

Case No.: CSP-18002
Magruder Pointe
(Renamed Suffrage Point)
(On Remand Pursuant to
Court Decision on Density)

Applicant: Werrlein WSSC, LLC

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

FINAL DECISION ON DENSITY EXPRESSED PER NET ACRE OF NET LOT OR
TRACT AREA PURSUANT TO A DECISION FROM
THE COURT OF SPECIAL APPEALS OF MARYLAND

A. Introduction

This case is before the District Council on remand after the Court of Special Appeals of Maryland (COSA) affirmed the District Council's approval of Conceptual Site Plan 18002 (CSP-18002), which rezoned a portion of the subject property from Open Space (O-S) to R-55 (One-Family Detached Residential) and concurrently allowed the development of townhouse dwelling units on the subject property.¹

However, because part of the District Council's final decision to approve CSP-18002 expressed density for single family detached and single family attached dwelling units *per acre*, as opposed to *per net acre of net lot or tract area*, COSA did not affirm that part of the final decision.

¹ *City of Hyattsville v. Prince George's Cty. Council*, 254 Md. App. 1, 91-93, 270 A.3d 950, 989-90 (filed February 23, 2022) (the District Council's decision must be affirmed in part, but not in its entirety. The decision must be affirmed insofar as it changed the underlying zone of the upper parcel from the O-S zone to the R-55 zone. The decision must also be affirmed insofar as it changed the list of allowed uses to allow townhouses on the subject property. The decision must be reversed to the extent that it modified the density regulations on the subject property to allow 6.7 dwelling units per acre . . . for single-family detached units and 9 dwelling units per acre . . . for single-family attached units. The District Council may not allow a density for one-family detached dwelling units that exceeds 6.7 dwelling units per net acre of net lot or tract area. The District Council may establish a density for townhouses that is different from the density for one-family detached dwelling units, but the District Council may do so only to meet the goals of the Development District and the purposes of the D-D-O Zone. The density that the District Council establishes for townhouses must be expressed as a number of dwelling units per net acre of net lot or tract area).

Instead, COSA remanded the matter to circuit court with instructions for that court to remand the matter to the District Council to express density per *net* acre of *net* lot or tract area.

As detailed *infra*, density is established for the subject property as follows:

1. Density for One-Family detached dwelling units shall not exceed 6.7 dwelling units per net acre of net lot or tract area, and
2. Density for Townhouse dwelling units shall not exceed 12.3 dwelling units per net acre of net lot or tract area.

B. The Subject Property

As discussed in greater detail below, the subject property consists of two parcels. The upper parcel is approximately 3.6 acres in size, and the lower parcel is approximately 4.66 acres in size. The subject property is within the municipality of the City of Hyattsville. Development of the subject property is governed primarily by the 2004 Gateway Arts District Sector Plan and Sectional Map Amendment, which placed the entire Gateway Arts District in a Development District Overlay (D-D-O) Zone. *City of Hyattsville*, 254 Md. App. at 5-8, 270 A.3d at 954-56.

C. Procedural Timelines

1. COSA Decision

On February 23, 2022, COSA issued its published opinion. After the mandate issued on March 28, 2022, no party filed a petition for writ of certiorari to the Court of Appeals to challenge any adverse ruling from COSA, including the ruling from COSA that the District Council has the authority to establish density per net acre of net lot or tract area for the subject property. Md. Rule 8-302. For purposes of land use, planning, and zoning in Prince George's County, *City of Hyattsville v. Prince George's Cty. Council*, 254 Md. App. 1, 270 A.3d 950 (2022), is precedent.

2. Motion for Order of Remand

On May 5, 2022, the District Council, the Applicant, and the City of Hyattsville filed a joint motion in the circuit court for an order of remand to the District Council to address density in accordance with the decision from COSA. Counsel for the Eisen Petitioners or parties did not join or oppose the motion. Motion To Issue Order of Remand, 5/5/2022. On May 12, 2022, the circuit court issued an order of remand to the District Council. Court Order, 5/17/2022. The order of remand (a final appealable order) was entered on May 17, 2022, which was not appealed by any party, including the Eisen Petitioners. *Schultz v. Pritts*, 291 Md. 1, 6, 432 A.2d 1319, 1322-23 (1981) (An order of remand to an administrative agency—here the District Council—is an appealable final order because it terminates the judicial proceedings and denies the parties means of further prosecuting or defending their rights in the judicial proceedings).

