

Case No.: DDS-623 National Harbor
Beltway Parcel, MGM, Lot 4

Applicant: MGM National Harbor, LLC

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

ORDER AFFIRMING PLANNING BOARD DECISION TO APPROVE
DEPARTURE FROM DESIGN STANDARDS

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 14-37, to approve a departure from design standards to allow a reduced standard, nonparallel parking space size to be used for all of the provided parking spaces for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, located approximately one mile north of the Woodrow Wilson Bridge, southwest of the intersection of I-95/495 (Capital Beltway) and Indian Head Highway (MD 210) in Planning Area 80 and Council District 8, is:

AFFIRMED, pursuant to Sections 27-132, 27-134, 27-141, 27-142, 27-228.01, 27-228.02, 27-239.01, 27-291, 27-258(a), and 27-550(a) of Subtitle 27 of the Prince George's County Code.¹

¹ The Prince George's County Code, Subtitle 27, Zoning Ordinance, (2013 Ed., 2014 Supp.), will be referred to hereinafter as "§27- ____". The Prince George's County Planning Board Resolution No. 14-37 will be referred to as "PGCPB No. 14-37."

PROCEDURAL HISTORY

Question 7, also known as the Gaming Expansion Question, was on the November 6, 2012 general election ballot in the state of Maryland as a legislatively-referred state statute, where it was approved by a majority of voters.² The measure allowed one additional casino to be constructed in Prince George's County and expanded the type of games (*i.e.*, table games) allowed at existing casinos. *See* Chapter 1, 2013 Md. Laws 1. *See also* Md. Code Ann., State Gov't §§ 9-1A-01–9-1A-38 (2009 & Supp. 2013).

On December 23, 2013, the Video Lottery Location Commission—in response to its' request for proposals for a video lottery operation license in Prince George's County—awarded the Prince George's County license to the applicant in this matter, MGM National Harbor, LLC (MGM).³

On or about February 10, 2014, MGM filed this application for a Departure from Design Standards (DDS-623), with the Development Review Division of the Prince George's County Planning Department, to allow a reduced standard, nonparallel parking space size to be used for all of the provided parking spaces for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886

² The ballot question passed by a 52% to 48% margin statewide and by a larger 59% to 41% margin in Prince Georges County.

³ *See or visit:*
<http://gaming.mdlottery.com/wp-content/uploads/2010/09/PG-County-Decision-Statement-12-23-2013.pdf>, and
<http://gaming.mdlottery.com/wp-content/uploads/2010/09/RFP-PG-VLT-2013-0101-2-6-13.pdf>, respectively.

square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage.⁴

On February 25, 2014, MGM received a Notice of License Award for a Video Lottery Operation License in Prince George's County from the Maryland Lottery and Gaming Control Commission. *See* Letter from Stephen L. Martino, Secretary, Maryland Lottery and Gaming Control Commission, to Mr. Lorenzo Creighton, President MGM, February 25, 2014.⁵

On March 25, 2014, the County Council sitting as the District Council introduced County Bill 6 (CB-6-2014), for the purpose of defining video lottery facility and terms related thereto, and authorizing a video lottery facility use as a permitted use in the Mixed Use-Transportation Oriented (M-X-T) Zone, subject to certain requirements, which was adopted and became law on April 15, 2014. *See* CB-6-2014.

On April 8, 2014, the County Council sitting as the District Council introduced County Bill 7 (CB-7-2014), for the purpose of requiring compliance with local business, local minority business, and local hiring requirements in a development agreement negotiated by the County Executive and a video lottery operator, subject to the approval of the same by County Council resolution, as a condition of the use of a video lottery facility. CB-7-2014 was adopted on May 6, 2014, and became effective on June 20, 2014. *See* CB-7-2014.

⁴ DDS-623 is a companion application to MGM's application for a Detailed Site Plan (DSP-07073-01) filed with the Development Review Division of the Planning Board. DSP-07073-01, although heard on the same day as this matter, was approved separately by Planning Board in PGCPB No. 14-36. The District Council will address its affirmance of DSP-07073-01 by separate order. MGM also filed an application for alternative compliance (AC-14005) for Lot 4. AC-14005 is a request for alternative compliance from the 2010 Prince George's County Landscape Manual, Section 4.2 along Harborview Avenue and National Avenue to permit an alternative landscape design that includes additional large caliper shade and ornamental tree plantings, and evergreen trees as a substitute for shrub plantings along the street; and from Section 4.9 to permit the use of non-native evergreen shrubs within the architectural terracing around the exterior of the parking garage. *See* PGCPB No. 14-37, p. 1.

