

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

AMENDMENT OF BASIC PLAN

A-9988-C-01

**REVISED
DECISION**

Application:	Amendment of Basic Plan and Conditions
Applicant:	Timothy Brandywine One Investments, LLC/ Timothy Branch, Inc.
Opposition:	None
Hearing Date:	September 30, 2020
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) A-9988/01 is a request to amend the Basic Plan for the Villages at Timothy Branch to expand the Mixed Retirement Development and remove all non-residential uses, and amend the conditions of approval, pursuant to §27-197(c) of the Zoning Ordinance, on approximately 72.43 acres of land in the L-A-C (Local Activity Center Zone, located on the south side of Brandywine Road in the eastern and western quadrants of its intersection with Mattawoman Drive, also known as 14200,14211 and 14300 Mattawoman Dr, Brandywine, MD.

(2) The Technical Staff recommended approval of the instant Application (Exhibit 16) and the Planning Board elected not to hear the matter and adopted the recommendation of the Technical Staff.

(3) No one appeared in opposition to the instant Application and the record closed at the conclusion of the evidentiary hearing on September 30, 2020.

FINDINGS OF FACT

Subject Property

(1) The subject property is located east of US Route 301(Crain Highway) and MD 5 (Branch Avenue) on the south side of Brandywine Road, in the eastern and western quadrants of its intersection with Mattawoman Drive. The subject property is undeveloped.

General Plan and Master Plan

(2) The current approved General Plan for Prince George's County, Plan 2035, placed the subject property within the Established Communities Growth Policy Area, which recommends

that these areas are appropriate for “context-sensitive infill and low to medium-density development.” (Plan 2035, page 20). Plan 2035 designates this general area as part of the Brandywine Local Center. (Plan 2035, page 18). This Application is consistent with the General Plan’s recommendations.

(3) The Subregion 5 Master Plan, approved subsequent to the original A-9988 approval of the L-A-C Zone, delineated the limits of the Core and Edge areas of the Brandywine Community Center. The defined center included a portion of the R-M zoned component of the overall Villages at Timothy Branch development, but did not extend the limits as far as the subject L-A-C zoned portion. The land use recommendation for the subject property however, is for Mixed Use land use, consistent with the rest of the Brandywine Community Center core area, and the edge areas north of the planned A-55 alignment.

The Master Plan text describes the area of the subject property as follows:

“The northeastern community center edge includes a portion of the Villages at Timothy Branch community. This community would include a mix of residential uses, predominately single-family attached and detached housing. The developer concept for the northern portion of the Villages at Timothy Branch community includes a mixed commercial and residential node near the intersection of A-63 and MD 381 (Brandywine Road).”

Neighborhood/Surrounding Uses

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

North:	Across Brandywine Road is undeveloped land in the M-X-T(Mixed Use Transit) Zone, single-family detached homes to the northeast in the R-R (Rural Residential) Zone, and medical office building (Medstar Health at Brandywine) in the I-1 (Light Industrial) Zone.
East:	Single-family detached homes in the R-R Zone and Timothy Branch Stream Valley
South:	The developing Timothy Branch Community in R-M (Residential Medium Development) Zone.
West:	Industrial uses in the I-3 (Planned Industrial/Employment Park) and E-I-A (Employment and Industrial Area) Zones, and vacant land in the R-M Zone

(5) The approved neighborhood of A-9988 was all of the “property within one mile of the Property”. Given the land and infrastructure development which has occurred since its initial approval and the subsequent delineation of the Brandywine Community Center by the July, 2013 Subregion 5 Master Plan, a more specific delineation of the neighborhood is useful. The

Applicant now proposes to define the neighborhood more specifically:

North: SMECo right-of-way on the north side of Dyson Road, running east to the railroad

East: Pope's Creek Branch Railroad

South: Timothy Branch, as it runs south of Brandywine Crossing

West: Maryland Route 5

Applicant's Proposal

(6) The overall property is split zoned between the Local Activity Center (L-A-C) Zone portion to the north and the Residential Medium Development (R-M) Zone to the south. This Application to amend the previously approved Basic Plan (A-9988) is limited to the L-A-C Zoned portion of the property, and is filed in order to facilitate a Mixed Retirement Development. Conceptually, the new Mixed Retirement Development component may include single family semidetached, multifamily and single family attached residential units. The previously approved retail/commercial, office, warehousing and distribution, and light manufacturing land uses are no longer proposed or viable for this development.

