

Case Nos.: DSP-22034
TCP2-053-07-06
AC-23001
DDS-22002
Alta Woodmore

Applicant: WS Woodmore, LLC

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

FINAL DECISION — APPROVAL OF DETAILED SITE PLAN

A. Introduction

On September 25, 2023, this matter was considered by the District Council, on mandatory review from Planning Board, using oral argument procedures, written exceptions from Opposition, written response from Applicant, and oral arguments from the parties. (9/25/2023, Tr.), Exceptions from Opposition, 8/29/2023, Applicant Response, 9/2/2023. The issues on appeal have been afforded full consideration. The Board's approval of Detailed Site Plan (DSP) 22032, Type 2 Tree Conservation Plan (TCP) 053-07-06, Alternative Compliance (AC) 23001, and Departure from Design Standards (DDS) 22002, to develop 284 multifamily dwelling units in two, 5-story buildings, for Alta Woodmore, located in the southern portion of the overall Woodmore Town Centre site, specifically on the west side of Ruby Lockhart Boulevard, approximately 312 feet

north of its intersection with St Joseph's Drive, is hereby AFFIRMED.^{1,2}

B. Exceptions

On or about July 27, 2023, the Board approved the application and related requests. PGCPB No. 2023-81, PGCPB No. 2023-86. Notice of mandatory review by the District Council were sent to persons of record because certain conditions of rezoning required the District Council to review the Board's approvals. Subsequently, several persons of record filed written exceptions to the Board's approvals.³ Exceptions from Opposition, 8/29/2023. Applicant filed a timely response.

¹ Unless stated otherwise herein, the District Council adopts and incorporates the findings and conclusions of the Planning Board in PGCPB No. 2023-81 and PGCPB No. 2023-86. DSP-22034, TCP2-053-07-06, and AC-23001 were approved in Planning Board Resolution No. PGCPB No. 2023-81. The Board's approval of DDS-22002 was approved in Resolution No. PGCPB No. 2023-86. Because the cases were heard together at oral argument, this final decision is in response to both Resolutions and exceptions thereto. Planning Board will be referred to as the Board and Technical Staff will be referred to as Staff. This application was filed under the Old Zoning Ordinance, or Subtitle 27 of the County Code, which will be cited to, or referred to, as "PGCC § 27-___." Persons of Record that filed exceptions will be referred to as Opposition. Applicant is WS Woodmore, LLC, and will be referred to as Applicant.

More specifically, the development request is as follows: The dwellings units will consist of a mixture of 10 studio units, 150 one-bedroom units, 116 two-bedroom units, and 8 three-bedroom units. Building 1 will contain 129 dwelling units, closest to Ruby Lockhart Boulevard, and 155 dwelling units will be located in Building 2. The 284 dwelling units will be located on a portion of Outlot A, which will be known as Lot 28. Another portion of Outlot A will be utilized for proposed commercial development, which will be evaluated in a separate DSP request, and will be known as Outlot E, with frontage on Ruby Lockhart Boulevard. In addition, the applicant requests a departure from design standards (DDS) for a reduction in the standard parking space size. The applicant also requests alternative compliance from the requirements of Section 4.3, Parking Lot Requirements, of the 2010 Prince George's County Landscape Manual (Landscape Manual). PGCPB No. 2023-81 at 1-2.

² The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property—including a preliminary plan of subdivision. PGCC § 27-141. The District Council may also take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. District Council Rules of Procedure Rule 6.5(f).

³ Opposition (a super-majority of which did *not* participate in proceedings before the Board) are: The City of Glenarden, Derek D. Curtis, II (individually and as the Glenarden City Council President and Council Member At-Large), Angela D. Ferguson (individually and as the Glenarden City Council Vice President and Council Member At-Large), James A. Herring (individually and as the Glenarden City Council Member for Ward I), Maurice A. Hairston (individually and as the Glenarden City Council Member for Ward II), Erika L. Fareed (individually and as the Glenarden City Council Member for Ward III), Robin L. Jones (individually and as a Glenarden City Council Member At-Large), Kathleen J. Guillaume (individually and as a Glenarden City Council Member At-Large), and Beverly Habada (individually and as the City of Glenarden City Manager).

Applicant Response, 9/2/2023. Opposition presents six (6) questions for review. Each question will be addressed in the order presented.

Question 1

I. Whether, under Condition 6 of A-9613-C, the Planning Board lacked the authority to approve DSP-22034. Exceptions at 3-11.

• Failure to Exhaust Administrative Remedies

Having reviewed the record, the District Council finds that Opposition failed to raise Question 1 or subpart of Question 1 before the Board. PGCPB No. 2023-81, PGCPB No. 2023-86, Planning Board Record Parts 1 & 2, Technical Staff Report, (7/6/2023, Tr.).⁴ Here, the Technical Staff Report was made available to the public and all persons of record (including Opposition) on June 22, 2023, at least two-weeks prior to the Board's evidentiary hearing on July 6, 2023. At the hearing before the Board, Opposition raised no objection to the findings and conclusions contained within the Technical Staff Report on this issue. Technical Staff Report, (7/6/2023, Tr.). The failure to raise an issue before the administrative agency is a failure to exhaust administrative remedies. *Chesley v. City of Annapolis*, 176 Md. App. 413, 427 n.7, 933 A.2d 475 (2007) (quoting *Delmarva Power & Light Co. v. Public Serv. Comm'n of Md.*, 370 Md. 1, 32, 803 A.2d 460, motion for reconsideration granted on other grounds, 371 Md. 356, 809 A.2d 640 (2002)), *cert. denied*, 403

⁴ The Planning Department analyzes the request and prepares a **technical staff report** recommending approval, approval with conditions, or denial. **The report is submitted to the Planning Board, Zoning Hearing Examiner, District Council, all persons of record, and any interested person requesting a copy. Staff reports are available two weeks prior to the Planning Board hearing.** Residents seeking to see a copy of the staff report, may contact the Development Review Division of the Prince George's County Planning Department...**If the Planning Board votes to hear the case, the applicant and interested persons may testify before the Planning Board in response to the technical staff report.** Testimony may be oral or written. All testimony becomes part of the official record that will be forwarded to the District Council. **The board may concur with the technical staff report or make a different recommendation.** The Planning Board recommendation is provided in the form of a resolution and is transmitted to the Zoning Hearing Examiner and District Council, along with copies of all other official record materials. Citizen's Handbook: Planning, Zoning, and Development Review in Prince George's County, at 28-29 (2014). (Emphasis added).

Md. 305, 941 A.2d 1105 (2008). Accordingly, “[a] party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings, may not thereafter complain about the error at a judicial proceeding.” *Cremins v. County Comm’rs of Washington County*, 164 Md. App. 426, 443, 883 A.2d 966 (2005) (quoting *Cicala v. Disability Review Bd. For Prince George’s County*, 288 Md. 254, 261-62, 418 A.2d 205 (1980)).

In the alternative, if Question 1 and subparts to Question 1 were properly raised before the Board (and they were not), Question 1 and its subparts lack merit. As a threshold matter, this DSP and related approvals were reviewed under the Old Zoning Ordinance (ZO). PGCPB No. 2023-81 at 1, PGCPB No. 2023-86 at 1. Under the Old ZO, and relevant here, order of approvals are as follows:

When a Conceptual Site Plan or Detailed Site Plan is required for development of land, the following order of approvals shall be observed : (1) Zoning (2) Conceptual Site Plan (3) Preliminary Plat of Subdivision (4) Detailed Site Plan (5) Final Plat of Subdivision (a final plat of subdivision may be approved prior to a detailed site plan, if the technical staff determines that the site plan approval will not affect final plat approval) and (6) Grading, building, use and occupancy permits. PGCC § 27-270.

In March 1988, the District Council approved Zoning Map Amendment (A)-9613-C, which rezoned the subject property from the Rural Residential (R-R) Zone to the Mixed Use-Transportation Oriented (M-X-T) Zone, subject to 11 conditions. Zoning Ordinance No. 13-1988.⁵ When property is zoned M-X-T, a Conceptual Site Plan (CSP) and a Detailed Site Plan (DSP) *shall* be approved for all uses and improvements. PGCC § 27-546.

⁵ In 1988, Applicant that filed for rezoning was Beltway Properties Associates, Limited Partnership. Zoning Ordinance No. 13 – 1988.

Condition 11 of A-9613-C required that the District Council review each plan for the subject property as follows:

The District Council shall *review for approval* the Conceptual Site Plan, the Detailed Site Plan, and the Preliminary Plan of Subdivision for the subject property. Zoning Ordinance No. 13 – 1988. (Emphasis added).

But in 2001 (13-years after rezoning was conditionally approved), the Court of Appeals of Maryland (now the Supreme Court) held (in an *unrelated* matter) that the District Council lacked the authority to review the Board’s approval of a Preliminary Plan of Subdivision (PPS). *County Council of Prince George’s County v. Dutcher*, 365 Md. 399, 403, 780 A.2d 1137, 1139 (2001). As a result, by operation of law, the requirement that the District Council review and approve the PPS for the subject property—in Condition 11—became inoperative or unenforceable.

In October 2006, the Board approved the original PPS for the subject property. PGCPB No. 2023-81 at 4. In accordance with *Dutcher*, the District Council did *not* review the Board’s 2006 PPS for the subject property. Planning Board Record, Parts 1 & 2.

Subsequently, in July 2007, pursuant to a request to amend certain conditions of the 1988 approval of A-9613-C, the District Council amended and reapproved A-9613-C, subject to six (6) conditions.⁶ PGCPB No. 2023-81 at 3, Zoning Ordinance No. 7 – 2007. Condition 11 was re-numbered Condition 6 of A-9613-C. But due to inadvertence, considering *Dutcher*, Condition 6 (below) carried over the 1988 requirement from Condition 11 that the District Council review the PPS for the property. Condition 6 also amended former Condition 11 to require the District Council to review for approval all DSPs for the subject property as follows:

⁶ In 2007, Applicant was Inglewood North, LLC. Zoning Ordinance No. 7 – 2007.

The District Council shall *review for approval* the Conceptual Site Plan, the Detailed Site Plans, and the Preliminary Plan of Subdivision for the subject property. Zoning Ordinance No. 7 – 2007 (DSP-22034_Backup 305-06 of 656). (Emphasis added).

