

Moses, Leonard D.

From: Bradley Heard <bradley.heard@gmail.com>
Sent: Monday, September 28, 2020 9:38 AM
To: Clerk of the Council
Cc: Christopher L. Hatcher
Subject: Re: DSP-06001-03 - Commons at Addison Road
Attachments: 20200928 Proposed Order.pdf; 20200928 Corrected Brief in Support of District Council Appeal.pdf; 20201005 Petitioner's District Council Presentation Commons at Addison Road.pdf

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Good Morning, Ms. Brown:

Attached for filing and inclusion within the record in connection with the above appeal are: (1) my corrected brief in support of my appeal; (2) a proposed order; and (3) my updated PowerPoint presentation. Please let me know if you have any questions or concerns in regard to these items. Thank you!

Regards,

Bradley E. Heard

Follow me on Twitter [@PGUrbanist](#)

On Sun, Sep 20, 2020 at 2:05 PM Bradley Heard <bradley.heard@gmail.com> wrote:

Dear Ms. Brown:

Attached for filing and inclusion within the record in connection with the above appeal is a brief in support of my petition for appeal. Please be advised that the brief includes a **request for continuance**, based on the unavailability of a transcript of the Planning Board hearing.

Please let me know if you have any questions. Also, FYI, I have not yet received information as to how to participate in tomorrow's virtual meeting. Please advise. Thank you!

Bradley E. Heard

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On Mon, Aug 24, 2020 at 11:25 AM Clerk of the Council <ClerkoftheCouncil@co.pg.md.us> wrote:

Good Morning Mr. Heard,

Thank you for contacting the Office of the Clerk of the Council. Per your inquiry below, please note that any valid appeals and/or correspondence will be included in the September 21, 2020 Mandatory Review Hearing process in accordance with the Zoning Ordinance, the District Council Rules of Procedure, and all applicable laws.

Your request to participate in the hearing is duly noted and an email including the information to join the meeting will be sent to all registered speakers prior to September 21, 2020.

Have a great day.



Donna J. Brown, Clerk of the Council

O: 301-952-3528 F: 301-952-5178 E: djbrown@co.pg.md.us Telework: 240-351-9777

From: Bradley Heard <bradley.heard@gmail.com>
Sent: Friday, August 21, 2020 2:08 PM
To: Clerk of the Council <ClerkoftheCouncil@co.pg.md.us>
Subject: DSP-06001-03 - Commons at Addison Road

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Good Afternoon Ms. Brown:

I am in receipt of your virtual hearing notice for the District Council's mandatory referral consideration of this DSP, setting a hearing on September 21. I had earlier sent a Notice of Appeal relating to this DSP, dated June 2 and received by your office on June 3. (Another copy of that notice is attached.) I also received an appeal notice from the Applicant. I am assuming the September 21 hearing/oral argument will apply to all three of these? Can you please confirm?

I do plan to submit additional written materials regarding these appeals. I also intend to speak at the virtual hearing. Accordingly, please send me the virtual meeting participation information. Also, please take note of my new home telephone number: 301.336.0978. Thank you!

Regards,

Bradley E. Heard

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



In re:

COMMONS AT ADDISON ROAD

* * *

BRADLEY E. HEARD,
Petitioner/Party of Record,

v.

6301 CENTRAL AVENUE, LLC,
Respondent/Applicant.

CASE NUMBER

DSP-06001-03

(On appeal from the final decision of the Prince George's County Planning Board)

CORRECTED BRIEF IN SUPPORT OF PETITION FOR APPEAL

Bradley E. Heard ("Heard" or "Petitioner"), a party of record to the above-captioned proceeding, submits this corrected brief in support of his petition for appeal to the District Council from the April 30, 2020, final decision of the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission, approving with conditions Detailed Site Plan Application No. DSP-06001-03, filed by 6301 Central Avenue, LLC ("Applicant" or "Respondent"). *See* PGCPB No. 2020-59 [hereinafter, "Decision"].¹

STANDARD OF REVIEW

In its review of the Planning Board's decision in this contested case, the District Council sits as an appellate body, employing the same standard as a court would in its judicial review of an administrative agency decision. *See County Council of Prince*

¹ This brief amends and supersedes the brief filed on September 20, 2020.

George's County v. Zimmer Dev. Co., 444 Md. 490, 573-75 (2015); *County Council of Prince George's County v. FCW Justice, Inc.*, 238 Md. App. 641, 672-75 (2018). Thus, the District Council must determine whether there is substantial evidence on the record as a whole to support the Planning Board's findings and conclusions, as embodied in its written decision, and whether the Board premised its decision on an erroneous conclusion of law. *Maryland-National Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 83 (2009) [hereinafter "*M-NCPPC v. GBACA*"].

An agency's factual determinations will satisfy the substantial evidence test if a reasonable mind might accept as adequate the evidence supporting them. *Id.* Typically, if there is reliable evidence in the record to render an agency's factual determination "fairly debatable," the reviewing court should defer to the agency's determination, even if the court would have made a different conclusion based on the facts. *Evans v. Burruss*, 401 Md. 586, 591-92 (2007); *Becker v. Anne Arundel County*, 174 Md. App. 114, 137-38 (2007). However, an agency's "half-baked conclusion" based on insufficient facts in the record before it is *not* entitled to deference. *M-NCPPC v. GBACA*, 412 Md. at 109. "Findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." *Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 553 (1999); *Becker*, 174 Md. App. At 138-39.

The District Council owes much less deference to the Planning Board's legal conclusions "and may reverse those decisions where the legal conclusions...are based on an erroneous interpretation or application of zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute." *M-NCPPC v. GBACA*, 412 Md. at 84-85.

ARGUMENT AND CITATION OF AUTHORITY

As discussed below, in connection with Petitioner's previously asserted grounds of error, many of the Planning Board's actions and decisions with respect to this DSP were premised on erroneous conclusions of law or unsupported by substantial evidence on the record.

- 1. The Planning Board erred as a matter of law and denied Petitioner due process of law to the extent it relied on the continuing validity of the District Council's previous *ultra vires* modifications of the Planning Board's final decisions concerning previous detailed site plan applications for the subject property.**

The pending Detailed Site Plan application (DSP-06001-03) purports to amend or revise the previously approved original (DSP-06001) and second (DSP-06001-01) DSP applications. However, regardless of whether the pending application is styled as an "amendment," "revision," or "substitution," the Zoning Ordinance requires that the application be processed as an original application: "All requirements for the filing and review of an original Detailed Site Plan shall apply to an amendment. The Planning Board shall follow the same procedures and make the same findings." P.G. Co. Code § 27-289(b).

Because the pending DSP application is subject to a full and plenary review by the Planning Board, just like an original DSP application, it must rise or fall on its own merit. The Planning Board is free to consider its previous findings made in connection with previous DSP applications, to the extent that they are relevant, probative, and comport with the evidence presented in connection with the subject DSP application; however, the Planning Board is not bound by any such previous findings unless a property owner has obtained a vested interest in those previous findings.

Under Maryland law, a property owner does not obtain any vested rights or interest in a development-related permit or approval until the owner has commenced and continued to proceed in good faith with physical development of the land, under a lawfully issued building permit, to such a degree that a reasonable member of the public inspecting the property can recognize that a building is being constructed for a use permitted under the then-current zoning. *Prince George's County v. Sunrise Dev. Ltd. P'shp*, 330 Md. 297, 313-14 (1993). A property owner's incursion of substantial sums in connection with developing a property is insufficient to confer a vested right or interest in a development-related permit or approval. *Id.* at 300 (noting that the owner/developer in that case had incurred more than \$2.5 million in project expenses over the course of four years in pursuit of various development approvals).

Here, no development has commenced under any of the previously approved DSPs, and the subject property remains vacant. Accordingly, Applicant has obtained no vested interest in any previous development-related permit or approval relating to the subject property. Early on in its decision, the Planning Board acknowledges that the pending DSP application supersedes the previous DSP approvals for the subject property. *See, e.g.*, Decision at 1, 3. However, the Planning Board then proceeds to ignore that fact by stating repeatedly that several conditions from previously approved DSPs "remain valid" or "continue to apply" to the pending DSP. *See, e.g., id.* at 6, 15-20. The Planning Board's holdings in that regard constitute reversible error.

The Planning Board's reliance on previous DSP approvals is particularly erroneous and prejudicial in this case because those approvals contain several conditions imposed directly by the District Council in its purported exercise of original jurisdiction during its "call-up" review of the Planning Board's previous DSP decisions.

However, because the District Council possesses no original jurisdiction in DSP matters and only sits as an appellate body, all of those conditions were *ultra vires* and void *ab initio*. *Zimmer*, 444 Md. At 573-75; *FCW Justice*, 238 Md. App. at 672-75.²

- 2. The Planning Board erred as a matter of law and denied Petitioner due process of law to the extent it relied on prior preliminary subdivision and detailed site plan approvals involving the subject property between 2006 and 2010, when the previous property owner, Dr. Mirza H.A. Baig, was admittedly engaged in a criminal pay-to-play bribery scheme with various named and unnamed county officials between at least 2006-2010, in order to secure their official assistance with various matters, including matters specifically relating to the proposed Commons at Addison Road development.**

Similarly, the Planning Board's reliance on previous subdivision and DSP approvals involving the subject property between 2006-2010 was improper because the undisputed and incontrovertible evidence of record shows that those approvals were obtained during the time when the previous (and partially current)³ property owner, Dr. Mirza Baig, was paying off public officials in the county to obtain favorable treatment relating to the proposed Commons at Addison Road development, among other properties. (Ex. 29, Baig Plea Agreement, at 11, 16-18.) The full extent of Dr. Baig's criminal conduct in that regard is not publicly known because Dr. Baig elected to accept

² The Planning Board's counsel opined on the record of the hearing that *Zimmer* and its progeny were inapplicable and that the Planning Board was not able to disregard the *ultra vires* modifications imposed by the District Council with respect to prior DSPs. (Tr. at 100:14-19.) The Board counsel was incorrect in two respects. First, the Planning Board, as the state agency with original jurisdiction to adjudicate contested zoning matters in Prince George's County, has not only the right but the legal duty to apply the law to the facts of any contested case before it. Through *Zimmer* and its progeny, Maryland courts have clarified that the District Council had no authority to modify Planning Board decisions; therefore, its actions were void *ab initio*. The Planning Board should have applied that law in this case. Second, this amended DSP application must be treated as an original application—particularly where, as here, no development has commenced on the property and no vested interest has attached to the previous DSP approvals. Therefore, even if the District Council had possessed the authority to modify Planning Board decisions on earlier DSPs, those DSPs themselves are now nugatory in light of the filing of this new, superseding DSP application.

³ An entity controlled by Dr. Baig still owns Parcel 87, where the surface parking lot is proposed.

a plea agreement rather than face a full trial and a more serious term of imprisonment. (*Id.*) However, the tainting of the previous development approval proceedings involving the Commons at Addison Road by Dr. Baig’s known and unknown criminal conduct constitutes a procedural irregularity that calls into question the fundamental fairness of the underlying proceedings and, thereby, denied Petitioner procedural due process in the subject DSP proceedings. *See, e.g., Maryland State Police v. Zeigler*, 330 Md. 540, 559 (1993) (“Procedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before them.”).

To cure this issue, the District Council should direct the Applicant to submit a new preliminary plan of subdivision application for the combined subject property (Parcel A, Parcel 87, and Lot 5) and then, after Applicant obtains a new preliminary subdivision approval from the Planning Board, submit a revised DSP application to the Planning Board that addresses the errors discussed herein. *Cf.* P.G. Co. Code § 27-270(a) (preliminary subdivision plan approval required before consideration of DSP application).⁴

⁴ Reconsideration of the underlying preliminary subdivision plan approvals is also appropriate because the main preliminary plan approval (Application No. 4-05068, PGCPB No. 06-37), which was approved in 2006, is over 14 years old and did not take into account the intervening comprehensive plans that had been adopted for the area, including the 2010 Subregion 4 Master Plan and the 2014 General Plan (a.k.a. *Plan 2035*). Although preliminary subdivision plans are typically valid for only two years, *see* P.G. Co. Code § 24-119(d)(5), this plan remains technically legally valid through December 31, 2020, as a result of several general extensions of validity periods approved by the District Council over the years, ostensibly in response to the Great Recession. *See, e.g.,* CB-60-2018. Nevertheless, the Planning Board retains the discretion, as the planning and zoning authority, to order an applicant to obtain an updated preliminary subdivision plan approval, if good cause exists for such reevaluation, because no applicant has a vested interest in any development-related approval prior to the time the applicant obtains a valid building permit and substantially commences construction on the site. *Sunrise Dev. Ltd. P’shp*, 330 Md. At 313-14.

3. The Planning Board erred as a matter of law and denied Petitioner due process of law by disregarding or failing to consider the recommendations of the 2014 Approved General Plan (*Plan 2035*) or the 2010 Approved Subregion 4 Master Plan, or viewing those comprehensive plan recommendations as merely advisory and not binding and regulatory in connection with the subject detailed site plan application.

Although the Planning Board did not specifically address the issue in its written decision, it is clear from the undisputed evidence in the record, as well as the comments of individual Board members and the Board's counsel, that the Board did not consider Plan 2035 and the Subregion 4 Master Plan as binding and regulatory in connection with its DSP review and, therefore, did not evaluate whether the DSP conformed to those comprehensive plans, as well as the 2000 Addison Road Metro ("ARM") Sector Plan, the development district standards of which the Board conceded were regulatory with respect to this DSP application. (Tr. at 13:9-13, 38:4-10, 100:20-102:1, 103:12-104:25, 105:1-106:10, 107:22-109:7.) The Board's failure to do so constitutes reversible error.

One of the central purposes of DSP review is to ensure that property is being developed "***in accordance with*** the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan." P.G. Co. Code § 27-281(b)(1)(A) (emphasis added). Where a local government enacts a statute, ordinance, or regulation that links planning and zoning, the effect of such a law "is usually that of requiring that zoning or other land use decisions be consistent with a plan's recommendations regarding land use." *M-NCPPC v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 100-01 (2009) (quoting *Mayor and Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 530-31 (2002)). "[T]he weight to be accorded a master plan or comprehensive plan recommendation depends upon the

language of the statute, ordinance, or regulation establishing the standards pursuant to which the decision is to be made.” *Id.* When the statute at issue directs that the zoning or land use decision should “conform to” or be “in accordance with” a comprehensive plan recommendation, the comprehensive plan recommendation is transformed into a binding regulation, and the zoning authority is not free to disregard it. *Id.*; *see also HNS Development, LLC v. People’s Counsel for Baltimore County*, 425 Md. 436, 457 (2012) (“[W]hen the development regulations incorporate Master Plan compliance the Master Plan itself becomes a regulatory device, rather than a mere guide and recommendation.”); *Merriam-Webster.Com Dictionary*, available at <https://www.merriam-webster.com/dictionary/in%20accordance%20with> (defining “in accordance with” as “in a way that agrees with or follows (something, such as a rule or request)”).

Because P.G. Co. Code § 27-281(b)(1)(A) establishes that DSP review is designed to ensure development of land “in accordance with... the General Plan, Master Plan, or other approved plan” the 2014 General Plan, 2010 Subregion 4 Master Plan, and 2000 ARM Sector Plan recommendations and standards for the Addison Road–Seat Pleasant Metro Center are *all* binding upon developers, the Planning Board, and the District Council, in connection with the subject detailed site plan application. Thus, for example, although the Planning Board is allowed to consider alternative development district standards from the ARM Sector Plan, if requested by the Applicant, *see* P.G. Co. Code § 27-548.25(c), such proposed alternatives may not substantially interfere with the

implementation of the applicable master plan (i.e., the Subregion 4 Master Plan⁵) or the ARM Sector Plan, and must also be “in accordance with” Plan 2035.

By its own admission on the record, the Planning Board failed to consider Plan 2035 and the Subregion 4 Master Plan in connection with this DSP. Also, as detailed below, the undisputed evidence in the record clearly shows that the DSP does not conform to several Plan 2035 and Subregion 4 Master Plan standards. Accordingly, the District Council should reverse the decision of the Planning Board and remand the case for further consideration by the Board under the appropriate standards.

