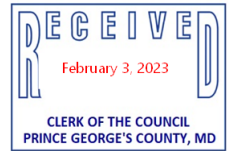


SPECIFIC DESIGN PLAN
SDP-1603-03
NATIONAL CAPITAL
BUSINESS PARK,
PARCEL 11

* BEFORE THE
* DISTRICT COUNCIL
* FOR
* PRINCE GEORGE’S COUNTY



AND

TCP2-026-2021-06

*
* * * * *
* * * * *

Exceptions and Request for Oral Argument

Introduction

NCBP Property, LLC (“Applicant”) applied for the approval of a Specific Design Plan (SDP-1603-03) to develop “a 301,392-square-foot warehouse distribution building” with associated parking and loading areas including up to 583 parking spaces and 133 loading spaces. Technical Staff Report 4. Ray and Kathy Crawford (collectively “Citizen-Protestants”) are Persons of Record and opposed SDP-1603-03. Along with SDP-1603-03, Applicant submitted TCP2-026-2021-06. Citizen-Protestants opposed TCP2-026-2021-06.

The Planning Board approved SDP-1603-03 and TCP2-026-2021-06 on December 15, 2022. The Planning Board approved the written resolution, 2022-133, on January 5, 2023. Notice of the Planning Board’s decision was mailed to all Persons of Record on January 10, 2023.

Citizen-Protestants appeal the Planning Board’s decision to approve SDP-1603-03 and TCP2-026-2021-06, file these exceptions, and request oral argument.¹

Standard of Review

When the Prince George’s County Council, Sitting as the District Council (“District Council”), reviews the Planning Board’s decision to approve a Specific Design Plan, the District Council exercises appellate, not original, jurisdiction. *See Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 569–70 (2015). When exercising appellate jurisdiction, the District Council must first ask, as a threshold matter, did the Planning Board’s opinion meet the minimum requirements for articulating the facts found, the law applied, and the relationship between the two in the agency’s written decision and without need for reference to the record? When exercising appellate review of the Planning Board’s decision, the District Council, “may not uphold the agency order unless it is sustainable on the agency’s findings and for the reasons stated by the agency.” *United Steelworkers of Am. AFL-CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984); *see also Relay Imp. Ass’n v. Sycamore Realty Co.*, 105 Md. App. 701, 714 (1995).

¹ Citizen-Protestants’ appeal is permitted under PZO Section 27-528.01(a) which provides that “the Planning Board’s decision on a Specific Design Plan may be appealed to the District Council upon petition of any person of record within thirty (30) days after the date of the notice of the Planning Board’s decision.” Citizen-Protestants are Persons of Record and have filed this appeal within 30 days of the date of the notice of the Planning Board’s decision.

If the answer is no, the District Council must vacate the Planning Board’s decision and remand for further proceedings.

Second, if the agency’s written findings are in accordance with the requirements of Maryland law, the District Council asks whether the agency premised its decision on an erroneous conclusion of law. *See Potomac Valley Orthopaedic Assocs. v. Md. State Bd. of Physicians*, 417 Md. 622, 635–36 (2011). The District Council does not afford any deference to the Planning Board’s conclusions of law—reviewing conclusions of law *de novo*. *See e.g., Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 629 (1998) (quoting *People’s Counsel v. Prosser Co.*, 119 Md. App. 150, 167–68 (1998)).

Third, if the agency premised its decision on correct conclusions of law, the District Council asks whether the record includes substantial evidence to support the agency’s findings. *See Layton v. Howard Cnty. Bd. of Appeals*, 171 Md. App. 137, 173–74 (2006). If no, the District Council may reverse or vacate the Planning Board’s decision.

Argument

I. The Planning Board’s written decision is legally deficient.

The District Council should remand this case to the Planning Board because the Planning Board’s decision is legally deficient. When the Planning Board makes a final decision, the Planning Board is required to provide a written resolution reflecting the final decision of the Planning Board containing statements of “(i) the findings of fact, [and] (ii) conclusion of law.” Prince George’s County Planning Board Rules of Procedure § 13. Maryland’s administrative jurisprudence imposes additional requirements that written

resolutions to be detailed enough to permit an appellate body to adequately review the administrative agency's reasoning. *See e.g., Colao v. County Council of Prince George's County*, 109 Md. App. 431, 454 (1996) (finding that "in the absence of reasoned administrative analysis a reviewing court is unable to determine the basis of the agency's action"); *see also Forman v. MVA*, 332 Md. 201, 220–21 (1993) (concluding that "without findings of fact on all material issues, and without a clear statement of the rationale behind the [agency's] action, a reviewing court cannot properly perform its function"). Under Maryland's administrative jurisprudence, an administrative agency's written resolution will be deemed inadequate when it adopts verbatim a staff report without also providing the administrative agency's reasoning. *See Montgomery v. Board of Cnty. Commissioners for Prince George's Cnty*, 256 Md. 597, 603 (1970) (finding that it is only appropriate to rely on a Technical Staff Report when the administrative agency "incorporate[es] into its order specific findings of basic facts and conclusions of either the Planning Board or of the Technical Staff **by specific reference to those findings**") (emphasis provided). An administrative agency's written resolution may also be deemed inadequate when the resolution "simply repeat[s] statutory criteria, broad conclusory statements, or boilerplate resolutions." *Bucktail v. Talbot Cty.*, 352 Md. 530, 553 (1999).

Here, Exhibit A demonstrates that the Planning Board's written resolution consists almost entirely of a verbatim recitation of the Technical Staff's report and fails to provide any additional analysis regarding the Planning Board's findings of fact or conclusions of law. Additionally, the Planning Board's written resolution consists entirely of conclusory

statements and fails to articulate the facts relied upon to support the Planning Board's conclusions. Therefore, the Planning Board's written resolution gives the appearance that the Planning Board failed to conduct an independent analysis of the evidence provided to it and the resolution fails to provide any appellate body with the ability to meaningfully review the Planning Board's reasoning.

1. It was improper for the Planning Board to copy verbatim the Technical Staff Report in this instance.

The Planning Board's written resolution gives the appearance that the Planning Board "abdicated its task to exercise independent judgment." *See Maryland-Nat. Capital Park and Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 83, fn. 9 (2009) (finding that the Planning Board's practice of copying larger portions of the Technical Staff Report was permissible only because the Planning Board "added additional findings of fact and conclusions") [hereinafter *Greater Baden*]. Maryland's judiciary discourages strongly the practice of adopting by reference a staff report in an administrative agency's written decision. *See Montgomery v. Board of Cnty. Commissioners for Prince George's Cnty*, 256 Md. 597, 603 (1970). Instead, Maryland's common law makes clear that administrative agencies are required to provide an explanation for the decisions the agency reached based on the evidence considered by the agency and the conclusions made by the agency. *See e.g., Gough v. Board of Zoning Appeals for Calvert Cnty*, 21 Md. App. 697, 702 (1974) (explaining that express findings by an administrative agency are needed so that "the court can determine whether the findings are supported by substantial evidence,

and whether the findings warrant the decision of the board”). Underlying this requirement is the fundamental understanding that an administrative agency’s role is to act as a neutral arbiter of the facts presented to it during a contested hearing. When the outcome of a contested hearing is, or appears to be, predetermined, the administrative agency has abandoned its duty to provide an independent evaluation of the issues before it and the public trust in the administrative agency is diminished.

Here, the Planning Board’s written resolution is nothing more than a verbatim copy of the Technical Staff Report. While this practice may be appropriate in some instances, it cannot be appropriate here because, at the very least, it gives the appearance that the Planning Board’s decision regarding SDP-1603-03 and the associated TCP2 was predetermined—that the Planning Board would not, and did not, meaningfully consider the evidence presented to it during the public hearing. The Technical Staff Report was published two weeks before the Planning Board conducted its public hearing regarding SDP-1603-03 and the associated TCP2. Thus, the Technical Staff Report, did not, and could not, evaluate or consider the evidence provided by both Citizen-Protestants and the Applicant during the Public Hearing. When the Planning Board copied verbatim the Technical Staff Report in its resolution without providing **any** additional analysis or evaluation of **any** evidence presented to it during the public hearing, the Planning Board implied that it did not conduct an independent analysis of the evidence provided to it. Instead, the Planning Board’s written resolution implies that the public hearing was merely

for show—nothing said during that hearing would have impacted the Planning Board’s decision.

Therefore, it was improper, in this instance, for the Planning Board’s written resolution to consist of no more than a verbatim copy of the Technical Staff Report because it, at the very least, gives the appearance that the Planning Board did not conduct an independent analysis of the issues before it, and at worst, proves that the Planning Board did not conduct an independent analysis of the issues before it. On this ground alone, the District Council should remand this matter to the Planning Board so that the Planning Board can issue a written decision commensurate with an agency that actually conducted an independent analysis of the issues presented to it.

2. The Planning Board’s written resolution does not allow for meaningful review of the Planning Board’s reasoning by any appellate body.

The Planning Board’s written resolution is legally deficient because it does not allow an appellate body to meaningfully review the facts found or conclusions made by the Planning Board. Meaningful appellate review of an administrative agency’s decision can only occur when appellate bodies understand facts found, law applied, and reasoning of **administrative agency** who made the decision. *See e.g., Gough v. Board of Zoning Appeals for Calvert Cnty*, 21 Md. App. 697, 702 (1974). Courts discourage the practice of adopting verbatim the Technical Staff Report without providing any additional analysis because the court cannot determine the agency’s reasoning as opposed to the staff’s reasoning. *See Montgomery v. Board of Cnty. Commissioners for Prince George’s Cnty*,

256 Md. 597, 603 (1970). This is especially true when arguments presented to the agency are not addressed by the Technical Staff Report and the Technical Staff Report consists only of conclusory statements. When appellate bodies are reviewing administrative agency decisions, the appellate body is not permitted to “scour the record in search of evidence to support the agency’s conclusions.” *Relay*, 105 Md. App. at 714; *see also United Steel Workers of America AFL-CIO v. Bethlehem Steel Corp.*, 298 Md. 665, 680 (1984). Rather, the basis of the agency’s decision must appear within the four corners of its written resolution. *See Mortimer v. Howard Rsch. and Dev. Corp.*, 83 Md. App. 432, 446 (1990) (declining to speculate on which facts in the record the planning board might have adopted).

Here, the Planning Board did not provide any additional information to supplement the portions copied verbatim from the Technical Staff Report. Additionally, the Technical Staff Report, and thus the Planning Board’s written resolution, consists entirely of conclusory statements. The statements provided within the Resolution do not indicate what facts the Planning Board, or Technical Staff, relied on to support its conclusions. Thus, appellate bodies cannot know what facts the Planning Board relied on and cannot scour the record in search of any such facts. For example, PZO Section 27-528(a)(5) requires that SDP-1603-03 “demonstrates that the regulated environmental features are preserved and/or restored to the fullest extent possible.” To support the Planning Board’s conclusion that the application satisfies this requirement, the Planning Board provided only the following:

This SDP has been reviewed by the Planning Board and determined that environmental features are preserved and/or restored, to the fullest extent possible.

Resolution 7.

This statement is entirely devoid of any findings of facts upon which the Planning Board relied on to make this conclusion. What regulated environmental features are located on the Subject Property? If environmental features exist, are those features being impacted by the development proposed in SDP-1603-03? If they are impacted, are they being preserved the fullest extent possible? If they are not impacted, are they being restored to the fullest extent possible? The Planning Board's statement does not cite to any factual finding that would answer these questions, and thus does not provide an appellate body with any meaningful way to evaluate the validity of the Planning Board's conclusion.

Similarly, PPS 4-21056 requires that the "total development within the subject property shall be limited to uses which generate no more than 1,401 AM peak-hour trips and 1,735 PM peak-hour vehicle trips." To support its conclusion that the application satisfies this requirement, the Planning Board provided only the following:

A 301,392-square-foot gross floor area (GFA) warehouse/distribution building is proposed with this SDP. The Planning Board has reviewed and determined that the use is within the peak-hour trips.

Resolution 11.

Again, upon what facts did the Planning Board rely to reach this conclusion? Did the Applicant provide a trip generation estimate for the proposed use? Did the staff provide one? How do the anticipated trips associated with this use compare to the anticipated trips

associated with other approved uses on the National Capital Business Park site? What are the total trips anticipated if the trips associated with this use are added to the trips associated with the other approved uses on the National Capital Business Park site? The Planning Board Resolution fails to provide any factual basis to support its conclusion. Thus, no appellate body would be able to determine whether the Planning Board's conclusion is correct or supported by evidence without improperly scouring the record to find any such evidence.

Therefore, the District Council must remand this matter to the Planning Board because it is not possible for the District Council or any other appellate body to evaluate the basis and legitimacy of the Planning Board's conclusions based only on the conclusory statements provide within the four corners of the Planning Board's decision.

II. The District Council should reverse the Planning Board's decision to approve SDP-1603-03 because industrial uses should not be allowed on the Subject Property when any decision to approve an industrial use would be based on an illegal text amendment, CB-22-2020.

SDP-1603-03 proposes an industrial land use on the Subject Property zoned Residential Suburban Development (R-S). Although industrial uses are not ordinarily permitted in the R-S zone, CB-22-2020 provide an exception—allowing industrial uses only on the Subject Property. However, CB-22-2020 is an illegal text amendment because it is a special law in violation of Article III, Section 33 of the Maryland Constitution and because CB-22-2020 violates the uniformity clause of Section 22-201(b)(2)(i) of the Maryland Land Use Article. The Planning Board erred when it approved SDP-1603-03

which proposed an industrial land use on the Subject Property because the Planning Board's approval hinges on an illegal text amendment, CB-22-2020.

This exact issue is being litigated in several cases before the Prince George's County Circuit Court. Citizen-Protestants have provided, as Exhibit B, the District Council with a copy of one of the opening memoranda in one of those cases. Exhibit B fully addresses these arguments on pages 9–21. Citizen-Protestants incorporate by reference the arguments provided on pages 9 – 21 of Exhibit B which demonstrate that CB-22-2020 is an illegal special law and violates the uniformity clause.

The Planning Board could have, and should have, considered the validity of CB-22-2020 when it approved SDP-1603-03. The Court in *Maryland Reclamation Associates, Inc. v. Harford County*, 468 Md. 339, 398–99 (2020), determined that when administrative agencies consider land use applications, they can, and must, consider constitutional issues relevant to the land use application.

Therefore, the District Council should reverse the Planning Board's decision to approve SDP-1603-03 because industrial uses should not be allowed on the Subject Property when the Planning Board's decision to approve an industrial use is based on an illegal text amendment, CB-22-2020.

III. The District Council should reverse the Planning Board's decision to approve SDP-1603-03 because the proposed development is not a use permitted under the Prior Zoning Ordinance.

The District Council should reverse the Planning Board's decision to approve SDP-1603-03, because SDP-1603-03 proposes a development not permitted under the Prior

Zoning Ordinance. The development proposed in SDP-1603-03 is a high-cube facility not a “warehouse unit” or “distribution facility” contemplated under the Prior Zoning Ordinance. Therefore, the development proposed in SDP-1603-03 is not a use permitted under PZO Section 27-515(b).

When determining whether a proposed development qualifies as a use already defined by the county zoning code, Rathkopf suggests that “it is not the name used by the owner that determines the character of the use. This is to be ascertained from what the use actually consists of and its method of operation.”¹ Rathkopf's *The Law of Zoning and Planning* § 5:18 (4th ed.). Accordingly, land uses are differentiated based on “the type of use activity occurring on a land parcel or within a building situated upon a land parcel” and the “relative measure of development impact as defined by the...amount of traffic generated, and amount of site coverage.” See Michael Davidson and Fay Dolnick, *A Planners Dictionary*, American Planning Association 247, 237 (2004) (Attached as Exhibit C). Legislative history can also be informative when the Court or an administrative body is tasked with determining whether a new type of land use falls into a use already defined by a county zoning ordinance. See e.g., *Marzullo v. Kahl*, 366 Md. 158 (2001); *Lucas v. People's Counsel for Balt. Cty.*, 147 Md. App. 209 (2002).

Here, the Applicant asserts that SDP-1603-03 contemplates the development of a warehouse unit or distribution facility as contemplated in the table of uses under PZO Section 27-515(b). See Backup 17. However, the evidence before the Planning Board demonstrates that the proposed development in SDP-1603-03 is not a warehouse unit or

distribution facility because the type of activity occurring with the proposed development will be different than the types of activities associated with a warehouse unit or distribution facility, the relative development impact will be much greater for the proposed development than would be anticipated with a warehouse unit or distribution facility, and the legislative history demonstrates that the proposed development is not the type of use contemplated by the legislature when it created the warehouse unit and distribution facility uses in 1992. Therefore, the proposed development in SDP-1603-03 is not a use permitted under PZO Section 27-515(b).

- 1. The proposed development in SDP-1603-03 is a high-cube facility, not a warehouse unit or distribution facility, because the type of activities associated with the proposed development are the same as those anticipated with a high-cube facility but differ from those anticipated with a warehouse unit or distribution facility.**

When “the type of use activity occurring on a land parcel or within a building situated upon a land parcel” differs from the type of activity occurring on other land, it is likely that there are two different uses. *See* Exhibit C. The Prior Zoning Ordinance describes the types of activities occurring in a warehouse unit as “the storage of goods and materials in connection with the day-to-day operation of a wholesale or distribution business.” PZO § 27-107.01(a)(256). A study based on empirical data collected by the Institute for Traffic Engineers (ITE), provides further context for the types of activities associated with a general warehouse use. According to ITE’s empirical data, the activities that occur in these traditional or standard warehouse uses are the storage of goods and materials “typically for more than one month” with “little or no automation; mechanization

limited to pallet jacks and forklifts.” *See* High-Cube Warehouse: Vehicle Trip Generation Analysis, ITE (2016) 4, 6 (Attached as Exhibit D). The prior Zoning Ordinance describes the activities associated with distribution facilities as the shipment of “merchandise, materials, or supplies” by a “wholesaler or retailer to the sales outlets or service operations it supports.” PZO § 27-107.01(a)(66.4)(A)(emphasis provided). The ITE manual identified the types of activities occurring on land with a high-cube facility as including a shorter storage durations of goods and materials, distribution in association with e-commerce related business plans, and the utilization of new technology that increases automation on site. *See* Exhibit D 1, 4.

Here, the Applicant’s attorney, Robert Antonetti, testified that the proposed development in SDP-1603-03 was being designed to accommodate the types of activities that “the modern logistics users are looking for” *See* December 15, 2022, Planning Board Hearing at 02:51:46. The Applicant’s representative Cole Schnorf expanded on this idea providing that the proposed development is intended to act as “a modern logistics center,” December 15, 2022, Planning Board Hearing at 02:51:23, where tenants will utilize “material handling equipment [that] has gotten more sophisticated, [so] warehouse users [can] store their goods to higher heights.” *See* December 15, 2022, Planning Board Hearing at 02:52:23. The Applicant’s traffic expert, Michael Lenhart, has previously testified that the term “modern logistics center” is synonymous with the types of high-cube facilities identified by the ITE. *See* Transcript of Zoning Hearing Examiner Hearing on February 23,

2022 Regarding A-9968-03, p. 24–25.² Similarly, Citizen-Petitioners also argued during the Planning Board hearing that the proposed development would fall under one of the five categories of high-cube facilities identified by the ITE manual. *See* December 15, 2022, Planning Board Hearing at 02:52:57.

Therefore, the evidence on the record and the empirical data collected by the ITE demonstrate that the activities associated with the proposed development in SDP-1603-03 are similar, if not identical, to the types of activities associated with a high-cube facility but significantly different from the types of activities associated with a “warehouse unit” or “distribution facility” under the Prior Zoning Ordinance.

- 2. The relative development impacts anticipated with SDP-1603-03 are similar, if not identical, to those anticipated with a high-cube facility but significantly larger than the relative development impacts anticipated with any warehouse use in contemplated in 1992.**

On December 31, 1992, the District Council enacted CB-90-1992, which added the definition of “warehouse unit” to the Prior Zoning Ordinance (PZO). The development proposed in SDP-1603-03 will have a much larger relative development impact than would be anticipated by any warehouse use contemplated in 1992. Even if two developments share some similarities in the types of activities anticipated, when the relative development impact of one development is significantly larger than the other, the two developments

² The District Council may take judicial notice of this evidence pursuant to PZO § 27-528.01(d); PZO § 27-523(c) (“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”).

should be considered two different uses. *See* Exhibit C. Relative development impact can be measured by several factors including traffic generation, site coverage, and building height. *Id.* One of the clearest examples of this can be found when one considers a large apartment complex and a single-family home. While the types of activities associated with the two may be similar in some aspects, the relative development impact of an apartment complex will be substantially higher than that of a single family home.

The empirical evidence collected by ITE demonstrates that standard warehouse uses ordinarily involve “limited truck parking area[s],” a “low number of dock positions to overall facility,” and a relatively low traffic generation rate. *See* Exhibit D 4–6.

Conversely, ITE’s empirical data demonstrates that high-cube facilities can have large parking supplies, high truck parking ratios, a high amount of loading docks, and a higher trip generation rate. *See* Exhibit D 4–6.

Here, the proposed development in SDP-1603-03 will provide up to 583 parking spaces where only 110 parking spaces are required. Technical Staff Report, 4. Additionally, “the site will be served by 62 loading spaces which are also higher than the Zoning Ordinance requirement.” Backup 76. When asked why the Applicant could not reduce the number of parking or loading spaces in the proposed development, the Applicant’s representative, Mr. Schnorf, explained that “we’re trying to develop a modern logistics center. . . . We aim to have one trailer parking space for each dock and that’s what the modern logistics users are looking for.” *See* December 15, 2022, Planning Board Hearing at 02:51:49. Given the exorbitant number of parking spaces, high ratio of docks and trailer

parking, and testimony of Mr. Schnorf, the record is clear that the proposed development in SDP-1603-03 will have impacts similar, if not identical to a high-cube facility but a different relative impact compared to a general warehouse.

3. Legislative history in the Prince George’s County Zoning Ordinance supports the conclusion that the proposed use in SDP-1603-03 is a high-cube facility and not a “warehouse unit” or “distribution facility” under the zoning ordinance.

Prior Zoning Text Amendments and the new Zoning Ordinance further support the conclusion that the “warehouse unit” and “distribution facility” uses contemplated in 1992 in the Prior Zoning Ordinance, do not include a high-cube facility like the one proposed in SDP-1603-03. Two cases, *Marzullo v. Kahl*, 366 Md. 158 (2001), and *Lucas v. People’s Counsel for Balt. Cty.*, 147 Md. App. 209 (2002), demonstrate how Maryland courts evaluate whether a proposed use qualifies as a use already defined by a county zoning code.

Marzullo analyzed whether a snake breeding operation qualified as “commercial agriculture” based on the definition provided in the county zoning ordinance. 366 Md. at 174. The Court’s analysis turned on both whether the legislature contemplated snake breeding operations when it drafted the definition of “commercial agriculture” and whether substantial evidence supported the Board of Appeals’ interpretation of the zoning ordinance. Based on previously proposed text amendments to the definitions of several agricultural uses, the Court concluded that the legislature did not contemplate snake breeding when it defined “commercial agriculture” because snakes are not “farm animals” and there was no indication that the legislature intended to “extend [] any of the relevant

definitions to include any new animals involved in new types of commercial agriculture that were not explicitly stated in the new definition.” *Id.* at 190-91. Therefore, there was clear legislative intent that the definition of “commercial agriculture” did not include the proposed snake breeding use.

In *Lucas*, the intermediate appellate court considered whether a proposed facility consisting of a helicopter landing pad and a landing strip for fixed-wing aircraft qualified as an “airport” based on the definition in the Baltimore County zoning ordinance. 147 Md. App. 209. The court’s analysis turned on whether the County Council created a narrower definition that more specifically described the proposed use. The court concluded that “in light of the legislative history, it is appropriate to view the specific designations of airstrip, helistop, and helipad as modifications of the general term ‘airport,’ and creating distinct and separate uses for different levels of aircraft operations. The combination of an airstrip with a helistop and helipad does not create an airport.” *Id.* at 235. Therefore, subsequent text amendments that more specifically described the proposed use served as clear legislative intent that the broader “airport” use no longer included the proposed use.

Here, there is clear legislative intent that the District Council did not intend to include the high-cube facilities like the development proposed in SDP-1603-03 in the prior zoning ordinance. In the prior Zoning Ordinance, a Merchandise Logistics Center was defined as “a facility located within a Regional Urban Community, where goods or products are received and may be sorted, packed and stored for the purpose of distribution to parcel carriers or delivery directly to a customer, and which may include ancillary, and

related functions such as indoor or outdoor loading and unloading, light maintenance and refueling of fleet vehicles, employee break room(s), ancillary retail sales and customer service areas, pick and pack areas, printing, packaging, and assembling or making products on demand and ancillary and related uses.” ZO § 27-101.01.150.1. During a PHED Committee hearing on May 7, 2019, Karen Zavakos, Zoning and Legislative Counsel for the County Council, explained the difference between a warehouse unit defined in the Zoning Code and a Merchandise Logistics Center, stating:

[W]ell, a Merchandise Logistics Center is not intended to be a warehouse. If the definition is crafted as precisely as we hope, the idea is it’s basically a touchdown place where [the product] goes in anticipation of being dispatched to local or very nearby local area. The idea behind it is that nothing lingers. It is not a storage hub or any kind of warehouse-type facility as our local zoning laws contemplated that.

Exhibit E 4.

As in *Lucas*, the prior Zoning Ordinance included a more specific definition which more closely describes the proposed high-cube facility than the general “warehouse” and “distribution facility” uses.

