

Case No.: DSP-20002
TCP2-018-2023
AC-22009
Variance (25-119(d))
Giac Son Buddhist Temple

Applicant: Giac Son Buddhist Temple Corp.

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

ORDER OF REMAND

A. Introduction

On January 16, 2024, using oral argument procedures, the District Council reviewed, based on its motion, the Planning Board's decision, embodied in Resolution 2023-98, to approve, among other things, Detailed Site Plan (DSP) 20002, a proposed development to construct a 4,625-square-foot place of worship and 1,877-square-foot accessory parsonage on approximately 1.64-acres of land in the Rural Residential Zone, located at the southeast quadrant of the intersection of MD 197 (Laurel Bowie Road) and Snowden Road, Planning Area 62, Council District 1. The District Council's review of the Board's decision also included consideration of written exceptions to the Board's decision from Citizen-Protestants.¹ (1/16/2024, Tr.), Exceptions, 11/2/2023.²

¹ Subject to certain Transitional Provisions in the New Zoning Ordinance, this case was reviewed and approved by the Board under the Old Zoning Ordinance (ZO). Under the Old ZO, when an appeal and request for oral argument is filed by a person of record, as is the case here, all other persons of record may also make oral argument or written submission in opposition. Copies of any written material to be submitted in support of this opposition position shall be filed with the Clerk of the Council (along with a certification of service upon the persons requesting oral argument) no later than five (5) days before the oral argument date. PGCC § 27-131.01. (d). Here, Applicant filed no written submission in opposition to exceptions filed by Citizen-Protestants.

² The Applicant's motion to strike testimony or discussion on square footage and lot coverage of the proposed development is DENIED. The District Council is authorized by statute to review the Board's approval of a Detailed Site Plan and issue the final decision. Md. Code Ann., Land Use (LU) Article § 25-210 (1957, 2012 Repl. Vol., 2023 Supp.) *See also County Council of Prince George's County v. Billings*, 420 Md. 84, 88, 21 A.3d 1065, 1067 (2011) (when a district council elects to review a decision, the filing of exceptions no longer is necessary to guarantee review at the next administrative level).

Having reviewed the record, written exceptions, and argument of the parties, the District Council finds that, among other things, the Board erred as a matter of law when it concluded that the proposed development was exempt from Preliminary Plan of Subdivision (PPS) approval under Section 24-107 of the Old Subdivision Regulations. PGCC § 24-107. Because the gross floor area (GFA) of the proposed development exceeds 5,000 square feet, the exemption from PPS approval does not apply. Under Section 27-270 of the Old Zoning Ordinance, Order of Approvals, the Applicant was required to obtain PPS approval before the Board was legally authorized to review and approve DSP-20002. PGCC § 27-270.

The District Council finds that, before issuing a final decision in this matter, and instead of disapproving DSP-20002 or reversing the Board's decision in its entirety, it is appropriate to remand this matter to the Board for action in accordance with grounds set forth below.³ LU § 25-210, PGCC § 27-290.

B. The Subject Property/Site Plan

The property consists of 1.64 acres and is located in the southeast quadrant of the intersection of MD 197 (Laurel Bowie Road) and Snowden Road. Resolution 2023-98 at 2. A site plan is “an illustrated proposal for the *development or use* of a particular piece of real property [depicting] how the property will appear if the proposal is accepted.” *Cty. Council of Prince George's Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018). (Emphasis added). Here, on the same lot, the site plan proposes to develop a 4,625-square-foot place of worship and maintain an existing single-family detached dwelling as a required parsonage or accessory use. The other existing

³ *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1037 (holding that the City's zoning requirements are general laws of neutral application that do not violate the Free Exercise Clause of the First Amendment nor impose a substantial burden on free exercise of religion and that, accordingly, the strict scrutiny requirement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is not triggered because the City reasonably determined that the applicant had failed to meet the requirements of its zoning ordinance).

structures on Parcels 27 and 28 will be razed. Resolution 2023-98 at 2.

C. Definitions under the Old Zoning Ordinance

Because the Applicant elected to have the proposed development reviewed and approved under the Old ZO, the following definitions are relevant on remand:

- Development: Any activity that materially affects the *condition or use* of dry land, land under water, or *any structure*. PGCC § 27-107.01(a)(66.1).
- Development: Development means an activity that materially affects the existing condition or use of any land or structure. LU § 1-101(f).
- Use: A “Use” is either:(i) The purpose for which a “Building,” “Structure,” or land is designed, arranged, intended, maintained, or occupied; or (ii) Any activity, occupation, business, or operation carried on in, or on, a “Building,” “Structure,” or parcel of land. PGCC § 27-107.01(a)(244) (A).
- Structure: Anything constructed or built. PGCC § 27-107.01(a)(228).
- Building: A “Structure” having a roof and used for the shelter, support, or enclosure of persons, animals, or property. PGCC § 27-107.01(a)(29)(A).
- Gross Floor Area: The *total* number of square feet of floor area in a “*Building*,” *excluding* those portions of a “Basement” used exclusively for storage or other areas used exclusively for the mechanical elements of a “Building,” and uncovered steps and porches, *but including the total floor area of “Accessory Buildings” on the same “Lot.” All horizontal measurements shall be made between the exterior faces of walls, columns, foundations, or other means of support or enclosure...* (Abbreviated as “GFA.”). PGCC § 27-107.01(a)(105).
- Building, Accessory: A “Building” subordinate to, and located on the *same lot* with, a “Main Building,” *and used for an accessory use*. PGCC § 27-107.01(a)(30).
- Use, Accessory: The “Use” of a “Building,” “Structure,” or land which: (A) Is subordinate to, customarily incidental to, and ordinarily found in association with, a principal “Use,” which it serves. (When a specific “Use” is allowed in the Tables of Uses accessory to a principal “Use”, the “Accessory Use” need not be customarily incidental to, or ordinarily found in association with, the principal “Use”); (B) Is subordinate in purpose, area (except in the case of a cemetery that is accessory to a church, convent, or monastery, provided both uses were existing as of January 1, 1991), floor area, intensity, and extent to, and located on the same “Lot” with, the principal “Use”, except that a “Tourist Home” as an “Accessory

Use” need only be subordinate to the principal “Dwelling” use in purpose and number of nights used as a “Tourist Home” “Accessory Use” over a calendar year; and (C) Does not change the character of the principal “Use.” PGCC § 27-107.01(a)(245).

D. Subdivision Exemption

Under the Old ZO, a Preliminary Plan of Subdivision (PPS) is defined as “[t]he preliminary detailed drawing (to scale) of a tract of land, depicting its proposed division into “Lots,” “Blocks,” “Streets,” “Alleys,” or other designated areas within a proposed “Subdivision.” PGCC § 27-107.01(a)(184). In relevant part, under PGCC § 24-107(c)(7)(C) of the Old Subdivision Regulations, PPS approval is not required of land by deed of a lot prior to January 1, 1982, provided that the development proposed is in addition to a development in existence prior to January 1, 1990, and does not exceed 5,000 square feet of GFA. PGCC § 24-107(c)(7)(C). The cardinal rule of statutory interpretation is to ascertain and effectuate the actual intent of the legislature. The Board’s interpretation of PGCC § 27-107(c)(7)(C) is reviewed *de novo* to determine if [the Board] was legally correct. *Motor Vehicle Admin. v. Smith*, 458 Md. 677, 686, 183 A.3d 211 (2018). 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)).

First, the record reflects a deed of a lot prior to January 1, 1982, and the existence of a single-family residence, which existed prior to January 1, 1990. But the record does *not* reflect that the square footage of the single-family residence was 1,877 sq. ft. *prior* to January 1, 1990. According to the record, more than 600 sq. ft. of the 1,877 sq. ft. was based on an *addition* after 1990. In the record, there is testimony and analysis from Tim Carter which shows that the addition could easily

exceed 800 sq. ft.—which calls into question the Applicant’s 1,877 sq. ft. measurement for the proposed parsonage. As such, when more than 600 sq. ft. (*not* in existence *prior* to 1990) is added to the 4,625 sq. ft. place of worship—the proposed development exceeds 5,000 sq. ft. GFA—disqualifying it from the PPS exemption under 24-107(c)(7)(C). Planning Board Record at 8, 454, 456, 613, 615, Exceptions at 2-3.

Second, even if the more than 600 sq. ft. addition *existed prior* to January 1, 1990, or even if it was not taken into consideration—the proposed development would still exceed 5,000 sq. ft. GFA. Under the Old ZO, development is defined as including any activity that materially affects the condition or use of dry land, land under water, or any structure.