⁵ *See or visit also:*
<http://gaming.mdlottery.com/casino-operator%E2%80%99s-license-issued-for-prince-george%E2%80%99s-county/>

On April 24, 2014, Technical Staff of the Planning Board submitted its report, which recommended approval of DDS-623, DSP-07073-01, and AC-14005 to the Planning Board. *See* Technical Staff Report, April 24, 2014.

On May 8, 2014, the Planning Board, pursuant to §§27-285 and 27-239.01, held a public hearing, and considered evidence on DDS-623, DSP-07073-01, and AC-14005. *See* (5/8/2014 Tr.) At the conclusion of the hearing, Planning Board voted to approve DDS-623, which was subsequently embodied within a resolution and adopted. *See* PGCPB No. 14-37.

On May 9, 2014, pursuant to §27-239.01, notification of Planning's Board's action was transmitted to the Clerk of the County Council. *See* Notification Letter from Mr. Alan Hirsch, Chief, Development Review Division, May 9, 2014.

On May 12, 2014, the District Council (9-0), pursuant to §27-239.01, elected to review DDS-623 and DSP-07073-01. *See* Zoning Agenda, May 12, 2014.

On June 9, 2014, Mr. Williams Nuckols appealed the decisions of the Planning Board in DDS-623, DSP-07073-01, and AC-14005 to the District Council. *See* Notice of Appeal by Mr. William Nuckols, June 9, 2014.

On June 10, 2014, the Clerk of the County Council notified all persons of record of the scheduled oral argument or public hearing for Monday, July 14, 2014.

On July 14, 2014, the District Council held a duly advertised public hearing or oral argument on this matter. At the conclusion of the hearing, this matter was taken under advisement. *See* Zoning Agenda, July 14, 2014.

On July 21, 2014, pursuant to §27-132, the District Council referred this matter to staff for the preparation of an order AFFIRMING the Planning Board actions in PGCPB No. 14-37. *See* Zoning Agenda, July 21, 2014.

APPLICABLE LAW

Pursuant to §27-239.01, in order for the Planning Board to grant a departure from design standards, it shall make the following findings: (i) The purposes of this Subtitle will be equally well or better served by the applicant's proposal; (ii) The departure is the minimum necessary, given the specific circumstances of the request; (iii) The departure is necessary in order to alleviate circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949; and (iv) The departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood. On appeal or review, the District Council shall affirm, reverse, or modify the decision of the Planning Board, or return the proposed departure to the Planning Board to take further testimony or reconsider its decision. *See* §27-239.01(b)(9)(d). Recently the Court of Special Appeals of Maryland held that the District Council exercises appellate jurisdiction over the Planning Board's decisions, and as such it is only authorized to affirm, reverse, or modify the decision based on the testimony, documents, and evidence presented at the hearing before the Planning Board, and review is limited to determining whether the Planning Board's decision was "arbitrary, capricious, discriminatory, or illegal." The Court of Special Appeals further concluded that, because the District Council is vested with appellate jurisdiction, the District Council may not substitute its judgment for that of the Planning Board, even if it had been so empowered, it might have made a diametrically different decision. The circumstances under which it may overturn or countermand a decision of the Planning Board are narrowly constrained. It may never simply second guess. *County Council of Prince George's County v. Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50, at 16-19 (filed May 28, 2014), *quoting County Council v. Curtis Regency Serv. Corp.*, 121 Md. App. 123,

137-138, 708 A.2d 1058 (1998) (citing *People’s Council for Baltimore Cnty. v. Beachwood Ltd. P’ship*, 107 Md. App. 627, 648-49, 670 A.2d 484 (1995)).⁶

FINDINGS AND CONCLUSIONS

Our findings and conclusions are based on, in addition to the record before us, statutory authority to 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 the approval of a preliminary plat of subdivision.⁷ See §27-141. Our review on the record, includes but is not limited to, MGM’s applications, Statement of Justification, Storm Water Management approval letter, Technical Staff Report, PowerPoint Slide Presentation, Proponent and Opposition Exhibits, Subdivision Records, Historic Preservation Commission Memorandum, Gaming Market & Economic Impact Studies, MGM Transportation Management Plan, Traffic Impact Analysis, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, Storm Water Management Concept Plan, Luminaire Schedule, MGM Parking Garage, State of Maryland Department of Transportation Plats, MGM’s Color Renderings, and May 8, 2014, transcript of proceedings.

