

Case No. DSP-99044/07 Prince George's
Plaza, Parcel A-1, Chick-fil-A

Applicant: Chick-fil-A

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

ORDER OF APPROVAL WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the application to amend the Table of Uses of the 1998 *Transit District Development Plan for the Prince George's Plaza Transit District Overlay Zone* (TDDP) is APPROVED IN PART, and DISAPPROVED IN PART. The application to amend the Table of Uses of the 1998 TDDP to permit a freestanding eating and drinking establishment or Chick-fil-A, in the Commercial Shopping Center (C-S-C) and Transit District Overlay (T-D-O) Zones, located in Planning Area 68, Council District 2, is APPROVED, BUT DISAPPROVED as to the drive-through service, as recommended in PGCPB No. 13-127. The site plan, DSP-99045/07, is APPROVED subject to the conditions in PGCPB No. 13-127.¹

¹ The Prince George's County Code, Subtitle 27, Zoning Ordinance, (2013 Ed., 2014 Supp.), will be referred to hereinafter as "§ 27- ____ The Land Use Article, Md. Ann. Code (2012, 2014 Supp.), will be referred to hereinafter as "§ ____ of the Land Use Article." The Prince George's County Planning Board Resolution No. 13-127 will be referred to as "PGCPB No. 13-127."

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 August 29, 2012, the Development Review Division of the Planning Department accepted the Applicant's filing of DSP-99044/07 for review.

On March 19, 2013, the City of Hyattsville filed its opposition to the Applicant's detailed site plan proposal with the drive-through service. *See* City of Hyattsville Letter, March 19, 2013. *See also* (10/31/2013, Tr.)

On November 16, 2013, the Technical Staff of the Planning Department filed its Staff Report, which recommended approval of the application to amend the Table of Uses of the 1998 TDDP—with modification to delete the drive-through service of the eating and drinking establishment—and approval of DSP-99044/07, subject to conditions. *See* Technical Staff Report, p. 20, October 16, 2013.

On October 31, 2013, the Planning Board held a public hearing and considered evidence on DSP-99044/07. At the conclusion of the hearing, Planning Board recommended approval of the application to amend the Table of Uses of the 1998 TDDP—with modification to delete the drive-through service—and approval of DSP-99044/07, subject to conditions. *See* (10/31/2013, Tr.)

On November 21, 2013, Planning Board's action on October 31, 2013, in DSP-99044/07, was embodied within a resolution and adopted. *See* PGCPB No. 13-127.

On November 25, 2013, notification of Planning Board's action, PGCPB No. 13-127, was transmitted to the Clerk of the Council and all persons of record.

On December 23, 2013, the Applicant appealed PGCPB No. 13-127 to the District Council. *See* Applicant's Appeal Letter, December 23, 2013.

On February 24, 2014, a public hearing was scheduled to consider DSP-99044/07. The public hearing was scheduled pursuant to §27-548.09.01 for mandatory review and pursuant to the Applicant's appeal. The hearing was continued to March 27, 2014, pursuant to Rule 5.7 of the District Council Rules of Procedure.

On March 27, 2014, the District Council did not convene due to inclement weather. *See* §27-291.

On April 14, 2014, the District Council held a public hearing to consider DSP-99044/07. Prior to the commencement of oral argument, a motion carried to remand DSP-99044/07 the Planning Board to allow 11 additional persons identified by the Applicant to sign up, if desired, to become persons of record. The motion also carried to allow further testimony into the record, and for Planning Board to reconsider its prior decision, to address the drive-through service of the Applicant's proposal to determine whether the drive-through service of proposed DSP-99044/07 meets the TDDP. The District Council adopted an Order of Remand on April 21, 2014, which embodied the action it took on April 14, 2014. *See* Zoning Agenda, April 14, 2014, and Order of Remand, respectively.

On July 22, 2014, the Planning Board notified all persons of record that it had no authority, pursuant to the duly adopted Order of Remand by the District Council, to re-open or reconsider DSP-99044/07. *See* PGCPB No. 14-63.

On September 18, 2014, the Clerk of the County Council notified all persons of record that a public hearing was scheduled for October 20, 2014.

On October 20, 2014, the District Council held a public hearing and reviewed DSP-99044/07, pursuant to 27-548.09.01, and Applicant's Appeal Letter, December 23, 2013.

APPLICABLE LAW

The Prince George’s County Council, by way of the express authority conferred by the Maryland General Assembly through the Regional District Act (RDA), sits as the District Council for that portion of the Maryland-Washington Regional District within Prince George’s County.² See §§ 14-101(f), 22-101(b) of the Land Use Article. As such, the RDA designates the Prince George’s County Council, sitting as the District Council, broad authority to regulate zoning and land use matters. See §§ 22-201(b), 22-202(a, b), 22-206, 22-208, 22-301(a)-(c), 22-310(a), 22-407 and 25-210 of the Land Use Article. In so doing, the legislature designates specific authority for the Council to make factual determinations and to adjudicate certain factual disputes in reaching a final decision in zoning cases.

Further, and pursuant to § 22-104 of the Land Use Article, the District Council may, by ordinance, adopt and amend the text of the zoning ordinance and may, by resolution or ordinance, adopt and amend the map or maps accompanying the zoning ordinance text to regulate, in the portion of the regional district lying within its county, the size of lots, yards, courts and other open spaces.³ Accordingly, in exercising its authority to regulate land use and

² The District Council sits as an administrative agency when reviewing a zoning matter. See *County Council v. Brandywine Enterprise*, 350 Md. 339, 711 A.2d 1346 (1998) (“The Regional District Act authorizes the County Council to sit as a district council in zoning matters, and, when it does so, it is acting as an administrative agency”); *County Council v. Carl M. Freeman Assocs.* 281 M. 70, 376 A.2d 869 (1973) (“When it sits at the district council in a zoning matter, the Prince George’s County Council is an ‘administrative agency’ as the term is broadly defined”). See also § 14-101(f) and § 22-101(b) of the Land Use Article. See also § 27-107.01(a)(1, 67, 68), Zoning Ordinance of Prince George’s County (2013 Ed., 2014 Supp.) (each subsection therein defining “district” as that portion of the Maryland-Washington Regional District located in Prince George’s County, Maryland, and “district council” as The Prince George’s County Council, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Prince George’s County).

