

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

**ZONING MAP AMENDMENT  
A-10044**

**DECISION**

Application:	R-R to M-X-T
Applicant:	Moore's Corner, LLC
Opposition:	Keesha Wheeler et. al.
Hearing Date:	October 10, 2018
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval with Condition

**NATURE OF REQUEST**

- (1) A-10044 is a request to rezone approximately 8.279 acres of land, located on the east side of Branch Avenue (MD 5) in the southwest quadrant of its intersection with Moore's Road, Brandywine, Maryland, from the R-R (Rural Residential) to the M-X-T (Mixed Use-Transportation Oriented) Zone.
- (2) The Technical Staff recommended disapproval (Exhibit 14) and the Planning Board did not elect to hold a hearing, and, in lieu thereof, adopted the recommendation of the Technical Staff. (Exhibit 15(f))
- (3) The record was closed at the conclusion of the evidentiary hearing on October 10, 2018.

**FINDINGS OF FACT**

**Subject Property**

- (1) The subject approximately 8.279 acres property is also described as part of Parcel 103 and is currently undeveloped, generally clear, and with a thin line of trees around its perimeter. It is located within the Piscataway Creek watershed of the Potomac River basin and contains a drainage swale along the eastern property line adjacent to an off-site private driveway.
- (2) The subject property has frontage on Branch Avenue (MD 5) and Moore's Road. Access to the subject property is from Moore's Road.

## History

(3) SE 2699 was approved with conditions on July 25, 1972 for approximately 5.38 acres of the subject property for Sand and Gravel Mining. This Special Exception was never utilized.

(4) Pursuant to a deed recorded in Liber 7538, Folio 637 among the Land Records of Prince George's County, Parcel 103 was 9.70 acres in size. On February 18, 1993, approximately 0.7757 acres of land, known as Parcel 168, was created by deed recorded in Liber 9317, Folio 651 among some of the property owners. This in turn created part of Parcel 103, which is the subject of the instant Application. Based on this deed history, it was determined that the subdivision of Parcel 168 was not a legally created parcel because it was not subdivided prior to January 1, 1982. Therefore, at the time of the Preliminary Plan of Subdivision (PPS), the adjacent Parcel 168, must be included in the PPS to make it into a legal lot.

## Master Plan and Sectional Map Amendment

(5) The 2013 Approved Subregion 5 Master Plan and Sectional Map Amendment retained the subject property in the R-R Zone. The Master Plan recommends Residential Low land uses on the subject property. Residential Low is defined as "...intended for single-family detached residential development that may have up to 3.5 dwelling units per acre". (Master Plan p. 33). All adjoining properties are also designated by the Master Plan for "Residential Low" future land use.

(6) The October 2002 General Plan placed the subject property within the Branch Avenue Corridor and within the Developing Tier. The Growth Policy Map of the 2014 Plan Prince George's 2035 Approved General Plan (Plan Prince George's 2035) placed the subject property in the Established Communities policy area, and the printed Generalized Future Land Use Map designates the subject property for "Residential Low" land use. Plan Prince George's 2035 defines Established Communities as "existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers". Plan Prince George's 2035's vision for Established Communities is "context-sensitive" infill and low-to medium-density development" (GPp. 20). The subject property is not located within a Priority Preservation Area.

## Neighborhood and Surrounding Uses

(7) The Staff recommends a neighborhood bounded as follows:

- North -** Piscataway Creek
- East -** Crain Highway (US 301)
- South-** Brandywine Road
- West -** Branch Avenue (MD 5)

(8) The Applicants land use expert, Mr. Mark Ferguson, opined that the neighborhood as proposed by the Technical Staff, being greater than 4 square miles in size, is unduly large given that the subject property is less than 9 acres in area, and given the limited east-west connections to Crain Highway (US 301). Mr. Ferguson recommends that the eastern boundary of the neighborhood is Dyson Road and the PEPCO and SMECO transmission lines east of Clinton Acres and west of the Brandywine Landing subdivisions.