⁶ Pursuant to Md. Code Ann., Land Use, §22-407 (2012 & Supp. 2014), the District Council voted to file, and has filed, a Petition for Writ of Certiorari in the Court of Appeals requesting its review of *County Council of Prince George’s County v. Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50 (filed May 28, 2014). Notwithstanding pendency of said petition, and until the Court of Appeals of Maryland disposes of same, our review of this matter will apply the standard of review announced in *Zimmer Development*.

⁷ See also RULES OF PROCEDURE FOR THE PRINCE GEORGE’S COUNTY DISTRICT COUNCIL (Adopted by CR-5-1993 and Amended by CR-2-1994, CR-2-1995 and CR-74-1995)

Rule 6: Oral Argument and Evidentiary Hearings:

“(f) The District Council may 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. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.”

- Departure from Design Standards Request

MGM requests approval of a departure from §27-558(a) to allow a reduced standard, nonparallel parking space size to be used for all of the provided parking spaces. DDS-623 is a companion application to the Detailed Site Plan application (DSP-07073-01), in which MGM requests approval of an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel. Combined, DDS-623 and DSP-07073-01 include the following development proposal:

- 512,490 square feet of entertainment and entertainment related uses,
- 54,695 square feet of other retail uses,
- 300-room hotel,
- 49,886 square feet of conference/assembly rooms,
- 3,000-seat performance theater,
- Numerous restaurant spaces equal to approximately 1,737 seats; and
- 4,797-space parking garage.

Development is primarily located on Lot 4; however, the circular entrance drive and the associated limits-of-disturbance (LOD) for the entrance drive construction, and the proposed private street, extend onto Lot 5.

The development data summary for MGM's request is as follows:

Zone	EXISTING M-X-T	APPROVED M-X-T
Uses	Vacant	entertainment establishment, hotel, retail, restaurants,
Acreages:		
Parcel 94 (total gross acreage)	49.47	49.47
Proposed Lot 2		1.31
Proposed Lot 3 (DSP- 07073)	7.26	7.26
Proposed Lot 4		22.76
Proposed Lot 5		9.38
Proposed Lot 6		6.01
Proposed Lot 7		2.75
Gross Floor Area:		
Lot 3 (DSP-07073)		
Building 1-Fast food		3,600
Building 2- Convenience store		<u>3,000</u>
Total Gross Floor area		6,600
Lot 4 (DSP-07073- 01)		
Entertainment Related Uses		483,381
Hotel		252,694
Retail		54,695
Office		29,109
Conference/Ballrooms (3,232 occupants)		49,886
Theater (3,000 seats)		136,818
Restaurant (1,737 seats, including hotel bar)		<u>71,654</u>
Total Gross Floor area		1,078,237
Floor Area Ratio		
Gross floor area of Beltway Parcel		1,084,837
Gross floor area of Waterfront		4,277,153
Total gross floor area for the entire National Harbor		5,361,990
Area of the entire property associated with the CSP		533.47 acres*
Floor area ratio proposed		0.23
Floor area ratio allowed per the CSP		0.31

*Based on the approved preliminary plan, depicting a more accurate calculation of the land area.

