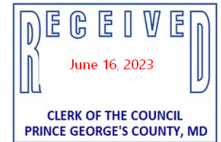


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June 7, 2023

Ms. Donna J. Brown
Prince George's County
Clerk of the Council
Wayne K. Curry Administration Building
2nd Floor
Largo, Maryland 20774

RE: **Reversal of DET-2022-001**
Westphalia Business Center 1 and 2

Request for Reconsideration

Dear Clerk of the Council Brown:

Pursuant to Section 27-3407(b)(7)(B), *Reconsideration and Amendment of Decisions* Applicant, Northpoint Realty Partners, LLC, is requesting that the District Council reconsider its Reversal in the above reference case based on "[f]raud, surprise, mistake or inadvertence".

History

On April 1, 2022, the new Prince George's County Zoning Ordinance (new ZO) became effective. For a period of two (2) years after enactment of the new ZO, Applicants may submit applications under the old Zoning Ordinance (old ZO) or the new ZO. Applicants making submissions under the old ZO included, are able to utilize transitional provisions to ensure that projects submitted under the old ZO are not unduly harmed by the implementation of the new ZO. Applicant making submissions under the new ZO are not subject to the transitional provisions but, instead, are reviewed based on the requirements of the new ZO. In its decision to Reverse the Planning Board's approval of DET-2022-002, the District Council erred,

among other things, based on a mistaken interpretation of the requirements of the new ZO.

I. The District Council Erred because Applicant Complied with all Conditions of the new Zoning Ordinance

The plain text of the new Zoning Ordinance supersedes the old Zoning Ordinance unless old provisions of the old ZO are brought forward. The District Council reversal of the Planning Board Decision is, in part, based on an incorrect interpretation of Section 27-3605(e)(2). More specifically, the aforementioned provision provides that a DET may only be approved if, among other things, “[t]he proposed development complies with all conditions of approval in any development approvals and permits to **which the detailed site plan is subject.**” In the instant case, the only conditions of approval to which the detailed site plan is subject are those found in the Section 27-2300 in the new Zoning Ordinance, *Order of Approvals*, which provides:

Section 27-2300 Order of Approvals

Unless otherwise provided in this Subtitle, the following orders of approval shall be observed:

- (1) Zoning;
- (2) Preliminary plan of subdivision (minor or major);
- (3) Detailed site plan;
- (4) Final plat of subdivision (minor or major), except that a final plat of subdivision (minor or major) may be approved prior to a detailed site plan if technical staff determines that the site plan approval will not affect final plat approval;
- (5) Grading, building, and use and occupancy permits.

Had the Applicant availed itself of the two year transitional period to submit an application under the old ZO, then the District Council’s interpretation of the applicability of the CSP would have been correct and the Applicant would have been required to demonstrate compliance with CSP 07001-01. However, the Applicant made its submittal under the new ZO. Therefore, all approvals to which the Applicant are subject are contained in the new ZO, which do not include compliance with CSP-07004-01

II. District Council made a Mistake by requiring Applicant to comply with a zone in the old ZO rather than the zone in the new ZO

The District Council erred in requiring the Applicant to comply with conditions associated with the M-X-T Zone, which does not exist in the new Zoning Ordinance rather than comply with the uses allowed in the TAC-E zone as set forth in the new ZO. The District Council also inadvertently failed to recognize that many of the conditions included in the CSP-07004-01 were based on the 2007 Westphalia Sector Plan, which are no longer applicable because they

they have been replaced with requirements set forth in Plan 2035. Moreover, the District Council incorrectly asserted that Applicant would be developing a Distribution Warehouse. In fact, the Applicant both in its written application and oral presentation indicated that the project would be developed in accordance with the TAC-E zone and no specific uses were articulated. Rather than address its concern about certain uses by way of conditions, the District Council simply denied Applicants submission because of its determination that uses allowed in the TAC-E zone were not permitted in the M-X-T zone. The District Council's determination is a mistake both in the reading of the what uses are allowed in the M-X-T zone and its determination of the applicability of the CSP for applications submitted under the new ZO. In addition, the District Council totally ignored that a DET could amend a CSP and never afforded the Applicant an opportunity to substantively address the Council's concerns regarding uses at the time of the hearing.

