Case No.: CDP-9002-09

Applicant: Parcel D2, LLC

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

ORDER AFFIRMING PLANNING BOARD DECISION,
WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the Planning Board's decision in Resolution PGCPB No. 10-56, approving with conditions a comprehensive design plan for 300 multifamily residential units, 160,000 square feet of commercial office and supporting commercial uses, and a freestanding parking garage to support the office building, described as about 8.49 acres of land in the M-A-C Zone, in the southwest quadrant of the intersection of Arena Drive and Lottsford Road, Largo, is:

AFFIRMED, for the reasons stated by the Planning Board in its resolution, which are hereby adopted as the findings of fact and conclusions of law of the District Council.

Affirmance of the Planning Board's decision is subject to the following conditions.

1. All conditions of approval of Basic Plans A-9280 and A-9281/08, Comprehensive Design Plans CDP-8804, CDP-8905, and CDP-9002 shall remain in full force and effect, unless specifically modified below.

2. The proposed mixed-use development on this property shall include a minimum of 115,000 square feet and a maximum of 160,000 square feet of office and supporting commercial uses and a maximum of 300 residential units.

3. Prior to certificate approval of the comprehensive design plan and prior to the submission of a preliminary plan of subdivision for the subject property:

a. A revised forest stand delineation text and plan for Parcels 1-A and 1-B, Block D, as part of a revised and signed natural resources inventory (NRI), shall be submitted. The revised FSD shall include the existing conditions of the specimen trees located adjacent to the Capital Centre, Lot 1 boundary. This information shall include detailed condition analyses, photographs, and individual evaluations for each tree. The evaluation of the existing trees shall be prepared by a certified arborist, licensed tree expert, or landscape architect.

b. The TCPI shall be revised as follows:

(1) Show the retention of woodlands on-site which include the existing specimen trees located adjacent to the Capital Centre, Lot 1 boundary. At time of specific design plan and TCPII preparation, the potential for the retention of the existing trees shall be further reviewed based on additional information submitted as part of the NRI;

(2) Use the previously approved quantity of existing woodlands on the site for calculating the woodland conservation requirements (0.83 acre);

(3) Reflect the additional information provided on the NRI regarding the specimen trees located on-site;

(4) Have the revised plans signed and dated by the qualified professional who prepared them.

c. The CDP shall be revised to provide for a potential full site access from Arena Drive if deemed acceptable by DPW&T.

4. At the time of specific design plan:

a. The applicant shall explore the possibility of moving the bank building to the west, so that the two larger, more compatible buildings can be located side-by-side, creating more consistency in building height.

b. A cohesive relationship shall be created between the office and residential components by using similar landscape elements, paving materials, etc. throughout the development. The landscape elements and paving materials shall be reviewed during the specific design plan stage. The bank building shall have at least two stories of useable office space (bank or other office uses) and shall be compatible in scale and design with

surrounding structures. The height, scale, and design of the bank building shall be reviewed during the SDP stage.

c. Landscape buffers shall be provided along the Boulevard at the Capital Centre property line to visually screen the development from the center. Landscape buffers shall also be considered along the underground tracks easement to create visual appeal. The landscape buffers shall be further analyzed to determine whether additional width of buffer should be required.

d. Details and specifications of the proposed bus stop shelter and associated amenities shall be submitted for review and approval.

e. Mechanical equipment or other utility hardware on roof, ground, or buildings shall be screened from public view with materials harmonious to the building, or they shall be located so as not to be visible from any public ways.

f. Refuse and waste removal areas, service yards, and large loading areas shall be screened from view from public ways with masonry screening materials that are harmonious to the building.

g. In areas where tree planters are located within the sidewalk, a minimum clear space of five feet shall be maintained for pedestrians.

h. Per Standards F and G of the Sidewalks, Crosswalks, and Trails portion of the Morgan Boulevard and Largo Town Center Metro Areas DDOZ, sidewalk paving materials and special treatment shall be carried across the crosswalk along Lottsford Road at the subject site's ingress/egress point. Special paving treatments shall also be considered at pedestrian crossings at the time of SDP.

