DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER

ZONING MAP AMENDMENT
A-9882-C

DECISION

Application:	Amendment of Conditions
Applicant:	Pinnacle Harbor, LLC
Opposition:	Sarah Cavitt, et al.
Hearing Date:	December 7, 2011
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) A-9882-C is before the District Council upon a request for the amendment of Conditions 2 and 3 imposed by the District Council upon the rezoning of approximately 54.7052 acres of land located south of the intersection of Oxon Hill Road, the Capital Beltway (I-95) and Indian Head Highway (Md. Rt. 210), Oxon Hill, Maryland, from the I-3 (Planned Industrial/Employment Park) and R-R (Rural Residential) to the M-X-T (Mixed Use Transportation Oriented) Zone.

(2) On July 6, 1994, the District Council gave final approval to A-9882-C subject to the following conditions:

1. Any residential housing on the site shall be restricted to single-family detached and/or attached units.

2. Any hotel/motel or retail development shall be designed to be integrated with the existing office building through a common off-street parking plan and a compatible architectural theme. A common pedestrian path system shall be designed to link all segments of the proposed development. Any retail segment shall not be designed as a typical strip shopping center or large single-use pad site.

3. A 100-foot-wide landscaped buffer (as required by CR-45-1985) shall be provided along Oxon Hill Road and the southern boundary.

4. The Historic Site status of Salubria, as well as the extent of the environmental setting, shall be noted on all plans and other documents submitted for this site.

5. All subsequent submittals for this site shall be referred to the Historic Preservation Section staff and the Historic Preservation Commission for their review and comment prior to approval.

6. Any plans within the environmental setting must be approved by the Historic Preservation Commission through the Historic Area Work Permit process.

7. A stormwater management concept plan shall be approved by the Department of Environmental Resources (DER) prior to the approval of any preliminary plats of subdivision.

8. A 100-year floodplain study shall be approved by DER Watershed Protection Branch prior to the approval of a Conceptual Site Plan.

9. A Forest Stand Delineation shall be submitted and approved in conjunction with any Preliminary Plan of Subdivision or Conceptual Site Plan for this property.

10. A Type I Tree Conservation Plan shall be submitted and approved in conjunction with the Conceptual Site Plan or Preliminary Plan of Subdivision for this property.

11. Noise-related issues shall be addressed at the time of Conceptual Site Plan submittal. The plan shall include needed mitigation measures and provide adequate screening and buffering along Indian Head Highway (MD 210).

12. Development on the site shall not produce a greater number of vehicle trips than that identified in the previous approval for Salubria Office Park (SP-88069) and shall be subject to the same transportation conditions and improvements.

13. Within 60 days after this approval becomes final, the applicant shall submit a stabilization and maintenance plan to the Historic Preservation Commission, which plan must be implemented within 90 days after its approval by the Historic Preservation Commission unless the Historic Preservation Commission allows a longer time for implementation.

14. Prior to approval of the Conceptual Site Plan, the applicant shall submit a restoration plan for the Historic Site for approval by the Historic Preservation Commission.

15. Prior to issuance of any building permits, the applicant shall fund or implement the restoration plan for the Historic Site, to allow restoration simultaneous with build-out of any development.

16. Prior to the issuance of any building permits, the owner shall agree to provide reasonable access to the Historic Preservation Commission or other expert groups or individuals recognized by the Historic Preservation Commission for the purposes of conducting archeological exploration on the Historic Site, at no expense to the owner. (Exhibit AC-4(a))

(3) At the conclusion of the evidentiary hearing, the record was held open for additional documents, upon receipt of which the record was closed on March 2, 2012. The instant Application is predicated on the removal of the subject property as a Historic Site on the 2010 Historic Sites and Districts Plan. The recommendation on the instant Application was held until after the June 12, 2012, hearing on the Applicant's request to remove the Historic Site designation for Salubria (Historic Site #80-002)

FINDINGS OF FACT

(1) The subject property is comprised of Parcel 18 and Parcel A (originally Parcels 7 and 8). Both parcels were placed in the R-R (Rural Residential) Zone by the 1984 Sectional Map

Amendment for Subregion VII. Parcel A was rezoned to the I-3 Zone by the District Council's approval of a Revisory Petition (CR-45-1985) filed by the property owner, which states in pertinent part:

WHEREAS, because the property occupies a geographically significant gateway location near the Capital Beltway in Prince George's County; lies across Oxon Hill Road from Oxon Hill Manor, A National Register Historic Site; includes within its boundaries an historic site known as Salubria Manor; and is near another highly significant development project, i.e., the Bay of the Americas, the District Council finds that development on the subject property should reflect high standards in regard to site planning and architecture, and specifically:

a) Should incorporate a 100-foot wide landscaped buffer strip, which retains, to the maximum possible extent, existing mature trees along the Oxon Hill Road frontage of the central and southerly parcels; (Exhibit AC-22)

