

RESOLUTION NO. 2022-02 * IN THE

BY THE PRINCE GEORGE’S * COUNTY COUNCIL FOR
COUNTY PLANNING BOARD *
14741 Governor Oden Bowie Drive * PRINCE GEORGE’S COUNTY
Upper Marlboro, Maryland 20772 *
* SITTING AS THE

IN THE CASE OF *
COMPREHENSIVE DESIGN PLAN * DISTRICT COUNCIL
CDP-9306-05 *
PRESERVE AT PISCATAWAY * CASE NO. _____
(BAILEY’S VILLAGE) *



* * * * *

NOTICE OF APPEAL AND REQUEST FOR ORAL ARGUMENT

Introduction

NNVR MS Cavalier Preserve, LLC (“Applicant”) applied for an amendment to the previously approved comprehensive design plan (“CDP”) to remove commercial, retail, office, and multifamily uses and replace those uses with 26 single-family attached dwelling uses on an undeveloped, 1.65-acre parcel located in the south-west quadrant of the intersection of Floral Park Road and St. Mary’s View Road, in Planning Area 84 and Council District 9 (“Subject Property” or “Lot 10”). The Subject Property is within the Local Activity Center (L-A-C) Zone of a larger development known as the Preserve at Piscataway.

Technical Staff recommended that the Prince George’s County Planning Board (“Planning Board”) disapprove CDP-9306-05.

The Planning Board's Resolution No. 2022-02 ("Resolution") concluded that the Applicant satisfied section 27-521(A) and the proposed amendment (CDP-9306-05) conformed to A-9870 and the conditions placed on CDP-9306. The Planning Board provided written notice of the Resolution in a letter dated January 25, 2022. (Notice letter and Resolution are attached as Exhibit A).

Geoffrey Tibbetts ("Appellant"), by his attorneys, G. Macy Nelson and Alex Votaw, appeal the Planning Board's approval of CDP-9306-05 in accordance with ZO section 27-523(a). Geoffrey Tibbetts resides at 2445 Bailey's Pond Road, Accokeek, MD 20607. Mr. Tibbetts is a person of record and appeared virtually before the Planning Board during the public hearing on January 6, 2022. He is aggrieved by the Planning Board's decision to approve CDP-9306-05.

Neither ZO section 27-523 nor the District Council Rules of Procedure prescribes the form of the Notice of Appeal or provides guidance about the briefing of an appeal of a decision by the Planning Board to approve an amendment to a CDP. Appellant has elected to submit an appeal generally in accordance with ZO section 27-131.01 because that section addresses appeals from the Zoning Hearing Examiner to the District Council, and other attorneys have used that format for appeals of Planning Board decisions. Appellant expressly reserves the right to supplement these arguments prior to the oral argument.

EXCEPTIONS

I. The Planning Board erred when it approved CDP-9306-05 because the Applicant did not satisfy the required findings for an amendment to an approved CDP under Section 27-521(a).

ZO section 27-524(a) requires that “all amendments of approved Comprehensive Design Plans shall be made in accordance with the provisions of this Division for initial approval.” As such, to approve an amendment to a CDP, the Planning Board must determine that the Applicant has satisfied the criteria provided in ZO section 27-521(a). ZO section 27-521(a) requires, in part, that “prior to approving a Comprehensive Design Plan, the Planning Board shall find that:”

- (1) The plan is in conformance with the Basic Plan approved by application per Section 27-195; or when the property was placed in a Comprehensive Design Zone through a Sectional Map Amendment per Section 27-223, was approved after October 1, 2006, and for which a comprehensive land use planning study was conducted by Technical Staff prior to initiation, is in conformance with the design guidelines or standards intended to implement the development concept recommended by the Master Plan, Sector Plan, or Sectional Map Amendment Zoning Change;
- (2) The proposed plan would result in a development with a better environment than could be achieved under other regulations;
- (3) Approval is warranted by the way in which the Comprehensive Design Plan includes design elements, facilities, and amenities, and satisfies the needs of the residents, employees, or guests of the project;

The Planning Board erred when it approved CDP-9306-05 because the Applicant did not satisfy ZO section 27-521(A)(1)-(3).

1. ZO section 27-521(a)(1)

ZO section 27-521(a) requires any amendment to a CDP conform with the basic plan. Here, the Basic Plan is A-9870. Staff Report, p. 4. CDP-9306-05 does not conform to A-9870, and therefore cannot satisfy ZO section 27-521(a)(1). Through A-9870, 19.98 acres was rezoned to L-A-C and, within the 19.98 acres, the location of a 6.75-acre area was specifically identified for commercial uses. Staff Report, p. 7. The Subject Property is entirely within the area identified for commercial use in the Basic Plan. Thus, the Basic Plan specifically identifies the Subject Property for commercial use.

