

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

ZONING MAP AMENDMENT

ZMA-2025-003

DECISION

Application:	Request to Rezone from the AR (Agricultural-Residential) Zone to the RSF-A (Residential, Single-Family-Attached) Zone
Applicant:	Day Land Investment, LLC. (Project Name Melwood Estates)
Opposition:	None
Hearing Date:	February 4, 2026
Decision Date:	April 14, 2026
Hearing Examiner:	Maurene McNeil
Recommendation:	Approval with Conditions

NATURE OF REQUEST

(1) ZMA-2025-003 is a request to rezone approximately 27.54 acres of land in the AR (Agricultural-Residential) Zone, consisting of Lot 1 and Outlots A & B, Tax Map 100, Grid B1, to the RSF-A (Residential, Single-Family Attached) Zone. The property is also located in the M-I-O (Military Installation Overlay) Zone for Height, Surface E (Conical Surface), and will remain therein if the request is approved. The property is generally located on the east side of Melwood Road, approximately 1,550 feet north of its intersection with Pennsylvania Avenue (MD Route 4).

(2) The Technical Staff and the Planning Board recommend that the request be denied. (Exhibit 29)

(3) No one appeared in opposition to the request.

(4) At the close of the hearing, the record¹ was left open to allow Applicant to submit some additional items. These were received on March 9, 2026, and the record was closed at that time.

¹ The record consists of 44 Exhibits and one hearing transcript.

FINDINGS OF FACT

Subject Property/Neighborhood/ Surrounding Uses

(1) The Subject Property totals 27.54 acres and is comprised of Lot 8 and Lot 11, Outlots A and B. Lot 8 is subject to Preliminary Plan of Subdivision (PPS) 4-83005, titled Melwood Estates, which was approved on March 10, 1983, for 10 single-family detached dwelling units (PGCPB Resolution No. 83-29), one of which was for Lot 8. Lot 11, Outlots A and B, are subject to PPS 4-88049, also titled Melwood Estates, which was approved on June 30, 1988, for one single-family detached lot and two outlots to be conveyed to the owner of Lot 8 (PGCPB Resolution No. 88-307). The property is subject to both PPS 4-83005 and PPS 4-88049. If the District Council approves this rezoning, a new PPS for the contemplated development would be required. As a result, none of the conditions of approval of the prior PPS apply to this ZMA.

(2) The Subject Property is heavily wooded and improved with two single-family detached dwellings, one on each lot. A horse barn and paddock are located on Lot 8.

(3) The following uses surround the Subject Property:

North: Single-family detached dwellings (part of the Melwood Estates subdivision) in the AR (Agriculture-Residential) Zone, with undeveloped single-family attached lots (on the site of the former German Orphan Home and now known as The Enclave) in the RMF-20 (Residential, Multifamily -20) Zone beyond.

South: Vacant wooded MNCPPC parkland in the ROS (Reserved Open Space) Zone with single-family attached dwellings in the LCD (Legacy Comprehensive Design) Zone beyond.

East: PEPCO transmission right-of-way in the AR Zone and beyond, single-family detached dwellings (the Melwood Manor and Roblee Acres subdivisions) in the RR (Residential, Rural) Zone.

West: Single-family detached dwellings in the AR Zone, and Melwood Road, with single-family detached and attached dwellings(part of the Westphalia Town Center) beyond in the TAC-E (Town Activity Center-Edge) Zone.

(4) The neighborhood is part of the Melwood Estates - Twin Knolls neighborhood. Applicant describes its boundaries as: Bridale Vale Road to the north; a PEPCO utility easement to the east; Pennsylvania Avenue (MD 4) to the south; and the Westphalia Town Center to the west. (Exhibit 36, p.3) Staff proffered a slightly different neighborhood of Westphalia Road to the north and west; Pennsylvania Avenue (MD 4) to the south; and a Potomac Electric Power Company (“PEPCO”) right-of-way to the east. (Exhibit 29, p. 4) Applicant does not argue that there has been a change in the

character of the neighborhood, so the slight difference in its description is not critical. This Examiner accepts the neighborhood as proffered by Staff.

Master Plan/Sectional Map Amendment/General Plan

(5) This case requires a brief analysis of the preliminary Adopted Westphalia Sector Plan ("Preliminary Sector Plan") and Endorsed Sectional Map Amendment ("Preliminary SMA") transmitted by the Maryland-National Capital Park and Planning Commission's Planning Board (The "Planning Board") for Prince George's County to the District Council in July, 2006, and the transcript of the joint hearing held by the Planning Board and the District Council on May 23, 2006, as well as the 2007 Approved Westphalia Sector Plan ("the Approved Sector Plan") and Sectional Map Amendment (the "Approved SMA"). The relevant portion of the May hearing is discussed below under Applicant's Request.

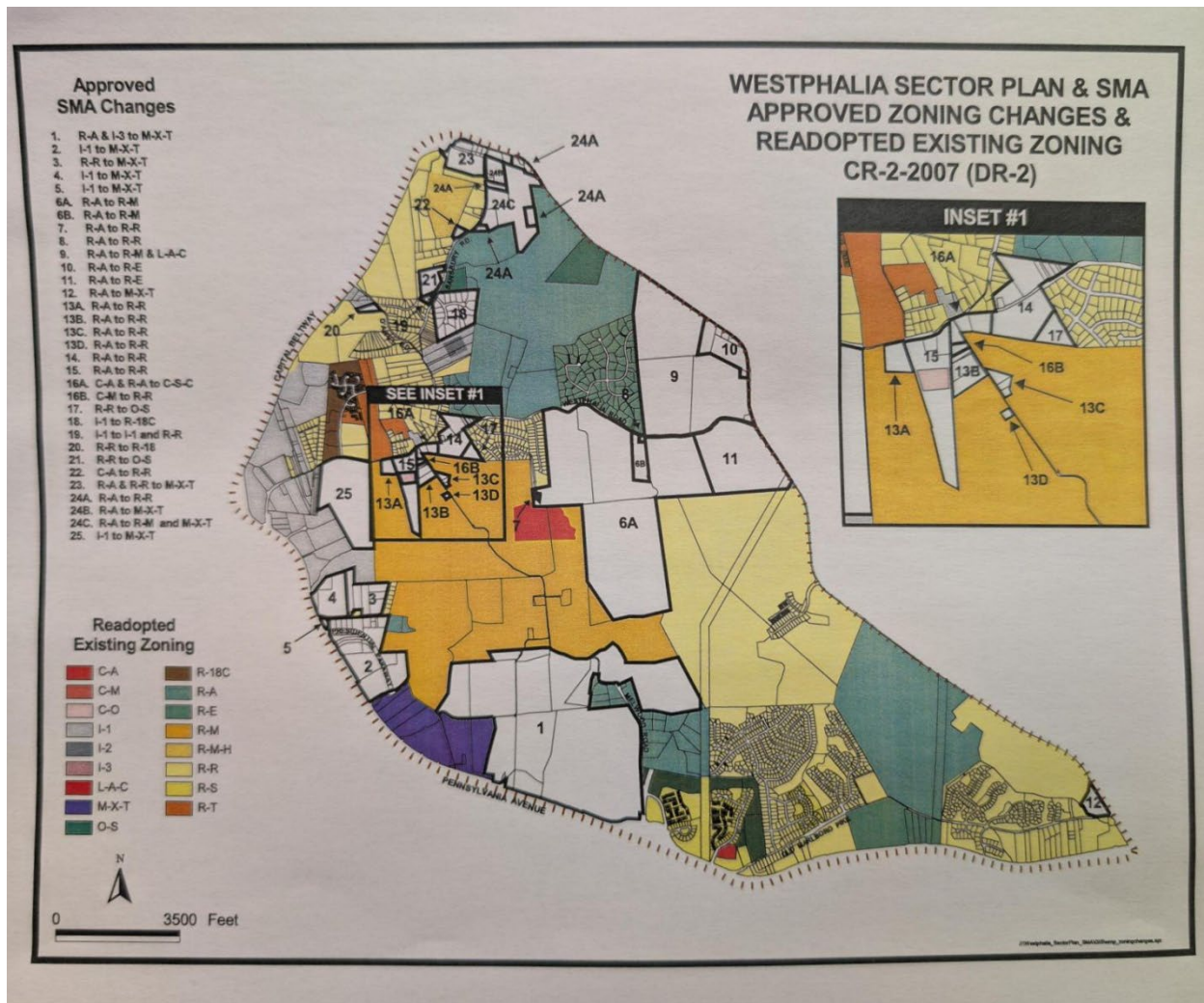
(6) The 2006 Preliminary SMA included a table of existing and proposed zoning inventory that indicated the 1996.84 acres of R-A zoned land would be reduced to 744.9 acres. (2006 Adopted Westphalia SMA, p.51). It also included a Table of Public Zoning Requests. There were 21 requests identified, and the Applicant's was not included. The 2007 Approved SMA included a table referencing the same twenty-one (21) rezoning requests made by the public in the preliminary SMA. Twenty-five zoning changes were approved. The following was provided as a basis for the rezonings:

The [C]ounty's Capital Improvement Plan and Ten-Year Water and Sewerage Plan, as well as existing land use and pending zoning applications, were examined and evaluated in preparation of both the preliminary land use plan and this proposed comprehensive rezoning. Consideration has also been given to the environmental and economic impact of the land use and zoning proposals....

Zoning applications pending during the SMA process are shown on Map 13 and described in Table 3. Requests for rezoning that were submitted by the public following initiation of the sectional map amendment are shown on Map 14 and described in Table 4. The pending applications and requests for rezoning were reviewed in the context of the proposed sector plan land use policies....

The [SMA] includes 25 recommended zoning changes based on the land use and development policies described in the ... [S]ector Plan. The location of approved changes is shown on Map 13 and described in Table 3. These zoning changes result in a new zoning inventory for the area (Table 2)....

