



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
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PGCPB No. 2020-152(A)

File No. DSP-20006

A M E N D E D R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board is charged with the approval of Detailed Site Plans pursuant to Part 3, Division 9 of the Zoning Ordinance of the Prince George's County Code; and

WHEREAS, in consideration of evidence presented at a public hearing on October 29, 2020, regarding Detailed Site Plan DSP-20006 for Checkers Laurel, the Planning Board ~~*[finds:]~~ approved DSP-20006 on October 29, 2020, and adopted PGCPB Resolution No. 2020-152 on November 19, 2020, formalizing the approval; and

*WHEREAS, on January 25, 2021, the District Council elected to review this application. The District Council held oral arguments on the case on March 22, 2021 and voted to remand it to the Planning Board to reopen the record and take further testimony or evidence on five specific issues; and

*WHEREAS, in consideration of the written evidence and testimony presented by the applicant at a public hearing on May 20, 2021, regarding the remand of Detailed Site Plan DSP-20006 Checkers Laurel, the Planning Board finds:

- 1. Request:** The subject detailed site plan (DSP) requests approval for the development of a 1,170-square-foot eating and drinking establishment with drive-through service, specifically a Checkers.
- 2. Development Data Summary:**

	EXISTING	APPROVED
Zone	C-S-C/R-55	C-S-C/R-55
Use(s)	Vacant	Eating and drinking establishment with drive-through service
Gross Acreage	0.84	0.84
C-S-C Zone	0.67	0.67
R-55 Zone	0.17	0.17
Total Gross Floor Area (GFA)	0 sq. ft.	1,170 sq. ft.

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OTHER DEVELOPMENT DATA

Parking Spaces

	Required	Provided
24 outdoor seats @ 1 space/ 3 seats*	8	12
+1 seat of 50 sq. ft. of GFA (excluding any area used exclusively for storage or patron seating, and any exterior patron service area)	4	
Handicap-Accessible**	2	2
Total Parking**	12	12

Note: *As discussed in Finding 6, outdoor seating for 24 patrons is provided.

**Total required and provided parking includes accessible and van-accessible spaces.

Loading Spaces

In accordance with Section 27-582(a) of the Prince George's County Zoning Ordinance, as the proposed development includes less than 2,000 square feet of gross floor area, no loading spaces are required.

- Location:** The subject property is located on the east side of US 1 (Baltimore Avenue), approximately 400 feet north of its intersection with Mulberry Street. Further, the property is located within Council District 01, and Planning Area 62.
- Surrounding Uses:** The subject property is bounded to the north by a medical urgent care facility, approved by DSP-14016, in the Commercial Shopping Center (C-S-C) Zone, and a single-family dwelling in the Light Industrial Zone; to the east by vacant land in the One-Family Detached Residential (R-55) Zone and the right-of-way of Magnolia Street; to the south by a single eating and drinking establishment in the C-S-C and R-55 Zones; and to the west by the right-of-way of Baltimore Avenue, with commercial development within the City of Laurel beyond.
- Previous Approvals:** The site is the subject of a previous Zoning Map Amendment A-9908-C, which was approved by the District Council on February 6, 1996, and an approved Stormwater Management (SWM) Concept Plan 15567-2019-00.

The property, Lot 23, is the subject of a record plat at Plat Book SJH243, Plat No. 3, and shares a 22-foot-wide private access easement with the lot to the north, Lot 22, containing the urgent care facility. Per Section 24-111(c)(4) of the Prince George's County Subdivision Regulations,

the development of less than 5,000 square feet of gross floor area does not require a preliminary plan of subdivision.

The Nazario Family, LLC is the property owner of the subject site for DSP-20006. The Circuit Court for Prince George's County, in Case No. CAE 16-10213, granted Nazario Family, LLC's motion for summary judgment in its favor, quieting title to the unclaimed portion of the right-of-way adjoining the property owned by the Nuzback Kathryn A. Revocable Trust, and concluding that Nazario Family, LLC acquired that portion of the right-of-way through adverse possession. The Court of Special Appeals, in Case No. 1323, September Term, 2017, affirmed the circuit court's judgment. The area shown for Lot 23 on the DSP includes this additional property area.

6. **Design Features:** The subject 0.84-acre lot was developed with an eating and drinking establishment (Bay and Surf Restaurant), which was razed in approximately 2013. The existing site is vacant and primarily covered with pavement and turf. The lot is an unusual shape, with a larger rectangular area fronting on Baltimore Avenue and extending eastward to Magnolia Street, and a smaller rectangular section, which contains the R-55-zoned portion, on the east side of the site that extends northward from its frontage on Magnolia Street.