³ See §14-101(h) of the Land Use Article, which defines local law as:

- (1) “Local law” means an enactment of the legislative body of a local jurisdiction, whether by ordinance, resolution, or otherwise.
- (2) “Local law” does not include a public local law.

§14-101(q) of the Land Use Article, which defines zoning law as:

zoning in the County, the District Council enacted certain procedural prescriptions within its Zoning Ordinance. *See Prince George's County v. Ray's Used Cars*, 398 Md. 632, 635-36, 922 A.2d 495, 497 (2007).

In conveying this expansive zoning authority, the Maryland Legislature also ceded substantial legislative prerogative upon the district councils in furtherance of its zoning powers and responsibilities to adopt and amend zoning laws. *See* § 22-104(a, b) of the Land Use Article. In addition, and in direct conformance with the RDA, the district councils may also divide the portion of the regional district located within its county into districts and zones of any number, shape, or area it may determine. *See* § 22-201 of the Land Use Article. As such, the enactment of zoning laws affecting the districts and zones of its respective geographic designation, as well as the right to the construction, alteration, and uses of buildings and structures, and the uses of land, including surface, subsurface, and air rights falls within the exclusive province of the district councils. *Id.* In so doing, the RDA inures the district councils with regulatory controls to promulgate prescriptions governing the form and manner of uses and structures on land, and to dictate the form and order of procedures deemed appropriate as to zoning and land use controls for land within its purview. *See* §§ 22-202 and 22-206 of the Land Use Article.

The District Council also enjoys specific authority to regulate requirements for site plans, including detailed site plans, which are provided for in Subtitle 27, Division 9, Subdivision 3 of the Zoning Ordinance. Because the proposed amendment and site plan is within the C-S-C Zone

(1) "Zoning law" means the legislative implementation of regulations for zoning by a local jurisdiction.
 (2) "Zoning law" includes a zoning ordinance, zoning regulation, zoning code, and any similar legislative action to implement zoning controls in a local jurisdiction.

(Commercial Shopping Center), the subject application must also comply with the requirements of the C-S-C Zone. Subtitle 27, Part 6, of the Zoning Ordinance. In turn, the District Council adopted local zoning provisions in the Zoning Ordinance in furtherance of the exercise of its ample authority supplied pursuant to the RDA. The Zoning Ordinance provides overarching purposes to guide exercise of its police power in furtherance of the public safety, health, and welfare of the citizens and residents of the County. *See* § 27-102.

Finally, only the District Council may approve an amendment, authorized pursuant to § 27-548.09.01, to the Transit District development requirements contained in the 1998 TDDP. § 27-548.09.01 provides

(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.

(6) If a Conceptual Site Plan is approved with an application, the owner may not obtain permits without an approved Detailed Site Plan.
(CB-72-2001; CB-53-2011) (Emphasis added).

See § 27-548.09.01. Amendment of Approved Transit District Overlay Zone.

FINDINGS AND CONCLUSIONS

Zoning Authority

As a threshold matter, the District Council has no inherent power to zone, and is precluded, by the express and unequivocal language of the RDA that granted it zoning power, from exercising that power in any manner other than that specifically authorized. The District Council can only exercise its powers under the statute to the extent and in the manner directed by the legislature. *See §§ 14-101(f), 22-101(b), 22-104, 22-201, 22-202(a, b), 22-206, 22-208, 22-210, 22-214, 22-301(a)-(c), 22-310(a), 22-407, 25-204, 25-207, 25-208, 25-209, and 25-210 of the Land Use Article. See also Montgomery Pres. Inc. v. Montgomery County Planning Bd., 424 Md. 367, 36 A.3d 419 (2012).* Because approval of an amendment to the Transit District Development Plan come within mandated procedures granted to the District Council, it may not delegate its authority to the Planning Board. The power to make such a **decision** is vested in the

District Council, **not** the Planning Board because its action must be considered a recommendation. *Id. See also Richmond Corp. v. Board of County Commissioners*, 254 Md. 244, 255 A.2d 398, 408 (1969) (stating that District Council is not bound by Planning Board or subordinate staff's recommendation).

As a matter of first impression, we find no articulable basis at law to support the fundamental fallacy. *See* § 27-548.09.01(b)(1)(2)(3). Nevertheless, and notwithstanding Applicant's appeal, we find our final decision as to any amendment, including those requesting changes to the list of allowed uses in a Transit District Development Plan, is within the sole province of the District Council. *See* § 27-548.09.01 (a)(1)(C), (b)(3)(5).

Applicant's Appeal

DSP-99044/07 constitutes the Applicant's seventh (7th) revision to previously approved DSP-099044. This revision is to construct a 5,030 square foot Chick-fil-A restaurant with a drive-through service.⁴ The Applicant concedes that the TDDP **does not permit** eating and drinking establishments with a drive-through service but avers that "drive-throughs" **are not prohibited** in the TDDP. Specifically, the Applicant contends that Planning Board erred because—in approving the amendment without a drive-through service—it cannot conclude that

