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## Comprehensive Design Plan Variance Request

**CDP-0902 (Remanded)**  
**VD-0902(Remanded)**

Application	General Data	
<b>Project Name:</b> The Villages at Timothy Branch  <b>Location:</b> East side of Robert S. Crain Highway (US 301), southeast of its intersections with Branch Avenue (MD 5) and Brandywine Road (MD 381).  <b>Applicant/Address:</b> Timothy Brandywine Investments One, LLC Timothy Brandywine Investments Two, LLC 2124 Priest Bridge Road, Suite 18 Crofton, MD 21114	Planning Board Hearing Date:	04/05/12
	Memorandum Date:	03/28/12
	Date Accepted:	11/12/09
	Planning Board Action Limit:	N/A
	Plan Acreage:	262
	Zone:	R-M
	Dwelling Units:	1,069
	Gross Floor Area:	N/A
	Planning Area:	85A
	Tier:	Developing
	Council District:	09
	Election District	11
	Municipality:	None
	200-Scale Base Map:	218SE07

Purpose of Application	Notice Dates	
On October 28, 2010, the Planning Board adopted resolution PGCPB No. 10-110 approving CDP-0902 with conditions. On January 23, 2012, the District Council remanded CDP-0902 to the Planning Board with direction that the Planning Board reconsider its decision regarding the use of the Brandywine Road Club.	Informational Mailing:	01/14/09
	Acceptance Mailing:	11/10/09
	Sign Posting Deadline:	03/06/12

<b>Staff Recommendation</b>		<b>Staff Reviewer:</b> Ruth Grover, M.U.P., A.I.C.P. <b>Phone Number:</b> 301-952-4317 <b>E-mail:</b> Ruth.Grover@ppd.mnccppc.org	
<b>APPROVAL</b>	<b>APPROVAL WITH CONDITIONS</b>	<b>DISAPPROVAL</b>	<b>DISCUSSION</b>
			<b>X</b>

MEMORANDUM

**TO: Prince George's County Planning Board**

**FROM: M-NCPPC Office of the General Counsel**

**SUBJECT: Villages of Timothy Branch; Comprehensive Design Plan CDP-0902;  
District Council Order of Remand**

**DATE: March 28, 2012**

On January 23, 2012, the District Council remanded the subject case with direction to the Planning Board to reconsider its decision. The purpose of this memorandum is to provide an overview of the application's progress thru the development review process and a recommendation on how the Planning Board should respond to the Order of Remand.

The Council's remand provides the following language regarding its direction to the Planning Board:

"REMANDED to the Planning Board, to reconsider its decision and take further evidence or action as to the following issue:

- (1) Technical staff for the Planning Board shall re-test the proposed development for transportation adequacy without the use of the Brandywine Road Club as a means of satisfying requirements of transportation adequacy. Instead, Planning Board technical staff shall apply the provisions of Section 24-124 of the Subdivision Regulations of Prince George's County, Maryland, the suspension of the Brandywine Road Club as adopted in CR-33-2011 and CR-61-2011, as well as transportation mitigation guidelines to ensure that the proposed development complies with the transportation adequacy standards recited therein, and that the development proposed in CDP-0902/VD-0902 will not excessively burden transportation public facilities."

Before addressing the direction in the Order of Remand, it is best to provide appropriate background on the actions that preceded this remand.

On October 7, 2010, CDP-0902 was approved by the Planning Board. This 262-acre property in the R-M Zone was processed in conjunction with companion application CDP-0901, a 72.26-acre property zoned L-A-C. As the major residential component of this overall development, CDP-0902 proposes up to 1,069 dwelling units. The L-A-C portion of the development proposes up 205,000 square feet of commercial office, 100,000 square feet of retail, and 131 dwelling units.

With respect to a transportation facilities review at the time of Comprehensive Design Plan, Section 27-521(a)(7) of the Zoning Ordinance states, “The staging of development will not be an unreasonable burden on available public facilities.”

The Planning Board approval of CDP-0902, as reflected in adopted Resolution PGCPB No. 10-110, addressed the finding above on Page 14 of that resolution. Specifically, the finding references the preceding transportation findings beginning on Page 7 and the subsequent recommended conditions ending on Page 17. These findings and conditions recognize the use of the Brandywine Road Club as the foundation of the required finding relating to the transportation element of “available public facilities.”

Subsequent to the approval of CDP-0902, the Planning Board approved Preliminary Plan of Subdivision 4-09003 on October 28, 2010. PPS 4-09003 was subject to the required transportation findings contained in Section 24-124 of the Subdivision Regulations. Those required transportation findings were made based upon the use of the Brandywine Road Club.

Subsequent to the approval of Preliminary Plan of Subdivision 4-09003, a Council resolution (CR-33-2011) was introduced on April 26, 2011. That resolution concluded with the following language:

“NOW, THEREFORE, BE IT RESOLVED by the County Council of Prince George’s County, Maryland, that except for applications located entirely within a Commercial, Industrial, or Employment and Institutional Area (“E-I-A”) Zone, or a combination thereof, the Brandywine Road Club is hereby immediately suspended for any applicant as a means of satisfying the requirements of Section 24-124 of the Prince George’s County Code.”

As part of the deliberations on this Resolution prior to its adoption on July 12, 2011, concerns were raised by staff and various applicants regarding the applicability of CR-33-2011 to developments that previously relied upon the use of the Brandywine Road Club for required findings related to transportation facilities. At that time, staff suggested that language be added to the Resolution providing clarity on this applicability issue. M-NCPPC staff was informed by Council staff that the specific provision in the Resolution (“...the Brandywine Road Club is hereby immediately suspended for any applicant as a means of satisfying the requirements of Section 24-124 of the Prince George’s County Code”) was prospective in nature and that if an applicant had already obtained a preliminary plan of subdivision approval, the area of land subject to that preliminary plan of subdivision would not be stopped at a later date because of CR-33-2011.

The Order of Remand direction that the “...Planning Board technical staff shall apply the provisions of Section 24-124 of the Subdivision Regulations...” to CDP-0902, raises a concern over the appropriate standard of review. Section 24-124 of the Subdivision Regulations is an established provision of the County Code requiring a determination of adequate transportation

facilities when considering the approval of a preliminary plan of subdivision. As noted above, the required finding in the Zoning Ordinance for a comprehensive design plan is that “[t]he staging of development will not be an unreasonable burden on available public facilities;” Application of a standard of review applicable to a different application type (preliminary plan of subdivision), regulated by a different Subtitle of the County Code (Subdivision Regulations) would be inappropriate and an impermissible application of the law.

It is recommended that the Planning Board respond to the Order of Remand by providing the District Council a suitable explanation detailing why it was impossible to follow their direction.