



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council
301-952-3600

September 16, 2024

**RE: DSP-19031-02 Popeyes
Three Roads Corner, LLC, Applicant**

NOTICE OF DECISION OF THE DISTRICT COUNCIL

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on September 9, 2024

CERTIFICATE OF SERVICE

This is to certify that on September 16, 2024, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

A handwritten signature in cursive script that reads "Donna J. Brown".

Donna J. Brown
Clerk of the Council

Case No.: DSP-19031-02
TCP2-026-2018-02
AC-24001
Popeyes

Applicant: Three Roads Corner, LLC

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

ORDER OF REMAND

On July 15, 2024, using oral argument procedures, this matter was considered by the District Council on its motion to review the decision of the Planning Board to approve Detailed Site Plan (DSP)-19031-02. Upon full consideration of the record, without affirming or reversing, the Board's approval of DSP-19031-02—a request to *amend* previously approved DSP-19031 to develop Parcels 1 and 4 with a 3,484-square-foot food and beverage store, a gas station, and a 982-square-foot car wash by adding Parcels 2 and 3 to DSP-19031 for the development of a 2,923-square-foot eating and drinking establishment with drive-through service on Parcel 3—is hereby REMANDED to the Board to take further testimony or reconsider its decision in accordance with this Order of Remand.^{1,2}

¹ The Board's decision is embodied in Resolution 2024-029 (hereinafter PGCPB No. 2024-029). In addition to approving the amendment to DSP-19031, the Board also approved Type 2 Tree Conservation Plan (TCP2)-026-2018-02 and Alternative Compliance (AC)-24001. This application does not propose any changes to the development approved for Parcels 1 and 4 under DSP-19031. PGCPB No. 2024-029 at 1, 20. Under PGCC § 27-289, which governs an application to *amend* a DSP (as is the case here), all requirements for the filing and review of an original Detailed Site Plan shall apply to an amendment and the Board shall follow the same procedures and make the same findings. PGCC § 27-289(b). All references to Subtitle 27 are under the prior Zoning Ordinance because the Applicant has elected to have the DSP reviewed under the prior Zoning Ordinance. PGCPB No. 2024-029 at 1.

² The District Council is authorized to review the decision of the Board to approve a DSP. Among other things, the District Council shall affirm, reverse, modify, or remand the DSP to the Board. PGCC § 27-290. *See also* Md. Code Ann., Land Use (LU) § 25-210, (1957, 2012 Repl. Vol., 2023 Supp.) (expressly authorizing the District Council to review a final decision of the [Board] to approve or disapprove a [DSP] and for the District Council to issue a final decision after a hearing).

A. Introduction.

In February 1996, approximately twenty-eight (28) years ago, the District Council enacted Zoning Ordinance 1-1996, which approved Zoning Map Amendment (A)-9920 to rezone the subject property, subject to two (2) conditions, as follows:³

- Before any building permit is issued, *a site plan* showing the footprint of *any* proposed building, parking, and landscaping (along with corresponding elevations) shall be reviewed and approved by the Planning Board or its designee. *Such plans shall show the building's siting, setback, orientation, scale, roof shape, and proportions to be compatible with the character of the Historic Resource and Historic Site.* Parking and landscaping shall be subject to the requirements of the Landscape Manual as to setbacks and buffers regarding development adjacent to Historic Sites.
- The adjoining Historic Resource and Historic Site *shall be noted* on all subsequent plans.

PGCPN No. 2024-029 at 6-7. (Emphasis added). *Rochow v. Md. Nat'l Capital Park & Planning Comm'n*, 151 Md. App. 558, 827 A.2d 927 (2003) (explaining that the failure to comply with *any* condition to a zoning map amendment constitutes a zoning violation under PGCC § 27-213(d)).