Other development data for Lot 4 is as follows:

	REQUIRED	APPROVED
Total Parking Spaces	4,738	4797
Handicapped Spaces	58	60
Total Loading Spaces	5	6

- Site Location, Surrounding Uses, and Prior Approvals

The proposed development site is generally located approximately one mile north of the Woodrow Wilson Bridge, southwest of the intersection of I-95/495 (Capital Beltway) and Indian Head Highway (MD 210) in Planning Area 80 and Council District 8. The tract is south of I-95/495, and west of Oxon Hill Road, with frontage on Oxon Hill Road to the east, National Avenue to the north, and Harborview Avenue to the south. The Beltway Parcel is on an elevated plateau overlooking the Waterfront Entertainment/Retail Complex portion of National Harbor. The DSP property for the Beltway Parcel is currently identified as Parcel 94 (residue of) on Tax Map 104 in Grid E-1, E-2, and F-1 of the Prince George's County land records. The site has a long, narrow configuration (approximately 3,400 feet long and 600 feet across) stretching northeast to southwest along the Capital Beltway, which forms the northwest boundary of the parcel. The Beltway Parcel also has approximately 1,200 feet of frontage on Oxon Hill Road. The land across the Capital Beltway (I-95/495) from the Beltway Parcel is occupied by the Oxon Hill Children's Farm, owned by the National Park Service. South and east of the site is land owned by the Maryland-National Capital Park and Planning Commission (M-NCPPC), Betty Blume Neighborhood Park, and the grounds of Oxon Hill Manor. Across Oxon Hill Road to the east is the Salubria office building and the Tanger Outlets. The Addison Family Cemetery, which will be preserved and left undisturbed in this plan of development, is located on the northwest side of the Beltway Parcel, which is outside of the subject proposed development.

The MGM site is a part of the larger development known as National Harbor, which consists of two major land areas, the Waterfront Parcel and the Beltway Parcel. The M-X-T Zone within the National Harbor development was granted by the District Council through eight (8) zoning map amendments applications filed during the 1980s and 1990s. *See* Zoning Map Amendments A-5619, A-5620, A-5621, A-5635, A-5636 and A-9433, which were consolidated for a waterfront project proposal known as the Bay of America, and subsequently enacted in Zoning Ordinance Numbers 47-1983, 48-1983, 49-1983, 44-1983, 45-1983, and 46-1983, respectively.⁸ The District Council also approved Zoning Map Amendment A-9593 in 1986, which reclassified property to the M-X-T Zone located at the northeast end of the subject site along Oxon Hill Road in conjunction with a second development proposal for the waterfront center known as Port America. *See* Zoning Ordinance Number 38-1986. In 1990, the District Council also granted Zoning Map Amendment A-9825, which reclassified property to the R-M-Zone on the southeastern side of the subject site near Oxon Hill Road, also in conjunction with development proposal for the waterfront center known as Port America. *See* Zoning Ordinance Number 33-1990.

The MGM site is located on property approved in Preliminary Plan of Subdivision (PPS) 4-88081, and adopted by the Planning Board in June of 1988. *See* PGCPB No. 88-245. PPS 4-88081 approved 12 parcels (Parcel A-L) and 3 outlots for a total of 82.13 acres. Subsequent to the approval of PPS 4-88081, Detailed Site Plan (DSP-88045) was also approved in June of 1988. *See* PGCPB No. 88-246. The Beltway Parcel was cleared of trees, graded, and stabilized in the late 1980s in accordance with DSP-88045.

⁸ The R-R Zone represents the original zoning applied to the area when it first became subject to zoning authority in 1957. The 1984 Subregion VII Sectional Map Amendment recognized the existing M-X-T and R-R Zones for this property.

Another Detailed Site Plan (DSP-88087) was approved in October of 1988. *See* PGCPB No. 88-493. Subsequently, the land area of Parcel L, 17.51 acres, was dedicated by deed to SHA for the Capital Beltway (I-95). The remainder of the site, 64.62 acres, was recorded in accordance with the approved PPS and DSP into 11 parcels (Parcels A-K), 7 outlots (Outlots A-G), and three rights-of-way dedicated for public use (North Port America Grande Boulevard, South Grande Boulevard, and Port America Grande Boulevard) in Plat Book NLP 153, plat 56 through 59, in June of 1990.⁹

In 1998, Conceptual Site Plan (CSP-98012) for National Harbor was approved for 534 acres of land, in the M-X-T, Rural Residential (R-R), and Residential Medium Development (R-M) Zones, including the subject site. *See* PGCPB Resolution No. 98-110. Subsequently, Planning Board approved a Preliminary Plan of Subdivision, (PPS) 4-01048, for the entire 534 acres in 2001. *See* PGCPB No. 01-163.