The proposed amendment requests the removal of all commercial uses at the Subject Property so that 26 attached residential units can be built. Staff Report, p. 5. The Subject Property is the only undeveloped parcel remaining of the 6.75 acres identified for commercial use. Staff Report, p. 6. The developed portions of the 6.75 acres identified for commercial use consist entirely of residential units. Staff Report, p. 7. As such, the proposed amendment would eliminate the possibility for commercial uses within the 6.75 acres originally identified for commercial uses in the Basic Plan, A-9780. *Id.* Therefore, the proposed amendment clearly does not conform to the Basic Plan.

Technical Staff concluded that the proposed amendment does not conform to the Basic Plan and Appellant adopts the findings of Technical Staff with regard to ZO section 27-521(a)(1). In part, Staff explained:

A-9870 was approved by the District Council as part of the 1993 Plan and the Sectional Map Amendment for Subregion V, Planning Areas 81A, 81B, 83, 84, 85A, and 85B (CR 60 1993). The subject CDP amendment

is not in conformance with the approved Basic Plan, as is discussed in Finding 7 above.

...

As the CDP amendment does not conform with the applicable basic plan and cannot be reasonably conditioned to conform, this required finding cannot be made, leading to a recommendation of disapproval.

Staff Report, p. 9—10.

With regards to Finding 7, Technical Staff explained:

A-9870 was approved by the District Council on September 14, 1993, rezoning the subject property to the L-A-C Zone (see CR-60-1993). The L-A-C Zone is intended for mixed-use developments that include, among other things, public, quasi-public, and commercial needs grouped together for the convenience of the populations they serve, and dwellings integrated with activity centers in a manner that retains the amenities of the residential development and provides the convenience of proximity to an activity center. L-A-C Zones are not intended for solely residential developments which are provided for within conventional residential zoning districts.

Staff Report, p. 6.

The Applicant argued without basis that the proposed amendment conformed to the Basic Plan because the Basic Plan zoned the Subject Property L-A-C and residential uses are a permitted use within the L-A-C zone. As the Planning Director, Andree Green Checkley, explained during the January 6, 2022, hearing, the entire universe of permissible uses within the L-A-C zone was not relevant to the analysis of whether CDP-9306-05 conforms to the Basic Plan because the Basic Plan created a narrower set of permissible uses on the Subject Property. The Planning Director explained:

A Basic Plan amendment is not a by-right zone. You don't have a right to it. You can't go out and build whatever uses are allowed in the zoning ordinance. You are asking for a special use, a special zone, in that area. So, what is presented, [] in terms of what uses will be on the property, is what is evaluated. It is not the world of uses that could be allowed on the property. It is what the applicant actually presents as what is going to be the use on this property that is evaluated by the staff, by the board, by the Council.

[] There is a universe of uses that could be [permitted within a zone] but in a basic plan, which is a special permission—a special use, you are stating what you are going to do through your illustrations, your commentary, your submissions. . . It's a plan. It's what the applicant comes forward and says "if you give me this special privilege, this use, this zone, this is what I am going to do." And that is what is evaluated and that is what the council votes on.

Planning Board Hearing, January 6, 2022.

The applicant, in A-9870, presented to the District Council a plan for a large development which specifically identified 6.75 acres of land, within the L-A-C zone, for commercial use. Technical Staff PowerPoint, p. 10. With this specific plan in mind, the District Council approved A-9870. As such, it is irrelevant whether residential uses are generally permitted in the L-A-C zone. The Planning Board must determine whether the Applicant's proposed amendment to eliminate commercial uses on the Subject Property conforms to the specific uses approved by the Basic Plan for the Subject Property.

Here, the only relevant evidence in the record demonstrated that the Subject Property is entirely within the area designated for commercial uses on the Basic Plan and that the Subject Property is the only remaining location in the development upon which

commercial uses can be built. Therefore, the proposed amendment to remove all commercial uses from the Subject Property cannot conform to the Basic Plan.

Further, the Planning Board failed to articulate how the Planning Board came to a contrary conclusion from that of the Technical Staff. The Planning Board did not provide an explanation for how it analyzed the requirements of the Basic Plan differently than Technical Staff nor did it provide counter arguments to those provided by Technical Staff. Instead, the Planning Board’s written decision merely manipulated the Technical Staff’s findings as shown in the table below:

Required Findings	Technical Staff	Planning Board
ZO section 27-521(a)(1)	<p>A-9870 was approved by the District Council as part of the 1993 <i>Master Plan and the Sectional Map Amendment for Subregion V, Planning Areas 81A, 81B, 83, 84, 85A, and 85B</i> (CR 60 1993). The subject CDP amendment is not in conformance with the approved Basic Plan, as is discussed in Finding 7 above.</p> <p>[Technical Staff provided additional explanation.]</p> <p>Staff Report, p. 9 (emphasis provided).</p>	<p>A-9870 was approved by the District Council as part of the 1993 <i>Master Plan and the Sectional Map Amendment of Subregion V, Planning Areas 81A, 81B, 83, 84, 85A, and 85B</i> (CR 60-1993). The Planning Board finds that the subject CDP amendment is in conformance with the approved Basic Plan, as discussed in Finding 7 above.</p> <p>[The Planning Board did not provide any further explanation.]</p> <p>PGCPB No. 2022-02, p. 6-7 (emphasis provided).</p>

<p>Finding 7.</p>	<p>A-9870 was approved by the District Council on September 14, 1993, rezoning the subject property to the L-A-C Zone (see CR-60-1993). The L-A-C Zone is intended for mixed-use developments that include, among other things, public quasi-public, and commercial needs grouped together for the convenience of the populations they serve, and dwellings integrated with activity centers in a manner that retains the amenities of the residential development and provides the convenience of proximity to an activity center. L-A-C Zones are not intended for solely residential developments which are provided for within conventional residential zoning districts.</p> <p>Staff Report, p. 6 (emphasis provided).</p>	<p>A-9870 was approved by the District Council on September 14, 1993, rezoning the subject property to the L-A-C Zone (see CR-60-1993). The L-A-C Zone is intended for developments with more than one use that include, among other things, public, quasi-public, and commercial uses grouped together for the convenience of the populations they serve, and dwellings integrated with activity centers in a manner that retains the amenities of the residential development and provides the convenience of proximity to an activity center. L-A-C Zones are not generally intended to provide for solely residential developments which are provided for within conventional residential zoning districts.</p> <p>PGCPB No. 2022-02, p. 3-4 (emphasis provided).</p>
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The table above demonstrates that the Planning Board failed to articulate the facts found, law applied, and relationship between the two to justify the Planning Board reaching the opposite conclusion as the Technical Staff with regard to ZO section 27-521(a)(1). Merely manipulating small portions of the Technical Staff’s Report did not provide an adequate explanation for the Board’s decision.

Appellant also adopts Technical Staff’s and the Planning Director’s conclusion that the Planning Board lacked authority to approve CDP-9306-05 before the District Council

approved an amendment to the Basic Plan. The Applicant's request eliminates the use approved on the Subject Property within the Basic Plan. To eliminate commercial uses from the area specifically identified for commercial use on the Basic Plan, the Applicant must submit to the District Council a request to amend the Basic Plan A-9870. The Applicant did not request an amendment to the Basic Plan, so the Planning Board does not yet have authority to approve an amendment to the CDP that eliminates commercial uses from the Subject Property.

Technical Staff explained:

The appropriate process for addressing a nonconforming CDP application is to seek approval of an amendment to the Basic Plan, pursuant to Section 27-197(c) of the Zoning Ordinance. Other developments have sought and received approval of similar Basic Plan amendments, such as A-9988-01 for the Villages at Timothy Branch and A-9775-01 for Springdale Estates, under this section of the Zoning Ordinance.

...

The District Council's intended design for the Basic Plan is clear in their inclusion of specified ranges of commercial and residential development to be provided in Bailey's Village, the L-A-C Zone portion of the Preserve at Piscataway.

...

[T]he complete elimination of a use, in this case commercial, is a zoning decision that falls within the jurisdiction of the District Council, not the Planning Board.

Staff Report, p. 9—10.

The Planning Director also explained that the Applicant's proposal required an amendment to the Basic Plan because

this was a District Council decision and it is not appropriate for staff to substitute its judgment for that of the District Council. This is not a complicated issue. The District Council approved a [Basic Plan] request. We do not know, nor could we know, if [the District Council] would have approved the [Basic Plan] had it not be for this commercial use. That is why it is vital and necessary that it goes back through the basic map amendment process to the Council[.]

...

In this particular case, the Applicant did not show this site as being possibly commercial, possibly residential. It showed commercial. . . That picture [is what] was in front of the District Council and that is where we have a problem with finding conformance because that is what was in front of the Council. We don't know whether [the District Council] meant one or the other because both were not shown—commercial was shown.

...

In a [basic plan], it is never a matter of what can be there. Its “here’s what I’m planning and based on what I’m showing you and what I’m planning, please give me this zone.” So, if [the plan] changes, it has to go back because, as I said earlier, we don’t know if the Council would have granted that zone but for what was shown to them.

Planning Board Hearing, January 6, 2022.