(2) The District Council approved A-9882-C in 1993, subject to conditions, which were agreed to by the property owner (infra), which rezoned both Parcel 18 and Parcel A from the I-3 and R-R Zones respectively to the M-X-T Zone. (Exhibit AC-4(a)(c)) The condition for a 100-foot landscape buffer established by CR-45-1985 was retained by the District Council's approval of A-9882-C:

Section 2. Application No. A-9882-C is approved subject to the following conditions (excerpted):

3. A 100-foot-wide landscaped buffer (as required by CR-45-1985) shall be provided along Oxon Hill Road and the southern boundary. (Exhibit AC 4(a))

(3) The instant property owner applied for CSP-05003 (Conceptual Site Plan) and 4-05079 (Preliminary Plat of Subdivision) for approximately 205,000-221,000 square feet of commercial retail and office. The property owner withdrew these Applications in 2005.

(4) On July 17, 1981, the District Council adopted the first Historic Sites and Districts Plan, a Functional Master Plan for historic sites and resources.[1] Properties designated as historic sites must meet specific criteria for historic, cultural, archeological and/or architectural significance pursuant to §29-104 of the Prince George's County Code.

(5) In approving and designating Salubria a Historic Site[2], the District Council found that Salubria met the specifically enunciated criteria determining that it is historically, culturally, and architecturally significant.

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[1] "We are pleased to present the Approved Historic Sites and Districts Plan. It was the subject of a joint Planning Board-County Council public hearing on January 13, 1981. After adoption by the M-NCPPC on May 13, 1981, it was approved by the County Council on July 17, 1981, as a functional plan amendment for the Prince George's County portion of the General Plan for the Maryland-Washington Regional District. The Council's resolution of approval (CR-107-1981) is reprinted herein." 1981 Historic Sites and Districts Plan, p. 6

[2] "80-2 Salubria – 6900 Oxon Hill Road, Oxon Hill

- ca. 1830 – 2 ½ story frame house with flanking kitchen wind and doctor's office
- Built by Dr. John H. Bayne, prominent physician and agriculturist; in near original condition"

1981 Historic Sites and Districts Plan, p. 70

(6) The District Council designated 22.556 acres of the original property as the Environmental Setting for Salubria and Salubria is shown on the October 1981 Master Plan for Subregion VII as a Historic Site.

(7) The current Historic Sites and Districts Plan, approved by the District Council in June 2010, continues to designate Salubria as a Historic Site. (2010 Historic Sites and Districts Plan, p. 144) A Functional Master Plan constitutes an amendment to the General Plan. (Article 28, Annotated Code of Maryland, §7-108)

(8) In 1995 the HPC approved the then property owner's request to revise and reduce the Historic Site Environmental Setting for Salubria from 22.557 acres down to 2.7 acres.[3] (Exhibits 50, p's. 2-3, and 67)

(9) During the ensuing years since its designation as a Historic Site in 1981, and after the main house was destroyed by fire in 1984, there have been multiple development plans and applications for the subject property, none of which have achieved fruition with the exception of the reduction in size of the Historic Environmental Setting by the HPC in 1995, which action is clearly of questionable legality.

(10) There are several active development Applications currently pending for the subject property in addition to the instant Application, all of which require the removal of Salubria and its Historic Environmental Setting (of whatever acreage) as a Historic Site by the District Council from the Historic Sites and Districts Plan, prior to, or as a condition of, approval. These Applications are CSP-11006 (Conceptual Site Plan), DSP-11025 (Detailed Site Plan) and 4-11028 (Subdivision).

(11) Adjacent to Parcel 18, across Oxon Hill Road to the west, is the Oxon Hill Manor Historic Site (#80-001) which includes an approximate eight (8) acre Environmental Setting, as well as additional property fronting Oxon Hill Road which is owned by the Maryland National Capital Parks and Planning Commission (M-NCPPC). The M-NCPPC also owns and operates Oxon Hill Manor.

Master Plan

(12) The subject property was retained in the M-X-T Zone by the *2006 Henson Creek-South Potomac Master Plan and Sectional Map Amendment,* which recommends a mix of uses for the site as part of the National Harbor Metropolitan Center. The Plan's strategies for the National Harbor Metropolitan Center include requiring "(F) uture land uses surrounding the waterfront center to complement its distinctive character, to be compatible with the neighboring community and to provide a suitable gateway to this unique project." (Master Plan, p. 51)

[3] This reduction in size of a Historic Site constitutes an amendment of the Historic Sites and Districts Plan, a Master Plan for Historic Resources requiring approval by the District Council, and appears to be without any legal grant of authority. The closest grants of authority contained in §29-106 are clearly not relevant as §29-106(a)(3) authorizes the Historic Preservation Commission to act upon Historic Area Work Permits (the instant Historic Preservation Commission action was not taken within the scope of its approval of HAWP #12-95 as a final decision for HAWP #12-95 was never issued (Exhibit 50, p's. 2 - 3) and as §29-106(a)(6) authorizes the Historic Preservation Commission to make recommendations on development plans, not, as here, a final dispositive action.

