

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND  
OFFICE OF THE ZONING HEARING EXAMINER**

**ZONING MAP AMENDMENT  
A-10006**

**DECISION**

Application:	R-R to C-S-C Zone
Applicant:	George Curtis, Jr. and Lyda Curtis
Opposition:	None
Hearing Date:	December 10, 2008
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

**NATURE OF PROCEEDINGS**

- (1) Zoning Map Amendment 10006 is a request to rezone approximately 51.637 acres of R-R (Rural Residential) Zoned land, located on the east side of MD 5/US 301, at the southeast quadrant of its intersection with Cedarville Road, extending to the Charles County line, to the C-S-C (Commercial Shopping Center) Zone.
- (2) The Applicants, George and Lyda Curtis, allege both that there has been a substantial change in character of the neighborhood since the adoption of the approved Sectional Map Amendment for Subregion V in 1993 and that there was a mistake in the 1993 Subregion V Sectional Map Amendment with regards to the subject property. (Exhibit 2)
- (3) The Technical Staff recommended denial of the Application (Exhibit 8) but later submitted proposed conditions for approval as requested. (Exhibit 36) The Planning Board did not schedule the instant Application for public hearing and in lieu thereof adopted the recommendations of the Technical Staff. (Exhibit 13)
- (4) At the conclusion of the evidentiary hearing the record was kept open for the submittal of additional documents. Upon receipt of the documents the record was closed on February 11, 2009.

**FINDINGS OF FACT**

**Subject Property**

- (1) The subject property is located in the southeast quadrant of the intersection of MD 5/US 301 (Crain Highway) and Cedarville Road, extending south to the Charles County line. The subject property consists of a tax parcel (Parcel 2, Map 165, Grid A-1) which has not been subdivided. It has been historically utilized for agricultural purposes and is improved with several single family dwellings and associated outbuildings.

## **Master Plan and Sectional Map Amendment**

(2) The 1993 Approved Master Plan for Subregion V recommended employment-industrial type uses for the subject property as part of Employment Area C in Planning Area 85A, envisioning the inclusion of employment-office, light manufacturing/business and accessory commercial uses.

(3) The 1993 Adopted Sectional Map Amendment for Subregion V retained the subject property in the R-R Zone in accordance with the request of the current Applicants (1) in order to retain the agricultural/residential use and (2) as industrial development was premature at that time.

(4) The 2002 General Plan locates the subject property within the Developing Tier in a corridor with a limited access highway. The vision for the Developing Tier is to maintain a pattern for low-to-moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. “Developing Tier...Corridors should be developed at sufficient intensities with integrated mixed land uses, sustain existing bus service, and create additional opportunities for more walk-, bike-, or drive-to-transit commuting.”

## **Neighborhood and Surrounding Uses**

(5) The Technical Staff proposes a neighborhood with boundaries commensurate with Employment Area C in the Subregion V Master Plan. This neighborhood is bounded on the north by MD 381 (Brandywine Road), on the east by the CSX Railroad, on the south by the Mattawoman Creek (Charles County Line) and on the west by US 301 (Crain Highway). This neighborhood is generally consistent with the neighborhood accepted in the Brandywine Crossing rezoning cases. (A-9980 and A-9990)

(6) Upon consideration, the Applicants have proposed the use of a slightly different neighborhood which is bounded on the north by MD 381 (Brandywine Road) and Shortcut Road, on the east by the CSX Railroad, on the south by the Mattawoman Creek (Charles County Line) and on the west by the Master Planned alignment of F-9 and US 301 (Crain Highway). (Exhibit 34) The crux of this amended neighborhood is to include a narrow strip of commercial land located on the west side of US 301 which is utilized by the Applicants’ to support their argument for a mistake in the Sectional Map Amendment.

