



DETAILED SITE PLAN * BEFORE THE
 DSP-22034 *
 ALTA WOODMORE * DISTRICT COUNCIL

 AND * FOR

 DDS-22002, AC-23001, * PRINCE GEORGE’S COUNTY
 TCP2-053-07-06 *

* * * * *

WRITTEN EXCPETIONS AND REQUEST FOR ORAL ARGUMENT

WS Woodmore, LLC (“Applicant”) applied for the approval of a Detailed Site Plan (DSP-22034), a Departure from Design Standards (DDS-22002), a request for Alternative Compliance (AC-23001), and a Type 2 Tree Conservation Plan (TCP2-053-07-06) to develop 284 multifamily dwelling units in two, five-story buildings on a parcel located on the west side of Ruby Lockhart Boulevard, approximately 312 feet north of its intersection with St. Joseph’s Drive. Staff Report 1. The City of Glenarden, Derek D. Curtis, II (individually and as the Glenarden City Council President and Council Member At-Large), Angela D. Ferguson (individually and as the Glenarden City Council Vice President and Council Member At-Large), James A. Herring (individually and as the Glenarden City Council Member for Ward I), Maurice A. Hairston (individually and as the Glenarden City Council Member for Ward II), Erika L. Fareed (individually and as the Glenarden City Council Member for Ward III), Robin L. Jones (individually and as a Glenarden City Council Member At-Large), Kathleen J. Guillaume (individually and as a Glenarden City Council Member At-Large), and Beverly Habada (individually and as the City of

Glenarden City Manager) (collectively “Protestants”) are Persons of Record and opposed DSP-22034, DDS-22002, AC-23001, and TCP2-053-07-06.

The Planning Board approved DSP-22034, DDS-22002, AC-23001, and TCP2-053-07-06 in Resolution 2023-86 and Resolution 2023-81 dated July 27, 2023. Notice of the Planning Board’s decision was mailed to all Persons of Record on August 1, 2023.

Protestants appeal the Planning Board’s decision to approve DSP-22034, DDS-22002, AC-23001, and TCP2-053-07-06, file these exceptions, and request oral argument.

QUESTIONS PRESENTED

- 1. Whether, under Condition 6 of A-9613-C, the Planning Board lacked the authority to approve DSP-22034.**
- 2. Whether the Planning Board erred when it approved DSP-22034 without requiring the Applicant to submit a new Traffic Impact Study.**
- 3. Whether the Planning Board erred when it approved TCP2-053-07-06 without requiring the Applicant to exhaust all on-site conservation techniques before the Planning Board approved the Applicant for off-site conservation techniques.**
- 4. Whether the Planning Board failed to articulate whether the Applicant’s Alternative Compliance Plan will be equally effective as normal compliance when the plan provides only 59 of the required 107 shade trees in the parking lot.**
- 5. Whether the Planning Board erred when it approved DSP-22034 when there is no evidence that the Applicant obtained the easement over the St. Joseph Catholic Church Property depicted in DSP-22034.**
- 6. Whether the Planning Board failed to give the City of Glenarden sufficient notice that the City could provide referral comments.**

EXCEPTIONS

For the reasons set forth *infra*, in Section I, Protestants assert that the District Council has original jurisdiction over the applications subject to this appeal. Thus, Protestants respectfully request that the District Council vacate the Planning Board's decision and schedule a new public hearing before the District Council for the applications subject to this appeal. To the extent Protestants argue in this appeal that the District Council should vacate and remand the Planning Board's decision, Protestants do so only as an argument in the alternative (*i.e.*, if the District Council disagrees that it has original jurisdiction over the applications subject to this appeal).

I. The Planning Board lacked the authority to approve DSP-22034 under Condition 6 of A-9613-C.

As a threshold matter, the District Council must vacate the Planning Board's decision to approve DSP-22034 because the Planning Board lacked the authority to approve DSP-22034.

Under Condition 6 of A-9613-C, "the District Council shall review for approval the Conceptual Site Plan, the Detailed Site Plans, and the Preliminary Plan of Subdivision for the subject property." Backup 305. Condition 6 leads to three possible outcomes—all of which remove from the Planning Board the authority to approve DSP-22034.

1. The Planning Board lacked authority to consider DSP-22034 because Condition 6 is invalid and therefore, the rezoning of the Subject Property to M-X-T is invalid.

Under Section 22-214 of the Maryland Land Use Article, “if any resolution, or any part or condition of a resolution, passed by the district council in accordance with this section is declared invalid by any court of competent jurisdiction...the zoning category applicable to the property rezoned by the resolution shall revert to the category applicable before the passage of the resolution; and the resolution shall be null and void and of no effect.” LU § 22-214(f).

Here, Condition 6 requires the District Council to review for approval all Preliminary Plans of Subdivision in the Woodmore Town Center. Backup 305. However, the Court in *County Council of Prince George’s County v. Dutcher* determined that the District Council has no authority to review or approve Preliminary Plans of Subdivision. *See County Council of Prince George’s County v. Dutcher*, 365 Md. 399 (2010). As a result, Condition 6 is invalid because it purports to give the District Council authority to review and approve Preliminary Plans of Subdivision—authority that directly contradicts the Court’s holding in *Dutcher*.

