

Christopher L. Hatcher
Attorney
chris@clhatcher.com

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Ms. Donna Brown
Clerk of the Council
Office of the Clerk of the Council
County Administration Building
14741 Governor Oden Bowie Drive, Room 2198
Upper Marlboro, MD 20772

Re: Supplement to Appeal from the Planning Board’s Recommendation of CSP-20007

On behalf of our client MRCBO LLC (the “**Applicant**”), CLHatcher LLC and Lerch, Early and Brewer, Chtd., submit this Supplement to Petition for Appeal (the “**Appeal Supplement**”) in support of Applicant’s Petition for Appeal from the Planning Board’s disapproval of CSP-20007 pursuant to PGCPB Resolution No. 2021-97 (the “**Resolution**”), which was submitted into the record within the required 30-day statutory appeal period on August 16, 2021. This Appeal Supplement also outlines the ways in which Applicant’s requested rezoning satisfies the District Council’s criteria for approval of an amendment to the Transit District Overlay Zone.

I. Background

The Applicant applied for approval of a Conceptual Site Plan (“**CSP**”) for the Clay Property, which consists of approximately 12.87 acres located at the termini of both Dean Drive and Calverton Drive within the municipal boundaries of the City of Hyattsville, MD (the “**Property**”). The Property is currently zoned R-80/T-D-O and is located in the Neighborhood Edge Character Area of the 2016 *Prince George’s Plaza Transit District Development Plan TDDP* (the “**TDDP**”).¹ The Property is also located within the Prince George’s Plaza Downtown and

¹ The TDDP creates two distinct, but interconnected Character Areas – the Downtown Core and Neighborhood Edge – that capitalize on the Transit District’s existing transit network, recreational amenities, and retail appeal. The Property is located in the Neighborhood Edge Character Area, which is described as a predominantly residential area that “transitions the intensity and vibrancy of the Downtown Core to surrounding established residential neighborhoods.” The TDDP calls for a mixture of housing types in the Neighborhood Edge – including townhouses – to broaden the Transit District’s appeal to current and future residents.

Prince George's Plaza Regional Transit District, as designated by the *Plan Prince George's 2035 Approved General Plan* (the "**General Plan**"). CSP-20007 proposes to rezone the Property's underlying base zone from R-80 to R-20 in order to permit a broader range of housing types and residential density that aligns with the purposes and recommendations of the TDDP, as well as the County's General Plan.

On July 15, 2021, the Prince George's County Planning Board (the "**Planning Board**") considered evidence regarding a request to change the underlying zone and for approval of CSP-20007 at a public hearing. By resolution dated July 22, 2021, the Planning Board recommended disapproval of the request to rezone the Property and disapproved CSP-20007, while also recommending several conditions of approval should the District Council choose to approve the rezoning and the Conceptual Site Plan. The Applicant appealed the Planning Board's recommendation of denial of the rezoning and decision to disapprove CSP-20007.

II. Legal Overview

A. District Council Standard of Review

When reviewing the Planning Board's action on the Conceptual Site Plan, the District Council sits in an appellate capacity. *County Council of Prince George's County v. Zimmer Development Co.*, 444 Md. 490, 572 (2015). Pursuant to Sec. 27-280(a) of the Prince George's County Zoning Ordinance (the "**Zoning Ordinance**") and Section 25-212 of the Land Use Article of the Maryland Code (the "**Land Use Article**"), the Planning Board's decision on a CSP may be appealed to the District Council by the Applicant. The District Council cannot overturn the Planning Board's findings and conclusions merely because the District Council disagrees with the Planning Board. Rather, the Planning Board's findings of fact and application of law to those findings of fact may only be overturned where not supported by substantial evidence in the record. *Id.* at 573.

Regarding the Planning Board's conclusions of law, the District Council owes less deference to the Planning Board and may reverse a legal conclusion of the Planning Board where "based on an erroneous interpretation or application of zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute." *Maryland-Nat. Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 84 (2009).

Moreover, where a provision of the Land Use Article or the Prince George's County Code (the "**County Code**") empowers the District Council, and not the Planning Board, to make a final decision on a matter, the District Council's authority is "original" rather than "appellate." *Zimmer Development Co.*, 444 Md. at 569. In this situation, the District Council may draw its own conclusions based on the evidence in the record. Pursuant to Section 27-548.09.01 of the Zoning Ordinance, the District Council, not the Planning Board, has final decision-making authority concerning specific amendments to Transit District Development requirements – including a change of a property's underlying zone.²

B. Criteria for Amendment of Approved Transit District Overlay Zone

In order to approve an amendment of an approved T-D-O Zone, the District Council must find that "the proposed development conforms with the purposes and recommendations for the Transit Development District, as stated in the TDDP, and meets applicable site plan requirements."³

III. CSP-20007 Satisfies the Criteria for District Council Amendment of the TDDP

As noted above, Sec. 27-548.09.01(b)(5) requires the following two findings for the District Council to approve an amendment to a Transit District Overlay Zone: (1) conformance with the purposes and recommendations of the TDDP and (2) satisfaction of applicable site plan requirements. This section will first evaluate how CSP-20007 conforms with both the purposes and recommendations of the TDDP, and then present evidence that it meets applicable site plan requirements for a Transit District Site Plan.

A. Rezoning Clay Property from R-80 to R-20 Conforms with the Purposes & Recommendations for the Prince George's Plaza TDDP

The Applicant's request to rezone the Property from R-80 to R-20 conforms with the purposes and recommendations of the TDDP. Specifically, the broader range of housing types and

² See Sec. 27-548.09.01(b)(1), "A property owner may ask the District Council, but not the Planning Board, to change the boundaries of the T-D-O Zone, a property's underlying zone, the list of allowed uses building height restrictions, or parking standards in the Transit District Development Plan."

