

DISTRICT COUNCIL FOR PRINCE GEORGE’S COUNTY, MARYLAND

SPECIFIC DESIGN PLAN
SDP 1603-02
NATIONAL CAPITAL BUSINESS PARK

AND

TCP2-026-2021-02



APPLICANT’S RESPONSE TO EXCEPTIONS TO APPROVAL
OF SDP 1603-02 AND TCP2-026-2021-02

COMES NOW the Applicant, AMS 2022 BTS- Upper Marlboro, MD, LLC (“Applicant”), by and through its attorneys, Daniel F. Lynch and the law office of McNamee Hosea, P.A., and provides this Response to the Exceptions to Approval of SDP 1603-02 and TCP2-026-2021-02.

INTRODUCTION

This matter involves an application for Specific Design Plan (“SDP 1603-02”) filed by AMS 2022 BTS- Upper Marlboro, MD, LLC (the “Applicant”). The real property subject to SDP 1603-02 is located at 15000 Leeland Road, Upper Marlboro, Maryland 20774, Map 0077, Grid 00B4 and constitutes a portion of the parcel bearing tax identification number 07-0670737 (the “Property”). The Property contains a total of 426.52 gross acres, of which 90.11 acres are subject to SDP 1603-02. SDP 1603-02 constitutes the first phase in a multi-phase development project. As a result of the new Zoning Ordinance passed by the Prince George’s County Council, effective April 1, 2022, the Property is located in the Legacy Comprehensive Design Zone (“LCD”).

On July 14, 2020, the District Council approved Counsel Bill 22–2020 (CB 22-2020), which is a text amendment that expanded the permissible uses at the Property to employment and

institutional uses consistent with the uses in Employment and Institutional Area (“E-I-A”) zone. However, because the development application for the Property was filed prior to the passage of the new Zoning Ordinance, the approval of SDP 1603-02 must proceed under the review standards for then existing Zoning Ordinance. As a result, SDP 1603-02 will be evaluated under the criteria for property located in the Residential Suburban Development (“R-S”) Zone.

On April 12, 2021, the District Council approved zoning map amendment A-9968-02, which revised zoning map amendments A-9968 and A-9968-01 and replaced the residential land use patterns on the Property with uses generally permitted E-I-A Zone, as authorized pursuant to Prince George’s County Code, Section 27-515(b).¹ On May 5, 2022, the Planning Board approved Concept Design Plan CDP-0505-02 and Type I Tree Conservation Plan TCP1-004020210-02, both of which revised previously approved plans. On April 26, 2022, Type 2 Tree Conservation Plan TCP2-026-2021-02 was submitted to the Environmental Planning Section of the Planning Board. On June 2, 2022, the Prince George’s County Planning Board (“Planning Board”) approved Preliminary Plan of Subdivisions PPS 4-21056 for the Property, allowing for the development of up to 5.5 million square feet of employment and institutional space consistent with the uses authorized in the E-I-A zone. SDP 1603-02 is for the development of a 3,428,985-square-foot multi-level warehouse/distribution facility in one building, surrounded on the north, south, and east sides by a 1,702-space surface parking lot and 500 truck trailer locations, including 85 loading docks. The proposed multi-level building will have a footprint of approximately 649,653 square feet and will be approximately 93 feet tall. The building is finished with five types of metal panels, in combination with five types of concrete panels, and is designed in a balanced composition with storefront glazing and a flat roof.

¹ Further references to Prince George’s County Code, Section 27 shall made in the format of “ZO § 27-____.” References to other Sections of the Prince George’s County Code shall be in the format of PGCC § __-__.

The Technical Staff issued its Staff Report on June 16, 2020. SDP 1603-02 and TCP2-026-2021-02 were taken under consideration by the Planning Board at its June 30, 2022 evidentiary hearing based upon the criteria set forth in ZO § 27-528,, after which it passed a resolution approving SDP 1603-02 and TCP2-026-2021-02 (“Resolution 2022-76”). Notice of the approvals was sent to all interested parties on July 7, 2022. The approval of SDP 1603-02 and TCP2-026-2021-02 under Resolution 2022-76 is subject to 21 conditions prior to formal certification. On August 5, 2022, certain opponents (“Opponents”) to SDP 1603-02 appealed to the Prince George’s County Council, Sitting as the District Council (“District Council”) and filed Exceptions to Resolution 2022-76. The Applicant files this Response to the Exceptions, and states as follows.

