

Case No. DSP-99006-01
McDonald's-Hyattsville

Applicant: McDonald's Corporation

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

ORDER AFFIRMING PLANNING BOARD DECISION

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 13-47, DSP-99006-01, to approve the Type II Tree Conservation Plan (TCPII-046-99-01) and further approve Detailed Site Plan DSP-99006-01 with conditions, for a 4,197 square-foot freestanding fast food eating and drinking establishment, specifically a McDonald's, in the Commercial Shopping Center (C-S-C) and Transit District Overlay (T-D-O) Zones located on the south side of East-West Highway (MD 410) at its intersection with Toledo Terrace, within Council District 2, in Planning Area 68, and within the Established Communities Tier, is hereby, AFFIRMED, pursuant to Sections 27-132, -27-134, 27-281, 27-285, 27-290, 27-548.08, 27-548.09, and 27-548.09.01 of Subtitle 27 of the Prince George's County Code.¹

¹ The Prince George's County Code, Subtitle 27, Zoning Ordinance, (2013 Ed., 2014 Supp.), will be referred to hereinafter as "§27- ____."

The Prince George's County Planning Board Resolution No. 13-47 will be referred to as "PGCPB No. 13-47."

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."

PROCEDURAL HISTORY

On or about February 14, 2013, McDonald's Corporation ("Applicant") filed an application to revise a Detailed Site Plan ("Application") in accordance with §§ 27-289 and 27-548.09.01 requesting, in pertinent part, an amendment to the Table of Uses set forth in the 1998 *Prince George's Plaza Transit District Overlay Zone and Transit District Development Plan* to allow the addition of a McDonald's restaurant, an eating and drinking establishment, to the Detailed Site Plan application previously approved for a Home Depot in Hyattsville, Maryland. Accordingly, on or about April 10, 2013, Planning staff issued a Technical Staff Report recommending the approval of the Application subject to certain conditions set forth as Conditions 1(a)-(r), set forth therein. The Prince George's County Planning Board ("Planning Board") conducted a public hearing on April 25, 2013, pursuant to §§ 27-285(a)(4) and 27-548.09.01, in accordance therewith, the Planning Board adopted Planning Board Resolution PGCPB No. 13-47 embodying its decision to approve DSP-99006-01, subject to certain enumerated conditions, namely Conditions 1(a)-(r). (PGCPB No. 13-47, at pp. 22-23).

By letter dated June 4, 2013, and pursuant to §§ 27-290(a) and 27-548.08, Applicant filed its appeal with the Clerk of the Council as to the Planning Board's decision concerning DSP-99006-01. On September 9, 2013, the County Council of Prince George's County, sitting as the District Council, conducted a duly advertised public hearing or oral argument concerning the appeal in accordance with §§ 27-131, 27-132, 27-290(c), 27-548.09.01, and the District Council Rules of Procedure. Upon conclusion of the proceedings, the District Council took the matter under advisement. (Tr., 09/09/2013) Thereafter, on October 28, 2013, the District Council issued its Order of Approval affirming the Planning Board's Decision, incorporated its findings

of fact and conclusions of law subject to certain modifications, specifically granted Applicant's request to Modify the Table of Uses as to DSP-99006-01, and on November 5, 2013, issued its Notice of Final Decision for DSP-99006-01. (District Council Order Affirming Planning Board Approval with Conditions, 10/28/2013; Notice of Final Decision, Redis C. Floyd, Clerk of the Council, 11/05/2013). Thereafter, on November 27, 2013, and pursuant to Md. Code Ann., Land Use, § 22-407 (2013 & Supp. 2014) and Maryland Rule 7-201, *et seq.*, the City of Hyattsville filed its Petition for Judicial Review of the District Council's decision as to DSP-99006-01. (Pet. Notice of Appeal, CAL13-35161, 11/27/2013). Upon submission of relevant pleadings and memoranda, the Circuit Court for Prince George's County, Judge Julia B. Weatherly presiding, heard oral arguments from the parties on June 6, 2014. At the conclusion of the hearing, the Court took the matter under advisement. (Tr., 06/06/2014). Thereafter, by Memorandum Opinion and Order of Court dated June 24, 2014, the Circuit Court for Prince George's County reversed the District Council's decision as erroneous, stating that the Council did not apply the correct standard of review and was instead limited in its power to review decisions of the Planning Board to whether the decision of the Planning Board is arbitrary, capricious, discriminatory, or illegal under the recent holding by the Court of Special Appeals of Maryland in *County Council of Prince George's County v. Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50, at 16-19 (filed May 28, 2014).² (Order of Court, 06/24/2014, at pp. 8-10), the Court reversed the District Council's decision in DSP-99006-01 and

² Pursuant to Md. Code Ann., Land Use, §22-407 (2012 & Supp. 2014), on July 10, 2014, the District Council filed a Petition for Writ of Certiorari in the Court of Appeals requesting its review of *County Council of Prince George's County v. Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50 (filed May 28, 2014). Notwithstanding this request for further review, and until the Court of Appeals of Maryland disposes of the District Council petition, we apply the *Zimmer Development* standard of review here.

remanded the case back to the District Council to render a decision in accordance with the standard promulgated in *Zimmer, supra*. (Order of Court, 06/24/2014, at pp. 9-10).

In accordance with the Court's Order in case number CAL 13-35161, the District Council placed the matter on its July 14, 2014, Zoning Agenda for appropriate action. Thereupon, on July 14, 2014, and pursuant to §27-132, the District Council referred this matter to staff for the preparation of an order AFFIRMING Planning Board's actions in PGCPB No. 13-47. *See* Zoning Agenda, July 14, 2014.

APPLICABLE LAW

Approval of Detailed Site Plans within a Transit District Overlay Zone is governed by Subdivision 1, Division 1, within Part 10A the Zoning Ordinance. Specifically, § 27-548.08 of that Subdivision states, in pertinent part, that:

Prior to the issuance of any grading permit for undeveloped property or any building permit in a Transit District, a Detailed Site Plan for individual development proposals shall be approved by the Planning Board in accordance with Part 3, Division 9.

A Detailed Site Plan, if required, shall be approved prior to, or concurrently with, any final plat of subdivision. A final plat of subdivision for roads only, however, may be approved prior to approval of the Detailed Site Plan. The Detailed Site Plan may include any portion of the Transit District, and may only be submitted by the owner of the subject property (or his authorized representative).

An amendment of the Transit District Standards may be requested and incorporated into a Conceptual or Detailed Site Plan application in accordance with 27-548.08(c) and 27-548.09.01.

§27-548.08(a).

Aside from any additional requirements prescribed by a Transit District Development Plan, the general requirements governing detailed site plan applications within a T-D-O Zone are

found within Part 3, Division 9, of the Zoning Ordinance. §27-281 of that Division provides, in relevant part:

- (b) **General purposes.**
 - (1) The general purposes of Detailed Site Plans are:
 - (A) 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;
 - (B) **To help fulfill the purposes of the zone in which the land is located;**
 - (C) **To provide for development in accordance with the site design guidelines established in this Division;** and
 - (D) To provide approval procedures that are easy to understand and consistent for all types of Detailed Site Plans.
- (c) **Specific purposes.**
 - (1) The specific purposes of Detailed Site Plans are:
 - (A) To show the specific location and delineation of buildings and structures, parking facilities, streets, green areas, and other physical features and land uses proposed for the site;
 - (B) To show specific grading, planting, sediment control, woodland conservation areas, regulated environmental features and storm water management features proposed for the site;
 - (C) To locate and describe the specific recreation facilities proposed, architectural form of buildings, and street furniture (such as lamps, signs, and benches) proposed for the site; and
 - (D) To describe any maintenance agreements, covenants, or construction contract documents that are necessary to assure that the Plan is implemented in accordance with the requirements of this Subtitle.

(§ 27-281(b, c)) (emphasis supplied).

In like manner, §27-285 provides:

- (1) Prior to the issuance of any grading, building, or use and occupancy permit for the development or use of any land for which a Detailed Site Plan is required, the applicant shall obtain approval of a Detailed Site Plan from the Planning Board.
- (2) The Planning Board shall review the Detailed Site Plan for compliance with this Division.
- (3) The Planning Board shall give due consideration to all comments received from other agencies.

(4) The Planning Board shall only consider the plan at a regularly scheduled meeting of the Planning Board after a duly advertised public hearing.

(5) The Planning Board shall approve, approve with modification, or disapprove the Detailed Site Plan, and shall state its reasons for the action.

(6) The Planning Board's decision shall be embodied in a resolution adopted at a regularly scheduled public meeting, a copy of which shall be sent to all persons of record (in the Detailed Site Plan approval process) and the District Council

§27-285(a).

Besides these general requirements, certain additional prescriptions apply to detailed Site Plans within a T-D-O Zone. Such required submittals include:

- (A) The number, floor area, and type of dwelling units;
- (B) The gross floor area devoted to commercial and industrial uses and the floor area devoted to other nonresidential uses;
- (C) The density and floor area ratios proposed, and how they were calculated;
- (D) A description of the relationship between vehicular, pedestrian, and bicyclist circulation systems;
- (E) Provisions for sediment control and stormwater management;
- (F) An exterior lighting plan, showing exterior lighting of all buildings, parking areas, driveways, and pedestrian ways, including the heights, number, and type of fixtures. The plan shall also show the amount of glare upon adjoining properties in terms of level of illumination (measured in foot-candles) and cut-off angle;
- (G) The location, design, size, lighting, and all other features of signs (except signs within, and not generally visible from outside of, buildings);
- (H) A statement of planning objectives to be achieved by the development through the particular approach proposed by the applicant. This statement shall include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant;
- (I) Any additional supporting documentation where requested in the Transit District Standards and accompanying applicability section;
- (J) Any pertinent Memorandum of Understanding between a car sharing corporation or company and the applicant pursuant to Section 27-548.09.02;
- (K) A signed and dated justification statement listing the Transit District Standards, how the proposed development complies with the standards, and justifying any proposed amendments to the standards; and
- (L) A development schedule indicating the approximate dates when construction can be expected to begin and to be completed.

