



# THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council  
301-952-3600

October 1, 2021

**RE: DSP-20015 Freeway Airport  
Freeway Realty, LLC, Applicant**

## ***NOTICE OF FINAL DECISION OF THE DISTRICT COUNCIL***

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on September 28, 2021.

## ***CERTIFICATE OF SERVICE***

This is to certify that on October 1, 2021, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

A handwritten signature in black ink, reading "Donna J. Brown".

---

Donna J. Brown  
Clerk of the Council

Case No.: DSP-20015  
TCP2-005-2021  
AC-21003  
Freeway Airport

Applicant: Freeway Realty, LLC

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

FINAL DECISION — APPROVAL OF DETAILED SITE PLAN

On September 13, 2021, this matter was considered by the District Council on appeal from Planning Board. Having afforded the issues on appeal full consideration, Council finds that the decision of Planning Board to approve proposed infrastructure for Detailed Site Plan 20015, Type 2 Tree Conservation Plan TCP2-005-2021, and Alternative Compliance 21003—for 416 single-family attached (townhouse) lots and 93 single-family detached lots, for a total of 509 lots, on property located on the west side of Church Road and in the southwest quadrant of its intersection with US 50 (John Hanson Highway), in Planning Area 74A—was supported by substantial evidence of record, not arbitrary, capricious, or otherwise illegal.<sup>1</sup> Unless otherwise stated herein, Council incorporates and adopts the findings and conclusions set forth by Planning Board in Resolution No. 2021-62.

---

<sup>1</sup> Detailed Site Plan 20015 (DSP-20015), Type 2 Tree Conservation Plan (TCP2-005-2021) and Alternative Compliance 21003 (AC-21003) will be referred to collectively as the site plan or separately where appropriate. Planning Board will be referred to as the Board. The Zoning Ordinance or Subtitle 27 of the County Code will be cited as “PGCC § 27-\_\_\_.” The Land Use Article will be cited as “LU § \_\_\_.”

The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision. PGCC § 27-141. The District Council may also take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. Moreover, the District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. District Council Rules of Procedure 6.5.

A. Introduction

On June 1, 2021, the Board notified Council and persons of record of its decision to approve the site plan. Resolution No. 2021-62. On June 14, 2021, Council waived its election to review the site plan. Subsequently, on June 30, 2021, Carol Boyer, a person of record, and others, appealed the decision of the Board to Council. Appeal by Boyer, 6/30/2021. Applicant has moved to dismiss the appeal, or in the alternative, requests that Council affirm the Board's decision. Response by Applicant, 7/19/2021.

For reasons set forth below, Council will deny Applicant's motion to dismiss the appeal and affirm the Board's decision.

B. Appeal — Legal Requirements

Under the County Code, the Board's decision on the site plan may be appealed to Council upon petition by any person of record. Among other things, the petition shall be filed with the Clerk of the Council within thirty (30) days after the date of the notice of the Board's decision. PGCC § 27- 290(a). Council finds (and it is undisputed) that Ms. Boyer (at minimum in her individual capacity) was a person of record and that her appeal was timely because it was filed on June 30, 2021 or within 30 days after notification of the Board's decision on June 1, 2021.

Under State law, the Board's decision on a site plan may be appealed to Council by a person of record but only if 1) the person is an aggrieved person that appeared at the hearing before the Board *in person, by an attorney, or in writing* and 2) the review is expressly authorized.<sup>2</sup> LU §§ 25-210, 25-212 (Emphasis added). Applicant contends that because Ms. Boyer did not appear at the hearing before the Board *in person*, her appeal is invalid and should be dismissed. Response

---

<sup>2</sup> There is no dispute that a Detailed Site Plan is subject to review by the Council. LU § 25-210.

by Applicant, 7/19/2021. Council finds that while Ms. Boyer did not appear (in person) at the virtual hearing before the Board, she did appear (*in writing*) because she was a person of record before the Board.<sup>3</sup>

C. Appeal Lacks Merit

Ms. Boyer claims that she was prevented from signing up to testify, which she contends precluded her from presenting testimony and evidence on soil contamination by lead. Ms. Boyer also claims that the Board's decision lacked sufficient evidence for approval and request that Council remand the site plan to the Board for a new hearing. Appeal, 6/30/2021. Applicant refutes these contentions in an extensive written response. Response by Applicant, 7/19/2021. Council finds that the contentions in the appeal lacks merit.

