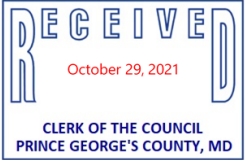


Detailed Site Plan \* BEFORE THE  
Beltway Plaza - Phase I \* DISTRICT COUNCIL  
DSP-20020 \* FOR  
Councilmanic District 4 \* PRINCE GEORGE' S COUNTY  
\*



\* \* \* \* \*

**PETITION FOR APPEAL AND REQUEST FOR ORAL ARGUMENT**

Petitioners, Natalie Williams, Darryl Martin, Shirley George, Joseph Kazarnovsky, Ralph Rieder, and Empirian Village of Maryland, LLC (collectively, “Citizen-Protestants”), by their attorney, G. Macy Nelson, Petition for Appeal of the Prince George’s County Planning Board’s (“Planning Board”) approval of Resolution No. 2021-113 (“DSP Resolution”) which authorized DSP-20020 for Beltway Plaza – Phase I. The Planning Board provided final notice of its decision on October 5, 2021. Petitioners set forth below the basis of their appeal.

**STATEMENT OF FACTS**

GB Mall applied for DSP-20020 for the redevelopment of Beltway Plaza on Greenbelt Road (MD 193) in Greenbelt, Prince George’s County. Citizen-Protestants opposed the approval of DSP-20020.

The DSP Resolution describes the Design Features of DSP-20020 for Beltway Plaza – Phase I:

**Design Features:** This DSP provides for the first of a five-phased plan to redevelop Beltway Plaza, an existing shopping mall site, into a pedestrian-friendly mixed-use community. The existing site is comprised of multiple parcels totaling 53.88 acres and is currently developed with a mall, two parking structures, surface parking, and multiple commercial pad sites. The mall spans across the central portion of the site with the

parking structures generally adjacent to the northern and southern sides of the building. The pad sites are located adjacent to Greenbelt Road in the southern portion of the site. The remainder of the site is predominantly surface parking lots.

The first phase of redevelopment of Beltway Plaza proposes improvements to the existing streetscape adjacent to Greenbelt Road and development of 20 acres of land in the northern section of site, adjacent to Breezewood Drive as shown in Figure 1. Along Greenbelt Road, enhancements are proposed to landscaping and pedestrian and bicycle infrastructure. The spatial needs for these improvements require 83 existing parking spaces to be reduced from standard-sized to compact spaces. The Planning Board finds the streetscape enhancements acceptable, subject to minor modifications as conditioned herein.

The DSP proposes development of three multifamily residential buildings (Buildings 1A, 1B, and 1C) with 750 total dwelling units, a 92-room hotel, parking structures, and a recreation center in the northern portion of the site, which is currently developed with surfacing parking lots.

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DSP Resolution at 6.

Staff presented a computer generated “fly over” video of the DSP-20020. The screen shot of the video depicts the density of the development proposed in DSP-20020. Citizen-Protestants added the labels to the image.



Planning Board video at 2:14:13.

### ERRORS

- I. **The Planning Board erred when it approved DSP-20020 because DSP-20020 conflicts with Plan 2035, as well as the 2013 Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment.**

In 2014, Prince George’s County promulgated a county-wide land planning document titled *2014 Plan Prince George’s 2035 Approved General Plan* (“Plan 2035”). The prior county-wide plan was known as the 2002 General Plan. Beltway Plaza is in the Established Communities Growth Policy Area as defined in Plan 2035. The vision for the Established Communities area is context-sensitive infill and low- to medium-density development. Plan 2035 at 20.

The applicable area master plan for the area including Beltway Plaza is the Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment (“Sector Plan”). The Sector Plan sets forth the following overall vision:

An interconnected, vibrant, and diverse mixed-use metropolitan center that provides new housing, employment, and recreational opportunities by capitalizing on the area’s strategic location, transportation assets, and unique open space system, incorporating lessons of walkability, mobility, and accessibility from historic Greenbelt and building on the communities’ commitment to sustainability.

