

Case No.: DET-2022-001
TCP2-029-12-16

Applicant: Northpoint Realty Partners, LLC

COUNTY COUNCIL OF PRINCE GEORGE’S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL

FINAL DECISION — DISAPPROVAL OF DETAILED SITE PLAN

On May 15, 2023, using oral argument procedures, this matter was considered by the District Council, on its motion to review, and from an appeal by certain persons of record. (5/15/2023, Tr.), Appeal, 4/13/2023. The issues have been afforded full consideration. The Board’s decision to approve Detailed Site Plan (DET)-2022-001 and Type 2 Tree Conservation Plan (TCP2-029-12-16), to develop 306,000 square-feet of commercial/distribution warehouse uses in two (2) separate buildings on two (2) proposed parcels, on the west end of the Westphalia Town Center, on the north and south sides of Presidential Parkway, east of Machinists Place, Planning Area 78, Council District 6, is hereby REVERSED.¹ PGCC § 27-3605(d)(10).

FINDINGS AND CONCLUSIONS

A. Introduction.

Under the Old Zoning Ordinance (Old ZO), the subject property was in the M-X-T (Mixed Use-Transportation Oriented)/M-I-O (Military Installation Overlay) Zone. In that zone (under the Old ZO), the property received entitlements for a Conceptual Site Plan (CSP)-07004-01 and two (2) separate Detailed Site Plans (DSP-12017 for infrastructure and DSP-12043 for special

¹ Under the New Zoning Ordinance (New ZO), which took effect April 1, 2022, a “Detailed Site Plan” is abbreviated as DET to distinguish it from DSP—the abbreviation used under the Old ZO. The New ZO remains under Subtitle 27 of the County Code and will be cited as “PGCC § 27-___.” The Planning Board will be referred to as the Board or the Planning Board when necessary. Technical Staff of the Board will be referred to as Staff. The Board’s decision was embodied in Resolution No. 2023-24 and will be referred to as PGCPB No. 2023-24. The Applicant is Northpoint Realty Partners, LLC and will be referred to as the Applicant. Meaning no disrespect, Citizen-Protestants—Denise France-Steele, Rongalett D. Green, Jante Turner, Dr. Chinonye Nnakwe Whitley, Corryne Carter, Nichole McMichael, and Sharon Bostic—will be referred to as the Appellants.

purpose). PGCPB No. 2023-24 at 3-4. Under the Old Subdivision Regulations (Old SR), the property also received an entitlement for a Preliminary Plan of Subdivision (PPS)-4-08002. *Id.* The approval process for the PPS and DSPs were subject to the approved CSP, which among other things, limits development to residential, retail, office, or hotel uses.

Under the New ZO, the property is in the Town Activity Center-Edge (TAC-e)/M-I-O Zone.² PGCPB No. 2023-24 at 4. The Applicant has elected to proceed with development under the New ZO because unlike the M-X-T/M-I-O Zone under the Old ZO, the TAC-e/M-I-O Zone permits commercial and distribution warehouse uses. But these land uses run counter to residential, retail, office, or hotel uses in the approved CSP and PPS. According to the Board, when reviewing a DSP under the New ZO, a CSP is not “recognized” as a required application. As such, the Board concluded that this DET did not have to conform to the land-use limitations of the approved CSP. Yet, the Board’s approval of this DET incorporated several requirements or conditions of approval from the approved CSP application—to “regulate” and condition the approval of this DET.

