

July 15, 2020

**VIA E-MAIL AND
ELECTRONIC FILING**

Madam Chair and Members of the
Planning Board for Prince George's County,
Maryland-National Capital Park
and Planning Commission
(c/o Staff Reviewer, Mr. Hurlbutt)
(PGCPB@mncppc.com)

Peter E. Ciferri

Direct: 240-778-2307
pciferri@mcmillanmetro.com

Maryland Bar
District of Columbia Bar

Re: **PRELIMINARY MOTION**
DSP-19050 & DSP 19050-01; DDS-660 (the "Application")

Dear Madam Chair and Board Members:

This Preliminary Motion comes on behalf of 6525 Belcrest Road, LLC. The Planning Board must address a fundamental, threshold issue before considering any aspect of Bald Eagle's Applications for Detailed Site Plans: Whether this Application was submitted by all parties with a right of interest in the property proposed for development?

Belcrest has identified to this Planning Board that it has a continuing right of use in the Dewey parking parcel. Its use right comes from its parking approvals and waivers issued by the District Council in 1970. The Applicant has known about this issue for over a year and has never produced to this Planning Board *any public approval* that would disrupt this original Belcrest's original parking approval.

Belcrest's predecessor in interest, Spruell Development, and its co-applicant Dewey Development, which is Dewey, L.C.'s predecessor in interest, jointly obtained those parking approvals, which subjected the Dewey parcel as the parking lot to serve for the benefit of the Metro III building. **Metro III Exhibit 6** (Copy Attached). The approval was for the location of the spaces on Dewey parcel. See Applicant's S.O.J. (DSP-19050) § 4. As a result, the Dewey parcel became the servient property to Metro III for off-site parking and the Code provisions in place at the time expressly created an accessory and primary use relationship that acted to merge these parcels and has not been disturbed by subsequent development acts. **Metro III Exhibit 20** (Excerpts Attached). The Metro III building has been served by, and has relied upon, the Dewey parcel surface parking lot without interruption ever since. See Applicant's S.O.J. (DSP-19050)



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§ 4. In the 1998 and 2016 versions of the TDDP, this specific surface parking lot was deemed legally existing and exempt from being reduced until new Detailed Site Plan applications were filed. (1998 TDDP at Page 20; 2016 TDDP at Page 198 & 262). In 2015, Belcrest obtained confirmation from the Planning Department that its building was subject to its original development approvals. **Metro III Exhibit 23** (Copy Attached).

Belcrest's right has continued uninterrupted since 1970 and the Applicant has done nothing to demonstrate otherwise. The parking was approved by a joint application brought by the parking parcel owner and the building parcel owner and the Applicant has not demonstrated that those approvals are no longer applicable. Yet, the Applicant's Detailed Site Plan proposes to extinguish the effect of those approvals and eliminate the entire surface parking lot without Belcrest's consent and without making Belcrest a party to an application that alters its use rights. This issue has been completely ignored in the staff reports for both cases, with staff instead relying on the existence of private agreements to dismiss the necessity of an analysis of public approvals.

Before proceeding with the Applicant's request the Planning Board must determine whether Belcrest has a legal interest to use this property and, therefore, should have been a party to this Application. It is a fundamental principal of law that a party cannot seek to unilaterally develop property to the detriment of others with a right of use or other legal interest in the land to be developed. Likewise, County law requires that an application be brought forward by all interested owners and that Detailed Site Plans be reviewed for, among other things, compatibility with adjacent and existing land uses, and for orderly development consistent with approved plans and master plans.

Belcrest has filed a pending lawsuit in the Circuit Court for Prince George's County seeking declaratory and injunctive relief to protect its property interest in the Dewey parcel. Both the Applicant and the M-NCPPC are defendants to that action. On the facts before it, the Planning Board must conclude that the Applicant has failed its burden to show that this Application was submitted by all property owners with an interest in the property and either Deny the Application or require resubmittal adding Belcrest as an Applicant.

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If the Planning Board cannot make that fundamental determination, then it must Deny the Application, or stay any determination, until the Circuit Court renders a final determination of the rights at stake.

Respectfully submitted,

McMILLAN METRO, P.C.



Peter E. Ciferri, Esq.

