



The Maryland-National Capital Park and Planning Commission
 Prince George's County Planning Department
 Development Review Division
 301-952-3530

Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

Detailed Site Plan Remand Hearing Checkers Laurel

DSP-20006

REQUEST	STAFF RECOMMENDATION
Remand Hearing	APPROVAL with conditions

Location: On the east side of US 1 (Baltimore Avenue), approximately 400 feet north of its intersection with Mulberry Street.	
Gross Acreage:	0.84
Zone:	C-S-C / R-55
Dwelling Units:	N/A
Gross Floor Area:	1,170 sq. ft.
Planning Area:	62
Council District:	01
Election District:	10
Municipality:	N/A
200-Scale Base Map:	219NE08
Applicant/Address: Mar-Chek, Inc. c/o Keith Martin 7810 Clark Road, Suite T-1 Jessup, MD 20794	
Staff Reviewer: Adam Bossi Phone Number: 301-780-8116 Email: Adam.Bossi@ppd.mncppc.org	



Planning Board Date:	05/20/2021
Planning Board Action Limit:	05/24/2021
Memorandum Date:	05/06/2021
Date Received:	03/25/2021
Persons of Record Mailing:	04/29/2021
Sign Posting:	04/28/2021

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

May 6, 2021

MEMORANDUM

TO: The Prince George's County Planning Board

VIA: Jill Kosack, Supervisor, Urban Design Section, Development Review Division *JSK*

FROM: Adam Bossi, Planner Coordinator, Urban Design Section, Development Review Division *AB*

SUBJECT: Detailed Site Plan DSP-20006 (Remanded)
Checkers Laurel

BACKGROUND

Detailed Site Plan DSP-20006 was approved by the Prince George's County Planning Board on October 29, 2020, and a final resolution was adopted on November 19, 2020 (PGCPB Resolution No. 2020-152). The Prince George's County District Council elected to review this application on January 25, 2021. The District Council conducted oral arguments on March 8, 2021 and remanded the DSP back to the Planning Board for further consideration on March 22, 2021. The Order of Remand was transmitted to the Planning Board on March 25, 2021. The Order of Remand requires the applicant to submit a revised site plan and for the Planning Board to reopen the record and take further testimony or evidence on five specific issues.

The subject DSP was originally filed by the applicant, in accordance with Section 27-282 of the Prince George's County Zoning Ordinance, to request approval of a 1,170-square-foot eating and drinking establishment with drive-through service on a 0.84-acre site that is split-zoned between the Commercial Shopping Center (C-S-C) Zone and One-Family Residential (R-55) Zone.

ORDER OF REMAND FINDINGS

The Order of Remand was mailed out to all parties of record on March 25, 2021. Within the Order of Remand, the District Council ordered the Planning Board to reopen the record and take further testimony or evidence on five specific issues (in **BOLD**, followed by staff's analysis), as follows:

1. The revised site plan’s compliance with the setback requirements of the C-S-C Zone;

The setback requirements for all commercial zones are defined in Section 27-462(b), Table 1 – SETBACKS, of the Zoning Ordinance. The submitted revised site plan provided the following table:

SETBACK CALCULATIONS (SECTION 27-462)

SETBACK	REQUIREMENT	NOTES
FROM STREET	10'	PROVIDED 60'
FROM SIDE LOT LINE OF ADJOINING LAND IN ANY RESIDENTIAL ZONE:		
SIDE YARD	12' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
REAR YARD	25' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
FROM REAR LOT LINE OF ADJOINING LAND IN ANY RESIDENTIAL ZONE:		
SIDE YARD	12' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
REAR YARD	25' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
FROM ADJOINING LAND IN ANY NONRESIDENTIAL ZONE	NONE, EXCEPT WHERE BUILDING IS 30 FEET HIGH, A DISTANCE EQUAL TO 1/3 THE TOTAL BUILDING HEIGHT OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER	PROVIDED 40'

The applicant’s revised DSP shows a setback from the street of 60 feet, which exceeds the 10-foot setback requirement. Landscape buffers for the side and rear yards are required to be 30 feet wide, which is greater than the 12-foot side yard and 25-foot rear yard setbacks otherwise required by Section 27-462(b). The revised DSP shows landscape buffers of at least 40 feet in width are provided, which is in excess of the requirements of Section 27-462(b). Therefore, the application meets all setback requirements of the C-S-C Zone as shown on the revised site plan.

2. The revised site plan’s compliance with the requirements of the 2010 Landscape Manual for incompatible uses;

As stated previously, the subject-property is split-zoned between the C-S-C Zone and the R-55 Zone. The eating and drinking establishment, with drive-through service, will be located entirely on the C-S-C-zoned portion. The R-55 portion of the subject property, which borders the C-S-C portion to the east and south, will contain a stormwater management (SWM) facility and landscaping. Because an eating and drinking establishment with drive-through service is not a permitted use in the R-55 Zone, the District Council concluded that the proposed Checkers does, in fact, border incompatible uses. According to the District Council, the applicant is required to revise the landscape buffers between the C-S-C and

R-55 portions of its property to comply with Section 4.7 of the 2010 *Prince George's County Landscape Manual* (Landscape Manual), which addresses buffering incompatible uses.

Section 4.7(c)(2)(G) of the Landscape Manual, however, provides that “[i]n the case of a lot that is located in more than one zone, the establishment of a required bufferyard is based on the platted or recorded property line(s), not the zoning lines(s).”

Incompatible use buffers are required in two locations, along a portion of the site’s southern boundary and along its eastern boundary shared with Lot 12. The revised site plan is in compliance with the Landscape Manual requirements of Section 4.7, Buffering Incompatible Uses, which are based on the compatibility of abutting uses for the applicable portion of the site’s southern boundary. A Section 4.7 buffer is provided along the site’s southern boundary shared with the adjoining Nuzback property, which is developed with an eating and drinking establishment that is considered a medium-impact use. The proposed eating and drinking establishment with drive-through service on the subject site is considered a high-impact use. As provided by Table 4.7-2 of the Landscape Manual, a Type ‘B’ bufferyard is required between the proposed high-impact use and existing medium-impact use. A Type ‘B’ bufferyard must include a minimum building setback of 30 feet, a minimum landscaped yard of 20 feet, and installation of at least 80 plant units per 100 linear feet of property line (204 plant units required) within the bufferyard. Section 4.7 allows for a 50 percent reduction in the required quantity of plant units when a six-foot-high, sight-tight fence or wall is provided. In addition, the number of required plant units may be further reduced when existing non-invasive vegetation within the bufferyard is retained.

The Section 4.7 bufferyard provided with the revised landscape plan exceeds all minimum requirements. A 40-foot building setback and 27-foot-wide landscape yard is provided. Minimum plant unit requirements have been exceeded as well. The landscape plans show 22 percent of the bufferyard vegetated by existing non-invasive trees and a six-foot-high, sight-tight fence is provided. With the existing vegetation and fence, the minimum number of required plantings within the bufferyard could be reduced to 79 plant units. However, the landscape plan provides 207 plant units, which exceeds the minimum quantity required, without counting reductions for the existing non-invasive vegetation and fence. The design of the bufferyard, including fence location, plant species selection, and planting locations are acceptable. All requirements of Section 4.7, Buffering Incompatible Uses, applicable to this bufferyard have been satisfied, with all minimum requirements exceeded.

Regarding the eastern property boundary shared with Lot 12, the revised plan provides for the continuation of the six-foot-high, sight-tight fence, retention of existing vegetation, and installation of 29 shrubs. As provided by Table 4.7-2 of the Landscape Manual, a Type ‘D’ bufferyard is required in this location with a 50-foot building setback and 40-foot landscaped yard planted with 160 plant units per 100 linear feet. The revised plan does not provide a landscape schedule to demonstrate conformance with the applicable requirements in this location. A condition is recommended for the required landscape schedule to be shown on the plan. If conformance cannot be demonstrated, the applicant may request alternative compliance, in accordance with Section 1.3 of the Landscape Manual.

In addition, while not required to buffer incompatible uses, the landscape plan revisions also include an extension of the six-foot-high, sight-tight fence and additional plantings along the site's eastern and southern boundary of Magnolia Street. This treatment will provide for a more seamless buffer along the entire southern property boundary than previously approved. Staff finds the revised Section 4.7 bufferyard and additional screening provided along Magnolia Street to be acceptable.

3. The revised site plan's inclusion of residential property to satisfy the 2010 Landscape Manual standards to serve a commercial zone or use;

The applicant's "Responses to District Council Remand" letter dated April 21, 2021 (Tedesco to Hewlett), pages 2 through 11, provides a detailed discussion that supports the location of the proposed SWM facility in the R-55 Zone portion of the subject property. The revised DSP and landscape plan retains the SWM facility in its originally proposed location. A six-foot-high, sight-tight fence and additional plantings are located between the SWM facility and Magnolia Street as screening for the facility. While not required, staff finds this additional landscape screening to be an improvement to the DSP. Staff also concurs with the applicant's analysis and finds the location of the proposed SWM facility to be acceptable.

This DSP is subject to 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, of the Landscape Manual. Sections 4.3 and 4.4 require planting in parking lots and screening of certain maintenance area and equipment, respectively, regardless of what zone they are located in or what use they are associated with, except for certain vehicle-related uses. Section 4.9 requires sustainable landscaping practices be incorporated as part of a site plan, regardless of the zone or use.

Section 4.2, Requirements for Landscape Strips Along Streets, of the Landscape Manual applies along abutting public or private streets for any nonresidential use in any zone and all parking lots (Landscape Manual, page 42). In addition, Section 4.7, Buffering Incompatible Uses, of the Landscape Manual specifically says the following:

"(G) In the case of a lot that is located in more than one zone, the establishment of a required bufferyard is based on the platted or recorded property line(s), not the zoning line(s)." (Landscape Manual, page 77)

Therefore, the Landscape Manual offers no impediment to using residential property to serve a commercial zone or use as the requirements apply regardless of zone or use, or apply along property lines, not zoning lines.

4. The revised site plan's compliance with Conditions 1.c. and 1.d. in Zoning Ordinance No. 3-1996; and

The subject property, now known as Lot 23, was resubdivided pursuant to a record plat dated July 24, 2015, and recorded in Plat Book SJH 243 at Plat No. 3. Former Lots 4-11, in Block 3, of the Oak Crest Subdivision (Plat Book LIB A at Plat No. 108) were consolidated into Lots 22 and 23. The subject DSP includes Lot 23 and the area of Magnolia Street that was acquired by a quiet title action for the unclaimed portion.

Condition 1.c. of Zoning Ordinance No. 3-1996 reads as follows:

Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.

The revised landscape plan shows enhanced screening and buffering of the previous Lot 11, Block 3 and Lots 14 through 17, Block 4. Specifically, additional plantings and a six-foot-high, sight-tight fence, have been added to increase screening for Lot 11, Block 3. A fence is now proposed along the former centerline of Magnolia Street, with evergreen trees to be installed on the south side of the fence and shrub plantings on the north side of the fence. As discussed above, under Issue 2 of the Order of Remand, this screening and buffer treatment exceeds the Type B bufferyard requirements for Section 4.7, Buffering Incompatible Uses, of the Landscape Manual. In addition, the same screening fence and planting arrangement is carried through from the incompatible use bufferyard along the remainder of the south side of the property to provide additional screening of Lots 14 through 17, Block 4. The revised landscape plan also shifts the location of the trash enclosure further north, away from these former lots, and provides additional plantings. Staff finds that the revised landscape plan adequately addresses the requirement of Condition 1.c.

Condition 1.d. of Zoning Ordinance No. 3-1996 reads as follows:

The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January 1994, if feasible.

The original DSP, and revised materials submitted in response to the Order of Remand, provide a discussion that indicate the large tree shown on Lot 10 of the applicant's January 1994 survey is not feasible to preserve.

Staff concurs with the applicant's rationale that preservation of this specific tree is not feasible, as it has already been previously impacted by paving on the property, which covers a large portion of the tree's root zone. Any redevelopment of the property to remove or resurface this existing paving, in order to implement current SWM regulations, will involve a large impact to the root zone and require an unreasonable amount of protection to ensure the viability of the tree. Allowing an impacted tree such as this to remain would create a potential hazard should it die and fall onto the adjacent commercial or residential properties.

In addition, the general area of the large tree on Lot 10 is proposed to be planted with 11 evergreen trees and 21 shrubs. While the preservation of this specific tree is not feasible, the landscape plan provides for these replacement plantings and the preservation of other large trees on the site, which is appropriate. Staff finds that the applicant's revised submission satisfactorily addresses this requirement.

5. The gross acreage and zone classifications of Lot 23, including the 25-foot-wide portion of the Magnolia Street right-of-way.

The gross acreage associated with the portions of Lot 23 in the C-S-C and R-55 Zones were adjusted on the revised site plan to include the 25-foot-wide portion of the former Magnolia Street right-of-way in the R-55 Zone. These figures are included in General Note 2 of the revised DSP and show the site area to consist of 25,705 square feet of C-S-C-zoned land and 10,885 square feet of R-55-zoned land. The inclusion of this portion of the former Magnolia Street right-of-way increased the total square footage of site area in the R-55 Zone by 3,385 square feet, with an equal decrease in square footage of site area in the C-S-C Zone. Staff finds this revision meets the requirements of the Order of Remand and corrects the gross area of the site located within the two zones.

RECOMMENDATION

Based on the forgoing supplemental evaluation and analysis, the Urban Design Section recommends that the Planning Board adopt the additional findings of this memorandum to address the five specific issues subject of this Order of Remand and issue an amendment to PGCPB Resolution No. 2020-152, subject to one new condition:

1. Prior to certification, the detailed site plan shall be revised, or additional information shall be provided, as follows:
 - f. Provide a Section 4.7, Buffering Incompatible Uses, schedule demonstrating conformance with the bufferyard required along Lot 12, or obtain approval of an alternative compliance from the requirements.

ITEM: 10

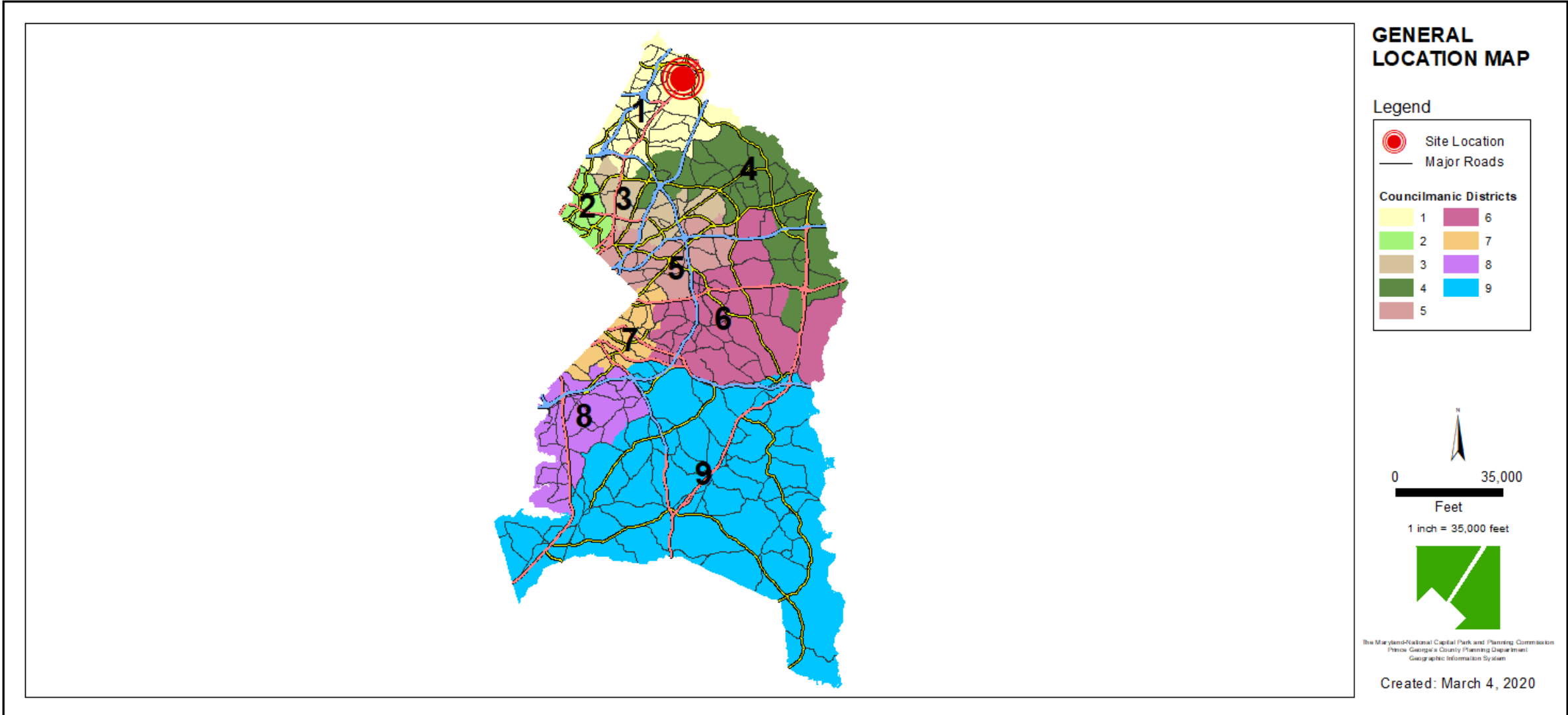
CASE: DSP-20006

CHECKERS LAUREL REMAND HEARING

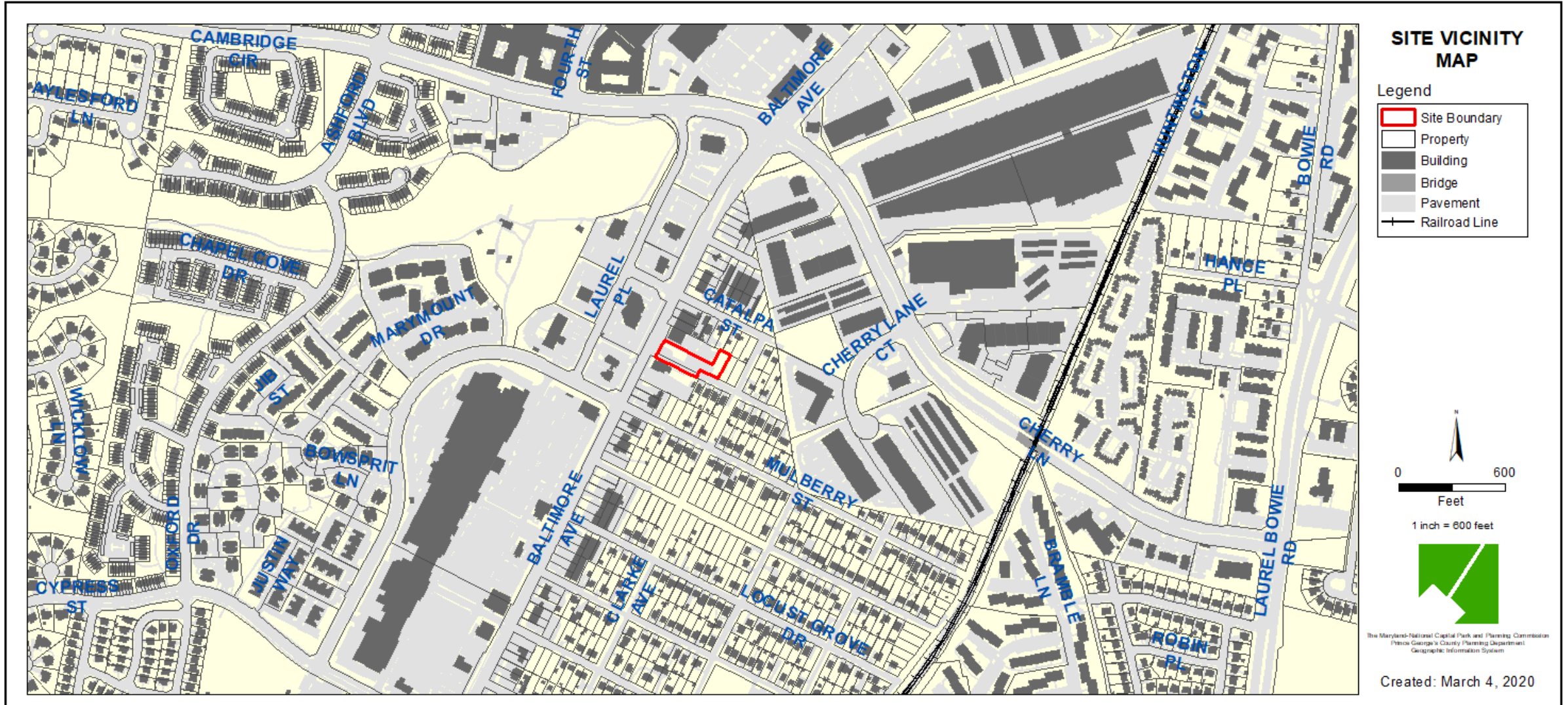
THE PRINCE GEORGE'S COUNTY PLANNING DEPARTMENT



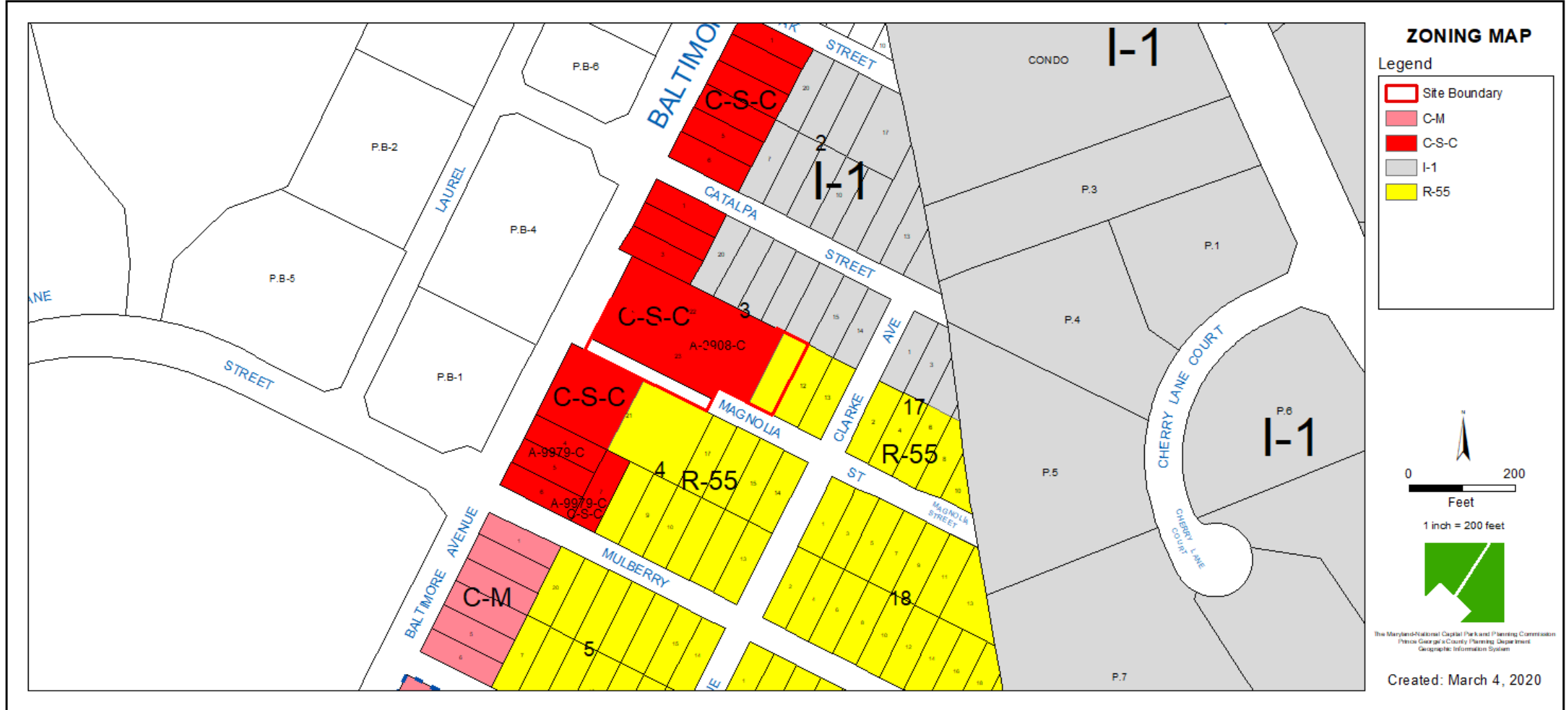
GENERAL LOCATION MAP



SITE VICINITY



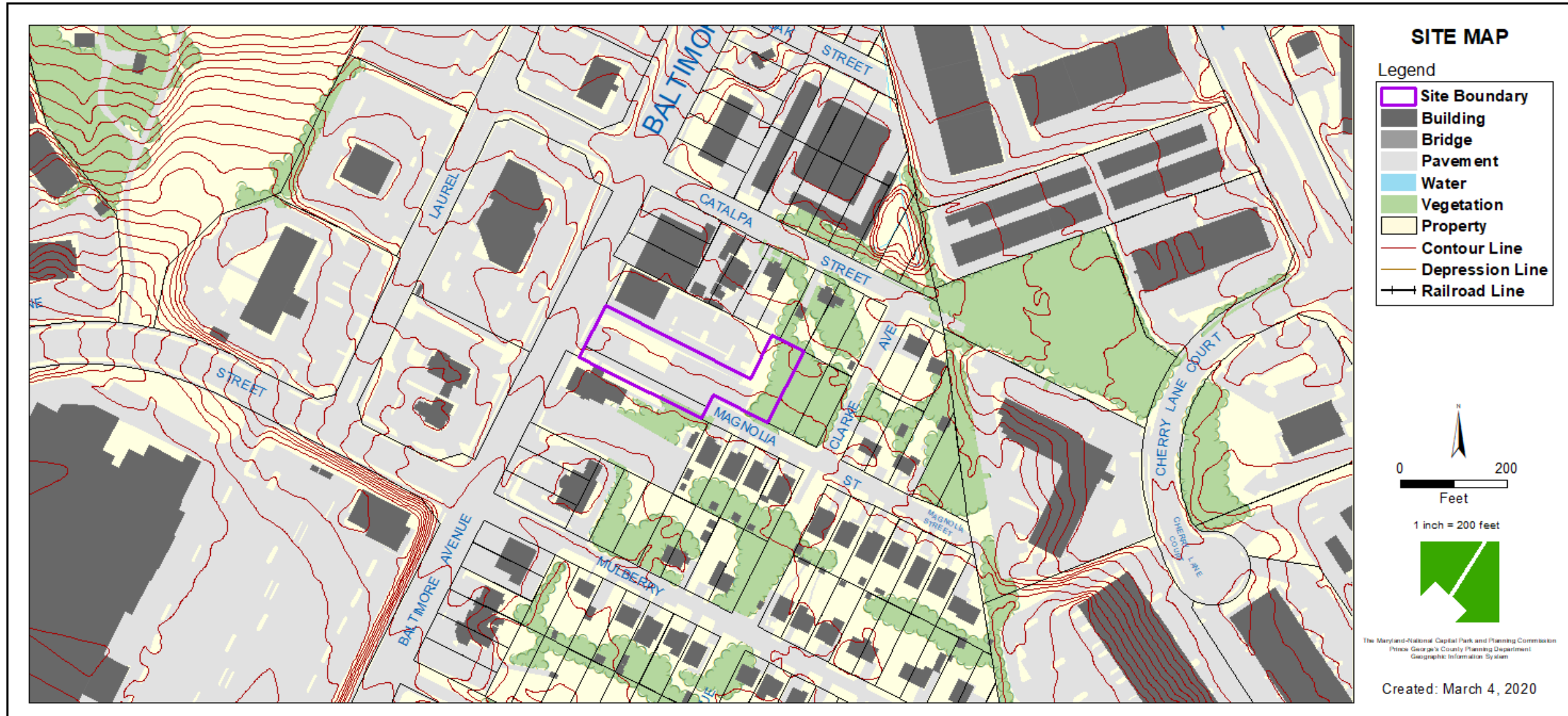
ZONING MAP



AERIAL MAP



SITE MAP



ORDER OF REMAND

Planning Board shall reopen the record to take further testimony or evidence on:

1. The revised site plan's compliance with the setback requirements of the C-S-C zone;
2. The revised site plan's compliance with the requirements of the 2010 Landscape Manual for incompatible uses;
3. The revised site plan's inclusion of residential property to satisfy the 2010 Landscape Manual standards to serve a commercial zone or use;
4. The revised site plan's compliance with Conditions 1. c. and 1. d. in Zoning Ordinance No. 3 – 1996; and
5. The gross acreage and zone classifications of Lot 23, including the 25-foot wide portion of the Magnolia Street right-of-way.

