

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

AMENDMENT OF CONDITION DSP-11017

**REMAND
DECISION**

Application: Amendment of Conditions
Applicants: Punam Singh/Jagjot Singh Khandpur, Esq.
t/a Hyattsville Subway Sandwich Shop
Opposition: None
Hearing Date: July 25, 2018
Hearing Examiner: Maurene Epps McNeil
Recommendation: Approval with Revised Condition

NATURE OF REQUEST

(1) The Applicant sought approval of a Detailed Site Plan for a 1,400-square-foot Subway Sandwich Shop, on property described as approximately 6,367 square feet of land in the Gateway Arts District Development District Overlay Zone ("DDOZ") and the M-U-I (Mixed Use-Infill) Zone, on the western side of Baltimore Avenue (US 1), approximately 790 feet south of its intersection with Farragut Street in Hyattsville, Maryland.

(2) By Resolution dated November 1, 2012, the Planning Board approved DSP-11017 with conditions (PGCPB No. 12-98). (Rec. Exhibit 10)

(3) On February 12, 2013, the District Council issued an Order affirming the Planning Board Decision with the same conditions recommended by the Planning Board:

1. Prior to signature approval of this detailed site plan, the following revisions shall be made to the plans and additional specified documentation submitted:
 - a. Add the deed reference "Liber 32700 at Folio 237" to the plan notes.
 - b. Add the underlying property information to the plan drawing.

- c. Add the material label of “stucco” to the yellow-colored portions of the front façade elevation drawing, if it is to remain an architectural material for the project.
- d. Revise the parking schedule as follows:
 - (1) To reflect that the total number of parking spaces required is 8 (1 per 3 seats) for the 18 seats provided, and two for the 80 square feet of gross floor area (excluding any area used exclusively for storage or patron seating, and any exterior patron service area).
- e. The proposed outdoor lighting shall be evaluated for full cut-[o]ff optics fixtures to ensure that off-site light intrusion into adjacent and environmentally-sensitive areas designated by the 2005 *Approved Countywide Green Infrastructure Plan* is minimized, and so that sky glow does not increase as a result of this development.
- f. A minimum of five bicycle parking spaces shall be provided at a location convenient to the building entrance. The location and number of spaces (bicycle racks) shall be approved by the Urban Design Section and trails coordinator.
- g. The streetscape and sidewalk treatment along the subject site’s frontage of Baltimore Avenue (US 1) shall be consistent in form and materials to the existing improvements immediately to the north of the subject site along the EYA development’s frontage of US 1.
- h. The surface material for the sidewalk shall be continued across the site’s ingress/egress point along Baltimore Avenue (US 1), or a high-visibility crosswalk shall be provided at this location.
- i. The applicant shall revise the landscape plan for the project to make it congruent to the detailed site plan for the case in all respects except that the landscape plan will provide landscaping in addition to all other information on the detailed site plan. Both plans shall be clearly legible. The Urban Design Section, as designee of the Planning Board, shall ensure that the plans are consistent with each other and both are clearly legible.
- j. The handicapped parking space shall be dimensioned as 16 feet by 19 feet.
- k. The dumpster detail shall be revised to indicate face brick to match the color of the brick to be utilized on the first story of the building as the external sheathing architectural material.

- I. General Note 4 on the detailed site plan shall be corrected to indicate that the proposed building height is 20 feet, 1 inch as indicated within the building footprint and by the submitted building elevations.
- m. General Note 6 on the detailed site plan shall be revised to indicate the square footage of the landscaped area on the site as green area, not "0 square feet" as is currently indicated.
- n. General Note 7 shall be revised to reflect the actual lot coverage of the site, not 6.367 or 100 percent.
- o. The limits of disturbance shall be indicated on the detailed site and landscape plans and General Note 8 shall be corrected if and as necessary if the disturbed area varies from the 4,750 square feet currently indicated in General Note 8 on both the detailed site and landscape plans.
- p. General Note 11 on the detailed site and landscape plans shall be revised to read:

"Property dimensions depicted hereon compiled and computed from land records data."
- q. The statement that "This site is not subject to any previous approvals" shall be removed from the detailed site plan as the site is subject to approval of a plat recorded in plat book A-18.
- r. General Note 12 of the detailed site and landscape plans that refer to "this survey" shall be removed as the subject documents are not surveys.
- s. The applicant shall revise the architecture for the project as follows:
 - (1) Storefront glass shall comprise a minimum of 6 percent of the front façade.
 - (2) The front elevation shall be revised to provide brick as per the applicant's exhibit, except to provide brick below and on the sides of the front windows. Both side and rear elevations shall be revised to provide brick instead of EIFS on all surfaces up to the line labeled "Roof Elevation." All brick shall be of one color, and all of the pilasters shown on the applicant's exhibit shall be retained as visual accents by protruding from the surrounding brick surfaces no less than one inch. The side elevation labeled as #2 on the applicant's exhibit shall be revised to reduce the height of the window and awning to be consistent with the height of the window and awning on the rear façade. All windows and doors shall have green canvas

canopies. Final design of the façades shall be approved by the Planning Board or its designee.