⁴ The original Detailed Site Plan, DSP-99044, and companion cases were reviewed and approved by the District Council on July 10, 2001. The original DSP was designed for Phase I of the redevelopment of the mall and included the renovation of one of an existing pad site as an Outback Steakhouse, a portion of the streetscape improvements along East-West Highway in front of Outback Steakhouse, and the redesign of the area around the east end of the shopping center. DSP-99044/01 was for the purpose of constructing a new anchor store (Target) and the addition of two tenants at the rear of the shopping center. The Planning Board granted a further amendment to Standard S8 in 2003, in conjunction with DSP-99044/01. DSP-99044/02 was for the purpose of renovating the rear of the shopping mall to improve access into the center, repaving, and incorporating additional green area. DSP-99044/03 was to allow two-way traffic in an existing drive aisle that was previously utilized for one-way traffic for loading purposes. DSP-99044/04 was for the purpose of adding a restaurant pad site (Olive Garden) of 7,685 square feet. DSP-99044/05 was for modification of the rear elevation on the east end of the structure to accommodate new tenants and to remove 19 parking spaces. DSP-99044/06 was for the purpose of constructing a pad site for a sit-down restaurant (Famous Dave's) of 6,574 square feet. The approved Famous Dave's restaurant was never constructed. The subject application is in the same location as approved Famous Dave's. *See* PGCPB No. 13-127, pp. 2-3, Applicant's Appeal Letter, December 23, 2013, pp. 1-2.

a drive-through service by its very nature is contrary to the goals of the TDDP if it approved a drive-through service for a use on an adjacent property. The Applicant also contends that there are no findings in PGCPB No. 13-127 to support Planning Board's finding that the location/configuration does not support the goals of the TDDP. The Applicant further contends that because the **use** is not prohibited in the TDDP, Planning Board erred because its decision is based upon its finding that the **use** does not support the goals of the TDDP. The Applicant does not challenge Planning Board's approval of its Detailed Site Plan. Instead, it requests that Condition 1. a. be removed from PGCPB No. 13-127,⁵ and for the District Council to affirm the Planning Board's recommendation to amend the Table of Use contained in the 1998 TDDP. *See* Applicant's Appeal Letter, December 23, 2013, pp. 2-3. *See also* Applicant's Statement of Justification, p. 3, IV. PROJECT SUMMARY.

At oral argument, on October 20, 2014, the Applicant further contends that in light of *County Council of Prince George's County, Sitting as the District Council v. Zimmer Dev't*, 217 Md. App. 310, 92 A.3d 601, (2014), *cert. granted*, Sept. Term 2014, Case No. 64 (Sept. 19, 2014) (*Zimmer*), it was arbitrary, capricious, and illegal for Planning Board to impose Condition 1. a. because 1) of conflicting memoranda from Community Planning Division, 2) Planning Board approved a drive-through service in 2008 for a BB&T Bank adjacent to its property, and 3) Planning Board failed to determine whether the development conforms to the TDDP. *See* (10/20/2014, Tr.)

The City of Hyattsville opposes the proposed development, including Applicant's request for an amendment to the Table of Use of the 1998 TDDP. The City contends that an eating and

⁵ Condition 1. a., in PGCPB No. 13-127, requires revision of the site plan to remove the drive-through service window, vehicular lanes and all other plan elements associates with the feature and convert the area into parking, green space, and/or amenity space; and shift the building to the east and expand the seating to the west of the proposed building, as feasible. *See* PGCPB No. 13-127, p. 19.

drinking establishment with drive-through service is inconsistent with the pedestrian and transit oriented intent of the 1998 TDDP. *See* City of Hyattsville Letter, March 19, 2013. *See also* (10/31/2013, Tr.) and (10/20/2014, Tr.)

- Zimmer Decision Inapplicable

The central issue in *Zimmer* involved whether the District Council is vested with original versus appellate jurisdiction when reviewing a **decision** of the Planning Board in zoning cases. The Court of Special Appeals opined that the District Council is vested with appellate not original jurisdiction when reviewing a decision of the Planning Board in zoning cases. As such, the Court further opined that the District Council's appellate jurisdiction is limited; it may not second-guess or substitute its judgment for that of the Planning Board. Instead, its review of a decision of the Planning Board is to determine whether it is arbitrary, capricious, illegal or discriminatory. *See County Council of Prince George's County, Sitting as the District Council v. Zimmer Dev't*, 217 Md. App. 310, 92 A.3d 601, (2014), *cert. granted*, Sept. Term 2014, Case No. 64 (Sept. 19, 2014). *Zimmer* is inapplicable as to the subject proposal because, pursuant to § 27-548.09.01, the District Council and **not** the Planning Board is vested with sole jurisdiction to approve or disapprove all requests to amend approved Transit District development requirements. To this end, the Planning Board merely provides a **recommendation** to the District Council. *See* § 27-548.09.01. *See also* PGCPB No. 13-127; Technical Staff Report, October 16, 2013; (10/31/2013, Tr.); (10/20/2014, Tr.); *Montgomery Pres. Inc. v. Montgomery County Planning Bd.*, 424 Md. 367, 36 A.3d 419 (2012). For the reasons set forth below, even if Planning Board's findings or recommendation to the District Council is subject to a *Zimmer* standard of review, the record contains no evidence to suggest the decision of the Planning Board

in PGCPB No. 13-127, is arbitrary, capricious, illegal, or discriminatory, or any articulable evidence as to a *Zimmer* violation.⁶

○ Drive-Through Service Not Land Use

The Planning Board did not err or commit a *Zimmer* violation when it found, as it relates to a fast-food restaurant, that drive-through service by its very nature is contrary to the goals of the 1998 TDDP. While we concede that an eating and drinking establishment is a potentially permitted land use in the 1998 TDDP, we further agree that the Table of Uses within Table 16 does not permit an Eating and Drinking Establishment (fast-food restaurant) **with a drive-through service** within Table 16 of the TDOZMA. As plainly stated within §27-548.01.14 of the Zoning Ordinance, that a fast-food restaurant is only permitted when within a wholly-enclosed shopping mall, or a department, variety, or drug store; within an office building; or within a hotel; or accessory to, and as an integral part of, an allowed recreational facility. It is also undisputed that, a drive-through service, in standalone fashion, is not a permitted land use in the Commercial Shopping Center (C-S-C) Zone within the 1998 TDDP. It is unambiguous that the 1998 *Prince George's Plaza Transit District Development Plan and Transit District Overlay Zone* emphasizes and, where possible, supports the need for reduction of emissions and the reduction of Single Occupant Vehicles in regards to certain permitted land uses within the commercial shopping center zone. See 1998 TDDP/TDOZMA, Table 16, pp. 134-35, *infra*.

