

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

ZONING MAP AMENDMENT

A-10055

DECISION

Application:	R-R and R-55 to M-X-T
Applicant:	Harbor View Development, LLC
Opposition:	IHAAC, Tina McDowell, Karen Egloff, et. al.
Hearing Dates:	February 10, 2021, March 24, 2021, April 28, 2021 and May 5, 2021
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval with Conditions

NATURE OF REQUEST

(1) A-10055 is a request for the rezoning of approximately 20.01 acres of R-55 (One-Family Detached Residential) and R-R (Rural Residential) zoned land to the M-X-T (Mixed Use – Transportation Oriented) Zone. A portion of the property also lies within the Chesapeake Bay Critical Area and is zoned I-D-O (Intensely Developed Overlay).

(2) The Applicant is Harbor View Development, LLC, the developer is Petra Development, LLC and the project is known as National View. The State Department of Assessments and Taxation (“SDAT”), the District of Columbia, and the Commonwealth of Virginia, respectively, have certified Harbor View Development, LLC, the Petra Design Group and Petra Development, LLC, respectively, as being in good standing to conduct business within their jurisdictions. (Exhibits 99, 102 and 100)

(3) The subject property is located on the north side of the Capital Beltway(I-495) , adjacent to the northeast quadrant of the intersection of the Capital Beltway (I-495) and Indian Head Highway (MD 210), and is identified as 6403 and 6407 Oxon Hill Road, 100-110 Crow Way, 1-121 Chippewa Drive and 5808-6008 Bald Eagle Drive, Oxon Hill, Maryland. The Technical Staff provided further the Capital Beltway (I-495) is classified as a freeway and Indian Head Highway (MD 210) is classified as an arterial.

(4) The Technical Staff recommended disapproval of the original Application and the Planning Board adopted Staff's recommendation as its own. (Exhibits 1 and 4)

(5) Several individuals appeared in support of and in opposition to the Application.

(6) At the conclusion of the final hearing the record was left open to allow Applicants to submit additional information. These items were submitted on May 14, 2021 and the record was closed at that time. (Exhibits 117 and 118)

FINDINGS OF FACT

Subject Property and Surrounding Uses

(1) The subject property is comprised of two abutting sites – Section 16 within the Forest Heights Subdivision in the Town of Forest Heights and the adjoining Butler property to the south. The Technical Staff offered the following description of these two sites:

The northern portion lies within the Town of Forest Heights and is in the R-55 Zone. This section was platted in April 1956 and is comprised of Lots 61-91 in Block 122, Lots 13-24 in Block 123, and Lots 8-14 in Block 124, recorded in [the] Land Records Prince George's County, Maryland as Forest Heights, Section 16 at Plat Book 28, Page 5. The single-family lots were never developed and the site has remained vacant.

The southern section of the proposed site is known as the Butler property and is located in the ... R-R Zone. The property is mostly wooded but has two historic residences and an existing electric utility right-of-way. The site is comprised of Parcels 26, 32, 33, 35, 36, and 37, which are not mapped within the Forest Heights municipal boundary. This section contains the Butler House (PG:76A-014/National Register), a Prince George's County historic site that was designated in 1981 and was listed in the National Register of Historic Places in March 2005. The Butler House property is adjacent to Mount Welby (PG:76A-013/National Register), also a Prince George's County historic site (designated in 1981), that is owned by the National Park Service and located within the Oxon Cove Farm. The Oxon Cove Farm property was listed in the National Register of Historic Places in September 2003. At least four outbuildings were located on the subject property from approximately 1965 until 1998, when the outbuildings were demolished....

(Exhibit 1, p. 4)

(2) The site has approximately 81.45 feet of frontage on the Capital Beltway/Indian Head Highway interchange; appr3,040.86 feet of frontage along Bald Eagle Drive; approximately 968.44 feet (centerline length) along Crow Way; and, approximately 422.63 feet (centerline length) along Chippewa Drive. (Exhibit 60)

(3) The site is accessed via Bald Eagle Drive, an unimproved road that extends throughout the property and connects with an off ramp from Indian Head Highway (MD 210). Despite its historic past (connecting Oxon Hill to Washington D.C. since approximately 1850) it is not identified as an historic or scenic road. (Exhibit 1, Backup p. 72)

(4) The subject property is surrounded by the following uses:

- North – Single-family detached dwellings in the R-55 Zone and federal parkland in the R-O-S Zone
- South – Bald Eagle Road
- East – Single-family detached dwellings in the R-55 Zone and federal parkland in the O-S Zone
- West – Federal parkland in the R-O-S Zone

(5) The Technical Staff established a neighborhood for the site with the following boundaries:

- North – Federal parkland in the R-O-S Zone at the Prince George's County and District of Columbia boundaries
- South – The Capital Beltway (I-495), a master plan freeway
- East – Indian Head Highway (MD 210), a master plan arterial roadway.
- West – Federal parkland in the R-O-S Zone at the Potomac River waterfront (Oxon Cove Farm, Mount Welby)

(Exhibit 1, p. 4) Applicant agreed with the neighborhood proffered by the Technical Staff. (Exhibit 67; May 5, 2021, T. 8-9)

Master Plan/Sectional Map Amendment/General Plan/Functional Plans

(6) The subject property lies within the Established Communities policy area discussed in the 2014 General Plan ("Plan 2035"). The General Plan provides that "Established Communities are most appropriate for context-sensitive infill development and low-to medium-density development." (2014 General Plan, p. 20) The General Plan also designated Regional Transit District and Local Centers and recommends directing the majority of future employment and residential growth to the Districts, and medium to medium-high residential development with limited commercial uses to the Centers. (General Plan, p. 19) The Technical Staff noted that the General Plan "specifically recommends Residential Low land use for the northern properties and Parks and Open space land use for the southern properties , as seen [on] ... Map 10, page 101...." (Exhibit 1, p. 5) That page of the General Plan also provides, in pertinent part, as follows:

The Generalized Future Land Use Map is not a zoning map ad is not intended to identify land uses and zoning for specific properties....

This map generalizes future land use designations as shown in approved sector and master plans. It does not follow parcel boundaries, and its land use categories do not identify permitted uses or imply dimensional standards. 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....

(2014 General Plan, p. 101)

(7) The Technical Staff opined that the request substantially impairs certain provisions of the two Master Plans that govern portions of the site (The 2000 The Heights and Vicinity Master Plan and the 2014 Eastover-Forest Heights-Glassmanor Sector Plan) and believes the request cannot further the policies of the 2017 Countywide Green Infrastructure Plan, as discussed more fully below.

Applicant's Request

(8) Applicant requests a rezoning of approximately 20.1 acres from the R-R and R-55 Zones to the M-X-T Zone. A portion of the property also lies within the I-D-O (Intense Development Overlay) Zone of the Chesapeake Bay Critical Area. Applicant initially proposes to develop the property with a 374-bed assisted living facility, 204 room hotel, 1,402 high-rise apartments, and 120,000 square feet of retail space (that may be located on the first floor of a high rise building and not in a strip of commercial uses. (Exhibit 22, p. 4). Applicant also proposes to expand bicycle and pedestrian connectivity to existing trails in the area. (Exhibit 20)

(9) Eli Borek, the director of development for Petra Development, will be managing the project if the instant request is approved. In 2018, when Petra Development decided to pursue the project, he reached out to community stakeholders, the Town of Forest Heights, and other government agencies and officials to advise them of their plans and to receive feedback. (March 24, 2021 T. 191-192) Applicant ultimately decided to file the Application:

So, the MXT zone really seems to offer the most appropriate opportunity for sufficient density to justify developing the property, while also providing the flexibility needed to create a truly cohesive mixed use community here. The location of the site ... is really exceptional from an accessibility standpoint; we're ... within 10 to 15 minutes of Arlington, Amazon Headquarters, Alexandria, ... National Airport, Washington D. C., National Harbor. I mean it's ... just a fantastic location from an accessibility and transportation standpoint. We ... really view the ... site as a natural extension of National Harbor[s] kind of growth area....

[We are aware that a portion of this site is a County historic site and a National Register site.] [O]n multiple occasions we reached out to the direct descendants of Henry Alexander Butler and we were able to gain some valuable knowledge about the history of the property and their family's stewardship of it. And we spoke to people who actually have lived on and spent time at the property when it was still being used as a farm; and they ... possess both knowledge and materials [and] actually ... they expressed they would like to see included in the historic storytelling that we're ... proposing on the site....

(March 24, 2021 T.194-196)

(10) Mr. Borek presented Applicant's vision of development for the site, including: a walkable, bikeable community accessible by public transit and with tie-ins to the Potomac

Heritage Trail network; a new police substation to relieve burden on the Town of Forest Heights; a mix of different housing types for a mix of income ranges; use of sustainable elements such as green roofs and solar panels; community gardens; and open/green spaces. (Exhibit 66; April 28, 2021 T. 199-209)

(11) Mr. Alan Hansen, accepted as an expert in the area of architecture, testified on Applicant's behalf. Mr. Hansen disagreed with the Technical Staff's finding that the Application could significantly impact the viewshed of the Oxon Hill Farm National Park:

First, the National View buildings will be approximately 1,500 to 2,000 feet away from the historic structures; second, most of the development on the site will be obscured by a thick forest of mature trees; and then once designed, the heights of the buildings will vary and step down in height as one move[s] northward from the Beltway towards the Forest Heights neighborhood. This will cause National View to better relate to the smaller scale residences. The change in natural grade elevation alone drops 125 feet from the Beltway, or south, to north. Finally, we also believe there will be many areas of the park and farm where National View will not be visible at all....

I want to re-emphasize that this is a rezoning application, and I want to stress that the National View buildings have not been designed.... [W]hat we have to date is a simple building envelope....