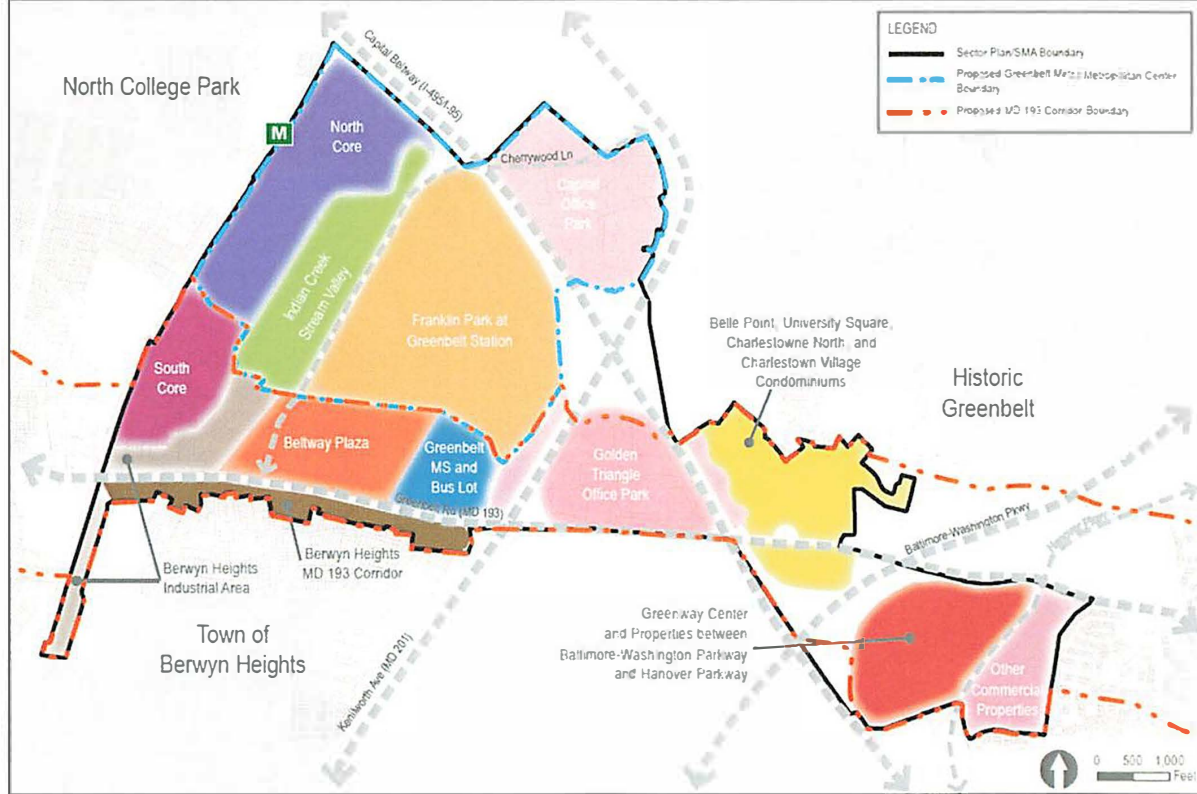
Sector Plan at 79. Regarding Beltway Plaza, the Sector Plan states:

The size, consolidated ownership, and strategic location of Beltway Plaza position the shopping center to redevelop over time into a vibrant, pedestrian-friendly, mixed-use landmark along the MD 193 Corridor. Two elements will prove critical to the site’s evolution—public-private investment in infrastructure and streetscape improvements, and a realistic and thoughtful phasing plan and design elements that facilitate infill development and redevelopment while ensuring the site is examined comprehensively.

*Id.* at 106.

The Sector Plan sets forth more precise objectives relevant to different geographical areas including Franklin Park and the North Core area. Map 17 identifies Beltway Plaza and the North Core:

MAP 17: Greenbelt Metro Area and MD 193 Corridor Focus Areas



The North Core is adjacent to the Greenbelt Metro Stop.

The Sector Plan supports mixed use development for Beltway Plaza and the North Core area. Sector Plan at 36. The Sector Plan supports “medium- to high-density development at North Core as long as it is handled appropriately and is sensitive to adjacent communities.” *Id.*

However, the Sector Plan sets forth a different, specific strategy for Beltway Plaza.

Strategy 1.3 states:

Incorporate a mix of housing types that are attractive to a range of homebuyers and renters. Concentrate townhomes at the rear of the

property as a transition to the residential uses along Breezewood Drive at Franklin Park at Greenbelt Station and encourage multifamily types throughout the site.

