

Case No.DPLS 428

Tropicana Grill

Applicant: Old Landover, LLC

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

FINAL DECISION — APPROVAL OF DEPARTURE FROM PARKING AND LOADING STANDARDS, SUBJECT TO CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that Application No. 428, to approve a departure from parking and loading standards from Section 27-568 of the Prince George's County Code, from one of the nine required parking spaces, is hereby APPROVED.¹

The District Council adopts the findings of fact and conclusions of law set forth in PGCPB No. 16-105, except as otherwise stated herein.

PROCEDURAL HISTORY

On or about January 12, 2015, the Applicant in this case, Old Landover, LLC, filed an application for building plan examination and permit. The application requested to renovate the interior of an existing tire store, located at **3505** Maryland Avenue, Hyattsville, Maryland, 20785, to a convenience store. *See* Permit No. 54029-2015-CU-01.

¹ The District Council has jurisdiction to determine, after an appeal or election to review, whether to affirm, reverse, or modify the decision of the Planning Board, or return the proposed departure to the Planning Board to take further testimony or reconsider its decision. PGCC § 27-588. 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. PGCC §§ 27-141, 27-588. The District Council may also 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. District Council Rules of Procedure, Rule 6(f).

On or about December 30, 2015, Permit No. 54029-2015-CU-01 was approved. Specifically, the Planning Department Permit Review Section and Department of Permitting, Inspections and Enforcement (DPIE), approved the permit subject to the Applicant providing updated floor plans for a 379 square-foot convenience store only and an updated parking schedule in accordance with Permit No. 4693-2014.² See Permit No. 54029-2015-CU-01, PGCPB No. 16-105, pp. 2–3. A convenience store is not a “use” defined in Subtitle 27 of the Code, but it is understood that a convenience store is contemplated within the “use” for a food or beverage store. Subtitle 27 of the Code defines a food or beverage store as “a use providing the retail sales of food, beverages, and sundries primarily for home consumption, and may include food or beverage preparation. Does not include a Department or Variety Store that provides incidental sales of candy, gum and similar non-refrigerated items at a check-out counter, or in a standard vending machine.” See PGCC § 27-107.01(a)(91.1).

In December 2015, the Applicant also filed an application for building plan examination and permit. The application requested to renovate the interior of an existing tire store, located at **3503** Maryland Avenue, Hyattsville, Maryland, 20785, to a restaurant. See Permit No. 44810-2015-CU. A restaurant is not a “use” defined in Subtitle 27 of the Code, but it is understood that a restaurant is contemplated within the “use” for an eating or drinking establishment. Subtitle 27 of the Code defines eating or drinking establishment as an establishment that provides food or beverages for consumption on or off premise, which may be developed freestanding, on a pad site or attached to another building, or located within another building or located within a group of buildings, which may include a drive-through service, carryout, outdoor eating, music of any kind,

²The Applicant’s updated parking schedule was demonstrated on the approved Special Exception (S.E. 2725) site plan for the subject property. See discussion *infra*. See also Permit No. 4693-2014.

patron dancing, or entertainment, excluding adult entertainment uses. PGCC § 27.107.01 (a)(81.1). However, an eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 A.M., excluding adult entertainment (which is not the case here) shall require approval by special exception. *See* PGCC § 27-461. The Planning Department's Permit Review Section determined that the Applicant must, before Permit No. 44810-2015-CU may be approved, request the approval of an application for a Departure from Parking and Loading Standards (DPLS).³ *See* Permit No. 44810-2015-CU.

On or about April 27, 2016, the Development Review Division of the Planning Department accepted the Applicant's DPLS application for processing (DPLS-428). After conducting its review of the DPLS, Technical Staff recommended to the Planning Board that DPLS-428 should be approved with conditions. *See* Technical Staff Report, 8/23/16.

On September 8, 2016, the Planning Board held a hearing to consider DPLS-428. *See* (9/28/2016, Tr.). At the conclusion of the hearing, the Board voted to approve DPLS-428, subject to certain conditions. *Id.*, pp. 51–52. The Board's action was subsequently adopted in a Resolution on September 28, 2016. *See* PGCPB No. 16–105, pp. 8–9.

