

Case No.: DSP-89063-07 Duvall Village
Shopping Center, Wal-Mart

Applicant: Wal-Mart Real Estate
Business Trust

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL

ORDER OF REMAND DE NOVO

This matter came before the District Council for oral argument on June 30, 2014, pursuant to an appeal and the Council's election to review pursuant §27-290 of the Zoning Ordinance of Prince George's County, being also Subtitle 27 of the Prince George's County Code and §25-210 of the Land Use Article of the Maryland Annotated Code ("Regional District Act")¹. After conducting proceedings pursuant to the Zoning Ordinance and its Rules of Procedure, the Council took this matter under advisement. On September 22, 2014, the Council referred this case to staff for the preparation of an order of remand de novo.

The District Council takes administrative notice² of the recent decision of the Court of Special Appeals of Maryland in *County Council of Prince George's County, Sitting as the District Council v. Zimmer Dev't*, 217 Md. App. 310, 92 A.3d 601, (2014), *cert. granted*, Sept.

¹ For purposes of this Remand Order, references to the County Council of Prince George's County, Maryland, sitting as the District Council, herein, shall be "District Council"; references to the Prince George's County Planning Board herein shall be "Planning Board"; references to the Zoning Ordinance of Prince George's County Code, being also the Zoning Ordinance for Prince George's County (2011 Ed. & 2012/2013 Supp.), herein, shall be "PGCZO"; and references to the Regional District Act set forth in Md. Code Ann., Land Use, §§20-101-25-807 (2012 & Supp. 2013), herein, shall be "RDA."

² See §27-141 (...The Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision.). See also RULES OF PROCEDURE FOR THE PRINCE GEORGE'S COUNTY DISTRICT COUNCIL (Adopted by CR-5-1993 and Amended by CR-2-1994, CR-2-1995 and CR-74-1995)

See also Rule 6: Oral Argument and Evidentiary Hearings:

(f) The District Council may take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.

Term 2014, Case No. 64 (Sept. 19, 2014). In particular, the *Zimmer* court expressly affirms the District Council's authority to remand zoning cases to the Planning Board but limits a final decision of the District Council to the issues specified within its order of remand. Notwithstanding, we find the *Zimmer* decision at odds with the 2003 decision of the Court of Appeals of Maryland in *Dorsey v. Bethel A.M.E Church.*, 375 Md. 59, 825 A.2d 388 (2003), stating that when an appellate body remands a case for further proceedings, the District Council's decision is not final. *See Dorsey*, 375 Md. at 75-77, 825 A.2d at 397-98. We construe this ruling as clear confirmation of the District Council's jurisdiction to review the entire matter after remand.

Moreover, on September 19, 2014, the Court of Appeals of Maryland granted certiorari as to the *Zimmer* decision and, as such, its ruling is not final. Based on the ruling in *Zimmer*, and the recent determination by Maryland's highest court to review that decision, the District Council does not intend to limit its final decision in the instant case to the specific issues on remand. We shall instead, for the reasons set forth in the findings stated herein, REMAND DSP 89063/07 to the Planning Board to conduct de novo proceedings in accordance with the direction of this Remand Order.

PROCEDURAL BACKGROUND

This detailed site application requests approval for renovation and expansion of existing improvements within the Duvall Village Shopping Center, totaling 104,507 square feet of retail space and 4,835 of bank space. In particular, Applicants propose renovation of a vacant 56,238-square-foot building with a 21,678 square-foot addition to devise a 77,916 square-foot anchor building constructed in perpendicular orientation to the existing 26,591 square-foot strip shopping center. PGCPB No. 14-16, at 2; TSR of 02/20/14, at 3; Stmt. Jstfc'n of 02/04/14, at 3-

4. square feet of bank space Proposed parking fronts the new building and the existing strip center, and additional parking extends north and west of a 4,836-square-foot pad site occupied by an existing bank, along the Annapolis Road (MD 450) property frontage at the northern end of the site. *Id.* Lastly, the proposed building expansion project will extend the Duvall Village Shopping Center to include Vacant Parcel B in the northeastern portion of the site. *See* PGCPB No. 14-16, at 2; TSR of 02/20/14, at 4-5.

