

Case No. DSP-12034 Keane Enterprises, Inc.

Applicant: Keane Enterprises, Inc.

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

**AMENDED ORDER AFFIRMING PLANNING BOARD DECISION,
WITH CONDITIONS**

This matter came before the District Council as an Item for Discussion at its April 27, 2015, session to consider the technical points raised within correspondence dated April 7, 2015, received by the Clerk of the District Council from counsel for Applicant, Keane Enterprises. As set forth therein, Applicant requested that the District Council reconsider its Order Affirming Planning Board Decision as to DSP-12034 pursuant to § 27-135 of the Zoning Ordinance, to clarify: (1) that its action in DSP-12034 rezoned the 0.86± acres of property from the R-55 (One-Family Detached Residential) Zone to the M-U-I (Mixed Use Infill) Zone; (2) that the 40-foot Osage Street right-of-way area was rezoned to the M-U-I Zone by operation of law; and (3) that the findings of fact, conclusions of law, and conditions of approval embodied in the final decision of the District Council as to DSP-12034 encumber only the geographic area within the administrative record that was reviewed and approved on July 15, 2013. At that time, the District Council took this matter under advisement. On April 28, 2015, this matter was referred for preparation of an Amended Order Affirming Planning Board pursuant to §§ 27-135 and 27-548.26 of the Zoning Ordinance. Thereafter, the District Council voted to adopt the prepared Amended Order Affirming Planning Board Decision as to DSP-12034 on April 28, 2015.

PROCEDURAL HISTORY

As the findings herein reflect, the District Council considered DSP-12034 and issued a final decision of approval with conditions as to the subject application in July 2013. The

geographic boundaries of DSP-12034 include the property located at 8315 Baltimore Avenue, College Park, Maryland 20740 (“Subject Property”). Subsequently, in 2014, the Planning Board approved DSP-12034-01 in accordance with the prescriptions of the Zoning Ordinance. The geographic boundaries for DSP-12034-01 include both the Subject Property and property located at 4700 Berwyn House Road, College Park, Maryland 20740.

Paragraph “A” of July 15, 2013, Final Decision as to DSP-12034

We take administrative notice of Applicant’s statement within its April 7, 2015, letter, that the District Council’s final decision as to DSP-12034, the July 15, 2013, Order Affirming the Planning Board Decision with Conditions, incorporated a statement within paragraph “A” found on page 1, as follows:

The Planning Board recommends to the District Council APPROVAL of the rezoning request to rezone approximately 0.86 acre in the One-Family Detached Residential (R-55 Zone) to the Mixed Use-Infill (M-U-1) Zone.

See DSP-12034, 07/15/2013 Order Affirming Planning Board Decision, with Conditions, at 1, ¶ A.

We take further notice of the statement by Applicant in its April 7, 2015, letter, that all interested parties were aware that the District Council action in this matter included a rezoning of the 0.86± acre parcel of land zoned R-55. Further, we agree that the July 15, 2013, is ambiguous in that it does not include an affirmative statement to that effect. As such, the District Council finds good cause, as articulated within Applicant’s April 7, 2015, letter as a basis to issue an Amended Order to clarify the intent of the District Council within our July 15, 2013, Order Affirming the Planning Board Decision with Conditions, as its final decision as to DSP-12034, to rezone the 0.86± acres of property to the M-U-I (Mixed Use – Infill) Zone.

Osage Right-of-Way

As a matter of first impression, we take further administrative notice that the 40-foot wide Osage right-of-way area on a final plat of subdivision titled, “Addition to Berwyn” was recorded among the Land Records of Prince George's County on July 6, 1906, in Liber J.W.B. No. 5, Folios 480 and 481. Accordingly, as a matter of first impression, we agree that the statement within Applicant’s April 7, 2015, letter that the 40-foot wide Osage right-of-way area included within the geographic boundaries of DSP-12034 is included within the land area rezoned to the M-U-I Zone, as a matter of law, pursuant to § 27-111 of the Zoning Ordinance.