(7) Use of a Master Planned roadway (F-9) as a boundary for a neighborhood in lieu of an existing, multi-lane divided highway would be very irregular and therefore the neighborhood is accepted as proposed by the Technical Staff. The inclusion (or exclusion) of the northernmost triangle of land bounded by US 301, MD 381, and Shortcut Road has no bearing on the disposition of the issues as developed by the Applicants.

(8) The subject property is surrounded by the following uses: to the north are I-1 zoned properties developed with miscellaneous industrial/commercial service uses (gas station/convenience

store, Panda power plant, Soil Safe oil reclamation company) and a large warehouse store (the former Wards warehouse), to the south is the Mattawoman Creek, beyond which are strip-commercial uses in Charles County, to the east is the CSX Railroad spur line, beyond which are residential and agricultural uses in the R-A (Rural Agricultural) Zone and to the west is US 301 (Crain Highway) across which is undeveloped land in the C-M (Commercial Miscellaneous) and R-A Zones.

### **Applicants' Proposal**

(9) The Applicants' are requesting that the entire acreage be rezoned from the R-R to the C-S-C Zone for development of retail commercial uses.

### **LAW APPLICABLE**

(1) The Applicant's request for rezoning to the C-S-C Zone must be found to satisfy the requirements of §27-157 of the Zoning Ordinance which provide:

(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.

(2) The Application must also further the purposes of the C-S-C Zone, §27-454(a):

(1) The purposes of the C-S-C Zone are:

(A) To provide locations for predominantly retail commercial shopping facilities;

(B) To provide locations for compatible institutional, recreational, and service uses;

(C) To exclude uses incompatible with general retail shopping centers and institutions; and

(D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

(3) The Court of Appeals of Maryland has repeatedly recognized that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that "strong evidence" of error is required to overcome that presumption. Pattey v. Board of County Commissioners for Worcester County, 271 Md. 352, 359, 317 A.2d 142, 146 (1874); Wakefield v. Kraft, 202 Md. 136, 141-142, 96 A.2d 27, 29 (1953); Trainer v. Lipchin, 269 Md. 667, 672-73, 309 A.2d 471, 474 (1973); Stratakis v. Beauchamp, 268 Md. 643, 652-53, 304 A.2d 2441, 249 (1973); Howard County v. Dorsey 292, Md. 351, 438 A.2d 1339 (1982).

(4) The Applicant bears the burden of proof in its request to have the zoning classification for the subject property changed. Messenger v. Board of County Commissioners, 259 Md. 693, 271 A.2d

166 (1970); Chesapeake Ranch Club, Inc. v. Fulcher, 48 Md. App. 223, 426 A.2d 428 (1981). §27-142(a)

(5) However, in a piecemeal rezoning case, sufficient evidence to “permit” a rezoning does not “require” a rezoning unless an Applicant is denied all reasonable use of the property. Valenzia v. Zoning Board, 270 Md. 479, 484, 312 A.2d 277 (1973); Messenger, supra.

(6) In zoning matters, the zoning body is considered to be the expert in the assessment of the evidence. Colao v. County Council of Prince George’s County, 109 Md. App. 431, 675 A.2d 148 (1996). This is based on the theory that zoning matters are essentially legislative functions. White v. Spring, 109 Md. App. 692, 675 A.2d 1023 (1996).

(7) In analyzing a change argument, the zoning body may evaluate the changes cumulatively, determining whether the aggregate changes in the character of the neighborhood since the last comprehensive rezoning was such as to make the decision fairly debatable. Bowman Group v. Moser, 112 Md. App. 694, 686 A.2d 643 (1996); County Commissioners of Howard County v. Merryman, 222 Md. 314, 159 A.2d 854 (1960)

(8) Once evidence of mistake or change is adduced, evidence must be presented which justifies the correctness of the new zone being sought. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975); Mayor and Council of Rockville v. Stone, 271 Md. 655, 319 A.2d 536 (1974).