Therefore, under Section 22-214(f) of the Maryland Land Use Article, the District Council must find that A-9613-C is invalid because *Dutcher* renders Condition 6 of A-9613-C invalid. In this circumstance, the District Council must vacate the Planning Board’s approval of DSP-22034 because the Planning Board has no authority to approve a Detailed Site Plan that is predicated on an invalid Zoning Map Amendment.

2. The Planning Board lacked the authority to consider DSP-22034 because DSP-22034 is predicated on a Preliminary Plan of Subdivision that was never properly approved.

If the District Council were to attempt to interpret Condition 6 in a manner that does not violate the Court's decision in *Dutcher*, then Condition 6 requires, at the very least, that the District Council have the opportunity to review Preliminary Plans of Subdivision for the Woodmore Town Center to provide comments.

Here, DSP-22034 relies on PPS 4-06016. However, there is no evidence that the District Council ever reviewed PPS 4-06016. Thus, PPS 4-06016 was never properly approved under Condition 6.

As a result, the Planning Board has no authority to approve DSP-22034 because it is predicated on a Preliminary Plan of Subdivision that has never been properly approved.

3. The Planning Board lacked authority to approve DSP-22034 because the District Council reserved for itself original jurisdiction over all Detailed Site Plans in the Woodmore Town Center.

If the District Council finds that Condition 6 is still valid and that the Preliminary Plan of Subdivision was properly approved even though it was not reviewed by the District Council, the District Council still must vacate the Planning Board's decision because the District Council, through Condition 6, reserved for itself original jurisdiction over all Detailed Site Plans in the Woodmore Town Center.

Under the Maryland Land Use Article and Maryland's Land Use case law, the District Council has the authority to reserve for itself original jurisdiction to review Detailed Site Plans as a condition of a Zoning Map Amendment.

a. The Land Use Article impliedly grants the District Council authority to review Detailed Site Plans with original jurisdiction.

The Land Use Article grants the District Council broad authority to regulate land uses in Prince George’s County including the authority to “regulate the construction, alteration, and uses of buildings and structures and the uses of land, including subsurface, and air rights,” LU § 22-201, and authority to “adopt and amend the text of the zoning law...and...adopt and amend any map accompanying the text of the zoning law.” LU § 22-104(a). “Zoning laws” are defined by the Land Use Article as “the legislative implementation of regulations for zoning” including “a zoning ordinance, zoning regulation, zoning code, and any similar legislative action to implement zoning controls.” LU § 14-101(q).

Impliedly included within the broad delegation of authority to the District Council is the authority of the District Council to reserve for itself the right to review and approve a Detailed Site Plan with original jurisdiction. *See e.g.*, LU § 25-210(e); LU § 25-301(c)(2)(xi), (c)(3). The District Council’s implied right to reserve for itself the authority to review Detailed Site Plans with original jurisdiction is demonstrated through the plain language of Sections 22-201 and 22-104 which give the District Council the broad authority to take legislative action to implement zoning controls over “the construction, alteration, and uses of buildings and structures and the uses of land, including subsurface, and air rights,” *see* LU § 22-201; LU § 22-104(a); LU § 14-101(q)—the type of activities described in and approved by Detailed Site Plans.

The District Council's implied right to reserve for itself the authority to review a Detailed Site Plan with original jurisdiction is also demonstrated when one reviews other provisions of the Land Use Article. For example, Section 25-210 states that the District Council has the authority to “**revoke** a delegation of site plan approval authority to the county planning board” in certain circumstances. *See e.g.*, LU § 25-210(e) (emphasis provided). The term “revoke” is not defined in the Land Use Article, but, according to the Merriam Webster Online Dictionary, the term “revoke” means “to annul by recalling to taking back” or “to bring or call back.”¹ An entity cannot revoke, or take back, something that the entity did not have in the first place. Accordingly, if the District Council has the authority to revoke, or take back, the Planning Board's jurisdiction over the approval of Detailed Site Plans, then the District Council must inherently possess the authority to review Detailed Site Plans for approval in the first place.

Relatedly, the District Council has the authority to delegate to municipal corporations certain powers of the District Council including the District Council's powers regarding Detailed Site Plans. LU § 25-301(a). Additionally, Section 25-301 recognizes that for some zones in Prince George's County, the zone “requires detailed site plan approval by the district council,” LU § 25-301(c)(3)(i), and that Detailed Site Plans can be

¹ Definition available at <https://www.merriam-webster.com/dictionary/revoke>.

required as a condition of approval of a zoning map amendment—amendments over which the District Council has original jurisdiction. LU § 25-104(a).

When the Land Use Article is considered as a whole, it is clear that the District Council has the inherent authority to review, with original jurisdiction, Detailed Site Plans when, and if, the District Council reserves for itself the right to do so.

- b. Maryland’s Land Use case law supports the conclusion that the District Council can reserve for itself original jurisdiction over Detailed Site Plans through conditions on the approval of zoning map amendments.**

The Court has never determined conclusively whether the District Council has the authority to review a Detailed Site Plan with original jurisdiction. But decisions related to this issue support the conclusion that the District Council can reserve for itself, through the conditional approval of a Zoning Map Amendment, the right to review and approve Detailed Site Plans with original jurisdiction.

The Supreme Court has determined that Detailed Site Plans differ significantly from Conceptual Design Plans and Specific Design Plans which the Planning Board reviews and approves with original jurisdiction. *See generally County Council of Prince George’s County v. Zimmer Development Co.*, 444. Md. 490, 562–63 (2015) (finding that “key differences exist between the CDP and SDP process and the Detailed Site Plan process.... CDPs and SPDs are not Detailed Site Plans by another name”).

