



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

PGCPB No. 2023-79

File No. DSP-21032

R E S O L U T I O N

WHEREAS, a new Zoning Ordinance, Subtitle 27, Prince George's County Code went into effect on April 1, 2022; and

WHEREAS, the subject property is within the Local Transit-Oriented-Core (LTO-C) Zone and was formerly in the Mixed Use-Infill (M-U-I) and Development District Overlay (D-D-O) Zones; and

WHEREAS, the applicant, Nabely Family Trust, submitted an application to request changes to the list of allowed uses contained in the Development District Standards for the D-D-O Zone; and

WHEREAS, pursuant to Section 27-1903(c) of the Zoning Ordinance, an applicant may proceed under the prior Zoning Ordinance to obtain approval of such changes to the list of allowed uses; and

WHEREAS, an application to request such changes must be accompanied by either a Conceptual Site Plan or Detailed Site Plan and the applicant chose to submit a Detailed Site Plan; and

WHEREAS, the application, entitled DSP-21032, was reviewed by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission under the requirements of the prior Zoning Ordinance; and

WHEREAS, in consideration of evidence presented at a public hearing on June 29, 2023, regarding the application for 5801 Arbor Street Property, the Planning Board finds:

1. **Request:** The site is currently operating as a wholesaling and distribution warehouse, and a contractor's office with outdoor storage. Per the Prince George's County Department of Permitting, Inspections and Enforcement (DPPE), there are no prior permits issued that allow these uses. Under the prior Prince George's County Zoning Ordinance, the site was in the Mixed Use-Infill (M-U-I) and Development District Overlay (D-D-O) Zones.

The applicant pursued use and occupancy permits, under the prior Zoning Ordinance, to validate the existing uses through Permit 1670-2018 for the wholesaling and distribution warehouse use and Permit 7827-2020 for the contractor's office with outdoor storage use. These permits were not approved because the existing uses are not permitted under the development district standards for the D-D-O Zone. The uses are also not permitted in the M-U-I Zone.

This application is seeking to validate the existing "wholesaling or distribution of materials used or produced on the premises," pursuant to Section 27-548.26(b)(1)(B) of the prior Zoning Ordinance, that allows the Prince George's County District Council to approve a change in the list of allowed uses in the D-D-O Zone, as modified by the zone's development district standards. When making such a request, an applicant is required to also submit either a conceptual site plan (CSP) or a detailed site plan (DSP). The Prince George's County Planning Board is required to

make a recommendation to the District Council on the request to change the list of allowed uses and make a final decision on whether the CSP or DSP meets the required findings for approval.

The property is subject to the table of uses for the M-U-I/D-D-O Zones, within the 2005 *Tuxedo Road/Arbor Street/Cheverly Metro Area Approved Sector Plan and Sectional Map Amendment* (Cheverly Sector Plan and SMA). The initial request filed with the acceptance package of the subject application was to add to the table of uses in the development district standards for the D-D-O Zone: wholesaling, distribution, and related storage of materials (products) used and produced on the premises (Wholesaling and Distribution Warehouse), and a contractor's office as a permanent use with outdoor storage (Contractor's Office with Outdoor Storage), at the subject property. The Cheverly Sector Plan and SMA does not permit such uses in the M-U-I/D-D-O Zones.

On May 18, 2023, the applicant submitted revised materials removing the request to amend the Table of Uses for the M-U-I/D-D-O Zones for a "contractor's office with outdoor storage." The applicant, instead, proposes to remove the existing contractor's office with outdoor storage use from the property.

In addition, the other requested use to allow "wholesaling or distribution of materials used or produced on the premises" was narrowed to "wholesaling or distribution of food or beverage materials only." The revised use is not permitted within the M-U-I/D-D-O Zones and, as such, an application to change the use is required for approval of the use on the subject property.