(SMA, pp. 47 and 50) The Map below shows all approved SMA changes as well as the areas where existing zoning was readopted. The subject property is part of the area shown in green to the west of approved Change No. 1.



(7) The Approved SMA retained the property in the R-A (Residential-Agricultural) Zone. The Sector Plan recommends "residential low" land use for the property but does not specify the density range. (2007 Approved Plan, p. 12)

Applicant's Request

(8) The Applicant, Day Land Investment, LLC, has been certified in good standing to conduct business within the State of Maryland. (Exhibit 33) It is also a contract purchaser of the subject property. (T. 43-44)

(9) Mr. Mark Sobo, a member of the LLC, was authorized to testify on its behalf at the hearing held by this Examiner. (Exhibits 40 and 44; T. 33) Mr. Sobo adopted and incorporated the Statement of Justification as his testimony. (T. 34) He testified that he resides in the area and has noticed that "the surrounding areas have shifted from the larger lot style development to more compact residential neighborhood." (T. 37) He also

testified that Applicant intends to develop the property with single-family detached dwellings with “no townhouses [and] [n]o multi-family.” (T. 38)

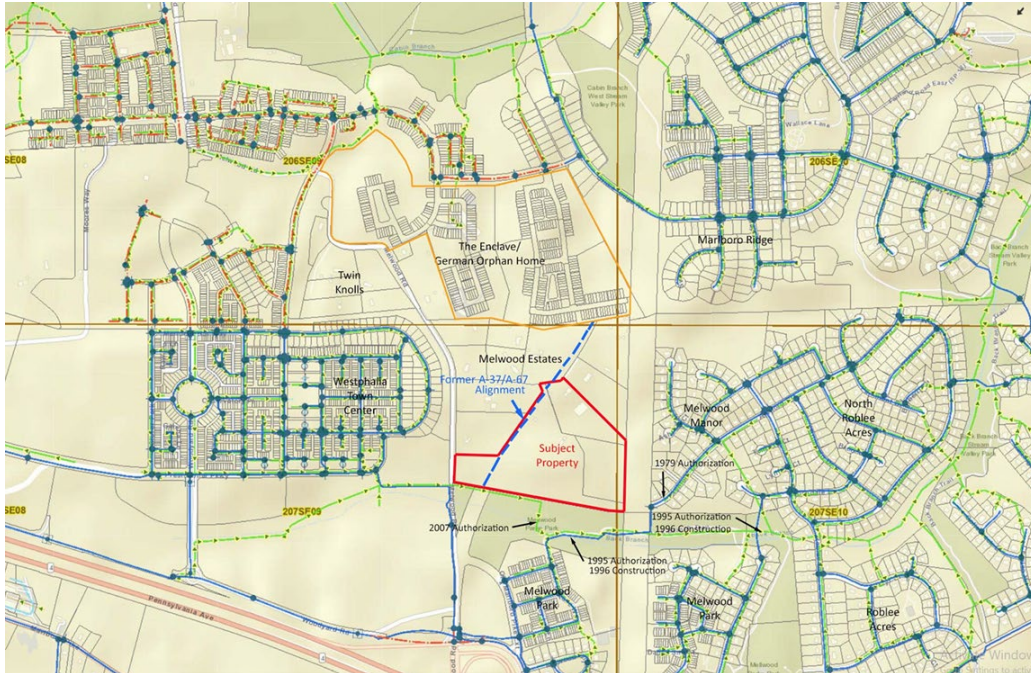
(10) Ms. Jenny Lynn Day has owned the subject property as Trustee for several years, and she and her husband have resided on the property for decades. She testified at the District Council’s hearing on the 2007 Approved SMA and noted her opposition to the recommendation that the subject property remain in the R-A Zone:

According to map 16, our property will be surrounded by M-X-T and R-M-H zoning with an insufficient buffer to Melwood Park which would destroy the rural nature of our property. Our property is adjacent to the Pepco right-of-way, which will provide access to our property through Robbley acres. Map 12 does not show an area of encampment of the British invasion of the army of 1812 and from the historic significance, I think that may want to be included. We do not feel the following are adequately covered in the SMA, road access or access road improvements required to accommodate the expected nearly 20,000 new housing units to prevent excessive traffic on Melwood Road. Provisions made to ensure access to equestrian trails throughout the rezoned area, linking back branch, hiker/biker/equestrian trail and Cabin Branch hiker/equestrian trail. The Claggett farm, Woodside Village, behind the Smith Family farm, is being developed as a horse community. We have a 25-acre horse farm with an arena and two other families living in Melwood Estates have horses, as well. This area was an established Marlboro Hunt fixture and horses have been a time-honored tradition in this area. The horse community is accustomed to transversing neighboring fields, riding along pastures and trails and the Pepco right-of-way. With inevitable and dramatic changes that will be occurring with development, it’s important that trails be established and linked throughout the rezoned area for equestrian activities. The Smith family farm has a good, freestanding barn that would be suitable for housing a Maryland Park Police mounted unit. This would provide additional safety and security to the area. Mounted units have the flexibility to respond quickly to situations, can work through traffic have a flexibility to negotiate their own path, work crowds and get to know the community and police miles of trails and park areas.

Another item that’s not addressed and this will be my last point, on the SMA, is, could rezoning of our property to R-M be accomplished with the provision that current zoning R-A remain in effect until the sale of the property which would then change with the express desire of the purchaser zoning of the property to R-M. We desire such designation zoning. I want to thank you.

(Exhibit 21, pp. 69-71)

(11) Applicant is seeking a rezoning of its 27.54 acres of land located on the east side of Melwood Road, approximately 1,550 feet north of its intersection with Pennsylvania Avenue (MD Route 4) from the AR (Agricultural-Residential) to the RSF-A (Residential, Single-Family -Attached) Zone. Exhibit 37, inserted below and prepared by Applicant’s Land Planner, outlines the subject property in red and shows all of the surrounding development:



The Statement of Justification, prepared by Applicant’s counsel in conjunction with its land planner and civil engineers, provides the following basis for the request:

In keeping with the Sector Plan’s Strategy for its Residential Areas and the quoted Design Principles, the envisioned residential development will be in a compact and distinctly organic form, with lot and block motifs consistent with emerging residential development abutting Westphalia Edge areas, while also preserving and enhancing environmental adaptation of the property. The development will also help to implement the Sector Plan and Master Plan of Transportation (MPOT) by providing roadways in a way that forms a livable and walkable edge to the neighborhood through provision of an extensive interior open space system and internal sidewalks. Designed in an integrated grid of public roads that are integrated with a hierarchy of pedestrian modes: walking, biking, jogging and riding.

Plan 2035

Since the adoption of the Sector Plan and SMA in 2007, the County adopted a new General Plan, known as “Plan Prince George’s 2035” (Plan 2035), which recommends residential low as the future land use. Residential Low is further defined as “Residential areas up to 3.5 dwelling units per acre. Primarily single-family detached dwellings.” (page 100)....

GENERAL CRITERIA FOR ZMA APPROVAL

Pursuant to County Council Bills CB-13-2018 and CB-15-2018, the Prince George’s County Council adopted a new Zoning Ordinance (Subtitle 27 of the County Code) and new Subdivision Regulations, which were to become effective upon the approval of the

Countywide Sectional Map Amendment (CMA). Pursuant to Council Resolution CR-136-2021, the new Zoning Ordinance became effective on April 1, 2022. As a result, the subject property was rezoned from the R-A/M-I-O Zones to the AR/MIO Zones. Pursuant to Section 27-3601(b) of the Zoning Ordinance, an amendment to the Official Zoning Map can be pursued as long as the criteria within the section are met. The Applicant notes that this ZMA application meets these criteria as the Property is not within a Safety Zone of the MIO Zone, does not propose a reclassification to a prohibited zone, and does not request an amendment to more than one zone....

Section 27-3601. Zoning Map Amendment

(e) Zoning Map Amendment (ZMA) Decision Standards.

In determining whether to adopt or disapprove a proposed Zoning Map Amendment (ZMA), the District Council may consider many factors. No amendment to the CBCAO Zone shall be granted without the applicant demonstrating conformance with the decision standards in Section 27-3603(d), CBCAO Zoning Map Amendment Decision Standards. No amendment to a Transit-Oriented/Activity Center base zone shall be granted except in accordance with the locational standards of Section 27-4204(b)(2) of this Ordinance. No other Zoning Map Amendment shall be granted without the applicant demonstrating either:

(1) There has been a substantial change in the character of the neighborhood; or....

The Applicant is not contending that there has been a substantial change in the character of the neighborhood as the basis of the requested rezoning.

(2) There was a mistake in the original zone for the land subject to the amendment which has never been the subject of an adopted sectional map amendment; or....

The Applicant is not contending that there was a mistake in the original zone for land that has never been the subject of an adopted sectional map amendment as the basis for the requested rezoning.

(3) There was a mistake in the current sectional map amendment....

The current AR zoning was put in place through the CMA adopted in November 2021. However, the decision standards for a ZMA outlined in Section 27-3601(e)(3), [state] “[t]here was a mistake in the current sectional map amendment.” The current sectional map amendment for the Subject Property is identified as the 2007 Westphalia SMA, which will be utilized as the most recent zoning, at least with regard to whether there was a “mistake” in the zoning applied to the Subject Property. Therefore, the Applicant contends that retaining the subject property in the prior R-A Zone with the adopted 2007 Westphalia Sector Plan and SMA was a mistake by the District Council. The District Council failed to consider existing facts and trends within the Sector Plan and SMA, which had they been considered, would have resulted in a rezoning of the subject property comparable to the surrounding properties which were rezoned as part of the SMA. An applicant can establish mistake or error by showing that at the time of the rezoning, the zoning authority failed to consider then-existing projects or trends, which

were reasonably foreseeable in the future.... Finding a mistake is concerned with the “adequacy and accuracy of the factual premises that underlie the conclusion-drawing....” A conclusion based on a factual predicate that is incomplete or inaccurate may be deemed a mistake or error....

