

Case No.: DSP-07073-01 National Harbor
Beltway Parcel, MGM, Lots 2-7

Applicant: MGM National Harbor, LLC

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

ORDER AFFIRMING PLANNING BOARD DECISION,
WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB Resolution No. 14-36, to approve with conditions a detailed site plan for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, located approximately one mile north of the Woodrow Wilson Bridge, southwest of the intersection of I-95/495 (Capital Beltway) and Indian Head Highway (MD 210) in Planning Area 80 and Council District 8, is:

AFFIRMED, pursuant to Sections 27-132, 27-134, 27-141, 27-142, 27-228.01, 27-228.02, 27-290, Part 3, Division 9, Part 10, Division 2, Subdivision 1 of Subtitle 27 of the Prince George's County Code, and Section 25-210 of the Land Use Article.¹

¹ The Prince George's County Code, Subtitle 27, Zoning Ordinance, (2013 Ed., 2014 Supp.), will be referred to hereinafter as "§27- ____". The Md. Code Ann., Land Use, §22-407 (2012 & Supp. 2014), will be referred to as "§____ of the Land Use Article." The Prince George's County Planning Board Resolution No. 14-36 will be referred to as "PGCPB No. 14-36."

PROCEDURAL HISTORY

Question 7, also known as the Gaming Expansion Question, was on the November 6, 2012, general election ballot in the state of Maryland as a legislatively-referred state statute, where it was approved by a majority of voters.² The measure allowed one additional casino to be constructed in Prince George's County and expanded the type of games (*i.e.*, table games) allowed at existing casinos. *See* Chapter 1, 2013 Md. Laws 1. *See also* Md. Code Ann., State Gov't §§ 9-1A-01–9-1A-38 (2009 & Supp. 2013).

On December 23, 2013, the Video Lottery Location Commission—in response to its' request for proposals for a video lottery operation license in Prince George's County—awarded the Prince George's County license to the applicant in this matter, MGM National Harbor, LLC (MGM).³

On or about February 10, 2014, MGM submitted a Detailed Site Plan (DSP-07073-01) to the Development Review Division of the Prince George's County Planning Department. The purpose of DSP-07073-01 is to develop an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage.

On February 25, 2014, MGM received a Notice of License Award for a Video Lottery Operation License in Prince George's County from the Maryland Lottery and Gaming Control

² The ballot question passed by a 52% to 48% margin statewide and by a larger 59% to 41% margin in Prince George's County.

³ *See or visit:* <http://gaming.mdlottery.com/wp-content/uploads/2010/09/PG-County-Decision-Statement-12-23-2013.pdf>, and <http://gaming.mdlottery.com/wp-content/uploads/2010/09/RFP-PG-VLT-2013-0101-2-6-13.pdf>, respectively.

Commission. *See* Letter from Stephen L. Martino, Secretary, Maryland Lottery and Gaming Control Commission, to Mr. Lorenzo Creighton, President MGM, February 25, 2014.⁴

On March 25, 2014, the County Council sitting as the District Council introduced County Bill 6 (CB-6-2014), for the purpose of defining video lottery facility and terms related thereto, and authorizing a video lottery facility use as a permitted use in the Mixed Use-Transportation Oriented (M-X-T) Zone, subject to certain requirements, which was adopted and became law on April 15, 2014. *See* CB-6-2014.

On April 8, 2014, the County Council sitting as the District Council introduced County Bill 7 (CB-7-2014), for the purpose of requiring compliance with local business, local minority business, and local hiring requirements in a development agreement negotiated by the County Executive and a video lottery operator, subject to the approval of the same by County Council resolution, as a condition of the use of a video lottery facility. CB-7-2014 was adopted on May 6, 2014, and became effective on June 20, 2014. *See* CB-7-2014.

On April 24, 2014, Technical Staff of the Planning Board submitted its report, which recommended approval of DSP-07073-01, AC-14005, and DDS-623⁵ to the Planning Board. *See* Technical Staff Report, April 24, 2014.

⁴ *See or visit also:*
<http://gaming.mdlottery.com/casino-operator%E2%80%99s-license-issued-for-prince-george%E2%80%99s-county/>

⁵ MGM filed a companion application for Departure from Design Standards (DDS-623) for size of parking spaces with the Development Review Division of the Planning Board. DDS-623, although heard on the same day as this matter, was approved separately by Planning Board in PGCPB Resolution No. 14-37. The District Council will address its affirmance of DDS-623 by separate order. MGM also filed an application for alternative compliance (AC-14005) for Lot 4. AC-14005 is a request for alternative compliance from the 2010 Prince George's County Landscape Manual, Section 4.2 along Harborview Avenue and National Avenue to permit an alternative landscape design that includes additional large caliper shade and ornamental tree plantings, and evergreen trees as a substitute for shrub plantings along the street; and from Section 4.9 to permit the use of non-native evergreen shrubs within the architectural terracing around the exterior of the parking garage. *See* PGCPB No. 14-36, p. 54.

On May 8, 2014, the Planning Board, pursuant to §§27-285 and 27-239.01, held a public hearing, and considered evidence on DSP-07073-01, AC-14005, and DDS-623. *See* (5/8/2014 Tr.) At the conclusion of the hearing, Planning Board voted to approve DSP-07073-01, AC-14005, and DDS-623. Planning Board's action on DSP-07073-01 and AC-14005 was subsequently embodied within a resolution and adopted. *See* PGCPB No. 14-36.

On May 9, 2014, pursuant to §27-285, notification of Planning's Board's action was transmitted to the Clerk of the County Council. *See* Notification Letter from Mr. Alan Hirsch, Chief, Development Review Division, May 9, 2014.

On May 12, 2014, the District Council (9-0), pursuant to §§27-290, 27-239.01, and §25-210 of the Land Use Article, elected to DSP-07073-01, AC-14005, and DDS-623. *See* Zoning Agenda, May 12, 2014.

On June 9, 2014, Mr. Williams Nuckols appealed the decisions of the Planning Board in DSP-07073-01, AC-14005, and DDS-623 to the District Council. *See* Notice of Appeal by Mr. William Nuckols, June 9, 2014.

On June 10, 2014, the Clerk of the County Council notified all persons of record of scheduled oral argument or public hearing on Monday, July 14, 2014.

On July 14, 2014, the District Council held a duly advertised public hearing or oral argument on this matter. At the conclusion of the hearing, this matter was taken under advisement. *See* Zoning Agenda, July 14, 2014.

On July 21, 2014, pursuant to §27-132, the District Council referred this matter to staff for the preparation of an order AFFIRMING Planning Board's actions in PGCPB No. 14-36, subject to certain conditions. *See* Zoning Agenda, July 21, 2014.

APPLICABLE LAW

Pursuant to §27-290, the Planning Board's decision embodied in PGCPB No. 14-36, may be appealed to the District Council upon petition by any person of record. The District Council may also vote to review the Planning Board's decision on its own motion within thirty (30) days after the date of the notice. Whether by appeal or Council's vote to review a detailed site plan, a public hearing must be scheduled. Within sixty (60) days after the close of the Council's hearing, the Council shall affirm, reverse, or modify the decision of the Planning Board, or remand the Detailed Site Plan to the Planning Board to take further testimony or reconsider its decision in accordance with the Order of Remand adopted by the Council. Where the Council **approves** a Detailed Site Plan, **it shall make the same findings** which are required to be made by the Planning Board. The Council shall give its decision in writing, stating the reasons for its action. Copies of the decision shall be sent to all persons of record, and the Planning Board. *See* §27-290 (a)(c)(d)(e). (Emphasis added). Planning Board procedures are as follows:⁶

(a) **General.**

(1) Prior to the issuance of any grading, building, or use and occupancy permit for the development or use of any land for which a Detailed Site Plan is required, the applicant shall obtain approval of a Detailed Site Plan from the Planning Board.

(2) The Planning Board shall review the Detailed Site Plan for compliance with this Division.

(3) The Planning Board shall give due consideration to all comments received from other agencies.

(4) The Planning Board shall only consider the plan at a regularly scheduled meeting of the Planning Board after a duly advertised public hearing.

(5) The Planning Board shall approve, approve with modification, or disapprove the Detailed Site Plan, and shall state its reasons for the action.

(6) The Planning Board's decision shall be embodied in a resolution adopted at a regularly scheduled public meeting, a copy of which shall be sent to all persons of record (in the Detailed Site Plan approval process) and the District Council.

(b) **Required findings.**

⁶ Planning Board is charged with the preliminary approval of Detailed Site Plans pursuant to Part 3, Division 9 of the Zoning Ordinance, which includes, but is not limited to, §27-274, §27-281-290.

(1) The Planning Board may approve a Detailed Site Plan if it finds that the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make these findings, the Planning Board may disapprove the Plan.

(2) The Planning Board shall also find that the Detailed Site Plan is in general conformance with the approved Conceptual Site Plan (if one was required).

(3) The Planning Board may approve a Detailed Site Plan for Infrastructure if it finds that the plan satisfies the site design guidelines as contained in Section 27-274, prevents offsite property damage, and prevents environmental degradation to safeguard the public's health, safety, welfare, and economic well-being for grading, reforestation, woodland conservation, drainage, erosion, and pollution discharge.

(4) The Planning Board may approve a Detailed Site Plan 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).

See §27-285(a)(b). (Emphasis added). Pursuant to §27-132(f), when the District Council, in deciding an appeal or elects to review a decision made by the Planning Board, it shall exercise original jurisdiction, and may, based on the record, approve, approve with conditions, remand, or deny the application. *See* §27-132(f)(1)(2). Recently however, the Court of Special Appeals of Maryland held that the District Council exercises appellate jurisdiction over the Planning Board's decisions, and as such it is only authorized to affirm, reverse, or modify the decision based on the testimony, documents, and evidence presented at the hearing before the Planning Board, and review is limited to determining whether the Planning Board's decision was "arbitrary, capricious, discriminatory, or illegal." The Court of Special Appeals further concluded that, because the District Council is vested with appellate jurisdiction, the District Council may not substitute its judgment for that of the Planning Board, even if it had been so empowered, it might have made a diametrically different decision. The circumstances under which it may overturn or countermand a decision of the Planning Board are narrowly constrained. It may never simply second guess. *County Council of Prince George's County v. Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50, at 16-19 (filed May 28, 2014), *quoting County Council v. Curtis Regency Serv. Corp.*, 121 Md.

App. 123, 137-138, 708 A.2d 1058 (1998) (citing *People's Council for Baltimore Cnty. v. Beachwood Ltd. P'ship*, 107 Md. App. 627, 648-49, 670 A.2d 484 (1995)).⁷

FINDINGS AND CONCLUSIONS

Our findings and conclusions are based on, in addition to the record before us, statutory authority to 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.⁸ See §27-141. Our review on the record, includes but is not limited to, MGM's applications, Statement of Justification, Storm Water Management approval letter, Technical Staff Report, PowerPoint Slide Presentation, Proponent and Opposition Exhibits, Subdivision Records, Historic Preservation Commission Memorandum, Gaming Market & Economic Impact Studies, MGM Transportation Management Plan, Traffic Impact Analysis, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, Storm Water Management Concept Plan, Luminaire Schedule, MGM Parking Garage, State of Maryland Department of Transportation Plats, MGM's Color Renderings, and May 8, 2014, transcript of proceedings.

- Proposed Development

⁷ Pursuant to Md. Code Ann., Land Use, §22-407 (2012 & Supp. 2014), the District Council voted to file, and has filed, a Petition for Writ of Certiorari in the Court of Appeals requesting its review of *County Council of Prince George's County v. Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50 (filed May 28, 2014). Notwithstanding pendency of said petition, and until the Court of Appeals of Maryland disposes of same, our review of this matter will apply the standard of review announced in *Zimmer Development*.

⁸ See also RULES OF PROCEDURE FOR THE PRINCE GEORGE'S COUNTY DISTRICT COUNCIL (Adopted by CR-5-1993 and Amended by CR-2-1994, CR-2-1995 and CR-74-1995)

Rule 6: Oral Argument and Evidentiary Hearings:

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

MGM requests approval of an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel. *See* PGCPB No. 14-36. DSP-07073-01 also proposes a lotting pattern for the remaining land area associated with the original Beltway Parcel. The application includes the following development proposal:

- 512,490 square feet of entertainment and entertainment related uses,
- 54,695 square feet of other retail uses,
- 300-room hotel,
- 49,886 square feet of conference/assembly rooms,
- 3,000-seat performance theater,
- Numerous restaurant spaces equal to approximately 1,737 seats; and
- 4,797-space parking garage.

The plan identifies the future subdivision of the residue of Parcel 94 of the Beltway Parcel into Lots 2-7. A private street is proposed along the northeast boundary of the site adjacent to the existing Baltimore-Washington Parkway (MD 295) ramp. The private street would connect the two Maryland State Highway Administration (SHA) roadways, Harborview Avenue and National Avenue. Development is primarily located on Lot 4; however, the circular entrance drive and the associated limits-of-disturbance (LOD) for the entrance drive construction, and the proposed private street, extend onto Lot 5. Previous development shown on proposed Lot 3 as approved in DSP-07073 is not affected by this review. *See* PGCPB No. 09-114.

