

July 29, 2021

VIA ELECTRONIC MAIL

Donna J. Brown
Clerk
Prince George's County Council
County Administration Building
Upper Marlboro, MD 20772

*Re. CSP-10002 and DSP-10011;
Amendment to Conditions of Approval*

Dear Madame Clerk:

On behalf of the applicant, Queens Chapel Town Center LLC and pursuant to Section 27-135(c) for the Zoning Ordinance, I am requesting that Conditions 3c of CSP-10003 and Condition 3c of DSP-10011 be deleted in their entirety. In support of this request, that applicant states:

PROJECT SUMMARY

The subject property is currently developed with an existing shopping center. It is in close proximity to the West Hyattsville Metro Station. The shopping center is surrounded by other commercial uses in the area. Specifically, the subject property is surrounded by the following uses:

North: Single-family homes located in the R-55 Zone.

South: Hamilton Street, across Hamilton Street is commercially developed property in the M-X-T Zone

East: Queens Chapel Road, across Queens Chapel Road is commercially developed property in the M-X-T Zone

West: WMATA parking in the M-X-T Zone

As noted above, the Preferred Land Use Plan found on page 36 of the TDDP, places the shopping center in the Retail/Commercial category of the Table of Uses. This Table of Uses controls the uses permitted in the West Hyattsville TDOZ and supersedes the underlying Table of Uses listed in the Zoning Ordinance.

PREVIOUS APPROVALS

The existing buildings on-site were mostly built prior to 1965 and have been the subject of various permits over the years. Detailed Site Plan DSP-00040 for Residue Parcel A-13 was approved by the Planning Board on December 21, 2000 (PGCPB Resolution No. 00-230) under the previous 1998 West Hyattsville Approved Transit District Development Plan for the Transit District Overlay Zone, with six conditions. These conditions are no longer outstanding as they were complied with and completed through the certification, permit, and construction processes. That approval was for a eating and drinking establishment with drive-through service. Conceptual Site Plan CSP-10002 and Detailed Site Plan DSP-10011, to allow an amendment to the Table of Uses of the 2006 *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone* for the subject property, were approved by the Planning Board on January 27, 2011 subject to three conditions. Subsequently, the Prince George's County District Council reviewed both of these cases on June 13, 2011 and adopted the Planning Board's resolutions, with one modification and three conditions. Condition 3c of those approvals provides:

Within Queens Chapel Town Center, any eating or drinking establishment, with drive-through service, operating pursuant to an approved detailed site plan as of the effective date of County Council Resolution CR-24-2006, shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use. Such eating or drinking establishments, with drive-through service, and their underlying detailed site plans may be modified pursuant to the existing provisions relating to revisions or amendments to detailed site plans generally as they exist in the Zoning Ordinance. If the use is discontinued for a period of 180 or more consecutive calendar days, unless the conditions of non-operation were beyond the control of the owner or holder of the use and occupancy permit, then the use shall no longer be considered a legal use.

Finally, DSP-10011/01 was approved by the Planning Board on February 21, 2013 (PGCPB Resolution No. 13-11) for the purpose of amending the mandatory development requirements building mounted signs to be internally illuminated.

The purpose of this request is to delete 3c of CSP-10002 and DSP-10011 cited above. In so doing, the existing permitted use will be subject to the same restrictions and conditions as the other permitted uses in Queens Chapel Town Center.

CRITERIA FOR APPROVAL

The District Council is permitted to amend conditions to a site plan approved in accordance with Section 27-135(c) which provides, in part:

- (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.

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 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.

BASIS FOR REQUEST

Condition 3c of both CSP-10002 and DSP-10011 provide, in part, if the use is discontinued for a period of 180 or more consecutive calendar days, unless the conditions of non-operation were beyond the control of the owner or holder of the use and occupancy permit, then the use shall no longer be considered a legal use. Under the Zoning Ordinance, this limitation is normally associated with nonconforming uses, whereas this use, and eating and drinking establishment with drive-through service, is a permitted use pursuant to the approval of DSP-00040 and pursuant to the 2006 *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone* which provide on page 38:

Legally existing development. Until a site plan is submitted, all buildings, structures, and uses that were lawful or could be certified as a legal nonconforming use on the date of sectional map amendment (SMA) approval are exempt from the TDDP standards and from site plan review and are not nonconforming. However, if a permit application is submitted and it is determined that the legally existing building, structure, or use has been discontinued for more than 180 days in accordance with Section 27-241(c), it shall comply with all applicable TDDP standards and site plan review.

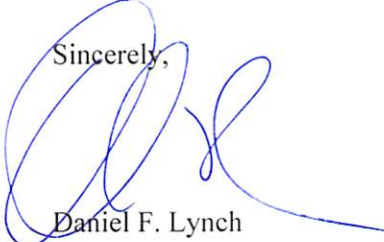
DSP-10011 was approved by the District Council in 2011 and that DSP reflected the eating and drinking establishment as shown on DSP-00040. Therefore, the use is legal and not nonconforming and it should not be subject to the 180 limit associated with nonconforming uses

in the West Hyattsville TDOZ.

Furthermore, this condition inhibits the applicant's ability to market the property to potential tenants. This condition places a cloud on their ability to operate an eating and drinking establishment with a drive through from the subject property and to maintain a viable and competitive use into the future. Potential tenants need and assurance that the use will continue into the future and also need the ability to renovate and modernize that use to stay competitive in the market. Any a major modification to the structure associated with the use would most likely require a closure of the business for a period that could exceed the 180 days. If such occurs, a tenant could potentially spend hundreds of thousands of dollars on a renovation or rebuilding only to lose their ability to operate the use.

