

Case No. DSP-13014
Forestville Plaza Shopping
Center

Applicant: PMM Enterprises, LLC

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

ORDER APPROVING DSP-13014,
WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, and the recommendation of the Planning Board in PGCPB No. 13-79, to approve with conditions a detailed site plan for a rezoning of the subject property located at the northeastern quadrant of the intersection of Forestville Road and Old Marlboro Pike (MD 725), with addresses of 7702-7794 Forestville Road in District Heights, in Planning Area 75A and Council District 6, from the Light Industrial/Development District Overlay Zone (I-1/D-D-O) to the Commercial Shopping Center/Development District Overlay Zone (C-S-C/D-D-O), that DSP-13014 is APPROVED, subject to the District Council's original jurisdiction over DSP-13014 pursuant to §27-132(f)(1), and its authority to approve the application pursuant to §27-548.26(b)(5) of the Zoning Ordinance.

As the basis for this action, the District Council, pursuant to §§ 27-132(f)(1), §27-548.26, and §27-290 of the Zoning Ordinance, states its findings and conclusions in Attachment A of this Order. The District Council also adopts and incorporates by reference as if fully stated herein, the recommended findings and conclusions stated by the Planning Board in its Resolution, PGCPB No. 13-79, except as otherwise stated in Attachment A.

ORDERED this 1st day of October, 2013, by the following vote:

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

Opposed:

Abstained:

Absent: Council Member Olson.

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: _____
Andrea C. Harrison, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

ATTACHMENT A

ORDER OF APPROVAL WITH CONDITIONS DSP-13014

PROCEDURAL HISTORY, FINDINGS, CONCLUSIONS, AND CONDITIONS

Procedural History

This case involves a detailed site plan for a rezoning of the subject property located at the northeastern quadrant of the intersection of Forestville Road and Old Marlboro Pike (MD 725), with addresses of 7702-7794 Forestville Road in District Heights, in Planning Area 75A and Council District 6, from the Light Industrial/Development District Overlay Zone (I-1/D-D-O) to the Commercial Shopping Center/Development District Overlay Zone (C-S-C/D-D-O).

On July 25, 2013, Planning Board considered evidence presented at a public hearing and subsequently adopted a resolution, PGCPB No. 13-79.

On August 23, 2013, Benjamin J. Woolery, Esquire, on behalf of Forest Square Center, L.C., appealed the Planning Board's decision in PGCPB No. 13-79, pursuant to §27-290 of the Zoning Ordinance,¹ to the District Council.

On September 30, 2013, the District Council held oral argument pursuant to §§ 27-132, 27-548.26, 27-290, and the District Council Rules of Procedure. At the conclusion of oral arguments, the District Council, pursuant to §27-132, referred this item to staff to prepare an order of approval with conditions.

¹ See Prince George's County Code, Subtitle 27, Zoning Ordinance, (2008-09 ed., as amended) (hereinafter "§ 27- __").

Appeal Issue

Forest Square Center, L.C., states that there was not sufficient basis in the record to approve the requested rezoning of the property because the applicant had not demonstrated that there had been a substantial change in the character of the neighborhood or that there was a mistake in the adoption of the current zoning of the property by the Marlboro Pike Sector Plan. *See* (7/25/13 Tr.)

The requirement to find either change or mistake prior to approving a rezoning of property is found in §27-157(a) of the Zoning Ordinance, which applies to zoning map amendment applications for conventional zones filed pursuant to §27-143. The property which is the subject of this application is the subject of a Development District Overlay Zone, which is not a conventional zone. A change in the underlying zoning category in a Development District Overlay Zone is regulated by §27-548.26(b). In PGCPB No. 13-79, Planning Board found that §27-548.26(b) allows a property owner to request that the District Council change the underlying zone of a property, or the list of allowed uses, as modified by the Development District Standards. The applicant has requested both a change in the underlying zone and the list of allowed uses.

§27-548.26(b)(5) requires the District Council to find that “the proposed development conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan, and meets applicable site plan requirements.” A finding that a change in the character of the neighborhood, or a mistake in the adoption of the current zoning is not required. The District Council finds, as did the Planning Board, that the proposed rezoning is in conformance with the proposed development and the purposes and recommendations for the Development District, as stated in the Marlboro Pike

Sector Plan, and meets applicable site plan requirements. *See* (7/25/13 Tr.), PGCPB No. 13-79, at 3-4.

We find that the Planning Board committed no factual or legal error in its recommendation, embodied in PGCPB No. 13-79, to approve with conditions DSP-1304 for a rezoning of the subject property located at the northeastern quadrant of the intersection of Forestville Road and Old Marlboro Pike (MD 725), with addresses of 7702-7794 Forestville Road in District Heights, in Planning Area 75A and Council District 6, from the Light Industrial/Development District Overlay Zone (I-1/D-D-O) to the Commercial Shopping Center/Development District Overlay Zone (C-S-C/D-D-O).

Conditions of Approval

The District Council's Order approving DSP-13014 is subject to the following conditions:

1. Prior to signature approval, the following revisions to the plans shall be made:
 - a. The following notes shall be added to the general notes of the DSP:
 - (1) The project is located in an Accident Potential Zone, but is exempt from the requirements of Interim Land Use Control (ILUC) legislation due to its presence in a Development District Overlay (D-D-O) Zone.
 - (2) The projected maximum noise levels on the subject site are 65–70 dBA Ldn and the height limitation is 144.26 feet.
2. The following land uses shall be prohibited on the subject Commercial Shopping Center/Development District Overlay (C-S-C/D-D-O)-zoned property, and these prohibited uses shall be listed in the general notes of the DSP:

- a. Adult day care center
- b. Assisted living facility
- c. Auditorium
- d. Bowling alley
- e. Catering use with banquet facility
- f. Church or similar place of worship, convent or monastery
- g. Clubs or private lodges
- h. Community building
- i. Day care centers—children and adults
- j. Eating and drinking establishments larger than 6,000 square feet of gross floor area (GFA).
- k. Elderly housing
- l. Eleemosynary or philanthropic institution
- m. Gas stations
- n. Government services (libraries, post offices, offices)
- o. Hospitals, doctor's offices, and medical clinics
- p. Hotels
- q. Nursing or care home
- r. Recreational or entertainment establishment of a commercial nature
- s. Schools—private/public
- t. Theatre

- u. Uses that involve the storage of or use of explosive, flammable, or toxic material in outdoor, above ground storage tanks
- 3. The applicant shall demonstrate conformance to the requirements of Section 4.4 of the 2010 *Prince George's County Landscape Manual* by the provision of adequate screening as described therein of loading spaces, outdoor merchandise storage, trash and recycling facilities, and mechanical equipment.