

Case No.: DSP-15012
Royal Farms, Brandywine

Applicant: Two Farms, Inc.
D/B/A Royal Farms

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 (2015 Ed., as amended) ("PGCC"), the District Council has jurisdiction to issue the final decision in Detailed Site Plan Application Number 15012, ("DSP-15012").¹ Planning Board's Resolution No. 16-06 ("PGCPB No. 16-06"), approving DSP-15012, to construct a gas station and a 4,946 square-foot food and beverage store, is legally authorized pursuant to PGCC Part 3, Division 9, and is hereby, **AFFIRMED**.

FACTUAL AND PROCEDURAL BACKGROUND

The Applicant, Two Farms, Inc. d/b/a Royal Farms seeks site plan approval to construct a gas station and a 4,946 square-foot food and beverage store on the west side of Branch Avenue (MD 5) in the southwest quadrant of its intersection with Moores Road, Brandywine, Councilmanic District 9. The subject site is zoned C-M (Commercial Miscellaneous) and is bounded to the north by Moores Road (MD 337) and beyond, by a nursery and garden center in the C-M Zone; to the east by Branch Avenue (MD 5) and beyond, by undeveloped land and single-family detached homes in the R-R (Rural-Residential) Zone; to the west by single-family detached homes in the R-R Zone; and to the south by Jannie Lane, a paper street, and beyond, by

¹ See also *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490; 120 A.3d 677; (2015).

undeveloped property in the R-R Zone. A gas station and food and beverage store is a permitted use, subject to site plan approval, in the C-M Zone.

On February 4, 2016, Planning Board adopted a resolution approving DSP-15012 subject to conditions. *See* PGCPB No. 16-06, pp. 19–20. Subsequently, the resolution was sent to all persons of record and to the Clerk of the County Council.

On or about March 15, 2016, Bernard Eugene Brooks appealed Planning Board’s approval of DSP-15012, to the District Council. *See* Notice of Appeal, 3/15/2016.

On or about April 13, 2016, the Applicant provided a written Response to Mr. Brooks appeal. *See* Applicant’s Response, 4/13/16.

On April 18, 2016, we conducted oral argument to consider the appeal filed by Mr. Brooks. *See* PGCC § 27-290(c), Zoning Agenda, 4/18/2016.

FINDINGS AND CONCLUSIONS

Appeal by Mr. Brooks

Mr. Bernard Eugene Brooks, a person of record, filed an appeal and requested oral argument before the District Council based on concerns that there would be negative impacts from the construction of DSP-15012. Mr. Brooks raises three (3) issues on appeal pertaining to safety, noise and traffic, which will be addressed below. *See* Notice of Appeal, 3/15/2016.

- Safety

Mr. Brooks contends that underground petroleum tanks and gas dispensers within close proximity of homes in the neighborhood (including his own residence) will pose a “tremendous danger.” *See* Notice of Appeal, 3/15/2016. The final decision in any zoning case shall be based only on the evidence in the record. *See* PGCC § 27-140.

Mr. Brooks resides at 7311 Moores Road. Pursuant to the County Code, gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line. Planning Board's approval of DSP-15012 complies with all statutory requirements of the County Code because all gasoline pumps and service appliances of the proposed Plan are located more than 25 feet behind the street line. The pumps are more than 100 feet from Branch Avenue (MD 5) and *more than* 200 feet from Moores Road and even further away from Mr. Brooks' residence. The subject site is a corner lot and has approximately 165 feet of frontage along Moores Road, which has a deeded right-of-way width of at least 70 feet. Access along Branch Avenue (MD 5) has been denied on SHA Plats; accordingly, the Applicant is proposing a single point of access on Moores Road. There are no schools, outdoor playgrounds, libraries, or hospitals within 300 feet of the subject site. The site is approximately 2,350 feet from Gwynn Park Middle School, 3,800 feet from the Maryland Gospel Assembly School, and over 12,200 feet from Southern Maryland Hospital. The Applicant does not propose rental of cargo trailers, trucks or similar uses on the site. The Applicant will also not store motor vehicles at the site. Moreover, the Applicant's proposal includes one on-site traffic-control sign which will be beneficial for on-site circulation. Furthermore, the Maryland Department of the Environment regulates the permitting and installation of petroleum tanks and gas dispensers for gas stations. *See Applicant's Response, Exhibit A, 4/13/16.* For the reasons stated above, Planning Board's approval of DSP-15012 is supported by substantial evidence of the record, not arbitrary or capricious, or otherwise illegal. There there is no evidence that the underground petroleum tanks and above ground gas dispensers of the proposed Plan will pose a "tremendous danger" to either the residence of Mr. Brooks or other surrounding properties in the neighborhood. *See PGCPB No. 16-06, pp. 3-5. See also PGCC §§ 27-358 and 27-274.*

