

Case No. DSP-04076-04
EYA Hyattsville Redevelopment
Phase I

Applicant: L H West Associates Ltd.

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

ORDER OF APPROVAL WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 14-53, to approve with conditions a detailed site plan for the following amendments to the previously approved plans: convert three live/work units to residential units with resulting architectural changes; revise the layout of the tot lot; add 156 square feet of land to the application; revise the Lot 129/130 courtyard, building footprint, lot line, and trash enclosure; add a privacy fence to Lot 127; and revise all sheets and tables that reference the total number of live/work units or identify Lots 127-129 as live/work units, located in the southwestern quadrant of the intersection of Baltimore Avenue (US 1) and Madison Street, in Planning Area 68 and Council District 2, is AFFIRMED.

PROCEDURAL HISTORY

On May 30, 2014, Technical Staff completed its review of DSP-04076-04, with a recommendation of approval with conditions.

On June 12, 2014, Planning Board held a public hearing and considered evidence on DSP-04076-04. At the conclusion of the hearing, Planning Board voted to approve DSP-04076-04, with conditions.

On June 19, 2014, Planning Board action on DSP-04076-04 was subsequently embodied within a resolution and adopted. *See* PGCPB No. 14-53.

On June 24, 2014, notification of Planning's Board's action, PGCPB No. 14-53, was transmitted to the Clerk of the County Council.

On July 24, 2014, Ms. Faith Davis appealed the decision of the Planning Board in PGCPB No. 14-53 to the District Council.

On September 22, 2014, the District Council held a duly advertised public hearing or oral argument on this matter. At the conclusion of the hearing, this matter was taken under advisement.

QUESTIONS ON APPEAL

Ms. Davis has presented the following questions for review:

- The proposed amendment would allow for construction of three residential units at Washington Blvd and Kennedy Street.
- The proposed amendment will no longer bring retail, as promised, and as such, the amendment, if granted, will add or bring undue hardship to residents with potential negative impact on property value, reduce parking, and loss of green space.
- The original plan called for ground floor retail, and since this is no longer the case, residents should not be subjected to additional congestion and potential negative impact on property values.
- An appeal should be considered so that the facts of the case can be considered impartially without any bias on a ten year working relationship between the applicant and the planning board.

Ms. Davis also indicated that more details of her concerns can be found from the transcript of her testimony before the Planning Board. *See* Ms. Faith Davis Letter of Appeal, July 24, 2014. The Applicant presented rebuttal.

APPLICABLE LAW

The Planning Board's decision on a Detailed Site Plan may be appealed to the District Council upon petition by any person or party of record. The petition shall specify the error which is claimed to have been committed by the Planning Board and shall also specify those portions of the record relied upon to support the error alleged. The petition shall be filed with the Clerk of the Council within thirty (30) days after the date of the notice of the Planning Board's decision and the District Council shall schedule a public hearing on the appeal. *See* Section 27-290(a) of the Zoning Ordinance and Section 25-210 of the Land Use Article.

The Planning Board, in approving a Detailed Site Plan, is required to find that the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make these findings, the Planning Board may disapprove the Plan. *See* Section 27-285(b) of the Zoning Ordinance. The District Council shall affirm, reverse, or modify the decision of the Planning Board, or remand the Detailed Site Plan to the Planning Board to take further testimony or reconsider its decision in accordance with the Order of Remand adopted by the Council. Where the Council approves a Detailed Site Plan, it shall make the same findings which are required to be made by the Planning Board. The Council shall give its final decision in writing, stating the reasons for its action. *See* Section 27-290(d)(e) of the Zoning Ordinance and Section 25-210 of the Land Use Article.

FINDINGS AND CONCLUSIONS

In approving DSP-04076-04, and pursuant to Section 27-290(d) of the Zoning Ordinance, the District Council makes the same findings as the Planning Board in Resolution PGCPB No. 14-53. Our final decision to approve DSP-04076-04, adopts and incorporates, as is fully restated

herein, the required findings and conclusions of the Planning Board, set forth in Section 27-285(b) of the Zoning Ordinance, as embodied in PGCPB No. 14-53.