## CONCLUSIONS OF LAW

### **Change in the Character of the Neighborhood**

(1) The Applicants note that since the last Sectional Map Amendment (1993), there have been four (4) rezoning Applications approved by the District Council within the subject neighborhood. (A-9980, A-9990, A-9987, and A-9988) The first two (2) Applications involved a change in zoning from an industrial/employment zone (I-1 to I-3) to a commercial zone (C-S-C) (euclidian zoning) for a large retail commercial center. The latter rezoned property from the I-3 and E-I-A Zones to the R-M and L-A-C Zones (Comprehensive Design Zones), respectively, for a mixed use residential/commercial development.<sup>1</sup> The Applicants contend that the subject Application should not be treated dissimilarly. With the current actual development of retail commercial on the Brandywine Crossing properties to the north (A-9980 and A-9990), the Applicants argue that the character of the neighborhood has changed to the point of warranting the instant rezoning from residential to commercial.

<sup>1</sup>A-9980 and A-9990 are final decisions. A-9987 and A-9988 are currently on appeal by the opposition before the Circuit Court for Prince George’s County, Md.

(2) The Technical Staff’s analysis of change is as follows:

It is difficult to argue that the development dynamic of Employment Area C has turned out differently than was envisioned by the County in 1993. Although it could be argued that the recommendations of the 1993 Master Plan were not expected to happen overnight, the fact remains that there has been little industrial development in this area, and some of what has developed has either changed use (the Wards warehouse, to the north) or is to be subsumed by the commercial retail proposed in the Brandywine Crossing cases. It should be noted that the industrial uses that have developed here (particularly the Panda power plant and Soil Safe soil treatment facility (the largest such facility on the east coast)) have located in proximity to the subject property. The retail commercial centers relied upon by the Applicant have not yet been built although they have been diligently moving their way through the various approval processes and may have, by the time this case is considered in public hearings, commenced in some manner. The Villages of Timothy Branch just recently received their approval by the District Council and are not as far along. Staff would note that those two cases (A-9987 and A-9998) were for comprehensive design zones and hinged on their conformance to the 2002 General Plan, not on an argument of change and mistake. Further, the development occurring at the time of and since the SMA, in proximity to the subject site, has given the immediate neighborhood a decidedly more industrial rather than a less industrial flavor. A power plant and soil reclamation facility are certainly not evidence of a change from industrial uses to commercial ones. Rezoning itself, without some substantial physical change to see in the field, are generally not accepted as strong evidence of a change. Many rezonings go through the entire development approval process only to languish and never come to fruition for a host of reasons. (Exhibit 8, p. 4)

(3) The Applicants argue that the changes cited by the Zoning Hearing Examiner in A-9990 as being indicative of change in the character of the neighborhood have now materialized. “The number of high-income residences has increased, as has the residents’ clamors for high-end retail and restaurants- an indication of change, per the witness. The Applicant also suggests that the recently adopted General Plan is indicia of change since it arguably supports additional retail, residences and employment uses. Finally, the District Council’s recent decision to rezone the property to the immediate south of that at issue (A-9980) is further evidence of change in the character of the neighborhood.” A-9990, ZHE Decision p.4

(4) The development, construction and use of a significant amount of retail floor area has occurred on the site of A-9980 including the newly opened for business Target and Costco stores. (Exhibits 28(a)(b)&(c)) Additionally, a Regency Furniture Outlet store is operating to the north of the subject property as a conversion from the former Montgomery Ward warehouse facility. (Exhibit 27) These rezonings, which would not in themselves constitute change, coupled with the actual development of A-9980, supports a conclusion that there has been a change in the neighborhood since the 1993 Sectional Map Amendment for Subregion V. Boyce, supra.