3. Notice of Action

On June 23, 2022, the Clerk of the County Council mailed a Notice of Action to counsel of record as follows:

Pursuant to an Order from the Circuit Court for Prince George’s County, Maryland, this matter was remanded to the District Council for action consistent with the decision of the Court of Special Appeals of Maryland on the issue of density on the subject property. In an abundance of caution and given the current state of the novel coronavirus (COVID-19) pandemic, the District Council is now operating under hybrid meeting operations. The Prince George’s District Council will meet in a hybrid manner – both virtually and in-person until further notice.

This is not a notice of oral argument. This notice is to inform counsel of record that this matter will be placed on the District Council agenda for action described above on:

TUESDAY, JULY 12, 2022 -10:00 A.M.
HYBRID MEETING
(BOTH VIRTUALLY AND IN-PERSON)
VIEW USING THE LINK PROVIDED AT: [HTTPS://PGCCOUNCIL.US/LIVE](https://pgccouncil.us/live)

Notice of Action, 6/23/2022 (Emphasis added).

4. Zoning Agenda Action — July 12, 2022

On July 12, 2022, Staff of the Planning Department provided the District Council with an orientation of the matter, including the relevant holding from COSA that the District Council must express density for each type of dwelling unit in terms of *net* acre of *net* lot or tract area as opposed to *per* acre. At the conclusion of the orientation, the District Council took the matter under advisement.

5. Zoning Agenda Action — September 19, 2022

On September 19, 2022, the District Council directed staff to prepare an order to establish density for the subject property as follows:

In order to meet the goals of the Development District and the purposes of the D-D-O Zone:

Density for One-Family detached dwelling units shall not exceed 6.7 dwelling units per net acre of net lot or tract area, and

Density for Townhouse dwelling units shall not exceed 12.3 dwelling units per net acre of net lot or tract area.

D. 2004 Gateway Arts District Sector Plan and Sectional Map Amendment

Development of the subject property is governed primarily by the 2004 Gateway Arts District Sector Plan and Sectional Map Amendment (2004 Plan). As noted above, the 2004 Plan covers the City of Hyattsville and “provides comprehensive guidance for future development” in the

Gateway Arts District. The 2004 Plan also describes seven “character areas,” each with distinct characteristics. Each character area has its own set of “Development District Standards,” which “implement the concepts and recommendations” for each character area. *Id.* at 17, 135. The 2004 Plan assigned the subject property to the “traditional residential neighborhood” or “TRN” character area. *Id.* at 138, *City of Hyattsville*, 254 Md. App. at 6-8, 270 A.3d at 955-56.

- Goals of the Development District or TRN

The goals of the TRN are to: promote development of both family and artist-oriented residential development in the R-55, R-35, R-20, and R-T zones; preserve the single-family residential neighborhood character as the anchor of the Arts District, while supporting artists who produce and teach from their homes; and to enhance the “built-in” natural surveillance of public areas by active neighbors on porches, in yards, and on the sidewalk. 2004 Plan at 26-27, 138. TRN character areas *overlay* land zoned for *attached* and *detached* single-family housing development. *Id.* at 138 (Emphasis added), *City of Hyattsville*, 254 Md. App. at 67-68, 270 A.3d at 980-81.

E. The D-D-O Zone

The 2004 Sectional Map Amendment imposed an overlay zone, known as the Development District Overlay (D-D-O) zone, on the entire Gateway Arts District. The D-D-O is a mapped zone superimposed over other zones in a designated development district, which may modify development requirements within the underlying zones. PGCC § 27-548.19, *City of Hyattsville*, 254 Md. App. at 6-8, 270 A.3d at 956.

