

Case No. A-10044  
Moore's Corner

Applicant: Moore's Corner, LLC

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

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, that Zoning Map Amendment Application Number 10044 (A-10044), to rezone approximately 8.279 acres of land, located on the east side of Branch Avenue (MD 5) in the southwest quadrant of its intersection with Moore's Road, Brandywine, Maryland, from the R-R (Rural Residential) to the M-X-T (Mixed Use-Transportation Oriented) Zone, is hereby DENIED.

FINDINGS AND CONCLUSIONS

I. Procedural History

In July 2017, Applicant filed an application to rezone the subject property. Development Review Division, of the Prince George's County Planning Department, accepted the application for review in October 2017. Ex. 1.

In December 2017, Planning Department's Technical Staff, through its report, recommended denial of the application. Ex. 14a.

In January 2018, the Planning Board adopted Staff's Report, and recommended denial of the application. Ex. 15f.

In October 2018, the Examiner held a hearing on the application. (10/10/2018, Tr.).

In December 2018, the Examiner, through its decision, and contrary to Planning Board, recommended approval of the application. Examiner's Decision, 12/19/2018.

In January 2019, persons of record who opposed the application filed timely exceptions to the Examiner's recommendation of approval. Exceptions by Alberta P. Moore, Karleen Powell, and James K. Davis, Esquire, on behalf of Kesia Wheeler. 1/18/2019.

In March 2019, Applicant filed a response to exceptions filed by persons in opposition. Applicant's Response, 3/15/2019.

On March 25, 2019, the District Council held a hearing to consider the application. (3/25/2019, Tr.). The case was taken under advisement.

On May 13, 2019, the District Council directed Staff to prepare an order of denial of the application. (5/13/2019).

## II. Application for Rezoning

The application seeks to reclassify the zone of the subject property from R-R (Rural Residential) to M-X-T (Mixed Use-Transportation Oriented). The M-X-T Zone is a floating zone as opposed to a Euclidean Zone.<sup>1</sup> Applicant's traffic study for the application evaluated the development for 90 single-family attached dwelling units and 40,000 square feet of retail uses. Before the Examiner, Applicant modified the development to 45-55 single-family attached townhouse dwellings (a residential density of 5.4 to 6.6 dwelling units per acre) and approximately 25,000 square feet of commercial/retail uses. Ex. 4, p. 3, Examiner's Dec., pp. 3-5, Ex. 14a., pp. 4-5, (10/10/2018, Tr.).

## III. Standard of Review — Floating Zone

Rezoning a parcel to a floating zone culminates in a legislative act amending the zoning on the official zoning map. Floating zones are used often to allow the development of specialized or mixed uses. More specifically, floating zones have been used to permit large commercial and

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<sup>1</sup> Generally, a property may be rezoned into a Euclidian zone only upon a threshold finding of a mistake of fact in the previous comprehensive rezoning or original zoning or an unforeseen change in the neighborhood occurring since the prior rezoning.

industrial uses, mixed uses, multifamily residences, and planned unit developments. To rezone a property to a floating zone, the zoning authority (i.e., District Council) must find generally that the legislative prerequisites for the zone are met and the rezoning is compatible with the surrounding neighborhood. The burdens of production and persuasion to demonstrate that the rezoning is appropriate fall on the applicant for a floating zone. It is vitally important that the District Council make appropriate express findings based on adequate evidence that the purposes set forth in the Ordinance for the floating zone exist and that the project is compatible with the existing uses in the general neighborhood. Planning considerations are normally accorded greater weight in assessing piecemeal rezoning applications for floating zones compared to those for Euclidian zones, the latter of which are linked to the change/mistake rule. Finally, floating zones tend to be plan-implementation mechanisms by which zoning decision-makers may carry out planning goals. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 515-517, 120 A.3d 677, 691-694 (2015). (Emphasis added.)

#### IV. Subject Property

The subject property is approximately 8.279 acres. The property is currently undeveloped, generally clear, and with a thin line of trees around its perimeter. It is located within the Piscataway Creek watershed of the Potomac River basin and contains a drainage swale along the eastern property line adjacent to an off-site private driveway. The property has frontage on Branch Avenue (MD 5) and Moore's Road. Access to the subject property is from Moore's Road. Ex. 14a.