Further, in the new Zoning Ordinance, the District Council defined a new use— “distribution warehouse”. This new use “includes the temporary storage of such products, supplies, and equipment pending distribution.” New ZO § 27-2500. Under the new Zoning Ordinance, a distribution warehouse use requires approval of a special exception in the Industrial, Employment (“IE”) zone. New ZO § 27-5101. This definition would likely encompass a high-cube facility like the development proposed here. Similar to Marzullo,

the new zoning text amendment demonstrates that the District Council did not intend to include a high-cube facility in either the “warehouse” or “distribution facility” uses of the prior Zoning Ordinance.

Additionally, the arguments relevant here are substantially similar to those presented to the Court of Appeals in the case of *Ray Crawford v. County Council of Prince George’s County Sitting as the District Council* (Case Number 0004). The parties in *Crawford* have fully briefed the case and the Court of Appeals heard oral argument on September 13, 2022. The Court of Appeals will likely issue its decision in the coming months. Citizen-Protestants previously introduced Petitioners briefs into the record for SDP-1603-02. The briefs can be found at SDP-1603-02 Planning Board Record pages 2376–2476.

For all of these reasons, the development proposed in SDP-1603-03 is a high cube facility and not a “warehouse unit” or “distribution facility” under the Prior Zoning Ordinance. Therefore, the District Council should reverse the decision of the Planning Board to approve SDP-1603-03 because the development proposed in SDP-1603-03 is not a use permitted on the Subject Property under the Prior Zoning Ordinance.

IV. The District Council should reverse the decision of the Planning Board because the record lacks substantial evidence to support the Planning Boards determination that SDP-1603-03 satisfies all of the applicable requirements.

The record lacks substantial evidence to support the Planning Board’s decision to approve SDP-1603-03.

1. The record lacks any evidence to demonstrate whether SDP-1603-03 conforms to the trip generation cap applicable to the Subject Property.

CDP-0505-02 and PPS 4-21056 limit the total vehicle trips permitted on the entire National Capital Business Park site. Under Condition 3 of CDP-0505-02 and Condition 2 of PPS 4-21056, the “total development within the subject property shall be limited to uses that would generate no more than 1,401 AM and 1,735 PM peak-hour vehicle trips.” Technical Staff Report 12, 14. Accordingly, the Applicant has the burden of demonstrating not only that the proposed development in SDP-1603-03 will “generate no more than 1,401 AM and 1,735 PM peak-hour vehicle trips” but also that the total anticipated vehicular trips from SDP-1603-03 **in combination with** any other approved development on the site, will “generate no more than 1,401 AM and 1,735 PM peak-hour vehicle trips.”

Here, the only evidence provided by the Applicant with regards to the trip generation cap is the following statement:

The Applicant is in agreement with the above condition. The development proposed with this SDP does not exceed the trip cap set forth above.

Backup 26, 27.

The Applicant did not provide any trip generation estimate for the proposed use or cite to any specific evidence to support its conclusory statement. Similarly, the Transportation Planning Section provide only the following statements:

The conditions have been evaluated as part of the SDP submission and are further discussed in this referral.

Backup 72.

The site is subject to prior approved SDP-1603-02 and pending SDP-2201, which considered a total of 3,597,465 SF of warehouse/distribution uses so far as part of the overall National Capital Business Park development. This SDP application proposes the development of approximately 301,392 SF of the general warehouse, which if approved, will bring the total site development to 3,898,857 SF of warehouse/distribution uses which is under the 5.5 million SF of development that was considered as part of the approved PPS application. As such, the uses and development program proposed with the SDP is consistent with the PPS application, and staff finds that the trips generated by the phased development of the subject SDP are within the trip cap.

Back up 76.

While these statements may demonstrate that the proposed development in SDP-1603-03 is within the square footage limitation imposed by prior applications, the statements do not provide any evidence upon which the Transportation Planning Section based its conclusion that “the trips generated by the phased development of the subject SDP are within the trip cap.” Back up 76. For example, these statements fail to calculate the anticipated trips generated by the proposed development in SDP-1603-03 or any other approved development on the site. Additionally, the statements fail to identify which trip generation rate should be applied to the development proposed in SDP-1603-03. Thus, the Transportation Planning Section’s statements are not adequate to satisfy the Applicant’s burden of proof with regard to the trip generation cap.

In that vein, the Technical Staff Report copied, almost verbatim, the Transportation Planning Section’s conclusions and provided the following statements with regard to the trip generation cap:

This application has been reviewed by Transportation staff and it was determined that the development does not exceed the trip cap and conforms with this requirement.

Technical Staff Report 13.

“The development shown with SDP-2201 is consistent with PPS 4-21056. The site is also subject to prior SDPs that approved development of approximately 3,428,985 square feet of warehouse/distribution uses so far, as part of the overall National Capital Business Park development. The SDP application proposes development of the general warehouse, which will be under the 5.5 million square feet of development that was considered as part of the approved PPS application. As such, the uses and development program proposed with the SDP is consistent with the PPS application, and staff finds that the trips generated by the phased development of the subject SDP are within the trip cap.”

Technical Staff Report 14.

Just as with the statements provided by the Transportation Planning Section, the statements provided in the Technical Staff Report fail to calculate the anticipated trips generated by the proposed development in SDP-1603-03 or any other approved development on the site. Additionally, the statements fail to identify which trip generation rate should be applied to the development proposed in SDP-1603-03. Thus, the statements are not adequate to satisfy the Applicant’s burden of proof with regard to the trip generation cap.

Finally, the Planning Board, in its resolution, provided the following statements with regard to the trip generation cap:

This application has been reviewed by the Planning Board and determined that the development does not exceed the trip cap and conforms with this requirement.

Resolution 10.

A 301,392-square-foot-gross floor area (GFA) warehouse/distribution building is proposed with this SDP. The Planning Board has reviewed and determined that the use is within the peak-hour trips.

Resolution 11.

The Planning Board failed to identify any evidence upon which it based its conclusion that the proposed development is within the peak-hour trips. Accordingly, the Applicant, the Transportation Planning Section, the Technical Staff, and the Planning Board all failed to cite evidence to support their conclusions that SDP-1603-03 is within the trip generation cap and the Applicant failed to provide submit any supporting evidence to the record to demonstrate its compliance with this criterion.

Therefore, the District Council should reverse the Planning Board's decision to approve SDP-1603-03 or vacate the decision and remand for the collection of further evidence because the record lacks any evidence upon which the Planning Board could base its determination that the proposed development conforms to the trip generation cap.

2. The record lacks substantial evidence to support a finding that SDP-1603-03 conforms to Sections 4.2 and 4.7 of the Landscape Manual.

The record lacks substantial evidence to support a finding that SDP-1603-03 conforms to all of the applicable requirements of the Landscape Manual. SDP-1603-03 "is subject to the requirements of the Landscape Manual, specifically Section 4.2, Requirements for Landscape Strips Along Streets. . . [and] Section 4.7, Buffering Incompatible Uses." Technical Staff Report 21.

Section 4.2 of the Landscape Manual requires “a landscape strip along the street line” for “all nonresidential uses and for all parking lots in any zone adjacent to a street.” The Landscape Manual provides six options for landscape strips in nonresidential and residential zones – a ten-foot landscape strip with at least 1 shade tree and 10 shrubs per linear feet of street frontage, a fifteen-foot average landscape strip with at least 1 shade tree and 5 shrubs per 35 linear feet of frontage, four to six foot landscape strip with a minimum of 10 shrubs per 30 feet of street frontage, a masonry wall, or an at least six foot landscape strip with an ornamental fence. Landscape Manual § 4.2(c)(6).

Neither the Planning Board’s resolution, the Technical Staff Report, the Backup, nor the Additional Backup, provide or cite to any document which identifies the type of landscape strip proposed by the Applicant in SDP-1603-03. Therefore, record lacks substantial evidence to support the Planning Board’s finding that SDP-1603-03 satisfies Section 4.2 of the Landscape Manual.

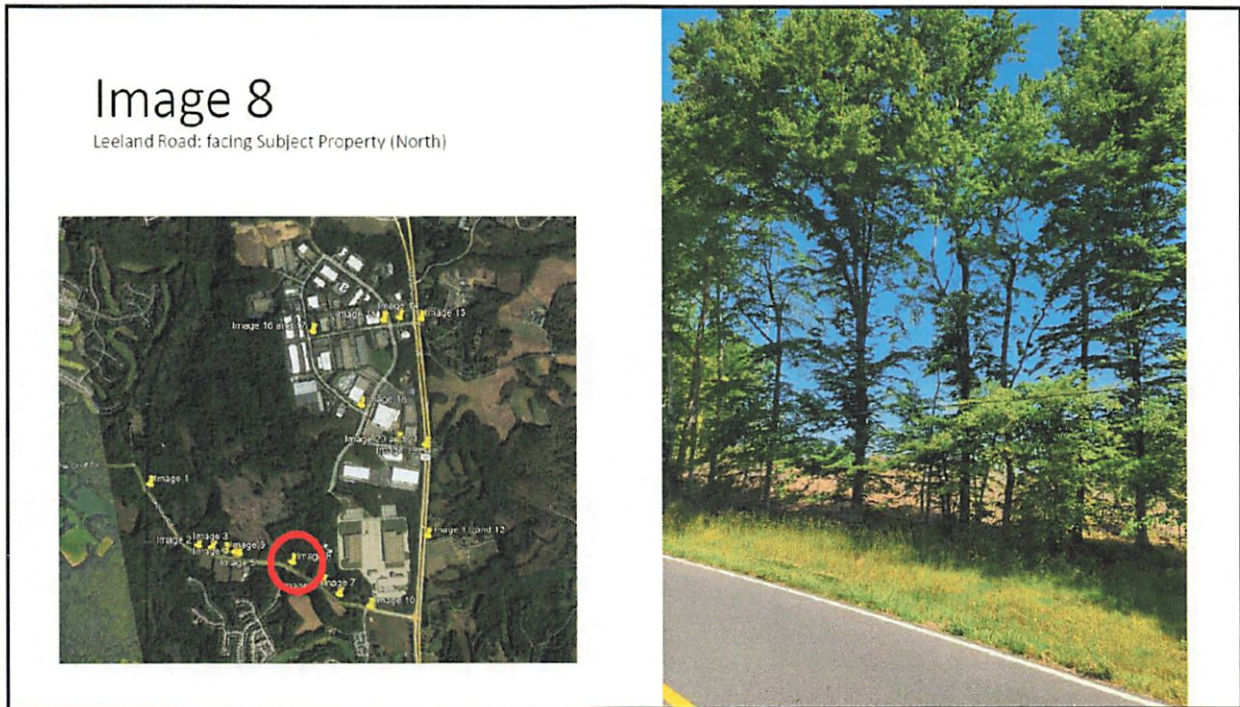
Section 4.7 of the Landscape Manual requires buffering of incompatible uses in order to “form a visual and physical separation between uses of a significantly different scale, character, and/or intensity of development to mitigate undesirable impacts, such as noise, smell, storage facilities, dust, fumes, vibration, litter, vehicle exhaust, and lighting.” Landscape Manual § 4.7(a)(2). When industrial uses abut single family residential uses, the Landscape Manual requires buffering of plant units per linear feet of property line. Landscape Manual § 4.7(c)(9). Buffering is also required when a developing property is adjacent to a vacant lot 4.7(c)(11).

Here, SDP-1603-03 proposes an industrial use on the National Capital Business Park. The National Capital Business Park property abuts Leeland Road where single-family residential houses exist and, as demonstrated by the image below, the southern portion of the development proposed in SDP-1603-03 runs parallel to Leeland Road. No development is currently approved on the portion of the National Capital Business Park site between the southern portion of the SDP-1603-03 development and Leeland Road.



Staff PowerPoint 12.

Accordingly, as demonstrated by the images produced below, the residential uses along Leeland Road will have a clear view of across the entire National Capital Business Park site and thus will also have a clear view of the proposed development in SDP-1603-03.



Additional Backup 55.

Image 9

Leeland Road: facing Subject Property (North)



Additional Backup 56.

The Applicant does not propose any buffering along the southern portion of the Subject Property in SDP-1603-03. Accordingly, the evidence in the record demonstrates that SDP-1603-03 fails to provide adequate buffering along the southern portion of the proposed development as required by Section 4.7 of the Landscape Manual. Therefore, the record lacks substantial evidence to support the Planning Board's finding that SDP-1603-03 satisfies Section 4.7 of the Landscape Manual.

For all of these reasons, the District Council should reverse the decision of the Planning Board to approve SDP-1603-03.

V. The District Council should reverse the decision of the Planning Board to approve TCP2-026-2021-06 because the record lacks substantial evidence to support the Planning Boards determination that TCP2-026-2021-06 satisfies all of the applicable requirements.

The record lacks substantial evidence to support finding that TCP2-026-2021-06 satisfies all of the applicable criteria of the Woodland and Wildlife Habitat Conservation Ordinance and the Environmental Technical Manual.

1. The record lacks any evidence to support a finding that the Limits of Disturbance in TCP2-026-2021-06 match the Erosion and Sediment Control Technical Plan.

Under Section 25-119 of the Prior Zoning Ordinance, “all plans and associated information shall be prepared in conformance with the Environmental Technical Manual.” PZO § 25-119(a)(3). The Environmental Technical Manual provides that “the [limits of disturbance (LOD)] shown on the TCP2 must always match that of the erosion and sediment control plan.” Environmental Technical Manual A-16. Accordingly, before the Planning Board can approve a Type 2 Tree Conservation Plan, the Planning Board is required to make an affirmative finding of fact that the LODs proposed in the TCP2 “match that of the erosion and sediment control plan.” Environmental Technical Manual A-16.

Here, the record demonstrates that the Applicant failed to provide the Planning Board or Technical Staff with a copy of an erosion and sediment control technical plan applicable to the Subject Property. *See* Resolution 19 (requiring that “a copy of the erosion and sediment control technical plan shall be submitted, so that the ultimate limit of disturbance for the project can be verified and shown on the Type 2 tree conservation plan” at a later time); Backup 66 (Environmental Planning Section explaining that it had not received a copy of the Erosion and Sediment Control Technical Plan and thus had not verified that the LOD for the proposed development matched). Thus, the record lacks any

evidence upon which the Planning Board could determine whether or not the LOD in TCP2-026-2021-06 matched the Erosion and Sediment Technical Control Plan.

Therefore, the District Council should either reverse the Planning Board's decision to approve TCP2-026-2021-06 or remand the decision so that the Planning Board can adequately determine whether the LOD in the TCP2 match the Erosion and Sediment Control Plan.

2. The record demonstrates that the Applicant could preserve or restore more woodland onsite.

The evidence in the record demonstrates that the Applicant failed to exhaust the on-site preservation techniques before being approved for off-site preservation techniques. Section 25-122(c) and the Environmental Technical Manual require that “every effort must be made to meet the woodland conservation requirements on-site and then the [methods listed in Section 25-122(c)] must be exhausted in turn.” *See* Environmental Technical Manual A-16. Accordingly, the Applicant has the burden of proving that it has exhausted all onsite preservation or reforestation techniques before it can be approved for any off-site preservation. Here, “the TCP2 proposes to meet the woodland conservation via a combination of both on-site woodland conservation as well as offsite preservation.” Backup 33. Although the Applicant submitted a Statement of Justification in association with its request to utilize off-site preservation techniques, the Applicant failed to explain why it could not increase the amount of on-site reforestation proposed—providing only that “we are proposing woodland conservation around the perimeter of the site as closely

ted to the edge of the development parcels as feasible.” *See* Backup 33. This explanation is not sufficient to explain why it could not adjust the proposed site layout to accommodate more onsite reforestation.

Instead, the evidence in the record demonstrates that the Applicant could provide additional land for onsite reforestation if it reduced the amount of parking proposed. The Applicant is proposing 173 more parking spaces than is required by the zoning ordinance. *See e.g.*, Technical Staff Report 4. Additionally, the Applicant’s attorney Robert Antonetti explained that “there are 303 parking spaces proposed and there’s an additional 280 spaces which are for overflow, but that’s an optional lot.” December 15, 2023, 02:50:10. Further, when Citizen-Protestants argued that the Applicant could provide more area for reforestation on the Subject Property if it reduced the proposed number parking spaces, Technical Staff testified that although Staff believes the proposal is adequate, “there could be more opportunities for green space” with the proposed development in SDP-1603-03. *See* Planning Board Hearing on December 15, 2023, 02:47:10. The Transportation Planning Section confirmed that “the proposed number of parking space is more than is required.” 02:48:09, *See* Planning Board Hearing on December 15, 2023.

Thus, the evidence in the record demonstrates that the Applicant could reduce the number of parking spaces in order to accommodate for a greater surface area of woodland on the Subject Property. Therefore, the record lacks substantial evidence to support the Planning Board’s finding that the Applicant actually exhausted onsite preservation

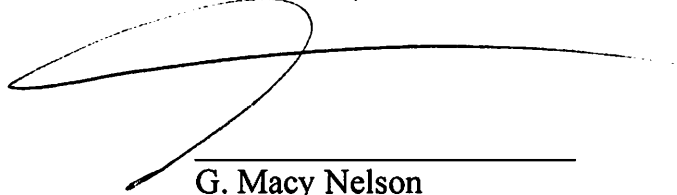
techniques before being approved for offsite techniques as is required under Section 25-122(c).

For all of these reasons, the District Council should reverse the Planning Board's decision to approve TCP2-026-2021-06.

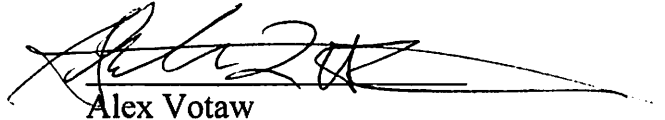
Conclusion

For all of these reasons Citizen-Protestants request the District Council disapprove SDP-1603-03 and TCP2-026-2021-06. In the event that the District Council approves SDP-1603-03 or TCP2-026-2021-06, Citizen-Protestants respectfully request that the District Council stay the effect of its approval, pursuant to Maryland Land Use Article § 22-407(a)(4), until the Circuit Court for Prince George's County issues its decision in CAL22-18255. In CAL22-18255, the Circuit Court will determine whether the District Council properly approved the Basic Plan applicable to the Subject Property (A-9968-03) which allows the development proposed in SDP-1603-03. If the District Council approves SDP-1603-03, it should stay the effect of the District Council's decision until a decision is issued by the Circuit Court in CAL22-18255 because the stay will ensure that the County's resources are not being used to evaluate development applications that may ultimately be deemed invalid.

Respectfully submitted,



G. Macy Nelson
AIS No. 8112010268
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
Email: gmacynelson@gmacynelson.com
Attorney for Protestants



Alex Votaw
AIS No. 2112150190
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
Email: alex@gmacynelson.com
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February 2023, a copy of the foregoing
Exceptions and Request for Oral Argument was mailed by U.S. Mail to:

Persons of Record (Exhibits Excluded) (List Attached)

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long, sweeping horizontal stroke that ends in a small upward tick.

G. Macy Nelson

CASE NO: SDP-1603-03
CASE NAME: NATIONAL CAPITAL
BUSINESS PARK
PARTY OF RECORD: 23
PB DATE: 1-5-2023

KELLY HADAYIA
PIVOT ENERGY
1750 15TH STREET SUITE 4
DENVER CO 80202
(CASE NUMBER: SDP-1603-03)

HENRY WIXON
GLENN DALE CITIZENS' ASSOCIATION, INC.
P.O.BOX 235
GLENN DALE MD 20769
(CASE NUMBER: SDP-1603-03)

KIMLEY-HORN
215 WASHINGTON AVENUE SUITE 500
TOWSON MD 21204
(CASE NUMBER: SDP-1603-03)

ALEXANDRA VOTAW
THE LAW OFFICE OF G. MACY NELSON
600 WASHINGTON AVENUE SUITE 202
TOWSON MD 21204
(CASE NUMBER: SDP-1603-03)

EMILY DEAN
KIMLEY-HORN ENGINEERS
215 WASHINGTON AVENUE SUITE 500
TOWSON MD 21204
(CASE NUMBER: SDP-1603-03)

ALEXANDRA VOTAW
THE LAW OFFICE OF G. MACY NELSON, LLC
600 WASHINGTON AVENUE SUITE 202
TOWSON MD 21204
(CASE NUMBER: SDP-1603-03)

JOE DIMARCO
BOHLER ENGINEERING
16701 MELFORD BOULEVARD SUITE 310
BOWIE MD 20715
(CASE NUMBER: SDP-1603-03)

CHRIS RIZZI
BOHLER ENGINEERING
16701 MELFORD BOULEVARD SUITE 310
BOWIE MD 20715
(CASE NUMBER: SDP-1603-03)

BOB KYTE
BOHLER ENGINEERING
16701 MELFORD BOULEVARD SUITE 310
BOWIE MD 20715
(CASE NUMBER: SDP-1603-03)

MICHAEL LENHART
LENHART TRAFFIC CONSULTING, INC.
645 B&A BOULEVARD SUITE 214
SEVERNA PARK MD 21146
(CASE NUMBER: SDP-1603-03)

RAY CRAWFORD
1340 CRAIN HIGHWAY
UPPER MARLBORO MD 20774
(CASE NUMBER: SDP-1603-03)

KATHY CRAWFORD
1340 CRAIN HIGHWAY
UPPER MARLBORO MD 20774
(CASE NUMBER: SDP-1603-03)

ROBERT ANTONETTI
SHIPLEY & HORNE, P.A.
1101 MERCANTILE LANE SUITE 240
LARGO MD 20774
(CASE NUMBER: SDP-1603-03)

ARTHUR HORNE
SHIPLEY & HORNE, P.A.
1101 MERCANTILE LANE SUITE 240
LARGO MD 20774
(CASE NUMBER: SDP-1603-03)

JOHN FERRANTE
SHIPLEY & HORNE, P.A.
1101 MERCANTILE LANE
LARGO MD 20774
(CASE NUMBER: SDP-1603-03)

NCBP PROPERTY, LLC
5850 WATERLOO ROAD SUITE 210
COLUMBIA MD 21045
(CASE NUMBER: SDP-1603-03)

COLEFAX SCHNORF
MANEKIN, LLC
5850 WATERLOO ROAD SUITE 210
COLUMBIA MD 21045
(CASE NUMBER: SDP-1603-03)

HENRY WIXON
10701 MARIETTA STREET
GLENN DALE MD 20769 -9406
(CASE NUMBER: SDP-1603-03)

JOHN MCGOWAN
KIMLEY-HORN ENGINEERS
1801 PORTER STREET SUITE 401
BALTIMORE MD 21230
(CASE NUMBER: SDP-1603-03)

RUTH GROVER
5727 RIDGE VIEW DRIVE
ALEXANDRIA VA 22310
(CASE NUMBER: SDP-1603-03)

MRS.CRYSTAL HABASH
11320 KETTERING PLACE
UPPER MARLBORO MD 20774
(CASE NUMBER: SDP-1603-03)

AUBREE FREELY
ARCO DESIGN/BUILD INDUSTRIAL
44 SOUTH BROADWAY SUITE 1003
WHITE PLAINS NY 10601
(CASE NUMBER: SDP-1603-03)

KYLE THIBEAULT
ARCO DESIGN/BUILD INDUSTRIAL
44 SOUTH BROADWAY SUITE 1003
WHITE PLAINS NY 10601
(CASE NUMBER: SDP-1603-03)

EXHIBIT A

Topic	Criteria/Requirement	Staff Report	Planning Board Resoluituion																								
Request		<p>The subject application requests approval of the development of a 301,392-square-foot warehouse distribution building, including 58,968 square feet of office space.</p> <p>Page 4.</p>	<p>The subject application requests approval for development of a 301,392-square-foot warehouse distribution building.</p> <p>Page 1.</p>																								
Development Data Summary		<table border="1" data-bbox="680 553 1318 651"> <thead> <tr> <th></th> <th>EXISTING</th> <th>PROPOSED</th> </tr> </thead> <tbody> <tr> <td>Zone</td> <td>LCD (prior R-S)</td> <td>LCD (prior R-S)</td> </tr> <tr> <td>Use(s)</td> <td>Vacant</td> <td>Warehouse/Distribution</td> </tr> <tr> <td>Total Gross Floor Area (GFA)</td> <td>-</td> <td>301,392 sq. ft.</td> </tr> </tbody> </table> <p>Page 4.</p>		EXISTING	PROPOSED	Zone	LCD (prior R-S)	LCD (prior R-S)	Use(s)	Vacant	Warehouse/Distribution	Total Gross Floor Area (GFA)	-	301,392 sq. ft.	<table border="1" data-bbox="1377 548 2028 646"> <thead> <tr> <th></th> <th>EXISTING</th> <th>APPROVED</th> </tr> </thead> <tbody> <tr> <td>Zone</td> <td>LCD (prior R-S)</td> <td>LCD (prior R-S)</td> </tr> <tr> <td>Use(s)</td> <td>Vacant</td> <td>Warehouse/Distribution</td> </tr> <tr> <td>Total Gross Floor Area (GFA)</td> <td>-</td> <td>301,392 sq. ft.</td> </tr> </tbody> </table> <p>Page 1.</p>		EXISTING	APPROVED	Zone	LCD (prior R-S)	LCD (prior R-S)	Use(s)	Vacant	Warehouse/Distribution	Total Gross Floor Area (GFA)	-	301,392 sq. ft.
	EXISTING	PROPOSED																									
Zone	LCD (prior R-S)	LCD (prior R-S)																									
Use(s)	Vacant	Warehouse/Distribution																									
Total Gross Floor Area (GFA)	-	301,392 sq. ft.																									
	EXISTING	APPROVED																									
Zone	LCD (prior R-S)	LCD (prior R-S)																									
Use(s)	Vacant	Warehouse/Distribution																									
Total Gross Floor Area (GFA)	-	301,392 sq. ft.																									
Parking and Loading Spaces		<p>Parking and Loading Spaces</p> <table border="1" data-bbox="711 881 1205 943"> <thead> <tr> <th>Use</th> <th>Required</th> <th>Provided</th> </tr> </thead> <tbody> <tr> <td>Total Parking Spaces</td> <td>110</td> <td>303*</td> </tr> <tr> <td>Loading Spaces</td> <td>133</td> <td>133</td> </tr> </tbody> </table> <p>Note: *Overflow parking areas may be provided to include 280 additional spaces, for a potential total of 583 spaces</p> <p>Page 4.</p>	Use	Required	Provided	Total Parking Spaces	110	303*	Loading Spaces	133	133	<p>Parking and Loading Spaces</p> <table border="1" data-bbox="1402 875 1961 943"> <thead> <tr> <th>Use</th> <th>Required</th> <th>Approved</th> </tr> </thead> <tbody> <tr> <td>Total Parking Spaces</td> <td>110</td> <td>303*</td> </tr> <tr> <td>Loading Spaces</td> <td>133</td> <td>133</td> </tr> </tbody> </table> <p>Note: *Overflow parking areas may be provided to include 280 additional spaces, for a potential total of 583 spaces</p> <p>Page 2.</p>	Use	Required	Approved	Total Parking Spaces	110	303*	Loading Spaces	133	133						
Use	Required	Provided																									
Total Parking Spaces	110	303*																									
Loading Spaces	133	133																									
Use	Required	Approved																									
Total Parking Spaces	110	303*																									
Loading Spaces	133	133																									

