

Case No.: DSP-10011-C
CSP-10002-C (companion case)
Queens Chapel Town Center
(Amendment of Condition)

Applicant: Queens Chapel Town Center, LLC

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

ORDER OF APPROVAL

On May 16, 2022, the District Council considered this matter using oral argument procedures. Having carefully considered the administrative record, including the recommendation of the Zoning Hearing Examiner (ZHE) to approve the application request to amend Condition 3. c. of Conceptual Site Plan (CSP)-10002-C and Detailed Site Plan (DSP)-10011-C, the appeals filed by the Applicant and the City of Hyattsville, the District Council finds that the Applicant has met its burden of demonstrating good cause and will grant the Applicant's request to amend Condition 3. c. of CSP-10002-C and Condition 3. c. of DSP-10011-C, subject to certain modifications or revisions. ZHE Record, ZHE Decision, 3/25/2022, Applicant's Appeal, 4/8/2022, City of Hyattsville Appeal, 4/8/2022, (5/16/2022, Tr).

Findings and Conclusions

Unless stated otherwise herein, the District Council adopts and incorporates the findings and conclusions made by the ZHE as its basis to approve the Applicant's request to amend Condition 3. c. of CSP-10002-C and Condition 3. c. of DSP-10011-C.¹ ZHE Decision, 3/25/2022.

¹ *Templeton v. County Council of Prince George's County*, 23 Md. App. 596, 329 A.2d 428 (1974) (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).

On June 13, 2011, the District Council enacted Zoning Ordinance No. 2-2011 (conditionally approving CSP-10002) and Zoning Ordinance No. 3-2011 (conditionally approving DSP-10011). See Notice of Final Decision (Zoning Ordinance No. 2-2011) and Notice of Final Decision (Zoning Ordinance No. 3-2011).

Relevant to the Applicant's request to amend Condition 3. c. of CSP-10002-C, Zoning Ordinance No. 2-2011 provides as follows:

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. The Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland, is hereby amended by changing the use table for the M-X-T/T-D-O and R-55/T-D-O zoned property that is the subject of Application No. CSP-10002, to permit the following uses, in addition to those listed in the July 2006 Approved Transit District Development Plan for the West Hyattsville Transit District, for the subdistrict in which the subject property is located:

1. Eating or drinking establishment, without drive-through service,
2. Pizza delivery service,
3. Clothing, dry goods,
4. Confectioner,
5. Florist,
6. Food or beverage goods preparation on the premises of a food and beverage store,
7. Sporting goods shop,
8. Stationery or office supply store, and
9. Video game or tape store.

SECTION 2. Approval of the change of uses and conceptual site plan is subject to the following conditions:

1. Prior to certification of the plan, the applicant shall:
 - a. Relabel the existing conditions plan as the natural resources inventory (NRI) for the property and submit it for approval.
 - b. Submit a copy of a standard letter of exemption for the property.
 - c. Revise the plan to list the additional permitted uses, use limitations, and note the provisions regarding the existing eating or drinking establishment, with drive-through service, per Condition 3.

2. Prior to issuance of any use and occupancy permits within the entire property, the proposed trees, as shown on the certified detailed site plan (DSP), shall be planted.
3. The following modifications shall be made to the applicant's request and to the Table of Uses for the commercial/retail section of the July 2006 *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone*. The modifications to the Table of Uses are applicable only to the subject site, as follows:
 - a. The following uses shall be added as permitted uses (P):
 - (1) Eating or drinking establishment, without drive-through service,
 - (2) Pizza delivery service,
 - (3) Clothing, dry goods,
 - (4) Confectioner,
 - (5) Florist,
 - (6) Food or beverage goods preparation on the premises of a food and beverage store,
 - (7) Sporting goods shop,
 - (8) Stationery or office supply store, and
 - (9) Video game or tape store.
 - b. The use table changes hereby approved for Queens Chapel Town Center are subject to the following limitations:
 - (1) Pizza delivery service is permitted if and only if an additional parking space, over and above the required number of parking spaces, is provided at the rear of the building for each vehicle to be used for delivery. No more than six vehicles shall be permitted for the delivery service.
 - (2) A confectioner shall be for retail use only and shall not exceed 3,000 square feet.
 - (3) Food or beverage goods preparation on the premises of a food and beverage store is permitted provided the goods are sold only on the premises and at retail.
 - (4) A sporting goods shop shall be permitted provided that there is no outside storage or display of products and the sale of firearms and ammunition is prohibited.
 - (5) Video game or tape store uses shall not include adult, X-rated, nude or semi-nude venues of any type, including, but not limited to, film, digital, hologram and similar technology, and live performance.

