



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

Zoning Map Amendment Petition No. A-9982

Application	General Data
Project Name: Townes of Brandywine Location: North side of Accokeek Road approximately 700 feet west of Branch Avenue Applicant/Address: KB Brandywine Land, LC 2139 Blue Knob Terrace Silver Spring, MD 20906	Date Accepted: 6/5/06
	Planning Board Action Limit: NA
	Plan Acreage: 30.3
	Zone: R-R
	Dwelling Units: 180
	Square Footage: NA
	Planning Area: 85A
	Tier: Developing
	Council District: 09
	Municipality: N/A
	200-Scale Base Map: 218SE07

Purpose of Application	Notice Dates
Rezoning from R-R to R-T (Metropolitan Dwelling Units)	Adjoining Property Owners Previous Parties of Record Registered Associations: 3/7/06 (CB-12-2003)
	Sign(s) Posted on Site and Notice of Hearing Mailed: NA

Staff Recommendation			Staff Reviewer: Laxmi Srinivas
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

September 27, 2007

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board
The Prince George's County District Council

VIA: Jimi Jones, Acting Zoning Supervisor

FROM: Laxmi Srinivas, Senior Planner

SUBJECT: Zoning Application No. A-9982

REQUEST: **Rezoning from the R-R Zone to the R-T 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 irregularly shaped parcel is located on the north side of Accokeek Road and the south side of Brandywine Road, approximately 700 feet west of Branch Avenue (MD 5) in Brandywine, Maryland. The subject property consists of 30.3 acres and is zoned R-R (Rural-Residential). It includes Parcels A and B, Parcel 103, and Lots 26 to 33 and is currently undeveloped. The subject property has approximately 800 feet of frontage on Accokeek Road and approximately 300 feet of frontage on Brandywine Road.

B. Development Data Summary:

	EXISTING	PROPOSED
Zone(s)	R-R	R-T
Use(s)	Vacant	Townhouses
Acreage	30.3 acres	30.3 acres
Lots	3 parcels, 8 lots	180 lots

C. Master Plan and General Plan Recommendations:

Master Plan

The 1993 Subregion V Master Plan Land Use Recommendations

The 1993 approved Subregion V master plan and SMA recommend medium suburban land use at up to approximately 6.7 dwelling units per acre for the subject property. The subject property is in the Brandywine community. The master plan states that the Brandywine community is a suburban living area and a primary location for housing in Subregion V. The development policies for suburban living areas include very small lot single-family detached, zero-lot line or attached units.

On page 220 of the SMA, it is noted that the R-R Zone is recommended as a holding or “base density” zone for this area prior to individual applications for comprehensive design zones. The full implementation of the master plan land use recommendations depend on the use of comprehensive design zone or other flexible planned development techniques.

The intersections of MD 5 with Accokeek Road (MD 373) and Brandywine Road are planned to be closed permanently. The master plan transportation element recommends a new collector road (C-527) constructed along the west side of the subject property as part of the comprehensively planned improvements.

General Plan

The subject property is located in the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. It is located to the north of the possible future center identified in the Brandywine Area.

D. Request:

The applicant is proposing to rezone the subject property from the R-R Zone to the R-T Zone to develop a new type of dwelling unit defined as a “metropolitan unit.” The allowable maximum density of metropolitan units in the R-T Zone is six dwelling units per acre. The applicant is proposing a maximum of six dwelling units per acre.

E. Neighborhood and Surrounding Uses:

According to the applicant, the subject property is located in a neighborhood defined by the following boundaries:

- MD 5 to the east
- Waldorf bypass to the south
- Brandywine Employment Spine Road to the north
- Accokeek Road to the west

The applicant has stated that the neighborhood is well defined by the existing and proposed transportation network of collectors, arterials and freeways.