REVISED PLANS

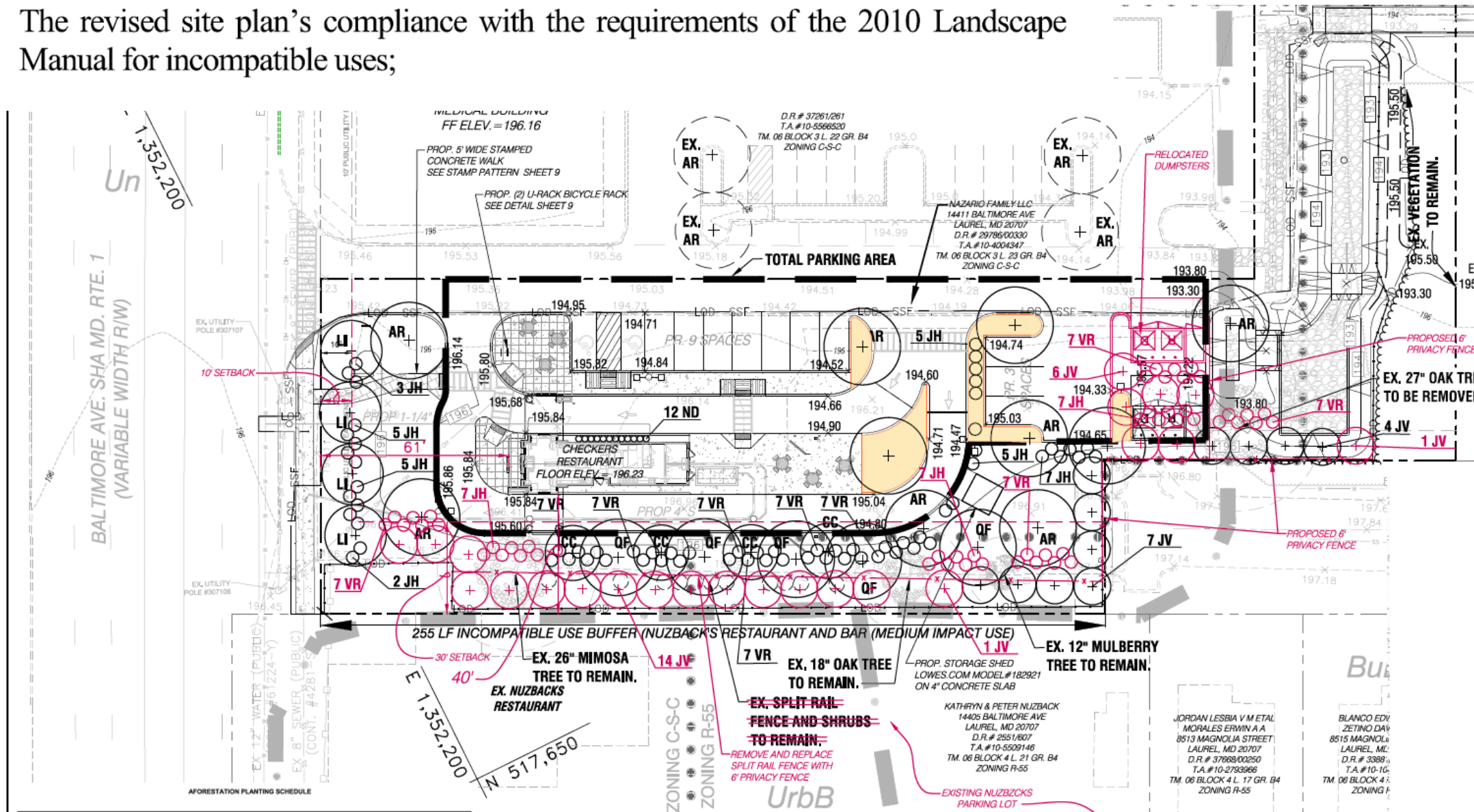
- The revised site plan's compliance with the setback requirements of the C-S-C zone;

SETBACK CALCULATIONS (SECTION 27-462)

SETBACK	REQUIREMENT	NOTES
FROM STREET	10'	PROVIDED 60'
FROM SIDE LOT LINE OF ADJOINING LAND IN ANY RESIDENTIAL ZONE:		
SIDE YARD	12' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
REAR YARD	25' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
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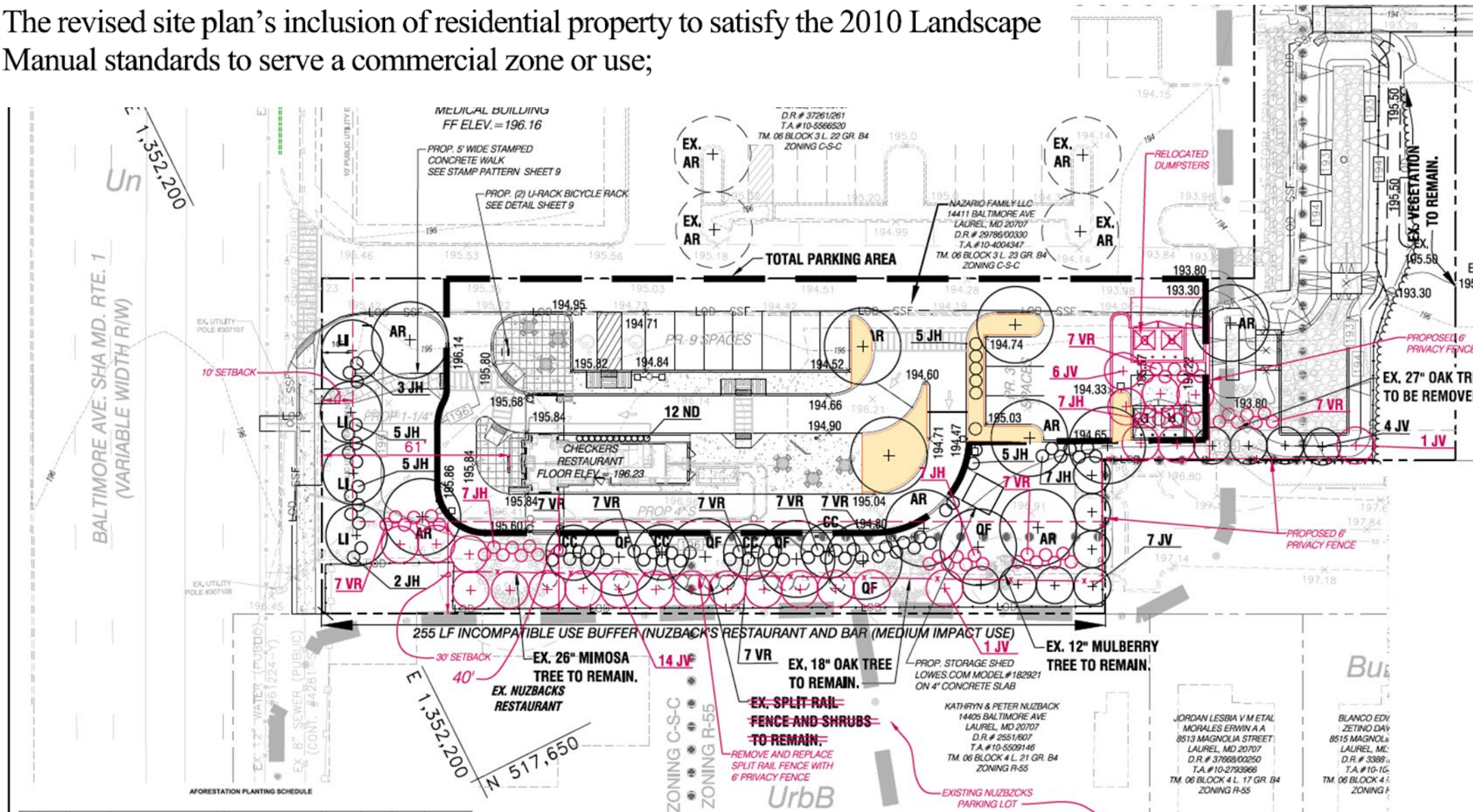
REVISED PLANS

- The revised site plan's compliance with the requirements of the 2010 Landscape Manual for incompatible uses;



REVISED PLANS

- The revised site plan's inclusion of residential property to satisfy the 2010 Landscape Manual standards to serve a commercial zone or use;



REVISED PLANS

4. The revised site plan's compliance with Conditions 1. c. and 1. d. in Zoning Ordinance No. 3 – 1996; and

Condition 1.c.

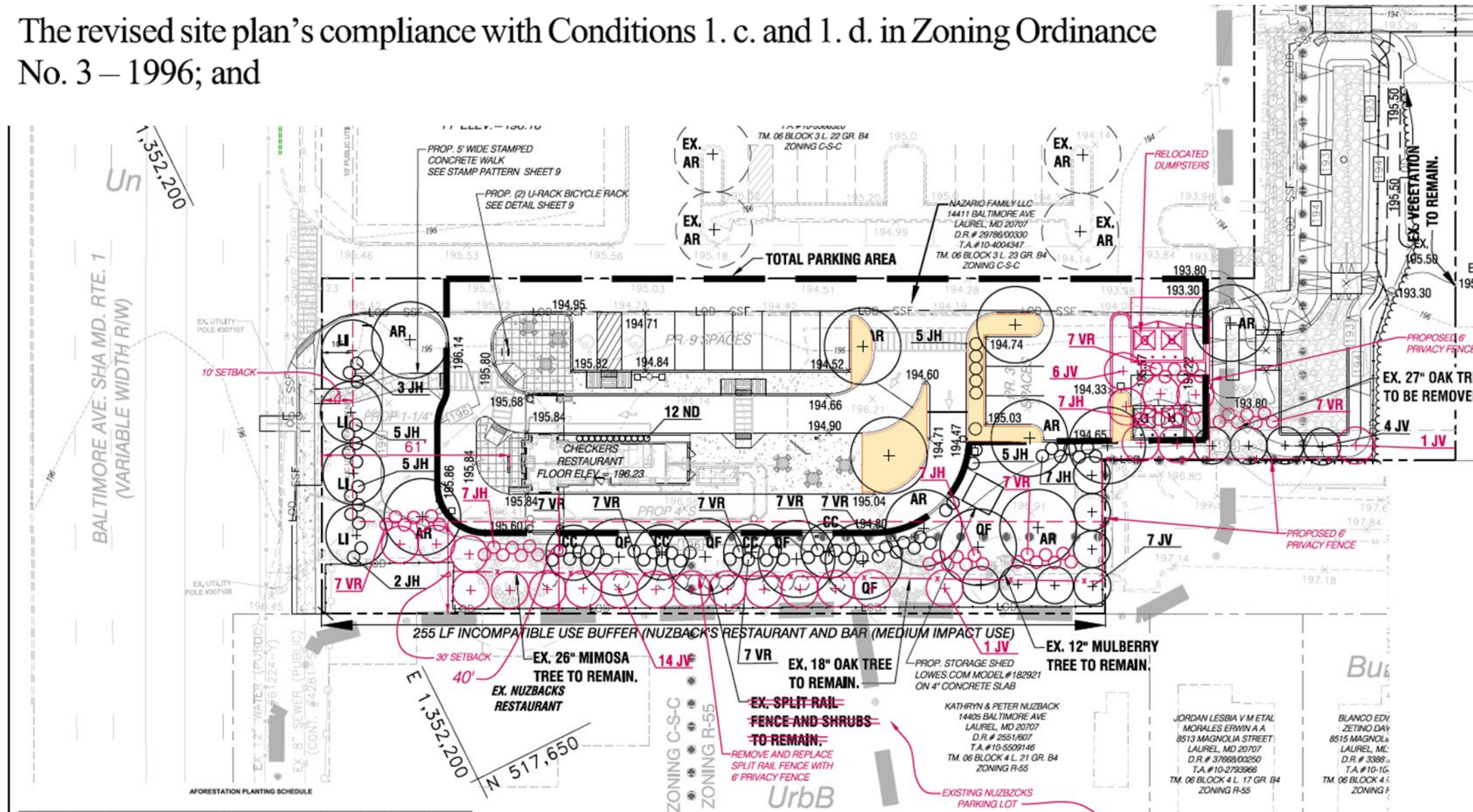
Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.

Condition 1.d.

The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January 1994, if feasible.

REVISED PLANS

4. The revised site plan's compliance with Conditions 1. c. and 1. d. in Zoning Ordinance No. 3 – 1996; and

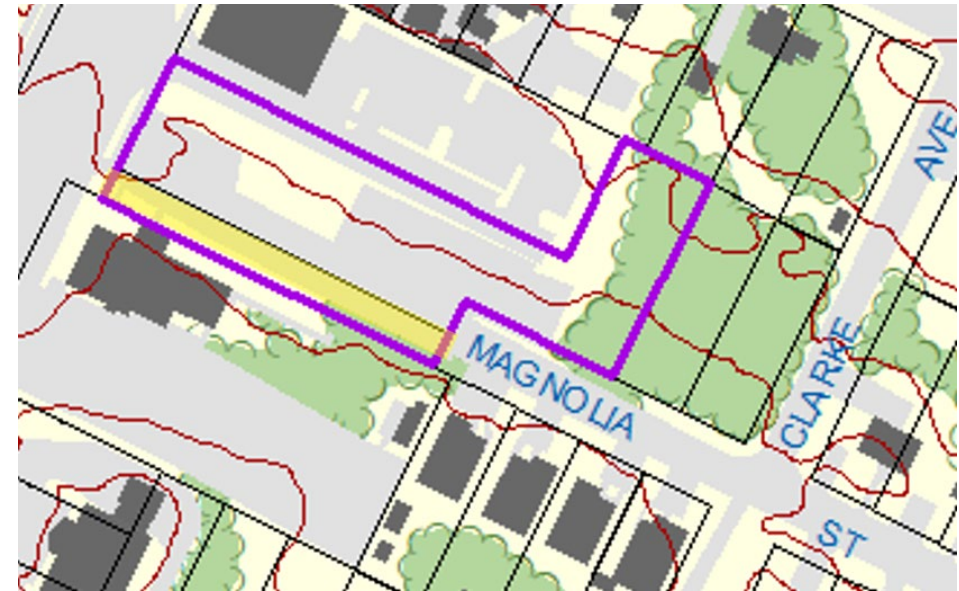


PROVIDED BY REVISED PLANS

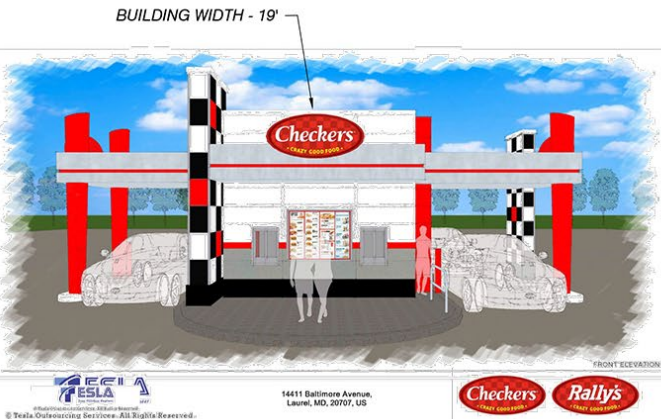
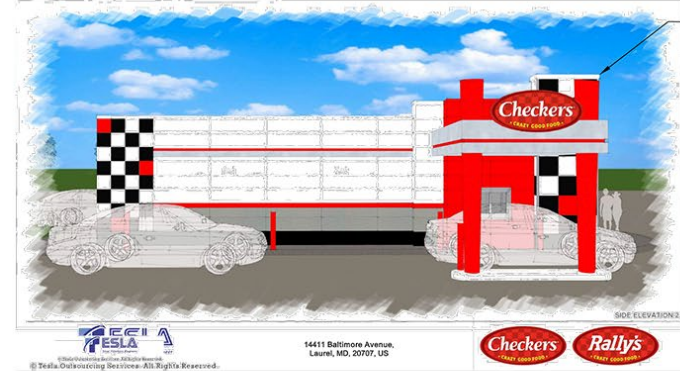
5. The gross acreage and zone classifications of Lot 23, including the 25-foot wide portion of the Magnolia Street right-of-way.

GENERAL NOTES:

1. TOPOGRAPHY SURVEY PERFORMED BY MESSICK & ASSOCIATES, FEBRUARY 2019. (NAD 83 HORIZONTAL DATUM & NGVD 29 VERTICAL DATUM)
2. ZONING: C-S-C (25,705 S.F.) & R-55 (10,885 S.F.), SUBDIVISION: OAK CREST
3. TAX MAP: 006, GRID B-4, LOT 23, BLOCK 3
4. LIBER/FOLIO: 29786/00330
5. ELECTION DISTRICT: 10
6. WSSC GRID: 219 NE 08
7. P.G. Co. STREET MAP: PAGE 8, MAP 5169, GRID C-6&7
8. THERE IS NO FLOODPLAIN ON SITE ACCORDING TO THE FLOODPLAIN INSURANCE RATE MAP COMMUNITY PANEL #2452080010 C.
9. TOTAL SITE AREA: 0.84 Ac. ±
10. PROPOSED USE: CHECKERS RESTAURANT
11. EXISTING WATER AND SEWER CATEGORIES: W-3 AND S-3
12. THERE ARE NO CEMETERIES OR HISTORIC FEATURES ON SITE.
13. URGENT CARE SITE CASE #10737-2010.
14. DISTURBED AREA: 30,866 SQ. FT. or 0.71 AC.
15. STORMWATER MANAGEMENT CONCEPT PLAN #15567-2019-00



ELEVATIONS



BUILDING FAÇADE MATERIALS ARE FIBER CEMENT PANELING AND EIFS, EXTERIOR INSULATION AND FINISH SYSTEMS (SYNTHETIC STUCCO)

BUILDING DIMENSIONS:
 WIDTH - 19'
 LENGTH - 55'
 HEIGHT - 14'-8 3/8"





McNamee Hosea
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 Greenbelt, Maryland 20770 F 301.982.9450

mhlawyers.com

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 Admitted in Maryland

E-mail: MTedesco@mhlawyers.com
 Direct Dial: Extension 222

April 21, 2021

Electronically Submitted

The Honorable Elizabeth M. Hewlett, Chair
 and The Honorable Planning Board Commissioners
 Prince George’s County Planning Board
 M-NCPPPC
 14741 Gov. Oden Bowie Drive
 Upper Marlboro, Maryland 20770

Re.: Checkers – Laurel (DSP-20006)

Responses to District Council Remand

Chair Hewlett and Planning Board Commissioners:

This Firm represents the applicant, Mar-Chek, Inc., in the above-referenced matter. We are writing to provide formal written responses to the District Council’s Order of Remand, as follows:

1. The revised site plan’s compliance with the setback requirements of the C-S-C Zone;

RESPONSE: The setback calculations for the C-S-C Zone are provided for in Section 27-462. The site plan for DSP-20006 has been revised to accurately provide and depict all of the required and provided setbacks. The Setback Calculation Table provided on the DSP is as follows:

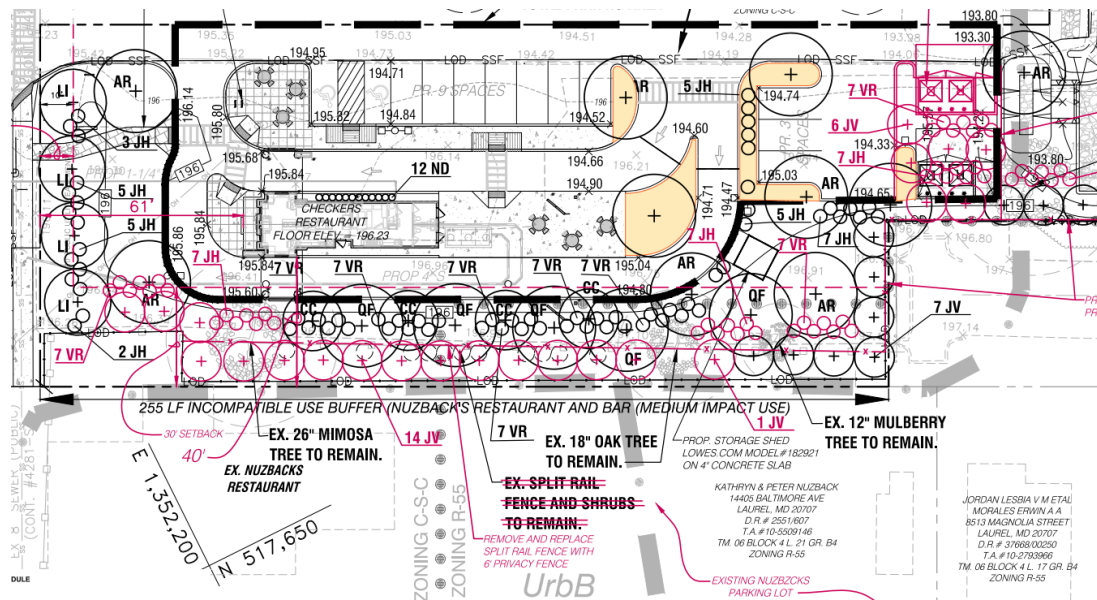
SETBACK CALCULATIONS (SECTION 27-462)

SETBACK	REQUIREMENT	NOTES
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2. The revised site plan's compliance with the requirements of the 2010 Landscape Manual for incompatible uses;

RESPONSE: All requirements of the 2010 Landscape Manual¹ are met. Specifically, and as provided on the revised DSP, all required bufferyards, building setbacks, and landscape strips for the required 4.2 and 4.7 Schedules are provided. Indeed, and to be more responsive the District Council's Order of Remand, the applicant has made a number of revisions to the DSP and Landscape Plan.

Section 4.7-1(G) of the Landscape Manual provides that “[i]n the case of a lot that is located in more than one zone, the establishment of the required bufferyard is based on the platted or recorded property line(s), not the zoning line(s).” The property within the boundaries of DSP-20006 is owned by Nazario Family, LLC, so an easement to accommodate any additional or required landscaping in any bufferyard is not required. Although the applicant does not believe that alternative compliance is required, if it is, the applicant respectfully requests the same, as the proposed bufferyard and landscape strips (either 4.7 or 4.2) are equal to or better than normal compliance. As provided on the revised plans, the 4.7 bufferyard along the southern boundary includes a building setback that is (10) feet wider than what is required; a landscape yard that is seven (7) feet wider than what is required; a six-foot high privacy fence; and plant units that exceed the requirement.

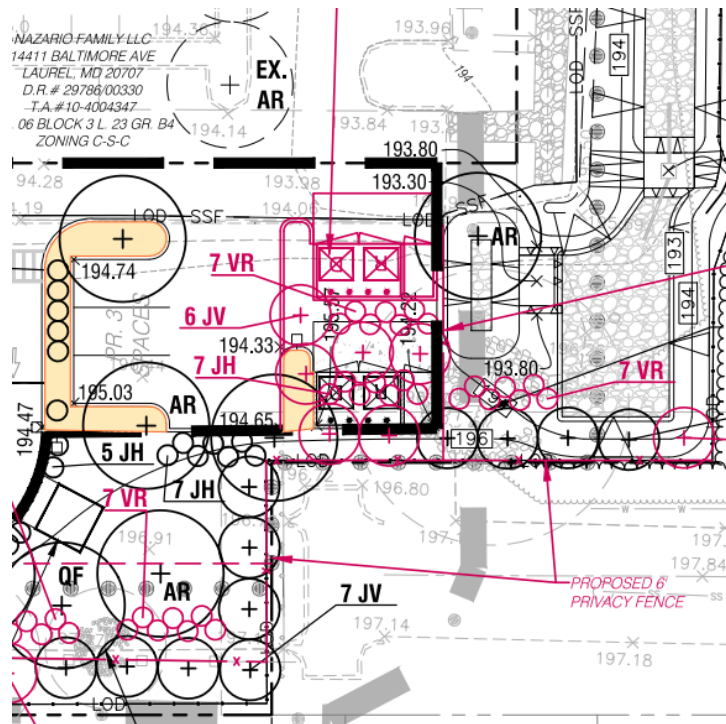


3. The revised site plan's inclusion of residential property to satisfy the 2010 Landscape Manual standards to serve a commercial zone or use;

¹ The Landscape Manual provides that “[t]he standards contained in this manual are intended to encourage development that is economically viable and environmentally sound. The standards are *not* intended to be arbitrary or to inhibit creative solutions. Project conditions may justify approval of alternative methods of compliance with the standards.”

RESPONSE: Section 4.7-1(G) of the Landscape Manual provides that “[i]n the case of a lot that is located in more than one zone, the establishment of the required bufferyard is based on the platted or recorded property line(s), not the zoning line(s).” (See also responses to Remand Items 2 and 5 herein).

Regarding the 4.2 Landscape Strip, the applicant has revised its plan and is providing a six-foot privacy fence along the Magnolia Street right-of-way; has relocated the proposed dumpster location away from said right-of-way; and has significantly increased the number of plant units within the 4.2 landscape strip.



In response to the District Council’s assertion regarding the inability to locate the required stormwater management facility on a portion of former Lot 11, which is located in the R-55 Zone, the applicant respectfully disagrees with this contention and finds no support in law nor in the long established application and administration of the applicable regulations regarding this issue.

First and foremost, although a stormwater management facility may meet the broad and inexact definition of a “structure” in Section 27-107.01(a)(66.1), such a facility or structure is not a “use” that is regulated by Subtitle 27 of the County Code. In fact, none of the Table of Uses in Subtitle 27 include a use designation for a stormwater management facility nor does Section 27-107.01 separately define the same. Instead, these facilities are regulated by Subtitle 32 of the County Code and the County Stormwater Management Design Manual. Unlike parking, which is a “structure” and an actual use in the Zoning Ordinance that is a resultant of a use that, depending on the circumstances of the parking itself, requires (or triggers) Use and Occupancy Permits, special exceptions, or other zoning entitlements, a stormwater management facility does

not and should not. This is also true for other utilities that are necessary for development, such as water and sewer lines, gas lines, electrical lines, fiber optic lines etc. These utilities, like stormwater management facilities, are not dependent upon the particular zoning of the property that they serve, and they often (if not always) cross numerous zoning districts to serve numerous developments within various zoning districts. The same is true for stormwater management facilities – in particular large regional facilities that exist throughout the County. These regional facilities, like so many stormwater management facilities, treat and capture stormwater from countless developments in countless different zoning districts.

The District Council incorrectly relies solely on the definition of a “structure” to reach its conclusion that the utilization of a small portion of Lot 23 in the R-55 Zone for stormwater is improper. The District Council’s Remand Order omits any analysis of Subtitle 32 of the County Code, which is dispositive of this issue. Subtitle 32, among other things, provides the requirements and regulations regarding the utilization of stormwater management facilities and practices required for water quality and quantity treatment associated with development. Nowhere in Subtitle 32 is “zoning” ever mentioned nor is there any enumerated requirement that facilities that serve certain zones be within the same zoning districts. In fact, Section 32-175, which addresses “Redevelopment,” is very clear that the requirements are based on the limit of disturbance (“LOD”) for a development, and not zoning categories/districts. Indeed, Section 32-175(k) specifically states, “[s]tormwater management shall be addressed for the portion of the site within the **limit of disturbance** according to the new development requirements in the Maryland Design Manual and the Prince George's County Design Manual for any net increase in impervious area.” (Emphasis added). Section 32-182(f) addresses situations where stormwater management design involves directing some or all of the runoff from the development site onto another site with absolutely no mention of zoning or requiring common zoning. Instead, that section only requires, “[i]f a stormwater management design plan involves direction of some or all runoff from the site, it is the responsibility of the applicant to obtain from adjacent property owners any easements or other necessary property interests concerning flow of water. Approval of a stormwater management plan does not create or affect any right to direct runoff onto adjacent property without that property owner's permission.” In the subject case, all facilities are on-site and under common ownership. Finally, Section 32-171 provides definitions for “stormwater management;” “stormwater management design plan;” and “stormwater management system;” and none of these mention, let alone, require like zoning.

(63) Stormwater Management (SWM). Using ESD for the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to prevent accelerated channel erosion, increased flood damage and/or degradation of water quality.

(64) Stormwater Management Design Plan. The set of drawings and other documents that comprise all of the information and specifications for the systems, structures, concepts, and techniques that will be used to control stormwater as required by the approved concept plan and the Maryland Design Manual and the Prince George's County Design Manual.