Under the Old ZO, a DSP *must* be approved, in the first instance, before permits may be issued for any proposed use of property in a zone that requires DSP approval or property for which *the Board or District Council* has expressly required approval of a DSP in a zoning *or* subdivision case...*or* otherwise.⁷ PGCC § 27-281.01. (Emphasis added). Also, under the Old ZO, the Board *shall review and approve* a DSP... PGCC § 27-285 (Emphasis added). Moreover, in the M-X-T Zone (as is the case here), the Board is also required to review and approve a DSP. PGCC § 27-542 *et seq.*

Condition 6 of A-9613-C did not repeal or replace *any* provision in the Old Subdivision Regulations or the Old ZO, which governs the Board’s authority to review and approve a PPS or DSP for the subject property. Therefore, Condition 6 did not remove from the Board the authority to review and approve the PPS or the DSP for the subject property *before* the District Council’s *review for approval* of the same.

1. The Planning Board lacked authority to consider DSP-22034 because Condition 6 is invalid and therefore, the rezoning of the Subject Property to M-X-T is invalid. Exceptions at 4.

Relying on Section 22-214 of the Land Use Article,⁸ Opposition contends that the Board’s approval of DSP-22034 must be vacated because it was predicated on the District Council’s invalid rezoning of the subject property. Exceptions at 4. Opposition is incorrect.

⁷ Where a regulation involves two (2) or more items connected by the conjunction “Or,” the connected items *may apply singly or in any combination*. 27-108.01 (a)(13). (Emphasis added).

⁸ Md. Code Ann., Land Use (LU) § 22-214 (1957, 2012 Repl. Vol., 2023 Supp.)

Section 22-214—Conditional Zoning—states as follows:

- (a) In approving any zoning map amendment, the district council may consider and adopt any reasonable requirements, safeguards, and conditions that:
 - (1) may be necessary to protect surrounding properties from adverse effects that might accrue from the zoning map amendment; or
 - (2) would further enhance the coordinated, harmonious, and systematic development of the regional district.
- (b)
 - (1) A statement of any condition provided under subsection (a) of this section shall be included in the resolution granting the amendment.
 - (2) The conditions shall remain in effect for so long as the property remains zoned in accordance with the resolution and the applicable zoning classification requested.
 - (3) A building permit, use permit, or subdivision plat may not be issued or approved for the property except in accordance with conditions set forth in the resolution.
- (c)
 - (1) An applicant has 90 days from the date of approval to accept or reject the land use classification conditionally approved.
 - (2) If the applicant expressly rejects the amendment as conditionally approved within the 90-day period, the zoning classification shall revert to its prior status.
- (d) Notwithstanding any other provision of this section, the district council may not impose any requirement, safeguard, or condition that would require the dedication of land for public use except for roads and easements.
- (e) The district council may adopt local laws necessary to provide adequate notice, public hearings, and enforcement procedures for the implementation of this section.
- (f) If any resolution, or any part or condition of any resolution, passed by the district council in accordance with this section is declared invalid by any court of competent jurisdiction:
 - (1) the zoning category applicable to the property rezoned by the resolution shall revert to the category applicable before the passage of the resolution; and
 - (2) the resolution shall be null and void and of no effect. LU § 22-214. (Emphasis added).

In accordance with LU § 22-214 (c), after the subject property was conditionally rezoned in 1988, Applicant Beltway Properties Associates, Limited Partnership timely *accepted* the conditions of approval in A-9613-C. Zoning Ordinance 13 – 1988. Subsequently, in 2007, when the District Council amended and reapproved A-9613-C, subject to six (6) conditions, Applicant Inglewood North, LLC also timely *accepted* the revised and amended conditions of approval in A-9613-C. Zoning Ordinance 7 – 2007. As such, the subject property was conditionally rezoned M-X-T, and those conditions remain in effect. LU § 22-214 (b).

Assuming, *arguendo*, that the District Council’s 1988 and 2007 rezoning of the subject property were predicated on an invalid Zoning Map Amendment, as alleged by Opposition (and it was not), no Applicant or person of record filed a timely petition in the Circuit Court for Prince George’s County for judicial review of the District Council’s final decision to rezone the subject property. *Cty. Council of Prince George’s Cty. v. Chaney Enters. L.P.*, 454 Md. 514, 534-35, 165 A.3d 379, 391-92 (2017) (LU § 22-407(a)(2) sets a 30-day deadline for filing a petition for judicial review when there is a direct attack upon the power or authority of the legislative body to adopt the legislation from which relief is sought). See also Md. Rule 7-203 (“[e]xcept as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of: (1) the date of the order or action of which review is sought; (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or (3) the date the petitioner received notice of the agency’s order or action, if notice was required by law to be received by the petitioner.”).

Moreover, since no Applicant timely rejected any condition of rezoning of the subject property, which would have caused the subject property to revert to its prior zoning classification, and since no Applicant or person of record (including Opposition) timely challenged any part of

the District Council's conditional rezoning of the subject property *in a court of competent jurisdiction*—the Board's approval of DSP-22034 and subsequent District Council review for approval were not predicated on an invalid Zoning Map Amendment. *Nutter v. Mayor and City Council of Baltimore*, 230 Md. 6, 185 A.2d 360 (1962) (where *no appeal is taken or attempted to be taken from a decision or action of the Board more than thirty days from the decision, Court of Appeals prohibits appeals of subsequent agency actions to reach back to the merits of an original action*).

Next, Opposition contends that because the Court in *Dutcher* opined that the District Council has no authority to review and approve a PPS, it renders Condition 6 invalid because it purports to give the District Council authority to review and approve a PPS, which directly contradicts the holding in *Dutcher*. Exceptions at 4. Opposition is incorrect. As noted above, no one appealed the District Council conditional rezoning of the subject property to a court of competent jurisdiction. As such, *Dutcher* did not invalidate Condition 6 of Zoning Ordinance No. 7 – 2007. Regardless, the District Council did *not* review the Board's 2006 PPS for the subject property. Therefore, the District Council did not exceed any authority in Condition 6 to contradict the holding in *Dutcher*.

2. The Planning Board lacked authority to consider DSP-22034 because DSP-22034 is predicated on a Preliminary Plan of Subdivision that was never properly approved. Exceptions at 5.

According to Opposition, the Board's 2006 approval of the PPS for the subject property was never properly approved under Condition 6 because the District Council did not review the PPS. Exceptions at 5. Opposition is incorrect.

Assuming, *arguendo*, that the Board's 2006 approval of the PPS was not properly approved, there is no evidence in the record that any Applicant or any person of record *timely* requested judicial review of the Board's 2006 approval of the PPS to the Circuit Court for Prince George's

County. To file a timely petition for judicial review of the Board's approval of a PPS, LU § 23-401, in relevant part, requires the following:

- (1) Within 30 days after the county planning board takes final action on an application for subdivision approval, judicial review may be requested by:
 - (i) a person aggrieved by the action;
 - (ii) in Montgomery County, a person or municipal corporation that appeared at the hearing in person, by attorney, or in writing; or
 - (iii) in Prince George's County, a municipal corporation that appeared at the hearing in person, by attorney, or in writing.
- (2) A petition for judicial review filed under this section may be made to the circuit court for the appropriate county.
- (3) The court may:
 - (i) affirm or reverse the action; or
 - (ii) remand the action to the county planning board for further consideration. LU § 23-401. (Emphasis added).⁹

Where the plain language of a statute governing the filing of a petition for judicial review is unambiguous, a reviewing body will not “construe the statute with forced or subtle interpretations that limit or extend its application.” *Centre Ins. Co. v J.T.W.*, 397 Md. 71, 79 (2007) (quoting *Price v. State*, 378 Md. 378, 387, (2003)). Section 23-401 of the Land Use Article is unambiguous. Under Section 23-401 the 30-day period runs from the date of the “final action” of the Planning Board.

Since no Applicant or person of record (including Opposition) timely challenged the Board's 2006 approval of the PPS for the subject property—the Board did not lack authority to approve DSP-22034 because it was not predicated on an invalid PPS by a court of competent jurisdiction. *Nutter*, 230 Md. 6, 185 A.2d 360 (1962) (where *no appeal is taken or attempted* to be taken from a decision or action of the Board *more than thirty days* from the decision, Court of Appeals *prohibits appeals of subsequent agency actions to reach back to the merits of an original action*).

⁹ See also Md. Rule 7-203, *supra*.

Regardless, as noted above, in accordance with *Dutcher*, the District Council did *not* review the Board's 2006 PPS for the subject property. Planning Board Record, Parts 1 & 2. Therefore, the Board's approval of the PPS for the subject property was properly approved.

3. The Planning Board lacked authority to approve DSP-22034 because the District Council reserved for itself original jurisdiction over all Detailed Site Plans in the Woodmore Town Center. Exceptions at 5.

Here, Opposition contends that if the District Council finds that Condition 6 is still valid and the PPS for the subject property was properly approved, the District Council must still vacate the Board's decision to approve the DSP because under Condition 6, the District Council reserved for itself original jurisdiction over all DSPs for the subject property. Exceptions at 5. Opposition is incorrect.

As a threshold matter, nothing in Condition 6 speaks to appellate or original jurisdiction. Regardless of appellate or original jurisdiction, Condition 6 merely requires that the District Council *review for approval* certain site plans for the subject property *after* rezoning the subject property to M-X-T. As noted above, Condition 6 of A-9613-C did not repeal or replace any provision in the Old Subdivision Regulations or the Old ZO, which governs the Board's authority to review and approve a CSP, a PPS, or a DSP for the subject property.

Therefore, Condition 6 did not remove from the Board the authority, *in the first instance*, to review and approve this DSP prior to the District Council's *review for approval*. The requirement in Condition 6 that the District Council review for approval this DSP does not necessarily mean that the District Council *is required to engage in independent fact finding*. Even when exercising original jurisdiction, the District Council may *accept for its review for approval* the findings and conclusions of the Board to approve the DSP. *Grant v. Cty. Council of Prince George's Cty.*, 465 Md. 496, 214 A.3d 1098 (2019) (where the District Council maintains original jurisdiction, it is

permitted to engage in its own fact-finding. But see *Templeton v. County Council of Prince George's County*, 23 Md. App. 596, 329 A.2d 428 (1974) (the District Council may, 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 Zoning Examiner, Planning Board or of the Technical Staff by specific reference to those findings).