- c. Within Queens Chapel Town Center, any eating or drinking establishment, with drive-through service, operating pursuant to an approved detailed site plan as of the effective date of County Council Resolution CR-24- 2006, shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use. Such eating or drinking establishments, with drive-through service, and their underlying detailed site plans may be modified pursuant to the existing provisions relating to revisions or amendments to detailed site plans generally as they exist in the Zoning Ordinance. If the use is discontinued for a period of 180 or more consecutive calendar days, unless the conditions of non-operation were beyond the control of the owner or holder of the use and occupancy permit, then the use shall no longer be considered a legal use. ZHE Decision at 1-4.

Relevant to the Applicant's request to amend Condition 3. c. of DSP-10011-C, Zoning Ordinance No. 3-2011 provides as follows:

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. The Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland, is hereby amended by changing the use table for the M-X-T/T-D-O and R-55/T-D-O zoned property that is the subject of Application No. DSP-10011, to permit the following uses, in addition to those listed in the July 2006 Approved Transit District Development Plan for the West Hyattsville Transit District, for the subdistrict in which the subject property is located:

- (1) Eating or drinking establishment, without drive-through service,
- (2) Pizza delivery service,
- (3) Clothing, dry goods,
- (4) Confectioner,
- (5) Florist,
- (6) Food or beverage goods preparation on the premises of a food and beverage store,
- (7) Sporting goods shop,
- (8) Stationery or office supply store, and
- (9) Video game or tape store.

SECTION 2. Approval of the change of uses and conceptual site plan is subject to the following conditions:

1. Prior to certification of the plan, the applicant shall:
 - a. Relabel the existing conditions plan as the natural resources inventory (NRI) for the property and submit it for approval.
 - b. Submit a copy of a standard letter of exemption for the property.
 - c. Revise the landscape plan and tree canopy coverage worksheet to show, at a minimum, an additional 8 proposed shade trees, and five proposed evergreen trees in open tree wells and planting areas throughout the site.
 - d. Revise the plan to list the additional permitted uses, use limitations, and note the provisions regarding the existing eating or drinking establishment, with drive-through service, per Condition 3.
2. Prior to issuance of any use and occupancy permits within the entire property, the proposed trees, as shown on the certified detailed site plan (DSP), shall be planted.
3. The following modifications shall be made to the applicant's request and to the Table of Uses for the commercial/retail section of the July 2006 *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone*. The modifications to the Table of Uses are applicable only to the subject site, as follows:
 - a. The following uses shall be added as permitted uses (P):
 1. Eating or drinking establishment, without drive-through service,
 2. Pizza delivery service,
 3. Clothing, dry goods,
 4. Confectioner,
 5. Florist,
 6. Food or beverage goods preparation on the premises of a food and beverage store,
 7. Sporting goods shop,
 8. Stationery or office supply store, and
 9. Video game or tape store.

- b. The use table changes hereby approved for Queens Chapel Town Center are subject to the following limitations:
 - 1. Pizza delivery service is permitted if and only if an additional parking space, over and above the required number of parking spaces, is provided at the rear of the building for each vehicle to be used for delivery. No more than six vehicles shall be permitted for the delivery service.
 - 2. A confectioner shall be for retail use only and shall not exceed 3,000 square feet.
 - 3. Food or beverage goods preparation on the premises of a food and beverage store is permitted provided the goods are sold only on the premises and at retail.
 - 4. A sporting goods shop shall be permitted provided that there is no outside storage or display of products and the sale of firearms and ammunition is prohibited.
 - 5. Video game or tape store uses shall not include adult, X-rated, nude or semi- nude venues of any type, including, but not limited to, film, digital, hologram and similar technology, and live performance.
- c. Within Queens Chapel Town Center, any eating or drinking establishment, with drive-through service, operating pursuant to an approved detailed site plan as of the effective date of County Council Resolution CR-24-2006, shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use. Such eating or drinking establishments, with drive-through service, and their underlying detailed site plans may be modified pursuant to the existing provisions relating to revisions or amendments to detailed site plans generally as they exist in the Zoning Ordinance. If the use is discontinued for a period of 180 or more consecutive calendar days, unless the conditions of non-operation were beyond the control of the owner or holder of the use and occupancy permit, then the use shall no longer be considered a legal use. ZHE Decision at 4-6.

