

Case No. DSP 14012 Gateway Center, Parcel L

Applicant: Shelter Development, LLC

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, and after hearing oral argument from the parties of record, that the application to approve a detailed site plan for a 104,628-square-foot, 100-unit, multifamily building, and the included Type II Tree Conservation Plan application TCPII-030-94-02, for property described as 7.088 acres of land in the R-10 (Multifamily High Density Residential) Zone, for a project referred to as Bladensburg Commons, with a street address of 4200 58th Avenue, located on the east side of 57th Avenue, approximately 2,600 feet north of its intersection with Landover Road (MD 202) within the Town of Bladensburg, Planning Area 69, Council District 5, be and the same is hereby APPROVED, subject to conditions.

As the basis for this final decision, and as expressly authorized by the Regional District Act, within Title 22 and Title 25 of the Land Use Article of the Annotated Code of Maryland, as well as the Zoning Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's County Code, we hereby adopt the findings and conclusions set forth in PGCPB No. 14-134 within the administrative record as the District Council's findings of fact and conclusions of law in this case.

PROCEDURAL HISTORY

On or about October 3, 2014, the Development Review Division of the Maryland-National Capital Park and Planning Commission accepted as filed DSP-14012, for review.

On November 25, 2014, the Technical Staff of the Planning Department filed its Staff Report, which recommended approval of the detailed site plan application, subject to conditions. *See* Technical Staff Report, p. 20, October 16, 2013.

On December 11, 2014, the Planning Board held a public hearing and considered evidence on DSP-14012 and its companion case, DPLS-408. At the conclusion of the hearing, Planning Board recommended approval of the application, subject to conditions.

On December 11, 2014, Planning Board's action as to DSP-14012 was embodied within a resolution and adopted. *See generally* PGCPB No. 14-134.

On December 16, 2014, Planning Board gave notice of the Planning Board's action as to DSP-14012 set forth in PGCPB No. 14-134, and transmitted to the Clerk of the Council and all persons of record.

On January 12, 2015, the District Council elected to make the final decision as to DSP-14012.

On January 14, 2015, a timely written appeal was filed with the Clerk of the District Council in accordance with § 27-290 of the Zoning, alleging various errors by Planning Board within its December 11, 2014, disposition as to DSP-14012, and requesting Oral Argument before the District Council. *See generally* 01/14/2015 Mem., Melendez to Floyd.

In turn, after the close of the appeal period for the subject application, the Clerk of the District Council mailed notice of the oral argument scheduled for March 23, 2015, to all persons of record as required by § 27-125.04 of the Zoning Ordinance. We conducted oral argument as scheduled on March 23, 2015, in accordance with the prescriptions of § 27-131 of the Zoning Ordinance, as well as the District Council Rules of Procedure. *See generally* 03/23/2015 Tr. *See also* Rule 6, R. of Proc., County Council of Prince George's County, sitting as the District Council. In amplifying the allegations raised in the January 14, 2015, written appeal, the Citizens

Opposition raised several questions, discussed *infra*, at oral argument. *See* 01/14/2015 Mem., Melendez to Floyd, at 1–2. *See also* 03/23/2015 Tr. At the conclusion of the proceeding, and in the manner prescribed by § 27-132 of the Zoning Ordinance, the District Council favorably voted to refer DSP-14012 for the preparation of an Order of Approval with Conditions.

APPLICABLE LAW

Through enactment of the Regional District Act (“RDA”) within the Land Use Article of the Annotated Code of Maryland, the General Assembly delegated broad zoning power the portion of the Maryland-Washington Regional District situated within Prince George’s County to the County Council for Prince George’s County, sitting as the District Council. Among the recited powers of the District Council within the RDA, set forth in § 22-104, is the broad legislative prerogative of the District Council to adopt and amend, by ordinance, the text of the zoning ordinance and the duty to adopt and amend, by resolution or ordinance, the map or maps accompanying the zoning ordinance text so as to regulate, among other elements, the size of lots, yards, courts and other open spaces. *See Prince George’s County v. Ray’s Used Cars*, 398 Md. 632, 635–36, 922 A.2d 495, 497 (2007). Subtitle 27 of the Prince George’s County Code is the Zoning Ordinance for the County (hereinafter referred as “§ 27-___, PGCZO.”)

