

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

**ZONING MAP AMENDMENT
A-10020-C/01**

DECISION

Application:	Amendment of Conditions
Applicant:	Woodmore Overlook Commercial, LLC
Opposition:	Lake Arbor Civic Assn., Samuel Dean, LaRay Benton
Hearing Dates:	October 7, 2020, November 30, 2020 and December 14, 2020
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) The subject property is located on Tax Map 60 in Grids E-3 and E-4, in Planning Area 73, and consists of approximately 18.33 acres of M-X-T (Mixed Use -Transportation Oriented) zoned land located in the northwest quadrant of the intersection of Landover Road (MD 202) and Lottsford Road.¹ It consists of six parcels and one outparcel, and is bound to the northeast by Ruby Lockhart Boulevard, to the south by Landover Road (MD 202), to the southeast by Lottsford Road, to the east by a church located in the I-3 (Planned Industrial/Employment Park) Zone, and to the west by vacant land in the M-X-T-Zone.

(2) Applicant purchased the property from Ludlow King, III in 2018, subsequent to the approval of the Conceptual Site Plan for the property and the initial Preliminary Plan of Subdivision. (Exhibits 3, 25, 33(a) and 33(b))

(3) A-10020-C is before the District Council upon a request for the amendment of all conditions of approval specifically related to transportation improvements set forth in Conditions 5.a and 5.b; 6; 7; and 8 imposed by the District Council upon its adoption of Zoning Ordinance 6-2010, which rezoned the subject property from the I-3 (Planned Industrial/Employment Park) Zone to the M-X-T (Mixed Use-Transportation Oriented) Zone. At the second hearing Applicant realized that it had inadvertently omitted Condition 4 (another pertaining to transportation provisions) and was given leave to amend its

¹ The subject property was part of a larger 45.93-acre parcel rezoned to the M-X-T Zone on July 12, 2010 upon the District Council's approval of A-10020-C and adoption of Zoning Ordinance No. 6-2010.

request to include this condition. The final hearing was held to allow all parties the opportunity to review the revised request and to either cross-examine Applicant's witness or offer testimony thereon.

(4) The Honorable Samuel Dean appeared in opposition to the request on his own behalf and on behalf of the Lake Arbor Citizens Association, as did Mr. LaRay Benton.

(5) The record of the original Application A-10000-C has been made a part of the record and incorporated herein by reference.

(6) At the conclusion of the final hearing², the record was left open to receive a written version of Mr. Dean's testimony. That item was received on December 14, 2020, and the record was closed at that time. (Exhibit 40)

PROCEDURAL MATTER

(1) Mr. LaRay Benton appeared in opposition to the Application and requested that I rule on his procedural objection thereto prior to the start of the November 30, 2021 hearing.³ The gist of Mr. Benton's objection was that he had appealed prior decisions by the District Council and Planning Board pertaining to the subject property (the District Council's approval of A-10020-C and DSP-18024, and the Planning Board's approval of Preliminary Plan of Subdivision ("PPS") 4-18007), these appeals are still pending in the Court of Special Appeals, and this Examiner, therefore, has no jurisdiction to hear the request. (November 30, 2020 T.9-10) Attorneys for the Applicant responded that Mr. Benton is not aggrieved and therefore has no standing to appeal any of the decisions; additionally they argue he has no meritorious arguments. (November 30, 2020 T.11-13) Applicant's attorneys also noted that Maryland Rule 7-205 expressly notes that filing an appeal of an administrative agency does not automatically stay the order or action of an administrative agency.

(2) Mr. Benton admits that he has not requested nor been granted a stay of this proceeding while the Court reviews the various administrative actions that he has challenged. (November 30, 2020 T. 18) Accordingly, I find that the pendency of appeals of prior decisions by the District Council and the Planning Board on other Applications concerning the subject property does not negate my ability to hear the instant Application.

² The October hearing was continued due to a sign posting error.

³ Mr. Benton and the Applicant submitted legal argument and copies of pleadings filed in the Circuit Court and Court of Special Appeals in support of, and opposition to, Mr. Benton's belief that I have no jurisdiction to hear the instant request. I did not include any of these written documents in the record but did include each in the file of this Application in case my ruling on their admissibility is subject to review at a later time.

FINDINGS OF FACT

Prior approvals

(1) On October 26, 2010, the District Council gave final approval to A-10000-C subject to the following conditions:

1. The applicant shall observe these recommendations should be observed during the preparation and review of the Conceptual Site Plan (CSP):
 - a. The site plan shall provide adequate open space at the perimeter, as determined by the Urban Design Section, to serve as a buffer between the project and adjacent lower-density residential development and the church.
 - b. Wherever possible, living areas shall be linked to community facilities, transportation facilities, employment areas, and other living areas by a continuous system of pedestrian walkways and bike trails utilizing the open space network.
 - c. Buffering in the form of landscaping, open space, berming, attractive fencing, and/or other creative site planning techniques should be utilized to protect existing residential areas, particularly those interfaces with the multifamily buildings in Phase 1 and that adjoining the church in Phase 2.
2. All future submissions for development activities on the subject property shall contain the following:
 - a. A signed Natural Resources Inventory (NRI).
 - b. A Tree Conservation Plan that covers the entire subject property.
3. At the time of CSP review, the Applicant and staff of the Department of Parks and Recreation shall develop a mutually acceptable package of parkland, outdoor recreational facilities, fees, or donations to meet the future needs of the residents of the planned retirement community.
4. The Conceptual Site Plan shall show right-of-way along I-308 (Ruby Lockhart Boulevard) and I-310 (the ramp/roadway linking Ruby Lockhart Boulevard and MD 202) consistent with Master Plan recommendations. This right-of-way shall be shown for dedication at the time of Preliminary Plan of Subdivision.
- 5.a. Total development within the subject property shall be limited to uses which generate no more than 514 AM and 963 PM peak-hour vehicle trips. Any

development generating a greater impact shall require an amendment of conditions with a new determination of the adequacy of transportation facilities.