Given that the subject property abuts the Edge area of the Westphalia Town Center, it was a mistake to fail to consider the Subject Property for rezoning to further support this area and to transition between the town center and the residential densities of the surrounding properties – especially considering the adjacent property to the west beyond Melwood Road was rezoned with the SMA.

As part of the SMA, change number 1 consisted of public rezoning requests (numbers 2, 3 and 4 on p. 81) to rezone approximately 468.12 acres of land from the R-A (Residential Agricultural) and I-3 (Planned Industrial/Employment Park) Zones to the M-X-T (Mixed Use-Transportation Oriented) Zone. At the time, the properties consisted of a farm, institutional use, and mostly vacant wooded land located north of Pennsylvania Avenue (MD 4) on either side of Moore’s Way and Melwood Road. This area contemplated a development concept proposed during the plan review process, and aimed to reflect the intended land use and design character approved for that area. The M-X-T Zone was recommended and approved to promote implementation of a mixed-use development within the Westphalia town center area.

Currently, this area is composed of two major development projects, the Westphalia Town Center and the Enclave at Westphalia. The Westphalia Town Center Conceptual Site Plan application ... approved single-family detached dwellings, townhouses, multifamily, office, and retail uses. The Enclave of Westphalia Conceptual Site Plan..., located north of the subject property, approved the developments surrounding the Subject Property....

The M-X-T Zone was selected for these two development projects in order to implement the Sector Plan’s recommendation for mixed-use development within the Westphalia Town Center Area. The zone allowed “a high density, urban, pedestrian-oriented character within the center core and edge with supportive development in the fringe area.” (p. 85) In line with the Sector Plan recommendations, the proposed town center was divided into Core (77± acres), Edge (260± acres), and Fringe (145± acres) areas....

The Subject Property is located adjacent to the Town Center Edge, within what the Sector Plan discusses as the surrounding “Residential Areas.” These residential areas are encouraged to “develop approximately 3,500 acres of new low-to-medium-density residential areas in a manner that conserves and is integrated with approximately 1,300 acres of existing residential development in accordance with the overall development pattern concept.” (p. 30). According to the SMA’s Development Pattern Element, the policy and design principles for Residential Areas also include “incorporation of a variety of housing types in single-family projects/subdivisions [by]: Build[ing] townhomes and small lot single-family homes to add diversity to neighborhoods *or as a transition between higher density units and lower density single-family neighborhoods...*” (Emphasis added). The design principles recommend designing residential developments that “connect and appropriately transition to pre-existing communities and neighboring commercial areas... to reflect the character of their location within Westphalia, *with areas closer to the town center being more compact and more urban, and outlying areas more rural.*” (p. 31) (Emphasis added). Given the close proximity to

the Town Center Edge, it was a mistake to fail to consider the Subject Property for rezoning to further support the Westphalia Center, and to provide a transition area between the residential densities of the surrounding properties. Especially given the Subject Property is in a prime location between M-X-T and R-R Zones. The AR zone is not only inconsistent with the use of the Subject Property, it is inconsistent with the land use recommendation and the policies and goals of the SMA because it fails to facilitate the intended transition from the dense, mixed-use of the Town Center to low-density residential areas. A medium to high density zoning designation—such as the RSF-A Zone—would permit a higher density residential area that would serve as a transition between the higher density single-family attached dwellings to the west, north, and south with the single family detached dwellings to the east. Rezoning the Subject Property to a higher residential zone would have met the intent for transitional areas as stated in the Sector Plan...

(Exhibit 4, pp. 8-12) The Statement of Justification includes two other mistake arguments. It notes a mistake occurred since the Sector Plan noted that the purpose for the R-A Zone was to encourage the retention of agriculture as a primary land use. Applicant challenges the assumption that its primary use of the land was agricultural in nature and argues that the surrounding areas certainly were not. (Exhibit 4, pp. 11-12). Finally, Applicant believes it was a mistake to retain the R-A zoning given the owner's request to rezone, even if she (appearing without counsel) requested an incorrect zone. (Exhibit 4, p. 13)

(12) The Statement of Justification also notes that the request would not impair the density recommended in the Sector Plan:

In comparing the "Low-Density Residential" land use recommendation with the previous, 1994 Master Plan for Melwood – Westphalia and Vicinity's land use recommendation of "Large Lot/Alternative Low Density" category, it is clear that the Sector Plan's intent was to increase the density of the desired development character of the Subject Property, and its immediate AR-zoned neighbors. The "Low-Density Residential" land use category of the Westphalia Sector Plan is comparable to the more modern "Residential Low" category, which has been defined since Master Plans circa 2010 and in the current [2014] Prince George's 2035 General Plan as "Residential areas up to 3.5 dwelling units per acre. Primarily single-family detached dwellings with a floor of 0.5 dwelling units per acre."

(Exhibit 4, p. 6) The Statement of Justification then explained how the property, located within the surrounding "Residential Areas" discussed in the Sector Plan, would satisfy certain Design Principles therein. (Exhibit 4, pp. 6-8)

(13) Mr. Michael Lenhart, accepted as an expert in transportation planning, prepared a Traffic Impact Analysis ("TIA") for the instant request. (Exhibit 10) The TIA studied the traffic impact that the proposed 87 single-family homes accessed via a driveway along Melwood Road would generate, concentrating on six study intersections close to the subject property: Melwood Road at site access; Melwood Road at Woodyard Road (MD 223); Woodyard Road (MD 223) at Old Marlboro Pike; Woodyard Road (MD 223) at

Pennsylvania Avenue (MD 4) South Ramps; Old Marlboro Pike at Old Marlboro Pike extension; and, Old Marlboro Pike at Melwood Chapel Lane.... After evaluating current traffic, background traffic, and the traffic expected if the property were developed as proposed all study intersections will operate within acceptable thresholds. (Exhibit 10, p. 19) Mr. Lenhart also testified at the hearing held by this Examiner. He stressed that the site is integrated into an existing roadway network that can easily accommodate traffic generated by the Application if it is approved; and it would not add a substantial amount of traffic to the overall road network. (T. 56-57) He also noted that the Planning Board's Transportation staff agreed with his conclusions, and adequacy will be reviewed at the time of preliminary plan of subdivision. (T. 61 and 65)

(14) Mr. Dan Schlegel and his firm, Dewberry Engineers, prepared a Natural Resources Inventory for the site that was approved. (T. 46) He and/or his team did a preliminary review of the site to "best prepare a layout and meet the density for the property", and preliminary engineering for the road grades, stormwater management, and calculations for the tree conservation plan. (T. 46) Finally, he noted that the property is in Water and Sewer Categories W4 and S4. (T. 49)

(15) Mr. Mark Ferguson, accepted as an expert in land use planning, prepared a Land Planning Analysis in support of the request. (Exhibit 36) The analysis provided, in pertinent part, as follows:

The proposed use associated with Zoning Map Amendment application ZMA-2025-003 is the construction of up to approximately 99 single-family dwellings (i.e. 3.5 dwelling units per acre), on lots conforming to the Intensity and Dimensional Standards for the RSF-A Zone. To limit the potential development of the property for other uses, or a greater permissible density of single-family dwellings as would be allowed by the maximum permissible density for single-family dwellings in the RSF-A Zone, the Applicant has proffered two conditions to restrict permissible Residential Uses to single-family detached dwellings, and to cap the permissible development density at 3.5 units per acre so as to conform to the density associated with the Sector Plan's land use recommendation.

This planner also notes that while ordinarily a Planned Development Zoning Map Amendment would be the best way to implement the recommendations of the sector plan in the way which this Zoning Map Amendment proposes, the Location Standard provision of Section 27-4302(a)(4) restricts the R-PD Zone from being applied to a property classified in a Rural and Agricultural Base Zone, which category includes the AR Zone in which the subject property is classified....

In its original Statement of Justification, the Applicant has contended that three mistakes were made by the District Council in retaining the prior R-A Zone at the subject property. This planner concurs with the Applicant's contentions. This report adds discussion of an additional mistake, the failure to consider the existing and planne[d] water and sewer service for the surrounding development and its relationship to the subject property.

The first mistake alleged by the Applicant is that the retention of the subject property in the prior R-A Zone was contrary to the Goals and Policies of the Sector Plan for the Westphalia Town Center and the surrounding Residential Areas with respect to the

density and character of planned development. This report adopts and incorporates the Applicant's discussion in pages 9-12 of its Statement of Justification (which was drafted in part by this planner). It is to be noted for clarity that Staff identifies this discussion in the Technical Staff Report as "Mistake 2."

The second mistake alleged by the Applicant is that the retention of the subject property in the prior R-A Zone was premised on an incorrect description of the existing land uses on and around the subject property in the 1994 Melwood-Westphalia Master Plan and Sectional Map Amendment. This report also adopts and incorporates the Applicant's discussion on page 12 of its Statement of Justification. It is to be noted for clarity that Staff identifies this discussion in the Technical Staff Report as "Mistake 1."

The third mistake alleged by the Applicant is that the retention of the subject property in the prior R-A Zone did not consider the merits of the request for rezoning made by the property owner at the Joint Public Hearing on May 23, 2006. This report also adopts and incorporates the Applicant's discussion on page 13 of its Statement of Justification....

In its Statement of Justification, the Applicant contended that the District Council did not serve the Goals and Policies of its own Sector Plan by retaining the prior R-A Zoning of the subject property in the Sectional Map Amendment.