ARGUMENT

I. Planning Board’s adoption of the Technical Staff Report in Resolution 2022-76 was proper.

The Opponents first argument in their Exceptions is based on the faulty premise that the Planning Board cannot adopt the findings and recommendations of the of the Technical Staff set forth in the Staff Report. In offering their argument, Opponents quote to the holding of the Court of Appeals in *Montgomery v. Bd. of County Comm’rs for Prince George’s County*, 256 Md. 597, 603 (1970), in which the Court indicates that the repetition of the recommended findings of the Technical Staff is a decision of the Planning Board is “not a practice to be encouraged.” Not only does this quoted language from the Court’s opinion not support a prohibition on the adoption of the Technical Staff’s findings, the Opponents fail to provide the remainder of the quotation from the Court of Appeals decision, which reads as follows:

Although this is not a practice to be encouraged, **we are not prepared to rule, as a matter of law, that the District Council may not, in a specific case, comply with the statutory requirement to make written findings of basic facts and**

conclusions by incorporating into its order specific findings of basic facts and conclusions of either the Planning Board or of the Technical Staff by specific reference to those findings.

Id. at 603 (emphasis added). In their effort to convince the District Council that the practice of adopting the Technical Staff's findings is somehow improper, the Opponents have transparently attempted to mislead the District Council by selectively citing to a small snippet of this larger quotation from the Court. The Court of Appeals simply does not say what the Opponents want it to say.

The Opponents continue this effort by citing to *Colao v. County Council of Prince George's County*, 109 Md. App. 431, 460-61, 675 A.2d 148, 163 (1996), arguing that the practice of adopting the findings of the Technical Staff is only appropriate when the Planning Board has reached its decision based upon its own independent review. Again, the following constitutes the full text of the portion of the Court's opinion cited to by the Opponents:

. . . in the same manner that the Court of Appeals **has recognized that it is acceptable for the Council to adopt as its own the findings and conclusions of others,** we suppose that there is nothing inherently improper if the decision that the Council adopted, i.e., the ZHE's decision, in turn adopts and incorporates reports and recommendations of other public offices—so long as the adopted findings and conclusions within each of those reports are sufficiently articulated, clear, and specific.

Colao v. Cnty. Council of Prince George's Cnty., 109 Md. App. 431, 460–61, 675 A.2d 148, 163 (1996), *aff'd*, 346 Md. 342, 697 A.2d 96 (1997)(emphasis added). In its opinion, the Court of Appeals states the obvious- that any agency, including the Planning Board, must properly consider the evidence and the law presented when rendering a decision. Again, this holding does not support the Opponents argument that the Planning Board did not properly consider the facts and evidence because it adopted the Technical Staff's recommendation in Resolution 2022-76.

Furthermore, the Opponents argue, without citation to any evidence whatsoever, that the Planning Board posted its decision on its agenda a week before it held its hearing. The Opponents then argue that the Planning Board considered the matter at the June 30, 2022 hearing and immediately approved SDP 1603-02. However, these facts do not demonstrate that the Planning Board failed to adequately consider the evidence presented at the hearing. While neither the Opponents nor the Applicant can “get inside the head” of the Planning Board’s members, the most logical scenario is likely the correct one— they were not swayed at all by any of the evidence or arguments of the Opponents, and found the Technical Staff’s recommendation to be factually supported and legally correct under the criteria for approval provided in ZO § 27-528(a)-(b).

Finally, the Opponents argue, once again without citation to any law, that because they raised certain issues at the Planning Board’s hearing, the Planning Board was somehow required to address each of those issues in Resolution 2022-76. This argument, if taken to its logical conclusion, would require the Planning Board to identify in its written decision every argument raised by any opponent at the required evidentiary hearing, no matter how absurd, and then provide an explanation for why that argument is unconvincing. This procedure is not contemplated, much less required, in any provision of the Zoning Ordinance relating to specific design plans. The Planning Board’s duty is to consider the evidence and testimony presented to it at the hearing, and then issue a written decision that addresses the required findings for specific design plans under ZO § 27-528.