### **Mistake in the 1993 Subregion V Sectional Map Amendment**

(5) The Applicants contend that retaining the subject property in the R-R Zone in the 1993 Sectional Map Amendment was a mistake. They allege that the District Council based their recommendation for employment uses in Employment Area C in the 1993 Master Plan on the mistaken belief that the land, having gone through the preliminary plan process, was on the threshold of development. However, little of this anticipated development has occurred in the more than 15 years that have elapsed since the approval of the Master Plan. Thus, the assumptions or premises relied upon by the District Council at the time of the Master Plan were invalid or have proven erroneous over time.

Further, the Applicants argue that the Master Plan recommended different commercial uses on the opposite side of US 301, although both sides show virtually identical characteristics. The Master Plan text provides no rationale for this planning difference. The C-S-C Zone would permit flexibility of design and use of the property without limiting the property to residential development, in turn serving a retail deficient neighborhood. As evidence, the Applicants offer that the 2010 county population estimate (840,921) was exceeded in 2004 (842,967). This mistake in estimation corresponds to the subregion as well, for which the Master Plan estimated a 2010 population of 53,922, while evidence in the record of A-9990 placed the 2004 population within a seven-mile radius of the site at 116,675.

To summarize Applicants argument:

1. The subject property was retained in the R-R Zone despite being located in Employment Area C with a recommendation for industrial/employment uses.
2. The Master Plan severely underestimated the population increases and the demographic trends.
3. Areas set aside for employment development never developed as such despite the 15 year time period since the comprehensive rezoning.

The Applicants allege that these are instances of mistakes revealed through the passage of time.

(6) The Technical Staff's analysis of mistake is as follows:

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 1993 approved Master Plan for Subregion V recommends industrial development for the subject property. The zoning to achieve the Master Plan's recommendation was not placed upon the site at the request of the property owner during the subsequent Sectional Map Amendment. The owner prevailed in their argument for continued residential use, calling industrial development premature. In this case it would seem, 15 years ago, the owner of the property was more prescient than was the County. It now seems somewhat disingenuous for the applicant to now argue that the District Council was mistaken to grant their request. While they claim that to treat them dissimilarly would be unfair, staff would note several ways that this property is different than the subject properties to the north:

1. The subject property, unlike all other four properties to the north, was retained in the residential zone in which it existed at the time of the SMA. It was never placed in an industrial zone.
2. The subject property, unlike the two commercial rezonings to the north, had never been subdivided for development and was thus not as far along in the development process.
3. The two Applications at the Villages of Timothy Branch were for comprehensive design zones, not Euclidean zones. Change or mistake was not an issue in those cases, rather they hinged on their compliance with the recommendation of the 2002 General Plan. They also are for a mixed-use development rather than strictly a retail commercial use, as would be developed here.

The Applicant also argues that the District Council should have treated the frontage along the east side of US 301 in a similar fashion to the west side, most of which was placed in the C-M Zone, since "both sides share virtually identical characteristics." This ignores the spur line of the CSX Railroad tracks that runs through Employment Area C. There is no such heavy freight line (and potential transit along the main line) running along the west side of US 301.

It is also true that the population estimates for Prince George's County were reached sooner than was expected. However, this can bring about many other needs than just retail commercial. Housing and job needs are driven by population as well. As far as the 116,675 persons within a seven-mile radius of the site of A-9990 are concerned, the Applicant does not explain how that measure differs from the subregion. If, in fact, the radius is applied consistently from a center point, it would take in substantial areas of Charles County which have seen significant increases over the last several decades.

The Applicant's arguments raise valid points about the amount of time that has elapsed since the last comprehensive rezoning. Many years have passed and the industrial employment envisioned by the plan has not materialized. While it is widely recognized that a planning area should undergo comprehensive rezoning more frequently than every 15 years, we do not agree that failure to develop within the lifetime of a Master Plan constitutes a mistake. (Exhibit 8, pgs. 5-6)

(7) Although the Applicants argue that the mistakes found in the 1993 Sectional Map Amendment by the District Council in A-9980 are relevant, those mistakes cannot be dispositive of the instant Application as the evidence addressed in A-9980 is quite different from the current facts. The Technical Staff said it best, that is disingenuous for the Applicants to argue that it was a mistake for the District Council to grant the Applicants rezoning request during the adoption process for the 1993 Sectional Map Amendment. The burden of any alleged mistake must lie with the Applicants', as it was at their insistence that the District Council retained the subject property in the R-R Zone.

