



THE PRINCE GEORGE'S COUNTY GOVERNMENT

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

March 19, 2024

**RE: DSP-21001 Remand Suffrage Point
Werrlein WSSC, 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 March 18, 2024

CERTIFICATE OF SERVICE

This is to certify that on March 19, 2024, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

A handwritten signature in cursive script, reading "Donna J. Brown", is written above a horizontal line.

Donna J. Brown
Clerk of the Council

Case No.: DSP-21001
Suffrage Point
(formerly known as Magruder
Pointe)
(On remand from Planning Board)

Applicant: Werrlein WSSC, LLC

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

FINAL DECISION — DISAPPROVAL OF DETAILED SITE PLAN

On March 11, 2024, using oral argument procedures, this matter was considered by the District Council on its motion to review the decision of the Planning Board (on remand) to approve Detailed Site Plan (DSP)-21001. Upon full consideration of the record, including oral and written testimony from the Applicant, the City of Hyattsville, Julie Wolf, Greg Smith, Save Our Sustainable Hyattsville, Inc., and others, the Board’s approval of DSP-21001, a request to construct 41-single-family townhouse dwelling units on the subject property, located in the southeast quadrant of the intersection of Hamilton Street and 40th Avenue, more specifically, between 40th Place and Magruder Park, in Planning Area 68, within the incorporated City of Hyattsville, Council District 2, is REVERSED.¹

¹ Prior to remand, the Board’s decision to approve DSP-21001 was embodied in Resolution No. 2023-15 or PGCPB No. 2023-15. On remand, the Board’s decision to approve DSP-21001 was embodied in Amended Resolution No. 2023-15(A) or PGCPB No. 2023-15(A).

FINDINGS AND CONCLUSIONS²A. The Subject Property

The subject property consists of two parcels. The upper parcel is approximately 3.6 acres, and the lower parcel is approximately 4.66 acres. The subject property is within the municipality of the City of Hyattsville. Development of the subject property is governed primarily by the 2004 Gateway Arts District Sector Plan and Sectional Map Amendment, which placed the entire Gateway Arts District in a Development District Overlay (D-D-O) Zone. PGCPB No. 2023-15 at 2.

B. Rezoning of the Subject Property

In June 2019, at the request of the Applicant, the District Council rezoned the lower parcel of the property from Open Space (O-S) to R-55 (One-Family Detached Residential). In addition to rezoning the lower parcel from O-S to R-55, the District Council also amended the Table of Uses in the D-D-O Zone to allow for development of single-family attached units (townhouses) in the R-55 Zone. The upper parcel was not rezoned from R-55. Conceptual Site Plan (CSP)-18002, 6/10/2019.

C. Appeals to Circuit Court and Court of Special Appeals

Certain persons of record appealed CSP-18002 to the Circuit Court for Prince George's County. *Petition of the City of Hyattsville*, Case No. CAL19-21492, and *Petition of Amanda Eisen, et al.*, Case No. CAL19-22819. The Circuit Court denied both petitions and affirmed CSP-18002.

² 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 a preliminary plan 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. Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. District Council Rules of Procedure Rule 6.5(f).

Memorandum Opinion, 12/14/2020. The Petitioners appealed to the Court of Special Appeals of Maryland (COSA).³ *City of Hyattsville, et al. v. Prince George's County Council, et al.*, Case No. 1261, September Term, 2020.

D. Detailed Site Plan (DSP)-18005 – Development of Upper Parcel

While litigation was pending in CSP-18002 before COSA, the Applicant filed DSP-18005, pursuant to the density calculation in CSP-18002 (which was subsequently struck down by the Appellate Court),⁴ to develop the Upper Parcel with 31 residential units. DSP-18005 identified the Lower Parcel as an *outparcel* for infrastructure *but* the density calculation in CSP-18002 was for the *entire* property—not just the Upper Parcel. Application Case File–DSP-18005, (6/11/2020, Tr.), PGCPB No. 2020-105, (9/14/2020, Tr.), (10/5/2020, Tr.).

