

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

SPECIAL EXCEPTION

2022-005

DECISION

Application:	Distribution Warehouse
Applicant:	Muirkirk Enterprises, LLC
Opposition:	N/A
Hearing Date:	December 6, 2023
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 2022-005 is a request for permission to use approximately 23.99 acres of land in the IE (Industrial, Employment) Zone for a Distribution Warehouse facility located in the southwest quadrant of the intersection of Konterra Drive and MD 200 (Intercounty Connector), Laurel.

(2) At the conclusion of the evidentiary hearing the record was kept open for the inclusion of several documents including Applicants Planning Analysis, the last of which was received January 26, 2024, and the record was closed. There are 52 exhibits in the record.

FINDINGS

Subject Property

(1) The Subject Property is located in the southwest quadrant of the intersection of Konterra Drive and MD 200 (Intercounty Connector). It is located at Tax Map 9, in Grids C4 and D4, and consists of 10 parcels and one lot (Lot 30). The parcels are known as Parcels 84, 85, 91, 115, 116, 117, 118, 128, 171 and 172. The easternmost portion of the Property, with frontage on Konterra Drive, is vacant and unimproved. The center portion is improved with a single-family dwelling. The western portion of the site consists of vacant property to the north, and three single-family dwellings to the south. The existing structures will be razed. The Subject Property contains various environmental features that include steep slopes, perennial streams, 100-year-floodplain, and wetlands.

Neighborhood and Surrounding Uses

(2) The Property is currently in the IE (Industrial, Employment) Zone.

The immediate uses surrounding the Subject Property are as follows:

- North - MD 200 and beyond, by vacant land proposed for mixed use in Transit-Oriented/Activity Center Zone Core area.
- East - Konterra Drive and beyond, to US 1 by commercial and industrial uses in the Industrial Employment (IE) and Legacy Comprehensive Design (LCD) Zones.
- South - Muirkirk Road and beyond, by commercial and industrial uses in the IE and LCD Zones.
- West - Industrial and residential uses in the IE Zone and vacant land in the RR (Residential, Rural) Zone.

(3) The neighborhood of the Subject Property was not defined in the Technical Staff Report.

The approval of a Special Exception requires a finding that, “the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood”. Additionally, a defined neighborhood is required by State and case law. As the Technical Staff failed to define the neighborhood as required by law, the neighborhood as defined by the Applicants expert land planner, Mr. Ken Dunn, is accepted as the neighborhood in the instant Application. Thus, the neighborhood of the Subject Property for the Application is as follows:

- North - Route 200 (commonly referred to as the ICC)
- South - Ammendale Road
- East - U.S. Rt. 1
- West - I-95

The neighborhood can be characterized as generally industrial/flex space to the east and southeast while to the west it can be characterized as undeveloped property in an industrial zone.

(4) The Subject Property is made up of multiple consolidated parcels including Parcels 172, 91, 85, 128, 171, 84, 116, 117, 118, and 115. The Application also includes Lot 30. Approximately half of the property in the Application is undeveloped, the other portions of the property involved in the Application include four single family detached houses and ancillary buildings. All of these existing structures are proposed to be razed.

Master Plan/Sectional Map Amendment

(5) The Technical Staff Report did not address the applicable Master Plan or Sectional Map Amendment. The Applicant provided the following:

The approved General Plan, otherwise referred to as Plan Prince George's 2035 Approved General Plan is also applicable to the review of this Special Exception request due to 27- 1300 (b). In this case, Plan 2035 is pertinent. The document lists many goals and policies. None of the policies or goals are hampered by this Application. The property is within the growth boundary as identified in the plan and as such propels the vision of Plan 2035.

The Approved 2010 Master Plan and Sectional Map Amendment for Subregion I (Planning Areas 60, 61, 62, and 64) recommends industrial land use on the subject properties. There is a specific discussion about the property in the Master Plan which indicates how the current residences that exist on the property have been negatively impacted by the construction of the adjacent ICC without a sound barrier and that they abut land in an industrial zone. In this case the Master Plan support the conversion from an older residential use to an industrial use. This reasoning is appropriate as the residential use is inappropriate and out of date use given the proximity of infrastructure, such as the ICC, designed to be taken advantage of by industrial/employment style opportunities.

Other Applicable Functional Master Plans

Neither the Technical Staff Report nor the Applicant's Planning Analysis addressed the other applicable Functional Master Plans.

Applicants' Proposal

(6) The subject Application proposes improving the Subject Property with two (2), single-story distribution warehouses. If the subject Application is approved, the Applicant will subdivide the Property into Proposed Parcels 1 and 2 and will hereinafter refer to the specific areas of the Property as "Proposed Parcel 1" and "Proposed Parcel 2". Both parcels will have vehicular access from Muirkirk Drive via separate entrances. A single access point will be provided for passenger vehicle and truck parking upon Proposed Parcel 1, while Proposed Parcel 2 will utilize separate access points with (1) for trucks and one(1) for passenger vehicles.