PEC/mb

Enclosures (as noted)

CC: 6525 Belcrest Road, LLC
Thomas Haller, Esq.
Jeremy Hurlbutt
Debra Borden, Esq.
David Warner, Esq.
James Hunt
Jill Kosack

DISTRICT COUNCIL PROPOSAL NO. 636 - 1970
DISTRICT COUNCIL RESOLUTION NO. 636 - 1970

It was Ordered that a WAIVER of the off-street parking requirements of the Zoning Ordinance requested by Nicholas Orem, Jr., Attorney for Spruell Development Corporation and Dewey Development Corporation, owners of all property involved, located on the north side of Toledo Road and limited by Belcrest and Adelphi Roads, Hyattsville, Maryland, be GRANTED.

SEE: Minutes of November 27, 1970

BY *Francis J. Luisi*
Francis J. Luisi, Chairman

ATTEST:

Jean M. Schmuhl
Jean M. Schmuhl, Clerk

such a manner that the provision of the required number of parking spaces is impractical because of a lack of sufficient vacant land in the vicinity;

- (c) the degree to which the proposed reduction in the number of parking spaces would result in greater amenities because of increased landscaping or the preservation of natural woodland or scenery; and
- (d) where there is unusual hardship, and when not detrimental to the occupants or owners of nearby properties.

24.13 Other Uses Prohibited. The automobile parking compounds or garages required by this section are for the sole purpose of accommodating the passenger vehicles of residents, occupants, guests, patrons, employees or other persons associated with the use to which they are accessory, and the loading spaces required are for the purpose of delivering and removing merchandise or other material. Except as provided in Sections 24.14 and 24.15 these areas shall not be used for the sale, display or storage of automobiles or other merchandise, the parking of vehicles accessory to the use, the performance of services, including services to vehicles, nor for any other purpose except those permitted herein; and the required parking compounds shall not be used for loading purposes.

24.14 Limited Service Permitted. Notwithstanding the provisions of Section 24.13, except in a residence, an automobile garage within a building

may include the incidental service automobiles under the following conditions:

- (a) Service shall be limited to supplying gasoline, oil, water and tire pressure, and washing;
- (b) Only automobiles utilizing the parking garage in accordance with this Section 24.0, may be served;
- (c) No signs visible from the exterior of the structure shall announce or advertise the presence of the service facilities.

24.15 Temporary Uses Permitted. Carnivals, circuses, or similar temporary uses shall be permitted in parking compounds, provided that no such use shall continue for more than 15 days consecutively. This shall be in addition to any temporary use specifically permitted in a parking compound as set forth in Section 27.0.

* **24.16 Permanent Requirements.** All required automobile parking compounds and loading areas together with the driveways giving access thereto are deemed to be required space in connection with the uses to which they are accessory and shall not be encroached upon in any manner. At any time that such a parking compound or loading area shall cease to be available for such purposes, the use and occupancy permit for the use to which it is appurtenant shall be revoked until such time as the requirements of this Section 24.0 are complied with.

24.17 Site Plan Approval Required. No building or use and occupancy permit shall be issued for any use for which parking compounds or loading areas both, are required.

24.222 Off-Site Facilities. The required parking compound may be provided on a lot other than that lot on which the principal use is located as otherwise provided for in this Ordinance provided that all of such parking compound is within five hundred (500) feet of the nearest boundary of the record lot on which the use is located and an appropriate legal arrangement assures the permanent availability of the compound. Such parking compound shall not exceed one hundred (100) spaces or twenty per cent (20%) of the parking required by Section 24.0, whichever is the lesser, if located within a residential zone.

24.223 Common Facilities. The off-street parking requirements for two or more uses may be satisfied by providing a joint compound. The normal parking requirement for each use participating in a joint compound may be reduced by up to twenty (20) per cent provided that

- (a) the normal requirement for each use is not more than twenty (20) spaces. and
- (b) the total of such reductions in any joint compound does not exceed forty (40) spaces.

24.224 Shopping Centers. In a shopping center, shopping mall, shopping plaza, or similar development in which there is at least 100,000 square feet of gross floor area, not including theaters, the following standards shall apply in place of those set forth in Section 24.23 and Section 24.32:

For each 200 square feet of gross floor area, excluding theaters.....1 parking space

For all office space in excess of (a) 20 per cent of the gross floor area, or (b) 50,000 square feet, whichever is the lesser.....as required in Section 24.23

For theaters.....as required in Section 24.23

Off-Street loading areas.....3 spaces for the first 100,000 sq. feet, plus 1 space for each additional 100,000 sq. feet

24.225 Fractional Number of Spaces. When the number of spaces calculated in accordance with these regulations results in a number containing a fraction, the required number of spaces shall be the nearest whole number.

