



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council
301-952-3600

April 28, 2021

**RE: A-10020-C-01 Woodmore Overlook Commercial
Woodmore Overlook Commercial, LLC, Applicant**

NOTICE OF FINAL DECISION OF THE DISTRICT COUNCIL

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed a copy of Zoning Ordinance No. 3 - 2021 setting forth the action taken by the District Council in this case on April 26, 2021.

CERTIFICATE OF SERVICE

This is to certify that on April 28, 2021 this notice and attached Council order were mailed, postage prepaid, to all persons of record.

A handwritten signature in cursive script, reading "Donna J. Brown".

Donna J. Brown
Clerk of the Council

County Administration Building
14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772

Case No.: A-10020-C-01
Woodmore Overlook Commercial
(Amendment of Conditions)

Applicant: Woodmore Overlook Commercial, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ZONING ORDINANCE NO. 3 -2021

AN ORDINANCE to amend certain conditions of approval in Zoning Ordinance 6-2010, which rezoned approximately 18.33 acres of the subject property from the I-3 (Planned Industrial/Employment Park) Zone to the M-X-T (Mixed Use-Transportation Oriented) Zone, located on Tax Map 60 in Grids E-3 and E-4, Planning Area 73, in the northwest quadrant of the intersection of Landover Road (MD 202) and Lottsford Road, is APPROVED.¹

WHEREAS, on March 29, 2021, this matter came before the District Council for consideration on the record from the Zoning Hearing Examiner, revised exceptions or appeals, and oral arguments of the parties; and

WHEREAS, having reviewed the record in this case, the District Council has afforded full consideration of the issues; and

WHEREAS, the District Council has determined that the applicant's request to amend certain transportation conditions in Zoning Ordinance 6-2010, should be approved as requested; and

¹ Zoning Ordinance 6-2010 approved rezoning application A-10020 with conditions (A-10020-C). The "C" indicates that the District Council rezoned the property subject to certain conditions. PGCC § 27-157(b). The "01" in A-10020-01 indicates the instant request or first amendment of the rezoning conditions previously imposed in A-10020-C.

WHEREAS, as the basis for this action, the District Council adopts the findings of facts and conclusions of law made by the Examiner in this case;² and

WHEREAS, the District Council makes additional findings of facts and conclusions of law, to resolve revised exceptions or appeals, as follows:

1. Applicant filed a request, as revised, to amend Conditions 4, 5.a, 5.b, 6, 7, and 8 in Zoning Ordinance 6-2010. Applicant's Revised Application Request, 6/14/2020.
2. The application was advertised and the property posted prior to public hearing, in accordance with all requirements of law.
3. Evidentiary hearings to consider the application request were held before the Examiner on October 7, 2020, November 30, 2020 and December 14, 2020. (10/7/2020, Tr.), (11/30/2020, Tr.), (12/14/2020, Tr.).
4. Lake Arbor Civic Association and LaRay J. Benton opposed the application request. (10/7/2020, Tr.), (11/30/2020, Tr.), (12/14/2020, Tr.).
5. On February 9, 2021, the Examiner issued a written decision recommending approval of the application request. Notice of Decision, 2/9/2021.
6. Applicant filed timely exceptions (as revised) to the Examiner's written decision to reinstate Condition 6 of Zoning Ordinance 6-2010. Applicant's Revised Exceptions, 2/17/2021.
7. Lake Arbor Civic Association filed timely exceptions (as corrected) to the Examiner's written decision, including a request for remand. Lake Arbor Corrected Exceptions, 3/23/2021, Request for Remand, 2/23/2021.

² Where the Council has delegated the duty of making findings of fact and recommendations to the Zoning Hearing Examiner, the Council may comply with the requirement of "specific written findings of basic facts and conclusions of law" by adopting the Examiner's findings and conclusions. *Templeton v. County Council of Prince George's County*, 23 Md. App. 596, 329 A.2d 428 (1974).