Requirements for site plans, including detailed site plans, are provided for in Subtitle 27, Division 9, Subdivision 3. The following sections of the Zoning Ordinance are relevant to this application:

§27-281. Purpose of Detailed Site Plans.

(a) Examples.

(1) Because the detailed design of land development significantly affects the health, safety, and welfare of the general public, and because regulation of land development through fixed standards can result in monotonous design and lower quality development, certain types of land development are best regulated by a combination of development standards and a discretionary review of a Detailed Site Plan. Such cases include:

- (A) Attached housing, such as townhouses and multifamily dwellings;
- (B) Planned employment parks;
- (C) Planned mixed-use developments;
- (D) Large parking compounds;
- (E) Recreational community developments;
- (F) Screening or buffering as a necessary design element;
- (G) Large single-use developments;
- (H) Environmentally sensitive land, or land that contains important natural features that are particularly worthy of attention;
- (I) Development which is potentially incompatible with land uses on surrounding properties; and
- (J) Buildings or land uses that are a part of particularly sensitive views as seen from adjacent properties or streets.

(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.

§ 27-281, PGCZO (2011 Ed. & Supp. 2014) (*emphasis added*).

The purposes of the Zoning Ordinance, pursuant to §27-102(a), are:

(1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;

- (2) To implement the General Plan, Area Master Plans, and Functional Master Plans;
- (3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;
- (5) To provide adequate light, air, and privacy;
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;
- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (10) To prevent the overcrowding of land;
- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;
- (12) To insure the social and economic stability of all parts of the County;
- (13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;
- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

§ 27-102, PGCZO.

The purposes of the R-10 Zone within the Zoning Ordinance are:

Sec. 27-439. R-10 Zone (Multifamily High Density Residential).

(a) Purposes.

(1) The purposes of the R-10 Zone are:

- (A) To provide suitable sites for high-density multifamily residential development;
- (B) To provide for this type of development at locations recommended by a Master Plan, or at other locations which are found to be suitable by the District Council; and
- (C) To provide residences in close proximity to the principal commercial and cultural centers of the County.

(b) Criteria for location.

(1) Among the possible methods for carrying out the purposes of this zone, preference should be given (where possible) to the assembly and use of sites occupied by deteriorated development which is in need of redevelopment.

(c) **Uses.**

(1) The uses allowed in the R-10 Zone are as provided for in the Table of Uses (Division 3 of this Part).

(d) **Regulations.**

(1) Additional regulations concerning the location, size, and other provisions for all buildings and structures in the R-10 Zone are as provided for in Divisions 1 and 5 of this Part, the Regulations Tables (Division 4 of this Part), General (Part 2), Off-Street Parking and Loading (Part 11), Signs (Part 12), and the Landscape Manual.

(e) **Bedroom percentages.**

(1) The bedroom percentages for multifamily dwellings in the R-10 Zone shall be in accordance with Section 27-419.

(f) **Site plan.**

(1) A Detailed Site Plan shall be approved for all multifamily dwellings (one hundred ten (110) feet high and under), including any associated community building or recreational facilities, in accordance with Part 3, Division 9, of this Subtitle. Multifamily dwellings higher than one hundred ten (110) feet shall be governed by the approved Special Exception Site Plan which is required for dwellings of this height.

§ 27-439, PGCZO.