(9) Although consideration of a neighborhood is not directly relevant to the approval of the M-X-T Zone in the same way that it is for a Euclidean rezoning or for approval of a Special Exception, it is germane to one of the findings of the M-X-T Zone, that being whether the subject property is within the vicinity of an intersection or interchange. Your Zoning Hearing Examiner adopts the recommendation of the neighborhood as proposed by the Applicant.

(10) Immediately to the west of the subject property is Branch Avenue (MD 5), a limited-access freeway. Moore's Road has access to Branch Avenue at an unsignalized at-grade intersection with a median break. Across Branch Avenue are a site for a Royal Farms gas station, a landscape contractor, and a used car sales lot, all in the C-M (Commercial Miscellaneous) Zone.

Immediately to the north of the subject property across Moore's Road are single-family dwellings in the R-R Zone. Beyond those, along the southern segment of Crestwood Avenue, are single-family dwellings and a landscaping contractor in the R-R Zone.

Immediately to the east of the subject property, beyond a private right-of-way (which is located on the easternmost edge of the subject property) are single-family residences in the R-R Zone. Beyond those, along the extension of Moore's Road, are single-family dwellings in the R-R Zone in the Loveless Estates subdivision.

Immediately to the south of the subject property are single-family dwellings in the R-R Zone. Further to the south is undeveloped, wooded property in the R-R Zone, and the A-63 interchange, now nearing completion.

In the broader neighborhood of the subject site, additional uses include the 75-acre Black-Eyed Susan Partners, LLC tract in the M-X-T Zone, which, through currently undeveloped, has a Conceptual Site Plan currently under review for up to 980 dwelling units and 60,000 square feet of commercial/retail space.

### **Applicants Request**

(11) The Applicant is requesting to rezone the subject property, part of Parcel 103, from the R-R Zone to the M-X-T Zone to facilitate a mix of development consisting of commercial/retail uses and single family attached dwelling units. The Applicant is proposing 45-55 single-family attached townhouse dwellings and approximately 25,000 square feet of commercial/retail uses located closer

to Branch Avenue (MD 5) at an Floor Area Ratio (FAR) of .4 to .65.

**APPLICABLE LAW**

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

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

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

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

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

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

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

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

(3) Adequate transportation facilities.

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

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

\* \* \* \* \*

**(c) Conditional approval.**

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

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

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

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

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

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

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

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

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

### CONCLUSIONS OF LAW

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

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

The approval of the M-X-T Zone at the subject property will allow for the planning and construction of a complementary mix of land uses which can better respond to both the positive and negative impacts of the subject property's location at the end of an interchange of a high-volume, high classification roadway, yielding benefits of efficiency of use of the public investment in the surrounding transportation network, promoting pedestrian activity within the development at the subject property, and providing both the neighborhood and passers-by with the convenience of additional commercial activity in proximity to the high-classification roadways in the vicinity. Furthermore, the review process inherent in the M-X-T Zone's regulations provides for a higher level of both planning flexibility and public oversight to promote and protect the public health, safety and welfare. The instant Application is therefore in harmony with the Zoning Ordinance's Purpose of protecting and promoting the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County.

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

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

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

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

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

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

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

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

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

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

As with other zones, the approval of the M-X-T Zone at this property will promote the most beneficial relationships between land and buildings, because it requires conformance with the Table of Permitted Uses as laid out in the Ordinance, and because it requires conformance with the

provisions of the Landscape Manual which provide for the screening of service functions and the buffering of incompatible adjoining uses.

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

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

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

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

The approval of the M-X-T Zone at the subject property would be in harmony with this Purpose because it would allow for the development of medium-density housing that can be buffered by proposed commercial sites from the adverse impacts of noise levels from the high traffic volumes on Branch Avenue. Additionally, the medium-density residential development which would be enabled by the approval of the subject Application will provide for more-affordable housing than the low-density residential development permitted by the existing zoning.

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

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

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

The approval of the M-X-T Zone at this property would be in harmony with this Purpose because it will require the property to be developed in conformance with the various principles that have been codified in the Ordinance to ensure the prevention of overcrowding, including the provisions of the Table of Uses that provides for the compatibility of uses, and for height limits, and

setbacks which can be established in the Conceptual Site Plan and Detailed Site Plan review processes to respond to site-specific contexts.