⁶ *Zimmer* neither defines nor establishes a test establishing what constitutes an arbitrary, capricious, discriminatory, or illegal decision or finding. A review of Maryland administrative law cases examining the definitions of arbitrary or capricious indicates 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.” See *Harvey v. Marshall*, 389 Md. 243, 297-300, 884 A.2d 1171, 1203-06 (2005) (internal citations omitted).

○ BB&T Bank –Distinguished

Planning Board's recommendation in DSP-99044/07 does not constitute or amount to error or a *Zimmer* violation because of its prior recommendation in DSP-06030. In the 1998 TDDP, an office (bank) is a permitted land use. A bank, unlike a fast-food restaurant, is not limited to a wholly-enclosed shopping mall, or department, variety, or drug store; within an office building; within a hotel; or accessory to, and as an integral part of, an allowed recreational facility. Therefore, in the 1998 TDDP, a bank may include a drive-through service. *See also Lussier v. Md. Racing Comm'n*, 343 Md. 681, 696–97, 684 A.2d 804 (1996) (holding agency's interpretation of statute it administers will be given considerable weight); *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881 (1989) (stating that reviewing court ordinarily follows zoning agency's interpretation of its own ordinance, even if questionable; the agency's decision, favorable or unfavorable to an applicant, is presumed correct); *Marzullo v. Kahl*, 366 Md. 158, 172, 783 A.2d 169 (2001) (finding interpretation of ordinance by local zoning board is entitled to 'considerable weight'). The BB&T Bank Detailed Site Plan, DSP-06030, and request to amend the Transit District development requirements confirms the intent and purpose of the 1998 TDDP. *See* Technical Staff Report, DSP-06030, November 14, 2005. The BB&T Bank, pursuant to § 27-548.09.01, requested and, Planning Board recommended to the District Council, approval of the following amendments to the 1998 TDDP:

P106—To allow the building height to be reduced from a minimum of four stories to the proposed building height of 27 feet.

P108—To allow the request to increase the build-to line from 40 feet to 44 feet along MD 410.

P109—To allow the request to increase the build-to line from 20 feet to 38 feet along Toledo Terrace.

S8—For the purpose of creating a unified streetscape along the frontage of MD

410, the applicant is asking to reduce the width of the streetscape in accordance with the width of the streetscape provided along the adjacent plaza shopping center.

S17—For the purpose of allowing more than 33 percent of the frontage of the project, along MD 410 and Toledo Terrace to be areas of parking and vehicular circulation.

S18—For the purpose of allowing a small portion of the parking lot to extend beyond the proposed build-to line.

S23—For the purpose of allowing the wall to partially screen the front of vehicles from the view from the roadway, with the use of a wall that will extend no higher than 5.5 feet

S31—For the purpose of providing the use of trash receptacles to be located within the building and at the drive-through and ATM stations.

S33—For the purpose of allowing the fulfillment of the ten percent requirement for woodland conservation through the use of shade trees providing ten percent tree cover on the site.

S75 (same as S23)—For the purpose of allowing the wall to partially screen the front of vehicles from the view from the roadway, with the use of the wall that will extend no higher than 5.5 feet

See PGCPB No. 07-220, pp. 15-16; Technical Staff Report, DSP-06030, November 14, 2005, pp. 2-7. The BB&T proposal required no amendment to the TDDP / TDOZMA Table of Uses (1998, T. 16) for a bank **with a drive-through service** because, unlike the subject proposal, a bank is a **wholesale permitted use, by right**, within Table 16 of the TDOZMA. As such, we find no qualifications as to financial institutions within the 1998 TDDP. *See, e.g.*, 1998 TDDP, Table 16, pp. 134-35, *infra*.

- Community Planning Division Memoranda

The Applicant avers that, because Community Planning Division authored one memorandum in February 2013 that concurred with its contention that there would be few negative impacts associated with the drive-through component but subsequently changed its position in a memorandum on September 12, 2013, such change in position is evidence that

Planning Board “shopped around” for an opinion to support its desired recommendation to the District Council. *See* Applicant’s Appeal Letter, December 23, 2013, p. 3, (10/20/2014, Tr.), Community Planning Memoranda, February 13 & September 12, 2013. We further find no evidence in the record to suggest that the 2013 Community Planning Division memorandum was solicited to reach an outcome-driven recommendation by the Planning Board and, ultimately, to the District Council. In fact, DSP-99044/07 was resubmitted to the staff of the Community Planning Division for evaluation of the Applicant’s proposed architecture. *See* (10/31/2013, Tr., pp. 28-32). Moreover, prior to issuance of its Technical Staff Report in October 2013, Community Planning South filed its final memorandum, which revised its position on the Applicant’s proposed drive-through service component. This revision was not arbitrary, capricious, illegal or discriminatory because another Planning Department, a year earlier, the Transportation Planning Section, Countywide Planning Division, recommended **against** the Applicant’s drive-through service component. Specifically, the Transportation Planning Section found

The findings and recommendations outlined below are based upon staff evaluation of the submitted site plan and the ways in which the proposed development conforms to the mandatory development requirements and guidelines outlined in the TDDP. The TDOZ is a mapped zone which is superimposed over other land use zones in a designated area around a Metrorail station and which may modify certain requirements for development within those underlying zones.

The pad site and proposed use for a 5,030-square-foot eating and drinking establishment with drive-through service will not promote the use of transit facilities. The proposed use with drive-through service will not increase transit service/metro ridership or decrease the use of the surrounding road network. It is not conducive to transit service but is designed to accommodate and increase automobile usage via its drive-through service. For these reasons the Planning Board does not support the proposed use with drive-through service in the TDOZ or adding eating and drinking

establishments with drive-through service to the table of uses found in Section 27-548-09.01 of the Zoning Ordinance. The site plan should be revised to reflect the proposed use without drive-through service.

