

Case No.: DSP-19050-01
Dewey Property

Applicant: Bald Eagle Partners

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

FINAL DECISION — APPROVAL OF DETAILED SITE PLAN

Pursuant to the Land Use Article and the Prince George's County Code, the District Council issues the final decision in Detailed Site Plan (DSP) Application Number 19050-01 (DSP-19050-01). Planning Board's approval of DSP-19050-01 (an amendment to a Detailed Site Plan (DSP)), for a development consisting of 529 multifamily dwelling units on proposed Parcels 1, 2, and 3, as the second phase of the Dewey Property mixed-use development, is hereby AFFIRMED.

Except as otherwise stated herein, Council adopts the findings and conclusions set forth by Planning Board in Resolution No. 2020-127 (PGCPB No. 2020-127).

A. Introduction

This case is on appeal from 6525 Belcrest Road, LLC (Appellant)—owner of Metro III Parcel. Appellant claims that when the Board approved the DSP application filed by Applicant Bald Eagle Partners, Inc. for the Dewey Parcel, the Board illegally, arbitrarily, and capriciously extinguished Metro III's prior development approvals—including its legally existing parking rights. Applicant has filed a response to the appeal.

When reviewing an appeal of a decision from Planning Board to approve a DSP application, Council may disapprove the Board's decision if the decision was not supported by substantial evidence of record, is arbitrary or capricious, or otherwise illegal. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015).

Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Arbitrary and capricious means “unreasonably or without a rational basis;” “founded on prejudice or preference rather than on reason or fact;” and “characterized by or guided by unpredictable or impulsive behavior, . . . contrary to the evidence or established rules of law.” *Cty. Council of Prince George’s Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018) (*quoting Harvey v. Marshall*, 389 Md. 243, 884 A.2d 1171 (2005)).

Having reviewed the record, Council finds that the Board’s approval of the amendment to the DSP application did not extinguish Metro III’s prior development approvals. The Board’s approval of DSP-19050-01, (an amendment to a Detailed Site Plan (DSP)), for a development consisting of 529 multifamily dwelling units on proposed Parcels 1, 2, and 3, as the second phase of the Dewey Property mixed-use development, was supported by substantial evidence of record, not arbitrary, capricious, or otherwise illegal. Application Case File–DSP-19050-01, (7/16/2020, Tr.), PGCPB No. 2020-127, (10/19/2020, Tr.).

B. The Appeal

1. Did the Planning Board commit legal error by relying on a shared parking analysis of the Metro III Property because 6525 Belcrest Road, LLC, is not an applicant before the Planning Board, has no proposed Detailed Site Plan under review, and the Metro III Property is not part of the Site Plan?

The Board was not precluded from considering the shared parking analysis in the DSP application. As discussed *infra*, Appellant has a leasehold interest in the Dewey Property. Therefore, neither its consent nor its participation was required to file the DSP application and for the Board to review and decide the application.

In 2019, the Applicant filed a Preliminary Plan application (4-18022). The Appellant opposed 4-18022 out of concern for its parking. To address the Appellant’s concerns, the Board adopted Finding 19 when it approved 4-18022 to ensure that a determination be made that adequate

parking exists for uses, including the Appellant's, that rely on the surface parking on the Dewey Property. Consistent therewith, the Applicant submitted, and the Board considered, a shared parking analysis. Properties in the University Town Center have been required to submit shared parking analyses with each detailed site plan. The requirement to provide a shared parking analysis was the result of two sources: (1) Condition 15 of CSP-00024; and (2) Section 27-574 of the Zoning Ordinance applicable to properties in the M-X-T Zone. Thus, a methodology for preparing and reviewing a shared parking analysis had been previously established. The Board found that the shared parking analysis submitted by the Applicant was acceptable and demonstrated that adequate parking exists. There is no evidence in the record which contradicts this finding. Appellant now contends that the mere *consideration* of that parking analysis was legal error because it allegedly eliminated its parking rights.

Council rejects Appellant's argument. The Board's consideration of the shared parking analysis did not eliminate any of the Appellant's rights. It merely concluded that, should the Dewey Property be redeveloped, there is enough parking elsewhere within the University Town Center to satisfy the requirements of the existing uses. The shared parking analysis was required to address Appellant's concerns and ensure that the redevelopment of the Dewey Property would not result in a parking shortage. The Board committed no legal error by considering the parking analysis.

