

Case No.: DSP-17004
Turkish American Community
Center Day Care

Applicant: Turkiye Diyanet Vakfi

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

FINAL DECISION — APPROVAL OF DETAILED SITE PLAN

Pursuant to Section 25-210 of the Land Use Article ("LU"), Md. Ann. Code (2012 Ed. & Supp. 2015) and Section 27-290 of the Prince George's County Code (2011 Ed. & Supp. 2015, or as amended) ("PGCC"), the District Council has jurisdiction to review an appeal of the Planning Board's decision in Detailed Site Plan Application Number 17004 ("DSP-17004").

Planning Board's Resolution No. 17-129 ("PGCPB No. 17-129"), approving Applicant's request for the addition of a day care center, with a maximum enrollment of 120 children, to an existing religious institution (mosque) in the One-Family Detached Residential (R-80) Zone, located on Good Luck Road, approximately 3,200 feet southwest of its intersection with Greenbelt Road (MD 193), in Councilmanic District 4, is hereby AFFIRMED.

Procedural History

On September 21, 2017, Planning Board held a public hearing to consider Applicant's request to approve DSP-17004, which is a request for addition of a day care center, with a maximum enrollment of 120 children, to an existing religious institution (mosque) in the One-Family Detached Residential (R-80) Zone. *See* (9/21/2017, Tr.), PGCPB No. 17-129, p. 1.

On October 19, 2017, Planning Board adopted its findings and conclusions in PGCPB No. 17-129. The Board approved DSP-17004 subject to conditions. *See* PGCPB No. 17-129, p. 11.

On November 6, 2017, the District Council took no action or elected not to review the Board's decision. *See* Zoning Agenda, 11/6/2017.

On November 16, 2017, the Board's decision was appealed, by Mr. Mehmet Omur Naz, to the District Council. *See* Appeal Letter, 11/16/2017.

On January 22, 2018, the District Council held oral argument to consider the appeal filed by Mr. Naz. *See* Zoning Agenda, 1/22/2018, (1/22/2018, Tr.).

Disposition of Appeal

A person may make a request to the District Council to review a decision of the Planning Board only if the person is an aggrieved person that appeared at the hearing before the Planning Board in person, by an attorney, or in writing. *See* LU §§ 25-212, 25-210, PGCC § 27-290.

In his written appeal to the District Council, Mr. Naz raised certain concerns about storm water management. *See* Appeal Letter, 11/16/2017. At oral argument on January 22, 2018, Mr. Naz suggested that the Board may have erred on certain issues concerning storm water management. *See* (1/22/2018, Tr.). While the record reflects that Mr. Naz was a person of record before the Planning Board, the record also reflects that Mr. Naz did not attend the evidentiary hearing before the Board on September 21, 2017. *See* (9/21/2017, Tr.). An appellate body ordinarily may not pass upon issues presented to it for the first time and that are not encompassed in the final decision of the administrative agency. *Zakwieia v. Baltimore Cty., Bd. of Educ.*, 231 Md. App. 644, 649-50 (2017), *cert. denied sub nom. Zakwieia v. Baltimore Co. Bd. of Educ.*, 454 Md. 676 (2017)); *see also Brodie v. Motor Vehicle Admin. of Md.*, 367 Md. 1, 4 (2001) (stating that “[a] court will review an adjudicatory agency decision solely on the grounds relied upon by the agency” (quoting *Dept. of Health v. Campbell*, 364 Md. 108, 123 (2001))). Because Mr. Naz

did not attend the Board's evidentiary hearing, the Board was not afforded an opportunity address his concerns; therefore, the issues he raised on appeal were not preserved for appellate review.

Assuming, *arguendo*, that Mr. Naz had preserved the issues on appeal before the Board, they are without merit. The Board found that DSP-17004 was in conformance with the applicable site design guidelines. The Board also found that many of the design guidelines do not apply since the subject property, its improvements, and use as an institutional type facility are existing and there are no proposed changes to the existing site and building with this DSP. Moreover, the Board found that the existing development does conform to various site design guidelines, such as by providing pedestrian access into the site from the public right-of-way and preserving green areas on the property. *See* PGCPB No. 17-129, p. 5.

Accordingly, as the basis for this final decision, the District Council hereby adopt the findings and conclusions set forth within PGCPB No. 17-129. Approval of DSP-17004 is subject to the following condition:

1. Prior to certification of this detailed site plan, the applicant shall make the following revisions to the plans and submit the following documentation:
 - a. Add a note to the site plan stating that the maximum day care center enrollment is limited to 120 children.
 - b. Add the gross floor area for the fellowship hall/day care center (11,827 square feet) to General Note 26.
 - c. Redesign the southernmost proposed concrete walkway, so the walkway is less angled and more rounded allowing for greater distance between the proposed walkway and Reforestation Area 2.
 - d. Label the 35-foot-wide building restriction line to match the record plat along the frontage of Cedar Lane.

- e. Provide the site plan notes as follows:

“During the demolition and construction phases, this project will conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.”

“During the demolition and construction phases, this project will conform to construction activity noise control requirements as specified in the Code of Maryland Regulations (COMAR).”

ORDERED this 12th day of February, 2018, by the following vote:

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

Opposed:

Abstained:

Absent: Council Members Taveras and Toles.

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: _____
Dannielle M. Glaros, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council