i. Provide bicycle parking at two or more locations throughout the subject site in highly visible and well-lit locations convenient to building entrances. The locations and number of bicycle racks and/or lockers shall be determined at the time of SDP.

j. The width, landscaping and details of the trail/sidewalks along the subject property's frontages of Arena Drive and Lottsford Road shall be reviewed at the time of specific design plan. Pedestrian amenities, landscaping, lighting, and sidewalk width will be evaluated in detail at that time.

k. A photometric plan shall be submitted that addresses the reduction of spillover lighting into residential areas and the total lighting output of the individual sites. The plan shall show the use of full cut-off optics and show no more than 0.5 foot-candles of light at each property line.

l. Staff and applicant shall further evaluate and consider the use of woodland preservation on-site in the required landscape buffer adjacent to the Capital Centre, Lot 1.

5. An overall pedestrian circulation plan shall be provided as part of the first SDP, in accordance with Condition 17 of approved Basic Plans A-9280 and A-9281. This plan shall include the location and width of all sidewalks, the location of the bus stop and supporting pedestrian paths, the location and number of bicycle parking facilities, and the location of pedestrian connections to the adjacent Largo Town Center development.

6. The details of pedestrian connections to the adjacent Boulevard at the Capital Centre development shall be provided in accordance with Condition 23 of approved Basic Plans A-9280 and A-9281. These connections shall extend to the edge of the parking lot of the adjacent development and include striped or contrasting walkways to the shopping center, pending the approval of or a use agreement with the Boulevard development or property manager. The applicant shall be responsible for constructing the connections to the limits of the subject property if an agreement is not reached between the two property owners.

7. The green area requirement for the subject property shall be a minimum of 40 percent for the residential portion and 30 percent for the commercial portion. At the time of SDP, the applicant shall provide evidence that the green area provided meets the definition of green area pursuant to Section 27-107.01(a)(103) of the Zoning Ordinance.

8. A build-to line of ten feet shall be applied consistently along Arena Drive to establish a unified streetscape.

9. Buildings shall be compatible in terms of exterior materials and colors, scale and massing, and style.

10. The area in front of the proposed retail shall be designed to enhance visual interest provided through variation in building materials and color at the street level, pedestrian-scaled signage, awnings, outdoor seating areas, and high-quality pedestrian amenities. Specific details of the streetscape and retail façades shall be provided and reviewed with the specific design plan application.

11. No building permits shall be issued for any residential uses on the property prior to the issuance of building permits for a minimum of 115,000 square feet of office and supporting retail uses and commencement of the building foundation for the main office building structure. A certification prepared by a qualified engineer shall be used to provide verification that the office building has commenced construction. It must include, at a minimum, photographs of portions of the office building foundation.

    Notwithstanding the foregoing, building permits may be issued for residential uses on the property, and such uses constructed, prior to the issuance of building permits for the office and supporting retail uses provided that the applicant first submits to the Prince George's County Planning Board the following: (a) a report from a licensed commercial real estate broker active in commercial leasing in Prince George's County stating that the office uses have been professionally marketed to potential tenants for at least 18 months; and (b) a statement from the applicant that the result of such effort has been insufficient to produce a level of pre-leasing required to finance the construction of the office uses under standard commercial terms and conditions.

    The applicant shall construct, on the first floor, the commercial retail uses concurrently with the residential uses located in the same building.

    As stated in Condition 2, no more than 300 residential units shall be allowed to be constructed on the property now or in the future. The portion of the property shown in purple on the approved Comprehensive Design Plan and labeled "office/commercial" shall be precluded in perpetuity from any residential development. A note shall be added to the Record Plat detailing this preclusion.