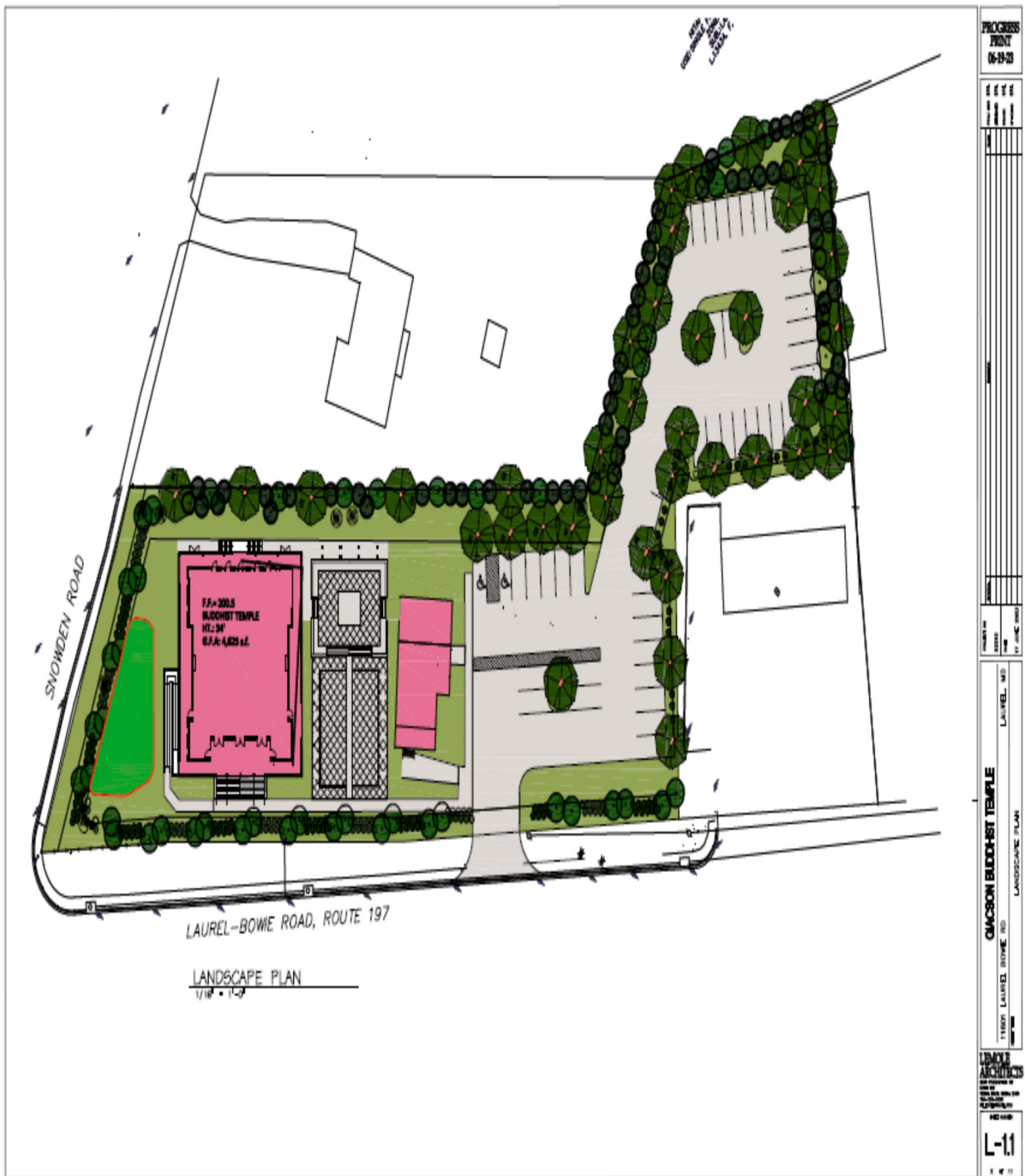
Here, the Applicant is not *only* proposing the activity of the 4,625 sq. ft. place of worship, which materially affects the condition of dry land on site, the Applicant is also proposing activity of the 1,877 sq. ft. (or more) parsonage as an accessory use on the same lot. According to the Applicant:

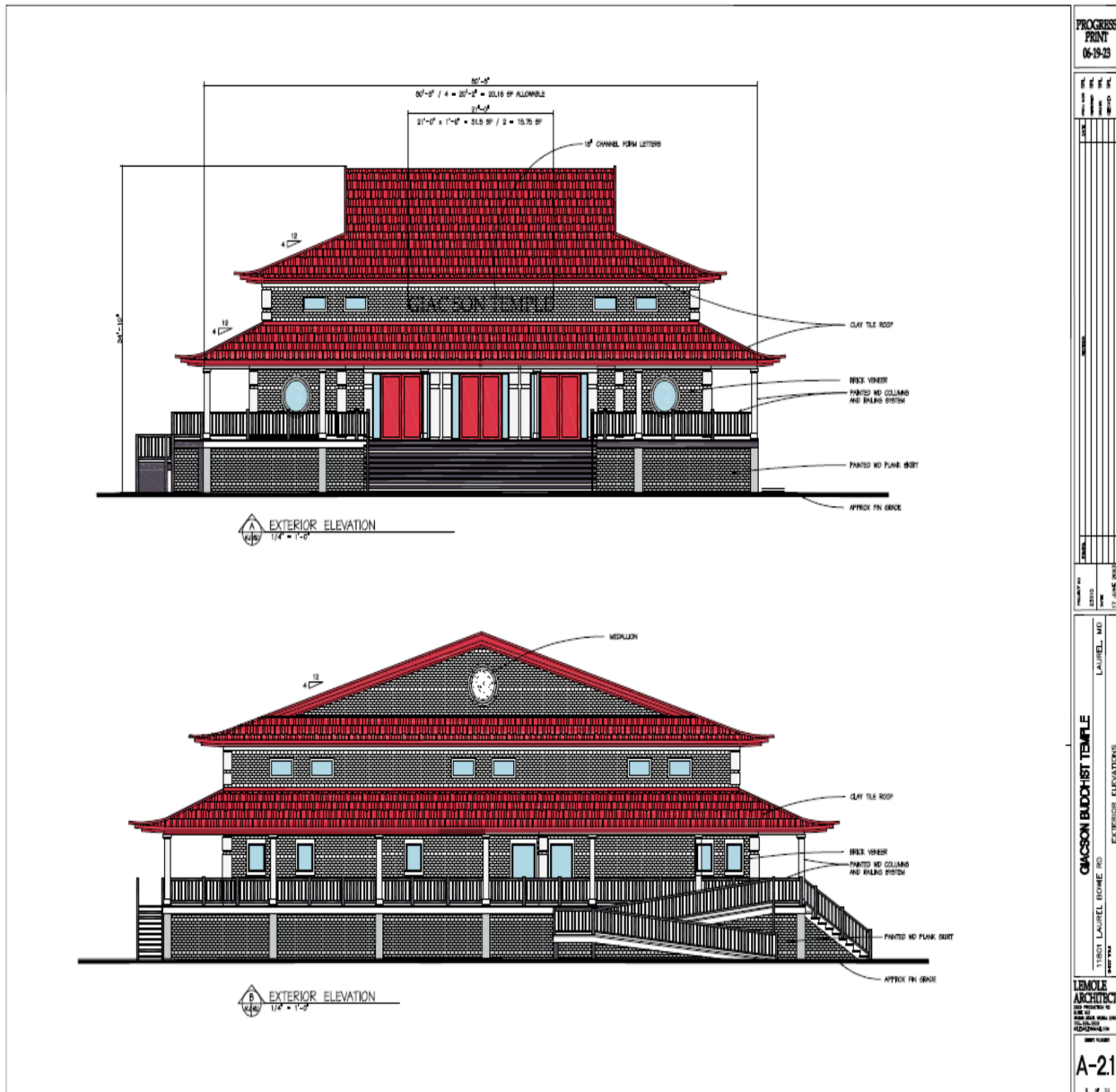
“Since Buddhist temples *require* a dwelling to be provided for the clergy, the *use* of this single-family home *will be a parsonage*. Section 27-424.01 allows a *parsonage as an accessory building which is accessory to churches or similar uses*. The other structures on Parcel 28 will be razed *to provide the required parking*. Parcels 27 and 28 will be developed and considered *as one buildable lot* for the purpose of conformance with the zoning ordinance.” (Emphasis added). Applicant’s Statement of Justification (SOJ), April 2023 at 2.

Because GFA is required to include the total floor area of the proposed parsonage—the proposed development would easily exceed 5,000 sq. ft. GFA—disqualifying the proposed development from the PPS exemption under 24-107(c)(7)(C).

Third, even if the required 1,877 sq. ft. (or more) parsonage for the place of worship was *excluded* from the GFA calculation, the proposed development would still exceed 5,000 sq. ft. because while the proposed 4,625 sq. ft. place of worship includes interior space—it does not

include *wrap-around covered porches*. When covered porches are included in the GFA, the proposed development would exceed 5,000 sq. ft. as shown below:





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According to the Applicant, building footprint for the proposed development is 7,209 sq. ft.—including covered porches as shown above. But to work-around the limitation on square footage under PGCC 24-107(c)(7)(C), the Applicant and the Board erroneously measured GFA to *exclude* the floor area within the covered porch. As the black outline shows above, the space used to measure GFA does *not* extend to the edge of the roof even though the covered walkways extend

to the edge of the roof. Planning Board Record at 141, 430, 432, Exceptions at 15-19.

The Board erred when it concluded that the proposed development was exempt from PPS approval under 24-107(c)(7)(C) because GFA requires that all horizontal measurements shall be made between the exterior faces of walls, columns, foundations, or other means of support or enclosure. PGCC § 27-107.01(a) (105).

When interpreting the Old ZO, it shall be read as a whole. It is not intended that specific requirements be interpreted separately from all other requirements in the Ordinance. PGCC § 27-108.01(a)(23). Based on the definitions under the Old ZO, which governs the proposed development, the Board erred when it failed to read the Old ZO as a whole. As a result, the Board failed to articulate, in any meaningful manner, findings of fact and conclusions necessary to allow the District Council, or persons of record, how it reasonably concluded that the Applicant's proposed development was exempt from PPS approval under 24-107(c)(7)(C). *Elbert v. Charles Cnty. Plan. Comm'n*, 2023 Md. App. LEXIS 805 (ACM Nov. 29, 2023) (meaningful articulation of findings of fact and conclusions are necessary to allow a reviewing [body] to determine the basis of the agency's action; otherwise, the agency's decision may be deemed arbitrary).