As detailed *infra*, the District Council finds that the Board's "conditional" approval of DSP-19031-02 was *not* based on substantial evidence of record because, among other things, the Applicant failed, in the first instance, as the Board concedes, to comply with numerous mandatory submittal requirements under PGCC § 27-282—and by extension—conditions of Zoning Ordinance 1-1996 or A-9920. Because the Board conducts the "evidentiary" hearing, and because the record lacked certain evidence on numerous submittal requirements for the proposed DSP, the Board's decision to approve the DSP on "future" compliance or evidence, not part of the DSP

³ Not relevant for the purposes of remand, the 2013 Approved Subregion 5 Master Plan and Sectional Map Amendment (master plan) was approved by the District Council on July 24, 2013 (Resolution CR-81-2013) and rezoned a portion of the subject site (Parcel 167) from the R-R Zone to the C-M Zone (pages 169 and 184 of the master plan). PGCPN No. 2024-029 at 4.

record, was erroneous. Without affirming or reversing the Board, the District Council will remand DSP-19031-02 to allow the Applicant to comply with all submittal requirements under PGCC § 27-282, in the first instance, *before* the application can be deemed *submitted, filed and completed* under § 27-282(h), and *before* the Board may lawfully conduct another evidentiary hearing to review the application request. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015) (explaining that, among other things, the District Council may reverse the Board's decision if, among other things, it is not based on substantial evidence of record).⁴

B. Findings of Fact and Conclusions of Law.

A site plan is “an illustrated proposal for the development or use of a particular piece of real property [depicting] *how* the property will appear *if the proposal is accepted*.” *Cty. Council of Prince George's Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018) (Emphasis added). As noted above, the proposed DSP is a request to amend previously approved DSP-19031 to develop Parcels 1 and 4 with a 3,484-square-foot food and beverage store, a gas station, and a 982-square-foot car wash by *adding* Parcels 2 and 3 to DSP-19031 for the development of a 2,923-square-foot Popeyes eating and drinking establishment with drive-through service on Parcel 3—without any changes to the development approved for Parcels 1 and 4 under DSP-19031. PGCPB No. 2024-029 at 1, 20.

As depicted below, the proposed Popeyes development will amend the previously approved DSP as follows:

⁴ Because the application could not have been deemed submitted and filed as completed under PGCC 27-282(f) because of the numerous submittal deficiencies that the Board found, the Zoning Ordinance *required* that the Board not approve the DSP but to notify the applicant (in writing), stating what *changes are required for approval*. PGCC § 27-285(d)(1) (If a Detailed Site Plan is not approved, the Planning Board shall notify the applicant (in writing), stating what changes are required for approval). (Emphasis added).