Proposed Parcel 1 will have frontage onto Konterra Drive and will be improved with an

approximately 122,200 square feet warehouse, while Proposed Parcel 2 will be west of Proposed Parcel 1 and will be improved with an approximately 147,000 sq. ft. warehouse. A total of 336 parking spaces will be provided, which exceeds the minimum requirements of 270 parking spaces at a rate of 1 parking space per 1,000 sq. ft. of gross floor area. Of the 336 parking spaces, one hundred twenty-three (123) will be located upon Proposed Parcel 1 and two hundred thirteen (213) will be located upon Proposed Parcel 2. A total of seventy (70) loading spaces will be provided; thirty-two (32) upon Proposed Parcel 1 and thirty-eight (38) upon Proposed Parcel 2, which exceeds the required minimum of nine (9). The additional loading spaces are necessary to maximum operational efficiency of the site.

The proposed facility is not a Warehouse. It is a Distribution Warehouse, hence the requirements within the Zoning Ordinance for a Special Exception process. The Zoning Ordinance clearly recognizes the difference between standard Warehouse and a Distribution Warehouse.

Distribution Warehouses require a higher level of staffing employment, and additionally, a larger amount of delivery trucks, vans, etc. for more frequent transfer of goods stored on site. Additionally, in the rear of the building, larger truck trailer storage, parking, and movements are necessary. Distribution Centers require approximately 20% to 50% more parking than standard Warehouses operation.

It has been estimated that approximately 200 workers will be at the facility with extended and overlapping work shifts. In addition to their employee vehicles, and additional 120-150 vans and light delivery trucks will be needed to service the distribution activities. This is the reason for the additional 66 parking spaces above the minimum calculation in the Ordinance. Typically, these types of facilities require a parking ratio of 1.2 to 1.5 spaces per 1000 sf of floor area. The proposed facility is parked at 1.2 per 1000 sf of floor area which is at the lower end of the typical range in recognition of the need to minimize the amount of coverage on the site.

History and Previous Approvals

(7) Lot 30 was the subject of Preliminary Plan of Subdivision (PPS) 4-76145, approved in 1961. However, no records remain. A new PPS will be required for the proposed development for the resubdivision of the Property into two parcels. The approval of a certificate of adequacy (ADQ) will be required at the time of PPS.

(8) The Subject Property is also the subject of Stormwater Management (SWM) Concept Plan 37756-2022-0, approved by the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) on July 11, 2023, and is valid until July 11, 2026.

BURDEN OF PROOF

(9) [T]he Court ...(of Appeals of Maryland)... has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an Application for a special exception use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981).

See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

(10) [T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d

543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981).

See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

LAW APPLICABLE

(1) The criteria for approval of a Special Exception for Distribution Warehouse in the IE Zone are the general criteria for approval of a Special Exception, §27-3604(e)(1). There are no specific criteria other than compliance with the Bulk Regulations.

(2) Section 27-3604(e)(1) of the Zoning Ordinance provides that a Special Exception may be approved if:

(A) *The proposed use and site plan are in harmony with the purpose of this Subtitle;*

The Zoning Ordinance has a hierarchy of Purposes, for the Ordinance as a whole, for Nonresidential Base Zones generally, and for the IE Zone in specific. Each of these series of purposes is addressed, following.

(3) The eighteen purposes of the Zoning Ordinance are laid out in section 27-1300. The harmony of the Subject Property with these Purposes is as follows:

(a) *Protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

The Zone allows the use, even if by a Special Exception, and the design of the use under consideration honors the obligations of the bulk restrictions without variance, then by definition the proposed is consistent with protecting and promoting the health, safety of present and future inhabitants because the use is listed as permitted (by Special Exception) in the Zoning Ordinance and is located in an area characterized by commercial and industrial uses with an adequate transportation network and public facilities.

(b) *Implement the General Plan, Area Master Plans, Sector Plans, and Functional*

Master Plans;

The General Plan, and the Master Plan have been evaluated and the site is in conformance with and advances the goals of the General Plan and Master Plan which identify the Subject Property as being in a commercial and industrial area. Neither the Technical Staff nor the Applicant addressed any functional Master Plans.

(c) Promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;

By obligating itself to the improvement of local infrastructure that will be further assessed at the time of Preliminary Plan of Subdivision, the proposal promotes these elements. The site seeks to develop in accordance with the restrictions of the IE Zone and will therefore promote the community through compliance with the requirements of the IE Zone and by adhering to the vision of the applicable Master Plan. The project will be evaluated for Adequate Public Facilities in detail at the time of Preliminary Plan of Subdivision but is served by an existing road network with proximate access to major freeways.

(d) Guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;

The character of growth of the area of the County where the Subject Property is located was established via the Sectional Map Amendment (SMA) that resulted in this property being rezoned to the IE Zone, a zone that allows for the use. Development in accordance with the zone established via the SMA supports the orderly development of the County. The Technical Staff did not address the applicable SMA.

(e) Support pedestrian-friendly, higher-intensity, mixed-use development in the appropriate locations, including support and emphasis upon a framework for multi-modal forms of mobility for pedestrians, bicyclists, transit users, and motorists;

The Subject Property is not located in a mixed-use appropriate location/zone.

(f) Support redevelopment and infill development within established areas of the County;

The Subject Property is not a redevelopment project.

(g) Provide adequate light, air, and privacy;

These standards traditionally refer to residential uses however in this context the Subject Property, though an employment site, does provide the necessary amounts of light, air, and privacy as demonstrated by the maintaining of the bulk restrictions including setbacks, net lot coverage, and landscape.

