

Case No. DSP-10027
Farmington Road Car Wash

Applicant: Interstate Farmington, LLC

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

ORDER AFFIRMING PLANNING BOARD DECISION,
WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 13-78, to approve with conditions a detailed site plan for a 9,129-square-foot combined car wash and retail building, located in the northeastern quadrant of the intersection of Indian Head Highway (MD 210) and Farmington Road East, in Planning Area 84 and Council District 9, is:

AFFIRMED, subject to the District Council's original jurisdiction pursuant to §27-132(f)(1) of the Zoning Ordinance and its authority to modify the decision of the Planning Board pursuant to 27-290(d) of the Zoning Ordinance.¹

As the basis for this action, the District Council, pursuant to §27-132(f)(1) and §27-290 of the Zoning Ordinance, adopts and incorporates the findings and conclusions of the Planning Board in its Resolution, PGCPB No. 13-78, except as otherwise stated herein.

¹ The Prince George's County Code, Subtitle 27, Zoning Ordinance, (2011 ed., as amended) will be referred to hereinafter as "§27- ____."

Procedural History

On June 13, 2013, Technical Staff of the Planning Board recommended approval of DSP-10027 with conditions to the Planning Board. *See* Technical Staff Report, June 13, 2013.

On June 27, 2013, the Planning Board considered evidence at a public hearing regarding DSP-10027. *See* (6/27/2013 Tr.) Matthew C. Tedesco, Esquire, appeared on behalf of the Applicant, Interstate Farmington, LLC. Thomas E. Dernoga, appeared on behalf of citizen opposition, Dorris Sharp, Earl Sharp, Judith Allen-Leventhal, Kelly Canavan and Accokeek, Mattawoman and Piscataway Creeks Communities Council, Inc., and the Indian Head Highway Area Action Council. *See* (6/27/2013 Tr., at 6 and 31).

On July 18, 2013, the Planning Board adopted Resolution 13-78, which approved DSP-10027 subject to conditions. *See* PGCPB 13-78. The Applicant, persons of record and the Clerk of the Council were notified of PGCPB 13-78 on July 23, 2013.

On August 21, 2013, the Clerk of the Council received an appeal and request for oral argument of PGCPB 13-78 to the District Council. *See* Letter dated August 20, 2013, Notice of Appeal.

On September 9, 2013, the first District Council session after August recess, the District Council took no action on this matter.²

On December 26, 2013, the Clerk of the Council, pursuant to §27-125.04, sent notice of scheduled oral argument on January 27, 2014, to all persons of record.

² *See* §27-291. Postponement of Council actions.

(a) Whenever the District Council is required to take action on or has the option to review a matter within a time limit specified in this Subtitle, the calculation of the time limit shall be postponed during the period that the Council is prohibited from taking action pursuant to the provisions of Article 28, Section 8-104(a), of the Annotated Code of Maryland, and the months of August and December when the Council is in recess; or in the event the Council fails or is unable to meet due to the cancellation of a scheduled Council session due to a weather emergency, or other declared state of emergency, in which event the time shall be extended to the next regularly scheduled date on which the Council meets.

On January 20, 2014, the Applicant filed a written response to the Notice of Appeal filed by citizen opposition. *See* Letter dated January 20, 2014, Applicant's Response to Notice of Appeal.

On January 27, 2014, the District Council, pursuant to §27-132, and the District Council Rules of Procedure, held oral arguments, and took this matter under advisement.

On March 18, 2014, the District Council, pursuant to §27-132, referred this matter to staff for the preparation of a document of approval with conditions.³

Appeal

For clarity and ease of reference, the District Council will restate the appellate issues noted by citizen opposition and the response by the Applicant and respond accordingly.

Notice of Appeal

On behalf of my clients, Doris Sharp, Earl Sharp, Judith Allen-Levanthal, Kelly Canavan and Accokeek, Mattawoman & Piscataway Creeks Communities Council, Inc. ("AMP Creeks"), and the Indian Head Highway Area Action Council ("IHHAAC"), I am filing this appeal of the Planning Board Resolution 13-78 approving DSP-10027 (the "Farmington Road Car Wash") in accordance with Section 27-290 of the Zoning Ordinance.

As the District Council may be aware, many citizens have been opposed to the proposed car wash for a number of years, and have raised numerous concerns concerning the development of a car wash at this site. The new version of DSP-10027 does little to address these concerns.

Preliminarily, the purposes of a detailed site plan include: "To provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan." Section 27-261 (b)(1)(A).

In this case, the Technical Staff provided analysis of DSP-10027 based on the 1993 Subregion 5 Master Plan and Sectional Map Amendment, and the Planning Board Resolution is based on this analysis of the 1993 Subregion 5 Master Plan and Sectional Map Amendment. PGCPB Resolution No. 13-78 at 3, 12-13. First, PGCPB Resolution No. 13-78 provides no actual analysis

³ District Council Session was scheduled for March 17, 2014, but due to the snow, the County was closed. *See* Footnote 2 above.

other than to make the bald statement that the 1993 Subregion 5 Master Plan and Sectional Map Amendment recommended the subject property for commercial use and placed the property in the C-M Zone. These simple observations do not address whether the proposed detailed site plan provides for development in accordance with “the principles for the orderly, planned, efficient and economical development” contained in the Master Plan. The appellants have argued that detailed site plan DSP-10027 undermines “the principles for the orderly, planned, efficient and economical development” contained in the Master Plan.”

More significantly, on June 28, 2013, the Planning Board adopted a new Subregion 5 Master Plan and endorsed a new Subregion 5 Sectional Map Amendment. PGCPB Resolution No. 13-75. This action occurred 3 weeks before the Planning Board approved PGCPB Resolution No. 13-78. And, on July 24, 2013, the District Council adopted CR-80-2013 approving the new Subregion 5 Master Plan, and CR-81-2013 approving the Subregion 5 Sectional Map Amendment. The District Council must review DSP-10027 on the basis on the newly approved Subregion 5 Master plan and Sectional Map Amendment, not the 1993 version that is now superseded. The District Council is bound to apply the law as it exists at the time a case is decided, so long as the application of the law does not interfere with intervening vested rights. *County Council for Prince George’s County v. Carl M Freeman Associates, Inc.*, 281 Md. 70,76-77,376 A.2d 860 (1977).

