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## Zoning Map Amendment

**A-9989**

Application	General Data
<b>Project Name:</b> RITCHIE STATION MARKET PLACE  <b>Location:</b> SOUTH SIDE OF RITCHIE MARLBORO ROAD, IMMEDIATELY WEST OF THE CAPITAL BELTWAY (I-495/I-95). <b>Applicant/Address:</b> RITCHIE HILL, LLC. 4640 FORBES BOULEVARD LANHAM, MARYLAND 20706	Date Accepted: 3/20/2007
	Planning Board Action Limit: N/A
	Plan Acreage: 116.5
	Zone: I-1, I-3 & R-R
	Dwelling Units: N/A
	Square Footage: 5,075,549
	Planning Area: 75A
	Tier: Developed
	Council District: 06
	Municipality: N/A
	200-Scale Base Map: 203se08

Purpose of Application	Notice Dates
REZONING FROM I-1, I-3 AND R-R TO C-S-C.	Adjoining Property Owners Previous Parties of Record Registered Associations: (CB-12-2003) <div>3/20/2007</div>
	Sign(s) Posted on Site and Notice of Hearing Mailed: <div>N/A</div>

Staff Recommendation		Staff Reviewer: Jimi Jones	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

**THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION**

**PRINCE GEORGE'S COUNTY PLANNING BOARD**

**TECHNICAL STAFF REPORT**

**SUBJECT:** A-9989

**REQUEST:** Rezoning from the I-1 and I-3 Zones to the C-S-C Zone

**RECOMMENDATION:** DENIAL

**NOTE:**

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

## FINDINGS:

- A. **Location and Field Inspection:** The subject property is undeveloped and largely cleared. The property is located in the southwest quadrant of the interchange formed by Ritchie-Marlboro Road and the Capital Beltway (I-495/I-95). It has frontage along the south side of Ritchie-Marlboro Road and along the west side of the Capital Beltway. The subject property comprises a total of 116.5 acres—90.7 acres are in the 1-3 Zone, 4.0 acres are in the R-R Zone, and approximately 2.1 acres are in the I-1 Zone.

B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	I-1, I-3 and R-R	C-S-C
Use(s)	N/A	N/A
Acreage	116.5	116.5
Lots		

- C. **History:** The 1986 Sectional Map Amendment (SMA) rezoned the majority of the subject property (Parcels 172,177,228 and 229) from the R-R Zone to the 1-3 Zone in SMA Change EA-201. The remainder of the subject property, designated as the “long-term redevelopment area” (LTRA) was retained in the R-R Zone. The SMA also retained a narrow strip of the subject property having frontage along the south side of Ritchie-Marlboro Road (approximately 0.6 acre) in the C-1 Zone. This C-1-zoned portion of the subject property, along with Parcels 11, 105-107, and Lot 1, were later rezoned from the C-1 and R-R Zones to the I-1 Zone in zoning map amendment applications A-9689-C and A-9698-C based on mistakes in adopting the 1986 SMA. Final approval was granted for these companion applications on January 23, 1989, changing the zoning on 2.88 acres from the R-R Zone to the 1-1 Zone (A-9689-C), and changing the zoning on 1.21 acres from the C-1 and R-R Zones to the 1-1 Zone, and generally requiring site plan review conditions.

On November 25, 2003, the District Council adopted Council Bill CB-65-2003, which amended the use tables in the R-R and 1-3 Zones to permit any use allowed in the C-S-C Zone subject to certain specific criteria.

On July 14, 2005, Preliminary Plan of Subdivision 4-04184 was approved for 101.83 acres of the subject property in the 1-3 Zone to allow development of up to 1,000,000 square feet of retail space or equivalent development, generating no more than 554 AM and 1,802 PM new peak-hour vehicle trips, among other conditions (PGCPB Resolution No. 05-115).

On June 2, 2005, Detailed Site Plan DSP-04080 for rough grading and installation of infrastructure was approved for the 101.83 acres (PGCPB Resolution No. 05-118).

On May 4, 2006, DSP-4080/01 was approved for the 101.83 acres to allow a Sam’s Club, a retaining wall, fence, parking, and a welcome center as part of an integrated shopping center (PGCPB Resolution No. 06-76).

On October 30, 2006, the District Council affirmed the Planning Board’s action in adopting PGCPB Resolution No. 06-76 for DSP- 04080/01 to allow the uses therein approved as part of an integrated shopping center on the majority of the subject property.

On June 15, 2006, Preliminary Plan of Subdivision 4-05133 was approved for 22.85 acres of the subject property within the I-1 and R-R Zones, including the applicant’s property in the adjacent C-S-C Zone that is not part of this instant application (PGCPB No. 06-143). Total development of

the subject 22.85 acres and the applicant's adjacent 101.83-acre property (subject to Preliminary Plan of Subdivision 4-04184) was limited to a combined 1,000,000 square feet of retail space or equivalent generating no more than 554 AM and 1,802 PM new peak-hour vehicle trips.

