

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

**ZONING MAP AMENDMENT
A-10043**

DECISION

Application: C-S-C/R-80/M-I-O to M-X-T/M-I-O
Applicant: Curtis Properties, Inc.
Opposition: None
Hearing Date: February 14, 2018
Hearing Examiner: Joyce B. Nichols
Recommendation: Approval

NATURE OF REQUEST

(1) A-10043 is a request for the rezoning of approximately 5.61 acres of land, located on the west side of Branch Avenue (MD 5), in the southwest quadrant of its intersection with Linda Lane, and east of Old Branch Avenue, also identified as 5620 Linda Lane, and 5702 and 5710 Old Branch Avenue, Temple Hills, Maryland, from the C-S-C (Commercial Shopping Center)/R-80 (One-Family Detached Residential)/M-I-O (Military Installation Overlay) to the M-X-T (Mixed Use-Transportation Oriented)/M-I-O Zones.

(2) The Technical Staff recommended disapproval (Exhibit 14) and the Planning Board did not elect to hold a hearing, and, in lieu thereof, adopted the recommendation of the Technical Staff. (Exhibit 47)

(3) At the close of the evidentiary hearing the record was left open for several documents, and upon receipt of which, the record was closed on March 6, 2018.

FINDINGS OF FACT

Subject Property

(1) The subject property is comprised of Parcels B and C and unsubdivided Tax Map 98, Parcel 25, and has frontage on Branch Avenue (MD 5), Linda Lane, and Old Branch Avenue.

(2) Parcel 25, Parcel C, and the south half of Parcel B are located in the R-80 Zone and total approximately 3.82 acres, and the northern part of Parcel B is located in the C-S-C Zone and is approximately 1.78 acres. The entire site is located within the M-I-O Zone.

(3) The subject property is located along the south side of Linda Lane along the entire length of the block between Old Branch Avenue and Branch Avenue (MD 5). The property is developed with an existing single-story commercial structure being used as an office building (occupied by the Applicant) in the C-S-C zoned portion of the property, with its access from Linda Lane; an associated parking lot on a part of the R-80 zoned portion of the property; and two single-family dwellings which front on Old Branch Avenue and are located on part of the R-80 zoned portion of the property.

History

(4) The 2006 Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area (Henson Creek-South Potomac Master Plan and Sectional Map Amendment) retained Parcel B in the split zones (C-S-C and R-80), and retained Parcel 25 and Parcel C in the R-80 Zone. The property was subject to a Preliminary Plan of Subdivision, PPS 4-87035, approved by the Planning Board on March 26, 1987 (PGCPB Resolution No. 87-111) with three conditions. Preliminary Plan 4-87035 included 4.79 acres in the C-S-C and R-80 Zones (Parcel A), and subdivided Parcel A into two parcels (Parcels B and C), separating the existing single-family detached dwelling and the commercial retail/office building on the subject site. Tax Parcel 25 currently contains an existing single-family detached dwelling and is not the subject of an approved Preliminary Plan of Subdivision or record plat.

Master Plan and Sectional Map Amendment

(5) The subject property is located in Planning Area 76B. The applicable Master Plan is the Approved Central Branch Avenue Corridor Revitalization Sector Plan, approved on April 2, 2013. The Sector Plan designated the subject property for “Residential Low” future land use along with all adjoining properties.

(6) The most recent Sectional Map Amendment (Henson Creek-South Potomac) adopted in April, 2006 retained the subject property in the previously-existing C-S-C and R-80 Zones.

(7) The October 2002 General Plan placed the subject property within the Branch Avenue Corridor, and within the Developed Tier. The Growth Policy Map in the May, 2014 General Plan (Plan Prince George’s 2035) placed the property in the Established Communities category, and the printed Generalized Future Land Use Map appeared to have designated it for Commercial land use (the recently-added PG Atlas layer indicates “Residential Low” land use). The subject property is not within a Priority Preservation Area.

Neighborhood and Surrounding Uses

(8) The neighborhood is bounded as follows:

North - Capital Beltway (I-495)

East -	Branch Avenue (MD Route 5)
South-	Allentown Road (MD Route 337)
West -	Henson Creek tributary running just to the west of Lorraine Drive, Woody Way and Alcon Drive

(9) Immediately to the east of the subject property is Branch Avenue, a limited-access freeway. Linda Lane has access to southbound Branch Avenue in a right-in, right-out at-grade intersection configuration.

Immediately to the north of the subject property across Linda Lane is the Central Baptist Church of Camp Springs in the R-80 Zone, also occupying the entire length of the block between Old Branch Avenue and Branch Avenue (MD 5). Beyond that, in the area between Old Branch Avenue and Branch Avenue, are a vehicle storage lot in the R-80 Zone along Branch Avenue, single family dwellings fronting Old Branch Avenue, and the Light Bearer's Mission Seventh Day Adventist Church fronting on Manchester Drive.

