

1 THE PRINCE GEORGE'S COUNTY PLANNING BOARD OF  
2 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

3  
4  
5 PRESERVE AT PISCATAWAY (BAILEY'S VILLAGE)  
6 Comprehensive Design Plan, CDP-9306-05

7  
8 T R A N S C R I P T  
9 O F  
10 P R O C E E D I N G S

11  
12 COUNTY ADMINISTRATION BUILDING

13 Upper Marlboro, Maryland

14  
15 January 6, 2022

16 VOLUME 1 of 1

17  
18  
19 BEFORE:

20 ELIZABETH M. HEWLETT, Chair

21 DOROTHY F. BAILEY, Vice-Chair

22 A. SHUANISE WASHINGTON, Commissioner

23 MANUEL R. GERALDO, Commissioner (Absent)

24 WILLIAM M. DOERNER, Commissioner

25  
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OTHERS PRESENT:

HENRY ZHANG, Staff, Urban Design Section

JENNIFER STABLER, Staff, Historic Preservation Section

JAMES HUNT, Division Chief, Development Review Division

ANDREE GREEN CHECKLEY - Planning Director

DAVID WARNER, Principal Counsel

ANDRE GINGLES, Attorney for Applicant

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1 P R O C E E D I N G S

2 MADAM CHAIR: CDP-9036-05, the Preserve at  
3 Piscataway, known as Bailey's Village. If I may stop for a  
4 second, is there a CDP statement? Normally I have to read a  
5 CDP statement. No? Okay. Maybe no.

6 UNIDENTIFIED SPEAKER: Madam Chair, there is one.

7 MADAM CHAIR: Okay.

8 UNIDENTIFIED SPEAKER: Yeah.

9 MADAM CHAIR: Okay, I don't have it.

10 UNIDENTIFIED SPEAKER: I can send it to Lee, Marie  
11 sent it to me this morning.

12 MADAM CHAIR: Okay. So we'll hold we'll get it,  
13 but while we're doing that, let me just make sure we have  
14 everyone we need. Mr. Zhang, are you on?

15 MR. ZHANG: Yes, ma'am. Happy New Year to you.

16 MADAM CHAIR: Okay. Thank you. And Ms. Kosack,  
17 are you on?

18 MS. KOSACK: Yes, present.

19 MADAM CHAIR: Wonderful. Mr. Gingles, are you on?

20 MR. GINGLES: I am, Madam Chairman, good morning,  
21 members.

22 MADAM CHAIR: Good morning. Thomas Zyla?

23 MR. ZYLA: Here, Madam Chair.

24 MADAM CHAIR: Now I have you signed up as others,  
25 but I guess Nooshin Amirpour, Woodlawn, are you a proponent?

1 MR. GINGLES: Ms. Amirpour is the, actually she's  
2 the developer representative.

3 MADAM CHAIR: Okay. So she is actually --

4 MR. GINGLES: Yes.

5 MADAM CHAIR: And Seth Churchill?

6 MR. CHURCHILL: Good morning, I am here.

7 MADAM CHAIR: Okay. And I'm going to move you to  
8 the proponents. Okay. Geoffrey Tibbetts?

9 UNIDENTIFIED SPEAKER: (Indiscernible).

10 MADAM CHAIR: Can you see? It's with a G,  
11 Geoffrey with a G. Okay. So Geoffrey Tibbetts signed up  
12 but we don't see him on. Joy Johnson?

13 MS. JOHNSON: I'm here.

14 MADAM CHAIR: Okay.

15 MS. JOHNSON: Yes.

16 MADAM CHAIR: Wonderful. And Courtney Lindsay?

17 MS. LINDSEY: (No audible response.)

18 MADAM CHAIR: No, C, with a C. No, Courtney  
19 Lindsay is not on. Okay. And then we do have a Proponents  
20 Exhibit Number 1, the Preserve at Piscataway Homeowner's  
21 Association letter of support. Okay. I'm going to pause  
22 while I still wait for my statement.

23 (Whereupon, a brief recess was taken.)

24 MADAM CHAIR: I now have my CDP statement. So  
25 this hearing is being held under the general enabling

1 authority of the Land Use Article Annotated Code of Maryland  
2 and conducted in accordance with the specific requirements  
3 and procedures of Sections 27-516 through 27-532 of the  
4 Prince George's County Code and the Maryland Administrative  
5 Procedures Act.

6           The purpose of this hearing is to consider the  
7 applicant's submission of a Comprehensive Design Plan  
8 proposal and to consider the plan in relation to the  
9 criteria set forth in Section 27-521 of the Prince George's  
10 County Code. The agenda item is Number 9, Comprehensive  
11 Design Plan 9306-05 the Preserve at Piscataway (Bailey's  
12 Village). All persons who wish to participate in the  
13 hearing should just please raise your hand, your right hand  
14 and declare in the presence of Almighty God, do you solemnly  
15 promise and declare that the testimony you are about to give  
16 before the Board is the truth of the best of your knowledge  
17 and belief? So I'm going to ask these folks who have signed  
18 up. Mr. Gingles, you are the attorney so --

19           MR. GINGLES: I'm sitting (indiscernible).

20           MADAM CHAIR: Okay. Okay. Mr. Tibbetts, you're  
21 not there, right. Joy Johnson?

22           MS. JOHNSON: Yes.

23           MADAM CHAIR: Okay. Thomas Zyla?

24           MR. ZYLA: I do.

25           MADAM CHAIR: Okay. Also I said Joy Johnson,

1 right, yes, and then Nooshin Amirpour.

2 MS. AMIRPOUR: (No audible response.)

3 MADAM CHAIR: She's muted. I think you have --

4 MS. AMIRPOUR: I do.

5 MADAM CHAIR: Okay. Thank you. And Seth  
6 Churchill?

7 MR. CHURCHILL: I do.

8 MADAM CHAIR: Thank you. And again I'm going to  
9 do one more call out for Courtney Lindsay. No, okay. And  
10 then Geoffrey Tibbetts, with a G. Geoffrey with a G. No.  
11 Okay. All right. This proceeding is being recorded,  
12 therefore all exhibits must be properly marked when they are  
13 introduced and identified when referred to or discussed.

14 Any person of record may ask questions of the  
15 witness at the conclusion of that witnesses' testimony but  
16 questioning must be limited to the information testified to  
17 by the witness.

18 And so that is my statement. We have everyone  
19 present. Mr. Zhang, you are on.

20 MR. ZHANG: Good morning, Madam Chair and members  
21 of the Planning Board. Happy New Year to you all.

22 MADAM CHAIR: Happy New Year.

23 MR. ZHANG: For the record, this is Henry Zhang  
24 with the Urban Design Section. But before I go to the case,  
25 I think the People's Zoning Council, for the record, the

1 People's Zoning Council need to be here --

2 MADAM CHAIR: Well --

3 MR. ZHANG: -- and the staff did send a notice to  
4 him back in October and also I also e-mailed him this  
5 morning about the link.

6 MADAM CHAIR: Yes. But People's Zoning Council is  
7 not on, we did double check. But you e-mailed him this  
8 morning and you know.

9 MR. ZHANG: The second time, yes, ma'am.

10 MADAM CHAIR: Okay. One more time. Mr. Tibbetts  
11 is now on. Okay. But can you just say okay? I see your  
12 name now. Mr. Tibbetts?

13 MR. TIBBETTS: (No audible response.)

14 MADAM CHAIR: Mr. Tibbetts, can you unmute  
15 yourself?

16 MR. TIBBETTS: (No audible response.)

17 MADAM CHAIR: Okay. All right. The People's  
18 Zoning Council is not on so there's nothing we can do about  
19 that this point. So you may proceed, Mr. Zhang.

20 MR. ZHANG: Thank you, Madam Chair.

21 MADAM CHAIR: Okay.

22 MR. ZHANG: For the record, this is Henry Zhang  
23 with the Urban Design Section. This application before you  
24 is a revision to a previously approved Comprehensive Design  
25 Plan basically it's the 05 revision, excuse me, to remove

1 commercial, retail office and multifamily uses and then  
2 replace them with 26 townhouses. This larger project  
3 basically consisting of five village has almost been  
4 constructed except for 14 single family detached homes in  
5 the Glassport Village and also Lot 10 in front of you today.  
6 Next slide, please.

7 This subject site is in Planning Area 84 Council  
8 District 9. Next slide, please.

9 This is the Vicinity Map shows specifically this  
10 portion of the project is located on the south side of  
11 Floral Road at its intersection with St. Mary's View, as  
12 outlined in red here. Next slide, please.

13 This is the Zoning Map of the entire CDP-9306,  
14 which covered a larger area of 878 acres of the land. In  
15 the R-L which is Residential Low Density Zone and also L-A-C  
16 Zone, which is Local Activity Zone as outlined in red here.  
17 Next slide, please.

18 The land impacted by this CDP is in the L-A-C  
19 Zone, specifically known as Lot 10 which only covers 1.65  
20 acres of the land. Next slide, please.

21 This is the aerial photo shows that the subject  
22 site basically has been roughly graded. Next slide, please.

23 It's generally level, surrounded by the townhouses  
24 on both side of the roadway and also a small lot single  
25 family detached homes. Next slide, please.



1           The Master Plan Right-of-Way shows Piscataway Road  
2 is an arterial roadway and the Floral Road is a primary  
3 roadway. Next slide, please.

4           Bird's eye view again shows the size and outline  
5 in blue. You see the townhouses on both sides. Next slide,  
6 please. Next slide. Okay.

7           This is approved Basic Plan basically the entire  
8 Preserve at Piscataway was approved on the two Basic Plan.  
9 This A-9870 basically covered L-A-C Zone. The rest of the  
10 residential zone covered by A-9869. Next slide, please.

11           This is the up close at the L-A-C Zone. This A-  
12 9870 approved back in 1993 basically covered almost 20 acres  
13 of the land, of which about 6.75 acres has been designated  
14 as commercial/retail office with a development cap at the  
15 70,000 square feet. At the same time approximately 13.23  
16 acres of the land has been slated for residential use which  
17 has a cap at 140 DU's. Over the years, this L-A-C portion  
18 of the commercial use has been developed, and approved  
19 developed with residential use and also a small portion of  
20 it, 1.65 acre still vacant and also has been retained for  
21 the use other than the residential. Next slide, please.

22           This is the most recent approval, basically is by  
23 the 03 revision. The original CDP has been revised four  
24 times. 03, this one has the impact on the layout. This is  
25 the most opted layout of the entire project. The 04

1 revision was approved by the Planning Board in last year,  
2 which was a revision to two architectural related condition  
3 and doesn't have an impact on the layout. Next slide,  
4 please.

5 This is basically the amend, the 05 revision in  
6 front of, you will see the impact is limited to Lot 10 here  
7 of the upper end corner of this slide. Next slide, please.

8 This just illustrative map basically shows the  
9 possible townhouses which are mainly rear loaded townhouses  
10 accessed through alley. Basically it's pretty the same  
11 architectural model which will be matching those constructed  
12 and occupied townhouse units. Next slide, please.

13 This is a Type 1 Tree Conservation Plan which  
14 included with this CDP and the future review of the TCP1  
15 will be carried out at a time of Preliminary Plan of  
16 Subdivision. Next slide, please.

17 This proposed CDP which will remove all the  
18 commercial/retail office uses and only have the residential  
19 use will be constructed on the site. It does not conform --

20 MADAM CHAIR: Okay.

21 MR. ZHANG: -- to the purpose of L-A-C Zone, as  
22 stated in Section 27-494(a) as in the Staff Report. Because  
23 this revision basically will remove use and service function  
24 from this Master Plan community. Most importantly as stated  
25 in Section 27-521(a) which listed all the required findings

1 for Planning Board approval of CDP, basically requires the  
2 Planning Board to find conformance with the governing Basic  
3 Plan.

4           In this case it's A-9870. In staff's opinion this  
5 CDP fails to demonstrate conformance with the Basic Plan  
6 which clearly designated the commercial/retail office uses  
7 on this property.

8           The applicant could remove commercial/retail  
9 office uses on this portion of the property if they would  
10 have amended the Basic Plan. This applicant also submitted  
11 a letter from the HOA which basically in support of this  
12 application. At the same time three citizens signed up as  
13 the opposition but it's turned out after conversations with  
14 two of them, they are basically in agreement with staff's  
15 recommendation.

16           Urban Design Section recommends that the Planning  
17 Board adopt the finding of this report and disapprove CDP-  
18 9306-05 including Type 1 Tree Conservation Plan, TCP1-009-  
19 94-04 for Bailey's Village at Preserve at Piscataway. This  
20 concludes the staff's presentation. Thank you.

21           MADAM CHAIR: Thank you, Mr. Zhang. So I'm going  
22 to need a little clarity and then we'll turn to, we'll see  
23 if the Board has any questions and then we're going to turn  
24 to Mr. Gingles. So I just want to make sure I'm clear. The  
25 council put this entire property in the L-A-C Zone back in

1 1993?

2 MR. ZHANG: Yes, ma'am.

3 MADAM CHAIR: And then the Basic Plan designated  
4 the subject property as commercial. No?

5 MR. ZHANG: Actually this A Dash include two  
6 parts.

7 MADAM CHAIR: Right.

8 MR. ZHANG: Basically includes 6.5, let me see the  
9 numbers, 6.75 acres in this L-A-C Zone for commercial/retail  
10 office and then --

11 MADAM CHAIR: Yes.

12 MR. ZHANG: -- the multifamily use. Another 13.23  
13 acres slated for the residential use which has a cap of 140  
14 DU's.

15 MADAM CHAIR: Okay. So will this, so my question  
16 is obviously the CDP is the second stage in the  
17 Comprehensive Design Zone category, so there's a Basic Plan,  
18 there's a Comprehensive Design Plan and then there's a  
19 Specific Design Plan. This second phase is the  
20 Comprehensive Design Plan. We have to find conformance with  
21 the Basic Plan, that's a requirement of the findings.

22 MR. ZHANG: That's correct. Yes, ma'am.

23 MADAM CHAIR: Okay. So what you're saying is that  
24 from the staff's perspective, also I want you to define what  
25 the L-A-C Zone is. I know we have in the Staff Report, but

1 can you define it on the record? And then --

2 MR. ZHANG: Well --

3 MADAM CHAIR: Yes.

4 MR. ZHANG: Okay.

5 MADAM CHAIR: Just in a second. Because then the  
6 question for us is and then you've also indicated there was  
7 another avenue to do this via amending the Basic Plan. So  
8 that is a possibility. On the other hand I think we're all  
9 interested in hearing what Mr. Gingles has to say in  
10 response because he may have something to counter with. So  
11 I'd like to know, I'd like for you to state on the record  
12 the purposes of the L-A-C Zone.

13 MR. ZHANG: Yes, ma'am. For the record, this is  
14 Henry Zhang with the Urban Design Section. The L-A-C Zone  
15 which is Local Activity Zone is one of the nine  
16 Comprehensive Design Zone in the county's Zoning Code. I  
17 think many of the purpose, one of which is that the uses had  
18 to be local and service function to basically serve the  
19 completely Master Plan planned community, basically. So  
20 that means the use had to be complimentary and serve the  
21 local need of the residents of the community.

22 As I stated, this larger community almost  
23 completely built out and based on the A-9870 this is the  
24 only piece of the other uses which has been deemed as a use  
25 and a service function which will serve the local residents.

1           As also I stated previously over the years the  
2 Planning Board's approval and the others to all those  
3 approval and the construction, this is the only piece which  
4 is 1.65 acre left will be available for this other  
5 functions.

6           MADAM CHAIR: Okay.

7           MR. ZHANG: So this is the last one and then this  
8 application they basically required to completely removal of  
9 this function on the --

10          MADAM CHAIR: Okay. Okay. So it's a local  
11 activity --

12          MR. ZHANG: -- on the front.

13          MADAM CHAIR: Okay. Hold on. So it's a local  
14 activity center, we've approved residential all around it in  
15 the remainder of the acreage, so this is the message where  
16 you can put the local activity, because the L-A-C Zone  
17 encourages dwellings integrated with the activity centers,  
18 and you're saying this is the last place where we could do  
19 that. Is that?

20          MR. ZHANG: That's correct.

21          MADAM CHAIR: Okay. Okay. So I'm going to see if  
22 the Board has questions of you before I then turn to Mr.  
23 Gingles. Okay. Madam Vice Chair, any questions?