The record reflects significant development and zoning history as to this property. DSP-89063/07. The subject site of the proposed project, which originally included the 2.39-acre environmental setting of Historic Site 70-017 (“Buena Vista”), was rezoned from the Planned Community/ General Commercial, Existing (R-P-C/C-2) to General Commercial, Existing (C-G) by Zoning Ordinance No. 73-1978 (A-9233), in conjunction with companion cases A-9232, A-9234, and A-9235 for adjacent properties. *See* PGCPB No. 14-16, at 2; TSR of 02/20/14, at 4-5; Stmt. Jstfc’n, at 4. In September of that year, Planning Board approved Preliminary Plan of Subdivision 4 87104 for the Duvall Village Shopping Center, including the proposal for construction of 104,050 square feet of retail space and 19,850 square feet of office space. *Id.*

In August 1989, and pursuant to a condition of the rezoning approval, a detailed site plan (DSP-89063) was approved for the site. *See* PGCPB No. 14-16, at 2; TSR of 02/20/14, at 4-5. Over time, various revisions and amendments to the site plan were approved in 1990, 1995, 2002, and 2003, respectively. Also in 2003, two additional changes were recorded, one as to approval of a second subdivision proposal, and another granting an easement to dedicate space for signage to commemorate this site’s significance in County history. *Id.* Lastly, the record reflects that there is an approved Storm water Management Concept Plan for the site, Concept

Plan No. 19201-2012-00, approved by Prince George's County Department of Public Works and Transportation ("DPW&T") on October 1, 2012, and expiring October 1, 2015. *See* PGCPB No. 14-16, at 2; TSR of 02/20/14, at 4-5.

As determined from the administrative record, the subject application was filed and accepted on or about December 16, 2013; a Technical Staff Report was submitted on February 20, 2014; and Planning Board conducted hearing proceedings on March 6, 2014, pursuant to the provisions of §27-285 of the Zoning Ordinance. *See* PGCPB No. 14-16, at 1; 03/06/014 Tr., at 2. Several persons of record testified in opposition the proposed project at the public hearing, including Macy Nelson, representing several citizen opponents of the proposed development. *Id.* On March 27, 2014, the Planning Board adopted PGCPB No. 14-16, approving DSP 89063/07 with conditions. On April 14, 2014, the District Council elected to review this matter in accordance with §27-290 of the PGCZO and §25-210 of the RDA; thereafter, on May 1, 2014, an appeal was filed by Macy Nelson, on behalf of the citizens, challenging the decision of Planning Board. We conducted oral argument in accordance with the notice provisions of the Zoning Ordinance and Council Rules of Procedure on June 30, 2014 and, after conclusion of those proceedings, we took the matter under advisement.

APPLICABLE LAW

The District Council, pursuant to authority conferred in §§22-104 and 22-206 of the RDA, enacted certain provisions of the Zoning Ordinance relevant to the subject proposal, as follows:

The purposes of the Zoning Ordinance are:

(1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;

(2) To implement the General Plan, Area Master Plans, and Functional Master Plans;

(3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;

(4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;

(5) To provide adequate light, air, and privacy;

(6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;

(7) To protect the County from fire, flood, panic, and other dangers;

(8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;

(9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;

(10) To prevent the overcrowding of land;

(11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;

(12) To insure the social and economic stability of all parts of the County;

(13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;

(14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and

(15) To protect and conserve the agricultural industry and natural resources.

See §27-102, PGCZO. (Emphasis added.)