II. CB 22-2020 is not a special law that violates the doctrine of zoning uniformity.

The Opponents argue in sections II and III of the Exceptions that CB 22-2020 constitutes an illegal special law that violates the doctrine of zoning uniformity. As indicated above, the

requirements for approval of a Specific Design Plan are set forth in ZO § 27-528(a)-(b). In addition, ZO § 27-528(c) holds that the Planning Board “may only deny the Specific Design Plan if it does not meet the requirements of ZO § 27-528(a) and (b), above.” No other basis for denial is provided in the Zoning Ordinance, therefore the Planning Board has no discretion to deny a Specific Design Plan on any basis other than a failure to comply with ZO § 27-528(a)-(b). On appeal, the District Council must review the decision of the Planning Board on the record, and may affirm, reverse, or modify the decision, or remand the decision to the Planning Board under ZO §§ 27-528.01 and 27-523(c)-(d). In the event that the District Council affirms the decision, ZO § 27-523(d) requires it to make the same findings as the Planning Board. Therefore, the District Council is similarly constrained in its ability to deny a Specific Design Plan on grounds other than ZO § 27-528(a)-(b), including upon constitutional grounds.

However, on page 4 of the Exceptions, the Opponents request that the District Council to deny approval of SDP 1603-02 because CB 22-2020 constitutes an unconstitutional “special law.” In essence, the Opponents argue that CB 22-2020 violates the doctrine of zoning uniformity by singling out the Property for additional permitted uses. While the authority of the District Council may be limited with regard to its ability to reverse a decision of the Planning Board on the grounds that it is based on an unconstitutional law, the District Council need not even contemplate the constitutionality of CB 22-2020 because, as held by the Court of Appeals in *Montgomery County. v. Woodward & Lothrop, Inc.*, 280 Md. 686, 720, 376 A.2d 483, 501 (1977):

The uniformity requirement does not prohibit classification within a district, so long as it is reasonable and based upon the public policy to be served. The focus is upon the terminology of the ordinance, rather than upon its application.

Id. at 720 (citing *Quinton v. Edison Park Development Corp.*, 59 N.J. 571, 285 A.2d 5 (1971); *Schmidt v. Board of Adjustment of City of Newark*, 9 N.J. 405, 88 A.2d 607 (1952); *Green Point Sav. Bank v. Board of Zoning Appeals*, 281 N.Y. 534, 24 N.E.2d 319 (1939)). *See also Anderson House, LLC v. Mayor & City Council of Rockville*, 402 Md. 689, 718, 939 A.2d 116, 134 (2008) (“regulations concerning a zoning district that are uniformly applicable may result in application in varying restrictions for individual properties without violating the uniformity requirement.”). It should also be noted that there is no provision in the Zoning Ordinance, or any other applicable law, requiring the District Council to examine the validity of CB 22-2020 in conjunction with the appeal of Resolution 2022-76.

If the District Council were to engage in a review of the validity of CB 22-2020, it must be analyzed based on whether its text singles out the Property for special treatment, and whether it furthers public policy in the area. *Woodward & Lothrop*, 280 Md. At 720. A plain review of CB 22-2020 demonstrates that it does not specifically reference any one property, but instead lists a set of conditions for any property in the RS Zone to qualify for E-I-A Zone uses. Moreover, CB 22-2020 is geared toward public policy in the region. For example, in the 2022 Bowie-Mitchellville and Vicinity Master Plan (“Bowie Master Plan”), the Property is located within the Collington Local Employment Area, which includes other properties engaging in “primarily light industrial use, comprised of mainly warehouses and distribution centers....” and the goal for the Collington Local Employment Area is to “continue to serve as an important industrial center.” *See* Bowie Master Plan, page 44. Land Use Policy 12 in the Bowie Master Plan is to “transform Collington Local Employment Area into a regional transportation, logistics, and warehousing hub,” and Economic Prosperity Policy 11 similarly calls for “strengthen[ing] the Collington Local Employment Area as a regionally competitive transportation, logistics, and

warehousing employment center.” *Id.* at 44, 102. Furthermore, the Prince George’s County General Plan (“Plan 2035”) Growth Policy Map designates the Property within an “Employment Area.” *Id.* at Page 107. The Employment Areas identified in Plan 2035:

[H]ave the highest concentrations of economic activity in our four targeted industry clusters healthcare and life sciences; business services; information, communication, and electronics (ICE); and the Federal Government. Plan 2035 recommends continuing to support business growth in these geographic areas—in particular in the targeted industry clusters— concentrating new business development near transit where possible, improving transportation access and connectivity, and creating opportunities for synergies.