Finally, this use was developed in conformance with the *1998 West Hyattsville Approved Transit District Development Plan for the Transit District Overlay Zone*. At that time, the use was permitted subject to the approval of a Detailed Site Plan and conformance with the Transit District Development Standards. The improvements on the property are not only designed to accommodate an eating and drinking establishment with drive-through service, but also designed to the meet urban and pedestrian oriented standards contained on the *1998 West Hyattsville Approved Transit District Development Plan for the Transit District Overlay Zone*. When the Planning Board approved DSP-00040 in 2001, it not only found that the proposed development of the property with an eating and drinking establishment with drive-through service was compatible with and complementary to existing and proposed development in the vicinity of the property, but the arrangement and design of buildings when coupled with their proximity to the West Hyattsville subway station, reflects a cohesive development capable of sustaining an independent environment of continuing quality and stability that will encourage an active commercial entity. This finding demonstrates that this use, although no longer a permitted use in the West Hyattsville TDOZ, is compatible with the surrounding area unlike nonconforming uses and therefore the need to phase this use out, through the 180 day limit set forth in condition 3c, is a mistake.

For these reasons, Queens Chapel Town Center LLC respectfully requests that condition 3c to CSP-10002 and DSP-10011 be deleted in their entirety. Thank you in advance for your time and consideration to this matter.

Sincerely,

Daniel F. Lynch

Marc Tartaro
Mayor



Gregory E. Rose
City Administrator

May 17, 2011

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301/985-5014

RECREATION & THE ARTS
301/985-5020

Honorable Ingrid M. Turner, Chair
Prince George's County District Council
14741 Governor Oden Bowie Drive, 2nd Floor
Upper Marlboro, MD 20772

RE: DSP-10011 and CSP-10002 – Request to Amend West Hyattsville TDDP Table of Uses

Dear Chair Turner and Members of the District Council,

I am writing to inform you that on Monday, May 16, 2011 the Hyattsville City Council voted to oppose DSP-10011 and CSP-10002, a request for amendment to the Table of Uses in the West Hyattsville Transit District Development Plan (TDDP).

The City opposes several of the applicant's requested uses, specifically eating or drinking establishments with drive-thru, building supply store, pizza delivery service, carpet or floor covering store, as these uses are auto-oriented. The City believes these uses contradict the intent of the main street commercial districts which should provide for a more pedestrian and non-motorized vehicle oriented environment. The City also requests the District Council to consider specifically prohibiting the pre-existing non-compliant use of drive-thru establishments when a property becomes vacant and/or transfer ownership.

The City is supportive of continued investment and economic development within the West Hyattsville TDDP, however the City cannot support uses which contradict the intent or compromise the integrity of future development.

Thank you in advance for your consideration.

Sincerely,

Marc Tartaro
Mayor

cc: Hyattsville City Council
Hon. Will Campos, County Councilmember, District 2
Jim Chandler, Community Development Manager
Dan Lynch, Attorney
Gregory Rose, City Administrator

CITY OF HYATTSVILLE

RESOLUTION

WHEREAS, the Prince George's County Planning Board is charged with the approval of Detailed Site Plans pursuant to Part 3, Division 9 of the Zoning Ordinance of the Prince George's County Code; and

WHEREAS, in consideration of evidence presented at a public hearing on January 27, 2011, regarding Detailed Site Plan DSP-10011 for Queens Chapel Town Center, the Planning Board finds:

1. **Request:** The subject application requests an amendment for the Table of Uses for the West Hyattsville Transit District Development Plan (TDDP), specifically for the shopping center known as Queens Chapel Town Center.

2. **Development Data Summary**

	EXISTING	APPROVED
Zone	M-X-T/R-55/T-D-O	M-X-T/R-55/T-D-O
Use(s)	Shopping Center	Shopping Center
Acreage	6.05	6.05
Parcels	15	15
Building Square Footage/GFA	64,740	64,740

On-Site Parking Data

	Existing
Standard Spaces	229
Parallel Spaces	3
Handicapped Spaces	11 (6 Van Accessible)
Total	243 (11 Handicapped)

3. **Location:** The site is in Planning Area 68 and Council District 2. More specifically, it is located in the northwest corner of the intersection of Hamilton Street and Queens Chapel Road.
4. **Surrounding Uses:** The subject property is bounded to the south by Hamilton Street, and, across the street, by commercially developed property in the M-X-T Zone; to the east by Queens Chapel Road, and, across the road, by commercially developed property in the M-X-T Zone; to the west by Ager Road, and, across the road, by a metro parking lot in the M-X-T Zone; to the northeast by Hamilton Manor Apartments in the R-18 Zone; and to the north, by single-family homes in the R-55 Zone.

5. **Design Features:** The subject parcels are already developed with various commercial buildings that present themselves as a shopping center. This DSP proposes no new physical development on-site, so the following is a description of the existing layout of the property.

The shopping center is comprised of multiple connected and disparate buildings measuring a total of 64,740 square feet divided over 15 parcels, all of which are under the same ownership. The buildings are generally located no more than 14 feet behind the right-of-way line along Hamilton Street and Queens Chapel Road, although one building is set back further, at approximately 48 feet. The on-site parking is generally located behind the buildings, accessed from a public alley that runs along the rear of the property, although there are a few locations in which small parking lots are adjacent to the rights-of-way. Additionally, for most of the site's frontage along Hamilton Street and 31st Avenue, either angled or parallel parking spaces are located within the rights-of-way. The site is accessed from multiple driveways off of Ager Road, Queens Chapel Road, Hamilton Street, and 31st Avenue.