<p>Location</p>		<p>The subject site is 26.23 acres in an overall 442.30 acres of development called the National Capital Business Park. The subject property is located on the north side of Leeland Road, approximately 3,000 feet west of its intersection with US 301 (Robert Crain Highway), in Planning Area 74A and Council District 04.</p> <p>Page 4.</p>	<p>The subject site is 26.23 acres in an overall 442.30 acres of development called the National Capital Business Park (NCBP). The subject property is located on the north side of Leeland Road, approximately 3,000 feet west of its intersection with US 301 (Robert Crain Highway), in Planning Area 74A and Council District 04.</p> <p>Page 2.</p>
<p>Surrounding Uses</p>		<p>The entire National Capital Business Park development is bounded to the north by properties in the Agricultural-Residential (AR) and Reserved Open Space Zones. Adjacent to the south are properties zoned AR and Legacy Comprehensive Design Zone (LCD).</p> <p>Page 4.</p>	<p>The entire NCBP development is bounded to the north by properties in the Agricultural-Residential (AR) and Reserved Open Space Zones. Adjacent to the south are properties zoned AR and Legacy Comprehensive Design Zone (LCD).</p> <p>Page 2.</p>

<p>Previous Approvals</p>		<p>The subject site was rezoned from the Employment and Institutional Area (E-I-A) and Residential-Agriculture (R-A) Zones to the Residential Suburban Development (R-S) and Light Industrial (I-1) Zones, as part of the 2006 Approved Master Plan and Sectional Map Amendment for Bowie and Vicinity. The subject property was included in Zoning Map Amendment (Basic Plan) A-9968-02, approved by the Prince George’s County District Council on April 12, 2021, and in an amendment to a Comprehensive Design Plan, CDP-0505-01, approved by the Prince George’s County Planning Board on April 29, 2021.</p> <p>Preliminary Plan of Subdivision (PPS) 4-20032 was approved by the Planning Board on September 9, 2021 (PGCPB Resolution No. 2021-112), for a 442.30-acre property zoned R-S, I-1, and R-A. The PPS approved 36 parcels for development of a 3.5 million-square-foot industrial park.</p> <p>SDP-1603-01 was approved by the Planning Board on January 13, 2022 (PGCPB Resolution No. 2022-10), for infrastructure for the overall development, including 35 parcels, street network, sidewalks, utilities, grading, stormwater management (SWM), retaining walls, and directional signage that will serve the employment and institutional uses proposed for the property.</p>	<p>The subject site was rezoned from the Employment and Institutional Area (E-I-A) and Residential-Agriculture (R-A) Zones to the Residential Suburban Development (R-S) and Light Industrial (I-1) Zones, as part of the 2006 Approved Master Plan and Sectional Map Amendment for Bowie and Vicinity. The subject property was included in Zoning Map Amendment (Basic Plan) A-9968-03, approved by the Prince George’s County District Council on April 12, 2021, and in an amendment to a Comprehensive Design Plan, CDP-0505-01, approved by the Prince George’s County Planning Board on April 29, 2021.</p> <p>Preliminary Plan of Subdivision (PPS) 4-20032 was approved by the Planning Board on September 9, 2021 (PGCPB Resolution No. 2021-112), for a 442.30-acre property zoned R-S, I-1, and R-A. The PPS approved 36 parcels for development of a 3.5 million-square-foot industrial park.</p> <p>SDP-1603-01 was approved by the Planning Board on January 13, 2022 (PGCPB Resolution No. 2022-10), for infrastructure for the overall development, including 35 parcels, street network, sidewalks, utilities, grading, stormwater management (SWM), retaining walls, and directional signage that will serve the employment and institutional uses approved for the property.</p>
---------------------------	--	--	--

PPS 4-21056 was approved by the Planning Board on June 2, 2022, for 27 parcels for development of up to 5.5 million square feet of industrial use on the subject property. PPS 4-21056 supersedes 4-20032 and therefore, this application is reviewed for conformance with the conditions of approval for 4-21056.

On April 1, 2022, the approved Countywide Sectional Map Amendment rezoned the property to the LCD Zone. The property was previously in the R-S Zone, as part of the 2006 Approved Master Plan and Sectional Map Amendment for Bowie and Vicinity. Prior to that, the R-S portion of the property was zoned E-I-A. The E-I-A Zone is intended for a concentration of non-retail employment and institutional uses such as medical, manufacturing, office, religious, educational, and warehousing. The property had been placed in the E-I-A Zone as part of the 1991 Bowie, Mitchellville and Vicinity Master Plan and Sectional Map Amendment. The 1991 master plan text referred to this land area as the "Willowbrook Business Center." Zoning Map Amendment A-9829 was approved as part of the 1991 master plan and allowed for a floor area ratio (FAR) between .3 and .38 for a total of 3,900,000 to 5,000,000 square feet of "light manufacturing, warehouse/distribution, ancillary office and retail commercial" uses.

Parcel 11 will be developed with warehouse/distribution uses permitted in the E-I-A Zone, per Section 27-515(b) of the prior Prince George's County Zoning Ordinance and Prince George's County Council Bill CB-22-2020.

On March 8, 2022, the District Council approved the 2022 Approved Bowie-Mitchellville and Vicinity Master Plan by adopting Prince George's County Council Resolution CR-18-2022. The 2022 master plan places the National Capital

PPS 4-21056 was approved by the Planning Board on June 2, 2022, for 27 parcels for development of up to 5.5 million square feet of industrial use on the subject property. PPS 4-21056 supersedes 4-20032 and therefore, this application is reviewed for conformance with the conditions of approval for 4-21056.

On April 1, 2022, the approved Countywide Sectional Map Amendment rezoned the property to the LCD Zone. The property was previously in the R-S Zone, as part of the 2006 Approved Master Plan and Sectional Map Amendment for Bowie and Vicinity. Prior to that, the R-S portion of the property was zoned E-I-A. The E-I-A Zone is intended for a concentration of non-retail employment and institutional uses such as medical, manufacturing, office, religious, educational, and warehousing. The property had been placed in the E-I-A Zone as part of the 1991 Bowie, Mitchellville and Vicinity Master Plan and Sectional Map Amendment. The 1991 master plan text referred to this land area as the "Willowbrook Business Center." Zoning Map Amendment A-9829 was approved as part of the 1991 master plan and allowed for a floor area ratio (FAR) between 0.3 and 0.38 for a total of 3,900,000 to 5,000,000 square feet of "light manufacturing, warehouse/distribution, ancillary office and retail commercial" uses.

Parcel 11 will be developed with warehouse/distribution uses permitted in the E-I-A Zone, per Section 27-515(b) of the prior Prince George's County Zoning Ordinance and Prince George's County Council Bill CB-22-2020.

On March 8, 2022, the District Council approved the 2022 Approved Bowie-Mitchellville and Vicinity Master Plan by adopting Prince George's County Council Resolution CR-18-2022. The 2022 master plan places the NCBP within a

Business Park within a focus area known as the “Collington Local Employment Area.” The Planning Board and District Council approved an industrial zoning recommendation for the Collington Local Employment Area in the Comprehensive Zoning Section of the 2022 master plan

The subject property is zoned LCD (formerly R-S), but is subject to the uses permitted in the E-I-A Zone, not the R-S Zone, pursuant to the provisions of Council Bill CB-22-2020. In addition, pursuant to the provisions of Council Bill CB-105-2022, the subject property may develop in accordance with the standards and uses applicable to the E-I-A Zone because the property is identified within a designated employment area in a master plan or sector plan. Specifically, the property is zoned LCD and is identified as part of the “Collington Local Employment Area”, pursuant to the approved 2022 Approved Bowie-Mitchellville and Vicinity Master Plan. Regardless, pursuant to Section 27-528 of the Zoning Ordinance, the Planning Board does not approve uses with an SDP application but, instead, reviews and approves the physical development of a property, including items such as buildings, architecture, landscaping, circulation, and the relationships between them.

The development proposed with this SDP is for Parcel 11, as currently shown on 4-21056.

focus area known as the “Collington Local Employment Area.” The Planning Board and District Council approved an industrial zoning recommendation for the Collington Local Employment Area in the Comprehensive Zoning Section of the 2022 master plan

The subject property is zoned LCD (formerly R-S), but is subject to the uses permitted in the E-I-A Zone, not the R-S Zone, pursuant to the provisions of Council Bill CB-22-2020. In addition, pursuant to the provisions of Council Bill CB-105-2022, the subject property may develop in accordance with the standards and uses applicable to the E-I-A Zone because the property is identified within a designated employment area in a master plan or sector plan. Specifically, the property is zoned LCD and is identified as part of the “Collington Local Employment Area,” pursuant to the approved 2022 Approved Bowie-Mitchellville and Vicinity Master Plan. Regardless, pursuant to Section 27-528 of the Zoning Ordinance, the Planning Board does not approve uses with an SDP application but, instead, reviews and approves the physical development of a property, including items such as buildings, architecture, landscaping, circulation, and the relationships between them.

The development approved with this SDP is for Parcel 11, as currently shown on 4-21056.

		<p>The site has an approved SWM Concept Plan, 214-2022-0, which was approved on July 7, 2022.</p> <p>Page 4-6.</p>	<p>The site has an approved SWM Concept Plan, 214-2022-0, which was approved on July 7, 2022.</p> <p>Page 2-3.</p>
Design Features		<p>The proposed 301,392-square-foot warehouse and distribution building will be 41 feet, 2 inches tall. The building materials will include concrete panels, hollow metal doors and tempered safety glass, and a color combination of white and various shades of gray. There will be a solar panel array along portions of the building's roof. There will be a 10-foot-wide by 3.5-foot-high monument sign at the entrance to the site and each tenant will have one building mounted sign. If a tenant has entrances on two sides of the building, they will have a sign along each side of the building. The site will have access along Queens Court and there will be 303 (up to 583) parking spaces, 20 bike spaces, 62 loading docks, and 133 loading spaces</p> <p>Page 6.</p>	<p>The 301,392-square-foot warehouse and distribution building will be 41 feet, 2 inches tall. The building materials will include concrete panels, hollow metal doors and tempered safety glass, and a color combination of white and various shades of gray. There will be a solar panel array along portions of the building's roof. There will be a 10-foot-wide by 3.5-foot-high monument sign at the entrance to the site and each tenant will have one building mounted sign. If a tenant has entrances on two sides of the building, they will have a sign along each side of the building. The site will have access along Queens Court and there will be 303 (up to 583) parking spaces, 20 bike spaces, 62 loading docks, and 133 loading spaces.</p> <p>Page 3-4.</p>
Compliance with Evaluation Criteria - Section 27-500, Uses		<p>7. Prince George's County Zoning Ordinance: The SDP application has been reviewed for compliance with the requirements of the prior Zoning Ordinance.</p> <p>Page 7.</p>	<p>7. Prince George's County Zoning Ordinance: The SDP application has been reviewed for compliance with the requirements of the E-I-A Zone of the Zoning Ordinance.</p> <p>Page 4.</p>

	(a) The general principle for land uses in this zone shall be:		
	(1) To provide concentrated nonretail employment or institutional (medical, religious, educational, recreational, and governmental) uses which serve the County, region, or a greater area; and	This development proposes a warehouse and distribution building, which will result in nonretail employment, in keeping with this general principle of the zone. Page 7.	This development is for a warehouse and distribution building, which will result in nonretail employment, in keeping with this general principle of the zone. Page 4.
	(2) To provide for uses which may be necessary to support these employment or institutional uses.	The proposed warehouse use will support nonretail employment, in keeping with this general principle of the zone. Page 7.	The warehouse use will support nonretail employment, in keeping with this general principle of the zone. Page 4.
	(b) The uses allowed in the E-I-A Zone are as provided for in the Table of Uses (Division 3 of this Part).	The proposed use is subject to the requirements of the E-I-A Zone, per Footnote 38 and Council Bill CB-22-2020. The proposed warehouse use is a permitted use within the E-I-A Zone. Page 8.	The use is subject to the requirements of the E-I-A Zone, per Footnote 38 and CB-22-2020. The proposed warehouse use is a permitted use within the E-I-A Zone. Page 4.
	(c) A Mixed-Use Planned Community in the E-I-A Zone may include a mix of residential, employment, commercial retail, commercial office, hotel or lodging, civic buildings, parks, or recreational uses, meeting all requirements in the definition of the use.	The application does not propose a mixed-use planned community. This application proposes a 301,392-square-foot warehouse and, as such, this requirement is not applicable. Page 8.	The application is not for a mixed-use planned community. This application proposes a 168,480-square-foot warehouse and, as such, this requirement is not applicable. Page 4.
Compliance with Evaluation Criteria - Section 27-501, Regulations (E-I-A-Zone)	(a) General Standards.	This development is subject to the requirements of the E-I-A Zone and conforms to the regulations outlined in Section 27-1 of the prior Zoning Ordinance. The subject property meets the minimum area required and exceeds the minimum green space and open space requirements for the zone. Page 8.	This development is subject to the requirements of the E-I-A Zone and conforms to the regulations outlined in Section 27-501, as modified by CB-22-2020 and CB-105-2022. The subject property meets the minimum area required and exceeds the minimum green space and open space requirements for the zone. Page 5.
	(b) Other regulations.		

<p>(1) Each lot shall have frontage on, and direct vehicular access to, a public street.</p>	<p>The subject property will have frontage on Queens Court, which is a public street and will allow vehicular access to the site.</p> <p>Page 8.</p>	<p>The subject property will front on Queens Court, which is a public street and will allow vehicular access to the site.</p> <p>Page 5.</p>
<p>(2) Additional regulations concerning development and use of property in the E-I-A Zone are as provided for in Divisions 1, 4, and 5 of this Part, General (Part 2), Off-Street Parking and Loading (Part 11), Signs (Part 12), and the Landscape Manual.</p>	<p>The proposed development meets all of the off-street and parking and loading requirements. The proposed signage is in conformance with Part 12 of the Zoning Ordinance and the application includes a landscape plan, in conformance with the requirements of the 2010 Prince George's County Landscape Manual (Landscape Manual).</p> <p>Page 8-9.</p>	<p>The development meets all of the off-street and parking and loading requirements. The proposed signage is in conformance with Part 12 of the Zoning Ordinance and the application includes a landscape plan, in conformance with the requirements of the Landscape Manual.</p> <p>Page 5.</p>
<p>(c) Mixed-Use Planned Community regulations.</p>		
<p>(1) A Mixed-Use Planned Community shall meet all purposes and requirements applicable to the M-X-T Zone, as provided in Part 10, and shall be approved under the processes in Part 10.</p>	<p>There is no mixed-use planned community being proposed as part of this application and this requirement is not applicable.</p> <p>Page 9.</p>	<p>There is no mixed-use planned community, as part of this application, and this requirement is not applicable.</p> <p>Page 5.</p>
<p>(2) Where a conflict arises between E-I-A Zone requirements and M-X-T Zone requirements, the M-X-T requirements shall be followed.</p>	<p>There are no proposed conflicts between the zoning requirements, and this is not applicable.</p> <p>Page 9.</p>	<p>There are no conflicts between the zoning requirements, and this is not applicable.</p> <p>Page 6.</p>
<p>(d) Adjoining properties. (1) For the purposes of this Section, the word "adjoining" also includes properties separated by streets, other public rights-of-way, or railroad lines.</p>	<p>The SDP shows and labels all adjoining properties, as outlined by this definition.</p> <p>Page 9.</p>	<p>The SDP shows and labels all adjoining properties, as outlined by this definition.</p> <p>Page 6.</p>

<p>Compliance with Evaluation Criteria - Section 27-528, Required Findings for the Plannign Board to Grant Approval of an SDP</p>	<p>(a) Prior to approving a Specific Design Plan, the Planning Board shall find that:</p>		
	<p>(1) The plan conforms to the approved Comprehensive Design Plan, the applicable standards of the Landscape Manual, and except as provided in Section 27-528(a)(1.1), for Specific Design Plans for which an application is filed after December 30, 1996, with the exception of the V-L and V-M Zones, the applicable design guidelines for townhouses set forth in Section 27-274(a)(1)(B) and (a)(11), and the applicable regulations for townhouses set forth in Section 27-433(d) and, as it applies to property in the L-A-C Zone, if any portion lies within one-half (1/2) mile of an existing or Washington Metropolitan Area Transit Authority Metrorail station, the regulations set forth in Section 27-480(d) and (e);</p>	<p>The SDP has been reviewed by staff and determined to be in compliance with approved CDP-0505-02. This application is for a proposed warehouse use and there are no residential uses being proposed, and parts of this requirement are not applicable to this development.</p> <p>Page 9-10.</p>	<p>The SDP has been reviewed by the Planning Board and determined to be in compliance with approved Comprehensive Design Plan CDP-0505-02. This application is for a warehouse use and there are no residential uses, and parts of this requirement are not applicable to this development.</p> <p>Page 6.</p>
	<p>(1.1) For a Regional Urban Community, the plan conforms to the requirements stated in the definition of the use and satisfies all requirements for the use in Section 27-508 of the Zoning Ordinance;</p>	<p>There is no regional urban community being proposed on this site, therefore, this requirement is not applicable.</p> <p>Page 10.</p>	<p>There is no regional urban community on this site, therefore, this requirement is not applicable.</p> <p>Page 6.</p>
	<p>(2) The development will be adequately served within a reasonable period of time with existing or programmed public facilities either shown in the appropriate Capital Improvement Program or provided as part of the private development...;</p>	<p>A traffic impact analysis was provided with the PPS and reviewed by Transportation staff, and determined acceptable.</p> <p>Page 10.</p>	<p>A traffic impact analysis was provided with the PPS and reviewed by the Planning Board, and determined acceptable.</p> <p>Page 7.</p>

<p>(3) Adequate provision has been made for draining surface water so that there are no adverse effects on either the subject property or adjacent properties;</p>	<p>The subject property has an approved SWM concept plan that has been approved by the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) and satisfies this requirement.</p> <p>Page 10.</p>	<p>The subject property has an approved SWM concept plan that has been approved by DPIE and satisfies this requirement.</p> <p>Page 7.</p>
<p>(4) The plan is in conformance with an approved Tree Conservation Plan; and</p>	<p>The subject application provided a Type 2 tree conservation plan (TCP2), which was reviewed by the Environmental Planning Section and determined to be consistent with the approved Type 1 tree conservation plan (TCP1), which satisfies this requirement.</p> <p>Page 10.</p>	<p>The subject application provided a Type 2 tree conservation plan (TCP2), which was reviewed by the Planning Board and determined to be consistent with the approved Type 1 tree conservation plan (TCP1), which satisfies this requirement.</p> <p>Page 7.</p>
<p>(5) The plan demonstrates that the regulated environmental features are preserved and/or restored to the fullest extent possible...</p>	<p>This SDP has been reviewed by staff and it has been determined that environmental features are preserved and/or restored, to the fullest extent possible.</p> <p>Page 10.</p>	<p>This SDP has been reviewed by the Planning Board and determined that environmental features are preserved and/or restored, to the fullest extent possible.</p> <p>Page 7.</p>
<p>(b) Prior to approving a Specific Design Plan for Infrastructure, the Planning Board shall find that the plan conforms to the approved Comprehensive Design Plan, prevents offsite property damage, and prevents environmental degradation to safeguard the public's health, safety, welfare, and economic well-being for grading, reforestation, woodland conservation, drainage, erosion, and pollution discharge.</p>	<p>The subject development conforms to CDP-0505-02, which includes established design guidelines for the project building heights, setbacks, lot coverage and open space. This application adequately addresses off-site property damage, environmental degradation, economic well-being for grading, reforestation, woodland conservation, drainage, and erosion and pollution discharge with site design, CDP, and tree conservation plan conformance.</p> <p>Page 11.</p>	<p>The subject development conforms to CDP-0505-02. Off-site property damage, environmental degradation, economic well-being, reforestation, woodland conservation, drainage, and erosion and pollution discharge are not a concern for the subject property, and this application adequately addresses these issues with site design, CDP, and TCP conformance.</p> <p>Page 7.</p>
<p>(c) The Planning Board may only deny the Specific Design Plan if it does not meet the requirements of Section 27-528 (a) and (b), above.</p>	<p>The SDP has been reviewed and it has been determined that the proposed development meets the standards of Section 27-528.</p> <p>Page 11.</p>	<p>The SDP has been reviewed and it has been determined that the proposed development meets the standards of Section 27-528.</p> <p>Page 8.</p>

<p>(d) Each staged unit (shown on the Comprehensive Design Plan) shall be approved. Later stages shall be approved after initial stages. A Specific Design Plan may encompass more than one (1) stage.</p>	<p>The phasing plan for this development was approved with CDP-0505-02 and conforms to this requirement.</p> <p>Page 11.</p>	<p>The phasing plan for this development was approved with CDP-0505-02 and conforms to this requirement.</p> <p>Page 8.</p>
<p>(g) An approved Specific Design Plan shall be valid for not more than six (6) years, unless construction (in accordance with the Plan) has begun within that time period. All approved Specific Design Plans which would otherwise expire during 1994 shall remain valid for one (1) additional year beyond the six (6) year validity period.</p>	<p>This SDP will have a six-year validity period, if it is approved by the Planning Board.</p> <p>Page 11.</p>	<p>This SDP will have a six-year validity period.</p> <p>Page 8.</p>
<p>(h) The Planning Board's decision on a Specific Design Plan shall be embodied in a resolution adopted at a regularly scheduled public meeting...The resolution shall set forth the Planning Board's findings.</p>	<p>This SDP will have an accompanying resolution that will include the Planning Board's decision, if this application is approved by the Board.</p> <p>Page 11.</p>	<p>This SDP has an accompanying resolution that includes the Planning Board's decision.</p> <p>Page 8.</p>
<p>(i) A copy of the Planning Board's resolution and minutes on the Specific Design Plan shall be sent to the Clerk of the Council for any Specific Design Plan for the Village Zones.</p>	<p>The proposed development is not located within a village zone; therefore, this requirement is not applicable.</p> <p>Page 11.</p>	<p>The proposed development is not located within a village zone; therefore, this requirement is not applicable.</p> <p>Page 8.</p>
<p>Compliance with Evaluation Criteria - Zoning Map Amendment (Basic Plan) A-9968-03</p>	<p>The requirements of Basic Plan A-9968-02 have been reviewed and the SDP is in conformance with those approvals. The relevant conditions applicable to this SDP are, as follows:</p> <p>Page 11.</p>	<p>The requirements of Basic Plan A-9968-03 have been reviewed and the SDP is in conformance with those approvals. The relevant conditions applicable to this SDP are, as follows:</p> <p>Page 8.</p>

<p>1. Proposed Lane Use Types and Quantities Total Area: 442.30 acres Total in (I-1 Zone): 15+/- acres (not included in density calculation) Total area (R-A Zone): 0.78+/- acres (not included in density calculation) Total area (R-S Zone): 426.52 acres per approved NRI Land in the 100-year floodplain: 92.49 acres Adjusted gross area (426 less half of the floodplain): 380.27 acres Proposed use: Warehouse/distribution, office, light industrial/manufacturing, and/or institutional uses up to 5.5 million square feet* Open Space Public active open space: 20 +/- acres Passive open space: 215 +/- acres * 100,000 sq. ft. of gross floor area may be located in the I-1 Zone property noted herein.</p>	<p>This development proposes a warehouse use, and the site is within the land use types and quantities.</p> <p>Page 12.</p>	<p>This development proposes a warehouse use, and the site is within the land use types and quantities.</p> <p>Page 9.</p>
<p>6. The Applicant, the Applicant's heirs, successors, and/or assigns shall construct a minimum 10-foot-wide Master Plan, hiker/biker trail located along the Collington Branch Stream Valley and a minimum 10-foot-wide feeder trail to the employment uses. The alignment and design details of both trails may be modified by the Prince George's County Department of Parks and Recreation, to respond to environmental constraints, with written correspondence.</p>	<p>The hiker trail located along the Collington Branch Stream Valley was approved with SDP-1603-01</p> <p>Page 12.</p>	<p>The hiker trail located along the Collington Branch Stream Valley was approved with SDP-1603-01</p> <p>Page 9.</p>
<p>8. The Applicant shall construct recreational facilities typical for a 20-acre community park, such as ball fields, a playground, tennis or basketball courts, shelters, and restroom facilities. The list of recreational facilities shall be determined at the preliminary plan of subdivision and specific design plan stage.</p>	<p>The proposed community park was approved with SDP-1603-02.</p> <p>Page 12.</p>	<p>The proposed community park was approved with SDP-1603-02.</p> <p>Page 9.</p>

