

1 THE PRINCE GEORGE'S COUNTY PLANNING BOARD OF  
2 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

3  
4  
5 CHECKERS LAUREL  
6 Detailed Site Plan, DSP-20006

7  
8 T R A N S C R I P T  
9 O F  
10 P R O C E E D I N G S

11  
12 COUNTY ADMINISTRATION BUILDING

13 Upper Marlboro, Maryland

14  
15 May 20, 2021

16 VOLUME 1 of 1  
17

18  
19 BEFORE:

20 ELIZABETH M. HEWLETT, Chair

21 DOROTHY F. BAILEY, Vice-Chair

22 A. SHUANISE WASHINGTON, Commissioner

23 MANUEL R. GERALDO, Commissioner

24 WILLIAM M. DOERNER, Commissioner

25  
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OTHERS PRESENT:

ADAM BOSSI, Staff, Urban Design Section

PETER GOLDSMITH, Senior Counsel

MATTHEW TEDESCO, Attorney for Applicant

C O N T E N T S

SPEAKER

PAGE

Michael Ostroff

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Alyssa Chang

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P R O C E E D I N G S

1  
2 MADAM CHAIR: The Prince George's County Planning  
3 Board is back in session and we had one major item, one case  
4 left, which was the Detailed Site Plan 20006, Checkers  
5 Laurel, which was a remand by the District Council solely  
6 for five specific reasons. So I want to make sure, let's do  
7 a check to make sure we have everybody. Let's start with  
8 the Planning Board, I see Vice Chair Bailey, I see  
9 Commissioner Doerner, I see Commissioner Washington and I  
10 see Commissioner Geraldo somewhere. Okay. Okay. Well,  
11 we'll come back to him. Okay. I see Mr. Adam Bossi, I see  
12 okay, do I see Mr. Tedesco, there he is. Okay. Now do I  
13 see Bob Noeth? And Ryan McCarthy. Bob Noeth is maybe he's  
14 on the phone. Okay. So Bob Noeth, are you on?

15 MR. NOETH: I am, Madam Chair.

16 MADAM CHAIR: Okay. Do I see Ryan McCarthy?

17 MR. TEDESCO: Madam Chair, this is Matthew  
18 Tedesco. Ryan had a family emergency, he had to step away,  
19 he's going to try to monitor but he may or may not be able  
20 to join us.

21 MADAM CHAIR: Okay. That's fine. Okay. And then  
22 we have Alyssa Chang.

23 MR. TEDESCO: Ms. Chang is counsel for the  
24 property owner.

25 MADAM CHAIR: I know but is she on? Okay.

1 MR. TEDESCO: She has another matter in Virginia  
2 at 2 o'clock. She's hopefully going to join us sometime  
3 after she concludes that matter.

4 MADAM CHAIR: Okay. And then Michael Ostroff?

5 MR. OSTROFF: Present.

6 MADAM CHAIR: Okay. Thank you. So that concludes  
7 the signup list. We have Applicant's Exhibit Number 1, the  
8 revised responses to the remand. We have Applicant's Number  
9 2, the Checkers Alternative Compliance exhibit, revised.  
10 Opponent's Exhibit Number 1 and then we have a Staff Exhibit  
11 Number 1.

12 Okay. So now, I don't know if I need to, well  
13 let's go to Mr. Bossi first and then I'll turn to Mr.  
14 Goldsmith, if needed, to outline the parameters of the  
15 remand. Okay. Mr. Bossi, are you ready for takeoff?

16 MR. BOSSI: Yes, thank you, Madam Chairwoman, and  
17 good afternoon members of the Planning Board. For the  
18 record my name is Adam Bossi with the Urban Design Section.  
19 So Item 10 here today as Madam Chairwoman already mentioned  
20 is the District Council's Order of Remand for Detailed Site  
21 Plan, DSP-20006, which proposes the development of a  
22 Checkers brand eating and drinking establishment with drive-  
23 thru service.

24 As Madam Chairwoman already mentioned as well too,  
25 you did have a number of items submitted into your

1 additional backup material as she already outlined.

2           Second kind of housekeeping item, I want to make  
3 everyone aware of, staff has added two slides to this  
4 presentation that were not previously included. They're  
5 really just kind of to help illustrate some of the points of  
6 the discussion, so I'll point those out as we go along.

7           And finally, just quickly, the procedural history  
8 of this case. The Planning Board originally approved DSP-  
9 20006 with conditions on October 29, 2020, and then  
10 subsequently adopted Resolution 2020-152 on November 19,  
11 2020. The District Council then elected to review this  
12 matter on January 25, 2021 and held oral arguments at their  
13 public hearing on March 8, 2021. The Council then  
14 subsequently issued their Order of Remand, which was  
15 received by the Planning Department on March 24, 2021 and is  
16 the subject of our discussion here today. We can move onto  
17 the second slide, please.

18           Just since as it has been some time since the  
19 Board last looked at this DSP, the first few slides here are  
20 just a quick overview of the site's location and general  
21 character. So here the subject property is in Planning Area  
22 62, Council District 1. Slide 3, please.

23           Outlined in red, the 0.4 acre property is  
24 irregularly shaped and located on the east side of Baltimore  
25 Avenue. It's about 400 feet north of its intersection with

1 Mulberry Street. Slide 4, please.

2           Excuse me. The property is split zoned with most  
3 of the site area in the Commercial Shopping Center Zone,  
4 that's the C-S-C Zone shown here in red. The far eastern  
5 portion of the site is in the One Family Detached  
6 Residential Zone, that's the R-55 Zone shown here in yellow.  
7 We also do see on this image the former paper right-of-way  
8 for Magnolia Street along the southern portion of the site.  
9 The split zoning as well as zoning of a portion of the  
10 former Magnolia Street right-of-way, are issues identified  
11 in the Council's Order of Remand. Slide 5, please.

12           As shown here in the aerial image, the subject  
13 site is currently vacant and fronts on Baltimore Avenue.  
14 This property was previously home to the Bay and Surf  
15 Restaurant, which was demolished in approximately 2013. To  
16 the north is an Urgent Care facility, which includes an  
17 existing private driveway which will be shared with this  
18 proposed Checkers Restaurant. To the south is an eating and  
19 drinking establishment, that's the News Back Bar and  
20 Restaurant and undeveloped residential lots on Magnolia  
21 Street abut the east side of the property with an  
22 established single family residential neighborhood located  
23 beyond that. We can move on to Slide 6, please.

24           Here the topographic map shows the site is  
25 generally flat. Slide 7, please.

1           So with this slide, we're going to pivot right  
2 into the Council's Order of Remand. The order directs the  
3 Planning Board to reopen the record on this Detailed Site  
4 Plan and take additional evidence and testimony regarding  
5 give specific points. Those are listed here. Since the  
6 Order of Remand was issued, the applicant submitted  
7 additional evidence into the record which is in the backup  
8 file for the case that was published on line two weeks ago,  
9 as well as the additional material mentioned at the start of  
10 this presentation. All those materials are publically  
11 available on the Board's website. If we can move on to  
12 Slide 8, please?

