



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council
301-952-3600

January 31, 2022

**RE: DSP-20020 Beltway Plaza – Phase 1
GB Mall Limited Partnership, Applicant**

NOTICE OF FINAL DECISION OF THE DISTRICT COUNCIL

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on January 24, 2022.

CERTIFICATE OF SERVICE

This is to certify that on January 31, 2022, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

A handwritten signature in cursive script, reading "Donna J. Brown".

Donna J. Brown
Clerk of the Council

Case No.: DSP-20020
Beltway Plaza – Phase 1

Applicant: GB Mall Limited Partnership

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

FINAL DECISION — APPROVAL OF DETAILED SITE PLAN

On January 10, 2022, this matter was considered by the District Council on appeal from Planning Board, and on the briefs and oral arguments of the parties. (1/10/2022, Tr.), Appeal, 10/29/2021, Applicant’s Response, 12/28/2021. The issues on appeal have been afforded full consideration. The Board’s approval of Detailed Site Plan 20020, Type 2 Tree Conservation Plan 030-00-01, and Alternative Development District Standards—for Phase 1 of the redevelopment of Beltway Plaza, to include 750 multifamily residential dwelling units, a hotel, recreation center, and limited streetscape improvements, within Planning Area 67, Council District 4, and in the City of Greenbelt—is hereby AFFIRMED.^{1,2,3}

¹ Detailed Site Plan 20020 (DSP-20020), Type 2 Tree Conservation Plan (TCP2-030-00-01) and Alternative Development District Standards will be referred to collectively as the site plan or separately where appropriate. Planning Board will be referred to as the Board and Technical Staff will be referred to as Staff. The Board’s Resolution will be referred to as the Resolution or PGCPB No. 2021-113. The Zoning Ordinance or Subtitle 27 of the County Code will be cited to as “PGCC § 27-____.” Parties appealing the Board’s decision will be referred to as Opposition. GB Mall Limited Partnership is the Applicant.

² Alternatively, the District Council may affirm, reverse, modify or remand the application to the Board. PGCC § 27-290(d).

³ Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property—including a preliminary plan of subdivision. PGCC § 27-141. Council may also take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. District Council Rules of Procedure Rule 6.5(f).

A. Introduction⁴

In March 2019, the Board approved applicant's Conceptual Site Plan (CSP)-18010 to develop the subject property.^{5,6} CSP-18010 approved a five-phased redevelopment of the site to consist of up to 250 two-family and/or single-family dwelling units, and up to 2,250 multifamily units (for a maximum of 2,500 total residential units), as well as a range of 435,000 to 700,000 square feet of commercial development. Council waived its election to review CSP-18010 and Opposition did not appeal. Therefore, on or about May 3, 2019, approval of CSP-18010 became final, including certain density for the five-phased redevelopment of the site. Response at 2, footnote 2. PBCPB No. 2021-113 (approving DSP-20020), pp. 5-6. *See also*, PGCPB No. 19-35 (approving CSP-18010), pp. 1-2.

In March 2020, the Board approved applicant's Preliminary Plan of Subdivision (PPS) 4-19023 for development of up to 2,500 multifamily dwelling units and up to 700,000 square feet of commercial space on 55 parcels at the site.⁷ Approval of the PPS changed the residential unit types previously approved in the CSP, but the number of allowable units fell within the maximum units previously permitted by the Board in the CSP and will be further evaluated at the time of detailed

⁴ Plans relevant to the development of this site are the 2013 Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment (Sector Plan) and the 2014 General Plan (Plan 2035).

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

⁶ Among other things, a conceptual site plan is a very general concept for developing a parcel of land before subdivision plans or final engineering designs are begun. Development may include planned mixed-use developments and development which is potentially incompatible with land uses on surrounding properties. PGCC § 27-272.

⁷ A preliminary plat (or plan) of subdivision is the preliminary detailed drawing (to scale) of a tract of land, depicting its proposed division into "Lots," "Blocks," "Streets," "Alleys," or other designated areas within a proposed "Subdivision." PGCC § 27-107.07(a) (184).

site plan. The Board determined that while the Sector Plan includes recommendations for a mix of housing types for redevelopment of the site, it also provides flexibility for design to respond to market conditions. PBCPB No. 2021-113, p. 6. *See also* PGCPB No. 2020-26 (approving PPS 4-19023), p. 12.⁸

In September 2021, the Board approved the applicant's site plan, which is the application at issue in this appeal.⁹ The site plan is for Phase 1 of the redevelopment of the site to include 750 multifamily residential dwelling units, a hotel, recreation center, and limited streetscape improvements. PBCPB No. 2021-113, p. 1. Council waived its election to review the site plan, but Opposition filed a timely appeal, which the applicant has opposed. Appeal, 10/29/2021, Response, 12/28/2021.

For reasons set forth herein, Council finds that the Board's approval of the site plan was supported by substantial evidence of record, fairly-debatable, not arbitrary, capricious, or otherwise illegal.

B. Jurisdiction and Standard of Review

Council may elect to review a final decision of the Board to approve or disapprove a site plan and a party of record may appeal to Council the Board's final decision to approve or disapprove the plan. Md. Code Ann., Land Use Article, § 25-210 (1957, 2012 Repl. Vol., 2021 Supp.), PGCC § 27-290. Because Council waived its election to review the Board's final decision, review of that decision is pursuant to Opposition's appeal. Zoning Agenda, 10/25/2021, (10/25/2021, Tr.),

⁸ Circuit Court affirmed the Board's approval of PPS-419023 on February 17, 2021. *See* CAL20-11215, Response at 5, ¶ 1. Opposition has appealed to the Court of Special Appeals and a decision is pending. *See* CSA-REG-0038-2021.

⁹ A site plan is "an illustrated proposal for the development or use of a particular piece of real property [depicting] how the property will appear if the proposal is accepted." *Cty. Council of Prince George's Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018).

Appeal, 10/29/2021.

In an appellate capacity, Council’s review of the Board’s final decision on factual findings, and the application of law to those factual findings, is limited to determining if there is substantial evidence in the record as a whole to support the Board’s findings and conclusions, and to determine if the decision is based on an erroneous conclusion of law. Council may not substitute its judgment for the Board. Rather, Council must affirm the Board’s decision if there is sufficient evidence such that a reasoning mind reasonably could have reached the factual conclusion the Board reached. *Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015). Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Arbitrary and capricious means “unreasonably or without a rational basis;” “founded on prejudice or preference rather than on reason or fact;” and “characterized by or guided by unpredictable or impulsive behavior, . . . contrary to the evidence or established rules of law.” *FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018) (quoting *Harvey v. Marshall*, 389 Md. 243, 884 A.2d 1171 (2005)).

C. The Appeal

Opposition alleges the Board committed five (5) errors that warrant disapproval of the site plan. Appeal, 10/29/2021. Applicant submitted an extensive written response in opposition of the appeal. Response, 12/28/2021. Each alleged error will be addressed in the order presented.¹⁰

- I. The Planning Board erred when it approved DSP-20020 because DSP-20020 conflicts with Plan 2035, as well as the 2013 Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment. Appeal at 3-10.¹¹

¹⁰ Plans relevant to this appeal are the 2013 Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan (Sector Plan) and Sectional Map Amendment and the 2014 General Plan (Plan 2035).

¹¹ The issue of whether a site plan must conform to both Plan 2035 and the Section Plan will be addressed first and the issue site plan density will follow.

Opposition contends that “[w]hen the Code requires developmental compliance with a sector plan, master plan, or equivalent, and that smaller plan must itself be in accordance with the broader general plan, then the development in question must also comply with that general plan even if the Code doesn’t specifically reference the general plan.” Opposition relies on three (3) Maryland appellate cases for the proposition that the site plan in this case “must comply with not only the requirements of the Sector Plan but also those of Plan 2035, both indirectly and as incorporated through the Sector Plan.” Appeal at 8-9.¹² Before addressing the statute that governs site plan approval, a brief review of the cases cited by Opposition is necessary to highlight why those cases are inapplicable.

At issue in cases cited by Opposition was Section 24-121(a)(5) of the County’s *subdivision regulations*—which states that a proposed *subdivision plat shall conform to the area master plan*, including maps and text, *unless* the [] Board [] finds that events have occurred to render the relevant plan recommendations no longer appropriate or the District Council has not imposed the recommended zoning. *Archers Glen Partners, Inc.*, 405 Md. at 49, 949 A.2d 643 (2008) (*That section of the code, however, does not expressly state that subdivision plans must conform to the General Plan*) (Emphasis added). *Archers Glen* passed through the appellate courts four (4) times. Each time, Mr. Nelson, counsel for the Opposition in *this* case, argued on behalf of the opposition in *Archers Glen*, and each time, he failed to persuade the appellate courts to adopt his argument that a *preliminary plan of subdivision must* conform to both an area master plan *and* general plan.