The subject DSP proposes the development of a Checkers eating and drinking establishment, with drive-through service, in the C-S-C-zoned western portion of the site and an associated SWM facility in the eastern, R-55-zoned section of the property. Access to the site will be provided by an existing 22-foot-wide, private driveway, shared with the abutting urgent care facility to the north, from Baltimore Avenue. The Checkers building will be 1,170 square feet in gross floor area and a single story in elevation. Two outdoor eating areas are shown, one directly east of the building, and a second to the north. The DSP shows seating for a total of 32 patrons (8 tables with 4 seats each), but the parking schedule only provides parking spaces for 24 seats. This discrepancy was discussed with the applicant's representative who confirmed plans should include 24 seats. A condition has been included herein for this to be corrected. Twelve parking spaces are provided in two bays, one along the shared driveway closest to the restaurant and a second, smaller parking area located slightly further to the east. Parking calculations require minor corrections, for which a condition has been included herein. Two drive-through service lanes are provided flanking the northern and southern facades of the restaurant. A two-lane entrance to the drive-through is located northeast of the building, and a single, combined egress point to its northwest. Site circulation for vehicles and pedestrians is acceptable. Bicycle racks and a trash enclosure are provided, and the photometric plan shows that adequate lighting is provided for all active areas of the site, with off-site impacts minimized.

Architecture

The 1,170-square-foot Checkers restaurant is proposed to be approximately 15 feet in height, 55 feet in length, and 19 feet wide. The building will front on Baltimore Avenue. Facades of the building will be faced with a combination of fiber cement panels and exterior insulation and finish system (EIFS) in red, white, and gray, with black and white checkerboard patterned accent walls. All patron service will be exterior to the building through the two drive-throughs on the northern and southern elevations and the walk-up windows on the western façade. Two outdoor

dining spaces are provided. There is no indoor dining area, but exterior-accessed restrooms are included. Fenestration is limited to patron service windows, which is typical of the Checkers brand. While more fenestration is usually required for restaurants providing indoor dining space, this design places dining areas and patron services exterior to the building. As such, the limited fenestration provided in this case is acceptable.

Signage

The DSP includes a single freestanding monument sign along Baltimore Avenue, three building-mounted signs on the west, north and south elevations, and multiple small directional signs. Building mounted signs are each approximately 29 square feet in area and share the same red oval design. The Planning Board finds that the building mounted signage conforms with the requirements of Section 27-613 of the Zoning Ordinance. The freestanding monument sign does not conform with the requirements of Section 27-614 of the Zoning Ordinance, as the sign area shown is in excess of the acceptable limit and it is located too close to Baltimore Avenue. A condition has been included herein for the freestanding monument sign location and size to be adjusted to conform with the requirements of Section 27-614.

COMPLIANCE WITH EVALUATION CRITERIA

7. **Prince George's County Zoning Ordinance:** The DSP application has been reviewed for compliance with the requirements of the C-S-C and R-55 Zones of the Zoning Ordinance:
 - a. The DSP locates the entire proposed commercial use in the C-S-C-zoned portion of the site. Development in the R-55-zoned area is limited to the installation of a SWM system. No buildings or structures are proposed within the R-55 Zone. In accordance with the commercial use table in Section 27-461(b) of the Zoning Ordinance, an eating or drinking establishment with drive-through service is a permitted use in the C-S-C Zone, subject to Footnote 24, which requires DSP approval, in accordance with Part 3, Division 9 of the Zoning Ordinance.
 - b. The DSP is in conformance with the C-S-C Zone development regulations contained in Section 27-462 of the Zoning Ordinance, including all setback requirements.
 - c. The DSP is in conformance with the applicable site design guidelines contained in Section 27-274 of the Zoning Ordinance, as cross-referenced in Section 27-283 of the Zoning Ordinance. For example, the subject development provides pedestrian access to the site from the public right-of-way, and the architecture proposed for the buildings employ a variety of architectural features and designs, such as projections, colors, and materials.
8. **Basic Plan A-9908-C:** The District Council approved A-9908-C on February 6, 1996, to rezone a portion of the subject site from R-55 to C-S-C, subject to three conditions as follows:

1. **The applicant shall obtain detailed site plan approval in accordance with Part 3, Division 9 of the Zoning Ordinance in order to address the following:**
 - a. **Use and/or redevelopment of the site shall be strictly oriented to U.S. Route 1.**
 - b. **No access to the site shall be provided from improved Magnolia Street (east of the barrier).**
 - c. **Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.**
 - d. **The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January 1994, if feasible.**

The DSP shows the Checkers building oriented toward Baltimore Avenue, with no access provided to Magnolia Street. Appropriate screening is provided in accordance with the Landscape Manual. Preservation of the large tree referenced by Condition 1.d. was determined to not be feasible, however, the applicant plans to preserve several other large existing trees in the same vicinity of the site, as well as add new trees.