Staff contends that the Applicant provided no proof that the District Council was unaware or mistaken about the property's location, and absent proof of the negative proposition of the Council's unawareness, that the Council must have simply engaged in protected bad judgment: The language of the Court of Appeals in its ruling in *People's Counsel for Balt. City v. Beachwood I Ltd. P'ship* certainly provides that,

"a conclusion based on a factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second guessing."

This planner would dryly point out that absent the existence of a positive error about the subject property's location, anything in the record discussing the location of the subject property would necessarily be evidence of the Council's actual and correct awareness. Staff here expects the Applicant to disprove its own argument in order to prove its validity.

This planner acknowledges that the District Council might very well have been capable of approving the 2007 Sectional Map Amendment having operated on the (bad) judgment that development of the subject property under the provisions of the prior R-A Zone would in fact provide for a sensitive transition, would be compatible infill to the existing neighborhood scale and character, and meet the other Goals and Policies enumerated in the Applicant's Statement of Justification; the damning provision of the Sectional Map Amendment that it did not, however, is its action in rezoning what was listed in the Sectional Map Amendment as Public Rezoning Request 4.

Public Rezoning Request 4 was for the German Orphan Farm Property, which was also classified in the prior R-A Zone before the adoption of the 2007 Westphalia Sector Plan and Sectional Map Amendment. As described above, the site of the German Orphan Home was just five hundred feet north from the subject property, and also had its access

from Melwood Road. This site, together with other nearby properties inside the Town Center's limit, was rezoned as Zoning Change Number 1 to the M-X-T Zone in order to "promote implementation of the sector plan recommendation for mixed-use development within the Westphalia town center area. This zone allows a high-density, urban, pedestrian-oriented character within the center core and edge with supportive development in the fringe area...."

This explicitly-stated summary of the Plan's Goals and Policies is the best evidence to this planner that an active consideration of facts simply did not happen regarding the subject property's location with respect to those Goals and Policies, despite its proximate, similarly-situated and similarly-zoned situation to property which was rezoned....

In its Statement of Justification, the Applicant contended that there has been an error of fact which was carried forward from the 1994 Melwood-Westphalia Master Plan and Sectional Map Amendment, describing the neighborhood of the subject property as one where, "stables and horses are as much a part of this neighborhood landscape as houses and people."

As noted in the neighborhood description, above, there are nineteen single-family detached dwellings along Melwood Road in the Twin Knolls and Mellwood Estates subdivisions and a couple of parcels of acreage. To rebut the applicant's argument, Staff expended four pages of text (correctly) pointing out that there are (or were) horses kept by three of the residents of these dwelling[s], and that care of horses is a part of the definition of agriculture.

This planner finds it ironic that the owner of the subject property is the resident with the largest paddock and horse barn, and that this owner (cited by the Technical Staff Report as "the previous owner;" this is technically true – she conveyed title to a family trust of which she is a trustee), in making her request to the District Council for her property to be rezoned, was the primary source for MNCPPC's contention about the agricultural character of the neighborhood. Notwithstanding the assured historic presence of horses on the subject property, this planner stands by his characterization of the nineteen single-family detached dwellings as large-lot residential, with the further stipulation occasional accessory and noncommercial horse keeping is present, but in no way are "stables and horses are as much a part of this neighborhood landscape as houses and people," nor have they [ever] been since the subdivision of Twin Knolls and Melwood Estates.

As such, this planner agrees with the Applicant's arguments, observing also that the locus of equestrian activity in the surrounding area is now at the eastern edge of the Marlboro Ridge development, in the RR Zone....

With respect to the discussion in Applicant's Statement of Justification and Staff's analysis in its Technical Staff Report on the Applicant's final alleged mistake, this planner would add two observations:

First, the property owner did not ask for "residential multifamily" zoning, as repeatedly alleged in the Technical Staff Report; she asked instead for application of the R-M (Residential Medium Development) Zone, the same zone which had been approved for

the Smith Home Farm application further north on Melwood Road just two months before the May 23, 2006 Joint Public Hearing, and for which a Water and Sewer Category Change had also been granted by CR-7-2006 a month before the Smith Home Farm zoning approval.

The second observation is that the property owner's request at the Joint Public Hearing did not seem to officially register: In the text of the Sectional Map Amendment, neither Map 19 nor Table 4 reflect Mrs. Day's request. This omission of Mrs. Day's request in the Sectional Map Amendment is further evidence that important facts about the property were not considered by the District Council in the retention of the prior R-A zoning of the subject property....

While not argued by the Applicant in its Statement of Justification, this planner observes that one very important aspect of land use planning was not treated at all in the Sector Plan: the provision of public water and sewer service.

A review of the history of amendments to the County's Ten Year Comprehensive Water and Sewer Plan reveals that the entirety of the subject property was classified S-4 by 2002, many years before the preparation of the sector plan, and well in advance of other properties surrounding the subject property.

On Page 5 of the Technical Staff Report, Staff states that the subject property was rezoned by the 1980 Sectional Map Amendment from R-R to the recently-created R-A Zone, "because of its location 'in System Area 6 with a small part of Parcel 11 in System Area 4' (page 79)." This statement is in concord with this planner's research: Part of Mellwood Estates, specifically all of the land therein which lay east of the then-planned A-67 alignment of Woodyard Road extended, and including virtually all of the subject property, was classified in Category S-4 in 2002, with the remaining area of Mellwood Estates being classified in category S-5.

This planner does not have access to the 1980 SMA, however, Staff goes on to say that,

"the properties included in this application would have been impacted by a capital project to 'extend sewer service from Turkey Branch to the Robershire Subdivision, which fronts on Brown Station Road.' (page 71). However, it is noted that these capital improvements were not completed because 'no projects have been proposed to extend the Turkey Branch Line or provide sewer lines in other branches to allow suburban development on the south side of White House Road'"

Unlike the description of the water and sewer categories of what is almost certainly the parent of the subject property, this planner does not find staff's subsequent analysis to be credible in any way, as Turkey Branch is two and a half miles north of the subject property, and outfalls into Western Branch some miles above Back Branch, which lies next to the subject property. Because of the intervening topography, there is no physical way that a gravity sewer line could have been extended from Turkey Branch to even the remote vicinity of the subject property.

Back Branch, however, abuts the subject property, and immediately following the approval of System Area S-4 for Smith Home Farm in 2006, the extension of public

water and sewer was authorized by WSSC, with the trunk sewer running immediately adjacent to the subject property in the Back Branch stream valley, and a water main extending up Melwood Road to the southwest corner of the subject property, at which point it bend[s] left into the Westphalia Town Center. The final engineering for these mains was approved by WSSC pursuant to their 2007 authorization in 2013, and were constructed by 2018.

There is no discussion at all of water and sewer facilities, the prior public planning therefore, or the planning and zoning implications of the presence of public sewer service in the 2007 Sector Plan. This is particularly confounding because much of the development which is the focus of the Sector Plan relies on the very sewer which now runs adjacent to the subject property.

This planner contends that had this information been in the record, it would have led to a different conclusion as to the appropriate zoning classification for the subject property, particularly given the Goals and Policies laid out in the Sector Plan....

(Exhibit 36, pp.6-10)

(16) LaShauna Tillmon resides in the Westphalia development. She submitted written comments and testified in support of the request, noting it will bring more housing, which is crucial to bringing quality economic vitality to the area. (Exhibit 23; T. 11-14)

(17) Robert Yates Claggett also submitted written comments and testified in support of the Application. He resides in the area and is a real estate agent. He supports the concept of bringing single-family detached dwelling units to the area. (Exhibit 22) Applicant submitted a document prior to the close of the hearing that indicates that Mr. Claggett is also a contract purchaser and that the two purchasers intend to develop the site solely with single-family detached dwellings. (Exhibit 43)

Agency Comment

(18) The Planning Department's ("Planning Department") Community Planning Division provided comment on the application. In particular, staff noted that the preceding Sectional Map Amendment that included the subject property—the 1980 Sectional Map Amendment (SMA)—for Planning Area 77 and 78 Melwood–Westphalia ("Melwood–Westphalia SMA") rezoned a portion of the subject property from the R-R (Residential Rural) Zone to the R-A (Residential Agricultural) Zone "because of its location ... in Sewer System Area 6 with a small part of Parcel 11 in System Area 4." (Exhibit 29, Backup p.28; 1980 Melwood–Westphalia SMA, p. 79) Staff further pointed out that the subject properties included in this application would have been impacted by a Capital Project to extend sewer service from Turkey Branch to the Robershire Subdivision, which fronts on Brown Station Road (but the improvements did not occur) since "no projects have been proposed to extend the Turkey Branch Line or provide sewer lines in other branches to allow suburban development on the south side of White House Road." (Exhibit 29, Backup p.28; 1980 Melwood-Westphalia SMA, p.71)

(19) The Planning Department's Historic Preservation Section recommended approval noting: (1) the Sector Plan contained no specific goals or policies concerning Historic Preservation applicable to the site or the proposed development; and (2) the probability of archeological sites being located within the subject property is low. (Exhibit 29, Backup p.26)

(20) The Planning Department's Environmental Planning Section reviewed the applicable environmental goals and policies of the 2014 General Plan, the Countywide Green Infrastructure Plan (approved within the 2017 Approved Resource Conservation Plan), and the Sector Plan and determined that most of the site is within designated Evaluation Areas with Regulated Areas located along the eastern area of the site, many of the goals/policies will be reviewed at later stages if the request is approved, as will woodland conservation and compliance with the Landscape Manual. It noted that the Zoning Ordinance does not require an approved Natural Resources Inventory ("NRI") at this stage, although Applicant had submitted one for review that shows regulated environmental features, several forest stands, and specimen trees on site. A Tree Conservation Plan will be required at a later stage if the request is approved, but the NRI reveals 21.73 acres of woodland on-site and no wooded floodplain. The rezoning would result in a substantial decrease in woodland conservation. The Environmental Planning Section therefore recommended that the Applicant be required to provide the reduced 20 percent woodland conservation threshold on-site, and that any unforested riparian buffers on-site be afforested as required in Section 25-121(c)(3) of the Prince George's County Code. (Exhibit 29, Backup pp. 38-39)

(21) The Planning Department's Transportation Planning Section stated that the property is located within Transportation Area ("TSA") 2. While noting that further transportation facility adequacy tests will occur at later reviews if the request is granted, it did provide the following conclusions:

Based on the findings presented . . . , staff find that transportation facilities as well as pedestrian and bicycle facilities within the proposed application are consistent with Section 27-3602 of the zoning ordinance. The proposed re-zoning of the property will not impair the ability to make transportation-related recommendations that are supported by an approved Master Plan or Functional Master Plan or included in the subdivision regulations and zoning ordinance, with the following condition:

1. Prior to the acceptance of a preliminary plan of subdivision, the applicant, and the applicant's heirs, successors, and/or assigns shall:
 - a. Submit a Traffic Impact Study ("TIS") to evaluate transportation adequacy as part of the preliminary plan of subdivision and certificate of adequacy applications.