- 5.b. The applicant shall make these improvements:
- (1) MD 202 at Saint Joseph Drive – Provide a third southbound left-turn lane along the southbound MD 202 approach.
 - (2) MD 202 at Lottsford Road – (i) Convert the existing eastbound right-turn lan[e] to a shared through/right-turn lane; (ii) Convert the westbound shared through/left turn lane to left-turn only (maintaining two (2) through lanes and two (2) left-turn lanes; (iii) Change the existing split-signal phasing to concurrent phasing on the Lottsford Road approaches; and (iv) Modify the median and signals accordingly, as required by the operating agency.
 - (3) Lottsford Road at Campus Way North -- Provide a second southbound left-turn-lane along Campus Way.
6. All required transportation facility improvements shall be determined at the time of subdivision approval.
7. Prior to the issuance of any commercial building permits within the subject property under Phase II, all required road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency.
8. Prior to the approval of the initial Detailed Site Plan, the Applicant shall submit an acceptable traffic signal warrant study to the Department of Public Works and Transportation (DPW&T) for signalization at the intersection of Lottsford Road and Ruby Lockhart Boulevard/Palmetto Drive. The Applicant should utilize a new 12-hour count, and should analyze signal warrants under total future traffic as well as existing traffic at the direction of DPW&T, and examine alternatives to signalization for reducing delays from the minor street approaches. If signalization or other traffic control improvements are deemed warranted at that time, the Applicant shall bond the improvements with DPW&T prior to the release of any building permits within the subject property, and complete installation at a time when directed by DPW&T. Such installation shall also include the restriping and/or minor widening of the northbound Palmetto Drive approach to provide two approach lanes to the intersection.
9. Prior to the approval of the initial commercial Detailed Site Plan under Phase II, the Applicant shall submit an acceptable traffic signal warrant

study to the Department of Public Works and Transportation (DPW&T) for signalization at the intersection of Ruby Lockhart Drive and the commercial access. The Applicant should utilize a new 12-hour count, and should analyze signal warrants under total future traffic as well as existing traffic at the direction of DPW&T, and examine alternatives to signalization for reducing delays from the minor street approaches. If signalization or other traffic control improvements are deemed warranted at that time, the Applicant shall bond the improvements with DPW&T prior to the release of any commercial building permits under Phase II, and complete installation at a time when directed by DPW&T.

10. There shall be no direct driveway access between the subject property and Landover Road (MD 202).
11. The Applicant shall provide eight-foot wide sidewalks and designated bike lanes along both sides of the subject site's portion of Ruby Lockhart Boulevard (consistent with approvals for the Woodmore Town Center), unless modified by DPW&T.

(Exhibit 3)

(2) In 2019, the District Council heard Applicant's, Mr. Benton's and the Association's appeal of the Planning Board's approval of a Detailed Site Plan for the subject property ("DSP-18024"). Mr. Benton raised certain allegations as to the propriety of Applicant's actions that were unrelated to the Detailed Site Plan and the District Council did not find any of them persuasive. (Exhibit 11, pp. 2-3) The Association challenged Applicant's Grand Way Boulevard access to Landover Road (MD 202) primarily on the ground that the right-of-way was not identified in the Countywide Master Plan of Transportation. The District Council found this ground to be "without merit because Grand Way Boulevard *has* been identified in the County's Transportation Master Plan." (Exhibit 11, p. 4)

(3) The District Council then discussed its decision approving the rezoning of the subject property and the conditions of approval (set forth above) attached to the rezoning, the Planning Board's conditions of approval in CSP-10004 for the subject property which appeared to have revised Conditions 4, 5.b, 6 and 7 of Zoning Ordinance 6-2010, and the District Council's subsequent review of the CSP which included a Condition 8 noting that the CSP "is subject to the requirements of Zoning Map [A]mendment A-10020-C." (Exhibit 11, pp. 8-9) Finally, the District Council discussed two approved Preliminary Plans of Subdivision for the property, a discussion that sheds light on the instant request:

In March 2012, the Board ... approved Preliminary Plan of Subdivision 4-10022.... PPS 4-10022 required I-310, also known as Grand Way Boulevard, to be a ramp connecting a grade elevated crossover of MD-202 from McCormick Drive to St. Joseph's Drive. The ... 2009 Approved Countywide Master Plan of Transportation...[and the] 1990 Largo-Lottsford Master Plan and Sectional Map Amendment [both depicted] the ramp and the

flyover of MD -202. Pursuant to PPS 4-10022, to satisfy Adequate Public Facilities (APF) test for traffic, development of the property was divided into Phase I (Residential) and Phase II (Commercial). Part of mitigation to satisfy APF was dedication and construction of the “ramp” to the overpass. PPS 4-10022 required the ramp to connect to MD-202 when the flyover was constructed. I-310 is intended to be a ramp and not a road because the connection to MD-202 is not to be made until the flyover is built over MD -202 from McCormick Drive to St. Joseph’s Drive....

In March 2019, the Board approved Preliminary Plan of Subdivision 4-18007 PPS 4-18007 indicates the ramp and the flyover are required to be funded and/or constructed when the I-310 road is built *and before any* commercial permits are issued.... With respect to Conditions 4, 5.b., 6 and 7 of the underlying rezoning the Board made findings as follows:

Condition 4:

This condition requires that the right-of-way for the I-308 and the I-310 facilities be shown on the CSP and shall be shown for dedication on the PPS. Both facilities are adequately shown on the submitted plan....

Condition 5.b:

This condition requires physical improvements at three locations within the study area. This condition is enforceable at the time of the first commercial building permit. It is noted that the conditioned improvements at MD 202 and Saint Joseph’s Drive have been constructed by others and that the conditioned improvements at MD 202 and Lottsford Road are to be amended pursuant to Section 27-213 (a)(3)(B) of the Prince George’s County Zoning Ordinance....