2. **Prior to the issuance of building permits, a Technical Stormwater Management Plan shall be approved by the Department of Environmental Resources Watershed Protection Branch for any improvement which increases impervious surfaces.**
3. **A soils report shall be submitted to the Natural Resources Division prior to building permit issuance addressing drainage and stability with regard to footing design.**

The Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) issued SWM Concept Approval Plan 15567-2019-00 in December 2019 for the proposed Checkers development. In addition, the applicant has indicated that a soils report shall be submitted prior to the issuance of building permits.

9. **2010 Prince George's County Landscape Manual:** Development proposed by this DSP is subject to Section 4.2, Requirements for Landscape Strips Along Streets; Section 4.3, Parking Lot Requirements; Section 4.4, Screening Requirements; Section 4.7 Buffering Incompatible Uses and Section 4.9, Sustainable Landscaping Requirements. The Planning Board finds that the proposal conforms with the applicable requirements of the Landscape Manual, as shown on the plans, with one minor correction required. A minor correction to the landscape schedule for Section 4.2, Landscape Strips Along Streets is needed and conditioned herein.
10. **Prince George's County Woodland and Wildlife Habitat Conservation Ordinance:** This proposed project is not subject to the provisions of the Prince George's County Woodland

and Wildlife Habitat Conservation Ordinance because the property is less than 40,000 square feet in size, and it contains less than 10,000 square feet of existing woodland. A Standard Letter of Exemption, S-167-2019, was approved on November 13, 2019, and is valid through November 13, 2021. A Natural Resources Inventory Equivalency Letter was approved on November 14, 2019 and is valid through November 14, 2024. It noted that the subject property contained no regulated environmental features and that no on-site regulated environmental features would be impacted by the project.

11. **Prince George's County Tree Canopy Coverage Ordinance:** Section 25-128, Tree Canopy Coverage Requirements, requires properties in the C-S-C Zone to provide a minimum tree canopy coverage (TCC) of 10 percent. The 0.84-acre subject site is required to provide 0.08 acre (3,659 square feet) in TCC. Through the subject DSP, the applicant has shown that approximately 0.19 acre (8,411 square feet) of TCC will be provided in proposed plantings, satisfying this requirement.
12. **Further Planning Board Findings and Comments from Other Entities:** The subject application was referred to the concerned agencies and divisions. The referral comments are summarized, as follows, and are incorporated herein by reference:
 - a. **Community Planning**—The Planning Board adopts, herein by reference, a memorandum dated September 21, 2020 (Tariq to Bossi), which noted that pursuant to Section 27-290.01(b)(5) of the Zoning Ordinance, this DSP is compatible with the future land use, which is mixed use commercial delineated in the 2010 *Approved Master Plan and Sectional Map Amendment for Subregion 1 (Planning Areas 60, 61, 62, and 64)*. However, master plan conformance is not required by Part 3, Division 9 of the Zoning Ordinance.
 - b. **Trails**—The Planning Board adopts, herein by reference, a memorandum dated September 18, 2020 (Ryan to Bossi), which noted that the pedestrian and bicyclist circulation on the site is safe, efficient, and convenient, pursuant to Sections 27-283 and 27-274(a)(2) of the Zoning Ordinance, and the relevant design guidelines for transportation. The DSP is deemed acceptable from the standpoint of pedestrian and bicycle transportation.
 - c. **Transportation Planning**—The Planning Board adopts, herein by reference, a memorandum dated September 25, 2020, (Masog to Bossi), which noted the DSP for the proposed use in the C-S-C Zone has no specific transportation-related requirements and there are no traffic-related adequacy findings required. Access and circulation were found to be acceptable.
 - d. **Permits**—The Planning Board adopts, herein by reference, a memorandum dated September 9, 2020 (Bartlett to Bossi), that identified minor corrections needed to the landscape plan, parking schedule and patron seating numbers. Painted directional arrows should be added to the entrance, exit and movement areas for the drive-through service areas. Exiting the drive-throughs is designed to be one way and pavement markings

should reflect this. A condition has been included herein for the corrections to be made and pavement markings to be added to the plans.

