THE PRINCE GEORGE'S COUNTY GOVERNMENT

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

RECEIVED
OCT 04 2013

October 3, 2013

RE: DSP-13009 Cafritz Property at Riverdale Park
Calvert Tract, LLC, Applicant

NOTICE OF FINAL DECISION
OF THE DISTRICT COUNCIL

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on September 30, 2013.

CERTIFICATE OF SERVICE

This is to certify that on October 3, 2013, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

Redis C. Floyd
Clerk of the Council

Case No. DSP-13009 Cafritz Property at Riverdale Park

Applicant: Calvert Tract, LLC

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

ORDER AFFIRMING PLANNING BOARD DECISION,
WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 13-63, to approve with conditions a detailed site plan for a mixed-use development including 855 multifamily units, 126 townhouses,[1] and approximately 187,277 square feet of commercial space distributed on 37.73 acres of land known as the Cafritz Property at Riverdale Park, pursuant to the Town Center Development Plan, located approximately 1,400 feet north of the intersection of Baltimore Avenue (US 1) and East-West Highway (MD 410), on the east side of Baltimore Avenue, in the Town of Riverdale Park, Council District 3, Planning Area 68, is AFFIRMED, subject to the District Council's original jurisdiction over DSP-13009 pursuant to §27-132(f)(1) and its authority to modify the decision of the Planning Board pursuant to 27-290(d) of the Zoning Ordinance.

As the basis for this action, the District Council, pursuant to §§ 27-132(f)(1), 27-290, and 27-281.01, of the Zoning Ordinance, states its findings and conclusions in Attachment A of this Order. The District Council also adopts and incorporates by reference as if fully stated herein, the findings and conclusions stated by the Planning Board in its Resolution, PGCPB No. 13-63, except as otherwise stated in Attachment A.

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[1] Pursuant to Condition 24 of this Order of Approval, herein, elimination of the seven (7) lots in the northeastern corner near the stormwater management pond adjacent to parcel "J" will reduce the total number of townhouses from 126 to 119 units.

ORDERED this 30th day of September, 2013, by the following vote:

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

Opposed:

Abstained:

Absent: Council Member Turner.

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: Andrea C. Harrison
Andrea C. Harrison, Chair

ATTEST:

Redis C. Floyd
Redis C. Floyd
Clerk of the Council

ATTACHMENT A

ORDER OF APPROVAL WITH CONDITIONS DSP-13009

PROCEDURAL HISTORY, FINDINGS, CONCLUSIONS, AND CONDITIONS

Procedural History

This case involves the 2012 rezoning of 35.71± acres of vacant property from the R-55 Zone (One-Family Detached Residential) to the M-U-TC Zone (Mixed-Use Town Center) by the District Council in Zoning Ordinance No. 11-2012, which was appealed to the Circuit Court for Prince George's County. The Circuit Court recently affirmed Zoning Ordinance No. 11-2012.[2] Calvert Tract, LLC is the applicant. The subject property and the name of the project are known as the Cafritz Property, legally described as Parcel 81, Tax Map 42, Grid D-1. The Cafritz Property is located approximately 1,400 feet north of the intersections of Baltimore Avenue (MD 410), on the east side of Baltimore Avenue, and it is within the municipal boundaries of the Town of Riverdale Park and the City of College Park. The 2012 rezoning expanded the 2004 Town of Riverdale Park Mixed-Use Town Center Zone Development Plan to include the 35.71± acres of the Cafrtiz Property for proposed commercial and residential development. *See* Zoning Ordinance No. 11-2012, PGCPB Resolution No. 12-09.

This detailed site plan application (DSP-13009) requests approval of a mixed-use development including 855 multifamily units, 126 townhouses, and approximately 187,277

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[2] Several citizens opposed the rezoning of the Cafritz Property and filed timely petitions for judicial review in the Circuit Court, case numbers: CAL12-25136 and CAL12-25243 (consolidated). Pursuant to Md. Rule 7-205, the filing of a petition for judicial review does not stay the order or action of the administrative agency, *i.e.*, the District Council adoption of Zoning Ordinance 11-2012. On September 17, 2013, the Honorable Krystal Q. Alves, of the Circuit Court for Prince George's County, in a 20-page written opinion, AFFIRMED the 2012 rezoning of the Cafritz Property. *See Jason Amster, et. al and Dr. Carol S. Nezzo, et al., v. County Council*, (September 17, 2013, Cir. Ct., J. Alves). *See also* Prince George's County Code, Subtitle 27, §27-141, (20080-09 ed., as amended) (hereinafter "§ 27-__") (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).

square feet of commercial space.[3] On June 6, 2013, the Planning Board adopted PGCPB No. 13-63, which approved DSP-13009, subject to conditions.

On June 17, 2013, the District Council, pursuant to §27-290, elected to review DSP-13009.

On July 8, 2013, the Town of University Park (Town), the City of College Park, and certain citizens, Susan Dorn, *et al.*, (Citizens), pursuant to §27-290, filed appeals to the District Council in DSP-13009. All parties requested oral argument.

On September 9, 2013, the District Council, pursuant to §27-132, and the District Council Rules of Procedure, held oral arguments, and subsequently took this matter under advisement.

On September 23, 2013, the District Council, pursuant to §27-132, referred this item to staff to prepare an order of approval with conditions.

Appeal Issues

For clarity, the Council will restate each of the appeal issues raised by the Town, the City, and Citizens as they relate to DSP-13009, and respond accordingly.

- **The Town alleges that the proposed DSP-13009 fails to meet the requirements of Zoning Ordinance No. 11-2012.[4]**

a. Condition 13 of A-10018 requires a "90-120 foot wide buffer" along the entire length of the property frontage on Baltimore Avenue. If the District Council intended to require only a minimum of 90 feet, exclusive of any required SHA right of way

[3] The applicant also filed applications for a Special Permit (SP-130002), approved, and adopted by Planning Board on June 20, 2013 (Special Permits are governed by §27.239.02, and are reviewable only by the Planning Board), in PGCPB No. 13-64, a Secondary Amendment (SA-130001), approved, and adopted by Planning Board on June 6, 2013, in PGCPB No. 13-57, and a Preliminary Plan of Subdivision (4-13002), approved, and adopted by Planning Board on May 30, 2013 in PGCPB No. 13-55.

[4] The Town also repeats verbatim appellate issues in DSP-1300 in its appeal to Secondary Amendment 130001. Our responses here, in DSP-13009, shall apply with equal force and effect to the Town's repetitive appellate issues in its appeal to Secondary Amendment 130001.

> along Route 1 as is now provided in the DSP Planning Resolution Condition 1(a)17), it would have done so. Instead, it provided a required range to complement the overall plan for this area as a transition place. Limiting the buffer to 90 feet is not consistent with Condition 13.

Response: This appeal issue is without factual or legal merit. Condition 13 of Zoning Ordinance 11-2012, states: "Prior to approval of a detailed site plan, a 90-to-120-foot-wide buffer shall be provided along the entire length of the property frontage on Baltimore Avenue that incorporates retention of existing trees to the maximum extent practicable.

The authority to impose conditions on the approval of a zoning map amendment is expressly conferred upon the Council by the Regional District Act, Land Use Article, Md. Ann. Code, §22-214 (2012). We may adopt any reasonable requirements, safeguards, and conditions that 1) may be necessary to protect surrounding properties from adverse effects that might accrue from the zoning map amendment; or 2) would further enhance the coordinated, harmonious, and systematic development of the regional district. We find, based on our review of the record that the Applicant's proposed DSP-13009 incorporates a buffer that is consistent with Condition 13 of the rezoning approval for the rezoning of the subject property imposed by Zoning Ordinance No. 11-2012. The intention of the District Council in imposing Condition 13 of Zoning Ordinance No. 11-2012 is to ensure variation in the width of the buffer area in meeting the 90-foot minimum buffer. The buffer area along the Route 1 frontage is at all points at least 90 feet from the ultimate right-of-way for Route 1 to the western boundary of the parking lots, which includes potential deceleration lanes. As such, the Applicant has met and satisfied the mandatory 90-foot buffer requirement. (5/23/13 Tr.), (5/30/13 Tr.), PGCPB No. 13-63, Technical Staff Report, 5/9/13. The intention of the District Council in imposing the 90-120 foot variable buffer is to ensure variation in the width of the buffer while meeting the mandatory 90-foot buffer requirement. *See Lussier v. Md. Racing Comm'n*, 343 Md. 681, 696-97, 684 A.2d 804 (1996), *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881 (1989) (An agency's interpretation of the statute that it administers will be given considerable weight).

> b. Condition 16 of A-10018 has not been met by the wording adopted by the Planning Board in Condition 1(a)(9). The condition can be met by adopting the wording proposed by the City of College Park, as follows (also referenced on page 20 of the Resolution):
>
> Prior to signature approval of the Detailed Site Plan, the Applicant shall apply and show results of LEED-ND Stage 1 review. If conditional approval is obtained, the Applicant shall employ every effort to obtain full LEED-ND certification and provide documentation of such. If conditional approval is not obtained, the Applicant shall make every effort to achieve U.S. Green Building Council (ISGBC) LEED-Silver certification under LEED-NC and LEED Homes, or if available, equivalent standards for all buildings. Specifically the Applicant shall follow the process

below:

Prior to DSP certification, the Applicant shall:

1) Designate a LEED-accredited professional ("LEED-AP") who is also a professional engineer or architect, as a member of their design team. The Applicant shall provide the name and contact information for the LEED AP to the City of College Park, the Towns of Riverdale Park and University Park and M-NCPPC.

2) Designate a representative from M-NCPPC and each municipality, who elects to participate, as a team member in the USGBC's LEED Online system. These team members will have privileges to review the project status and monitor the progress of all documents submitted by the project team.

Prior to the issuance of the first use and occupancy permit, the Applicant shall provide documentation that the project has obtained the appropriate LEED certification. If certification has not been completed, the Applicant shall submit certification statements from their LEED-AP that confirms the project list of specific LEED credits will meet at least the minimum number of credits necessary to attain the appropriate LEED certification of LEED-ND, LEED-NC and/or LEED Homes.