The development data summary for MGM’s request is as follows:

Zone	EXISTING M-X-T	APPROVED M-X-T
Uses	Vacant	entertainment establishment, hotel, retail, restaurants,
Acreages:		
Parcel 94 (total gross acreage)	49.47	49.47
Proposed Lot 2		1.31
Proposed Lot 3 (DSP-07073)	7.26	7.26
Proposed Lot 4		22.76
Proposed Lot 5		9.38
Proposed Lot 6		6.01
Proposed Lot 7		2.75
Gross Floor Area:		
Lot 3 (DSP-07073)		
Building 1-Fast food		3,600
Building 2- Convenience store		<u>3,000</u>
Total Gross Floor area		6,600
Lot 4 (DSP-07073-01)		
Entertainment Related Uses		483,381
Hotel		252,694
Retail		54,695
Office		29,109
Conference/Ballrooms (3,232 occupants)		49,886
Theater (3,000 seats)		136,818
Restaurant (1,737 seats, including hotel bar)		<u>71,654</u>
Total Gross Floor area		1,078,237
Floor Area Ratio		
Gross floor area of Beltway Parcel		1,084,837
Gross floor area of Waterfront		4,277,153
Total gross floor area for the entire National Harbor		5,361,990
Area of the entire property associated with the CSP		533.47 acres*
Floor area ratio proposed		0.23
Floor area ratio allowed per the CSP		0.31

*Based on the approved preliminary plan, depicting a more accurate calculation of the land area.

Other development data for DSP-07073-01, Lot 4, is as follows:

	REQUIRED	APPROVED
Total Parking Spaces	4,738	4797
Handicapped Spaces	58	60
Total Loading Spaces	5	6

- Site Location, Surrounding Uses, and Prior Approvals

The proposed development site is generally located approximately one mile north of the Woodrow Wilson Bridge, southwest of the intersection of I-95/495 (Capital Beltway) and Indian Head Highway (MD 210) in Planning Area 80 and Council District 8. The tract is south of I-95/495, and west of Oxon Hill Road, with frontage on Oxon Hill Road to the east, National Avenue to the north, and Harborview Avenue to the south. The Beltway Parcel is on an elevated plateau overlooking the Waterfront Entertainment/Retail Complex portion of National Harbor. The DSP property for the Beltway Parcel is currently identified as Parcel 94 (residue of) on Tax Map 104 in Grid E-1, E-2, and F-1 of the Prince George’s County land records. The site has a long, narrow configuration (approximately 3,400 feet long and 600 feet across) stretching northeast to southwest along the Capital Beltway, which forms the northwest boundary of the parcel. The Beltway Parcel also has approximately 1,200 feet of frontage on Oxon Hill Road. The land across the Capital Beltway (I-95/495) from the Beltway Parcel is occupied by the Oxon Hill Children’s Farm, owned by the National Park Service. South and east of the site is land owned by the Maryland-National Capital Park and Planning Commission (M-NCPPC), Betty Blume Neighborhood Park, and the grounds of Oxon Hill Manor. Across Oxon Hill Road to the east is the Salubria office building and the Tanger Outlets. The Addison Family Cemetery, which will be preserved and left undisturbed in this plan of development, is located on the northwest side of the Beltway Parcel, which is outside of the subject proposed development.

The MGM site is a part of the larger development known as National Harbor, which consists of two major land areas, the Waterfront Parcel and the Beltway Parcel. The M-X-T Zone within the National Harbor development was granted by the District Council through eight (8) zoning map amendments applications filed during the 1980s and 1990s. *See* Zoning Map Amendments A-5619, A-5620, A-5621, A-5635, A-5636 and A-9433, which were consolidated for a waterfront project proposal known as the Bay of America, and subsequently enacted in Zoning Ordinance Numbers 47-1983, 48-1983, 49-1983, 44-1983, 45-1983, and 46-1983, respectively.⁹ The District Council also approved Zoning Map Amendment A-9593 in 1986, which reclassified property to the M-X-T Zone located at the northeast end of the subject site along Oxon Hill Road in conjunction with a second development proposal for the waterfront center known as Port America. *See* Zoning Ordinance Number 38-1986. In 1990, the District Council also granted Zoning Map Amendment A-9825, which reclassified property to the R-M Zone on the southeastern side of the subject site near Oxon Hill Road, also in conjunction with development proposal for the waterfront center known as Port America. *See* Zoning Ordinance Number 33-1990.

The MGM site is on property originally approved in Preliminary Plan of Subdivision (PPS) 4-88081, and adopted by the Planning Board in June of 1988. *See* PGCPB No. 88-245. PPS 4-88081 approved 12 parcels (Parcel A-L) and 3 outlots for a total of 82.13 acres. Subsequent to the approval of PPS 4-88081, Detailed Site Plan (DSP-88045) was also approved in June of 1988. *See* PGCPB No. 88-246. The Beltway Parcel was cleared of trees, graded, and stabilized in the late 1980s in accordance with DSP-88045.

Another Detailed Site Plan (DSP-88087) was approved in October of 1988. *See* PGCPB No. 88-493. Subsequently, the land area of Parcel L, 17.51 acres, was dedicated by deed to SHA

⁹ The R-R Zone represents the original zoning applied to the area when it first became subject to zoning authority in 1957. The 1984 Subregion VII Sectional Map Amendment recognized the existing M-X-T and R-R Zones for this property.

for the Capital Beltway (I-95). The remainder of the site, 64.62 acres, was recorded in accordance with the approved PPS and DSP into 11 parcels (Parcels A-K), 7 outlots (Outlots A-G), and three rights-of-way dedicated for public use (North Port America Grande Boulevard, South Grande Boulevard, and Port America Grande Boulevard) in Plat Book NLP 153, plat 56 through 59, in June of 1990.¹⁰

In 1998, Conceptual Site Plan (CSP-98012) for National Harbor was approved for 534 acres of land, in the M-X-T, Rural Residential (R-R), and Residential Medium Development (R-M) Zones, including the subject site. *See* PGCPB No. 98-110. Subsequently, Planning Board approved a Preliminary Plan of Subdivision, (PPS) 4-01048, for the entire 534 acres in 2001. *See* PGCPB No. 01-163.

In July 2009, the Planning Board approved Detailed Site Plan (DSP-07073) for 6,600 square feet of commercial uses on Lot 3, as well as a large paved area for recreational/outdoor exhibitions, displays, entertainment, or performance uses on proposed Lots 4 and 5 (shown as Parcel A at that time). *See* PGCPB No. 09-114. Although Lot 3 has not been recorded as a final plat as of the writing of this report, the development proposal for Lot 3 is shown for informational purposes within this application. The site also has an approved Stormwater Management Concept (SWM) 48280-2007-00, pursuant to which the SWM pond for the Beltway Parcel was constructed and is located in Betty Blume Park on M-NCPPC-owned land. In addition, the site is also subject to SWM Concept 4853-2014-00, which was approved on February 14, 2014.

- Design Features

DSP-07073-01 includes an entertainment establishment on Lot 4, which measures a total

¹⁰ A vacation petition, V-06004, to vacate a total of 64.45 acres, was approved by the Planning Board in January of 1990. *See* PGCPB No. 06-287. This vacation petition included Subdivision Plat NLP 153, plat 56 through 59 in their entirety, except for Outlots E, F, and G (0.17 acres) which were conveyed to M-NCPPC (recorded in Liber 7684 at Folio 513).

of 22.76 acres of land. A portion of the grand entrance, located at the north end of the building with a circular vehicular drop-off area and associated grading, extends a short distance into future Lot 5. A private road connection is proposed along the northernmost edge of Lot 5, designed to connect Harborview Avenue to National Avenue. DSP-07073-01 further sets up the future subdivision of the lots and parcel for the remainder of the residue of Parcel 94.

- Architecture

The proposed structure measures approximately 1,500 linear feet by approximately 595 linear feet, and will fill most of Lot 4. The land area of Lot 4 slopes, and the change in grade within the lot is approximately 80 feet with the lowest portion at the south end of the lot. The building is exposed at its south end, with six stories of a terraced parking garage and landscaping placed strategically within the terracing of the structure. An outdoor plaza sits atop the parking garage at the south end of the building. This plaza includes a large water fountain surrounded by seating areas, landscaping, and a large monumental structure that is part of the signage for the project. Above the podium containing the plaza is the main entertainment area covered by two stories of the building in a sleek white roof. At the north end of the building is a 21-story hotel, a slim structure clad in glass that will be a significant visual landmark. A circular drive around another water feature provides drop-off and access to the hotel and its parking areas.

The parking structure will provide 4,797 parking spaces, and is distributed among eight floors with multiple egress and ingress locations along Harborview Avenue and National Avenue. Levels one through four are designated for self-park parking with access to these parking areas provided through three entry/exit points located on each side of the building from Harborview Avenue and National Avenue, near the south end of the building where the grade is the lowest on the site. Level five of the parking structure is the location of the valet parking, VIP parking, and employee parking areas. This

floor also includes the loading dock areas and the employee and service areas. Level six provides additional valet parking and employee parking, and includes a mezzanine floor of additional support services and offices.

The first floor of the building includes the seventh floor of parking. The first floor is the entertainment zone, including the video lottery facility and the outdoor plaza with a large water fountain. The pool measures approximately 22,000 square feet and is architecturally integrated into the design of the roof, and open to the sky. To the north of the structure, along Harborview Avenue, is a partially covered vehicular drop-off area with a central water feature and access to valet parking. A mezzanine (or the 8th floor of the parking structure) provides for offices and another parking area for hotel guests.

The second floor of the building (actually the ninth floor of the structure counting from the lowest level of the garage) includes the entrance to the hotel lobby, ballrooms, and other assembly rooms and is accessed from the circular vehicular drop-off area that is proposed to be shared between the subject site and the adjacent future proposed establishment at the north end of the site. The first and second floors are located under the long sleek white roof. Above this roof line, the hotel rises at the northern end of the building into a 21-story structure, approximately 150 feet in width by 400 feet in length, featuring approximately 20 rooms per floor. The height of the hotel tower is approximately 240 feet, measuring 400 feet above sea level. The hotel includes a floor dedicated to the lobby, a floor for fitness, a floor for a spa, a floor for executive offices, and room floors above.

MGM's architect, Mr. Russel Perry, provided the following description of the proposed building design and site:

MGM National Harbor is a sleek modern mixed-use facility consisting of a slender angular hotel tower and a contrasting long low entertainment complex under a sweeping roof, both atop an enclosed parking structure in the form of a plinth that emerges from a steeply sloping site. Surrounding the assembly is a one-way counter-

clockwise loop consisting of Harborview Avenue to the south and National Avenue to the north connected with a new road to the east.

The dominant approach to the site is from the low point at the west allowing access to multiple levels of the parking garage as Harborview Avenue is ascended along the south of the complex. The garage, all levels of which are connected internally by ramps, can be entered by entertainment venue guests at levels P1, P3 and P4, as the grade is climbed. These multiple entries minimize vehicle stacking along the street. VIP guests have their own garage entrance and exit on P5 further up the hill, followed by the main entertainment guest drop off under a porte-cochere. This entrance leads the guest to the glass roofed Conservatory, the nexus of most internal circulation within the complex, on the primary entertainment floor. Guests can also drop their vehicles for valet parking at this entrance. Valet ramps lead from the entry court to the parking on P6 below.

At the top of the site, hotel guests will be directed onto the site to enter via an elliptical court featuring a large pool and fountain. Another porte-cochere covers the hotel drop-off from which both valet and hotel self-parking ramps lead to parking on levels P7 and P8. Inside the east entrance is the hotel lobby, one floor above and overlooking the Conservatory below.

From the east end of the site, National Avenue will lead the visitor along the north side of the complex past the secondary loading dock for the Theater which is a large volume projecting from under the sculpted roof of the lower entertainment volume. Just past the Theater is the north entrance leading to the other side of the Conservatory. This entrance also gives access to the building from the bus drop-off area along the north wall. There are three bus bays with a bypass lane that will also be used for National Harbor bus drops.

Descending the hill, the next opening through the plinth wall is the primary loading dock on P5. The internal dock is large enough to accommodate truck turning so that no vehicles need to back out of the dock. Further down the hill is the entry and exit for staff parking on P4. Inside the garage, at this entry, is an employee pick-up and drop-off. An internal ramp leads the staff to their parking areas on P5 and P6. As the bottom of the hill is approached, entertainment guests have parking exits on P3 and P1. While there are multiple pedestrian emergency exits from the garage levels, only vehicles can enter those levels.

The public parking (P1, P2, P3 and P4) and staff parking (P5 and P6) form a podium for the entertainment and lodging uses above. The light-colored precast concrete walls of this plinth are sloped or battered to suggest the stepped bases of Washington DC's monumental core. Within this base on P5 is also housed the primary concentration of back-of-house facilities (warehouse, office, kitchens, gaming support, locker rooms, etc.).

Lightly perched atop this podium is a one-story entertainment structure with a mezzanine under a sculptural white roof. West of the venue is a large heavily-planted events terrace with views to the Potomac River. An internal public corridor to the south of the gaming area, lined with shops and restaurants, connects the terrace to the Conservatory for the convenience of under-aged guests.

The hotel, entered from the east, is a twenty-one story angular glass tower. Its base level sits atop parking level P8, one floor above the Conservatory floor. While retail uses flank the Conservatory floor, the over-looking level has the hotel lobby, ball rooms and meeting rooms. The next floor of the tower contains a spa with a pool and pool deck outside the tower to the south. Above this is one floor of executive offices and eighteen floors of hotel rooms.

- Signage

§§27-613(f)(1) and 27-614(e)(1) state that design standards for all signs attached to a building, and all on-site freestanding signs, should be determined by the Planning Board for each individual development in the M-X-T Zone at the time of DSP review. Each DSP should be accompanied by plans, sketches, or photographs indicating the design, size, methods of sign attachment, and other information deemed necessary. In approving signage, the Planning Board is required to find that the proposed signs are appropriate in size, type, and design, given the proposed location and the use to be served, and the signage should be in keeping with the remainder of the Mixed-Use Zone development.