Starting at the southwest corner of the site is Residue Parcel A-13, which is the subject of a prior approval of Detailed Site Plan DSP-00040, and is developed with a 2,839-square-foot, brick and stucco, fast-food, Kentucky Fried Chicken restaurant. This building sits within 2.5 feet of the right-of-way at the corner of Hamilton Street and Ager Road and the existing drive-through lane runs along the north side of the building, with parking beyond it. Within the eastern portion of this parcel is a one-story, cinder block, 4,523-square-foot building with three tenants, specifically a bakery, furniture store and liquor store. There is parking located between this building and Hamilton Street and within a parking lot that takes up the remainder of the eastern portion of the parcel.

The portion of the site from the eastern property line of Residue Parcel A-13 to 31st Avenue is divided into ten parcels of varying size. One large, 22,790-square-foot, brick, stone and cinder-block building sits across all of these parcels, set back approximately ten feet from the Hamilton Street right-of-way, with multiple tenants including a barber, restaurant, dry cleaners and nail salon, among others. Additional parking and loading spaces are then provided behind the buildings along the northern property line, with access via the adjacent alley.

On the eastern side of 31st Avenue, is Parcel B-3 which includes a single, 5,971-square-foot, brick and concrete building, located within nine feet of the Hamilton Street right-of-way, with four tenants, specifically a restaurant, dollar store, hair salon and barber. Parking and loading are located at the rear of the building with access from the alley that runs along the northern property line. To the east is Parcel B-2, which has a parking lot along the western edge and a portion of a brick and glass building, with a convenience store tenant, in the southeastern corner, which sits within 12 feet of the Hamilton Street right-of-way. This building extends to the east into the adjacent Residue Parcel B-1 for a total area of 8,584 square feet and includes two more tenants, a pet groomer and a post office. After a small gap, another 13,360-square-foot, brick and glass building runs parallel to and stays within nine feet of the right-of-way line at the corner of Hamilton Street and Queens Chapel Road. This building houses seven tenants including a bank,

bridal store, and restaurants, among others.

Across a 20-foot public alley is Residue Parcel F, which sits along the northern and eastern boundaries of the entire subject property. It has one small, 6,673-square-foot, brick and concrete, three-tenant building in the eastern corner fronting on Queens Chapel Road, sitting within nine feet of the right-of-way. The rest of this parcel is asphalt parking and gravel areas that wrap around the north side of the public alley between the shopping center and the adjacent residential areas.

6. **Previous Approvals:** The existing buildings on-site were mostly built prior to 1965 and have been the subject of various permits over the years. Detailed Site Plan DSP-00040, for Residue Parcel A-13, was approved by the Planning Board on December 21, 2000 (PGCPB Resolution No. 00-230), under the previous June 1998 *West Hyattsville Approved Transit District Development Plan for the Transit District Overlay Zone*, with six conditions. These conditions are no longer outstanding as they were complied with and completed through the certification, permit and construction processes.

COMPLIANCE WITH EVALUATION CRITERIA

7. **Zoning Ordinance:** The subject application is for a change in the Table of Uses for the July 2006 *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone (TDDP)*. This document supersedes the Table of Uses for permitted uses in the Zoning Ordinance for the M-X-T Zone. Additionally, since the shopping center exists and no new construction is proposed, the site plan design guidelines of the Zoning Ordinance are not applicable.

The applicant has submitted the required application for a detailed site plan pursuant to Section 27-548.09.01(b)(6), Amendment of Approved Transit District Overlay Zone, of the Zoning Ordinance. The Planning Board evaluated the proposed uses and finds that most but not all of them meet the requirements of Section 27-548.09.01, which specifies the required findings for an amendment to the Table of Uses. The Planning Board reviewed the detailed site plan against the criteria for approval in the M-X-T Zone as set forth in Section 27-546(d) of the Zoning Ordinance and offers the following comments:

(1) The proposed development is in conformance with the purposes and other provisions of this Division;

There is no development proposed with this plan, as the proposed changes to the Table of Uses will only allow for a change in the mix of tenants leasing space in the existing buildings on the site. All proposed uses for which approval is recommended would be consistent with the purposes and other provisions of Division 2, Part 10 (Mixed Use Zones) of the Zoning Ordinance.

- (2) **For property placed in the M-X-T Zone through a Sectional Map Amendment approved after October 1, 2006, the proposed development is in conformance with the design guidelines or standards intended to implement the development concept recommended by the Master Plan, Sector Plan, or Sectional Map Amendment Zoning Change;**

This does not apply as the site was zoned M-X-T before October 1, 2006.

- (3) **The proposed development has an outward orientation which either is physically and visually integrated with existing adjacent development or catalyzes adjacent community improvement and rejuvenation;**

The existing shopping center was renovated in 2001, 2006 and 2007 to create a unique, urban appearance, which does serve to create a strong street presence that is integrated with the surrounding commercial uses. However, the proposed changes to the Table of Uses will result only in a change in the mix of tenants leasing space in the existing buildings on the site, with no new construction proposed. Therefore, the proposed detailed site plan will have no impact on the existing development's outward orientation, or its physical or visual integration with existing adjacent development.