As detailed *infra*, the New ZO does “recognize” the applicability of a previously approved CSP. Under the New ZO, a DET is required to, among other things, comply with all conditions of approval in any development approvals and permits to which the DET is subject to. PGCC § 27-3605(e)(2). Here, the DET is subject to the conditions of the previously approved CSP, DSPs and PPS (*i.e.*, development approvals). The PPS was subject to the CSP, and the conditions of the CSP limits development of the property to residential, retail, office, or hotel uses. Because the Board’s

² When land is zoned or rezoned to a TAC Zone, it shall be designated as part of the zone’s Core area or part of its Edge area. The Core area shall include the land area that is the main focal point of the zone or a concentrated area of the zone’s most intense development. The remainder of the zone shall be designated as the zone’s Edge area, which is intended to accommodate less intense, more auto-oriented development with more of a residential mix and less emphasis on commercial development. The zone’s Core area and Edge area shall be delineated on the Zoning Map in conjunction with the mapping of the TAC Zone. PGCC § 27-4204(d)(2).

approval of this DET allows for commercial/distribution warehouse uses, which do not comply with the land uses approved in the CSP or PPS, the Board’s decision was arbitrary, capricious, or otherwise illegal. *Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015).

B. The New ZO Recognizes An Approved Conceptual Site Plan Application Under the Old ZO.

On April 1, 2022, the New ZO repealed and superseded the Old ZO—subject to a 2-year transitional provision or grace period to proceed with development under the Old ZO. PGCC § 27-1701, Council Bill (CB)-13-2018 and CB-98-2021. Under the Old ZO, an approved CSP, such as CSP-07004-01, remains valid for an unlimited period or unless an amendment of the Zoning Ordinance necessitates revision of the Plan. PGCC § 27-278.

The New ZO recognizes, through its Transitional Provisions, the validity and applicability of certain entitlements obtained under the Old ZO—such as CSP-07004-01, DSP-12017 and DSP-12043 here—even though the Old ZO has been repealed and superseded.³ Specifically, under the New ZO, PGCC § 27-1704—Projects Which Received Development or Permit Approval Prior to the Effective Date of this Ordinance—governs. Two (2) provisions of PGCC § 27-1704 are relevant. First, PGCC § 27-1704(a) provides, in relevant part, that the approval of a CSP (such as CSP-07004-01 here) shall remain valid for 20-years from April 1, 2022—as opposed to an unlimited period under the Old ZO. Second, PGCC § 27-1704(e) provides, in relevant part, that development proposals (such as CSP-07004-01, DSP-12017 and DSP-12043) are considered “grandfathered” and subsequent revisions or amendments may be reviewed under the Old ZO or

³ These types of entitlements are also referred to as “grandfathered” under the Transitional Provisions. PGCC § 27-1704(e).

the New ZO. The record lacks any evidence of subsequent revisions or amendments to CSP-07004-01, DSP-12017 and/or DSP-12043.

C. The New Subdivision Regulations Recognizes An Approved Preliminary Plan of Subdivision under the Old SR.

On April 1, 2022, the New Subdivision Regulations (New SR) repealed and superseded the Old SR—subject to a 2-year transitional provision or grace period to proceed with development under the Old SR. PGCC § 24-1701, Council Bill (CB)-15-2018 and CB-88-2021. Under the Old SR, an approved PPS, such as PPS-4-08002 here, remains valid for the time specified. PGCC § 24-1704(a). Here, the approved PPS (under the Old ZO), subject to the conditions of the land use limitations in the CSP (under the Old ZO), remains valid until December 31, 2023. PGCPB No. 2023-24 at 4, PGCC § 24-1704(a).

The New SR recognizes, through its Transitional Provisions, the validity and applicability of certain subdivision entitlements obtained under the Old SR—such as PPS-4-08002 here—even though the Old SR has been repealed and superseded.⁴ Specifically, under the New SR, PGCC § 24-1704—Projects Which Received Subdivision Approval Under The Prior Subdivision Regulations—governs. Primarily, two (2) provisions of PGCC § 24-1704 are relevant. First, PGCC § 24-1704(e) provides, in relevant part, that the approval of a PPS (such as PPS-4-08002 here) shall remain valid up to December 31, 2023—as specified under the Old SR. Second, PGCC § 24-1704(e) provides, in relevant part, that development proposals (such as PPS-4-08002) are considered “grandfathered” and subsequent revisions or amendments may be reviewed under the Old SR or the New SR. The record lacks any evidence of subsequent revisions or amendments to

⁴ These types of entitlements are also referred to as “grandfathered” under the Transitional Provisions. PGCC § 24-1704(e) and (g).