24.23 Schedule. The minimum numbers of off-street parking spaces for each type of use shall be as listed in the following schedule:



Mandatory Development Requirements and Development Guidelines

The Prince George's County Zoning Ordinance allows for the designation of Mandatory Development Requirements (Section 27-548.07(e)(1)) and Site Design Guidelines (Section 27-548.07(e)(2)). The Mandatory Development Requirements for development in the transit district are indicated in this document by a "P" or an "S." The Mandatory Development Requirements must be completely reflected by and incorporated into the Conceptual Site Plans, Preliminary Plats of Subdivision and Detailed Site Plans. These requirements shall be coordinated with the public agencies having jurisdiction.

Mandatory Development Requirements indicated by a "P" may only be amended through use of the Primary Amendment Procedure stipulated in Section 27-213.06(b) of the Zoning Ordinance. It is also necessary to use the Primary Amendment Procedure to change such items as the Transit District Overlay Zone (TDOZ) boundary, underlying zoning, permitted land uses, major access points and public transportation services or facilities. Mandatory Development Requirements indicated by an "S" may only be amended through use of the Secondary Amendment Procedure stipulated in Section 27-213.06(c) of the Zoning Ordinance.

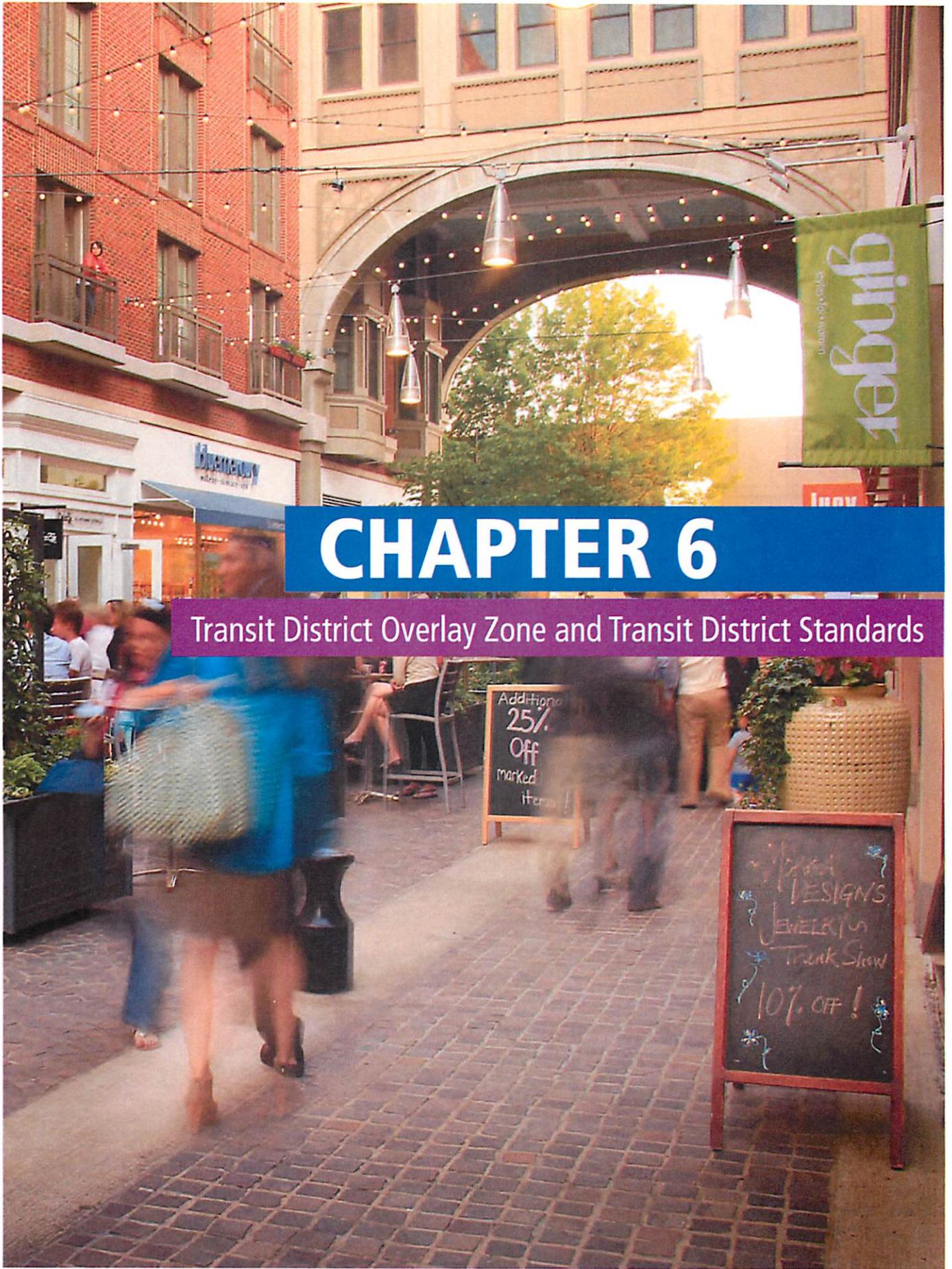
Site Design Guidelines are criteria for development/redevelopment and general performance standards which the Planning Board shall use in reviewing Conceptual and/or Detailed Site Plans. Site Design Guidelines for development in the transit district are indicated in this document by a "G." Sections 27-276 and 27-285 require the Planning Board to find that Conceptual and Detailed Site Plans satisfy the Site Design Guidelines.