The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision. PGCC § 27-141. The District Council may also take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. Moreover, the District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. District Council Rules of Procedure 6.5.

8. Mr. LaRay J. Benton also filed exceptions. Benton Exceptions, 2/25/2021.
9. Oral arguments were held on March 29, 2021. (3/29/2021, Tr.).
10. On April 6, 2021, a motion carried to direct staff to prepare this Ordinance to approve the application request in accordance with the Examiner's written decision. (4/6/2021, Tr.).
11. For reasons stated in Applicant's revised exceptions and at oral argument, and any opposition thereto, Applicant's request to reinstate Condition 6 of Zoning Ordinance 6-2010, will be granted since it was an original condition of rezoning in 2010, negating a determination of good cause. (3/29/2021, Tr.).
12. Lake Arbor Civic Association's request to remand this case to the Examiner is denied. Applicant's request to reinstate Condition 6 of Zoning Ordinance 6-2010 does not conflict with or contradict the Examiner's written decision to revise Condition 5(b). Nor is the Examiner's decision to revise Condition 5(b) erroneous. And the Examiner's decision to revise Condition 5(b) does not nullify District Council's 2019 approval of Detailed Site Plan (DSP) 18024. To the contrary, District Council's decision to *approve* DSP-18024 is *subject to* Condition 5(b). If the approval of DSP-18024 is *no longer subject to* Condition 5(b) (as is the case here), District Council's decision to approve DSP-18024 is *not* nullified. DSP-18024 was approved on separate grounds but was subject to certain conditions from original rezoning of the property. Moreover, District Council's approval of DSP-18024 is on appeal in the Court of Special Appeals. A decision from the Court of Special Appeals is expected on or after May 25, 2021. CSA-REG-0105-2020, *Benton v. Prince George's County District Council*. DSP-18024 is also pending before District Council pursuant to Applicant's timely request for reconsideration. Applicant's Request for Reconsideration, 9/23/2019.
13. Corrected exceptions filed by Lake Arbor Civic Association lack merit. The Association argues that the Examiner erred in finding that Applicant demonstrated good cause to revise certain transportation conditions in Zoning Ordinance 6-2010. Lake Arbor Corrected Exceptions, 3/23/2021. The Association argues that it provided substantial evidence that the Examiner erred in finding good cause. But factual findings are reviewed to determine if they are supported by substantial evidence *in the record*. *Md. Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482, 514 n.15, 42 A.3d 40 (2012). The substantial evidence test does not turn on whether an *aggrieved party* provided substantial evidence to support its position before the administrative agency. On the contrary, the substantial evidence test requires a determination of whether the *agency's decision* is founded upon substantial evidence *in the record*. *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 997 A.2d 768 (2010). The Examiner's finding that the Applicant demonstrated good cause *is*

supported by substantial evidence *in the record*. ZHE Decision, pp. 3-21, (10/7/2020, Tr.), (11/30/2020, Tr.), (12/14/2020, Tr.), (3/29/2021, Tr.).