- (4) **The proposed development is compatible with existing and proposed development in the vicinity;**

Proposed changes to the Table of Uses, as limited by the conditions of approval, will not reduce or compromise the compatibility of the existing shopping center with the other existing or proposed developments in the transit district.

- (5) **The mix of uses, and arrangement and design of buildings, and other improvements reflect a cohesive development capable of sustaining an independent environment of continuing quality and stability;**

The mix of uses will be enhanced by the expansion of permitted uses in the Table of Uses, as limited by the conditions of approval, and better enable the shopping center to sustain an independent environment of continuing quality and stability.

- (6) **If the development is staged, each building phase is designed as a self-sufficient entity, while allowing for effective integration of subsequent phases;**

No additional development is proposed at this time; therefore, there is no proposed staging.

- (7) **The pedestrian system is convenient and is comprehensively designed to encourage pedestrian activity with the development;**

The shopping center is located entirely within one-half mile of the West Hyattsville Metro Station. It is surrounded by sidewalks on the southern, eastern and western edges of the property, along Hamilton Street, Queens Chapel Road, and Ager Road, which provide connections to the pedestrian system within the transit district area. Proposed changes to the Table of Uses, as limited by the conditions of approval, will not reduce or compromise the convenience or design of facilities provided for pedestrians in the development.

- (8) On the Detailed Site Plan, in areas of development which are to be used for pedestrian activities or as gathering places for people, adequate attention has been paid to human scale, high quality urban design, and other amenities, such as the types and textures of materials, landscaping and screening, street furniture, and lighting (natural and artificial).**

The existing shopping center already provides a moderate level of quality urban design with human-scale buildings located close to a comfortable streetscape space that includes lighting, landscaping and specialty paving. The proposed changes to the Table of Uses, as limited by the conditions of approval, will not reduce or compromise the existing quality of urban design in the shopping center.

- (10) On the Detailed Site Plan, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval, whichever occurred last, the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant.**

This requirement does not apply as no new development is proposed that would require additional public facilities.

- (11) On a property or parcel zoned E-I-A or M-X-T and containing a minimum of two hundred fifty (250) acres, a Mixed-Use Planned Community including a combination of residential, employment, commercial and institutional uses may be approved in accordance with the provisions set forth in this Section and Section 27-548.**

This requirement does not apply as the property contains less than 250 acres.

8. **The July 2006 Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone (TDDP):** The transit district development plan (TDDP) places the Queens Chapel Town Center shopping center

in the Retail/Commercial Preferred Land Use category.

The applicability section of the TDDP states that all new development must show compliance with the TDDP standards in the site plan review process. Since the subject DSP shows no new development, it is not required to meet the standards at this time. However, this should not be taken to validate the existing physical development in any way or to exempt any future development or redevelopment of this property from the TDDP standards.

The applicant contends that the table of uses for this particular subarea is too restrictive and does not allow many uses common to similar shopping centers. The property was retained in the M-X-T Zone at the time of the approval of the July 2006 *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone*. The existing shopping center development does not necessarily comply with all of the recommendations for the Developed Tier per the General Plan nor the *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone*. However, it will remain as an existing use until such time as a redevelopment application is presented and, until then, it would be best if it remains a viable shopping center with legitimate retail uses.

The applicant has requested the following uses be permitted that currently are not permitted by the use table for the sub-district in which the project is located:

- Fast-food restaurant
- Eating or drinking establishment, with or without drive through
- Eating or drinking establishment, attached to or within a group of buildings
- Pizza delivery service
- Carpet or floor covering
- Clothing, dry goods
- Confectioner
- Florist
- Food or beverage goods preparation on the premises of a food and beverage store
- Sporting goods shop
- Stationary or office supply store
- Video game or tape store
- Medical practitioner's Office

Although some of the above uses already operate in the center, they became nonconforming with the adoption of the TDDP. As to conformance with the goals of the West Hyattsville TDDP, the Planning Board found the following (TDDP, page 1):

The goal of the West Hyattsville TDDP is to provide a clear and predictable path for transit-oriented development (TOD) within the West Hyattsville TDOZ...The 2002 Prince George's County Approved General Plan (page 44) defines TOD as development that actively seeks to increase the transit use and decrease automobile

dependency by:

- **Locating homes, jobs, and shopping closer to transit services;**

The shopping center is located across Ager Road from the West Hyattsville Metro Station. Amending the Table of Uses under the TDDP will offer the residents of the West Hyattsville community more food-related establishments and retail choices. A thriving shopping center will create more job opportunities and will encourage additional commercial and residential development within close proximity to the metro.

- **Locating the mix of critical land uses (living/working/shopping) in closer proximity to one another; and**

This detailed site plan is not proposing any changes to the shopping center; their sole purpose is to amend the Table of Uses contained in the TDDP. As mentioned above, approval of this amendment will allow the shopping center to attract a wider variety of commercial establishments, creating a better mix of shopping choices adjacent to the metro station and residential communities.

- **Establishing land use/transit linkages that make it easier to use transit (rail and bus).**

As mentioned above, the existing shopping center is in close proximity to the West Hyattsville Metro Station, which makes it easily accessible from the trains and buses en route to and from the metro station.