(April 28, 2021 T. 74)

(12) Mr. Hansen prepared a power point presentation for the Historic Preservation Commission. (Exhibit 42 (b)) A 360-degree panoramic photo shows the distance between Mount Welby House and National View - approximately 1,700 feet, per the witness. The power point then shows the possible maximum height of buildings within the development, and how much of these buildings can be seen from various vantage points. A similar power point was prepared to show "potential historic interpretation projects" in honor of the Butler House and Mount Welby. (Exhibit 42(a); April 28, 2021 T. 84-90)

(13) Rachel Lightsinger, a civil engineer, testified on Applicant's behalf. She and her firm prepared two Natural Resource Inventories for the northern and southern portions of the site (NRI-146-2019 and NRI-184-14)¹ that were reviewed and approved by MNCPPC. (April 28, 2021 T. 39) Ms. Lightsinger provided a counterpoint to many of the environmental concerns raised by the Technical Staff in its report, including its belief that inadequate soils, steep slopes, and possible flooding of homes along Cree Drive should preclude further consideration of the request. She noted in a letter to the developer that "additional borings along the [n]orthern boundary of the site" were performed and revealed that "the in-situ soils were found to be of the course grained variety, which are also less prone to erosion"; and "[t]he site also features a deep groundwater table, which provides natural stormwater storage volume in the void space of soils and rocks found below the surface." (Exhibit 50, p. 1) The letter concluded that she is aware of the flooding issues that could affect the downstream properties and the project will be designed in a

¹ The Environmental Planning Section of the Technical Staff noted that NRI-184-14 has expired. (Exhibit 1, Backup p. 71)

manner to preclude runoff on the properties along Cree Drive. Ms. Lightsinger agreed with People's Zoning Counsel that this evidence may not be germane at this point in the process (i.e. the review of a rezoning request). (April 28, 2021 T. 44)

(14) As noted above, the subject property has approximately 81.45 feet of frontage along the Capital Beltway (I-495)/Indian Head Highway (MD 210) interchange, approximately 3,040.86 feet of frontage along Bald Eagle Drive, approximately 968.44 feet of frontage along Crow Way, and approximately 422.63 feet of frontage along Chippewa Drive. Both Indian Head Highway and the Capital Beltway are classified as an arterial or higher within the Countywide Master Plan of Transportation. Mr. Michael Lenhart, accepted as an expert in transportation planning, provided written analyses (Exhibits 22 and 81)² and oral testimony that opined that the subject property is within the vicinity of the major interchange noted above and that the transportation facilities will be adequate to carry anticipated traffic for the proposed development. Mr. Lenhart's testimony as to adequacy was, in relevant part, as follows:

[T]he guidelines ... [allow] for up to a level of service E [as an acceptable level of service] inside the Capital Beltway....

The study included five intersections[.] Maryland 210 at the southbound I-95 ramps... and the Bald Eagle Road intersection was projected to operate at a level of service F with no improvements. We did identify an improvement that was to widen Bald Eagle Road approaching Maryland 210 to provide a separate right turn lane, and that mitigates our impact and gets the intersection back to a level of service E, which is acceptable.

Bald Eagle Road at the park driveway and site driveway was projected to operate at inadequate delays as a normal stop-controlled intersection with no improvements. It's standard practice in the guidelines that if an unsignalized intersection is projected to operate with delays in excess of 50 seconds per vehicle, that there would be a condition that requires a signal warrant analysis and install a signal if required; or evaluate other options to address the delays.

[W]e looked at several options where we reconstructed the ... existing driveway park entrance on Bald Eagle Drive into a T intersection, and we also looked at the possibility of a roundabout at that location. [A]nd based upon our study, we recommend a roundabout.... State Highway also supported that option and our study found that all other intersections were determined to operate within acceptable parameters....

[The Technical Staff] reviewed the study and referred it out to State Highway. It should be noted that the Technical Staff, Transportation Planning Staff, concurred with the findings of our study and agreed with our findings that transportation facilities would be adequate....

[State Highway has looked at our latest concept for Bald Eagle and] [t]hey had few comments. Actually [,] we're on our third submittal to the State to work through their comments. During the first submittal, they had concerns about the ... two T intersection

² Exhibit 22 is the original traffic study updated on July 16, 2020. M. Lenhart produced a revised, Exhibit 81, analysis due to the age of the traffic counts once the Application was accepted.

options that we proposed, so we went back to the roundabout option. They have reviewed that option. They have indicated that, or they have stated that they support the roundabout option at the Bald Eagle and the driveway access, and they believe that that will work adequately; and they had [a] few other comments still with offsite issues and queuing issues out on Oxon Hill Road for left turn queueing. Our latest submit[tal] addressed those issues and we expect ... an approval ultimately from the State....

Bald Eagle Road is a state roadway ... and the entrance to the park driveway is located in the state right-of-way that is the Bald Eagle Road alignment. There is [a] SHA plat that I believe is Exhibit 76... [and on Exhibit 80] you can see this property is shown in blue ... and it's outlined; and then the yellow hash lines represent the entrance into the site. You can see where the bridge is over the Capital Beltway. That is Bald Eagle Road. And the driveway off of Bald Eagle Road that goes into the park entrance is located in State Highway right-of-way. The black ... solid line that you see denotes State Highway right-of-way.... Bald Eagle Road is entirely within State right-of-way. The park entrance is entirely within the State right-of-way. Even all the way back, almost to the parking lot for the park entrance, that is all State Highway right-of-way....

[I]n the Technical Staff Report they made a comment that it's not a viable access point to handle the traffic without generating negative impact on abutting single-family neighborhood; and I do not agree with that comment. Bald Eagle Road has zero driveways or entrance points to any other residential neighborhoods; in fact, the residential neighborhood to the north of this property, the access to that neighborhood is off of Route 210, about half a mile north of the traffic signal at this ... southbound 95 [off ramp] and the Bald Eagle intersection. So, this entrance will in no way impact any existing neighborhoods.

At the roundabout, we have prepared a Concept Plan that has been reviewed and approved by State Highway; and we will need a State Highway access permit to build that; but all of the work will be within the State right-of-way, not National Park Service road.... [I do not believe we need National Park Service permission regarding access.] The driveway, again, is completely within State Highway right-of-way, and the Bald Eagle Drive, if you look on the record plat and the deeds, there was a 30-foot prescriptive right-of-way and that runs up through the property. They kind of [denote] the western edge of the property going, well, from north to south from that park entrance.

(April 28, 2021 T. 159-166)

(15) Mr. Lenhart provided the following testimony as to the site being within the vicinity of a major intersection/interchange:

[The term interchange is not defined in the Zoning Ordinance. It is defined in] AASHTO, which is [the] American Association [of] State Highway Transportation Officials[.] [I]t's ... a national organization that has many publications on design and planning [,] and they define an interchange as a system of interconnecting roadways in conjunction with one or more grade separations that provides the movement of traffic between two or more roadways or highways of different levels....

So interchange includes a series of grade separated bridges and overpasses, and ramps connecting two roadways. This would include any merge lanes, the [merge] weave areas,

or... terminus points and other connecting roads; and while Bald Eagle Road itself is not an on[-]ramp... or off-ramp, there is connectivity at the interchange, and existing guide signage. If you are on southbound 95 and you take the offramp to Route 210, there's guide signs immediately on the west side of Route 210 for people getting off of... 95 guiding motorists to use Bald Eagle Road to get to National Harbor, Gaylord Convention Center, MGM, and the Tanger Outlet shops; and it's clear that the Bald Eagle Road is intended as a connection for, for the overall interchange; and also,... it is identified as an interchange in the right-of-way via P.G. Atlas... and there's a transportation layer on... the GIS system; and if you turn that transportation layer on, it includes Bald Eagle Road as part of the overall interchange....

[I]n the case of Bald Eagle Road, there was a denial of access that was placed upon the ... United States of America property that's immediately east of the National View property, between National View and Bald Eagle Road; and State Highway Administration, when they acquired the right-of-way, they placed a denial of access along the entire frontage of that USA property; and so... if you are getting off of the I-95 interchange and you come across from Bald Eagle Road, the entrance to our property is the first potential point of access where you can actually interact with traffic to and from the interchange....

[The Technical Staff] simply made a statement that the traffic is not located within one-half mile of where the Beltway and Maryland 210 cross; and they referred to the center point of the interchange; and then they discussed the walkability to and from the site in relation to the center point of the interchange, which [is] not practical because you ... cannot walk to the center point of the interchanges. It's not a ... valid point of reference in my opinion....

[T]he access is located less than a third of a mile from the intersection of 210 at the on and off ramps of I-95. It's the first allowable point of access along Bald Eagle Road from the offramp. The signalized intersection of 210 at the on and offramps from southbound 95 is an arterial or higher intersection. Maryland 210 is an arterial, and the offramp from the Beltway is a freeway ramp. So, that does qualify as the... arterial criterion....

A precedent has been set in prior... cases using the definition of neighborhood. Vicinity is not defined in the Zoning Ordinance and... it's been agreed that... since the lack of that definition allows us to go to other sources, and Webster's Dictionary defines vicinity as neighborhood....

I do not concur with [Staff's] opinion. Again, they arbitrarily used the half mile from a center of an interchange. Nowhere in the Zoning Ordinance do they say it has to be a half mile, or does it talk about the center of an interchange. It simply says vicinity, and if you look at the P.G. Atlas transportation layer, considering that Bald Eagle Road is part of the interchange, this entire tract is located within a half mile of the interchange boundary; and again, ... if you look at the interchange, inclusive of Bald Eagle Road, it is within a half mile; but I think vicinity is really the more important term here and, again, it is in the neighborhood, the same neighborhood as the interchange....