The District Council approved DSP-18005 in October 2020. Subsequently, in November 2020, certain persons of record appealed DSP-18005 to the Circuit Court for Prince George's County. *Petition of Leigh Altman, et al.*, CAL20-18893. In June 2021, on motion by the District Council, the Circuit Court dismissed the petition with prejudice because Petitioners failed to file a Rule 7-207 Memorandum. Order of Court, 6/9/2021. No further appeal was taken in DSP-18005.

E. Preliminary Plan of Subdivision (PPS) 4-18001 – Development of Upper Parcel

While litigation was also pending in CSP-18002 before COSA, the Applicant filed PPS 4-18001 to develop the Upper Parcel pursuant to the density calculation in CSP-18002. In April 2020, the Board approved PPS 4-18001. Certain persons of record appealed to the Circuit Court

³ At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

⁴ *City of Hyattsville v. Prince George's Cty. Council*, 254 Md. App. 1, 68-69, 91-93, 270 A.3d 950, 989-90 (filed February 23, 2022) (The decision under review here [CSP-18002] establishes the maximum densities that may be allowed on the *entire subject property, not just the upper parcel*). (Emphasis added).

for Prince George's County. *Wolf vs Planning Board of PG County*, Case No. CAL20-14895. The Circuit Court affirmed the Board's approval of PPS 4-18001. Petitioners appealed to the ACM. *Julie Wolf, et al. v. Planning Board of Prince George's County*, Case No. ACM-REG-2099-2022.

The ACM affirmed the Board's approval of PPS 4-18001 *but* explained that the PPS for the Upper Parcel labeled the Lower Parcel as an *outparcel* for infrastructure. *Wolf v. Plan. Bd.*, 260 Md. App. 103, fn. 7., 306 A.3d 763 (2023) ("Werrlein's PPS for the Upper Parcel labelled the Lower Parcel as an outparcel for infrastructure."). Under the County's Subdivision Regulations an outparcel is "[a] parcel of land designated on a subdivision plat which does not meet the requirements of this Subtitle for adequate public facilities and is, therefore, not usable as a legal building site. PGCC § 24-101(a)(20). Yet, the Board also approved PPS 4-18001 subject to density calculation in CSP-18002 for the *overall* property, which (as mentioned above in footnote 4) was *struck down* on appeal. PGCPB No. 2020-35, p. 1, Condition 1. *Wolf, supra*, (Explaining that "[i]t is true that Werrlein's CSP might be invalidated by the circuit court, requiring it to revise its project.".)⁵ *City of Bowie v. Prince George's County*, 384 Md. 413, 863 A.2d 976 (2004) (Explaining that a developer who moves forward despite a pending appeal "*risks exposure to suits and the enforcement of regulations*" should the underlying approval be invalidated, but the "Court cannot presume to dictate the business risks in which a developer may choose to engage."). (Emphasis added).

F. COSA Affirming in Part and Reversing in Part CSP-18002

In February 2022, COSA affirmed the District Council in CSP-18002 to 1) rezone the lower parcel of the property from O-S to R-55 and 2) to amend the Table of Uses in the D-D-O Zone to

⁵ Here, the ACM is referring to the 2nd CSP approved by the District Council after the 1st CSP was struck down by ACM on the issue of density. The 2nd CSP is pending in the Circuit Court and is scheduled for a hearing on April 9, 2024.

allow the lower parcel to be developed with townhouses. But COSA *reversed* the District Council in CSP-18002 on the issue of density because under the Zoning Ordinance, density must be expressed in terms of *net* acre *not* gross acre. In reversing, COSA held that 1) the District Council *may not* allow a density for one-family detached dwelling units that exceeds 6.7 dwelling units per *net* acre of net lot or tract area and 2) the District Council *may* establish a density for townhouses that is different from the density for one-family detached dwelling units, *but* density must be expressed as a number of dwelling units per *net* acre of net lot or tract area.