2. Did the Planning Board commit legal error by concluding that the Appellant's valid and continuing public approvals for the benefit of the Metro III Property do not restrict the development of the burdened property, the Dewey Property?

Appellant's argument essentially asserts that it has a vested right to continue parking on the Dewey Property due to the granting of the Parking Waiver, and therefore a subsequent change in law could not retroactively invalidate the Parking Waiver. On page 9 of its Letter of August 27, 2020, Appellant states:

The Board's determination that the properties are no longer bound by valid public approvals because of mere changes in law, without changes in development approvals applicable to both of two properties, is legal error.

Council rejects this argument. The concept of vested rights is not applicable to the use of the Dewey Property pursuant to the Parking Waiver. Vested rights apply when zoning requirements change after construction has substantially commenced such that the development should not be subject to the new requirements. The approval of the Parking Waiver gave the Appellant the right to use the Dewey Property. The Parking Waiver did not order or require the owner of the Dewey Property to continue with its contractual relationship with the Appellant. The Board did not err because it did not find that "mere changes in law" invalidated Appellant's parking rights. The Board found as a factual matter that the adoption of the TDDP parking standards – the "mere change in law" the Appellant refers to – changed the parking requirements from that which were applicable in 1970 and that adequate parking exists to accommodate the current parking requirements. This finding was supported by the shared parking analysis which the Board appropriately considered. It did not invalidate the Parking Waiver.

3. Did the Planning Board commit legal error by concluding that 6525 Belcrest Road, LLC, has no equitable interest to use the Dewey Property?

The Board did not conclude that Appellant cannot use the Dewey Property. Rather, the Board rejected Appellant's argument that the Parking Waiver created an unencumbered, perpetual right to use the Dewey Property. Appellant offered no evidence that the Parking Waiver conferred such rights. In fact, there is evidence indicating the contrary, including the 1969 mortgage and the 1970 letter from the Chairman of the Board, each of which acknowledge that parking could be temporary and potentially relocated. Rather than reconcile those documents, Appellant ignores them.

Additionally, Appellant alleges that the definition of “equitable interest” provided by Board’s legal counsel was “extremely narrow” and “unsupported by the law.” However, Appellant cites no law to support those allegations. Based on the foregoing, the Board properly rejected Appellant’s over-characterization of the Parking Waiver.

Appellant also argues that the Parking Waiver established an easement over the Dewey Property. It has been established that easements can be created by express grant/reservation, or by implication. *See Kобрine L.L.C. v. Metzger*, 380 Md. 635–36 (2004). There are two ways to create an express easement: (1) pursuant to the recording statute (Maryland Real Property Article, Section 4-101(a)(1)); or (2) in a memorandum compliant with the Statute of Frauds. Under the recording statute, an easement must be executed by the owner of the burdened property. Here, the burdened property is allegedly the Dewey Property. However, the owner in 1970, Dewey Corporation, did not execute the Parking Waiver. Rather, the Parking Waiver was granted by the County Council. As for the second method of creating express easements, Appellant does not point to any memorandum that complies with the Statute of Frauds. As a result, the Board properly declined to recognize an express easement.

Council also finds that the Board properly rejected the implied easement argument. An implied easement arises when an easement is “necessary” to access the land. *See Purnell v. Beard and Bone, LLC*, 203 Md. App. 495 (2012). The term “necessary” is strictly defined as “imperative and absolute.” *See id.* At no point did Appellant address how parking on the Dewey Property is imperative or absolutely necessary to access the Metro III Property.

Finally, the Board properly rejected Appellant’s argument that the Parking Waiver “merged” the Dewey and Metro III Properties. First, there was no unity of title when the Parking Waiver was granted in 1970. Second, Appellant has offered insufficient evidence of an intent to

merge the properties. To the contrary, reserving the right to relocate parking is inconsistent with the argument that the owner intended to merge the two properties. Finally, the properties are separated by Toledo Road. Appellant does not address whether properties can be merged across a public right-of-way, and if so, what effect that would have on said right-of-way.