Finally, under the Old ZO, when a proposed development or activity requires a Detailed Site Plan, the following order of approvals *shall* be observed:⁴

- (1) Zoning;
- (2) Conceptual Site Plan;
- (3) Preliminary Plat of Subdivision;
- (4) Detailed Site Plan;
- (5) Final Plat of Subdivision (a final plat of subdivision may be approved prior to a detailed site plan, if the technical staff determines that the site plan approval will not affect final plat approval);
- (6) Grading, building, use and occupancy permits. PGCC § 27-270.

⁴ Under the Old ZO, "shall" is always mandatory and not discretionary. PGCC § 27-108.01(a)(19). However, here, a conceptual site plan is not required for this proposed development.

Having found that the Board erred when it concluded that the proposed development was exempt from PPS approval under 24-107(c)(7)(C), the Board's approval of DSP-20002 was *void ab initio* because it violated the Order of Approvals under the Old ZO. PGCC § 27-270. On remand, based on the proposed development and activity, the Applicant must first file and obtain PPS approval before filing a revised or amended Detailed Site Plan application to address the issues set forth herein. PGCC § 27-270.

E. Stormwater Management

In Maryland, stormwater management facilities are subject to regulations in a Zoning Ordinance. *People's Counsel for Balt. County v. Surina*, 400 Md. 662, 929 A.2d 899 (2007). Under the Old ZO, when a Detailed Site Plan is submitted to the Board it shall include an *approved* stormwater management concept plan. PGCC § 27-282(e)(11). Under the Stormwater Ordinance, or Subtitle 32, a SWM concept plan is the "[t]he first of three required plan approvals that includes the information necessary to allow an initial evaluation of a proposed project." PGCC § 32-171(a)(14). Although stormwater management is primarily governed by Subtitle 32, those regulations and guidelines must also be carried out in accordance with the Zoning Ordinance. *Surina*, 400 Md. at 690-93 ([A]lthough zoning laws and subdivision regulations are separate forms of regulation, and typically are administered by different governmental agencies or bodies, they operate in practical application to ensure that land in a particular locality is developed in a relatively uniform and consistent manner...Nowhere in any of the relevant cases explaining the differences between zoning and subdivision regulation is there an indication that improvements required by a subdivision regulation may be placed anywhere the developer wishes, regardless of an improvement's location relative to internal zoning boundaries and their requirements).

Here, the Department of Permit Inspections and Enforcement (DPIE) approved a SWM concept plan for the site on June 2, 2020, which *expired* on June 2, 2023—prior to the Technical Staff’s Report on August 24, 2023, and prior to the Board’s subsequent evidentiary hearings. What more, when DPIE approved the concept plan in 2020, it found that the concept plan also required approval from State Highway Administration (SHA). Planning Board Record at 61-62. *See Ross v. Montgomery County*, 252 Md. 497, 250 A.2d 635 (1969) (Landowners were prevented from constructing an apartment hotel on their property because their building permit had *expired*, and they had acquired no vested right to proceed with construction).

Under the Old ZO, the 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). PGCC § 27-285(b)(4). Subtitle 24-130(b)(5)—stream, wetland, and water quality protection and stormwater management—of the Old Subdivision Regulations provides as follows:

- (a) Proposed subdivisions shall be designed to minimize the effects of development on land, streams and wetlands, to assist in the attainment and maintenance of water quality standards, and to preserve and enhance the environmental quality of stream valleys.
- (b) The Planning Board shall require that proposed subdivisions conform to the following:
 - (1) The preliminary plan shall demonstrate adequate control of the increased runoff due to the ten (10) year storm or such other standards as State law or the County shall adopt.
 - (2) The stormwater control shall be provided on-site unless the Planning Board, on recommendation from the County, waives this requirement.
 - (3) The submission of a storm drainage and stormwater management concept plan, and approval thereof by the County, may be required prior to preliminary plan approval.

(4) Where a property is partially or totally within an area covered by an adopted Watershed Plan, the preliminary plan shall conform to such plan.

(5) Where a property is located outside the Chesapeake Bay Critical Areas Overlay Zones the preliminary plan and all plans associated with the subject application shall demonstrate the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible consistent with the guidance provided by the Environmental Technical Manual established by Subtitle 25. Any lot with an impact shall demonstrate sufficient net lot area where a net lot area is required pursuant to Subtitle 27, for the reasonable development of the lot outside the regulated feature. All regulated environmental features shall be placed in a conservation easement and depicted on the final plat.

