

Case No.: DSP-13008-01
Gilpin Property

Applicant: Silver Branch, LLC

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

FINAL DECISION — APPROVAL OF DETAILED SITE PLAN

Pursuant to Section 25-210 of the Land Use Article ("LU"), Md. Ann. Code (2012 Ed. & Supp. 2015) and Section 27-290 of the Prince George's County Code (2011 Ed. & Supp. 2015, or as amended) ("PGCC"), we have jurisdiction to issue the final decision in this Detailed Site Plan Application Number 13031, ("DSP-13008-01").¹ Planning Board's Resolution No. 15-137 ("PGCPB No. 15-137"), approving DSP-13008-01, to construct an additional 98,832 square feet of consolidated storage use, including 948 interior and exterior access units in one new building and three building expansions to the existing structure be and the same, is hereby AFFIRMED.

As the basis for this final decision, and as expressly authorized by 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, we hereby adopt the findings and conclusions set forth within PGCPB No. 15-137, except where otherwise stated herein, and APPROVE DSP-13008-01.

FACTUAL AND PROCEDURAL BACKGROUND

DSP-13008-01 seeks to construct an additional 98,832 gross floor area of consolidated storage use on improved property described as 14.43 acres of land located in the southeastern quadrant of the intersection of Southern Avenue and Wheeler Road, approximately 770 feet

¹ See also *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490; 120 A.3d 677; (2015) (The District Council is expressly authorized to review a final decision of the county planning board to approve or disapprove a detailed site plan and the District Council's review results in a final decision).

northeast of Southview Drive, in the I-1 (Light Industrial) Zone, Planning Area 76A, Council District 7. *See* PGCPB No. 15-137, at 2. The property is improved, with the primary structure constructed in 1961 and recently converted for use as an existing consolidated storage use pursuant to approval of DSP-13008 in 2014. *See* PGCPB No. 15-137, at 2.

The amendment, as opposed to a revision, was filed for the purpose of adding 157,262 square feet of consolidated storage use on the property. *See* 10/07/2015 TSR, at 44; Statement of Justification, 08/07/15, at 2. In October 2015, the Planning Department accepted DSP-13008-01 for review as a *revision* to DSP-13008 and assigned case number DSP-13008-01 to this application. *See* 10/07/2015 TSR, at 1. On October 7, 2015, the Technical Staff issued its report and assessment of the application, conditionally recommending approval of DSP-13008-01. Subsequently, Technical Staff transmitted its conditional recommendation to Planning Board for its consideration. *See* 10/07/2015 TSR, at 1. Planning Board held a hearing on December 17, 2015, and at the conclusion of the hearing, Planning Board voted to approve DSP-13008-01, embodying its decision in a resolution, PGCPB No. 15-137.

On February 8, 2016, we elected to review DSP-13008-01. A hearing was held on March 28, 2016. At the conclusion of the hearing, we took this matter under advisement. *See generally* 03/28/2016, Tr.

FINDINGS AND CONCLUSIONS

Part 3, Division 9 (Subdivisions 1–3) of Subtitle 27 of the County Code governs the requirements for review and disposition of a Detailed Site Plan. Accordingly, Planning Board “shall review the Detailed Site Plan for compliance with Part 3, Division 9 (Subdivisions 1–3) of Subtitle 27 of the Prince George’s County Code. *See* §§ 27-274, 27-285, 27-289, 27-475.04, PGCC.

There is *no* provision in Part 3, Division 9 (Subdivisions 1–3) of Subtitle 27 of the County Code that allows for a *revision* of a Detailed Site Plan. Part 3, Division 9 (Subdivisions 1–3) of Subtitle 27 of the County Code. There is, however, a process set forth in the County Code for *amendment* of an approved Detailed Site Plan. Accordingly, when the Applicant filed its 2015 application requesting an amendment to DSP-13008—**“for the purpose of adding 157,262 square feet of consolidated storage on the property”**—it was subject to the requirements of § 27-289, PGCC, as follows:

(a) General.