¹² The 3 cases are: 1) *Archers Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 933 A.2d 405, *recon. denied*, (2007), *aff’d on other grounds*, 405 Md. 43, 949 A.2d 639 (2008); 2) *Maryland-National Capital Park & Planning Comm’n v. Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 985 A.2d 1160 (2009); and 3) *Naylor v. Prince George’s County Planning Bd.*, 200 Md. App. 309, 27 A.3d 597 (2011), *cert. denied*, 424 Md. 56, 33 A.3d 982 (2011).

- *Archers Glen I* — After the Board approved a developer’s preliminary plan of subdivision, Mr. Nelson, on behalf of the opposition, filed a petition for judicial review in circuit court, which affirmed the Board. Mr. Nelson appealed to the Court of Special Appeals (COSA). In an unreported opinion,¹³ COSA held that the Board failed to articulate sufficiently the findings in support of its conclusion that the preliminary plan conformed to the recommendations of the [area] master plan. COSA vacated the circuit court’s judgment and directed circuit court to remand the case to the Board for further proceedings. COSA ***did not*** decide the parties’ dispute regarding “whether the [] Board was required to consider the subdivision[’s] compliance with ***both*** the [g]eneral [p]lan and the [m]aster [p]lan, ***or only*** the [m]aster [p]lan.” Instead, COSA held that “[t]he parties apparently did not litigate this issue before the [] Board, and the Board did not expressly decide the issue in its decision. Because we are vacating the judgment and remanding the case, ultimately, to the [] Board, and given the fact that the issue was not litigated within the [] Board, *we find it unnecessary, and inappropriate under the circumstances, to definitively resolve how the [g]eneral [p]lan should apply under the [s]ubdivision [r]egulations.*” *Archers Glen Partners, Inc.*, 405 Md. at 49, 949 A.2d at 642 (Emphasis added).

- *Archers Glen II* — On remand pursuant to *Archers Glen I*, the Board held another hearing and reapproved the preliminary plan. Mr. Nelson, on behalf of the opposition, filed a second petition for judicial review in circuit court. This time, the circuit court remanded the case to the [] Board for “further specific and factually supported consideration[s] and findings” regarding the preliminary plan’s conformance to the recommendations of the general plan as “incorporated in the [m]aster [p]lan when not thereby contradicted or amended.” Specifically, the

¹³ *Garner v. Prince George’s County Planning Bd of the Maryland-National Capital Park and Planning Comm’n*, No. 2715, Sept. Term 2003 (filed January 18, 2005).

circuit court held that the Board needed to make specific findings regarding the “number of new dwelling units constructed and projected to be constructed between 2000 and 2025 in the whole of Prince George’s County; the number of dwelling units already approved for construction in the Rural tier of Prince George’s County; and whether the addition of 46 new dwelling units in the Rural Tier will cause growth in the Rural Tier since 2000 to exceed 0.75-1.00% of overall projected dwelling unit growth.” The Board and the applicant appealed to COSA. In a reported opinion,¹⁴ a different panel of COSA that decided *Archers Glen I* reversed the judgment of the circuit court. On this occasion before COSA, Mr. Nelson argued that COSA’s unreported opinion in *Archers Glen I* that discussed the potential legal effect to be accorded the general plan in the subdivision process served as the “law of the case,” and thus, the recommendations of the general plan were binding on the [] Board in considering and acting on the preliminary plan. COSA disagreed and held that *Archers Glen I* did *not* decide the issue of whether the General Plan was binding, and thus, the law of the case doctrine did not apply. COSA went on to hold that the [] Board had “**discretion** to determine whether the preliminary subdivision plan conformed . . . to the goals, objectives, policies, and strategies in the [g]eneral [p]lan.” COSA finally concluded that the [] Board’s approval of the preliminary plan was supported by substantial evidence. *Archers Glen Partners, Inc.*, 405 Md. at 51-52, 949 A.2d at 643-645 (Emphasis added).

- *Archers Glen II (Reconsideration)* — After *Archers Glen II* was decided, Mr. Nelson, on behalf of the opposition, filed a motion for reconsideration, which the District Council *joined*. Among other things not relevant here, Mr. Nelson and the District Council argued that the decision in *Archers Glen II* concerning the general plan declared it to be of no effect and “eviscerated” the general plan. COSA rejected both arguments as “totally devoid of merit” and a “gross distortion”

¹⁴ *Archers Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 933 A.2d 405 (filed July 6, 2007).

of *Archers Glen II*. COSA concluded that the general plan amended the master plan “with respect to countywide goals, objectives, policies, and strategies.” COSA also concluded that the master plan is binding, and because “objectives,” including growth objectives, were made a part of the master plan, they are binding. COSA further concluded that the application of specific provisions in a plan, *even if binding, rests with the Planning Board (subject to the substantial evidence test)* to determine whether a preliminary subdivision plan conforms to the master plan and the objectives in the general plan. *Archers Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 323-325, 933 A.2d 405, 423-424, *recon. denied*, (filed October 31, 2007) (Emphasis added).

- *Archers Glen III* — Dissatisfied with the holdings in *Archers Glen I & II*, Mr. Nelson, on behalf of the opposition, filed a petition for writ of certiorari in the Court of Appeals, which was granted.¹⁵ But the petition was granted only to address the following two (2) questions: 1) May the [] Board participate as a party in a judicial review of its decision approving a [p]reliminary [p]lan for a residential development? and 2) Does the law of the case doctrine apply to a Court of Special Appeals’ opinion in the same proceeding which addresses a legal question pursuant to Md. Rule 8-131(a) in order to provide “guidance” and “to avoid the expense and delay of additional appeals”? *Archers Glen Partners, Inc.*, 405 Md. at 52-53, 949 A.2d at 645. The Court of Appeals rejected both arguments. On the first question, the Court found that the issue of the Board’s standing to participate was *not* preserved by the opposition for appellate review and because the opposition conceded that the developer had standing, the Court *declined* to address the issue of standing because it was unnecessary to the outcome of the case. On the second question, the Court *declined to address the dispute between the parties whether the general plan’s growth objectives*

¹⁵ *Garner v. Archers Glen*, 403 Md. 304, 941 A.2d 1104 (Feb. 13, 2008).

are binding on the [Board] and applicants in the subdivision review process. *Id.* at 405 Md. at 53-55, 60-61, 949 A.2d at 645-646, 649 (Emphasis added).

- Greater-Baden — After the Court of Appeals resolved *Archers Glen* in 2008, the Court decided *Greater-Baden* in 2009. *Greater-Baden* (like *Archers Glen*) involved the Board's approval of a *preliminary plan*—not approval of a *detailed site plan*. After the Board approved the developer's preliminary plan, Mr. Nelson, on behalf of the opposition, sought judicial review in circuit court, which remanded the case to the Board. The Board appealed to COSA, which affirmed the circuit court in an unreported opinion.¹⁶ The Board filed a petition for writ of certiorari in the Court of Appeals, which was granted.¹⁷ Relevant here, the question before the Court in *Greater-Baden* was “whether the [] Board, *at the least, must consider* the [g]eneral [p]lan's numeric growth objective when determining whether to approve or reject a *preliminary [] plan*.” *Greater Baden-Aquasco Citizens Ass'n*, 412 Md. at 97-98, 985 A.2d at 1174 (Emphasis added). The Court concluded that the [] Board *should* have considered the [g]eneral [p]lan's numeric residential growth objective in the Rural Tier in determining whether the [p]reliminary [p]lan conformed to the [m]aster [p]lan. *Id.* 412 Md. at 110, 985 A.2d at 1181-1182 (Emphasis added).

- Naylor — Similar to the cases above, *Naylor* also involved the Board's approval of a *preliminary plan*—not approval of a *detailed site plan*. After the Board approved the developer's preliminary plan, Mr. Nelson, on behalf of the opposition, petitioned for judicial review in the circuit court, which affirmed the Board. Mr. Nelson, on behalf of the opposition, appealed to COSA, which addressed the following questions: 1) Does the [] Board have standing to participate

¹⁶ *Maryland-National Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 2009 Md. LEXIS 944 (Md. Ct. Spec. App. Dec. 23, 2009).