In assessing the

ISSUES RAISED ON APPEAL

A timely appeal was filed in this case by a person of record in accordance with § 27-290 of the Zoning Ordinance. Advanced therein, and amplified during the oral argument proceedings conducted on March 23, 2015, are the following allegations of error by Planning Board in its assessment and disposition as to DSP-14012 and DPLS-408: (1) that the proposed development will provide more moderate-density and moderate-income housing that is much needed in the area” is erroneous and will lead to overcrowding for school facilities and lack of adequate parking; (2) Planning Board’s reliance on Preliminary Plan of Subdivision No. 4-14004 to support its finding of adequate school facilities and controverts other evidence within the administrative record; (3) The Prince George’s County Department of Permitting, Inspections, and Enforcement (“DPIE”) recommended that the Town of Bladensburg submit comments to the administrative record for the subject application and, by letter dated November 9, 2014, the

Town submitted comments that were excluded from consideration by Planning Board; (4) Planning Board erred in relying on the information within Applicant's Statement of Justification that considers Largo Center Apartments and Steeplechase Apartments as substantially similar to subject development proposal; and (5) Planning Board's disposition as to the bicycle parking approved for the subject proposal is inadequate to support a proposed cyclist-oriented housing site.

It is well-settled in Maryland that the evaluation of an administrative agency decision turns on the substantial evidence test. Substantial evidence, generally, is evidence that a reasoning person would consider sufficient to support a conclusion. *Motor Vehicle Admin v. Delawter*, 403 Md. 243, 256-57, 941 A.2d 1067 (2008), *quoting Md. Aviation Admin. v. Noland*, 386 Md. 556, 873 A.2d 1145 (2005). "In judicial review of zoning matters, including special exceptions. . . 'the correct test to be applied is whether the issue before the administrative body is "fairly debatable," that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions.'" *Alviani v. Dixon*, 365 Md. 95, 107, 775 A.2d 1234 (2001), *White v. North*, 356 Md. 31, 44, 736 A.2d 1072 (1999) (*quoting Sembly v. County Bd. of Appeals*, 269 Md. 177, 304 A.2d 814 (1973)). *See also Board of County Commissioners v. Holbrook*, 314 Md. 210, 218, 550 A.2d 664 (1988) (fairly debatable test "accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment'").

Thus, in assessing the validity of an administrative agency decision for substantial evidence, questions about findings from the evidence should be resolved in the Council's favor unless the record has no evidence – not even a "scintilla," *see Turner v. Hammond*, 270 Md. 41,

310 A.2d 543 (1973), *County Comm'rs v. Oak Hill Farms*, 232 Md. 274, 192 A.2d 761 (1963) – to support them.

Here, after reviewing the testimony and other evidence within the administrative record for the subject application, we reject all of the issues raised in the January 14, 2015, appeal in this case. Rather, we find that Planning Board's decision was not arbitrary, capricious, discriminatory, or illegal, because it was not made impulsively, at random, or according to individual preference. *See Harvey v. Marshall*, 389 Md. 243, 297–300, 884 A.2d 1171, 1203–06 (2005).

For the reasons stated above, we find that there is substantial evidence to support the decision of Planning Board as to DSP-14012 and its companion case, DPLS-408. Therefore, we shall affirm the decision of Planning Board and approve DSP-14012 with conditions as the final decision of the District Council as to DSP-14012.

Approval of DSP-14012 is subject to the following conditions:

1. Prior to certificate of approval of the detailed site plan (DSP), the following revisions shall be made, or information shall be provided:
 - a. Revise the existing right-of-way of 57th Avenue to show the correct width of 100 feet.
 - b. Replace the designation of "BRL" to "Setback."
 - c. Verify that the required setbacks provided in General Note 3 are accurate. The correct setbacks shall be indicated in the table.
 - d. Show the entrance sign setback from the right-of-way.
 - e. Revise the six-foot-high wood fence detail with a detail showing a four-foot-high fence of a more durable material atop the retaining wall.
 - f. Indicate that all of the proposed exterior light fixtures will be shielded and positioned so as to minimize light trespass caused by spill light.
 - g. Provide sign and playground equipment details in color.

