



# THE PRINCE GEORGE'S COUNTY GOVERNMENT

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

February 4, 2025

**RE: DSP-20002 Remand Giac Son Buddhist Temple  
Giac Son Buddhist Temple Corp., Applicant**

## ***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 this case on January 27, 2025

## ***CERTIFICATE OF SERVICE***

This is to certify that on February 4, 2025, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

A handwritten signature in cursive script, reading "Donna J. Brown".

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Donna J. Brown  
Clerk of the Council

Case No.: DSP-20002  
TCP2-018-2023  
AC-22009  
Variance (25-119(d))  
Giac Son Buddhist Temple

Applicant: Giac Son Buddhist Temple Corp.

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

FINAL DECISION — DISAPPROVAL OF DETAILED SITE PLAN

A. Introduction

On January 13, 2025, using oral argument procedures, the District Council considered the Planning Board’s Amended Resolution, PGCPB No. 2023-98(A), to approve Detailed Site Plan (DSP)-20002.

As detailed *infra*, because the Board violated certain statutory timeframes in the Zoning Ordinance and its own Rules of Procedure after remand from the District Council in January 2024, the Board exceeded its statutory authority and jurisdiction to adopt an Amended Resolution to untimely approve a no action or unchanged decision in DSP-20002. As such, the Board’s action in PGCPB No. 2023-98(A) is not legally authorized, not supported by substantial evidence of record, and is arbitrary, capricious or otherwise illegal. *Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015) (holding that the District Council may reverse an approval by the Board if the decision was not legally authorized, not supported by substantial evidence of record, was arbitrary, capricious, or otherwise illegal).

B. Factual and Procedural Background Before Remand<sup>1</sup>

On January 16, 2024, using oral argument procedures, the District Council reviewed, based on its motion, the Board's decision, embodied in Resolution 2023-98, to approve, among other things, Detailed Site Plan (DSP) 20002, a proposed development to construct a 4,625-square-foot place of worship and 1,877-square-foot accessory parsonage on approximately 1.64-acres of land in the Rural Residential Zone, located at the southeast quadrant of the intersection of MD 197 (Laurel Bowie Road) and Snowden Road, Planning Area 62, Council District 1. The District Council's review of the Board's decision also included consideration of written exceptions to the Board's decision from Citizen-Protestants.<sup>2</sup> (1/16/2024, Tr.), Exceptions, 11/2/2023,<sup>3</sup> Order of Remand at 1.

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<sup>1</sup> On January 25, 2024, the District Council adopted an Order of Remand which contained certain findings of fact and conclusions of law that the Board erred as a matter of law when it approved DSP-20002, which are incorporated and adopted herein. Order of Remand, 1/25/2024.

<sup>2</sup> Subject to certain Transitional Provisions in the New Zoning Ordinance, this case was reviewed and approved by the Board under the Old Zoning Ordinance (ZO). Under the Old ZO, when an appeal and request for oral argument is filed by a person of record, as is the case here, all other persons of record may also make oral argument or written submission in opposition. Copies of any written material to be submitted in support of this opposition position shall be filed with the Clerk of the Council (along with a certification of service upon the persons requesting oral argument) no later than five (5) days before the oral argument date. PGCC § 27-131.01. (d). The Applicant filed no written submission in opposition to exceptions filed by Citizen-Protestants. Order of Remand at 1.

<sup>3</sup> In its Order of Remand, the District Council denied the Applicant's motion to strike testimony or discussion on square footage and lot coverage of the proposed development because it is authorized by statute to review the Board's approval of a Detailed Site Plan and issue the final decision. Md. Code Ann., Land Use (LU) Article § 25-210 (1957, 2012 Repl. Vol., 2024 Supp.) *County Council of Prince George's County v. Billings*, 420 Md. 84, 88, 21 A.3d 1065, 1067 (2011) (when a district council elects to review a decision, the filing of exceptions no longer is necessary to guarantee review at the next administrative level). The District Council also rejected any suggestion from the Applicant that an erroneously approved site plan would violate any federal law. Order of Remand, fn. 4. *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1037 (2004) (holding that the City's zoning requirements are general laws of neutral application that do not violate the Free Exercise Clause of the First Amendment nor impose a substantial burden on free exercise of religion and that, accordingly, the strict scrutiny requirement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is not triggered because the City reasonably determined that the applicant had failed to meet the requirements of its zoning ordinance). Order of Remand at 1-2.

Upon careful consideration of the record, including written exceptions, and argument of the parties, the District Council found that, among other things, the Board erred as a matter of law when it concluded that the proposed development was exempt from Preliminary Plan of Subdivision (PPS) approval under Section 24-107 of the Old Subdivision Regulations. PGCC § 24-107. The District Council found that because the gross floor area (GFA) of the proposed development exceeds 5,000 square feet, the exemption from PPS approval does not apply. Under Section 27-270 of the Old Zoning Ordinance, Order of Approvals, the Applicant was required to obtain PPS approval before the Board was legally authorized to review and approve DSP-20002. PGCC § 27-270. Order of Remand at 2.

Instead of disapproving DSP-20002, the District Council found that it was appropriate at that time to remand the matter to the Board for it and the Applicant to act in accordance with the grounds set forth in the Order of Remand. LU § 25-210, PGCC § 27-290.

As explained below, because both parties failed to act as required by law, the findings of fact and conclusions of law in the District Council's Order of Remand will serve as the basis for its final decision to disapprove DSP-20002. Order of Remand at 2.

### C. Factual and Procedural Background After Remand

On January 25, 2024, the Clerk of the Council sent the Board and all persons of record a copy of the District Council's Order of Remand. Notice of Decision, 1/25/2024.

Under time limits for action, for development applications *remanded* to the Board by the District Council, the Board *shall* approve, approve with modifications, or disapprove the Detailed Site Plan *within sixty (60) days* of the transmittal date of the notice of remand by the Clerk of the District Council. The month of August and the period between and inclusive of December 20 and January 3 shall not be included in calculating this sixty (60) day period. PGCC § 27-285(c)(5).

Where the Board determines that it cannot comply with the prescriptions of an Order of Remand adopted by the District Council pursuant to this Section, the Board's findings as to the reasons for its action, and its decision on the Plan shall be embodied in a *resolution* adopted at a regularly scheduled public meeting. PGCC § 27-290(f).

On April 24, 2024, in violation of PGCC §§ 27-285(c)(5) and 27-290(f), the Chair of the Board sent a *letter* to the Chair of the County Council. Shapiro Letter to Ivey, 4/24/2024. In relevant part, the letter indicated that because the Board was unable to hold a hearing within sixty (60) days from the date of the Order of Remand, the Board's decision prior to remand remains unchanged. But the *letter* from the Chair of the Board indicating that the decision of the Board remains unchanged *after* remand was legally deficient for several reasons.