¹⁷ *Park & Planning v. Greater Baden Aquasco*, 407 Md. 529, 967 A.2d 182 (2009).

in this appeal? 2) Did the [] Board adequately articulate factual findings regarding the 1% growth objective [*in the 2002 General Plan*]? and 3) Is there substantial evidence in the administrative record to support the [] Board’s finding that the [p]reliminary [p]lan is not inconsistent with the 1% growth objective [*in the 2002 General Plan*]? *Naylor*, 200 Md. App. at 313, 27 A.3d at 599. Relevant here, COSA held that the Board met its duty to find if the development was consistent with the general plan’s growth objective because it (1) did not ignore the objective, (2) discussed such consistency by stating the subdivision was not in conflict with the dwelling units envisioned in the rural tier over the next 20 years, and (3) did not have to predict how many units could be added in the rural tier. *Id.* at 200 Md. App. at 316-327, 27 A.3d at 601-607.

Relying on the holdings above, Opposition incorrectly argues that “[t]he courts have already analyzed the question of *cross-plan compliance* with regards to *subdivisions*, and the analysis *carries over to zoning*—i.e.—to the Board’s approval of the *detailed site plan* at issue here. Appeal at 8, ¶ 2 (Emphasis added). But none of the cases cited by Opposition *hold* that 1) before the Board may approve a *preliminary plan*—it **must** find *cross-plan compliance* with **both** an area master plan **and** general plan or 2) before the Board may approve a *detailed site plan*—it **must** find *cross-plan compliance* with **both** an area master plan **and** general plan.

To further advance the flawed argument of *cross-plan compliance* before the Board may approve a *detailed site plan*, Opposition avers that the County Code elevates Plan 2035 and the Section Plan to the level of a regulatory device. Appeal at 7-8. Applicant correctly points out that (under Maryland law) those Plans are merely advisory guidelines unless a statute renders them binding. Response at 5-15. Whether a plan is a guide or a regulatory device is generally a matter of statutory interpretation, to which the canons of statutory construction apply. *Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 101, 985 A.2d 1160 (2009). The cardinal rule of statutory

interpretation is to ascertain and effectuate the real and actual intent of the legislature. *Lockshin v. Semsker*, 412 Md. 257, 274, 987 A.2d 18, 28 (2010).

- Plan 2035

The plain language of Plan 2035 expressly states that it is *intended* to be a document that includes *comprehensive recommendations for guiding future* development in the County. It states as follows:

Plan 2035 includes *comprehensive recommendations for guiding future development within Prince George's County such as goals, policies, and strategies*. The plan contains *recommended goals, policies, and strategies* for the following elements: *Land Use*; Economic Prosperity; Transportation and Mobility; Natural Environment; *Housing and Neighborhoods*; Community Heritage, Culture, and Design; Healthy Communities; and Public Facilities. Plan implementation through prioritization of strategies, *measuring short and long-term success*, public and municipal engagement, intergovernmental coordination, and public-private partnerships are also described. Plan 2035, Abstract (Emphasis added).

The following key terms are essential to understanding the *recommendations of Plan 2035: Vision, Goal, Policy, and Strategy*. Plan 2035, p. 91, Section IV: Elements (Emphasis added).

It contains a matrix of Plan 2035 strategies that forges a strong link between the plan's *recommendations* and the responsible parties. Plan 2035, p. 8, Section V: Implementation (Emphasis added).

It is important to note that master and sector plans will continue to evaluate land use *at the local level, guide site specific development, and implement zoning recommendations* based on demographic trends, population forecasts, and *market analyses*. Plan 2035, p. 96, Future Land Use (Emphasis added).

Land use categories provide general guidance on the intensity, character, and location of land uses. Sector and master plans may use text and graphics to identify common subcategories and accompanying descriptions and densities, as needed. Plan 2035, p. 97, Land Use Categories (Emphasis added).

- Sector Plan

The plain language of the Sector Plan expressly states that it is *intended* to be a document of *recommendations for land use* in the County. It states as follows:

Developed with the active participation of the community, including property owners, developers, residents, and elected officials; this document *recommends goals, policies, strategies, and actions pertaining to land use, urban design, the environmental and green infrastructure networks, the multimodal transportation system, housing, economic development, health and wellness, the Greenbelt medical mile, public facilities, parks and recreation, historic preservation, zoning, and implementation*. The *plan* builds upon *recommendations* of the 2002 Approved General Plan for Prince George's County for centers and corridors in the Developed Tier, addresses sustainable development tied to existing and proposed mass transit options, and *incorporates recommendations* from functional area master plans such as the Green Infrastructure Functional Master Plan of Transportation, and Water Resources Functional Master Plan. The Sectional Map Amendment proposes zoning changes *to implement the land use recommendations of the sector plan*. Sector Plan, Abstract (Emphasis added).

This *sector plan* is distinguished by its *flexible approach to complex land use and urban design issues* while continuing to respect community priorities and values...Finally, sector plan *recommendations and design guidelines and standards* will foster an enhanced sense of place. Sector Plan, p. 1, Plan Highlights (Emphasis added).

Key *recommendations* of this *sector plan* include the following: *Land Use and Urban Design, Environmental Infrastructure, Transportation (Safety, Connectivity, Mobility, and Access), Economic Development, Housing and Neighborhood Preservation, Quality of Life, Implementation, and Sectional Map Amendment*. Sector Plan, pp. 2-4, Plan Highlights (Emphasis added).

The plain language of the Sector Plan also expressly states that it is *intended* to be a *guide* for the *redevelopment* of the subject property known as Beltway Plaza. It states as follows:

This *sector plan* should serve as a *guide* for the phased redevelopment of the Beltway Plaza holdings. The following illustrative site plan diagrams show how the site *could evolve* in a comprehensive manner. *These illustrative site plan diagrams should not be construed as a mandate*. The *sector plan* recognizes that market conditions will dictate specific phasing and uses. Sector Plan, p. 106, Beltway Plaza Illustrative Phasing Plan (Emphasis added).

These concept drawings are for illustrative purposes only and *should not be construed to mandate the presented site plans or be interpreted as the sector plan's final recommendations for the potential redevelopment of the Beltway Plaza property*. Sector Plan, p. 107, Beltway Plaza Illustrative Phasing Plan (Emphasis added).

Plan 2035 and the Sector Plan were *authored* by the Planning Commission and adopted by the District Council. Plan 2035, Abstract, Sector Plan, Abstract, respectively. It is well settled law that plans, which are the *result of work done by planning commissions* and adopted by the ultimate zoning bodies, *are advisory in nature and have no force of law* absent statutes or local ordinances linking planning and zoning. If the latter exist, they serve to elevate the status of the comprehensive plan to a level of a true regulatory device. *Mayor & Council of Rockville v. Rylyns Enters.*, 372 Md. 514, 529-31, 814 A.2d 469, 477-79 (2002). And where a development plan is *required* to, for example, “conform to” or “be in compliance” with a master plan or general plan, the relevant plan becomes a binding regulatory device that the deciding authority may not disregard. *Friends of Frederick County v. Town of New Mkt.*, 224 Md. App. 185, 120 A.3d 769 (2015) (Emphasis added).

Unlike the cases cited by Opposition that interpreted a County *subdivision regulation* that *requires* a preliminary plan to *conform* to the area master plan (*without express conformance to the general plan*), *detailed site plan regulations do not require* (in the *first* instance) that the Board find plan conformance (or cross-plan conformance) to an area master plan and general plan. Opposition also cites to various provisions of the Code that address general purposes of a zone or site plan in relation to an area master plan or general plan. Appeal at 7-10. But none of those provisions address PGCC § 27-285(b)—the regulation that governs what the Board must find *before* deciding to approve a detailed site plan. PGCC § 27-285(b) provides as follows:

(b) Required findings.

