



A-10051-REMAND \* BEFORE THE  
 MARIA VOLPE AND \* DISTRICT COUNCIL  
 SANDRA CAREY \* FOR  
 TRUSTEES/CAROZZA \* PRINCE GEORGE' S COUNTY  
 PROPERTY  
 COUNCILMANIC DISTRICT 9

\* \* \* \* \*

**Exceptions and Request for Oral Argument**

**Introduction**

Maria Volpe and Sandra Carey, Trustees/Carozza Property (“Applicants”) applied for the rezoning of approximately 60 acres of land zoned Rural Residential (R-R) to Mixed Use – Transportation Oriented (M-X-T) in the southwest quadrant of the intersection of Pennsylvania Avenue (MD 4) and Woodyard Road (“Subject Property”). Remand Decision, p. 1, paragraph 1. Applicants “propose to develop the property with a 30,000-square-foot shopping center, a 220-room hotel, 180 townhouses, 60,000-square-feet of general office, and a 250-seat church.” Remand Decision, p. 6, paragraph 13. Christine Hough and Charles Askins (“Citizen-Protestants”) opposed the application.

The Zoning Hearing Examiner (“ZHE”) recommended approval of the application in her Remand Decision dated July 9, 2021.

Citizen-Protestants file these exceptions to the ZHE’s recommended approval and request oral argument.

**1. The Zoning Hearing Examiner (“ZHE”) erred when she ruled that the application for the rezoning was not subject to the change-mistake rule. ZHE’s Remand Decision, pp. 30-1, paragraphs 4-5. The ZHE should have disapproved the application for the rezoning because the Applicants did not prove compliance with the change-mistake rule.**

Under Maryland common law, an applicant for rezoning must prove the existence of unforeseen changes in the surrounding neighborhood since the last comprehensive rezoning or mistake of fact by the zoning authority in the comprehensive zoning. *See, e.g., Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 512 (2015). This requirement, known as the change-mistake rule, “endeavors to serve the important function of preventing the arbitrary use and/or abuse of the zoning power.” *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 538 (2002). The change-mistake rule is based on the strong presumption that the motives and wisdom of the legislative body in adopting the comprehensive zoning were correct and valid. *Id.* at 535.

The change-mistake rule does not apply to the piecemeal grant of a floating zone. *See, e.g., Aubinoe v. Lewis*, 250 Md. 645 (1968); *Kramer v. Board of Cnty. Comm’rs for Prince George’s Cnty.*, 248 Md. 27 (1967). Instead, the zoning authority must find that the application complies with the express purposes of the floating zone and that the floating zone is compatible with existing uses in the general neighborhood. STANLEY ABRAMS, *GUIDE TO MARYLAND ZONING DECISIONS*, §2.04 Findings Required (5th ed. 2012).

Applicants must satisfy the change-mistake rule because the M-X-T Zone is not a floating zone under Maryland’s common law. Maryland’s land use jurisprudence identifies factors to determine when a zone is a floating zone. Some of the factors are procedural in nature—that the zoning ordinance requires a site plan approval, that the zoning ordinance

includes a “purpose” clause, and that the criteria for approval are similar to a special exception. STANLEY ABRAMS, GUIDE TO MARYLAND ZONING DECISIONS, §2.04 Findings Required (“While the existence of a purpose clause appears to be some indicia of whether a zone is a floating zone, the existence of site plan approval appears, however, to be the most important characteristic.”); *Bigenho v. Montgomery Cnty. Council*, 248 Md. 386, 391 (1968) (“[T]he floating zone is subject to the same conditions that apply to safeguard the granting of special exceptions . . .”).

However, the fundamental requirement for a zone to be considered a floating zone must be whether it was “legislatively predeemed compatible with the areas in which it may thereafter be located on a particular application.” *Chatham Corp. v. Beltram*, 243 Md. 138, 149–50 (1966). The approval of a floating zone, like a special exception, does not require the protection of the change-mistake rule against arbitrary piecemeal zoning decisions because “there has been a prior legislative determination, as part of a comprehensive plan, that the use which the administrative body permits, upon application to the particular case of the specific standards, is *prima facie* proper in the environment in which it is permitted.” *Huff v. Bd. of Zoning Appeals of Balt. Cnty.*, 214 Md. 48 (1956).

The M-X-T Zone is not a floating zone, and thus Applicants must demonstrate change or mistake because there is no evidence that there has been “a prior legislative determination” that the use of the M-X-T Zone “is *prima facie* proper” for the Subject Property. Although the M-X-T Zone includes a purpose clause, requires a site plan, and has criteria for approval similar to a special exception, these procedural requirements alone cannot be enough to create a floating zone. If only the procedural requirements were

sufficient to create a floating zone, they could easily be incorporated into every zone—thus eliminating the change-mistake rule entirely. Instead, as a threshold issue, there must also be some evidence of a prior determination by the legislative body as to which specific areas the application of the floating zone would be appropriate for.

The Prince George’s County Zoning Ordinance (“PGZO”) implies that there may be two types of floating zones in the county—Comprehensive Design Zones and Mixed-Use Zones. *See* PGZO §§ 27-143, *et seq.* (only removing the change-mistake criteria in zoning map amendments for these two categories of zones). However, the Comprehensive Design Zones are clearly floating zones while the Mixed-Use Zones are not. For example, the Prince George’s County Comprehensive Design Zones have already been determined to be floating zones by the court while the Mixed-Use Zones have not. *See generally Zimmer*, 444 Md. 490. Additionally, the Comprehensive Design Zone Ordinance includes a section titled “Applicability” describing where the legislature intended the zone to be used. *See* PGZO § 27-477. Thus, the provisions of the Comprehensive Design Zone clearly demonstrate that “there has been a prior legislative determination . . . that the use which the administrative body permits . . . is *prima facie* proper in the environment in which it is permitted.” *Huff*, 214 Md. at 62.

Conversely, none of Prince George’s County’s Mixed-Use Zones have a section similar to Section 27-477 that clearly demonstrate a prior legislative determination as to where the use of a Mixed-Use Zone would be *prima facie* proper. *See generally* PGZO §§ 27-541.02, *et seq.*

The Prince George's County M-X-T Zone can be similarly contrasted from the floating zones that exist in Montgomery County. The Montgomery County Zoning Ordinance ("MCZO") also includes a section titled "Applicability" describing where the legislature intended the floating zones to be used. MCZO art. 59, § 5.1.3. Similar to the Prince George's County Comprehensive Design Floating Zone, the provisions relevant to the Montgomery County Floating Zones clearly demonstrate that "there has been a prior legislative determination . . . that the use which the administrative body permits . . . is *prima facie* proper in the environment in which it is permitted." *Huff*, 214 Md. at 62.

Without further evidence that the M-X-T Zone was carefully considered and drawn so as to ensure compatibility with adjoining uses, in a manner similar to the Comprehensive Design Zone or Montgomery County's Floating Zones, the M-X-T Zone should not be treated as a floating zone. Although the M-X-T Zone does share some similar qualities to a floating zone, it lacks the foundational requirement of prior legislative determination as to where its application would be *prima facie* proper. As a result, applications for rezoning to an M-X-T Zone present the danger of the "arbitrary use and/or abuse of the zoning power" where approval of the zone contradicts the strong presumption that the motives and wisdom of the legislative body in adopting the comprehensive zoning were correct and valid. *See Rylyns*, 372 Md. at 535–538. Accordingly, an application for rezoning to an M-X-T Zone must satisfy the change-mistake rule.

**2. The ZHE erred when she determined that General Plan, Area Master Plan, or Functional Master Plan provided only recommendations, not requirements. Remand Decision, p. 32, paragraph 11.**

Section 27-213(a)(2) states:

Prior to approval, the Council shall find that the proposed location will not substantially impair the integrity of an approved General Plan, Area Master Plan, or Functional Master Plan and is in keeping with the purposes of the M-X-T Zone.

Section 27-213(a)(2) elevates the General Plan, Area Master Plan, and Functional Master Plan “to the status of a regulatory device.” *Maryland-Nat. Cap. Park & Plan. Comm’n v. Greater Baden-Aguasco Citizens Ass’n*, 412 Md. 73, 98 (2009). The ZHE erred when she determined that General Plan, Area Master Plan, or Functional Master Plan provided only recommendations, not requirements. Remand Decision, p. 32, paragraph 11.

**3. The ZHE erred when she found that the application for the rezoning satisfied Section 27-213(a)(2). ZHE’s Remand Decision, pp. 4-6, paragraphs 6-12; pp. 16-18, paragraphs 27-8; and pp. 31-3, paragraphs 6-13. The application of the M-X-T Zone will substantially impair the integrity of the relevant comprehensive planning documents regarding their land use and environmental policies.**

The subject application does not satisfy the requirements of Section 27-213(a)(2). The application of an M-X-T Zone to the Subject Property will substantially impair two categories of policies in the relevant comprehensive planning documents – land use policies and environmental policies. Further, the application of an M-X-T Zone to the Subject Property is not in keeping with the purposes of the M-X-T Zone.

Technical Staff found that the applicable comprehensive planning documents for the Subject Property include 2014 Plan Prince George’s 2035 Approved General Plan (Plan 2035), the Subregion 6 Master Plan and Sectional Map Amendment (Subregion 6 Master Plan and SMA), the Countywide Green Infrastructure Plan of the Approved Prince George’s County Resource Conservation Plan (May 2017).

Technical Staff found, and Citizen-Protestants concur, that the application of an M-X-T Zone to the subject site would substantially impair each of these documents in the following ways:

**a. Substantial Impairment of Land Use and Economic Development Policies**

Prince George's County Approved General Plan (Plan 2035) established the following land use and economic development policies and strategies that are relevant to this application:

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

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

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

**Policy LU 9:** Limit the expansion of new commercial zoning outside of the Regional Transit Districts and Local Centers to encourage reinvestment and growth in designated centers and in existing commercial areas (Land Use, page 116).

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

**Strategy HD 9.9:** Implement urban design solutions to ensure appropriate transitions between higher intensity and density development and surrounding lower-density residential neighborhoods. Urban techniques include decreasing (stepping down) building heights, reducing development densities, and

otherwise modifying architectural massing and form (Community Heritage, Culture, and Design, page 215).

As stated in the Technical Staff report, Plan 2035 designated the Subject Property within the Established Communities area and described them as “existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers” ... Development growth is to be focused in the Regional Transit Districts and Local Centers. Plan 2035’s vision for the Established Communities area is “context-sensitive infill and low- to medium-density development” (page 20). In addition, Plan 2035 recommends residential low land use for the Subject Property (Map 10, page 101). The Subject Property is not within a Regional Transit District, Local Center, or an Employment Area, as defined in Plan 2035 (pages 19, 106, and 109).

Applicants’ Statement of Justification (“SOJ”) acknowledges the residential low land use recommendations for the Subject Property but states that the proposed zoning will not substantially impair the general plan or the master plan and is in keeping with the purposes of the M-X-T Zone. However, Technical Staff in their original staff report, did not find that the Applicants’ request is justified and offered the following:

Pursuant to Section 27-213(a)(2), this application would substantially impair the integrity of Plan 2035 in the following manners:

Plan 2035 recommends, “context-sensitive infill and low- to medium-density development” within the Established Communities policy area (page 20); and specifically recommends residential low land use for the Subject Property (Map 10, page 101).

More specifically, Plan 2035 defines the residential low land use as up to 3.5 dwelling units per acre (page 100). The R-R Zone allows a maximum



of 2.17 dwelling units per acre, well within this range. The M-X-T Zone allows the possibility of densities significantly higher, including permitting multifamily and single-family attached dwellings that are only economical at higher densities. Under certain conditions, the zone can permit a floor area ratio (FAR) as high as 8.0.

Furthermore, the rezoning of the Subject Property at this location contradicts the Plan 2035 recommendations to:

- “Concentrate medium- to high-density housing development to Regional Transit Districts and Local Centers” (Housing and Neighborhoods, Policy HN 1, page 187);
- “limit future mixed-use land uses outside of the Regional Transit Districts and Local Centers” (Land Use, Policy 7, page 114);
- “limit the expansion of new commercial zoning outside of the Regional Transit Districts and Local Centers...” (Land Use, Policy 9, page 116);
- “...encourage growth to concentrate in the Regional Transit Districts that are designated as Downtowns” (Land use, Strategy LU 1.1, page 305); and
- “Direct a majority of projected new residential and employment growth to the Regional Transit Districts...” (Land Use, Policy LU 1, page 110).