Moreover, in order to approve a Detailed Site Plan applications within the T-D-O Zone, the Planning Board must make specific findings, as set forth below, to ensure full compliance with the respective Transit District Development Plan, as enumerated below:

(c) Required findings.

(1) In addition to the findings required by Section 27-276(b) for approval of a Conceptual Site Plan in the T-D-O Zone, the Planning Board shall find that the Transit District Site Plan is consistent with, and reflects the guidelines and criteria for development contained in, the Transit District Development Plan.

(2) The findings required by Section 27-285(b) shall not apply to the T-D-O Zone. Instead, the following findings shall be made by the Planning Board when approving a Detailed Site Plan in the T-D-O Zone:

(A) The Transit District Site Plan is in strict conformance with any mandatory requirements of the Transit District Development Plan;

(B) The Transit District Site Plan is consistent with, and reflects the guidelines and criteria for development contained in, the Transit District Development Plan;

(C) The Transit District Site Plan meets all of the requirements of the Transit District Overlay Zone, and applicable regulations of the underlying zones, unless an amendment to the applicable requirement or regulation has been approved;

(D) The location, size, and design of buildings, signs, other structures, open spaces, landscaping, pedestrian and vehicular circulation systems, and parking and loading areas maximize safety and efficiency, and are adequate to meet the purposes of the Transit District Overlay Zone;

(E) Each structure and use, in the manner proposed, is compatible with other structures and uses in the Transit District, and with existing and proposed adjacent development; and

(F) Requests for reductions from the total minimum required parking spaces for Transit District Overlay Zones pursuant to Section 27-548.09.02 meet the stated location criteria and are accompanied by a signed Memorandum of Understanding between a car sharing corporation or company and the applicant.

§27-548.08(a)-(c).

In general, amendments to approved Detailed Site Plans are subject to the provisions of §27-289, as follows:

[a]n application to amend a Detailed Site Plan shall be filed with the Planning Board by the owner or authorized owner representative. No amendment of a Detailed Site Plan shall be permitted without the approval of the Planning Board or Planning Director, as provided in this Section. The Director may authorize staff to take any action the Director may take under this Section. All requirements for the filing and review of an original Detailed Site Plan shall apply to an amendment. **The Planning Board shall follow the same procedures and make the same findings.**

§27-289 (a, b) (emphasis supplied).

As with the procedural requirements for initial Detailed Site Plan applications, amendments to approved Detailed Site Plans in the T-D-O Zone also carry certain additional requirements, as set forth in §27-548.09.01:

(a) District Council.

(1) The District Council but not the Planning Board may approve any of the following amendments to Transit District development requirements, under procedures in Part 3, Division 2, Subdivision 5:

- (A) Change of the boundary of the T-D-O Zone;
- (B) Change of an underlying zone;
- (C) Change to the list of allowed uses, as modified by the Transit District Development Plan;
- (D) Change to building height requirements;
- (E) Change to transportation demand requirements or other parking provisions in the Transit District Development Plan which do not concern the dimensions, layout, or design of parking spaces or parking lots.

(b) Property Owner.

(1) A property owner may ask the District Council, but not the Planning Board, to change the boundaries of the T-D-O Zone, a property's underlying zone, the list of allowed uses, building height restrictions, or parking standards in the Transit District Development Plan. The Planning Board may amend parking provisions concerning the dimensions, layout, or design of parking spaces or parking lots.

(2) The owner's application shall include:

(A) A statement showing that the proposed development conforms with the purposes and recommendations for the Transit District, as stated in the Transit District Development Plan; and

(B) A Detailed Site Plan or Conceptual Site Plan, in accordance with Part 3, Division 9.

(3) Filing and review of the application shall follow the site plan review procedures in Part 3, Division 9, except as modified in this Section. The

Technical Staff shall review and submit a report on the application. When an amendment application proposes to enlarge the boundaries of the Transit District Overlay Zone by five (5) or more acres, the Technical Staff shall also provide an Adequate Public Facilities report as defined in Subtitle 24 of the County Code as part of the development review process for proposed development of the subject property. The Planning Board shall hold a public hearing and submit a recommendation to the District Council. Before final action the Council may remand the application to the Planning Board for review of specific issues.

(4) An application may be amended at any time. A request to amend an application shall be filed and reviewed in accordance with Section 27-145.

(5) The District Council may approve, approve with conditions, or disapprove any amendment requested by a property owner under this Section. In approving an application and site plan, the District Council shall find that the proposed development conforms with the purposes and recommendations for the Transit Development District, as stated in the Transit District Development Plan, and meets applicable site plan requirements.

§27-548.09.01(a, b).

Pursuant to §27-290, the Planning Board's decision embodied in PGCPB No. 14-37, may be appealed to the District Council upon petition by any person of record. The District Council may also vote to review the Planning Board's decision on its own motion within thirty (30) days after the date of the notice. Whether by appeal or Council's vote to review a detailed site plan, a public hearing must be scheduled. Within sixty (60) days after the close of the Council's hearing, the Council shall affirm, reverse, or modify the decision of the Planning Board, or remand the Detailed Site Plan to the Planning Board to take further testimony or reconsider its decision in accordance with the Order of Remand adopted by the Council. Where the Council **approves** a Detailed Site Plan, **it shall make the same findings** which are required to be made by the Planning Board. The Council shall give its decision in writing, stating the reasons for its action. Copies of the decision shall be sent to all persons of record, and the Planning Board. *See* §27-290 (a)(c)(d)(e). (Emphasis added). Moreover, in reviewing an appeal from the Planning Board's decision in a Detailed Site Plan, the decision of the District Council shall be based on the record

made before the Planning Board. No new evidence shall be entered into the record of the case unless it is remanded to the Planning Board and a rehearing is ordered. *See also* §27-141 (“The final decision in any zoning case shall be based only on the evidence in the record, and shall be supported by specific written findings of basic facts and conclusions. In addition, 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”).

Recently, however, on May 28, 2014, the Court of Special Appeals of Maryland held that the District Council exercises appellate jurisdiction over the Planning Board’s decisions and, as such, it is only authorized to affirm, reverse, or modify the decision based on the testimony, documents, and evidence presented at the hearing before the Planning Board, and is limited to determining whether the Planning Board’s decision was “arbitrary, capricious, discriminatory, or illegal.” The Court of Special Appeals further concluded that, because the District Council is vested with appellate jurisdiction, the District Council may not substitute its judgment for that of the Planning Board, even if it had been so empowered, it might have made a diametrically different decision. The circumstances under which it may overturn or countermand a decision of the Planning Board are narrowly constrained. It may never simply second guess. *County Council of Prince George’s County v. Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50, at 16-19 (filed May 28, 2014),³ *quoting County Council v. Curtis Regency Serv.*

³ Pursuant to Md. Code Ann., Land Use, §22-407 (2012 & Supp. 2014), the District Council voted to file, and has filed, a Petition for Writ of Certiorari in the Court of Appeals requesting its review of *County Council of Prince George’s County v. Zimmer Development*, ___ Md. App. ___, ___ A.2d ___, 2014 Md. App. LEXIS 50 (filed May 28, 2014). Notwithstanding pendency of said petition, and until the Court of Appeals of Maryland disposes of same, our review of this matter will apply the standard of review announced in *Zimmer Development*.

Corp., 121 Md. App. 123, 137-38, 708 A.2d 1058 (1998) (citing *People's Council for Baltimore Cnty. v. Beachwood Ltd. P'ship*, 107 Md. App. 627, 648-49, 670 A.2d 484 (1995)).

Neither the *Curtis Regency* nor *Zimmer Development* decision defines the 'arbitrary, capricious, discriminatory, or illegal' standard of review. A review of the holdings in Maryland administrative law cases examining the definitions of arbitrary or capricious, the Court of Appeals indicated that "so long as the actions of administrative agencies are reasonable or rationally motivated, those decisions should not be struck down as arbitrary or capricious. Arbitrary or capricious decision-making, rather, occurs when decisions are made impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms." *Harvey v. Marshall*, 389 Md. 243, 297-300, 884 A.2d 1171, 1203-06 (2005) (internal citations omitted). The Court, in deciding both the *Curtis Regency* and *Zimmer Development* cases, also fails to articulate how an administrative agency, in an appellate capacity, should conduct its review of a subordinate agency decision. We therefore find instructive, for our review in such appellate capacity, the distinction drawn between review of a trial court's decision and review of an agency's decision explained by Judge Rodowsky of the Court of Appeals:

Judicial review of administrative action differs from appellate review of a trial court judgment. **In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court.** However, in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. (internal citations omitted.)

Judicial review of administrative agency action is narrow. The court's task on review is *not* to substitute its judgment for the expertise **of those persons who constitute the administrative agency**. A reviewing court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons

stated by the agency. A court's role is limited to determining if there is **substantial evidence in the record as a whole** to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. (internal citations omitted.) (emphasis supplied.).