Consequently, either (1) the District Council needs to evaluate and decide this case based on the newly approved Subregion 5 Master plan and Sectional Map Amendment; or (2) the District Council should remand this matter back to the Planning Board in order to evaluate DSP-10027 in accordance with the “the principles for the orderly, planned, efficient and economical development” contained in the Subregion 5 Master Plan.

In the Land Use and Development Pattern Chapter of the newly approved Subregion 5 Master Plan, under the Developing Tier Policy Area Goals, there are three Goals relevant to this application. *Preliminary Subregion 5 Master Plan and Proposed Sectional Map Amendment* at 32.⁴ The appellants raised these issues before the Planning Board, but the Planning Board took little account of them.

- Promote a sustainable pattern of development that encourages economic vitality.
- Enhance the quality and character of communities and neighborhoods.
- Preserve rural, agricultural, and scenic areas and protect environmentally sensitive lands.

⁴ The text of the Preliminary Subregion 5 Master Plan and Proposed Sectional Map Amendment has been approved by the District Council through its adoption of CR-80-2013 and CR-81-2013, except for specific items in the Resolutions that are not relevant to DSP-10027.

As noted above, neither the Staff Report nor PGCPB Resolution No. 13-78 addressed these issues in any detail - including not addressing similar goals under the 1993 Subregion 5 Master Plan. The Master Plan discusses the intended commercial areas and what is expected in Accokeek. The subject property is not in one of the two designated commercial areas; therefore, commercial development of the property should be closely aligned with the above Master Plan goals.

Further, the Master Plan states:

This plan limits the expansion of commercial land uses along major roadways that are not in designated growth areas, consistent with goals and policies to discourage strip commercial development and to support redevelopment and infill development in existing and planned development areas over “green field” development. *Id.* In addition, the “Communities” section states the following relevant Goal: “Provide for compatible new development in older, established communities of Accokeek, Brandywine Village, and Clinton.” *Id.* at 55.

The issues raised before the Planning Board by the appellants demonstrate that DSP-10027 does not enhance these significant Master Plan goals. First, the proposed car wash use is inappropriate since it is literally across the street from one longstanding residential subdivision. The project also backs up to and abuts another residential subdivision, and is directly across Indian Head Highway from a smaller, newer subdivision and a Buddhist monastery. PGCPB Resolution No. 13-78 ignores these surrounding uses and discusses the subject property as if it is in an undeveloped area. PGCPB Resolution No. 13-78 at 1.

This entrance to the White Hall community is a designated scenic road, and even with minimal landscaping improvements, this car wash as a gateway to the community will result in a blight on the existing scenic nature -no matter how much the applicant tries to dress it up. PGCPB Resolution No. 13-78 at 23-24. While the citizens recognize that the property is zoned C-M, that does not mean that any use is appropriate in relation to the existing surrounding uses. The proposed car wash will not advance the goals to “Enhance the quality and character of communities and neighborhoods”, and to “Provide for compatible new development in older, established communities...” The citizens object that this use will create noise, light and other pollution that will have an adverse impact on nearby homeowners. The proposed use is also inappropriate due to its close proximity to the Accokeek Academy (formerly, the Henry G. Ferguson Elementary School and the Eugene Burroughs Middle School).

Second, the Accokeek area in the vicinity of the property already has a number of failed businesses, and convenience stores and car washes already exist all along the Indian Head Highway corridor. The proposed car wash will not advance the Master Plan goal to "Promote a sustainable pattern of development that encourages economic vitality." The citizens strongly believe that there is not a market for more of these low-end businesses and they do not want to have more blighted properties visited upon their community. Such businesses have a propensity to be a magnet for crime, which is a substantial concern for the residents in closest proximity, and failed businesses pose an even greater concern as magnets for crime. At the Planning Board hearing, the appellants submitted an exhibit listing the many car wash operations already in existence in the general Indian Head Corridor area. The Planning Board decided to ignore this evidence that challenges the sustainability of the proposed use. A review of PGCPB Resolution No. 13-78 demonstrates that the Planning Board did not address sustainable development or economic vitality in any manner.

Third, the detailed site plan proposes an awkward access at a dangerous intersection, and this type of use will place too much traffic on a road that is incapable of handling it. Not only is this a dangerous situation for the immediate residential community, but also it is dangerous since Farmington Road East is a primary access for students, parents and faculty at the Accokeek Academy. PGCPB Resolution No. 13-78 really does not discuss the safety of the access, and transportation related issues are referred back to the conditions in the approval of the preliminary plan of subdivision for the property. PGCPB Resolution No. 13-78 at 3-4, 15-16 and 28.

Fourth, the appellants object to the environmental impact that this use will have. The property is in close proximity to Piscataway Creek. The intense development of the site will result in a significant loss of filter/habitat (i.e., trees) and substantially increased runoff containing numerous pollutants from the new impervious surface. There is a very active tributary of Piscataway Creek running through the east side of the property, and it will be adversely affected. As approved, the proposed car wash use will result in a disturbance of 7,867 square feet of Primary Management Area (PMA). PGCPB Resolution No. 13-78 at 21-22. The Piscataway Creek is already subject to a TMDL⁵ and its water quality has seen tremendous degradation over the past 15 years due to excessive development within the watershed and a substantial increase in impervious surfaces. Piscataway Creek in this area is still classified as a Tier II Stream by the Maryland Department of the Environment, but the water quality has been steadily declining. While the Planning Board can argue that all of the previous development, and this project, comply with applicable storm water

⁵ Total Maximum Daily Loads of Fecal Bacteria for the Non-Tidal Piscataway Creek Basin in Prince George's County, Maryland (MDE, May 2006; EPA, September 2006).
http://www.mde.state.md.us/assets/documents/Piscataway_TMDL_051006_final.pdf

management requirements, this does not change the fact that years of increased impervious surface in the Piscataway Creek Watershed have led to substantial degradation, as evidenced in part by the TMDL.

