

August 16, 2021

Mrs. Donna Brown  
Clerk of the Council  
Office of the Clerk of the Council  
County Administration Building  
14741 Governor Oden Bowie Drive, Room 2198  
Upper Marlboro, MD 20772

**Re:** Appeal from the Planning Board’s Disapproval of CSP-20007

On behalf of our client MRBCO LLC (the “**Applicant**”), CLHatcher LLC and Lerch, Early and Brewer, Chtd., submit this Petition for Appeal (this “**Petition for Appeal**”) of the Planning Board’s disapproval of CSP-20007 pursuant to PGCPB Resolution No. 2021-97 (the “**Resolution**”).

Pursuant to Sec. 27-548.09.01(a) of the Prince George’s County Zoning Ordinance (the “**Zoning Ordinance**”), the District Council has final decision-making authority over amendments to Transit District Development requirements involving a change of a property’s underlying zone. Accordingly, the Applicant requests a District Council Hearing to review the Planning Board’s disapproval of CSP-20007 within the 30 day statutory time period. [Pursuant to Sec. 27-280(a) of the Prince George’s County Zoning Ordinance and Section 25-212 of the Land Use Article of the Annotated Code of Maryland, the Planning Board’s decision on a Conceptual Site Plan (“**CSP**”) may be appealed to the District Council by the Applicant.] When reviewing the Planning Board’s action on the Conceptual Site Plan, the District Council sits in an appellate capacity. *County Council of Prince George’s County v. Zimmer Development Co.*, 444 Md. 490, 572 (2015).

The Applicant’s appeal of the Planning Board’s disapproval of CSP-20007 is based on the following:

**I. The Planning Board Erred as a Matter of Law by Disapproving CSP-20007**

The District Council may reverse a legal conclusion of the Planning Board where “based on an erroneous interpretation or application of zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute.” *Maryland-Nat. Capital Park & Planning Comm’n v. Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 84 (2009). The Planning Board applied an incorrect standard of review for approval of a CSP and acted *ultra vires* in disapproving CSP-20007. The Planning Board’s errors are discussed below.

**A. The Planning Board Applied the Incorrect Standard of Review for Approval of a CSP**

The Planning Board applied a “conformance” standard for approval of the CSP where only a “consistency” standard is required. Pursuant to Sec. 27-548.01(c)(1), in order to approve a CSP in the T-D-O (Transit District Overlay) Zone, the Planning Board must find that the Transit District Site Plan is “consistent with, and reflects the guidelines and criteria for development contained in, the Transit District Development Plan” (the “TDDP”). The findings and analysis in the Resolution confirm that CSP-20007 is consistent with the purposes of the T-D-O Zone and the TDDP and the related analysis details the ways in which the CSP advances the purposes of the TDDP. Yet, despite these findings of consistency with the TDDP, the Resolution repeatedly adds caveats explaining that its finding of consistency are irrelevant or should be disregarded because the CSP does not conform to the TDDP’s Future Land Use Map. In other words, the Planning Board based its disapproval of CSP-20007 on the inapplicable standard of non-conformance instead of the applicable standard of consistency.

**B. The Planning Board Relied Upon a Determination Yet to be Made by the District Council as the Basis for its Disapproval**

The Planning Board acted *ultra vires* in basing its disapproval of CSP-20007 on a determination of non-conformance that the District Council has not made. Where the Zoning Ordinance empowers the District Council, and not the Planning Board, to make a final decision on a matter, the District Council’s authority is “original” rather than “appellate.” *Zimmer Development Co.*, 444 Md. at 569. Sec. 27-548.09.01 of the Zoning Ordinance empowers the District Council, and not the Planning Board, to make the final decision on specific amendments to Transit District Development requirements, including a change of a property’s underlying zone.

The Planning Board’s application of the District Council’s original authority on the requested rezoning functionally prevented the Planning Board from properly reviewing CSP-20007. The Planning Board relied on its *ultra vires* determination of non-conformance with the TDDP’s Future Land Use Map as the basis for recommending disapproval of the rezoning and disapproving the CSP. If the Planning Board had not improperly asserted the District Council’s authority, the supportive findings and analysis included in the Resolution and the Planning Staff Report would have mandated approval of CSP 20007.

**II. The Planning Board Erred as a Matter of Fact by Disapproving CSP-20007**

**A. The Planning Board Relied on Issues Outside of the Applicable Criteria for Approval of a CSP**

The Planning Board relied upon issues that are irrelevant to the applicable criteria for approval. Pursuant to Sec. 27-548.01(c)(1), for approval of a CSP in the T-D-O (Transit District

Overlay) Zone, the Planning Board must find that the Transit District Site Plan is “consistent with, and reflects the guidelines and criteria for development contained in, the Transit District Development Plan.” The Planning Board based its disapproval of CSP-20007 on a finding of non-conformance with the TDDP’s Future Land Use Map. The Future Land Use Map represents a singular recommendation within the myriad of purposes, goals, policies, and strategies included within the TDDP. Indeed, the CSP does, in fact, conform with the TDDP’s broad purposes and recommendations. Accordingly, the Planning Board not only erred in law by applying the incorrect “conformance” standard of review, but also erred in fact by overlooking the greater context of the TDDP’s purposes and recommendations.

**III. Conclusion**

For the foregoing reasons, the Applicant respectfully requests that the District Council reverse the Planning Board’s disapproval of CSP-20007 in light of the Planning Board’s errors of law and fact. A supplement to this Petition for Appeal providing additional support for its arguments will be submitted before closure of the record.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

This will certify that I have this day caused to be served copies of the within and foregoing document upon the following parties by first-class mail, postage prepaid, addressed as follows:

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This 16<sup>th</sup> day of August, 2021.

A handwritten signature in blue ink, appearing to read "Chris L. Hatcher", written over a horizontal line.

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