Plan 2035 indicates that medium- to high-density housing, mixed-use, and commercial development in this area of Prince George’s County is to be located within the Westphalia Local Town Center, north of MD 4 from the Subject Property, and other regional transit districts and local centers, and nowhere else. The County’s development goals are stated in Plan 2035, as further discussed.

Mixed-use and commercial zoning should be limited to the designated regional transit districts, local centers, and employment areas. At the time of the writing of the staff report, there were 985.38 acres of property, wholly or partially within a 1-mile radius of the Subject Property, zoned for mixed-use; L-A-C, Residential Medium Development, (R-M) and Residential Suburban Development (R-S). Staff noted that the R-M and R-S Zones allow non-residential uses, such as food and beverage stores, as well as beauty salons. It was evident that there is a substantial amount of property zoned for mixed-use in Subregion 6 and adjacent planning areas, and any additional mixed-use zoning would inhibit commercial revitalization in the areas where it is desired.

Allowing the Subject Property to be rezoned to the M-X-T Zone at the proposed location, outside the regional transit districts and local centers, pulls mixed-use growth away from designated areas where it is more desirable (including the Westphalia Local Town Center across MD 4 from the Subject Property); and promotes a scale and mix of development that is out of context with the surrounding low- to medium-density residential neighborhoods. The rezoning of the Subject Property challenges Plan 2035's recommendation to "ensure appropriate transitions between higher intensity and density development and surrounding lower-density residential neighborhoods" (Community Heritage, Culture, and Design, HD 9.9, page 215).

Technical Staff also found, and Citizen-Protestants concur, that the application would substantially impair the land use and economic development goals in the Subregion 6 Master Plan and SMA. As stated in the Staff report, the Subregion 6 Master Plan and SMA recommends retaining the residential low land use for Parcels 32, 35, and 92. Residential low land use is described as "Residential areas of up to 3.5 dwelling units per acre. Primarily single-family detached dwellings." (page 40).

This is consistent with the purposes of the current R-R zoning, defined by Section 27-428(a) of the Prince George's County Zoning Ordinance to "facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles;"

In addition, the Subregion 6 Master Plan and SMA recommends goals, policies, and strategies for development patterns and land uses that apply to properties in the sector plan area:

**Goal:** Promote a development pattern that improves mobility options by making transit service more accessible, preserves irreplaceable agricultural and natural resource lands, concentrates commercial centers,

and sustains a diverse and vibrant economy (Development Pattern and Land Use, page 39).

**Policy 1:** Promote a development pattern that allocates appropriate amounts of land for residential, commercial, employment, industrial, and institutional land uses, in accordance with County development goals by considering local and regional needs, the integration of land uses wherever possible, and the impact of development proposals on the economy, environment, equity, and efficiency;

**Strategy 1:** Maintain low- to moderate-density land uses except as part of mixed-use development and planned communities (Developing Tier, page 58).

In addition, the master plan includes these policies and strategies with respect to economic development that the proposed rezoning would not support:

**Policy 1:** Intensify and grow economic development at strategic locations zoned for industrial and commercial uses to increase employment opportunities, income, and the tax base within Prince George's County and the subregion.

**Strategy 1:** Ensure that adequate amounts of land are available for economic development while avoiding over-zoning land as commercial that encourages sprawl and inhibits revitalization efforts.

**Strategy 4:** Support redevelopment and revitalization of existing employment areas rather than greenfield development (Employment, page 147).

**Policy 4:** Provide commercial development in strategic locations to serve the needs of communities giving preference to improving existing centers (Living and Community Areas, page 177).

Technical Staff, in their original report, found that Pursuant to Section 27-213(a)(2), this application would substantially impair the integrity of the Subregion 6 Master Plan and SMA in the following manners:

**Land Use and Density:** The Subregion 6 Master Plan and SMA recommends maintaining, "low- to moderate-density land uses..."

(Strategy 1, Developing Tier, page 58), within the developing tier (now known as the Established Communities area pursuant to Plan 2035). In addition, the Subregion 6 Master Plan and SMA specifically recommends the residential low land use (Map 27) for the Subject Property. Though Strategy 1, as contained on page 58, recommends maintaining "...low- to moderate density *except* as part of mixed-use development" the property is not recommended for mixed-use, therefore the exception does not apply.

The Subregion 6 Master Plan and SMA defines the residential low land use as "Residential areas of up to 3.5 dwelling units per acre. Primarily single-family detached dwellings." (page 40). The R-R Zone allows a maximum of 2.17 dwelling units per acre, well within this range. In addition, the M-X-T Zone allows the possibility of densities significantly higher, including permitting multifamily and single-family attached dwellings that are only economical at higher densities. Under certain conditions, the zone can permit a FAR as high as 8.0.

Furthermore, the M-X-T Zone requires at least two land uses to be included in a development, which can include office/industrial/research, hotel/motel, retail and/or residential in any combination. This means that under the M-X-T Zone, it is possible that residential land uses may not be included in a new development.

Given that the M-X-T Zone allows high-density, non-residential development; the rezoning of the property will not only permit a density and mix of uses that is contrary to that envisioned by the plan but would also prevent the execution of the Subregion 6 Master Plan and SMA's vision of low-density, residential land uses, which greatly impairs the integrity of the Subregion 6 Master Plan and SMA.

**Development Pattern and Location:** A key component of the Subregion 6 Master Plan and SMA, that is evident throughout, is the recommended development pattern or, more specifically, the location of mixed-use and commercial zoning and land use. The Subregion 6 Master Plan and SMA recommends promoting, "...a development pattern that...concentrates commercial centers..." (Goal 4, Development Pattern and Land Use, page 39); consolidating, "...commercial development in strategic locations to serve the needs of communities giving preference to improving existing centers."

(Policy 4, Living and Community Areas, page 177); intensifying and growing, "...economic development at strategic locations zoned for industrial and commercial uses..." (Policy 1, Employment, page 147);

and supporting, "...redevelopment and revitalization of existing employment areas rather than greenfield development" (Strategy 4, Employment page 147).

The Subject Property is not located in or as part of an existing commercial center or an employment area, nor is it zoned commercial or industrial. It is a vacant greenfield property, that abuts low- to medium-density residential neighborhoods to the south and northeast, and vacant land to the north and east.

Though it is located near the proposed Westphalia Town Center, the Subject Property was not envisioned to be part or an extension of the future development by either the 2007 *Approved Westphalia Sector Plan* or the Subregion 6 Master Plan and SMA.

Furthermore, a major concern contained in the Subregion 6 Master Plan and SMA is the amount of mixed-use and commercial zoning already in place in the Subregion 6 Master Plan and SMA area and the County. The Subregion 6 Master Plan and SMA recommends avoiding, "...over-zoning land as commercial..." to discourage, "...sprawl and inhibit revitalization efforts in existing commercial centers" (Strategy 1, Employment, page 147).

Instead, the Subregion 6 Master Plan and SMA recommends allocating, "...an appropriate amount of land for residential, commercial, employment, industrial, and institutional land uses in accordance with County development goals...." (Policy 1, Developing Tier, page 58).

**b. Substantial Impairment of Environmental Policies**

Citizen-Protestants concur with the conclusions in the original Staff report – that the application of the M-X-T Zone to the Subject Property would significantly impair the integrity of environmental policies within the applicable comprehensive planning documents. Applicants' approved NRI identified the existence of a regulated stream and at least 31 specimen trees. Although there may be fewer environmental features on the Subject Property than the Technical Staff initially identified, Staff's original conclusions remain valid. Further, Applicants provided no relevant evidence in the hearing on April 14, 2021

to contradict Technical Staff's initial findings. However, if the Zoning Hearing Examiner believes that the accuracy of the Staff's original findings has been undermined by Applicants' NRI, the expert staff of the M-NCPPC Environmental Planning Section should have the opportunity to issue additional comments or findings pursuant to the conditions created in the ZHE's request for remand. Citizen-Protestants and Applicants should then have the opportunity to base their comments on the most accurate and relevant Staff findings.

*i. Technical Staff's original findings are still valid.*

In her written decision, the ZHE stated that "if the facts concerning the regulated environmental features on site were exactly as proffered by the Technical Staff I would recommend denial of the request since the County Green Infrastructure Plan clearly delineates most of the site within regulated areas and evaluation areas (and the General Plan and Subregion 6 Master Plan clearly include policies for the protection and preservation of the Green Infrastructure Network) and approving the request would considerably weaken these areas." ZHE Decision Aug. 20 pg. 19. Applicants' approved NRI confirmed the existence of regulated areas and evaluation areas as it identified a regulated stream bisecting the eastern portion of the Subject Property and 31 specimen trees clustered around the western portion of the Subject Property.

Although the NRI does not confirm all of the regulated environmental features proffered by Technical Staff in their original report, the conclusions made by the Staff regarding the Green infrastructure Plan, Woodland Conservation, Regulated Environmental Features, and the General Plan are still supported by the findings in the

NRI. Accordingly, the NRI confirms that the proposed application of a M-X-T Zone to the Subject Property will substantially impair the environmental policies of the applicable comprehensive documents.

In their original report, Technical Staff found that under the *Countywide Green Infrastructure Plan* of the *Approved Prince George's County Resource Conservation Plan* (May 2017), the majority of the Subject Property falls within regulated areas and evaluation areas. Regulated areas “contain environmentally sensitive features...that are regulated (i.e., protected) during the land development process.” Prince George's County Green Infrastructure Plan pg. 18. Based on available information, the regulated areas include the headwaters of streams, associated stream buffers, and adjacent steep slopes, which comprise the primary management area (PMA). The NRI identified an intermittent stream, steep slopes, and 31 specimen trees – all constitute regulated areas. Further, evaluation areas “contain environmentally sensitive features... that are not regulated (i.e, not protected) during the land development process.” Prince George's County Green Infrastructure Plan pg. 18. The evaluation areas adjacent to regulated environmental features provide opportunities for building larger riparian buffers and habitat corridors, and opportunities to provide linkages between environmental features. The NRI identified isolated wetlands and a contiguous tree canopy – both create regulated areas. Accordingly, there is no evidence to contradict Staff's original conclusion that the majority of the Subject Property falls within regulated areas and evaluation areas.

The Subregion 6 Master Plan and SMA recommends the protection, preservation, and restoration of the identified green infrastructure network, in order to protect critical

resources and to guide development and mitigation activities (Policy 1, Wildlife and Habitat, pages 68–69); and the preservation or restoration of regulated areas designated in the green infrastructure network through the development review process for new land development proposals, (Strategy 4, Wildlife and Habitat, pages 68–69).

As both the Technical Staff and the ZHE have already noted, “the General Plan and Subregion 6 Master Plan clearly include policies for the protection and preservation of the Green Infrastructure Network.” Based on the clear policies within the General Plan and Subregion 6 Master Plan regarding the green infrastructure network, Staff’s conclusion that “Any impacts to regulated environmental features on the Subject Property are not supported” should still be correct.

The environmental constraints within the Subject Property, as contained in the resource conservation plan, comprises nearly the entire Subject Property, with the most sensitive areas, namely the streambeds, bisecting the property. The proposed M-X-T Zone, which encourages intense, high-density land uses, would permit development that greatly impedes efforts to preserve the tree canopy and restore the waterways, while the R-R Zone, a low-density low-intensity zone, would promote development that limits disturbance to the green infrastructure network.

As it relates to Woodland Conservation, the Technical Staff’s original statements are still valid. More specifically, Technical Staff found, and Citizen-Protestants concur, that:

Development of the site would be subject to the provisions of Subtitle 25, Division 2, of the Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance (WCO), and future development of the



site must be in conformance with an approved tree conservation plan. The site is currently zoned R-R and has a required woodland conservation threshold of 20 percent of the net tract area. If approved, the proposed change to the M-X-T Zone will reduce the woodland conservation threshold to 15 percent. Based on the stream and Green Infrastructure network mapped on-site, the proposed zoning change is not supported. The current thresholds are appropriate and should be met with on-site preservation of the highest priority woodlands within the Green Infrastructure network. Future land development applications would require conformance with the WCO.