4. Did the Planning Board commit legal error by relying on the private ground lease to define the Appellant's scope of right to use the Dewey Property in a case where private agreements are not relevant to the Board's analysis?

Council finds that the Board did not rely on the ground lease as the basis for its decision or interpret the ground lease. In fact, on page 19 of Resolution No. 2020-125, the Board states: “[a]ny matters regarding private agreements for use of the parking on the Dewey property are not relevant to the DSP requirements or analysis.” (Emphasis added). Since the Board clearly did not interpret the ground lease, the Board committed no legal error.

As it relates to Appellant's interest in the Dewey Property, no evidence has been provided that would suggest that Metro III has anything other than a leasehold interest. As discussed *supra*, Council rejects the equitable title argument because Appellant does not have title, nor does Appellant show that the Parking Waiver conferred any ownership rights. Likewise, Council rejects the easement argument because there was no express grant from the owner, nor is an easement absolutely necessary to access the property. Aside from these arguments, Appellant does not assert any other interest in the property.

A. Request for Postponement

When the Board transmitted the record to Council, certain of Appellant's letters and exhibits were not included. Appellant brought this to light in its October 2, 2020 letter which requested that those documents be transmitted, and that the hearing scheduled for October 19, 2020 be postponed or remanded. In response, the Board transmitted the letters and exhibits on October

6, 2020. Council had almost two full weeks to consider the complete record and such documents have been appropriately considered. Therefore, the delayed transmission did not prejudice Appellant to justify postponing the hearing or remanding the case to the Planning Board.

B. Conclusion

The Board’s decision, as adopted in PGCPB No. 2020-127, (an amendment to a Detailed Site Plan (DSP)), for a development consisting of 529 multifamily dwelling units on proposed Parcels 1, 2, and 3, as the second phase of the Dewey Property mixed-use development, in Council District 2, Planning Area 68, more specifically, on the north side of Toledo Road, approximately 240 feet west of Adelphi Road, in the southwest, northwest, and northeast portions of the property, is AFFIRMED, subject to:

A. Alternative transit district development standards are approved as follows:

1. **Streets and Frontage, Blocks (page 208)**—To allow for Parcel 2 to exceed the 500-foot block maximum, so Road A may intersect Belcrest Road, across from Toledo Terrace.
2. **Streets and Frontage, Frontage Zones (page 208)**—To allow a reduction to a 5-foot-wide sidewalk with a 6-foot-wide tree and furnishing zone on the Adelphi Road frontage.
3. **Streets and Frontage, Frontage Zones (page 208)**—To allow three buildings on Parcel 2 and one building on Parcel 3 to front and open onto a driveway.
4. **Streets and Frontage, Build-To Lines and Zones (page 209)**—To allow for the building on Parcel 1 and Buildings D and L to deviate from the build-to line along Toledo Road, Belcrest Road, Road B, and Road A, as shown on the plan.
5. **Streets and Frontage, Build-To Lines and Zones, Building Entrances (page 210)**— To allow the service entrance to be placed along Road B.
6. **Site Elements/Walls, Fences, and Gates (page 248)**—To allow a 3-foot-tall fence along the Belcrest Road frontage, and an entry feature with a brick wall in the southwest corner of Parcel 2.

7. **Parking and Loading, Loading (page 263)**—To allow loading spaces to not be located in the rear of the building, but placed on the Road B frontage.
 8. **Downtown Core Standards (pages 265-269)**—To allow only 67 percent of the frontage along Belcrest Road and Road A on Parcel 2 to contain buildings.
 9. **Neighborhood Edge Standards (pages 270-272)**—To allow the buildings on Parcel 3 not to meet the 80 percent frontage requirement along Adelphi Road.
 10. **Streets and Frontage, Frontage Zones (page 208)**—To allow the placement of transformers within the frontage zone on Road B.
- B. Conditions of Detailed Site Plan DSP-19050-01 and Type 2 Tree Conservation Plan TCP2-042-2019-02 for Dewey Property are:
1. Prior to certification, the detailed site plan (DSP) shall be revised, or additional information shall be provided, as follows:
 - a. Provide building templates showing the dimensions of each multifamily building, including dimensions of internal parking spaces with a minimum size of 9.5 by 19 feet.
 - b. Show a turnaround at the eastern end of the access drive serving Buildings K and M on Parcel 2.
 - c. Provide an exhibit displaying “Future Trail” signage at all trailhead locations, and at appropriate intervals along the entirety of the trail alignment adjacent to Parcel 2 and Parcel 3, indicating the public use trail. Details of the sign, including the language for the sign, the height of its posting at each location, the materials, and the color of the sign shall be provided.
 - d. Reduce the width of the connector trail from Parcel 3 to the shared-use trail on Parcel 4 from 10 feet wide to 8 feet.
 - e. Extend the shared-use trail at a width of 8 feet, depending on constructability, to connect through the Prince George’s Plaza Community Center parking lot to Toledo Road, subject to and unless modified by the Prince George’s County Department of Parks and Recreation (DPR), with written correspondence.

