
ZONING MAP AMENDMENT)
DOBSON FARMS)
A-10059)
COUNCILMANIC DISTRICT 9)

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

RESPONDENT D.R. HORTON, INC.'S RESPONSE
TO PETITIONER'S EXCEPTIONS OF THE
DECISION OF THE ZONING HEARING
EXAMINER & REQUEST FOR ORAL
ARGUMENT



COMES NOW the Respondent, D.R. Horton, Inc. (the “Respondent”), by and through its attorneys, Matthew C. Tedesco, and the law firm of McNamee Hosea, P.A., and files this Response to Petitioner’s Exceptions of the Decision of the Zoning Hearing Examiner & Request for Oral Argument in the above-captioned matter, and in support thereof states as follows.

FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from Respondent’s application for a zoning map amendment (“A-10059”) to rezone approximately 581.06 acres of property located on the south side of McKendree Road and west of the Timothy Branch, approximately 1,400 feet west of US 301 / MD 5 (the “Property”). Specifically, A-10059, which was officially accepted for review on February 17, 2021, and filed pursuant to Section 27-195 of the 2019 Edition of the Zoning Ordinance (the “prior Zoning Ordinance”), seeks to rezone the Property from the R-E and R-A Zones to the R-S Zone / LCD Zone. The Technical Staff of The Maryland-National Capital Park and Planning Commission (“M-NCPPC”) reviewed the application and on June 28, 2021, issued its Technical Staff Report (“TSR”) with all associated back-up referrals – recommending approval of A-10059. (Ex. 48). On July 29, 2021, the Prince George’s County Planning Board (the “Planning Board”) held a hearing on the application and voted to recommend approval of A-

10059. On September 9, 2021, the Planning Board adopted Resolution PGCPB No. 2021-109 approving A-10059 with no conditions (Ex. 45). Prior to the evidentiary hearing before the Zoning Hearing Examiner (“ZHE”), and pursuant to Section 27-1905(c)(1) of the prior Zoning Ordinance, A-10059 was tolled pending final District Council action on the Countywide Map Amendment (“CMA”). On November 29, 2021, the District Council adopted CR-136-2021, thereby approving the CMA, with an effective date of April 1, 2022. Consequently, and pursuant to Section 27-1905(c)(2) of the prior Zoning Ordinance, on December 20, 2021, Respondent submitted a written request that its application proceed and that its request for the R-S Zone be replaced with the LCD (“Legacy Comprehensive Design”) Zone, and revised its Basic Plan accordingly. (Ex. 51 and Ex. 56). On February 19, 2022, James Hunt, Division Chief of the Development Review Division, submitted a memorandum to the ZHE noting that Technical Staff’s (and indirectly, the Planning Board’s) recommendation of approval would not change if the property were rezoned to the LCD Zone. (Ex. 55).

On March 2, 2022, the ZHE conducted the evidentiary hearing on A-10059. On May 25, 2022, the ZHE issued her decision in A-10059 approving the request to rezone the Property to the R-S Zone with five (5) conditions. On June 21, 2022, Petitioner, Evelyn Spelman Williams, filed a Request for Oral Argument with the District Council, alleging five (5) complaints related to the ZHE’s approval of A-10059. In response, Respondent files this Response.

I. A-10059 meets the requirements of approval pursuant to Section 27-195 of the prior Zoning Ordinance and is supported by substantial evidence.

Petitioner broadly (and generally) contends without any substantiated evidence that A-10059 will have a significantly negative impact on Prince George’s County’s “current poor and lagging educational system, the environment (neighboring streets and land), the current residential areas, and proposes no convincing improvement in the surrounding area” (Pet.

Request for Oral Argument). However, the Technical Staff of M-NCPPC, all referring agencies, the Planning Board, the ZHE, and Respondent, all of whom prepared and/or reviewed the substantial evidence presented in this case (consisting of 82 exhibits and 1,113 pages) concluded and adequately articulated that all of the required findings provided for in Section 27-195 of the prior Zoning Ordinance as well as the applicable purposes (Section 27-511 of the prior Zoning Ordinance) have been met, and are supported by uncontroverted substantial evidence. Petitioner's broad and conclusory statements, which were at best generalities, are not supported by probative or substantial evidence in the record and do not make any of the ZHE's findings fairly debatable.

a. Transportation and other existing or planned private and public facilities will be adequate for the uses proposed.