Regarding regulated environmental features, Staff's following statement is supported by the NRI:

According to information available on PGAtlas, there are regulated environmental features as defined in Section 25-118(b) 63.1 on this site

In Prince George's County, impacts to any regulated environmental features should be limited to those that are necessary for the development of the property. Necessary impacts are those that are directly attributable to infrastructure required for the reasonable use and orderly and efficient development of the Subject Property or are those that are required by County Code for reasons of health, safety, or welfare. Necessary impacts include, but are not limited to, adequate sanitary sewerage lines and water lines, road crossings for required street connections, and outfalls for stormwater management (SWM) facilities. Road crossings of streams and/or wetlands may be appropriate if placed at the location of an existing crossing or at the point of least impact to the regulated environmental features. SWM outfalls may also be considered necessary impacts if the site has been designed to place the outfall at a point of least impact. The types of impacts that can be avoided include those for site grading, building placement, parking, SWM facilities (not including outfalls), and road crossings where reasonable alternatives exist. The

cumulative impacts for the development of a property should be the fewest necessary and sufficient to reasonably develop the site, in conformance with County Code.

Impacts to regulated environmental features must first be avoided and then minimized. If impacts to the regulated environmental features are proposed, a statement of justification must be submitted, in accordance with the Prince George's County Environmental Technical Manual. The justification must address how each impact has been avoided and/or minimized. Future land development applications will require a finding of preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible, per Sections 24 and 27 of the County Code. The original Technical Staff report stated that impacts to regulated environmental features would not be supported in order to accommodate higher density.

Finally, the NRI supports Technical Staff's original finding, with which Citizen-Protestants concur, that the application would substantially impair the following environmental policies and strategies from the Prince George's County General Plan (Plan 2035):

**Policy 1:** Protect, preserve, and restore the identified Green Infrastructure network and areas of local significance within Subregion 6, in order to protect critical resources and to guide development and mitigation activities;

**Strategy 2:** Protect primary corridors (Patuxent River, Charles Branch, Collington Branch, Piscataway Creek, Mattawoman Creek, and Swanson Creek) during the review of land development proposals, to ensure the highest level of preservation and restoration possible, with limited impacts for essential development elements. Protect secondary corridors to restore and enhance environmental features, habitat, and important connections;

**Strategy 4:** Preserve or restore regulated areas designated in the Green Infrastructure Network through the development review process for new land development proposals (Wildlife and Habitat, pages 68-69).

**Policy 2:** Restore and enhance water quality in degraded areas and preserve water quality in areas not degraded.

*ii. Applicants presented no relevant evidence to contradict Technical Staff's original findings.*

Whether the application of the M-X-T Zone to the Subject Property would substantially impair the integrity of the General Plan's and Subregion 6 Master Plan's clear policies for the protection and preservation of the Green Infrastructure Network depends on how much of the Subject Property should be included within the Green Infrastructure Plan. Applicants originally argued that no portion of the property should be subject to the Green Infrastructure Plan while the Staff argued that the majority of the property should be subject to the Green Infrastructure Plan. If the Staff were correct the ZHE, in her written decision, stated that she would have to deny the application. On the other hand, if the Applicants were correct, there would be no conflict with the policies of the Subregion 6 Master Plan or General Plan related to the Green Infrastructure Plan because no portion of the property would be relevant to those policies.

The NRI affirmatively disproved the Applicants' original argument that the Green Infrastructure Plan should not apply to the Subject Property. The NRI, although it does not prove the exact conditions relied on by the Technical Staff, does not affirmatively disprove the Staff's conclusion that the majority of the Subject Property has regulated areas and evaluation areas. None of the Applicants' expert witnesses provided testimony as to what portion of the property would still be subject to the Green Infrastructure Plan. Ryan

McCalister testified that the identified regulated resources would not be a significant constraint to development under the proposed zone. Jake McCarthy provided testimony only about how he conducted the field evaluation for the NRI. Neither Mr. McCalister's nor Mr. McCarthy's testimony provide adequate information to determine what portion of the property should still be subject to the Green Infrastructure Plan.

Francis Siberholz, the expert offered for land planning, testified that the NRI did not change his original opinion that the application of the M-X-T Zone would not substantially impair the integrity of the relevant environmental policy. However, Mr. Siberholz similarly failed to articulate what portion of the property he believed should be subject to the Green Infrastructure Plan or provide any testimony on how the existence of regulated environmental resources on the property impacts the proposed rezoning's relationship to the relevant environmental policies.

The Applicants has the burden of proving that the proposed rezoning satisfies the criteria in Section 27-213. Accordingly, the Applicants should have the burden of affirmatively proving that the Technical Staff's original conclusions are no longer accurate based on the NRI. The Applicants cannot merely demonstrate that there is an inconsistency in the underlying information relied on by the Staff in their original opinion. Instead, the Applicants must demonstrate that the results of the NRI affirmatively disprove the conclusions made by the Staff that the application of the M-X-T Zone would substantially impair the integrity of the relevant environmental policies.

***iii. Technical Staff should issue new findings or confirm original findings in light of the NRI.***

Among the conditions created in the ZHE's request for a remand, the ZHE requested that:

If the NRI Plan verifies the absence of regulated environmental features the Planning Board/Technical Staff shall have 30 days to submit any additional recommendations to guide further review of any development on the Subject Property.

On remand, the Applicants submitted a NRI Plan. Rem. Exhibit 7; Rem. T. 10. People's Zoning Counsel noted that Technical Staff did not review the NRI Plan. Rem. T. 84.

The approved NRI does not "verif[y] the absence of regulated environmental features" but instead identified the existence of a regulated stream bisecting the western portion of the Subject Property as well as 31 specimen trees clustered around the majority of the easter portion of the Subject Property. Citizen-Protestants assert that Technical Staff's original conclusions are still supported by the findings in the NRI and thus the ZHE should disapprove of the application as she indicated that she would should the conditions proffered by the Technical Staff turn out to be true. However, if the ZHE believes that the NRI undermines the accuracy of the Staff's conclusions, the Staff should issue comments or findings based on the updated information.

The purpose of the aforementioned condition was "to guide further review of any development on the Subject Property." Based on this purpose, it would be necessary for the Technical Staff to re-evaluate their original findings based on the new information included within the NRI. If the ZHE believes that the NRI has proven a deviation from the

original information relied on by the Staff, then further comments from the Staff would be necessary to provide the ZHE with an accurate and adequate evidentiary basis upon which to make a finding. For the reasons described in the previous section, the ZHE has not been provided with accurate evidence as to whether the application of the M-X-T Zone would substantially impair the integrity of the relevant environmental policies if the environmental features on the property deviate significantly from the information relied on in the first hearing.

In summary, Citizen-Protestants believe that the NRI supports Technical Staff's original findings regarding impairment of the Green infrastructure Plan, Woodland Conservation, Regulated Environmental Features, and the General Plan. Further, Applicants did not provide relevant evidence to disprove the accuracy of Staff's original conclusions in light of the NRI. Accordingly, the ZHE should find that the application of the M-X-T Zone to the Subject Property would substantially impair the integrity of the relevant environmental policies. However, if the ZHE believes that the NRI does not support Staff's original findings, the Staff should issue additional comments in light of the NRI because the ZHE has no evidence in the record as to whether the application of the M-X-T Zone on the Subject Property would substantially impair the integrity of environmental policies based on the information in the NRI. Without additional comment, ZHE would be forced to rely on the allegedly inaccurate Staff report as well as the inaccurate testimony of Applicants' expert land planner whose testimony was based on the assumption that there were no regulated environmental features.

**c. The Application is not in keeping with Purpose of the M-X-T Zone**

The application is not consistent with the purposes of the M-X-T Zone set forth in Section 27-542(a). Citizen-Protestants set forth below Section 27-542(a) in bold type followed by Technical Staff's comments in regular type:

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

The Subject Property is within the vicinity of a major interchange (MD 4 and MD 223) and could expand employment and living opportunities and enhance economic status in these areas. However, rezoning the Subject Property to the M-X-T Zone does not embody orderly development; the proposal directs mixed-use, high-density land use away from the regional transit districts, local centers, and employment areas. Thus, if the Subject Property is granted approval of the M-X-T Zone, the intent of the M-X-T Zone insofar as promoting orderly development would not be upheld.

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

The proposed rezoning of the Subject Property does not implement the recommendations of Plan 2035 or the Subregion 6 Master Plan and SMA and permits development that directly contradicts those recommendations. If the property were granted approval of the M-X-T Zone, the property could be compact, mixed-use, and internally walkable; however, the Subregion 6 Master Plan and SMA does not recommend this density, land use, or type of development at this location. Based on the *Countywide Green Infrastructure Plan of the Approved Prince George's County Resource Conservation Plan* (May 2017) the majority of the site falls within regulated areas and evaluation areas. According to available information, the regulated areas include the headwaters of streams, associated stream buffers, and adjacent steep slopes, which comprise the PMA. The major roadways and significant environmental features may prevent this development if zoned M-X-T from being

walkable to other communities in the neighborhood. Note, however, that the subject application is for a rezoning, with no commitment to a particular design program with which to develop the site and must be evaluated against the requirements for rezoning the property; not with respect to what ultimately will be built at that location.

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

As described in this purpose, the M-X-T Zone strives to protect the value of land and buildings within the zone, as well as increase development potential by concentrating M-X-T-zoned properties at strategic locations, such as the regional transit districts, local centers, and employment areas. Currently, Subregion 6 contains a substantial number of M-X-T-zoned properties concentrated in appropriate areas, such as the Westphalia Town Center.

Rezoning the Subject Property to the M-X-T Zone scatters M-X-T zoned properties in inappropriate areas and weakens the value and development potential of properties where M-X-T zoned land has been concentrated. In addition, the proposed location for the rezoning to M-X-T is not compatible with nearby developments, such as the low-density residential communities. The property has a tenuous connection to Westphalia Town Core due to the significant barrier that is MD 4.

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

The location of the Subject Property is not in proximity to other mixed-use developments. Properties to the northeast and south have residential land uses on the properties. The northern and eastern properties zoned for mixed-use, separated from the subject site by MD 4 and MD 223, remain undeveloped. In addition, the location of the Subject Property is not in proximity of transit facilities.

Transit does not refer to a major intersection because a major intersection, intrinsically, promotes automobile use as opposed to discouraging it. Therefore, M-X-T-zoned property at this location cannot facilitate transit use or reduce automobile use.



Furthermore, M-X-T zoning at this location cannot facilitate bicycling. There are no established or funded bicycle facilities or infrastructure on MD 4, MD 223, or Marlboro Pike. Also, M-X-T zoning at this location cannot facilitate walkability. Pedestrians would be required to cross MD 4, a freeway, or MD 223, a master-planned arterial road, without the assistance of a pedestrian bridge or underpass.

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

An M-X-T zoned property at this location, with a 24-hour environment, is inappropriate and out of context. The Subject Property is surrounded by vacant land, and low- to medium-density residential communities. It is unlikely that there is a large enough daytime or residential population existing near the Subject Property to support a 24-hour environment, and the residents of these neighborhoods may find it a nuisance and incompatible with the character of their neighborhood.

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

At this location, mixed-use development, either horizontal or vertical, may blend internally, but would not blend with adjacent uses. Instead, it would be isolated from the mixed-use zoned properties to the north and east due to MD 4 and MD 223. This purpose presumes the Subject Property is in an urban or urbanizing area and that the development would become part of the urban fabric. This is not the case for this property.

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

At the rezoning stage of the development review process, there are no urban design or site plans, or architectural drawings to review to determine functional relationships among uses or distinctive visual character and identity.

**(8) To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public**

**facilities and infrastructure beyond the scope of single-purpose projects.**

Mixed-use development is inherently more efficient by using economies of scale and typically provides energy savings during construction. At this stage of the development review process, there are no SWM plans or public facility recommendations to evaluate.

