

Case Nos.: DSP-19045  
TCP2-117-05-01  
Royal Farms Greenbelt  
(Reconsideration)

Applicant: RF Greenbelt RE LLC

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

FINAL DECISION — APPROVAL OF DETAILED SITE PLAN

On March 22, 2021, this matter was considered by the District Council on the record from Planning Board, and on the briefs and oral arguments of the parties. Council has afforded the issues on appeal full consideration and has determined that Planning Board’s approval of Detailed Site Plan 19045 and Type 2 Tree Conservation Plan 117-05-01—to construct a 4,649-square-foot food and beverage store, gas station, and separate 4,368-square-foot commercial building—was not arbitrary, capricious, or otherwise illegal. Unless otherwise stated herein, Council’s approval of the site plan<sup>1</sup> incorporates and adopts the findings and conclusions set forth by Planning Board in Resolution No. 2020-154 (A).

A. Introduction

This site plan requests approval to develop property within the Golden Triangle Office Park in Greenbelt. The Board approved the request, but the City of Greenbelt and certain “Small Businesses” (collectively Opposition) appealed to Council. Opposition requests that Council reverse, vacate, or disapprove the site plan. Applicant counters that Council should affirm the Board’s decision to approve the site plan. PGCPB No. 2020-154 (A), p. 3, Appeal, 2/8/2021,

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<sup>1</sup> Detailed Site Plan 19045 (DSP-19045) and Type 2 Tree Conservation Plan (TCP2-117-05-01) will be referred to as the site plan or separately where appropriate. Planning Board will be referred to as the Board and Technical Staff will be referred to as Staff. The Board’s Amended Resolution will be referred to as the Resolution or PGCPB No. 2020-154 (A). The Zoning Ordinance or Subtitle 27 of the County Code will be cited to as “PGCC § 27-\_\_\_\_.”

Applicant's Response, 3/11/2021, (3/22/2021, Tr.).

For reasons set forth herein, Council finds that the decision of the Board (as amended on reconsideration) is supported by substantial evidence of record, fairly-debatable, and not based on an erroneous conclusion of law.

B. Jurisdiction and Standard of Review

Council may elect to review a final decision of the Board to approve or disapprove a site plan and a party of record may appeal to Council the Board's final decision to approve or disapprove the plan. Md. Code Ann., Land Use, § 25-210, PGCC § 27-290. Council waived its election to review the Board's final decision of this site plan. Zoning Agenda, 1/25/2021, (1/25/2021, Tr.). Council's jurisdiction to review the Board's final decision is pursuant to an appeal from Opposition. Appeal, 2/8/2021. In an appellate capacity, Council's review of the Board's final decision on factual findings, and the application of law to those factual findings, is limited to determining if there is substantial evidence in the record as a whole to support the Board's findings and conclusions, and to determine if the decision is based on an erroneous conclusion of law. Council may not substitute its judgment for the Board. Rather, Council must affirm the Board's decision if there is sufficient evidence such that a reasoning mind reasonably could have reached the factual conclusion the Board reached. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015).

C. The Appeal

Opposition alleges ten (10) errors which it believes warrant disapproval of the site plan.<sup>2</sup> Appeal, 2/8/2021. Council will address each alleged error seriatim or in order presented.

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<sup>2</sup> Opposition 10 alleged errors are sequentially correct using natural numbers under "Summary of Argument" but are sequentially incorrect using roman numerals under "Argument." Appeal, pp. 5-19.

- I. The Planning Board failed to give appropriate notice that it approved Resolution No. 2020-154(A) which authorized DSP-19045 for Royal Farms Greenbelt. Appeal at 6.

Counsel for Small Business Owners (Mr. Nelson) concedes that the Board mailed a copy of the Amended Resolution to various persons of record but claims he did not receive the Resolution. Yet Mr. Nelson, on behalf of his clients, filed a *timely* 20-page appeal on the Amended Resolution. Appeal, 2/8/2021, Party of Record List, 1/7/2021, pp. 1, 2, 3, 4, 6.

Pursuant to the Board's Rules of Procedures, [a] final decision in a contested case shall be reflected in the form of a resolution. The mailing date of Resolution shall be considered the date of the final decision for purposes of reconsideration requests and *appeals*. Board's Rules of Procedure, Section 13 - Final Decisions, Resolution and Appeal Rights.<sup>3</sup> The mailing date of the Board's Resolution (or final decision) was January 12, 2021. The notification of mailing, in relevant part, provided as follows:

Re: Notification of Planning Board Action on  
Detailed Site Plan DSP-19045  
Royal Farms Greenbelt

Attachment: **PGCPB Resolution No. 2020-154(A)**  
**cc: Donna J. Brown, Clerk of the County Council**  
**Persons of Record** (Emphasis added).



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<sup>3</sup> <http://mncppc.org/DocumentCenter/View/1371/Rules-of-Procedure-PDF?bidId=> (last visited April 1, 2021).

Notification, 1/12/2021. Mr. Nelson is listed as the 75<sup>th</sup> party of record. Party of Record List, 1/7/2021, p. 6. Mr. Nelson also claims that as of the *morning* of February 8, 2021, the Board had not uploaded [on their website] the final Resolution. This argument lacks merit.

First, for purposes of appeal, the Board's Rules of Procedure does not require online posting of the final Resolution. Second, it is *obvious* that Mr. Nelson was in *receipt* of the Amended Resolution (by mail or other means). On the *afternoon* of February 8, Mr. Nelson filed a *timely* 20-page appeal from the *same* Amended Resolution he claims was not posted online and that he did not receive in the mail due to the vagaries of the U.S. mail delivery system. Appeal, 2/8/2021, Applicant's Response at 4.

The record evidence is sufficient that the Board gave appropriate notice of (and Mr. Nelson *received*)<sup>4</sup> the Resolution that authorized the site plan.

