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OFFICE OF THE ZONING HEARING EXAMINER
FOR PRINCE GEORGE'S COUNTY

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HYATTSVILLE BRIGHTSEAT ROAD RE LLC : Case No. SE/VSE-4845
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A hearing in the above-entitled matter was held on
March 9, 2022, at the Prince George's County Office of
Zoning, Zoning Hearing Examiners Office, 1301 McCormick
Drive, 3rd Floor, Largo, Maryland 20774 before:

Maureen McNeil
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Tom Haller, Esq.

On Behalf of People's Zoning:

Stan Brown

P R O C E E D I N G S

1
2 MS. MCNEIL: Good morning, everyone, I'm Maurene
3 McNeil, I'll be the zoning hearing examiner today. Today
4 we're here on the variance request accompanying a special
5 exception request for a gas station or food or beverage
6 store, case number SE/VSE, put on my glasses, 4845, and
7 today is March the 8th, 2022. I just want to note for the
8 record, if anything happens that we have a new way of
9 signing in to go to meetings, which I didn't discover until
10 about 20 minutes ago, and I think I'm in here, but it says
11 authentication failed. So, talk fast Tom Haller, because we
12 don't want to continuance. Okay, if counsel would identify
13 themselves for the record.

14 MR. HALLER: No, we do not want to continuance
15 Madam Examiner Thomas Haller on behalf of the applicant.

16 MR. BROWN: Stan Brown, peoples zoning counsel.

17 MS. MCNEIL: Okay, before we start, so we had a
18 hearing a little over a month ago and realized we had to
19 continue to have a hearing on the variance. Back then, all
20 of the exhibits were in binders 1, 2 and 3, I believe we
21 noted in the transcript, and there were 47 exhibits. But
22 for ease of this continuance, I believe all 47 exhibits are
23 in one binder and we have now added Exhibits 48 and 49.
24 Forty-nine is the proforma for Mr. Brown of his notice of
25 intent to defend, but Mr. Haller, would you briefly explain

1 what 48 is since it was not out on the website, if anybody
2 was out there trying to review all the document, thank you.

3 MR. HALLER: Absolutely, Madam Examiner. At the
4 close of the last hearing, the record was left open to
5 submit an organizational chart for the entity that is the
6 contact purchaser of the property, which is Hyattsville
7 Brightseat Road, RE LLC. And so, what the Exhibit 48
8 includes is an organizational chart listing, the name of the
9 entities that own a 5 percent or greater interest in that
10 entity. And then there are two entities that own a 5
11 percent or greater interest in that entity, and so I've also
12 provided an operating statement, not only for Hyattsville
13 Brightseat Road RE LLC, but also for the two entities who
14 own a 5 percent or greater interest. And I've also included
15 operating, I mean operating statements for them as well.
16 So, I just wanted to make sure that we had all of the
17 disclosures that were necessary in the record. And then I
18 also included just out of an abundance of caution, although
19 I don't think its required, a business entity ethics
20 affidavit for one of the entities that owns an interest in
21 another entity that has an interest in Brightseat Road,
22 about Hyattsville Brightseat Road, RE LLC. So, the purpose
23 was just to ensure that the record was fully compliant with
24 all of the disclosure and affidavit requirements and also to
25 provide the organizational information Mr. Brown requested.

1 MS. MCNEIL: Thank you, and just before you start,
2 is there anyone here in opposition to the request? I don't
3 see any names that we didn't see last time around, but I
4 need to ask that. Okay, there doesn't appear to be, so Mr.
5 Haller, you may proceed.