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

Mixed-use development is inherently flexible in terms of market response. However, with the chosen location, the project would shift economic vitality and investment away from where it is needed and desired, specifically the regional transit districts, local centers, and employment areas.

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

At this stage of the development review process, there are no architectural or urban design plans to evaluate.

**4. The ZHE erred when she determined that the transportation facilities will be adequate to carry the anticipated traffic for the proposed development. Remand Decision, pp. 31-2, paragraph 8.**

Section 27-312(a)(3)(A) requires that:

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

Christine Hough testified, “Rezoning of [the Subject Property] to MXT would significantly amplify the ... traffic problems and endanger the vehicular and pedestrian

safety of our residents by increasing the amount and duration of traffic congestion in our community.” Rem. T. 42-5. Moreover, Technical Staff warned: “if the requested rezoning were approved, the property owner is entitled to propose the maximum density permitted by the zoning ordinance in the M-X-T Zone with the review of subsequent applications, which may yield different transportation impact results” and noted that the M-X-T Zone approval is not based upon a conceptual site plan. Only the current proposed development yield is shown in the traffic impact study, and the traffic-related findings can be amended at the time of preliminary plan of subdivision, in accordance with Section 27-213(a)(3)(B). Further, they stated that “while staff has always interpreted this part of the law to allow the scope of transportation improvements to be amended as future traffic patterns change, it appears to also allow more intensive uses to be proposed at later review stages. The M-X-T Zone allows a range of uses and density, which may exceed the development proposal put forth herein.

The District Council should disapprove the application because the transportation facilities will not be adequate to carry anticipated traffic for the proposed development.

**5. The ZHE erred when she declined to accept expert reports prepared by Lawrence Green, PE, PTOE and Ruth E. Grover, M.U.P, A.I.C.P.**

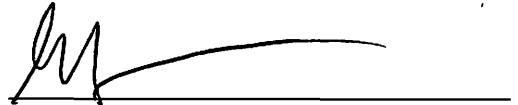
On April 30, 2021, Citizen-Protestants filed a Post-Hearing Memorandum which included expert reports prepared by Lawrence Green, PE, PTOE and Ruth E. Grover, M.U.P, A.I.C.P. The Applicants objected to the Green and Grover reports on the grounds that the evidentiary portion of the case was over and because Mr. Green and Ms. Grover had not testified under oath. On May 3, 2021, the ZHE declined to admit the reports.

Citizen-Protestants except to that ruling because they believe that the deadline for submitting such evidence had not expired. Citizen-Protestants have attached to these exceptions the report and resume of Ruth E. Grover, M.U.P, A.I.C.P.s as Exhibits A and B and the report and resume of Lawrence Green, PE, PTOE as Exhibits C and D.

**Conclusion**

For all of these reasons, Citizen-Protestants request the District Council disapprove A-10051.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of August, 2021, a copy of the foregoing Exceptions and Request for Oral Argument was mailed electronically and by first-class mail, postage pre-paid to:

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Persons of Record  
(Via by U.S. mail only)

  
G. Macy Nelson

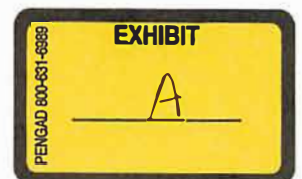
April 30, 2021

**RE: Case A-10051**

**I. Introduction**

My name is Ruth Grover and I am a land planner with a Master of Urban Planning degree and more than 35 years planning experience in both the private and public sectors, including most recently working for Macy Nelson. In that capacity, I have prepared this written testimony as to the land planning issues in the Zoning Map Amendment A-10051, Carozza Property Zoning Map Amendment application, submitted by Maria Volpe and Sandra Carey, Trustees/Carozza Property (the “Applicants”), which requests rezoning of Parcels 32, 35 and 92, recorded in Liber 13557 at Folio 730 (the “Property”) from the Residential Rural (R-R) Zone to the Mixed Use – Transportation (M-X-T) Zone. My analysis leads to a recommendation of disapproval, in agreement with staff’s original recommendation on the project. My resume is attached for your information.

This project has been long in process. It was first accepted for processing by the M-NCPPC on July 23, 2019 and a technical staff report, dated October 17, 2019, was prepared for an October 31, 2019 Planning Board hearing, which is in the record for this case and which I would like to incorporate into my comments by reference, except where noted to the contrary. The Planning Board made no request to hear, though they endorsed staff’s recommendation in the case. The record on the case was then transmitted to the Zoning Hearing Examiner (ZHE) on November 5, 2019 and subsequently was scheduled for a virtual hearing on April 14, 2020, then the case was called up by the District Council which scheduled oral argument on January 25, 2021 and, on February 9, 2021 remanded the case to the ZHE for a new or revised



recommendation. A hearing was held for the case on April 14, 2021 and the record was held open for two weeks which has enabled us to submit these comments.

I agree with the planning and zoning logic expressed in the original technical staff report and the recommendation of disapproval arrived at in its conclusion. The application should be disapproved because it is not in conformance with the basic tenets of comprehensive planning practice which includes conformance with the relevant adopted comprehensive planning documents which in this case include the 2014 Plan Prince George's 2035 Approved General Plan (Plan 2035), the Subregion 6 Master Plan and Sectional Map Amendment (Subregion 6 Master Plan and SMA), the Countywide Green Infrastructure Plan of the Approved Prince George's County Resource Conservation Plan (May 2017) and because it is not in conformance with the applicable provisions of the Prince George's County Zoning Ordinance (the "Zoning Ordinance") which seek to implement the goals and objectives expressed in the comprehensive planning documents which include, but are not limited to. Section 27-213, Criteria for approval of the M-X-T Zone, Section 27- , Purposes of the M-I-O and Section 27-542, Purposes of the M-X-T Zone. Further, the application should be disapproved because the proposed rezoning would lead to incompatibilities with the existing land use fabric and would cause negative off-site impacts to the surrounding area.

## **II. Relevant Zoning Ordinances and Comprehensive Planning Documents**

An M-X-T rezoning application must be approved in accordance with Prince George's Zoning Ordinance Section 27-213(a):

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

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

- (i) A major intersection or major interchange (being an intersection or interchange in which at least two (2) of the streets forming the intersection or interchange are classified in the Master Plan as an arterial or higher classified street reasonably expected to be in place within the foreseeable future); or
  - (ii) A major transit stop or station (reasonably expected to be in place within the foreseeable future).
- (B) Criterion 2. The applicable Master Plan recommends mixed land uses similar to those permitted in the M-X-T Zone.
- (2) Prior to approval, the Council shall find that the proposed location will not substantially impair the integrity of an approved General Plan, Area Master Plan, or Functional Master Plan and is in keeping with the purposes of the M-X-T Zone. In approving the M-X-T Zone, the District Council may include guidelines to the Planning Board for its review of the Conceptual Site Plan.
- (3) Adequate transportation facilities.
- (A) Prior to approval, the Council shall find that transportation facilities that are existing, are under construction, or for which one hundred percent (100%) of construction funds are allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, will be funded by a specific public facilities financing and implementation program established for the area, or provided by the applicant, will be adequate to carry anticipated traffic for the proposed development.

The purposes of the M-X-T Zone are found in Prince George's Zoning Ordinance Section

27-542:

- (1) To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens.
- (2) To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses;
- (3) To conserve the value of land and buildings by maximizing the public and private development potential inherent in the location of the zone, which might otherwise become scattered throughout and outside the County, to its detriment;
- (4) To promote the effective and optimum use of transit and reduce automobile use by locating a mix of residential and non-residential uses in



- proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use;
- (5) To facilitate and encourage a twenty-four (24) hour environment to ensure continuing functioning of the project after workday hours through a maximum of activity, and the interaction between the uses and those who live, work in, or visit the area;
  - (6) To encourage an appropriate horizontal and vertical mix of land uses which blend together harmoniously;
  - (7) To create dynamic, functional relationships among individual uses within a distinctive visual character and identity;
  - (8) To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public facilities and infrastructure beyond the scope of single-purpose projects;
  - (9) To permit a flexible response to the market and promote economic vitality and investment; and
  - (10) To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.

Staff found that the applicable comprehensive planning documents for the subject property include 2014 Plan Prince George's 2035 Approved General Plan (Plan 2035), the Subregion 6 Master Plan and Sectional Map Amendment (Subregion 6 Master Plan and SMA), the Countywide Green Infrastructure Plan of the Approved Prince George's County Resource Conservation Plan (May 2017).

### **III. Questions Presented**

1. Does the application of a M-X-T Zone to the subject property satisfy Section 27-213(a)(2)?
2. Will the traffic facilities be adequate to carry anticipated traffic for the proposed development pursuant to Section 27-213(a)(3)?

### **IV. Brief Answer**

1. No, the application of the M-X-T Zone will substantially impair the integrity of the relevant comprehensive planning documents and the application is not in keeping with the purposes of the M-X-T Zone.
2. No, the traffic facilities will not be adequate to carry the anticipated traffic for the proposed development.

**V. Discussion**

- 1. The application of the M-X-T Zone will substantially impair the integrity of the relevant comprehensive planning documents regarding their land use and environmental policies.**

Section 27-213(a)(2) states that:

Prior to approval, the Council shall find that the proposed location will not substantially impair the integrity of an approved General Plan, Area Master Plan, or Functional Master Plan and is in keeping with the purposes of the M-X-T Zone.

**The subject application does not meet this requirement.** The application of an M-X-T Zone to the subject property will substantially impair two categories of policies in the relevant comprehensive planning documents – land use policies and environmental policies. Further, the application of an M-X-T Zone to the subject property is not in keeping with the purposes of the M-X-T Zone.

Staff found that the applicable comprehensive planning documents for the subject property include 2014 Plan Prince George's 2035 Approved General Plan (Plan 2035), the Subregion 6 Master Plan and Sectional Map Amendment (Subregion 6 Master Plan and SMA), the Countywide Green Infrastructure Plan of the Approved Prince George's County Resource Conservation Plan (May 2017).

Staff found, and citizen-opponents concur, that the application of an M-X-T Zone to the subject site would substantially impair each of these documents in the following ways:

a. Substantial Impairment of Land Use and Economic Development Policies

Prince George's County Approved General Plan (Plan 2035) established the following land use and economic development policies and strategies that are relevant to this application:

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

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

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

**Policy LU 9:** Limit the expansion of new commercial zoning outside of the Regional Transit Districts and Local Centers to encourage reinvestment and growth in designated centers and in existing commercial areas (Land Use, page 116).

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

**Strategy HD 9.9:** Implement urban design solutions to ensure appropriate transitions between higher intensity and density development and surrounding lower-density residential neighborhoods. Urban techniques include decreasing (stepping down) building heights, reducing development densities, and otherwise modifying architectural massing and form (Community Heritage, Culture, and Design, page 215).

With respect to transportation, the technical staff report contains the following policies and strategies that the proposed rezoning is not in keeping with:

**Major Roads MD 4 (Pennsylvania Ave):** This plan recommends the upgrade of MD 4 to freeway status from I-495 to the Anne Arundel County line. Part of this upgrade is complete in Subregion 6, although interchange upgrades are still necessary to achieve freeway status. In particular, interchanges to replace at-grade intersections of MD 4 with Westphalia Road, Suitland Parkway, and Dower House Road have not been completed, and several existing interchanges, such as those at MD 223 and US 301, need to be upgraded (Major Roads, page 84).

**Policy 1:** Develop a road network that balances regional mobility and local accessibility needs.

**Strategy 1:** Continue to manage existing and future traffic by building the Subregion Plan’s road network (as shown in Table 9 [page 99] and Map 14 [page 86]). Give priority to key roads that would be heavily impacted by growth (including BRAC-related growth): Old Marlboro Pike (Transportation Needs Based on Growth Trends, page 92).

**Policy 3:** Maintain and improve both the arterial and nonarterial systems to provide for safe and efficient travel.

**Strategy 1:** Fund and construct the following road projects listed in the Capital Improvement Program and MDOT Consolidated Transportation Program – Reconstruction of MD 4 (including interchanges at Suitland Parkway and Dower House Road (Transportation Needs Based on Growth Trends, page 93).