- (1) *The Planning Board may approve a Detailed Site Plan if it finds that the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make these findings, the Planning Board may disapprove the Plan.*

- (2) The Planning Board shall also find that the Detailed Site Plan is in *general conformance with the approved Conceptual Site Plan* (if one was required).
- (3) The Planning Board may approve a Detailed Site Plan for Infrastructure if it finds that the plan satisfies the site design guidelines as contained in Section 27-274, prevents offsite property damage, and prevents environmental degradation to safeguard the public's health, safety, welfare, and economic well-being for grading, reforestation, woodland conservation, drainage, erosion, and pollution discharge.
- (4) The Planning Board may approve a Detailed Site Plan if it finds that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

The appellate courts have opined on the County's *detailed site plan regulations* as follows:

Before certain kinds of development activities can occur in Prince George's County, the developer must submit a detailed site plan to the Planning Board for its review and approval. PGCC §§ 27-282 and 27-285. *The legislative premise of the detailed site plan review process is that "regulation of land development through fixed standards can result in monotonous design and lower quality development, [therefore] certain types of land development are best regulated by a combination of development standards and a **discretionary review**. . . ."* PGCC § 27-281. *Examples of the types of development that are appropriate for detailed site plan review include: development on environmentally sensitive land, development that "is potentially incompatible with land uses on surrounding properties," and "[b]uildings or land uses that are a part of particularly sensitive views as seen from adjacent properties or streets."* PGCC § 27-281(a)(1)(H)-(J).

*Before deciding to approve a detailed site plan, **the Planning Board must find that "the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use."*** PGCC § 27-285(b). As the Court explained in *Zimmer*, the detailed site plan process *"is a method of moderating design guidelines so as to allow for greater variety of development, while still achieving the goals of the guidelines."*

FCW Justice, Inc., 238 Md. App. 641, 193 A.3d 241 (2018) (quoting *Zimmer Dev. Co.*, 444 Md. 490, 562-63, 120 A.3d 677 (2015)) (Emphasis added). Opposition is legally incorrect that a detailed site plan *must* comply with *both* Plan 2035 *and* the Sector Plan before the Board may decide to approve the site plan. Moreover, if the Board was compelled to find *cross-plan* conformance

before deciding to approve the site plan, it would render the Board’s *discretionary review* of the site plan meaningless. *Archers Glen Partners, Inc.*, 176 Md. App. 292, 933 A.2d 405 (2007) (holding that the [] Board had “**discretion** to determine whether the preliminary subdivision plan conformed . . . to the goals, objectives, policies, and strategies in the [g]eneral [p]lan.”) (Emphasis added).

- Site Plan Density

Opposition submits a screen shot of a computer generated “fly over” video used in a presentation by Planning Staff to depict what it claims is *higher* density than contemplated in Plan 2035 and the Sector Plan. Appeal at 2-6. Density for a proposed development is not defined or determined by appearance or by a depiction from a fly over video or screen shot. In the Code, density for land use is defined as “[t]he number of dwelling units per acre of net lot area.” PGCC § 27-107.01(a)(66). To the extent that Opposition is attempting to fashion an argument against the density approved in CSP-18010, the argument fails because, as noted earlier, there was no challenge to the Board’s approval of CSP-18010. Moreover, in the Sector Plan, the subject property is in the Mixed-Use Infill (M-U-I) and Development District Overlay (D-D-O) Zones, which provides that “regulations are intended to create community environments enhanced by a mix of residential, commercial, recreational, open space, employment and institutional uses *in accordance with approved plans*.” Sector Plan, Appendices, A-28. *See also* PGCC § 27-546.18 (a)(...the regulations governing location, setbacks, size, height, lot size, density, and other dimensional requirements in the M-U-I Zone are as follows) (b)[w]here an owner proposes a mix of residential and commercial uses on a single lot or parcel in the M-U-I Zone, *the site plan as approved shall set out the regulations to be followed*) (Emphasis added). Furthermore, Plan 2035 also defines density as the number of dwelling units or persons per acre of land expressed in units

per gross acre. In relevant part, townhouses range from 6 to 12 units per acre attached in a row, and *multifamily units range from 12 to 48 units per acre in one structure*. Plan 2035, p. 284 (Emphasis added). And the Sector Plan describes mixed-use residential as properties that contain a mix of uses that are *predominantly* residential. Sector Plan, p. 90.

Opposition incorrectly states that Plan 2035 designated the property in the Established Communities, which calls for context-sensitive infill and low to medium density development. Appeal at 3, ¶ 1. While Established Communities are the most appropriate for context-sensitive infill and low to medium density development, Plan 2035 did not *solely* designate the property in the Established Communities—it *also* designated the property in the Employment Areas and Innovation Corridor of the Growth Policy Map. Plan 2035, pp. 18 (Map 1), 22 (Map 2), 107 (Map 11). Employment areas command the highest concentration of economic activity in four targeted industry clusters—healthcare and life sciences; business services; information, communication, and electronics; and the Federal Government. *Id.* at 106. Employment areas are also a result of the 2013 Strategic Economic Development Plan (SEDR), which among other things, targets public sector funding and incentives to include the Innovative Corridor and Neighborhood Revitalization areas. *Id.* at 21. The SEDR in Plan 2035 also calls for incentives to attract new employers along MD 193, including shared parking, bike amenities and lanes, sidewalks, public facilities, and other amenities. *Id.* at 257. Moreover, the property is also surrounded with multifamily residential development in the M-U-I Zone and commercial development in the M-U-I and Commercial Shopping Center (C-S-C) Zones. PGCPB No. 2021-113, pp. 1, 5, Sector Plan, p. 91 (approved land use (mixed use) for Beltway Plaza, Franklin Park at Greenbelt Station, and North Core).

Opposition also states that the “Sector Plan supports mixed use development for Beltway Plaza and the North Core area” and “medium to high density development at [the] North Core so

long as it is handled appropriately and is sensitive to adjacent communities.” Appeal at 5, ¶ 1. Both statements misrepresent the Sector Plan because they come from a “summary of community comments” on page 36 of the Sector Plan—*not* from the Vision and Goals for Land Use and Urban Design for Beltway Plaza, Franklin Park at Greenbelt Station, or the North Core. *See and compare* Sector Plan, p. 36 and pp. 85-102. The Board noted that land use concept for the Sector Plan defines six subareas within the Greenbelt Metro Area and MD 193 Corridor development district for the purposes of examining issues and opportunities and formulating recommendations. Detailed development requirements and recommendations are provided for these six distinct areas within the Sector Plan: North Core, South Core, Franklin Park and Greenbelt Station, Capital Office Park, Beltway Plaza, and MD 193 Corridor. PGCPB No. 2021-113, p. 10. Concerning density, Plan 2035 designated Greenbelt Metro as a Regional Transit District. Plan 2035, p. 107, Map 11. Plan 2035 states (in relevant part) that “*density and intensity are often noticeably greater within a quarter mile of Metro and light rail stations.*” *Id.* at 108, Table 16. Plan 2035 also describes new housing mix in a Regional Transit District as *predominantly high-rise and mid-rise apartments*, condos, and townhouses at 40+ dwelling units per acre. *Id.* Plan 2035 further states that walkable, mixed-use areas, including transit-oriented developments, are often roughly one-half mile in diameter and organized around a core and edge, with the most dense and intense development growing out from the entry of a Metro station, and that the edge include more of a residential mix. *Id.* at 109.

Opposition further contends that the Board’s approval of the site plan should be vacated because the site plan design program for high density apartments in the northern portion of the Beltway Plaza bordering on Breezewood Drive conflicts with [] Plan 2035’s vision for “low-to medium-density development” and the Sector Plan’s strategy for Beltway Plaza to concentrate

“townhomes at the rear of the property as a transition to the residential uses along Breezewood Drive at Franklin Park at Greenbelt Station.” Appeal at 6, ¶ 1. These contentions are legally incorrect for several reasons.

First, a detailed site plan is subject to the Board’s *discretionary review*—which allows the Board to find that “the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use.” PGCC § 27-285(b). Second, the Board is *not* required to find *cross-plan* compliance with *a* vision of Plan 2035 and/or *a* strategy of the Sector Plan before it may approve the site plan—the Plans are documents of comprehensive *recommendations to guide future* development in the County. Third, Plan 2035 did not *solely* designate the property in the Established Communities—it *also* designated the property in the Employment Areas and Innovation Corridor of the Growth Policy Map. Fourth, the property is also in the M-U-I Zone and density for the redevelopment of the site was approved (and unchallenged) in CSP-18010—which approved (among other features) up to 2,500 multifamily units. Fifth, the Board approved the applicant’s preliminary plan for up to 2,500 multifamily dwelling units and up to 700,000 square feet of commercial space. Sixth, the approved preliminary plan changed the residential unit types previously approved in the CSP, but the number of allowable units fell within the maximum units approved in the CSP. Seventh, when the Board approved the preliminary plan, it allowed for further evaluation at the time of detailed site plan because it determined that while the Sector Plan includes recommendations for a mix of housing types for redevelopment of the site, it also provides flexibility for design to respond to market conditions. PBCPB No. 2021-113, p. 6, PGCPB No. 2020-26, p. 12. Lastly, the 750 multifamily units proposed in the site plan falls within the maximum units permitted in the CSP. PGCC §27-

282(g) (a detailed site plan application may amend an existing conceptual site plan applicable to a proposal for development of the subject property).