(April 28, 2021 T. 167 -172)

(16) Mr. Lenhart also addressed M-X-T purposes 1 and 4 dealing with transportation and opined that these were met since the site is within the vicinity of the interchange of two streets classified as arterial or higher and, "with regards to transit, walking, biking,

etc.” because Oxon Hill Road has exclusive bike lanes along both sides and the Oxon Hill Farm trail (a shared roadway trail), sidewalks and the bus routes on 210 will ensure proximity to buses, walking and biking. (April 28, 2021 T. 173-174)

(17) The Zoning Ordinance also requires a finding that the approval of M-X-T zoning at the subject property will not substantially impair the integrity of the General Plan and that it be in keeping with the purposes of the M-X-T Zone. Mark Ferguson, accepted as an expert in the area of land use planning, provided a Land Use Analysis that included the following observations about impairment of the two Master Plans:

The Goal of the Heights Plan’s Residential Neighborhoods element is, “to preserve and protect existing neighborhoods by promoting maintenance programs as well as new and diverse quality residential development.” To further that Goal, the Plan recommends a Concept of, “utilizing urban design principles to … develop effective buffering between conflicting adjacent land uses.” This planner would argue that the approval of the M-X-T Zone at the subject property would allow for the creation of diverse residential development, and the extensive public reviews inherent in the regulations of the M-X-T Zone would ensue the creation of effective buffering between proposed land uses and the subject property’s surrounding neighbors, and balance the difference between the mapped land use recommendation and the zone requested by this application. As such, the approval of the instant application would not be a substantial impairment of the Heights Plan’s land use recommendations. There is no discussion at all of either the Butler tract or the Forest Heights tract in the Residential Neighborhoods element, however, because of the historic occupancy of the Butler family and the presence of the recorded lots on the Forest Heights tract which predated the incorporation of the presence of the recorded lot on the Forest Heights tract which predated the incorporation of the surrounding neighborhood into the Maryland Washington Regional District in 1957, it is unlikely that any land use planning attention has ever been paid to the subject property. The conformance of the subject application to the Environment element of the Heights Master Plan was discussed exhaustively by Staff in the Technical Staff Report. Staff notes that the approval of the requested rezoning would result in a reduction to the application woodland conservation threshold from 20% to 15%, and states that, “These reductions encourage, more woodland clearing, more impervious surface more stormwater runoff and more litter. This planner would note with some discreet asperity that stormwater must necessarily be managed so as not to create more runoff from a site in its post-development condition regardless of the zone in which that property is classified, and wonders why impervious area is related to litter generation. In the end, Staff states that they believe that the proposed rezoning “would not be consistent with environmental goals,” but do not go so far as to call the rezoning a substantial impairment of the Plan from an environmental perspective. This planner would go further and state that the adherence to the Plan’s environmental goals is a function of the site design, and not the zoning, as such the approval of the subject application would not substantially impair the Heights Plan’s Environmental element....

There is no discussion at all of either the Butler tract or the Forest Heights tract in the Residential Neighborhoods element, however; because of the historic occupancy of the Butler family and the presence of the recorded lots on the Forest

Heights tract which predated the incorporation of the surrounding neighborhood into the Maryland-Washington Regional District in 1957, it is unlikely that any land use planning attention has ever been paid to the subject property. The Goal of the Heights Plan's Residential Neighborhoods element is "to preserve and protect existing neighborhoods by promoting maintenance programs as well as new and diverse quality residential development." [Citations omitted.] This planner would argue that the approval of the M-X-T Zone would ensue the creation of effective buffering between proposed land uses and the subject property's surrounding neighbors, and balance the difference between the mapped land use recommendation and the zone requested by this application. As such, the approval of the instant application would not be a substantial impairment of the Heights Plan's land use recommendations.

The conformance of the subject application to the Environment element of the Heights Master Plan was discussed exhaustively by Staff in the Technical Staff Report. Staff notes that the approval of the requested rezoning would result in a reduction to the applicable woodland conservation threshold from 20% to 15%, and states that, "These reductions encourage, more woodland clearing more impervious surface more stormwater runoff and more. This planner would note with some discreet asperity that stormwater must necessarily be managed so as not to create more runoff from a site in its post-development condition regardless of the zone in which that property is classified, and wonders why impervious rea is related to litter generation. In the end, Staff states that they believe that the proposed rezoning "would not be consistent with environmental goals," but do not go so far as to call the rezoning a substantial impairment of the Plan from an environmental perspective. This planner would go further and state that the adherence of the Plan's environmental goals is a function of the site design, and not the zoning and as such the approval of the subject application would not substantially impair the Heights Plans environment element....

(Exhibit 60, pp. 9-10)

(18) Mr. Ferguson also addressed the Application's compliance with the purposes of the M-X-T Zone, noting that:

- the property is adjacent to and directly connected to the National Harbor Regional Transit District and the Oxon Hill Local Neighborhood Center, and abuts the major interchange of the Capital Beltway and Indian Head Highway and the interchange of the Capital Beltway and I-295 also lie within the defined neighborhood of the subject property, thereby satisfying Purpose No. 1.
- Although the General Plan, Master Plan and Sector Plan do not specifically recommend mixed land uses for the subject property the Heights and Vicinity Master Plan does recognize the Woodrow Wilson Bridge as a gateway into the County and approving the instant request would provide another attractive, welcoming entrance into the County; the same Master Plan includes a Goal the preserve and protect existing neighborhoods by promoting maintenance programs as well as new and diverse quality residential development and includes a concept of using urban design principles to develop effective buffering between conflicting

adjacent land uses; the General Plan includes a policy to limit future mixed-use land uses outside of the Regional Transit Districts and Local Centers but does not state that such uses shall only occur within these areas; the General Plan included a Land Use Policy and Strategy urging the coordination of land use planning with County Municipalities and Applicant has received strong support from the Town of Forest Heights for the mixed use development of the site; and, the Eastover Master Plan includes a redevelopment goal of property value creation and economic development as well as recommending density needed to support the commercial area surrounding the Eastover Shopping Center - the instant request is close to that shopping center and will allow sufficient density to support businesses and mixed uses that can contribute to the revitalization thereof. Thus Purpose 2 is met.

- The location of the site (abutting a major interchange and in the vicinity of a second major interchange) and its proposed density will provide a greater return on the public investment in the surrounding infrastructure. Thus Purpose 3 is met.
- There are a series of existing and planned trails running through or right past the site that can be completed if the request is satisfied and the site is close to the Oxon Hill Park and Ride facility. Therefore Purpose 4, which urges the promotion of the effective and optimum use of transit and facilitation of walking, bicycling and transit use, is met.
- The mix of residential, retail and hotel use will encourage a 24-hour environment. Thus Purpose 5 is met.
- The review process will ensure a harmonious blend of the mix of land uses, and the creation of dynamic functional relationships among the individual uses, and land planning that focuses on the use of economies of scale, innovative stormwater management techniques, and provisions of public facilities, thereby satisfying Purposes 6, 7 and 8.
- The approval of the request will provide Applicant the flexibility to include multiple land uses that promote economic vitality and investment, thereby satisfying Purpose 9.
- Approval of the request at this location will allow the opportunity to minimize the effects of noise from the nearby roadways and provide the appropriate transition from the adjacent single-family residential development, thereby meeting Purpose 10.

(Exhibit 60)

(19) Finally, Mr. Ferguson agreed with Mr. Lenhart's position that the property lies within the "vicinity" of an interchange because the dictionary defines vicinity as "the neighborhood". (May 5, 2021 T. 10) He presented exhibits that show the limits of two interchanges in the neighborhood of the subject property (Exhibits 51, 67 and 82; May 5, 2021 T. 10-11), and offered the following explanation as to why he believes, from a land use perspective, Staff's decision to measure from the crossing point of the interchange is incorrect:

[T]he relationship of the M-X-T zone to the transportation element is really what I just described. It's ... really to bring together that nexus of activity that's associated with high-

volume transportation facilities with high-intensity land use; and really transportation-oriented uses; and that's more than just transit orientation. Transit orientation is a component, but not the sole component of transportation orientation; and ... because transit trips ... are only 12 to 15 percent of total vehicle trips ... the vast majority of transportation activity is still, and in my opinion will remain, vehicle-oriented.

So, what you ... want to do with the MXT zone is orient intense uses to intense transportation facilities; and that way they can draw their occupants , their visitors, their patrons from that high transportation facility nearby, not to spread high traffic through roads and other facilities that are not designed for them [,] to leave quieter areas for quieter development, and to focus loud and busy areas around busy facilities.... [Y]ou're trying to capitalize on the vehicular traffic that ... may be transit, you know, bus vehicular; but [a] supportive mix of uses and higher densities, intensities which are supported by the MXT zone....

[S]taff said ... the idea is a half mile walking distance from the crossing point of the interchange ...[is] how they analyzed it.... [A]s Mr. Lenhart testified, and I certainly agree from a land use perspective, ... walking distance is important, but you have to measure it from somewhere that you can walk from and, you know, the center point of an interchange of two high-classification roads like Indian Head Highway and ... I-495 is about the most hostile environment to pedestrians that there is. Really, when you ... look at Exhibit 67 and you see just how far those elements of the interchange extend from the center point, you'll see that it, it really is about a mile to cross the interchange from one of its ends to the other; and very often, even basic pedestrian needs, such as sidewalks, don't exist because from a pedestrian standpoint, there's no there, there. There's nowhere for you to go. There won't be any bus, ... there won't be any buildings; there won't be any bus stops.... All you're doing is crossing from one end to the other. So, pedestrian orientation to the crossing point of an interchange is, it's nonsensical....

[The subject property is located within the vicinity of this interchange.] this is the first property that you can get to in the northwest quadrant fo the interchange.... Everything else is denial of access; and so, and, in fact, as you can see from Exhibit 67 ... the subject property actually fronts on the interchange. So, it absolutely is within the vicinity....

[Exhibit 76] is SHA Plat No. 17273, which was the state right-of-way plat that illustrated the taking for the interchange of the northwest quadrant of... Indian Head Highway, Maryland 210 and 495. The subject property is outlined in red on it.... [and... the entrance to the subject property has frontage on and vehicular access to the state property which encompasses the interchange....]