13           So we'll walk through the Order of Remand points  
14 one by one here. The first point, the Revised Site Plan's  
15 compliance with the setback requirements of the C-S-C Zone.  
16 So the setback requirements for the C-S-C Zone are defined  
17 in Section 27-462(b) specifically in Table 1. Those  
18 requirements are shown here, largely in black on the setback  
19 calculation table that was provided on the applicant's  
20 Revised Detailed Site Plan. So in the middle column the  
21 applicant shows in red that a 30 foot landscape buffer is  
22 required here, which does exceed those lesser requirements  
23 of the zone for the side and rear yard setbacks. On the far  
24 right column in red we see the setback distances provided by  
25 the plan, which all exceed those minimum requirements. So

1 staff found that the Revised Site Plan meets all of these  
2 requirements for the C-S-C Zone. If we can move onto Slide  
3 9, please?

4           So here the the second point of the Order of  
5 Remand, the Revised Site Plan's compliance with the  
6 requirements of the 2010 Landscape Manual for Incompatible  
7 Uses. So this pertains to Section 4.7, it's buffering  
8 incompatible uses of the Landscape Manual. With this  
9 requirement to the Order of Remand, the District Council  
10 asserted that the Landscape Plan requires two incompatible  
11 use buffers. The first along portions of the site's  
12 southern boundary and a second one along its eastern  
13 boundary shared with Lot 12.

14           The DSP as originally approved only included one  
15 incompatible use buffer and that was along the southern  
16 portion of the property.

17           So with the plan shown here, I'll speak to that  
18 buffer along the southern property boundary. Here a Type B  
19 incompatible use landscape buffer is required and again  
20 speaking specifically for the southern boundary. The  
21 minimum requirements of that Type B buffer are a 30 foot  
22 building setback, 20 foot wide landscape yard to be planted  
23 with 80 plant units per 100 linear feet. The originally  
24 approved buffer yard here has been enhanced with the revised  
25 plans to include additional plant units, does replace and



1 existing split rail fence with a 6 foot tall sight tight  
2 fence as well. As revised, this buffer exceeds all of the  
3 Type B buffer yard requirements of Section 4.7 of the  
4 Landscape Manual. So this buffer treatment has also been  
5 extended beyond where it's required to encompass the  
6 majority of the southern property boundary, including  
7 portions along Magnolia Street.

8           Regarding the eastern property boundary shared  
9 with Lot 12, so Lot 12 abuts the far eastern side of the  
10 lot, so it's on the far right side of this image here. So  
11 as discussed under Finding 2 in staff's memo, the Council  
12 determined an incompatible use buffer is appropriate to  
13 provide between the Checkers development and the vacant  
14 residential lots to the east. Lot 12, being directly  
15 adjacent to the site. Here a Type D incompatible buffer  
16 yard would be required. The Type D buffer yard requires a  
17 50 foot building setback and a 40 foot wide landscape buffer  
18 to be planted with 160 plant units per 100 linear feet of  
19 property, of property line, excuse me.

20           As shown here, the applicant's first revised plan  
21 did not address this point. Given the location of the storm  
22 water facility in that area as well it would also not be  
23 possible for the landscape yard to meet that distance, that  
24 40 foot wide requirement. If we can move onto Slide 10,  
25 please?

1           So in response to those issues, the applicant  
2 further revised their plans and filed a request for  
3 alternative compliance from the requirements of the  
4 Landscape Manual for buffering incompatible uses along this  
5 eastern property line.

6           This is one of the new slides that was added for  
7 today's discussion here, showing the incompatible use buffer  
8 with Lot 12 now provided by the applicant. Here what's been  
9 provided is a variable width buffer, it does include the 6-  
10 foot sight tight fence, additional plant units and retention  
11 of existing vegetation. Staff finds this treatment  
12 acceptable.

13           And given the odd configuration of the property  
14 and acceptability of the alternative landscape solution  
15 proposed, you know, at the end of the presentation staff  
16 will ultimately be recommending the Board approve that  
17 alternative compliance request. Slide 11, please.

18           So the third point in the Order of Remand reads  
19 the Revised Site Plan inclusion of residential properties to  
20 satisfy the 2010 Landscape Manual standards to serve a  
21 commercial zone or use.

22           So here again with the dual zoning of the  
23 property, the Council was concerned that it may not be  
24 appropriate for the R-55 Zone area of the site to be  
25 utilized to satisfy the Zoning Ordinance or Landscape Manual

1 requirements for the commercial use proposed in the C-S-C  
2 Zone portion of the property. As discussed on page 5 of  
3 staff's memo, the applicant did provide a 10 page discussion  
4 and rationale for the storm water facility associated with  
5 the development to be located in the R-55 Zone portion of  
6 the property, despite serving the commercial use. Staff  
7 does agree with applicant's assessment here and we do  
8 believe that the storm water facility proposed where it is  
9 in this case is acceptable.

10           Regarding the utilization of the R-55 Zone portion  
11 of the property for Landscape Manual conformance purposes  
12 associated with the commercial use. Through requirements of  
13 the Landscape Manual that apply to this DSP are Sections  
14 4.2, that's the landscape strips along streets, Section 4.3  
15 parking lot requirements, Section 4.4 screening  
16 requirements, Section 4.7 for buffering incompatible uses  
17 and Section 4.9 the sustainable landscaping requirements.

18           Sections 4.3 and 4.4 require planting in parking  
19 lots and screening of certain maintenance areas and  
20 equipment regardless of what zone they are in or what use  
21 they are associated with, except for certain vehicle related  
22 uses.

23           Section 4.9 requires sustainable landscaping  
24 practices to be incorporated as a part of a Site Plan  
25 regardless of the zone or the use as well.

1           Regarding Section 4.2 requirements for landscape  
2 strips along streets, these requirements apply along  
3 abutting streets for any nonresidential use in any zone.

4           Finally, regarding Section 4.7, the buffering of  
5 incompatible uses in addition to the discussion provided  
6 with the last two slides, Section 4.7 provides that in the  
7 case of a lot that is located in more than one zone, the  
8 establishment of a required buffer yard is based on the  
9 platted or recorded property lines, not the zoning lines.

10           So in summation in this case the Landscape Manual  
11 does not impede the inclusion of the residential portion of  
12 the property to satisfy the Landscape Manual requirements  
13 for the commercial use. If we can move onto Slide 12,  
14 please?

15           So this point of the Order of Remand looks at two  
16 specific conditions of Zoning Ordinance Number 3-1996, which  
17 is associated with the rezoning of a portion of what is now  
18 the subject property to the C-S-C Zone. That decision was  
19 included in the original backup file for this case. If we  
20 can move onto Slide 13, please?

21           So since the time of the rezoning the lotting  
22 pattern on the property has changed. So staff has prepared  
23 the second new image, or new slide, excuse me, that was not  
24 previously included in the presentation. This is an  
25 illustrative image of some of the former lot lines, those

1 are shown in red, with the current lot configuration  
2 outlined in blue. Here Condition 1C requires screening and  
3 buffering of former Lot 11, as well as the residential  
4 properties across Magnolia Street to the southeast of the  
5 site. Slide 14, please.

