

The Planning Board approved CDP-0505-02 and TCP1-004-2021-02 in Resolution 2022-53 dated May 19, 2022. Notice of the Planning Board's decision was mailed to all Persons of Record on May 24, 2022.

Citizen-Protestants appeal the Planning Board's decision to approve CDP-0505-02 and TCP1-004-2021-02, file these exceptions, and request oral argument.

I. The Planning Board erred when it approved CDP-0505-02 because the CDP's validity is based on an illegal special law.

CDP-0505-02 permits the Applicant to expand employment and institutional uses on the Subject Property by 2 million square feet. Even though the Subject Property was zoned Residential Suburban Development (R-S), Council Bill 22-2020 (CB-22-2020) expanded the permissible uses on the Subject Property to include employment and institutional uses. CB-22-2020 is an illegal special law and thus invalid. Therefore, the uses permitted by CDP-0505-02 are based on an illegal special law and CDP-0505-02 must be denied.

To determine whether a law is "special" and therefore prohibited by Article III, Section 33 of the Maryland Constitution, the District Council must conduct a six-element analysis as follows:

1. Whether the legislation was actually intended to benefit or burden a particular member or members of a class instead of an entire class;
2. Whether the legislation identifies particular individuals or entities;

3. Whether a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation;
4. Whether the legislation's substantive and practical effect, and not merely its form, shows that it singles out one individual or entity, from a general category, for special treatment;
5. Whether the legislatively drawn distinctions are arbitrary and without any reasonable basis;
6. The public interest underlying the enactment, and the inadequacy of the general law to serve that interest is also a pertinent consideration.

See Cities Serv. Co. v. Governor, 290 Md. 533, 569–70 (1981); *MDE v. Days Cove Reclamation Co., Inc.*, 200 Md. App. 255–56 (2011). No single element “is conclusive in all cases,” *Cities Serv. Co.*, 290 Md. at 569, but rather they are applied jointly to determine to what extent an alleged special law benefits or burdens a singular person, entity, or narrow group of persons or entities. *See generally id.* “One of the most important reasons for the provision in the Maryland constitution against special legislation is ‘to prevent one who has sufficient influence to secure legislation from getting an undue advantage over others[.]’” *Howard Cty. v. McClain*, 254 Md. App. 190, 197 (2022).

1. CB-22-2020 was clearly intended to benefit a particular entity.

The second element—whether an entity is specifically named in a bill—is analyzed concurrently with the first—whether the law is intended to implicitly benefit or detriment

a certain entity. “Laws that confer a benefit, rather than a detriment, on a single party at the time of its enactment are looked upon more harshly.” *McClain*, 254 Md. App. at 200. Courts only “accord limited weight to [the second] factor because it can be easily manipulated by using narrow descriptive criteria.” *Id.*

As often occurs in an analysis of spot zoning, a particular parcel is typically targeted for rezoning at the behest of a particular entity or group of entities. In this case, the record clearly identifies the Applicant as the chief proponent of the bill, the owner of the lot that the bill would affect, and the meaningful recipient of any advantages conferred by the bill. *See* July 14, 2020, District Council Hearing (Arthur Horne testifying as a representative of the Applicant in support of CB-22-2020). Similarly, during the June 2, 2020, District Council hearing, Council Members Davis and Turner explained that CB-22-2020 would benefit the Subject Property.

Further, the Planning Board specifically identified the Subject Property as the sole beneficiary of CB-22-2020. The Planning Board stated it “believe[d] that only one property in the County would” be impacted by CB-22-2020. The Planning Board further explained that CB-22-2020 “was drafted for an approximately 639-acre property, located north of Leeland Road and east of a freight line owned by Consolidated Rail, and identified in tax records as Parcel 30, tax account 0670737. This property is also known as Willowbrook and has an extensive approval history under its existing R-S Zone. . . If the District Council would like this property to be rezoned, it would be more appropriate to do so during a

sectional map amendment following approval of the ongoing master plan for Bowie and Vicinity (Planning Area 74A).” CB-22-2020 Planning Board Analysis, p. 1.

The Prince George’s County, Maryland Office of Law similarly stated, “the proposed bill (specifically footnote 38 to Section 27-515(b)) appears to be drafted for a specific parcel contained within a R-S zone.” CB-22-2020 OOL Memo.

2. NCBP Property, LLC (Applicant) sought out and received special advantages from the District Council.

The developer seeking to build on the Subject Property sent its attorney, Arthur Horne, on its behalf, to reiterate its goals before a friendly majority of the District Council, asking them to amend the Zoning Ordinance in such a fashion that it, and it alone, would be able to develop land in a manner otherwise expressly forbidden by the general use provisions of the R-S zone. It received these advantages with the passage of CB-22-2020.

