



THE PRINCE GEORGE'S COUNTY GOVERNMENT

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

May 27, 2021

**RE: DSP-20029 Behnke Property 7-Eleven
Root 1, LLC, ETAL, Applicant**

NOTICE OF 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 May 24, 2021.

CERTIFICATE OF SERVICE

This is to certify that on May 27, 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

County Administration Building
14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772

Case No.: DSP-20029
Behnke Property 7 Eleven

Applicant: Root 1, LLC ETAL

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

ORDER OF REMAND

IT IS HEREBY ORDERED that Detailed Site Plan 20029, a request to develop a 4,500-square-foot food and beverage store and a gas station with eight multi-product dispensers, on 1.89 acres in the C-M Zone, located on the west side of US 1 (Baltimore Avenue) south of its intersection with Howard Avenue, Planning Area 61, Councilmanic District 1, is REMANDED, to Planning Board for further testimony or reconsideration of its decision as set forth herein. PGCC §§ 27-132(f), 27-290(d).

FINDINGS AND CONCLUSIONS

A. Introduction

On May 10, 2021, this matter was considered by the District Council on the record from Planning Board using oral argument procedures. (5/10/2021, Tr.). For reasons explained below, Planning Board shall reopen the record to take further testimony or evidence from the applicant that shall demonstrate or address how, among other things, the proposed site plan *implements* or is *in accordance with* purposes of Subtitle 27, the 2014 General Plan (or Plan 2035), and the 2010 Subregion 1 Master Plan.

B. The Subject Property

The subject site was formerly part of the Behnke Nursery. The Nursery occupied the subject site and abutting property to the south and west for approximately 90 years. The property is bounded to the north by the right-of-way of Howard Avenue, with commercial development in

the Commercial Miscellaneous (C-M) Zone beyond; to the east by the right-of-way of US 1, with the CSX railroad corridor beyond; and to the south and west by a single property in the C-M Zone, which is developed with a greenhouse and multiple buildings that supported the former Behnke nursery and garden center use. PGCPB No. 2021-21, p.2.

C. Interpretations and Rules of Construction

Where a regulation involves two (2) or more items connected by the conjunction “and,” it indicates that *all* the connected items *shall* apply, unless the context indicates to the contrary. PGCC § 27-108.01(a)(13)(A) (Emphasis added). For example, Subtitle 27 or the Zoning Ordinance has 15 purposes, which are connected by the conjunction “and.” PGCC § 27-102(a)(1)-(15). Some of those purposes are to *implement the General Plan, Area Master Plans, and Functional Master Plans*, guide the orderly growth and development of the County, promote the most beneficial relationship between the uses of land and buildings to protect landowners from adverse impacts of adjoining development, and protect against undue noise, and air and water pollution. PGCC § 27-102(a)(2)(4)(6)(13) (Emphasis added). Other purposes that are also relevant to the evaluation criteria include purposes of the commercial zones and general purposes of a detailed site plan. PGCC §§ 27-446, 27-459 and 27-281.

D. Commercial Zones

The site is in a Commercial Zone. Purposes of Commercial Zones are:

- (1) *To implement the general purposes of this Subtitle;*
- (2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;
- (3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;

- (4) *To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;*
- (5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;
- (6) *To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;*
- (7) To increase the stability of commercial areas;
- (8) To protect the character of desirable development in each area;
- (9) To conserve the aggregate value of land and improvements in the County; and
- (10) To enhance the economic base of the County.

PGCC § 27-446 (Emphasis added). Specifically, the site is in the C-M Zone (Miscellaneous Commercial). Purposes of the C-M Zone are:

- (A) To provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas;
- (B) To provide these locations, where possible, on nonresidential streets; and
- (C) *To provide concentrations of these uses which are relatively far apart.*

PGCC § 27-459 (Emphasis added).

E. Detailed Site Plan

The site plan requests approval to develop a 4,500-square-foot food and beverage store and a gas station with eight multi-product dispensers. PGCPB No. 2021-21, p.1. A site plan is “an illustrated proposal for the *development* or *use* of a particular piece of real property [depicting] how the property will appear if the proposal is accepted.” *Cty. Council of Prince George’s Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018) (Emphasis added). General purposes of a detailed site 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.