Response: This appeal issue is without factual or legal merit. Condition 16 of Zoning Ordinance 11-2012 states: "**The applicant shall submit evidence of an application submittal to the U.S. Green Building Council (USGBC) under Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND) for a Smart Location and Linkage (SLL) prerequisite review at the time of Preliminary Plan submission and provide the results for review prior to approval of the Preliminary Plan.** Upon GBCI/USGBC approval of SLL prerequisites, the applicant shall pursue and employ commercially reasonable efforts to obtain conditional approval of the plan under LEED-ND 2009 Stage 1 (pre-entitlement) approval. If based on pre-entitlement review, full certification through LEED-ND is not practicable, then the applicant shall at detailed site plan provide a LEED score card that demonstrates a minimum of silver certification for all new construction and that will be enforced through DSP review. If the LEED score card requirements cannot be enforced through the DSP review or other third-party certification acceptable to both the applicant and the Town of Riverdale Park and the Town of University Park (and pursued by the applicant at its expense), at minimum the applicant shall pursue silver certification under LEED-NC and LEED Homes, or if available, equivalent standards as determined at time of DSP by the Planning Board." (Emphasis added.) Conditions imposed as part of rezoning, as is the case here, Zoning Ordinance 11-2012, may only be changed by the District Council. *See K.W. James Rochow, et al. v. Maryland National Capital Park and Planning Commission, et al.*, 151 Md. App. 558, 827 A.2d 927 (2003). And the condition remains in effect for so long as the property remains zoned in accordance with Zoning Ordinance 11-2012, and a building permit, use permit,

or subdivision plat may not be issued or approved for the property except in accordance with conditions set forth in Zoning Ordinance 11-2012. *See also* §22-214 of the Land Use Article, Md. Ann. Code (2012). The Town is not authorized by law to unilaterally propose, in an appeal, a change to a condition of rezoning by the District Council.[5]

The Planning Board's approval of DSP-13009 was conditional, and so is our approval of DSP-13009. That is, **prior to certification of the DSP**, the applicant is required to revise the plans or provide the specified documentation in Condition 1(a)(9) of PGCPB No. 13-63, which provides that the Applicant shall "submit evidence of conditional approval of the plan under leadership in energy and environment design (LEED-ND) 2009 Stage 1 (pre-entitlement) approval." (Emphasis added.)

Our review of the record shows that this condition required the applicant to submit evidence of an application to the USGBC for LEED-ND for a Smart Location and Linkage prerequisite review "at the time of Preliminary Plan submission and provide the results for review prior to approval of the Preliminary Plan." This, in our view, constitutes an issue that was ripe for resolution during consideration of an application for preliminary plan of subdivision, not during our review of DSP-13009. The only potential DSP-13009 issue involved the following language: "If based on pre-entitlement review, full certification through LEED-ND is not practicable, then the applicant shall at detailed site plan provide a LEED scorecard that demonstrates a minimum of silver certification for all new construction and that will be enforced through DSP review. If the LEED score card requirements cannot be enforced through the DSP review or other third-party certification acceptable to both the applicant and the Town of Riverdale Park and the Town of University Park (and pursued by the applicant at its expense), at minimum the applicant shall pursue silver certification under LEED-NC and LEED Homes, or if available, equivalent standards as determined at time of DSP by the Planning Board." An application was made for the LEED-ND, and the Applicant determined that, based on pre-entitlement review, full certification through LEED-ND was practicable. *See* PGCPB No. 13-55 (4-13002), Finding 16.[6] As such, there was no need to address any of the issues that could have been raised at DSP had it been determined that LEED-ND was "not practicable." This, therefore, is not a DSP issue.

We find no merit in this appeal issue because Condition 1(a)(9) of PGCPB No. 13-63 requires the Applicant, prior to certification of the DSP-13009, to "submit evidence of conditional approval of the plan under leadership in energy and environment design (LEED-ND)

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[5] *See* §27-135. No request for reconsideration or amendment of condition was filed in Zoning Ordinance 11-2012.

[6] Finding 16 states: The applicant has submitted the U.S. Green Building Council (USGCB) LEED Certification Project Review Report for the Smart Location and Linkage (SLL) application under the provisions and requirements of the LEED-ND (Leadership in Energy and Environmental Design (LEED) for Neighborhood Development) rating system as required by this condition for the PPS. The LEED Certification Project Review Report states that under the SLL prerequisite standards, the Cafritz Property was approved for Development Program and Site Type (Plf1); Project Timeline (Plf2); and Project Location and Base Mapping (Plf3); and the Cafritz Property was awarded for Smart Location (SLLp1); Imperiled Species and Ecological Communities Conservation (SLLp2); Wetland and Water Body Conservation (SLLp3); Agricultural Land Conservation (SLLp4); and Floodplain Avoidance (SLLp5). *See* PGCPB No. 13-55 (4-13002).

2009 Stage 1 (pre-entitlement) approval," which meets the intent and sprit of Condition 16 of Zoning Ordinance 11-2012.

Furthermore, conditions imposed as part of rezoning, as is the case here, Zoning Ordinance 11-2012, may only be changed by the District Council. *See K.W. James Rochow, et al. v. Maryland National Capital Park and Planning Commission, et al.*, 151 Md. App. 558, 827 A.2d 927 (2003). And the condition remains in effect for so long as the property remains zoned in accordance with Zoning Ordinance 11-2012, and a building permit, use permit, or subdivision plat may not be issued or approved for the property except in accordance with conditions set forth in Zoning Ordinance 11-2012. *See also* §22-214 of the Land Use Article, Md. Ann. Code (2012). The Town is not authorized by law to unilaterally propose, in an appeal, a change to a condition of rezoning by the District Council.

Notwithstanding, based on our review of the evidence in the administrative record, we find that certain portions of the proposed language supplied by the Town of University Park capture the intended objectives of Condition 16 of Zoning Ordinance No. 12-2012 as to Condition 1a (9), and incorporate those salient points accordingly within the Conditions of Approval, below.

> c. Conditions 17, 18, and 19 of A-10018 have not been met. Condition 17 requires the submission of an acceptable Transportation Management Plan ("TMP"), Condition 18 required commitment to a private shuttle with certain headways and destinations, and Condition 19 required commitment to a circulator bus program, all by approval of the Preliminary Plan. These conditions were not satisfied by the Preliminary Plan hearing. The Town, Riverdale Park, College Park and the Applicant met and agreed upon the wording of an acceptable TMP, which included provisions concerning the circulator bus and the shuttle, and monitoring of the TMP, which was proffered to the Planning Board at the hearing. Instead, the Planning Board adopted conditions that extend these requirements to approval of final plat, with review by DPW&T and M-NCPPC staff only and no review by the Town or other municipalities. This action by the Planning Board overrides a specific requirement of Conditions 17, 18 and 19.

Response: Pursuant to §27-285(b)(1) of the Zoning Ordinance, the Planning Board may approve a Detailed Site Plan if it finds that the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make these findings, the Planning Board may disapprove the Plan. §27-285(b)(1). Pursuant to §27-290(d), upon review of a detailed site plan from the Planning Board, we shall affirm, reverse, or modify the decision of the Planning Board, or return the Detailed Site Plan to the Planning Board to take further testimony or reconsider its decision. In approving a Detailed Site Plan, it shall make the same findings which are required to be made by the Planning Board. We take judicial

notice of the fact that by letter dated May 6, 2013, to Chairman Hewlett, it was confirmed that the required TMP had been submitted to the M-NCPPC for the entire development, prior to approval of the preliminary plan of subdivision on May 30, 2013, in PGCPB No. 13-55.

We take further judicial notice of the fact that, since the time of filing of Application No. DSP-13009, the Town, as well as the other municipalities, withdrew its appeal as to the issues of the TMP and procedural failure of process. Nevertheless, we find persuasive the evidence concerning the agreement between the Town and applicant, and we further encourage applicant and DPW & T to pursue use of the TMP negotiated by the Town and applicant as the foundation for the TMP and ensure that the items in Condition 14 are addressed. We find that DSP-13009 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.

> d. Condition 23 of A-10018 has not been met. This condition prohibits "clear-cutting or regrading any portion of the development until a detailed site plan for that portion of the site has been approved." The Resolution by the Planning Board recognizes in Condition 4 that Parcels K, L and M, which include the multi-family buildings, are not included in this DSP. Condition 4 states: "Prior to the issuance of building permits for Parcel K, L and M, a detailed site plan application for each such parcel shall be reviewed and approved by the Planning Board in accordance with Part 3, Division 9 of the Zoning Ordinance." However, in Condition 10(d), the Planning Board requires the Applicant to revise the plans to show the interim grading and landscaping proposed for Parcels K, L, M, and the portion of Parcel F where the future hotel is proposed. Allowing for interim grading for Parcels K, L and M authorizes clear cutting or re-grading on a portion of the development that is not included in a detailed site plan. The DSP does not cover the entire property, as is clear from Condition 4.

Response: We have reviewed the record and find this contention to be without merit. *See* (5/23/13 Tr.), (5/30/13 Tr.), PGCPB No. 13-63, Technical Staff Report, 5/9/13. Parcels K, L and M were never removed from the subject DSP, and were, in fact, included as part of the approval of that DSP. This is consistent with the Planning Board's approval of DSP Condition 10d. - had those parcels not been included within this DSP, the Board would not have had jurisdiction to impose such a condition. The Planning Board did not either expressly or by implication require that the parcels be removed from the DSP and the acreage adjusted accordingly-the acreage approved was the same as the acreage applied for. Furthermore, the area of those parcels continued to be included within the calculations for the entire subject property as to such issues as stormwater management and woodland conservation. This is similar to a common situation in which the Planning Board will consider a detailed site plan application for infrastructure only, with detailed site plans for the design and layout of the buildings upon those sites to be submitted

at a later date. We find that Parcels K, L, and M unquestionably remain included within DSP-13009.

> e. Condition 25 of A-10018 has not been met at either the Preliminary Plan of Subdivision stage nor at the DSP stage, notwithstanding the information provided by Andres Gingles, Esq., on behalf of the Applicant with respect to the consent of the University of Maryland and CSX and public funding. With specific reference to the DSP, Condition 25(b) requires that "(I)f the manner of public funding is tax increment financing, or any other funding mechanism that requires the approval of the County Council or other government body or entity, the approval of the County Council and all other government bodies or entities must be obtained prior to the approval of any detailed site plan for the subject property." Preliminary Plan of Subdivision Condition 36(b) states: The applicant shall demonstrate that the approved funding mechanism committed by the applicant as part of Condition 25 (A-10018), stated above, has been fully established and has been authorized by the county and/or other governmental bodies." While the County Council has adopted CR-28-2013, which authorizes a Special Taxing District for a portion of the Property, Section 10-269 of the County Code requires additional legislative action to issue bonds to finance the infrastructure improvements, including the crossing, and to levy and impose the tax. There is no legislative determination that the tax to be imposed by the future legislative act is sufficient to pay for a bond that will finance those improvements. Further, the construction of the bridge is now required to demonstrate adequate public facilities. At this point, the Applicant does not control the land needed to comply with these requirements, so that the DSP is premised on something that has not occurred. The cost for the acquisition will affect the financing, which again points to the current inability to obtain governmental approval.