**Policy 2:** Ensure that the road system is improved concurrently with development, so that road and intersection capacities match demand (Transportation Needs Based on Growth Trends, page 93).

As stated in the technical staff report, Plan 2035 designated the subject site within the Established Communities area and described them as “existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers” ... Development growth is to be focused in the Regional Transit Districts and Local Centers. Plan 2035’s vision for the Established Communities area is “context-sensitive

infill and low- to medium-density development” (page 20). In addition, Plan 2035 recommends residential low land use for the subject property (Map 10, page 101). The subject property is not within a Regional Transit District, Local Center, or an Employment Area, as defined in Plan 2035 (pages 19, 106, and 109).

The applicant provided a statement of justification (SOJ) with his original application, dated July 2, 2019, incorporated herein by reference. The SOJ acknowledges the residential low land use recommendations for the subject property but states that the proposed zoning will not substantially impair the general plan or the master plan and is in keeping with the purposes of the M-X-T Zone. However, staff in their original staff report, did not find that the applicant’s request is justified and offered the following:

Pursuant to Section 27-213(a)(2), this application would substantially impair the integrity of Plan 2035 in the following manners: Plan 2035 recommends, “context-sensitive infill and low- to medium-density development” within the Established Communities policy area (page 20); and specifically recommends residential low land use for the subject property (Map 10, page 101).

More specifically, Plan 2035 defines the residential low land use as up to 3.5 dwelling units per acre (page 100). The R-R Zone allows a maximum of 2.17 dwelling units per acre, well within this range. The M-X-T Zone allows the possibility of densities significantly higher, including permitting multifamily and single-family attached dwellings that are only economical at higher densities. Under certain conditions, the zone can permit a floor area ratio (FAR) as high as 8.0.

Furthermore, the rezoning of the subject property at this location contradicts the Plan 2035 recommendations to:

- “Concentrate medium- to high-density housing development to Regional Transit Districts and Local Centers” (Housing and Neighborhoods, Policy HN 1, page 187);
- “limit future mixed-use land uses outside of the Regional Transit Districts and Local Centers” (Land Use, Policy 7, page 114);
- “limit the expansion of new commercial zoning outside of the Regional Transit Districts and Local Centers...” (Land Use, Policy 9, page 116);

- “...encourage growth to concentrate in the Regional Transit Districts that are designated as Downtowns” (Land use, Strategy LU 1.1, page 305); and
- “Direct a majority of projected new residential and employment growth to the Regional Transit Districts...” (Land Use, Policy LU 1, page 110).

Plan 2035 indicates that medium- to high-density housing, mixed-use, and commercial development in this area of Prince George’s County is to be located within the Westphalia Local Town Center, north of MD 4 from the subject property, and other regional transit districts and local centers, and nowhere else. The County’s development goals are stated in Plan 2035, as further discussed.

Mixed-use and commercial zoning should be limited to the designated regional transit districts, local centers, and employment areas. At the time of the writing of the staff report, there were 985.38 acres of property, wholly or partially within a 1-mile radius of the subject property, zoned for mixed-use; L-A-C, Residential Medium Development, (R-M) and Residential Suburban Development (R-S). Staff noted that the R-M and R-S Zones allow non-residential uses, such as food and beverage stores, as well as beauty salons. It was evident that there is a substantial amount of property zoned for mixed-use in Subregion 6 and adjacent planning areas, and any additional mixed-use zoning would inhibit commercial revitalization in the areas where it is desired.

Allowing the subject property to be rezoned to the M-X-T Zone at the proposed location, outside the regional transit districts and local centers, pulls mixed-use growth away from designated areas where it is more desirable (including the Westphalia Local Town Center across MD 4 from the subject property); and promotes a scale and mix of development that is out of context with the surrounding low- to medium-density residential neighborhoods. The rezoning of the subject property challenges Plan 2035’s recommendation to “ensure appropriate transitions between higher intensity and density development and surrounding lower-density residential neighborhoods” (Community Heritage, Culture, and Design, HD 9.9, page 215).

The staff also found, and citizen-opponents concur, that the application would substantially impair the land use and economic development goals in the Subregion 6 Master Plan and SMA. As stated in the staff report, the Subregion 6 Master Plan and SMA recommends retaining the residential low land use for Parcels 32, 35, and 92. Residential low land use is described as “Residential areas of up to 3.5 dwelling units per acre. Primarily single-family detached dwellings.” (page 40).

This is consistent with the purposes of the current R-R zoning, defined by Section 27-428(a) of the Prince George’s County Zoning Ordinance to “facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles;”

In addition, the Subregion 6 Master Plan and SMA recommends goals, policies, and strategies for development patterns and land uses that apply to properties in the sector plan area:

**Goal:** Promote a development pattern that improves mobility options by making transit service more accessible, preserves irreplaceable agricultural and natural resource lands, concentrates commercial centers, and sustains a diverse and vibrant economy (Development Pattern and Land Use, page 39).

**Policy 1:** Promote a development pattern that allocates appropriate amounts of land for residential, commercial, employment, industrial, and institutional land uses, in accordance with County development goals by considering local and regional needs, the integration of land uses wherever possible, and the impact of development proposals on the economy, environment, equity, and efficiency;

**Strategy 1:** Maintain low- to moderate-density land uses except as part of mixed-use development and planned communities (Developing Tier, page 58).

In addition, the master plan includes these policies and strategies with respect to economic development that the proposed rezoning would not support:

**Policy 1:** Intensify and grow economic development at strategic locations zoned for industrial and commercial uses to increase employment opportunities, income, and the tax base within Prince George’s County and the subregion.

**Strategy 1:** Ensure that adequate amounts of land are available for economic development while avoiding over-zoning land as commercial that encourages sprawl and inhibits revitalization efforts.

**Strategy 4:** Support redevelopment and revitalization of existing employment areas rather than greenfield development (Employment, page 147).

**Policy 4:** Provide commercial development in strategic locations to serve the needs of communities giving preference to improving existing centers (Living and Community Areas, page 177).

Staff, in their original report, found that Pursuant to Section 27-213(a)(2), this application would substantially impair the integrity of the Subregion 6 Master Plan and SMA in the following manners:

**Land Use and Density:** The Subregion 6 Master Plan and SMA recommends maintaining, “low- to moderate-density land uses...” (Strategy 1, Developing Tier, page 58), within the developing tier (now known as the Established Communities area pursuant to Plan 2035). In addition, the Subregion 6 Master Plan and SMA specifically recommends the residential low land use (Map 27) for the subject property. Though Strategy 1, as contained on page 58, recommends maintaining “...low- to moderate density *except* as part of mixed-use development” the property is not recommended for mixed-use, therefore the exception does not apply.

The Subregion 6 Master Plan and SMA defines the residential low land use as “Residential areas of up to 3.5 dwelling units per acre. Primarily single-family detached dwellings.” (page 40). The R-R Zone allows a maximum of 2.17 dwelling units per acre, well within this range. In addition, the M-X-T Zone allows the possibility of densities significantly higher, including permitting multifamily and single-family attached dwellings that are only economical at higher densities. Under certain conditions, the zone can permit a FAR as high as 8.0.

Furthermore, the M-X-T Zone requires at least two land uses to be included in a development, which can include office/industrial/research, hotel/motel, retail and/or residential in any combination. This means that under the M-X-T Zone, it is possible that residential land uses may not be included in a new development.

Given that the M-X-T Zone allows high-density, non-residential development; the rezoning of the property will not only permit a density and mix of uses that is contrary to that envisioned by the plan but would also prevent the execution of the Subregion 6 Master Plan and SMA’s vision of low-density, residential land uses, which greatly impairs the integrity of the Subregion 6 Master Plan and SMA.

**Development Pattern and Location:** A key component of the Subregion 6 Master Plan and SMA, that is evident throughout, is the recommended



development pattern or, more specifically, the location of mixed-use and commercial zoning and land use. The Subregion 6 Master Plan and SMA recommends promoting, "...a development pattern that...concentrates commercial centers..." (Goal 4, Development Pattern and Land Use, page 39); consolidating, "...commercial development in strategic locations to serve the needs of communities giving preference to improving existing centers." (Policy 4, Living and Community Areas, page 177); intensifying and growing, "...economic development at strategic locations zoned for industrial and commercial uses..." (Policy 1, Employment, page 147); and supporting, "...redevelopment and revitalization of existing employment areas rather than greenfield development" (Strategy 4, Employment page 147).

The subject property is not located in or as part of an existing commercial center or an employment area, nor is it zoned commercial or industrial. It is a vacant greenfield property, that abuts low- to medium-density residential neighborhoods to the south and northeast, and vacant land to the north and east.

Though it is located near the proposed Westphalia Town Center, the subject property was not envisioned to be part or an extension of the future development by either the 2007 *Approved Westphalia Sector Plan* or the Subregion 6 Master Plan and SMA.

Furthermore, a major concern contained in the Subregion 6 Master Plan and SMA is the amount of mixed-use and commercial zoning already in place in the Subregion 6 Master Plan and SMA area and the County. The Subregion 6 Master Plan and SMA recommends avoiding, "...over-zoning land as commercial..." to discourage, "...sprawl and inhibit revitalization efforts in existing commercial centers" (Strategy 1, Employment, page 147).

Instead, the Subregion 6 Master Plan and SMA recommends allocating, "...an appropriate amount of land for residential, commercial, employment, industrial, and institutional land uses in accordance with County development goals...." (Policy 1, Developing Tier, page 58).

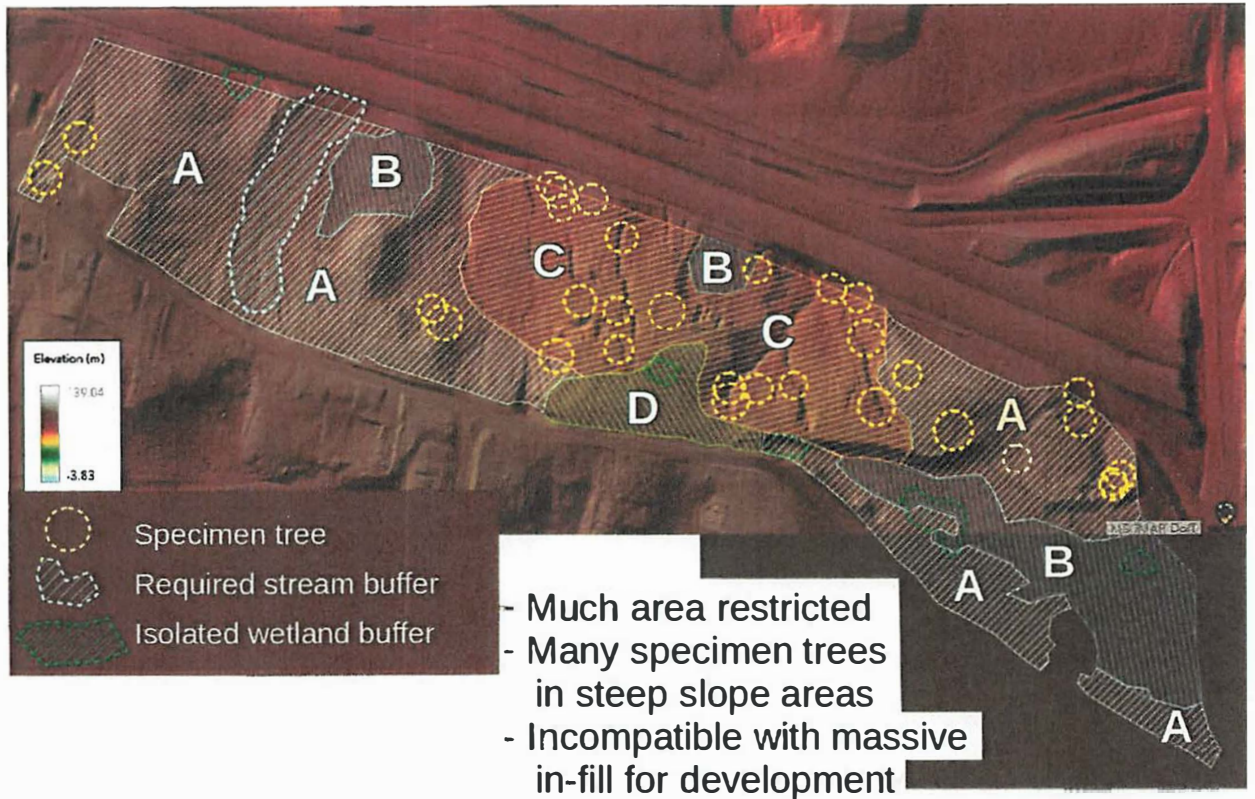
b. Substantial Impairment of Environmental Policies

Citizen-opponents concur with the conclusions in the original staff report – that the application of the M-X-T Zone to the subject property would significantly impair the integrity of environmental policies within the applicable comprehensive planning documents. The applicant's approved NRI identified the existence of a regulated stream and at least 31 specimen

trees. Although there may be fewer environmental features on the subject property than the staff initially identified, the staff's original conclusions remain valid. Further, the applicant provided no relevant evidence in the hearing on April 14, 2021 to contradict staff's initial findings. However, if the Zoning Hearing Examiner believes that the accuracy of the staff's original findings has been undermined by the Applicant's NRI, the expert staff of the M-NCPPC Environmental Planning Section should have the opportunity to issue additional comments or findings pursuant to the conditions created in the ZHE's request for remand. Citizen-opponents and applicants should then have the opportunity to base their comments on the most accurate and relevant staff findings.