(h) Encourage economic development activities that provide desirable employment and a broad, protected tax base;

This Application encourages both a broad tax base and desirable employment opportunities.

(i) Ensure a high level of quality development in general, for the benefit of all citizens and residents, throughout the County;

Much thought has been put into the architectural look of the building in order to provide pleasing architecture. The buildings have been sited to honor environmental constraints, buffering opportunities and the parking and truck courts have been sited to reduce visual impact on nearby public roads via orientation and landscape.

(j) Promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;

There is no adjoining development. The Subject Property has been designed in an effort to reduce its impact on any new/future development. Additionally, while the Subject Property is not abutted by existing commercial uses, the architectural style proposed for the project is compatible with the nearby Ammendale Business Park.

(k) Protect the established character of residential communities and neighborhoods;

The Subject Property is not adjacent to residential uses.

(l) Protect the County from fire, flood, panic, and other dangers;

The Subject Property has been specifically designed to reduce the impact of downstream

flooding through innovative use of stormwater management opportunities to address volume control. The Subject Property proposal will provide environmental designs over and above standards required by the County Code to help improve downstream flooding conditions.

- (m) Provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;***

This Application is not residential in nature.

- (n) Prevent the overcrowding of land;***

Demonstrating that the proposed use honors the open space/green space requirements for development in this Zone proves that the site prevents the overcrowding of land.

- (o) Protect the rural character of the County in designated, appropriate locations;***

The Subject Property is not in the rural portion of the County.

- (p) Ensure the provision of open space to protect scenic beauty and the natural features of the County, as well as provide adequate recreational space;***

The open space and scenic beauty have been adequately protected and even enhanced with additional landscape.

- (q) Protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features; and***

The reduction of disturbance of stream valleys, steep slopes, lands of natural beauty, dense forest, scenic vistas and other similar features has been accommodated. Any disturbance to these elements is due to the master planned roads and/or additional water quantity management to assist in the prevention of downstream flooding.

- (r) Protect and conserve the agricultural industry and natural resources.***

The Subject Property site is neither zoned nor exists as part of the agricultural industry.

- (4)** In addition to the purposes of the broader Ordinance, there are seven general Purposes for

Nonresidential Base Zones, Section 27-4203(a), as follows:

- (1) *Provide appropriately located lands for the full range of business uses needed by the County's residents, businesses, and workers, consistent with the goals and policies of the General Plan and the applicable Area Master Plan or Sector Plan to support quality economic growth;***
- (2) *Strengthen the County's economic base, and provide employment opportunities close to home for County residents;***
- (3) *Create suitable environments for various types of businesses, and protect them from the adverse effects of incompatible development;***
- (4) *Create suitable environments for various types of mixed-use development, where business, office, retail, and residential development is designed and integrated in compatible ways;***
- (5) *Accommodate new infill development and redevelopment that is consistent with the context and the character of the nonresidential zone in which it is located;***
- (6) *Ensure nonresidential development is located and designed to protect and preserve the character of existing single-family zones and neighborhoods; and***
- (7) *Promote sustainable development that conserves energy and is energy-efficient, reduces the emission of greenhouse gases, provides physical and economic access to nutritious foods, employs sustainably-sourced and recycled materials, and meets similar sustainability goals.***

Neither the Technical Staff nor the Applicant addressed these requirements.

(5) Further required is compliance with the specific purposes of the IE Zone, Section 27-4203(e)(1):

(A) To provide for a mix of employment, research and development, and light industrial development, with an expectation of high-quality design that is set apart from the high-traffic-generating commercial zones and residential communities;

(B) To provide lands to serve light industrial uses while prohibiting more intensive forms of industrial development;

- (C) To accommodate limited residential development; and**
- (D) To ensure compatibility between industrial development and nearby residential uses.**

Neither the Technical Staff nor the Applicant addressed these requirements.

(6) The additional criteria for approval of a Special Exception pursuant to Section 27-3604(c)(1) of the Zoning Ordinance are as follows:

- (B) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;**

The proposed use is in conformance with the requirements and regulations set forth in Subtitle 27.

The proposed use is being evaluated according to the general required findings of approval for all SPEs contained in Section 27-3604(e).

The Application also demonstrates conformance with the IE Zone development regulations, and development standards contained in Part 27-6 of the Zoning Ordinance. The Applicant has provided the proposed site layout and representative architecture to supplement the SPE Site Plan. The Applicant proposes an increase in the maximum lot coverage and a decrease in green area. Prince George's County Council Bill CB-40-2023 added Footnote 6 to Section 27-4203(e)(2) of the Zoning Ordinance, that reads as follows:

When approving a special exception or detailed site plan, the decision-making body or official may increase the maximum lot coverage to not more than 80% and may reduce the minimum green area to not less than 20%, upon a showing by the applicant that the proposed maximum lot coverage and minimum green area are reasonably necessary for the proposed use, are compatible with adjacent properties and the neighborhood, and that the increase in the maximum lot coverage will be offset by enhanced SWM, flood control, use of solar or geothermal power, off-site tree mitigation, or similar environmental benefits. No variance from the requirements of this Subsection shall be permitted.

