

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board is charged with the approval of Detailed Site Plans pursuant to Part 3, Division 9 of the Zoning Ordinance of the Prince George's County Code; and

WHEREAS, DSP-99044-07 for Prince George's Plaza Parcel A-1, Chick-fil-A was approved by the Planning Board on October 31, 2013, and PGCPB Resolution No. 13-127 was adopted on September 12, 2013; and

WHEREAS, on December 23, 2013, the applicant submitted a letter to appeal the Planning Board's decision in this matter; and

WHEREAS, on March 17, 2014, the District Council elected to review this case; and

WHEREAS, on April 21, 2014, the District Council issued an Order to remand the case to the Planning Board (the "Remand Order") in accordance with Section 27-290 of the Zoning Ordinance in response to the District Council's "determination" that certain persons did not receive the required application notice and in order to allow additional persons of record submitted by the applicant to register in this matter, and take additional testimony on the drive-through component of the DSP; and

WHEREAS, on May 28, 2014 the Court of Special Appeals issued a reported opinion in *County Council of Prince George's County v. Zimmer Development Company*, which clarified and affirmed that the Prince George's County Council sitting as the District Council does not have original jurisdiction over matters within the Planning Board's exclusive jurisdiction; and

WHEREAS, the Court in *Zimmer* expressly held that "the District Council must constrain its review of decisions of the Planning Board 'to the facts and information contained within the record made at the hearing before the Planning Board' PGCC §27-523(c)"; and

WHEREAS, the record made at the hearing before the Planning Board contains no reference to any claim that "certain citizens and/or adjoining property owners did not receive notice of the application filing in this matter," Remand Order p. 1; and

WHEREAS, the record contains an affidavit from the applicant's counsel affirming under the penalties of perjury that all required persons and entities were mailed the application notice; and

WHEREAS, the District Council's appellate jurisdiction does not allow the applicant, or any person, to raise new issues or introduce new facts on appeal which were not presented to the Planning Board; and

WHEREAS, the Remand Order affords the Planning Board no legal basis to re-open the record to accept additional testimony or persons of record.

NOW THEREFORE,

1. The Planning Board has no authority to re-open or reconsider the detailed site plan.
2. The Planning Board hereby returns this matter to the District Council.

\* \* \* \* \*

This is to certify that the foregoing is a true and correct copy of the administrative action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Shoaff and Hewlett voting in favor of the motion, and with Commissioner Geraldo absent at its regular meeting held on Thursday, July 17, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 17th day of July 2014.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator

PCB:JJ:MF:dsb