- 4. The Planning Board erred as a matter of law and denied Petitioner due process of law to the extent it determined that it was not empowered or authorized to require, as a condition of approving a detailed site plan application, that Applicant dedicate land and/or pay for onsite, offsite, or site-adjacent improvements, including within the public right-of-way, in accordance with the requirements of applicable comprehensive plans, so long as there is a nexus and rough proportionality between the land dedication or monetary exaction and the proposed land use.**

In response to several of Petitioner’s challenges to the DSP—particularly those involving instances where Applicant’s plans failed to show improvements within the public rights-of-way adjacent or nearby to the subject property, as called for in various

⁵ The Subregion 4 Plan updates the ARM Sector Plan and is designated by the Planning Department as the “currently active and applicable” plan governing the subject property. (*Id.* at 6; M–NCPPC, *Active Community and Development Plans*, available at <http://mncppc.maps.arcgis.com/apps/webappviewer/index.html?id=a57768c1821146a19aaba2a7704a5dd0>.) In addition to setting out general land use visions, goals, policies, and strategies for the Addison Road center, the Subregion 4 Plan provides a conceptual regulating plan that specifies building envelope standards and site requirements to which all development should conform, and also describes how each site relates to adjacent street spaces. (Subregion 4 Plan at 137.) The Subregion 4 Plan also provides detailed design guidelines for General Plan-designated centers within the subregion. (*Id.* at 561-615 (*Appendix A: Design Guidelines for the Subregion 4 Centers*)). Although these guidelines do not negate any specific DDOZ standards that may apply to certain centers, including those set forth in the ARM Sector Plan, they nevertheless provide development and design guidelines for implementing a variety of master plan goals, including: “[promoting] compact mixed-use development at moderate to high densities”; “[ensuring] transit-supportive and transit-serviceable development”; and “[requiring] pedestrian-oriented and transit-oriented design.” (*Id.* at 561-62.)

comprehensive plans—the Planning Board, based on its comments during the hearing, appeared to take the position that such improvements were outside the scope of the DSP and thus unable to be addressed by the Planning Board in its DSP review.⁶ (Tr. at 109:8–110:2.) The Planning Board’s apparent legal conclusions in that regard constitute reversible error.

As discussed in the previous section, a key purpose of DSP review is to ensure that property is being developed “in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan.” P.G. Co. Code § 27-281(b)(1)(A). To that end, an applicant is specifically required to prepare a civil plan that shows, among other things: “Zoning categories of the subject property and *all adjacent properties*”; “Locations and types of major improvements that are within fifty (50) feet of the subject property *and all land uses on adjacent properties*”; and “Street names, right-of-way and pavement widths of existing streets and interchanges *within and adjacent to* the site.” P.G. Co. Code § 27-282(d) (emphasis added). Furthermore, in service of that objective, the Planning Board is authorized to require an applicant to supply “any other pertinent information” necessary to enable the Board to evaluate whether an applicant’s development plans conform to the zoning ordinance, the applicable zone, and applicable comprehensive plans. *Id.* § 27-282(e)(21). Thus, by specific statutory design and direction, the Planning Board’s DSP review is concerned not only with the subject property and the proposed development within the boundaries thereof, but also with

⁶ The Planning Board’s written decision did not explain in any detail its rationale for failing to consider Petitioner’s arguments relating to Applicant’s failure to provide required offsite improvements.

how the proposed development of the subject property works within the context of its surroundings.

It is a well-settled principle of law that a planning or zoning authority such as the Planning Board is authorized to require, as a condition of approving a development-related application, that a property owner dedicate land and/or pay for onsite, offsite, or site-adjacent improvements, including within the public right-of-way, so long as there is a nexus and rough proportionality between the land dedication or monetary exaction and the proposed land use. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612-13 (2013) (citing *Dolan v. City of Tigard*, 512 U.S. 374 (1994) and *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987)); accord *Dabbs v. Anne Arundel Cty.*, 458 Md. 331, 348-50 (2018). The land dedication or monetary exaction must advance a legitimate public interest, and the agency must make an individualized determination that the land dedication or improvements relate “both in nature and extent to the impact of the proposed development.”⁷ *Dolan*, 483 U.S. at 391. “No precise mathematical calculation is required” to establish the requisite nexus and rough proportionality. *Id.*

The Planning Board’s authority and discretion to require land dedication, monetary exactions, or other conditions of site plan or permit approval in connection

⁷ The findings and development standards in the approved ARM Sector Plan, Subregion 4 Master Plan, and General Plan establish that it is in the public interest to improve pedestrian safety and circulation and to enhance the visual appearance of the Addison Road Metro Center’s core area by, *inter alia*, improving the street grid and pedestrian street space, providing safe pedestrian crossings, upgrading the street lighting, and burying and relocating overhead utilities within the public rights-of-way adjacent to and nearby to the subject property. Additionally, the uncontested evidence in the record shows that subject DSP application proposes to add 193 multifamily housing units to a single block in the core of the Addison Road Metro Station area, which will bring approximately 470-550 new people to this one-block area. When added to the existing population, these additional dwellings and people will impact the subject area significantly. Accordingly, given the nature and extent of the impact of the proposed development, it is both reasonable and proportionate to require Applicant to dedicate land and/or make onsite or offsite improvements adjacent and nearby to the subject property, including within the public rights-of-way.

with its administration of the **zoning regulations** is separate and distinct from and not constrained by its authority and discretion to require monetary exactions, property dedication, or other conditions of preliminary subdivision plan approval in connection with its administration of the **subdivision regulations**. *FCW Justice*, 238 Md. at 249-51 (discussing the “two broad categories of land use control: zoning and planning (which includes subdivision regulation)” and how those two concepts overlap, such that “some implementation and enforcement procedures may have both planning and zoning aims”). The Planning Board derives its zoning and subdivision authority from the Regional District Act, and nothing in that act limits the exercise of the Planning Board’s authority and discretion in one area versus the other. *Zimmer*, 444 Md. At 524-25; *FCW Justice*, 238 Md. App. 648. Thus, while the Planning Board’s previous conditions of approval in a preliminary subdivision plan remain binding on a developer or property owner during subsequent stages of zoning and development review, such conditions merely set a “floor,” not a “ceiling.” The Planning Board remains free, at subsequent stages of zoning and development review, to impose whatever additional conditions of approval it deems necessary or prudent to ensure conformity with then-applicable zoning regulations and comprehensive plans, so long as such additional conditions meet the *Koontz–Dolan–Nollan* standard.⁸

⁸ Importantly, none of the public roadway improvements at issue in this case involve the need for Applicant to dedicate additional land. Rather, much like the common requirement to install sidewalks along the right-of-way adjacent to one’s property, these improvements would require Applicant to coordinate with the appropriate roadway authorities (i.e., the State Highway Administration or the county Department of Public Works & Transportation) at the time of construction to obtain the necessary right-of-way access permits. A similar process applies to construction of onsite improvements, however. At the time of construction, the Applicant will need to obtain the necessary building and grading permits from the county Department of Permits, Inspection, and Enforcement. The necessity of Applicant obtaining additional permits down the line does not preclude the Planning Board from directing Applicant to make the necessary right-of-way improvements, as called for in applicable comprehensive plans. Indeed, the relevant public authorities—*e.g.*, DPIE, SHA, and DPW&T—are all involved in the DSP review process and
(*cont’d...*)

The facts and circumstances of this case explain exactly why the Planning Board must remain free to impose reasonable conditions on proposed developments at both the initial planning (including subdivision) stage as well as the zoning (including DSP) stage. Here, the subject detailed site plan application comes to the Planning Board for review and adjudication 14 years after the 2006 preliminary subdivision plan approval relating to Parcel A and 12 years after the 2008 preliminary subdivision plan approval relating to Parcel 87. Within those intervening years, the Planning Board has adopted and the District Council has approved the Subregion 4 Master Plan (2010) and a new General Plan (2014) governing the subject property. These comprehensive plans clarify and strengthen the walkable urban transit-oriented and pedestrian-oriented recommendations and standards relating to the subject property, and call for increased densities at the subject property. The Planning Board is entitled to determine whether those intervening comprehensive plans or other factors—including issues not fully or adequately explored during previous stages of review—counsel in favor of additional conditions of approval in connection with the subject detailed site plan.⁹

are invited to advise the Planning Board of any concerns they may have regarding a proposed development.

⁹ For example, since 2012, the Subdivision Ordinance has specifically required the Planning Board to make a determination that adequate public pedestrian and bikeway facilities will exist in general plan-designated centers to serve the proposed subdivision and the surrounding area. *See* P.G. Code § 24-124.01(b). Specifically, with respect to pedestrian facilities, the Planning Board is required to evaluate “the degree to which the sidewalks, streetlights, street trees, street furniture, and other streetscape features recommended in the Countywide Master Plan of Transportation and applicable area master plans or sector plans have been constructed or implemented in the area” and “the presence of elements that make it safer, easier, and more inviting for pedestrians to traverse the area (e.g., adequate street lighting, sufficiently wide sidewalks on both sides of the street buffered by planting strips, marked crosswalks, advance stop lines and yield markings, ‘bulb-out’ curb extensions, crossing signals, pedestrian refuge medians, street trees, benches, sheltered commuter bus stops, trash receptacles, and signage).” *Id.* Additionally (and speaking to the interrelatedness of the Planning Board’s planning and zoning functions as discussed in *FCW Justice*), the Subdivision Ordinance specifically directs any developer or property owner subject to a conceptual or detailed site plan to include a pedestrian and bikeway facilities plan
(cont’d...)

In any event, it is important not to raise form over substance unnecessarily. The Planning Board is empowered through the Regional District Act to exercise localized planning and zoning functions within Prince George’s County. The Court of Appeals has recognized that planning and zoning are interrelated, such that “some implementation and enforcement procedures may have both planning and zoning aims.” *FCW Justice*, 238 Md. at 249-51. When the Planning Board reviews a proposed development—whether at the subdivision stage or at the zoning stage—it is reviewing the proposal for compliance with the Subdivision Ordinance, Zoning Ordinance, and any applicable comprehensive plans. The RDA does not restrict the Planning Board’s ability to address any such issues at either stage, when necessary or prudent to ensure compliance with applicable law or comprehensive plans. And a developer or property owner possesses no vested interest in any earlier development approval of the Planning Board prior to the developer’s commencement of construction under a validly issued building permit. Accordingly, the Planning Board erred in determining that the issue of offsite and site-

showing existing and proposed pedestrian and bicycle infrastructure within a half-mile of the development. *Id.* § 24-124.01(f).

Finally, before a building permit can be issued in a general plan-designated center, the developer/property owner must show that “all required adequate pedestrian and bikeway facilities have full financial assurances, have been permitted for construction through the applicable operating agency’s access permit process, and have an agreed-upon timetable for construction and completion with the appropriate operating agency.” *Id.* § 24-124.01(g). In other words, prior to the issuance of a building permit, the developer will be required to show that some combination of funding (i.e., from the developer, county, state, or other sources) is present to show “full financial assurances” and permitting for all such pedestrian and bicycle infrastructure. *Id.*

Because none of that guidance regarding the adequacy of pedestrian and bikeway facilities was specified in the Subdivision Ordinance at the time the preliminary plans of subdivision relating to this development were considered in 2006 and 2008, the Planning Board may choose to address these issues at the DSP stage, to ensure compliance with the applicable comprehensive plans. Alternatively, it may elect to direct the applicant to submit a new preliminary subdivision plan application and to defer further consideration of the DSP until the new preliminary plan approval is obtained. What the Planning Board *cannot* do, however, is ignore the requirements of the applicable comprehensive plans with respect to pedestrian and bicycle infrastructure.

adjacent improvements called for in comprehensive plans was outside the scope of its DSP review.

5. **The Planning Board erred as a matter of law and denied Petitioner due process of law by (a) relying principally on the technical staff report prepared by the Development Review Division, which by the Commission's own admission considered only the arguments of the Applicant in support of the application and not the arguments of Petitioner in opposition to the application and (b) adopting substantially all of the staff report as the Board's decision in a contested case.**

The undisputed evidence shows that the Development Review Division's technical staff did not consider Petitioner's arguments in opposition to the DSP in preparing their staff report. Staff also conceded during the hearing that they did not consider Plan 2035 or the Subregion 4 Master Plan as binding and regulatory in connection with its evaluation of the DSP. Accordingly, the Board's decision, which adopted and incorporated substantially all of the staff's report and failed to address or rule on any of Petitioner's proposed findings of fact, did not reflect the true state of the evidence in this contested case. Petitioner was not mentioned by name at any point in the staff report or the Planning Board's decision, and the substance of Petitioner's extensive opposition to the DSP prior to and during a five-hour hearing was only vaguely alluded to in the concluding paragraphs of the Board's findings. *See* Decision at 26 (noting, in Paragraph 19, that a public hearing was held and that "testimony and documentation expressed concerns that the application and the Board's hearing procedures did not meet the requirements of the law," but that the Board concluded otherwise).

Administrative agencies are duty-bound to make findings of fact and conclusions of law on *all* material issues in a contested case, to resolve *all* significant conflicts in the

evidence, and to provide a clear explanation of their rationale for reaching their decision. *See, e.g., Mehrling v. Nationwide Insurance Company*, 371 Md. 40, 62-67 (2002) (reversing agency's decision and remanding case to agency, in light of agency's failure to make adequate findings of fact and conclusions of law and to explain its decision-making); *Forman v. Motor Vehicle Administration*, 332 Md. 201, 221-22 (1993) (same). Because the Planning Board's decision does not contain clearly explained findings and conclusions that resolve all significant issues in dispute, the District Council should remand the case to the Planning Board to make such findings and conclusions, based on the evidence previously adduced and admitted into the record at the public hearing on April 9, 2020. In addition, pursuant to the Administrative Procedure Act, the Planning Board's final decision should rule specifically on each of Petitioner's proposed findings of fact, as submitted on April 7, 2020. Md. Code Ann., State Gov't, § 10-221.

6. **The Planning Board erred as a matter of law and denied Petitioner due process of law by (a) failing to resolve all contested issues of fact and explain the resolution thereof (rather than simply adopting the proposed findings contained in the technical staff report), and (b) failing to state a ruling on each proposed finding of fact offered by Petitioner.**

Petitioner incorporates the arguments and points of authority in the preceding assignment of error.

7. **The Planning Board erred as a matter of law and denied Petitioner due process of law by considering and acting upon the subject detailed site plan application prior to the time that applicant had obtained all required preliminary plans of re-subdivision related to the subject property.**

Petitioner withdraws this assignment of error.

8. **The Planning Board erred as a matter of law, abused its discretion, and acted arbitrarily and capriciously, in**

contravention of the substantial evidence adduced in the administrative record, and in contravention of the requirements of the applicable comprehensive plans, by approving the subject detailed site plan, which proposed a large surface parking lot covering the entire 0.9-acre land area of Parcel 87.

The undisputed evidence of record shows that Applicant's proposed surface parking lot on Parcel 87 is contrary to the applicable comprehensive plans. The Planning Board's findings to the contrary are not supported by substantial evidence and, by its own admission, did not consider the requirements of the Subregion 4 Master Plan and Plan 2035.

Shared Parking

ARM Development District Standard S2(B) provides that "Shared parking lots shall be utilized, whenever possible, to reduce the amount of parking spaces needed." (ARM Sector Plan at 176.). Likewise, Plan 2035 states that parking should not "dominate the pedestrian realm"; that "[p]arking accommodations for new developments should be located in *shared or private garages* accessed via alleyways"; and that in the rare circumstance when "surface parking *cannot be avoided*, it should be located behind buildings to help foster a pedestrian-friendly and human-scaled environment." (General Plan at 209 (emphasis added); *see also id.* at 160 (noting General Plan's transportation and mobility standard to "support parking reduction strategies such as shared parking" in local centers).)

The undisputed evidence showed that the WMATA parking garage at Addison Road Metro Station, directly across the street from the subject site, had been operating at less than half of its 1,268-space capacity for at least the past eight calendar years, and that even with the inclusion of 200 shared parking spaces for the Commons at Addison

Road development, the garage would only be using 815 spaces, or 64% of its capacity. (Ex. 14, WMATA Parking Details: Addison Road–Seat Pleasant Station.) The evidence also showed that WMATA was willing to negotiate with Applicant for the shared use of at least 55 such spaces—the number that Applicant had initially inquired about—but that Applicant voluntarily abandoned those negotiations. (Jan. 24, 2020 Email from B. Barrett to T. Willams; Tr. at 11:7-15.)¹⁰ Accordingly, Applicant could not meet its burden of proof to establish that a shared parking arrangement to reduce or eliminate the need for the 86-space surface parking lot on Parcel 87 was not feasible.

Similarly, Applicant could not meet its burden of establishing that it could not avoid providing the 86 spaces of surface parking desired on Parcel 87 in a shared or private garage, as called for in Plan 2035. Indeed, Applicant had originally proposed a 143-space parking garage under the proposed mixed-use building on Parcel A, but later reduced that proposal to a 38-space underground parking facility. (*Compare* Ex. 15, Undated DSP Originally Submitted at C-03 *with* Ex. 1, DSP at C-03.) Likewise, Parcel 87 already had an approved preliminary plan of subdivision for a parking *garage*, not a surface lot. (Prelim. Subdiv. Plan 4-08019, PGCPB No. 08-124.)