Immediately to the west of the subject property are single-family residences in the R-R (Rural Residential) Zone on the west side of Old Branch Avenue and in the neighborhood beyond. Further along Old Branch Avenue to the north is the New Chapel Baptist Church and its associated New Chapel Christian Academy in the R-R Zone. Diagonally to the southwesternmost corner of the property, at the intersection with Center Drive, is a Citgo gas station in the C-M (Commercial Miscellaneous) Zone. A mix of single-family dwellings and undeveloped land in the R-R and R-80 Zones continue along the Old Branch Avenue frontage beyond the Citgo station until commercial activity around the intersection of Allentown Road and Old Branch Avenue begins a half-mile to the south.

Immediately to the south of the subject property is the Abbott Forest subdivision of single-family dwellings in the R-80 Zone, which comprise a single cul-de-sac, Center Drive. Further to the south in the area between Old Branch Avenue and Branch Avenue is another single-family dwelling in the R-55 (One-Family Detached Residential) Zone, the Evangel Assembly in the C-2 (General Commercial, Existing) Zone, unimproved land in the C-S-C Zone, and a Kaiser Permanente facility in the C-S-C Zone. Beyond the Kaiser facility is a ramp from the interchange of Branch Avenue (MD 5) and Allentown Road (MD 337), with a cell tower and some nonconforming single-family residences in the C-S-C Zone beyond.

In the vicinity of the subject site, the land area between Old Branch Avenue and Branch Avenue (MD 5) is, with the exceptions listed above, preponderantly (70%) occupied by a mix of commercial and institutional uses, including several large churches, a large medical facility and a vehicle storage yard, in addition to the existing commercial use at the subject site.

Applicants Request

(10) The Applicant is requesting to rezone Parcels B, C, and 25 from the C-S-C and R-80 Zones to the M-X-T Zone to facilitate a mix of development consisting of offices, commercial, and retail uses. The Applicant's Amended Statement of Justification proposes the conceptual development of 12,000 square feet of retail/commercial uses and 25,000 square feet of office use, or a combination thereof. (Exhibit 16)

APPLICABLE LAW

(1) The Applicants request for approval of the M-X-T Zone must be found to satisfy the provisions of §27-213 of the Zoning Ordinance. This Section provides, in pertinent part, as follows:

(a) Criteria for approval of the M-X-T Zone.

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

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

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

(ii) A major transit stop or station (reasonably expected to be in place within the foreseeable future).

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

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

(3) Adequate transportation facilities.

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

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

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(c) Conditional approval.

(1) When it approves a Zoning Map Amendment, the District Council may impose reasonable requirements and safeguards (in the form of conditions) which it finds are necessary to either:

(A) Protect surrounding properties from adverse effects which might accrue from the Zoning Map Amendment; or

(B) Further enhance the coordinated, harmonious, and systematic development of the Regional District.

(2) In no case shall the conditions waive or lessen the requirements of, or prohibit uses allowed in, the approved zone.

(3) All building plans shall list the conditions and shall show how the proposed development complies with them.

(4) Conditions imposed by the District Council shall become a permanent part of the Zoning Map Amendment, and shall be binding for as long as the Mixed Use Zone remains in effect on the property (unless amended by the Council).

(5) If conditions are imposed, the Applicant shall have ninety (90) days from the date of approval to accept or reject the rezoning as conditionally approved. He shall advise (in writing) the Council accordingly. If the Applicant accepts the conditions, the Council shall enter an order acknowledging the acceptance and approving the Map Amendment, at which time the Council's action shall be final. Failure to advise the Council shall be considered a rejection of the conditions. Rejection shall void the Map Amendment and revert the property to its prior zoning classification. The Council shall enter an order acknowledging the rejection, voiding its previous decision, and reverting the property to its prior zoning classification, at which time the Council's action shall be final.

(6) All Zoning Map Amendments which are approved subject to conditions shall be shown on the Zoning Map with the letter "C" after the Application number.

(2) The instant Application must also be found to further the Purposes of the M-X-T Zone, §27-542(a), and the general Purposes, §27-102, of the Zoning Ordinance.

CONCLUSIONS OF LAW

(1) The Application is keeping with the general Purposes of the Zoning Ordinance, §27-102, as follows:

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

The approval of the M-X-T Zone will allow for a complementary mix of land uses to be planned and constructed at the subject property, yielding benefits of efficiency to the surrounding transportation network, promoting pedestrian activity, providing the convenience of additional commercial activity in proximity to the high-classification roadways in the vicinity. The review process inherent in the M-X-T Zone's regulations provides for a higher level of both planning flexibility and public oversight to promote and protect the public health, safety and welfare. Approval of the subject Zoning Map Amendment is therefore in harmony with the Zoning Ordinance's purpose of protecting and promoting the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County.

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

Plans;

This Purpose is addressed in the Zoning Ordinance by the criterion for approval of the M-X-T Zone found in §27-213(a)(2); the extent to which the approval of the M-X-T Zone at the subject property does not impair the General Plan, Sector Plan and Functional Master Plans is discussed supra.

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

As with the purpose of implementing the General and Master Plans, this Purpose is largely replicated by the criterion for approval of the M-X-T Zone found in §27-213(a)(3)(A) addressing transportation facilities; the harmony of the request for approval of the M-X-T Zone with this Purpose will be discussed at length supra.