Neighborhood and Surrounding Uses

(13) The subject property is comprised of two (2) parcels (Parcel A and Parcel 18) of land located between Oxon Hill Road (to the west) and Indian Head Highway (to the east). Parcel A has been graded and some roads have been built to serve an office park ("Salubria Office Park") which was eventually envisioned to consist of three (3) office/light industrial buildings and associated parking. Parcel A is bisected by a 110-foot right-of-way for a ramp from the Capital Beltway (I-95), effectively dividing the existing office building on Parcel 92 from the subject property with the exception of two (2) small appendages of land shown on CSP-11006 and proposed for a hotel and parking. The southern 22 acres (Parcel 18) is primarily wooded and contains the scant remains of the original Salubria and outbuildings, Historic Site #80-002, within a 2.7 acre Environmental Setting.

(14) The subject property is within the Developing Tier. (Exhibit AC-21) The Applicant is in error in its Statement of Justification wherein it alleges that the subject property is located within the Developed Tier. (Exhibit AC-5)

(15) The subject property is surrounded by the following uses:

North - An office building in the M-X-T Zone.

East - Indian Head Highway (MD 210) and apartments in the R-10 Zone.

South - Single-family residences in the R-R and R-55 Zones and the former Thomas Addison Elementary School. The school site, most recently used as a special education center by the Leary School and as a church, is now vacant. The site has an approved Special Exception for reuse as a Day Care Center (SE-3971).

West - Across Oxon Hill Road is the site of Oxon Hill Manor, a Prince George's County Historic Site listed on the National Register of Historic Places. It is used for a meeting hall, banquet facilities and offices. It is also the site of an approved Adult Day Care Center (SE-3496). Further to the south across Oxon Hill Road is the Crescent City Jaycees Oxon Hill Community Center. Both of these properties are owned by M-NCPPC and are in the R-O-S Zone.

Applicant's Request

(16) The Applicant is requesting the elimination of Conditions 2 and 3.

APPLICABLE LAW

Amendment of Conditions

(1) An Application for the amendment of Conditions attached to a piecemeal Zoning Map Amendment may be approved in accordance with §27-135(c) as follows:

(c) The District Council may (for good cause) amend any condition imposed or site plan approved (excluding Comprehensive Design Zone Basic Plans or R-P-C Zone Official Plans) upon the request of the applicant without requiring a new application to be filed, if the amendment does not constitute an enlargement or extension.

Good Cause

(2) The Court of Appeals of Maryland, in Kay Construction Company v. County Council, 227 Md. 479, 177 A.2d 694 (1962) considered the definition of "good cause" upon appeal of a Council resolution overturning a previous decision upon a reconsideration of that previous decision for "good cause shown." In Kay, the Court first considered a zoning ordinance provision requiring "good cause" for reopening a zoning case. In Kay, the Court held that a change of mind on the basis of the evidence of record is not "good cause." In arriving at this conclusion the Court referred to a previous decision, Zoning Appeals Board v. McKinney, 174 Md. 551, 564, 199 A. 540, 171 A.L.R. 207, 564 (1938), which states that in the absence of a statutory requirement, "It may be conceded without discussion that the Board has the right to correct errors in its decisions caused by fraud, surprise, mistake or inadvertence, which any agency exercising judicial functions must have, to adequately perform its duties." The Court, in Kay, referred to cases from other jurisdictions similar to McKinney and treatises, then stated the reasoning applied in those cases has some relevance to the issue in Kay. The Court cited with favor "[t]he Connecticut rule …(which … was laid down in St. Patrick's Church Corporation v. Daniels, 113 Conn. 132, 154 A. 343, at 345 (1931), where it was said, '…the test to be applied is whether new or additional facts appear *showing a change in conditions or other considerations materially affecting the merits*, intervening since the former decision.' (Italics added.)" The Court, in Kay, 177 A.2d at 698, stated further: "We recognize that the cases cited dealt with zoning boards exercising quasi-judicial powers, while, as we have indicated, the instant case involves the Council acting as a legislative body. However, the reasoning applied in those cases has some relevance to the issue before us. The Ordinance, by requiring that "good cause" be shown as a necessary condition to the granting by the Council of a petition for reconsideration, has in effect grafted upon that agency a limitation which exists in regard to quasi-judicial bodies even in the absence of statue. It permits the Council to grant a petition for reconsideration only where there appears to be a substantial reason for doing so, as defined in the cases cited." "…[A]mere change of opinion by the Commission as to the correctness of its original decision…" is not "good cause." "…[G]ood cause could consist of material matters arising subsequent to the decree on a showing of fraud, accident or mistake or denial of opportunity to present proofs…" "…The Council did not allege that there was any fraud, surprise, mistake or inadvertence as to the facts which were before it for consideration at the time of its original deliberation on the request for rezoning, or as to any other factor, or that any new facts had been

developed. In its own words, it averred that it had made "a plain and simple error in *judgment* based on the *evidence of record*" (italics added), as claimed in the petitions for reconsideration. The ten points which the Council listed to support this conclusion all relate to matters which were, with one exception, before the Council at the original hearing for rezoning… The only exception was the Master Plan for the Kensington-Wheaton rezoning resolution. As mentioned earlier, it was alluded to by the Council in the resolution as a factor of the rezoning." For an application of Mckinney and Kay, see Schultz v. Montgomery County Planning Board, 230 Md. 76 185 A.2d 502 (1962).