Mr. Brooks also contends that the construction of a 24-hour establishment adjacent to homes in the neighborhood will increase the prospect of unwarranted behavior such as burglary and looting. *See* Notice of Appeal, 3/15/2016. We disagree. Prior to taking action on a Detailed Site Plan, the Planning Board shall refer the plan to the Prince George's County Police Department for review and comment. The Police Department may comment on issues relevant to their mission, including opportunities to implement crime-prevention measures, and to enhance the safety and security of residents, employees and other users of a project through implementation of the principles of Crime Prevention Through Environmental Design (CPTED—pronounced *sep-ted*). *See* PGCC § 27-284.

On October 28, 2015, the Police Department reviewed DSP-15012. The Department found *no* CPTED issues with the proposed Plan and applauded the Applicant's utilization of LED light fixtures in the project design. *See* CPTED Memorandum, 10/28/2015. Moreover, the proposed Plan illustrates adequate lighting to illuminate entrances and parking throughout the site. Lighting for the proposed Plan will consist of pole mounted lighting within the parking lot as well as wall mounted sconce lighting along the sides and rear of the building. The lighting plan will provide patrons with a bright, safe atmosphere without glare or light traveling onto adjoining properties—negating any prospect of unwarranted behavior such as burglary or looting of residential properties. Furthermore, the proposed Plan will provide 992 feet of buffering along the western property line, which is adjacent to Mr. Brooks' residence. The 992 feet of buffering consists of a six-foot-high privacy fence and landscaping on both sides of the fence. To further lessen the impact of the proposed use on the adjacent residential property, Planning Board approved DSP-15012 without the Plan's proposed neon-illuminated sign on the rear elevation that abuts the residential

property—further negating any prospect of unwarranted behavior such as burglary or looting of residential properties. *See* PGCPB No. 16-06, p. 2, Royal Farms, Brandywine Slides 1–14.

For the reasons stated above, Planning Board’s approval of DSP-15012 is supported by substantial evidence of record, was not arbitrary or capricious, or otherwise illegal because the proposed Plan’s conformance with CPTED, including construction of 992 feet of buffering adjacent to Mr. Brooks’ residence will decrease (as opposed to increase) the prospect of unwarranted behavior such as burglary and looting. *See* PGCPB No. 16-06, Royal Farms, Brandywine Slides 1–14.

- Noise

Mr. Brooks next contends that the unregulated volume of horns, radio, screeching tires, and large trucks will “devastate the quiet” he has enjoyed for 45 years. *See* Notice of Appeal, 3/15/2016. Because the proposed Plan has not yet been constructed, it would be mere speculation to disapprove DSP-15012 on the basis of noise.

The configuration of the site is unusually long and narrow. The site will be *partially* developed. The remainder of the undeveloped southern end of the site is dedicated to *woodland conservation*. *See* Royal Farms, Brandywine Slides 1–14. The Plan proposes a *single* point of vehicular access along the property’s frontage on Moores Road. The Plan places the primary gas station canopy with seven pump islands *along* Branch Avenue (MD 5), a location on the site which is furthest away from residential properties on Moores Road. Three diesel pump islands proposed at the southern *end* of the site are also *along* Branch Avenue (MD 5) and are substantially buffered from residential properties on Moores Road. As noted, the Plan proposes 992 feet of buffering (consisting of a six-foot-high privacy fence and landscaping on both sides of the fence) which will serve to buffer and regulate any potential unwarranted noise from residential properties on Moores

Road. The 992 feet of buffering will also serve to buffer the site's surface parking and air station. On-site tree preservation and afforestation areas are also proposed south of the air station and surface parking lot, which will further serve to buffer and regulate any potential unwarranted noise from residential properties on Moores Road.