According to COSA:

This error may be significant for a property on which the number of net acres may be substantially less than the total acreage of the property. The ongoing nature of the development approval process demonstrates why the error in establishing the maximum density for the subject property must be corrected. The decision under review here establishes the maximum densities that may be allowed on the entire subject property, not just the upper parcel. At all subsequent stages for approval of Werrlein's proposed development, on either parcel, the administrative decision-makers will determine whether the proposed development actually conforms with the maximum densities established by the District Council's zoning decision. Unless corrected, the error here in overstating the density allowed on the property may continue to affect each subsequent decision.

City of Hyattsville v. Prince George's Cty. Council, 254 Md. App. 1, 68-69, 91-93, 270 A.3d 950, 989-90 (filed February 23, 2022). (Emphasis added). No further appeal was taken.

G. CSP-18002 — On Remand from Courts

In October 2022, on remand from the Courts, the District Council issued a final decision on density expressed in terms of *net* acre or *net* lot or tract area as follows:

1. Density for One-Family detached dwelling units shall not exceed 6.7 dwelling units per net acre of net lot or tract area, and
2. Density for Townhouse dwelling units shall not exceed 12.3 dwelling units per net acre of net lot or tract area.

CSP-18002, 10/17/2022. Certain persons of record appealed to the Circuit Court for Prince

George's County. *In the Matter of Julie Wolf, et al.*, Case No. C-16-CV-22-000629. A hearing is set for April 9, 2024.

H. Preliminary Plan of Subdivision (PPS) 4-21052 – Development of Lower Parcel

In June 2022, *before* the October 2022 final decision of the District Council on remand in CSP-18002, expressing density in terms of *net* acre of *net* lot or tract area, the Board approved PPS 4-21052 for the Lower Parcel, previously designated as an outparcel. PGCPB No. 2022-75.

Among other things, the Board found as follows:

At the time of detailed site plan, the applicant shall determine whether there is to be any public use of the subject property. If there is to be any public use, *the plans shall show either a parcel(s) to be conveyed to the City of Hyattsville*, or a public use easement on homeowners' association Parcel B2 to the benefit of the City of Hyattsville, in order to ensure the general public continues to have access to the park facilities on the parcel. If an easement is granted on Parcel B2, the parcel shall primarily serve to provide compensatory storage for the subject property, and the applicant shall determine which areas of the parcel may be used by the public. If no easement is granted or property conveyed for the existing park facilities, the park facilities on the subject site shall be shown to be removed or relocated.

Prior to approval of building permits, the applicant and the applicant's heirs, successors, and/or assignees shall convey to the homeowner's association land, as identified on the approved preliminary plan of subdivision. Land to be conveyed shall be subject to the following:

- a. A copy of the recorded deed for the property to be *conveyed* shall be submitted to the Subdivision Section of the Development Review Division.
- b. All waste matter of any kind shall be removed from the property, and all disturbed areas shall have a full stand of grass or other vegetation upon completion of any phase, section, or the entire project.
- c. The *conveyed* land shall not suffer the disposition of construction materials or soil filling, other than the placement of fill material associated with permitted grading operations that are consistent with the permit and minimum soil class requirements, discarded plant materials, refuse, or similar waste matter.

- d. Any disturbance of land to be *conveyed* to the association shall be in accordance with an approved site plan and tree conservation plan. This shall include, but not be limited to, the location of sediment control measures, tree removal, temporary or permanent stormwater management facilities, utility placement, and storm drain outfalls.
- e. Storm drain outfalls shall be designed to avoid adverse impacts on land to be *conveyed* to the association. The location and design of drainage outfalls that adversely impact property to be conveyed shall be reviewed and approved by the Development Review Division.
- f. The Prince George's County Planning Board, or its designee, shall be satisfied that there are adequate provisions to ensure retention and future maintenance of the property to be *conveyed*.