On June 22, 2006, Departure from Sign Design Standards DSDS-634 was approved by the Planning Board to allow a freestanding sign along the Beltway advertising the Ritchie Station Marketplace integrated shopping center approved for the subject property.

On November 11, 2006, DSP-04080/02 was accepted for processing to add the 22.85 acres of I-1, R-R, and C-S-C-zoned land (included in Preliminary Plan of Subdivision 4-05133) to the 101.83 acres previously approved in order to revise the rough grading plan approved in DSP-04080

- D. **Master/General Plan Recommendations:** The subject property is subject to the land use policy recommendations contained within the July 1985 approved Suitland-District Heights and Vicinity Master Plan. The master plan map shows employment use for the entire subject site located within the proposed 250±-acre D'Arcy Road Employment Area (Employment Area 2). An approximate 28-acre portion of the subject property, located south of Ritchie-Marlboro Road and adjacent to a townhouse development to the west, is designated on the master plan map as the proposed long-term redevelopment area (LTRA) within the D'Arcy Road Employment Area. This LTRA is the largest of three such areas designated in the master plan "...to be protected at this time, while retaining the concept that this is in the long run an appropriate part of the total employment area. This may be achieved by the definition of a [LTRA] and by retention of zoning which reflects existing uses." (Page 189.) The master plan's September 1986 existing situation map shows residential use on all of the applicant's property.

The master plan map also shows floodplain/floodplain soils through the southern portion of the subject property as reflected on the site survey. Also, most of the site is shown as a conditional reserve and perceptually sensitive area, being located along the Beltway and adjacent to the townhouse development to the west. The open space implementation map legend indicates that portions of the subject property should be subject to subdivision control of unsafe land and floodplain areas, including noise control.

It is noted that the applicant has provided for the protection of these physical features and the future provision of the extension of Hampton Park Boulevard South through the subject property in previous development approvals (Preliminary Plan of Subdivision 4-04184 and subsequent detailed site plans).

The 2002 General Plan indicates that the subject property is in the Developed Tier, where one of the visions is to create a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium to high density neighborhoods.

- E. **Request:** The applicant contends that District Council made a mistake by placing the subject property in the I-1, I-3, and R-R Zones during the 1986 Sectional Map Amendment (SMA) for Suitland-District Council Heights and Vicinity. In addition, the applicant argues that there has been a substantial change in the character of the neighborhood since the SMA. A rezoning of the subject property to the C-S-C Zone is, therefore, requested.
- F. **Neighborhood and Surrounding Uses:** Staff does not agree with the boundaries set by the applicant. The applicant's neighborhood boundaries include nearly the entire Forestville community to the south as well as the Hampton Industrial Park to the north as far as Central

Avenue. Staff asserts that, from a planning standpoint, a neighborhood is part of a larger community and it usually defined by major roads or natural features that separate it from other areas.

Staff believes the neighborhood is defined by the following boundaries:

North— Central Avenue  
East— Capital Beltway  
South— D’Arcy Road  
West— Ritchie Branch and Ritchie Road

The property is surrounded by the following uses:

North— The Hampton Industrial Park, which includes the developing 1-1-zoned Steeplechase Business Park, undeveloped parcels, and various warehouse and industrial uses in the 1-1 and 1-3 Zones, including the C-S-C-zoned Hampton Mall area.  
East— The Capital Beltway.  
South— Undeveloped land in the I-2 Zone and farther south across D’Arcy Road is the F.O. Day asphalt plant, the county’s Department of Public Works and Transportation Operations complex and other developed and undeveloped land in the 1-2 and 1-4 Zones.  
West— A townhouse community in the R-T zone, an M-NCPPC park, and undeveloped land in the C-S-C Zone.

**G. Required Findings:**

**Section 27-157. Map Amendment Approval**

**(a). Change/Mistake Rule**

**(1) No application shall be granted without the applicant proving that either:**

**(A) There has been a substantial change in the character of the neighborhood; or**

**(B) Either**

- (i) **There was a mistake in the original zoning for property which has never been the subject of an adopted Sectional Map Amendment, or**
- (ii) **There was a mistake in the current Sectional Map Amendment.**

**Applicant's Position:** The applicant contends that there was a mistake made in the adoption of the 1986 SMA (CR-25-1986) that would support the subject property being placed in the C-S-C Zone. Secondly, the applicant believes there have been several documented changes in the character of the neighborhood since the last SMA which, cumulatively considered, justify the requested rezoning to the C-S-C Zone.