- II. The Planning Board erred when it approved DSP-20020 because DSP-20020 conflicts with Conceptual Site Plan (“CSP”)-18010. Appeal at 10-11.

This contention concerns Condition 3 of the Board’s approval of CSP-18010. The condition states that “[p]rior to approval of a detailed site plan for the project, the applicant shall provide sidewalks on both sides of all internal roads, consistent with Complete Streets policies of the 2009 Approved Countywide Master Plan of Transportation. PGCPB No. 19-35, p. 17, PGCPB 2021-113, pp. 16-17. Opposition avers that 1) the law requires that the site plan comply with each of the requirements of CSP-18010, 2) no law authorizes the Board to exempt the applicant from the requirement to provide sidewalks on both sides of all internal roads, and 3) if the applicant wished to present a DSP without a sidewalk on the South side of Street A, the law required the applicant to petition to amend the previously approved CSP before submitting the site plan. Appeal at 10. Opposition is legally incorrect.

First, the law (in relevant part) only requires the Board to find that the site plan is in *general conformance* with the approved CSP. PGCC § 27-285(b)(2). The legislative premise of the detailed site plan review process is that “regulation of land development through fixed standards can result in monotonous design and lower quality development, [therefore] certain types of land development are best regulated by a combination of development standards and a discretionary review. . . .” PGCC § 27-281. Examples of the types of development that are appropriate for detailed site plan review include: development on environmentally sensitive land, development that “is potentially incompatible with land uses on surrounding properties,” and “[b]uildings or land uses that are a part of particularly sensitive views as seen from adjacent properties or streets.”

PGCC § 27-281(a)(1)(H)-(J). Here, the Board addressed Condition 3 of the CSP and made the following findings and conclusions:

The DSP provides sidewalks on both sides of all internal roads with one exception. Sidewalks are not provided on the south side of Street A, adjacent to the northeast corner of the existing mall, where there are existing loading and service areas utilized by mall tenants. *Sidewalks were not provided here to avoid **conflicts** between pedestrians and commercial truck traffic. In this location, a sidewalk would be inappropriate due to the context and character of the loading area.* On the opposite side of Street A in this location, a 10-foot-wide shared-use path is provided to accommodate pedestrian and cyclist movement. *The placement of sidewalks along internal roadways, as shown on the DSP, **is consistent with the CSP** and Complete Streets policies of the 2009 Approved Countywide Master Plan of Transportation.*

PGCPB 2021-113, pp. 16-17 (Emphasis added), (9/9/2021, Tr.). As noted above, before deciding to approve a detailed site plan, the Board must find that “the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use.”

PGCC § 27-285(b). The detailed site plan process “is a method of moderating design guidelines so as to allow for greater variety of development, while still achieving the goals of the guidelines.”

FCW Justice, Inc., 238 Md. App. 641, 193 A.3d 241 (2018) (quoting *Zimmer Dev. Co.*, 444 Md. 490, 562-63, 120 A.3d 677 (2015)). The Board’s resolution also provided as follows:

For the aforementioned reasons, including but not limited to the design features identified in Finding 6, the Planning Board finds the DSP will create a development of wide variety while achieving the goals of the site design guidelines contained in Section 27-274 of the Zoning Ordinance. ***The DSP-20020 also conforms to CSP-18010***, including the proposed phasing of development, *and will result in a project that represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, of the Prince George’s County Code without requiring unreasonable cost and without detracting substantially from the utility of the proposed development for its intended use.*

PGCPB No. 2021-113, pp. 24-25. Second, the law *does* authorize the Board to *approve* a site plan *amending* Condition 3 of the previously CSP. PGCC §27-282(g) (a detailed site plan application

may amend an existing conceptual site plan applicable to a proposal for development of the subject property). *See also* PGCC § 27-108.01(a)(10) (the word “*approve*” includes “approve with conditions, modifications, or *amendments*.”) (Emphasis added). Lastly, the law does not require the applicant to amend the CSP *first* before presenting the DSP—it states the opposite. PGCC §27-282(g) (a detailed site plan application may amend an existing conceptual site plan applicable to a proposal for development of the subject property).

III. The Planning Board erred legally and factually when it approved TCP2-030-00-01. Appeal at 11-13.

1. The Planning Board erred legally because the DSP Resolution failed to articulate how the Applicant satisfied the required findings for 9.11 acres of off-site mitigation. Appeal at 12-13.
2. The Planning Board erred factually because the record lacked substantial evidence that the Applicant made “every effort...to meet the woodland conservation requirements on-site.” Appeal at 13.

These contentions are without factual or legal merit. The Board made the following findings and conclusions:

This site is subject to the provisions of the Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance (WCO) because the property has previously approved tree conservation plans. A Type 1 Tree Conservation Plan, TCP1-008-10-01, was approved with PPS 4-19023. This TCP1 approved the site to be developed in five phases. The previously approved and implemented TCP2-030-00, was not phased, and only covered a portion of the subject property. The revised TCP2-030-00-01, has also divided the site into five separate phases, with this DSP covered in Phase 1.

The site has an overall woodland conservation threshold of 15 percent or 8.08 acres. According to the TCP2 worksheet, a total of 0.88 acre of woodlands are proposed to be cleared with Phase 1, with a total of 1.33 acres of clearing for all phases. The cumulative woodland conservation requirement for Phase 1 is 9.37 acres, and is 9.41 acres for all phases of development. The TCP2 proposes to meet the requirement of Phase 1 through a combination of 0.22 acre of preservation, 0.04 acre of afforestation/reforestation, and 9.11 acres of off-site mitigation (2.10 acres of which has already been met and recorded for this site on TCP2-08-92 under Liber

9255 folio 460 per assignment as noted on TCP2-030-00 recorded in Liber 13871 Folio 204). Technical corrections and clarifications to the TCP2 are needed and are addressed by conditions included herein. *While testimony was received arguing that certain conservation method priorities in Section 25-122(c) were not followed by staff, no evidence was provided to support this claim and the Planning Board found no basis for reevaluating the TCP2.*

PGCPB No. 2021-113, p. 21, Finding 13 (Emphasis added).

The Planning Board adopts, herein by reference, a memorandum dated August 10, 2021 (Juba to Bossi), which notes that the site has an approved Natural Resources Inventory Plan (NRI-156-2018-01), which shows that there are no regulated environmental features or specimen trees on-site. Because no regulated environmental features will be impacted by the proposed development, these features have been preserved and/or restored in a natural state to the fullest extent possible, in accordance with the requirement of Subtitle 24-130(b)(5) of the Subdivision Regulations. TCP2-030-00-01, submitted with this DSP, shows the woodland conservation requirements for the Phase 1 project area being met through preservation, afforestation/reforestation, and off-site mitigation. Technical corrections and clarifications are needed to the TCP2.

PGCPB No. 2021-113, p. 23, Finding 15(g).

The Board expressly adopted and incorporated into the resolution approving the site plan—the memorandum from Staff—which contained findings of facts and conclusions that adequately articulated how the applicant satisfied off-site mitigation based on substantial evidence in the record.¹⁸ *See* Memorandum from Juba to Bossi, 8/10/21, Response, Exhibit 8, and Response, pp. 16-19, (9/9/2021, Tr.). On appeal, the Board’s factual findings are reviewed to determine whether they are supported by substantial evidence in the record. *Md. Bd. of Pub. Works v. K. Hovnanian’s Four Seasons at Kent Island*, 425 Md. 482, 514 n.15, 42 A.3d 40 (2012). The substantial evidence test does not concern whether an aggrieved party provided substantial evidence to support its position before the administrative agency. On the contrary, the substantial evidence test requires a determination of whether the *agency’s decision* is founded upon substantial evidence in the record.

¹⁸ The Board also made *conditional* findings and conclusions on the TCP when it approved the applicant’s preliminary plan of subdivision. PGCPB No. 2020-26, pp. 2-3.