An application to amend a Detailed Site Plan shall be filed with the Planning Board by the owner or authorized owner representative. No amendment of a Detailed Site Plan shall be permitted without the approval of the Planning Board or Planning Director, as provided in this Section. The Director may authorize staff to take any action the Director may take under this Section.

(b) Amendment, Planning Board.

All requirements for the filing and review of an original Detailed Site Plan shall apply to an amendment. The Planning Board shall follow the same procedures and make the same findings.

§ 27-289, PGCC (emphasis added); 10/07/2015 TSR, at 44.

Notwithstanding the plain requirements of the County zoning law, the record reflects that when Planning Board approved DSP-13008-01, its decision was limited to an assessment and determinations as to conformance with the approval of DSP-13008; the approval of Preliminary Plan 4-15017; a portion of the applicable zoning requirements set forth in §§ 27-473, 27-474.05, PGCC; and various requirements prescribed by the County Landscape Manual the Tree Canopy Coverage Ordinance. *See* PGCPB No. 15-137, at 3–16.

Although we find that Planning Board should have made more specific findings of facts and conclusions of law, as set forth in set forth in § 27-274, PGCC, before approving DSP-13008-01, we also find that Planning Board ultimately concluded that the proposed amendment—to triple

the size and number of units for the consolidated storage use on the site—represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9 of the Prince George’s County Code without requiring unreasonable cost and without detracting substantially from the utility of the proposed development for its intended use. *See* PGCPB No. 15-137, at 16.²

In the future, absent a provision in the County Code to the contrary, Planning Board shall apply the law as it is set forth in Part 3, Division 9 (Subdivisions 1–3) of Subtitle 27 of the County Code which includes making required findings and conclusions necessary to determine whether the Detailed Site Plan was designed in accordance with the eleven (11) evaluation criteria of the site design guidelines set forth in § 27-274, PGCC. *See also* §§ 27-274, 27-281, 27-283, 27-285, 27-289, PGCC; PGCPB No. 15-137.³

Moreover, on May 6, 2014, we adopted County Resolution 26-2014, which approved *Plan Prince George’s 2035*, the comprehensive update to the County General Plan for that portion of the Maryland-Washington District within Prince George’s County, pursuant to the provisions of Md. Code Ann., LU, §§ 21-103(a)–(b), 21-104 (2012 & Supp. 2015). As a result, our approval of *Plan Prince George’s 2035*, the 2014 General Plan *superseded* the County general development policies within the 2002 *Prince George’s County General Plan*. When Planning Board approved

² *See* PGCC, § 27-285(a)(5) (requiring that “[w]hen it approves a Detailed Site Plan, Planning Board shall state its reasons for the action). *See also Harford County v. Preston*, 322 Md. 493, 505, 588 A.2d 772, 778 (1991) (holding agency’s duty to make findings of fact “is in recognition of the fundamental right of a party to a proceeding before an administrative agency to be apprised of the facts relied upon by the agency in reaching its decision and to permit meaningful judicial review of those findings”); *Forman v. Motor Vehicle Admin.*, 332 Md. 201, 221, 630 A.2d 753, 764 (1993) (reaffirming that “[w]ithout findings of fact on all material issues . . . a reviewing court cannot properly perform its function”).

³ *See Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 503, 823 A.2d 626, 650 (2003) (holding that administrative agency must generally observe all rules, regulations, or procedures which it established and when it fails to do so, its actions will be vacated and the matter remanded. This rule is consistent with Maryland’s body of administrative law, which generally holds that an agency should not violate its own rules and regulations).

DSP-13008-01, we find little beyond a one-sentence conclusion below as to how the application provides for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan:

The application is consistent with the *Plan Prince George's 2035 Approved General Plan* (Plan Prince George's 2035). The development application is consistent with the 2000 *The Heights and Vicinity Approved Master Plan and Sectional Map Amendment* (Heights and Vicinity Master Plan and SMA). There are no planning issues.