The proposed Special Exception Site Plan shows lot coverage on Parcel 1 at 72.5 percent, and Parcel 2 at 70.7 percent. Green area is shown on Parcel 1 at 27.5 percent, and Parcel 2 at 29.3 percent. This expanded coverage and reduction in green area is necessary for the development of two distribution Warehouses on the Property. Distribution Warehouses will be a compatible use given the

predominantly industrial and commercial character of the neighborhood. The increase in lot coverage will be offset by enhanced SWM and flood control through micro-bioretenment facilities, bioswales, and submerged gravel wetlands. The approved SWM Concept Plan (37756-2022-00) and approval letter demonstrate control for both managing the stormwater generated on-site and for managing the stormwater entering the site via the existing stream north of the site, to alleviate existing flooding conditions along Muirkirk Road.

The SWM Concept Plan was approved by DPIE on July 11, 2023, and expires on July 11, 2026. However, the layout of the SWM facilities shown on the Concept Plan is inconsistent with the layout shown on the Special Exception Site Plan and the Type 2 Tree Conservation Plan (TCP2).

A condition has been included herein that prior to certification of the Special Exception, a revised SWM Concept Plan approval from DPIE that is consistent with the layout of the Special Exception Site Plan and the TCP2 must be submitted.

- (C) The proposed use shall be consistent with the General Plan and shall conform with the relevant goals, policies, and strategies of the applicable Area Master Plan, Sector Plan, or Functional Master Plan for the subject property and its surrounding area.**

The 2014 Plan Prince George's 2035 Approved General Plan (Plan 2035) classifies this Application as located within the Established Communities Growth Policy Area. These areas are most appropriate for context-sensitive infill and low- to medium-density development. The Application is consistent with the goals, policies, and strategies of Plan 2035 because the proposed use contributes to the ability to develop a business services industry (warehousing and distribution) cluster.

The 2010 Approved Master Plan and Sectional Map Amendment for Subregion 1 (Planning Areas 60, 61, 62, and 64) (Master Plan) recommends industrial land use on the Subject Property. The proposed use is consistent with the recommended land use.

Construction of Distribution Warehouses is consistent with Plan 2035 and conforms to the relevant goals, policies, and strategies of the Master Plan for the Subject Property and its surrounding area. The Special Exception Application, as requested, conforms to this finding.

- (D) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;**

The proposed use will add quality development and employment opportunities to the surrounding community. The Lighting Plan incorporates full cut-off lighting to minimize spillover lighting. Landscaping is used to buffer the site from surrounding views and uses. Frontage improvements, including sidewalks and bike lanes, will ensure safe modes of transportation. On-site parking and loading adequately meets the needs of employees and visitors. SWM best practices are incorporated into the site, to address runoff and mitigate flooding from upstream sources. The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area.

(E) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

The general neighborhood is industrial and commercial in character. Furthermore, the adjacent properties are all either in an industrial or commercial zone, or developed with an industrial or commercial use. The proposed development is also of an industrial character, and therefore, is in keeping with the existing and likely future land use of the surrounding area.

As previously noted, the properties to the west are single-family residential and vacant land in the IE Zone. These properties to the west will be buffered by a 40-wide landscape buffer.

Given the mostly industrial and commercial character of the neighborhood, the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.

(F) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and

Type 2 Tree Conservation Plan TCP2-032-2023 was submitted with this Special Exception Application. The TCP2 shows 6.78 acres of woodlands in the net tract area and 3.54 acres of woodlands in the floodplain, for a total of 10.32 acres of total woodlands on-site. This Application and TCP2 propose to clear 6.53 acres of woodlands in the net tract area woodlands in the floodplain. The current Woodland Conservation worksheet, as shown on the TCP2, is incorrectly calculating the Woodland Conservation requirement. Per Subtitle 25-121(C), Table 1, of the County Code, the Woodland Conservation threshold and afforestation threshold are both 15 percent in the I-E Zone. The Applicant's worksheet uses a 20 percent Woodland Conservation threshold and 15 percent afforestation threshold, which is overestimating the Woodland Conservation requirement for this site by 4.98 acres.

Based on the proposed clearing and the thresholds referenced above, the total Woodland Conservation requirement should be 6.95 acres. The Applicant proposes to meet this requirement with 0.25 acre of on-site woodland preservation, 0.95 acre of afforestation/reforestation, and shows 10.73 acres in off-site mitigation credits. However, using the above-referenced thresholds, the off-site mitigation should be corrected to 5.75 acres and will be required to be secured prior to issuance of the first permit. Revisions are required to the Woodland Conservation worksheet to incorporate this data and the Applicant shall make every effort to provide additional woodland conservation requirements on-site.

Section 25-122(c)(1) of the County Code prioritizes methods to meet Woodland Conservation requirements. The Applicant submitted a Statement of Justification (SOJ) on May 31, 2023, requesting approval of off-site Woodland Conservation, as reflected on the TCP2 worksheet. The Applicant states that on-site preservation cannot be fully utilized because most of the priority woodland on-site for preservation is located within and adjacent to the 100-year floodplain. The Applicant is providing a total of 3.06 acres of woodland preservation in this area, of which only 0.25 acre can be credited towards meeting the Woodland Conservation requirement. The Applicant further states that on-site afforestation/reforestation is being provided at two locations; however, the Plan has been revised to show a total of three locations of afforestation/reforestation for a total amount of 0.95 acre. Staff noted that there are additional opportunities for on-site afforestation/reforestation. These include further expansion of Reforestation Area B, and adding reforestation to the southern edge of Preservation Area C. These areas must be utilized first to meet the Woodland Conservation requirement before other options are used.