Applicability

All development shall comply with the requirements of the Transit District Development Plan (TDDP). Development is any activity that materially affects the condition or use of dry land, land under water or any structure as defined in Section 27-107(a)(66.1). Redevelopment, rehabilitation and renovation of existing structures are all forms of development. Any form of these types of development

may be exempt from the requirements of this TDDP, provided that all aspects of the proposed development meet the following provisions:

1. All existing buildings and structures that do not meet the requirements of the TDDP but were otherwise lawful as of July 14, 1992, are considered to be nonconforming buildings and structures for the purposes of this TDDP. They may continue to be occupied.
2. All legally existing parking and loading spaces do not have to be reduced and/or eliminated in accordance with the TDDP parking cap. Also, these legally existing parking and loading spaces are not subject to the size restrictions of this TDDP.
3. Permits for interior alteration, exterior rehabilitation of an existing building that do not include an increase in gross floor area, canopies, fences, ordinary maintenance or changes in occupancy may be obtained if the existing or proposed use:
 - a. Is permitted by the TDDP.
 - b. Has adequate numbers of existing parking and loading spaces that meet or exceed the maximum parking ratio as set forth by this TDDP, or meet or exceed the parking ratios of Part II of the Zoning Ordinance, whichever parking ratio results in less required parking.
4. Permits which involve an increase of not more than 10 percent of the gross floor area (GFA) of an existing structure on July 14, 1992, or 5,000 square feet, whichever is less, are exempt from meeting the requirements of this TDDP. No Special Exception for the enlargement, extension or alteration of a nonconforming building, structure or use shall be approved if it would result in a greater increase in GFA than permitted in this paragraph.
5. Alterations to legally existing parking for the purposes of restriping, resurfacing or the addition of landscaping not required by this TDDP are exempt from meeting the regulations of this TDDP as long as the parking lot maintains conformance to all previously applicable regulations and no new additional parking spaces are created.
6. Permits for the restoration, reconstruction, or establishment of a nonconforming building or structure, or a certified nonconforming use that are in conformance with Section 27-243 of the Zoning Ordinance are exempt.
7. Permits for refacing an existing sign are exempt from the requirements of this TDDP.



CHAPTER 6

Transit District Overlay Zone and Transit District Standards

Exemptions

The following section describes specific exemptions from part or all of the Transit District Standards and DSP review. Unless specifically described otherwise, additions, expansions, or extensions of buildings, structures, and uses not subject to an exemption identified in this section are subject to DSP review, and are only required to conform to the Transit

District Standards for the area of the addition, expansion, or extension of the building, structure, or use. Adding on, expanding, or extending a building or use to an extent that requires conformance to the Transit District Standards or DSP review only requires such conformance for the addition, expansion, or extension.

Exemptions | Legally Existing Development

E1 Until a Detailed Site Plan (DSP) is submitted, all buildings, structures, and uses, which were lawful or could have been certified as legal nonconforming uses pursuant to Section 27-244 of

the Zoning Ordinance on July 19, 2016, are exempt from the Transit District Standards and are not nonconforming.

Exemptions | Legally Existing Parking And Loading

E2 Until a DSP is submitted, all legally existing parking and loading spaces in the Transit District that were lawful on July 19, 2016 need not be reduced, are

exempt from the Transit District Standards and DSP review, and are not nonconforming.

