

Case No. DSP-09015

Applicant: Evangel Cathedral, Inc.

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

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 11-05, to approve with conditions a detailed site plan for infrastructure for rough grading, stormwater management and sewer, public and private roadways, recreation facilities, and future commercial/community areas, and to establish 364 townhouse lots for final platting purposes, on property referred to as Westphalia Center (Moore property), described as 47.70 acres of land in the M-X-T Zone, located on the north and west sides of Moore's Way, approximately one-half mile north of Pennsylvania Avenue (MD Route 4), and one-half mile east of Presidential Parkway, Forestville, is:

REVERSED, and the application, DSP-09015, is hereby DENIED, as the applicant and the Planning Board have not shown on this record that the applicant has met the conditions attached to the preliminary plan of subdivision, 4-08018, approved by the Planning Board in PGCPB No. 09-95. Approval of this detailed site plan is inconsistent with Planning Board findings and conditions in PGCPB No. 09-95 and is not consistent with M-X-T Zone procedures and purposes or site plan review procedures and purposes.

The purposes of the M-X-T Zone are set out in § 27-542 of the Zoning Ordinance:

(1) To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens;

(2) To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses;

(3) To conserve the value of land and buildings by maximizing the public and private development potential inherent in the location of the zone, which might otherwise become scattered throughout and outside the County, to its detriment;

(4) To promote the effective and optimum use of transit and reduce automobile use by locating a mix of residential and non-residential uses in proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use;

(5) To facilitate and encourage a twenty-four (24) hour environment to ensure continuing functioning of the project after workday hours through a maximum of activity, and the interaction between the uses and those who live, work in, or visit the area;

(6) To encourage an appropriate horizontal and vertical mix of land uses which blend together harmoniously;

(7) To create dynamic, functional relationships among individual uses within a distinctive visual character and identity;

(8) To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public facilities and infrastructure beyond the scope of single-purpose projects;

(9) To permit a flexible response to the market and promote economic vitality and investment; and

(10) To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.

This proposed project, a small part of what the District Council approved as the Westphalia Center, is not consistent with M-X-T purposes. It does not "promote the orderly development . . . of land in the vicinity of major interchanges, major intersections, [or] designated General Plan Centers"; it does not "implement recommendations in the approved General Plan [or] Master Plans . . . by creating [a] compact, mixed-use, walkable communit[y]"; and it will not "reduce automobile use" in this vicinity of Prince George's County.

Section 27-270 (a) of the Zoning Ordinance provides as follows, as to the order of approval for projects requiring site plan review:

- (1) Zoning;
- (2) Conceptual Site Plan;
- (3) Preliminary Plat of Subdivision;
- (4) Detailed Site Plan;
- (5) Final Plat of Subdivision (a final plat of subdivision may be approved prior to a detailed site plan, if the

- technical staff determines that the site plan approval will not affect final plat approval);
- (6) Grading, building, use and occupancy permits.

In § 27-270 (a) the District Council has expressed its intention that site plan review and preliminary plat of subdivision review should be coordinated. But in particular, the Council intends that preliminary plat approval *precede* detailed site plan review, to ensure that the Planning Board and District Council conduct final site plan review after the property owner (or applicant) demonstrates compliance with conditions concerning adequacy of public facilities.

Subtitle 24 of the County Code contains the Subdivision Regulations, applied by the Planning Board at the time of preliminary plat of subdivision review. Section 24-122.01 (a) of the Subdivision Regulations requires the Planning Board to find that public facilities serving the subdivision will be "adequate." Section 24-124 specifically concerns transportation facilities.

Section 24-124 (a) (1) provides, generally, subject to exceptions not relevant here:

- (a) Before any preliminary plat may be approved, the Planning Board shall find that:
 - (1) There will be adequate access roads available to serve traffic which would be generated by the proposed subdivision, or there is a proposal for such roads on an adopted and approved master plan and construction scheduled with one hundred percent (100%) of the construction funds allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, and/or such roads are incorporated in a specific public facilities financing and implementation program as defined in Section 27-107.01(186.1)

By this section the Council intends that during preliminary subdivision plat review the technical staff and Planning Board ensure that highway facilities serving the subdivision will be adequate.