The applicant contends that through a long series of development approvals for the subject property since the 1985 master plan and 1986 SMA, that the Planning Board and District Council have unequivocally determined that the subject property is, in fact, suitable for an integrated shopping center as permitted in the requested C-S-C Zone. By extension, having been determined suitable for an integrated shopping center and the uses typically associated therewith, it follows that the C-S-C Zone is the logical and proper zone for the subject property. If the District Council were to consider a new SMA today, they would undoubtedly place the property in the most appropriate use-oriented zone, which is the C-S-C Zone, in recognition of all the previous development approvals accorded to the property.

The applicant believes that the following findings provide sufficient evidence to support their contention that a mistake occurred in adopting the 1986 SMA for Suitland-District Heights and Vicinity.

1. The applicant asserts that the requested C-S-C Zone is warranted because a mistake was made in retaining the C-1 Zone on the portion of the subject property within the LTRA, including changing zoning from the C-2 to the C-S-C Zone on the applicant's adjacent property. Had the District Council fully intended to implement the master plan's employment land use recommendations for Employment Area 2, the applicant believes the District Council erred by not placing the entire site within the 1-3 Zone as originally proposed. Instead, the District Council clearly demonstrated confusion or misunderstanding in interpreting the master plan by adopting a wide variety of zoning for the applicant's assembled property (the R-R, C-1, C-S-C, and 1-3 Zones), when they clearly wanted to encourage land assembly and unified zoning.
2. The Zoning Hearing Examiner has found, with District Council concurrence (Zoning Ordinance No. 59-1988). that rezoning a portion of the subject property subsequent to the last SMA was justified based on a mistake in adopting the 1986 SMA. Specifically, in approving the 1-1 Zone for a portion of the subject property in zoning map amendments A-9689-C and A-9698-C, the Council concurred with the Zoning Hearing Examiner's finding that "the real issue in this case is a determination of how properties in long-term redevelopment areas, as designated in the Master Plan, are to be rezoned. If it is determined that they are to be rezoned by individual applications, the Council then mistakenly placed the properties in a zone other than an industrial zone in the [SMA], by a mistaken interpretation of the law of rezoning." See Zoning Ordinance No's. 59/60-1988 (attached).

In that decision, the Zoning Hearing Examiner found that the preliminary master plan recommended the 1-3 Zone for the properties (essentially all of Employment Area 2, including the LTRA and all of the applicant's land holdings in this area). The Examiner also found that because local residents complained about the recommendations, the adopted SMA retained either residential or commercial zoning. However, the master plan and SMA text and maps document that no commercial uses existed on the applicant's property at the time of SMA adoption. Therefore, a factual error was made by the Council in not zoning the entire property in either an industrial or residential zoning category. The result has led to piecemeal decisions over the years in an attempt to interpret the master plan and develop a consensus regarding the proper land use and development for all of the subject property.

The Zoning Hearing Examiner goes on to infer that the "...worst situation would be piecemeal rezoning over time of individual lots throughout the community, followed in each case by shifting uses and/or small-scale redevelopment in a haphazard manner." The Examiner continues: "A suitable redevelopment pattern would normally occur following extensive lot assembly and submission of a unified development plan within a single zoning classification." The Examiner found this desirable either "...collectively through individual owners or by a single owner of assembled parcels."

Interestingly, the applicant has accomplished exactly that task of assembling properties and getting approved a unified development concept for an integrated shopping center over the entire subject property. It has taken 20 years since the last SMA for the Planning Board and District Council to evolve public land use policy, embodied in the 1985 master plan, to the point where it can be concluded that the appropriate implementation of the master plan, including the use of the subject property is for commercial retail purposes. Accordingly, the approved commercial uses should be placed in the C-S-C Zone.

3. We note that the approval of the 1-1 Zone for a portion of the subject property in 1988, though perhaps correct at the time, has compounded the issue of mistake because it has further inhibited unified development of Employment Area 2. In trying to implement a unified land use policy for this employment area while overcoming the mistakes made in the last master plan and SMA, including approval of the 1-1 Zone, the District Council subsequently enacted two separate zoning text amendments that allow retail uses on certain properties with mixed R-R, 1-1 and 1-3 zoning. It was not until the District Council enacted the second text amendment to allow retail uses in the 1-1 Zone (CB-19-2005) that it became possible to develop retail uses on the entire subject property. At that point, and with substantial land assemblage under unified ownership having occurred along with changed market conditions, the fruition of a master plan policy for this portion of Employment Area 2 materialized in the instant request. Since then, subsequent development approvals for all or portions of the subject property to allow an integrated retail shopping center, are evidence of changed conditions in the intended character of the neighborhood since the 1986 SMA and the 1988 rezoning (*Mayor & Council of Rockville v. Stone*, 271 Md. 665,662,319A.2d 536, 541, (1974).
4. The applicant notes that the District Council in adopting the 1985 master plan and 1986 SMA states the following in the approval resolution (CR-147-1985):

"For the purpose of approving the Master Plan for Suitland-District Heights and Vicinity, thereby defining long-range land use and development policies and

detailed zoning proposals (*for a period of six to ten years*)...” (emphasis added).