The retail building for Royal Farms is designed to reflect a rural aesthetic, which is a trademark of Royal Farms. The prototype model has been constructed throughout Maryland and most recently, a site plan which was approved for construction on Allentown Road. The building design incorporates a band of composite siding at the top portion of the building, brick veneer in the middle, and stone veneer at the base of the building. The main entrance projects from the rest of the building and features two side entry points. The front elevation is accented with a shed-style roof over the main entrance supported by stone veneer and painted steel columns and topped with a cupola, and over-sized windows that help break up the horizontal mass. The rear elevation, which abuts the residential property to the west, presents long uninterrupted bands of the composite siding, red brick and stone veneer. These rural aesthetic design elements of the site conform to the character of the neighborhood.

To further lessen the impact of the proposed use on the adjacent residential property, the sidewalk along the rear of the building will be replaced with native shrub plantings, to soften the foundation along the rear elevation—and provide additional buffering between residential properties on Moores Road. *See* PGCPB No. 16-06, p. 2. Moreover, Code of Maryland Regulations (“COMAR”), Section 26.02.03.02.B, regulates noise levels for receiving land use categories, which provides maximum allowable noise levels as 65 dBA for day time and 55 dBA for night time. *See* Applicant's Exhibit 2. Existing ambient noise levels will be *no* higher than current levels and they already exceed acceptable night time levels. *See* (1/14/2016, Tr. pp. 38–41).

Furthermore, the Applicant's proposal includes one on-site traffic-control sign, which will be beneficial for on-site circulation and will negate the prospect of unwarranted post-construction noise.

For the reasons stated above, Planning Board's approval of DSP-15012 is supported by substantial evidence of record, not arbitrary or capricious, or otherwise illegal because the Plan's design to place the primary gas station canopy with seven pump islands *along* Branch Avenue (MD 5), which is furthest away from residential property on Moores Road, will not "devastate" the quiet enjoyment Mr. Brooks has enjoyed for the past 45 years. Moreover, the Plan's 992 feet of buffering (consisting of a six-foot-high privacy fence and landscaping on both sides of the fence) will maintain the quiet Mr. Brooks has enjoyed over the years at his residence because it will serve as substantial buffering to *potential* unregulated noise from the site. Furthermore, the Plan's buffering will serve residential properties on Moores Road from *existing* unregulated noise on Branch Avenue (MD 5). *See* Royal Farms, Brandywine Slides 1–14.

- Traffic

Finally, Mr. Brooks speculates that ingress and egress of the proposed Plan will pose multiple risks of injury and death. *See* Notice of Appeal, 3/15/2016. The site is adjacent to Branch Avenue (MD 5) which is listed in the *Approved Subregion 5 Master Plan and Sectional Map Amendment* as a freeway. No structures are being proposed within the right-of-way of Branch Avenue (MD 5). Moores Road is a non-master plan roadway maintained by the County. The intersection of Branch Avenue (MD 5) and Moores Road includes southbound on/off-ramps. The site has *one* access point from Moores Road, which is approximately 160 to 200 feet from the ramps. To the extent that there could be operational issues for vehicles entering and exiting the site on Moores Road, the Maryland State Highway Administration (SHA) along with the County

will review any operational issues on Moores Road at the access permit stage. According to the record, additional SHA right-of-way is shown along Moores Road to accommodate the future interchange options. The State Highway Administration is currently considering future interchange options for Branch Avenue between Moores Road and Earnshaw Drive as part of the overall MD 5 Corridor Transportation Study from US 301 to Auth Road north of the Capital Beltway (I-95/I-495).

As previously noted, there are no schools, outdoor playgrounds, libraries, or hospitals within 300 feet of the subject site. The site is approximately 2,350 feet from Gwynn Park Middle School, 3,800 feet from the Maryland Gospel Assembly School, and over 12,200 feet from Southern Maryland Hospital. The Applicant does not propose rental of cargo trailers, trucks or similar uses on the site. The Applicant will also not store motor vehicles at the site.

