

July 8, 2013

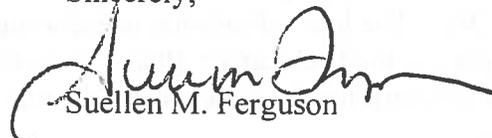
Redis C. Floyd  
Clerk of the County Council  
County Administration Building  
Upper Marlboro, MD 20772

Re: Secondary Amendment 130001  
Cafritz Property

Dear Madame Clerk:

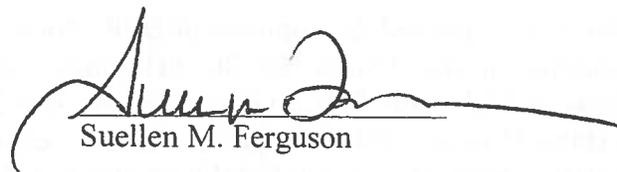
This letter is sent on behalf of the Town of University Park ("Town") to note its appeal and request for oral argument, pursuant to Section 27-546.14(b)(6) and Section 27-280 of the Zoning Code, of the Resolutions issued on June 6, 2013 by the Prince George's County Planning Board ("Planning Board") in the above-referenced matter. The Town appeals on the basis that the Planning Board's Resolution approving Secondary Amendment SA 130001 is not consistent with Zoning Ordinance 11-20012, nor with the Approved Cafritz Property at Riverdale Park Town Center Development Plan and requirements for approving changes thereto. The basis for the Town's appeal is more particularly set out in the attached memorandum.

Sincerely,

  
Suellen M. Ferguson

I HEREBY CERTIFY that a copy of the foregoing and attached memorandum was mailed, postage pre-paid, this 8<sup>th</sup> day of July, 2013, to:

All parties of record

  
Suellen M. Ferguson

## APPEAL MEMORANDUM TO THE DISTRICT COUNCIL BY THE TOWN OF UNIVERSITY PARK

Re: Appeal from Resolutions of the Prince George's County Planning Board for Detailed Site Plan DSP-13009  
Secondary Amendment 130001

### BACKGROUND

Rezoning Application No.A-10018 for the Cafritz property ("Property"), which is located on the east side of Baltimore Avenue (Route 1) approximately 1,400 feet north of its intersection with East-West Highway (Route 410), was approved by the District Council on July 12, 2012 by means of Zoning Ordinance No. 11-2012. The Town of University Park ("Town") supported the rezoning application, as it was specifically conditioned on the Applicant achieving certain milestones by the preliminary plan and detailed site plan stages. The Town's major concerns have been and continue to be the following:

1. Traffic management through the provision of a shuttle, circulator bus, effective traffic management plan ("TMP") and a TDMD.
2. A required "buffer" or gateway entrance feature along the Route 1 frontage facing University Park with a width of between 90 and 120 feet.
3. Timely construction of the CSX Crossing.

Preliminary Plan 4-13002 for the Property was originally due to be heard by the Planning Board earlier this year, but was withdrawn and re-filed with significant changes, and heard on May 16, 2013. One week later, the Planning Board heard Secondary Amendment SA-130001 on May 23, 2013, despite the Town's request for a continuance. Detailed Site Plan DSP-13009 was also scheduled to be heard on May 23, 2013, but was continued at the request of the Town, due to the late submission of information by the Applicant. The Planning Board hearing on the DSP was held on May 30, 2013. The late submission of information and the small interval between the hearings with respect to the Preliminary Plan, Secondary Amendment and Detailed Site Plan made it extremely difficult for the Town to adequately review and process information or to prepare a response.

### APPEAL ISSUES

The Town opposed the approval of DSP 13009 and SA -130001, both by appearing at the hearings on May 23 and May 30, 2013 and by submitting a letter dated May 23, 2013, marked as Town of University Park Exhibit #1 at the May 23 Secondary Amendment hearing and as Town Exhibit #5 at the DSP and Special Permit Hearing on May 30, 2013, and remarks by the Town's attorney, marked as Town Exhibit #4 at the DSP and SP hearing. These documents, and the issues raised therein, are incorporated in this memorandum by reference as if fully set forth, with the exception that the Town withdraws the request to include City of College Park conditions 1(b) and 3, and Town DSP condition 2, as having been met.