14. Exceptions filed by Mr. Benton also lack merit. Mr. Benton argues that the Examiner erred because 1) Applicant did not show good cause, 2) certain documents were not accepted into the record, 3) there was bias toward him, and 4) Applicant's direct non-compliance with approved Conceptual Site Plan, Preliminary Plan of Subdivision 4-18007, Transportation, General Plan, Landover Corridor Plan, or Plan 2035, PGCC §§ 27-103, 259, 640, 641, 642, and *Board v. McKinney*, 174 Md. 551, 199 A. 540 (1938). Benton Exceptions, pp. 1-2. Each exception will be addressed in turn below.
15. Having determined that the Examiner's finding did not err in finding good cause, there is no need to address that point again here. *See* Finding 14, ZHE Decision, pp. 3-21, (10/7/2020, Tr.), (11/30/2020, Tr.), (12/14/2020, Tr.), (3/29/2021, Tr.).
16. The Examiner did not err in declining to accept certain litigation documents into the record. ZHE Decision, p. 3. Those documents are irrelevant to the determination of an application request, pursuant to PGCC § 27-135(c), to amend certain conditions of rezoning in Zoning Ordinance 6-2010. Zoning Ordinance 6-2010 is not on judicial review or appeal in any court of competent jurisdiction. Moreover, Mr. Benton has failed to persuade any court of competent jurisdiction to overturn any final decision of the District Council or Planning Board. *See* Findings 17 and 18.
17. Mr. Benton's petition for judicial review in circuit court of District Council's final decision to approve DSP-18024 was *dismissed* for lack of *standing* by the Honorable ShaRon M. Grayson Kelsey. Petition of LaRay J. Benton, CAL19-32060. Mr. Benton appealed Judge Kelsey's dismissal of his petition to the Court of Special Appeals. The only issue on appeal before the Court of Special Appeals is Mr. Benton's *standing*—not the validity or substance of District Council's final decision to approve DSP-18024. CSA-REG-0105-2020, *Benton v. Prince George's County District Council*. Mr. Benton also petitioned the Court of Appeals to review the District Council's final decision to approve DSP-18024. Pet. Docket No. 200, September Term, 2020. The Court of Appeals *denied* Mr. Benton's petition for writ of certiorari on October 23, 2020. *Benton v. Prince George's Cty. Dist. Council*, 2020 Md. LEXIS 527, 471 Md. 106, 240 A.3d 855 (Oct. 23, 2020).
18. Mr. Benton's petition for judicial review in circuit court of Planning Board's final decision to approve Preliminary Plan of Subdivision 4-18007 was *denied* by the Honorable Lawrence V. Hill, Jr. Petition of LaRay J. Benton, CAL19-14488. Mr. Benton appealed Judge Hill's affirmance of the Board's final decision in Preliminary Plan of Subdivision 4-18007 (PPS 4-18007) to the

Court of Special Appeals. The Court of Special Appeals affirmed Judge Hill and in turn upheld the Board's final decision to approve PPS 4-18007. *Benton v. Woodmore Overlook Commer., LLC*, 2021 Md. App. LEXIS 233, 2021 WL 1040497 (Md. Ct. Spec. App. March 18, 2021). Mr. Benton also petitioned the Court of Appeals to review the Board's final decision to approve PPS 4-18007. Pet. Docket No. 199, September Term, 2020, Pet. Docket No. 218, September Term, 2020. The Court of Appeals *denied* both petitions for writ of certiorari on October 23, 2020. *Benton v. Woodmore Overlook Commer.*, 2020 Md. LEXIS 558, 471 Md. 106, 240 A.3d 855 (Oct. 23, 2020), *Benton v. M-NCPPC*, 2020 Md. LEXIS 543, 471 Md. 105, 240 A.3d 854 (Oct. 23, 2020).

19. It was not error or inherent bias for the Examiner to limit Mr. Benton's standing or participation. ZHE Decision, p. 19. Mr. Benton, who is not an attorney, attempted to represent several corporations before the Examiner. But except for a duly elected officer of a bona fide civic association or homeowners' association, non-attorney representation of a corporation is *not* permitted. Md. Code Ann., Land Use § 25-201 (1957, 2012 Repl. Vol., 2020 Supp.), PGCC § 27-125(a), District Council Rules of Procedure 6.2. *See also Turkey Point Property Owners' Ass'n v. Anderson*, 106 Md. App. 710, 666 A.2d 904 (1995) (A corporation is considered a person and must be represented by an attorney admitted to practice law in Maryland).
20. PGCC § 27-103 applies to the scope of the Zoning Ordinance and other conflicting ordinances. Mr. Benton fails to show how this provision of the Ordinance has any bearing on the determination of an application request, pursuant to PGCC § 27-135(c), to amend certain conditions of rezoning in Zoning Ordinance 6-2010.
21. PGCC § 27-259 applies to an application request for permits to build within proposed rights-of-way. Mr. Benton fails to show how this provision of the Ordinance has any bearing on the determination of an application request, pursuant to PGCC § 27-135(c), to amend certain conditions of rezoning in Zoning Ordinance 6-2010.
22. PGCC §§ 27-640, 27-641 and 27-642 are found in Part 13 of the Ordinance. This part of the Ordinance addresses general administrative procedures for Area Master Plans, General Plan, Functional Master Plans, Sector Plans, and Planning Areas. Mr. Benton fails to show how these provisions of the Ordinance have any bearing on the determination of an application request, pursuant to PGCC § 27-135(c), to amend certain conditions of rezoning in Zoning Ordinance 6-2010.