The Appellate Court has determined that when a Detailed Site Plan is required by the Zoning Ordinance and there is no other condition to the contrary, the Planning Board

has original jurisdiction over the Detailed Site Plan while the District Council retains appellate jurisdiction. *Heard v. County Council of Prince George's County*, 256 Md. App. 586, 611 (2022).

The instant appeal differs from *Heard* because here, unlike in *Heard*, the District Council explicitly reserved for itself, through Condition 6, the right to review Detailed Site Plans in the Woodmore Town Center with original jurisdiction. When the District Council approves a Zoning Map Amendment it, in effect, approves an amendment to the Zoning Ordinance. Thus, when the District Council approved Condition 6 to A-9613-C, it approved an amendment to the Zoning Ordinance that, in effect, reserved for the District Council, original jurisdiction over the Detailed Site Plans in the Woodmore Town Center.

The Appellate Court has further determined that when a Detailed Site Plan is required as a condition of approval for a Preliminary Plan of Subdivision for a property within a traditional Euclidean Zone, the Planning Board retains original jurisdiction over the Detailed Site Plan because Preliminary Plans of Subdivision are within the exclusive jurisdiction of the Planning Board. *See County Council of Prince George's County v. FCW Justice, Inc.*, 238 Md. App. 641 (2018).

The instant appeal differs from *FCW Justice* because here, DSP-22034 was not required by a Preliminary Plan of Subdivision but instead by the Zoning Ordinance and a zoning map amendment—an application within the District Council's jurisdiction.

Lastly, the Appellate Court has determined that the District Council can reserve for itself the right to review and approve a Conceptual Site Plan through the conditional

approval of a Zoning Map Amendment that rezones a property to the M-X-T Zone. *See Rochow v. Maryland National Capital Park and Planning Commission*, 151 Md. App. 558 (2003).

Rochow is on point here. In *Rochow*, the Court considered a development on a plot of land that was rezoned to the M-X-T zone via a zoning map amendment. *Rochow*, 151 Md. App. at 574. The Court recognized that “in approving any local [zoning] map amendment . . . , the district council . . . may . . . adopt whatever reasonable . . . conditions as may in its opinion be necessary either to protect the surrounding properties from adverse effects which might accrue from the zoning amendment, or which would further enhance the coordinated, harmonious, and systematic development of the regional district.” *Rochow*, 151 Md. App. at 572; *see also* LU § 22-214. “Conditions imposed by the District Council . . . become a permanent part of the Zoning Map amendment, and shall be binding for as long as the Mixed Use Zone remains in effect on the property (unless amended by the Council).” *Rochow*, 151 Md. App. at 573 (quoting Prince George’s County Code § 27-213(c)(4)).

In *Rochow*, Condition 1 of the zoning map amendment required all land subject to the rezoning “be included on a comprehensive concept plan.” *Rochow*, 151 Md. App. at 574. Condition 3 required that “the Planning Board shall require review and approval of [the comprehensive concept plan] by the District Council.” *Rochow*, 151 Md. App. at 574. Condition 35 required that “the District Council shall review and approve a Conceptual Site Plan for” the project. *Rochow*, 151 Md. App. at 576. The Court recognized that “the

District Council ensured that it would have the last word on the conceptual site plan for this site by imposing condition 3...this condition prevents the Planning Board from finally approving a concept plan for developing this site without prior ‘review and approval of that plan by the District Council.’” *Rochow*, 151 Md. App. at 580. Similarly, the Planning Board, at that time, “affirmed that, pursuant to condition 3 in the zoning map amendment, the Board had to obtain the District Council’s approval for the National Harbor CSP.” *Rochow*, 151 Md. App. at 580. When the Planning Board considered the application, the Planning Board concluded that it “would not finally approve the CSP until the District Council reviewed and approved it.” *Rochow*, 151 Md. App. at 580.

Just like in *Rochow*, the District Council here, “reserved the right to review and approve” DSP-22034 when it imposed Condition 6 on Zoning Map Amendment A-9613-C. *See Rochow*, 151 Md. App. at 580. As a result, the Planning Board here did not have the authority to give final approval of the Detailed Site Plan until **after** the Detailed Site Plan was reviewed and approved by the District Council. In other words, the Planning Board did not have exclusive original jurisdiction over the Detailed Site Plan—the District Council did.

For all of these reasons, the District Council should vacate the Planning Board’s decision to approve the DSP-22034 because the Planning Board did not have authority to approve the DSP application.

II. The Planning Board erred when it approved DSP-22034 without requiring a new Traffic Impact Study because the Planning Board was required to make a new finding of adequacy.

Although DSP-22034 was filed under the prior Subdivision and Zoning Ordinances, it is still subject to the transitional provisions of the new Subdivision and Zoning Ordinances. Under the new Subdivision Ordinance, a determination of adequate public facilities made before April 1, 2022 will automatically receive a certificate of adequacy only if the prior determination of adequacy “was still valid on” April 1, 2022. *See* New Subdivision Ordinance § 24-4503(a)(1); New Subdivision Ordinance § 24-1704.