- II. The Planning Board erred legally when it ruled that Section 27-274(a)(2)(C) related only to on-site vehicular and pedestrian circulation. Appeal at 6-7.

The cardinal rule of statutory interpretation is to ascertain and effectuate the actual intent of the legislature. *County Council of Prince George's County v. Dutcher*, 365 Md. 399, 416-17, 780 A.2d 1137, 1147-48 (2001). The Board's interpretation of PGCC § 27-274(a)(2)(C) is reviewed *de novo* to determine if it was legally correct. *Motor Vehicle Admin. v. Smith*, 458 Md. 677, 686, 183 A.3d 211 (2018). Considerable weight should be given to the agency's interpretation and application of the statute. *County Council of Prince George's County v. Billings*, 420 Md. 84, 21 A.3d 1065 (2011). Concerning *on-site* vehicular and pedestrian *circulation*, PGCC § 27-274(a)(2)(C) provides (in its entirety) as follows:

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<sup>4</sup> Mr. Nelson specifically appeals the Board's **Amended** Resolution—i.e.—PGCPB No. 2020-154(A). This fact independently confirms that Mr. Nelson *received* appropriate notice. Appeal, 2/8/2021.



Vehicular and pedestrian *circulation on a site* should be safe, efficient, and convenient *for both pedestrians and drivers*. To *fulfill this goal*, the following *guidelines* should be observed:

- (i) The location, number and design of driveway entrances *to the site* should *minimize conflict with off-site traffic*, should provide a safe transition *into the parking lot*, and should provide adequate acceleration and deceleration lanes, if necessary;
- (ii) *Entrance drives* should provide adequate *space for queuing*;
- (iii) *Circulation patterns* should be designed so that *vehicular traffic may flow freely through the parking lot* without encouraging higher speeds than can be safely accommodated;
- (iv) *Parking areas* should be designed to discourage their use *as through-access drives*;
- (v) *Internal signs* such as *directional arrows, lane markings*, and other roadway commands should be used to facilitate *safe driving through the parking lot*;
- (vi) *Drive-through* establishments should be designed with adequate space for *queuing lanes that do not conflict with circulation traffic patterns or pedestrian access*;
- (vii) *Parcel pick-up areas* should be coordinated with other *on-site traffic flows*;
- (viii) Pedestrian access should be provided *into the site and through parking lots* to the major destinations *on the site*;
- (ix) *Pedestrian and vehicular circulation routes* should generally be *separated and clearly marked*;
- (x) *Crosswalks for pedestrians that span vehicular lanes* should be identified by the *use of signs, stripes on the pavement*, change of paving material, or similar techniques; and
- (xi) *Barrier-free pathways to accommodate the handicapped* should be provided.

PGCC § 27-274(a)(2)(C)(i)-(xi) (Emphasis added). The clear intent of this statute is to provide for safe, efficient, and convenient *on-site* vehicular and pedestrian *circulation*. To achieve the *goal* of the statute, minimizing conflicts with “off-site traffic” is a *guideline* that should be *observed* for the *location, number and design of driveway entrances on-site*. The clear intent of the statute is

also to ensure that *access driveways* provide for a safe transition *into the parking lot on-site*. Council agrees with the Applicant that Opposition misinterpreted the statute, which resulted in a misguided argument that the Board was required to evaluate the *adequacy of intersections within the vicinity* of the property—unrelated to the single access driveway for the development from Capitol Drive. Applicant’s Response at 5.

Opposition also alleges that the Board erred legally when it determined it did not need to consider off-site traffic. Appeal at 7. Opposition misrepresents the record because the Board *did* consider conflicts with off-site traffic. The Board relied upon substantial evidence of record and determined that *even if* the design guidelines in the statute was intended to evaluate off-site traffic, *its findings* on traffic studies, estimates, and testimony in the record would *satisfy* PGCC § 27-274(a)(2)(C)(i) and (ii). PGCPB No. 2020-154, p. 11-12, PGCPB No. 2020-154 (A), pp. 5-6, 11-17, Letter from City of Greenbelt to Chair Hewlett, 10/12/2020, Letter from Haller to Chair Hewlett, 10/13/2020, Staff Report, 10/22/2020, Statement of Justification/Supplemental Statement of Justification, 10/27/2020, Transportation Analysis, 10/8/2020, Supplemental Transportation Analysis, 10/26/2020, (10/29/2020, Tr.), (12/17/2020, Tr.), (3/22/2021, Tr.). *See also* discussion below in Argument III.

The Board was legally correct to conclude that the statute applies only to *on-site* vehicular and pedestrian *circulation*.

- III. The Planning Board did not adequately articulate how the proposed single access driveway for the development from Capitol Drive complied with Section 27-274(a)(2)(C). Appeal at 7-8.

Opposition avers that the Board failed to articulate how the proposed single access driveway from Capitol Drive will minimize “potential” conflicts with off-site traffic. Appeal at 8. Opposition adds the word “potential” into the statute to give it a meaning it desires. But statutory

interpretation neither adds nor deletes words or engages in forced or subtle interpretation in an attempt to extend or limit the statute's meaning. *Bellard v. State*, 452 Md. 467, 481, 157 A.3d 272 (2017) (quoting *Wagner v. State*, 445 Md. 404, 417-19, 128 A.3d 1 (2015)). This argument is based on the same misinterpretation of the statute discussed above in Argument II.

Applicant's first site plan proposed 2 access driveways from Capitol Drive. Staff Report, p. 6, Figure 1: Illustrative Site Development Plan, Item 8, Slide 9 of 17. But at the request of Opposition, the Board approved the site plan subject to a single access driveway and installation of a sign at the site exit directing vehicles wishing to travel east on MD 193 or south on I-295 to utilize the intersection of Walker Drive and Greenbelt Road. PGCPB No. 2020-154, p. 19. PGCC § 27-108.01(a)(10) ([t]he word approve includes approve with conditions, modifications, or amendments).