## **I. The Proposed DSP Fails to Meet the Requirements of Zoning Ordinance No. 11-2012.**

- a. Condition 13 of A-10018 requires “a 90-120 foot wide buffer” along the entire length of the property frontage on Baltimore Avenue. If the District Council intended to require only a minimum of 90 feet, exclusive of any required SHA right of way along Route 1 as is now provided in the DSP Planning Resolution Condition 1(a)(17), it would have done so. Instead, it provided a required range to complement the overall plan for this area as a transition place. Limiting the buffer to 90 feet is not consistent with Condition 13.
- b. Condition 16 of A-10018 has not been met by the wording adopted by the Planning Board in Condition 1a (9). The condition can be met by adopting the wording proposed by the City of College Park, as follows (also referenced on page 20 of the Resolution):

Prior to signature approval of the Detailed Site Plan, the Applicant shall apply and show results of LEED-ND Stage 1 review. If conditional approval is obtained, the Applicant shall employ every effort to obtain full LEED-ND certification and provide documentation of such. If conditional approval is not obtained, the Applicant shall make every effort to achieve U.S. Green Building Council (USGBC) LEED-Silver certification under LEED-NC and LEED Homes, or if available, equivalent standards for all buildings. Specifically the Applicant shall follow the process below:

Prior to DSP certification, the Applicant shall:

- 1) Designate a LEED-accredited professional (“LEED-AP”) who is also a professional engineer or architect, as a member of their design team. The Applicant shall provide the name and contact information for the LEED AP to the City of College Park, the Towns of Riverdale Park and University Park and M-NCPPC.
- 2) Designate a representative from M-NCPPC and each municipality, who elects to participate, as a team member in the USGBC’s LEED Online system. These team members will have privileges to review the project status and monitor the progress of all documents submitted by the project team.

Prior to the issuance of the first use and occupancy permit, the Applicant shall provide documentation that the project has obtained the appropriate LEED certification. If certification has not been completed, the Applicant shall submit certification statements from their LEED-AP that confirms the project list of specific LEED credits will meet at least the minimum number of credits necessary to attain the appropriate LEED certification of LEED-ND, LEED-NC and/or LEED Homes.

- c. Conditions 17, 18 and 19 of A-10018 have not been met. Condition 17 required the submission of an acceptable Transportation Management Plan (“TMP”), Condition 18 required commitment to a private shuttle with certain headways and destinations, and Condition 19 required commitment to a circulator bus program, all by approval of the Preliminary Plan. These conditions were not satisfied by the Preliminary Plan hearing. The Town, Riverdale Park, College Park and the Applicant met and agreed upon the

wording of an acceptable TMP, which included provisions concerning the circulator bus and the shuttle, and monitoring of the TMP, which was proffered to the Planning Board at the hearing. Instead, the Planning Board adopted conditions that extend these requirements to approval of final plat, with review by DPW&T and M-NCPPC staff only and no review by the Town or other municipalities. This action by the Planning Board overrides a specific requirement of Conditions 17, 18 and 19.

- d. Condition 23 of A-10018 has not been met. This condition prohibits “clear-cutting or re-grading any portion of the development until a detailed site plan for that portion of the site has been approved.” The Resolution by the Planning Board recognizes in Condition 4 that Parcels K, L and M, which include the multi-family buildings, are not included in this DSP. Condition 4 states: “Prior to the issuance of building permits for Parcels K, L and M, a detailed site plan application for each such parcel shall be reviewed and approved by the Planning Board in accordance with Part 3, Division 9 of the Zoning Ordinance.” However, in Condition 10(d), the Planning Board requires the Applicant to revise the plans to show the interim grading and landscaping proposed for Parcels K, L, M, and the portion of Parcel F where the future hotel is proposed. Allowing for interim grading for Parcels K, L and M authorizes clear cutting or re-grading on a portion of the development that is not included in a detailed site plan. The DSP does not cover the entire property, as is clear from Condition 4.
  
- e. Condition 25 of A-10018 has not been met at either the Preliminary Plan of Subdivision stage nor at the DSP stage, notwithstanding the information provided by Andre Gingles, Esq., on behalf of the Applicant with respect to the consent of the University of Maryland and CSX and public funding. With specific reference to the DSP, Condition 25(b) requires that “(I)f the manner of public funding is tax increment financing, or any other funding mechanism that requires the approval of the County Council or other government body or entity, the approval of the County Council and all other government bodies or entities must be obtained prior to the approval of any detailed site plan for the subject property.” Preliminary Plan of Subdivision Condition 36(b) states: The applicant shall demonstrate that the approved funding mechanism committed by the applicant as part of Condition 25 (A-10018), stated above, has been fully established and has been authorized by the county and/or other governmental bodies.” While the County Council has adopted CR-28-2013, which authorizes a Special Taxing District for a portion of the Property, Section 10-269 of the County Code requires additional legislative action to issue bonds to finance the infrastructure improvements, including the crossing, and to levy and impose the tax. There is no legislative determination that the tax to be imposed by the future legislative act is sufficient to pay for a bond that will finance those improvements. Further, the construction of the bridge is now required to demonstrate adequate public facilities. At this point, the Applicant does not control the land needed to comply with these requirements, so that the DSP is premised on something that has not occurred. The cost for the acquisition will affect the financing, which again points to the current inability to obtain required governmental approval.