- Purposes of the D-D-O Zone

The specific purposes of the D-D-O zone are:

- (1) To provide a close link between Master Plans, Master Plan Amendments, or Sector Plans and their implementation;
- (2) To provide flexibility within a regulatory framework to encourage innovative design solutions;
- (3) To provide uniform development criteria utilizing design standards approved or amended by the District Council;
- (4) To promote an appropriate mix of land uses;
- (5) To encourage compact development;
- (6) To encourage compatible development which complements and enhances the character of an area;
- (7) To promote a sense of place by preserving character-defining features within a community;
- (8) To encourage pedestrian activity;
- (9) To promote economic vitality and investment.

PGCC § 27-548.20(a), *City of Hyattsville*, 254 Md. App. at 63, n.17, 270 A.3d at 979.

F. The 2014 General Plan for Prince George's County or Plan 2035

In May 2014, the General Plan for Prince George's County was approved, which is also known, or referred to, as Plan 2035. Under Plan 2035, the property is in the Established Communities Area. Plan 2035 classifies existing residential neighborhoods and commercial areas served by public water and sewer outside of regional transit districts and local centers as established communities. Established communities are most appropriate for context-sensitive infill and low-to medium-density development. Infill development takes place on vacant or underutilized parcels within an area that is already characterized by urban development and has access to urban services. Plan 2035 defines density to include single-family detached dwellings that range from less than 1 to 6 per [net] acre on a single lot, townhouses from 6 to 12 units per [net] acre, and multifamily units from 12 to 48 units per [net] acre in one structure. Plan 2035, pp.

20, 284, 288, PGCPB Nos. 18-74, 18-74(A), Staff Report, 7/18/2018, Statement of Justification, 6/27/2018, Staff Supplemental Memo, 2/25/2019, (3/14/2019, Tr.), (5/13/2019, Tr.).

G. Surrounding Properties and Densities

To the north and east of the subject property, beyond Hamilton Street and 41st Avenue, are existing single-family detached houses in the R-55 zone; to the west, beyond 40th Avenue, is an existing public park known as Magruder Park, owned by the City of Hyattsville, and Magruder Woods Park owned by the Maryland-National Capital Park and Planning Commission (M-NCPPC) in the O-S zone; and between the two parcels are midrise apartment buildings in the Multifamily High Density Residential (R-10) zone. Moreover, surrounding properties, like the subject property, are in the TRN character area and the D-D-O zone. PGCPB No. 18-74(A) at 2.

The adjoining properties in the R-55 zone are developed with single-family homes with a density of approximately 3.6 to 7.9 dwelling units per [net] acre (average lot size is 0.126-0.3 acre). The R-10 zoned property, between 40th Place and 41st Avenue, is developed with 3 existing multifamily apartment buildings, with an approximate density of 30 dwelling units per [net] acre, but it is allowed to be up to a maximum of 48 dwelling units per [net] acre. PGCPB No. 18-74(A) at 21.

H. Other Residential Zones and Densities

In the R-20 zone, the maximum density for one-family detached dwellings is 6.7 dwelling units per net acre, but the maximum density for townhouses is 16.33 dwelling units per net acre. PGCC § 27-442(h). In the R-T, R-30, R-30C, R-18, and R-18C zones, the maximum density for one-family detached dwellings is 6.7 dwelling units per net acre, but the maximum density for

townhouses is 6.0 dwelling units per net acre (or 8.0 dwelling units per net acre for certain townhouses approved before November 1, 1996). *Id.* In the R-T zone, the maximum density in the “Townhouse, Transit Village” category is 12.0 dwelling units per net acre. PGCC § 27-442(h), *City of Hyattsville*, 254 Md. App. at 66, n.24, 270 A.3d at 988.

Moreover, the District Council has adopted several bills or legislation, which have encouraged *high-density*, single-family dwellings in the R-55 Zone, *including townhouses*. PGCPB Nos. 18-74, 18-74(A), Staff Report, 7/18/2018, Statement of Justification, 6/27/2018, Staff Supplemental Memo, 2/25/2019, (3/14/2019, Tr.), (5/13/2019, Tr.).