Concerning the single access driveway (recommended by Opposition), the Board's initial Resolution fully articulated how the driveway complies with the statute as follows:

The Planning Board also reviewed recent traffic study data from an expert for the applicant who concurred with staff's findings and also testified that the expected additional trips generated by the development were significantly under allowable caps. The expert also testified that intersections where traffic would be directed had capacity to appropriately handle increased traffic from the development. The expert also submitted a traffic study reviewed by the Planning Board that supported his testimony. Staff also testified that the intersection of Capitol Drive and Greenbelt Road (MD-193) was rarely used and that the intersection at Greenbelt Road and Walker Drive operated at Level Service "A." Testimony was also received by an expert for an opponent of the project, without documentary support, that the proposed development would generate a higher number of trips than estimated by the (ITE) *Trip Generation Manual* and that the intersections would cause an unacceptable amount of queuing. The Planning Board weighed the evidence and agreed with the staff's analysis.

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Testimony was also received that the applicant's proposal does not meet the design guidelines for 27-274(a)(2)(C)(i) and (ii) because of the aforementioned higher trip counts and queuing at intersections. However, testimony from applicant's counsel

noted that those design guidelines related only to “on-site” vehicular and pedestrian circulation. The Board agrees with applicant’s counsel. However, since the Board already determined that the traffic studies and testimony provided by the applicant, as well as the findings of staff support the traffic counts estimates and meet the requirements for adequacy, even if the design guidelines did intend to evaluate off-site traffic, the Board’s findings would satisfy the requirements of 27-274(a)(2)(C)(i) and (ii). The Planning Board also approves the proposed single access driveway for the development from Capitol Drive. There is no direct access to Greenbelt Road. The access driveway is full movement allowing ingress and egress into the site. The design of on-site circulation is also acceptable. From the standpoint of transportation, therefore, it is determined that this plan is acceptable and meets the finding required for a DSP as described in the Zoning Ordinance.

PGCPB No. 2020-154, p. 11-12.

Ultimately, the site plan was reconsidered by the Board to allow parties of record an opportunity to respond to certain new information on the site plan. PGCPB No. 2020-154 (A), pp. 1, 17, (12/3/2020, Tr.). At the conclusion of the hearing, Commissioner Washington made the following motion:

COMMISSIONER WASHINGTON: Madam Chair, I move that we adopt the findings of staff as outlined in staff’s report, in addition to the amended findings as outlined in staff’s memo dated October 22nd and approve DSP-19045 and TCP2-1170501 along with the associated conditions as outlined in staff’s report and as further amended by staff’s memo dated October 22, 2020. In addition to that, staff’s new Condition 7 as outlined in the October 22nd memo shall be revised as read into the record by Mr. Haller, the applicant, in addition to an applicant proffered condition related to a repair station for bicycles and I would ask staff to ensure that the resolution reflects the appropriate wording to accommodate that.

In addition to the resolution incorporating the City of Greenbelt’s conditions and this would be based on their memo dated October 12th, Conditions 1, 3, 4, 5, 7, 9 and 11. And I would just note that some of Greenbelt’s conditions have already been incorporated by staff into their revised conditions.

(12/17/2020, Tr., pp. 29-30). After the Vice Chair seconded the motion, the Chair added the following discussion on the motion:

MADAM CHAIR: Okay. Wait a minute. I think Madam Vice Chair seconded it. Is there a discussion? *Under discussion I would like to add as a finding that we have heard and considered the additional presentation by Mr. Nelson and Mr. Green and Mr. Guckert in this matter as well.*

The motion carried 5-0. (12/17/2020, Tr., pp. 30-31) (Emphasis added). It was reasonable for the Board to adopt, among other things, the findings contained in Staff's Report. *Maryland-Nat. Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 110 (2009) ("...not unreasonable for the Planning Board to rely on a Staff Report, as the Planning Board did in this case, if the Staff Report is thorough, well conceived, and contains adequate findings of fact."). Subsequently, the Board adopted Amended Resolution No. 2020-154 (A) to certify its action on reconsideration. The Resolution, in relevant part, indicates as follows:

At the December 17, 2020 hearing, the Planning Board heard testimony from the applicant that reiterated their reasoning for the reconsideration, noting they were requesting no changes to the Board's findings and conditions of PGCPB Resolution No. 2020-154. The City of Greenbelt provided testimony that reiterated concerns previously presented in their October 12, 2020 letter and as presented at the October 29, 2020 hearing on the detailed site plan (DSP). The City also noted appreciation for the Board having incorporated a number of their requested conditions in PGCPB Resolution No. 2020-154. Counsel and a traffic expert representing persons of record in opposition provided additional testimony focused on traffic counts and associated information provided in the applicant's October 13th and 27th supplemental memorandums. This testimony argued certain applicant traffic counts related to intersections near the subject site were flawed but did not identify how such flaws, if true, caused the DSP to not be in conformance with the requirements of the Zoning Ordinance. Counsel and the traffic expert representing the applicant rebutted the opponent's testimony by identifying specific mistakes in the calculation methods used by the opponent's traffic expert and then explained why this DSP would not create traffic issues. The Planning Board considered all testimony provided and determined the findings and conditions of PGCPB Resolution No. 2020-154, as originally approved, did not warrant revision.

PGCPB No. 2020-154 (A), pp. 5-6, 11-17, PGCPB No. 2020-154, p. 11-12.

The findings and conclusions in the Resolution were also consistent with Council's review of the evidence in the record. Letter from City of Greenbelt to Chair Hewlett, 10/12/2020, Letter

from Haller to Chair Hewlett, 10/13/2020, Staff Report, 10/22/2020, Statement of Justification/Supplemental Statement of Justification, 10/27/2020, Transportation Analysis, 10/8/2020, Supplemental Transportation Analysis, 10/26/2020, (10/29/2020, Tr.), (12/17/2020, Tr.), (3/22/2021, Tr.).