Finally, Applicant could not meet its burden of establishing that it could not avoid the need for the 86-space surface lot on Parcel 87 by simply requesting a further

¹⁰ Applicant’s counsel suggested that “some very specific legal issues” prevented Applicant from entering into a shared parking arrangement with WMATA because “the Zoning Ordinance requires us to be able to have those spaces in perpetuity if they’re provided offsite” and WMATA “wouldn’t necessarily” agree to enter into a long-term lease for those spaces. (Tr. at 133:8-21.) As an initial matter, the arguments of a party’s counsel do not constitute evidence in an administrative hearing. *See, e.g. McReady v. University System of Maryland*, 203 Md. App. 225, 240 (2012). Second, counsel cited no requirement of the Zoning Ordinance that would prohibit a party in a shared parking arrangement from entering into a less-than-perpetual term lease with the owner of the parking facility. Third, counsel’s arguments are belied by the facts: the technical staff had already recommended approval of the WMATA shared parking arrangement before Applicant abandoned it. *See* Feb. 18, 2020 Staff Report at 5.

reduction in any required parking minimums from the Planning Board, in light of the site's proximity to Metro and the availability of the large, half-unused Metro parking lot across the street. Indeed, the new zoning ordinance adopted but not yet implemented by the Planning Board and District Council would eliminate all parking requirements for residential and commercial uses in the core areas of Local Transit-Oriented zones such as the subject property. *Cf.* CB-13-2018, Table 28-6305(a).

Compact, High-Density, Vertical Mixed-Use Development

The ARM Sector Plan calls for compact development with higher, neighborhood-scaled development intensities favoring Metro users and pedestrians west of the Metro station, near the intersection of Addison Road and Central Avenue. (ARM Sector Plan at 166.) Similarly, the Subregion 4 Plan calls for high-density, vertical mixed-use development west of the Addison Road Metro station, along East Capitol Street, Central Avenue, and Addison Road South. (Subregion 4 Plan at 137, 141.) However, the single-use surface parking lot proposed on Parcel 87, which sits west of and directly across from the Addison Road Metro Station's large and underutilized parking garage, is neither a compact, nor high-density, nor vertical, nor mixed-use development of Parcel 87, as called for in the Subregion 4 Plan. (DSP at C-01, C-03.) The proposed surface lot would also not promote development that serves Metro users over automobile users, nor promote pedestrian-oriented development as called for in the ARM Sector Plan. Thus, Applicant cannot meet its burden of establishing that the proposed surface lot on Parcel 87 comports with the compact, high-density vertical mixed-use elements of the applicable comprehensive plans.¹¹

¹¹ Applicant's counsel floated a suggestion that the surface parking lot on Parcel 87 could be viewed as only a temporary use, and that that parcel could provide a perfect location for mixed-use development
(*cont'd...*)

Preserving Vacant Parcels for Future High-Density Vertical Mixed-Use Transit-Oriented Development

The undisputed evidence of record shows that the subject property area is a food desert that is in need of a large, 41,000+ SF full-service grocery store within walking distance of Metro. (Ex. 25, USDA, *Food Access Research Atlas*; Ex. 26, FMI, *Median Total Store Size – Square Feet*.) It is the county’s declared policy to “[i]mprove residents’ access to fresh foods, in particular for households living in low-income areas with limited transportation options, and promote sources of fresh foods countywide,” and to “[i]ncentivize, through tax abatements or other mechanisms, full-service grocery stores in... food deserts.” (General Plan at 226.) Additionally, the evidence showed that there is a significant unmet need for dense multifamily housing in Prince George’s County, particularly near transit, and that the Addison Road–Seat Pleasant Center, in particular, “lacks a more diversified mix of single-family attached and multifamily units that, with higher densities, support transit.” (Subregion 4 Plan at 139.) Consequently, the Subregion 4 Plan emphasizes the need “to ensure that remaining development adheres to TOD principles” and to “[e]ncourage development of appropriate density on remaining unimproved development sites[.]” (*Id.* at 140, 141.)

Parcel 87, directly across from the Addison Road Metro Station, is one of the few vacant parcels of land available to be developed as a mixed-use multifamily building

in the future. (Tr. at 126:10–127:22.) Again, the arguments of counsel are not evidence, but even if they were, it is clear that Applicant’s counsel is trying to have it both ways. Earlier, counsel suggested (incorrectly) that a shared parking arrangement with WMATA was not possible because WMATA would not agree to enter into a lease for those spaces “in perpetuity.” *See supra* note 10. Here, by contrast, he suggests that the proposed surface parking on Parcel 87 could be something other than in perpetuity. Once again, counsel’s arguments are disproven by the record evidence—from Applicant’s own witness: the surface parking on Parcel 87 is not intended for use as a placeholder for a future phase of development, but rather in satisfaction of minimum parking requirements under the Zoning Ordinance. (Tr. at 139:19–140:5.) In any case, Parcel 87 could more easily be available for future development if it is just left alone, undisturbed and unencumbered, in its current vacant state.

with a full-service grocery store on the ground floor. Thus, Applicant’s proposed use of Parcel 87 for a single-use surface parking lot is clearly contrary to applicable comprehensive plan principles.

For all of the foregoing reasons, the Planning Board erred in approving a surface parking lot on Parcel 87 in connection with the subject DSP.

9. **The Planning Board erred as a matter of law, abused its discretion, and acted arbitrarily and capriciously, in contravention of the substantial evidence adduced in the administrative record, and in contravention of the requirements of the applicable comprehensive plans, by approving the subject detailed site plan, which proposed surface parking between the eastern building frontage and the right-of-way along Addison Road South.**

In accordance with the ARM Sector Plan’s general neotraditional/new urban development goals, Standard S3 calls for the establishment of a “**consistent setback** close to the right-of-way line or street edge within an attached row or block of commercial buildings. Setbacks should provide a **continuous building edge** to define the public zone of the street. This defined and close edge enlivens commercial areas by encouraging window shopping and streetside activity.” (ARM Sector Plan at 180 (emphasis added).) More specifically, Standard S3(C) provides specifically that “A front build-to line of between 10 and 15 feet from the right-of-way line shall be established for office, retail/commercial, and institutional buildings which front onto MD-214 and Addison Road.” (*Id.*) Similarly, the Conceptual Regulating Plan for the Addison Road Metro Center in the Subregion 4 Plan calls for general building frontages along Addison Road South, with “multistory buildings placed directly at the sidewalk, with windows along the façade, with the buildings lined up shoulder to shoulder.” (Subregion 4 Plan at 144, 565.)

Contrary to these standards, Applicant proposed and the Planning Board approved alternative development district standards that would allow Applicant to insert 10 surface parking spaces and associated landscaping between the eastern building façade and Addison Road South, thereby removing the building entirely from the street, well beyond the 10-15-foot setback. Applicant’s purported justification for the alternative standard is to allow for “teaser parking” visible to motorists passing by.¹² (Tr. at 114:6-17, 122:3-15.)

Applicant does not even attempt to explain how “teaser parking,” which is solely for the use and benefit of automobile drivers, is consistent with the ARM Sector Plan’s goals of promoting transit-oriented development that “serves Metro users, not the automobile,” and promoting pedestrian-oriented development that “aids Metro users and will encourage pedestrians to use residential and commercial properties near the Metro station.” (ARM Sector Plan at 166.) There would be no point in Applicant offering such an explanation, as such a suburban-style, automobile-oriented building design is plainly not in service of those goals and interferes with the implementation of the Sector Plan’s goals as well as the form-based building envelope guidelines of the Subregion 4 Master Plan for the subject property. For example, removing the building façade from the street to accommodate suburban-style “teaser parking” would prevent the establishment of a continuous building edge along the western side of Addison Road South, to define the public street realm—a critical component of walkable urban

¹² Here again, the Planning Board’s written decision does not even address the substance of Applicant’s purported justification, but rather simply finds in conclusory fashion that the requested alternative standard is acceptable. *See* Decision at 7. Such “half-baked conclusions,” unsupported by the record, that merely intone the applicable legal standard, cannot be sustained on appellate review. *M-NCPPC v. GBACA*, 412 Md. at 109; *Bucktail*, 352 Md. At 553; *Becker*, 174 Md. App. at 138-39.

development principles.¹³ Indeed, the applicable comprehensive plans allow such convenience parking to be provided **on-street**, as is typical in walkable urban areas. (ARM Sector Plan at 176; Subregion 4 Plan at 602 (“On-street parking slows passing vehicular traffic and acts as a buffer between moving vehicles and pedestrians.”).)

The Planning Board’s approval of an alternative development district standard to allow “teaser parking” along the Addison Road street frontage, between the building and the sidewalk, is not supported by substantial evidence. Additionally, because the Planning Board admittedly did not even consider the requirements of the Subregion 4 Master Plan, the Board’s findings are invalid as a matter of law and should be reversed.

- 10. The Planning Board erred as a matter of law, abused its discretion, and acted arbitrarily and capriciously, in contravention of the substantial evidence adduced in the administrative record, and in contravention of the requirements of the applicable comprehensive plans, by approving an alternative Addison Road Town Center and Vicinity (“ARM”) development district standard to Standard S3 that allowed for construction of a building with an inconsistent setback, inconsistent building edge, and obscured from the sidewalk in several places by fencing and surface parking, all of which violated basic principles of new urbanist or neotraditional building design and was not even remotely required by any potential site constraints imposed by the WMATA line of influence along the MD-214 frontage of the subject property.**

Similarly, the Planning Board erred in approving Applicant’s requested alternative development district standard to allow for a varied building setback of 12-60

¹³ The dissenting commissioners, Doerner and Geraldo, were both incredulous at the notion that Applicant’s placement of surface parking between the eastern building façade and Addison Road South was consistent with urbanism. Commissioner Doerner noted the Applicant could simply place that additional parking under the building, if they believed it to be necessary. (Tr. at 113:5-18, 114:24–115:2.) Commissioner Geraldo stated he “could not agree less” with Applicant’s argument that its building design comported with new urbanism principles, that such parking should go behind the building if it cannot go underneath it, and that placing the surface lot between the building and the street makes the development look “like a shopping center.” (Tr. at 121:3-11, 122:17–123:1.)

feet from the right-of-way line along the Central Avenue (MD-214) street frontage of the building. Applicant contended, without supporting financial evidence, that although it was certainly possible to build over a Metro right-of-way or inside the WMATA line of influence buffer adjacent to the Metro right-of-way, doing so would be financially prohibitive for the project. Assuming, for purposes of argument, that Applicant's unsupported testimony is sufficient to make it "fairly debatable" that building inside the WMATA line of influence is financially prohibitive, Applicant may be justified in seeking an alternative development district standard to establish a setback behind the influence line. However, Applicant provides no evidence in support of its request for a *varied* setback that allows for a *non-continuous* building edge. Nor does Applicant provide sufficient justification for the placement of privacy walls between the building façade and the setback line at the northwest corner of the building along Central Avenue. Applicant contends simply that the varied building edge is more aesthetically pleasing and that the privacy walls were mandated by a prior District Council condition of approval.¹⁴

Moreover, the Subregion 4 Master Plan's building envelope guidelines for the Central Avenue frontage of the subject property call for storefront frontage, which is similar to the general frontage indicated along Addison Road South, except with a focus on retail uses. Because the Planning Board failed to consider the master plan requirements, its decision regarding Applicant's proposed alternative development district standards is legally invalid and should be reversed.

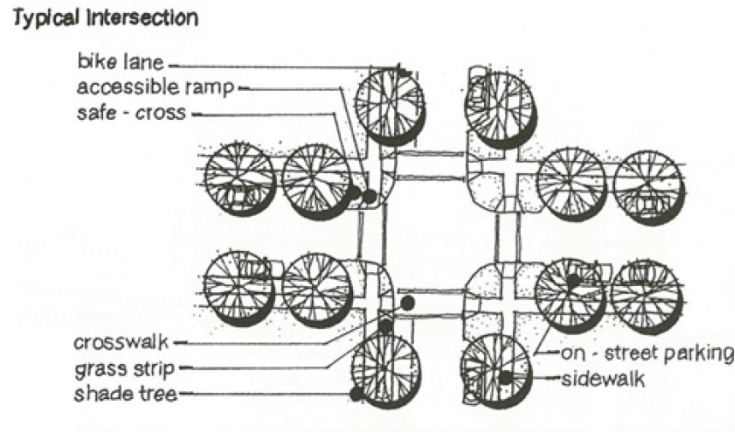
11. The Planning Board erred as a matter of law, abused its discretion, and acted arbitrarily and capriciously, in

¹⁴ The Board's decision does not discuss these justifications, and the District Council's previous approvals of conditions on previous DSPs that are now superseded by the current DSP are ultra vires.

contravention of the substantial evidence adduced in the administrative record, and in contravention of the requirements of the applicable comprehensive plans, by approving the subject detailed site plan, which failed to: (a) connect the adjacent Zelma Avenue right-of-way directly to MD-214; (b) provide a safe crossing across MD-214 at its intersection with Zelma Avenue and MD-332; and (c) provide a safe crossing across Addison Road South at its intersection with the site access point.

The Planning Board's written decision does not address Petitioner's claims regarding Applicant's failure to make the necessary improvements to the rights-of-way adjacent to its property to connect Zelma Avenue to MD-214, and to provide safe crossings across MD-214, MD-332, and Addison Road South, as called for in the applicable comprehensive plans. As discussed earlier, based on their comments at the hearing, Applicant and the Planning Board appear to take the position that this issue is outside the scope of the DSP. The Board's failure to address this issue head-on in its written decision is, by itself, reversible error, as is the Board's apparent conclusion that the issue is outside the scope of DSP review.

The objective of ARM Development District Standard P1 is "To provide a multimodal circulation system in the town center which will stimulate development and the use of the Metro within a network of interconnected streets, which are user friendly for pedestrians, bicyclists and also accommodate motorists." (ARM Sector Plan at 190.) Standard P1(F) provides specifically that within the Metro West-Town Commons subarea, where the subject site is located, "Intersections should employ 'safe-crosses.' This treatment enhances pedestrian safety... (see [figure] DDS-5)":



(*Id.* at 190, 194.) Standard P1(G, H) calls for the eventual removal of MD-332 (Old Central Ave) from Rollins Ave eastward, and for the creation of direct connections of Zelma Ave and Yolanda Ave to MD-214 (Central Ave/East Capitol St). (*Id.* at 71-72, 90-93, 190-191, 193, 197.)

It is undisputed that the DSP is not in compliance with Standard P1. It is also undisputed, based on the evidence in the record, that the Zelma Ave–MD-332–MD-214 intersection adjacent to Parcel A is presently unsafe and not user friendly for pedestrians, given the lack of safe pedestrian crossings, pedestrian-scaled streetlighting, and sufficiently wide sidewalks buffered from the curbs of busy arterial streets, where drivers frequently exceed the posted 30 MPH speed limit. (Heard Decl. ¶ 11.) Additionally, the record evidence shows that based on an average housing size of between 2.45-2.85 persons per occupied rental unit in census tract 8028.03, block 1001, covering the subject property, the 193 multifamily rental units in Applicant’s proposed development will bring an additional 473-550 people to the Zelma Ave–MD-332–MD-214 intersection adjacent to Parcel A. (Exs. 6-7, U.S. Census Bureau, 2017 ACS 5-year Estimate, Tables DP-04, B25008; Ex. 31, Housing and Population Data.) These additional residents will greatly increase the foot traffic in and around that intersection.

In addition to ARM Standard P1, the Subregion 4 Master Plan identifies “[c]reating safe pedestrian access across Addison Road and Central Avenue” as a key planning issue for the Addison Road Center and specifically encourages the establishment of “safe and direct pedestrian crosswalks across Central Avenue, East Capitol Street, and Addison Road to encourage pedestrian traffic.” (Subregion 4 Plan at 139, 141.) Plan 2035 further provides that compact blocks—which typically range from 150-300 feet in length, but should not exceed 600 feet— “are essential to ensuring that a neighborhood is walkable and bikeable.” (General Plan at 208.) Lot A of the subject property has approximately 400 feet of frontage on MD-214 (between Addison Road South and Zelma Ave) and approximately 200 feet of frontage on Addison Road South and Zelma Avenue; as such, it could constitute a reasonably compact block within the meaning of the General Plan. The addition of marked pedestrian crossings at the intersection of Zelma Ave, Central Ave, and Old Central Ave adjacent to Parcel A is necessary to comport with the compact block connectivity principle in the General Plan. (General Plan at 208.)