Finally, because of the foregoing adverse impacts, the property values of residents in the vicinity of the property will be adversely affected. This personal burden on county homeowners is inappropriate for a project that will bring nothing of value to Prince George's County. In this regard, the citizens agree with and support the objections raised by the Accokeek Development Review District Committee.

In conclusion, the appellants listed above request that:

(1) the District Council remand this matter back to the Planning Board in order to evaluate DSP-10027 in accordance with the "the principles for the orderly, planned, efficient and economical development" contained in the Subregion 5 Master Plan; or

(2) that, based on the foregoing arguments, the District Council find that the plan does *not* represent a reasonable alternative for satisfying the site design guidelines because it fails to satisfy the Master Plan Goals of promoting a sustainable pattern of development that encourages economic vitality; enhancing the quality and character of communities and neighborhoods; preserving rural, agricultural, and scenic areas and protecting environmentally sensitive lands; and providing compatible new development in older, established communities.

The appellants request oral argument, and thank you for the opportunity to address the District Council regarding this matter.

See Letter dated August 20, 2013, Notice of Appeal.

Applicant's Response to Appeal

On behalf of the applicant, Interstate Farmington, LLC, please accept this letter as a formal response to Mr. Thomas E. Dernoga's Notice of Appeal, dated August 20, 2013. Mr. Dernoga's Notice of Appeal can be broken down into one common position, which frames this response. Specifically, Mr. Dernoga contends that the District Council should remand DSP-10027 to the Planning Board so that the Planning Board can re-evaluate DSP-10027 in accordance with the Subregion 5 Master Plan that was re-adopted on July 24, 2013 by CR-80-2013.

Respectfully, this request, including all of the other points, arguments, contentions, and/or positions espoused in Mr. Dernoga's Notice of Appeal are either red herrings or are completely unsupported in fact or law, and therefore, should be given no weight by the District Council. Indeed, the specific points and arguments advanced by Mr. Dernoga are neither persuasive nor mandatory to justify the requested remand of DSP-10027. Upon a thorough review of the record in this matter and the relevant case law (as it applies to these facts), we believe that the Planning Board's approval of DSP-10027 must be affirmed, and would respectfully request that the District Council affirm the findings and conclusions made in PGCPB No. 13-78.

Mr. Dernoga's request for remand and his main argument in support thereof rests solely on his misguided belief that the Zoning Ordinance requires the Planning Board to make a finding that a detailed site plan must strictly comply with an adopted Master Plan. However, no such requirement exists in the Zoning Ordinance. Indeed, Section 27-285(b) lists the required findings that the Planning Board must make in order to approve a detailed site, and none of the provisions of that section place such a burden on the Planning Board. Instead, Mr. Dernoga is impermissibly attempting to elevate the general purposes of a detailed site plan to the level of a required finding that must be made prior to approving the same. That is, Mr. Dernoga incorrectly contends that the "general purposes" enumerated in Section 27-281(b) of the Zoning Ordinance is analogous to a mandatory finding that the development shall conform with all of the principles and goals contained in a Master Plan. This is simply a mischaracterization of Section 27-281(b)(1), which the Planning Board interprets and applies routinely, and such interpretations and applications carry the presumption of validity and are *prima facie* correct.⁶

Again, and it must be highlighted, this section provides for the "general purposes" for a detailed site plan, and the Planning Board can make a finding that the detailed site plan is "generally" in conformance with the applicable Plan without being required to make a finding that every principle, policy, goal, or recommendation in the Plan is met.

The same cannot be said for a preliminary plan of subdivision, which is regulated by Subtitle 24 of the County Code. Specifically, Section 24-121(a)(5) requires that "the Planning Board shall require that the preliminary plan and final plat shall conform to the area master plan, including maps and texts" (Emphasis Added.) No such language exists in Section 27- 285(b). Moreover, case law confirms that the effect to be given to a master plan depends upon the language employed in the particular legislation. See *Coffey v. M-NCPPC*, 293

⁶ The jurisprudence of this State is clear that an agency's interpretations and application of statutes that it administers is given considerable weight. *Singley v. County Comm'rs of Frederick County*, 178 Md. App. 658, 675 (2008) (citing *Marzullo v. Kahl*, 366 Md. 158, 172 (2001)). Recognition must be given regarding the expertise of the administrative agency in interpreting and applying its own rules and regulations. *Cf. Department of Human Resources v. Thompson*, 103 Md. App. 175, 189 (1995).

Md. 24, 441 A.2d 1041 (1982) (recognizing that compliance with a master plan was a mandatory requirement under the subdivision regulations); *Maryland-National Capital Park and Planning Commission v. Greater-Baden Aquasco Citizens Assoc.*, 412 Md. 73, 985 A.2d 1160 (2009) (in the subdivision context, the Court found that the Planning Board should have considered the numeric growth objective in the Rural Tier when determining whether the preliminary plan conformed to the Master Plan). This is significant because the subject property already has an approved preliminary plan of subdivision (to wit: 4-10013; PGCPB No. 11-67), which was never appealed by Mr. Dernoga nor any other party of record. Even more important is the fact that Preliminary Plan 4-10013 was evaluated under the 2009 Approved Subregion 5 Master Plan and Sectional Map Amendment, which, as it relates to the subject property and the points and arguments put forth by Mr. Dernoga, is identical to the Master Plan that was re-adopted by the District Council in CR-80-2013.⁷ Consequently, the strict mandatory compliance to the Master Plan, which Mr. Dernoga so desperately seeks to have applied has already been made by the Planning Board when it evaluated and approved Preliminary Plan 4-10013.