See United Steelworkers v. Beth. Steel, 298 Md. 665, 679, 472 A.2d 62, 69 (1984).

FINDINGS AND CONCLUSIONS

Our findings and conclusions are based on, in addition to the record before us, our statutory authority to take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision.⁴ *See* §27-141. Here, our review on the record includes, but is not limited to, McDonald's Corporation's Application for Revision of DSP-99006; Applicant's Statement of Justification; Technical Staff Report and Recommendation; Correspondence from Mayor Tartaro to Chairperson Hewlett; Transcript of April 25, 2013, Public Hearing before the Planning Board; Planning Board Resolution PGCPB No. 13-47, dated May 16, 2013; McDonald's Notice of Appeal, dated June 5, 2013; Oral Argument conducted September 9, 2014, before the District Council pursuant to §27-290; Order of Approval with Conditions issued by the District Council as to DSP-99006-01, dated October 28, 2013; City of Hyattsville Petition for Judicial Review, dated November 27, 2013; Petitioner's Brief, dated

⁴ *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.”

February 26, 2014, and related exhibits; Respondents' Answering Memorandum, dated April 15, 2014; and Memorandum Opinion of Court, dated June 24, 2014, CAL13-35161, Weatherly, J.

- **Development Proposal**

McDonald's Corporation requests an amendment to the Table of Uses for the approved Transit District Development Plan for the 1998 *Prince George's Plaza Transit District Overlay Zone* to permit a 4,197-square-foot freestanding fast food eating and drinking establishment with drive-through, specifically a McDonald's, in the Commercial Shopping Center (C-S-C) and Transit District Overlay (T-D-O) Zones. *See* PGCPB No. 13-47, at p. 1.

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

	<u>EXISTING</u>	<u>APPROVED</u>
Zone	C-S-C/T-D-O-Z	C-S-C/T-D-O-Z
Use(s)	Building Supply Store	Building Supply Store/ Fast-food restaurant
Acreage	13.21	13.21
Building Square Footage/GFA	134,284	138,481 (4,197 new)

Parking

	<u>PERMITTED</u>	<u>APPROVED</u>
Home Depot - 134,284 square feet (Preferred Ratio of <4.35 spaces/100 s.f.)*	584	424
McDonald's - 4,197 square feet (Preferred Ratio of <4.35 spaces/100 s.f.)	18	64**
Total Parking	602	488

***Note:** Per the TDDP, Mandatory Development Requirement P7.

****Note:** The applicant is providing 64 parking spaces within the lease area, for an excess of 46 parking spaces. However, given that the total number of on-site parking spaces will be reduced with the subject application, the site is not subject to payment of an impact fee under either the preferred or the premium parking caps, as defined in the 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP).

The subject site is located on the south side of East-West Highway (MD 410) at its intersection with Toledo Terrace, in Planning Area 68, Council District 2, in the Developed

Tier.⁵ The site is bounded to the north by East-West Highway with the Post Park multifamily and retail development beyond; to the east and south by the Kiplinger Property, currently in the Commercial Shopping Center (C-S-C) and Transit District Overlay (T-D-O) Zones, but the subject of Conceptual Site Plan SCP-11002, which was approved by the Planning Board on February 28, 2013, by way of PGCPB No. 13-20, to rezone the property to the Mixed Use-Transportation (M-X-T) Zone and propose a mixed-use, residential and commercial development; to the south by property owned by the Washington Metropolitan Area Transit Authority (WMATA) and containing above ground Metro rail tracks; and to the west by The Maryland-National Capital Park and Planning Commission (M-NCPPC) Heurich Community Park in the R-O-S Zone. *See* PGCPB No. 13-47, at pp. 1-3.

The 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (T-D-O-Z) rezoned the subject property from the M-X-T Zone to the C-S-C Zone. Thereafter, on May 6, 1999, the Planning Board approved an application for Preliminary Plan of Subdivision, 4-99004, for the property. *See* PGCPB No. 99-78. In turn, on September 9, 1999, the Planning Board considered and approved Detailed Site Plan application DSP-99006 for the existing building supply store on-site, Home Depot. *See* PGCPB No. 99-146.

- **Design Features**

Parcel A is developed with an existing 117,975-square-foot, one-story, 25-foot-high prototypical Home Depot building supply store, to include an attached 16,309-square-foot, one-

⁵ On May 6, 2014, pursuant to Md. Code Ann., Land Use, §§21-103, 21-104 (2013 & Supp. 2014), by way of adoption of CR-26-2014, the District Council approved a comprehensive update to the General Plan for that portion of the Maryland-Washington Metropolitan Regional District within Prince George's County. While no land use policies as to growth tier boundaries were adopted affecting the subject property of DSP-99006-01, certain terminology changes were approved by the Council within *Plan Prince George's 2035*. In particular, the Council approved changes to nomenclature for tier designations established pursuant to the 2002 *Approved General Plan*. Accordingly, and as applied concerning the subject application, the "Developed Tier" is now known as "Established Communities."

story, 24-foot-high garden center developed in accordance with the original approval of DSP-99006. The existing building sits at the far western end of the site, facing east, and the associated 507-space parking lot spreads out in front of it. Access to the site is from one private drive that intersects East-West Highway (MD 410) at the south side of its signaled intersection with Toledo Terrace at the far northeastern corner of the site. The drive then curves to the southwest, following the southern property line, with multiple openings to the parking aisles. The streetscape along East-West Highway (MD 410) is fully improved per the TDDP and the subject application does not propose to remove or change these improvements at all, except for a minor revision to the design of the existing brick screen wall. *See* PGCPB No. 13-47, at p. 2.

The record evidence reflects that the proposed 4,197-square-foot, one-story, approximately 23-foot-high, freestanding McDonald's fast food restaurant will be located in the far northeastern corner of the existing on-site parking lot, closest to the site's access drive intersection with East-West Highway (MD 410). According to the information submitted, the proposed building itself will sit along the northern edge of the property, within 23 feet of the right-of-way of East-West Highway, with a proposed drive-through located immediately adjacent to the south side of the building. *See* PGCPB No. 13-47, at p. 3; (Tr., 04/25/2013, at pp. 5-6). The existing parking lot will then be reconfigured between the drive-through and the access drive to the south, including a new entrance onto the access drive. A trash corral and a loading space will be located at the western end of the building. *See* PGCPB No. 13-47, at p. 3; (Tr., 04/25/2013, at p. 6).

In reviewing the administrative record, the Council finds that certain comments raised at the time of plan review by the Technical Staff, notably the comments regarding potential conflict between vehicles queued for the drive-through and vehicular circulation in and out of the

adjacent parking area. The Council further notes evidence that Applicant agreed with this analysis, thereafter informally submitting a revised proposal showing an improved circulation plan. *See* PGCPB No. 13-47, at 3; (Tr., 04/25/2014, at p. 6). The Council also notes the finding of the Planning Board as to the traffic congestion, concluding that if the proposal were approved with the drive-through service, then a revision to the DSP is needed, prior to certification, in order to ensure proper site design and address the issue of congestion due to queuing vehicles in the drive-through. *See* PGCPB No. 13-47, at p. 2. A sidewalk connects the sidewalk within the East-West Highway (MD 410) right-of-way to the front of the building. There is an existing meandering brick screen wall along the northern edge of the property, which is proposed for reconfiguration into a straight, three-foot-high portion between the proposed building and the right-of-way. *See* PGCPB No. 13-47, at pp. 2-3. *See also* Application, McDonald's Corp. acceptance date of 02/14/2013.

The Council's findings also include certain design features for the proposed new building for the site, entitled "2011 Series 38101 R5 plus F5," with a contemporary appearance and some architectural detailing. Additionally, the proposed main entrance is located along the eastern façade, facing the access drive, with another public entrance along the northern façade, facing East-West Highway (MD 410). *See* PGCPB No. 13-47, at p. 3. *See also* (Tr., 04/25/2013, at 8). Additionally, multiple painted, metal service doors are located along the northern and western façades. The one-story, flat-roof building, with a maximum building height of 23 feet four inches, is finished with a combination of red and dark brown face brick, cultured stone, and aluminum doors and coping. As proposed, the building design incorporates accent elements, including aluminum coping and cultured stone, to break up the dominance of brick on all of the elevations. *See* PGCPB No. 13-47, at p. 3. *See also* (Tr., 04/25/2013 at 7). A roof cap element,

bearing a yellow hue that is characteristic of McDonald's restaurants, is proposed in the front of the building on the east façade. In the southeastern corner of the building, review of record evidence reveals a tower element at the front entrance. The flat plane of the roof of the tower element is broken with the addition of a stone veneer parapet and a golden, metal, sloping curve as a roof-cap design element. Dark brown brick proposed on the southern side of the building, in the area of the drive-through pick-up windows and in the form of wide horizontal bands between the pick-up windows. Lastly, the proposed building design incorporates yellow and grey metal above the exterior side doors of the building, dining room windows, and drive-through pick-up windows. *See* PGCPB No. 13-47, at p. 3; (Tr., 04/25/2013, at p. 9). *See also* Application, McDonald's Corp. acceptance date of 02/14/2013.

The Council further notes building-mounted signage, totalling approximately 120 square feet proposed with this application; however, due to close proximity to the right-of-way, no new freestanding signage is proposed except directional and menu boards. The building-mounted signage includes the prototypical, internally-illuminated McDonald's golden arch corporate sign on all four façades, with white name letters on all façades but for the western side. *See* PGCPB No. 13-47, at p. 3; (Tr., 04/25/2013, at pp. 8-9).

