

IN RE:

SPECIAL EXCEPTION DOCKET NO. 1325
WALDORF STATION
(FORMERLY KNOWN AS WALDORF CROSSING)/
WALDORF RESTAURANT INC.,
(APPLICANT)

APPLICANT'S EXHIBIT 4114/15
11 DOCKET # 1325

BEFORE THE CHARLES COUNTY
BOARD OF APPEALS

MEMORANDUM OF LAW

Waldorf Restaurant Inc., (“Applicant”), through their counsel, Gibbs and Haller and Edward C. Gibbs, Jr., hereby file this Memorandum of Law.

I. AN APPEAL OF AN APPROVED PRELIMINARY SUBDIVISION PLAN TO THE CIRCUIT COURT DOES NOT STAY THE PLANNING COMMISSION’S APPROVAL OF SAID PRELIMINARY PLAN OF SUBDIVISION.

The Planning Commission previously approved the Preliminary Subdivision Plan (PSP) (XPN#12-0010) on September 22, 2014. Certain objectors appealed the approval directly to the Circuit Court. An appeal was also filed to the Board of Appeals. That appeal was dismissed. The Board’s dismissal was also appealed to the Circuit Court. The Board of Appeal’s decision, as well as the Planning Commission’s original approval of PSP XPN#12-0010, are now on appeal to the circuit court by opponents of the development. No motions have been filed by any parties to stay any of the administrative proceedings in connection with this project, nor has any court stayed the proceedings *sua sponte*.

The approval of PSP XPN#12-0010 is required for this project. However, a challenge to the Planning Commission is not a proper basis to stay the administrative actions, such as the captioned Special Exception, that Applicant pursues in furtherance of this project.

Maryland Rule 7-204 governs petitions for judicial review. It is well-settled law that a petition for judicial review does not stay the underlying administrative action. Indeed, Maryland Rule 7-205 specifically reads:

The filing of a petition does not stay the order or action of the administrative agency. Upon motion and after hearing, the court may grant a stay, unless prohibited by law, upon the conditions as to bond or otherwise that the court considers proper. (Emphasis added.)

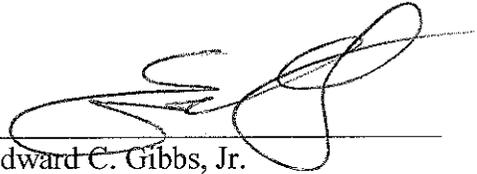
Although Rule 7-205 provides a mechanism whereby the court may grant a stay upon motion, the Rule neither requires the court to grant a stay nor automatically imposes a stay on the underlying action or proceedings.

Maryland courts have recognized that a petition for judicial review does not serve to stay an administrative action. In a case involving the approval of a preliminary plan of subdivision, the Court of Appeals held that a party seeking to proceed pursuant to approval from a final action such as a preliminary plan approval can continue to act on such approvals even when challenged in court. See City of Bowie v. Prince George's Cnty., 384 Md. 413, 430, 863 A.2d 976, 986 (2004) (“we hold that the Planning Board had proper jurisdiction to consider Green Hotels' final plat and the Board was not required to withhold its consideration until such time as all legal challenges to the preliminary plat's approval were exhausted.”). The Court made clear that a successful applicant on a administrative zoning or subdivision action can undertake the actions approved notwithstanding that the action, such as a preliminary plan, might be appealed to the circuit court. However, the Court also recognized that the applicant does so at his or her own risk that the underlying administrative action may be invalidated.¹

Accordingly, Applicant is permitted as a matter of law to proceed with the captioned Special Exception, as well as all other governmental actions in furtherance of the project.

¹The Applicant submits even if no preliminary plan was approved, this special exception could be processed in any event.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Gibbs, Jr.', written over a horizontal line.

Edward C. Gibbs, Jr.

GIBBS AND HALLER

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