I. Preliminary Plan of Subdivision Application No. 4-21052

On June 30, 2022, the Planning Board approved the Applicant’s Preliminary Plan of Subdivision (PPS) application for the lower parcel of the subject property. PGCPB No. 2022-75, File No. 4-21052.² According to the Board’s resolution, the Applicant requested 2.88 acres of additional impacts to regulated environmental features for construction of a 100-year flood compensatory storage facility, four proposed micro-bioretenention stormwater devices, a stormwater management outfall, and other cut and fill grading operations, to establish proposed lots, roads, and associated on-site infrastructure. The Board indicated that the Department of Permitting, Inspections and Enforcement (DPIE) granted the Applicant’s Floodplain Fill Waiver (36721-2018), for impacts to allow for filling and grading within the floodplain to *reduce* the area of

² PGCC § 27-141 (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 a preliminary plan of subdivision).

existing 100-year floodplain and Primary Management Area (PMA) on-site and make Outparcel 1 *developable*. PGCPB No. 2022-75 at 31-32 (Emphasis added). The Board found that the PPS application shows 41 total townhouse lots for the lower parcel, based on the existing approved CSP-18002. According to the Board, when density is expressed in terms of *net* acreage, density is *not* expected to result in a different townhouse lot yield. PGCPB No. 2022-75 at 33-34. The Board also noted that the *actual* lot yield must be determined at the appropriate stage of review when the relevant requirements of the Subdivision Regulations and the Zoning Ordinance are applied. As such, the 41 units shown on the PPS application *are the maximum* this development *can achieve*, rather than the *guaranteed* total lot yield for the site because given specific site constraints and restrictions, the *total* lot yield may be *reduced*. PGCPB No. 2022-75 at 32-33 (Emphasis added).

Moreover, the Board imposed 15 conditions of approval on the PPS application. PGCPB No. 2022-75 at 2-5. Those 15 conditions of approval to the PPS application will ensure compliance with the density range established for the subject property in *this* approval because density has been established *not to exceed* a maximum range, which for the subject property is not a guaranteed total lot yield for the site because specific site constraints and restrictions may result in a *reduction* of the total lot yield. *Id.*, *City of Hyattsville*, 254 Md. App. at 68-69, 270 A.3d at 989-90 (“At all subsequent stages for approval of [Applicant’s] proposed development, on either parcel, the administrative decision-makers will determine whether the proposed development actually conforms with the maximum densities established by the District Council’s zoning decision.”) (Emphasis added).

J. Conclusion

Under circumstances such as these, density for one-family detached not to exceed 6.7 dwelling units per net acre of net lot or tract area and density for townhouses not to exceed 12.3 dwelling units per net acre of net lot or tract area, will meet the goals of the TRN and purposes of the D-D-O zone. Such density will also benefit the proposed development, will further the purposes of the TRN, and will not substantially impair implementation of any Master Plan or Sector Plan. PGCC § 27-548.26((b)(1)(B), *City of Hyattsville*, 254 Md. App. at 66-67, 270 A.3d at 988-89.

- Goals of the TRN

TRN character areas overlay land zoned for *attached* and *detached* single-family housing development. 2004 Plan at 138 (Emphasis added), *City of Hyattsville*, 254 Md. App. at 67-68, 270 A.3d at 980-81. Setting density (not to *exceed a range of maximum* density) for the subject property will meet the goals of the TRN.³ Such a *range of maximum* density expressly satisfies the TRN character areas, which overlay land zoned for *attached* and *detached* single-family housing development. Such a *range* of maximum density will promote development of *both* family and artist-oriented residential development (to include *newly* approved *uses* for *townhouses*) in the R-55 zone. It will *preserve* the single-family residential neighborhood character as an *anchor* of the Arts District, while supporting *artists* who produce and teach from their homes that are *not* limited

³ The District Council finds that the 2004 Plan expressly states that “[g]enerally, density is four (4) to ten (10) units per [net] acre,” for *existing* TRN character areas. 2004 Plan at 26-27 (Emphasis added). The District Council will assume for purposes of this approval, such density referred to single-family detached dwelling units. But the District Council finds that such *generalization* of density, under the Ordinance, allows it the *discretion* to amend or modify the table of uses of the TRN to amend and allow density regulations to meet the *goals* of the TRN *if* the appropriate request is made (as is the case here) under the Ordinance.

to single-family *detached* units—yet enhancing the “built-in” natural surveillance of public areas by active neighbors on porches, in yards, and on the sidewalk because the upper and lower parcels of the subject property not only transition within sufficient proximity, but the maximum density of each parcel for each type of dwelling unit will achieve the goals of the residential neighborhood charter of the TRN for *attached* and *detached* single-family housing development.