(Exhibit 29, Backup p. 42)

(22) The Planning Department's Subdivision Section provided the following comment:

The property subject to this Zoning Map Amendment (ZMA-2025-003) is located in Tax Maps 91, Grid B4 and 100, Grids A1 and B1. It contains a total of 27.54 acres and consists of Lot 8, recorded in the Land Records in Plat Book NLP 118, page 67, approved on December 1, 1983; and Lot 11, Outlot A, and Outlot B, recorded in Plat Book NLP 147, page 100, approved on July 13, 1989. The property is currently developed for commercial use and is occupied by a catering service on Lot 8. The remainder of the subject property is wooded and vacant. Lot 8 is subject to Preliminary Plan of Subdivision (PPS) 4-83005, titled Melwood Estates, which was approved for 10 single-family, detached dwelling units (PGCPB Resolution No. 83-29), one of which was Lot 8. Lot 11, Outlot A and Outlot B are subject to PPS 4-88049, also titled Melwood Estates, which was approved for one single-family detached lot and two Outlots to be conveyed to the owner of Lot 8 (PGCPB Resolution No. 88-307).

The applicant has requested to rezone the subject property from its current Agricultural-Residential (AR) Zone to the Residential, Single-Family-Attached (RSF-A) Zone, pursuant to Sections 27-3601 and 27-3602 of the Prince George's County Zoning Ordinance, for development of residential single-family detached dwelling units.

This application is solely to rezone the subject property to the RSF-A Zone. However, the applicant has provided a development concept plan indicating that, if the rezoning is approved, the applicant plans to propose razing the existing structures to accommodate the development of residential single-family detached dwelling units. The following comments are provided for informational purposes and do not pertain to the rezoning request, but rather to the contemplated development proposal. The development shown on the concept plan would be required to file preliminary plan of subdivision (PPS), detailed site plan, certificate of adequacy (ADQ) and final plat applications for the property. These applications would be required following the ZMA, if approved, and prior to the approval of building permits.

The 2018 Water and Sewer Plan placed this property in the Water and Sewer Category 4, "Community System Adequate for Development Planning". Administrative amendment from Category 4 to 3 is required prior to a final plat.

The western boundary of the property has frontage on Melwood Road, a scenic and historic road with a variable width right-of-way requiring buffering from the proposed development, which would be reviewed with the subsequent applications.

Access to the site is proposed from its frontage on Melwood Road. The site also has access via an existing 22-foot-wide access easement (also known as Melyard Road) at its northern boundary, which connects to Melwood Road. Access to the property will be evaluated at the time of PPS in accordance with Section 24-4200 and Section 27-6200, should this ZMA be approved. The review of mandatory dedication of parkland and master plan trails, among other requirements, would also be reviewed with a PPS. The southern boundary of the property abuts property owned by the Maryland-National Capital Park and Planning Commission (M-NCPPC) containing Melwood Parke Park (Park ID R06), which is developed with the Black Branch Trail. A connection to that trail may be appropriate and the location of recreational facilities should be incorporated with design of the site, should this project move forward to PPS....

(Exhibit 29, Backup pp. 43-44)

(23) Prior to the release of its report, the Technical Staff received correspondence in support of the request, but none in opposition. (Exhibit 29, p. 16)

(24) The Technical Staff ultimately concluded that the Application should be denied, based on the referrals received, and the Applicant's Statement of Justification ("SOJ"), reasoning in pertinent part as follows:

To approve the requested zoning map amendment, Section 27-3601(e) of the Zoning Ordinance states the following:

In determining whether to adopt or disapprove a proposed zoning map amendment (ZMA), the District Council may consider many factors. No amendment to the CBCAO Zone shall be granted without the applicant demonstrating conformance with the decision standards in Section 27-3603(d), CBCAO Zoning Map Amendment Decision Standards. No amendment to a Transit-Oriented/Activity Center base zone shall be granted except in accordance with the locational standards of Section 27-4204(b)(2) of this Ordinance. No other zoning map amendment shall be granted without the applicant demonstrating either:

- (1) There has been a substantial change in the character of the neighborhood; or**
- (2) There was a mistake in the original zone for the land subject to the amendment which has never been the subject of an adopted sectional map amendment; or**
- (3) There was a mistake in the current sectional map amendment....**

[The applicant's SOJ contends that the Zoning Map Amendment should be approved, based upon Section 273601(e)(3) of the Zoning Ordinance, because there was a mistake in the current SMA. The following is the staff's analysis of the applicant's stated mistakes:]

Mistake 1: Mistake in the 2007 SMA

The applicant states that the 2007 Westphalia SMA carried forward a mistake in the 1994 Master Plan and SMA. The applicant's revised SOJ, dated August 18, 2025, reads "'Within the 1994 Melwood Westphalia Approved Master Plan and Sectional Map Amendment, the Subject Property was in an area described as "beyond the transmission lines, are nine homes on larger, more rural parcels in the O-S and R-A Zone; stables and horses are as much as part of this neighborhood landscape

as are houses and people" (page 52).

The applicant goes on to argue that Section 27-4201(d)(l) of the Zoning Ordinance states that, "the purposes of the Agricultural-Residential (AR) Zone are: (A) To provide for large-lot single-family detached residential subdivisions, while encouraging the retention of agriculture as a primary land use; (B) To encourage the preservation of trees and open spaces; and (C) to prevent soil erosion and stream valley flooding" (page 12). The applicant contends that the subject property is residential in use and character and that retaining the subject property's R-A zoning, at the time the District Council adopted the 2007 Westphalia SMA, was a mistake of fact and a failure to consider its use, location, and character within the context of the SMA.

As previously noted, in SDRC comments, staff requested that the applicant provide information demonstrating that the description of the property and surrounding area in the 1994 Master Plan and SMA was incorrect and that this description was relied upon in retaining the R-A zoning in the 2007 Westphalia SMA. The applicant responded that the arguments regarding the 1994 Master Plan and SMA were "moot" because the 2007 Westphalia SMA supersedes the 1994 Master Plan and SMA (see SDRC response letter). Given the lack of a link between the 1994 Master Plan and SMA and the 2007 Westphalia SMA, staff concur with the applicant. Arguments regarding the 1994 Master Plan and SMA are moot. Staff, nonetheless, address the substance of the applicant's arguments here for purposes of completeness.

First, regarding the existing use and character of the subject property, staff does not find that the description of the subject property and adjacent parcels in the 1994 Master Plan were inaccurate. There is no evidence that there were not "stables and horses" on the subject property or within the immediate vicinity. In fact, aerial imagery from 1993 reveals what appear to be agricultural structures on the subject property. Therefore, staff find there is no evidence that the District Council's adoption of the 2007 Westphalia SMA carried forward a mistake.

Second, regarding the contention that the subject property is residential in use and character, per Section 27-426(a), the purposes of the R-A Zone are identical to the purposes provided for in the current AR Zone noted above, in Section 27-4201(d)(1). Per Section 27-107.01(a)(9) of the prior Zoning Ordinance, the definition of "Agriculture" reads, in part, "Agriculture includes equine activities and equine facilities. Equine activities include teaching equestrian skills, participating in equestrian events, competitions, exhibitions or other displays of equestrian skills, and caring for, breeding, boarding, dealing, selling, renting, riding or training equines. Equine facilities include barns, stables, rings,

paddocks or accessory buildings or structures used for equine activities." In addition, the principal use classification dwelling, one-family detached (in general) is permitted by right in the R-A Zone and as part of a property assembly with an equestrian recreational facility. Aerial imagery obtained by staff, via PGAtlas, demonstrate that the subject property contains residential and agriculture uses including horses, barn, paddock, stable and other agricultural equipment dating back to at least 1993. The property can simultaneously contain a residence and structures, activities, animals and equipment associated with agriculture.

In addition, the previous owner of the subject property or a portion thereof, Jenny Day, testified to the District Council on May 23, 2006, that "We have a 25-acre horse farm with an arena and two other families living in Melwood Estates have horses, as well. This area was an established Marlboro Hunt fixture and horses have been a time-honored tradition in this area. The horse community is accustomed to transversing neighboring fields, riding along pastures and trails and the PEPCO right-of-way. With inevitable and dramatic changes that will be occurring with development, it's important that trails be established and linked throughout the rezoned area for equestrian activities" (JPH Transcript, p. 70, ln. 12-14).