In PGCPB No. 09-95, the Planning Board made findings about highway facilities. The subject property was zoned M-X-T (Mixed Use, Transportation Oriented) in the 2007 Westphalia

Sector Plan and Sectional Map Amendment, approved in Council Resolution 2-2007. The M-X-T zoning of this property was a part of the District Council's approval of the Westphalia Center in CR-2-2007, a project of some 530 acres. The Council takes administrative notice that Westphalia Center itself had an approved conceptual site plan, CSP-07004, revised in 2010, but does not have any pending detailed site plan, other than this one now before the Council. Indeed the approvals for site plans and subdivision plans for this property were completely reversed, from the order required in § 27-270. The approval of CSP-07004 covered all of Westphalia Center, 530 acres; then the preliminary plat of subdivision, 4-08018, was approved on 25 June 2009, in PGCPB No. 09-95; then the conceptual site plan was revised, for the subject property and the remainder of Westphalia Center, in CSP-07004/01, approved on 10 June 2010 and corrected on 5 January 2011 in PGCPB No. 10-59 (C); and now the applicant presents this application, the first detailed site plan application for Westphalia Center.

The point of this recitation is that this applicant, formerly including itself as part of the large Westphalia Center development project, is now proceeding on its own, and does not have the benefit of highway facilities that would have been provided with development of the Westphalia Center project. The Planning Board's approval resolution for the applicant's preliminary plat of subdivision, PGCPB No. 09-95, included condition 32.g., which provides:

Prior to the 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:

* * * * *

- g. MD 4 and Dower House Road - Construct a grade-separated, two-point diamond interchange with traffic signals at both at-grade intersections, subject to the requirements of SHA.

By this preliminary plat condition, the applicant was required – on 25 June 2009 – to show, prior to detailed site plan approval, that the interchange required in condition 32.g. of PGCPB No. 09-95 would be fully financed, would have necessary construction permits, and would have "an agreed-upon timetable" for construction.

But two years later, for this detailed site plan application, the Planning Board has merely carried forward the Dower House Road interchange condition from PGCPB No. 09-95. Condition 13.b. of the Planning Board's DSP-09015 resolution, PGCPB No. 11-05, reads as follows:

Prior to the issuance of any building permits for the subject property, the following road improvements as may be phased 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:

* * * * *

b. MD 4 and Dower House Road

Construct a grade separated two-point diamond interchange with traffic signals at both at-grade intersections, subject to the requirements of SHA.

That is, neither applicant nor staff nor Planning Board can show any progress or any effort to meet the Planning Board's condition 32.g. in PGCPB No. 09-95.

Detailed site plan review and approval provisions are set out in §§ 27-281 through 27-290 of the Zoning Ordinance. The Ordinance provides, as to the purposes of detailed site plans:

(b) **General purposes.**

(1) The general purposes of Detailed Site Plans are:

- (A) To provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan;
- (B) To help fulfill the purposes of the zone in which the land is located;
- (C) To provide for development in accordance with the site design guidelines established in this Division; and

(D) To provide approval procedures that are easy to understand and consistent for all types of Detailed Site Plans.

(c) **Specific purposes.**

(1) The specific purposes of Detailed Site Plans are:

(A) To show the specific location and delineation of buildings and structures, parking facilities, streets, green areas, and other physical features and land uses proposed for the site;

(B) To show specific grading, planting, sediment control, woodland conservation areas, regulated environmental features and storm water management features proposed for the site;

(C) To locate and describe the specific recreation facilities proposed, architectural form of buildings, and street furniture (such as lamps, signs, and benches) proposed for the site; and

(D) To describe any maintenance agreements, covenants, or construction contract documents that are necessary to assure that the Plan is implemented in accordance with the requirements of this Subtitle.

For detailed site plans, the Zoning Ordinance presently does not authorize Planning Board or District Council to make findings or impose conditions concerning adequacy of public facilities. Public facilities, including especially highway facilities, are tested for adequacy at the time of preliminary plat of subdivision approval, not DSP approval.