First, Ms. Boyer provided no direct evidence that she was prevented from signing up to testify before the Board. Ms. Boyer instead relies on certain statements and exhibits from Barbara Simmons and Michael Bridges. But Ms. Simmons and Mr. Bridges were not persons of record below. Appeal, 6/30/2021, Appendix A & B. Second, there is substantial evidence of record that

---

<sup>3</sup> Council also finds that Ms. Boyer signed up to become a person of record on behalf of "Concerned Citizens of Prince George's County," a corporate entity. Before the Council, except for a duly elected officer of a bona fide civic association or homeowners' association, non-attorney representation of a corporation is *not* permitted. Md. Code Ann., Land Use § 25-201 (1957, 2012 Repl. Vol., 2020 Supp.), PGCC § 27-125(a), District Council Rules of Procedure 6.2. *See also Turkey Point Property Owners' Ass'n v. Anderson*, 106 Md. App. 710, 666 A.2d 904 (1995) (A corporation is considered a person and must be represented by an attorney admitted to practice law in Maryland). To the extent that "Concerned Citizens of Prince George's County" is a bona fide civic or homeowners' association, the record does not indicate that Ms. Boyer is a duly elected officer. Regardless, Ms. Boyer appeals in her individual capacity.

Moreover, Council finds that because Beverly Simmons, Michael Bridges, Kathleen Beres, Miller Einsel, Millicent Carroll, Milly Hall, and Michael M. Brown were not persons of record below, they were not authorized to sign the appeal filed by Ms. Boyer. Party of Record List, 5/27/2021.

James Riley, a person of record, submitted written opposition to the site plan on September 2, 2021. Council finds that if Mr. Riley's written opposition was an attempt to appeal the Board's decision, it was untimely because it was not filed within 30 days after the Board's notification of decision on June 1, 2021. PGCC § 27-290(a). Alternatively, the issue of spot zoning is not relevant to the approval of the site plan.

the Board satisfied all legal requirements of notice for a public hearing and procedures to sign up to speak or testify. Response by Applicant, 7/19/2021, Exhibits 1-2. Third, a remand to the Board for a new hearing to present testimony or evidence on soil contamination by lead would be futile because there is substantial (and conclusive) evidence of record from Maryland Department of Environment (MDE) that no collected soil sample from the subject property exceeded MDE residential cleanup standard. Moreover, MDE has concluded that the soils at the subject property are acceptable for residential future use.<sup>4</sup> Response by Applicant, 7/19/2021, Exhibit 3.

D. Conclusion

Finding no error in the Board's determination that the site plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use as referenced in PGCC § 27-285(b), the site plan is approved.

DSP-20015, TCP2-005-2021, and AC-21003 are subject to the following conditions:

1. Prior to certification, the following revisions shall be made, or information be provided on the plans:
  - a. Update all pedestrian and trail network elements on the plan to be consistent with Applicant's Exhibit 2, unless modified by the Prince George's County Department of Permitting, Inspections and Enforcement with written correspondence.
  - b. Provide a detail exhibit of Americans with Disabilities Act accessible sidewalk ramps.
  - c. Identify the locations of the short-term, inverted-U style, bicycle parking racks.

---

<sup>4</sup> As a general rule, a remand is appropriate for an administrative agency to perform remaining administrative functions unless remand would be futile. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015). Here, a remand would be futile, and therefore not appropriate, because the only decision the Board could make on remand would be to approve the site plan for infrastructure. *Cty. Council of Prince George's Cty. v. Convenience & Dollar Mkt./Eagle Mgmt. Co.*, 238 Md. App. 613, 193 A.3d 225 (2018).

- d. Provide the direction of the R5-3 modified/No Unauthorized Motor Vehicles signs to face the shared-use path entrance.

- e. Provide the site plan notes as follows:

“During the construction phases of this project, noise should not be allowed to adversely impact activities on the adjacent properties. Indicate intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code.”

“During the construction phases of this project, no dust should be allowed to cross over property lines and impact adjacent properties. Indicate intent to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.”