#### V. The Neighborhood

Among other things, Applicant's proposed rezoning must be compatible with the general or surrounding neighborhood. Planning Board described the neighborhood as follows:

**North** — Moore's Road, and beyond, existing single-family detached homes in the R-R Zone.

To the north are three developed residential lots consisting of .45, .72, and 2.0 acres in size.

**South** — Residential single-family detached developments in the R-R Zone.

To the south, are two parcels, 2.10 and 3.65 acres developed with single-family detached residences.

**East** — Residential single-family detached developments in the R-R Zone.

To the east are single-family detached houses on lots .63 to .69 acre in size. In 2002, to the east of the subject property, 42 residential lots were approved on 45 acres.

**West** — MD 5 (Branch Avenue).

Along the east side of MD 5, north and south of the subject property, the land is mostly wooded or developed as low density residential. Between 2,400 – 2,800 feet to the south is the Mattawoman Drive overpass (currently under construction) that will re-route traffic on Brandywine and Accokeek roads at their intersection with MD 5. There is no existing or planned connection between the subject property and the area surrounding this interchange. Approximately 2,500 feet to the north is a master planned collector road, C-517. Opposite C-517 is a master planned arterial road, A-65. At the subject property, at MD 5 and Moore's Road, there is no similar major interchange, existing or planned. Ex. 14a., p. 4, Comm. Plan. Memo, 11/29/2017. (Emphasis added).

The Examiner adopted Applicant's description of the neighborhood as follows:

**North** — Immediately to the north of the subject property across Moore's Road are single-family dwellings in the R-R Zone. Beyond those, along the southern segment of Crestwood Avenue, are single-family dwellings and a landscaping contractor in the R-R Zone.

**South** — Immediately to the south of the subject property are single-family dwellings in the R-R Zone. Further to the south is undeveloped, wooded property in the R-R Zone, and the A-63 interchange, now nearing completion.

**East** — Immediately to the east of the subject property, beyond a private right-of-way (which is located on the easternmost edge of the subject property) are single-family residences in the R-R Zone. Beyond those, along the extension of Moore's Road, are single-family dwellings in the R-R Zone in the Loveless Estates subdivision.

**West** — Immediately to the west of the subject property is Branch Avenue (MD 5), a limited-access freeway. Moore's Road has access to Branch Avenue at an unsignalized at-grade intersection with a median break. Across Branch Avenue are a site for a Royal Farms gas station, a landscape contractor, and a used car sales lot, all in the C-M (Commercial Miscellaneous) Zone. Examiner's Dec., p. 3, (10/10/2018, Tr.). (Emphasis added).

## VI. Planning Documents

### A. 2013 Subregion 5 Master Plan and Sectional Map Amendment

The Master Plan retained the subject property in the Rural Residential (R-R) Zone. The purposes of the R-R Zone are to provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, to better utilize the natural terrain; to facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles; to encourage the preservation of trees and open spaces; and to prevent soil erosion and stream valley flooding. PGCC § 27-428. (Emphasis added). The Master Plan recommends Residential low land uses on the subject property. Residential low areas are:

“[D]esignated for single-family detached suburban development. Most of the land in Subregion 5 is in this category, which is intended for single-family detached residential development that may have up to 3.5 dwelling units per acre. Residential low areas include much of the residential land in the Accokeek community that is not in the Rural Tier and most of the land in Clinton surrounding Cosca Regional Park. These areas are in the MD 5 corridor north of Floral Park Road and Brandywine Road. Along MD 223, most of the area known as Hyde Field (presently Washington Executive Airport) is designated residential low in this master plan. This departs from the long-standing designation for this property as an employment and institutional area. At this location, the residential-low land use designation is consistent with the surrounding development pattern.” Master Plan, p. 33. (Emphasis added).

The Master Plan’s guide for zoning in the R-R Zone imposes an even stricter residential density for the R-R Zone. It provides as follows:

R-R: Rural Residential—Permits approximately one-half acre residential lots; subdivision lot sizes depend on date of recordation; allows a number of nonresidential special exception uses.