    The applicant, its successors and assigns, hereby irrevocably and in perpetuity authorizes and empowers the Office of People's Zoning Counsel, in accordance with Section 27-139.01(b) & (d) of the Prince George's County Zoning Ordinance, to appear in any court having jurisdiction, and on behalf of the applicant, its successors and assigns, to confess judgment against the applicant, its successors and/or assigns to temporarily and permanently enjoin and prohibit the construction of any residential dwellings on the portion of the property designated for office/commercial on the approved Comprehensive Design Plan.

    The applicant, its successors and assigns hereby consents to such permanent injunction and (a) agrees to the entry of a Consent Judgment to enforce the injunction,(b) agrees to pay all costs of any such action for injunctive relief, including attorneys fees incurred by the County in its enforcement of this restriction on residential development, and (c) expressly waives any and all legal defenses to the entry of an injunction

and/or Consent Judgment that precludes residential construction on the portion of the property shown in purple on the approved Comprehensive Design Plan and labeled "office/commercial" and noted on the Record Plat.

The applicant shall execute a Consent Judgment prior to the District Council's consideration of any Specific Designs Plans concerning the residential uses. The Office of People's Zoning Counsel shall retain the signed Consent Judgment in escrow. A copy shall be provided to the MNCPPC. The Office of People's Zoning Counsel shall file the Consent Judgment in a court of law only if the applicant, its successors and/or assigns, attempts to violate the prohibition against residential uses. The Consent Judgment shall survive any future amendment of the Basic Plan or Comprehensive Design Plan and shall be enforceable in a court of law against the applicant, its successors and assigns, notwithstanding any future amendment to the conditions attached to the Basic Plan or Comprehensive Design Plan.

This condition shall modify Condition 3 of the Basic Plan A-9280/08 and shall be carried forward to all subsequent Comprehensive Design Plans, Preliminary Plans and Specific Design Plans for the subject property.

12. Prior to the issuance of any building permit, the applicant and the applicant's heirs, successors, and/or assignees shall conduct a signal warrant study for the proposed access on Arena Drive, and enter into a binding agreement with DPW&T to provide full funding for the installation of the required traffic signal with pedestrian countdown phase, pedestrian cross walks on all approaches, and any other associated geometric modifications warranted by DPW&T.

13. A pedestrian amenity area shall be provided in association with the office component of the development and shall include seating areas, landscaping and decorative paving, at a minimum. Details of this amenity area shall be reviewed at the time of specific design plan.

14. Prior to issuance of the second residential building permit in Parcel-2, Block D, also known as Parcel-I, the applicant shall provide evidence that either:

    a. The applicant has obtained all necessary permits for construction and has completed the terrace garden steps (also known as Add Alternate (2); or

    b. The applicant has paid a fee-in lieu to the DPR in the event DPR has constructed the terrace garden steps as specified on the plans for the Largo Town Center Park. The fee-in lieu shall be in the amount of $232,420.00 in 2010 dollars. This amount shall be adjusted for inflation in accordance with the Consumer Price

Index (CPI) to the end of the fiscal year preceding the year in which the actual construction is completed by the DPR.

15. The total development within the subject property shall be limited to 148,000 GSF of office use, 8,000 GSF of retail space, 4,000 GSF bank building, and 300 residential units, or any equivalent development that would generate no more than 396 AM and 441 PM peak-hour vehicle trips. These figures include the 20 percent approved reduction for transit.

16. The Design Guidelines shall be included in a revised CDP text. At the time of specific design plan, the guidelines shall be further reviewed and refined in the context of a final plan of development.

17. The District Council hereby restates, for clarity and emphasis, condition 24 of the Basic Plan, applicable to this and all other comprehensive and specific design plans for the properties covered by the Basic Plan:

    The applicant has proffered, and the District Council requires, the establishment of a condominium regime, with condominium quality in all structures, for the multifamily buildings.

Ordered this 13th day of July, 2010, by the following vote:

In Favor: Council Members Dernoga, Bland, Campos, Dean, Exum, Harrison, Knotts, Olson 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: _____
Thomas E. Dernoga, Chairman

ATTEST:

_____
Redis C. Floyd
Clerk of the Council