Motor Vehicle Admin. v. Shea, 415 Md. 1, 997 A.2d 768 (2010). There is no substitution of judgment for that of the Board in reviewing its findings of fact. *Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272, 293-94, 173 A.3d 549 (2017).

For purposes of approving TCP2-030-00-01, if the administrative record and the Board’s final determination reflect that the Board considered the factors and conditions required by the applicable provisions (including PGCC §25-122), the resolution need not restate all facts upon which it rests. *West Montgomery Cty. Citizens Ass’n v. Montgomery Cty. Planning Bd. of the Maryland-National Park & Planning Comm’n*, 248 Md. App. 314, 241 A.3d 76 (2020) (“It is not unreasonable for the Planning Board to rely on a Staff Report, as the Planning Board did in this case, if the Staff Report is thorough, well-conceived, and contains adequate findings of fact.”) (quoting *Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 110, 985 A.2d 1160 (2009)). The test is reasonableness, not rightness.” *Md. Dep’t of the Env’t v. Riverkeeper*, 447 Md. 88, 134 A.3d 892 (2016) (quoting *Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399, 396 A.2d 1080 (1979)).

- IV. The Planning Board erred when it approved DSP-20020 because the Planning Board relied on a Stormwater Concept Plan approval that did not comply with County law. Appeal at 13-16.

Under the County Code, when an applicant submits a detailed site plan for review, it is *only* required to include (among other things) “[a]n *approved* stormwater management concept plan.” PGCC 21 27-282(e)(11). The site plan has an *approved* SWM concept plan (38318-2020-00) from Department of Permitting, Inspections and Enforcement (DPIE), which is valid until April 27, 2024—i.e.—it complies with County law. PGCPB No. 2021-113, p. 23, Response, Exhibit 8. The SWM concept plan “means a documented action by [DPIE] following a review to determine and acknowledge the *sufficiency of submitted material* to meet the requirements of a state *in the*

Department's development review process." PGCC § 32-171(a)(7)(A)(Emphasis added).
Opposition mischaracterizes the record because DPIE did provide *comments* on stormwater for the site plan, which were as follows:

STORMWATER MANAGEMENT CONCEPT APPROVAL

Case Name: Beltway Plaza Phase 1

Case#: 38318-2020-00

Applicant's Name: GB Mall Limited Partnership c/o Quantum Companies

CONDITIONS OF APPROVAL:

1. THIS PROJECT INVOLVES REDEVELOPMENT OF AN EXISTING DEVELOPED SITE. SITE SHALL BE DESIGNED TO TREAT FOR 100% WQ_v OF THE IMPERVIOUS AREA WITHIN THE PROPOSED DISTURBED AREA AND 100% WQ_v AND CPV FOR NEW IMPERVIOUS AREA USING ESD PRACTICES AND TECHNIQUES.

2. AT THE TIME OF BUILDING PERMIT REVIEW, PLEASE PROVIDE THE REVIEWER WITH A GEOTECHNICAL REPORT TO DETERMINE UNDERGROUND WATER TABLE AS PER CB-94-2004.

3. LANDSCAPE PLANS ARE REQUIRED AT TECHNICAL REVIEW.

4. SHA APPROVAL REQUIRED.

5. THIS PROJECT WILL REQUIRE A SITE DEVELOPMENT FINE GRADING PERMIT.

6. ADEQUACY ANALYSIS OF THE RECEIVING CONVEYANCE SYSTEM IS REQUIRED.

7. PROJECT NEEDS TO BE ADA COMPLIANT.

8. THE PROJECT IS THE REDEVELOPMENT OF AN EXISTING SHOPPING CENTER. THE SITE WILL BE CONVERTED TO MIXED USE SUCH AS MULTI-FAMILY RESIDENTIAL APARTMENTS, COMMERCIAL AND RETAIL USE.

9. ADDITIONAL CONDITIONS:

A) FOR PHASE 1: PRIOR TO ISSUANCE OF SITE DEVELOPMENT FINE GRADING PERMIT, THE DEVELOPER MUST POST A CASH BOND IN THE AMOUNT OF \$ 243,200.00 FOR 100-YEAR QUANTITY CONTROL SWM FEE-IN-LIEU.

B) 100-YEAR QUANTITY CONTROL OF PROVIDING 121,670 CU. FT. OF STORAGE VOLUME FOR PHASE I WILL BE PROVIDED IN PHASE II OF THE PROJECT. PHASE II, PHASE III, AND PHASE IV 100-YEAR QUANTITY CONTROL VOLUME WILL NEED TO BE DETERMINED.

C) FOR PHASE 2 AND BEYOND CONSTRUCT 10/100-YEAR CONTROL (UNDERGROUND STORAGE) FOR ENTIRE SITE IN PHASE 2, AS SHOWN ON THE CONCEPT PLAN. ONCE THE 10/100-YEAR UNDERGROUND STORAGE IS BUILT, THE DEVELOPER WILL BE

ELIGIBLE FOR REFUND OF THE CASH BOND-SWM FEE IN LIEU COLLECTED DURING PHASE I.
REVIEWED BY RIG.

Response, Exhibit 8/Stormwater Management Concept Approval (Emphasis added). Opposition also mischaracterizes the text of the “Water Efficiency and Recharge” standards in the Sector Plan. These standards concern *water efficiency* and *recharge* **not** whether DPIE’s SWM concept approval complies with County law. The entire text provides as follows:

- ❖ *Surface parking areas, alleyways, and driveways **should** be **constructed** with durable, pervious paving materials (grass paver systems, porous paving, or pervious asphalt) to promote groundwater recharge and reduce stormwater runoff quantity and flow rates.* Gravel is discouraged because of issues related to dust generation.
- ❖ *At all-grade walks (excluding public sidewalks) and pathways **shall** be constructed with pervious materials.*
- ❖ *Capture slow runoff using exfiltration tanks, drainage swales, and other devices.*
- ❖ *Use low-flow water closets, faucets, showerheads, washing machines, and other efficient water-consuming appliances.*

Sector Plan, p. 243 (Emphasis added). Stormwater plans, fee in lieu of, and waivers, are subject to requirements in Subtitle 32, Division 3, of the County Code—known as the Stormwater Management Ordinance—*not* the Sector Plan. Provisions of the Stormwater Ordinance were adopted pursuant to Md. Code Ann., Environmental Article, Title 4, Subtitle 2 (2009).

Opposition contends that the Board erred when it approved the site plan because 1) it ruled that no stormwater analysis is performed at the time of the site plan, 2) it ruled that review of the stormwater is within the purview of DPIE, and 3) there will be no management of stormwater runoff at POI 3 until years later in Phase II. Appeal at 16. These contentions are legally incorrect. By law, DPIE (not the Board or District Council), *is* responsible for the coordination and enforcement of the provisions of the Stormwater Ordinance. PGCC § 32-170. A concept plan is

the *first of three* required plan approvals that includes the information necessary to allow [DPIE] an initial evaluation of a proposed project. A *site development plan* is the *second of three required plan approvals* that includes the information necessary to allow [DPIE to conduct] a detailed evaluation of a proposed project. And a *final stormwater management plan* is the *third* required plan approvals *that includes the information necessary to allow all approvals and permits to be issued by DPIE*. PGCC § 32- 171(a)(14)(33)(60) (Emphasis added). The Board made the following relevant findings and conclusions, which are consistent with enforcement of the provisions of the Stormwater Ordinance:

The site has an approved SWM Concept Plan 38318-2020-00, which is valid until April 27, 2024.

The approved Concept plan includes 33 separate labelled micro-bioretenion areas and one disconnection of non-rooftop runoff associated with each of the proposed buildings and parking lots. The approved concept plan is not consistent with the DSP. The locations of many of the micro-bioretenion areas on the approved Concept Plan are different then (sic) what are shown on the TCP2. The placement of these micro-bioretenion areas appear to possibly result in different amounts of woodland clearing between the Concept plan and the TCP2. *The TCP2 must be revised to be consistent with the approved stormwater management concept plan. The project will be subject to further review at the time of permit and DPIE reserves the right to impose restrictions, if necessary, prior to permit.*

Testimony was heard from experts on behalf of both project opponents and the applicant concerning stormwater facility design and functionality. The Planning Board noted, however, that stormwater analysis is undertaken at the time of preliminary plan of subdivision, not DSP, and a finding was made at that time that the existence of the approved stormwater concept plan met the requirements of the Subdivision Regulations. Further evaluation, therefore, including approval of a final plan and any appeal of the concept plan, would fall within the purview of the Department of Permitting, Inspections and Enforcement. The Planning Board also noted that the County has the professional expertise to evaluate stormwater matters and is in the best position to address such matters.