In summary, the Transportation Planning Section determines that the site pad should be revised and that eating and drinking establishments with drive through service should not be added to the table of uses allowed within the TDDP.

See Transportation Planning Section, Countywide Planning Division, Memorandum, September 14, 2012. In light of the record, Community Planning Division revised September 2013 memorandum was not impulsive or random, instead it was reasonable and rationally motivated because another Planning Department division a year earlier recommended **against** the Applicant's drive-through service component. Even if the revised September Community Planning memorandum constituted a *Zimmer* violation, the District Council is not bound by that recommendation, nor is it bound by the recommendation in the February 2013 Community Planning memorandum, but it may choose to accept the recommendation of the Transportation Planning Section, which recommended **against** the Applicant's drive-through service component. *See Richmond Corp. v. Board of County Commissioners*, 254 Md. 244, 255 A.2d 398, 408 (1969) (finding District Council not bound by opinions of Planning Commission or Department of Inspection and Permits as to certain uses and whether said uses harmonize with purpose and intent of the General Plan).

- Conformance of Proposed Development to the TDDP

The Applicant avers, without specificity, that Planning Board's recommendation to the District Council is illegal because the Board failed to determine whether the development conforms to the 1998 TDDP. *See* (10/20/2014, Tr.) Applicant's contention is without factual or legal merit. The Planning Board, with specificity, determined the development's conformance to

the 1998 TDDP—without the drive-through service—which the District Council adopts and incorporates as if fully restated herein. *See* PGCPB No. 13-127, pp. 5-21. *See and compare also* Applicant's Statement of Justification, pp. 3-9.

The 1998 TDDP & TDOZMA

The 1998 TDOZMA is a mapped zone, which is superimposed over other land use zones in a designated area around a Metro station, and which may modify certain requirements for development within those underlying zones. Central to our review of the Applicant's request, and pursuant to the prescriptions of § 27-548.09.01, this proposal seeks to amend or change the table of uses contained in the 1998 TDOZMA, specifically Table 16 for Subarea 11, which is reproduced, in pertinent part, as follows:

**TABLE 16
PERMITTED USES
SUBAREAS 4, 6, 7, 9, 10A, 11, AND 13B
PRINCE GEORGE'S PLAZA TRANSIT DISTRICT**

LAND USE	SUBAREA NUMBER AND ZONE						
	4	6	7	9	10A	11	13B
	C-S-C	C-S-C	C-S-C	C-S-C	C-S-C	C-S-C	C-O
(1) COMMERCIAL							
(A) Eating and Drinking Establishments:							
Fast-Food Restaurant:							
(i) Within a wholly-enclosed shopping mall, or department, variety or drug store	P	P	P	P	P	P	X
(ii) Within an office building	P	P	P	P	P	P	PA
(iii) Within a hotel	PA	PA	PA	PA	PA	PA	X
(iv) Accessory to, and as an integral part of, an allowed recreational facility	P	P	P	P	P	P	P
Other than a drive-in or fast-food restaurant (which may include incidental carry-out service, except where specifically prohibited):							
(i) Permitted no entertainment (of any sort) other than music, and no patron dancing	P	P	P	P	P	P	P
(ii) Within an office building	P	P	P	P	P	P	P
(iii) Accessory to an allowed use	P	P	P	P	P	P	X
(B) Vehicle, Mobile Home, Camping Trailer and Boat Sales and Service							
Vehicle, part or tire store without installation facilities	P	P	P	P	P	P	X
(C) Offices:							
Banks, savings and loan association, or other savings or lending institution, other than automatic teller machine only	P	P	P	P	P	P	P

"P" indicates the use is permitted

"PA" indicates the use is permitted, subject to the following:

- (1) There shall be no entrances to the use directly from outside the building;
- (2) No signs or other evidence indicating the existence of the use shall be visible from outside the building, other than a business identification sign lettered on a window. The sign shall not exceed six (6) square feet in area; and
- (3) The use is secondary to the primary use of the building.

¹
"PA" In addition to the notes above for "PA", the use is permitted provided it is located within an office building and is not located above the ground floor; not more than 15% of the gross floor area of the building is dedicated to PA¹ uses; and not more than 3,000 square feet of gross floor area shall be allotted to any one shop.

"X" indicates the use is prohibited

If a use is not listed, it is prohibited

See 1998 TDDP / TDOZMA, Part V, Table 16, pp. 3-8, 134-35.

As reflected in Table 16, above, within Subarea 11, an eating or drinking establishment is a permitted land use in the Commercial Shopping Center Zone. Moreover, a fast-food restaurant is permitted therein only within a wholly-enclosed shopping mall, or department, variety, or drug store; within an office building; within a hotel; or accessory to, and as an integral part of, an allowed recreational facility. Also in Subarea 11, other than an automatic teller machine only, banks, savings and loan association, or other savings or lending institution are permitted in the commercial shopping center zone.

In 2010, the Council enacted legislation to revise the Zoning Ordinance to define an eating or drinking establishment as “an establishment that provides food or beverages for consumption on or off premise, which may⁷ be developed freestanding, on a pad site or attached to another building, or located within another building or located within a group of buildings, which may include a drive-through service, carryout, outdoor eating, music of any kind, patron dancing, or entertainment, excluding adult entertainment uses.” See §27-107.01 (81.2); (CB-46-2010); (CB-56-2011) (emphasis added).

Additionally, the 1994 *Master Plan for Planning Area 68* addresses the Prince George’s Plaza Transit District as follows:

Designed to promote coordinated and integrated development schemes around Metro stations, the Transit District Development Plans provide the requirements for developing land within a specific transit district. This linkage between land use and transit is designed to achieve an efficient pattern of development that

⁷ See §27-108.01. Interpretations and rules of construction.

(10) The word “**approve**” includes “**approve with conditions, modifications, or amendments**.”

(19) The words “shall,” “must,” “may only” or “may not” are always mandatory and not discretionary. **The word “may” is permissive** (emphasis added).