Per Section 25-122(c)(1)(D), only specimen, champion, and historic trees in good condition are prioritized for preservation over off-site mitigation. There are only 13 specimen trees on-site that meet the minimum good condition requirement for preservation, 9 of which are being requested for removal, as part of the subject Application. Staff support the request for removal of these trees. The remaining four trees to be saved are within the wooded floodplain being preserved and cannot be credited.

The next priority is for allowing for credit of natural regeneration on-site; however, given the extensive invasive species on-site, Staff does not recommend the use of on-site natural regeneration to meet credit on-site. Therefore, Staff agree that once the on-site mitigation options detailed above are exhausted, that off-site mitigation options are then appropriate for the site.

Once the above changes for on-site credit and afforestation/reforestation are shown on the Plan, the Tree Conservation plan worksheet and any associated tables must be revised. Further technical revisions to the TCP2 are required and are included in the conditions.

(G) The proposed Site Plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirements of Subtitle 24: Subdivision Regulations.

Regulated environmental features (REF) are defined as any regulated streams, nontidal wetlands, and their associated buffers inclusive of any Primary Management Area (PMA). An approved Natural Resources Inventory Plan (NRI-191-2022-01) was submitted with the Application, which shows the existing conditions of the property consistent with the Special Exception Application and TCP2. A total of 28 specimen trees have been identified on-site, or within the immediate vicinity of the site's boundary. The site was previously graded as part of a Sand and Gravel mining operation, which has subsequently regenerated with woodlands and wetlands adjoining an existing regulated stream. There are existing houses located on the western portion of the Property.

The site contains REFs that include wetlands, streams, and their associated buffers. County regulated 100-year floodplain is also mapped on-site on either side of the stream. The PMA, which includes REFs, the County regulated 100-year floodplain, and adjoining steep slopes 15 percent or greater, is mapped on-site. The Forest Stand Delineation indicates that there are three separate forest stands on-site, which have high ratings for preservation and high to medium ratings for restoration. The site has a total of 10.32 acres of gross tract woodland, as shown on the NRI, of which 3.54 acres are in the floodplain, and 6.78 acres are in the net tract area.

The REFs on this property, as delineated in the approved NRI plan, include a stream, wetlands, and their associated buffers. The PMA inclusive of these REFs, existing floodplain, and adjacent steep slopes is also mapped centrally on-site, dividing the property into an eastern and western portion on either side of the existing stream. The applicant has submitted a revised Letter of Justification (LOJ) for two impacts (Impact 1 and Impact 2) to the REFs and PMA.

Impact 1 proposes a SWM system to control both on-site and upstream stormwater via on-site gravel wetlands proposed within the floodplain. This proposed impact is supported as proposed, by Staff, as it is a policy of the Master Plan. However, Staff encourage the Applicant to look at ways of reducing the overall size of the proposed gravel wetlands by using alternatives to storing stormwater for the proposed development, such as underground storage beneath the proposed parking lots or buildings on-site.

Impact 2 is to remove an existing, isolated wetland and associated buffer totaling 4,492 square feet that is located outside of the PMA, for the siting of a one-story warehouse, with associated parking, and circulation on Parcel 1. The Applicant has not adequately demonstrated

how impacting this wetland is unavoidable, or how impacts cannot be minimized. The only argument is to say that it is necessary to fit the proposed building footprint, associated circulation, and parking lot within this part of the site. Therefore, Staff cannot recommend approval of this impact, as such impacts to REFs would not normally be granted, unless sufficient evidence has been presented that no reasonable alternatives exist to minimize impacts to the isolated wetland and its respective buffer.

Staff find that the REFs have been preserved and/or restored in a natural state to the fullest extent possible, in accordance with the requirements of Sections 27-6808 and 27-4300 of the Zoning Ordinance, for Impact 1, but recommend disapproval of Impact 2.

Development Standards

(7) Section 27-6 of the Zoning Ordinance requires the following applicable findings:

a. Section 27-6200 Roadway Access, Mobility, and Circulation

The Special Exception Site Plan demonstrates sufficient roadway access, mobility, and circulation. The site is accessed via a 44-foot-wide entrance from Old Central Avenue. Sidewalk and bike circulation is addressed with the inclusion of a 5-foot sidewalk and bicycle racks on-site.

b. Section 27-6300 Off-Site Parking and Loading

In accordance with the Parking and Loading Regulations contained in Section 27-6300 of the Zoning Ordinance, a Distribution Warehouse requires 1.0 spaces per 1,000 square feet of gross floor area (GFA). The development on Parcel 1 has 122,200 square feet of GFA, and thus, would require 123 parking spaces. The Applicant proposes 123 parking spaces. As such, a total of five handicap spaces are also required and six are provided. The development on Parcel 2 has 147,000 square feet of GFA, and thus, would require 147 parking spaces. The Applicant is providing 213 parking spaces. The Applicant also addresses the over-parking in the SOJ, stating that additional parking is necessary to accommodate both employee vehicles and delivery vans. Staff agree with this assessment. The handicap requirement is seven spaces, however, the Special Exception only shows four. A Condition has been included herein to address this shortfall.