Exemptions | Parking Facilities

E3 Resurfacing, adding landscaping to parking facilities, and the retrofit of parking facilities with Environmental Site Design stormwater management features pursuant to Section 32-175 of the Water Resources Protection and Grading Code, are exempt from the Transit District Standards and DSP review if the parking facilities were lawful, legally nonconforming, or were made not nonconforming on July 19, 2016, and remain in conformance with all previously applicable regulations. New parking areas that result in the addition of five or fewer parking spaces are exempt from the Transit District Standards and DSP review but shall comply with any applicable

parking and landscaping regulations of the Zoning Ordinance and the Landscape Manual.

E4 Restriping of parking facilities to accommodate parking for the disabled, expectant mothers, car-sharing services, or emergency vehicle access and parking is exempt from the Transit District Standards and DSP review only if such restriping results in no net addition in the number of general purpose surface parking spaces. Restriping of surface parking facilities that results in an addition of general purpose parking spaces is prohibited.

Exemptions | Single-Family Residential Dwellings

E5 On July 19, 2016, no single-family residential dwellings existed within the Transit District. Construction of single-family residential dwellings within the Transit District is subject to the Transit District Standards and DSP review. Subsequent additions or modifications to any single-family residential dwelling are exempt from the Transit

District Standards and DSP review if the residential use continues. A new single-family dwelling unit built to replace one destroyed by fire, flood, or other natural disaster shall also be exempt from the Transit District Standards for up to five years from the date of loss.

Exemptions | Multifamily Development

E6 An addition to a multifamily residential structure that was lawful or could have been certified as nonconforming pursuant to Section 27-244 of the Zoning Ordinance on July 19, 2016 is exempt from the Transit District Standards and DSP review if the

addition (and the accumulated sum of all additions since July 19, 2016) does not increase the gross floor area (GFA) by more than 15 percent or 5,000 square feet, whichever is less.

Exemptions | Nonresidential Development

E7 An addition to a nonresidential structure, other than an integrated shopping center, that was lawful or could have been certified as nonconforming pursuant to Section 27-244 of the Zoning Ordinance on July 19, 2016, is exempt from the Transit District

Standards and DSP review if the addition (and the cumulative sum of all additions since July 19, 2016) does not increase the GFA by more than 15 percent or 5,000 square feet, whichever is less.

Exemptions | Existing Shopping Centers

E8 An attached nonresidential addition to any existing building that is part of an integrated shopping center that was lawful or could have been certified as nonconforming pursuant to Section 27-244 of the Zoning Ordinance on July 19, 2016 is exempt from the Transit District Standards and DSP review if the addition (and the accumulated sum of all additions since July 19, 2016) does not increase the GFA by more than 15 percent of the total GFA of the integrated shopping center (excluding single-use pad sites) as it existed on July 19, 2016.

Any addition which causes an integrated shopping center to exceed this threshold, and all subsequent nonresidential additions, require the approval of a DSP pursuant to Exemption E1 and such additions are subject to the Transit District Standards.

E9 All other development on the site of an integrated shopping center not attached to an existing integrated shopping center, including, but not limited to, pad sites, shall require the approval of a DSP and conformance to the Transit District Standards.

Exemptions | Nonresidential Development

E10 Additions proposing any residential or residential mixed-use development at an existing integrated shopping center, whether it is a physical

addition to an existing integrated shopping center or not, shall be subject to the Transit District Standards and DSP review regardless of size.

Exemptions | Alteration and Rehabilitation

E11 Permits for alteration and rehabilitation, are exempt from the Transit District Standards and DSP review only if the existing or proposed use is permitted by this TDDP, and the alteration or

rehabilitation does not increase the GFA by more than 15 percent or 5,000 square feet, whichever is less.

Exemptions | Other

E12 The following are exempt from the Transit District Standards and DSP review if the existing or proposed use is permitted.

E12.1: Decks.

E12.2: Ordinary maintenance that does not require a permit.

E12.3: Changes in permitted use or occupancy.

E12.4: Changes in ownership.

E13 Fences are exempt from DSP review but subject to the Transit District Standards at the time of Building Permit, where required.

Exemptions | Signs

E14 Existing signs for an existing use, building, or structure that was lawful or could have been certified as a legal nonconforming use on July 19, 2016, are exempt from the Transit District Standards and are not nonconforming.

E15 New signs for an existing use, building, or structure that was lawful or could be certified as a legal nonconforming use on July 19, 2016, are subject to the Transit District Standards at the time of Sign Permit and are exempt from DSP review.

E16 Adding lighting to an existing sign is exempt from the Transit District Standards.