In addition, Section 27-141 of the Zoning Ordinance permits the “Council 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 plan of subdivision.” (Emphasis added.) Therefore, a remand would be completely futile because the specific issues that Mr. Dernoga raises regarding the evaluation of the approved Subregion 5 Master Plan already have been evaluated by the Planning Board. By taking judicial notice of the approved preliminary plan of subdivision, which was evaluated under the very same Master Plan that Mr. Dernoga relies upon to frame his remand request, the District Council can affirm the Planning Board’s approval of DSP-10027 and reject the notion that the case should be remanded to the Planning Board for further evaluation of the re-adopted Subregion 5 Master Plan.

Finally, as it relates to the Master Plan, both the 1993 Subregion 5 Master Plan and Sectional Map Amendment the re-adopted 2009 Subregion 5 Master Plan and Sectional Map Amendment placed and retained the subject property in the C-M Zone, respectively, and the proposed use is permitted by right in the C-M Zone, subject to detailed site plan approval. Moreover, the Proposed and Future Land Use Map (Map IV-1, page 31) for Subregion 5 shows the subject property in a commercial designation. This map evidences the County’s desire for the subject property to be developed with commercial/retail businesses. Thus, it is a

⁷ During the Planning Board’s evidentiary hearing held on June 27, 2013, undersigned counsel, on behalf of the applicant, provided clarifying testimony that Preliminary Plan 4-10013 was evaluated under the 2009 Approved Subregion 5 Master Plan and that the detailed site plan was not inconsistent with the goals of either the 1993 Subregion 5 master Plan or the 2009 Subregion Master Plan. (Tran. at pp. 44-45.) Mr. Dernoga neither objected to nor rebutted this fact during the evidentiary hearing before the Planning Board.

mischaracterization by Mr. Dernoga to assert that, as it relates to the subject property, the Master Plan seeks to “limit the expansion of commercial land uses.” Instead, the text on page 32 for “Commercial” areas acknowledges that “other smaller commercial areas are scattered in diverse locations, mostly reflecting crossroads,” which is precisely the case here since the subject property is located at the intersection of MD 210 and Farmington Road. Simply put, the text relied upon by Mr. Dernoga is not only contradicted by the Future Land Use Map of the Subregion 5 Master Plan, but also contradicted by the text of the Plan itself. Therefore, Mr. Dernoga’s arguments and conclusions derived therefrom are wholly unpersuasive.

Mr. Dernoga’s other arguments include (i) the alleged lack of need for a car wash in the area; (ii) the alleged traffic impact(s) associated with the proposed use; and (iii) the alleged environmental impacts created by the proposed development. All of these assertions are not supported in law or fact, and therefore, must be ignored. There is absolutely no legal requirement in the Zoning Ordinance that the applicant bears the burden to demonstrate a need for a car wash at this location nor is there such a requirement that the Planning Board find that need exists prior to approving DSP-10027. Evaluating DSP-10027 under such a requirement would result in reversible error. Therefore, and similar to Mr. Dernoga’s Master Plan arguments, absolutely no weight or consideration should be given to this argument. Second, the traffic impact and all other adequate public facility requirements regarding the proposed use of the subject property were fully tested, evaluated, and determined when Preliminary Plan 4-10013 was approved.⁸ Again, the Planning Board’s approval in PGCPB No. 11-67, which was not appealed by any party of record, demonstrates that all traffic related impacts have been evaluated and, with the improvements required to be made under the conditions of approval for the preliminary plan of subdivision, all intersections will operate satisfactorily. Indeed, based on the redesign of the detailed site plan (i.e., reduction to size of the building, consolidating the buildings into one building, reducing the number of parking spaces, revising the drive aisles and queuing lanes, removing outfalls from regulated environmental features, reducing the impervious area, etc.), the Planning Board and the Department of Public Works and Transportation correctly found that access to and circulation on the site were acceptable. (PGCPB No. 13-78, pp. 15-16; 26). Finally, Mr. Dernoga’s argument regarding environmental impacts is neither supported by the substantial evidence in this record nor the evidence in the record for the preliminary plan of subdivision. During the evaluation of DSP- 10027, the applicant completely redesigned the site in order to further reduce any impacts to the primary management area (“PMA”) (see above). The net result of the redesign was a reduction of 890 square feet to the previously approved PMA impact, or

⁸ Section 27-282 of the Zoning Ordinance does not require an applicant to submit a traffic impact study at the time of detailed site plan review nor does the Zoning Ordinance require that the Planning Board make a finding of transportation adequacy at the time of detailed site plan review. These required findings, pursuant to Subtitle 24 of the County Code, are specifically required to be made during the evaluation of a preliminary plan of subdivision. Again, the District Council may take judicial notice of Preliminary Plan 4-10013, thus, rendering remand futile.

approximately 11%. The Planning Board correctly determined that the applicant's redesign demonstrated a reduction to the maximum allowed disturbance to the PMA, and that the site design with limited impacts of only 6,977 square feet demonstrated the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible. (PGCPB No. 13-78, pp. 5-7; 10-12; 17-25).

With this all this in mind, and based on the substantial evidence in the record (including taking judicial notice of the Planning Board's prior approval of Preliminary Plan 4-10013), the record supports the Planning Board's findings of fact regarding the characteristics of the site itself and its ultimate conclusion of consistency with the purposes and other findings required in the Zoning Ordinance. Consequently, and given that a remand would be futile, the Planning Board's approval and the District Council's affirmation of the same is warranted. Therefore, the applicant contends that Mr. Dernoga's arguments are not persuasive and, based on the record (including the imposition of the recommended conditions of approval) and the fact that Preliminary Plan 4-10013 was evaluated under the 2009 Approved Subregion 5 Master Plan and Sectional Map Amendment, DSP-10027 is not inconsistent with the recommendations of the Master Plan and satisfies the general purposes listed in Section 27-28l(b).

Wherefore, based on the foregoing, the applicant respectfully contends that none of the arguments espoused by Mr. Dernoga in his Notice of Appeal are persuasive, as all of the arguments put forth are either red herrings or are completely unsupported in fact or law. Consequently, the District Council should DENY the request for remand and AFFIRM the Planning Board's approval of DSP-10027.

See Letter dated January 20, 2014, Applicant's Response to Notice of Appeal.