See also *Board of Physician Quality v. Mullan*, 381 Md. 157, 166, 848 A.2d 642, 648 (2004); *State v. Green*, 367 Md. 61, 82, 785 A.2d 1275, 1287 (2001); *Brodsky v. Brodsky*, 319 Md. 92, 98, 570 A.2d 1235, 1237 (1990) (“May” is generally interpreted as permissive, in contrast with “shall,” which is interpreted as mandatory).

supports the regional transit system and makes significant progress toward reducing traffic congestions.

The 1998 TDDP also reveals a multipronged blueprint composed of seven general elements: 1) Urban Design, 2) Environment, 3) Transportation, 3) Public Facilities, 4) Economic Development, and 5) Trails, and Parks and Recreation, as follows:

Urban Design

- Create a pedestrian-friendly environment and minimize views of parking areas.
- Encourage the use of structured parking and discourage huge expanses of surface parking.
- Link existing residential neighborhoods to the Metro and other uses with a strong pedestrian network.

Environment

- Minimizing the negative impacts of development.

Transportation

- Ensure that all new development or redevelopment in the transit district is coordinated in a fashion that:
 - Provides for adequate levels of transportation and transit operating and service efficiency.
 - Ideally produces a net revenue increase for the County.
 - Is based on transportation and transit policies that seek to increase protection of County environmental assets and resources.

Economic Development

- Maximize the function of the station facility as a transit transfer point, employment destination and off-peak shopping center.
- Encourage evening usage of the area.
- Promote the development of service-oriented businesses which will support the large existing daytime population and encourage metro ridership.

Trails

- Have pedestrian/multiuse trails and bikeways viewed seriously as a viable transportation mode that can provide a low-cost, energy-efficient and environmentally safe alternative to the single-occupant vehicle (SOV).
- Have in place a uniform, totally connected, continuous trail and bikeway network with access to and from all neighborhoods and communities for all aspects of the living environment, office, shopping, schools, transit, parks and bus stops.
- To achieve, with the recommended trails and bikeway infrastructure in place, a goal that at least 5 percent of the transit district workers and/or persons accessing Metro will use bicycles and walking as alternative transportation modes.

See 1998 TDDP, pp. 11, 14-15.

In turn, within Part III of the Transit District Development Plan, the seven elements outlined above are developed in further detail as to its specific purposes, land use policy, and regulatory requirements for development within the Transit District, as shown below:

Urban Design

The following design goals are provided to help achieve and overall design character throughout the Prince George's Plaza Transit District:

- Create a pedestrian-friendly environment and minimize views of parking areas.
- Encourage the use of structured parking and discourage huge expanses of surface parking.
- Link existing residential neighborhoods to the Metro station and other uses with a strong pedestrian network.

Parking and Loading

Parking lots should not dominate the frontage of pedestrian-oriented streets or interrupt pedestrian routes. Large expanses of surface parking detract from the pedestrian emphasis of the transit district and dedicate valuable land close to the transit system to non-Metro rider generating uses.

Transportation and Parking

The 1998 TDDP is designed to promote coordinated and integrated development within the boundaries of the transit district and to capitalize on the metro system. The underlying planning assumption is that demand on transportation facilities in the transit district should be governed by the proximity of the regional rapid transit rail system. This, in turn, should facilitate a reduction of peak hour single-occupant vehicle (SOV) trips by maximizing transit use, promoting transit-oriented land uses and encourage pedestrian mobility.

With the implementation of this plan, transportation facilities in the transit district should improve mobility, increase accessibility to other major activity centers within the County and the region, and capitalize on the regional rapid transit rail system by maximizing rail ridership and attracting and optimizing transit oriented development.

Goal

- To ensure coherent and coordinated development, or redevelopment, in the transit district that:
 - Provides for adequate transportation operations and transit service efficiency.
 - Ideally, produces a net revenue increase for the County.
 - Is based on transportation and transit policies that protect County environmental assets and resources.

Objectives

- Enhance transit service to satisfy a wider range of local and community mobility needs.
- Modify the highway system to improve the flow of traffic within and through the transit district and the surrounding area.
- Promote alternatives to SOV use, such as trip reduction policies, ridesharing, priority and market-rate pricing of parking, and other types of transportation demand management, to reduce peak hour traffic congestion.

- All development approved for the transit district will include trip reduction measures (TRMs), such as promoting walking to work, enhancing existing bus service, increasing mass transit use and encouraging vanpools/carpools, that reduce the number of peak hour SOV trips to preserve the adequacy of transportation facilities in the transit district.

Adequacy Determination Process for Transportation Impacts in the Transit District

The primary constraint to development within the transit district is vehicular traffic congestion, particularly the congestion caused by SOV trips that can be combined or converted to trips taken on the available transit service in the district.

One method for relieving congestion is to reduce the number of vehicle trips, particularly SOV trips, to and from the transit district. As such, the TDDP addresses transportation adequacy by managing the parking supply in the transit district with the following incentives to reduce SOV trips:

Environment

- Air Quality

The transit district is classified as a nonattainment area, or an area not meeting National Air Quality Standards for ozone pollution. Ozone (O³) is a toxic gas formed in the atmosphere when intense sunlight reacts with nitrogen oxides (mostly from automobiles) and volatile organic compounds (from paints, inks, solvents and gasoline).

Implementation of requirements set forth in this TDDP will have a positive impact on ozone levels. Concentrating development near the Metro station, encouraging transit ridership and prohibiting uses that promote ozone pollution will aid the region in reaching attainment levels.

Public Facilities

- Pedestrian/Bicycle/Multiuse Trail Network

Projected increases in vehicular traffic from continuing commercial and residential growth call for a more balanced approach to the metropolitan area's existing and planned transportation facilities. Bicycling is energy efficient, economical and healthy for the use, and, most importantly, encourages better use of the existing transportation network by minimally impacting physical surroundings as well as government budgets. Bicycle and pedestrian transportation modes, either alone or combined with mass transit modes, are cost effective and viable alternatives to the increasing use of the automobile.