PGCPB No. 2022-75 at 4-5. (Emphasis added). Certain persons of record appealed to the Circuit Court for Prince George's County. *Petition of Shanna Fricklas, et al.*, CAL22-23156. In March 2023, the Circuit Court affirmed the Board's approval of PPS 4-21052. No further appeal was taken in PPS 4-21052.

I. DSP-21001 – Development of Lower Parcel (Previously Designated as an Outparcel)

In October 2022, after the final decision of the District Council on remand in CSP-18002, expressing density in terms of *net* acre of *net* lot or tract area, and during the pendency of re-litigation of CSP-18002 in the Circuit Court, the Applicant filed the instant Detailed Site Plan (DSP)-21001 to develop the Lower Parcel with townhouses. DSP-21001, Technical Staff Report at 1.

- DSP-21001 – Board's Approval Prior to Remand

In March 2023, during the pendency of re-litigation of CSP-18002 in the Circuit Court, the Board approved DSP-21001, subject to certain conditions. PGCPB No. 2023-15 at 27. Among other things, the Board found as follows:

The site is subject to Preliminary Plan of Subdivision (PPS) 4-21052 for Suffrage Point, which was approved on June 16, 2022 (PGCPB Resolution No. 2022-75). *This PPS superseded a prior approved PPS, 4-18001, for this 4.66 acres of the overall Suffrage Point development. PPS 4-21052 approved 41 lots and 7 parcels. Of the seven parcels, five are to be conveyed to a homeowner's association, while two are to be conveyed to the City of Hyattsville.*

At the time of detailed site plan, the applicant shall determine whether there is to be any public use of the subject property. If there is to be any public use, the plans shall show either a parcel(s) *to be conveyed to the City of Hyattsville, or a public use easement on homeowners' association Parcel B2 to the benefit of the City of Hyattsville*, in order to ensure the general public continues to have access to the park facilities on the parcel. If an easement is granted on Parcel B2, the parcel shall primarily serve to provide compensatory storage for the subject property, and the applicant shall determine which areas of the parcel may be used by the public. If no easement is granted or property conveyed for the existing park facilities, the park facilities on the subject site shall be shown to be removed or relocated.

The DSP shows two parcels, Parcels C and D, to be conveyed to the City of Hyattsville for public use. Conveyance of these parcels will ensure that the existing park facilities therein will not need to be removed or relocated. The DSP does not show any public use easements. However, at the City of Hyattsville City Council meeting on December 5, 2022, the City Council recommended that should the DSP be approved, the applicant shall dedicate a public use easement over Parcel B2, an open space parcel located adjacent to Driskell Park. Therefore, a condition is included herein requiring such.

PGCPB No. 2023-15 at 3, 12-13. (Emphasis added).

- DSP-21001 – District Council's Review of Board's Approval and Order of Remand

Under Section 25-210 of the Land Use Article,⁶ the District Council is authorized to review a decision of the Board to approve a Detailed Site Plan and issue the final decision. LU § 25-210.

On May 8, 2023, using oral argument procedures, the District Council considered the Board's approval of DSP-21001. (5/8/2023, Tr.).

On May 11, 2023, the District Council, on motion, voted 8-0, to remand this matter to the Board to reopen the record to take further testimony or evidence. Primarily, the Order of Remand

⁶ Md. Code Ann., Land Use (LU) § 25-210 (1957, 2012 Repl. Vol., 2023 Supp.)

gave the Applicant the option to withdraw the site plan, or alternatively, submit a revised site plan. If the Applicant did not withdraw the site plan, the Applicant was required to submit a *revised* site plan. The revised site plan was required to include a *new* decision from DPIE on all required findings and considerations in PGCC § 32-206(d) and (j)—including, but not limited to, whether a waiver can be granted for any filling or the construction or placement of any structures or obstructions ultimately located in the FEMA-designated floodways, and a corresponding density calculation worksheet documenting and explaining the net lot acreage or net tract acreage of the lower parcel that is subject to be developed after excluding any land in the 100-year floodplain, and after excluding any alleys, streets, or other public roadways or land dedicated, donated or conveyed. Order of Remand, 5/11/2023.