Response: Condition 25(b) of Zoning Ordinance 11-2012, states: **"Establish a funding mechanism using a combination of public and private funds, subject to any required governmental approval, which must be obtained prior to the first detailed site plan; establish a system of financial assurances, performance bonds or other security to ensure completion of construction and establish a timetable for construction, of the CSX Crossing in accordance with the Preliminary Plan."** Condition 25(b) **does not** state, as the Town indicates, "(I)f the manner of public funding is tax increment financing, or any other funding mechanism that requires the approval of the County Council or other government body or entity, the approval of the County Council and all other government bodies or entities must be obtained prior to the approval of any detailed site plan for the subject property." The Town uses language from Condition 25 out of context. Regardless, the Applicant has satisfied Condition 25(b).

On May 4, 2013, the County Council adopted County Resolution 28-2013 (CR-28-2013), which concerned the Applicant's property. CR-28-2013 provides, in relevant part, as follows:

> For the purpose of designating an area within Prince George's County, Maryland as a "special taxing district" as that term is used in Section 10-269 of the Prince George's County Code, as amended, and as that term is used in Section 9-1301 of Article 24 of the Annotated Code of Maryland, as amended, (collectively, the "Act"), such special taxing district to be located in the Town of Riverdale Park, Maryland and to be known as the "Calvert Tract Special Taxing District;" providing for, and determining, various matters in connection with the establishment of a special taxing district, creating a special fund with respect to the special taxing district; providing for the introduction of a future ordinance or ordinances to provide for the levy of a special tax in connection with such special taxing district; pledging proceeds of such special tax to be paid over to the special fund as provided in the Act; making certain findings and determinations with respect to the special fund and the use of such fund; providing that special obligation bonds may be issued from time to time pursuant to an ordinance or ordinances enacted in accordance with the Act and secured by the special fund; and generally relating to the Calvert Tract Special Taxing District.
>
> **WHEREAS, the Owner plans to construct a mixed use development including retail, commercial, residential and office facilities, including, but not limited to, a crossing over the CSX railroad tracks adjacent to the Special Taxing District**; and
>
> WHEREAS, such development will further economic development within the County and thus meet the public purposes contemplated by the Act; and
>
> WHEREAS, the Owner has requested that the County issue its special obligation bonds in one or more issues or series to finance infrastructure improvements within or adjacent to the Special Taxing District, as permitted by the Act; and
>
> WHEREAS, the Act authorizes the County to issue special obligation bonds from time to time for the purpose of providing funds to be used to fulfill one or more of the purposes of said Act; and
>
> WHEREAS, the County will consider the introduction of an ordinance or ordinances to, among other things, provide for the

> levy of a special tax on the real property within the Special Taxing District, and provide that the County will apply the revenues of the Special Tax and the proceeds of any special obligation bonds authorized by the ordinance or ordinances and issued under the Act to fund a portion of the costs of the infrastructure improvements...

See CR-28-2013 (Emphasis added.) We are persuaded by our adopted resolution alone that the Applicant has satisfied Condition 25(b). *See Lussier v. Md. Racing Comm'n*, 343 Md. 681, 696-97, 684 A.2d 804 (1996), *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881 (1989) (An agency's interpretation of the statute that it administers will be given considerable weight). We also take judicial notice of the Applicant's May 6, 2013, letter, which fully described the proposed combination of public and private funding, including the Tax Increment Financing (TIF) District approved by Resolution of the Town of Riverdale Park for the subject property, as well as the County Council Resolution establishing a Special Taxing District for the subject property. Additionally, the two funding mechanisms-the TIF Resolution from Riverdale Park, and the Special Taxing District Resolution from the County Council were both approved prior to the DSP-13009, and in fact prior to the preliminary plan of subdivision. We are further persuaded by Condition 37 imposed in the preliminary plan of subdivision approval, which requires that, prior to approval of a building permit, the Applicant must demonstrate that the CSX crossing has been constructed, fully bonded and permitted for construction on an agreed upon timetable or otherwise incorporated in specific public facilities financing and implementation program as defined in Section 27-107.01(b)(186.1) of the Zoning Ordinance, as well as Section 24-124(a)(6) of the Subdivision regulations and per SHA, CSX DPWT requirements, or there is a proposal for such roads on an approved master plan and construction scheduled with 100 percent of funds allocated in the CCIP or SCTP.

- **The Town submits that it was legal error to not include the following conditions in the DSP:**

> 1. Prior to the issuance of the first grading permit, the Applicant, its heirs, successors and assigns shall demonstrate that the extension of the approved J-Crossing (Version J.3.300) over the CSX tracks to Rivertech Court with at least 36 feet of road pavement, five foot sidewalks and on-road bike lanes, plus a tow foot barrier (a) have been constructed, (b) fully bonded and permitted for construction with an agreed-upon time table for construction by the Applicant and/or the applicant's heirs, successors, or assigns, (c) otherwise incorporated in a specific public facilities financing and implementation program as defined in Section 27-107.01 (186.1) of the Zoning Ordinance or (d) there is incorporated within the adopted County Capital Improvements Program (CIP) or the current State Consolidated Transportation Program (CTP) with one hundred percent (100%) construction funding allocated during the six years. In addition the Applicant must submit for review and comment the completed, revised

funding plan for the CSX Crossing (Bridge) of the Office of the Executive, Prince George's County; the Office of the Mayor, Town of Riverdale Park; and the Office of the Mayor, Town of University Park, which shall be allowed 10 days to review and comment prior to the issuance of a grading permit. If no comment is received, the permit may be issued.

2. Prior to approval of the Detailed Site Plan, the applicant shall submit a draft easement for the protection and maintenance of the 90 to 120 foot wide buffer required by Condition 13 of Zoning Ordinance No. 11-2012 for Zoning Map Amendment A-10018 to the benefit of the Town of University Park and the Town of Riverdale Park. The easement for the protection and maintenance, which is subject to approval by the Town of University Park and Town of Riverdale Park, shall include language that sets forth the rights, responsibilities, and liabilities of the applicant and the applicant's heirs, successors, and/or assignees with respect to maintenance of the buffer, consistent with the requirements of the detailed site plan. The easement shall be reviewed and approved by the Planning Board and its designee.

3. Prior to approval of the final plat, the applicant, and the applicant's heirs, successors, and/or assignees, shall submit a fully executed easement for the protection and maintenance to the benefit of the Town of University Park and the Town of Riverdale Park for the entire buffer delineated on the approved detailed site plan. The liber/folio of the easement shall be reflected on the final plat prior to recordation.

4. Delete or relocate Lots 1-7 along Woodberry Street and create a common play area within this space with appropriate buffering and screening from Building 1.

Response: We find no merit in this appeal issue and request by the Town. The Town offers no legal reason or basis why it was error for Planning Board *not* to include the above conditions in DSP-13009. Nor does the Town offer its legal authority for imposing conditions in DSP-13009. Pursuant to §27-285(5), the Planning Board, in its review of a detailed site plan, shall approve, approve with modification, or disapprove the detailed site plan, and the word "approve" includes "approve with conditions, modifications, or amendments." *See* §27-108.01 (a)(10).

Regardless, the Town's proposed condition 1 is essentially a re-statement **of** preliminary plan of subdivision Condition 37e, with the exception that it requires that the various assurances occur prior to the first grading permit, as opposed to building permits, as designated in the preliminary plan of subdivision. Since this condition relates to the adequacy of public facilities, there was no need for this to occur prior to the first grading permit. *See* (5/30/13, Tr. 201).

Condition 37 imposed in the preliminary plan of subdivision approval, which requires that, prior to approval of a building permit, the Applicant must demonstrate that the CSX crossing has been constructed, fully bonded and permitted for construction on an agreed upon timetable or otherwise incorporated in specific public facilities financing and implementation program as defined in Section 27-107.01(b)(186.1) of the Zoning Ordinance, as well as Section 24-124(a)(6) of the Subdivision regulations and per SHA, CSX DPWT requirements, or there is a proposal for such roads on an approved master plan and construction scheduled with 100 percent of funds allocated in the CCIP or SCTP. The Town also requests that the Applicant submit for review and comment the "completed, revised funding plan for the CSX Crossing" to the County Executive and the Mayors of the Towns of Riverdale Park and University Park. To the extent that the public portion of the funding for this crossing will involve the Town of Riverdale Park through its TIF financing, and Prince George's County in connection with the Special Taxing District and other mechanisms, the Office of the County Executive and the Town of Riverdale Park will be involved in the funding for this Crossing. The Town has provided no legal basis to persuade us why it should be involved in this process when it has proffered no public funding for this purpose. *See* (5/23/13 Tr.), (5/30/13 Tr.), PGCPB No. 13-63, Technical Staff Report, 5/9/13. Lastly, in finding that the language of Condition 27 of the preliminary plan of subdivision approval captures the intentions of the Council stated in Zoning Ordinance 11-2012 conditions as to the rezoning of the subject property, we further note that Condition 37 is more prescriptive and carries weight.

Nevertheless, we take administrative notice of all conditions imposed upon Applicant pursuant to its Preliminary Plan of Subdivision. As such, we further note that the conditions imposed as to the bridge and financing pursuant thereto exceed that of Zoning Ordinance 11-2012, and we support and emphasize compliance therewith.

Proposed condition 2 was rejected by the Town of Riverdale Park because it concluded that it was inappropriate and unnecessary. (5/30/13, Tr. 150-51). We also reject the Town's proposed condition 2 and 3. The subject property, including this front buffer area is, of course, owned by the Applicant, and as with any private property, the owner is responsible for the appropriate maintenance of that property. The owner of this or any other private property cannot be required to cede control of the maintenance of this property to any other party. The property owner is ultimately responsible for the appropriate maintenance of this portion of the subject property, and if it is ever found to be in violation of any applicable code provisions from the Town of Riverdale Park or Prince George's County, it would be subject to code enforcement through either of those jurisdictions – not the Town.