Moreover, Council finds that this argument *ignores* the fact that the Board approved the site plan based on the *specific* recommendation from Opposition to condition the development of the site to a single access driveway. This argument also *ignores* the fact that the Board found that the single access driveway satisfies location, width, curbing and sidewalks requirements in PGCC § 27-358(a)(5)(6)(7). PGCPB No. 2020-154 (A), pp. 5-6.

The Board adequately articulated how the design of a single access driveway (recommended by Opposition) will minimize conflicts with offsite traffic.

- IV. The record lacked substantial evidence supporting the conclusion that the proposed single access driveway for the development from Capitol Drive complied with Section 27-274(a)(2)(C). The Planning Board made certain incorrect factual findings regarding how it complied with Section 27-274(2)(a)(2)(C). Small Business Owners proffer the following correct factual findings based on the testimony of Lawrence Green. Appeal at 9-15.

Opposition requests that Council upend the factual findings made by the Board by accepting certain proffered facts from its expert, Mr. Green, and reject the testimony from Applicant's expert, Mr. Guckert. Appeal at 14, 15.

On appeal, the Board's factual findings are reviewed to determine whether they are supported by substantial evidence in the record *Md. Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482, 514 n.15, 42 A.3d 40 (2012). Review is limited to ascertaining whether a reasoning mind could have reached the same factual conclusions reached by the agency on the record before it. Similarly, if the agency decision being judicially reviewed

is a mixed question of law and fact, the substantial evidence test applies, that is, the same standard of review that would apply to an agency factual finding. *Taylor v. Harford County Dep't of Soc. Servs.*, 384 Md. 213, 862 A.2d 1026 (2004). The substantial evidence test does not concern whether an aggrieved party provided substantial evidence to support its position before the administrative agency. On the contrary, the substantial evidence test requires a determination of whether the *agency's decision* is founded upon substantial evidence in the record. *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 997 A.2d 768 (2010). Under this standard, the reviewing body must “defer to the agency’s fact-finding and drawing of inferences if they are supported by the record” and “review the agency’s decision in the light most favorable to it.” *Motor Vehicle Admin. v. Carpenter*, 424 Md. 401, 36 A.3d 439 (2012). There is no substitution of judgment by the reviewing body “on the question [of] whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.” *Md. Dep't of the Env't v. Riverkeeper*, 447 Md. 88, 134 A.3d 892 (2016) (quoting *Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399, 396 A.2d 1080 (1979)).

Having determined that the Board’s final decision is supported by substantial evidence of record and not premised on an erroneous conclusion of law, there is no need to address this point again. *See* discussion above in Argument II and III. Assuming, without deciding, that the expert testimony from Mr. Green permits a finding either way on the single access driveway, the decision is not arbitrary or capricious—but “fairly debatable.” *Jabine v. Priola*, 45 Md. App. 218, 412 A.2d 1277 (1980). There is a difference between evidence which compels a certain result and that which merely permits it. A decision is “fairly debatable” if it is supported by substantial evidence of the record taken as a whole. *Sedney v. Lloyd*, 44 Md. App. 633, 410 A.2d 616 (1980). The test is not whether Opposition provided substantial evidence to support its position on the

single access driveway. The test is whether the Board's *decision* concerning the single access driveway is founded upon substantial evidence in the record. *Shea*, 415 Md. 1, 997 A.2d 768 (2010).

The Board's decision that the single access driveway complies with PGCC § 27-274(a)(2)(C) is supported by substantial evidence, fairly-debatable, and not based on legal error.

- V. The Planning Board erred legally when it ruled "master plan conformance is not a required finding for approval of a DSP." Appeal at 15.

Proposals for land use contained in a plan constitute a *non-binding advisory recommendation*, unless a relevant ordinance or regulation, or specific zoning, subdivision, or other land use approval, make compliance with the plan recommendations mandatory. *Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015) (Emphasis added). Required findings for a site plan are as follows:

- (1) The Planning Board may approve a Detailed Site Plan if it finds that the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make these findings, the Planning Board may disapprove the Plan.
- (2) The Planning Board shall also find that the Detailed Site Plan is in general conformance with the approved Conceptual Site Plan (if one was required).
- (3) The Planning Board may approve a Detailed Site Plan for Infrastructure if it finds that the plan satisfies the site design guidelines as contained in Section 27-274, prevents offsite property damage, and prevents environmental degradation to safeguard the public's health, safety, welfare, and economic well-being for grading, reforestation, woodland conservation, drainage, erosion, and pollution discharge.
- (4) The Planning Board may approve a Detailed Site Plan if it finds that the regulated environmental features have been preserved and/or restored in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

PCGG § 27-285(b). Nothing in this provision requires master plan conformance to approve a site



plan. The subject property is zoned C-O (Commercial Office). The purposes of the C-O zone are to provide locations for predominantly nonretail commercial uses, such as business offices and services of a professional, clerical, or administrative nature, and such retail and service uses as are desirable for the efficient and convenient operation of the nonretail uses. PGCC § 27-453(a). The Board did not disregard the general purposes of PGCC §§ 27-102(a) and 27-446(a)(6). Appeal at 15. When interpreting words and phrases in the Ordinance, the particular and specific control the general. PGCC § 27-108.01.

The Board addressed, in the alternative, master plan conformance as follows:

**Community Planning**—The Planning Board adopts, herein by reference, a memorandum dated August 20, 2020 (Sams to Bossi), which notes that pursuant to Part 3, Division 9, Subdivision 3, of the Zoning Ordinance, master plan conformance is not a required finding for approval of a DSP. While the Planning Board heard testimony that the purposes of the Zoning Ordinance and commercial zoning (Sections 27-102(a)(2) and 27-446(a)(6) respectively) are to implement master plans, it also heard testimony that those purposes are applicable to the adoption of the Zoning Ordinance, but are not findings required for approval of a DSP.