For the reasons stated above, Planning Board's approval of DSP-15012 is supported by substantial evidence of record, not arbitrary or capricious, or otherwise illegal since there is no evidence in the record to support Mr. Brooks' speculative contention that ingress and egress of the proposed Plan will pose multiple risks of injury and death merely because the proposed business is a Royal Farms. *See* PGCPB No. 16-06, Royal Farms, Brandywine Slides 1–14.

Approval of DSP-15012

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, Planning Board's approval of DSP-15012 is legally authorized pursuant to PGCC Part 3, Division 9. Planning Board's approval of DSP-15012 is supported by substantial evidence of record, and is not arbitrary or capricious, or otherwise illegal. As a basis of this final decision, we adopt the findings and

conclusions set forth in PGCPB No. 16-06, to APPROVE DSP-15012, subject to the following conditions:

1. Prior to certificate of approval of the detailed site plan, the following revisions shall be made, or information shall be provided:
 - a. The parking schedule shall be revised to indicate the correct number of total parking spaces required.
 - b. The height of the fueling canopies shall be shown on the plan.
 - c. The applicant shall replace the slatted chain-link dumpster enclosure fencing with an opaque material that complements the finish materials on the primary structure.
 - d. The neon-illuminated “Royal Farms” sign on the rear elevation of the retail structure shall be removed.
 - e. Identify the materials for the directional sign on the detail sheet.
 - f. The base of the freestanding pylon sign shall be revised to incorporate a stone veneer base or support columns that complement the primary building and fueling station canopies.
 - g. The pylon/freestanding sign detail shall specifically indicate the material of the product display sign face area and what additional product information is proposed.
 - h. The Pylon Sign Table proposed sign face area shall be revised to replace “Net Proposed” with “Product Advertising” and correct the square footage for the price sign to 56 square feet.
 - i. The Pylon Sign Table shall be revised to show the correct allowable sign area.
 - j. The Building and Canopy Sign Table shall include a breakdown of the percentage of sign area for the diesel canopy as well as the main canopy. If a second “Royal Farms” building-mounted sign is approved, it shall also be reflected in the Table.
 - k. Indicate the illumination methods of all signs on the sign plan.
 - l. Provide handicap ramps on the site where applicable.

- m. Replace the sidewalk along the rear of the building with native ornamental grass plantings. The schedule for 4.9 of the 2010 *Prince George's County Landscape Manual* shall be revised accordingly to reflect the additional planting materials.
 - n. The landscape plan and associated Section 4.2 planting schedule shall show the correct linear frontage along Branch Avenue (MD 5), and the required number of shade trees and shrubs shall be adjusted accordingly.
 - o. The Section 4.7 planting schedule shall be amended so that the total linear feet of buffer strip required is corrected.
 - p. Substitute the proposed oak trees within the Section 4.7 bufferyard with shade trees with a narrower growth habit, such as a columnar form shade tree.
 - q. Replace the proposed vinyl fence detail with a non-white, earth tone colored, six-foot-high, board-on-board composite fence.
2. Prior to the signature of the TCP2 for this site, the liber and folio of the recorded woodland conservation easement shall be added to the standard Type 2 Tree Conservation Plan notes on the plan as follows:
- “Woodlands preserved, planted, or regenerated in fulfillment of woodland conservation requirements on-site have been placed in a woodland and wildlife habitat conservation easement recorded in the Prince George's County Land Records at Liber _____ Folio____. Revisions to this TCP2 may require a revision to the recorded easement.”
3. The applicant and the applicant's heirs, successors, and/or assigns shall provide the following:
- a. Construct a sidewalk between the driveway and the west subject site boundary, as part of frontage improvements consistent with Department of Public Works & Transportation (DPW&T) standards, subject to modification by DPW&T.

ORDERED this 2nd day of May, 2016, by the following vote:

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

Opposed:

Abstained:

Absent: Council Members Harrison and Lehman.

Vote: 7-0

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