23. Mr. Benton's reliance on *Board of Zoning Appeals v. McKinney*, 174 Md. 551, 199 A. 540 (1938) is inapposite. In 1938 the Court of Appeals was called upon to decide whether the Board of Zoning Appeals could seek judicial review in an appellate court, when a circuit court had reversed and annulled the Board's final zoning decision. *McKinney*, 174 Md. at 556, 199 A. at 542. The Court ultimately dismissed the appeal because the Board of Zoning Appeals had no statutory right of appeal. *Id.* at 174 Md. at 564, 199 A. at 546. Maryland jurisprudence had traditionally taken a narrow view regarding the capacity of an administrative agency to seek judicial review of its own decisions. *Comm'n on Human Relations v. Anne Arundel County*, 106 Md. App. 221, 236, 664 A.2d 400, 408 (1995). This narrow view, referred to as the *McKinney-Peco* doctrine, evolved from decisions in *McKinney*, *supra*, and *Maryland Board of Pharmacy v. Peco, Inc.*, 234 Md. 200, 198 A.2d 273 (1964). These cases stood for the proposition that a *State* agency was precluded from seeking appellate review of a circuit court decision when the circuit court overruled the agency's final administrative decision upon judicial review. *Maryland-National Capital Park & Planning Comm'n v. Anderson*, 395 Md. 172, 909 A.2d 694 (2006) (Emphasis added). The *McKinney-Peco* doctrine (as applied in Administrative Procedure Act (APA) cases) is inapplicable because Council is not subject to the APA.³ *Grant v. Cty. Council of Prince George's Cty.*, 465 Md. 496, 214 A.3d 1098 (2019), *Cty. Council of Prince George's Cty. v. Chaney Enters. L.P.*, 454 Md. 514, 534-35, 165 A.3d 379, 391-92 (2017). Lastly, the *McKinney-Peco* doctrine has since been abrogated. In 1993, the Legislature (in direct response to the *McKinney-Peco* doctrine) adopted Section 10-222(a) of the APA, which explicitly confers on covered State agencies the right to seek judicial review of the agency's final administrative decision where the decision was made by either an internal or external administrative tribunal, to which the agency delegated the authority to make a final decision in the agency's name. *Anderson*, 395 Md. 172, 909 A.2d 694 (2006), Chapter 59, of the Acts of 1993.

- NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. The application to amend Conditions 4, 5.a, 5.b, 7, and 8 in Zoning Ordinance 6-2010, which rezoned approximately 18.33 acres of the subject property from the I-3 (Planned Industrial/Employment Park) Zone to the M-X-T (Mixed Use-Transportation Oriented) Zone, located on Tax Map 60 in Grids E-3 and E-4, Planning Area 73, in the northwest quadrant of the intersection of Landover Road (MD 202) and Lottsford Road, is APPROVED.

³ The Administrative Procedure Act or APA is codified in Md. Code Ann., State Government Article, Title 10, Subtitle 2 (1957, 2014 Repl. Vol., 2020 Supp.).