(May 5, 2021 T. 14-19)

(20) Several citizens testified in support of the Application, generally citing:

- A need for walkable communities
- Housing for a mixed income community with affordable housing as well as in with market condos and rentals
- A "facelift" for the Forest Heights area with quality housing and utilization of environmentally friendly green building materials

- Creation of jobs
- Less need to travel elsewhere for groceries, retail shopping, restaurant, and exercise
- Much needed senior community housing
- Long term viability for the Town of Forest Heights
- Ability to complete local trail network and access areas

(March 24, 2021 T. 12-13, 24-25, 45, 50 - 52, 55, 59; April 28, 2021 T. 116-118)

(21) The Neighbors for Fort Washington Commercial Development, a nearly 800-member group, noted its support for the Application:

Petra Development's request... represents a forward-thinking "smart development" mindset that can catalyze commercial tax revenue growth, increased property valuation, and improved residential quality of life. Additionally, the inclusion of senior living options allows citizens to "age in place" in a lively, energetic atmosphere where they aren't forgotten. We applaud that!

During Petra Development's presentation to our members, they expressed their commitment to collaborate with Forest Height's residents to design a plan that included community gardens, culturally-sensitive art, and an enhanced trail network. This was a welcome declaration that, to us, signaled a holistic approach to neighborhood building.

Commercial development always features complex variables and this will be no different. Development must be balances with conservancy, traffic studies need to reflect current patterns, and storm water management plans must be transparent and innovative. We feel strongly that this can all be accomplished if Petra Development, local community groups, and Prince George's government work together....

(Exhibit 95)

Opposition's concerns:

(22) The National Parks Conservation Association's ("NCPA") Senior Program Director, Pamela Goddard, provided the following testimony on behalf of the NCPA.

I am writing on behalf of the National Parks Conservation Association and our 28,000 Maryland members and supporters to urge you to deny the request to rezone land abutting Oxon Cove Park from R-R and R-55 to M-X-T for the National View development project. Not only is the proposed rezoning at odds with Prince George's County plans, it would negatively impact Oxon Cove Park and Oxon Hill Farm, important national park sites in the region.

The mission of the National Parks Conservation Association (NCPA) is to protect and enhance America's National Park System for present and future generations. We have upheld this mission since NCPA was created in 1919 by the very first National Park Service Director Stephen Mather. A key component of our mission is to bring

visitors into the parks for recreation and service. For the last ten years, we have hosted volunteer cleanups at Oxon Cove Park in support of our mission and the park.

Oxon Cove Park

Oxon Cove Park is a gem in the region, sharing with visitors to its rich history and important outdoor spaces. The land was farmed by the Piscataway Indians before 1600, weathered the War of 1812, and hosted a hospital for the mentally ill in the early 1900s. Today the 500-acre park introduces guests to a working farm, provides a popular site for birding and fishing, and hosts critical open space for outdoor recreation like hiking and cycling.

Oxon Cove Park features fourteen buildings, including Mount Welby, built in 1805 by the Debutts family as their family home. Mount Welby was designated a Prince George's County historic site in 1981 and was listed in the National Register of Historic Places in 2003. Visitors enter the park on Bald Eagle Road, a road that historically connected Oxon Hill to Washington DC since 1850. The road's design dates back to the time of the horse and buggy. During the 1800's, the Berry Plantation comprised the southern part of the park. In 2005, Oxon Cove Park was accepted as a member of the National Underground Railroad Network to Freedom to share the story of Jacob Shaw, a man enslaved at the Berry Plantain who escaped to seek freedom in Washington DC.

The adjacent property subject to development was formerly homes to several prominent free African American families including the Butlers, the Hattons, and the Proctors. Henry Alexander Butler, a free African American, moved his family to this site in 1853 and the property remained in the ownership of his family for more than 150 years. These families owned their own property and farmed their own land, highly unusual in their era. Although most of the buildings are gone, historic resources could exist that should be discovered through archaeology and lidar. If the property is developed, these historic resources will disappear.

Negative Impacts to Oxon Cove Park and the Adjacent Community

If the zoning is changed and this project is built, Oxon Cove Park and the greater community will face many negative impacts in addition to the loss of historic resources. Building the National View complex at this site will increase impervious surfaces resulting in polluted stormwater runoff, sedimentation, and flooding. There are currently no impervious surfaces in the northern half of the proposed site. Stormwater management to address flooding would require an even bigger footprint for the project. The plan entails clearing open space that will diminish tree canopy and increase forest fragmentation. Traffic will increase substantially resulting in air and noise pollution. Lights from the complex will disrupt the night sky. The height and size of the complex itself will create negative impacts to the historic viewshed both within the national park and the adjoining neighborhood.

A substantial impact that is not given due diligence in the applicant's proposal is how traffic will be addressed on Bald Eagle Road. This development project presumes widening of Oxon Hill Farm Driveway and using Bald Eagle Road for the up to 13,000 vehicles accessing the site daily. The National Park Service has not indicated that

this would be permitted. The sheer number of cars would easily create significant traffic congestion in the area, making this a public safety hazard as well should an emergency arise.

Another considerable impact not considered is how to address the fact that there is currently no plan for mass transit to be extended to this development. No agency presently has any plans to serve this site with mass transit. The adjoining roadways are not programmed for improvement for the next six years in the current Maryland Department of Transportation's transportation programs. The project applicant wishes to build up to 1700 housing units, 200,000 square feet of commercial space, four assisted living residences, a medical facility, and a police station with no access to mass transit. This most certainly will result in unwieldy amounts of traffic with its associated air and noise pollution.

This plan is incompatible with the historic and natural character of this area and the current single- family housing in the adjacent neighborhoods. It will increase traffic and pollution, destroy critical green space, and disrupt the viewshed of this historic landscape, including Oxon Cove Park. We urge you to deny the applicant's request to change the zoning of this area.

Thank you for considering our views.

(Exhibit 38)

(23) The IHHAAC (Indian Head Highway Area Action Council) voted to oppose the rezoning due to "significant issues with transportation, traffic, adequate public facilities, the environment and the historic sites." (Exhibit 83)

(24) Ms. Janet Gingold provided the following testimony on behalf of the Prince George's Sierra Club (the nation's oldest grassroots environmental organization):

The Prince George's Sierra Club urges you to deny the request to rezone the properties The Sierra Club recognizes the need for more affordable housing and more housing for seniors in our County. We support high-density and [mixed-use] transit-oriented development as specified in Plan 2035 in the regional transit districts; however, the proposed National View project is not truly transit-oriented. It is not within easy access of any existing or planned public transit routes. It would create development outside the existing edge of developed land, encroaching upon the Potomac shoreline special conservation district described in the 2017 Green Infrastructure Plan.

Experts from the County's Planning Board have found that this rezoning would be contrary to the goals of Prince George's Plan 2035[;] 2000 Heights and Vicinity Master Plan; the 2014 [Eastover/Forest Heights/Glassmanor] Sector Plan; and the 2014... Resource Conservation Plan. It is not in keeping with the purpose of the MXT zoning and it would promote a mixed use of development that is out of context with the surrounding neighborhood of Forest Heights and the wooded areas and adjacent national parkland...

Currently, the properties in question are wooded with oaks, beeches, tulip trees and others of varying size, including scattered specimen trees providing a backdrop for the historic

Oxon Cove Park and the aptly named community of Forest Heights. High-density, mixed use development here would markedly change the character of the area. It would replace a primarily natural view scape with a highly urban one, and impact the experience of families, school groups, and others who come to Oxon Cove Park to learn about local history, connect with their rural heritage, or to enjoy a brief escape from the urban environment....

As we look to a future with more excess heat days and more extreme precipitation, preservation of our green infrastructure takes on greater importance for decreasing heat... and absorbing flood waters. Even small areas of mature forests become more important not just for the sake of the wild things that live there, but because of the ecosystem services they provide for the human population. The proposed zoning change would allow for loss of trees and other vegetation, and the creation of more impervious surfaces. This is contrary to the policies outline in the 2017 Green Infrastructure Plan... [and] the 2017 Resources Conservation Plan....

Both Staff from the Department of Permitting and Inspections and the National Park Service had pointed to potential safety issues related to single-point for increased ingress and egress on Bald Eagle Road. This could interfere with access to emergency vehicles needed to care for elderly residents, as well as activities at the proposed police station, in addition to impacting the experience for visitors to the park....

(May 5, 2021 T. 110-114)

(25) Residents of the Town of Forest Heights decried the impact to their viewsheds if the request is approved; the increase in vehicular trips to the area from approximately 558 total daily to 13,429 as indicated in the Technical Staff Report; the loss of mature trees; impact on the historic resources; the possibility that uses proffered at this stage of zoning may not be the uses actually constructed; dense uses in contrast with Plan 2035's recommendation of residential low-land use; the quiet and tranquility currently enjoyed by residents; possible negative impact on wildlife; no guarantee that any senior housing constructed will be affordable; and the proximity of other shopping centers that could fulfill area residents' shopping needs. (Exhibit 40; March 24, 2021 T. 70-71, 128, 130, 144-145 and May 5, 2021 T. 108, 111, 124-126)

Agency and Municipal Comments

(26) David Iannucci, President and CEO of the Prince Georg's County Economic Development Corporation ("EDC"), provided a letter in support of the request on behalf of the EDC:

I write to express support for the rezoning request.... The site is a major gateway to Prince George's County and the State of Maryland. Given the site's close proximity to the National Harbor, the MGM Hotel and Casino, and two of the County's designated Centers, we believe Petra's proposal is well-suited for this location.

This particular site will become part of... several National-themed developments along that portion of the Potomac River with National Harbor just south of this site and National

Landing on the Virginia side of the river. National Landing also happens to be the location of the new Amazon headquarters and associated development, which will only boost the potential for National View's success....