First, where the Board determines that it cannot comply with the prescriptions of an Order of Remand adopted by the District Council, the Board's findings as to the reasons for its action, and its decision on the Plan on remand shall be embodied in a *resolution (not a letter)* adopted at a regularly scheduled public meeting. PGCC § 27-290(f). (Emphasis added). Second, under the Board's own Rules of Procedure, the *letter* (as opposed to a *resolution*) was *not* sent to all persons of record for purposes of reconsideration requests and appeals—which affected the procedural and substantive rights of Citizen-Protestants. Third, under the Board's own Rules of Procedure (like PGCC § 27-290(f)), a final decision in a contested case *shall* be reflected in the form of a *resolution—not a letter*. Fourth, a *resolution* from the Board—*not a letter*—must reflect the final decision of the Board, which shall contain separate statements of: (i) the findings of fact, (ii) conclusion of law, and (iii) *appeal rights of the applicant and parties of record*. Section 13 of Board's Rules of Procedure. (Emphasis added). As noted above, because the Board did not follow its own Rules of Procedure where its decision as reflected in a resolution and served on all parties

of record, such parties procedural and substantive due process rights were prejudiced. *Cty. Council of Prince George's Cty. v. Palmer Rd. Landfill, Inc.*, 247 Md. App. 403, 236 A.3d 766 (2020) (explaining that an agency generally must observe rules, regulations or procedures which it has established and that an agency should not violate its own rules and regulations).

On July 17, 2024, the Chair of the County Council notified the Chair of the Board that the April 24, 2024, letter failed to comply with certain provisions of the Zoning Ordinance and the Board's own Rules of Procedure. Ivey Letter to Shapiro, 7/17/2024.

On September 26, 2024, over eight (8) months after remand from the District Council, the Board held a public hearing. PGCPB No. 2023-98(A) at 1, (9/26/2024, Tr.). Subsequently, the Board acted on October 3, 2024, and adopted its Amended Resolution, PGCPB No. 2023-98(A), which memorialized that it and the Applicant had failed to comply with PGCC §§ 27-285(c)(5) and 27-290(f) and the District Council's Order of Remand. Notice of the Board's Amended Resolution was sent to persons of record on October 8, 2024. PGCPB No. 2023-98(A) at 1. Having carefully reviewed the transcript of the Board's public hearing on September 26, 2024, the District Council finds that the Board<sup>4</sup> and the Applicant *fail* to understand their respective duty and obligation to act on remand. (9/26/2024, Tr.)

Concerning the Board on remand, it is incumbent upon the Board (*not* the Applicant or Citizen-Protestants) to schedule and hold a hearing *within 60 days* to address the Order of Remand—*regardless* of whether the Applicant has taken any action to comply with the Order of Remand. At the hearing, it is incumbent upon the Board to reopen the record and take additional

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<sup>4</sup> According to the Board, since the Applicant did not submit anything within the 60-day action period, there would have been nothing for the Board to consider had it held a hearing within the 60-day period and, therefore, it could take no further action on DSP-20002. PGCPB No. 2023-98(A) at 22. As explained herein, the Applicant's failure to act has *no* bearing on the Board's affirmative duty and obligation to act.

testimony and evidence from the Applicant<sup>5</sup> or others and to decide whether *it* can or cannot comply with the prescriptions of an Order of Remand. Thereafter, it is incumbent upon the Board to act *within 60-days* from the Order of Remand to state its findings to the reasons for its action—and that decision on the Plan, amended or otherwise, shall be embodied in a *resolution—not a letter*—adopted at a regularly scheduled public meeting of the Board.

Concerning the Applicant on remand, the District Council finds *no* merit in the proffer to the Board from counsel for the Applicant that “the [District] Council knew when they sent that remand order over that what they were directing the Applicant to do was impossible,” or “setting the Applicant up for failure.” (9/26/2024, Tr., p.21). The Order of Remand provided *reasonable* alternatives for the Applicant to exhaust administrative remedies and make it *possible to cure its own failures* in DSP-20002. Order of Remand.

At oral argument on January 13, 2025, Applicant, through its counsel, *conceded* that DSP-20002 was *not* exempt from an approval of a Preliminary Plan of Subdivision (PPS) because it exceeded 2,500 square feet, and that the Applicant is *now* willing to submit a *revised* DSP to construct a facility that is *less* than 2,500 square feet. (1/13/2025, Tr.). Based on the Applicant’s admission at oral argument, it is the Applicant who *knew* it was *possible* to submit an amended or revised DSP that did not exceed 2,500 square feet so that it can be exempted from filing a PPS. As such, it is the Applicant who also *knew* it was *possible* to withdraw its DSP on remand that the District Council found was in excess of 2,500 square feet if the Applicant wants to construct a facility in *excess* of 2,500 square feet and file a PPS for review and approval before submitting a

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<sup>5</sup> The Applicant bears the burden of proof in any zoning case. PGCC § 27-142.

DSP to construct a facility in excess of 2,500 square feet. Instead, the Applicant did *nothing*.<sup>6</sup>

In the final analysis, under PGCC §§ 27-285 and 27-290, the Board was *required* to act within *60-days* from receipt of the Order of Remand. The Board failed to do so. 67 Opinions of the Attorney General 203, 209 (1982) (explaining that “a provision is mandatory when failure to follow it renders the proceedings to which it relates illegal and void.”). (Emphasis added).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Bellard v. State*, 452 Md. 467, 481 (2017) (*quoting Wagner v. State*, 445 Md. 404, 417 (2015)). To do so, “we look first to the language of the statute, giving it its natural and ordinary meaning,” and “[w]hen the statutory language is clear, we need not look beyond the statutory language to determine [] intent.” *Id.* However, if the legislative intent cannot be readily discerned from the statutory language itself, “we may, and often must, resort to other recognized indicia.” *Id.* Those indicia include, among other things, the broader statutory structure, the legislative history, the purpose behind the statute, and “the relative rationality and legal effect of various competing constructions.” *Id.* at 482.

Under the Zoning Ordinance, “shall” is mandatory. PGCC § 27-108.01(a)(19). Therefore, it is clear from the statutory language in PGCC §§ 27-285 and 27-290 that the Board was required to act within *60-days* from receipt of the Order of Remand. To the extent that the legislative intent of the District Council was not readily discernable from PGCC §§ 27-285 and 27-290 (and it was), the legislative history and purpose settles the issue.

According to the Committee Report on Council Bill (CB)-83-2015, to amend, among other things, time limitations for the Board to act on remand from the District Council on DSPs, the

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<sup>6</sup> PGCPB No. 2023-98(A) at 1 and 22, wherein the Board acknowledged that *the Applicant did not submit anything within the 60-day action period*. (Emphasis added).



District Council clearly stated that its legislative intent was to accommodate any potential need of rehearing or re-referral on remand. And it was the legislative intent of the District Council under CB-83-2015 to *increase*, from the *stricter* 30-days to *60-days*, the period that the Board *must* decide site plans referred on remand, and that the 60-day increase was an increase from the initial stricter 30-day limit on remand. Agenda Item Summary, 11/3/2015. (Emphasis added).