As to proposed condition 4, based on the evidence in the record, we agree that the discussion about the need for additional outdoor play space is with merit. The Planning Board also requested a "minimum of two additional outdoor multi-age playgrounds in condition 22a." We also agree with Planning Board and the Town of Riverdale Park that Lots 1-7 along Woodberry Street is not the appropriate location. Accordingly, and pursuant to authority recited in §§ 27-102(a), 27-281, and 27-290 of the Zoning Ordinance, we find that the Applicant should remove the seven (7) lots in the northeastern corner near the stormwater management pond adjacent to parcel "J" to provide for appropriate play space as indicated in the SA and reflected in condition 22.

- **The Town also submits that the District Council should impose the following additional conditions:**

1. In order to insure that the obligations with respect to the CSX crossing are met, the District Council should require the following:
a. Prior to certification of plans, provide a profile, cross sections, architectural renderings and of the bridge crossing for review by Urban Design and the Town of University Park.
b. Prior to issuance of a grading permit, require proof of payment of $50,000 to the University of Maryland by the Applicant.
c. Prior to first building permit, require that the Applicant demonstrate final approval of an agreement with the University of Maryland (including approval of the Board of Public Works) with respect to the transfer of the property required to land the bridge to the Applicant.
d. Prior to issuance of a grading permit, the Applicant must file and obtain approval for any required detailed site plan or mandatory referral for the property where the bridge will land.
2. The District Council should also require the following:
a. Prior to certification of plans, include a sheet that references all applicable conditions, including A-10018, the Preliminary Plan and Detailed Site Plan.
b. Prior to certification of plans, Applicant shall show on the plans the final disposition of the improvements required by SHA and the extent of the gateway feature. If a sidewalk is included in SHA improvements, there should be a showing that it meets ADA requirements.

Response: Based on the evidence in the record, we find that the Applicant has substantially complied with the conditions imposed by the rezoning of the subject property imposed by Zoning Ordinance No. 11-2012. However, in order to ensure compliance for the duration of the project, Applicant should provide or continue to provide pertinent documentation to appropriate agencies as set forth in the Conditions of Approval, below, and is further encouraged to share updates concerning the bridge and gateway features / buffer with the general public.

- **The basis for the City's reasons for appeal are as follows:**

1. The DSP should include dedication of Parcel H to the City of College Park and submission of detailed design plans of the Trolley Trail including landscaping and signage elements for review and approval by the City of College Park.
Parcel H contains 19,803 square feet and is located entirely in the City of College Park. The applicant proposes to construct a trolley trail through Parcel H to connect to the existing trolley trail to the north that is owned and maintained by the City of College Park within the historic Rhode Island Avenue right-of-way through the city limits. The city prefers to have jurisdiction over this segment of the right-of-way as well. The M-NCPPC Department of Parks and Recreation has expressed no objection to City of College Park ownership of Parcel H and the trail within it.

The City of College Park asked for conveyance of Parcel H in a letter dated May 15, 2013 to the Planning Board and during testimony at the Planning Board hearing on PPS 4-13002. The Planning Board did not express any objections to ownership of Parcel H by the City but indicated that the City of College Park should pursue the conveyance of this parcel to the City after it is dedicated to M-NCPPC. The City submits that this would create an unnecessary bureaucratic burden on the City and M-NCPPC when it could be done at the time of final plat by the applicant. The City of College Park should also have the right to review and comment on the detailed design plans for the trolley trail. Condition 1.a.(21) of PGCPB no. 13-63 simply provides a copy of the design plans for the trolley trail to the City without affording the City the opportunity to review, comment or approve the plans.
The City notes that Parcel H is omitted from the Parcel-by-Parcel Description included in Finding 6 of PGCPB No. 13-63.

Response: The allegations by the City generally amount to thoughtful requests lacking in substantive merit. While the Council is aware of the City's preference to have jurisdiction over the right-of-way within the City limits on Parcel H, we find that such a dedication is not required pursuant to the approval of a Detailed Site Plan application for development under Part 3, Division 9 of the Zoning Ordinance. Moreover, we also find, based on a review of the law in light of the record evidence that the requested guarantee to "review, comment, or approve the plans" is not contemplated within §27-280 of the Zoning Ordinance and is not required. Lastly, a review of the record reveals that the Planning Board, in adopting Condition 1.a.(21), and directing that a copy of the design plans for the trolley trail to the City, meets the prescriptions recited in §§ 27-102 and 27-281of the Zoning Ordinance.

2. Condition 1.a.9 in the DSP is not sufficient to be in compliance with Condition 16 of A-10018 as approved in Zoning Ordinance No. 11-2012. The following condition would satisfy this requirement:

Prior to signature approval of the Detailed Site Plan, the Applicant shall apply and show results of LEED-ND Stage 1 review. If conditional approval is obtained, the Applicant shall employ every effort to obtain full LEED-ND certification and provide documentation of such. If conditional approval is not obtained, the Applicant shall make every effort to achieve U.S. Green Building Council (ISGBC) LEED-Silver certification under LEED-NC and LEED Homes, or if available, equivalent standards for all buildings. Specifically the Applicant shall follow the process below:

A. Prior to DSP certification, the Applicant shall:

1) Designate a LEED-accredited professional ("LEED-AP") who is also a professional engineer or architect, as a member of their design team. The Applicant shall provide the name and contact information for the LEED AP to the City of College Park, the Towns of Riverdale Park and University Park and M-NCPPC.

2) Designate a representative from M-NCPPC and each municipality, who elects to participate, as a team member in the USGBC's LEED Online system. These team members will have privileges to review the project status and monitor the progress of all documents submitted by the project team.

B. Prior to the issuance of the first use and occupancy permit, the Applicant shall provide documentation that the project has obtained the appropriate LEED certification. If certification has not been completed, the Applicant shall submit certification statements from their LEED-AP that confirms the project list of specific LEED credits will meet at least the minimum number of credits necessary to attain the appropriate LEED certification of LEED-ND, LEED-NC and/or LEED Homes.

The language in the City's proposed condition is intended to reflect the next steps in the LEED-ND certification process and provide assurances that Condition # 16 of Zoning Ordinance No. 11-2012 in Case No. A-10018 is met.

Condition #16 states in part,"...the applicant shall pursue and employ commercially reasonable efforts to obtain conditional approval of the plan under LEED-ND 2009 Stage 1 (pre-entitlement) approval. If based on pre-entitlement review, full certification through LEED-ND is not practicable, then the applicant shall at detailed site plan provide a LEED scorecard that demonstrates a minimum of silver certification for all new

construction and that will be enforced through DSP review..." This condition language requires that a determination be made at the time of detailed site plan as to which certification path the applicant will follow based on the results of the USGBC pre-entitlement review. Because the applicant had not even applied for this review at time of detailed site plan, this determination could not be made. The Planning Board instead approved Condition #1.a.(9) in PGCPB No. 13-63 that requires the applicant to "Submit evidence of conditional approval of the plan under leadership in energy and environment design (LEED-ND) 2009 State 1 (pre-entitlement) approval prior to certification of the DSP."

This condition stops short of requiring the applicant to obtain certification under any LEED program or any other equivalent standards and therefore does not fulfill the condition requirement of the zoning case. The City's reading of the condition is that if the plan is eligible for LEED-ND certification, the applicant is required to pursue said certification, and if the plan is not eligible, the applicant is required to pursue silver certification under LEED-NC and LEED Homes or equivalent standards.

The City's proposed condition language is similar to language previously adopted by the Planning Board in DSP-12034, PGCPB No. 13-36 so it is not without precedent. It established a process for the applicant to follow and enables appropriate parties to follow the progress of the USGBC review online. Most importantly, it makes clear that the ultimate goal is for the project to actually obtain certification under LEED-ND or another standard.

Response: See response above to Town of University Park appeal on these matters, found on pp. 4-6, herein.

3. In order to insure that the bikeshare station required to be shown on the DSP is actually built, the condition should include the following:

Prior to approval of the first building permit, the Applicant shall show a final location for the proposed bikeshare station (11 docks and 6 bikes) that measures 31 feet in length and 6 feet in width in the vicinity shown on the Preliminary Plan. If the Capital Bikeshare Program or similar program is operational or under contract for operation, the Applicant, its successors and assigns, shall pay the then prevailing cost, not to exceed $45,000 to the

Administrator of the Bikeshare Program, or similar program, for the installation and 12-month operation of an 11 dock/6 bike station.

When a bike share is shown on the Detailed Site Plan located on Van Buren Street, funding for the station was not included in any condition adopted in the Preliminary Plan or Detailed Site Plan resolutions nor was it included in the applicant's Transportation Management Plan. The requested funding represents the current cost of purchasing and installing the equipment for one bikeshare station and the cost for operating the station for one year.

The City of College Park and the University of Maryland are in the process of entering into a contract with the Capital Bikeshare providers and intend to launch a nine-station system by January 1, 2014. The goal is to grow the bikeshare network to include other locations along Route 1 corridor and vicinity particularly new mixed-use development projects. Funding to expand the system in this way is needed and has readily been agreed to through conditions of approval by the developers of the following recent projects: The Varsity, M Square, Domain and Koon's Ford. This is a small, one-time cost for a project the size of Cafritz especially when the project will benefit from the enhanced transportation accessibility and connectivity that bikeshare will provide.

Response: Our review of the evidence contained in the record reveals no error of fact or law to supporting the reversal of the decision of the Planning Board embodied in PGCPB Res. No. 13-57. To that end, we find that the Applicant has substantially complied with the requirements imposed by §§ 27-102, 27-281, 27-283, and 27-290 of the Zoning Ordinance. However, we take all due notice of the concerns, including bikeshare, raised by the City and urge that resolution to these issues be made through an executed TMP, which will be developed by the Prince George's County Department of Public Works and Transportation, together with input from the Town of University Park, the City of College Park, and the Town of Riverdale Park.

- **Citizens allege that Planning Board committed the follow errors:**

1. The Planning Board did not postpone the hearing of the Detailed Site Plan on May 23, 2013, as required by Sec. 27-125.05. An enormous amount of new information was submitted both by the Applicant and by various government agencies well after the technical staff report had been completed on May 9, 2013, including specifically, but not limited to, the report of Mr. Faramarz Mokhtari from the County's Transportation Planning Section, regarding changes made by the Planning Board to the

> Preliminary Plan of Subdivision on May 16, 2013. The Planning Board determined to proceed with its hearing May 23 regardless of the statutory mandate, and it also determined, after it commenced the hearing, which lasted several hours, to continue the hearing on May 30.