*Id.* at 105. The Sector Plan also states:

Any proposed phasing plan [for Beltway Plaza] should involve a commitment by the property owner to comprehensively craft:

A land use program that:

\*\*\*

- Transitions in height, building types, and building massing to ensure a more compatible relationship to the mixed used residential neighborhood at Franklin Park at Greenbelt Station.

*Id.* at 106.

DSP-20020’s design program for high density apartments in the northern portion of Beltway Plaza bordering on Breezewood Drive conflicts with the Plan 2035’s vision for “low- to medium-density development” and the Sector Plan’s strategy for Beltway Plaza to concentrate “townhomes at the rear of the property as a transition to the residential uses along Breezewood Drive at Franklin Park at Greenbelt Station.” For these reasons, the District Council should vacate the Planning Board’s approval of DSP-20020 and remand the case to the Planning Board for proceedings consistent with the District Council’s Final Decision.

Staff’s—and GB Mall’s—position from the outset has been that no single step of the development process requires actual conformance with Plan 2035. Even when discussing the preliminary plan of subdivision they forwarded this argument, which is currently in ongoing litigation. However, in the circumstances present here, DSP-20020

must comply with not only the requirements of the Sector Plan but also those of Plan 2035, both indirectly and as incorporated through the Sector Plan.

The Prince George's County Code ("Code" or "PGCC") requires that DSP-20020 comply with Plan 2035. Multiple sections of the Zoning Ordinance detail how a DSP should proceed in accordance with Plan 2035. Section 27-102(a)(2) states that the purpose of the Zoning Ordinance itself is "[t]o implement the General Plan, Area Master Plans, and Functional Master Plans." Commercial zones in Prince George's County are directed to use land "in accordance with the purposes of the General Plan, Area Master Plans, and this Subtitle." *See* PGCC § 27-446(a)(6). Section 27-268 calls for DSPs to "help to fulfill the purposes of the zone in which the land is located." Detailed Site Plans themselves state similarly that they must "provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan." *See* PGCC § 27-281.

Furthermore, Beltway Plaza is located in the Mixed Use-Infill ("M-U-I") Zone with a Development District Overlay ("D-D-O"), which provides additional requirements of conformance. Section 27-546.15(b)(1) states that one of the specific purposes of the M-U-I Zone is "[t]o implement recommendations in approved Master Plans, Sector Plans, or any other applicable plans" such as, where applicable, Plan 2035. Section 27-518.19 states that the D-D-O Zone must "ensure that the development of land in a designated development district meets the goals established for the district in a Master Plan, Master Plan Amendment, or Sector Plan." Sections 27-548.24 and .25 describe the process of

developing Master Plans/Sector Plans for D-D-Os and how DSPs need to conform to the Development District Standards that implement the recommendations of such plans.

Strict language evincing such a design of conformance is not required. Even when an ordinance merely states that a zoning or subdivision matter be consistent with recommendations in a plan, that suffices to elevate that plan's recommendations to have legally binding effect.

Where [statutes or local ordinances linking planning and zoning] exist, . . . they serve to elevate the status of comprehensive plans to the level of true regulatory devices. In those instances where such a statute or ordinance exists, its effect is usually that of requiring that zoning or other land use decisions be consistent with a plan's recommendations regarding land use and density or intensity.

*Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 530–31 (2002) (internal citations omitted). Thus, whether the Code uses the words “conform to” or “comply with” or “implement recommendations” or even “provide in accordance”, the effect is that the Code has elevated the plan to the level of a regulatory device. *See id.*

The courts have already analyzed the question of cross-plan compliance with regard to subdivisions, and the analysis carries over to zoning. When the Code requires developmental compliance with a sector plan, master plan, or equivalent, and that smaller plan must itself be in accordance with the broader general plan, then the development in question must also comply with that general plan even if the Code doesn't specifically reference the general plan. *See Archers Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 308 (2007), *aff'd*, 405 Md. 43 (2008); *see also Maryland-Nat. Capital Park & Plan.*



*Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73 (2009); *see also Naylor v. Prince George's Cty. Plan. Bd.*, 200 Md. App. 309 (2011).