Staff find that the applicant has not demonstrated that the District Council made a mistake of fact when it adopted the 2007 Westphalia SMA. The District Council had at its disposal the necessary planning tools, studies, public input and data, which provided a comprehensive analysis of the planning area. This enabled it to make a deliberate legislative decision to retain the subject property's R-A zoning designation.

Mistake 2: Factual Inconsistency with Zoning Purpose

The applicant states that the District Council erred when it failed to consider the subject property for rezoning to support the development of the Westphalia Town Center and to provide a transition between residential densities in the surrounding area. Specifically, the applicant argues that the District Council erred by failing to rezone the subject property to a higher density due to its adjacency to the TAC-E Zone stating "...that the requested RSF-A Zone provides the best comparable zone for development of single-family detached homes that will complement and be consistent with the surrounding Westphalia area" (page 3).

Staff find that this argument does not support a finding that the District Council made a mistake of fact when it retained the subject property in the R-A Zone. An argument for mistake that relies on the surrounding zoning should include proof that the District Council was unaware of or mistaken about the property's location, with respect to the surrounding

zoning (see *Beachwood I Limited Partnership*, 107 Md. App. at 654-56; *Howard County v. Doresy*, 292 Md. 351, 364-65 (1982)). The applicant has provided no such evidence. Under these circumstances, questioning whether AR (prior R-A) is an appropriate transition between TAC-E (prior M-X-T) and RR (prior R-R), considering the Sector Plan recommendations, would be questioning the Council's judgement, rather than identifying an error in its assumptions. As mentioned above, the District Council had at its disposal the information necessary to make an informed, deliberative legislative decision. The District Council is within its right to choose the most restrictive zoning designation to transition from an urban edge. The applicant is essentially arguing that the District Council made a poor planning choice- [an] error in judgement- but provides no evidence that it relied on an incorrect or missing fact in its decision making. As noted above, even "a case of bad judgment [...] is immunized from second-guessing" *Id.* at 645.

Mistake 3: Failure to Fully Consider Property Owner Testimony

In the revised SOJ, the applicant contends that the previous owner's (Jenny Day) May 23, 2006, request to rezone the subject property from the R-A Zone to a residential multifamily zoning class zone- while stipulating that the R-A Zone remain in effect until the property was sold- demonstrates that the Council overlooked existing facts that supported higher residential density for the site.

The transcript analysis of the May 23, 2006 Joint Public Hearing (JPH Transcript), which was provided to the District Council for its July 11, 2006 Work session, contains responses to Ms. Day's testimony. With respect to Ms. Day's request for residential multifamily zoning upon sale of the property, the Transcript Analysis provided an explanation of the proper means of securing residential multifamily zoning:

"There are established procedures in the Zoning Ordinance that allow an applicant to request a rezoning through a zoning map amendment process, whenever the applicant is ready to do so. Alternatively, rezoning may occur in an SMA, but under either process rezoning becomes effective upon approval. There are no procedures in the zoning ordinance that allow approval of any rezoning that becomes effective upon sale of the property" (page 63).

This is an accurate statement of how the requested residential multifamily zone may be approved. Specifically, the residential multifamily zone is a Comprehensive Design Zone (CDZ). Accordingly, under the prior Zoning Ordinance, a property owner could apply for the residential multifamily zone via ZMA, accompanied by a basic plan (prior Zoning Ordinance § 27-179). Notably, because the residential multifamily zone was a CDZ, no finding of mistake would have been required. The residential multifamily zone could also have been imposed via an SMA, if a ZMA application,

including a basic plan, was provided (prior Zoning Ordinance §§ 27-223(b)(1); 27-179(c)(l)(D)). However, as noted in the applicant's SOJ, the 2007 Westphalia SMA did not include a basic plan for the subject property. Based on the foregoing, the subject property was retained in the R-A Zone. Accordingly, rather than demonstrating evidence of a mistake, the record demonstrates that the District Council granted the permissible part of Ms. Day's request - retaining the subject property in the R-A Zone. It also declined the improper portion of Ms. Day's request - rezoning to residential multifamily upon sale of the property - based on the accurate information that the residential multifamily zone could subsequently be requested through the ZMA process, under the prior Zoning Ordinance.

The applicant bolsters its argument that Ms. Day's testimony should have been treated only as a request for up-zoning by noting that "adjacent and nearby properties were rezoned to the M-X-T zone pursuant to the principals laid out in the Sector Plan for similarly situated land" and that "the District Council did not account for the Property's existing use, location and character." This appears to be a call back to "Mistake 1" and "Mistake 2" above. As detailed above, staff does not find either "Mistake 1" or "Mistake 2" meet the standard for a finding of mistake.

Therefore, the applicant has not demonstrated that the District Council made a mistake of fact by granting the legally permissible portion of the prior owner's request.

Staff find that the applicant has failed to demonstrate that the District Council made a mistake of fact regarding the prior owner's testimony.

Conclusion

For a mistake to be a legally justifiable basis for rezoning, there must have been a basic and actual mistake by the legislative body, in this case the District Council.

Staff find that the applicant has not demonstrated that a mistake of fact occurred when the District Council adopted the 2007 Westphalia SMA. Staff confirmed that the prior R-A (current AR) zoning designation is consistent with the use, location, and character of the subject property and the abutting and adjacent properties in the AR Zone. Per Section 27-441 of the prior Zoning Ordinance, the R-A Zone permits, by right, one-family detached dwellings, in addition to dwellings associated with equestrian recreational facilities, horses, and other agricultural activities. Recent aerial imagery shows an equine/agricultural use on a portion of the subject property and testimony from the previous owner confirms these uses and demonstrates the importance of equine culture in this

community-as noted in the 1994 SMA.

Staff find that the applicant has not demonstrated a mistake of fact regarding the assertion that the District Council erred when it retained the property in the R-A Zone for the subject property (and surrounding area), which is located between land in the TAC-E (prior M-X-T) and RR (prior R-R) Zones. The Council had all necessary planning tools and data at its disposal to make a deliberate and informed legislative decision regarding the subject property's role as a transition area. The choice of the most restrictive zoning to buffer the TAC-E (prior M-X-T) Zone is a policy judgment, which cannot be second guessed at this juncture. The applicant's argument is legally insufficient to prove a "mistake of fact."

Staff find that the applicant has not demonstrated a mistake of fact regarding the previous property owner's testimony on May 23, 2006. The Council retained the R-A zoning, which was the only legally permissible portion of the owner's request. Rejecting the request for conditional residential multifamily zoning was a correct application of the law, not a factual oversight. The Council acted lawfully and consistently with the portion of the request that was viable.

(Exhibit 29, pp.6-14)

(25) The Department of Permitting, Inspections and Enforcement ("DPIE") discussed various roadway frontage improvements and stormwater management that will need to be addressed if the request is approved. It also advised that the 2018 Water and Sewer Plan designates the subject property in Water and Sewer Category 4, inside the Sewer Envelope, in the Growth Tier, and within Tier 1 under the Sustainable Growth Act, and approved for sewer service. (Exhibit 29, Backup pp. 46-48)

APPLICABLE LAW

(1) The request must satisfy the following provisions found in Section 27-3601 (e) of the Zoning Ordinance;²

(a) General

² The other Sections are provided for the District Council's reference in considering the recommendation provided herein.

This Section establishes a uniform mechanism to amend the Official Zoning Map to reclassify an area to a base or overlay zone (only an applicant-initiated request to reclassify property to the CBCAO Zone may follow this procedure. Any other amendment to the CBCAO Zone is processed in accordance with Section 27-3603, Chesapeake Bay Critical Area Overlay (CBCAO) Zoning Map Amendment).

(b) Applicability

The procedures and standards of this Section apply to any amendment to the Official Zoning Map that involves a specific parcel of land (commonly known as a "rezoning").

- (1) Under no circumstance shall a zoning map amendment be approved to reclassify lands wholly or partially within the Safety Zones of the MIO Zone into the following zones: any Transit-Oriented/Activity Center base zone, any Planned Development (PD) zone, or the RMF-12, RMF-20, RMF-48, IE, CGO, CN, or CS zones.
- (2) Under no circumstance shall a zoning map amendment be approved to reclassify lands to any of the following zones: RMH, LCD, LMXC, or LMUTC.
- (3) No application shall be filed requesting more than one zone.

(c) Zoning Map Amendment Submittal Requirements

- (1) The zoning map amendment application shall be submitted to the Planning Director.
- (2) Zoning map amendment plats and site plans shall be prepared by a licensed professional engineer, architect, landscape architect, or land use planner.
- (3) Upon filing the application, the applicant shall pay to the Planning Board a fee to help defray the costs related to processing the application.
- (4) If more than 1 drawing is used, all drawings shall be at the same scale (where feasible).
- (5) A zoning map amendment application shall include the following:
 - (A) A signed application form, which shall include:
 - (i) The name, address, and telephone number of the applicant, and an indication of the applicant's status as contract purchaser, agent, or owner;
 - (ii) The street address of the property, name of any municipality the property is in, and name and number of the Election District the property is in;
 - (iii) The name, address, and signature of each owner of record of the property. Applications for property owned by a corporation must be signed by those officers empowered to act for the corporation;
 - (iv) The name, address, and telephone number of the correspondent;