Staff does not agree with the boundaries set by the applicant. The applicant’s neighborhood is not a homogenous residential neighborhood. From a planning standpoint, a neighborhood is part of a larger community and it is usually defined by major roads or natural features that separate it from other areas. The neighborhood should encompass an area of adequate size so that it has a well-defined character. The applicant’s use of an existing network of collectors, arterials and freeways is not appropriate because it does not define the residential neighborhood in which the subject property is located. The applicant has stated that the neighborhood defined by staff is very large and includes the subject property which is designated “medium suburban” and other low suburban, suburban estate, large lot, or semi-rural living areas. The subject property is in the easternmost edge of the neighborhood defined by staff. Staff disagrees with the applicant. The neighborhood defined by staff is of adequate size to include various residential uses. There is no requirement that a subject property be centrally located in a neighborhood. A property can be located anywhere in the neighborhood.

According to staff, the subject property is located in a neighborhood defined by the following boundaries:

- Floral Park Road and Brandywine Road on the north
- Accokeek Road on the south
- Branch Avenue on the east
- Danville Road on the west

The property is surrounded by the following uses:

North - Brandywine Road and single-family residential in the R-R Zone. Properties across Brandywine Road are zoned C-O.

South - Single-family residential in the R-R Zone and Accokeek Road. Single-family residential zoned R-R is across from Accokeek Road. The master plan designates Accokeek Road as a historic road.

East - Single-family residential in the R-R Zone. The J.E. Hunt Residence (#85-A-17) is a historic property located on the eastern side of the subject property at the intersection of Accokeek Road, MD 5 and Brandywine Road.

West - Single-family residential in the R-R Zone. The proposed right-of-way for the relocated Accokeek Road, identified in the master plan as C-527, is along the west side of the property.

F. History:

The subject properties were rezoned from R-A (Residential-Agriculture) to R-R (Rural Residential) through the 1993 Subregion V master plan and SMA. On Page 220 of the SMA, it is noted that the R-R Zone is recommended as a holding or “base density” zone for this area prior to individual applications for comprehensive design zones.

G. Zoning Requirements:

Section 27-157. Map Amendment Approval

(a) Change/Mistaking 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 1993 Subregion V master plan and SMA and there has been a substantial change in the character of the neighborhood.

The Maryland courts have applied a more liberal standard when property is being classified from one commercial subcategory to another than is applied when the reclassification involves a change from one use category to another. Drawing an analogy, it is reasonable to assume a more liberal standard in the instant matter where the subject property is being classified from one residential subcategory (R-R) to another (R-T).

The applicant contends that the specific evidence of substantial change in the character is based on the cumulative impact of the actual development that has occurred in the neighborhood since the adoption and approval of the master plan and the recently proposed road alignments of Accokeek

Road through the property. The realignment is an unanticipated change. The master plan recommended residential land use at higher densities to complement the employment areas planned nearby in the Brandywine Special Study Area.

The master plan states that the plan may need to be interpreted with some flexibility to respond to changing conditions. The R-R Zone was to serve as a base density zone until applications for comprehensive design zones were made to develop individual properties in and around the Brandywine Special Study Area. No applications for comprehensive design zones were submitted within the Brandywine Special Study Area in the past 14 years. The property to the south of Accokeek Road was developed at the base density of the R-R Zone instead of being developed with employment uses as envisioned in the Subregion V master plan. The master plan did not envision utilizing the base density of the holding zone for development. The Lakeview at Brandywine also was developed at the base density of the R-R Zone. It is apparent that the density and intensity of development envisioned in 1993 for the northern portion of the Brandywine Special Study Area will never come to fruition.

The realignment of C-527 also constitutes a substantial change. The roadway would be relocated from running along the western boundary of the property to alignments which bisect the property, thus changing the character of the neighborhood and the subject property itself.

Without the employment and high density residential uses south of Accokeek Road, the focus of the subject property is to provide a buffer and transition between the Euclidian commercial zones north of Brandywine Road and the low density Euclidian residential zones south and west of the property. The R-T Zone will provide the required transition because it will allow for a development with metropolitan townhouses.