Collectively, PGCC §§ 27-285 and 27-290, states that that Board “shall” approve, approve with modifications, or disapprove the DSP or adopt a resolution with findings indicating *why it cannot comply* with the prescriptions of an Order of Remand *within sixty (60) days* of the transmittal date of the notice of remand by the Clerk of the District Council, and use of the word “shall” in a statute is generally understood *to impose a requirement, not to permit the exercise of discretion*. The Board did neither. *Prince George’s County v. Vieira*, 340 Md. 651, 660 (1995) (explaining that “shall” is ordinarily “regarded as a direct indication that the Legislature directed that certain conduct is required” (Emphasis omitted)); *Foy v. Baltimore City Det. Ctr.*, 235 Md. App. 37, 60-61 (2017) (“[O]rdinarily, the word ‘shall,’ unless the context within which it is used indicates otherwise . . . denotes an imperative obligation inconsistent with the idea of discretion.” (quoting *Bright v. Unsatisfied Claim and Judgment Fund Board*, 275 Md. 165, 169 (1975))); *Columbia Rd. Citizens’ Ass’n v. Montgomery County*, 98 Md. App. 695, 700-01 (1994) (“The word ‘shall’ in a statute is presumed . . . [to] denot[e] an imperative obligation inconsistent with the exercise of discretion.” (internal quotation marks and citation omitted)); *see also Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016) (“Unlike the word ‘may,’ which implies discretion, the word ‘shall’ usually connote a requirement.”).

Because the Board violated certain statutory timeframes in the Zoning Ordinance and its own Rules of Procedure after remand from the District Council in January 2024, the Board exceeded

its statutory authority and jurisdiction to adopt an Amended Resolution to untimely approve a no action or unchanged decision in DSP-20002. As such, the Board's action in PGCPB No. 2023-98(A) is not legally authorized, not supported by substantial evidence of record, and is arbitrary, capricious or otherwise illegal. *Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015), *Harvey v. Marshall*, 389 Md. 243, 298, 884 A.2d 1171, 1204 (2005) (A decision is arbitrary and capricious if it is "made impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms.").

After careful consideration of the record, the District Council finds that the Board erred as a matter of law before and after remand because DSP-20002 failed to comply with the requirements of the Zoning Ordinance.

For the reasons herein, the Board's Amended Resolution, PGCPB No. 2023-98(A), is REVERSED, and DSP-20002 is DISAPPROVED.

**D. The Subject Property/Site Plan**

The property consists of 1.64 acres and is located in the southeast quadrant of the intersection of MD 197 (Laurel Bowie Road) and Snowden Road. Resolution 2023-98 at 2. 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). Here, on the same lot, the site plan proposes to develop a 4,625-square-foot place of worship and maintain an existing single-family detached dwelling as a required parsonage or accessory use. The other existing structures on Parcels 27 and 28 will be razed. Resolution 2023-98 at 2.

### E. Definitions under the Old Zoning Ordinance

Because the Applicant elected to have the proposed development reviewed and approved under the Old ZO, the following definitions are relevant on remand:

- Development: Any activity that materially affects the *condition or use* of dry land, land under water, *or any structure*. PGCC § 27-107.01(a) (66.1).
- Development: Development means an activity that materially affects the existing condition or use of any land or structure. LU § 1-101(f).
- Use: A “Use” is either:(i) The purpose for which a “Building,” “Structure,” or land is designed, arranged, intended, maintained, or occupied; or (ii) Any activity, occupation, business, or operation carried on in, or on, a “Building,” “Structure,” or parcel of land. PGCC § 27-107.01(a) (244) (A).
- Structure: Anything constructed or built. PGCC § 27-107.01(a) (228).
- Building: A “Structure” having a roof and used for the shelter, support, or enclosure of persons, animals, or property. PGCC § 27-107.01(a)(29)(A).
- Gross Floor Area: The *total* number of square feet of floor area in a “*Building*,” *excluding* those portions of a “Basement” used exclusively for storage or other areas used exclusively for the mechanical elements of a “Building,” and uncovered steps and porches, *but including the total floor area of “Accessory Buildings” on the same “Lot.” All horizontal measurements shall be made between the exterior faces of walls, columns, foundations, or other means of support or enclosure...* (Abbreviated as “GFA.”). PGCC § 27-107.01(a) (105).
- Building, Accessory: A “Building” subordinate to, and located on the *same lot* with, a “Main Building,” *and used for an accessory use*. PGCC § 27-107.01(a)(30).
- Use, Accessory: The “Use” of a “Building,” “Structure,” or land which: (A) Is subordinate to, customarily incidental to, and ordinarily found in association with, a principal “Use,” which it serves. (When a specific “Use” is allowed in the Tables of Uses accessory to a principal “Use”, the “Accessory Use” need not be customarily incidental to, or ordinarily found in association with, the principal “Use”); (B) Is subordinate in purpose, area (except in the case of a cemetery that is accessory to a church, convent, or monastery, provided both uses were existing as of January 1, 1991), floor area, intensity, and extent to, and located on the same “Lot” with, the principal “Use”, except that a “Tourist Home” as an “Accessory Use” need only be subordinate to the principal “Dwelling” use in purpose and number of nights used as a “Tourist Home” “Accessory Use” over a calendar year;

and (C) Does not change the character of the principal “Use.” PGCC § 27-107.01(a) (245).

F. Subdivision Exemption

Under the Old ZO, a Preliminary Plan of Subdivision (PPS) is defined as “[t]he preliminary detailed drawing (to scale) of a tract of land, depicting its proposed division into “Lots,” “Blocks,” “Streets,” “Alleys,” or other designated areas within a proposed “Subdivision.” PGCC § 27-107.01(a) (184). In relevant part, under PGCC § 24-107(c)(7)(C) of the Old Subdivision Regulations, PPS approval is not required of land by deed of a lot prior to January 1, 1982, provided that the development proposed is in addition to a development in existence prior to January 1, 1990, and does not exceed 5,000 square feet of GFA. PGCC § 24-107(c)(7)(C). The cardinal rule of statutory interpretation is to ascertain and effectuate the actual intent of the legislature. The Board’s interpretation of PGCC § 27-107(c)(7)(C) is reviewed *de novo* to determine if [the Board] was legally correct. *Motor Vehicle Admin. v. Smith*, 458 Md. 677, 686, 183 A.3d 211 (2018). Statutory interpretation neither adds nor deletes words or engages in forced or subtle interpretation in an attempt to extend or limit the statute’s meaning. *Bellard v. State*, 452 Md. 467, 481, 157 A.3d 272 (2017) (*quoting Wagner v. State*, 445 Md. 404, 417-19, 128 A.3d 1 (2015)).