24          MADAM VICE CHAIR: No questions at this time,  
25 thank you.

1 MADAM CHAIR: Okay. Commissioner Washington?

2 COMMISSIONER WASHINGTON: No questions at this  
3 time. Thank you.

4 MADAM CHAIR: Okay. Commissioner Doerner?

5 COMMISSIONER DOERNER: Yes. Mr. Zhang, I find  
6 this a little bit difficult as I was prepping and reading  
7 through the case, the Staff Report and everything. Because  
8 I'm sort of torn that development sort of in L-A-C Zone is a  
9 little bit difficult if you have multiple property owners or  
10 multiple developers, because then you have kind of competing  
11 interest. If one person was controlling the entire zone,  
12 then I think it would be a little easier to kind of guide  
13 the development in certain ways.

14 Because what I'm kind of struggling with is  
15 whether or not the L-A-C, if it's a recommendation of  
16 certain kind of mixes and I understand from like if I was  
17 playing Sim City or some development game, and I wanted to  
18 like encourage like the highest and best use and development  
19 to kind of play out the scenario over the next 20 years like  
20 what we would want to do, that we'd want to have the  
21 activity center and density kind of flow out from afterwards  
22 from around there. But what I'm struggling to find out is  
23 whether or not it's a requirement that there be certain  
24 amounts of commercial development in this L-A-C or this  
25 particular area. And then whether or not it's prohibited to

1 and I think these would be two separate but related  
2 questions, whether or not it's prohibited to only do  
3 residential development in this particular parcel.

4           Because I realize that like the L-A-C was  
5 developed to encourage this but in the same respect I'm  
6 trying to think about like other case scenarios. Like if we  
7 have a high rise density kind of unit that has a height  
8 limit of like 30 stories, but somebody can only do it at 20  
9 stories, are we going to force them to build up to 30  
10 stories and go bankrupt, even if the market won't support  
11 that? Like at some, I'm trying to wrap my head around this  
12 and I'm hoping that you can help provide a little bit more  
13 clarity of how you guys got at your recommendation.

14           MR. ZHANG: Okay. Yes, thank you, Commissioner  
15 Doerner. I think that's a very good question. I think if  
16 you sit back a little bit and look at this concept of the  
17 Comprehensive Design Zone, basically it's the county's  
18 equivalent to PUD, Planned Unit Development of the, you  
19 know, the other part in this country.

20           Basically this is the vehicle, it's a combination  
21 of planning and zoning, you know, so to speak. I think  
22 that's basically is the subject to the interpretation in a  
23 way because understand that this approval, you know, dated  
24 back to 1993, that's almost like 30 years ago. I think that  
25 the Council and the Planning Board had a vision for this



1 property that's why we have this L-A-C Zone. That's why the  
2 staff started looking at the purpose of the zone, so  
3 basically the purpose of the zone as stated in, you know,  
4 494A in the Staff Report page 9, basically among others,  
5 there is a couple, you know, purpose staff stated.  
6 Basically, the purpose of this from the planning perspective  
7 is try to build a complete community. But I think in the  
8 zoning term I also heard that this is just like, you know,  
9 it's not like M-X-T Zone, the code specifically stated you  
10 need to have two uses, you know, at least two uses among the  
11 three and then therefore some people just said okay this  
12 shouldn't be hold them to, hold their feet to the fire and  
13 they had to have those two uses.

14           But I think the staff's review, I mean especially  
15 in this case, we understand there is, you know, a  
16 combination of planning and zoning situation here. And then  
17 from the planning perspective the vision changed and the  
18 best practice came at the same time the zoning  
19 interpretation is also, you know, subject to the  
20 interpretation because you know this is not an M-X-T Zone.  
21 The code didn't just clearly state it, but I think somehow  
22 the code said this had to be there and then that's also a  
23 practice, I think this office has been doing in all those  
24 years, if the council's order include those uses and then if  
25 the applicant in this case, they did, they told them to

1 remove this use from the Basic Plan, usually we are going to  
2 ask them to amend the Basic Plan in order to get the CDP  
3 approved.

4 COMMISSIONER DOERNER: Yes, so I understand that  
5 you guys are going to ask them to do that, because we're  
6 trying to implement the Basic Plan in some ways.

7 MR. ZHANG: Yes.

8 COMMISSIONER DOERNER: So does the L-A-C Zone then  
9 require like at least two of maybe the four, like a  
10 commercial office retail or residential, or is it just sort  
11 of suggested in that sense?

12 MR. ZHANG: No, I think, yes, I think I should  
13 have said it suggest it. But keep in mind, this  
14 Comprehensive Design Zone basically in the Zoning Code  
15 specifically stated will be subject to three steps of  
16 approval. The first step is Basic Plan and second step is  
17 CDP and then the third step is SDP. And then in each of the  
18 approval that's why we have this finding number one,  
19 basically you had to find in conformance with the Basic  
20 Plan.

21 So that's basically where the staff, you know,  
22 come from, basically we look at the Basic Plan and then if  
23 the Basic Plan specifically or clearly, you know,  
24 identifying the use and the acreage and the density and then  
25 in this case the applicant basically will be completely

1 removing that use and then therefore we couldn't find the,  
2 you know, conformance (indiscernible) I hope this will help.

3 COMMISSIONER DOERNER: So yes, I think that helps.

4 MADAM CHAIR: Okay. And you know what? And you  
5 know what else --

6 COMMISSIONER DOERNER: What would you guys have  
7 done --

8 MADAM CHAIR: You know what else, Commissioner  
9 Doerner? And we may turn to our own counsel to elaborate as  
10 well but after Mr. Gingles too, but continue with your  
11 questions but we may turn to our legal after this, after  
12 Gingles though.

13 COMMISSIONER DOERNER: Yes, I think I definitely  
14 would like to hear from Mr. Warner at the end to kind of  
15 summarize stuff especially to just kind of focus us in on  
16 what are the most pertinent kind of legal points that we  
17 need to decide between.

18 MADAM CHAIR: But I want to do that after Mr.  
19 Gingles. Okay.

20 COMMISSIONER DOERNER: But --

21 MADAM CHAIR: Okay. Okay.

22 COMMISSIONER DOERNER: Yes, and Mr. Zhang, so if  
23 they had proposed like office or retail instead of  
24 residential, would you guys have the same stance where you  
25 would say no we really need to have the commercial because

1 that's what was kind of pointed out in the Basic Plan? Even  
2 though those are other two uses in the L-A-C?

3 MR. ZHANG: No, I think as long because the Basic  
4 Plan which is the first step, which basically set up the  
5 very broad in a scope of development. Even though most of  
6 the time they just decided the quantity and the relationship  
7 and density and then all those details need to be defined at  
8 time of CDP. The reason CDP is so important basically is  
9 kind of a negotiation between the regulatory agency in this  
10 case, the Planning Board and developer. So basically the  
11 CDP approval set up the entire zoning requirement for the  
12 development of this property. So if the A Dash include the  
13 multiple uses and then the CDP level they propose those uses  
14 maybe only one or two, we should be able to find the  
15 conformance.

16 But in this case as stated, because the use has  
17 been clearly identified by the Basic Plan on this L-A-C  
18 property, and then now they just, you know, the applicant  
19 wants to use the CDP to completely remove that and then  
20 that's why we couldn't find the conformance.

21 COMMISSIONER DOERNER: Okay. Thank you. I'll let  
22 me Mr. Gingles --

23 MADAM CHAIR: Okay.

24 COMMISSIONER DOERNER: -- present his case and  
25 then wait for Mr. Warner to clarify as well. Thank you.

1           MADAM CHAIR: Okay. Thank you. So just making  
2 sure that we still have just four Commissioners. Okay. So  
3 with that, Mr. Gingles, you are on.

4           MR. GINGLES: Good morning again Madam Chairman  
5 and members of the Board.

6           MADAM CHAIR: Good morning.

7           MR. GINGLES: For the record, Andre Gingles with  
8 law offices in Laurel, Maryland. I think this is the first  
9 time I've had a case the first day of your year, so I will  
10 unfortunately unable to be brief. But I'll start with  
11 noting it's a 30 year old Basic Plan, approved by the  
12 council pursuant to CR-60 in 1993 and we're nearly 97  
13 percent complete. This amendment impacts 1.65 acres, which  
14 is essentially about .002 percent of the development.

15           There is a single Basic Plan that is approved for  
16 both the R-L and the L-A-C zones and now we have a single  
17 CDP that's approved over both of the zones. I think  
18 Commissioner Doerner got to the issue, but I do feel that  
19 it's necessary, particularly because of its being listed as  
20 a disapproval, I have to go a little bit more thoroughly  
21 through the Staff Report because of findings that we would  
22 be asking you to consider if the Board determines that this  
23 should be voted upon favorably.

24           I'd note first that the disapproval recommendation  
25 commences with Finding Number 7 that's on page 6 of your

1 report. And it asserts in sentence number 2 that first  
2 paragraph, that the L-A-C Zone is intended for mixed-use  
3 development and you've already gotten into a bit of a  
4 conversation about mixed-use. here is nothing in the L-A-C  
5 Zone that uses that term, and so we disagree with that  
6 finding that's in your Staff Report. The assertion is not  
7 found anywhere in 27-494 which is the section of the  
8 ordinance that expresses the purposes for the L-A-C Zone.  
9 And I think it remains accurate that the improved land use  
10 quantities for the L-A-C Zone were intentional and perhaps  
11 even approved with the idea that it was going to foster  
12 creation of a local activity center.

13 But it's also true that there's no minimal amount  
14 of uses that were mandated in the Basic Plan. There's no  
15 mixed-use mandated in the L-A-C requirement and since that  
16 is appropriate there means there's no condition in the Basic  
17 Plan nor nothing in the Zoning Ordinance that says you have  
18 to develop the uses that are in that zone.

19 We note that in the initial Basic Plan the  
20 applicant only proposed that there be 40,000 square feet of  
21 commercial development, which the staff did oppose at that  
22 time. I mean if you look at Finding Number 9 in that Basic  
23 Plan Technical Staff Report back from 1993, the staff had a  
24 condition in a finding, the condition was number 15, in  
25 which they pushed that the commercial be up to 70,000 square

1 feet. Ultimately --

2 MADAM CHAIR: Mr. Gingles, let me stop you for a  
3 second. Do we have that finding? Do we have that?

4 MR. GINGLES: I'm not sure if it's in your report,  
5 but --

6 MADAM CHAIR: Okay.

7 MR. GINGLES: -- it's among the research that we  
8 looked at --

9 MADAM CHAIR: Okay.

10 MR. GINGLES: -- in terms of the initial Basic  
11 Plan.

12 MADAM CHAIR: Okay.

13 MR. GINGLES: But I would tell you that if you  
14 look at number 5, excuse me, Finding Number 9 in Condition  
15 Number 15 of that Technical Staff Report, that is the  
16 discussion.

17 Ultimately, at the time of the CDP, that area came  
18 in at 40,000 square feet. I further note if you look at  
19 page 8 on the Staff Report, the staff goes on and lists  
20 Conditions 1, 8 and 10 of the Basic Plan as being applicable  
21 to the applicant's amendment and asserts that our proposed  
22 amendment is not in conformance with these conditions.

23 So first off, with Condition Number 1, that's just  
24 a listing requirement. It's not a development requirement.  
25 It essentially says you have to list this on the Basic Plan.

1 And it only refers to the Basic Plan, not the CDP nor this  
2 pending CDP amendment, and that's the clear language of that  
3 condition.

4           With regard to Condition Number 8, it only  
5 expresses that a majority of the commercial uses proposed to  
6 be retail. It doesn't mandate the development of commercial  
7 uses, it just says that majority of the commercial should be  
8 retail. Again, that's the clearer language of the condition  
9 and lastly with regard to Condition Number 10, staff didn't  
10 find any issue.

11           The staff then on pages 8 and 9 assert that the  
12 CDP doesn't conform to two of the listed purposes of the L-  
13 A-C Zone which is expressed in 27-494(a) nor general  
14 principal that they list for 27-495(a). Now while the  
15 applicant, we don't concur with the staff conclusions on  
16 this, we would just point you to first and foremost its  
17 Section 27-521 that expresses the findings that this  
18 Planning Board must make in order to approve a CDP or CDP  
19 amendment. Neither the sections or the provision that are  
20 listed on pages 8 or 9 among those clearly expressed  
21 requirements that the Planning Board must find in making a  
22 determination.

23           The section that's cited by staff relates to the  
24 establishment of the zone. It was what was relevant back at  
25 the time of the Basic Plan, not at this time for a CDP.



1 Now, once you get to page 9 on the Staff Report commencing  
2 with (c) (1), the staff is now listing the appropriate 15  
3 requirements that guide this Planning Board's determination  
4 to whether or not the CDP amendment is appropriate for its  
5 approval. The issue of conformance in the Basic Plan is  
6 essentially the primary issue and what we have indicated to  
7 staff in a lot of information that we sent to them is that  
8 we think that the finding relative to this first requirement  
9 as staff notes, that the Basic Plan specifically designated  
10 areas of the proposed amendment as only commercial. I  
11 would ask if the Board could put back up what Mr. Zhang had  
12 as slide number 9, excuse me.

13 MADAM CHAIR: We can do that.

14 MR. GINGLES: Slide number 11, I'm sorry.

15 MADAM CHAIR: Okay.

16 MR. GINGLES: Now what they're suggesting to you  
17 is that that area that's outlined in red is a 6.75 acres  
18 that was designated as only commercial and the staff asserts  
19 this several times in the report. We've provided staff with  
20 that exhibit where we just showed an outline of that area  
21 and they all agreed that that's the 6.75 acres as designated  
22 as commercial.

23 We also showed in that exhibit where the Planning  
24 Board has already approved residential development within  
25 this 6.75 acres that is, the staff asserts is

1 (indiscernible) only commercial, and the 1.65 is within that  
2 same area. Hence their assertion is in direct conflict with  
3 what the Planning Board has previously approved on SDP's  
4 with townhouses within the area the staff asserts is only  
5 commercial. Now in the review of all of the staff reports  
6 with regard to this and we looked at the Staff Reports  
7 involving the CDP, the PPS that also allowed for the lots in  
8 this area and the subsequent SDP's. And all of those show  
9 these residential lots being done in the area that the staff  
10 is now asserting is only commercial.

11 In a review of the Staff Report has no staff  
12 discussion, nor any staff concern relative to the Planning  
13 Board moving forward with residential development in an area  
14 that they're now asserting is solely a commercial area. In  
15 fact, Finding Number 5 that was in the Preliminary Plan of  
16 Subdivision that specifically lotted out many of those  
17 areas, indicated, that's in this commercial area, indicated  
18 that it conforms to the land use recommendations that are in  
19 CR-60 1993, which is the resolution encompassing the Basic  
20 Plan.

21 I would note that in the following sentence after  
22 they declared the only commercial declaration staff asserts  
23 that the process would be for us to seek a Basic Plan  
24 amendment. Mr. Zhang talked a little bit about that.

25 However, if you'll note earlier in the report and

1 I referenced this on page 7, staff's already indicated that  
2 the L-A-C Zone without any commercial development would be  
3 unacceptable because they are sort of deeming it a two use  
4 mixed-use zone. Finding Number 7 on page 6 is what I  
5 alluded to earlier.

6 So essentially staff is asserting consistent with  
7 their prior mixed-use declaration that the L-A-C Zone  
8 mandates two uses. And I would just note --

9 MADAM CHAIR: Can I ask you a question? Mr.  
10 Gingles?

11 MR. GINGLES: -- that the Zimmer (phonetic sp.)  
12 Court of Appeals position --

13 MADAM CHAIR: Mr. Gingles? I just have a quick  
14 question.

15 MR. GINGLES: Sure.

16 MADAM CHAIR: So I'm looking at page 6 and what I  
17 would agree with it says the L-A-C Zone is intended, it  
18 doesn't say mandated, number one. And it says mixed-use  
19 developments which probably would have been an okay language  
20 had there really not, if there really was no such thing as a  
21 mixed-use zone. So because sometimes people can get  
22 confused whether you're talking about a mix of uses or a  
23 specific mixed-use zone. So it sounds like, I think they  
24 may have been saying intended for more than one type of use.

25 MR. GINGLES: I'd even grant you that in terms of

1 mixed development as opposed to mixed-use zone --

2 MADAM CHAIR: Yes.

3 MR. GINGLES: -- but I would note again that the  
4 Zimmer case which was authored by the Honorable Glen T.  
5 Harold.

6 MADAM CHAIR: Yes, we know.

7 MR. GINGLES: And it's a case that I handled at  
8 the lower level. There was an L-A-C Zone that was solely  
9 commercial, it did not have two uses. There is, if you read  
10 those Staff Reports there's no issue about the need to have  
11 a second use in that L-A-C Zone.