Standard lot size	20,000 sq. ft. 15,000 sq. ft. if recorded prior to February 1, 1970 10,000 sq. ft. if recorded prior to July 1, 1967
<u>Maximum dwelling units per net acre</u>	<u>2.17</u>
<u>Estimated average dwelling units per Acre.</u>	<u>1.85</u>

Master Plan, p. 242. (Emphasis added). The Master Plan also states that the types of land uses for the residential low designation is “[p]rimarily single-family detached dwellings.” Moreover, “[a]ll adjoining properties are also designated by the Master Plan for ‘residential low’ future land use.”

Master Plan, pp. 30, 33, 242, Ex. 14a., p. 5, Examiner’s Dec. p. 2. (Emphasis added).

The Master Plan’s guide for zoning for M-X-T Zone provides as follows:

M-X-T: Mixed Use-Transportation Oriented—Provides for a variety of residential, commercial, and employment uses; mandates at least two out of the following three use categories: (1) Retail businesses; (2) Office/Research/Industrial; (3) Dwellings, hotel/motel; encourages a 24-hour functional environment; must be located near a major intersection or a major transit stop or station and will provide adequate transportation facilities for the anticipated traffic or at a location for which the applicable master plan recommends mixed uses similar to those permitted in the M-X-T Zone.

Lot size and dwelling types  
Maximum floor area ratio

No restrictions  
0.4 without optional method  
8.0 with optional method  
(provision of amenities).

Master Plan, p. 245. (Emphasis added).

#### B. 2014 Plan Prince George’s 2035 General Plan

Plan 2035 placed the property in the Established Communities, which are existing residential neighborhoods and commercial areas served by public water and sewer outside the Regional Transit Districts and Local Centers. Established communities are most appropriate for context-sensitive infill and low-to-medium-density development. The hallmark of Plan 2035 is to concentrate mixed-use development in designated Regional Transit Districts and Local Centers, rather than scattered throughout the County. The Plan’s policy states that the County should “limit future mixed-use land uses outside of the Regional Transit District and Local Centers. Plan 2035 did not designate the area comprising the subject property a Local Center. Plan 2035 also eliminated MD 5 as a General Plan development corridor. Plan 2035, pp. 20, 114. Ex. 14a., pp. 5-6, Comm. Plan. Memo, 11/29/2017, Examiner Dec., p. 2.

Finally, Master Plans with prior designations in conflict with Plan 2025 are superseded as follows:

“All planning documents which were duly adopted and approved prior to the date of adoption of Plan Prince George’s 2035 shall remain in full force and effect, except the designation of tiers, corridors, and centers, until those plans are revised or superseded by subsequently adopted approved plans.”

Plan 2035, p. 270. (Emphasis added).

## VII. M-X-T Zone

Criteria for approval of the M-X-T Zone are as follows:

- (1) The District Council shall only place land in the M-X-T Zone if at least one (1) of the following two (2) criteria is met:

- (A) Criterion 1. The entire tract is located within the vicinity of either:

- (i) A major intersection or major interchange (being an intersection or interchange in which at least two (2) of the streets forming the intersection or interchange are classified in the Master Plan as an arterial or higher classified street reasonably expected to be in place within the foreseeable future; or
    - (ii) A major transit stop or station (reasonably expected to be in place within the foreseeable future).

- (B) Criterion 2. The applicable Master Plan recommends mixed land uses similar to those permitted in the M-X-T Zone.

- (2) Prior to approval, the Council shall find that the proposed location will not substantially impair the integrity of an approved General Plan, Area Master Plan, or Functional Master Plan and is in keeping with the purposes of the M-X-T Zone. In approving the M-X-T Zone, the District Council may include guidelines to the Planning Board for its review of the Conceptual Site Plan.

- (3) Adequate transportation facilities.

- (A) Prior to approval, the Council shall find that transportation facilities that are existing, are under construction, or for which one hundred percent (100%) of construction funds are allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, will be funded by a specific public facilities financing and implementation program established for the area, or provided by the applicant, will be adequate to carry anticipated traffic for the proposed development.

- (B) The finding by the Council of adequate transportation facilities at this time shall not prevent the Planning Board from later amending this finding during its review of subdivision plats. PGCC § 27-213. (Emphasis added).