Here, Section 27-546 of the prior Zoning Ordinance provides that “if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval, whichever occurred last,” the Planning Board may not approve a Detailed Site Plan unless the Planning Board finds that “the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant.” ZO § 27-546(d)(10). Accordingly, under the prior zoning ordinance, a determination of adequacy for a Detailed Site Plan in the M-X-T Zone will expire after 6 years.

Here, the most recent finding of adequacy was made in 2012 for an amendment to the Preliminary Plan of Subdivision (PPS 4-06016)—11 years ago. *See* Backup 490. Notably, however, the Traffic Impact Study used in the 2012 evaluation was conducted in

2006—17 years ago. *See* Backup 490. Thus, the prior determination of adequacy for the Woodmore Town Center was not valid on April 1, 2022 because more than six years had elapsed. Therefore, the Subject Property cannot not automatically receive a new certificate of adequacy for the public facilities.

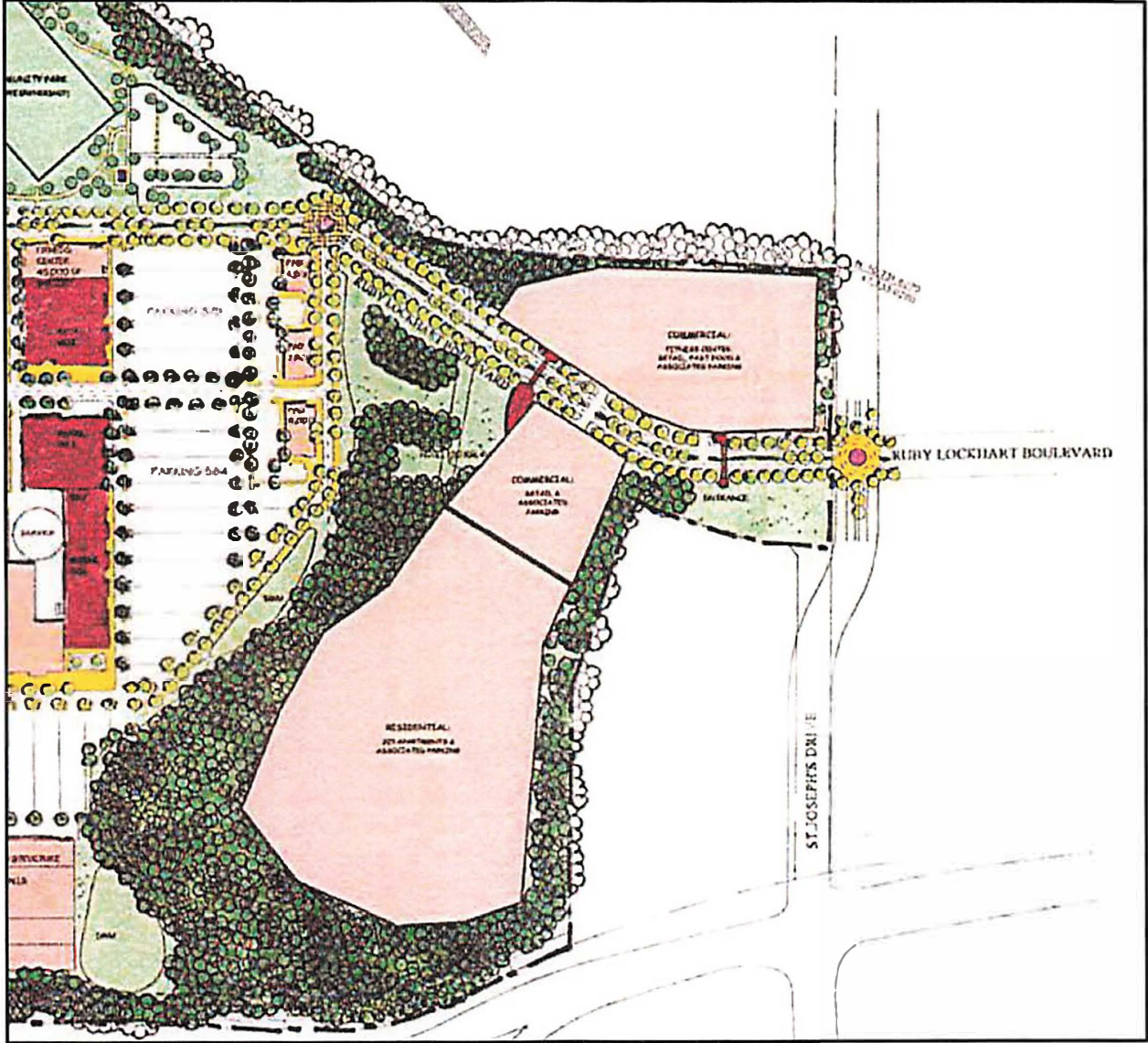
As a result, when the Planning Board is tasked with finding that the proposed development here “will be adequately served within a reasonable period of time with existing or programmed public facilities,” *see* ZO § 27-546(d)(10), the Planning Board is required to make a new determination of adequacy according to the procedures set forth under the new Subdivision and Zoning Ordinances because there was no valid determination of adequacy for the Subject Property on April 1, 2022.

The District Council should vacate the Planning Board’s decision to approve DSP-22034 and remand so that the Planning Board can make a new determination of adequacy that considers a new Traffic Impact Study.