12 MADAM CHAIR: Okay.

13 MR. GINGLES: So hence there are L-A-C Zones where  
14 only one of the uses are developed.

15 MADAM CHAIR: Yes.

16 MR. GINGLES: I mean the staff goes on to express  
17 that an amendment to the Basic Plan has been done and what  
18 they view as similar circumstances. With regard to the  
19 Timothy Branch case that they cite in the report, and I  
20 think, we would note that in the Timothy Branch case first  
21 of all that Basic Plan amendment that was done was the  
22 project proposed a use that was not previously allowed on  
23 the Basic Plan. They proposed that use in an area in which  
24 it was previously not shown on the plan. The staff deemed  
25 it to be an expansion to include an active adult use. Our

1 CDP amendment is for use that is already shown on the  
2 approved Basic Plan, it's within the same area of the Basic  
3 Plan and which it's previously been developed, and it's  
4 wherein the Planning Board has already approved the use in  
5 the development of the use remains within the allowable  
6 density caps.

7           We think this alone shows conformity of the CDP  
8 amendment to the Basic Plan. In fact, we would assert that  
9 given what the Planning Board has done in the past, that we  
10 need only should have been doing the Preliminary Plan of  
11 Subdivision for the new lot in an SDP as opposed to even  
12 needing to do this CDP amendment. And I'll talk a little  
13 bit further about that a little bit later.

14           In the second paragraph under (c) (1) on page 9,  
15 staff does note the ranges for the commercial development,  
16 however, again and the Commissioner was alluding to this,  
17 there's no express requirement in the Basic Plan for a  
18 minimum of any of the uses. These base ranges are not a  
19 minimum development requirement absent a condition saying  
20 that they have to be done. I mean nothing in the Basic Plan  
21 nor any provision of the Zoning Ordinance unlike for M-X-T  
22 development requires the development of all or some portion  
23 of all of the uses that are shown on the Basic Plan.

24           Again, L-A-C may promote or desire to promote  
25 mixed-use development it's not a mixed-use zone, where the

1 use of mixes is somehow mandated. And the applicant  
2 indicated in its statement of justification about the Basic  
3 Plan being illustrative and we didn't mean that in the sense  
4 that it doesn't mean anything, we meant it in the sense that  
5 it's illustrative to what can be developed on the property  
6 as a result of the zoning.

7           Nevertheless, we strongly assert that the  
8 expressed language that's in the Basic Plan that's in Cr-60  
9 approval actually governs. And the express language that  
10 governs essentially lists what can be developed, but doesn't  
11 mandate any minimum of that development.

12           And lastly, as they talk about the activity area,  
13 we would note that the community focal point which is that  
14 village green that hasn't been done, is there and is a focal  
15 point, and to the extent that that wants to be improved, the  
16 HOA has the ability to add some additional amenities to that  
17 area and they've discussed at different times whether or not  
18 that may or may not be done.

19           In paragraph 4 on page 10, again the staff asserts  
20 that what we're doing is the elimination of a use and that  
21 this can only be done by the District Council. However,  
22 they don't cite any authority that it can only be done by  
23 the District Council.

24           First, I would note that we think it's incorrect  
25 because again the use is not mandated, it's not a condition

1 that's in the Basic Plan, nor is it a use that the Zoning  
2 Ordinance requires be developed. The Basic Plan again  
3 proposes what can be developed, the CDP ultimately the  
4 second phase shows what is going to be developed and I would  
5 sort of remind the Planning Board, what I don't recall was  
6 whether or not any of the members were there, but in a prior  
7 or earlier, this development had a golf course as a part of  
8 its development. That golf course was a use, and a major  
9 use. It was a major part of that community. That was  
10 eliminated solely by an SDP amendment. There was no  
11 amendment to the Basic Plan, there wasn't even an amendment  
12 to the CDP. Now I would note that there was legislation  
13 facilitated and had to do with numbers of having additional  
14 uses in the R-A Zone. But nothing in that legislation  
15 changed any of the provisions related to amending or any  
16 requirement to amend the Basic Plan or any, or amending or  
17 any requirement to amend the CDP. And it was simply done  
18 that use eliminated, it was simply done as a result of the  
19 SDP being done which this Planning Board approved.

20           Finally, on the subject, we would just note that  
21 with regard to a CDP and or an SDP, the District Council  
22 retains the authority to review it, approve it, modify it,  
23 reverse it or do any other condition to it. And so it's not  
24 like their authority is effected by what, if anything, the  
25 Planning Board might do on a decision.

1           I mean essentially the Basic Plan is the zoning  
2 for this property and like most zoning, once it's on the  
3 property nothing is mandated unless it's a condition, or  
4 it's a requirement of the Zoning Ordinance. And in this  
5 case, with that Basic Plan there's no requirement in the  
6 Zoning Ordinance and it wasn't a condition.

7           Relative to the second Planning Board finding that  
8 needs to be made, we did inform staff of our long efforts.  
9 They've gone on since 2004 in terms of the marketing of the  
10 property for commercial development, a lot of different  
11 things have been attempted. In fact, it's continued to be  
12 marketed even throughout the current pandemic.  
13 Additionally, we would note that we do have HOA support for  
14 the change of this development for this remaining 1.65 acres  
15 and a letter is in the record to that affect.

16           As in regards to the staff's assertion relative to  
17 the environment, we would assert that the environment that's  
18 essentially residential has existed for several years and to  
19 now sort of force inclusion of a commercial use would change  
20 the environment substantially more than anything else. We  
21 think that the result is that the environment is better  
22 served by it being the residential that it has been probably  
23 for 15 plus years.

24           Essentially, the community has been successful in  
25 the implementation of the CDP with the exception of



1 attracting any retail or commercial. Again, forcing  
2 something to go in just as a part of the zone makes no sense  
3 in our view. Nor do we believe that it is an issue that the  
4 Basic Plan should have to be conformed again given all of  
5 the past decisions on other applications within this area  
6 that the staff is asserting was only for commercial  
7 (indiscernible) and in particularly --

8 MADAM CHAIR: Okay. So I've got --

9 MR. GINGLES: -- true to sort of go through an  
10 additional requirement at this point with the last sort of  
11 remaining .002 acres.

12 MADAM CHAIR: Mr. Gingles, I need to stop you for  
13 a second, because you've said this a lot already and I'm  
14 just looking because we have a lot and the language, you  
15 know, I'm looking at the language in some places in the  
16 Staff Report but I haven't committed every single paragraph  
17 to memory. So help me understand, direct me to where the  
18 staff says that only commercial can be allowed in that spot.  
19 Because you said that repeatedly that staff indicated only  
20 commercial can go there and --

21 MR. GINGLES: Go to --

22 MADAM CHAIR: -- then you said that but the  
23 Planning Board has already allowed residential there and I  
24 guess in counter to what staff says should only be  
25 commercial. So just show me where that is in the Staff

1 Report so I can follow that.

2 MR. GINGLES: Sure. I need to go back in my  
3 notes, Madam Chair.

4 MADAM CHAIR: Okay. All right.

5 MR. GINGLES: I want to say it's page 6 in Finding  
6 Number 7 but let me go back.

7 MADAM CHAIR: Page what, six?

8 MR. GINGLES: I think it's page 6 Finding number  
9 7.

10 MADAM CHAIR: Okay.

11 MR. GINGLES: Let me go back.

12 MADAM CHAIR: Okay. Well, you know, you can do it  
13 afterwards, I'll just give you a heads up that I'll be  
14 looking for that. So let me let you finish your flow.  
15 Okay.

16 MR. WARNER: It's in the middle of page 9, first  
17 paragraph after (c) (1).

18 MADAM CHAIR: Okay. Okay. Thank you.

19 MR. WARNER: Second sentence.

20 MADAM CHAIR: Okay.

21 MR. GINGLES: Just sort of the last thing. So  
22 with regard to the remaining 12 of the 15 requirements,  
23 excuse me, the Zoning Ordinance findings that the Planning  
24 Board would have to determine, staff doesn't raise any  
25 issues. While we maybe thing some of them can be clarified,

1 we concur essentially with the analysis in that there are no  
2 issues and/or they don't apply.

3 I guess I would say essentially in closing, we  
4 would note that conformity to the Basic Plan can be found  
5 because with regard to our proposed amendment, it provides  
6 for development of an existing approved use within the  
7 existing approved density. The proposed amendment is within  
8 the area that allows the use and it's within the area that  
9 the Planning Board has previously allowed the use.

10 Neither the approved Basic Plan nor the ordinance  
11 requires that we develop all of the uses that are listed on  
12 the Basic Plan. And alternatively, we think that the  
13 Planning Board could just decide that no amendment of the  
14 CDP is even necessary at this point, given all of the  
15 approvals allowing residential in that only commercial area  
16 and that we simply just need to do a Preliminary Plan and an  
17 SDP, which has been done for all the other residential  
18 that's in that only commercial area.

19 I will submit a list of findings, should the  
20 Planning Board decide favorably, but it's largely along the  
21 lines of what I've outlined in the presentation.

22 MADAM CHAIR: Okay.

23 MR. GINGLES: And that I will answer any specific  
24 questions and I tried to in my presentation clarify, or at  
25 least address, what Commissioner Doerner had asked of Mr.

1 Zhang.

2 MADAM CHAIR: Okay. Okay. Thank you. Thank you,  
3 Mr. Gingles. So there probably are some other questions.  
4 Okay. I see, thank you, Mr. Warner for directing us to that  
5 provision on page 9. I guess with what Mr. Zhang had  
6 indicated was the Basic Plan specifically designated the  
7 area as only commercial. So I guess he was saying that's  
8 what the Basic Plan did and I'm looking at the --

9 MR. ZHANG: Madam Chair?

10 MADAM CHAIR: Yes?

11 MR. ZHANG: If I may?

12 MADAM CHAIR: Yes.

13 MR. ZHANG: Yes, actually on the backup, page 136,  
14 basically it's a CR-60 1993 amendment 16. The Basic Plan  
15 basically says so that identifying neighborhood activity  
16 center. So in this case it's not like L-A-C Zone required  
17 two uses or, you know, if you can't do the two uses we can't  
18 find in conformance. This case, the key is to find  
19 conformance with the Basic Plan and then Basic Plan only  
20 stated acres, density, but also very specifically  
21 identifying the location at this location.

22 If you read that amendment 16 on page 136  
23 basically they're identified the neighborhood activity  
24 center you know on the south side of Floral Road. And then  
25 that's why because of this CDP we're going to totally remove

1 any possibility to build any neighborhood activity center,  
2 that's why we cannot find in conformance with the Basic  
3 Plan.

4 MADAM CHAIR: Okay. Hold up, hold up, hold up,  
5 Mr. Zhang, I'm on that page. Which one of these amendments?

6 MR. ZHANG: It's amendment 16.

7 MADAM CHAIR: 16, got it. Okay. Oh I see.

8 MR. ZHANG: On CR-60 --

9 MADAM CHAIR: I got it.

10 MR. ZHANG: -- yes, yes, and then you read the  
11 language that neighborhood activity center will be on the  
12 south side of Floral Road. Basically that's the Basic Plan  
13 specifically identified zone. And then this is the location  
14 which we believe, you know, required by the Basic Plan, 9870  
15 that's why by completely remove this, I mean from, replace  
16 it with townhouses, will basically not be strict conformance  
17 with the Basic Plan.

18 MADAM CHAIR: Okay.

19 MR. GINGLES: But if I may, Madam Chairman?

20 MADAM CHAIR: I was looking at page 160. Okay.  
21 So go ahead, Mr. Gingles.

22 MR. GINGLES: I'm sorry. There's no way, shape or  
23 form, and I've done a lot of commercial development in my  
24 time that any neighborhood center can be developed on 1.65  
25 acres. Once the Planning Board allow residential

1 development and other development in that 6.75, which in CR-  
2 60 was initially listed as 8.53 for commercial acreage and  
3 some of it was obviously going to be, and that's in the L-A-  
4 C Village Zone in CR-60, that's what listed, 8.53 acres.  
5 Somehow or another it got reduced to 6.75. But in the  
6 ranges even at the 40 to 70, excuse me at the 59,000 to  
7 70,000 which was pressed by staff, or even the 40,000 which  
8 the applicant had, once this property per the Planning Board  
9 decision on the Preliminary Plan of Subdivision CDP in prior  
10 SDP's have developed in that area, there's no commercial or  
11 neighborhood center left to be developed on 1.65 acres.

12 MADAM CHAIR: Okay. Let me stop you for a second.

13 MR. GINGLES: But we were looking at a --

14 MADAM CHAIR: Let me stop you for a second. Let  
15 me stop you.

16 MR. GINGLES: Okay.

17 MADAM CHAIR: So what you're also saying and I'm  
18 asking you this question.

19 MR. GINGLES: Sure.

20 MADAM CHAIR: So you had several arguments that  
21 you've made, several points and as I'm asking this question,  
22 is one of your points with regard to when the Planning Board  
23 approved residential development in this area 0.1, are you  
24 saying we sort of waived that requirement for solely  
25 commercial part 1, so it is sort of akin to a waiver

1 argument part 1 and part 2, are you also saying it also  
2 becomes an impossibility because there's not enough room  
3 left for that type of development, for the commercial  
4 development in the 1.6 remaining? Is that what you're --

5 MR. GINGLES: So let me, I'll take the latter  
6 first.

7 MADAM CHAIR: Okay.

8 MR. GINGLES: In terms of developing a  
9 neighborhood center --

10 MADAM CHAIR: Yes, yes.

11 MR. GINGLES: -- as Mr. Zhang pointed out, that's  
12 impossible to develop on 1.65 acres. I would note that  
13 there have been uses and we know from having conversations  
14 with the community, a gas station or I mean you can  
15 development maybe a convenience store along there, no one  
16 was sort of looking at that for the interest of their  
17 development. But I would say on the waiver portion that  
18 you've mentioned, we would not suggest to you that the  
19 Planning Board was waiving ultimately some development of  
20 commercial down there, but the Planning Board was saying  
21 that what it approved we believe, was in conformance with  
22 the Basic Plan, so that as we develop residential and what  
23 is asserted by the staff right now is only commercial and  
24 has not previously been asserted by them, in either the PPS  
25 CDP or SDP as only commercial, that's a new --

1           MADAM CHAIR: My question was not whether we were  
2 waiving commercial, whether we were waiving the preclusion  
3 of any residential in that area.

4           MR. GINGLES: Yes.

5           MADAM CHAIR: Okay. Okay.

6           MR. GINGLES: And you didn't.

7           MADAM CHAIR: Okay.

8           MR. GINGLES: Yes. And I mean, then there is  
9 nothing in the Staff Reports that make this a Basic Plan  
10 issue in any of those earlier approvals.

11           MADAM CHAIR: Okay. Okay. Thank you for that.  
12 Okay. Okay. So you were finished for now with your  
13 presentation, Mr. Gingles. I'm going to turn to the Board  
14 to see if they have any questions of you and then I'm going  
15 to turn to Mr. Warner. Okay. Madam Vice Chair, any  
16 questions?

17           MADAM VICE CHAIR: No questions at this time,  
18 thank you.

19           MADAM CHAIR: Commissioner Washington any  
20 questions?

21           COMMISSIONER WASHINGTON: Yes. Well, and it was  
22 essentially addressed, I was going to ask about why you did  
23 not seek an amendment to the Basic Plan, but thank you Mr.  
24 Gingles for addressing that. And I guess I would further  
25 say that where I am now, it sort of boils down to the whole



1 issue of what's required and or what's prohibited along the  
2 lines of my colleague's questioning, Commissioner Doerner's  
3 questioning. So I would be interested in hearing from  
4 counsel in that regard. Because to me it seems that, I  
5 guess where I am now is that it's not required, I mean it's  
6 more suggested or being promoted that it be, you know,  
7 commercial activity in this zone as opposed to being  
8 required and or anything that took place that prohibited

9 MADAM CHAIR: Okay.

10 COMMISSIONER WASHINGTON: I'm just kind of looking  
11 for clarity in that regard. Thank you, Madam Chair.

12 MADAM CHAIR: Okay. Thank you, Commissioner  
13 Washington. And both you and Commissioner Doerner have  
14 asked the question about whether this is required or merely  
15 suggested and what our options are in that regard, that was  
16 part one. And I would also note that's something that we  
17 have to address but we also have to address conformance with  
18 the Basic Plan. Okay. Now Commissioner Doerner?

