

The City of Destin



Post Office Box 399 Destin, Florida 32540 (904) 837-4242 FAX (904) 837-3267

October 2, 1995

DO-95-13

Chick-Fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349-2998

Re: **FINAL DEVELOPMENT ORDER FOR A 2,800 S.F. CHICK-FIL-A RESTAURANT, A MAJOR DEVELOPMENT**

Gentlemen:

Based upon City Council's approval of the above referenced project at its meeting on September 18, 1995, this letter will serve as your Final Development Order to include all of the provisions of:

- (1) the enclosed Technical Review Committee Report dated July 20, 1995;
- (2) the Planning Commission Report and Recommendation to City Council;
- (3) the conditions contained in the September 20, 1995 letter from City Attorney Robert E. McGill to James W. Grimsley, attorney for Chick-Fil-A;
- (4) the conditions contained in the August 16, 1995 Memorandum from Robert E. McGill, III, City Attorney to the Destin Planning Commission.

Copies of the above referenced documents are attached to and made a part of this Development Order letter. In addition:

1. You must obtain a building permit for construction within one year of the date of your development order approval or the development order will expire and it will be necessary for you to re-submit your project to the review process. Expiration date would be September 17, 1996.
2. In order to obtain a building permit for construction you must provide the City with a copy of your DEP Stormwater Management Permit.

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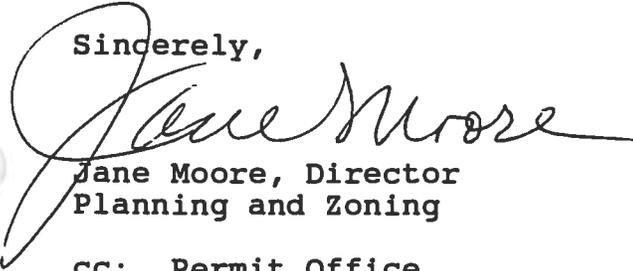
3. Prior to the issuance of a Certificate of Occupancy, you must provide the City with a copy of the DOT permit.

The process you have just completed gives you site plan approval and the opportunity to go pursue permits for construction. Building permits and specific construction requirements are to be coordinated with the Building Department. Pam Adams is the Permit Clerk and Larry Ballard is the Building Official. It is my understanding that your drawings have previously been submitted for review so this should help expedite the permitting process.

If you have any questions regarding this Development Order letter or the conditions attached thereto, you should notify this office in writing by return mail so that there is no confusion.

We wish you success in this endeavor and look forward to a resolution to the Sundestin parking issue.

Sincerely,

A handwritten signature in cursive script that reads "Jane Moore". The signature is written in black ink and is positioned above the typed name and title.

Jane Moore, Director
Planning and Zoning

cc: Permit Office

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REPORT AND RECOMMENDATION

TO: Destin City Council

FROM: Destin Planning Commission

SUBJ: Request approval of Chick-Fil-A Restaurant, a Major Development

DATE: September 5, 1995

ISSUE:

Request approval of Chick-Fil-A Restaurant, a Major Development. The proposed project consists of a 2,800 s.f. restaurant to be located approximately 1150' west of the intersection of Airport Road and Highway 98. Request is made by Northwest Florida Engineering and Surveying, Inc., agent for Chick-Fil-A, Inc., owner. The property contains 1.84 acres or more.

DISCUSSION:

The Planning Commission conducted a Public Hearing on the proposed project on August 17, 1995. During that meeting there was a lengthy discussion regarding the requirement for a portion of the required parking for the Sundestin Condominium to be placed on the site. It was noted by staff that the Sundestin Condominium project was approved by Okaloosa County when off-site parking was allowed under county regulations (74-4) if the parking spaces were within 400' of the site.

It was further pointed out that there is an existing PARKING LICENSE AGREEMENT which provides a perpetual non-exclusive parking license for up to 310 standard sized automobiles for the use of the Sundestin International Condominium Owners' Association, its members and their guests, licensees, invitees, etc. The record is very unclear as to the exact location of this parking area but the most recent government action was by Okaloosa County on November 11, 1984 when they approved the off-site parking spaces for Sundestin across the front of the Chick-Fil-A parcel adjacent to Highway 98. Apparently this location was never recorded as an easement on the property.

There is ongoing litigation between the Sundestin Condominium Association and Chick-Fil-A, Inc. The Circuit Court has issued a Temporary Order that Chick-Fil-A provide a temporary parking lot consisting of 160 spaces for the Sundestin Condominium in the location shown on their drawings (north of the proposed restaurant and its site improvements). A copy of the Temporary Order is included with this packet.

Other than the legal ramifications of the requirement to provide parking for the Sundestin Condominium, the project meets all City requirements.

