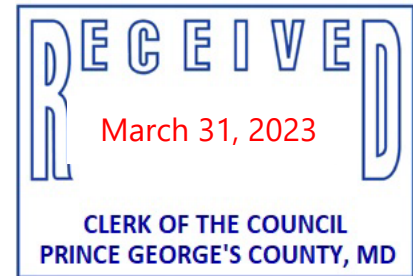


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JUSTIN S. KORENBLATT



March 31, 2023

Ms. Donna J. Brown,
Clerk of the County Council
Wayne K. Curry Administration Building, 2nd Fl.
Largo, Maryland 20774

Re: 9113 Baltimore Avenue; Detailed Site Plan DSP-22015

Dear Ms. Brown:

Please be advised that I represent the Applicant in the Detailed Site Plan referenced above. On January 26, 2023, the Prince George's County Planning Board approved DSP-22015 pursuant to the adoption of PBCPB Resolution No. 2023-03. On February 28, 2023, an appeal of the Detailed Site Plan was filed through the submission of an email by Judy Blumenthal. Please accept this correspondence as a response to the appeal filed by Ms. Blumenthal.

In her appeal, Ms. Blumenthal raises four issues. Ms. Blumenthal further requests that the District Council reverse the decision of the Planning Board and deny the Detailed Site Plan. When reviewing an appeal of a decision from Planning Board to approve a DSP application, Council may disapprove the Board's decision if the decision was not supported by substantial evidence of record, is arbitrary or capricious, or otherwise illegal. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015). Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Arbitrary and capricious means "unreasonably or without a rational basis;" "founded on prejudice or preference rather than on reason or fact;" and "characterized by or guided by unpredictable or impulsive behavior, ... contrary to the evidence or established rules of law." *Cry. Council of Prince George's Cty. v. FCW*

Justice, Inc., 238 Md. App. 641, 193 A.3d241 (2018) (quoting *Harvey v. Marshall*, 389 Md. 243, 884 A.2d 1171 (2005)). As discussed in greater detail below, the decision of the Planning Board was supported by substantial evidence in the record and was not arbitrary or capricious or otherwise illegal. As a result, there is no basis for the District Council to reverse or modify the decision of the Planning Board.

The first issue raised by Ms. Blumenthal is that both ingress and egress to Baltimore Avenue are necessary to serve the proposed development. It should first be noted that the approval of access to the site was addressed at the time of the Preliminary Plan of Subdivision (4-22007) and is not subject to modification by the Detailed Site Plan. Thus, this objection is outside the scope of this application.

By way of background, in its Preliminary Plan of Subdivision (4-22007), the Applicant initially proposed two points of access into the parking garage proposed for the project. The first point of access was a full movement entrance and exit from Cherokee Street. The second point of access was a right-in/right-out entrance and exit onto Baltimore Avenue. During the review of the Preliminary Plan, Staff of the Maryland-National Capital Park and Planning Commission recommended that the entrance on Baltimore Avenue be restricted to right-out only movements. The recommendation to limit the movement was based on both safety concerns and the recommendations of the 2010 Central US 1 Corridor Sector Plan ("Sector Plan"). Regarding safety, vehicles turning right into the parking garage from Baltimore Avenue will at times be traveling at a fairly high rate of speed prior to make the turn due to the heavy volume of traffic on Baltimore Avenue. Conflicts with pedestrians and bicyclist utilizing the sidewalk in front of the building would be increased by such a traffic movement. In addition, the 2010 Central US 1 Corridor Sector Plan states that when a property fronts on Baltimore Avenue and a secondary street, the primary access must be from the secondary street. The Planning Board determined at the time of the Preliminary Plan that by limiting the point of access on Baltimore Avenue to a right-out only movement, it would not be considered a primary point of access and would ensure the safety of bicyclists and pedestrians. As a result, the Preliminary Plan was approved with a condition that the Detailed Site Plan be designed to only permit a right-out exit from the parking garage. The Detailed Site Plan submitted by the Applicant and approved by the Planning Board conformed with this condition.

It is also important to note that during the consideration of the Preliminary Plan, the City of College Park requested that the Applicant construct a right turn lane from westbound Cherokee Street onto northbound Baltimore Avenue. Currently, Cherokee Street is only two lanes. As a result, if a car is seeking to turn left onto southbound Baltimore Avenue, and is stopped at the traffic signal, any traffic seeking to proceed northbound on Baltimore Avenue must wait, which backs up traffic into the neighborhood. The Applicant recognized that this improvement will benefit not only the development but also the surrounding community and agreed to make this improvement. With the addition of the right turn lane, the Applicant agreed to the staff recommendation that the right turn movement into the garage be eliminated.

During its consideration of the Detailed Site Plan, the City of College Park requested that the garage access on Baltimore Avenue be modified to now add a right-in access. The basis for the City's request was that the entrance from Baltimore Avenue would divert some trips from the intersection of Cherokee Street and Baltimore Avenue. Residents in the neighborhood who utilize Cherokee Street have noticed an increase in traffic since the traffic signal was installed several years ago. The City was of the opinion that reducing traffic on Cherokee Street should take precedence over limiting the access into the garage from Baltimore Avenue.

At the Detailed Site Plan hearing, the Planning Board heard extensive discussion from all parties of record, as well as the Applicant and the City of College Park regarding the access from Baltimore Avenue. As noted in Finding 16 of the Planning Board Resolution, the City's request to add the right-in turning movement conflicted with a condition of the Preliminary Plan. Such a modification could only be approved if the Preliminary Plan condition was modified through a reconsideration request. Rather than deny the City's request outright, the Planning Board modified Condition 1(n) to include an option for right-in access at the driveway off of Baltimore Avenue if the applicant subsequently obtains subdivision approval allowing for right-in access through the filing of a request for reconsideration. Since the Preliminary Plan restricted access to right-out from Baltimore Avenue, the Planning Board did not have the authority simply modify the condition at the time of Detailed Site Plan. The Planning Board did all it was legally permitted to do.