6           So the revised plans address Condition 1C by  
7 relocating their trash enclosure further from these lots,  
8 adding that 6 foot privacy fence and plantings that we  
9 previously discussed. This landscape treatment is  
10 essentially a continuation of that incompatible use buffer  
11 that's provided along the majority of the site's southern  
12 boundary. As previously noted, that buffer exceeds the  
13 standards for Type B incompatible use buffer in this  
14 location.

15           Landscaping and some of the trash enclosure  
16 screening is provided on former Lots 8 and 9 as well. Staff  
17 does believe this enhancement to the Landscape Plan  
18 adequately addresses Condition 1C of 3-1996.

19           Regarding the second Condition 1D pertaining to  
20 the preservation of a large tree on former Lot 10, if  
21 feasible. This tree is the 27 inch caliber oak labeled at  
22 the southern edge of former Lot 10. It's shown as to be  
23 removed and those labels are on the lower right corner of  
24 the slide image here.

25           The applicant did provide rationale that

1 preservation of the tree is not feasible, including noting  
2 significant impacts to the root zone that exists from  
3 pavement that's already on the site, over the root zone.  
4 And likely impacts from the installation of the storm water  
5 facility. Staff does agree that these conditions make the  
6 preservation of the tree not feasible.

7           Additionally, as detailed on page 6, excuse of, of  
8 staff's memo, new plantings are proposed in this location  
9 and other vegetation in the same general area of the site  
10 will be preserved. Slide 15, please.

11           So slide 15 talks to Item 5 of the Order of  
12 Remand. This point directs an adjustment to be made in the  
13 area of the site classified as commercial shopping center  
14 and R-55 on Lot 23, that's our subject site. Essentially,  
15 here the approved DSP shows the entire area associated with  
16 the former Magnolia Street right-of-way and the southern  
17 edge of the site of being entirely in the C-S-C Zone. The  
18 revised plans do correct this and show the far eastern  
19 portion of that area being in the R-55 Zone. You can see  
20 those figures are corrected in general note 2 here, and the  
21 line work, the appropriate line work has been added to the  
22 plan to reflect that as well. Slide 16, please.

23           So just as I conclude the presentation, I did want  
24 to include just a quick image of the restaurant building  
25 that is proposed here. And as I do move to conclude the

1 presentation, I want to note that the staff memo as  
2 published includes finding language and a condition relevant  
3 to the applicant requesting alternative compliance from  
4 Section 4.7 of the Landscape Manual. That was for the  
5 buffer to be provided with Lot 12 on the eastern side of the  
6 site.

7           As discussed in the presentation here today, the  
8 applicant has essentially already addressed this condition,  
9 so staff is recommending the Board approve the alternative  
10 compliance request. So with that, staff is pleased to  
11 recommend the Board adopt the findings of staff's  
12 memorandums, memorandum, excuse me, deleting recommended  
13 Condition 1F and adjusting the associated language of  
14 Finding 2 accordingly and issue an amended resolution for  
15 Detailed Site Plan, DSP-20006. With that, I'm available to  
16 answer any questions. Thank you.

17           MADAM CHAIR: Okay. Thank you, Mr. Bossi. So  
18 delete Condition 1F is your recommendation and adjust the  
19 corresponding finding which was what again, let me --

20           MR. BOSSI: That's in Finding 2, ma'am.

21           MADAM CHAIR: Two, okay, thank you. Okay. So  
22 let's see if the Board has any questions for you. And then  
23 I think I'm going to turn; I'm not going to turn to counsel  
24 right now. I think I'm going to turn to counsel after, in a  
25 little bit. Okay. So these are all addressed, the remand

1 was for a specific purpose for just those items. And let's  
2 see if the Board has any questions for you before we turn to  
3 Mr. Tedesco. Madam Vice Chair?

4 MADAM VICE CHAIR: No questions, thank you.

5 MADAM CHAIR: Commissioner Washington?

6 COMMISSIONER WASHINGTON: No questions. Thank  
7 you, Mr. Bossi.

8 MADAM CHAIR: Okay. And Commissioner Doerner?

9 COMMISSIONER DOERNER: No questions.

10 MADAM CHAIR: Commissioner Geraldo?

11 COMMISSIONER GERALDO: I have no questions, Madam  
12 Chair, thank you.

13 MADAM CHAIR: Thank you. Mr. Tedesco, you are on  
14 and Mr. Tedesco, thank you for your statement of  
15 justification and with those other exhibits, because those  
16 other illustrations of the locations with the split zones  
17 and the storm water management facilities. So Mr. Tedesco,  
18 you're on.

19 MR. TEDESCO: Thank you, Madam Chair and members  
20 of the Planning Board. Good afternoon, excuse me, for the  
21 record Matthew Tedesco with the Law Firm of McNamee Hosea  
22 here on behalf of the applicant in this case, Mari-Chek,  
23 Incorporated. I want to thank Mr. Bossi, I don't want to be  
24 redundant, I know it's been a long day. I will just from  
25 the outset let me say this, I will align myself and all my



1 comments with respect to today's hearing with Mr. Bossi's  
2 presentation this afternoon. Mr. Bossi, as always, did a  
3 fantastic job, very thorough, very thorough but also  
4 informative with respect to the reasons why we're here  
5 today. We are here on a remand from the District Council,  
6 from your approval back in the fall, October 29, 2020.

7           Just to remind you, the Zoning Ordinance under  
8 Section 27-290 subpart D, requires that if the District  
9 Council is to remand a case back to you, they may only do it  
10 one time and the remand must be in accordance with the  
11 specific grounds stated in the order. So we are here solely  
12 for the five items that were provided in the District  
13 Council's order, nothing more and nothing less.

14           Again, I would align myself with Mr. Bossi with  
15 respect to his presentation as well as the Staff Report. We  
16 agree with staff's recommendations, we agree with staff's  
17 request to delete proposed Condition 1F. We would also  
18 agree with staff's recommendation to include the alternative  
19 compliance that the alternative compliance committee has  
20 recommended, it's in your backup, to supplement Finding  
21 Number 2 on pages 4 and 5 of the staff's memorandum.

22           We would also, and Mr. Goldsmith may hit on this,  
23 but we would also ask that if the Board is inclined to  
24 approve this application as recommended by staff, we would  
25 ask that Finding 3 also be somewhat supplemented in the

1 resolution with specific findings as it relates to the  
2 location of the storm water management facility. Staff in  
3 its memorandum did indicate its agreement to our analysis by  
4 reference, and again I would defer to Mr. Goldsmith on that.  
5 But the applicant would at least request that some  
6 articulation of that finding, if the Board is so inclined,  
7 be included in Finding Number 3.

8           I'm just going to hit on a couple of high points,  
9 I don't want to belabor this, I don't want to again be  
10 redundant. We did provide a very thorough memorandum in  
11 response to the remand order that we will incorporate and  
12 adopt as further testimony here today. We also submitted a  
13 number of exhibits as well, you know, Revised Site Plans and  
14 exhibits associated with that remand and the alternative  
15 compliance that's been recommended for approval.