As stated in Item 1 above, it has taken 20 years since the last SMA for the Planning Board and District Council to evolve public land use policy, embodied in the 1985 master plan, to the point where it can be concluded that the appropriate implementation of the master plan, including the use of the subject property, is for commercial purposes. Accordingly, the approved commercial uses should be placed in the C-S-C Zone. This point can not be emphasized enough in the context of the six to ten year time frame of the master plan and SMA. Also, it is important to note that the SMA process anticipates subsequent piecemeal rezoning in cases where the applicant demonstrates that a clear mistake was made in the original zoning or subsequent rezoning by adoption of a SMA (Section 27-220). We believe our evidence demonstrates a clear mistake. Furthermore, the District Council erred in recognizing that the master plan would provide long range land use and development policies for a period of six to ten years, when in fact, it has been 21 years since the last master plan.

The applicant’s position regarding change in the character of the neighborhood: Approval of a rezoning request in 1985, subsequent land transfers, and changes in policy and regulations have introduced elements of change in the character of the neighborhood that have weakened the viability of employment land use in the D’Arcy Road Employment Area as envisioned by the 1985 Suitland-District Heights Master Plan. These changes are discussed below:

1. The D’Arcy Road Employment Area, containing the subject property, has effectively been reduced in area because 18.44 acres were changed from the I-3 Zone (adopted via the 1986 SMA) to the R-T Zone. This zoning change involved adjacent land located west of the subject property and south of the Forestville Park townhouses. However, these 18.44 acres were subsequently conveyed to M-NCPPC for parkland. This change essentially eliminates the need for a full extension of Hampton Park Boulevard (Industrial Road I-1) south of the subject property. Part of this road is shown on the master plan within what is now the parkland. Attachment 1 addresses this issue and explains that properties south of the subject site are oriented to and have access to D’Arcy Road.
2. Another element of change in the character of the neighborhood from that envisioned by the master plan is the reduced need for the extension of Hampton Park Boulevard (Industrial Road I-1) to serve this entire employment area. Environmental policies have changed significantly since the need for proposed Industrial Road I-1 was planned that render the full extension of the road very unlikely. This is because development today must be environmentally responsible. In addition, as discussed in Attachment 1, the need for proposed Industrial Road I-1 is reduced because adequate access now exists to serve the entire master plan employment area. As part of the recent approval of the 2007 *Westphalia Sector Plan*, the District Council upgraded the Ritchie-Marlboro Road/Beltway interchange to a full interchange which will improve access to Employment Areas 3 and 4, including the subject property.
3. Recognition of retail deficiencies in the Suitland-District Heights planning area and recent changes to land use policies in the adjacent Westphalia planning area cannot be ignored when considering the appropriate zoning for the subject property. Specifically, the recent 2007 *Westphalia Sector Plan* approved a substantially larger population increase than anticipated by the 1994 Melwood-Westphalia and Vicinity Master Plan and the 1985 Suitland-District Heights and Vicinity Master Plan.



In the context of how the subject property impacts or services the retail shopping and office needs of residents within the defined neighborhood, planning area, and adjacent planning areas, there is no question that utilization of the subject property for uses allowed in the C-S-C Zone will markedly improve and enhance the quality of life for residents in these areas. This is borne out by the findings of the District Council in approving CB-65-2003, where the Planning, Zoning and Economic Development Committee Report indicates that the Council found this legislative district (inclusive of the subject property) “currently underserved” by retail uses.

The Council’s recent approval of the 2007 Westphalia Sector Plan also introduces elements of change that were not considered in the 1985 District Heights and Vicinity Master plan. The Westphalia Sector Plan has amended the boundary between the Suitland-District Heights and Westphalia planning areas from that originally approved as the boundary between both planning areas. This change incorporates all of the land area contained within the interchange and roundabouts associated with the Ritchie-Marlboro Road and Beltway interchange into the Westphalia planning area in order to serve the new growth approved for the abutting Westphalia area. This change was never anticipated by the 1985 Suitland-District Heights Master Plan. This improved access and upgrades to the interchange area and nearby roads in Westphalia (A-39 and MC-634) ideally positions the subject property as a sufficiently sized and accessible integrated shopping center capable of serving the retail shopping needs of new Westphalia area residents that were not anticipated by the 1985 master plan.