BIRD'S-EYE VIEW WITH APPROXIMATE SITE BOUNDARY OUTLINED

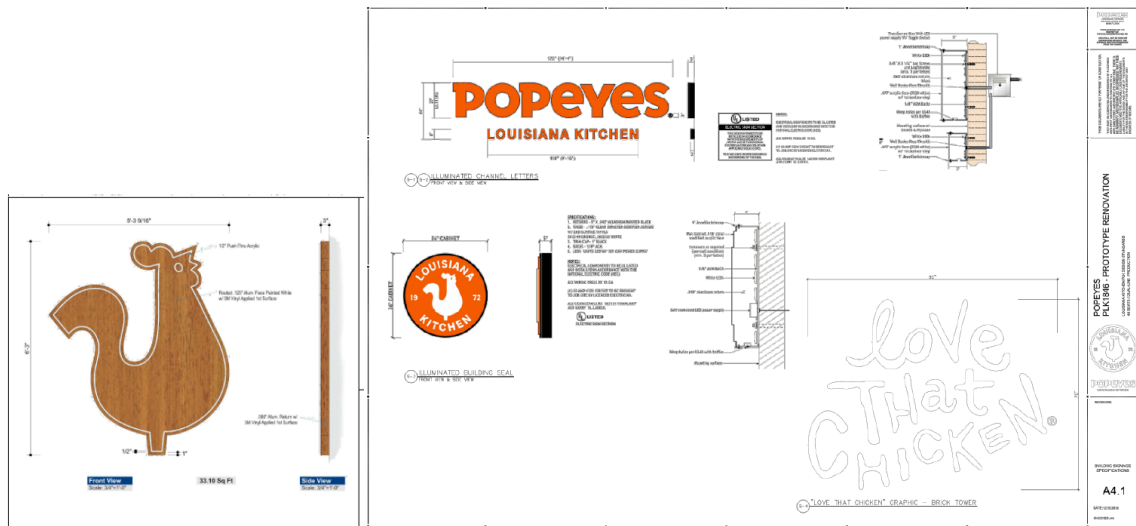


Parcel 3: the Subject DSP

Parcels 1 & 4: DSP-19031 (Parent Case)

District Council Hearing 7-15-24

Slide 9 of 17



District Council Hearing 7-15-24

Slide 14 of 17

Reproduced from Slide Presentation at Oral Argument.⁵

⁵ To view the slide presentation, please visit:
<https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=6700838&GUID=6C227CC9-3173-426F-96C7-46B14C5E6ED0&Options=ID|Text|&Search=DSP-19031> (last visited September 8, 2024).

In relevant part, under the prior Zoning Ordinance, requirements for Detailed Site Plans are as follows:

1. Specific purposes.

The specific purposes of Detailed Site Plans are:

- (A) To show the *specific location and delineation of buildings and structures, parking facilities, streets, green areas, and other physical features and land uses proposed for the site*;
- (B) To show specific grading, planting, sediment control, woodland conservation areas, regulated environmental features and storm water management features proposed for the site;
- (C) To locate and describe the specific recreation facilities proposed, *architectural form of buildings*, and street furniture (such as lamps, signs, and benches) proposed for the site; and
- (D) To describe any maintenance agreements, covenants, or construction contract documents that are necessary to assure that the Plan is implemented in accordance with the requirements of this Subtitle.

PGCC § 27-281(c). (Emphasis added).

2. Submittal requirements.

- (a) The Detailed Site Plan *shall be submitted* to the Planning Board by the owner of the property or his authorized representative.
- (b) The Detailed Site Plan shall be prepared by an engineer, architect, landscape architect, or urban planner.
- (c) Upon filing the Plan, the applicant shall pay to the Planning Board a fee to help defray the costs related to processing the Plan. The scale of fees shall be determined by the Planning Board, except that the filing fee for a day care center for children shall not exceed the Special Exception filing fee for a day care center for children as set forth in Section 27-297(b) (1.1). A fee may be reduced by the Planning Board if it finds that payment of the full amount will cause an undue hardship upon the applicant.
- (d) If more than one (1) drawing is used, all drawings shall be at the same scale (where feasible).

(e) A Detailed Site Plan shall include the following:⁶

- (1) Location map, north arrow, and scale;
- (2) *Boundaries of the property, using bearings and distances* (in feet); and either the subdivision lot and block, or liber and folio numbers;
- (3) Zoning categories of the subject property and all adjacent properties;
- (4) Locations and types of major improvements that are within fifty (50) feet of the subject property and all land uses on adjacent properties;
- (5) An approved Natural Resource Inventory;
- (6) Street names, right-of-way and pavement widths of existing streets and interchanges within and adjacent to the site;
- (7) *Existing rights-of-way and easements* (such as railroad, utility, water, sewer, access, and storm drainage);
- (8) Existing site and environmental features as shown on an approved NRI;
- (9) *A Type 2 Tree Conservation Plan prepared in conformance with Division 2 of Subtitle 25 and The Woodland and Wildlife Habitat Conservation Technical Manual* or a Standard Letter of Exemption;
- (10) A statement of justification describing how the proposed design preserves and restores the regulated environmental features to the fullest extent possible;
- (11) An approved stormwater management concept plan;
- (12) Proposed system of internal streets including right-of-way widths;
- (13) Proposed lot lines and the dimensions (including bearings and distances, in feet) and the area of each lot;
- (14) *Exact location and size of all buildings, structures, sidewalks, paved areas, parking lots (including striping) and designation of waste collection storage areas and the use of all buildings, structures, and land;*
- (15) Proposed grading, using one (1) or two (2) foot contour intervals, and any spot elevations that are necessary to describe high and low points, steps, retaining wall heights, and swales;
- (16) A landscape plan prepared in accordance with the provisions of the Landscape Manual showing the exact location and description of all plants and other landscaping materials, including size (at time of planting), spacing, botanical and common names (including description of any plants that are not typical of the species), and planting method;

⁶ Under the prior Zoning Ordinance, the word shall is mandatory and not discretionary. PGCC § 27-108.01(a)(19).