16           To Mr. Bossi's point really we're here on kind of  
17 two general issues, landscaping and zoning. And from the  
18 landscaping perspective, the Revised Detailed Site Plan and  
19 Landscape Plan satisfactory conforms to the Landscape Manual  
20 in all aspects. Primarily with respect to the southern, and  
21 if we could go to one of the slides of the Site Plan, not  
22 the architectural. Adam, you may know which slide number it  
23 is better, but that one's fine, if you go back. No, the  
24 previous one. There you go.

25           So you can see from this slide that the applicant

1 even though necessary and not required to do so, has  
2 significantly increased the planting materials along the  
3 southern border. We've also included a 6 foot sight tight  
4 fence that runs what used to be the center line of Magnolia  
5 Street and there will be a 6 foot sight tight fence with  
6 additional landscape on either side of that to further  
7 buffer the Nuzback Restaurant to the south. That fence runs  
8 to the stub of Magnolia to the east, then north and then  
9 east again along the Magnolia right-of-way. We've also  
10 included a 6 foot fence between on the right side of the  
11 dumpster enclosure to further screen what used to be former  
12 Lot 11, pursuant to conditions of the rezoning to address  
13 that concern.

14           I think Mr. Bossi hit on it, but from the southern  
15 boundary perspective, the 4.7, the required plant units in  
16 that buffer are 79 plant units, we have 207 plant units to  
17 and include 22 percent of the buffer with existing  
18 vegetation and wood, and trees.

19           With respect to the eastern buffer, that is the  
20 subject of the alternative compliance. Mr. Bossi hit on  
21 that very well, and I want to thank the alternative  
22 compliance committee, Andrew Bishop was one of the ones that  
23 worked on that application along with the entire committee.  
24 The required plant units for that 4.7 eastern Type D buffer  
25 is 68, we have 86. We have a varying width landscape of 17

1 to 27 feet. The requirement is 40 and that's really the  
2 alternative compliance that's being sought. But the  
3 building setback is over 251 feet and there's 42 percent  
4 existing onsite woodland vegetation in that buffer yard.

5           With respect to the storm water facility, a  
6 portion of which is on former Lot 10 and former Lot 11,  
7 which is now all Lot 23. We provided, I think 10 pages of  
8 our legal analysis as well as prior examples of that being  
9 utilized in Prince George's County for very significant  
10 projects, and we would submit on that. I do want to  
11 highlight that from the perspective of Subtitle 32, Subtitle  
12 32 and not Subtitle 27, is the regulatory framework for  
13 which storm water facilities exist in Prince George's  
14 County. And Subtitle 32 does not restrict or limit the  
15 placement of storm water facilities based upon zoning. It  
16 requires storm water facilities based upon limits of  
17 disturbance and we've cited to Section 32-175(k), 32-182(f).  
18 Both of those sections we think articulate quite well that  
19 the District Council, in our opinion, is just legally wrong  
20 with its analysis with respect to the location of storm  
21 water facility and identifying it as a structure. As we all  
22 know that definition of a structure is a very loose  
23 definition and we see no prohibition in the Zoning Ordinance  
24 or in Subtitle 32 with respect to the location of the storm  
25 water facility, a portion of which on the R-55 Zone.

1 I do want to highlight that this property not only  
2 has concepts, site development concept approval it also has  
3 technical storm water final approval, which has been  
4 reviewed and approved by DPIE, who has raised no issues or  
5 objections to the location or the design of that storm water  
6 facility.

7 Your indulgence, Madam Chair.

8 I also want to point out you know just in response  
9 to the District Council, some of the District Council's  
10 points on that issue. It basically relies solely upon the  
11 definition of structure. However, if you look at Section  
12 27-281(c) as in Charlie, it talks about the specific  
13 purposes of a Detailed Site Plan. And (c)(1)(A) says that  
14 the specific purposes of a Detailed Site Plan are (A) to  
15 show the specific location and delineation of buildings and  
16 structures, parking facilities, streets, green areas and  
17 other physical features.

18 Interestingly in subpart (c)(1)(B) it also the  
19 specific purpose also requires the Detailed Site Plan to  
20 show specific grading, plantings, sediment control, woodland  
21 conservation areas, regulated environmental features, and  
22 storm water management features. So within the Zoning  
23 Ordinance with respect to the Detailed Site Plan and its  
24 purposes, it separates or distinguishes structures from  
25 actual storm water management features. So we feel that the

1 utilization of just clumping a storm water management  
2 facility as a structure in relying upon that for the legal  
3 basis that it can't be on a differently zoned property is  
4 unfounded.

5           Furthermore, and finally with respect to that  
6 particular issue, as I mentioned in our memorandum it's  
7 replete and we didn't even really do an exhaustive search,  
8 we just basically did a search of what was readily  
9 available. And you can see very significant developments  
10 that have been approved over many, many years in Prince  
11 George's County, where development has occurred in  
12 differently zoned properties with the storm water facilities  
13 adjacent thereto in different zoned properties. So the  
14 clear application, administration, the regulations that not  
15 only Park and Planning administers, but the county and DPIE  
16 as an agency, or DPW&T prior to DPIE, evidences no  
17 legitimate legal basis for that to be problematic in any  
18 way.

19           Finally, I'm wrapping up, Madam Chair, dealing  
20 with remand item number 4, dealing with the conditions of  
21 the prior rezoning. Again, we would submit on what's been  
22 presented by Mr. Bossi in his report, as well as our  
23 memorandum. But we have, as you can see, significantly  
24 increased the landscaping, sight tight fencing, in direct  
25 response as well as relocation of the dumpster in direct

1 response to that remand item from the District Council.

2           And finally with respect to Condition 1D, we do  
3 believe that with the existing urbanization of that lot with  
4 the prior Bay and Surf and the asphalt and the parking that  
5 the root zone of that tree has been damaged. Any further  
6 improvements will further damage that tree, causing it to  
7 die, which will then create an unsafe, untenable situation  
8 for not only the existing residents on Magnolia, but the  
9 future development of this property, it creates a hazard.

10           So with that in mind and given the fact of the  
11 finding that needs to be made here, we do believe that the  
12 retention of that tree would create unreasonable costs and  
13 detract substantially from the utility of the development  
14 and its intended use. Mr. Bossi did correctly highlight  
15 that notwithstanding the removal of that tree, we have  
16 included significant landscaping in that area, 11 evergreens  
17 and 21 shrubs in addition to the fence and in addition to  
18 existing mature trees that will be retained.

19           And finally with respect to remand item number 5,  
20 in direct response to 27-111, we have updated the square  
21 footages of the zoning of the property for Lot 23 as well as  
22 the right-of-way that's been acquired through a quiet title  
23 action approved by the Court of Special Appeals to include  
24 the proper zoning designations and those have been marked on  
25 the Amended Site Plan.

1           So then Madam Chair, we respectfully request the  
2 Board's approval of this once again in response to these  
3 very specified remand items. I want to thank Mr. Bossi and  
4 Ms. Kosack, Mr. Bishop and staff for its review of this  
5 case. When these cases come back on remand, we are on a  
6 very short clock and as you can see, this particular remand  
7 required revisions to the Site Plan which staff was amenable  
8 to reviewing and getting this case back to you within the  
9 time provisions of the Code and for that we are very  
10 grateful and thankful.