The failure of the subject detailed site plan to ensure safe pedestrian crossing with marked crosswalks at the intersection of Zelma Ave, Central Ave, and Old Central Ave adjacent to Parcel A does not comport with the Subregion 4 Plan, the ARM Development District Standards, or Plan 2035’s compact block connectivity principles. Accordingly, the Planning Board erred in approving this DSP.

- 12. The Planning Board erred as a matter of law, abused its discretion, and acted arbitrarily and capriciously, in contravention of the substantial evidence adduced in the administrative record, and in contravention of the requirements of the applicable comprehensive plans, by approving the subject detailed site plan, which proposed to delay construction of required eight-foot-wide sidewalks and**

five-foot-wide planting strips along the adjacent MD-214 and Addison Road South rights-of-way.

ARM Development District Standard P2(C) and figure DDS-7 provide that sidewalks shall be set back from the curb with a five-foot-wide grass strip for the planting of shade trees and be a minimum of eight feet wide along the subject property's frontage on MD 214, and a minimum of five feet wide along the subject property's Addison Road South frontage. (ARM Sector Plan at 195, 198.) This assignment of error concerns a note that Applicant included on the subject DSP, indicating that it proposed to delay construction of the required buffered sidewalks along MD-214 (Central Ave) and a portion of Addison Road South frontage until some undetermined point in the future, when another unrelated developer had constructed improvements to MD-214: "SIDEWALK, GREEN SPACE & CONNECTION FROM ADDISON ROAD AND MD 214 (WITHIN DASHED AREA) TO BE CONSTRUCTED AFTER THE COMPLETION OF MD214 IMPROVEMENT BY ELM STREET DEVELOPMENT UNDER 09-AP-PG-015-1" (DSP at C-01.).

The Planning Board's written decision does not address this argument,¹⁵ and during the hearing, the technical staff acknowledged that they did not have an understanding of Applicant's note on the DSP. (Tr. at 43:20–44: 3, 48:14-19.) However, Applicant acknowledges that it intends by the inclusion of this note to delay construction of the required buffered sidewalk infrastructure.

As discussed earlier, the undisputed evidence of record establishes that the Central Avenue street frontage of the subject property is presently unsafe and not user friendly for pedestrians, given the lack of safe pedestrian crossings, pedestrian-scaled

¹⁵ This failure alone requires reversal and remand of the DSP to the Planning Board.

streetlighting, and sufficiently wide sidewalks buffered from the curbs of busy arterial streets, where drivers frequently exceed the posted 30 MPH speed limit. (Heard Decl. ¶ 11.) Accordingly, Applicant cannot meet its burden of proof to establish that a delay in construction of the required buffered sidewalk infrastructure is consistent with the applicable comprehensive plans, which require pedestrian-friendly and transit-supportive development.

13. The Planning Board erred as a matter of law, abused its discretion, and acted arbitrarily and capriciously, in contravention of the substantial evidence adduced in the administrative record, and in contravention of the requirements of the applicable comprehensive plans, by approving the subject detailed site plan, which failed to provide ornamental pole-mounted streetlights along the adjacent MD-214, Addison Road South, and Zelma Avenue rights-of-way.

To “enhance the visual appearance, as well as contribute to user safety and improved nighttime visibility” within the ARM sector area, ARM Development District Standard P5 provides for the installation of ornamental pole-mounted lighting fixtures and luminaires, rather than cobra head style highway lighting, along all major roadways. (ARM Sector Plan at 203.) It is undisputed that this DSP does not provide the required ornamental streetlighting along MD-214 or Addison Road South. Indeed, the record evidence shows that there are currently no streetlights whatsoever along the MD-214 frontage of Parcel A. (Heard Decl. ¶ 12.)

Here again, the Planning Board’s written decision does not address this issue.¹⁶ However, Applicant and the technical staff appeared, based on their comments during the hearing, to take the position that such improvements in the adjacent rights-of-way were outside the scope of the DSP and thus unable to be addressed by the Planning

¹⁶ This failure alone requires reversal and remand of the DSP to the Planning Board.

Board in its DSP review—a position that, as discussed earlier, is incorrect as a matter of law. (Tr. at 38:11-18, 39:11-14.) Accordingly, the District Council should reverse the Planning Board’s approval of this DSP and remand the case to the Planning Board.

- 14. The Planning Board erred as a matter of law, abused its discretion, and acted arbitrarily and capriciously, in contravention of the substantial evidence adduced in the administrative record, and in contravention of the requirements of the applicable comprehensive plans, by approving the subject detailed site plan, which failed to show the placement underground of all existing and proposed utilities along the adjacent MD-214, Addison Road South, and Zelma Avenue rights-of-way.**

“To reduce the visual impact of existing overhead utility lines along major road corridors in the town center,” ARM Development District Standard P6 requires that all new development and redevelopment projects within the town center, where the subject property is located, shall place or relocate existing and new utilities underground. (ARM Sector Plan at 204.) It is undisputed that this DSP does not provide for the undergrounding of utilities along the major rights-of-way adjacent to the subject property. Instead, the Planning Board ruled that a previous condition imposed by the District Council during its “call-up” review of DSP-06001-01 was “still valid and has been carried forward with DSP-0600103.” Decision at 17-18. That condition provided (contrary to the express requirement of Standard P6) that “Utility lines and facilities off site need not be undergrounded, but the applicant shall participate in an underground utilities fund at Central Avenue (MD-214) and Addison road, *if one is created*, to study or implement the underground placement of utilities in this vicinity. Funding contributions by the applicant shall not exceed \$10,000.” *Id.* (emphasis added).

The Planning Board’s rulings concerning the undergrounding of utilities in the subject DSP constitute reversible error. As noted earlier, the District Council’s

imposition of the condition in connection with its call-up review of a prior DSP was *ultra vires* and *void ab initio*, and also tainted by Dr. Baig’s criminal pay-to-play activities during the time of the District Council’s consideration of the previous DSP; therefore, it should not have been “valid” to be “carried forward” to the current DSP.¹⁷ Additionally, such a condition would have been arbitrary, capricious, and unsupported by substantial evidence of record in the current DSP, even if the Planning Board had exercised its own discretion. The undisputed evidence adduced at the hearing showed that the undergrounding of overhead utilities along major roadways in connection with new mixed-use development projects is a common requirement within and outside of Prince George’s County (*e.g.*, in connection with the new developments at Arts District Hyattsville, Riverdale Park, and the former Hine School Site across from Eastern Market Metro). The Applicant made no request for the application of any alternative development district standard relating to utility undergrounding, and provided no justification (financial or otherwise) for any such alternative standard; thus the Planning Board had no occasion to evaluate whether any such proposed alternative standard would benefit the development district and not interfere with the implementation of the applicable comprehensive plans, as required by P.G. Co. Code § 27-548.25(c). Accordingly, the District Council should reverse the Planning Board’s decision to approve the subject DSP and remand the case to the Planning Board.

15. The Planning Board erred as a matter of law, abused its discretion, and acted arbitrarily and capriciously, in contravention of the substantial evidence adduced in the administrative record, in contravention of the requirements of

¹⁷ Also, the concept of the continuing validity and automatically carrying forward of conditions imposed in a prior DSP is improper in the context of the Planning Board’s review of an amended and superseding DSP application. *See* P.G. Co. Code § 27-289(b) (requiring an amended DSP to be treated as an original DSP).

the applicable comprehensive plans, and in contravention of the zoning ordinance by approving the subject detailed site plan, which contained residential uses on the first floor of a mixed-use building in the C-S-C/D-D-O Zone.

In the Addison Road Metro Center, within the C-S-C/D-D-O zone, dwelling units are generally permitted in a mixed-use commercial building containing 4 or more stories, subject to the satisfaction of certain special exception standards, if the units are located above the third story. (ARM Sector Plan at 257.) Also, along the Central Avenue frontage of Parcel A, where the proposed mixed-use building is located, only commerce uses are permitted on the first story of the building. (Subregion 4 Master Plan at 144, 565-66.) It is undisputed that Applicant's proposed mixed-use building on Parcel A does not comply with the use regulations of the C-S-C/D-D-O Zone or the Subregion 4 Master Plan because it contains non-commerce (residential and private recreational) uses on the first story and dwelling units below the fourth story of a mixed-use commercial building. (Ex. 37, DSP at A-201.)

The Planning Board rejected Applicant's request for an amendment to the use table to allow for residential uses on all floors of a mixed-use building on the subject property and, instead, recommended to the District Council an amendment that would allow residential uses above the first floor of a mixed-use building of up to 10 stories in the C-S-C/D-D-O zone. Decision at 6. Petitioner does not object to the Planning Board's recommended amendment to the use table; however, even if it is granted, this DSP would still be out of compliance with the zone and with the Subregion 4 Master Plan because it contains non-commerce (residential and private recreational) uses on the first floor of a mixed-use building fronting on Central Avenue. Accordingly, the District

Council should reverse the Planning Board's approval of the subject DSP and remand the case to the Planning Board.

WHEREFORE, for all of the foregoing reasons, Petitioner requests that the District Council **REVERSE** the final decision of the Planning Board to approve the subject detailed site plan with conditions; **DISAPPROVE** Respondent's proposed modification of the zoning use table in the ARM DDOZ to allow for residential uses on all floors (including the first floor) of mixed-use buildings in the C-S-C/D-D-O Zone; **APPROVE** the Planning Board's recommended modification of the zoning use table in the ARM DDOZ to allow for residential uses above the first floor of mixed-use buildings between 4 to 10 stories in height in the C-S-C/D-D-O Zone; and **REMAND** the case to the Planning Board with instructions to order the Applicant to file a new preliminary plan of subdivision application for Parcel A and Lot 5,¹⁸ and upon approval thereof, to submit an amended DSP application for further consideration by the Planning Board in a manner not inconsistent with these arguments.

A **proposed order** is attached for the District Council's consideration.

Respectfully submitted this 28th day of September, 2020.

/s/ Bradley E. Heard
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¹⁸ Applicant does not currently own Parcel 87; however, if Applicant and adjoining property owners wish to collaborate on the development of a new preliminary subdivision plan, they are free to do so.

CERTIFICATE OF SERVICE

This will certify that I have this day caused to be served copies of the within and foregoing document upon the following parties by first-class mail, postage prepaid, addressed as follows:

6301 Central Avenue, LLC 1738 Elton Rd Ste 215 Silver Spring, MD 20904	Christopher L. Hatcher, Esq. Lerch, Early & Brewer Chtd. 7600 Wisconsin Avenue, Suite 700 Bethesda, MD 20814
Traci R. Scudder, Esq. Scudder Legal 137 National Plaza, Suite 300 Oxon Hill, MD 20745	Emanuel Melton 724 Opus Avenue Capitol Heights MD 20743
Mr. Eric Dobbins 6710 Weston Ave Capitol Heights, MD 20743	Jason B Small, Ph.D. Town of Capitol Heights 1 Capitol Heights Boulevard Capitol Heights, MD 20743
Mr. Jacob Y. Andoh Lake Arbor Civic Association 1702 Doral Court Court Mitchellville, MD 20721-2380	Mr. Eddie Gunn 11406 Moneyworth Court Upper Marlboro Md 20774-9312
Mr. Mark Ferguson 9500 Medical Center Drive Suite 480 Largo, MD 20774	Glenn Cook The Traffic Group, Inc. 9900 Franklin Square Drive Suite H Baltimore, MD 21234
Mr. Christopher Andrews 204 Daimler Drive Capitol Heights, MD 20743	Mr. Miguel Franco 602 Victorianna Drive Capitol Heights, MD 20743
Ms. Pleshette Monroe 303 Nalley Road Landover, MD 20785	Messrs. Will Jolley & Brian Bailey City of Seat Pleasant 6301 Addison Road Seat Pleasant, MD 20743

Mr. Jignesh Patel AB Consultants, Inc. 9450 Annapolis Road Suite H Lanham, MD 20706	Ms. Stephanie Farrell Torti Gallas Partners 1300 Spring Street 4th Floor Silver Spring, MD 20910
Mr. Edward M. Morales Perez Sr. 6113 Harrington Street Capitol Heights, MD 20743	Ms. Jewell Webb 207 Zelma Avenue Capitol Heights, MD 20743

This 28th day of September, 2020.

/s/ Bradley E. Heard

Bradley E. Heard

415 Zelma Avenue

Capitol Heights, MD 20743

Telephone: (301) 336-0978

Email: Bradley.Heard@gmail.com



Commons at Addison Road Metro (DSP-06001-03)

Petitioner-Opponent's Presentation
To The District Counsel
(Bradley E. Heard)

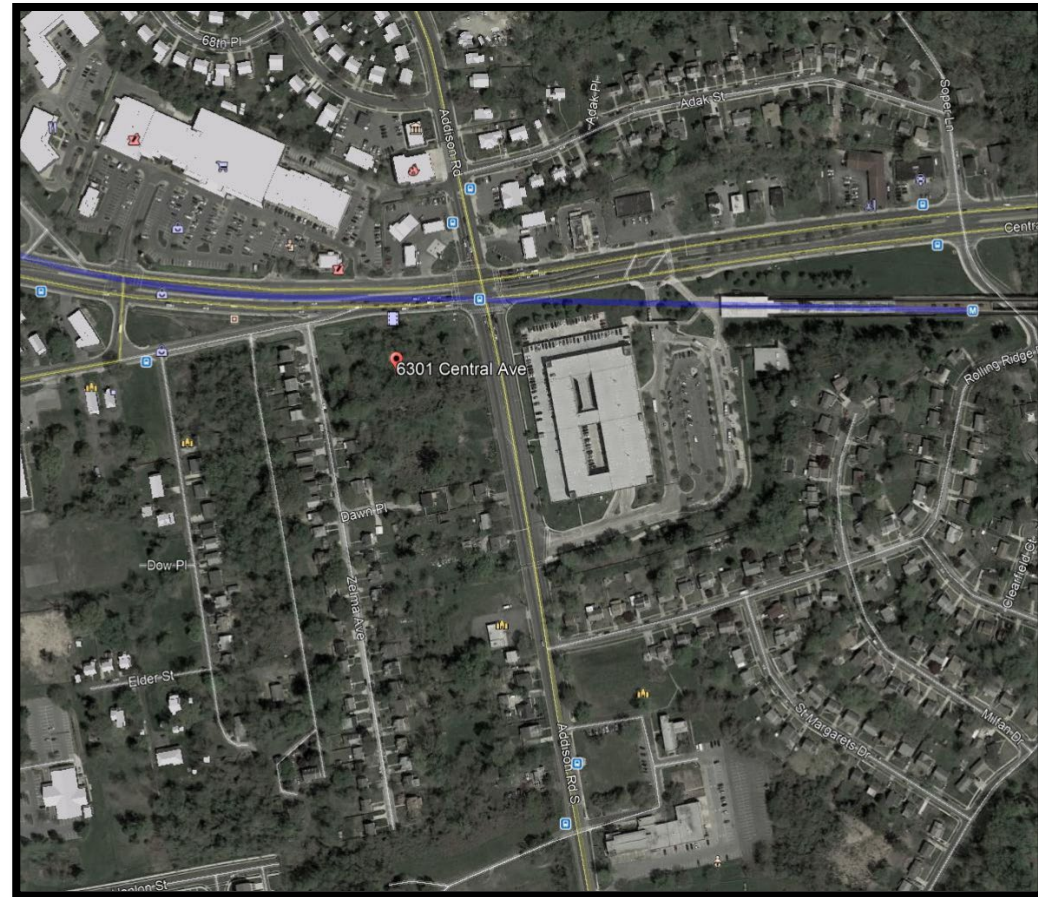


Planning Board Commissioner
Manuel R. Geraldo

*“Obviously, I want this area developed. I just get tired of hearing well **we just can't do it in Prince George's**, but it can be done everywhere else. [...] I'm going to vote no against this but I do want the project. I just think that it can be tweaked better and that **we're just accepting less** because it's in Prince George's.”*

Planning Board Hearing, April 9, 2020

(Tr. at 171:20-23, 172:14-16.)



No More “Accepting Less” From Developers!