On October 24, 2016, the Council elected to review DPLS-428. Subsequently, the Council held a hearing to consider DPLS-428 on January 9, 2017. *See* Zoning Agenda, 1/9, 2017, (1/9/2017, Tr.).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In 1975, the property at issue, which consists of 3503 and 3505 Maryland Avenue, was subject to Special Exception 2725 (in accordance with Site Plan depicted in Exhibit 15) and

³ At the hearing before the Planning Board, counsel for the Applicant conceded that approval of DPLS-428 was required because the Applicant had requested a permit to operate a six-seat restaurant. (9/28/2016, Tr., p. 33).

Departure from Design Standards 11. *See* S.E. 2725 and DDS-11, Technical Staff Report, 8/23/16, p. 4, (9/28/2016, Tr., p. 48), PGCPB No. 16–105, p. 1. The approval of S.E. 2725 granted 8 parking spaces for the subject property, which in 1975 was zoned R-55 (One-Family Detached Residential). *See* S.E. 2725 and DDS-11.

Subsequent to 1975, the subject property was rezoned from R-55 or One-Family Detached Residential to the Commercial Shopping Center (C-S-C) Zone. The 1994 Approved Master Plan and Sectional Map Amendment for Bladensburg-New Carrollton and Vicinity (Planning Area 69) retained the subject property in the C-S-C Zone. PGCPB No. 16–105, p. 2. According to Subtitle 27 of the County Code, when a property is rezoned and subsequent uses are permitted in the new zone without approval of a Special Exception (as is the case here), the Special Exception shall terminate, and all provisions of the new zone shall apply to further use and development of the property. PGCC § 27-320(a)(5). The Applicant intends to occupy 3503 and 3505 Maryland Avenue with an eating or drinking establishment use (a six-seat restaurant) and a food or beverage store use (a convenience store). Both uses are permitted by right in the C-S-C Zone. *See* PGCC § 27-461, Table of Uses. In other words, even though Planning Board's approval and the Applicant's updated parking plan for the subject property refer to S.E. 2725, the special exception was terminated when the subject property was rezoned to C-S-C Zone because the proposed uses are permitted in the C-S-C Zone.

Since the approval of DPLS-428 affects land development, which affects the health, safety, and welfare of the general public, the District Council shall modify the Planning Board's approval in order to protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County.

Affirmance of DPLS-428 is subject to the following conditions:

1. Prior to certification of DPLS-428 and approval of Permit No. 44810-2015-CU, the Applicant shall revise the site plan for the subject property to:
 - a. Correct the dimensions of the handicap-accessible parking space to 13 feet by 19 feet.
 - b. Correct the parking calculations and the total number of parking spaces required.
 - c. Remove the parking spaces within the right-of-way of Maryland Avenue from the site plan.
 - d. Provide floor plans for all uses in 3503 and 3505 Maryland Avenue and both of the upper levels of 3503 and 3505 Maryland Avenue. The floor plan shall clearly demonstrate the dimensions of all areas, including seating and non-seating patron areas.
2. Prior to issuance of permits, all trash dumpsters shall either be moved internal to the building or screened in accordance with Section 4.4 of the 2010 *Prince George's County Landscape Manual*.
3. The operating hours for the eating or drinking establishment and food or beverage store at 3503 and 3505 Maryland Avenue shall be Monday–Friday (10:00 a.m. – 9:00 p.m.), Saturday (11:00 a.m. – 9:00 p.m.) and Sunday (11:00 a.m. – 7:00 p.m.). At no time shall the Applicant extend the hours of operation in this approval to allow music and patron dancing.
4. The Applicant shall provide written proof that Old Landover, LLC, is active and in good standing with the Maryland Department of Assessments and Taxation.
5. Upon satisfaction of the conditions of approval, the Planning Department shall amend the appropriate zoning map for Prince George's County to reflect that S.E. 2725 has been terminated and the subject property is no longer subject to S.E. 2725.
6. Any violation of the conditions of this approval shall be subject to revocation proceedings in accordance with the Prince George's County Code.

Ordered this 7th day of March, 2017, by the following vote:

In Favor: Council Members Davis, Franklin, 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: _____
Derrick Leon Davis, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council