3. CB-22-2020’s substantive and practical effect shows that it singles out the Applicant for special treatment.

Like with factors 1 and 2, factors 4 and 5 are commingled and can be analyzed jointly. The June 2, 2020, District Council hearing demonstrates that the District Council was *aware* of the legal problems with CB-22-2020. *See e.g.*, CB-22-2020 OOL Memo; CB-22-2020 Planning Board Analysis; June 2, 2020 District Council Hearing (OOL Testimony).

Further, even though the language of CB-22-2020 might be generalized, the distinctions drawn within are arbitrary and designed for the application of CB-22-2020 to the Subject Property. *See* CB-22-2020 Planning Board Analysis. There is no particular

rational provided for the restrictions placed within footnote 38 of CB-22-2020, except to limit the obvious ramifications of amending all R-S parcels within the County.

4. There is no public interest underlying the enactment of CB-22-2020.

The Court of Appeals has found that some laws, even if they in fact single out certain entities and would otherwise be considered “special,” are not prohibited by the Constitution provided they address “special evils with which existing general laws are incompetent to cope.” *Jones v. House of Reformation*, 176 Md. 43, 58 (1939). But broad suggestions that “the community” wants the development ring hollow without any actual factual evidence to suggest that it would benefit either the local community or the Prince George’s County populace at large to allow a single developer the opportunity to side-step the duly enacted old Zoning Ordinance and undermine the newly enacted new Zoning Ordinance before it ever took effect.

When only a single entity is likely to benefit from an exception to a law, then it does not have a “justifiable public interest.” *See McClain*, 254 Md. App. at 203. There was no “special evil” to correct in simply requiring the Applicant to develop under the rules of the zones applied to the Subject Property or to follow the procedures for a Sectional Map Amendment. Nothing identified in the record is unique about the property such that it would be penalized in a certain manner for legal compliance.

Therefore, as CB-22-2020 benefited a singular entity that sought out assistance from the District Council and had no underlying public interest, it is an illegal special law

Citizen-Petitioners are permitted to raise this issue in the context of the CDP approval when the validity of CB-22-2020 would impact the validity of the CDP. *Maryland Reclamation Associates, Inc. v. Harford County*, 468 Md. 339, 398–99 (2020).

For all of these reasons, Citizen-Protestants request that the District Council declare CB-22-2020 invalid because it is an illegal special law and thus also deny CDP-0505-02 and TCP1-004-2021-02.

II. The Planning Board erred when it approved CDP-0505-02 because CDP-0505-02 does not satisfy Section 27-521(a)(1).

Section 27-521(a)(1) requires the Planning Board to find that the CDP is “in conformance with the Basic Plan **approved** by application per section 27-195” (emphasis provided). Here, the Planning Board approved CDP-0505-02 even though it conflicted with the **approved** Basic Plan (A-9968-02) which permitted only 3.5 million square feet of employment and institutional uses. Planning Board Decision p. 5. The Planning Board approved CDP-0505-02 based on the condition that a subsequent Basic Plan (A-9968-03) be approved by the District Council. Planning Board Decision p. 33. In doing so, the Planning Board exceeded its limited authority. The zoning ordinance only permits the Planning Board to approve a CDP based on the specific criteria outlined in Section 27-521. Section 27-521(a)(1) requires the Planning Board to find that the CDP application conforms to the **approved** Basic Plan and does not authorize the Planning Board to approve a CDP application based on a **pending** Basic Plan.

Therefore, Citizen-Protestants request that the District Council deny CDP-0505-02 because the application did not satisfy Section 27-521(a)(1).

III. The Planning Board erred when it approved TCP1-004-2021-02 without requiring the Applicant to submit a variance request to remove specimen trees or demonstrate that it had exhausted on-site preservation methods before being approved for off-site preservation.

Subtitle 25 of the County Code requires the Applicant to preserve all specimen trees on the Subject Property and take “every effort [] to meet the woodland conservation requirements on-site.” *See* § 25-122(b)-(c); 2018 Environmental Technical Manual, A-16.

To remove specimen trees, the Applicant was required to obtain a variance pursuant to Section 25-119(d). Before being allowed to satisfy its woodland conservation requirements off-site, the Applicant was required to demonstrate that it had “exhaust[ed] in turn” every on-site preservation method. *See* § 25-122(c); 2018 Environmental Technical Manual, A-16.