The present site plan, DSP-09015, does not show conformance with PGCPB No. 09-95, as to highway facilities. The plan also does not conform to PGCPB No. 09-95 in its proposed commercial development. The Planning Board in PGCPB No. 09-95 approved 3,000 square feet of commercial space, finding that such a small amount of commercial area would not affect the vehicle trip generation calculations for the property. (That is, the Board determined trip generation by residential dwelling unit count alone.) But this plan, DSP-09015, proposes 8,000 square feet of commercial area, a total for which highway facilities adequacy has not been examined.

In its DSP resolution, PGCPB No. 11-05, the Planning Board noted that this applicant proposed a new transportation network, one not approved in the Westphalia Sector Plan and SMA, CR-2-2007, or in subsequent proceedings, including 4-08018 proceedings for the preliminary plat of subdivision:

At the time of the review of the original Conceptual Site Plan CSP-07004 and Preliminary Plans of Subdivision 4-08018 and 4-08002 (for the remainder of Westphalia Center), the vehicular connection to the existing public street system was via Dower House Road (MC-637 running north and south through the development) and Campobello Road, which abuts the southern property line of the Moore Property (off-site) within the Westphalia Development and runs east to west. A stream crossing to the east was not anticipated or approved with the preliminary plan of subdivision for the Moore Property, or the original CSP because access was provided from the south, through Westphalia Center property.

Subsequent to the approval of CSP-07004 and Preliminary Plan of Subdivision 4-08018 on June 4, 2009, the applicant filed a revision to CSP-07004 in order to revise conditions of approval to allow the Moore Property to move forward independently from Westphalia Center, since there were separate owners of the properties. The applicant proposed the additional connection to the east to Smith Home Farm with an indication of possible future stream crossing to provide access to the Moore Property. This proposal for the stream crossing was introduced late in the review process regarding CSP-07004-01 and there was not sufficient time for review of environmental impacts to the stream. As such, the impact was not properly requested or evaluated. Because the subject DSP application has moved forward without a new or reconsidered preliminary plan of subdivision to provide the opportunity to obtain approval of this crossing, and because the project is grandfathered from the requirements of the new environmental legislation effective September 1, 2010, by virtue of the fact that this impact was not reflected on a previous preliminary plan of subdivision that was approved, the applicant cannot request this impact with a detailed site plan and retain the grandfathered status, because it is not in substantial conformance with the previously approved preliminary plan of subdivision.

Section 27-270, Order of Approvals, of the Zoning Ordinance requires that a conceptual site plan (CSP) be approved prior to the preliminary plan of subdivision. The order of approvals was followed with the original approval of the Conceptual Site Plan CSP-07004 and Preliminary Plan of Subdivision 4-08018 on June 4, 2009. The preliminary plan does not show the proposed crossing and vehicular connection. The DSP proposal to add the road crossing at this location is not in substantial conformance with the preliminary plan of subdivision, which was approved by the Planning Board based on the original CSP, which did not reflect the connection in this proposed location.

PGCPB No. 11-05, at 15-16. The District Council fully agrees with this part of the Planning Board's decision.

The District Council cannot approve this DSP application because the applicant has not followed the staged review and approval procedures in the Zoning Ordinance. After approval of the original CSP for Westphalia Center, CSP-07004, which included the subject property, the applicant, independent of the Westphalia Center approval, filed its own preliminary plat of subdivision application, 4-08018. After

that was approved, with various public facilities conditions, including condition 32.g. for the Dower House Road interchange, it was incumbent on the applicant to show substantial compliance with the public facilities conditions, before or at the time of detailed site plan review. Failing that, the applicant should have gone back to the Planning Board and asked for reconsideration of public facilities conditions it regarded as unreasonable or impossible of fulfillment. It is not proper procedure, at this stage of review, to simply carry forward preliminary plan conditions for public facilities. They must be complied with or modified by the Planning Board; they may not be attached to the DSP approval the applicant requests.

Because the applicant has not complied with Zoning Ordinance purposes or procedures, the District Council cannot approve its detailed site plan application. The present application must be denied, and the applicant must proceed to meet or modify conditions in the preliminary plat of subdivision resolution.

Ordered this 14th day of June, 2011, by the following vote:

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

Opposed:

Abstained:

Absent: Council Member Johnson

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: _____
Ingrid M. Turner, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council