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

As noted in the discussion of the Purpose of protecting and promoting the public health and safety, above, the multi-stage public review process inherent in the M-X-T Zone's regulations affords a higher level of guidance for the development at the property (and therefore for its contribution to the growth and development of the County as a whole). Additionally, the necessarily-limited location of the higher densities permitted by the M-X-T Zone only to appropriate locations governed by the availability of transportation facilities further promotes the orderly growth and development of the County. The approval of the M-X-T Zone on this property is in particularly close harmony with this Purpose of the Ordinance.

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

The approval of the M-X-T Zone on this property will ensure the provision of adequate light, air and privacy, both for the occupants of the subject property and for its neighbors, because it requires conformance with the Landscape Manual to insure the provision of sufficient distance and buffering between proposed uses and neighboring uses, and conformance with height limitations in order to allow for access to light and air.

The additional standards and design guidelines for the approval of Conceptual Site Plans and Detailed Site Plans which are required by the regulations for the M-X-T Zone afford additional opportunities to ensure the provision of adequate light, air and privacy. Approval of the M-X-T Zone on this property will be in harmony with this Purpose.

(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 M-X-T Zone on this property will promote the most beneficial relationships between land and buildings, because it requires conformance with the Table of Permitted Uses, and because it requires conformance with the provisions of the Landscape Manual which provide for the screening of service functions and the buffering of incompatible adjoining uses.

Furthermore, the standards and design guidelines enumerated in the Zoning Ordinance to direct the approval of Conceptual Site Plans and Detailed Site Plans which are required by the regulations for the M-X-T Zone afford additional opportunities to promote the good planning practices suggested by this Purpose. Approval of the M-X-T Zone on this property will be in harmony with this Purpose.

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

The approval of the M-X-T Zone on this property would be in harmony with this Purpose because it will require the property to be developed in conformance with regulations established in the body of the Zoning Ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the Floodplain Regulations, Stormwater Management Regulations, the Fire Prevention Code, the Building Code, and the Tables of Permitted Uses for the various zones.

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

This Purpose is not applicable to the subject Application, as the proposed mix of uses does not include a residential component.

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

The approval of the M-X-T Zone on this property would be in harmony with this Purpose because it would allow for intensive development (including a significant amount of employment space) which would augment the tax base of the County directly and provide for a significant amount of employment beginning with its development and construction, and extending to its final completed uses.

(10) To prevent the overcrowding of land;

The approval of the M-X-T Zone on this property would be in harmony with this Purpose because it will require the property to be developed in conformance with the various principles that have been codified in the Ordinance to ensure the prevention of overcrowding, including the

provisions of the Table of Uses that provides for the compatibility of uses, height limits, and setbacks.

(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;*

The approval of the M-X-T Zone on this property would be in harmony with this Purpose. First, as noted above, the criterion of §27-213(a)(3)(A) assures the adequacy of local public transportation facilities as a prerequisite to the approval of the Zone. Second, one of the principal criteria which the Zoning Ordinance requires for approval of the M-X-T Zone is specifically to ensure that transportation facilities that are either existing, or are to be provided for so as to be adequate to carry anticipated traffic for the proposed development. And third, the approval of the M-X-T Zone on this property would require the property to be developed in accordance with the regulations established in the body of the Zoning Ordinance (and other County ordinances) which are intended to lessen the danger and congestion of traffic on roads, such as the requirements for the provision of adequate off-street parking, and the separation of entrances from nearby intersections.

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

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be *prima facie* evidence of the Application's harmony with this Purpose. Beyond that, however, the approval of the M-X-T Zone on this property would promote the economic and social stability of the County by allowing for appropriately-sited intensive development to contribute to the tax base, and by providing sites for useful and convenient residences, employment and commercial services to the surrounding community.

(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;*

The approval of the M-X-T Zone on this property will have minimal impact to the natural features in the County. It will not itself generate noise pollution, and will better accommodate the noise impacts from the adjacent freeway than the land use recommended by the Sector Plan, and the uses will be in compliance with the County's Woodland Conservation policies by virtue of their exemption from the requirement for a Tree Conservation Plan. No steep slopes, stream valleys or scenic vistas will be affected. By conformance to these principles and regulations, the approval of the M-X-T Zone would be in harmony with this Purpose.

The final two purposes,

(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*

are not directly applicable to the approval of the M-X-T Zone on this property, except to the extent that the concentration of office and retail commercial activity at a site located on a developed site in the vicinity of a major interchange will minimize the pressure to develop the open lands where agriculture and the extraction of natural resources are practiced. §27-102(a)

(2) The Application is also in keeping with the specific Purpose of the M-X-T Zone, §27-542(a), as follows:

(1) *To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens;*

The subject Application is in keeping with this Purpose of the M-X-T Zone as the subject site is located within the vicinity of a major interchange, and its approval will allow for the establishment of new retail and office commercial uses that will provide a source of desirable employment for the citizens of Prince George's County.

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

The approval of the subject Application would be in keeping with this Purpose of the M-X-T Zone because it will allow for the creation of a mix of office and retail commercial uses in a compact, moderately-dense configuration.