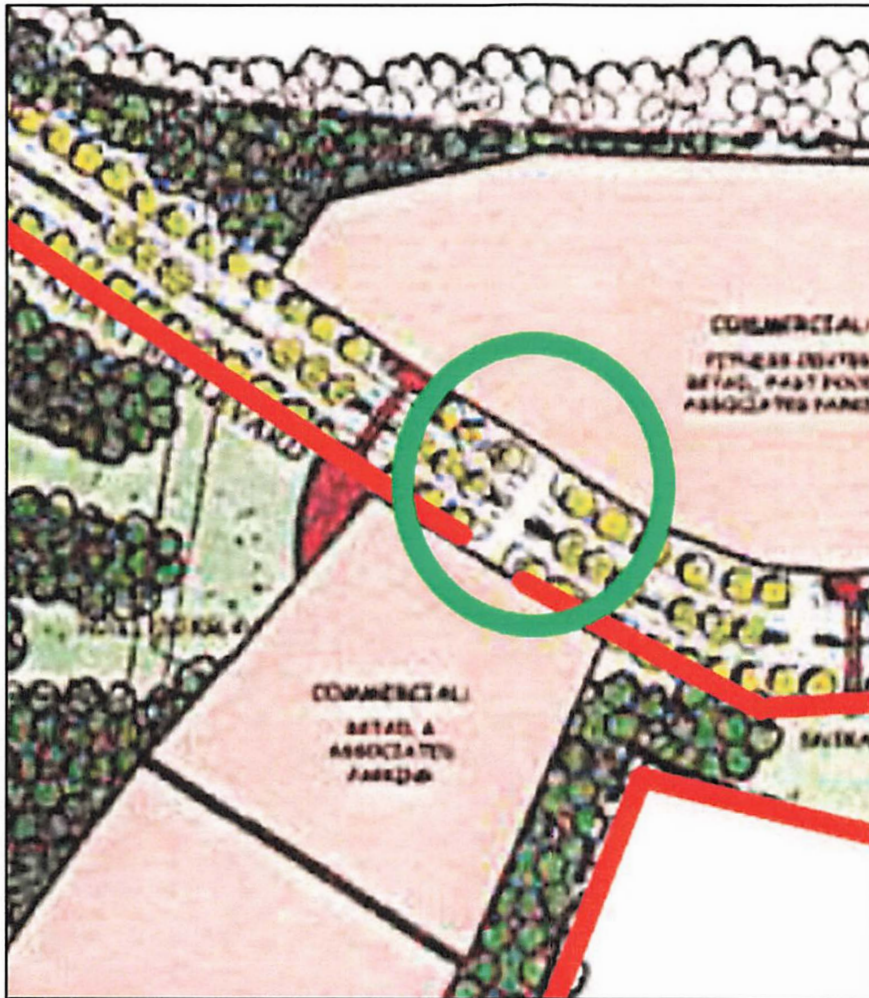
Even if the Planning Board is not required to conduct a new determination of adequacy, the Planning Board still was required to review a new Traffic Impact Study. A new Traffic Impact Study is the only way the Planning Board could determine whether DSP-22034 would be adequately served by public facilities for several reasons.

First, under DSP-22034, access to the Subject Property on Ruby Lockhart Boulevard includes only right-in and right-out turns. PGCPB No. 2023-81, page 48. However, the transportation facilities approved when the Planning Board made the prior

determinations of adequacy for the Woodmore Town Center included access to the Subject Property via right and left turns as shown below.



See Backup 64.



See Backup 64 (red outline around the Subject Property and green circle around access points to the Subject Property provided).

Accordingly, a new Traffic Impact Study is clearly necessary here because the prior findings of adequacy for the Subject Property were based on the assumption that traffic would be able to enter and exit the Subject Property through either a right turn or a left turn. DSP-22034's right-in only access to the Subject Property will force vehicles headed towards the Subject Property to travel up the northside of Ruby Lockhart Boulevard, all the way to the traffic circle, to then travel back down the southside of Ruby Lockhart

Boulevard to access the Subject Property. PGCPB No. 2023-81, page 48. Accordingly, the right-in only access to the Subject Property will significantly impact the traffic flow within the Woodmore Town Center. Similarly, DSP-22034's right-out only access to the Subject Property will force every vehicle leaving the Subject Property whose destination is the Woodmore Town Center to turn right out of the Subject Property onto the southside of Ruby Lockhart Boulevard, then, within approximately 300 feet, get into the left lane, then make a U-Turn at the busy intersection of Ruby Lockhart Boulevard and St. Joseph Drive, to then travel back up the northside of Ruby Lockhart Boulevard to reach the Woodmore Town Center. PGCPB No. 2023-81, page 48. Just as the right-in only access to the Subject Property will disrupt traffic flows within the Woodmore Town Center, the right-out only access from the Subject Property will impact traffic flow within and outside the Woodmore Town Center. Furthermore, DSP-22034's proposed right-in and right-out access to the Subject Property could significantly impact the response times for emergency vehicles.

Second, the need for a new Traffic Impact Study is important here because the only Traffic Impact Study for the Subject Property was conducted in 2006—before significant construction was completed in the Woodmore Town Center and before any construction of residential units began. The land uses and density around the Woodmore Town Center have changed significantly over the past 17 years.

The image below depicts the conditions near the Woodmore Town Center in 2006 when the only Traffic Impact Study was conducted:



Google EarthPro (red outline for the approximate location of the Subject Property provided).

The image below shows the conditions around the Woodmore Town Center in 2012 when the Planning Board made the most recent determination of adequacy based on the 2006 Traffic Impact Study:



Google EarthPro (red outline for the approximate location of the Subject Property provided).