- h. Indicate the type and height of fencing for the play area and provide a detail of the fence. The fence shall be of a durable material.
 - i. Add a general note indicating compliance with Prince George's County Health Department requirements relating to dust and noise during construction.
 - j. A photometric plan shall be provided to ensure adequate lighting is provided in the parking areas. Landscaping may be adjusted as necessary to ensure maximum light distribution.
 - k. Revise General Note 6(a) to indicate up to one-third of the required parking spaces may be compact.
 - l. All compact spaces shall be labeled.
 - m. The DSP shall be revised as necessary to be in conformance with Preliminary Plan of Subdivision 4-14004.
2. Prior to certificate of approval of the detailed site plan, the following revisions shall be made to the landscape plan or information shall be provided:
- a. Adjust the plant list and schedule for Section 4.9, Sustainable Landscaping Requirements, to reflect the trees shown as "R" provided along the driveway from 58th Avenue to the parking area.
 - b. The eight shade trees provided closest to the northern property line and the school use in conformance with Section 4.7, Buffering Incompatible Uses, and that are not shading parking shall be replaced with a variety of evergreen and ornamental trees.
 - c. Revise the Tree Canopy Coverage worksheet to reflect any tree conservation plan revisions and indicate conformance with tree canopy coverage requirements.
 - d. Demonstrate the use of full cut-off optics to ensure that off-site light intrusion is minimized.
3. Prior to certification of the detailed site plan, the Type 2 tree conservation plan (TCP2) shall be revised as follows:
- a. The following note shall be added to the plan:

"The Declaration of a Tree Conservation/Landscape Easement and Agreement was recorded in the land records at L. 10250 F. 182 for an area of 0.24 acre. A portion of the easement was established to meet the off-site woodland conservation requirement of the Elizabeth Seton High School Site (Parcel A) on the subject site. The easement has been vacated;

however, the 0.15 acre of off-site woodland conservation shall continue to be reflected as a requirement of the subject site.”

- b. Revise the woodland conservation worksheet as follows:
 - (1) Account for the additional 0.15 acre of woodland conservation previously approved to be met on this site for the requirements of TCPH-062-95.
 - (2) Provide a column for each parcel included on the plan.
 - c. All reforestation shall be removed from within ten feet of any utility line and/or structure.
 - d. Reforestation Areas 1, 3, and 4 shall be removed from the plan, in addition to any areas that do not meet the minimum dimensional requirements to be counted as woodland conservation.
 - e. Add the standard owner’s awareness signature block to the plan and have the property owners for both Parcels L and K sign.
 - f. Type all previous approval information into the TCP approval block.
 - g. Remove the proposed treeline from the plan and the legend.
 - h. Add the standard planting details from the Environmental Technical Manual for the timing of planting (Detail 13) and for handling bare root stock (Detail 15).
 - i. Revise the reforestation planting table to reflect the required reduction in on-site planting area.
 - j. Have the qualified professional who prepared the plan sign and date it and update the revision box with a summary of the revision.
4. Prior to certification of the DSP, the final stormwater management plan shall be submitted. The limits of disturbance shall be consistent between the plans.
 5. Prior to certification of the DSP, the final erosion and sediment control plan shall be submitted. The limits of disturbance shall be consistent between the plans.
 6. Prior to issuance of the first building permit, provide a financial contribution of \$210 to the Town of Bladensburg for the installation of one bicycle warning sign assembly (W11-1 sign over a “Share the Road” plaque W16-1) on 57th Avenue to warn motorists of the presence of bicyclists.

Ordered this 27th day of April, 2015, by the following vote:

In Favor: Council Members Franklin, Davis, Glaros, Harrison, Patterson, Taveras, Toles and Turner.

Opposed:

Abstained:

Absent: Council Member Lehman.

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