



THE PRINCE GEORGE'S COUNTY GOVERNMENT

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

June 10, 2024

**RE: SE-2022-002 Glenn Dale Self Storage (Arcland Duvall Street)
Arcland Property Company, LLC, Applicant**

NOTICE OF FINAL DECISION OF THE DISTRICT COUNCIL

Pursuant to the provisions of Section 27-3416 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed a copy of Zoning Ordinance No. 3 - 2024 setting forth the action taken by the District Council in this case on June 3, 2024.

CERTIFICATE OF SERVICE

This is to certify that on June 10, 2024 this notice and attached Council order were mailed, postage prepaid, to all persons of record.

A handwritten signature in cursive script, reading "Donna J. Brown".

Donna J. Brown
Clerk of the Council

**Wayne K. Curry Administration Building
1301 McCormick Drive Largo, MD 20774**

Case No: SE-2022-002
TCP2-016-96-04
Glenn Dale Self Storage
(Arcland Duvall Street)

Applicant: Arcland Property Company, LLC

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

ZONING ORDINANCE NO. 3 - 2024

AN ORDINANCE to conditionally approve Special Exception 2022-002 (SE-2022-002).

WHEREAS, SE-2022-002 (the application) was filed to request approval to use approximately 3.34 acres of land in the CS (Commercial Service) Zone located at 10810 and 10812 Duvall Street, Glenn Dale, Maryland for a Consolidated Storage facility; and

WHEREAS, the subject property is located in the southwest quadrant of the intersection of Glenn Dale Boulevard and MD 564 (Lanham-Severn Road). More specifically, the property is located on Tax Map 36, Grid B2, and consists of one parcel, one lot, and a portion of a public street (Duvall Street); and

WHEREAS, the site is currently improved with a cell tower, which will remain; and

WHEREAS, the application was advertised and the property posted prior to the evidentiary public hearing, in accordance with all requirements of law; and

WHEREAS, upon review of the application, Technical Staff of the Planning Department recommended approval of the application subject to conditions; and

WHEREAS, on November 29, 2023, the Zoning Hearing Examiner (Examiner) held an evidentiary hearing on the application; and

WHEREAS, Sean Suhar appeared in opposition to the request; and

WHEREAS, on January 18, 2024, the Examiner filed a written decision, with the Clerk of the Council, recommending that the District Council approve the application subject to certain conditions; and

WHEREAS, on February 12, 2024, the District Council elected to review the decision of the Examiner to conditionally approve the application; and

WHEREAS, neither the applicant nor opposition filed any exceptions to the recommendation of the Examiner to conditionally approve the application; and

WHEREAS, on February 15, 2024, the Clerk of the Council issued notice of oral argument to all persons of record; and

WHEREAS, on February 22, 2024, Matthew Tedesco, Esquire, attorney for the applicant filed an unopposed request to extend the 70-day Oral Argument Hearing action period in order to reschedule the Oral Argument Hearing pursuant to Section 27-3604(d)(10)(F) of the Zoning Ordinance; and

WHEREAS, on March 5, 2024, the District Council extended the time to hold a hearing for up to 45 additional days; and

WHEREAS, on April 8, 2024, the District Council held a hearing, using oral argument procedures, to consider the application, as conditionally approved by the Examiner; and

WHEREAS, the applicant and opposition were allowed to present oral argument for and against the application; and

WHEREAS, having carefully considered the arguments of the applicant and opposition, the District Council finds that opposition was *not* required to file exceptions (to preserve a right to present oral argument) to the Examiner's recommendation of approval at the public hearing because, in accordance with *County Council of Prince George's County v. Billings*, 420 Md. 84,

21 A.3d 1065 (2011), a party to a zoning action who fails to file a written appeal, and hedges its bets on the District Council's election to review the decision, runs the risk that the [District] Council will not exercise that power, and in that instance, judicial review of the agency decisions could be foreclosed for failure to take advantage of the right to appeal, *but* once the [District Council] grants that review, Maryland's exhaustion requirement *does not* mandate that party file a separate, redundant request for appeal; and

WHEREAS, a special exception, as is the case here, sometimes called a "conditional use," is a zoning device that provides a middle ground between permitted and prohibited uses that allows the local legislature to set some uses as *prima facie* compatible for a given zone, subject to a case-by-case evaluation to determine whether the use would result in an adverse effect on the neighborhood (other than any adverse effect inherent in that use within the zone), such that would make the use actually incompatible; and

WHEREAS, because special exceptions are created legislatively, they are presumed to be correct and an appropriate exercise of the police power.¹ *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 514-515, 120 A.3d 677, 690-691 (2015); and