Condition 6:

This condition affirms that the needed transportation improvements shall be determined at the time of subdivision approval, and that is done herein....

Condition 7:

The instant application is Phase II of the development approved with A-10020-C. This condition is not yet applicable and will be enforced in the future....

Despite prior approvals and findings by the Board, DSP-18024 was not reviewed and approved pursuant to certain rezoning conditions imposed by Council in 2010. The Board and Staff did not review DSP-18024 for conformance or compliance with rezoning Conditions 4, 5.b, or 6.... Council has never amended or deleted [these conditions] – nor has any applicant ever filed an appropriate request to amend said conditions....

To the extent DSP-18024 proposes to relocate the I-310 road from north to south on its property, the Master Plan of Transportation and the Largo-Lottsford Master Plan show the I-310 right-of-way ramp alignment across the commercial parcel/lot where the applicant proposes to construct a gas station and food and beverage store.... Council may authorize the issuance of a building permit to construct within proposed rights-of-way, but no written request has been made by this applicant....

Prior to certification, the applicant ... shall revise the detailed site plan to show proposed gas station and food and beverage store will not be constructed within a proposed right-

of-way unless there has been an issuance of a building permit to construct the proposed gas station and food and beverage store within a proposed right-of-way pursuant to procedures set forth in ...[Prince George's County Code Section] 27-259....

(Exhibit 11, pp. 9-13)

In short, the District Council recognized that a ramp and flyover were described in the appropriate plans but required the approval of a request to build within the right-of-way before they could be constructed in the manner approved by the Planning Board. It also noted that Applicant had not filed the proper applications to amend the transportation conditions imposed by the District Council in its approval of A-10020-C. (See, Rochow v. Md. Nat'l Capital Park & Planning Commission, 151 Md. App. 558, 827 A 2d 927 (2003)) Thus, the conditions remained.

(4) The Technical Staff reviewed Applicant's request for reconsideration of the Planning Board's decision on Preliminary Plan of Subdivision ("PPS") 4-18007, and offered the following analysis in support of the request:

The applicant's specific request is for reconsideration of Condition 6(a) and 6(b), which are related to the requirement of off-site road improvements that were the result of prior adequacy requirements that are no longer applicable.

The site was originally subdivided by means of PPS 4-10022 as the King Property. At that time, the site included a residential parcel to the east of this site across Ruby Lockhart Boulevard, along with the subject property, which was approved with commercial uses. PPS 4-10022 received an entitlement trip cap of 514 AM and 963 PM peak-hour trips. Several years later, the residential parcel was resubdivided pursuant to PPS 4-16019, and that site was subsequently developed with townhouses.

In 2019, PPS 4-18007 was approved as a resubdivision of the commercial parcel of PPS 4-10022. Materials provided at that time by the applicant showed an intention to retain the original trip cap, less the trips assigned to PPS 4-16019, even though a less trip-intensive program of development was being proposed by the applicant. During the process of staff review, a lower trip cap, consistent with the applicant's proposal, was formulated and this lower trip cap of 364 AM and 347 PM peak-hour trips was incorporated into the staff recommendation, approved by the Planning Board, and incorporated into PGCPB Resolution No. 19-32. While the applicant agreed to this reduction, the traffic impact study was never updated to confirm how this change affected the findings of the staff report.

The applicant eventually determined that the lower trip cap assigned to the site resulted in a change to the scope of off-site transportation improvements that would be required. The applicant provided a report dated September 2019 that detailed the impacts to the off-site improvements caused by the lower trip cap and, based on this report, the reconsideration was eventually requested....

Given the analysis prepared by the applicant and the supporting recommendations of the Transportation Planning staff, a modified condition is recommended which would allow construction of an additional southbound left-turn lane from MD 202 onto eastbound Lottsford Road, and construction of the entire roadway between MD 202 and Ruby Lockhart Boulevard within the dedicated right-of-way to County standards.

Based on the findings above, staff finds that adequate transportation facilities will exist to serve the proposed development, as required under Section 24-124 of the Subdivision Regulations, and recommends approval of the reconsideration for the amendment of Condition 6 and Finding 10 of PGCPB Resolution No. 19-32 for the Woodmore Overlook Commercial subdivision, as provided within the Transportation Planning Section memorandum dated April 1, 2020....

(Exhibit 23, pp. 2-4)

(5) The Planning Board agreed with Staff and on May 7, 2020 adopted an Amended Resolution, 1932(A) for Preliminary Plan of Subdivision ("PPS") 4-18007. This Resolution provides, in pertinent part, as follows:

5. Total development within the subject property shall be limited to uses which generate no more than 364 AM and 347 PM peak-hour vehicle trips. Any development generating an impact greater than that identified herein above shall require a new preliminary plan of subdivision, with a new determination of the adequacy of transportation facilities....
6. Prior to issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances; (b) have been permitted for construction through the operating agency's access ... process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency (with improvements designed, as deemed necessary, to accommodate bicycles and pedestrians):
 - a. MD 202 AT Lottsford Road: Construct an additional southbound left-turn lane (to create a triple left-turn lane) from MD 202 onto eastbound Lottsford Road, along with necessary signal modifications to support the triple left turn.
 - b. I-310/Grand Way Boulevard: Construct the entire roadway between MD 202 and Ruby Lockhart Boulevard within the dedicated right-of-way to County standards....
7. Prior to approval of the initial commercial detailed site plan, the applicant shall submit an acceptable traffic signal warrant study to the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) and/or the Prince George's County Department of Public Works and Transportation (DPW&T) for signalization at the intersection of Ruby Lockhart Drive and the commercial access. The applicant shall utilize a new 12-hour count and shall analyze building permits under Phase II, and complete installation at a time when directed by DPIE/DPW&T....