Findings and Conclusions

We reject the request by citizens to remand this application back to the Planning Board to evaluate DSP-10027 in accordance with the "principles for the orderly, planned, efficient and economical development" contained in the Subregion 5 Master Plan" or because it was error for the Planning Board to assess DSP-10027 under the *Approved 1993 Approved Subregion 5 Master Plan and Sectional Map Amendment* (1993 Plan). *See* Letter dated August 20, 2013, Notice of Appeal, at 4, (1/27/12014 Tr., 8-9, 29).

First, a remand is not necessary to evaluate whether DSP-10027 is in accordance with the "principles for the orderly, planned, efficient and economical development" contained in the

Subregion 5 Master Plan” because in deciding an appeal to the District Council, which is the situation here, from a decision made by the Planning Board, Council shall exercise original jurisdiction and for any appeal of a decision made by Planning Board, the Council may, based on the record, approve, approve with conditions, remand, or deny the application. *See* §27-132(f)(1)(2).

Second, Planning Board did not err in its evaluation of DSP-10027 based on the 1993 Plan. Pursuant to an action filed in the Circuit Court for Prince George’s County, on October 26, 2012, in consolidated cases CAL09-31402 & CAL09-32017, the Honorable Leo. E. Green, Jr., invalidated and declared void County Resolution 61-2009 (CR-61-2009).⁹ CR-61-2009 had approved the *2009 Subregion 5 Master Plan and Sectional Map Amendment* (2009 Plan), which superseded the 1993 Plan. On November 5, 2012, the District Council, on its own motion, and pursuant to the October 26, 2012, Order of Court and §27-227, voted to reconsider CR-61-2009 concerning the 2009 Plan. Although Planning Board re-adopted the 2009 Master Plan on June 27, 2013, prior to its approval of DSP-10027, it was bound by the 1993 Plan on June 27, 2013, and July 18, 2013, when it voted and adopted PGCPB No. 13-78, respectively, approving DSP-10027 because the District Council did not approve Planning Board’s re-adopted 2009 Master Plan until July 24, 2013. *See* County Resolution 80-2013, at 13 (CR-80-2013). Therefore, at the

⁹ *See* §27-141 (...The 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 the approval of a preliminary plat of subdivision.). *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.

time Technical Staff reviewed and Planning Board decided DSP-10027, the 1993 Plan was the law.

We now address the issue of whether DSP-10027 conforms to the Approved 2009 Master Plan adopted on July 24, 2013, in CR-80-2013. *See County Council for Prince George's County v. Carl M Freeman Associates, Inc.*, 281 Md. 70, 76-77,376 A.2d 860 (1977). *See also* Applicant's Notice of Appeal, at 2.

Requirements for site plans, including detailed site plans, are provided for in Subtitle 27, Division 9, Subdivision 3, of the Zoning Ordinance. Some general purposes of a detailed site plan are to 1) provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan, 2) help fulfill the purposes of the zone in which the land is located, and 3) provide for development in accordance with the site design guidelines established in Division 9 (Site Plans) of the Zoning Ordinance. *See* §27-281.

Citizens rely on select language, and in our view, out of context, from the Approved 2009 Plan, at 31, to urge us to “find that the plan does not represent a reasonable alternative for satisfying the site design guidelines because it fails to satisfy the Master Plan Goals of promoting a sustainable pattern of development that encourages economic vitality; enhancing the quality and character of communities and neighborhoods; preserving rural, agricultural, and scenic areas and protecting environmentally sensitive lands; and providing compatible new development in older, established communities.” *See* Letter dated August 20, 2013, Notice of Appeal, at 4.

We have reviewed the Approved 2009 Plan of 2013, Part IV. Land Use-Development Pattern in its entirety, *i.e.*, A. Land Use Map, B. Developing Tier Policy Area, C. Rural Tier, D. Centers and Corridors, E. Communities, and F. General Plan Amendments. *See* Approved 2009

Plan, pp. 29-69. We have also reviewed County Resolution 81-2013 (CR-81-2013), which re-approved, with revisions, the Subregion 5 Sectional Map Amendment. In doing so, we are reminded that on June 13, 2013, the Planning Board held a work session to consider the plan public hearing testimony and on June 27, 2013, the Planning Board, in response to the public hearing testimony endorsed the Subregion 5 Sectional Map Amendment as described in Prince George's County Planning Board Resolution PGCPB No. 13-75 and transmitted the endorsed Sectional Map Amendment and supporting documents to the District Council on July 2, 2013, and on July 8, 2013, the District Council held a work session to review Planning Board endorsed Sectional Map Amendment reflecting public hearing testimony and, after discussion concerning the record of testimony and exhibits relevant to the Subregion 5 Master Plan and SMA, the Council directed Technical Staff to prepare a resolution of approval with revisions. *See* CR-81-2013, at 4. None of the 8 Revisions concern the subject property of DSP-10027. The District Council approved the down-zoning of almost 60 acres of C-M property to Rural Residential in the Approved 2009 Sectional Map Amendment in 2013, based on the following discussion:

Rezoning from the C-M Zone to the R-R Zone is proposed in order to prevent excessive strip commercial along expressways. This change is consistent with a 2002 General Plan economic development to, "ensure that adequate amounts of property zoned land are available for economic development activities while avoiding overzoning that encourages sprawl and inhibits revitalization efforts."

See Approved 2009 Plan, at 180.

We note however, that the *1993 Subregion V Approved Master Plan and Sectional Map Amendment* rezoned the property from the R-R Zone to the C-M Zone in accordance with Plan recommendations for commercial development. *See* Community Planning Division Memo dated May 21, 2013. The Approved 2009 Master Plan *limits* the expansion of commercial land uses along major roadways that are not in designated growth areas, consistent with goals and policies to discourage strip commercial development and to support redevelopment and infill

development in existing and planned development areas over “green field” development. *Id.* at 32. (Emphasis added.) In doing so, it was not our intent to *prohibit* the expansion of commercial land uses along *all* major roadways because we did not downzone the subject property in 1993, 2009, or 2013. *See* Approved 2009 Plan, at 169-202. To the contrary, we intensified the zone of the subject property from Rural Residential to Commercial Miscellaneous in 1993. We find that our intent in 1993 is consistent with our intent in 2009 and 2013 not to downzone the subject property.