Contradictory to Petitioner's bald assertion, the substantial evidence supports a finding that the transportation facilities will be adequate pursuant Section 27-195(b)(1)(C) of the prior Zoning Ordinance. A Traffic Impact Study and transform model was prepared and submitted to Transportation Planning Staff for the purposes of providing traffic data for M-NCPPC's use in analyzing the master plan roads utilizing M-NCPPC's TransForm modelling software. (Ex. 10, 13 – 17; Ex. 79 and 82; *see also*, Ex. 48; Tr. pp 51 - 63). It should also be noted that the Property is located within Planning area 85A and is subject to the Brandywine Road Club (CR-9-2017). Future entitlement applications will require additional traffic impact analyses as well the participation in the Brandywine Road Club, pursuant to Section 24-124 of the Subdivision Regulations. Specifically, Council Resolution CR-9-2017 provides the following:

- (1) Establishes the use of the Brandywine Road Club for properties within Planning Areas 85A and 85B as a means of addressing significant and persistent transportation deficiencies within these planning areas.

- (2) Establishes a list of projects for which funding from the Brandywine Road Club can be applied.
- (3) Establishes standard fees by development type associated with the Brandywine Road Club to be assessed on approved development.

Pursuant to CR-9-2017, and at the time of the preliminary plan of subdivision, the Brandywine Road Club fee for the future development will be imposed at \$1,338 per dwelling unit to be indexed by the appropriate cost indices to be determined by the Department of Permitting, Inspection, and Enforcement (“DPIE”). Further, in accordance with CB-22-2015, once the appropriate payment is made to the satisfaction of DPIE, at the time of building permit, no further obligation will be required regarding fulfillment of transportation adequacy requirements of Section 24-124(a) of the prior Subdivision Regulations. Consequently, although transportation facilities will be addressed again at the time of the preliminary plan of subdivision pursuant to Subtitle 24, the record shows, and M-NCPPC agrees, that transportation facilities will be adequate once certain mitigation efforts required by the Brandywine Road Club are addressed by Respondent, as required by Section 27-195(b)(1)(C).

- i. Other public facilities are adequate, and in the case of schools, are and will be adequate once the applicable School Facility Surcharge is paid at the time of building permit.**

Again, Petitioner baldly asserts that the rezoning will not enhance the current “poor educational system in PG County.” (Pet. Request for Oral Argument).¹ Similar to the transportation adequacy determination, at the time of preliminary of subdivision, pursuant to Section 24-122.02 of the Subdivision Regulations, the impact on school facilities will be analyzed. That said, and the District Council may take notice of the same, the Property is located within School Cluster 5, and currently has capacity as follows:

¹ Respondent, who is investing millions of dollars in Prince George’s County opposes this characterization of Prince George’s County’s educational system.

- **Elementary School Cluster 5 – 81% capacity**
- **Middle School Cluster 5 – 85% capacity**
- **High School Cluster 5 – 72% capacity**

Furthermore, Section 10-192.01 of the County Code establishes a school facility surcharges that includes an annual adjustment for inflation, unrelated to the provision of adequacy determination in Subtitle 24 or Section 27-195(b)(1)(D) of the prior Zoning Ordinance. The current amount of this surcharge is \$18,900 for building permits issued for all buildings outside of the Capital Beltway that are not adjacent to a mass transit rail station operated by WMATA. This fee will be required to be paid to DPIE at the time of issuance of each building permit. Thus, and notwithstanding the fact that the school capacity is adequate, Respondent will be required to pay the applicable School Facility Surcharge to DPIE in satisfaction of any adequacy requirement.

ii. The Petitioner’s contention that A-10059 should include provisions to build new quality medical facilities is not a requirement of approval.

Neither Section 27-195 nor 27-511 of the prior Zoning Ordinance require the ZHE or the District Council to find that Respondent must propose to “build new quality medical facilities.” (Pet. Request for Oral Argument). Indeed, and notwithstanding that this contention is a red herring, there are a number of high quality medical facilities that currently exist in the area surrounding the Property. For example, The Greater Baden Medical Services at Brandywine building (located at 7450 Albert Road, Brandywine, Maryland 20613) is approximately 0.38 mile from the Property; the MedStar Health building (located at 13590 Brandywine Road, Brandywine, Maryland 20613) is approximately 2.37 miles from the Property; MedStar Southern

Maryland Hospital Center and MedStar Health Primary Care at Clinton (located 7503 Surratts Road, Clinton, Maryland 20735) is approximately 5.61 miles from the Property; and Brandywine Volunteer Fire Department (Station 840) (located at 13809 Brandywine Road, Brandywine, Maryland 20613) is approximately 2.45 miles from the Property. Despite Petitioner's² unsubstantiated contentions to the contrary, there is no debate that Brandywine is served by a number of high-quality medical facilities that provide a wide range of medical services that are easily accessible.