2. **Development Data Summary:**

	EXISTING	EVALUATED
Zone	LTO-C (Prior M-U-I/D-D-O)	LTO-C (Prior M-U-I/D-D-O)
Total Site Area	0.46	0.46
Use(s)	Wholesale or distribution and Contractor's Office*	Wholesale or distribution
Total Building Gross Floor Area (GFA)	9,053 sq. ft	9,053 sq. ft

Parking and Loading Data:

Parking Requirements	REQUIRED	PROVIDED
3 spaces for first 1,500 sq. ft. GFA	3	3
1 space for each additional 1,500 sq. ft. GFA	5	6
Total Parking Spaces	8	9

Other Development Data:

Loading Spaces	REQUIREMENT	REQUIRED	PROVIDED
Wholesale or warehouse	1 per 1,500–10,000 sq. ft GFA	1	0
Total Loading Spaces		1	0**

Notes: *The existing uses, as a wholesaling and distribution warehouse and a contractor's office with outdoor storage, are operating without approval or authorization. The contractor's office with outdoor storage use is to be removed.

**The Cheverly Sector Plan and SMA does not contain specific requirements for the number of loading spaces; therefore, Section 27-582(a) of the prior Zoning Ordinance serves as the requirement.

3. **Location:** This property is located on the south side of Arbor Street, approximately 250 feet west of its intersection with 59th Avenue in Council District 5, and Planning Area 69. More specifically, the site address is 5801 Arbor Road, located less than a 0.5 mile south of the corporate limits for the Town of Cheverly. The property is shown as Lots 1–8, Block 6, of the Tuxedo Subdivision shown in Plat Book A, Plat No. 71, as filed among the land records of Prince George's County.
4. **Surrounding Uses:** This property is surrounded by light industrial/commercial uses in the LTO-C Zone to the west, east, and north across Arbor Street. US 50 (John Hanson Highway) is located to the south, with the Cheverly Metro Station in the LTO-C Zone, beyond.
5. **Previous Approvals:** Permit 906-1975-U was issued on June 4, 1975, and allowed the retail sale of truck parts, but specifically stated that no warehousing or service use was permitted. At the time of permit approval, the site was located in the General Commercial, Existing (C-2) Zone, which also did not allow a storage warehouse use.

Permit 1881-1988-U was approved on February 14, 1989, and allowed the site to be used for auto repair services.

In 2005, the Cheverly Sector Plan and SMA rezoned the subject property from the Miscellaneous Commercial (C-M) Zone to the M-U-I Zone and superimposed a D-D-O Zone.

DSP-05103 was approved by the Planning Board on July 20, 2006 (Resolution No. 06-177), to allow for an automotive storage yard for cars waiting to be repaired, on a 0.42-acre site in the C-M Zone. At the time of this application, the site was exempt from the Cheverly Sector Plan and SMA D-D-O Zone requirements, because no new construction was proposed on-site.

The site is currently operating as a wholesaling and distribution warehouse, and a contractor's office with outdoor storage.

Per DPIE, there are no prior permits issued that allow the use of a wholesaling and distribution warehouse and a contractor's office with outdoor storage.

The applicant has pursued use and occupancy permits to validate the existing uses through Permit 1670-2018 for the wholesaling and distribution warehouse use and Permit 7827-2020 for the contractor's office with outdoor storage use. These permits were not approved and are currently on hold due to noncompliance with the applicable D-D-O Zone standards, as the uses are not permitted.

The revised request removes the contractor's office with outdoor storage use and narrows the scope of the wholesaling and distribution use to food or beverage materials only.

COMPLIANCE WITH EVALUATION CRITERIA

6. **2018 *Approved Greater Cheverly Sector Plan* and the Development District Overlay (D-D-O) Zone:** This property is located within the Cheverly Metro Local Transit Center boundary of the Greater Cheverly Sector Plan, and Section 3 (Land Use Element) provides policies and strategies that apply to this area, including the following:

Policy LU 2—Define the Local Transit Center (LTC) boundary to focus redevelopment at the Cheverly Metro Station and along the MD 459 (Arbor Street and Tuxedo Road) corridor east of the CSX Railroad tracks, and to limit development in the floodplain. (page 43)