#### VIII. M-X-T Zone — Criterion 1

In the context of “within the vicinity” in Criterion 1, the Master Plan states that M-X-T Zone development “must be located **near a major intersection or a major transit stop or station**...or at a location for which the applicant master plan recommends mixed-use similar to those permitted in the M-X-T Zone.” Master Plan, p. 245. Vicinity is not defined in the Code, but words and phrases not specifically defined or interpreted in the Code shall be construed according to the common and generally recognized usage of the language. Technical words and phrases, and others that have acquired a peculiar and appropriate meaning in the law, shall be construed according to that meaning. PGCC § 27-108.019(a)(7). Merriam-Webster dictionary defines vicinity, in the context of neighborhood, **as surrounding area or district**, and, in the context of proximity, **the quality or state of being near**.<sup>2</sup> In the Code, “adjacent” is **nearby**, but not necessarily “Abutting,” “Adjoining,” or “Contiguous.” PGCC §27-107.01(a)(4). (Emphasis added).

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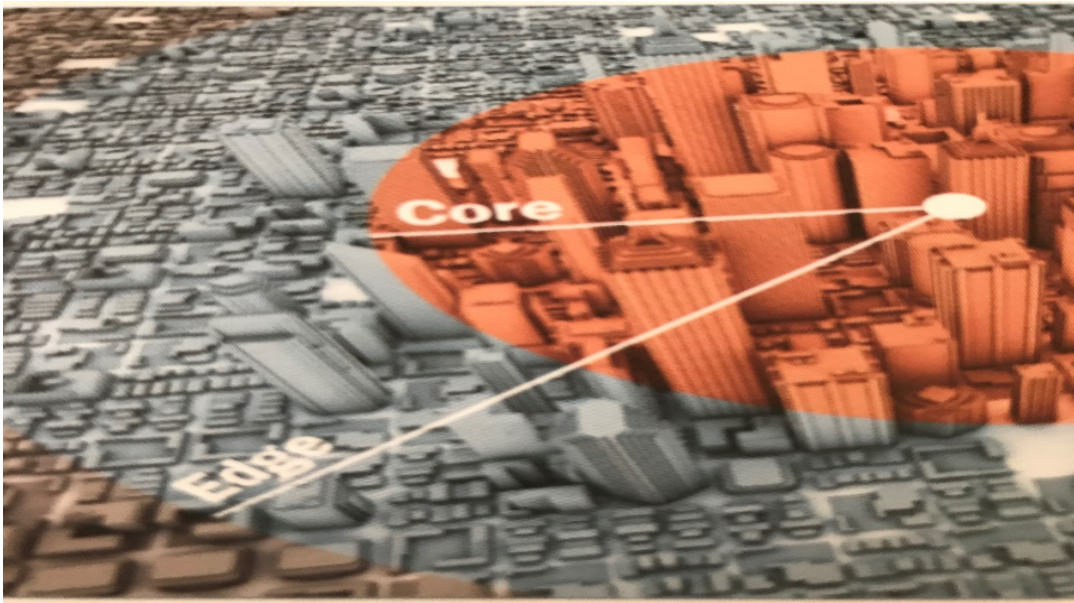
<sup>2</sup> <https://www.merriam-webster.com/dictionary/vicinity> (last visited May 13, 2019). The dictionary also states that “[v]icinity has its origins in the idea of **neighborliness** - it was borrowed into English in the 16th century from Middle French *vicinité*, which in turn derives from the Latin adjective *vicinus*, meaning “**neighboring**.” “*Vicinus*” itself can be traced back to the noun *vicus*, meaning “**row of houses**” or “**village**,” and ultimately all the way back to the same ancient word that gave Gothic, Old Church Slavic, and Greek words for “**house**.” Other descendants of “*vicinus*” in English include “*vicinal*” (“local” or “of, relating to, or substituted in adjacent sites in a molecule”) and “*vicinage*,” a synonym of “vicinity” **in the sense of “a neighboring or surrounding district.”** (Emphasis added).

An **interchange** is defined as a **junction of two or more highways** by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams. <https://www.merriam-webster.com/dictionary/interchange> (last visited May 13, 2019). (Emphasis added).

An **intersection** is defined as a place or area where **two or more things (such as streets) intersect**. <https://www.merriam-webster.com/dictionary/intersection> (last visited May 13, 2019). (Emphasis added).