- b. The environmental relationship reflects compatibility between the requested uses and surrounding uses, and proposes significant improvements through preservation, wetland enhancements, understory enhancement, ecological enhancements, and increasing habitat and biodiversity.**

Petitioner next argues that the approval of A-10059 will negatively effect the “already poor environment with even more debris on the . . . extremely dirty neighboring streets, green land, and main highways. . . .” (Pet. Request for Oral Argument). However, and once again, the record is replete with substantial evidence that the proposed rezoning of the Property in conjunction with the ZHE's conditions (which were proffered by Respondent) will be in conformance with and improve upon the requirements and policies of the Woodlands, Wildlife and Habitat Policy of the Environmental Infrastructure Section within the Subregion V Master Plan; will expand upon wetland protection and growth; and will preserve or enhance sustainability of stream and wooded floodplain. (See Ex. 43; Tr. at pp 35 – 48; Ex. 63, 64, 65, 70, and 71; Ex. 38 at Sec. 7, p. 52 and pp. 32 and 24).

Specifically, the proposed concept allots for only 16% of the site to be cleared for development, and approximately 423.67 acres (72.9%) of the Property will remain as open

² Petitioner indicated that she recently purchased her property located at 6300 Brechin Drive, Brandywine, Maryland 20613. (See Tr. at p. 88, Line 11-12). According to SDAT records, Petitioner purchased her property on or around January 13, 2022.

space. (Ex. 71). There will be no net loss of woodland on the site and the development will add woodland acreage above and beyond the woodland conservation required. The Property is over 60% wooded and A-10059 (and associated Basic Plan) intends to keep it that way. Indeed, the Property – along with Respondents proffers (adopted as conditions by the ZHE) – provides a springboard for thoughtfully designed habitat creation with interwoven neighborhoods.

The preservation of the expansive Mattawoman floodplain and woodland is only one part of the environmental value of this once farmed and minded Property. The diverse existing ecology onsite in tandem with highly developable area sets the stage for a marquee project showcasing what is environmentally possible in Prince George’s County. (*C.f.* Ex. 43; *See also*, Tr. at pp 35 – 48; Ex. 63, 64, 65, 70, and 71; Ex. 38 at Sec. 7, p. 52 and pp. 32 and 24). This project creates an opportunity to change the future course for the Property in a positive direction – the likes not typically seen in Prince George’s County. Currently, the Property sits abandoned, unmaintained, and its habitat value challenged by encroaching invasive species and undesirable habitats. As Mr. Steve Allison, Respondent’s expert arboriculturist and landscape architect indicated, every inch of the Property has been walked and mapped over a period of months to investigate all of the unique features of the Property. (Tr. at p. 37, Line 1-14). In doing so, among other things that are detailed in testimony and exhibits (including Exhibit 43 and Exhibit 40), a Basic Plan that adopts a comprehensive plan that includes (i) stream corridor assessment surveys with Natural Resource Inventory (“NRI”) plan review; (ii) on-site woodland conservation; (iii) creation and enhancement of wetlands with adjoining meadows that focus on providing wildlife habitat; (iv) enhancing biodiversity in woodland understory; and (v) ecological enhancements through selective environmental site design that both replicate and increase biodiversity of the local ecology is being advanced by the Respondent. There is no

debate that the preservation and enhancement of the existing woodland and wetland systems will benefit the Mattawoman watershed for years to come by providing nearly 400 acres of woodland for this unique site.