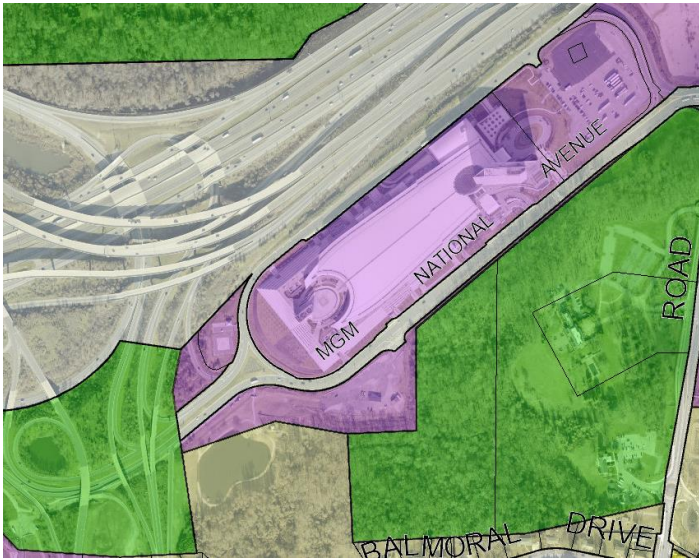
(65)Stormwater Management System. Natural areas, ESD practices, stormwater management measures, and any other structure through which stormwater flows, infiltrates or discharges from a site.

The subject development and proposed stormwater management facility satisfies all of the requirements of Subtitle 32 and the Design Manual, as the site has received site development concept plan approval (Case No. 15567-2019) and technical plan approval (Case No. 1682-2020) from the Department of Permitting, Inspections, and Enforcement (DPIE). It must be noted that DPIE did not raise any objection or issue with the utilization of the R-55 Zoned portion of Lot 23 for stormwater, and the reason being is because there is no such prohibition in the Code, which include provisions and regulations that DPIE routinely and consistently administers.

Notwithstanding the clear and unambiguous provisions of Subtitle 32 and the Manual, which provide no statutory requirement(s) that mandate that a stormwater management facility for a development project be on like zoned property, the Planning Board should take notice of other examples in the County where the zoning associated with a development and the stormwater management facility that serves it are not the same, as this shows a clear, purposeful, and consistent application of the applicable code provisions that DPIE and/or M-NCPPC administer. Below are some examples, which are not intended to be an exhaustive list, as the list below omits larger regional facilities for which a number of projects (with various zoning designations) send stormwater. This non-exhaustive list evidences that there are a number of examples, throughout the County, where the zoning of a particular development is different than the property that contains the stormwater management facilities that treats/handles the associated stormwater.

Examples:

- MGM - (Development in MXT and SWM Facility in RR Zone):



- Hall Station - (Development in LAC Zone and SWM Facility in RR Zone)



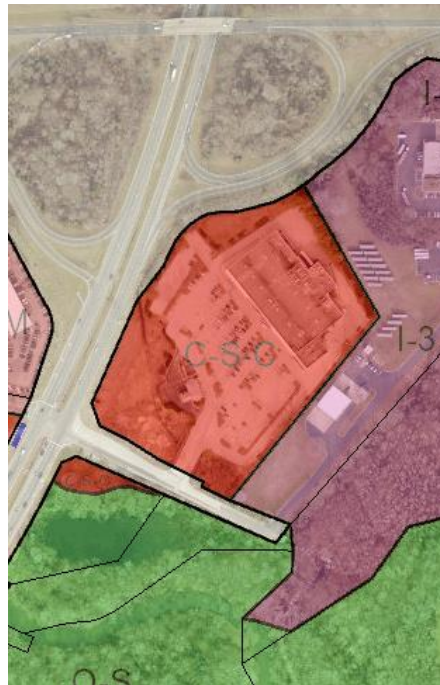
- Village Drive & US 301 - (Development in CM Zone and SWM facility in R-A Zone)



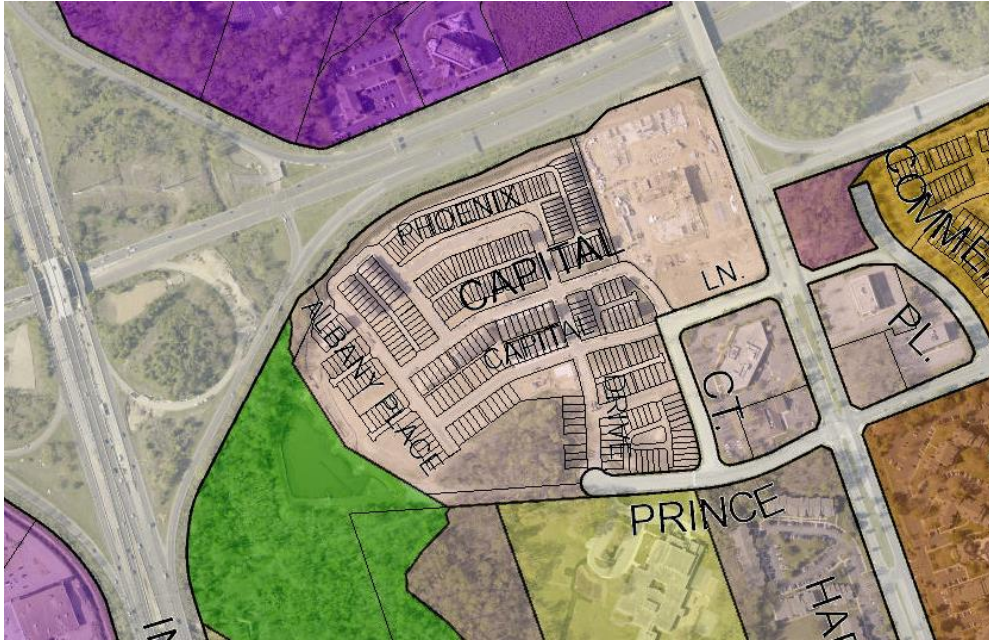
- Trade Zone - (Development in EIA Zone and SWM Facility in O-S Zone):



- Marlboro Crossing Shopping Center - (Development in CSC Zone and SWM Facility in O-S Zone):



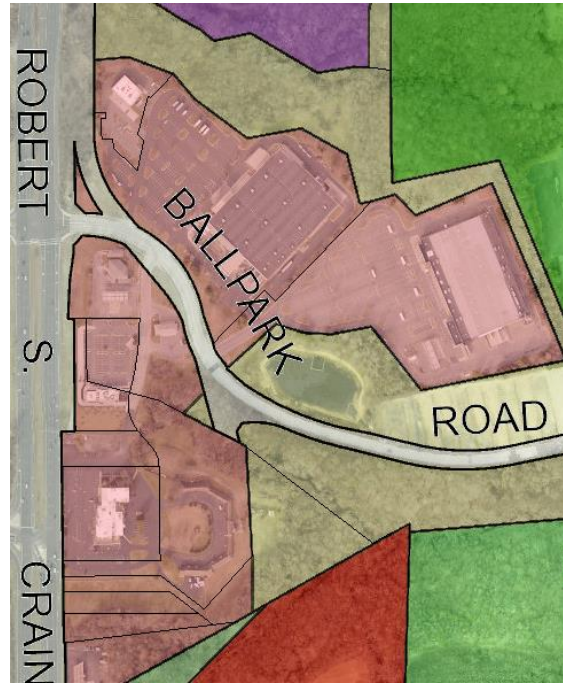
- Capital Court - (Development in C-O Zone and SWM Facility in R-O-S Zone):



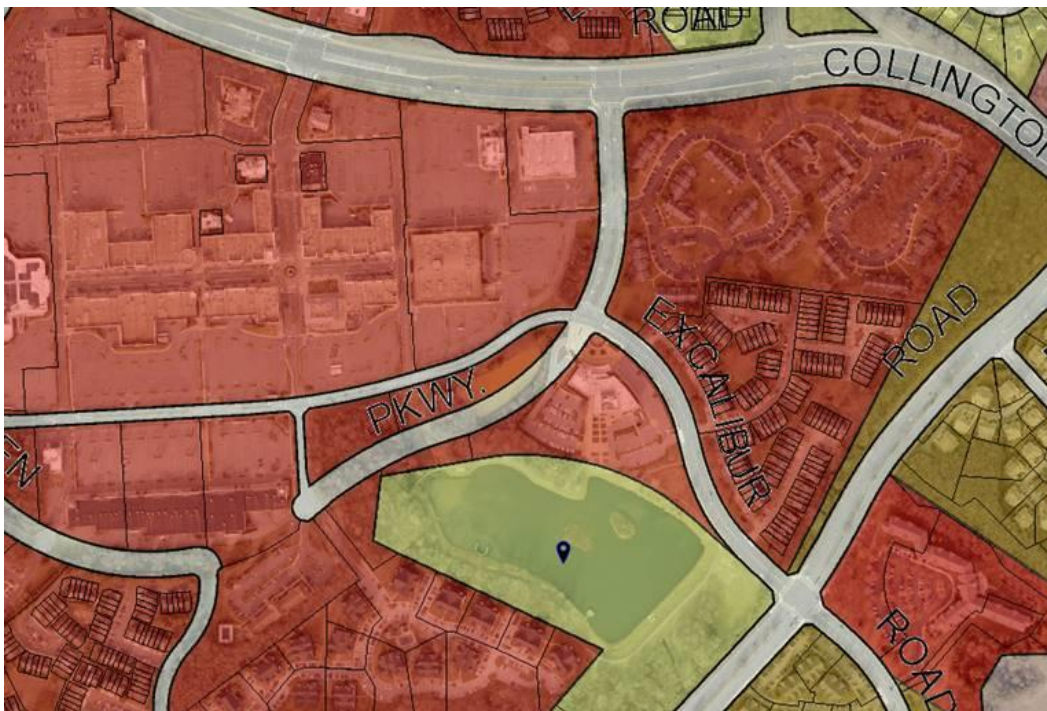
- Portions of Fairwood - (Development in MXC Zone and some of the SWM Facilities are in the R-O-S Zone):



- Rips & Ballpark Road (Home Depot, BJs and AutoZone) – (Development in the C-M Zone and SWM Facility in the R-R Zone):



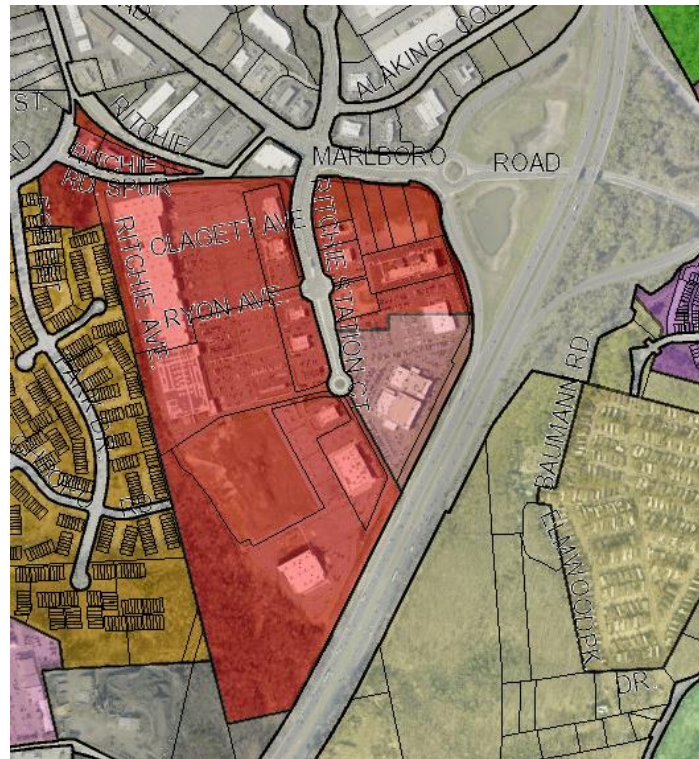
- Bowie Town Center & City Hall - (Development in the M-A-C Zone and SWM Facility in the R-S Zone) (Note this is also within the City of Bowie):



- Glenn Dale Commons (Phase 2 & 5) – (Development in the M-X-T Zone and SWM Facility in the O-S Zone):



- Ritchie Station - (Development in the C-S-C Zone and SWM Facility in ROW of Capital Beltway)



If the District Council’s assertion that stormwater management facility must be on property in the same zoning district as the development it serves is correct, a contention the applicant disagrees with, then these, and countless other projects, are now non-conforming uses. Moreover, the District Council’s contention and application of the definition of “structure” to support its position treats stormwater management facilities differently than other utilities (i.e., water, sewer, electric, gas, fiber optic, etc.) that would also meet the broad definition of a “structure.” Such an application is inconsistent with how these and other code provisions have been interpreted and administered for decades.

4. The revised site plan’s compliance with Conditions 1.c. and 1.d. in Zoning Ordinance No. 3 – 1996; and

RESPONSE: The subject property, now known as Lot 23, was resubdivided pursuant to a record plat dated July 24, 2015, and recorded in Plat Book SJH 243 at Plat No. 3. Consequently, former Lots 4 – 11, in Block 3, of the Oak Crest Subdivision (Plat Book LIB A at Plat No. 108) were consolidated into Lots 22 and 23. The subject DSP includes Lot 23 and the area of Magnolia Street that was lawfully acquired by a quiet title action for the unclaimed portion of the Magnolia Street right-of-way.

Condition 1.c.

Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.

A number of revisions have been made to the DSP and Landscape Plan in response to this remand item and zoning condition. Specifically, the dumpster has been relocated to the north – farther away from existing stub of Magnolia Street; additional landscaping has been added to former Lots 10 and 11 to provide additional buffering and screening for Lot 11; a six (6) foot privacy fence has been added along the southern boundary of former Lots 10 and 11, the eastern side of former Lot 9, and along the former centerline of Magnolia Street that was acquired by Nazario Family, LLC; a six (6) foot privacy fence was added to former Lot 10 to provide buffering and screening for former Lot 11; and additional landscaping was added to the south of new fence along the former centerline of the paper street of Magnolia Street, which conforms to the Section 4.7 Buffer. These revisions have been added to ensure that screening and buffering for Lots 14 through 17 in Block 4 is provided. This additional privacy fencing and landscaping in this area is in conformance with the Landscape Manual and provides the required screening and buffering for former Lot 11, Block 3, and former Lots 14 through 17, Block 4.

Condition 1.d.

The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant’s survey of January 1994, if feasible.

The preservation of the “large tree” on former Lot 10 is not feasible. Feasibility is defined as, “capable of being done or carried out; capable of being used or dealt with

successfully; reasonable; likely.”² The preservation of this particular tree is not reasonably likely nor could it be dealt with successfully. Given the prior development of the subject property that extended to the tree in question, this tree was previously damaged by the urban environment and development. In particular, the subject property was the former site of the Bay and Surf Restaurant and associated parking lot, which extended to and over the root zone of said tree.



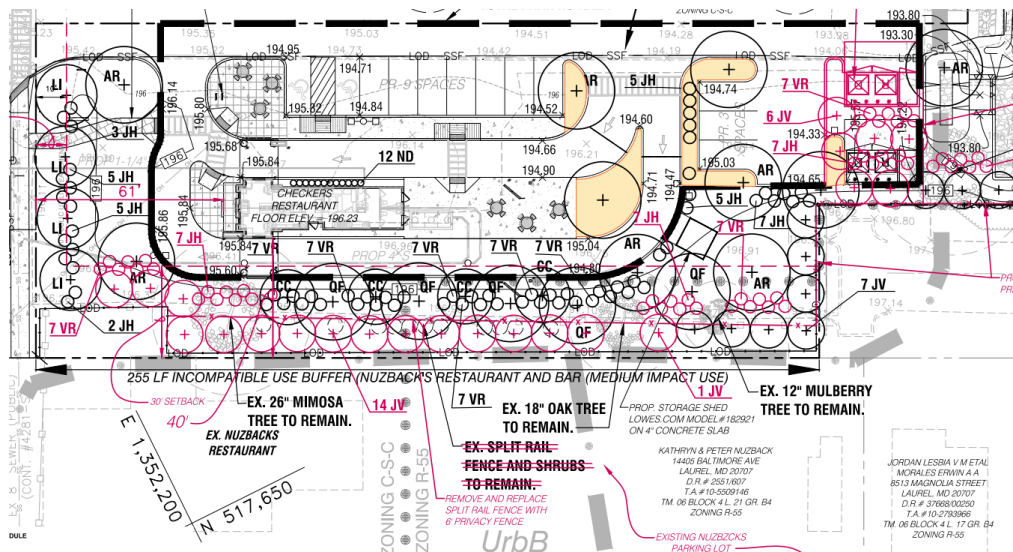
It would not be reasonable to preserve this tree, as it would require significant protection of the root system to ensure its continued viability, which would result in unreasonable costs and would substantially detract from the utility of the proposed development for its intended use, which is permitted in the C-S-C Zone. In response, however, the applicant’s landscape plan provides for the preservation of several other large existing trees in the same vicinity of the site, as well as the addition of new trees. The revised DSP and Landscape Plan now show 11 new trees being planted in the same area of the tree in question. Consequently, and notwithstanding the necessary removal of this tree, the applicant’s design more than doubles the required Tree Canopy Coverage requirement (3,659 square feet is required, and 8,411 square feet is provided).

² <https://www.merriam-webster.com/dictionary/feasible>

5. The gross acreage and zone classifications of Lot 23, including the 25-foot wide portion of the Magnolia Street right-of-way.

RESPONSE: As provided in the PGCPB No. 2020-152, and further described at the March 8, 2021 District Council oral argument hearing, the Circuit Court for Prince George’s County, in Case No.: CAE-16-10213, granted the property owner’s, Nazario Family, LLC, Motion for Summary Judgment, quieting title to the unclaimed portion of the Magnolia Street right-of-way that adjoined both Lot 23 and the property to the south, owned by the Nuzback Kathryn A. Revocable Trust, and concluded that Nazario Family, LLC acquired that portion of the right-of-way through adverse possession (i.e., the 25-foot wide portion of the paper Magnolia Street right-of-way that is the subject of Remand Item No. 5). The Court of Special Appeals, in Case No. 1323, September Term, 2017, affirmed the Circuit Court’s judgment. Pursuant to Section 27-111(a)(1) and (3), the 25-foot wide portion of the Magnolia Street right-of-way is deemed to be in the R-55 Zone, with the other portion previously consolidated into Lot 23 in the C-S-C Zone. This is graphically depicted on the revised site plan. Accordingly, the gross acreage and zone classifications for Lot 23 have been revised, and are depicted on the DSP. General Note 2 has been updated to provide the square footage of the C-S-C Zones portion of the property (25,705 square feet) and the R-55 Zoned portion of the property (10,885 square feet).

Again, the DSP has been revised to accurately show the zoning line for this portion of the 25-foot wide portion of the Magnolia Street right-of-way. Section 4.7-1(G) of the Landscape Manual provides that “[i]n the case of a lot that is located in more than one zone, the establishment of the required bufferyard is based on the platted or recorded property line(s), not the zoning line(s).” This area is owned by Nazario Family, LLC, so an easement to accommodate the additional landscaping in this portion of the property, is not required. Although the applicant does not believe that alternative compliance is required, if it is, the applicant respectfully requests the same, as the proposed bufferyard and landscape strips (either 4.7 or 4.2) are equal to or better than normal compliance. As provided, the bufferyard along the southern boundary includes a building setback that is (10) feet wider than what is required; a landscape yard that is seven (7) feet wider than what is required; a six-foot high privacy fence; and plant units that exceed the requirement.



Based on the foregoing, and the revised DSP, the applicant contends that the remand items have been satisfactorily addressed, and would respectfully request that the Planning Board re-approve DSP-20006.

As always, thank you for your continued consideration of this matter.

Respectfully submitted,



Matthew C. Tedesco, Esq.

cc: DRD Applications
James Hunt
Jill Kosack
Adam Bossi
David Warner, Esq.
Peter Goldsmith, Esq.




THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council
301-952-3600

March 25, 2021

INTRA-OFFICE MEMORANDUM

TO: James Hunt, Division Chief
Development Review Division
Maryland-National Capital Park and Planning Commission

FROM: 
DB Donna J. Brown
Clerk of the Council

RE: **DSP-20006 Checkers Laurel
Mar Chek, Inc., Applicant**

The District Council voted to remand the above referenced case to the Planning Board on March 22, 2021 for review of specific issues stated in the Order of Remand.

Attached is a copy of the Order of Remand along with a link to the [entire case file](#). If you have any questions, please contact me. Thank you.

Attachments

cc: Matthew Tedesco, Esq., Attorney for the Applicant
Raj Kumar, Principal Counsel to the District Council
Karen T. Zavakos, Zoning and Legislative Counsel
Stan Brown, People's Zoning Counsel
Cheryl Summerlin, Supervisor, M-NCPPC
Jill Kosack, Supervisor, M-NCPPC
Adam Bossi, Staff Reviewer, M-NCPPC

**County Administration Building
14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772**



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council
301-952-3600

March 24, 2021

**RE: DSP-20006 Checkers Laurel
Mar-chek, Inc., Applicant**

NOTICE OF DECISION OF THE DISTRICT COUNCIL

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on March 22, 2021.

CERTIFICATE OF SERVICE

This is to certify that on March 24, 2021, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

A handwritten signature in black ink that reads "Donna J. Brown".

Donna J. Brown
Clerk of the Council

**County Administration Building
14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772**

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

ORDER OF REMAND

IT IS HEREBY ORDERED that Detailed Site Plan 20006, a request to develop a 1,170-square-foot Checkers eating and drinking establishment with drive-through service, in the C-S-C (Commercial Shopping Center) and R-55 (One-Family Detached Residential) Zones, in Councilmanic District 1, Planning Area 62, is REMANDED, to Planning Board for further testimony or reconsideration of its decision as set forth herein. PGCC §§ 27-132(f), 27-290(d).

FINDINGS AND CONCLUSIONS

A. Introduction

Checkers¹ requests approval of a Detailed Site Plan (site plan) to construct an eating and drinking establishment, with drive-through service (the use) in two different zones. Checkers' site plan includes property in the Commercial Shopping Center (C-S-C) zone that *adjoins* property in the One-Family Detached Residential (R-55) zone, which does *not* permit the *use*. The site plan also includes a 25-foot wide strip comprised of the Magnolia Street right-of-way, which is split-zoned C-S-C and R-55.

¹ The applicant is Mar-chek, Inc. and will be referred to as Checkers. The Nazario Family, LLC is the property owner of the subject site for DSP-20006. PGCPB No. 2020-152, p. 2. PGCC § 27-282(a) (The Detailed Site Plan shall be submitted to the Planning Board by the owner of the property or his authorized representative). Here, the site plan application was signed by the owner and applicant. Application Form, 5/5/2020.

In the C-S-C zone, the *use* is permitted—*subject* to site plan approval. PGCC § 27-461(b),

Footnote 24. In the R-55 zone, the use is permitted *provided*:

(A) The property was used as a parking lot serving adjacent property in a commercial zone pursuant to a special exception approved prior to September 1, 1991.

(B) A detailed site plan shall be approved in accordance with Part 3, Division 9 of this Subtitle.

(C) Regulations concerning the net lot area, lot coverage and green area, lot/width, frontage, yards, building height, density, minimum area for development, any dimensional (bulk) requirements, and other requirements applicable for development in the R-55 Zone shall not apply.

PGCC § 27-441(b), Footnote 115 (Emphasis added).

Checkers wants to build required Stormwater Management (SWM) for the *use* in the R-55 zone. But in *this* R-55 zone, the *use* is *not* permitted because the District Council previously found that the property did *not* serve as a parking lot to the adjacent C-S-C zone property. Statement of Justification, 6/19/2020, Site Plan General Notes, (10/29/2020, Tr.), PGCPB No. 2020-152, p. 2, Zoning Ordinance No. 3 – 1996, pp. 1-4.

For reasons explained below, Planning Board shall reopen the record to take further testimony or evidence on, among other things, a revised site plan.²

B. The Subject Property

Prior to 1990, the subject property was comprised of several Lots. In 1990, Lots 4, 5 and 6 were comprehensively rezoned from R-55 to C-S-C, which at that time was improved with the

² At the evidentiary hearing, Planning Board had no questions concerning the legality of the Site Plan. A motion carried 5-0 to approve the Plan. (10/29/2020, Tr.).

Bay ‘n Surf [Seafood] Restaurant (Bay ‘n Surf).³ Lots 7-10 (used for Bay ‘n Surf parking) were retained in the R-55 zone. Lots 11-13 were also retained in the R-55 zone. 1990 Subregion I Sectional Map Amendment (1990 SMA).

In 1996, the owner of Bay ‘n Surf made a request to rezone Lots 7-13 from R-55 to C-S-C.⁴ The District Council (6-3) granted the request in part and denied it in part. Zoning Ordinance No. 3 – 1996.

Granting the request in part, Council rezoned Lots 7-10 from R-55 to C-S-C. Council concluded that the “commercial area” in the 1990 SMA logically included not *only* Bay ‘n Surf on Lots 4, 5 and 6, but *also* Bay ‘n Surf associated parking on Lots 7-10, which had been in existence for many years. Council also concluded that had that 1990 SMA rezoned Lots 7-10 to C-S-C, that would have validated [Bay ‘n Surf] existing parking lot and allowed “*sufficient amount*” of room for the appropriate *landscaping* and *buffering* as required in the Landscape Manual. Zoning Ordinance No. 3 – 1996, pp. 1-4 (Emphasis added).

Denying the request in part, Council did *not* rezone Lots 11-13 from R-55 to C-S-C. Council found that the subject property was located within the area noted as Change No. SL 3-01 in the 1990 SMA—described as “Single-family homes bounded by Magnolia and Mulberry Streets, the Baltimore & Ohio Railroad, Contee Place and east of the commercial area bordering on Baltimore Avenue.” Based on this description, Council concluded that the area *intended* to be included within the R-55 zone was that area “east of the commercial area,” which should have

³ Bay ‘n Surf opened in 1965 by owner J. Patrick Edelmann.

⁴ The request was based on grounds of mistake in the 1990 SMA.

applied *only* to Lots 11-13—not Lots 7-10. Zoning Ordinance No. 3 – 1996, pp. 1-4 (Emphasis added).

Partial rezoning of the property was subject to the following conditions:

1. The applicant shall obtain detailed site plan approval in accordance with part 3, Division 9 of the Zoning Ordinance in order to address the following:
 - a. *Use and/or redevelopment of the site shall be strictly oriented to U.S. Route 1.*
 - b. No access to the site shall be provided from improved Magnolia Street (east of the barrier).
 - c. *Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; **a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.***
 - d. The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January, 1994, if feasible.
2. Prior to the issuance of building permits, a Technical Stormwater Management Plan shall be approved by the Department of Environmental Resources Watershed Protection Branch for any improvement which increases impervious surfaces.
3. A Soils Report shall be submitted to the Natural Resources Division prior to building permit issuance addressing drainage and stability with regard to footing design. *Id.* at 4-5, Final Conditional Zoning Approval, 4/24/1996 (Emphasis added).

In 2007, Bay 'n Surf closed due to a fire and was eventually razed in 2013. At that time, Bay 'n Surf (and associated parking) was located on what was known as Lot 21 consisting of 1.25-acres. Due to a Lot line adjustment in 2014, between Lot 11 and Lot 21, Lots 22 and 23 were

created. Lot 22, consisting of .06-acres, is currently improved with a 5,500-square-foot Urgent Care Facility. PGCPB No. 14-96 (Final Plat of Subdivision 5-14093), pp.1-2, DSP-14016.

In 2015, Nazario Family, LLC filed a Plat of Correction, Lot 22 and Lot 23, Block 3, Oak Crest. The 2015 Plat incorporated into Lot 23, the 25-foot wide strip comprised of the Magnolia Street right-of-way and former Lot 11, which is comprised of .7899-acres. But this gross acreage on the Plat of Correction is different from the gross acreage of .84 indicated on the site plan application and Planning Board’s Resolution. Plat of Correction, SJH 243, Plat No. 3, 7/24/2015, Application Form, 5/5/2020, PGCPB No. 2020-152, p.1.⁵

C. Site Plan

A site plan is “an illustrated proposal for the *development* or *use* of a particular piece of real property [depicting] how the property will appear if the proposal is accepted.” *Cty. Council of Prince George’s Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018) (Emphasis added). Checkers’ site plan shows that *not all structures* for the *use* will be built or constructed in the C-S-C zone—as required in the Ordinance. PGCC § 27-461(b), Footnote 24. Checkers wants to build or construct a SWM *structure* for the *use* on former Lot 11, where the *use* has been expressly prohibited. PGCC § 27-441(b), Footnote 115, (10/29/2020, Tr.), PGCPB No. 2020-152, pp. 1-2.