(Exhibit 16, pp. 3-4)

(6) In its reconsideration of PPS 4-18007 the Planning Board also reviewed the conditions at issue in this request (Conditions 4,5, 6, 7 and 8 of Zoning Ordinance 6-2010) and provided the following comments:

4. The Conceptual Site Plan shall show right-of-way along I-308 (Ruby Lockhart Boulevard) and I-310 (the ramp/roadway linking Ruby Lockhart Boulevard and MD 202) consistent with Master Plan recommendations. This right-of-way shall be shown for dedication at the time of Preliminary Plan of Subdivision.

This condition requires that the right-of-way for the I-308 and the I-310 facilities be shown on the CSP and shall be shown for dedication on the PPS. Both facilities are adequately shown on the submitted plan.

5.a. Total development within the subject property shall be limited to uses which generate no more than 514 AM and 963 PM peak-hour vehicle trips. Any development generating a greater impact shall require an amendment of conditions with a new determination of the adequacy of transportation facilities.

This subdivision, in combination with PPS 4-16019, is within the trip cap established with this condition.

5.b. The applicant shall make these improvements:

- (1) MD 202 at Saint Joseph's Drive – Provide a third southbound left-turn lane along the southbound MD 202 approach.
- (2) MD 202 at Lottsford Road – (i) Convert the existing eastbound right-turn lane to a shared through/right-turn lane; (ii) Convert the westbound shared through/left turn lane to left-turn only (maintaining two (2) through lanes and two (2) left turn lanes, (iii) Change the existing split signal phasing to concurrent phasing on the Lottsford Road approaches, and (iv) Modify the median and signals accordingly, as required by the operating agency.
- (3) Lottsford Road at Campus Way North-Provide a second southbound left turn lane along Campus Way.

This condition requires physical improvements at three locations within the study area. This condition is enforceable at the time of the first commercial building permit. It is noted that the conditioned improvements at MD 202 and Saint Joseph's Drive have been constructed by others and that the conditioned improvements at MD 202 and Lottsford Road are to be amended pursuant to Section 27-213(a)(3)(B) of the Prince George's County Zoning Ordinance.

6. All required transportation facility improvements shall be determined at the time of subdivision approval.

This condition affirms that the needed transportation improvements shall be determined at the time of subdivision approval, and that is done herein.

7. Prior to the issuance of any commercial building permits within the subject property under Phase II, all required road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed upon timetable for construction with the appropriate operating agency.

The instant application is Phase II of the development approved with A-10020-C-01. This condition sets bonding and permitting requirements for needed roadway improvements. This condition is not yet applicable and will be enforced in the future.

8. Prior to the approval of the initial Detailed Site Plan, the Applicant shall submit an acceptable traffic signal warrant study to the Department of Public Works and Transportation (DPW&T) for signalization at the intersection of Lottsford Road and Ruby Lockhart Boulevard/Palmetto Drive. The Applicant should utilize a new 12 hours count and should analyze signal warrants under total future traffic as well as existing traffic at the direction of DPW&T, and examine alternatives to signalization for reducing delays from the minor street approaches. If signalization or other traffic control improvements are deemed warranted at that time, the Applicant shall bond the improvements with DPW&T prior to the release of any building permits within the subject property, and complete installation at a time when directed by DPW&T. Such installation shall also include the restriping and/or minor widening of the northbound Palmetto Drive approach to provide two approach lanes to the intersection.

This condition requires submittal of a signal warrant study at the time of the initial DSP at Lottsford Road at Ruby Lockhart Boulevard/Palmetto Drive. That signal has been studied, determined to be warranted, and has been bonded and permitted by the County for installation....

(Exhibit 16, pp. 7-9)

Applicant's request

(7) Applicant initially requested that the transportation conditions set forth in Zoning Ordinance 6-2010, above, be revised as follows:

Please be advised that I represent Woodmore Overlook Commercial, LLC, the applicant and owner of the property identified in DSP-18024 (PGCPB No. 19-32). In accordance with Section 27-135(c) of the Zoning Ordinance, the Applicant hereby requests that the District Council amend the conditions of approval

contained in Zoning Ordinance 6-2010 dated July 10, 2010, in A-10020-C. Specifically, the Applicant requests that all conditions relating to transportation facilities be replaced with the conditions of approval for 4-18007.

Substantively, 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.”

Specifically, this request relates to transportation improvements set forth in Conditions 5.a and 5.b; 6; 7; and 8. Condition 6 of Zoning Ordinance 6-2010 for A-10020-C states the following:

“6. All required transportation facility improvements shall be determined at the time of subdivision approval.”

Preliminary Plan of Subdivision 4-18007 was approved by the Planning Board in March 2019 (PGCPB Resolution No. 19-32) and superseded the previous Preliminary Plan for the site, 4-10002. Conditions 6 and 7 are the only two conditions of PPS 4-18007 related to transportation facility improvements as follows:

“6. Prior to issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency’s access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency (with improvements designed, as deemed necessary, to accommodate bicycles and pedestrians):

a. MD 202 at Lottsford Road: *[Convert the existing eastbound right-turn lane to a shared through/right-turn lane] Construct an additional southbound left-turn lane (to create a triple left-turn lane) from MD 202 onto eastbound Lottsford Road, along with necessary signal modifications to support the triple left turn.

~~*[b. Lottsford Road at Campus Way North: Provide a second, southbound, left-turn lane along Campus Way.]~~

~~*[c.]b. I-310/Grand Way Boulevard: Construct the entire roadway between MD 202 and Ruby Lockhart Boulevard within the dedicated right-of-way to County standards.”~~

“7. Prior to approval of the initial commercial detailed site plan, the applicant shall submit an acceptable traffic signal warrant study to the Prince George’s County Department of Permitting, Inspections and Enforcement (DPIE) and/or the Prince George’s County Department of Public Works and Transportation (DPW&T) for signalization at the intersection of Ruby Lockhart Drive and the commercial access. The applicant shall utilize a new 12-hour count and shall analyze signal warrants under total future traffic, as well as existing traffic, at the direction of DPW&T. If signalization or other traffic control improvements are deemed warranted at that time, the applicant shall bond the improvements with DPIE/DPW&T prior to release of any building permits under Phase II, and complete installation at a time when directed by DPIE/DPW&T.”