First, the record reflects a deed of a lot prior to January 1, 1982, and the existence of a single-family residence, which existed prior to January 1, 1990. But the record does *not* reflect that the square footage of the single-family residence was 1,877 sq. ft. *prior* to January 1, 1990. According to the record, more than 600 sq. ft. of the 1,877 sq. ft. was based on an *addition* after 1990. In the record, there is testimony and analysis from Tim Carter which shows that the addition could easily *exceed* 800 sq. ft.—which calls into question the Applicant’s 1,877 sq. ft. measurement for the

proposed parsonage. As such, when more than 600 sq. ft. (*not* in existence *prior* to 1990) is added to the 4,625 sq. ft. place of worship—the proposed development exceeds 5,000 sq. ft. GFA—disqualifying it from the PPS exemption under 24-107(c)(7)(C). Planning Board Record at 8, 454, 456, 613, 615, Exceptions at 2-3.

Second, even if the more than 600 sq. ft. addition *existed prior* to January 1, 1990, or even if it was not taken into consideration—the proposed development would still exceed 5,000 sq. ft. GFA. Under the Old ZO, development is defined as including any activity that materially affects the condition or use of dry land, land under water, or any structure.

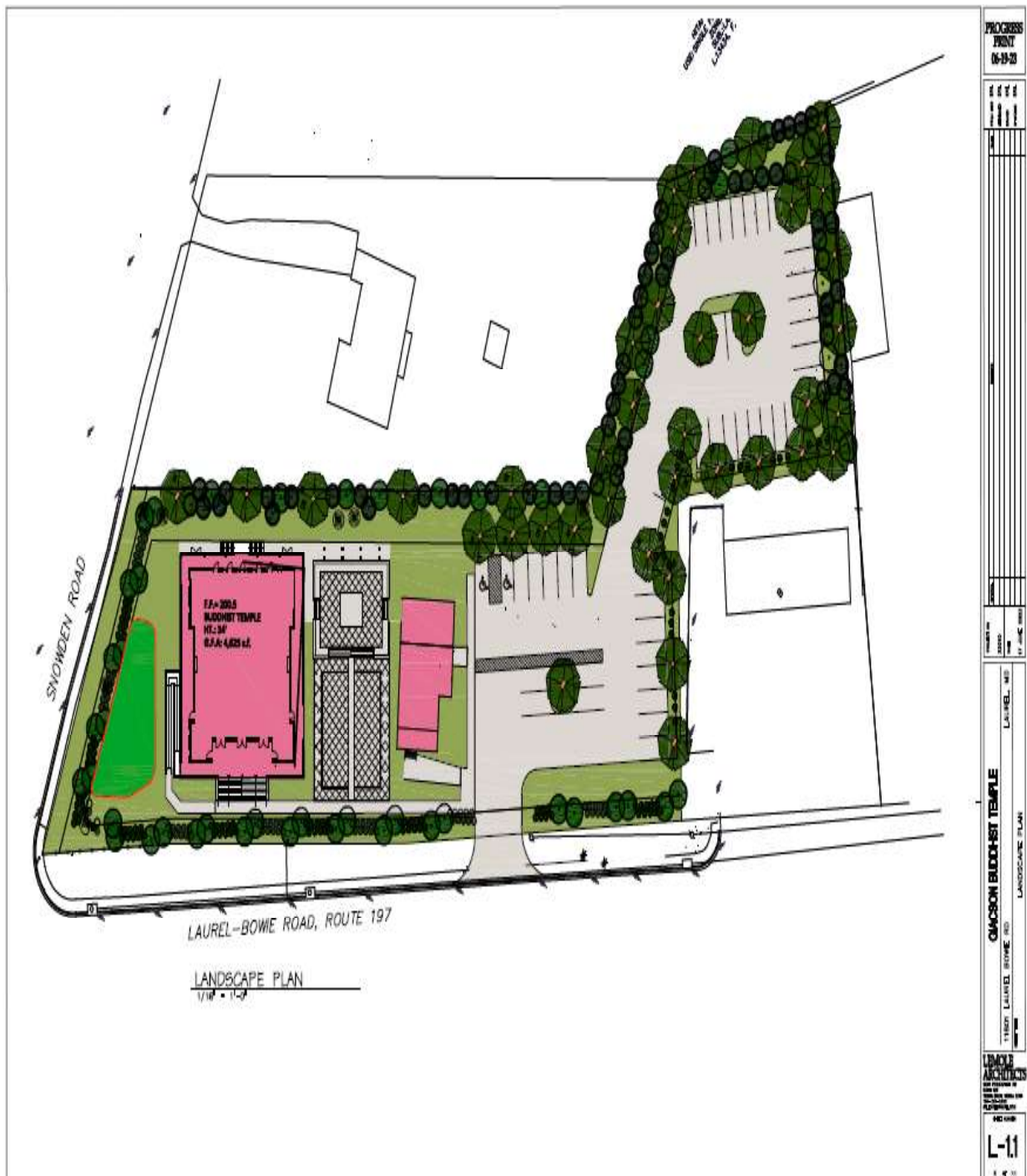
Here, the Applicant is not *only* proposing the activity of the 4,625 sq. ft. place of worship, which materially affects the condition of dry land on site, the Applicant is also proposing activity of the 1,877 sq. ft. (or more) parsonage as an accessory use on the same lot. According to the Applicant:

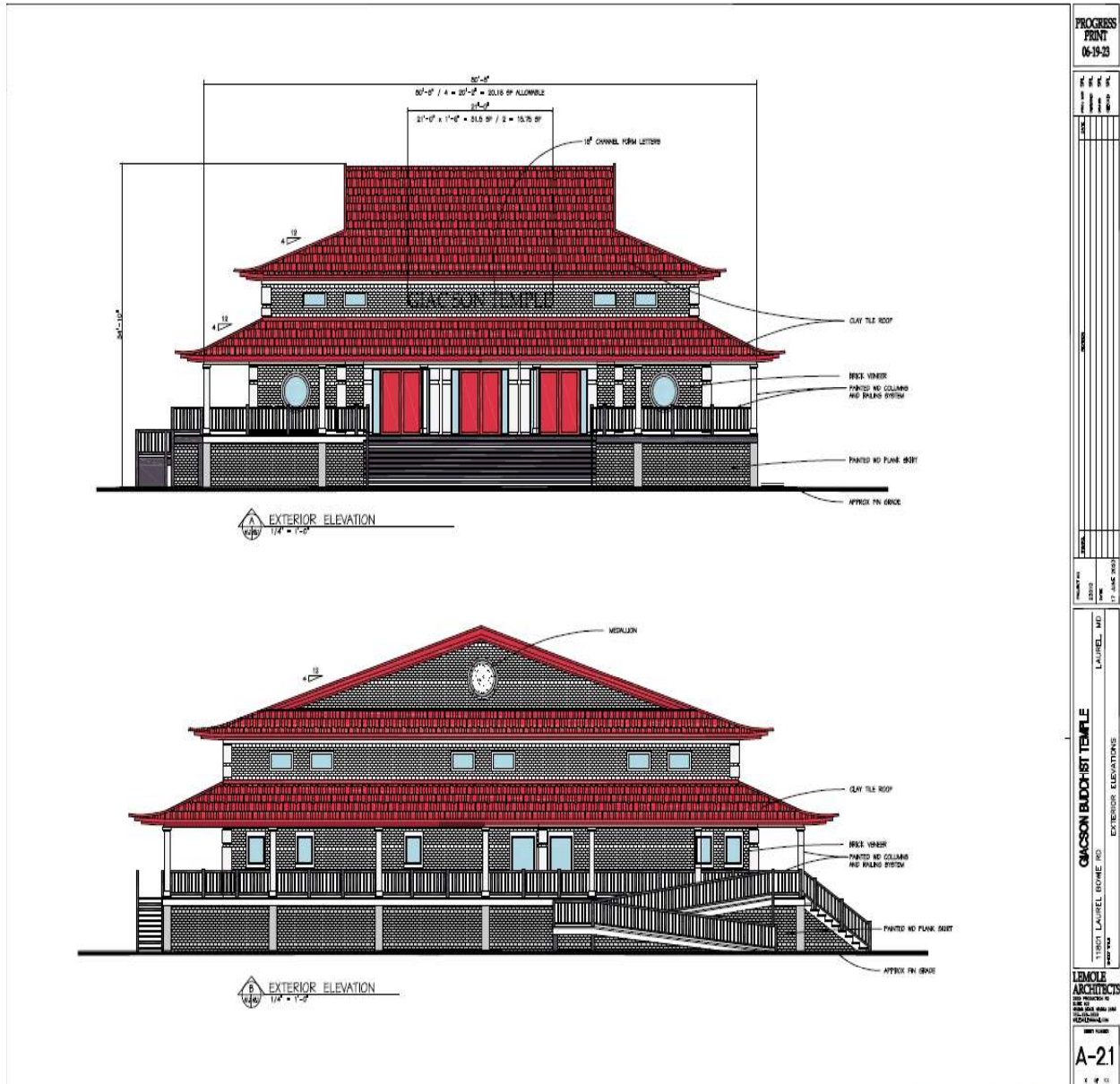
“Since Buddhist temples *require* a dwelling to be provided for the clergy, the *use* of this single-family home *will be a parsonage*. Section 27-424.01 allows a *parsonage as an accessory building which is accessory to churches or similar uses*. The other structures on Parcel 28 will be razed *to provide the required parking*. Parcels 27 and 28 will be developed and considered *as one buildable lot* for the purpose of conformance with the zoning ordinance.” (Emphasis added). Applicant’s Statement of Justification (SOJ), April 2023 at 2.

Because GFA is required to include the total floor area of the proposed parsonage—the proposed development would easily exceed 5,000 sq. ft. GFA—disqualifying the proposed development from the PPS exemption under 24-107(c)(7)(C).

Third, even if the required 1,877 sq. ft. (or more) parsonage for the place of worship was *excluded* from the GFA calculation, the proposed development would still exceed 5,000 sq. ft. because while the proposed 4,625 sq. ft. place of worship includes interior space—it does not include *wrap-around covered porches*.

When covered porches are included in the GFA, the proposed development would exceed 5,000 sq. ft. as shown below:





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According to the Applicant, building footprint for the proposed development is 7,209 sq. ft.—including covered porches as shown above. But to work-around the limitation on square footage under PGCC 24-107(c)(7)(C), the Applicant and the Board erroneously measured GFA to *exclude* the floor area within the covered porch. As the black outline shows above, the space used to measure GFA does *not* extend to the edge of the roof even though the covered walkways extend

to the edge of the roof. Planning Board Record at 141, 430, 432, Exceptions at 15-19.

The Board erred when it concluded that the proposed development was exempt from PPS approval under 24-107(c)(7)(C) because GFA requires that all horizontal measurements shall be made between the exterior faces of walls, columns, foundations, or other means of support or enclosure. PGCC § 27-107.01(a) (105).

When interpreting the Old ZO, it shall be read as a whole. It is not intended that specific requirements be interpreted separately from all other requirements in the Ordinance. PGCC § 27-108.01(a)(23). Based on the definitions under the Old ZO, which governs the proposed development, the Board erred when it failed to read the Old ZO as a whole. As a result, the Board failed to articulate, in any meaningful manner, findings of fact and conclusions necessary to allow the District Council, or persons of record, how it reasonably concluded that the Applicant's proposed development was exempt from PPS approval under 24-107(c)(7)(C). *Elbert v. Charles Cnty. Plan. Comm'n*, 259 Md. App. 499, 305 A.3d 478 (2023) (meaningful articulation of findings of fact and conclusions are necessary to allow a reviewing [body] to determine the basis of the agency's action; otherwise, the agency's decision may be deemed arbitrary).

Finally, under the Old ZO, when a proposed development or activity requires a Detailed Site Plan, the following order of approvals *shall* be observed:<sup>7</sup>

- (1) Zoning;
- (2) Conceptual Site Plan;
- (3) Preliminary Plat of Subdivision;
- (4) Detailed Site Plan;
- (5) Final Plat of Subdivision (a final plat of subdivision may be approved prior to a detailed site plan, if the technical staff determines that the site plan approval will not affect final plat approval);
- (6) Grading, building, use and occupancy permits. PGCC § 27-270.

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<sup>7</sup> Under the Old ZO, "shall" is always mandatory and not discretionary. PGCC § 27-108.01(a)(19). Here, however, a conceptual site plan is not required for this proposed development.



Having found that the Board erred when it concluded that the proposed development was exempt from PPS approval under 24-107(c)(7)(C), the Board's approval of DSP-20002 was *void ab initio* because it violated the Order of Approvals under the Old ZO. PGCC § 27-270. On remand, based on the proposed development and activity, the Applicant must first file and obtain PPS approval before filing a revised or amended Detailed Site Plan application to address the issues set forth herein. PGCC § 27-270. Alternatively, the Applicant may submit a revised Detailed Site Plan that doesn't require an exemption under 24-107(c)(7)(C).

G. Stormwater Management

Stormwater management facilities are subject to regulations in a Zoning Ordinance. *People's Counsel for Balt. County v. Surina*, 400 Md. 662, 929 A.2d 899 (2007). Under the Old ZO, when a DSP is submitted to the Board it shall include an *approved* stormwater management concept plan. PGCC § 27-282(e)(11). Under the Stormwater Ordinance, or Subtitle 32, a SWM concept plan is the "[t]he first of three required plan approvals that includes the information necessary to allow an initial evaluation of a proposed project." PGCC § 32-171(a)(14). Although stormwater management is primarily governed by Subtitle 32, those regulations and guidelines must also be carried out in accordance with the Zoning Ordinance. *Surina*, 400 Md. at 690-93 ([A]lthough zoning laws and subdivision regulations are separate forms of regulation, and typically are administered by different governmental agencies or bodies, they operate in practical application to ensure that land in a particular locality is developed in a relatively uniform and consistent manner...Nowhere in any of the relevant cases explaining the differences between zoning and subdivision regulation is there an indication that improvements required by a subdivision regulation may be placed anywhere the developer wishes, regardless of an improvement's location relative to internal zoning boundaries and their requirements).