Through illustration below, Plan 2035 is instructive, if not dispositive, on the meaning or interpretation of “within the vicinity,” in Criterion 1. Plan 2025 states that “[w]alkable, mixed-use areas, including transit-oriented developments, are often roughly **one-half mile in diameter and organized around a core and edge.**” Plan 2035, p. 109. (Emphasis added).



Plan 2035 also states that “[a]n entry to a Metro station or another transit stop is often located **at the center of the core,** with the most dense and intense development growing out from this point.” Plan 2035 further states that “[b]est practices dictate employment and retail uses be concentrated in the core and that the edge include more of a residential mix with less of an emphasis on commercial uses.” *Id.* (Emphasis added).

Plan 2035’s illustration of walkable, mixed-use areas, including transit-oriented developments—as one-half mile in diameter and organized around a core and edge—is synonymous with “near,” “nearby,” “surrounding,” and “within the vicinity.” This interpretation is consistent with other definitions in the Code for transit-oriented development projects that requires “...the subject property has greater than fifty percent (50%) of its net lot area located

within a one-half mile radius of the constructed WMATA Metrorail station as measured from the center of the transit station platform.” PGCC § 27-107.01(a)(242). (Emphasis added).

Pursuant to the definition of vicinity or through illustration or interpretation above, Applicant failed to meet its burden of production and persuasion on Criterion 1. First, Applicant’s M-X-T proposal is not “located **near a major intersection or a major transit stop or station**...or at a location for which the applicable master plan recommends mixed-use similar to those permitted in the M-X-T Zone.” Master Plan, p. 245. Second, Applicant’s M-X-T proposal is not one-half mile in diameter and organized around a core and edge, measured from the center, of a major intersection or major interchange. Third, the entire tract of the subject property “is not within the vicinity of a major intersection or interchange,” because the entire tract of the property is located approximately 3/4 of a mile north of the existing MD 5/MD 381 (Brandywine Road) intersection and 1/2 mile from the Brandywine Road interchange and the proposed rezoning is incompatible with the existing and surrounding neighborhood. Plan 2035, pp. 20, 109, 114. Ex. 14a., pp. 4-5, Comm. Plan. Memo, 11/29/2017, Examiner Dec., p. 2, Site Plans, Slides 1-8.<sup>3,4</sup>

Furthermore, the subject property “is not within the vicinity” of a major intersection or major interchange because, due to its location, purposes of the M-X-T Zone do not exist. Purposes of the M-X-T Zone are:

(1) To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic

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<sup>3</sup> Applicant contends the subject property is less than 2,200 linear feet (.41 miles) to the north of Branch Avenue and planned Old Fort Road, and 2,500 linear feet (.47 miles) to the south of Branch Avenue and planned Brandywine Employment Spine Road. Ex. 4, p. 3. Applicant still fails to meet Criterion 1 because the “entire tract” of the subject property “is not within the vicinity” of the applicable intersection or interchange.

<sup>4</sup> It is undisputed from the record that, for purposes of the M-X-T Zone, the property is not within the vicinity of a major transit stop or station (reasonably expected to be in place within the foreseeable future). PGCC § 27-213(a)(1)(A)(ii). A major transit stop is defined as [a] rapid rail transit terminal “[b]uilding,” or a public transit stop served by fifteen (15) or more transit vehicles travelling in one direction during a peak hour. PGCC § 27-107.01(a)(243).

status of the County and provide an expanding source of desirable employment and living opportunities for its citizens;

(2) To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses;

(3) To conserve the value of land and buildings by maximizing the public and private development potential inherent in the location of the zone, which might otherwise become scattered throughout and outside the County, to its detriment;

(4) To promote the effective and optimum use of transit and reduce automobile use by locating a mix of residential and non-residential uses in proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use;

(5) To facilitate and encourage a twenty-four (24) hour environment to ensure continuing functioning of the project after workday hours through a maximum of activity, and the interaction between the uses and those who live, work in, or visit the area;

(6) To encourage an appropriate horizontal and vertical mix of land uses which blend together harmoniously;

(7) To create dynamic, functional relationships among individual uses within a distinctive visual character and identity;

(8) To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public facilities and infrastructure beyond the scope of single-purpose projects;

(9) To permit a flexible response to the market and promote economic vitality and investment; **and**

(10) To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning. PGCC § 27-542. (Emphasis added).