While Zoning Ordinance 6-2010 for A-10020-C included several conditions relating to transportation improvements (namely Conditions No. 5.a, 5.b, 7, and 8), Condition 6 explicitly states that **“All required transportation facility improvements shall be determined at the time of subdivision approval.”** Therefore, we request that the District Council: (1) delete Conditions No. 5.a, 5.b, 7, and 8, of Zoning Ordinance 6-2010 for A-10020-C (2) amend the Findings accordingly; and (3) carry forward the appropriate conditions of 4-18007 as the transportation conditions for A-10020-C.

(Exhibit 2)

(8) Subsequent to the November 30, 2020 hearing Applicant revised its request to include the following justification for the removal/revision of Condition 4:

I represent Woodmore Overlook Commercial, LLC, the applicant and owner of the property identified in DSP-18024; Preliminary Plan 4-18007; and A-10020-C (Ex. 21, 16, and 20). As was determined at our hearing before the Zoning Hearing Examiner on November 30, 2020, I am amending our request for a hearing on December 14, 2020. This amendment is to request the Examiner include a request to delete Condition No. 4 of A-10020-C as well as our prior requests.

Condition No. 4 of A-10020-C states:

"The Conceptual Site Plan shall show right-of-way along I-308 (Ruby Lockhart Boulevard) and 1-310 (the ramp/roadway linking Ruby Lockhart Boulevard and MD 202) consistent with Master Plan recommendations. This right-of-way shall be shown for dedication at the time of Preliminary Plan of Subdivision."

In this case, my client purchased the property subsequent to the approval of

CSP-10004 (Ex. 25) and Preliminary Plan 4-10022 (Ex. 3) on January 30, 2018. As to CSP-10004, the Planning Board found in both instances Condition No. 4 was satisfied as 1-308 and 1-310 were correctly shown on the CSP (see page 15-16 of PGCPB Resolution No. 11-116 adopted January 5, 2012). The District Council affirmed the Planning Board with conditions by Order dated March 26, 2012. Lastly, the certified CSP (enclosed) shows both 1-308 and I-310.

The following preliminary plan processed by Mr. King (4-10022), the prior owner, also indicated that Condition 4 of A-10020-C was satisfied on page 9 of PGCPB Resolution No. 12- 13:

"The Conceptual Site Plan shall show right-of-way along 1-308 (Ruby Lockhart Boulevard) and 1-310 (the ramp/roadway linking Ruby Lockhart Boulevard and MD 202) consistent with Master Plan recommendations. This right-of-way shall be shown for dedication at the time of Preliminary Plan of Subdivision."

The above condition has been addressed. Facilities for the I-308 and the I-310 were shown on the conceptual site plan consistently with master plan recommendations. The preliminary plan shows the proposed right-of-way dedication for I- 308 and I- 310."

My client purchased the property on January 30, 2018 (Ex. 33.a. and b.) and began processing a preliminary plan (4-18007). As testified to by Mr. Lenhart, our traffic engineer, the applicant determined in conjunction with the Maryland State Highway Administration (SHA); the Department of Permits, Inspections, and Enforcement (DPIE); and the Transportation Section of the M-NCPPC the exact location and design for 1-310. The County approved the alignment and design and issued a street permit for construction, 2300-2019 (Ex. 15). The applicant has since constructed I-310 now known as Grand Way Boulevard (Ex. 35) as required by the 2009 Master Plan of Transportation (Enclosed). As to I-308 (Ruby Lockhart Boulevard), the roadway was dedicated and also constructed as shown on DSP-18024.

Given that both I-308/1-310 are dedicated and constructed, we respectfully submit there is " good cause" as required by Section 27-135.c.1 of the Code to delete Condition No. 4 with a finding that the requirements of Condition No. 4 of A-10020-C have been satisfied in full. The issue of "enlargement or extension" is moot as the roads are a requirement of A-10020-C and all subsequent approvals. Hence, they are not an enlargement nor an extension of the use being on site. In fact, there is less development than that originally approved with A-10020-C as our expert testified to and in the record of DSP-18024 approved by the District Council and 4-18007 as reconsidered by the Planning Board (PGCPB No. 19-32 (A)).

(Exhibit 37)

(9) Michael Lenhart, accepted as an expert in the area of transportation planning, offered the following testimony in support of the request:

Mr. Lenhart: [T]he original Preliminary Plan was based on a trip cap that was established in the original A-10020 and the trip cap got reduced at the time of the 4-18007 Preliminary Plan based on the Detailed Site Plan 18024 that was forthcoming at the same time and the reduced program resulted in a significant reduction in the trip cap, which was not acknowledged in the initial traffic study that we conducted for the Preliminary Plan 4-18007.

Mr. Rivera: As I recall the original A case and the CSP and the Preliminary Plan approved ... had [AM] and [PM] trip hour caps of 514 [AM] and 963 [PM] peak hour trips with [the] original development program. Based upon the new development program, is it our understanding that the Planning Board recommended approval of a much lower trip cap of 364 [AM] and 347 [PM] peak hour trips for those same intersections?

Mr. Lenhart: That's correct. And the Preliminary Plan that was approved, 4-18007 [-] at the time of the initial approval of that Preliminary Plan ... the traffic study was still based upon 514 [AM] and 963 [PM] trips. And the offsite improvements that were a condition of approval were still based upon those higher trip caps. [T]he reduction in the trip cap that was applied at that Preliminary Plan resulted in fewer offsite trips that were needed. And so we conducted a revised traffic study and applied for a reconsideration based upon the lower trip cap and that reconsideration resulted in identifying the fact that fewer offsite improvements were needed....