Response: This appeal issue has no factual or legal merit. Pursuant to §27-125.05, where the Planning Board is authorized to conduct a public hearing in a zoning or site plan case, the Planning Board shall send by first class mail a copy of the technical staff report to the applicant and all parties of record no less than two (2) weeks prior to the scheduled public hearing on the application. At the same time and in the same manner, the Planning Board shall send a copy of the technical staff report to every municipality located within one (1) mile of the property which is the subject of the application and to all civic associations registered with the Commission for the area which includes the property. **If new information is provided by the applicant or any governmental agency after the technical staff report is completed, any party of record shall be allowed a one (1) week postponement if such party so requests.** (Emphasis added.) First, based on our review of the hearing transcript, Citizens did not request a postponement. *See* (5/23/2013 Tr.). At the May 23, 2013, hearing, Suellen M. Ferguson, Esquire, on behalf of the Town and City, not Citizens, made a request for postponement pursuant to §27-125.05, which the Planning Board granted. Therefore, there was no violation of §27-125.05.

> 2. The Planning Board gave the public inadequate notice of the continued hearing. Before the Board's website was revised-on May 29-to show that the Detailed Site Plan hearing was on its agenda for May 30, a number of citizens had to call to ask whether the date of the hearing had been fixed and what its place was on the Planning Board's agenda. No other notice was afforded to persons who had signed up as Persons of Record, despite the fact that the Planning Board maintained on its Persons of Record spreadsheet both the email addresses and the phone numbers of all persons who had provided such contact information.

Response: The Citizens do not complain that they did not receive notice of the May 23, 2013, public hearing or the May 30, 2013 public hearing. Rather they complain that notice of the May 30, 2013, public hearing was inadequate. Pursuant to the Planning Board's Rules of Procedure, notice of all hearings held pursuant to its Rules shall be in accordance with provisions of the Zoning Ordinance and any public hearing may be recessed to an announced time and place or posted at the time and place of the original location for which original notice has been given. Thereafter, no further notice shall be necessary. *See* Prince George's County Planning Board Rules of Procedure, Sections 2 and 3, respectively. PGCPB Resolution No. 08-71, as amended May 8, 2008. We find that the Planning Board provided adequate notice of the May 30, 2013, public hearing. On May 23, 2013, the Planning Board, consistent with its own Rules of Procedure, recessed its public hearing and announced that the next hearing will be held on May 30, 2013, the place of the original location for which original notice had been given. (5/23/13 Tr.) While the parties of record may have been slightly inconvenienced, by rule, after the Planning Board recessed from the May 23, 2013, hearing, no further notice was necessary.

3. The Planning Board has failed to maintain a process sufficient to ensure that its online system of registration of Persons of Record in fact so captures all individuals who use such system. Among the citizens appealing this Detailed Site Plan are several who became aware that they were not so registered, despite their online registration; persons who appeared on May 30; persons who were alerted to the absence of their names from a list that was provided by Planning Board staff and who subsequently "successfully" registered (online or by fax); as well as persons who learned only after May 30 of their exclusion from the list of Persons of Record.

Response: This appeal has no factual or legal merit. Whether Planning Board failed to maintain a sufficient process to ensure that its online system of registration of Persons of Record in fact so captures all individuals who use such system is not legal error in approving a detailed site plan. Pursuant to §27-285(b)(1), the Planning Board may approve a Detailed Site Plan if it finds that the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make these findings, the Planning Board may disapprove the Plan. §27-285(b)(1). We find, after reviewing the record in this matter, that Planning Board committed no legal error in approving DSP-13009. *See* (5/23/13 Tr.), (5/30/13 Tr.), PGCPB No. 13-63, Technical Staff Report, 5/9/13. We would note, however, that a receipt indicating that the registration has been received is appropriate.

4. The Planning Board erred in granting approval of the Detailed Site Plan when it proceeded to a hearing without having a schematic map or drawing submitted by the Applicant within a timely public record showing in detail adequate (sic) for the Planning Board to make a determination or for the public to make informed comment or suggestion sufficient as to the width of streets and sidewalks, placement of parks, placement of streets, width of curbs, placement of the bridge, crossing of the bridge, and other details necessary to distinguish a Detailed Site Plan from one that is merely conceptual. Inadequacy of the submission is illustrated by the Planning Board's nearly four single-spaced pages of 23 required revisions to the Detailed Site Plan. (See PGCPB No. 13-63 Resolution File No. DSP 13-009, pp.77-81). Similarly, the Planning Board erred by deferring the approval of the Transportation Management Plan, shuttle bus commitment and circulator bus program to approval at final plat. Such deferral failed to meet conditions 17, 18, 19 of the Zoning Ordinance.

Response: This appeal issue is without merit. Pursuant to §27-282(e), a detailed site plan shall include the following:

(1) Location map, north arrow, and scale;

(2) Boundaries of the property, using bearings and distances (in feet); and either the subdivision lot and block, or liber and folio numbers;

(3) Zoning categories of the subject property and all adjacent properties;

(4) Locations and types of major improvements that are within fifty (50) feet of the subject property and all land uses on adjacent properties;

(5) An approved Natural Resource Inventory;

(6) Street names, right-of-way and pavement widths of existing streets and interchanges within and adjacent to the site;

(7) Existing rights-of-way and easements (such as railroad, utility, water, sewer, access, and storm drainage);

(8) Existing site and environmental features as shown on an approved NRI;

(9) A Type 2 Tree Conservation Plan prepared in conformance with Division 2 of Subtitle 25 and The Woodland and Wildlife Habitat Conservation Technical Manual or a Standard Letter of Exemption;

(10) A statement of justification describing how the proposed design preserves and restores the regulated environmental features to the fullest extent possible;

(11) An approved stormwater management concept plan;

(12) Proposed system of internal streets including right-of-way widths;

(13) Proposed lot lines and the dimensions (including bearings and distances, in feet) and the area of each lot;

(14) Exact location and size of all buildings, structures, sidewalks, paved areas, parking lots (including striping) and designation of waste collection storage areas and the use of all buildings, structures, and land;

(15) Proposed grading, using one (1) or two (2) foot contour intervals, and any spot elevations that are necessary to describe high and low points, steps, retaining wall heights, and swales;

(16) A landscape plan prepared in accordance with the provisions of the Landscape Manual showing the exact location and description of all plants and other landscaping materials, including size (at time of planting), spacing, botanical and common names (including description of any plants that are not typical of the species), and planting method;

(17) Exact location, size, type, and layout of all recreation facilities;

(18) Exact location and type of such accessory facilities as paths, walks, walls, fences (including widths or height,

> as appropriate), entrance features, and gateway signs (in accordance with Section 27-626 of this Subtitle);
>
> (19) A detailed statement indicating the manner in which any land intended for public use, but not proposed to be in public ownership, will be held, owned, and maintained for the indicated purpose (including any proposed covenants or other documents);
>
> (20) Description of the physical appearance of proposed buildings (where specifically required), through the use of architectural elevations of facades (seen from public areas), or through other illustrative drawings, photographs, or renderings deemed appropriate by the Planning Board; and
>
> (21) Any other pertinent information.

Submittal of a detailed site plan does not require "schematic maps." A "schematic map" is defined as the scale drawing that outlines the floor plan where scale models of basic elements can be placed for best and most effective positioning.[7] Regardless of this technicality however, our review of the record reveals that original DSP plans were submitted on March 28, 2013, a revised set of plans, with minor changes to labeling and lot/parcel lines, was submitted on April 18, 2013. Planning Board's findings were based on a final revised set of plans submitted May 1st through the 6th, 2013. *See* (5/23/13 Tr.), (5/30/13 Tr.), PGCPB No. 13-63, Technical Staff Report, 5/9/13.

> 5. The Planning Board erred in approving the Detailed Site Plan when it did not require actual funding of the bridge by the Applicant as required in the Zoning Ordinance. There is no evidence in the record that the Applicant has in fact contributed to an escrow account or any other funding mechanism (sic) the required $5 million dollars proffered by the Applicant to be contributed. Mr. Mokhtari's report notes this oversight; the Planning Board did not take up that observation in its Resolution.

Response: This appeal issue is without factual or legal merit. Condition 25(b) of Zoning Ordinance 11-2012, states: **"Establish a funding mechanism using a combination of public and private funds, subject to any required governmental approval, which must be obtained prior to the first detailed site plan; establish a system of financial assurances, performance bonds or other security to ensure completion of construction and establish a timetable for construction, of the CSX Crossing in accordance with the Preliminary Plan."** (Emphasis added.) On May 4, 2013, the County Council adopted County Resolution 28-2013 (CR-28-2013), which concerned the Applicant's property. CR-28-2013 provides, in relevant part, as follows:

> For the purpose of designating an area within Prince George's County, Maryland as a "special taxing district" as that term is used

[7] *See* http://thelawdictionary.org/schematic-plan/ (last visited September 28, 2013).

in Section 10-269 of the Prince George's County Code, as amended, and as that term is used in Section 9-1301 of Article 24 of the Annotated Code of Maryland, as amended, (collectively, the "Act"), such special taxing district to be located in the Town of Riverdale Park, Maryland and to be known as the "Calvert Tract Special Taxing District;" providing for, and determining, various matters in connection with the establishment of a special taxing district, creating a special fund with respect to the special taxing district; providing for the introduction of a future ordinance or ordinances to provide for the levy of a special tax in connection with such special taxing district; pledging proceeds of such special tax to be paid over to the special fund as provided in the Act; making certain findings and determinations with respect to the special fund and the use of such fund; providing that special obligation bonds may be issued from time to time pursuant to an ordinance or ordinances enacted in accordance with the Act and secured by the special fund; and generally relating to the Calvert Tract Special Taxing District.

WHEREAS, the Owner plans to construct a mixed use development including retail, commercial, residential and office facilities, including, but not limited to, a crossing over the CSX railroad tracks adjacent to the Special Taxing District; and

WHEREAS, such development will further economic development within the County and thus meet the public purposes contemplated by the Act; and

WHEREAS, the Owner has requested that the County issue its special obligation bonds in one or more issues or series to finance infrastructure improvements within or adjacent to the Special Taxing District, as permitted by the Act; and

WHEREAS, the Act authorizes the County to issue special obligation bonds from time to time for the purpose of providing funds to be used to fulfill one or more of the purposes of said Act; and

WHEREAS, the County will consider the introduction of an ordinance or ordinances to, among other things, provide for the levy of a special tax on the real property within the Special Taxing District, and provide that the County will apply the revenues of the Special Tax and the proceeds of any special obligation bonds authorized by the ordinance or ordinances and issued under the Act to fund a portion of the costs of the infrastructure improvements...