Id. at Page 19. CB-22-2020 allows for the expansion of employment opportunities in areas throughout the County targeted for such growth, such as the Collington Local Employment Area, by allowing E-I-A uses in RS zones that had previously been designated for E-I-A use. CB 22-2020 also requires properties engaging in E-I-A uses in an RS zone, such as warehouses and distribution centers, to include street connectivity through an adjacent employment park, such as the National Capital Business Park adjacent to the Property. This is consistent with the goals for the Employment Areas identified in the Growth Policy Map in Plan 2035. *See* Plan 2035, Page 107. Finally, the 2022 Bowie Master Plan recommends the reclassification of all properties in the Collington Local Employment Area to the Industrial Heavy (IH) Zone as defined in the new Zoning Ordinance effective April 1, 2022, which allows storage warehouses and distribution warehouses as a permitted uses. *Id.* at 87. *See also* Revised ZO § 27-5101. Accordingly, CB 22-2020 is facially neutral, and its purpose is squarely within the cross-hairs of the public policy goals identified in the Bowie Master Plan and Plan 2035.

III. The Planning Board has authority to conditionally approve a Specific Design Plan conditioned upon the future compliance with additional statutory requirements.

Beginning on page 11 of the Exceptions, the Opponents argue that Resolution 2022-76 was invalid because it conditioned the approval of SDP 1603-02 upon the satisfaction of a

number conditions set forth on pages 25-27 thereof. Opponents point to these conditions, and attempt to characterize them as a failure to comply with the requirements of ZO § 27-528(a)-(b). This position is completely inconsistent not only with the applicable law, but with procedure followed for decades by the Planning Board and District Council.

As the District Council is well aware, under ZO 27-528(e), the Planning Board must “approve, approve with modifications, or disapprove the Specific Design Plan within seventy (70) days of its submittal.” The Planning Board has done precisely that by modifying SDP 1603-02 based on the conditions on pages 25-27 of Resolution 2022-76. However, it should be noted that by modifying SDP 1603-02 based the conditions imposed in its decision, the Planning Board has not approved the use. The Applicant has the duty to ensure that those conditions are satisfied prior to formal certification of SDP 1603-02. Simply put— if the Applicant can satisfy those conditions, SDP 1603-02 will be certified, but if the Applicant cannot satisfy the conditions, it will not be certified. The Opponents’ attempt to characterize the conditions in Resolution 2022-76 as a failure to meet the requirements of ZO § 27-528(a) is completely inconsistent with the authority granted to the Planning Board to make approvals with modifications in the form of mandatory conditions precedent to certification. As the Planning Board’s counsel, David Warner, indicated during the June 30, 2022 hearing, all approvals from the Planning Board contain conditions, and there are certain issues that the Planning Board does not have the expertise to decide. As a result, the Planning Board must rely upon other local agencies to take the lead on certain approvals, which the Specific Design Plan is made conditional upon.²

² See June 30, 2022 hearing video at 2:38:30, mncppc.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1713&Format=Agenda

IV. Resolution 2022-76 is based upon substantial evidence from evidentiary record.

Arguments V and VI of the Exceptions, beginning on page 16, suffer a similar flaw. In essence, the Opponents fail to recognize that the approval process for a large scale development project such as the one envisioned in SDP 1603-02 involves numerous agency approvals relating to subdivision, zoning, environmental safeguards, building permits, storm water management, and traffic and noise analysis. The considerations involved in these approval processes include substantial overlap. As a result, in Resolution 2022-76 the Planning Board at times refers to prior approvals involving the same factual considerations involved in determining whether SDP 1603-02 satisfies the approval requirements of ZO § 27-528(a). For example, under ZO § 27-528(a)(2), the Planning Board must find that Property will be adequately served with public facilities. A nearly identical evidentiary showing was required during the review and approval process for PPS 4-21056 under the Subdivision regulations in PGCC § 24-122.01(a). Under ZO § 27-528(a)(3), a finding of adequate provision for the draining of surface water must be made, which corresponds directly to the Subdivision regulation in PGCC § 24-121(a)(15) requiring approval of a stormwater management concept plan. The requirement under ZO § 27-528(a)(5) that the Specific Design Plan demonstrate that regulated environment features are preserved or restored correlates directly to the Subdivision requirement under PGCC § 24-121(a)(11) to preserve wooded lands and specimen trees. In addition, ZO § 27-528(b) generally repeats the same considerations contained in ZO § 27-528(a) by requiring the “prevent[ion] of offsite property damage [and] prevent[ion] of environmental degradation,” and woodland conservation, reforestation, drainage, erosion, and pollution discharge.