PPS-4-08002.

D. The New ZO Requirements To Approve A DET.

The Applicant filed this DET under the New ZO to capitalize on uses approved in the TAC-e/MIO Zone. But before moving forward under the New ZO, the Applicant was required to do more to capitalize on uses approved in the TAC-e/MIO Zone. Under the Transitional Provisions of the New ZO and New SR, the Applicant was required (in the *first* instance) to revise or amend the appropriate development approvals in order for this DET to comply with the conditions of those prior development approvals.

Under the New ZO, a DET **may only** be approved if, among other things, “[t]he proposed development complies with **all** conditions of approval in **any development approvals** and permits to which the detailed site plan is subject.” PGCC § 27-3605(e)(2). It is of no moment here, as the Board puts it, that the New ZO doesn’t recognize a CSP as a **required application**. PGCPB No. 2023-24 at 4. Worse, the Board ignores all together that the approved PPS (never revised or amended under the Transitional Provisions) was subject to the CSP land use limitations. Yet, the Board approved the DET subject to the PPS—which was subject to the conditions of the approved CSP that limits the development of the property to residential, retail, office, or hotel uses.

Under the New ZO, when a DET is required, the Order of Approvals does not require the filing of a CSP application. PGCC § 27-2300. But here, the DET was already subject to an approved CSP (*i.e.*, a development approval). PGCC § 27-3605(e)(2). To be sure, why else would the Transitional Provisions of the New ZO and New SR “grandfathered” projects that received development approvals **prior** to the effective date of the New ZO? PGCC § 24-1704 and PGCC § 27-1704. And why else would those same Transitional Provisions permit subsequent revisions or amendments of those same “grandfathered” development approvals under either the New ZO or

New SR? The legislative intent is clear. Subsequent development under the Old ZO or New ZO must conform to prior development approvals—unless otherwise revised or amended—pursuant to the appropriate Transitional Provisions.⁵ Moreover, under the New ZO, an application or development application is defined as “[t]he completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by this Ordinance and the District Council, Board of Appeals, or Planning Director as part of the review of a permit or development approval.” PGCC § 27-2500. Nothing in this definition amounts to a development approval. To be sure, the property is already subject to “development” under prior development approvals. The New ZO and New SR both define development as “[a]ny activity that materially affects the condition or use of dry land, land under water, or any structure.” PGCC § 24-2300 and PGCC § 27-2500.

E. Conclusion.

Because the Applicant has yet to successfully file or receive subsequent revisions or amendments to prior development approvals which limits development of the property to residential, retail, office, or hotel uses, the Board’s approval of this DET to develop the property with 306,000 square-feet of commercial/distribution warehouse uses was arbitrary, capricious, or otherwise illegal.⁶ *Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015).

ORDERED this 16th day of May, 2023, by the following vote:

⁵ When ascertaining the meaning and intent of the New SR and New ZO, they shall be read as a whole. PGCC § 24-2101 and PGCC § 27-2100, respectively.

⁶ The Applicant argues that under the Old ZO, a DSP can amend a previously approved CSP. But here, the Applicant voluntarily elected to proceed under the New ZO to obtain approval of this DET. Finally, there is no need to reach the merits of other arguments advanced by the Appellants because (in the first instance) the Board’s approval of this DET to develop the property with commercial/distribution warehouse uses under the TAC-e/MIO Zone was arbitrary, capricious, or otherwise illegal.

In Favor: Council Members Burroughs, Blegay, Dernoga, Fisher, Franklin, Harrison, Ivey, Olson, Oriadha, Watson.

Opposed:

Abstained:

Absent: Council Member Hawkins.

Vote: 10-0.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Thomas E. Dernoga, Chair

ATTEST:

Donna J. Brown
Clerk of the Council