The Planning Board’s Resolution did not address Technical Staff’s or the Planning Director’s conclusion that the Planning Board lacked the authority to approve CDP-9306-05 without the District Council first approving a Basic Plan amendment to A-9870. Thus, the Planning Board failed to articulate why CDP-9306 does not require an amendment to the Basic Plan.

Therefore, the District Council should reverse or, alternatively, vacate and remand, the Planning Board’s approval of CDP-9306-05 because the Planning Board’s Resolution

failed to adequately articulate how it determined that the Applicant satisfied ZO section 27-521(a)(1) and because the record lacked substantial evidence to support the Planning Board's conclusion that the Applicant satisfied ZO section 27-521(a)(1).

2. ZO section 27-521(a)(2)

ZO section 27-521(a)(2) requires that “[t]he proposed plan would result in a development with a better environment than could be achieved under other regulations.” CDP-9306-05 proposes the elimination of commercial uses on the Subject Property to allow for a solely residential development. Staff Report, p. 6. The requested amendment would not result in a development with a better environment than could be achieved under other regulations.

The Bailey's Village development was approved to implement a village consisting of 20-30,000 square feet of retail/commercial, 10-15,000 square feet of commercial office, and 140 multi-family dwelling units using the L-A-C zone. Staff Report, p. 4. The Subject Property is within the proposed Bailey's Village development.

The existing regulations on the Subject Property would create a better environment than a solely residential development because the existing regulations would create a mixed-use community—providing a superior living experience with a focus on walkability and the ability to meet a variety of neighborhood-serving commercial needs close to home. This is the focus in many modern planning efforts as it serves to create a more vibrant, desirable, and sustainable environment sought out by those desiring more than a bedroom community in which to live. Additionally, the commercial synergy that would be created

by locating jobs and shopping opportunities close to residents would serve the economy of the area. Instead of adding to the County's economy, the proposed amendment would simply add residential units and cause added demand on County services such as schools, fire, rescue and police.

The larger subdivision, Villages at Piscataway, earned additional density by promising to provide a superior living environment. In prior applications, this promise was eroded. Approving CDP-9306-05 further erodes the original design concept for the property as expressed in the Subregion 5 Master Plan and the Basic Plan for the project and eliminates all possibility of creating the required neotraditional village in Bailey's Village. The proposed amendment would replace the promise of a superior living environment with a single land use, which would detract from the original design, vision and commitment for this portion of the Villages of Piscataway.

It is clear that the proposed amendment, CDP-9306-05, would not result in a development with a better environment than could be achieved under the existing regulations. Therefore, the Applicant fails to satisfy ZO section 27-251(a)(1).

Appellant also adopts the conclusions provided by the Technical Staff who explained:

The CDZs provide much greater flexibility in design, compared with regulations in conventional zones. This CDP amendment provides for a development that is not in line with the purposes of the L-A-C Zone. The CDP amendment proposes to make an L-A-C-zoned site exclusive for single-family development, which could have been achieved through the R-L zoning, as approved for the remainder of the Preserve at Piscataway.

Therefore, the proposed plan does not yield a better environment than could have been achieved under other regulations.

Staff Report, p. 11.

The Planning Board's Resolution is legally deficient because the Planning Board failed to explain how a solely residential development would create a better environment than would be achievable under the existing regulations. Further, the Planning Board's conclusion that the Applicant satisfied ZO section 27-521(a)(2) was not supported by substantial evidence because the record lacks any evidence which demonstrates that a solely residential development would create a superior environment to a mixed-use or commercial development on the Subject Property.

The Planning Board provided the following explanation:

CDZs provide much greater flexibility in design, compared with regulations in conventional Euclidean zones. This CDP amendment provides for a development that is permitted within the L-A-C Zone. The CDP amendment proposes to make an L-A-C-zoned site exclusive for single-family development, which has been the use for over 15 years, inclusive of the village square. No commercial development has occurred during the build-out of the community, which is now over 95 percent complete; therefore, the Planning Board finds that the proposed plan yields a better environment than could have been achieved under other regulations. This CDP amendment is also supported by the Homeowners Association of the Preserve At Piscataway that has been included in the record of this case.

PGCPB No. 2022-02, p. 7.

The only evidence provided by the Planning Board to support its decision was irrelevant. Neither the Applicant's failure to attract a commercial tenant nor the Homeowners Association's letter in support of CDP-9306-05 demonstrate that the

proposed amendment would create a better environment than would be achievable under the existing regulations.

Therefore, the District Council should reverse, or alternatively vacate and remand, the Planning Board's decision to approve CDP-9306-05 because the Planning Board failed to articulate how a solely residential development would create a better environment than a mixed-use development and the record lacked substantial evidence to support the Planning Board's conclusion that the Applicant satisfied ZO section 27-521(a)(2).