19 COMMISSIONER DOERNER: Yes, I want to ask Mr.  
20 Gingles, I think you raised good points and the proposed  
21 versus required aspects I think are interesting as well as  
22 the approval of residential already in this zone, if it's  
23 explicitly designated for commercial. I think that would be  
24 a conflict in terms of what we've signaled in our  
25 interpretations in some ways. One of the things that we

1 asked about was a neighborhood activity center or that's at  
2 least in the amendment that Mr. Zhang had cited. I do math  
3 so when I see like logical statements of stuff saying a  
4 neighborhood activity center for commercial and residential  
5 land use instead of saying or, to me it kind of requires  
6 both. But is there any requirement in there that would  
7 actually specify a percentage of commercial? Because I know  
8 you said that you can't develop most commercial activity  
9 which may be the most profitable for you, but --

10 UNIDENTIFIED SPEAKER: Hello, how are you? Good.

11 MADAM CHAIR: Okay. Hold up, we got somebody's  
12 conversation. Somebody's on the phone.

13 UNIDENTIFIED SPEAKER: Pardon?

14 MADAM CHAIR: Somebody's talking on the phone. So  
15 we're going to mute everybody. Okay. All right, go back --

16 COMMISSIONER DOERNER: Yes, was there ever an  
17 attempt to try and develop out the commercial aspects of  
18 this or maybe have a mix of residential of commercial  
19 because you set up a very interesting legal case, right?  
20 Like you've set up a, it specifically says commercial,  
21 you're only going pure residential and it's sort of cut and  
22 dry. But if you had gone for a little bit of a mix it might  
23 have been a bit of more of a discussion with staff I think.

24 MR. GINGLES: (No audible response.)

25 COMMISSIONER DOERNER: I think you're on mute.

1           MADAM CHAIR: Okay. Is that a question for Mr.  
2 Gingles?

3           MR. GINGLES: So Commissioner, we have and I can  
4 attest, because I represented the prior developer to the  
5 current developer coming on probably a decade or so ago. To  
6 a number of instances date back to 2004 seeking to develop  
7 or do a commercial activity center. I mean in large part  
8 and in deference to staff, only because I spent a fair  
9 amount of time in Columbia, I know the similar kind of  
10 zoning and what is sort of intended. I've also sort of seen  
11 a lot of things sort of fail. But it is sort of situated in  
12 and it was sort of listed and it does provide in the Basic  
13 Plan the appropriate quantities of density and intensity.  
14 And there were efforts made and even through the pandemic,  
15 we've gone after everything from just a couple of retail  
16 buildings that would be service, you know, probably pizza  
17 delivery and those kinds of things to going after some  
18 development with once we were looking at a daycare center in  
19 addition to a few other uses in there. And in large part  
20 because the urban, excuse me, because the area has  
21 essentially still stayed fairly rural suburban, because I  
22 won't call it urban it had some pockets there, there in just  
23 the limited amount of traffic that's coming along there,  
24 there has been just no interest in developing it.

25           I'd also move back to that 6.75 acres in which we

1 ultimately and the Planning Board approved then decreased  
2 over time the amount of retail area that was left, given  
3 that a fair amount of that commercial area is now developed  
4 with residential, both townhouses in there. And so the  
5 single use kind of retail that could potentially still go  
6 there in many instances that has been floated to the HOA at  
7 different times, they've had no interest and frankly we've  
8 had some concerns because at that point we were still  
9 developing residential and you did not want to do anything  
10 as you were moving forward with that residential that was  
11 going to impact the marketing of the community. And there  
12 are certain retail uses that just weren't going to be  
13 determined appropriate.

14           So it is both what has been approved over time  
15 that has decreased the ability to develop what I would call  
16 any type of either village center or any retail center of a  
17 decent size. I mean I have just have done enough  
18 development to know most folks are looking minimally. I  
19 mean even for a fast food spot they start off looking for  
20 two acres, minimum.

21           MADAM CHAIR: So it's sort of preempted. Okay.

22           COMMISSIONER DOERNER: I think that's a helpful  
23 practical --

24           MADAM CHAIR: Okay.

25           COMMISSIONER DOERNER: -- and that's all the

1 questions that I have.

2 MADAM CHAIR: Okay. Thank you, Commissioner  
3 Doerner. Okay. So now before I go to our own counsel, Mr.  
4 Warner, our Principal Counsel, I need to double check  
5 something. So I know Mr. Tibbetts was having some  
6 difficulty signing on. I want to check, I know our team  
7 here has been reaching out to him. I want to do a sound  
8 check to make sure we can hear him and he can hear us. So  
9 you saw his name there, right? Okay. Mr. Tibbetts?

10 MR. TIBBETTS: Yes, madam, I can hear you, can you  
11 hear me okay?

12 MADAM CHAIR: Yes, we can, so we're good. Okay.

13 MR. TIBBETTS: Okay. Very good.

14 MADAM CHAIR: Okay.

15 MR. TIBBETTS: Thank you.

16 MADAM CHAIR: Okay, thank you. Okay. So with  
17 that, I'm going to turn to our principal counsel, David  
18 Warner. You heard the questions. Basically the questions  
19 were is there a requirement for a commercial in this area  
20 and then two, and we still have to deal with the conformance  
21 to the Basic Plan issue. Can you shed any light on this  
22 discussion from a legal standpoint?

23 MR. WARNER: Thank you, Madam Chair, yes, I  
24 absolutely can do so. At this time do you also want me to  
25 address Mr. Gingles' brought up some legal --

1 MADAM CHAIR: Yes, all of the above.

2 MR. WARNER: -- issues as well.

3 MADAM CHAIR: All of the above. All of the above,  
4 thank you.

5 MR. WARNER: Okay. Well, the first thing I would  
6 just maybe orient the Planning Board to and I know you've  
7 been doing these a long time, so I don't need to explain it  
8 belt and suspenders, but you know these Comprehensive Design  
9 Zones are a unique animal in a lot of ways, because you know  
10 they're really designed, I believe in the purposes for a  
11 Comprehensive Design Zone, they're, you know, supposed to be  
12 approved so we come up with kind of an imaginative, creative  
13 outcome at the end of the day with the development proposed.  
14 And so what a Comprehensive Design Zone does is it blends a  
15 lot of the zoning and planning together as opposed to  
16 perhaps a development where we have the zoning, we do the  
17 Detailed Site Plan, the Preliminary Plan and the specific,  
18 or the CSP, excuse me, CSP, DPS and DSP.

19 In the Comprehensive Design Zone a lot of this  
20 work is done at the same time. So for instance, in 1993  
21 when this property was rezoned to the different  
22 Comprehensive Design Zones it was required to also include  
23 approval of a Basic Plan. And the Zimmer case that Mr.  
24 Gingles refers to does make it very clear that the Basic  
25 Plan and in this case, the council resolution are a part of

1 the zoning process. But the Zimmer case does not say,  
2 however, is that the Basic Plan is a Zoning Map. If you  
3 look at the contents of a Basic Plan it contains a lot of  
4 different things. Some things relating to zoning such as  
5 intensity and the density designations but it also contains  
6 the general outline of streets, for instance, an access to  
7 the property. It has planning and zoning elements in it.

8           So in this particular case, the local activity  
9 center, the purposes of which are accurately explained by  
10 Mr. Zhang, was designed to provide a zone where a mix of  
11 uses can be allowed. Keep in mind that zoning is designed  
12 in a way with the intent to when it comes to uses say what  
13 is allowed and what isn't allowed. And it should be very  
14 clear when it does so. So a local activity center said  
15 we're going to allow all sorts of different commercial and  
16 residential uses and you can look at the use table in our  
17 code and see all of those that are permitted, including the  
18 proposed uses that Mr. Gingles' client is looking to  
19 develop.

20           He's correct when he says that the local activity  
21 center does not require uses unlike for instance, the M-X-T  
22 Zone, where you have to have two different types of uses.  
23 The L-A-C's don't mandate that. They were designed for  
24 that, and clearly in 1993 there's no question that the  
25 District Council intended this to be a much different

1 development than it's ended up being 30 years later.

2           So the Basic Plan comes along at the same time and  
3 it designates all sorts of things on it as I mentioned. And  
4 no question is Mr. Zhang correct when he says that the area  
5 that Mr. Gingles client is seeking to develop is only  
6 commercial on the Basic Plan. I mean look at the drawing,  
7 it's nothing else except commercial. While it shows only  
8 commercial, a Basic Plan is not a Zoning Map, it reflects  
9 what the council decided to do when it rezoned the property  
10 and we have a 50 page council resolution that contains all  
11 of the uses permitted, all of the densities and intensities  
12 and various zoning requirements that are going to apply to  
13 this property.

14           That resolution also did not mandate that this  
15 property be only commercial, it offered commercial and  
16 residential. So when they adopted the Basic Plan along with  
17 this zoning it was part of the Master Plan, it was a Master  
18 Plan and SMA that they said you know the proper thing for  
19 this area is commercial and you can see it right there on  
20 the plan. And what we have traditionally done when a  
21 development comes along that does not meet conformance with  
22 the Basic Plan, we direct applicant's to the Basic Plan  
23 Amendment process. That's because that process gives the,  
24 in this case, the Zoning Hearing Examiner and the District  
25 Council the opportunity to consider whether their



1 designation of commercial was appropriate or not and there's  
2 a process for this that's available to the applicant today  
3 and and it was available six months ago when we recommended  
4 it.

5           The finding that we need to make as Mr. Gingles  
6 points out and our Staff Report identifies, is we have to  
7 determine, or the Planning Board has to determine if the  
8 application conforms to the Basic Plan. And as we can see  
9 in previous approvals this Board has determined that  
10 townhouses have conformed to the area marked commercial.

11           The opinion of staff is while that is true, no  
12 proposal came along with the intention to eliminate all  
13 commercial use. And they feel the Basic Plan Amendment is  
14 the right process to do that. However, when making a  
15 finding of conformance, it doesn't mean that you have to  
16 determine that something mirrors exactly what is on the  
17 previous plan. You know, we do that with subsequent Site  
18 Plans when we determine conformance, we'll do that when we  
19 look at the SDP to see if it conforms to the Detailed Site  
20 Plan or to the CDP. We make a decision on conformance. Is  
21 this consistent and we can take into consideration all of  
22 the factors that would relate to that, including what has  
23 been done in the past, what is the relationship, the  
24 proposed uses to the surrounding area and come up with a  
25 decision on conformity. I don't believe that the Basic Plan

1 is zoning when it comes to only commercial uses can be  
2 developed at this location. But it does require the  
3 Planning Board to make a determination as to whether the  
4 development of residential, or townhouses in this case,  
5 would be consistent with the Basic Plan and the intention  
6 for this particular location.

7           So no, in short answer the L-A-C does not require  
8 commercial and neither did the 1993 council resolution  
9 require commercial. But they did plan for it and we have to  
10 evaluate this CDP for its conformance with that plan.

11           COMMISSIONER WASHINGTON: And Mr. Warner, to  
12 ensure I'm correct, the first threshold is conformance to  
13 the plan.

14           MADAM CHAIR: To the Basic Plan?

15           COMMISSIONER WASHINGTON: To the Basic Plan,  
16 right.

17           MR. WARNER: Exactly.

18           COMMISSIONER WASHINGTON: Thank you.

19           MR. WARNER: And then just to touch on a couple of  
20 the comments I jotted down that Mr. Gingles brought up. I  
21 don't believe, and I have not looked specifically at what he  
22 was quoting, but staff whatever opposition it may have had  
23 to commercial in 1993 is irrelevant. What's relevant is  
24 what was approved by the District Council. I agree with him  
25 that the conformance with the Basic Plan is the essential

1 requirement here because a finding of conformance then does  
2 appear through the Staff Report, will satisfy the design  
3 guidelines through the remaining part of the Staff Report.

4           With regard to his comment on the SDP removing the  
5 golf course, we looked at that. I think I looked at that  
6 with him in particular back in the summer. It was my  
7 finding at the time that the District Council adopted  
8 legislation, I wrote down here on November 17, 2009 that  
9 allowed for removal of the golf course. So they made a  
10 legislative decision get rid of the golf course and I think  
11 they may have said do it by SDP or whatever you want to do  
12 it. But I think that was a legislative decision, so I don't  
13 think that's relevant in this particular case for what Mr.  
14 Gingles is asking for.

15           And with regard to the neighborhood activity  
16 center and that amendment 16, that was an amendment to the  
17 Basic Plan. So again that was the District Council planning  
18 for this area in saying you know we want it to look like  
19 this, but it's not a mandate.

20           I think that's all I had on Mr. Gingles' comments.

21

22           MADAM CHAIR: Okay. Thank you, Mr. Warner. Let  
23 me see if the Board has any questions of Mr. Warner and then  
24 Mr. Gingles you may want to respond to Mr. Warner. Madam  
25 Vice Chair?

1 MADAM VICE CHAIR: No questions for Mr. Warner.

2 Thank you.

3 MADAM CHAIR: Okay. Commissioner Washington any  
4 other questions for him?

5 COMMISSIONER WASHINGTON: No additional questions.  
6 Thank you.

7 MADAM CHAIR: Okay. Thank you. Commissioner  
8 Doerner?

9 COMMISSIONER DOERNER: No questions, thank you.  
10 That was very helpful.

11 MADAM CHAIR: Okay. Mr. Gingles, do you care to  
12 respond to Mr. Warner?

13 MR. GINGLES: Just a few points.

14 MADAM CHAIR: You can make your few points and  
15 then we have other people signed up we want to hear from  
16 them and you will also get the opportunity to respond after  
17 they speak. Okay.

18 MR. GINGLES: Sure. Just a few points. And I  
19 agree with a great amount of Mr. Warner just expressed,  
20 because he was clear that there was no requirement in the L-  
21 A-C to develop commercial retail, it's not in the resolution  
22 of approval, and that you get down and I'll discuss again to  
23 the conformity issue.

24 I do want to note because I've raised the issue  
25 that this could alternatively be done by an SDP and a

1 Preliminary Plan of Subdivision, even without an amendment  
2 of the CDP.

3           The bill CB-57 2009, simply said that a golf  
4 course may be removed from an R-L Zone. It did not change  
5 any of the language in the existing Zoning Ordinance  
6 regarding under what circumstances a Basic Plan can be  
7 amended or should be amended or even with the CDP can or  
8 should be amended. None of those provisions were changed in  
9 that legislation. It simply indicated that there were  
10 certain criteria that must be applicable in order to get to  
11 the SDP stage in that. And I will note that we moved  
12 forward on a big use like the golf course in the R-L Zone  
13 which was a part of that Basic Plan without and that took up  
14 at least 200 plus acres of the development. That was done  
15 again without amending something that was also in the  
16 resolution. The resolution was clearly identified in CR,  
17 excuse me, the golf course was clearly identified in CR-60.  
18 And that's again why we even raised the issue of the need  
19 for the CDP.

20           But assuming the CDP is, amendment, excuse me, is  
21 needed, we still think that the expressed language here in  
22 which no commercial is required to be developed, that the  
23 Basic Plan is essentially a planning document that  
24 illustrative, that what would like to be seen to be  
25 developed, but that as the, excuse me, as this Planning

1 Board has done in a number of cases already, notwithstanding  
2 that 6.75 acres being there as the commercial retail to be  
3 developed for this 800 plus acre development, it has  
4 consistently found that during residential development  
5 within that area of the property as we are now proposing,  
6 still is in conformance with the Basic Plan. We think that  
7 as long as the use is something that is allowed, the non-  
8 development of a use that is not mandated should still be  
9 deemed in conformance with that Basic Plan. Thank you.

10 MADAM CHAIR: Okay. Okay. So that's it for you.  
11 Let me start going then to some other folks who have signed  
12 up to speak at this point. Okay. So do you want to go with  
13 Mr. Zyla first? Let's go to Mr. Zyla first.

14 MR. ZYLA: No questions, I'm just here to answer  
15 any questions.

16 MADAM CHAIR: Okay. And Ms. Amirpour, anything  
17 you want to, you have to, anything you care to add?

18 MS. AMIRPOUR: Good morning, Madam Chair and  
19 members of the Board and the other folks present. For the  
20 record, my name is Nooshin Amirpour with Woodlawn  
21 Development Group. Thank you Henry, for your presentation.

22 Mr. Gingles has done a fine job of presenting our  
23 case, so I don't want to burn too much of your time. We  
24 marked this parcel for various compatible uses, we were  
25 sensitive to some uses that the residents would not want

1 next door to them. There is a strong demand for housing and  
2 we know, conforming and compatible townhouses with similar  
3 density to the surrounding works. We have completed our  
4 last phase at Danville Estates with this being our last  
5 remaining market parcel and we are very excited to complete  
6 what we started years ago.