See CR-28-2013 (Emphasis added.) We are persuaded by our resolution alone that the Applicant has satisfied Condition 25(b), and that Planning Board did not commit legal error in its approval of DSP-13009. *See Lussier v. Md. Racing Comm'n*, 343 Md. 681, 696-97, 684 A.2d 804 (1996), *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881 (1989) (An agency's interpretation of the statute that it administers will be given considerable weight). We also take judicial notice of the Applicant's May 6, 2013, letter which fully described the proposed combination of public and private funding, including the Tax Increment Financing (TIF) District approved by Resolution of the Town of Riverdale Park for the subject property, as well as the County Council Resolution establishing a Special Taxing District for the subject property. Additionally, the two funding mechanisms-the TIF Resolution from Riverdale Park, and the Special Taxing District Resolution from the County Council were both approved prior to the DSP-13009, and in fact prior to the preliminary plan of subdivision.

> 6. The Planning Board erred in granting approval of the Detailed Site Plan when it relied on conditional rather than actual approval by the University of Maryland concerning the CSX railroad crossing, as required under Condition 25d of the Ordinance. (See A-10018, Notice of Final Decision of the District Council, July 18, 2012, p. 17, and alluded to on p. 37 of the Resolution) Furthermore, as of May 30-and even as of the date of this writing-the actual "off-site land or right-of-way acquisition costs"-among other costs required to be identified in the same Condition of the Ordinance-have not been determined. Although that requirement was demanded with the Preliminary Plan of Subdivision, the incorrect assertion that a Zoning Ordinance condition has been met does not mean either that the condition is waived or that there is no longer a need to meet it completely before proceeding to the Detailed Site Plan.

Response: This appeal issue is premised on Citizens inaccurate and out of context use and restatement of Condition 25(d) of Zoning Ordinance 11-2012. Condition 25(d) is prefaced with: "**Prior to the approval of a Preliminary Plan of Subdivision (the "Preliminary Plan"),** the applicant shall do the following, subject to the opportunity for review and comment by Prince George's County, the Town of Riverdale Park, and the Town of University Park:" (Emphasis added.) Condition 25(d) states as follows: "Provide cost estimates for the design, permitting and construction of the CSX Crossing, including off-site land or right-of-way acquisition costs, if any." *See* Zoning Ordinance 11-2012, Condition 25. We also find that Condition 25(d) is not a prerequisite for approval of DSP-13009. Rather, based on our review of the record and our judicial notice of PGCPB No. 13-55 (4-13002), which approved and adopted the preliminary plan of subdivision in this matter, Planning Board found that the Applicant has satisfied Condition 25(d). *See* (5/23/13 Tr.), (5/30/13 Tr.), PGCPB No. 13-63, Technical Staff Report, 5/9/13, and PGCPB No. 13-55 (4-13002).

> 7. Planning Board erred in finding that the woodland conservation threshold had been met onsite. The burden is placed

> rightly on the Applicant to show how such a threshold cannot be met, rather than on the Planning Board to make an apology for the Applicant's design. The record does not show that the Applicant designed the site in an attempt to meet the woodland conservation threshold, whether or not infill design is a challenge to such a threshold showing. Rather, it is the Applicant's own design that makes meeting the conservation threshold "challenging." The Planning Board's recitation disposing of the woodland conservation threshold is conclusory and without record support. (See Resolution, p.17) Additionally, the Planning Board erred by disregarding Condition 23 of the Zoning Ordinance which prohibits regarding until a detailed site plan has been approved for the specific portion to be re-graded. Despite the fact that the Resolution explicitly fails to include Parcels K, L and M of the property (presumably set aside for multi-family buildings), the Planning Board's Resolution, Condition 10(d), purports by its language to meet Condition 23, so as to show the interim grading those parcels.

Response: Citizens assertions with regard to woodland conservation are incorrect. The Woodland Conservation ordinance is drafted and interpreted within the context of the land use assigned to a particular property, not as an absolute objective. *See Lussier v. Md. Racing Comm'n*, 343 Md. 681, 696-97, 684 A.2d 804 (1996), *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881 (1989) (An agency's interpretation of the statute that it administers will be given considerable weight). Since, as indicated within the Planning Board Resolution for DSP-13009, the M-U-TC zoning of the subject property allows for high-density residential and commercial uses-as evidenced by the nature of the Development Plan approved by the District Council as part of the Zoning Amendment-the Woodland Conservation ordinance was properly applied to the subject property by the Planning Board. The findings by Planning Board embodied an evaluation of this entire issue by the Environmental Planning Section, and is certainly not "conclusory and without record support." It was properly considered and evaluated within the context of the design goals of the M-U-TC Zone. As previously discussed, Parcels K, L and M were not removed from this DSP, and were included in the total acreage and calculations regarding Woodland Conservation and Stormwater Management for the entire site. *See* PGCPB No. 13-63 and Technical Staff Report, 5/9/13. Regarding compliance with Condition 23 of Zoning Ordinance 11-2013, Parcels K, L and M are included within DSP-13009. While the Planning Board Resolution does require an additional DSP for each of those parcels prior to the issuance of a building permit, those parcels remained as part of this DSP-13009. We find evidence of this in Condition No. 10d, which require interim grading upon those parcels.

> 8. The Planning Board erred in recognizing private, indoor fee-to-use recreation facilities as adequate public facilities for recreation. Furthermore, the Planning Board erred in not demanding "complete details" (such as size and type of facility) until certification of the plans, rather than at approval of the Detailed Site Plan. (See Resolution, pp. 79-80) Public comment

> was made at the hearing suggesting a "pocket park" in the northwest corner of the property to be substituted for one or two townhomes (such townhomes requested to be eliminated by planning staff). To the best of our knowledge and belief, the Preliminary Plan approved by the Planning Board included such a park and thus the Resolution is in conflict with the adopted Preliminary Plan. Neither the public comment nor the planning staff suggestion was carried over into the Resolution. Public comment was made repeatedly requesting that a filed sufficient for soccer or like athletic field be identified and dedicated on the property. No capture of such comment appeared in the Resolution.

Response: Based on the evidence in the record, we agree that the discussion about the need for additional outdoor play space is with merit. The Planning Board also requested a "minimum of two additional outdoor multi-age playgrounds in condition 22a." We also agree with Planning Board and the Town of Riverdale Park that Lots 1-7 along Woodberry Street is not the appropriate location. Accordingly, and pursuant to authority recited in §§ 27-102(a), 27-281, and 27-290 of the Zoning Ordinance, we find that the Applicant should remove the seven (7) lots in the northeastern corner near the stormwater management pond adjacent to parcel "J" to provide for appropriate play space as indicated in the SA and reflected in Condition 22.

> 9. The Planning Board erred in failing to require appropriate input from the Historic Preservation Commission (HPC). Based on a prior plan of the project, the HPC concluded at its April 16, 2013 meeting, that there would be "no visual impact" on adjacent National Register Historic Districts. The DSP was (sic) this conclusion. However, the HPC did not take up the current access route's impact on historical properties until a meeting that took place on May 21 (not May 22 as stated in the Planning Board documents). In no part of the HPC May 21 meeting was there any discussion of the *visual impact* of the new alignment. Furthermore, the Town of University Park and Riverdale Park are registered in the Maryland Historic Trust's database as in the National Register of Historic Districts, and thus the National Park Service (NPS) has jurisdiction. At no time in the rezoning, PPS or DSP process has the NPS been consulted.

Response: This appeal issue is without factual or legal merit. Referral to HPC is required pursuant to §27-284. DSP-13009 was referred to the HPC. The HPC made the following findings and conclusions on DSP-13009:

> At their April 16, 2013 meeting, the Historic Preservation Commission (HPC) reviewed the subject application in regard to its relationship to Archeological Site 18PR259 located on the

property; adjacent ERCO Historic Site (68-022); Riverdale Park (68-004), University Park (66-029), and Calvert Hills (66-037) National Register historic districts. After a detailed presentation of the application and discussion with the applicant, the HPC determined that elements of the DSP may require revisions that might not be available in time for review by the Planning Board. As a result, their recommended condition language below provides for additional review of these revisions before the certification of the detailed site plan, if these revisions are not available at the time of the Planning Board hearing. The HPC voted 6-0-1 (the Chairman voted "present") to forward the following findings, conclusions, and recommendations to the Planning Board for its review of Detailed Site Plan DSP-13009 Cafritz Property:

The HPC provided a summary of the background of the subject property and the affected historic sites and districts.

HPC Findings

(1) The subject DSP application provides for the development of residential, commercial, hotel, and office uses within the M-U-TC (Mixed-Use Town Center) Zone and based on a set of site-specific design guidelines. The proposed plans include up to 1,542,000 square feet of residential space (981 multi- and single-family dwelling units); up to 26,400 square feet of office space; up to 201,840 square feet of retail/flex space; and up to 145,080 square feet of hotel space within a network of streets that are extensions of the nearby grid established to the west in University Park and to the south in Riverdale Park.

(2) The subject DSP application, and the associated preliminary plan of subdivision, provides for the retention-in-place of the nineteenth century ice house, the property's most significant remaining historic and archeological feature. The subject application includes the ice house within a landscaped portion of the parking area associated with the proposed grocery store near the southwestern portion of the property. The application provides some conceptual details for the final form of the feature, but does not specifically address the design, materials and construction techniques to be used, or the number and content of interpretive measures to be installed. The applicant's Phase III mitigation plan should include these details and address preservation of the ice house in place, data recovery for the carriage barn site and the required interpretive measures.

(3) The illustrative plans for the proposed development indicate a number of the large, multi-story buildings on the property that may have a visual impact on the adjacent National Register Historic Districts.

(4) At the historic preservation commission meeting dated April 16, 2013, the HPC voiced concern about future access to the ice house for archeological investigation and the preservation of the materials inside the structure. The plans do not provide any details of how the structure will be ventilated. The HPC directed Planning Board to work with the applicant to finalize some of the details of the ice house feature before the review of the DSP by the Planning Board, if possible. These details include the establishment of a limit of disturbance (LOD) to safeguard the ice house during grading and construction, the establishment of an archeology easement, more detailed specifications for the design and construction of the ice house enclosure, and more precise character and location of interpretive signage.