³ See Sec. 27-548.09.01.

additional density permitted in the requested R-20 Zone are appropriate for a property located within a designated Downtown and Regional Transit District, including one located within the Neighborhood Edge Character Area. An analysis outlining the purposes and recommendations of the TDDP as it relates to the Property and the Applicant's request is set forth below.

i. Purposes

The general purpose of the TDDP is to “implement the General Plan’s vision for a walkable, transit-oriented community within the Prince George’s Plaza Transit District, using a market driven approach.⁴ Specifically, the TDDP provides a statement of purpose that explicitly enumerates the purpose of the TDDP, as well as its general regulatory framework and functionality:

The purpose of the TDDP is to implement the Plan 2035 vision for a walkable, transit-oriented community within the Prince George’s Plaza Transit District using a market-driven approach. The TDDP also builds upon and updates the foundation of past planning initiatives, including the 1994 Planning Area 68 Approved Master Plan and the 1998 Prince George’s Plaza Approved Transit District Development Plan. Finally, the plan establishes a regulatory foundation for orderly and predictable development using design standards and guidelines. These standards and guidelines will help to produce a public realm and overall built environment that transforms the Transit District into the new, regionally competitive Regional Transit District called for in Plan 2035 and that helps to put Prince George’s County on the regional—even national—transit-oriented development map.⁵

In other words, the TDDP’s primary purpose is to implement the *Plan Prince George’s 2035 General Plan*. Notably, this statement of purpose directly follows the TDDP’s introduction of the General Plan’s primary goals.⁶ In addition, the General Plan’s Growth Policy Map indicates that the foundational purpose of the TDDP is implementation of the General Plan’s initial Land Use Policy which is to, “Direct a majority of projected new residential and employment growth to the Regional Transit Districts...”⁷ The General Plan describes Regional Transit Districts as

Moderate- to high-density and intensity regional-serving centers. Destinations for regional workers and residents that contain a mix of office, retail, entertainment, public and quasi-

⁴ See TDDP, page 6, “Purpose of the Transit District Development Plan.”

⁵ *Id.*

⁶ *Id.* at pages 2-3, “Introduction.” The General Plan “addresses existing, changing, and new priorities such as transit-oriented development, sustainability, neighborhood reinvestment, and agricultural protection. The General Plan designates Prince George’s Plaza as one of eight Regional Transit Districts and one of three Downtowns in the County.

⁷ See General Plan, page 110.

public, flex, and medical uses; the balance of uses will vary depending on the center's predominant character and function. Walkable, bikeable, and well-connected to a regional transportation network via a range of transit options. Density and intensity are often noticeably greater within a quarter mile of Metro and light rail stations.

New Housing Mix:

Predominantly high-rise and mid-rise apartments and condos, townhouses

Average Net Housing Density for New Development:

40+ Dwelling Units/Acre⁸

The lower end of the suggested density range for Regional Transit Districts, “moderate density,” is not explicitly defined in the General Plan. However, for context, the Maryland-National Capital Park & Planning Commission’s (“M-NCPPC”) “Guide to Zoning Categories” states that the R-18 Zone, “provides for multiple family (apartment) development of moderate density.” Since the R-18 Zone allows for multifamily dwelling densities between 12 and 20 units per acre, the lower end of the density anticipated for a Regional Transit District can reasonably be approximated to be 12-20 dwelling units per acre.

Going beyond the significant intensity and density recommended for Regional Transit Districts, the Introduction to the TDDP provides even stronger considerations supporting concentrated development within the TDDP area:

The Plan 2035 Strategic Investment Map identifies four critical areas where the majority of County, state, and federal money and resources should be focused to realize meaningful change in the County: three Downtowns, the Innovation Corridor, Neighborhood Revitalization Areas, and Priority Preservation Areas. Plan 2035 designates three Regional Transit Districts—Prince George’s Plaza Metro, New Carrollton Metro, and Largo Town Center Metro—as new Downtowns for the County. Plan 2035 recommends targeted public investments and incentives in the Downtowns to catalyze their growth and development as regional destinations and major economic drivers for Prince George’s County.⁹

⁸ See General Plan, page 108.

⁹ See TDDP, page 5.

In addition to meeting the general purposes outlined for the TDDP in the General Plan, the requested rezoning also aligns with its density-related purposes. The Property was annexed into the Transit District through the 2016 *Transit District Overlay Zoning Map Amendment* (the “TDOZMA”) and the TDOZMA’s discussion of Growth Policy, which prefaces the list of annexed properties, includes the following statement:

*The Prince George’s Plaza Transit District Development Plan (TDDP) and Transit District Overlay Zoning Map Amendment (TDOZMA) conforms to the spirit, vision, and goals of Plan 2035. The TDDP contains goals, policies, and strategies to implement these growth policies and amends the boundaries of Plan 2035’s Prince George’s Plaza Regional Transit District to incorporate the Transit District in its entirety.*¹⁰

The Property’s inclusion in the TDOZMA is evidence of its expected role in advancing the purpose of the General Plan through the TDDP and it directly contradicts any assertion that the development of the Property should be limited to low-density residential uses. In other words, any such limitation on the Property’s future development would be contrary to the General Plan’s explicit vision and goals for moderate to high-density development in Regional Transit Districts.

ii. Recommendations

The TDDP’s recommendations are largely established by the hierarchy of Goals, Policies and Strategies provided in the Plan’s required Elements and the following analysis evaluates the requested rezoning in light of them.

Goals, Policies, and Strategies: Land Use Element

Goals

- A mix of land uses that complement each other, help to create and support an attractive and vibrant public realm, and are within convenient walking distance of each other and public transit.
- Sufficient capacity to help meet the County’s Growth Management Goals of 50 percent of new dwelling units and new jobs within Regional Transit Districts.
- The accommodation of the anticipated amount and mix of development through a significant redevelopment of the Transit District.¹¹

¹⁰ *Id.* at page 68.

¹¹ *Id.* at page 70.