The image below depicts the current conditions near the Woodmore Town Center:



Google EarthPro (red outline for the approximate location of the Subject Property provided).

These images clearly show that over the past 17 years, the development around the Woodmore Town Center has changed significantly and a new Traffic Impact Study is necessary to evaluate whether the proposed development here will be adequately served by programmed or existing public facilities.

Due to the fact that DSP-22034's right-in and right-out access differs significantly from the infrastructure evaluated in the 2006 Traffic Impact Study and the 2012 determination of adequacy, the fact that the development and density around the Woodmore Town Center has changed over time, and the fact that a Traffic Impact Study has not been conducted for the Woodmore Town Center for over 17 years, it is clear that the Planning Board's finding of adequacy here was legally deficient. Instead, the Planning Board should have required a new Traffic Impact Study as that is the only way the Planning Board could sufficiently determine whether the existing or programmed public facilities are adequate to serve the proposed development with only right-in and right-out access.

Therefore, the District Council should vacate and remand the Planning Board's decision and require the Applicant to submit a new Traffic Impact Study which would allow the Planning Board to make legally sufficient finding regarding the adequacy of the available public facilities.

III. The Planning Board erred when it approved TCP2-053-07-06 without requiring the Applicant to exhaust all on-site conservation techniques before the Planning Board approved the Applicant for off-site conservation techniques.

Prince George's County's Woodland Conservation and Tree Preservation Ordinance (WCO), requires property owners to preserve or restore a certain amount of woodland on their property—called the woodland conservation threshold. *See* PRINCE GEORGE'S COUNTY CODE § 25-118(b)(75). The WCO provides a list of woodland conservation techniques that an applicant is permitted to use to satisfy its woodland conservation threshold. PRINCE GEORGE'S COUNTY CODE § 25-122(c). The preservation

techniques must be exhausted in the order listed in Section 25-122(c) where on-site conservation techniques are listed before off-site conservation techniques. Prince George's County Environmental Technical Manual A-16; PRINCE GEORGE'S COUNTY CODE § 25-122(C). Accordingly, an applicant is required to demonstrate that it has exhaust all on-site conservation techniques first before the applicant can be permitted to utilize off-site conservation techniques. Similarly, the Planning Board is required to articulate how the Applicant has exhausted all onsite conservation techniques before the Planning Board allows the Applicant to use off-site conservation techniques. *See* Prince George's County Environmental Technical Manual A-16; PRINCE GEORGE'S COUNTY CODE § 25-122(C). Furthermore, the record must include substantial evidence to support the Planning Board's conclusion that the Applicant exhausted all on-site conservation techniques before the Planning Board approves the Applicant's proposed off-site conservation techniques.

Here, the Planning Board approved the Applicant's request to satisfy its woodland conservation threshold through the use of 1.93 acres of off-site preservation. PGCPB No. 2023-81, page 42. However, the Planning Board failed to articulate whether the Applicant exhausted any of the on-site conservation techniques before the Planning Board approved the Applicant for off-site conservation techniques. Furthermore, the record is devoid of any evidence demonstrating how, or whether, the Applicant exhausted any of the on-site conservation techniques before it requested permission to utilize off-site conservation techniques.

Therefore, the District Council must vacate and remand the Planning Board's decision to approve TCP2-053-07-06 because the Planning Board failed to articulate how the Applicant exhausted the on-site conservation techniques listed in Section 25-122(C). Alternatively, the District Council should reverse the Planning Board's decision to approve TCP2-053-07-06 because the record lacks any evidence to support the conclusion that the Applicant could not preserve or restore an additional 1.93 acres of woodland on-site through any of the listed on-site conservation techniques.

IV. The Planning Board failed to articulate how the Applicant's Alternative Compliance Plan will be equally effective as planting 107 shade trees in the proposed parking lot.

The Landscape Manual requires the Applicant to cover 15% of the proposed parking lot area with interior landscaping and provide 107 shade trees within the parking lot area. The Planning Board approved the Applicant's Alternative Compliance Plan under which the Applicant will reduce the number of required shade trees in the parking lot by 50% in exchange for increasing the amount of interior landscaping by only 1%, providing additional trees around the perimeter of the parking lot, and providing larger caliper shade trees than would otherwise be required.

A request for alternative compliance must be denied unless the proposed alternative compliance is "equally effective as normal compliance in terms of quality, durability, hardiness and ability to fulfill the design criteria in Section 3." Prince George's County Landscape Manual § 1.3(b).

Relevant here, Section 3 describes the purpose of shade trees as follows:

Shade trees have the greatest overall impact on the built environment because of their size, character, and permanence and should be the first element considered for a planting design. Shade trees provide unity, character, and identity for residential neighborhoods and can soften architecture, create a transition between the built and natural environment, and provide a human scale for nonresidential neighborhoods. Shade trees should also be used to:

- (1) Define major active and passive open spaces and direct both vehicular and pedestrian movement.
- (2) Define and enhance views.
- (3) Modify climate.
- (4) Provide shade in the summer.
- (5) Reduce the impact of direct and reflected light.
- (6) Screen and buffer undesirable or incompatible views and activities.

Prince George's County Landscape Manual § 3.4(a).

