



The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

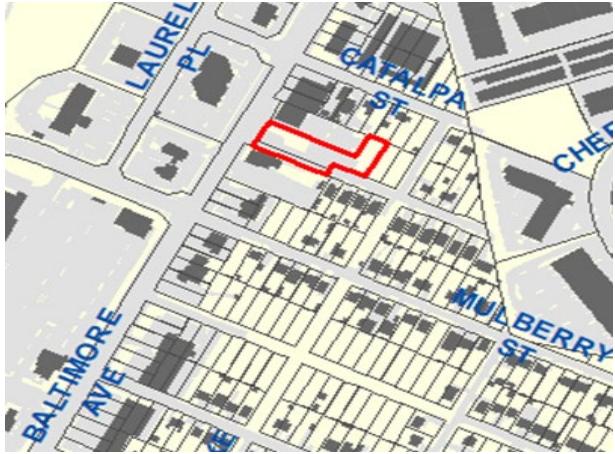
Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

Detailed Site Plan

Remand Hearing

Behnke Property 7-Eleven

DSP-20029

| REQUEST | | STAFF RECOMMENDATION | |
|---|---------------|---|------------|
| Remand Hearing | | APPROVAL with conditions | |
| Location: On the west side of US 1 (Baltimore Avenue) south of its intersection with Howard Avenue. | |  | |
| Gross Acreage: | 1.89 | | |
| Zone: | C-M | | |
| Dwelling Units: | N/A | | |
| Gross Floor Area: | 4,500 sq. ft. | | |
| Planning Area: | 61 | | |
| Council District: | 01 | | |
| Election District: | 01 | | |
| Municipality: | N/A | | |
| 200-Scale Base Map: | 214NE05 | | |
| Applicant/Address: Root 1, LLC, ETAL 4416 East West Highway, 4th Floor Bethesda, MD 20814 | | Planning Board Date: | 07/22/2021 |
| Staff Reviewer: Adam Bossi Phone Number: 301-780-8116 Email: Adam.Bossi@ppd.mncppc.org | | Planning Board Action Limit: | 07/26/2021 |
| | | Memorandum Date: | 07/06/2021 |
| | | Date Received: | 05/27/2021 |
| | | Persons of Record Mailing: | 06/22/2021 |
| | | Sign Posting: | 06/22/2021 |

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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

July 6, 2021

MEMORANDUM

TO: The Prince George's County Planning Board

VIA: William Capers, Supervisor, Urban Design Section, Development Review Division

FROM: Jill Kosack, Master Planner, Urban Design Section
Adam Bossi, Planner Coordinator, Urban Design Section
Development Review Division

SUBJECT: Detailed Site Plan DSP-20029 (Remanded)
Behnke Property 7-Eleven

BACKGROUND

Detailed Site Plan DSP-20029 was approved by the Prince George's County Planning Board on February 4, 2021, and a final resolution was adopted on March 4, 2021 (PGCPB Resolution No. 2021-21). The Prince George's County District Council elected to review this application on April 7, 2021. The District Council conducted oral arguments on May 10, 2021, and remanded the DSP back to the Planning Board for further consideration on May 24, 2021. The Order of Remand was transmitted to the Planning Board on May 27, 2021. The Order of Remand, which was received on June 17, 2021, requires the Planning Board to reopen the record to take further testimony or evidence from the applicant to address issues not required for the approval of a DSP through the submission of a revised site plan addressing eight specific issues. The revised site plan and additional statements of justification were received on June 17 and June 24, 2021.

The subject DSP was originally filed by the applicant, in accordance with Section 27-282 of the Prince George's County Zoning Ordinance, to request approval of a 4,500-square-foot food and beverage store and a gas station with eight multiproduct dispensers, on 1.89 acres in the Commercial Miscellaneous (C-M) Zone.

PLANNING BOARD FINDINGS AND APPROVAL OF DSP-20029

In order to approve a DSP, the Planning Board must make four required findings in Section 27-285(b) of the Zoning Ordinance. Those findings are as follows:

- (1) The Planning Board may approve a Detailed Site Plan if it finds that the 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. If it cannot make these findings, the Planning Board may disapprove the Plan.**
- (2) The Planning Board shall also find that the Detailed Site Plan is in general conformance with the approved Conceptual Site Plan (if one was required).**
- (3) The Planning Board may approve a Detailed Site Plan for Infrastructure if it finds that the plan satisfies the site design guidelines as contained in Section 27-274, prevents offsite property damage, and prevents environmental degradation to safeguard the public's health, safety, welfare, and economic well-being for grading, reforestation, woodland conservation, drainage, erosion, and pollution discharge.**
- (4) The Planning Board may approve a Detailed Site Plan if it finds that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).**

On February 4, 2021, the Planning Board took testimony and reviewed evidence regarding DSP-20029. In approving DSP-20029, the Planning Board determined that the application represented a reasonable alternative for satisfying the site design guidelines and that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible, in accordance with the requirements of Section 24-130(b)(5) of the Prince George's County Subdivision Regulations. (See Findings 6, 12 and 13, PGCPB Resolution No. 2021-21.)