When Council rezoned Lots 7-10 in 1996, it contemplated *use* and/or *redevelopment* of the “site” *rezoned to C-S-C*. Specifically for the *C-S-C zone*, 1) orientation of the use and/or

⁵ 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. PGCC § 27-141, *County Council of Prince George’s County v. Dutcher*, 365 Md. 399, 780 A.2d 1137 (2001).

redevelopment was *strictly* limited to U.S. Route 1, 2) no access was granted from improved Magnolia Street (east of the barrier), 3) screening and buffering *shall* be provided for former Lot 11, 4) preservation, if feasible, of large tree on Lot 10, 5) approval of stormwater management for any improvement [on the *C-S-C zone*] which increases impervious surfaces, and 6) a soils report addressing drainage and stability with regard to footing design [on the *C-S-C zone*].

Council *declined* to rezone former Lot 11 because it found that it was *never* used as a *parking* lot for the adjacent commercial zone. Zoning Ordinance 3 – 1996, pp. 4-5. Twenty years after declining to rezone former Lot 11 to C-S-C, Council amended the Table of Uses for the R-55 zone to prohibit this Lot from being used for an eating and drinking establishment, with drive-thru service. PGCC § 27-441(b), Footnote 115, CB-81-2016.

Checkers *incorrectly* states that “[n]o buildings *or structures* are proposed” for the *use* within the R-55 zone. Statement of Justification, 6/19/2020 (Emphasis added). A “[u]se” is either: (i) [t]he purpose for which a “[b]uilding,” “[s]tructure,” or land is designed, arranged, intended, maintained, or occupied; or (ii) [a]ny activity, occupation, business, or operation carried on in, or on, a “[b]uilding,” “[s]tructure,” *or parcel of land*. PGCC § 27-107.01(a)(244). A “[s]tructure” is defined as [a]nything constructed or built. PGCC § 27-107.01(a)(228). Development is defined as [a]ny activity that materially affects the *condition* or *use* of dry land, land underwater, or any structure. PGCC § 27-107.01(a)(66.1). *See also* Md. Code Ann., Land Use Article, § 1-101(f) (2012, 2020 Supp.) (“Development” means an activity that materially affects the existing *condition* or *use* of any *land* or structure) (Emphasis added).

Under the Ordinance and State law, Council finds that Checkers’ SWM is a *structure* that constitutes development for the *use* in the *C-S-C zone* that will materially affect the existing

condition of former Lot 11, where the *use* is expressly prohibited. *See also* 2010 Landscape Manual at 65 (DPW&T and M-NCPPC shall coordinate review of the design of all landscaping associated with stormwater management facilities *prior* to the final technical approval of the stormwater management plan by DPW&T) (Emphasis added).

D. Setbacks for C-S-C Zone

Lot 23 is comprised of a commercial zone that *adjoins* a residential zone. Setback calculations or regulations in a commercial zone from the rear yard of an *adjoining* residential zone are 25 feet *or* the buffer required in the Landscape Manual, whichever is *greater*. PGCC § 27-462 (Emphasis added). Checkers *incorrectly* indicates that C-S-C zone setback calculations are *not* applicable to final approval of its site plan. Statement of Justification, 6/19/2020. Planning Board's decision also contains *no* findings to support its conclusion that Checkers' site plan complies with required setbacks for the C-S-C zone. (10/29/2020, Tr.), PGCPB No. 2020-152, p. 4.

E. Landscape Manual Buffer Requirements

Checkers *incorrectly* indicates that buffer yards in the 2010 Landscape Manual are not required because all *adjoining* properties are compatible uses. Statement of Justification, 6/19/2020. Lot 23 is comprised of a commercial zone that *adjoins a vacant incompatible* residential zone. 2010 Landscape Manual at 74, 4.7, Buffering Incompatible Uses. Checkers' landscape plan does not conform with *all* relevant provisions of Section 4.7. Moreover, as discussed *infra*, Checkers' landscape plan also does not conform to certain rezoning conditions for *screening* and *buffering* in Zoning Ordinance 3 – 1996.

F. Zoning Ordinance No. 3 – 1996 – Rezoning Conditions

When the District Council rezoned the property in 1996, the applicant consented to the conditions in writing. Zoning Ordinance No. 3 – 1996. When a property is conditionally rezoned, those conditions shall become a permanent part of the Zoning Map Amendment and shall be *binding* for as long as the zone remains in effect on the property (*unless* amended by the Council). PGCC § 27-157(b), *Rochow v. Md. Nat'l Capital Park & Planning Comm'n*, 151 Md. App. 558, 827 A2d 927 (2003). Checkers' landscape plan does not conform to Conditions 1. c. or 1. d. in Zoning Ordinance 3 – 1996—nor has any request been made to amend any condition of rezoning.

Concerning Condition 1. c., Checkers avers that former Lot 11 is part of the site plan and existing wooded area is proposed to remain undisturbed to maintain a natural buffer to R-55 zone Lot 12. Statement of Justification, 6/19/2020. But this justification does not comply with Condition 1. c. First, former Lot 11 has been foreclosed from being used as an eating and drinking establishment, with drive-thru service. Second, Checkers' site plan is required to provide *screening* and *buffering for* former Lot 11. PGCC § 27-441(b), Footnote 115, CB-81-2016. Moreover, the 1996 rezoning of the site *also* requires Checkers to *provide landscaping* and *screening* on a *portion* of Lots 8 and 9.

Concerning Condition 1. d., Checkers propose to remove the 27' Oak Tree due to the limited site area available for the 100-peak discharge management facility required for sites located within the Bear Branch watershed. Statement of Justification, 6/19/2020. Planning Board concluded (without *any* findings) that preservation of the large tree in Condition 1. d. “was determined to not be feasible.” PGCPB No. 2020-152, p. 5.

G. Conclusion

Having concluded that the *use* on former Lot 11 is expressly prohibited in the Ordinance, the applicant shall submit a revised site plan that excludes former Lot 11 and any other R-55 zone portion of the property that is not permitted to serve the commercial zone and the *use* of an eating and drinking establishment, with drive-thru service. PGCC § 27-441(b), Footnote 115, CB-81-2016.

Planning Board shall reopen the record to take further testimony or evidence on:

1. The revised site plan’s compliance with the setback requirements of the C-S-C zone;
2. The revised site plan’s compliance with the requirements of the 2010 Landscape Manual for incompatible uses;
3. The revised site plan’s inclusion of residential property to satisfy the 2010 Landscape Manual standards to serve a commercial zone or use;
4. The revised site plan’s compliance with Conditions 1. c. and 1. d. in Zoning Ordinance No. 3 – 1996; and
5. The gross acreage and zone classifications of Lot 23, including the 25-foot wide portion of the Magnolia Street right-of-way.

ORDERED this 22nd day of March, 2021, by the following vote:

In Favor: Council Members Anderson-Walker, Davis, Dernoga, Glaros, Harrison, Hawkins, Ivey, Streeter, Taveras, and Turner.


Opposed:

Abstained:

Absent: Council Member Franklin.

Vote: 10-0.

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

By: 

Calvin S. Hawkins, II, Chair

ATTEST:



Donna J. Brown
Clerk of the Council

STATEMENT OF JUSTIFICATION

CHECKERS LAUREL 2, DSP-20006

Description of proposed use/request:

Construction of a Checkers Restaurant, parking, sidewalks and landscaping on a 0.84 acre previously developed parcel in the C-S-C Zone.

Description and location of the subject property:

The project site is located at 14411 Baltimore Avenue in Laurel along the east side of US Route 1 in Prince George's County, Maryland. The site is Lot 23 and it is located within the C-S-C zone in the Oak Crest subdivision and comprises a total of 0.84 acres. A small area of R-55 zoned property is located at back of site that is not to be disturbed. A recently constructed Urgent Care building is located at 14421 Baltimore Avenue, adjacent to Lot 23 to the north, vacant residential lots to the east and Nuzback's Bar is located on the adjacent site to the south. Access to the site is from Baltimore Avenue through a shared use access easement that is shared with the Urgent Care site next door. The project site consists of a portion of the remaining pavement from the former "Bay N Surf" restaurant parking lot and grass area. There are no non-tidal wetlands, steep slopes, floodplains or streams located on this site.

Variance Request/s and required findings for each request:

None.

Rezoning Request A-9908-C

The conditions and proposed conformance to the conditions of the A-9908-C rezoning approval are:

1) The applicant shall obtain detailed site plan approval in accordance with part 3, Division 9 of the Zoning Ordinance in order to address the following:

a. Use and/or redevelopment of the site shall be strictly oriented to U.S. Route 1.

Response: The front of the Checkers building will face U.S. Route 1.

b. No access to the site shall be provided from Magnolia Street (east of the barrier.)

Response: No site access to or from Magnolia Street is proposed.

- c. Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.

Response: Lot 11 is part of the Checkers site property at the eastern boundary and is mostly wooded. The existing wooded area is proposed to remain undisturbed to maintain a natural buffer to Lot 12 which is zoned R-55.

- d. The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January, 1994, if feasible.

Response: The large tree refers to an existing 27" oak tree located adjacent to Magnolia Street. The oak tree is proposed to be removed due to the limited site area available for the 100-year peak discharge management facility required for sites located within the Bear Branch watershed and to leave undisturbed the existing wooded area adjacent to Lot 12. The oak tree is to be replaced by four Eastern Red Cedar trees (maximum height 40'-60' and maximum spread of 20') and one Red Maple tree. We are, however preserving the existing 26" Mimosa tree, the 18" Oak tree and the 12" Mulberry tree all located along the south boundary of the site.

- 2) Prior to the issuance of building permits, a Technical Stormwater Management Plan shall be approved by the Department of Environmental Resources Watershed Protection Branch for any improvement which increases impervious surface.

Response: The Detailed Site Plan including the Technical Stormwater Management design (#1682-2020-0) is currently in the approval/bonding process.

- 3) A Soils Report shall be submitted to the Natural Resources Division prior to building permit issuance addressing drainage and stability with regard to footing design.

Response: A Soils Report regarding footing design will be submitted to the Natural Resources Division prior to building permit issuance.

Conformance to R-55 Zoning Requirements

b) Uses

(1) No residential development is proposed under this Detailed Site Plan within the R-55 zone. Wooded area is being preserved within the R-55 zoning area of this site.

c) Regulations

(1) No buildings or structures are proposed under this Detailed Site Plan within the R-55 zone.

Conformance to C-S-C Zoning Requirements

Division 1.-General

Sec. 27-447.- Fences and Walls – Neither walls nor fences are proposed under this DSP.

Sec. 27-448.01- Frontage – The site has frontage on and direct access to a public street.

Sec. 27-449.- Extensions and Projections –

- (a) (1) No projections or extensions are proposed beyond the building lines.
- (2) No tents are proposed.
- (b) The proposed building canopy will not extend beyond the building lines.

Sec. 27-450.- Landscaping, Screening and Buffering – Proposed landscaping, screening and buffering are in accordance with requirements of the Landscape Manual.

Sec. 27-451.- Swimming Pools – No swimming pools are proposed.

Sec. 27-451.01.- Satellite Dish Antennas – No antennas of any kind are proposed.

Division 2.- C-S-C Zone

- (b) Landscaping and Screening - Proposed landscaping, screening and buffering are in accordance with requirements of the Landscape Manual.

Division 3.-Uses.-

- (1) Eating and drinking establishments with drive-through service is an allowed use subject to DSP approval.

Division 4.- Regulations .-

SETBACK CALCULATIONS (SECTION 27-462)

SETBACK	REQUIREMENT	NOTES
FROM STREET	10'	PROVIDED
FROM SIDE LOT LINE OF ADJOINING LAND IN ANY RESIDENTIAL ZONE:		
SIDE YARD	12' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER	N/A
REAR YARD	25' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER	N/A
FROM REAR LOT LINE OF ADJOINING LAND IN ANY RESIDENTIAL ZONE:		
SIDE YARD	12' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER	N/A
REAR YARD	25' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER	N/A
FROM ADJOINING LAND IN ANY NONRESIDENTIAL ZONE	NONE, EXCEPT WHERE BUILDING IS 30 FEET HIGH, A DISTANCE EQUAL TO 1/3 THE TOTAL BUILDING HEIGHT OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER	N/A

NOTE: LANDSCAPE MANUAL SECTION 4.7 BUFFERYARDS ARE NOT REQUIRED. ALL ADJOINING PROPERTIES ARE COMPATIBLE USES.

Division 5.-Additional Requirements for Specific Uses.- Not applicable

Part 11. – Off-Street Parking and Loading –

PARKING TABLE

USE: EATING ESTABLISHMENT INCLUDING DRIVE THROUGH SERVICE AND CARRYOUT
BUILDING GFA = 1,170 SQ. FT.
INTERIOR PATRON SEATS: 0
EXTERIOR PATRON SEATS: 24

PARKING CALCULATION

24 EXTERIOR SEATS/3 SEATS PER SPACE = 9 SPACES REQUIRED
1,170 SQ.FT. GFA /1 SPACE /50 SQ.FT. OF GFL
OR 1,170 SQ.FT. GFA - *EXTERIOR SEATING AND PATRON SERVICE AREA OF 975 SQ.FT. = 195 SQ.FT.
195 SQ.FT. ADJUSTED GFA/1 SPACE/50 SQ.FT. = 4 SPACES REQUIRED
PARKING SPACES REQUIRED = 9
PARKING SPACES PROVIDED = 12
PARKING SPACE SIZE: 9.5' x 19'
** LOADING SPACES REQUIRED = 0
HANDICAP PARKING SPACES REQUIRED = 2
HANDICAP PARKING SPACES PROVIDED = 2 INCLUDING 1 VAN ACCESSIBLE SPACE
HANDICAP PARKING SPACE SIZE: 8.0' x 19'

*PGCO CODE SEC. 27-568

**PGCO CODE SEC. 27-582

Part 12. – Signs –

PROPOSED SIGN CONFORMANCE TABLE

FREESTANDING MONUMENT SIGN

USE: COMMERCIAL

REQUIRED BUILDING SETBACK FROM FRONT STREET LINE = 40 FT.

PROVIDED BUILDING SETBACK FROM FRONT STREET LINE = 61 FT.

REQUIRED DISTANCE FROM STREET LINE TO PROPOSED SIGN = 10 FT.

PROVIDED DISTANCE FROM STREET LINE TO SIGN = 10 FT.

MAXIMUM SIGN HEIGHT ALLOWED = 25 FT.

PROPOSED SIGN HEIGHT PROVIDED = 11.2 FT.

LINEAL FEET OF STREET FRONTAGE = 225.3 L.F.

MAXIMUM AREA OF SIGN ALLOWED: STREET FRONTAGE 225.3 L.F./4 L.F. PER 1 SQ.FT. OF SIGNAGE = 56.33 SQ.FT.

PROPOSED AREA OF DOUBLE SIDED LOGO SIGN: 28 SQ.FT. x 2 = 56 SQ.FT. < 56.33 SQ. FT. ALLOWED. PROPOSED SIGN IN COMPLIANCE

QUANTITY OF FREESTANDING SITE SIGNS ALLOWED: FROM 100 - 1,100 L.F. STREET FRONTAGE 1 SIGN IS ALLOWED

QUANTITY OF FREESTANDING SITE SIGNS PROVIDED: 1

CANOPY SIGNS

USE: COMMERCIAL

REQUIRED BUILDING SETBACK FROM FRONT STREET LINE = 40 FT.

PROVIDED BUILDING SETBACK FROM FRONT STREET LINE = 61 FT.

MAXIMUM SIGN HEIGHT ALLOWED = 12 FT. ABOVE ROOFLINE

PROPOSED SIGN HEIGHT PROVIDED = BELOW ROOFLINE

LINEAL FEET OF FRONT OF BUILDING = 19 FT.

MAXIMUM FRONT CANOPY SIGN AREA ALLOWED = 60 SQ.FT.

PROPOSED AREA OF FRONT CANOPY SIGN: 28.88 SQ.FT. < 60 SQ. FT. ALLOWED. PROPOSED FRONT CANOPY SIGN IN COMPLIANCE

MAXIMUM AREA OF MULTIPLE CANOPY SIGNS ALLOWED: BUILDING FRONT DIMENSION 19 FT. x 2 SQ.FT. OF SIGNAGE PER 1 L.F. OF BUILDING FRONT DIMENSION = 38 SQ.FT. EACH SIGN

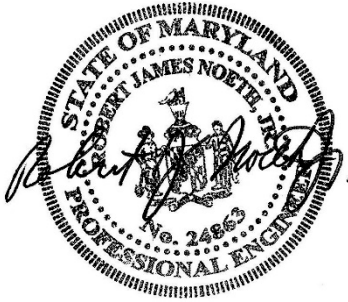
PROPOSED AREA OF SIDE CANOPY SIGN : 28.88 SQ.FT. < 38 SQ. FT. ALLOWED. PROPOSED SIDE CANOPY SIGNS IN COMPLIANCE

BASED ON PGCO CODE SEC. 27-614

Landscape Manual - Proposed landscaping, screening and buffering are in accordance with requirements of the Landscape Manual.

Summary/conclusion of request:

Approval of a Detailed Site Plan is requested for construction of a Checkers Restaurant located on a previously developed site upon which there are no environmentally sensitive areas.



Agent for Owner

6/19/2020



THE PRINCE GEORGE'S COUNTY GOVERNMENT

App w/c
Lots 7, 8, 9, 10

Office of the Clerk of the Council
(301) 952-3600

May 3, 1996


RE: A9908-C (J. Patrick Edelmann)

NOTICE OF FINAL DECISION
OF THE DISTRICT COUNCIL

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland, requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in your case on February 6, 1996.

CERTIFICATE OF SERVICE

This is to certify that on May 3, 1996 this notice and attached Council Order were mailed, postage prepaid, to all persons of record.



Joyce T. Sweeney
Clerk of the Council

(3/93)

Case No.: A-9908-C

Applicant: J. Patrick Edelman

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

ZONING ORDINANCE NO. 3 - 1996

AN ORDINANCE to amend the Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland, subject to conditions.

WHEREAS, Application No. A-9908-C has been filed for property described as approximately 52,500 square feet of land, in the R-55 Zone, located on the north side of Magnolia Street, west of Clarke Avenue, Laurel, to rezone the property to the C-S-C Zone; and

WHEREAS, the application was advertised and the property posted prior to public hearing, in accordance with all requirements of law; and

WHEREAS, the application was reviewed by the Technical Staff and the Planning Board, who have filed recommendations with the District Council; and

WHEREAS, a public hearing was held before the Zoning Hearing Examiner; and

WHEREAS, the Zoning Hearing Examiner's recommendations were duly filed with and considered by the District Council; and

WHEREAS, having reviewed the record in this case, the District Council has determined that a portion of the subject property should be rezoned to the C-S-C Zone; and

WHEREAS, in order to protect adjacent properties and the surrounding neighborhood, the rezoning herein is granted with conditions; and

WHEREAS, as the basis for this action, the District Council adopts the following as its findings of fact and conclusions of law in this case:

1. The District Council finds that the subject property consists of Lots 7-13, Block 3, Oakcrest Subdivision, located east of U.S. Route 1 (Baltimore Avenue), north of Magnolia Street, and west of Clarke Avenue in an unincorporated area of Prince George's County.
2. The District Council finds that the existing zoning is R-55, which was imposed upon the subject property through the Subregion I Sectional Map Amendment, adopted in October 1990. The Applicant requests the C-S-C Zone for this property.
3. The District Council finds that the Applicant alleges mistake in that subregion I SMA, for several reasons, including the following:
 - a. The Subregion I Master Plan map, approved in March, 1990, indicated the entire subject property recommended for retail commercial uses.
 - b. The Planning Staff stated that this recommendation was in error, and should have been applied to properties north of the subject property.
 - c. Within the Subregion I Master Plan, a commercial overlay zone was recommended for properties within the Oakcrest area, on the east side of U.S. Route 1, to a depth of approximately 300 feet. The Planning Staff has stated that had the retail commercial triangle been properly located north of the subject property, the subject property would have been included within the area shown for the proposed commercial overlay zone.

- d. Within the Subregion I SMA transmittal, the subject property was located within the area noted as Change No. SL 3-01. This area was described as "Single-family homes bounded by Magnolia and Mulberry Streets, the Baltimore & Ohio Railroad, Contee Place and east of the commercial area bordering on Baltimore Avenue." The applicant submits that the "commercial area bordering on Baltimore Avenue" included not only the Bay & Surf Restaurant fronting on Baltimore Avenue, but also the associated parking, currently existing on Lots 7-10 as well.
4. The District Council finds that Lots 7, 8, 9, and part of 10 are currently paved, and serve as existing parking for the Bay & Surf Restaurant, which is located on Lots 4, 5 and 6 fronting on U.S. Route 1. Parking also currently exists within the right-of-way of Magnolia Street, from U.S. Route 1 east to a concrete barrier located on the eastern boundary of Lot 18, Block 4. This parking has existed for at least 25-30 years in this location.
 5. The District Council finds the homes currently existing on Lots 14-17, Block 4, located on the south side of Magnolia Street across from the subject property, were constructed no earlier than 1992, after the adoption of the Subregion I SMA.
 6. The District Council finds that the residents currently living in the homes on Lots 14-17, Block 4, were aware of the existing parking lot for the Bay & Surf Restaurant, as described above, at the time they purchased and occupied these homes.
 7. The District Council finds that Mr. Stephen Wells, owner of the home located on Lot 17, Block 4, and Mr. James Hayes, owner of the home located on Lot 15, Block 4, expressed their opposition to this Application, indicating their concern that a commercial rezoning of the entire request could result in construction of a commercial building on Lots 11-13, Block 3, immediately across from their homes.
 8. The District Council finds that while the SMA zoning recommendation of R-55 for the subject property differed from the recommendation in the Master Plan Map for retail commercial uses, no explanation was ever given to explain this difference.

9. The District Council concludes that had the District Council been aware of the mistaken location of the retail commercial triangle upon the subject property, the commercial overlay zone would have been applied to the subject property. Had that occurred, Lots 7-10 upon the subject property would have been zoned C-S-C, since this would have validated the existing parking lot serving the Bay & Surf Restaurant on Lots 4, 5, and 6, and allowed a sufficient amount of room for the appropriate landscaping and buffering as required in the Landscape Manual.
10. The District Council concludes that the description of Change No. SL 3-01 within the Subregion I SMA transmittal described the area intended to be included within the R-55 zone as that area "east of the commercial area", which, it is found, should have applied only to Lots 11-13. The "commercial area" logically included not only the Bay & Surf Restaurant on Lots 4, 5 and 6, but also its associated parking on Lots 7-10, which had been in existence for many years at the time of the SMA consideration by the District Council.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. The Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland, is further hereby amended by rezoning a portion of the property, being Lots 7, 8, 9, and 10, which is the subject of Application No. A-9908-C from the R-55 Zone to the C-S-C Zone. The request to rezone Lots 11, 12 and 13 from the R-55 to the C-S-C zone is denied.

SECTION 2. Application No. A-9908-C is approved subject to the following conditions:

1. The applicant shall obtain detailed site plan approval in accordance with part 3, Division 9 of the Zoning Ordinance in order to address the following:
 - a. Use and/or redevelopment of the site shall be strictly oriented to U.S. Route 1.
 - b. No access to the site shall be provided from improved Magnolia Street (east of the barrier).

- c. Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.
 - d. The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January, 1994, if feasible.
2. Prior to the issuance of building permits, a Technical Stormwater Management Plan shall be approved by the Department of Environmental Resources Watershed Protection Branch for any improvement which increases impervious surface.
 3. A Soils Report shall be submitted to the Natural Resources Division prior to building permit issuance addressing drainage and stability with regard to footing design.

SECTION 3. BE IT FURTHER ENACTED that this Ordinance shall become effective on the date of its enactment.

Enacted this 6th day of February, 1996, for initial approval, by the following vote:

In Favor: Council Members Del Giudice, Bailey, Estepp, MacKinnon, Scott and Wilson

Opposed: Council Members Gourdine, Maloney, and Russell

Abstained:

Absent:

Vote: 6-3

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

BY: *Stephen J. Del Giudice*
Stephen J. Del Giudice, Chairman

ATTEST:

Joyce T. Sweeney
Joyce T. Sweeney
Clerk of the Council

Case No.: A-9908-C

Applicant: J. Patrick Edelmann

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

FINAL CONDITIONAL ZONING APPROVAL

AN ORDINANCE to incorporate the applicant's acceptance of conditional zoning and to grant final conditional zoning approval.

WHEREAS, the District Council in approving Application No. A-9908-C, to rezone the subject property from the R-55 zone to the C-S-C zone, attached certain conditions; and

WHEREAS, the applicant has duly consented in writing to the conditions; and

WHEREAS, the District Council, having reviewed the application and the administrative record, deems it appropriate to accept the applicant's consent to the conditions and to approve final conditional rezoning.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. Final conditional zoning approval of Application No. A-9908-C is hereby granted. The applicant's written acceptance of the conditions referred to above, at the time of initial conditional zoning approval, is hereby incorporated into this amendment of the Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland.


SECTION 2. Use of the subject property as conditionally reclassified shall be subject to all requirements in the applicable zones and to the requirements in the conditions referred to above. Failure to comply with any stated condition shall constitute a zoning violation and shall be sufficient ground

for the District Council to annul the rezoning approved herein; to revoke use and occupancy permits; to institute appropriate civil or criminal proceedings; or any other action deemed necessary to obtain compliance.

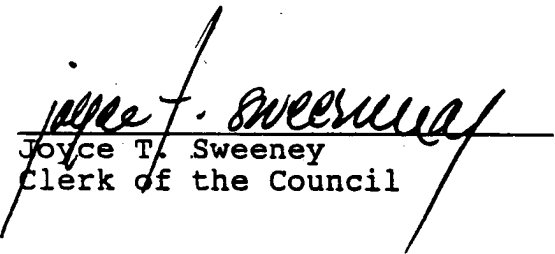
SECTION 3. This ordinance shall take effect on Wednesday, April 24, 1996, the date of receipt of acceptance by the applicant(s) of the condition(s) imposed in Zoning Ordinance No. 3-1996.

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

BY:


Stephen J. Del Giudice
Chairman

ATTEST:

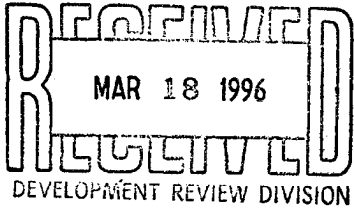

Joyce T. Sweeney
Clerk of the Council



THE PRINCE GEORGE'S COUNTY GOVERNMENT

P.G. PLANNING DEPARTMENT

Office of the Clerk of the Council
(301) 952-3600



March 8, 1996

DISTRICT COUNCIL PRELIMINARY NOTICE OF CONDITIONAL ZONING APPROVAL

ZONING SECTION

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland, requiring notice of decision of the District Council, a copy of the Council Order granting preliminary conditional zoning approval of ZMA A- 9908-C on February 6, 1996, is attached.

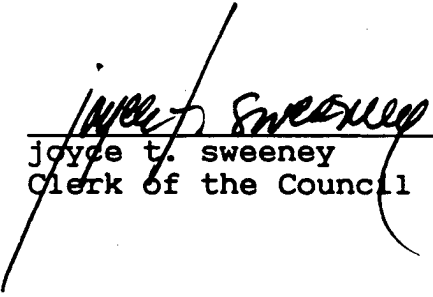
In compliance with the provisions of Section 27-157(b) of the Zoning Ordinance, the applicant must file a written acceptance or rejection of the land use classification as conditionally approved within ninety (90) days from the date of approval by the District Council. Upon receipt by the Clerk's Office of a written acceptance by the applicant, a final Order will be issued with an effective date for conditional approval shown as the date written acceptance was received by the Clerk's Office.

The failure to accept the conditions in writing within ninety (90) days from the date of approval shall be deemed a rejection. Rejection shall void the Map Amendment and revert the property to its prior zoning classification.

Written approval or rejection of conditions must be received by the Clerk's Office no later than the close of business (5:00 p.m.) on May 6, 1996.

CERTIFICATE OF SERVICE

This is to certify that on March 8, 1996, this notice and attached Order were mailed, postage prepaid, to the attorney/ correspondent and applicant(s). Notice of final approval will be sent to all persons of record.