- a. **The Land Use Article impliedly grants the District Council authority to review Detailed Site Plans with original jurisdiction. Exceptions at 6-8.**
- b. **Maryland's Land Use case law supports the conclusion that the District Council can reserve for itself original jurisdiction over Detailed Site Plans through conditions on the approval of zoning map amendments. Exceptions at 8-11.**

Whether LU § 25-210 expressly or implicitly grants the District Council the authority to review DSPs with original jurisdiction—it does not foreclose the District Council from adopting the findings and conclusions of the Board or Technical Staff when it approves or denies a DSP. Among other things, under LU § 25-210, the district council *may* only decide whether to review the final approval or disapproval of a detailed site plan under this section *within 30 days after the date the final approval or disapproval was issued* [from Planning Board], and if so, issue a *final decision* within 60 days after the date of the hearing. To the extent that LU § 25-210 grants the District Council *original or exclusive jurisdiction* over a DSP, even after, Planning Board, in the first instance, approves a DSP, *nothing* in LU § 25-210 *prohibits* the District Council from *adopting and incorporating* findings and conclusions of the Board or its Technical Staff, to approve or deny a DSP. *Grant*, 465 Md. 496, 214 A.3d 1098 (2019), *Templeton*, 23 Md. App. 596, 329 A.2d 428 (1974).

Next, Opposition contends that under Condition 6 of A-9613-C, the District Council reserved its right to review and approve the DSP at issue here. As such, according to Opposition, the Board did not have the authority to give final approval of the DSP until *after* the DSP was reviewed and approved by the District Council—in other words, the Board did not have exclusive jurisdiction over the DSP—the District Council did. Exceptions at 11. Opposition is incorrect.

Regardless of whether the District Council has original or exclusive jurisdiction over the DSP at issue here, Condition 6, as discussed above, did not repeal, or replace any provision in the Old ZO or LU § 25-210. Accordingly, under the statutory scheme of the Old ZO, and LU § 25-210, the Board’s authority to approve the DSP *is before (not after)* review for approval by the District Council.¹⁰

Question 2

II. The Planning Board erred when it approved DSP-22034 without requiring a new Traffic Impact Study because the Planning Board was required to make a new finding of adequacy. Exceptions at 12-20.

- **Failure to Exhaust Administrative Remedies**

Having reviewed the record, the District Council finds that Opposition failed to raise Question 2 before the Board. PGCPB No. 2023-81, PGCPB No. 2023-86, Planning Board Record Parts 1 & 2, Technical Staff Report, (7/6/2023, Tr.). Here, the Technical Staff Report, which contained the Board’s ultimate findings on this exception from Opposition was made available to the public and all persons of record (including Opposition) on June 22, 2023, at least two-weeks prior to the

¹⁰ Even if the statutory scheme of the Old ZO and LU § 25-210 were in conflict (and they are not)—LU § 25-210 governs, and the outcome is the same. Under LU § 25-210, the District Council *may only* decide whether to review the final approval or disapproval of a detailed site plan within 30 days *after* the date the final approval or disapproval was issued from Planning Board. *Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015) (“To the extent that the Charter, or the ordinances adopted thereunder, conflict with the RDA, the Charter and ordinances are invalid, and the RDA governs.”).

Board's evidentiary hearing on July 6, 2023. At the hearing before the Board, Opposition raised no objection to the findings and conclusions contained within the Technical Staff Report on this issue. Technical Staff Report, (7/6/2023, Tr.). The failure to raise an issue before the administrative agency is a failure to exhaust administrative remedies. *Chesley*, 176 Md. App. 413, 427 n.7, 933 A.2d 475 (2007) (quoting *Delmarva Power & Light Co.*, 370 Md. 1, 32, 803 A.2d 460, motion for reconsideration granted on other grounds, 371 Md. 356, 809 A.2d 640 (2002)), *cert. denied*, 403 Md. 305, 941 A.2d 1105 (2008). Accordingly, "[a] party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings, may not thereafter complain about the error at a judicial proceeding." *Cremins*, 164 Md. App. 426, 443, 883 A.2d 966 (2005) (quoting *Cicala*, 288 Md. 254, 261-62, 418 A.2d 205 (1980)).

In the alternative, if Question 2 was properly raised before the Board (and it was not), it lacks merit. According to Opposition:

Section 27-546 of the prior Zoning Ordinance provides that "if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval, whichever occurred last," the Planning Board may not approve a Detailed Site Plan unless the Planning Board finds that "the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant." ZO § 27-546(d)(10). Accordingly, under the prior zoning ordinance, a determination of adequacy for a Detailed Site Plan in the M-X-T Zone will expire after 6 years. Exceptions at 12.

Opposition is incorrect. In relevant part, PGCC § 27-546 (d)(10) provides as follows:

(d) *In addition to the findings* required for the Planning Board to approve either the Conceptual or Detailed Site Plan (Part 3, Division 9), *the Planning Board shall also find that:*

(10) On the Detailed Site Plan, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval, whichever occurred last, *the development will be adequately served within a reasonable period of time with existing or programmed public facilities* shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club). (Emphasis added).

The cardinal rule of statutory interpretation is to ascertain and effectuate the actual intent of the legislature. *Dutcher*, 365 Md. 399, 416-17, 780 A.2d 1137, 1147-48 (2001). The Board's interpretation of PGCC § 27-546 (d)(10) is reviewed *de novo* to determine if it was legally correct. *Motor Vehicle Admin. v. Smith*, 458 Md. 677, 686, 183 A.3d 211 (2018). Considerable weight should be given to the agency's interpretation and application of the statute. *County Council of Prince George's County v. Billings*, 420 Md. 84, 21 A.3d 1065 (2011).

Nothing in PGCC § 27-546 (d)(10) requires a new Traffic Study if more than six (6) years have lapsed since the last finding of adequacy. In relevant part, PGCC § 27-546 (d)(10) merely states that *in addition to findings* required for the Board to approve a CSP or DSP, "on the DSP" the Board *must also find* that if more than six (6) have lapsed since the last finding of adequacy, *the development "on the DSP" will be adequately served within a reasonable period of time with existing **or** programmed public facilities* shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club). (Emphasis added). Moreover, *nothing* in PGCC § 27-546 (d)(10) states that "a determination of adequacy for a Detailed Site Plan in the M-X-T Zone *will expire after 6 years.*" Exceptions at 12. (Emphasis added). Statutory interpretation neither adds nor deletes words or engages in forced or subtle interpretation in an

attempt to extend or limit the statute's meaning. *Bellard v. State*, 452 Md. 467, 481, 157 A.3d 272 (2017) (quoting *Wagner v. State*, 445 Md. 404, 417-19, 128 A.3d 1 (2015)).

On this DSP, *in addition* to making the required findings to approve the DSP, PGCPB No. 2023-81 at 45, the Board also articulated its findings of adequacy as follows:

A review of adequate public facilities occurred at the time of approval of the zoning map amendment and the PPS, and the Planning Board found that transportation facilities will be adequate. The multifamily residential dwelling units are the first to be constructed at Woodmore Towne Centre and is within the development cap of the prior approvals. PGCPB No. 2023-81 at 21.

(10) On the Detailed Site Plan, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval, whichever occurred last, the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club).

The Transportation Planning Section noted that the most recent adequacy finding for the overall M-X-T site was made in 2006 for PPS 4-06016. This finding requires that, if more than six years have elapsed since a finding of adequacy was made, then a new finding of adequacy is required. The development will be adequately served, within a reasonable period of time, with existing public facilities. Given that the review of conformance to this finding focuses on the period of time required for implementation of any needed transportation facilities, the following is noted:

- (1) All transportation facilities deemed necessary for adequacy by the PPS have been constructed and opened to traffic. The exception is the Evarts Street connection across the Capital Beltway, which is required with the later stages of the office component of this development.
- (2) The opening of the Capital Beltway/Arena Drive interchange to full-time operations has been completed.
- (3) There are no facilities which were assumed to be part of background development, during the review of transportation adequacy, that have been deferred due to either a loss of funding or bonding.

Given that all required transportation improvements, as set forth in the PPS (with the exception of the Evarts Street bridge), have been constructed, it is determined that all transportation facilities needed to serve the multifamily dwelling units will be available within a reasonable period of time, as required by this finding. PGCPB No. 2023-81 at 21-22. (Emphasis added).

Preliminary Plan of Subdivision 4-06016: PPS 4-06016, was originally approved, subject to 40 conditions, on September 21, 2006. Subsequently, the applicant requested a waiver and reconsideration of the PPS, which the Planning Board granted. The amended resolution of approval (PGCPB Resolution No. 06-212(A)), with 40 conditions, was approved by the Planning Board on July 12, 2012, for 375 residential lots, 39 commercial lots, and 17 parcels for the anticipated development of 750,000 square feet of retail use; 1,000,000 square feet of office use; a 360-room hotel; and 1,079 dwelling units, which includes 450 multifamily dwelling units. The PPS encompassed a larger area, than the area included in this DSP.

The following conditions of approval of the PPS relate to the review of this DSP:

3. Prior to the issuance of any building permits for uses generating more than 876 AM and 1,397 PM peak hour trips within the subject property, as defined in the March 2006 traffic study as Phases II and III with trip generation determined in a consistent manner with the same traffic study, improvements to the I-95/I-495/Arena Drive interchange shall be under construction which, when completed, will allow said interchange to be open for full-time usage.

8. Total development within the subject property shall be limited to uses which generate no more than 3,112 AM and 3,789 PM peak-hour vehicle trips, with trip generation determined in a consistent manner with the March 2006 traffic study. Any development generating an impact greater than that identified hereinabove shall require a new preliminary plan of subdivision with a new determination of the adequacy of transportation facilities.

This condition establishes an overall trip cap for the subject property of 3,112 AM and 3,789 PM peak-hour trips. Pursuant to DSP-17030 (the most recent site plan proposing new structures on the site that falls under 4-06016), the total trips of the site are 988 AM and 2,333 PM. According to the review by the Transportation Planning Section, dated June 7, 2023 (Ryan to Shelly), this development will add 113 AM and 111 PM trips and brings the total trips for the site to 1,111 AM and 2,444 PM trips. Therefore, the Planning Board concludes that this site will not exceed the total trip cap identified in Conditions 3 and 8. PGCPB No. 2023-81 at 34-35. (Emphasis added).