Petra's proposal presents an ideal opportunity to add more density to an area of the County that has been targeted for growth under Prince George's Plan 2035. The high visibility of this location should attract quality retail options complimentary to those at the National Harbor and MGM as well as services that will be crucial to the Town of Forest Heights, and the residential component will undoubtedly strengthen the businesses in the area and enhance the continued success of the town in its pursuit of a walkable, sustainable, and forward-thinking community. The site is also located in an Opportunity Zone, which will be an important advantage to attracting capital investment to the project....

(Exhibit 37)

(27) The Town of Forest Heights is within a Priority Funding Area and was recently named a Sustainable Community, pursuant to the Maryland Department of Housing and Community Development's Sustainable Communities Program. This "designation is a threshold requirement for application to several Maryland Department of Housing and Community Development revitalization programs" and "provides access to a suite of resources that can support housing and community development, local transportation enhancements, tax credit programs and programs to support a healthier environment...." (Exhibit 53) In its application to renew its designation as a Sustainable Community, the Town noted its strengths as:

- the existence of the Forest Heights Community Development Corporation
- its close proximity to National Harbor, the outlet mall and MGM
- its annexation of adjacent land

The Town noted its weaknesses as:

- Very few retail or commercial properties
- A commercial node characterized by poorly maintained commercial facades
- Limited paid staffing to focus on economic development

The Town has also received designation as an Opportunity Zone.

(28) Both the Mayor and the governing body of the Town of Forest Heights submitted written support of the request. As early as 2020 the Mayor submitted a letter to the Chairs of the Planning Board and County Council that provided, in part, as follows:

The development of this important site checks many boxes for the Town. As you may know, the Town worked closely with a... (MNCPPC) as they drafted the 2014 Eastover-Forest Height-Glassmanor Sector Plan and Sectional Map Amendment which was published. At that time, this site was under the private ownership of two families, and therefore, the land was not taken into consideration as we worked on the Sector Plan.

At this time, the Town recognizes the need to update the Sector Plan. An update would allow the Town to effectively take advantage of an opportunity that has been presented by the Harbor View developers which will greatly enhance the lives of our residents. Harbor View will address many needs of the Town, and bring much-needed services, amenities, retail and commercial options to our Town residents. One noteworthy feature of their plans is to build a 3,0000 square foot police substation. Our police force needs this, as they are now operating out of limited office space, and at a time when the Town is currently growing its police department and moving towards 24-hour patrol coverage....

We strongly support the developer's request to rezone this site to accommodate the conceptual plans that have been presented to the Town. We believe the developer shares the Town's vision regarding creating true sustainable communities and their development plans that they have presented to the Town. We believe the developer shares the Town's vision regarding creating true sustainable communities and their development plans reflect responsible initiatives to implement green techniques, such as vegetative green roofs, community gardens, and use of pervious materials where appropriate. They also understand the importance of health and wellness and are implementing and connecting walking trails and other amenities to advance the health of residents who will live, work and lay there. Neighboring residents will also be able to walk safely from this development site along a connecting trail that leads across the Beltway to National Harbor and beyond.

As much as we support Smart Growth, our Town's relative lack of an economic base has been a Smart Growth barrier. Forest Heights has accomplished quite a bit in terms of Smart Growth using grant monies and partnerships with other public and private sector organizations. However, virtually our entire tax base and related revenue is dependent upon the collection of residential property tax. Granting this rezoning will allow the Town to significantly broaden its tax base, and the development of these properties is crucial to this effort. For our town, Harbor View's proposed mix of residential, retail and commercial development represents a once-in-a generation economic development opportunity. The proposed development will result in a necessary increase in the Town's housing options, attracting the kind of commercial and retail business mix that the Town seeks for its residents.

(Exhibit 23)

(29) The Town's joint resolution in support provided, in pertinent part, as follows:

WHEREAS, Harbor View LLC... has purchased the Butler and the Habib Foundation properties south of Cree Drive along with other properties and wished to develop the land in cooperation of the Town to obtain the necessary **land** use approvals from M-NCPPC and the County;

WHEREAS the development area is approximately ten (10) acres of land located inside the Town and ten (10) acres located outside of the Town including the Butler parcels and an SHA parcel near Beltway and Bald Eagle Dr.; and

WHEREAS, the Mayor and Council find that the Town of Forest Heights seeks to correct the imbalance between residential and commercial development, and conservative estimates indicate that the Town could realize approximately \$3M

annually in addition tax revenue from National View, and the development will also feature a police substation to accommodate the growing needs of the Town's police force and transition to 24-hour operations; and...

WHEREAS, the Town's Sustainable Plan mirrors many of the development and redevelopment concepts and infrastructure improvements contained in the Sector Plan, which the Town recognizes is in need of updates to allow the Town to more effectively take advantage of an opportunity that has been presented which will greatly enhance the lives of Town residents, bring much-needed services, amenities, retail and commercial options to our Town residents; and

WHEREAS, the Mayor and Council find that the developer shares the Town's vision regarding creating true sustainable communities and the development plans reflect responsible initiatives to implement green techniques, such as vegetative green roofs, community gardens, and use of pervious materials where appropriate, and they also understand the importance of health and wellness and are implementing and connecting walking trails and other amenities to advance the health of residents who will live, work and play there, and residents will be able to walk safely from this development site along a connecting trail that leads across the Beltway to the National Harbor and beyond; and

WHEREAS, the Mayor and Council further find that support for this project will be beneficial for the Town for the following reasons: (i) our Town['s] relative lack of an economic base has been a Smart Growth barrier, (ii) Granting this rezoning will allow the Town to broaden its tax base, and the development of these properties is crucial to this effort, (iii) the proposed development will result in a necessary increase in the Town's housing options, attracting the kind of commercial and retail business that the Town seeks for its residents, sit down restaurants and upscale brand name retailers within the Town limits, want our seniors to be able to "age in place" so it will not be necessary for them to leave the community as the aging process progresses....

NOW THEREFORE BE IT RESOLVED, [that] the Mayor and the Town Council of the Town of Forest Heights, supports the rezoning of the subject properties from R-55 and R-R to M-X-T for the development of residential, retail, commercial and medical uses proposed by the Developer....

(Exhibit 109)

(30) The remainder of the Resolution addresses a pre-annexation agreement that would: incorporate exploring an alternative emergency access to the site if the rezoning were approved; provide for way finding markers from the Town to the Butler property; address compatibility of development along the northern portion of the site with the existing surrounding neighborhood along Cree Drive; increases tree canopy coverage with the existing town by 3%; includes review of a noise study prior to subdivision approval; and preserves at least 10% of the specimen trees found throughout the subject property, as shown on an updated NRI.

(31) The Historic Preservation Commission and staff reviewed the request for its impact on Historic Site 76A-014 (the Butler House) and Historic Site 76A-013 (Mount Welby). Staff presented the following information to the Commission:

The subject application proposes the rezoning of the subject properties from R-55 and R-R to M-X-T for the development of residential, retail, commercial, and medical uses. The applicant is proposing 1,500-1,700 multi-family units, four assisted living buildings, 200,000 square feet of retail/commercial/office space, a 50,000 square-foot medical building, and a 3,000 square-foot police substation. The subject property contains the Butler House (76A014/National Register). The Butler House property is adjacent to Mount Welby (76A-013/National Register), which is owned by the National Park Service and located within the Oxon Cove Farm. The Oxon Cove Farm property was listed in the National Register of Historic Places in September 2003. The Butler House is a three-bay, 2 ½-story wood-frame-and-log dwelling with a steeply pitched side-gable roof and a large shed-roof addition. The Butler House is significant for its association with the themes “African-American experience, 1660-1865” and “The Freedmen’s Bureau, 1865- 1872” as set forth in the Multiple Property Documentation for African-American Historic Resources in Prince George’s County, Maryland. Henry Alexander Butler, a free African American from Charles County, moved with his family to the property around 1853 and completed construction of the house. The property had been continuously associated with the Butler family since that time and until its recent sale to the applicant for the subject application. The Butler House, now in ruinous condition, and its associated property are nevertheless rare surviving examples of a documented pre-Civil War landholding/farmstead inhabited by a free African American family. According to Butler family oral history, the Butler House was begun in 1851 as a post office. Henry Alexander Butler, a free African American man from Charles County, moved with his family to the property in 1853 and completed construction of the house. The Butler family possesses receipts for taxes paid on the property by Henry Butler in 1859 and 1860. The Butlers turned their property into a small farm that included a chicken house, meat house, barns, and other agricultural buildings. During the Civil War, Union officers are said to have stopped at the house when traveling through the area. Family photographs indicate that the Butlers lived a comfortable, middle class life. They also enjoyed high status in the African American community. Henry Butler became a Reconstruction-era community leader, serving as trustee of the Freedmen’s Bureau school near Oxon Hill. The Butlers associated with prominent African American Washingtonians, including the first African American priest and a Mr. Lewis, master barber at the U.S. Capitol. The property remained in the Butler family until it was sold to Harbor View Development, LLC in 2019. The property also holds potential to yield information about African American material culture. The Butler House meets Criterion A for listing in the National Register of Historic Places. The northern portion of the subject property was owned by several other African American families, including the Hattons and the Proctors. Henry Hatton acquired 21 acres of Mt. Welby from Joseph H. Bowling on January 9, 1868. Hatton had a blacksmith shop in Oxon Hill. Two of Hatton’s sons, Henry and George W. Hatton, joined the U.S. Colored Troops during the Civil War. Several of Henry Butler’s children and grandchildren continued to live in the Butler House through the late twentieth century. The Hatton property appears to have been abandoned in the 1940s to 1950s when the Forest Heights housing development was platted. The Mount Welby Historic Site/Oxon Cove Farm Historic District (76A-013) is adjacent to the subject property. Oxon Cove Farm is an agricultural complex, encompassing 14 buildings and two structures. The property is currently part of a living farm museum operated by the National Park Service. The resources encompassed in the historic district are associated with the

property's sequential development as a plantation, an institutional agricultural complex, and a farm museum, during the nineteenth and twentieth centuries. Turn-of-the-century farm implements, and machines are scattered throughout the park grounds. The eight contributing elements constitute a recognizable agricultural complex that is significant for its association with mental health care. Buildings included within the district are associated with the 1800-1850 and 1891-1943 time periods. The Oxon Cove Farm historic district was among the first agricultural complexes to be used as a therapeutic treatment center for the mentally ill. Mount Welby was determined eligible for listing in the National Register under Criterion A for its association with St. Elizabeth's Hospital in Washington, D.C. Mount Welby was used by the hospital as a farm where mental patients could be helped in their treatment by honest labor in fresh air. The property was also determined eligible under Criterion C for architecture. Mount Welby, which was constructed in 1811 and substantially altered in 1891, is an unusual melding of a Federal period house with the urban row house aesthetic of the Victorian period. In addition, the farmstead encompasses a fairly complete grouping of agricultural buildings dating from the early to late 19th century and is a rare reminder of the area's agricultural past.