Loading spaces for warehouse uses are calculated as one space up to 10,000 square feet, plus an additional space for each additional 40,000 square feet or major fraction thereof. Parcel 1 would require four loading spaces. A total of 32 spaces are provided for Parcel 1. Parcel 2 would require five loading spaces. A total of 38 spaces are provided. All loading spaces meet the minimum

required 12-foot by 45-foot dimension.

Regulated environmental features (REF) are defined as any regulated streams, nontidal wetlands, and their associated buffers inclusive of any Primary Management Area (PMA). An approved inclusive of any Primary Management Area (PMA). An approved Natural Resources Inventory Plan (NRI-191-2022-01) was submitted with the Application, which shows the existing conditions of the property consistent with the Special Exception Application and TCP 2. A total of 28 specimen trees have been identified on-site, or within the immediate vicinity of the Subject Property's boundary. The Subject Property was previously graded as part of a Sand and Gravel Mining operation, which has subsequently regenerated with woodlands and wetlands adjoining an existing regulated stream. There are existing houses located on the western portion of the property.

The site contains REFs that include wetlands, streams, and their associated buffers. County regulated 100-year floodplain is also mapped on-site on either side of the stream. The PMA, which includes REFs, the County regulated 100-year floodplain, and adjoining steep slopes 15 percent or greater, is mapped on-site. The Forest Stand Delineation indicates that there are three separate forest stands on-site, which have high ratings for preservation and high to medium ratings for restoration. The site has a total of 10.32 acres of gross tract woodland, as shown on the NRI, of which 3.54 acres are in the floodplain, and 6.78 acres are in the net tract area.

The REFs on this Property, as delineated in the approved NRI plan, include a stream, wetlands, and their associated buffers. The PMA inclusive of these REFs, existing floodplain, and adjacent steep slopes is also mapped centrally on-site, dividing the property into an eastern and western portion on either side of the existing stream. The Applicant has submitted a revised Letter of Justification (LOJ) for two impacts (Impact 1 and Impact 2) to the REFs and PMA. Impact 1 proposes a SWM system to control both on-site and upstream stormwater via on-site gravel wetlands proposed within the floodplain. This proposed impact is supported as proposed, by staff, as it is a policy of the master plan. However, staff encourage the Applicant to look at ways of reducing the overall size of the proposed gravel wetlands by using alternatives to storing stormwater for the proposed development, such as underground storage beneath the proposed parking lots or buildings on-site. Impact 2 is to remove an existing, isolated wetland and associated buffer totaling 4,492 square feet that is located outside of the PMA, for the siting of a one-story warehouse, with associated parking, and circulation on Parcel 1.

c. Section 27-6400 Open Space Set-Asides

The open space required for industrial uses in a non residential base zone is five percent. Open space is being satisfied by existing woodland that is not being disturbed.

d. Section 27-6500 Landscaping

This Special Exception is in conformance with the applicable standards of the Landscape Manual. Section 4.2, Requirements for Landscape Strips Along Streets, and Section 4.3, Parking Lot Requirements, and Section 4.7, Buffering Incompatible Uses, are shown on the Landscape Plan.

e. Section 27-6600 Fences and Walls

No fences or walls are associated with this Special Exception.

f. Section 27-6700 Exterior Lighting

The Special Exception Application included a photometric plan demonstrating conformance with this standard. Light-level measurements at the property line are shown to be negligible. All exterior luminaries, including security lights, are full cut-off fixtures that are directed downward.

g. Section 27-6800 Environmental Protection and Noise Controls

The Subject Property will be governed by a SWM Concept Plan, if approved. This Plan, when implemented, will result in a decrease in pollutants and run-off from storm and non-storm events currently entering the Master Plan area's waterways and wetlands. An approved SWM Concept Plan (37756-2022-00) was submitted with the Special Exception, which shows the use of 12 micro-bioretenion facilities, 3 bio swales, and 3 submerged gravel wetlands. The Concept Plan was approved by DPIE on July 11, 2023, and expires on July 11, 2026. The layout of the SWM facilities shown on the Concept Plan is inconsistent with the layout shown on the Special Exception Site Plan and the TCP2. The Concept Plan covers a slightly larger area than the other Plans, with additional parking located in the northeast portion of the Property. The proposed maintenance accessway and associated grading to access each of the gravel wetland facilities are currently not shown on the Plan, even though the update to the layout was requested to be shown at the time of the Subdivision and Development Review Committee meeting. Prior to certification of the Special Exception, a revised approved SWM Concept Plan from DPIE that is consistent with the layout of the Special Exception Site Plan and the TCP 2 must be submitted.