- Purposes of the D-D-O Zone

The D-D-O is a mapped zone superimposed over other zones in a designated development district, which may modify development requirements within the underlying zones. PGCC § 27-548.19, *City of Hyattsville*, 254 Md. App. at 6-8, 270 A.3d at 956. Setting density (not to *exceed* a *range of maximum* density) for the subject property will further the purposes of the development district and will conform with the purposes and recommendations for the development district.

Setting density (not to *exceed* a *range of maximum* density) for the subject property conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan. It provides flexibility within a regulatory framework to encourage innovative design solutions; provides uniform development criteria utilizing design standards approved or amended by the District Council; promotes an appropriate mix of land uses; encourages compact development; encourages compatible development which complements and enhances the character of the area; promotes a sense of place by preserving character-defining features within the community; encourages pedestrian activity; and promotes economic vitality and investment.

It supports transit and other basic urban services, and promotes compact development that is consistent with smart growth policies in Hyattsville, while maintaining economic viability. PGCPB Nos. 18-74, 18-74(A), Staff Report, 7/18/2018, Statement of Justification, 6/27/2018, Staff Supplemental Memo, 2/25/2019, (3/14/2019, Tr.), (5/13/2019, Tr.).

It supports feasible, multi-modal, public transportation and other basic community services, improves economic productivity, improves real estate value and business activity. PGCPB Nos. 18-74, 18-74(A), Staff Report, 7/18/2018, Statement of Justification, 6/27/2018, Staff Supplemental Memo, 2/25/2019, (3/14/2019, Tr.), (5/13/2019, Tr.).

For such reasons stated herein, setting development density, not to exceed 6.7 dwelling units per net acre of net lot or tract area for One-Family detached dwelling units, and not to exceed 12.3 dwelling units per net acre of net lot or tract area for Townhouse dwelling units, 1) will further the purposes of the development district, 2) will conform with the purposes and recommendations for the development district, 3) will represent a most reasonable alternative for satisfying the site design guidelines without requiring unreasonable costs and without distracting substantially from the utility of the proposed development for its intended use, and 4) will not otherwise substantially impair the implementation of the 2004 Plan or Plan 2035. PGCC §§ 27-276(b)(1), 27-548.26(b), *City of Hyattsville*, 254 Md. App. at 66-67, 270 A.3d at 988-89.

APPROVAL of Conceptual Site Plan CSP-18002, to rezone a portion of the subject property to R-55 and change the list of allowed uses in the development district, to facilitate R-55 development of the entire 8.26 acres, is subject to the following conditions:

1. Prior to certification, the Conceptual Site Plan shall be revised, or additional information shall be provided, as follows:

- a. Delineation of the existing and revised 100-year floodplain.
 - b. Revise the plan to include the legal description of all lots included in the CSP.
 - c. Reflect approval of the uses, zones, and densities allowed.
2. At the time of Detailed Site Plan, as required in PGCC § 27-548.26, Applicant shall:
 - a. Provide evidence that impact to the floodplain has been approved by the authority having jurisdiction.
 - b. Provide sidewalks on both sides of all internal streets, excluding alleys, as appropriate.
3. Prior to issuance of any building permit, Applicant shall, pursuant to PGCC § 27-548.26, obtain approval of a Detailed Site Plan (DSP) for the entire 8.26 acres. The DSP shall be subject to all Development District Overlay (D-D-O) Zone standards applicable to the Traditional Residential Neighborhood Character Area. Additional bulk requirements shall be established with the approval of the DSP to implement the applicable goals and recommendations of the 2004 *Approved Sector Plan and Sectional Map Amendment for the Prince George's County Gateway Arts District*, to achieve context-sensitive, high-quality, single-family residential development.

ORDERED this 17th day of October, 2022, by the following vote:

In Favor: Council Members Franklin, Glaros, Harrison, Hawkins, Medlock, Streeter, Turner and Taveras.

Opposed: Council Members Burroughs, Dernoga and Ivey.

Abstained:

Absent:

Vote: 8-3.

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