- (17) Exact location, size, type, and layout of all recreation facilities;
- (18) *Exact location and type of such accessory facilities as paths, walks, walls, fences* (including widths or height, as appropriate), entrance features, and gateway signs (in accordance with Section 27-626 of this Subtitle);
- (19) A detailed statement indicating the manner in which any land intended for public use, but not proposed to be in public ownership, will be held, owned, and maintained for the indicated purpose (including any proposed covenants or other documents);
- (20) *Description of the physical appearance of proposed buildings (where specifically required), through the use of architectural elevations of facades* (seen from public areas), or through other illustrative drawings, photographs, or renderings deemed appropriate by the Planning Board; and
- (21) Any other pertinent information.

(f) The submittal requirements in (e) may be modified in accordance with Section 27-286.

(g) A Detailed Site Plan application may amend an existing Conceptual Site Plan applicable to a proposal for development of the subject property.

(h) A Detailed Site Plan *shall* be considered *submitted* on the date the Planning Director determines that the applicant *has filed a complete* Plan in accordance with the requirements of this Section.

PGCC § 27-282. (Emphasis added).

3. Planning Board procedures.

(a) General.

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

(2) *The Planning Board shall review the Detailed Site Plan for compliance with this Division.*⁷

⁷ “Compliance” is defined as the act of *obeying a law or rule, especially one that controls a particular industry or type of work or the act of doing everything that someone tells or wants you to do.* <https://dictionary.cambridge.org/us/dictionary/english/compliance> (last visited September 8, 2024). (Emphasis added). As noted above, the prior Zoning Ordinance allows for *such compliance based on the evidentiary record prior to DSP approval—not based on “future” compliance or evidence after the record has closed.* See footnote 4 above. Here, the DSP as submitted failed to satisfy several submittal requirements, as the Board concedes, *before* the application could have, in the first instance, be deemed *filed and completed before* the “evidentiary” hearing.

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

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

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

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

PGCC § 27-285(a)(1)-(6). (Emphasis added).

(b) Required findings.

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

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

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

(4) The Planning Board may approve a Detailed Site Plan if it finds that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

PGCC § 27-285(b)(1)-(4). (Emphasis added).

Nothing in Zoning Ordinance 1-1996 or the above provisions contemplates that submittal requirements for a DSP may be *deferred* for “future” compliance or evidence *not* in the original evidentiary record prior to approval. The prior Zoning Ordinance contemplates the *exact opposite* to avoid running afoul of other statutory timeframes. As noted above, because the application could not have been deemed submitted, filed and completed under PGCC 27-282(f) because of the numerous submittal deficiencies that the Board found, the prior Zoning Ordinance *required* that the Board *not* approve the DSP but to *notify* the applicant (in writing), stating what *changes* are required *for approval*. PGCC § 27-285(d)(1).

According to the Board’s decision, *changes* required to approve DSP-19031-02, but conditioned for “future” compliance based on evidence *not* in the evidentiary record, are as follows:

- Existing Building on Site: A condition is included herein requiring the applicant to clarify the existence of the building on-site and revise the existing condition/demolition plan. If the on-site building has been razed, a condition is included herein requiring the applicant to revise the existing building gross floor area for Parcels 1 and 4 in General Note 6. PGCPB No. 2024-029 at 2.
- Parking Setbacks: Regarding the *parking* setback requirements shown on the submitted plan, a condition is included herein requiring the applicant to clarify which zoning ordinance is being referred to and, if not, remove this information from the plan. Another condition is also included requiring the applicant to correct “front setback” to “street setback.” *The northern property line of Parcel 3 adjoins Parcel 2. Since the four parcels are treated as one development site, setback requirements among the parcels are not applicable. **A condition is included herein requiring the applicant to revise the dimension of the provided southern *setback*, to be consistent with what is shown on the plan. PGCPB No. 2024-029 at 2.