A Phase I archeology survey was conducted on the subject property in October and November 2019. The fieldwork was initiated with a pedestrian survey in which several bottle and container glass dumps were identified. Several trash dumps were noted along the ravine to the east of the Butler houses. No historic artifact concentrations or scatters were noted on the surface. Subsurface artifacts recovered date from the prehistoric to modern periods. The prehistoric artifacts were not found in any concentration and were scattered over an area 600 feet in length. Most of the historic artifacts recovered date to the twentieth century occupation of the property. Cultural features identified included a combination well house and adjacent well east of the Butler House. An area to the southwest of the Butler House and to the east of the entry road was indicated to be a possible cemetery.

Staff recommended that, based on the authority granted to it through Subtitle 29-106 (6), the HPC recommend to the Planning Board that the proposed rezoning of the subject property from R-55 and R-R to M-X-T is incompatible with the rural historic character of the adjacent historic site, Mount Welby (76A-013), and further, that the proposed rezoning would fully destroy any remnants of the Butler, Hatton, and Proctor families' historic habitation of the subject property. In addition, specific efforts shall be made to confirm the potential presence of any burials on the subject property. If identified, proper measures shall be implemented to ensure the protection of any burials until such time as their lawful disposition is resolved....

(Exhibit 56)

(32) Commissioner Pruden made a motion to recommend that the Planning Board find the proposed rezoning to be incompatible with the rural historic character of Mount Welby and that it would fully destroy and remnants of the Butler House. That motion failed and the Historic Preservation Commission did not make any recommendation on the request.

(33) The Department of Permitting, Inspections and Enforcement (“DPIE”) noted no objection to the proposed rezoning with the following caveat:

The access road into this site appears to be flood prone. Unless the Applicant can propose an alternate means of access or in some way demonstrate non-flood prone access, DPIE will not be able to support this development.

(Exhibit 1, Backup pp. 84-85)

(34) The United States Department of the Interior National Park Service noted its objection to the Application alleging a negative impact to the park entrance shared driveway access to Bald Eagle Road; the impact to the park viewshed; and the impact to the historic Butler property. (Exhibit 1, Backup pp. 86-89)

(35) Michael Comisso, the Acting Superintendent of Piscataway Park (which includes Oxon Hill Farm and Oxon Cove Park) was authorized by the National Park Service to speak on its behalf. (Exhibit 97) Mr. Comisso provided the following opposition to the request:

Oxon Hill Farm and Oxon Cove Park were established for scenic and recreation values, as part of the corridor of trails, parkways, forests, and wetlands in the comprehensive system of parks in and around our nation’s capital.... Within the intensively developed urban area of the Washington D.C. beltway, the park provides hands-on opportunities for children to milk a cow and collect fresh eggs from chickens, and to explore the long history of farming at the site....

[W]e are concerned with the proposed rezoning because of its potential negative impacts to park land and to people’s experiences at the park. If this change is approved, we believe that the resulting project will have significant deleterious effects on traffic and safety at the park’s entrance, park viewsheds, and historic resources....

The property proposed for rezoning shares driveway access to Bald Eagle Road with the park. All development on this property will have only a single, constrained access point (width of historic roadbed) as it is bounded on two of three sides by park land and on the third by privately owned and occupied homes. There is no opportunity for another access point without additional property acquisition. We believe allowing such substantial development that relies on this constrained access point will damage the park’s entrance and will cause safety issues for both park visitors and the general public. We are concerned with such a dramatic increase in traffic on the shared driveway access and the proposal to widen Bald Eagle Road....

The existing zoning for the property allows moderate residential development, which is in keeping with the adjacent suburban Forest Heights neighborhood. The introduction of any higher density use will have negative impacts on the historic setting of the park and the rural experience park visitors now enjoy. Specifically, the proposed changes in zoning will greatly impact the park’s viewshed with the introduction of high-rise structures that will be seen from all areas of the farm’s historic core....

A significant portion of the area proposed for rezoning is a parcel known as the Butler property, which is in the National Register of Historic Places. This property, adjacent to the park, includes the Butler house (ca. 1853), the only surviving antebellum free Black homestead in Prince George's County. The proposed rezoning and development plans for National View will remove this important piece of American history from the landscape....

(Exhibit 91)

(36) The State Highway Administration ("SHA") commented on the traffic study conducted by Mr. Lenhart. While it noted that the report concludes that the study intersections will continue to operate at acceptable levels of service under future conditions, the SHA did request additional comments on several items. (Exhibits 75 and 81, pp. 27-30) Mr. Lenhart submitted a point-by-point response on March 16, 2021 (Exhibit 72) but the record does not appear to include SHA'S agreement with the response.

(37) The Technical Staff recommends the request be denied, opining that the request does not meet any of the applicable requirements of Section 27-213 of the Zoning Ordinance. It first notes that the request would substantially impair the General Plan, Master Plans and Functional Plans. It cited provisions of the various plans it considered relevant to review of the instant request. The following provisions were culled from the 2014 General Plan:

Policy LU 1: Direct a majority of projected new residential and employment growth to the Regional Districts, in accordance with the Growth Policy Map (Map 11, pages 107-108) and the Growth Management Goals (Table 17, page 110) set forth in Table 17 (Land Use, page 110)

Strategy LU 1.1: To support areas best suited in the near term to become economic engines and models for future development, encourage projected new residential and employment growth to concentrate in the Regional Transit districts that are designated as Downtowns (see Strategic Investment Program under the Implementation section [pages 252-254])(Land Use, page 305).

Policy LU 7: Limit future mixed-uses outside of the Regional Transit Districts and Local Centers (Land Use, page 114).

Policy LU 9: Limit the expansion of new commercial zoning outside of the Regional Transit Districts and Local Centers to encourage reinvestment and growth in designated centers and in existing commercial areas.

Policy HN 1: Concentrate medium- to high-density housing development in Regional Transit Districts and Local Centers with convenient access to jobs, schools, childcare, shopping, recreation, and other services to meet projected demand and changing consumer preferences (Housing and Neighborhoods, page 187)

Strategy HD 9.9: Implement urban design solutions to ensure appropriate transitions between higher intensity and density development and surrounding lower-density

residential neighborhoods. Urban techniques include decreasing (stepping down) building heights, reducing development densities, and otherwise modifying architectural massing and form (Community Heritage, Culture, and Design, page 215).

(Exhibit 1, pp. 5-6)

(38) The Technical Staff noted that the 2000 Heights and Vicinity Master Plan, which governs the southern portion of the property, made no specific recommendation as to future land use of the site, but did recommend that infill development be compatible with the low-density surrounding neighborhood. The 2014 Eastover /Forest Heights/Glassmanor Sector Plan governs the northern portion of the property. It also makes no specific future land use recommendation. It does place the property in Focus Area 5. Staff states that since no recommendations are made to change the current land use in this Focus Area “the area’s existing land use, described as dense single-family housing, should remain the same.” (Exhibit 1, p. 8)

(39) Staff next cites a plethora of environmental recommendations in the 2014 Eastover/Forest Heights/Glassmanor Sector Plan and the 2000 Master Plan for the Heights and Vicinity, and argues that any development of the site or development inconsistent with its present zoning would result in less trees and more impervious surfaces, stormwater retention measures, noise studies due to proximity and the Beltway and concludes that “[b]ased on the recommendations of both area master plans, the proposed rezoning would not be consistent with environmental goals if the rezoning request is granted.” (Exhibit 1, pp. 9-14)

(40) The Urban Design Section reviewed information from the Applicant which suggested that they would like to provide a mixed-use development of up to 1,500-1,700 multifamily dwelling unit;, 200,00 square feet of retail, commercial and office space; a 204-room hotel; a 50,000-square-foot medical building; and a 3,000 square-foot police substation. It recommended denial of the request reasoning as follows:

The subject site is encumbered with significant regulated environmental features and is in a very narrow linear shape that results in limited buildable envelope....

The site is surrounded on the east side with lower density (6.7 dwelling units per acre) single-family detached established neighborhoods; on the west [side] by public park. The proposed gross residential density only in this Zoning Map Amendment Application is estimated at 85 dwelling units per acre, which is almost 13 times of the existing residential density. If up to 200,000 square feet of retail and up to 50,000 square feet of medical uses are taken into the density calculation, minus the environmental features from the developable envelope, the net density of this development will be much higher and that is totally out of... [character] with the surrounding development patterns north of the Capital Beltway.