It is undisputed from the record that the Board was *not* required to make a *new* determination of adequacy of transportation facilities because the added AM and PM trips (for this DSP) will *not*

be greater or exceed the overall trip cap for the subject property. Moreover, the Board's finding of adequacy for this DSP was also consistent with Applicant's Statement of Justification as follows:

This criterion has been expressly addressed in DSP-07011-04 (24 Hour Fitness), (See Resolution PGCPB No. 13-113, p.11-12), DSP-14027 (Hampton Inn Hotel) (See Resolution No. PGCPB No. 15-22, p.10-11), DSP- 16011 (Nordstrom Rack) (See Resolution PGCPB No. 16-88, p.13), and DSP- 17030 (Children's Hospital medical office) (See PGCPB No. 18-22, p.11- 12). Each of these Detailed Site Plans included an express analysis of the requirements of this provision. In each case, the Transportation Planning Section and ultimately the Planning Board and District Council, found that this Section does not require a new adequacy of transportation facilities analysis. Rather, it has been the finding of the Planning Board and the District Council that this Section merely requires a determination that needed and previously identified transportation facilities have been provided. In each case, the analysis is centered upon whether or not transportation facilities which were originally deemed necessary for adequacy by the Preliminary Subdivision Plan have been constructed and are open to traffic. In each case, the Planning Board and District Council have found that all required transportation facilities identified in the Preliminary Subdivision Plan have been constructed with the exception of the Evarts Street connection across the Capital Beltway. That connection has been expressly deferred until the final 103,000 square feet of commercial office construction. In light of that fact, the Planning Board and District Council have consistently found that all transportation facilities needed to serve the uses proposed in each of the Detailed Site Plans referenced above are available as required. The finding can be no different in this instance. This Detailed Site Plan is for a multifamily residential component always envisioned to occur as part of the development of Woodmore Towne Centre. All required transportation improvements as set forth in the Preliminary Plan (with the exception of the Evarts Street overpass) have been provided. Therefore, this criterion is met and satisfied. Applicant's Statement of Justification (SOJ) at 38-39.

Opposition next contends that even if the Board is not required to conduct a new determination of adequacy, the Board still was required to review a new Traffic Impact Study because, among other things, under this DSP, access to the subject property on Ruby Lockhart Boulevard includes only right-in and right-out turns but prior determinations of adequacy made by the Board included right and left turn access to the property. Exceptions 13-14. Opposition is, again, incorrect.

Concerning right-in and right-out access to the subject property, the Board articulated its findings as follows:

A robust discussion then began regarding the traffic impacts associated with the multifamily development, as discussed by several members of the opposition. The Planning Board then submitted several questions to staff and the applicant regarding these traffic impacts and considerations to increase connectivity to the central portion of the Woodmore Town Centre. The primary question from the Planning Board to staff and the applicant was why only a right-in/right-out access point was permitted for this site. Staff noted that the access point was evaluated during the prior PPS approval and that right-in/right-out access on Ruby Lockhart Boulevard was the best option available. Staff also noted that, while the site has frontage on MD 202 to the west, it is not anticipated that SHA would grant access to the property along the expressway. Ruby Lockhart Boulevard has a median that runs from the intersection of Saint Joseph's Drive, pass the site's frontage, to the traffic circle to the north. Therefore, the applicant would be required to interrupt the median to permit vehicles to turn left into and out of the site, and this median is controlled by DPIE. The applicant also noted that DSP-07011-04 approved LA Fitness, across the street on Ruby Lockhart Boulevard, with right-in/right-out only access on the same street. The applicant and staff testified that, if a future resident wanted to reach Woodmore Town Centre via a motor vehicle, they would take a right turn out of the subject site and move to the left lane. The vehicle would then perform a U-turn at the traffic light where Ruby Lockhart Boulevard and Saint Joseph's Drive intersect. Once the U-turn is made, the resident would then navigate to the north on Ruby Lockhart Boulevard to the traffic circle and into Woodmore Town Centre. This vehicular movement was found to be safer than permitting a break in the median along Ruby Lockhart Boulevard, to allow vehicles to turn left into and out of the subject property. The Planning Board found this analysis acceptable, but asked additional questions about whether traffic calming measures were necessary from the traffic circle, pass the subject property's frontage, to the intersection of Saint Joseph's Drive on Ruby Lockhart Boulevard. Staff and the applicant both testified that traffic calming measures were not necessary, with additional analysis provided in Applicant Exhibit 2.

The Planning Board then asked the applicant if existing bicycle infrastructure was present on the frontage of Ruby Lockhart Boulevard. The applicant and staff testified that a bicycle lane was present, but that cyclists looking to reach the central portion of the town center would have to make a U-turn at the intersection of Ruby Lockhart Boulevard and Saint Joseph's Drive, to avoid biking against traffic. This U-turn is again necessary because Ruby Lockhart Boulevard has a median that runs across the entire roadway, between the traffic circle to the north and the intersection of Saint Joseph's Drive to the south. The Planning Board found this explanation sufficient, but asked for further clarification about why the applicant was not providing a walking path or bicycle path to Woodmore Town Centre from within

the subject property. The applicant testified that significant regulated environmental features exist on the northern portion of the property, along with severe slopes that would make construction of such trails a significant challenge. Staff provided concurring testimony and the Planning Board was satisfied with this explanation.

Following this discussion, the Board voted to approve Detailed Site Plan DSP-22034, Type 2 Tree Conservation Plan TCP2-053-07-06, Departure from Design Standards DDS-22002, and Alternative Compliance AC-23001, subject to the revised conditions provided by the applicant and agreed upon by staff in Applicant Exhibit 1. PGCPB No. 2023-81 at 47-48.

The Board's Resolution of approval also adopted and incorporated by reference certain memoranda from agencies and divisions as follows:

Transportation Planning—In a memorandum dated June 2, 2023 (Ryan to Shelly), it was noted that the plan is acceptable and meets the findings required for a DSP, as described in the prior Zoning Ordinance and the applicable prior conditions of approval associated with CSP-03006, CSP-03006-02, and PPS 4-06016. PGCPB No. 2023-81 at 43.

Subdivision—In a memorandum dated June 2, 2023 (Heath to Shelly), it was noted that the DSP was found to be in conformance with the approved PPS, with conditions regarding technical corrections and the approval of an access agreement, prior to the platting of Lot 28 and Outlot E. PGCPB No. 2023-81 at 43.

The Board's factual findings are reviewed to determine whether they are supported by substantial evidence in the record. *Md. Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482, 514 n.15, 42 A.3d 40 (2012). The substantial evidence test does not turn on whether an aggrieved party provided substantial evidence to support its position before the administrative agency. On the contrary, the substantial evidence test requires a determination of whether the agency's decision is founded upon substantial evidence in the record. *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 997 A.2d 768 (2010). Moreover, if the administrative record and the Board's final determination reflect that the Board considered the factors and conditions required by the applicable provisions, the resolution need not restate all facts upon which it rests. *West Montgomery Cty. Citizens Ass'n v. Montgomery Cty. Planning Bd. of the Maryland-National Park*

& Planning Comm’n, 248 Md. App. 314, 241 A.3d 76 (2020) (“It is not unreasonable for the Planning Board to rely on a Staff Report, as the Planning Board did in this case, if the Staff Report is thorough, well-conceived, and contains adequate findings of fact.”) (quoting *Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 110, 985 A.2d 1160 (2009)). “The test is reasonableness, not rightness.” *Md. Dep’t of the Env’t v. Riverkeeper*, 447 Md. 88, 134 A.3d 892 (2016) (quoting *Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399, 396 A.2d 1080 (1979)).

Because nothing in PGCC § 27-546 (d)(10) requires a new Traffic Study if more than six (6) years have lapsed since the last finding of adequacy (as opposed to merely finding whether the proposed development will be adequately served based on the last finding of adequacy), and because the added AM and PM trips (for this DSP) will *not be greater or exceed* the overall trip cap for the subject property (as previously determined), there is substantial evidence in the record (as shown above) that the Board’s approval of the DSP was in full compliance with the requirements of PGCC § 27-546 (d)(10) and, among other things, Conditions 3 and 8 of the PPS.

Question 3

III. The Planning Board erred when it approved TCP2-053-07-06 without requiring the Applicant to exhaust all on-site conservation techniques before the Planning Board approved the Applicant for off-site conservation techniques. Exceptions at 20-22.

- **Failure to Exhaust Administrative Remedies**

Having reviewed the record, the District Council finds that Opposition failed to raise Question 3 before the Board. PGCPB No. 2023-81, PGCPB No. 2023-86, Planning Board Record Parts 1 & 2, Technical Staff Report, (7/6/2023, Tr.). Here, the Technical Staff Report was made available to the public and all persons of record (including Opposition) on June 22, 2023, at least two-weeks prior to the Board’s evidentiary hearing on July 6, 2023. At the hearing before the Board,

Opposition raised no objection to the findings and conclusions contained within the Technical Staff Report on this issue. Technical Staff Report, (7/6/2023, Tr.). The failure to raise an issue before the administrative agency is a failure to exhaust administrative remedies. *Chesley*, 176 Md. App. 413, 427 n.7, 933 A.2d 475 (2007) (quoting *Delmarva Power & Light Co.*, 370 Md. 1, 32, 803 A.2d 460, motion for reconsideration granted on other grounds, 371 Md. 356, 809 A.2d 640 (2002)), *cert. denied*, 403 Md. 305, 941 A.2d 1105 (2008). Accordingly, “[a] party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings, may not thereafter complain about the error at a judicial proceeding.” *Cremins*, 164 Md. App. 426, 443, 883 A.2d 966 (2005) (quoting *Cicala*, 288 Md. 254, 261-62, 418 A.2d 205 (1980)).

In the alternative, if Question 3 was properly raised before the Board (and it was not), it lacks merit. Primarily, Opposition contends that 1) the Board failed to articulate whether on-site conservation techniques had been exhausted before approving off-site conservation techniques and 2) the record is devoid of any evidence demonstrating whether on-site conservation techniques had been exhausted. Exceptions at 21-22. Opposition is incorrect.