7 So with that, I appreciate your time and  
8 consideration. Thank you.

9 MADAM CHAIR: Thank you, Ms. Amirpour. Let's see  
10 if the Board has any questions of you with regard to your  
11 marketing. Madam Vice Chair?

12 MADAM VICE CHAIR: No questions, thank you.

13 MADAM CHAIR: Commissioner Washington?

14 COMMISSIONER WASHINGTON: No questions, thank you.

15 MADAM CHAIR: Commissioner Doerner?

16 COMMISSIONER DOERNER: No, no questions. I  
17 apologize if you all have been hearing things in the  
18 background, I'm teleworking with my son because of  
19 (indiscernible) schools.

20 MADAM CHAIR: Okay.

21 COMMISSIONER DOERNER: So he's singing in French  
22 right now.

23 MADAM CHAIR: Okay. Well, that's impressive.  
24 Okay. Seth Churchill, do you wish to speak?

25 MR. CHURCHILL: (No audible response.)

1           MADAM CHAIR: We have to unmute you, we can't hear  
2 you yet. He has to unmute on his end? You have to unmute  
3 on your end, Mr. Churchill.

4           UNIDENTIFIED SPEAKER: He's already on.

5           MADAM CHAIR: Okay. Uh-oh. Okay.

6           MR. CHURCHILL: No, Madam Chair, I have nothing,  
7 I'm just here to answer questions if necessary.

8           MADAM CHAIR: Okay. Thank you so much. Mr.  
9 Tibbetts, are you ready now? Geoffrey Tibbetts?

10          MR. TIBBETTS: Yes, Madam Chair, can you hear me  
11 okay?

12          MADAM CHAIR: Yes, we can, loud and clear. Thank  
13 you.

14          MR. TIBBETTS: Good. For the record, my name is  
15 Geoffrey Tibbetts, I am the owner of the Edelen House  
16 (phonetic sp.), the Bailey Plantation to the right of the L-  
17 A-C that we've been talking about.

18          MADAM CHAIR: Can you hold on a second?

19          MR. TIBBETTS: I want to --

20          MADAM CHAIR: Can you hold on a second. Can we  
21 pick out a slide so that we can see, Mr. Zhang, can you  
22 direct Mr. Flannigan to the best slide to see where Mr.  
23 Tibbetts is, the Edelen House?

24          MR. ZHANG: Yes, Madam Chair --

25          MADAM CHAIR: Yes, Mr. Zhang?



1           MR. ZHANG: I think the last slide we saw Edelen,  
2 the letter of Edelen.

3           MADAM CHAIR: Okay. Right there?

4           MR. ZHANG: The last one. You see it right here.

5           MADAM CHAIR: Next slide. Okay. Okay. Got it.  
6 Right there? Okay. Thank you.

7           MR. ZHANG: Yes.

8           MADAM CHAIR: Okay. All right. I'm sorry, Mr.  
9 Tibbetts you can go ahead. We just want to get a visual.  
10 Okay.

11           MR. TIBBETTS: Okay. Good, thank you. I want to  
12 compliment everybody on their presentations. I think it's  
13 been very well developed. I also want to compliment the  
14 Board on the time and the detail that they are putting into  
15 this, it's very much appreciated.

16           So my opposition to the amendment today is  
17 twofold. First of all, there is a historical element on  
18 this that hasn't really been talked about much, and I think  
19 that it's important that that be considered. This is not  
20 just a development in a vacuum. This is property that has  
21 been found by the National Trust to have historical reasons  
22 and we're specifically talking about Piscataway Village and  
23 the Edelen House is part of that. So that's part of the  
24 historical trust. And when we look at the original plan of  
25 1993, there's a lot of very important information that talks

1 about the importance of keeping the original open feels and  
2 the open feel, the open areas surrounding Piscataway  
3 Village. And I think that's important that be incorporated  
4 into the discussion here.

5           Where we're talking about the actual Lot 10 and  
6 the development of 26 townhomes here, that would not be  
7 consistent with the original 1993 plan, and the importance  
8 of keeping those open areas that are associated with  
9 Piscataway Village.

10           Second, the lot that we're talking about, Lot 10,  
11 and again several individuals have noted that the acreage on  
12 that is relatively small. That area has specifically been  
13 the area for a historical buildings that were associated  
14 with the Bailey House or the Edelen House. So in that area  
15 there were three specific barns that were used for the  
16 tobacco production during the Bailey, the Bailey years. And  
17 those have been covered over, so the development in this  
18 area, Lot 10, is going to be right over the area where those  
19 barns had been located that were in the process of drying  
20 the tobacco and getting the tobacco to the ships in  
21 Piscataway Village and so forth.

22           In addition to that, there has been additional  
23 discussion with other individuals and homeowners in  
24 Piscataway Village as to how we can move forward the  
25 historical importance of Piscataway in Maryland. And

1 there's been a number of discussions as to what we would  
2 like to see have done, how improvements can take place and  
3 those need to be incorporated into this discussion because  
4 what we're talking about with Lot 10 the area that's  
5 proposed for the amendment would directly impact those  
6 historical talks that we want to preserve Piscataway, and  
7 we've been in talks with the, the transportation board,  
8 putting in a roundabout right there at the intersection and  
9 also having some historical rehabilitation and restoration  
10 of some of the historical properties and buildings that had  
11 been there, just to preserve the importance of what  
12 Piscataway had been in the early founding years of the State  
13 of Maryland.

14           So I think in all of our discussion, as important  
15 as, as it is, it talks about density, we're talking about  
16 you know what the plans are, what the zoning is, there has  
17 to be the historical thing. This is particularly important  
18 simply because when we look at the slide the area that we're  
19 talking about directly abuts and is adjacent to a national  
20 historical site and that needs to be considered and there  
21 needs to be additional discussion as to how we can  
22 coordinate any development within this that would still stay  
23 within the planning of those historical elements that are  
24 going outside of the discussion with the Planning Board  
25 right now.

1 MADAM CHAIR: Is that it for you, Mr. Tibbetts?

2 MR. TIBBETTS: Yes, and the second element is  
3 there is, there has been no discussion while the way that  
4 the Planning Board and commission can look at this, and  
5 they're looking at whether or not there's conformance to the  
6 amendment. The, I, I believe the HOA has put forward a, a  
7 request for an approval on this.

8 So in my conversations with a number of the  
9 residents in the area, they are not familiar with nor do  
10 they approve of what the HOA is putting forward. And I know  
11 what we're talking about here in 1993 when the planning,  
12 when the original plan came out was quite a while ago, but I  
13 think what Mr. Zhang was saying and what Mr. Warner has also  
14 echoed is that those initial ideas for the development of  
15 the community are very important. And what I would ask for  
16 is that there be greater community involvement, specifically  
17 the residents who have to deal with whatever development is  
18 going to take place there. Have, make sure that there is a  
19 concerted voice as to how we can all sort of look forward  
20 and look towards the planning purpose, that is not the case  
21 at the moment.

22 So if the Board were to go forward with this,  
23 there would not be a uniformity of the residents, nor an  
24 agreement, for the development and we ask that there be a  
25 greater coordination with the residents that surround Lot 10

1 and make sure that they work with the developer to come up  
2 with some sort of amendment or plan to be able to develop  
3 this, this lot so that it's conformance with the original  
4 plan but also more importantly, the larger perspective of  
5 having the historical nature and the elements of Piscataway  
6 Village be considered.

7 MADAM CHAIR: Okay. Thank you, Mr. Tibbetts.  
8 Does that conclude your remarks for the moment?

9 MR. TIBBETTS: Yes, ma'am, it does.

10 MADAM CHAIR: Okay. Thank you. So I am going to,  
11 I know we have other people signed up but I'm going to turn  
12 to Mr. Zhang to address or someone if we have someone else  
13 on, Mr. Hunt I don't know who that might be, to address the  
14 historic preservation of the integrity of the historic site  
15 so that there's no infringement. And also, Mr. Gingles --

16 MR. ZHANG: Yes.

17 MADAM CHAIR: -- I see the letter which is  
18 Proponent's Exhibit Number 1 which is a letter it's not the  
19 entire board, but it says the Board, I guess that means the  
20 Board of Directors of the Preserve at Piscataway Homeowner's  
21 Association has had a meeting with the developer and  
22 supports, the entire letter is in support. But I don't know  
23 that it was a membership meeting, it seems like it was a  
24 board meeting. So I'd like to turn to Mr. Zhang first to  
25 address the first part of Mr. Tibbetts' comments and then

1 Mr. Gingles to address the second part. Okay.

2 MR. ZHANG: Yes, Madam Chair, for the record, this  
3 is Henry Zhang with Urban Design Section. If I may, I would  
4 like to first direct the Board's attention to this site on  
5 the right hand side.

6 MADAM CHAIR: Yes.

7 MR. ZHANG: And then to the west of the graphic,  
8 you see that Edelen House. Basically that's the historic  
9 site --

10 MADAM CHAIR: Okay.

11 MR. ZHANG: -- which has been previously decided  
12 and the setting you know has been previously decided. And  
13 then --

14 COMMISSIONER WASHINGTON: Mr. Zhang, could you  
15 please ask him to use the cursor? I'm not tracking you.

16 MADAM CHAIR: Yes, I'm not --

17 COMMISSIONER WASHINGTON: Where are we?

18 MR. ZHANG: Okay. Okay.

19 MADAM CHAIR: So you're talking about the  
20 depiction on the right, is that what you're saying?

21 MR. ZHANG: Yes, ma'am. Mr. Philip Flannigan,  
22 would you please move the cursor to the west of the right  
23 hand graphic? You see that main house?

24 MADAM CHAIR: Oh yes, I see it. Yes, right up,  
25 okay there it is. Okay.

1 MR. ZHANG: That's the location of the Edelen  
2 House in relation to this proposed revision.

3 MADAM CHAIR: Okay.

4 MR. ZHANG: And Kenny, would you please also --

5 MADAM CHAIR: Can you show us Lot 10?

6 MR. ZHANG: Yes. That's the location of the  
7 house.

8 MADAM CHAIR: Okay. Right there. Okay.

9 MR. ZHANG: Okay. Okay. If I may, Madam Chair, I  
10 would like Kenny to go to the bird's eye view of the site,  
11 because I think Mr. Tibbetts may missed the early  
12 presentation in relation to this revision. Okay. Mr.  
13 Tibbetts, actually I tried to reach out to you yesterday and  
14 left a message, but this revision is very limited to this  
15 site. You see here, it's a bird's eye view.

16 MADAM CHAIR: Right. Okay.

17 MR. ZHANG: This is the Lot 10. This revision has  
18 no, any impact on the previously the finding the Board and  
19 the council made regarding this historic site. Which you  
20 will not be able to see on this exhibit because this further  
21 west, or left hand, outside this picture. So that's  
22 basically I can add to the discussion because this revision  
23 has no impact on the previously decided setting for the  
24 historic site.

25 MADAM CHAIR: Okay. Thank you. Mr. Gingles?

1           MR. GINGLES: Mr. Zhang pointed out what I was  
2 going to point out. The only thing that I would note is  
3 that with regard to the historic Piscataway Village there  
4 are conditions that were done by your historic division and  
5 the Historic Preservation Commission which dealt with the  
6 Glass Village North which was very close and proximate to  
7 the historic village and discussed the type of housing and  
8 view sheds that need to be maintained over in that area as  
9 well.

10           Again, this proposed amendment has no impact on  
11 either of those.

12           MADAM CHAIR: But my other question to you was  
13 about the Board, well not your exhibit but the Proponent's  
14 Exhibit Number 1, which is the Board at Preserve at  
15 Piscataway and so it says you had meetings, plural, with the  
16 developer. Were all of the meetings solely with the Board?  
17 Was there not an actual HOA meeting? I'm just curious.

18           MR. GINGLES: We, the Board sort of explained --

19           MADAM CHAIR: It probably was virtual, yes.

20           MR. GINGLES: Yes. It was a virtual meeting. So  
21 the Board invited us in with the members, not just the Board  
22 to do --

23           MADAM CHAIR: Oh, okay.

24           MR. GINGLES: -- a presentation and this has been  
25 some time back.



1 MADAM CHAIR: Okay.

2 MR. GINGLES: And that's when we made the  
3 presentation. Ultimately, the Board sent us this letter,  
4 but the presentation we did was an open meeting of the  
5 membership.

6 MADAM CHAIR: Okay. Thank you.

7 UNIDENTIFIED SPEAKER: Yes, Madam Chair --

8 MR. GINGLES: And Madam Chairman, it did include  
9 and some of them may be here today, it did include some of  
10 the folks who lived in the townhouses or those single  
11 families that are close to Lot 10.

12 MADAM CHAIR: Okay. All right. Thank you. Okay.  
13 So I'm now going to turn to, the next speaker was Joy  
14 Johnson.

15 MS. JOHNSON: (No audible response.)

16 MADAM CHAIR: Hold on, we need to find her. Oh  
17 there she is. Okay. Okay.

18 MS. JOHNSON: Good morning everyone, or good  
19 afternoon.

20 MADAM CHAIR: Good afternoon. Okay.

21 MS. JOHNSON: Please excuse me, I'm going to be  
22 reading some notes so I, I may be looking down on occasion.

23 MADAM CHAIR: Okay.

24 MS. JOHNSON: But I wanted to say hello Prince  
25 George's County Planning Board and all in attendance. For

1 the record, my name is Joy A. Johnson. I am a current  
2 resident at Preserve at Piscataway community. I live in the  
3 Bailey's Village and I live in the single family homes known  
4 as the city homes.

5 MADAM CHAIR: Hold on a second. Hold on a second  
6 so we can figure out. Mr. Gingles or Mr. Zhang, can you  
7 direct Mr. Flannigan here to the best slide so we can see  
8 where she lives?

9 MR. GINGLES: I think she's behind that row of  
10 townhouses.

11 MS. JOHNSON: I live on Port Commerce Court.

12 MADAM CHAIR: I mean is there a better slide, I  
13 guess I'm asking.

14 MS. JOHNSON: There was, no.

15 MR. GINGLES: We might be able to find it on that,  
16 on, yes.

17 MS. JOHNSON: There you go.

18 MR. GINGLES: Yes.

19 MS. JOHNSON: So I live --

20 MADAM CHAIR: A little bit too much black and  
21 green but --

22 MS. JOHNSON: -- there you are. Yes, where the  
23 cursor is, Port Commerce Court.

24 MADAM CHAIR: Okay.

25 UNIDENTIFIED SPEAKER: Okay.

1 MS. JOHNSON: And so I've lived in the community  
2 now for six years. My partner has been here for nine. He  
3 had the, he had the, the home built. And so for as long as  
4 we've been here that lot has been open. I have throughout  
5 the years attended several HOA meetings. I did not attend  
6 that one relating, that was stated about the presentation  
7 for this, unfortunately. I don't know the date on when, on  
8 which that happened. But since COVID, you know, time has  
9 been more available.

10 So I'm presenting to you all some concerns as a  
11 resident living in such close proximity to that lot. We  
12 live in what's called a city home, so we have a full sized  
13 home but it's on a smaller lot, similar to the townhome  
14 sizes. And so for the time that we've lived here, we've  
15 enjoyed that lot, Bailey's Lot 10, free space so to speak,  
16 or open space I should say, excuse me, because our homes are  
17 on smaller lots. Our properties are closer to one another  
18 compared to the rest of the neighborhood.

19 And so it's kind of similar to some of the points  
20 that Mr. Tibbetts had made, we enjoy --

21 MADAM CHAIR: Are we not doing anything with Lot  
22 10? Is that not right? Well anyway --

23 MS. JOHNSON: I'm sorry?

24 MADAM CHAIR: I was asking our own team, I thought  
25 we pretty much established we weren't doing anything with

1 Lot 10, or we are?

2 MR. GINGLES: Just to be clear, Madam Chairman,  
3 Lot 10, where you see these sort of artist rendition of the  
4 homes there.

5 MADAM CHAIR: Yes.

6 MR. GINGLES: That's Lot 10.

7 MADAM CHAIR: Okay.

8 MR. GINGLES: This space that's just below there  
9 is --

10 MADAM CHAIR: Yes. Open.

11 MR. GINGLES: -- exists --

12 MADAM CHAIR: Okay.

13 MR. GINGLES: -- open space area. It's actually  
14 sort of designed as an urban gathering space because of that  
15 being the more urban area.