Joyce T. Sweeney
Clerk of the Council

(3/93)

County Administration Building — Upper Marlboro, Maryland 20772

- c. Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.
 - d. The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January, 1994, if feasible.
2. Prior to the issuance of building permits, a Technical Stormwater Management Plan shall be approved by the Department of Environmental Resources Watershed Protection Branch for any improvement which increases impervious surface.
 3. A Soils Report shall be submitted to the Natural Resources Division prior to building permit issuance addressing drainage and stability with regard to footing design.

SECTION 3. BE IT FURTHER ENACTED that this Ordinance shall become effective on the date of its enactment.

Enacted this 6th day of February, 1996, for initial approval, by the following vote:

In Favor: Council Members Del Giudice, Bailey, Estep, MacKinnon, Scott and Wilson

Opposed: Council Members Gourdine, Maloney, and Russell

Abstained:

Absent:

Vote: 6-3

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

BY: *Steph J. Del Giudice*
Steph J. Del Giudice, Chairman

ATTEST:

Joyce T. Sweeney
Joyce T. Sweeney
Clerk of the Council

- d. Within the Subregion I SMA transmittal, the subject property was located within the area noted as Change No. SL 3-01. This area was described as "Single-family homes bounded by Magnolia and Mulberry Streets, the Baltimore & Ohio Railroad, Contee Place and east of the commercial area bordering on Baltimore Avenue." The applicant submits that the "commercial area bordering on Baltimore Avenue" included not only the Bay & Surf Restaurant fronting on Baltimore Avenue, but also the associated parking, currently existing on Lots 7-10 as well.
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5. The District Council finds the homes currently existing on Lots 14-17, Block 4, located on the south side of Magnolia Street across from the subject property, were constructed no earlier than 1992, after the adoption of the Subregion I SMA.
6. The District Council finds that the residents currently living in the homes on Lots 14-17, Block 4, were aware of the existing parking lot for the Bay & Surf Restaurant, as described above, at the time they purchased and occupied these homes.
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8. The District Council finds that while the SMA zoning recommendation of R-55 for the subject property differed from the recommendation in the Master Plan Map for retail commercial uses, no explanation was ever given to explain this difference.

9. The District Council concludes that had the District Council been aware of the mistaken location of the retail commercial triangle upon the subject property, the commercial overlay zone would have been applied to the subject property. Had that occurred, Lots 7-10 upon the subject property would have been zoned C-S-C, since this would have validated the existing parking lot serving the Bay & Surf Restaurant on Lots 4, 5, and 6, and allowed a sufficient amount of room for the appropriate landscaping and buffering as required in the Landscape Manual.
10. The District Council concludes that the description of Change No. SL 3-01 within the Subregion I SMA transmittal described the area intended to be included within the R-55 zone as that area "east of the commercial area", which, it is found, should have applied only to Lots 11-13. The "commercial area" logically included not only the Bay & Surf Restaurant on Lots 4, 5 and 6, but also its associated parking on Lots 7-10, which had been in existence for many years at the time of the SMA consideration by the District Council.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. The Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland, is further hereby amended by rezoning a portion of the property, being Lots 7, 8, 9, and 10, which is the subject of Application No. A-9908-C from the R-55 Zone to the C-S-C Zone. The request to rezone Lots 11, 12 and 13 from the R-55 to the C-S-C zone is denied.

SECTION 2. Application No. A-9908-C is approved subject to the following conditions:

1. The applicant shall obtain detailed site plan approval in accordance with part 3, Division 9 of the Zoning Ordinance in order to address the following:
 - a. Use and/or redevelopment of the site shall be strictly oriented to U.S. Route 1.
 - b. No access to the site shall be provided from improved Magnolia Street (east of the barrier).

Case No.: A-9908-C

Applicant: J. Patrick Edelmann

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

ZONING ORDINANCE NO. 3 - 1996

AN ORDINANCE to amend the Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland, subject to conditions.

WHEREAS, Application No. A-9908-C has been filed for property described as approximately 52,500 square feet of land, in the R-55 Zone, located on the north side of Magnolia Street, west of Clarke Avenue, Laurel, to rezone the property to the C-S-C Zone; and

WHEREAS, the application was advertised and the property posted prior to public hearing, in accordance with all requirements of law; and

WHEREAS, the application was reviewed by the Technical Staff and the Planning Board, who have filed recommendations with the District Council; and

WHEREAS, a public hearing was held before the Zoning Hearing Examiner; and

WHEREAS, the Zoning Hearing Examiner's recommendations were duly filed with and considered by the District Council; and

WHEREAS, having reviewed the record in this case, the District Council has determined that a portion of the subject property should be rezoned to the C-S-C Zone; and

WHEREAS, in order to protect adjacent properties and the surrounding neighborhood, the rezoning herein is granted with conditions; and

WHEREAS, as the basis for this action, the District Council adopts the following as its findings of fact and conclusions of law in this case:

1. The District Council finds that the subject property consists of Lots 7-13, Block 3, Oakcrest Subdivision, located east of U.S. Route 1 (Baltimore Avenue), north of Magnolia Street, and west of Clarke Avenue in an unincorporated area of Prince George's County.
2. The District Council finds that the existing zoning is R-55, which was imposed upon the subject property through the Subregion I Sectional Map Amendment, adopted in October 1990. The Applicant requests the C-S-C Zone for this property.
3. The District Council finds that the Applicant alleges mistake in that subregion I SMA, for several reasons, including the following:
 - a. The Subregion I Master Plan map, approved in March, 1990, indicated the entire subject property recommended for retail commercial uses.
 - b. The Planning Staff stated that this recommendation was in error, and should have applied to properties north of the subject property.
 - c. Within the Subregion I Master Plan, a commercial overlay zone was recommended for properties within the Oakcrest area, on the east side of U.S. Route 1, to a depth of approximately 300 feet. The Planning Staff has stated that had the retail commercial triangle been properly located north of the subject property, the subject property would have been included within the area shown for the proposed commercial overlay zone.

OFFICE OF ZONING HEARING EXAMINER
FOR PRINCE GEORGE'S COUNTY, MARYLAND

A-9908 (J. Patrick Edelmann)
Case Number

NOTICE OF DECISION

On the 22nd day of August, 1995, the attached Decision of the Zoning Hearing Examiner in Case No. A-9908 was filed with the District Council. This is not the final decision, only the recommendation of the Hearing Examiner to the District Council.

Within 30 calendar days after the above date, any person of record may file exceptions with the Clerk of the Council to any portion of this Decision, and may request oral argument thereon before the District Council.* If oral argument is requested, all persons of record will be notified of the date scheduled for oral argument before the District Council. In the event no exception or request for oral argument is filed with the Clerk of the Council within 30 calendar days from the above date, the District Council may act upon the application and must decide within 120 days or the case will be considered denied. Persons of record will be notified in writing of the action of the District Council.

Zoning Hearing Examiner
County Administration Building
Upper Marlboro, MD 20772

* Instructions regarding exceptions and oral argument are found on the reverse side of this notice.

- CC: Lawrence N. Taub, Esquire, 9200 Basil Court, Suite 300, Landover, MD 20785
- Karen L. Plumer, Esquire, Levan, Schimel, Belman & Abramson, 9881 Broken Lane Parkway, Columbia, MD 21046
- The Honorable Frank P. Casula, Mayor of Laurel, 8103 Sandy Spring Road, Laurel, MD 20707
- J. Patrick Edelmann, 14411 Baltimore Avenue, Laurel, MD 20707
- Karl D. Brendle, 350 Municipal Square, Laurel, MD 20707
- Alex and Jan Drew, 7015 Wake Forest Drive, College Park, MD 20740
- James Hayes, 8517 Magnolia Street, Laurel, MD 20707
- Albert Heyser, Heyser Cycle Center, 1300 Washington Boulevard, Laurel, MD 20707
- Edwin Jones, 8519 Magnolia Street, Laurel, MD 20707
- Hazel Patterson, 8519 Catalpa Street, Laurel, MD 20707
- Susan Poe, 8103 Sandy Spring Road, Laurel, MD 20707
- Stephen Wells, 8513 Magnolia Street, Laurel, MD 20707
- Mary Williams, Oakcrest Development Corporation, 7833 Walker Drive, Suite 620, Greenbelt, MD 20770
- Joel D. Rozner, People's Zoning Counsel, County Administration Building, 2nd Floor, Upper Marlboro, MD 20772

INSTRUCTIONS FOR FILING

I. Exception(s) Taken to the Examiner's Decision Shall Be:

- a) In writing;
- b) Numbered in sequence;
- c) Specific as to the error(s) which are claimed to have been committed by the Examiner;

(The page and paragraph numbers of the Examiner's Decision should be identified.)

- d) Specific as to those portions of the record, including the Hearing Examiner's Decision, relied upon to support your allegation of error(s) committed by the Examiner.

(The exhibit number, transcript page number, and/or the page and paragraph numbers of the Examiner's Decision should be identified.)

II. Requests for Oral Argument:

If you desire oral argument before the District Council, request must be made, in writing, at the time of filing your exception(s).

III. Notification to All Persons of Record:

Your request for oral argument and/or exception(s) must contain a certificate of service to the effect that a copy thereof was sent by you to all persons of record by regular mail.

(A list of these persons and their addresses is included in this notice of Examiner's Decision sent to you herewith or is available from the Clerk of the Council.)

IV. When to File:

Your request for oral argument and/or exceptions must be filed within 30 calendar days after the Examiner's Decision has been filed with the District Council.

V. Where to File:

Clerk of the County Council
County Administration Building
Upper Marlboro, Maryland 20772
Phone: 952-3600

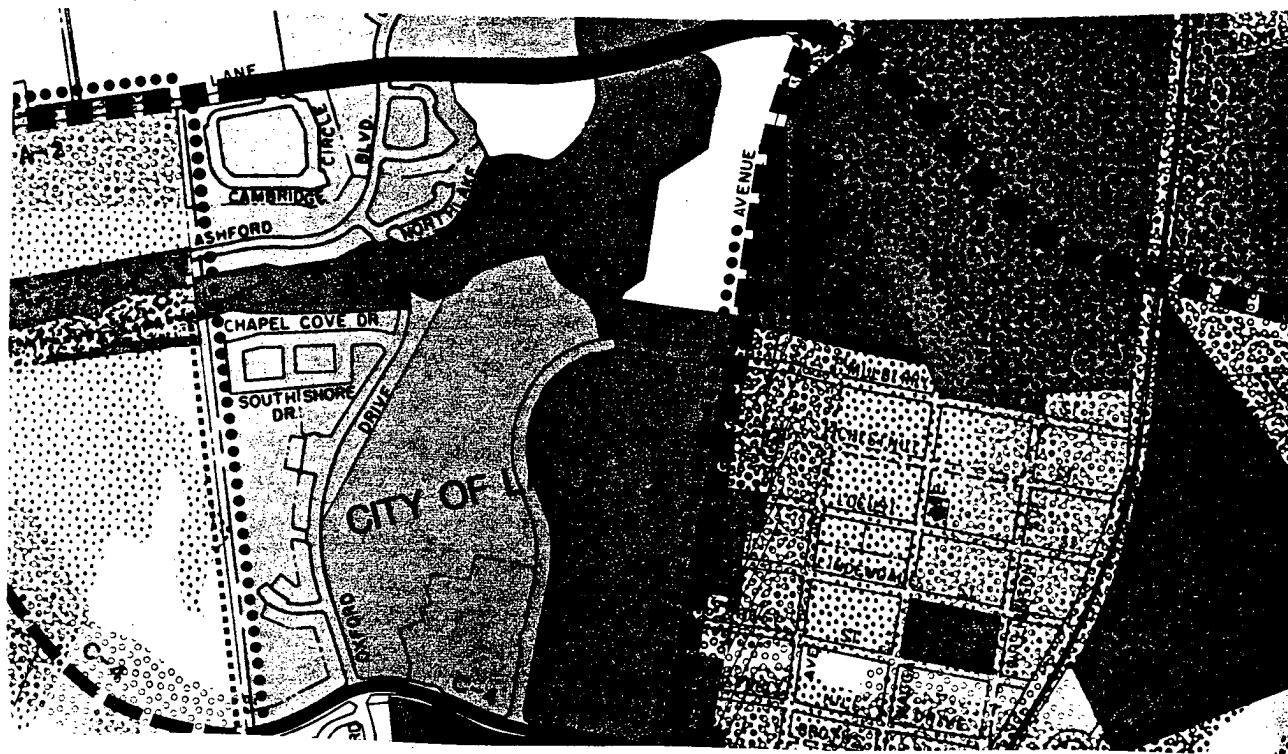
INSTRUCTIONS FOR REPLY TO EXCEPTIONS FILED
AND ORAL ARGUMENT REQUESTED

If you are notified that another person of record has requested oral argument, you may:

- 1) Participate in the hearing if there is oral argument, and/or
- 2) Reply, in writing, to the exceptions taken by the other person. Such reply must be served on the Clerk and all other persons of record no later than five (5) business days before the date of oral argument.

(7) The zones of the various properties mentioned above were approved when a comprehensive zoning map was adopted October 2, 1990. The subject property had been zoned R-R just prior thereto. The restaurant property was zoned C-H prior to the new map. The I-1 areas had been zoned I-1.¹

(8) The zones approved for Oakcrest in the SMA are for the most part recommended in the Master Plan. The applicant claims that this is not true for the subject property, that the Master Plan map showed it for commercial but it was instead zoned residential. The Plan map by coloration does show retail commercial for all that area from half way down Block 4, between Magnolia Lane and Mulberry Street up to Oak Street above Block 3, in the same color. The fact that this is in error and, more particularly so as to the subject property, is evidenced in the accompanying SMA map, the one on the reverse side of the Plan map and the one on p. 241 of the text. Both these maps show the property in Change Number SL3-01, R-R to R-55. These properties



(M.P. Map)

¹Apparently, the southern half of those lots next adjoining the subject property were zoned R-R and the northern half I-1 prior to 1975. (South Laurel SMA Proposal 1975, P. 129, A-9070) They were zoned I-1 in the 1975 SMA.

DISCUSSION

(1) The subject property is specifically addressed in the SMA summary text, page 75-77, under Change Number SL3-01, South Laurel Area Analysis Area 3. A map on page 76 locates the property in the R-R Residential Zone. The text on page 77 recommends, under Change Number SL3-01, R-55 zoning. Under "Use Location" the property is described as Block 3, Lots 7-13. The property just north of these lots, including Block 2 and Lots 14-20, is described as a "triangle" and was proposed for C-S-C zoning under Change Number SL3-07, page 78. These lots were zoned I-1, however, because they had become improved with mini warehouses during the SMA process. (MP text, p. 108; NOTE: Amendment 6, SMA Adopting Resolution, CR-72-1990: Exh. 33, SMA File)

(2) The restaurant is located, for the most part, on Lots 4-6, Block 3. Change Number SL3-07 recommended C-S-C zoning for these lots which were then zoned C-H. A restaurant was noted to be on land described as 14415 Baltimore Avenue under "Use and Location", page 78. This is the address of the restaurant.

(3) The error of the Master Plan did not create an error in the SMA. The SMA map carried the R-55 zoning for the property from the very inception of the Plan/SMA process. The fact that the Plan map was in error did not cause the SMA map or text to be in error. The Master Plan text itself explains the correct area which is to be considered for commercial on page 108; "At the northern end of the Oakcrest Commercial Strip, there is a triangle of land that is zoned for industrial uses." The existing situation map shows this to be all lots of Block 2 not then zoned commercial, Lots 14-20, Block 3, and Lots 1, 3 and parts of Lots 6 and 8, Block 17. The text goes on to suggest commercial zoning for this triangle but it actually was zoned I-1. (See para #1 Supra)

(4) The subject property was in part used for commercial purposes and parking therewith during the period of time the Master Plan and SMA were being considered by staff and District Council.³ This use is noted in the existing situation map attached to the Master Plan by showing red color over the west portions of the subject property. It appears that this might extend to include Lot 9, but at least Lots 7 and 8. (Exh. 5, p. 1)⁴

³The use of Lots 7, 8 and 9 for parking for the restaurant was noted in 1974 in the Statement of Justification filed with application A-9070.

⁴The County had at this time determined that the use of Lots 7 and 8 for parking was non-conforming. (Bd. of App. #3049,8-30-71) This use preexisted the adoption of zoning in 1959 (Permit #248-71CG).

(5) The fact that portions of the property were utilized for commercial parking purposes when the Master Plan and SMA were processed and a considerable time before, is of no help to the issue of mistake in this application. The facts were obvious to explain how this commercial use was established contrary to the requirements of the R-R Zone. It can be assumed this use was known to exist by the drafters of the SMA. The Staff never recognized a restaurant existed on Lot 7 as a non-conforming use. We assume the staff planners knew about the parking use on the subject property but they would not necessarily know if a building was on the property.⁵ The staff noted on the proposed Master Plan situation map a commercial use was being made of the portion of the property used for parking although zoned R-R. There was, therefore, no creation of a non-conforming use by zoning that property R-55. Creation of a non-conforming use by SMA adoption is not proscribed, only the down-zoning of property thereby creating a non-conforming use. Since the R-55 is more intense than the R-R Zone, there was no downzoning, therefore no abrogation of Section 27-223(d)(2). The use of Lot 7 for a restaurant, absent any evidence that this use was recognized by the County as legal, cannot be presumed to be legal and as such gives no support for zoning that lot or any other lots of the owner to the C-S-C Zone.

(6) With respect to applicant's other suggestion of error, that it was error not to adopt an overlay zone, we agree that it would have affected the subject property had it been adopted. The subject property would have been designated on the Plan map and any of the property within 300 feet of the right-of-way of Rt. 1 would have enjoyed any benefits of being included in the overlay zone. This would involve only Lots 7, 8 and 9 however. By the terms of the Master Plan text this would not mean these lots would be recommended for commercial zoning. This 300 foot area was to be considered as the limit of any governmental action which would allow commercial encroachment including parking into the interior of Oakcrest. Other ways of encroachment could be by special exception permitting residential lots to be used for commercial purposes and nonconforming use certification. The overlay zone may still be adopted but because it hasn't been does not mean the SMA was in error since the SMA was not necessarily the sole mechanism to implement this concept. The owner has permission now to use Lots 7 and 8 for parking in conjunction with the restaurant and could extend this permission to other lots by special exception.

⁵When applicant sought to enlarge the building from Lots 5 and 6 to Lots 7 and 8, the building permit application (12962-77) contained a note that the proposed addition was not permitted in the R-R Zone. That same year the applicant obtained a variance of 25 feet for the rear lot setback requirement for Lots 3, 4, 5 and 6. (Appeal No. 4898)

DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER

Patrick Edelmann
Applicant

Application: A-9908

Jones, et al
Opposition

Before: Barry S. Cramp

DECISION

FACTS

(1) Application has been made for rezoning from R-55 to C-S-C for seven lots located in the Oakcrest Subdivision in South Laurel. The District Council is asked what it would have zoned this property had it known that it was being used for commercial purposes at the time of adoption of the comprehensive rezoning for Subregion I in 1990. The Planning staff admits there was an error in the Master Plan map which preceded the comprehensive rezoning and had there not been this error the property would have remained as zoned, or in the alternative, zoned in an overlay zone, but not all of the property would have been included in a commercial category. Applicant also claims it was error of the District Council not to adopt overlay zoning as recommended in the Master Plan.

(2) The C-S-C zone is a Euclidean zone and is not an overlay zone. It is a zone which is located on property at the time of comprehensive zoning as distinguished from floating zones which are said to float over the map area, to come down at the request of the owner later on property which meets predetermined land use criteria. Euclidean and floating zones are underlying zones. Overlay zones are transposed over underlying zones and modify the use or regulations of the underlying zones.

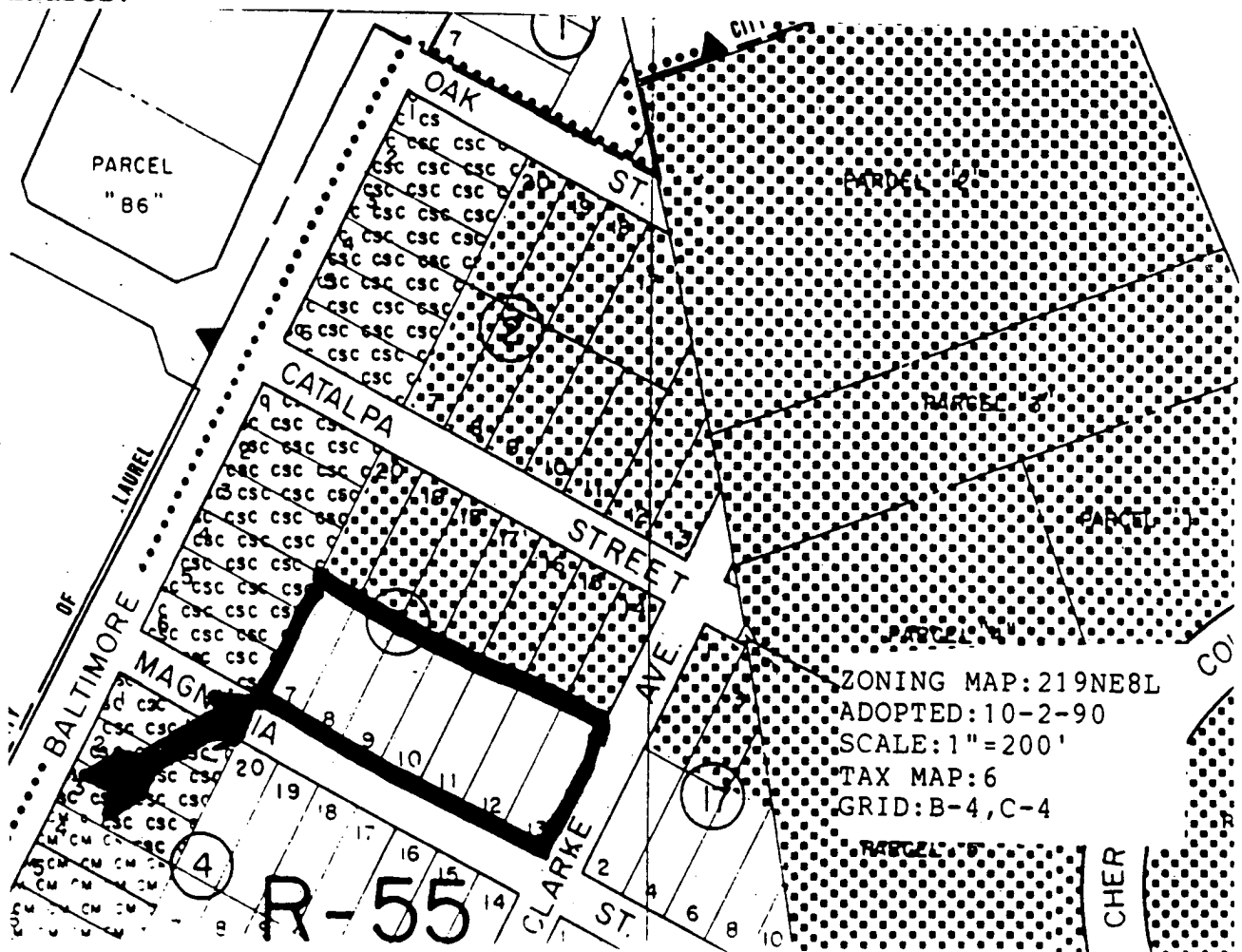
(3) A Euclidean zone may be approved by piecemeal application upon a finding that there has been change in the character of a neighborhood since the comprehensive zoning or mistake in its adoption. We are concerned here with the issue of mistake.

A-9908

(4) The subject property is Lots 7 through 13 of Block 3, Oakcr. These seven lots face Magnolia Street on the north side. They ad Lots 4, 5 and 6 of Block 3 which face U.S. Rt. 1 and are zoned C. These lots contain a restaurant for which the subject property is for parking. Commercial uses must perforce of law provide their parking on commercially zoned land unless allowed by special exception permission, granted by the District Council, or if this parking nonconforming use, i.e. established prior to the zoning limitation parking. The subject property has been partially improved building in which is located the resaurant some of which is o and with a parking compound on Lots 7, 8 and 9.

(5) Across Magnolia Street, which is paved only from Lot 9 through 13, are vacant parcels zoned R-55, Lot 20 through 18, Block 4. Homes are built, partially built or will be built on Lots 14 through 17 also zoned R-55. The paved portion of Magnolia Street ends at a barrier located opposite the boundary between Lots 17 and 18 of Block 4 and Lots 9 and 10 of the subject block.

(6) The land directly north of the property, as well as east across Clarke Avenue, is zoned I-1 and partially developed with warehouses. Across U.S. Rt. 1 is a shopping center (Laurel Lakes) in the City of Laurel.






THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION


14741 Governor Oden Bowie Drive
 Upper Marlboro, Maryland 20772
 TTY: (301) 952-4366
 www.mncppc.org/pgco

September 18, 2020

MEMORANDUM

TO: Adam Bossi, Development Review Division

FROM: Benjamin Ryan, Transportation Planning Section, Countywide Planning Division 

VIA: Bryan Barnett-Woods, Transportation Planning Section, Countywide Planning Division 

SUBJECT: Detailed Site Plan Review for Pedestrian and Bicycle Transportation Master Plan Compliance

The following detailed site plan (DSP) was reviewed for conformance with the Zoning Ordinance, the *Approved Countywide Master Plan of Transportation (MPOT)* and the *2010 Approved Subregion 1 Master Plan* and sectional map amendment and sector plan to provide the appropriate pedestrian and bicycle transportation recommendations.

Detailed Site Plan Number: DSP-20006

Development Case Name: Checkers Laurel

Type of Master Plan Bikeway or Trail

Municipal R.O.W.	<input type="checkbox"/>	Public Use Trail Easement	<input type="checkbox"/>
PG Co. R.O.W.	<input type="checkbox"/>	Nature Trails	<input type="checkbox"/>
SHA R.O.W.	<input checked="" type="checkbox"/>	M-NCPPC – Parks	<input type="checkbox"/>
HOA	<input type="checkbox"/>	Bicycle Parking	<input checked="" type="checkbox"/>
Sidewalks	<input checked="" type="checkbox"/>	Trail Access	<input type="checkbox"/>

Detailed Site Plan Background	
Building Square Footage (non-residential)	1,170 Square-Feet
Number of Units (residential)	N/A
Abutting Roadways	Baltimore Avenue, Magnolia Street
Abutting or Nearby Master Plan Roadways	US-1 (Baltimore Avenue) (A-9)
Abutting or Nearby Master Plan Trails	Planned Bike Lane: Baltimore Avenue Planned Side Path: Baltimore Avenue
Proposed Use(s)	Eating & Drinking Establishment
Zoning	C-S-C / R-55
Centers and/or Corridors	Baltimore Avenue Corridor
Prior Approvals on Subject Site	N/A

Previous Conditions of Approval

There are no binding prior conditions of approval on the subject property specific to pedestrian or bicycle improvements that are relevant to this subject application. While the subject site is within a 2002 Corridor, due to the nature of the application it is not subject to Section 24-124.01 of the Subdivision Regulations and the "Transportation Review Guidelines, Part 2."

Proposed Pedestrian and Bicycle Infrastructure

The subject application is for the construction of an eating and drinking establishment. The site is located on US Route 1 (Baltimore Avenue) approximately 0.25 miles southwest of the intersection of Baltimore Avenue and Cherry Lane. Sidewalks are currently in place along the subject property's frontage of Baltimore Avenue. The site features two outdoor eating areas, one of which is located adjacent to the restaurant and a second located to the rear of the restaurant. The submitted plans include a 7-foot-wide sidewalk located between the parking area and the restaurant, which leads to the adjacent outdoor eating area and the restaurant, as well as a 5-foot-wide sidewalk leading from Baltimore Avenue directly to the restaurant. An internal crosswalk crossing the central drive aisle provides a pedestrian connection from the parking area to the rear outdoor eating area. Bicycle racks have been displayed on the outdoor eating area adjacent to the restaurant.

Review of Master Plan Compliance

This development case is subject to the 2009 *Approved Countywide Master Plan of Transportation*, and the 2010 *Approved Subregion 1 Master Plan* and sectional map amendment and sector plan which recommends the following facilities:

- Sidepath along Baltimore Avenue
- Bicycle lanes along Baltimore Avenue

Comment: As a detailed site plan, improvements within the right-of-way are beyond the scope of this application. No additional right-of-way is being sought with this application. The Maryland State Highway Administration (SHA) can require the construction of the master plan recommended bicycle lanes along Baltimore Avenue as appropriate, or they may be installed by SHA as part of a future roadway repaving or Capital Improvement Project.