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

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

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

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence of the Application's harmony with this Purpose. Beyond that, however, the approval of the M-X-T Zone at this property would promote the economic and social stability of the County by allowing for appropriately-sited, moderately-intensive development to contribute to the tax base, and by providing sites for medium-density attached residences which will expand housing opportunities available in the neighborhood, and for retail commercial uses to serve the surrounding community.

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

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



The final two Purposes,

- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and***
- (15) To protect and conserve the agricultural industry and natural resources***

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

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

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

The subject Application is in keeping with this Purpose of the M-X-T Zone as the subject site is located within the vicinity of a major interchange, and its approval will allow for the establishment of new retail and medium-density residential uses that will provide in-demand dwelling types and shopping or eating opportunities for the citizens of Prince George's County.

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

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

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

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

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

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

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

The location of the subject Application is in keeping with this Purpose of the M-X-T Zone because the property conforms to the requirement of Section 27-547(d) to provide a mix of residential and retail/commercial uses, by containing both retail uses which will be active during the day, and residential uses which will be active in the evenings as well.

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

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

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

The location of the subject Application is in keeping with this purpose of the M-X-T Zone because it will be able to take advantage of the Zone's unsurpassed flexibility in allowing the various uses throughout the subject property to be appropriately co-located to reinforce one another while at the same time allowing for reasonable site planning responses to conditions such as: buffering the adjacent single-family dwellings which surround the subject property, ensuring an appropriate scale for buildings nearer to them, and by locating the commercial uses nearer to the visual and acoustic impacts from Branch Avenue.

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

The flexibility of land use and site planning regulations, as well as the mix of uses permitted by the M-X-T Zone allow the location of the subject property to be in keeping with this Purpose of the M-X-T Zone.

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

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

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

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

(3) The southern edge of the subject property is located approximately 2,800 feet or 0.53 miles north of the crossing point of the centerlines of Branch Avenue (MD 5) and Mattawoman Drive (Prince George's County Arterial A-63). Branch Avenue is classified by the Master Plan of Transportation as a Freeway, and Mattawoman Drive is classified as an Arterial. For compliance §27-213(a)(1)(A), roadways classified as Arterials, Expressways and as Freeways would all meet the requirements of §27-213(a)(1)(A)(i). It is only required that an Application be found to satisfy either §27-213(a)(1)(A)(i) or (ii) of Criterion 1.

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

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

While distances associated with transportation orientation are difficult to measure empirically, helpfully, a number of Master Plans do give guidance for distances associated with the

more limited concept of transit orientation; for instance: “Core centers should include the area that is between one-quarter and one-half of a mile walking distance from a transit station or stop.”<sup>1</sup> It is therefore reasonable, within limits, to apply this half-mile walkability radius associated by the Master Plan with transit orientation to the more generalized transportation orientation of the M-X-T Zone. In fact, the Technical Staff seems to have adopted this half-mile walkability standard in their discussion of the subject case, as well.<sup>2</sup>

Judging “vicinity” as a simplistic half-mile radius from the crossing point of the roadways which are relevant to the subject property, as the Technical Staff has done, is, however, manifestly insufficient. To illustrate, it is instructive to briefly explore the nature of the two very different types of facilities provided for by §27-213(a)(1)(A)(i), namely intersections and interchanges.

An intersection is a ground-level feature that is definable by the crossing point of the two intersecting roadways. Intersections are important to transportation-oriented activities of both pedestrians and vehicles, typically serve as locations for surface transit stops, and often serve as transfer locations between different transit routes. Because of the conjunction of high volumes of pedestrian, private vehicle and transit activity, major intersections typically serve as the focus of surrounding development. Thus, application of a half-mile radius from that focal point may be a reasonable limit on the transportation orientation of sites in the proximity of major intersections.

