Avenue in a single family residential neighborhood.

As a result of daily traffic safety hazards and overwhelming neighborhood complaints, Councilmember Paul Koretz wrote the ZA expressing concerns regarding "significant public safety risks and traffic congestion" and requesting a public hearing pursuant to Condition 27 of the CUP ("Early Plan Approval Review").

On February 6, 2020, DOT also wrote the ZA confirming the serious traffic impacts endangering public safety and the surrounding neighborhood. DOT conceded that such impacts could have been identified before the Drive-Thru CUP was approved had a traffic study been performed. Again, no traffic study was done because of erroneous conclusions by DOT and Chick-Fil-A consultants that the Drive Thru would not cause any traffic impacts.

Because of the voluminous documented severe public safety hazards and adverse impacts from the Drive-Thru use, on May 15, 2020, the ZA required Chick-Fil-A to file an early Plan Approval pursuant to Condition 27 of the CUP.

The Early Plan Approval Review Hearing

A public hearing on the Early Plan Approval Review was held by a new ZA, Henry Chu, on September 14, 2020 at which time the following evidence was presented:

A. Over 300 residents and community stakeholders spoke or wrote emails with regard to the public safety hazards and adverse impacts of the Drive Thru including:

- Dangerous and illegal U Turns
- Backing in and out of residents' driveways
- Residents' driveways blocked
- Northbound White Oak Avenue vehicles crossing over into oncoming southbound traffic
- Hazards to pedestrians
- East side of White Oak sidewalk blocked at Drive-Thru entry
- Impacts on delivery of mail
- Impacts on trash pickup

B. The ZA was presented with video clips and photos documenting the daily traffic hazards and adverse impacts set forth above;

C. Chick-Fil-A did not dispute the evidence of traffic hazards and adverse impacts on public safety and the surrounding neighborhood;

D. Based on the overwhelming, uncontested evidence above, the ZA was requested to make the following findings:

1. *Substantial evidence in the form of photos, videos, emails and testimony has been presented which shows that the current Drive Thru use adversely affects public safety and persons residing in the surrounding area;*

2. *Substantial evidence in the form of photos, videos, emails and testimony has been presented which shows that the current Drive Thru use has resulted in traffic violations;*

3. *Substantial evidence in the form of photos, videos, emails and testimony has been presented which shows that the current Drive Thru use has resulted in adverse impacts of residential uses.*

These requested findings were supported by Councilmember Paul Koretz, the Encino Neighborhood Council, Encino Property Owners Association, Homeowners of Encino, Neighborhoods First and the impacted neighborhood residents.

Zoning Administrator Determination Error

The ZA erred by not making the requested findings above and by further finding that Chick-Fil-A was in *substantial compliance* with the CUP conditions. Clearly the ZA, who otherwise did a very good job of handling a very emotional, contentious public hearing, was using “math” in referring to compliance based on the numbers of conditions. The reality is that compliance is comparative and if an approved CUP use – here a Drive Thru – has not been conducted in due regard for the character of the surrounding neighborhood and the ZA expressly found noncompliance with CUP Conditions 1,2,3, 7and 14.

The ZA further erred by finding compliance with CUP Condition 23 which states:

“Prior to the utilization of this grant, 24-hour “hot line” shall be provided for complaints or concerns from the community regarding the operation. The 24-hour phone number shall be posted at the following locations:

- a. Entry, visible to pedestrians
- b. Customer service desk, front desk or near the hostess station.

The applicant shall maintain a log of all calls, detailing: (1) date complaint received; (2) nature of complaint, and (3) the manner in which the complaint was resolved. This log shall be made available to law enforcement personnel upon request and presented as part of the application if and when a new application to continue the operation is submitted to the Department of City Planning. Complaints shall be responded to within 24 hours.”

As of the date of this Appeal, there is no 24-hour “Hot Line” phone number that is visible to pedestrians; no log of calls detailing the information required by Condition 23 has been provided to the public or ZA (to the knowledge of Appellant); and calls by neighborhood residents to the Chick-Fil-A ownership have been ignored without any corrective actions taken.

New CUP Conditions Imposed by the ZA

Appellant acknowledges and appreciates the new CUP Conditions 48, 49 and 50 imposed by the ZA which provides for a further public hearing to evaluate the effectiveness of the traffic mitigation measures proposed by Chick-Fil-A and DOT.

However, because some of such measures could significantly and adversely impact thousands of community residents who reside south of Ventura Boulevard who rely on the artery of White Oak Avenue to access Ventura Boulevard and the Ventura 101 Freeway, Appellant requests that the Plan Approval determination expressly provide that such traffic mitigation measures are being implemented on a “trial basis”. It is conceivable that the loss of an existing left turn only lane northbound White Oak Avenue may need to be restored after an evaluation is made of the effectiveness or lack thereof including greater harm.

Mindful of the requirements set forth in LAMC Section 12.27.1 for revocation of a CUP, if DOT approves such proposed traffic mitigation, it is imperative that the ZA condition such measures on a **trial basis** not exceeding 60-90 days. **The profits of the operator cannot outweigh protection of the neighborhood.**

Finally, Appellant requests that a new CUP Condition be imposed that states:

“Failure of operator to eliminate or show the ability to eliminate the public safety hazards and adverse impacts shall result in a ZA-initiated Notice of Revocation of CUP Hearing pursuant to LAMC Section 12.27.1”.