WHEREAS, in *Schultz v. Pritts*, 291 Md. 1, 15, 432 A.2d 1319, 1327 (1981), the Court of Appeals (now the Supreme Court of Maryland) described the required analysis for special exceptions as follows:

These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located

¹ The Land Use Article defines a special exception as a specific use that 1) would not be appropriate generally or without restriction; and 2) shall be based on a finding that i) the requirements of the zoning law governing the special exception on the subject property are satisfied; and ii) the use on the subject property is consistent with the plan and is compatible with the existing neighborhood. Md. Code Ann., Land Use (LU) Article, § 1-101(p) (1957, 2012 Repl. Vol., 2023 Supp.).

anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular-use proposed at the particular-location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

In subsequent cases, the Court of Appeals explained that the *Schultz* comparison for special exception does not entail a comparative geographical analysis which weighs the impact at the proposed site against the impact the proposed use would have at all other sites within the zone. *People's Counsel for Balt. Cnty. v. Loyola Coll. in Md.*, 406 Md. 54, 100, 956 A.2d 166, 194 (2008). Rather, this comparison “is focused entirely on the neighborhood involved in each case.” *Id.* at 102. Accordingly, even though a special exception use may have some adverse effects on the surrounding area, “the legislative determination necessarily is that the use conceptually [is] compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the [zoning agency] that actual incompatibility would occur.” *Id.* at 106; and

WHEREAS, in *Loyola, supra*, the Court of Appeals concluded its analysis of the *Schultz* test as follows:

With this understanding of the legislative process (the “presumptive finding”) in mind, the otherwise problematic language in *Schultz* makes perfect sense. The language is a backwards-looking reference to the legislative “presumptive finding” in the first instance made when the particular use was made a special exception use in the zoning ordinance. It is not a part of the required analysis to be made in the review process for each special exception application. It is a point of reference explication only. *Id.* at 106-07; and

WHEREAS, more recently, the Court of Appeals explained that:

“[i]f [the applicant] shows...that the proposed use would be conducted without real detriment to the neighborhood... [the applicant] has met his burden.” Once the applicant meets this threshold, the local zoning board will “ascertain in each case the adverse effects that the proposed use would have on the specific, actual surrounding area.” *Montgomery County v. Butler*, 417 Md. 271, 305, 9 A.3d 824 (2010), (quoting *Schultz, supra*, 291 Md. at 11)). And “if there is *no* probative evidence of harm or disturbance in-light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal.” *Loyola, supra*, 406 Md. at 83 (quoting *Turner v. Hammond*, 270 Md. 41, 55, 310 A.2d 543, 551 (1973)) (Emphasis added); and

WHEREAS, having carefully considered the record in this matter, and the appropriate standard of review for special exceptions, and based on the facts and circumstances of *this case*, the District Council finds that the applicant *has* carried its burden of proof, and opposition has *not* generated any probative evidence of harm or disturbance in-light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan to disapprove the application as requested; and

WHEREAS, the District Council finds, as a basis for its final decision, that the record for this special exception application represents a proper case for it to adopt the findings and conclusions of the Examiner as a basis for this final decision.²

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. Special Exception 2022-002 and Type 2 Tree Conservation Plan 016-96-04, for Glenn Dale Self Storage, are APPROVED, subject to the following conditions:

1. Prior to certification of the Special Exception Site Plan, the following revisions shall be made, or information shall be provided:
 - a. The Applicant shall provide evidence of vacation for the portion of Duvall Street included on the Special Exception Site Plan.
 - b. Prior to the issuance of the first building permit, the Applicants shall provide assigned community benefit agreement, in accordance with Section 27-5402(4)(1)(I) of the Prince George's County Zoning Ordinance.

SECTION 2. Subject to the conditions of approval, use of the subject property shall be subject to all other requirements of the Zoning Ordinance. Failure to comply with any condition of approval shall constitute a zoning violation and shall constitute sufficient grounds for the appropriate County agency to institute all appropriate proceedings to void or terminate the Special Exception approval or take any other action deemed necessary to obtain compliance with this

² *Templeton v. County Council of Prince George's County*, 23 Md. App. 596, 329 A.2d 428 (1974).

approval.

SECTION 3. This Ordinance shall become effective upon enactment.

ENACTED on June 3, 2024, by the following vote:

In Favor: Council Members, Blegay, Dernoga, Fisher Franklin, Harrison, Ivey, Olson, and Watson.

Opposed:

Abstained:

Absent: Council Members Burroughs, Hawkins and Oriadha.

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 Ivy
Jolene Ivy, Chair

ATTEST:

Donna J. Brown

Donna J. Brown
Clerk of the Council