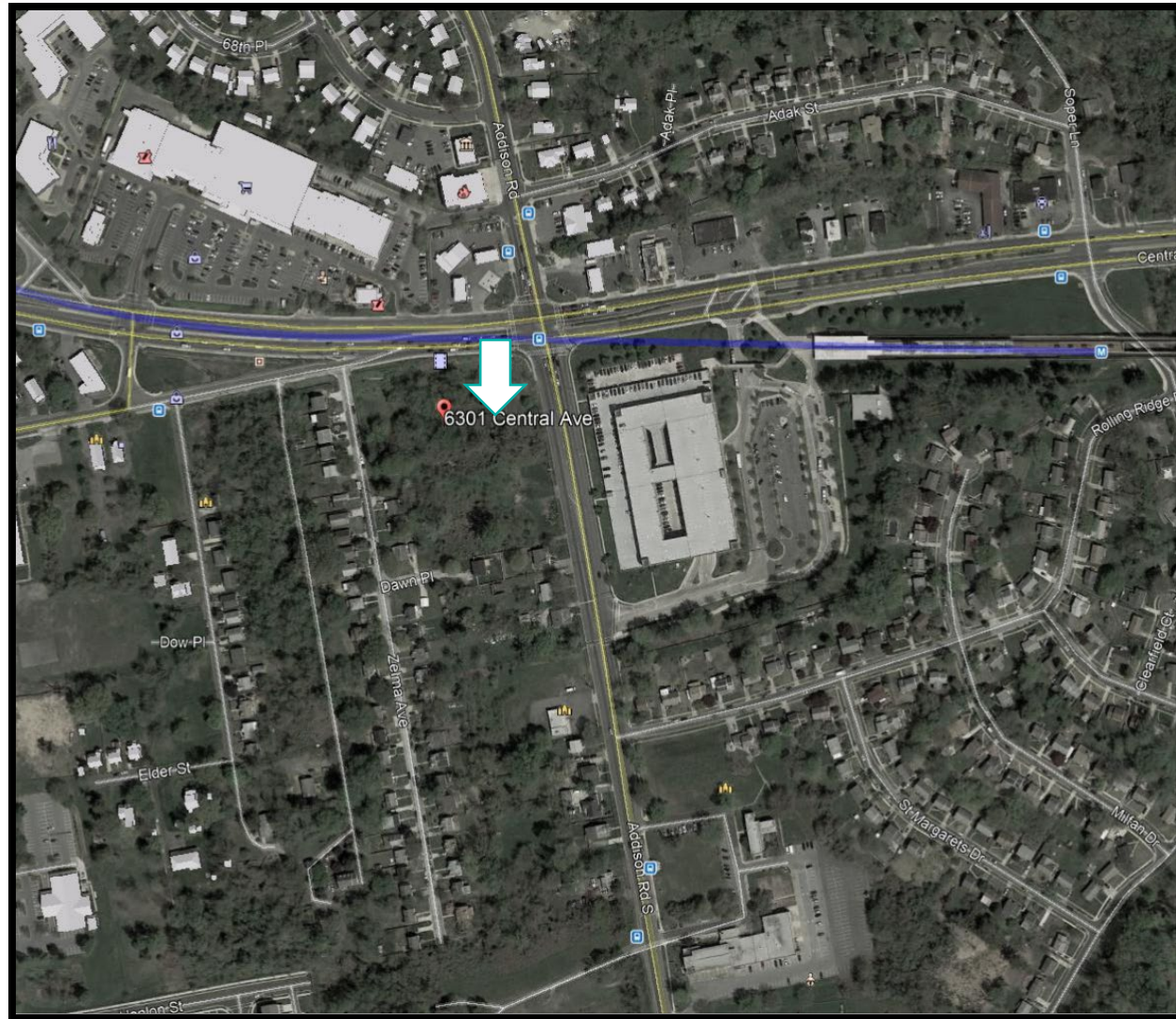
- Residents of the Addison Road Metro Center and Central Prince George’s County want the same quality walkable urban mixed-use transit-oriented development that exists at other DC-area Metro Stations
- Our comprehensive plans demand that type of development around Metro.
- *We are Prince George’s Proud, Not Prince George’s Desperate!*



Hine Middle School Redevelopment, Eastern Market Metro Station

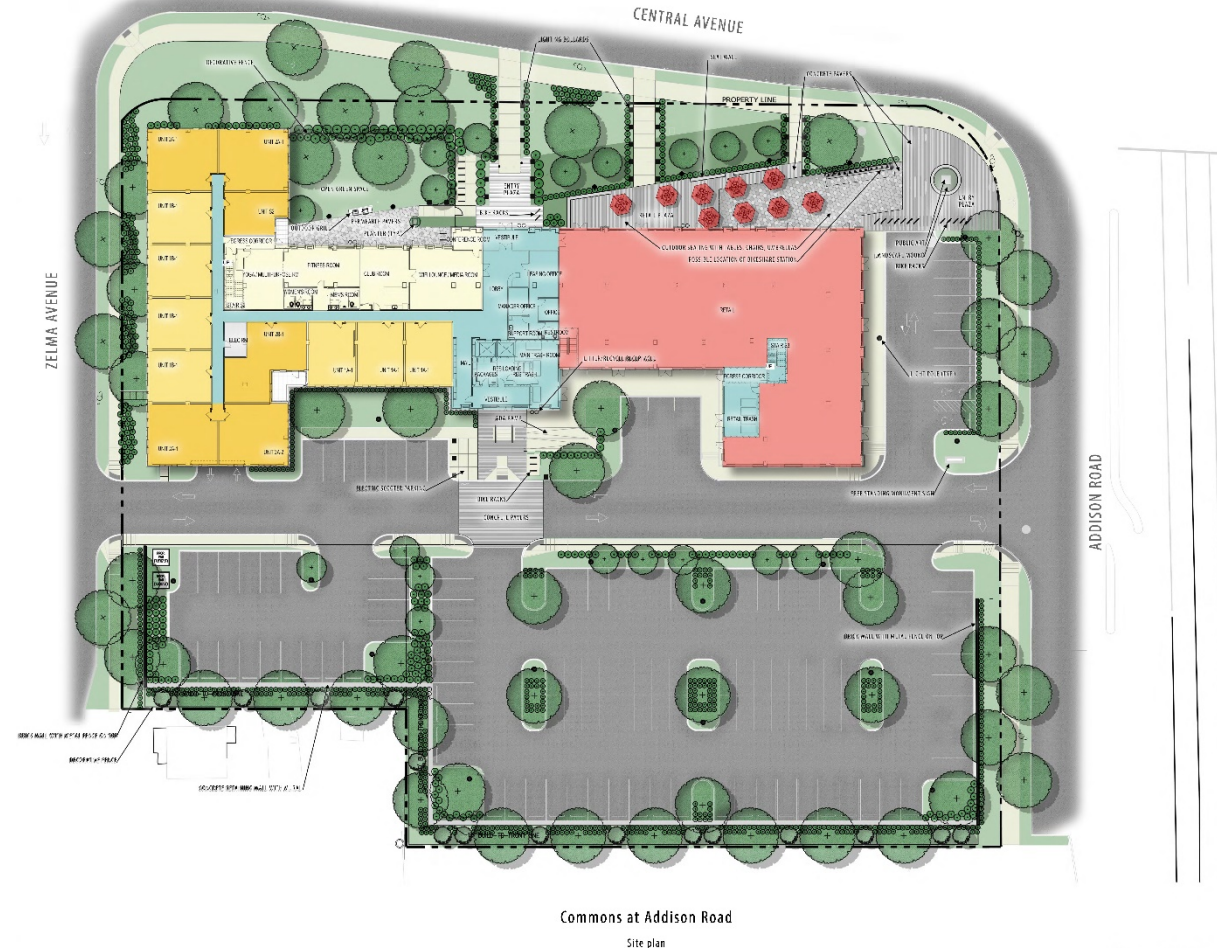
The subject property is a **key development site** in the Addison Road Metro Center.

- Large, undeveloped acreage directly across from Metro
- Key cite for walkable urban mixed-use transit-oriented development
- Will set the standard for future mixed-use TOD in the Center
- **We should not “accept less”** than true mixed-use walkable urban TOD at this critical intersection



Assignments of Error Before Planning Board

- Set forth in detail in my Corrected Brief in Support of Petition for Appeal
- Summarized in this Presentation
- Proposed order of remand submitted for District Council's consideration

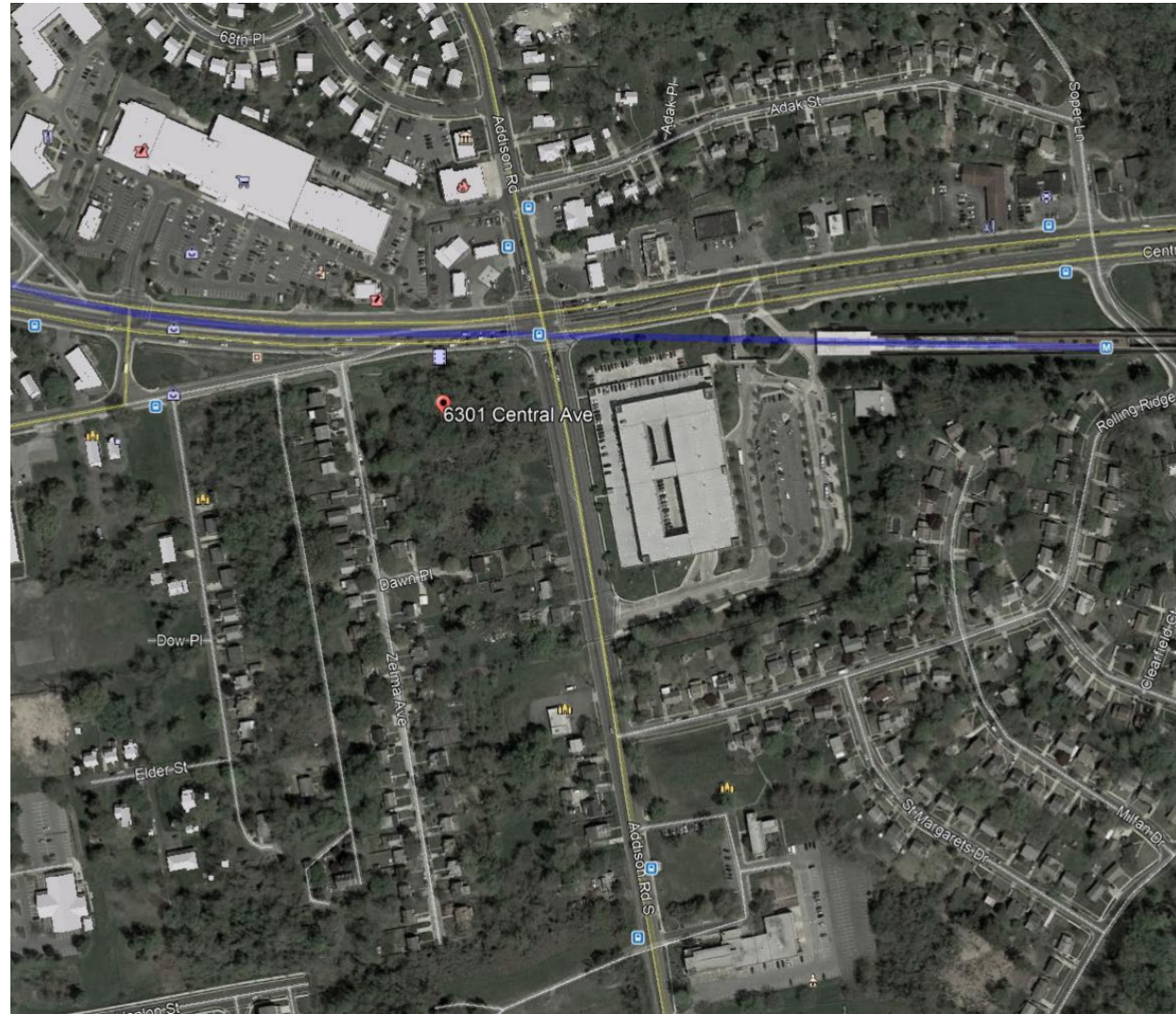


Procedural Irregularities:

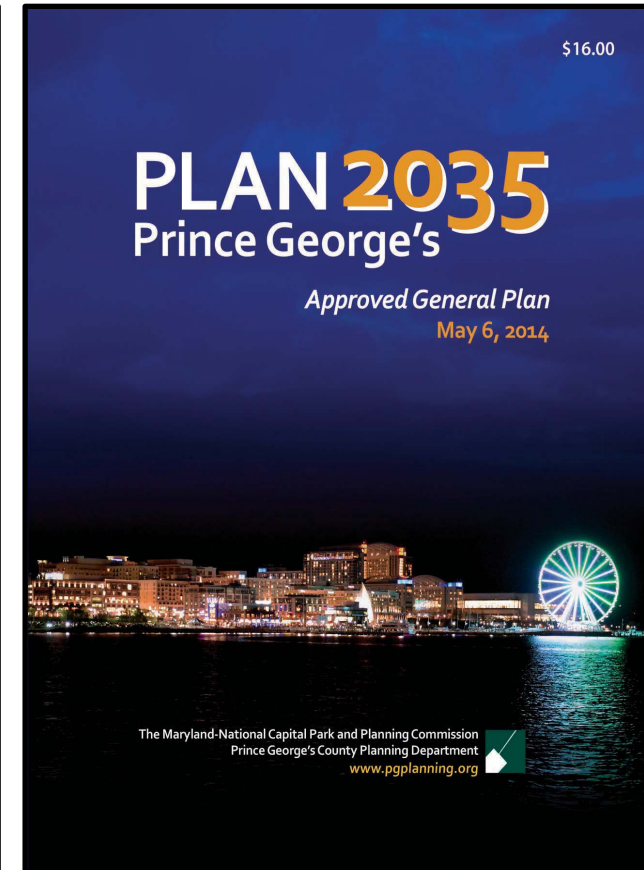
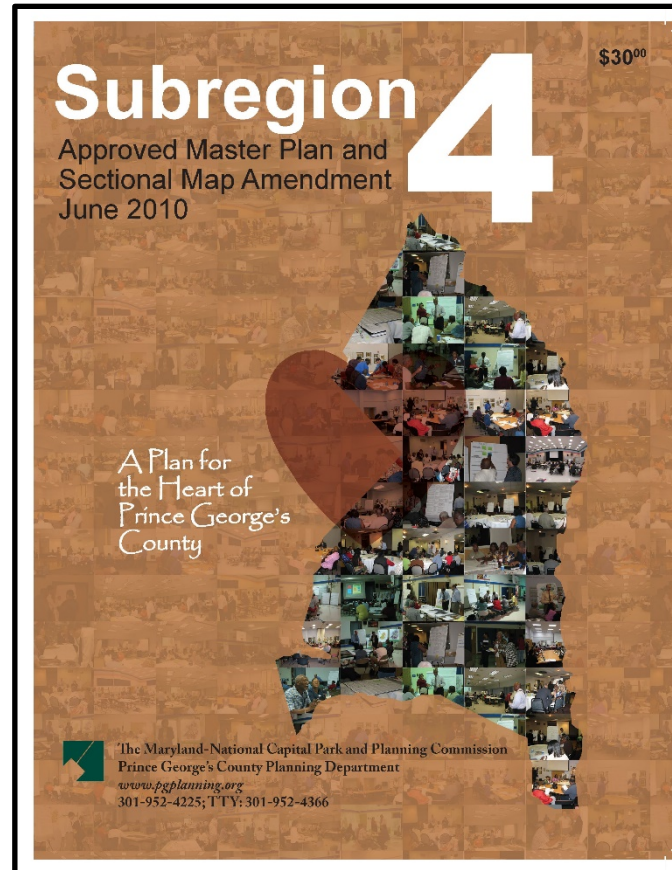
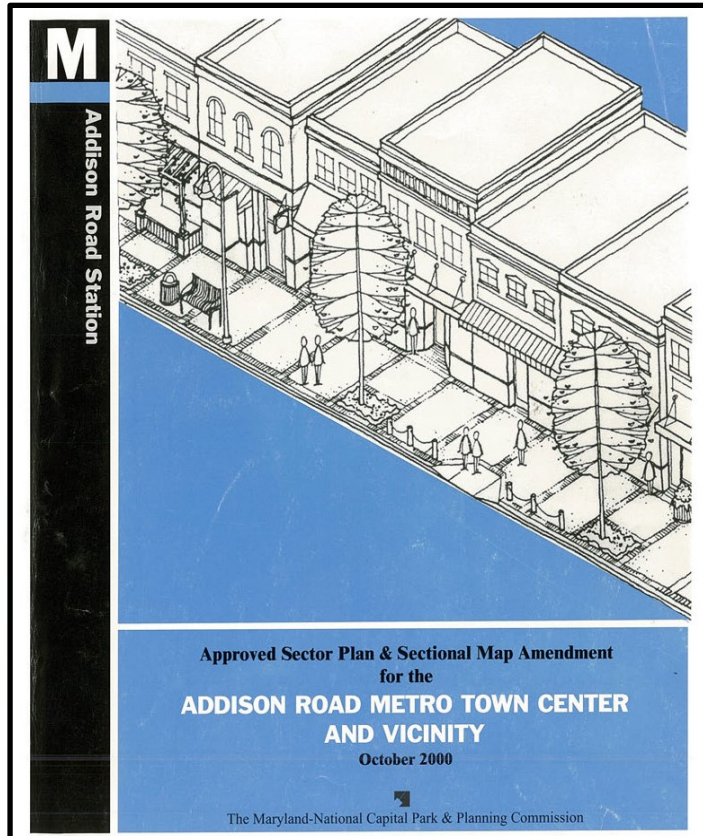
- Dr. Mirza Baig's Criminal Pay-to-Play Activities, 2006–2010
- District Council's Ultra Vires Actions in Prior DSPs