On May 16, 2023, the Clerk of the Council transmitted the Order of Remand to the Board. Intra-Office Memo, Brown to Hunt, 5/16/2023, Notice of Decision, 5/16/2023.

J. Section 27-285 of the Zoning Ordinance – Board Procedures – Time limits for action

For development applications *remanded* to the Board by the District Council, the Board *shall* approve, approve with modifications, or disapprove the Detailed Site Plan within sixty (60) days of the transmittal date of the notice of remand by the Clerk of the District Council. PGCC § 27-285(c)(5).

K. Section 27-290 of the Zoning Ordinance – Appeal/Review of Board’s Decision

Where the Board determines that it cannot comply with the prescriptions of an Order of Remand adopted by the District Council, the Board findings as to the reasons for its action, and its decision on the Plan *shall* be embodied in a resolution adopted at a regularly scheduled public hearing. The Board’s adoption of a resolution under this subsection *shall* constitute a decision of

the Board on the Plan in accordance with the procedures of this Section and Section 27-285. PGCC § 27-290(f).⁷

L. DSP-21001 – Board’s Approval After Remand⁸

On October 5, 2023, acting outside of 60-day time limitations under PGCC §§ 27-285 and 27-290, the Board held its first non-evidentiary hearing on remand. (10/5/2023, Tr.). PGCPB No. 2023-15(A) at 1.

On November 2, 2023, still acting outside of 60-day time limitations under PGCC §§ 27-285 and 27-290, the Board held its first evidentiary hearing on remand. (11/2/2023 Tr). PGCPB No. 2023-15(A) at 1.

On November 30, 2023, acting more than 4-months outside of 60-day time limitations under PGCC §§ 27-285 and 27-290, the Board adopted a resolution approving DSP-21001. PGCPB No. 2023-15(A) at 30.

On December 5, 2023, acting more than 4-months outside of 60-day time limitations under PGCC §§ 27-285 and 27-290, the Board transmitted its decision to the District Council. Notification of Action, 12/5/2023.

M. DSP-21001 – District Council’s Review of Board’s Approval After Remand

On January 16, 2024, the District Council elected to review the Board’s decision, on remand, to approve DSP-21001. (1/16/2024, Tr.). Notice that oral argument would be held on February 16, 2024, was sent to all persons of record on January 24, 2024. After written notice of oral argument, several persons of record filed written requests to reschedule the oral argument from February 16, 2024, to March 11, 2024.

⁷ Under the Zoning Ordinance, “shall” is mandatory. PGCC § 27-108.01(a)(19).

⁸ It is undisputed in the record that the Board took *no* action within 60-days of the Order of Remand.

On February 16, 2024, People’s Zoning Counsel, Stan D. Brown, provided a procedural overview of the case. Among other things, Mr. Brown announced to all parties, including counsel for the Applicant, that the Board’s approval of DSP-21001 failed to comply with the 60-day time limitations in accordance with PGCC §§ 27-285 and 27-290. (2/16/2024, Tr.). Subsequently, the District Council, on motion, voted 9-0, to continue oral argument to March 11, 2024.⁹

On March 11, 2024, using oral argument procedures, the District Council considered the Board’s approval, on remand, of DSP-21001. After oral arguments from the parties, Mr. Brown informed the District Council that, among other things, the Board’s approval of DSP-21001, on remand, failed to comply with the 60-day time limitations in accordance with PGCC §§ 27-285 and 27-290, and certain density calculations under the Zoning Ordinance. Subsequently, the District Council took the matter under advisement. (3/11/2024, Tr.).