(c) The submission of a sediment control concept study, and approval thereof by the Soil Conservation District, may be required prior to final plan approval. PGCC § 24-130(a)-(c).

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According to the record, more than 10,000 square feet of woodlands previously existed on-site, which were illegally cleared between 2014–2018. Resolution 2023-98 at 12. In April 2023, the site was issued three violations by DPIE as follows:

Date	DPIE Violation Number	Citation
4/3/2023	12950-2023	Complaint of illegal construction
4/11/2023	14052-2023	Citation for extending driveway with gravel and concrete pad in front and walkway on property
4/11/2023	14054-2023	Complaint for same as 14052-2023

Under PGCC § 27-108.01(a)(5), when the Old ZO refers to development or activity occurring on one property and its impacts on another property, it is assumed that more than the land itself may be impacted and that buildings, structures, *and people may also be impacted.* (Emphasis added). Here, Citizen-Protestants are neighboring property owners that are impacted by the Applicant’s illegal development and activity on the site.

There is overwhelming evidence in the record of the Applicant's illegal deforestation, illegal paving, and illegal construction on the site, which have caused excessive flooding to surrounding properties, including Citizen-Protestants. Resolution 2023-98 at 18-24, Planning Board Record at 433, 436, 437, 439, 447, 448, 450, 613, 615. The Board erred when it approved DSP-20002, subject to a condition for the Applicant to submit an approved SWM concept plan at time of certification, because there was *no* evidence in the record of an *approved* SWM concept plan for the Board to reasonably conclude would satisfy the requirements of PGCC § 27-285(b)(4) and PGCC § 24-130(b)(5) or address the impacts of the proposed development or activity on Citizen-Protestants or other people or property in the neighborhood. Resolution 2023-98 at 18-24, Planning Board Record at 433, 436, 437, 439, 447, 448, 450, 613, 615. *See also Baker v. Bd. of Trs. of Emps. Ret. Sys. of City of Balt.*, 269 Md. 740, 744 (1973) (administrative decisions must not be "arbitrary, capricious, or unreasonable" – there must be "substantial evidence from which the [B]oard could have reasonably found as it did.").

Having found that the proposed development was not exempt from PPS approval under 24-107(c)(7)(C), the Board's approval of DSP-20002 was *void ab initio*. Because the Board's approval of DSP-20002 was void from the beginning, the Board could not have reasonably found (without PPS approval) 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). PGCC § 27-285(b)(4). *Elbert*, 2023 Md. App. LEXIS 805 (ACM Nov. 29, 2023) (meaningful articulation of findings of fact and conclusions are necessary to allow a reviewing [body] to determine the basis of the agency's action; otherwise, the agency's decision may be deemed arbitrary).

Lastly, the expired SWM concept plan conflicts with the Detailed Site Plan and Landscape Plan rendering. Planning Board Record at 777 and Slides 7-12. That is, much of the property boundary has some form of SWM facility. At the same time, the Applicant is justifying its Alternative Compliance on providing extra plantings above what is required, but the Landscape Plan appears to show much of the plantings directly on top of the SWM facility. On remand, this conflict must be reviewed and addressed by DPIE and the Board.

F. Property Boundaries

There is substantial evidence in the record to sustain written exceptions that the Board's approval of DSP-20002 has improperly included land of adjoining property owner Teresa Washington at 9807 Snowden Road. Exceptions at 5, (9/7/2023, Tr), Planning Board Record at 618, 736-742, 767-768.

Among other things, when a Detailed Site Plan is submitted for review and approval is it required to show, *boundaries of the property*, using bearings and distances (in feet) and either the subdivision lot and block, or liber and folio numbers. PGCC § 27-282(e)(2). Having concluded that the proposed development is *not* exempt from PPS approval under PGCC § 24-107(c)(7)(C), the Applicant shall be required to establish, among other things, boundaries of the property, using bearings and distances (in feet) and either the subdivision lot and block, or liber and folio numbers.

Moreover, *specific* purposes of a Detailed Site Plan are to show the *specific* location and delineation of *buildings and structures, parking facilities, streets, green areas, and other physical features and land uses* proposed for the site and to show *specific grading, planting, sediment control, woodland conservation areas, regulated environmental features and storm water management features proposed for the site*. PGCC § 27-281(c). (Emphasis added).

Below are images in the record of boundary markups of the site. Boundary lines in blue are of the site but the boundary line markup in red shows that the Applicant has illegally appropriated significant portions of 9807 Snowden Road for its own use including the removal of woodland, the laying of gravel, and the erection of a 15-foot Buddha. PGCC § 27-108.01(a)(14) (The words “erected” and “constructed” also include “modified,” “reconstructed,” “built,” “rebuilt,” “altered,” “placed,” “relocated,” “moved,” and “maintained.”).