- (v) A statement listing the name, and the business and residential addresses, of all individuals having at least a five percent (5%) financial interest in the property or the contract purchaser(s);
 - (vi) If any owner or contract purchaser(s) is a corporation, a statement listing the officers of the corporation, their business and residential addresses, and the date on which they assumed their respective offices. This statement shall also list the current Board of Directors, their business and residential addresses, and the dates of each Director's term. An owner that is a corporation listed on a national stock exchange shall be exempt from the requirement to provide residential addresses of its officers and directors; and
 - (vii) If the owner or contract purchaser(s) is a corporation (except one listed on a national stock exchange), a statement containing the names and residential addresses of those individuals owning at least five percent (5%) of the shares of any class of corporate security (including stocks and serial maturity bonds).
- (B) Four copies of an accurate plat, prepared, signed, and sealed by a registered engineer or land surveyor, which shall show:
- (i) The present configuration of the property, including bearings and distances (in feet) and the total area of the property (in either acres or square feet);
 - (ii) The property's lot and block number, subdivision name, and plat book and page number, if any; or a description of its acreage, with reference to liber and folio numbers;
 - (iii) The names and owners of record, or subdivision lot and block numbers, of adjoining properties;
 - (iv) The name, location, distance to the center line, and right-of-way width of all abutting streets. If the property is not located at the intersection of 2 streets, the distance to, and the name of, the nearest intersecting street shall be indicated;
 - (v) A north arrow and scale (no smaller than 1 inch equals 400 feet);
 - (vi) The total area of the property (in either square feet or acres);
 - (vii) The location of all existing buildings on the property; and
 - (viii) The subject property outlined in red.
- (C) Four copies of the zoning map page on which the property is located, plotted to scale and outlined in red;
- (D) A vicinity map;

- (E) A copy of the applicant's informational mailing letter, list of addresses, and signed affidavit of mailing;
- (F) Any required State Ethics Commission affidavits;
- (G) A statement of justification detailing the legal basis by which the requested amendment can be approved, and any factual reasons showing why approval of the request will not be detrimental to the public health, safety, and welfare; and
- (H) Any other pertinent information deemed necessary by the District Council, Zoning Hearing Examiner, or Planning Board.

(d) Zoning Map Amendment (ZMA) Procedure

This Subsection identifies additions or modifications to the standard review procedures in Section [27-3400](#), Standard Review Procedures, that apply to development applications for a zoning map amendment (ZMA). Figure 27-3601(b) identifies key steps in the (ZMA) procedure.

(1) Pre-Application Conference

See Section [27-3401](#), Pre-Application Conference, except for applications submitted by the District Council, the Planning Board, or the Planning Director.

(2) Pre-Application Neighborhood Meeting

See Section [27-3402](#), Pre-Application Neighborhood Meeting, except for applications submitted by the District Council, the Planning Board, or the Planning Director.

(3) Application Submittal

See Section [27-3403](#), Application Submittal. In addition, no parcel of land shall be the subject of two separate applications for a zoning map amendment (ZMA) at the same time. If two or more separate parcels of land are included in one application, they must be adjoining. For the purposes of this Subsection, "adjoining" means those parcels of land which abut or are separated only by a public right-of-way, stream bed, or the like.

(4) Determination of Completeness

See Section [27-3404](#), Determination of Completeness.

(5) Staff Review and Action

See Section [27-3406](#), Staff Review and Action. After staff review and evaluation of the application, the Planning Director shall prepare a Technical Staff Report, which shall include a recommendation on the application.

For any property owner-initiated application for a zoning map amendment involving the Chesapeake Bay Critical Area Overlay (CBCAO) Zone, the Planning Director shall, at least 30 days before the Zoning Hearing Examiner's hearing:

- (A) Transmit to the District Council the amendment application, plans, maps, specifications, Planning Board recommendation, and all other data, materials, and record evidence (to date) pertaining to the amendment; and
- (B) Transmit to the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays a copy of the amendment application, and the conceptual conservation plan for their initial review and comment.

(6) Scheduling Public Hearing and Public Notice

See Section [27-3407](#), Scheduling of Hearings and Public Notice.

(7) Review and Recommendation by Advisory Board or Official

See Section [27-3408](#), Review and Recommendation by Advisory Board or Official.

- (A) The Planning Board shall decide whether to hold a non-evidentiary hearing on the application within 15 days after receipt of the Technical Staff Report, or at its first meeting after the preparation of the report if no meeting has occurred within the 15 days.
- (B) If the Planning Board decides not to conduct a hearing, the recommendation in the Technical Staff Report constitutes the Planning Board's recommendation, and the Planning Director shall transmit the Technical Staff Report to the ZHE.
- (C) If the Planning Board decides to hear the matter, it shall set a hearing date which shall be at least 30 days after its decision to hear the matter.
 - (i) Prior to or at the Planning Board's hearing, the applicant and any other person may submit written responses to the Technical Staff Report, together with any supporting material. The responses shall become a part of the record that will be forwarded to the ZHE.
 - (ii) At the hearing, the Planning Board shall, following their Rules of Procedure, consider the application, relevant support materials, the Technical Staff Report, applicant comments, and any public comments, and make a recommendation containing specific findings of basic facts and conclusions of law, by resolution, on the application in accordance with Section [27-3601\(d\)](#), Zoning Map Amendment (ZMA) Decision Standards. The Planning Board shall transmit its resolution with recommendation to the ZHE.
- (D) At least thirty (30) days after receiving the Planning Board's recommendation, the ZHE shall provide notice, schedule, and conduct an evidentiary hearing on the application in accordance with Section [27-3412](#), Evidentiary Hearing, and make a recommendation. The ZHE shall issue its decision not more than 100 days after the date of its last hearing on the application. The ZHE shall, following the ZHE's Rules of Procedure, consider the original application, relevant support materials, the Planning Board's recommendation, the applicant's and

any party of record's testimony and materials, and any public comments. At the conclusion of the hearing, the ZHE shall make a recommendation on the application in accordance with Section 27-3601(d), Zoning Map Amendment (ZMA) Decision Standards.

- (E) After the hearing is concluded and the record is closed, the ZHE shall prepare and serve upon all persons of record a written decision containing specific findings of basic facts, conclusions of law, and a recommended decision.

(8) Review and Decision by Decision-Making Body or Official

See Section [27-3409](#), Review and Decision by Decision-Making Body or Official.

- (A) After receipt of the ZHE's recommendation, the District Council shall conduct a public hearing on the application in accordance with Section [27-3414](#), Oral Argument Hearing, and render a final decision in accordance with Section 27-3601(d), Zoning Map Amendment (ZMA) Decision Standards. The District Council shall adopt written findings of material facts and conclusions.
- (B) The District Council may approve a less intense zone than that requested by the applicant for any part of the land subject to the application.
- (C) If the subject property is located within the boundaries of a municipality, a less intense zone may only be approved if there was testimony on the less intense zone before the Zoning Hearing Examiner, and an opportunity given for the municipality to make a recommendation. If there was no testimony or opportunity, the application shall be remanded to the Zoning Hearing Examiner for this purpose. Upon remand, the Hearing Examiner shall notify all persons of record and any municipality in which the property is located. The Hearing Examiner shall conduct further hearings if the case warrants.
- (D) A two-thirds majority vote of the full Council shall be required to approve any portion of the amendment that is contrary to the recommendation of a municipality concerning land within its boundaries, the recommendation of a governed special taxing district concerning land within its district, or a zoning map amendment that is contrary to an approved Area Master Plan or Sector Plan.

(9) Conditions of Approval

Allowed (see Section [27-3415](#), Conditions of Approval).

- (A) The following conditions of approval are allowed:
 - (i) Conditions that may be necessary to protect surrounding properties from adverse effects that might accrue from the proposed zoning map amendment (ZMA); or

- (ii) Conditions that would further enhance the coordinated, harmonious, and systematic development of the regional district.
- (B) If conditions of approval are imposed, the applicant has ninety (90) days from the date of District Council's decision to approve the conditions as part of the rezoning, to accept or reject the rezoning as conditionally approved. The applicant shall accept or reject the conditions in writing, to the Council.
- (C) If the applicant accepts the conditions, the Council shall enter an order acknowledging the acceptance and adopt the zoning map amendment (ZMA) by ordinance, at which time the Council's action is final.
- (D) Failure of the applicant to advise the Council about acceptance of the conditions is considered a rejection of the conditions.
- (E) If the conditions are rejected, the zoning map amendment (ZMA) will be denied and voided, and the land subject to the application will maintain its prior zone classification. If this occurs, the Council shall enter an order acknowledging the rejection, voiding its previous decision, and stating the land maintains its prior zone classification. This order shall be the final decision on the application.
- (F) All amendments that are approved subject to conditions shall be shown on the Official Zoning Map with the letter "C" after the application number.

(10) Notification

See Section [27-3416](#), Notification.

(11) Post-Decision Actions

(A) Designation on Official Zoning Map

If a zoning map amendment (ZMA) is adopted by the District Council, the Planning Director shall place the amendment on the Official Zoning Map within a reasonable period of time after its adoption. Designation of a zone on the Official Zoning Map shall note the ordinance approving the zone classification.

(B) Effect on Special Exceptions

When any land upon which a special exception has been approved is reclassified to a zoning category different from that category in which it was classified at the time the special exception was approved, the following shall apply:

- (i) If, at the time of the rezoning, the approved use requires the approval of a special exception in the new zone, and the specific special exception requirements governing the use are the same in both zones, the special exception, as approved, shall remain in full force and effect.
- (ii) If, at the time of the rezoning, the approved use is not permitted in the new zone, or requires approval of a special exception with different

requirements, and the use or construction authorized by the special exception has commenced and has not ceased, the special exception shall not terminate and the use may continue as a nonconforming use.

- (iii) If, at the time of the rezoning, the approved use is not permitted in the new zone, or requires approval of a special exception with different requirements, and the use or construction authorized by the special exception has not commenced or has ceased, the special exception shall terminate, and all provisions of the new zone shall apply to the use and development of the property.
- (iv) If, at the time of the rezoning, the approved use is permitted in the new zone without approval of a special exception, the special exception shall terminate, and all provisions of the new zone shall apply to further use and development of the property.