- e. **Environmental Planning**—The Planning Board adopts, herein by reference, a memorandum dated September 10, 2020 (Juba to Bossi), which indicated that no additional environmental review issues were identified for the subject site.
 - f. **Historic Preservation**—The Planning Board adopts, herein by reference, a memorandum dated August 18, 2020 (Stabler and Smith to Bossi), which noted that the subject property does not contain and is not adjacent to any Prince George’s County historic sites or resources, and that the probability of archeological sites within the subject property is low. This proposal will not impact any historic sites, historic resources or known archeological sites.
 - g. **Prince George’s County Fire Department**—The Fire Department did not offer comments on the subject application.
 - h. **Prince George’s County Department of Permitting, Inspections and Enforcement (DPIE)**—DPIE did not offer comments on the subject application.
 - i. **Prince George’s County Police Department**—The Police Department did not offer comments on the subject application.
 - j. **Prince George’s County Health Department**—The Planning Board adopts, herein by reference, a memorandum dated September 3, 2020 (Adepoju to Bossi), which provided standard comments including the use of construction time noise and dust controls, as well as need for permitting of the food service facility.
 - k. **Maryland State Highway Association (SHA)**—The Planning Board adopts, herein by reference, an email dated September 3, 2020 (Woodroffe to Bossi), which noted that work proposed within the Baltimore Avenue right-of-way would require permitting through SHA’s District 3 Utility Office.
 - l. **Washington Suburban Sanitary Commission (WSSC)**—A WSSC did not offer comments on the subject application.
13. As required by Section 27-285(b) of the Zoning Ordinance, the DSP, if revised as conditioned, represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, of the Prince George’s County Code, without requiring unreasonable cost and without detracting substantially from the utility of the proposed development for its intended use.
14. Section 27-285(b)(4) of the Zoning Ordinance provides the following required finding for approval of a DSP:

- (4) **The plan shall demonstrate the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).**

No regulated environmental features such as streams, wetlands, 100-year floodplain, associated buffers, and primary management areas are located on-site.

- *15. **Remand Findings:** The Order of Remand was mailed out to all parties of record on March 25, 2021. Within the Order of Remand, the District Council ordered the Planning Board to reopen the record and take further testimony or evidence on five specific issues. Upon consideration of all testimony and evidence presented at the remand hearing, the Planning Board made the following additional findings and conclusions with respect to the five issues that were the subject of the remand:

1. The revised site plan's compliance with the setback requirements of the C-S-C Zone;

The setback requirements for all commercial zones are defined in Section 27-462(b), Table 1 – SETBACKS, of the Zoning Ordinance. The revised DSP shows a setback from the street of 60 feet, which exceeds the 10-foot setback requirement. Landscape buffers for the side and rear yards are required to be 30 feet wide, which is greater than the 12-foot side yard and 25-foot rear yard setbacks otherwise required by Section 27-462(b). The revised DSP shows landscape buffers of at least 40 feet in width are provided, which is more than the requirements of Section 27-462(b). Therefore, the application meets all setback requirements of the C-S-C Zone as shown on the revised site plan.

2. The revised site plan's compliance with the requirements of the 2010 Landscape Manual for incompatible uses;

The subject-property is split-zoned between the C-S-C Zone and the R-55 Zone. The eating and drinking establishment, with drive-through service, will be located entirely on the C-S-C-zoned portion. The R-55 portion of the subject property, which borders the C-S-C portion to the east and south, will contain a stormwater management (SWM) facility and landscaping. Because an eating and drinking establishment with drive-through service is not a permitted use in the R-55 Zone, the District Council concluded that the proposed Checkers does, in fact, border incompatible uses. According to the District Council, the applicant is required to revise the landscape buffers between the C-S-C and R-55 portions of its property to comply with Section 4.7 of the 2010 Prince George's County Landscape Manual (Landscape Manual), which addresses buffering incompatible uses.

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Section 4.7(c)(2)(G) of the Landscape Manual, however, provides that “[i]n the case of a lot that is located in more than one zone, the establishment of a required bufferyard is based on the platted or recorded property line(s), not the zoning lines(s).”

Incompatible use buffers are required in two locations, along a portion of the site’s southern boundary and along its eastern boundary shared with Lot 12. The revised site plan is in compliance with the Landscape Manual requirements of Section 4.7, Buffering Incompatible Uses in both locations.