Here, the Department of Permitting, Inspections and Enforcement (DPIE) approved a SWM concept plan for the site on June 2, 2020, which *expired* on June 2, 2023—prior to the Technical Staff’s Report on August 24, 2023, and prior to the Board’s subsequent evidentiary hearings. What’s more, when DPIE approved the concept plan in 2020, it found that the concept plan also required approval from the State Highway Administration (SHA). Planning Board Record at 61-62. *Ross v. Montgomery County*, 252 Md. 497, 250 A.2d 635 (1969) (Landowners were prevented from constructing an apartment hotel on their property because their building permit had *expired*, and they had acquired no vested right to proceed with construction).

Under the Old ZO, the Board may approve a DSP *if* it finds that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5). PGCC § 27-285(b)(4). Subtitle 24-130(b)(5)—stream, wetland, and water quality protection and stormwater management—of the Old Subdivision Regulations provides as follows:

- (a) Proposed subdivisions shall be designed to minimize the effects of development on land, streams and wetlands, to assist in the attainment and maintenance of water quality standards, and to preserve and enhance the environmental quality of stream valleys.
- (b) The Planning Board shall require that proposed subdivisions conform to the following:
  - (1) The preliminary plan shall demonstrate adequate control of the increased runoff due to the ten (10) year storm or such other standards as State law or the County shall adopt.
  - (2) The stormwater control shall be provided on-site unless the Planning Board, on recommendation from the County, waives this requirement.
  - (3) The submission of a storm drainage and stormwater management concept plan, and approval thereof by the County, may be required prior to preliminary plan approval.

(4) Where a property is partially or totally within an area covered by an adopted Watershed Plan, the preliminary plan shall conform to such plan.

(5) Where a property is located outside the Chesapeake Bay Critical Areas Overlay Zones the preliminary plan and all plans associated with the subject application shall demonstrate the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible consistent with the guidance provided by the Environmental Technical Manual established by Subtitle 25. Any lot with an impact shall demonstrate sufficient net lot area where a net lot area is required pursuant to Subtitle 27, for the reasonable development of the lot outside the regulated feature. All regulated environmental features shall be placed in a conservation easement and depicted on the final plat.

- (c) The submission of a sediment control concept study, and approval thereof by the Soil Conservation District, may be required prior to final plan approval. PGCC § 24-130(a)-(c).

According to the record, which the Board did not (or could not) modify on remand, more than 10,000 square feet of woodlands previously existed on-site, which were illegally cleared between 2014–2018. Resolution 2023-98 at 12. In April 2023, the site was issued three violations by DPIE as follows:

Date	DPIE Violation Number	Citation
4/3/2023	12950-2023	Complaint of illegal construction
4/11/2023	14052-2023	Citation for extending driveway with gravel and concrete pad in front and walkway on property
4/11/2023	14054-2023	Complaint for same as 14052-2023

Under PGCC § 27-108.01(a)(5), when the Old ZO refers to development or activity occurring on one property and its impacts on another property, it is assumed that more than the land itself may be impacted and that buildings, structures, *and people may also be impacted*. (Emphasis added). Here, Citizen-Protestants are neighboring property owners that are impacted by the Applicant’s illegal development and activity on the site.

There is overwhelming evidence in the record of the Applicant's illegal deforestation, illegal paving, and illegal construction on the site, which have caused excessive flooding to surrounding properties, including Citizen-Protestants. Resolution 2023-98 at 18-24, Planning Board Record at 433, 436, 437, 439, 447, 448, 450, 613, 615. The Board erred when it approved DSP-20002, subject to a condition for the Applicant to submit an approved SWM concept plan at time of certification, because there was *no* evidence in the record of an *approved* SWM concept plan for the Board to reasonably conclude would satisfy the requirements of PGCC § 27-285(b)(4) and PGCC § 24-130(b)(5) or address the impacts of the proposed development or activity on Citizen-Protestants or other people or property in the neighborhood. Resolution 2023-98 at 18-24, Planning Board Record at 433, 436, 437, 439, 447, 448, 450, 613, 615, *Baker v. Bd. of Trs. of Emps. Ret. Sys. of City of Balt.*, 269 Md. 740, 744 (1973) (administrative decisions must not be “arbitrary, capricious, or unreasonable” – there must be “substantial evidence from which the [B]oard could have reasonably found as it did.”).

Having found that the proposed development was *not* exempt from PPS approval under § 24-107(c)(7)(C), the Board's approval of DSP-20002 was *void ab initio*. Because the Board's approval of DSP-20002 was void from the beginning, the Board could not have reasonably found (without PPS approval) that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5). PGCC § 27-285(b)(4). *Elbert*, 259 Md. App. 499, 305 A.3d 478 (2023) (meaningful articulation of findings of fact and conclusions are necessary to allow a reviewing [body] to determine the basis of the agency's action; otherwise, the agency's decision may be deemed arbitrary).

Lastly, the expired SWM concept plan conflicts with the DSP and Landscape Plan. Planning Board Record at 777 and Slides 7-12. That is, much of the property boundary has some form of SWM facility. At the same time, the Applicant is justifying its Alternative Compliance on providing extra plantings above what is required, but the Landscape Plan appears to show much of the plantings directly on top of the SWM facility. Any future site plan shall be prohibited from doing so or resolve such conflicts.

#### H. Property Boundaries

There is substantial evidence in the record to sustain written exceptions that the Board's approval of DSP-20002 has improperly included land of adjoining property owner Teresa Washington at 9807 Snowden Road. Exceptions at 5, (9/7/2023, Tr), Planning Board Record at 618, 736-742, 767-768.

When a DSP is submitted for review and approval is it required to show, among other things, *boundaries of the property*, using bearings and distances (in feet) and either the subdivision lot and block, or liber and folio numbers. PGCC § 27-282(e)(2). Having concluded that the proposed development is *not* exempt from PPS approval under PGCC § 24-107(c)(7)(C), the Applicant shall be required to establish, among other things, boundaries of the property, using bearings and distances (in feet) and either the subdivision lot and block, or liber and folio numbers.

Moreover, *specific* purposes of a DSP are to show the *specific* location and delineation of *buildings and structures, parking facilities, streets, green areas, and other physical features and land uses* proposed for the site and to show *specific grading, planting, sediment control, woodland conservation areas, regulated environmental features and storm water management features proposed for the site*. PGCC § 27-281(c). (Emphasis added).

Below are images in the record of the site and boundary markups. Boundary lines in blue are of the site but the boundary line markup in red shows that the Applicant has illegally appropriated significant portions of 9807 Snowden Road for its own use including the removal of woodland, the laying of gravel, and the erection of a 15-foot Buddha. PGCC § 27-108.01(a)(14) (The words “erected” and “constructed” also include “modified,” “reconstructed,” “built,” “rebuilt,” “altered,” “placed,” “relocated,” “moved,” and “maintained.”).