As stated on page 4 of the TDDP:

The main purpose of this plan is to maximize the public benefits from the West Hyattsville Metro Station. The plan sets out primary goals emphasizing the neighborhood, environment, transportation, and low-impact development (LID):

- **Promote TOD near the Metro Station and create a sense of place consistent with the neighborhood character areas.**

The existing shopping center includes a post office, a bank, and restaurants. Adding more retail choices and food establishments to the existing shopping center will create a stronger sense of place consistent with the neighborhood character area. Warehouses or manufacturing facilities are generally not transit-oriented development due to their large sizes; therefore, conditions have been included in this approval setting limitations on the carpet or floor covering store, confectioner and food or beverage goods preparation on the premises of a food and beverage store in order to ensure these types of uses are developed as retail-oriented businesses, and not as large-scale manufacturers.

- **Ensure that all new development or redevelopment in the transit district is pedestrian-oriented.**

The applicant is not proposing any new development or redevelopment to the existing shopping center. However, the current development is pedestrian-oriented as, generally, the buildings front on the street with parking in the rear. Additionally, in order to ensure all future tenants within this subject property are pedestrian-oriented, the applicant's request for approval of a fast-food restaurant with a drive through as a permitted use is denied. However, a condition has been included in this approval that allows the existing fast-food restaurant with drive through within the subject property to remain as a valid, legal use. The pizza delivery service was deemed to be acceptable as a permitted use, despite it being generally vehicle-oriented, but a condition setting limitations on the delivery vehicles has been included in this approval, in order to limit impacts on pedestrians.

- **Restore, protect, and enhance the environment by protecting environmentally sensitive areas, minimizing impacts of development, and expanding recreational opportunities and trail and bikeway connections.**

The subject property has no environmentally sensitive areas and proposes no new development. Therefore, this goal does not apply to the subject application.

- **Maximize residential development opportunities within walking distance of the Metro Station.**

The subject properties lie within the retail/commercial land use category of the TDDP; therefore, residential development on this site would not be in conformance with the plan, despite the fact that it is within walking distance of the Metro Station. However, expanding the allowed commercial uses on the property will enhance the viability and attractiveness of the shopping center, which could in turn attract developers to pursue more residential opportunities on adjacent sites. However, in order to ensure the shopping center remains conducive to future adjacent residential development, conditions setting limitations on the type of products sold at any sporting goods shop or video game or tape store have been included in this approval.

In addition to the purposes of the West Hyattsville TDDP mentioned above, the general purposes of the TDOZ are contained in Section 27-548.03 of the Zoning Ordinance. The applicant believes that amending the Table of Uses under the TDDP complies with the purposes as follows:

- (1) **To enhance the development opportunities in the vicinity of transit stations;**

The existing shopping center is located within 1,000 feet of the West Hyattsville Metro Station and the applicant is only amending the Table of Uses at this time, to add more retail choices and food establishments to the existing shopping center. This will create

more opportunities for the center, make it more competitive, and in turn spur redevelopment at some future date.

(2) To promote the use of transit facilities;

The shopping center is located within 1,000 feet of the West Hyattsville Metro Station. Furthermore, the site is located between major Maryland and Washington, D.C. employment centers which are accessible via the Metro transit system. The applicant believes that broadening the scope of uses allowed in the shopping center at this site, within such a short distance of this Metro station, will promote use of the transit system by its current and future customers.

(3) To increase the return on investment in a transit system and improve local tax revenues;

Amending the Table of Uses will increase the choices available for food establishments and retail stores and will draw in new tenants to the shopping center. A successful commercial center will generate greater tax revenues for the County.

(4) To create a process which coordinates public policy decisions, supports regional and local growth and development strategies, and creates conditions which make joint development possible;

The site is developed with an existing shopping center. The applicant is not proposing any additional development at this time.

(5) To create a process which overcomes deficiencies in ordinary planning processes and removes obstacles not addressed in those processes;

The TDOZ allows flexibility in the development process through the use of amendments to the TDDP. In this case, amending the Table of Uses under the TDDP as part of the detailed site plan process will allow development of this retail-commercial area in a manner that is more conducive to a changing market and to the proposed development of other subareas in the transit district.

(6) To minimize the costs of extending or expanding public services and facilities, by encouraging appropriate development in the vicinity of transit stations;

More variety of retail stores and food establishments within close proximity to the West Hyattsville Metro Station will give customers more choices in one location and lessen the commute to other stores located further from the metro station, as the shopping center will be able to meet more of the needs of the customers in one area. It will encourage metro ridership and in turn decrease the use of the surrounding road network.

(7) To provide mechanisms to assist in financing public and private costs associated with development;

Public financing is not proposed as part of this application.

(8) To provide for convenient and efficient pedestrian and vehicular access to Metro stations;

The shopping center is located within 1,000 feet of the West Hyattsville Metro Station. It is surrounded by sidewalks on the western, southern, and eastern edges of the property alongside Ager Road, Hamilton Street, and Queens Chapel Road, that provide connections to the pedestrian system within the TDOZ and, therefore, convenient access to the metro station.

(9) To attract an appropriate mix of land uses;

The applicant is proposing to amend the Table of Uses under the TDDP to grant more opportunities to the customer base of the community. The underlying purpose of this amendment is to broaden the Table of Uses so as to provide a greater mix of uses at the center.

(10) To encourage uses which complement and enhance the character of the area;

The vision statement of the TDDP, page 7, encourages high-quality, compact development that will create the economic base of new shops and stores that will enhance the quality of life for everyone in Hyattsville and its immediate neighbors. The existing Table of Uses places the subject property at a competitive disadvantage. It restricts many common yet essential choices for the community, such as eating or drinking establishments, clothing stores, and shoe stores. A broader Table of Uses will attract a more diverse group of retail tenants and enhance the character of the area.