Because the subject property remained zoned C-M after our approval of the Approved 2009 Master Plan and Sectional Map Amendment in 2013, we find that the propose use in DSP-10027 conforms to the intent of the Master Plan. The purposes of the C-M Zone are to provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas; to provide these locations, where possible, on nonresidential streets; and to provide concentrations of these uses which are relatively far apart. *See* §27-459. DSP-10027 proposes to use the subject property for retail and a carwash. Both uses are permitted under the Zoning Ordinance. *See* §27-461.

Based on our review of the record, we note that the project is subject to the requirements of the approval of Preliminary Plan of Subdivision 4-10013, approved by the Planning Board on June 30, 2011 (PGCPB Resolution No. 11-67), adopted by the Planning Board on July 28, 2011. The project is also subject to the requirements of Stormwater Management Concept Approval, 20898-2010-01, approved by the Planning Board on November 27, 2012 and valid until November 27, 2015.

We have also reviewed the Site Vicinity Map (Slide 3 of 15), Zoning Map (Slide 4 of 15), Aerial Map (Slide 5 of 15), Site Map (Slide 6 of 15), Master Plan Right-of-Way Map (Slide 7 of 15), Bird’s Eye View with Approximate Site Boundary Outlined (Slide 8 of 15), Originally

Proposed Site Plan (Slide 9 of 15), Currently Proposed Site Plan (Slide 10 of 15), Originally Proposed Architecture (Slide 11 of 15), Currently Proposed Architecture (Slide 12 of 15), Rendered Landscape (Slide 13 of 15), Aerial Rendered Landscape Plan (Slide 14 of 15), the Tree Conservation Plan (Slide 15 of 15), and the evidentiary hearing transcript (6/27/2013 Tr.).

Our findings demonstrate that the project is accessed from a single point on its Farmington Road East frontage. Parking is provided for the project along the southwest and southeastern sides of the building and in the southwest corner of the paved area of the site. Loading and the dumpster enclosure are both located in this corner as well. Two handicapped-parking spaces are located on the southeastern side of the building. A sidewalk is provided around the building as is landscaping on the periphery of the site. An access lane to the car wash is provided separate from the parking area. Cars would turn right onto this queuing lane after entering the site and travel in a counter-clockwise direction to the car wash.

The architecture of the building offers visual interest by providing varied form and massing. This combined with predominant use of brick as the primary building material, a standing seam metal roof, and the use of landscaping to enhance and soften the architecture, create an aesthetically pleasing appearance and help the project fit in with its generally rural and undeveloped surroundings.

A single free-standing sign is proposed to identify both the car wash and tenant(s) envisioned to occupy the retail building. The design of the sign mimics the architecture of the building, including a green, standing seam metal roof and brick veneer piers flanking the sign face. The material to be utilized for the base and capitals of the architectural piers and some additional detailing at the base of the roof is not identified, though it appears to be exterior insulation finishing system (EIFS). The sign is proposed to measure 12-foot-high and 12-foot-wide, and be designed identically on both sides of the sign. The measurement of the side

(from front to back façade) is not dimensioned but appears to measure approximately two feet. In deference to the status of Farmington Road East as historic, a condition of this approval requires that the sign be revised to be smaller so it will impact less its primarily, historic, undeveloped and rural surroundings.

We are persuaded, based on our evaluation of DSP-10027 above and the record before us, that the plan is in accordance with the principles for the orderly, planned, efficient and economical development contained in the Approved 2009 Master Plan and Sectional Map Amendment. We are also persuaded by the evidence above that DSP-10027 represents a reasonable alternative for satisfying the site design guidelines of the Zoning Ordinance because the plan satisfies the Master Plan Goals of promoting a sustainable pattern of development that encourages economic vitality; enhancing the quality and character of communities and neighborhoods; preserving rural, agricultural, and scenic areas and protecting environmentally sensitive lands; and providing compatible new development in older, established communities.

We reject citizen's appeal to deny DSP-10027 because it will create noise, light and other pollution that will have an adverse impact on nearby homeowners. *See* Notice of Appeal, at 3. We have reviewed the record and the evidentiary transcript from June 27, 2013, and the oral argument transcript from January 27, 2014, and we found no evidence or testimony to support these bald allegations.¹⁰

¹⁰ Based on our review of the evidentiary hearing transcript, none of the appellants testified before the Planning Board. *See* (6/27/2013, Tr.). And none of the appellants appeared at oral arguments before the District Council. *See* (1/27/2014, Tr.). We also reject citizen opposition appeal to deny DSP-10027 on the basis that the plan will have an adverse impact to the property values of the adjacent property owners, (1/27/2013, Tr. at 6-7), because there is simply no evidence in the record to support this contention. *See Ray v. Mayor of Baltimore*, 430 Md. 74, 59 A.3d 545 (2013) (affirming the requirement that expert testimony is required to determine whether the value of a property will increase or decrease because of future development). *See also* (6/27/2013, Tr.), (1/27/2014, Tr.).

Similarly, we reject citizen's appeal to deny DSP-10027 because it does not advance the Master Plan goal because for the reasons stated above we found that the plan is in conformance with the Approved 2009 Master Plan. *See* Notice of Appeal, at 3.

We further reject citizen opposition appeal to deny DSP-10027 because the Planning Board decided to ignore a proposed list of car wash operations already in existence in the general Indian Head Corridor area. *See* Notice of Appeal, at 3. Our review of the record indicated that the Planning Board accepted the proposed list into the record for consideration. (6/27/2013 Tr. at 36-37) We give the proposed list no weight because it does not affect our finding of whether DSP-10027 represents a reasonable alternative for satisfying the site design guidelines of the Zoning Ordinance for the reasons stated above.