At this location, the M-X-T Zone will not promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers. Again, among other reasons stated above, the entire tract of the subject property “is not within the vicinity of a major intersection or interchange.” The subject property is located approximately 3/4 of a mile north of the existing MD 5/MD 381 (Brandywine Road) intersection and 1/2 mile from the Brandywine Road interchange. Plan 2035 did not designate the area comprising the subject property as a Local Center. Moreover, M-X-T reclassification at this location will not create a compact, walkable, mixed use community or promote the effective and optimum use of transit and reduce automobile use by locating a mix of

residential and non-residential uses in proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use. Plan 2035, pp. 20, 109, 114. Ex. 14a., p. 5, Comm. Plan. Memo, 11/29/2017, Examiner Dec., p. 2, Site Plans, Slides 1-8.

#### IX. M-X-T Zone — Criterion 2

The Master Plan, for purposes of this property, does not recommend mixed land uses similarly permitted in the M-X-T Zone. Applicant erroneously states that “[a]lthough the Master Plan’s Land Use Map shows the subject property as ‘Residential low density,’ the General Plan places the property along a General Plan Corridor.” Ex. 4, p. 3. Plan 2035 eliminated MD 5 as a General Plan development corridor. Plan 2035 does not support mixed use development at this location. Even if Plan 2035 did not eliminate MD 5 as a General Plan development corridor, Plan 2035 states that Master Plans with prior designations in conflict with Plan 2035 are superseded as to designation of tiers, corridors, and centers, until those plans are revised or superseded by subsequent approved plans. Plan 2035, p. 270, Ex. 14a., p. 6.

Among other things, a purpose of the M-X-T Zone is “[t]o implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses.” PGCC § 542(a)(2).<sup>5</sup> In the Master Plan, mixed use areas are designated in Brandywine and Clinton. Master Plan, p. 33. The Future Land Use map shows that the subject property is located entirely within the Residential low land use category. The Master Plan does not recommend a mix of uses but single-family detached residential uses for this location.

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<sup>5</sup> Implementation of the General Plan, Area Master Plans, and Functional Master Plans is a purpose of the Zoning Ordinance. PGCC § 27-102(a)(2).

The Master Plan retained the property in the Rural Residential (R-R) Zone. The purposes of the R-R Zone are to provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, to better utilize the natural terrain; to facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles; to encourage the preservation of trees and open spaces; and to prevent soil erosion and stream valley flooding. PGCC § 27-428. (Emphasis added). The Master Plan recommends Residential low land uses for this location. Residential low areas are:

“[D]esignated for single-family detached suburban development. Most of the land in Subregion 5 is in this category, which is intended for single-family detached residential development that may have up to 3.5 dwelling units per acre. Residential low areas include much of the residential land in the Accokeek community that is not in the Rural Tier and most of the land in Clinton surrounding Cosca Regional Park. These areas are in the MD 5 corridor north of Floral Park Road and Brandywine Road. Along MD 223, most of the area known as Hyde Field (presently Washington Executive Airport) is designated residential low in this master plan. This departs from the long-standing designation for this property as an employment and institutional area. At this location, the residential-low land use designation is consistent with the surrounding development pattern.” Master Plan, p. 33. (Emphasis added).

The Master Plan’s guide for zoning in the R-R Zone imposes an even stricter residential density for the R-R Zone. The Plan states that the maximum dwelling unit per acre for the R-R Zone is 2.7 units per acre and an estimated average of 1.85 dwelling units per acre. Master Plan, p. 242. The Master Plan also states that the types of land uses for the residential low designation is “[p]rimarily single-family detached dwellings.” Moreover, “[a]ll adjoining properties are also designated by the Master Plan for ‘residential low’ future land use.” Master Plan, pp. 30, 33, 242, Ex. 14a., p. 5, Examiner’s Dec. p. 2. (Emphasis added).

The Master Plan does not support M-X-T Zone at this location. In terms of land uses, the proposed M-X-T Zone is not similar to the land uses allowed in the existing R-R Zone that is supported by the Master Plan. Commercial, industrial, and institutional land uses that are permitted in the M-X-T Zone are prohibited in the existing R-R Zone. For example, the M-X-T Zone permits

28 commercial uses compared to 17 commercial uses permitted in the R-R Zone, and 13 educational/institutional uses compared to 8 educational/institutional uses in the R-R Zone. Ex. 14a., p. 7, Comm. Plan. Memo, 11/29/2017.