E17 Converting a lighted sign to an electronic sign represents a change in sign type and requires conformance to the Transit District Standards at the time of Sign Permit and is exempt from DSP review.

E18 Refacing of an existing sign, including repair or replacement of a pole or sign support, with no increase in sign area, or increase in the height of a freestanding sign, is exempt from the Transit District Standards and DSP review.

E19 Wayfinding, destination, and community signs, or signs directing drivers, bicyclists, or pedestrians to a public/shared parking facility, installed by a public agency, business improvement district, or other quasi public entity are exempt from the Transit District Standards.

E20 Temporary advertisements or public art displays in vacant or under construction ground-floor windows.



Prince George's County Planning Department
Development Review Division

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
TTY: (301) 952-4366
www.mncppc.org/pgco
301-952-3195

November 5, 2015

6525 Belcrest Road LLC
c/o Ann Marie Mehlert, Esq.
Lerch, Early & Brewer, Chtd.
3 Bethesda Metro Center, Suite 460
Bethesda, MD 20814

**Re: 6525 Belcrest Road
3308 Toledo Road
Hyattsville, MD 20782
Tax IDs: 3666690, 1865757,
1865732 & 1865740**

Dear Ms. Mehlert:

This is in response to your letter received October 29, 2015, requesting zoning verification for the above-referenced properties. The properties are zoned M-X-T (Mixed Use Transportation) and TDOZ (Transit District Overlay Zone). The properties fall within Subareas 2 and 3 of the *Prince George's Plaza Approved Transit District Development Plan for the Transit District Overlay Zone, June 1998* (Plan). Specific uses allowed for the properties can be found within the Plan. The properties are also subject to the use limitations and other applicable requirements in the Plan. You may also access the full text of the Plan on-line at www.pgplanning.org/Resources/Publications.htm/. The Plan is available for purchase for \$4.00, plus an additional shipping and handling fee of \$5.00. If you wish to purchase this document, please contact me.

Research of our records indicates that Conceptual Site Plan #CSP-00024 was approved by the Prince George's District Council on January 8, 2001, for Subareas 2 and 3 of the Prince George's Plaza Transit District Overlay Zone (TDOZ). The plan proposes a mixed-use development with a "Main Street" theme that includes office, retail and residential. A revision to this plan, #CSP-00024/01 was approved on December 6, 2001, by the Prince George's County Planning Board (Planning Board), allowing for a different style of lighting pole than that required by the Plan. In addition, Detailed Site Plan #DSP-00052 was approved on January 4, 2001, by the Planning Board for a 14,400 square-foot addition to an existing office building (Metro I) and a new chiller building adjacent to the existing Metro III building. This plan has been revised 4 times. Most recently, #DSP-00052/04 was approved on March 10, 2004, by the Prince George's County Planning Director for minor revisions to the playground design, increasing enrollment from 99 to 135 students, to provide designated parking spaces for the Greenwood school in Subarea 2, and to add signage along Toledo Road. Most recently, Permit #29251-2015-UOW was approved on July 6, 2015, for a medical office. There is no site plan available for the permit. On May

c/o Ann Marie Mehlert, Esq.
Lerch, Early & Brewer, Chtd.
November 5, 2015
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14, 2014, Permit #16235-2014-CUW was approved for an office. This is the most recently approved permit that includes a copy of the site plan for this property. These records indicate the property was improved in accordance with the zoning standards at the time of development. There are no special exceptions or variances on file for this project.

To obtain a copy of this approved permit site plan, please mail a check to our office made payable to M-NCPPC in the amount of \$4.00. You may also make purchase using a major credit card. For additional information regarding credit card purchases, please call me at 301-952-3195. Plans will be emailed to you upon receipt of your payment.

M-NCPPC (Commission) does not issue permits or code violation notices in Prince George's County, Maryland. The Commission's role is to review permit applications for compliance with zoning and subdivision regulations. Information regarding outstanding violations, use and occupancy and building permits may be obtained by contacting the Prince George's County Department of Permitting, Inspections and Enforcement at 301-883-5900. They can provide you with copies of the aforementioned items.

This letter constitutes only an informal, non-binding statement of the requirements of the Ordinance, applicable regulations and available records. This letter has been rendered without review of a formal application and is therefore, limited to the accuracy of the information you provided in your letter.

I hope this adequately responds to your request. If additional information is needed, please do not hesitate to contact me at 301-952-3195.

Sincerely,

A handwritten signature in black ink, appearing to read 'Benjamin Ryan', written in a cursive style.

Benjamin Ryan
Senior Planning Technician