We also give no weight to citizen's appeal to reject DSP-10027 because of blight and propensity to be a magnet for crime. *See* Notice of Appeal, at 3. At the evidentiary hearing, other than a statement of belief from counsel for citizen opposition, there was no evidence presented to support this contention. (6/27/2013 Tr. at 39-40)

Additionally, we reject citizen's appeal that DSP-10027 proposes an awkward access at a dangerous intersection, and this type of use will place too much traffic on a road that is incapable of handling it. *See* Notice of Appeal, at 3. Citizen opposition provided no evidence to substantiate this point. (6/27/2013, Tr.) We however, found substantial evidence in the record to the contrary. The Transportation Planning Section found that the site was subject to a trip cap condition which limits development on the site to uses generating no more than 27 AM and 147 PM peak-hour vehicle trips. Further they noted the following with regard to the trip cap:

- a. The original preliminary plan proposed a 6,000 square foot car wash and 5,200 square feet of retail space. The current site plan proposes a 6,109-square-foot car wash and 3,020 square feet of retail space.

- b. The car wash would have the same trip generation as the original proposal. The retail space would generate 24 AM and 57 PM peak-hour vehicle trips.
- c. The overall trip generation is 24 AM and 142 PM peak-hour vehicle trips. Therefore, the proposal conforms to the condition.
- d. The applicant has, since the above comments were composed, reduced the size of the proposed building, thereby reducing the number of trips from the site and continuing to conform to this condition.

See Transportation Planning Section Memorandum dated May 10, 2013.

Finally, we reject citizen's appeal to deny DSP-10027 because of the environmental impact of the use. Citizen opposition allege, again with no evidence, that the intense development of the site will result in a significant loss of filter/habitat (i.e., trees) and substantially increased runoff containing numerous pollutants from the new impervious surface. *See* Notice of Appeal, at 4. We find these statements unsupported by any proof or evidence in the record. We adopt the findings of the Planning Board in PGCPB No. 13-78, and restate them as our findings concerning the Primary Management Area (PMA) in response to concerns raised by citizen opposition in their appeal. *See* PGCPB No. 13-78, at 20-22.

The site was previously identified as containing a Primary Management Area (PMA) that is required to be preserved to the fullest extent possible per Section 24-130(b)(5). The Subdivision Regulations requires that: "...all plans associated with the subject application shall demonstrate the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible." The regulated environmental features on the subject property include the PMA. Impacts to the regulated environmental features should be limited to those that are necessary for the development of the property. Necessary impacts are those that are directly attributable to infrastructure required for the reasonable use and orderly and efficient development of the subject property or are those that are required by County Code for reasons of

health, safety, or welfare. Necessary impacts include, but are not limited to, adequate sanitary sewerage lines and water lines, road crossings for required street connections, and outfalls for stormwater management facilities. Road crossings of streams and/or wetlands may be appropriate if placed at the location of an existing crossing or at the point of least impact to the regulated environmental features. Stormwater management outfalls may also be considered necessary impacts if the site has been designed to place the outfall at a point of least impact. The types of impacts that can be avoided include those for site grading, building placement, parking, stormwater management facilities (not including outfalls), and road crossings where reasonable alternatives exist. The cumulative impacts for the development of a property should be the fewest necessary and sufficient to reasonably develop the site in conformance with County Code.

Impacts to the regulated environmental features were proposed and a statement of justification was submitted in accordance with Section 24-130 of the Subdivision Regulations on May 26, 2011. The preliminary plan proposed impacts to the PMA in order to install two stormwater management/bioretenction areas, stormwater outfalls, and road improvements to Farmington Road. The two proposed stormwater management/bioretenction areas and the associated outfalls are located on the perimeter of the PMA. There was also a proposed impact to the PMA for the drive aisle that leads to the carwash. Planning Board determined, and we concur, that the proposed impacts had been minimized to the extent possible by the use of a retaining wall to reduce the grading into the PMA. The stormwater management features are also hereby found to be designed to meet the current Maryland Department of the Environment (MDE) Environmental Site Design (ESD) standards and criteria to the Maximum Extent Practicable (MEP); however, there was insufficient design information available at time of preliminary plan to fully evaluate the portion of the impacts needed for the drive aisle for the carwash.

The impacts related to stormwater management are considered necessary for the orderly development of the subject property. The impacts cannot be avoided because they are required by other provisions of the County Code. The development is providing full ESD with 100 percent water quality and quantity and the impacts have been designed to minimize, to the fullest extent possible, the impacts to the PMA. At time of preliminary plan, a finding was made that based on the level of design information available at the then present time, the regulated environmental features on the subject property had been preserved and/or restored to the fullest extent possible based on the limits of disturbance shown on the tree conservation plan submitted for review. The impacts approved in concept were for the installation of two stormwater management/bioretenction areas, their associated stormwater outfalls and the road improvements to Farmington Road East because these site features cannot be avoided. But it was indicated at that time that the impact proposed for the drive aisle would be re-evaluated at the time of the review of the detailed site plan when more design information is available. A total of 7,867 square feet of disturbance to the PMA was approved at time of preliminary plan.

It was requested that the applicant demonstrate the PMA impacts associated with the current approval not exceed the 7,867 square feet of disturbance approved at time of preliminary plan. On May 29, 2013, a supplemental Statement of Justification for PMA impacts was submitted to the Planning Board. The most recently revised plans, also received on May 29, 2013, [(Originally Proposed Site Plan (Slide 9 of 15), Currently Proposed Site Plan (Slide 10 of 15), Originally Proposed Architecture (Slide 11 of 15), Currently Proposed Architecture (Slide 12 of 15), Rendered Landscape (Slide 13 of 15), Aerial Rendered Landscape Plan (Slide 14 of 15), the Tree Conservation Plan (Slide 15 of 15)], represent a major redesign of the site which reduced PMA impacts due to the following changes to site design:

- (a) The retail building and car wash were combined into one building;
- (b) The size of retail space provided was reduced from 4,751 square feet to 3,020 square feet;
- (c) The number of parking spaces provided on site was reduced from 45 to 28 spaces;
- (d) The building was relocated to provide a wider landscape buffer along Indian Head Highway (MD 210);
- (e) The drive aisle was relocated further away from the PMA;
- (f) Stormwater management bioretention areas were moved out of the PMA.