(3) From 1962 to 1983 there were not a great number of reported cases in Maryland relying on the Kay case. However, with the rendering of their decision in In re Robert G., 296 Md. 175, 461 A.2d 1 (1983), the Court of Appeals appears to have, without saying, abandoned the requirement that reasons for good cause must amount to "fraud, surprise, mistake or inadvertence." The Court of Special Appeals in In re Trevor A., 55 Md. App. 491, 462 A.2d 1245 (1983) at p. 1248, condenses In re Robert G.: "In *In re Robert G*. Judge Smith pointed out that Maryland's view of good cause is that stated by Black's Law Dictionary, 623 (5th ed. 1979):

> 'Substantial reason, one that affords a legal excuse. Legally sufficient ground or reason. Phrase "good cause" depends upon circumstances of individual case, and finding of its existence lies largely in discretion of officer or court to which decision is committed… "Good cause" is a relative and highly abstract term, and its meaning must be determined not only by verbal context of statue in which term is employed but also by context of action and procedures involved in type of case presented.' (Citations omitted.)
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> "Good cause" depends upon the facts and circumstances.' (Maryland Rule 741 g was being interpreted). *Id.* 296 Md. at __, 461 A.2d at 3 and *Taliaferro v. State*, 295 Md. 376, 456 A.2d 29, *cert. Denied*, _U.S. _, 103 S.Ct. 2114, 76 L.Ed.2d 1307 (1983)
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> "Judge Smith went on to point out that 'good cause' has been equated with 'substantial reason,' *Kay Constr. Co. v. County Council*, 227 Md. 479, 177 A.2d 694 (1962), a legal excuse, *State v. Churchill*, 82 Ariz. 375, 380, 313 P.2d 753 (1957); '… an adequate cause, a cause that comports with the purpose of the statue involved, *Syrek v. California Unemployment Appeals Insurance Board*, 54 Cal.2d 519, 529 [7 Cal. Rptr. 97], 354 P.2d 625 (1960; '…substantial or legal cause…' *Tucker v. People*, 136 Colo. 581, 586, 319 P.2d 983 (1957); that 'good cause ground is provided to take care of *unanticipated circumstances*' (Emphasis added by Hawaii Court). *State v. Estencion*, 63 Hawaii Reports 264, 267, 625 P.2d 1040 (1981), and finally, that "good cause"… is a flexible term…not amendable to general rules or rigid formulas…its meaning must be deduced from the facts of each case in a manner that is consistent with' the fundamental purpose of the act within which the term is used. *Trexler v. Com., Unemployment Comp. Bd.*, 27 Pa. Comm. 180, 365 A.2d

1341, 1344 (1976)." See also Francois v. Alberti Van and Storage Co., Inc., 285 Md. 663, 404 A.2d 1058, 1064 (1979).

(4) Section 27- 108.01(a)(7) of the Zoning Ordinance provides as follows:

> "[w]ords and phrases not specifically defined or interpreted in this Subtitle or the Prince George's County Code shall be construed according to the common and generally recognized usage of the language. Technical words and phrases, and others that have acquired a peculiar and appropriate meaning in the law, shall be construed according to that meaning.

(5) "Good Cause" is not expressly defined in the Zoning Ordinance. Accordingly, the definition set forth in Black's Law Dictionary (7th Edition) can be used:

> ***good cause***. A legally sufficient reason. Good cause is often the burden placed on a litigant … to show why a request should be granted or an action excused.

(6) The Court of Appeals has held that the determination whether "good cause" exists to allow the amendment of a condition is left to the discretion of the trier of fact, and will only be reversed "where no reasonable person would take the view adopted…." Rios v. Montgomery County, 386 Md. 104121 (2005)(citations omitted)

Res Judicata

(7) To recapitulate the law regarding "res judicata" and administrative agencies, the court's pronouncements as it is understood they are applicable today will be restated.