Strategies

LU 2.1—Promote redevelopment from east of the CSX railroad tracks along MD 459 (Tuxedo Road and Arbor Street) to Cheverly Avenue to allow a mix of residential, retail and office uses. (page 43)

LU 2.2—Facilitate parcel assembly from east of the CSX Railroad tracks along MD 459 (Tuxedo Road and Arbor Street) to encourage redevelopment in the Local Transit Center and implement the vision of a walkable main street. (page 43)

The 2018 *Approved Greater Cheverly Sector Plan* replaced the 2005 Cheverly Sector Plan and SMA. However, the D-D-O Zone containing design standards and a table of uses to facilitate implementation of land use and community character recommendations still remains applicable.

The subject application requested to amend the table of uses within the D-D-O Zone, in accordance with Section 27-548.26(b)(5). New development was not approved with this application. The Planning Board finds that the disapproved amendment would have allowed the wholesaling and distribution of food and beverage materials to continue as a principal use on the property. The contractor's office with outdoor storage use was stated to be removed. The

requested principal use is not consistent with the policies and strategies of the Greater Cheverly Sector Plan that seek to achieve a mix of residential, retail, and office uses for the purpose of implementing the plan's vision of a walkable main street in the plan area.

7. **Prince George's County Zoning Ordinance:** The subject site plan has been reviewed for conformance with the requirements of the M-U-I and D-D-O Zones. Uses in the M-U-I Zone are governed by Section 27-546.17(a), which states:

(a) All uses permitted by right or by Special Exception in the C-S-C Zone, as provided in Section 27-461(b), are permitted by right in the M-U-I Zone, except as follows:

- (1) For the uses in Section 27-461(b)(3), Miscellaneous, and 27-461(b)(6) Residential/Lodging, the uses allowed are those permitted in Section 27-441(b)(4), Miscellaneous, and (7), Residential/Lodging, for the R-18 Zone, except that hotel and motel uses are permitted as in the C-S-C Zone.**

The C-S-C Zone does not permit wholesaling or distribution uses of any kind, with one specific exception (by footnote) for the adaptive use of a furniture warehouse store. Section 27-461(a)(7) of the prior Zoning Ordinance provides that all uses not listed are prohibited.

Uses in the D-D-O Zone are governed by Section 27-548.22 which provides that "uses allowed on property in a Development District Overlay Zone shall be the same as those allowed in the underlying zone in which the property is classified, except as modified by Development District Standards approved by the District Council." The development district standards, as adopted by the 2005 Cheverly Sector Plan and SMA, also prohibit the existing and requested uses.

Although wholesaling or distribution of food or beverage materials only is a prohibited use in the M-U-I and D-D-O Zones, pursuant to Section 27-548.26(b), the applicant has requested that the District Council change the list of allowed uses for the subject property, to allow a desired use. In doing so, the District Council must find that the proposed development conforms with the purposes and recommendations for the development district, as stated in the master plan, master plan amendment, or sector plan; meets applicable site plan requirements; and does not otherwise substantially impair the implementation of any comprehensive plan, applicable to the subject development proposal.

The Planning Board recommends disapproval of the applicant's request to allow a wholesaling and distribution warehouse, as it is not consistent with the permitted uses of the C-S-C Zone or the intent of the D-D-O Zone, and will substantially impair implementation of the Cheverly Sector Plan and SMA by eliminating the opportunity to develop the subject property, as recommended by the sector plan.

Two objectives of the Cheverly Sector Plan and SMA are to bring industrial areas into code compliance, remove noxious uses, and transform Arbor Street into a main street with retail,

accompanied and supported by residential and small office uses (page 56). More specifically, Subareas A and B which contain the subject property, were placed under the D-D-O Zone to ensure that the redevelopment of land in these subareas met the land uses and/or urban design goals contained in the Cheverly Sector Plan and SMA. The D-D-O Zone's development district standards, guidelines, and uses are intended to achieve goals that "provide a pedestrian-oriented, human-scale environment that will enliven the sector area, provide a community-oriented town center, and offer flexible, easy-to-accommodate opportunities for future economic growth and development" (page 83).