These land use goals specifically refer to the General Plan’s goal of directing 50 percent of the County’s residential growth through 2035 into the County’s three Regional Transit Districts. Moreover, implementation of this growth target is characterized as a “significant redevelopment of the Transit District.” These future land use goals directly conflict with the continuation of the low-density status quo of a property in the Prince George’s Plaza Transit District. The following specific land use Policy is also intended to advance the growth target goal:

POLICY LU2: Create sufficient residential capacity to help meet the County’s Growth Management Goal of 50 percent of new dwelling units within Regional Transit Districts.¹²

The Applicant’s requested rezoning creates additional housing capacity within the Transit District. The Property’s current R-80 zoning limits residential capacity to single-family detached dwellings at a density of 4.58 dwelling units per acre. The proposed R-20 Zone diversifies the potential housing mix on the Property by permitting single-family semidetached, triple-attached, and townhouses. Each of these additional housing types in the R-20 Zone is permitted at a density greater than that currently allowed by the R-80 Zone. Accordingly, the rezoning will advance the County’s Growth Management Goals by permitting additional residential density on the Property. Relevant Strategies established to implement Policy LU2 are:

Strategy LU2.1: Preserve the Neighborhood Edge as an exclusively residential area.

Strategy LU2.2: Encourage high-rise and mid-rise apartments, condos, and townhouses, consistent with the Regional Transit District Growth Management Goal.

A rezoning of the Property from R-80 to R-20 would align with each of these Land Use Strategies, as CSP-20007 would permit single-family attached homes that are appropriate for the surrounding Neighborhood Edge community and the Prince George’s Plaza Transit District. Given that the General Plan recommends housing densities starting at forty (40) dwelling units per acre and a mix of apartments, condominiums, and townhouses in Regional Transit Districts¹³, future development of single-family attached dwellings at the Property would ensure that an appropriate

¹² *Id.* at page 75.

¹³ *See* General Plan, page 110. The General Plan’s first Land Use Policy recommends directing “a majority of projected new residential and employment growth to the Regional Transit Districts.”

transition is provided between the single-family dwellings located outside of the TDDP and denser development desired around Metro in the Downtown Core. It is important to note that Strategy LU2.2 does not include single-family detached dwellings as an encouraged housing type in the TDDP.

TDDP Land Use Policy 7, which is quoted below, is indicative of the TDDP’s intent to concentrate commercial and other mixed land uses in the Downtown Core and preserve the Neighborhood Edge as an exclusively residential Character Area:

POLICY LU7: Limit nonresidential development in the Neighborhood Edge.

This Policy is to be implemented through two separate Land Use Strategies:

Strategy LU7.1: Limit the use of underlying mixed-use zones to the Downtown Core or to Properties previously zoned for mixed use.

Strategy LU7.2: Prohibit incompatible or inappropriate uses in the Neighborhood Edge.

Given the intent of the TDDP to implement the General Plan’s goals for the Regional Transit District, single-family detached development would be incompatible with those goals and would be an inappropriate use for the Property. Other questions of compatibility with adjacent development – also addressed by other Goals, Policies and Strategies discussed herein – are actively met with design interventions provided for in the CSP. These interventions include transitional buffers to protect surrounding historic resources, insulate existing development, and enhancing the neighboring parkland.

Goals, Policies, and Strategies: Community, Heritage Culture and Design Element

The vision of the TDDP’s Community Heritage, Culture and Design Element is, “A memorable, walkable, vibrant, and welcoming regional urban destination, built on an active, exciting, attractive and safe public realm, designed to promote and support human activity, social interaction, and commerce while respecting the culture and history of the surrounding community and the natural environment.”¹⁴ Several Policies and Strategies in this Element, cited below,

¹⁴ See TDDP, page 101.

reinforce the Land Use Element’s Goals, Policies and Strategies, and also deal with matters particular to the Property and its immediate surroundings:

POLICY HD2: Create or preserve natural barriers and build transitions between the Transit District and surrounding residential communities.

Strategy HD2.1: Preserve and enhance all existing parkland and natural resource areas.

The connection from the Property to the adjacent Northwest Branch Community Park will significantly enhance the access to and usability of the existing parkland.

POLICY HD3: Redevelop the Transit District to the urban scale appropriate for a designated Regional Transit District

Strategy HD3.1: Permit and encourage residential densities in excess of 40 units per acre.

Although the proposed rezoning to the R-20 Zone will not rise to the density level encouraged by Strategy HD3.1, it will permit the lowest, “moderate-density” level provided for by the General Plan for Regional Transit Districts.

POLICY HD5: Create significant urban design features at signature sites that establish a distinct identity of place, create symbolic gateways and significant points of interest, and contribute to the visual and architectural character of the Transit District.

Strategy HD5.2: Avoid construction that negatively impacts the following architectural vistas:

- The view of Hitching Post Hill from the “Clay Property.”

POLICY HD10: Minimize and mitigate potential impacts to the undeveloped land surrounding Hitching Post Hill (Historic Site 68-001).

Strategy HD10.1: Incorporate a wide landscaped buffer or park along the edge of the northernmost property in the Transit District—commonly referred to as the Clay Property—across the street from Hitching Post Hill.

The Conceptual Site Plan implements these recommendations by the proffer of a 150-foot wide buffer of preserved woodlands across Rosemary Lane from Hitching Post Hill which will minimize

and mitigate impacts to that Historic Site and its surrounding environmental setting. The preserved wooded area will be either retained as a private area or as a public park. These options are discussed below under the Parks and Recreation Element.

Strategy PR1.1: Pursue opportunities to acquire parkland or provide public access to open space amenities to serve the Transit District’s future population and contribute to the County’s overall parkland goals. Facilities are categorized based upon the Urban Park Typology in Formula 2040: Functional Master Plan for Parks, Recreation and Open Space. Construct the recommended facilities in Table 17 and Map 20.

Table 17 and Map 20 in the TDDP include several facilities relevant to CSP-20007. Park and Recreation Facility #1 is described as a Resource Park, located south of Hitching Post Hill, that is either M-NCPPC-owned or privately-owned. The Comment discussing this park is, “Park designed to provide an appropriate buffer between single-family neighborhood and the historic resource at Hitching Post Hill.” As discussed, the proposed 150-foot wide buffer of preserved woodlands will minimize and mitigate impacts to that Historic Site and its surrounding environmental setting.