- **Zoning Requirements for the C-S-C and T-D-O Zones**

The Council, in reviewing the record evidence, examined the applicable zoning requirements for the C-S-C and T-D-O Zones for the C-S-C and T-D-O Zones to the proposed applications for a freestanding fast food restaurant with drive-through service, a use prompting Applicant's change request as to the Table of Uses for the 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP). Accordingly, based on the applicable law, and with limited exceptions, we find the Planning

Board's determination as to the proposed application in general conformance with the site plan amendments, as discussed below. *See* PGCPB No. 13-47, at p. 3; (Tr., 04/25/2013, at pp. 8-9).

Pursuant to §27-548.04, this document generally supersedes the Table of Uses for all permitted uses in the Zoning Ordinance that would otherwise apply to uses within the C-S-C Zone. *See* §27-548.07; 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP), at pp. 129-34.

- **Amendment of the Approved Transit District Overlay Zone**

In addition, the Council takes notice of §27-548.09.01(b)(1), providing in relevant part:

(b) (1) A property owner may ask the District Council, but not the Planning Board, to change the boundaries of the T-D-O Zone, a property's underlying zone, the list of the allowed uses, building height restrictions or parking standards in the Transit District Development Plan. The Planning Board may amend the parking provisions concerning the dimensions, layout, or the design of parking spaces or parking lots.

This section provides relevant procedures needed for a property owner to request an amendment of the list of allowed uses set forth in the Table of Uses for a Transit District Development Plan. Here, the Council finds evidence considered by the Planning Board that the property owner, by and through counsel, filed a request to amend the table of uses to allow a freestanding fast food eating and drinking establishment with drive-through service on the subject site only. *See* Application, McDonald's Corp., acceptance date of 02/14/2013.

Section 27-548.09.01(b)(5) provides criteria for the evaluation applications for detailed site plans within a T-D-O Zone by the District Council:

(5) The District Council may approve, approve with conditions, or disapprove any amendment requested by a property owner under this Section. In approving an application and site plan, the District Council shall

find that the proposed development conforms to the purposes and recommendations for the Transit Development District, as stated in the Transit Development District Plan, and meets applicable site plan requirements.

Applying these provisions in reviewing the instant case, we note that the Council must exercise certain duties arising out of mandatory review for a project. Because the subject application includes a proposal for an amendment to the use table that may only be granted by the District Council. *See* Application, McDonald's Corp., date of acceptance 02/14/2013. *See also* §27-548.08. In turn, this section confers an express duty upon the Planning Board to make recommendations as to the merits of a site plan application that will be considered by the District Council. *See* PGCPB No. 13-47, at p. 4; §27-578.03.

- **§27-548.08 - Required Planning Board Findings - Detailed Site Plans in the T-D-O Zone**

§27-548.08 provides the following list of required Planning Board findings necessary to approve a Detailed Site Plan application in the T-D-O Zone. Each is stated below, with commensurate findings based on the administrative record for DSP-99006-01:

The Transit District Site Plan is in strict conformance with any mandatory requirements of the Transit District Development Plan.

Based on the administrative record, as well as testimony received during the public hearing conducted before the Planning Board, we find significant evidence to support the determination of the Planning Board that, but for the proposed drive through service associated with the fast-food restaurant, the application otherwise strictly complies with all mandatory requirements of the Transit District Development Plan. *See* PGCPB No. 13-47, at pp. 14-15, 22; (Tr., 04/25/2013 at pp. 34-35, 38-39, 46-47). We further find that the Planning Board dedicated significant effort in evaluating whether a drive-through service associated with a fast-food

restaurant may be approved because it may be found to be consistent with the prescriptions associated with a T-D-O Zone. *See* PGCPB No. 13-47, at pp. 14-15, 22; (Tr., 04/25/2013 at pp. 34-35, 38-39, 46-47). In the instant case, we are unable to conclude that any comments received in the administrative record, whether in the form of citizen input or in the comments received from the Planning Department staff. *See generally* PGCPB No. 13-47. *See also* (Tr., 04/25/2013). Accordingly, and based on the foregoing, we find sufficient support in the record to sustain the Planning Board's determination that, where the drive-through is stricken from the application, the proposed application is in strict conformance with the mandatory requirements of the 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP). *See* PGCPB No. 13-47, at pp. 14-15, 22; (Tr., 04/25/2013 at pp. 34-35, 38-39, 46-47).

The Transit District Site Plan is consistent with, and reflects the guidelines and criteria for development contained in, the Transit District Development Plan.

Subject to the enumerated conditions of its approval, we find sufficient discernable evidence in the record to support the Planning Board's decision that the subject application is consistent with the guidelines and criteria for development contained in the TDDP, as discussed further, *infra*.

The Transit District Site Plan meets all of the requirements of the Transit District Overlay Zone, and applicable regulations of the underlying zones.

As discussed herein under the Design Features Section, *infra*, the Council finds substantial evidence within the administrative record to support the Planning Board's determinations as to compliance with all zoning requirements, whether imposed by way of a Transit District Development Plan, pertinent requirements arising out of the underlying zoning

classification of the property, or the regulatory framework imposed by the Transit District Overlay Zone. *See* PGCPB No. 13-47, at pp. 4-9. *See also* (Tr., 04/25/13).

The location, size, and design of buildings, signs, other structures, open spaces, landscaping, pedestrian and vehicular circulation systems, and parking and loading areas maximize safety and efficiency, and are adequate to meet the purposes of the Transit District Overlay Zone.

In reviewing the administrative record of evidence employed in reaching its decision, the Council notes that the Planning Board made specific findings of fact that the subject proposal to construct, ample evidence within the record supports the findings by the Technical Staff, and ultimately the Planning Board, that the proposed fast-food restaurant use, provided the drive-through service is eliminated, fits into the existing site layout in order to maximize safety and efficiency and is adequate to meet the purposes of the T-D-O Zone. *See* PGCPB No. 13-47, at pp. 4-22. *See also* (Tr., 04/25/13, at pp. 24, 30, 42).

Each structure and use, in the manner proposed, is compatible with other structures and uses in the Transit District, and with existing and proposed adjacent development.

As discussed *supra*, the Council finds that sufficient evidence within the record exists to support the finding by the Planning Board that the proposed structure and use, with elimination of the drive-through service, is readily compatible with the surrounding and existing development, through placement of additional building frontage along the East-West Highway (MD 410) right-of-way. *See* PGCPB No. 13-47, at p. 6. *See also* (Technical Staff Report, Urban Design Section).

Compliance with the 1998 Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone (TDDP).

The Council further finds ample support within the administrative record in evaluating the Planning Board's determination as to compliance with regulatory provisions set forth in the

1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP). In evaluating the subject proposal in the context of regulatory compliance, we find that the Planning Board decision incorporated sufficient record evidence. Specifically, we note the Planning Board highlighted the legal bases supporting their determinations concerning the applicability of certain Mandatory Development Requirements as to the subject property; accordingly, the Board found that the subject property is situated within Subarea 9 pursuant to the 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP), and Board rightly determined that the project is subject to, and in fact complied with, all of the District-wide Mandatory Development Requirements and Site Design Guidelines, as well as any Subarea-specific Mandatory Development Requirements and Site Design Guidelines listed within the TDDP. *See* PGCPB No. 13-47, at p. 8. *See also* 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP), at p. 114.

- **Mandatory Development Requirements**

In evaluating the array of Mandatory Development Requirements and associated guidelines, the Planning Board made the following findings based on the administrative record:

All primary and secondary pedestrian routes shall be constructed using special paving materials.

In order to make a finding of compliance, the Planning Board determined that the imposition of a condition is necessary to requiring revisions to the sidewalk connecting the restaurant to the streetscape along East-West Highway (MD 410) be revised to provide special paving. *See* PGCPB No. 13-47, at pp. 9-10, 22-23.

Primary entrances should be designed as one of the major architectural features so they are clearly identifiable and offer a sense of arrival.

In order to make a finding of compliance, the Planning Board further determined that the sense of arrival at the primary entrance, on the eastern façade, would be enhanced if the DSP was revised to include an expanded paved area, including specialty paving, tables and chairs for customer use and decorative plantings. *See* PGCPB No. 13-47, at pp. 9-10; Technical Staff Report, Urban Design Section). The Board, based on its finding, imposed a condition requiring such has been included in its decision of approval.

All new retail development shall provide four bike racks per 10,000 gross square feet of floor space with each rack holding a minimum of two bicycles.

The Board, based on averments supplied by Applicant in the subject application, found that sufficient bike parking was already provided in accordance with the approval of DSP-99006 as to the previous Home Depot DSP approval. In any event, the Board found that the requirement for adequate bike parking is also required for this proposed retail space. Moreover, in evaluating the site design for the subject application, the Board found that sufficient bicycle parking should be located on the site that are conveniently accessible to the McDonald's. To this end, and based on the evidence in the record, we find justified the Planning Board's determination in imposing bicycle parking requirements as a condition of the site plan approval. *See* PGCPB No. 13-47, at 17, 22-23. *See also* Technical Staff Report, Urban Design Section; 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP), at p. 114.

At the time of Detailed Site Plan, the number of trash cans and locations shall be shown on the plan. Trash receptacles should be placed in strategic locations to prevent litter from accumulating in and around the proposed development.