The building has approximately 1,400 linear feet of building frontage on National Avenue, 550 linear feet of building frontage on the west end of the site where National Avenue and Harborview Avenue intersect, and 1,400 linear feet of building frontage on Harborview Avenue. The signage plan indicates the use of five light emitting diode (LED) video boards, building-mounted signage in the form of the MGM logo, a freestanding sign marquee, a statue, a light beam proposed vertically from the hotel and lighting of a portion of the hotel façade. The signage proposal is as follows:

a. Building Mounted Signage

(1) LED Video Boards-The plan proposes one 60-foot-tall, 100-foot-wide, and 35-foot-deep video board at the center of the west building elevation. Four additional 49-foot-tall, 90-foot-wide, and 71-foot-deep video boards are proposed: two on the north and south sides of the building elevations along National Avenue and Harborview Avenue. In total, a sign area of approximately 46,240 square feet is proposed by the light-emitting diode (LED) video boards, including all sides of the three-dimensional boards that have graphic area. A video board sign area of 14,820 square feet is parallel to and is proposed to face National Avenue (in the direction of the Capital Beltway (I-95/495)). A video board sign area of 2,100 square feet is parallel to and is proposed to face the west. A video board sign area of 14,820 square feet is proposed to face Harborview Avenue. The video boards are high-definition screens and will appear similar to a television screen and are shown as general graphic area on the DSP. The area of all of the proposed video boards should be indicated on the DSP. The bases of the video boards begin between the elevations of 124 feet and 130 feet. The tops of the boards extend to elevations of 190 feet, for the board at the center of the west building elevation, and 173 feet for the other four boards on either side of the project.

The LED video boards are currently planned to advertise activities and amenities on-site, including but not limited to restaurants, gaming activities, retail, special events and other such informational messaging. Outdoor advertising signs (i.e. billboards) are expressly prohibited by the Zoning Ordinance in accordance with §27-593, Prohibited signs. Outdoor advertising signs are defined by the Zoning Ordinance as signs that direct attention to a business, commodity, service, entertainment, event, or other activity conducted, sold, or offered elsewhere than upon the property on which the sign is located. The proposed LED video boards are not considered outdoor advertising signs or billboards, because the video boards advertise services, goods, and activities offered on site. The Planning Board recognized the prohibition of the advertisement of businesses, commodities, services, entertainment, events, or other activities conducted, sold, or offered elsewhere than upon the subject property, as is required by the Zoning Ordinance.

In accordance with §27-592, signs which flash or blink, or which have varying intensity of illumination on less than a five second cycle, are prohibited. While digital boards are not prohibited by the Zoning Ordinance, the applicant should remain cognizant of Zoning Ordinance regulations dealing with the lighting and speed of imagery shown on the boards, so as not to flash or blink, in order to avoid motorist distraction and impairment.

(2) Other Building-Mounted Signage-Two building-mounted signs with the text “MGM” are proposed on the north and south sides of the hotel building to be a maximum elevation of 382 feet. The dimensions of the letters are proposed at 13.5 feet in height by 51.5 feet in width. The information provided does not indicate that building-mounted signs will include lighting. The color, material, and method of

illumination of the signs should be indicated on the signage plan. The Planning Board finds that if lighting of this sign is proposed that it be subtly lit with external lighting or back/halo lighting only.

(3) Hotel Façade Lighting-Signs are defined as any letter, word, numeral, figure, design, projected image, picture, illustration, emblem, symbol, trademark, banner, pennant, or other device, which is used to announce, direct attention to, identify, advertise, or otherwise make anything known. In this application lighting of the building is a device that is used to draw attention to and advertise the proposed entertainment center and hotel. A portion of the exterior elevations of the hotel will be lit from dusk to dawn. This is accomplished through horizontal bands of white lighting placed under aluminum fins located on each level of the hotel.

b. Freestanding Signage

(1) One freestanding sign-Is located in the area of the hotel drop-off on the east side of the proposed building. The sign is 20 feet in width by 20 feet in height and features the text “MGM.” While the building materials are not labeled, the sign is shown as grey and white in appearance. The proposed sign materials and any information on the illumination of the proposed sign should be provided on the signage plan prior to certification.

(2) Statue-The signage plan locates a lion statue along the south building elevation in the area of the main entertainment area drop-off. The statue is 18 feet in height and sits upon a 16-foot-tall pedestal. The use of the lion statue, which is a trademark of MGM, will add to the placemaking on the site.

(3) Light Beam-The signage plan includes a light beam, which is proposed to be emitted from the hotel at the highest point on the site. The light beam does not comply with the intent of site design guidelines with respect to site lighting, and the Planning Board and applicant agree that it will be removed from the proposal.

The signage plan should be revised to include additional types of non-commercial signage that are essential to a project of this size. Prior to the issuance of a sign permit, MGM should include a wayfinding signage plan that provides locations, details, and design standards for all on-site directional signage for vehicles and pedestrians that can be viewed from the public realm. *See* PGCPB No. 14-36, pp. 9-10, 83, (05/08/2014, Tr.), (07/14/2014, Tr.). As part of the overall National Harbor site wayfinding signage package, wayfinding signage will be needed to direct pedestrians to cross at a single location when arriving via the National Heritage Trail, or as determined by the State

Highway Administration. *See* PGCPB No. 14-36, p. 71; Transportation Planning Section Memorandum, March 11, 2014.

- Sustainable Design Features

The proposed design includes green building techniques. MGM Resorts integrates elements of green building within all of its new development projects and renovations. MGM anticipates Leadership in Energy and Environmental Design (LEED) gold certification for the site. Some green building features include:

- a. The applicant proposes to include preferred parking spaces within the underground garage that will be designated for high-efficiency vehicles.
- b. The site will be served by public transportation via existing and new bus stops.
- c. In addition to utilizing the adjacent Betty Blume stormwater management facility, on-site stormwater storage within a sub-grade cistern adjacent to the P1 parking level is proposed.
- d. The applicant proposes to reduce the heat island effect of the building by placing the majority of the project's parking below ground and utilizing a white roofing system that will comply with the Cool Roof Rating Council's requirements.
- e. Opportunities for utilizing drought tolerant landscaping will be explored, and on-site landscaping will be irrigated through the use of the reservoir of stored stormwater that will be collected in an on-site cistern.
- f. Indoor water conservation approaches are being pursued.
- g. The mechanical/ heating and cooling systems will be designed to be energy efficient.
- j. The applicant intends to utilize locally extracted and manufactured products to the extent they are available.

See MGM National Harbor Schematic Design Project Narrative, pp. 84-91, April 2, 2014. *See also* (5/8/2014, Tr.), (7/14/2014, Tr.). Although the County does not have a Green Building Code, MGM

has demonstrated its commitment to sustainable design and green building techniques. The Council encourages MGM to offer a recycling program within the development in the future.

- Requirements of the M-X-T Zone and Site Plan Design Guidelines

Based on the record, DSP-07073-01 complies with the requirements of the M-X-T Zone and the site plan design guidelines of the Zoning Ordinance.

The purposes of the M-X-T Zone include the following:

To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, and major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens.

The site is the Beltway Parcel of a large development known as National Harbor. The uses are generally in conformance with the purposes and provisions of the M-X-T Zone. National Harbor as a whole will promote the orderly development of land in the vicinity of the Woodrow Wilson Bridge at an important interchange of I-95/495 and will maximize private development potential. The proposed mixture of uses on the subject property the value of land so as to allow for a market to be created that would sustain a long term source of employment opportunities for County residents. *See* MGM's applications, Statement of Justification, Storm Water Management approval letter, Technical Staff Report, PowerPoint Slide Presentation, Proponent and Opposition Exhibits, Subdivision Records, Historic Preservation Commission Memorandum, Gaming Market & Economic Impact Studies, MGM Transportation Management Plan, Traffic Impact Analysis, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, Storm Water Management Concept Plan, Luminaire Schedule, MGM Parking Garage, State of Maryland Department of Transportation Plats, MGM's Color Renderings, and May 8, 2014, transcript of proceedings.

To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses.

The 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* retained the previous M-X-T Zone reclassification for the MGM site. CSP-98012 specifically defines a mix of retail, commercial office, hotel, and a visitor's center. The Beltway Parcel was envisioned in CSP-98012 as a high-density urban environment with 725,000 square feet of retail space, 200,000 square feet of general office space, 1,000 hotel rooms, and a 50,000 square foot visitor's center, or other uses not exceeding the designated trip cap. At the time of the preliminary plan of subdivision, the plan called for the same mix of uses, but with an increase in the amount of office space (to 443,000 square feet) and a reduction in retail space (to 200,000 square feet) and hotel rooms (850) and a visitor's center, or other uses not exceeding the designated trip cap. See PGCPB No. 98-110 and PGCPB No. 01-163, respectively. The current development proposal, for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, fulfills to the vision of a high intensity development that was intended when the property was placed in the M-X-T Zone.

To conserve the value of land and buildings by maximizing the public and private development potential inherent in the location of the zone, which might otherwise become scattered throughout and outside the County, to its detriment.

The subject site along with the rest of the Waterfront Parcel of National Harbor was rezoned to M-X-T due to its close proximity to a major interstate freeway, the State of Virginia, and the District of

Columbia. Immediate access to Virginia is available via the Wilson Bridge; and immediate access to the District of Columbia is available via I-295. The completed portion of the Waterfront Parcel of the National Harbor development has become an important tourist destination in the region. The current development proposal, for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, will dramatically enhance the value of the land.

To promote the effective and optimum use of transit and reduce automobile use by locating a mix of residential and non-residential uses in proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use.

The MGM site, as a part of the National Harbor development, will make full use of the existing and scheduled major transportation systems. Substantial highway improvements have been put in place with the completion of the reconstruction of the Woodrow Wilson Bridge that allow the site to have direct and efficient connections to interstate highway systems. Pedestrian and bicycle trails have been planned and constructed in several locations to facilitate walking, bicycle, and transit use. The site is also directly accessible to Metro bus along Oxon Hill Road, which will promote the effective and optimum use of transit and reduce automobile use.

To facilitate and encourage a twenty-four (24) hour environment to ensure continuing functioning of the project after workday hours through a maximum of activity, and the interaction between the uses and those who live, work in, or visit the area.

DSP-07073-01 is for a portion of the M-X-T-zoned Beltway Parcel of the larger National Harbor development which has a mixture of uses that will encourage a 24-hour environment in the

ultimate development of the project. The completed portion of the large number of entertainment and dining attractions immediately along the riverfront have attracted many local and area residents and people visiting the Washington metropolitan region. The current development proposal, for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, will facilitate and encourage a twenty-four (24) hour environment to ensure continued functioning of the project after working hours and on weekends.

To encourage an appropriate horizontal and vertical mix of land uses which blend together harmoniously.

CSP-98012 proposes a mixture of retail, office, hotel, entertainment, and restaurant uses with various services, and a visitor center in a harmonious, carefully-crafted land plan. MGM National Harbor is a proposed entertainment establishment, of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, that will integrate harmoniously into the existing development of National Harbor and the surrounding uses, including the recent development of the Tanger Outlets.¹¹

To create dynamic, functional relationships among individual uses within a

¹¹ See PGCPB No. 12-40, approval of DSP-11025, Salubria Center, for 437,721 square feet of retail, office, and hotel development in the M-X-T Zone.

distinctive visual character and identity.

The larger National Harbor development is designed so that various uses will interact in a dynamic, synergistic way; hotels, dining, entertainment and retail all working together to create a critical mass of activity. The functional relationships between the various uses are carefully considered, with vehicular and pedestrian circulation completely separated and service areas carefully concealed and separated from public use areas. The proposed entertainment venue will provide another dynamic aspect to the project and will provide a distinctive visual character through the design of the building. *See* MGM's applications, Statement of Justification, Storm Water Management approval letter, Technical Staff Report, PowerPoint Slide Presentation, Proponent and Opposition Exhibits, Subdivision Records, Historic Preservation Commission Memorandum, Gaming Market & Economic Impact Studies, MGM Transportation Management Plan, Traffic Impact Analysis, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, Storm Water Management Concept Plan, Luminaire Schedule, MGM Parking Garage, State of Maryland Department of Transportation Plats, MGM's Color Renderings, and May 8, 2014, transcript of proceedings.

To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public facilities and infrastructure beyond the scope of single-purpose projects.

MGM National Harbor will achieve economies of scale and savings in energy when compared to construction of a number of individual projects occupying the same land area. This intensive use of the land, for over a million square feet of mixed-use development, at the gateway to the state of Maryland and Prince George's County will provide for optimum land use planning. MGM plans to seek Gold LEED certification, demonstrating its commitment to energy savings. The proposal provides for additional SWM techniques above those that were previously approved for the

site, provides for a roadway to connect two state highways and provides for a major entertainment destination within the County, the State and the region. *See* MGM National Harbor Schematic Design Project Narrative, pp. 84-91, April 2, 2014. *See also* (5/8/2014, Tr.), (7/14/2014, Tr.).

To permit a flexible response to the market and promote economic vitality and investment.

MGM National Harbor will contribute to the economic vitality of the overall National Harbor development and is a substantial investment in the County by the applicant. According to MGM's Gaming Market and Economic Impact Studies, the project construction will create 2,760 jobs and total employee earnings of \$384,802,000. During full operations, the annual projected combined spending at MGM and the neighboring businesses is expected to be \$822,500,000. In regard to job generation, 3,758 direct jobs are projected on-site, plus another 425 jobs at nearby businesses as a result of direct expenditures in the area related to tourism. It is anticipated that there will be \$29,614,445 generated in taxes and fees to Prince George's County. *See* Gaming Market & Economic Impact Studies, April 2013.

To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.