- f. Submit confirmation from the Prince George's County Department of Permitting, Inspections and Enforcement regarding the location of any additional 1.5 safety factor lines that may exist on this site that would restrict this phase of development.
- g. Provide four-sided, color elevations for all of the multifamily buildings, showing the dimensions, labeling, and proposed signage locations, to be reviewed and approved by the Urban Design Section as designee of the Prince George's County Planning Board, in consultation with the City of Hyattsville.
- h. Provide a variety of materials and/or colors on the rear and side elevations of all of the buildings on Parcels 2 and 3, to add architectural interest, similar to the front elevations.
- i. Provide details, such as square footage, dimensions, materials, and lighting, in a comprehensive sign table on the signage plan.
- j. Clearly show all right-of-way improvements and existing features on abutting properties.
- k. Provide details for all of the proposed site features including, but not limited to, the multi-use trail, high-visibility sidewalk, enhanced paving, benches, fences, gates, tables, and bike racks.
- l. Clearly show the location of all fences and gates on the property.
- m. Revise the parking tabulation to show the parking space size and the required handicap-accessible parking for all parcels. The location of handicap-accessible parking spaces on Parcels 2 and 3 should be shown on the plan.
- n. Provide a recreation facility list on the plan, which should not include things such as a pet spa or bicycle parking, as they are not considered recreation facilities.
- o. Provide overhead canopies for all of the front entrances of the proposed multifamily buildings on Parcel 2 and 3, or demonstrate there is an open entry to the covered vestibule.
- p. Provide a minimum of two inverted-U shaped bike racks in front of the leasing office on Parcel 1.

- q. Show the location and type of a public art element (such as a mural, sculpture, enhanced signage or functional art piece) to be integrated into the project in a high visibility area viewable from the public realm, with specific consideration of the entrance monument sign locations.
 - r. Provide a “Share the road with a bike” sign along the subject site’s frontage on Toledo Road, to supplement the roadway markings.
 - s. Provide a highly visible crosswalk across the garage and loading accesses from Road B to the building on Parcel 1.
2. Prior to certification of the detailed site plan (DSP), the Type 2 tree conservation plan (TCP2) shall be revised, as follows:
- a. Revise the TCP2 worksheet by:
 - (1) Widening each column, so the full DSP number associated with each phase is fully legible.
 - (2) Changing the status from pending to approved for Phases 1 through 3.
 - (3) Removing the three extra columns in the worksheet not associated with any phases, which are labeled as “DSP-.”
 - b. Revise the Specimen Tree table to indicate that all the specimen trees are proposed for removal.
3. Prior to approval of the first building permit:
- a. Install “Future Trail” signage along the extent of the trail alignment.
 - b. Pursuant to Condition 1(e), the applicant shall obtain approval from DPR of the construction drawings for the trail extension on Maryland-National Capital Park and Planning Commission property.
4. Prior to commencement of any construction on Park Property, a Construction and Maintenance Agreement must be executed with DPR.

Ordered this 26th day of October, 2020, by the following vote:

In Favor: Council Members Anderson-Walker, Davis, Dernoga, Franklin, Glaros, Harrison, Hawkins, Ivey, Streeter, Taveras, and Turner.

Opposed:

Abstained:

Absent:

Vote: 11-0.

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: _____
Todd M. Turner, Chair

ATTEST:

Donna J. Brown
Clerk of the Council