Goals, Policies, and Strategies: Housing & Neighborhoods Element

The TDDP envisions a “diverse community of housing opportunities and neighborhood characteristics that meet the housing preferences and affordability needs of residents, while creating a mixed-income community to attract and support development in the Transit District. The subject application conforms with the TDDP’s Housing & Neighborhoods Element by providing additional diverse housing opportunities and affordability within the Transit District.

POLICY HN1: Provide a variety of housing types and unit sizes, and neighborhoods to accommodate and meet the demands of existing future residents in the transit district.

Strategy HN1.1: Permit a mix of housing types (such as medium- to high-rise apartments and condominiums, two over twos, and townhouses), unit sizes, and rental and homeownership options attractive to a range of households and incomes.

The requested rezoning would permit a mix of housing types on the Property. As discussed, the existing R-80 Zone limits residential development to single-family detached dwellings. The R-

20 Zone permits additional density and housing types – including townhouses – that align with the TDDP’s Housing & Neighborhoods Strategies. These additional housing types are attractive to a range of households and incomes and expand the appeal of the Transit District to a larger segment of the County’s housing market.

POLICY HD3: Redevelop the Transit District to the urban scale appropriate for a designated Regional Transit District.

Strategy HN2.1: Preserve and provide affordable housing opportunities in the Transit District.

The rezoning will also allow for redevelopment that conforms with the density and urban scale appropriate for a Regional Transit District. Additionally, as detailed in Section V of this Appeal Supplement, the Applicant has proffered that ten percent (10%) of the total number of future dwelling units developed at the Property will be reserved for affordable/workforce housing at approximately 60-80% of Area Median Income (“AMI”).

In sum, CSP-20007 conforms with the TDDP’s purposes and breadth of applicable recommendations. The request to change the Property’s underlying base zone to R-20 aligns with the purpose of the TDDP – namely, implementing the General Plan’s vision for a Regional Transit District that accommodates the majority of the County’s new residential growth. As discussed, after nearly five years of relatively lower-density development activity in the Transit District, the TDDP has few remaining opportunities to satisfy this purpose. The increased density associated with this application represents one of these few remaining opportunities. Determining conformance with TDDP’s recommendations requires consideration of the Plan’s applicable policies, strategies and goals in context – especially, as they relate to future land use and residential growth in the TDDP. Weighing the totality of the TDDP’s extensive recommendations, it becomes apparent that CSP-20007 conforms with the TDDP’s recommendations, a prerequisite for District Council approval pursuant to Sec. 27-548.09.01.

B. CSP-20007 Meets the Applicable Site Plan Requirements

Pursuant to Sec. 27-548.09.01(b)(5), the District Council must find that an amendment to the T-D-O Zone meets all applicable site plan requirements. The findings and analysis provided by both the Resolution and the Prince George’s County Planning Department’s (the “**Planning**”

Department”) Staff Report confirm that CSP-20007 meets the applicable site plan requirements and nothing in the record contradicts such findings.

C. The Planning Board Failed to Appropriately Weigh the Entire TDDP

The Planning Board failed to consider the entire TDDP when it recommended disapproval of the request to rezone the Property from R-80 to R-20 to the District Council. The Planning Board predicated its disapproval on a singular map within the TDDP, rather than the extensive purposes, recommendations, policies, strategies, and goals that support rezoning the Property to R-20.¹⁵ In narrowing the basis of its ultimate recommendation to one map among hundreds of pages of text that support the rezoning, the Planning Board disregarded the TDDP text. Community Planning Staff’s revision of its initial analysis highlights the inappropriate weight placed on the Future Land Use Map. In an April 30, 2021 Memorandum from D. Green to Case Reviewer D. Spradley, Community Planning found “no major issue with the proposal to rezone the site from R-80 to R-20 to permit the development of a greater variety of housing types.” Additionally, Community Planning stated that townhomes, duplexes, or triplexes – housing types that are permitted in the requested R-20 Zone, but not the current R-80 Zone – may “offer a compatible transition of density and scale” between the existing garden apartments to the west and single-family detached homes to the east. Community Planning’s Memo detailing the compatibility of the proposed housing types allowed by the rezoning was subsequently replaced by a June 15, 2021 Memorandum from D. Green to Case Reviewer D. Spradley, stating that the rezoning did not conform with the TDDP’s purposes and recommendations. Planning Staff admitted, on the record, that the initial Memorandum’s finding of compatibility and no major issues was based on the TDDP’s text and that it was ultimately revised because of an “error” based solely on Map 15 in the TDDP.

The Planning Board and Staff’s outsized weight on one map is a demonstrably erroneous interpretation of the TDDP. The TDDP’s Future Land Use Map is but a single illustration that must be interpreted and read consistently within the context of the entire TDDP. The Planning Board’s inappropriate weighting ignores the purpose of the TDDP to respond to market conditions for development and implement the General Plan’s vision for a Prince George’s Plaza Downtown

¹⁵ See TDDP, page 74. Map 15, “Future Land Use.”

and Regional Transit District.

To clarify, the Applicant is not contesting that the TDDP's Future Land Use Map does not exist. The Applicant acknowledges that Map 15 and its recommended land use for the Property are indeed a part of the TDDP. The Applicant, however, asserts that the map represents just one of numerous recommendations contained in the TDDP. The majority of these recommendations, as outlined above, are consistent with the requested rezoning to the R-20 Zone. Accordingly, Map 15 must be read within the context of the entire TDDP.