Baltimore Avenue currently displays a shared lane marking for bicycle use along its north side, approximately 0.3 miles northeast from the subject property, fronting the Towne Center at Laurel, located at 14700 Baltimore Avenue.

The subject property falls within the 2010 *Approved Subregion 1 Master Plan* and sectional map amendment. Within this plan, the subject property falls within Focus Area 4 (Map 8, p.32). Policy 3 of Focus Area 4 makes the following recommendation:

Policy 3: Create a safer walkable environment through improvements to streets, sidewalks and building orientation:

- Create an urban boulevard character along US 1 by widening sidewalks and establishing a build-to line to locate future development closer to the street.
- Locate parking areas at the rear and sides of all buildings.

Policy 5 of the Bicycle, Pedestrian and Equestrian Facilities section (p.60) makes the following recommendation:

Policy 5: Provide comprehensive pedestrian and bicycle facilities along US 1 and improve pedestrian safety:

- Incorporate pedestrian amenities such as benches, pedestrian scale lighting, and pedestrian safety features such as well-marked crosswalks, pedestrian refuges, and curb extensions as frontages improvements are made along US 1.

Comment: The proposed plans include a 6-foot-wide sidewalk along the subject property's frontage of Baltimore Avenue and a stamped concrete pattern to the 5-foot-wide sidewalk leading from Baltimore Avenue directly to the restaurant. These design features are supported by the sector plan and will highlight the sidewalk, creating an inviting point of entry for pedestrians. Additionally, the applicant has located parking to the rear and sides of the restaurant, which helps visibility for pedestrians and bicyclists along Baltimore Avenue.

The MPOT provides policy guidance regarding multimodal transportation and the Complete Streets element of the MPOT recommends how to accommodate infrastructure for people walking and bicycling:

- Policy 2: All road frontage improvements and road capital improvement projects within the Developed and Developing Tiers shall be designed to accommodate all modes of transportation. Continuous sidewalks and on-road bicycle facilities should be included to the extent feasible and practical.
- Policy 4: Develop bicycle-friendly roadways in conformance with the latest standards and guidelines, including the 1999 AASHTO *Guide for the Development of Bicycle Facilities*.
- Policy 5: Evaluate new development proposals in the Developed and Developing Tiers for conformance with the Complete Streets principles.

Comment: The submitted plans include a crosswalk crossing the vehicle entry point along Baltimore Avenue and the vehicle entry points along the internal driveway. As previously mentioned, bicycle racks will be located within the outdoor eating area adjacent to the restaurant. An internal sidewalk network serves the subject site. The wide sidewalk along Baltimore Avenue and the concrete stamped 5-foot-wide sidewalk leading from Baltimore Avenue to the restaurant provides a pedestrian-oriented environment within the immediate vicinity of the subject property.

Recommended Conditions of Approval

The Transportation Planning Section find that the pedestrian and bicyclist circulation on the site to be safe, efficient, and convenient, pursuant to Sections 27-283 and 27-274(a)(2), the relevant design guidelines for transportation and conclude that the submitted detailed site plan is deemed acceptable from the standpoint of pedestrian and bicycle transportation.




Prince George's County Planning Department
Community Planning Division


14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org
301-952-3972

September 21, 2020

MEMORANDUM

TO: Adam Bossi, Urban Design Section, Development Review Division

VIA: David A. Green, MBA, Master Planner, Community Planning Division 

FROM: Maha Tariq, Senior Planner, Neighborhood Revitalization Section, Community Planning Division 

SUBJECT: **DSP- 20006, Checkers in Laurel**

FINDINGS

Community Planning Division staff finds that, pursuant to Section 27-290.01(b)(5) of the Zoning Ordinance, this Detailed Site Plan application is compatible with the future land use, which is Mixed Use Commercial delineated in the 2010 Approved *Subregion 1 Master Plan and Sectional Map Amendment*.

BACKGROUND

Application Type: Detailed Site Plan

Location: 14411 Baltimore Avenue, Laurel MD 20707; Lot 23, Block 3 of the Oak Crest Subdivision

Size: 0.84 acres

Existing Uses: Vacant

Proposal: The applicant proposes to construct one story fast-food restaurant with associated parking, sidewalks and landscaping on a previously developed site.

GENERAL PLAN, MASTER/TRANSIT DISTRICT DEVELOPMENT PLAN, AND ZONING

General Plan: This application is located within the Established Communities policy area. "Established Communities are most appropriate for context-sensitive infill and low-to-medium density development," (p.20). The general plan recommends mixed-use on the subject property.

Referral Number and name

Date

Page 2

Master Plan: The 2010 *Approved Subregion 1 Master Plan and Sectional Map Amendment* recommends mixed-use commercial as future land use on the subject property. In addition, the subject property is in Focus Area 4 (pg.31) of US 1/Baltimore Avenue Corridor (pg.17). The Plan identifies the following four policies for Focus Area 4:

1. Establish areas of mixed-use development that complement surrounding residential areas.
2. Create a coordinated, pedestrian-oriented commercial area that provides a location for consolidated automobile sales at US 1.
3. Create a safer walkable environment through improvements to streets, sidewalks and building orientation.
4. Establish a continuous open space network by upgrading existing open space and introducing new parks.

Planning Area: 62

Community: South Laurel-Montpelier

Aviation/MIOZ: This property is not located in an Aviation Policy Area or the Military Installation Overlay Zone.

SMA/Zoning: The property is zoned C-S-C (Commercial Shopping Center) and R-55 (One-Family Detached Residential)

Staff Comments: No.

c: Long-range Agenda Notebook

August 18, 2020

MEMORANDUM

TO: Adam Bossi, Urban Design Review, DRD

VIA: Howard Berger, Supervisor, Historic Preservation Section, CWPD

FROM: Jennifer Stabler, Historic Preservation Section, CWPD
Tyler Smith, Historic Preservation Section, CWPD

SUBJECT: DSP-20006 Checkers in Laurel

The subject property comprises 0.84 acres on the east side Baltimore Avenue, 400 feet north of Mulberry Street. The subject application proposes a Checkers restaurant. The subject property is Zoned C-S-C.

A search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites indicates the probability of archeological sites within the subject property is low. The subject property does not contain and is not adjacent to any Prince George's County historic sites or resources. This proposal will not impact any historic sites, historic resources or known archeological sites. Historic Preservation Section staff recommend approval of DSP-20006 Checkers in Laurel without conditions.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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Prince George's County Planning Department
Countywide Planning Division

301-952-3650

September 10, 2020

MEMORANDUM

TO: Adam Bossi, Planner Coordinator, Urban Design Section, DRD

VIA: Megan Reiser, Supervisor, Environmental Planning Section, CWPD

FROM: Marc Juba, Planner Coordinator, Environmental Planning Section, CWPD

SUBJECT: Checkers Laurel; Detailed Site Plan, DSP-20006

The Environmental Planning Section (EPS) has reviewed Detailed Site Plan DSP-20006, received by the Countywide Planning Division on August 12, 2020 with revisions submitted by the applicant received on September 2, 2020 in response to comments from staff at the Subdivision Review Committee (SDRC) meeting on August 21, 2020.

The site has a Natural Resource Inventory Equivalency Letter (NRI-117-12-01) which was issued on November 14, 2019. Much of this site has been previously developed and is not associated with any Regulated Environmental Features (REF). The site has a valid Standard Letter of Exemption from the Woodland and Wildlife Habitat Conservation Ordinance (WCO) that expires on November 14, 2020.

The site has an approved Stormwater Management Concept Plan #15567-2019-00 that is in conformance with the current code, which was issued on December 13, 2019.

No additional environmental review issues have been identified for the subject site. The Environmental Planning Section recommends approval of the application with no conditions.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

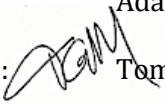
Countywide Planning Division
Transportation Planning Section

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301-952-3680

September 25, 2020

MEMORANDUM

TO: Adam Bossi, Urban Design Review Section, Development Review Division
FROM:  Tom Masog, Transportation Planning Section, Countywide Planning Division
SUBJECT: **DSP-20006: Checkers Laurel**

Proposal

The applicant is proposing to develop a site with a commercial use.

Background

The site is the location of a recent rezoning application, Zoning Map Amendment A-9908-C. There was also a recent lot line adjustment. Both the rezoning and the final plat resolution resulting from the lot line adjustment have conditions that require consideration in this referral. An eating or drinking establishment with drive-through service is permitted by right with a requirement of a detailed site plan (DSP) in most circumstances. However, the DSP for this use has no specific transportation-related requirements. In general, the site plan is intended to address general detailed site plan requirements such as access and circulation. The identified requirements of Section 27-358(a) include more specific requirements for location, access, site operations, and site design. There are no traffic-related adequacy findings required.

Review Comments

The applicant proposes an eating or drinking establishment with drive-through service. The restaurant is 1,170 square-feet with two drive-through windows and no interior seating. The tenth edition of *Trip Generation* (Institute of Transportation Engineers) includes rates for "Fast Food Restaurant with Drive-Through and No Interior Seating." In consideration of a pass-by rate in each peak hour of 50 percent, the proposal would generate 31 AM and 25 PM peak-hour trips.

The most recent submitted plans have been reviewed. Access and circulation are acceptable. The right-of-way width of US 1 is 90 to 120-feet, as listed in the *Approved Master Plan and Sectional Map Amendment for subregion I*. The right-of-width is depicted as variable width on the site plan; however, sufficient right-of-way of 50-feet from centerline, consistent with master plan recommendations, was previously dedicated, and is reflected on the site plan and the plat. The existing right-of-width of US 1 should be shown on the plan.

Prior Approvals

Zoning Map Amendment A-9908-C for this site was reviewed and approved by the District Council on February 6, 1996 (Zoning Order 3-1996). The District Council approved the rezoning with one

traffic-related condition which is applicable to the review of this DSP and warrants discussion, as follows:

- 1. The applicant shall obtain detailed site plan approval in accordance with part 3, Division 9 of the Zoning Ordinance in order to address the following:**
 - b. No access to the site shall be provided from Magnolia Street (east of the barrier.)**

The site plan shows sole access to the site from US 1. The plan shows no roadway or driveway access onto Magnolia Street.

It is noted that sub-conditions (a), (c), and (d) are not traffic-related; (a) relates to building placement, (c) relates to screening, and (d) relates to tree preservation.

Final Plat 5-14093 for this site was reviewed and approved by the Planning Board on September 4, 2014 (PGCPB Resolution No. 14-96). The Planning Board approved the final plat with one traffic-related condition which is applicable to the review of this DSP and warrant discussion, as follows:

- 2. Prior to the recommendation of approval by The Maryland-National Capital Park and Planning Commission (M-NCPPC) for the first building permit for either Lot 22 or 23 (whichever occurs first), the construction of the shared driveway shall be a part of the limit of the permit in order to provide adequate access to the site.**

This condition was met when the adjacent development on Lot 22 occurred. The shared driveway provides the access for the proposed use to US 1.

It is noted that the site plan conforms to all plat notes on Record Plat SJH 243-003 for Oak Crest. Also, the lot line adjustment on the final plat was heard by the Planning Board for the purpose of approving a variation from Section 24-121(a)(3) and the shared access easement pursuant to Section 24-128(b)(9) for Lots 22 and 23. Both of these elements are reflected appropriately on the site plan.

Conclusion

From the standpoint of transportation and in consideration of the findings contained herein, it is determined that this plan is acceptable if the application is approved.

September 9, 2020

MEMORANDUM

TO: Adam Bossi, Urban Design

FROM: Jason Bartlett, Permit Review Section, Development Review Division

SUBJECT: Referral Comments for DSP- 20006 Checkers (Laurel)

NOTE: Comments below are based off review of plan file “CNP-CDP-DSP-20006”

1. Signs previously reviewed and comments separately provided by John Linkins.
2. There are several parking related discrepancies: Firstly, the applicant is stating that there are 24 seats provided outdoors, but the DSP Site Plan clearly shows eight four-top tables, which would equal 32 seats. Secondly, the applicants parking schedule reflects a formula of 1 space for every 3 seats **OR** 1 space for every 50 SF of GFA (excluding any area used exclusively for storage or patron seating, and any exterior patron service area), but Sec. 27-568(a)(D) of the ordinance actually requires 1 space for every 50 SF of GFA **PLUS** 50 SF of GFA (excluding any area used exclusively for storage or patron seating, and any exterior patron service area). Applicant will therefore need to revise their parking schedule to reflect this calculation and change the required parking from 9 to 15 spaces required (4 for the GFA and 11 for the 32 spaces). Furthermore, since the current site design does not provide 15 spaces, a redesign to add the additional parking space will be required or the applicant will need to file a companion Departure From Parking and Loading Standards (DPLS) application with this case. If a companion DPLS is filed, the DPLS number should be referenced and reflected in the parking schedule on the DSP.

Applicant provided parking schedule on Cover Sheet:

PARKING TABLE	
USE: EATING ESTABLISHMENT INCLUDING DRIVE THROUGH SERVICE AND CARRYOUT	
BUILDING GFA = 1,170 SQ. FT.	
INTERIOR PATRON SEATS: 0	
EXTERIOR PATRON SEATS: 24	
PARKING CALCULATION	
24 EXTERIOR SEATS/3 SEATS PER SPACE = 9 SPACES REQUIRED	
1,170 SQ.FT. GFA/1 SPACE/50 SQ.FT. OF GFL	
OR 1,170 SQ.FT. GFA - *EXTERIOR SEATING AND PATRON SERVICE AREA OF 975 SQ.FT. = 195 SQ.FT.	
195 SQ.FT. ADJUSTED GFA/1 SPACE/50 SQ.FT. = 4 SPACES REQUIRED	
PARKING SPACES REQUIRED = 9	
PARKING SPACES PROVIDED = 12	
PARKING SPACE SIZE: 9.5' x 19'	
** LOADING SPACES REQUIRED = 0	
HANDICAP PARKING SPACES REQUIRED = 2	
HANDICAP PARKING SPACES PROVIDED = 2 INCLUDING 1 VAN ACCESSIBLE SPACE	
HANDICAP PARKING SPACE SIZE: 8.0' x 19'	
*PGCO CODE SEC. 27-568	
**PGCO CODE SEC. 27-582	

3. Show clear direction arrows at the entrance and exit to the site. The 14'-wide exit shown is only acceptable for one-way traffic flow, but arrows must be provided on the site plan to demonstrate this.
4. Applicant did not provide the LF of street frontage for their landscape schedule 4.2-1, which should be 84.33'. per Plat 243@3. See excerpt below:

Sample Schedule 4.2-1		
Requirements for Landscape Strips Along Streets		
Linear feet of street frontage, excluding driveway entrances: 		
1) General Plan Designation:	<input checked="" type="checkbox"/> Developing Tier	<input type="checkbox"/> Rural Tier
	<input type="checkbox"/> Developed Tier,	
	Corridor Node or Center	
2) Option Selected:	1, 2, 3, or 4: <u>2</u>	1 or 2: <input type="checkbox"/>

5. Ensure any revision made to the site plan based off reviewer's comments are mirrored on the landscape plan prior to certification.

***** end comments *****



Division of Environmental Health/Disease Control

Date: September 3, 2020

To: Adam Bossi, Urban Design, M-NCPPC

From: Adebola Adepoju, Environmental Health Specialist, Environmental Engineering/ Policy Program

Re: DSP-20006, Checkers Laurel

The Environmental Engineering / Policy Program of the Prince George's County Health Department has completed a desktop health impact assessment review of the detailed site plan submission for Checkers Laurel located at 11441 Baltimore Avenue and has the following comments / recommendations:

1. Health Department permit records indicate there are more than 5 existing carry-out/convenience store and one grocery food facilities within a ½ mile radius of this location. Research has found that people who live near an abundance of fast-food restaurants and convenience stores compared to grocery stores and fresh produce vendors, have a significantly higher prevalence of obesity and diabetes.
2. Indicate how the project will provide for pedestrian access to the site by residents of the surrounding community.
3. Increased traffic volumes in the area can be expected as a result of this project. Published scientific reports have found that road traffic, considered a chronic environmental stressor, could impair cognitive development in children, such as reading comprehension, speech intelligibility, memory, motivation, attention, problem-solving, and performance on standardized tests.
4. ***The food facility is considered a prototype food service facility in which two or more facilities in the state having uniformed set of plans.*** The applicant must submit an



Angela Absobrooks
County Executive

Environmental Engineering/Policy Program
Largo Government Center
9201 Basil Court, Suite 318, Largo, MD 20774
Office 301-883-7681, Fax 301-883-7266, TTY/STS Dial 711
www.princegeorgescountymd.gov/health



Division of Environmental Health/Disease Control

application for plan review to the Maryland Department of Health's Environmental Health Bureau's Food protection and Food Licensing program located at 6 St. Paul Street, Suite 1301, Baltimore, Maryland. 21202.

5. The applicant must submit plans to the Plan Review department at the Department of Permitting, Inspection Enforcement located at 9400 Peppercorn Place in Largo Maryland. 20774 for the proposed food facility and apply for a Health Department Moderate HACCP priority, Food Service Facility permit.
6. During the construction phases of this project, noise should not be allowed to adversely impact activities on the adjacent properties. Indicate intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code.
7. During the construction phases of this project, no dust should be allowed to cross over property lines and impact adjacent properties. Indicate intent to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.

If you have any questions or need additional information, please contact me at 301-883-7677 or aoadepoju@co.pg.md.us.



Environmental Engineering/Policy Program
Largo Government Center
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From: [Kwesi Woodroffe](#)
To: [Bossi, Adam](#)
Cc: [PGCReferrals](#); [Mark Loeffler](#)
Subject: RE: REVISED EPlan ACCEPTANCE referral for DSP-20006, CHECKERS (LAUREL) (PB)SHA; KW
Date: Thursday, September 3, 2020 10:46:57 AM
Attachments: [image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
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[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Good morning Adam,

I reviewed the subject referral and for the proposed work in the state right of way (water and sewer connections, sidewalk connection and cross-walk striping), the applicant will need a District Office (DO) Permit from our SHA District 3 Utility Office. Applicant should contact the District 3 Utility Engineer, Mr. Mark Loeffler (MLoeffler@mdot.maryland.gov), for further coordination and instruction on how to apply for a DO Permit.

Thanks, Kwesi

Kwesi Woodroffe
Regional Engineer
District 3 Access Management
MDOT State Highway Administration
KWoodroffe@mdot.maryland.gov
301-513-7347 (Direct)
1-888-228-5003 – toll free
Office Hours
M-Thurs.: 6:30a-3:30p
Fr: 6:30a-10:30a
9300 Kenilworth Avenue,
Greenbelt, MD 20770
<http://www.roads.maryland.gov>



From: ePlan <ePlan@ppd.mncppc.org>
Sent: Wednesday, September 2, 2020 2:48 PM
To: ePlan <ePlan@ppd.mncppc.org>; Green, David A <davida.green@ppd.mncppc.org>; Brake, Michelle <Michelle.Brake@ppd.mncppc.org>; Henderson, Tamika <Tamika.Henderson@ppd.mncppc.org>; Franklin, Judith <Judith.Franklin@ppd.mncppc.org>; Masog, Tom <Tom.Masog@ppd.mncppc.org>; Barnett-Woods, Bryan

Additional Back-up

For

Detailed Site Plan DSP-20006
Checkers Laurel

Matthew C. Tedesco, Esquire
Admitted in Maryland

E-mail: MTedesco@mhlawyers.com
Direct Dial: Extension 222

May 5, 2021

Electronically Submitted

The Honorable Elizabeth M. Hewlett, Chair
and The Honorable Planning Board Commissioners
Prince George’s County Planning Board
M-NCPPPC
14741 Gov. Oden Bowie Drive
Upper Marlboro, Maryland 20770

Re.: Checkers – Laurel (DSP-20006)

(Revised) Responses to District Council Remand

Chair Hewlett and Planning Board Commissioners:

This Firm represents the applicant, Mar-Chek, Inc., in the above-referenced matter. We are writing to provide formal written responses to the District Council’s Order of Remand, as follows:

1. The revised site plan’s compliance with the setback requirements of the C-S-C Zone;

RESPONSE: The setback calculations for the C-S-C Zone are provided for in Section 27-462. The site plan for DSP-20006 has been revised to accurately provide and depict all of the required and provided setbacks. The Setback Calculation Table provided on the DSP is as follows:

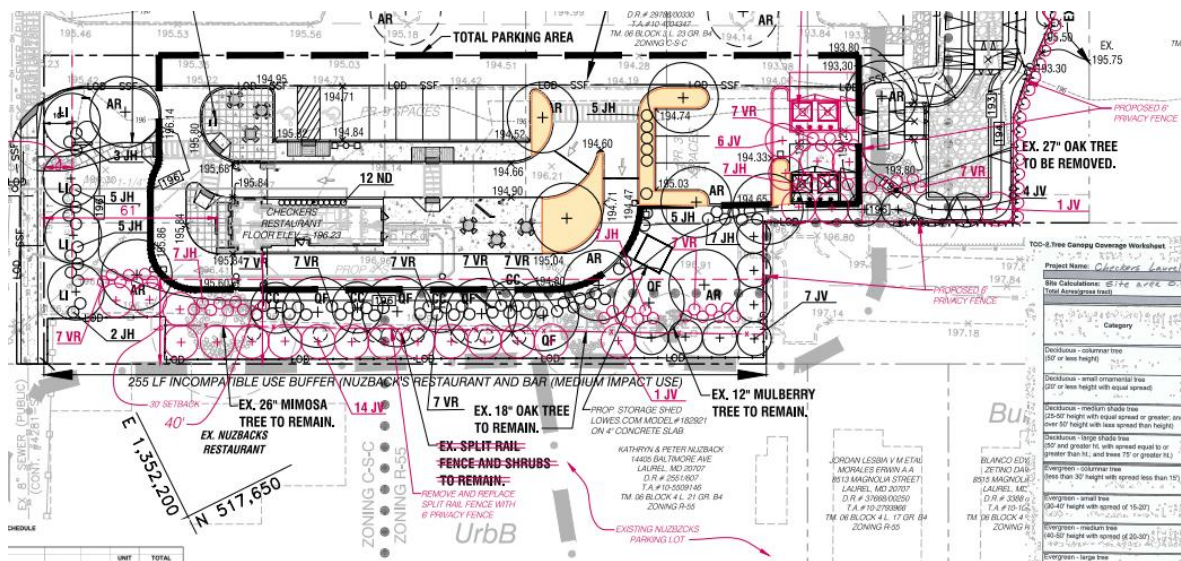
SETBACK CALCULATIONS (SECTION 27-462)

SETBACK	REQUIREMENT	NOTES
FROM STREET	10'	PROVIDED 60'
FROM SIDE LOT LINE OF ADJOINING LAND IN ANY RESIDENTIAL ZONE:		
SIDE YARD	12' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
REAR YARD	25' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
FROM REAR LOT LINE OF ADJOINING LAND IN ANY RESIDENTIAL ZONE:		
SIDE YARD	12' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
REAR YARD	25' OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER 30'	PROVIDED 40'
FROM ADJOINING LAND IN ANY NONRESIDENTIAL ZONE	NONE, EXCEPT WHERE BUILDING IS 30 FEET HIGH, A DISTANCE EQUAL TO 1/3 THE TOTAL BUILDING HEIGHT OR BUFFER REQUIRED BY LANDSCAPE MANUAL, WHICHEVER IS GREATER	PROVIDED 40'

2. The revised site plan's compliance with the requirements of the 2010 Landscape Manual for incompatible uses;

RESPONSE: All requirements of the 2010 Landscape Manual¹ are met. Specifically, and as provided on the revised DSP, all required bufferyards, building setbacks, and landscape strips for the required 4.2 and 4.7 Schedules are provided. Indeed, and to be more responsive the District Council's Order of Remand, the applicant has made a number of revisions to the DSP and Landscape Plan.

Section 4.7-1(G) of the Landscape Manual provides that “[i]n the case of a lot that is located in more than one zone, the establishment of the required bufferyard is based on the platted or recorded property line(s), not the zoning line(s).” The property within the boundaries of DSP-20006 is owned by Nazario Family, LLC, so an easement to accommodate any additional or required landscaping in any bufferyard is not required. Although the applicant does not believe that alternative compliance is required, if it is, the applicant respectfully requests the same, as the proposed bufferyard and landscape strips (either 4.7 or 4.2) are equal to or better than normal compliance. As provided on the revised plans, the 4.7 bufferyard along the southern boundary includes a building setback that is (10) feet wider than what is required; a landscape yard that is seven (7) feet wider than what is required; a six-foot high privacy fence; and plant units that exceed the requirement.



Regarding the 4.7 buffer yard associated with former Lot 11, which is adjacent to Lot 12 – a vacant Lot in the R-55 Zone, the applicant seeks alternative compliance. Although the number of plant units required in this buffer yard is 118 plat units, and the applicant is providing 29, the applicant has added a six-foot privacy fence to former Lot 11 (east of the stormwater facility)

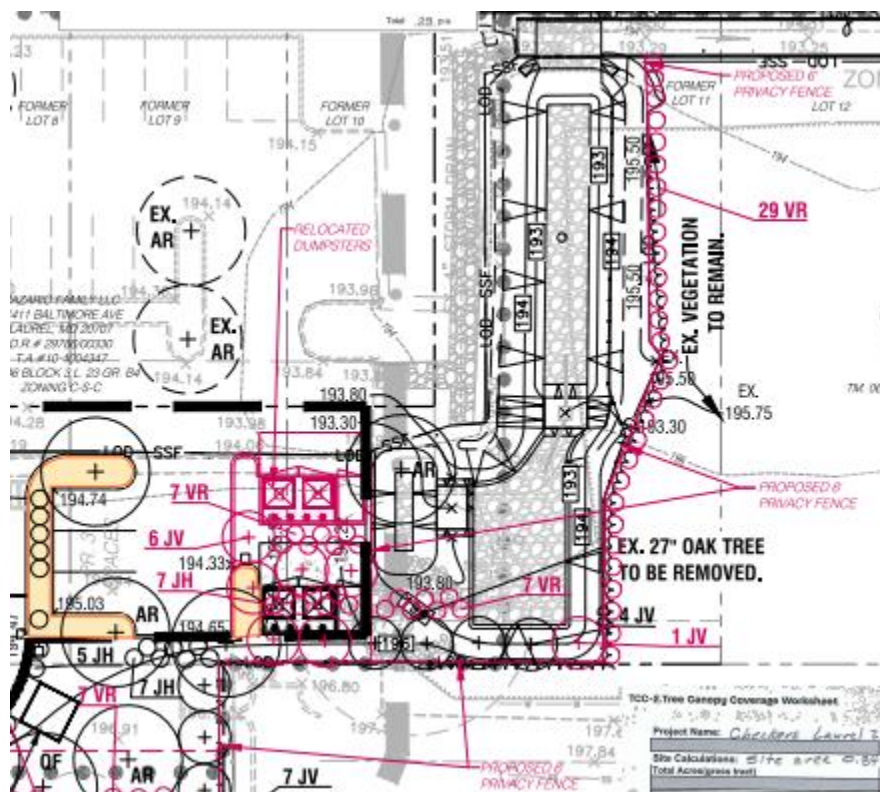
¹ The Landscape Manual provides that “[t]he standards contained in this manual are intended to encourage development that is economically viable and environmentally sound. The standards are *not* intended to be arbitrary or to inhibit creative solutions. Project conditions may justify approval of alternative methods of compliance with the standards.”

and 29 new plant units. The stormwater devise, which is an infiltration trench with stone surfaces that will not allow planting. In addition, and as mentioned below, Lot 12 is wooded and the owner has no intention of developing Lot 12. Currently, existing trees make up 42% of the buffer yard. The revised 4.7 schedule takes into account the 50% reduction in required planting units. Finally, there is an earth embankment that limits the ability to add new plant units due to steep slopes. Given these facts and the additional improvements proposed, the applicant contends that the proposed landscape buffer yard is equal to conformance especially given the fact that 42% of the buffer yard includes existing trees and a six-foot privacy fence has been added.

3. The revised site plan’s inclusion of residential property to satisfy the 2010 Landscape Manual standards to serve a commercial zone or use;

RESPONSE: Section 4.7-1(G) of the Landscape Manual provides that “[i]n the case of a lot that is located in more than one zone, the establishment of the required bufferyard is based on the platted or recorded property line(s), not the zoning line(s).” (See also responses to Remand Items 2 and 5 herein).