(C) Resubmitting Application

If the District Council wholly or partly denies an application for a zoning map amendment (ZMA), the following limitations apply instead of those in Section 27-3418(d), Resubmitting Application:

- (i) No new zoning map amendment application may be filed on the same land until two (2) years have elapsed after final action (including appellate review) on a previous application. After two (2) applications on the same land have been acted upon, four (4) years must elapse before another application on the same land may be filed. No land shall be the subject of two (2) applications for map amendment at the same time.

(e) Zoning Map Amendment (ZMA) Decision Standards

In determining whether to adopt or disapprove a proposed zoning map amendment (ZMA), the District Council may consider many factors. No amendment to the CBCAO Zone shall be granted without the applicant demonstrating conformance with the decision standards in Section 27-3603(d), CBCAO Zoning Map Amendment Decision Standards. No amendment to a Transit-Oriented/Activity Center base zone shall be granted except in accordance with the locational standards of Section 27-4204(b)(2) of this Ordinance. No other zoning map amendment shall be granted without the applicant demonstrating either:

- (1) There has been a substantial change in the character of the neighborhood; or
- (2) There was a mistake in the original zone for the land subject to the amendment which has never been the subject of an adopted sectional map amendment; or
- (3) There was a mistake in the current sectional map amendment.

Change or Mistake

(2) There is a presumption of validity accorded comprehensive rezoning and the presumption is that at the time of its adoption the District Council considered all of the relevant facts and circumstances, then existing, concerning the land in question. (Howard County v. Dorsey, 292 Md. 351, 438 A.2d 1339 (1982)) *Strong* evidence of mistake is required to overcome the presumption. (Mayor & Council of Rockville v. Rylyns Enters., Inc., 372 Md.514, 535-536, 814 A. 2d (2002); City of Hyattsville v. Prince George's County Council, 254 Md. App. 1, 42 (2022)) It has been held that a more liberal standard can be applied when the request is to rezone a property from one subcategory of use to another than when going from one use category to another. (See, Tennison v. Shomette, 38 Md. App. 1, 379 A.2d 187 (1977). The burden of proof is the Applicant's to bear. (Anne Arundel County v. Maryland National Bank, 32 Md. App. 437, 361 A.2d 134 (1975))

(3) Mistake or error can be shown in one of two ways: (a) a showing that at the time of the comprehensive rezoning the District Council failed to take into account then existing facts or reasonably foreseeable projects or trends; or (b) a showing that events that have occurred since the comprehensive zoning have proven that the District Council's initial premises were incorrect. The mistake must have occurred in the rezoning and not in the Master Plan. (Dorsey, supra; Boyce v. Sembly, 25 Md. App. 43 (1975))

(4) In People's Counsel for Baltimore County v. Prosser Co., 119 Md. App. 150,179, 704 A. 2d 483 (1998), the Court of Appeals (now the Supreme Court) further explained what must be shown in order to support an argument of mistake in the comprehensive rezoning:

In order to find legal mistake, there must be evidence that assumptions or premises relied on by the County Council were invalid. Beachwood, 107 Md. App. At 645. This situation is different from the exercise of bad judgment based on complete and accurate information.... The burden is on the entity seeking reclassification to show the conditions that made the comprehensive rezoning incorrect and the failure of the Council to have considered those conditions.... The Court further noted that "the consistency of the proposed use with the Master Plan would have been insufficient alone" to show mistake in the comprehensive rezoning.

(5) Finally, the District Council is not required to grant the request even where Applicant adduces strong evidence of change or mistake. (Hardesty v. Dunphy, 259 Md. 718, 271 A.2d 152 (1970); Mayor & Council of Rockville v. Rylyns Enterprises, 372 Md.514,538-539,814 A.2d 469 (2002))

Conditional Zoning

(6) Applicant would have preferred requesting a Planned Development Zone for the subject property, but those are currently not available for land being rezoned from the AR Zone. Applicant therefore submitted the instant request, noting that it would agree

to limit its use of the property to single-family detached dwellings. At the close of the hearing Applicant and the contract purchasers of the subject property submitted a “Declaration of Restrictive Uses” intended to mandate that the site will only be developed with single-family detached dwellings.(Exhibit 43) Applicant’s intent is to contractually restrict the purchasers from building anything other than single-family detached dwellings on the site. As such, the jurisprudence surrounding “Restrictive Covenants” within deeds should also govern the review of this proffer by the Applicant.

(7) The Declaration of Use Restrictions is intended to be in full force and effect for 30 years, and this seems to be a sufficient amount of time to ensure that single-family detached homes are constructed on the property. It appears that this restriction may not be changed since it is binding upon the land and the Owners. However, the land is being sold to the Covenantee/Benefited parties. At that point, they are the new owners and will arguably have the power to unilaterally defeat the covenant. It has been held that a restrictive covenant may become invalid if the covenantee no longer exists, thereby defeating the purpose of the covenant. City of Bowie v. MIE Properties, Inc., 398 Md. 657,687, 922 A.2d 509, 528 (2007).

(8) It is well established that “private restrictions controlled by contract and real estate law, are entirely independent of zoning....” Chayt v. Maryland Jockey Club, 179 Md. 390, 398, 18 A.2d 856, 860 (1941). Moreover, the District Council may not enforce or even consider the Declaration since the use of covenants restricting permitted uses in connection with a rezoning, and reliance upon the same by the rezoning authority, is tantamount to an illegal form of conditional zoning. (Montgomery County v. National Capital Realty Corp. 267 Md. 364, 297 A.2d 675 (1972); Board of County Commissioners of Washington County v. H. Manny Holtz, Inc., 65 Md. App. 574, 501 A.2d 489 (1985))

(9) In addition, the District Council cannot rely on a site plan or architectural drawings as a controlling factor in its decision to rezone, as that may also constitute impermissible conditional zoning. (Hyson v. Montgomery County Council, 242 Md. App. 319, 423 A. 2d 967 (1980))

CONCLUSIONS OF LAW

(1) The District Council may not consider the proffered Declaration of Restrictive Uses submitted by Applicant, for the reasons noted above, and I did not consider it in arriving at my recommendation in this case.

(2) If the District Council decides to approve the rezoning request, it *must* find that there was a mistake in the prior Sector Plan and then *may* consider the request to rezone the subject property from the AR Zone to the RSF-A Zone, thereby allowing *all* of the permitted uses in that Zone.

(3) Applicant proffered three arguments in support of its belief that the District Council made a legal mistake when it chose to retain the AR zoning of the subject property, and each are set forth fully, *supra*. They can be summarized as follows:

- It was a mistake to retain the R-A zoning since the subject property abuts the Edge area of the Westphalia Town Center and the existing zoning was contrary to the goals and policies of the Sector Plan for the Town Center and the surrounding properties, as they related to density and character of planned development. This mistake was compounded by the rezoning of the adjacent property to the west of Melwood Road.
- The retention of the R-A zoning was based on an inaccurate description of the existing land uses on the subject property used in the 1994 Melwood-Westphalia Master Plan and Sectional Map Amendment.
- The retention of the R-A zoning did not consider the merits of the request for rezoning made by Jenny Day at the Joint Public Hearing on May 23, 2026.

(4) Mr. Ferguson, provided a fourth basis for mistake, described herein. In short, it was his expert opinion that the Sector Plan failed to address the fact that the County's Ten Year Comprehensive Water and Sewer Plan had placed the entirety of the subject property in the S-4 category by 2002. He further noted that Back Branch abuts the subject property, and in 2006, following the approval of System Area S-4 for Smith Home Farm, an extension of public water and sewer was authorized by WSSC with the trunk sewer running adjacent to the subject property. Had the District Council been aware of this access to public water and sewer, given the goals and policies of the Sector Plan and the SMA itself, it might have granted a rezoning.

(5) The Technical Staff disagreed with Applicant and recommended that the District Council reject each argument, for detailed reasons set forth *supra*.

(6) I agree with Staff that, assuming *arguendo* it was a mistake for the District Council to not have changed the zoning to a more dense category given the Subject Property's location within the Residential Areas associated with the Westphalia Town Center, it is more akin to a mistake based on the correct facts. This type of mistake would not support the instant request, as noted above.

(7) However, I agree with Applicant that the District Council may have been unaware of Ms. Day's public request for a rezoning. First, neither the Adopted nor the Approved Westphalia SMA's include her request under the Public Rezoning Request Table and Map. Staff stated that the request was discussed as shown in the Transcript Analysis of Testimony provided after the May 2026 Joint Public Hearing, and the District Council alluded to worksessions held by the Planning Board and its own worksession held thereafter to consider public hearing testimony. However, none of this information is in the record, nor could I locate any of it, which would have allowed me to take official/administrative notice of its content. I think the failure to include the request in the

actual SMAs and the inability to locate any transcript analyses supports the argument that the Council did not have this information prior to approving the SMA.

(8) I believe a mistake also occurred to not have updated the Sector Plan to discuss the Water and Sewer updates for the properties within its boundaries. While mistakes in the Master Plan may not be used to support a request to rezone, the SMA stressed that reliance on this information is a basis for zoning changes.

(9) It is unfortunate that there is no RSF-PD Zone, or that Applicant did not request another residential zone that limits development to single-family detached dwelling units. If the request is approved as submitted the District Council cannot restrict any of the myriad residential or nonresidential uses allowed in this Zone. However, Section 27-3601 (d)(8)(B) allows the District Council to approve a less intense zone than that requested by Applicant.

RECOMMENDATION

I recommend that ZMA-2025-003 be Approved on the grounds of mistake for the reasons noted in the Conclusions of Law, above. If the District Council does not wish to allow all of the types of dwellings permitted by right in the RSF-A Zone, it should approve a less intense zone as permitted in Section 27-3601(d)(8)(B). If the Council would prefer more information prior to doing so, it may remand the Application for the limited purpose of discussing the less intense zone. Any remand should include a date by which the Examiner's recommendation shall be forwarded.