CSP-98012, which governs DSP-07073-01, demonstrates the intention to make the overall National Harbor project a showcase of interesting and exciting architecture. Excellence in architectural design combined with an impressive site plan demonstrates excellence in physical planning. As proven in the completed portion of the Waterfront Parcel, the flexibility inherent in this project allows the freedom of architectural design to achieve excellence in the development. The architectural elevations and perspective drawings for MGM National Harbor demonstrate a landmark building and construction in Prince George's County. Not only is the architectural building design modern and elegant, it is distinctive and provides a significant architectural quality worthy of

the entrance into the County from Virginia and into the State of Maryland. *See* MGM's applications, Statement of Justification, PowerPoint Slide Presentation, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, and MGM's Color Renderings.

The proposed development has an outward orientation which either is physically and visually integrated with existing adjacent development or catalyzes adjacent community improvement and rejuvenation.

MGM National Harbor has an outward orientation. The entire Beltway Parcel is related much more to I-95/495 than to the existing development to the east. The proposed entertainment establishment, of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, is expected to catalyze adjacent community improvement and rejuvenation. *See* MGM's applications, Statement of Justification, PowerPoint Slide Presentation, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, and MGM's Color Renderings.

The proposed development is compatible with existing and proposed development in the vicinity.

MGM's entertainment establishment is consistent and compatible with the concept that was set forth for the development because it complements the existing Waterfront Development. In regard to the physical development, the Beltway Parcel is somewhat removed from the waterfront development and is surrounded by the Capital Beltway and parkland. Therefore, its unique design

and location make the project compatible with the surrounding area, including the waterfront portion of the development and the recent development of Tanger Outlets.

The mix of uses, arrangement and design of buildings and other improvements, and provision of public amenities reflect a cohesive development capable of sustaining an independent environment of continuing quality and stability.

DSP-07073-01 is capable of sustaining itself as an entertainment center. The mix of entertainment uses and the arrangement and design of the building and hotel will sustain an independent mixed-use compact development envisioned in CSP-98012. *See* MGM's applications, Statement of Justification, PowerPoint Slide Presentation, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, MGM's Color Renderings, and Gaming Market & Economic Impact Studies, April 2013.

If the development is staged, each building phase is designed as a self-sufficient entity, while allowing for effective integration of subsequent phases.

MGM National Harbor will be developed as a single stage. DSP-07073-01 does not provide a staging plan.

The pedestrian system is convenient and is comprehensively designed to encourage pedestrian activity within the development.

Careful attention has been given to the design of the pedestrian system in the entire National Harbor project. Pedestrian and vehicular traffic are kept separate in accordance CSP-98012 and PPS 4-01048. *See* PGCPB No. 98-110 (CSP-98012) and PGCPB No. 01-63(C)(A) (PPS 4-01048), respectively. The pedestrian system provides immediate and direct access to the area's sidewalks and road crossings. Convenient access to the Woodrow Wilson Bridge Trail is provided on Harborview Avenue. Sidewalks are located on the building frontages at the proposed ingress/egress points. Lighting and landscaping are provided along the proposed sidewalks. New sidewalks are proposed along Harborview Avenue, and a pedestrian gathering place is located at the semi-circular main entrance area. The sidewalks on Harborview Avenue will connect to the Oxon Hill Road sidewalks

when adjacent properties to the north of the subject property are developed and sidewalks are constructed. Crosswalks should include special paving material.

On the Detailed Site Plan, in areas of the development which are to be used for pedestrian activities or as gathering places for people, adequate attention has been paid to human scale, high quality urban design, and other amenities, such as the types and textures of materials, landscaping and screening, street furniture, and lighting (natural and artificial).

DSP-07073-01 does not generally provide for public spaces as the building encompasses the majority of the site. Unlike a residential development, where the purpose of the M-X-T Zone is to provide quality living opportunity for future residents, DSP-07073-01 is a plan where the human element is programed into the development within the structure and entertainment establishment itself. *See* MGM's applications, Statement of Justification, PowerPoint Slide Presentation, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, MGM's Color Renderings.

On a Conceptual Site Plan for property placed in the M-X-T Zone by a Sectional Map Amendment, transportation facilities that are existing; that are under construction; or for which one hundred percent (100%) of construction funds are allocated within the adopted County Capital Improvement Program, or the current State Consolidated Transportation Program, will be provided by the applicant, or are incorporated in an approved public facilities financing and implementation program, will be adequate to carry anticipated traffic for the proposed development. The finding by the Council of adequate transportation facilities at the time of Conceptual Site Plan approval shall not prevent the Planning Board from later amending this finding during its review of subdivision plats.

The subject property was not approved as a Sectional Map Amendment. The property was placed in or rezoned to the M-X-T Zone through individual zoning map amendments. *See* Zoning Ordinance Numbers 47-1983, 48-1983, 49-1983, 44-1983, 45-1983, 46-1983, 38-1986, and 33-1990. Therefore this requirement is not applicable.

On the Detailed Site Plan, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval,

whichever occurred last, the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be approved by the applicant.

MGM National Harbor submitted a traffic impact analysis in 2013, as a requirement of the State of Maryland for a Video Lottery Operation license in Prince George's County. *See* Video Lottery Location Commission Request for Proposals 2013-0101.¹² The traffic impact analysis and study indicates that the development will be adequately served by existing programmed public facilities within a reasonable period of time as required by §27-546(d)(10). MGM has proffered improvements to ensure that the proposal is adequately served prior to opening. This would meet the requirements of the Zoning Ordinance. *See* Traffic Impact Analysis, 2013. *See also* MGM Transportation Management Plan.

On a property or parcel zoned E-I-A or M-X-T and containing a minimum of two hundred fifty (250) acres, a Mixed-Use Planned Community including a combination of residential, employment, commercial and institutional uses may be approved in accordance with the provisions set forth in this Section and Section 27-548.

The National Harbor project was rezoned under the regular provisions of the M-X-T Zone, not under the Mixed-Use Planned Community provisions therefore, this section is not applicable. *See* Zoning Ordinance Numbers 47-1983, 48-1983, 49-1983, 44-1983, 45-1983, 46-1983, 38-1986, and 33-1990.

DSP-07073-01 is also consistent with additional regulations in §27-548 for the M-X-T Zone. Those additional regulations are as follows:

- (a) Maximum floor area ratio (FAR):**
- (1) Without the use of the optional method of development-0.40 FAR; and**

¹² *See or visit also:*
<http://cdn.mdлотtery.com.s3.amazonaws.com/Gaming/Final-%20Consultant%20Reports/VI%20Sam%20Schwartz%204%20MGM.pdf>, and

<http://cdn.mdлотtery.com.s3.amazonaws.com/Gaming/Consultant%20Powerpoints/SSE%20FINAL%20Presentation%20to%20Commission.pdf>, respectively.

(2) With the use of the optional method of development-8.00 FAR.

CSP-98012, which governs DSP-07073-01, caps the development at 0.31 FAR. MGM applications propose a FAR of 0.23 for the overall development. *See* MGM's applications, Statement of Justification, PowerPoint Slide Presentation, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, MGM's Color Renderings.

Except as provided for in this Division, the dimensions for the location, coverage, and height of all improvements shown on an approved Detailed Site Plan shall constitute the regulations for these improvements for a specific development in the M-X-T Zone.

MGM, through this approval, shall show the dimensions for location, coverage and height of all improvements, and the same shall constitute the regulations for the site.

Landscaping, screening, and buffering of development in the M-X-T Zone shall be provided pursuant to the provisions of the Landscape Manual. Additional buffering and screening may be required to satisfy the purposes of the M-X-T Zone and to protect the character of the M-X-T Zone from adjoining or interior incompatible land uses.

DSP-07073-01 is subject to the 2010 *Prince George's County Landscape Manual*. MGM has filed an application for Alternative Compliance (AC-14005). The findings on AC-14005 will be discussed *infra*.

Each lot shall have frontage on, and direct vehicular access to, a public street, except lots for which private streets or other access rights-of-way have been authorized pursuant to Subtitle 24 of this Code.

DSP-07073-01 complies with this requirement. *See* MGM's applications, Statement of Justification, PowerPoint Slide Presentation, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, MGM's Color Renderings.

DSP-07073-01 is in conformance with the applicable site design guidelines contained in

§27-274 as follows:

(1) §27-274(a)(2), titled “Parking, loading, and circulation,” provides guidelines for the design of surface parking facilities. Surface parking lots are encouraged to be located to the rear or side of structures to minimize the visual impact of cars on the site. In this case, all of the required parking is provided within a structured parking garage that is integrated into the building design, which meets the goals of §27-274(a)(2). The exterior of the parking structure is most visible along the north, south, and west sides of the building, where the most parking garage levels are exposed. The architectural elevations indicate the use of architectural precast concrete panels enhanced with planted terraces along the exterior of the garage structure to improve its appearance. Details related to the appearance of the architectural precast concrete panels should be provided prior to certificate approval of the plans to ensure that an attractive treatment is provided.

(2) In accordance with §27-274(a)(2)(B), loading areas have been designed to be visually unobtrusive, as they have been placed interior to the structure.

(3) In accordance with §27-274(a)(3), titled “Lighting,” the pattern of light pooling should be directed on-site. Photometric information has been provided that indicates adequate lighting on the property and within the parking structure. The photometric plan indicates lighting levels from light fixtures and poles to illuminate vehicular ways and walkways. The photometric plan does not include lighting information for the various signage features including the light beam or LED video boards, and does not explore the lighting levels for these features at or beyond the property line.

(a) Light Beam-The proposed light beam directs lighting from the hotel directly into the night sky. Light beams and search lights are discouraged for use. While light beams and search lights are infrequently directed into adjacent properties, they are designed to be highly visible in and outside of the direct vicinity of the property and can affect other property-owners’ enjoyment of the night sky from their properties. The night sky is a shared resource for all in the region, and is recommended for protection by the 2002 *Approved Prince George’s County General Plan*.¹³ Policy 5 of the Environmental Infrastructure chapter of the 2002 Approved General Plan states:

Reduce overall sky glow, minimize the spill-over of light from one property to the next, and reduce glare from light fixtures.

Due to the project’s highly visible location at a gateway into Maryland and Prince George’s County, the Planning Board found that the elimination of the light beam will not affect this project’s visibility or success. The Historic Preservation Commission (HPC) recommends that the light beam

¹³ See discussion *infra* concerning *Plan Prince George’s 2035*.

be removed from the proposal and MGM indicates its intent to comply with this request. Prior to certification, the detailed site plan, signage plans, and architectural plans, should be revised to eliminate the proposed light beam from the hotel.

(b) LED Video Boards-MGM indicates that detailed lighting information for the LED video boards cannot be provided at this time, because the design of these features has not been finalized. MGM also indicates that the final design of the boards including the lighting elements will comply with applicable international codes. The Planning Board would prefer that, in addition to the provided notes, the plan demonstrate conformance with §27-592, Illumination, which states:

(a) The light from any illuminated sign shall be shaded, shielded, or directed so that the light intensity does not adversely affect surrounding areas.

(b) Signs which flash or blink, or which have varying intensity of illumination on less than a five (5) second cycle, are prohibited.

(c) The illumination or glare from a sign shall not shine directly onto a street so as to constitute a hazard to motorists.

Additional information should be provided to indicate that the lighting levels or brightness of the LED video boards will be designed to direct lighting on site and limit lighting impacts beyond the boundaries of the detailed site plan. Final boards should be manufactured so that the brightness may be adjusted to the appropriate higher daytime or lower nighttime levels.

(c) Architectural Lighting-Information in the record indicates that a portion of the exterior elevations of the hotel will be lit from dusk to dawn. This is accomplished by means of horizontal bands of white lighting placed under aluminum fins located at each level of the hotel. Details of the aluminum fin and lighting system indicate that lighting will be directed upwards onto the face of the hotel, which is a reflective glass. The fin system is designed to direct lighting onto the face of the hotel, and reduce the possibility for glare to be created and inadvertently affect adjacent properties. Details of the fin and lighting system and a note to this effect should be placed on the architectural elevations. With the elimination of the light beam, and relevant plan notes regarding the lighting of the LED video boards and the architectural lighting on the face of the hotel, the Planning Board finds conformance with §27-274(a)(3), "Lighting."

(4) In accordance with §27-274(a)(6)(i), site and streetscape amenities, the design of light fixtures, benches, trash receptacles, bicycle racks, and other street furniture should be coordinated. Details for proposed site amenities should be provided on the

detailed site plan; and at a minimum, locations of and details for trash receptacles and benches near the proposed drop-off locations should be provided.

DSP-07073-01 conforms to §27-548.01.04(a) for a Recreational or Entertainment Establishment of a Commercial Nature with Video Lottery Facility.

Requirements. A Recreational or Entertainment Establishment of a Commercial Nature with a Video Lottery Facility (“Facility”) shall be permitted, subject to detailed site plan review and approval, in accordance with the following additional requirements:

(1) Submission demonstrating that the locational requirements as set forth in Section 9-1A-36(h)(1)(VI), State Government Article, Annotated Code of Maryland, are met.

MGM Applicant’s Exhibit 1 (slide 78 of staff’s PowerPoint presentation), demonstrates a four (4) mile radius map showing that the Beltway property is within the required radius, and the February 25, 2014, Notice of Award Letter to MGG from the Maryland Lottery and Gaming Control Commission. *See* Applicant’s Exhibit 1.

Submission demonstrating that transportation facilities in the area affected by traffic generated by the Facility (“traffic study area”) will be adequate based on:

(A) Total traffic conditions as prescribed in the most recent Transportation Review Guidelines (“Guidelines”) published by the Maryland-National Capital Park and Planning Commission;

(B) Compliance with a comprehensive transportation plan in accordance with Section 9-1A-32, State Government Article, Annotated Code of Maryland prior to issuance of any use and occupancy permits; and

(C) The transportation improvements regarding the Facility submitted to the Maryland Video Lottery Facility Location Commission (“Location Commission”).