The Sector Plan makes clear that it is to be kept consistent with Plan 2035, just as the Subregion VI Master Plan did with the prior General Plan as described in *Archers Glen*, 176 Md. App. 292:

- “In conjunction with functional master plans . . . the General Plan establishes new priorities and recommendations dealing with mixed-use, transit-oriented development . . . .” Sector Plan at 9.
- “Amends the zoning map, through the SMA, in order to implement the land use recommendations of this sector plan and the General Plan.” *Id.*
- “The new plan makes comprehensive planning and zoning recommendations to implement development . . . consistent with the recommendations of the General Plan.” *Id.* at 10.

Plan 2035 states that “[a]ll planning documents which were duly adopted and approved prior to the date of adoption of Plan 2035 shall remain in full force and effect, except the designation of tiers, corridors, and centers, until those plans are revised or superseded by subsequently adopted and approved plans.” Plan 2035 at 270. This statement includes the portions of those master plans that call for conformance with Plan 2035, and as in *Archers Glen*, calls for conformance with a prior iteration of a plan carry over to its replacements; thus, conformance with the 2002 General Plan is conformance with Plan 2035. Even though a master plan primarily governs development, it governs subject to Plan 2035 if it “states that it is intended to be in accordance with the General Plan . . . and to the

extent it is not, the General Plan prevails.” *Greater Baden-Aquasco*, 412 Md. at 105 (internal quotations omitted).

Therefore, because the DSP never attempted to conform to Plan 2035, nor does it properly conform to the Sector Plan, the District Council should deny the DSP.

## **II. The Planning Board erred when it approved DSP-20020 because DSP-20020 conflicts with Conceptual Site Plan (“CSP”)-18010**

The law requires that DSP-20020 comply with each of the requirements of CSP-18010. (PGCPB No. 19-35). PGCC § 27-285(b)(2). Regarding sidewalks, Condition 3 of PGCPB No. 19-35—the approving document for CSP-18010—states that “[p]rior to approval of a detailed site plan for the project, the applicant shall provide sidewalks on both sides of all internal roads, consistent with the Complete Streets policies of the 2009 *Approved Countywide Master Plan of Transportation*.” CSP Resolution at 17.

The Technical Staff Report prepared for the project (“DSP Staff Report”) stated that DSP-20020 failed to comply with Conceptual Site Plan’s requirement that “the applicant shall provide sidewalks on both sides of all internal roads.” DSP Staff Report at 17. Notwithstanding that deficiency in the DSP, Technical Staff recommended approval of the DSP. The Staff Reviewer, Adam Bossi, discussed this sidewalk issue at 2:12:45 – 2:13:15 in the video of the Planning Board hearing.

The DSP Resolution also stated that the applicable Conceptual Plan required that “[p]rior to approval of a detailed site plan for the project, the applicant shall provide sidewalks on both sides of all internal roads, consistent with the Complete Streets policies

of the 2009 *Approved Countywide Master Plan of Transportation.*” DSP Resolution at 16. Nevertheless, the DSP Resolution approved DSP-20020 which “provides sidewalks on both sides of all internal roads with one exception. Sidewalks are not provided on the south side of Street A, adjacent to the northeast corner of the existing mall, where there are existing loading and service areas utilized by mall tenants.” *Id.*

No law authorizes the Planning Board to exempt the Applicant from the requirement to “provide sidewalks on both sides of all internal roads.” If the Applicant wished to present a DSP without a sidewalk on the south side of Street A, the law required the Applicant to petition to amend the previously approved CSP before presenting the DSP.

For these reasons, the District Court should reverse the Planning Board’s approval of DSP-20020.

**III. The Planning Board erred legally and factually when it approved TCP2-030-00-01. Those errors require the District Council to reverse or, alternatively, vacate the Planning Board’s approval of DSP-20020 because it was premised on TCP2-030-00-01.**

PGCC Subtitle 25 – Trees and Vegetation, Division 2 sets forth the requirements for the woodland conservation. Simply stated, new development must satisfy prescribed requirements for woodland preservation, afforestation, and off-site mitigation. In this case, the woodland conservation requirement for Phase 1 is 9.37 acres and is 9.41 acres for all phases. DSP Staff Report at 22 and DSP Resolution at 21.

Section 25-122(c) of the Code makes clear that Subtitle 25’s highest conservation method priority is the “on-site preservation of connected woodland and wildlife habitat

areas . . . .” “A Forest Management Plan shall be prepared and approved in conformance with the Environmental Technical Manual . . . .” PGCC § 25-118(32). The Environmental Technical Manual states that “every effort must be made to meet the woodland conservation requirements on-site and then the [listed] methods must be exhausted in turn.” Environmental Technical Manual at A-34. An applicant may explore off-site preservation methods only after the applicant has proved that it has exhausted on-site preservation methods.