Framed within the purposes of the TDDP, the future land use set forth in Map 15 is no longer responsive to market conditions. As previously noted, after nearly five years of relatively lower-density development activity in the Transit District, there are few remaining opportunities to satisfy the TDDP's Anticipated 2035 Buildout.¹⁶ Since the Council's adoption of the TDDP in 2016, development in the Transit District has been significantly less dense than anticipated and is failing to meet appropriate levels of density for a Regional Transit District. The Property represents one of the TDDP's few remaining opportunities to advance these goals. As such, the Planning Board's interpretation of Map 15 is in conflict with the most salient purposes and goals of the TDDP. The extensive reliance of the Planning Board on the existence of a single map in the TDDP was both inappropriate and improper.

IV. Planning Board Acted Erroneously by Disapproving CSP-20007

The analysis below supplements the arguments set forth in the Applicant's August 16, 2021 Petition for Appeal and explains how the Planning Board erred as a matter of law and fact in disapproving CSP-20007.

A. The Planning Board Erred as a Matter of Law by Disapproving CSP-20007

The District Council may reverse a legal conclusion of the Planning Board where "based on an erroneous interpretation or application of zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute." *Maryland-Nat. Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 84 (2009). The

¹⁶ *Id.*, page 72. Table 13, "Anticipated 2035 Building (Net New Development)" reflects the TDDP's density goals across various unit types.

Planning Board applied an incorrect standard of review for approval of a CSP and acted *ultra vires* in disapproving CSP-20007. The Planning Board's errors of law are discussed below.

1. The Planning Board Applied the Incorrect Standard of Review for Approval of a CSP

Pursuant to Sec. 27-548.01(c)(1), in order to approve a CSP in the T-D-O Zone, the Planning Board must find that the Transit District Site Plan is "consistent with, and reflects the guidelines and criteria for development contained in, the TDDP." However, instead of applying the "consistent with" standard, the Planning Board applied a standard of "conformance" with the weight accorded to a master plan recommendation depends upon the language of the statute, ordinance, or regulation establishing the standards pursuant to which the decision is to be made. *Richmarr Holly Hills, Inc. v. Am. PCS, L.P.*, 117 Md.App. 607, 636, 701 A.2d 879 (1997). Statutory language requiring "conformance to the area master plan" elevates the master plan to a binding regulatory document. *Archers Glen Partners, Inc. v. Betty Garner*, 176 Md.App. 292, 933 A.2d 405 (2007). Accordingly, in the context of the Zoning Ordinance, statutory language requiring "conformance" with the area master plan is a significantly different and greater standard from "consistency" with the master plan.

Specifically, Planning Board Findings 7 and 8 analyze the requested rezoning to R-20 and the Transit District Site Plan for "conformance with the relevant recommendations of Plan 2035," "conform[ance] with the relevant strategies and policies of the Prince George's Plaza TDDP and TDOZ," and "conform[ance] to the relevant purposes and recommendations as stated in the TDDP."¹⁷ Clearly, the Resolution's analysis of CSP-20007 is erroneously grounded in the standard of "conformance" with the purposes and recommendations of the TDDP and thus fails to apply the correct Planning Board "consistent" standard.¹⁸

The Staff Report – representing the only instance in the record in which the Planning Board or Staff analyzed both the TDDP's text and Future Land Use Map – includes numerous findings

¹⁷ See PGCPB Resolution No. 2021-97, pages 3-8.

¹⁸ Interestingly, the only documents in the Record that apply the correct Planning Board standard of review are: (1) Applicant's Statement of Justification; (2) Applicant's TDDP Analysis; and (3) the M-NCPPC Planning Staff Report for the CSP-20007.

and analysis indicating CSP-20007's consistency with the TDDP. Staff's analysis and findings of consistency are included below:

Staff Report Finding 7(b) – Analysis of Relevant TDDP Policies & Strategies

- POLICY LU2:** Create sufficient residential capacity to help meet the County's Growth Management Goal of 50 percent of new dwelling units within Regional Transit Districts.
- POLICY LU2:** Permit and encourage residential densities in excess of 40 units per acre.
- Strategy TM1.3:** Ensure that all streets and paths provide continuous nonmotorized access even where auto access may not be provided.
- Policy TM7:** Provide off-street bicycle and pedestrian connections between neighboring developments and surrounding communities wherever feasible.

The site plan includes plans to extend Dean Drive east to connect with the western terminus of Calverton Drive. This connection would be a nonmotorized, multi-use path designed to conform with the TDDP's design standards. The nonmotorized path will provide additional connectivity for pedestrians and cyclists in the Neighborhood Edge character area and promote multimodal accessibility throughout the Prince George's Plaza Transit District. Moreover, this nonmotorized path achieves Transportation and Mobility Strategy 7.3 of the TDDP, that indicates for all streets and paths to provide continuous nonmotorized access even where auto access may not be provided on the property.¹⁹

Staff Report Finding 8 – Compliance with Requirements of the R-20 Zone & T-D-O Zone

(a) Purpose [of the R-20 Zone]

(1) The purposes of the R-20 Zone are:

- (B) To facilitate the planning of higher density one-family developments with small lots and dwellings of various sizes and styles;**

The property owner is requesting the rezoning of the property from the R-80 Zone to the R-20 Zone. The R-80 Zone exclusively permits one-family detached dwellings with a

¹⁹ See CSP-20007 Staff Report, pages 6-9.

maximum density of 3.0–4.5 dwelling units per acre. The R-20 Zone permits a residential density up to 6.70 dwelling units per acre for one-family detached dwellings, up to 12.44 dwelling units per acre for one-family semidetached dwellings, and up to 16.33 dwelling units per acre for one-family triple-attached dwellings or townhouses. The rezoning from the R-80 to the R-20 Zone creates a higher density of one-family development on the property. The lot and townhouse sizes and styles will be addressed during the DSP or PPS stage of the development.

(C) To provide for a greater variety of housing types;

There are single-family detached residential and multifamily residential housing immediately adjacent to the property. The provision of 137 townhouses on the property would contribute to the variety of housing types neighboring the property. However, townhouses are already provided in other areas of the TDDP.

(D) To encourage the preservation of trees and open spaces;

The CSP has incorporated open space areas and passive and active recreational facilities and trails that creates opportunities for an active environment for residents and eases the impact on the public park system.