Section 27-111(a) of the Zoning Ordinance, states that “Zone boundary lines follow the center lines of streets.” In turn, § 27-107.01 (a)(225)(A)(ii) of the Zoning Ordinance defines “Street” as “a proposed ‘Street’ right-of-way or widening shown ... on a ‘Record Plat’.” Consequently, we find that since the proposed Osage right-of-way is shown on the “Addition to Berwyn” record plat, the M-U-1 Zone of the property in DSP-12034, including the area that was rezoned, extends through the 40-foot wide Osage right-of-way area. To this end, it is the intent of the District Council in its final decision as to DSP-12034 that the 40-foot wide Osage right-of-way be rezoned to the M-U-I Zone pursuant to its final decision for approval for the rezoning of 0.86± acre of property to the M-U-I (Mixed Use – Infill) Zone. As such, the District Council finds good cause, as articulated within Applicant’s April 7, 2015, letter as a basis to issue an Amended Order to clarify the intent of the District Council within our July 15, 2013, Order Affirming the Planning Board Decision with Conditions, to clarify that the 40-foot wide Osage right-of-way is in the M-U-1 Zone, by operation of law.

Applicability of DSP-12034 to Encumber Only the Subject Property

We take administrative notice of subsequent history of DSP-12034, as follows: after issuance of our final decision as to DSP-12034, Applicant filed a Detailed Site Plan application

concerning 2.12 acres of land situated immediately south of the subject property proposed for development contemplated within DSP-12034. In so doing, we note that this site plan application was filed as a revision to DSP-12034 and assigned the application number “DSP-12034-01.” We did not consider the merits of DSP-12034-01; rather, this proposal was approved by the Planning Board by way of its adoption of PGCPB No. 14-74 on July 31, 2014. Thereafter, we note that no person of record appealed from the determination of the Planning Board, the District Council did not elect to review DSP-12034-01, and the Planning Board determination as to DSP-12034-01 became final, by operation of law, in accordance with § 27-290 of the Zoning Ordinance.

While development proposals contemplated within applications DSP-12034 and DSP-12034-01 share a common parent designation in “DSP-12034,” we agree with the Applicant’s statement that each project was always intended to be a separate and independent developments, and no conditions of approval link our final decision as to DSP-12034 with the final decision contemplated within the Planning Board resolution PGCPB No. 14-74 as to DSP-12034-01. Thus, we further conclude that it was not possible for conditions of approval imposed by way of our July 2013 final decision to encumber the DSP-12034-01 property, since the DSP-12034-01 property was never reviewed by the District Council and was filed and reviewed one year after our final decision as to DSP-12034. Therefore, the District Council finds good cause, as articulated within Applicant’s April 7, 2015, letter, as a basis to issue an Amended Order to clarify the intent of the District Council within our July 15, 2013, Order Affirming the Planning Board Decision with Conditions, to state that the findings of fact, conclusions of law, and conditions of approval for its Order of Approval for DSP-12034 are limited to the geographic boundaries of DSP-12034, and encumbers only the property for which we reviewed and issued a final decision in July 2013.

As the basis for this decision, and as expressly authorized by the RDA, namely Title 22 and Title 25 of the Land Use Article of the Annotated Code of Maryland, as well as the County Zoning Ordinance, being also Subtitle 27 of the Prince George's County Code, we hereby adopt the findings and conclusions within the administrative record as to the proposed application, specifically, the findings and conclusions set forth within PGCPB No. 13-36, and technical points raised within the April 7, 2015, correspondence from Applicant's counsel for clarification of the scope and intent of the District Council's July 15, 2013, Order Affirming the Planning Board decision as the final decision as to DSP-12034.

Specifically, § 27-135 of the Zoning Ordinance provides, in pertinent part:

Sec. 27-135. Reconsideration.

(a) Reconsiderations and site plan amendments for Special Exceptions shall be as provided for in Part 4. All others are governed by this Section (except Zoning Ordinance text amendments).

(b) Once a final decision has been made by the District Council, the decision may be reconsidered upon a written request filed by either the applicant or other person of record within thirty (30) days of the final decision if, based on the written request, the Council finds that there may have been an error in reaching the final decision that was caused by fraud, surprise, mistake, or inadvertence. The person of record filing the request for reconsideration shall, upon filing the request, send a copy to all other persons of record.

(1) If the District Council determines there may be grounds for reconsideration of their final decision, the Clerk of the Council shall schedule an evidentiary hearing on the request.

(2) After hearing, the District Council shall first vote to reconsider their final decision and, if an affirmative motion is adopted, vote on a new decision.