In addition to the findings required for approval of a DSP, the commercial use table in Section 27-461(b) of the Zoning Ordinance also requires gas stations, which are permitted uses in the C-M Zone, to comply with certain specific criteria for approving a special exception use for a gas station, namely, Section 27-358(a)(1), (2), (4), (5), (6), (7), (8), (9), and (10) of the Zoning Ordinance, which read as follows:

- (1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;**
- (2) The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located;**

* * *

- (4) The storage or junking of wrecked motor vehicles (whether capable of movement or not) is prohibited;**
- (5) Access driveways shall be not less than thirty (30) feet wide unless a lesser width is allowed for a one-way driveway by the Maryland State Highway Administration or the County Department of Permitting, Inspections, and**

Enforcement, whichever is applicable, and shall be constructed in compliance with the minimum standards required by the County Road Ordinance or Maryland State Highway Administration regulations, whichever is applicable. In the case of a corner lot, a driveway may begin at a point not less than twenty (20) feet from the point of curvature (PC) of the curb return or the point of curvature of the edge of paving at an intersection without curb and gutter. A driveway may begin or end at a point not less than twelve (12) feet from the side or rear lot line of any adjoining lot;

- (6) Access driveways shall be defined by curbing;**
- (7) A sidewalk at least five (5) feet wide shall be provided in the area between the building line and the curb in those areas serving pedestrian traffic;**
- (8) Gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line;**
- (9) Repair service shall be completed within forty-eight (48) hours after the vehicle is left for service. Discarded parts resulting from any work shall be removed promptly from the premises. Automotive replacement parts and accessories shall be stored either inside the main structure or in an accessory building used solely for the storage. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to the main structure) and placed on a permanent foundation, or it shall be entirely surrounded with screening material. Screening shall consist of a wall, fence, or sight-tight landscaping material, which shall be at least as high as the accessory building. The type of screening shall be shown on the landscape plan.**
- (10) Details on architectural elements such as elevation depictions of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings shall demonstrate compatibility with existing and proposed surrounding development.**

In approving DSP-20029, the Planning Board concluded that the application also satisfied those criteria. (See Finding 7, PGCPB Resolution No. 2021-21.)

In addition, the Planning Board also found DSP-20029 to be in conformance with the requirements of the applicable Preliminary Plan of Subdivision 4-85102, the 2010 *Prince George's County Landscape Manual*, the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance, and the Prince George's County Tree Canopy Coverage Ordinance. The Planning Board also reviewed evaluations of DSP-20029 conducted by the Community Planning, Transportation Planning, Trails, Permits, Subdivision, and Historic Preservation Sections within the Planning Department, as well as any and all comments received from the Prince George's County Fire Department, the Prince George's County Department of Permitting, Inspections and Enforcement, the Prince George's County Police Department, the Prince George's County Health Department, the Maryland State Highway Association, and Washington Suburban Sanitary Commission. (See Findings 8, 9, 10, and 11, PGCPB Resolution No. 2021-21.)

As a result of the foregoing, the Planning Board's approval of DSP-20029 complies with all requirements of law.

ORDER OF REMAND FINDINGS

Within the Order of Remand, the District Council ordered the Planning Board "to take further testimony or reconsideration of its decision" on eight specific issues. Relying on its conclusion 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 of the Prince George's County Code and the "purposes" of the Commercial Zones, the District Council required the applicant to address on remand how the application "implements or is in accordance with" with those purposes, along with the 2014 Plan Prince George's 2035 Approved General Plan (Plan 2035) and the 2010 *Approved Master Plan and Sectional Map Amendment for Subregion I (Planning Area 60, 61, 62, and 64)* (Subregion I Master Plan). The District Council, however, did not ask the Planning Board to reconsider its findings made with respect to Section 27-285(b) or its analysis regarding the additional criteria set forth in Section 27-358(a)(1), (2), (4), (5), (6), (7), (8), (9), and (10) added by the commercial use table.