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

(6) In the case of the subject property, the end of the Branch Avenue/Mattawoman Drive interchange is roughly coincident with the Branch Avenue/Moore’s Road intersection. And since the entirety of the subject property is within less than a quarter-mile walking distance to the end of the Branch Avenue/Mattawoman Drive interchange, it meets the vicinity criterion of Section 27-213(a)(1)(A)(i).

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

<sup>2</sup> Technical Staff Report, Exhibit 14, pp. 6 and 21.

(7) The above discussion of “vicinity” can be supplemented further. As noted above, the Zoning Ordinance does not give any guidance as to the distance of measurement contemplated by the phrase “in the vicinity.” Section 27-108.01(a)(7) of the Zoning Ordinance, however, provides that, “Words and phrases not specifically defined or interpreted in this Subtitle or the Prince George’s County Code shall be construed according to the common and generally recognized usage of the language. Technical words and phrases, and others that have acquired a peculiar and appropriate meaning in the law, shall be construed according to that meaning.”

(8) Merriam-Webster’s dictionary defines, “vicinity” as, “a surrounding area or district; neighborhood.” The instant neighborhood certainly includes one interchange of roadways where both are classified as arterials or higher; Branch Avenue with Mattawoman Drive/A-63, but it could also include the planned interchange of Branch Avenue with the planned A-65 arterial.

(9) While the A-65 does not now exist and its construction is not programmed in the County’s CIP, the interchange is nevertheless programmed and partially funded in the State CTP, and is listed as the County’s fifth-highest highway priority in its most recent Transportation Priorities Letter. (Exhibit 40) Even if the A-65 itself is not constructed, the proposed interchange will still serve to remove the existing at-grade intersections at Moore’s Road and Burch Hill Road/Earnshaw Drive. In SHA’s preferred option for the configuration of this interchange, the subject property would be located at the edge of this interchange as well, as Moore’s Road would serve as the entry point to the interchange for northbound traffic on Branch Avenue.

(10) “Interchange” is not defined in the Zoning Ordinance, however, the American Association of State Highway Transportation Officials (AASHTO) defines an “interchange” as a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels. The Federal Highway Administration (FHA) adopts the use of AASHTO for design criteria definitions and design guidelines. An “intersection” is an at grade intersection of two separate roadways. FHA’s informational guide, the Interstate System for Access Information Guide, defines an access point on an interstate and an interchange as each entrance or exist point including ramps. “Each entrance or exit point, including “locked gate” access and access to collector-distributor roads or ramps, is considered to be an access point. For example, a diamond interchange has four access points.” (Exhibit 36) T.p. 28-29

(11) Exhibit 35 is a State Highway Administration (SHA) Map depicting the Branch Avenue (MD 5) at Brandywine Road and Accokeek Road (MD 373) interchange which is currently under construction. (A-63) This interchange is located south of the subject property. SHA’s Model Inventory of Roadway Elements (MIRE) includes: “182. Interchange Type, Definition: Type of interchange, Attributes: Diamond...” (Exhibit 37) Thus the diamond interchange under construction in Exhibit 35 is an interchange having four access points as described by FHA.

(12) Exhibit 38 is AASHTO Figure 10.2A, depicting Free-Flow Ramps Entering and Exiting from Crossroad, as modified in red to show the relationship between the A-63 interchange currently under construction with the subject property. SHA has denied access along Branch Avenue (MD 5) as relates to the A-63 and even the A-65 interchanges including the subject property. (Exhibit 39)

(13) Exhibit 32, the Future Conditions aerial, depicts the limits of disturbance for both the A-63 (under construction) and the A-65 interchanges within a dotted orange line. Both are on the County's priority list and the State's planning list. (Exhibit 40) A dotted yellow line depicts the A-63 road alignment and the subject property is identified in blue, at the southern end of the A-65 interchange and within approximately 100 feet to the north of the A-63 interchange limit of disturbance. Portions of both the A-63 and A-65 limits of disturbance are within the neighborhood.