HPC Conclusions

(1) A detailed site plan for interpretive signage and other public outreach measures focused on the history and significance of the MacAlpine property, the Calvert Homes development, the ERCO factory, and the historic trolley right-of-way, should be developed as part of the DSP process affecting the subject property. Because of the short time frame associated with the submittal of the subject application, the applicant has been unable to provide many of the details associated with the retention and interpretation of the ice house before review of the subject application by the Historic Preservation Commission (HPC). Therefore, the applicant should be required to submit specific details for the design elements to the Historic Preservation Commission for review before certification of the detailed site plan, so that these details and specifications can be included on the certified plans.

(2) The ERCO Historic Site (68-022) and its 13.71-acre environmental setting will be impacted by the bridge that will cross from the subject property over the CSX tracks and onto the University of Maryland property to the east. However, because the historic site is the subject of a Memorandum of Agreement between the University of Maryland and the Maryland Historical Trust providing ultimately for demolition, the impact of the railroad crossing should be considered de minimis. Archeological site 18PR258 will be impacted by the bridge that will cross from

> the subject property over the CSX tracks and onto the University of Maryland property to the east.
>
> (3) The applicant proposes the use of traditional and historicist design elements, materials, and details throughout much of the development. As such, to the extent that the taller buildings within the developing property may be visible from the adjacent National Register Historic Districts which are low-rise and residential in nature, the new development should have no negative visual impact on the historic districts.
>
> Four of the five HPC recommended conditions are proposed to be included in the PPS report as recommended conditions and therefore, are not needed here. The single condition relevant to this application is included.
>
> At their May 22, 2013 meeting, the Historic Preservation Commission (HPC) reviewed the subject application in regards to the revised alignment for the CSX railroad crossing (alignment "J") and the relocation of two multifamily buildings. Through a discussion, the HPC reaffirmed its conclusion that the ERCO Historic Site (#68-022) will be demolished through an agreement between the University of Maryland and the Maryland Historical Trust, regardless of the revised alignment of the railroad crossing and the relocation of two multifamily buildings within the developing property. As a result, the HPC voted (7-0-1, the Chair voted "present") to reaffirm, without revision, its findings, conclusions, and recommendations on the subject application.

See PGCPB No. 13-63, 27-29, Technical Staff Report, 5/9/13, 27-29. We are persuaded from our review of HPC's findings and conclusions that Planning Board obtained appropriate input from HPC prior to its approval of DSP-13009.

> 10. The introduction of new plans, maps, conditions and revisions weeks after the staff report and *during* the hearing made it difficult if not impossible for even the best informed members of the public to follow, let alone adequately comment and make meaningful suggestions as to what would be suitable for the property.

Response: Our review of the record does not support Citizens contention legally or factually. First, §27-125.05 states that if new information is provided **by the applicant or any governmental agency after the technical staff report is completed, <u>any party of record</u> shall be allowed a one (1) week postponement <u>if such party so requests</u>**. (Emphasis added.) Second, our review of the hearing transcripts reveals no such facts or request. *See* (5/23/2013 Tr.), (5/30/2013 Tr.). To the contrary, at the May 23, 2013, hearing, Suellen M. Ferguson,

Esquire, on behalf of the Town and City, not Citizens, made the request for postponement pursuant to §27-125.05, which the Planning Board granted. It would seem logical that if, at the May 30, 2013, hearing, new information was provided by the applicant or any governmental agency in violation of §27-125.05, Ms. Ferguson would have requested a postponement pursuant to §27-125.05. We found no such request was made, by any party of record, at the May 30, 2013, hearing. Therefore, there was no violation of §27-125.05.

Conditions of Approval

Because the detailed design of land development significantly affects the health, safety, and welfare of the general public, and because regulation of land development through fixed standards can result in monotonous design and lower quality development, certain types of land development are best regulated by a combination of development standards and a discretionary review of a Detailed Site Plan. Some general purposes of a detailed site plan are to 1) provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan, 2) help fulfill the purposes of the zone in which the land is located, and 3) provide for development in accordance with the site design guidelines established in Division 9 (Site Plans) of the Zoning Ordinance. *See* §27-281.

With this statutory framework in mind, our original jurisdiction over DSP-13009 pursuant to §27-132(f)(1), and our authority to modify the decision of the Planning Board pursuant to 27-290(d), affirmance of the Planning Board's decision is subject to the following conditions:

1. Prior to certification of the DSP, the applicant shall revise the plans as follows or provide the specified documentation:

a. Revise the detailed site plan as follows:

(1) Revise the detailed site plan to be in conformance with Preliminary Plan of Subdivision No. 4-13002, as approved, and with secondary

amendments approved through Secondary Amendment Application No. SA130001. Prior to certification of plans, include a sheet that references all applicable conditions, including A-10018, the Preliminary Plan and Detailed Site Plan.

(2) Provide details and specifications, subject to review and approval by the Historic Preservation Commission and The Maryland-National Capital Park and Planning Commission (M-NCPPC) staff archeologist for:

(a) The design and construction of the ice house feature to be retained to specifically address the techniques to be used to safeguard the archeological feature during construction; the design and materials of the exterior of the ice house and its roof, in order to ensure the long-term preservation of the feature and to ensure proper drainage and ventilation;

(b) The design, number, and location of interpretive signs to be erected and public outreach measures to be based on the findings of the archeological investigations; the interpretive measures shall also address the significance of the nearby ERCO factory, the Calvert Homes development, and the trolley that once ran through the subject property. Signage shall also address the site's history relating to the Plummer family and slave life, the MacAlpine Mansion, and the site's relationship to the University of Maryland.

(3) Provide a plan note that indicates conformance to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.

(4) 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.

(5) Revise the plans so that the intersection of proposed Van Buren Street with Baltimore Avenue (US 1) is reconfigured employing the appropriate traffic controls and design features per Maryland State Highway Administration (SHA) standards that prohibit through movement between existing Van Buren Street west of Baltimore Avenue (US 1) and the proposed Van Buren Street.

(6) Revise the plans to indicate high visibility, special treatment crosswalks similar to those installed in downtown College Park as well as pedestrian activated countdown signals at Van Buren Street and Baltimore Avenue (US 1). Crosswalks shall be provided across Van Buren Street on both east and west side of Route 1 and across Route 1 on the south and north side of Van Buren to connect all four corners of the intersection between Van Buren and Route 1. Details for the crosswalks and pedestrian signals shall be provided for the review of the Urban Design Section and subject to approval by SHA. Signage for bikes and pedestrians shall be provided to increase driver awareness.

(7) Revise the plans so that the intersection of proposed Underwood Street with Baltimore Avenue (US 1) is reconfigured employing appropriate traffic controls and design features per SHA standards that limit vehicular access at this location to right-in-only from Baltimore Avenue (US 1).

(7.b) A pedestrian refuge, as well as a landscaped median in the center lane on US 1 south and north of the intersection with Van Buren shall be employed to ensure pedestrian safety and visibility, subject to SHA approval and within the approved US 1 right-of-way of the preliminary plan.

(8) A revised photometric plan showing a detail of full cut-off optics shall be submitted. The lighting intensity shall be revised as necessary to be consistent with the use of full cut-off optics.

(9) Prior to signature approval of the Detailed Site Plan, the Applicant shall apply and show results of LEED-ND Stage 1 review. If conditional approval is obtained, the Applicant shall employ every effort to obtain full LEED-ND certification and provide documentation of such. Prior to DSP certification, the Applicant shall: (a) Designate a LEED-accredited professional ("LEED-AP") who is also a professional engineer or architect, as a member of their design team. The Applicant shall provide the name and contact information for the LEED AP to M-NCPPC; (b) Designate a representative from M-NCPPC, who elects to participate, as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team; (c) Prior to the issuance of the first use and occupancy permit for the first multifamily building, the Applicant shall provide documentation that the project has obtained the

appropriate LEED-ND pre-certification. Documentation of final LEED-ND certification shall be provided to M-NCPPC.

(10) Provide a cross section of the proposed Trolley Trail for approval by The MNCPPC Department of Parks and Recreation (DPR) and place on the plans. North South access across the property shall be provided to the greatest extent practicable even during site construction. A plan shall be submitted to M-NCPPC Department of Parks and Recreation (DPR) that maximizes trail access through the subject property prior to and after grading and during project construction until the trail is completed per Condition 2 below.

(11) Revise the locations of the stop bar along Van Buren Street at Rhode Island Avenue west of the Trolley Trail crossing, unless modified by the Department of Public Works and Transportation (DPW&T).

(12) The Trolley Trail shall be raised where it crosses the following: Van Buren Street; Woodberry Street; the alley north of Woodberry Street; and the driveway south of Building 6b; unless modified by the Department of Public Works and Transportation (DPW&T).

(13) Provide for bicycle parking showing the location, number, and type of bicycle parking spaces consistent with the LEED-ND Bicycle Network and Storage Credit to be approved by the Transportation Planning Section.

(14) Revise the plan to include Americans with Disabilities Act (ADA) curb cuts, ramps and special paving for crosswalks at all locations where sidewalks or trails intersect with on-site roadways. Details and specifications shall be added to the plans, unless modified by DPW&T.

(15) Revise the landscape plan to identify all specimen trees to be preserved in accordance with the specimen tree variance request as approved with the PPS. Identify each specimen tree to be preserved by number.

(16) Provide the location of the noise wall, with ten-foot clearance on all sides, and details and specifications, if the noise wall is required.

(17) Demonstrate the minimum 90-foot depth requirement of the gateway entrance feature on Parcels A, B and C.

(18) Provide details and specifications for all free-standing walls and retaining walls for review and approval by the Urban Design Section.

(19) The general notes shall be revised to indicate the exact square footage of uses for each building, rather than a range of square footages. Remove any notation relating to a hotel use on the plans and/or general notes.

(20) The median within Van Buren Street shall be planted with street trees and/or shrubs, with species and size to be reviewed and approved by the Urban Design Section.

(21) Detailed design plans of the Trolley Trail including landscaping, screening and signage elements, shall be reviewed and approved by the Urban Design Section and the Department of Parks and Recreation (DPR), with referral to the appropriate public safety agency for its comments, and a copy provided to the City of College Park. Trees and shrubs shall be used heavily as practicable to buffer the Trolley Trail from the rear parking and loading of the U.S. Post Office building, and the Urban Design section shall review for compliance.