*i. Staff's original findings are still valid.*

In her written decision, the ZHE stated that "if the facts concerning the regulated environmental features on site were exactly as proffered by the Technical Staff I would recommend denial of the request since the County Green Infrastructure Plan clearly delineates most of the site within regulated areas and evaluation areas (and the General Plan and Subregion 6 Master Plan clearly include policies for the protection and preservation of the Green Infrastructure Network) and approving the request would considerably weaken these areas." ZHE Decision Aug. 20 pg. 19. The applicant's approved NRI confirmed the existence of regulated areas and evaluation areas as it identified a regulated stream bisecting the eastern portion of the subject property and 31 specimen trees clustered around the western portion of the subject property. Below is a depiction of these regulated environmental features in which the location of the natural resources provided in the NRI is superimposed over a Lidar image:



Although the NRI does not confirm all of the regulated environmental features proffered by the staff in their original report, the conclusions made by the staff regarding the Green infrastructure Plan, Woodland Conservation, Regulated Environmental Features, and the General Plan are still supported by the findings in the NRI. Accordingly, the NRI confirms that the proposed application of a M-X-T Zone to the subject property will substantially impair the environmental policies of the applicable comprehensive documents.

In their original report, staff found that under the *Countywide Green Infrastructure Plan* of the *Approved Prince George's County Resource Conservation Plan* (May 2017), the majority of the subject property falls within regulated areas and evaluation areas. Regulated areas “contain environmentally sensitive features...that are regulated (i.e., protected) during the land

development process.” Prince George’s County Green Infrastructure Plan pg. 18. Based on available information, the regulated areas include the headwaters of streams, associated stream buffers, and adjacent steep slopes, which comprise the primary management area (PMA). The NRI identified an intermittent stream, steep slopes, and 31 specimen trees – all constitute regulated areas. Further, evaluation areas “contain environmentally sensitive features... that are not regulated (i.e, not protected) during the land development process.” Prince George’s County Green Infrastructure Plan pg. 18. The evaluation areas adjacent to regulated environmental features provide opportunities for building larger riparian buffers and habitat corridors, and opportunities to provide linkages between environmental features. The NRI identified isolated wetlands and a contiguous tree canopy – both create regulated areas. Accordingly, there is no evidence to contradict staff’s original conclusion that the majority of the subject property falls within regulated areas and evaluation areas.

The Subregion 6 Master Plan and SMA recommends the protection, preservation, and restoration of the identified green infrastructure network, in order to protect critical resources and to guide development and mitigation activities (Policy 1, Wildlife and Habitat, pages 68–69); and the preservation or restoration of regulated areas designated in the green infrastructure network through the development review process for new land development proposals, (Strategy 4, Wildlife and Habitat, pages 68–69).

As both the staff and the ZHE have already noted, “the General Plan and Subregion 6 Master Plan clearly include policies for the protection and preservation of the Green Infrastructure Network.” Based on the clear policies within the General Plan and Subregion 6 Master Plan regarding the green infrastructure network, staff’s conclusion that “Any impacts to

regulated environmental features on the subject property are not supported” should still be correct.

The environmental constraints within the subject property, as contained in the resource conservation plan, comprises nearly the entire subject property, with the most sensitive areas, namely the streambeds, bisecting the property. The proposed M-X-T Zone, which encourages intense, high-density land uses, would permit development that greatly impedes efforts to preserve the tree canopy and restore the waterways, while the R-R Zone, a low-density low-intensity zone, would promote development that limits disturbance to the green infrastructure network.

As it relates to Woodland Conservation, the staff’s original statements are still valid.

More specifically, staff found, and citizen-opponents concur, that:

Development of the site would be subject to the provisions of Subtitle 25, Division 2, of the Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance (WCO), and future development of the site must be in conformance with an approved tree conservation plan. The site is currently zoned R-R and has a required woodland conservation threshold of 20 percent of the net tract area. If approved, the proposed change to the M-X-T Zone will reduce the woodland conservation threshold to 15 percent. Based on the stream and Green Infrastructure network mapped on-site, the proposed zoning change is not supported. The current thresholds are appropriate and should be met with on-site preservation of the highest priority woodlands within the Green Infrastructure network. Future land development applications would require conformance with the WCO.

Regarding regulated environmental features, staff’s following statement is supported by the NRI:

According to information available on PGAtlas, there are regulated environmental features as defined in Section 25-118(b) 63.1 on this site

In Prince George's County, impacts to any regulated environmental features should be limited to those that are necessary for the development of the property. Necessary impacts are those that are directly attributable to infrastructure required for the reasonable use and orderly and efficient development of the subject property or are those that are required by County Code for reasons of health, safety, or welfare. Necessary impacts include, but are not limited to, adequate sanitary sewerage lines and water lines, road crossings for required street connections, and outfalls for stormwater management (SWM) facilities. Road crossings of streams and/or wetlands may be appropriate if placed at the location of an existing crossing or at the point of least impact to the regulated environmental features. SWM outfalls may also be considered necessary impacts if the site has been designed to place the outfall at a point of least impact. The types of impacts that can be avoided include those for site grading, building placement, parking, SWM facilities (not including outfalls), and road crossings where reasonable alternatives exist. The cumulative impacts for the development of a property should be the fewest necessary and sufficient to reasonably develop the site, in conformance with County Code.

Impacts to regulated environmental features must first be avoided and then minimized. If impacts to the regulated environmental features are proposed, a statement of justification must be submitted, in accordance with the Prince George's County Environmental Technical Manual. The justification must address how each impact has been avoided and/or minimized. Future land development applications will require a finding of preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible, per Sections 24 and 27 of the County Code. The original staff report stated that impacts to regulated environmental features would not be supported in order to accommodate higher density.

Finally, the NRI supports the staff's original finding, with which citizen-opponents concur, that the application would substantially impair the following environmental policies and strategies from the Prince George's County General Plan (Plan 2035):

**Policy 1:** Protect, preserve, and restore the identified Green Infrastructure network and areas of local significance within Subregion 6, in order to protect critical resources and to guide development and mitigation activities;

**Strategy 2:** Protect primary corridors (Patuxent River, Charles Branch, Collington Branch, Piscataway Creek, Mattawoman Creek, and Swanson Creek) during the review of land development proposals, to ensure the highest level of preservation and restoration possible, with limited impacts for essential development elements. Protect secondary corridors to restore and enhance environmental features, habitat, and important connections;

**Strategy 4:** Preserve or restore regulated areas designated in the Green Infrastructure Network through the development review process for new land development proposals (Wildlife and Habitat, pages 68-69).

**Policy 2:** Restore and enhance water quality in degraded areas and preserve water quality in areas not degraded.

*ii. Applicant presented no relevant evidence to contradict the staff's original findings.*

Whether the application of the M-X-T Zone to the subject property would substantially impair the integrity of the General Plan's and Subregion 6 Master Plan's clearly policies for the protection and preservation of the Green Infrastructure Network depends on how much of the subject property should be included within the Green Infrastructure Plan. Applicant originally argued that no portion of the property should be subject to the Green Infrastructure Plan while the Staff argued that the majority of the property should be subject to the Green Infrastructure Plan. If the staff were correct the ZHE, in her written decision, stated that she would have to deny the application. On the other hand, if the Applicant were correct, there would be no conflict

with the policies of the Subregion 6 Master Plan or General Plan related to the Green Infrastructure Plan because no portion of the property would be relevant to those policies.

The NRI affirmatively disproved the Applicant's original argument that the Green Infrastructure Plan should not apply to the subject property. The NRI, although it does not prove the exact conditions relied on by the staff, does not affirmatively disprove the staff's conclusion that the majority of the subject property has regulated areas and evaluation areas. None of the Applicant's expert witnesses provided testimony as to what portion of the property would still be subject to the Green Infrastructure Plan. Ryan McCalister testified that the identified regulated resources would not be a significant constraint to development under the proposed zone. Jake McCarthy provided testimony only about how he conducted the field evaluation for the NRI. Neither Mr. McCalister's nor Mr. McCarthy's testimony provide adequate information to determine what portion of the property should still be subject to the Green Infrastructure Plan.

Francis Siberholz, the expert offered for land planning, testified that the NRI did not change his original opinion that the application of the M-X-T Zone would not substantially impair the integrity of the relevant environmental policy. However, Mr. Siberholz similarly failed to articulate what portion of the property he believed should be subject to the Green Infrastructure Plan or provide any testimony on how the existence of regulated environmental resources on the property impacts the proposed rezoning's relationship to the relevant environmental policies.

The Applicant has the burden of proving that the proposed rezoning satisfies the criteria in Section 27-213. Accordingly, the Applicant should have the burden of affirmatively proving that the staff's original conclusions are no longer accurate based on the NRI. The Applicant



cannot merely demonstrate that there is an inconsistency in the underlying information relied on by the staff in their original opinion. Instead, the Applicant must demonstrate that the results of the NRI affirmatively disprove the conclusions made by the staff that the application of the M-X-T Zone would substantially impair the integrity of the relevant environmental policies.

***iii. Staff should issue new findings or confirm original findings in light of the NRI.***

Among the conditions created in the ZHE's request for a remand, the ZHE requested that:

If the NRI Plan verifies the absence of regulated environmental features the Planning Board/Technical Staff shall have 30 days to submit any additional recommendations to guide further review of any development on the subject property.

The approved NRI does not "verif[y] the absence of regulated environmental features" but instead identified the existence of a regulated stream bisecting the western portion of the subject property as well as 31 specimen trees clustered around the majority of the easter portion of the subject property. Citizen-opponents believe that staff's original conclusions are still supported by the findings in the NRI and thus the ZHE should disapprove of the application as she indicated that she would should the conditions proffered by the staff turn out to be true. However, if the ZHE believes that the NRI undermines the accuracy of the staff's conclusions, the expert staff should issue comments or findings based on the updated information.

The purpose of the aforementioned condition was "to guide further review of any development on the subject property." Based on this purpose, it would be necessary for the staff to re-evaluate their original findings based on the new information included within the NRI if the ZHE believes that the environmental features on the site significant deviation from the information relied on by the staff. If the ZHE believes that the NRI has proven a deviation from

the original information relied on by the staff, then further comments from the staff would be necessary to provide the ZHE with an accurate and adequate evidentiary basis upon which to make a finding. For the reasons described in the previous section, the ZHE has not been provided with accurate evidence as to whether the application of the M-X-T Zone would substantially impair the integrity of the relevant environmental policies if the environmental features on the property deviate significantly from the information relied on in the first hearing.