(c) The District Council may (for good cause) amend any condition imposed or site plan approved (excluding Comprehensive Design Zone Basic Plans or R-P-C Zone Official Plans) upon the request of the applicant without requiring a new application to be filed, if the amendment does not constitute an enlargement or extension.

(1) In the case of an amendment of a condition (imposed as part of the approval of the zoning case), the request shall be directed, in writing, to the District Council, and shall state the reasons therefore. Before the Council amends a condition, the Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with Section 27-129, and shall notify all parties of record (including all parties of record on the original application and any amendments thereto) in the same manner as required for an original application.

The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's decision with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

(2) Where a site plan has been approved by the Council, the applicant may request an amendment to the site plan in the form of an application filed with the Planning Board. The Technical Staff shall analyze the proposed amendment, taking into consideration the requirements of this Subtitle. The staff shall submit (for the record) a recommendation. This recommendation, along with the proposed amendment, shall be transmitted by the Technical Staff directly to the District Council. The Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with Section 27-129, and shall notify all parties of record (including all parties of record on the original application and any amendments thereof) in the same manner as required for an original application. The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

(d) An applicant may request the amendment of any Comprehensive Design Zone Basic Plan or R-P-C Zone Official Plan, as set forth in Sections 27-197 and 27-158.

(c) The District Council may (for good cause) amend any condition imposed or site plan approved (excluding Comprehensive Design Zone Basic Plans or R-P-C Zone Official Plans) upon the request of the applicant without requiring a new application to be filed, if the amendment does not constitute an enlargement or extension.

§ 27-135, Prince George's County Zoning Ordinance (*emphasis added*).

In addition, because this property is situated within a Development District Overlay Zone imposed in the 2010 *Central U.S. 1 Corridor Sector Plan and Sectional Map Amendment*, the

following provision of the Zoning Ordinance was applied in the application, consideration, and approval of DSP-12034:

Sec. 27-548.26. Amendment of Approved Development District Overlay Zone.

(a) District Council.

(1) The following amendments to development requirements within the Development District may be initiated and approved by the District Council through the minor plan amendment procedure and concurrent Sectional Map Amendment process, in accordance with Part 13, Division 2, and Part 3, Division 4:

(A) Changes to the boundary of the D-D-O Zone; and

(B) Changes to the underlying zones or the list of allowed uses, as modified by the Development District Standards.

(2) At the written request of a municipality in which development district property is located, the District Council may modify the Development District Standards under the following procedures. The District Council shall direct the Planning Board to prepare the amendment and shall specify which Development District Standards should be reviewed.

(A) For hearing procedures in general, the Planning Board and District Council shall follow the requirements in Part 3, Division 9, for Conceptual Site Plans as found in Sections 27-276(a)(1), (3), (4), (5), (6) (7); and 27-276(d). Review by the District Council shall follow the procedures in Section 27-280. Notice of the Planning Board's hearing shall be sent by first-class mail to all municipalities with development district property, all parties of record in the Sectional Map Amendment, and all property owners within the area specified in the District Council's direction;

(B) Planning Board staff must prepare a report and recommendation. The Planning Board shall hold a public hearing, file its decision with the Clerk of the Council, and send copies to persons of record of this amendment process within fifty (50) days of the receipt of the District Council's direction to the Planning Board;

(C) In order to approve an amendment of the Development District Standards the Planning Board shall make the following findings:

(i) The amendment is in compliance with the goals of the Development District; and

(ii) The amendment is in conformance with the purposes of the D-D-O Zone.

(b) Property Owner.

(1) A property owner may request that the District Council amend development requirements for the owner's property, as follows:

(A) An owner of property in, adjoining, or separated only by a right-of-way from the Development District may request changes to the boundary of the approved D-D-O Zone.

(B) An owner of property in the Development District may request changes to the underlying zones or the list of allowed uses, as

modified by the Development District Standards.

(2) The owner's application shall include:

(A) A statement showing that the proposed development conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan; and

(B) A site plan, either the Detailed Site Plan required by Section 27-548.25 or a Conceptual Site Plan.

(3) Filing and review of the application shall follow the site plan review procedures in Part 3, Division 9, except as modified in this Section. The Technical Staff shall review and submit a report on the application, and the Planning Board shall hold a public hearing and submit a recommendation to the District Council. Before final action the Council may remand the application to the Planning Board for review of specific issues.