(22) The stormwater management concept plan and detailed site plan shall be consistent in detail and design. A walking trail around the stormwater management pond north of the multifamily building shall be indicated on the plan and designs submitted to the Urban Design Section.

(23) Prior to certification of the plans, the applicant shall submit the following information regarding private recreational facilities:

(a) Provide complete details, sizes, specifications, floorplans, and/or lists of all private indoor and outdoor recreational facilities on-site. These facilities shall be distributed among the residential areas on-site in order to provide convenient and safe recreational opportunities to all residents. They shall include a comprehensive approach to the design of the facilities considering recreational benefit to the targeted residents, year- round active recreational benefit, activities for all age groups, and shall include a minimum of two additional outdoor multi-age playground facilities of which one shall encourage imaginative play. At least one of these facilities shall be located on the seven (7) lots in the northeastern corner near

the stormwater management pond adjacent to parcel "J" and include an "imagination" style playground. All of these facilities shall be of high-quality design with the use of high-quality, low-maintenance materials, not including wood.

(b) Provide a schedule for the timing of the construction of all facilities. The outdoor facilities shall be completed, at a minimum, in phase with the surrounding development, whether it be roads or buildings, and the indoor facilities shall be completed no later than prior to the issuance of a use and occupancy permit for the related building.

(c) Provide information regarding all private on-site recreational facilities to be reviewed and approved by the Planning Board or its designee, and reflected on the final plan set.

(d) The plans shall be revised to conform to the Parks and Recreation Facilities Guidelines.

(24) Remove the seven (7) lots in the northeastern corner near the stormwater management pond adjacent to parcel "J" from the detailed site plan and preliminary plan as well as the alley behind and adjacent to the lots to provide for a connected space to the trail and open space around the stormwater management pond. These lots shall be designated for at least one multi-age playground facility that follows Parks and Recreation Facilities Guidelines and is in accordance with condition 23, above. As a result, a seven-unit reduction of the total number of townhouse units is necessary to reflect the elimination of the seven (7) lots. Accordingly, and in furtherance of the interest of the public safety, health, and welfare as set forth in §§ 27-102 and 27-281 of the Zoning Ordinance, the total number of townhouse units is hereby reduced from 126 units, as approved in PGCPB . No. 13-63, to a total of 119 townhouse units, as reflected in Footnote 1 of this Order of Approval, and as further reflected in Condition G of SA-130001.

b. Revise the Type 2 tree conservation plan (TCP2) as follows:

(1) All specimen trees shall be survey located and accurately reflected on all plans.

(2) Specimen trees 255, 281, 262, and 265 shall be evaluated by a certified arborist for construction tolerance based on the final site

conditions and include the following information: recommendations for treatment prior to, during, and after construction. Treatments may include options such as the placement of protection devices and signs, root pruning, crown pruning, fertilization, and watering. Details of all required treatments and protective devises shall be provided on the TCP2 and reviewed by environmental planning. Significant measures shall be made to preserve these specimen trees.

(3) Revise the worksheet to show the correct fee-in-lieu factor of $.90 per square foot, or change the worksheet to reflect off-site mitigation.

c. Revise the TCP2 and landscape plan as follows:

(1) Revise the label on the TCP2 from "Trees" to "Existing Trees to be Preserved (See Landscape Plan)"

(2) Demonstrate conformance to the requirement of ten percent tree canopy coverage, per the Development Plan.

2. Prior to issuance of the third building permit, the Rhode Island Avenue hiker/biker trail, and associated interpretive/commemorative features, shall be completed per the approved design plans and open to the public.

3. Prior to the issuance of the first grading permit, evidence shall be submitted that all pretreatment and protective devices for specimen trees 255, 281, 262 and 265 have been implemented.

4. Prior to the issuance of building permits for Parcels K, L and M, a detailed site plan application for each such parcel shall be reviewed and approved by the Planning Board in accordance with Part 3, Division 9 of the Zoning Ordinance.

5. Prior to the issuance of use and occupancy building permits for residential units protected from noise by the proposed noise wall, the wall shall be fully constructed on-site, if such a noise wall is required.

6. The plans shall be revised to conform to the Cafritz Property at Riverdale Park Town Center Development Plan, as modified by any approved secondary amendments. The MU-TC Guidelines Compliance Matrix ("Matrix"), dated May 5, 2013, shall serve as the instrument to guide the revisions to the plans at either time of certification or prior to building permit, as determined by the Urban Design Section. The Matrix shall be revised upon review to identify which outstanding guidelines and standards should be addressed at the time of certification of the DSP, and which should be reviewed before the issuance of a building permit for a specific building or parcel.

7. Prior to approval of a final use and occupancy permit for Parcel C, the applicant shall install the on-site commemorative/interpretive features for the ice house and complete other agreed-upon outreach and education measures.

8. Prior to issuance of the third building permit, multiple public artworks shall be incorporated into the greenway entrance feature along Baltimore Avenue (US 1).

9. Prior to approval of permits for construction of the bridge, the applicant shall submit the following to the Urban Design Section (M-NCPPC) for review of aesthetic and functional impacts, and to the Prince George's County Police Department for review of crime prevention through environmental design (CPTED) measures as follows:

a. The elevations, profiles and cross sections of the bridge design with sufficient detailing to address the materials and design of retaining/abutment walls and or posts. All surfaces should be designed to limit graffiti.

b. The plans shall be reviewed and comments provided in regard to proposed enclosures of space under the bridge, such as fencing or walls, lighting, and access control.

10. Prior to certification of the detailed site plan, the applicant shall revise the plans as follows or provide the specified documentation:

a. Revise the plan to provide at least 59 feet of right-of-way dedication from the existing center line along the property's frontage with Baltimore Avenue (US 1) for the provision of standard travel lanes, standard center turn lanes, on-road bike lanes, and a meandering sidewalk / 8-10-foot multiuse path along US 1 within the proposed dedicated right-of-way for US 1.

b. Revise the plans to provide for porous pavement in the surface parking compound areas to the extent that subsurface conditions are suitable in regards to percolation and structural support, as stated in the soils report.

c. Indicate on the plans the lots and parcels that are the subject of Special Permit SP130002.

d. Revise the plans to show the interim grading and landscaping proposed for Parcels K, L, M, and Parcel F. Landscaping for Parcel F shall include more significant features given its prominence in the subject property near the commercial activity.

e. Revise the M-U-TC Guidelines Compliance Matrix to correspond to the lots, parcels, and building designations as shown on the approved detailed site plan.

f. Revise the plans to show two additional exterior entries to Building 5, at least one of which shall be located on Woodberry Street

g. Revise the plans to show and identify shrubs and trees to buffer and/or screen the CSX railroad tracks in the space available.

h. Revise the plans to show street planting strips a minimum of six feet wide.

i. Revise the plans to show the Baltimore Avenue (US 1) landscaping/pedestrian amenity strip with shade trees planted approximately 30 to 40 feet on center. The size of the trees to be planted shall be a minimum of 2.5- to 3-inch caliper, subject to Maryland State Highway Administration (SHA) approval.

j. Provide a timetable with estimated dates for grading of the site and construction of buildings.

k. Prior to issuance of a rough grading permit, a plan shall be submitted to the Urban Design Section (M-NCPPC), the Town of University Park to describe phasing of the grading of the property to maintain as much as possible of the mature tree canopy and other screening in the greenway entrance feature on Parcels A, B, and C, until such time as grading is required by construction activity on adjacent parcels.

l. Revise the site plan to show the building height in feet for all buildings.

m. Provide landscaping and shading trees 30 feet on-center along the southern edge of the parking lot along driveway access (Underwood Street) on Parcel C as approved by the Urban Design Section as designee of the Planning Board.

n. Revise the location of the play area shown in the northeast corner of the Village Green to the northwest corner and provide for a unified play area with a low ornamental fence and multiple play equipment.

o. Provide raised crosswalks at 47th Street at the Van Buren intersection to the Village Green to the adjacent multifamily parcels and provide speed table at western location of the CSX bridge at the Village Green, subject to DPW&T approval.

11. Prior to the release of any building permits for Buildings 6B, 7, 8, or 9, the applicant shall provide evidence of good faith efforts to work with the Town of Riverdale Park to establish and authorize a shared parking district pursuant to Article 21A of the County Code.

12. The applicant should participate in a regional economic partnership along the corridor with existing business groups in neighboring jurisdictions and proximate developments to the east and west to: enhance regional connections and overall economic vitality, support and help recruit small/local businesses, coordinate and co-promote programming of activities, exhibits, thematic events, etc., and help ensure mutual success.

13. Prior to signature approval, provide details and specifications of the proposed green roof technologies to be employed, at a minimum on buildings 4 and 6A, consistent with the approved stormwater concept plan.

14. The TDMD and TMP plans shall address bikeshare, as well as weekend and evening traffic in addition to conditions outlined in the preliminary plan of subdivision (PGCPB No. 13-55, 4-13002). Expansion (improving headways, as well as weekend and evening service of locally provided services such as Bus 17 (Route 1 Ride) shall be reviewed and considered a primary mechanism to address transportation needs identified in the TDMD or TMP.

15. The applicant shall continue an 8-10 foot meandering multi-use (bike and pedestrian) path roughly adjacent to Route 1 that is ADA compliant, subject to Maryland State Highway Administration (SHA) approval and right-of-way availability or permission of the property owner, north of the property on the WMATA parcel and south of the property on the National Guard property. The path north of the site shall connect at Albion Road and pass through the historic, existing, MacAlpine and Calvert columns, if feasible. South of the site decorative bollards on the east side of the path shall be used to replace barricades at National Guard facility, subject to National Guard consent and approval. The applicant shall not bear any cost to acquire right-of-way needed to comply with this Condition.

16. Monument signs as described in the Detailed Site Plan submittal require a secondary amendment. Signage is governed by the 2012 Cafritz Property at Riverdale Park Town Center Development Plan, *Design Standards / Site Design,* "Signage," Paragraph 5, which states, in pertinent part, that "[u]nique neon signs, internally lit signs, and signs with moving parts or blinking lights may only approved for creative value that enhances the town center in areas outside of the historic core." Because the applicant's proposed signage was submitted as part of DSP-13009, and not through a secondary amendment as contemplated by the Development Plan, we reverse, and deny the Planning Board's approval of monument signs as

part of DSP-13009. All monument signs must follow the Development Plan guidelines or seek a secondary amendment.