S-EYE VIEW WITH APPROXIMATE SITE BOUNDARY OUTL



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Under the Old ZO, certain rules apply when determining the boundaries of any zone shown on the Zoning Map. PGCC § 27-111. Moreover, under the Old ZO, structure is defined as anything constructed or built. PGCC § 27-107.01(a) (228). And a use is defined as either the purpose for which a building, structure, or land is designed, arranged, intended, maintained, or occupied; or any activity, occupation, business, or operation carried on in, or on, a building, structure, or parcel of land. PGCC § 27-107.01(a) (244) (A). Consequently, no land, building, or structure shall be used by the Applicant in any manner which is not allowed under the Old ZO. PGCC § 27-114. And no building or structure shall be erected by the Applicant unless it conforms to all requirements under the Old ZO. PGCC § 27-118(a).

On remand, in accordance with PGCC § 27-111, the Applicant shall submit a revised or amended Detailed Site Plan that shows the *specific* boundary lines of the site for the proposed development. The Applicant is prohibited from submitting a revised or amended Detailed Site Plan that includes any discrepancies or land of adjoining property owner Teresa Washington at 9807 Snowden Road to satisfy, among other things, building setback requirements, Landscape Manual Plan requirements, or Stormwater Management Facility requirements. In addition, while boundary lines on www.PGATLAS.com are not exact, the District Council observes that along the southeastern boundary it appears that the parking lot of the church on Parcel 29 and the building on Parcel 30 extend onto the Applicant's property. If these encroachments are found to be generally correct, this will have an impact on the calculation of "lot coverage."

G. Parking

Citizen-Protestants argue that the Board erred when it determined that the parking requirement should be calculated based on the purported membership of the Temple and not based on the anticipated attendance during major events. Exceptions at 19-20. While on the face of the Board's Resolution this may appear to be the case, it is technically not accurate.

According to the record, the Board approved the Applicant's Detailed Site Plan, in accordance with Technical Staff's Report, which was based on a Table that calculated parking based on seats as follows:

22. PARKING REQUIREMENT:
 PARKING REQUIRED:
 OFFICES:
 872 S.F OF OFFICE AREA:
 @1 PER 250 S.F. OF THE FIRST 2,000 SF. OF GFA. = 3 SPACES
 BUDDHIST TEMPLE MAIN SANTUARY:
 OCCUPANCY: 180 SEATS
 @1 PER 4 SEATS= 40 SPACES
 TOTAL REQUIRED: 43 SPACES

PARKING PROVIDED:

 STANDARD SPACES (9.5' X 19'): 28 SPACES
 HANDICAPPED (18' MIN. X 19'): 2 SPACES
 COMPACT SPACES (8' X 16.5') 13 SPACES
 PARALLEL SPACES (8' X 22') 2 SPACES
 TOTAL PROVIDED: 43 SPACES

THE PARSONAGE IS ONLY FOR MEMBERS OF THE TEMPLE; THEREFORE,
 THE REQUIRED PAEKING SPACES ARE INCLUDED IN THE BUDDHIST TEMPLE MAIN
 SANTUARY.
 THE BUDHIST TEMPLE MAIN DIFFERENCE AMONG OTHER RELIGIOUS USES IS THAT
 IT WILL ONLY REACH FULL OCCUPANCY CAPACITY 5 TIMES DURING THE YEAR.

THE MAIN EVENTS WHEN THE TEMPLE WILL REACH FULL MEMBERSHIP CAPACITY ARE AS
 FOLLOW:
 LUNAR NEWY YEAR (JANUARY AND FEBRUARY)
 COMPASSIONATE FESTIVAL (END OF MARCH OR BEGINNING OF APRIL)
 VESAK DAY (MAY OR JUNE)
 ULUMBANA DAY (AUGUST)
 MID AUTUMN FESTIVAL (SEPTEMBER).

Planning Board Record at 176.

While the Board’s Resolution may not have been clear on this point, the record and the Technical Staff Report was clear that parking requirements were calculated and satisfied based on *number of seats*. See *West Montgomery Cty. Citizens Ass’n v. Montgomery Cty. Planning Bd. of the Maryland-National Park & Planning Comm’n*, 248 Md. App. 314, 241 A.3d 76 (2020) (“It is 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.”) (quoting *Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 110, 985 A.2d 1160 (2009)). “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)). Here, based on substantial evidence in the record, it was reasonable for the Board to rely on its Technical Staff report concerning the calculation of parking for the site based on number of

membership seats.

However, the record is devoid of *any* evidence that the Applicant has the necessary maintenance agreements or arrangements to accommodate *overflow* parking for large or special events that *will impact* buildings, structures, or *people* in the neighborhood. Under the Old ZO, a specific purpose of a Detailed Site Plan is to show the *specific* location of *parking facilities*. PGCC § 27-281(b)(c)(1)(A). As a result, on remand, the Applicant *shall* submit *any and all* agreements or arrangement with *any* property owner in the neighborhood concerning *overflow* parking for large or special events associated with the proposed development and activity on the subject property. PCCC 27-282(e)(22) (*submittal requirements for a Detailed Site Plan includes any pertinent information*).

