

Case No.: DSP-15029
U.S. Business Interiors
Parcel N, Largo Centre West

Applicant: U.S. Business Interior Realty
Holdings, Inc., c/o NAI
The Michael Companies, Inc.

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, Land Use Article, Annotated Code of Maryland (2012 Ed. & Supp. 2015), and Section 27-290 of the Zoning Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's County Code (2011 Ed. & Supp. 2014) ("PGCC"), we have jurisdiction to issue the final decision as to Detailed Site Plan Application Number 15029, ("DSP-15029").¹ For the reasons that follow, after review of the administrative record, the decision of the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission to approve DSP-15029, adopted via resolution PGCPB No. 15-115, is hereby AFFIRMED.

As the basis for this final decision, and as expressly authorized within Titles 22 and 25 of the Land Use Article, Annotated Code of Maryland, and the Prince George's County Code, we hereby adopt the findings and conclusions of the Planning Board approval, as set forth in PGCPB No. 15-115, as the District Council's findings of fact and conclusions of law as to DSP-15029.

¹ See also *County Council of Prince George's County v. Zimmer Dev't Co.*, 444 Md. 490, 120 A.3d 677 (2015) (reaffirming that District Council has authority to review decision of County planning board, and District Council's decision to approve, disapprove, or to approve with conditions is the final decision).

FACTUAL AND PROCEDURAL BACKGROUND

U.S. Business Interior Realty Holdings, Inc., (“Applicant”) seeks approval of a detailed site plan application, DSP-15029, accepted for filing on or about September 22, 2015, by the Prince George’s County Planning Board of the Maryland-National Capital Park and Planning Commission. DSP-15029 proposes to amend the table of uses permitted in the development district standards approved by the District Council in the 2013 *Largo Town Center Sector Plan and Sectional Map Amendment* to expressly state, as a permitted use therein, its existing bulk retailing and warehouse/distribution facility, occupying approximately 99,366 square feet of gross floor area, and situated on 6.98 acres of land within the M-U-I (Mixed Use–Infill) and D-D-O (Development District Overlay) Zones, with a street address known as 8800 Lottsford Road, and that is located approximately 770 feet east of the intersection of Harry S. Truman Drive and Largo Drive West, on the west side of Lottsford Road, Planning Area 73, Council District 6. The subject property is situated within the Transit-Oriented Development Core Area of the Largo Town Center Development District, and is bounded to the north by Harry S. Truman Drive and beyond by the proposed development known as ‘Ascend Apollo’ in the M-X-T (“Mixed Use–Transportation-Oriented”) and D-D-O (“Development District Overlay”) Zones; to the south by Largo Drive West and beyond by the Woodlands Business Center within the M-U-I (“Mixed Use–Infill”) and D-D-O Zones; to the east by Lottsford Road and beyond by the ‘Mosaic at Largo Station Apartments’ in the M-U-I/D-D-O Zones; and to the west by a stormwater management pond, Parcel ‘O’ in the Largo Centre West subdivision, within the M-U-I/D-D-O Zones.

In accordance with the prescriptions of Sections 27-284 and 27-548.26 of the Zoning Ordinance, the technical staff in the Planning Department of the Maryland-National Capital Park

and Planning Commission (“Technical Staff”) reviewed the proposed application and issued a report on October 14, 2015. On October 29, 2015, the Planning Board conducted a duly advertised public hearing concerning the subject proposal. On November 5, 2015, Planning Board approved DSP-15029, via adoption of PGCPB No. 15-115, and subsequently transmitted its decision to the Clerk of the District Council in accordance with Section 27-285(c) of the Zoning Ordinance on November 10, 2015. District Council review of the subject application is required by Section 27-548.26 of the Zoning Ordinance; accordingly, on January 11, 2016, we conducted proceedings on the proposed application using oral argument procedures in accordance with the prescriptions of Part 3 of the County Zoning Ordinance.