Further, A-10059 presents a unique living environment for residents of Prince George's County, the design of which is unattainable in the Property's current Euclidean zoning designations. It is deliberately planned to provide stunning views into Mattawoman Creek and its tributaries, taking full advantage of its environmental setting, while protecting and enhancing its ecosystem. Exhibit 62 shows eight development areas in a setting that includes the following:

1. Grand Entrance Feature
2. Community Space & Neighborhood Identify
3. Rural Tier Habitat Preserve
4. Walking and Nature Trails
5. Active Recreation
6. Variety of Housing Types and Price Point
7. Natural Environment
8. Traffic Calming Design Elements

These elements ensure that the environmental relationship reflects compatibility between the requested uses and surrounding uses. Simply put, the A-10059 and its Basic Plan satisfies Section 27-195(b)(1)(E) of the prior Zoning Ordinance.

II. In approving A-10059, neither Sections 27-195 nor 27-511 require the District Council to find that the rezoning will not slow or negate growth in the current residential property values.

Although Petitioner, once again, baldly asserts that the approval of A-10059 will negatively affect current property values, there is no evidence in the record to support such a contention nor is there a requirement that the District Council find that A-10059 will not negate residential property values. Instead, and as the substantial evidence in the record shows, A-10059 satisfies the applicable goals, polices, and strategies of the applicable planning documents

– namely *Plan Prince George’s 2035 Approved General Plan* (“Plan 2035”) and the *Subregion 5 Master Plan*.

Beginning on Page 100, Plan 2035 sets forth twelve (12) Land Use and eight (8) Housing and Neighborhood Policies. These policies include goals and strategies aimed at promoting the health, safety and welfare of current and future residents and workers. The policies aim to direct higher density development to Regional Transit Districts and Local Centers and aim to ensure that a mix of housing is provided, including accessibility and affordability across the County and within developments. As determined by M-NCPPC Technical Staff, the Planning Board, and the ZHE, A-10059 meets these goals notwithstanding that not all of the policies are within any particular applicant’s control, but A-10059 helps advance those that are. (*See Ex. 38 at pp. 13 – 28; and Ex. 48 at pp. 5 – 15; See also Tr. at pp. 77 – 84 (regarding Master Plan conformance); Ex. 45*). Finally, there is no debate that A-10059 conforms to the principles and guidelines of the Master Plan related to environmental issues and with respect to the number of dwelling units for Residential Low and Residential Low Transition areas.

III. The District Council should approve A-10059, and in so doing, impose the LCD Zone.

At the conclusion of the ZHE’s decision, Conclusion of Law Sections 11 – 13, the ZHE opines that the R-S Zone may be imposed, but the LCD Zone may not. Respondent believes that due to the effectuation of the new Zoning Ordinance³, and pursuant to Section 27-1703(a) of the new Zoning Ordinance, the LCD Zone may be imposed.

In opining that the LCD Zone may not be imposed, the ZHE relies on Sections 27-3601(b)(2) and 27-4205(a); however, those sections of the new Zoning Ordinance are not applicable to A-10059. That is, Section 27-3601 deals with a zoning map amendment (“ZMA”)

³ Pursuant to County Council Bill CB-13-2018, the Prince George’s County Council adopted a new Zoning Ordinance (Subtitle 27 of the County Code), which became effective on April 1, 2022 pursuant to CR-136-2021.

filed pursuant to the new Zoning Ordinance, and not the prior Zoning Ordinance. A-10059 is **not** a ZMA filed pursuant to Section 27-3601; instead, it is a ZMA filed pursuant to Section 27-195 of the prior Zoning Ordinance.

A-10059 was accepted for review on February 17, 2021, more than a year prior to the effectuation of the new Zoning Ordinance. The publication of the TSR (June 28, 2021); the Planning Board hearing (July 29, 2021); the adoption of the Planning Board's resolution (September 9, 2021); and the ZHE hearing (March 2, 2022) all occurred prior to the effectuation of the new Zoning Ordinance (April 1, 2022). Moreover, Section 27-1703(a) specifically provides:

Any development application, including a permit application or an application for zoning classification, that is filed and accepted prior to the effective date of this Ordinance may be reviewed and decided in accordance with the Zoning Ordinance and Subdivision Regulations in existence at the time of the acceptance of said application. An application for zoning classification decided after the effective date of this Ordinance must result in a zone set forth within this Ordinance.

Thus, A-10059 must be reviewed and decided in accordance with Section 27-195 of the prior Zoning Ordinance (which it is). Further, since the decision of A-10059 is now occurring after April 1, 2022 (the effective date of the new Zoning Ordinance), it must result in a zone set forth within the new Zoning Ordinance pursuant to Section 27-1703(a). Based on this, and given the inapplicability of Section 27-3601 (of the new Zoning Ordinance), the ZHE's conclusion that that section prohibits the ability to impose the LCD Zone for this ZMA application is incorrect.