(11) To insure that developments within the Transit District possess a desirable urban design relationship with one another, the Metro station, and adjoining areas; and

The applicant is not proposing any new development at this time. Amending the Table of Uses contained in the TDDP will allow a greater mix of uses at the shopping center. Adding more choices to the retail/commercial category under the TDDP will allow the neighboring residential communities to choose from a wider variety of retail establishments from the same shopping center and lessen the commute to other stores outside the neighborhood area. A successful shopping center with a greater mix of uses will also attract customers from adjoining communities.

(12) To provide flexibility in the design and layout of buildings and structures, and to promote a coordinated and integrated development scheme.

This requirement does not apply as no new development is proposed with the subject application.

9. ***Prince George's County Landscape Manual:*** The DSP application is not subject to the *Prince George's County Landscape Manual* as there is no proposed increase in gross floor area or impervious surface and there is no change of use from a lower to higher intensity use category. Any future revisions to this plan should be reviewed for conformance to the Landscape Manual if it proposes any new physical improvements.
10. **Woodland and Wildlife Habitat Conservation Ordinance (WCO):** This property is exempt from the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because it contains less than 10,000 square feet of existing woodland. Per Sections 27-273(e) and 27-282(e) of the Zoning Ordinance, an approved natural resources inventory (NRI) and tree conservation plan or letter of exemption are now submittal requirements for a DSP. However, neither an approved NRI nor a standard letter of exemption was included in the submission package and, therefore, both must be submitted prior to certificate approval of the DSP. A tree conservation plan is not required at this time.
11. **Tree Canopy Coverage Ordinance (TCC):** This property is subject to the Prince George's County Tree Canopy Coverage Ordinance because it is a development application that requires a Standard Letter of Exemption. Properties zoned M-X-T are required to provide a minimum ten percent of the gross tract area in tree canopy.

The subject site is 6.05 acres in size and has a minimum tree canopy requirement of 0.605 acres or 26,352 square feet. The site plan is proposing to meet the requirement with a combination of existing and planted trees that would result in a total of 20,650 square feet of tree canopy coverage, which is short of the requirement by 5,702 square feet. The applicant submitted a request for a variance (VTCC) of 5,702 square feet from the requirements of Section 25-128 of the Prince George's County Code. The applicant provided the following summarized justification for the variance request:

“The sole purpose of these applications is to amend the Table of Uses for the West Hyattsville TDDP. No new development is being proposed at this time. Furthermore, the subject property was initially developed in the 1950s. Most of the buildings were built up to the sidewalks located along the south and east sides of the property. Although tree pits were added approximately ten years ago to the sidewalk area, there is no room along the sites frontages to plant additional trees. In addition, the on-site parking associated with the center is located behind the building. This parking lot was developed prior to the enactment of the Landscape Manual and does not contain any interior plantings as would otherwise be required under Section 4.3.c.(2) of the Landscape Manual. In light of this,

the existing parking lot does not contain any opportunities to provide additional tree canopy coverage. For these reasons, the applicant requests a 2.2% (5,072 square feet) variance to Section 25-128 of the Prince George's County Code.”

In order to approve a variance to the tree canopy coverage requirements, Section 25-119(d)(1) dictates the following required findings:

(A) Special conditions peculiar to the property have caused the unwarranted hardship;

The subject property does have special conditions as it was mostly built out in the 1950's, prior to any landscaping or woodland conservation requirements. It would be an unwarranted hardship to have to remove existing buildings or parking in order to create planting areas to meet the full tree canopy coverage requirement on-site, especially when the subject applications do not involve any new development.

However, during a site visit on November 3, 2010, staff noted multiple additional locations on-site where trees could be planted without requiring removal of any existing paving or buildings. These include empty tree wells along Hamilton Street and 31st Avenue, open areas along the northern and northeastern property lines, where there are already existing trees, and between the building and the property line along the far eastern part of the property within Parcel F. The Planning Board found that a total of approximately 8 shade trees, and five evergreen trees can be added, within these areas, for an additional 2,250 square feet of tree canopy coverage, on top of what is already shown on the submitted site plans. Additionally, there is an existing elm tree on Parcel B-2 and an existing black cherry and mulberry tree along the northeastern property line of Residue Parcel F that are being credited towards the tree canopy coverage requirement. These three trees are either dead, diseased or dying based on a visual evaluation during the site visit. The canopy area for these trees, a total of 1,150 square feet, should be removed from the total tree canopy coverage provided on-site as they do not provide adequate coverage in their current conditions.

With the subtraction of these three trees and the addition of the 13 others in the suggested areas, the new total tree canopy coverage provided for the subject properties would be 21,750 square feet or 8.25 percent. Therefore, the variance amount required would be reduced to 1.75 percent, or 4,602 square feet, which represents a sufficient allowance given the specific conditions on the property as it is currently developed. Conditions have been included in this approval that require the site plan be revised to show the additional proposed trees and the revised tree canopy coverage worksheet to reflect the additional trees. Given the unusual nature of the subject application which will not lead to subsequent building or grading permits, a condition requiring the planting of all proposed trees prior to the issuance of any use and occupancy permits has also been included.

(B) Enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;

If the tree canopy coverage requirement was fully enforced, the applicant would have to demolish parking areas or buildings, despite the fact that these applications do not involve any new development, thereby, in all likelihood, denying them the right to continue operation of one or more of the businesses in the existing viable shopping center development.