(E) To prevent soil erosion and stream valley flooding.

The CSP has incorporated a site design that prevents soil erosion, and the property is located outside of the 100-year floodplain.

(a) The specific purposes of the Transit District Overlay Zone are:

(1) To enhance the development opportunities in the vicinity of transit stations;

The Prince George's Plaza Metro Station is located about 0.75 mile south of the property, and the Adelphi Road-UMD Purple Line Station is proposed about 0.55 mile to the northeast of the property.

(2) To promote the use of transit facilities;

The property owner is requesting to rezone the property from the R-80 Zone to the R-20 Zone to accommodate development of 137 townhouses. The development of townhouses on the property would broaden the scope of existing and future housing types in the neighboring area that aligns with the transit oriented development (TOD) best management practices to maximize potential ridership and utilization of existing and future transit facilities.

(3) To increase the return on investment in a transit system and improve local tax revenues;

The property's proximity to the existing Metro Green and Yellow Lines and the future Maryland Department of Transportation Purple Line encourages ridership and utilization of the County's largest transit systems. Per the statement of justification (SOJ), the property is situated between major employment centers in Washington, DC and within the County, and future residents of the townhouse development will frequently utilize Metro and the Purple Line for commuting purposes. Moreover, the development of townhouses on the property will further activate the TDDP and generate greater tax revenues for the County.

(4) To create a process which coordinates public policy decisions, supports regional and local growth and development strategies, and creates conditions which make joint development possible;

The property owner's request to rezone the property from the R-80 Zone to the R-20 Zone within the TDDP requires approval from the Prince George's County District Council. This process coordinates public policy decisions with the local growth and development strategies that are outlined in the TDDP.

(5) To create a process which overcomes deficiencies in ordinary planning processes and removes obstacles not addressed in those processes;

The TDOZ allows flexibility in the development process with amendments to the TDDP. Per the SOJ, the rezoning request will overcome deficiencies in the TDOZ that detrimentally restrict housing types and limit the

residential capacity on the property.

- (6) To minimize the costs of extending or expanding public services and facilities, by encouraging appropriate development in the vicinity of transit stations;**

The property owner is requesting to rezone the property from the R-80 Zone to the R-20 Zone to accommodate up to 137 townhouses. Providing a variety housing types at an appropriate density within the TDDP aligns with the best management practices and foundational goals of TOD in the County. The rezoning of the property to include a townhouse development encourages efficient land use that utilizes existing public services and facilities within the transit district. As outlined in the TDDP, the residential options that cater to a broad spectrum of households and incomes contribute to sustaining and maintaining the existing infrastructure within the vicinity of the transit stations. However, the plan zoned the property R-80 and finds single-family detached dwellings to be the appropriate development on the property.

- (8) To provide for convenient and efficient pedestrian and vehicular access to Metro stations;**

Per the SOJ, the property owner is requesting to extend the eastern terminus of Dean Drive to connect with the western terminus of Calverton Drive. This extension would include a vehicular roadway and multi-use path, designed in accordance with the design standards outlined in the TDDP. The requested connection would provide more opportunities for pedestrians and bicyclists within the transit district by linking the existing and future residential communities in the Neighborhood Edge to Metro character areas in the Downtown Core.

- (9) To attract an appropriate mix of land uses;**

While there are no commercial uses included on the site plan for this case, the development of townhouses on the property is an appropriate level of residential development in the Neighborhood Edge character area that complements and further activates commercial and mixed-use land uses in the Downtown Core.

(11) To insure that developments within the Transit District possess a desirable urban design relationship with one another, the Metro Station, and adjoining areas; and

The housing types allowed by right within the R-20 Zone and TDOZ on the property facilitates a desirable and compatible urban design relationship with the recent residential development in the Neighborhood Edge character area, but not with the surrounding residential communities that are immediately adjacent to the property.²⁰

The above excerpts from the Staff Report’s analysis, being the only record evidence where the appropriate “consistency” standard was applied, conclude that the rezoning and Conceptual Site Plan are consistent with the TDDP and TDOZ. Staff’s analysis of compatible housing types, increased connectivity, and appropriate density within Regional Transit Districts and the Neighborhood Edge Character Area all support a finding of consistency. Despite Staff’s numerous findings of consistency, the Planning Board disregarded applicable criteria solely because it believed that the Conceptual Site Plan did not conform to the TDDP’s Future Land Use Map.²¹ In other words, the Planning Board based its disapproval of CSP-20007 on an inapplicable standard of non-conformance with the TDDP instead of the applicable standard of consistency – an error of law.

2. The Planning Board Relied Upon a Determination Yet to be Made by the District Council as the Basis for its Disapproval

The Planning Board acted *ultra vires* in basing its disapproval of CSP-20007 on a determination of non-conformance that the District Council has not made. Sec. 27-548.09.01 of the Zoning Ordinance empowers the District Council, and not the Planning Board, to make the final decision on specific amendments to Transit District Development requirements, including a change of a property’s underlying zone.²² An agency’s actions outside of its statutory grant of

²⁰ *Id.* at pages 9-12.

²¹ See PGCPB Resolution No. 2021-97, page 7. In analyzing the recommend future land use designation for the Property, Finding 8 provides that “The CSP’s incorporation of 137 townhouses on the 12.87-acre property, therefore, does not conform to the purposes and recommendations provided in the TDDP.”

²² Where the Zoning Ordinance empowers the District Council, and not the Planning Board, to make a final decision on a matter, the District Council’s authority is “original” rather than “appellate.” *Zimmer Development Co.*, 444 Md. at 569.

powers are considered unauthorized and *ultra vires*. *Annapolis Roads Property Owners Assn. v. Annapolis Planning Comm.*, 2007 WL 5746770 (Md.Cir.Ct).