(i) Any required on or off-site transportation improvements contained in this submission shall be made prior to, or concurrent with, the construction of the Facility, and shall be completed prior to the issuance of any use and occupancy permits for the Facility.

MGM submitted a traffic impact study in April 2013, which was a requirement by the State of Maryland for a Video Lottery Operation license in Prince George’s County. *See* Traffic Impact Study, April 2013. Several deficiencies were noted. Subsequently, MGM submitted a revised traffic impact study, which was received and duly forwarded to the Maryland State Highway

Administration (SHA) and the Prince George’s County Government (Department of Public Works & Transportation (DPW&T) and the Department of Permitting, Inspections and Enforcement (DPIE)) for review. *See Revised Traffic Impact Study, March 11, 2014.*

DSP-07073-01 was evaluated according to the following standards:

- Links and signalized intersections: Level-of-service (LOS) E, with signalized intersections operating at a critical lane volume (CLV) of 1,600 or better.
- Unsignalized intersections: The *Highway Capacity Manual* (Transportation Research Board) procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. The analysis considers delay, approach volume, and the critical lane volume. Once the CLV exceeds 1,150 for the intersection, this is deemed to be an unacceptable operating condition. The Planning Board found that the applicant should provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

The following intersections are included within the study area:

- Harborview Avenue & I-295 On-Ramp
- MD 414 & Harborview Avenue
- Harborview Avenue & Tanger access
- MD 414 & National Avenue
- MD 414 & MD 210 SB Ramps/Bald Eagle Road
- MD 414 & MD 210 NB Ramps
- MD 414 & I-95 NB Ramps
- MD 414 & I-95 SB Ramps/Bald Eagle Road
- National Avenue & West Street
- Harborview Avenue & West Street

Major components of the study are summarized below:

Existing Traffic. Counts were taken in February 2013 in general accordance with the “Transportation Review Guidelines, Part 1” (“*Guidelines*”). The counts were taken to reflect a weekday peak-hour analysis as well as a Saturday analysis. While the weekday peak-hour analysis is the standard analysis prescribed by the “*Guidelines*,” the use will generate maximum traffic on Saturdays.

Background Traffic. The traffic study utilized a 0.35 percent annual growth rate to estimate base future traffic volumes for 2016 and 2036. Also, 16 approved developments in the area were included. The list of approved developments is complete, and in aggregate generates 4,007 AM, 4,364 PM, and 4,086 Saturday peak-hour vehicle trips. These trips are assigned to the local roadway network to produce future Background Traffic Conditions for 2016 and 2036.

Total Traffic. The traffic study begins analyzing the proposal by reassigning the traffic along National and Harborview Avenues to reflect that these streets will be changed to a one-way loop operating in a counterclockwise direction. The trip generation of the proposal is summarized in the following tables:

Trip Generation Summary, DSP-07073/01, Beltway Parcel-MGM: Weekday								
Land Use	Use Quantity	Metric	AM Peak Hour			PM Peak Hour		
			In	Out	Tot	In	Out	Tot
Casino	4,580	gaming positions	213	71	284	736	491	1,227
Hotel	300	rooms	102	66	168	94	83	177
Theater Venue (it is noted that specific language is included to state that the venue will generate traffic after 7:30 p.m., and should not count against a peak-hour trip cap)	3,000	seats	0	0	0	600	600	1,200
Total Trips Utilized in Traffic Analysis			315	137	452	1,430	1,174	2,296
Total Trips Utilized Against the Peak-Hour Trip Cap (excludes Theater Venue)			315	137	452	830	574	1,404

Trip Generation Summary, DSP-07073/01, Beltway Parcel-MGM: Saturday								
Land Use	Use Quantity	Metric	Saturday Peak Hour					
			In	Out	Tot			
Casino	4,580	gaming positions	808	717	1,525			
Hotel	300	rooms	121	95	216			
Theater Venue	3,000	seats	600	600	1,200			
Total Trips Utilized in Analysis			1,529	1,412	2,941			
Total Trips Utilized Against the Peak-Hour Trip Cap (excludes Theater Venue)			No Saturday trip cap					

The theater venue is intended to operate after the 6:15 p.m. weekday peak hour therefore, it can be excluded from computations concerning the peak-hour trip cap. However, a condition is required which limits theater venue start times to 7:30 p.m. or later on non-holiday weekdays.

Considerable space within the proposal is devoted to restaurants, retail, and offices associated with the primary uses. The trip generation rates have been selected to reflect a full range of operations. The casino rate, while measured by gaming position, reflects the full operation including offices, food and beverage service, and retail stores for a casino of similar scope. The hotel rate, while measured by number of rooms, reflects a full-service hotel that includes banquet facilities, meeting facilities, restaurants, lounges, and recreational facilities. The rates used are satisfactory, and are as follows:

- 38 percent to and from the west along I-95
- 28 percent to and from the east along I-95
- 18 percent to and from the north along I-295
- 8 percent to and from the south within National Harbor (Waterfront Parcel)
- 6 percent to and from the south along MD 210
- 1 percent to and from the east along MD 414 (Oxon Hill)
- 1 percent to and from the south and west along Oxon Hill Road

The assignment has been conducted in a satisfactory manner and in accordance with the

“Guidelines.” The following tables summarize the traffic analysis results for the year 2036:

YEAR 2036 TOTAL TRAFFIC CONDITIONS: Weekday				
Intersection	Critical Lane Volume		Level of Service	
	(AM & PM peak hour)		(LOS, AM & PM)	
Harborview Avenue & I-295 On-Ramp	307	393	A	A
MD 414 & Harborview Avenue	1,003	1,119	B	B
Harborview Avenue & Tanger access	274	541	A	A
MD 414 & National Avenue	1,786	899	F	A
MD 414 & MD 210 SB Ramps/Bald Eagle Road	1,062	1,387	B	D
MD 414 & MD 210 NB Ramps	552	662	A	A
MD 414 & I-95 NB Ramps	1,191	1,502	C	E
MD 414 & I-95 SB Ramps/Bald Eagle Road	736	969	A	A
National Avenue & West Street	1,012	772	B	A
Harborview Avenue & West Street	189	540	A	A

YEAR 2036 TOTAL TRAFFIC CONDITIONS: Saturday				
Intersection	Critical Lane Volume		Level of Service	
	(Saturday peak hour)		(LOS, Saturday)	
Harborview Avenue & I-295 On-Ramp	435		A	
MD 414 & Harborview Avenue	1,124		B	
Harborview Avenue & Tanger access	499		A	
MD 414 & National Avenue	905		A	
MD 414 & MD 210 SB Ramps/Bald Eagle Road	1,404		D	
MD 414 & MD 210 NB Ramps	608		A	
MD 414 & I-95 NB Ramps	1,327		D	
MD 414 & I-95 SB Ramps/Bald Eagle Road	799		A	
National Avenue & West Street	795		A	
Harborview Avenue & West Street	450		A	

The traffic study indicates that the intersection of MD 414 and National Avenue operates unacceptably during at least one analysis period. In response, MGM recommends the following improvements:

- (1) Restripe the leftmost northbound through lane along MD 414 to a left-turn lane, which will result in a northbound double-left turn. This approach will remain a four-lane approach which will now consist of two left-turn lanes, an exclusive through lane, and a shared through and right-turn lane.

- (2) Restripe the rightmost southbound through lane along MD 414 to a right-turn lane, which will result in a southbound double-right turn. This approach will remain a five-lane approach which will now consist of an exclusive left-turn lane, two through lanes, and two right-turn lanes.

In analyzing the year 2036 total traffic with the improvements listed above, the intersection of MD 414 and National Avenue would operate as follows: AM peak hour: CLV of 1,020 and LOS B; PM peak hour: CLV of 917 and LOS A; Saturday peak hour: CLV of 852 and LOS A. The traffic study recommends the following improvements at the intersection of MD 414 and National Avenue, which were submitted to the Maryland Video Lottery Facility Location Commission, and are proposed to be constructed by the applicant prior to the issuance of any use and occupancy permits for this proposal:

1. Restripe the leftmost northbound through lane along MD 414 to a left-turn lane, which will result in a northbound double left turn. This approach will remain a four-lane approach which will now consist of two left-turn lanes, an exclusive through lane, and a shared through and right-turn lane.
2. Restripe the rightmost southbound through lane along MD 414 to a right-turn lane, which will result in a southbound double right turn. This approach will remain a five-lane approach which will now consist of an exclusive left-turn lane, two through lanes, and two right-turn lanes.

Planning Board staff (Masog to Lareuse) reviewed the study and provided comments. The Maryland State Highway (SHA) Administration provided comments indicating that they would work with all parties to address traffic impacts and minimize operational issues, and they had no objection to the development proceeding. *See* Memoranda from Transportation Planning Section, March 10, 2014, April 17, 2014, and April 22, 2014.

DSP-07073-01 includes a bus/shuttle drop-off area. The comprehensive transportation plan needs to determine where transit buses will stop, and if a shelter(s) would be needed at the stop(s). While many patrons may use transit, there is a higher potential that many employees will rely upon transit to reach this site. Also, areas need to be identified where taxis can serve patrons, and also where taxis can wait. The large circle in front of the hotel entrance seems sufficient in size and well-located, but there needs to be some assurance that taxis can use this area for waiting as well as

passenger drop-off and pick-up. MGM has clarified that charter buses and shuttle buses that regularly serve the facility would utilize an area within the National Harbor Waterfront Parcel near the Gaylord Hotel. Because the site is within the M-X-T Zone, a finding is required that the development proposed will be adequately served by public facilities within a reasonable period of time as required by §27-546(d)(10). MGM has submitted a study and proffered improvements to ensure that the proposal is adequately served prior to opening. The proffered improvements for the proposed development will be adequately served by public facilities within a reasonable time period as required by §27-546(d)(10).

There is further substantial evidence in the record to support transportation adequacy. Transportation Planning Section provided a complete review of transportation adequacy in its review of DSP-07073-01, and its conformance to transportation related conditions embodied in CSP-98012 and PPS 4-01048. *See* Transportation Planning Section Memoranda, March 10, 2014, April 17, 2014, and April 22, 2014.

Access to the Beltway Parcel is shown from National Avenue and Harborview Avenue. These roadways are one-way, thereby creating a counterclockwise circulation through the Beltway Parcel. These roadways connect to Oxon Hill Road, Indian Head Highway (MD 210), and several Capital Beltway (I-95/I-495) ramps to provide access to and from the site. Site access is generally acceptable. All internal roadways appear to have appropriate dedication. Structured parking (eight levels) is being proposed for the 4,797 parking spaces. The main feature of the circulation is that persons accessing the use will approach from the southwest along one-way Harborview Avenue, enter the site, and leave the site back toward the southwest along one-way National Avenue. This access should act to minimize the impact of visitors to the site on Oxon Hill Road. The final plan revision includes a new roadway at the northeastern end of the site. Access to the Beltway Parcel is

shown from National Avenue and Harborview Avenue. *See* Transportation Planning Section Memorandum, March 10, 2014. These roadways are primarily one-way, thereby creating a counterclockwise circulation within the Beltway Parcel. The original plan would have caused traffic to use Oxon Hill Road in order to complete the intended “loop” around the middle of the Beltway Parcel. This additional roadway would serve to connect Harborview Avenue and National Avenue. As a part of the overall circulation, the roadway is acceptable. However, the ownership and maintenance of this roadway are unclear. Also, while the plan indicates that this roadway will be a single travel lane (which is acceptable); the plan is unclear regarding other amenities such as street trees and sidewalks. At a minimum, this roadway should be constructed with a sidewalk along it on the southwest side. Other amenities as well as ownership and maintenance issues should be determined when the adjacent portion of the Beltway Parcel is reviewed as a site plan.

The parking requirement in §27-574 (b) appears to have been developed using appropriate methods as prescribed for the M-X-T Zone. The analysis provided is supportable. The number of parking spaces required for each proposed use, based on the requirements of 27-568, is 4,766 spaces. MGM has proposed 4,797 spaces, an excess of 31 parking spaces.

The site is adjacent to I-95/I-495 and Oxon Hill Road. Both facilities are master plan roadways. Sufficient dedication along these facilities has been obtained through prior dedication or deeds, and no further dedication is needed. The site is adjacent to a proposed transit line, which is shown as a line on the map within the 2009 *Countywide Master Plan of Transportation* (MPOT) on the south side of Harborview Avenue. The proposed structure does not affect the line on the map. It is noted that the floor plan sheets indicate a transit station, with a pedestrian bridge from the proposed entertainment complex to the station, on the north side of National Avenue. The *Countywide Master Plan of Transportation* shows no stations along the adjacent transit line. Given

that the line on the *Countywide Master Plan of Transportation* is not even in a location to serve the station shown on the floor plan, this station and the pedestrian bridge should be labeled as “conceptual future” elements or removed from the plans.

Transportation Planning Section states that a comprehensive pedestrian system consisting of trails and sidewalks is planned for the entire National Harbor project. *See* Transportation Planning Section Memorandum, March 11, 2014. Because Lot 4 will be a part of the overall National Harbor project, MGM has agreed to locate wayfinding signage as designated on the site plan, to address crosswalks locations and ingress and egress to the entertainment establishment. One of the access-related conditions of CSP-98012 was for an extension of the Potomac Heritage Trail from Harborview Avenue to the entrance to the “Jaycee’s.” *See* PGCPB No. 98-110. This section of trail has been constructed. MGM paid a fee to the County for construction of the trail, which was constructed in conjunction with a county capital improvement project on Oxon Hill Road. PPS 4-01048 included conditions of approval related to pedestrian connections, bicycle parking, and trail construction. Marked crosswalk locations at ingress and egress points were a condition of DSP-07073.