N. DSP-21001 – District Council’s Referral to Staff to Prepare Order of Denial

On March 12, 2024, the District Council, on motion, voted 8-0, to direct Staff to prepare an Order to disapprove DSP-21001 because of the Board’s failure to comply with the 60-day time limitations in accordance with PGCC §§ 27-285 and 27-290, and certain density calculations under the Zoning Ordinance. (3/12/2024, Tr.).

O. DSP-21001 – Board Acted Outside Time Limitations on Remand to Approve DSP-21001

As noted above, under PGCC §§ 27-285 and 27-290, the Board was *required* to act within 60-day of the transmittal date of the notice of remand by the Clerk of the District Council. The Board

⁹ District Council Rules of Procedure 5.7. Recess or Continuation to Another Time and Place. (Before or after the commencement of any public hearing, the presiding officer may recess or continue the hearing to another time and place provided there has been original notice for the hearing. The presiding officer shall announce on the record, the time and place of the next hearing and no further notice or publication shall be necessary.

failed to do so. *See* 67 Opinions of the Attorney General 203, 209 (1982) (explaining that “a provision is mandatory *when failure to follow it renders the proceedings to which it relates illegal and void.*”). (Emphasis added).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Bellard v. State*, 452 Md. 467, 481 (2017) (quoting *Wagner v. State*, 445 Md. 404, 417 (2015)). To do so, “we look first to the language of the statute, giving it its natural and ordinary meaning,” and “[w]hen the statutory language is clear, we need not look beyond the statutory language to determine [] intent.” *Id.* However, if the legislative intent cannot be readily discerned from the statutory language itself, “we may, and often must, resort to other recognized indicia.” *Id.* Those indicia include, among other things, the broader statutory structure, the legislative history, the purpose behind the statute, and “the relative rationality and legal effect of various competing constructions.” *Id.* at 482.

Under the Zoning Ordinance, “shall” is mandatory. PGCC § 27-108.01(a)(19). Therefore, it is *clear* from the statutory language in PGCC §§ 27-285 and 27-290 that the Board was *required* to act within 60-days of the transmittal date of the notice of remand by the Clerk of the District Council. To the extent that the legislative intent of the District Council was not readily discernable from PGCC §§ 27-285 and 27-290 (and it was), the legislative history and purpose were.

According to the Committee Report of Council Bill (CB)-83-2015, to amend, among other things, time limitations for the Board to act on *remand* from the District Council on Detailed Site Plans, the District Council *clearly* stated that its legislative intent was *to* accommodate any potential need of rehearing or re-referral on remand. And it was the legislative intent of the District Council to, under CB-83-2015, *increase*, from the *stricter* 30-days to 60-days, ***the period that the Board must decide site plans referred on remand***, and that the 60-day *increase* was an increase

from the *initial stricter* 30-day limit on remand. Agenda Item Summary, 11/3/2015.¹⁰ (Emphasis added).

Here, collectively, PGCC §§ 27-285 and 27-290, states that that Board “shall” approve, approve with modifications, or disapprove the Detailed Site Plan or adopt a resolution with findings indicating why it cannot comply with the prescriptions of an Order of Remand *within sixty (60) days of the transmittal date of the notice of remand by the Clerk of the District Council*, and use of the word “shall” in a statute is generally understood to impose a *requirement*, not to permit the exercise of discretion. The Board did neither. *See, e.g., Prince George’s County v. Vieira*, 340 Md. 651, 660 (1995) (explaining that “shall” is ordinarily “regarded as a direct indication that the Legislature directed that certain conduct is required” (emphasis omitted)); *Foy v. Baltimore City Det. Ctr.*, 235 Md. App. 37, 60-61 (2017) (“[O]rdinarily, the word ‘shall,’ unless the context within which it is used indicates otherwise . . . denotes an imperative obligation inconsistent with the idea of discretion.” (quoting *Bright v. Unsatisfied Claim and Judgment Fund Board*, 275 Md. 165, 169 (1975))); *Columbia Rd. Citizens’ Ass’n v. Montgomery County*, 98 Md. App. 695, 700-01 (1994) (“The word ‘shall’ in a statute is presumed . . . [to] denot[e] an imperative obligation inconsistent with the exercise of discretion.” (internal quotation marks and citation omitted)); *see also Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016) (“Unlike the word ‘may,’ which implies discretion, the word ‘shall’ usually connotes a requirement.”).