Moreover, had the Planning Board not improperly asserted the District Council's authority, the supportive findings and analysis included in the Resolution and the Planning Staff Report would have mandated approval of CSP-20007. Despite being analyzed through the lens of the District Council's non-existing findings, Planning Board Findings 7 and 8 outline how the CSP and requested rezoning aligns with the General Plan's purposes and recommendations for the Prince George's Plaza Downtown and Regional Transit District, provides for appropriate housing types in the Neighborhood Edge Character Area, and meets numerous TDDP Strategies and Policies across relevant planning and development disciplines.²³ Additionally, Finding 7(b) lists nine relevant TDDP Policies and Strategies that are advanced by CSP-20007:

- Strategy LU2.1:** Preserve the Neighborhood Edge as an exclusively residential area.
- Policy LU6:** Create a residential neighborhood north of Toledo Terrace east of Belcrest Road.
- Policy LU6.1:** Incorporate a mix of housing types, including multifamily units, townhouses, two over twos, and single-family houses, attractive to a range of homebuyers and renters, including families, young-professionals, empty-nesters, and seniors.
- POLICY LU7:** Limit nonresidential development in the Neighborhood Edge.
- Strategy LU7.2:** Prohibit incompatible or inappropriate uses in the Neighborhood Edge.
- Strategy TM1.3:** Ensure that all streets and paths provide continuous nonmotorized access even where auto access may not be provided.
- Policy TM7:** Provide off-street bicycle parking and pedestrian connections between neighboring developments and surrounding communities wherever feasible.
- Policy HD10:** Minimize and mitigate potential impacts to the undeveloped land surrounding Hitching Post Hill (Historic Site 68-001).

²³See PGCPB Resolution No. 2021-97, page 4. Finding 7 states the CSP does not conform with the relevant recommendations of the General Plan, TDDP or TDOZ, but proceeds to list the desired 40+ dwelling units per acre within Regional Transit Districts, ideal housing types – including townhouses – for the Neighborhood Edge Character Area, and connectivity goals that include walkable/bikeable connections and housing in proximity to transit.

Policy HD10.1: Incorporate a wide landscaped buffer or park along the edge of the northernmost property in the Transit District – commonly referred to as the Clay Property – across the street from Hitching Post Hill.²⁴

Since CSP-20007 is, in fact, consistent with each of these TDDP Policies and Strategies, the Planning Board had to resort to a usurpation of the District Council’s authority in order to disapprove the CSP. The record is absent of ambiguity; the Planning Board would have approved CSP-20007 if not for its *ultra vires* determination of non-conformance.

B. The Planning Board Erred as a Matter of Fact by Disapproving CSP-20007

1. The Planning Board Relied on Issues Outside of the Applicable Criteria for Approval of a CSP

The Planning Board relied upon issues that are irrelevant to the applicable criteria for approval. Pursuant to Sec. 27-548.01(c)(1), for approval of a CSP in the T-D-O (Transit District Overlay) Zone, the Planning Board must find that the Transit District Site Plan is “consistent with, and reflects the guidelines and criteria for development contained in, the Transit District Development Plan.” The Planning Board based its disapproval of CSP-20007 on a finding of non-conformance with the TDDP’s Future Land Use Map. Planning Board Finding 13 explains that the Planning Board’s finding that the CSP is not consistent with the TDDP is “particularly based on the District Council’s intention to retain low density residential development on the subject property.”²⁵ Finding 13 continues, “for the same reasons, the Board cannot find that the CSP represents a reasonable alternative for satisfying the site design guidelines without requiring unreasonable costs and without detracting substantially from the utility of the requested development for its intended use.”²⁶ In tethering both of its required findings to the District Council’s initial decision to retain R-80 Zoning on the Property, the Planning Board erroneously emphasized the Future Land Use Map’s role within the context of the entire TDDP. More importantly, previous actions of the District Council cannot factor into the Planning Board’s evaluation of the CSP’s consistency with the TDDP.

²⁴ *Id.* at page 5.

²⁵ *Id.* at page 14.

²⁶ *Id.*

As noted above, the Future Land Use Map represents a singular recommendation within the myriad of purposes, goals, policies, and strategies included within the TDDP. Indeed, CSP-20007 does, in fact, conform with the TDDP's broad purposes and recommendations. Accordingly, the Planning Board not only erred in law by applying the incorrect "conformance" standard of review, but also erred in fact by overlooking the greater context of the TDDP's purposes and recommendations.

V. Applicant's Proffers

The Applicant's proposal has been refined through an inclusive and collaborative approach to best suit the present and future needs of the community. Absent influence or mandate of any applicable zoning regulation, covenant, or condition of approval, the following proffers reflect the Applicant's willingness to advance the stated interests of relevant stakeholders.

1. Future residential development on the Clay Property pursuant to CSP-20007 shall include affordable/workforce housing, in compliance with the following:
 - A. 10% of the final number of approved dwelling units will be moderately priced dwelling units affordable for families/individuals earning between 60% and 80% of Area Median Income (based on household size).
 - B. The owner shall establish the locations and sizes of the moderately priced dwelling units prior to the issuance of the first building permit.
 - C. Prior to the sale of any moderately priced dwelling unit a covenant will be recorded restricting the sale of such unit for a period of thirty (30) years to families/individuals earning between 60% and 80% of Area Median Income (based on household size).
2. In order to mitigate adverse impacts to the existing historic resource, namely Hitching Post Hill (Historic Site 68-001), an enhanced 150-foot landscaped buffer shall be provided along the north side of the property measured from the future dedicated right-of-way for Rosemary Lane.

3. In order to provide an appropriate transition in density and height from the east and to mitigate adverse impacts to the existing residential community, an enhanced 50-foot landscaped buffer shall be provided adjacent to the existing residential lots, north of Calverton Drive measured from the eastern property line.
4. The connection from the subject property to Calverton Drive shall be for pedestrians, bicycles, and emergency vehicles only.