Although master plan conformance is not required for approval of a DSP, the Planning Board finds the DSP conforms with the goals or objectives for the Golden Triangle in the *Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment*. While testimony at the hearing noted the *Sector Plan* contained one strategy supporting existing office uses and one goal to promote and strengthen the existing office and retail markets, the findings in the Sams to Bossi letter, and testimony received at the hearing, identified that page 91 of the *Sector Plan* specifically identifies future land uses for the subject property as “Commercial Office and/or Retail.”

PGCPB No. 2020-154, p. 10, PGCPB No. 2020-154 (A), pp. 10-11, (10/29/2020, Tr.), (12/17/2020, Tr.), (3/22/2021, Tr.). As noted above in Argument III, the Board may rely on findings in a Staff Report. *Greater Baden-Aquasco Citizens Ass’n*, 412 Md. at 110.

The Board did not err legally when it found that master plan conformance is not a required finding to approve a site plan.

- VI. The Planning Board did not adequately articulate how the Greenbelt Royal Farms complied with the Sector Plan's goal of protecting and promoting existing businesses. Appeal at 15-16.

Opposition alleges that the Board inadequately articulated how the Greenbelt Royal Farms addresses the Sector Plan's goal of promoting and strengthening existing retail markets and facilitating the revitalization and redevelopment of existing commercial properties to enhance the *competitiveness* of area businesses. According to Opposition, the Board failed to address whether the Greenbelt Royal Farms would *help* or *harm* these businesses. Appeal at 16. (Emphasis added).

First, for purposes of this argument, challenges based on *economic competition* or *harm from economic competition* is not sufficient to show aggrievement. *Patel v. Bd. of License Comm'rs for Somerset Cnty.*, 230 Md. App. 195, 146 A.3d 1178 (2016) citing *A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colo., LLC*, 447 Md. 425, 135 A.3d 492 (2016) (The motivator driving Moe to protest the rezoning was, as found by the Circuit Court Judge, "simply a matter of competition." It is clear, however, that, "a person is not 'aggrieved' for standing purposes when his sole interest in challenging a zoning decision is to stave off competition with his established business.") (Emphasis added).

Second, in addition to findings discussed above in Argument V, the Board found as follows:

The Planning Board received a letter dated October 12, 2020 (Byrd to Hewlett) which noted that the Greenbelt City Council reviewed and voted to oppose the subject DSP 4-3 at its October 5, 2020 meeting and recommended the Planning Board disapprove the DSP. Key concerns of the City Council regarding the proposed project, as further presented through testimony at the hearing from counsel to the City and the City Mayor, included generalized concerns regarding traffic concerns, environmental concerns, suitability of this land use, the economic impact and demand of the proposed development, the necessity of developments to utilize local hiring practices and to contract with local Minority Business Enterprises (MBEs), increased noise and traffic that will impact the residential areas to the east of the site, concerns about the intersection of Capitol Drive and

Greenbelt Road (MD 193) impacts on the operation of Capitol Drive, on-street parking on both sides of Capitol Drive, adverse environmental impacts, storm water runoff, and the clearing of the existing trees on the site. The City Council also believed the use is not the highest and best use for the subject property and expressed concern about economic demand and long-term viability of the site. The City also expressed concern about the preservation and maintenance of the Toaping Castle Site, and the speculative development of the second commercial building. The City is opposed to the inclusion of the second commercial building in this DSP.

The Planning Board considered all of the City's concerns and determined the findings of the Board, as provided in this Resolution, address the City's generalized concerns regarding traffic, the environment, suitability of this land use, noise, the intersection of Capitol Drive and Greenbelt Road (MD 193), on-street parking, adverse environmental impacts, storm water runoff, and the clearing of the existing trees on the site, and historic preservation.

The City Council also believed the use is not the highest and best use for the subject property and expressed concern about economic demand and long-term viability of the site. The City also expressed concern about the preservation and maintenance of the Toaping Castle Site, and the speculative development of the second commercial building. The City is opposed to the inclusion of the second commercial building in this DSP.

In addition, the Planning Board notes that the City's remaining concerns, regarding the economic impact and demand of the proposed development, the necessity of developments to utilize local hiring practices and to contract with local MBEs, and the economic impact on other businesses are not issues that the Planning Board is allowed to consider when evaluating a DSP.

PGCPB No. 2020-154, pp. 14-15, PGCPB No. 2020-154 (A), pp. 14-15, (10/29/2020, Tr.), (12/17/2020, Tr.), (3/22/2021, Tr.).

The Board adequately articulated how the Greenbelt Royal Farms complies with the Sector Plan.

- VII. The record lacks substantial evidence that the proposed Greenbelt Royal Farms complies with the Sector Plan. The Planning Board made certain incorrect factual findings regarding the DSP's alleged conformance with the Sector Plan. Small Business Owners proffer correct factual findings based on the testimony of Ruth Grover. Appeal at 17-18.

Similar to Argument IV, Opposition requests that Council upend the Board's factual findings that the site plan conforms with the Sector Plan by accepting proffered facts from Ruth Grover. Appeal at 17.

Having determined that the Board's final decision is supported by substantial evidence of record and not premised on an erroneous conclusion of law, there is no need to address this point again. *See* discussion above in Argument V and VI. Assuming, without deciding, that proffered facts from Ms. Grover permits a finding either way on the Sector Plan, the decision is not arbitrary or capricious—but “fairly debatable.” *Priola*, 45 Md. App. 218, 412 A.2d 1277 (1980). There is a difference between evidence which compels a certain result and that which merely permits it. A decision is “fairly debatable” if it is supported by substantial evidence of the record taken as a whole. *Lloyd*, 44 Md. App. 633, 410 A.2d 616 (1980). The test is not whether Opposition provided substantial evidence to support its position on the Sector Plan. The test is whether the Board's *decision* concerning the Sector Plan is founded upon substantial evidence in the record. *Shea*, 415 Md. 1, 997 A.2d 768 (2010).