The Applicant's original request sought to delete Condition 3. c. ZHE Ex. 1, Ex. 9. Subsequently, the Applicant amended its request to revise (as opposed to delete) Condition 3. c. as follows:

Within Queens Chapel Town Center, any eating or drinking establishment, with drive-through service, operating pursuant to an approved detailed site plan as of the effective date of County Council Resolution CR-24-2006, shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use.

On December 15, 2021, the ZHE held a hearing to consider the Applicant's request. At the hearing, the City of Hyattsville and Alexi Sanchez Boado opposed the Applicant's request. (12/15/2021, Tr.).

After the hearing before the ZHE, counsel for the Applicant filed a closing memorandum. Primarily, the memorandum explained that the property would be rezoned LTO-Core upon the effective dates of the Countywide Map Amendment (CMA) and the New Zoning Ordinance. The LTO Core zone, however, does not permit the current use (which was renamed to "quick service drive-through restaurant"), but as a preexisting use, it will be deemed conforming under Section 27-1704 (d) of the New Zoning Ordinance. As a result, the Applicant amended its request, for a second time, as follows:

Within Queens Chapel Town Center, any eating or drinking establishment, with drive-through service, operating pursuant to an approved detailed site plan as of the effective date of County Council Resolution CR-24-2006, shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use. Notwithstanding the above, any future redevelopment of the entire Queens Chapel Town Center Property, as shown on CSP-10002 and DSP-10011, shall not include a quick service restaurant with drive-through.

At the conclusion of the hearing, the record was left open to allow the Applicant and the Opposition to submit additional documents. After submission of certain additional documents, the record closed on February 16, 2022.

On March 25, 2022, the ZHE issued a written decision recommending approval of the Applicant's request to amend Condition 3. c., as follows:

Within Queens Chapel Town Center, any eating or drinking establishment, with drive-through service, operating pursuant to an approved detailed site plan as of the effective date of County Council Resolution CR-24-2006, shall remain valid,

be considered a legal use, and shall not be deemed a nonconforming use. Notwithstanding the above, any cessation of the use for a period of time in excess of 180 calendar days that is not caused by permissible renovations to the use nor required to address Code violations shall constitute abandonment of the use. If the use has temporarily ceased operation due to permissible renovation or to address a Code violation it shall be reestablished within one calendar year from the date upon which the use last ceased.

Future redevelopment of the entire Queens Chapel Town Center Property, as shown on CSP-10002-C and DSP-10011-C, shall not include a quick service restaurant with or without drive-through if the use is not permitted in the zone at the time of redevelopment. ZHE Decision at 19.

On April 8, 2022, the Applicant appealed the decision of the ZHE to the District Council. Applicant's Appeal, 4/8/2022. The City of Hyattsville also filed an appeal. Hyattsville Appeal, 4/8/2022.

As noted above, having carefully considered the administrative record, including the findings and conclusions of the Zoning Hearing Examiner (ZHE) to approve the application request to amend Condition 3. c. of Conceptual Site Plan (CSP)-10002-C and Detailed Site Plan (DSP)-10011-C, the appeals filed by the Applicant and the City of Hyattsville, the District Council finds that the Applicant has met its burden of demonstrating good cause and will grant the Applicant's request to amend Condition 3. c. of CSP-10002-C and Condition 3. c. of DSP-10011-C, subject to certain modifications or revisions.

Although the District Council agrees with the Applicant that Condition 3. c. as proposed by the ZHE significantly limits the time in which the Applicant may relet the eating and drinking establishment with drive-through service, the District Council also agrees with the City of Hyattsville, that the drive-through component does not conform to the transit-oriented vision of the future development in West Hyattsville and therefore the drive-through component should not operate without limitation.

Condition 3. c. of CSP-10002-C and DSP-10011-C shall hereby be revised as follows:

The drive through component of the eating and drinking establishment shall be allowed to operate for five (5) years or until Parcels 116, 117, 118, 119 and 145, found at Tax Map 41, Grid E4, located adjacent to the West Hyattsville Metro Station, are developed, and occupied, whichever occurs first.

Ordered this 19th day of September, 2022, by the following vote:

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

Opposed:

Abstained:

Absent: Council Members Burroughs, Glaros, Ivey and Taveras.

Vote: 7-0.

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