	<p>15. The Applicant, the Applicant's heirs, successors, and/or assignees shall construct a minimum 10-foot-wide master plan shared-use path along the subject site frontage of Leeland Road, consistent with AASHTO standards, unless modified by the Prince George's County Department of Permitting, Inspections and Enforcement, with written correspondence.</p>	<p>The proposed shared-use path was provided with approved SDP-1603-01.</p> <p>Page 12.</p>	<p>The proposed shared-use path was provided with approved SDP-1603-01.</p> <p>Page 9.</p>
<p>Compliance with Evaluation Criteria - Comprehensive Design Plan CDP-0505-02</p>		<p>The Planning Board approved CDP-0505-02 on May 19, 2022. The subject application is in conformance with the approved CDP and its associated design guidelines including building and parking setbacks, architectural features, building height and FAR, parking and loading, and signage.</p> <p>The relevant conditions applicable to this SDP are, as follows:</p> <p>Page 13.</p>	<p>The Planning Board approved Comprehensive Design Plan CDP-0505-02 on May 19, 2022. The subject application is in conformance with the approved CDP and its associated design guidelines. The relevant conditions applicable to this SDP are, as follows:</p> <p>Page 10.</p>
	<p>3. Total development within the subject property shall be limited to uses that would generate no more than 1,401 AM and 1,735 PM peak-hour vehicle trips. Any development generating an impact greater than that identified herein above shall require a new preliminary plan of subdivision, with a new determination of the adequacy of transportation facilities.</p>	<p>This application has been reviewed by Transportation staff and it was determined that the development does not exceed the trip cap and conforms with this requirement.</p> <p>Page 13.</p>	<p>This application has been reviewed by the Planning Board and determined that the development does not exceed the trip cap and conforms with this requirement.</p> <p>Page 10.</p>

	<p>4. The following road improvements shall be phased at the time of future specific design plan applications, and a determination shall be made as to when said improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed upon timetable for construction with the appropriate operating agency</p> <p>a. US 301 (Robert Crain Highway) at Leeland Road</p> <p>(1) Provide three left-turn lanes on the eastbound approach</p> <p>b. Prince George's Boulevard and Queens Court-Site Access, unless modified at the time of preliminary plan of subdivision:</p> <p>(1) Provide a shared through and left lane and a shared through and right lane on the eastbound approach.</p> <p>(2) Provide a shared through and left lane and a shared through and right lane on the westbound approach.</p> <p>(3) Provide a shared through and left lane on the northbound approach and a shared through and right lane on the southbound approach.</p>	<p>This application was reviewed by Transportation staff and determined that the phasing plan and improvements are acceptable, and that this requirement has been satisfied.</p> <p>Page 13.</p>	<p>This application was reviewed by the Planning Board and determined that the phasing plan and improvements are acceptable, and that this requirement has been satisfied.</p> <p>Page 10.</p>
	<p>6. At the time of specific design plan, the applicant shall show all proposed on-site transportation improvements on the plans.</p>	<p>All on-site transportation improvements are included in this SDP, and Transportation staff has reviewed and determined that this is acceptable.</p> <p>Page 14.</p>	<p>All on-site transportation improvements are included in this SDP, and the Planning Board has reviewed and determined that this is acceptable.</p> <p>Page 10.</p>
<p>Compliance with Evaluation Criteria - Preliminary Plan of Subdivision 4-21056</p>		<p>PPS 4-21056 was approved, subject to 22 conditions, and the conditions relevant to the review of this SDP are listed below in BOLD text. Staff analysis of the project's conformance to these conditions follows each one in plain text:</p> <p>Page 14.</p>	<p>PPS 4-21056 was approved, subject to 22 conditions, and the conditions relevant to the review of this SDP are listed below in BOLD text. The Planning Board's analysis of the project's conformance to these conditions follows each one, in plain text:</p> <p>Page 11.</p>

<p>1. Prior to signature approval of the preliminary plan of subdivision (PPS), the plan shall be revised to:</p> <p>i. Show a 10-foot-wide public utility easement along property frontage with Popes Creek Drive. The applicant may request a variation to this requirement at the time of final plat.</p>	<p>[Did not address]</p>	<p>The submitted plans include a 10-foot-wide public utility easement (PUE), along the site's frontage on Popes Creek Drive, in accordance with this condition.</p> <p>Page 11.</p>
<p>2. Total development within the subject property shall be limited to uses which generate no more than 1,401 AM peak-hour trips and 1,735 PM peak-hour vehicle trips. Any development generating an impact greater than that identified herein above shall require a new preliminary plan of subdivision, with a new determination of the adequacy of transportation facilities.</p>	<p>The development shown with SDP-2201 is consistent with PPS 4-21056. The site is also subject to prior SDPs that approved development of approximately 3,428,985 square feet of warehouse/distribution uses so far, as part of the overall National Capital Business Park development. The SDP application proposes development of the general warehouse, which will be under the 5.5 million square feet of development that was considered as part of the approved PPS application. As such, the uses and development program proposed with the SDP is consistent with the PPS application, and staff finds that the trips generated by the phased development of the subject SDP are within the trip cap.</p> <p>Page 14.</p>	<p>A 301,392-square-foot gross floor area (GFA) warehouse/distribution building is proposed with this SDP. The Planning Board has reviewed and determined that the use is within the peak-hour trips.</p> <p>Page 11.</p>
<p>3. Any residential development of the subject property shall require the approval of a new preliminary plan of subdivision, prior to the approval of any building permits.</p>	<p>The development proposed with this SDP is consistent with the land uses evaluated with the PPS, which does not include residential development. Conformance with this condition has been demonstrated.</p> <p>Page 14.</p>	<p>The development with this SDP is consistent with the land uses evaluated with the PPS, which does not include residential development. Conformance with this condition has been demonstrated.</p> <p>Page 11.</p>

<p>4. Development of this site shall be in conformance with the approved Stormwater Management Concept Plan (42013-2020-00) and any subsequent revisions.</p>	<p>The development is in conformance with the approved SWM concept plan (42013-2020-00) submitted with this application</p> <p>Page 14.</p>	<p>With the application, the applicant submitted the above referenced approved SWM concept plan and letter, which covers the overall NCBP development. The approval was issued by DPIE on June 28, 2021 and expires on June 28, 2024. In addition, the applicant submitted a SWM Concept Plan (214-2022-0) and approval, specific to the subject site; this approval was issued on July 7, 2022 and expires on July 7, 2025. The Planning Board has reviewed and determined conformance with the approved SWM concept plan.</p> <p>Page 11.</p>
<p>5. Prior to approval of a final plat: a. The applicant and the applicant's heirs, successors, and/or assignees shall grant 10-foot-wide public utility easements along the public rights-of-way, in accordance with the approved preliminary plan of subdivision.</p>	<p>Ten-foot-wide public utility easements are shown and labeled along the public right-of-way of Queens Court, in accordance with PPS 4-21056.</p> <p>Page 14.</p>	<p>The submitted SDP shows PUEs along the site's frontages on Queens Court and Popes Creek Drive, both of which are public rights-of-way.</p> <p>Page 12.</p>

<p>7. Prior to issuance of a use and occupancy permit for nonresidential development, the applicant and the applicant's heirs, successors, and/or assignees shall:</p> <p>a. Contact the Prince George's County Fire/EMS Department to request a pre-incident emergency plan for each building.</p> <p>b. Install and maintain a sprinkler system that complies with the applicable National Fire Protection Association Standards for the Installation of Sprinkler Systems.</p> <p>c. Install and maintain automated external defibrillators (AEDs) at each building, in accordance with the Code of Maryland Regulations (COMAR) requirements (COMAR 30.06.01-05), so that any employee is no more than 500 feet from an AED.</p> <p>d. Install and maintain bleeding control kits next to fire extinguisher installation at each building, and no more than 75 feet from any employee. These requirements shall be noted on the specific design plan.</p>	<p>The requirements listed in Condition 7 are noted on the subject SDP.</p> <p>Page 15.</p>	<p>These requirements are noted on the SDP. as required, except the requirement in Condition 7b. This requirement shall be added to General Note 35.</p> <p>Page 12.</p>
<p>8. At the time of final plat, the applicant shall dedicate all rights-of-way, consistent with the approved preliminary plan of subdivision.</p>	<p>The SDP reflects the rights-of-way for Queens Court and Logistics Lane, as approved with PPS 4-21056.</p> <p>Page 15.</p>	<p>The submitted SOP shows right-of-way for Queens Court, along the site frontage, consistent with the approved PPS.</p> <p>Page 12.</p>

<p>9. The applicant shall submit a phasing plan (with adequate justification) as part of the first specific design plan for a building to show the phasing of the following transportation improvements to the development of the site. A determination shall be made at that time as to when said improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed upon timetable for construction with the appropriate operating agency.</p> <p>a. US 301 (Robert Crain Highway) at Leeland Road</p> <p>(1) Provide three left turn lanes on the eastbound approach.</p> <p>b. A signal warrant analysis and signalization of the intersection of Prince George's Boulevard and Queens Court-Site Access with the following lane configuration:</p> <p>(1) A shared through and left and a shared through and right lane on the eastbound approach.</p> <p>(2) A shared through and left and a shared through and right lane on the westbound approach.</p> <p>(3) A shared through and left on the northbound approach and a shared through and right lane on the southbound approach. When the signal is deemed warranted, the applicant shall construct the signal and associated improvements to the requirements and schedule directed by the operating agency.</p>	<p>A phasing plan was submitted as part of this application and indicated that the eastbound Leeland Road Lane improvement does not need to be implemented until the overall site is developed with the high-cube fulfillment center warehouse and 1,600,000 square feet of general warehouse uses. As previously stated, this SDP application proposes development of approximately 301,392 square feet of general warehouse and the total site development will not be more than the approved threshold and would not require the need for reconstruction of eastbound Leeland Road. However, the phasing plan indicates that the Prince George's County Capital Improvement Program (CIP) US 301 improvements will need to be implemented to offset the impacts generated by this phase of development at the US 301/Leeland Road intersection, specifically a third southbound through lane. As a condition of approval, staff recommends that the applicant pay the shared contribution for the US 301 CIP improvements or construct the improvements in lieu of the fee, as provided in the phasing plan.</p> <p>The phasing plan also indicates that DPIE has approved the traffic signal warrant analysis for Prince George's Boulevard at the Queens Court intersection. The traffic signal plans will proceed under a separate street construction permit with DPIE, and the signal will be installed at a time as directed by DPIE.</p> <p>Page 16.</p>	<p>A phasing plan was submitted, as part of this application, and indicated that the eastbound Leeland Road Lane improvement does not need to be implemented, until the overall site is developed with the high-cube fulfillment center warehouse and 1,600,000 square feet of general warehouse uses. As previously stated, this SDP application proposes development of approximately 301,392 square feet of general warehouse and the total site development will not be more than the approved threshold and would not require the need for reconstruction of eastbound Leeland Road. However, the phasing plan indicates that the Prince George's County Capital Improvement Program (CIP) US 301 improvements will need to be implemented to offset the impacts generated by this phase of development at the US 301/Leeland Road intersection, specifically a third southbound through lane. As a condition of approval, the applicant shall pay the shared contribution for the US 301 CIP improvements or construct the improvements in lieu of the fee, as provided in the phasing plan.</p> <p>The phasing plan also indicates that DPIE has approved the traffic signal warrant analysis for Prince George's Boulevard at the Queens Court intersection. The traffic signal plans will proceed under a separate street construction permit with DPIE, and the signal will be installed at a time as directed by DPIE.</p> <p>Page 13.</p>
--	--	---

<p>10. Prior to approval of a building permit for each square foot of development, the applicant, and the applicant's heirs, successors, and/or assignees shall pay to the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), a fee of \$0.92 (1989 dollars) multiplied by (Engineering News Record Highway Construction Cost index at time of payment) / (Engineering News Record Highway Construction Cost Index for second quarter 1989). The County may substitute a different cost index, if necessary.</p>	<p>A phasing plan was submitted as part of this application. The phasing plan indicates that the applicant needs to contribute \$155,002 (1989 dollars) to the US 301 CIP-funded improvements.</p> <p>Page 16.</p>	<p>The applicant submitted, with the SDP, a memorandum dated June 15, 2022, which is intended to provide phasing plans, satisfying the requirements of Conditions 9 and 10. The Planning Board has reviewed and determined conformance with the condition.</p> <p>Page 14.</p>
<p>11. The applicant shall provide an interconnected network of pedestrian and bicycle facilities consistent with the 2009 Countywide Master Plan of Transportation and the 2022 Approved Bowie-Mitchellville and Vicinity Master Plan policies and goals. The exact design and details of these facilities shall be provided as part of the first specific design plan, prior to its acceptance.</p>	<p>The latest SDP submission is in conformance with the referenced condition and is further described in more detail below.</p> <p>Page 17.</p>	<p>[Did not address]</p>
<p>12. The applicant's heirs, successors, and/or assignees shall construct a minimum 10-foot-wide master plan hiker/biker trail located along the Collington Branch Stream Valley and a minimum 10-foot-wide feeder trail to the employment uses.</p>	<p>SDP-1603-01 approved the location and concept design details for the Collington Branch Stream Valley hiker/biker trail and the on-site feeder trail. SDP-1603-01 also established the trigger for construction of the on-site feeder trail. SDP-1603-02 established the trigger for construction of the Collington Branch Stream Valley Trail.</p> <p>Page 17.</p>	<p>[Did not address]</p>

<p>13. Prior to the issuance of the first building permit, the applicant and the applicant's heirs, successors, and/or assignees shall (a) have full financial assurances, (b) a permit for construction through the operating agency's access permit process, and (c) an agreed upon timetable for construction with the appropriate operating agency of a minimum 10-foot-wide master plan shared-use path along the subject site frontage of Leeland Road, consistent with AASHTO standards, unless modified by the Prince George's County Department of Permitting, Inspections and Enforcement, with written correspondence. The exact details shall be shown as part of the first specific design plan for a building, prior to its approval.</p>	<p>This condition states that the details for the required shared-use path, along the subject site frontage of Leeland Road, be shown with the first SDP for a building on the subject site. The details for this facility were included with infrastructure SDP-1603-01.</p> <p>Page 17.</p>	<p>[Did not address]</p>
---	---	--------------------------

<p>14. At the time of the first final plat, in accordance with Section 24-134(a)(4) of the prior Prince George's County Subdivision Regulations, approximately 113.21 +/- acres of parkland, as shown on the preliminary plan of subdivision, shall be conveyed to the Maryland-National Capital Park and Planning Commission (M-NCPPC). The land to be conveyed shall be subject to the following conditions:</p> <p>a. An original, special warranty deed for the property to be conveyed, (signed by the Washington Suburban Sanitary Commission Assessment Supervisor) shall be submitted to the Subdivision Section of the Development Review Division, Upper Marlboro, along with the application of first final plat.</p> <p>b. The applicant and the applicant's heirs, successors, and/or assignees shall demonstrate any liens, leases, mortgages, or trusts have been released from the land to be conveyed to M-NCPPC.</p> <p>c. M-NCPPC shall be held harmless for the cost of public improvements associated with land to be conveyed, including but not limited to, sewer extensions, adjacent road improvements, drains, sidewalks, curbs and gutters, and front-foot benefit charges prior to and subsequent to application of the first building permit.</p> <p>d. The boundaries, lot or parcel identification, and acreage of land to be conveyed to M-NCPPC shall be indicated on all development plans and permits, which include such property.</p> <p>e. The land to be conveyed shall not be disturbed or filled in any way without the</p>	<p>The boundaries, parcel identification, and acreage of the parcels to be conveyed to the Maryland-National Capital Park and Planning Commission were included in SDP-1603-01 and will be required to be conveyed with the first final plat for this development.</p> <p>Page 18.</p>	<p>[Did not address]</p>
--	--	--------------------------

prior written consent of the Prince George's County Department of Parks and Recreation (DPR). If the land is to be disturbed, DPR shall require that a performance bond be posted to warrant restoration, repair, or improvements made necessary or required by the M-NCPPC development approval process. The bond or other suitable financial guarantee (suitability to be judged by the M-NCPPC Office of the General Counsel) shall be submitted to DPR within two weeks prior to applying for grading permits.

f. All waste matter of any kind shall be removed from the property to be conveyed. All wells shall be filled, and underground structures shall be removed. The Prince George's County Department of Parks and Recreation shall inspect the site and verify that land is in an acceptable condition for conveyance, prior to dedication.

g. Stormdrain outfalls shall be designed to avoid adverse impacts on land to be conveyed to or owned by M-NCPPC. If the outfalls require drainage improvements on adjacent land to be conveyed to or owned by M-NCPPC, the Prince George's County Department of Parks and Recreation (DPR) shall review and approve the location and design of these facilities.

DPR may require a performance bond and easement agreement, prior to issuance of grading permits.

h. In general, no stormwater management facilities, tree conservation, or utility

easements shall be located on land owned by, or to be conveyed to, M-NCPPC. However, the Prince George's County Department of Parks and Recreation (DPR) recognizes that there may be need for conservation or utility easements in the dedicated M-NCPPC parkland. Prior to the granting of any easements, the applicant must obtain written consent from DPR. DPR shall review and approve the location and/or design of any needed easements. Should the easement requests be approved by DPR, a performance bond, maintenance and easement agreements may be required, prior to issuance of any grading permits.

<p>15. The applicant shall be subject to the following requirements for development of the 10-foot-wide on-site feeder trail:</p> <p>a. The applicant and the applicant’s heirs, successors, and/or assignees shall allocate appropriate and developable areas for, and provide, the on-site feeder trail from the southern terminus of Logistics Lane to the shared-use path on Leeland Road.</p> <p>b. The on-site feeder trail shall be reviewed by the Urban Design Section of the Development Review Division of the Prince George’s County Planning Department, for adequacy and proper siting, in accordance with the Prince George’s County Park and Recreation Facilities Guidelines, with the review of the specific design plan (SDP). Triggers for construction shall also be determined at the time of SDP.</p> <p>c. Prior to submission of the final plat of subdivision for any parcel, the applicant, and the applicant’s heirs, successors, and/or assignees shall submit three original executed private recreational facilities agreements (RFAs) to the Development Review Division (DRD) of the Prince George’s County Planning Department for construction of the on-site feeder trail, for approval. Upon approval by DRD, the RFA shall be recorded among the Prince George’s County Land Records and the Liber and folio of the RFA shall be noted on the final plat, prior to plat recordation.</p> <p>d. Prior to approval of building permits for a new building, the applicant and the applicant’s heirs, successors, and/or assignees shall submit a performance bond, letter of credit, or other suitable financial guarantee for construction of the on-site feeder trail.</p>	<p>The alignment and a detailed construction cross section for the on-site feeder trail, as well as its trigger for construction, were approved with infrastructure SDP-1603-01.</p> <p>Page 19.</p>	<p>[Did not address]</p>
---	--	--------------------------

<p>16. Recreational facilities to be constructed by the applicant shall be subject to the following:</p> <p>a. The timing for the development of the 20-acre park and Collington Branch Stream Valley Trail, and submittal of the revised construction drawings, shall be determined with the first specific design plan for development (not including infrastructure).</p> <p>b. The location of the Collington Branch Stream Valley Trail shall be staked in the field and approved by the Prince George's County Department of Parks and Recreation, prior to construction.</p> <p>c. All trails shall be constructed to ensure dry passage. If wet areas must be traversed, suitable structures shall be constructed. Designs for any needed structures shall be reviewed and approved by the Prince George's County Department of Parks and Recreation.</p> <p>d. The handicapped accessibility of all trails shall be reviewed during the review of the specific design plan.</p> <p>e. The public recreational facilities shall be constructed, in accordance with the standards outlined in the Prince George's County Park and Recreation Facilities Guidelines.</p> <p>f. Prior to submission of any final plats of subdivision, the applicant shall enter into a public recreational facilities agreement (RFA) with the Maryland- National Capital Park and Planning Commission for construction of recreation facilities on parkland. The applicant shall submit three original executed RFAs to the Prince George's County Department of Parks and</p>	<p>SDP-1603-01 approved the location and concept design details for the Collington Branch Stream Valley hiker trail. This condition will be further reviewed at the time of final plat and building permit.</p> <p>Page 20.</p>	<p>[Did not address]</p>
---	---	--------------------------

Recreation (DPR) for their approval three weeks prior to the submission of the final plats. Upon approval by DPR, the RFA shall be recorded among the Prince George's County Land Records and the recording reference shall be noted on the final plat of subdivision prior to recordation. The RFA may be subsequently modified pursuant to specific design plan approvals, or revisions thereto, which determine the timing for construction of the 20-acre park and Collington Branch Stream Valley Trail.

g. Prior to the approval of the first building permit for a new building, the applicant shall submit to the Prince George's County Department of Parks and Recreation (DPR) a performance bond, a letter of credit, or other suitable financial guarantee, for construction of the public recreation facilities, including the Collington Branch Stream Valley Trail, in the amount to be determined by DPR.

<p>18. Development of this subdivision shall be in conformance with approved Type 1 Tree Conservation Plan (TCP1-004-2021-03). The following note shall be placed on the final plat of subdivision: "This development is subject to restrictions shown on the approved Type 1 Tree Conservation Plan (TCP1-004-2021-03 or most recent revision), or as modified by the Type 2 Tree Conservation Plan and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland and Wildlife Habitat Conservation Ordinance (WCO). This property is subject to the notification provisions of CB-60-2005. Copies of all approved Tree Conservation Plans for the subject property are available in the offices of the Maryland-National Capital Park and Planning Commission, Prince George's County Planning Department."</p>	<p>The Environmental Planning Section has reviewed this condition and determined that this will be addressed at the time of final plat review.</p> <p>Page 21.</p>	<p>A Type 2 Tree Conservation Plan (TCP2-026-2021-06) was submitted with the SDP. The Planning Board has reviewed and determined that the TCP2 conforms to approved TCPI-004-2021-03.</p> <p>Page 14.</p>
<p>19. Prior to the issuance of permits for this subdivision, a Type 2 tree conservation plan shall be approved. The following note shall be placed on the final plat of subdivision: "This plat is subject to the recordation of a Woodland Conservation Easement pursuant to Section 25-122(d)(1)(B) with the Liber and folio reflected on the Type 2 Tree Conservation Plan, when approved."</p>	<p>[Did not address]</p>	<p>See Response for Condition 18 above.</p>

<p>Compliance with Evaluation Criteria - Specific Design Plan SDP-1603-01</p>		<p>The Planning Board approved SDP-1603-01 on January 13, 2022, for infrastructure for the overall National Capital Business Park development, including 35 parcels, street network, sidewalks, utilities, grading, SWM, retaining walls, and directional signage that will serve the employment and institutional uses proposed for the property. Staff has reviewed this application and determined that it is in conformance with the approved SDP.</p> <p>Page 21.</p>	<p>The Planning Board approved SDP-1603-01 on January 13, 2022, for infrastructure for the overall NCBP development, including 35 parcels, street network, sidewalks, utilities, grading, SWM, retaining walls, and directional signage that will serve the employment and institutional uses proposed for the property. The Planning Board has reviewed this application and determined that it is in conformance with the approved SDP.</p> <p>Page 14.</p>
<p>Compliance with Evaluation Criteria - 2010 Prince George's County Landscape Manual</p>		<p>The application is subject to the requirements of the Landscape Manual, specifically Section 4.2, Requirements for Landscape Strips Along Streets; Section 4.3, Parking Lot Requirements; Section 4.4, Screening Requirements; Section 4.7, Buffering Incompatible Uses; and Section 4.9, Sustainable Landscaping Requirements. Staff has reviewed this application and determined that it is in conformance with the Landscape Manual, and the required plantings and schedules are provided on the plan.</p> <p>Page 21.</p>	<p>The application is subject to the requirements of the Landscape Manual, specifically Section 4.2, Requirements for Landscape Strips Along Streets; Section 4.3, Parking Lot Requirements; Section 4.4, Screening Requirements; Section 4.7, Buffering Incompatible Uses; and Section 4.9, Sustainable Landscaping Requirements. The Planning Board has reviewed this application and determined that it is in conformance with the Landscape Manual, and the required plantings and schedules are provided on the plan.</p> <p>Page 15.</p>

<p>Compliance with Evaluation Criteria - Prince George's County Woodland and Wildlife Habitat Conservation Ordinance:</p>		<p>This property is subject to the provisions of the 2010 Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) because the project is subject to a PPS (4-21056). This project is subject to the WCO and the Environmental Technical Manual (ETM). TCP2-026-2021-06 has been submitted with the application and requires revisions to be found in conformance with TCP1-004-2021-03 and the WCO.</p> <p>The District Council amended the woodland conservation/afforestation threshold on land with the prior R-S zoning, with permitted uses in the prior E-I-A Zone. The subject property shall be developed in accordance with the threshold requirements of the prior E-I-A Zone. The woodland conservation threshold for this 442.30-acre property is based on 15 percent for the E-I-A (R-S) and I-1 Zone portions of the site, and 50 percent for the R-A Zone, for a weighted woodland conservation threshold requirement of 15.08 percent, or 52.40 acres. There is an approved TCP1 and TCP2 on the overall development related to the prior residential subdivision, which were grandfathered under the 1991 Woodland Conservation Ordinance, but the prior tree conservation plan approvals are not applicable to the new development proposal.</p>	<p>This property is subject to the provisions of the 2010 Woodland and Wildlife Habitat Conservation Ordinance (WCO) because the project is subject to a PPS (4-21056). This project is subject to the WCO and the Environmental Technical Manual (ETM). Type 2 Tree Conservation Plan TCP2-026-2021-06 has been submitted with the application and requires revisions, to be found in conformance with Type 1 Tree Conservation Plan TCP1-004-2021-03 and the WCO.</p> <p>The District Council amended the woodland conservation/afforestation threshold on land with prior R-S zoning, with permitted uses in the prior E-I-A Zone. The subject property shall be developed in accordance with the threshold requirements of the prior E-I-A Zone. The woodland conservation threshold (WCT) for this 442.30-acre property is based on 15 percent for the E-I-A (R-S) and I-1 portions of the site, and 50 percent for the R-A Zone, for a weighted WCT requirement of 15.08 percent, or 52.40 acres. There is an approved TCP1 and TCP2 on the overall development related to the prior residential subdivision, which were grandfathered under the 1991 Woodland Conservation Ordinance, but the prior TCP approvals are not applicable to the new development proposal.</p>
---	--	--	--

The National Capital Business Park is subject to the WCO and the ETM. A rough grading permit was approved for the site, utilizing the limit of disturbance of TCP2-026-2021, which is in process. An amended rough grading permit, with an enlargement of the limit of disturbance to include area approved under PPS 4-21056 and TCP1-004-2021-03, was recently approved for this site as TCP2-026-2021-05. Revisions to TCP2-026-2021 were submitted with SDP-1603-01, SDP-1603-02, and SDP-1603-04. Proposed clearing with the park dedication area shall be reflected in a future application. Details of the recreation facilities, impacts to the PMA, and the variance request for the specimen tree removal will be analyzed with the application proposing the development of the park.