¹⁰ <https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=2467356&GUID=B22F86A9-BCD4-40C3-A534-E83E82957E7E&Options=ID|Text|&Search=CB-83-2015> (last visited 3/17/2024).

Because the Board, on remand, acted outside the required time limitations to approve DSP-21001, the Board's proceedings outside of those time limitations to approve DSP-21001 were arbitrary, capricious, illegal and void. *Harvey v. Marshall*, 389 Md. 243, 298, 884 A.2d 1171, 1204 (2005) (A decision is arbitrary and capricious if it is "made impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms.").¹¹

P. DSP-21001 – Fails to Satisfy Density Requirements Under the Zoning Ordinance

In the alternative, to the extent that the Board's proceedings to approve DSP-21001 were not arbitrary, capricious, illegal and void, the plan fails to satisfy density requirements under the Zoning Ordinance. Under the Zoning Ordinance, density is defined as the number of dwelling units per acre of net lot area. PGCC § 27-107.07(a)(66). Net lot area is the total contiguous area included within the lot lines of a lot excluding alleys, streets and other public ways and land lying within a 100-year floodplain. PGCC § 27-107.07(a) (161). Net tract area is the gross tract area minus all land which lies within a 100-year floodplain and has been dedicated, donated, or otherwise conveyed out of the tract. PGCC § 27-107.07(a) (163). *City of Hyattsville*, 254 Md. App. 1, 270 A.3d 950 (2022), Applicant's Exhibit 7/DSP-2001_Backup 131 of 170.

When the Board approved PPS 4-21052, for the Lower Parcel, it found, in relevant part, as follows:

At the time of detailed site plan, the applicant shall determine whether there is to be any public use of the subject property. If there is to be any public use, the plans shall show either a parcel(s) to be conveyed to the City of Hyattsville, or a public use easement on homeowners' association Parcel B2 to the benefit of the City of Hyattsville, in order to ensure the general public continues to have access to the park facilities on the parcel. If an easement is granted on Parcel B2, the parcel shall primarily serve to provide compensatory storage for the subject property, and the applicant shall determine which areas of the parcel may be used by the public. If no

¹¹ On March 4, 2024, the Applicant submitted a letter indicating that in other remand cases the Board approved such cases well after 60-days. The Applicant is mistaken. A review of those cases indicate that the Board acted timely on each case in accordance with the Order of Remand.

easement is granted or property conveyed for the existing park facilities, the park facilities on the subject site shall be shown to be removed or relocated.

Prior to approval of building permits, the applicant and the applicant's heirs, successors, and/or assignees shall convey to the homeowner's association land, as identified on the approved preliminary plan of subdivision. Land to be conveyed shall be subject to the following:

- a. A copy of the recorded deed for the property to be *conveyed* shall be submitted to the Subdivision Section of the Development Review Division.
- b. All waste matter of any kind shall be removed from the property, and all disturbed areas shall have a full stand of grass or other vegetation upon completion of any phase, section, or the entire project.
- c. The *conveyed* land shall not suffer the disposition of construction materials or soil filling, other than the placement of fill material associated with permitted grading operations that are consistent with the permit and minimum soil class requirements, discarded plant materials, refuse, or similar waste matter.
- d. Any disturbance of land to be *conveyed* to the association shall be in accordance with an approved site plan and tree conservation plan. This shall include, but not be limited to, the location of sediment control measures, tree removal, temporary or permanent stormwater management facilities, utility placement, and storm drain outfalls.
- e. Storm drain outfalls shall be designed to avoid adverse impacts on land to be *conveyed* to the association. The location and design of drainage outfalls that adversely impact property to be conveyed shall be reviewed and approved by the Development Review Division.
- f. The Prince George's County Planning Board, or its designee, shall be satisfied that there are adequate provisions to ensure retention and future maintenance of the property to be *conveyed*.