The L-A-C Zoned portion of the Timothy Branch development has a Gross Tract Area of 72.4295 acres and is located along Brandywine Road with access from existing Mattawoman Drive. This portion of the community was reviewed and approved as Zoning Map Amendment A-9988-C, with a density of 10-15 dwelling units per acre, a dwelling unit range of 640-960 dwelling units, proposed 220,000-270,000 square feet of commercial uses. With this amendment to the Basic Plan, A-9988-01, the Applicant is proposing a Mixed Retirement Development with a density of 2.8-7.5 dwelling units per acre, and a dwelling unit range of approximately 180-480 units

The development proposed with the original approval envisioned this as a mixed-use village center of commercial office, retail uses, light industrial flex space, and a mix of residential unit types that included a multifamily active adult community. Subsequent to the original approval of the Basic Plan, however, the Brandywine Crossing development to the south of the Timothy Branch community was reviewed, approved, and constructed.

Brandywine Crossing encompasses approximately 500,000 square feet of commercial retail space and currently serves as the center of activity in the General Plan and Master Plan's defined Brandywine Community Center. In addition adjacent to the Brandywine Crossing development, there exists an additional 48,000 square feet of office/retail uses in its immediate surroundings. The addition of more commercial space within a mile of Brandywine Crossing would be duplicative, and warrants a new look at the L-A-C portion of the Timothy Branch development.

Additionally, the Southern Area Aquatics and Recreation Complex was recently completed to the north of the subject property, on the west side of Missouri Avenue. This facility, the first multigenerational recreation complex in Prince George's County, serves as a significant locus of public activity to support the Brandywine Community Center, and the subject property is a part of the direct link between the commercial center and this important public facility.

The requested amendment to the Basic Plan will help to support the existing retail center to the south instead of competing with it, and at the same time will provide population to support the activity at the Southern Area Aquatics and Recreation Complex. As such, the proposed active adult use would create a better balance of land use areas around the Brandywine Community Center.

The approved Basic Plan reflects the Following land uses, types and quantities:

Total area:	72± acres
Land in the 100-year floodplain:	8 acres
Adjusted gross area:	64 acres
Density permitted under the L-A-C Zone:	10 – 15 du/ac
Permitted Dwelling Unit Range: -	640 – 960 du
Floor area ratio:	0.2 – 0.4 FAR
Proposed commercial/employment:	220,000 – 270,000 sq. ft.

Proposed Land Use Types and Quantities:

Commercial/office, retail, light industrial flex space for office, manufacturing, warehousing and distribution uses.

LAW APPLICABLE AND CONCLUSIONS OF LAW

(1) The instant Application satisfies both the general purposes of the Zoning Ordinance §27-102(a) and the specific purposes of the L-A-C Zone, §27-494(a) as follows:

(a) The purposes of the L-A-C Zone are to:

- (1) Establish (in the public interest) a plan implementation Zone, in which (among other things):**
 - (A) Permissible residential density and building intensity are dependent on providing public benefit features and related density/intensity increment factors; and**

(B) The location of the zone must be in accordance with the adopted and approved General Plan, Master Plan, Sector Plan, public urban renewal plan, or Sectional Map Amendment Zoning Change;

(2) Establish regulations through which adopted and approved public plans and policies (such as the General Plan, Master Plans, Sector Plans, public urban renewal plans, and Sectional Map Amendment Zoning Changes for Community, Village, and Neighborhood Centers) can serve as the criteria for judging individual physical development proposals;