Based on its review of the administrative record, and specifically the subject application, Statement of Justification, and detailed proposal information concerning the requested development, the Planning Board determined that Applicant has partially satisfied this requirement. In particular, the Board examined the area of the subject application designating an area on the west side of the proposed structure as a trash corral. Unfortunately, no further information concerning the proposed waste management to indicate, for example, how many dumpsters are located in this corral area, were supplied as part of the application materials. Based on the dearth of information to this end, coupled with the stated goal of a pedestrian oriented community design, the Planning Board finds that individual trash receptacles, strategically located, are more likely to be effective in controlling litter accumulation in the proposed development area. Based on this information, and in furtherance of this important element of the site design and function, the Planning Board further found that the DSP should be reassessed on this point prior to certificate of the detailed site plan, for clarification.

Conformance with Approval of Preliminary Plan of Subdivision 4-99004.

On May 6, 1999, the Planning Board approves an application for a Preliminary Plan of Subdivision 4-99004, including a Home Depot was approved by the Planning Board on May 6, 1999, by way of PGCPB No. 99-78. The resolution for the approved preliminary plan contains eleven conditions which warrant the following discussion:

Type II Tree Conservation Plan shall be approved in conjunction with the Detailed Site Plan.

The site has a previously approved Type II Tree Conservation Plan, TCPII-046-99, with which the proposed development is in conformance because no change is proposed to the previously approved limit of disturbance (LOD).

Development of this site shall be in conformance with the approved stormwater concept plan, Concept 998003250.

The Department of Public Works and Transportation (DPW&T) indicated that the subject application is not consistent with the approved Stormwater Management Concept Plan, 2259-2011. Therefore, a revised concept approval is required prior to certification of the DSP and the approved and valid date should be noted on the plan.

**In addition to the typical review, the Detailed Site Plan shall examine:
The possible location of a site for a Medical Evacuation Unit;
The alignment of the trail connection;
Road improvements required by the State Highway Administration;
Stormwater management outfalls onto park property.**

The previous DSP approval found conformance with this condition and the subject application does not propose any improvements that affect any of the mentioned improvements.

At the time of Detailed Site Plan, the applicant shall demonstrate conformance to the requirements and guidelines for the subject subarea as defined in the Transit District Development Plan (TDDP) for the Prince George's Plaza Transit District Overlay Zone, as well as general conformance to all other regulations in the same document. If the proposed parking in addition to already approved total parking exceeds that which is allowed by the TDDP, the applicant shall submit new studies as required by staff in order to determine any additional facilities needed to support the planned development.

Conformance with the TDDP and TDO Zone are discussed in Findings 7 and 8 above. The subject application actually proposes to reduce the number of total parking spaces on the site.

- **Conformance with Detailed Site Plan SP-99006 Approval**

The Planning Board approved Detailed Site Plan DSP-99006 on September 9, 1999, (PGCPB Resolution No. 99-146) subject to seven conditions, which warrant the following discussion:

The sidewalk connecting the store to the streetscape along East West Highway shall be revised to provide special paving.

The evidence in the administrative record supports the Planning Board's determination that the proposal does not affect the sidewalk connecting the Home Depot to the streetscape. Notwithstanding, the Planning Board determined that the record supported a recommendation that a similar condition be enforced for the sidewalk connecting the proposed McDonald's to the streetscape along East-West Highway (MD 410).

A note shall be provided stating that any stormdrain inlets associated with the development and all inlets on the subject subarea shall be stencilled with "Do Not Dump. Chesapeake Bay Drainage".

Because the subject application proposes new stormdrain inlets, the Planning Board found that such finding supports the imposition of similar condition and enforcement for the subject application.

Prior to issuance of any building permit, the following improvements shall be in place, fully bonded or permitted for construction:

- 1. Reconstruct Kiplinger Access Drive as a 4-lane divided access roadway from its intersection with MD 410 to the proposed first site access driveway and as a 4-lane undivided roadway per Prince George's County DPW&T standards to the site's second access point.**
- 2. Provision of 30 feet turning radii for the right-turning traffic to and from the Kiplinger Access Drive.**

The location of the proposed hiker/biker trail on Park Property shall be staked in the field, and approved by Park Planning and Development staff prior to construction.

Prior to the issuance of a building permit, a Recreational Facilities Agreement shall be executed for the trail, and a performance bond posted for the construction of the trail, and to warrant the restoration, repair or improvements for the stormdrain system on park property.

A building permit issued for the existing Home Depot on the subject property met all requirements for compliance with this section and no provision prescribes repeated compliance is necessary as to the subject proposal.

- **Applicable County Landscape Manual Requirements**

§ 27-450 of the Zoning Ordinance provides that the landscaping, screening, and buffering of all development in commercial zones shall be provided, pursuant to the provisions of the 2010 *Prince George's County Landscape Manual* (Landscape Manual). Furthermore, the TDDP (page 30) requires that all properties within the transit district satisfy the requirements of the Landscape Manual. 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone*, at p. 30. Specific requirements are as follows:

Section 4.2, Requirements for Landscaped Strips along Streets.

The Council notes the above requirement that, for all non-residential uses in any zone and for all parking lots, a landscape strip shall be provided on the property abutting all public and private streets. Based on review of the administrative record, the prior approved detailed site plan application met this requirement, and the proposed improvements do not require the removal of any of the plantings in this area. Additionally, the subject proposal supplies an appropriate schedule, and detailing how compliance with the requirements of this section will be achieved for the frontage of East-West Highway (MD 410) immediately adjacent to the McDonald's, specifically through the use of shade trees and a three to four-foot-high masonry wall. *See* Landscape Manual, §4.2.

Section 4.3, Parking Lot Requirements.

The Board noted that proposed parking lots larger than 7,000 square feet provide planting islands throughout the parking lot to reduce the impervious area. The subject application to

revise Detailed Site Plan DSP-99006-01 proposes revisions to the existing parking compound on-site. Planning Board further determined that the schedules provided for Parking Lot Perimeter Landscape Strips, pursuant to Section 4.3(c)(1), does not apply to the subject application. As a result, the Planning Board concluded that references to these schedules should be removed from the plan. *See § 4.3, 2010 Prince George's County Landscape Manual.*

Turning to §4.3(c)(2), Parking Lot Interior Planting Requirements, evidence in the record suggests that the proposed landscape plan provides the correct schedule for the two different compounds on-site. However, the Council finds that, in reaching its decision as to DSP-99006-01, the Planning Board noted several inaccuracies within the schedule, to include inconsistent schedules depicted in the application, and its lack of consistency between the schedule approved within the County Landscape Manual. *See PGCPB No. 13-47, at ppl* and the number of trees required should be calculated based on the provided interior planting area. This means that Parking Compound 1 is short of the required number of shade trees and additional trees should be added. Additionally, the schedule for Parking Compound 2 shows the requirements being met; however, no plan was provided showing this. These issues have been included in conditions of this approval.

Section 4.4, Screening Requirements.

Planning Board considered evidence in the record as to the screening requirements required within the Landscape Manual. In particular, the Board noted that, as applied to the proposed project, this provision apply and further require that all dumpsters, loading spaces, and mechanical areas be screened from adjoining existing residential uses, land in any residential zone, and from constructed public streets. *See §4.4, 2010 Prince George's Count Landscape Manual.* The subject DSP provides a six-foot-high brick screen wall between the loading space

and East-West Highway (MD 410) and encloses the proposed trash area with an eight-foot-high brick-veneered corral to meet the requirements of this section. *See* PGCPB No. 13-47, at p. 13.

Section 4.7, Buffering Incompatible Uses.

The Council finds that the Planning Board made appropriate findings, based on the record evidence, that the subject application is exempt from the buffering requirements of §4.6, because the proposal does not involve an total increase in gross floor area (GFA) on-site of ten percent, or 5,000 square feet; it does not extend any new structure or paved area closer to an adjacent property in a less-intense use category; and it does not involve the intensification of the proposed use within the plan. *See* PGCPB No. 13-47, at p. 12, 22; change of use from a lower- to higher-intensity use category. Based on the foregoing information, we find that the Planning Board.

Section 4.9, Sustainable Landscaping Requirements.

The Council finds that the proposed development application is subject to Section 4.9, which requires that a percentage of the proposed plant materials be native plants. However, the number of plants in the schedule does not match the plant schedule, and the plant schedule does not designate which plants are native species. *See* PGCPB No. 13-47, at p. 13, 22; Technical Staff Report, Urban Design Section. Based on the foregoing, the Council finds substantial evidence and sufficient facts to support its finding that a condition of approval is needed to ensure the basis to make the required findings set forth in §27-548. determination should be revised on the DSP prior to certification.

- **Prince George's County Woodland Conservation Ordinance**

Based on applicable law, Technical Staff suggested, and the Planning Board determined, that the property falls within the jurisdiction of the 1993 Prince George's County Woodland Conservation and Tree Preservation Ordinance (WCO). *See* PGCPB No. 13-47, at pp. 9-10. *See*

also Technical Staff Report, Urban Design Section. In reviewing the subject application, the Board finds that the site has a previously approved tree conservation plan. A Tree Conservation Plan (TCPII-046-99) was approved for the site on August 12, 1999, and the site has been developed in conformance with that approval. The previous tree conservation plan had an overall requirement of 3.94 acres that was met with 0.28 acres of reforestation/afforestation, 3.57 acres of off-site woodland credits and 0.09 acres of on-site woodland preservation. *See* PGCPB No. 13-47, at pp. 9-10. *See also* Technical Staff Report, Urban Design Section.