(8) Since it has been concluded that there has been a change in the character of the neighborhood supportive of the request to rezone the subject property to the C-S-C Zone, it is not necessary to address the other allegations of mistake raised by the Applicants.

(9) Upon a finding of mistake or change, it is incumbent on the Applicants to provide evidence that the current request for the C-S-C Zone is the appropriate corrective zone.

(10) The instant Application is in conformance with the general purposes of the Zoning Ordinance, §27-102(a) as follows:

- (1) ***To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;***

This C-S-C Zoning proposal is for the development of a key County gateway property, where the heavily traveled MD 5/US 301 enters the Prince George's County from Charles County. In accordance with the 2002 General Plan GOALS for the Developing Tier, and GOALS for Centers and Corridors, this development will be a compact, mixed retail and office center, configured in a non-linear design, as facilitated by the site's generous size (52± acres) and width (1,000 feet average). It will be constructed as a pedestrian-oriented plaza or mall, and will create approximately 1,000 new jobs and increase ridership on the existing MTA bus line that connects the WMATA system to Charles County. Further, the potential exists for public transit utilizing the rail line that borders the east side of the property.

- (2) ***To implement the General Plan, Area Master Plans, and Functional Master Plans;***

The subject property is located in the Developing Tier within a "Corridor with Limited Access Highway," as designated by the County's 2002 General Plan. This proposal for the development of a compact, mixed retail and office center along this corridor is in accordance with the General Plan's GOALS for the Developing Tier, and GOALS for Centers and Corridors, as discussed in (1) above.



This Application also contributes to the implementation of the 1993 Approved Subregion V Master Plan recommendation for employment uses at this location, although not industrial-employment. Industrial-employment hasn't materialized in the subregion in the 30 years since the 1978 SMA rezoned over a 1,000 acres to I-1, I-2, I-3 and the E-I-A Zones. Expert market analyses have demonstrated that the Prince George's County economy has shifted from goods-producing activities (manufacturing and warehousing) to services-producing businesses. The anticipated 270,000 square feet of retail/office floor area at the subject property should create 1,000 new jobs at this location.

- (3) *To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

This Application will promote the conservation, creation, and expansion of the Brandywine community by concentrating development on a site that is within the MD 5/US 301 corridor, which the State Highway Administration identifies for future highway upgrades via the future US 301 upgrade realignment project, and the proposed Eastern Waldorf Bypass MD 5 options. Public water exists in Cedarville Road at the site, and public sewer exists within 1,500 feet of the property.

- (4) *To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;*

This Application will provide for the orderly growth and development of this 52± acre site through the realization of a 270,000 square foot, mixed office and retail center, configured in a pedestrian-oriented plaza/mall, in accordance with the applicable GOALS of the 2002 General Plan, at this key County gateway property, located within the MD 5/US 301 Corridor.

- (5) *To provide adequate light, air and privacy;*

Adequate light, air and privacy will be provided at this proposed development in compliance with all Federal, State and local regulations, as monitored and controlled by the permit processes.

- (6) *To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;*

The approval of the C-S-C Zone for the subject property will allow for the realization of a compact, mixed office and retail center at this key County gateway property. The property's generous size and width will facilitate a non-linear, plaza or mall configuration of buildings that will promote the most beneficial relationship between the uses of land and buildings. The provision of a buffer, as shown on the current Master Plan along the property's eastern boundary, will protect the only adjoining landowners from adverse impacts, if any, from the proposed development.