The revised site plan is in compliance with the Landscape Manual requirements of Section 4.7, Buffering Incompatible Uses, which are based on the compatibility of abutting uses for the applicable portion of the site’s southern boundary. A Section 4.7 buffer is provided along the site’s southern boundary shared with the adjoining Nuzback property, which is developed with an eating and drinking establishment that is considered a medium-impact use. The proposed eating and drinking establishment with drive-through service on the subject site is considered a high-impact use. As provided by Table 4.7-2 of the Landscape Manual, a Type ‘B’ bufferyard is required between the proposed high-impact use and existing medium-impact use. A Type ‘B’ bufferyard must include a minimum building setback of 30 feet, a minimum landscaped yard of 20 feet, and installation of at least 80 plant units per 100 linear feet of property line (204 plant units required) within the bufferyard. Section 4.7 allows for a 50 percent reduction in the required quantity of plant units when a six-foot-high, sight-tight fence or wall is provided. In addition, the number of required plant units may be further reduced when existing non-invasive vegetation within the bufferyard is retained.

The Section 4.7 bufferyard provided with the revised landscape plan exceeds all minimum requirements along the applicable portion of the site’s southern boundary. A 40-foot building setback and 27-foot-wide landscape yard is provided. Minimum plant unit requirements have been exceeded as well. The landscape plans show 22 percent of the bufferyard vegetated by existing non-invasive trees and a six-foot-high, sight-tight fence is provided. With the existing vegetation and fence, the minimum number of required plantings within the bufferyard could be reduced to 79 plant units. However, the landscape plan provides 207 plant units, which exceeds the minimum quantity required, without counting reductions for the existing non-invasive vegetation and fence. The design of the bufferyard, including fence location, plant species selection, and planting locations are acceptable. All requirements of Section 4.7, Buffering Incompatible Uses, applicable to this bufferyard have been satisfied, with all minimum requirements exceeded.

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Regarding the eastern property boundary shared with Lot 12, as provided by Table 4.7-2 of the Landscape Manual, a Type 'D' bufferyard is required in this location with a 50-foot building setback and 40-foot landscaped yard planted with 160 plant units per 100 linear feet. When existing trees are in part of the buffer yard, the number of plant units required may be reduced in proportion to the percentage of the area of the buffer yard occupied by existing trees to be retained. In such areas, invasive plant species should be removed. Additionally, the plant unit requirement can be reduced by 50 percent by installation of a six-foot high, sight-tight fence.

The revised plan provides for the retention of existing trees in 42 percent of the buffer yard and provides a six-foot-high, sight-tight fence, a building setback of 251 feet, a variable width buffer yard of 17-27 feet, and installation of a total of 86 plant units (68 plant units are required). The buffer provided meets the requirements for a Type D buffer, except for the width of the landscape buffer yard. A request for Alternative Compliance, AC-21013, from the Type D buffer yard width requirement accompanied the revised DSP.

As discussed in Staff's Exhibit 2, the Alternative Compliance Committee and the Planning Director finds the alternative landscape solution will create a visual and physical separation between the commercial development and the residentially zoned Lot 12 and mitigate undesirable impacts. The stormwater management facility and the proposed bufferyard will also create a transition between the Checkers restaurant and possible future development on Lot 12. The proposed commercial development is in the center of Lot 23 in the C-S-C-zoned portion and Lot 12 is wooded, zoned R-55, and under common ownership with the subject site. Therefore, the Planning Board finds the proposed alternative landscape solution to be equally effective as normal compliance with the requirements of Section 4.7 of the Landscape Manual and approved AC-21013.

In addition, while not required to buffer incompatible uses, the landscape plan revisions also include an extension of the six-foot-high, sight-tight fence and additional plantings along the site's eastern and southern boundary of Magnolia Street. This treatment will provide for a more seamless buffer along the entire southern property boundary than previously approved. The Planning Board finds the revised Section 4.7 bufferyard and additional screening provided along Magnolia Street to be acceptable.

3. The revised site plan's inclusion of residential property to satisfy the 2010 Landscape Manual standards to serve a commercial zone or use;

The applicant's "Responses to District Council Remand" letter dated April 21, 2021 (Tedesco to Hewlett), pages 2 through 11, provides a detailed discussion that supports the location of the proposed SWM facility in the R-55 Zone portion of the subject property.

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The revised DSP and landscape plan retain the SWM facility in its originally proposed location, on the R-55 portion of the split-zoned property. On page 3 of the applicant's April 21, 2021 letter addressed to the Planning Board's Chair and Commissioners, the applicant maintains that, in accordance with applicable laws, it may locate its required stormwater management facility (a "submerged gravel wetland") on the portion of the subject site zoned R-55, a zone where the principal use is prohibited. For the following reasons, the Planning Board agrees with the applicant.