In turn, the general purposes of Detailed Site Plans are:

(A) To provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan;

(B) To help fulfill the purposes of the zone in which the land is located;

(C) To provide for development in accordance with the site design guidelines established in this Division; and

(D) To provide approval procedures that are easy to understand and consistent for all types of Detailed Site Plans.

See §27-281, PGCZO. (Emphasis added.)

For Commercial Zones, other general purpose provisions are recited in the Zoning

Ordinance as follows:

- (a) The purposes of Commercial Zones are:
- (1) To implement the general purposes of this Subtitle;
 - (2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;
 - (3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;
 - (4) To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;**
 - (5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;**
 - (6) To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;**
 - (7) To increase the stability of commercial areas;
 - (8) To protect the character of desirable development in each area;
 - (9) To conserve the aggregate value of land and improvements in the County; and
 - (10) To enhance the economic base of the County.

See §27-446, PGCZO (Emphasis added).

Regarding the C-G (General Commercial, Existing) Zone, the Ordinance provides:

(a) Purposes.

(1) The purposes of the C-G Zone are the same as the purposes of the C-S-C Zone, as stated in Section 27-454(a)(1) (except for (D)).

(b) Landscaping and screening.

(1) Landscaping and screening shall be provided in accordance with Section 27-450.

(c) Uses.

(1) The uses allowed in the C-G Zone are the same as those allowed in the C-S-C Zone, as provided for in Table of Uses II (Division 3 of this Part).

(d) Regulations.

(1) Additional regulations concerning the location, size, and other provisions for all buildings and structures in the C-G Zone are the same as those for the C-S-C Zone as provided for in Divisions 1 and 5 of this Part, the Regulations Table (Division 4 of this Part), General (Part 2), Off-Street Parking and Loading (Part 11), Signs (Part 12), and the Landscape Manual.

§27-457, PGCZO.

Lastly, the County approves and regulates development and land use through implementation of comprehensive plans pursuant to Parts 3 and Part 13 of its Zoning Ordinance, and Title 21 of the RDA. *See generally* §§27-221 – 27-228, 27-638 – 27-648, PGCZO (2011 & 2012/2013 Supp.); Md. Code Ann., Land Use §§21-102 – 21-107 (2012 & Supp. 2013). The following land use plans currently apply to the proposed project:

- (1) 2010 *Glenn Dale-Seabrook-Lanham & Vicinity Sector Plan and Sectional Map Amendment*;
- (2) 2009 *Countywide Master Plan of Transportation*; and
- (3) 2014 *Plan Prince George's 2035 General Plan Amendment*.³

See PGCPB No. 14-16, at 10; TSR of 02/20/14, at 12; Mem., Cmty. Plan'g Div. (Smoot) of 01/30/14, at 2, 4.

FINDINGS AND CONCLUSIONS

1. Transportation

Upon review of the administrative record, we make the following findings as to the sufficiency of evidence in support of Planning Board's transportation findings in its approval of DSP 89063/07, as follows:

Of particular value in discerning the history of traffic and transportation on the development site are the referral memoranda in the record from staff. In its February 11, 2014, memo on referral, the Subdivision states that transportation adequacy was evaluated twice at the site—in 1987, at the time of initial subdivision; and in 2003, pursuant to a second subdivision

³ We briefly note that, by adoption of CR-26-2014 on May 6, 2014, the District Council approved *Plan Prince George's 2035*, a comprehensive update to the general plan for that portion of the Maryland-Washington District within Prince George's County, pursuant to the provisions of Md. Code Ann., Land Use, §§ 21-103(a, b), 21-104 (2012 & Supp. 2013). As a result of Council approval, *Plan Prince George's 2035* supercedes the previous approval as to the 2002 *Prince George's County General Plan*.