The Board approved the PPS for the subject property in 2006. As noted above, there was no judicial challenge to the Board’s 2006 PPS approval. Nor has there been any judicial challenge to the Board’s previously approved tree conservation plans TCP1-13-05 and TCP2-053-07-05. *Nutter*, 230 Md. 6, 185 A.2d 360 (1962) (where no appeal is taken or attempted to be taken from a decision or action of the Board more than thirty days from the decision, Court of Appeals prohibits appeals of subsequent agency actions to reach back to the merits of an original action).

In relevant part, Condition 9 of the 2006 PPS addressed requirements for a Type 2 Tree Conservation Plan at the time of DSP approval as follows:

9. A Type II tree conservation plan shall be approved at the time of approval of the DSP.

Type 2 Tree Conservation Plan TCP2-053-07-06 was submitted for review with this application and is further analyzed in Finding 13. PGCPB No. 2023-81 at 35.

Finding 13 provides as follows:

13. 1991 Prince George's County Woodland Conservation and Tree Preservation Ordinance:

This property is subject to the provisions of the Woodland Conservation and Tree Preservation Ordinance *because there are previously approved tree conservation plans (TCP1-13-05 and TCP2-053-07-05). A sixth revision to TCP2-053-07 was submitted with this application. The worksheet on the TCP2 is based on the original area of woodlands provided on-site with TCP2-053-07.* According to the worksheet, the site's overall gross area is 244.63 acres. A total of 229.50 acres of existing woodlands are on the net tract, with 12.92 acres of woodlands in the floodplain, resulting in a woodland conservation threshold of 34.76 acres (15 percent).

The Woodland Conservation Worksheet permits the removal of 195.80 acres of woodland in the net tract area and 0.97 acre of woodland in the floodplain, for a woodland conservation requirement of 85.87 acres. According to the worksheet, the requirement will be met with 23.79 acres of preservation and 45.40 acres in fee-in-lieu. This phase of the plan is showing 1.93 acres in fee-in-lieu to be paid. The Environmental Planning Section does not support the use of fee-in-lieu and recommends that the conservation requirement for this phase be met using off-site mitigation credits, or other suitable methods. The worksheet should be revised to reflect the use of off-site mitigation credits, or other suitable methods, to meet the woodland conservation requirement. Technical revisions to the TCP2 are required and are included herein. In accordance with the approved Natural Resources Inventory, NRI-021-06-06, 13 specimen trees have been identified on the subject property, along with a 100-year floodplain, wetlands, streams, and steep slopes that comprise the PMA. *The TCP2 and the DSP show all required information correctly, in conformance with the NRI, and no specimen trees were identified for removal with this application.*

The applicant submitted an approved SWM Concept Plan (34077-2022) showing no impacts to the PMA for the proposed SWM facilities. The SWM concept plan and letter were approved on February 16, 2023, and are valid until February 26,

2026. The approved SWM concept plan shows the use of 12 micro-bioretenention facilities and one underground storage facility, to meet the current requirements of environmental site design, to the maximum extent practicable. No further information is required regarding STM with this application. PGCPB No. 2023-81 at 42. (Emphasis added).

The Board also articulated findings on the TCP2 as follows:

30. All future tree conservation plans shall show woodland conservation on-site to be no less than 10 percent of the net tract area.

Type 2 Tree Conservation Plan TCP2-053-07-06 has been submitted with this DSP, in conformance with this requirement. This requirement was addressed in the first phase of the Woodmore Town Centre project.

32. Development of this subdivision shall be in conformance with an approved Type I Tree Conservation Plan (TCPI/013/05-01). The following note shall be placed on the Final Plat of Subdivision:

“This development is subject to restrictions shown on the approved Type I Tree Conservation Plan (TCPI/013/05-01), or as modified by the Type II Tree Conservation Plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland Conservation Ordinance. This property is subject to the notification provisions of CB-60-2005.”

The above note will be required on the final plat. PGCPB No. 2023-81 at 37.

Moreover, the Board further articulated its findings to approve the TCP2 by adopting and incorporating a 5-page Memorandum from Environmental Planning. PGCPB No. 2023-81 at 43/DSP-22034_Backup 638-642 of 656. Below is a screen shot of the Memorandum, which states as follows:

June 6, 2023

MEMORANDUM

TO: Andrew Shelly, Planner II, Urban Design Section, DRD

VIA: Thomas Burke, Planning Supervisor, Environmental Planning Section, CWPD *TB*

FROM: Mary Rea, Planner II, Environmental Planning Section, CWPD *MAR*

SUBJECT: Alta Woodmore; DSP-22034 and TCP2-053-07-06

The Environmental Planning Section (EPS) has reviewed the above-referenced Detailed Site Plan (DSP-22034) and Type 2 Tree Conservation Plan (TCP2-053-07-06), accepted on April 28, 2023. Comments were provided to the applicant at the Subdivision and Development Review Committee (SDRC) meeting on May 12, 2023. Revised plans and documents were received on May 26, 2023, in response to these comments. The EPS recommends approval of DSP-22034 and TCP2-053-07-06, with recommended findings and conditions listed at the end of this memorandum.

BACKGROUND

The EPS previously reviewed the following applications and associated plans for the subject site:

Review Case #	Associated Tree Conservation Plan #	Authority	Status	Action Date	Resolution Number
A-9613C	N/A	District Council	Approved	3/14/1988	PGCPB No. 13-1988
CSP-03006	TCP1-13-05	Planning Board	Approved	9/29/2005	PGCPB No. 05-205
4-06016	TCP1-13-05-01	Planning Board	Approved	9/21/2006	PGCPB No. 06-212
DSP-07011	TCP2-053-07	Planning Board	Approved	7/19/2007	PGCPB No. 07-144
DSP-07011-01	TCP2-053-07-01	Planning Board	Approved	1/15/2009	PGCPB No. 09-03
DSP-07057	TCP2-053-07-02	Planning Board	Approved	9/25/2008	PGCPB No. 08-140
DSP-14027	TCP2-053-07-03	Planning Board	Approved	3/19/2015	PGCPB No. 15-22
DSP-16011	TCP2-053-07-04	Planning Board	Approved	7/28/2016	PGCPB No. 16-88

DSP-17030	TCP2-053-07-05	Planning Board	Approved	3/22/2018	PGCPB No. 18-22
DSP-22034	TCP2-053-07-06	Planning Board	Pending	Pending	Pending

PROPOSED ACTIVITY

The current application is for the construction of two multi-family residential buildings and associated infrastructure. The current zoning for the site is Town Activity Center-Edge (TAC-E); however, the applicant has opted to apply the zoning standards that were in effect prior to April 1, 2022, for the Mixed Use-Transportation Oriented (M-X-T) Zone.

GRANDFATHERING

The project is grandfathered with respect to the environmental regulations contained in prior Subtitles 24, 25, and 27 because the project has a previous preliminary plan approval (4-06016).

PREVIOUSLY APPROVED CONDITIONS

The EPS previously reviewed CSP-03006-02 and Preliminary Plan of Subdivision (PPS 4-06016). No previously approved environmentally related conditions from CSP-03006-02 are relevant to the current DSP application.

Preliminary Plan of Subdivision 4-06016

The amended PPS 4-06016 was approved by the Planning Board with the Prince George's County Planning Board (PGCPB) Resolution No. 06-212 on September 21, 2006. The conditions of approval, which are environmental in nature and are relevant to this DSP, are shown in **bold** and are addressed below:

9. **A Type II tree conservation plan shall be approved at the time of approval of the DSP.**

TCP2-053-07-06 was submitted and reviewed with this DSP.

10. **Development of this site shall be in conformance with Stormwater Management Concept Plan #20908-2003-01, and any subsequent revisions.**

Stormwater management (SWM) concept plan #20908-2003-01 has been replaced with SWM concept #34077-2022 for this DSP. The site is in conformance with SWM concept #34077-2022.

29. **Prior to the issuance of any permits which impact jurisdictional wetlands, wetland buffers, streams or Waters of the U.S., the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.**

This will be reviewed at the time of permitting.

30. **All future tree conservation plans shall show woodland conservation on-site to be no less than 10 percent of the net tract area.**

This requirement was addressed in the first phase of the project.

SUMMARY OF RECOMMENDED FINDINGS AND CONDITIONS

The EPS has completed the review of DSP-22034 and TCP2-053-07-06, and recommends approval, subject to the following findings and conditions:

Recommended Findings:

1. No specimen trees will be removed with this application.
2. The regulated environmental features (REF) on the subject property were preserved and/or restored to the fullest extent possible based on the limits of disturbance shown on the current type 2 tree conservation plan (TCP2). No impacts to REF(s) are proposed with this application.
3. Conservation easements for the areas within the PMA have been previously recorded.

Recommended Conditions:

1. Prior to signature approval of the detailed site plan, the TCP2 shall be revised as follows:
 - a. Update the worksheet to remove the use of fee-in-lieu in this phase of development and show other means of meeting the woodland conservation requirement.
 - b. Update the worksheet to reflect the woodland preservation in this phase of the site.
 - c. Add the specimen tree table.
 - d. The owner's awareness certificate shall be signed.
 - e. Add the forest conservation act reporting information table.
 - f. Standard Note #1 shall be corrected to the correct DSP number, DSP-22034.
 - g. Standard Note #9 shall be corrected to reflect this plan being grandfathered.
 - h. Show the locations of the woodland preservation signs.
 - i. Have the plans signed and dated by the qualified professional who prepared them.
2. Prior to the issuance of any permits, which impact 100-year floodplain, wetlands, wetland buffers, streams, or waters of the United States, the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.
3. The retaining walls shall be designed in accordance with the recommendations as specified in the Hillis-Carnes Engineering Associates geotechnical report dated April 24, 2023, and revised on May 19, 2023.
4. The geotechnical report and the global stability analysis shall be reviewed and approved by the Department of Permitting, Inspections and Enforcement (DPIE) at the time of final grading permits.
5. The design package of the retaining wall shall be reviewed and approved by DPIE at the time of the retaining wall building permit.