- Parking Requirements: **A condition is included herein requiring the applicant to properly label the dimensions of 60-degree nonparallel parking spaces.

***There are two parallel parking spaces shown on the plan. A condition is included herein requiring the applicant to revise the parking schedule. PGCPB No. 2024-029 at 2.

- Design Features: The subject development is oriented towards MD 5 and has pedestrian access from MD 631. The building is one-story and is approximately 19 feet in height. Two drive-through lanes are located to the south of the building with two separate menu display boards. The two lanes merge into one lane before the pick-up window. A condition is included herein requiring the applicant to organize all information and details related to the drive-through service in one package, such as directional signs, clearance bars, and menu display boards. PGCPB No. 2024-029 at 5.
- Architecture: The architectural design of the approved building is contemporary with a flat roof. The building is finished with a mix of materials, including brick veneer, stucco finished exterior insulation and finish systems, glass, aluminum tubes, and pre-finished metal cap. The materials are arranged in a geometric pattern. Conditions are included herein requiring the applicant to label the elevations based on cardinal directions, and separate and organize details associated with the elevations from the signage package such as the drive-through canopy, decorative shutters, and aluminum tubes. PGCPB No. 2024-029 at 5.
- Signage: The subject DSP includes six building-mounted signs, per Section 27-107.01 of the prior Zoning Ordinance, which defines signs as, “Any letter, word, numeral, figure, design, projected image, picture, illustration, emblem, symbol, trademark, banner, pennant, or other device, which is used to announce, direct attention to, identify, advertise, or otherwise make anything known. Signs do not include the flag or emblem of any nation; county; state; city; religious, fraternal, or civic organization; decorations or works of art which in no way identify a product or business.” Among the six signs, two are letter signs, two are logo signs and two are graphic signs. These signs are mounted on the west, north and south elevations. Each of the elevations has two signs. No signs are mounted on the east elevation. Some details of the signs are missing. Conditions are included herein requiring the applicant to re-organize the signage package, provide details for each sign (including dimensions, materials, and illumination), revise the signage schedule to demonstrate conformance with the requirements (location, height, and area). The submitted plans also include a free-standing sign; however, its location is not specified on the plans. A condition is included herein requiring the applicant to clarify if the subject DSP includes such a sign and, if not, remove it from the signage package

and, if provided, indicate its location on the plan. Signage information contained in Standard Note 7 appears to be incorrect; therefore, a condition is included herein for correction. PGCPB No. 2024-029 at 5-6.

- Lighting: The subject DSP includes both building-mounted and pole-mounted lighting throughout the site, with details. The Planning Board finds that the submitted photometric plan shows adequate lighting for users on-site and is sufficient for illuminating drive aisles, building entryways, and walking paths. A condition is included herein requiring the applicant to add a note indicating that all light fixtures included in this DSP are fully cut-off and directed downward to reduce glare and light spill-over. For people to access the approved development on Parcel 3, they need to use the shared vehicular entry/exit point located on Parcel 1 and cross Parcel 2, via a drive aisle. Conditions are included herein requiring the applicant to revise the photometric plan, submitted for this DSP, to cover the entire access route from MD 631 and add additional pole-mounted light fixtures along the route on Parcel 2, to ensure sufficient illumination. PGCPB No. 2024-029 at 6.
- Loading and Trashing Facilities: The subject DSP includes one loading space, located internally to the subject property. With the planting along the MD 631 frontage, public view to the loading space is screened. A condition is included herein requiring the applicant to revise the landscape plan to accommodate the provision of the one loading space. The submitted plans also show the location of a dumpster. Details of the dumpster enclosure are included in this DSP but are blurred. Conditions are included herein requiring the applicant to provide legible dumpster details and revise the large-scale plan for the dumpster, to be consistent with the design shown on other plans. PGCPB No. 2024-029 at 6.
- Zoning Ordinance 1-1996 – Condition 2: The adjoining Historic Resource and Historic Site shall be noted on all subsequent plans. Such a note is not included in the submitted plans. A condition is included herein requiring the applicant to add a note to the plans, indicating that the Historic Marlow-Huntt Store and Casket Shop (85A-033-14) is located across MD 631. PGCPB No. 2024-029 at 7.
- Green Area: The submitted plan shows 52 percent of green area to be provided on-site. The size, shape, location, and design of green area is appropriate to enhance landscape screening from residential houses located to the south of the subject site, as well as to improve the street frontage of MD 631 and MD 5. A condition is included herein to correct “open space” to “green area.” PGCPB No. 2024-029 at 9.