The proposed development includes multiple mid- to high-rise vertical mixed-use buildings. Given the constrained shape of the site, it is not possible to provide any transition in terms of building typology and density between the proposed development and the existing single family detached houses. The proposed development will be

commanding, dominating, and overshadowing the existing neighborhood to the east that will create a stark visual contrast between the low, tiny single-family detached homes and the tall, massive mid- to high-rise buildings....

Based on the foregoing analysis, the Urban Design Section does not support [the Application] because the proposed zoning is not consistent with the recommendations from the General Plan or the Master Plan and will therefore substantially impair both plans. If the M-X-T Zone is adopted, then at the time of the Conceptual Site Plan and Detailed Site Plan reviews, special attention should be given to ensure project's compatibility with the surrounding neighborhoods, as well as any restrictions associated with the R-C-O Zone.³

(Exhibit I, Backup pp. 82 and 83)

(41) The Transportation Section reviewed the request and sent referrals to DPIE and SHA. It first noted that the "estimated site trip generation indicates that the proposed rezoning could have an off-site impact of 600 to 900 additional trips, depending on the peak hour being considered" and the "daily trip impact could be as high as 12,900 daily trips." (Exhibit 1, p. 25) After reviewing Applicant's two concepts to ensure that the two intersections nearest the site can operate at an adequate level, the staff provided the following comment:

While the staff are inclined to accept these concepts as evidence that the two intersections nearest the site can be made to be adequate, the concept of creating access to this site needs greater thought. Both access concepts involve usage of a National Park Service roadway, and this applicant has not shown that the use of that roadway is feasible or permittable. One access concept involves all traffic entering and leaving the site to make two 90-degree turns; the other concept involves making a park road into a through roadway. Neither of these ideas is conducive to creating a mixed-use community. Also, given that there is potential for more than 13,000 daily vehicles accessing the site, more serious consideration must be given to signalization near the site access. There is not a viable vehicular access point to the site to handle the traffic of the proposed intense development at this time without generating significant negative impact on the abutting established traditional single-family neighborhoods.

Given the proposed uses and the associated traffic projection outlined in the traffic study, it is determined that the transportation facilities in the area would be adequate to carry anticipated traffic for the proposed development, as required by Section 27-213 (a)(1)....

(Exhibit 1, pp. 28-29)

(42) The Technical Staff closed its report with the following recommendation of disapproval:

³ Elsewhere in the record it is noted that a portion of the property lies within the I-D-O Zone. (Exhibits 1, p. 16 and 69) I believe the Urban Design Section mistakenly referenced the R-C-O Zone.

The application does not meet the requirements of Section 27-213 (a)(1)(B) of the Zoning Ordinance because the 2000 *The Heights and Vicinity Approved Master Plan and Sectional Map Amendment* and the 2014 *The Approved Eastover/Forest Heights/Glassmanor Sector Plan and Sectional Map Amendment* does not recommend mixed land uses for the subject property similar to those recommended in the... M-X-T zone.

This application does not meet the requirements of Section 27-213 (a)(2) of the Zoning Ordinance. This application will substantially impair the integrity of Plan 2035 primarily because the proposed high-density mixed-use development is not supported by the recommended land use for Established Communities Growth Policy Area, as designated by Plan 2035. This application will also substantially impair the integrity [of] the 2000 *The Heights and Vicinity Approved Master Plan and Sectional Map Amendment*, primarily because the proposed high-density mixed-use development does not conform to the recommended infill development that is compatible with the low-density character of the surrounding neighborhoods (The Heights, page 13). As previously stated, the intent of the master plan and the general plan is to direct mixed-use, high-density developments, such as that permitted by and encouraged in the M-X-T Zone, into designated regional transit districts and local centers, rather than scattered throughout the County. Since the subject properties are not located within any designated regional transit district or local center, the master plan envisioned this area for low- to medium-density residential neighbor development, rather than high-density mixed-used development. In addition, pursuant to Section 27-213(a)(2), this application is not in harmony with the purposes of the M-X-T Zone.

The intense character of M-X-T Zone development would be vastly different, inappropriate, and an abrupt transition in density and uses from what is envisioned in the 2014 Plan Prince George's 2035 Approved General Plan, the 2000 *The Heights and Vicinity Approved Master Plan and Sectional Map Amendment*, and the 2014 *The Approved Eastover/Forest Heights/Glassmanor Sector Plan and Sectional Map Amendment*. Therefore, staff finds that reclassifying the subject properties to the M-X-T Zone will substantially impair the goals, policies, and purposes of the general plan and the master plan. Consequently, staff recommends **DISAPPROVAL** of Zoning Map Amendment Application A-10055, National View, for rezoning from the R-R and R-55 Zones to the M-X-T Zone.

(Exhibit 1, p. 30)

APPLICABLE LAW

(1) Applicant's request for a rezoning to the M-X-T Zone must satisfy the provisions of Section 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, or will be provided by the Applicants, 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.

* * * *

(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 Applicants 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 Applicants 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 Application must also further the purposes of the M-X-T Zone, found in Section 27-542(a) of the Zoning Ordinance. This Section provides as follows:

(a) The purposes of the M-X-T Zone are:

- (1) To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, and major transit stops, 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;
- (2) 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;
- (3) To promote the effective and optimum use of transit and other major transportation systems;
- (4) 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;
- (5) To encourage diverse land uses which blend together harmoniously;
- (6) To create dynamic, functional relationships among individual uses within a distinctive visual character and identity;
- (7) To promote optimum land planning with greater efficiency through the use of economies of scale and savings in energy beyond the scope of single-purpose projects;
- (8) To permit a flexible response to the market; and
- (9) 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.

(3) If the District Council approves the request, further site plan review and approval will be required, pursuant to Section 27-546 of the Zoning Ordinance. That Section provides as follows:

Sec. 27-546. Site plans.

- (a) A Conceptual Site Plan and a Detailed Site Plan shall be approved for all uses and improvements, in accordance with Part 3, Division 9, of this Subtitle.
- (b) In addition to the information required by Part 3, Division 9, for Conceptual Site Plans, the following information shall be included on Plans in the M-X-T Zone:
 - (1) A general description of the pedestrian system proposed;
 - (2) The proposed floor area ratio;
 - (3) The type and location of uses proposed, and the range of square footage anticipated to be devoted to each;
 - (4) A general description of any incentives to be used under the optional method of development;
 - (5) Areas proposed for landscaping and screening;
 - (6) The proposed sequence of development; and
 - (7) The physical and functional relationship of the project uses and components.

(8) Property placed in the M-X-T Zone by a Sectional Map Amendment shall provide supporting evidence which shows whether the proposed development will exceed the capacity of transportation facilities that are existing, are under construction, for which one hundred percent (100%) of construction funds are allocated within the adopted County Capital Improvement Program or within the current State Consolidated Transportation Program, will be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club), or are incorporated in a specific public facilities financing and implementation program.

(c) In addition to the information required by Part 3, Division 9, for Detailed Site Plans, the following information shall be included on Plans in the M-X-T Zone:

- (1) The proposed drainage system;
- (2) All improvements and uses proposed on the property;
- (3) The proposed floor area ratio of the project, and detailed description of any bonus incentives to be used; and
- (4) Supporting evidence which shows that the proposed development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program or within the current State Consolidated Transportation Program, will be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club), or are incorporated in a specific public facilities financing and implementation program, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plan approval, whichever occurred last.

(d) In addition to the findings required for the Planning Board to approve either the Conceptual or Detailed Site Plan (Part 3, Division 9), the Planning Board shall also find that:

- (1) The proposed development is in conformance with the purposes and other provisions of this Division;
- (2) For property placed in the M-X-T Zone through a Sectional Map Amendment approved after October 1, 2006, the proposed development is in conformance with the design guidelines or standards intended to implement the development concept recommended by the Master Plan, Sector Plan, or Sectional Map Amendment Zoning Change or include a major employment use or center which is consistent with the economic development strategies of the Sector Plan or General Plan;
- (3) The proposed development has an outward orientation which either is physically and visually integrated with existing adjacent development or catalyzes adjacent community improvement and rejuvenation;
- (4) The proposed development is compatible with existing and proposed development in the vicinity;
- (5) The mix of uses, arrangement and design of buildings and other improvements, and provision of public amenities reflect a cohesive development capable of sustaining an independent environment of continuing quality and stability;
- (6) If the development is staged, each building phase is designed as a self-sufficient entity, while allowing for effective integration of subsequent phases;
- (7) The pedestrian system is convenient and is comprehensively designed to encourage pedestrian activity within the development;

- (8) On the Detailed Site Plan, in areas of the development which are to be used for pedestrian activities or as gathering places for people, adequate attention has been paid to human scale, high quality urban design, and other amenities, such as the types and textures of materials, landscaping and screening, street furniture, and lighting (natural and artificial); and
- (9) On a Conceptual Site Plan for property placed in the M-X-T Zone by a Sectional Map Amendment, transportation facilities that are existing; that are under construction; or for which one hundred percent (100%) of construction funds are allocated within the adopted County Capital Improvement Program, or the current State Consolidated Transportation Program, will be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club), or are incorporated in an approved public facilities financing and implementation program, will be adequate to carry anticipated traffic for the proposed development. The finding by the Council of adequate transportation facilities at the time of Conceptual Site Plan approval shall not prevent the Planning Board from later amending this finding during its review of subdivision plats.
- (10) On the Detailed Site Plan, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval, whichever occurred last, the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club).
- (11) On a property or parcel zoned E-I-A or M-X-T and containing a minimum of two hundred fifty (250) acres, a Mixed-Use Planned Community including a combination of residential, employment, commercial and institutional uses may be approved in accordance with the provisions set forth in this Section and Section 27-548.

Editor's note(s)—By Order of Court dated February 14, 2020, The Circuit Court for Prince George's County, in CAL 19-23357, invalidated the Council's enactment of CB-018-2019 and CB-019-2019. As such, the provisions of this Section are null and void.