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

The location of the subject Application is in keeping with this Purpose of the M-X-T Zone because the property is located in the vicinity of a major interchange, and will allow for a return on the public investment in the major infrastructure component by allowing it to maximize its development potential which accrues from its location.

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

The location of the subject Application is in keeping with this Purpose of the M-X-T Zone because the property will provide a mix of non-residential uses in proximity to one another which will encourage walking between those mixed uses on the site.

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

The location of the subject Application is in keeping with this Purpose of the M-X-T Zone because the property conforms to the requirement of Section 27-548(d) to provide a mix of office and retail commercial uses, by containing both retail and office uses which will be active during the day, and retail uses which will be active in the evenings as well.

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

The review process afforded by the M-X-T Zone's regulations will allow the planning of the subject Application to be in keeping with this Purpose by allowing for the design of an integrated center with road and pedestrian networks affording interconnection within the subject property and the surrounding neighborhood.

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

The location of the subject Application is in keeping with this Purpose of the M-X-T Zone because it will be able to take advantage of the Zone's unsurpassed flexibility in allowing the various uses throughout the subject property to be appropriately co-located to reinforce one another while at the same time allowing for reasonable site planning responses to conditions such as: buffering the adjacent dwellings in the Abbott Forest subdivision, ensuring an appropriate scale for buildings proposed nearer to Old Branch Avenue, and by locating vehicular entrances which respond to the more commercial and institutional character of Linda Lane.

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

The flexibility of land use and site planning regulations, as well as the permitted development density afforded by the M-X-T Zone, allow the location of the subject property to be in keeping with

this Purpose of the M-X-T Zone.

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

The location of the subject Application is in keeping with this Purpose of the M-X-T Zone because achieving the multiplicity of land use types required by the Zone's regulations more easily accommodates the cyclical variations in market demand for those different land use types.

(10) *To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.*

The location of the subject Application will be in keeping with this Purpose of the M-X-T Zone because the flexible land planning standards of the Zone allow for a flexible response to the numerous planning considerations which impact the property, specifically including: (1) presentation of an attractive aspect to the peripheral high-classification roadway, while simultaneously minimizing the effects of the adverse impacts from those roadways, including noise; and (2) providing an appropriate transition to the nearby residential development which addresses density, scale and character. §27-542(a)

(3) The subject property is located approximately 3,350 feet or 0.63 miles south of the crossing point of the centerlines of the Capital Beltway (I-495) and Branch Avenue (MD 5). The Capital Beltway and Branch Avenue are both classified by the Master Plan of Transportation as Freeways, which are the highest level of street classification. For compliance with this Criterion, roadways classified as Arterials, Expressways and as Freeways would all meet the requirements of Section 27-213(a)(1)(A)(i).

(4) The term "interchange" is not defined in the Zoning Ordinance. The American Association of State Highway and Transportation Officials (AASHTO) is a standards setting body which publishes specifications, test protocols and guidelines which are used in highway design and construction throughout the United States.

Section 10.1 of AASHTO provides that "An interchange is a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels." See below:

Grade Separations and Interchanges

10.1 Introduction and General Types of Interchanges

The ability to accommodate high volumes of traffic safely and efficiently through intersections depends largely on the arrangements provided for handling intersecting

traffic. The greatest efficiency safety, and capacity are attained when the intersecting traveled ways are grade separated. An interchange is a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

(5) Mr. Mike Lenhart, the Applicant's expert in transportation, testified that, in his expert opinion, an intersection is an at grade intersection of roadways with traffic controls such as stop signs, signals, roundabouts, etc. and an interchange is a grade separated intersection of roadways that allows for free flow movement. The components of an interchange are "Bridges to provide grade separations, ramps between roads, weave areas between ramps, merge/diverge areas for accel/decel of vehicles, taper areas."

(6) Exhibit 28(a) depicts the interchange limits of I-95/495 at Branch Avenue (MD 5) interchange and its correlated denial of access. Exhibit 28(b) is a close up of the geographic relationship between the subject property located less than 500 feet from the I-95/495 at Branch Avenue (MD 5) interchange.

(7) The Zoning Ordinance does not give any guidance as to the distance of measurement contemplated by the phrase "in the vicinity." To properly evaluate "vicinity" in the context of the potential for application of a transportation-oriented zone, it is useful to first understand what transportation orientation is.

In terms of land use, transportation-oriented land uses are those which are located in proximity to, and more materially, rely for their viability on their ability to draw occupants and visitors from the high volume of users of major transportation facilities. Traffic to transportation-oriented land uses could be private cars, transit (either bus or rail) users on foot, or a combination of the two; the proportion and volume of each mode will vary greatly from site to site.

