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ZONING & PLANNING - MARYLAND

Matter of Homick

Court of Special Appeals of Maryland - December 1, 2022 - A.3d - 2022 WL 17347897

Protesters petitioned for review of decision of city board of appeals approving developer's application for special exception to build new and retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, but which denied developer's request for parking variances.

The Circuit Court affirmed decision granting approval of special exception and denying request for parking variances, and remanded for board to clarify incongruity between decisions. On remand, board approved application based on amended site development plan (SDP) to comply with parking restrictions in light of denial of parking variances. Protesters again sought review, and Circuit Court affirmed. Protesters appealed.

The Court of Special Appeals held that:

- Court of Special Appeals had jurisdiction over appeal;
- Board's consideration on remand of developer's amended SDP did not impermissibly exceed scope of circuit court's remand order;
- Approval of application based on amended SDP was not inconsistent with remand order;
- Substantial evidence supported board's approval on remand of application for special exception; and
- Board's approval of application on remand was not arbitrary and capricious.

Court of Special Appeals had jurisdiction over appeal from circuit court's final judgment on judicial review of city board of appeals' grant of developer's request for special exception to build new and to retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, under statute authorizing appeal from judgment of circuit court to Court of Special Appeals when litigation involved zoning dispute.

City board of appeals' consideration on remand of developer's amended site development plan, which reduced seating capacity of proposed new restaurant in order to comply with zoning requirements for parking, did not impermissibly exceed scope of circuit court's remand "for further clarification" as to how board could grant developer's original request for special exception to construct restaurant and to retrofit existing buildings to create dwelling apartments and commercial office space, despite having denied request for variances from parking requirements; circuit court found that substantial evidence supported board's findings in support of its decisions granting zoning district boundary adjustment and denying parking variances, such that those issues could not be relitigated on remand, and order did not prohibit board from considering new facts not considered when application was first evaluated, in order to remain consistent with circuit court's order.

City board of appeals' approval of application for special exception to build and retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, based on

amended site development plan (SDP) that reduced restaurant seating capacity in order to comply with parking restrictions in light of board's denial of request for parking variances, was not inconsistent with circuit court's order in which it found that board had not adequately explained how it could grant application while denying request for parking variances and remanding to board "for further clarification consistent with this ruling," despite protesters' assertion that remand order was law of case; board did not reject law of case, as it was able to point to modifications to SDP, including zoning district boundary adjustment that was previously affirmed, reduced seating capacity for restaurant, and conditions and restrictions imposed on approved special exception, all of which addressed circuit court's original concern about incongruity between approval of application despite denial of request for parking variances.

Substantial evidence supported city board of appeals' approval on remand of developer's amended application for special exception to build new and retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, which reduced proposed seating capacity of restaurant to comply with parking restrictions, following denial of request for parking variances; restaurants in zoning district had to provide parking spaces for 30% of its patronage capacity, additional ten spaces had to be on site for apartments and commercial office space plans, developer's amended site development plan (SDP) enhanced bufferyards and reduced onsite parking spaces needed and established parking management plan, and number of parking spaces provided, used in accordance with parking management plan, provided sufficient parking for all proposed users, in compliance with city code parking restrictions, without need for parking variances.

City board of appeals' approval on remand of developer's application for special exception to build new and retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, based on amended site development plan (SDP) that reduced seating capacity of restaurant and parking management plan in order to comply with code parking restrictions in light of denial of request for parking variances, was not arbitrary and capricious, despite protesters' assertion that board did not comply with requirement of one-year wait period for resubmission of application after initial denial, where board approved original application, subject to conditions, circuit court affirmed approval and denial of parking variances but remanded for board to clarify incongruity between grant of application and denial of parking variances, and amended application addressed circuit court's concerns and complied with parking restrictions.

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