VI. Conclusion

In conclusion, the Planning Board erred as a matter of law and fact in disapproving CSP-20007. Additionally, the Planning Board did not appropriately analyze the purposes and recommendations of the TDDP when it recommended disapproval of the Applicant's requested rezoning to the District Council. As analyzed in Section III of this Appeal Supplement, CSP-20007 and the requested zoning change satisfy the District Council's criteria for an amendment to an approved T-D-O Zone, pursuant to Sec. 27-548.09.01(b)(5). For the foregoing reasons, the Applicant respectfully requests that the District Council approve the request to rezone the Clay Property's underlying zone from R-80 to R-20 and reverse the Planning Board's disapproval of CSP-20007.

Respectfully submitted,



Christopher L. Hatcher
CLHatcher LLC
1001 Prince George's Blvd,
Suite 700
Upper Marlboro, MD 20774
Email: chris@clhatcher.com

CERTIFICATE OF SERVICE

This will certify that I have this day caused to be served copies of the within and foregoing document upon the following parties by first-class mail, postage prepaid, addressed as follows:

SAMUEL BLUMBERG
2305 VALLEY AVENUE
WILMINGTON, DE 19810

SCOTT R WILSON
P.O.BOX 483
COLLEGE PARK, MD 20741

CHRISTOPHER HATCHER
LERCH, EARLY & BREWER
7600 WISCONSIN AVENUE SUITE 700
BETHESDA, MD 20814

MACY NELSON
G. MACY NELSON,LLC
600 WASHINGTON AVENUE SUITE 202
TOWSON, MD 21204

DAVID BICKEL
SOLTESZ
4300 FORBES BOULEVARD SUITE 230
LANHAM, MD 20706

BLUMBERG, MARVIN R. COMPANY
402 KING FARM BOULEVARD SUITE 125
ROCKVILLE, MD 20850

SOLTESZ, LLC
4300 FORBES BOULEVARD SUITE 230
LANHAM, MD 20706

LISA SUTTON
7305 WELLS BOULEVARD
HYATTSVILLE, MD 20783

RACHIDA DUKES
7111 PONY TRAIL COURT/S
HYATTSVILLE, MD 20782

DAVID DUKES
7111 PONY TRAIL COURT/S
HYATTSVILLE, MD 20782

CHARLES DUKES
7111 PONY TRAIL COURT/S
HYATTSVILLE, MD 20782

RACHIDA DUKES
7111 PONY TRAIL COURT/S
HYATTSVILLE, MD 20782

BEN SIMASEK
CITY OF HYATTSVILLE
3304 GUMWOOD DRIVE
HYATTSVILLE, MD 20783

LUCAS BOUCK
6804 CALVERTON DRIVE
HYATTSVILLE, MD 20782

MARK FERGUSON
RDA/SITE DESIGN
9500 MEDICAL CENTER DRIVE SUITE 480
LARGO, MD 20774

MATTHEW PALUS
7101 PONY TRAIL LANE
HYATTSVILLE, MD 20782

ALYSON REED
3320 ROSEMARY LANE
HYATTSVILLE, MD 20782

SHEILA GUPTA
7106 BRIDLE PATH LANE
HYATTSVILLE, MD 20782

JULIE CHAWLA-KAZER
3300 ROSEMARY LANE
HYATTSVILLE, MD 20782

AARON KAZER
3300 ROSEMARY LANE
HYATTSVILLE, MD 20782

JOSEPH LUEBKE
7209 HITCHING POST LANE
HYATTSVILLE, MD 20783

ALYSON REED
3320 ROSEMARY LANE
HYATTSVILLE, MD 20782

EMILY PALUS
7101 PONY TRAIL LANE
HYATTSVILLE, MD 20782

ROBERT FLETCHER
3308 ROSEMARY LANE
HYATTSVILLE, MD 20782

ROSE FLETCHER
3308 ROSEMARY LANE
HYATTSVILLE, MD 20782

KATE POWERS
CITY OF HYATTSVILLE
4310 GALLATIN STREET
HYATTSVILLE, MD 20781

RUTH GROVER
G. MACY NELSON LLC
5727 RIDGE VIEW DRIVE 5727 RIDGE VIEW DR
ALEXANDRIA, VA 22310

VINCENT BIASE
LERCH, EARLY & BREWER
425 L STREET SUITE 601
WASHINGTON, DC 20001

MR.DAVID DUKES
7111 PONY TRAIL COURT/S
HYATTSVILLE, MD 20782

MR.RONALD J PEDONE
UNIVERSITY HILLS AREA CIVIC ASSOCIATION
3309 GUMWOOD DRIVE
HYATTSVILLE, MD 20783 -1934

MR.THOMAS WRIGHT
7209 HITCHING POST LANE
HYATTSVILLE, MD 20783

MR.PETER BURKHOLDER
7101 7101 BRIDLE PATH LANE 7101 BRIDLE
PATH LANE
HYATTSVILLE, MD 20782

MR.THOMAS L WRIGHT
7209 HITCHING POST LANE 7209 HITCHING
POST LANE
HYATTSVILLE, MD 20783

MR.CHARLES A DUKES JR. 7111
PONY TRAIL COURT/S
HYATTSVILLE, MD 20782

MR.JOSEPH R LUEBKE
7209 HITCHING POST LANE
HYATTSVILLE, MD 20783

MS.EMILY S PALUS 7101
PONY TRAIL LANE
HYATTSVILLE, MD 20782

DR.MANMOHAN S CHAWLA
NA
3300 ROSEMARY LANE
HYATTSVILLE, MD 20782

MRS.BETH KARA
6901 CALVERTON DRIVE
HYATTSVILLE, MD 20782

MRS.DETRA DORSEY
6815 CALVERTON DRIVE 6815 CALVERTON DR
HYATTSVILLE, MD 20782

PAUL FEGELSON
4611 NORTHWEST 43RD PLACE
WASHINGTON, DC 20016

This 26th day of August, 2021.

A handwritten signature in blue ink, appearing to read "Chris L. Hatcher", written over a horizontal line.

Christopher L. Hatcher
CLHatcher LLC
1001 Prince George's Blvd,
Suite 700
Upper Marlboro, MD 20774
Telephone: 301-524-3946
Email: chris@clhatcher.com