H. Tree Conservation Plan

Citizen-Protestants argue that the Board's decision to approve TCP2-018-2023 was erroneous because it failed to enforce the mitigation techniques required under PGCC § 25-120. Exceptions at 7-15.

As a threshold matter, Subtitle 25 of the County Code governs the enforcement of Trees and Vegetation—not the enforcement of the Old ZO. The Board's interpretation of Subtitle 25 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 Board's interpretation and application of the statute. *County Council of Prince George's County v. Billings*, 420 Md. 84, 21 A.3d 1065 (2011).

Here, the Board was presented with a set of unique circumstances of illegal activity and illegal deforestation by the Applicant. While the Applicant's conduct should not be condoned or rewarded, the Board did not fail to perform the required legal analysis to enforce the mitigation

techniques required under Subtitle 25. 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). The substantial evidence test does not turn on 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). "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)).

There is substantial evidence in the record to support the Board's legal interpretation of Subtitle 25. Moreover, the Board's findings and conclusions to approve TCP2-018-2023 were reasonable. Resolution 2023-98 at 9-16.

I. Forest Conservation Variance

Citizen-Protestants argue that the Board erred when it approved the Applicant's Forest Conservation variance. Exceptions at 21-31. Assuming, without deciding, that the Board was legally correct to grant the Applicant's variance, the Board should, on remand, make findings and conclusions to resolve whether the removal of Specimen Trees 1 and 2 are within the boundary lines of the Applicant's property and not within the boundary lines of adjoining property owner Teresa Washington at 9807 Snowden Road. Moreover, on remand, the Board's legal analysis to grant a variance must include a comparison of the Applicant's property to nearby surrounding properties in accordance with Maryland case law. *See* Exceptions at 23-24.

J. Neighborhood Nuisance

Citizen-Protestants argue that the Board erred when it approved DSP-20002 because doing so would permit the premises to be used as a public or neighborhood nuisance. Exceptions at 31. Subtitle 14 is not part of the Old or New Zoning Ordinance. Subtitle 27 governs the Old and New ZO. Subtitle 14 governs morals and conduct in the County. As a result, the Board is not required to determine whether the Applicant's Detailed Site Plan application violates any part of Subtitle 14 before it may approve or disapprove the application. Notwithstanding the distinction between Subtitle 14 and Subtitle 27, the Citizen-Protestants' complaints of excessive noise are persuasive. As a result, at oral argument, the Applicant has agreed to a condition that the proposed place of worship will not be allowed to have outdoor amplified sound. (1/16/2024, Tr.).

K. Conclusion

On remand, the Applicant shall:

1. File and obtain Preliminary Plan of Subdivision approval in accordance with the Old Subdivision Regulations. PGCC § 27-270. Among other things, PPS filing, and review should resolve all discrepancies concerning property boundaries, including northeast property boundary and southeastern boundaries. For instance, the record indicates that the church next door has parking on the Applicant's property, which is evidence of more impervious surface. Also, Parcel 30 has part of a building and paved area on the Applicant's property. This evidence should be evaluated at PPS to determine the exact percentage of lot coverage for the proposed development and activity.
2. File and obtain approval of a revised or amended Detailed Site Plan in accordance with the Old ZO. Among other things, the revised or amended Detailed Site Plan shall comply with all submittal requirements under PGCC § 27-282 of the Old ZO, including any parking plan or any written agreement to effectuate overflow parking for large or special events as part of the proposed development and activity. The revised or amended Detailed Site Plan shall also be accompanied with a detailed floor plan for the proposed development and activity, including whether the floor plan is anticipated to be used, in part, as a commercial kitchen. The revised or amended Detailed Site Plan shall further depict a sprinkler system on the building of the proposed place of worship.

3. File and obtain approval of a revised or amended Detailed Site Plan which shall contain a condition that the Applicant will not utilize any outdoor amplified sound for its activities.
4. File and obtain approval of a Stormwater Management Concept Plan from DPIE, which shall also include approval from State Highway Administration. The revised or amended Detailed Site Plan shall not place or locate any stormwater facility on or within the boundary lines of adjoining property located at 9807 Snowden Road.

ORDERED this 22nd day of January 2024, by the following vote:

In Favor: Council Members Burroughs, Blegay, Dernoga, Fisher, Harrison, Hawkins, Ivey, Olson, Oriadha, and Watson.

Opposed:

Abstained:

Absent: Council Member Franklin.

Vote: 10-0.

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: _____
Jolene Ivey, Chair

ATTEST:

Donna J. Brown
Clerk of the Council