The record for DSP-15029 contains considerable history as to the subject development and the establishment of the existing uses on the property. The sequence of events prompting the existing development on the property begins September 12, 1988, when the District Council enacted Zoning Ordinance A-9682-C, an approval of a zoning map amendment reclassify the subject to property to the E-I-A (Employment and Institutional Area) Zone and an accompanying basic plan prescribed by the Zoning Ordinance. *See* Zoning Ordinance No. 53-1988; § 27-478, PGCC. Nearly five years later, on July 12, 1993, the District Council approved a proposal to amend the 1988 basic plan for the property, A-9682-01-C, via enactment of Zoning Ordinance No. 15-1993. Thereafter, a specific design plan proposal, SDP-9708 (PGCPB No. 97-211), was approved and adopted by the Planning Board on July 24, 1997. Next, Planning Board approved a preliminary plan application for the subject property, Preliminary Plan of Subdivision 4-79 179, and final plat ultimately recorded as Plat V.J. 180-35 as Parcel “N.” Later that same year, the County permitting agency issued a building permit for development of the site on December 15, 1997, in accordance

with the terms of approval set forth within SDP-9708. *See* PGCPB No. 15-115, at 2; 10/14/2015 TSR, at 4.

The record reflects that the existing structure houses an existing use on the property and, while its genesis also dates back to the approval of SDP-9708, its categorization has historically proven difficult. *See* PGCPB No. 15-115, at 2; 10/14/2015 TSR, at 4. The Planning Board, in its approval of SDP-9708 via adoption of PGCPB No. 97-211, described the use as “commercial office and storage” that distinguish it from a traditional warehouse use ordinarily subject to limitations established by a conceptual design plan. Accordingly, Planning Board made the following finding:

“It is obvious from a review of this definition that the USBI facility is not a warehouse, since the facility will be used as an office and storage facility, and not a wholesale or distribution business. Employees meet with clients (*i.e.*, customers) on site and design and market office equipment and systems. Also, unlike a warehouse unit as defined above, the USBI business is located in the same building as the storage facility. The main business of USBI is the design and marketing and inventory control of office equipment and systems.”

PGCPB No. 15-115, at 2; 10/14/2015 TSR, at 4–5.

In turn, the County approved a building permit application, 4746-98-CGU, in early 1998 for construction of the existing building proposed for use as commercial office and storage, subsequent to receipt of February 4, 1998, correspondence from Technical Staff in the Planning Department of M-NCPPC concluding that the specific combination of uses proposed on the subject property, as considered and approved within SDP-9708, conforms with specific uses permitted in the basic plan, as follows:

CONDITIONS:

- a. Accessory structures and uses including showrooms and warehousing as limited by prohibited list;
- b. Offices;
- c. Light distribution, design spaces and assembly spaces;
- d. Wholesale/retail floor sales and retail area; and

- m. Any other use not listed above and consistent with the stated purpose if the E-I-A Zone may be approved by the Prince George's County Planning Board, upon finding that the use will not be hazardous, noxious, or offensive because of odor, dust, smoke, gas, vibration or noise, or otherwise be detrimental to the health, safety, or general welfare of persons in the area.

See PGCPB No. 15-115, at 2–3; 10/14/2015 TSR, at 5.

Thereafter, on May 12, 1998, the County issued Use and Occupancy Permit Number 3221-98-CU as to the office/warehouse uses on the subject property, and reflecting the observation and comment by staff of the permitting agency for the County that the uses contemplated by permit 3221-98-CU did not fully align with the listed array of specific uses permitted in the E-I-A Zone which, according to the record, is the likely result of program limitations of the County's computer technology resulting in its inability to recognize uses not specifically set forth in the table of uses permitted for the E-I-A Zone. See PGCPB No. 15-115, at 3; 10/14/2015 TSR, at 5. As a result, the record states that County permitting staff described the use as office/warehouse, rather than commercial office/storage, as they were uses available in the array of uses permitted for the E-I-A Zone. See PGCPB No. 15-115, at 3; 10/14/2015 TSR, at 5.