(4) An application may be amended at any time. A request to amend an application shall be filed and reviewed in accordance with Section 27-145.

(5) The District Council may approve, approve with conditions, or disapprove any amendment requested by a property owner under this Section. In approving an application and site plan, the District Council shall find that the proposed development conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan, and meets applicable site plan requirements.

(6) If a Conceptual Site Plan is approved with an application, the owner may not obtain permits without an approved Detailed Site Plan.

§ 27-548.26, Zoning Ordinance (*emphasis added*).

Sec. 27-145. Amendment of applications.

(a) Requests to amend an application shall be in writing and signed by the owner of record. The request may be submitted only by the applicant (or his authorized representative). The amendment of applications shall be subject to the following:

(1) Amendments concerning an error, omission of fact, or other factual change not mentioned below in this Section shall be permitted at any time.

(2) Amendments which change the total area or configuration of a property shall be made before the application is transmitted to the Council. If the area is increased, the appropriate additional filing fee shall be paid.

(3) Amendments which change the requested zoning classification shall be accompanied by a new (revised) justification statement. The amendment shall also be the subject of a new (revised) Technical Staff Report or a statement by the Technical Staff that a new (revised) report is unnecessary. Requests received prior to the date of the public release of the Technical Staff Report shall be administratively granted. Where the Technical Staff recommends an amendment, the applicant may request the amendment within fifteen (15) days after the date of the public release of the Technical Staff

Report, in which case the request shall be administratively granted. If the Planning Board hears the case, and either the amendment is different than the one recommended by the staff or the fifteen (15) days have lapsed, the amendment request shall be directed to the Planning Board prior to or on the date on which it first hears the application, or within ten (10) days after the date the Planning Board recommends the amendment. The amendment shall not be permitted if more than ten (10) days have elapsed since the date of the Planning Board's recommendation.

(4) Notification of any amendments shall be furnished to any person who has requested (in writing) a copy of the Technical Staff Report.

§ 27-145, Zoning Ordinance (*emphasis added*).

In reading the three sections of the Zoning Ordinance *in pari materia*, we conclude that § 27-548.26 of the Zoning Ordinance is controlling as to the subject development proposal, and this section provides specific authority for an applicant to amend an application at any time, in accordance with § 27-145 of the Zoning Ordinance. *See* § 27-548.26(b)(4), Zoning Ordinance. We further find that § 27-145 serves to elucidate the meaning of § 27-548.26, and corroborates our specific authority to amend a request to correct “an error, omission of fact, or other factual change,” separate and apart from all other procedural prescriptions within the other subsections of this provision of the Zoning Ordinance. Lastly, while not controlling in the instant case, we find the language of § 27-135(c) of the Zoning Ordinance instructive as further support for the authority of the District Council to reconsider and amend a prior approval for good cause shown. *See* § 27-135(c), Zoning Ordinance.

Maryland law concerning statutory construction bolsters this view. It is a well-established premise of statutory construction that statutes dealing with the same subject matter should, when possible, be read together and harmonized. *Scott v. State*, 297 Md. 235, 465 A.2d 1126 (1983); *Commission on Medical Discipline v. Bendler*, 280 Md. 326, 330, 373 A.2d 1232 (1977); *Dept. of Natural Resources v. France*, 277 Md. 432, 357 A.2d 78 (1976). In this pursuit, results that are unreasonable, illogical or inconsistent with common sense should be avoided and an

interpretation should be given which will not lead to absurd or anomalous results. *Comptroller v. John C. Louis Co.*, 285 Md. 527, 538–39, 404 A.2d 1045 (1979).

Based on the foregoing, we are persuaded by the statements in its April 7, 2015, correspondence that Applicant has submitted a written request for amendment of our July 13, 2015, Order as to DSP-12034, has established certain factual omissions or error amounting to good cause as a basis for the clarifications set forth in this Amended Order, that were contemplated within our approval of DSP-12034, pursuant to §§27-548.26 and 27-145 of the Zoning Ordinance. As a result, we further find that the particular issues addressed in this Amended Order are of a technical, clarifying nature, and are not subject to the hearing requirements of § 27-135 of the Zoning Ordinance.