So Condition 6A, B and C were the original conditions [in the Planning Board's resolution approving the original Preliminary Plan]. 6A was a set of improvements that was required at Maryland 202 and Lottsford Road. That set of improvements was revised to modifying right turn lane on eastbound Lottsford Road to a shared through right. That was replaced with constructing a third left turn lane from southbound Maryland 202 onto eastbound Lottsford Road. So that is the new Condition A, a triple left turn.

Condition B is improvements of Lottsford Road and Campus Way North and that condition is no longer required. The intersection of Lottsford Road at Campus Way North was determined to pass the adequate public facilities test based on the lower trip cap. And ... the trip cap was reduced by ... close to 60 percent reduction ... a substantial reduction and that is why 6B is no longer need[ed].

Condition 6C becomes 6B and that is simply to construct the I-310 roadway between the northbound Maryland [202] and Ruby Lockhart Boulevard....

Mr. Rivera: Back when the zoning case was approved in A-10020 there was a

different set of conditions.... Mr. Lenhart, can you go through [conditions]4A, 5A, 5B and then finally 6 and that relationship now of our new conditions as it relates to 4A, 5A, 5B and 6....

Mr. Lenhart: Certainly. So Condition 4 is simply that the CSP shall show right-of-way along I-308 and I-310 consistent with Master Plan recommendations and that the right-of-way shall be shown and dedicated at the time of Preliminary Plan. In fact, the Preliminary Plan has occurred for Woodmore Commercial which is the 18007 and then Woodmore Residential which was the ... residential development to the east side of Ruby Lockhart Boulevard adjacent to the subject Preliminary Plan 18007 and the right-of-way for I-308 and I-310 have been fully dedicated and [/]or dedeed to the county and ...have been constructed.... So this Condition 4 really is satisfied....

Mr. Rivera: Mr. Lenhart, in your review of those prior conditions of approval that mentioned ... [I-310] ... as a proposed ramp/roadway connecting to a ramp flyover connecting McCormack Drive to St. Joseph's Drive over [MD] 202 ...[d]id you approach the relevant agencies to determine the appropriate location of I-310 not only as to location along Ruby [Lockhart Boulevard] and 202 as to their access points but also to its design...?

Mr. Lenhart: Yes we did. We met with transportation staff, Mr. Masog.... We met with Kwasi Woodruff at State Highway Administration... and we also consulted with DPIE on the location of the roadway. The primary consultation in these discussions was with State Highway Administration due to the P.G. Atlas shows the Master Plan location of I-310 at the northern property line where it connects between northbound [MD] 202 and Ruby Lockhart Boulevard. That location is located if you look at a map or an aerial photo you can see that P.G. Atlas location is within the functional area of the turn lanes at the [MD] 202 and St. Joseph's Drive intersection. State Highway Administration does not like access points to be located within the functional area of the turn lanes. And by functional area it's within the ... existing deceleration lane that's out there today and has been out there for many years. And so we've met with State Highway Administration to discuss the appropriate location and it was determined by the state that that access, the I-310 should be shifted and it was shifted roughly 240 feet ... and that moved to I-310 out of the deceleration lane from St. Joseph's Drive and allowed us to construct ... a full deceleration lane into I-310 along with an acceleration lane that then tied into the deceleration lane for St. Joseph's Drive. That was what State Highway supported and wanted us to do. We agreed to that. We met with Mr. Masog and discussed the issue with him. Mr. Masog agreed that that made sense and as a result that is what was done.

[I]t is standard practice and it has been done many, many times where a Master Plan roadway that's shown on the Master Plan can be shifted and moved within a property so long as it does not encumber or affect an adjacent property....[W]hen a master planned road is moved after a Master Plan has been approved and a Transportation Plan has been approved, it can't be moved such that it impacts

another property, or encumbers another property when they haven't had an ability to review that through a public process....

And in this case, the shifting of that I-310 number one it did not affect any other properties, did not encumber any other properties. Number two, it was reviewed and approved by the operating agencies. And number three it does improve the location of the access by moving I-310 out of the functional area of adjacent intersections. And number four, it does not change the intent of the Master Plan. I-310 is not a ramp, it's not a flyover, it is an at grade connection that connects northbound Route 202 to Ruby Lockhart Boulevard at grade at both locations and the flyover in the Master Plan, when you hear the word flyover, the flyover is that there's a future desire to take St. Joseph's Drive and raise it and have it go over Route 202 and there would be roadway links on either side of 202 that would provide connectivity back to 202....

And ... I believe that we satisfied already Condition 4 because that simply says show the right-of-way at time of CSP, show it for dedication at time of Preliminary Plan, now consistent with Master Plan recommendations [-] that may be the term that people are getting hung up on. But again, there are numerous cases where right-of-way has been shifted. It doesn't have to be right in the exact location shown on P.G. Atlas. It can be moved and it has been moved many times when it doesn't affect other properties or the intent of the Master Plan....

Mr. Brown: Mr. Lenhart, I mean I understand exactly what you said concerning the Master Plan. But as I indicated earlier, I need somebody to say that on the record, I don't want that to be implied.... With regards to the so-called ramp or flyover, was it originally proposed as part of the original rezoning for this property in A-10020 or was it originally proposed as part of the Master Plan?

Mr. Lenhart: So the flyover at St. Joseph's Drive and Route 202 is part of the Master Plan.... The roadways I-310 and I-308 are connector roads, they're not ramps... and so you know I would say that the use of the word ramp in Condition 4 is really not appropriate. The roadway linking Ruby Lockhart and northbound Maryland 202 is what it is, but it's not a ramp.

(November 30, 2020 T. 22-28, 34-38)

(10) Upon cross examination at the final hearing Mr. Lenhart again clarified why he believed that the construction of I-308 and I-310 were in harmony with the Master Plan:

Mr. Benton: [Y]ou stated that ... if the request is approved today, that it wouldn't be a change in the Master Plan for the site However ... the terms ... roadway and ... ramp are within the 2009 Master Plan. So ... I'm trying to understand your basis for stating ... that this particular request is not requesting a change to the Master Plan.