- Harborview Avenue and National Avenue

Marked crosswalks currently exist at several locations on Harborview Avenue between Oxon Hill Road and the waterfront, which connect to the trail system directly across from the property on the east side of Harborview Avenue. The plan shows several ingress/egress points along the subject property frontage of Harborview Avenue. MGM should show marked crosswalks across all of their ingress/egress points to conform to the conditions of approval for Detailed Site Plan DSP-07073. Accessible, push-button pedestrian signal crossings could be located at these locations, if it is

determined that there will be high numbers of pedestrians and other activity, and if warranted. However, Planning Board was not aware of any agency requirement for signals at these locations.

Sidewalk deficiencies should be addressed as much as possible along MGM's property frontage. Sidewalks have not yet been connected on the west side of Harborview Avenue to Oxon Hill Road along the subject property frontage. A sidewalk is proposed along the west side of Harborview Avenue along MGM's property frontage. Properties to the north are anticipated to construct sidewalks that will connect to Oxon Hill Road, which will be the subject of future reviews.

MGM proposes sidewalks along its National Avenue frontage. Sidewalks cannot be connected to Oxon Hill Road along National Avenue from the subject property. The property that is north of and adjacent to the subject property can develop a sidewalk along its property frontage that would connect along Oxon Hill Road. This will be the subject of a future review in conjunction with future Lot 5.

- Bikeways and Trails

The subject property is directly across from the Woodrow Wilson Bridge Trail, a section of which is part of the existing trail on Harborview Avenue. Bicycle connections include connections to the Potomac Heritage National Scenic Trail on Oxon Hill Road, National Harbor waterfront, and the Woodrow Wilson Bridge Trail. This bridge trail is a 3.5-mile trail that extends from Oxon Hill Road across the Potomac River to the Huntington Metro Station in Virginia. The trail connects to a network of trails in Northern Virginia, including the Mount Vernon Trail. The trail accommodates shared use for bicyclists, pedestrians, hikers, runners, and inline skaters and is completely separated from motor vehicle traffic. The trail has a rating of "easy" except for a difficult half-mile, uphill section to Oxon Hill Road from the Woodrow Wilson Bridge where the trail gains approximately

200 feet in elevation. To access the trail in Maryland, there are at-grade road crossings at Oxon Hill Road and National Harbor Boulevard.

- Bicycle Parking Spaces

PPS 4-01048 required that bicycle racks be constructed in appropriate locations throughout the subject property. Modern and decorative bicycle racks should be located throughout the property. Adequate and direct connections should be made to the bike parking spaces, and these should be a minimum of six to eight feet in width. The plans have been revised in the review process to provide bicycle parking on two levels of the garage, one for the employee parking of bicycles and one level for the general public to park bicycles. This revision is sufficient to meet the intent of providing sufficient bicycle parking for the facility.

- Adequate and Direct Connections for Pedestrians and Bicyclists

Access to the neighborhood's sidewalk and trail system is important within the greater National Harbor activity center. Pedestrian and bicycle connections should be made from all four sides of the property to the approved road crossing locations. Direct bicycle and pedestrian connections should be provided from the building's entrances to the approved crossing locations.

Access to the Woodrow Wilson Bridge Trail should be a key feature on the plan. Pedestrians and bicyclists should be directed to these locations along buffered and landscaped paths, and care should be taken to discourage road crossings at locations that are not marked with crosswalks or that do not contain vehicle and pedestrian signalization. MGM has agreed to provide way finding signage along the trail system.

This plan is acceptable and satisfies the requirements of §27-285, and pursuant to §27-546, the development will be adequately served by transportation facilities within a reasonable period.

Therefore, the proposal will not conflict with the area master plan recommendations, and it will provide adequate access to area trails and sidewalks.

Submission demonstrating a lighting plan that illuminates all parking areas and walkways on site.

MGM submitted a photometric plan that demonstrates proposed lighting for the typical garage level within the building. The plan indicates that the average light intensity of the parking levels within the structured parking garage will be 6.9-foot candles. This can be compared to the Illuminating Engineering Society of North America's recommended average of 1-foot candle for parking structure ramps, and 0.5-foot candle for drive aisles and parking areas. MGM is committed to lighting the facilities to 5-foot candles for ramps and 3.5-foot candles for drive aisles and parking areas, well beyond the minimum recommended standard of the Illuminating Engineering Society of North America. MGM photometric plan demonstrates the proposed lighting levels of pedestrian ways. The photometric plan provides for lighting of the entire site, based on a 12-foot-high pole with a 24-inch arm length. The plans demonstrate that the average illumination of the pedestrian pathways is 1.54-foot candles and a minimum of 0.6-foot candles. The recommended lighting standard for pedestrian walkways of the Illuminating Engineering Society of North America is 1-foot candle in a commercial area, 0.2-foot candle in a residential area and 0.6-foot candle in an intermediate area. MGM's proposal for lighting is adequate for pedestrian movement around the site as the average illumination meets or exceeds the minimum recommended standard of the Illuminating Engineering Society of North America. *See* MGM Photometric Plan, April 2, 2014.

A receipt confirming submission of a written security plan to the Chief of Police demonstrating a 24-hour adequate security and surveillance plan, including plans to control loitering in the parking areas.

(A) The security plan may be a confidential submittal.

(B) Review and approval by the Chief of Police or the Chief's designee is required prior to the issuance of any use and occupancy permit for the Facility.

Mark A. Magaw, Chief of Police of Prince George's County Police Department, provided the following:

“Pursuant to CB-06-2014, this letter is to acknowledge receipt of a confidential draft written security plan and accompanying information from MGM.

Prior to the site opening, I also acknowledge that my approval of this security plan is a requirement for the issuance of a Use and Occupancy permit for the facility. My department has started meeting with officials from MGM and will continue to do so over the course of the next year and half as this security plan evolves. I am confident that as these discussions continue and as this plan is further developed we will arrive at a final product that will meet with my approval.”

Subject to approval by the Chief of Police, this condition will be fulfilled. *See* Letter from Mark A. Magaw, Chief of Police, April 23, 2014.

Submission of written plan for daily removal of litter and refuse in the Facility and on site.

MGM submitted a memorandum related to a waste removal plan for the site. MGM has proposed a waste removal plan it utilizes at its Detroit MGM facility. MGM has proffered that there has been no issue related to trash removal at any of MGM's sites across the world, and there will not be any issue associated with trash removal at this site. Based on MGM's memorandum for its waste removal plan in the facility and on site, this condition is satisfied so long as it is implemented daily. *See* MGM Memorandum dated March 27, 2014.

Submission of a statement acknowledging obligations pursuant to Section 9-1A-10(a)(3), State Government Article, Annotated Code of Maryland, including any related compliance and reporting requirements.

MGM provided the following statement of acknowledgment:

“Pursuant to CB-06-2014 Section 27-548.01.04(a)(6), and on behalf of MGM National Harbor, LLC, please be aware that MGM National Harbor, LLC (“MGM”) understands that, in accordance with Section 9-1A-10(a)(3), State Government Article, Annotated Code of Maryland, Prince George's County (“the County”) may impose local business, local minority business participation, and local hiring requirements to the extent authorized by local law and permitted by the United States Constitution. In the event the County imposes such local requirements in accordance with that statute, MGM hereby expressly acknowledges its obligations to comply with

such local requirements, including any related compliance and reporting requirements.

See Letter from Mr. Lorenzo D. Creighton, April 14, 2014.

Submission of a statement detailing any opportunities in relation to the video lottery facility to be made available to Prince George’s County residents or businesses via direct monetary or other equity investment, ownership of independent in-line businesses, ownership of retail pad sites, ownership of business franchises, ownership of service businesses, and/or ownership of any other for-profit businesses.

MGM has provided the following statement:

“MGM will design, develop and implement a program to accept up to \$100 million from additional investors in the MGM National Harbor project, in accordance with and subject to applicable law. For up to \$30 million of such maximum, MGM will use commercially reasonable efforts to give preference to County residents. All such additional investors will be required to be ‘accredited investors’ (as defined in the Securities Act of 1933, as amended). MGM intends to implement the investment program by January 1, 2015. In addition, MGM plans to work with the Prince George’s County’s Economic Development Corporation, and/or other such business agencies as the County may designate, to develop programs to assist in the identification and development of tenant and franchise opportunities for local residents in such areas as retail, dining and entertainment.”

See MGM Statement, April 15, 2014.

Full compliance with this Section by the Video Lottery Operator, including compliance with any plans, commitments, or other information contained in any submissions required in this Section, shall be a stated condition of approval for the Facility’s Detailed Site Plan.

The following condition is in response to this requirement:

The applicant shall comply with the Zoning Ordinance, other applicable local and state law, and any plans, commitments or other proffers contained in any submissions or testimony upon which approval of the site plan is based.

Additionally in the record, MGM has also acknowledged in its Notice of License Award that it shall obtain all proper zoning approvals and permits for the proposed Facility location, and that it will submit same to the Maryland Lottery and Gaming Control Commission. *See* MGM Acknowledgement of Notice of License Award, March 13, 2014.

The District Council adopts by reference, as if fully restated herein, Planning Board's findings and conclusions as they relate to conditional rezoning of the property to the M-Z-T Zone in Zoning Map Amendment A-5635, adopted in Zoning Ordinance No. 44-1983. *See* PGCPB No. 14-36, pp. 30-38.

The District Council adopts by reference, as if fully restated herein, Planning Board's findings and conclusions, as they relate to conditional rezoning of the property to the M-Z-T Zone in Zoning Map Amendment A-5635, as adopted in Zoning Ordinance No. 44-1983 (*i.e.*, Conditions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19). *See* PGCPB No. 14-36, pp. 30-38.

The District Council also adopts by reference, as if fully restated herein, Planning Board's findings and conclusions, as they relate to Conditions 1, 3, 4, 5, 7, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39, in CSP-98012. *See* PGCPB No. 14-36, pp. 38-50.

The District Council further adopts by reference, as if fully restated herein, Planning Board's findings and conclusions, as they relate to the thirty two (32) conditions of PPS 4-01048. *See* PGCPB No. 14-36, pp. 51-54.

- Alternative Compliance Application (AC-14005)

MGM requests approval of an alternative compliance for landscaping proposed on Lot 4. The site is currently undeveloped, and was cleared of trees, graded, and stabilized in the late 1980s in accordance with DSP-88045. *See* PGCPB No. 88-246. Companion DSP-07073-01 proposes an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat

performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage. The proposal is subject to Section 4.2., Requirements for Landscape Strips Along Streets; Section 4.9, Sustainable Landscaping Requirements; and Section 4.10, Street Trees Along Private Streets of the 2010 *Prince George’s County Landscape Manual*.

REQUIRED: 4.2 Landscape Strip along Streets, along Harborview Avenue and National Avenue (Option 2)

Length of	3,141 feet
Width of	15 feet
Shade Trees	90
Shrubs	449

PROVIDED: 4.2 Landscape Strip along Streets, along Harborview Avenue and National Avenue (Option 2)

Length of	3,141 feet
Width of	15+ feet
Shade Trees	102
Ornamental	32
Evergreen	10
Shrubs	183

REQUIRED: 4.9 Sustainable Landscaping Requirement, Percent Native Plant Materials

Shade Trees	50%
Ornamental	50%
Evergreen	30%
Shrubs	30%

PROVIDED: 4.9 Sustainable Landscaping Requirement, Percent Native Plant Materials

Shade Trees	77%
Ornamental	72%
Evergreen	100%
Shrubs	8%

MGM seeks Alternative Compliance from Section 4.2 along Harborview Avenue and National Avenue to permit an alternative landscape design that includes additional large caliper shade and ornamental tree plantings, and evergreen trees as a substitute for shrub plantings along the street; and from Section 4.9 to permit the use of non-native evergreen shrubs within the architectural

terracing around the exterior of the parking garage. MGM wishes to plant the larger sized shade and ornamental trees instead of shrubs at the base of the building to reinforce the monumentality of the building, and to eliminate all hiding places for those with criminal intent. The proposal includes a planting area along the street that is in access of 15 feet in width with many areas exceeding 40 feet in width. A double row, or allee, of Willow Oak trees is proposed between the street and the face of the building in most of the perimeter of the site, if the plantings proposed within the State Highway Administration (SHA) right-of-way are approved. Trees within the right-of-way are subject to SHA approval and modification and, therefore, have not been included in the subject Alternative Compliance analysis, and should not be included in the Landscape Manual schedules on the plan. One area of shrubs and evergreen trees is provided between the building and the street to improve views of a wall to the garage on the north side of the building. Near the area of bus loading on the north side of the building, shade trees are proposed within four-foot-wide by ten-foot-long tree pits. Ornamental trees are planted in a formal pattern at the west end of the building and provide a pleasing appearance from the intersection of Harborview and National Avenues.

MGM's alternative compliance request for the substitution of larger shade and ornamental trees in lieu of some of the required shrub plantings should be approved. The larger 3-3.5-inch caliper shade trees and 2.5-inch caliper ornamental trees will result in a grander and more proportional appearance along the edge of this large expansive building than could be achieved with fewer trees and more shrubs; in fact, the Council finds that this comports with the standard specified in the Landscape Manual. In addition to the proposed plants on the subject property within the Section 4.2 strip, approximately 25 additional shade trees are proposed within the SHA right-of-way, and approximately 3,200 evergreen shrubs are proposed in terraced planter boxes that are integrated into walls of the parking structure creating the appearance of a "living wall." This proposal for plant

material will result in a landscape design for the project that is equally effective as and more appealing than could be achieved under normal compliance with Section 4.2 of the 2010 *Prince George's County Landscape Manual*.