3. ZO section 27-521(a)(3)

ZO section 27-521(a)(3) requires that prior to approving a Comprehensive Design Plan, the Planning Board shall find that "approval is warranted by the way in which the Comprehensive Design Plan includes design elements, facilities, and amenities, and satisfies the needs of the residents, employees, or guests of the project."."

Here, the proposed amendment would eliminate all possibilities of commercial uses in the Bailey's Village development. Staff Report, p. 6. The commercial uses contemplated in the Basic Plan were intended to provide services and amenities to the community. However, there are no other lots within the Bailey's Village development which could provide the commercial uses specifically contemplated in the Basic Plan. Staff Report, p. 6. As such, CDP-9306-05 eliminates the possibility for the development of amenities or services for the residents of Bailey's Village. Therefore, the requested amendment does not satisfy ZO section 27-521(a)(3) because it eliminates the possibility for any commercial

facilities or amenities in Bailey's Village and cannot satisfy the needs of the residents, employees, or guests of the project.

Additionally, Appellant adopts the findings of Technical Staff who explained:

Approval is not warranted, as this CDP amendment removes design elements, specifically all commercial uses, which were originally planned to provide employment opportunities and services to the residents and guests of the Preserve at Piscataway. By removing commercial uses from the L-A-C-zoned section of the development and replacing them with 26 single-family attached units, the CDP amendment drastically changes the nature of the L-A-C design concept approved for Bailey's Village in A-9870. The CDP amendment will make Bailey's Village a residential neighborhood only.

Staff Report, p. 11.

The Planning Board's Resolution was legally deficient because the Planning Board failed to articulate how the Planning Board came to a contrary conclusion from that of the Technical Staff. The Planning Board did not provide an explanation for how it evaluated the design elements, facilities, and amenities in CDP-9306-05 differently than Technical Staff. Nor did it explain how the elimination of the intended use on the Subject Property does not "drastically change the nature of the L-A-C design concept approved for Bailey's Village in A-9870." Staff Report, p. 11. Instead, the Planning Board's Resolution merely manipulated of the Technical Staff's findings as provided in the table below:

Required Findings	Technical Staff	Planning Board
ZO section 27-521(a)(3)	<p>Approval is not warranted, as this CDP amendment removes design elements, specifically all commercial uses, which were originally planned to provide employment opportunities and services to the residents and guests of the Preserve at Piscataway. By removing commercial uses from the L-A-C-zoned section of the development and replacing them with 26 single-family attached units, the CDP amendment drastically changes the nature of the L-A-C design concept approved for Bailey’s Village in A-9870. The CDP amendment will make Bailey’s Village a residential neighborhood only.</p> <p>Staff Report, p. 11 (emphasis provided).</p>	<p>The Planning Board finds that approval is warranted, as this CDP amendment simply removes design elements, specifically undevelopable commercial uses, from the area to which such uses were limited, if they were to occur. This CDP amendment will make Bailey’s Village a residential neighborhood which is permissible in the L-A-C Zone.</p> <p>PGCPB No. 2022-02, p. 7 (emphasis provided).</p>

The table above demonstrates that the Planning Board failed to articulate the facts found, law applied, and relationship between the two to justify the Planning Board reaching the opposite conclusion as the Technical Staff with regard to ZO section 27-521(a)(3). Merely manipulating small portions of the Technical Staff’s Report did not provide an adequate explanation for the Board’s decision.

Further, the Planning Board’s decision is not supported by substantial evidence. The only evidence in the record is that CDP-9306-05 would permanently deprive the Bailey’s

Village community of the opportunity to have commercial services and amenities. The record lacks any evidence which demonstrated that the elimination of all commercial uses within the Bailey's Village development "includes design elements, facilities, and amenities, and satisfies the needs of the residents, employees, or guests of the project."

Therefore, the District Council should reverse or, alternatively, vacate and remand, the Planning Board's approval of CDP-9306-05 because the Planning Board's written decision failed to adequately articulate how it determined that the Applicant satisfied ZO section 27-521(a)(3) and because the record lacked substantial evidence to support the Planning Board's conclusion that the Applicant satisfied ZO section 27-521(a)(3).

For all of these reasons, the Planning Board erred when it approved CDP-9306-05 because the proposed development does not satisfy ZO section 27-521(a)(1)-(3).

II. The Planning Board erred when it approved CPD-9306-05 because the requested amendment does not satisfy condition 35 of CDP-9306.

The Planning Board approved CDP-9306 subject to 37 conditions. CDP-9306-05 Backup, p. 208–26. Among those conditions, condition 35 required the developer to provide a parcel of land within Bailey's village to a religious group or other non-profit organization free of charge. Both the Planning Board and the Technical Staff agree that "all findings and conditions of CDP-9306 (PGCPB Resolution No.94-98(C)(A)) remain valid and govern the development of the L-A-C zoned section of the Preserve at Piscataway." PGCPB No. 2022-02, p. 10; Staff Report, p. 13.