The development is in close proximity to the Brandywine Community Center, which is a recommendation of both the General Plan 2035 and the Subregion 5 Approved Master Plan and Sectional Map Amendment. The original Basic Plan was approved under the prior General Plan (2002) and Subregion V Master Plan and Sectional Map Amendment (1993). These prior plans recommended this general area for a Brandywine Community Center. The Brandywine Center was specifically described in the 2002 General Plan as follows, "[t]he Brandywine Center is located on both sides of MD 5/US 30 I north of the Charles County line. On the east side is a partially developed employment area. On the west is the Brandywine Special Study Area identified in the 1993 Subregion V Master Plan. This area is currently recommended for a mix of residential, employment and retail uses." (Page 103)

The current plan approvals, Plan Prince George's 2035 (the General Plan) and the 2013 Subregion 5 Approved Master Plan and Sectional Map Amendment, place the L-A-C portion of the Timothy Branch development adjacent to the Brandywine Community Center Edge (Map IV-S: Brandywine Community Center Core and Edges, Page 50). The proposed Active Adult Timothy Branch Community is proximate to the Community Center Edge, and in the vicinity of the Brandywine Community Center Core. Pages 46-50 of the Subregion V Master Plan provides a discussion of the Brandywine Community Center. Map IV-5: Brandywine Community Center Core and Edges (Page 50) depicts certain areas as Community Center Core and Community Center Edge. The southern portion of the Timothy Branch development is within the Community Center Core, and radiating out from that area, a portion of the Timothy Branch development is within the Community Center Edge. The Timothy Branch community is referenced on Page 47, within the discussion of the Community Center Edges, and is described as follows, "The northeastern community center edge includes a portion of the Villages at Timothy Branch community. This community would include a mix of residential uses, predominately single-family attached and detached housing. The development concept for the northern portion of the Villages at Timothy Branch community includes a mixed commercial and residential node near the intersection of A- 63 and MD 381 (Brandywine Road) While these areas are beyond the community center edge, they would be tied to the community center by road linkages and a complementary land use pattern." Plan 2035 acknowledges that the Villages at Timothy Branch community is close to the Brandywine Community Center, and the existing L-A-C Zoning is justified in current Subregion V Master Plan as being proximate to, connected by, and

complementary with the Brandywine Town Center. The L-A-C portion of the project is certainly no further away to a Master Plan Center than it was at the time of the original approval.

(3) Assure the compatibility of proposed land uses with existing and proposed surrounding land uses, and existing and proposed public facilities and services, so as to promote the health, safety and welfare of the present and future inhabitants of the Regional District;

Comprehensive Design Zones are the best tool for accommodating surrounding land uses, by providing appropriate buffers. The active adult community is a more compatible neighbor to both the R-M Zoned portions of Timothy Branch and the abutting single-family detached development in the Brandywine Village subdivision to the east. The existing warehouse use was an existing neighbor at the time of the original basic plan approval, and appropriate buffers can be planned.

(4) Encourage and stimulate balanced land development;

The balance of land development in the surrounding neighborhood, and the change in the proposed development from retail/commercial/employment to an active adult community is a central principle behind the proposal of the subject amendment, and is directly in support of this purpose. Looking at the broader Brandywine community, the Brandywine Crossing approvals and construction have established that area as the hub of commercial activity, and serve the retail needs for the surrounding community. The proposed uses with the previously approved Timothy Branch L-A-C are duplicative to the existing development at Brandywine Crossing. A better balance in land uses would be the currently proposed active adult community, which would support the existing town center development and not detract from its viability.

Furthermore, the proposed Mixed Retirement Community will provide population to support the activity at the Southern Area Aquatics and Recreation Complex, the first multigenerational recreation complex in Prince George's County, and by virtue of its location, the proposed development will reinforce the physical connection between the core of the Brandywine Community Center and this important public facility.