SECTION 2. Use of the subject property shall be subject to all requirements in the applicable zones and to the requirements in the conditions herein. Failure to comply with any stated condition shall constitute a zoning violation and shall constitute sufficient grounds for the District Council to annul the rezoning as conditionally approved; to revoke use and occupancy permits; to institute appropriate civil or criminal proceedings; and/or to take any other action deemed necessary to obtain compliance.

SECTION 3. Approval of A-10020-C-01 is subject to the following amended conditions:

1. The applicant shall observe these recommendations during the preparation and review of the Conceptual Site Plan (CSP):
 - a. The site plan shall provide adequate open space at the perimeter, as determined by the Urban Design Section, to serve as a buffer between the project and adjacent lower-density residential development and the church.
 - b. Wherever possible, living areas shall be linked to community facilities, transportation facilities, employment areas, and other living areas by a continuous system of pedestrian walkways and bike trails utilizing the openspace network.
 - c. Buffering in the form of landscaping, open space, berming, attractive fencing, and/or other creative site planning techniques should be utilized to protect existing residential areas, particularly those interfaces with the multifamily buildings in Phase 1 and that adjoining the church in Phase 2.
2. All future submissions for development activities on the subject property shall contain the following:
 - a. A signed Natural Resources Inventory (NRI).
 - b. A Tree Conservation Plan that covers the entire subject property.

3. At the time of CSP review, the Applicant and staff of the Department of Parks and Recreation shall develop a mutually acceptable package of parkland, outdoor recreational facilities, fees, or donations to meet the future needs of the residents of the planned retirement community.
4. Total development within the subject property shall be limited to uses which generate no more than 364 AM and 347 PM peak-hour vehicle trips. Any development generating a greater impact shall require an amendment of conditions with a new determination of the adequacy of transportation facilities.
5. Prior to issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency (with improvements designed, as deemed necessary, to accommodate bicycles and pedestrians):
 - a. MD 202 at Lottsford Road: Construct an additional southbound left-turn lane (to create a triple left-turn lane) from MD 202 onto eastbound Lottsford Road, along with necessary signal modifications to support the triple left turn.
 - b. I-310/Grand Way Boulevard: Construct the entire roadway between MD 202 and Ruby Lockhart Boulevard within the dedicated right-of-way to County standards.
6. All required transportation facility improvements shall be determined at the time of subdivision approval.
7. Prior to approval of the initial commercial detailed site plan, the applicant shall submit an acceptable traffic signal warrant study to the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) and/or the Prince George's County Department of Public Works and Transportation (DPW&T) for signalization at the intersection of Ruby Lockhart Drive and the commercial access. The applicant shall utilize a new 12-hour count and shall analyze signal warrants under total future traffic, as well as existing traffic, at the direction of DPW&T. If signalization or other traffic control improvements are deemed warranted at that time, the applicant shall bond the improvements with DPIE/DPW&T prior to release of any building permits under Phase II, and complete installation at a time when directed by DPIE/DPW&T.

8. There shall be no direct driveway access between the subject property and Landover Road (MD 202).
9. The Applicant shall provide eight-foot wide sidewalks and designated bike lanes along both sides of the subject site's portion of Ruby Lockhart Boulevard (consistent with approvals for the Woodmore Town Center), unless modified by DPW&T.

SECTION 4. The Ordinance shall become effective upon enactment.

ENACTED this 26th day of April, 2021, by the following vote:

In Favor: Council Members Anderson-Walker, Davis, Dernoga, Franklin, Glaros, Harrison, Hawkins, Streeter, Taveras, and Turner.


Opposed:

Abstained:

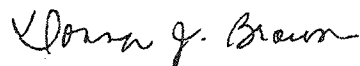
Absent: Council Member Ivey.

Vote: 10-0.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: 
Calvin S. Hawkins, II, Chair

ATTEST:



Donna J. Brown
Clerk of the Council