PGCC § 27-281 (Emphasis added). Specific purposes of a detailed site plan 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.*

PGCC § 27-281 (Emphasis added). The Zoning Ordinance shall be read as a whole. PGCC § 27-108.01(a)(23). Words and phrases not specifically defined or interpreted shall be construed according to the common and generally recognized usage of the language. PGCC § 27-108.01(a)(7). To *implement* something is to *carry out* or *accomplish*, especially to give practical effect to and ensure of *actual fulfillment* (Emphasis added).¹ To do something *in accordance with* is to do it in a way that *agrees with* or *follows* (something, such as a rule or request) (Emphasis added).² The statutory scheme above is clear that the evaluation criteria of a site plan include, among other things, how the development *implements* or is *in accordance with* purposes of Subtitle 27, the General Plan, and the Master Plan. The proposed site plan is subject to the 2014 General

¹ <https://www.merriam-webster.com/dictionary/implement> (last visited May 20, 2021).

² <https://www.merriam-webster.com/dictionary/in%20accordance%20with> (last visited May 20, 2021).

Plan (or Plan 2035), and the 2010 Approved Subregion I Master Plan and Sectional Map Amendment.

F. General Plan (or Plan 2035)

Plan 2035 designates the subject site in the Established Communities and Employment Areas of the County Growth Policy Map. Plan 2035, Map 1, p. 18, p. 19, Map 11, p. 107, Memo from Community Planning Division, 12/12/2020, Statement of Justification, pp. 2-3.

Under Plan 2035, the Employment Areas were identified because of two major County plans: the 2013 Strategic Development Plan and the 2014 Southern Green Line Station Area Plan. These designated employment areas have the highest concentrations of economic activity in four targeted industry clusters – healthcare and life sciences; business services; information, communication, and electronics (ICE); and the Federal Government. Plan 2035 recommends continuing to support business growth in these geographic areas – in particular in the targeted industry clusters – concentrating new business development near transit where possible, improving transportation access and connectivity, and creating opportunities for synergies. Plan 2035, p. 19, Statement of Justification, pp. 2-3.

Established communities are existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers. Established communities are most appropriate for *context-sensitive infill and low-to-medium-density development*. Plan 2035 recommends maintaining and enhancing existing public services (police and fire/EMS), facilities (such as libraries, schools, parks, and open space), and infrastructure in these areas (such as sidewalks) to ensure that the needs of existing residents are met. Infill development takes places on vacant or underutilized parcels within an area that is

already characterized by urban development and has access to urban services. Plan 2035, pp. 20, 288 (Emphasis added).

G. Master Plan

Development of the property is subject to the 2010 Approved Master Plan and Sectional Map Amendment for Subregion I (Planning Areas 60, 61, 62, and 64). The 2010 Master Plan placed the property in Focus Area 1, Map 3. 2010 Master Plan, pp. 19-20. Statement of Justification, p. 3. The vision for Focus Area 1 is:

US 1 developed as a “main street,” new mixed-use neighborhoods adjacent to the Beltsville Agricultural Research Center (BARC) and existing low- to high density housing in Beltsville. New development is integrated with older residential neighborhoods and is connected by a network of open spaces and a central focal place. Rhode Island Avenue is divided into two local streets by focal greens along US 1, with streetscape improvements and trails. The commercial core at the Costco Shopping Center is redeveloped into a high quality shopping destination. The southern portion of US 1 is lined by a heavily planted streetscape gateway from I-495 north to Sunnyside Avenue and through the BARC landscape. *A new mixed-use neighborhood from Prince George’s Avenue to Garrett Avenue is integrated with the adjacent single-family neighborhood and is buffered from US 1 and the CSX railroad line to the east.* An area of medium-density housing is included in this neighborhood adjacent to the mixed-use development, extending from Garrett Avenue to Quimby Avenue and buffered from US 1 and the CSX rail line.

2010 Master Plan, p. 19 (Emphasis added). Goals for Focus Area 1 are:

- *Quality mixed-use and residential development that protects, enhances and integrates with surrounding neighborhoods.*
- *Increased open space and improved open space connections.*
- *Upgraded streetscape and pedestrian amenities to establish a walkable community.*
- Retention and expansion of selected retail development on US 1.

2010 Master Plan, p. 19 (Emphasis added). Policies and strategies for Focus Area 1 are:

Policy 1: Establish areas of mixed-use development that are integrated with adjacent residential neighborhoods.

Strategies

- Develop a mixed-use neighborhood at the southern end of the focus area, adjacent to BARC.
- Encourage mixed-use development in the area on the west side of US 1, north of Powder Mill Road.
- *Ensure that new mixed-use development is integrated with—and protects, enhances and complements—surrounding residential neighborhoods.*
- Guide regional commercial and industrial traffic away from proposed neighborhoods.

Policy 2: Develop new mixed-use residential development to protect and enhance adjacent residential neighborhoods.