ZO section 27-524(a) provides that “all amendments of approved Comprehensive Design Plans shall be made in accordance with the provisions of this Division for initial approval.” ZO section 27-524 does not distinguish between amendments to the substance of the CDP and amendments to conditions attached with the approval of the CDP. Accordingly, modifications to conditions constitute an amendment to a CDP and require compliance with ZO section 27-524(a). This conclusion is further supported by previously approved amendments to CDP-9306 where the Planning Board required compliance with ZO section 27-524(a) for requests to modify conditions. *See* CDP-9306-05 Backup, p. 265 (Planning Board held that CDP-9306-04, “a request to amend Conditions 1.a(1) and (2)” was an “amendment to a comprehensive design plan.”)

Here, CDP-9306-05 violates condition 35 because it proposes to eliminate all nonresidential uses from Bailey’s Village and utilize the remaining developable area for residential units. If CDP-9306-05 was approved, there would be no more undeveloped land within Bailey’s Village. As a result, the developer would be unable to convey to a religious or nonprofit organization a parcel of land within Bailey’s Village and thus unable to satisfy Condition 35. Therefore, the Planning Board erred when it approved CDP-9306-05 because the proposed amendment does not satisfy all of the “findings and conditions of CDP-9306 (PGCPB Resolution No.94-98(C)(A)) [which] remain valid and govern the development of” the Subject Property. *See* PGCPB No. 2022-02, p. 10; Staff Report, p. 13.

Technical Staff concluded that the proposed amendment could not be approved without the modification of condition 35. Staff Report, p. 16. Conversely, the Planning

Board concluded that CDP-9306-05 can be approved even though it does not satisfy condition 35 because “this condition is no longer applicable.” PGCPB No. 2022-02, p. 12. However, the Planning Board lacked authority to determine that condition 35 was no longer applicable to CDP-9306-05.

Under ZO section 27-524(a), and based on the Planning Board’s previous decisions, a condition can only be modified through the CDP amendment process pursuant to ZO section 27-524. Here, the Applicant did not submit an application to amend condition 35. As a result, the Planning Board did not have the authority to invalidate the requirements of condition 35. Instead, the Planning Board only had the authority to come to one of two conclusions with regards to condition 35—either the proposed amendment satisfied condition 35 or the proposed amendment did not satisfy condition 35. If the proposed amendment did not satisfy condition 35, then CDP-9306-05 could only be approved after the Applicant submitted a successful amendment application to modify the requirements of condition 35

Therefore, the District Council should reverse or, alternatively, vacate and remand, the Planning Board’s approval of CDP-9306-05 because CDP-9306-05 violates condition 35 and the Planning Board lacked the authority to waive the requirements of condition 35.

III. The Planning Board erred when it approved CDP-9306-05 because the requested amendment does not conform with the 2013 Approved Subregion 5 Master Plan.

The requested amendment is not in conformance with the 2013 Approved Subregion Master Plan because it eliminates commercial uses and results in only one type of use

throughout the L-A-C zone. The Subregion 5 Master Plan, Future Land Use map specifically contemplates commercial uses on the Subject Property. 2013 Subregion 5 Master Plan, p. 32. The proposed amendment would eliminate all commercial use on the property and instead create a solely residential development. Therefore, CDP-9306-05 does not conform to the 2013 Approved Subregion Master Plan.

Further, the proposed amendment does not conform to the intended land uses within the L-A-C Zone. The Subregion 5 Master Plan, Table of Future Land Use Map Designations, Descriptions, and Applicable Zones categorizes the L-A-C zone as a “mixed use” zone. 2013 Approved Subregion 5 Master Plan, p. 31. The Table describes mixed use zones, like the L-A-C zone, as follows:

Areas of various residential, commercial, employment, and institutional uses. Residential uses may include a range of unit types. **Different mixed use areas may vary with respect to their dominant land uses;** i.e. commercial uses may dominate overall land use in one mixed use area, whereas residential uses may dominate in another.

2013 Approved Subregion 5 Master Plan, p. 31 (emphasis provided).

The New Oxford American Dictionary, 3rd edition, defines the term “dominant” as “most important, powerful, or influential.” According to Merriam-Webster’s Dictionary, the term “dominant” means “commanding, controlling, or prevailing over all others.” Inherent in each definition is a comparison of at least two things. Accordingly, the description of the types of land uses permitted in an L-A-C zone clearly requires multiple types of land uses on properties zoned L-A-C. This interpretation is further supported by the facts specific to CDP-9306-05. The Subject Property was zoned L-A-C as part of a

larger development that promised public benefits in exchange for permission to build residential units at a higher density.

