



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council
301-952-3600

March 24, 2021

**RE: DSP-20006 Checkers Laurel
Mar-chek, Inc., Applicant**

NOTICE OF DECISION OF THE DISTRICT COUNCIL

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on March 22, 2021.

CERTIFICATE OF SERVICE

This is to certify that on March 24, 2021, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

A handwritten signature in cursive script that reads "Donna J. Brown".

Donna J. Brown
Clerk of the Council

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

ORDER OF REMAND

IT IS HEREBY ORDERED that Detailed Site Plan 20006, a request to develop a 1,170-square-foot Checkers eating and drinking establishment with drive-through service, in the C-S-C (Commercial Shopping Center) and R-55 (One-Family Detached Residential) Zones, in Councilmanic District 1, Planning Area 62, is REMANDED, to Planning Board for further testimony or reconsideration of its decision as set forth herein. PGCC §§ 27-132(f), 27-290(d).

FINDINGS AND CONCLUSIONS

A. Introduction

Checkers¹ requests approval of a Detailed Site Plan (site plan) to construct an eating and drinking establishment, with drive-through service (the use) in two different zones. Checkers' site plan includes property in the Commercial Shopping Center (C-S-C) zone that *adjoins* property in the One-Family Detached Residential (R-55) zone, which does *not* permit the *use*. The site plan also includes a 25-foot wide strip comprised of the Magnolia Street right-of-way, which is split-zoned C-S-C and R-55.

¹ The applicant is Mar-chek, Inc. and will be referred to as Checkers. The Nazario Family, LLC is the property owner of the subject site for DSP-20006. PGCPB No. 2020-152, p. 2. PGCC § 27-282(a) (The Detailed Site Plan shall be submitted to the Planning Board by the owner of the property or his authorized representative). Here, the site plan application was signed by the owner and applicant. Application Form, 5/5/2020.

In the C-S-C zone, the *use* is permitted—*subject* to site plan approval. PGCC § 27-461(b),

Footnote 24. In the R-55 zone, the use is permitted *provided*:

(A) The property was used as a parking lot serving adjacent property in a commercial zone pursuant to a special exception approved prior to September 1, 1991.

(B) A detailed site plan shall be approved in accordance with Part 3, Division 9 of this Subtitle.

(C) Regulations concerning the net lot area, lot coverage and green area, lot/width, frontage, yards, building height, density, minimum area for development, any dimensional (bulk) requirements, and other requirements applicable for development in the R-55 Zone shall not apply.

PGCC § 27-441(b), Footnote 115 (Emphasis added).

Checkers wants to build required Stormwater Management (SWM) for the *use* in the R-55 zone. But in *this* R-55 zone, the *use* is *not* permitted because the District Council previously found that the property did *not* serve as a parking lot to the adjacent C-S-C zone property. Statement of Justification, 6/19/2020, Site Plan General Notes, (10/29/2020, Tr.), PGCPB No. 2020-152, p. 2, Zoning Ordinance No. 3 – 1996, pp. 1-4.

For reasons explained below, Planning Board shall reopen the record to take further testimony or evidence on, among other things, a revised site plan.²

B. The Subject Property

Prior to 1990, the subject property was comprised of several Lots. In 1990, Lots 4, 5 and 6 were comprehensively rezoned from R-55 to C-S-C, which at that time was improved with the

² At the evidentiary hearing, Planning Board had no questions concerning the legality of the Site Plan. A motion carried 5-0 to approve the Plan. (10/29/2020, Tr.).

Bay ‘n Surf [Seafood] Restaurant (Bay ‘n Surf).³ Lots 7-10 (used for Bay ‘n Surf parking) were retained in the R-55 zone. Lots 11-13 were also retained in the R-55 zone. 1990 Subregion I Sectional Map Amendment (1990 SMA).

In 1996, the owner of Bay ‘n Surf made a request to rezone Lots 7-13 from R-55 to C-S-C.⁴ The District Council (6-3) granted the request in part and denied it in part. Zoning Ordinance No. 3 – 1996.

Granting the request in part, Council rezoned Lots 7-10 from R-55 to C-S-C. Council concluded that the “commercial area” in the 1990 SMA logically included not *only* Bay ‘n Surf on Lots 4, 5 and 6, but *also* Bay ‘n Surf associated parking on Lots 7-10, which had been in existence for many years. Council also concluded that had that 1990 SMA rezoned Lots 7-10 to C-S-C, that would have validated [Bay ‘n Surf] existing parking lot and allowed “*sufficient amount*” of room for the appropriate *landscaping* and *buffering* as required in the Landscape Manual. Zoning Ordinance No. 3 – 1996, pp. 1-4 (Emphasis added).

Denying the request in part, Council did *not* rezone Lots 11-13 from R-55 to C-S-C. Council found that the subject property was located within the area noted as Change No. SL 3-01 in the 1990 SMA—described as “Single-family homes bounded by Magnolia and Mulberry Streets, the Baltimore & Ohio Railroad, Contee Place and east of the commercial area bordering on Baltimore Avenue.” Based on this description, Council concluded that the area *intended* to be included within the R-55 zone was that area “east of the commercial area,” which should have

³ Bay ‘n Surf opened in 1965 by owner J. Patrick Edelmann.