proposal. *See* Subdv. Sect. Mem. (Nguyen) of 02/11/14, at 1-2. Notwithstanding, the memo states, only the first subdivision provides meaningful traffic analysis, because the second subdivision proposed no additional development. *See* Subdv. Sect. Mem. (Nguyen) of 02/11/14, at 3. Instead of conducting a new traffic assessment at that time, the 1987 traffic study results were incorporated into second proposal. *Id.* In like fashion, the Transportation Division offered similar comments as to the procedural history of transportation at the site. *See* Transp. Div. Mem. (Burton) of 01/16/14, at 2. As support for its conclusions, the Subdivision Section's memo incorporated the 1987 traffic findings as an attachment to its Memo within the record. *See* TSR, 02/20/14, at 57; Subdv. Sect. Mem. (Nguyen) of 02/11/14, Att. 1. A final referral memo of note in the record was submitted by the Health Department on January 15, 2014, cites the following impact assessment for the proposed development:

Increased traffic volumes in the area can be expected as a result of the inclusion of the Wal-Mart on the site. Scientific reports have found that road traffic is considered a chronic environments stressor and may impact people living in the adjacent communities. In addition, there should be clearly marked pedestrian crossings in the roads between the community and the shopping center.

TSR, 02/20/14, at 73; Health Dep't Mem. (Hoban) of 01/15/14, at 1.

Other record testimony of note emanates from the public hearing before the Planning Board regarding DSP 89063/07. *See* 03/06/14 Tr., at 15-35. During the hearing, and in response to the Commissioners' questions, Staff provided explanations for the continued use of a 1987 Traffic Study test adequacy. *Id.* Thereafter, and more importantly, Counsel for Citizens' Opposition relayed the admission of staff that the 1987 traffic study was lost in a flood of the County Administration Building, and the statement that "not only is the applicant relying on a 1987 traffic study, it's a traffic study that appears to be no longer in existence." *See* 03/06/14 Tr., at 30.

In reaching its decision on this matter, we further note the Planning Board's finding that it had no authority, when reviewing DSP-89063-07, to consider the adequacy of the road system serving the proposed development because the 1987 Preliminary Plan performed that analysis. *See* 03/06/14 Tr., at 15-35. Instead, the record reflects the ruling of the Planning Board that the only relevant issue was whether traffic generated by the development proposed in the subject application would be greater than the traffic authorized by the 1987 Preliminary Plan. *Id.*

However, upon review of the record to assess that issue, we find credible evidence that disputes calculations used to find there will be less traffic resulting from this project than in 1987, specifically: (1) that erroneous failure to consider revisions to the standardized methodology for calculating the floor area approval to distinguish between commercial and office space; and (2) through erroneous inclusion of the bank pad in the calculations transport the bank pad site in the total square footage calculations between the calculations for traffic, and the apportionment of square footage calculations applicable in 1987, and the standard calculations used for calculation of square footage used in 2014. *See* 03/06/14 Tr., at 32-34.

We take notice of the provisions of §24-111 of the County Subdivision Regulations, providing that, with certain exceptions, a Preliminary Plan dated prior to October 27, 1970, does not authorize the issuance of a building permit. Based on the record, we find that Planning Board erred in its interpretation §24-111 that a Preliminary Plan approved after October 27, 1970, must then be approved upon sit plan application without any consideration of the adequacy of roads in the area. What's more, this provision is silent as to Preliminary Plans approved *after* October 27, 1970. For these reasons, we find Planning Board's reliance on §24-111 for its conclusions as to transportation adequacy for this application erroneous conclusions of law.

We are further unable to find merit in Planning Board's conclusion of no jurisdiction over transportation adequacy, despite the compelling evidence to dispute the adequacy of the road system, as we find plainly the case in the subject application, because: (1) as previously discussed in this section of our Order, we find the record plainly shows fundamental changes in development patterns and traffic in this portion of Prince George's County since 1987; (2) the 1987 is missing from the Preliminary Plan file, or no longer exists, thwarting meaningful consultation or evaluation as to traffic; and (3) the current development proposal differs widely from that approved in 1987. *See* 03/06/14 Tr., at 32-34.