Section 27-102 provides 15 "purposes" of the Zoning Ordinance. The first, which refers to the State's "police power," provides that one of the Zoning Ordinance's purposes is to "protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County." PGCC §27-102(a)(1). In reference to the "police power," the Court of Appeals, Maryland's highest Court, has said that zoning ordinances "are in derogation of the common law right to so use private property as to realize its highest utility, and while they should be liberally construed to accomplish their plain purpose and intent,"—that is to protect the public's health, safety, and welfare—"they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language." *Trail v. Terrapin Run, LLC*, 403 Md. 523, 536 (2008), *overturned on other grounds due to legislative action; see also Gino's of Maryland, Inc. v. City of Baltimore*, 250 Md. 621, 642–43 (1968) (agreeing with the appellants' assertion that "zoning ordinances are in derogation of the common law and should be strictly construed"); *accord White v. North*, 356 Md. 31, 48 (1999); *Harford Cty. People's Couns. v. Bel Air Realty Assocs. Ltd. P'ship*, 148 Md. App. 244, 266 (2002).

The design and location of stormwater management facilities is not subject to the Zoning Ordinance. The Zoning Ordinance does not treat stormwater management facilities as a "use," which the Zoning Ordinance defines as either: "(i) The purpose for which a 'Building,' 'Structure,' or land is designed, arranged, intended, maintained, or occupied; or (ii) "Any activity, occupation, business, or operation carried on in, or on, a 'Building,' 'Structure,' or parcel of land." Therefore, it is not relevant that "stormwater management facility uses" are not listed in a "use table" for a zone, such as the residential use table provided in Section 27-441 and the commercial use table in Section 27-461. If such were the case, every one of the many stormwater management facilities installed in residential and commercial zones in the County would be in violation of the Zoning Ordinance.

The District Council, on page 5 of its Order of Remand, writes that the Zoning Ordinance requires "all structures for the use" to be "built or constructed" on the C-S-C zoned portion of the property. To the extent that pronouncement is correct, the laws, regulations, and guidelines governing stormwater management do not treat all stormwater

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management facilities as “structural,” notwithstanding the definition of “structure” set forth in Section 27-107.01(a)(228) of the Zoning Ordinance,” which reads, “Anything constructed or built.”

In Prince George’s County, stormwater management is primarily governed by Subtitle 32 of the Prince George’s County Code, not the Zoning Ordinance (Subtitle 27) or the Subdivision Regulations (Subtitle 24). In particular, Division 3 of Subtitle 32 is the Stormwater Management Ordinance. PGCC § 32-170(a). Subtitle 32 allows stormwater management facilities to be located on-site or off-site, depending on the facts and circumstances of a particular development, without regard to the property’s zoning. Additionally, there is nothing in the authorizing legislation governing local stormwater management programs, codified under Title 4, Subtitle 2 of the Environment Article of the Maryland Code, and its corresponding regulations, adopted in Title 26, Subtitle 17 of the Code of Maryland Regulations, that prohibits the proposed location of the stormwater management facilities. In fact, the State regulations mandate local governments to modify their zoning laws to ensure stormwater management facilities use “Environmental Site Design” to the “maximum extent practicable” (i.e., “ESD to the MEP”), which “means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.” Md. Code Regs. 26.17.02.02(B)(15)(a) (emphasis added). See Md. Code Regs. 26.17.02.08(B)(3) (“The use of the ESD planning techniques and treatment practices specified in this section may not conflict with existing State law or local ordinances, regulations, or policies. Counties and municipalities shall modify planning and zoning ordinances and public works codes to eliminate any impediments to implementing ESD to the MEP according to the Design Manual.”).

According to the Stormwater Management Ordinance, “[p]lanning techniques, nonstructural practices, and design methods specified in the Maryland Design Manual and the Prince George’s County Design Manual shall be used to implement ESD to the MEP.” PGCC § 32-178(a)(1). In addition, the “use of ESD planning techniques and treatment practices must be exhausted before any structural BMP is implemented.” PGCC § 32-178(a)(1). The Stormwater Management Ordinance lists “submerged gravel wetlands” as an “ESD treatment practice” and excludes it from the list of “structural stormwater management measures.” Compare PGCC § 32-179(a)(2), with PGCC § 32-179(b).

Similar to Subtitle 32, the 2000 Maryland Stormwater Design Manual Volumes I & II and the 2014 Prince George’s County Stormwater Manual do not treat “submerged gravel wetlands” as “structural”; rather, the device is characterized as a “micro-scale”

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practice. The *Maryland Design Manual* and *Prince George's County Stormwater Manual* provide the following description with respect to micro-scale practices:

Micro-scale practices are small water quality treatment devices used to capture and treat stormwater runoff from discrete impervious areas (e.g., less than one acre). These practices typically include natural systems, vegetation, and soils and may be interconnected to create a more natural drainage system. In many cases, they may resemble the larger structural practices (e.g., infiltration, filters, dry swales) described in Chapter 3. However, the design variants listed below can be distributed throughout a project to provide stormwater management at the source unlike their structural relatives that were typically used as "end-of-pipe" treatment for larger drainage areas.

