

DETAILED SITE PLAN
DET-2022-001
WESTPHALIA BUSINESS
CENTER 1 AND 2

* BEFORE THE
* DISTRICT COUNCIL

AND

* FOR
* PRINCE GEORGE’S COUNTY

TCP2-029-12-16

* * * * *

**CITIZEN-PROTESTANT’S OPPOSITION TO APPLICANT’S MOTION
FOR RECONSIDERATION**

Denise France-Steele, Rongalett D. Green, Jante Turner, Dr. Chinonye Nnakwe Whitley, Corryne Carter, Nicole McMichael, and Sharon Bostic (collectively “Citizen-Protestants”) file this Opposition to the Motion for Reconsideration filed by North Point Realty Partners, LLC (“Applicant”) regarding the District Council’s decision to reverse the approval of DET-2022-001 Westphalia Business Center 1 and 2 on May 16, 2023.

STANDARD OF REVIEW

To approve a Motion for Reconsideration, the District Council must find that “based on the written request...there may have been an error in reaching the final decision that was caused by fraud, surprise, mistake, or inadvertence.” ZO § 27-3407(b)(7)(B)(i).

ARGUMENT

The District Council must deny the Applicant’s Motion for Reconsideration because the Applicant failed to provide, in its written statement, any evidence which establishes “fraud, surprise, mistake, or inadvertence” regarding the factual circumstances relied on by the District Council. Second, the opinion offered by the People’s Zoning Counsel’s does not constitute a “surprise” under Section 27-3407(b)(7)(B)(i) nor was it adopted by the District Council. Finally, even if disputes over the interpretation of the Zoning Ordinance

were sufficient to grant a Motion for Reconsideration, here, the District Council correctly interpreted the applicable zoning provisions.

I. The District Council may not approve a Motion for Reconsideration based on alleged errors in the interpretation of the applicable zoning ordinance.

As a threshold matter, the District Council must deny the Applicant's Motion for Reconsideration because the Applicant has failed to satisfy its burden of proof under Section 27-3407(b)(7)(B). The Applicant has the burden of proving that the District Council's decision was based on an error caused by "fraud, surprise, mistake, or inadvertence." ZO § 27-3407(b)(7)(B)(i).

However, the alleged fraud, surprise, mistake, or inadvertence must relate to the "facts which were before [the decision maker] for consideration at the time of its original deliberation." *Calvert County Planning Commission v. Howlin Realty Management, Inc.*, 364 Md. 301, 324 (2001). In other words, the Applicant has the burden of proving that there is a "new or different factual situation" which warrants reconsideration. *Schultze v. Montgomery County Planning Board*, 230 Md. 76, 81 (1962).

A Motion for Reconsideration cannot be based merely on a request that the District Council change its mind. *See Howlin Realty*, 364 Md. at 325 ("What is *not* permitted is a 'mere change of mind' on the part of the agency"). Accordingly, the alleged fraud, surprise, mistake or inadvertence cannot relate to the District Council's legal interpretation of the applicable zoning ordinance. If a motion for reconsideration fails to allege a new or different factual situation which may change the District Council's decision, then the motion must be denied.

Here, the Applicant does not offer any evidence of a new or different factual situation in this case. Furthermore, the Applicant's Motion for Reconsideration hinges solely on its argument that it is entitled to reconsideration because the District Council erred "based on a mistaken interpretation of the requirements of the new ZO." Motion for Reconsideration 2.

Therefore, the District Council must deny the Applicant's Motion for Reconsideration because the Applicant has failed to show that there was "fraud, surprise, mistake, or inadvertence" with regards to the relevant facts in this case. Instead, the Applicant asks the District Council to merely change its mind—something expressly prohibited by Maryland law. *See Howlin Realty*, 364 Md. at 325.

II. The argument made by the People's Zoning Council cannot create "surprise" under Section 27-3407(b)(7)(B)(i) and, even if it could, there is no evidence whatsoever that the District Council relied on the argument.

In Section VII of the Applicant's Motion for Reconsideration, the Applicant erroneously argues that the District Council's decision was based on a "novel interpretation" offered by the People's Zoning Council. Motion for Reconsideration 4. However, a legal interpretation, new or old, is not the type of surprise that the Applicant is required to establish under Section 27-3407(b)(7)(B). As explained *supra* in Section I, an alleged fraud, surprise, mistake, or inadvertence, must relate specifically to the factual circumstances of the case not the legal interpretations. Furthermore, there is no evidence in the District Council's written decision that any Council Member adopted the interpretation of the People's Zoning Council. The Applicant's unsubstantiated claim that "it is quite probable that at least some of the Council Members...may have mistakenly

relied on this advice in considering their vote on the motion” is not sufficient to prove that any member of the Council did in fact adopt the People’s Zoning Council’s interpretation.

Therefore, the District Council cannot approve the Applicant’s Motion for Reconsideration on the grounds set forth in Section VII of the Applicant’s Motion for Reconsideration.

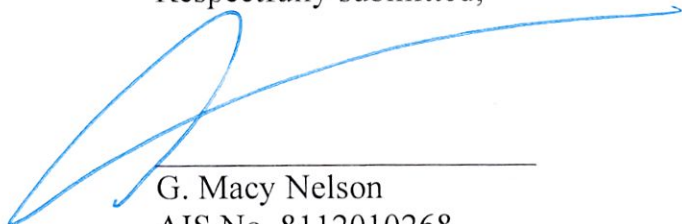
III. The District Council did not err when it interpreted the applicable provisions of the Prince George’s County Zoning Ordinance.

Even if a Motion for Reconsideration could be granted on the grounds that the District Council erred legally when it interpreted the zoning ordinance, here, for all of the reasons provided in Citizen-Protestants’ written exceptions, the District Council correctly interpreted the applicable zoning provisions. Therefore, the District Council must deny the Applicant’s Motion for Reconsideration.

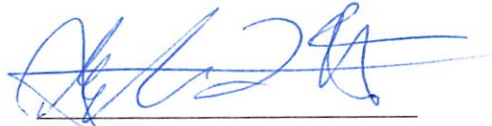
CONCLUSION

For all of these reasons, Citizen-Protestants respectfully request that the District Council deny the Applicant’s Motion for Reconsideration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July 2023, a copy of the foregoing Exceptions and Request for Oral Argument was mailed electronically:

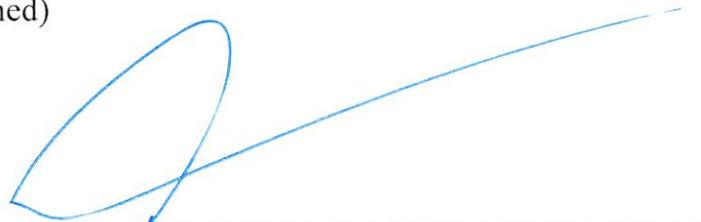
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