Based on this evidence, we find that the Planning Board failed to review the adequacy of the road system serving the proposed development, even though no planning body has considered the adequacy of the roads since 1987. *See* 03/06/14 Tr., at 15-35. That failure is especially significant where the traffic study from the 1987 Preliminary Plan is missing, and there are material differences between the proposed development in 1987 and the current proposal. *Id.* For these reasons, we find that a Remand De Novo is necessary in order for Planning Board to evaluate the adequacy of the relevant roads and intersections for the proposed development, and for Planning Board to take evidence and receive testimony in new proceedings as to the current adequacy of relevant roads and intersections for the proposed development.

2. Storm water Management

The District Council is also persuaded by the evidence in the administrative record supplied by expert testimony during the Planning Board public hearing as to the site plan application. Specifically, Robert E. Bathurst, P.E., of Century Engineering, storm water engineer was qualified as an expert witness at the hearing and offered insight as to the approved Storm

water Management Concept Plan and its viability after completion of the proposed additional development on the site. *See* Tr., 03/06/14, at 51-66.

The record of testimony offered at the public hearing before Planning Board includes Robert G. Bathurst, P.E. opined that the Applicant's storm water plan does not meet the minimum storm water standards because the Applicant incorrectly treats existing pervious surfaces as impervious surfaces. Had the Applicant properly treated the pervious areas as pervious areas, the applicable storm water regulations would require the Applicant to reduce the size of the building or parking lot and to provide additional storm water management. *See* Tr., 03/06/15, at 58, 59-60.

In particular, Mr. Bathurst's testimony highlights specific inconsistencies with the State approved storm water concept plan for the site, namely the lack of evidence as to a downstream study in the certification of the current concept plan; the strong discrepancy shown on the concept plan of impervious surface and the State law, resulting in marginal storm water management *before* the addition new impervious surfaces on-site; and the obsolete design of the concept plan that lacks an attenuation device to hold back the peak. *See* Tr., 03/06/15, at 58, 59-61.

Moreover, we find that the Applicant had the legal obligation to prove that its storm water plan satisfies all regulatory requirements before the Planning Board approved the detailed site plan for the site. As a result, the Planning Board erred when it approved the DSP, stating:

The detailed site plan shall be sent to the Department of Permits, Inspections and Enforcement (DPIE) with the request that they consider and address the issues raised in a letter dated March 5, 2014, from Mr. [Robert] Bathurst of Century

Engineering, regarding stormwater management and to consider the run-off that is going into the townhouses located immediately adjacent to the subject site.

PGCPB No. 14-16, at 22.

As a result, we find that the Planning Board should thoroughly address grading and storm water management on the subject property. While we note the evidence in administrative notice that there exists an approved Storm water Management Concept Plan for the site, we find the expert witness testimony produced at the Planning Board hearing persuasive to refute the adequacy of the current Concept Plan in place on the site. We further find that this evidence is sufficient to establish existence of significant factual dispute regarding the capacity for the current facilities to accommodate storm water in and around the subject site as currently constructed. Neither the record evidence nor Planning Board resolution satisfactorily establish whether the current Concept Plan addresses the impact of the construction on storm water runoff on adjoining properties. Consequently, a remand is vital for Planning Board to specifically consider and make findings as to the potential detrimental effects of the proposed project on storm water on the site and surrounding properties. Moreover, the expert witness testimony produced at the Planning Board hearing reveals significant factual dispute regarding that plan's capacity to accommodate storm water under in its current state of development. Further, neither the record nor Planning Board resolution indicate whether the current Concept Plan assess changes in storm water runoff resulting from the additional development and impact on adjoining properties. Moreover, on remand, the Planning Board should evaluate whether the Applicant's storm water plan satisfied all regulatory requirements. The District Council also instructs the Planning Board to conduct a hearing where County staff, the Applicant, and all

Persons of Record will be permitted to present evidence regarding whether the Applicant's storm water plan satisfied all regulatory requirements.