Taken singularly, the changes in the character of the neighborhood are not sufficient to support the rezoning, but cumulatively they do demonstrate a substantial change in the character of the neighborhood.

The rezoning from Rural Residential (R-R) to Residential Townhouse (R-T) will fulfill a number of visions and residential planning guidelines of the master plan and special study area. The metropolitan townhouses will provide a moderate density buffer and transition between commercial uses north of Brandywine Road and the lower-density, single-family detached development to the west and south.

The applicant has stated that a property owner who relies upon change in seeking a rezoning must establish the following:

- What area reasonably constituted the neighborhood of the subject property
- The changes that have occurred in the neighborhood since the comprehensive rezoning.
- These changes resulted in a change in the character of the neighborhood.

Staff Comment's: Staff does not concur with the applicant's position. The applicant contends that there was a mistake made in the adoption of the 1993 Subregion V master plan and SMA and there has been a substantial change in the character of the neighborhood.

Staff believes that there is no mistake in the current Sectional Map Amendment according to the above Section 27-157 (a)(1)(B) of the Zoning Ordinance because:

1. There is a provision to achieve the maximum residential densities by rezoning to comprehensive design zones. The R-M comprehensive design zone provides for a variety of residential units including single-family, townhouse, and multifamily developments. A maximum of 30 percent of the total number of units can be townhouses. The sector plan envisioned achieving the maximum densities by using a variety of housing types.
2. The applicant also has the option to rezone the property to another comprehensive design zone other than the R-M Zone that allows only townhouse units.
3. The subject property was placed in a holding zone in order to enable future rezoning to comprehensive design zones when the neighborhood was ready for the higher densities.
4. The subject property was placed in a holding zone in order to enable future rezoning to comprehensive design zones when the neighborhood was ready for the higher densities.
5. The sectional map amendment specifically recommended rezoning to comprehensive design zones because a superior product that provided adequate open space, preservation of environmental features and superior site design and architectural design could be achieved in the comprehensive design zones.

The applicant contends that the Maryland courts have applied a more liberal standard when property is being classified from one commercial subcategory to another than is applied when the reclassification involves a change from one use category to another. Drawing an analogy, it is reasonable to assume a more liberal standard in the instant matter where the subject property is being classified from one residential subcategory (R-R) to another (R-T). Staff recognizes that a more liberal standard is applied when rezoning among subcategories. However, in this case, the rezoning of the subject property from the R-R Zone (holding zone) to the R-T Zone is not necessary to achieve the desired density. The property can be rezoned to a comprehensive design zone to achieve the desired density. Staff does not agree that a mistake has occurred.

The applicant contends that the specific evidence of substantial change in the character is based on the cumulative impact of the actual development that has occurred in the neighborhood since the adoption and approval of the master plan and the recently proposed road alignments of Accokeek Road through the property. The realignment is an unanticipated change. The master plan recommended residential land use at higher densities to complement the employment areas planned nearby in the Brandywine Special Study Area.

The applicant contends that the master plan states that the plan may need to be interpreted with some flexibility to respond to changing conditions. Staff agrees. However, the circumstances related to this property and the surrounding area have not changed significantly to require a flexible interpretation of the plan.

The applicant contends that the R-R Zone was to serve as a base density zone until applications for comprehensive design zones were made to develop individual properties in and around the Brandywine Special Study Area. No applications for comprehensive design zones were submitted within the Brandywine Special Study Area in the past 14 years. Even though there were no applications for comprehensive design zones in the past, there may be some applications in the future. The desired residential density for the subject property can still be achieved by rezoning to a comprehensive design zone.

The applicant contends that the property to the south of Accokeek Road was developed at the base density of the R-R Zone instead of being developed with employment uses as envisioned in the Subregion V master plan. The Lakeview at Brandywine to the south of the subject property also was developed at the base density of the R-R Zone. Staff does not agree with the applicant's boundaries for the neighborhood. Therefore, the property to the south of Accokeek Road and the Lakeview at Brandywine property are not in the neighborhood of the subject property. Changes that are not in the neighborhood of the subject property cannot be used to define a change in the character of the neighborhood.