To Cure Prejudice:

- Order New Preliminary Subdivision Plan
- Treat DSP as original application, as required by Zoning Ordinance



Binding Nature of Comprehensive Plans



Requiring Improvements Within Public Rights-of-Way

- Connecting Zelma Ave to Central Ave (MD-214)
- Providing Safe Crossings at Intersections
- Buffered Sidewalks
- Ornamental Pole-Mounted Streetlights
- Undergrounding Utilities



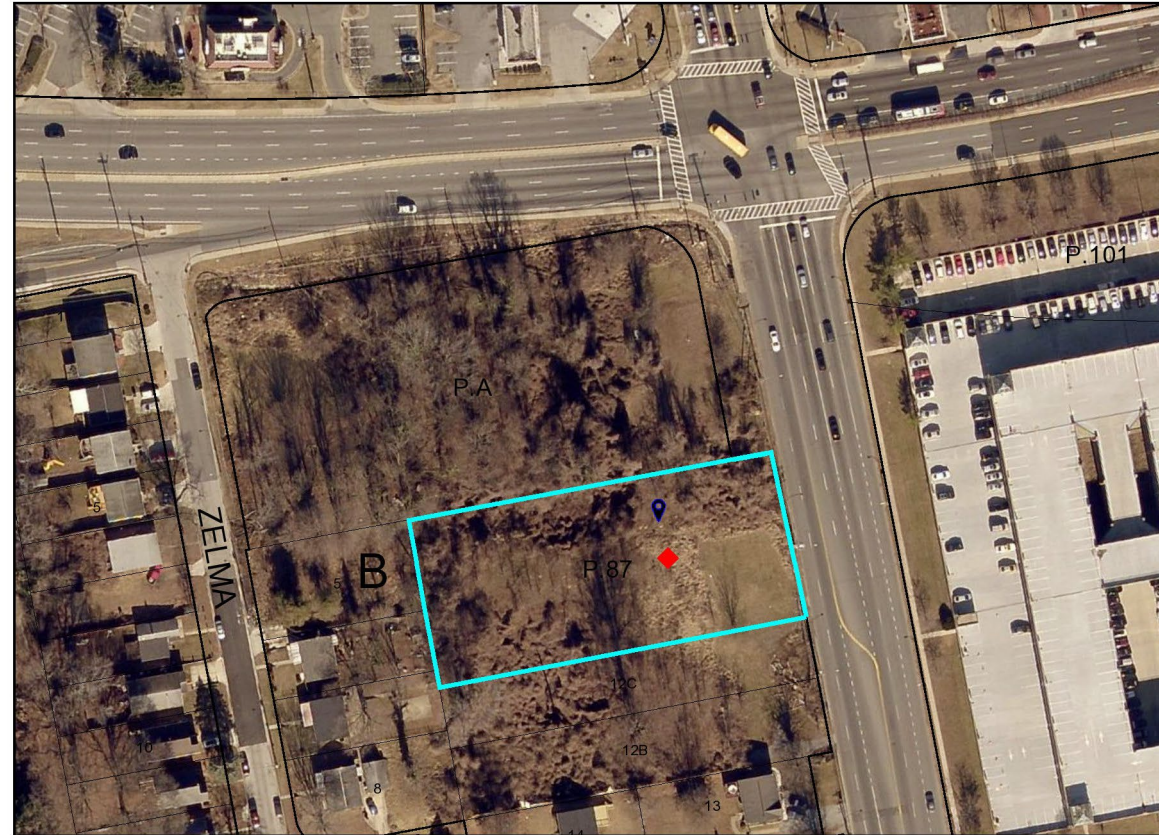
Administrative Fact-Finding

- Resolve all significant conflicts in evidence
- Provide clear explanation of rationale for decisionmaking
- Rule on all proposed findings of fact
- Don't rely exclusively on technical staff report

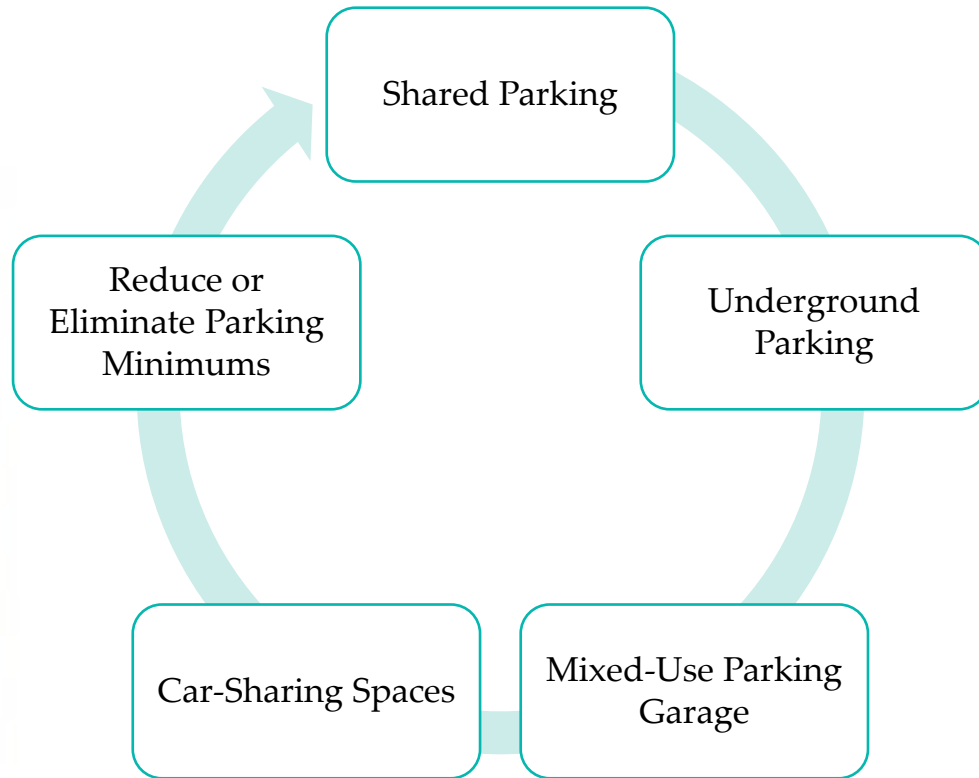


Surface Parking on Parcel 87

- **ARM Development District Standard S2(B):** “**Shared parking lots** shall be utilized, whenever possible, to reduce the amount of parking spaces needed.”
- **Subregion 4 Plan:** Parking setback is **30 ft behind build-to line**, unless below-grade or on-street.
- **Plan 2035:** “When surface parking cannot be avoided, it should be **located behind buildings** to help foster a pedestrian-friendly and human-scaled environment.”



Alternatives to Surface Parking



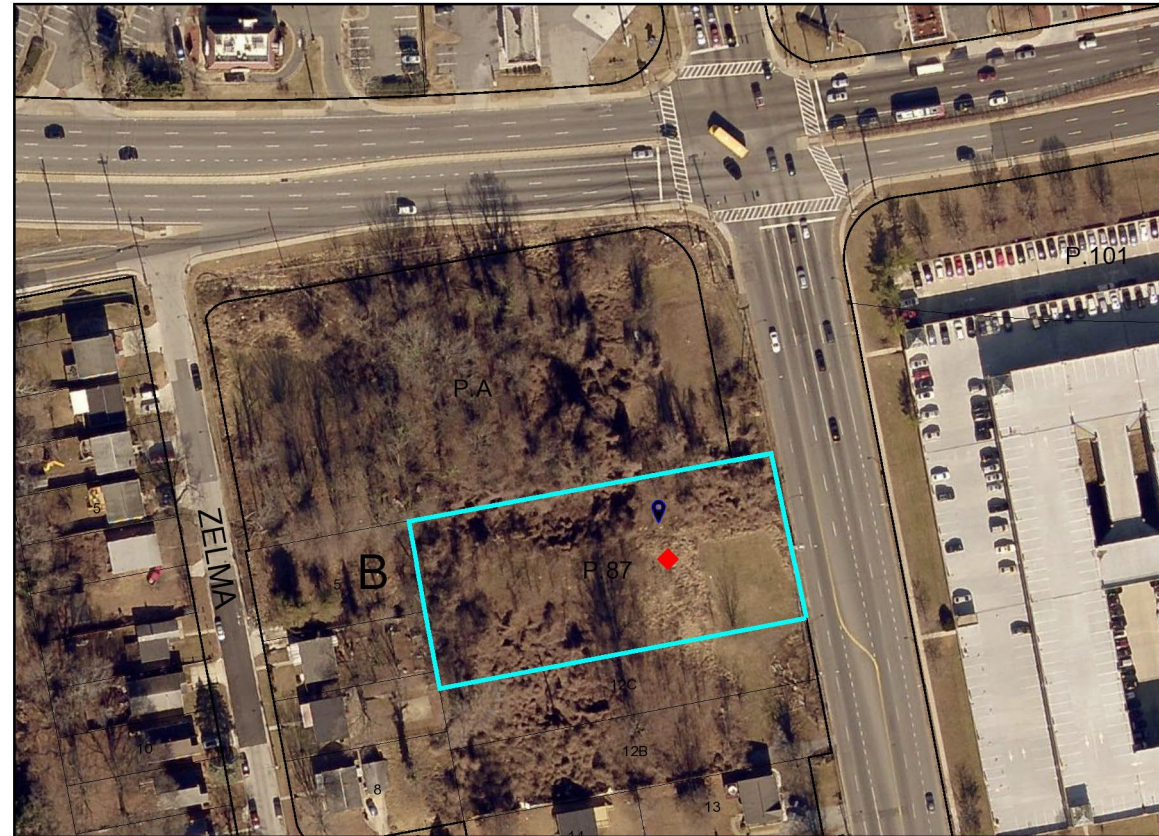
- Addison Road Metro's parking garage (directly across the street) operates at less than 50% capacity.
- No dedicated parking is needed in a mixed-use transit-oriented development directly across from Metro.
- The new zoning ordinance eliminates parking minimums in RTO & LTO zones within 1/4-mile of Metro.
- If dedicated parking is required or desired, it should go under the building or in a mixed-use garage.

Surface Parking on Parcel 87

Applicant proposes that we “accept less” by wasting valuable developable land around Metro stations on surface parking.

Large surface parking lots are antithetical to the concept of **compact, vertical, dense mixed-use development**. They take up valuable land needed for:

- Multifamily Housing
- Full-Service Grocery Stores

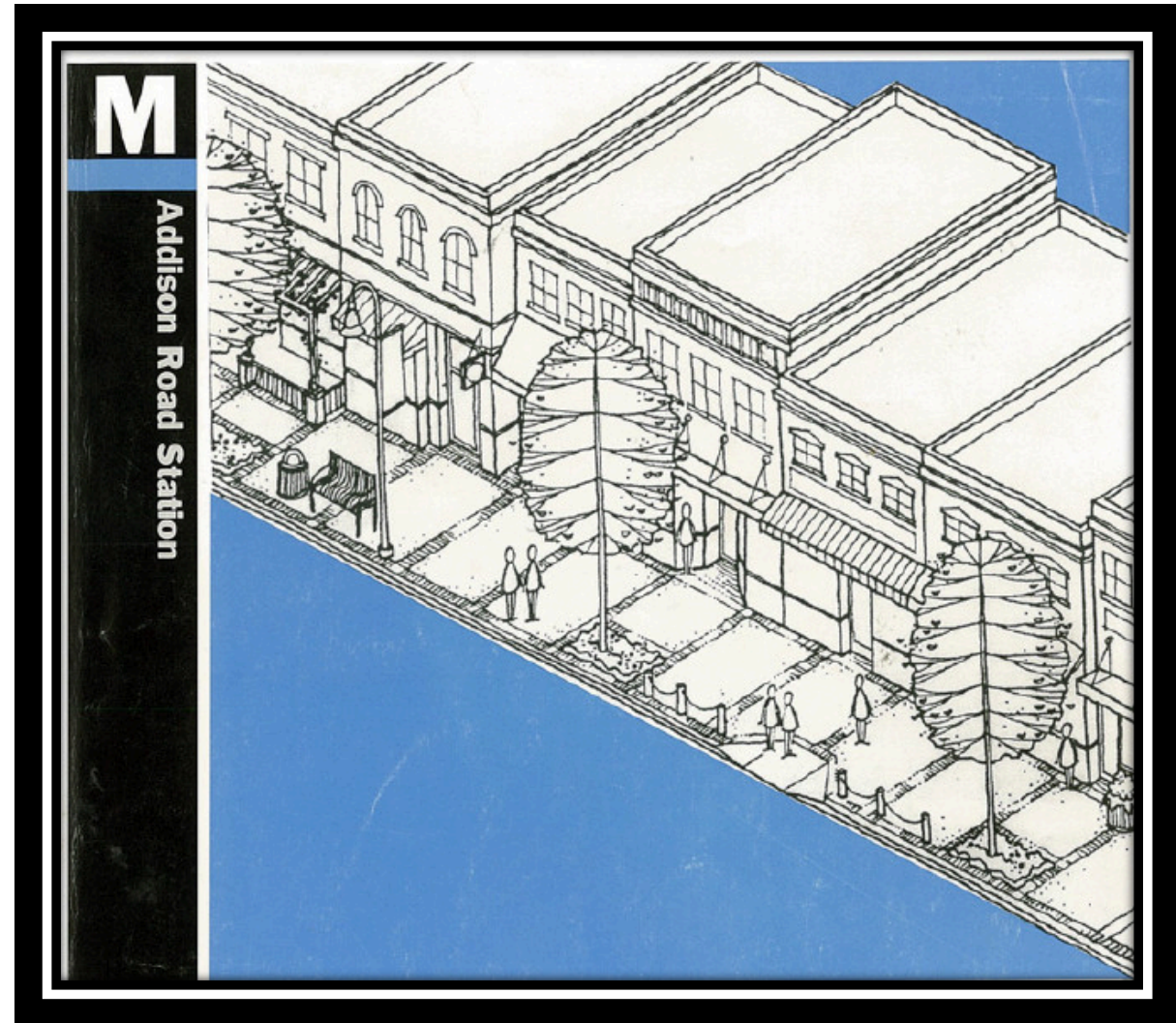


Building Siting and Setback

ARM Development District Standard S3 requires buildings to provide a:

- Consistent Setback
- Continuous Building Edge
- Front Build-to Line 10-15 feet from Right-of-Way Line

The ARM Sector Plan and Subregion 4 Master Plan generally require neotraditional or new urbanist building design.