The Board's factual findings are reviewed to determine whether they are supported by substantial evidence in the record. *K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482, 514 n.15, 42 A.3d 40 (2012). The substantial evidence test does not turn on whether an aggrieved party provided substantial evidence to support its position before the administrative agency. On the

contrary, the substantial evidence test requires a determination of whether the agency’s decision is founded upon substantial evidence in the record. *Shea*, 415 Md. 1, 997 A.2d 768 (2010). Moreover, if the administrative record and the Board’s final determination reflect that the Board considered the factors and conditions required by the applicable provisions, the resolution need not restate all facts upon which it rests. *West Montgomery Cty. Citizens Ass’n*, 248 Md. App. 314, 241 A.3d 76 (2020) (“It is not unreasonable for the Planning Board to rely on a Staff Report, as the Planning Board did in this case, if the Staff Report is thorough, well-conceived, and contains adequate findings of fact.”) (quoting *Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 110, 985 A.2d 1160 (2009)). “The test is reasonableness, not rightness.” *Riverkeeper*, 447 Md. 88, 134 A.3d 892 (2016) (quoting *Annapolis Waterfront Co.*, 284 Md. 383, 399, 396 A.2d 1080 (1979)).

Like the Board’s decision to approve the DSP at issue here, administrative decisions must not be “arbitrary, capricious, or unreasonable” – there must be “substantial evidence from which the [B]oard could have reasonably found as it did.” *Baker v. Bd. of Trs. of Emps. Ret. Sys. of City of Balt.*, 269 Md. 740, 744 (1973). Here, the Board’s articulation or factual findings are *more than adequate or sufficient and were not supplied by the parties*. *Relay Improvement Assoc. v. Sycamore Realty Co., Inc.*, 105 Md. App. 701, 714 (1995). There is substantial evidence, in the record, that the Board, reasonably found as it did, and did not, for purposes of this DSP, fail to articulate whether Applicant exhausted any of the on-site conservation techniques before the Board approved Applicant’s off-site conservation techniques. Nor is the record devoid of any evidence demonstrating that Applicant has not exhausted, for purposes of this DSP, any of the on-site conservation techniques before it requested permission to utilize off-site conservation techniques.

For purposes of *this* DSP, the Board reviewed the sixth revision to the previously approved (and grandfathered) TCP2-053-07—which included, among other things, prior (unchallenged)

approvals of Applicant's TCP2s and the worksheet on the TCP2 based on the *original area* of woodlands provided on-site with TCP2-053-07—none of which have been overturned by a court of competent jurisdiction.

Question 4

IV. The Planning Board failed to articulate how the Applicant's Alternative Compliance Plan will be equally effective as planting 107 shade trees in the proposed parking lot. Exceptions at 22-27.

- **Failure to Exhaust Administrative Remedies**

Having reviewed the record, the District Council finds that Opposition failed to raise Question 4 before the Board. PGCPB No. 2023-81, PGCPB No. 2023-86, Planning Board Record Parts 1 & 2, Technical Staff Report, (7/6/2023, Tr.). Here, the Technical Staff Report was made available to the public and all persons of record (including Opposition) on June 22, 2023, at least two-weeks prior to the Board's evidentiary hearing on July 6, 2023. At the hearing before the Board, Opposition raised no objection to the findings and conclusions contained within the Technical Staff Report on this issue. Technical Staff Report, (7/6/2023, Tr.). The failure to raise an issue before the administrative agency is a failure to exhaust administrative remedies. *Chesley*, 176 Md. App. 413, 427 n.7, 933 A.2d 475 (2007) (quoting *Delmarva Power & Light Co.*, 370 Md. 1, 32, 803 A.2d 460, motion for reconsideration granted on other grounds, 371 Md. 356, 809 A.2d 640 (2002)), *cert. denied*, 403 Md. 305, 941 A.2d 1105 (2008). Accordingly, "[a] party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings, may not thereafter complain about the error at a judicial proceeding." *Cremins*, 164 Md. App. 426, 443, 883 A.2d 966 (2005) (quoting *Cicala*, 288 Md. 254, 261-62, 418 A.2d 205 (1980)).

In the alternative, if Question 4 was properly raised before the Board (and it was not), it lacks merit. Primarily, Opposition contends that 1) the Board failed to articulate how the Alternative Compliance Plan shows that the proposal is equal to or better than the criteria in the Landscape Manual, 2) the Board must provide evidence that the proposal will be equal or better, and 3) the Board's analysis about the efficacy of the proposal was based on a conclusory statement. Exceptions at 22-23. Exceptions at 21-23. Opposition is incorrect.

The Board fully articulated its findings and conclusions (supported by evidence in the record) to grant Applicant's Alternative Compliance proposal as follows:

12. 2010 Prince George's County Landscape Manual: The application is subject to the requirements of Section 4.1, Residential Requirements; Section 4.3, Parking Lot Requirements; Section 4.6, Buffering Development from Streets; Section 4.7, Buffering Incompatible Uses; and Section 4.9, Sustainable Landscaping Requirements, of the Landscape Manual. The landscape plan provided with the subject DSP contains the required schedules, demonstrating that the requirements have been met, apart from Section 4.3, from which the applicant has requested alternative compliance. A diverse set of trees and shrubs have been provided to meet the landscaping requirements, along with preserved existing trees in the northern portion of the site. Technical corrections to the landscape plan and schedules have been conditioned herein. These conditions include removal of the Section 4.2-1 landscape schedule and alternative compliance request from the landscape plans. The DSP does not request a nonresidential use and, therefore, the requirements of Section 4.2-1 are not applicable, until such use is proposed on Outlot E. The Planning Board also found that the native species percentage of evergreens and shrubs should be increased to at least 50 percent and have provided a condition, accordingly.

In reviewing the landscape plan, the Planning Board found that the provided fence for the Section 4.6-1 buffer is inadequate. The fence runs parallel to the place of worship's property line to the south, but does not screen the property boundary that faces MD 202. Therefore, a condition has been provided for the applicant to revise the Section 4.6-1 schedule to provide the necessary plant material, to conform to Section 4.6 of the Landscape Manual. Emphasis shall be placed on providing the plant material behind the garages fronting MD 202, to enhance their screening from the roadway. PGCPB No. 2023-81 at 40.

Alternative compliance is requested from Section 4.3, Parking Lot Requirements, of the Landscape Manual for the interior planting requirements, as follows:

REQUIRED: Section 4.3-2 Interior Planting for Parking Lots 7,000 Square Feet or Larger

Total Parking Lot Area	212,372 sq. ft.
Interior Landscape Area (15% of Parking Lot Area)	31,856 sq. ft.
Shade trees (1 per 300 square feet of landscape area)	107

PROVIDED: Section 4.3-2 Interior Planting for Parking Lots 7,000 Square Feet or Larger

Total Parking Lot Area	212,372 sq. ft.
Interior Landscape Area (16% of Parking Lot Area)	34,288 sq. ft.
Shade trees (1/300 sq. ft. = 115 required)	49

Justification of Recommendation

The applicant requests alternative compliance from the requirements of Section 4.3-2 of the Landscape Manual. Per Section 4.3-2, an applicant shall provide 1 shade tree per 300 square feet of interior landscape area provided. The applicant has provided 34,288 square feet of landscape area, which requires a total of 115 shade trees. Due to the unusual shape of the property, primary management area on the site, stormwater management facilities, and parking needed to support the 284 dwelling units, the space for trees within the interior of the parking lot is limited. As a result, the applicant provides only 49 shade trees within the interior of the parking lot.

To mitigate the lack of interior shade trees, the applicant has provided 16 percent landscape area, instead of the required 15 percent which increases the amount by 2,432 square feet. In addition, the applicant provides an additional 70 shade trees along the parking lot perimeter. However, this does not adequately address the lack of interior shade trees, as there is additional space that has not been utilized internally to the parking lot. Therefore, the Planning Board recommends that, at least 9 additional interior shade trees be provided to reach half of the requirement internally, bringing the total to 58 shade trees. In addition, the Planning Board found that all internal shade trees be planted at a minimum of 3- to 3.5-inch caliper to provide more immediate shade and visual relief. These revisions should be provided, prior to signature approval of the DSP. With these revisions, the Planning Board believes that the provided alternative design will be equally effective as normal compliance with Section 4.3-2 of the Landscape Manual, due to the increased landscape area, increased tree size, and perimeter shade trees.

The applicant also requested alternative compliance from Section 4.2-1, Requirements for Landscape Strips Along Streets and Section 4.6-1, Buffering Residential Development from Streets, of the Landscape Manual. However, the

DSP does not provide a nonresidential use and, therefore, the requirements of Section 4.2-1 are not applicable to this development. In addition, the residential development is no longer abutting Ruby Lockhart Boulevard. Outlot E, which is a future commercial development pad, now separates the residential development from the street. As a result, neither alternative compliance is needed.

The Planning Board approved Alternative Compliance AC-23001, from the 2010 *Prince George's County Landscape Manual*, for Section 4.3-2, Interior Planting for Parking Lots 7,000 Square Feet or Larger, subject to two conditions, which have been included herein. PGCPB No. 2023-81 at 40-41. (Emphasis added).

The Board's factual findings are reviewed to determine whether they are supported by substantial evidence in the record. *K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482, 514 n.15, 42 A.3d 40 (2012). The substantial evidence test does not turn on whether an aggrieved party provided substantial evidence to support its position before the administrative agency. On the contrary, the substantial evidence test requires a determination of whether the agency's decision is founded upon substantial evidence in the record. *Shea*, 415 Md. 1, 997 A.2d 768 (2010). Moreover, if the administrative record and the Board's final determination reflect that the Board considered the factors and conditions required by the applicable provisions, the resolution need not restate all facts upon which it rests. *West Montgomery Cty. Citizens Ass'n*, 248 Md. App. 314, 241 A.3d 76 (2020) ("It is not unreasonable for the Planning Board to rely on a Staff Report, as the Planning Board did in this case, if the Staff Report is thorough, well-conceived, and contains adequate findings of fact.") (quoting *Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 110, 985 A.2d 1160 (2009)). "The test is reasonableness, not rightness." *Riverkeeper*, 447 Md. 88, 134 A.3d 892 (2016) (quoting *Annapolis Waterfront Co.*, 284 Md. 383, 399, 396 A.2d 1080 (1979)).

Like the Board's decision to approve the DSP at issue here, administrative decisions must not be "arbitrary, capricious, or unreasonable" – there must be "substantial evidence from which the [B]oard could have reasonably found as it did." *Baker v. Bd. of Trs. of Emps. Ret. Sys. of City of*

Balt., 269 Md. 740, 744 (1973). Here, the Board’s articulation or factual findings are *more than adequate or sufficient and were not supplied by the parties*. *Relay Improvement Assoc. v. Sycamore Realty Co., Inc.*, 105 Md. App. 701,714 (1995). There is substantial evidence, in the record, that the Board, reasonably found as it did, and did not, for purposes of this DSP, fail to articulate how Applicant’s Alternative Compliance Plan will be equally effective as planting 107 shade trees in the proposed parking lot. Nor is the record devoid of any evidence demonstrating that Applicant’s Alternative Compliance Plan will not be equally effective as planting 107 shade trees in the proposed parking lot.