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CHICK-FIL-A RESTAURANT
September 5, 1995

RECOMMENDATION:

Based on its compliance with code and being compatible with surrounding land uses, the Planning Commission recommended approval of the project by a vote of 7-0, adopted the Technical Review Committee Report as its Findings of Fact and with the condition that the development order include the following language recommended by the City Attorney:

The applicant has requested that the city proceed forward with consideration of this application for development approval with full knowledge of the possibility that the Okaloosa County Circuit Court or some other court of competent jurisdiction may rule against the use of the subject property as permitted in this development order.

The applicant understands that if and when it chooses to begin construction of the requested improvements, it does so at its own risk. Accordingly, the applicant disclaims, relinquishes and waives any and all rights to claim that it acted to its detriment in reliance on this permit authorization. The applicant waives any rights against the city in relation to any demolition or removal of any improvements from the aforementioned property, which may be ordered by the referenced courts in the future.

The City disavows its obligation to defend any challenge to the development order hereby granted. Further, the applicant waives any right to argue that the applicant relied on this development order and demand that the City of Destin defend any challenge to the development order.

SUGGESTED MOTION BASED ON PLANNING COMMISSION ACTION:

I move that we approve the Chick-Fil-A Restaurant with the development order to include the language recommended by the Planning Commission.

STAFF COMMENTS:

Further guidance from the City Attorney may be required on the off-site parking issue for Sundestin inasmuch as the proposed area only includes 160 spaces. The project requirement at time of approval by Okaloosa County was 310 spaces which is the number included in the PARKING LICENSE AGREEMENT. Council might be able to consider approving the Chick-Fil-A project as proposed with the additional stipulation that no further development will be approved on the balance of the property until the parking issue is resolved through the Court system. This concept has not been discussed with the City Attorney as of the writing of this report (09-01-95).

TECHNICAL REVIEW COMMITTEE REPORT

PLANNING AND ZONING DEPARTMENT CHICK-FIL-A RESTAURANT A MAJOR DEVELOPMENT NORTH SIDE OF HIGHWAY 98 EAST JULY 20, 1995

ISSUE

Request for approval of Chick-Fil-A, a Major Development. The proposed project consists of a 2,800 s.f. restaurant to be located approximately 1150' west of the intersection of Airport Road and Highway 98. Request is made by Northwest Florida Engineering and Surveying, Inc., agent for Chick-Fil-A, Inc., owner. The property contains 1.84 acres, more or less.

BACKGROUND

The proposed project lies between Pizza Hut and Days Inn Motel (to the west) and the entrance road, Gulf Terrace Way, into the Gulf Terrace Condominium project (to the east). Further east is the Waffle House restaurant.

The site contains a parking easement in the form of a "Parking License" for 310 required parking spaces for the SunDestin Condominium which lies South of Highway 98. The Sundestin Condominium project was approved by Okaloosa County in 1984 with 310 of the required parking spaces to be located off-site on the property under consideration for the Chick-Fil-A project. Subsequent approval was granted on November 11, 1984, by the Board of County Commissioners to relocate the off-site parking to an area adjacent to Highway 98. (SEE ATTACHED DRAWING AND DOCUMENTS FROM OKALOOSA COUNTY FILES.) On April 24, 1984, a "Parking License Agreement" was entered into (Official Records Book 1242, Page 1153, et seq., Okaloosa County) which spells out the agreement for 310 parking spaces and which included a legal description but no map. (See Agreement #1)

An amended "Parking License Agreement", dated July 31, 1986, was executed and recorded (Official Records Book 1355, Page 884, et seq., Okaloosa County). This agreement changed the location of the parking to another location on the site. (See Agreement #2) Subsequently, another agreement was entered into on February 4, 1988, and recorded (Official Records Book 1439, Page 891, et seq., Okaloosa County). This agreement again changed the location of the parking. This agreement also contained specific language that stated:

"6. It is the specific intent of "Altus Bank" and "SunDestin", and is a condition of this amendment that the "New Parking Area", as constructed, obtain approval from the City of

The median break aligns with Gulf Terrace Way. Ideally, access into this property would be allowed from Gulf Terrace Way but this is a private street and the city cannot mandate access for this property. According to the developer, Gulf Terrace is not amenable to the idea.

SETBACKS

The building meets all required setbacks. The building front is approximately 91' from their front property line.

SIDEWALKS

Sidewalks are existing along Highway 98 and any damage to these facilities during construction will necessitate their replacement at the developer's expense.

UTILITIES

Underground utilities are required.

WHITE SANDS ZONE

The project is located in White Sands Zone 2 and fill material must comply with city code.