- (7) *To protect the County from fire, flood, panic, and other dangers;*

This proposed commercial center will be constructed in accordance with all County, State and Federal regulations, as assured by the various permit procedures.

- (8) *To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;*

As this proposal is for a commercial development, this purpose is not applicable to this Application.

- (9) *To encourage economic development activities that provide desirable employment and a broad, protected tax base;*

The realization of the anticipated 270,000 square foot retail/office center will increase the tax base and provide a sizeable source of employment. It will also be a likely source of new riders for the existing MD 5 MTA bus line that connects the WMATA systems to Charles County.

- (10) *To prevent the overcrowding of land;*

This Application will not overcrowd the land, as it is anticipated to yield a Floor Area Ratio (FAR) of 0.13, which is a moderate development intensity that provides sufficient site area for green space. Further, an estimated four acres (nearly 8%) of the site is within the 100-year floodplain, and as such, will remain undeveloped.

- (11) *To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;*

This Application will insure the continued usefulness of all elements of the transportation system for their planned functions. This proposal will be subjected to the subdivision test for adequate public facilities, including transportation. The Applicant will be responsible for any additional transportation facilities, if they are needed in the area and not provided by others.

- (12) *To insure the social and economic stability of all parts of the County;*

This proposal, which will result in a pedestrian-oriented, compact mixed retail/office center at this important County gateway property, is estimated to create 1,000 new jobs, contributing to the social and economic stability of the County.

- (13) *To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;*

- (14) *To provide open space to protect scenic beauty and natural features of the County, as well*

*as to provide recreational space; and*

**(15) *To protect and conserve the agricultural industry and natural resources.***

The subject property contains streams, 100-year floodplain, and wetlands all associated with the Mattawoman Creek. According to the Approved Countywide Green Infrastructure Plan, the Mattawoman stream environs is a regulated area, and will be off limits for development purposes other than necessary infrastructure construction such as utility connections and storm drain outfalls. The protection of the environmental features will be addressed in subsequent development stages.

(11) The instant Application is in compliance with the general purposes of the Commercial Zones, §27-446(a) as follows:

**(1) *To implement the general purposes of this Subtitle;***

This Application is in harmony with the general purposes of this Subtitle, as stated supra.

**(2) *To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;***

The proposed development of the site will contribute to the variety of commercial uses at this Master Plan recommended employment area and County gateway through the realization of a mixed retail and office center, which will provide additional needed services to the community and the traveling public.

**(3) *To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;***

The site is ideally located at the intersection of two well-traveled commuter roads for use as a services-producing retail and office center. This service commercial use will be adjacent to other commercial uses in the Brandywine community, including Brandywine Crossing, Chaddsford, the 301 Commerce Center and other newly developing commercial uses in the area.

**(4) *To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;***

The proposed retail/office center will protect adjacent property against fire, noise, glare, noxious matter and other objectionable influences as it will be designed, constructed and operated in conformance with all Federal, State and County regulations.

**(5) *To improve traffic efficiency by maintaining the design capacities of streets, and to lessen***

*the congestion on streets, particularly in residential areas;”*

The subject property is located at the intersection of two Master Plan designated arterials, within a 2002 General Plan designated “Corridor with Limited Access Highway”. Development of the subject property will then proceed through the development review process, where it will be tested for adequate public facilities, including transportation. If additional transportation facilities are needed, the Applicants will have to provide these if they are not being provided by others.

**(6) *To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;***

The use of the site as a compact, mixed office and retail center will promote the efficient and desirable use of the land in conformance with the Approved 2002 General Plan and the Approved 1993 Subregion V Master Plan (as modified by the General Plan), which emphasizes transit-oriented development, and recommends employment uses for the site, respectively.

**(7) *To increase the stability of commercial areas;***

The proposed commercial development at this key County gateway site will increase the stability of commercial areas by implementing the 2002 General Plan designation for the site, which provides for distinct, transit-oriented commercial centers within this designated “Corridor with Limited Access Highway.”