Maryland Design Manual, § 5.4.3; *Prince George's County Stormwater Manual*, §10.8

One of those "design variants" is a "submerged gravel wetland," which the *Maryland Design Manual* and *Prince George's County Stormwater Manual* describe as follows:

A submerged gravel wetland is a small-scale filter using wetland plants in a rock media to provide water quality treatment. Runoff drains into the lowest elevation of the wetland, is distributed throughout the system, and discharges at the surface. Pollutant removal is achieved in a submerged gravel wetland through biological uptake from algae and bacteria growing within the filter media. Wetland plants provide additional nutrient uptake and physical and chemical treatment processes allow filtering and absorption of organic matter.

Maryland Design Manual, § 5.4.3; *Prince George's County Stormwater Manual*, §10.8.2.

In that same vein, the Court of Appeals has found the location of stormwater management facilities to be a matter of regulatory control beyond the general scope of zoning laws. Cf. *People's Counsel for Baltimore County v. Surina*, 400 Md. 662 (2007) (finding the placement of a SWM facility primarily serving land with a more intense rural-residential zone on land with a less intense rural-agricultural zone did not violate the county's zoning regulations).

The proposed SWM facility will improve stormwater management on the undeveloped site and will, therefore, promote the public's health, safety, and welfare. In addition, the Department of Permitting, Inspections, and Enforcement has issued an approval

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demonstrating compliance with the requirements under Subtitle 32. Finally, as the applicant demonstrated at the hearing, the Planning Board and its planning staff have previously interpreted the applicable laws to allow stormwater management facilities to be installed on split-zoned properties under similar circumstances. Thus, the Planning Board approves the proposed stormwater management facility on the R-55 portion of the site.

A six-foot-high, sight-tight fence and additional plantings are located between the SWM facility and Magnolia Street as screening for the facility. The Planning Board finds additional landscape screening to be an improvement to the DSP. This DSP is subject to Section 4.2, Requirements for Landscape Strips Along Streets; Section 4.3, Parking Lot Requirements; Section 4.4, Screening Requirements; Section 4.7, Buffering Incompatible Uses; and Section 4.9, Sustainable Landscaping Requirements, of the Landscape Manual. Sections 4.3 and 4.4 require planting in parking lots and screening of certain maintenance area and equipment, respectively, regardless of what zone they are located in or what use they are associated with, except for certain vehicle-related uses. Section 4.9 requires sustainable landscaping practices be incorporated as part of a site plan, regardless of the zone or use.

Section 4.2, Requirements for Landscape Strips Along Streets, of the Landscape Manual applies along abutting public or private streets for any nonresidential use in any zone and all parking lots (Landscape Manual, page 42). In addition, Section 4.7, Buffering Incompatible Uses, of the Landscape Manual specifically says the following:

“(G) In the case of a lot that is located in more than one zone, the establishment of a required bufferyard is based on the platted or recorded property line(s), not the zoning line(s).” (Landscape Manual, page 77)

Therefore, the Landscape Manual offers no impediment to using residential property to serve a commercial zone or use as the requirements apply regardless of zone or use, or apply along property lines, not zoning lines.

4. The revised site plan’s compliance with Conditions 1.c. and 1.d. in Zoning Ordinance No. 3-1996; and

The subject property, now known as Lot 23, was resubdivided pursuant to a record plat dated July 24, 2015 and recorded in Plat Book SJH 243 at Plat No. 3. Former Lots 4–11, in Block 3, of the Oak Crest Subdivision (Plat Book LIB A at Plat No. 108) were consolidated into Lots 22 and 23. The subject DSP includes Lot 23 and the area of Magnolia Street that was acquired by a quiet title action for the unclaimed portion.

*Denotes Amendment

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Condition 1.c. of Zoning Ordinance No. 3-1996 reads as follows:

Screening and buffering shall be provided for Lot 11, Block 3 and for Lots 14 through 17, Block 4 in accordance with the provisions of the Landscape Manual; a portion of Lots 8 and 9 on the subject site shall also be used for landscaping and screening.