Specifically, there is substantial evidence in the record to justify the Applicant's amendment request for the conversion of the three live/work units located on Lots 127–129 to residential units and a resultant change to the architecture of the building. The uncontroverted evidence in the record is the result of the Applicant's experience with other live/work units within this development. In short, the Applicant has experienced that live/work units cannot be financed and there is no demand for these units. If the building on Lots 127–129 were to be built as currently approved, these three units would simply remain vacant, which would have a negative impact upon the development and the community. Given this scenario, the Applicant has proposed to convert these units to residential only, with a conforming change to the architecture of the building. The remaining proposed revisions are very minor in nature and self-explanatory. *See* (6/12/2014, Tr.)

The requested conversion of the proposed live/work units to residential units represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of a proposed development for its intended use. Given the certainty of failure for live/work units at this point in time, disapproval of the amendment, for the reasons stated on appeal by Ms. Davis, would require unreasonable costs, and would detract substantially from the utility of the proposed development for its intended use. The subject revision approval does not alter the previous findings of conformance made at the time of approval of the underlying DSP-04076. *See* 2004 Approved Sector Plan and Sectional Map Amendment for the Prince George's County Gateway Arts District. Nor does the subject revision approval affect the findings made during the approval of the underlying DSP-

04076 for EYA Hyattsville regarding compliance with the requirements of the Zoning Ordinance in the M-U-I and D-D-O Zones. *See* (6/12/2014, Tr.)

We now address the questions raised on appeal by Ms. Davis.

1. **Potential negative impact on property value.** At the Planning Board, Ms. Davis provided no evidence to support her contention that the conversion of the live-work units to residential only would have a negative impact on property values.
2. **Reduced parking.** The required number of parking spaces for both live-work units and residential units are the same. Parking for a residential or live-work use shall be a minimum of 1.0 on-site spaces per unit. *See* Gateway Arts District Sector Plan, p. 139. Since no additional units are proposed to be created, *i.e.*, the 3 live-work units will be converted to 3 residential units, there will be no reduction in parking.
3. **Loss of green space.** If Ms. Davis refers to the “green space” that is currently existing on the site of the proposed building, that was never “green space” that was required as part of the approved Detailed Site Plan. It is only a holding area until the building that has been planned and approved on this site is built. It should also be noted that this “green space” would be eliminated even if the building were to continue to include live-work units.
4. **Bias.** After reviewing the record, we find no evidence of bias or an improper relationship between the Applicant and the Planning Board. The transcript of the Planning Board’s public hearing revealed that Ms. Davis was afforded and extended the same due process as the Applicant. As such, we conclude that the duly advertised public hearing was held in accordance with the Planning Board’s Administrative Practice and Rules of Procedure approved in PGCPB Resolution No. 08-71.

Finding no evidence in the record to support the questions on appeal, we approve DSP-04076-04.

DSP-04076-04 is subject to the following conditions:

1. Prior to certification of the subject revision to the detailed site plan, the following corrections shall be made or additional materials submitted:

- a. Outlot C shall be included in the limits of this DSP and the new DSP boundary shall be clearly identified.
 - b. The applicant shall provide to staff written confirmation from the Department of Permitting, Inspections and Enforcement (DPIE) stating that the proposed development of the site is in accordance with the requirements of approved Stormwater Management Concept Plan 9124-2005-00 or any approved revision thereto.
 - c. The following Notes 1 and 2 of Record Plat PM 217-73 shall be included in the General Notes of the DSP:
 - (1) This plat is subject to Declaration of Covenants, Conditions and Restrictions recorded in Liber 24556 at Folio 612.
 - (2) This plat is subject to Recreational Facilities Agreement recorded in Liber 24707 at Folio 075.
 - d. The proposed Parcel A-3 and Outlot D shall be shown and labeled with new bearings, distances and square footage calculations on the plan. Parcel A-3 shall be labeled as "To Be Conveyed to the HOA" and Outlot D shall be labeled as "To Be Conveyed to the Owner of Adjacent Property Identified Under Tax ID No. 1827575."
 - e. The applicant shall provide an inset on Sheet C3.00 of the DSP, detailing the proposed lot line adjustment of Outlots A and C.
2. Prior to approval of the final plat, the applicant, the applicant's heirs, successors, and/or assignees shall submit an executed deed of conveyance for Outlot D to the owner of the adjacent property identified under Tax ID No. 1827575. If the applicant should no longer intend to convey Outlot D, a DSP revision shall be submitted for the conversion of the outlot into a parcel that will be conveyed to the HOA.

Ordered this 6th day of October, 2014, by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Lehman, Olson, Patterson, Toles and Turner.

Opposed:

Abstained:

Absent: Council Member Harrison

Vote: 8-0

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: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council