## S-EYE VIEW WITH APPROXIMATE SITE BOUNDARY OUTL

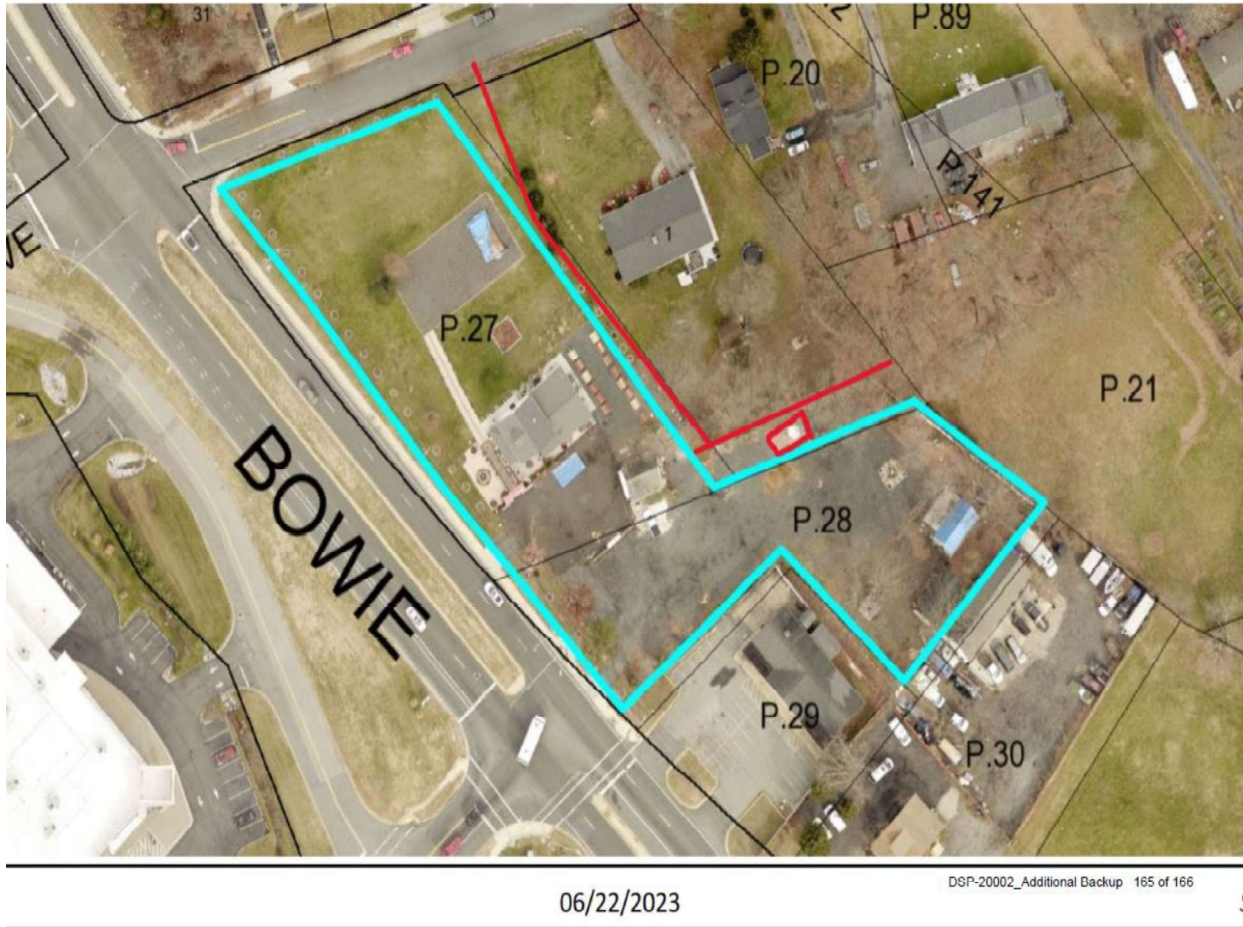


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Under the Old ZO, certain rules apply when determining the boundaries of any zone shown on the Zoning Map. PGCC § 27-111. Moreover, under the Old ZO, structure is defined as anything constructed or built. PGCC § 27-107.01(a) (228). And a use is defined as either the purpose for which a building, structure, or land is designed, arranged, intended, maintained, or occupied; or any activity, occupation, business, or operation carried on in, or on, a building, structure, or parcel of land. PGCC § 27-107.01(a) (244) (A). Consequently, no land, building, or structure shall be used by the Applicant in any manner which is not allowed under the Old ZO. PGCC § 27-114. And no building or structure shall be erected by the Applicant unless it conforms to all requirements under the Old ZO. PGCC § 27-118(a).

On remand, in accordance with PGCC § 27-111, the Applicant *failed* to submit a revised or amended Detailed Site Plan that shows the *specific* boundary lines of the site for the proposed development. As such, the record, as a whole, still has no evidence that includes an explanation of any discrepancies or land of adjoining property owner Teresa Washington at 9807 Snowden Road to satisfy, among other things, building setback requirements, Landscape Manual Plan requirements, or Stormwater Management Facility requirements.

In addition, while boundary lines on [www.PGATLAS.com](http://www.PGATLAS.com) are not exact, the District Council finds that along the southeastern boundary it appears that the parking lot of the church on Parcel 29 and the building on Parcel 30 extend onto the Applicant's property. If such encroachments are found to be generally correct, this will have an impact on the calculation of "lot coverage." But because the Board and the Applicant failed to act on remand to address such encroachments, there is still *no* evidence in the record for the District Council to resolve such encroachments. Any future site plan must address and resolve the District Council's findings and conclusions on such encroachments.

#### I. Parking

Before remand, Citizen-Protestants argued that the Board erred when it determined that the parking requirement should be calculated based on the purported membership of the Temple and not based on the anticipated attendance during major events. Exceptions at 19-20. While on the face of the Board's Resolution this may appear to be the case, it is technically not accurate.

According to the record, the Board approved the Applicant's DSP, in accordance with Technical Staff's Report, which was based on a Table that calculated parking *based on seats* as follows:



22. PARKING REQUIREMENT:	
PARKING REQUIRED:	
OFFICES:	
672 S.F. OF OFFICE AREA:	
@1 PER 250 S.F. OF THE FIRST 2,000 SF. OF GFA. = 3 SPACES	
BUDDHIST TEMPLE MAIN SANTUARY:	
OCCUPANCY: 180 SEATS	
@1 PER 4 SEATS=	40 SPACES
TOTAL REQUIRED:	43 SPACES
PARKING PROVIDED:	
STANDARD SPACES (9.5' X 19'):	26 SPACES
HANDICAPPED (18' MIN. X 19'):	2 SPACES
COMPACT SPACES (8' X 16.5')	13 SPACES
PARALLEL SPACES (8' X 22')	2 SPACES
TOTAL PROVIDED:	43 SPACES
THE PARSONAGE IS ONLY FOR MEMBERS OF THE TEMPLE; THEREFORE, THE REQUIRED PARKING SPACES ARE INCLUDED IN THE BUDDHIST TEMPLE MAIN SANTUARY.	
THE BUDDHIST TEMPLE MAIN DIFFERENCE AMONG OTHER RELIGIOUS USES IS THAT IT WILL ONLY REACH FULL OCCUPANCY CAPACITY 5 TIMES DURING THE YEAR.	
THE MAIN EVENTS WHEN THE TEMPLE WILL REACH FULL MEMBERSHIP CAPACITY ARE AS FOLLOW:	
LUNAR NEW YEAR ( JANUARY AND FEBRUARY)	
COMPASSIONATE FESTIVAL (END OF MARCH OR BEGINNING OF APRIL)	
VESAK DAY (MAY OR JUNE)	
ULUMBANA DAY (AUGUST)	
MID AUTUMN FESTIVAL ( SEPTEMBER).	