In summary, citizen-opponents believe that the NRI supports the staff's original findings regarding impairment of the Green infrastructure Plan, Woodland Conservation, Regulated Environmental Features, and the General Plan. Further, Applicant's did not provide relevant evidence to disprove the accuracy of staff's original conclusions in light of the NRI.

Accordingly, the ZHE should find that the application of the M-X-T Zone to the subject property would substantially impair the integrity of the relevant environmental policies. However, if the ZHE believes that the NRI does not support staff's original findings, the staff should issue additional comments in light of the NRI because the ZHE has no evidence in the record as to whether the application of the M-X-T Zone on the subject property would substantially impair the integrity of environmental policies based on the information in the NRI. Without additional comment, ZHE would be forced to rely on the allegedly inaccurate staff report as well as the inaccurate testimony of applicant's expert land planner whose testimony was based on the assumption that there were no regulated environmental features.

c. Not in keeping with Purpose of the M-X-T Zone

Pursuant to Section 27-213(a)(2), the proposed location is not consistent with the purposes of the M-X-T Zone. The complete list of purposes is copied below, followed by staff comment:

Section 27-542(a)(1) states:

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

The subject property is within the vicinity of a major interchange (MD 4 and MD 223) and could expand employment and living opportunities and enhance economic status in these areas. However, rezoning the subject property to the M-X-T Zone does not embody orderly development; the proposal directs mixed-use, high-density land use away from the regional transit districts, local centers, and employment areas. Thus, if the subject property is granted approval of the M-X-T Zone, the intent of the M-X-T Zone insofar as promoting orderly development would not be upheld.

Section 27-542(a)(2) states:

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

The proposed rezoning of the subject property does not implement the recommendations of Plan 2035 or the Subregion 6 Master Plan and SMA and permits development that directly contradicts those recommendations. If the property were granted approval of the M-X-T Zone, the property could be compact, mixed-use, and internally walkable; however, the Subregion 6

Master Plan and SMA does not recommend this density, land use, or type of development at this location. Based on the *Countywide Green Infrastructure Plan of the Approved Prince George's County Resource Conservation Plan* (May 2017) the majority of the site falls within regulated areas and evaluation areas. According to available information, the regulated areas include the headwaters of streams, associated stream buffers, and adjacent steep slopes, which comprise the PMA. The major roadways and significant environmental features may prevent this development if zoned M-X-T from being walkable to other communities in the neighborhood. Note, however, that the subject application is for a rezoning, with no commitment to a particular design program with which to develop the site and must be evaluated against the requirements for rezoning the property; not with respect to what ultimately will be built at that location.

Section 27-542(a)(3) states:

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

As described in this purpose, the M-X-T Zone strives to protect the value of land and buildings within the zone, as well as increase development potential by concentrating M-X-T-zoned properties at strategic locations, such as the regional transit districts, local centers, and employment areas. Currently, Subregion 6 contains a substantial number of M-X-T-zoned properties concentrated in appropriate areas, such as the Westphalia Town Center.

Rezoning the subject property to the M-X-T Zone scatters M-X-T zoned properties in inappropriate areas and weakens the value and development potential of properties where M-X-T zoned land has been concentrated. In addition, the proposed location for the rezoning to M-X-T

is not compatible with nearby developments, such as the low-density residential communities. The property has a tenuous connection to Westphalia Town Core due to the significant barrier that is MD 4.

Section 27-542(a)(4) states:

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

The location of the subject property is not in proximity to other mixed-use developments. Properties to the northeast and south have residential land uses on the properties. The northern and eastern properties zoned for mixed-use, separated from the subject site by MD 4 and MD 223, remain undeveloped. In addition, the location of the subject property is not in proximity of transit facilities.

Transit does not refer to a major intersection because a major intersection, intrinsically, promotes automobile use as opposed to discouraging it. Therefore, M-X-T-zoned property at this location cannot facilitate transit use or reduce automobile use.

Furthermore, M-X-T zoning at this location cannot facilitate bicycling. There are no established or funded bicycle facilities or infrastructure on MD 4, MD 223, or Marlboro Pike. Also, M-X-T zoning at this location cannot facilitate walkability. Pedestrians would be required to cross MD 4, a freeway, or MD 223, a master-planned arterial road, without the assistance of a pedestrian bridge or underpass.

Section 27-542(a)(5) states:

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

An M-X-T zoned property at this location, with a 24-hour environment, is inappropriate and out of context. The subject property is surrounded by vacant land, and low- to medium-density residential communities. It is unlikely that there is a large enough daytime or residential population existing near the subject property to support a 24-hour environment, and the residents of these neighborhoods may find it a nuisance and incompatible with the character of their neighborhood.

Section 27-542(a)(6) states:

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

At this location, mixed-use development, either horizontal or vertical, may blend internally, but would not blend with adjacent uses. Instead, it would be isolated from the mixed-use zoned properties to the north and east due to MD 4 and MD 223. This purpose presumes the subject property is in an urban or urbanizing area and that the development would become part of the urban fabric. This is not the case for this property.

Section 27-542(a)(7) states:

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

At the rezoning stage of the development review process, there are no urban design or site plans, or architectural drawings to review to determine functional relationships among uses or distinctive visual character and identity.

Section 27-542(a)(8) states:

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

Mixed-use development is inherently more efficient by using economies of scale and typically provides energy savings during construction. At this stage of the development review process, there are no SWM plans or public facility recommendations to evaluate.

Section 27-542(a)(9) states:

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

Mixed-use development is inherently flexible in terms of market response. However, with the chosen location, the project would shift economic vitality and investment away from where it is needed and desired, specifically the regional transit districts, local centers, and employment areas.

Section 27-542(a)(10) states:

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

At this stage of the development review process, there are no architectural or urban design plans to evaluate.

**2. The traffic facilities will not be adequate to carry the anticipated traffic for the proposed development.**

Section 2 7-312(a)(3)(A) requires that:

(A) Prior to approval, the Council shall find that transportation facilities that are existing, are under construction, or for which one hundred percent (100%) of construction funds are allocated within the adopted County Capital

Improvement Program, within the current State Consolidated Transportation Program, will be funded by a specific public facilities financing and implementation program established for the area, or provided by the applicant, will be adequate to carry anticipated traffic for the proposed development.

In the original application, with respect to transportation, though staff found transportation adequacy for the rezoning, they warned: “if the requested rezoning were approved, the property owner is entitled to propose the maximum density permitted by the zoning ordinance in the M-X-T Zone with the review of subsequent applications, which may yield different transportation impact results” and noted that the M-X-T Zone approval is not based upon a conceptual site plan. Only the current proposed development yield is shown in the traffic impact study, and the traffic-related findings can be amended at the time of preliminary plan of subdivision, in accordance with Section 27-213(a)(3)(B). Further, they stated that “while staff has always interpreted this part of the law to allow the scope of transportation improvements to be amended as future traffic patterns change, it appears to also allow more intensive uses to be proposed at later review stages. The M-X-T Zone allows a range of uses and density, which may exceed the development proposal put forth herein.” Therefore, we have had an independent traffic evaluation performed by Transportation Engineer Larry Green which will be submitted to you separately. This report updates the previous traffic analysis and demonstrates that the application is no longer in conformance with Section 27-213(a)(3)(B) – offering additional reasons why this rezoning should not be approved. Therefore, we do not wish to incorporate by reference the transportation discussion included in the staff report that was published for the project in our comments.

## **VI. Conclusion**

The proposed rezoning would be incompatible with the surrounding land use context. At present, the subject property provides a buffer between existing residential development and



heavily traveled Pennsylvania Avenue (MD 4). Permitting the subject property to be rezoned to M-X-T/M-I-O would remove that buffer and permit a variety of incompatible uses to be developed on the property with attendant off site impacts of noise, traffic etc. Additionally, the proposed bubble diagram of the anticipated development on the property (though it may change) anticipates a linear development with a 250-seat church on the on the western end of subject property, 30,000 square feet of commercial shopping center development on the eastern end a 220-room hotel and 180 townhouses. With this sort of layout, a portion of each of these incompatible land uses would be adjacent to the existing residential development. The applicant has suggested that the sites of the commercial buildings would provide some separation from existing residential and that the project would be generously landscaped during the CSP and DSP process. However, generally, the minimal requirements of the 2010 *Prince George's County Landscape Manual* (the Landscape Manual) would be applied; there is no requirement to provide Section 4.7 buffering incompatible uses among the various uses in a mixed use development and a provision called "Alternative Compliance" may always be applied to pursuant to the Landscape Manual for a reduction in the amount of landscaping provided. In effect, this could result in very meager landscaping and a clash of incompatible land uses that might significantly impact existing residents use and enjoyment of their properties.

For all the foregoing reasons, we support the Prince George's County Planning Department's original recommendation of disapproval for the project as expressed in their staff report dated October 31, 2019. The project is not in conformance with the applicable comprehensive planning documents and the Zoning Ordinance. The rezoning should not be approved.

**Ruth E. Grover, M.U.P., A.I.C.P.**

**Experience**

***Senior Planner/Planner Coordinator*** (November 2002-August 2018)

Maryland-National Planning and Parks Commission, Upper Marlboro, Maryland

Reviewed site plan applications for landscaping, hardscape, architecture and site design for the Urban Design Section; Compiled extensive technical staff reports incorporating comments from other sections of M-NCPPC and outside agencies; Presented cases before the Planning Board and the District Council; Interfaced and negotiated with and provided information to applicants, developers, their representatives; and Supervised the preparation of urban design referrals on zoning cases and mandatory referrals prepared as required by law for entities otherwise exempt from site plan review.

***Deputy Director of Planning and Zoning*** (November 1999-November 2002)

St. Mary's Office of Planning and Zoning, Leonardtown, Maryland

Assisted the Director with the management of the Office of Planning and Zoning; Supervised the development review section in the processing of plat, subdivision and site plan approvals; Regularly presented applications before and provided staff support to the Planning Commission and Board of Appeals; Participated in the creation of a new zoning ordinance for the County; Reviewed and edited written materials issued by the Office and issued all written decisions on staff level cases.

***Planner*** (November 1996-November 1999)

Spotsylvania County Department of Planning, Spotsylvania County, Virginia

Processed rezoning, special use, historic board and replatting applications; Presented applications before the Spotsylvania Planning Commission, Board of Supervisors and Historic Preservation Commission; Acted as staff liaison to the telecommunications industry, implementing a newly adopted policy to control the proliferation of telecommunications towers; and Assisted in the expansion of the Courthouse Historic District, the National Register Nomination Process and in developing an appropriate and effective sign ordinance for the Historic District.

***Environmental Program Planner*** (August 1992-May 1994)

Department of Environmental Quality, Richmond, Virginia

Ensured financial accountability of petroleum storage tank owners; Drafted financial responsibility regulations; Evaluated and processed applications for reimbursement from the Virginia Petroleum Storage Tank Fund; Reviewed demonstrations of financial responsibility for tank vessels; and Provided information to the public on the telephone, through the preparation and distribution of detailed explanatory materials, and by participating in presentations in various locations in Virginia on behalf of the Department.



***Planner*** (April 1987-June 1989)

**Monroe County Growth Management Division, Key West, Florida**

Helped to implement newly implemented land development regulations; Managed the vested rights program; Reviewed development applications for compliance; Worked on amending the comprehensive plan; Prepared various plans; Presented before the Planning Commission; Acted as public information officer in the Building Department; and Represented the Department on the Development Review Committee and the Keys Council for the Disabled.

***Planner*** (April 1986-June 1987)

**AKRF, Inc., New York, NY**

Prepared land use, economic and historic sections of environmental impact statements; Supervised the preparation and inclusion of graphics, maps and photographs; Conducted site and market analyses for development proposals; and Negotiated the terms of development proposals as necessary.

***Planner*** (October 1984-December 1985)

**Mayo, Lunch & Associates, Inc. Hoboken, NJ**

Prepared master plans for local governments, utilities and various Boards of Education; Analyzed development plans for compliance with local requirements; Wrote planning analysis reports; Prepared site plan, rezoning and variance applications; Presented client's cases before planning and zoning boards; Acted in a planning advisory capacity for local governments; and Prepared grant applications.