The applicant believes the approved use of the property for an integrated shopping center more than fulfills the 1985 master plan’s vision and redevelopment policies related to the subject property. The requested rezoning will allow unencumbered use of the property for retail purposes that will meet and serve the needs of persons within the neighborhood, the planning area, and areas beyond.

4. The applicant also points out that the retail market study performed as part of the 1985 Suitland-District Heights master plan considered only planning area residents, while also recognizing (page 141) that “...in fact there is a continuous movement both into and out of the Planning Area by external and local residents, and that apparent excess and deficits partially represent net inflows and outflows of shoppers, respectively” By so doing, the District Council ignored the substantial demand by county residents living just outside of the Beltway. Thus, the applicant believes the District Council erred in not fully considering the retail shopping needs of residents from the Westphalia area when it adopted the variety of zones on the subject property in 1986.

Cumulatively, evolved changes in environmental policies, roadway alignments, zoning changes on and adjacent to the subject property since the last SMA, Zoning Ordinance text amendments, and development approvals on the subject property by the Planning Board and District Council make the issue of change fairly debatable. Accordingly, this evidence is sufficient to support a finding of substantial change in the character of the D’Arcy Road Employment area from that envisioned by the 1985 master plan. Together, these changes destroy the presumption of correctness in adoption of the 1986 SMA, thereby justifying reclassification of the subject property to the C-S-C Zone. *Bowman Group v. Dawson Moser*, 112 Md. App. 694, 686 A.2d 643 (1996).

**Staff’s Analysis:** Staff points out that there is a strong presumption of validity accorded a

comprehensive rezoning. The presumption is that at the time of its adoption of the comprehensive rezoning, the District Council considered all of the relevant facts and circumstances then existing concerning the subject property. Mistake or error can be shown in one of two ways:

- A. A showing that at the time of the comprehensive rezoning the District Council failed to take into account then existing facts or reasonably foreseeable projects or trends or;
- B. A showing that events that have occurred since the comprehensive zoning have proven that the District Council's initial premises were incorrect.

The 1985 approved Master Plan for Suitland-District Council Heights and Vicinity recommends industrial development for the subject property. The zoning to achieve the master plan's recommendation was placed on the property during the 1986 sectional map amendment. The applicant, using a 1988 Zoning Hearing Examiner decision for rezoning cases A-9689 and A-9698, argues that retaining the C-1 Zone on the portion of the subject property within the LTRA, including changing zoning from the C-2 to the C-S-C Zone on the applicant's adjacent property, was a mistake. However, the applicant is requesting that the subject property be placed in the C-S-C Zone as well. The 1988 zoning case is for an adjacent property that involved a request for rezoning from the R-R and C-1 Zones to the I-1 Zone. It is unclear as to how Council's failure to rezone that property entirely to the I-3 Zone is a basis to place the subject property in the C-S-C Zone. A critical element in the review of a rezoning request based on mistake is the question of "what is the appropriate zone to correct the mistake."

The second point of the applicant's mistake argument similarly takes on the question of what is the appropriate zone to correct the mistake. The Examiner found in the 1988 case that the preliminary master plan recommended the I-3 Zone for the property and other properties in the LTRA and that "...the master plan and SMA text and maps document that no commercial uses existed on the applicant's property at the time of SMA adoption. Therefore, a factual error was made by the Council in not zoning the entire property in either an industrial or residential zoning category." Again the answer to the question of what is the appropriate zone at that time was either the industrial or residential zones. The applicant in this case is requesting commercial zoning. It is again unclear as to how the case cited helps advance the applicant's argument for commercial zoning.

Points three and four of the applicant's argument raise valid points about the amount of time that has elapsed since the last comprehensive rezoning. The applicant points to the language from the approval resolution for the master plan and SMA that describes the intent of the 1985 plan as to define long-range land use and development policies and detailed zoning proposals for a period of six to ten years. Many years have passed and the industrial employment envisioned by the plan has not materialized. The District Council subsequently enacted two separate zoning text amendments that allow retail uses on certain properties with mixed R-R, 1-1, and 1-3 zoning. It was not until the District Council enacted the second text amendment to allow retail uses in the 1-1 Zone (CB-19-2005) that it became possible to develop retail uses on the entire subject property. While it is widely recognized that a planning area should undergo comprehensive rezoning more frequently than 20 years, we do not agree that failure to engage in comprehensive rezoning constitutes a mistake. In addition, Council may desire retail rather than industrial development on the property. We do not believe that changing their minds on the type of development constitutes a mistake.