Section 25-122(c)(1) of the WCO prioritizes methods to meet the woodland conservation requirements. On November 18, 2022, the applicant submitted a statement of justification (SOJ) dated September 19, 2022, requesting approval of a combination of on-site and off-site woodland conservation, as reflected on the TCP2 worksheet. The site contains 186.15 acres of primary management area (PMA), approximately 15,622 linear feet of regulated streams, and 94.77 acres of 100-year floodplain. The applicant states that, although they are only preserving 86.76

NCBP is subject to the WCO and the ETM. A rough grading permit was approved for the site, utilizing the limit of disturbance (LOD) of TCP2-026-2021, which is in process. An amended rough grading permit, with an enlargement of the LOD to include area approved under 4-21056 and TCP1-004-2021-03, was recently approved for this site as TCP2-026-2021-05. Revisions to TCP2-026-2021 were submitted with SDP-1603-01, SDP-1603-02, and SDP-1603-04. Proposed clearing with the park dedication area shall be reflected in a future application. Details of the recreation facilities, impacts to the primary management area (PMA), and the variance request for specimen tree removal will be analyzed with the application proposing the development of the park.

Section 25-122(c)(1) of the WCO prioritizes methods to meet the woodland conservation requirements. On November 18, 2022, the applicant submitted a statement of justification (SOJ) dated September 19, 2022, requesting approval of a combination of on-site and off-site woodland conservation, as reflected on the TCP2 worksheet. The site contains 186.15 acres of PMA, approximately 15,622 linear feet of regulated streams, and 94.77 acres of 100-year floodplain. The applicant states that, although they are only preserving 85.38 acres of the 117.85

acres of the 117.85 woodland conservation requirement on-site, they are proposing to preserve the highest quality of woodlands on-site within the PMA and contiguous to these areas, which has a priority of preservation. The woodland conservation threshold for the development is 52.40 acres, or 15.08 percent, which is proposed to be met on-site in preservation. The central portion of the site was the subject of a timber harvest, which was implemented. The applicant states that, clearing of the central portion of the property is supported due to the implemented timber harvest, and that providing on-site afforestation/reforestation, connected to the on-site preservation, is a higher priority over preserving the central areas of woodlands impacted by the timber harvest. The applicant proposes to protect the woodland preservation areas, including areas of reforestation. Ninety-nine of the specimen trees on-site are located in the proposed woodland conservation easement. The applicant states that the site is not suitable for natural regeneration and the next logical step is to provide the remaining requirement off-site, within an approved tree bank. In review of the conservation method priorities of Section 25-122(c)(1), staff agrees that on-site afforestation/reforestation, connected to the on-site preservation, is a higher priority over preserving the central areas of woodlands

woodland conservation requirement on-site, they are proposing to preserve the highest quality of woodlands on-site within the PMA and contiguous to these areas, which has a priority of preservation. The WCT for the development is 52.40 acres, or 15.08 percent, which is proposed to be met on-site in preservation. The central portion of the site was the subject of a timber harvest, which was implemented. The applicant states that, clearing of the central portion of the property is supported due to the implemented timber harvest, and that providing on-site afforestation/reforestation, connected to the on-site preservation, is a higher priority over preserving the central areas of woodlands impacted by the timber harvest. The applicant proposes to protect the woodland preservation areas, including areas of reforestation. Ninety-nine of the specimen trees on-site are located in the proposed woodland conservation easement. The applicant states that the site is not suitable for natural regeneration and the next logical step is to provide the remaining requirement off-site, within an approved tree bank. In review of the conservation method priorities of Section 25-122(c)(1), staff agrees that on-site afforestation/reforestation, connected to the on-site preservation, is a higher priority over preserving the central areas of woodlands impacted by the timber harvest, that are not directly connected to

impacted by the timber harvest, that are not directly connected to environmental features. Staff supports the applicant's request to meet the woodland preservation requirements, as stated in their SOJ, through a combination of on-site and off-site preservation.

The overall woodland conservation worksheet shows clearing of 245.67 acres (prior approvals 260.75 acres) of woodland on the net tract area, and clearing of 1.86 acres (prior 1.09 acres) of woodland in the floodplain. Based on staff's calculations, this results in a woodland conservation requirement of 117.50 acres (prior 118.68 acres). The requirement is proposed to be met with 86.76 acres of on-site woodland preservation, 15.60 acres of on-site reforestation, and 13.57 acres of off-site woodland conservation credits. Although this development has been part of several reviews, as individual applicants submit SDPs for development, future applicants should continue to look for opportunities to provide additional areas of woodland preservation and reforestation.

As submitted, it appears this application proposes to reduce the overall amount of woodland clearing by 7.78 acres, increasing woodland preservation by 7.78 acres. The plan is not clear where the reduction of the clearing is occurring. Prior to certification of TCP2-026-2021-04, the applicant shall demonstrate the areas where woodland clearing was reduced and revise the plan and worksheet, as necessary.

environmental features. The Planning Board supports the applicant's request to meet the woodland preservation requirements, as stated in the SOJ, through a combination of on-site and off-site preservation.

The overall woodland conservation worksheet shows clearing of 254.35 acres (prior approvals 260.75 acres) of woodland on the net tract area, and clearing of 1.86 acres (prior 1.09 acres) of woodland in the floodplain. Based on calculations, this results in a woodland conservation requirement of 117.85 acres (prior 118.68 acres). The requirement is proposed to be met with 85.38 acres of on-site woodland preservation, 16.81 acres of on-site reforestation, and 15.66 acres of off-site woodland conservation credits. Although this development has been part of several reviews, as individual applicants submit SDPs for development, future applicants should continue to look for opportunities to provide additional areas of woodland preservation and reforestation.

As submitted, it appears this application proposes to reduce the overall amount of woodland clearing, increasing the woodland preservation. The plan is not clear where the reduction of the clearing is occurring. Prior to certification of TCP2-026-2021-06, the applicant shall demonstrate the areas where woodland clearing was reduced and revise the plan and worksheet, as necessary.

		<p>The plan was previously approved for clearing within the 100-year floodplain for an entrance to the site and proposed to reforest certain areas of the impacted floodplain. The worksheet must be revised to add the acreage of reforestation in floodplain.</p> <p>Technical revisions to the revised TCP2 are required and included in the conditions of this technical staff report.</p> <p>Page 21-22.</p>	<p>The plan was previously approved for clearing within the 100-year floodplain for an entrance to the site and proposed to reforest certain areas of the impacted floodplain. The worksheet must be revised to add the acreage of reforestation in floodplain.</p> <p>Technical revisions to the revised TCP2 are required and included in the conditions of this technical staff report.</p> <p>Page 15-16.</p>
<p>Compliance with Evaluation Criteria - Prince George's County Tree Canopy Coverage Ordinance</p>		<p>Subtitle 25, Division 3, the Tree Canopy Coverage Ordinance, of the Prince George's County Code requires a minimum percentage of tree canopy coverage (TCC) on projects that require a building or grading permit for 5,000 square feet or greater of gross floor area or disturbance. The TCC is based on the gross tract area and is required to provide a minimum of 10 percent in the prior E-I-A Zone. A schedule has been provided, which shows conformance to Section 25-128 of the County Code.</p> <p>Page 22-23.</p>	<p>Subtitle 25, Division 3, the Tree Canopy Coverage Ordinance, of the Prince George's County Code requires a minimum percentage of tree canopy coverage (TCC) on projects that require a building or grading permit for 5,000 square feet or greater of gross floor area or disturbance. The TCC is based on the gross tract area and is required to provide a minimum of 10 percent in the prior E-I-A Zone. A schedule has been provided, which shows conformance to Section 25-128 of the County Code.</p> <p>Page 16.</p>

<p>Compliance with Evaluation Criteria - Refereral Comments</p>		<p>The subject application was referred to the concerned agencies and divisions. The referral comments are summarized, as follows, and are incorporated herein by reference:</p> <p>a. Community Planning—In a memorandum dated November 9, 2022 (Lester to Butler), the Community Planning Division noted that master plan conformance is not required for this application.</p> <p>b. Historic Preservation—In a memorandum dated November 9, 2022 (Stabler and Smith to Butler), it was noted that there are no archaeological or historic resources on the site.</p> <p>c. Transportation Planning—In a memorandum dated November 15, 2022 (Yang to Butler), the Transportation Planning Section noted that the subject application is acceptable, subject to the conditions herein.</p> <p>d. Subdivision Review—In a memorandum dated November 14, 2022 (Gupta to Butler), it was noted that the SDP is in substantial conformance with the PPS. Technical revisions are required and included as conditions.</p>	<p>The subject application was referred to the concerned agencies and divisions. The referral comments are summarized, as follows, and are incorporated herein by reference:</p> <p>a. Community Planning—The Planning Board has reviewed and adopts the memorandum dated November 9, 2022 (Lester to Butler), in which it was noted that master plan conformance is not required for this application.</p> <p>b. Historic Preservation—The Planning Board has reviewed and adopts the memorandum dated November 9, 2022 (Stabler and Smith to Butler), in which it was noted that there are no archaeological or historic resources on the site.</p> <p>c. Transportation Planning—The Planning Board has reviewed and adopts the memorandum dated November 15, 2022 (Yang to Butler), in which it was noted that the subject application is acceptable, subject to the conditions herein.</p> <p>d. Subdivision Review—The Planning Board has reviewed and adopts the memorandum dated November 9, 2022 (Gupta to Butler), in which it was noted that the SDP is in substantial conformance with the PPS. Technical revisions are required and included as conditions.</p>
---	--	---	--

		<p>e. Environmental Planning—In a memorandum dated November 17, 2022 (Nickle to Butler), it was noted that the environmental features have been preserved, to the fullest extent possible. Technical corrections are included as conditions herein.</p> <p>Page 23.</p>	<p>e. Environmental Planning—The Planning Board has reviewed and adopts the memorandum dated November 17, 2022 (Nickle to Butler), in which it was noted that the environmental features have been preserved, to the fullest extent possible. Technical corrections are included as conditions herein.</p> <p>Page 17.</p>
<p>Conclusion/ Recommendation</p>		<p>Based upon the foregoing evaluation and analysis, the Urban Design staff recommends that the Planning Board adopt the findings of this report and APPROVE Specific Design Plan SDP-1603-03 and Type 2 Tree Conservation Plan TCP2-026-2021-06, for National Capital Business Park, Parcel 11, subject to the following conditions:</p> <p>Page 23.</p>	<p>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 Type 2 Tree Conservation Plan TCP2-026-2021-06, and further APPROVED Specific Design Plan SDP-1603-03 for the above-described land, subject to the following conditions:</p> <p>Page 17.</p>

EXHIBIT B

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PETITION OF:

*

ANTAWAN WILLIAMS, ET AL.

*

Petitioners

*

FOR JUDICIAL REVIEW OF THE
DECISION OF THE:

*

CAL22-18255

*

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

*

*

IN THE CASE OF:

*

A-9968-03

NATIONAL CAPITOL
BUSINESS PARK

*

* * * * *

**CITIZEN-PETITIONERS' MEMORANDUM IN SUPPORT OF PETITION FOR
JUDICIAL REVIEW**

Antawan Williams, Arlancia Williams, Ray Crawford, Kathy H. Crawford, and John Homick (collectively "Citizen-Petitioners") by their attorneys, G. Macy Nelson and Alex Votaw, file this Memorandum in Support of Petition for Judicial Review of the decision of the County Council of Prince George's County, Maryland, Sitting as the District Council ("District Council") to approve a Basic Plan Amendment, A-9968-C-03, for the National Capitol Business Park.

QUESTIONS PRESENTED FOR REVIEW

1. **Whether the District Council erred legally when it approved the application for a Basic Plan Amendment where the decision was based on an illegal text amendment which violated the uniformity clause of Section 22-201(b)(2)(i) of the Maryland Land Use Article.**
2. **Whether the District Council erred legally when it approved the application for a Basic Plan Amendment where the decision was based on an illegal special law in violation of Article III, Section 33 of the Maryland Constitution.**
3. **Whether the District Council erred when it approved a land use application that contemplates a use not permitted by the Zoning Ordinance.**

STATEMENT OF FACTS

This case arises from a proposal to develop 5.5 million square feet of high intensity industrial uses including a 3.6 million square foot “high-cube fulfillment center warehouse,” on a 441.3-acre wooded property located at 15000 Leeland Road, Upper Marlboro, Maryland as depicted below (“Subject Property”). R. 10, 999.¹

¹ The record submitted to the Court did not include bates numbering. Citizen-Petitioners refer to the pdf page.



R. 660.

The Subject Property contains extensive regulated environmental features including streams, wetlands, 100-year floodplains, seven rare, threatened, or endangered species, forest interior dwelling species habitat, and specimen trees. R. 314.

To the north and west of the Subject Property is undeveloped land zoned Residential Low Development (R-L). R. 21. To the east is the Collington Center zoned Employment and Institutional Area (E-I-A). R. 21. The south side of the Subject Property is bounded by Leeland Road – a scenic road. R. 21. The land to the south of the Subject Property is zoned Residential Suburban Development (R-S). R. 21.

Two scenic or historic roads are adjacent to the perimeter of the Subject Property – Leeland Road and Oak Grove Road. R. 314.

The Subject Property is Zoned Residential Suburban Development (R-S). The “general principle for land uses in” the R-S Zone “is that uses shall be either residential in nature, or necessary to serve the dominant residential uses.” Prince George’s County Zoning Ordinance (“ZO”) § 27-512(a). To that end, before August 28, 2020, the types of uses permitted in the R-S Zone included residential uses, an eating or drinking establishment, a barber or beauty shop, a church, a day care center, a nursing home, a school, cemetery, library, post office, public buildings, fire or ambulance station, community building, golf course, park or playground, or some agricultural uses. ZO § 27-512(b). No industrial uses were permitted in the R-S Zone. ZO § 27-512(b).

In 2018, a Basic Plan Amendment, A-9968-01, was approved for the Subject Property in 2018 for the development of single family attached and detached residences in accordance with the list of permitted uses in the R-S Zone at the time. R. 23.

On July 14, 2020, the District Council adopted CB-22-2020 to expand the permitted uses in the R-S Zone. CB-22-2020 took effect forty-five calendar days later, on August 28, 2020. The use changes authorized by CB-22-2020 were codified in the ZO Section 27-515(b), footnote 38.

After the enactment of CB-22-2020 on August 28, 2020, the uses permitted in the R-S Zone expanded to permit “any use allowed in the E-I-A Zone (excluding those permitted by Special Exception)” which includes intensive transportation uses like an airport, a heliport, a railroad yard or freight station, and a trucking or motor freight station as well as all of the listed industrial uses like an industrial metal, waste, rag, glass, or paper

salvage operation, a maintenance or service yard, manufacturing activity, and a vehicle salvage or wrecking operation. R. 205-212; ZO § 27-512(b).

Most relevant here, CB-22-2020 allows, for the first time, the “warehouses and distribution facility” use in the R-S Zone.

The Zoning Ordinance defines a warehouse as a “‘Building’ used for the storage of goods and materials in connection with the day-to-day operation of a wholesale or distribution business, or a business that is not located in the same ‘Building’ or on the same property as the ‘Warehouse Unit.’ The storage of goods and materials as an ‘Accessory Use’ to a business located on the same property is not a ‘Warehouse Unit.’” ZO § 27-107.01(a)(256) (definition created via CB-90-1992 on December 31, 1992).

The Zoning Ordinance defines distribution facility as “(A) A facility to or from which a wholesaler or retailer ships merchandise, materials, or supplies for storage or distribution by that wholesaler or retailer to the sales outlets or service operations it supports; or (B) A business whose functions are similar to those of the United States Postal Service, that is exclusively devoted to the receiving, sorting, sending, and delivery of letters, parcels, and other postal express matter.” ZO § 27-107.01(a)(66.4) (definition created via CB-90-1992 on December 31, 1992).

However, the benefits of CB-22-2020 can only be utilized under very specific and limited conditions. Under CB-22-2020, E-I-A uses, like a warehouse, are only permitted on a R-S zoned parcel, a portion of a parcel, or an assemblage of adjacent land that:

1. Was rezoned from the E-I-A and R-A zones to the I-1 and the R-S Zones by a Sectional Map Amended approved after January 1, 2006;
2. Contains at least 400 acres and adjoins a railroad right-of-way; and
3. Is adjacent to an existing employment park developed pursuant to the E-I-A Zone requirements.

See R. 211.

The applicability of CB-22-2020 is further restricted to only those developments where “street connectivity [is] through an adjacent employment park” and where “a public park of at least 20 acres [is] provided.” *See* R. 211. For developments to which CB-22-2020 applies, “[r]egulations in the R-S Zone shall not apply” and instead the “regulations in the E-I-A Zone shall apply.” *See* R. 211.

Due to the extensive limitations created by CB-22-2020, only one property in the entire County can take advantage of the benefits of CB-22-2020 – the Subject Property. To that end, the Prince George’s County Planning Board (“Planning Board”) explained that “the Planning Board believes that only one property in the County would qualify. This bill was drafted for an approximately 639-acre property, located north of Leeland Road and east of a freight line owned by Consolidated Rail, and identified in tax records as Parcel 30, tax account 0670737. The property is also known as Willowbrook and has an extensive approval history under its existing R-S Zone.” Planning Board Letter re CB-22-2020, 2

(Attached as Exhibit A)². The Subject Property is the only property matching the Planning Board's description.

Accordingly, on January 4, 2021, NCBP Property, LLC and Manekin, LLC ("Applicant") submitted a new Basic Plan Amendment, A-9968-02, to replace the residential land uses with 3.5 million square feet of "warehouse/distribution, office, light industrial/manufacturing, and/or institutional uses." R. 490, 936. A-9968-02 was approved by the District Council on April 12, 2021. R. 505.

On December 17, 2021, Applicant submitted another Basic Plan Amendment, A-9968-03, to increase the warehouse/distribution, office, light industrial/manufacturing, and/or institutional uses by 2 million square feet for a total of 5.5 million square feet. R. 505. The Applicant explained that in the proposed development:

approximately 3,600,000 square feet is planned to be a high-cube fulfillment center warehouse with 650,000 square feet of permanent ground-floor square footage. The ITE Trip Generation Manual (11th Edition) has specific trip generation rates for High-Cube Fulfillment Center Warehouse (ITE-155). This use is described in the manual as "A building that typically has at least 200,000 gross square feet of floor area, has a ceiling height of 24 feet or more, and is used primarily for the storage and/or consolidation of manufactured goods (and to a lesser extent, raw materials) prior to their distribution to retail locations or other warehouses. A typical HCW has a high level of on-site automation and logistics management. The automation and logistics enable highly efficient processing of goods through the HCW. A high-cube warehouse can be free-standing or located in an industrial park."

² Citizen-Petitioners have included a Motion to Supplement the Administrative Record for all of the exhibits attached hereto.

R. 999. The District Council approved A-9968-03 on May 16, 2022, and notice was sent on May 23, 2022.

On June 20, 2022, Citizen-Petitioners submitted this petition for judicial review.

STANDARD OF REVIEW

When reviewing the District Council’s decision, this Court asks whether the District Council premised its decision on an erroneous conclusion of law. *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1991). “An agency decision based on regulatory and statutory interpretation is a conclusion of law.” *GenOn Mid-Atl., LLC v Md. Dep’t of the Env’t*, 248 Md. App. 253, 269 (2020) (internal quotation omitted). While a measure of deference is granted to administrative interpretations of an ordinance, that deference is affected by whether the interpretation has been “applied consistently and for a long period of time.” *Balt. Gas & Elec. Co. v. Pub. Serv. Comm’n of Md.*, 305 Md. 145, 161 (1986). An agency is also not entitled to deference if its interpretation conflicts with unambiguous statutory language. “An agency’s erroneous interpretation of its regulations must yield to the plain language of the statute. ‘No custom, however long and generally it has been followed by officials, can nullify the plain meaning and purpose of a statute.’” *Kerpelman v. Disability Review Bd. of Prince George’s Cty. Police Pension Plan*, 155 Md. App. 513, 521 (2004) (quoting *Bouse v. Hutzler*, 180 Md. 682, 687 (1942)).

ARGUMENT

Citizen-Petitioners rest their case on three arguments: (1) A-9968-3 is based on an illegal text amendment which violates the uniformity clause of the Maryland Land Use

Article, (2) A-9968-03 is based on an illegal special law in violation of the Maryland Constitution, and (3) A-9968-03 authorizes a land use (a high-cube fulfillment center warehouse) that is not permitted under the applicable zoning ordinance. This Court has the authority to consider in this judicial review action whether the approval of A-9968-03 was based on an illegal text amendment. *Maryland Reclamation Assocs., Inc. v. Harford Cty.*, 468 Md. 339, 398–99, *reconsideration denied* (May 4, 2020), *cert. denied sub nom. Maryland Reclamation Assocs., Inc. v. Harford Cty., Maryland*, 141 S. Ct. 560 (2020).

I. This Court should reverse the District Council’s approval of A-9968-03 because CB-22-2020 violates the uniformity clause of Section 22-201(b)(2)(i) of the Maryland Land Use Article.

The District Council may only pass zoning laws that are “uniform for each class or kind of development throughout a district or zone.” MD Land Use § 22-201(b)(2)(i). The reasoning behind this requirement, known as the uniformity clause, is that “the motives or wisdom of the legislative body in adopting an original or comprehensive zoning enjoy a strong presumption of correctness and validity.” *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 535 (2002). Accordingly, the uniformity clause serves to protect landowners from “favoritism towards certain landowners within a zone by the grant of less onerous restrictions than are applied to others within the same zone elsewhere in the district” through individualized zoning amendments. *Matter of Concerned Citizens of PG County District 4, et al.*, 255 Md. App. 106, 117 (2022).

A zoning text amendment only satisfies the uniformity clause if it is “equally applicable to similarly situated properties” and is “reasonable and based upon the public policy to be served.” *Concerned Citizens*, 255 Md. App. at 119.

1. CB-22-2020 applies only to the Subject Property.

The text amendment must be “equally applicable to similarly situated properties” *Concerned Citizens*, 255 Md. App. at 119. Even when a text amendment appears on its face to apply to all properties in a specific zone, it may still violate the uniformity clause when the text amendment is drafted to “single[] out a property or properties.” *Concerned Citizens*, 255 Md. App. at 120 (citing *Anderson House LLC v. Mayor and City Council of Rockville*, 402 Md. 689, 714 (2008)).

Here, CB-22-2020 amends the uses permitted in the R-S zone and thus, on its face applies to all R-S properties. However, due to the extensive limitations created by CB-22-2020, only one property in the entire county can take advantage of the benefits of CB-22-2020 – the Subject Property. To that end, the Prince George’s County Planning Board (“Planning Board”) explained that “the Planning Board believes that only one property in the County would qualify. This bill was drafted for an approximately 639-acre property, located north of Leeland Road and east of a freight line owned by Consolidated Rail, and identified in tax records as Parcel 30, tax account 0670737. The property is also known as Willowbrook and has an extensive approval history under its existing R-S Zone.” Exhibit A, 2. The Subject Property is the only property matching the Planning Board’s description.

Similarly, the Prince George's County Office of Law explained that "we believe this proposed bill can be perceived to violate the uniformity requirement. *See*, Md. Land Use Code Ann. Section 4-201(2)(i), which states: 'Zoning regulations shall be uniform for each class or kind of development throughout each district or zone.' **The proposed bill (specifically footnote 38 to Section 27-515(b)) appears to be drafted for a specific parcel contained within a R-S Zone.**" Memorandum of the Office of Law (emphasis provided) (Attached as Exhibit B).