While distances associated with transportation orientation are difficult to measure empirically, helpfully, a number of Master Plans do give guidance for distances associated with the more limited concept of transit orientation; for instance: "Core centers should include the area that is between one-quarter and one-half of a mile walking distance from a transit station or stop."¹ It is therefore reasonable, within limits, to apply this half-mile walkability radius associated by the Master Plan with transit orientation to the more generalized transportation orientation of the M-X-T Zone. In fact, the Technical Staff seems to have adopted this half-mile walkability standard in their discussion of the subject case, as well.²

Judging "vicinity" as a simplistic half-mile radius from the crossing point of the roadways which are relevant to the subject property, as the Technical Staff has done, is, however, manifestly insufficient. To illustrate, it is instructive to briefly explore the nature of the two very different types

¹ M-NCP&C, Approved Subregion 5 Sector Plan and Sectional Map Amendment (July, 2013), p. 54, (as amended by Prince George's County Planning Board Resolution 13-75, page 4, Amendment 10.)

² Technical Staff Report, Exhibit 14, p. 6 and pp. 30-31.

of facilities provided for by Section 27-214(a)(1)(A)(i), namely intersections and interchanges.

An intersection is a ground-level feature that is definable by the crossing point of the two intersecting roadways. Intersections are important to transportation-oriented activities of both pedestrians and vehicles, typically serve as locations for surface transit stops, and often serve as transfer locations between different transit routes. Because of the conjunction of high volumes of pedestrian, private vehicle and transit activity, major intersections typically serve as the focus of surrounding development.

So Application of a half-mile radius from that focal point may be a reasonable limit on the transportation orientation of sites in the proximity of major intersections.

(8) Interchanges, however, are wholly different things than intersections. Grade separation, high vehicle speeds, the need for long acceleration-deceleration lanes and weaving lanes in advance of vehicle ramps, and characteristically long distances-often almost a mile-across the extent of the interchange mean that pedestrian activity within or across them is virtually nil. Transit stops within the limits of interchanges are also-at best-very rare because of the hostility of interchanges to pedestrian activity. Denial of vehicular access to abutting properties along the lengths of the ramps, acceleration-deceleration lanes and weaving lanes mean further that even vehicle activity is limited wholly to the act of traversing the interchange. It is only beyond the extent of the weaving lanes that legal access restrictions are lifted, pedestrian activity is not actively dangerous, and vehicle traffic can interact with the adjoining land and land uses. Cars and buses can enter and exit, and land uses can take advantage of the activity associated with the traffic on the high-classification roadways. In the case of interchanges, therefore, application of a half-mile walking distance as a proxy for "vicinity" is instead appropriately taken from the ends of the interchange, where transportation orientation can begin.

(9) Mr. Lenhart testified that the significance of the instant interchange components from a land use perspective and in measuring vicinity is that the denial of access, the weaves, the acceleration and deceleration lanes, etc., despite the high volume of traffic on MD 5 at this location, creates an absolute inability to generate meaningful land use activity when those people cannot interact with the surrounding land.

(10) Land use activity depends on the nature of the physical configuration of a particular interchange. In the instant Application the design of the interchange prohibits access AT the interchange due to the ramp designs and merge/diverge areas. The Linda Lane property is located immediately at the end of the interchange components and by virtue, is located within the vicinity of the interchange. The subject property and the interchange is also within Staff's defined neighborhood.

(11) Mr. Lenhart testified that, in his expert opinion, the Technical Staff did not adequately consider the design of this interchange. Their use of the center of the interchange as a point to reference "vicinity" emphasizes this issue. For example, the property on Henderson Road in the SE

quadrant of 495/5 interchange is only 500 feet from the center of the interchange as the crow flies, but if you measure the distance by road it would be over 7,000 feet to the same property by car. Although Staff references “interchange footprint” in its analysis, it then references the center point of the interchange to measure the distance from the subject property as 3,300 feet from the center of the interchange. Staff further states that the site has no transportation relationship to the interchange based on the center point of the interchange. In Mr. Lenharts opinion, the center of the interchange should not be the point of reference as the center of the interchange has no transportation relationship to anything considering you cannot physically get to the center of the interchange, and the “footprint” of the interchange is more than just the center point of the two intersecting freeways.

(12) The Technical Staff did not provide an analysis or explain the components of an interchange. Staff simply referenced the center point of the interchange, which has no transportation bearing to any of the transportation system.

(13) Staff did not consider ramp designs, merge/diverge areas, and when taken into consideration, it can be seen that the Linda Lane ramps are as close as possible to the interchange, and are at the end of the interchange itself when considering all of its components. The failure to properly determine the actual interchange invalidates Staff’s conclusions. A “center of an interchange” cannot be used to invalidate vicinity based on transportation relationship when the center of the interchange itself has no transportation relationship to anything.

(14) Mr. Lenhart disagreed with the Technical Staff’s measurements and their point of measurement in determining “vicinity”.

- The limits of denial of access really tell the story to support the argument that the subject property is within the vicinity of the interchange. So where you have denial of access, you cannot have a land use relationship between a piece of property and the adjoining transportation element.
- In other words, the logical definition of vicinity regarding an interchange of two freeways should be measured from the points of denial for access.
- Freeway to freeway really prohibit interaction from a land use perspective due to all of the elements of an interchange. Measuring out from those points (i.e., all of the elements of an interchange) is what is necessary to determine the true interaction for the transportation orientation and the land use that will utilize a mix of uses allowed in the M-X-T Zone.
- To rebut Staff’s measurement (center of the interchange of the two roads), the denial of access component of the actual interchange is important due to the actual interaction (land use interaction) with the transportation element. It makes no sense, as the Staff contends, to have vicinity measured from a point where it is impossible to

have actual interaction due to the denial of access. Using the Henderson Road house next to the interchange as an example highlights that under M-NCPPC's measurements/application, that property would meet the requirement for M-X-T, yet that property (immediately adjacent to the interchange) is wholly unsuited for an M-X-T Application because of the long distance caused by the local road network through a residential neighborhood one would have traverse in order to even get to the property.