In addition, the Planning Board finds that disapproval of the requested use is appropriate, when the applicant is currently operating that same use without a permit. Per DPIE, no prior permits have been issued that allow the use of a storage warehouse. Permit 906-1975-U was issued on June 4, 1975, and allowed the retail sale of truck parts, but specifically stated that no warehousing or service was permitted. When this permit was approved, the site was located in the C-2 Zone, which did not allow a storage warehouse use. Permit 1881-1988-U was approved on February 14, 1989, and allowed the site to be used for auto repair services. The subject property was changed from the C-2 Zone to the C-M Zone, which also does not allow a storage warehouse use.

The District Council, the Planning Board, and the community invested a significant amount of time creating the D-D-O Zone for the Cheverly Sector Plan and SMA. To ignore the strategies and permitted uses, fails to adhere to the community's wishes and the land use vision for the area.

The planning processes, which lead to approval of all sector plans, involve public processes and substantial resources. The public process is to guarantee that the clear vision and reasonable expectations are considered and, most importantly, an implementable plan is approved. The Cheverly Sector Plan and SMA provides decision-makers with clear and concise direction regarding desired uses and building standards necessary to implement the plan's vision.

In an effort to assure the validity of approved plans, to maximize opportunities to implement the plan, and to maintain the community's trust in the planning processes, the Planning Board cannot support uses that are contrary to the plan's vision. The applicant's request, to add the wholesaling and distribution warehouse of food and beverage materials as a permitted use on the property, eliminates the opportunity to attract mixed-use residential development to the subject property, as recommended by the Greater Cheverly Sector Plan, and reinforced by the Cheverly Sector Plan and SMA, which reclassified the subject property from the C-M Zone to the M-U-I Zone and imposed the D-D-O Zone. In addition, the District Council did not approve zoning for the subject site that would allow the proposed use; therefore, there is no presumption that the subject site could be used, as desired.

Therefore, the Planning Board recommends to the District Council that the request to allow the use of wholesaling, distribution, and related storage of food and beverage materials (products) used and produced on the premises be disapproved.

8. **2010 Prince George's County Landscape Manual:** The application is exempt from the

requirements of the 2010 *Prince George's County Landscape Manual* (Landscape Manual), per Section 1.1(d), because the change in use will not result in a change from a lower-intensity to a higher-intensity use category, as defined in the Landscape Manual. Any future development applications for this site may be subject to the requirements of the Landscape Manual.

9. **Prince George's County Woodland and Wildlife Habitat Conservation Ordinance:** The site is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance, as stated in a letter of exemption issued on October 10, 2013. The reason given for issuing the letter of exemption was because the property contains less than 10,000 square feet of woodland and has no previous tree conservation plan approvals.
10. **Prince George's County Tree Canopy Coverage Ordinance:** This project is not subject to the requirements of the Tree Canopy Coverage Ordinance because the disturbance on the site will not exceed 5,000 square feet.
11. **Referral Comments:** The subject application was referred to the concerned agencies and divisions. The Planning Board has reviewed and adopts referral comments that are incorporated herein by reference and are summarized, as follows:
 - a. **Community Planning**—In a memorandum dated June 7, 2023 (Selvakumar to Lockhart), an evaluation was offered of the application's conformance with the D-D-O Zone, which has been incorporated into Findings 7 and 8 above.
 - b. **Transportation Planning**—In a memorandum dated November 9, 2022 (Yang to Burke), comments were provided stating that the existing access connections, site circulation, and the number of on-site parking spaces are sufficient and meet the zoning requirements.
 - c. **Subdivision Review**—In a memorandum dated November 4, 2022 (Gupta to Burke), comments were provided stating that there is no preliminary plan of subdivision (PPS) associated with the subject property. The project is exempt from the requirement of a new PPS and new final plat, pursuant to Section 24-111(c)(3) of the prior Subdivision Regulations, because the final plat predates October 27, 1970, the development was in existence prior to January 1, 1990, and no new development is now requested. A PPS may be required if new development is requested in the future.
 - d. **Prince George's County Department of Permitting, Inspections, and Enforcement Review**—In a memorandum dated December 1, 2022 (Giles to Burke), comments were provided stating that there is no objection to the requested DSP. In addition, the applicant will be required to provide documentation of previously issued permits for all built structures and site work in future development stages.
12. The subject DSP does not request any new development on the property. Instead, the DSP reflects the existing site design that will accommodate the applicant's intended uses. Because the existing uses on the property are not permitted, and the Planning Board recommends the District Council