(a) "The doctrine of res judicata is that a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit, where the court had jurisdiction, proceedings were regular, and [the] omission was due to [a party's] own negligence." Lease-A-Car, Inc v. Thomassen Lincoln Mercury, Inc., 36 Md. App. 437, 442, 373 A.2d 1268, 1272 (1977) [quoting Frontier Van Lines v. Maryland Bank & Trust Co., 274 Md. 621, 623, 336 A.2d 778, 780 (1975); Alvey v. Alvey, 225 Md. 386, 390, 171 A.2d 92, 94 (1961)] Lawrence N. Brandt, Inc v. Montgomery, etc., 39 Md. App. 147, 383 A.2d 688, 694 (1978) Batson v. Shiflett, 325 Md. 671, 602 A.2d 1191, 1201 (1992)

(b) "The rule is designed to avoid the 'expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions' Murray International Freight Corp. v. Graham, 315 Md. 543, 547, 555 A.2d 502, 503-504 (1989), quoting Montana v. United States, 440 U.S. 147, 153-154, 99 S Ct. 970, 973-974, 59 L.Ed.2d 210, 217 (1979)." deLeon v. Slear, 328 Md. 569, 616 A.2d 380, 385 (1992)

(c) "The traditional principle of res judicata has three elements: (1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must

have been a valid final judgment on the merits by a court of competent jurisdiction. Rowland v. Harrison, 320 Md. 223, 229, 577 A2.d 51, 54 (1990); Shum v. Gaudreau, 317 Md. 49, 54, 562 A.2d 707, 709-710 (1989); Cassidy v. Board of Education, 316 Md. 50, 57, 557 A.2d 227, 230 (1989); Cicala v. Disability Review Board, 288 Md. 254, 263, 418 A.2d 205, 211 (1980); MPC, Inc. v. Kenny, 279 Md. 29, 32, 367 A.2d 486, 488-489 (1977); Mattee v. Boone, 251 Md. 332, 341, 247 A.2d 390, 395 (1968); Alvey v. Alvey, spura, 225 Md. at 390, 171 A.2d at 94; Myers v. Gordon, 165 Md. 534, 538-539, 170 A. 186, 187-188 (1934)." deLeon v. Slear, supra.

(d) "In light of the administrative procedures and adjustments which the District Council is required to follow and make in the process of rezoning, the principles of public policy which underline the rule of res judicata logically would seem to be applicable to its actions in this respect. See 2 Davis, Administrative Law Treatise, Ch. 18 (1985); 2 Cooper, State Administrative Law, Ch. XV, subsections 1 and 4 (1965) 2 Am. Jur. 2d Administrative Law subsections 496-97 (1962); Cohen, Some Aspects of Maryland Administrative Law 24 Md.L.Rev. 1, 20 (1964); Hollywood Circle, Inc. v. Department of Alcoholic Bev. Con., 55 Cal.2d 728, 13 Cal. Rptr. 104, 361 P.2d 712, 714; Evans v. Monagahan, 306 N.Y. 312, 118 N.E.2d 452, 458…" Woodlawn Citizens' Association v. Board of County Comm'rs for Prince George's County, 241 Md. 187, 216 A.2d 149, 153 (1966). Alvey, supra, Century I Condo v. Plaza Condo Joint Ven., 64 Md. App. 107, 494 A.2d 713 (1985).

(e) When an administrative agency is acting in a judicial capacity and resolves disputes of fact properly before it which the parties have had an adequate opportunity to litigate, the Courts have not hesitated to apply 'res judicata' to enforce repose." United States v. Utah Constr. Co., 384 U.S. 394, 86 S Ct. 1545, 16 L.Ed. 2d 642 (1966) Res judicata is only applicable to administrative agency decisions when acting as stated above. Sugarloaf v. Waste Disposal, 323 Md. 641, 659, N.13, 594 A.2d 1115, 1123-24 N.13, (1991). Batson v. Shiflett, 325 Md. 671, 602 A.2d 1191, 1201 (1992).

(f) "It is quite plain…that at least some of the principles of the doctrine of res judicata are applicable to zoning boards… [A]n unreversed final decision by a zoning board passed in the exercise of its discretion upon issues of fact or upon mixed issues of law and fact are fully binding upon the parties to the cause and their privies as to all issues determined thereby. It is only when there has been a substantial change of conditions or it is shown that the decision was the product of fraud, surprise, mistake, or inadvertence, that such an administrative body may reverse its prior decision in litigation between the same parties. Whittle v. Board of Zoning Appeals, 211 Md. 36, 125 A.2d 41 (1956); Woodlawn Assn. V. Board, supra; Gaywood Association v. MTA, 246 Md. 93, 227 A.2d 735… Mistaken interpretations of law, however honestly arrived at, are held not to be within the exercise of sound administrative discretion and the legislative prerogative, but to be arbitrary and illegal. Perpetuation of illegality by an administrative body by inflexible application of the principle of res judicata is impermissible." [Emphasis in original] Board of County Comm'rs. of Cecil County v. Racine, 24 Md. App. 435, 332, A.2d 306, 313-315 (1975) Department v. Reeders Memorial Home, 86 Md. App. 447, 455, 586 A.2d 1295 (1991) It must be remembered that the fraud, surprise, mistake or inadvertence must not be due to a party's own omission or negligence. Lawrence N. Brandt, Inc., supra. Department v. Reeders Memorial Home, 86 Md. App. 447, 455, 586 A.2d 1295 (1991)

(g) In deLeon v. Shear, 328 Md. 569, 616 A.2d 380 (1992) at p. 389 et seq. the Court of Appeals of Maryland stated:

"In order for res judicata to be applicable, Dr. deLeon must be attempting to relitigate the same 'claim' or 'cause of action' in the second action as in the first.