Indeed, the Transitional Provisions of Section 27-1703(a) contained in the new Zoning Ordinance contemplated this very scenario and made accommodations for the same when it unambiguously provided that a pending ZMA may continue to be reviewed and approved under the prior Zoning Ordinance (in this case Section 27-195), but that the decision to approve the

pending ZMA after the effectuation date of the new Zoning Ordinance (April 1, 2022) must result in a zone set forth in said new Zoning Ordinance.

With the endorsement of the CMA by the Planning Board on October 28, 2021, and the adoption of the CMA by the District Council on November 29, 2021, Respondent, in conformance with Part 19 of the prior Zoning Ordinance, was required to elect to move forward with A-10059 and elect a new replacement zone based on the new Zoning Ordinance. (*See* Ex. 51, with attachments). This not only ensured compliance with Section 27-1905(c)(2) of the prior Zoning Ordinance (which was still applicable until April 1, 2022), but also ensured future conformance with Section 27-1703(a) (which is now applicable). To that end, on December 20, 2021, the applicant complied with Section 27-1905(c)(2) by indicating its intent to proceed with A-10059 and requested to replace the R-S Zone with the LCD Zone, as the appropriate new zone directed by the Approved Guide to New Zones. (*Id.*).

The determination of the proper replacement zone to the LCD Zone was thoroughly vetted with and confirmed by M-NCPPC, its Principal Counsel, and Technical Staff – including staff charged with preparing the CMA and new Zoning Ordinance. (*See id.*). Finally, on February 19, 2022, James Hunt, Planning Division Chief of the Development Review Division, of M-NCPPC, confirmed, in response to Respondent’s December 20, 2021 letter (Ex. 51), that “Technical Staff finds that a new technical staff report is unnecessary as the requested [replacement] from the originally requested R-S Zone to the new LCD Zone has no impact on staff’s recommendation in any manner.” (Ex. 55).

Consequently, the ZHE’s decision to approve the R-S Zone, as the required findings of Section 27-195 have been satisfied and are supported by substantial evidence, results in the

affirmative ability for the District Council to approve A-10059 and, pursuant to Section 27-1703(a), impose the LCD Zone as the appropriate replacement zone for the R-S Zone.

Assuming arguendo that the LCD Zone cannot be imposed and the correct zone to impose is the R-S Zone, it will have no true impact on Respondent's request since, for all practical purposes, the R-S Zone and the LCD Zone are equivalent. As noted in the record, the new provisions governing the LCD Zone only require that development comply with the zone and use standards for the R-S Zone found in the prior Zoning Ordinance. The District Council, assuming arguendo, could still approve the R-S Zone if Section 27-1703 is "interpreted" to be nugatory unless it is interpreted to allow an applicant that started its quest to rezone to the R-S Zone over two years ago (far in advance of the adoption of the CMA), to finally have it considered and decided by the District Council.

CONCLUSION

In accordance with the arguments set forth above, the substantial evidence in the record, the ZHE's decision that Section 27-195 of the prior Zoning Ordinance has been met, the District Council should approve A-10059 and impose the LCD Zone, as requested.

Respectfully submitted,

D.R. HORTON, INC.

By its attorney,



Matthew C. Tedesco, Esq.
McNamee, Hosea, P.A.
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770
(301) 441-2420 Telephone
(301) 982-9450 Facsimile
mtedesco@mhlawyers.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date set forth below, a copy of the foregoing Response to Petitioner's Exceptions to the Decision of the Zoning Hearing Examiner & Request for Oral Argument was served by electronic mail or first-class mail, postage prepaid, upon the following:

Raj A. Kumar, Esq.
Principal Counsel
Prince George's County Council
Wayne K. Curry Administration Building
1301 McCormick Drive, Suite 3-126
Largo, Maryland 20774
RAKumar@co.pg.md.us
Attorney for Prince George's County District Council

Stan D. Brown, Esq.
People's Zoning Counsel
1300 Caraway Court, Suite 101
Largo, Maryland 20774-5462
attorney@stanbrown.law

Parties of Record

Date: September 9, 2022



Matthew C. Tedesco, Esq.