Strategies

- Support and integrate existing residential neighborhoods with new housing on US 1 and Rhode Island Avenue.
- Develop a mix of medium-density residential and office uses on the west side of US 1 (north of Garrett Avenue and the proposed mixed-use development on US 1).
- Develop a mix of medium-density housing and office uses on the west side of Rhode Island Avenue, north of the intersection with US 1.
- Improve the streetscape adjacent to the proposed medium-density housing to serve as a buffer from US 1.

Policy 3: Establish new open space areas and a central focal place to connect surrounding neighborhoods.

Strategies

- Utilize the edges of the BARC property as visual open space to create a more attractive gateway into the sector area from the south.
- Locate a central public focal place at the intersection of Rhode Island Avenue and US 1 to serve the southern mixed-use neighborhood.
- *Locate a central public focal place within the proposed mixed-use neighborhood west of US 1 between Prince George's Avenue and Garrett Avenue.*
- Provide connections to surrounding open space, including the Ammendale Normal School historic site, Indian Creek, and the proposed paths alongside the Kenilworth Avenue extension.

Policy 4: Improve pedestrian/bicycle circulation and streetscape character.

Strategies

- Construct a pedestrian bridge across US 1, from the area north of Quimby Avenue to Linden Street and the adjacent Indian Creek stream valley, thereby creating a continuous trail connection between proposed open space acquisition east of US 1 and the proposed trails alongside the Kenilworth Avenue extension.
- Establish distinct zones of unified streetscape elements along US 1:
 - Gateway streetscape north of I-495 to Sunnyside Avenue
 - Main street streetscape from Sunnyside Avenue to focal place at Rhode Island Avenue
 - Retail streetscape on US 1 between Rhode Island Avenue and Powder Mill Road
 - Buffered edge with path along US 1 to shield new housing development from US 1 traffic.
- Improve and add sidewalks and pedestrian crossings along US 1 to encourage safe pedestrian uses and better east-west connections.
- Move overhead utilities underground.
- Implement proposed in-road bicycle lanes along US 1, extending the existing lanes along the IKEA frontage.

Policy 5: Retain, expand and complement retail development at the existing Costco site and nearby sites.

Strategies

- Retain and improve the existing Costco retail site.
- Expand retail uses on this site and on the opposite side of US 1 to allow for improvements that accommodate retail with large-floor-plate needs.
- Locate a grocery store in this area.

Policy 6: Improve existing traffic circulation to protect and enhance proposed neighborhoods.

Strategies

- Eliminate the direct intersection of Rhode Island Avenue with US 1, utilizing the space created at the end of the right-of-way as the location for a public focal place.
- Create additional secondary streets that link Rhode Island Avenue with US 1 at an east-west intersection.

- Widen and improve the bridge over the CSX rail line along Powder Mill Road.
- Provide traffic calming and a neighborhood entry feature at Powder Mill Road and US 1 for westbound traffic.

2010 Master Plan, pp. 19-23 (Emphasis added).

H. Conclusion

When the Zoning Ordinance is read as a whole, the District Council concludes that the evaluation criteria of a detailed site plan include, among other things, how the development *implements* or is *in accordance with* purposes of Subtitle 27, the 2014 General Plan (or Plan 2035), and the 2010 Subregion 1 Master Plan. On remand, the applicant shall submit a revised site plan that will demonstrate or address the following:

1. The development implements the 15 purposes of Subtitle 27.
2. The development implements the purposes of the Commercial Zones.
3. The development is in accordance with the principles for the orderly, planned, efficient and economical development contained in Plan 2035, and the 2010 Subregion I Master Plan, including the Vision for Focus Area 1 and relevant goals, policies and strategies for Focus Area 1.
4. The development provides for a sidewalk along with the entire southern frontage of the subject property.
5. The development provides for a monument sign instead of a freestanding sign. Planning Board shall evaluate the monument sign location and size.
6. The development provides for fill-in planting areas at the northeast corner, and along the US 1 frontage, and the southeast boundary of the property. The goal of filling-in these planting areas is to screen the fuel pumps as effectively as possible. Shrubs along the US 1 frontage should be 4-6 foot-high and maintained at that height.
7. The development facilitates smart growth along US 1 with the installation of an Electrical Vehicle Charging Device (EVCD). A space containing an EVCD shall be designated as exclusively for use by electric cars and the space shall be created as one of the reserved spaces on the premises.

8. The development relocates the trash dumpster at least 25 feet from the west property boundary.

ORDERED this 24th day of May, 2021, by the following vote:

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


Opposed:

Abstained:

Absent: Council Member Anderson-Walker.

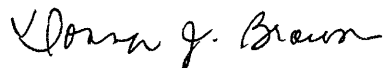
Vote: 10-0.

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: 

Calvin S. Hawkins, II, Chair

ATTEST:



Donna J. Brown
Clerk of the Council