16 MADAM CHAIR: Okay.

17 MADAM VICE CHAIR: Did he say that's open space?

18 MR. GINGLES: Yes it is, and I would just sort of  
19 note that when we removed the golf course we then as a part  
20 of that, or you all approved as a part of that all of that  
21 got changed into open space with additional amenities done  
22 in terms of trails and things like that. And so essentially  
23 200 to and I don't remember the exact acreage number but 200  
24 plus acres or so went from golf course into additional open  
25 space --

1           MADAM CHAIR: To remain open space, you're saying?  
2 To remain open space?

3           UNIDENTIFIED SPEAKER: 300.

4           MADAM CHAIR: Okay. Okay. All right, I'm sorry,  
5 Ms. Johnson. Okay. So that is to remain open space. Okay.  
6 Go ahead. I just wanted to get clarity, Ms. Johnson, you  
7 can go ahead.

8           MS. JOHNSON: Okay. And so with the proposal and  
9 I spoke to, to Mr. Zhang because I wasn't clear on the  
10 Board's position versus the developer's position, but I'll  
11 just say that in speaking to some of the community recently,  
12 as of yesterday because I told them that I was going to be  
13 speaking today, we would really like a more cooperative  
14 approach in the developer allowing us to have some say or to  
15 have an opinion, since this property or this land has been  
16 acquired such long ago, 1993. And as it's been discussed  
17 has had a few amendments and changes, the golf course which  
18 I know was mentioned. At one point there was a mention of a  
19 school. And so there have been a lot of changes but among  
20 those changes being that now we've been in this, in our home  
21 for almost 10 years, to now have this additional change of  
22 wanting to have commercial, I guess mixed-use space but from  
23 my understanding the builder wanting to have an additional  
24 20 some townhomes.

25           MADAM CHAIR: In lieu of --

1 MS. JOHNSON: It's something that --

2 MADAM CHAIR: -- the other development. So the  
3 townhomes in lieu of, instead of the commercial and retail  
4 development.

5 MS. JOHNSON: Right.

6 MADAM CHAIR: And then I was going to ask you, did  
7 you attend and maybe Mr. Gingles your team can tell us when  
8 it was, because apparently they made a presentation to the  
9 entire homeowner's association. So did you attend that  
10 meeting?

11 MS. JOHNSON: No, I mentioned earlier that I did  
12 not.

13 MADAM CHAIR: Okay.

14 MS. JOHNSON: But I also don't recall the date of  
15 that.

16 MADAM CHAIR: Okay.

17 MS. JOHNSON: So since the pandemic time has been  
18 more available, right --

19 MADAM CHAIR: Okay.

20 MS. JOHNSON: -- and to attending these meetings  
21 and such and we now do things through Zoom.

22 MADAM CHAIR: Okay.

23 MS. JOHNSON: So I don't know when that  
24 presentation was and no I did not, I did not, I was not  
25 privy to it. I was privy to this meeting --

1 MADAM CHAIR: Okay.

2 MS. JOHNSON: -- because of your signage.

3 MADAM CHAIR: Okay. Okay.

4 MS. JOHNSON: Which was very helpful because a lot  
5 of us in the community were aware due to, you know, you all  
6 having to post that sign and, and making us aware.

7 MADAM CHAIR: Okay.

8 MS. JOHNSON: So --

9 MADAM CHAIR: Okay.

10 MS. JOHNSON: -- so that was very helpful as the  
11 community of being aware. But what my point is, is I  
12 understand that now it's the plan has been to no longer have  
13 been excuse and to go to the 20 some townhomes. But part of  
14 the reason, I'm, I'm a native Accokeekian (phonetic sp.), I  
15 grew up here. I'm very familiar with the Edelen Home, that  
16 was the only, that was the only property on this land. And  
17 so I like the open space.

18 Part of the reasons I came back to Accokeek is the  
19 open space, and so with the additional, with the change of  
20 these additional townhomes it does start to get crowded. I  
21 mean we're, we're already in a space where the homes that,  
22 the homes that we live in are more condensed, which is fine.  
23 But a part of the exchange is yes, you have a smaller lot  
24 but we had that space available.

25 So if that's not even an option, right, let's say

1 not doing anything with it is not an option, then as a  
2 community we would at least like an opportunity to have more  
3 of a cooperative conversation about what can be done. Some  
4 of the things and I, and I will be brief, but some of the  
5 things that were discussed among the community because we  
6 have a, a face, a private Facebook group, if leaving it  
7 alone is not an option, some sort of a community garden  
8 that, that we, the association could be cooperatively in  
9 working with. Some sort of an outdoor fitness trail. I  
10 know that the opportunity to submit images was when I  
11 registered, but this as an opinion that was given by another  
12 resident and what the trail was was pretty much a big circle  
13 that had different activities within it, which helps to  
14 promote health and activity, for the children as well as for  
15 the adults.

16 Another member or resident has suggested something  
17 where the Chesapeake Natives, they run a native plant  
18 nursery, even something where we can incorporate maybe a  
19 rain barrel garden. But ultimately what we do not want  
20 which was kind of mentioned by Mr. Gingles and I believe a  
21 few others, we're not interested in a gas station. You know  
22 we're not interested in a corner store. We're not  
23 interested in a 7-Eleven. And one thing that I, I would say  
24 that is to my knowledge, I don't know of any L-A-C activity  
25 center, I don't I'm not familiar with any that have been



1 within the area, and I'm not familiar with any that have  
2 been successful. So that the thought of mixing the  
3 commercial element doesn't seem appealing either because  
4 then that's what I've noticed in terms of communities that  
5 have a commercial element, there isn't necessarily  
6 sustainability there. Because a part of the reason that you  
7 come to move to live here is yeah, you got to travel a  
8 little bit to get to places, or to be able to do things, but  
9 that's some of the enjoyment of the quietness that we enjoy.

10           So in conclusion, my point is I understand if  
11 nothing can be done. Right, I understand if something has  
12 to be done to that lot based on what has already been given  
13 and what the rights of the developer is. But as someone  
14 that lives in the community within eyeball shot of that lot,  
15 my children actually catch the bus at that courtyard area, I  
16 would like --

17           MADAM CHAIR: Ms. Johnson, I'm trying to follow  
18 one thing that you're saying. So are you talking  
19 specifically about one lot, you're not talking about the  
20 open area that Mr. Gingles referred. Can you put the cursor  
21 there, you're not talking about that open area that's to  
22 remain open. Or are you talking about the entire parcel?  
23 What are you, I'm just trying to --

24           MS. JOHNSON: I'm talking about Bailey Lot 10, the  
25 1.65 acres.

1 MADAM CHAIR: Okay.

2 MS. JOHNSON: That where, right now there is an  
3 illustration of homes which are proposed.

4 MADAM CHAIR: Right.

5 MS. JOHNSON: But that right now is a totally open  
6 flat land grass space. It's what we use during Thanksgiving  
7 for our Turkey Bowl. It's what we use in the summertime --

8 MADAM CHAIR: Well wait a minute.

9 MS. JOHNSON: -- to, to throw water balloons at  
10 each other. It's what we use --

11 MADAM CHAIR: Okay.

12 MS. JOHNSON: -- to --

13 MADAM CHAIR: That's not your land though, right?

14 MS. JOHNSON: I understand but it's in our  
15 community.

16 MADAM CHAIR: You best be careful what you're  
17 admitting to. Okay. Okay.

18 MS. JOHNSON: So what I'm saying is being that  
19 this has been proposed so long ago, '93 --

20 MADAM CHAIR: Yes.

21 MS. JOHNSON: -- right, now we're at 2022, we've  
22 already been in this, this side of the community for almost  
23 10 years.

24 MADAM CHAIR: Yes.

25 MS. JOHNSON: And so to now have something like

1 this it would have been one thing had this been developed at  
2 the time when everything was being developed, but now that  
3 we're here, the residents, the taxpayers, we would just like  
4 to have an opinion as to what can possibly be there and it  
5 not be a, a High's or a 7-Eleven or something and it's not  
6 necessarily that you know the, the 20 homes that are  
7 proposed to be there, that is, that's a lot of homes.  
8 That's a lot more traffic. We have time enough getting out  
9 on Floral Park and Piscataway. You know that four way stop  
10 is --

11 MADAM CHAIR: Okay.

12 MS. JOHNSON: -- horrendous.

13 MADAM CHAIR: Well let me tell you this --

14 MS. JOHNSON: So --

15 MADAM CHAIR: Okay. Let me say this, that if in  
16 fact this is approved, as Mr. Zhang said, and I know this is  
17 complicated, particularly if you don't do this land use  
18 stuff on a regular basis. Most people --

19 MS. JOHNSON: I do not.

20 MADAM CHAIR: Yes, most people don't get involved  
21 until something is proposed for their neighborhood. That's  
22 just --

23 MS. JOHNSON: Correct.

24 MADAM CHAIR: -- that's just life. So --

25 MS. JOHNSON: That's me.

1           MADAM CHAIR: -- Mr. Zhang was indicating that the  
2 CDP is the second stage in a Comprehensive Design Zone. So  
3 first there's the Basic Plan, that establishes the zoning.  
4 Then there's a Comprehensive Design Plan and then there will  
5 ultimately be a Specific Design Plan but there will be a  
6 Preliminary Plan also. And the Preliminary Plan will talk  
7 about the lot layout and that is when you do an analysis of  
8 what we call adequate public facilities. That means okay,  
9 they'll do a traffic analysis. Okay. Will traffic lights  
10 be required. I mean, you know, how's the turning, you know,  
11 there will be an analysis of the effect on the community and  
12 there may either the Preliminary Plan goes up and gets  
13 approved or it doesn't get approved, or it gets approved  
14 with a lot of conditions to make it consistent with what all  
15 the legal requirements.

16           And you will have, no matter what, the citizens  
17 will have an opportunity to participate. So let me just say  
18 a couple of things. We, the Board, first of all, you're  
19 signed up so we'll make sure that you're a party of record.  
20 Okay. And you are a party of record now. But we put the  
21 signs, we ensure that the signs go up so that you know about  
22 this hearing. But it's also important to stay focused on  
23 the HOA meetings in advance and now Mr. Gingles you and your  
24 team have her contact information, correct? And if not,  
25 we'll get it to you, okay, so that she can be involved in

1 all the steps. Okay.

2 MR. GINGLES: Yes.

3 MADAM CHAIR: Okay. And the same thing with Mr.  
4 Tibbetts. Okay. So you will have greater opportunities for  
5 input. It sounds like you had one that may have been missed  
6 with the HOA meetings, that first meeting. But there will  
7 be future opportunities so we want to make sure that  
8 everyone has your contact information so that you can  
9 participate in the meetings before it comes to the Planning  
10 Board. So because that way you have the ability to express  
11 to the developer the kinds of things, you and your community  
12 can express to the developer the kind of things that you  
13 would like to see. So I just wanted to tell you that so  
14 there will be --

15 MS. JOHNSON: Thank you.

16 MADAM CHAIR: -- other opportunities. Okay.  
17 Especially to address the traffic that you're talking about.  
18 Mr. Gingles, you know, we're not going to distribute phone  
19 numbers and whatnot or e-mails on this streamed session, but  
20 we'll get it to you. Okay?

21 MR. GINGLES: Thank you.

22 MADAM CHAIR: Okay.

23 MS. JOHNSON: Thank you for your time.

24 MADAM CHAIR: Okay. Ms. Johnson, was there  
25 anything else?

1 MS. JOHNSON: No, ma'am.

2 MADAM CHAIR: Okay. Thank you so very much.

3 MS. JOHNSON: Thank you.

4 MADAM CHAIR: And then Mr. Gingles, I'd like for  
5 you to be able to respond to her. And someone on your team  
6 will be able to tell exactly when this HOA meeting took  
7 place where everything was, yes?

8 MR. GINGLES: I don't have Ms. Erickson here, but  
9 I'm trying to get her to research my calendar now.

10 MADAM CHAIR: Okay. And it looks like Ms.  
11 Amirpour, you have your mic on, so it looks like you're  
12 ready to say something.

13 MS. AMIRPOUR: Yes, Madam Chair. I just wanted to  
14 respond and go on record regarding one of your previous  
15 questions about our meetings with the HOA, and whether it  
16 was with the community or just with the HOA Board. We  
17 reached out to HOA late 2019 and requested to have a  
18 community presentation at the, for the town, the proposed  
19 townhouses. WE had a presentation to the community in  
20 January of 2021 and then another one in March and we  
21 followed up with another community meeting in March to  
22 respond to some of the questions that were raised by the  
23 residents. '

24 MADAM CHAIR: Okay, you're talking 2021?

25 MS. AMIRPOUR: Basically --

1 MADAM CHAIR: 2021, you're saying?

2 MS. AMIRPOUR: 2021.

3 MADAM CHAIR: Okay.

4 MS. AMIRPOUR: So basically we spent the entire  
5 2021 after our presentations to maintain a dialogue with the  
6 HOA Board and so that they are involved and, we've obtained  
7 the support of this proposal from them. We plan to make  
8 improvements and provide cash contributions towards various  
9 amenities through the community that HOA has identified as  
10 amenities they wish to pursue in the future, if we can  
11 secure all the necessary approvals.

12 MADAM CHAIR: Okay. So your first meeting in  
13 January of 2021 was with the entire HOA?

14 MS. AMIRPOUR: That's correct, with the community.

15 MADAM CHAIR: Yes, okay.

16 MS. AMIRPOUR: HOA and the community.

17 MADAM CHAIR: And the community, okay, Mr. Gingles  
18 you were trying to ask --

19 MS. AMIRPOUR: And also the one, and also the one  
20 in March.

21 MADAM CHAIR: Okay. Thank you. Mr. Gingles?

22 MR. GINGLES: I just want to note and we'll see if  
23 we can find the exhibit also for Ms. Johnson, and she may or  
24 may not be aware. But again when we did remove the golf  
25 course which would have been in private hands, we did and we

1 worked with Susan Lareuse back then at that time, that area  
2 became open space and included some recreational amenities  
3 that were, that trail and types of things that Ms. Johnson  
4 was talking about. And that goes throughout the entirety of  
5 the property.

6 MADAM CHAIR: Okay.

7 MR. GINGLES: The 800 and some plus acres.

8 MS. AMIRPOUR: 300 acres.

9 MR. GINGLES: 300 acres, right.

10 MADAM CHAIR: 300 acres. Okay. Thank you.

11 MR. GINGLES: Sure.

12 MADAM CHAIR: I am now I'm going to turn to  
13 Courtney Lindsay.

14 MS. LINDSEY: (No audible response.)

15 MADAM CHAIR: Is Courtney Lindsay? No, no  
16 Courtney Lindsay on. Okay. All right. So let me do this.  
17 Mr. Zhang, you know what I'd like to turn to Ms. Stabler  
18 (phonetic sp.). Ms. Stabler. Dr. Stabler, are you on?

19 DR. STABLER: Yes, Madam Chair, this is Jennifer  
20 Stabler with the Historic Preservation Section.

21 MADAM CHAIR: Okay. Dr. Stabler can you address  
22 the concerns raised by Mr. Tibbetts and touched upon by Ms.  
23 Johnson and as addressed by Mr. Zhang with regard to the  
24 Edelen property? Edelen Home?

25 DR. STABLER: Sure. The property now that the



1 development has been subdivided, this particular lot or  
2 parcel is not considered adjacent to the historic site. So  
3 the Historic Preservation Commission typically just reviews  
4 impacts to the historic site on lots or parcels that are  
5 directly adjacent to the historic site. So that's why this  
6 particular development was not referred to the Historic  
7 Preservation Commission.

8           We, staff did analyze the property and I guess we  
9 felt that the intervening development would, you know, would  
10 make the proposed development not as visible from the  
11 historic site as, you know, if it were directly across. But  
12 that the intervening development would, you know, I guess  
13 not make the new development visible. So we did not feel  
14 that there would be a huge impact to the visual, you know,  
15 the visual impacts to the historic site.

16           MADAM CHAIR: Okay.

17           DR. STABLER: And as far as the Piscataway  
18 Village, that as well, there is intervening property between  
19 the historic site and the village, so that also would not be  
20 considered adjacent to the historic site.

21           MADAM CHAIR: Okay. Thank you, Dr. Stabler. I'm  
22 just going to look for a show of hands real quick to see if  
23 the Board has any questions of you. And I don't see any  
24 right now. Okay. Thank you so much, Dr. Stabler, and I'm  
25 going to turn to --

1 DR. STABLER: Sure.

2 MADAM CHAIR: -- our Chief of Development Review,  
3 Mr. Hunt.

4 MR. HUNT: And good morning Madam Chair and  
5 members of the Board, for the record I'm James Hunt with the  
6 Development Review Division. I just want to kind of clarify  
7 a little bit more detail to the Board staff's position on  
8 this particular case.