The Court case referenced in the Editor's Note invalidated provisions pertaining to a particular use not at issue in this case. However, given the language used in the Editor's note, the District Council should specifically require Conceptual and Detailed Site Plan approval that satisfies the provisions in Part 3, Division 9 of the Zoning Ordinance, and any other requirement deemed necessary, should it choose to grant the rezoning.

CONCLUSIONS OF LAW

- (1) The Application must be found to comply with the requirements of Section 27-213 and the purposes of the M-X-T Zone found in Section 27-542.
- (2) The subject property must be located within the vicinity of either a major intersection or interchange in which at least two of the streets forming the intersection or interchange are classified in the Master Plan as an arterial or higher. (Section 27-213 (a)(1)(A)(i)) All would agree that the property is relatively close to the Indian Head Highway (MD 210) and the Capital Beltway (I-495) - two streets classified as arterial or

higher. However, the Technical Staff believes that the entire property should be within a 1/2 mile of the interchange to support walkability and that the ½ mile is measured from the point that the two streets cross (which would clearly not support walkability). If that measurement is applied all of the property is approximately 3,250 feet from the interchange and one-half mile is 2,640 feet. Applicant believes the “vicinity” test is satisfied if the two streets are in the neighborhood of the subject property because the dictionary defines vicinity as neighborhood. Indeed, the Merriam Webster Dictionary (accessed online at Merriam-Webster.com) defines “vicinity” as “a surrounding area or district; neighborhood the quality or state of being near.” This Examiner believes the definition usually applied is most akin to the last portion – the state of being near- as the complete square footage of a neighborhood used for land use purposes is seldom included in the record (nor was it in this case). Using that definition, one can still find the interchange to be in the vicinity of the entire property – whether we measure from the point where the two arterial or higher roadways cross (which does not seem feasible if a “walkability” standard is proposed) or we measure from the site’s proximity to the entire interchange (which includes Bald Eagle Drive per AASHTO and the County’s GIS system) the entire property is near the interchange.

(3) Since I have determined that the vicinity test is met, the applicable Master Plans are not required to have recommended mixed land uses for the site similar to those permitted in the M-X-T Zone.(Section 27-213 (a)(1)(B))

(4) The Technical Staff and Applicants expert transportation planning witness both opined that transportation facilities are adequate to carry anticipated traffic for the proposed development. (Section 27-213(a)(3)) Moreover, transportation adequacy will be reviewed again at the time of subdivision approval.

(5) The Zoning Ordinance does not expressly define the term “substantially impair”; accordingly, we look to the generally recognized usage. See, Section 27-108.01(a)(7). “Substantial” is generally defined as “considerable; ample; large”. (Webster’s New World Dictionary, 2nd College Edition) “Impaired” generally means weakened or damaged. I can/not find that approval of mixed-use development on the subject property will substantially impair either the General Plan, the Sector Plan or the Master Plan recommendations and policies, for the following reasons. The General Plan is not intended to identify land uses and zoning for specific properties. I agree that some policies within the General Plan would seemingly preclude the instant Application (such as the policies directing a majority of projected new residential and employment growth to Regional Transit Districts, limiting future mixed-use land uses outside of the Regional Transit Districts and Local Centers, and concentrating medium- to high-density development in Regional Transit Districts and Local Centers) but I cannot conclude that these policies are an absolute bar since this use of the property was not projected approximately 9 years ago when the 2014 General Plan was under consideration, and the District Council’s use of qualifying language such as “limiting” and “concentrating” as well as its failure to add further limiting language to Section 27-213 do not support such a conclusion. Review of the policies within the Master Plan and Sector Plan similarly would not lead to the conclusion that the instant request is a substantial impairment

thereof. The Heights Master Plan, applicable to the Butler property to the south, did not make a specific future land use recommendation but did urge that infill development be compatible with the low-density character of the surrounding neighborhood. Twenty-one years have passed since its adoption and no development in the interim. This request would not substantially impair the intent of the Master Plan so long as the site plans for any development address compatibility with the neighborhood. The 2014 Sector Plan, applicable to the Forest Heights property to the north, also does not make a specific future land use recommendation, but Staff finds dispositive the facts that in the focus area that included the northern part of the subject property there was no recommendation made to change the land use, unlike in other focus areas and the plan notes that there should be sidewalks on each side of the street and a study to address open stormwater culverts before sidewalks are provided. The latter recommendations can, again, be addressed at a later stage when site plans are approved. The Mayor of Forest Heights provided a reasonable explanation as to why the Focus Area also made no mention of a different land use for the property -the site was under the private ownership of two families, so the land was not taken into consideration. The Town has requested that a new plan be initiated now that the land is combined and under one ownership. Finally, other policies/recommendations within these Plans and the functional master plans either support the request, or raise design issues that can be addressed at the Conceptual and/or Detailed Site Plan stages. When all of these facts are considered, as well as those discussed in the Technical Staff Report and Mr. Ferguson's land planning analysis, I cannot find that the request would substantially impair the intent of the General, Master, Sector and Functional Plans. (Section 27-213 (a)(2)

(6) The request is in keeping with the purposes of the M-X-T Zone for the reasons noted above and since: it lies within the vicinity of a major interchange and a Regional Transit District and Local Neighborhood Center as noted *supra* and can be developed in a manner provide additional employment and living opportunities; Applicant intends to provide a mix of residential, retail and institutional (police substation) uses in a manner that capitalizes on its location next to the arterial or higher rights-of-way and partially within the designated sustainable community and opportunity zone (the Town of Forest Heights); the mix of uses will encourage a robust (if not quite 24-hour) environment; site plan review will ensure that the divers uses will blend harmoniously, creating functional relationships among each within a distinctive visual character and can ensure appropriate horizontal and vertical mix of uses that will promote optimum land planning, permit a flexible response to the market and allow freedom of architectural design and an incentive to the developer to achieve excellence in physical, social and economic planning. (Sections 27-213(a)(2) and 27-542(a))

(7) Finally, the Zoning Rewrite will probably not change the zoning of the subject property since the R-R Zone will be carried over, the R-55 Zone only changed slightly, and the M-X-T Zone deleted - so the District Council may not consider the "fit" of this M-X-T Zone during its upcoming Countywide Map Amendment review.

(8) Those in opposition to the request raised valid concerns. No amount of site plan review and adherence to all applicable laws in the development of "National View" will

prevent some impact to their viewshed, and some increase to traffic, noise, and interference with their way of life. If the District Council decides to approve the request, however, it will do so in a manner that will mandate adherence to all of the County, State or Federal laws applicable to this development to ensure as minimal adverse impacts as possible.

RECOMMENDATION

I recommend APPROVAL of A-10055 subject to the following conditions:

- (1) Prior to Conceptual Site Plan review and the issuance of any permit Applicant shall submit written evidence from the SHA indicating its approval of the proposed access to the property via the state-owned right-of-way and with Mr. Lenhart's March 16, 2021 response to SHA's concerns with the Traffic Study (Exhibit 72).
- (2) The request will be subject to Conceptual and Detailed Site Plan approval in accordance with the strictures found in Part 3, Division 9 of the Zoning Ordinance (2019 Edition, 2020 Supplement). Additionally, special attention should be given to the development's compatibility with the surrounding area and any restrictions associated with the I-D-O Zone, as well as some appropriate recognition of the historic Butler House property.
- (3) The Conceptual Site Plan shall include the following:
 - (a) A general description of the pedestrian system proposed;
 - (b) The proposed floor area ratio;
 - (c) The type and location of uses proposed, and the range of square footage anticipated to be devoted to each;
 - (d) A general description of any incentives to be used under the optional method of development;
 - (e) Areas proposed for landscaping and screening;
 - (f) The proposed sequence of development; and
 - (g) The physical and functional relationship of the project uses and components.
- (4) The following information shall be included on the Detailed Site Plans:
 - (a) The proposed drainage system;
 - (b) All improvements and uses proposed on the property;
 - (c) The proposed floor area ratio of the project, and detailed description of any bonus incentives to be used;

(d) Supporting evidence which shows that the proposed development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program or within the current State Consolidated Transportation Program, will be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club), or are incorporated in a specific public facilities financing and implementation program, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plan approval, whichever occurred last.

(5) In addition to the findings required for the Planning Board to approve either the Conceptual or Detailed Site Plan (Part 3, Division 9 of the Zoning Ordinance (2019 Edition, 2020 Supplement), the Planning Board shall also find that:

- (a) The proposed development is in conformance with the purposes and other provisions of Part 10, Division 2, Subdivision 1 of the Zoning Ordinance (2019 Edition, 2020 Supplement);
- (b) The proposed development has an outward orientation which either is physically and visually integrated with existing adjacent development or catalyzes adjacent community improvement and rejuvenation;
- (c) The proposed development is compatible with existing and proposed development in the vicinity;
- (d) The mix of uses, arrangement and design of buildings and other improvements, and provision of public amenities reflect a cohesive development capable of sustaining an independent environment of continuing quality and stability;
- (e) If the development is staged, each building phase is designed as a self-sufficient entity, while allowing for effective integration of subsequent phases;
- (f) The pedestrian system is convenient and is comprehensively designed to encourage pedestrian activity within the development and the immediate area and sidewalk improvements, internal pedestrian connections, connectivity with adjacent properties and other pedestrian-oriented development shall be evaluated.
- (g) On the Detailed Site Plan, in areas of the development which are to be used for pedestrian activities or as gathering places for people, adequate attention has been paid to human scale, high quality urban design, and other amenities, such as the types and textures of materials, landscaping and screening, street furniture, and lighting (natural and artificial); and, in areas adjacent to existing homes or the adjacent park adequate attention has been paid to minimize any adverse impact of design or other amenities on these areas.

- (h) Applicant has submitted a noise study and shall use the appropriate noise and vibration mitigation measurements in developing the property; and
- (i) On the Detailed Site Plan, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval, whichever occurred last, the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club).