The Council notes that the Planning Board found ample basis to form its decision as to revising the Tree Conservation Plan for the site. Accordingly, we find substantial evidence to support the Board's finding that the proposal comports with all applicable tree conservation requirements, as that the proposal meets the applicable tree conservation requirements, since the comments on referral from the technical staff proposal will not necessitate revisions to the previously approved limit of disturbance. Because this is a major addition to the subject site, the TCPII should be revised to show the proposed McDonald's restaurant facility and parking lot revisions. Conditions regarding this revision have been included in this approval. *See* PGCPB No. 13-47, at pp. 9-10. *See also* Technical Staff Report, Urban Design Section.

- **Tree Canopy Coverage Ordinance**

The Board found the proposed project is subject to the requirements of Subtitle 25, Division 3, The Tree Canopy Coverage Ordinance (TCC), because it will require a permit for more than 1,500 square feet of disturbance. *See* PGCPB No. 13-47, at pp. 10, 22. *See also* Technical Staff Report, Urban Design Section. The requirement for the subject property is ten percent of the gross tract area, or 1.32 acres (57,543 square feet), based on the C-S-C zoning. The required worksheet was provided for the tree canopy coverage (TCC) requirement showing

it being met by a combination of 0.37 acres of on-site woodland conservation, 1.02 acres of other existing trees on-site and 3,525 square feet of proposed landscape trees. However, no information was provided in the administrative record concerning the method for calculating the area of existing trees. As a result, based on the facts in the administrative record, we find the Planning Board's determination as to the imposition of a condition of approval of the detailed site plan in order to ensure that the required information be provided prior to certification. *See* PGCPB No. 13-47, at pp. 10, 22. *See also* Technical Staff Report, Urban Design Section.

- **Community Planning**

The District Council takes particular note of the Planning Board's findings based on comments submitted in the administrative record by the Community Planning Division. In evaluating the subject application, the Board compared DSP-99006-01 with applicable planning documents as well as the specific requirement of the zoning ordinance. *See* PGCPB No. 13-47, at pp. 14, 22. While the Board found substantial consistency between the proposed development and the pertinent County land use recommendations and policies arising under the 2002 *Approved General Plan*, including applicable Development Pattern policies for centers in the Developed Tier, the Board noted the concerns raised in the comments from the Community Planning Division that the inclusion of a proposed drive-through service with the fast-food use is "contrary to the goals for the Prince George's Plaza Transit District, which stresses incentivization toward and creation of a pedestrian-friendly environment along East-West Highway."

In like fashion, and based on the administrative record, the Board further found that the proposed development application conforms with the land use policy adopted within the 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District*

Overlay Zone. See PGCPB No. 13-47, at pp. 14, 22. However, despite these findings, the Board Community Planning Division also expressly found that the proposed addition of drive-through service for the proposed use on the property is contrary to the goals of the Prince George's Plaza Transit District Development Plan. *See* PGCPB No. 13-47, at pp. 13-14; (Tr., 04/25/2013, at 40-47).

The Planning Board found the subject application in conformance with applicable comprehensive land use plans, such as general plans and any area master plan. In so finding, the Board considered comments from the Community Planning Division. These comments note that the 2002 *Prince George's County Approved General Plan* designates the property within the Developed Tier, and that the proposed use is consistent with the General Plan's Development Pattern goals and policies for the Developed Tier. Thus, and as required by §27-548.03, the Community Planning Division concluded that the subject development proposal is consistent with the high intensity, mixed-use communities oriented around efficient, pedestrian friendly access to Metro Stations recommended in the 1998 *Approved Prince George's Plaza Transit District Overlay Zone. See* Community Planning Memorandum, March 15, 2013.

The District Council takes administrative notice that on May 6, 2014, and pursuant to Maryland Code Ann., Land Use, §§21-103(a)(b), 21-104 (2013 & 2014 Supp.), the County approved *Plan Prince George's 2035*, a comprehensive update to the general plan for that portion of the Maryland-Washington Regional District within Prince George's County. *See* CR-26-2014. While the review of DSP-99006-01 by Technical Staff and Planning Board did not expressly contemplate the concepts embodied within the updated general plan, the District Council nevertheless finds that the findings and conclusions embodied in PGCPB No. 13-47 are not arbitrary, capricious, discriminatory, or illegal as a matter of law, since the proposals set

forth within DSP-99006-01 generally comply with the growth policies and priorities promulgated within *Plan Prince George's 2035*. See CR-26-2014. See also *County Council for Prince George's County v. Carl M Freeman Associates, Inc.*, 281 Md. 70,76-77,376 A.2d 860 (1977) ("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").

The generalized future land use map incorporated in the general plan update, shown in Map 9 of *Plan Prince George's 2035*, reflects a broad, countywide perspective of future land use patterns that is consistent with the development proposal within DSP-99006-01. In fact, the District Council finds the land use policies embodied within the updated plan demonstrate a greater level of consistency between the general plan and DSP-99006-01, because *Plan Prince George's* incorporates existing land uses and improvements constructed since adoption of the 2002 General Plan. See *Plan Prince George's 2035*, Land Use, Map 9, pp. 81-82, PGCPB No. 14-10, Attachment B, p. 9.

Moreover, by its express terms, *Plan Prince George's 2035* incorporates the recommendations within current approved sector plans or area master plans for the County. See *Plan Prince George's 2035*, Land Use Element, p. 9, PGCPB No. 14-10, Attachment B, Map 9. Thus, since the Planning Board found DSP-99006-01 to be in general conformance with the recommendations set forth in the 1998 *Approved Prince George's Plaza Transit District Overlay Zone*, the District Council finds that conclusion valid and in compliance with *Plan Prince George's 2035*, and the prescriptions of §27-548.03. See PGCPB No. 13-47, p. 11; Technical Staff Report, Urban Design Division, p. 22.

The Council further finds that, although the Planning Board made no findings as to specific future land on land within the plan area. Notwithstanding, the Council finds certain

evidence in the record where the Planning Board notes the lack of specific intention as to the intended future land uses for the parcel, and finds, in the alternative, certain policy guidance for a T-D-O Zone, where the District Development Plan links the allowed/desired uses to the zone and provides a purpose statement that calls for retail, service, and office uses, with consideration of mixed-used development in the future. *See* PGCPB No. 13-47, at pp. 7, 14-15. In this case, the zoning of the property is C-S-C, and the permitted uses are generally in conformance with that zone, emphasizing commercial retail and office uses. *See* PGCPB No. 13-47, at pp. 14, 22; *see also* (Tr., 04/25/2013, at 8, 14, 35-36, 47-48).

The Board found that transit district development plan does not permit eating and drinking establishments with drive-through service in the C-S-C Zone, and also finding that the applicant must request an amendment to the development plan to allow the requested use, as requested within the subject application, which requires approval of the District Council pursuant to Division 10A of the Zoning Ordinance. *See* §27-548.03. *See also* PGCPB No. 13-47, at pp. 14, 22; (Tr., 04/25/2013, at 8, 14, 35-36, 47-48).

On the other hand, the Council further notes the overwhelming body of evidence within the administrative record to substantiate the assessment of the Planning Board that the drive-through component proposed is, by its very nature, contrary to the goals for the Prince George's Plaza Transit District to create a pedestrian-friendly environment along East-West Highway. The TDDP emphasizes the importance of pedestrian access and circulation (page 28) and identifies the public rights-of-way as the location of the primary pedestrian system and focus of pedestrian connectivity. The parking area and drive-through for the proposed McDonald's have been designed to be less suburban in character and more pedestrian-friendly and walkable. *See* PGCPB No. 13-47, at pp. 14. *See also* (Tr., 04/25/2013, at p. 7). The Board noted concerns

raised by the Community Planning comments that the relationship between the drive-through queuing area and parking drive aisles should be clarified by the applicant to ensure that there are no issues with vehicular stacking and egress during peak operating hours. Additionally, the portion of the East-West Highway (MD 410) elevation near the service doors should have greater façade articulation to help break up the blank wall areas. Finally, the Board found that although the planned configuration of the McDonald's is less suburban and promotes a more pedestrian-friendly environment, the Planning Board found any potential amendment to the development plan to permit drive-through service would be detrimental to the transit district goals and desired development pattern, and included as a required condition for its decision to approve the subject application, that the proposed drive-through service be removed from DSP-99006-01. *See* PGCPB No. 13-47, at pp. 13-14, 22; (Tr., 04/25/2013, at 40-47).

Based on the foregoing, the District Council finds that the decision of the Planning Board as to its approval of DSP-9906-01, including its condition for removal of the drive-through service proposal, was based on substantial evidence and was not otherwise arbitrary, capricious, illegal or discriminatory.

- **Transportation Planning**

In forming the basis for its decision, a review of the record evidence reveals a fairly substantial analysis and comment by the Transportation Division of the Planning Department on the proposal provided by the Transportation Division of the Planning Department, concerning the proposed application. *See* PGCPB No. 13-47, at pp. 14-16, 22. As such, in adopting PGCPB No. 99-146 in September 1999, the Planning Board approved the original Detailed Site Plan proposal, DSP-99006, for the subject property. Pursuant to that application, DSP-99006 requested approval of a 117,975 department or variety store upon Parcel 9 on property within the

1998 *Approved Prince George's Plaza Transit District Overlay Zone*. See PGCPB No. 13-47, at pp. 14-16, 22. The current proposal, styled DSP-99006-01, seeks modification of that development to approve new construction proposed on the site. The new development proposal includes, in substantial part, construction a fast-food restaurant proposed for location to the east of, and adjacent to, the existing retail building improvements on the site. See generally PGCPB No. 99-146. See also PGCPB No. 13-47, at 1-2; (Tr., 04/25/2013, at pp. 1-7); Technical Staff Report, Urban Design Section, at 1-3.

