

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND OFFICE OF
THE ZONING HEARING EXAMINER**

**AMENDMENT OF CONDITION FOR
CNU-25172-2011**

DECISION

Application:	Amendment of Condition for a Certified Non-Conforming Use
Applicant:	Brightseat Development Associates, LLC/8300 Sheriff Road FedEx Field
Opposition:	None
Hearing Date:	July 18, 2018
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

NATURE OF PROCEEDINGS

(1) CNU-25172-2011 was approved by the District Council on February 11, 2013, allowing Applicant to operate a temporary gravel commercial parking lot for use in conjunction with events held at FedEx Field in Landover, Maryland. The subject property is approximately 22.13 acres of land in the M-X-T Zone (Mixed Use-Transportation Oriented), located in the northwest quadrant of the intersection of Brightseat Road and Sheriff Road, and identified as 8300 Sheriff Road, Landover, Maryland.

(2) The District Council imposed the following condition in its certification of the parking lot:

The nonconforming use is subject to the rezoning of the 2009 Approved Landover Gateway Sector Plan and Sectional Map Amendment, Chapter 7: Implementation, page 138. The existing temporary graveled parking lot shall be allowed to continue as a temporary nonconforming use for the next five (5) years from the date of adoption of this Order. The temporary graveled parking lot use shall cease immediately at the expiration of the five-year term and all future uses of the subject property shall comply with applicable law.

(Exhibit 2, Attachment A, p. 16)

(3) On April 19, 2018, Applicant Brightseat Road Development Associates, LLC requested an amendment of the condition pursuant to the provisions of section 27-135

(c) (1) of the Zoning Ordinance. On April 24, 2018, the Clerk of the Council referred the request to the Office of the Zoning Hearing Examiner for an evidentiary hearing.

(4) No one appeared in opposition to the request at the hearing held by this Examiner.

(5) This Examiner takes administrative notice of the record and District Council decision in CNU-25172-2011.

FINDINGS OF FACT

(1) The subject property is located at the intersection of Brightseat Road and Sheriff Road in Landover, Maryland. (Exhibits 16(a) – (c)) Applicant purchased the property in 2003, and began operating an overflow parking lot for use during events at FedEx Field. (T. 6) At the time of purchase the property was zoned CM (Commercial Miscellaneous).

(2) In 2009, the subject property was rezoned from the C-M Zone to the M-X-T Zone. A commercial parking lot is not a permitted use in that zone. Accordingly, Applicant requested that its parking lot be certified as a nonconforming use. The request was granted, as noted above.

(3) Since certification, the use has “been continuously used as a parking lot in conjunction with uses at FedEx Field.” (T. 12) Applicant also attempted to sell the property and submitted a Conceptual Site Plan (CSP-13006) that was approved to allow the development of 380 multifamily units on site. However, the purchase did not occur. (T. 11) Applicant continues to market the property, and is “currently talking to a major developer in the area....” (T.11)

Applicant’s Request

(4) Applicant requests that the condition imposed by the District Council in its certification of the nonconforming temporary commercial parking lot be revised to extend operation for an additional five years.

(5) One of the members of Brightseat Road Development, LLC provided the following testimony in support of the instant request:

Well the good cause is the, traffic committee and the Washington Redskins Organization has always supported this parking lot being open. Because ... we can park 1,000 cars there, unfortunately we ... probably average five ... 600 cars. So you know, on game days if that lot wasn't open it probably would have, it's going to cause some issues. So again [the] traffic committee has supported it and the Redskin Organization has always supported it.

(T. 18)

(6) The manager of the use testified that there have not been any incidents at the site since 2008 (when she first became the manager). (T. 22 - 23)

(7) Finally, Applicant's counsel proffered that the development approval process to see the approved CSP to fruition will likely take another two years. (Exhibit 3) That time, coupled with the time to find a contract purchaser/developer, leads to the instant request for an additional five years.

LAW APPLICABLE

Amendment of Conditions

(1) An Application for the amendment of conditions may be approved in accordance with Section 27-135 (c)(1):

(c) The District Council may (for good cause) amend any condition imposed or site plan approved (excluding Comprehensive Design Zone Basic Plans or R-P-C Zone Official Plans) upon the request of the applicant without requiring a new application to be filed, if the amendment does not constitute an enlargement or extension.

(1) In the case of an amendment of a condition (imposed as part of the approval of the zoning case), the request shall be directed, in writing, to the District Council, and shall state the reasons therefore. Before the Council amends a condition, the Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with Section 27-129, and shall notify all parties of record (including all parties of record on the original application and any amendments thereto) in the same manner as required for an original application. The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's decision with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

Good Cause

(2) The Court of Appeals of Maryland, in Kay Construction Company v. County Council, 227 Md. 479, 177 A.2d 694 (1962) considered the definition of “good cause” upon appeal of a Council resolution overturning a previous decision upon a reconsideration of that previous decision for “good cause shown.” In Kay, the Court held that a change of mind on the basis of the evidence of record is not “good cause.” In arriving at this conclusion, the Court referred to a previous decision, Zoning Appeals Board v. McKinney, 174 Md. 551, 564, 199 A. 540, 171 A.L.R. 207, 564 (1938), which states that in the absence of a statutory requirement, “It may be conceded without discussion that the Board has the right to correct errors in its decisions caused by fraud, surprise, mistake or inadvertence, which any agency exercising judicial functions must have, to adequately perform its duties.”

CONCLUSIONS OF LAW

(1) “Good Cause” for an amendment of a condition requires a “substantial reason” and not merely a change of mind.

(2) Applicant continues to market the property in order to develop it in accordance with the strictures of the M-X-T Zone. It has shown good cause to allow the temporary parking to continue until such development occurs, since it provides much needed additional parking during the use of FedEx Field.

RECOMMENDATION

It is recommended that CNU-25172-2011 be allowed to continue for one additional term of five years to allow the Applicant to market and/or develop the property in a manner permitted under its present zoning.