Regarding the 4.2 Landscape Strip, the applicant has revised its plan and is providing a six-foot privacy fence along the Magnolia Street right-of-way; has relocated the proposed dumpster location away from said right-of-way; and has significantly increased the number of plant units within the 4.2 landscape strip.



In response to the District Council's assertion regarding the inability to locate the required stormwater management facility on a portion of former Lot 11, which is located in the R-55 Zone, the applicant respectfully disagrees with this contention and finds no support in law nor in the long established application and administration of the applicable regulations regarding this issue.

First and foremost, although a stormwater management facility may meet the broad and inexact definition of a "structure" in Section 27-107.01(a)(66.1), such a facility or structure is not a "use" that is regulated by Subtitle 27 of the County Code. In fact, none of the Table of Uses in Subtitle 27 include a use designation for a stormwater management facility nor does Section 27-107.01 separately define the same. Instead, these facilities are regulated by Subtitle 32 of the County Code and the County Stormwater Management Design Manual. Unlike parking, which is a "structure" and an actual use in the Zoning Ordinance that is a resultant of a use that, depending on the circumstances of the parking itself, requires (or triggers) Use and Occupancy Permits, special exceptions, or other zoning entitlements, a stormwater management facility does not and should not. This is also true for other utilities that are necessary for development, such as water and sewer lines, gas lines, electrical lines, fiber optic lines etc. These utilities, like stormwater management facilities, are not dependent upon the particular zoning of the property that they serve, and they often (if not always) cross numerous zoning districts to serve numerous developments within various zoning districts. The same is true for stormwater management facilities – in particular large regional facilities that exist throughout the County. These regional facilities, like so many stormwater management facilities, treat and capture stormwater from countless developments in countless different zoning districts.

The District Council incorrectly relies solely on the definition of a "structure" to reach its conclusion that the utilization of a small portion of Lot 23 in the R-55 Zone for stormwater is improper. The District Council's Remand Order omits any analysis of Subtitle 32 of the County Code, which is dispositive of this issue. Subtitle 32, among other things, provides the requirements and regulations regarding the utilization of stormwater management facilities and practices required for water quality and quantity treatment associated with development. Nowhere in Subtitle 32 is "zoning" ever mention nor is there any enumerated requirement that facilities that serve certain zones be within the same zoning districts. In fact, Section 32-175, which addresses "Redevelopment," is very clear that the requirements are based on the limit of disturbance ("LOD") for a development, and not zoning categories/districts. Indeed, Section 32-175(k) specifically states, "[s]tormwater management shall be addressed for the portion of the site within the **limit of disturbance** according to the new development requirements in the Maryland Design Manual and the Prince George's County Design Manual for any net increase in impervious area." (Emphasis added). Section 32-182(f) addresses situations where stormwater management design involves directing some or all of the runoff from the development site onto another site with absolutely no mention of zoning or requiring common zoning. Instead, that section only requires, "[i]f a stormwater management design plan involves direction of some or all runoff from the site, it is the responsibility of the applicant to obtain from adjacent property owners any easements or other necessary property interests concerning flow of water. Approval of a stormwater management plan does not create or affect any right to direct runoff onto adjacent property without that property owner's permission." In the subject case, all facilities are on-site and under common ownership. Finally, Section 32-171 provides definitions for

“stormwater management;” “stormwater management design plan;” and “stormwater management system,” and none of these mention, let alone, require like zoning.

(63) Stormwater Management (SWM). Using ESD for the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to prevent accelerated channel erosion, increased flood damage and/or degradation of water quality.

(64) Stormwater Management Design Plan. The set of drawings and other documents that comprise all of the information and specifications for the systems, structures, concepts, and techniques that will be used to control stormwater as required by the approved concept plan and the Maryland Design Manual and the Prince George's County Design Manual.

(65) Stormwater Management System. Natural areas, ESD practices, stormwater management measures, and any other structure through which stormwater flows, infiltrates or discharges from a site.

The subject development and proposed stormwater management facility satisfies all of the requirements of Subtitle 32 and the Design Manual, as the site has received site development concept plan approval (Case No. 15567-2019) and technical plan approval (Case No. 1682-2020) from the Department of Permitting, Inspections, and Enforcement (DPIE). It must be noted that DPIE did not raise any objection or issue with the utilization of the R-55 Zoned portion of Lot 23 for stormwater, and the reason being is because there is no such prohibition in the Code, which include provisions and regulations that DPIE routinely and consistently administers.

Notwithstanding the clear and unambiguous provisions of Subtitle 32 and the Manual, which provide no statutory requirement(s) that mandate that a stormwater management facility for a development project be on like zoned property, the Planning Board should take notice of other examples in the County where the zoning associated with a development and the stormwater management facility that serves it are not the same, as this shows a clear, purposeful, and consistent application of the applicable code provisions that DPIE and/or M-NCPPC administer. Below are some examples, which are not intended to be an exhaustive list, as the list below omits larger regional facilities for which a number of projects (with various zoning designations) send stormwater. This non-exhaustive list evidences that there are a number of examples, throughout the County, where the zoning of a particular development is different than the property that contains the stormwater management facilities that treats/handles the associated stormwater.

Examples:

- MGM - (Development in MXT and SWM Facility in RR Zone):



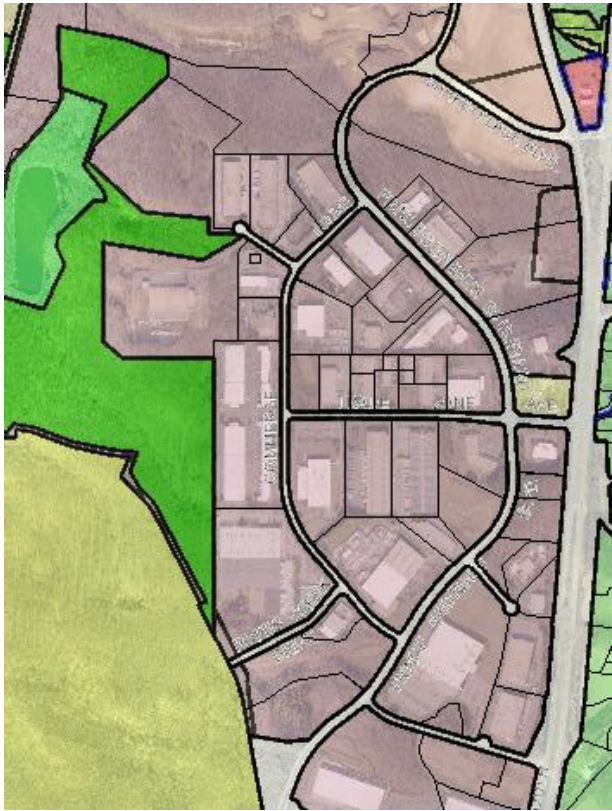
- Hall Station - (Development in LAC Zone and SWM Facility in RR Zone)



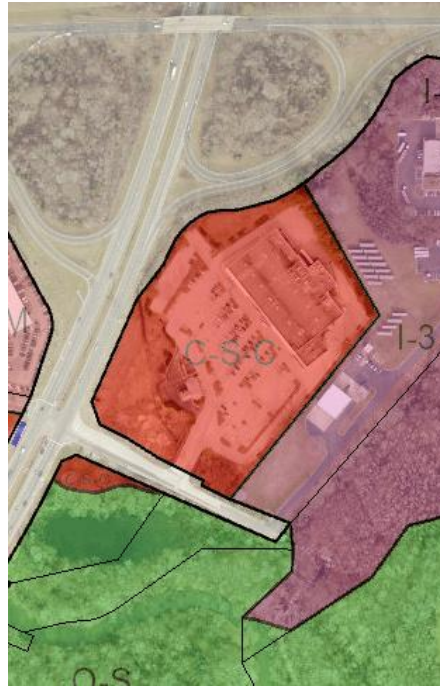
- Village Drive & US 301 - (Development in CM Zone and SWM facility in R-A Zone)



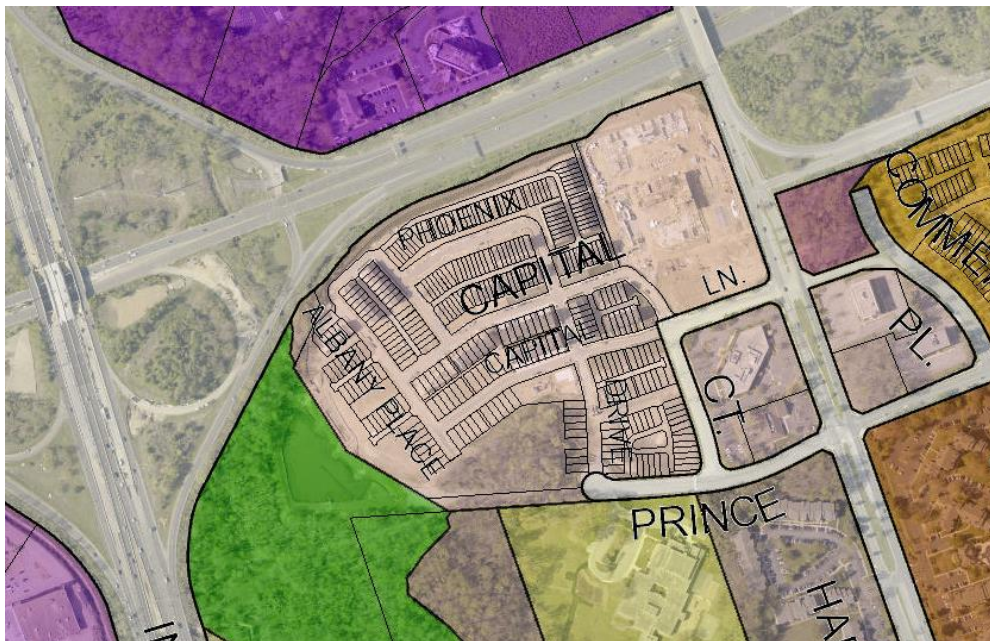
- Trade Zone - (Development in EIA Zone and SWM Facility in O-S Zone):



- Marlboro Crossing Shopping Center - (Development in CSC Zone and SWM Facility in O-S Zone):



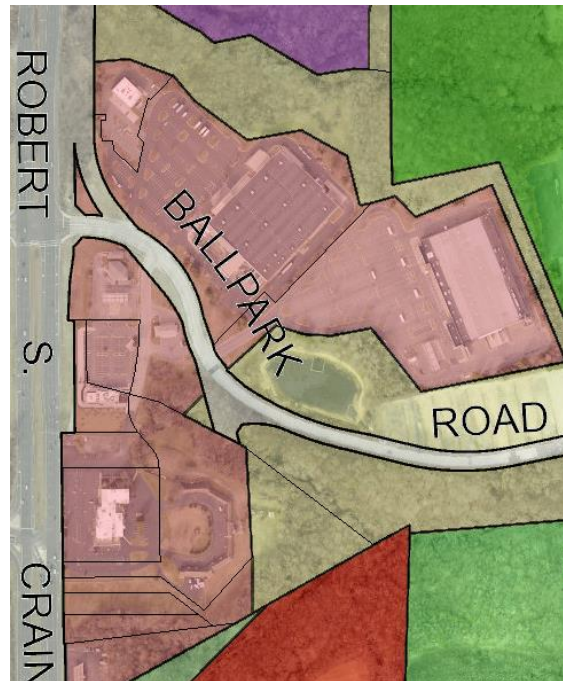
- Capital Court - (Development in C-O Zone and SWM Facility in R-O-S Zone):



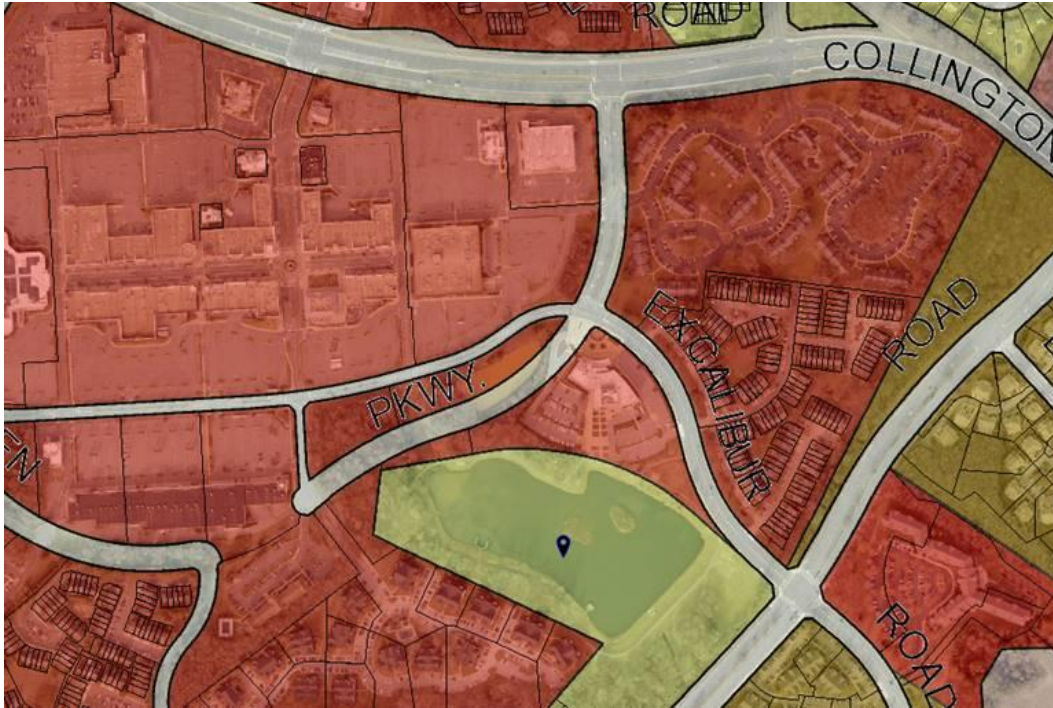
- Portions of Fairwood - (Development in MXC Zone and some of the SWM Facilities are in the R-O-S Zone):



- Rips & Ballpark Road (Home Depot, BJs and AutoZone) – (Development in the C-M Zone and SWM Facility in the R-R Zone):



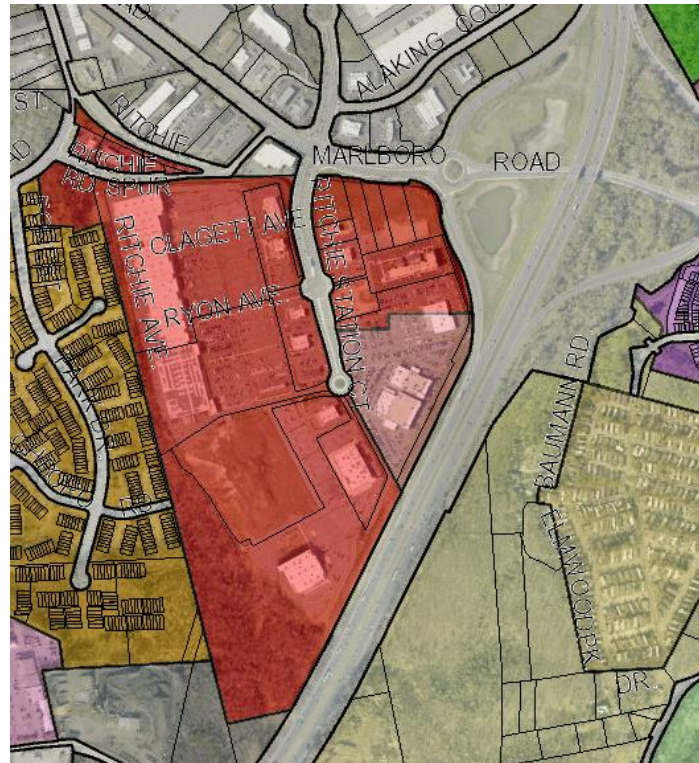
- Bowie Town Center & City Hall - (Development in the M-A-C Zone and SWM Facility in the R-S Zone) (Note this is also within the City of Bowie):



- Glenn Dale Commons (Phase 2 & 5) – (Development in the M-X-T Zone and SWM Facility in the O-S Zone):



- Ritchie Station - (Development in the C-S-C Zone and SWM Facility in ROW of Capital Beltway)



If the District Council’s assertion that stormwater management facility must be on property in the same zoning district as the development it serves is correct, a contention the applicant disagrees with, then these, and countless other projects, are now non-conforming uses. Moreover, the District Council’s contention and application of the definition of “structure” to support its position treats stormwater management facilities differently than other utilities (i.e., water, sewer, electric, gas, fiber optic, etc.) that would also meet the broad definition of a “structure.” Such an application is inconsistent with how these and other code provisions have been interpreted and administered for decades.

Regarding the 4.7 buffer yard associated with former Lot 11, which is adjacent to Lot 12 – a vacant Lot in the R-55 Zone, the applicant seeks alternative compliance. Although the number of plant units required in this buffer yard is 118 plant units, and the applicant is providing 29, the applicant has added a six-foot privacy to former Lot 11 (east of the stormwater facility) and 29 new plant units. The stormwater devise, which is an infiltration trench with stone surfaces that will not allow planting. In addition, and as mentioned below, Lot 12 is wooded and the owner has no intention of developing Lot 12. Currently, existing trees make up 42% of the buffer yard. The revised 4.7 schedule takes into account the 50% reduction in required planting units. Finally, there is an earth embankment that limits the ability to add new plant units due to steep slopes. Given these facts and the additional improvements proposed, the applicant contends that the proposed landscape buffer yard is equal to conformance especially given the fact that 42% of the buffer yard includes existing trees and a six-foot privacy fence has been added.

4. The revised site plan's compliance with Conditions 1.c. and 1.d. in Zoning Ordinance No. 3 – 1996; and

RESPONSE: The subject property, now known as Lot 23, was resubdivided pursuant to a record plat dated July 24, 2015, and recorded in Plat Book SJH 243 at Plat No. 3. Consequently, former Lots 4 – 11, in Block 3, of the Oak Crest Subdivision (Plat Book LIB A at Plat No. 108) were consolidated into Lots 22 and 23. The subject DSP includes Lot 23 and the area of Magnolia Street that was lawfully acquired by a quiet title action for the unclaimed portion of the Magnolia Street right-of-way.

Condition 1.c.

Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.

A number of revisions have been made to the DSP and Landscape Plan in response to this remand item and zoning condition. Specifically, the dumpster has been relocated to the north – farther away from existing stub of Magnolia Street; additional landscaping has been added to former Lots 10 and 11 to provide additional buffering and screening for Lot 11; a six (6) foot privacy fence has been added along the southern boundary of former Lots 10 and 11, the eastern side of former Lot 10, and along the former centerline of Magnolia Street that was acquired by Nazario Family, LLC; a six (6) foot privacy fence was added to former Lot 10 to provide buffering and screening for former Lot 11; and additional landscaping was added to the south of new fence along the former centerline of the paper street of Magnolia Street, which conforms to the Section 4.7 Buffer. These revisions have been added to ensure that screening and buffering for Lots 14 through 17 in Block 4 is provided. This additional privacy fencing and landscaping in this area is in conformance with the Landscape Manual and provides the required screening and buffering for former Lot 11, Block 3, and former Lots 14 through 17, Block 4.

Condition 1.d.

The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January 1994, if feasible.

The preservation of the “large tree” on former Lot 10 is not feasible. Feasibility is defined as, “capable of being done or carried out; capable of being used or dealt with successfully; reasonable; likely.”² The preservation of this particular tree is not reasonably likely nor could it be dealt with successfully. Given the prior development of the subject property that extended to the tree in question, this tree was previously damaged by the urban environment and development. In particular, the subject property was the former site of the Bay and Surf Restaurant and associated parking lot, which extended to and over the root zone of said tree.

² <https://www.merriam-webster.com/dictionary/feasible>



It would not be reasonable to preserve this tree, as it would require significant protection of the root system to ensure its continued viability, which would result in unreasonable costs and would substantially detract from the utility of the proposed development for its intended use, which is permitted in the C-S-C Zone. Indeed, given the prior urban development around the tree and damage to the root zone and trunk, any additional disturbance within the area of the tree and its roots will likely kill the tree, resulting in a dead tree which would become hazardous to this site and the surrounding neighborhood.

In response, however, the applicant's landscape plan provides for the preservation of several other large existing trees in the same vicinity of the site (e.g. up to 42% of existing trees on former Lot 11 are being preserved) as well as the addition of new trees. The revised DSP and Landscape Plan now show 11 new trees being planted in the same area of the tree in question. Consequently, and notwithstanding the necessary removal of this tree, the applicant's design more than doubles the required Tree Canopy Coverage requirement (3,659 square feet is required, and 8,411 square feet is provided).

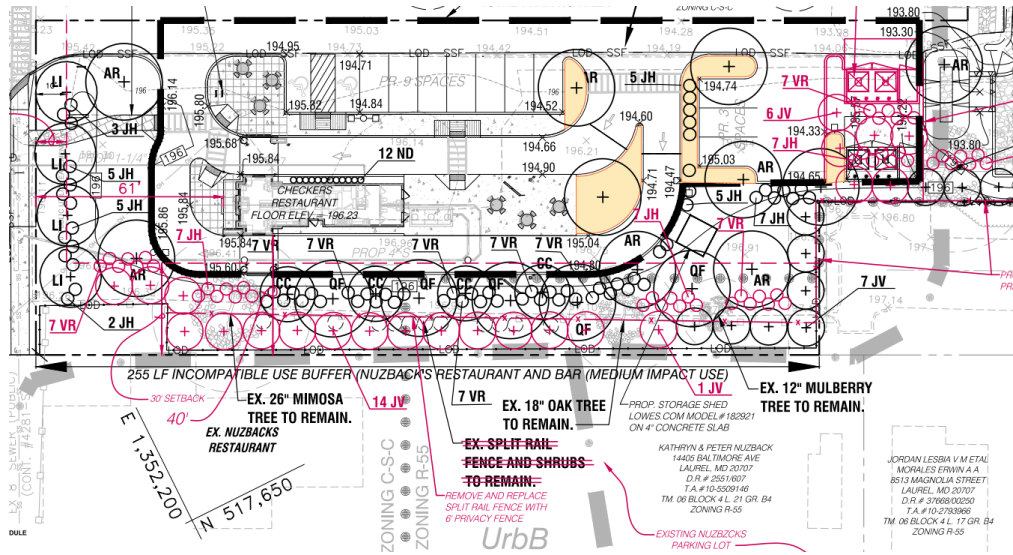
Regarding the 4.7 buffer yard associated with former Lot 11, which is adjacent to Lot 12 – a vacant Lot in the R-55 Zone, the applicant seeks alternative compliance. Although the number of plant units required in this buffer yard is 118 plant units, and the applicant is providing 29, the

applicant has added a six-foot privacy to former Lot 11 (east of the stormwater facility) and 29 new plant units. The stormwater devise, which is an infiltration trench with stone surfaces that will not allow planting. In addition, and as mentioned below, Lot 12 is wooded and the owner has no intention of developing Lot 12. Currently, existing trees make up 42% of the buffer yard. The revised 4.7 schedule takes into account the 50% reduction in required planting units. Finally, there is an earth embankment that limits the ability to add new plant units due to steep slopes. Given these facts and the additional improvements proposed, the applicant contends that the proposed landscape buffer yard is equal to conformance especially given the fact that 42% of the buffer yard includes existing trees and a six-foot privacy fence has been added.

5. The gross acreage and zone classifications of Lot 23, including the 25-foot wide portion of the Magnolia Street right-of-way.

RESPONSE: As provided in the PGCPB No. 2020-152, and further described at the March 8, 2021 District Council oral argument hearing, the Circuit Court for Prince George’s County, in Case No.: CAE-16-10213, granted the property owner’s, Nazario Family, LLC, Motion for Summary Judgment, quieting title to the unclaimed portion of the Magnolia Street right-of-way that adjoined both Lot 23 and the property to the south, owned by the Nuzback Kathryn A. Revocable Trust, and concluded that Nazario Family, LLC acquired that portion of the right-of-way through adverse possession (i.e., the 25-foot wide portion of the paper Magnolia Street right-of-way that is the subject of Remand Item No. 5). The Court of Special Appeals, in Case No. 1323, September Term, 2017, affirmed the Circuit Court’s judgment. Pursuant to Section 27-111(a)(1) and (3), the 25-foot wide portion of the Magnolia Street right-of-way is deemed to be in the R-55 Zone, with the other portion previously consolidated into Lot 23 in the C-S-C Zone. This is graphically depicted on the revised site plan. Accordingly, the gross acreage and zone classifications for Lot 23 have been revised, and are depicted on the DSP. General Note 2 has been updated to provide the square footage of the C-S-C Zones portion of the property (25,705 square feet) and the R-55 Zoned portion of the property (10,885 square feet).

Again, the DSP has been revised to accurately show the zoning line for this portion of the 25-foot wide portion of the Magnolia Street right-of-way. Section 4.7-1(G) of the Landscape Manual provides that “[i]n the case of a lot that is located in more than one zone, the establishment of the required bufferyard is based on the platted or recorded property line(s), not the zoning line(s).” This area is owned by Nazario Family, LLC, so an easement to accommodate the additional landscaping in this portion of the property, is not required. Although the applicant does not believe that alternative compliance is required, if it is, the applicant respectfully requests the same, as the proposed bufferyard and landscape strips (either 4.7 or 4.2) are equal to or better than normal compliance. As provided, the bufferyard along the southern boundary includes a building setback that is (10) feet wider than what is required; a landscape yard that is seven (7) feet wider than what is required; a six-foot high privacy fence; and plant units that exceed the requirement.



Based on the foregoing, and the revised DSP, the applicant contends that the remand items have been satisfactorily addressed, and would respectfully request that the Planning Board re-approve DSP-20006.

As always, thank you for your continued consideration of this matter.

Respectfully submitted,

Matthew C. Tedesco, Esq.

- cc: DRD Applications
- James Hunt
- Jill Kosack
- Adam Bossi
- David Warner, Esq.
- Peter Goldsmith, Esq.

Sample Schedule 4.3-1
Buffering Incompatible Uses Requirements

- General Plan designation: Developing Tier, Corridor Node or Center
- Use of proposed development: Developing or Rural Tier
- Impact of proposed development: Develop In/ East Food Resest.
- Use of adjoining development: Develop In/ East Food Resest.
- Impact of adjoining development: Develop In/ East Food Resest.
- Minimum required buffer (A, B, C, D or E): A X B C D E
- Minimum required building setback: 50 feet
- Building setback provided: 40 feet
- Minimum required width of landscape yard: 20 feet
- Width of landscape yard provided: 27 feet
- (The required setback and landscape yard may be reduced by fifty percent (50%) in the Developed Tier, Corridor Node or Center when a six (6) foot high fence or wall is provided.)
- Linear feet of buffer strip required along property line and right-of-way: 235 linear feet
- Percentage of required buffer occupied by existing trees: 22 %
- Is a six (6) foot high fence or wall included in buffer strip? X yes no
- (The required plant material may be reduced by fifty percent (50%) when a six (6) foot high fence or wall is provided.)
- Total number of plant units required in buffer strip: 235 p.u.
- Total number of plant units provided: 118 p.u.