MGM further requests alternative compliance as to Section 4.9 of the Landscape Manual, Sustainable Landscaping Requirements, to permit the use of a greater percentage of non-native shrubs in the landscape design than would be permitted under normal compliance with the Landscape Manual. In support of, MGM's Landscape Architect, Mr. Scott Rykiel, provided the following testimony:

"The design intent of the landscape plan is to respect the strong axial nature of the site and the monumentality of the building. The landscape plan reinforces the building symmetry through allee's at the street level and linear hedges that step up the building face. The shrubs are to be maintained as clipped evergreen hedges to create a green architectural gesture on the stepped garage façade. The West elevation facing the Potomac also is graded in terraces complimenting the architecture. No foundation planting is proposed along the north, south elevations of the building so that the architecture appears to emerge from the site. The green steps blur the line of where the landscape starts and stops.

"Most of the proposed trees are native species representing the Potomac landscape. Since, the intent is for the green steps to be visible year round we are proposing a non-native but adaptive, evergreen hedge (yews)."

The landscape proposes approximately 3,200 yews (*Taxus x media* 'Densifomis') to create hedges that are proposed to step up the building face of the parking garage. This shrub is particularly well suited for this use as it is reliably evergreen, and can be sheared to create the formal treatment desired for the "living wall." The large quantity of this non-native evergreen shrub results in a large percentage of non-native shrubs on the site. The District Council finds that this request should be approved, as the proposed design concept necessitates a very specific evergreen planting palette that can be shaped into a compact and clipped evergreen hedge. There are no native evergreen shrubs that could replace the design function and maintain the year-around evergreen appearance that the yew will provide. Further, while the yew is non-native, it is not identified as an invasive species. We

also concur with the Alternative Compliance Committee that, while a large percentage of non-native shrubs are proposed, the overall planting plan results in a greater percentage of native tree plantings than would be required under normal compliance with the Landscape Manual. The large majority of the proposed shade, ornamental, and evergreen trees are native species and meet the intent of Section 4.9. We further concur with the Alternative Compliance Committee that MGM proposed landscape plan, which proposes a greater percentage of native shade, ornamental and evergreen trees and non-native shrubs, is equally effective as normal compliance with Section 4.9 of the 2010 *Prince George's County Landscape Manual*.

In sum, the District Council concurs with the Planning Board's approval of MGM's Alternative Compliance application (AC-14005), subject to the following condition:

Revise the Section 4.2 and 4.9 schedules to exclude all plant material proposed within the State Highway Administration right-of-way.

See PGCPB No. 14-36, pp. 54-57.

The District Council adopts by reference, as if fully restated herein, Planning Board's findings and conclusions, as they relate to Tree Canopy Coverage, Woodland Conservation Ordinance, and Historic Preservation. *See* PGCPB No. 14-36, pp. 57-70.

The District Council also adopts by reference, as if fully restated herein, Planning Board's findings and conclusions, as they relate to comments and recommendations from the Department of Parks and Recreation, the Maryland State Highway Administration, Subdivision Review, Environmental Planning, the Washington Suburban Sanitary Commission, Verizon, Inc., Potomac Electric Power Company, the Prince George's County Police Department, the Prince George's County Fire/EMS Department, the Prince George's County Health Department, the Department of Permits, Inspections and Enforcement, and the Maryland Aviation Administration. *See* PGCPB No. 14-36, pp. 74-80.

- Plan Prince George's 2035 and 2006 Master Plan

Community Planning Division states that the 2002 *Prince George's County Approved General Plan* designates the property within the Developing Tier, and the proposed use is consistent with the General Plan's Development Pattern goals and policies for the Developing Tier. The vision for the Developing Tier is a network of low-density residential communities and vibrant mixed-use commercial centers that feature a concentration of employment opportunities, quality stores, sit-down restaurants, public services, and amenities. Lastly, and as required by § 27-546(d), the Community Planning Division found that the development proposal within the application is consistent with the high intensity, mixed-use recommendations of the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*. See Community Planning Memorandum, March 14, 2014.

On May 6, 2014, the District Council, pursuant to §§21-103(a)(b), 21-104, approved *Plan Prince George's 2035*, a comprehensive update to the general plan for that portion of the Maryland-Washington District within Prince George's County. See CR-26-2014. While the review of DSP-07073-01 by Technical Staff and Planning Board did not expressly contemplate the updated general plan, the District Council finds that the findings and conclusions embodied in PGCPB No. 14-36 are not arbitrary, capricious, discriminatory, or illegal as a matter of law because the proposals set forth within DSP-07073-01 comply with the growth policies and priorities promulgated within *Plan Prince George's 2035*. See CR-26-2014. See also *County Council for Prince George's County v. Carl M Freeman Associates, Inc.*, 281 Md. 70,76-77,376 A.2d 860 (1977) (The District Council is bound to apply the law as it exists at the time a case is decided, so long as the application of the law does not interfere with intervening vested rights).

The generalized future land use map incorporated in the general plan update, shown in Map 9 of *Plan Prince George's 2035*, reflects a broad, countywide perspective of future land use patterns that is consistent with the development proposal within DSP-07073-01. In fact, the District Council finds the land use policies embodied within the updated plan demonstrate a greater level of consistency between the general plan and DSP-07073-01 because Plan Prince George's incorporates existing land uses and improvements constructed since adoption of the 2002 General Plan. *See Plan Prince George's 2035*, Land Use, Map 9, pp. 81-82, PGCPB No. 14-10, Attachment B, p. 9.

Lastly, by its express terms, *Plan Prince George's 2035* incorporate the recommendations within current approved sector plans or area master plans for the County. *See Plan Prince George's 2035*, Land Use Element, p. 9, PGCPB No. 14-10, Attachment B, Map 9. Since the Planning Board found that DSP-07073-01 was in conformance with the recommendations of the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*, the District Council finds that conclusion valid and in compliance with Plan Prince George's 2035, and the prescriptions of §27-546(d). *See* PGCPB No. 14-36, p. 11, Technical Staff Report, Urban Design Division, p. 64.

The 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* also recommends the reduction of light pollution and the use of full cut-off optic light fixtures for all uses. MGM's proposed development does not exceed the height of the Imaginary Runway Surfaces for Joint Base Andrews. This property is not in the Accident Potential Zones, Clear Zone, or High Intensity Noise Contours for Joint Base Andrews. The property is located within Outer Horizontal Surface 'F' of the Interim Land Use Control (ILUC) Area for Joint Base Andrews. The maximum allowable height for structures in Zone 'F' is 500 feet above the ground elevation of Joint Base Andrews (i.e. approximately 774 feet above sea level). The design

drawings indicate that the MGM Hotel (400-foot elevation) is the tallest structure on the site, which does not exceed the height of Outer Horizontal Surface 'F' for Joint Base Andrews.

The proposed entertainment establishment is located approximately eight miles northeast of the Mount Vernon National Historic Site. Although the proposed development is not located within the boundaries of the Mount Vernon Viewshed Area of Primary Concern, the Planning Board reviewed the line-of-sight and three-dimensional analyses prepared by staff to determine whether the MGM hotel tower and other portions of the entertainment establishment would be visible from Mount Vernon. The analyses show that the entertainment establishment will not be visible from Mount Vernon because it is screened by mature vegetation on the grounds of Mount Vernon and by topography along the Potomac River. Furthermore, the Planning Board received confirmation of this from Eric Benson, GIS Manager, of George Washington's Mount Vernon as provided in a photographic narrative of the viewshed.

This finding seeks to protect the dark sky attributes. While further analysis of the entire project's impact on the night sky is preferred, the elimination of the light beam provides a positive step toward the reduction of night sky impacts. In pursuit of LEED certification for the development, the proposal has also included a white roof, roof plantings, and a provision for irrigation through the reuse of stormwater. MGM should consider the use of solar panels for onsite electricity generation which would strengthen the applicant's LEED application for Gold status.

ARGUMENTS ON APPEAL

On June 9, 2014, Mr. Williams Nuckols appealed the decisions of the Planning Board in DSP-07073-01, AC-14005, and DDS-623 to the District Council. *See* Notice of Appeal by Mr. William Nuckols, June 9, 2014. Below is a summary of the questions or issues raised by Mr. Nuckols:

- Transportation
 - A. Inadequate/inaccurate transportation analysis lacks consideration of full range of traffic demands to adequately assess appropriate facilities and improvements needs for the site, including:
 - 1. Obsolete traffic counts completed in February 2013 do not adequately or accurately consider traffic emanating from the nearby Tanger Outlet Center that is now open and operating,
 - 2. Obsolete traffic counts do not adequately or accurately consider traffic generated by the growing residential community at the site;
 - 3. Traffic flow from evening performances and special events that will be held at the site not adequately or accurately considered.
 - B. Inadequate transportation facilities and inappropriate traffic flow on the site resulting from insufficient analysis of key peak traffic demands.
 - C. Inadequate pedestrian and bicycle facility analysis lacks consideration of key demand times to adequately assess appropriate pedestrian and bicycle facilities needs for the site, including:
 - 1. Current pedestrian and bicycle facilities demands not adequately or accurately considered;
 - 2. Early AM and later PM usage not adequately or accurately considered;
 - 3. Weekend and holiday demand for pedestrian and bicycle facilities not adequately or accurately considered;
 - 4. Future demand for facilities upon completion of the project not adequately or accurately considered.

See also (7/14/2014, Tr.).

Appellant's arguments are without factual or legal merit. There is substantial evidence in the record to support DSP-07073-01 compliance with the transportation requirements in §27-546. In particular, the analysis as to traffic, pedestrian and bicycle facilities, and the adequacy of the proposal at peak demand times, are carefully addressed within multiple memoranda from Transportation Planning Division of the Planning Department. *See* Transportation Planning Division Memoranda, March 10, 2014, April 17, 2014, and April 22, 2014. The analysis in each Memorandum incorporates comments from the Prince George's Department of Public Works and

Transportation and the Maryland State Highway Administration. Transportation Planning Division provided a detailed review of DSP-07073-01 conformance with all transportation-related conditions in CSP-09812 and PPS 4-01048, a summary of the traffic study and trip capacity, and other access and circulation issues. Moreover, as new information was submitted by MGM, the Transportation Division revisited its analysis to assess the continued validity of its recommendations as to transportation based on the new information. *See* Memorandum, Masog to Lareuse, April 22, 2014, p. 1; Memorandum, Issayans to Masog, April 18, 2014, pp. 1-2; Memorandum, Masog to Lareuse, April 17, 2014, p. 1. *See also* PGCPB No. 14-36, p. 71. For example, MGM's initial traffic impact study from April 18, 2013, prompted comments by referral agencies noting several deficiencies. In response, MGM submitted a revised traffic impact study on March 11, 2014. Referring agencies re-analyzed the transportation needs of the proposal incorporating the new information. *See* Memorandum, Masog to Lareuse, April 22, 2014, p. 1; Memorandum, Issayans to Masog, April 18, 2014, pp. 1-2; Memorandum, Masog to Lareuse, April 17, 2014, p. 1. *See also* PGCPB No. 14-36, at p. 71.

In turn, by way of referral, the Maryland State Highway Administration (SHA), the Prince George's County Government (Department of Public Works & Transportation (DPW&T), and the Department of Permitting, Inspections and Enforcement (DPIE)) submitted additional comments upon review. The record reveals that additional comments from said agencies were duly incorporated into the April 22, 2014, Memorandum from the Transportation Planning Division. *Id.*

There is substantial evidence in the record squarely addressing the requirement for adequacy of pedestrian and bicycle facilities. To illustrate, the adequacy of pedestrian and bicycle facilities was assessed and specific recommendations provided to comply with the recommendations of the 2006 *Master Plan and Sectional Map Amendment for the Henson Creek South Potomac Planning*

Area. See Memorandum, Janousek to Lareuse, March 11, 2014, pp. 2-3. Planning Board incorporated these recommendations as to compliance with the approved master plan for the subject property, and the prescriptions of §27-548. See PGCPB No. 14-36, pp. 82-84.

Based on the evidence in the record, DSP-07073-01 complies with the transportation requirements of §27-548.01.04.

- Stormwater

Appellant alleges the deficiency of certain design features proposed on the site that may negatively affect stormwater management on the site. After acknowledging that the stormwater management plan is not squarely before the District Council, Appellant alleges the following deficiencies:

- A. Large footprint impervious surface proposed for the site and negatively affects the efficacy of stormwater management;
 1. Proposed development covers entire hillside with impervious structure despite leading designs that favor more greenspace and vegetation;
 2. Excessive roof space in the designs proposed for the site, despite leading designs that favor less roof surface and vegetation on roof space.
 3. Huge white roof not as effective as vegetation on roof for air quality and heat sink.

Appellant argues the proposed stormwater management control measures approved for the application, as well as the proposed design elements to be incorporated in the construction and operation of the facilities proposed on the site, are insufficient because they fail to incorporate certain elements of recent advancements in design as to sustainability. Upon review of the record, however, there is specific evidence to support a finding that the proposals within the subject application either incorporate the design features alleged by Appellant to be missing, or are otherwise alternatively addressed within analysis that support Planning Board's finding of compliance with requirements set forth in §27-542(a)(8). See PGCPB No. 14-36, pp. 36-37, 77-78. DSP-07073-01 includes evidence from the Site/Road Plan Review Division of the Prince George's

County Department of Planning, Inspections and Enforcement, which states that the development proposal within the application is consistent with the approved enhanced Stormwater Management Concept Plan No. 4853-2014-00, dated February 14, 2014. See Letter from Site/Road Plan Review Division, March 24, 2014. There is also additional evidence in the record from the Environmental Planning Section which reiterates the proposal's consistency with the approved concept plan; noting that stormwater will be directed to ponds numbered 11 and 12, which will be owned and maintained by the Prince George's County Government. Further, the maintenance of pond vegetation aesthetics will be performed by the M-NPPC, as the stormwater ponds constructed for use at the site are situated on M-NCPPC owned land, in Betty Blume Park. *See* Memorandum, Schneider to Lareuse, April 11, 2014, p. 5; Technical Staff Report, Urban Design Section, p. 14; PGCPB No. 14-36, p.5. *See also* (05/08/2014, Tr.), (07/14/2014, Tr.).