Comprehensive plans and comprehensive rezoning proposals approved for the area of the subject property subsequent to establishment of the existing use on the subject property are also relevant to the proposed application. In 2004, the subject property was rezoned from the E-I-A to the M-U-I Zone, its current zoning classification. While we take administrative that we had occasion revisit the comprehensive zoning of this area in approving the 2013 *Largo Town Center Sector Plan and Sectional Map Amendment*, we retained the existing M-U-I Zone for the subject property in that effort. See PGCPB No. 15-115, at 2; 10/14/2015 TSR, at 4. See generally Council Resolution No. CR-137-2013; CR-138-2013. Thus, the effect of the reclassification of the property

to the M-U-I Zone, as offered by Applicant, adopted by Planning Board, and as we now approve, is as follows:

The record also reflects Applicant’s explanation of how the existing use on the subject property supports the goals of the development district standards approved in the 2013 *Largo Town Center Sector Plan and Sectional Map Amendment*, as follows:

[T]he subject property is improved with an existing warehouse/distribution facility authorized by the Planning Board with the approval of SDP-9708 through their adoption of Resolution No. 97-211. The Applicant is the initial developer, occupant, and owner of the building since the date of its original construction on or about 1998, with approximately 18-years of continuous business operations. No new improvements to the property are either proposed or required by the Detailed Site Plan. The only change request is to the list of allowed uses to permit [the existing uses]. [T]he Applicant observes that the recently implemented Largo Town Center Sector Plan [and SMA] rezoned the entirety of an approximate 800 acre DDOZ area surrounding the Largo Town Center Metro Station to a variety of different mixed use zoning districts, each with their own separate and overlapping sets of design standards. While the Applicant is supportive of the Largo Town Center Plan in general, it is important to note that from a planning, as well as an economic development standpoint, maintaining the viability of the existing improved properties is critical to the County’s plans for this area. From a land planning perspective, it is important to have a mix of uses that will serve the expanding government complex, the new hospital site and other developments that occur in the Largo Town Center, ranging from residential, offices to retail to restaurants and light industrial uses, such as [the existing use]. All of these uses combined are vital in creating a sense of place and community, and provided a sustainable environment.

See PGCPB No. 15-115, at 5; 10/14/2015 TSR, at 7.

We also note the following finding of Planning Board in the record as to the alignment of the permitted uses in the M-U-I Zone within the Largo Town Center Development District, as offered by Technical Staff:

The existing use is most closely aligned to those currently allowed in the M-U-I Zone within the Largo Town Center Sector Plan use table that includes:

(C) Offices:

Office (except as otherwise provided):

(ii) All others P*

(E) Trade (Generally Retail): Bulk retailing:

(i) Products allowed to be sold in a C-S-C Zone P*

* The letter P indicates that the use is permitted in the zone indicated.

The use within the existing building contains office space, but the other uses are not explicitly or even generally included in the permitted use table. Part of the existing operation of the business includes the retail sales of office furniture in bulk quantities to commercial businesses, but it is not clear from the Zoning Ordinance exactly what products are allowed in the C-S-C (Commercial Shopping Center) Zone, since the Use Table identifies uses and does not list products. A retail shop or store (not listed) in the Largo Town Center modified use table is permitted in the M-U-I Zone if it is similar to one permitted in the C-S-C Zone. A furniture store is only permitted in the C-S-C Zone if it does not exceed 50,000 square feet. Moreover, a furniture store typically distributes its merchandise from a warehouse, not from on-site storage.

See PGCPB No. 15-115, at 5; 10/14/2015 TSR, at 7.