Noise controls and adequacy will be evaluated at the time of PPS, but it is anticipated the level of noise generated from the proposed use will be minimal.

h. Section 27-61100 Industrial Form and Design Standards

The Special Exception is in conformance with the applicable standards in Section 27-61100 of the Zoning Ordinance, for Distribution Warehouses, regarding the building entrance, building façade materials, and the location of loading areas and off-street parking. However, the building façade articulation and roof line variation, as shown on the architectural elevations, do not meet the standards. A condition has been included herein to address the deficiency.

i. Section 27-61200 Neighborhood Compatibility Standards

The Special Exception is in conformance with the applicable standards in Section 27-61200 of the Zoning Ordinance, including building height and setbacks, open space, and locations/design of other site features. The Site Plan and architectural plans demonstrate that the proposed distribution warehouses meet the various dimensional standards for the IE Zone.

j. Section 27-61500 Signage

The Applicant proposes two monument signs. One at each entrance to the development along Muirkirk Road. The proposed monument signs meet the requirements of this section.

2018 Prince George's County Landscape Manual Requirements

(8) The proposed development is subject to the requirements of the Landscape Manual. Specifically, conformance is required for Section 4.2, Requirements for Landscape Strips Along Streets; Section 4.3, Interior Planting for Parking; Section 4.7, Buffering Incompatible Uses, and Section 4.9, Sustainable Landscaping Requirements. Staff find that the proposed Landscape Plan meets these requirements.

Prince George's County Tree Canopy Coverage Ordinance

(9) The Subject Property is subject to the requirements of the Prince George's County Tree Canopy Coverage Ordinance and must provide a minimum of 10 percent of the limits of disturbance to be covered in Tree Canopy, due to the site being redeveloped and zoned IE. A Tree Canopy Coverage (TCC) schedule was provided, demonstrating the required amount of TCC is 104,500 square feet. The provided TCC is 134,165 square feet, which exceeds the minimum requirement.

Prince George's County Woodland and Wildlife Habitat Conservation Ordinance

(10) Section 27-6803 of the Zoning Ordinance requires that the Subject Property be subject to the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) because the Property is greater than 40,000 square feet and is not associated with a

previously approved Tree Conservation Plan. TCP2-032-2023 was submitted with the Special Exception Application.

Variance

(11) The Applicant has requested a variance for the removal of 21 specimen trees. The LOJ requests the removal of 21 specimen trees identified as Specimen Trees 1–3, 7–12, and 17 through 28. The condition of trees proposed for removal ranges from poor to good. The TCP2 shows the location of the trees proposed for removal. These specimen trees are proposed for removal for the development of the site, roadways, utilities, SWM, and associated infrastructure.

Evaluation

Staff support the removal of 21 specimen trees requested by the Applicant, based on the findings below. Section 25-119(d) of the County Code contains six required findings [text in bold] to be made before a variance from the WCO can be granted. An evaluation of this variance request, with respect to the required findings, is provided below:

A. Special conditions peculiar to the property have caused the unwarranted hardship.

In relation to other properties in the area, special conditions peculiar to the Subject Property would cause an unwarranted hardship if the Applicant were required to retain the 21 specimen trees located on-site. Those “special conditions” relate to the specimen trees themselves, such as their size, condition, species, and on-site location.

The Applicant requests the removal of the 21 specimen trees for the proposed widening of roadways, building footprints, SWM, parking, circulation, and grading. The species proposed for removal are various oak species, American elm, tulip poplar, American basswood, red maple, eastern red cedar, and silver maple. The condition ratings of these trees range from poor to good, with most classified in good condition. The trees have poor to good construction tolerances; however, all species of the included specimen trees have limiting factors for their construction tolerance, specifically if significant impacts are proposed to the critical root zone. These trees are located throughout the site.

Specimen Trees 1–3, 7–12, and 17–28 are somewhat dispersed yet integral to a developable portion of the site, the widening of Muirkirk Road, and for construction of SWM facilities to detain, and safely convey stormwater off-site. Retention of these trees and protection of their respective

critical root zones would have a considerable impact on the proposed development by creating challenges for building siting, the required expansion of Muirkirk Road, and adequate circulation, and infrastructure through portions of the site.

B. Enforcement of these rules will deprive the Applicant of rights commonly enjoyed by others in similar areas.

Enforcement of the requirement that all specimen trees be preserved, along with an appropriate percentage of their critical root zone, would deprive the Applicant of rights commonly enjoyed by others in similar areas. All variance Applications for the removal of specimen trees are evaluated in accordance with the requirements of Subtitle 25 and the Environmental Technical Manual for site-specific conditions. Specimen trees grow to such a large size because they have been left undisturbed on a site for sufficient time to grow; however, the species, size, construction tolerance, and location on a site are all somewhat unique for each site.

Based on the location and species of the specimen trees proposed for removal, retaining the trees, and avoiding disturbance to the critical root zone of Specimen Trees 1–3, 7–12, and 17–28 would have a considerable impact on the development potential of the property. If similar trees were encountered on other sites, they would be evaluated under the same criteria. These 21 specimen trees requested for removal are located within the developable parts of the site.

C. Granting the variance will not confer on the Applicant a special privilege that would be denied to other Applicants.

Not granting the variance to remove Specimen Trees 1–3, 7–12, and 17–28 would prevent the Subject Property from being developed in a functional and efficient manner. This is not a special privilege that would be denied to other Applicants. If other similar developments featured REFs and specimen trees in similar conditions and locations, they would be given the same considerations during the review of the required variance Application. Other Applicants with similar circumstances would receive the same recommendation.