The revised landscape plan shows enhanced screening and buffering of the previous Lot 11, Block 3 and Lots 14 through 17, Block 4. Specifically, additional plantings and a six-foot-high, sight-tight fence, have been added to increase screening for Lot 11, Block 3. A fence is now proposed along the former centerline of Magnolia Street, with evergreen trees to be installed on the south side of the fence and shrub plantings on the north side of the fence. As discussed above, under Issue 2 of the Order of Remand, this screening and buffer treatment exceeds the Type B bufferyard requirements for Section 4.7, Buffering Incompatible Uses, of the Landscape Manual. In addition, the same screening fence and planting arrangement is carried through from the incompatible use bufferyard along the remainder of the south side of the property to provide additional screening of Lots 14 through 17, Block 4. The revised landscape plan also shifts the location of the trash enclosure further north, away from these former lots, and provides additional plantings. The Planning Board finds that the revised landscape plan adequately addresses the requirement of Condition 1.c.

Condition 1.d. of Zoning Ordinance No. 3-1996 reads as follows:

The landscape plan shall also show the preservation of the large tree shown on Lot 10 of the applicant's survey of January 1994, if feasible.

The original DSP, and revised materials submitted in response to the Order of Remand, provide a discussion that indicate the large tree shown on Lot 10 of the applicant's January 1994 survey is not feasible to preserve.

The Planning Board finds that preservation of this specific tree is not feasible, as it has already been previously impacted by paving on the property, which covers a large portion of the tree's root zone. Any redevelopment of the property to remove or resurface this existing paving, in order to implement current SWM regulations, will involve a large impact to the root zone and require an unreasonable amount of protection to ensure the viability of the tree. Allowing an impacted tree such as this to remain would create a potential hazard should it die and fall onto the adjacent commercial or residential properties.

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In addition, the general area of the large tree on Lot 10 is proposed to be planted with 11 evergreen trees and 21 shrubs. While the preservation of this specific tree is not feasible, the landscape plan provides for these replacement plantings and the preservation of other large trees on the site, which is appropriate. The Planning Board finds that the revised DSP satisfactorily addresses this requirement.

5. The gross acreage and zone classifications of Lot 23, including the 25-foot-wide portion of the Magnolia Street right-of-way.

The gross acreage associated with the portions of Lot 23 in the C-S-C and R-55 Zones were adjusted on the revised site plan to include the 25-foot-wide portion of the former Magnolia Street right-of-way in the R-55 Zone. These figures are included in General Note 2 of the revised DSP and show the site area to consist of 25,705 square feet of C-S-C-zoned land and 10,885 square feet of R-55-zoned land. The inclusion of this portion of the former Magnolia Street right-of-way increased the total square footage of site area in the R-55 Zone by 3,385 square feet, with an equal decrease in square footage of site area in the C-S-C Zone. The Planning Board finds this revision meets the requirements of the Order of Remand and corrects the gross area of the site located within the two zones.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and *APPROVED Alternative Compliance AC-21013, and APPROVED Detailed Site Plan DSP-20006 for the above-described land, subject to the following condition:

1. Prior to certification, the detailed site plan (DSP) shall be revised, or additional information shall be provided, as follows:
 - a. Revise the DSP and landscape plan to show outdoor seating for 24 patrons only.
 - b. Correct the parking schedule to show 12 spaces required.
 - c. Revise the DSP to relocate the freestanding monument sign to a location at least 10 feet from the street line and correct the signage area calculations and design of the freestanding monument sign to conform with the requirements of Section 27-614 of the Prince George's County Zoning Ordinance.
 - d. Add the site's linear feet of frontage in the landscape schedule for Section 4.2, Landscape Strips Along Streets.

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- e. Add clear directional arrows to pavement at the entrance and exit of the drive-through lanes.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council of Prince George's County within thirty (30) days following the final notice of the Planning Board's decision.

* * * * *


This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Doerner, Geraldo and Hewlett voting in favor of the motion at its regular meeting held on Thursday, October 29, 2020, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 19th day of November 2020.

*This is to certify that the foregoing is a true and correct copy of the remand action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Doerner, with Commissioners Washington, Doerner, Bailey, Geraldo and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, May 20, 2021, in Upper Marlboro, Maryland. The adoption of this amended resolution based on the remand action taken does not extend the validity period.

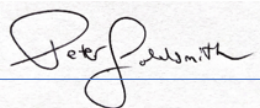
Adopted by the Prince George's County Planning Board this 17th day of June 2021.

Elizabeth M. Hewlett
Chairman

By 
Jessica Jones
Planning Board Administrator

EMH:JJ:AB:nz

APPROVED AS TO LEGAL SUFFICIENCY



M-NCPPC Legal Department
Date: June 8, 2021

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