With respect to change in the character of the neighborhood, the applicant does not, in staff's opinion, provide very persuasive arguments. We are compelled to point out that the test is

**substantial change** in the character of the neighborhood. Conveying 18 acres of undeveloped R-T-zoned land to parkland does not create a substantial change in the character of the neighborhood. Staff recognizes that the recently approved Westphalia Sector Plan creates more of a market for the type of retail development envisioned by the applicant, but the evolution of the market away from the type of industrial development originally envisioned by the 1985 Master Plan goes more toward the mistake argument than change in the character of the neighborhood.

**H. Referral Comments:**

1. The **Environmental Planning Section**, in a memo dated June 25, 2007, provides the following comments:

**Background:**

The Environmental Planning Section originally reviewed the subject property in 1991 as part of Type II Tree Conservation Plan TCPII/203/91 for a timber harvest and a subsequent -01 revision approved in 2001 for 101.83 acres. In 2004, Preliminary Plan 4-04184 was reviewed for the same area, which requested the consolidation of 11 existing parcels in the I-3 and R-R Zones into six parcels. The conditions of approval for Preliminary Plan 4-04184 are found in PGCPB Resolution No. 05-115 and included approval of Type I Tree Conservation Plan TCPI/100/04 for the site. Issues regarding woodland conservation and noise will be addressed with future applications under the proposed zoning.

In 2006, Preliminary Plan 4-05133 and TCPI/100/04-01 were reviewed for the inclusion of an additional 22.85 acres (Phase II) to the overall development. This additional area was identified as Parcel 7 and Outparcel 1. The TCPII (TCPII/203/91-02) was subsequently revised to include the additional 22.85 acres.

The site was again reviewed as Detailed Site Plan DSP-04080/01 in conjunction with TCPII/203/91-02 for rough grading and infrastructure. That application is currently on remand and pending approval. The revised TCPII/203/91-02 and DSP-04080/02 cover the entire site of 120.55 acres.

The current application is a request to amend the zoning of a 116.50-acre site in the R-R, I-1, and I-3 Zones to the C-S-C Zone to allow for the development of an integrated shopping center. The subject property is located within Suitland District Heights and Vicinity Approved Master Plan and Sectional Map Amendment.

**Site Description:**

The subject property is located in the southwest quadrant of the intersection of I-95 and Ritchie Marlboro Road. The surrounding properties are industrially zoned except to the east and west of I-95 where some properties are residentially zoned. The site is characterized by terrain sloping toward the west and south of the subject property, and drains into unnamed tributaries of the Southwest Branch watershed in the Patuxent River basin. The predominant soil types on the site are Adelphia, Beltsville, Bibb, Collington, Chillum, Galestown, Sassafra, Shrewsbury and Westphalia. These soil series generally exhibit moderate to severe limitations to development due to steep slopes, high water table, poor

and impeded drainage, seasonally high water table, and flood hazard. The site is largely undeveloped and partially wooded. According to PGAtlas there are no rare, threatened or endangered species found to occur in the vicinity of this site. There are streams, floodplain, and wetlands associated with the site. There are no Marlboro clays or scenic or historic roads located on or adjacent to the subject property. The subject property is located adjacent to I-95, a freeway and a major noise generator. Because of the proposed zoning and uses of the site, the noise levels generated are expected to be within the state noise standards for those uses. This property is located in the Developed Tier as delineated on the General Plan.

### **Environmental Issues Addressed in the Suitland District Heights and Vicinity Master Plan Conformance**

The subject property is located within Analysis Area 2 of the Suitland and District Heights and Vicinity Master Plan and Sectional Map Amendment. There are few specific recommendations pertaining to the environmental elements of the master plan that relate to the subject property.

Previous approvals have provided for the future extension of Hampton Park Boulevard South through the subject property (Preliminary Plan of Subdivision 4-0184 and subsequent detailed site plans). The protection of environmental features proposed on the basic plan and as reflected on previous approvals is in conformance with the guidance provided by the master plan.

### ***Countywide Green Infrastructure Plan Conformance***

The site contains regulated areas, evaluation areas and network gap areas within the designated network of the *Countywide Green Infrastructure Plan*. The site contains a significant regulated area along the southeastern property line, that has an adjacent evaluation area and a small area designated as network gap. Most of the evaluation area and network gap were disturbed as part of a previous timber harvest permit. The regulated areas are undisturbed and will be the focus of preservation efforts. The basic plan shows preservation of the regulated areas and contiguous evaluation areas, providing conformance with the *Countywide Green Infrastructure Plan*. Reviews during future development phases will provide more detailed evaluation of conformance with the *Countywide Green Infrastructure Plan*.

### **Prior Zoning Approvals**

The 1986 Suitland District Heights and Vicinity Sectional Map Amendment rezoned a portion of the subject property from the R-R Zone to the I-3 and I-2 zoning category, with no conditions.