The Environmental Technical manual provides that “TCP1 applications are required to meet all of the requirements of Subtitle 25.” 2018 Environmental Technical Manual, A-7. As such, the Environmental Technical Manual makes clear that when a TCP1 includes the conceptual removal of specimen trees, an applicant is required to obtain variances before the TCP1 may be approved. *See id.* Further, when the TCP1 includes a proposal to meet conservation requirements off-site, an applicant is required to demonstrate how it has exhausted all on-site preservation methods. *Id.* at A-16.

Here, “the proposed development shown on [TCP1-004-2021-02] proposes the conceptual removal of specimen trees.” Planning Board Decision p. 20. The Applicant also proposes to satisfy its conservation requirements, in part, through off-site preservation. Planning Board Decision p. 18. However, “no variance application was submitted with the CDP” and the Applicant never explained how it had exhausted on-site preservation requirements before requesting approval for off-site preservation. Planning Board Decision p. 20.

Despite the clear deficiencies in the TCP1 in light of the requirements set out in Subtitle 25 and the 2018 Environmental Technical Manual, the Planning Board nevertheless approved TCP1-004-2021-02. To support its decision, the Planning Board erroneously concluded that “[no variance] is required at this stage.” Planning Board Decision p. 31. Further, the Planning Board failed to explain why it believed that the Applicant had exhausted all on-site preservation methods before requesting permission to meet its woodland conservation requirements off-site. Accordingly, the Planning Board’s decision to approve TCP1-004-2021-02 violated both Subtitle 25 and the Environmental Technical Manual.

Therefore, Citizen-Protestants request the District Council disapprove TCP1-004-2021-02 because the Planning Board erred when it concluded that no variance was required and the Planning Board erred when it failed to articulate how the Applicant had exhausted on-site preservation methods.

Conclusion

For all of these reasons, Citizen-Protestants request the District Council disapprove CDP-0505-02 and TCP1-004-2021-02.

Respectfully submitted,



G. Macy Nelson
AIS No. 8112010268
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
Email: gmacynelson@gmacynelson.com
Attorney for Protestants



Alex Votaw
AIS No. 2112150190
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
Email: alex@gmacynelson.com
Attorney for Protestants

CERTIFICATE OF SERVICE

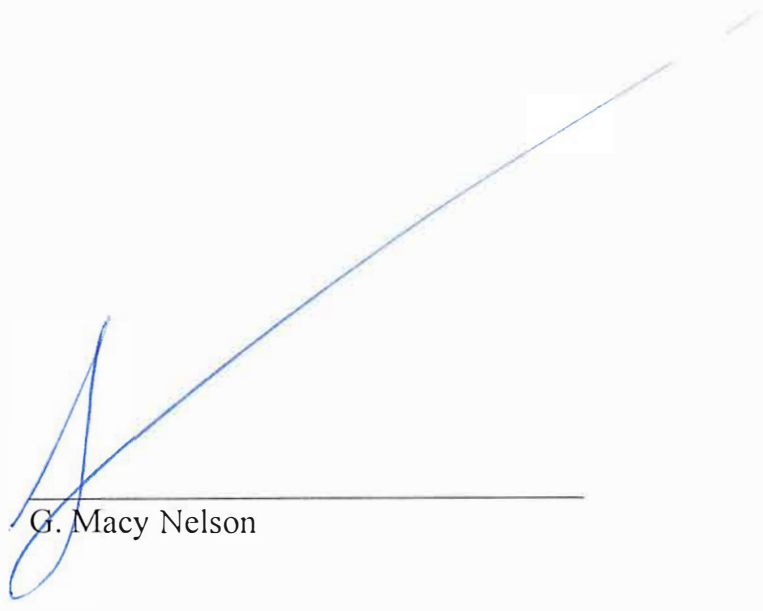
I HEREBY CERTIFY that on this 21st day of June, 2022, a copy of the foregoing Exceptions and Request for Oral Argument was mailed electronically and by first-class, postage pre-paid, to:

Robert J. Antonetti, Jr., Esquire
Shipley & Horne. P.A.
1107 Mercantile Lane, Suite 240
Largo, Maryland 20774

Rajesh A. Kumar, Esquire
Prince George's County Council
1301 McCormick Drive – Suite 3-126
Largo, Maryland 20774

David Warner, Principal Counsel
Office of the General Counsel
The Maryland-National Capital Park
and Planning Commission
14741 Governor Oden Bowie Dr., Suite 4120
Upper Marlboro, Maryland 20772

Persons of Record (List Attached)
(By U.S. Mail Only)