In evaluating an application for a DSP, the Planning Board may consider the "purposes" set forth in various sections of the Zoning Ordinance under certain circumstances; however, neither the Zoning Ordinance nor case law requires it to do so. *Cf. Pomeranc-Burke, LLC v. Wicomico Env't Tr., Ltd.*, 197 Md. App. 714, 750 (2011) ("Our reading is that the Board considered the purposes of the applicable ordinances and consistency with the relevant Plan provisions in interpreting and applying the cluster development ordinances in their entirety. It had the power to do so as long as it did not violate specific legislative requirements."). Furthermore, the Court of Appeals has consistently said that "[p]roposals for land use contained in a plan constitute a non-binding advisory recommendation, unless a relevant ordinance or regulation, or specific zoning, subdivision, or other land use approval, make compliance with the plan recommendations mandatory." *Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 522 (2015). Here, at this stage of development approvals—that is, a DSP—there is no law, regulation, or approval that makes compliance with either Plan 2035 or the Subregion I Master Plan mandatory.

Although the Order of Remand requires the Planning Board to reopen the record and take further testimony or evidence on matters not required for the approval of a DSP, the applicant has provided a revised site plan and additional evidence on the District Council's eight issues as listed in **BOLD**, followed by Staff's analysis:

1. **The development implements the 15 purposes of Subtitle 27.**

As previously stated, an application for a DSP is not legally required to demonstrate that it implements or is in accordance with the purposes of Subtitle 27. That notwithstanding, the proposed gas station and food and beverage store will provide modern stormwater management, upgraded landscaping, a convenient commercial use, safe vehicular entrances, reuse of an existing developed site with adequate public facilities, all of which encourage economic development, orderly growth, implementation of Plan 2035 goals, and protect the safety and welfare of inhabitants of the County. The applicant provides extensive detailed discussion of each specific purpose in their "Land Planning Analysis" dated June 24, 2021, which is incorporated herein by reference.

2. The development implements the purposes of the Commercial Zones.

As previously stated, an application for a DSP is not legally required to demonstrate that it implements or is in accordance with the purposes of the Commercial Zones. That notwithstanding, the proposed gas station and food and beverage store will provide another service commercial use within a corridor that includes a mix of retail and service uses, a landscape buffer to protect adjacent properties, full cut-off light fixtures, and a reuse of a vacant commercial site to increase the stability of the area. The applicant provides extensive detailed discussion of each specific purpose in their “Land Planning Analysis” dated June 24, 2021, which is incorporated herein by reference.

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.

As previously stated, an application for a DSP is not legally required to address whether 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. That notwithstanding, the applicant provides extensive detailed discussion of the relevant principles, goals, policies, and strategies in their Land Planning Analysis, dated June 24, 2021, which is incorporated herein by reference.

4. The development provides for a sidewalk along with the entire southern frontage of the subject property.

The revised site plan shows a 5-foot-wide sidewalk along the property’s southern frontage of the access easement, which will be installed at the time of future development of the access road. Staff finds the revised site plan is in conformance with this requirement.

5. The development provides for a monument sign instead of a freestanding sign. Planning Board shall evaluate the monument sign location and size.

The revised site plan indicates that a 12-foot-high, 100-square-foot monument sign is now proposed at the northeast corner of the site, adjacent to the intersection of US 1 and Howard Avenue, but outside of the public utility easement. This is in conformance with the requirement of this point of remand and with the provisions of the Zoning Ordinance, as shown on the DSP.

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.

The revised site plan provides additional plantings (approximately 18 shrubs) at the northeast corner, along US 1, and at the southeast boundary of the site. A solid hedge of shrubs, which will be 4–6 feet high at full growth, is proposed along the US 1 and Howard Avenue frontages, in addition to the required shade trees. Staff finds the revised site plan is in conformance with this requirement.

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.**

The revised site plan proposes one electric vehicle charging device in a parking space, designated for electric vehicles, south of the building, in conformance with this requirement.

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

The revised site plan indicates that the dumpster enclosure has been relocated 25 feet away from the western boundary line, in conformance with this requirement.

RECOMMENDATION

While the Planning Board's approval of Detailed Site Plan DSP-20029 by PGCPB Resolution No. 2021-21, complied with the requirements of law, based on the forgoing supplemental evaluation and analysis, the Urban Design Section finds the applicant has satisfactorily addressed the eight specific issues subject of this Order of Remand and recommends the Planning Board approve an amendment to PGCPB Resolution No. 2021-21.