The applicant contends that the master plan did not envision utilizing the base density of the holding zone for development. It is apparent that the density and intensity of development envisioned in 1993 for the northern portion of the Brandywine Special Study Area will never come to fruition. Staff disagrees with the applicant. The Brandywine Special Study Area is not in the neighborhood of the subject property. It is located on the south side of the neighborhood of the subject property. Therefore development utilizing the base density that is not in the neighborhood of the subject property cannot be used to define a change in the character of the neighborhood.

The applicant contends that the realignment of C-527 also constitutes a substantial change. The roadway would be relocated from running along the western boundary of the property to alignments which bisect the property, thus changing the character of the neighborhood and the subject property itself. Staff disagrees with the applicant. The relocation of the roadway from the west side of the property to a location inside the property is not a significant change and does not constitute a change in the character of the neighborhood. The alignment of C-527 is shown in the Master Plan and therefore cannot be used as evidence of change. It is an improvement that is anticipated by the plan. Furthermore, it is not unusual for road alignments to be adjusted or realigned as properties are subdivided for development. Staff also notes that, in this case, the road has not yet been built. The applicant would perhaps have a stronger case if the road existed.

The applicant contends that without the employment and high density residential uses south of Accokeek Road, the focus of the subject property is to provide a buffer and transition between the Euclidian commercial zones north of Brandywine Road and the low density Euclidian residential zones south and west of the property. The R-T Zone will provide the required transition because it will allow for a moderate density development with metropolitan townhouses. Staff disagrees. A moderate density residential development that serves as a buffer can be achieved by rezoning the subject property to a Comprehensive Design Zone.

The applicant contends that taken singularly, the changes in the character of the neighborhood are not sufficient to support the rezoning, but cumulatively they do demonstrate a substantial change in the character of the neighborhood. Staff does not agree with the applicant's boundaries for a neighborhood. Therefore, the cumulative changes in a neighborhood that does not include the subject property are not considered as changes in the character of the neighborhood.

The applicant contends that the rezoning from Rural Residential (R-R) to Residential Townhouse (R-T) will fulfill a number of visions and residential planning guidelines of the master plan and special study area. The metropolitan townhouses will provide a moderate density buffer and transition between commercial uses north of Brandywine Road and the lower-density, single-family detached development to the west and south. Staff disagrees. Rezoning to a comprehensive design zone will also fulfill a number of visions and residential planning guidelines of the master plan and special study area and will provide for a moderate density residential development.

The applicant contends that a rezoning is justified because:

- A neighborhood has been defined
- Changes have occurred in the neighborhood since the comprehensive rezoning
- These changes have resulted in a change in the character of the neighborhood.

Staff does not agree with the boundaries set by the applicant. We note that the applicant uses roads which do not exist as neighborhood boundaries. The applicant's southern boundary is the Waldorf Bypass. This road does not exist. The applicant's northern boundary is The Brandywine Spine Road. Only two small sections of this road have been built. Certainly, in establishing neighborhood boundaries, one should use visible barriers.

G. Referral Comments:

1. The Subdivision Section (memorandum dated December 1, 2006) states that the proposal consists of three parcels, Parcel 103, Parcel 102 and Parcel 83, and eight lots, Lots 26–33, known as Littleworth. The applicant must file a new preliminary plan of subdivision pursuant to Section 24-107 of the Subdivision Regulations. A condition of approval has been added to require the same.
2. The Washington Suburban Sanitary Commission (memorandum dated August 3, 2006) states that the impacts from this rezoning this property for the water supply and sewer systems would not be significant.
3. The Transportation Planning Section (memorandum dated October 30, 2006) states that the approved Subregion V master plan recommends a master plan trail along planned collector C-527. The section has recommended an eight-foot wide, asphalt master plan trail along the subject site's entire frontage of C-527. A condition of approval has been added to require the same.
4. The Transportation Planning Section (memorandum dated September 6, 2006) states that the proposed rezoning could have an impact of 85 to 95 additional trips depending on the peak hour. The MD 5 frontage improvements along the roadways must be in accordance with DPW&T guidelines. If the subject property were to be developed according to the proposed rezoning, a traffic study considering the nearby intersections would be required. The site is adjacent to the existing Accokeek Road (MD 373). The master plan recommendations would relocate this facility to the south, leaving the existing Accokeek Road and Brandywine Road as local roadways. The plan also recommends C-527 as a collector facility on a new alignment. Any development plans for this site should provide dedication for future roadways.