As to rooftop vegetation, Community Planning Division states that the proposal includes the use of roof planting, and a provision for irrigation through the reuse of stormwater, in furtherance of MGM's stated goal for achievement of LEED gold certification for the facility. *See* PGCPB No. 14-36, pp. 10-11; Technical Staff Report, Urban Design Section, May 8, 2014, p. 64. *See also* Applicant MGM Schematic Design Project Narrative, pp. 85-89. Lastly, although the County does not have a Green Building Code, MGM has demonstrated its commitment to sustainable design and green building techniques. The Council encourages MGM to offer a recycling program within the development in the future. *See* PGCPB No. 14-36, at pp. 11, 83.

In light of the foregoing, the proposal meets the environmental requirements required by §27-542(a)(8), and is not otherwise arbitrary, capricious, illegal or discriminatory. Consequently, Appellants' claim of insufficient findings as to stormwater is without factual or legal merit.

- Lighting and Signage

- A. Lighting plan proposed for the site excessive and inadequate:
1. Brightness requirements for external lighting unspecific and inadequate to prevent driver distraction and ambient light pollution created on the site;
 2. Light pollution not adequately or accurately considered in evaluation of light plan for the site;
 3. External lighting of 22 story building excessive and inadequate to prevent driver distraction and ambient light pollution on the site;
 4. Lighted and video advertisement proposed on the site excessive and inadequate to prevent driver distraction and ambient light pollution.

Appellant alleges deficiency in the record as to the recommendations by the Planning Board regarding signage. This claim is also without merit. There is substantial evidence in the record to support the determinations of the Planning Board as to signage in accordance with §§27-592, 27-593, 27-613(f)(1), 27-614(e)(1). *See* PGCPB No. 14-36, pp. 7-10, 81-84. *See also* Technical Staff Report, Urban Design Section, pp. 9-11; 75-77; (05/08/2014, Tr.), (07/14/2014, Tr.). Technical Staff raised concerns regarding the proposed LED Video Boards, noting the County proscription against certain content not specifically directing attention to a business, service, or commodity not offered on the property at which the sign is located. *See* Technical Staff Report, Urban Design Section, pp. 9-11; 75-77. Further, Staff expressed specific concern as to the proposed LED signage and the potential for motorist distraction and impairment in the case of signs which flash or blink, or display variances intensity of illumination on less than a five second cycle, as all are expressly prohibited pursuant to the provisions of §27-592. *See* PGCPB No. 14-36, p. 81; Technical Staff Report, Urban Design Section, pp. 9-11; 75-77. *See also* (07/14/2014, Tr.). Other comments supplied on referral note ambiguity in the signage plan as to building mounted signs and recommending an indication by the applicant as to the color, material, and method of illumination in the proposed signage plan and that lighting, if any, for building mounted signs be subtly lit, and limited to external lighting or back/halo lighting. In turn, Planning Board adopted staff's recommendations and conditionally approved the proposed signage for DSP-07073-01 to ensure requirements of §27-592 are satisfied.

See PGCPB No. 14-36, p. 71; Technical Staff Report, Urban Design Section, pp. 9-11, 75-77. See also (07/14/2014, Tr.).

Next, the Planning Board reviewed comments from several referral agencies regarding hotel façade lighting proposed at each floor of the hotel facility from dusk until dawn. Technical Staff stated that signs are defined as any letter, word, numeral, figure, design, projected image, picture, illustration, emblem, symbol, trademark, banner, pennant, or other device, which is used to announce, direct attention to, identify, advertise, or otherwise make anything known. In this application lighting of the building is a device that is used to draw attention to and advertise the proposed entertainment center and hotel. Staff comments made note of the prescriptions of §27-274(a)(3), that light patterns of light pooling should be directed on site as well as the recommendation of the 2006 *Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*, that the reduction of light pollution and use of full cut-off optic light fixtures for all uses. See PGCPB No. 14-36, pp. 9, 81; Technical Staff Report, Urban Design Section, p. 19; Memorandum from Zamore to Lareuse, 03/14/2014, p. 1-2. See also (05/08/2014, Tr.), (07/14/2014, Tr.). As a final matter regarding lighting and signage, MGM withdrew its request for the light beam that is shown to be emitted from the hotel into the night sky. See PGCPB No. 14-36, p. 81.

Based on the above findings, the decision of the Planning, as to compliance with applicable signage requirements of the Zoning Ordinance, was supported by substantial evidence, and it is not otherwise arbitrary, capricious, illegal, or discriminatory. Accordingly, Appellants' claim on appeal as to insufficient findings for signage is without factual or legal merit.

- General Allegations

Appellant asserts certain concerns raised during the May 8, 2014, public hearing conducted by the Planning Board, but he fails to state any details as to the substance of

these concerns within the written appeal filed on June 9, 2014, or during oral argument on July 14, 2014.

Because the Appellant fails to specify his concerns or the error which is claimed to have been committed by the Planning Board, or those portions of the record relied upon to support these concerns or errors, we decline to speculate what they might be. To the extent those concerns or errors were addressed above, we adopt and incorporate by reference our findings and conclusions above.

Pursuant to §27-290(a)(c)(d)(e), §27-285(b), and §25-210 of the Land Use Article, the District Council, based on the findings herein, APPROVES DSP-07073-01 and AC-14005. The District Council concurs with Planning Board that DSP-07073-01 is in general conformance with CSP-98012; and if revised in accordance with the proposed conditions below, represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, of the Prince George's County Code, without requiring unreasonable cost and without detracting substantially from the utility of the proposed development for its intended use.

For the reasons stated above, Planning Board's decision was not arbitrary, capricious, discriminatory, or illegal, because it was not made impulsively, at random, or according to individual preference. *See Harvey*, 389 Md. 243, 297-300, 884 A.2d 1171, 1203-06 (2005). Further, we may not substitute our judgment for that of the Planning Board. *See Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50, at 16-19.

Accordingly, the decision of the Planning Board, in PGCPB No. 14-36, is AFFIRMED.

Approval of DSP-07073-01 and AC-14005 for the above-described land is subject to the following conditions:

1. Prior to certificate approval of this detailed site plan, the applicant shall:

- a. Revise the sign plan to include a chart that indicates the sign area of all of the proposed signage, including five video boards, two building-mounted signs on the hotel façade with the text “MGM,” the proposed freestanding sign near the entertainment entrance, and the hotel façade lighting.
- b. Add a note to the sign plan to indicate that the video boards will not be used to advertise services, goods, and activities offered off- site, unless otherwise permitted by the Zoning Ordinance.
- c. Add a note to the sign plan to state that the applicant shall monitor the imagery shown on the video boards, so the signs do not flash or blink repeatedly in a manner prohibited by Section 27-592 of the Zoning Ordinance.
- d. Revise the sign plan to include the color, materials, and method of illumination of all of the proposed signs. If lighting of the building-mounted “MGM” signs located high upon hotel façade is proposed, they shall be lit with external lighting or back/halo lighting, or softly lit internal lighting.
- e. Revise the sign plan and architectural elevations to eliminate the light beam that is shown to be emitted from the hotel into the night sky.
- f. Provide details and samples that indicate the appearance of the architectural precast concrete panels proposed on the exterior of the parking garage. The final treatment shall be approved by Urban Design Section and shall have an attractive appearance that provides visual interest in pattern or texture.
- g. Provide a note on the sign plan to indicate that the lighting levels or brightness of the LED video boards will be adjustable for daytime and nighttime levels to limit lighting impacts, to the extent possible, beyond the boundaries of the detailed site plan.
- h. Include details and specifications of the fin system proposed on the face of the hotel on the architectural elevations. The detail shall demonstrate that the façade lighting is designed to direct lighting onto the face of the hotel, and not into the night sky. Details and specifications shall be included on the architectural elevations.
- i. Identify locations and provide details for all of the proposed site and streetscape amenities to ensure that a coordinated design is provided, to be approved by the Urban Design Section. Specifically, locations of and details for trash receptacles, lighting, and benches near the proposed drop-off locations shall be provided.
- j. Provide a note on the DSP that requires adequate protection of the Addison Family Cemetery throughout the course of construction by ensuring that the limit-of-disturbance (LOD) shown on the plans is identified in the field with

concrete “Jersey barriers,” and the area within the barriers shall not be used as a staging area for building materials, construction vehicles, and should be off-limits to all heavy equipment.

- k. Provide the proposed bearings and distances on all property lines.
 - l. Delineate the perpetual easement as reflected on SHA P/R Plat 56481 and make adjustments to the plan accordingly.
 - m. Clearly show the bearings and distances of the burial site and 15-foot access easement as reflected on vacated Plat NLP 153-56.
 - n. Remove the first phrase of General Note 3 relating to interpretation of the lots as shown on the DSP.
 - o. Show the parcel layout and designation as reflected on the applicant’s National Harbor Beltway Parcel Exhibit, Lot 2–7, and modify to show West Road within Parcel A (with sidewalk and street trees), or shown the roadway to be dedicated if the applicant provides evidence of acceptance by the Maryland State Highway Administration (SHA).
 - p. Revise Site Development Note 3 to have the correct number and acreage of proposed Lots 2–7 and Parcel A, (unless evidence is provided that the West Road will be conveyed to SHA).
 - q. Revise the landscape plan to show the Section 4.2 and 4.9 schedules excluding all plant material proposed within the State Highway Administration right-of-way.
 - r. Provide crosswalks with special paving, to be approved by the Urban Design Section, across all ingress/egress points, subject to modification by the SHA.
 - s. Provide an accessible pedestrian signal crossing(s) across Harborview Avenue connecting the site to the Heritage Trail at the agency-approved road crossing location(s) if approved by SHA.
 - t. Provide details of the bicycle racks on the plans.
 - u. Provide a minimum six-foot-wide sidewalk along the entire subject property frontage and/or building of National and Harborview Avenues and connections to the crosswalks on Oxon Hill Road, or as modified by SHA.
 - v. Revise the plan to show the unmitigated 65dBA noise line.
2. No light beams or search lights shall be permitted on the site.

3. Prior to the approval of the use and occupancy permit, the applicant shall evaluate the feasibility of providing a recycling program within the development in the future, and if determined to be desirable and feasible, submit a letter establishing a timeline and milestones to achieve this goal.
4. Prior to the issuance of the first building permit, the applicant shall make a payment to the M-NCPPC in the amount of \$85,353.00 for the supply and installation of the landscaping materials on the Oxon Hill Manor site to improve the buffer between the MGM National Harbor project and the historic Oxon Hill manor site.
5. Prior to the issuance of any use and occupancy permits for this proposal, the following road improvements at the intersection of MD 414 and National Avenue shall be open to traffic:
 - a. Restripe the leftmost northbound through lane along MD 414 to a left-turn lane, which will result in a northbound double left turn. This approach will remain a four-lane approach which will now consist of two left-turn lanes, an exclusive through lane, and a shared through and right-turn lane.
 - b. Restripe the rightmost southbound through lane along MD 414 to a right-turn lane, which will result in a southbound double right turn. This approach will remain a five-lane approach which will now consist of an exclusive left-turn lane, two through lanes, and two right-turn lanes.
6. Shows within the theater venue shall not commence prior to 7:30 p.m. on non-holiday weekdays.
7. The applicant shall comply with a comprehensive transportation plan that is prepared in accordance with Section 9-1A-32, State Government Article, Annotated Code of Maryland, prior to the issuance of any use and occupancy permits.
8. The comprehensive transportation plan that is prepared in accordance with Section 9-1A-32, State Government Article, Annotated Code of Maryland, shall address the following issues:
 - a. The location(s) of transit bus stops, and whether a shelter(s) would be needed at the stop(s).
 - b. The pick-up and drop-off areas for taxis, and a taxi waiting area.
9. The applicant shall comply with the Zoning Ordinance, other applicable local and state law, and any plans, commitments or other proffers contained in any submissions or testimony upon which approval of the site plan is based.
10. The plans should remove any reference to a pedestrian bridge.
11. Prior to the approval of a building permit which includes the hotel, certification by a professional engineer with competency in acoustical analysis shall be submitted to the MNCPPC as part of the building permit package. The certificate shall verify that noise

mitigation methods have been incorporated in the architectural plans to reduce interior noise levels to the applicable legal standard for hotels in the MXT zone at this particular location.

12. The applicant shall provide evidence that the six interpretive plaques required by Stipulation II.C of the Memorandum of Agreement executed between the Maryland Department of the Environment, the Maryland Historic Trust and the Peterson Companies and by Condition No. 30 of SP-98012 have been installed by the end of 2014.
13. Prior to the issuance of the sign permit, the applicant shall provide wayfinding signage locations, detailing directional signage for vehicles, bicyclist, and pedestrians to direct people to and from internal activities of the entertainment establishment.
14. Prior to the approval of the final plat for Lot 4, the applicant shall provide 10-foot-wide public utility easements (PUE) abutting all public and private streets to serve the development or provide proof of an acceptable alternative approved by all of the affected utility companies.
15. Prior to use and occupancy permit, the abandonment of the dedicated public ROW as reflected on the approved DSP, or as modified by SHA, shall be incorporated into the site by a minor final plat approved by the Planning Director in accordance with Section 24-108.

Ordered this 21st day of July, 2014, by the following vote:

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

Opposed: Council Member Lehman.

Abstained:

Absent:

Vote: 8-1

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

By: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council