9 Back in 1993, the applicant submitted a package to  
10 staff and to the District Council that indicated this  
11 particular property, this property particularly for  
12 commercial. Okay. That information was provided to the  
13 District Council. We don't know for sure how they, you  
14 know, under their analysis what took place, but we do know  
15 that on their, as part of the submission package that they  
16 reviewed, this particular property was indicated as  
17 commercial. So as a part of that Basic Plan Amendment,  
18 staff has reviewed for a particular findings on this CDP and  
19 the findings do not indicate that we can find conformance to  
20 that particular Basic Plan, and that Basic Plan finding  
21 regarding this particular property being commercial.

22 So that's staff's standpoint. We don't know for  
23 sure, like I said, you know of the council's review, but  
24 what we are saying also is, not saying I should say, that  
25 this particular development would not be approved but what

1 we are saying is that under a Basic Plan Amendment that is  
2 the proper avenue for the applicant to go down for a review  
3 of this particular request, not a CDP amendment.

4 MADAM CHAIR: Okay, so --

5 MR. HUNT: I just want to kind of clarify that to  
6 the Board real quick.

7 MADAM CHAIR: So you're saying it's not that the,  
8 okay, let me repeat what I --

9 MADAM VICE CHAIR: What?

10 MADAM CHAIR: -- thought I heard. That it was the  
11 applicant's submission for commercial in this property,  
12 that's what you're saying?

13 MR. HUNT: Right, we're saying that that  
14 submission package --

15 MADAM CHAIR: (Sound.)

16 MR. HUNT: -- that went to the District Council  
17 indicated just like staff has said multiple times that this  
18 particular property was indicated as commercial. And so  
19 that indication for that area being commercial is what went  
20 to the council and so staff is saying that that Basic Plan  
21 that was approved with that Basic Plan. So staff's review  
22 of that Basic Plan or that finding from the Basic Plan  
23 indicates this property being commercial and that's part of  
24 staff's review. And that's part of the reason why they  
25 cannot find conformance to that Basic Plan, which is a

1 requirement of the CDP.

2           COMMISSIONER WASHINGTON: Well, Mr. Hunt, that's  
3 actually very helpful to me because quite frankly that's  
4 what I've been struggling with is the conformance to the  
5 Basic Plan piece. I mean notwithstanding that Planning  
6 Board in prior years has approved residential in this space,  
7 and I believe it was something Mr. Warner said, you know,  
8 call it unfortunate, those my words, but we're at the point  
9 now where this is all that's left in this space. And it  
10 seems clear that commercial was always intended or  
11 envisioned as part of this development. That said, it's a  
12 30 year old vision, so I completely get that. I completely  
13 get that. But it also holds that there's another avenue to  
14 get to where I think the applicant is trying to get to and  
15 that's the Basic Plan Amendment.

16           Because I had no issue, I'm quite comfortable with  
17 what's been said in terms of you know it not being required  
18 and/or prohibited in this area, but we needed to address the  
19 basic, because that's our requirement as a Board to find  
20 conformity with the Basic Plan, correct?

21           MR. HUNT: That's correct.

22           COMMISSIONER WASHINGTON: And so if there had been  
23 a Basic Plan Amendment, and I'm telling you I've been  
24 struggling with this, if that had been the route we'd be  
25 having an entirely different conversation here and likely

1 could have overcome to get what the applicant is trying to  
2 get to.

3 MADAM CHAIR: Okay. And also --

4 COMMISSIONER WASHINGTON: Is that right? Is that  
5 correct?

6 MADAM CHAIR: Yes, I think --

7 COMMISSIONER WASHINGTON: (Indiscernible) my own  
8 thoughts here.

9 MADAM CHAIR: Yes. And I think the Planning  
10 Director is on too, you can go ahead respond, Mr. Hunt, but  
11 I think the Planning Director is on. She just, okay, go  
12 ahead.

13 MR. HUNT: I was just going to say yes, that's  
14 exactly what I was trying to say and I'll let Madam Director  
15 speak.

16 MADAM CHAIR: Okay. Ms. Checkley.

17 MS. CHECKLEY: Thank you, Madam Chair and members  
18 of the Board. So staff's basic concern here is that this  
19 was a District Council decision and it is not appropriate  
20 for staff to substitute its judgment for that of the  
21 District Council. This is not a complicated issue.

22 The District Council approved a Zoning Map  
23 Amendment request. We do not know, nor could we know if  
24 they would have approved the map amendment had it not been  
25 for this commercial. That's why it's vital and necessary

1 that it goes back through the basic map amendment process to  
2 the council where all of these issues, should it be,  
3 continue to be commercial, should it be residential, the  
4 citizens will have an input. All of these issues will be  
5 properly addressed through that process.

6 MADAM CHAIR: Okay.

7 MS. CHECKLEY: Thank you.

8 MADAM CHAIR: Thank you. Okay. All right. I'm  
9 hoping that we can be done with this case soon, because  
10 otherwise we're going to have to call for a health break,  
11 nature break. But at this point we're back to you, Mr.  
12 Gingles for your summation.

13 MR. GINGLES: Probably four things, just to note.

14 MADAM CHAIR: Okay.

15 MR. GINGLES: Particularly responding to what Mr.  
16 Warner said earlier and then what was just sort of responded  
17 to by Mr. Hunt and the Planning Director.

18 Mr. Warner indicated earlier that what the  
19 District Council approved essentially was a planning and  
20 zoning document, and that's in effect what it is. The  
21 District Council and I've been involved with a number of  
22 Basic Plans, when it requires something be done, it  
23 specifically mandates within a condition what then has to be  
24 done as a part of a plan.

25 No such mandate other than the applicant

1 indicating an area that could be commercial, no such mandate  
2 is either in the Basic Plan approval nor the Zoning  
3 Ordinance requirement for the L-A-C Zone that's on the  
4 property. I think it's very revealing in the sense that for  
5 the staff to now express that 6.75 acres was designated by  
6 the District Council to be commercial development and  
7 consistently since 1993 and any subsequent approval allowed  
8 residential development in that commercial area is  
9 essentially an acknowledgement that the commercial  
10 designation is, if commercial occurs this is where it needs  
11 to occur, not that it must occur. And that's the  
12 distinction that we have made throughout this process.

13           They have decided that what the District Council  
14 did is essentially that this needs to occur in that area.  
15 We just only assert which we think is evidenced by your own  
16 approvals that if commercial occurs, this is where it needs  
17 to occur. Not that it has to occur in this area.

18           And again I would note that the District Council  
19 if they wanted to make sure that some portion or all of this  
20 area stay commercial then it would have been mandated as the  
21 use in the L-A-C Zone. Absent that language in either the  
22 council resolution approving the Basic Plan or the condition  
23 of the Basic Plan or somewhere else in the Zoning Ordinance,  
24 then it is simply if it occurs, this is where it has to  
25 occur, as opposed to other places throughout the zone. If

1 it occurs this is where it occurs. Not that it has to  
2 occur. There is no mandate that it has to occur and our  
3 decision simply to develop the other uses that they have  
4 allowed in that area as you have allowed us to do in the  
5 past, is I think an acknowledgement that it is not a mandate  
6 that it be done, but that if it's done, this is where it  
7 occurs.

8 MADAM CHAIR: Okay. That's it for you. I'm going  
9 to ask the Board if they have any questions of anyone. Of  
10 Mr. Gingles, Mr. Zhang, Mr. Hunt, our Planning Director, our  
11 counsel Mr. Warner, the citizens. So I'm going to start  
12 with Madam Vice Chair. If you have any questions from any  
13 of those folks.

14 MADAM VICE CHAIR: I do have a question  
15 particularly in light of Mr. Gingles' comments about what  
16 the council's decision, council's bill that it did to  
17 mandate. And so I don't think I've heard anyone talk about  
18 whether or not they felt it was indeed a mandate. I'm not  
19 clear from our staff.

20 MADAM CHAIR: I think we did hear from Mr. Warner.  
21 Okay. Well anyway, so let's hear it --

22 MADAM VICE CHAIR: (Sound.)

23 MADAM CHAIR: Okay. Can someone address that  
24 issue for Madam Vice Chair?

25 MR. ZHANG: Madam Chair, if I may? Yes.



1 MADAM CHAIR: Okay.

2 MR. ZHANG: I think we did state previously that  
3 the only reason required by the Zoning Code, 27-521(a) the  
4 Planning Board to approve a Comprehensive Design Plan, they  
5 need to find conformance with the Basic Plan. And not so  
6 much on the L-A-C portion, because L-A-C doesn't require as  
7 the M-X-T Zone to have two uses out of three. But the key  
8 issue here is that the council's approval for the A Dash to  
9 the CR-60 1993 specifically identifies, you know, 6.75 acres  
10 for the commercial/retail office, multifamily. But it's  
11 through those years the approval, this acreage has been  
12 shrunked. And then which is basically in line with the  
13 applicant's argument that this is not mandated, but somehow  
14 has been designated.

15 But this case as a critical point they're going to  
16 totally remove that, that means there's no possibility for  
17 future use and service, you know, function to serve this  
18 community. This is a master planned community, they need  
19 this component. And then that's why we, you know, have very  
20 difficulty, you know, have difficulty to find in conformance  
21 with the Basic Plan. That's why we made the recommendation  
22 as stated in the Staff Report.

23 Madam Chair, one last thing. I think I just want  
24 to add, I received the People's Zoning Council's e-mail  
25 basically he said he got sick with COVID and will not be

1 able to attend today's meeting, hearing, I'm sorry.

2 MADAM CHAIR: Okay. I heard that but I wasn't  
3 going to announce the why.

4 MR. ZHANG: He did. Thank you (indiscernible).

5 MADAM CHAIR: I was just going to say he was sick.  
6 Okay. Okay.

7 MR. ZHANG: Thank you.

8 MADAM CHAIR: Okay. Okay.

9 MR. GINGLES: If I may, just one last, just in  
10 response to Ms. Bailey's inquiry. Again, we think the  
11 conformity issue is the issue. And so we have a Basic Plan  
12 that was approved with a lot of uses and it specifically  
13 designated an area where with regard to a particular set of  
14 uses, commercial, if they're going to occur they have to  
15 occur in this area. So the fact that we are not doing any  
16 doesn't put us out of conformance with the plan, because we  
17 are still doing the uses that are allowed in the area.

18 Whether or not the use is eliminated again, we  
19 think it would be an issue if the use was mandated and  
20 needed to occur but because we're not eliminating anything  
21 that was mandated, but rather just something that is allowed  
22 in the L-A-C Zone then we see no problem with finding of  
23 conformity.

24 MADAM CHAIR: Well, thank you for that. And  
25 that's basically the Board has to make that finding, so

1 we'll see one way or the other.

2 MR. GINGLES: Yes. Okay.

3 MADAM CHAIR: Okay. I'm going to turn to Ms.  
4 Checkley.

5 MS. CHECKLEY: Thank you, Madam Chair. Just a  
6 final point from staff on this issue. Basic Plans allow a  
7 lot of uses, depending on the zone, depending on what the  
8 applicant proposes. That is why there's always a rendering.  
9 It's not concrete, correct, but it shows what the applicant  
10 is proposing and in this particular case, the applicant did  
11 not show this site as being possibly commercial, possibly  
12 residential, it showed commercial. And that is what was in  
13 front of, that picture was in front of the District Council  
14 and that is where we have a problem with finding  
15 conformance. Because that is what was in front of the  
16 council, we don't know whether they met one or the other  
17 because both were not shown, commercial was shown.

18 MADAM CHAIR: So my question to you, and I asked  
19 this question earlier. So is that --

20 MR. GINGLES: Yes that --

21 MADAM CHAIR: No, hold on a second. My question  
22 is that who showed commercial? So the applicant presented  
23 that back then, way back then? Okay.

24 MS. CHECKLEY: That is correct.

25 MADAM CHAIR: Okay. And then Mr. Gingles has

1 indicated that we then, even though that whole section was  
2 designated commercial we then approved some residential in  
3 there.

4 MADAM VICE CHAIR: Right.

5 MADAM CHAIR: Okay. But and then you're saying  
6 okay, but I think what I hear you saying and Mr. Zhang  
7 saying is that okay so we've reduced the amount of  
8 commercial in there but you're saying because of what they  
9 showed there should be some commercial in there. Is that  
10 what you're saying? Or go to the Basic Plan Amendment  
11 route, is that what you're saying, because we're all  
12 struggling here.

13 MS. CHECKLEY: Yes.

14 MADAM CHAIR: Okay. All right.

15 MR. GINGLES: Well --

16 MADAM CHAIR: Okay. Mr. Gingles and then we're  
17 going to wrap up. Okay.

18 MR. GINGLES: I just have to say, okay, because  
19 it's the cake and eat it too argument

20 MADAM CHAIR: Okay.

21 MR. GINGLES: And I want to go back to both what  
22 Commissioner Doerner and Commissioner Bailey, actually even  
23 the question that was raised by Commissioner Washington.  
24 6.7 acres, I just want to make sure we're not focusing on  
25 the last 1.65, and it seems to be almost implying that

1 that's what was shown that's commercial. It was an entire  
2 almost seven acres that was shown as commercial, and it was  
3 simply designated as where commercial would occur if it  
4 occurred.

5 MADAM CHAIR: Okay.

6 MR. GINGLES: And I think the biggest point in  
7 this issue is and I'll emphasize once again is, is whether  
8 or not showing that on a plan and creating intensities and  
9 densities, then mandates that you have to develop commercial  
10 versus if commercial is developed this is where it will  
11 exist. And we believe it's the latter and that's why you  
12 can find conformity. Because it was simply here's what's  
13 approved, here's what's in the zone and if you develop  
14 commercial you need to develop it here. Not that you have  
15 to develop commercial. Thank you, Madam Chairman.

16 MADAM CHAIR: Okay. My question is --

17 COMMISSIONER WASHINGTON: I'm sorry, Madam Chair,  
18 and I would like to hear from our counsel on that. Because  
19 if commercial is developed it has to be in a certain area is  
20 very different from mandating commercial at all. So I mean  
21 and I think I'm pretty clear where staff is, but Mr. Gingles  
22 I would like a response to that, Mr. Warner.

23 MADAM CHAIR: Okay. And before you do that, Mr.  
24 Warner, I'd like to know, there's something that I'd like to  
25 know. Because Mr. Gingles you hear everyone struggling with

1 this. So I know I don't know why, I'm asking why we didn't,  
2 you didn't attempt the amendment of the Basic Plan. I'd  
3 like to know and there may be a time factor, it may be an  
4 expense factor, it may be all of the above. But part of it  
5 --

6 MR. GINGLES: All of it.

7 MADAM CHAIR: -- but part of that is you know when  
8 you file this approach, the CDP, it still is time consuming,  
9 you have to go through SDRC and all those other things,  
10 which I'm sure some of this may have been brought to your  
11 attention then. And so if you had changed courses back then  
12 you may not, you know you probably, the time factor may have  
13 been pretty much the same, I'm not sure.

14 MR. GINGLES: Well all of the above and it's very  
15 difficult to look at a client and tell them to do something  
16 that you don't think is accurate --

17 MADAM CHAIR: Okay.

18 MR. GINGLES: -- and frankly I had some discussion  
19 with some other personnel involved or potentially involved  
20 in the process and discussed the issue --

21 MADAM CHAIR: Okay.

22 MR. GINGLES: -- and got what I thought were  
23 opinions that we were on pretty sound ground, particularly  
24 in terms of what this Planning Board had done in the past  
25 and what the case that was being cited to me at that time,

1 Timothy Branch, why we felt very distinguishable from that  
2 case. We clearly felt that this was simply, when you looked  
3 at everything that was approved in the conditions this was  
4 here is where you put commercial if you develop commercial,  
5 which is an allowable use in the L-A-C Zone. And we thought  
6 again based on everything the Planning Board had been doing  
7 up to that date, that they simply also felt that residential  
8 could be developed in the area because it was one of the  
9 allowable uses in the area.

10           And again, there being no mandate to put it in.  
11 So yes, we didn't pursue that, we had, there was a lot of  
12 discussion back and forth, I know I had some discussions  
13 with Mr. Warner, with some other folks. There were at  
14 least, I think Henry is the third staff person on this  
15 issue, so there were several changes throughout the process.  
16 But we felt like this was the right avenue to pursue.

17           Again, and the last thing I would just note is  
18 previously the other changes that have occurred in this  
19 development in terms of the implication that a use is being  
20 eliminated didn't even involve a CDP amendment.