The above examples are noted to demonstrate that much of what is required in ZO § 27-528(a) has already been investigated and approved in whole or in part by way of PPS 4-21056.

Resolution 2022-76 does not lack a basis in substantial evidence, as it is completely proper for the Planning Board to refer to those prior approvals. To the extent that analysis of factors under ZO § 27-528(a) has not been undertaken, or will be completed in the future during the course of alternate development processes involving agencies with more specific expertise, the Planning Board has conditioned the final certification of SDP 1603-02 on the completion of those processes. As indicated by the Planning Board's general counsel during the June 30, 2022 evidentiary hearing, the Planning Board must rely on the expertise of other County agencies in its analysis of Specific Design Plans, which results in decisions where final certification is conditioned upon subsequent approvals from those agencies. As appropriately stated by Mr. Warner, the contingent approval represented in Resolution 2022-76 is not an approval of the use at this stage of the development project.³

Regardless, the Opponents argue that Resolution 2022-76 was not supported by substantial evidence from the record. A review of Resolution 2022-76 reveals otherwise. Each of these criteria for approval under ZO § 27-528(a) are listed below, in conjunction with a summary of the evidence relied upon by the Planning Board or the condition imposed prior to final certification.

1. **SDP 1603-02 conforms to Comprehensive Design Plan CDP 0505-02 for the Property.**

The Planning Board properly finds in Resolution 2022-76 finds that the site improvements detailed in SDP 1603-02 conform to the approved CDP 0505-02. Resolution 2022-76 describes the site improvements to be made under SDP 1603-02 in detail on pages 4 through 8, which include but are not limited to the construction of the new 3,428,985 square foot building and its design features, parking facilities, truck trailer locations, loading docks,

³ See June 30, 2022 hearing video at 2:42:00-2:42:20
mncppc.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1713&Format=Agenda.

appropriate signage, a “photometric plan” detailing lighting fixtures, the implementation of green building techniques, the construction of two hiking trails, an exhibit detailing a proposed 20 acre community sports park, and a network of pedestrian and biking trails extending from Queen’s Court to the Property. The Planning Board described these improvements in detail in Resolution 2022-76, and (1) determined that they conformed to CDP 0505-02 or (2) imposed a condition modifying SDP 1603-02 to ensure conformance prior to certification.

2. **The 90.11 acres included in SDP 1603-02 will be adequately served with public facilities.**

The Planning Board indicates on page 9 of Resolution 2022-76 that the Property is governed by the previously approved PPS 4-21056, in which the determination of the adequacy of public facilities for the entire 426.52 gross acres of the Property was deemed sufficient. Being that SDP 1603-02, which represents only Phase I of the overall project, encompasses only 90.11 of the Property, the Planning Board determined that the public facilities are sufficient. The required road improvements, which are described in detail on page 11 of Resolution 2022-76, will be phased at the time of future Specific Design Plans in conjunction with the issuance of the building permit, as required under condition of approval 1(m). In addition, contrary to the argument of the Opponents on page 23 of the Exceptions, the Planning Board properly conditioned its approval of SDP 1603-02 upon the provision of a truck turning plan. *See* Resolution 2022-76, Condition 1(o), Page 27. Again, conditions such as this are standard in the approval process, and SDP 1603-02 will not be certified until they are met.

3. **Adequate provision for the draining of surface water has been made for the entire 426.52 acre Property by way of the Storm Water Management Concept Plan.**

As indicated in Resolution 2022-76, SWM Concept Plan 42013-2020-00 was approved on June 28, 2021 with the entire 426.52 acre Property. This plan shows the use of seven

submerged gravel wetlands, four underground storage treatment facilities, and sand filters. A revised SWM Concept Plan was also filed specifically for the 90.11 acres to be developed under SDP 1603-02 which includes three of the submerged gravel wetlands and a wet pond. Approval of the revised SWM is a condition of certification of SDP 1603-02, and will be overseen through continuing reviews by the Department of Permitting, Inspections, and Enforcement (“DPIE”) and Soil Conservation District (“SCD”). Grading of the site must be performed during the initial construction phase, and no grading permit will be issued by DPIE unless the revised SWM is approved.