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 13-36, to approve with conditions a detailed site plan for the redevelopment of the Koons Ford site, currently occupied by two single-story structures, with three buildings, including a 156-room hotel, 23,615 square feet of retail space, and the associated three-story parking garage, located in the northeastern corner of the intersection of Baltimore Avenue (US 1) and Berwyn House Road, in College Park, Planning Area 66, Council District 3, and the Developed Tier, and after further review and reconsideration of the record, in light of the applicant's requests, that the District Council's order of July 15, 2013, be and the same is hereby: AMENDED, for the reasons stated in the Planning Board's decision in PGCPB No. 13-36, with the following modifications and additions:

(A.) The District Council does hereby rezone approximately 0.86 acres from the R-55 (One-Family Detached Residential) Zone to the M-U-I (Mixed Use-Infill) Zone pursuant to the provisions of § 27-548.25 of the Zoning Ordinance. In so doing, it is the intent of the District Council that the zoning classification for the 40-foot wide area shown as a street dedication in

the final plat of subdivision titled, “Addition to Berwyn,” and recorded in Liber J.W.B. No. 5, Folios 480 and 481 on July 6, 1906, be and the same is hereby zoned M-U-I, by operation of law, in accordance with the provisions of §§ 27-107.01 and 27-111 of the Zoning Ordinance.

(B.) The final decision of the District Council as to DSP-12034 approved a 156-room hotel, including 11,313 square feet of retail space and a 12,300 square foot standalone CVS pharmacy. It is the further intent of the District Council that the basis for this decision, including the findings of fact and conclusions of law supporting the affirmance of the Planning Board decision, as well as the conditions imposed pursuant to the District Council’s approval of DSP-12034 shall apply only to that development approval. Accordingly, the subsequent approval set forth within DSP-12034-01, which is a revision to DSP-12034, relate to a separate development. Accordingly, the approval for that 2.12-acre property, to be developed with 275 multi-family residential units and up to 1,000 square feet of commercial retail uses, is a separate development approval. Thus, it is the intent of the District Council that the findings, conclusions, and conditions of approval set forth herein apply only to the development proposal set forth in DSP-12034. As such, any subsequent applications for plans and permits for either of the two developments contemplated by DSP-12034 and DSP-12034-01 shall be reviewed and issued separately.

Affirmance of the Planning Board’s decision is subject to the following conditions:

- A. The Planning Board recommends to the District Council APPROVAL of the rezoning request to rezone approximately 0.86 acre in the One-Family Detached Residential (R-55) Zone to the Mixed Use–Infill (M-U-I) Zone.
- B. The Planning Board APPROVED the alternative development district standards for:
 - 1. Pages 228 and 230—Mandatory shop frontage with a zero-foot build-to-line along the US 1 frontage (to allow an 18-foot build-to-line along US 1);
 - 2. Page 234—The maximum front build-to-line principal of ten feet (to allow an 18-foot build-to-line along US 1);

3. Page 234—The principal building height of two stories minimum (to allow Building 2 to be a one-story building);
4. Page 239—The required number of parking spaces for the proposed hotel and retail uses (to allow a larger amount of provided parking spaces, specifically 293);
5. Page 239—The minimum number of required bicycle parking spaces (to allow the applicant to provide 54 bicycle parking spaces, instead of the required 98);
6. Page 254—Freestanding signs shall not be permitted (to allow for four, small, way-finding, freestanding signs on-site);
7. Page 254—The maximum area of nine square feet for any single sign mounted perpendicular to a façade (to allow for a maximum area of 36 square feet for any single sign mounted perpendicular to a given façade);
8. Page 255—Not permitted: pole-mounted signs (to allow for four, small, way-finding, pole-mounted signs);
9. Page 256—Within the walkable node, to obtain a minimum of LEED Silver (Leadership in Energy and Environmental Design) certification (to allow for an alternative method of compliance as conditioned below);
10. Page 257—All at-grade walks and pathways shall be constructed with pervious materials (to allow the applicant to use impervious materials for all paving);
11. Page 257—Underground or above-grade cisterns shall be integrated into the site plan (to allow the applicant not to provide cisterns, but rather use bioretention ponds and planters for stormwater purposes).