6 MR. HALLER: And Madam Examiner, I'm going to be
7 very brief this morning. At the prior hearing, we provided
8 testimony specifically related to the variance. We did not
9 withhold any discussion of that, and I would request
10 testimony from the prior hearing be incorporated into the
11 record of today's hearing. In addition, I would note for
12 the record that the criterial for the variance was addressed
13 both in our statement of justification, which is Exhibit 18
14 in the record, as well as in Mr. Ferguson's land planning
15 analysis which is Condition 43. So, the variance
16 requirements have been addressed both in writing and through
17 testimony. If the examiner would like, I could have Mr.
18 Ferguson give a brief overview of what the variance is just
19 to make sure that this record is clear, and I'm happy to do
20 that. Or that's up to the examiner, we do not have to
21 provide any more information other than what's already in
22 the record unless the examiner would like us to just for
23 clarity purposes.

24 MS. MCNEIL: Okay, just because some new person
25 may be watching, we don't know that, could we have Mr.

1 Ferguson briefly go through the reasoning for the variance
2 request? Oh, there he is. Mr. Ferguson, do you swear or
3 affirm under the, I'm sorry, do you swear or affirm under
4 the penalties of perjury that the testimony you shall give
5 will be the truth and nothing but the truth?

6 MR. FERGUSON: I do. Mr. Haller's mic appears to
7 go dead.

8 MR. HALLER: No, no, I'm here, no, okay. Thank
9 you, Mr. Ferguson. For purposes of the clarity in the
10 record, would you please briefly describe the specific
11 variance which has been requested in conjunction with the
12 special exception and which is the subject of today's
13 hearing?

14 MR. FERGUSON: I will. The variance is that the
15 subject property shall have direct vehicular access to a
16 street with a right-of-way width of at least 70-feet. The
17 subject property in this case is the special exception limit
18 which is a part of the larger parcel which currently exists.
19 The access to the subject property, which is to say the
20 special exception limits, will pass through a portion of the
21 property which is outside of the special exception limits on
22 its way from Brightseat Road into the special exception
23 limits. And then furthermore, it is the applicant's
24 intention in the very near future to actually subdivide the
25 property so that the special exception area is in fact a

1 separate lot which will have its access by an easement over
2 the remainder of what is now a single lot. The condition
3 which gives rise to the request is principally a topographic
4 separation which exists from the subject property, i.e. the
5 special exception area, and the adjoining Brightseat Road,
6 as well as a denial of access along the subject properties
7 other frontage which is Long Arena or Medical Center Drive.
8 And so really, the combination of the topographic access and
9 to some degree, some safety considerations and separation
10 from the nearby intersection of Brightseat and Arena, are
11 the conditions which require the entrance to be located
12 where it is.

13 Secondly, the subject property is currently owned
14 by the owners of the adjoining hotel and they do not wish
15 their property to be encumbered by the special exception, so
16 therefore you know they were unwilling to grant the special
17 exception area to extend across their entrance, and
18 therefore you know remove the need for the variance.

19 MS. MCNEIL: Mr. Brown?

20 MR. BROWN: I have no questions, thank you.

21 MS. MCNEIL: Do you all know approximately how
22 long it would take to get to subdivision, if this were
23 approved?

24 MR. HALLER: We have an application that is ready
25 for preview by Park and Planning, we have a number assigned

1 and we've sent notices out. So, we would anticipate that we
2 would get to subdivision probably in about, well it depends
3 on how long it takes Park and Planning to accept the
4 subdivision, but if the examiner will recall, because this
5 property's in the I-3 zone, we also need a conceptual site
6 plan. So, we have a conceptual site plan, a detailed site
7 plan and a subdivision application ready to submit. We just
8 wanted to make sure that we knew where we stood as far as
9 the special exception was concerned before we submitted
10 that.

11 MS. MCNEIL: And what was this property rezoned to
12 in the Countywide map amendment, I just want to know?

13 MR. HALLER: It would be the IE zone.

14 MS. MCNEIL: And I apologize for not knowing this
15 off the top, but I remember at one point, the zoning
16 ordinance rewrite would say that the special exception site
17 plan would be all that's needed in the future and no other
18 detail or other site plan. Do you know if that's the case?
19 So, you all want to proceed under the current ordinance no
20 matter what, I take it?