The Board also considered changes to the Zoning Ordinance, namely enactment of County Council CB-56-2011 by the District Council and resulting amendment of definitions within Section §-107.01 of the Zoning Ordinance essentially combined fast-food and drive-in restaurants with the more general category termed eating or drinking establishments. As required by §27-548.04 of the Zoning Ordinance each Transit District Development sets forth specific land uses requirement within a Table of Uses in the Transit District Plan. See PGCPB No. 13-46, at pp. 8, 13-16, 22. Here, however, the Planning Board considered evidence in the administrative record that distinguishes between fast-food restaurants and other types of eating and drinking establishments; moreover, for the Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone greatly limits the circumstances in which a fast-food restaurant can be located. As a result, the Planning Board found that in the Prince George's Plaza T-D-O Zone, the TDDP Table of Uses limits the permitted locations for fast-food restaurants, thereby limiting them to sites within another building, or located on a site as an accessory to a recreation facility. See PGCPB No. 13-46, at pp. 8, 13-16, 22; (Tr., 04/25/2013, at pp. 5-6, 22-25).

In reviewing the guiding principles of the 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP), we note a clear orientation to pedestrian-friendly spaces that tend to encourage pedestrian mobility through focused design principles of connectivity, adequate sidewalks and pedestrian safety features, as well as ample bicycle facilities and direct access to transit. *See 1998 Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP), at 122. The Board found that, based on comments supplied in the record, the TDDP tends to limit fast-food restaurants by placing them in locations where the provision of drive-through service would be difficult if not impossible. *See 1998 Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP), at pp. 122-24. Therefore, while the Planning Board supports the placement of a fast-food restaurant on the subject site, it unequivocally concluded that the inclusion of drive-through service is inconsistent with the TDDP. *See* PGCPB No. 13-46, at pp. 8, 13-16, 22; (Tr., 04/25/2013, at pp. 5-6, 22-25). Support for this conclusion emanates from the goals of the transit district, such as the creation of a pedestrian-friendly environment. It also drives from the general goals that form the underpinnings of the Transit District Overlay (T-D-O) Zone set forth in §27-548.03. Moreover, certain guidelines within the "Transportation Review Guidelines, Part 1" document provides a checklist to evaluate the economic and social success of excellent or successful transit-oriented development (TOD). *See also* 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP), at 122-24. The checklist, which is based on review of similar checklists and sets of regulations around the United States, indicates that lack (or non-provision) of drive-through facilities is a positive characteristic. *See* PGCPB No. 13-46, at pp. 8, 13-16, 22.

The existing retail store consisting of 117,975 square feet with a 16,309-square-foot garden center on Parcel A was approved with 507 parking spaces on 13.21 acres of land. The T-D-O-Z required a maximum parking of 4.35 spaces per 1,000 square feet or 18 parking spaces for the proposed McDonald's use. The applicant is providing 64 parking spaces, an excess of 46 parking spaces. Combined, there will be net loss of 19 parking spaces proposed by this site plan, leaving 488 parking spaces remaining within Parcel A. Given that parking spaces will be eliminated under this site plan, the site is not subject to payment of an impact fee under either preferred or the premium parking caps, as defined in the TDDP. *See* PGCPB No. 13-46, at pp. 8, 13-16, 22; (Tr., 04/25/2013, at pp. 5-6, 22-25).

The Board also found that configuration of the drive-through service lane, as well issue of the potential vehicular queuing, coupled with the frequent bursts of persons seeking to enter or exit the parking on the site. Even the queuing of two or three cars at the entrance to the drive-through service lane, where the menu board is located and where orders are taken, would block much of the site's parking. This area requires additional signage even if drive-through service is maintained in order to lessen the likelihood of queued vehicles blocking parking. These operational issues provide another justification for the elimination of the drive-through service. Given the site constraints, the plan would be much more functional for all users, including delivery vehicles, if drive-through service were eliminated on the plan. Beyond these issues, the found that the proposed development within the detailed site plan is acceptable. *See* PGCPB No. 13-47, at pp. 14, 22; *see also* (Tr., 04/25/2013, at 8, 14, 35-36, 47-48).

In summary, and based on the Council's review of the administrative record, we find substantial evidence to support the Planning Board's decision that the subject application generally conforms to the 1998 *Approved Transit District Development Plan for the Prince*

George's Plaza Transit District Overlay Zone (TDDP) and other prior approved plans, and its determination that while the use is acceptable at this location, the provision of the drive-through service (a) poses issues with the TDDP and the general goals of the T-D-O Zone, (b) is not consistent with excellent TOD, (c) creates conflicts with patrons entering the building, and (d) results in queuing issues affecting vehicles entering and leaving, and resulting condition imposed in its resolution of approval requiring the drive-through service be eliminated from the detailed site plan. *See* PGCPB No. 13-47, at p. 22.

- **Subdivision Review**

The subject property is known as Parcel A, located on Tax Map 41 in Grid E-2, within the C-S-C Zone and is 13.21 acres. A review of applicable conditions attached to approval of the relevant Preliminary Plan of Subdivision 4-99004 has been incorporated into discussion under the Subdivision heading above. Parcel A was recorded in Plat Book VJ 188-33 on November 19, 1999. The record plat contains five notes, restated in **bold** as follows, below, that the Board found of particular relevance in its assessment of the subject proposal.

This plat is subject to a recreation facilities agreement recorded in Liber 13466 at Folio 335.

The recorded recreation facilities agreement indicates that the developer is to construct an eight-foot-wide asphalt trail and stone veneer headwall. The construction of the recreation facilities are to be completed prior to issuance of the certificate of occupancy. The Home Depot store was built in 2000 and is currently occupied.

This plat is subject to an access easement, in accordance with Section 24-12 (b)(9) of the Subdivision Regulations, Prince George's code, recorded in Liber 13408 at Folio 634.

The Council notes that this application proposes no access to East-West Highway, (MD 410). The proposed McDonald's restaurant will use the existing access location of the Home Depot onto the access easement. Moreover, the Planning Board found that the bearings, distances, and public utility easement (PUE) depicted on the plan are consistent with the record plat. *See* PGCPB No. 13-47, at pp. 16, 23. Nevertheless, the Planning Board noted certain inconsistencies between the approved subdivision application and the subject proposal within DSP-99006-01. To this end, Planning Board determined the following revisions are necessary to correct certain technical errors or inconsistencies:

1. Show and label the entire acreage for Parcel A.
2. Clearly show and label the access easement Liber 13408 Folio 634 as reflected on the record plat VJ 188-33.
3. Clearly show and label the PEPCO easement Liber 6909 Folio 325, as reflected on the record plat VJ 188-33.

The Detailed Site Plan DSP-99006-01 is in substantial conformance with the approved Preliminary Plan of Subdivision 4-99004 and record plat if the above comments have been addressed. Failure of the site plan and record plat to match will result in the grading and building permits being placed on hold until the plans are corrected. There are no other subdivision issues at this time.

- **Trails**

The Board found that Applicant's proposal is in strict conformance with the trail-related mandatory development requirements of the TDDP. Specifically, the Planning Board found that Applicant submitted all required information, including a general description of the proposed pedestrian system; accordingly, the Planning Board found the proposal adequate as assessed pursuant to the intended use on the subject property. The Board further finds that Applicant's proposal conforms with all required information to be submitted with a Detailed Site Plan,

pursuant to §27-546(b)(1) of the Zoning Ordinance, including: A statement regarding the “description of the relationship between vehicular and pedestrian circulation systems” is required site plan content. In this regard, and in their Statement of Justification, the applicant states that the landscape plan “incorporates pedestrian safety into its design. Clear lines of site for both automobiles and pedestrians are provided so as to allow for safe travel throughout Subarea 9.”

The Planning Board agreed with this assertion. No new curb cuts are proposed along East-West Highway (MD 410). The proposed building is located along East-West Highway (MD 410). The proposal includes a vehicular access via the existing East-West Highway (MD 410) access drive at the Home Depot. A direct sidewalk connection to the existing sidewalks and streetscape along East-West Highway (MD 410) is shown on the plans. The sidewalks and the pedestrian zone appear to be adequate to meet the purposes of the Transit District Overlay Zone (T-D-O-Z) as required by 27-548.08(c) of the Zoning Ordinance. The streetscape contains pedestrian scaled lighting and other amenities and is in strict conformance with the TDDP’s District Wide Mandatory Development Requirements. Further, the applicant’s proposal shall be in conformance with the requirements of the T-D-O (Transit District Overlay) Zone. The applicant’s proposal is consistent with the “Regulations” contained within Section 27-548.06(e) of the Zoning Ordinance, which requires that the “pedestrian system within a Transit District shall be oriented toward serving the Metro station, as well as other development within the District.”

The design of the building and drive-through layout orients sidewalks towards East-West Highway (MD 410) in order to provide access to the nearby Prince George’s Plaza Metro Station. The sidewalks are wide enough for a bicycle to use, and bicycles can ride within the limits of East-West Highway (MD 410). The site is close to the access to the Northwest Branch

Trail and the proposal conforms to the TDDP's District Wide and Subarea 9 Mandatory Development Requirements that are described in the TDDP.