⁴ The request was based on grounds of mistake in the 1990 SMA.

applied *only* to Lots 11-13—not Lots 7-10. Zoning Ordinance No. 3 – 1996, pp. 1-4 (Emphasis added).

Partial rezoning of the property was subject to the following conditions:

1. The applicant shall obtain detailed site plan approval in accordance with part 3, Division 9 of the Zoning Ordinance in order to address the following:
 - a. *Use and/or redevelopment of the site shall be strictly oriented to U.S. Route 1.*
 - b. No access to the site shall be provided from improved Magnolia Street (east of the barrier).
 - c. *Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.*
 - d. The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant’s survey of January, 1994, if feasible.
2. Prior to the issuance of building permits, a Technical Stormwater Management Plan shall be approved by the Department of Environmental Resources Watershed Protection Branch for any improvement which increases impervious surfaces.
3. A Soils Report shall be submitted to the Natural Resources Division prior to building permit issuance addressing drainage and stability with regard to footing design. *Id.* at 4-5, Final Conditional Zoning Approval, 4/24/1996 (Emphasis added).

In 2007, Bay ‘n Surf closed due to a fire and was eventually razed in 2013. At that time, Bay ‘n Surf (and associated parking) was located on what was known as Lot 21 consisting of 1.25-acres. Due to a Lot line adjustment in 2014, between Lot 11 and Lot 21, Lots 22 and 23 were

created. Lot 22, consisting of .06-acres, is currently improved with a 5,500-square-foot Urgent Care Facility. PGCPB No. 14-96 (Final Plat of Subdivision 5-14093), pp.1-2, DSP-14016.

In 2015, Nazario Family, LLC filed a Plat of Correction, Lot 22 and Lot 23, Block 3, Oak Crest. The 2015 Plat incorporated into Lot 23, the 25-foot wide strip comprised of the Magnolia Street right-of-way and former Lot 11, which is comprised of .7899-acres. But this gross acreage on the Plat of Correction is different from the gross acreage of .84 indicated on the site plan application and Planning Board’s Resolution. Plat of Correction, SJH 243, Plat No. 3, 7/24/2015, Application Form, 5/5/2020, PGCPB No. 2020-152, p.1.⁵

C. Site Plan

A site plan is “an illustrated proposal for the *development* or *use* of a particular piece of real property [depicting] how the property will appear if the proposal is accepted.” *Cty. Council of Prince George’s Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018) (Emphasis added). Checkers’ site plan shows that *not all structures* for the *use* will be built or constructed in the C-S-C zone—as required in the Ordinance. PGCC § 27-461(b), Footnote 24. Checkers wants to build or construct a SWM *structure* for the *use* on former Lot 11, where the *use* has been expressly prohibited. PGCC § 27-441(b), Footnote 115, (10/29/2020, Tr.), PGCPB No. 2020-152, pp. 1-2.

When Council rezoned Lots 7-10 in 1996, it contemplated *use* and/or *redevelopment* of the “site” *rezoned to C-S-C*. Specifically for the *C-S-C zone*, 1) orientation of the use and/or

⁵ 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, *County Council of Prince George’s County v. Dutcher*, 365 Md. 399, 780 A.2d 1137 (2001).

redevelopment was *strictly* limited to U.S. Route 1, 2) no access was granted from improved Magnolia Street (east of the barrier), 3) screening and buffering *shall* be provided for former Lot 11, 4) preservation, if feasible, of large tree on Lot 10, 5) approval of stormwater management for any improvement [on the *C-S-C zone*] which increases impervious surfaces, and 6) a soils report addressing drainage and stability with regard to footing design [on the *C-S-C zone*].

Council *declined* to rezone former Lot 11 because it found that it was *never* used as a *parking* lot for the adjacent commercial zone. Zoning Ordinance 3 – 1996, pp. 4-5. Twenty years after declining to rezone former Lot 11 to C-S-C, Council amended the Table of Uses for the R-55 zone to prohibit this Lot from being used for an eating and drinking establishment, with drive-thru service. PGCC § 27-441(b), Footnote 115, CB-81-2016.

Checkers *incorrectly* states that “[n]o buildings *or structures* are proposed” for the *use* within the R-55 zone. Statement of Justification, 6/19/2020 (Emphasis added). A “[u]se” is either: (i) [t]he purpose for which a “[b]uilding,” “[s]tructure,” or land is designed, arranged, intended, maintained, or occupied; or (ii) [a]ny activity, occupation, business, or operation carried on in, or on, a “[b]uilding,” “[s]tructure,” *or parcel of land*. PGCC § 27-107.01(a)(244). A “[s]tructure” is defined as [a]nything constructed or built. PGCC § 27-107.01(a)(228). Development is defined as [a]ny activity that materially affects the *condition* or *use* of dry land, land underwater, or any structure. PGCC § 27-107.01(a)(66.1). *See also* Md. Code Ann., Land Use Article, § 1-101(f) (2012, 2020 Supp.) (“Development” means an activity that materially affects the existing *condition* or *use* of any *land* or structure) (Emphasis added).