Mr. Lenhart: Because it's not. The Master Plan calls for I-310 and I-308

connections [- they] are not ramps, they're not interchanges, they're not grade separated anything. They are roadway connections that connect Road A to Road B. The overpass ... is St. Joseph's Drive at Route 202. That is not on our site, it's not connected to our site, it's not our frontage, it's offsite. I-310 is not a ramp for that movement, it's a roadway connector-connecting their various roads and links. And so this is not a change to the Master Plan....

(December 14, 2020 T. 22-23)

(11) Finally, Mr. Lenhart opined there is good cause to grant the instant request:

[T]he good cause is the fact that the amount of traffic generated by the proposal as ... the project does now propose and approved is much lower ... over 50 percent reduction than the original trip cap. And so the associated conditions of approval for offsite requirements should be reduced accordingly....

(November 30, 2020 T. 40-41,)

(12) Mr. Tom Masog, a member of the Technical Staff and employee of the Maryland-National Capital Park and Planning Commission testified to clarify Mr. Brown's question concerning the Master Plan's treatment of the rights-of-way at issue:

The Preliminary Plan dedicated all needed rights-of-way, it dedicated appropriate right-of-way along Ruby Lockhart, it dedicated 70 feet of right-of-way along Grand Way Boulevard. And actually ... the Preliminary Plan reflected the right-of-way along Grand Way Boulevard, it was previously dedicated by this applicant....

[W]e have done a lot of soul searching in the Planning Department about Master Plans, P.G. Atlas and anything that sort of comes in between or outside of that. The Master Plan is, it is a guiding document. Our Associate General Counsel has told us that particularly in something from 1990 where there are no property lines you can't set up a precise alignment for any of the Master Plan facilities. Most of them are, they're shown as additional dedication along existing roads, that's easy to interpret. Roads that are on new alignments like I-310 ... [w]here they're on a new alignment [and] there's nothing there, it's hard to interpret those. We can do the best we can on P.G. Atlas, but that's why there is some flexibility and some variability in moving those rights-of-way to the point that we feel that if it stays within a given property that's appropriate to move it as needed. The Master Plan rights-of-way were laid out initially... sometimes without regard for environmental features and things like that, and so there has to be some flexibility in interpreting them and by not requiring maps with property lines and all needed features to lay out those roads. The Council allowed some flexibility and that is the opinion of our Associate General Counsel.

With regard to Condition 4 ... it asks for the applicant to reflect the needed rights-of-way and to dedicate as needed. And that was done at the time of Preliminary Plan of Subdivision or prior to....

So Ruby Lockhart is definitely [oriented] ... east west. It's intended to connect at St. Joseph's to Lottsford Road and so it's east west maybe a little bit southeast to northwest. The I-310 is intended to be southwest to northeast and it's intended to connect 202 to Ruby Lockhart. And in the case of this ... Preliminary Plan both of those roads are generally in those same directions.... I-310 was never intended to be a flyover over 202. That always was supposed to be St. Joseph's Drive. I-310 and its sister road on the south side of 202 Peppercorn Place, are the roads that were supposed to serve as the connectors between 202 and that flyover of St. Joseph's over 202....

(November 30, 2020 T. 81-84)

(13) I-310 has been completed with a 70-foot right-of-way of which 46 feet are paved. (November 30, 2020 T. 38-39, 58) Applicant submitted copies of the street connection permit issued by the Department of Permitting, Inspections and Enforcement ("DPIE") that allowed construction of I-310 as well as a picture of the street which as of the hearing had not been opened to the public. (Exhibits 15 and 35; December 14, 2020 T.16). Both I-308 and I-310 have been dedicated to the County. Additionally, DPIE noted no objection to Applicant's request for reconsideration of PPS 4-18007. (Exhibit 14)

Opposition's concerns

(14) Mr. Samuel Dean appeared in opposition to the request on behalf of himself and the Lake Arbor Civic Association ("the Association"). (Exhibit 39). Mr. Dean testified that he and the Association were opposed to the deletion of Condition 4 of Zoning Ordinance No. 6 -2010 for several reasons. First, Mr. Dean and the Association argue that prior zoning approvals for development in the area required Grand Way Boulevard (I-310) be constructed as a ramp and not an at grade access to Landover Road (MD 202). (December 14, 2020 T. 28-32) Second, Mr. Dean and the Association believe that the Largo Lottsford Master Plan and the Master Plan of Transportation required that a ramp be constructed at the access into the site from Landover Road (MD 202). (December 14, 2020 T. 29-30, 33) Third, they suggest that I-308 and/or I-310 are not located in the area approved in the applicable plans. (November 30, 2020 pp. 62-70) Finally, they argue that Applicant deeded land to the County to circumvent the requirement in a prior Conceptual Site Plan approval as well as language in a prior Detailed Site Plan approval that there be no access to the site from Landover Road (MD 202), but a flyover ramp could be approved from Landover Road (MD 202) onto the subject property.(December 14, 2020 T. 32)

(15) Mr. LaRay Benton raised procedural objections to the hearings which were addressed prior to the start of Applicant's case and overruled, as discussed *supra*. He was allowed to participate in the hearing representing himself only, and not his business entity. Mr. Benton's substantive concerns were similar to those raised by Mr. Dean and the Association in that he argued that Applicant is attempting to amend the Zoning Ordinance, the General Plan, the Largo-Lottsford Master Plan and the Route 202 Corridor Study by changing I-310 from a ramp/flyover to an at grade right-of-way. (December 14, 2020 pp. 40-53)

LAW APPLICABLE

Amendment of Conditions

(1) An application for the amendment of conditions attached to a piecemeal zoning map amendment may be approved in accordance with Section 27-135 (c), which provides 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....