The net result of the redesign was a reduction of 1,187 square of PMA impacts, from 7,867 square feet to 6,680 square feet, or approximately 15 percent. The Planning Board determined that the applicant had demonstrated, and we concur, that the impacts were consistent with that approval at time of preliminary plan. Concurrently, the revised plans showed an additional 297 square feet of PMA disturbance resulting from the newly identified presence of 100-year floodplain on the site, which had not been addressed in the revised Statement of Justification. Adding the total of impacts resulting from the current approval and the amount of additional PMA impacts resulting from expansion of the PMA, the total hereby approved PMA impacts for this site is 6,977 square feet. This is a reduction of 890 square feet or 11 percent of those approved with the preliminary plan.

Finding no error committed by Planning Board to warrant a remand or denial of DSP-10027, we affirm Planning Board's decision subject to the following conditions:

1. Prior to signature approval of the plans, the applicant shall revise the detailed site plan or provide additional information as follows:
 - a. Reference to Farmington Road East shall be corrected throughout the case file, application and plan set.

- b. If road frontage improvements are required by DPW&T along the subject property frontage of Farmington Road East, plans shall be revised to include a shoulder for bicyclists along the entire subject property frontage in conjunction with the bicycle warning signage, unless modified by DPW&T.
- c. The applicant shall redesign the parking area to remove or relocate the four identified parking spaces that currently intrude into the required Section 4.6 20-foot-wide buffer along Farmington Road East, while maintaining conformance to all other applicable evaluation criteria.
- d. The label of "Parcel 6" on the subject property shall be replaced by "Parcel 1" as reflected on the approved preliminary plan of subdivision.
- e. The applicant shall add the following notes to the General Notes of the subject DSP:
 - (1) As a water conservation measure, the proposed wash facility will be equipped with a water reclamation system.
 - (2) During the construction phases of this project, no dust should be allowed to cross over property lines and impact adjacent properties. This intent to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control is hereby indicated as a note on the plan set.
 - (3) During the construction phases of this project, noise should not be allowed to adversely impact activities on the adjacent properties. This intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code is hereby indicated as a note on the plans.
 - (4) "A variation approved pursuant to Section 24-121(a)(3) as part of the preliminary plan of subdivision for the project limits vehicular access to the site to one direct access from Parcel 1 onto Farmington Road East."
- f. The applicant shall specify that the color of the standing seam metal to be utilized for the roofing in the subject project shall be "Forest Green" instead of "Patina Green" to be more in keeping with the natural surroundings of the subject project.
- g. The DSP and TCP2 shall be revised to correctly delineate the PMA based on the approved 100-year floodplain study, and the total area of the PMA

and of the PMA impacts shall be indicated. The applicant shall demonstrate that the overall site is no greater than the quantity of PMA impacts approved by the Planning Board at time of preliminary plan approval prior to DSP certification.

h. The TCP2 plan shall be revised as follows:

- (1) Revise all areas of woodland preservation to eliminate areas located within the approved 100-year floodplain, and label with correct methodology and area.
- (2) Correct the woodland conservation summary table on the plan sheet.
- (3) Show the correct delineation of the PMA based on the approved 100-year floodplain, and revise all site statistics including the acreage of total PMA area shown on the plan to reflect the revised PMA.
- (4) Include a graphic element for woodland conservation signage in the legend of the plan, and show proposed locations on site. Woodland conservation signs may be mounted on the permanent protection device (split rail fence) in lieu of a post if a detail is provided. Revise notes to indicate that woodland conservation signage should be retained in perpetuity.
- (5) Revise the woodland conservation worksheet as follows:
 - (a) Show the correct TCP2 revision number in the worksheet.
 - (b) Insert the 0.53 acres of 100-year floodplain into the calculation and correct other quantities which are affected.
 - (c) Recalculate the woodland conservation requirement and provided based on revisions required above.
 - (d) Provide the woodland conservation shortage for the site as off-site woodland conservation in an approved woodland conservation bank.
- (6) Have the revised plans signed and dated by the qualified professional who approved the plan.

- i. The proposed outdoor lighting shall be specified as full cut-off optic fixtures to ensure that off-site light intrusion into adjacent and environmentally-sensitive areas designated by the 2005 *Approved Countywide Green Infrastructure Plan* is minimized, and so that sky glow does not increase as a result of the subject development. This requirement will cause the deletion of the “Euclid” fixture as a lighting choice for the site unless the applicant can demonstrate to the Planning Board or designee that the proposed fixture will not contribute to off-site light spillage.
2. Prior to signature approval of the TCP2 for this property, pursuant to Section 25-122(d)(1)(B) of the Subdivision Regulations, all woodland preserved, planted or regenerated on-site shall be placed in a woodland conservation easement recorded in land records and the liber/folio of the easement shall be indicated on the TCP2 and in the general notes on the DSP.
3. Prior to certificate approval of the DSP, the DSP and landscape plan shall be revised as follows to complement the vernacular character of the adjacent historic roadway:
 - a. The use of the non-native *Gleditsia triacanthos* (honey locust) within the bufferyard along Farmington Road East shall be replaced by a native such as *Quercus Palustris* (pin oak), *Quercus rubrum* (red oak), *Quercus palustris* (pin oak), *Amelanchier Laevis* (shadblow serviceberry), *Myrica pennsylvanica* (Northern bayberry) and *Viburnum dentatum* (arrowood), all more appropriate along this historic roadway.
 - b. The proposed monument sign shall be reduced in height to no more than nine feet above ground level and 12 feet in width.
 - c. The keystone retaining wall shall be simple in design and be complementary in color to the structures on the site.

Ordered this 24th day of March, 2014, by the following vote:

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

Opposed:

Abstained:

Absent: Council Members Lehman and Olson.

Vote: 7-0

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: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council