### **Conditions of Prior Preliminary Plan Approvals**

Preliminary Plan 4-05133 was approved in April 12, 2006, subject to conditions contained in PGCPB Resolution No. 06-143, for expansion of the site by 22.85 acres. The following condition is environmental in nature. The condition is shown in **bold typeface** and the associated comments are shown in standard typeface.

**10. Development of this site shall be in conformance with an approved Type I**

**Tree Conservation Plan (TCPI/100/04-01). The following note shall be placed on the final plat of subdivision.**

**“Development is subject to the restrictions shown on the approved Type I Tree Conservation Plan (TCPI/100/04-01), or as modified by the Type II tree conservation plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved tree conservation plan and will make the owner subject to mitigation under the Woodland Conservation Ordinance. This property is subject to the notification provisions of CB-60-2005.”**

**Comment:** A Type II Tree Conservation Plan (TCPII/203/93) and subsequent revisions have been approved for the subject property in conformance with TCPI/100/04-01.

#### Environmental Review

1. The subject property was harvested using a clear-cut method within the last three years in conformance with TCPII/203/91, and as revised in October 2004. The TCPII and the FSD cover an area of 120.57 acres, while the current application covers only a 101.83-acre portion of the site. A forest stand delineation (FSD) was submitted for the site in February 2006, and subsequently revised in March 2006, was found to address the criteria for an FSD in accordance with the Prince George’s Woodland Conservation and Tree Preservation Technical Manual.

**Comment:** No additional information is needed with regard to the FSD.

2. The property is subject to the provisions of the Prince George’s County Woodland Conservation Ordinance because the site has previously approved Tree Conservation Plans (TCPI/100/04 and TCPII/203/91-02). The TCPII shows the woodland conservation requirement for the site being met on site through a combination of preservation, afforestation/reforestation, and off-site mitigation.

**Comment:** If revised development proposals are submitted under the new zoning, revisions to the approved TCPs will be required.

3. Noise is a consideration in the review of this proposal due to proximity of the subject property to I-95, the residential portion of the subject property. Because the request is for rezoning to the C-S-C Zone, it is not likely that the noise levels generated will be above the state noise standards for these uses. Based on projected traffic (average daily traffic or ADT projected 10 years) data supplied by the State of Maryland, the Environmental Planning Section Noise Model has projected that the 65 dBA (Ldn) noise contour is located 1,199 feet from the centerline of the roadway.

All future plans should delineate the 65 dBA (Ldn) noise contour as reflected on previously approved plans.

**Comment:** No further action is required at this time with regard to noise contour delineation.

2. The **Urban Design Section**, in a memo dated May 24, 2007 submits the following comments:

According to Section 27-441 and 27-473, the I-1, I-3, and R-R Zones may contain any uses allowed under the C-S-C zone, provided that the following conditions apply to the site:

- (A) **The property is located on and inside the Capital Beltway at an existing interchange with said Beltway;**
- (B) **The site contains a minimum of eighty (80) acres that is split-zoned I-3, I-1, and R-R, with not more than twenty percent (20%) zoned R-R;**
- (C) **The property is proposed for employment uses in the most recently approved applicable Master Plan;**
- (D) **A Detailed Site Plan shall be approved in accordance with Part 3, Division 9, of this Subtitle; and**
- (E) **The site plan shall include at least two (2) stores containing one hundred thousand (100,000) square feet or more of gross floor area.**

All of the conditions above apply to the subject site. The majority of the site is currently zoned R-R and I-3. C-S-C uses would be permitted on those portions of the site in accordance with the above conditions, and they would be required to follow the development regulations of the underlying R-R and I-3 Zones. As discussed below, the portion of the property in the I-1 Zone would also permit C-S-C uses but would be required to follow I-3 setback regulations (as a condition of their rezoning resolutions). Rezoning the property to the C-S-C Zone would result in much less stringent development regulations than the current I-3 and R-R regulations, as outlined below:

- A. The R-R Zone generally requires a 25-foot front yard, side yards of at least 8 feet totaling at least 17 feet for both sides, and a 20-foot rear yard. For allowed uses other than residential dwellings and places of worship (i.e., the C-S-C uses that would be likely on this site), the maximum allowable lot coverage is 60 percent. In contrast, the C-S-C Zone does not specify a maximum lot coverage.
- B. The I-3 Zone requires a 30-foot setback from the street (the setback applies to buildings, surface parking, and loading areas), a 50-foot setback from a freeway such as the Capital Beltway, a 50-foot setback from residential land, and a 20-foot setback from nonresidential land. The zone has a maximum building coverage of 45 percent of the net lot area and a minimum green area requirement of 25 percent of the lot area. In contrast, the C-S-C Zone would require only a minimum 10-foot setback from the Capital Beltway, and there is no specified maximum building coverage or minimum green area.