Here, CDP-9306-05 does not just eliminate commercial uses on the Subject Property, it also eliminates the possibility of having multiple uses within the larger development. A development made of only one use – residential – does not conform with the intended land use in the L-A-C zone under the Subregion 5 Master Plan. Thus, CDP-9306-05 does not conform to the Master Plan because it eliminates the possibility of multiple uses in a development zoned L-A-C.

Further, Appellant adopts Technical Staff, including the Planning Coordinator of the Neighborhood Revitalization Section of the Community Planning Division, Wendy Irminger's, conclusion that CDP-9306-05 did not conform to the 2013 Subregion 5 Master Plan.

The Planning Board concluded that CDP-9306-05 did conform with the 2013 Subregion 5 Master Plan. The Planning Board's Resolution was legally deficient because the Planning Board failed to adequately articulate how the Planning Board came to a contrary conclusion from that of the Technical Staff. The Planning Board did not explain how a solely residential development conformed to the commercial use identified for the Subject Property in the Future Tables Map. Instead, the Planning Board's written decision merely manipulated the Technical Staff's findings as provided in the table below:

Required Findings	Technical Staff	Planning Board
Conformance with the 2013 Subregion 5 Master Plan	<p>In a memorandum dated December 20, 2021 (Irminger to Kosack), the Community Planning Division noted that pursuant to Section 27-521(a)(1), this application <u>does not</u> conform to the design guidelines or approval conditions intended to implement the development concept reflected in the approved Basic Plan for this development or the commercial land use recommended at this location in the 2013 <i>Approved Subregion 5 Master Plan</i> (Subregion 5 Master Plan).</p> <p>Staff Report, p. 17 (emphasis provided).</p>	<p>The Planning Board adopts a memorandum dated December 20, 2021 (Irminger to Kosack), which noted that pursuant to Section 27-521(a)(1), this application generally conforms to the design guidelines or approval conditions intended to implement the development concept reflected in the approved Basic Plan for this development or the commercial land use recommended at this location in the 2013 <i>Approved Subregion 5 Master Plan</i> (Subregion 5 Master Plan).</p> <p>PGCPB No. 2022-02, p. 13 (emphasis provided).</p>

The table above demonstrates that the Planning Board failed to articulate the facts found, law applied, and relationship between the two to justify the Planning Board reaching the opposite conclusion as the Technical Staff with regard to conformance with the 2013 Subregion 5 Master Plan.

Further, the Planning Board’s decision is not supported by substantial evidence. In fact, the Planning Board’s conclusion is completely contradictory to the conclusions made by Wendy Irminger in the December 20, 2021 letter. Ms. Irminger stated:

Community Planning Division staff finds that pursuant to Section 27-521(a)(1), **this application does not conform** to the design guidelines or approval conditions intended to implement the development concept

reflected in the approved Basic Plan for this development or the commercial land use recommended at this location in the 2013 Approved Subregion 5 Master Plan.

CDP-9306-05 Backup, p. 274 (emphasis provided).

At no point in her letter does Ms. Irminger conclude that the application “generally conforms” to the design guidelines or approval conditions applicable to the Subject Property. The Planning Board’s statement is not only inaccurate, but it also contradicts the Planning Board’s own decision to approve CDP-9306-05. By adopting Ms. Irminger’s letter, the Planning Board adopted the letter’s conclusion that “this application **does not conform**” to the Subregion 5 Master Plan or the Subregion V SMA.

Therefore, the District Council should reverse or, alternatively, vacate and remand, the Planning Board’s approval of CDP-9306-05 because the Planning Board’s Resolution failed to adequately articulate how it determined that the proposed amendment conformed to the Master Plan and because the record lacked substantial evidence to support the Board’s conclusion that the proposed amendment conformed to the Master Plan.

IV. The Planning Board erred when it approved CDP-9306-05 because the requested amendment does not fulfill the purposes of the L-A-C zone.

The proposed amendment should fulfill the purposes of the L-A-C zone. *See Staff Report*, p. 2, 8. The purposes of the L-A-C Zone include:

- (5) Group uses serving public, quasi-public, and commercial needs together for the convenience of the populations they serve; and
- (6) Encourage dwellings integrated with activity centers in a manner which retains the amenities of the residential environment and provides the convenience of proximity to an activity center.

ZO section 27-494(a).

CDP-9306-05 does not fulfill the purposes of the L-A-C Zone because it eliminates the possibility of public, quasi-public, or commercial uses that could serve the Bailey's Village population. CDP-9306-05 also eliminates the possibility of creating dwellings integrated with an activity center.