PGCPB No. 2022-75 at 4-5. (Emphasis added).

When the Board approved DSP-21001, for the Lower Parcel, prior to remand, it found, in relevant part, as follows:

The site is subject to Preliminary Plan of Subdivision (PPS) 4-21052 for Suffrage Point, which was approved on June 16, 2022 (PGCPB Resolution No. 2022-75). *This PPS superseded a prior approved PPS, 4-18001, for this 4.66 acres of the*

overall Suffrage Point development. PPS 4-21052 approved 41 lots and 7 parcels. Of the seven parcels, five are to be conveyed to a homeowner's association, while two are to be conveyed to the City of Hyattsville.

At the time of detailed site plan, the applicant shall determine whether there is to be any public use of the subject property. If there is to be any public use, the plans shall show either a parcel(s) *to be conveyed to the City of Hyattsville, or a public use easement on homeowners' association Parcel B2 to the benefit of the City of Hyattsville*, in order to ensure the general public continues to have access to the park facilities on the parcel. If an easement is granted on Parcel B2, the parcel shall primarily serve to provide compensatory storage for the subject property, and the applicant shall determine which areas of the parcel may be used by the public. If no easement is granted or property conveyed for the existing park facilities, the park facilities on the subject site shall be shown to be removed or relocated.

The DSP shows two parcels, Parcels C and D, to be conveyed to the City of Hyattsville for public use. Conveyance of these parcels will ensure that the existing park facilities therein will not need to be removed or relocated. The DSP does not show any public use easements. However, at the City of Hyattsville City Council meeting on December 5, 2022, the City Council recommended that should the DSP be approved, the applicant shall dedicate a public use easement over Parcel B2, an open space parcel located adjacent to Driskell Park. Therefore, a condition is included herein requiring such.

PGCPB No. 2023-15 at 3, 12-13. (Emphasis added). *See also* PGCPB No. 2023-15(A).

On remand, the Applicant was required to submit a *revised site plan* as follows:

Any revised site plan submitted by the Applicant shall include a density calculation worksheet documenting and explaining the *net* lot acreage or *net* tract acreage of the lower parcel that is subject to be developed *after excluding any land in the 100-year floodplain, and after excluding any alleys, streets, or other public roadways or land that has been dedicated, donated, conveyed or proposed to be dedicated, donated or conveyed out of the tract.*

Order of Remand, # 5. (Emphasis added). 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).

Because there is no *revised* site plan for DSP-21001 in the record in accordance with the Order of Remand or in accordance with the definition of density under the Zoning Ordinance, the plan is DISAPPROVED since it cannot be determined whether the proposed development for the Lower Parcel actually conforms with the maximum density established by the District Council in CSP-18002 after remand from the Courts. *City of Hyattsville*, 254 Md. App. at 68-69, 91-93, 270 A.3d at 989-90 (explaining that “[a]t all subsequent stages for approval of Werrlein’s proposed development, on either parcel, the administrative decision-makers will determine whether the proposed development actually conforms with the maximum densities established by the District Council’s zoning decision.”).

ORDERED this 18th day of March 2024, by the following vote:

In Favor: Council Members Burroughs, Blegay, Fisher, Harrison, Ivey, Olson, Oriadha, and Watson.

Opposed:

Abstained:

Absent: Council Members Dernoga, Franklin and Hawkins.

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: Jolene Ivey
Jolene Ivey, Chair

ATTEST:
Donna J. Brown
Donna J. Brown
Clerk of the Council