11           I have nothing further, Madam Chair, and happy to  
12 answer any questions.

13           MADAM CHAIR: Okay. All right. Thank you, Mr.  
14 Tedesco and good job. You know, the findings that you are  
15 referring to you said for two and three. I guess I'm trying  
16 to find them.

17           MR. TEDESCO: If I may, Madam Chair, on page 4 and  
18 5 of the staff's memorandum or Staff Report.

19           MADAM CHAIR: Okay.

20           MR. TEDESCO: I think like Mr. Bossi was  
21 suggesting, and I certainly don't want to speak for him, but  
22 I think in the last paragraph of Finding 2, which is really  
23 remand item number 2, it sets the stage for proposed  
24 Condition 1F. But that is now somewhat moot because the  
25 alternative compliance committee has recommended approval of



1 the AC and what we're asking this Board to do is approve  
2 that alternative compliance --

3 MADAM CHAIR: Right.

4 MR. TEDESCO: -- which then would be reflected in  
5 this finding.

6 MADAM CHAIR: Okay. I guess, you know, I was also  
7 looking for the resolution from before, our previous  
8 approval. I guess that's what I was looking for. Okay.

9 MR. TEDESCO: I'm sorry?

10 MADAM CHAIR: So we're going to utilize the  
11 alternative compliance, we got that because you had that  
12 recommendation of approval. Okay.

13 COMMISSIONER WASHINGTON: I'm sorry, madam, I also  
14 was trying to, I was going to ask you to restate the  
15 rationale for augmenting Finding 3, Mr. Tedesco. I just  
16 want to make sure I captured that correctly.

17 MR. TEDESCO: Yes, and thank you Commissioner  
18 Washington and I guess I'm not suggesting it needs to be  
19 augmented in any way. What staff in the opening paragraph,  
20 staff talks about our response to the District Council  
21 remand and basically concludes that staff finds the  
22 additional landscape, excuse me, staff also concurs with the  
23 applicant's analysis and finds the location of this proposed  
24 storm water management facility to be acceptable. I think  
25 because the District Council in its remand order for item

1 number 3, had talked about the inability of locating that  
2 storm water facility, the applicant would request, I guess  
3 the legal determination --

4 MADAM CHAIR: Right.

5 MR. TEDESCO: -- or finding from the Board --

6 MADAM CHAIR: Yes.

7 MR. TEDESCO: -- with respect to that issue,  
8 certainly we would request that it would be consistent with  
9 staff's recommendation in its adoption of our analysis. But  
10 I would defer to Mr. Goldsmith on that as well.

11 MADAM CHAIR: So essentially you're asking that it  
12 say fully legal, legal and fully acceptable? Both. Not  
13 just acceptable because that doesn't seem to address the  
14 legal issue.

15 MR. TEDESCO: Correct.

16 MADAM CHAIR: Okay. All right. So --

17 COMMISSIONER WASHINGTON: Yes, that addressed my  
18 question. Thank you both.

19 MADAM CHAIR: Okay. Okay. So let's see if the  
20 rest of the Board has any questions of you and let's start  
21 with Madam Vice Chair.

22 MADAM VICE CHAIR: No questions, Madam Chair,  
23 thank you.

24 MADAM CHAIR: Okay. And then Commissioner  
25 Washington, any other questions?

1 COMMISSIONER WASHINGTON: No additional questions.

2 MADAM CHAIR: Okay. Commissioner Doerner?

3 COMMISSIONER DOERNER: No, I had the same question  
4 about number 3, so that was good.

5 MADAM CHAIR: Okay. Commissioner Geraldo?

6 COMMISSIONER GERALDO: I just had a question as to  
7 the opposition that was filed with some question about  
8 whether or not who owns that right-of-way.

9 MADAM CHAIR: We're going to get to that too,  
10 because I'm going to have to turn to --

11 COMMISSIONER GERALDO: Okay.

12 MADAM CHAIR: -- Mr. Goldsmith and actually --

13 COMMISSIONER GERALDO: Okay.

14 MADAM CHAIR: -- and I'm going to monitor to see  
15 who else is on first too.

16 COMMISSIONER GERALDO: Okay. Thank you.

17 MADAM CHAIR: Thank you. So if there are no other  
18 questions of Mr. Tedesco, who will have the opportunity to  
19 come back and wrap up. So Mr. Noeth is the engineer, I  
20 presume he's here only for questions, Mr. Tedesco?

21 MR. TEDESCO: That's correct, Madam Chair.

22 MADAM CHAIR: Okay. And Mr. McCarthy may or may  
23 not get back on, he had a family emergency. Okay. And then  
24 I'm going to come back to Ms. Chang, I guess and see if  
25 she's back on. But right now I guess I'll go to Michael

1 Ostroff right not.

2 MR. OSTROFF: Good afternoon, my name is Michael  
3 Ostroff with the firm of Montero Law Group, in Silver  
4 Spring, Maryland, and we represent the Catherine A. Nuzback  
5 (phonetic sp.) Trust, which is the property owner on the  
6 southern border of this plot of land.

7 MADAM CHAIR: Okay. So hold on a second, Mr.  
8 Ostroff. Mr. Flannigan, can you sort of direct us and Mr.  
9 Ostroff, if you can see the screen, if you can sort of  
10 direct us to where her property is. Is that the best --

11 MR. OSTROFF: Sure.

12 MADAM CHAIR: -- is that the best --

13 MR. OSTROFF: It's actually --

14 MADAM CHAIR: Is that the best exhibit for this,  
15 Mr. Bossi? The one, no probably not.

16 MR. BOSSI: Yes, Madam Chairwoman.

17 MADAM CHAIR: It is? Okay.

18 MR. BOSSI: In fact, the property is directly  
19 south of this site, so it would be on the lower portion of  
20 the image.

21 MADAM CHAIR: Okay. All right.

22 MADAM VICE CHAIR: What's --

23 MADAM CHAIR: Okay. I'm sorry, Mr. Ostroff. You  
24 can continue then.

25 MR. OSTROFF: Sure. At the bottom you'll actually

1 see it says ex-Nuzback Restaurant. There's a structure  
2 outline there.

3 MADAM CHAIR: Oh got it. Okay. Thank you.

4 MADAM VICE CHAIR: Okay.

5 MR. OSTROFF: My client is the southern property  
6 owner. We've submitted a written statement, a brief written  
7 statement --

8 MADAM CHAIR: Which we have.

9 MR. OSTROFF: -- I'm not going to belabor the  
10 point but I did want to address two issues. First is the  
11 statement regarding the quiet title and the incorporation of  
12 the Magnolia Street right-of-way, it was referred to by Mr.  
13 Bossi and previously as a paper right-of-way. I am not  
14 disputing and our client is not disputing that there was a  
15 quiet title action and an order stating that as and between  
16 the two property owners, the Nuzback Trust does not have a  
17 property interest in it. However, our client has maintained  
18 and continues to maintain that his belief and his position  
19 that this is county owned property. And we did cite to two  
20 current cases, one in the Circuit Court of Prince George's  
21 County, one in the United States District Council for the  
22 District of Maryland, looking for additional information.  
23 One case was a Maryland Public Information Access request  
24 wherein there is a memorandum and a determination drafted by  
25 the Maryland National Capital Park and Planning Commission,

1 a former Assistant General Counsel, stating that the county  
2 didn't have an interest, but we've never seen that analysis,  
3 we've never received that. And so our purpose really is to  
4 paper that issue, to show that our continued concern and our  
5 continued position is that it is county property, that has  
6 now been incorporated into this lot and this application.  
7 I'm happy to address that in more detail.