D. The request is not based on conditions or circumstances, which are the result of actions by the Applicant.

The existing site conditions or circumstances, including the location of the specimen trees, are not the result of actions by the Applicant. The location of the trees and other natural features throughout the property is based on natural, or intentional circumstances that long predate the Applicant's interest in developing this site. In addition, to date, the Applicant has not undertaken any

construction on the site that would cause the need for the removal of the specimen trees with the proposed development.

E. The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

There are no existing conditions relating to land or building uses on the site, or on neighboring properties, which have any impact on the location or size of the specimen trees. The trees have grown to specimen tree size based on natural conditions and have not been impacted by any neighboring land or building uses.

F. Granting of the variance will not adversely affect water quality.

Requirements regarding the SWM Concept will be reviewed and approved by DPIE. Erosion and sediment control requirements are reviewed and approved by the Prince George's Soil Conservation District. Both SWM, sediment, and erosion control requirements are to be met in conformance with state and local laws to ensure that the quality of water leaving the site meets the state's standards. State standards are set to ensure that no degradation occurs and granting this variance will require adherence to these standards.

Conclusion on the Variance Request

The required findings of Section 25-119(d) were adequately addressed for the removal of Specimen Trees 1–3, 7–12, and 17–28.

DISPOSITION

Based on the testimony, Applicant's Statement of Justification, the Applicant's Planning Analysis, the Technical Staff Report, associated referrals, and materials in the record, the Applicant has demonstrated conformance with the required Special Exception findings, as set forth in Section 27-3604 and Section 27-5402(u) of the Prince George's County Zoning Ordinance.

Special Exception 2022-005, requested variance to Section 25-119(d), and Type 2 Tree Conservation Plan TCP 032-2023, for Muirkirk Enterprises, LLC are APPROVED, subject to the following Conditions:

1. Prior to certification of the Special Exception Site Plan, the following revisions shall be made, or information shall be provided:

- a. Provide limit of disturbance on the Site Plan and Landscape Plan and add to the legend.
 - b. For both Distribution Warehouse buildings, show the square footage as gross floor area and provide the building height in feet.
 - c. Show the width of the handicapped parking space access aisles on the plan. Label the handicapped parking spaces with “HC” or the wheelchair icon and indicate which spaces are “Van” accessible.
 - d. Show the correct amount of handicapped parking spaces for each parcel.
 - e. Make the building dimensions on the plan darker.
 - f. Clearly identify the top and bottom elevations of any walls/retaining walls on the site plan and landscape plan.
 - g. Include the recording references for existing lots and parcels in the general notes.
 - h. Label right-of-way dedication along Muirkirk Road.
 - i. Show a bicycle lane and sidewalk along the Subject Property’s frontage of Muirkirk Road and Konterra Drive.
 - j. Revise the elevations to show and label all building entrance doors.
 - k. Revise the layout to show no proposed access along Konterra Drive unless the Applicant can demonstrate compliance with Section 27-6206 of the Prince George’s County Zoning Ordinance, at the time of Preliminary Plan of Subdivision.
2. Prior to the certification of the Type 2 Tree Conservation Plan (TCP 2), the Plan shall meet all the requirements of Subtitle 25, Division 2 of the Prince George’s County Code, and the Environmental Technical Manual, and shall be revised as follows:
 - a. Correct errors in the TCP 2 worksheet to accurately reflect the woodland conservation requirement and how the requirement is being made.
 - b. Add additional afforestation/reforestation on-site through expansion of Reforestation Area B, and by adding reforestation to the southern edge of Preservation Area C to

the fullest extent practicable. Adjust all planting schedules, as necessary.

- c. The proposed maintenance accessway and associated grading to access each of the gravel wetland facilities must be shown on the TCP 2.
 - d. Provide notes pertaining to invasive species, as well as an invasive species management plan.
3. Prior to the certification of the Type 2 Tree Conservation Plan (TCP 2) for the Subject Property, documents for the required Woodland Conservation Easements shall be prepared and submitted to the Environmental Planning Section for review by the Office of Law, and submission to the Office of Land Records for recordation. The following note shall be added to the standard TCP 2 notes on the Plan, as follows:

“Woodlands preserved, planted, or regenerated in fulfillment of woodland conservation requirements on-site have been placed in a woodland and wildlife habitat conservation easement recorded in the Prince George’s County Land Records at Liber ____ Folio _____. Revisions to this TCP 2 may require a revision to the recorded easement.”
4. Prior to the issuance of any permits that impact wetlands, wetland buffers, streams, or waters of the United States, the Applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions were complied with, and associated mitigation plans.
5. Prior to certification of the Special Exception and Type 2 Tree Conservation Plan (TCP2), a revised approved Concept Grading, Erosion and Sediment Control Plan from Prince George’s County Soil Conservation District that is consistent with the layout of the Special Exception Site Plan and the TCP2 must be submitted.
6. Prior to certification of the Special Exception and Type 2 Tree Conservation Plan (TCP2), a revised approved Stormwater Management Concept Plan from the Prince George’s County Department of Permitting, Inspections and Enforcement that is consistent with the layout of the Special Exception Site Plan and the TCP2 must be submitted.