In accordance with the transportation element, the following goals, objectives and recommendations are presented to encourage and provide an alternative mode of pedestrian/bicycle travel:

Goals

- To have pedestrian/multiuse trails and bikeways viewed seriously as a viable transportation mode that can provide a low-cost, energy-efficient and environmentally safe alternative to the SOV.
- To have in place a uniform, totally connected, continuous trail and bikeway network with access opportunity to and from all neighborhoods and communities for all aspects of the living environment, including offices, shopping, schools, transit, parks and bus stops.
- To achieve, with the recommended trails and bikeway infrastructure in place, a goal that at least 5 percent of the transit district workers and/or persons accessing Metro will use bicycles and walking as alternative transportation modes.

See 1998 TDDP, pp. 28-29, 39-40, 44-45, 56-57, 71, 77-81.

The 1998 TDDP further emphasizes the importance of pedestrian access and circulation and identifies the public rights-of-way as the location of the primary pedestrian system and focus

of pedestrian connectivity. Comparing the pad site and proposed 5,030 square-foot Chick-fil-A development **with drive-through service** in the southwestern corner of the Prince George's Plaza parking lot with frontage on East-West Highway (MD 410)—Slide 3 of 16 (Site Vicinity Map), Slide 4 of 16 (Zoning Map), Slide 5 of 16 (Overlay Map), Slide 6 of 16 (Aerial Map), Slide 7 of 16 (Site Map), Slide 8 of 16 (Master Plan Right-of-Way Map), Slide 9 of 16 (Bird's Eye View Map), Slide 10 of 16 (Rendered Landscape Plan), Slides 11 and 12 of 16 (Architectural Elevations), and Slides 13 and 14 of 16 (Perspective Images)—and Figure 1 (Location of Prince George's Plaza Transit District), Figure 2 (Properties Located Within The Prince George's Plaza Transit District), Figure 3 (The Metrorail System), Figure 4 (Existing Land Uses), and Figure 5 (Underlying Zoning)—with the purposes and recommendations for the transit district in the 1998 TDDP, the proposed **drive-through service** of the proposed development does not conform with the 1998 TDDP.

Based on the administrative record, we find that the proposed Chick-fil-A **with drive-through service** will promote and increase automobile usage within the Transit District. The drive-through service component of the Chick-fil-A will promote and encourage an increase in single-occupant vehicle (SOV) trips in the Transit District, because approximately 50 or 60 percent of its customers use their cars to visit the establishment. *See* (10/31/2013, Tr., pp. 35-36) Even if the percentage of Chick-fil-A customers was less consequential, a drive-through service component does not facilitate the objectives of the TDDP because it does not improve the flow of traffic within and through the transit district and surrounding area. At the time of adoption of the 1998 TDDP, the traffic standards for the intersection nearest the development proposal was at a Level of Service (LOS) "E." The 1998 TDDP describes traffic conditions for LOS "E" as

“Represents operating conditions at or near the capacity level. All speeds are reduced to a low but relatively uniform value. Freedom to maneuver within the traffic stream is extremely difficult. Maneuvers are accomplished by forcing a vehicle or pedestrian to ‘give way.’ Operations at this level are usually unstable because small increases in flow or minor perturbations within the traffic stream will cause breakdowns. Average signal delay at intersections is less than 60 seconds.

See 1998 TDDP, p. 51, Table 2, Levels of Service and Critical Lane Volume Definitions.

The Applicant indicated in the record that Chick-fil-A is a nationally recognized restaurant chain that does not have a location within a 10-mile radius of the Transit District site, and as proposed, it is intended to provide an additional dining option to the surrounding residential communities. *See* Applicant’s Statement of Justification, pp. 3-4. A Chick-fil-A **with a drive-through service** component is not a development that includes trip reduction measures. To the contrary, we find that a drive-through service component is intended to attract customers in automobiles for fast, quick, and convenient service. As such, a drive-through service component at this site will increase peak hour SOV trips, especially if the proposed development is intended to serve surrounding residential communities. Even though the Applicant’s reconfiguration of the drive-through service component was better than its initial proposal, questions remain as to the relationship of the pick-up window and departure area to the drive aisle along the rear side of the building. Traffic leaving the pick-up window comes to a T-intersection with a drive aisle and parking lot planting island after less than 40 feet of travel, which does not minimize vehicle and pedestrian conflicts. *See* Slides 13 and 14 of 16 (Perspective Images), Community Planning Memorandum, September 12, 2013, pp. 3-4. Additionally, the proposed drive-through and double lanes are located directly adjacent to the pedestrian zone along East-West Highway. While a low wall would exist between the drive-through and the pedestrian zone, exhaust and lighting associated with drive-through and queuing lane, which is only 12 feet from

the existing sidewalk, would provide negative impacts to the pedestrian realm. *See* PGCPB No. 13-127, pp. 3-4.

Drive-through service traffic queuing and departing from the site of the proposed Chick-fil-A will not have a positive impact on the ozone levels for Subarea 11, which is within a transit district classified as a nonattainment area or an area not meeting National Air Quality Standards for ozone pollution. Ozone (O³) is a toxic gas formed in the atmosphere when intense sunlight reacts with nitrogen oxides (mostly from automobiles) and volatile organic compounds (from paints, inks, solvents and gasoline). By contrast, we further find that the Chick-fil-A **without a drive-through service** will have a positive impact on ozone levels because it will concentrate development near the Metro station, encourage transit ridership and restrict or prohibit uses that promote ozone pollution and will aid the region in reaching attainment levels. Therefore, an amendment to the table of uses with modification to delete the drive-through service will promote the purposes and goals of the 1998 TDDP. *See* 1998 TDDP, pp. 14-15, 28-29, 39-40, 44-45, 56-57, 71, 77-81. *See also* Community Planning Division Memorandum, September 12, 2013, Transportation Planning Section Memorandum, September 14, 2012.