PGCPB No. 15-137, at 10.⁴

While Planning Board's resolution approving DSP-13008-01 sets forth at least *de minimus* analysis of the facts in the record with respect to findings (b)(2)–(4), above, its assessment as to finding (b)(1) on page 15, paragraph 14 of PGCPB No. 15-137 reflects only affirmative, boilerplate restatement of the text of § 27-285(b)(1) as sufficient support for the finding. Notwithstanding Planning Board's deficient findings of facts in certain areas of its approval of DSP-13008-01, we choose not to remand this case to Planning Board for further findings of fact and conclusions of law because, in our view, it would delay economic revitalization in the County. *See* PGCPB No. 15-137, at 15.

Because by statute, the District Council is expressly authorized to review a decision of

⁴ A use permitted by right in a zone does not warrant automatic approval of a zoning application. *See Coffey v. Maryland-National Capital Park and Planning Commission*, 293 Md. 24, 441 A.2d 1041(1982) (observing that if Planning Board's lone function is a "rubber-stamp approval" after reviewing a zoning application for every subdivision plat which conformed with the zoning ordinance, there would be little or no reason for their existence. An applicant must also comply with state and other county regulations).

the Planning Board to approve or disapprove a Detailed Site Plan, we find that DSP-13008-01 was designed in accordance with the eleven (11) evaluation criteria of the site design guidelines set forth in § 27-274, PGCC.

APPROVAL of DSP-13008-01 is subject to the following conditions:

1. Prior to certificate of approval of DSP-13008-01, the Applicant shall revise the detailed site plan as follows:
 - a. Provide a plan that conforms to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.
 - b. Provide a plan that conforms to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code.
 - c. Provide wall heights and spot shots along on all existing and proposed retaining and screen walls on the site.
 - d. Indicate the correct proposed building square footage and unit numbers in the general notes on the DSP, as necessary.
 - e. Revise the parking space dimensions, requirements, and plant labels, as necessary to reflect what is provided.
 - f. Revise the architecture as follows:
 - (1) Provide decorative concrete block, to match Building 'B,' as the primary façade material on the three building expansions of Building 'A.'
 - (2) Specify the sloped metal roof on the three building expansions of Building 'A' to be brown to match the existing brick.
 - (3) Extend the proposed decorative concrete block a minimum of eight feet in height above the grade level along the intersecting corner of the north and east elevations.
 - (4) Show all proposed building-mounted signage on Building 'B,' subject to the Zoning

Ordinance requirements, to be reviewed by the Urban Design staff as designee of the Planning Board.

- g. Revise the site plan and architecture to conform to the maximum 36-foot building height requirement required by the County Code.
- 2. Prior to certification of the detailed site plan, the Type 2 Tree Conservation Plan shall be revised as follows:
 - a. The TCP2 shall be revised to reflect the correct PMA acreage consistent with the approved NRI and TCP1.
 - b. The wetland and wetland buffer symbols shall be shown on the TCP2 plan as shown in the legend.
 - c. Add the existing treeline to the TCP2 plan.
 - d. Show the required vicinity map on the TCP2 plan.
 - e. Revise the limits of disturbance to exclude the areas of “Woodland Preserved-Not Credited” or show the area of “Woodland Preserved-Not Credited” within the limits of disturbance as cleared. Revise the worksheet as necessary.
- 3. The following note shall be placed on the Final Plat of Subdivision:

“This plat is subject to the recordation of a Woodland Conservation Easement pursuant to Section 25-122(d)(1)(B) with the Liber and folio reflected on the Type 2 Tree Conservation Plan.”

ORDERED this 5th day of April, 2016, by the following vote:

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

Opposed: Council Member Toles.

Abstained:

Absent: Council Member Turner.

Vote: 7-1

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 L. Davis, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council