In July 2009, Detailed Site Plan application (DSP-07073) was approved by the Planning Board for 6,600 square feet of commercial uses on Lot 3, as well as a large paved area for recreational/outdoor exhibition, displays, entertainment, or performance uses on proposed Lots 4 and 5 (shown as Parcel A at that time). *See* PGCPB No. 09-114. The development proposal for Lot 3 is shown for informational purposes in this application. Lot 3 has not been recorded as a final plat as of the writing of this report. The site also has an approved Stormwater Management Concept (SWM) 48280-2007-00, pursuant to which the SWM pond for the Beltway Parcel was constructed and is located in Betty Blume Park on M-NCPPC-owned land. In addition, the site is also subject to SWM Concept 4853-2014-00, which was approved on February 14, 2014.

⁹ A vacation petition, V-06004, to vacate a total of 64.45 acres, was approved by the Planning Board in January of 1990. *See* PGCPB No. 06-287. This vacation petition included Subdivision Plat NLP 153, plat 56 through 59 in their entirety, except for Outlots E, F, and G (0.17 acres) which were conveyed to the Maryland-National Capital Park and Planning Commission (M-NCPPC) (recorded in Liber 7684 at Folio 513).

- Design Features

The use proposed includes an entertainment establishment on proposed Lot 4, which measures a total of 22.76 acres of land. A portion of the grand entrance located at the north end of the building with a circular vehicular drop-off area and the associated grading extends a short distance into future Lot 5. A private road connection is proposed along the most northern edge of Lot 5, designed to connect Harborview Avenue to National Avenue. The DSP further sets up the future subdivision of the lots and parcel for the remainder of the residue of Parcel 94.

- Architecture

The proposed structure measures approximately 1,500 linear feet by approximately 595 linear feet, and will fill most of Lot 4. The land area of Lot 4 slopes, and the change in grade within the lot is approximately 80 feet with the lowest portion at the south end of the lot. The building is exposed at its south end, with six stories of a terraced parking garage and landscaping placed strategically within the terracing of the structure. An outdoor plaza sits atop the parking garage at the south end of the building. This plaza includes a large water fountain surrounded by seating areas, landscaping, and a large monumental structure that is part of the signage for the project. Above the podium containing the plaza is the main entertainment area covered by two stories of the building in a sleek white roof. At the north end of the building is a 21-story hotel, a slim structure clad in glass that will be a significant visual landmark. A circular drive around another water feature provides drop-off and access to the hotel and its parking areas.

The parking structure will provide 4,797 parking spaces, and is distributed among eight floors with multiple egress and ingress locations along Harborview Avenue and National Avenue. Levels one through four are designated for self-park parking with access to these parking areas provided through three entry/exit points located on each side of the building from Harborview

Avenue and National Avenue, near the south end of the building where the grade is the lowest on the site. Level five of the parking structure is the location of the valet parking, VIP parking, and employee parking areas. This floor also includes the loading dock areas and the employee and service areas. Level six provides additional valet parking and employee parking, and includes a mezzanine floor of additional support services and offices.

The first floor of the building includes the seventh floor of parking. The first floor is the entertainment zone, including the video lottery facility and the outdoor plaza with a large water fountain. The pool measures approximately 22,000 square feet and is architecturally integrated into the design of the roof, and open to the sky. To the north of the structure, along Harborview Avenue, is a partially covered vehicular drop-off area with a central water feature and access to valet parking. A mezzanine (or the 8th floor of the parking structure) provides for offices and another parking area for hotel guests.

The second floor of the building (actually the ninth floor of the structure counting from the lowest level of the garage) includes the entrance to the hotel lobby, ballrooms, and other assembly rooms and is accessed from the circular vehicular drop-off area that is proposed to be shared between the subject site and the adjacent future proposed establishment at the north end of the site. The first and second floors are located under the long sleek white roof. Above this roof line, the hotel rises at the northern end of the building into a 21-story structure, approximately 150 feet in width by 400 feet in length, featuring approximately 20 rooms per floor. The height of the hotel tower is approximately 240 feet, measuring 400 feet above sea level. The hotel includes a floor dedicated to the lobby, a floor for fitness, a floor for a spa, a floor for executive offices, and room floors above.