(14) The northbound exit ramp ends approximately 550 feet south of the subject property and ends approximately 1,250 feet south of the center line of Moore's Road. T.p. 34-48 FHA and SHA include access and egress as within a diamond interchange. Technical Staff, as it has previously done in contraventions of FHA and SHA policy, failed to include the entity of the diamond interchange in its analysis and measured from the center of the A-63 interchange to the subject property, approximately 3,000 feet. It is undisputed that the area within the center of the A-63 interchange is not accessible to pedestrians or to other than those vehicles traversing Branch Avenue (MD 5). A-63 is an arterial and a freeway interchange. The entire tract of the subject property is clearly located within the vicinity of a major interchange. §27-213(a)(1)(A)(i)

## **General Plan**

(15) The General Plan classified the subject property in its Growth Policy Map<sup>3</sup> in the Established Communities category, and the Generalized Future Land Use Map<sup>4</sup> designated it for "Residential Low" land use.

"Established Communities" are described by the General Plan as making "up the County's heart – its established neighborhoods, municipalities, and unincorporated areas outside designated centers"<sup>5</sup> and recommends that, "Established communities are most appropriate for context-sensitive infill and low- to medium-density development. Plan 2035 recommends maintaining and enhancing existing public services (police and fire/EMS), facilities (such as libraries, schools, parks, and open space), and infrastructure in these areas (such as sidewalks) to ensure that the needs of existing residents are met."<sup>6</sup> The medium-density development which is proposed is context-sensitive, given its proximity to the (nearly-)existing interchange (A-63) and the planned interchange to the north (A-65), the high volume of traffic on Branch Avenue, the existing and proposed development on the C-M Zoned land across Branch Avenue, and on the Black-Eyed Susan Partners, LLC tract.

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<sup>3</sup> M-NCP&PC, Plan Prince George's 2035 – Approved General Plan (May, 2014), p. 107.

<sup>4</sup> General Plan, p. 101

<sup>5</sup> Ibid., p. 106.

<sup>6</sup> Ibid., p. 20.

“Residential Low” land use is described by the General Plan as, “Residential areas up to 3.5 dwelling units per acre. Primarily single-family detached dwellings.”<sup>7</sup> The note under the Generalized Future Land Use Map directs the reader that, “by definition, this map should be interpreted broadly and is intended to provide a countywide perspective of future land use patterns.”<sup>8</sup>

Technical Staff references Policy 7 of the Land Use element in Plan Prince George’s 2035 Approved General Plan as evidence of a substantial impairment; it makes the recommendation to, “limit future mixed-use land uses outside of the Regional Transit Districts and Local Centers.”<sup>9</sup> This Policy has been repeatedly interpreted by Staff to mean that the M-X-T Zone should not be applied outside of Regional Transit Districts and Local Centers. With the adoption of the Zoning Ordinance Rewrite, however, it is now clear that the limitation of future mixed uses outside of transit districts and local centers was really meant to apply to the intensity of mixed-use land uses, and not to their extent or location: Policy LU7.2, directing the County to, “consider developing, as part of the Zoning Ordinance update, alternative lower density zoning districts that promote walkability and allow for a mix of uses,”<sup>10</sup> has manifested itself in the new Zoning Ordinance as allowing residential mixed uses, albeit at lower densities than the M-X-T Zone would theoretically allow, in all of the new commercial base zones, which would represent an enormous extension of the ability to create mixed uses throughout the County, outside of the Regional Transit Districts and Local Centers.

Technical Staff repeatedly contends that a grant of rezoning to the M-X-T Zone raises the specter of a development materializing with a Floor Area Ratio (FAR) of 8.0.<sup>11</sup> The development intensity indicated by the traffic study which accompanied the subject Application represents an FAR of approximately 0.65, and the development intensity which is more likely to eventuate is an FAR of approximately 0.4. The Applicant would certainly agree that the level of development intensity which is appropriate for a Regional Transit District or a Local Center is not appropriate here, its location in the vicinity of a major interchange notwithstanding. But a medium-density mixed-use development such as what has been proposed with the subject Application is certainly both context-sensitive and appropriate.