The Applicant proposes to meet the Phase 1 requirement by 0.22 acre of preservation, 0.04 acre of afforestation/reforestation, and 9.11 acres of off-site mitigation. DSP Staff Report at 22; DSP Resolution at 21.

The Staff Report recommended approval of DSP-20020 and TCP2-030-00-01.

- 1. The Planning Board erred legally because the DSP Resolution failed to articulate how the Applicant satisfied the required findings for 9.11 acres of off-site mitigation.**

The woodland conservation requirement for Phase 1 is 9.37 and is 9.41 for all phases. DSP Staff Report at 22; DSP Resolution at 21. The Applicant proposes to meet the Phase 1 requirement by .22 acre of preservation, 0.04 acre of afforestation/reforestation, and 9.11 acres of off-site mitigation. DSP Staff Report at 22; DSP Resolution at 21. The Planning Board erred legally because the DSP Resolution failed to articulate how the Applicant satisfied the required findings for 9.11 acres of off-site mitigation. The DSP Resolution approved off-site mitigation without articulating how the Applicant made every effort “to meet the woodland conservation requirements on-site.”

For these reasons, the District Council should reverse or, alternatively, vacate the Planning Board's approval of DSP-20020 and TCP2-030-00-01.

**2. The Planning Board erred factually because the record lacked substantial evidence that the Applicant made "every effort . . . to meet the woodland conservation requirements on-site."**

There is no evidence in the record that the Applicant made "every effort . . . to meet the woodland conservation requirements on-site." The only evidence was that the Applicant's preferred design was to use entire site. Approving the TCP2-030-00-01, which allows off-site conservation before the exhaustion of on-site preservation methods, is contrary to the goal stated in PGCC Subtitle 25 – Trees and Vegetation, Division 2, the Woodland and Wildlife Habitat Conservation Ordinance, which is to protect and preserve existing woodland on-site.

For these reasons, the District Council should reverse the Planning Board's approval of TCP2-030-00-01.

**IV. The Planning Board erred when it approved DSP-20020 because the Planning Board relied on a Stormwater Concept Plan approval that did not comply with County law.**

PGCC Section 27-548.25(b) requires the DSP to comply with the Development Standards in the Sector Plan. *See* DSP Resolution at 10–11. The Development Standards require that DSP properly manage stormwater runoff. The section titled "Sustainability and the Environment" encompasses the topic "Water Efficiency and Recharge," which includes the following statements:

- Surface parking areas, alleyways, and driveways should be constructed with durable, pervious paving materials (grass paver systems, porous paving, or pervious asphalt) to promote groundwater recharge and reduce stormwater runoff quantity and flow rates. \*\*\*
- Capture slow runoff using exfiltration tanks, drainage swales, and other devices. \*\*\*

The Department of Permitting, Inspections and Enforcement (“DPIE”) failed to submit comments on the DSP. Staff Report at 23. Technical Staff, however, addressed stormwater in their comments. For example, Staff wrote:

### **Stormwater Management**

The site has an approved Stormwater Management Concept Plan #38318-2020-00, which is valid until April 27, 2024.

The approved Concept plan includes 33 separate labeled micro-bioretenion areas and one disconnection of non-rooftop runoff associated with each of the proposed buildings and parking lots. The approved concept plan is not consistent with the DSP. The locations of many of the micro-bioretenion areas on the approved Concept Plan are at different locations than what are shown on the TCP2. The placement of these micro-bioretenion areas appear to possibly result in different amounts of woodland clearing between the Concept plan and the TCP2. The TCP2 must be revised to be consistent with the approved stormwater management concept plan. The project will be subject to further review at the time of permit and DPIE reserves the right to impose restrictions, if necessary, prior to permit.

No further information is required at this time regarding stormwater management with this DSP application.

Backup, 155 of 217.