Planning Board Record at 176.

While the Board's Resolution prior to remand may not have been *clear* on this point, the record and the Technical Staff Report was clear that parking requirements were calculated and satisfied based on *number of seats*. *West Montgomery Cty. Citizens Ass'n v. Montgomery Cty. Planning Bd. of the Maryland-National Park & Planning Comm'n*, 248 Md. App. 314, 241 A.3d 76 (2020) ("It is not unreasonable for the Planning Board to rely on a Staff Report, as the Planning Board did in this case, if the Staff Report is thorough, well-conceived, and contains adequate findings of fact.") (quoting *Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 110, 985 A.2d 1160 (2009)). "The test is reasonableness, not rightness." *Md. Dep't of the Env't v. Riverkeeper*, 447 Md. 88, 134 A.3d 892 (2016) (quoting *Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399, 396 A.2d 1080 (1979)). Here, based on substantial evidence in the record, it was reasonable for the Board to rely on its Technical Staff report concerning the calculation of parking for the site

based on number of membership *seats*.

However, after remand, the record is *still* devoid of *any* evidence that the Applicant has the necessary maintenance agreements or arrangements to accommodate *overflow* parking for large or special events that *will impact* buildings, structures, or *people* in the neighborhood. Under the Old ZO, a specific purpose of a Detailed Site Plan is to show the *specific* location of *parking facilities*. PGCC § 27-281(b)(c)(1)(A). As a result, after remand, and to the extent that the Applicant wants to pursue the proposed development via a DSP that is exempt from filing a PPS application, the Applicant is *still* required to submit *any and all* agreements or arrangement with *any* property owner in the neighborhood concerning *overflow* parking for large or special events associated with the proposed development and activity on the subject property. PCCC 27-282(e)(22) (*submittal requirements for a Detailed Site Plan includes any pertinent information*).

#### J. Tree Conservation Plan

Citizen-Protestants argued, before remand, that the Board's decision to approve TCP2-018-2023 was erroneous because it failed to enforce the mitigation techniques required under PGCC § 25-120. Exceptions at 7-15.

As a threshold matter, Subtitle 25 of the County Code governs the enforcement of Trees and Vegetation—not the enforcement of the Old ZO. The Board's interpretation of Subtitle 25 is reviewed *de novo* to determine if it was legally correct. *Motor Vehicle Admin. v. Smith*, 458 Md. 677, 686, 183 A.3d 211 (2018). Considerable weight should be given to the Board's interpretation and application of the statute. *County Council of Prince George's County v. Billings*, 420 Md. 84, 21 A.3d 1065 (2011).

Here, the Board was presented with a set of unique circumstances through testimony and evidence of illegal activity and illegal deforestation by the Applicant. While the Applicant's

conduct should not be *condoned or rewarded*, the Board, prior to remand, performed the required legal analysis to enforce the mitigation techniques required under Subtitle 25. The Board's factual findings are reviewed to determine whether they are supported by substantial evidence in the record, reasonable, not arbitrary, capricious or otherwise illegal. *Md. Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482, 514 n.15, 42 A.3d 40 (2012). The substantial evidence test does not turn on whether an aggrieved party provided substantial evidence to support its position before the administrative agency. The substantial evidence test requires a determination of whether the agency's decision is founded upon substantial evidence in the record. *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 997 A.2d 768 (2010). "The test is reasonableness, not rightness." *Md. Dep't of the Env't v. Riverkeeper*, 447 Md. 88, 134 A.3d 892 (2016) (*quoting Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399, 396 A.2d 1080 (1979)).

As such, prior to remand, and after remand, there is substantial evidence in the record to support the Board's legal interpretation of Subtitle 25. Moreover, the Board's findings and conclusions to approve TCP2-018-2023 were reasonable, not arbitrary, capricious or otherwise illegal. Resolution 2023-98 at 9-16.

#### K. Forest Conservation Variance

Citizen-Protestants argued before remand that the Board erred when it approved the Applicant's Forest Conservation variance. Exceptions at 21-31. The District Council found that to the extent that the Board was legally correct to grant the Applicant's variance, the Board should, on remand, make additional findings and conclusions to resolve whether the removal of Specimen Trees 1 and 2 are within the boundary lines of the Applicant's property and not within the boundary lines of adjoining property owner Teresa Washington at 9807 Snowden Road. The District Council also found that, on remand, the Board's legal analysis to grant a variance must include a

comparison of the Applicant's property to nearby surrounding properties in accordance with Maryland case law, which it didn't prior to remand. Exceptions at 23-24, Order of Remand at 19.

Because the Board and the Applicant failed to act on remand, any future site plan and approval of a Forest Conservation variance shall include appropriate findings and conclusions and appropriate legal analysis from the Board before granting the site plan and variance—including a comparison of the Applicant's property to nearby surrounding properties in accordance with Maryland case law.

L. Neighborhood Nuisance

Citizen-Protestants argued before remand that the Board erred when it approved DSP-20002 because doing so would permit the premises to be used as a public or neighborhood nuisance. Exceptions at 31. Subtitle 14 is not part of the Old or New Zoning Ordinance. Subtitle 27 governs the Old and New ZO. Subtitle 14 governs morals and conduct in the County. As a result, the Board was not required to determine whether the Applicant's DSP violates any part of Subtitle 14 before it may approve or disapprove the application. Notwithstanding the distinction between Subtitle 14 and Subtitle 27, complaints from Citizen-Protestants of excessive noise are persuasive.

At oral argument before remand, the Applicant agreed to a *condition of approval* that the proposed place of worship will *not* be allowed to have outdoor amplified sound. (1/16/2024, Tr.). As such, any future site plan filed and approved by the Board shall include a *condition* that the proposed place of worship will *not* be allowed to have outdoor amplified sound. (1/13/2025, Tr.).

ORDERED this 27<sup>th</sup> day of January 2025, by the following vote:

In Favor: Council Members Blegay, Burroughs, Dernoga, Fisher, Harrison, Ivey, and Watson.

Opposed:

Abstained:

Absent: Council Members Hawkins, Olson and Oriadha.

Vote: 7-0.

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:   
Jolene Ivey, Chair

ATTEST:



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Donna J. Brown  
Clerk of the Council