SIGNS

No signs have been requested as part of this submittal. All signs must comply with the city's sign regulations.

MYLAR

Mylar is not required to be submitted.

LANDSCAPE

The project meets or exceeds the landscape requirements as follows:

OPEN SPACE:

80,150 s.f. of property X 18%	=	14,427	s.f. required
Site plan provides 45.9 %	=	36,780	s.f. provided

TREES REQUIRED:

Reforestation 19	Perimeter 11	Parking Lot 9
(10 per acre)	(1 per 25')	(Islands)

Protected Trees on Site (12" to 23" diameter):	0
Preserved Trees on Site (24" or more diameter):	0
Credits for Protected/Preserved Trees	0
TOTAL TREES REQUIRED	39
TOTAL TREES PROVIDED	40

Staff initially thought the Chick-Fil-A site abutted the private roadway, Gulf Terrace Way. However, we subsequently learned that Gulf Terrace Condominium owns a narrow strip between this roadway and the development parcel. Therefore, there is no 10' front perimeter required on the eastern boundary as mentioned during TRC.

September 20, 1995

James W. Grimsley, Esq
SMITH, GRIMSLEY, BAUMAN, PINKERTON,
PETERMANN, SAXER & WELLS
Post Office Box 2379
Fort Walton Beach, Florida 32549

Steven Hall, Esq.
HALL & RUNNELS, P.A.
1234 Airport Road, Suite 106
Destin, Florida 32541

RE: OUR FILE NO.: DES(PC) 5004.3
CHICK-FIL-A, INC.

Dear Jim and Steve:

On September 18, 1995, the Destin City Council reviewed the application by Chick-Fil-A for a development order to construct a restaurant on the property which is subject to the Parking License Agreement with SunDestin Association, Inc. The development order was approved under the following conditions:

- 1) Chick-Fil-A acknowledge that the restaurant building may have to be moved if Judge Barron so rules and Chick-Fil-A is proceeding at their sole risk in constructing the restaurant;
- 2) Chick-Fil-A will not construct any further building on the site until Judge Barron rules on the location of the 310 parking spaces provided in the Parking License Agreement;
- 3) Chick-Fil-A will construct 160 parking spaces immediately; and
- 4) Chick-Fil-A acknowledges that a total of 310 parking spaces will be provided for off-site parking for SunDestin Condominium.

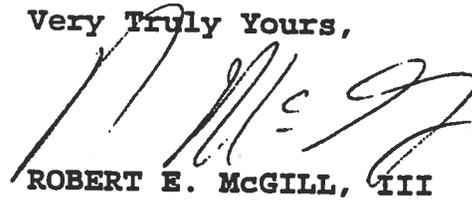
The City Council further found that SunDestin Condominium is not in compliance with its development order. The City Council is willing to wait for a ruling by Judge Barron concerning the exact location of the 310 parking spaces on the property before taking any action against SunDestin. Specifically, the City of Destin will provide a grace period of 120 days from the date that Judge Barron enters an Order determining the exact location of the parking spaces or the parties enter into a settlement agreement

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regarding the location of the parking spaces before taking any code enforcement action.

If you have any questions concerning the above, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'R. McGill, III', written over a horizontal line.

ROBERT E. MCGILL, III

REM/ksg

CC: Jane Moore, Destin City Hall ✓
Philip Cook, Destin City Hall

MEMORANDUM

FROM: ROBERT E. MCGILL, III, CITY ATTORNEY
TO: DESTIN PLANNING COMMISSION
DATE: AUGUST 16, 1995
RE: CHIC-FIL-A ORDER

We have received the enclosed temporary order executed by Judge Robert Barron. It is my recommendation that we proceed forward with a development order that includes some language indemnifying and holding the City harmless from any action by the developer of Chic Fil-A and/or the owner of the property upon which the Chic Fil-A site will be constructed. Specifically, the development order should contain the following language:

The applicant has requested that the City proceed forward with consideration of this application for development approval with full knowledge of the possibility that the Okaloosa County Circuit Court or some other court of competent jurisdiction may rule against the use of the subject property as permitted in this development order.

The applicant understands that if and when it chooses to begin construction of the requested improvements, it does so at its own risk. Accordingly, the applicant disclaims, relinquishes and waives any and all rights to claim that it acted to its detriment in reliance on this permit authorization. The applicant waives any rights against the City in relation to any demolition or removal of any improvements from the aforementioned property, which may be ordered by the referenced courts in the future.

The City disavows its obligation to defend any challenge to the development order hereby granted. Further, the applicant waives any right to argue that the applicant relied on this development order and demand that the City of Destin defend any challenge to the development order.

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