To support its decision to approve AC-23001, the Planning Board must provide evidence that the proposed plan will be equally effective at, among other things, defining and enhancing the views, modifying the climate, providing shade in the summer, and reducing the impact of direct and reflected light compared to what is required through normal compliance (*i.e.*, planting 107 shade trees in the parking lot). *See* Prince George's County Landscape Manual § 1.3(b); Prince George's County Landscape Manual Section § 3.4(a).

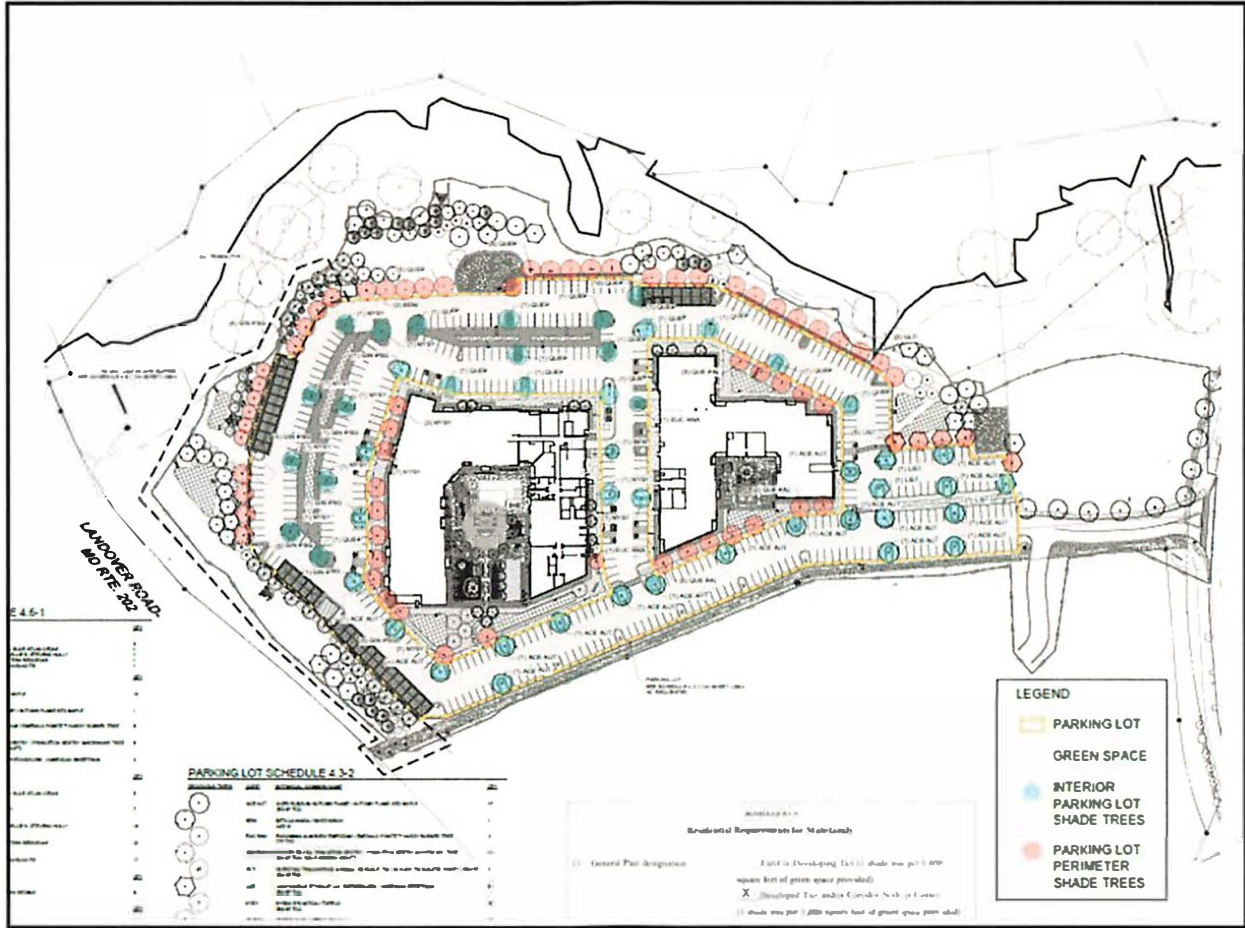
Here, the only analysis the Planning Board provided about the efficacy of AC-23001 was the Planning Board's conclusory statement that "with these revisions, the Planning Board believes that the provided alternative design will be equally effective as normal compliance with Section 4.3-2 of the Landscape Manual, due to the increased landscaped

area, increased tree size, and perimeter shade trees.” PGCPB No. 2023-81, page 41; PGCPB No. 2023-81, page 41.

However, Maryland’s administrative jurisprudence requires the Planning Board’s final decision to do more than “simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions.” *Bucktail, LLC v. Cty. Council of Talbot Cty.*, 352 Md. 530, 553 (1999). At minimum, the Planning Board here was required to articulate the facts it relied on to determine that AC-23001 will be equally effective as planting 107 shade trees and the Planning Board was required to explain how those facts support the Planning Board’s conclusion. *See Forman v. MVA*, 332 Md. 201, 220–21 (1993).

The Planning Board’s conclusory statement that “the provided alternative design will be equally effective as normal compliance,” *see e.g.*, PGCPB No. 2023-81, fails to articulate how the proposal to reduce the number of shade trees by 50% would be equally effective at defining and enhancing the views, modifying the climate, providing shade in the summer, and reducing the impact of direct and reflected light compared to planting 107 shade trees. Furthermore, there is no evidence in the record to support such a conclusion.