3. Compatibility with Comprehensive Land Use Plans

As discussed in more detail in the sections above, we find the following land use plans currently apply to the proposed project: (1) 2010 *Glenn Dale-Seabrook-Lanham & Vicinity Sector Plan and Sectional Map Amendment*; (2) 2009 *Countywide Master Plan of Transportation*; and (3) 2014 *Plan Prince George's 2035 General Plan Amendment*.⁴ See PGCPB No. 14-16, at 10; TSR of 02/20/14, at 12; Mem., Cmty. Plan'g Div. (Smoot) of 01/30/14, at 2, 4.

We note references as to the 2002 *Prince George's County General Plan*;, as well as the 2009 *Countywide Master Plan of Transportation*. PGCPB No. 14-16, at 10; TSR of 02/20/14, at 12; Cmty. Plan'g Div. Mem. (Smoot) of 01/31/14. References within both the 2002 *Prince George's County General Plan* and the 2009 *Countywide Master Plan of Transportation* designate the subject property within the Developing Tier of the County; accordingly, policy recommendations for the area call for low-to-moderate density, suburban residential communities and to limit commercial uses to designated Centers, with and employment areas that are transit serviceable. *Id.* The proposed application is further subject to the 'Complete Streets' principles as well as recommendations set forth within Chapter IV and Chapter VI of the 2009 *Countywide Master Plan of Transportation*. See PGCPB No. 14-16, at 12; TSR of 02/20/14, at 14-15; Trans. Plan'g Div. Mem. (Shaffer) of 02/06/14, at 1-2. We find the evidence

⁴ We briefly note that , by adoption of CR-26-2014 on May 6, 2014, the District Council approved *Plan Prince George's 2035*, a comprehensive update to the general plan for that portion of the Maryland-Washington District within Prince George's County, pursuant to the provisions of Md. Code Ann., Land Use, §§ 21-103(a, b), 21-104 (2012 & Supp. 2013). As a result of Council approval, *Plan Prince George's 2035* supersedes the previous approval as to the 2002 *Prince George's County General Plan*.

in the record inconclusive in ascertaining whether the Planning Board fully examined the proposed development in the context of all recommendations embodied within these Countywide comprehensive plans. Consequently, we find that further examination of this matter is needed to ensure consistency with specific policies articulated in the transportation functional master plan and all applicable general plan amendment as to continuity of County land use policy.

Moreover, the 2010 *Glenn Dale-Seabrook-Lanham & Vicinity Sector Plan and Sectional Map Amendment* provides additional land use recommendations pertinent to the subject proposal. See PGCPB No. 14-16, at 10; TSR of 02/20/14, at 12; Mem., Cmty. Plan'g Div. (Smoot) of 01/30/14, at 2, 4. Regarding the subject property, this current sector plan (*i.e.*, area master plan) states that, based on the condition of existing commercial areas and recently completed, pending, and planned commercial development, commercial zoning amendments should focus on facilitating redevelopment in targeted commercially zoned areas, such as Duvall Village. PGCPB No. 14-16, at 1011; TSR of 02/20/14, at 13; Cmty. Plan'g Div. Mem. (Smoot) of 01/30/14, at 2. As such, we are unpersuaded that substantial evidence exists in the record exists in support of the Board's finding that the proposed development is "in conformance with the area master plan recommendations for the shopping center"; and "[t]he economic benefits of the proposed Wal-Mart are also substantial." See PGCPB No. 14-16, at 12. This assertion, without more specific points articulated to showing the evidence upon which it is based, allows for no meaningful review of its substance and, ultimately, its validity. We therefore find that further review of this development proposal is needed to, among other issues, whether the proposed retail use will create economic benefits. To this end, we remand this matter to the Planning Board for de novo proceedings, with instruction for specific evaluation and to make specific findings regarding the recommendations of the area master plan. We further instruct that Planning Board allow

testimony from the County staff, the Applicant, and all Persons of Record as to whether the proposed project will create economic benefits.