- Trip Generation: The applicant submitted a trip generation memo dated September 17, 2021, with this DSP, stating that the approved development on Parcels 1 and 4 (approved under DSP-19031) and the proposed development on Parcels 2 and 3 under the subject DSP, would generate 74 a.m. and 66 p.m. trips. These trips are well within the trip cap established with PPS 4-18009. However, the Planning Board recommends the trip generation calculation be consistent with the prior approvals, using the square footage of the approved eating and drinking establishment with drive through. A condition is included herein for a revised trip generation memorandum. PGCPB No. 2024-029 at 11.
- Type 2 Tree Conservation Plan: This condition was met, but the easement was recorded incorrectly without the metes and bounds or the woodland preservation exhibit. Prior to certification of DSP-19031-02, the woodland conservation easement will need to be amended and restated and recorded in the Prince George's County Land Records to include the metes and bounds, the woodland preservation exhibit, and the woodland conservation easement document. PGCPB No. 2024-029 at 13.
- 2010 Landscape Manual: Section 4.2, Requirements for Landscape Strips Along Streets (MD 631)—Along MD 631, the applicant is using Option 1 to fulfill the requirements. Option 1 requires a minimum 10-foot-wide landscape strip to be planted with a minimum of 1 shade tree and 10 shrubs per 35 linear feet of frontage, excluding driveway openings. However, most of the plants and shrubs are located outside of the 10-foot-wide landscape strip. A condition is included herein requiring the applicant to revise this schedule with Option 2, which requires a minimum width of 10 feet, and has an average width of at least 15 feet. The required planting will be at the rate of 1 shade tree and 5 shrubs per 35 linear feet of frontage. PGCPB No. 2024-029 at 13.
- Section 4.2, Requirements for Landscape Strips Along Streets (MD 5): The submitted landscape plan shows the analysis for the requirements of Section 4.6-2 for the MD 5 frontage. However, the correct section for this frontage is Section 4.2. A condition is included herein requiring the applicant to add a correct schedule to the plan and provide necessary information to demonstrate conformance to the requirements. PGCPB No. 2024-029 at 13.
- Section 4.3, Parking Lot Requirements: Section 4.3 requires a percentage of the parking lot, determined by the size, to be used as planting area. In this DSP, the parking lot area is approximately 29,125 square feet. Table 4.3-1, Parking Lot Interior Planting Requirements, requires eight percent of the interior planting area, which is approximately 2,330 square feet. The submitted landscape plans show the provision of 2,858 square feet of the interior planting area (approximately 9.8 percent). For parking lots less

than 50,000 square feet, 1 shade tree shall be provided for each 300 square feet of the provided interior landscape area. Therefore, 10 shade trees are required for this DSP, and this requirement is met with the provision of 12 shade trees. Conditions are included herein requiring the applicant to label the width of the landscape islands parallel to the parking spaces, and to update the information for Items 6 and 9 to conform with the requirements. PGCPB No. 2024-029 at 14.

