

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

**AMENDMENT OF CONDITIONS
DSP-13014/01**

DECISION

Application:	Amendment of Conditions
Applicant:	PMM Enterprises, LLC t/a Forestville Plaza Shopping Center
Opposition:	None
Hearing Date:	April 12, 2017
Examiner:	Joyce B. Nichols
Recommendation:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) The Applicant is seeking an amendment to Conditions 1(a)(1) and 2 of the District Council's October 1, 2013 approval of Detailed Site Plan 13014 for a rezoning of approximately 18.17 acres of land, located in the northeast quadrant of the intersection of Forestville Road and Old Marlboro Pike (MD 725), also identified as 7702-7794 Forestville Road, District Heights, Maryland, from the Light Industrial/Development District Overlay (I-1/D-D-O) Zone to the Commercial Shopping Center/Development District Overlay (C-S-C/D-D-O) Zone.

(2) By Resolution dated July 30, 2013 the Planning Board approved DSP-13014 with three Conditions. (Exhibit 5(a))

(3) The District Council adopted its Order Approving DSP-13014, with Conditions, on October 1, 2013. (Exhibits 3(a) and (b)) These approved Conditions are as follows:

1. Prior to signature approval, the following revisions to the plans shall be made:
 - a. The following notes shall be added to the general notes of the Detailed Site Plan:
 - (1) The project is located in an Accident Potential Zone, but is exempt from the requirements of Interim Land Use Control (ILUC) legislation due to its presence in a Development District Overlay (D-D-O) Zone.
 - (2) The projected maximum noise levels on the subject site are 65-70 dBA Ldn and the height limitation is 144.26 feet.
2. The following land uses shall be prohibited on the subject Commercial Shopping Center/Development District Overlay (C-S-C/D-D-O) Zoned property, and these prohibited uses shall be listed in the general notes of the Detailed Site Plan:
 - a. Adult day care center

- b. Assisted living facility
 - c. Auditorium
 - d. Bowling alley
 - e. Catering use with banquet facility
 - f. Church or similar place of worship, convent or monastery
 - g. Clubs or private lodges
 - h. Community Building
 - i. Day care centers-children and adults
 - j. Eating and drinking establishments larger than 6,000 square feet of gross floor area (GFA)
 - k. Elderly housing
 - l. Eleemosynary or philanthropic institution
 - m. Gas stations
 - n. Government services (libraries, post offices, offices)
 - o. Hospitals, doctor's offices, and medical clinics
 - p. Hotels
 - q. Nursing or care home
 - r. Recreational or entertainment establishment of a commercial nature
 - s. Schools-private/public
 - t. Theatre
 - u. Uses that involve the storage of or use of explosive, flammable, or toxic material in outdoor, above ground storage tanks
3. The Applicant shall demonstrate conformance to the requirements of Section 4.4 of the 2010 Prince George's County Landscape Manual by the provision of adequate screening as described therein of loading spaces, outdoor merchandise storage, trash and recycling facilities, and mechanical equipment.

(4) By letter dated February 1, 2017, the Applicant requested that the District Council amend Conditions 1(a)(1) and 2 (Exhibit 2) and by letter dated February 7, 2017, the Clerk to the Council requested that the Office of the Zoning Hearing Examiner conduct a de novo hearing in this matter. (Exhibit 1)

(5) The record was initially closed on April 12, 2017 at the conclusion of the evidentiary hearing. By letter dated May 11, 2017, the record was reopened for the submission of additional documents, upon receipt of which, the record was closed on April 22, 2017. (Exhibit 12)

APPLICABLE LAW

(1) The District Council may amend a condition of approval for a Detailed Site Plan upon a finding of good cause for the amendment. §27-135(c)

(2) Section 27-135(c) states as follows:

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

(3) Sections 27-548.26(b)(1) and (2) (Amendment of Approved Development District Overlay Zone) state as follows:

(b) Property Owner.

(1) Notwithstanding the provisions of subsection (a), above, a property owner may request that the District Council amend development requirements for the owner's property, as follows:

(A) An owner of property in, adjoining, or separated only by a right-of-way from the Development District may request changes to the boundary of the approved D-D-O Zone.

(B) An owner of property in the Development District may request changes to the underlying zones or the list of allowed uses, as modified by the Development District Standards.

(2) The owner's application shall include:

(A) A statement showing that the proposed development conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan; and

(B) A site plan, either the Detailed Site Plan required by Section 27-548.25 or a Conceptual Site Plan.