(15) Mr. Lenhart opined that the subject property is located within the vicinity of the instant interchange in such a manner that it actually interacts with the transportation orientation of the freeway exchange. The transportation relationship is driven by the ability for vehicles to interact with the land use, and the subject property is the first property that a motorist can interact with from the interchange of I-95/495 MD 5 given the interchange components allowing access. Linda Lane is at the limit of the interchange which is definitely within the vicinity of the interchange. §27-213(a)(1)(A)(i)

(16) The instant Application and the location of the subject property will not substantially impair the integrity of an approved General Plan or Functional Master Plan and is in keeping with the purpose of the M-X-T Zone. §27-213(2)

General Plan

(17) The General Plan classified the subject property in its Growth Policy Map³ in the Established Communities category, and the Generalized Future Land Use Map⁴ appeared to have designated it for Commercial land use (thought the recently-added PG Atlas layer indicates "Residential Low" land use).

"Established Communities" are described by the General Plan as making "up the County's heart-its established neighborhoods, municipalities, and unincorporated areas outside designated centers"⁵ and recommend that, "Established communities are most appropriate for context-sensitive infill and low-to medium-density development. The General Plan recommends maintaining and enhancing existing public services (police and fire/EMS), facilities (such as libraries, schools, parks, and open space), and infrastructure in these areas (such as sidewalks) to ensure that the needs of existing residents are met."⁶

"Commercial" land use is described by the General Plan as, "Retail and business areas, including employment uses such as office and service uses. A range of services are provided at the neighborhood to regional level. New commercial areas have access to multimodal transportation

3 M-NCPPC, Plan Prince George's 2035-Approved General Plan (May, 2014), p. 107.

4 General Plan, p. 101.

5 Ibid., p. 106.

6 Ibid., p. 20.

options.”⁷ By contrast, “Residential Low” land use is described as, “Residential areas up to 3.5 dwelling units⁸ per acre. Primarily single-family detached dwellings.”⁹ It is noted that the Generalized Future Land use Map generally replicates the recommendations of the Master Plan or Sector Plan in force at the time of the approval of the General Plan; the note under the Generalized Future Land Use Map directs the reader that, “by definition, this map should be interpreted broadly and is intended to provide a countywide perspective of future land use patterns. To identify the future land use designation for a specific property, please refer to the property’s relevant approved Sector or Master Plan.”¹⁰

Policy 7 of the General Plan’s Land Use element does make the recommendation to, “limit future mixed-use land uses outside of the Regional Transit Districts and Local Centers.”¹¹ It is also noted that Policy LU7.1 directs the County to “reevaluate mixed-use land use designations outside of the Regional Transit Districts and Local Centers as Master Plans are updated”¹² and further directs the County to, “consider developing, as part of the Zoning Ordinance update, alternative lower density zoning districts that promote walkability and allow for a mix of uses.”¹³

Given the character of commercial and institutional uses which are preponderant in the area between Old Branch Avenue and Branch Avenue and the severe noise impact on the subject property from Branch Avenue the application of the M-X-T Zone at the subject property would be context-sensitive. Furthermore, the recommendations of Policy 7 are not compulsory in either their wording or application, the recommendation is that mixed-use land uses be limited, not forbidden.

(18) The criterion for approval of the M-X-T Zone in §27-213(a)(2) is not one of conformance to the General Plan as it is for approval of a Comprehensive Design Zone, instead, it is that the Plan should not be substantially impaired. Technical Staff contends that, “rezoning the subject property from R-80 to M-X-T substantially impairs Plan Prince George’s 2035 by exponentially expanding commercial development outside of the Regional Transit Districts and Local Centers, and pulling possible commercial growth away from those preferred locations.”¹⁴ How the application of the M-X-T Zone to 5.6 acres of land which is already improved with existing commercial development would constitute an exponential expansion of commercial development outside of the Regional Transit Districts and Local Centers is beyond hard to see; the Branch Avenue Regional Transit District¹⁵ alone comprises approximately 440 acres. Approval of the subject Application would not bar the implementation of any larger intent for the surrounding community, let along for the County as a whole.

7 Ibid., p. 100.

8 On page 5 of the Technical Staff Report, Staff instead references the Sector Plan’s description, which provides for densities of up to 5.7 units per acre in the Developed Tier.