oppose the request to add the intended uses, the Planning Board finds that, pursuant to Section 27-285(b)(1) of the prior Zoning Ordinance, the DSP will detract substantially from the utility of the proposed development for its intended use and, therefore, does not represent a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9.

13. Section 27-285(b)(4) of the prior Zoning Ordinance requires that regulated environmental features be preserved and/or restored in a natural state, to the fullest extent possible. This application is to allow an existing use being operated on the site, and is not requesting any new development and will, therefore, not cause any impact to the conditions of the site.
14. As of the publishing of the technical staff report, the Planning Board did not receive any community feedback or input regarding the subject application.
15. **Planning Board Hearing:** The Planning Board held a public hearing on this application on June 29, 2023. At the hearing, and in rendering its decision, the Board considered all written and oral testimony, along with all exhibits submitted according to the Planning Board's procedures. During the hearing, the applicant's attorney provided oral testimony that only one application has been filed under the 2005 Cheverly Sector Plan and that the mixed-use vision may need to be more flexible. He also testified that the continued operation of the intended uses will aid in the development of the area and that a proposed covenant has been signed by the Town of Cheverly and the property owner governing the resale of the property.

Mr. Dylan Galloway, Town Administrator for the Town of Cheverly, spoke in support of the request. During his testimony, Mr. Galloway confirmed that the Town of Cheverly has signed a Declaration of Covenants with the property owner. In addition, the Town of Cheverly Mayor and Town Council voted in support of the application.

Ms. Nicole Nies, representing the Cheverly West Homeowners Association, spoke in opposition to the application. During her testimony, Ms. Nies stated that the homeowners association finds that the requested use is not in the vision of a community-friendly business, would like the use to conform to the permitted uses within the current Zoning Ordinance, and the use should be consistent with the vision for the nearby Prince George's Hospital Center redevelopment site. Ms. Nies also provided testimony that she does not believe the 2018 Greater Cheverly Sector Plan was a failure, as it is premature to make that assumption. Ms. Nies also added that the site is not within the Town of Cheverly.

The Chair of the Planning Board expressed sympathy for the property owner's situation, but did not believe the evidence warranted giving up on the sector plan at this time. Commissioners Geraldo, Washington, Doerner, and Bailey also concurred with the Chair's comments, with Commissioner Washington adding that she found nothing in the testimony that would overcome staff's analysis and Commissioner Doerner identifying with the comments provided by Ms. Nies, that the Chair acknowledged as well.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and recommend to the Prince George's County District Council DISAPPROVAL of the applicant's request to permit wholesaling, distribution, and related storage of food and beverage materials (products) used and produced on the premises, and further DISAPPROVED the Detailed Site Plan for the above-described land.

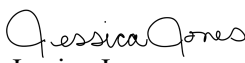
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council of Prince George's County within thirty (30) days following the final notice of the Planning Board's decision.

* * * * *

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Bailey, Doerner, and Shapiro voting in favor of the motion at its regular meeting held on Thursday, June 29, 2023, in Upper Marlboro, Maryland.

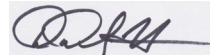
Adopted by the Prince George's County Planning Board this 27th day of July 2023.

Peter A. Shapiro
Chairman

By 
Jessica Jones
Planning Board Administrator

PAS:JJ:DL:jah

APPROVED AS TO LEGAL SUFFICIENCY



David S. Warner
M-NCPPC Legal Department
Date: July 25, 2023