The Board's decision that the site plan complies with the Sector Plan is supported by substantial evidence, fairly-debatable, and not based on legal error.

VIII. The Planning Board failed to adequately articulate how the proposed Greenbelt Royal Farms complied with the architectural conditions set forth in Section 27-358(a)(10) and PPS 4-75259. Appeal at 18-19.

This argument misrepresents the record because it omits relevant findings made by the Board. On the issue of architectural compatibility with *existing* and *proposed surrounding development*, the Board made the following findings:

**Location:** The subject property is located on the north side of MD 193 (Greenbelt Road), approximately 635 feet east of its intersection with Walker Drive. Further, the property is located within the Golden Triangle Office Park Focus Area of the *2013 Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment*.

**Surrounding Uses:** The subject property is bounded to the north and west by property in the Commercial Miscellaneous Zone developed with an automobile dealership, Capitol Cadillac. Capitol Drive abuts the southwest portion of the site, with undeveloped land in the Commercial Shopping Center Zone beyond. To the east are properties in the Commercial Office (C-O) Zone, including one property developed with a public utility use, and multiple undeveloped properties, with I-95/I-495 (Capital Beltway) beyond. The property is bounded to the south by Greenbelt Road, with the Greenbelt Park property in the Reserved Open Space Zone beyond.

**Design Features:** The subject 4.07-acre site is predominantly undeveloped and wooded. An existing gravel parking area, in the northern portion of the site, is associated with the adjacent automobile dealership use and proposed to be removed. A Prince George's County historic site, the ruins of a historic house known as the Toaping Castle, 18PR801, is in the southeast corner of the site. The historic resource is to be preserved, with an interpretive sign provided, and split-rail fence proposed to encircle it.

The subject application proposes the development of a Royal Farms gas station and food and beverage store, with an eating and drinking establishment component, including 29 seats. A separate, second commercial building is proposed to include future commercial retail or service uses. A specific use or user has not been presented for the commercial building and is not a required finding for the approval of a DSP.

**Architecture:** The proposed 4,649-square-foot Royal Farms food and beverage store is a single-story rectangular structure oriented parallel to Greenbelt Road. The associated 5,280-square-foot gas station canopy, with eight multi-product dispensers, is located south of the building, closer to Capitol Drive and Greenbelt

Road. The canopy will be 19 feet in height and the building will be 21 feet in height to the top of its parapet. The southern elevation of the building includes a gable-covered main entrance with a height of approximately 32.5 feet. A decorative cupola tops the gable and extends to a height of approximately 38.5 feet. Facades of the building are faced with a combination of beige cementitious siding and brick and stone veneers. Red and white trim, white steel canopies, and green awnings are used in combination to add visual interest to the design. The gas station canopy includes pillars clad with stone veneer and topped with a white steel canopy with red trim which compliments the building façade design.

The proposed 4,368-square-foot commercial building is a single-story, rectangular building oriented perpendicular to Greenbelt Road. It is 18 feet in height, with a raised parapet height of 20 feet at the building's southwest corner, where the main entrance is located. Larger windows and wood-tone cement panel siding is utilized in the southwest corner area to further emphasize the entrance. Ample fenestration is provided on the western and southern facades of the building. Façades on all sides of the building are to be brick veneer and cement panel siding in tones of gray.

**Signage:** A comprehensive signage program is provided that includes freestanding, canopy-mounted, and building-mounted signs for Royal Farms and the commercial building. A departure from sign design standards was originally filed with the City of Greenbelt to accompany this DSP. The departure request was withdrawn, and the signage was redesigned to conform with the applicable requirements of the Prince George's County Zoning Ordinance.

PGCPB No. 2020-154, pp. 2-4, PGCPB No. 2020-154 (A), pp. 3-4. These findings were based on testimony and the review of numerous architectural renderings. Figure 1: Illustrative Site Development Plan, Figure 2: Southern Elevation – Royal Farms, Figure 3: Western Elevation – Commercial Building, Figure 4: Signage Examples, Item 8 (Slides 1-17), (10/29/2020, Tr.), (12/17/2020, Tr.), (3/22/2021, Tr.). The subject property is also the last property to develop in the Golden Triangle—i.e.—there is *no* remaining *proposed* development.

The Board adequately articulated how the site plan complies with architecture requirements in PGCC § 27-358(a)(10) and the preamble to the conditions in Preliminary Plan of Subdivision 4-75259 (PPS 4-75259). PGCPB No. 2020-154, pp. 6-9, PGCPB No. 2020-154 (A), pp. 7-9.

- IX. The record lacks substantial evidence that the proposed Greenbelt Royal Farms complies with the architectural conditions set forth in Section 27-358(a)(10) and PPS 4-75259. Small Business Owners proffer correct factual findings based on the testimony of Ruth Grover. Appeal at 19.

Similar to Argument IV and VII, Opposition requests that Council upend the Board's factual findings that the site plan complies with the requirements in PGCC § 27-358(a)(10) and the preamble to the conditions in PPS 4-75259 by accepting proffered facts from Ruth Grover.