- Section 4.7, Buffering Incompatible Uses (Bufferyard 1): The DSP shows an approximately 89-foot building setback, an approximately 20-foot landscape yard, and 338 plant units, including a mix of evergreen trees and shrubs. The applicant has exceeded the minimum plant unit requirement by almost 100 percent, and the provided landscape plan conforms to all other requirements within Section 4.7. In addition, the applicant plans to install a 6-foot-high, board-on-board fence on the retaining wall within Bufferyard 1. The restaurant sits elevated above the adjacent residential property, with an approximately 3-foot-high slope and then an approximately 4-foot-high retaining wall located within the landscape bufferyard. The 6-foot-high fence will be located at the top of the retaining wall and will be elevated so as to enhance its screening ability. Conditions are included herein requiring technical revisions to the plan to verify these heights and relationships. PGCPB No. 2024-029 at 15.
- Section 4.7, Buffering Incompatible Uses (Bufferyard 2): Section 4.7 requires buffering for the southern property line that is adjacent to single-family detached houses in the RR Zone (formerly the R-R Zone). Table 4.7-2, Minimum Bufferyard Requirements, requires a Type D bufferyard for a drive-in or fast-food restaurant, which is high impact, adjoining single-family detached dwellings. Table 4.7-3, Bufferyard Types, requires a minimum building setback of 50 feet, a minimum landscape yard width of 40 feet, and 160 plant units per 100 linear feet of property line for a Type D bufferyard. Bufferyard 2 in the subject DSP complies with these requirements through the existing on-site vegetation. A condition is included herein requiring the applicant to correct the requirements for the building setback and the width of landscape yard. PGCPB No. 2024-029 at 15.
- Section 4.9, Sustainable Landscaping: Section 4.9 requires that a certain percentage of plants within each plant type (including shade trees, ornamental trees, evergreen trees, and shrubs) be native species (or the cultivars of native species). The minimum percentage of plants of each plant type, required to be native species and/or cultivars, is 50 percent for shade trees and ornamental trees, and 30 percent for evergreen trees and shrubs. Conditions are included herein requiring the applicant to revise Schedule 4.9-1 and the landscape schedule, to be consistent with the information contained in other required schedules and demonstrate

conformance to the requirements of Section 4.9. PGCPB No. 2024-029 at 15.

Because the application could not have been deemed submitted, filed and completed under PGCC 27-282(f) because of the numerous submittal deficiencies above that the Board found, the prior Zoning Ordinance *required* that the Board *not* approve the DSP but to *notify* the applicant (in writing), stating what *changes* are required *for approval*. PGCC § 27-285(d)(1).

Accordingly, on remand:

1. The applicant may *withdraw* the wholly deficient DSP application or abandon the project altogether if it cannot comply with the requirements of the prior Zoning Ordinance, or in the alternative, shall submit a revised DSP application that *complies* with all revisions articulated by the Board in its Resolution at pages 21 through 24. PGCPB No. 2024-029 at 21-24.
2. To the extent that the applicant submits a revised DSP application that complies with all revisions articulated by the Board in its Resolution at pages 21 through 24, Technical Staff shall issue an amended Report on the revised DSP.
3. After appropriate notice of Technical Staff's amended Report, in accordance with law, the Board shall schedule, after appropriate notice, in accordance with law, another evidentiary hearing to consider the DSP application.
4. After an evidentiary hearing on Technical Staff's amended Report analyzing applicants' revised DSP application, the Board shall transmit a revised or amended decision to the District Council in a Resolution, amended or otherwise, in accordance with the provisions on remand under the prior Zoning Ordinance.

ORDERED this 9th day of September 2024, by the following vote:

In Favor: Council Members Blegay, Burroughs, Dernoga, Fisher, Harrison, Hawkins, Ivey, Olson, Oriadha, and Watson.

Opposed:

Abstained:

Absent:

Vote: 10-0.

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

By: Jolene Ivey
Jolene Ivey, Chair

ATTEST:

Donna J. Brown
Donna J. Brown
Clerk of the Council