In the fifteen years since the adoption of the 1998 TDDP, there have been significant development activities—*i.e.*, variety of retail and multifamily uses in the C-S-C, C-O, M-X-T, and R-18 zones—that compound the demand on the transportation infrastructure in the area. It is imperative to effectuate all recommendations within the District Plan to improve congestion and alleviate pollution in the Transit District. To this end, the proposed drive-through service component is not consistent with the goals and objectives of the 1998 TDDP to 1) optimize transit and pedestrian oriented development, 2) provide for adequate transportation operations

and transit service efficiency, 3) promote alternatives to SOV use and reduction of traffic congestion.

According to the Court of Appeals, when statutes link planning and zoning, Master Plans are elevated to the level of true regulatory devices. *HNS Dev., LLC v. People's Counsel for Balt. County*, 425 Md. 436, 42 A.3d 12 (2012), citing *Mayor & City Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 814 A.2d 469, (2002). The Court also held that plans that do not conform to the Master Plan must be rejected, and nonconformance may serve as an independent basis of denial. *Id.*, citing *Maryland-National Capital Park & Planning Commission v. Greater Baden-Aquasco Citizens Association*, 412 Md. 73, 985 A.2d 1160 (2009); *Coffey v. Maryland-National Capital Park & Planning Commission*, 293 Md. 24, 441 A.2d 1041 (1982). One of the purposes of the County's Zoning Ordinance is to implement the Master Plan, and a general purpose of a detailed site plan is 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. See §§27-201(a)(2) and 27-281(b)(1)(A). These provisions of the Zoning Ordinance link planning and zoning and, as such, serve to elevate the 1994 *Master Plan for Planning Area 68* and 1998 TDDP as true regulatory devices. For the reasons stated above, we conclude that DSP-99044/07 **with a drive-through service** does not conform to the 1994 *Master Plan for Planning Area 68* and the 1998 TDDP.

Instead of rejecting DSP-99044/07 in its entirety, as it does not conform to the 1994 *Master Plan for Planning Area 68* and the 1998 TDDP, the application to amend the Table of Uses of the 1998 TDDP is APPROVED IN PART, and DISAPPROVED IN PART. The application to amend the Table of Uses of the 1998 TDDP to permit a freestanding eating and drinking establishment or Chick-fil-A, in the Commercial Shopping Center (C-S-C) and Transit

District Overlay (T-D-O) Zones, located in Planning Area 68, Council District 2, is APPROVED, BUT DISAPPROVED as to the drive-through service, as recommended in PGCPB No. 13-127. The site plan, DSP-99045/07, is APPROVED subject to the conditions in PGCPB No. 13-127.⁸

DSP-99045/07 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 plan to remove the drive-through service window, vehicular lanes and all other plan elements associated with the feature and convert the area into parking, green space, and/or amenity space; and shift the building to the east and expand the seating area to the west of the proposed building, as feasible.
 - b. Revise the sign plan to reflect the elimination of the drive-through, menu boards, and directional drive-through signage.
 - c. The following revisions or additional information shall be provided regarding the architectural proposal:
 - (1) Provide additional information/clarification regarding the final appearance and materials of the wood-like wall features.
 - (2) Provide additional brick detailing and articulation, via modification to brick patterns, colors, and/or architectural

⁸ The Planning Board, in approving a Detailed Site Plan, is required to find that the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make these findings, the Planning Board may disapprove the Plan. *See* Section 27-285(b) of the Zoning Ordinance. The District 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 final decision in writing, stating the reasons for its action. *See* Section 27-290(d)(e) of the Zoning Ordinance and Section 25-210 of the Land Use Article. In approving DSP-99044/07, and pursuant to Section 27-290(d) of the Zoning Ordinance, the District Council makes the same findings as the Planning Board in Resolution PGCPB No. 13-127. This final decision to approve DSP-99044/07, adopts and incorporates, as is fully restated herein, the required findings and conclusions of the Planning Board, set forth in Section 27-285(b) of the Zoning Ordinance, as embodied in PGCPB No. 13-127.

treatments to provide visual interest along all elevations with specific emphasis on the south elevation facing East-West Highway.

- d. Indicate the correct gross tract area of Parcel A-1 in the general notes located on the coversheet.
- e. Revise the sign plan to indicate that the flag pole shall not exceed a height of 25 feet.
- f. Label the height and dimensions of the proposed dumpster enclosure; and provide details and specifications for review and approval by the Urban Design Section.
- g. Provide details and specifications of specialty paving for the sidewalks around the building, at major entrances, and within the outdoor seating areas, compatible in design and color to the sidewalk within the streetscape of East-West Highway.
- h. Provide an enlarged plan (at one inch equals ten feet) of the outdoor seating area that indicates the layout of specialty paving, outdoor furniture, the proposed trellis, and landscaping within and immediately surrounding the area. Details and specifications of outdoor furniture and the trellis shall be provided.
- i. Identify the locations of outdoor trash receptacles and include details and specifications of their design.
- j. Provide an attractive screen wall between the proposed loading space and East-West Highway to meet the requirements of Section 4.4 of the 2010 *Prince George's County Landscape Manual*. The loading space shall be relocated and the screen wall shall be designed as an extension of the building.
- k. Provide a plan note that indicates the details of the granted departure from Section 4.7 of the 1990 *Prince George's County Landscape Manual*. Notes incorrectly indicating an exemption from Section 4.7 of the 2010 *Prince George's County Landscape Manual* shall be removed.
- l. Revise the plant schedule to designate which plants are native species.

- m. Provide a plan note that indicates the applicant's intent to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.
 - n. 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.
 - o. Provide a sidewalk around one or both sides of the building.
2. Prior to approval of use and occupancy permits for the proposed Chick-fil-A the applicant shall submit a certificate of landscape maintenance in accordance with Section 1.7 indicating that all dead, diseased, or otherwise absent shrubs and shade trees that are required along the East-West Highway frontage of Prince George's Plaza have been provided or have been replaced.

Ordered this 28th day of October, 2014, by the following vote:

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

Opposed:

Abstained:

Absent: Council Member Olson

Vote: 8-0

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