Based on our review of the record, DDS-623 complies with the requirements of the M-X-T Zone. The purposes of the M-X-T Zone include the following:

To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, and major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens.

The site is the Beltway Parcel of a large development known as National Harbor. The uses are generally in conformance with the purposes and provisions of the M-X-T Zone. National Harbor as a whole will promote the orderly development of land in the vicinity of the Woodrow Wilson Bridge at an important interchange of I-95/495 and will maximize private development potential. The proposed mixture of uses on the subject property the value of land so as to allow for a market to be created that would sustain a long term source of employment opportunities for County residents. *See* MGM's applications, Statement of Justification, Storm Water Management approval letter, Technical Staff Report, PowerPoint Slide Presentation, Proponent and Opposition Exhibits, Subdivision Records, Historic Preservation Commission Memorandum, Gaming Market & Economic Impact Studies, MGM Transportation Management Plan, Traffic Impact Analysis, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, Storm Water Management Concept Plan, Luminaire Schedule, MGM Parking Garage, State of Maryland Department of Transportation Plats, MGM's Color Renderings, and May 8, 2014, transcript of proceedings.

To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses.

The 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* retained the previous M-X-T Zone reclassification for the MGM site. CSP-98012 specifically defines a mix of retail, commercial office, hotel, and a visitor's center. The Beltway Parcel was envisioned in CSP-98012 as a high-density urban environment with 725,000 square feet of retail space, 200,000 square feet of general office space, 1,000 hotel rooms, and a 50,000 square foot visitor's center, or other uses not exceeding the designated trip cap. At the time of the preliminary plan of subdivision, the plan called for the same mix of uses, but with an increase in the amount of office space (to 443,000 square feet) and a reduction in retail space (to 200,000 square feet) and hotel rooms (850) and a visitor's center, or other uses not exceeding the designated trip cap. See PGCPB Resolution No. 98-110 and PGCPB No. 01-163, respectively. The current development proposal, for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, fulfills to the vision of a high intensity development that was intended when the property was placed in the M-X-T Zone.

To conserve the value of land and buildings by maximizing the public and private development potential inherent in the location of the zone, which might otherwise become scattered throughout and outside the County, to its detriment.

The subject site along with the rest of the Waterfront Parcel of National Harbor was rezoned to M-X-T due to its close proximity to a major interstate freeway, the State of Virginia, and the District of Columbia. Immediate access to Virginia is available via the Wilson Bridge; and immediate access to the District of Columbia is available via I-295. The completed portion of the Waterfront Parcel of the National Harbor development has become an important tourist destination in the region. The current development proposal, for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, will dramatically enhance the value of the land.

To promote the effective and optimum use of transit and reduce automobile use by locating a mix of residential and non-residential uses in proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use.

The MGM site, as a part of the National Harbor development, will make full use of the existing and scheduled major transportation systems. Substantial highway improvements have been put in place with the completion of the reconstruction of the Woodrow Wilson Bridge that allow the site to have direct and efficient connections to interstate highway systems. Pedestrian and bicycle trails have been planned and constructed in several locations to facilitate walking,

bicycle, and transit use. The site is also directly accessible to Metro bus along Oxon Hill Road, which will promote the effective and optimum use of transit and reduce automobile use.

To facilitate and encourage a twenty-four (24) hour environment to ensure continuing functioning of the project after workday hours through a maximum of activity, and the interaction between the uses and those who live, work in, or visit the area.

DDS-623 and DSP-07073-01 is for a portion of the M-X-T-zoned Beltway Parcel of the larger National Harbor development which has a mixture of uses that will encourage a 24-hour environment in the ultimate development of the project. The completed portion of the large number of entertainment and dining attractions immediately along the riverfront have attracted many local and area residents and people visiting the Washington metropolitan region. The current development proposal, for an entertainment establishment of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, will facilitate and encourage a twenty-four (24) hour environment to ensure continued functioning of the project after working hours and on weekends.

To encourage an appropriate horizontal and vertical mix of land uses which blend together harmoniously.