The Transportation Planning Section has stated that considering the capacity issues in the MD 5 corridor stated in the master plan, an intensification of zoning at this time could worsen the situation described in the master plan. The section has also stated that the adequacy of transportation facilities is not an issue pertaining to the change or mistake finding required for a Euclidean Zone.

5. The Environmental Planning Section (memorandum dated July 31, 2006) states that the site consists of streams and wetlands associated with Piscataway Creek in the Potomac River watershed. The site is mostly wooded and there are no rare, threatened or endangered species found to occur in the vicinity of this property. The principal soils on the site are in the Beltsville and Leonardtown series. The site is in the Developing Tier of the General Plan. According to the Countywide Green Infrastructure Plan, the stream valley along the western boundary is a regulated area and the remainder is an evaluation area. An environmental information package will be required at the time of the preliminary plan application. The site is subject to the requirements of the Woodland Conservation Ordinance because the entire site is more than 40,000 square feet in area and contains more than 10,000 square feet of woodland. Conditions of approval have been added to require all the woodland conservation on-site and provide landscape buffers along Accokeek Road to meet the requirements of the Design Guidelines and Standards for Scenic and Historic Roads. Conditions of approval have been added to require the same.
6. The Department of Parks and Recreation (memorandum dated October 17, 2006) states that the proposal was reviewed for compliance with the General Plan and master plan and the existing conditions in the vicinity of the proposed development as it pertains to recreational facilities. The addition of residential units on the subject property increases the demand for on-site recreational facilities and the need for public parkland and public recreational facilities. The section has required that the applicant demonstrate that the recreational needs of the new residents shall be met by the provisions of outdoor recreational facilities, fees or donations. Issues regarding recreational facilities are addressed during the subdivision review stage of the development process.
7. The Historic Preservation and Public Facilities Planning Section (memorandum dated July 25, 2006) states that the subject development will not be an unreasonable burden on available public facilities. The section has also concluded that the existing fire and police services are adequate. The proposed residential development is subject to the school facilities surcharge fees established by County Council bill CB-31-2003. Compliance with the requirements of CB-31-2003 will be reviewed during the subdivision review process for the subject proposal.
8. The Historic Preservation Section and Public Facilities Planning Section (memorandum dated October 20, 2006) states that the adjacent property to the east is the J.E. Hunt Residence (Historic Resource #85A-017). The J.E. Hunt Residence was identified as a Historic Resource in the 1981 Historic Site and Districts Plan. If the site is evaluated for potential designation as a historic site, the proposal will be subject to the bufferyard requirements for historic sites of the Prince George's County *Landscape Manual*. The proposed development must also address the views to and from the historic resource in order to minimize the potential visual impact of the development. Conditions of approval have been added to require the same.
9. The Urban Design Review Section (memorandum dated November 28, 2006) has no comments.

