

Case No. DSP-11011 Potomac Business Park
Super Walmart

Applicant: Oxon Hill Associates, L.C.

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

ORDER OF REMAND

IT IS HEREBY ORDERED, that application DSP-11011, a detailed site plan, companion variance application requests from Section 27-471(f)(2) and (3) and Section 27-474(b) of the Zoning Ordinance, and companion variance application DPLS-370 for a departure from Section 27-568 of the Zoning Ordinance, for a 100,779-square-foot department or variety store, specifically a Super Walmart, on 13.36 acres in the Planned Industrial/Employment Park (I-3) Zone located on the southeast corner of the intersection of Oxon Hill Road and Felker Avenue within Planning Area 76B, Council District 8, and the Developed Tier, is:

REMANDED, pursuant to §27-132 and §27-290 of the Zoning Ordinance, to the Planning Board to take further testimony and reconsider its decision as follows:

County Bill 64-2012 (CB64-2012)

1. On or about November 7, 2012, the District Council adopted CB-64-2012, which amended the provisions of the Zoning Ordinance concerning Department or Variety Stores in the Commercial and Industrial Zones. On remand, the Planning Board shall take further testimony from the applicant, opposition, and other persons of record concerning the application request in DSP-11011, including the companion variances from §27-441(f)(2) and (3) and §27-474(b), and the companion variance application request in DPLS-370. The Planning Board shall evaluate and process the applications for compliance, conformance and validity subject to the requirements of CB-64-2012, which, in pertinent part, provides a Special Exception requirement

for certain Department or Variety stores in the I-3 Zone, and further provides an exemption from the Special Exception requirement for certain development with a gross floor area not exceeding 85,000 square feet. Planning Board shall also determine the applicability, if any, of §27-271 of the Zoning Ordinance to DSP-11011, requested variances and companion variance application DPLS-370.

Master Plan Conflict

2. Community Planning South Division has determined that DSP-11011 is inconsistent with the 2002 General Plan Development Pattern policies for the Developed Tier Centers. Community Planning South Division also determined that DSP-11011 does not conform to the mixed land use recommendation in the 2006 *Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment*; Community Planning South Division Memorandum, February 27, 2011. Section 27-230(a) of the Zoning Ordinance provides, in relevant part, that a variance may only be granted when Planning Board *finds* that: (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions; (2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

3. The Maryland Court of Appeals recently held that when statutes link planning and zoning, Master Plans are elevated to the level of true regulatory devices. *HNS Dev., LLC v. People's Counsel for Balt. County*, 425 Md. 436, 42 A.3d 12 (2012), affirming *HNS Development, LLC v. People's Counsel for Baltimore County, et al.*, 200 Md. App. 1, 24 A.3d 167 (2011), citing *Mayor & City Council of Rockville v. Rylins Enters., Inc.*, 372 Md. 514, 814

A.2d 469, (2002). The Court also held that plans that did not conform to the Master Plan must be rejected. *Id.*, citing *Maryland-National Capital Park & Planning Commission v. Greater Baden-Aquasco Citizens Association*, 412 Md. 73, 985 A.2d 1160 (2009), *Coffey v. Maryland-National Capital Park & Planning Commission*, 293 Md. 24, 441 A.2d 1041 (1982). On remand, Planning Board shall reconsider its decision in accordance with Maryland law.

Variances from §27-471(f)(2) and §27-474(b)

4. On remand, the Planning Board shall take further testimony from the applicant, opposition, and other persons of record, and evaluate whether the requested variances from §27-471(f)(2) and §27-474(b) to allow for more than 25 percent of the parking lot to be located in the yard to which the building's main entrance is oriented, to allow for loading docks to be located on a side of the building facing a street, and to allow for reduced building and parking setbacks are "area variances" or "use variances" in accordance with Maryland law.