CSP-98012 proposes a mixture of retail, office, hotel, entertainment, and restaurant uses with various services, and a visitor center in a harmonious, carefully-crafted land plan. MGM National Harbor is a proposed entertainment establishment, of a commercial nature with a video lottery facility consisting of a total of 1,078,237 square feet on proposed Lot 4 of the National Harbor-Beltway Parcel, to include 512,490 square feet of entertainment and entertainment

related uses; 54,695 square feet of other retail uses, a 300-room hotel; 49,886 square feet of conference/assembly rooms, 3,000-seat performance theater; numerous restaurant spaces equal to approximately 1,737 seats; and a 4,797-space parking garage, that will integrate harmoniously into the existing development of National Harbor and the surrounding uses, including the recently opened Tanger Outlets.¹⁰

To create dynamic, functional relationships among individual uses within a distinctive visual character and identity.

The larger National Harbor development is designed so that various uses will interact in a dynamic, synergistic way; hotels, dining, entertainment and retail all working together to create a critical mass of activity. The functional relationships between the various uses are carefully considered, with vehicular and pedestrian circulation completely separated and service areas carefully concealed and separated from public use areas. The proposed entertainment venue will provide another dynamic aspect to the project and will provide a distinctive visual character through the design of the building. *See* MGM's applications, Statement of Justification, Storm Water Management approval letter, Technical Staff Report, PowerPoint Slide Presentation, Proponent and Opposition Exhibits, Subdivision Records, Historic Preservation Commission Memorandum, Gaming Market & Economic Impact Studies, MGM Transportation Management Plan, Traffic Impact Analysis, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, Storm Water Management Concept Plan, Luminaire Schedule, MGM Parking Garage, State of Maryland Department of Transportation Plats, MGM's Color Renderings, and May 8, 2014, transcript of proceedings.

¹⁰ *See* PGCPB No. 12-40, approval of DSP-11025, Salubria Center, for 437,721 square feet of retail, office, and hotel development in the M-X-T Zone.

To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public facilities and infrastructure beyond the scope of single-purpose projects.

MGM National Harbor will achieve economies of scale and savings in energy when compared to construction of a number of individual projects occupying the same land area. This intensive use of the land, for over a million square feet of mixed-use development, at the gateway to the state of Maryland and Prince George's County will provide for optimum land use planning. MGM plans to seek Gold LEED certification, demonstrating the applicant's commitment to energy savings. The proposal provides for additional SWM techniques above those that were previously approved for the site, provides for a roadway to connect two state highways and provides for a major entertainment destination within the County, the State and the region. *See* MGM National Harbor Schematic Design Project Narrative, pp. 84-91, April 2, 2014. *See also* (5/8/2014, Tr.) and (7/14/2014, Tr.).

To permit a flexible response to the market and promote economic vitality and investment.

MGM National Harbor will contribute to the economic vitality of the overall National Harbor development and is a substantial investment in the County by the applicant. According to Gaming Market and Economic Impact Studies, the project construction will create 2,760 jobs and total employee earnings of \$384,802,000. During full operations, the annual projected combined spending at MGM and the neighboring businesses is expected to be \$822,500,000. In regard to job generation, 3,758 direct jobs are projected on-site, plus another 425 jobs at nearby businesses as a result of direct expenditures in the area related to tourism. It is anticipated that there will be \$29,614,445 generated in taxes and fees to Prince George's County. *See* Gaming Market & Economic Impact Studies, April 2013.

To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.

CSP-98012, which governs DSP-07073-01, demonstrates the intention to make the overall National Harbor project a showcase of interesting and exciting architecture. Excellence in architectural design combined with an impressive site plan demonstrates excellence in physical planning. As proven in the completed portion of the Waterfront Parcel, the flexibility inherent in this project allows the freedom of architectural design to achieve excellence in the development. The architectural elevations and perspective drawings for MGM National Harbor demonstrate a landmark building of a magnitude never before constructed in Prince George's County. Not only is the design of the building modernly elegant, it is distinctive and provides a significant architectural quality worthy of the entrance into the County from Virginia and into the State of Maryland. *See* MGM's applications, Statement of Justification, PowerPoint Slide Presentation, Detailed Site Plan, Landscape Plan, Overall Floor Plans & Schematic Design, Tree Conservation Plan TCP2-23-01, F.A.R. Exhibit, and MGM's Color Renderings.