"In determining whether claims are the same for purposes of res judicata, we have in the past sometimes utilized a 'same evidence' test. See MPC, Inc. v. Kenny, supra, 279 Md. at 33, 367 A.2d at 489. We have indicated, however, that the concept of a 'claim' is broad. See, e.g., Edmonds v. Lupton, 253 Md. 93, 252 A.2d 71 (1969) (defining a 'claim' as 'a group or aggregate of operative facts giving ground or occasion for judicial action, as distinguished from the narrow concept of a "cause of action").'

"Recently, in Kent County Bd. of Educ. V. Bilbrough, 309 Md. 487, 525 A.2d 232 (1987), we adopted the 'transaction' test, as set forth in §24 of the Restatement (Second) of Judgments, as the basic test for determining when two claims or causes of action are the same for purposes of res judicata. See also Rowland v. Harrison, supra, 320 Md. at 230 n. 2, 577 A.2d at 54 n. 2; Shum v. Gaudreau, supra, 317 Md. At 54-55, 562 A.2d at 710.

"In Kent County Bd. of Educ. v. Bilbrough, supra, 309 Md. at 497-498, 525 A.2d at 237-238, Judge Rodowsky for the Court explained as follows (footnote omitted):

'Restatement (Second) of Judgments describes the current approach of courts to answering the same claim—separate claim conundrum in §24, comments a, at 197:

'The present trend is to see claim in factual terms and to make it coterminous with the transaction regardless of the number of substantive theories, or variant forms of relief, flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights. The transaction is the basis of the litigative unit or entity which may not be spit.

'Consequently, the American Law Institute in §24 of Restatement (Second) of Judgments has adopted the following standards for determining the "Dimensions of 'Claim' for Purposes of Merger or Bar—General Rule Concerning 'Splitting":'

(1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar (see §§ 18, 19) the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transaction, out of which the action arose.

(2) What factual grouping constitutes a 'transaction', and what groupings constitute a 'series', are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin or motivation, whether they form a convenient trail unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." (Footnote omitted)

"In light of these principles, the Court in Bilbrough, 309 Md. at 500, 525 A.2d at 238-239, held that the claims there were separate because two separate transactions were involved. In reaching this conclusion, the Court pointed out that the two actions concerned different matters, that 'the core of the activities complained of by the respondent in the two actions occurred at different times,' and that the activities occurred at different places.

(h) "…Maryland now applies the 'transaction' test when determining whether two cases are the same for the purposes of res judicata." deLeon, 328 Md. at 589-90; Kent County Bd. of Educ. v. Bilbrough, 309 Md. 487, 499 (1987) (adopting Restatements (Second) of Judgments Section 24). Cases are grouped by 'transaction' pragmatically, 'giving weight to such considerations as whether the facts are related in time, space, origin or motivation, whether they form a convenient trail unit, and whether their treatment as a unit conforms to the parties expectations or business understanding or usage.' deLeon, 328 Md. at 590 (footnote omitted); Bilbrough, 309 Md. At 498 (both quoting Restatement, supra)." et. al., 101 Md. App. 170, 643 A.2d 920 (1994) Cert Den 649 A.2d 601 (1994)

(i) The rule applies even though there is a statutory waiting period before a second application can be filed. The application of the rule does not depend upon whether or not the case was as comprehensively or persuasively presented in the first case as at the second, all information which could have been produced should have been produced and the second case cannot be decided on testimony which might have been introduced in the first case, that is, the facts existed at the time of the first case. Whittle, supra, Alvey v. Hedin, 243 Md. 334, 221 A.2d 62 (1966); Mayor and Council of Rockville v. Stone, 271 Md. 655, 319 A.2d 536, 539, 540 (1974).

(j) The doctrine as stated above applies without regard to the kind of Court which rendered the final judgment, Circuit Court, People's Court and Orphan's Court; and without regard to the form of the earlier action, Racine, supra.

(k) It is not necessary that the first cause of action be final by a Court decision, the applicable principles of res judicata apply to the second action. However, if the first action was final from any Court decision, that decision is an absolute bar to the second action at both the administrative agency as well as in the Courts. Whittle, supra; Gaywood, supra; Woodlawn, supra; and Racine, supra.