Not only was the Subject Property the only property impacted by CB-22-2020 as of 2020, but it is also the only property that will ever be impacted by CB-22-2020 due to the updated zoning ordinance. In 2022, Prince George's County adopted a new zoning ordinance which rezoned properties previously within a comprehensive design zone, like the R-S Zone, to the Legacy Comprehensive Design Zone (LCD). The purpose of the LCD zone is to "carry forward regulations and procedures from the prior Ordinance" for "comprehensive design zones established prior to April 1, 2022 for which a Basic Plan, Comprehensive Design Plan (CDP), or Specific Design Plan (SDP) was approved prior to April 1, 2022." *See Legacy Zones*, Prince George's County Planning Department, available at <https://www.pgparcs.com/835/Legacy-Zones>. Here, the Subject Property is the only property that has an approved Basic Plan which takes advantage of the benefits of CB-22-2020. Accordingly, the new Zoning Ordinance simultaneously continues the benefit of CB-22-2020 on the Subject Property while preventing any other property from ever qualifying for CB-22-2020's benefits in the future.

Therefore, CB-22-2020 is not “equally applicable to similarly situated properties” as it will only ever apply to the Subject Property. *See Concerned Citizens*, 255 Md. App. at 119.

2. CB-22-2020 restricts its benefits based on criteria that are not reasonable or based upon the public policy to be served.

Zoning text amendments must be “reasonable and based upon the public policy to be served.” *Concerned Citizens*, 255 Md. App. at 119 (quoting *Montgomery Cnty. v. Woodward & Lothrop, inc.*, 280 Md. 686, 720 (1977)). Specifically, when a zoning text amendment serves to allow certain new uses but only in limited circumstances, the “criteria and restrictions in [zoning text amendment must] have a legitimate public purpose and [must be] ‘reasonable and based upon the public policy to be served.’” *Concerned Citizens*, 255 Md. App. at 121. If instead, the “criteri[a] seem[] tailor-made” to single out the Subject Property, a zoning text amendment is not “reasonable and based upon the public policy to be served.” *Concerned Citizens*, 255 Md. App. at 119, 124.

For example, *Concerned Citizens* considered a zoning text amendment which allowed an increased density for townhouse in the R-A zone but only for properties that satisfied very specific criteria. When the *Concerned Citizens* court considered one criterion which required the R-A zoned property to be “entirely within 2,500 feet of land owned by a regulated public utility and used for purposes of electrical generation, transmission, or distribution,” the Court explained that

[t]his criterion seems tailor-made for [the Subject Property] and leaves us puzzled by how it is reasonably based on a public purpose. . . [Property

owner's explanations do] not offer a public policy that is served by the bill and when we review this criterion under the *Woodward & Lothrop* "reasonable and based upon the public policy to be served" standard, it falls short. [] Nor did counsel for the District Council offer any public policy reason for why proximity to a power line reasonably related to a public purpose. We cannot conceive of what public policy might be served by requiring that property—to qualify for the special higher-density development—must be within 2,500 feet of land owned by a public utility and used for electrical generation, transmission, or distribution.

255 Md. at 124-25.

Here, the restrictions in CB-22-2020 are not reasonably related to any public policy. CB-22-2020 was enacted for "the purpose of permitting certain employment and institutional uses permitted by right in the E-I-A (Employment and Institutional Area) Zone to be permitted in the R-S (Residential Suburban) Zone of Prince George's County, under certain specified circumstances, and providing procedures for the amendment of approved Basic Plans to guide the development of such uses." R. 205.

Just as in *Concerned Citizens*, the language in the bill itself "is not helpful to explain the purpose for this change in [use]." 255 Md. App. at 121. Further, there does not appear to be any public policy that would justify the specific restrictions put forward in CB-22-2020.

For example, why must E-I-A uses be limited to R-S Zoned properties that were "rezoned from the E-I-A and R-A Zones to the I-1 and R-S Zones by a Sectional Map Amendment" specifically approved after January 1, 2006? Would other R-S zones

properties similarly rezoned before January 1, 2006, not be equally appropriate locations for E-I-A uses?

Why must the R-S Zoned property be at least 400 acres **and** adjoining a railroad right-of-way? What advantages does adjoining a railroad right-of-way provide aside from tailoring this benefit to only the Subject Property?

Why must the R-S Zoned property also be adjacent to an existing employment park developed pursuant to the E-I-A Zone? Would a similarly situated R-S property that is adjacent to an employment park developed pursuant to a different commercial zone not be equally appropriate for the E-I-A uses?

Finally, why must the E-I-A uses be permitted on R-S properties only when “street connectivity [is] through an adjacent employment park”? *See* R. 211.

Any argument that CB-22-2020 does satisfy this second factor because it serves to incentivize development that generates economic benefits for the county is not relevant to this analysis. *See Concerned Citizens*, 255 Md. App. at 126 (agreeing that the singling out of a specific property for benefits in a zoning text amendment “certainly [] cannot be made merely to accommodate private interests detrimental to the welfare of other property owners in the same district”). The question before this Court is not whether the District Council has a reasonably public policy basis for wanting this type of development in the county. Instead, the narrow question before this Court is whether there is a public policy basis for the District Council’s use of the specific restrictions in CB-22-2020 to justify the designation of a small area (the Subject Property) for the benefits of CB-22-2020.

There is no public policy that might be served by requiring a R-S property to satisfy all of these criteria in order to develop E-I-A uses. Instead, the criteria set forth in CB-22-2020 merely serve to limit the text amendment's benefits to only the Subject Property.

Therefore, CB-22-2020 violates the uniformity clause of Section 22-201(b)(2)(i) of the Maryland Land Use Article because it does not equally apply to similarly situated properties and its restrictions are not reasonably related to any conceivable public policy interest.

II. This Court should reverse the District Council's approval of A-9968-03 because CB-22-2020 is a special law in violation of Article III, Section 33 of the Maryland Constitution.

Article III, Section 33 of the Maryland Constitution prohibits special laws. A law is considered a special law based on an a six-element analysis as follows:

1. Whether the legislation was actually intended to benefit or burden a particular member or members of a class instead of an entire class;
2. Whether the legislation identifies particular individuals or entities;
3. Whether a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation;
4. Whether the legislation's substantive and practical effect, and not merely its form, shows that it singles out one individual or entity, from a general category, for special treatment;

5. Whether the legislatively drawn distinctions are arbitrary and without any reasonable basis;
6. Whether there is public interest underlying the enactment, and the inadequacy of the general law to serve that interest is also a pertinent consideration.

See Cities Serv. Co. v. Governor, 290 Md. 553, 569-70 (1981); *MDE v. Days Cove Reclamation Co., Inc.*, 200 Md. App. 256 (2011). No single element “is conclusive in all cases,” *Cities Serv. Co.*, 290 Md. at 569, but rather they are applied jointly to determine to what extent an alleged special law benefits or burdens a singular person, entity, or narrow group of persons or entities. *See generally id.* “One of the most important reasons for the provision in the Maryland constitution against special legislation is ‘to prevent one who has sufficient influence to secure legislation from getting an undue advantage over others[.]’” *Howard Cty. v. McClain*, 254 Md. App. 190, 197 (2022).

1. CB-22-2020 was clearly intended to benefit the Applicant.

The first two elements—whether the law is intended implicitly for the benefit or detriment of a certain entity and whether an entity is specifically named in a bill—are analyzed concurrently. “Laws that confer a benefit, rather than a detriment, on a single party at the time of its enactment are looked upon more harshly.” *McClain*, 254 Md. App. at 200. Courts only “accord limited weight to [the second] factor because it can be easily manipulated by using narrow descriptive criteria” to avoid specifically naming an entity. *Id.* These two factors are met when a particular parcel is targeted for rezoning at the behest of a particular entity or group of entities.

Here, CB-22-2020 permits E-I-A uses in the R-S Zone under specific conditions. *See* R. 211. CB-22-2020 also exempts the qualifying R-S Zoned property from R-S regulations and instead permits development under E-I-A regulations. *See* R. 211 (Footnote 38(b), (c)). Thus CB-22-2020 confers the benefit of less restrictive zoning regulations onto the qualifying property.

However, the Subject Property is the only property in Prince George’s County that qualifies for the benefits of CB-22-2020. The Planning Board specifically identified the Subject Property as the sole beneficiary of CB-22-2020. Exhibit A. The Planning Board stated that “only one property in the County” would be impacted by CB-22-2020. Exhibit A, 2. The Prince George’s County Office of Law similarly stated, “the proposed bill (specifically footnote 38 to Section 27-515(b)) appears to be drafted for a specific parcel contained within a R-S zone.” Exhibit B.

The record also clearly identifies the Applicant as the chief proponent of the bill, the owner of the lot that the bill would affect, and the meaningful recipient of any advantages conferred by the bill. *See* July 14, 2020, District Council Hearing (Arthur Horne testifying as a representative of the Applicant in support of CB-22-2020).³ Similarly, Council Members Davis and Turner explained that CB-22-2020 would benefit one specific property, the Subject Property, during the June 2, 2020, District Council hearing.

³ Citizen-Petitioners have ordered the transcripts for the District Council Hearings related to CB-22-2020 and will supplement the record with said transcripts once the transcripts are received.

Therefore, the record clearly indicates the CB-22-2020 was intended to benefit the Applicant and satisfies the first two elements of the special law analysis.

2. Applicant sought out and received special advantages from the District Council.

The Applicant sent its attorney, on its behalf, to reiterate its goals before a friendly majority in the District Council, asking them to amend the Zoning Ordinance in such a fashion that it, and it alone, would benefit. *See* July 14, 2020, District Council Hearing (Arthur Horne testifying as a representative of the Applicant in support of CB-22-2020). The Applicant's attorney expressed the Applicant's support for the bill that would allow the Applicant to develop the Subject Property in a manner otherwise expressly forbidden by the general use provisions of the R-S zone. *See id.* The Applicant received these benefits with the passage of CB-22-2020.

3. CB-22-2020's substantive and practical effect shows that it singles out the Applicant for special treatment.

Like with factors 1 and 2, factors 4 and 5 are commingled and can be analyzed jointly. Factors 4 and 5 can be satisfied with a showing that the "legislatively drawn distinctions" in the bill act only to "single[] out one individual or entity, from a general category, for special treatment" and were not created for any other reasonable basis. *See Cities Serv. Co. v. Governor*, 290 Md. 553, 570 (1981); *MDE v. Days Cove Reclamation Co., Inc.*, 200 Md. App. 256, 265 (2011).

Here, the benefits of CB-22-2020 (less restrictive zoning regulations) are limited only to properties that:

- Were rezoned from the E-I-A and R-A Zones to the I-1 and R-S Zones by a Sectional Map Amendment approved after January 1, 2006;
- Contain at least 400 acres and adjoins a railroad right-of-way; and
- Are adjacent to an existing employment park developed pursuant to the E-I-A Zone requirements.

R. 211 (Footnote 38(a)). The benefits of CB-22-2020 are further restricts to only those developments which provide:

- street connectivity through an adjacent employment park; and
- a public park of at least 20 acres.

R. 211 (Footnote 38(d)).

As explained *supra* in Section I(2), there is no reasonable basis for limiting the benefits of CB-22-2020 under these unusually specific and narrow criteria. Further, the Court of Special Appeals has already determined that by “narrowing [a text amendment] to such extent that it only applies to one property, the Council rendered [the text amendment] unreasonable.” *McClain*, 254 Md. App. at 204. Here, it is clear that the only purpose these criteria serve is to single out the Subject Property for the benefits of the CB-22-2020 without identifying the property by name.

4. There is no public interest underlying the enactment of CB-22-2020.

Some laws, even if they in fact single out certain entities and would otherwise be considered “special,” are not prohibited by the Constitution provided they address “special evils with which existing general laws are incompetent to cope.” *Jones v. House of*

Reformation, 176 Md. 43, 58 (1939). However, Zoning text amendments that single out a certain entity for a benefit do not satisfy this criterion when law already provides procedures that could produce the same outcome. *McClain*, 254 Md. App. at 203.

In *McClain*, the Court determined “there is no public need for [a text amendment that singles out one property for a benefit] because [beneficiaries of the bill] can already successfully apply for a conditional use under the general law.” 254 Md. at 190. Similarly, here, the Planning Board explained that there is no public need for CB-22-2020 because:

If the District Council would like this property to be rezoned, it would be more appropriate to do so during a sectional map amendment following approval of the ongoing master plan for Bowie and Vicinity (Planning Area 74A). The District Council initiated a master plan for Planning Area 74A, including the subject property, in February 2020. The master plan update will give the Council an opportunity to comprehensively review its goals for this property and all possible issues, and plan for its future.

Text amendments are best suited to fine-tune the uses or regulations in an existing zone. CB-22-2020 does not fine tune the R-S Zone; instead, it allows uses wholly different from those normally associated with the R-S Zone. For that reason, the Planning Board believes the on-going Bowie Master Plan update is a superior vehicle to accomplish the purposes of CB-22-2020. The planning Department is currently evaluating the master plan area and engaging in discussions with residents, property owners, and the business community to determine the appropriate future use of land in this area.

CB-22-2020 Planning Board Analysis (Attached as Exhibit C).

In addition to the Sectional Map amendment process, the general law also provided the Applicant with the opportunity to apply for a Zoning Map Amendment under Section 27-179. Accordingly, the zoning ordinance already provided the District Council and the Applicant with procedures to rezoning the Subject Property to allow E-I-A uses. Thus,

there is no evidence to demonstrate that the “existing general laws are incompetent to cope” with any alleged evil addressed by CB-22-2020. *Jones*, 176 Md. at 58. Therefore, there is no public interest underlying the enactment of CB-22-2020 because the existing zoning ordinance already provided several processes to accomplish the same goals as the text amendment.

For all of these reasons, Citizen-Petitioners request that this Court declare CB-22-2020 invalid because it is an illegal special law and thus reverse the District Council’s decision to approve A-9968-03.

III. This Court should reverse the District Council’s approval of A-9968-03 because it authorizes a use not permitted under the Zoning Ordinance (a high-cube fulfillment center warehouse).

Even if this Court determines that CB-22-2020 is a valid text amendment and thus E-I-A uses are permitted on the Subject Property, the use contemplated in A-9968-03 (a high-cube fulfillment center warehouse) is not a use permitted in the E-I-A Zone under Section 27-515(b).

CB-22-2020 allows “warehouses and distribution facility” on the Subject Property. R. 205-212; ZO § 27-515(b).

The Zoning Ordinance defines a warehouse as a “‘Building’ used for the storage of goods and materials in connection with the day-to-day operation of a wholesale or distribution business, or a business that is not located in the same ‘Building’ or on the same property as the ‘Warehouse Unit.’ The storage of goods and materials as an ‘Accessory

Use' to a business located on the same property is not a 'Warehouse Unit.'" ZO § 27-107.01(a)(256) (definition created via CB-90-1992 on December 31, 1992).

The Zoning Ordinance defines distribution facility as "(A) A facility to or from which a wholesaler or retailer ships merchandise, materials, or supplies for storage or distribution by that wholesaler or retailer to the sales outlets or service operations it supports; or (B) A business whose functions are similar to those of the United States Postal Service, that is exclusively devoted to the receiving, sorting, sending, and delivery of letters, parcels, and other postal express matter." ZO § 27-107.01(a)(66.4) (definition created via CB-90-1992 on December 31, 1992).

Although the Applicant has described the proposed uses for the Subject Property generally as warehouse/distribution, office, light industrial/manufacturing, and/or institutional uses, R. 505, the Applicant more specifically described the intended development as follows:

of the 5,500,000 square feet of development, approximately 3,600,000 square feet is planned to be a high-cube fulfillment center warehouse with 650,000 square feet of permanent ground-floor square footage. The ITE Trip Generation Manual (11th Edition) has specific trip generation rates for High-Cube Fulfillment Center Warehouse (ITE-155). This use is described in the manual as "A building that typically has at least 200,000 gross square feet of floor area, has a ceiling height of 24 feet or more, and is used primarily for the storage and/or consolidation of manufactured goods (and to a lesser extent, raw materials) prior to their distribution to retail locations or other warehouses. A typical HCW has a high level of on-site automation and logistics management. The automation and logistics enable highly efficient processing of goods through the HCW. A high-cube warehouse can be free-standing or located in an industrial park.

R. 999.

The Zoning Ordinance’s definitions for the “warehouse” and “distribution facility” uses do not contemplate the use described by the Applicant and permitted by A-9968-03 (a “high-cube fulfillment center warehouse”). R. 999. Therefore, the District Council acted outside the scope of its authority when it approved A-9968-03 because the District Council is only authorized to approve applications for uses permitted in the applicable zone. *See* ZO § 27-515(a), (a)(6) (providing that “no use shall be allowed in the Comprehensive Design Zones, except as provided for in the Table of Uses ...[and] all uses not listed [in the Table of Uses] are prohibited”).

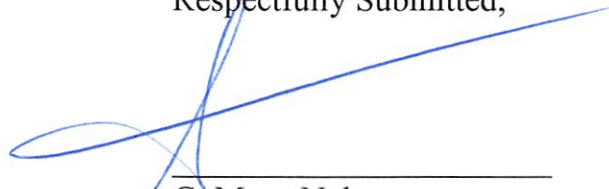
Citizen-Petitioners intend to request a stay in these proceedings because the Court of Appeals is currently considering a substantially similar issue – whether an “Amazon Last Mile Hub” is a “Warehouse,” and therefore permitted, under the Prince George’s County Prior Zoning Ordinance. The arguments relevant here are substantially similar to those presented to the Court of Appeals in the case of *Ray Crawford v. County Council of Prince George’s County Sitting as the District Council* (Case Number 0004). The parties in *Crawford* have fully briefed the case and the Court of Appeals heard oral argument on September 13, 2022. The Court of Appeals will likely issue its decision in the coming months.

CONCLUSION

Citizen-Petitioners rest their case on three arguments: (1) A-9968-3 is based on an illegal text amendment which violates the uniformity clause of the Maryland Land Use

Article, (2) A-9968-03 is based on an illegal special law in violation of the Maryland Constitution, and (3) A-9968-03 authorizes a land use (a high-cube fulfillment center warehouse) that is not permitted under the applicable zoning ordinance. Therefore, this Court should hold that the District Council illegally approved A-9968-03 and reverse the District Council's decision or, alternatively, stay the proceedings until the Court of Appeals has issued its decision in *Ray Crawford v. County Council of Prince George's County Sitting as the District Council*.

Respectfully Submitted,



G. Macy Nelson
AIS No. 8112010268
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
Email: gmacynelson@gmacynelson.com
Attorney for Petitioners



Alex Votaw
AIS No. 2112150190
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
Email: alex@gmacynelson.com
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2022, a copy of the foregoing Memorandum in Support of Judicial Review was emailed and mailed first-class, postage pre-paid to:

Rajesh A. Kumar, Esquire
Prince George's County Council
1301 McCormick Drive, Suite 3-126
Largo, Maryland 20774

Arthur J. Horne, Jr., Esquire
Robert J. Antonetti, Jr., Esquire
Dennis Whitley, III, Esquire
Shipley & Horne, P.A.
1101 Mercantile Lane, Suite 240
Largo, Maryland 20774

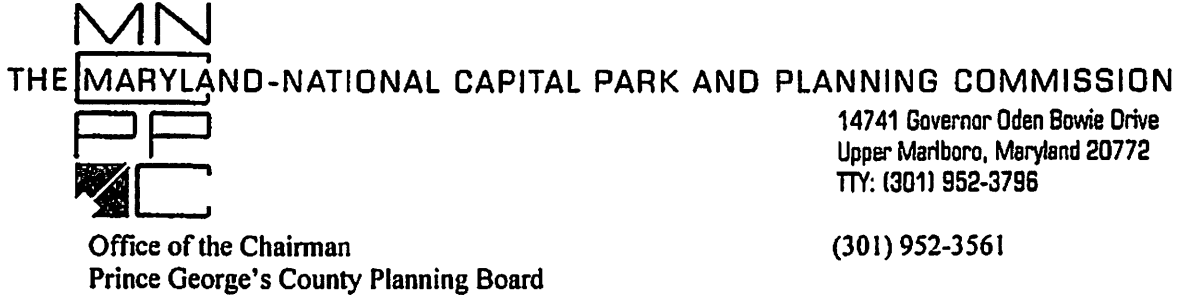
Bruce L. Marcus, Esquire
Megan E. Coleman, Esquire
MarcusBonsib, LLC
6411 Ivy Lane, Suite 116
Greenbelt, Maryland 20770

Steve P. Hollman, Esquire
Abraham Shanedling, Esquire
Sheppard, Mullin, Richter & Hampton, LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006-6801



G. Macy Nelson

EXHIBIT A



May 28, 2020

The Honorable Todd M. Turner
Chair
Prince George's County Council
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

Dear Chairman ^{Todd} Turner:

Re: CB-20-2020 and CB-22-2020

Thank you for providing the Planning Board an opportunity to review and comment on proposed District Council legislation. During the May 28, 2020 Planning Board meeting, the following positions were adopted in accordance with the planning staff's recommendations on the proposed legislation. A **Planning Board Analysis of each bill is attached for your consideration and a brief excerpt from each report is provided below:**

CB-20-2020 amends the Subdivision Regulations to clarify the authority for approval of Public Safety Surcharge fee waivers in Prince George's County.

**Planning Board Recommendation: Oppose as drafted with explanation.
(See Attachment 1 for full analysis)**

The Planning Board is not clear on whether the intent of the bill is to waive the Public Safety Surcharge fee or the Adequate Public Safety Facilities Mitigation Guidelines. The purpose of the Public Safety Surcharge fee is to collect revenue for police, fire, emergency medical services, construction or rehabilitation of buildings or the purchase of equipment or communication devices used in connection with public safety services. In addition, CB-56-2005 presents the test for adequacy during the time of Preliminary Plan of Subdivision review which is a test of the response times for police, fire, and emergency services. If the response times are not adequate the applicant is required to pay a fee or build infrastructure to ensure adequacy in accordance with the Adequate Public Safety Facilities Mitigation Guidelines.

It should be noted that waiving the Public Safety Surcharge fee or the mitigation fee for specific projects reduces collected revenue for police, fire, emergency medical services or the ability to address public safety infrastructure adequacies throughout the County.

The bill should be clarified to determine what fee the County Council intends to waive. If the intent is to waive the Public Safety Surcharge fee, then revisions to the bill should be made to Section 10-192.11 (Public Safety Surcharge.) not within Section 24-122.01 (Adequacy of public facilities.).

CB-22-2020 amends the Zoning Ordinance to permit employment and institutional uses in the Residential Suburban (R-S) Zone, under very limited circumstances, and provides procedures for the amendment of approved Basic Plans to allow these new uses. The bill allows all uses that are permitted in the Employment and Institutional Area (E-I-A) Zone to occur on a qualifying property.

Planning Board Recommendation: Oppose with explanation.
(See Attachment 1 for full analysis)

As discussed below, the Planning Board believes that only one property in the County would qualify. This bill was drafted for an approximately 639-acre property, located north of Leeland Road and east of a freight line owned by Consolidated Rail, and identified in tax records as Parcel 30, tax account 0670737. The property is also known as Willowbrook and has an extensive approval history under its existing R-S Zone.

The 2006 Bowie and Vicinity Master Plan recommended suburban intensity residential development at this location. Residential development in the low range of the R-S Zone was considered a suitable transition between adjacent neighborhoods. The intent was for development at the Leeland Road location to be more intense than the development to the west (Oak Creek) and less intense than the development to the south (Beech Tree).

If the District Council would like this property to be rezoned, it would be more appropriate to do so during a sectional map amendment following approval of the ongoing master plan for Bowie and Vicinity (Planning Area 74A). The District Council initiated a master plan for Planning Area 74A, including the subject property, in February 2020. The master plan update will give the Council an opportunity to comprehensively review its goals for this property and all possible issues, and plan for its future.

Text amendments are best suited to fine-tune the uses or regulations in an existing zone. CB-22-2020 does not fine-tune the R-S Zone; instead, it allows uses wholly different from those normally associated with the R-S Zone. For that reason, the Planning Board believes the on-going Bowie Master Plan update is a superior vehicle to accomplish the purposes of CB-22-2020. The Planning Department is currently evaluating the master plan area and engaging in discussions with residents, property owners, and the business community to determine the appropriate future use of land in this area.

Although the current residential zoning of the property is appropriate, there are reasons why the Council might find commercial, industrial, or institutional uses to be equally appropriate. A large amount of non-residential development in the E-I-A and I-1 zones exists directly east of the property. The railroad line to the west and Leeland Road to the south form natural boundaries between this property and adjacent residential zones, although careful buffering and design regulations would be needed to provide compatibility.

Should the text amendment move forward, the Planning Board has additional concerns regarding footnote 38:

Under (a) (iii) the words "an existing employment park" are not defined and should be clarified.

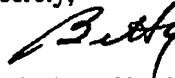
Under (c) the bill states the R-S Zone regulations shall not apply. Replacement development regulations are needed. Not adding development regulations defeats the entire purpose of zoning and denies the District Council and the Planning Board the ability to apply any objective standards to the development.

Under (d) (iii) there are concerns about the legality of the proposed conditional approval requirement that development on this property provide "a public park of at least 20 acres."

As always, Planning Department staff members are available to work with the Council and your legislative staff on any pertinent legislative matters. Please let us know if we may be of further assistance.

Should you have questions, please do not hesitate to contact the Office of the Planning Director at 301-952-3595. Thank you, again, for your consideration.

Sincerely,



Elizabeth M. Hewlett
Chairman

Attachments

EXHIBIT B



Prince George's County, Maryland

Inter-Office Memorandum

Office of Law

LEGISLATIVE COMMENT

DATE: June 2, 2020

TO: Robert J. Williams, Jr., Council Administrator

THRU: Jackie Brown, Committee Directors
PHED Committee

THRU: Rhonda L. Weaver, County Attorney

THRU: Joseph C. Ruddy, Deputy County Attorney

FROM: **Sakinda L. Skinner**, Associate County Attorney

RE: CB-22-2020

The Office of Law reviewed Draft 2 of the above referenced **bill** and finds it to be in proper legislative form.