***Paralegal*** (October 1981-October 1984)

**Sullivan and Cromwell, New York, NY**

Provided support to the mergers and acquisitions and real estate sections of the firm while clerking for the bar exam; Proofread and checked citations; Did legal research in case and statutory law as well as periodicals; Completed incorporations; Conducted serial closings for construction loans; Proofread; Reviewed and drafted legal documents; and Completed incorporations.

**Internships:** **Law Clerk** for Judge Henry Bramwell (June 1981-July 1981); **Research Assistant** at the American Civil Liberties Union (February 1981-May 1981); **Urban Planning and Legal Intern** for the Public Development Corporation (September 1980-December 1980); and **Liaison** to Community Planning Board for the Queens Office of the New York City Planning Department.

**Education:**

Hunter College, **Master of Urban Planning, 1981**; Brooklyn Law School, **Legal Studies, 1978-1981**; Kirkland College, **Bachelor of Arts in Architectural Studies, 1978**; University of Virginia, **Architectural and Art History Studies, 1975-1977**

**Professional Affiliations:**

**American Planning Association, since 1981 and American Institute of Certified Planners, since 1991.**

# Memorandum

TO: G. Macy Nelson  
FROM: Lawrence Green, PE, PTOE  
DATE: April 29, 2021  
SUBJECT: Carozza Property (Prince George's County) – Proposed Rezoning

## INTRODUCTION

The purpose of this memorandum is to summarize a review of documents pertaining to the proposed rezoning of the Carozza Property from the Rural Residential (R-R) zoning to the Mixed-Use Transportation (M-X-T) oriented zoning. The property is located in the southwest quadrant of the interchange of Pennsylvania Avenue (MD 4) and Woodyard Road (MD 223). The review of the documents focused on the traffic impacts and traffic generation associated with the proposed rezoning.

The following documents were reviewed:

- Traffic Impact Analysis for Carozza Property dated June 20, 2019 by Lenhart Traffic Consulting
- Traffic Impact Analysis for Carozza Property dated May 15, 2019 by Lenhart Traffic Consulting
- Memorandum dated July 30, 2019 by the Prince George's County Department of Permitting, Inspections and Enforcement Site/Road Plan Review Division
- Memorandum dated September 11, 2019 by the Prince George's County Department of Permitting, Inspections and Enforcement Site/Road Plan Review Division
- Letter dated August 23, 2019 by the Maryland Department of Transportation
- Memorandum dated September 29, 2019 by the M-NCPPC Transportation Section, Countywide Planning Division

## TRAFFIC GENERATION/TRAFFIC IMPACT IMPLICATIONS

The current R-R zoning will allow up to 111 Single Family Detached Dwelling units on the site. The proposed M-X-T zoning assumed that the property would contain a 30,000 square foot Shopping Center, a 220-Room Hotel, 180 Townhomes, 60,000 square feet of Office Development, and a 250-Seat Church. However, it should be noted that the M-X-T zoning would permit higher traffic generating uses if the applicant chose to explore this option.

The existing zoning will generate 83 AM Peak Hour Trips and 99 PM Peak Hour Trips. The proposed rezoning to M-X-T will generate 454 AM Peak Hour Trips (an increase of 447%) and 536 PM Peak Hour Trips (an increase of 441%).



# Memorandum

The traffic report prepared by Lenhart Traffic Consulting determined that there were failing intersections in the vicinity of the site (MD 223 at Dower House Road, MD 223 at Marlboro Pike, and MD 4 at Dower House Road). The traffic report assumed the construction of interchange improvements at the existing MD 4 at MD 223 interchange. The traffic report also assumed a project at the MD 4 at Dower House Road intersection to add 2 through lanes in both the eastbound and westbound directions on MD 4, and to eventually construct a grade-separated interchange at this location.

The MD 4 at MD 223 interchange improvement project and improvements at the MD 4 at Dower House Road are not listed in the current State Highway Administration (SHA) Consolidated Transportation Program (CTP) and has no construction funding. The Prince George's County Capital Improvement Program (CIP) does include a project to widen MD 4 at Dower House Road and a grade separated interchange at this location. However, the construction funding of these improvements is designated by "Others". Since the SHA has jurisdiction of MD 4 and the SHA is not aware of any construction funding at Dower House Road or MD 223, the funding for construction by "Others" as noted in the Prince George's CIP at these locations should not be assumed by SHA in the foreseeable future. Since the Carozza Property developer is not proposing to construct the improvements to the existing MD 4 at MD 223 interchange and to the MD 4 at Dower House Road intersection, there is not adequate justification to assume that these roadway projects will be built to support the proposed rezoning of the Carozza Property.

## **CONCLUSIONS**

The proposed rezoning of the Carozza Property from the R-R zoning to the M-X-T zoning will generate 447% more AM Peak Hour Trips and 441% more PM Peak Hour Trips than the current zoning. The roadway network surrounding the Carozza Property is projected to operate at unacceptable levels of service in the future unless major roadway improvements are constructed. SHA has no construction funding allocated to build the roadway improvements identified on MD 4 at Dower House Road and MD 223 in the traffic impact analysis. Since the Carozza Property is not committing to construct the needed roadway improvements to create adequate levels of service, the proposed rezoning will only exacerbate the current poor levels of service.

In addition, the proposed rezoning includes both Retail development and a proposed Church. Therefore, a weekend analysis should also be included to be sure that the surrounding roadway network can support the proposed rezoning.

# Lawrence Green, P.E., PTOE

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## EDUCATION

University of Maryland at College Park, BS Electrical Engineering, 1986

## WORK EXPERIENCE

Clark Nexsen (March 2020 – Present) – Clark Nexsen is a full-service multi-discipline engineering, architectural, interior design, planning and landscape architecture firm founded in 1920. Clark Nexsen employs more than 400 employees in 10 offices in the United States.

Senior Transportation Engineer

- Manage and prepare traffic engineering studies for both public and private sector clients
- Areas of expertise include Traffic Impact Studies, Signing and Pavement Marking Plans, Maintenance of Traffic Plans, Safety Studies, Vision Zero Studies, and Parking Studies

Daniel Consultants, Inc. (DCI) (September 1993 – March 2020) - DCI is a full-service civil engineering firm located in Columbia, Maryland. DCI is a specialized transportation engineering firm, with a large pool of qualified traffic engineers (16 full-time traffic engineers), office and field technicians, and a full suite of traffic engineering software and hardware tools. Our expertise areas include traffic engineering and transportation planning, highway engineering, structures, geotechnical engineering, surveying, training and research. Website: [www.danielconsultants.com](http://www.danielconsultants.com)

Senior Traffic Engineering Manager

- Prepare Traffic Impact Studies (Maryland and Washington, DC) – Approximately 30 studies
- Review, Critique, and Prepare Supplemental Analyses of other Traffic Impact Studies as consultant to Maryland State Highway Administration – Approximately 4,500 traffic studies
- Conduct other safety studies
- Prepare Signing Plans, Pavement Marking Plans, Maintenance of Traffic Plans and Lighting Plans

Gorove/Slade Associates (1989 – 1993)

Traffic Engineer

- Prepare Traffic Impact Studies – Approximately 100 studies (Maryland and Washington, DC)
- Prepare Parking Studies/Pedestrian Circulation Studies

Greenhorne & O'Mara (1986 – 1989)

Traffic Engineer

- Prepare Traffic Impact Studies – Approximately 30 studies
- Prepare Parking and Safety Studies

## PROFESSIONAL SKILLS

Traffic Impact Studies, Highway Capacity Manual, Synchro, VISSIM, MUTCD, Critical Lane Volume Analyses, Trip Generation, Traffic Signal Timing, Traffic Counting Data Collection



## **PROFESSIONAL CERTIFICATIONS/ORGANIZATIONS**

Maryland and North Carolina Professional Engineer (PE) - 2002  
Professional Traffic Operations Engineer (PTOE) – 2017  
Institute of Transportation Engineers (ITE)  
American Council of Engineering Companies (ACEC)

## **EXPERT WITNESS EXPERIENCE**

Prince George's County Hearing Examiner (Sworn Expert as Professional Traffic Engineer)  
Baltimore County Hearing Examiner (Sworn Expert as Professional Traffic Engineer)  
City of Wilmington, NC Hearing Examiner (Sworn Expert as Professional Traffic Engineer)  
Prince George's County Planning Board  
Howard County Planning Board  
Charles County Planning Board

## **SAMPLE TRAFFIC/SAFETY STUDIES CONDUCTED BY LAWRENCE GREEN**

Engineering Services for Capital Improvement Infrastructure Projects (City of Gaithersburg, MD) - Traffic Study Team Lead for various projects including: Traffic Engineering Studies and Analyses, Signal Studies, Lighting Studies, Signing/Pavement Marking Studies, Safety Studies, Roundabout Studies, and Traffic Impact Studies.

- **Recent Traffic Impact Study Reviews for City of Gaithersburg**
- 700 Quince Orchard Road – Mixed Use Development with Office & Townhomes
- Washingtonian North – Independent Living/Assisted Living Facility
- Shady Grove Neighborhood Center – Mixed Use Development with Retail, Office, Hotel, Multi-Family Dwelling Units, and Townhomes
- 405 S. Frederick Avenue – Convenience Market with Gasoline Pumps

Traffic Impact Study (TIS) Reviews – Statewide, MD (MDOT/SHA) - As the Lead Peer Reviewer, personally reviewed and evaluated over 4,500 traffic studies within the 23 counties of Maryland over 18 years and has drafted letters of technical response, while representing the State, to the local governmental agencies. Mr. Green has also testified at public hearings on behalf of the SHA for various development proposals. The purpose of the testimony was to provide justification for various transportation/transit improvements along the State Highway network.

Martin Luther King Jr. Avenue (Washington, DC) – Project Manager responsible for a safety enhancement study for the District Department of Transportation along a 2-mile section of Martin Luther King, Jr. Boulevard. Elements of the study included enhanced traffic channelization, improved pedestrian crossings, the installation of a traffic median, and improved corridor wide traffic flow. It is the first-ever Vision Zero study in the District.

Brandywine Area Public Facilities and Transportation Master Plan Study – Transportation Analysis, Brandywine, MD – Mr. Green examined M-NCPPC Master Plan required transportation studies to refine and implement recommendations for the Brandywine area with respect to the refining preferred alignments for proposed new roads and road segments, identifying the public costs associated with constructing the proposed master plan road network, evaluating the impact of existing traffic along MD 381 in the Old Brandywine Village Center area, and developing recommendations for improved

pedestrian circulation, improved parking, and other safety improvements that will promote revitalization.

Princeton Sports (Baltimore County) – Mr. Green prepared a traffic and safety assessment to assess the impacts from an adjacent mixed-use development. Elements of the study included intersection capacity, intersection safety, sight distance evaluations, and traffic circulation. The project involved sworn expert testimony before the Baltimore County Hearing Examiner.

Florida Avenue Corridor Study (Washington, DC) – Prepared a traffic impact study to assess traffic operations based upon a 10-year forecasted traffic volumes that included both adjacent future developments and regional growth of traffic.

Middle Sound Village (City of Wilmington, NC) – Prepared a traffic impact study review and safety assessment of a proposed residential development along Middle Sound Loop Road. The project involved sworn expert testimony before the New Hanover County Planning & Zoning Commission for this proposed rezoning case.

#### **CRITICAL LANE VOLUME ANALYSES TEACHING EXPERIENCE**

At the request of the Maryland State Highway Administration (SHA), Mr. Green conducted a multi-day instruction course on intricacies of performing Critical Lane Volume (CLV) analyses at intersections. The course included a lecture series and a test for proficiency. SHA staff state-wide were invited to participate at this training course conducted at the SHA Headquarters Office in Baltimore.

#### **ADEQUATE PUBLIC FACILITIES MAUALS EXPERTISE**

At the request of the Maryland State Highway Administration, Mr. Green prepared Traffic Impact Study Review Manuals for the 23 counties of Maryland for use by SHA staff. The manuals documented the proper Traffic Impact Study procedures related to collecting traffic data, trip generation techniques, trip distribution techniques, intersection capacity analyses techniques, and proper mitigation techniques to meet the Adequate Public Facilities Ordinances for each county or other local jurisdiction.