Landscape Manual

(8) The 2010 Prince George's County Landscape Manual provides the requirements for landscape and bufferyards, and states in pertinent part with reference to Historic Sites:

SECTION 3 – LANDSCAPE ELEMENTS AND DESIGN CRITERIA

3.5 Other Landscape Design Considerations

(i) Environmental Settings of Historic Sites

The environmental setting of an historic site is an essential element of its historic value. The environmental setting is the extent of the property protected as a historic site on which the structure is located unless the environmental setting has been reduced or enlarged by the action of the Historic Preservation Commission after careful consideration of the historic and natural features, and landscape character of the property. Many historic sites in Prince George's County are still rural in character. The integrity of these sites should not be compromised by incompatible adjacent development. Developing properties adjacent to designated historic sites should minimize adverse visual impact on the historic site and its environmental setting through sensitive sitting of built elements and by provision of buffer areas that preserve existing trees, or that are landscaped to be as compatible as possible with the environmental setting. (Landscape Manual p. 30)

(9) The Landscape Manual further provides:

SECTION 4 – LANDSCAPE STANDARDS

4.7.1 Buffering Incompatible Uses

(c) Requirements

(7) Developing Lots Adjacent to Historic Sites

(b) If a developing lot adjoins a designated historic site (except underground archeological sites) and is located within the Developing or Rural Tier, the developing lot shall provide a Type "E" Buffer along the entire shared property line (see Table III and Figure 4.7 (h)). This requirement does not apply to a property line or right-of-way line adjacent to a special roadway (see Section 4.6). (Landscape Manual p. 93-94)

4.7 Table III. Bufferyard Types

Type	Minimum Building Setback	Minimum Landscaped Yard	Number of Plan Units Required per 100 Linear Feet of Property Line
A	20 feet	10 feet	40
B	30 feet	20 feet	80
C	40 feet	30 feet	120
D	50 feet	40 feet	160
E	60 feet	50 feet	180

CONCLUSIONS

(1) "Good Cause" for an amendment of a condition requires a "substantial reason" and not merely a change of mind. "Good Cause" depends upon the facts and circumstances of the case before the trier of fact and must be applied in a manner that is consistent with the fundamental purpose of the amendment statute, §27-135. The legal principal of res judicata would bar a request to amend Conditions 2 and 3 unless there has been a mistake in law in the first decision or there has been a change in circumstances since the initial decision, as has been demonstrated in the instant Application.

(2) It is agreed by all parties and by the Technical Staff that the existing office building on Parcel 92 (adjacent to Parcel A to the north) was constructed with an outdated architectural facade and parking design and with intervening road improvements it is not appropriate nor is it desirable to continue the requirement that the subject property utilize a similar architectural facade or that the subject property be linked with the existing office building through a common pedestrian path system (T. p. 93-95, Exhibit AC-41). However, it is reasonable to continue to require a common pedestrian path system on the subject property. These changes in circumstances are legally sufficient to support a finding of good cause to delete/amend Condition 2.

(3) The first Landscape Manual was not adopted by the County Council until October, 1989 and thus would not have been considered in 1984 when the Revisory Petition rezoned Parcel A of the subject property from R-R to the I-3 Zone. Parcel 18 remained in the R-R Zone. However, the 1989 Landscape Manual was in effect in 1994 when A-9882-C was adopted subject to a 100 foot bufferyard (Condition 3).

(4) The 1989 Landscape Manual required a Type "D" Bufferyard on a developing property adjacent to historic sites. (1989 Landscape Manual p.'s 28, 49-61) A Type "D" Bufferyard required a minimum building setback of 50 feet, a minimum landscaped yard of 40 feet, and 160 plant units per 100 linear feet of property line. Thus when the District Council carried forward the 100 foot bufferyard Condition of Revisory Petition CR-45-1985 and imposed it on the entirety of the subject property when it granted the property owner's rezoning request in 1994, the District Council was aware that the bufferyard was greater than the minimum standard set in the 1989 Landscape Manual. The property owner agreed to the condition of a 100 foot bufferyard which was in excess of the minimum standard of 40 feet.

(5) The 2010 Landscape Manual established a minimum building setback of 60 feet, a minimum landscaped yard of 50 feet, and 180 plant units per 100 linear feet of property line for developing properties adjacent to historic sites. (2010 Landscape Manual p. 89) The 2010 Landscape Manual continues to emphasize that developing properties should minimize adverse visual impact on historic sites and environmental settings. (2010 Landscape Manual p. 30)

(6) Mr. Ken Dunn, the Applicant's expert land planner, testified that "visibility from the surrounding areas is one of the most important factors in creating a successful retail environment. Buffering, to the extent that it's currently required at 100 feet, would severely limit the proposal by reducing the critical visibility…" (T. p. 42 and 43)

(7) Mr. Dunn also testified that the retention of the 100 foot buffer would require a redesign of the parking layout, but conceded when questioned by the People's Zoning Counsel, that the parking layout/site design, has not been approved, and any approval of DSP-11025 or CSP-11006 is contingent upon the approval of the instant Application. (T. p. 42-45)

(8) The three (3) competing interests are thus: (1) the Applicant's desire for street visibility resulting is its request to decrease the buffer from 100 to 20 feet, (2) the Landscape Manual's requirement of a minimum bufferyard of 50 feet with an additional 10 foot building restriction line, and (3) the civic desire to maintain the existing 100 foot bufferyard required since 1984 and agreed to by the Applicant's predecessor in interest since 1994.