Examples of New Urbanist Mixed-Use Development Abound

Palette at Arts District
Hyattsville



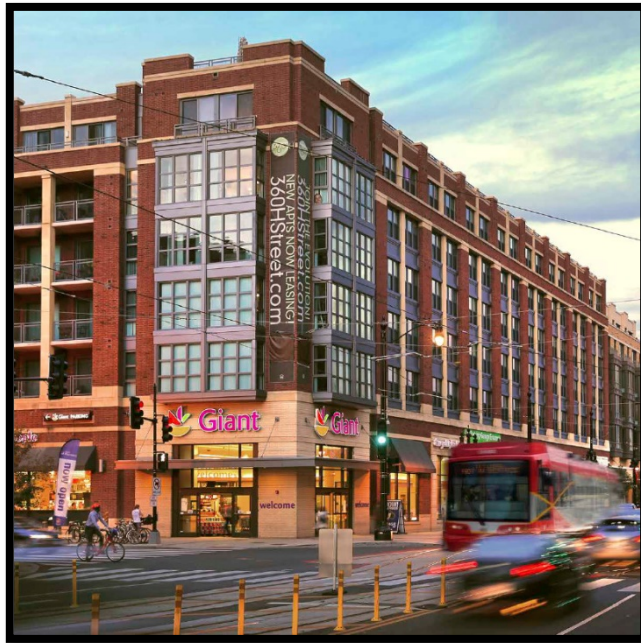
Hine Middle School
Redevelopment



Torti Gallas is Experienced in Developing New Urbanist TODs

360° H Street

(212 DUs, 43,00 SF retail, 270 below-grade parking spaces)

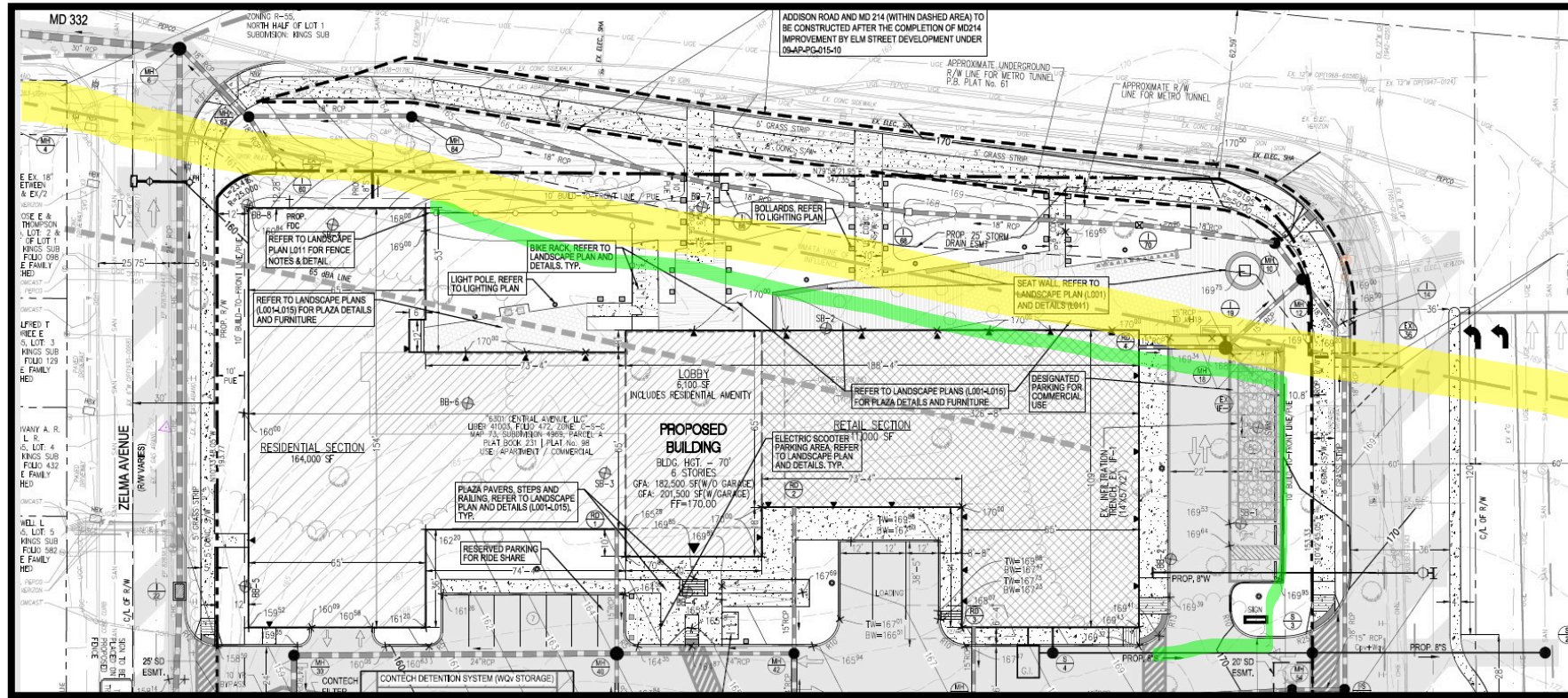


Park Place at Georgia Ave-Petworth

(148 Aps, 7 Townhouses, 17,000 SF retail)



Applicant Proposes We “Accept Less” Than New Urbanist TOD



- No Consistent Setback
- No Continuous Building Edge

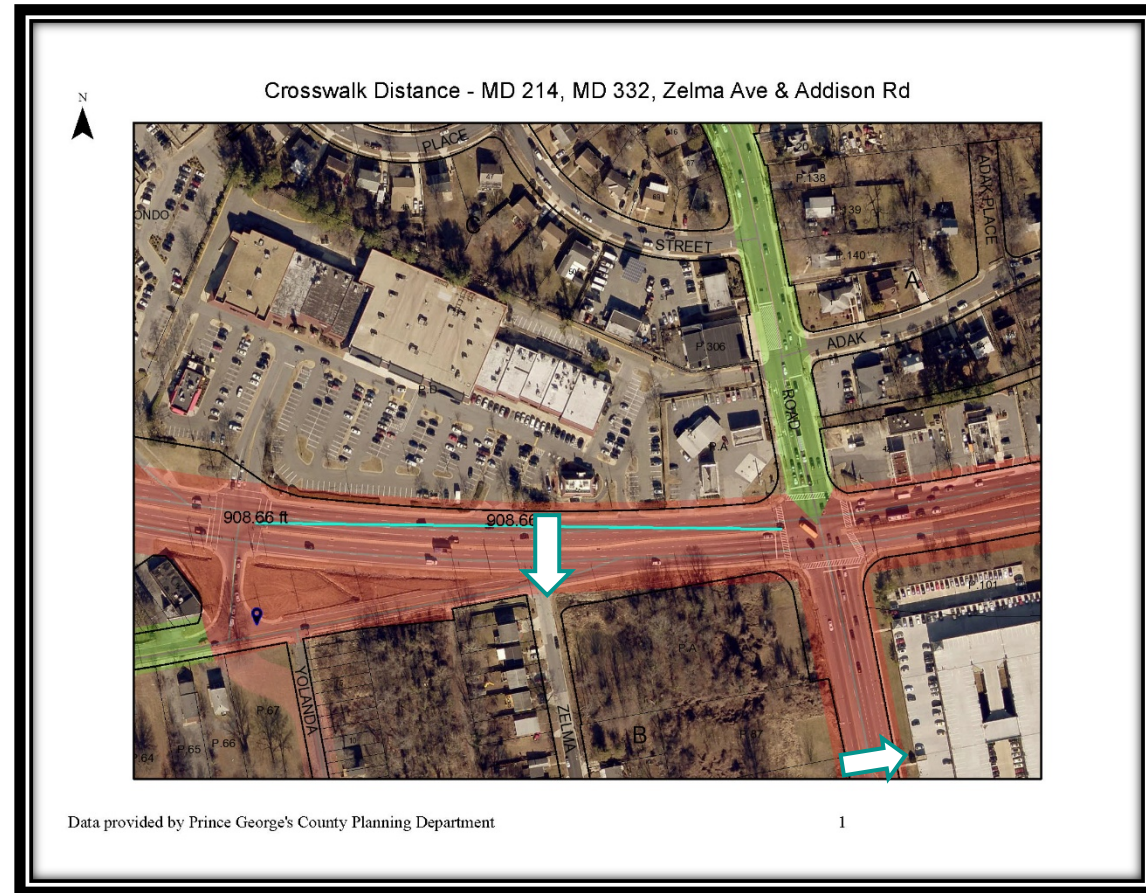
- Building Set Back > 50 feet from Right-of-Way Line
- Blocked by Walls, Fences, and Surface Parking

Roadway Network

*Applicant proposes we
"accept less" than safe
pedestrian infrastructure*

ARM Development District
Standard P1 requires:

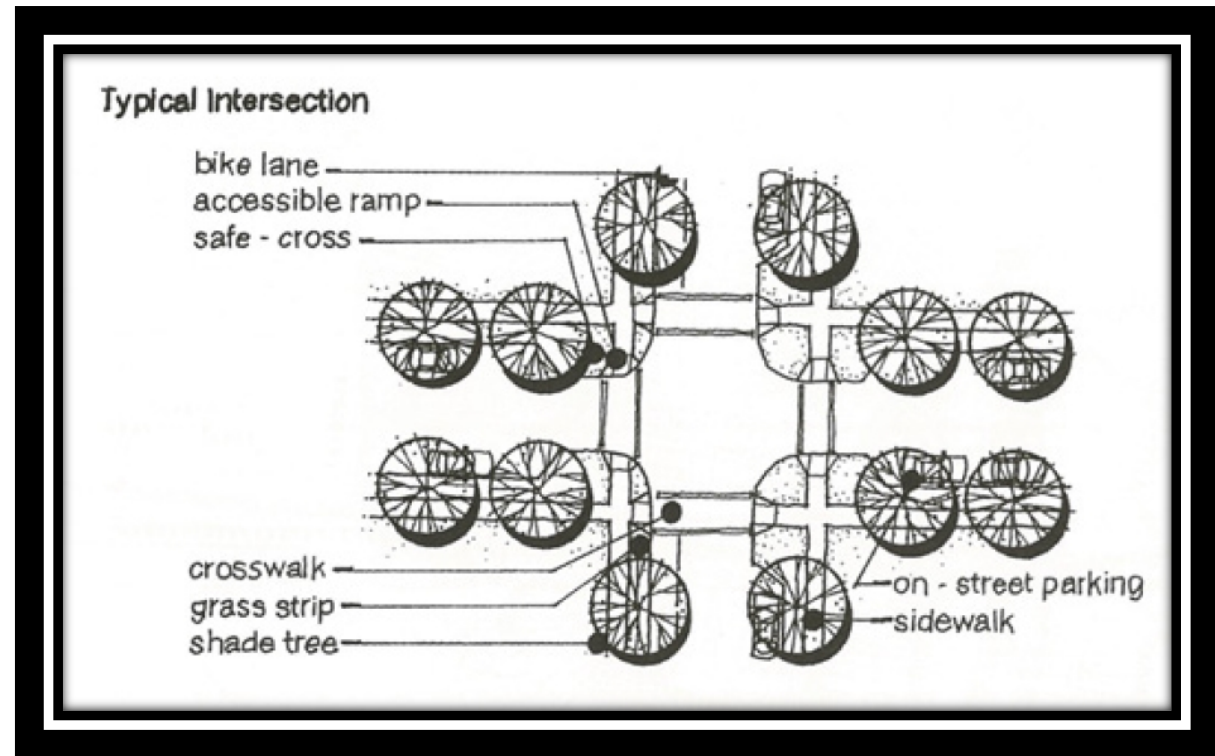
- Connecting Zelma Ave
Directly to MD-214
(Central Ave)
- Providing Safe Crossings



Roadway Network

Safe Crossings Provide:

- Marked Crosswalks at All Intersections
- Curb Bump-outs



Roadway Network

Compact Blocks

- Generally Between 150-300 ft in length
- Should Not Exceed 600 ft in length

Parcel A's 400 ft of frontage on Central Ave, Between Addison Rd and Zelma Ave = Compact Block



Sidewalks

*Applicant Proposes We
"Accept Less" by Delaying
Construction of Required
Buffered Sidewalks*

ARM Development District
Standard P2 requires:

- 8-foot-wide sidewalks along MD-214; 5-foot-wide sidewalks along Addison Road South
- 5-foot-wide grass planting strip at curb edge



Ornamental Streetlights

Applicant proposes we “accept less” than safe, attractive, and functional streetlighting around our new TODs.

- ARM Development District Standard P5 requires ornamental pole-mounted streetlights and luminaires along all streets
- Currently, *there are no streetlights* along the Central Ave frontage of Parcel A, and only cobra-head lighting along Addison Rd S and Zelma Ave



Utility Undergrounding

*Applicant proposes we
“accept less” than attractive,
clutter-free sidewalks free of
overhead utility poles around
our new TODs.*

ARM Development District
Standard P6 requires all
existing and new utilities to
be placed underground



Zoning—Use Table Violation

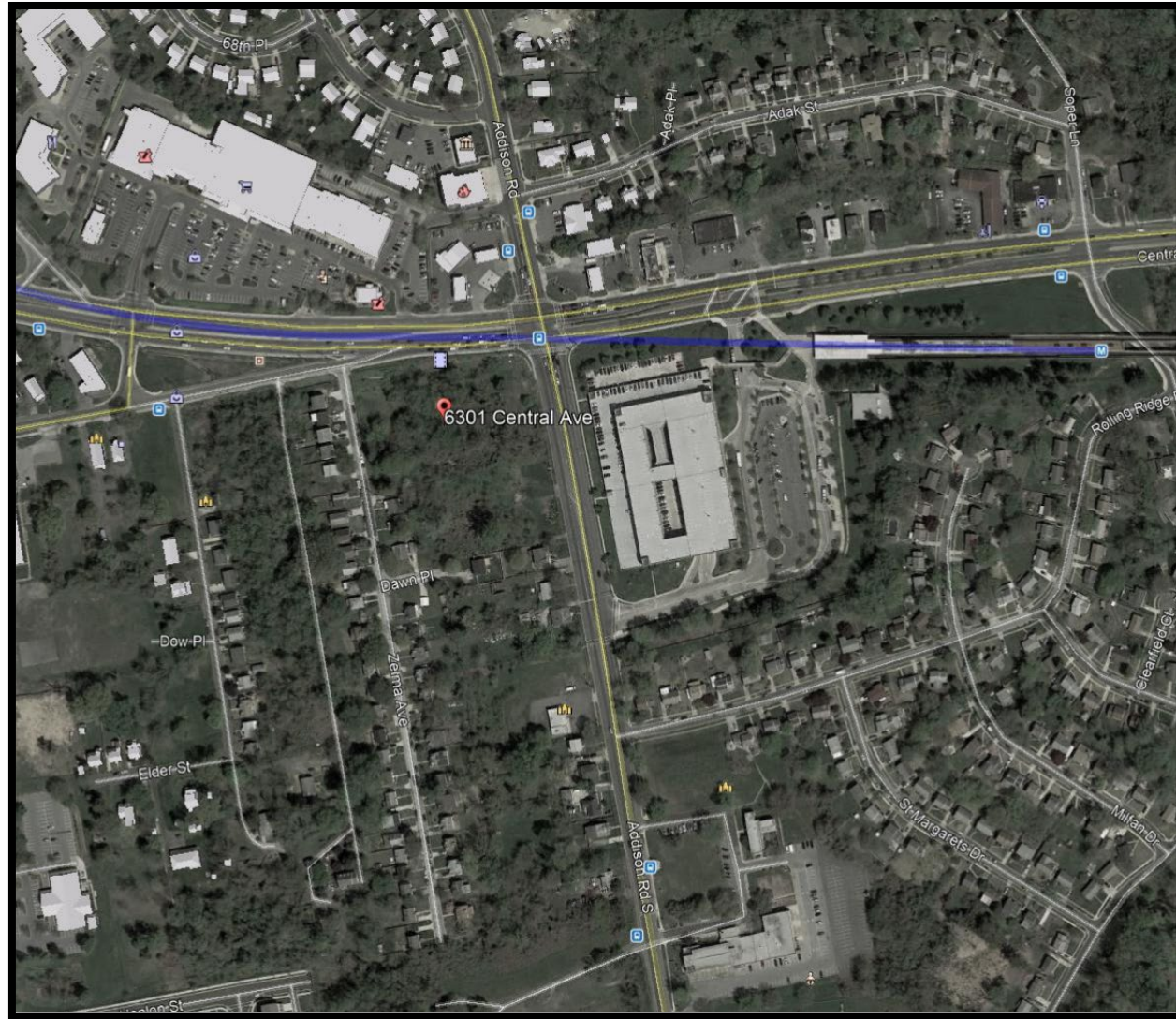
Applicant proposes that we “accept less” commercial/office store frontage in our TODs.