The Applicant would further request that the District Council take administrative notice of the fact that the

Applicant did file a request for reconsideration of the Preliminary Plan condition restricting access from Baltimore Avenue and the Planning Board denied that request. Based upon the evidence in the record, the Planning Board did not have the authority to simply ignore the condition impose the time of the Preliminary Plan and authorize a right-in movement from Baltimore Avenue. The Planning Board used appropriate judgment in adopting Condition 1(n). The determination as to whether access should be permitted is a Preliminary Plan issue, not a Detailed Site Plan issue. Ms. Blumenthal is requesting the District Council to modify the Detailed Site Plan in a manner that conflicts with a Preliminary Plan condition. Doing so is not only illegal, it would place the Applicant in an untenable situation. Clearly, there was substantial evidence to support the Planning Board's decision in this matter. As a result, not only is the issue raised by Ms. Blumenthal outside the scope of this application, the District Council does not have the authority to amend or ignore a valid Preliminary Plan condition.

The second issue raised by Ms. Blumenthal is that the Central US 1 Corridor Sector Plan has been overtaken by environmental trends which have rendered utility systems inadequate. Miss Blumenthal references issues experienced by residents related to Washington Gas, PEPCO and WSSC. The availability of utilities is a public facilities issue. The adequacy of public facilities is addressed at the time of Preliminary Plan through the approval of a separate ADQ application. In this case, ADQ-2022-039 was fully reviewed and approved prior to the approval of the Preliminary Plan. No agency raised any issue relating to the adequacy of existing utility systems. The approval of the ADQ is now final and unappealable. As a result, this issue is not relevant to the Detailed Site Plan and cannot be addressed at this time.

Ms. Blumenthal's third argument is that the increase in traffic resulting from this proposed development will impact the ability of emergency vehicles to access the community. In support of this argument, Ms. Blumenthal attaches two photographs of Cherokee Street and Delaware Street showing on-street parking. However, these photographs are not part of the record, and cannot be considered by the District Council. Again, traffic is an issue which is now addressed through the ADQ process. During that process (ADQ-2022-039), the Applicant fully evaluated of the traffic impacts of the proposed development and the proposed development was found to satisfy the requirements of the Sector Plan and the Transportation Review Guidelines. In conclusion, the determination of

transportation adequacy is an ADQ issue and is not relevant at the time of Detailed Site Plan. The Planning Board found that the proposed development is consistent with the approved ADQ and the Preliminary Plan and therefore did not err in its approval of the Detailed Site Plan.

While traffic adequacy is addressed outside the Detailed Site Plan process, it should be noted that the proposed development will not alter the ability of emergency vehicles to access the neighborhood. To the contrary, the proposed development will improve existing conditions. As noted above, although not required for traffic adequacy, the Applicant agreed at the request of College Park to widen Cherokee Street at its intersection with Baltimore Avenue to provide a free right turn lane. This will improve the flow of traffic from the neighborhood. In addition, the Applicant is removing four full movement access points on Baltimore Avenue which currently serve the three existing motels and replacing them with a single right-out exit from the parking garage. This improves both traffic safety as well as pedestrian and bicycle safety.

Finally, Ms. Blumenthal raised concerns about parking. Her concern is that the parking provided will be inadequate, and that overflow parking will impact North College Park. In support of her argument, Ms. Blumenthal cites the growing trend toward multi-generational housing and multiple generations living under one roof. She also states that leasing and renting out rooms are common behaviors in a college town. First, the Sector Plan carefully regulates parking. The Sector Plan establishes a parking ratio based upon the location of the property in the corridor. The number of parking spaces cannot be modified--up or down--unless an amendment is approved to increase or decrease the number of parking spaces provided. The Sector Plan also allows for a shared parking calculation that would allow mixed use projects, such as Subject Property to reduce the total number of parking space required. In this instance, the Applicant did not avail itself of the shared parking methodologies to reduce parking. In fact, the applicant requested an amendment to increase the parking from that required by the Sector Plan. In this instance, a total of 360 parking spaces are provided while only 327 are required. Thus, the Planning Board approved an increase in the number of parking spaces required by the Sector Plan. The Planning Board found that the additional parking would benefit the development and the development district, as required by Section 27-548.25(c), and would not substantially impair implementation of the Sector Plan. As a result, the Planning Board did not err in its

approval. The applicant would also note that the proposed units are not market rate student housing units but rather affordable multi-family units. The building will be professionally managed, and subleasing will be prohibited and strictly monitored/enforced. Thus, the concerns cited by Ms. Blumenthal are, respectfully, not applicable to the proposed development. For these reasons, the number of parking spaces provided is sufficient to satisfy not only the requirements of the Sector Plan but the needs of the development as well.

Based upon the above, the applicant respectfully requests that the District Council deny the appeal of Ms. Blumenthal and affirm the decision of the Planning Board. The Planning Board decision was supported by substantial evidence and was not arbitrary and capricious. Further, the Planning Board did not err is a matter of law in any of its findings and recommendations. For these reasons, the Applicant requests that the District Council affirm the decision in the Planning Board in DSP-22015.

Very truly yours,

GIBBS AND HALLER

A handwritten signature in blue ink, appearing to read 'THH', with a long horizontal flourish extending to the right.

Thomas H. Haller

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 2023, a copy of this Request for Reconsideration was mailed by first class mail, postage prepaid, to all parties of record in Preliminary Subdivision Plan 4-22007.

A handwritten signature in blue ink, appearing to read 'THH', with a long horizontal flourish extending to the right.

Thomas H. Haller