(C) Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants;

A variance from the tree canopy coverage requirement on this site is appropriate given its specific condition as an older, existing development adjacent to a metro station, and the fact that the subject applications are simply for an amendment to the allowed Table of Uses and propose no new development. If, at some point in the future, an application is filed for the subject properties that involves any development or redevelopment, the tree canopy coverage requirements should be reevaluated at that time for that specific case. Therefore, granting this variance would not confer a special privilege on this applicant that would be denied to other similar applications.

(D) The request is not based on conditions or circumstances which are the result of actions by the applicant;

The request is not based on conditions which are the result of actions by the applicant as the existing development was built in the 1950's, prior to there being any landscaping or woodland preservation requirements.

(E) The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

The request for the tree canopy coverage variance does not have anything to do with conditions on neighboring properties.

(F) Granting of the variance will not adversely affect water quality.

Granting of the variance to the tree canopy coverage requirements will not adversely affect water quality in the area as the variance is necessary to validate existing conditions.

12. Further Planning Board Findings and Comments from Other Entities: The subject applications were referred to the concerned agencies and divisions. The referral comments are summarized as follows:

- a. **Community Planning North**—This application is not consistent with the 2002 General Plan Development Pattern policies for the Developed Tier and this application does not conform with the commercial/retail land use recommendations of the 2006 *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone*.

More particularly, the purpose of the application is to amend the table of uses within the 2006 *West Hyattsville Approved Transit District Development Plan*. The West Hyattsville TDDP promotes moderate- to higher-density, pedestrian friendly development within a half mile vicinity of the metro station. The subject property is located in the Main Street Commercial/Retail District. It is part of the Hamilton Square neighborhood, which is envisioned to be the most active of the three neighborhoods due to its central location and diverse development mix.

The applicant's requested amendments to the use table and findings are as follows:

(1) Fast-food restaurant

Fast-food restaurants may be permitted without a drive through. This use would be considered an "Eating or drinking establishment, excluding drive-through service."

(2) Eating or drinking establishment with and without drive through (existing)

Eating or drinking establishment without drive through may be permitted.

(3) Eating or drinking establishment, attached to or within a group of buildings

Eating or drinking establishment, without drive through, attached to or within a group of buildings may be permitted.

(4) Pizza delivery service

On page 44 of TDDP, under section (3) Miscellaneous, "Other uses of appropriate size, which can be justified as similar to one of the uses listed in this section." Pizza delivery service is similar to an eating and drinking establishment; however, no delivery service is permitted (or recommended) per the TDDP. A delivery service is auto oriented and the intent of the main street retail/commercial district is to provide for a more pedestrian friendly environment.

(5) Building Supply store

A building supply store is not permitted or recommended. A hardware store is permitted per the TDDP page 43.

The applicant has since removed this requested use.

(6) Carpet and Floor Covering

A carpet and floor covering store is not permitted or recommended.

(7) Clothing, dry goods

Variety or dry goods store is permitted per TDDP, page 43. Clothing is not permitted nor recommended.

(8) Confectioner

A confectioner is not permitted or intended for retail/commercial use.

(9) Florist

The use is permitted per page 42 “Book (except adult book store), camera, gift, jewelry, music, souvenir, or other specialty store not specifically listed.”

(10) Food or beverage goods preparation on the premises of a food and beverage store

On page 44 of TDDP, under section (3) Miscellaneous, “Other uses of appropriate size, which can be justified as similar to one of the uses listed in this section.” An eating or drinking establishment without a drive through and food and beverage stores are permitted per the TDDP.

(11) Sporting good shop

This use is permitted per page 42 “Book (except adult book store), camera, gift, jewelry, music, souvenir, or other specialty store not specifically listed.”

(12) Stationary or office supply store

This use is permitted per page 42 “Book (except adult book store), camera, gift, jewelry, music, souvenir, or other specialty store not specifically listed.”

(13) Video game or tape store

This use is permitted per page 42 “Book (except adult book store), camera, gift, jewelry, music, souvenir, or other specialty store not specifically listed.”

(14) Private School

School, private or public, all types are permitted through Special Permit in the retail/commercial land use per the TDDP, page 44.

The applicant has since removed this requested use.

(15) Medical practitioner’s office

A medical practitioner's office is not consistent with a retail/commercial atmosphere and is not recommended. This type of use was intended for the mixed-use office/residential land use categories.

The Planning Board found that an office use was not intended for the retail/commercial land use area within the TDDP and, the medical practitioner's office use was eliminated from the final recommended list of permitted uses.

- b. **Transportation Planning**—From a transportation standpoint, the uses being requested are similar to uses that already exist on the site. No new construction is proposed at this time. Ager Road and Queens Chapel Road are master plan arterials and Hamilton Street is a master plan collector. It is noted that the master plan would have an impact of 40 feet along the Queens Chapel frontage, and that the existing buildings are within the planned right-of-way. Given that no construction is proposed, this issue is not enforceable at this time.
- c. **Permit Review**—Permit Review comments are either not applicable at this time, have been addressed through revisions to the plans, or are addressed through conditions of approval of this detailed site plan.
- d. **Environmental Planning**—A review of the available information indicates that streams, wetlands, 100-year floodplain and severe slopes are not found to occur on the subject property. Transportation-related noise impacts from Ager Road, a designated arterial roadway, are not an issue because no residential or residential-type uses are proposed with this application. The soil found to occur according to the *Prince George's County Soil Survey* is in the Elsinboro-Urban Land complex series. Elsinboro soils have no limitation with respect to development. According to available information, Marlboro clay is not found to occur on this property. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. There are no designated scenic and historic roads adjacent to this property. This property is located in the Northwest Branch watershed of the Anacostia River basin, in the Developed Tier as reflected in the adopted General Plan. The West Hyattsville TDDP does not contain any environmental design standards specific to the subject site.
- e. **Potomac Electric Power Company (PEPCO)**—PEPCO did not offer comments on the subject application.