8           The owners of the property, the Narzario (phonetic  
9 sp.) Family LLC are not parties to that litigation. That  
10 litigation as outlined in my letter is with the Commission  
11 itself as well as the county.

12           The second issue is more of a practical issue with  
13 the change and the replacement of the split rail fence, now  
14 into a 6 foot privacy fence, which will divide the  
15 commercial lots and prevent easy access. I note again for  
16 the record that this was a former parking lot it was used  
17 and usable by various parties and it permitted access from  
18 Magnolia Street, the paved portion of Magnolia Street and  
19 the community there to our client's restaurant. In the  
20 process of original approval and now remand, it appears  
21 that, and they've testified that the intention now is to  
22 replace the split rail fence with a 6 foot privacy fence,  
23 which would obviously impact accessibility to the community,  
24 to the commercial properties in the surrounding area, the  
25 walk-thru and I'm not sure what the justification for

1 changing to that was.

2           So those are the primary reasons for our  
3 opposition, again it's stated the cases are stated in the  
4 written opposition, that is information for the Board to  
5 consider. To the extent that there's any issue with this,  
6 you know, I mean this was subject in part to the remand  
7 because it has to deal with the incorporation of this street  
8 into the planning and the landscape aspect of this property.

9           So I will sit back, I will rest on that issue. I  
10 did just want to bring it to, and my client wanted to bring  
11 it to the Commission, the Board's attention.

12           MADAM CHAIR: Okay. Thank you, Mr. Ostroff. It  
13 seems to me I have a little familiarity with the memo from  
14 the then counsel. But anyway, I think, okay, so let me turn  
15 to Mr. Goldsmith at this time to address the issue of the  
16 street, of the right-of-way. And anything else, Mr.  
17 Goldsmith. Okay.

18           MR. GOLDSMITH: Good afternoon, Madam Chair, Peter  
19 Goldsmith, Senior Counsel. Okay. With respect to the  
20 street, having read the opinion from the Court of Special  
21 Appeals it looks like they, Nuzback, raised this argument  
22 that Magnolia was a public road before the Circuit Court.  
23 The Court ruled that Nuzback failed to produce any evidence  
24 to dispute the claim that the owner of the Checkers  
25 property, to dispute that the owner of the Checkers property

1 had obtained ownership of Magnolia Street by adverse  
2 possession.

3           In other words, and also I've seen no evidence  
4 from the county, that the county has accepted the dedication  
5 or wants to. They don't have to. So under the law  
6 typically, although I haven't seen the memo, I think that  
7 was just referred to, typically the adjoining property owner  
8 would own the road up to the midpoint of the road. But in  
9 this case, there's a court order from the Circuit Court and  
10 the Court of Special Appeals affirming that decision, where  
11 the Circuit Court ruled that the owners of the Checkers  
12 property owns the half of Magnolia Street on the Nuzback  
13 side. And so I've seen, and I've seen no stay in those two  
14 pending cases, issued by the Courts to stay processing of  
15 this development application.

16           MADAM CHAIR: Okay. Thank you, Mr. Goldsmith.

17           COMMISSIONER WASHINGTON: Madam Chair --

18           MR. GOLDSMITH: Madam Chair, did you want me to  
19 address the storm water issue as well?

20           MADAM CHAIR: Hold on a second.

21           COMMISSIONER WASHINGTON: Yes, Finding 3.

22           MADAM CHAIR: Yes, thank you.

23           COMMISSIONER WASHINGTON: Thank you.

24           MR. GOLDSMITH: Okay. In the remand order on page  
25 5, under Section C in the second sentence, the District



1 Council's order reads Checkers Site Plan shows that not all  
2 structures for the use will be built or constructed in the  
3 C-S-C Zone, meaning referring to the storm water management  
4 area in the R-55, as required by the Ordinance. And  
5 citation to Section 27-461(b) footnote 24. And I do not  
6 believe, and so I think what the, to the extent that the  
7 District Council is saying that the storm water management  
8 facility the submerged gravel wetland, to the extent that  
9 the District Council is saying that that can't be  
10 constructed in the R-55 Zone, I do not believe that the law  
11 is that definitive, and I think there are important elements  
12 that are absent from the District Council's analysis that  
13 lead to a different conclusion. And so the footnote in the  
14 citation, footnote 24, the footnote to the commercial use  
15 table relating to eating and drinking establishments in the  
16 C-S-C Zone and as it relates to this case all it says is it  
17 just requires an approval of a Detailed Site Plan.

18           It says nothing about requiring all structures for  
19 the use to be built in only the C-S-C Zone. And absent from  
20 the District Council's analysis as Mr. Tedesco pointed out  
21 is any mention of Subtitle 32 of the Prince George's County  
22 Code, and that's the subtitle that governs storm water  
23 management. There is also no mention of the authorizing  
24 legislation set forth in the environmental article for local  
25 government implementation of those storm water management

1 programs and there's no mention of the corresponding state  
2 regulations. So there is nothing in Subtitle 32 or in state  
3 law that requires storm water management facilities to be  
4 located in the same zone as the principal use. And as Mr.  
5 Tedesco pointed out, there's some provisions that indicate  
6 preference to locate these facilities on site, which is  
7 where the submerged gravel wetland facility is located. I  
8 mean it's in a different zone, but it's still on site. It's  
9 all on Lot 23.

10 Furthermore, the Zoning Ordinance does not treat  
11 storm water management as a use, a quote unquote use, as  
12 that term is understood in the Zoning Ordinance. If a quote  
13 unquote use is not included in a use table, then it would be  
14 prohibited and storm water management facilities are not  
15 included in a commercial use table, but they are required  
16 nonetheless.

17 MADAM CHAIR: Correct.

18 MR. GOLDSMITH: So again storm water management  
19 facilities cannot be placed anywhere the developer wishes,  
20 they're governed by Subtitle 32, not the Zoning Ordinance,  
21 and staff has concluded that what is being proposed meets  
22 the requirements of Subtitle 32. And so as the law is now,  
23 I see no clear legal impediment to locating the proposed  
24 storm water management facility on an R-55 zoned property,  
25 to serve the use on the C-S-C property.

1           MADAM CHAIR: Okay. So in terms of saying this  
2 finding, let me find the page, would you concede or do you  
3 have proposed language to amend this, the one finding, you  
4 may not utilize the terminology appropriate and legal, but  
5 there's no prohibition?