The intensity of the M-X-T Zone and the R-R Zone are not similar. For example, townhouses are permitted by-right in the M-X-T Zone, whereas in the R-R Zone they are prohibited except under extremely limited circumstances. Townhouses are permitted in the R-R Zone “only to replace an existing surface mining or Class III fill operation located directly adjacent to an interstate (with “I” classification, not “US” or “MD”) highway, which operation has an active permit at the time of preliminary plan approval for the townhouse, two-family dwelling or multifamily development.” PGCC § 27-441(b)(7), footnote 79. These limitations in the R-R Zone are necessary and intentional to ensure that development in the zone implements the Plan’s land use recommendation; i.e., Residential low development. Ex. 14a., p. 7, Comm. Plan. Memo, 11/29/2017.

In addition, no text in the Master Plan supports rezoning the subject property to M-X-T. The Future Land Use Map designates the subject property for residential low land use, which envisions that the future development will be residential and integrated into the surrounding community of one-family detached dwellings. Planning Board and Applicant unequivocally described the neighborhood as residential with predominantly single-family detached dwellings. Ex. 14a., p. 4, Comm. Plan. Memo, 11/29/2017, Examiner’s Dec., p. 3.

Applicant failed to meet its burden of production and persuasion on Criterion 2 because the Master Plan, for purposes of this property, does not recommend mixed land uses similarly permitted in the M-X-T Zone and the proposed rezoning is incompatible with the existing and surrounding neighborhood.

X. M-X-T Zone — Substantial Impairment

Having determined that Applicant has failed to meet its burden of production and persuasion on Criterion 1 or 2 and that the proposed rezoning is incompatible with the existing and surrounding neighborhood, there is no need to determine whether reclassification to the M-X-T Zone will substantially impair an approved Plan and is in keeping with the purposes of the M-X-T Zone.

Assuming, *arguendo*, Applicant had met its burden of production and persuasion on either Criterion 1 or 2, reclassification to the M-X-T Zone at this location will substantially impair the integrity of the Master Plan and Plan 2035 and will not be in keeping with the purposes of the M-X-T Zone.<sup>6</sup>

- Master Plan<sup>7</sup>

The Master Plan has directed much of its attention to the plan-defined Brandywine Community Center. It specifically delineates boundaries for the Brandywine Community Center Core and Edges as well as surrounding areas. It recommends future mixed-use development for much of the land within these boundaries. The Master Plan does not recommend rezoning properties outside of the plan-defined Brandywine Community Center to mixed-use zones. The Master Plan recommends mixed-use development in the Core Area of the Brandywine Community Center, where a future transit stop is recommended. If the Master Plan supported mixed-use development at the subject location it would have recommended the area for mixed-use

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<sup>6</sup> No determination is necessary on adequate transportation facilities because Applicant has failed to meet Criterion 1 and 2 for the M-X-T Zone, and in the alternative, even if one of the criteria was met, reclassification to the M-X-T Zone will substantially impair the integrity of the Master Plan and Plan 2035 and will not be in keeping with the purposes of the M-X-T Zone. (PGCC § 27-213(a)(3)).

<sup>7</sup> Master Plans are elevated to the level of true regulatory devices when statutes link planning and zoning. *HNS Dev., LLC v. People's Counsel for Balt. County*, 425 Md. 436, 42 A.3d 12 (2012).

development on the Future Land Use Map. To the contrary, the Plan recommends low density residential development.

Reclassification to M-X-T Zone would directly contradict the goals of the Master Plan to achieve low-density residential uses on the subject property. The current and surrounding residential zoning (R-R) yields densities up to 2 dwelling units per acre and the Plan recommends up to 3.5 dwellings units per acre; both are considered low-density residential development—to implement Residential low land use. Rezoning to M-X-T would result in an extremely large increase in the density over what is presently allowed or recommended at this location. Given the low density of surrounding uses, and the high density possible in the M-X-T Zone, the requested rezoning would be grossly inappropriate and would not be an “effective transition” between MD 5 and the surrounding single-family detached dwellings, but an abrupt transition in density and use. The character of M-X-T Zone development, whether it is composed of townhouses, multifamily, office, or commercial development, would be vastly different from the envisioned low-density residential uses. Moreover, the Master Plan’s guide to zoning provides for a maximum .4 FAR for M-X-T Zone without optional method of development and 8.0 FAR with optional method of development (provision of amenities). Master Plan, p. 245, PGCC § 27-545. Applicant’s M-X-T proposal provides for a minimum .4 FAR and maximum .65 FAR, without optional method of development. Ex. 4, Examiner’s Dec., pp. 3-4, PGCC § 27-545.