TC-2 Tree Canopy Coverage Worksheet

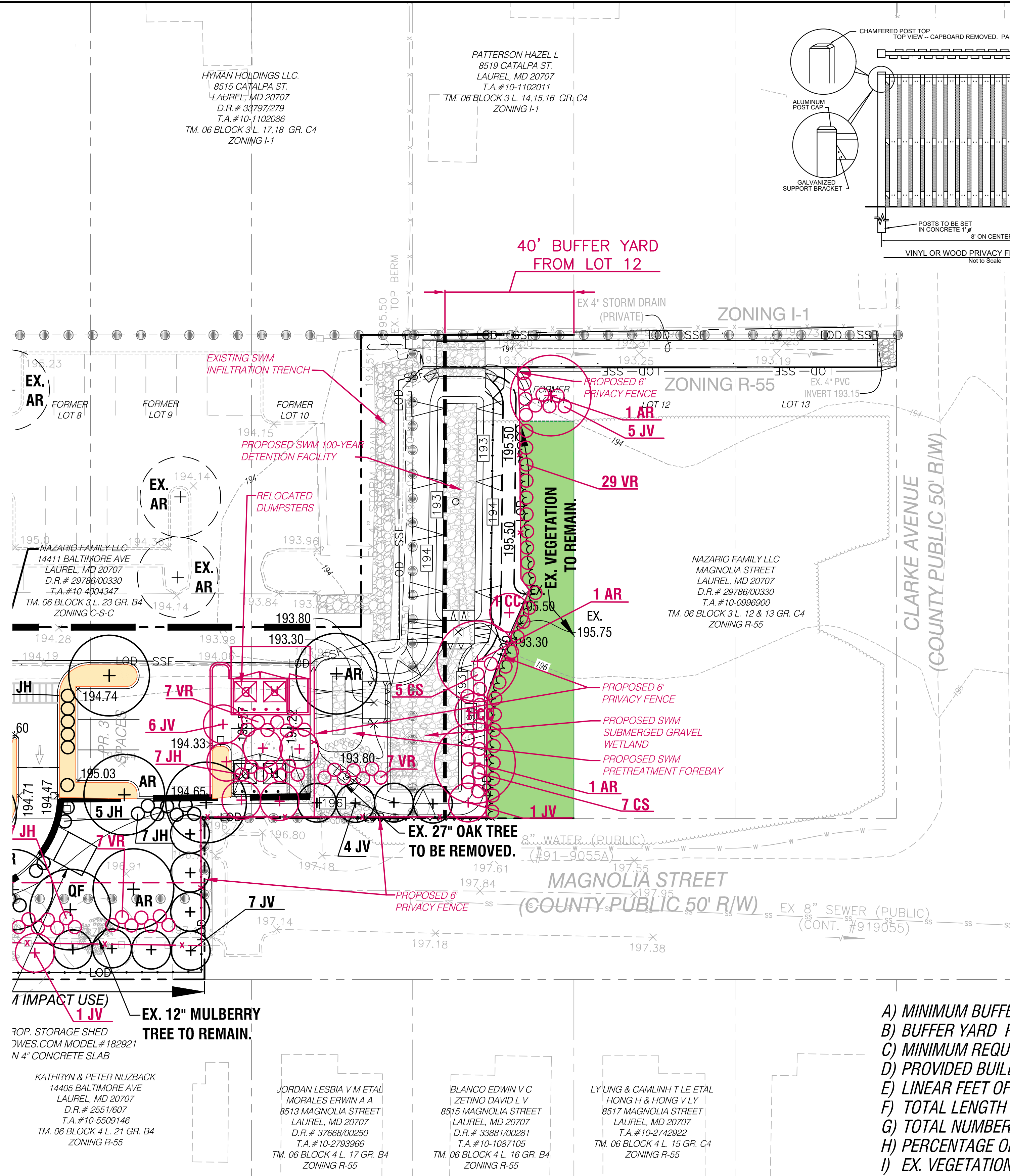
Project Name: Checkers Laurel 2 Plan #

Site Calculations: Site Area 0.84 AC x 10% = 3,059 sq. ft. required

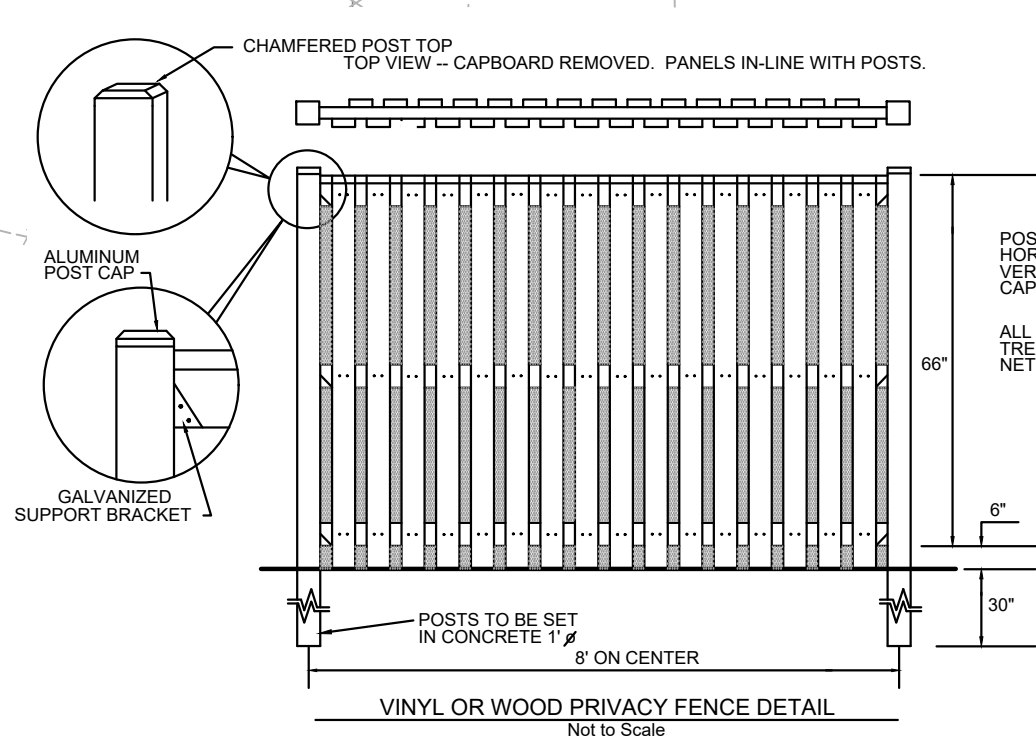
Category	Credit per Tree Based on Size at Planting (in square feet)	Number of Trees	Total Credit
Deciduous - columnar tree (50' or less height)	1-1 1/2" = 40	0	0
Deciduous - small ornamental tree (20' or less height with equal spread)	2-2 1/2" = 50	0	0
Deciduous - medium shade tree (25-50' height with equal spread or greater, and over 50' height with less spread than height)	3-3 1/2" = 75	4	300
Deciduous - large shade tree (50' and greater ht. with spread equal to or greater than ht., and trees 75' or greater ht.)	3-3 1/2" = 150	13	1,950
Evergreen - columnar tree (less than 30' height with spread less than 15')	6-8" = 40	0	0
Evergreen - small tree (30-40' height with spread of 15-20')	8-8" = 75	0	0
Evergreen - medium tree (40-50' height with spread of 20-30')	10-12" = 125	11	1,375
Evergreen - large tree (50' height or greater with spread of over 30')	12-12" = 250	0	0
TOTAL NUMBER OF TREES		28	3,625
A. TOTAL SQUARE FOOTAGE IN PLANTED TREES =			4,475.0
B. TOTAL SQUARE FOOTAGE OF EXISTING TREES =			3,236.0
C. TOTAL TREE CANOPY COVERAGE PROVIDED =			3,236.0
D. TOTAL SQUARE FOOTAGE REQUIRED =			3,059.0

AForestation Planting Schedule

QTY.	SYMBOL	SIZE	BOTANICAL NAME	COMMON NAME	SPACING	ROOT	UNIT COST	TOTAL COST
12	AR	2 1/2" Cal.	Acer rubrum	Red Maple	25-30' o.c.	B&B	\$ 400.00	\$ 4,800.00
38	JV	6" Ht.	Juniperus Virginiana	Eastern Red Cedar	12' o.c.	B&B	\$ 200.00	\$ 7,600.00
1	GT	2 1/2" Cal.	Gliditsa triacanthos 'Shademaster'	Shademaster Honeylocust	as shown	B&B	\$ 400.00	\$ 400.00
53	JH	2 1/2" Ht.	Juniperus horizontalis	Horizontal Juniper	4' o.c.	Cont.	\$ 50.00	\$ 2,650.00
6	CC	1 1/2" Cal.	Cercis canadensis	Eastern Redbud	15-20' o.c.	B&B	\$ 200.00	\$ 1,200.00
12	CS	2 1/2" Cal.	Cornus Stolonifera	Red Osier Dogwood	4-5' o.c.	Cont.	\$ 50.00	\$ 600.00
3	QF	2 1/2" Cal.	Quercus falcata	Southern Red Oak	30-35' o.c.	B&B	\$ 400.00	\$ 1,200.00
12	ND	2 1/2" Ht.	Nandina domestica 'compacta'	Dwarf Nandina	3-4' o.c.	Cont.	\$ 50.00	\$ 600.00
70	VR	2 1/2" Ht.	Viburnum rhytidophyllum	Leather Leaf Viburnum	4-5' o.c.	Cont.	\$ 50.00	\$ 3,500.00
Total for bonding only								\$ 22,550.00



PLAN VIEW
SCALE: 1"=20'



Sample Schedule 4.3-1
Requirements for Landscape Strips Along Streets

MAGNOLIA AVENUE
Linear feet of street frontage, excluding driveway entrances: 164 LF

- General Plan Designation: Developing Tier Rural Tier
- Option Selected: 1, 2, 3, or 4: 2 1 or 2:
- Is there a public utility easement along the frontage of the property? X Yes no
- Number of plants required: 3 shade trees 13 shrubs 15 shrubs 25-foot-wide strip of existing trees
- Total number of trees provided: 11 ornamental/evergreen 14 trees 15 shrubs 27 25-foot-wide strip of existing trees

Sample Schedule 4.3-1
Buffering Incompatible Uses Requirements

ALONG LOT 12 BOUNDARY

- General Plan designation: Developing Tier, Corridor Node or Center
- Use of proposed development: Developing or Rural Tier
- Impact of proposed development: HIGH
- Use of adjoining development: Residential R-55
- Impact of adjoining development: LOW
- Minimum required buffer (A, B, C, D or E): A B C D E
- Minimum required building setback: 50 feet
- Building setback provided: 25 feet
- Minimum required width of landscape yard: 40 feet
- Width of landscape yard provided: 17' TO 27' feet
- Linear feet of buffer strip required along property line and right-of-way: 147 linear feet
- Percentage of required buffer occupied by existing trees: 42 %
- Is a six (6) foot high fence or wall included in buffer strip? X yes no
- Total number of plant units required in buffer strip: 235
- Total number of plant units provided: 118 p.u.

160 P.U. / 100 L.F. BUFFER x 147 L.F. = 235 P.U. REQUIRED
REDUCTION FOR 6' FENCE: 235 P.U. x 50% = 118 P.U. REQUIRED
REDUCTION FOR EXISTING VEGETATION: 118 - (118 x 42%) = 68 P.U. REQUIRED

LOT 12 BUFFER YARD DATA

- A) MINIMUM BUFFER YARD REQUIRED..... 40'
- B) BUFFER YARD PROVIDED..... 40'
- C) MINIMUM REQUIRED BUILDING SETBACK..... 50'
- D) PROVIDED BUILDING SETBACK..... 251'
- E) LINEAR FEET OF BUFFER STRIP REQUIRED ALONG PROPERTY LINE..... 147'
- F) TOTAL LENGTH OF 6' HIGH PRIVACY FENCE PROVIDED..... 143'
- G) TOTAL NUMBER OF PLANT UNITS REQUIRED IN BUFFER STRIP..... 118 P.U.
- H) PERCENTAGE OF REQUIRED BUFFER YARD OCCUPIED BY EXIST. TREES..... 42%
- I) EX. VEGETATION REDUCTION IN REQUIRED PLANT UNITS 118 - (118 x 42%)..... 68 P.U.
- J) TOTAL NUMBER OF SHRUBS PROVIDED IN BUFFER STRIP..... 46 (46 P.U.)
- K) TOTAL NUMBER OF ORNAMENTAL TREES PROVIDED IN BUFFER STRIP..... 2 (20 P.U.)
- L) TOTAL NUMBER OF CANOPY TREES PROVIDED IN BUFFER STRIP..... 3 (30 P.U.)
- M) TOTAL NUMBER OF PLANT UNITS PROVIDED IN BUFFER STRIP..... 86 P.U.

Sample Schedule 4.3-1
Requirements for Landscape Strips Along Streets

Linear feet of street frontage, excluding driveway entrances:

- General Plan Designation: Developing Tier Rural Tier
- Option Selected: 1, 2, 3, or 4: 2 1 or 2:
- Is there a public utility easement along the frontage of the property? X Yes no
- Number of plants required: 3 shade trees 13 shrubs 15 shrubs 25-foot-wide strip of existing trees
- Total number of trees provided: 4 shade trees 14 trees 15 shrubs 25-foot-wide strip of existing trees

Sample Schedule 4.3-1
Parking Lot Perimeter Landscape Strip for Parking Lots 7,000 Square Feet or Larger

Linear feet of parking lot perimeter adjacent to property line: 54'

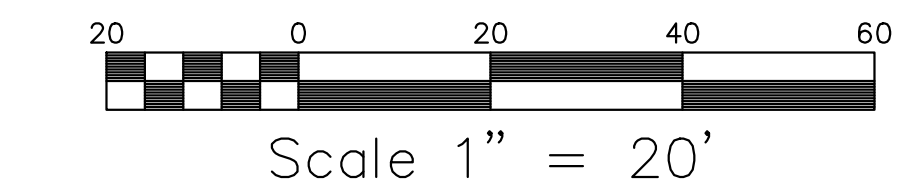
- General Plan designation: Developing Tier X Developing Tier Rural Tier
- Option selected: 1, 2, or 3: 1 1 or 2: 1 1 or 2:
- Width of perimeter strip required: 5 feet
- Width of perimeter strip provided: 5 feet
- Plant material required: 2 shade trees 6 shrubs 2 shrubs 2 shrubs 2 shrubs 2 shrubs 7 shrubs
- Total plant material provided: 2 shade trees 6 shrubs 2 shrubs 7 shrubs 2 shrubs 7 shrubs

Sample Schedule 4.3-2
Interior Planting for Parking Lots 7,000 Square Feet or Larger

- Parking Lot Area (see Figure 4.3-7): 13,600 square feet
- Interior landscaped area required: 8 % 1,095 square feet
- Interior landscaped area provided: 8 % 1,100 square feet
- Minimum number of shade trees required: 4 shade trees
- Number of shade trees provided: 4 shade trees
- Is a minimum of 160 square feet of contiguous pervious land area provided per shade tree? X yes no
- Is there a planting island on average every 10 spaces? X yes no
- Is a curb or wheel stop provided for all parking spaces abutting a planting or pedestrian area? X yes no
- Are planting islands that are either parallel or perpendicular to parking spaces on both sides a minimum of 9 feet wide? X yes no
- Is a planting island that is perpendicular to parking spaces on one side a minimum of 6 feet wide? X yes no
- For parking lots 50,000 square feet or larger: 1/A
 - a) Is there a 9-foot-wide planting island perpendicular to parking for every 2 bays? yes no
 - or
 - b) Is the number of shade trees required increased? (1 per 200 square feet of interior planting area provided) yes no

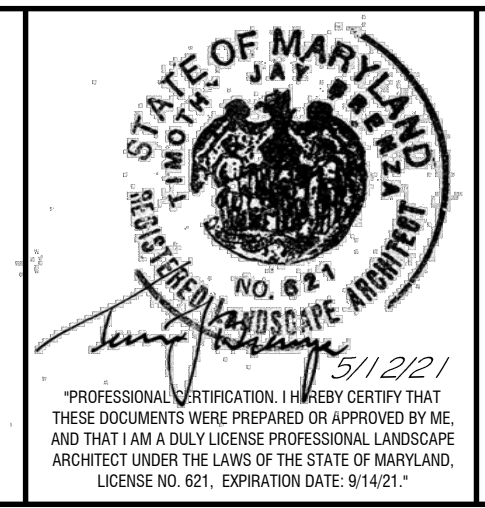
Sample Schedule 4.9-1
Sustainable Landscaping Requirements

- Percentage of native plant material required in each category:
 - Shade Trees: total 13 x 50% = 6.5 total number required total number provided 13 = 60 % native
 - Ornamental Trees: total 4 x 50% = 2 total number required total number provided 4 = 100 % native
 - Evergreen Trees: total 11 x 30% = 3.3 total number required total number provided 11 = 100 % native
 - Shrubs: total 50 x 30% = 15 total number required total number provided 15 = 30 % native
- Are invasive species proposed? yes X no
- Are existing invasive species on-site in areas that are to remain undisturbed? yes X no
- If "yes" is checked in numbers 2 or 3, is a note included on the plan requiring removal of invasive species prior to certification in accordance with Section 1.5, Certification of Installation of Plant Materials? yes X no
- Are trees proposed to be planted on slopes greater than 3:1? yes X no



ALTERNATE COMPLIANCE EXHIBIT
CHECKERS LAUREL 2
DETAILED SITE PLAN
14411 BALTIMORE AVE., LAUREL, MD 20707
TAX MAP: 06 BLK: 3 GRID: B4 LOT: 23 ZONING: C-S-C OAK CREST
TAX ACCOUNT No.: 10-4004347
TENTH TAX ASSESSMENT DISTRICT PRINCE GEORGES COUNTY, MARYLAND 20707
SCALE: AS SHOWN DATE: MAY, 2021 SHEET 1 OF 1

MESSICK & ASSOCIATES
CONSULTING ENGINEERS,
PLANNERS AND SURVEYORS
7 OLD SOLOMONS ISLAND ROAD, SUITE 202
ANNAPOLIS, MARYLAND 21401
(410) 266-3212 * FAX (410) 266-3502 email: engr@messickandassociates.com



DEVELOPER
KEITH MARTIN
7810 CLARK ROAD, SUITE T-1
JESSUP, MD 20794

OWNER
NAZARIO FAMILY LLC
14405 MARYLAND AVE.
BELTSVILLE, MD 20705

REVISION	DESCRIPTION	BY	DATE

May 18, 2021

Via electronic submission only

The Maryland-National Capital
Park and Planning Commission
14741 Gov. Oden Bowie Drive
Upper Marlboro, MD 20772

Re: DSP-20006 Checkers Laurel

Dear Planning Board:

This firm represents the Kathryn A. Nuzback Revocable Trust aka Nuzback Kathryn A. Revocable Trust (the "Trust"), the owner of the commercial and residential property adjacent the property at issue in application referred to as DSP-20006 Checkers Laurel. The purpose of this letter is to document our client's written opposition to the application and to place on the record information pertinent to the property in question.

First, there are two (2) pending lawsuits against the County (*Nuzback Kathryn A Revocable Trust v. MNCPP, et al.*, Case No. CAL20-13248 and *Kathryn A. Nuzback Revocable Trust v. Prince George's County, Maryland*, Case No. 21-00579), and regarding the determination and disposition of a "50' Right of Way" between the subject property and the Trust's property. The property owner, Nazario Family, LLC, has asserted a claim of ownership in the right of way and, therefore, the Applicant incorporated this land into its development application. In prior litigation, the Nazario Family LLC was granted an order *as to and against* our client regarding ownership of the right of way through adverse position in *Nazario Family, LLC v. Nuzback Kathryn A. Revocable Trust, et al.*, Case No. CAE 16-10213.¹ However, what has not been determined by final order is whether Prince George's County, Maryland is the legal owner of the right of way.

¹ On Page 4, Para. 5 of the Staff Report for DSP-20006, it is noted: "The Nazario Family, LLC is the property owner of the subject site for DSP-20006. The Circuit Court for Prince George's County, in Case No. CAE 16-10213, granted the Nazario Family, LLC's motion for summary judgment in its favor, quieting title to the unclaimed portion of the right-of-way adjoining the property owned by the Nuzback Kathryn A. Revocable Trust, and concluding that Nazario Family, LLC acquired that portion of the right-of-way through adverse possession. The Court of Special Appeals, in Case No. 1323, September Term, 2017, affirmed the circuit court's judgment. The area shown for Lot 23 on the DSP includes this additional property area."

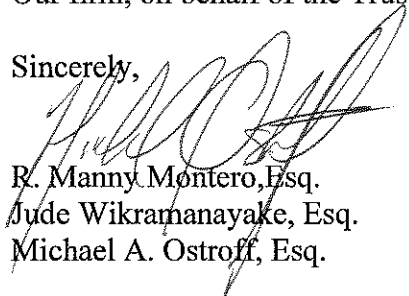
Despite several attempts to have the County acknowledge its ownership interest in the Right of Way, the County has been passive at best to the Nazario Family, LLC's attempts to redevelop the land for its own financial benefit. In the litigation with Nazario Family, LLC, Nazario Family contended that the County never took possession from the State of Maryland. Said contention was based on a memorandum allegedly written by MCNPP in the 1990s; however, the County has never produced the memorandum and, therefore, the position is legally suspect. The two pending lawsuits seek information from the County as to why it has not asserted its ownership interest in the Right of Way. The first suit against MNCPP and DPIE is a result of the County's failure/refusal to provide documents responsive to an MPIA request; the second federal suit alleges that the transfer or abandonment of the Right of Way to Nazario Family, LLC was a violation of Count Code § 2-111.01.

Accordingly, our client wants to ensure that the Board is fully aware of the issues presented by the development application, namely, that the application seeks ratification of the private development of what may be County-owned land, in contravention of the County Code's statutory scheme for disposing of County land. As a party to the state court litigation, we wanted to ensure that MNCPPC, through this Board, understood the underlying issues surrounding this matter and the position of our client.

Second, as a practical matter, the Trust is concerned about the proposed development backing to the Trust's property line, including any infringement on the use, enjoyment, and access of the commercial and residential buildings owned by the Trust. The Trust notes that the property is currently and has been a right of way that was blocked to traffic but used as a parking lot by both commercial properties. The proposed development eliminates this neutral access point and develops the land up to the existing property line. Though the current plan provides that this area is to be landscaped, the purpose herein is to raise concerns regarding current use, enjoyment, and access, as well as future additional development.

Our firm, on behalf of the Trust, intends to participate in the hearing on May 20, 2021.

Sincerely,



R. Manny Montero, Esq.
Jude Wikramanayake, Esq.
Michael A. Ostroff, Esq.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 14741 Governor Oden Bowie Drive
 Upper Marlboro, Maryland 20772

DATE: May 14, 2021
TO: Andree Green Checkley, Esq., Planning Director
VIA: Henry Zhang, Co-Chair, Alternative Compliance Committee
 Jill Kosack, Co-Chair, Alternative Compliance Committee
FROM: Andrew Bishop Alternative Compliance Committee Member
PROJECT NAME: Checkers, Laurel
PROJECT NUMBER: Alternative Compliance AC-21013
COMPANION CASE: Detailed Site Plan DSP-20006

ALTERNATIVE COMPLIANCE			
Recommendation:	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/> Denial
Justification: SEE ATTACHED	Andrew Bishop		
			Andrew Bishop
			_____ Reviewer's Signature

PLANNING DIRECTOR'S REVIEW			
<input type="checkbox"/> Final Decision	<input type="checkbox"/>	Approval	<input type="checkbox"/> Denial
<input checked="" type="checkbox"/> Recommendation	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/> Denial
<input checked="" type="checkbox"/>	To Planning Board		
<input type="checkbox"/>	To Zoning Hearing Examiner		
Planning Director's Signature _____			Date

APPEAL OF PLANNING DIRECTOR'S DECISION			
Appeal Filed:			
Planning Board Hearing Date:			
Planning Board Decision:	<input type="checkbox"/>	Approval	<input type="checkbox"/> Denial
Resolution Number:			

Alternative Compliance: AC-21013
Name of Project: Checkers Laurel
Companion Case: DSP-20006
Date: May 14, 2021

This Alternative Compliance application is a companion case to Detailed Site Plan DSP-20006, which proposes construction of a 1,170-square-foot eating and drinking establishment with drive-through service on Lot 23. Alternative compliance is requested from the requirements of the 2010 *Prince George's County Landscape Manual* (Landscape Manual) for Section 4.7, Buffering Incompatible Uses, along its eastern boundary where the site is adjacent to a vacant residentially zoned property, Lot 12.

Location

The subject site is on the east side of US 1 (Baltimore Avenue), approximately 400 feet north of its intersection with Mulberry Street, in Planning Area 62 and Council District 1. The site is also within the geography previously designated as the Developing Tier, and reflected on Attachment H(5) of the *Plan Prince George's 2035 Approved General Plan*, as found in Prince George's County Planning Board Resolution No. 14-10 (see Prince George's County Council Resolution CR-26-2014, Revision No. 31).

Background

The subject DSP was originally filed by the applicant, in accordance with Section 27-282 of the Prince George's County Zoning Ordinance, to request approval of a 1,170-square-foot eating and drinking establishment with drive-through service on a 0.84-acre site that is split-zoned between the Commercial Shopping Center (C-S-C) Zone and One-Family Detached Residential (R-55) Zone. DSP-20006 was approved by the Planning Board on October 29, 2020, and a final resolution was adopted on November 19, 2020 (PGCPB Resolution No. 2020-152).

The Prince George's County District Council elected to review this application on January 25, 2021. The District Council conducted oral arguments on March 8, 2021 and remanded the DSP back to the Planning Board for further consideration on March 22, 2021. The Order of Remand was transmitted to the Planning Board on March 25, 2021 and required the applicant to submit a revised site plan. The Order of Remand also required the Planning Board to reopen the record and take further testimony on five specific issues. One of these issues relates specifically to the landscape buffers between the proposed development and adjacent R-55-zoned property to the east. The Order of Remand requires the applicant to comply with Section 4.7 of Landscape Manual, which addresses buffering incompatible uses. The objective of the landscape bufferyard is to form a visual and physical separation between uses of significantly different scale, character, and/or intensity of development to mitigate undesirable impacts.

The subject site is an unusual shape, with a larger rectangular area fronting on Baltimore Avenue and extending eastward to Magnolia Street, and a smaller rectangular section, which contains the R-55-zoned portion, on the east side of the site that extends northward from its frontage on Magnolia Street. The proposed Checkers restaurant building and site improvements are located on the C-S-C-zoned portion site, and the proposed stormwater management (SWM) facility serving the development is located on the R-55-zoned portion of the site. Access to the site is provided from Baltimore Avenue by an existing 22-foot-wide, private driveway that is shared with the abutting urgent care facility to the north.

The applicant is seeking relief from the requirements of Section 4.7(c)(2)(G) Buffering Incompatible Uses, along the eastern boundary adjacent to Lot 12. Due to space limitations and the location of the stormwater facility, which will not permit any additional plantings inside the facility and cannot accommodate additional plant units on the embankment of this facility. The application fails to meet Section 4.7

requirements for the required landscape yard, and the applicant is proposing a landscape yard with a varied width and 18 additional planting units than would normally be required, as follows:

REQUIRED: Section 4.7-2 Buffering Incompatible Uses, adjacent to vacant residentially zoned Lot 12

Total length of bufferyard	147 feet
Building setback	50 feet
Landscape yard	40 feet
Plant units (160 per 100 linear feet)	68

PROVIDED: Section 4.7-2 Buffering Incompatible Uses, adjacent to vacant residentially zoned Lot 12

Length of bufferyard	147 feet
Building setback	251 feet
Landscape yard	17-27 feet
Percentage of bufferyard occupied by existing trees	42 percent*
Fence or wall	Yes, 6-foot-high**
Plant units (160 per 100 linear feet)	86

Notes: * When existing trees are located in part of the landscaped yard, the number of plant units required may be reduced in proportion to the percentage of the area of the landscaped yard occupied by existing trees. Invasive species should be removed from the buffer area.

**The plant unit requirement can be reduced by 50 percent by installation of a 6-foot-high, sight-tight fence.

Justification of Recommendation

Section 4.7 requires a Type D landscape bufferyard, along the eastern property line shared with Lot 12, to include a 50-foot building setback and 40-foot-wide landscape yard to be planted with 160 plant units per 100 linear feet of the property line. The applicant is not able to meet the required 40-foot landscape yard width on the eastern property boundary and is requesting approval of an alternative design, from the requirements of Section 4.7. The proposed commercial development is in the center of Lot 23 in the C-S-C-zoned portion of the site and includes a stormwater facility on the eastern portion of the site on former Lot 11, adjacent to Lot 12 in the R-55 Zone. Lot 12 is vacant, zoned R-55, and under common ownership with the subject site.

To compensate for the reduced width of the landscape yard, the applicant is proposing an alternative design to meet the required landscape buffer by proposing a varied width landscape yard, constructing a 6-foot-high, sight-tight fence, preserving existing on-site vegetation, and by providing 26 percent more than the required plant units. This will create a visual and physical separation between the commercial development and the residentially zoned Lot 12 and mitigate undesirable impacts. The SWM facility and the proposed bufferyard will also create a transition between the Checkers restaurant and possible future development on Lot 12.

The Alternative Compliance Committee finds that the applicant’s proposals are equally effective as normal compliance with the requirements of Section 4.7 of the Landscape Manual. The 6-foot-high, sight-tight

fence, preservation of existing vegetation, and additional plant units meet the intent of Section 4.7, Buffering Incompatible Uses.

Recommendation

The Alternative Compliance Committee recommends APPROVAL of Alternative Compliance AC-21013 for Checkers Laurel, from the requirements of Section 4.7(c)(2)(G), Buffering Incompatible Use Requirements of the 2010 *Prince George's County Landscape Manual*, along its eastern boundary area adjacent to Lot 12.