C. The Planning Board APPROVED Detailed Site Plan DSP-12034 for Keane Enterprises, Inc. and Type 2 Tree Conservation Plan TCP-2-002-13, subject to the following conditions:

1. Prior to certification, the applicant shall revise the plans as follows or provide the specified documentation:
 - a. Revise the detailed site plan (DSP) as follows:
 - (1) Revise all notes regarding the square footage of retail space to match and provide a breakdown of the number of retail units within the hotel building and their square footages;
 - (2) Provide a plan note that indicates conformance to construction activity dust control requirements as specified in the 2011

Maryland Standards and Specifications for Soil Erosion and Sediment Control;

- (3) Provide a plan note that indicates the applicant's intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code;
- (4) Indicate that all proposed exterior light fixtures will use full cut-off optics and be shielded and positioned so as to minimize light trespass caused by spill light;
- (5) Provide a Tree Canopy Coverage schedule showing the requirement being met on-site;
- (6) Revise the plan to reflect and label dedication to the State Highway Administration (SHA) of the required right-of-way for the entire property frontage along Baltimore Avenue (US 1) per the most recent SHA planning drawings for US 1, and/or as approved by the 2010 *Approved Central US 1 Corridor Sector Plan and Sectional Map Amendment*;
- (7) Revise the plan to reflect Parcel 121 as an alley;
- (8) General Note 6 shall be revised to reflect the correct total acreage for the site to include the 40-foot-wide right-of-way of Osage Street as shown on the Site, Grading and Utility Plan;
- (9) Show all existing and proposed lot lines on the Site, Grading and Utility Plan;
- (10) Provide written documentation from the City of College Park agreeing to the conveyance of the portion of the Berwyn House Road and Osage Street rights-of-way which are proposed to be included in the DSP;
- (11) Add a note regarding the date of the construction of the existing buildings;
- (12) Provide an approved utilities plan to determine that adequate area exists for installation of utilities, or if a public utility easement should be required;
- (13) Add a note to the DSP that all loading area access doors shall remain closed, except during times of entrance and exiting of vehicles;

- (14) Revise General Note 7D to delete the shared parking factor calculation, and the baseline assumptions for the parking calculations shall be revised to the walkable node requirements;
- (15) Revise the plan to move the proposed monument signs out of the proposed US 1 right-of-way dedication or provide documentation from SHA that the proposed locations are acceptable;
- (16) Revise the plans to include a location for a proposed bike share station;
- (17) Remove the sign from the landmark feature on the west elevation;
- (18) Eliminate the use of any wayfinding signs that are more than 5 feet in height.

b. Revise the architecture as follows:

- (1) Reduce the use of cast stone on the south building façade along Berwyn House Road to increase the wall area that is transparent window and incorporate additional architectural treatments to be reviewed by the Planning Board or it's designee, with input from the City of College Park staff;
- (2) Refine the design of the parking garage structure to incorporate additional high-quality materials and detailing along the façades visible from Baltimore Avenue (US 1), Berwyn House Road, and Pontiac Street, to better reflect the architecture of the associated hotel building and provide a more attractive public face, as shown in Exhibit "B";
- (3) Revise the signage sheet to indicate the approved signage standard amendments;
- (4) Improve the landmark feature (tower) of the building to make it more prominent and visible by, for example, making it taller than it is wide, adding a roof structure and providing more ornamentation or detail, to be reviewed by the Urban Design staff, with input from the City of College Park staff.

c. Revise the Type 2 tree conservation plan (TCP2) as follows:

- (1) Revise the woodland conservation worksheet to match the woodland preservation acreage on the plan view of the TCP2;
- (2) Have the revised plan signed and dated by the qualified professional preparing the plan.