4. **Resolution 2022-76 adequately articulates the basis for SDP 1603-02’s conformance with TCP2-026-2021-02.**

Resolution 2022-76 indicates that TCP2-026-2021-02 was submitted to the Environmental Planning Section on April 26, 2022. The Planning Board reviewed SDP 1603-02 and found that it conformed to TCP2-026-2021-02 as revised by certain conditions. The conditions imposed on SDP 1603-02 involve appropriate modifications to TCP2-026-2021-02, and are listed on pages 25-26 of Resolution 2022-76. In addition, the submission of an approved erosion and sediment control plan, which will be overseen by DPIE and SCD, and updating of the TCP2-026-2021-02 worksheet with that information, are conditions precedent approval of TCP2-026-2021-02 and certification of SDP 1603-02. *See* Resolution 2022-76, Conditions 1(d)(11)-(12) and 1(e). Again, the Planning Board must rely the expertise of these separate County agencies to ensure compliance prior to final certification of SDP 1603-02.

5. **SDP 1603-02 will preserve or restore the regulated environmental features at the Property.**

As detailed in Resolution 2022-76, SDP 1603-02 only relates to 90.11 acres of the larger 426.52 acre Property, and does not expand the approved land use quantities included in A-9968-

03 which preserve more than half of the entire Property in a natural state. *Id.* at Page 10. This criteria was further evaluated when PPS 4-21056 was approved and conformance was demonstrated. The Planning Board concluded, after review of the SDP and the proposed TCP2-026-2021-02, that the regulated environmental features on the Property will be preserved and/or restored, to the fullest extent possible, based on the level of detail provided with SDP-1603-02.

Id.

V. Resolution 2022-76 is supported by evidence in the record demonstrating the conditions of all prior approvals have been met, or that that conditions will be met prior to final certification.

Argument VI beginning on page 31 of the Exceptions constitutes, in essence, a regurgitation of the same unfounded “errors” contained in Argument V. As indicated above, the Planning Board determined, at times by way of prior approvals, that SDP 1603-02 satisfied the requirements of ZO § 27-528(a). Despite the argument of the Opponents, the various approval processes involved in a development project of this magnitude do not exist in a vacuum. The approval of SDP 1603-02 may be made contingent upon future approvals, or the finalization of revisions to prior approvals to ensure that prior conditions are met. The Planning Board has done precisely that by imposing the conditions set forth on pages 25-27 of Resolution 2022-76.

VI. The proposed structure is a permitted use under ZO § 27-515(a) for the E-I-A zone.

The Opponents next argue that SDP 1603-02 proposes a use that was “not permitted under the Prior Zoning Ordinance”⁴ because the use would include the construction of a “High-Cube Fulfillment Center Warehouse.” Oddly enough however, the Opponents concede that under

⁴ Throughout the Exceptions, the Opponents make citation to pages from the “Backup” and “Additional Backup” provided for the Planning Board Hearing which are either incorrect or non-existent. For example, on page 34 of the Exceptions, Opponents indicate that PPS 4-21056 proposed a “High-Cube Fulfillment Center Warehouse,” citing to page 91 of the Additional Backup. However, the “Additional Backup” posted on the Planning Board’s website contains only 69 pages, and page 91 of 234 of the file titled “Backup” says nothing of the sort.

ZO § 27-515, “warehouses and distribution facilities” are permitted uses in the E-I-A zone. Then, in an effort to somehow draw a distinction between (1) a warehouse, (2) a fulfillment center, and (3) a “high-cube fulfillment center warehouse,” the Opponents enter into a rambling 5 page discourse. *See* Exceptions, Pages 34-39. The Opponents argue that a warehouse is a building used for the storage of goods in connection with the day to day operations of a wholesale or distribution business that is not located within the building, but that a distribution facility is a place where goods are stored and then shipped by a wholesaler to retail outlets. The Opponents then, based upon a source they refer to as the “ITE Manual,”⁵ define a “high-cube fulfillment center warehouse as a facility “used primarily for the storage and/or consolidation of manufactured goods (and to a lesser extent, raw materials) prior to their distribution to retail locations or other warehouses. . .” In providing this 5 page argument, the Opponents fail to identify any real substantive difference between the three terms. For example, if a warehouse is used to store goods for a wholesale or distribution business, it is axiomatic that those goods will eventually be shipped by vehicle to downstream business or consumers in stream of commerce. A “distribution facility” appears to serve a similar function, in that it constitutes a temporary location where goods are stored while awaiting their delivery to outlets that the business serves. Per the definition provided by the Opponents in the IT Manual, a “high-cube fulfillment center warehouse” is designed to store goods prior to their distribution to retail locations, end users, or other warehouses. *See* Exceptions, page 37. By their own definition, the Opponents concede