Further, Appellant adopts Staff's findings:

The CDP amendment eliminates the possibility for commercial development within the L-A-C-zoned Bailey's Village and proposes the area to be exclusively for residential development. This is contrary to the above noted purposes of the L-A-C Zone, which recommends integrating commercial and residential uses to foster the creation of an area where people can live, work, play and shop. Bailey's Village was designated as a "Village Center" in CR-60-1993, to provide convenient commercial uses to serve the approximately 1,000 residences within the Preserve at Piscataway. The current proposal to make Bailey's Village exclusively for residential uses precludes the creation of an activity center, in accordance with the purposes of the L-A-C Zone.

Staff Report, p. 8-9 (emphasis provided).

The Planning Board's conclusion that the proposed amendment conforms to the requirements for an L-A-C zone was arbitrary and capricious because it was based, in part, on irrelevant considerations. An agency decision is arbitrary and capricious when "decisions are made impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms." *Harvey*, 389 Md. at 299. Here, the Planning Board acknowledged that the proposed amendment did not fulfill the purposes

of the L-A-C zone but concluded that CDP-9306-05 should nonetheless be approved. The Planning Board explained:

The CDP amendment does not fulfill all of the purposes of the L-A-C Zone, as stated in Section 27-494(a) of the Prince George's County Zoning Ordinance, but the Planning Board finds that the constructed development is of high quality and fulfills the vision approved for the subject property. The developable area left is only 1.65 acres in size and will not be economically viable for any commercial development.

...

Given the size limitation, the current proposal to make Bailey's Village exclusively for residential uses will be the least detrimental to the existing owner-occupied homes.

...

The applicant's Statement of Justification and testimony have evidenced a nearly 20-year attempt to attract desirable retail, including during the recent pandemic, and that all attempts have been unsuccessful. As such the Planning Board finds commercial development would not likely occur in this development.

PGCPB No. 2022-02, p. 6 (emphasis provided).

None of the explanations provided by the Planning Board are relevant to the determination of whether the proposed amendment satisfies the requirements and purposes of the L-A-C zone. The regulations controlling L-A-C zones do not permit the Planning Board to weigh the alleged economic struggles of an applicant against the stated purposes of the zone. As Staff explained, if the Applicant cannot provide a mix-development on the Subject Property, the appropriate action would be to request a zoning map amendment to A-9870 before the District Council. Staff Report, p. 9-10.

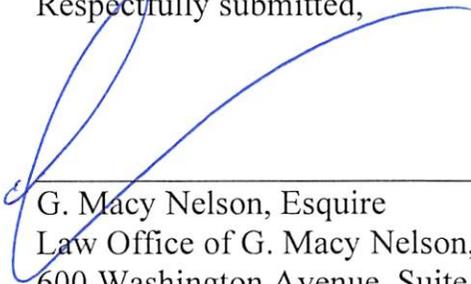
It is clear that the Planning Board's determination that the proposed amendment satisfied the requirements of an L-A-C zone were based only on the Applicant's alleged unsuccessful attempts to attract commercial uses because the Planning Board itself admitted that "the CDP amendment does not fulfill all of the purposes of the L-A-C Zone," PGCPB No. 2022-02, p. 6, and the Planning Board provided no other relevant evidence upon which it could have based its decision. Therefore, the Planning Board's decision that the Applicant satisfied the requirements for an L-A-C zone was arbitrary and capricious because it was not based on "a relevant or applicable set of norms."

Therefore, the District Council should reverse or, alternatively, vacate and remand, the Planning Board's approval of CDP-9306-05 because, by the Planning Board's own admission, the amendment does not fulfill the purposes of the L-A-C Zone and the Planning Board's decision to nonetheless approve CDP-9306-05 was arbitrary, capricious, and not supported by substantial evidence on the record.

CONCLUSION

For all of these reasons, Appellants respectfully request that the District Council reverse or, alternatively, vacate the Planning Board's approval of CDP-9306-05.

Respectfully submitted,



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CERTIFICATE OF SERVICE

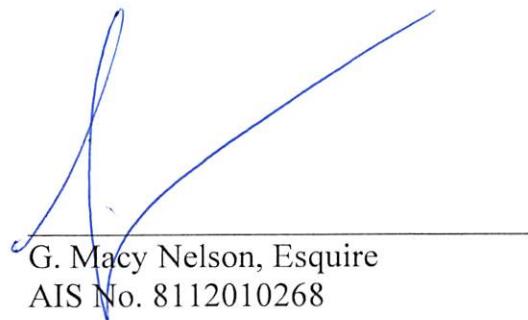
I HEREBY CERTIFY that on this 24th day of February 2022, a copy of the foregoing Notice of Appeal and Request for Oral Argument was mailed electronically and by first-class, postage pre-paid to:

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CASE NAME: BAILEYS VILLAGE
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