6           COMMISSIONER WASHINGTON: Can I --

7           MADAM CHAIR: I mean what's your proposed language  
8 for that condition?

9           COMMISSIONER WASHINGTON: Well, can I add to that  
10 before you comment and I was going to say and or is the  
11 language as proposed by staff consistent with what you just  
12 stated?

13           MR. GOLDSMITH: Well, I think the issue is that  
14 staff in the memo said staff concurs with the applicant's  
15 analysis and finds the location of the proposed storm water  
16 management facility acceptable. And I think what Mr.  
17 Tedesco is asking for a little bit more specific finding.

18           MADAM CHAIR: Stronger language.

19           MR. GOLDSMITH: The stronger language.

20           COMMISSIONER WASHINGTON: Got it.

21           MR. GOLDSMITH: And so I think that the legal  
22 conclusion is that there's no clear legal impediment to  
23 locating the storm water management facility on the R-55  
24 zoned property to serve the use on the C-S-C property.

25           MADAM CHAIR: So do you have any problem with

1 adding that language?

2 MR. GOLDSMITH: No.

3 MADAM CHAIR: Okay. Okay.

4 COMMISSIONER WASHINGTON: Okay. Thank you.

5 MADAM CHAIR: Okay. So let me see, where was I in  
6 terms of questions. I said Commissioner Washington,  
7 Commissioner Doerner?

8 COMMISSIONER DOERNER: Yes, just a point of  
9 clarification. I think just to be picky, Mr. Goldsmith,  
10 what you're saying is that the R-55 portion of this property  
11 or the R-55 zoned area of this property, right, not a  
12 separate R-55 property, because that's kind of one of the  
13 distinctions in this.

14 MR. GOLDSMITH: Absolutely. That's absolutely --

15 COMMISSIONER DOERNER: I just want to make sure  
16 it's abundantly clear about that.

17 MADAM CHAIR: Correct.

18 MR. GOLDSMITH: Yes.

19 MADAM CHAIR: Okay.

20 MR. GOLDSMITH: The R-55 zoned portion of this  
21 property --

22 MADAM CHAIR: Of this site.

23 MR. GOLDSMITH: -- because it's all --

24 MADAM CHAIR: Of this site.

25 COMMISSIONER DOERNER: (Indiscernible) property in

1     itself.

2             MADAM CHAIR:   Yes.

3             MR. GOLDSMITH:   Correct.

4             COMMISSIONER DOERNER:   Okay.   Thank you.

5             MADAM CHAIR:   The R-55 zoned portion of the site.

6     Okay.   All right.   So is that it for you Commissioner

7     Doerner?

8             COMMISSIONER DOERNER:   Yes, just nitpicking.

9             MADAM CHAIR:   Okay.   No, that was good.   That was  
10    good.   Commissioner Geraldo?

11            COMMISSIONER GERALDO:   No questions, Madam Chair.

12            MADAM CHAIR:   Okay.   All right.   So now did Ms.  
13    Chang, is she on?

14            MS. CHANG:    (No audible response.)

15            MADAM CHAIR:   Ms. Chang?

16            MS. CHANG:    Yes, sir, oh I'm sorry, yes, ma'am.

17            MADAM CHAIR:   Yes, so anyway, Ms. Chang, I don't

18    know how long you've been on and if you heard the

19    conversation regarding the right-of-way and who owns the

20    right-of-way.   Is it the county?   Or do you have --

21            MS. CHANG:    Yes, I just came out of a hearing so I

22    didn't hear any of that, but I'm prepared to make a brief

23    statement if that's okay.   Because I read the letter that

24    was submitted by Mr. Montero (phonetic sp.) for the Nuzback

25    Trust.

1           MADAM CHAIR: Okay. Well, if you can help us, if  
2 you have some light to shed that would be appreciated.

3           MS. CHANG: That's fine, Your Honor, I'm sorry,  
4 Madam Chair.

5           MADAM CHAIR: Okay. You definitely just came out  
6 of a hearing, but okay. Okay.

7           MS. CHANG: Yes, and I'm sitting in my car, I  
8 apologize and I'm burning up.

9           MADAM CHAIR: Well I hope you're on the side of  
10 the road. Okay. Okay.

11           MS. CHANG: Okay. Specifically, I wanted to  
12 address and maybe this is the pertinent part of their  
13 statement that there has been no final order as to whether  
14 Prince George's County is the legal owner of the right-of-  
15 way, the subject right-of-way that's adjacent to the  
16 Narzario property as well as the Nuzback Trust.

17           After the Narzario family quiet title action, the  
18 Nuzback and that was never disclosed in the letter, but  
19 maybe the Board knows this, the Nuzback sued the Narzario  
20 family and the county as well as the state in case number  
21 CAE18-11322 in the Circuit Court of Prince George's County  
22 for the court to declare either the state or the county  
23 owned the right-of-way. Prince George's County immediately  
24 pled it had no property interest in the right-of-way and was  
25 granted summary judgment on July 11, 2019. And of course

1 the Narzario family was dismissed with prejudice, as res  
2 judicata since that was already determined from that prior  
3 quiet title action.

4           So having exhaust their legal recourse through the  
5 state courts and even the Court of Special Appeals, the  
6 Nuzback Trust filed an eleventh hour suit against the county  
7 in federal court, I assume just so that it's based on the  
8 same issue, claiming that Prince George's County really is  
9 the rightful owner of the right-of-way. And having read  
10 that pleading which quite honestly doesn't make any sense  
11 whatsoever, basically most of the allegations, if anything  
12 contains, you know, its various allegations of conspiracy  
13 and the suit has no merit whatsoever. So I think that that  
14 case where the Nuzback's had filed suit against the county  
15 as well as the state, I think kind of ends this, this  
16 inquiry that Prince George's County never took, you know,  
17 never took possession of the right-of-way, never had any  
18 interest in it and the court's decision to grant summary  
19 judgment, you know, based upon Prince George's County's  
20 representation that it had no property interest in July of  
21 2019, I think resolved that issue.

22           MADAM CHAIR: Okay. Okay. Thank you, Ms. Chang.  
23 So we may come back --

24           MS. CHANG: Thank you.

25           MADAM CHAIR: -- to you, hopefully not because I

1 don't want you driving. Okay. So let's see --

2 MS. CHANG: I'm not driving, I'm just sitting  
3 right here, it's okay.

4 MADAM CHAIR: Okay. Okay. Thank you. Okay. So  
5 now Mr. Tedesco, Mr. Ostroff, you do get the opportunity to  
6 respond and then finally we will close out with Mr. Tedesco.

7 MR. TEDESCO: I'll defer at this moment, Madam  
8 Chair, and be happy to respond once we're ready to conclude.

9 MADAM CHAIR: Okay. Mr. Ostroff, do you have  
10 anything to add?

11 MR. OSTROFF: My only addition would be that the  
12 characterizations, obviously, are going to be different from  
13 the Narzario's point of view and ours. The second lawsuit  
14 that was referenced was a declaratory judgment that was  
15 dismissed based on the county's representation that it  
16 didn't own the land. There has been no formal, and again we  
17 refer to a memorandum from the Commission discussing this.  
18 But the problem is from Nuzback Trust point of view is that  
19 we have never been privy to that memorandum. We don't know  
20 how the county came to its determination and so I want to be  
21 clear on that. It is our position that the county is the  
22 owner, but we are not privy to the county's insider  
23 knowledge despite the fact that we have done a public  
24 information request. So I just want to say that.