III. District Council Erred because it Failed to Recognize that the Applicant's Statement of Justification dated December 22, 2022 was Incorporated by Reference

The District Council's reversal asserts that the "Board's approval of this DET incorporated several requirements or conditions of approval from the approved CSP application". However, the Reversal failed to acknowledge that the Planning Board's Resolution incorporated Applicant's Statement of Justification dated December 22, 2022, which set forth support for compliance with CSP-07004-01. PGCPB No. 2023-24 Compliance with Applicable Provisions of the Zoning Ordinance. While Applicant continues to assert that submission under the new ZO does not require "compliance" with CSP that was approved under the old ZO, at the very least, the District Council should have remanded the case to permit clarification of those issues that were articulated in the SOJ and considered by Planning Board during its review of the subject DET.

IV. The District Erred in its Interpretation of the new Zoning Ordinance Transitional Provisions

The District Council made a mistake by incorrectly applying Sections 27-1703 and 27-1704 with regard to the transitional provisions. The new Zoning Ordinance includes transitional provisions in order to grandfather certain applications filed under the old ZO and prevent undue harm that might arise from implementation of the new ZO. These transitional provisions do not apply to applications submitted under the new Zoning Ordinance. Moreover, the plain text of Sections 27-1703 and 27-1704 demonstrates that the District Council considered the applicability of Conceptual Site Plans by allowing applicants that submit applications under the old ZO to complete projects based on an existing CSP even though CSPs are not recognized in the new ZO except to provide that the projects filed under the old ZO have a reduced validity period from indefinite to twenty years.

V. District Council Erred by Applying the Wrong Standard of Review.

Applicant continues to assert that applications submitted under the new ZO are not subject to CSPs. However, even if they were applicable, the District Council mistakenly applied the stricter standard of compliance as set forth in the new ZO rather than the less stringent standard set forth in the old ZO, which only requires “generally” conforms. Moreover, the District Council failed to recognize that a DET can modify a CSP.

VI. The District Council Erred in Asserting that the CSP Limited Development to Residential, Retail, Office and Hotel Uses

A Conceptual Site Plan is a concept plan that is further delineated through the Preliminary Plan of Subdivision and Detailed Site Plan. In the instant case, the Applicant’s CSP submission proposed a new town center with a vertical and horizontal mix of commercial and residential uses. While Applicant may have proposed residential, retail, office and/or hotel uses, there is nothing in the CSP that prohibits the Applicant from proposing other commercial uses in the DET submission.

VII. District Council’s Reversal based, in part, on surprise argument made by People’s Zoning Council

People’s Zoning Counsel’s comments made at the oral argument when briefing the Council regarding the entitlement review when proceeding under the new ordinance. The argument purported that the valid and existing preliminary plan for the Town Center did not apply because it was not filed and reviewed under the new ordinance. His interpretation suggests that every project must start at the beginning of the process irrespective of whether being submitted under the new ZO

This novel interpretation was not raised at the time of Planning Board review of the site plan and was not a legal position raised by any party. Moreover, neither counsel to the District Council or the Planning Commission were asked by the District Council at oral argument to comment on the new interpretation and further, since the interpretation was put forth in summation, neither party was allowed to comment on the interpretation. In fact, discussions with M-NCPPC staff and legal counsel following the oral argument hearing indicated that they disagreed with the interpretation and feel it is directly in contradiction with the letter and intent of the new ordinance.

While the interpretation of People’s Zoning Counsel is not expressly included in the Order of Reversal later adopted by the Council, the interpretation set the tone for the Council’s vote to prepare an Order of Reversal at the conclusion of the oral argument hearing. It is quite

probable that at least some of the Council members were surprised by this new and untested legal theory and may have mistakenly relied on this advice in considering their vote on the motion. The mistake is amplified by the fact that the interpretation was not put forward as an argument to consider but was stated as a mandatory rule of law that prohibited the Council from approving the application. This was clearly a mistake and certainly a surprise warranting reconsideration.

Conclusion

For the reasons stated above, Applicant respectfully requests that the Planning Board grant Applicant's Request for Reconsideration of its Reversal of DET-2022-001. Per the Board's Rules of Procedure, a copy of this request has been mailed to the Persons of 'record on DET-2022-01.

Respectfully submitted

Marva Jo Camp

Marva Jo Camp, Esq.
Attorney for Applicant

cc: Dewberry
Parties of Record