The Office of Law believes potential legal impediments exist within this bill as currently drafted. We share the same concerns outlined in the Planning Board's Memo and Maryland-National Capital Park and Planning Commission's Memo. Additionally, we believe this proposed bill can be perceived to violate the uniformity requirement. *See*, Md. Land Use Code Ann. Section 4-201(2)(i), which states: "Zoning regulations shall be uniform for each class or kind of development throughout each district or zone." The proposed bill (specifically footnote 38 to Section 27-515(b)) appears to be drafted for a specific parcel contained within a R-S zone. As currently drafted this bill allows E-I-A uses (other than special exceptions) to occur in the R-S Zone and exempts such development from the R-S regulations.

EXHIBIT C

CB-22-2020–Planning Board Analysis (Attachment 2)

CB-22-2020 amends the Zoning Ordinance to permit employment and institutional uses in the Residential Suburban (R-S) Zone, under very limited circumstances, and provides procedures for the amendment of approved Basic Plans to allow these new uses. The bill allows all uses that are permitted in the Employment and Institutional Area (E-I-A) Zone to occur on a qualifying property. The Planning Board believes that only one property in the County would qualify, as discussed below.

The Planning Board has the following comments and suggestions for consideration by the District Council:

Policy Analysis:

This bill amends Sections 27-195 (Map Amendment Approval.), 27-197 (Amendment of approved Basic Plan.), 27-511 (Purposes.), and 27-512 (Uses.), and Section 27-515(b) (Uses Permitted in Comprehensive Design Zones.). The most significant amendment adds a new footnote 38 to Section 27-515(b). The footnote allows all E-I-A uses (other than special exceptions) to occur in the R-S Zone, exempts such development from the R-S regulations, adds new standards for streets and parkland, and describes the type of parcel or assemblage that will qualify to use the footnote.

The Planning Board believes this bill was drafted for an approximately 639-acre property, located north of Leeland Road and east of a freight line owned by Consolidated Rail, and identified in tax records as Parcel 30, tax account 0670737. The property is also known as Willowbrook and has an extensive approval history under its existing R-S Zone.

The 2006 Bowie and Vicinity Master Plan recommended suburban intensity residential development at this location. Residential development in the low range of the R-S Zone was considered a suitable transition between adjacent neighborhoods. The intent was for development at the Leeland Road location to be more intense than the development to the west (Oak Creek) and less intense than the development to the south (Beech Tree).

The District Council approved A-9968 (Willowbrook) simultaneously with the approval of the 2006 master plan and its concurrent sectional map amendment on February 7, 2006, subject to the limitations and conditions set forth in CR-11-2006.

Approximately 13 acres of the Willowbrook site—located between the Safeway Distribution Center site that is in the northwest quadrant of US 301 and Leeland Road and the residentially-zoned portion of the Willowbrook site—are designated for employment land use. Employment land use was considered appropriate for this portion of the property at the time because of the physical separation of this portion of the Willowbrook site by a stream and steep topography that orients it toward the abutting, existing employment development. At this location, Prince George's Boulevard (I-300) is to be extended from its southern terminus through this area and continue through the Safeway Distribution Center site to Leeland Road.

If the District Council would like this property to be rezoned, it would be more appropriate to do so during a sectional map amendment following approval of the ongoing master plan for Bowie and Vicinity (Planning Area 74A). The District Council initiated a master plan for Planning Area 74A, including the subject property, in February 2020. The master plan update will give the Council an opportunity to comprehensively review its goals for this property and all possible issues, and plan for its future.

CB-22-2020 – Planning Board Analysis (Attachment 2)

Page 2

Text amendments are best suited to fine-tune the uses or regulations in an existing zone. CB-22-2020 does not fine-tune the R-S Zone; instead, it allows uses wholly different from those normally associated with the R-S Zone. For that reason, the Planning Board believes the on-going Bowie Master Plan update is a superior vehicle to accomplish the purposes of CB-22-2020. The Planning Department is currently evaluating the master plan area and engaging in discussions with residents, property owners, and the business community to determine the appropriate future use of land in this area.

Although the current residential zoning of the property is appropriate, there are reasons why the Council might find commercial, industrial, or institutional uses to be equally appropriate. A large amount of non-residential development in the E-I-A and I-I zones exists directly east of the property. The railroad line to the west and Leeland Road to the south form natural boundaries between this property and adjacent residential zones, although careful buffering and design regulations would be needed to provide compatibility.

Should the text amendment move forward, the Planning Board has additional concerns regarding footnote 38:

Under (a) (iii) the words "an existing employment park" are not defined and should be clarified.

Under (c) the bill states the R-S Zone regulations shall not apply. Replacement development regulations are needed. Not adding development regulations defeats the entire purpose of zoning and denies the District Council and the Planning Board the ability to apply any objective standards to the development.

Under (d) (iii) there are concerns about the legality of the proposed conditional approval requirement that development on this property provide "a public park of at least 20 acres."

New Zoning Ordinance:

The subject property would be placed in the Legacy Comprehensive Design (LCD) Zone. The development regulations would be the same as in the prior Zoning Ordinance if the applicant continues to develop in accordance with prior approvals.

Impacted Property:

The bill as drafted would impact the Willowbrook property, consisting of approximately 639 acres, located north of Leeland Road and east of a freight line owned by Consolidated Rail, and identified in tax records as Parcel 30, tax account 0670737.

Following discussion, the Planning Board voted to oppose CB-22-2020 with the above-mentioned explanation.

IN THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY, MARYLAND

PETITION OF: *

ANTAWAN WILLIAMS, ET AL. *

Petitioners *

FOR JUDICIAL REVIEW OF THE * CAL22-18255
DECISION OF THE:

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

IN THE CASE OF: *
A-9968-03 *
NATIONAL CAPITOL *
BUSINESS PARK *

* * * * *

**CITIZEN-PETITIONERS’ MOTION TO SUPPLEMENT THE
ADMINISTRATIVE RECORD FOR A-9968-03**

Citizen-Petitioners, by their attorneys, G. Macy Nelson and Alex Votaw, file this Motion to Supplement the Administrative Record pursuant to Maryland Land Use Article § 22-407(b)(2)(iii), and for reasons, say:

1. On August 10, 2022, the County Council of Prince George’s County, Maryland, Sitting as the District Council (“District Council”) transmitted the administrative record to the Circuit Court for A-9968-03. The record included a copy of CB-22-2020.

2. The record for CB-22-2020 includes a Signed Letter from the Prince George’s County Planning Board (“Planning Board”), a Memorandum from the Prince

George's County Office of Law, and the Planning Board's Analysis, but these documents were not included in the administrative record for A-9968-03.

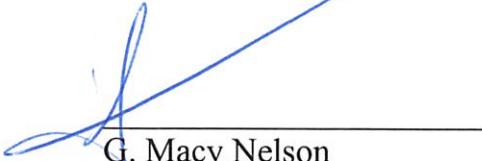
3. Citizen-Petitioners have attached a copy of the Signed Letter from the Planning Board, the Memorandum from the Prince George's County Office of Law, and the Planning Board's Analysis as Exhibits A, B, and C respectively.

4. The record for CB-22-2020 also includes four Prince George's County Council hearings on May 18, 2020, June 2, 2020, June 9, 2020, and July 14, 2020.

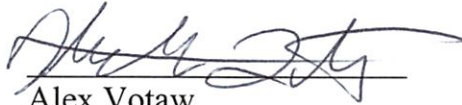
5. Citizen-Petitioners have ordered the transcripts for these hearings and intend to supplement the record again once the transcripts have been received.

6. Pursuant to Maryland Land Use Article § 22-407(b)(2)(iii), Citizen-Petitioners respectfully request that this Court grant their motion to supplement the record.

Respectfully Submitted,



G. Macy Nelson
AIS No. 8112010268
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
Email: gmacynelson@gmacynelson.com
Attorney for Petitioners



Alex Votaw
AIS No. 2112150190
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
Email: alex@gmacynelson.com
Attorney for Petitioners

CERTIFICATE OF SERVICE

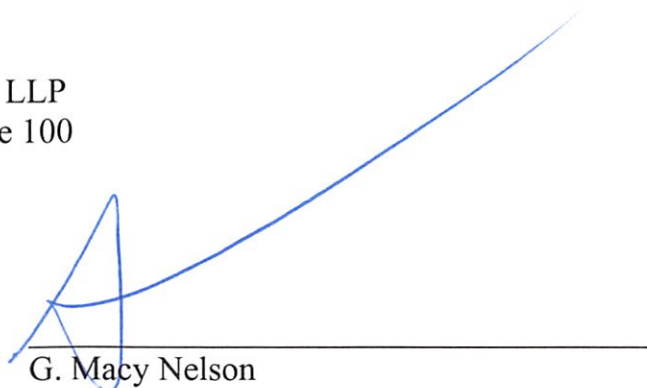
I HEREBY CERTIFY that on this 26th day of September, 2022, a copy of the foregoing Motion to Supplement the Administrative Record for A-9968-03 was emailed and mailed first-class, postage pre-paid to:

Rajesh A. Kumar, Esquire
Prince George's County Council
1301 McCormick Drive, Suite 3-126
Largo, Maryland 20774

Arthur J. Horne, Jr., Esquire
Robert J. Antonetti, Jr., Esquire
Dennis Whitley, III, Esquire
Shipley & Horne, P.A.
1101 Mercantile Lane, Suite 240
Largo, Maryland 20774

Bruce L. Marcus, Esquire
Megan E. Coleman, Esquire
MarcusBonsib, LLC
6411 Ivy Lane, Suite 116
Greenbelt, Maryland 200770

Steve P. Hollman, Esquire
Abraham Shanedling, Esquire
Sheppard, Mullin, Richter & Hampton, LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006-6801



G. Macy Nelson

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PETITION OF: *

ANTAWAN WILLIAMS, ET AL. *

Petitioners *

FOR JUDICIAL REVIEW OF THE * CAL22-18255
DECISION OF THE:

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

IN THE CASE OF: *
A-9968-03 *
NATIONAL CAPITOL *
BUSINESS PARK *

* * * * *

ORDER

Upon the foregoing Motion to Supplement the Administrative Record, it is this
_____ day of _____, 2022, by the Circuit Court for Prince George's County,

ORDERED, that the Signed Letter from the Planning Board, the Memorandum
from the Prince George's County Office of Law, and the Planning Board's Analysis
(Exhibits A, B, and C) be added to the administrative record for A-9968-03.

JUDGE

EXHIBIT C

streets, fire stations, parks, schools, and other public facilities. (*Clarkdale, Ariz.*)

Any and all of the public facilities and services needed for development of a lot or parcel of land. (*Lake Elsinore, Calif.*)

Those man-made structures which serve the common needs of the population, such as: potable water systems; wastewater disposal systems; solid waste disposal sites or retention areas; storm drainage systems; electric, gas, or other utilities; bridges; roadways; bicycle paths or trails; pedestrian sidewalks, paths, or trails; and transit stops. (*Loveland, Colo.*)

Those man-made structures which serve the common needs of the population, such as: sewage disposal systems; potable water systems; potable water wells serving a system; solid waste disposal sites or retention areas; stormwater systems; utilities; docks; bridges and roadways. (*Temple Terrace, Fla.*)

■ **ingress** (See also *egress*) Access or entry point or entrance. (*Champaign, Ill.*)

■ **inn** (See also *hotel; motel*) Any building or group of buildings in which there are five or fewer guest rooms, used for the purpose of offering public lodging on a day-to-day basis, not including a bed and breakfast home. (*Valdez, Alaska*)

A multiple-unit building, with more than three and up to 20 guest rooms, where overnight lodging and meals are provided for compensation. Meals include breakfast, lunch, and dinner served only to guests who are provided overnight lodging. (*Deschutes County, Ore.*)

A building, which contains a dwelling unit occupied by an owner or resident manager, in which up to 10 lodging rooms or lodging rooms and meals are offered to the general public for compensation, and in which entrance to bedrooms is made through a lobby or other common room. "Inn" includes such terms as "guest house," "lodging house," and "tourist house." (*Limington, Maine*)

An existing structure where for compensation and only by prearrangement for definite periods, lodging and meals for transients are provided. Such uses are

limited to 10 rooming units excluding resident manager quarters. (*Rock Hall, Md.*)

■ **inoperable vehicle** (See *motor vehicle, inoperable*)

■ **inoperative** Incapable of functioning or producing activity for mechanical or other reasons. (*Truckee, Calif.*)

■ **institution** A facility that provides a public service and is operated by a federal, state, or local government, public or private utility, public or private school or college, church, public agency, or tax-exempt organization. (*Island County, Wash.*)

An establishment providing residence and aid to persons for charitable, educational, corrective, or religious purposes. (*Hot Springs, Ark.*)

An organization established to serve a social, educational, or religious purpose, such as a hospital, school, or church. (*Richland, Wash.*)

A group of buildings or structures that are under common or related ownership, that are located in a contiguous area, notwithstanding rights-of-ways; that contain two or more different uses as integral parts of the functions of the organization, such that different structures contain different primary uses; and that contain a combined minimum of 100,000 total square feet of gross floor area. (*Pittsburgh, Pa.*)

A building or premises occupied by a nonprofit corporation or a nonprofit establishment for public use. (*Mishawaka, Ind.; Troy, Ohio*)

■ **institutional use** (See also *quasi-public use*) Public and public/private group use of a nonprofit nature, typically engaged in public service (e.g., houses of worship, nonprofit cultural centers, charitable organizations). (*Palm Beach, Fla.*)

A nonprofit or quasi-public use, such as a religious institution, library, public, or private school, hospital, or government-owned or government-operated structure or land used for public purpose. (*Champaign, Ill.; Lake Elsinore, Calif.*)

■ **intelligent vehicle highway system** (See also *transportation systems, smart technology*) A multilevel cooperative

public/private effort to develop and implement new technologies to improve transportation efficiencies. (*Maricopa County, Ariz.*)

Technological innovations developing or applying electronics, communications and information processing technologies to improve the efficiency and safety of surface transportation systems. Such technology may include systems that alert authorities to emergency situations, on-board navigation systems for vehicles, electronic collection of tolls and transit fares, traffic management centers that can adjust speed limits, traffic signals and road access and electronic monitoring of vehicles. (*Southeast Michigan Council of Governments*)

■ **intensification of use** A change in the use of a site or structure where the new or modified use is required by [local law] to provide more off-street parking spaces than the former use or the owner/operator implements a change in the operational characteristics of the use (e.g., increase in the number of days or hours of operation) which have the ability to generate more activity on the site. (*Truckee, Calif.*)

To alter the character of a use to the extent that the use generates new or different impacts on the health, safety, or welfare of the surrounding neighborhood, including but not limited to the level or amount of traffic, noise, light, smoke, odor, vibration, outside storage, or other similar conditions associated with the use. (*Milwaukee, Wisc.*)

■ **intensity** (See also *density definitions; development, high-intensity*) Relative measure of development impact as defined by characteristics such as the number of dwelling units per acre, amount of traffic generated, and amount of site coverage. (*Sandy, Ore.*)

The degree to which land is occupied or the density of development. (There is no single measure of the intensity of land use. Rather, a land use is relatively more or less intense than another use. Generally, a particular use may be more intense due to one or more characteristics, such as traffic generated, amount of impervi-

ous surface, bulk of the structures, number of employees, density, or nuisance such as pollution, noise, light, etc.) (*Temple Terrace, Fla.*)

The comparative degree of perceived increase or exaggeration from one use or condition to a proposed use or condition as it applies to parking needs, traffic patterns, visual magnitude, or altered atmosphere or character on a particular parcel of land. (*Ephraim, Wisc.*)

The level of concentration of activity occurring on a site or in an area. Intensity is often used interchangeably with density. (*Scottsdale, Ariz.*)

The degree to which land is used referring to the levels of concentration or activity in uses ranging from uses of low intensity, e.g., agricultural and residential, to uses of highest intensity, e.g., heavy industrial uses. High intensity uses are normally uses that generate concentrations of vehicular traffic and daytime population and are less compatible with lower intensive uses. (*Norfolk, Neb.*)

The degree to which land is used, measured by a combination of the type of land used and the amount of land or floor area devoted to that use. (*Chapel Hill, N.C.*)

■ **intensity of use** (See also *density definitions*) The number of dwelling units per acre for residential development and the floor area ratio (FAR) for nonresidential development, such as commercial, office, and industrial. (*Pittsburgh, Pa.*)

The number of square feet of development per acre by land use type with respect to non-residential land uses. (*Concord, N.C.*)

■ **intensity system** An organized and comprehensive system for determining or controlling the intensity with which land is developed, replacing conventional fixed yard, height, spacing, etc., and density (i.e., lot area per dwelling unit) controls with more sensitive regulatory devices. The heart of the system is a land-use-intensity scale that establishes ratios to be applied to gross land area in determining maximum residential floor area, minimum total livability and recreation open space requirements, and ratios

based on number of dwelling units to determine parking requirements. Developed in the mid-1960s by the U.S. Federal Housing Administration, LUI has been adapted as a control device for the planned residential development provisions of some zoning ordinances. Partly because of its complexity, but also because of its unconventional innovations, its use has been very limited. (*American Planning Association*)

■ **interchange** (See also *highway; street*) The road improvement providing transfer of motor vehicles from one roadway to another. (*Interstate 81 Corridor Council*)

A grade separated intersection with one or more turning lanes for travel between intersection legs. (*Racine County, Wisc.*)

■ **interchange plan** The plan that contains official policies developing the interchange study area. (*Interstate 81 Corridor Council*)

■ **interchange study area** A potential interchange area studied for its features and characteristics, suggesting development because of its critical economic and overall impact in the local community and region. (*Interstate 81 Corridor Council*)

■ **intergovernmental agreement** A contractual agreement between the [jurisdiction] and another governmental entity. IGAs with municipalities are the [jurisdiction's] primary means of achieving coordinated planning for the areas adjacent to town limits. The agreements define appropriate future urban areas and establish standards and procedures for development in these areas. . . . (*Larimer County, Colo.*)

■ **interim use** A temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. (*Hopkins, Minn.*)

■ **interim zone of influence** A procedure for the exchange of information on certain proposed land uses between a city or town and the county, and for the resolution of conflicts between the plans, policies, and development standards of such jurisdictions, pursuant to interlocal agree-

ment. If this procedure is used, it shall be for a specified period not to exceed 18 months to permit the participating jurisdictions to establish a zone of influence. (*Island County, Wash.*)

■ **interim zoning** (See also *holding zone; moratorium*) A device to freeze or severely restrict development for a short period during which a comprehensive plan for an area or a new set of zoning regulations is prepared. Interim zoning has three main purposes: it permits planning and ordinance writing to proceed relatively free of development pressures; it prevents uses that will not conform to the adopted ordinances; and it engenders public debate on the issues. When the controls have been found to be a subterfuge for a more-or-less permanent effort to halt growth, the courts have thrown them out. (*American Planning Association*)

In a community that has not been zoned, the use of a stop-gap zoning ordinance is sometimes used to preserve the existing pattern of land development, usually by limiting new commercial or industrial uses to areas where such uses are already found. (*Handbook for Planning Commissioners in Missouri*)

A zoning designation that temporarily reduces or freezes allowable development in an area until a permanent classification can be fixed; generally assigned during General Plan preparation to provide a basis for permanent zoning. (*California Planning Roundtable*)

■ **interior decorating establishment** A commercial establishment from where professional home interior decorating services are provided. The on-site retail sale of furniture and other home furnishings to the general public shall not be offered; however, cloth, wallpaper, and paint samples may be provided. (*Badin, N.C.*)

[T]he identification, research, or development of creative solutions to problems relating to the function or quality of the interior environment; performance of services relating to interior spaces, including programming, design analysis, space planning of non-load-bearing interior construction, and application of aesthetic principles, by using specialized knowl-

tract or tracts of a registered land survey number. (*Jordan, Minn.*)

■ **land surveyor** A person who, by reason of his knowledge of the several sciences and of the principles of land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, and whose competence has been attested by the [state regulatory board] through licensure as a land surveyor. (*Campbell County, Va.*)

A person registered in the state in the field of land surveying. (*Sedona, Ariz.*)

A person who, by reason of his special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education or practical experience, is qualified to engage in the practice of land surveying. (*Concord, N.C.*)

■ **land trust** (See also *easement, conservation*) A private, nonprofit conservation organization formed to protect natural resources, such as productive farm and forest land, natural areas, historic structures, and recreational areas. Land trusts purchase and accept donations of conservation easements. They educate the public about the need to conserve land, and some provide land-use and estate planning services to local governments and individual citizens. (*American Farmland Trust*)

Private nonprofit organizations that work with private landowners to protect the sensitive and important features of their property, primarily by fee simple acquisition of land by donation or purchase for management as nature preserves and by conservation easements. (*Washtenaw County, Mich.*)

■ **land use** The occupation or use of land or water area for any human activity or any purpose. . . . (*California Planning Roundtable*)

A description of how land is occupied or utilized. (*Schaumburg, Ill.*)

A use of land that may result in an earth change, including but not limited to subdivision, residential, commercial, indus-

trial, recreational, agricultural practices, or other development, private and public highway, road, and stream construction, and drainage construction. (*Grand Traverse County, Mich.*)

The type of use activity occurring on a land parcel or within a building situated upon a land parcel. (*Concrete, Wash.*)

Use of land, building use, and use of any building. (*Hawaii County, Hawaii*)

The development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under an adopted comprehensive plan or element or portion thereof, land development regulations, or a land development code, as the context may indicate. (*Temple Terrace, Fla.*)

■ **land-use classification** (See also *North American Industry Classification System (NAICS); Standard Industrial Classification (SIC)*) A system for classifying and designating the appropriate use of properties. (*California Planning Roundtable*)

■ **land-use compatibility** The design, arrangement, and location of buildings and structures or other created or natural elements of the urban environment which are sufficiently consistent in scale, char-

acter, siting, coloring, or materials with other buildings or elements in the area so as to avoid abrupt or severe differences. (*Clarkdale, Ariz.*)

The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. Some elements affecting compatibility include: intensity of occupancy as

measured by dwelling units per acre; floor area ratio; pedestrian or vehicular traffic generated; volume of goods handled; and such environmental effects as noise, vibration, glare, air pollution, or radiation. (*Rock Hall, Md.*)

The characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include height, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access and parking impacts. Other important characteristics that affect compatibility are landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, compatibility refers to the sensitivity of development proposals in maintaining the character of existing development. (*Loveland, Colo.*)

■ **land use, conflicting** The transfer over a property line of negative economic or environmental effects, including but not limited to: traffic, noise, vibration, odor, dust, glare, smoke, pollution, water vapor, mismatched land uses or density, height, or mass, mismatched layout of adjacent uses, loss of privacy, and unsightly views. (*Loveland, Colo.*)



conflicting land use

The proximity of one or more land uses to another use when the former is not compatible with the latter; for example, an odious factory next to a rose garden. (*Prince George's County, Md.*)

■ **land-use decision** A final determination by a city body or officer with the highest level of authority to make the determination, including those with au-

EXHIBIT D

HIGH-CUBE WAREHOUSE VEHICLE TRIP GENERATION ANALYSIS

PREPARED FOR
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
AND
NATIONAL ASSOCIATION OF INDUSTRIAL AND OFFICE PROPERTIES

PREPARED BY
INSTITUTE OF TRANSPORTATION ENGINEERS
WASHINGTON, DC

OCTOBER 2016

ACKNOWLEDGEMENT AND DISCLAIMER

This report was prepared as a result of work sponsored, paid for, in whole or in part, by the South Coast Air Quality Management District (SCAQMD) and NAIOP (National Association of Industrial and Office Properties (NAIOP)). The report is the product of a collaborative process by which ITE, SCAQMD, and NAIOP embarked upon an effort to better understand vehicle trip generation rates at high-cube warehouse facilities.

The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of SCAQMD or NAIOP. SCAQMD, NAIOP, their officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. SCAQMD and NAIOP have not approved or disapproved this report, nor has SCAQMD or NAIOP passed upon the accuracy or adequacy of the information contained herein.

The NAIOP Inland Empire and Southern California Chapters provided direct input for various items of the report, including a suggested high-cube warehouse classification system.

EXECUTIVE SUMMARY

Purpose – South Coast Air Quality Management District (SCAQMD) and NAIOP (National Association of Industrial and Office Properties) provided funding to the Institute of Transportation Engineers (ITE) to help in the establishment of national guidance for the estimation of vehicle trip generation at what are commonly called high-cube warehouse distribution centers (HCW).

Definition of High-Cube Warehouse – A high-cube warehouse is a building that typically has at least 200,000 gross square feet of floor area, has a ceiling height of 24 feet or more, and is used primarily for the storage and/or consolidation of manufactured goods (and to a lesser extent, raw materials) prior to their distribution to retail locations or other warehouses. A typical HCW has a high level of on-site automation and logistics management. The automation and logistics enable highly-efficient processing of goods through the HCW. For the purpose of this trip generation analysis, HCWs are grouped into five types: fulfillment center, parcel hub, cold storage facility, transload facility, and short-term storage facility.

Data Sources – The analysis contained herein is based on data from 15 separate data sources, including recent data collected under the sponsorship of SCAQMD and NAIOP. The database includes trip generation information from 107 individual sites.

Findings – The HCW market continues to evolve as individual tenants/owners implement different e-commerce business plans. For example, some deliver goods to the customer within two days and others deliver orders to the nearest store for customer pick-up. As business plans and technology continue to evolve, these should continue to be monitored. Although the tenant or its planned operations are often unknown at the time of site development review, for the purpose of estimating vehicle trip generation, it may be as important to know the tenant as much as other facility factors.

For transload, short-term storage, and cold storage HCWs, the proportionate mix of types of vehicles (i.e., cars versus trucks) accessing the site is very consistent, both daily and during the AM and PM peak hours.