2. Total development within the subject property shall be limited to development which generates no more than 129 AM and 246 PM peak-hour vehicle trips, which include the reduction for pass-by trips for the proposed uses.
3. Prior to issuance of any building permits within the subject property (as determined necessary by SHA), the following pedestrian improvements shall (1) have full financial assurance, (2) have been permitted for construction by the Maryland State Highway Administration (SHA), and the City of College Park, and (3) have an agreed-upon timetable for construction with SHA and the City:
 - a. The provision of any pedestrian-related traffic signal modifications, pedestrian/ bike push buttons and count-down displays at all approaches, and inclusion of highly-visible and well-delineated pedestrian crosswalks and stop bars on the western, northern and southern approaches at the intersections of Baltimore Avenue (US 1) with Berwyn House Road per SHA and the City of College Park standards;
 - b. The provision of wide pedestrian crosswalks on all approaches of Pontiac Street and Baltimore Avenue (US 1), if deemed necessary by the City of College Park;
 - c. Installation of traffic control signs at the site access points with Pontiac Street that read “No Right Turn Except Local Traffic”;
 - d. Provision of a striped crosswalk on Pontiac Street and Berwyn House Road at their intersection with Route 1.
4. Prior to issuance of any permits which impact the 100-year floodplain, the applicant shall submit copies of all federal and state wetland permits, if required, along with evidence that approval conditions have been complied with, and associated mitigation plans.
5. The Applicant shall make every effort to achieve U.S. Green Building Council (USGBC) LEED-Silver certification under an applicable LEED 2009 rating system as required by the Sector Plan Development Standards for their retail and hotel buildings. The Applicant shall pursue LEED Silver certification through the Split Review process. Specifically, the Applicant shall follow the process below:
 - a. Prior to DSP certification, the Applicant shall:
 - 1) Register the project with the USGBC and provide a copy of the payment receipt;
 - 2) Designate a LEED-accredited professional (“LEED-AP”) who is also a professional engineer or architect, as a member of their

design team. The Applicant shall provide the name and contact information for the LEED-AP to the City and M-NCPPC;

- 3) Designate the City of College Park Planning Director as a team member in the USGBC's LEED Online system. The City's team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team.
- b. Prior to the issuance of a building permit, the Applicant shall submit the results of the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation shall demonstrate that the retail and hotel buildings are anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain the minimum level of LEED certification.
 - c. Prior to the issuance of the first use and occupancy permit, the Applicant shall provide documentation that the project has been certified LEED by the USGBC to the City of College Park and to M-NCPPC. If certification has not been completed, the Applicant shall submit certification statements from their LEED-AP that confirms the project list of specific LEED credits will meet at least the minimum number of credits necessary to attain LEED certification.

The appropriate regulating agency may issue a temporary use and occupancy permit to the Applicant until such time as LEED certification is documented. If it is determined that a temporary use and occupancy permit cannot be issued, a permanent use and occupancy permit may be issued by the appropriate regulating agency once an escrow or letter of credit in the amount of \$50,000 is established with an agent that is acceptable to the City of College Park. Said escrow agent shall hold the funds subject to the terms of this Agreement. The escrow (or letter of credit) shall be released to the Applicant upon final LEED certification. In the event that the Applicant fails to provide, within 180 days of issuance of the use and occupancy permit for the Project, documentation to the City demonstrating attainment of LEED certification, the entirety of the escrow will be released upon demand to the City and will be posted to a fund within the City budget supporting implementation of environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the City, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the City, and no release of escrowed funds shall be made to the Applicant or to the City during the extension.

6. Prior to the issuance of the building permit, the Applicant shall:
 - a. Provide proof of compliance with Federal Aviation Regulation Part 77;
 - b. Coordinate with the State Highway Administration to revise the streetscape improvements along Route 1 to accommodate the proposed road reconstruction along the subject property frontage, in particular, to avoid the relocation of proposed street lighting and street trees shown in the existing right-of-way.

7. Prior to the issuance of the building permit, the Applicant should coordinate with the State Highway Administration to address feasibility of providing an underground vault for the installation of public utilities. If the Applicant does not underground utilities at the time of development nor provide for the undergrounding of utilities, the Applicant shall consent to participate in a comprehensive program for the undergrounding of utilities being developed in conjunction with the active SHA project funded in the 2013-2018 Consolidated Transportation Program for the segment of the project from College Avenue to MD 193. The amount to be paid by the Applicant under the program shall not exceed a total of \$200,000. If a comprehensive program is not established by 2020, this condition shall expire.

Affirmance is also subject to the following additional condition by the District Council.

As the basis for this action, the District Council adopts the decision and recommendation of the Planning Board, as its findings of fact and conclusions in this case.

- D. The District Council further finds that the Applicant’s proposed transportation improvements associated with the project shall comport with the M-U-I Zone recited in Section 27-546.15(b), ensure compliance with pertinent site plan requirements set forth in Sections 27-546.19(c) and 27-281(b), and generally meet the public safety and welfare purposes of the Zoning Ordinance as set forth in Section 27-102(a)(11) to “lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions.”

Ordered this 28th day of April, 2015, by the following vote:

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

Opposed:

Abstained:

Absent: Council Member Toles.

Vote: 8-0

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: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council