9 General Plan, p. 100.

10 Ibid., 101.

11 Ibid., p. 114.

12 Ibid.

13 Ibid.

14 Technical Staff Report, Exhibit 14, p. 10.

15 As described by the area of high intensity zoning around the Branch Avenue Metro Station.

Sector Plan

(19) The applicable Master Plan is the Approved Central Branch Avenue Corridor Revitalization Sector Plan, approved on April 2, 2013. The Approved Land Use map designates the property for “Residential Low” land use.¹⁶

The Sector Plan focuses its land use recommendations on six focus areas; the subject site is not located in one of those focus areas, and the Plan does not have any specific recommendations for the subject site or the area surrounding it. Explanation for the Plan’s land use recommendation can only be found in one of the goals of the Plan, which is the principle to “concentrate neighborhood-serving retail in appropriate locations and repurpose older and underperforming commercial centers for the uses.”¹⁷ This principle is reiterated a number of times throughout the Plan, but not in any specific discussion of the subject property or its neighborhood.

The Sector Plan does have a number of extended discussions of Branch Avenue. In its discussion of Transportation Systems, it notes that the traffic on the segment of Branch Avenue adjacent to the subject site had increased by 40.9% between 2000 and 2010 to a total of 124,920 vehicles per day. For comparison, no roadway in the County other than its three interstates (I-95, I-495, I-295/Route 50) has a higher daily traffic volume.

Associated with this high traffic volume is noise. The Sector Plan states that, “noise issues related to transportation uses in the Sector Plan area are limited to roadways designated as arterial and greater, which produce enough noise to result in unsafe noise levels.”¹⁸ Table 5, immediately following, provides that areas within 722 feet of the segment of Branch Avenue immediately adjacent to the subject property would be subjected to unsafe noise levels; that 722 feet distance would cover the entire area of the subject property.

The market discussion in the Sector Plan contains an analysis of the office market. In it, the Plan states that, “estimates suggest that the plan area...could over time support 2.3 million square feet of additional office development as part of a redevelopment and revitalization effort to create a more attractive and inviting environment.”¹⁹ The office development proposed by the Applicant would represent only 1% of that volume of supportable additional office space, hardly an “exponential expansion.”

Similar to their contention regarding the General Plan, Technical Staff contends that the land use recommendations of the Sector Plan were, “carefully crafted,”²⁰ and that, “deviating from the Sector Plan by redirecting mixed-use development away from the carefully planned focus areas,

16 M-NCP&PC, Approved Central Branch Avenue Corridor Revitalization Sector Plan (April, 2013), p. 114.

17 Sector Plan, p.1.

18 Ibid., p. 37.

19 Ibid., p. 26.

20 Technical Staff Report, Exhibit 14, p. 9.

increasing the intensity and density of uses different from the Sector Plan's recommendation, and ignoring the implementation plan's discouragement of M-X-T zoning, would substantially impair the Sector Plan.”²¹

It is questionable whether a close study of the existing land use pattern and the adverse environmental impact of the noise from Branch Avenue that yielded a “Residential Low” land use recommendation would accurately be called “carefully crafted.” A boundary survey of the subject property shows that existing development is already a mix of residential and commercial land uses which totals 37,539 square feet, an amount closely comparable to the amount of development which is proposed. Finally, the Technical Staff’s characterization of the Sector Plan as discouraging M-X-T zoning is at least somewhat disingenuous. A more concise reading of the paragraph from which the Staff quotes on page 8 of its Report reveals that the desire of the Plan is for “mixed-uses within each focus area, but not necessarily within each development,”²² which is potentially at odds with the M-X-T Zone’s positive requirement for a mix of uses.

It is acknowledged that the Plan does not recommend mixed-use land use at the subject site. But a Sector Plan recommendation for mixed uses is not a requirement of §27-213(a)(1) for the approval of the M-X-T Zone if the subject site is in the vicinity of a major intersection or interchange. And the separate criterion for approval of the M-X-T Zone in §27-213(a)(2) is not one of conformance to the Sector Plan but rather a much more limited finding that the Plan should not be substantially impaired. Allowing for the rezoning of a modestly-sized site to allow for uses which are compatible with the surrounding land uses and environmental impacts at an intensity comparable to that which currently exists will not impair the implementation of the Sector Plan throughout the remainder of its applicable area.

Other Applicable Functional Master Plans

(20) There are no Regulated Areas or Evaluation Areas of the County’s 2017 mapping of the Green Infrastructure Plan that lie within the subject property’s limits.

With regard to the Historic Sites and Districts Plan, no historic sites, resources or districts are located in the vicinity of the subject property.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the subject Application.

No proposed sites for Public Safety facilities are in the area affected by the subject Application.

21 Ibid.

22 Sector Plan, p. 138.

Branch Avenue is listed as Freeway F-9 on the Countywide Master Plan of Transportation. It generically lists an ultimate right-of-way width of 300 feet against an existing right-of-way widths of 200 feet, but the PG Atlas Transportation Layer does not indicate any additional widening is planned. Old Branch Avenue is designated as a Historic Road, and is listed as Collector Roadway C-716, with a planned right-of-way width of 80 feet; this ultimate right-of-way width is already accommodated across a part of the property's Old Branch Avenue frontage, and the remainder will be provided at the time of subdivision.