A more detailed analysis of trails-related Mandatory Development Requirements was then provided. Based on that analysis, the Planning Board concluded that the proposed pedestrian walkways, lighting, and bicycle parking do not conflict with the TDDP. The site will be conveniently located along East-West Highway (MD 410) and will be accessible to the Prince George's Plaza Metro Station and the Northwest Branch Trail. The following conditions shall be considered:

- (a) Install two u-shaped bicycle parking spaces close to the main entrance to the building anchored into a concrete base.
- (b) Prior to certification, the detailed site plan shall show two u-shaped bicycle parking spaces near the main entrance to the building.
- (c) Details of the bicycle parking and signage shall be provided on the detailed site plan.
- (d) A bicycle parking area sign (MUTCD D4-3) shall be erected at the parking location (see MUTCD Part 9, Traffic Control for Bicycle Facilities, Section 9B.23.).

- **Permit Review**

The Planning Board found, based on comments submitted by the Permit Review Division, that a fast-food restaurant is not a permitted use pursuant to the Table of Uses set forth within the 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP).

- **Environmental Planning**

The Planning Board next reviewed evidence to include a summary of the environmental site description, as well as a detailed analysis as to the Detailed Site Plan proposal as to

conformance with the environmental requirements set forth in the 1998 *Approved Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP). *See* PGCPB No. 13-47, at p. 19. This analysis is discussed in Finding 8 above as necessary.

A Natural Resource Inventory Equivalency letter, NRI-090-11, in conformance with the environmental regulations, was issued on April 25, 2011, and submitted with the current application. The Board found that since the site has less than 10,000 square feet of woodlands, no regulated environmental features will be impacted as part of the proposed application. *See* PGCPB No. 13-47, at p. 19.

- **Department of Public Works and Transportation (DPW&T)**

By memorandum dated March 12, 2013, DPW&T supplied agency comments concerning the need for a coordinated effort with the State Highway Administration (SHA) regarding the roads adjacent to the subject project. *See* PGCPB No. 13-47, at p. 19. The Department further provided standard comments concerning storm drainage systems and soils investigation, as well as a finding that the proposed application DSP is not consistent with approved Stormwater Management Concept Plan No. 2259-2011. *See* PGCPB No. 13-47, at pp. 19, 22. As a result, and based on the foregoing evidence, we find sufficient evidence within the administrative record to sustain the Planning Board finding and imposition of a condition of approval for the application and requiring proof of an approved stormwater management concept plan, and a letter stating that it is consistent with the proposed layout prior to certification of the DSP. *See* PGCPB No. 13-47, at pp. 19, 22. *See also* (Technical Staff Report, Urban Design Section).

- **Prince George's County Health Department**

In a memorandum dated March 1, 2013, the Environmental Engineering Program of the Prince George's County Health Department offered the following comments and recommendations:

- (a) The photometric plan reflects what appear to be areas of excessive light levels on the site, but does not extend far enough to include light levels at the adjacent property lines. There is an increasing body of scientific research suggesting that artificial light pollution can have lasting adverse impacts on human health. The photometric plan should be revised to indicate that all proposed exterior light fixtures will be shielded, fixed in the full cut-off position and located so as to minimize light trespass caused by spill light onto adjacent properties.
- (b) There are seven existing carry-out/convenience store food facilities and two markets/grocery stores within a one-half mile radius of this location. Research has found that people who live near an abundance of fast-food restaurants and convenience stores compared to grocery stores and fresh produce vendors, have a significantly higher prevalence of obesity and diabetes.

The subject application proposes a fast-food restaurant; however, given the existing development on-site, it is not likely that there would be room for a market or grocery store instead of the proposed restaurant which has such a small footprint and impact.

- (c) During the demolition/construction phases of this project, no dust should be allowed to cross over property lines and impact adjacent properties. Indicate intent to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control. This requirement will be enforced at the time of permit; however, a note should be provided on the DSP indicating conformance with these requirements.
 - (d) During the demolition/construction phases of this project, no noise should be allowed to adversely impact activities on the adjacent properties. Indicate intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code. This requirement will be enforced at the time of permit; however, a note should be provided on the DSP indicating conformance with these requirements.
- **Maryland State Highway Administration (SHA)**

SHA provided correspondence in the administrative record, in the form of a request to perform a Traffic Impact Study (TIS) to review and determine whether any off-site

improvements will be required as a result of the proposed development. SHA stated that if it is concluded that off-site improvements are required to East-West Highway (MD 410), an access permit will be required. The Planning Board reviewed the following response to the requested TIS:

Aside from the fact that issues of off-site transportation adequacy are generally not reviewed at the time of detailed site plan, the specific requirements of the applicable TDDP greatly reduce the need for adequacy review at any stage of development provided that the development proposal conforms to the TDDP. For these reasons, no traffic study has been requested or reviewed. However, the applicant shall be made aware that SHA has requested a study, and that agency may compel the provision of a study by the applicant in the event that any permits from SHA are needed to implement this use.

- **Washington Suburban Sanitary Commission (WSSC)**

By memorandum dated February 27, 2013, WSSC offered comments as to necessary coordination with buried utilities and WSSC easements and the requirements for connection to the existing water and sewer lines.

- **The City of Hyattsville**

By letter dated April 16, 2013, the City advised that the City Council of Hyattsville, at their April 15, 2013 meeting, voted unanimously to oppose the subject proposal to construct a McDonald's restaurant with drive-through service within the Prince George's Plaza Transit District Overlay Zone (TDOZ). Additionally, the City stated that they do not support the applicant's request for an amendment to the table of uses to permit eating and drinking establishments with drive-through service. The City stated that the request is inconsistent with the pedestrian and transit oriented intent of the TDDP and will compromise the walkability and

long-term development within the TDOZ. The City continues to maintain the position that restaurants with drive-through service are not an appropriate land use within this TDOZ and if the applicant requires a drive-through as part of the development, the City is opposed to this proposed detailed site plan.

The Board agreed with the City and, for the reasons also stated *infra*, the Board included of approval requiring the removal of the drive-through service from the proposed use.

Pursuant to §27-290(a)(c)(d)(e) and §27-285(b), the District Council, based on the findings herein, APPROVES DSP-99006-01 and TCPII-046-99-01. The District Council concurs with Planning Board that DSP-99006-01 is in general conformance with the zoning requirements set forth in the 1998 *Approved Prince George's Plaza Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone*; and, if revised in accordance with the proposed conditions below, represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, and Part 10A, Division 1, 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.

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

Accordingly, the decision of the Planning Board, in PGCPB No. 13-47, is AFFIRMED.

Approval of DSP-99006-01 and TCPII-046-99-01 for the above-described land is 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. Revise the DSP to remove the drive-through portion of the use and convert the area into green space or amenity space.
 - b. Revise the DSP to show an expanded paved area in the front of the restaurant, to the east, to include specialty paving, tables and chairs for customer use and decorative plantings.
 - c. Submit a copy of an approved Stormwater Management Concept plan and letter consistent with the proposed layout.
 - d. The sidewalk connecting the McDonald's to the streetscape along East-West Highway (MD 410) shall be revised to provide special paving to be approved by the Urban Design Section as designee of the Planning Board.
 - e. Revise the DSP to include notes and a detail regarding the stenciling of storm drain inlets with "Do Not Dump – Chesapeake Bay Drainage." A copy of the sediment and erosion control plan containing notes and details regarding the same stenciling shall be submitted.
 - f. Remove the Section 4.3(c)(1) Parking Lot Perimeter Landscape Strip schedules from the DSP.
 - g. Revise the Section 4.3(c)(2) schedules to match the one in the 2010 *Prince George's County Landscape Manual* (Landscape Manual) and to accurately reflect the required number of shade trees, and that requirement being met. Additionally, provide a landscape plan for the entirety of Parking Compound 2.
 - h. Revise the DSP to note the exemption from Section 4.7 of the 2010 *Prince George's County Landscape Manual*.
 - i. Revise the Section 4.9 schedule on the DSP to match the number of plants in the plant schedule and revise the plant schedule to designate which plants are native species to be in conformance with the 2010 *Prince George's County Landscape Manual*.
 - j. Revise the Type II Tree Conservation Plan TCPII-046-99 as follows:
 - (1) Show the proposed building and parking lot layout for the proposed application.
 - (2) Show the previous TCP approval and add "01" to the approval block.

- (3) Have the revised plan signed and dated by the qualified professional preparing the plan.
- k. Revise the DSP to indicate how many trash receptacles are within the corral area and where proposed individual trash receptacles, at least two, will be located throughout the proposed seating and parking areas adjacent to the McDonald's.
- l. Revise the DSP to show how the area of existing trees credited in the tree canopy coverage schedule was calculated.
- m. Revise the DSP to show and label the entire acreage for Parcel A
- n. Revise the DSP to clearly show and label the access easement, Liber 13408 Folio 634, and the Potomac Electric Power Company (PEPCO) easement, Liber 6909 Folio 325, as reflected on the record plat.
- o. Revise the DSP to show a minimum of two u-shaped bicycle parking spaces, anchored into a concrete base, close to the main entrance of the building and provide details of the bicycle parking and signage (MUTCD D4-3).
- p. Revise the photometric plan to indicate that all proposed exterior light fixtures will be shielded and fixed in the full cut-off position and footcandle levels throughout the proposed area of improvement will be minimized to the maximum extent practicable.
- q. Provide a plan note that indicates conformance to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.
- r. Provide a plan note that indicates the applicant's intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code.

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

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

Opposed:

Abstained:

Absent:

Vote: 9-0

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