- (3) The stucco “crown” shall be embellished to add dentil molding.
- (4) The internally-lit sign shall be replaced with a wooden painted sign, lit by a gooseneck spotlight.
- (5) The dumpster enclosure shall be sheathed in red brick and the gates of the enclosure shall be of a green, non-wood, low sheen durable material. The color shall match that of the canvas awnings of the front façade.
- (6) The window proposed on the north side of the proposed structure shall indicate that the window is non-operable.

Final design of the architectural improvements to the proposed building shall be approved by the Planning Board or its designee.

- t. The applicant shall add a general note to the plans stating that: “The applicant intends to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediments Control.”
2. The maximum number of seats in the Subway Sandwich Shop shall be no more than 18.

(Rec. Exhibit 3)

(4) By letter dated June 7, 2017, the Clerk of the Council notified the Office of the Zoning Hearing Examiner that Applicants request that Condition 1(k), *supra*, be revised to allow a wooden fence enclosure for the dumpster to the rear of the site.¹ (Rem. Rec. Exhibits 1 and 2)

(5) This Examiner held two hearings on the request and issued a decision with the following recommendation:

(1) I would recommend that Conditions 1(k) of the District Council’s approval of DSP-11017 be revised to allow wood fencing in lieu of total brick exposure as follows:

k. The dumpster detail shall be revised to indicate that board-on-board wood, similar to that used in the fencing around the adjacent EYA property be utilized and that the gates of the dumpster enclosure be of a durable, low-sheen, non-wood,

¹The record of the prior hearings on applicant’s request is adopted in its entirety and incorporated herein.

green composite material to match the canvas awnings of the front façade.

(2) Condition 1 (s) (5) could be deleted in its entirety since it would be incorporated in the new condition 1 (k). All remaining conditions of approval shall remain in full force revised in the same manner as (k), above.

(Rem. Rec. Exhibit R-9)

(6) On March 12, 2018, the District Council remanded the request to the Zoning Hearing Examiners with the following directions:

On remand, the Examiner shall reopen the evidentiary record to allow the Applicant to introduce, among other things a revised Site Plan.

(Rem. Rec. Exhibit R-1)

APPLICABLE LAW

(1) The District Council may amend a condition of approval for a Detailed Site Plan pursuant to Section 27-135 of the Zoning Ordinance. This Section provides, in pertinent part, 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.

(1) In the case of an amendment of a condition (imposed as part of the approval of the zoning case), the request shall be directed, in writing, to the District Council, and shall state the reasons therefore. Before the Council amends a condition, the Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with [Section 27-129](#), and shall notify all parties of record (including all parties of record on the original application and any amendments thereto) in the same manner as required for an original application. The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's decision with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and

argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

(2) Where a site plan has been approved by the Council, the applicant may request an amendment to the site plan in the form of an application filed with the Planning Board. The Technical Staff shall analyze the proposed amendment, taking into consideration the requirements of this Subtitle. The staff shall submit (for the record) a recommendation. This recommendation, along with the proposed amendment, shall be transmitted by the Technical Staff directly to the District Council. The Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with [Section 27-129](#), and shall notify all parties of record (including all parties of record on the original application and any amendments thereof) in the same manner as required for an original application. The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

(2) "Good cause" is not defined in the Zoning Ordinance. Pursuant to Section 27-108.01(a)(7):

Words 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.

(3) The Maryland courts have applied the definition of "good cause" found in Black's Law Dictionary. See, *In re Trevor A.*, 55 Md. App. 491, 496, 462 A.2d 1245 (1982). Black's Law Dictionary (7th Edition) defines "good cause" as follows:

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....

(4) The Court of Appeals has held that the determination whether "good cause" exists to allow the waiver of a condition precedent 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. 104, 121 (2005) (Citations omitted)

FINDINGS OF FACT

(1) The property lies within Planning Area 68 as discussed in the 2004 Sector Plan and Sectional Map Amendment for the Prince George's County Gateway Arts District ("Gateway Arts District Sector Plan and SMA"). Accordingly, the proposed eating and drinking establishment is subject to the development district standards of the Gateway Arts DDOZ. In particular, it must satisfy the town center character area development standards. These standards require dumpsters to "be screened by an opaque material similar in color and material to that of the main building so they are not visible from the public sidewalk or streets." (2004 Gateway Arts District Sector Plan and SMA, p. 150).