5. On remand, Planning Board shall, instead of adopting or concurring with Applicant's Justification, make factual findings and conclusions of its own as required by §27-230(a) and reconsider whether 1) the subject property has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions, 2) strict application of §27-230(a) will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and 3) the requested variance or variances will not substantially impair the intent, purpose, or integrity of the 2002 General Plan Development Pattern policies for the Developed Tier Centers or the 2006 Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment.

Transportation and Traffic

6. On remand, and prior to transmittal to the District Council, the applicant, to be consistent with Condition 9 of the PGCPB Resolution No. 88-250(A), Preliminary Plan of Subdivision 4-88054 and address a significant concern from the Transportation Planning Section, shall remove from its plan before the Planning Board any direct access or access drive to Oxon Hill Road. The applicant shall also remove the note from its plan that any direct access or access drive to Oxon Hill Road is subject to reconsideration of the approved preliminary plan.

7. In letters dated February 27, and 29, 2012, from the Maryland Department of Transportation, State Highway Administration (SHA), to Urban Design Section of Planning Board and EBA Engineering, respectively, SHA indicated that it has withheld further review of DSP-11011 until several "Access Management Division Comments" have been addressed by the applicant, including but not limited to a proposal for right-in/right-out directional connection onto Oxon Hill Road which may cause operational problems along Oxon Hill Road, and submission of a revised traffic signal warrant study to SHA. See also Subdivision Section Memorandum, February 22, 2012. At the Planning Board hearing in May 2012, and prior to its approval in June 2012, Planning Board, applicant, opposition and other persons of record were not afforded the benefit of a complete review of DSP-11011 by SHA. On remand, Planning Board shall take further testimony from the applicant, opposition, and other persons of record concerning final SHA review and comments on DSP-11011. Planning Board shall also evaluate and process DSP-11011 and companion variances for compliance and conformance subject to further SHA review and comments.

8. The Transportation Planning Section indicated that the applicant's trip cap analysis presented several issues because it was for the overall Potomac Business Park site, when the use is a single store and not a shopping center comprised of many smaller stores; Transportation Planning Section Memorandum, April 20, 2012. On remand, the applicant shall submit a revised trip cap analysis for the proposed development in DSP-11011 or as amended. Planning Board shall evaluate whether the revised trip cap analysis, for a single store or the proposed development as amended, is in compliance with Conditions 15-18 of Preliminary Plan of Subdivision 4-88054.

DPLS-370

9. The Department of Public Works and Transportation (DPW&T), Office of Engineering, found that the application for a Departure from Parking and Loading Standards (DPLS-370), requesting a departure from §27-568 of the Zoning Ordinance to allow for a reduction in the minimum number of required parking spaces as a companion case to DSP-11011 was unacceptable because the departure will result in overflow parking on public roadways which impacts the County's safe roadway operation; DPW&T Memorandum, February 8, 2012. The Transportation Planning Section, in its review of DPLS-370, found that the parking departure has been necessitated by the size and constraints of the site and suggested that a parking structure, and possibly even a two-level store, be given consideration for the following reasons:

- The site layout is problematic in placing the main store entrance at the main point of vehicular access. The lack of separation between pedestrians and vehicles creates safety and operational issues. Reducing the overall footprint of the structures would allow more flexibility in designing the site.

- The site constraints create a need for departures and variances; these result from developing (literally) every square inch of the site to accommodate structures.
- The site is within a Regional Center, as defined in the Prince George's County Approved General Plan, and it is adjacent to a planned fixed-guideway transit station as identified in the Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area. As such, there should be a much greater emphasis on transit-supportive development, which should include an emphasis on multi-story buildings and structured parking.