As set forth in Section 27-548.26(b) of the Zoning Ordinance, the District Council may approve additional uses to the M-U-I Zone through a detailed site plan process approved by the District Council. *See* PGCPB No. 15-115, at 3; 10/14/2015 TSR, at 5–6; § 27-548.26(b). In making a required finding for approval of this site plan application, Planning Board was persuaded by Applicant’s points concerning the M-U-I Zone, particularly that the zone does not specifically permit the type of use that currently exists on-site and, thus, it is considered legally constructed pursuant to the prescriptions of the previous E-I-A Zone and regulatory prescriptions that were applicable at the time of construction and use and occupancy permit for the subject use on the property. *See* PGCPB No. 15-115, at 5; 10/14/2015 TSR, at 7.

We find that Planning Board was also persuaded by other, further information submitted to the record within Applicant’s September 8, 2015, statement of justification:

In general, it is important to note that from a planning, as well as an economic development standpoint, maintaining the viability of the existing improved properties is critical to the County’s plans for this area. From a land planning perspective, it is important to have a mix of uses that will serve the expanding government complex,

the new hospital site and other developments that occur in the Largo Town Center, ranging from residential, offices to retail to restaurants and light industrial uses, such as [the existing use]. All of these uses combined are vital in creating a sense of place and community, and [they] provide a sustainable environment.

See PGCPB No. 15-115, at 5; 10/14/2015 TSR, at 7.

Moreover, the record shows that Planning Board, in approving the proposed application, rightly found that the proposed amendment to the permitted uses approved for the Largo Town Center Development District will better serve the goals and purposes of the 2014 General Plan Amendment, *Plan Prince George's 2035*, since the current General Plan for the County squarely acknowledges that existing land uses “represent what is actually only on the ground today and may not represent what the approved master plan envisions as the planned future land use.” *See* PGCPB No. 15-155, at 7. *See also* 2014 *Plan Prince George's 2035*, at 69. By way of our adoption of CR-26-2014 on May 6, 2014, we take all due administrative notice of the County land use and development policies set forth within the 2014 County General Plan update, *Plan Prince George's 2035*: “Over time, land uses will transition in the Largo Town Center Sector Plan area toward more mixed-use office/retail and institutional uses. In the short term, it is important to maintain the viability of existing buildings and uses.” *See* PGCPB No. 15-155, at 7. *See also* 2014 *Plan Prince George's 2035*, at 69. *See generally* Council Resolution No. CR-26-2014.

Consequently, in the resolution adopted to approve DSP-15029, Planning Board necessarily found that the subject proposal conforms with the purposes and recommendations approved for the Largo Town Center Development District because it is limited in scope to the subject property and its approval serves only to validate a longstanding, lawful use in existence at the time of the 2013 development district approval by the District Council. *See* PGCPB No. 15-115, at 7; 10/14/2015 TSR, at 9. We agree. Planning Board also found, and we further agree, that the requested amendment concerning the existing use and development on the property is exempt

from compliance with the development district standards. *See* PGCPB No. 15-155, at 4, 7 (finding conformance in statements to satisfy requirements for approval of a detailed site plan pursuant to § 27-285(b), PGCC). *See also* 10/14/2015 TSR, at 7. As a result, since the record unequivocally shows that improvements and uses on the subject property are existing, were constructed lawfully pursuant to the applicable zoning regulations for the E-I-A Zone in accordance with an approved specific design plan, and a valid use and occupancy permit was issued in 1998 for this subject use that has continuously operated since 1998, we agree that the site is, according to the D-D-O Zone development district standards applicability section, exempt from the Largo Town Center Development District standards. *See* PGCPB No. 15-115, at 4.

Based on the foregoing, we conclude that Planning Board correctly found, in its approval as to DSP-15029, that the subject application complies with the requirements of Section 27-548.26(b) of the Zoning Ordinance, because the subject property is located in the development district treated by the Largo Town Center Sector Plan and SMA; Applicant submitted the required statement of justification and detailed site plan application to add a use to the list of permitted uses for the Largo Town Center development district for its property; the requested use does not interfere with the purposes expressed on pages 7 and 8 of the sector plan, namely promoting and facilitating transit-oriented development around the Largo Town Center Metro Station in order to maximize transit ridership, revitalize the area through economic development while maintaining its socioeconomic diversity, and to adopt a sustainable development pattern that is conducive to its designation as a metropolitan center; the addition of the proposed use would not inhibit realization of the vision of a major institutional or governmental user within walking distance of the Metro station, such as a new regional medical center, an expanded university satellite campus,

or a U.S. General Services Administration tenant, while also preserving the economic viability of the subject property. *See* PGCPB No. 15-115, at 4.

