Case No.: DPLS 415

Applicant: Potomac Energy Holdings, LLC

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

FINAL DECISION — APPROVAL OF DEPARTURE FROM PARKING AND LOADING STANDARDS

IT IS HEREBY ORDERED, after review of the administrative record, that Application No. 415, to approve a departure from parking and loading standards ("DPLS-415") from Section 27-582(a) of the Prince George's County Zoning Ordinance for the departure of four (4) of the required 25 parking spaces set forth in Section 27-568 of the Prince George's County Zoning Ordinance, is hereby APPROVED.

As the basis for this final decision, and as expressly authorized by the Regional District Act, within Titles 22 and 25 of the Land Use Article of the Annotated Code of Maryland, and Subtitle 27 of the Prince George's County Code, except as otherwise stated herein, we hereby adopt the findings and conclusions set forth in PGCPB No. 15-44.

FACTUAL AND PROCEDUAL BACKGROUND

On February 5, 2015, the Prince George's County Planning Department Development Review Division ("Technical Staff") accepted the Applicant's Departure from Parking and Loading Standards application ("DPLS-415"), which requested a departure of five of the required 25 parking spaces. Subsequently, Technical Staff transmitted its conditional recommendation of approval of DPLS-415 to Planning Board for its consideration. *See* Technical Staff Report, 4/22/2015. Planning Board held a hearing on May 7, 2015. At the conclusion of the hearing, Planning Board voted to approve DPLS-415 but only granted a departure of 4 of the required 25 parking spaces. *See* 5/7/2015, Tr. Subsequently, on June 4, 2015, Planning Board adopted a

resolution that embodied its vote and approval of DPLS-415 from May 7, 2015. The resolution was sent to all persons of record and to the Clerk of the County Council. *See* PGCPB No. 15-44, Notification of Planning Board Action.

On June 22, 2015, the District Council elected to review the Planning Board's decision in PGCPB No. 15-44, which approved DPLS-415.

On July 6, 2015, Mr. Ricky D. Dorsey appealed Planning Board's decision, PGCPB No. 15-44, to the District Council, which the Applicant opposed.[1] *See* Notice of Appeal, 7/6/2015, Applicant's Response to Appeal, 11/3/2015.

On October 7, 2015, the Clerk of the County Council sent notices of oral argument hearings to all persons of record.

On November 9, 2015, the District Council held oral arguments on the proposed special exception application and companion cases DPLS-415 (PGCPB No. 15-44) and DSDS-688 (PGCPB No. 15-45).

FINDINGS AND CONCLUSIONS

- Appeal by Mr. Dorsey

  Competition & Property Values

[1] Mr. Dorsey also appealed companion cases DSDS-688 (PGCPB No. 15-45) and SE-4757 for our consideration. *See* Appeal Letters, 7/6/2015, 10/5/2015. We note that Mr. Dorsey filed his appeals *pro se* but was represented by counsel at oral argument. *See* 11/9/2015, Tr. Although we held combined oral arguments on Mr. Dorsey's appeals, we dispose of his appeals in the companion cases separately. *See* Final Decisions in DSDS-688 and SE-4757. The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision. *See* PGCC § 27-141. *See also* Rules of Procedure for the Prince George's County District Council: Rule 6: Oral Argument and Evidentiary Hearings: (f) The District Council may take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.

Mr. Dorsey raises several concerns regarding the proposed special exception application, which the Applicant has opposed. Among his concerns, Mr. Dorsey states that an addition of a carwash and its particular location on the site will devastate his two million dollar investment in the community by significantly decreasing his business and property value. At the same time, Mr. Dorsey concedes that he has no issue with competition, except that if the special exception application is granted, adjustments in the proposed site plan should be made in order to address the interest of his business. Specifically, Mr. Dorsey would like the car wash building repositioned to stand along the north border of the site parallel to his property line, behind the gas station convenience store building. *See* Mr. Dorsey's Appeal Letters, 7/6/2015, 10/5/2015, Applicant's Response to Appeal, 11/3/2015. First, we recognize that Mr. Dorsey's business *may* have more competition as a result of the proposed carwash, but competition is not a proper element of zoning and a person whose sole interest for objecting to prevent competition with his established business in not a person aggrieved. *Lucky Stores v. Board of Appeals of Montgomery County* 270 Md. 513 (1973); *Kreatchman v. Ramsburg*, 224 Md. 209, 167 A.2d 345 (1961). Second, Mr. Dorsey failed to produce any expert testimony in the record to support his contention that the development of the proposed carwash (regardless of its position on the site) would decrease or increase the values of his business or property in the community. *See* PGCPB No. 15-43; PGCPB No. 15-44; PGCPB No. 15-45; Technical Staff Report, 4/22/2015; 5/7/2015, Tr.; 6/17/2015, Tr. *See also Ray v. Mayor of Baltimore*, 430 Md. 74, 59 A.3d 545 (2013) (affirming the requirement that expert testimony is required to determine whether the value of a property will increase or decrease because of future development). To the extent that the approval of DPLS-415 requires findings of 1) pre-existing gas station, 2) number of gas stations, and 3) balance of land in the area, we adopt and incorporate by reference, as if fully restated herein, our findings and conclusions in SE.4757.

Because Mr. Dorsey failed to identify any factual or legal error made by Planning Board to approve a departure from parking and loading standards from Section 27-582(a) of the Prince George's County Zoning Ordinance for the departure of four (4) of the required 25 parking spaces set forth in Section 27-568 of the Prince George's County Zoning Ordinance, IT IS HEREBY ORDERED, after review of the administrative record, that PGCPB No. 15-44 is AFFIRMED.

Ordered this 16th day of November, 2015, by the following vote:

In Favor: Council Members Franklin, Davis, Glaros, Harrison, Lehman, Patterson, Taveras, Toles and Turner.

Opposed:

Abstained:

Absent:

Vote: 9-0

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: _____
Mel Franklin, Chairman

ATTEST:

_____
Redis C. Floyd
Clerk of the Council