10. The State Highway Administration (memorandum dated January 31, 2007) states that the intersections of MD 5 with Accokeek Road (MD 373) and Brandywine Road are planned to be closed permanently. The master plan transportation element recommends a new collector road (C-527) constructed along the west side of the subject property as part of the comprehensively planned improvements. This connection is considered a temporary measure until a more suitable connection is made between Accokeek Road (MD 373) and Brandywine Road. The applicant has shown an 80-foot-wide right-of-way on the western portion of the property as a possible dedication for this alignment. The proposed dedication runs along a wetland. The State Highway Administration has no objections to the rezoning of this property. However, it has objection to the dedication of right-of-way in areas designated as environmentally sensitive. The applicant has proffered conditions to address the State Highway Administration's concerns in a letter dated February 27, 2007. Additional conditions of approval have also been added to address the State Highway Administration's concerns.
11. The Community Planning Division (memorandum dated August 21, 2006) states that the proposal is consistent with the 2002 General Plan for the Developing Tier and the recommendations of the 1993 Approved Subregion V Master Plan and SMA for medium-suburban residential land use. The 1993 Approved Subregion V Master Plan and SMA recommend medium suburban land use at up to approximately 6.7 dwelling units per acre for the subject property. The subject property is in the Brandywine community. The master plan states that the Brandywine community is a suburban living area and a primary location for housing in Subregion V. The development policies for suburban living areas include very small lot, single-family detached, zero-lot line or attached units. The proposed townhouse development conforms to the building types and density anticipated by the master plan for this area. At present, the choice of zones available to implement the recommendations of the master plan for this area is not as limited as in 1993. The density and the standards for the R-T Zone comply with the land use and density recommendations of the master plan for medium-suburban residential land use.

The memorandum from the Community Planning Division states that:

"DETERMINATIONS

- "- This application is not inconsistent with the 2002 General Plan Development Pattern policies for the Developing Tier.
- "- This application conforms to the recommendation of the 1993 approved Subregion V master plan and SMA for medium-suburban residential land use.
- "- The master plan proposal for a new collector road (C-527) is not addressed by this application.

"BACKGROUND

"Location: North side of Accokeek Road (MD 373) west of Branch Avenue (MD 5)

"Size: 30.3 acres

"Existing Uses: Undeveloped property

“Proposal: Rezoning from the R-R Zone to the R-T Zone

“GENERAL PLAN, MASTER PLAN AND SMA

“2002 General Plan: This application is located in the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. It is located just to the north of the possible future center identified in the Brandywine Area.

“Master Plan: 1993 Subregion V master plan

“Planning Area/
Community: PA 85A / Brandywine

“Land Use: Medium-suburban residential land use at up to 5.7 dwelling units per acre

“Environmental The Natural Features and Environmental Facilities Map indicate this property was wooded in 1990. A natural reserve area is located on the northern part of the property.

“Historic Resources: A historic resource, the J. E. Hunt Residence (85A-17), is located on the property adjoining to the east.

“Transportation: A new collector road (C-527) is proposed along the west side of this property. Accokeek Road (MD 373) is an existing road that will provide local access along the south side of the property.

“Public Facilities: No master plan public facilities are proposed on or adjacent to this property.

“Parks & Trails: A hiker/biker trail is proposed along collector road C-627 on the west side of this property.

“SMA/Zoning: The 1993 Subregion V SMA classified this property in the R-R Zone.

“PLANNING ISSUES

“**The 1993 Subregion V Master Plan Land Use Recommendations**

“The property subject to this application is in the Brandywine community and, although not specifically shown in the illustration on page 79, it should be considered as a part of the South Village area and the Pleasant Springs neighborhood. The Brandywine community also contains the Brandywine Special Treatment Area (BSSA), which is located across Accokeek Road (MD 373) to the south of the subject property.

The BSSA contains more detailed recommendations for a coordinated, planned community, including a broad mix of private and public land uses, which were taken into account for land use recommendations on surrounding properties.

“The Brandywine community is a Suburban Living Area and a primary location for housing in Subregion V (plan, p. 50). The property subject to this application is recommended for medium-suburban residential land use at up to approximately 6.7 dwelling units per acre (plan, p. 48). Development policies for Suburban Living Areas that apply to this application include:

“Medium- and high-suburban and low-urban densities (4.5 to 12 du/ac) are planned only within or adjacent to activity centers or as a transition use adjacent to employment. Building styles include very small lot single-family detached, zero-lot line, plex or attached units.” (plan, p. 50)

“Staff Comment: The attached residential (townhouse) development proposed by this application conforms to the building types and density anticipated by the master plan for this area.