Having determined that the Board's final decision is supported by substantial evidence of record and not premised on an erroneous conclusion of law, there is no need to address this point again. *See* discussion above in Argument VIII. Assuming, without deciding, that proffered facts from Ms. Grover permits a finding either way on architecture and lighting, the decision is not arbitrary or capricious—but “fairly debatable.” *Priola*, 45 Md. App. 218, 412 A.2d 1277 (1980). There is a difference between evidence which compels a certain result and that which merely permits it. A decision is “fairly debatable” if it is supported by substantial evidence of the record taken as a whole. *Lloyd*, 44 Md. App. 633, 410 A.2d 616 (1980). The test is not whether Opposition provided substantial evidence to support its position on architecture and lighting. The test is whether the Board's *decision* concerning architecture and lighting is founded upon substantial evidence in the record. *Shea*, 415 Md. 1, 997 A.2d 768 (2010).<sup>5</sup>

The Board's decision, that the site plan complies with the requirements in PGCC § 27-358(a)(10) and the preamble to the conditions in Preliminary Plan of Subdivision 4-75259 (PPS 4-75259), is supported by substantial evidence, fairly-debatable, and not based on legal error.

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<sup>5</sup> On lighting, at the request of Opposition, the Board approved the site plan subject to *certification* by the International Dark Sky Association. PGCPB No. 2020-154, p. 19, PGCPB No. 2020-154(A), p. 20. Opposition Exhibit 6 is irrelevant because it does not reflect the type of lighting that is required for Greenbelt Royal Farms. Applicant's Response at 15-16.

- X. The Resolution failed to comply with Condition 3 of PPS 4-75259. Appeal at 19-20.

This argument is baseless. Condition 3 of PPS 4-75259 states that the Board will *consult* with the City of Greenbelt on site plan review. Condition 3 was fully satisfied because the Board *did* consult with the City. PGCPB No. 2020-154, pp. 14-15, PGCPB No. 2020-154 (A), pp. 14-15, Applicant's Response at 16, Letter from City of Greenbelt to Chair Hewlett, 10/12/2020. The City's letter, in relevant part, stated:

"...[T]he Greenbelt City Council respectfully *recommends* that the Prince George's County Planning Board disapprove this Detailed Site Plan. *If* the Planning Board votes to *conditionally approve* the Detailed Site Plan, the City *urges* the Planning Board to adopt the attached conditions, *in addition to those recommended by M-NCPPC staff.*"

Letter from Haller to Chair Hewlett, p. 2 (Emphasis added). City representatives also testified before the Board. (10/29/2020, Tr.), (12/17/2020, Tr.). At the hearing in October, the City Solicitor acknowledged the Board's compliance with Condition 3 as follows:

MR. POUNDS: -- ...I'm the City Solicitor for the City of Greenbelt. *This application originally came before the City staff, the City Planning staff and also the City Advisory Planning Board.* Through those reviews a number of different issues were raised and those issues and comments were sent to the City Council at a public hearing.

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As a result, as you mentioned earlier, the *City in its letter* of rejection, did send a letter saying that the City Council did vote against this project, *however, with that realization of the authority of the Planning Board*, they did send conditions that we were requested that it be reviewed and adopted as a result of its internal review also. *And while we appreciate the five of those conditions were adopted by the applicant, we would request that all 14 conditions actually be adopted.*

It is the City's view that the application before it was opposed by the City Council and indeed many of the conditions were discussed at that time. *And we know the City's opposition is a request and obviously **is not binding** before the Planning Board.* So the reason that the City included the conditions is that if the Planning Board votes to approve the project, obviously, you know over the City's objection, *the City would request that the conditions be reviewed in the Planning Board*



*decision*. So thus, on behalf of the City Council the City is in opposition to the application and we request that it be denied.

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MADAM CHAIR: Okay. Thank you, Mr. Pounds and it's good to see you, however virtually, but it's good to see you. Let me say this, let me just say this. Having reviewed the City of Greenbelt's letter and I know the City, it was close, they voted 4-3 to oppose but as you've indicated they submitted the conditions just in case the Board decides to go forward. *While we take the information from the municipalities and everybody very, very seriously as we have to evaluate everything we still as you know as an attorney, we still have to evaluate everything in accordance with the laws that have been prescribed and the legal parameters that we have.*

(10/29/2020, Tr., pp. 36-39) (Emphasis added). Ms. Grover's testimony is without foundation in fact. The Board did not err because *more* deference to the City is not required to satisfy Condition 3. The Board's *conditional* approval of the site plan is sufficient. PGCC § 27-108.01(a)(10) ([t]he word approve includes approve with conditions, modifications, or amendments). There is a trigger for the City's conditions because Applicant may not obtain *certification* or *grading permits* for the site plan *until* those conditions are *satisfied*. PGCPB No. 2020-154, pp. 16-19, PGCPB No. 2020-154(A), pp. 18-20.

The Resolution did not fail to comply with Condition 3 of PPS 4-75259.

D. Forest Conservation Act

At oral argument, the issue was first raised whether a recent opinion from the Attorney General released on October 26, 2020, concerning the Forest Conservation Act affects the approval of the site plan. 105 *Opinions of the Attorney General* 66 (2020), (3/22/2021, Tr.). The AG's Opinion does not impact the approval of the site plan. A Type 2 Tree Conservation Plan is required to be submitted and approved for a Detailed Site Plan. The Board approved the Applicant's Type 2 Plan (TCP2-117-05-01). The Type 2 Plan contains a "Standard Woodland Conservation Worksheet for Prince George's County" as required by the Environmental Technical Manual. This

worksheet reflects that 1.13 acres of off-site woodland conservation credits are required. The worksheet does not specify how those woodland conservation credits will be satisfied, but the Environmental Technical Manual requires that if off-site woodland conservation is proposed to fulfill the woodland conservation requirement, evidence that this requirement has been satisfied must be provided prior to the release of the associated grading permit. The determination as to whether the off-site credits can be satisfied through the preservation of existing trees or through the creation of new woodlands is not a site plan issue. The AG's Opinion states that conformance with the State Woodland Conservation Ordinance requires that off-site woodland conservation credits must be satisfied through the creation of new woodlands rather than the preservation of existing trees. If that requirement is applicable at the time of grading permit, the Applicant must comply. At this time, the AG's Opinion does not impact the approval of the site plan and Type 2 Plan because the issue is not addressed until grading permit, and the Tree Conservation Plan approved in this case does not specify where the off-site tree mitigation credits will be obtained.