The Applicant’s Landscape Plan, reproduced below, shows clearly that the vast majority of the parking spaces in the proposed parking lot will not be shaded by any tree or any other structure.



Staff PowerPoint, slide 11.

The Plan shows that the parking spaces will likely be subject to direct sunlight for the majority of the day. The Planning Board does not articulate how the proposed alternative compliance plan will do anything to “modify the climate”, “provide shade in the summer”, or “modify the impact of direct and reflected light.” Prince George’s County Landscape Manual, Section 3.4(a). Instead, AC-23001, which leaves roughly 180,000 square feet of asphalt uncovered in the parking lot, will inevitably lead to extremely hot conditions in and around the parking lot. Furthermore, additional trees around the

perimeter of the parking lot will do nothing to provide shade for the people walking through the parking lot.

The need for shade trees to provide relief from extreme heat within the proposed parking lot is particularly important in this specific development because the Applicant proposes to provide 141 fewer parking spaces than would ordinarily be required. The Applicant's proposal to reduce the number of parking spaces is based on the Applicant's assumption that roughly 23% of the residents will walk across the parking lot to access public transit. PGCPB No. 2023-81, page 12; PGCPB No. 2023-86, page 12. Without proper shade within the parking lot, the residents who will rely on public transit will be subject to extreme heat during their walk through the parking lot to the public transit stops during the summer. Exposure to extreme heat during the summer can lead to serious, life-threatening health side effects. Furthermore, extreme heat in the parking lot can also pose serious health threats to the dogs utilizing the dog park on the site—potentially causing burns on their paws as they walk to and from the multi-family structures.

Ensuring that the Applicant provides adequate shade in the parking lot is critically important now more than ever as climate change continues to make our summers hotter and longer. The failure to require adequate shading in the parking lot today can have long lasting, detrimental health impacts on the residents of this proposed development. Large swaths of unshaded pavement will lead to negative impacts from the urban heat island effect including increased utility costs as well as negative health consequences. Extreme

heat from climate change can also pose serious health threats to residents which will be exacerbated by the unshaded pavement in the Applicant’s Alternative Compliance Plan.

Finally, the fact that the shade trees will be 3-3.5 inches in diameter instead of 2.5-3 inches in diameter does not mean that the trees will provide twice as much shade over time. Accordingly, there is no evidence in the record that AC-23001 will provide the same amount of shade or the same cooling effect that would come from full compliance with the landscape manual.

For all of these reasons, the District Council should vacate the Planning Board’s decision to approve AC-23001 because the Planning Board failed to articulate how 58 shade trees and 16% interior landscape area will be equally effective at providing shade and modifying climate within the parking lot when compared to normal compliance with 107 shade trees and 15% interior landscape.

V. The Planning Board erred when it approved DSP-22034 without proof that the Applicant had obtained an access easement over the St. Joseph Catholic Church Property.

The Planning Board approved DSP-22034 based, in part, on the assumption that “a secondary access point to the St. Joseph Catholic Church property to the south will also be provided.” PGCPB No. 2023-81, page 5. However, there is no evidence in the record that the Applicant has obtained permission to cross the St. Joseph Catholic Church to access the Subject Property. Therefore, the Planning Board’s decision to approve DSP-22034 should be vacated because the Planning Board cannot approve the Detailed Site Plan on the assumption that there will be a secondary access point to the Subject Property through

the Church property without any evidence demonstrating that the Applicant is permitted to use the Church property to access the Subject Property.

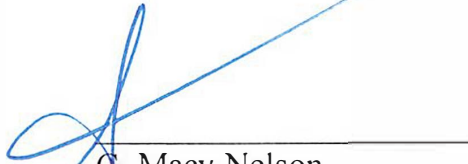
VI. The Planning Board failed to give the City of Glenarden sufficient notice that the City could provide referral comments about the proposed development.

Before the Planning Board can approve a Detailed Site Plan, the Planning Board must refer the Plan to all agencies “whose action is likely to have a substantial effect on the plan under review.” PZO § 27-284(a). It is the Planning Board’s obligation to maintain a list of referral agencies. PZO § 27-284(a).

Here, the Planning Board failed to adequately refer DSP-22034, DDS-22002, AC-23001, and TCP2-053-07-06 to the City of Glenarden for comments because planning staff sent notice regarding referral comments to outdated emails—emails for individuals who no longer work for the City of Glenarden. PGCPB No. 2023-81, page 47. Thus, the City never received the referral notice. It is not sufficient that the City received notice of the hearing because notice of the hearing is fundamentally different than notice of referral.

Therefore, the District Council should vacate the Planning Boards decision to approve DSP-22034 because the Planning Board failed to satisfy its duties under Section 27-284 when the Planning Board failed to properly refer the applications to the City of Glenarden for comments.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August 2023, a copy of the foregoing Exceptions and Request for Oral Argument was served as follows:

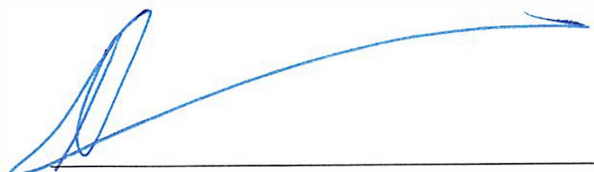
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