**(8) *To protect the character of desirable development in each area;***

The proposed mixed retail and office commercial center will compliment the other numerous commercial developments occurring in the Brandywine Community core, on both sides of MD 5/US 301, just north of this location, contributing to the overall experience of working and shopping in a modern transit-oriented and pedestrian-oriented mixed commercial and residential community center.

**(9) *To conserve the aggregate value of land and improvements in the County; and***

The proposed uses of the subject property will conserve the aggregate value of land and improvements in the County, as they will provide a modern work place and shopping center for the residents of the Brandywine Community and motorists on this heavily traveled highway corridor.

**(10) *To enhance the economic base of the County.***

The proposed development of the site will enhance the economic base of the County through the realization of a modern, compact, mixed retail and office center at this highly visible County gateway location, attracting employees and shoppers from within the Brandywine Community, and the traveling public on this major thoroughfare.

**(12)** The instant Application is in conformance with the specific purposes of the C-S-C Zones, §27-

454(a)(1) as follows:

**(A) *To provide locations for predominately retail commercial shopping facilities;***

The proposed mixed retail and office center will capitalize on this important County gateway location, which is close to other newly developing retail commercial uses along the MD 5/US 301 corridor.

**(B) *To provide locations for compatible institutional, recreational and service uses;***

The proposed use is a mixed retail and office use. The area just north of this site, zoned C-S-C, is presently being developed with several retail, service, and office commercial uses.

**(C) *To exclude uses incompatible with general retail shopping centers and institutions;***

The proposed mixed retail and office center would be compatible with other retail shopping centers and commercial uses emerging within the Brandywine Community.

(13) Current air photos of the subject property indicate that 95 percent of the site is in open farm fields, and only two acres of the site are wooded. Numerous residential and agriculturally-related buildings are located on the property. This site contains streams, 100-year floodplain and wetlands associated with Mattawoman Creek in the Potomac River watershed. According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program, there are no rare, threatened, or endangered species found to occur on or in the vicinity of this property. Cedarville Road is designated in the Subregion V Master Plan (1993) as a historic road. US 301, which borders the site to the west, is a Master-Planned divided arterial, and an existing source of traffic-generated noise. According to the Prince George's County Soil Survey, the principal soils on the site are in the Beltsville, Bibb, Croom, Iuka, Leonardtown and Sassafras series. All of these soils, except for Sassafras, are hydric and may present difficulties due to high water tables and impeded drainage. Marlboro clay does not occur in this area; there are also small network gaps. The subject property is located within the Mattawoman Creek Stream Valley Special Conservation Area.

(14) According to the Approved Countywide Green Infrastructure Plan, the Mattawoman stream valley along the southern boundary is a regulated area and approximately the lower half of the property is within an evaluation area.

The Mattawoman Creek is a 60,300-acre watershed located in Prince George's and Charles Counties. Approximately 18,500 acres of the total watershed is located in Prince George's County. The creek originates in Brandywine in Prince George's County and flows south towards Waldorf in Charles County, where it begins to form the border between the two counties at US 301.

The Mattawoman Creek and its tidal and non-tidal wetlands were identified in a 1981 Maryland Department of State Planning report on areas of critical State concern. The creek, its

wetlands and its tributaries are among the most productive finfish spawning and nursery streams in the entire Chesapeake Bay region. The nontidal wetland areas support unusually large numbers of fish-eating wildlife, especially Great Blue Herons, Great Egrets, Bald Eagles, and Black-Crowned Night Herons.

The quality of the water entering the stream systems in the watershed is of particular concern. The Benthic IBI (1999–2003 biological assessment) for the Mattawoman Creek is poor; the habitat rating (1999–2003 biological assessment) is fair. When evaluation areas occur within the watershed, the woodlands present should be preserved adjacent to streams to widen the corridors adjacent to regulated areas to protect water quality. Reviews during future development phases will provide more detailed evaluation of conformance with the Green Infrastructure Plan.

