



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

PRINCE GEORGE'S COUNTY ZONING ORDINANCE INTERPRETATION

Zoning Ordinance Interpretation: ZOI-2023-002

Applicant: **The Maryland-National Capital Park and Planning Commission – Prince George's County Department of Parks and Recreation**

Project Name: **Westphalia Central Park**

Property Address: **10311 Westphalia Road, Upper Marlboro, MD 20772**

Background

This request for a Zoning Ordinance Interpretation concerns property within Westphalia owned by The Maryland-National Capital Park and Planning Commission (M-NCPPC). M-NCPPC owns three parcels with Tax Account Nos. 5565308, 1783950, and 1711597 (subject property). The subject property is designated Legacy Comprehensive Design (LCD) Zone on the Official Zoning Map and is subject to, among other approvals, Zoning Map Amendment (Basic Plan) A-9973 and Comprehensive Design Plan CDP-0601 (development approvals).

Request

Does Section 27-1606 of the Zoning Ordinance cause any portion of the subject property to be placed in the Reserved Open Space (ROS) Zone?

Do Sections 27-1704(a) and (b) of the Zoning Ordinance permit the development approvals to be amended under the provisions of the prior Zoning Ordinance?

Interpretation

Section 27-1606 of the Zoning Ordinance does not cause any portion of the subject property to be placed in the ROS Zone.

Section 27-1704(e) of the Zoning Ordinance permits the development approvals to be amended. Sections 27-1704(a), (b), and (h) of the Zoning Ordinance qualify the development approvals for application of Section 27-1704(e).

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Procedure

Section 27-3612 of the Zoning Ordinance establishes a uniform mechanism for rendering formal written interpretations of any provision of the Ordinance. The Prince George's County Planning Director is responsible for making interpretations of all provisions of the Ordinance including, but not limited to: (1) Interpretations of the text; (2) Interpretations of the zone boundaries; (3) Interpretations of whether an unlisted use is comparable to a listed use or not, and should be allowed in a zone or prohibited in that zone; and (4) Interpretations of compliance with a condition of approval.

Textual interpretations are based on the text's relationship with other laws and considerations including, but not limited to, the plain meaning of the provision's wording, applicable definitions in Section 27-2500 of the Zoning Ordinance, common and accepted usage, and the purpose of the provision, as further described in Section 27-3612(d)(1)(B) of the Zoning Ordinance. The Planning Director's interpretation is also guided by the cardinal rules of statutory interpretation, as defined by the Maryland Supreme Court.

Analysis

The applicant is requesting an interpretation of three sections of the Zoning Ordinance, Sections 27-1606, 27-1704(a), and 27-1704(b). Specifically, the applicant is asking if Section 27-1606 changes the current zoning designation of any portion of the subject property and whether Sections 27-1704(a) and (b) permit the development approvals to be amended.

Section 27-1606

- (A) The plain meaning of the provision's wording, considering any terms specifically defined in Section Sec. 27-2500, Definitions, and the common and accepted usage of terms; and**

Section 27-1606 provides that "Any land conveyed to the Maryland-National Capital Park and Planning Commission after July 1, 2002 and consisting of more than seventy five (75) acres shall be placed immediately in the Reserved Open Space (ROS) Zone until a Zoning Map Amendment for the land has been approved by the District Council." According to the applicant, only one of the three parcels making up the subject property, Tax Account No. 5565308, consists of more than 75 acres. The parcel was conveyed to M-NCPPC in 2014. The plain language of Section 27-1606, therefore, requires Tax Account No. 5565308 to be placed immediately in the ROS Zone.

- (B) The purpose of the provision, as indicated by:**

- (i) Any purpose statement in the section(s) where the text is located;**

No specific purpose statement applies to Section 27-1606.

- (ii) The provision's context and consistency with surrounding and related provisions;**

Section 27-1600 of the Zoning Ordinance governs the Official Zoning Map. Pursuant to Section 27-1601(a) of the Zoning Ordinance, the location and boundaries of zones are shown on a set of maps, entitled "Zoning Map of the Maryland-Washington Regional District in Prince George's County, Maryland." This map is referred to as the "Official Zoning Map" and is incorporated into the Ordinance. The Official Zoning Map "shall be the final authority as to the status of zone classifications of land in the County. In case of any dispute regarding the zone classification of land, the original map adopted with the ordinance applying the original zone classification rezoning the land shall control."

The Official Zoning Map depicts Tax Account No. 5565308 as LCD Zone. As such, Section 27-1601(a) provides that this is the final authority concerning the zoning status of the property.

Section 27-1606 was adopted in 2018, pursuant to Prince George's County Council Bill CB 13-2018, and became effective April 1, 2022. The Official Zoning Map was adopted in 2021, pursuant to Prince George's County Council Resolution CR-135-2021, and also became effective April 1, 2022. The District Council, therefore, was aware of Section 27-1606 at the time it adopted the Official Zoning Map and proceeded to rezone Tax Account No. 5565308 to the LCD Zone.

Reading Section 27-1606, in the context of its surrounding and related provisions, creates a conflict because the Ordinance provides that the Official Zoning Map is the final authority, as to the status of the zoning for Tax Account No. 5565308. Since the District Council was aware of Section 27-1606 when the Council rezoned Tax Account No. 5565308 to the LCD Zone and, in the event of any dispute, the Zoning Ordinance says the Official Zoning Map controls. The context of the surrounding provisions concludes that the legal zoning for the subject property is the LCD Zone and that Section 27-1606 does not apply.