(9) A change in circumstance can be found by the widening of Oxon Hill Road and the resulting taking of land for the right-of-way. The desire for street visibility is common to all commercial retail establishments and is not unique to the instant proposal and is not a change in circumstance as envisioned by law. The minimum bufferyard established by the 2010 Landscape Manual is of a 50 foot bufferyard with an additional 10 foot building restriction line for developing properties adjacent to historic sites.

RECOMMENDATION

It is recommended that Conditions 2 and 3 be amended and that A-9882-C be subject to the following conditions:

(1) Any residential housing on the site shall be restricted to single-family detached and/or attached units.

(2) For that portion of the site south of the freeway ramp, a common pedestrian path system shall be designed to link all segments of the proposed development. Any retail segment shall not be designed as a typical strip shopping center or large single-use site.

(3) All future development plans for the subject property shall show buffering along Oxon Hill Road and the southern boundary of the site consistent with the following:

(a) Along the frontage along Oxon Hill Road on old Parcel 7 and that portion of old Parcel 8 north of the existing paved entrance drive onto the subject property, not being adjacent to Oxon Hill Manor, a minimum 20-foot wide landscape strip shall be maintained in accordance with the specifications of Section 4.6 of the Landscape Manual. The strip may incorporate a variety of buffering and screening methods, including, but not limited to, landscaping, and low walls. The type and quantity of plant materials and other methods to be utilized shall be reviewed and approved at the time of Detailed Site Plan.

(b) Along the frontage along Oxon Hill Road on old Parcel 8 south of the paved entrance drive and on Parcel 18, a minimum 50-foot wide woodland preservation area shall be retained as a buffer to preserve the rural character of, and compatibility with, the adjacent Oxon Hill Manor historic site, in accordance with Type "E" Bufferyard. Additionally, in accordance with a Type "E" Bufferyard, there shall be a ten foot building setback from the buffer.

(c) A minimum 100-foot woodland preservation area shall be provided along the southern boundary to act as a buffer between the proposed development and the school and residences to the south.

(4) The Historic Site status of Salubria, as well as the extent of the Environmental Setting, shall be noted on all plans and other documents submitted for this site.

(5) All subsequent submittals for this site shall be referred to the Historic Preservation Section staff and the Historic Preservation Commission for their review and comment prior to approval.

(6) Any plans within the environmental setting must be approved by the Historic Preservation Commission through the Historic Area Work Permit process.

(7) A Stormwater Management Concept plan shall be approved by the Department of Environmental Resources (DER) prior to the approval of any Preliminary Plats of subdivision.

(8) A 100-year floodplain study shall be approved by DER Watershed Protection Branch prior to the approval of a Conceptual Site Plan.

(9) A Forest Stand Delineation shall be submitted and approved in conjunction with any Preliminary Plan of Subdivision or Conceptual Site Plan for the subject property.

(10) A Type I Tree Conservation Plan shall be submitted and approved in conjunction with the Conceptual Site Plan or Preliminary Plan of Subdivision for the subject property.

(11) Noise-related issues shall be addressed at the time of Conceptual Site Plan submittal. The Plan shall include needed mitigation measures and provide adequate screening and buffering along Indian Head Highway (MD 210).

(12) Development on the site shall not produce a greater number of vehicle trips than that identified in the previous approval for Salubria Office Park (SP-88069) and shall be subject to the same transportation conditions and improvements.

(13) Within 60 days after the approval of A-9882-C, the Applicant shall have submitted a stabilization and maintenance plan to the Historic Preservation Commission, which plan must have been implemented within 90 days after its approval by the Historic Preservation Commission unless the Historic Preservation Commission allowed a longer time for implementation.

(14) Prior to approval of the Conceptual Site Plan, the Applicant shall submit a restoration plan for the Historic Site for approval by the Historic Preservation Commission.

(15) Prior to issuance of any building permits, the Applicant shall fund or implement the restoration plan for the Historic Site, to allow restoration simultaneous with build-out of any development.

(16) Prior to the issuance of any building permits, the property owner shall agree to provide reasonable access to the Historic Preservation Commission or other expert groups or individuals recognized by the Historic Preservation Commission for the purpose of conducting archeological exploration on the Historic Site, at no expense to the owner.

(17) The District Council shall amend the Historic Sites and Districts Plan in accordance with State and County law to remove Salubria and its Environmental Setting (Historic Site #80-002) as a Historic Site prior to the issuance of any permits, other than a Historic Area Work Permit, on the subject property.