For a cold storage HCW, the currently available data demonstrates a useable, direct correlation between building size and vehicle trip generation.

The single data points for fulfillment centers and parcel hubs indicate that they have significantly different vehicle trip generation characteristics compared to other HCWs. However, there are insufficient data from which to derive useable trip generation rates.

For transload and short-term storage HCW sites, additional data sites and additional information on past sites are needed in order to derive useable trip generation rates.

Recommendations (Action Plan) – A strategically-developed data collection program is needed that targets each type of HCW individually. The strategy should include a prioritized plan for collecting additional data at five classifications of HCWs that are representative of the types of facilities expected to be commonly developed in coming years. The data should be collected at mature facilities, each of which clearly fits within one HCW classification, during periods of typical levels of activity based on the types of facilities and businesses served.

All future data collection should seek to acquire an enhanced set of site descriptive information that will enable development of better predictive models than are currently available.

STUDY PURPOSE AND PROCESS

South Coast Air Quality Management District (SCAQMD) and NAIOP (National Association of Industrial and Office Properties) provided funding to the Institute of Transportation Engineers (ITE) to help in the establishment of consensus-based national guidance for the estimation of trip generation at what are commonly called high-cube warehouses (HCW). This report documents the results of that effort to develop a credible and defensible procedure for collecting and analyzing site trip generation data for use in transportation impact analyses (TIA) and air quality/vehicular emissions analyses (AQA¹) for HCW-type facilities.

ITE convened a meeting of practitioner-based experts at ITE Headquarters on April 1, 2015. The meeting participants are listed in Table 1. At the meeting's conclusion, several individuals were tasked with development of specific products, including the following:

- An overall work plan for this report and for subsequent data collection and analysis
- A clear and consistent definition of HCW for this report and for future studies and analysis
- A vehicle classification scheme that satisfies ultimate data requirements for TIA and AQA and complies with reasonable data collection capabilities and budgets

ITE staff assumed responsibility for compilation and analysis of existing HCW trip generation data.

The full expert panel provided comments and suggestions on each interim product that eventually became part of this complete report. Nevertheless, responsibility for content completeness and data analysis accuracy rests with ITE staff.

Table 1. Expert Panel for High-Cube Warehouse Trip Generation Study

Mr. Brian Bochner	Texas A&M Transportation Institute, College Station, Texas
Mr. Paul Basha	City of Scottsdale, Arizona
Mr. Milton Carrasco	Transoft Solutions, Inc., Richmond, British Columbia
Dr. Kelly Clifton	Portland State University, Portland, Oregon
Mr. Henry Hogo (for Mr. Barry Wallerstein)	South Coast Air Quality Management District, Diamond Bar, California
Mr. Kim Snyder	Prologis, Cerritos, California
Ms. Cecilia Ho	Federal Highway Administration, Washington, DC
Mr. Ian Macmillan	South Coast Air Quality Management District, Diamond Bar, California
Mr. Thomas Phelan	VHB, Newark, New Jersey
Mr. Jeremy Raw	Federal Highway Administration, Washington, DC
Mr. Erik Ruehr	VRPA Technologies, San Diego, California
Mr. Frank Sherkow	Southstar Engineering and Consulting, Inc., Yachats, Oregon
Mr. Joe Zietsman	Texas A&M Transportation Institute, College Station, Texas
Mr. Tom Brahms	Institute of Transportation Engineers, Washington, DC
Mr. Kevin Hooper	Institute of Transportation Engineers, Washington, DC
Ms. Lisa Tierney	Institute of Transportation Engineers, Washington, DC

¹ In California, when a new warehouse project is proposed, it undergoes environmental review pursuant to the California Environmental Quality Act (CEQA). Air quality analyses conducted pursuant to CEQA typically compare project emissions against local air district thresholds to determine the potential significance of the project's air quality impacts. These emission estimates rely on trip generation rates to determine the volume of cars and trucks that could visit the proposed project site.

HIGH-CUBE WAREHOUSE DEFINITION

A high-cube warehouse (HCW) is a building that typically has at least 200,000 gross square feet of floor area, has a ceiling height of 24 feet or more, and is used primarily for the storage and/or consolidation of manufactured goods (and to a lesser extent, raw materials) prior to their distribution to retail locations or other warehouses. A typical HCW has a high level of on-site automation and logistics management. The automation and logistics enable highly-efficient processing of goods through the HCW.²

A classification scheme for different types of HCWs is presented in Table 2 along with their distinctive characteristics. The characteristics of a typical standard warehouse are provided for comparative purposes. The five types of HCW are the following:

- Transload – usually pallet loads or larger handling products of manufacturers, wholesalers/distributors, or retailers with little or no storage durations
- Short-Term Storage – products held on-site for a short time
- Cold Storage – HCW with permanent cold storage in at least part of the building
- Fulfillment Center – storage and direct distribution of e-commerce product to end users
- Parcel Hub – transload function for a parcel delivery company

² High-cube warehouses are classified as Land Use Code 152 in ITE *Trip Generation Manual*, 9th Edition. The definition provided in *Trip Generation Manual* for HCW is as follows:

“High-cube warehouses/distribution centers are used for the storage of materials, goods and merchandise prior to their distribution to retail outlets, distribution centers or warehouses. These facilities are typically characterized by ceiling heights of at least 24 feet with small employment counts due to a high level of mechanization. High-cube warehouses/distribution centers generally consist of large steel or masonry shell buildings and may be occupied by or multiple tenants. A small ancillary office use component may be included and some limited assembly and repackaging may occur within these facilities.

“High-cube warehouses/distribution centers may be located in industrial parks or be free-standing. Intermodal truck terminal (Land Use 030), industrial park (Land Use 130), manufacturing (Land Use 140) and warehousing (Land Use 150) are related uses.”

When the 10th edition of *Trip Generation Manual* is developed, the findings and recommendations of this report will be reflected in an updated definition for high-cube warehouses.

Table 2. High-Cube Warehouse Classifications

	Standard Warehouse/ Storage	Transload Facility	Short-Term Storage	Cold Storage	Fulfillment Center	Parcel Hub
Description and Key Warehouse Functions						
Typical Functions	Products stored on-site typically for more than one month	Focus on consolidation and distribution of pallet loads (or larger) of manufacturers, wholesalers, or retailers; little storage duration; high throughput and high-efficiency	Focus on warehousing/ distribution with distribution space operated at high efficiency; often with custom/special features built into structure for movement of large volumes of freight	Temperature-controlled for frozen food or other perishable products stored in any type of HCW; building built with substantial insulation, including foundation, walls, and roof ³	Storage and direct distribution of e-commerce product to end users; smaller packages and quantities than for other types of HCW; often multiple mezzanine levels for product storage and picking	Regional and local freight-forwarder facility for time-sensitive shipments via air freight and ground (e.g., UPS, FedEx, USPS); site often includes truck maintenance, wash, or fueling facilities
Break-Bulk or Assembly	Can include break-bulk and assembly activities	Very limited pick-and-pack area within facility	May or may not include break-bulk, repack or assembly activities	Limited or no break-bulk, repack or assembly activities	Pick-and-pack area comprises majority of space	Limited or no break-bulk, repack or assembly activities
Place in Supply Chain		Usually for final distribution to retail stores but can be for manufacturer to wholesale distribution		Typically, late in the supply chain for final distribution to retail stores or local, smaller distribution centers	Typically, freight for final consumption (business-to-business and consumers)	Can be situated at multiple points in the supply chain (intermediate or final delivery)

³ Cold storage products (e.g., flowers and other perishables) that are not frozen must be shipped within hours or a few days. Cold storage products that are frozen may take a long time to ship. Products in these facilities may be treated more like typical HCW products.

	Standard Warehouse/ Storage	Transload Facility	Short-Term Storage	Cold Storage	Fulfillment Center	Parcel Hub
Location	Typically in an industrial area within urban area or urban periphery	Typically in an area with convenient freeway access; often in rural or urban periphery area	Typically in an area with convenient freeway access	Depends on supply and demand markets	Often near a parcel hub or USPS facility, due to time sensitivity of freight	Typically in close proximity to airport; often stand-alone
Overall Site Layout						
Employee Parking		Smaller employee parking ratio (per facility square foot) than fulfillment center or parcel hub	Smaller employee parking ratio (per facility square foot) than fulfillment center or parcel hub		Larger parking supply ratio than for all other HCW types	Larger employee parking ratios; truck drivers often based at facility (i.e., parking may be for both site employees and drivers)
Truck & Trailer Parking	Limited truck parking area; increases with distance to major distribution hub	Large, open trailer parking area surrounding facility; produces high land to building ratio	Ratio of truck parking spaces to docks can vary between 0.5:1 and 1.5:1, with 1:1 being very common	Can vary with whether products are frozen or perishable ⁴	Significantly higher truck parking ratios than for other HCWs	Very high truck parking ratios to dock positions, often 2:1 or more
Loading Dock Location	Either on one side or on two adjacent sides	Minimum of two sides (adjacent or opposite); can be on four sides	On either one or two sides			Usually on both long sides of building; can be on four sides
Building Dimensions						
Length vs. Depth		Typical length vs. depth ranges between 3:1 and 2:1; shallower than Standard	Typical length vs. depth is 2:1; shallower than Standard			Typical configuration is cross-dock; building typically more shallow (150-300 feet across) than other HCWs

⁴ Cold storage product handling must be done quickly. Any product stored in a trailer on the site requires either an idling truck or an external power supply to maintain the temperature within the required ranges.

	Standard Warehouse/ Storage	Transload Facility	Short-Term Storage	Cold Storage	Fulfillment Center	Parcel Hub
Ceiling Height	Typically between 28 and 40 feet	Typically, lower than for other HCW	Typically between 28 and 34 feet, with some facilities in excess of 40 feet	Typically higher (70-100 feet) to maximize efficiency of refrigeration; frozen food tends to have a higher ceiling than produce handling	Often as high as 40 feet in order to accommodate up to three levels of interior mezzanines	Typically not as tall as other HCW; commonly between 18 and 20 feet range; racking not usually provided (i.e. floor-stack only)
Number of Docks	Low number of dock positions to overall facility, 1:20,000 square feet or lower	Typical dock-high loading door ratio is 1:10,000 square feet; common range between 1:5,000 & 1:15,000 square feet	Typically, 1:10,000 square feet or lower			
Automation						
Material Handling Systems	Little or no automation; mechanization limited to pallet jacks and forklifts	Very highly-mechanized material handling systems	Very highly-mechanized material handling systems; high ratio of material handling equipment to overall floor area	Very high clear height requires sophisticated material handling equipment	High levels of automation in material handling equipment	High levels of automation in material handling equipment
Conveying Systems	Little or no automation	Usually automated mechanized conveying	Usually limited automated conveying	Very high clear height requires a sophisticated conveyance system	High levels of automation in conveying systems	High levels of automation in conveying systems
Warehouse Mgmt Systems (WMS)		Some facilities use ASRS (Automated Storage and Retrieval Systems)			High levels of automation; some use of ASRS	High levels of automation

Table 2. Additional Descriptive Features

Typical Floor Area Ratios range between 35 and 60 percent. Standard, Fulfillment Center, and Parcel Hub sites tend to have higher values than Transload and Short-Term Storage HCW.

Office/Employee Welfare⁵ Space is highly variable and is insignificant within overall building square footage. Common values are between 3,000 and 5,000 square feet for Cold Storage and between 5,000 and 10,000 square feet for Transload Facility, Fulfillment Center, and Parcel Hub.

Movement of Goods in Trucks – For a Transload site, typical truck movements are comprised of full load, large trailers, both inbound and outbound. For some “last mile” or local distribution centers, long-haul trucks or international containers can arrive loaded and depart empty, while local delivery trucks arrive empty and depart loaded. For national and regional distribution centers, trucks can come in loaded and re-load with different product mix and depart loaded.

Hours of Operation and Peak Periods – Peak truck movement activity is often outside the peak commuting period on the adjacent street system. HCW operations are often 24 hours per day, every day of the year. For a Standard site, there is a greater likelihood that the site peak period of traffic operations may coincide with or be near the street peak period.

Truck Sizes – Truck size can vary significantly between similar sites. Sizes and types are a function of the origins and destinations of the goods processed at the facility (i.e., location in the supply chain). Local deliveries to business/residential customers are commonly made with smaller trucks (except warehouses that, for example, deliver bulky items to a home improvement store). Longer distance travel or deliveries at early stages in the supply chain are typically with larger trailers. For Cold Storage and Fulfillment Center, the outbound trucks are often smaller because of cargo weight and last-mile distribution needs. Intermediate hubs accommodate large trucks on both the inbound and outbound side (e.g., FedEx Ground). “Final delivery” hubs have small trucks on the outbound side (e.g., FedEx Overnight).

⁵ Employee welfare area includes restrooms, locker rooms, and break rooms.

EXHIBIT E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

BEFORE THE PLANNING, HOUSING AND
ECONOMIC DEVELOPMENT COMMITTEE

ORDINANCE CONCERNING DEFINITIONS (CB-018-2019)

May 7, 2019

COUNTY ADMINISTRATIVE BUILDING
UPPER MARLBORO, MARYLAND

COMMITTEE MEMBERS:

- DANNIELLE M. GLAROS, Chair
- CALVIN S. HAWKINS, II, Vice Chair
- THOMAS E. DERNOGA
- DERRICK LEON DAVIS
- JOLENE IVEY

Blair Scoping & Transcription Service
12166 Cavalier Drive
Dunkirk, MD 20754
443-404-0437

P-R-O-C-E-E-D-I-N-G-S

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

MS. BROWN: The first item on today's agenda is CB-018-2019. This Bill amends the Zoning Ordinance Definitions section to add a new definition for a Merchandise Logistics Center and amends the existing definition for Regional Urban Community. The Planning Board supports CB-018. They had a suggested amendment, but I believe they are okay with Draft 1. Ms. Hightower can expand on that. I think they have resolved that issue on the amendment. The Office of Law determined the Bill is in proper legislative form with no impediments to its enactment. Thank you.

CHAIR GLAROS: Okay, thank you, Ms. Brown. Let me turn to the sponsor of the Bill, Mr. Davis.

MR. DAVIS: Thank you, Madam Chair. As Ms. Brown has already articulated, this is not beginning of a process. This is kind of the middle of the process. We've been working at this in our community for some time, and we certainly appreciate the Planning Board's opinion with regard to this specific issue. I think CB-018 and 019 have a symbiotic relationship, and so I'm glad that we were able to work through all of the pieces. But what I'll do is ask Ms. Zavakos to just give us just a teenie bit more explanation, and if in fact Park and Planning has anything that they need to add to that, then at which time I'll make the motion to put it on the floor.

CHAIR: Okay, thank you. Let me turn to Ms. Zavakos, and then I'll go to Ms. Hightower and Ms. McNeil. Ms. Zavakos.

MS. ZAVAKOS: Thank you, Madam Chair, and thank you for, Mr. Davis, for your opening remarks. The Planning Board's comments suggest that perhaps the Bill could be tweaked to include use tables that would include the mixed-use tables in the (inaudible) as well as the Floating Zone or Comprehensive Design Zone uses to permit said use in the

1 Ordinance. Quite frankly, I will respond to that gently by saying that that's not necessary,
2 and my reasons for that are twofold.

3 One, the addition of this enhancement to the Regional Urban Community definition
4 implies necessarily that they could not be anywhere but within the standard Regional Urban
5 Community use, which is already permitted within the mixed-use zones. Secondly, we're
6 on the cusp of initiating a new Zoning Ordinance implementation process in which case this
7 would be consistent with and not confuse the public as we go to take on that endeavor. So,
8 in consultation with Park and Planning, we had a friendly discussion about it, and they can
9 see my viewpoint and I see theirs. There you are.

10 CHAIR: Okay, thank you, Ms. Zavakos. Ms. Hightower or Ms. McNeil.

11 MS. HIGHTOWER: Thank you, Madam Chair and Members of the Committee.
12 We have no additional comments. Thank you.

13 CHAIR: Okay. Ms. Hightower, thanks for the review of this one. Ms. McNeil.

14 MS. MCNEIL: No additional comment.

15 CHAIR: Okay, thanks, Ms. McNeil. Let me turn to Ms. Hernandez and Ms. Austin.

16 MS. HERNANDEZ: We have no additional comments.

17 CHAIR: Okay, thank you, Ms. Hernandez.

18 MR. DAVIS: Thank you, and with that, Madam –

19 CHAIR: Up, up, Ms. Austin.

20 MS. AUSTIN: You going to leave me?

21 MR. DAVIS: Oh, you know what? I owe you lunch.

22 CHAIR: You should do that more often, Ms. Austin.

23 MS. AUSTIN: Right.

24 MR. DAVIS: No, it was yesterday. I meant to say that she was there.

1 MS. AUSTIN: We have no additional comments.

2 CHAIR: Okay, Ms. Austin. Let me turn back to the sponsor of the Bill.

3 MR. DAVIS: Thank you, Madam Chair. As I said, this is – and they work in
4 tandem – CB-018 and -019, and so, on CB-019, when we get to it, I do believe that there's
5 some additional work that we have already begun the process of, but I'd like to move CB-
6 018, Draft 1, favorable.

7 MR. HAWKINS: Second.

8 MR. DAVIS: Thank you.

9 CHAIR: Okay, so I have a motion by Mr. Davis, a second by Mr. Hawkins. We are
10 in discussion, colleagues. Mr. Hawkins, you're queued up. Was that for the motion?

11 MR. HAWKINS: Yes.

12 CHAIR: Okay, let me see if there's any questions on the table. I have a question
13 from Ms. Ivey. Ms. Ivey.

14 MS. IVEY: Yeah, I was just trying to figure out – I'm sure I'm just missing
15 something, but a Merchandise Logistics Center, is that a warehouse or what is it exactly?
16 Tell me.

17 MS. ZAVAKOS: Okay, well, a Merchandise Logistics Center is not intended to be a
18 warehouse. If the definition is crafted as precisely as we hope, the idea is it's basically a
19 touchdown place where it goes in anticipation of being dispatched to local or very nearby
20 local areas. The idea behind it is that nothing lingers. It is not a storage hub or any kind of
21 warehouse type facility as our local zoning laws contemplate that.

22 MS. IVEY: And where would they be allowed?

23 MS. ZAVAKOS: Only within a Regional Urban Community.

24 MS. IVEY: And what is that? I'm still learning.

1 MS. ZAVAKOS: A Regional Urban Community is something that was actually
2 devised by way of a prior, prior Council with which I have the pleasure of saying that we are
3 rejoined by one that was on the Council that approved the plan that actually created it as
4 well as the legislation. A Regional Urban Community is the creature of, quite frankly, the
5 2007 Westphalia Sector Plan and Sectional Map Amendment. And that exists only, as far as
6 I know, at this point, yet it is subject to be expanded by the legislative action of this Council,
7 elsewhere. But at the moment it only exists within the area boundaries of the Westphalia
8 Plan.

9 MS. IVEY: So, a Merchandise Logistics Center at this point would only be allowed
10 in Westphalia?

11 MS. ZAVAKOS: No, only within the Regional Urban Community which only
12 resides within Westphalia.

13 MS. IVEY: Right now?

14 MS. ZAVAKOS: That's right.

15 MS. IVEY: Okay. Thank you.

16 CHAIR: Thank you, Ms. Ivey, for those questions. On a side note, if we did want to
17 expand the definition and apply it elsewhere, we would need to just set it up a little bit
18 differently, which I think is where Planning's comments were going. One thing on the
19 Merchandise Logistics Center, given Ms. Ivey's question about her concern, well, isn't this
20 just a warehouse, the, I think this is intended, as you said, to be greater than a single-story
21 warehouse, which is sort of like the vision that a lot of people have. It may – I don't know if
22 you want to put this in the definition, maybe it's taken up actually in CB-019, Draft 2. By
23 the end of the day, I believe this, the logistics that are as envisioned would be multiple

1 stories. And so, or you could just put in more than one story, which maybe will help people
2 understand that it's no, not exactly a warehouse.

3 MS. ZAVAKOS: Right, it is not. The definition, we start drifting into the category
4 of regulations when we start talking about stories.

5 CHAIR: Got it. Okay.

6 MS. ZAVAKOS: And remember, there is not only under the zone but under the use
7 itself when you get to the particulars of the next Bill that go with it, and I think that would
8 clear it up.

9 CHAIR: Okay, no worries. I was just suggesting that, given her question, it might
10 be a helpful clarification to replace the "a" with "multiple-story" facility. But sounds like
11 019 is going to solve that. Let me turn to Mr. Dernoga, and, Ms. Ivey, thank you for your
12 questions. Mr. Dernoga.

13 MR. DERNOGA: Thank you. I appreciate Ms. Ivey's questions because, frankly, I
14 have no idea what this Bill does, and this was presented last week. And because it's in the
15 middle of a budget, and this is not typically a scheduled meeting date, as much as I tried to
16 get to the Park and Planning comments, I was unable. And I tried to read them real quickly,
17 but they're complicated. And I am just at a loss as to how these two Bills go together, what
18 the impact is. I gather it's a Westphalia thing, so maybe I should just leave it at that and just
19 say, congratulations Westphalia.

20 The thing that jumped out at me when I first saw the Bill, we have one of these
21 things in Beltsville. And the citizens there are engaged in fighting the building user because
22 they do exactly what Ms. Zavakos said, which is swoop in with a bunch of big trucks, drop a
23 whole lot of stuff off, and then very shortly thereafter, they take out a lot of little trucks
24 which in the middle of the – it was a touchdown area. And because of the close proximity to

1 the residential community in that case, it's led to a lot of noise violation complaints and back
2 and forth, so I just have a sensitivity. Now, I assume Mr. Davis has that under control in
3 Westphalia.

4 But I'm worried about expanding this use, because one of the issues in that case – for
5 those in the audience, it's the brick yard – and the citizens claim it's a warehouse, and Park
6 and Planning claim – no, the citizens claim it's a trucking operation, which it is, and Park
7 and Planning thinks it's a warehouse, even though nothing ever stays in the building. So,
8 I'm just concerned that there's some impetus. I gather, we have a lot of suits in the back, so
9 we have a bunch of lobbyists here on behalf of this. I'd love to hear what they have to say, a
10 lot of suits. Anyway, I'll get off – I'll get off the mike, but I just am not comfortable that
11 we're moving so fast that – you know, I would love that, particularly when CB-019, I hope
12 we walk through the building and explain what it does and what the policies are just so we
13 can understand and the public can understand, because this is – I have a pretty good grasp of
14 zoning law, and I have no clue what's going on. So, sorry.

15 CHAIR: Thank you, Mr. Dernoga, and thank you for the thoughts and comments on
16 this one. As you may or may not know, Mr. Davis wasn't able to be at our meeting on the
17 16th, and I ended up with a personal conflict, so there was a lot of shuffling and that's why I
18 thanked people in the beginning to get us here.

19 As far as I – as my understanding of this, in essence, what we're doing is we're just
20 adding a new definition. At least from the standpoint, Mr. Dernoga, of the concerns in your
21 community, it looks like you'll be narrowly focused on the Regional Urban Community,
22 which is a fairly unique community as it is, or zoning as it is within the County. So, I
23 suppose that's the – it doesn't have much application beyond within the Regional Urban

1 Community. With that, let me turn to Mr. Davis, who's queued up, and then, once again,
2 the longer Bill of this package is CB-019, which will be the next Bill. Mr. Davis.

3 MR. DAVIS: Thank you, Madam Chair, and understanding the comments of
4 colleagues, and what we tried to do is follow the Master Plans as they exist, follow the
5 history of zoning as it exists and ensure that we're preparing not only from the past but for
6 the future. And the reality that Mr. Dernoga articulated in his commentary with regard to a
7 specific piece of property in his district, I believe, when I supported Ms. Ivey's Bill last
8 week and knowing the level of necessity with regard to relationship with the community, all
9 of those things have played out over a long period of time. So, I'm very confident and
10 comfortable that the types of concerns that Mr. Dernoga expressed have been vetted, will
11 continue to be vetted. And all the way through the process of this economic opportunity,
12 they will be considered. And with that, Madam Chair, we can call the question.

13 CHAIR: We don't need to call the question. I know other speakers queued up, and
14 we are in the discussion. However, I did have people here identify from the audience who
15 want to be speakers on this. If I may suggest, I think we can move forward on this Bill, and
16 you guys can come up on -019 if that's okay. Okay, with that said, seeing no other further
17 speakers, we've been in discussion, there was a motion by Mr. Davis, a second by Ms.
18 Hawkins [sic]. I think we're ready for a vote.

19 CLERK: Chair Glaros.

20 CHAIR: I vote aye.

21 CLERK: Vice Chair Hawkins.

22 MR. HAWKINS: (Inaudible)

23 CLERK: Council Member Davis.

24 MR. DAVIS: Aye.

1 CLERK: Council Member Dernoga.

2 MR. DERNOGA: I abstain.

3 CLERK: Council Member Ivey.

4 MS. IVEY: (Inaudible)

5 CLERK: Motion carries 4-0-1.

6 CHAIR: Okay, thank you. Thank you, colleagues.

7 (Whereupon, the Committee discussion of this Bill was concluded.)

8

9

CERTIFICATE OF TRANSCRIBER

10 I, Ruth Kerker Blair, hereby certify that the excerpt of the testimony given in the
11 above-entitled matter was transcribed by me, and that said transcript is a true record, to the
12 best of my ability, of said testimony.

13 I further hereby certify that I am neither a relative to nor an employee of any attorney
14 or party herewith, and that I have no interest in the outcome of these proceedings.

15 This 20th day of August, 2019.

16

17

18

RUTH KERKER BLAIR

19

20

21

22

23

24