The Staff Report recommended that, “Prior to certification of the detailed site plan, submit an approved stormwater concept plan showing the same layout as the detailed site

plan and Type 2 tree conservation plan.” Staff Report at 30. Applicant GB Mall proposed deletion of this requirement. Additional Backup, 4 of 135

James Thomas, P.E. testified as an expert stormwater engineer. Mr. Thomas used the Existing Conditions Plat 9 to describe the existing conditions. *See* Additional Backup, 129 of 135. There are two off-site drainage points. The first drainage point (“POI 1”) is located on Beltway Plaza’s western boundary. The second drainage point (“POI 2”) is located at Beltway Plaza’s southwestern corner.

Mr. Thomas used the Post-Development Hydrology plat to describe the proposed conditions. *See* Additional Backup, 130 of 135. The proposed design provides for a third discharge point (“POI 3”) located on Beltway Plaza’s northern boundary.

The Applicant proposes to manage the stormwater runoff that will drain to POI 3 with a 121,670 cubic foot underground storage facility. The Applicant, however, does not plan to construct the underground storage facility until Phase II. Mr. Thomas opined that the Applicant should construct the underground storage facility in Phase I. The deferment of the construction of the underground storage facility to Phase II means that the stormwater draining to POI 3 will not be managed until such time that the underground storage facility is constructed.

The Planning Board made the following findings regarding stormwater:

**Environmental Planning**— \*\*\* The site has an approved SWM Concept Plan 38318-2020-00, which is valid until April 27, 2024. Testimony was heard from experts on behalf of both project opponents and the applicant concerning stormwater facility design and functionality. The Planning Board noted, however, that stormwater analysis is

undertaken at the time of preliminary plan of subdivision, not DSP, and a finding was made at that time that the existence of the approved stormwater concept plan met the requirements of the Subdivision Regulations. Further evaluation, therefore, including approval of a final plan and any appeal of the concept plan, would fall within the purview of the Department of Permitting, Inspections and Enforcement. The Planning Board also noted that the County has the professional expertise to evaluate stormwater matters and is in the best position to address such matters.

DSP Resolution at 23.

The Planning Board erred in several ways when it approved DSP-20020. First, Planning Board erred when it ruled that no stormwater analysis is performed at the time of Detailed Site Plan. The DSP must conform with the Development Standards, which include requirements for stormwater management. Second, the Planning Board erred when it ruled that the review of the stormwater issue was “within the purview of the Department of Permitting, Inspections and Enforcement.” *Id.* The Development Standards place stormwater within the purview of the Planning Board. Moreover, DPIE submitted no comments on the proposed DSP. Third, the Planning Board erred when it approved DSP-20020 even though there would be no management of the stormwater runoff at POI 3 until years in the future when the Applicant proceeds to Phase II.

**V. The Planning Board erred when it approved DSP-20020 because the Planning Board improperly approved 13 deviations from development district standards.**

The Applicant sought thirteen deviations from development district standards. The requested deviations include the approval of deviations from the requirements regarding:



- Lot Occupation,
- Build-to lines (2),
- Massing,
- Access to off-street parking lots and structured parking,
- Parking Lots,
- Loading and Service Areas (2),
- Structured Parking,
- Signage,
- Water Efficiency and Recharge (2), and
- Open Space.

PGCC Section 27-548.25(c) sets forth the required findings for a deviation:

If the applicant so requests, the Planning Board may apply development standards which differ from the Development District Standards, most recently approved or amended by the District Council, unless the Sectional Map Amendment text specifically provides otherwise. The Planning Board shall find that the alternate Development District Standards will benefit the development and the Development District and will not substantially impair implementation of the Master Plan, Master Plan Amendment, or Sector Plan.

Technical Staff recommended approval of the thirteen deviations. Staff Report at 12–16.

The Planning Board approved the deviations. DSP Resolution at 25-7.

Ruth, Grover, M.U.P., A.I.C.P., provided expert testimony that the Planning Board should not approve the deviations because individually, and cumulatively, they enable a development that conflicts with the Sector Plan’s requirements for the northern portion of Beltway Plaza. The applications for the deviations enable more density in Phase I than the Sector Plan allows. For all of these reasons, the District Council should reverse the Planning Board’s approval of the deviations and the approval of DSP-20020.

**CONCLUSION**

For all of these reasons, the District Council should reverse the Planning Board's approval of DSP-20020.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28<sup>th</sup> day of October, 2021, a copy of the foregoing Petition for Appeal and Request for Oral Argument was mailed electronically and by first-class, postage pre-paid to:

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