Under the Ordinance and State law, Council finds that Checkers’ SWM is a *structure* that constitutes development for the *use* in the *C-S-C zone* that will materially affect the existing

condition of former Lot 11, where the *use* is expressly prohibited. *See also* 2010 Landscape Manual at 65 (DPW&T and M-NCPPC shall coordinate review of the design of all landscaping associated with stormwater management facilities *prior* to the final technical approval of the stormwater management plan by DPW&T) (Emphasis added).

D. Setbacks for C-S-C Zone

Lot 23 is comprised of a commercial zone that *adjoins* a residential zone. Setback calculations or regulations in a commercial zone from the rear yard of an *adjoining* residential zone are 25 feet *or* the buffer required in the Landscape Manual, whichever is *greater*. PGCC § 27-462 (Emphasis added). Checkers *incorrectly* indicates that C-S-C zone setback calculations are *not* applicable to final approval of its site plan. Statement of Justification, 6/19/2020. Planning Board's decision also contains *no* findings to support its conclusion that Checkers' site plan complies with required setbacks for the C-S-C zone. (10/29/2020, Tr.), PGCPB No. 2020-152, p. 4.

E. Landscape Manual Buffer Requirements

Checkers *incorrectly* indicates that buffer yards in the 2010 Landscape Manual are not required because all *adjoining* properties are compatible uses. Statement of Justification, 6/19/2020. Lot 23 is comprised of a commercial zone that *adjoins a vacant incompatible* residential zone. 2010 Landscape Manual at 74, 4.7, Buffering Incompatible Uses. Checkers' landscape plan does not conform with *all* relevant provisions of Section 4.7. Moreover, as discussed *infra*, Checkers' landscape plan also does not conform to certain rezoning conditions for *screening* and *buffering* in Zoning Ordinance 3 – 1996.

F. Zoning Ordinance No. 3 – 1996 – Rezoning Conditions

When the District Council rezoned the property in 1996, the applicant consented to the conditions in writing. Zoning Ordinance No. 3 – 1996. When a property is conditionally rezoned, those conditions shall become a permanent part of the Zoning Map Amendment and shall be *binding* for as long as the zone remains in effect on the property (*unless* amended by the Council). PGCC § 27-157(b), *Rochow v. Md. Nat'l Capital Park & Planning Comm'n*, 151 Md. App. 558, 827 A2d 927 (2003). Checkers' landscape plan does not conform to Conditions 1. c. or 1. d. in Zoning Ordinance 3 – 1996—nor has any request been made to amend any condition of rezoning.

Concerning Condition 1. c., Checkers avers that former Lot 11 is part of the site plan and existing wooded area is proposed to remain undisturbed to maintain a natural buffer to R-55 zone Lot 12. Statement of Justification, 6/19/2020. But this justification does not comply with Condition 1. c. First, former Lot 11 has been foreclosed from being used as an eating and drinking establishment, with drive-thru service. Second, Checkers' site plan is required to provide *screening* and *buffering for* former Lot 11. PGCC § 27-441(b), Footnote 115, CB-81-2016. Moreover, the 1996 rezoning of the site *also* requires Checkers to *provide landscaping* and *screening* on a *portion* of Lots 8 and 9.

Concerning Condition 1. d., Checkers propose to remove the 27' Oak Tree due to the limited site area available for the 100-peak discharge management facility required for sites located within the Bear Branch watershed. Statement of Justification, 6/19/2020. Planning Board concluded (without *any* findings) that preservation of the large tree in Condition 1. d. “was determined to not be feasible.” PGCPB No. 2020-152, p. 5.

G. Conclusion

Having concluded that the *use* on former Lot 11 is expressly prohibited in the Ordinance, the applicant shall submit a revised site plan that excludes former Lot 11 and any other R-55 zone portion of the property that is not permitted to serve the commercial zone and the *use* of an eating and drinking establishment, with drive-thru service. PGCC § 27-441(b), Footnote 115, CB-81-2016.

Planning Board shall reopen the record to take further testimony or evidence on:

1. The revised site plan’s compliance with the setback requirements of the C-S-C zone;
2. The revised site plan’s compliance with the requirements of the 2010 Landscape Manual for incompatible uses;
3. The revised site plan’s inclusion of residential property to satisfy the 2010 Landscape Manual standards to serve a commercial zone or use;
4. The revised site plan’s compliance with Conditions 1. c. and 1. d. in Zoning Ordinance No. 3 – 1996; and
5. The gross acreage and zone classifications of Lot 23, including the 25-foot wide portion of the Magnolia Street right-of-way.

ORDERED this 22nd day of March, 2021, by the following vote:

In Favor: Council Members Anderson-Walker, Davis, Dernoga, Glaros, Harrison, Hawkins, Ivey, Streeter, Taveras, and Turner.

Opposed:

Abstained:

Absent: Council Member Franklin.

Vote: 10-0.

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: 

Calvin S. Hawkins, II, Chair

ATTEST:



Donna J. Brown
Clerk of the Council