The goals and land use recommendations of the Master Plan were carefully crafted by stakeholders, planning staff and the Planning Board, and reviewed and approved by the District Council in 2013 after many years of public engagement and participation, including community meetings, Planning Board and County Council work sessions, and public hearings. Deviating from the Master Plan by redirecting mixed-use development away from the carefully planned Brandywine Community Center and increasing the intensity and density of uses different from the



Plan's land use recommendations will substantially impair the Master Plan and will not be keeping with the purposes of the M-X-T Zone. Ex. 14a., Comm. Plan. Memo, 11/29/2017, Master Plan, pp. 30, 33, 242, 245, Plan 2025, pp. 20, 109, 114, 116, 270.

- Plan 2035

The hallmark of Plan 2035 is to concentrate mixed-use development, as permitted by and encouraged in the M-X-T Zone, in designated Regional Transit Districts and Local Centers, rather than scattered throughout the County.

Plan 2035's Land Use Policy 7 states that the County should "limit future mixed-use land uses outside of the Regional Transit Districts and Local Centers." Plan, p. 114. The area comprising the subject property was not designated a Local Center in the Plan, because mixed-use development would be out of context, as the area is surrounded by low-density residential uses without access to transit.

Reclassification of the subject property to the M-X-T Zone will substantially impair Plan 2035 by allowing mixed-use development in an inappropriate area, out of context with the Established Communities existing land use, and by re-directing mixed-use growth away from designated centers. Mixed-use development is more appropriate for, and should be directed to, the Branch Avenue Metro Station area, nine miles north of the subject property, which the Plan designated as a Regional Center, or several miles south in the area designated a Local Center in Brandywine.

Land Use Policy 9 of Plan 2035 states that the County should "limit the expansion of new commercial zoning outside of the Regional Transit Districts and Local Centers to encourage reinvestment and growth in designated centers..." Plan, p. 116. Rezoning the subject property to M-X-T will expand commercial development outside of the Regional Transit Districts and Local Centers, pulling potential, new commercial growth away from those preferred locations in the

Plan. Reclassification to the M-X-T Zone will substantially impair Plan 2035 and it will not be keeping with the purposes of the M-X-T Zone. Ex. 14a., p. 9, Comm. Plan. Memo, 11/29/2017, Plan 2025, pp. 20, 109, 114, 116, 270.

#### XI. Traffic

Applicant's M-X-T proposal will add over 200 traffic trips during AM and PM peak hours. Testimony from persons in opposition also demonstrated evidence of traffic hazards and traffic congestion. This evidence demonstrates that Applicant's proposal does not meet purposes of the Zoning Ordinance and M-X-T Zone. To lessen the danger and congestion of traffic on the streets is a purpose of the Zoning Ordinance. PGCC § 27-102(a)(11). To promote the effective and optimum use of transit and reduction of automobile use is a purpose of the M-X-T Zone. PGCC § 27-542(a)(4). Testimony from persons of record in opposition also demonstrated evidence that Applicant's M-X-T proposal will not be compatible with the surrounding area and established character of the neighborhood. Ex. 14a., Transportation Planning Memo, 11/29/2017, (10/10/2017, Tr.), Exceptions by Alberta P. Moore, Karleen Powell, and James K. Davis, Esquire, on behalf of Kesia Wheeler, 1/18/2019, (3/25/2019, Tr.).

#### XII. Conclusion

Based on the findings and conclusions set forth herein, Applicant has failed to meet its burdens of production and persuasion to demonstrate that the criteria and purposes of the M-X-T Zone exist at this location and that the project is compatible with the surrounding neighborhood.

Adopted this 14<sup>th</sup> day of May, 2019, by the following vote:

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

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: \_\_\_\_\_  
Todd M. Turner, Chair

ATTEST:

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