E. Conclusion

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

Approval of DSP-19045 and TCP2-117-05-01 are subject to the following conditions:<sup>6</sup>

1. Prior to certification, the detailed site plan shall be revised, or additional information shall be provided, as follows:
  - a. Correct technical errors in the parking and loading schedule.
  - b. Provide a location and detail for an interpretive sign for the Toaping Castle Historic Site, to be reviewed by the City of Greenbelt. This sign shall be installed prior to the issuance of a use and occupancy permit.
  - c. Show the metes and bounds, the limits of the environmental setting, and the proper identification of the Toaping Castle Archeological Site (18PR801).
  - d. Provide a bicycle repair station at a location convenient to the Royal Farms building.
  - e. Show infrastructure for two electric vehicle charging stations, serving a minimum of four cars simultaneously, which shall be installed with the site development to facilitate the installation of charging stations in the future.
  - f. Provide a dog relief station to include signage, waste bags, and a trash can at an appropriate location.
2. Prior to certification of the detailed site plan, the Type 2 tree conservation plan (TCP2) shall be revised, as follows:
  - a. Identify the location of the previous tree-line on-site using the 2000 aerial image from PG Atlas and identify all associated previously cleared woodland areas on the plan.
  - b. Revise the TCP2 worksheet as follows:
    - (1) Revise the existing woodland value to incorporate the area of woodlands that existed in 2000 that were cleared subsequently.
    - (2) Incorporate the previously cleared area into the woodland cleared value of the worksheet.
    - (3) Account for all off-site clearing in the worksheet.

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<sup>6</sup> Pursuant to discussion at oral argument, Condition 4 will be added to the Board's approval.

- (4) Account for all areas of woodlands retained not cleared in the worksheet (remove the area of woodland retained not credited from woodland cleared total in the worksheet).
- (5) Place an asterisk next to the existing woodland and woodland cleared values, with a corresponding asterisk and the following footnote underneath the TCP worksheet:

“\*Note: The existing woodland value includes \_\_\_\_\_ acreage of woodlands that previously existed and were cleared on-site.”

- c. Modify the note on the TCP2 to clarify that the off-site clearing within the right-of-way of MD 193 (Greenbelt Road) is pending review with the Maryland State Highway Administration.
- d. Show all existing to remain and proposed utility easements and public rights-of-way on the TCP2. Ensure no afforestation is placed on-top of any easements or public rights-of-way (except for surface drainage easements).
- e. The qualified professional must sign and date the TCP worksheet on the TCP2.
- f. The qualified professional must sign and date their landscape architect seal on each sheet of the TCP2.
- g. Have the Property Owners Awareness Certificate signed and dated by the owner or owner’s representative.
- h. Add the standard “Permanent (Split Rail) Tree Protection Fence for Reforestation Areas” detail to the plan. Show this fencing around all proposed reforestation and afforestation areas as required.
- i. Add the standard “Reforestation Area Sign” detail to the plan. Identify the locations of all proposed reforestation signs on the plan.
- j. Show all stormwater management structures.
- k. Revise General Note 3 by replacing “The Department of Public Works and Transportation or the Department of Environmental Resources” with the “Department of Permitting, Inspections and Enforcement (DPIE).”

- l. Add and complete the following standard additional notes:
    - (1) Add the notes entitled “When invasive plant species are to be removed by the permittee” Add a copy of the corresponding invasive management plan to the TCP2.
    - (2) Add the post development notes.
  - m. Replace all proposed Virginia pines with an appropriate native evergreen that is not susceptible to wind throw.
  - n. Remove all Woodland Preservation Area signs from the plan since no woodland preservation is being provided on-site.
  - o. Add the standard tree pruning detail to the plan.
  - p. Add the standard tree planting and maintenance calendar to the plan.
  - q. Add the following note under the TCP2 certification block on Sheet 1:

“Woodlands preserved, planted, or regenerated in fulfillment of on-site woodland conservation requirements have been placed in a Woodland and Wildlife Habitat Conservation Easement recorded in the Prince George’s County Land Records at Liber \_\_\_\_\_ Folio \_\_\_\_\_. Revisions to this TCP2 may require a revision to the recorded easement.”
3. Prior to the issuance of a grading permit, the applicant shall:
    - a. Provide a final report detailing the Phase I and Phase II investigations and ensure that all artifacts are curated at the Maryland Archaeological Conservation Lab. Proof of the disposition of the artifacts shall be provided to Historic Preservation staff.
    - b. Install a super silt fence around the boundaries of the Toaping Castle Site, 18PR801, to protect the site during construction.

4. The applicant shall submit a written request to the State Highway Administration (SHA) seeking review of any needed traffic and/or traffic signal improvements at the intersection of Walker Drive and MD 193/Greenbelt Road and provide copy of letter and response to the City of Greenbelt.
5. The applicant shall install a sign at the site exit directing vehicles wishing to travel east on MD 193 (Greenbelt Road) or south on I-295 to utilize the intersection of Walker Drive and Greenbelt Road.
6. The applicant shall revise the entrance to the site and provide for a single driveway and internal circulation.
7. Lighting on the site shall be certified by the International Dark Sky Association.
8. The applicant shall submit a copy of the Royal Farms sustainable construction practices, and note on the plan that the proposed Royal Farms shall be constructed in accordance with their sustainable construction practices.

ORDERED this 6<sup>th</sup> day of April, 2021, by the following vote:

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


Opposed:

Abstained:

Absent:

Vote: 11-0.

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

By:   
\_\_\_\_\_  
Calvin S. Hawkins, II, Chair

ATTEST:



\_\_\_\_\_  
Donna J. Brown  
Clerk of the Council