In its disposition as to DSP-15029, Planning Board makes the finding that DSP-15029 conforms with recommendations within the most current General Plan for the County, *Plan Prince George's 2035* (recognizing that existing land uses may not represent future land use recommendations, and acknowledging that recommendations may be implemented over time through a combination of redevelopment and rezoning). *See* PGCPB No. 15-115, at 7; 10/14/2015 TSR, at 9. Planning Board also found that the application conforms to, and does not conflict with, approved land use recommendations in the 2013 *Largo Town Center Sector Plan and SMA*, calling for zoning and other development regulations in furtherance of the continued evolution of this area into a higher-density, mixed-use residential and commercial/retail center; and adding the existing commercial office/storage use to the list of permitted uses allowed under the M-U-I Zone for the subject property will further efforts to maintain the viability and usability of the existing structure while allowing for future residential and nonresidential uses envisioned for the area in the 2013 Largo Town Center plan. *See* PGCPB No. 15-115, at 3–4; 10/14/2015 TSR, at 6–7. Based on the foregoing discussion of our review of the administrative record, we agree.

Regarding the required findings of Division 9, Part 3 of the Zoning Ordinance, Planning Board found that the subject application meets the specific requirements for approval of detailed site plan as set forth in § 27-285(b) of the Zoning Ordinance. In particular, Planning Board found that because the subject proposal does not propose any expansion of the existing building or use, new improvements or site work of any kind, and requests only to add the existing use on its property to the development district list of permitted uses, approval of the subject proposal will not impinge on the vision for the D-D-O Zone nor inhibit the vision of the 2013 Largo Sector Plan

and SMA. *See* PGCPB No. 15-115, at 4. As a result, Planning Board found that the subject proposal to permit existing commercial office retail sales on a specified property 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, which is a legally constructed existing use on property within the 2013 Largo Town Center Development District. *See* PGCPB No. 15-115, at 4, 7.

Lastly, we concur with Planning Board's finding that a condition of approval is needed to require a general note be added to the plans stating that the above use is permitted on the subject site prior to signature of the site plan. PGCPB No. 15-115, at 6.

During our mandatory review of the subject application on January 11, 2016, Applicant and the Citizens Opposition offered comments regarding DSP-15029. We note that Charles Renninger, representing the Largo Civic Association, offered comments in opposition to the proposed application. Among the concerns raised was potential for expansion of the use on the site, given its location within the Transportation-Oriented Development Core area of the development district. In response to these concerns, at the conclusion of the January 11, 2016, proceedings, the People's Zoning Counsel recommended a condition of approval expressing prohibition of all outdoor storage associated with any use on the property. *See* 01/11/2016 Tr. We agree with the recommendation of the People's Zoning Counsel and, based on the evidence within the administrative record, we find that the recommended condition to prohibit any outdoor storage on the site is reasonable in order to ensure that the vision of the D-D-O Zone and the Largo Sector Plan, and efforts to realize that land use vision for higher density development in the area of the subject property, will not be frustrated.

The final decision of the District Council to approve DSP-15029 is subject to the following conditions:

1. Prior to certificate approval of this detailed site plan, the plans shall be revised to include the following note:

- a. The following use is permitted (**P**), permitted as an accessory use (**PA**), or permitted as a secondary use (**PB**), as indicated on the subject property pursuant to Applicant's Exhibit #1:

(3) Miscellaneous:

Warehouse and distribution

P

2. No outdoor storage shall be permitted in association with any use on the subject property.

ORDERED this 2nd day of February, 2016, 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