USE	ZONE		
	C-O	C-S-C	C-M
(C) With a temporary removable cover (bubble)	P*	P	P
Theatre:			
(A) Indoor	P*	P	P
(B) Outdoor (including drive-in)	X	X	X
Zoo, not publicly owned	X	X	X
(6) RESIDENTIAL/LODGING:			
Apartment housing for the elderly or physically handicapped	X	P*	X
Country Inn	X	P	P
Dwelling, provided that it was legally erected prior to the date upon which the property was classified in a Commercial Zone, or was legally erected in a Commercial Zone under prior regulations	P	P	P
Dwelling unit within a building containing commercial uses:			
(A) Not exceeding 3 units per building, to be located above the ground floor, except where otherwise allowed	P	P	P
(B) Not exceeding 3 units per building, with 1 unit at ground level for a resident manager, caretaker, or night watchman (and family)	X	X	P
(C) In a building containing 4 or more stories, provided the units are located above the third story	P*	P*	P*
Hotel or motel:			
(A) Hotel or motel in general	P	P	P
(B) Including any use allowed in the C-S-C Zone (but not generally allowed in the C-M Zone, excluding those permitted by Special Exception), when located within a hotel, provided the uses shall not be located above the ground floor; not more than fifteen (15) percent of the gross floor area of the building shall be devoted to the uses; and not more than 3,000 square feet shall be allotted to any one use (CB-105-1985; CB-58-1990)	X	X	PA

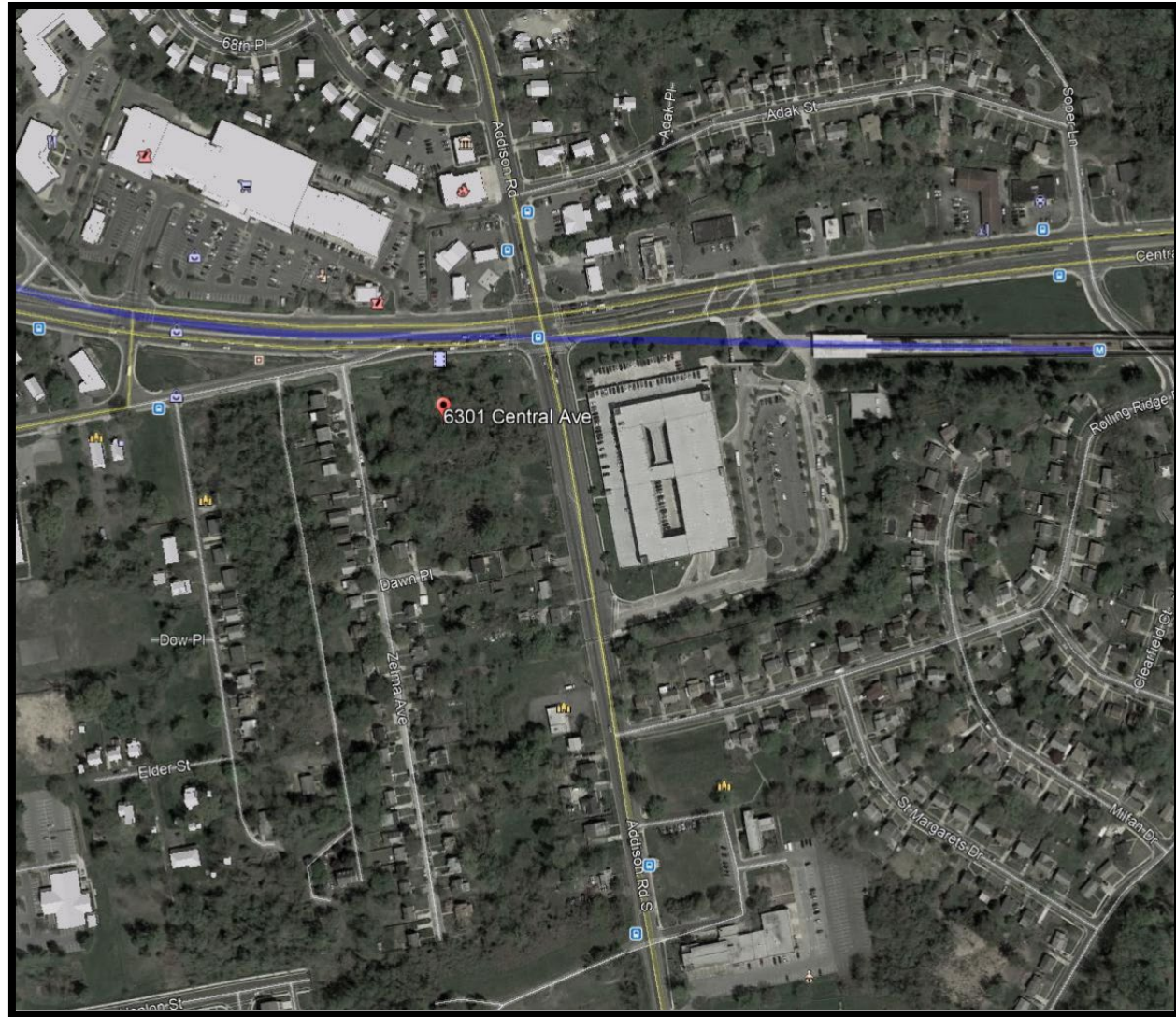
No More “Accepting Less” Around Our Metro Stations!

Relief Requested:

- **REVERSE** Planning Board’s decision approving DSP
- **DISAPPROVE** Applicant’s proposed use table amendment allowing residential uses on all floors
- **APPROVE** Planning Board’s recommended use table amendment allowing residential uses above 1st floor
- **REMAND** to Planning Board with instructions to order new Preliminary Subdivision Plan and Amended DSP application



*Thank You For Your
Attention!*



ATTACHMENT – PROPOSED ORDER

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



In re:

COMMONS AT ADDISON ROAD

CASE NUMBER

DSP-06001-03

(On appeal and mandatory review from the final decision of the Prince George’s County Planning Board)

ORDER

THIS MATTER is before the District Council, pursuant to P.G. Co. Code § 27-290, on the appeal of the April 30, 2020, final decision of the Planning Board filed by Bradley E. Heard (“Heard” or “Petitioner”), a party of record opposing the application; and also pursuant to P.G. Co. Code § 27-548.22(b), on the mandatory review of a request for a modification to the list of allowed uses in the C-S-C/D-D-O Zone filed by the property owner, 6301 Central Avenue, LLC (“Applicant”).

The Planning Board’s April 30, 2020, decision, embodied in PGCPB No. 2020-59 (“Decision”), approved with conditions Applicant’s Detailed Site Plan (“DSP”) application and recommended to the District Council a modification to the list of allowed uses concerning the C-S-C/D-D-O zone for the Addison Road Metro Town Center and Vicinity (“ARM”) Development District Overlay Zone, to allow for residential dwelling units on the second and higher floors of a mixed-use commercial building containing 4 or more stories, and to allow for a building height of up to 10 stories. Decision at 6, 26-31. The Planning Board rejected Applicant’s request for a use table

modification that would have allowed for residential uses on all floors of mixed-use commercial buildings. *Id.* at 6.

With respect to the appeal, Petitioner's assignments of error are detailed in his Petition for Appeal from the Planning Board's Decision dated June 2, 2020, and filed on June 3, 2020, which petition is incorporated herein by reference. Applicant filed a brief in opposition to Petitioner's appeal on September 14, 2020. Petitioner filed a corrected brief in support of his appeal on September 28, 2020. With respect to the mandatory review, Applicant filed an "appeal" (or, more accurately, an objection) to the Planning Board's recommendation on the use table amendment on August 17, 2020. The District Council held an oral argument hearing on October 5, 2020.

Upon due consideration of the parties' briefs and arguments and an independent review of the record on appeal, and for the reasons generally stated in Petitioner's corrected brief in support of his appeal, the District Council finds as follows:

1. The Planning Board erred to the extent it relied on the continuing validity of the District Council's previous modifications of the Planning Board's final decisions concerning previous detailed site plan applications for the subject property. Any such modifications were *ultra vires* and void *ab initio*. See *County Council of Prince George's County v. Zimmer Dev. Co.*, 444 Md. 490, 573-75 (2015); *County Council of Prince George's County v. FCW Justice, Inc.*, 238 Md. App. 641, 672-75 (2018). Additionally, the Planning Board is required to treat an amended DSP application as an original application, except to the extent that the property owner has attained a vested interest in any prior development approval. P.G. Co. Code § 27-289(b); *Prince George's County v. Sunrise Dev. Ltd. P'shp*, 330 Md. 297, 313-14 (1993).

2. The involvement of the previous property owner, Dr. Mirza H.A. Baig, in various criminal pay-to-play schemes with former county officials between the period 2006-2010, in exchange for favorable treatment relating to the proposed Commons at Addison Road development (among other properties), creates a procedural irregularity that calls into question the fundamental fairness of the underlying development review proceedings. Petitioner, and all parties of record, are entitled to procedural due process in the subject DSP proceedings. *See, e.g., Maryland State Police v. Zeigler*, 330 Md. 540, 559 (1993) (“Procedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before them.”). This includes a reasonable expectation that any previously applicable development review matters are free from any appearance of impropriety. Accordingly, to cure any potential prejudice arising out of the earlier proceedings, the Planning Board will be directed to require Applicant to obtain a new preliminary subdivision approval for the subject property prior to proceeding with further DSP review.
3. The Planning Board erred to the extent it failed to consider the recommendations of the 2014 Approved General Plan (*Plan Prince George’s 2035*) or the 2010 Approved Subregion 4 Master Plan as binding and regulatory, rather than merely advisory, in connection with the subject detailed site plan application. The Zoning Ordinance provides that a key purpose of DSP review is to ensure that property is being developed “*in accordance with* the principles for the orderly, planned, efficient and

economical development contained in the General Plan, Master Plan, or other approved plan.” P.G. Co. Code § 27-281(b)(1)(A) (emphasis added). When the statute at issue directs that the zoning or land use decision should “conform to” or be “in accordance with” comprehensive plan recommendations, the comprehensive plan recommendation is transformed into a binding regulation such that the zoning decision must be consistent with those plan recommendations. *See M-NCPPC v. Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 100-01 (2009) (quoting *Mayor and Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 530-31 (2002)); *HNS Development, LLC v. People’s Counsel for Baltimore County*, 425 Md. 436, 457 (2012) (“[W]hen the development regulations incorporate Master Plan compliance the Master Plan itself becomes a regulatory device, rather than a mere guide and recommendation.”).

4. The Planning Board erred to the extent it determined that it was not empowered or authorized to require, as a condition of approving a detailed site plan application, that Applicant dedicate land and/or pay for onsite, offsite, or site-adjacent improvements, including within the public right-of-way, in accordance with the requirements of applicable comprehensive plans, so long as there is a nexus and rough proportionality between the land dedication or monetary exaction and the proposed land use. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612-13 (2013) (citing *Dolan v. City of Tigard*, 512 U.S. 374 (1994) and *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987)); accord *Dabbs v. Anne Arundel Cty.*, 458 Md. 331, 348-50 (2018). The Planning Board possesses this authority and discretion both at

the planning/subdivision and zoning stages of review. *See FCW Justice*, 238 Md. at 249-51 (discussing the “two broad categories of land use control: zoning and planning (which includes subdivision regulation)” and how those two concepts overlap, such that “some implementation and enforcement procedures may have both planning and zoning aims”). Thus, the Planning Board is entitled to determine whether any intervening comprehensive plans enacted after preliminary subdivision plan approval, or other factors—including issues not fully or adequately explored during previous stages of review—counsel in favor of additional conditions of approval in connection with the subject detailed site plan.¹

5. The Planning Board erred by failing to resolve all contested issues of fact and explain the resolution thereof (rather than simply adopting the proposed findings contained in the technical staff report), and failing to state a ruling on each proposed finding of fact offered by Petitioner. *See, e.g., Mehrling v. Nationwide Insurance Company*, 371 Md. 40, 62-67 (2002) (reversing agency’s decision and remanding case to agency, in light of agency’s failure to make adequate findings of fact and conclusions of law and to explain its decision-making); *Forman v. Motor Vehicle Administration*, 332 Md. 201, 221-22 (1993) (same); Md. Code Ann., State Gov’t, § 10-221.

¹ If the Planning Board determines that additional land dedication is needed, such that the subject property owner would need to change the relationship between a previously subdivided lot and a street, or between one lot and another, it should direct the property owner to file a new preliminary subdivision plan application prior to proceeding with further DSP review. *Cf. P.G. Co. Code* §§ 24-111, 27-270(a). However, the monetary exactions at issue in this case do not involve the dedication of land, but rather the making of improvements within existing public rights-of-way.

6. The Planning Board erred in approving Applicant's proposed surface parking lot on Parcel 87. In so doing, it did not consider the recommendations and standards of the Subregion 4 Master Plan or Plan 2035. Additionally, the Planning Board's findings that the surface lot comported with the requirements of the ARM Sector Plan were not supported by substantial evidence in the record.
7. The Planning Board erred in approving Applicant's proposal to include surface parking between the eastern building façade on Parcel A and Addison Road South. In so doing, it did not consider the recommendations and standards of the Subregion 4 Master Plan or Plan 2035. Additionally, the Planning Board's findings that Applicant's proposed alternative development district standards, which allowed for an increase in the building setback along Addison Road South to accommodate the surface parking, would benefit the development district and not substantially impair the implementation of the applicable comprehensive plans were not supported by substantial evidence in the record.
8. The Planning Board erred in approving Applicant's proposal to have an inconsistent setback and noncontinuous building edge partially obscured by privacy fencing along the northern building façade on Parcel A, fronting on Central Ave (MD-214). In so doing, it did not consider the recommendations and standards of the Subregion 4 Master Plan or Plan 2035. Additionally, the Planning Board's findings that Applicant's proposed alternative development district standards, which allowed for the variation in setback and building edge, would benefit the development district and not substantially impair the

implementation of the applicable comprehensive plans were not supported by substantial evidence in the record.

9. The Planning Board erred in failing to consider Petitioner's arguments regarding the necessity of making pedestrian safety improvements within the rights-of-way adjacent and nearby to the subject property (e.g., connecting Zelma Avenue to MD-214 and providing safe crossings across MD-214, MD-332, Zelma Avenue, and Addison Road South). The applicable comprehensive plans discuss the need for such pedestrian safety improvements, and the record evidence showed that the existing conditions around the subject property were both unsafe and unpleasant for pedestrians.
10. The Planning Board erred in failing to consider Petitioner's arguments regarding Applicant's proposal to delay construction of required buffered sidewalks along MD-214 and a portion of Addison Road South. The applicable comprehensive plans require such pedestrian safety improvements, and the record evidence showed that the existing conditions around the subject property were both unsafe and unpleasant for pedestrians.
11. The Planning Board erred in failing to consider Petitioner's arguments regarding Applicant's failure to provide ornamental pole-mounted streetlighting along the rights-of-way adjacent to the subject property, in accordance with ARM Development District Standard P5.
12. The Planning Board erred in failing to consider Petitioner's arguments regarding Applicant's failure to place existing and proposed utilities underground along the rights-of-way adjacent to the subject property, in accordance with ARM Development District Standard P6.

13. The Planning Board erred in approving Applicant’s proposal to include residential and private recreational uses on the first floor of the mixed-use building on Parcel A. Such uses are inconsistent with the Storefront building envelope standards applicable to the subject property in the Subregion 4 Master Plan, contrary to the zoning requirements of the C-S-C/D-D-O zone, and contrary to the Planning Board’s own recommended modification to the use table for that zone.
14. The District Council finds that the Planning Board’s recommended modification to the list of allowed uses concerning the C-S-C/D-D-O zone for the ARM Sector Plan, to allow for residential dwelling units on the second and higher floors of a mixed-use commercial building containing 4 or more stories, and to allow for a building height of up to 10 stories, conforms with the purposes of the development district, as stated in the ARM Sector Plan, and does not substantially impair the implementation of any comprehensive plan applicable to the subject property.
15. The District Council finds that Applicant’s recommended modification to the list of allowed uses concerning the C-S-C/D-D-O zone for the ARM Sector Plan, which would allow for residential dwelling units on all floors of mixed-use commercial buildings, conflicts directly with the Storefront building envelope standards applicable to the subject property in the Subregion 4 Master Plan—thereby substantially impairing the implementation of that comprehensive plan.

Accordingly, for all of the foregoing reasons, the District Council hereby **REVERSES** the final decision of the Planning Board to approve the subject detailed

site plan with conditions; **DISAPPROVES** Applicant's proposed modification of the zoning use table in the ARM DDOZ to allow for residential uses on all floors (including the first floor) of mixed-use buildings in the C-S-C/D-D-O Zone; **APPROVES** the Planning Board's recommended modification of the zoning use table in the ARM DDOZ to allow for residential uses above the first floor of mixed-use buildings between 4 to 10 stories in height in the C-S-C/D-D-O Zone; and **REMANDS** the case to the Planning Board with instructions to order the Applicant to file a new preliminary plan of subdivision application for Parcel A and Lot 5,² and upon approval thereof, to submit an amended DSP application for further consideration by the Planning Board in a manner not inconsistent with this Order.

IT IS SO ORDERED this _____ day of _____, 2020.

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

TODD M. TURNER
COUNCIL CHAIR

² Applicant does not currently own Parcel 87; however, if Applicant and adjoining property owners wish to collaborate on the development of a new preliminary subdivision plan, they are free to do so.