In summary, the Transportation Planning Section found that at a minimum, the parking departure requires better justification through comparison with similar site, and further thought needs to be given to the overall plan for the site. The justifications for the various variances and departures speak considerably about sustainability, but it is not clear that the subject plan is sustainable given the importance of this site within a regional center and adjacent to a planned transit station. Transportation Planning Section Memorandum on DPLS-370, February 16, 2012, and Transportation Planning Section Memorandum on DSP-11011, Master Plan Conformance, February 28, 2012. Similarly, Community Planning South Division concluded that the applicant should explore site and building design options that will be more consistent with the 2006 *Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment* vision and help facilitate the future transformation of the area to a more urban feel, such as:

- The master plan concept illustration on Oxon Hill Regional Center Vision Diagram, Page 50, Map 20.
- Two smaller pad sites close to Oxon Hill Road with setbacks consistent with existing buildings. (see the attached Rockville Pike Walmart concept).
- A two-story Walmart located closer to the street, with setback consistent with existing buildings.

Community Planning South Division Memorandum, February 27, 2011. The Maryland Court of Appeals recently held that when statutes link planning and zoning, Master Plans are elevated to the level of true regulatory devices. *HNS Dev., LLC v. People's Counsel for Balt. County*, 425 Md. 436, 42 A.3d 12 (2012), affirming *HNS Development, LLC v. People's Counsel for Baltimore County, et al.*, 200 Md. App. 1, 24 A.3d 167 (2011), citing *Mayor & City Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 814 A.2d 469, (2002). The Court also held that plans that did not conform to the Master Plan must be rejected. *Id.*, citing *Maryland-National Capital Park & Planning Commission v. Greater Baden-Aquasco Citizens Association*, 412 Md. 73, 985 A.2d 1160 (2009), *Coffey v. Maryland-National Capital Park & Planning Commission*, 293 Md. 24, 441 A.2d 1041 (1982). On remand, Planning Board shall reconsider its decisions in accordance with Maryland law.

10. On remand, Planning Board shall, instead of adopting or concurring with Applicant's Justification, make factual findings and conclusions of its own as required §27-568 of the Zoning Ordinance. In doing so, Planning Board shall reconsider whether, in light of DPW&T February 8, 2012 Memorandum, Transportation Planning Section Memorandum on DPLS-370, February 16, 2012, and the 2006 *Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment*, the companion variance application request in DPLS-370 should be granted. Additionally, Planning Board shall, in light of CB-64-2012, take further testimony from the applicant, opposition, and other persons of record concerning the viability of a parking structure and a two-level store to meet site constraints and conformance with the 2006 *Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment*.

Health and Environmental Concerns

11. The Environmental Engineering Program of the Prince George's County Health

Department after its health impact assessment review of DSP-11011 provided, in part, the following comments:

- Increased traffic volumes in the area can be expected as a result of this project:
 - a. Published scientific reports have found that road traffic, considered a chronic environment stressor, could impair cognitive development in children, such as reading comprehension, speech intelligibility, memory, motivation, attention, problem-solving, and performance on standardized tests.
 - b. There is an emerging body of scientific evidence indicating that fine particulate air pollution from traffic is associated with childhood asthma.
 - c. Several large-scale studies demonstrate that increased exposure to fine particulate air pollution is associated with detrimental cardiovascular outcomes, including increased risk of death from ischemic heart disease, high blood pressure, and coronary artery calcification.
- There is an increasing body of scientific research suggesting that artificial light pollution can have lasting adverse impacts on human health. Indicate that all proposed exterior light fixtures will be shielded so as to minimize light trespass caused by spill light.
- Indicate the dust control procedures to be implemented during the construction phase of this project. No dust should be allowed to cross over property lines and impacted adjacent properties.
- Indicate the noise control procedures to be implemented during the construction phase of this project. No construction noise should be allowed to adversely impact activities on the adjacent school or hotel properties.

Health Department, Division of Environmental Health, Memorandum, February 17, 2012.

12. On remand, given the proximity of the John Hanson Montessori School and Oxon Hill High School, Planning Board shall take further testimony from the applicant, opposition, and other persons of record concerning the comments from the Health Department and what if any preventive measures the applicant proposes to implement during construction of the

proposed project to alleviate the environmental and health concerns that may adversely impact the adjacent schools and other adjacent properties.

Ordered this 28th day of January, 2013, by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Lehman, Olson, Patterson, 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: _____
Andrea C. Harrison, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council