(iii) Any legislative history related to the provision's adoption;

There is no specific legislative history related to the adoption of Section 27-1606. A similar provision under the prior Zoning Ordinance, Section 27-113.03, required property transferred to M-NCPPC, in excess of 75 acres, to be placed in the R-O-S Zone. According to a summary of the bill approving Section 27-113.03 (CB-043-2004), the District Council adopted the provision, in part, to address "the Nash Property at US 301 and US 50." The decision was solely based on who was going to own the property, not the proposed land use. In other words, the District Council did not impose R-O-S zoning because it was the most appropriate zone for the property, but simply because the property would be owned by M-NCPPC.

Tax Account No. 5565308 was rezoned Residential Medium Development (R-M) by the District Council in 2006, pursuant to Zoning Map Amendments A-9965 and A-9966 for the overall Westphalia development. M-NCPPC acquired the parcel in 2014, in furtherance of the conditions associated with A-9965 and A-9966, but the property remained in the R-M Zone on the Official Zoning Map. Following the acquisition of the parcel, the District Council adopted two amendments to the zoning approvals governing the parcel, A-9973-01 and A-9973-02, but retained the parcel's zoning as R-M.

The subject property was designated R-M for approximately 8 years, until it was rezoned LCD by CR-135-2021 (effective April 1, 2022). As a result, M-NCPPC, adjacent owners, and other stakeholders relied on the zoning classification for a significant period of time. In addition, any such automatic rezoning would have occurred without the benefit of a public hearing and other due process considerations. Therefore, the legislative history related to the provision's adoption, and the resulting legislative decisions of the District Council retaining the property in the R-M Zone, suggests that the District Council also did not intend to apply Section 27-113.03 to the subject property.

(iv) The general purposes served by this Ordinance, as set forth in Section 27-1300, General Purpose and Intent;

Among other purposes, the Zoning Ordinance promotes conservation; guides the orderly growth and development of the County; encourages economic development activities; promotes the most beneficial relationship between the uses of land and buildings; and ensures the provision of open space. Section 27-1606, and its predecessor Section 27-113.03, furthers these purposes by ensuring that property owned by M-NCPPC is held to further the goals of "Open Space" zoning including preservation; the protection of scenic and environmentally sensitive areas; and to ensure retention of non-intensive, active or passive recreation uses.

At the same time, the zoning applications for the Westphalia project, adopted subsequent to Section 27-1606 (A-9965 and A-9966), approved a complex comprehensive development plan governing the long-term public and private development of hundreds of acres of land, including the subject property. The District Council's approval of A-9965 and A-9966 zoning the subject property R-M, retaining that zoning through subsequent zoning amendments and other development approvals, and now rezoning it LCD also furthers the Zoning Ordinance's purposes of guiding orderly growth and development and promoting the most beneficial relationship between the uses of land and buildings. It is reasonable, therefore, to conclude that the District Council did not intend to apply Section 27-1606 to the subject property and that such a decision furthers the purposes of the Zoning Ordinance.

(v) The applicable comprehensive plans.

The legislative history does not reflect any consideration by the District Council of applicable comprehensive plans at the time of the adoption of Section 27-1606, or its predecessor Section 27-113.03.

Sections 27-1704 (a) and (b)

Property in the LCD Zone may proceed to develop, in accordance with the standards and procedures of the Zoning Ordinance in existence prior to April 1, 2022, subject to the terms and conditions of the development approvals which it has received (§ 27-1704(h)). The development approvals for the subject property consist of a basic plan and comprehensive design plan approved prior to April 1, 2022.

Pursuant to Section 27-1704(e), subsequent revisions or amendments to a basic plan or comprehensive design plan approved prior to April 1, 2022 “shall be reviewed and decided under the Zoning Ordinance under which the original development approval or permit was approved, unless the applicant elects to have the proposed revision or amendment reviewed under this Ordinance.”

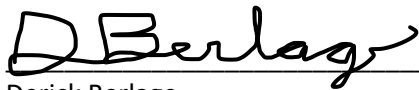
Conclusion

The subject property is zoned LCD on the Official Zoning Map. According to Section 27-1601(a), the Official Zoning Map is the final authority concerning the zoning status of the property. Section 27-1606 requires property of a certain size conveyed to M-NCPPC to be placed immediately in the ROS Zone. Section 27-1606 is modeled on Section 27-113.03 of the prior Zoning Ordinance adopted in 2004. Several subsequent legislative decisions of the District Council, after 2004, reflect a clear intent to maintain the property in the R-M Zone under the prior Zoning Ordinance, and now the LCD Zone, and not apply Section 27-1606. Therefore, the Planning Director finds that Section 27-1606 does not rezone the subject property to the ROS Zone and that the correct legal zoning for the subject property is LCD. The subject property is also governed by certain development approvals that may be amended under Section 27-1704(e).

* * *

This written interpretation is binding on subsequent decisions by the Planning Director or other M-NCPPC or County administrative officials in applying the same provision of this Ordinance or the Official Zoning Map to the project at the subject property, unless the interpretation is modified in accordance with the requirements of the Ordinance or the text of the Ordinance impacting the interpretation is amended.

This written interpretation is a final decision of the Planning Director and may be appealed to the Prince George's County Board of Zoning Appeals within 30-days following receipt of this interpretation by the applicant.

A handwritten signature in black ink, appearing to read "D Berlage", written over a horizontal line.

Derick Berlage
Acting Planning Director

November 22, 2023

Date