⁵ The “ITE Manual” appears to be a guide published by the Institute of Transportation Engineers, which is a resource utilized in part to perform traffic volume analysis. Opponents fail to provide the full excerpt of the definition they cite to allow the District Council or the Applicant to review it, nor do they provide any justification as to why the ITE Manual’s definition is appropriate.

that this use can alternatively be described a warehouse, which is a permitted use under ZO § 27-515.⁶

The bottom line is that the building to be constructed at the Property will be used for the storage of goods awaiting shipment to downstream wholesalers, retailers, end-users, or other warehouses. This squarely fits within the definition of a warehouse or distribution facility provided in the prior Zoning Ordinance, as authorized in the E-I-A zone under ZO § 27-515.

VII. The Planning Board's approval of TCP2-026-2021-02 was proper.

Similar to the other items identified by the Opponents in their Exceptions, the Type 2 Tree Plan, TCP2-026-2021-02, was properly approved by the Planning Board. The fact that a determination as to the exhaustion of on-site reforestation and woodland preservation options was not explicitly made in Resolution 2022-76 should not preclude the approval of TCP2-026-2021-02. Like other approvals administered by County agencies with more specific expertise, the approval of TCP2-026-2021-02 is subject to conditions, and will likely require revision during the course of development of the Property. Resolution 2022-76 indicates that the development activities at the Property, as they now stand, will require 118.68 acres of woodland conservation. Applicant proposes to satisfy approximately 80% of that requirement with 78.98 acres of on-site woodland preservation, and 15.47 acres of on-site reforestation. *Id.* at Page 17. The remaining 24.23 acres will satisfied through off-site conservation.

VIII. The use proposed in SDP 1603-02 is a permitted use in the E-I-A zone, and does not require consistency with Plan 2035 or the Bowie Master Plan.

In their final argument, the Opponents argue that the approval of SDP 1603-02 was erroneous because it conflicts with Plan 2035 and the 2006 Bowie Area Sector Plan. However,

⁶ In their strained effort to create an argument, on pages 37-38 of the Exceptions the Opponents cite to a definition for "Merchandise Logistics Center" which was included CB-018-2019, a Bill that was invalidated. This portion of the argument should be given no weight.

the Opponents concede that consideration of the applicable general and master plans is not a criteria to be considered under ZO § 27-528 for specific design plans. The Opponents also fail to recognize that the proposed use- a distribution facility- is a permitted use under ZO § 27-515. Accordingly, the analysis contained on pages 40-42 of the Exceptions relating to the Opponents' belief that SDP 1603-02 conflict with Plan 2035 and the Bowie Master Plan is completely irrelevant. It should also be noted that the Opponents' expert attempted to analyze SDP 1603-02 based upon the 2006 Bowie Area Sector Plan, which is not even the applicable master plan for the area due to the enactment of the Bowie Master Plan in 2022. As Applicant's counsel noted during the Planning Board's June 30, 2022 hearing, an expert witness "cannot go willy-nilly picking whatever master plan you want to use to support your case, you have to look at that which is most recently approved." Regardless, as indicated in argument section II of this Response, SDP 1603-02 serves the planning goals set forth in Plan 2035 and the Bowe Master Plan.

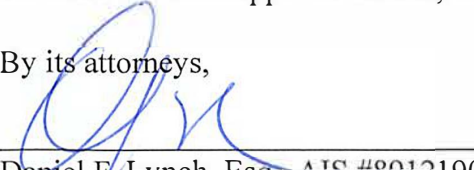
CONCLUSION

For the reasons set forth herein, the approval of SDP 1603-02 and TCP2-026-2021-02 by way of Planning Board Resolution 2022-76 should be affirmed.

Respectfully Submitted,

AMS 2022 BTS- Upper Marlboro, MD, LLC

By its attorneys,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date set forth below, a copy of the foregoing Applicant's Response to Exceptions to Approval of SDP 1603-02 and TCP2-026-2021-02 was served by electronic mail and first class mail, postage prepaid, upon the following:

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