(5) Group uses serving public, quasi-public, and commercial needs together for the convenience of the populations they serve; and

There is no requirement for every L-A-C development to include a public, quasi-public or commercial use. Those land uses are permitted, but not a requirement for the zone. An active adult residential component was included with the original approval.

(6) Encourage dwellings integrated with activity centers in a manner which retains the amenities of the residential environment and provides the convenience of proximity to an activity center.

This Application is proposing all of these things because the appropriate way to view the activity center, particularly subsequent to the 2013 delineation of the Brandywine Community Center area by the Subregion 5 Master Plan, is the Brandywine Community Center. Historically, there has never been a specific, Master-Planned intent to have commercial activity at this location. By removing the retail and commercial component of the approved Basic Plan for the L-A-C Zone, and by expanding the previously-proposed active adult development, the intent of the current Master Plan to support activity in the Brandywine Community Center is fulfilled. On Page 47 of the current Subregion V Master Plan describes the Timothy Branch development concept as located on the northern portion of the Brandywine Town Center Town Center, just outside of the community center edge. Although located just outside of the community center edge, both the Timothy Branch Community and the located further out Stephen's Crossing development are seen by this Master Plan as tied to the Brandywine Community Center "by road linkages and a complementary land use pattern."

(2) Section 27-486. Provides the Density and intensity calculations:

(a) Residential density determinations in the L-A-C and M-A-C Zones shall be based on an average number of dwelling units per gross residential acre. Residential density determinations in the R-S, R-M, R-U, V-M, V-L, and R-L Zones shall be based on an average number of dwelling units per gross acre, minus fifty (50) percent of the density attributed to any land located within a one hundred (100) year floodplain. The base residential density shall be the numerical base to which increment factors may be applied. The base density shall not establish the minimum density for development in the zone. Motel units, hotel units, and living accommodations in institutions shall not be considered as dwelling units.

(b) Portions of the proposal devoted exclusively to a mixed retirement development shall be excluded from the density calculations for the overall proposal, and shall be subject to a separate density calculation specified for mixed retirement development in the general standards for each zone. For the purposes of density calculations, each separate living unit provided in any nursing or care home or assisted living facility shall be considered a dwelling unit. Whatever property in the zone that is not utilized for mixed retirement development shall maintain its approved density, and no density transfer shall be approved.

(c) Commercial intensity determinations shall be based on a gross-building-area-to-gross-commercial-land-area ratio. The base commercial floor area ratio shall be the numerical base to which increment factors may be applied.

(d) Increments shall not be allowed for any improvement which is required to be made by the developer (by other laws or regulations).

(e) Notwithstanding Subsections (a) through (d), above, density limits or a range of density limits lower than those recited in this Section for Comprehensive Design Zones may be established as part of the text of an approved Master Plan, Sector Plan, or other comprehensive planning document.

As approved, the residential density of the L-A-C portion of the Timothy Branch development is 10-15 dwelling units per acre, which is unattainable. The proposed active adult community proposes a development density of 2.8-7.5 dwelling units per acre, and a dwelling unit range of approximately 180-480. The idea of the L-A-C Zone is to provide an integration of land uses, with commercial within close proximity to the residential. As stated in the Subregion V Master Plan, the Timothy Branch development is tied and is in close proximity to the Brandywine Community Center commercial core.