(2) DSP-11017 was approved on February 12, 2013. It required that the dumpster be placed on an 8' by 8' concrete pad and required the "dumpster enclosure to be brick matching proposed building external sheathing architectural material" and the "dumpster enclosure gates [to] be of a durable, low sheer, non-wood, green composite material to match the canvas awnings to be utilized on the building." (Rec. Exhibit 12(b)) The District Council's approval imposed a similar condition (1(s)(5), *supra*). Applicants did not request a revision to this condition.

(3) Mr. Jagjot Singh Khandpur, Esq. appeared on Applicants behalf at the original hearings. He is the husband of Punam Singh and a co-owner of the property. He requested that Condition 1(k) in the District Council's approval be revised, and offered the following testimony in support of the request:

So, we are requesting ... to amend this condition so we can build a wooden dumpster enclosure, and the reasons for my request are the main building which this dumpster will service [is] only 1,400 square feet in dimension, and the enclosure as it is in the plans today is about 10 feet wide, eight feet deep, and seven feet high, and its walls will be about a foot thick. We feel that ... if we are asked to build this enclosure as it is it would compete with the main building for attention, and I believe ... that's not the intention of the Council that the dumpster should be somewhat camouflaged....

The actual dumpster container that is sitting there right now is only four feet deep, six feet wide, and five and a half feet high, that's the actual metal container that's there in which the garbage is disposed. So, to build such a big structure really serves no purpose, in fact it is counterproductive.

If we are allowed to build a smaller wooden enclosure we will get one additional parking space ... and I'm sure that will benefit the ... customers, and public in general. And where this dumpster pad is located on, behind the pad and to the right side of the pad is wooden fence on both these sides, so if we are allowed to build a wooden enclosure it would kind of merge very well with the background and would not, you know, stand out seeking attention. And these wooden enclosures [are] not new or something unique that we are asking for, we are in the EYA development in Hyattsville Town Center, and many of the

houses or the apartment complexes are served by these dumpsters which are enclosed in wooden enclosures. And then, of course, the cost of building a brick and mortar dumpster enclosure is much more than a wooden dumpster enclosure.

(August 14, 2017, T. 4-6)

(4) Mr. Khandpur noted that it would cost between \$18,000 to \$20,000 to construct the enclosure as currently approved in the detailed site plan. (August 17, 2017, T.8)

(5) Mr. Jagjot Singh Khandpur appeared at the remand hearing and presented a revised Site Plan. (Rem. Rec. Exhibit R-8)²

(6) Mr. Khandpur explained that the Subway building will be undergoing reimaging shortly. It will remain brick but the awnings may change. Accordingly, Applicant asks that Condition 1(k) be revised to simply require a board-on-board wood enclosure for the dumpster. The revised site plan includes a note allowing the dumpster enclosure to be made of wood.

CONCLUSIONS OF LAW

(1) Pursuant to Section 27-135(c), infra, the District Council may amend the conditions for good cause. Good cause has not been shown to accept the revised condition as proffered. Applicant has indicated that it would be expensive to construct the enclosure as approved, and that there could be an additional parking space provided the condition is revised. However, Applicant did not submit any invoice supporting the cost, and the revised site plan does not show an additional parking space.

(2) The dumpster is adjacent to the fence surrounding the EYA townhouse development. It is possible that the requested change to match that fencing would still satisfy the Gateway Arts District standards discussed above. Moreover, Applicant does not know what color will be approved for the store's awnings, so there is good cause to remove the requirement that the dumpster enclosure's gate be green. For these reasons, I find good cause exists to revise 1(k), and 1(s)(5) to allow a wooden enclosure of the dumpster.

RECOMMENDATION

(1) I would recommend that Condition 1(k) of the District Council's approval of DSP-11017 be revised to allow wood fencing in lieu of a total brick exposure, as provided in Note 20 of the revised Detailed Site Plan:

² No one else was present at the remand hearing.

20. Dumpster enclosure to be made of wood, large enough to enclose existing ballard and concrete dumpster pad, and should follow manufacturer's specifications. Wood fencing shall be opaque and constructed of vertically – run slats that are not less than three (3) inches and not more than six (6) inches in width. Dumpster enclosure gates should be durable, decay-resistant exterior-grade treated lumber and should incorporate cross bracing.

(Rem. Rec. Exhibit R-8)

(2) Condition 1(s)(5) could be deleted in its entirety since it would be incorporated in the new condition 1(k). The revised Detailed Site Plan should be submitted to the Planning Board or its designee for review and approval.