- f. Prepare and submit documents for the required woodland conservation easements to the Environmental Planning Section for review by the Office of Law, and upon approval record the easements in the Prince George's County Land Records. The following note shall be added to the standard Type 2 tree conservation plan notes on the plan, as follows:

“Woodlands preserved, planted, or regenerated in fulfillment of woodland conservation requirements on-site have been placed in a woodland and wildlife habitat conservation easement recorded in the Prince George's County Land Records at Liber \_\_\_\_ Folio \_\_\_\_\_. Revisions to this TCP2 may require a revision to the recorded easement.”

- g. Revise the highly visible lot exhibit to include the following lots:

**Block B:** Lots 25, 26, 34, 42, 43, 53, 54, 60, 61, 67, 68, 95, and 102

**Block C:** Lots 5, 6, 25, 26, 31, 32, 35, 36, 45, 46, 50, 60, 61, 72, 95, and 96

**Block G:** Lots 3, 13, 14, 21, 35, 36, and 51

**Block J:** Lots 3, 24, 36, and 46

- h. Provide development standards for fences, accessory buildings, and swimming pools.
2. The proposed development shall be governed by the development standards established as follows:

<b>DEVELOPMENT STANDARDS</b>		
<b>ZONE: Residential Agricultural (R-A) developed per R-T standards pursuant to CB-17-2019</b>		
	<b>SINGLE FAMILY ATTACHED*</b>	<b>SINGLE FAMILY DETACHED</b>
MINIMUM LOT SIZE:	1,800 SF	6,500 SF
MINIMUM LOT DEPTH:	80 FEET	N/A
MINIMUM FRONTAGE AT STREET R.O.W.:	22 FEET	45 FEET
MINIMUM FRONTAGE AT FRONT B.R.L.:	22 FEET	65 FEET
MINIMUM FRONT SETBACK FROM R.O.W.:	N/A <sup>1</sup>	25 FEET <sup>2</sup>
MINIMUM SIDE SETBACK (Total of Both Yards/Minimum of Either Yard):	N/A <sup>1</sup>	17 FEET /8 FEET <sup>3</sup>
IF A CORNER LOT, THE SIDE YARD ALONG THE STREET:	N/A <sup>1</sup>	25 FEET
MINIMUM REAR SETBACK:	N/A <sup>1</sup>	20 FEET <sup>4</sup>
MAXIMUM BUILDING HEIGHT:	40 FEET	40 FEET
MAXIMUM LOT COVERAGE:	75 percent	50 percent
<sup>1</sup> For townhouses, specific individual yards are not required. Instead, at least eight hundred (800) square feet per lot shall be allocated for front, side, or rear yard purposes; however, the actual yard area may be reduced to not less than five hundred (500) square feet for the purpose of providing steps, terraces, and open porches (decks) which project into the otherwise required yard area. Not more than three (3) continuous, attached dwellings may have the same setback. Variations in setbacks shall be at least two (2) feet.		
<sup>2</sup> For single family detached dwellings, stoops, steps and/or porches may encroach ten (10) feet into the front setback.		
<sup>3</sup> For each one (1) foot the building exceeds thirty-five (35) feet in height, the minimum side yards shall be increased by one-half (1/2) foot.		
<sup>4</sup> For single family detached dwellings, stoops, steps, decks, and/or patios may encroach ten (10) feet into the rear setback.		
*A minimum of seventy-five percent (75%) of all townhouse units shall have a full front façade excluding gables, bay windows, trim, and doors) of brick, stone, or stucco. Townhouses shall not contain vinyl siding.		

3. Prior to issuance of the 130th building permit in Phase 1, the 82nd building permit in Phase 2, the 60th building permit in Phase 3, and the 74th building permit in Phase 5, the respective recreational facilities in each phase shall be installed and open to the residents, as follows:

Phase	Recreational Facilities
1	One tot lot and 470 linear feet of a 10-foot-wide asphalt trail
2	Approximately 5,652 linear feet of a 10-foot-wide asphalt trail
3	One pre-teen lot and 315 linear feet of a 10-foot-wide asphalt trail
5	One tot-lot and one pre-teen lot

4. Prior to issuance of the 382nd building permit, the clubhouse and swimming pool shall be constructed and open to the residents.

ORDERED this 28<sup>th</sup> day of September, 2021, by the following vote:

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

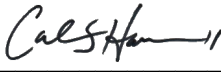
Opposed: Council Members Anderson-Walker, Dernoga and Ivey.

Abstained:


Absent: Council Member Streeter.

Vote: 7-3.

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