But the record also reflects, based on Applicant’s representation, through counsel, that it would be reasonable for the District Council to impose a condition of approval for this DSP development for Applicant to install certain solar panels in parking lot areas which would align with Applicant’s Alternative Compliance Plan to be equally as effective as planting 107 shade trees in the proposed parking lot. (9/25/2023, Tr.). See Condition 1.v.

Question 5

V. The Planning Board erred when it approved DSP-22034 without proof that the Applicant had obtained an access easement over the St. Joseph Catholic Church Property. Exceptions at 27-28.

- **Failure to Exhaust Administrative Remedies**

Having reviewed the record, the District Council finds that Opposition failed to raise Question 5 before the Board. PGCPB No. 2023-81, PGCPB No. 2023-86, Planning Board Record Parts 1 & 2, Technical Staff Report, (7/6/2023, Tr.). Here, the Technical Staff Report was made available to the public and all persons of record (including Opposition) on June 22, 2023, at least two-weeks prior to the Board’s evidentiary hearing on July 6, 2023. At the hearing before the Board, Opposition raised no objection to the findings and conclusions contained within the Technical

Staff Report on this issue. Technical Staff Report, (7/6/2023, Tr.). The failure to raise an issue before the administrative agency is a failure to exhaust administrative remedies. *Chesley v. City of Annapolis*, 176 Md. App. 413, 427 n.7, 933 A.2d 475 (2007) (quoting *Delmarva Power & Light Co. v. Public Serv. Comm'n of Md.*, 370 Md. 1, 32, 803 A.2d 460, motion for reconsideration granted on other grounds, 371 Md. 356, 809 A.2d 640 (2002)), *cert. denied*, 403 Md. 305, 941 A.2d 1105 (2008). Accordingly, “[a] party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings, may not thereafter complain about the error at a judicial proceeding.” *Cremins v. County Comm’rs of Washington County*, 164 Md. App. 426, 443, 883 A.2d 966 (2005) (quoting *Cicala v. Disability Review Bd. For Prince George’s County*, 288 Md. 254, 261-62, 418 A.2d 205 (1980)).

In the alternative, if Question 5 was properly raised before the Board (and it was not), it lacks merit. According to Opposition, the Board approved the DSP based, in part, on the assumption that “a secondary access point to the St. Joseph Catholic Church property to the south will also be provided.” Exceptions at 27. Opposition is incorrect.

Under the Old Zoning Ordinance, a specific purpose of a DSP is to, among other things, **describe any maintenance agreements**, covenants, or construction contract documents that are necessary to assure that the Plan is implemented in accordance with the requirements of the Zoning Ordinance. PGCC § 27-281 (c)(1)(D). And when a DSP is submitted to the Board, it **shall** include, among other things, **existing rights-of-way, and easements** (such as railroad, utility, water, sewer, access, and storm drainage). PGCC § 27-282(e)(7). (Emphasis added).

Based on the record, the secondary access point is a proposed access easement, which will provide St. Joseph’s Church—not the subject property—with a secondary means of ingress and

egress. There is no evidence in the record that the DSP will provide secondary access for the subject property. At the hearing before the Board, Applicant provided facts/evidence concerning a “secondary access point to the St. Joseph’s Catholic Church property” as follows:

MR. GIBBS: For years, Saint Joseph’s Church has been asking for the developers of Woodmore Towne Centre to somehow provide a second point of ingress and egress for them so that their sole point of ingress and egress is not on Saint Joseph’s Drive.

So Wood Partners has stepped up to the plate and has met with and committed to Saint Joseph’s Church to provide an easement and to construct a driveway connection from Saint Joseph’s Church property into what will be lot 28 after out lot A is replatted so that the church will have a point of access onto Ruby Lockhart Boulevard. That’s significant simply because it will allow patrons at Saint Joseph’s Church, particularly during Sunday services, to be able to come out, take a right on Ruby Lockhart Boulevard, and go directly across Saint Joseph’s Drive. And to take Ruby Lockhart Boulevard down past the Woodmore Overlook project where a new public road has been constructed and is open to provide a second point of access onto Maryland 202, which has a free right-in, right-out turning movement associated with it as well. Or in the alternative, they can continue down Ruby Lockhart Boulevard to hit Lottsford Road and take a right or a left turn at that point in time. So basically, there are three different routes that can be taken for the church now for their worshippers to leave the Saint Joseph’s Church property after their services.

I can tell you from my personal conversations with the church, they are absolutely delighted that this is happening. They are also delighted that we are putting a 6-foot-high site type fence above, on top of, mounted on the retaining walls which run along our common property boundary with Saint Joseph’s Church. That is going to provide, you know, a visual screen from the multi-family residential from the church property. They are very happy with that change as well. (7/6/2023, Tr., pp. 33-34). (Emphasis added).

Consistent with the facts and evidence in the record, the Board approved the DPS subject to the following conditions:¹¹

- c. Label the total area of Lot 28 on Sheet 4 of the DSP.
- d. Label Outlot E as “proposed,” instead of “future,” on Sheet 4 of the DSP and provide the total area of Outlot E.

¹¹ Under the Old ZO, the word “approve” includes “approve with conditions, modifications, or amendments.” PGCC § 27-108.01(a)(10).

e. Clearly reflect the boundary between Lot 28 and Outlot E, adjusting the boundary so that the entirety of the access driveway is provided on Lot 28 on the DSP.

f. Clearly reflect **the extent of the private access agreement** needed to serve Outlot E on the DSP.

g. The applicant shall show, dimension, and label **a private access easement** encumbering that portion of Lot 28 and the access only necessary to serve Outlot E. PGCPB No. 2023-81 at 49. (Emphasis added).

On this issue, the Board's approval of the DSP was in accordance with all requirements of the Old ZO.

Question 6

VI. The Planning Board failed to give the City of Glenarden sufficient notice that the City could provide referral comments about the proposed development. Exceptions at 28.

According to Opposition, under PGCC § 27-284, the Board failed to give sufficient notice to The City of Glenarden (Glenarden) to provide *referral comments* about the proposed DSP development. Exceptions at 28. Opposition is incorrect. PGCC § 27-284 provides as follows:

- (a) Prior to taking action on the Detailed Site Plan, the Planning Board shall refer the plan to the Historic Preservation Commission (Part 14), when appropriate, **and to all agencies which the Planning Board deems appropriate for review and comment.** The agencies shall include all of those whose action is likely to have a substantive effect on the plan under review. The Planning Board shall maintain a list of referral agencies. The plan shall also be referred to:
 - (1) the Prince George's County Police Department for review and comment. The Police Department may comment on issues relevant to their mission, including opportunities to implement crime-prevention measures, and to enhance the safety and security of residents, employees and other users of a project through implementation of the principles of Crime Prevention Through Environmental Design (CPTED); and
 - (2) the Prince George's County Health Department. The Health Department shall perform a health impact assessment review of the proposed development identifying the potential effects on the health of the population, and the distribution of those effects within the population, including recommendations for design components to increase positive

health outcomes and minimize adverse health outcomes on the community. PGCC § 27-284. (Emphasis added).

Under the Old ZO, Glenarden *is not an agency* of the County *subject to referral comments*. In the County, the word “agency” is used to designate *a subordinate element of government* and **shall** be construed as including all offices, departments, institutions, boards, commissions, and corporations of the County government and, when so specified, all other offices, departments, institutions, boards, commissions, and corporations which receive or disburse County funds. County Charter § 1017(m). (Emphasis added).

For purposes of notice for the proposed DSP development, Glenarden is not a subordinate agency of the County. Instead, Glenarden is a *municipality* subject to receive notice for the proposed DSP development in accordance with “**informational mailing**” under PGCC § 27-107.01(a) (122.4) of the Old ZO as follows:

Informational mailing: The mailing, with the information required in Part 3, Division 1, **which an applicant sends to municipalities**, civic associations, and adjoining property owners **before filing an application**. PGCC § 27-107.01(a) (122.4). (Emphasis added).

Because Glenarden is a *municipality*¹² as opposed to an *agency* of the County (for purposes of referral comments), the Board did not violate *any* notice provision under PGCC § 27-284. Nor was Glenarden deprived of informational notice.

On the issue of sufficient notice of the proposed DSP development, the Board articulated its findings and conclusions as follows:

Two members of the City Council of the City of Glenarden signed up to speak, in opposition to this development application. These members were Mr. Derek Curtis

¹² Please visit:
https://www.cityofglenarden.org/government/city_of_glenarden_government/organizational_chart_of_city_government.php (last visited 10/20/2023).

II and Ms. Erika Fareed. Mr. Curtis and Ms. Fareed testified that staff did not properly notify the City of this development application and that the applicant did not engage with the City, prior to filing the application.

The applicant responded that the following notices were sent to the City of Glenarden:

- Informational mailing—Per the applicant, the informational mailing list included the current mayor and the City generally. The record contains informational notice letters dated November 15, 2022, and December 2, 2022, and associated mailing lists confirming that informational mailings were sent to Mayor Cross and “Mayor – City of Glenarden.”
- Acceptance mailing—Per the applicant, the acceptance mailing list included the current mayor, Councilmember Erika Fareed, and the City generally. The record contains the acceptance letter dated April 25, 2023, and associated mailing list confirming that the notice was sent to Mayor Cross, all seven current councilmembers (Fareed, Herring, Jones, Ferguson, Hairston, Guillaume, and Curtis), the acting city manager (Regis L. Bryant), and “Mayor – City of Glenarden.”
- Hearing Mailing—The record contains evidence of a hearing notice sent to all parties of record on June 6, 2023, 30 days before the July 6, 2023, hearing. Per the associated mailing list, the parties of record included all seven current council members (Fareed, Herring, Jones, Ferguson, Hairston, Guillaume, and Curtis) and the acting city manager (Regis L. Bryant).