G. Macy Nelson

CASE NO: CDP-0505-02
CASE NAME: NATIONAL CAPITAL
BUSINESS PARK
PARTY OF RECORD: 24
PB DATE: 5-19-2022

HENRY WIXON
GLENN DALE CITIZENS' ASSOCIATION, INC.
P.O.BOX 235
GLENN DALE MD 20769
(CASE NUMBER: CDP-0505-02)

SHIRLEY BOYD
P.O.BOX 4408
CAPITOL HEIGHTS MD 20791
(CASE NUMBER: CDP-0505-02)

JOHN HOMICK
16000 TRADE POINT AVENUE
UPPER MARLBORO MD 20774
(CASE NUMBER: CDP-0505-02)

MACY NELSON
600 WASHINGTON AVENUE AVENUE SUITE
SUITE
TOWSON MD 21204
(CASE NUMBER: CDP-0505-02)

CHRIS RIZZI
BOHLER ENGINEERING
16701 MELFORD BOULEVARD SUITE 310
BOWIE MD 21045
(CASE NUMBER: CDP-0505-02)

JOE DIMARCO
BOHLER ENGINEERING
16701 MELFORD BOULEVARD SUITE 310
BOWIE MD 20715
(CASE NUMBER: CDP-0505-02)

MIKE LENHART
LENHART TRAFFIC CONSULTING, INC.
645 BALTIMORE ANNAPOLIS BOULEVARD
SUITE 214
SEVERNA PARK MD 21146
(CASE NUMBER: CDP-0505-02)

MIKE WILSON
UFCW LOCAL 400
8400 CORPORATE DRIVE SUITE SUITE
LANDOVER MD 20785
(CASE NUMBER: CDP-0505-02)

RAY CRAWFORD
1340 CRAIN HIGHWAY
UPPER MARLBORO MD 20774
(CASE NUMBER: CDP-0505-02)

KATHY H CRAWFORD
1340 CRAIN HIGHWAY 14741 GOVENOR ODEN
BOWIE DRIVE SECOND FLOOR
UPPER MARLBORO MD 20774
(CASE NUMBER: CDP-0505-02)

ROBERT ANTONETTI
SHIPLEY & HORNE, P.A.
1101 MERCANTILE LANE
LARGO MD 20774
(CASE NUMBER: CDP-0505-02)

JOHN FERRANTE
SHIPLEY & HORNE, P.A.
1101 MERCANTILE LANE SUITE 240
LARGO MD 20774
(CASE NUMBER: CDP-0505-02)

ARTHUR HORNE
SHIPLEY & HORNE, P.A.
1101 MERCANTILE LANE SUITE 240
LARGO MD 20774
(CASE NUMBER: CDP-0505-02)

KENT A BENJAMIN
1133 RING BILL LOOP 14741 GOVENOR ODEN
BOWIE DRIVE SECOND FLOOR
UPPER MARLBORO MD 20774
(CASE NUMBER: CDP-0505-02)

VERNICE MILLER-TRAVIS
104 JEWETT PLACE
BOWIE MD 20721
(CASE NUMBER: CDP-0505-02)

FRED TUTMAN
PATUXENT RIVERKEEPER
17412 NOTTINGHAM ROAD 14741 GOVENOR
ODEN BOWIE DRIVE SECOND FLOOR
UPPER MARLBORO MD 20772
(CASE NUMBER: CDP-0505-02)

HENRY WIXON
10701 MARIETTA STREET
GLENN DALE MD 20769 -9406
(CASE NUMBER: CDP-0505-02)

DAN SMITH
6019 INWOOD STREET
CHEVERLY MD 20785
(CASE NUMBER: CDP-0505-02)

GREG SMITH
4204 FARRAGUT STREET
HYATTSVILLE MD 20781
(CASE NUMBER: CDP-0505-02)

RUTH GROVER
5727 RIDGE VIEW DRIVE
ALEXANDRIA VA 22310
(CASE NUMBER: CDP-0505-02)

MR.GARRY YANCY
P.O.BOX 686
UPPER MARLBORO MD 20773
(CASE NUMBER: CDP-0505-02)

DR.JANET GINGOLD
PRINCE GEORGE'S COUNTY SIERRA CLUB
13107 WHITEHOLM DRIVE
UPPER MARLBORO MD 20774 -1831
(CASE NUMBER: CDP-0505-02)

MRS.KYM TAYLOR
FAMILY CHOICE HEALTHCARE
3003 WESTBROOK DRIVE
BOWIE MD 20721
(CASE NUMBER: CDP-0505-02)

MRS.TERRY NURIDDIN
15201 JOHNSTONE LANE
BOWIE MD 20721
(CASE NUMBER: CDP-0505-02)