25 And number two, you know, I just want to reiterate



1 my question as to why the railing, the fencing became a  
2 privacy fencing as opposed to the split rail, which I  
3 believe that would be Mr. Tedesco more than Ms. Chang. But  
4 it does seem to be a change in the accessibility to the  
5 property.

6 MADAM CHAIR: Okay. So this is it for you, Mr.  
7 Ostroff and then we're going to go to Mr. Tedesco and Mr.  
8 Tedesco gets to respond and close out and then the Board can  
9 ask any questions of anyone. So Mr. Tedesco?

10 MR. TEDESCO: Thank you, Madam Chair. I would  
11 align myself with Ms. Chang's response as well Mr.  
12 Goldsmith's responses with respect to the right-of-way. The  
13 only thing I would add additionally, which I think we said  
14 at the outset is that I know the Board has been quite  
15 accommodating to Mr. Ostroff and his client with respect to  
16 this. They did not attend the October 29th hearing, so  
17 while I commend and compliment the Board for its  
18 accommodations, this issue of the right-of-way is not part  
19 of this remand.

20 MADAM CHAIR: Okay.

21 MR. TEDESCO: And I just, you know, for the sake  
22 of the record, because I don't know what the ultimate  
23 outcome of this case is going to be, I just want to make  
24 sure the record is preserved from our perspective that we  
25 have deviated quite substantially on this issue from the

1 actual remand that came down from the District Council and I  
2 think we have somewhat gone awry of 27-290(d). But  
3 nevertheless whatever information that you all need in  
4 response to a letter that was submitted into this record  
5 which again arguably I think is beyond the scope of the  
6 remand, but that be what it may. You know, we would, I  
7 guess for the record, object to this line of questioning and  
8 or part of the hearing. But nevertheless, we do understand  
9 Mr. Ostroff's position.

10           With respect to the specific question about the  
11 fencing along with stub of Magnolia, the east side of the  
12 property running south and then running along what used to  
13 be the center line of Magnolia, that was directly in  
14 response to the District Council's remand and during that  
15 oral argument hearing, actually Councilmember Dernoga had as  
16 well as the People's Zoning Council, had suggested in  
17 response to the prior zoning condition Condition 1D of 3-  
18 1996, suggestive of the sight tight fencing to better adhere  
19 to Condition 1, excuse me, I said 1D, I meant to say 1C,  
20 Condition 1C of Zoning Ordinance Number 3-1996, which, among  
21 other things, required the then lots, excuse me, existing  
22 Lots 14 through 17 in Block 4, which are on the south side  
23 of Magnolia, on the bottom right hand corner of your screen  
24 there. You can see it's the lots labeled Jordan, Labizza  
25 (phonetic sp.), yes, that lot. Those are Lots 14 through 17

1 as you run east.

2           And so in response to that, the applicant agreed  
3 to propose a sight tight fence along that area In response  
4 to that and I would say I don't know the full history of  
5 that rezoning case from 1996, but it certainly was important  
6 to the District Council at that point in time to provide  
7 screening and buffering from the commercial uses along Route  
8 1 to the residential R-55 uses and homes to the east.

9           So with respect to pedestrian connectivity, there  
10 are sidewalks existing throughout this area as well as along  
11 Route 1. There is the ability for pedestrian connectivity  
12 along the front without having to access the back of these  
13 properties which honestly, we wouldn't really want people  
14 walking through the storm water facilities and the trash  
15 areas anyway, so.

16           I would also note that the Nuzback Restaurant has  
17 outdoor seating which the shared parking that was referenced  
18 hasn't been utilized in quite some time. And certainly  
19 would be, I think, speaking for the owners something that  
20 they would agree to for any potential trespassing that may  
21 occur. So again the sight tight fence was strictly proposed  
22 to further enhance the landscaping, further enhance the  
23 buffering and in further response to the remand items, and  
24 primarily Condition 1C of the prior rezoning.

25           And with that, Madam Chair, I think we have

1 analyzed this quite thoroughly and we would respectfully  
2 request the Board's approval.

3 MADAM CHAIR: Thank you, Mr. Tedesco. If the  
4 Board has no questions of anyone there is an opportunity to  
5 raise your hand if you do have a question, but if not, we'll  
6 entertain a motion at this time.

7 COMMISSIONER WASHINGTON: Madam Chair, I move that  
8 we adopt the additional findings of staff's memorandum dated  
9 May 6, 2021, and in so doing would ask that Finding Number 2  
10 be augmented based on the rationale as set forth in Staff  
11 Exhibit Number 1. I would also that staff would update and  
12 augment Finding Number 3, in consult with counsel consistent  
13 with Mr. Goldsmith's determination that the location of the  
14 proposed storm water management facility is acceptable and  
15 approve or issue an amendment to PGCPB Resolution Number  
16 2020-152, also known as or codifying DSP-20006, in addition  
17 to approving AC-21013.

18 MADAM CHAIR: We have a motion, is there a second?  
19 I'll get to discussion, is there a second?

20 COMMISSIONER DOERNER: Doerner will second.

21 MADAM CHAIR: Okay. Under discussion, and I think  
22 Commissioner Washington said for the resolution in consult  
23 with the language as spoken by, as stated by our counsel,  
24 Mr. Goldsmith, in terms of that it is, there is no  
25 prohibition of the storm water management being located in

1 the R-55 portion of this site. Whatever your specific  
2 language was, yes, but that's what Commissioner Washington  
3 was referring to. I just want to make it really clear in  
4 the discussion. Okay. And Commissioner Doerner, do you  
5 have something too to add?

6 COMMISSIONER DOERNER: No, that's fine.

7 MADAM CHAIR: Okay. So we have a motion and we  
8 have a second. Madam Vice Chair?

9 MADAM VICE CHAIR: I vote aye.

10 MADAM CHAIR: Commissioner Washington?

11 COMMISSIONER WASHINGTON: Vote aye.

12 MADAM CHAIR: Commissioner Doerner?

13 COMMISSIONER DOERNER: Vote aye.

14 MADAM CHAIR: And Commissioner Geraldo?

15 COMMISSIONER GERALDO: I vote aye, Madam Chair.

16 MADAM CHAIR: Okay. The ayes have it 5-0. Thank  
17 you very much, everyone. Mr. Hunt, is there any additional  
18 business to come before the Planning Board today?

19 MR. HUNT: There are no additional business items  
20 before the Board today.

21 MADAM CHAIR: The Planning Board is adjourned.  
22 Stay safe everyone, enjoy these beautiful days.

23 COMMISSIONER GERALDO: Thank you.

24 UNIDENTIFIED PERSON: Thank you.

25 **(Whereupon, the proceedings were concluded.)**

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Planning Board in the matter of:

CHECKERS LAUREL

Detailed Site Plan, DSP-20006



By: \_\_\_\_\_

Date: August 2, 2021

Diane Wilson, Transcriber