The criterion for approval of the M-X-T Zone in §27-213(a)(2) is not one of conformance to the General Plan as it is for approval of a Comprehensive Design Zone; instead, it is that the Plan should not be substantially impaired. “Substantially impair” is not defined in the Zoning Ordinance, so it is again necessary to refer back to Section 27-108.01(a)(7) and its provision that, “technical words and phrases, and others that have acquired a peculiar and appropriate meaning in the law, shall be construed according to that meaning.” An “impairment” is defined by Merriam-Webster as, “being in an imperfect or weakened state or condition;” thus, any nonconformity to a Plan’s recommendation could certainly be seen as an impairment. But “substantial impairment” is clearly a

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<sup>7</sup> Ibid., p. 100.

<sup>8</sup> Ibid., p. 101.

<sup>9</sup> Ibid., p. 114.

<sup>10</sup> Ibid.

<sup>11</sup> M-NCP&PC, Technical Staff Report, A-10044, pp. 5, 8, 10. As developed, National Harbor has a FAR of 2.

higher standard. A judgment of substantial impairment has been found in the law to be a balancing test of whether the conformities of a proposal outweigh its nonconformities (or impairments).

The General Plan recommends “Residential Low” land use; it is arguable whether the proposed mixed-use zoning would even constitute an impairment given the Plan’s intent that development be context-sensitive, given the surrounding context of the abutting freeway, the abutting major interchange, the nearby C-M Zoned development, and the impending nearby M-X-T development, and given the Plan’s direction that its generalized land use recommendations, “should be interpreted broadly and [are] intended to provide a countywide perspective of future land use patterns.” Even if application of a mixed-use zone to an area recommended for “Residential Low” land use does constitute an impairment, however, the application of the M-X-T Zone to a single tract of only 8.3 acres of land is difficult to assess as substantial in the context of the Plan for a County encompassing more than 300,000 acres. Approval of the subject Application would not bar the implementation of any larger intent for the surrounding community, let alone for the County as a whole.

### **Master Plan**

(16) As noted above, the applicable Master Plan is the Subregion 5 Master Plan and Sectional Map Amendment, approved on July 24, 2013. The Approved Land Use Map designates the property for “Residential Low” land use<sup>12</sup>. The Master Plan places the subject property in the Developing Tier Policy Area, the Branch Avenue Corridor, and the Brandywine Community. The Master Plan lays out nine “key planning issues” affecting the future of Subregion 5; none of these issues<sup>13</sup> address the recommendations for land use in neighborhood of the subject property.

Given the balancing test which is required to determine substantial impairment, evaluation of the conformance of the subject Application to the Master Plan cannot be limited to the Plan’s specific mapped land use recommendation: The Master Plan has six Elements, of which Land Use is only one. The approval of the M-X-T Zone would be in conformance with the goals, policies and strategies of the Environment, Transportation Systems, Public Facilities, Economic Development and Historic Preservation elements. Furthermore, while the mapped land use recommendation for the subject property is not a recommendation for mixed-use development, the approval of the M-X-T Zone would in fact be consistent with the stated Goals of the Land Use Element of the Plan.

The four Goals of the Master Plan for land use in the Developing Tier Policy Area are:

- “Promote a sustainable pattern of development that encourages economic vitality.
- “Encourage efficient use of existing and planned public facilities.

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<sup>12</sup>M-NCP&PC, Approved Subregion 5 Master Plan and Sectional Map Amendment (July, 2013), p. 31.

<sup>13</sup> Key planning issues are listed as: Modifications to Rural Tier boundaries, Adequacy of public facilities, long-term planning versus immediate concerns, Accokeek, Brandywine [specifically the effects of the transition from industrial to commercial uses in the planned Center], Hyde Field, MD 223, Mattawoman Creek and Future US 301 alignment. See Master Plan, pp. 24-25.