(3) The instant Application also satisfies the specific criteria for the amendment of approved Basic Plan §27-195(b);

(1) Prior to the approval of the application and the Basic Plan, the applicant shall demonstrate, to the satisfaction of the District Council, that the entire development meets the following criteria:

(A) The proposed Basic Plan shall either conform to:

- (i) The specific recommendation of a General Plan map, Area Master Plan map; or urban renewal plan map; or the principles and guidelines of the plan text which address the design and physical development of the property, the public facilities necessary to serve the proposed development, and the impact which the development may have on the environment and surrounding properties; or**
- (ii) The principles and guidelines described in the Plan (including the text) with respect to land use, the number of dwelling units, intensity of nonresidential buildings, and the location of land uses.**

Timothy Branch is in an area recommended for mixed use land use by the Master Plan, and is planned to be integrated with the Brandywine Community Center by the extension of Mattawoman Drive, now under construction. The Subregion V Master Plan, on page 47, specifically discusses the Villages at Timothy Branch development within its Community Center Edges section. The Master Plan described the development as follows, "The northeastern community center edge includes a portion of the Villages at Timothy Branch community. This community would include a mix of residential uses, predominately single-family attached and

detached housing. The development concept for the northern portion of the Villages at Timothy Branch community includes a mixed commercial and residential node near the intersection of A-63 and MD 381 (Brandywine Road) While these areas are beyond the community center edge, they would be tied to the community center by road linkages and a complementary land use pattern." By this text, the Master Plan specifically addresses the design and physical development of the Villages of Timothy Branch project, and how it is a an integrated part of the balance of land uses in and around the Brandywine Community Center.

The January, 2013 plan, "Formula 2040: Functional Master Plan for Parks, Recreation and Open Space," had proposed a multigenerational center "near the intersection of MD 5 and US 301" to serve Service Area 9. (Page 147.) This facility, the Southern Area Aquatics and Recreation Center has recently been completed at 13601 Missouri A venue, approximately a half-mile north of the subject property. The proposed active adult community at the subject property will help to support the activity at this important public facility, and the development at the subject property will help to reinforce the physical connection between the core of the Brandywine Community Center and the new recreation center.

The public facilities are adequate (Technical Staff Report 5/15/2020) and the proposed amendment is not inconsistent with the policies of Plan 2035 and the 2010 Subregion 5 Master Plan and Sectional Map Amendment (Technical Staff Report 5/4/2020)

(B) The economic analysis submitted for a proposed retail commercial area adequately justifies an area of the size and scope shown on the Basic Plan;

While this amendment to the Basic Plan will no longer propose a retail commercial area, and an economic analysis is not a requirement, an economic analysis was provided in support of the proposed Mixed Retirement Development.

(C) Transportation facilities (including streets and public transit) (i) which are existing, (ii) which are under construction, or (iii) for which one hundred percent (100%) of the construction funds are allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or will be provided by the applicant, will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved General or Area Master Plans, or urban renewal plans;

The Mixed Retirement Development use will result in fewer transportation trips than the currently approved mix of commercial, retail, and residential uses. A traffic analysis based on the

proposed Mixed Retirement Community has been included with this Application. Based on the decrease to the density and intensity of development contemplated with the original Basic Plan, even with the maximum range of 480 age restricted dwelling units, the L-A-C area of the Timothy Branch development will continue to generate less traffic than what was projected with the approval of the original Basic Plan and CDP-0901. Technical Staff Report (5/15/2020) concurred and recommended deletion of Condition 2 of the District Council approval of A-9988.

(D) Other existing or planned private and public facilities which are existing, under construction, or for which construction funds are contained in the first six (6) years of the adopted County Capital Improvement Program (such as schools, recreation areas, water and sewerage systems, libraries, and fire stations) will be adequate for the uses proposed;

All public facility adequacy was tested previously with the approval of Preliminary Plan of Subdivision 4-09003. Although a new Preliminary Plan of Subdivision is contemplated for the development of the Mixed Retirement Development, and the public facility adequacy will be reviewed at that time, All facilities are adequate for the uses proposed. This is especially true since the proposed Basic Plan Amendment contemplates an active adult community, which will have a less impact of public facilities than what was originally tested under PPS 4-09003. Technical Staff Report (5/15/2020) concurs.

(E) Environmental relationships reflect compatibility between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District.