PGCPB No. 2021-113, p. 23 (Emphasis added).¹⁹

¹⁹ The Board also made conditional findings and conclusions regarding stormwater management when it approved the applicant's preliminary plan. PGCPB No. 2020-26, pp. 3-4, 13.

Expert testimony from Opposition concerning POI 3 was based on the *wrong* set of plans. Response at 20, (9/9/2021, Tr.). The applicant provided the correct plans, which shows the correct location of POI 2. Response, Exhibit 9. The Board’s conditional approval of the site plan was legally correct because no development can occur at the site until DPIE approves a final stormwater management plan and issuance of a fine grading permit. PGCC §§ 32-126, 32-130, 32-135, 32-182, 32-184, 32-189, Response at 19-24. Moreover, expert testimony from Opposition concerning the 100-year underground stormwater facility is not required or necessary to manage stormwater runoff directed to POI 3. The applicant’s expert witness testified that the underground stormwater management facility will be located under the parking lot of the existing Giant grocery store, which is scheduled to be demolished during Phase II of the project. Response at 24, (9/9/2021, Tr.).

- V. The Planning Board erred when it approved DSP-20020 because the Planning Board improperly approved 13 deviations from development districts standards. Appeal at 16-17.

According to Opposition the Board *should* not have approved deviations from the development district standards because individually, and cumulatively, they enable more density for Phase 1 that conflicts with the Sector Plan’s requirements for the northern portion of the site. The argument starts and ends there—Opposition cites to no evidence in the record to support its contention that the Board erred in approving the 13 deviations. Appeal at 17. When the Board’s decision is appealed to the District Council, the petition *shall specify the error which is claimed to have been committed by the Board and shall also specify those portions of the record relied upon to support the error alleged*. PGCC § 27-290(a) (Emphasis added). Generally, a single sentence is insufficient to satisfy this requirement. *Silver v. Greater Balt. Med. Ctr., Inc.*, 248 Md. App. 666, 688 n.5, 243 A.3d 576 (2020). Moreover, on appeal, a brief is required to contain “argument in

support of the party's position on each issue." "[W]here a party fail[s] to cite any relevant law on an issue in its brief, [appellate courts] will not "rummage in a dark cellar for coal that [may or may not] be there." *HNS Development, LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 459, 42 A.3d 12 (2012) (quoting *Konover Prop. Trust v. WHE Assocs.*, 142 Md. App. 476, 494, 790 A.2d 720 (2002) ((cleaned up)). Notwithstanding this deficiency by Opposition, the Board, weighing the evidence in the record as a whole, made the following findings and conclusions:

Development District Standards of the Development District Overlay Zone:

Section 27-548.25(b) of the Zoning Ordinance requires a DSP meet the applicable Development District Standards. The Planning Board may also approve development standards that differ from the Development District Standards if the alternate standards will benefit the development and not substantially impair implementation of the Sector Plan.

Testimony was heard that proposed development did not conform to the Sector Plan because it was contrary to comprehensive planning, is proceeding in phases, and allows for deviations. The Planning Board also examined substantial evidence supporting the requested deviations in the applicant's Statement of Justification and testimony. The phasing of development was provided for in both the Sector Plan and the CSP and is permitted by the Zoning Ordinance through the application and approval of more than one DSP. Furthermore, the Planning Board did not find any testimony suggested the proposed deviations would substantially impair implementation of the Sector Plan but, rather, were in accord with the phasing of development.

PGCPB No. 2021-113, pp. 10-11 (9/9/2021, Tr.). In addition, the Board provided a detailed explanation for approving each of the modifications from the D-D-O design standards. PGCPB No. 2021-113, pp. 11-15. On appeal, the Board's factual findings are reviewed to determine whether they are supported by substantial evidence in the record. *K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482, 514 n.15, 42 A.3d 40 (2012). The substantial evidence test does not concern whether an aggrieved party provided substantial evidence to support its position before the administrative agency. On the contrary, the substantial evidence test requires a determination

of whether the agency's decision is founded upon substantial evidence in the record. *Shea*, 415 Md. 1, 997 A.2d 768 (2010). There is no substitution of judgment for that of the Board in reviewing its findings of fact. *Cleanwater Linganore, Inc.*, 456 Md. 272, 293-94, 173 A.3d 549 (2017).

D. Conclusion

Finding no error in the Board's determination that the site plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use as referenced in PGCC § 27-285(b), Council will also approve the site plan as follows:

A. APPROVED the alternative development district standards for:

1. **Lot Occupation—The frontage buildout shall be a minimum of 60 percent at the build-to line.**

To allow for 26.3 percent frontage buildout within 20 to 30 feet of the right-of-way of Breezewood Drive.

2. **Build-to Lines—The front principal build-to line for buildings along Breezewood Drive shall be between 20 and 30 feet from the right-of-way.**

To allow a variable-width build-to line from the right-of-way of Breezewood Drive of approximately 10 feet to 84 feet.

3. **Build-to Lines—The build-to line for buildings along any internal street built within the Beltway Plaza site as part of a comprehensive, phased redevelopment shall be between 10 and 20 feet from the edge of the curb.**

To allow for a variable-width build-to line of approximately 16 to 27 feet for Garage 3; a variable-width build-to line of approximately 10 to 80 feet for the western portion of Building 1C; for Garage 4 and the recreation center, where a build-to line of 20 to 30 feet is provided; and at Building 1A, where a build-to line of approximately 12 to 65 feet is provided.

4. **Massing—Massing requirements are shown for new construction within the Greenbelt Metro Area and MD 193 Corridor development district and are designed to ensure that new development is responsive to issues of scale, natural lighting, and pedestrian comfort. An expression line is required above the second story. Buildings shall include a stepback after eight stories. The**

maximum height of an arcade varies with building heights.

To allow for an expression line above the first story of all proposed residential buildings.

5. **Access of Off-Street Parking Lots and Structured Parking—When alleys, secondary frontage, or side streets are not present, primary frontage streets may be used as the primary source of access to off-street parking, with a driveway that either passes to the side of the building or through the building. See Figures 3 and 4 on the right. This condition should be avoided to the fullest extent possible to reduce the number of driveways.**

To allow for driveway access from Breezewood Drive to Garage 1, internal to Building 1A, and to Garage 3, adjacent to Building 1C.

6. **Parking Lots—Off-street surface parking areas shall be set back a minimum of 20 feet from all property lines along streets, except along alleys.**

To allow for a 10-foot setback for parking lots proposed on the western portion of the site from Street A.

7. **Loading and Service Areas—Loading and service areas shall not be visible from streets, except alleys. These areas shall be located a minimum of 30 feet away from public sidewalks.**

To allow for loading and service areas to be visible from Street A and within less than 30 feet from public sidewalks where otherwise not feasible, as shown on the DSP.

8. **Loading and Service Areas—Loading and service areas should be hidden from public view by street screens such as fences or street walls.**

To allow for loading and service areas to be in public view where street screens, such as fences or street walls, are not implementable.

9. **Structured Parking—Parking structures shall be set back a minimum of 50 feet from the property lines of all adjacent streets (except rear alleys) to reserve room for linear buildings between the parking structure and the lot frontage. Linear buildings shall be a minimum of two stories in height and may be attached or detached from parking structures.**

To allow for parking structures to be located less than 50 feet from the property lines of all adjacent streets.

10. **Signage—A maximum of one freestanding or monument sign shall be permitted for each residential development exceeding 200 dwelling units.**

To allow for two freestanding or monument signs and one wall sign for residential development associated with Phase 1 redevelopment of Beltway Plaza.

11. **Water Efficiency and Recharge—Surface parking areas, alleyways, and driveways should be constructed with durable, pervious paving materials (grass paver systems, porous paving, or pervious asphalt) to promote groundwater recharge and reduce stormwater runoff quantity and flow rates. Gravel is discouraged because of issues related to dust generation.**

To allow for the use of impervious paving materials and for stormwater management (SWM) to be addressed through other means of quantity and quality controls, subject to an approved SWM concept plan.

12. **Water Efficiency and Recharge—All at-grade walks (excluding public sidewalks) and pathways shall be constructed with pervious materials.**

To allow for the use of impervious paving materials and for stormwater management (SWM) to be addressed through other means of quantity and quality controls, subject to an approved SWM concept plan.