(4) Section 27-548.26(b)(5) authorizes:

(5) The District Council may approve, approve with conditions, or disapprove any amendment requested by a property owner under this Section. In approving an application and site plan, the District Council shall find that the proposed development conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan, and meets applicable site plan requirements.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) Pursuant to Section 27-548.22, a DDOZ may limit the uses which are permitted in the underlying zone. When DSP-13014 was filed, the Applicant requested that the Subject Property be rezoned to the C-S-C Zone and that all of the uses permitted in the C-S-C Zone be allowed. However, Condition 2 set forth in the District Council's Order Approving DSP-13014, with Conditions, contained a list of 20 uses or use categories which were prohibited on the Subject Property. (Exhibit 3(b))

(2) The list of prohibited uses contained in Condition 2 of DSP-13014 was the result of an analysis set forth in the Technical Staff Report (Exhibit 4) which was included in the Recommendation of the Planning Board as reflected in Resolution PGCPB 13-79. (Exhibits 5(a) and (b)) As the Staff Report notes, the Subject Property is located within the area of Prince George's County impacted by the flight operations of Joint Base Andrews. In 2009 a Joint Land Use Study ("JLUS") was prepared which recommended that regulations be adopted to address potential land use incompatibilities near Joint Base Andrews. Pursuant to the JLUS Study, the County Council adopted CB-3-2012 and CB-4-2012 which consisted of Interim Land Use Controls ("ILUC"). The ILUC provisions were based upon the recommendation in the 2007 Air Installation Compatibility Use Zone ("AICUZ") Study issued by the Department of Defense. The purpose of the ILUC controls was to establish interim regulations while legislation to create a Military Installation Overlay Zone ("MIOZ") could be drafted and adopted. The ILUC provisions were in effect at the time the Technical Staff Report was prepared and the Detailed Site Plan was approved by the District Council. Section 27-1805(b)(5) of CB-3-2012 set forth a list of 23 prohibited uses which closely mirror the list of prohibited uses recommended in the Staff Report. (Exhibit 4) However, pursuant to Section 27-1805(d)(6) of CB-3-2012, the ILUC regulations did not apply to property within a DDOZ. Therefore, in order for any of the use restrictions adopted by ILUC to apply to the Subject Property, a condition of approval was required.

(3) When the District Council approved DSP-13014, it required three Conditions. Condition 1(a)(1) required that a Note be added to the Site Plans stating that the project is located within an Accident Potential Zone, but noting that the project is exempt from the requirements of ILUC. Now that the ILUC no longer is in force and effect, this Condition should be revised to reference the MIOZ. Additionally, Condition 2 sets forth the list of prohibited uses consistent with the list contained in Section 27-1805(b)(5) of ILUC which no longer has any legal force or effect.

(4) In 2015, legislation was enacted to adopt the MIOZ (CB-42-2015). This legislation addressed uses which should be prohibited or limited on properties located within Accident Potential Zones 1 and 2. This Subject Property is partly within Accident Potential Zone 1 and partly within Accident Potential Zone 2. The list of uses which are either prohibited or limited is now codified in Section 27-548.56. Subsection 27-548.56(a)(1) contains a list of Prohibited Uses while Subsection 27-548.56(b) contains a list of Limited Permitted Uses. Limited Permitted Uses are uses which are permitted but are subject to size limitations. The list of Prohibited and Limited Permitted Uses was approved by the District Council after months of deliberation surrounding the approval of the MIOZ. As noted, the list of Prohibited uses set forth in Condition 2 of the DSP

largely reflects the interim regulations which were established by the District Council pending public input on the final legislation. Now that the legislative process has been completed, and the MIOZ has been imposed on the Subject Property through the adoption of CR-97-2015, the appropriate use restrictions should be those set forth in Section 27-548.56. However, Section 27-548.53(g) provides that “where the requirements of the underlying zone are more restrictive than the M-I-O Zone, the more restrictive of the requirements shall apply.” Since the list of prohibited uses represent the requirements of the underlying DDOZ, such list is controlling unless modified by the District Council pursuant to this Application.

(5) The Applicant’s request to be regulated consistent with other C-S-C Zoned properties located within the now adopted M-I-O Zone is fair and reasonable and constitutes good cause to approve the requested amendment. §27-135(c) This proposed request to align the permitted/prohibited uses in the D-D-O Zone with the permitted/prohibited uses in the M-I-O Zone conforms with the purposes and recommendations of the Development District, as stated in the Master Plan, Master Plan Amendment, or the Sector Plan, and meets applicable Site Plan requirements. §27-548.26(b)(5) (Exhibit 13(b))

RECOMMENDATION

The Conditions of Approval of DSP-13014 be and hereby are amended as follows:

1. Prior to Certification of the Amended Detailed Site Plan:
 - a. The following notes shall be added to the General Notes of the Detailed Site Plan:
 - (1) The project is located in an Accident Potential Zone and is subject to the requirements of the Military Installation Overlay (M-I-O) Zone.
 - (2) The projected maximum noise levels on the subject site are 65-70 dBA Ldn and the height limitation is 144.26 feet.
2. The Subject Property shall be subject to the provisions of Section 27-548.56 of the Prince George’s County Code which establish the Prohibited Uses and Limited Permitted Uses within the M-I-O Zone.
3. The Applicant shall demonstrate conformance to the requirements of Section 4.4 of the 2010 Prince George’s County Landscape Manual by the provision of adequate screening as described therein of loading spaces, outdoor merchandise storage, trash and recycling facilities, and mechanical equipment.