- f. **City of Hyattsville**—In a letter dated October 12, 2010, the City of Hyattsville stated the the City is not supportive of many of the applicant’s requested uses, as they are inconsistent with the intent of transit-oriented design. Due to the number of requested amendments to the Table of Uses, it is the City’s position that the applicant’s request for changes should be made through an application to revise the zoning of the TDDP, so that the requested amendments can be reviewed in a comprehensive manner.

The Planning Board found that the applicant is able to request a change to the list of allowed uses in a T-D-O Zone per Section 27-548.09.01 of the Zoning Ordinance, which puts no limitation on how extensive the requested change can be. This DSP has been filed in accordance with this section.

- g. **Town of Brentwood**—The Town of Brentwood did not offer comments on the subject application.
- h. **Town of North Brentwood**—The Town of North Brentwood did not offer comments on the subject application.
- i. **City of Mount Rainier**—The City of Mount Rainier did not offer comments on the subject application.

13. **Required Finding for Detailed Site Plan**

As required by Section 27-285(b) of the Zoning Ordinance, the detailed site plan will, if approved in accordance with proposed conditions and limitations on proposed uses, represent a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, without requiring unreasonable cost and without detracting substantially from the utility of the proposed development for its intended use.

Additionally, per Section 27-285(b)(4) of the Zoning Ordinance, which became effective on September 1, 2010, a required finding for approval of a detailed site plan is as follows:

The Planning Board may approve a Detailed Site Plan if it finds that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible.

There are no regulated environmental features found on the subject property; therefore, no preservation or restoration is necessary.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the Detailed Site Plan DSP-10011 and further approved Variance Application No. VTC-10011 subject to the following conditions:

1. Prior to certification of the plan, the applicant shall:
 - a. The existing conditions plan shall be relabeled as the natural resources inventory (NRI) for the property and be submitted for approval.
 - b. Submit a copy of a standard letter of exemption for the property.
 - c. Revise the landscape plan and tree canopy coverage worksheet to show, at minimum, an additional 8 proposed shade trees, and five proposed evergreen trees in open tree wells and planting areas throughout the site.
 - d. Revise the plan to list the additional permitted uses, use limitations, and note the provisions regarding the existing eating or drinking establishment, with drive-through service, per Condition 3.
2. Prior to issuance of any use and occupancy permits within the entire property, the proposed trees, as shown on the certified DSP, shall be planted.
3. The following modifications shall be made to the applicant's request and to the Table of Uses for the commercial/retail section of the July 2006 Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone. The modifications to the Table of Uses are **only applicable to the subject site, as follows:**
 - a. The following uses shall be added as permitted uses (P):
 - (1) Eating or drinking establishment, without drive-through service
 - (2) Pizza delivery service
 - (3) Carpet or floor covering
 - (4) Clothing, dry goods
 - (5) Confectioner
 - (6) Florist

- (7) Food or beverage goods preparation on the premises of a food and beverage store
 - (8) Sporting goods shop
 - (9) Stationary or office supply store
 - (10) Video game or tape store
- b. The use table changes hereby approved for Queens Chapel Town Center are subject to the following limitations:
- (1) Pizza delivery service is permitted provided an additional parking space, over and above the required number of parking spaces, is provided at the rear of the building for each vehicle to be used for delivery. No more than six vehicles shall be permitted for the delivery service.
 - (2) Carpet or floor covering store shall be showroom and retail only and only in those locations where there is an existing rear loading area or loading dock. No outside storage or display of products shall be permitted.
 - (3) A confectioner shall be for retail use only and not to exceed 3,000 square feet.
 - (4) Food or beverage goods preparation on the premises of a food and beverage store is permitted provided the goods are only sold on the premises and at retail.
 - (5) A sporting goods shop shall be permitted provided that there is no outside storage or display of products and the sale of firearms and ammunition is prohibited.
 - (6) Video game or tape store uses shall not include adult, X-rated, nude or semi-nude venues of any type, including, but not limited to, film, digital, hologram and similar technology, and live performance.
- c. Within Queens Chapel Town Center, any eating or drinking establishment, with drive-through service, operating pursuant to an approved detailed site plan as of the effective date of County Council Resolution CR-24-2006, shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use. Such eating or drinking establishments, with drive-through service, and their underlying detailed site plans may be modified pursuant to the existing provisions relating to revisions or

amendments to detailed site plans generally as they exist in the Zoning Ordinance. If the use is discontinued for a period of 180 or more consecutive calendar days, unless the conditions of non-operation were beyond the control of the owner or holder of the use and occupancy permit, then the use shall no longer be considered a legal use.

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

* * * * *

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Cavitt, seconded by Commissioner Vaughns, with Commissioners Cavitt, Vaughns and Parker voting in favor of the motion, and with Commissioners Clark and Squire absent at its regular meeting held on Thursday, January 27, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 24th day of February 2011.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Acting Planning Board Administrator

PCB:JJ:JK:arj