Good Cause

(2) As noted above, the District Council may grant Applicant's request if it finds "good cause" to do so. The Zoning Ordinance does not define "good cause", so we must look

to court opinions for guidance.

(3) In Kay Construction Company v. County Council, 227 Md. 479, 177 A.2d 694 (1962), the Court of Appeals of Maryland considered the definition of “good cause” where a Council resolution was reconsidered upon the resignation of a Councilmember and reversed allegedly for “good cause shown.” The Court held that “mere reargument based on the evidence originally presented to and accepted by the Council” is not good cause. (277 Md. At 488) The Court, in reliance on a prior decision (Zoning Appeals Board v. McKinney, 174 Md. 551, 199 A. 540 (1938)), did note that in the absence or presence of a statutory requirement, the administrative body has the right to correct errors in its decisions caused by fraud, surprise, mistake or inadvertence. More recently 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)

CONCLUSIONS OF LAW

(1) I agree with Applicant that there is good cause (substantial reason), and it would not be an impermissible change of mind, for the District Council to amend the transportation conditions, as requested. First, the original Condition 6 required that all transportation conditions be determined by the Planning Board at the time of subdivision yet other conditions set forth specific requirements concerning certain rights-of-way that could be impacted by the development. The record indicates that Condition 6 was satisfied, and the uses proposed at the time of subdivision review had much lower trip impact on the affected rights-of-way, and also changed the need for the other road improvements suggested by the District Council in its original approval. Under these circumstances it would be confusing, at best, to not revise the original transportation conditions and/or include the updated conditions imposed by the Planning Board in its approval of PPS 4-18007.

(2) In arriving at this recommendation, I am mindful of the concerns of those in opposition. However, Mr. Benton did not procure a stay of this proceeding despite ample opportunity to do so and a brief review of some of the pleadings filed in his pending cases does not reveal a reason to deny the instant request. Additionally, given the expert testimony of Mr. Lenhart and Mr. Masog of the Technical Staff I do not believe the 2009 Countywide Master Plan of Transportation mandated a ramp/flyover at I-310 and Landover Road (MD 202). I also believe I-308 and I-310 were constructed generally in the area indicated on Map 13 (p. 87) in the 2009 Countywide Master Plan of Transportation. Assuming, arguendo, the roads are oriented in a manner slightly different from the placement indicated on the map, the Master Plan expressly notes that “the entries in this mapset are approximations and illustrations of the detailed recommendations in the plan text” and “[t]he graphics are not intended to be legally

sufficient.” (Master Plan of Transportation, p. 73) Finally, I do not believe that the District Council’s reference to I-310 as a “ramp/roadway” in Condition 4 was meant to suggest that I-310 was required to be a ramp or flyover at its intersection with Landover Road (MD 202), especially given the language in Condition 6 allowing the Planning Board to determine all transportation facility improvements at the time of subdivision approval.

RECOMMENDATION

I would recommend that the application be APPROVED since the Applicant has provided good cause for the Amendment of Zoning Ordinance 6-2010 to delete and/or revise conditions 4, 5.a., 5.b., 6, 7 and 8. Original Footnotes 6 and 9 should also be deleted due to redundancy. Accordingly, I would recommend that the District Council revise its conditions of approval in A-10020-C as follows:

1. The applicant shall observe these recommendations during the preparation and review of the Conceptual Site Plan (CSP):
 - a. The site plan shall provide adequate open space at the perimeter, as determined by the Urban Design Section, to serve as a buffer between the project and adjacent lower-density residential development and the church.
 - b. Wherever possible, living areas shall be linked to community facilities, transportation facilities, employment areas, and other living areas by a continuous system of pedestrian walkways and bike trails utilizing the open space network.
 - c. Buffering in the form of landscaping, open space, berming, attractive fencing, and/or other creative site planning techniques should be utilized to protect existing residential areas, particularly those interfaces with the multifamily buildings in Phase 1 and that adjoining the church in Phase 2.
2. All future submissions for development activities on the subject property shall contain the following:
 - a. A signed Natural Resources Inventory (NRI).
 - b. A Tree Conservation Plan that covers the entire subject property.
3. At the time of CSP review, the Applicant and staff of the Department of Parks and Recreation shall develop a mutually acceptable package of parkland, outdoor recreational facilities, fees, or donations to meet the future needs of the residents of the planned retirement community.
4. Total development within the subject property shall be limited to uses which generate no more than 364 AM and 347 PM peak-hour vehicle trips. Any development generating a greater impact shall require an amendment of

conditions with a new determination of the adequacy of transportation facilities.

5. Prior to issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency (with improvements designed, as deemed necessary, to accommodate bicycles and pedestrians):
 - a. MD 202 at Lottsford Road: Construct an additional southbound left-turn lane (to create a triple left-turn lane) from MD 202 onto eastbound Lottsford Road, along with necessary signal modifications to support the triple left turn.
 - b. I-310/Grand Way Boulevard: Construct the entire roadway between MD 202 and Ruby Lockhart Boulevard within the dedicated right-of-way to County standards.
6. Prior to approval of the initial commercial detailed site plan, the applicant shall submit an acceptable traffic signal warrant study to the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) and/or the Prince George's County Department of Public Works and Transportation (DPW&T) for signalization at the intersection of Ruby Lockhart Drive and the commercial access. The applicant shall utilize a new 12-hour count and shall analyze signal warrants under total future traffic, as well as existing traffic, at the direction of DPW&T. If signalization or other traffic control improvements are deemed warranted at that time, the applicant shall bond the improvements with DPIE/DPW&T prior to release of any building permits under Phase II, and complete installation at a time when directed by DPIE/DPW&T.
7. There shall be no direct driveway access between the subject property and Landover Road (MD 202).
8. The Applicant shall provide eight-foot wide sidewalks and designated bike lanes along both sides of the subject site's portion of Ruby Lockhart Boulevard (consistent with approvals for the Woodmore Town Center), unless modified by DPW&T.