13. **Open Space—Pervious paving materials are encouraged whenever possible to facilitate landscaping, tree growth, and the absorption and treatment of rainwater runoff.**

To allow for the use of impervious paving materials and for stormwater management (SWM) to be addressed through other means of quantity and quality controls, subject to an approved SWM concept plan.

- B. APPROVED Detailed Site Plan DSP-20020 and Type 2 Tree Conservation Plan TCP2-030-00-01, for Beltway Plaza Phase 1, subject to the following conditions:

1. Prior to signature approval of this detailed site plan (DSP), the following revisions shall be made to the plans and additional specified documentation submitted:
 - a. On the coversheet, revise the proposed gross floor area in General Note 9 and/or the explanatory note next to it so that the numbers are consistent.
 - b. Revise General Note 17 on the coversheet and/or the plan drawings so that the gross floor area of the recreation center is shown consistently.

- c. On the plan drawings, show proposed Parcels KK and JJ as to be dedicated to the community association. Show a public use easement over each of the two parcels.
- d. Incorporate the parcel exhibit into the DSP plan set. Ensure all parcel labels on the exhibit correctly match those on the other DSP plan sheets. Ensure all parcels are labeled rather than only those within the Phase 1 area.
- e. Clarify and correct for consistency throughout the DSP, the total gross floor area associated with Phase 1, as provided in General Note 9 of the DSP cover sheet.
- f. Add a note to the Detailed Site Plan identifying the features to be provided with the 2,532-square-foot rooftop amenity area on the north side of Building 1A. These features shall include, but may not be limited to, the following design elements; shade structure (e.g., a pergola or trellis) and sitting areas that include outdoor chairs, tables, and/or sofas.
- g. Correct the label for the proposed number of residential units for Building 1A on Sheet 3C of the DSP.
- h. Provide screening, artwork, or other architectural treatments (e.g., decorative spandrel system) to soften the appearance of the parking structures and add visual interest to the development to the southern facades of Parking Garages 2, 3, and 4, the eastern façade of Parking Garage 3, and northern and western façades of Garage 4. The exact treatment shall be evaluated and approved by the Urban Design Section of the Prince George's County Planning Department in consultation with the City of Greenbelt Department of Planning. In addition, the southern façade of garage 4 shall be further evaluated with future detailed site plans associated with subsequent phases of development, and may be modified at the time to provide additional, screening, artwork, or other architectural treatments if it is determined that additional treatments are needed to soften its appearance.
- i. Correct the number of parking spaces shown for Parking Garage 3 to be consistent throughout the DSP.
- j. Correct Note 1 on the photometric plans, adjust symbology for light poles shown on the DSP, and correct associated lighting details. Details for lighting are shown on Sheet 35, whereas Sheet 36 is referenced.

- k. Add pedestrian-scale, building-mounted, or freestanding lighting in appropriate areas of the site, such as adjacent to building entrances and in pedestrian plazas.
- l. Correct Sheet 3B regarding Development District Overlay Zone signage standards to show an amendment is necessary to one residential signage standard that limits the quantity of freestanding signage permitted on-site, as detailed in Finding 8.
- m. Revise the BPIS exhibit to address the requirement of Condition 11d of Preliminary Plan of Subdivision 4-19023 pertaining to the replacement of existing poles with new generation accessible pedestrian signals, signal heads, and mast arm-structures for the westbound and northbound movements at the intersection of Beltway Plaza and Greenbelt Road by adding a note to the exhibit.
- n. Revise the BPIS exhibit to depict a City of Greenbelt bus shelter on the northside of Greenbelt Road at the intersection of 60th Avenue, as required by Condition 11f of Preliminary Plan of Subdivision 4-19023.
- o. Extend the existing sidewalk fully around the Road B cul-de-sac with sidewalkramps and a crosswalk across the driveway to the parking deck.
- p. Revise the Sharrow and Bike Lane Marking Exhibit to change the red color of the bicycle lane and sharrow markings and the R3-17/BIKE LANE and R4-11/BIKES MAY USE FULL LANE signage to black and provide an “ENDS” plaque for the westernmost R3-17/BIKE LANE sign, unless modified by the applicable operating agency with written correspondence. Provide a note to the DSP specifying that Sharrows are to be provided on Roads A and B and MD 193 in accordance with the Sharrow Exhibit, unless modified by the applicable operating agency with written correspondences.
- q. Label all bicycle parking racks, seating, trash receptacles, and other pedestrian and bicycle features shown in the landscape plan.
- r. Correct the label for the width of the shared-use path on the left side of Sheet 14 of the landscape plan to be “10-foot-wide.”
- s. Provide a 5-foot-wide walkway instead of a 4-foot-wide walkway on Sheet 18 of the landscape plan.

- t. Correct Sheet 3B under landscaping standards to indicate a community gardenspace is being provided.
 - u. Add a new general note to the plan indicating that all site features and amenities associated with the development of each building shall be completed with their associated building. This shall include recreation facilities and streetscape features as applicable.
 - v. Provide a crosswalk with a median refuge on Street B, between Buildings 1B and 1C connecting the sidewalks along the south side of the Breezewood Drive Triangle Park.
 - w. Provide planting details for the median island at the intersection of Street B and Breezewood Drive.
 - x. Revise plans and details to provide recycling bins at all locations where trashcans are provided.
 - y. Revise the design of the retaining wall proposed south of Building 1A to include the use of decorative materials, such as split-faced masonry, cast in/stamped concrete, etc.
 - z. Add a sheet indicating the location of all wayfinding signage to be included with Phase 1.
 - aa. Include elevations in the architectural plans for facades in the courtyard areas of all applicable buildings.
 - bb. Revise plans to show a maximum of three monument signs and the wall sign at Building 1A provided as part of Phase 1 and remove details of signage types not to be included. Additional freestanding or monument signs will be reviewed with future phases of development and associated detailed site plan review.
 - cc. On the coversheet, revise General Note #7 to state that the plan proposes 12 parcels and 4 residual parcels.
2. Prior to certification of the detailed site plan, the Type 2 tree conservation plan (TCP2) shall be revised, as follows:
- a. Label and delineate the phase boundaries for all proposed phases on all relevant sheets of the TCP2.
 - b. Revise all woodland treatment area labels to be broken down by development phase on the plan.

- c. Revise the acreage of all woodland treatment area labels on the plan so they are consistent with those on the cover sheet and so their tallies are consistent with the TCP2 worksheet.
 - d. Remove the old superseded TCP2 tree save labels from the plan.
 - e. Update the TCP worksheet as necessary once the above changes have been made.
 - f. Update TCP2 General Note 6 to correctly state that the property is within Environmental Strategy Area One (formerly the Developed Tier).
 - g. Provide the previous approval information on the approval block on each sheet of the TCP2.
 - h. Add a copy of the invasive species management plan onto the TCP2.
 - i. Make the following revisions to the Woodland Afforestation/Reforestation Plant Schedule:
 - (1) Specify a caliper or container size for each of the evergreen trees specified on the plan.
 - j. Remove the Specimen Tree Sign detail from the TCP2.
 - k. Add the standard Typical Upright Staking Detail to the TCP2, per the 2018 Environmental Technical Manual.
3. Prior to certification of the Type 2 tree conservation plan for this site, documents for the required woodland conservation easements shall be prepared and submitted to the Environmental Planning Section for review by the Office of Law, and submission to the Prince George's County Land Records for recordation. The following note shall be added to the standard Type 2 tree conservation plan notes on the plan, as follows:

“Woodlands preserved, planted, or regenerated in fulfillment of woodland conservation requirements on-site have been placed in a woodland and wildlife habitat conservation easement recorded in the Prince George's County Land Records at Liber _____ Folio _____. Revisions to this TCP2 may require a revision to the recorded easement.”
4. Prior to approval of a final plat, the final plat shall include public utility easements consistent with those shown on Preliminary Plan of Subdivision 4-19023, unless a variation is approved with the plat to eliminate the required easements.

5. Any ground-mounted HVAC or mechanical units associated with the residential buildings shall require appropriate screening from public views.

ORDERED this 24th day of January, 2022, by the following vote:

In Favor: Council Members Davis, Dernoga, Franklin, Glaros, Harrison, Hawkins, Ivey, Streeter, Taveras, and Turner.

Opposed:

Abstained:

Absent:

Vote: 10-0.

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

By: 

Calvin S. Hawkins, II, Chair

ATTEST:



Donna J. Brown
Clerk of the Council