“The 1993 Subregion V Master Plan Transportation Recommendations

“The master plan transportation element recommends a new collector road (C-527) constructed along the west side of the subject property as part of the comprehensively planned improvement of MD 5 (F-9) and US 301 (F-10) to freeway status and the local circulation system for the Brandywine community. The relevance to this proposal to the subject property is the planned closing of the current intersection of Accokeek Road (MD 373) at Branch Avenue (MD 5) and the need to route local traffic north to a planned new interchange on MD 5, approximately 1,000 feet to the north at proposed road A-63.

“Staff Comment: The status of ongoing plans and proposals for these transportation improvements needs to be addressed by the Transportation Planning Section of the Countywide Planning Division.

“The 1993 Subregion V SMA

“The 1993 Subregion V SMA policies state that ‘full implementation of master plan land use recommendations in many areas depend on the use of comprehensive design zone (CDZ) or other flexible planned development techniques.’ (plan, p. 191) Under SMA regulations, a CDZ may not be approved without an application and a recommendation from the Planning Board. In the interim, a “base density” zone is applied to the SMA zoning map that allows for an acceptable level of alternative development or, if the owner chooses, an application for the zoning techniques suggested by the master plan, or other zones that might be appropriate. A table in the plan text (p. 191) indicates that the R-R Zone is the appropriate “base density” conventional zoning category for medium-suburban residential land use recommendations. The table further indicates that that an application for the R-M comprehensive design zone would conform to the density recommendations of the plan for the subject property.

“Staff Comment: As noted by this applicant (statement of justification, pp. 7-8), there have been unanticipated changes to the Zoning Ordinance regarding the density and the standards for the R-T Zone, which bring it in line with the land use and density recommendations of this master plan for medium-suburban residential land use. As such, the choice of zones available to implement the recommendations of the master plan for this area is not as limited as in 1993.”

- H. **Conclusions:** Staff notes that the applicant revised the statement of justification to address C-527. We do not agree that C-527 creates a substantial change in the character of the neighborhood because it is anticipated by the plan.

The Maryland courts have established that the basic test considered in a contention of error is whether the legislative body made a basic and actual mistake when it adopted a comprehensive zoning map placing the property in its present zoning classification.

There is a strong presumption of correctness of original zoning and of comprehensive rezoning. To sustain a change in circumstances, a strong evidence of mistake must be produced.

The change/mistake finding merely permits the legislative body to grant the requested rezoning but does not require it to do so. However, where a mistake in zoning exists, and the existing zoning deprives the owner of all economically viable use, the rezoning is mandated.

The applicant can achieve the density recommendations of the master plan and achieve a moderate density residential development by rezoning the property to a comprehensive design zone. The applicant has failed to demonstrate that rezoning to a comprehensive design zone to achieve the recommendations of the master plan is a mistake. The applicant has also not submitted strong proof to justify the rezoning to the R-T Zone. The existing zoning does not deprive the owner of all economically viable use of the property.

The applicant has indicated that there are cumulative changes in the character of the neighborhood. Staff does not agree with the neighborhood boundaries set by the applicant. The applicant's neighborhood is too large and relies on roads that do not exist.

The realignment of C-527 does not constitute a substantial change. This alignment is anticipated by the Master Plan. Realignments can occur at subdivision to address site specific conditions. The location of roadway alignments is always approximate. Therefore, the relocation of the roadway from the west side of the property to a location inside the property is not a significant change and does not constitute a change in the character of the neighborhood.

Based on the above, staff concludes that there was no mistake made in the adoption of the 1993 Subregion V master plan and SMA and there has been no substantial change in the character of the neighborhood.

Staff therefore recommends DENIAL of the subject rezoning application, A-9982, for rezoning from the R-R Zone to the R-T Zone. We further recommend that the application be amended to request the R-M Zone in accordance with the Master Plan.