The portion of the site currently in the I-1 Zone is subject to Section 27-469 and the conditions of Zoning Ordinance Nos. 59-1988 and 60-1988, which include:

- 1. **That adequate buffering / screening of adjacent properties shall be provided with special attention to the maintenance of existing vegetation.**

This condition predates the 1990 *Landscape Manual*, which sets out buffering and screening requirements. Any new development on the site would be required to provide adequate buffering and screening as part of the *Landscape Manual* requirements, so the condition above would be fulfilled by application of the *Landscape Manual*.

2. **That the site plan of development shall be approved by the Planning Board using the requirements of the I-3 Zone (excluding lot coverage and green area) as a guide.**

The main requirements of the I-3 Zone, excluding lot coverage and green area, are the setback regulations outlined above.

3. **That the District Council shall review and approve all site plans subsequent to approval by the Planning Board.**

As stated earlier, the proposed C-S-C Zone has substantially less restrictive regulations regarding building setbacks and lot coverage than the current R-R, I-1, and I-3 Zones. Granting the rezoning request would relax the existing development regulations on the site to standards that in have in the past resulted in typical environmentally insensitive suburban shopping center design, i.e. a sea of asphalt in front of the buildings.

Given the prominent location of the site along major transportation routes, specifically its visibility from I-495 and Richie Marlboro Road, it will be important to ensure environmentally sensitive design through the implementation of design standards in the form of conditions, including detailed site plan review. Environmentally sensitive design on this site must create a visually attractive and inviting appearance for the development, including pleasing views and adequate buffering from I-495. The majority of the site, including the entire frontage along I-495, is currently subject to the development regulations of the I-3 Zone, which require an appropriate 50-foot-wide setback adjacent to the freeway and also require a minimum of 25 percent green area on the site. It is important that the green area be dispersed over the site and not hidden behind buildings. These requirements would contribute to the overall attractiveness of future development.

One of the purposes of the I-3 Zone is to “provide development standards which assure the compatibility of proposed land uses with surrounding land uses, maximize open space so as to create a park-like setting, and improve the overall quality of industrial/employment areas in Prince George’s County.” From an Urban Design perspective, it is desirable to retain some of the I-3 development standards in order to provide high-quality commercial development on this site if it is rezoned to the C-S-C zone.

### **Recommendation**

The Urban Design Section recommends that if the rezoning application is approved, the approval should be subject to these conditions:

1. A detailed site plan shall be approved in accordance with Part 3, Division 9.
2. In addition to the requirements of the C-S-C Zone, the following requirements shall apply:

- a. The plans shall demonstrate green area of no less than 25 percent of the net tract area.
- b. A 50-foot-wide landscaped buffer strip shall be provided along the Capital Beltway.
- c. A 20-foot-wide landscaped strip shall be provided along all other street frontages.

**Conclusion:** There is a strong presumption of validity of a comprehensive rezoning. A piecemeal rezoning request must present strong evidence of a mistake in the comprehensive rezoning or evidence of substantial change in the neighborhood. The last comprehensive rezoning of this community occurred over 20 years ago. The fact that a property has not developed in accordance with the zoning assigned to it does not necessarily mean such zoning is a mistake. If that were true, numerous properties in the neighborhood as well as in the county could be eligible for rezoning based on mistake. The applicant's discussion about text amendments by the District Council to allow the type of retail uses permitted in the C-S-C Zone at best suggests to us that Council may have changed its mind regarding the type of development desired for the property. We are reluctant to characterize the adoption of text amendments as evidence of mistake. The applicant does not point to any documents from the text amendment process indicating that Council believed that it was a mistake to place the property in its current zones.

As planners, we are concerned about the impact a large retail center may have on existing retail areas. The recommendation for industrial development of the property in the master plan was the result of a comprehensive study of employment needs. The same is true of the recommendations for commercial development in the planning area. Staff is concerned that a piecemeal decision to change the property to a(n) (unplanned) major commercial center may have a detrimental impact on other planned commercial centers such as Hampton Mall. We have observed how the development of new commercial centers has accelerated the decline of older commercial areas. A comprehensive approach to planning these developments gives us an opportunity to more effectively address the commercial and industrial development needs of the county.

The applicant has established an abnormally large neighborhood in arguing that there has been a substantial change in the character of the neighborhood. Staff does not agree with the neighborhood boundaries presented by the applicant. In addition, we do not find that a change in environmental policies (again, which apply to the entire county) or the reduced need for a particular road constitutes a **substantial** change in the character of the neighborhood. We therefore recommend DENIAL of the requested rezoning.