- “Enhance the quality and character of communities and neighborhoods.
- “Preserve rural, agricultural and scenic areas and protect environmentally sensitive lands.”<sup>14</sup>

Development enabled by the application of the M-X-T Zone at the subject property would be more sustainable given the context of the adjacent freeway, the subject property’s location adjacent to a major interchange on that freeway, and the character of nearby existing and planned development. Development at a higher intensity than the existing zoning would more efficiently use the existing and planned public facility of Branch Avenue. The review process for the M-X-T Zone, including the requirement for a Conceptual Site Plan will allow the development at the subject property to respond to the context of its surroundings and enhance the quality and character of its neighborhood.

Finally, the subject property is not rural, agricultural or scenic, and does not contain environmentally sensitive lands.<sup>15</sup> So, despite the Master Plan’s mapped recommendation of “Residential Low” land use, the approval of the M-X-T Zone would be in conformance with the Master Plan’s land use goals for the Policy Area in which the subject property is located.

Four Policies are then laid out to implement these four Goals:

- “Support redevelopment and infill development in existing and planned development areas over ‘green field’ development that uses natural resource lands.
- “Direct new commercial development to targeted growth areas, rather than along highways.
- “Provide land in appropriate locations for residential and economic development opportunities.
- “Provide for a variety of housing types and opportunities.”<sup>16</sup>

The proposed development that would be enabled by the approval of the M-X-T Zone is neither redevelopment nor infill development, but it would not use natural resource lands: The subject property is clear, generally flat, and no regulated natural features are located on it.

The proposed development would include a commercial component, and the neighborhood of the subject property is not a targeted growth area. As such, approval of the subject Application would not conform to this Policy.

The subject property, because of its location immediately adjacent to a freeway, and more specifically adjacent to a major interchange on that freeway, and because of the nearby existing and

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<sup>14</sup> Ibid., p. 32.

<sup>15</sup> GIS mapping indicates that it is possible that an area of the periphery of a buffer associated with an offsite drainage course could affect the very southeast corner of the subject property; this would be determined definitively with the approval of a Natural Resources Inventory as the very first stage of any actual development proposal.

<sup>16</sup> Master Plan, p. 34.

planned development, is an appropriate location for the medium-density development which has been proposed with this Application.

Finally, the medium-density attached dwellings which would be enabled by the approval of the M-X-T Zone at the subject property would provide for a variety of housing types and opportunities not now present in the neighborhood. So, again, despite the Master Plan's mapped recommendation of "Residential Low" land use, the approval of the M-X-T Zone would be in conformance with three of the four of the Master Plan's land use policies for the Policy Area in which the subject property is located.

The Master Plan also places the subject property in the Branch Avenue Corridor. While this recommendation flowed from the 2002 General Plan which has since been superseded by the subsequent 2014 General Plan, the Subregion 5 Master Plan's contents were not amended by the approval of the new General Plan. As such, the Master Plan's Goal for the Branch Avenue Corridor remains applicable:

- "Expand existing concentrations of population and employment along MD 5 Corridor, particularly in Clinton, at corridor nodes, and within the Brandywine Community Center."<sup>17</sup>

The subject property is not in Clinton, was not designated as a corridor node (though the area immediately around the center of the MD 5/A-63 interchange was,) and is not in the Brandywine Community Center, but it is important to note that this Goal is directing that this expansion occur "particularly" in the three listed areas, but not *exclusively* in them. As such, the approval of the M-X-T Zone at the subject property would not impair this Master Plan Goal for the Branch Avenue Corridor.

The text of the Land Use Element of the Master Plan which addresses the subject property is short, and is quoted in full:

"The remaining portions of the Brandywine community are envisioned as being primarily low density residential. Much of the future residential development would be in large master-planned subdivisions, particularly in the northern and western portions of the community, such as Saddle Creek and the Estates at Pleasant Valley.

"A small area on the west side of MD 5 at Moore's Road is zoned for commercial use. The land use map shows this area for residential use since access to MD 5 will be terminated when MD 5 becomes a freeway [footnote: access to MD 5 will be via A-65 or A-63, see Chapter VI, Transportation Systems] making that area unsuitable for commercial use."