21           MADAM CHAIR: Okay. Mr. Warner, can you respond  
22 to Commissioner Washington, please?

23           MR. WARNER: Right. Again, I think her question,  
24 if I have it right, thank you, Madam Chair, is with regard  
25 to the Basic Plan and the issue of whether it mandates

1 commercial at that location. And I believe I agree with  
2 everyone who has spoken on this to this point, that the  
3 Basic Plan does not mandate it.

4           The Zoning Ordinance has a process, however, that  
5 has been used many times and is the process that our staff  
6 recommended and has been used in situations where someone  
7 seeks to develop something that doesn't conform to the Basic  
8 Plan. You go through the Basic Plan Amendment process.

9           In this case it wouldn't be increasing the size of  
10 the area or anything that falls under a requirement that you  
11 go back through the Zoning Map Amendment process, this  
12 process would be simply 27-197(c). And we've used that same  
13 code section for similar circumstances like this to fix a  
14 Basic Plan or correct a Basic Plan so that the development  
15 can be in conformity to it.

16           But conformance is still a decision that is within  
17 the judgment of the Planning Board to make and that's the  
18 question before you at this particular stage. If he goes  
19 back through the Basic Plan Amendment process, then as I  
20 think Ms. Checkley said then you get the involvement of the  
21 Zoning Hearing Examiner, the People's Council, it goes to  
22 the District Council. The District Council gets to  
23 determine if that change to the Basic Plan is warranted. So  
24 does that answer the question Commissioner Washington?

25           COMMISSIONER WASHINGTON: Well, maybe, Mr. Warner.



1 Because what I heard you say is that the Basic Plan does not  
2 mandate. That's important. So if it doesn't mandate it,  
3 then why is it not in conformity, what they are putting  
4 forward?

5 MR. WARNER: Well the --

6 COMMISSIONER WASHINGTON: Because it's the  
7 (indiscernible) nonconformity to me suggests that their  
8 proposing something that's contrary to the Basic Plan. But  
9 if you're saying it doesn't mandate it, then there's not  
10 nonconforming.

11 MR. WARNER: It doesn't mandate it and we look at  
12 conformity all the time when we review Site Plans, you know  
13 we look at the Detailed Site Plan to see if it conforms to  
14 the CSP and that's what we're doing in this case. The plan  
15 doesn't mandate that that's commercial. But the proposal is  
16 to build residential where the plan was for commercial. And  
17 so does that conform to the Planning Board's opinion.

18 COMMISSIONER WASHINGTON: But that's  
19 contradictory, Mr. Warner.

20 MADAM CHAIR: Okay.

21 COMMISSIONER WASHINGTON: (Indiscernible)  
22 contradictory.

23 MADAM CHAIR: Hold on one second, let me do this,  
24 because I've tried and tried and tried to hold on but it's  
25 really time for a nature break. It really is, trust me.

1 COMMISSIONER WASHINGTON: Okay.

2 MADAM CHAIR: So I know you're not finished with  
3 your questions --

4 MR. GINGLES: I'm sorry.

5 MADAM CHAIR: -- but I need to detour for a  
6 second. So let's give it --

7 MR. GINGLES: I'm sorry.

8 MADAM CHAIR: -- you know five to 10 minutes,  
9 okay? And then you can finish with your questions,  
10 Commissioner Washington and I see that the Planning Director  
11 wants to get back. But this time is needed right now.  
12 Okay. Thank you.

13 MADAM VICE CHAIR: And we're going in circles,  
14 yes.

15 MADAM CHAIR: Okay.

16 (Whereupon, a brief recess was taken.)

17 MADAM CHAIR: The Prince George's County Planning  
18 Board is back in session, we took a break. Let me make sure  
19 we have Mr. Gingles though. Do we have him? Mr. Gingles,  
20 Mr. Zhang. Okay. We got Mr. Gingles, do we have Mr. Zhang?  
21 Okay. We've got Mr. Hunt. Okay. Okay. All right. Then  
22 so Commissioner Washington you were asking a question I  
23 believe of Mr. Warner and then I know Madam Planning  
24 Director had, she turned her mic on, she wanted to say  
25 something.

1 COMMISSIONER WASHINGTON: Okay.

2 MS. CHECKLEY: I think I might be able to help  
3 here. I have a very --

4 COMMISSIONER WASHINGTON: Can I finish my question  
5 and then Madam Planning Director you can weigh in after  
6 that?

7 MADAM CHAIR: Okay.

8 COMMISSIONER WASHINGTON: Okay. Thank you. The  
9 quandary remains for me in that, so if I think about the  
10 Basic Plan it's like the Basic Plan would like to see  
11 commercial but it doesn't mandate commercial. So if I use  
12 that as a base premise, then I struggle with how we can find  
13 nonconformity with something that doesn't essentially exist  
14 in the first place. I hope, I'm not trying to oversimplify  
15 but I'm trying to state it in a way that makes it clear. So  
16 I'll leave that there for Mr. Warner and/or you, Madam  
17 Planning Director to respond to. Thank you.

18 MS. CHECKLEY: So if I may, Mr. Warner, because  
19 I've been in your position, I've been in Mr. Gingles'  
20 position and I've also been on the county side. So for the  
21 past 30 years in Prince George's County, this is how Basic  
22 Plan Amendments are processed. It's not, a Basic Plan  
23 Amendment it's not a by right zone. You don't have a right  
24 to it. You can't go out and build whatever uses are allowed  
25 in the Zoning Ordinance. You're asking for a special use, a

1 special zone in that area.

2           So what is presented in terms of acreage, in terms  
3 of what uses will be on the property is what is evaluated.  
4 It's not the world of uses that could be allowed on the  
5 property, it's what the applicant actually presents as what  
6 is going to be the use on this property that is evaluated by  
7 staff, by the Board, by the council because there's a  
8 universe of uses that could be. But in a Basic Plan which  
9 is a special permission, a special use, you are stating what  
10 you're going to do through your illustrations, your  
11 commentary, your submissions that is what is evaluated.

12           So Mr. Gingles is right, I have mad respect for  
13 Mr. Gingles, he knows this. It doesn't mandate. No, I  
14 haven't seen a Basic Plan in 30 years that mandated  
15 anything. It's a plan. It's what the applicant comes  
16 forward and says if you give me this special privilege, this  
17 use, this zone this is what I am going to do. And that is  
18 what is evaluated and that is what the council votes on.

19           If we take Mr. Gingles' interpretation, it will  
20 overturn 30 or more years of practice in this county because  
21 it's never a matter, in a Zoning Map Amendment it's never a  
22 matter of what can be there. It's here's what I'm planning  
23 and based on what I'm showing you and what I'm planning  
24 please give me this zone. So if it changes it has to go  
25 back because as I stated earlier, we don't know if the

1 council would have granted that zone but for what was shown  
2 to them. So I guess that's it.

3 MADAM CHAIR: Okay.

4 MR. GINGLES: For --

5 MADAM CHAIR: Mr. Gingles, okay let me do this.

6 MR. GINGLES: All right.

7 MADAM CHAIR: Let me make sure, hold on, Mr.  
8 Gingles, because we have to bring this to an end.

9 MR. GINGLES: Sure.

10 MADAM CHAIR: So I want to make sure that the  
11 Board has all the questions, as the applicant's attorney you  
12 go last. So I want to make sure the Board has asked the  
13 questions of everyone they want to ask or you can go last  
14 now and then the Board can ask whatever questions they want.  
15 Thank you. Okay. So go ahead, Mr. Gingles.

16 MR. GINGLES: No, no, well I was just, if I  
17 thought I heard the Planning Director correct, I've at least  
18 been involved in plans where there have been conditions  
19 mandated about what is desired to be seen on property and  
20 those are the conditions that you then have to live with.

21 I would just note on the Timothy Branch one that's  
22 mentioned in here, it was the result of mandating particular  
23 areas where certain uses were going to go and that's why  
24 that Basic Plan needed to be amended.

25 I'm not sure if anybody's answering Commissioner

1 Washington's, and maybe it is being answered, but we're  
2 moving around it, but essentially her question is does it  
3 mandate that the use be done. We would say no, I think Mr.  
4 Warner said no. We've said that it mandates if the use is  
5 done here's where it needs to occur.

6 MADAM CHAIR: That wasn't her whole question. The  
7 rest of that question is, she wanted to know if it was  
8 mandated or not mandated and if it's not mandated why is it  
9 that we can't find conformity.

10 MR. GINGLES: And I would say again you can find  
11 conformity because it's simply, if you look at the Basic  
12 Plan and it lists the land use uses in quantities that in  
13 that area it allows for residential development within a  
14 specific quantity and you all have already allowed for a  
15 residential development in that area. And I would just note  
16 that even the base minimum that was in the Basic Plan can  
17 now not be developed, as I was explaining to Commissioner  
18 Doerner earlier, even that base quantity can no longer be  
19 developed in that area as a result of the prior Planning  
20 Board approvals allowing additional development. There's no  
21 way to even put the base amount of commercial development in  
22 the area anymore.

23 So I'm not sure why there's a difficulty finding  
24 conformity when as Counsel Warner said earlier, you don't  
25 always, I think his quote was, there's no requirement that

1 it mirror what's there and we think what we are doing is  
2 definitely within conformity. Does it mirror that  
3 illustrative design that was a part of the Basic Plan? No.  
4 But it hasn't mirrored that for over a decade, given the  
5 past approvals that the Planning Board (indiscernible).

6 MADAM CHAIR: All right. Does the Board have any  
7 questions of anyone? And if not we're ready for a motion.

8 COMMISSIONER WASHINGTON: No, madam --

9 MADAM CHAIR: So let me see if the Board has any  
10 questions. Okay. Madam Vice Chair?

11 MADAM VICE CHAIR: (No audible response.)

12 COMMISSIONER WASHINGTON: You're muted.

13 MADAM CHAIR: Madam Vice Chair, any questions?

14 MADAM VICE CHAIR: No, no, no.

15 MADAM CHAIR: Okay. Commissioner Washington any  
16 additional questions?

17 COMMISSIONER WASHINGTON: (No audible response.)

18 MADAM CHAIR: That's a no. Okay. Commissioner  
19 Doerner?

20 COMMISSIONER DOERNER: No questions.

21 MADAM CHAIR: Okay. We're ready for a motion.

22 COMMISSIONER WASHINGTON: Boy has this been  
23 difficult.

24 MADAM CHAIR: Yes.

25 COMMISSIONER WASHINGTON: Madam Chair, I still

1 have a lot of gray or clarity that I'm still trying to quite  
2 frankly personally see, but with that and so based on that,  
3 and certainly based on Madam Planning Director's comments as  
4 well as our counsels, I move that we adopt the findings of  
5 this report, adopt staff's finding and disapprove CDP-9306-  
6 05 and TCP1-009-94-04. And in so doing especially because  
7 there is an avenue to get to where I think the applicant is  
8 trying to get to through the Basic Plan Amendment process,  
9 that's the motion I'm putting forward.

10 MADAM CHAIR: We have a motion. Is there a  
11 second?

12 (No audible response.)

13 MADAM CHAIR: Is there a second?

14 (No audible response.)

15 MADAM CHAIR: Okay. The motion fails for lack of  
16 a second. You know maybe I'll second it for purposes of  
17 discussion though. Is there a discussion?

18 (No audible response.)

19 MADAM CHAIR: Okay. Madam Vice Chair, any  
20 discussion?

21 MADAM VICE CHAIR: (No audible response.)

22 MADAM CHAIR: Okay. So this, I see we have four  
23 people, so I see where this is going. Okay. So Madam Vice  
24 Chair, how do you vote on that motion?

25 MADAM VICE CHAIR: Nol.



1           MADAM CHAIR: Okay. Commissioner Washington, it's  
2 your motion, so.

3           COMMISSIONER WASHINGTON: I vote aye.

4           MADAM CHAIR: Commissioner Doerner?

5           COMMISSIONER DOERNER: I vote no.

6           MADAM CHAIR: Okay. I guess I will vote of course  
7 I knew I'd be the tie breaker here. It doesn't much matter  
8 because even if I vote aye, the motion fails. So I think I  
9 will vote aye, and the motion fails because it's a tie vote.  
10 So is there a substitute motion? Commissioner Doerner?

11           COMMISSIONER DOERNER: Yes, I'll go ahead and I'll  
12 make a motion that we actually overturn and we approve the  
13 application as submitted. Because in my opinion after  
14 hearing testimony from everyone, general counsel and from  
15 hearing or from reviewing the Staff Report and the  
16 applicable L-A-C Zoning, including the Basic Plan, or the  
17 ideas within the Basic Plan, I think that the conditions  
18 imposed by the District Council when it rezoned the property  
19 as well that the Planning Board can find that the CDP does  
20 conform to the Basic Plan. Because the Basic Plan is a  
21 proposal, it's not a requirement, it doesn't mandate any  
22 kind of a percentage or amount of commercial uses, it's just  
23 a suggestive tool. That in an ideal world if we could have  
24 backed up and kind of put this forward and erased all the  
25 kind of economic conditions around here, we hopefully would

1 have had a commercial development in that area with  
2 surrounding residential use.

3           Such hasn't happened and on that subject property  
4 I don't think it would be appropriate for us to try and  
5 require the commercial use necessarily. Residential use is  
6 permitted in the L-A-C, it's not prohibited and there's no  
7 minimum requirement. So I would suggest that we approve  
8 CDP-9306-05 and Type 1 TCP-0099404 at Bailey's Village at  
9 the Preserve at Piscataway.

10           MADAM VICE CHAIR: And for all the reasons that  
11 Commissioner Doerner articulated I would second.

12           MADAM CHAIR: So we have a motion by Commissioner  
13 Doerner, seconded by Madam Vice Chair. I guess there was no  
14 discussion and no additional discussion on this one either.  
15 So I'm going to call for the vote. You know a tie vote jams  
16 us up because we only have four people, so either way. So  
17 Madam Vice Chair?

18           MADAM VICE CHAIR: I vote aye.

19           MADAM CHAIR: Commissioner Washington?

20           COMMISSIONER WASHINGTON: I vote no.

21           MADAM CHAIR: Commissioner Doerner?

22           COMMISSIONER DOERNER: I vote aye. It's up to  
23 you.

24           MADAM CHAIR: Okay. I'm going to vote aye,  
25 because you know either way we have a problem. So I think

1 that's right. I would ask, you know, we will talk to staff  
2 separately, we cannot, I know our concern from Madam  
3 Planning Director that this just upends the Basic Plan and  
4 Comprehensive Design Plan process that's been decades long  
5 and that can be problematic. So we need to look carefully  
6 and again we make our decisions on a case by case basis. So  
7 just, you know, we just evaluate each case as it comes  
8 forward. Okay. So the ayes have it 3:1. All right.

9 COMMISSIONER DOERNER: Madam Chair, may I suggest  
10 we also clean up a little bit of the language in the Staff  
11 Report? If staff would be willing to do it I think page 6  
12 that we had talked about earlier where were talking about  
13 like the mixed-use development.

14 MADAM CHAIR: Yes

15 COMMISSIONER DOERNER: I think you made a good  
16 point in talking about there's a mixed-use zoning that's  
17 specifically used --

18 MADAM CHAIR: Yes.

19 COMMISSIONER DOERNER: -- in our county. So if we  
20 could have something that would be (indiscernible) of it  
21 where it would be like multiple uses.

22 MADAM CHAIR: Yes.

23 COMMISSIONER DOERNER: Or expressed like there's a  
24 prioritized or promoted --

25 MADAM CHAIR: Yes.

1           COMMISSIONER DOERNER: -- but not necessarily  
2 required just to be specific within there.

3           MADAM CHAIR: Okay. Thank you. Thank you.

4           MR. ZHANG: Yes. Yes, Madam Chair and members of  
5 the Planning Board. If the Planning Board approved this, we  
6 have to modify the finding in support of this decision. We  
7 can address those issues accordingly. Thank you.

8           MADAM CHAIR: The Planning Board just did approve  
9 it and findings were in fact made and yes they will have to  
10 be modified with the consultation with counsel before the  
11 resolution comes back in front of us. So --

12          MR. ZHANG: That's correct.

13          MADAM CHAIR: -- okay. Thank you. Okay.

14          (Whereupon, the proceedings were concluded.)

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DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Planning Board in the matter of:

PRESERVE AT PISCATAWAY (BAILEY'S VILLAGE)

Comprehensive Design Plan, CDP-9306-05



By: \_\_\_\_\_

Date: March 15, 2022

Diane Wilson, Transcriber