Staff testified that the City of Glenarden *also received a referral*, at the time of acceptance of this application, which was on April 28, 2023. Two members of the City of Glenarden received the development application and were requested to provide a referral. However, the City Council members testified that these individuals (etobias@cityofglenarden.org and eestes@cityofglenarden.org) no longer work at the City of Glenarden and that staff should update the referral contact to the new city manager, Ms. Beverly Habada.

Staff testified that this contact information will be updated for all future referrals sent to the City of Glenarden. The applicant then provided testimony that the development application package was also made available to the City of Glenarden in three separate instances, prior to a City Council hearing.

- April 26, 2023: Mr. Gibbs spoke with Ms. Habada on the phone. He followed up and emailed Ms. Habada the application materials.
- May 16, 2023: Mr. Gibbs spoke with Mayor Cross. He forwarded Mayor Cross the email he had sent to Ms. Habada transmitting the application materials.

- Unknown Date (after May 16, 2023): Mr. Gibbs received a call from the City clerk requesting that the applicant team schedule a meeting with the City. Mr. Gibbs forwarded the application materials to the city clerk.
- June 21, 2023: The applicant team met with the City in advance of the Planning Board hearing.

The City of Glenarden testified this was *accurate*.

The Planning Board, therefore, finds the City was provided adequate notice of the hearing and that the City received timely opportunity to provide comments necessary for an adequate referral. The Board also notes that two members of the City Council testified at the hearing. PGCPB No. 2023-81 at 46-47. (Emphasis added).

In Maryland, the purpose of notification is to inform, and is satisfied where record reflects the parties possessed actual knowledge of the intended zoning and participated at the public hearing. *Largo Civic Ass’n v. Prince George’s County*, 21 Md. App. 76, 318 A.2d 834 (1974). Here, two (2) members of the City Council from Glenarden testified at the hearing before the Board. Moreover, since Glenarden had knowledge of the proposed DSP development, the requirement of notification is satisfied by actual knowledge, especially since Glenarden acted upon such facts and knowledge. *Landover Books, Inc. v. Prince George’s County, Maryland*, 81 Md. App. 54, 566 A.2d 792 (1989) (where complaining litigant had knowledge of facts, the requirement of notification is satisfied by actual knowledge, especially when acted upon).

In the final analysis, the Board committed no error concerning notice to Glenarden of the proposed DSP development.

C. Conclusion

Finding no merit in exceptions filed by Opposition, approval by the Board in DSP-22034, TCP2-053-07-06, AC-23001, and DDS-22002, are hereby AFFIRMED. The District Council, as a basis for its final decision, affirming and approving DSP-22034, TCP2-053-07-06, AC-23001,

and DDS-22002, adopts and incorporates by reference, as if fully restated herein, the Board's findings and conclusions in PGCPB No. 2023-81 and PGCPB No. 2023-86. In doing so, the District Council finds that the site plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use as referenced in PGCC § 27-285(b), and that under PGCC § 27-546(d)(10), the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club).

DSP-22034, TCP2-053-07-06, AC-23001, and DDS-22002 are APPROVED, subject to the following conditions:

1. Prior to certification, the detailed site plan (DSP) shall be revised, or additional information shall be provided, as follows:
 - a. Revise General Note 11 to provide a dwelling unit breakdown by building number, including the different types of units in each building.
 - b. Add the following general notes to the DSP coversheet:
 - (1) "During the construction phases of this project, noise should not be allowed to adversely impact activities on the adjacent properties. Indicate intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code."
 - (2) "All buildings shall be fully equipped with automatic fire suppression systems in accordance with applicable National Fire Protection Association standards and all applicable County laws."
 - (3) "Mitigation will be needed for Building 1 to reduce interior noise levels to 45 dBA or less."
 - c. Label the total area of Lot 28 on Sheet 4 of the DSP.

- d. Label Outlot E as “proposed,” instead of “future,” on Sheet 4 of the DSP and provide the total area of Outlot E.
- e. Clearly reflect the boundary between Lot 28 and Outlot E, adjusting the boundary so that the entirety of the access driveway is provided on Lot 28 on the DSP.
- f. Clearly reflect the extent of the private access agreement needed to serve Outlot E on the DSP.
- g. The applicant shall show, dimension, and label a private access easement encumbering that portion of Lot 28 and the access only necessary to serve Outlot E.
- h. The site plan shows two internal loading spaces. One loading space is required. Revise one of the provided loading space size on the DSP coversheet and Sheet 4, to conform with the minimum dimensional requirement in Section 27-578(a) of the prior Prince George’s County Zoning Ordinance or, in the alternative, provide an additional external on-site loading space which conforms with said minimum requirements.
- i. Revise the DSP coversheet to state that bicycle parking requirements are not applicable.
- j. Provide a revised bicycle parking space total, based on the combined number of indoor and outdoor bicycle spaces.
- k. Provide a separate label for Americans with Disabilities Act (ADA) parking on Sheet 4 of the DSP.
- l. Revise the provided architecture, as follows:
 - (1) With the exception of courtyards and recessed balcony areas, the first floor of each building elevation shall consist of full brick.
 - (2) Demonstrate conformance to Condition 20 of Conceptual Site Plan CSP-03006-02.
 - (3) Incorporate white coloring into the front and rear elevations of the garages.
 - (4) Offer a brick feature on the top of Garage Blocks 3 and 4, to incorporate the existing Woodmore signage into the design.

- (5) Provide the dimensions for the two multifamily building elevations.
- (6) Revise the location map of the maintenance shed architectural elevation, to conform with the DSP.
- m. Provide a detailed cost estimate of the values of the planned recreation facilities.
- n. Provide at least a 6-foot-high sight-tight fence along the eastern perimeter boundary of the dog park where it abuts Outlot E, to separate the dog park from the proposed commercial/retail use.
- o. Revise the exterior lighting fixtures to utilize full cut-off appliances.
- p. Provide a photometric plan demonstrating that the development will not provide spillover exterior lighting levels.
- q. Provide decorative pavers at the entrance of each multifamily residential building and the portion of the sidewalk adjacent to proposed Outlot E.
- r. Provide a signage schedule on the DSP coversheet, demonstrating conformance to Part 12 of the prior Prince George's County Zoning Ordinance.
- s. Revise the freestanding sign stand material from stone to brick, to be consistent with the multifamily buildings.
- t. Revise the landscape plan, as follows:
 - (1) Revise the overall landscape plan to provide labels for all on-site plant material, excluding the building courtyards.
 - (2) Provide the caliper for all plant material with each plant schedule.
 - (3) Revise the Section 4.3-2 schedule to provide nine additional shade trees within the interior parking lot landscape area.
 - (4) The applicant shall demonstrate that all interior parking lot shade trees are planted at a minimum of 3- to 3.5-inch caliper.
 - (5) Revise the Section 4.6-1 schedule to provide the necessary plant material, to conform to Section 4.6 of the 2010 *Prince George's County Landscape Manual*. Emphasis shall be placed on providing the plant material behind the garages fronting MD 202 (Landover Road), to enhance screening from the roadway.

- (6) Revise the Section 4.7-1 schedule and label a “Church” as a medium impact use.
 - (7) Revise the Section 4.9-1 schedule and provide at least 50 percent native evergreen tree and shrub species.
 - (8) Revise line items A and B on the tree canopy coverage schedule, to match the Type 2 tree conservation plan, and have a qualified professional sign and date the provided schedule.
 - (9) Provide attractive understory landscaping surrounding the proposed freestanding signage along Ruby Lockhart Boulevard.
 - u. Provide electric vehicle charging stations on the DSP and revise the parking tabulation on the DSP coversheet.
 - v. The applicant shall install solar panel parking canopies to cover fifty (50) percent of the parking lot area to provide additional shade which would have resulted if the full complement of shade trees had been provided under the Landscape Manual. Urban Design Section and the Transportation Section of the Maryland National Capital Park and Planning Commission may modify the location or placement of the solar panel parking canopies to cover fifty (50) percent of the parking lot area but shall not reduce the installation of solar panel parking canopies to less than fifty (50) percent of the parking lot area.
2. Prior to certification, the Type 2 Tree Conservation Plan (TCP2-053-07-06) shall be revised, or additional information shall be provided, as follows:
- a. Update the worksheet to remove the use of fee-in-lieu, in this phase of development, and show other means of meeting the woodland conservation requirement.
 - b. Update the worksheet to reflect the woodland preservation in this phase of the site.
 - c. Add the specimen tree table.
 - d. The owner’s awareness certificate shall be signed.
 - e. Add the Forest Conservation Act reporting information table.
 - f. Standard Note 1 shall be corrected to the correct detailed site plan number, DSP-22034.
 - g. Standard Note 9 shall be corrected to reflect this plan as being grandfathered.

- h. Show the locations of the woodland preservation signs.
 - i. Have the plans signed and dated by the qualified professional who prepared them.
3. Prior to issuance of any permits, which impact 100-year floodplain, wetlands, wetland buffers, streams, or waters of the United States, the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.
 4. The retaining walls shall be designed in accordance with the recommendations, as specified in the Hillis-Carnes Engineering Associates geotechnical report, dated April 24, 2023, and revised on May 19, 2023.
 5. The geotechnical report and the global stability analysis shall be reviewed and approved by the Prince George's County Department of Permitting, Inspections and Enforcement, at the time of final grading permits.
 6. The design package of the retaining wall shall be reviewed and approved by the Prince George's County Department of Permitting, Inspections and Enforcement, at the time of the retaining wall building permit.
 7. Prior to approval of a final plat for Lot 28 and Outlot E, the applicant and the applicant's heirs, successor, and/or assignees shall provide a draft access easement agreement, to be reviewed and approved by the Subdivision Section of the Development Review Division of the Prince George's County Planning Department. The documents shall set forth the rights, responsibilities, and liabilities of the parties and shall include the rights of the Maryland-National Capital Park and Planning Commission. The documents shall be recorded in the Prince George's County Land Records, and the easement shall be delineated with the Liber/folio indicated on the final plat, prior to recordation.
 8. The dog park shall be constructed and available for use at the time of the first occupancy certificate for any dwelling unit.

ORDERED this 23rd day of October 2023, by the following vote:

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

Opposed:

Abstained:

Absent: Council Member Watson.

Vote: 10-0.

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

By: _____
Thomas E. Dernoga, Chair

ATTEST:

Donna J. Brown
Clerk of the Council