ORDER

Based on the review of the administrative record, and the findings and conclusions, it is hereby ORDERED, that this matter is remanded to the Planning Board to conduct proceedings de novo pursuant to §§27-107.01(a)(198) and 27-132(f)(2) of the Zoning Ordinance.

- (1.) On remand, the Planning Board shall direct its technical staff to prepare the application over again as if it were a new one; as such, Planning Board is instructed to consider and incorporate all findings and conclusions set forth in this Order, to conduct all necessary referrals, and to issue all specified reports set forth in Part 3, Division 9 of the Zoning Ordinance and §§ 22-104(b) (1, 5), 22-206(b), 22-108(b), 25-210(a–d) (2012 & Supp. 2013) of the RDA. However, nothing in this Order of Remand De Novo shall require Applicant to submit a new application for the proposed development project. Accordingly, after conducting a new public hearing after submission of the new technical staff report, Planning Board shall adopt a new decision on the subject application, and transmit its adopted resolution to the District Council.

- (2.) On remand, Planning Board shall process this matter anew in accordance with the prescriptions of Part 3, Division 9 of the Zoning Ordinance. In conducting de novo proceedings, the District Council instructs the Planning Board to evaluate the adequacy of transportation facilities, including relevant roads and intersections in the vicinity of the property that is the subject of this application, and to make specific findings and determinations as to the adequacy of those transportation facilities, In so doing, Planning Board is additionally instructed to conduct a new public hearing where County staff, the Applicant, and all Persons of Record will

be permitted to present evidence regarding adequacy of transportation facilities, including relevant roads and intersections in the vicinity of the subject application.

- (3.) On remand, the Planning Board shall review the project application based on a new administrative record, incorporating the findings and conclusions updated County policies embodied in the 2014 *Plan Prince George's 2035 General Plan Amendment*, including analysis as to pertinent changes in growth policies, transportation priorities, the elimination of tier designations previously designated under the 2002 *Prince George's County General Plan*, and other pertinent policy changes affecting development in the area of the subject proposal.
- (4.) On remand, the Planning Board shall review all applicable master plans and area master plans for the area that includes the site proposed for this project. To this end, Planning Board is instructed to create a new administrative record incorporating specific analysis as to the recommendations within all applicable master plans. The District Council also instructs the Planning Board to conduct a new public hearing where County staff, the Applicant, and all Persons of Record will be permitted to present evidence regarding compatibility with applicable master plan recommendations, and to present evidence regarding whether the proposed retail use will create economic benefits for the County and surrounding communities.
- (5.) On remand, the Planning Board should thoroughly address grading and storm water management on the subject property. While the record indicates that there is an approved Storm Water Management Concept Plan for the site, expert witness testimony produced at the Planning Board hearing reveals significant factual dispute regarding that plan's capacity to

accommodate storm water under in its current state of development. Further, neither the record nor Planning Board resolution indicate whether the current Concept Plan assess changes in storm water runoff resulting from the additional development and impact on adjoining properties. As a result, on remand the Planning Board should evaluate whether the Applicant's current storm water plan satisfied all regulatory requirements for approval of storm water management concept plans. The District Council also instructs the Planning Board to conduct a new public hearing where County staff, the Applicant, and all Persons of Record will be permitted to present evidence regarding whether the Applicant's storm water plan satisfied all regulatory requirements.

- (6.) As provided in §27-107.01(a)(198), as a Remand De Novo is a remand of a zoning case back to the Planning Board for the purpose of processing the application over again as if it were a new one, all persons who wish to do so may register as persons of record in the de novo proceedings for this matter.

ORDERED this 23rd day of September, 2014, by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Lehman, Olson, Patterson, Toles and Turner.

Opposed:

Abstained:

Absent:

Vote: 9-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

By: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council