The remaining relevant element on the Master Plan of Transportation is a transit right-of-way for a "future fixed guideway transit extension from the Branch Avenue Metrorail Station." The transit line is illustrated on the west side of Branch Avenue in the Countywide Master Plan of Transportation, but options are located on both sides of Branch Avenue as well as along Old Branch Avenue in the Maryland State Highway Administration's August, 2010 Southern Maryland Transit Corridor Preservation Study. In other recent planning and subdivision Applications along Branch Avenue, provisions have been made to protect a 70 foot strip of land for the future transit right-of-way along the east side of Branch Avenue. In any case, if determined to be appropriate, land can be reserved at the time of subdivision; approval of the subject Application would not impair the Master Plan Transportation.

M-I-O Zone

(21) The subject property is also classified in the M-I-O Zone which classification would not be affected by the requested rezoning. The conformance of the subject property to the provisions of the M-I-O Zone in Part 10C of the Zoning Ordinance is as follows:

Part 10C includes three Impact Maps which establish the boundaries of the M-I-O Zone. Figure A establishes the area subject to restrictions related to height, Figure B establishes the area subject to restrictions related to noise, and Figure C establishes the area subject to the restrictions related to Accident Potential/Clear Zones North and South.

Based upon a review of the Impact Maps, the subject site is included within the boundaries of the Impact Map on Figure A, which establishes the area subject to restrictions related to height, but is not within the boundaries established by any other Impact Map.

Compliance with Section 27-584.54:

Requirements for maximum permissible structure height in the M-I-O Zone are found in Section 27-548.54. The subject site is located under the limits of Conical Surface E, and as such is subject to the height restrictions.

The provisions of §27-548.54(e)(2)(D), followed verbatim, apply as follows: The distance between Surface A and the nearest boundary of the subject property is 10,546 feet, and the distance between the subject property and the border of Surfaces D and E is 4,048 feet; the subtotal per §27-

548.54(e)(2)(D)(i): 10,546 minus 4,048 = 6,498; and, 6,498 divided by 20 = 325, and 150 added to that yields 475 feet. Finally, the provisions of §27-548.54(e)(2) require that the difference between the highest elevation on the subject property (271) and the height of the runway surface (274), or three feet, be added to the 475-foot height to yield a highest permissible structure of 478 feet.

An inspection of the Zoning Ordinance's definitions of the height limit surfaces, however, strongly suggests that the result of a 478-foot height limit at the subject site is not the intended result; Surface E, the "Conical Surface," is defined as, "an inclined imaginary surface extending outward and upward from the outer periphery of the inner horizontal surface....The slope of the conical surface is 20:1." Surface D, the "Inner Horizontal Surface," is defined as, "an imaginary surface that is an oval plane at a height of 150 feet above the established airfield elevation." Therefore, a property which is located 4,048 feet from the border of Surfaces D and E should limit a structure thereon by only an additional 202 feet (or, the 4,048 feet horizontal distance divided by the 20:1 slope of the conical surface) above the 150-foot height of Surface D. Further applying the provisions of §27-548.54(e)(2), as was done above, would then yield a highest permissible structure of 355 feet.

In either case, however, given the very high permissible limits, the provisions of the Military Installation Overlay Zone will not restrict the subject site from being reasonably developed with the permitted uses provided for in the Table of Uses for the M-X-T Zone.

Compliance with Section 27-584.55:

As noted above, the subject property is not within the limit of the 60dB contour associated with the M-I-O Zone, so no sound reduction certification is applicable, nor is it in the High-Intensity Noise Area as delineated on Figure B, and as such would not be subject to the seven categories of prohibited uses laid out in §27-548.55(c)(1)(C).

Compliance with Section 27-584.56:

With respect to the use restriction listed in Section 27-548.56, the subject site is not located within the limits of any of the Safety Zones (to wit, the Clear Zone and the Accident Potential Zones 1 and 2); as such, these restrictions are not applicable to the subject site.

Conformance with Section 27-548.51:

The purposes of the M-I-O (Military Installation Overlay) Zone, are laid out in Section 27-548.51, as follows:

The purposes of the Military Installation Overlay Zone are to regulate the development and use of structures and property in order to promote land uses compatible with operations at Joint Base Andrews; to protect the safety and welfare of individuals in the area from the adverse impacts associated with high levels of noise from flight operations and the potential

for aircraft accidents associated with proximity to Joint Base Andrews operations. The intent of the regulations is to recognize the rights of individual property owners while reducing interference with the military operations at Joint Base Andrews.

As indicated by the foregoing analysis of Part 10C's limitations on structure height, noise impacts, land uses and interference with communications, the approval of the subject Application will be in conformance with the purposes of the M-I-O Zone. §27-213(a)(2)

(22) The Technical Staff concluded upon review of the Applicant's Traffic Impact Analysis (Exhibit 10), "that the proposed rezoning and its proposed uses will not bring about a substantial impact on the existing transportation facilities in the area of the subject property in the near term." (Exhibit 14, TSR p. 14) Pages 10-14 containing the tables and facts used as a basis for the Technical Staff's conclusion are adopted by reference. §27-213(a)(3)(A)

RECOMMENDATION

APPROVAL of A-10043.