21 MR. HALLER: Well, we are at this point, and one
22 of the reasons why is because in the IE zone, the hotel
23 requires a special exception.

24 MS. MCNEIL: Okay, but it's there? Okay, all
25 right. I don't think I have any further questions. So it

1 would not be a hardship to you to supplement this record
2 with any future subdivision plat and showing the legal
3 easement giving you access to Arena Drive, I mean not Arena,
4 but Brightseat?

5 MR. HALLER: No, it would not. We did submit a
6 copy of the draft REA that has been negotiated between the
7 property owner and the contract purchaser. That's in the
8 record. Obviously, that won't be executed unless this
9 application and the other application go through, and they
10 proceed to settlement. So, we can certainly provide a fully
11 executed copy of that upon completion of the application.

12 MS. MCNEIL: Okay. Well, I really want to keep
13 you longer, but I don't have any other questions.

14 MR. HALLER: There is one other housekeeping
15 matter that I did want to bring to the examiner's
16 attention --

17 MS. MCNEIL: Okay.

18 MR. HALLER: -- and ask a question. If you will
19 recall, and I'm happy to share my screen to show the site plan,
20 but if you recall, there was a question that was discussed
21 because this particular food and beverage store has some seats
22 in it, and there was some discussion as to whether we needed to
23 reference both parking requirements for a food and beverage
24 store, and for an eating and drinking establishment on the site
25 plan. We submitted a revised site plan which was Exhibit 46,

1 and that site plan referenced eating and drinking
2 establishment. I subsequently became aware that Madam Examiner
3 made a determination in another similar case that adding a few
4 seats to a food and beverage store doesn't invert it to being
5 an eating and drinking establishment, and that all that is
6 required is for the parking schedule to account for the seats.
7 So, if that is --

8 MS. MCNEIL: Hasn't been tested out any further
9 than the examiner, but yes, I think that's an excellent
10 interpretation of the code, but go ahead.

11 MR. HALLER: So, what that would necessitate in
12 this case would be simply, and again, I can pull the site
13 down if you want to seed it, but simply remove the reference
14 fooding from the parking schedule, the reference to an
15 eating and drinking establishment, and leave only the
16 reference to providing parking for the seats. It wouldn't
17 change the parking count, it just would mean that we
18 wouldn't represent it's a separate or a different use. And
19 my thought would be that it would be cleaner for the record
20 to simply submit a revised site plan reflecting that, rather
21 than have that be a condition of approval or going into the
22 future.

23 MS. MCNEIL: Okay, well if you don't -- well you
24 could submit it now, but just in case this were approved,
25 there might be like another note someone might want added,

1 maybe, I'm not sure yet. So, you want to wait a while? I
2 like that you agreed to that, but --

3 MR. HALLER: Well, I don't want to hold the
4 opportunity to paying a decision in this matter you know for
5 any length of time. We can submit a revised site plan
6 within a day or two, then the record would be complete.

7 MS. MCNEIL: Okay, you can do that.

8 MR. HALLER: Obviously, if somebody requires that
9 I modify those other than the examiner's decision, then that
10 would be what it would be, but we're happy to hold the
11 record open to submit a revised site plan without one
12 housekeeping modification.

13 MS. MCNEIL: Okay, that will be great. Thank you.

14 MR. HALLER: Okay.

15 MS. MCNEIL: And the record will close upon
16 receipt of the revised site plan. And if there's nothing
17 further from anyone, this matter is adjourned.

18 MR. HALLER: Thank you, Madam Examiner.

19 MS. MCNEIL: Thank you all.

20 MR. BROWN: Thanks everyone.

21 MR. HALLER: Thank you all, bye.

22 (Whereupon, the hearing was concluded.)

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Office of the Zoning Hearing Examiner in the matter of:

HYATTSVILLE BRIGHTSEAT ROAD RE LLC

Case No. SE/VSE-4845

By:



Pat Purnell, Transcriber