(15) No Natural Resources Inventory Plan (NRI) or Forest Stand Delineation (FSD) was submitted with the subject Application, and are not required as part of a Zoning Map Amendment application. It should be noted that an NRI and other environmental information must be approved prior to submittal of a Preliminary Plan, and is recommended for any other development application.

The southern portion of the site contains small stream branches and wetland areas. The open quality of the site makes the construction of large pad sites for the development of commercial-style buildings easy to accommodate, and allows for development to be focused away from the regulated and evaluation areas of the site.

Because the protection of the water quality of Mattawoman Creek is a priority concern, impervious surfaces should be fragmented and water quality treatment should occur using micro-management techniques throughout the site.

This site will be subject to the provisions of the Woodland Conservation and Tree Preservation Ordinance because the site is larger than 40,000 square feet in area, and contains more than 10,000 square feet of woodlands.

The proposed rezoning will result in a decreased woodland conservation threshold requirement for the site from 20 percent to 15 percent, but because the amount of existing woodland on the site falls below the woodland conservation threshold, a 15 percent afforestation requirement will be applied regardless of the zoning. As a result there is little difference between the amounts of woodland conservation that would be required for the subject property if the subject application is approved.

A Tree Conservation Plan will be required when appropriate in the development process. Because most of the site contains regulated areas and evaluation areas within the designated green infrastructure network, and is an identified Special Conservation Area in the Countywide Green Infrastructure Plan, woodland conservation should be provided on-site to the greatest extent possible.

(16) It is recognized that preparation for a new Master Plan and Sectional Map Amendment for Subregion V is in progress, however it is still early enough in the process that the instant rezoning Application, if approved by the District Council, may be taken into consideration during the Master Plan and Sectional Map Amendment review process.

### **RECOMMENDATION**

Approval of A-10006 for rezoning from the R-R to the C-S-C Zone with the following Conditions:

1. The Applicants shall obtain an approved Detailed Site Plan to ensure compatibility with the nearby industrially-developed properties, conformance with the purposes of the C-S-C Zone, views to the site from US 301 and to address buffering necessary to screen the view of the development from the adjacent properties in the Rural Tier.
2. All future submissions for development activities on the subject property shall include a signed Natural Resources Inventory (NRI). The NRI shall be used by the designers to prepare a site layout that limits impacts to the Regulated Areas and Evaluation Areas of the site to the greatest extent possible.
3. Future development proposals shall provide water quality treatment areas through the site through the use of bioretention areas, rain gardens or other environmentally sensitive design techniques. Impervious surfaces shall be fragmented to the fullest extent possible, with water quality features located between the buildings, parking areas and travel aisles.
4. Woodland conservation that is required by the Woodland Conservation Ordinance should be provided on-site to the greatest extent possible.
5. The submission package of the next Development Review Application shall include an Inventory of Significant Visual Features for the viewshed of historic Cedarville Road.
6. Access to the site shall be restricted to Cedarville Road with no direct access to US 301.
7. The Applicants shall address the following trails issues at the time of Preliminary Plan and Detailed Site Plan:
  - a. Provide adequate pedestrian crosswalks for the two legs of the intersection of Cedarville Road and US 301 that about the subject property plan.
  - b. Provide sidewalks along the property's frontages of US 301 and d Cedarville Road at the time of site plan.
  - c. Provide interior sidewalks and sidewalk connections.
  - d. Work with M-NCPPC Parks and Recreation to develop a trail plan along Mattawoman

- Creek stream valley on or adjacent to the subject property.
- e. Provide connections from the subject site to the future trail alignment.
8. The Applicants shall evaluate the extraction of mineral resources on the site prior to any development that would make these valuable resources inaccessible.
9. Adequate right-of-way consistent with Master Plan recommendations must be dedicated along the property's frontages in concert with the subdivision of the property.