## **II. Secondary Amendment**

With respect to the Secondary Amendment, the Town asserts that it was legal error:

1. To adopt Condition H of the Secondary Amendment instead of the following condition: Approve the amendment to Landscaping and Pedestrian Amenity Zone for the purpose of eliminating the standard sidewalk, subject to SHA approval, and providing only a publicly owned and maintained serpentine sidewalk and bike path to increase the likelihood of tree preservation.
2. To grant a variance from MUTC sign standards for the requested Whole Foods sign (Standard 9 on page 11 and Building 3) as it is not in conformance with Section 27-546.14 of the Zoning Ordinance.
3. To adopt Condition 5 of the Secondary Amendment instead of the following condition: Require a minimum four foot high, attractive brick wall and dense evergreen shrub hedge which will address crime prevention through environmental design, block ambient light from motor vehicles, and is consistent with the storm water management along the parking edge for Parcels A and B, also referenced as Lots 1,2 and 3, where the edge is adjacent to the greenway entrance feature. Details, specifications and specific plantings shall be provided for review and approval by the Urban Design Section.

## **III. Detailed Site Plan**

The Town submits that it was legal error to not include the following conditions in the DSP:

1. Prior to the issuance of the first grading permit, the Applicant, its heirs, successors and assigns shall demonstrate that the extension of the approved J-Crossing (Version J.3.300) over the CSX tracks to Rivertech Court with at least 36 feet of road pavement, five foot sidewalks and on-road bike lanes, plus a two foot barrier (a) have been constructed, (b) fully bonded and permitted for construction with an agreed-upon time table for construction by the Applicant and/or the applicant's heirs, successors, or assigns, (c) otherwise incorporated in a specific public facilities financing and implementation program as defined in Section 27-107.01(186.1) of the Zoning Ordinance or (d) there is incorporated within the adopted County Capital Improvements Program (CIP) or the current State Consolidated Transportation Program (CTP) with one hundred percent (100%) construction funding allocated during the six years. In addition, the Applicant must submit for review and comment the completed, revised funding plan for the CSX Crossing (Bridge) to the Office of the Executive, Prince George's County; the Office of the Mayor, Town of Riverdale Park; and the Office of the Mayor, Town of University Park, which shall be allowed 10 days to review and comment prior to the issuance of a grading permit. If no comment is received, the permit may be issued.

2. Prior to approval of the Detailed Site Plan, the applicant shall submit a draft easement for the protection and maintenance of the 90 to 120 foot wide buffer required by Condition 13 of Zoning Ordinance No. 11-2012 for Zoning Map Amendment A-10018 to the benefit of the Town of University Park and the Town of Riverdale Park. The easement for the protection and maintenance, which is subject to approval by the Town of University Park and Town of Riverdale Park, shall include language that sets forth the rights, responsibilities, and liabilities of the applicant and the applicant's heirs, successors, and/or assignees with respect to maintenance of the buffer, consistent with the requirements of the detailed site plan. The easement shall be reviewed and approved by the Planning Board or its designee.
3. Prior to approval of the final plat, the applicant, and the applicant's heirs, successors, and/or assignees, shall submit a fully executed easement for the protection and maintenance to the benefit of the Town of University Park and the Town of Riverdale Park for the entire buffer delineated on the approved detailed site plan. The liber/folio of the easement shall be reflected on the final plat prior to recordation.
4. Delete or relocate Lots 1-7 along Woodberry Street and create a common play area within this space with appropriate buffering and screening from Building 1.

#### **IV. Additional Conditions**

1. In order to insure that the obligations with respect to the CSX crossing are met, the District Council should require the following:
  - a. Prior to certification of plans, provide a profile, cross sections, architectural renderings and of the bridge crossing for review by Urban Design and the Town of University Park.
  - b. Prior to issuance of a grading permit, require proof of payment of \$50,000 to the University of Maryland by the Applicant.
  - c. Prior to first building permit, require that the Applicant demonstrate final approval of an agreement with the University of Maryland (including approval by the Board of Public Works) with respect to the transfer of the property required to land the bridge to the Applicant.
  - d. Prior to issuance of a grading permit, the Applicant must file and obtain approval for any required detailed site plan or mandatory referral for the property where the bridge will land.
2. The District Council should also require the following:
  - a. Prior to certification of plans, include a sheet that references all applicable conditions, including A-10018, the Preliminary Plan and the Detailed Site Plan.

- b. Prior to certification of plans, Applicant shall show on the plans the final disposition of the improvements required by SHA and the extent of the gateway feature. If a sidewalk is included in SHA improvements, there should be a showing that it meets ADA requirements.