This text states that the vision is "primarily" low density residential, but not *exclusively*. In support of this, it is important to recognize that the Sectional Map Amendment included the rezoning

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<sup>17</sup> Ibid., p. 48.

of the Black-Eyed Susan Partners, LLC tract to the M-X-T Zone in an area which was similarly recommended for “Residential Low” land use.<sup>18</sup>

The conformance of the subject Application to the Environment Element of the Master Plan was analyzed exhaustively by Technical Staff, and no impairment was found to its recommendations. The Environment Element specifically has a number of policies and strategies addressing the adverse impacts of noise generation, recognizing that, “local highways generate noise according to the speed and volume of traffic carried as well as other factors including noise reception location and topography. Freeways are normally the noisiest facilities.”<sup>19</sup> The Plan reports 2007 traffic volumes on a nearby segment of Branch Avenue as 67,370 vehicles per day (which has increased to a 2017 level of 73,411 VPD per SHA traffic counts). To address the noise generated by the high-volume, high-speed traffic on Branch Avenue, the Master Plan proposes a policy, “ensure that excessive noise-producing uses are not located near uses that are particularly sensitive to noise intrusion.”<sup>20</sup> While the Plan does not give guidance as to the extent of noise penetration into properties adjacent to Branch Avenue, it is clear that development permitted by the M-X-T Zone would better implement this policy than the development which would be permitted by the existing zoning.

Similarly, Technical Staff did not find impairments to the Transportation Systems, Public Facilities, Economic Development and Historic Preservation elements.

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

### **Other Applicable Functional Master Plans**

(17) There are no Regulated Areas or Evaluation Areas of the County’s 2017 mapping of the Green Infrastructure Plan that lie within the subject property’s limits (see footnote 15, however).

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

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<sup>18</sup> CR-81-2013, Revision Four.

<sup>19</sup> Master Plan, p. 88.

<sup>20</sup> Ibid.

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

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

Branch Avenue is listed as Freeway F-9 on the Countywide Master Plan of Transportation. It lists an ultimate right-of-way width of 300' against an existing right-of-way width of 300'. The PG Atlas transportation layer does not indicate any additional widening is planned.

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

In summary, the approval of the M-X-T Zone at the subject property will not substantially impair the General Plan, Sector Plan or Functional Master Plans. §27-213(a)(2)

### **Adequate Transportation Facilities**

(18) In accordance with the required findings of §27-213(a)(3), the Applicant proposed a Traffic Impact Analysis (TIA) (Exhibit 12) assuming a maximum of 90 townhouse dwelling units and 40,000 square feet of commercial/retail as originally proposed in the Applicants Statement of Justification. (Exhibit 4) During the evidentiary hearing the Applicant discussed a decrease in development to 45-55 townhouses and 25,000 square feet commercial/retail.

(19) The TIA was prepared pursuant to the Scoping Agreement prepared by the Transportation Division, Technical Staff. (Exhibit 11(b)) The TIA analyzed the critical intersections of Branch Avenue (MD 5) at Moore's Road, and Moore's Road at site access. Site access is projected to operate with less than 50 seconds of delay and therefore will operate well within the adequacy threshold.

(20) The intersection at Branch Avenue (MD 5) and Moore's Road fails under both Background and Total Conditions, however the Applicant's contribution to the failures are minimal. The A-63 interchange is largely built out, providing limited potential to provide any meaningful mitigation

improvements, particularly those that would be properly scaled to a small development as proposed for the subject property.

(21) The Technical Staff agrees with the TIA and concurs with the Applicants proffer to provide funds as part of the Brandywine Road Club to provide its pro rata share to help ameliorate the large scale transportation improvements needed in this area. Contributions to the Brandywine Road Club are anticipated by CR-9-2017. Participation in the Brandywine Road Club will make the transportation facilities adequate to carry the anticipated traffic for the proposed development (§27-213(a)(3)) and the amount of the financial contributions will be determined at Preliminary Plat of Subdivision.

### **RECOMMENDATION**

APPROVAL of A-10044 subject to the following Condition:

1. Development of the subject property is contingent on the contribution of a pro rata share to the Brandywine Road Club, the amount to be determined at Preliminary Plan of Subdivision.