The existing environmental relationship between the L-A-C property and its environs was established with the original Basic Plan approval, and the development envelopes approved thereby are not proposed to be altered by this Amendment. The design of the development proposal will continue to provide sufficient buffers between the roads, the existing warehouse, the Timothy Branch Stream Valley, and the surrounding residential to buffer the proposed active adult community. Technical Staff Report (5/18/2020) found that the environmental impacts are envisioned to be within the limits of the previously approved Plans. The impacts on surrounding land uses will be lessened with the conversion to a residential land use, while impacts from abutting non-residential land uses will be evaluated further with the amendment to the CDP. Appropriate conditions and consideration exist in the original approval to ensure this analysis is done at later stages of development. Staff is recommending that the previously approved conditions and consideration be brought forward with the subject Application.

The requested change in use will not result in a change to the Woodland Conservation Threshold, which is currently 15 percent, and there is an approved Type 1 and Type 2 Tree Conservation Plan and on the overall Timothy Branch development. All future applications

will require a Tree Conservation Plan covering the land area included in the application, in accordance with the current regulations.

Brandywine Road (MD 381), which borders the subject property on the north, is a designated historic road. Appropriate buffering for special roadways, consistent with the requirements established by CDP-0901 for this L-A-C portion of the site, should be maintained on future development applications. Matapeake Drive is a Master Plan of Transportation designated arterial roadway, which are regulated for noise with respect to proposed residential development. A noise study will be required with future applications to determine appropriate mitigation for the proposed residential use.

(2) Notwithstanding subparagraphs (C) and (D), above, where the application anticipates a construction schedule of more than six (6) years (Section 27-179), public facilities (existing or scheduled for construction within the first six (6) years) will be adequate to serve the development proposed to occur within the first six (6) years. The Council shall also find that public facilities probably will be adequately supplied for the remainder of the project. In considering the probability of future public facilities construction, the Council may consider such things as existing plans for construction, budgetary constraints on providing public facilities, the public interest and public need for the particular development, the relationship of the development to public transportation, or any other matter that indicates that public or private funds will likely be expended for the necessary facilities.

All public facilities, as demonstrated by the approved Preliminary Plan of Subdivision 4-09003, are adequate.

(3) In the case of an L-A-C Zone, the applicant shall demonstrate to the satisfaction of the District Council that any commercial development proposed to serve a specific community, village, or neighborhood is either:

- (A) Consistent with the General Plan, an Area Master Plan, or a public urban renewal plan; or**
- (B) No larger than needed to serve existing and proposed residential development within the community, village, or neighborhood.**

The redirecting of the L-A-C Zoned portion of the project from retail/commercial/employment focused development to an Mixed Retirement Development is in fact a reinforcement of the intent of this criteria for approval. With the approval and construction of the Brandywine Crossing development, the introduction of additional retail to the Brandywine community may result in an excess of retail space this market. The expansion of the Mixed Retirement Community as the sole

land use to the L-A-C portion of Timothy Branch, however, would positively implement this criteria for approval by ensuring that there are appropriately balanced

RECOMMENDATION

Approval of A-9988-C-01 subject to the following land use types and quantities, and conditions:

Land Use Types and Quantities:

Total area:	72± acres
Land in the 100-year floodplain:	8 acres
Adjusted gross area:	64 acres
Density permitted under the L-A-C Zone:	10–15 du/ac
Permitted dwelling unit range:	640 – 960 du
Floor area ratio:	0.2–0.4 FAR
Proposed Land Use Types and Quantities:	Mixed Retirement Development

Conditions

1. Prior to certification the Basic Plan Map shall be revised to:
 - a. Delineate the M-I-O-Z-Intensity Zone and note on the plan that residential construction within the M-I-O-Z shall conform to Section 27-548.55(b) of the Prince George's County Zoning Ordinance.
 - b. Clarify the land use as either conventional residential, or Mixed-Use Retirement, in accordance with Subtitle 27.