DDS-623 seeks reduction of the standard, nonparallel parking space size from 9½ feet by 19 feet to 9 feet by 18 feet pursuant to §27-239.01. A departure of six inches in width and one-foot in length has been requested. This is a universal parking space size that is typically utilized in structured parking, and all parking on this site is in garages. A departure from §27-558(a) is requested, which sets forth the following requirement:

The size of parking spaces shall be as follows:

TYPE OF SPACE	MINIMUM SIZE (IN FEET)
Standard car spaces:	Size of space
Parallel	22' by 8'
Nonparallel	19' by 9 5'
Compact car spaces:	
Parallel	19' by 7'
Nonparallel	16½' by 8'

Pursuant to §27-239.01(b)(7), to grant a departure from design standards, the following findings are required:

The purposes of this Subtitle will be equally well or better served by the applicant's proposal.

Based on the findings above, the purposes of the M-X-T Zone are fulfilled by MGM's development proposals.

The purposes of Part 11, Off-Street Parking and Loading, are:

- (1) To require (in connection with each building constructed and each new use established) off-street automobile parking lots and loading areas sufficient to serve the parking and loading needs of all persons associated with the buildings and uses;**
- (2) To aid in relieving traffic congestion on streets by reducing the use of public streets for parking and loading and reducing the number of access points;**
- (3) To protect the residential character of residential areas; and**
- (4) To provide parking and loading areas which are convenient and increase the amenities in the Regional District.**

See 27-550(a).

The purposes of Subtitle 27 will be equally well or better served by MGM's proposal. Specifically, the reduced parking space size allows for a more compact and efficient structured parking design, while providing off-street parking sufficient to serve the needs of the project. The reduced standard, nonparallel parking spaces will meet the needs of the site's users without

overcrowding the land, or negatively impacting open space, adjacent land uses, or environmentally sensitive areas.

The departure is the minimum necessary, given the specific circumstances of the request.

MGM states that this is the minimum necessary to provide all parking onsite. The departure of six inches in width and one-foot in length is the minimum necessary without adversely affecting the functionality of the proposed nonparallel parking space. The size of the space, 9 feet in width by 18 feet, is larger than the minimum size allowed for compact spaces. Most automobiles average 16 to 17 feet in length, and mid-size and large SUVs average the same length. The driveway aisles within the parking garage are 24 feet in width, which is sufficient for access. The departure is necessary for efficiency of the design of a parking structure and to ensure that the required parking spaces can be provided entirely within the parking structure.

The departure is necessary in order to alleviate circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949.

The departure is necessary to alleviate circumstances specific to the site. The site has moderate slopes and is narrower than it is wide. The most effective way to provide ample parking on the site is through the proposed multi-story parking structure, which is proposed to be built into the slope of the long rectangular site below the proposed entertainment venue and hotel. MGM states the site is surrounded by SHA right-of-way and no additional land is available for on-site parking. Given the information presented, no objection is offered regarding the reduction of parking space size within the parking structure as proposed; the departure as requested is acceptable.

The departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood.

The departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood. Specifically, the functionality of each individual parking space will not be affected. MGM has proposed a parking space size (18 feet in length by 9 feet in width) that is a typical size endorsed in *Dimensions of Parking* (Urban Land Institute), which supports a parking space width of nine feet for standard size spaces in a setting with moderate to higher turnover parking, as is anticipated for this project. The departure will allow for a more efficient yet fully functional parking design that will serve the needs of the project and protect adjacent land uses.

In sum, based on our review of the record, the District Council AFFIRMS the decision of the Planning Board to, grant DDS-623 for a departure of six inches in width and one-foot in length to allow a standard, nonparallel parking space size of 9 feet in width by 18 feet in length.

For the reasons stated above, Planning Board's decision was not arbitrary, capricious, discriminatory, or illegal, because it was not made impulsively, at random, or according to individual preference. *See Harvey*, 389 Md. 243, 297-300, 884 A.2d 1171, 1203-06 (2005). Further, we may not substitute our judgment for that of the Planning Board. *See Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50, at 16-19.

Ordered this 21st day of July, 2014, by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Olson, Patterson, Toles and Turner.

Opposed: Council Member Lehman.

Abstained:

Absent:

Vote: 8-1

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: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council