

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

**ZONING MAP AMENDMENT**

**ZMA-2024-005**

Application: Request to Rezone from the LCD Zone to the RMF-12 Zone  
Applicant: Lake Marlton Land Holdings, LLC  
Opposition: The Marlton Control Commission, Cindy Proctor, et. al.  
Hearing Date: November 5, 2025  
Decision Date: February 13, 2026  
Hearing Examiner: Maurene Epps McNeil  
Recommendation: Approval with Conditions

**NATURE OF REQUEST**

- (1) ZMA-2024-005 is a request to rezone 18.03 acres a part of Parcel 102 (Tax Map 119, Grids A-1, A-2, and B-2), from the LCD (Legacy Comprehensive Design) Zone to the RMF-12 (Residential, Multifamily-12) Zone to match the remaining acres 7.75 acres in Parcel 102. Thus, the request is to remove the current split-zoning of the subject property. If the request is approved, the Applicant would develop Parcels 101, 102, and 103 as a cohesive townhouse development, with all properties zoned RMF. The subject property is located at the northeast corner of Heathermore Boulevard and Woodstock Drive East, in Upper Marlboro, Maryland.
- (2) The Technical Staff recommended approval, and the Planning Board accepted its recommendation as its own. (Exhibit 27)
- (3) Several residents of the Marlton development testified in opposition to the request.
- (4) At the conclusion of the hearing the record was left open to allow Applicant to submit additional items. (T. 145) These items were received on November 14, 2025 and the record<sup>1</sup> was closed at that time.

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<sup>1</sup> The record consists of 44 Exhibits and one hearing Transcript. Two exhibits forwarded by the Technical Staff, one from the Marlton Control Commission and the other a petition ostensibly signed by several residents within the Marlton Community (Exhibits 23 and 26) were not included in the record since the signatories were not sworn as witnesses at the hearing, nor subject to cross-examination, and zoning decisions may not be based on plebiscite.

## FINDINGS OF FACT

### Subject Property/Neighborhood/Surrounding Uses

(1) Staff provided an extensive synopsis of the zoning history of the Marlton development (in which lies the subject property). (Exhibit 27, pp.4-5, Backup pp. 128-317) In short, the unimproved, wooded subject property is part of the Marlton neighborhood, which was developed as a master-planned, primarily residential community pursuant to the Official Plan of Marlton, implemented under the former R-P-C (Planned Community) Zone. As noted by the planning staff in its review of a prior application for Marlton, this zoning “was intended to provide for the comprehensive zoning and design of a new town, complete with a variety of dwelling unit types, and served by its own complement of commercial development and public facilities as well as an opportunity to provide at-place employment.” (Exhibit 27, Backup p. 281)

(2) The neighborhood is generally bounded by Croom Road to the north; a Potomac Electric Power Company (“PEPCO”) right-of-way to the east; Duley Station Road to the south; and Robert Crain Highway (US 301) to the west. (Exhibit 27, p. 5)

(3) The subject property is surrounded by the following properties:

North	Woodstock Drive East and residential uses and undeveloped land in the RSF-A (Residential, Single-Family-Attached) Zone
East	Residential uses in the RMF-12 Zone
South	Heathermore Boulevard and beyond, multifamily uses in the RMF-20 (Residential, Multifamily-20) Zone
West	Woodstock Drive East and beyond, residential uses in the RSF-A Zone

### General Plan, Master Plan, and Functional Plans

(4) The 2014 General Plan (“Plan Prince George’s 2035”) includes a Growth Policy Map on page 18 that places this property within the Established Communities, an area deemed most appropriate for context-sensitive infill and low-to medium-density development. The General Plan recommends enhancing public facilities and infrastructure to meet residents’ needs. (2014 General Plan, p. 20)

(5) The property lies within an area governed by the 2013 Subregion 6 Master Plan (“Master Plan”) and Sectional Map Amendment (“SMA”), colloquially known as West

Marlton. The Master Plan recommends Residential-Medium-High land uses on the northern portion of the Marlton community, defined as a mix of dwelling unit types, including apartments, at a density between 8-20 dwelling units per acre. (Master Plan, p. 40) The Master Plan labeled the subject property as an Activity Center, defined as a “community focal point providing for the combination, rather than scatteration, of general retail, service commercial, professional office, higher density housing, and appropriate public/quasi-public uses.” (Master Plan, p. 259) The SMA rezoned the subject property from the C-2 (General Commercial) Zone to the L-A-C (Local Activity Center) Zone and R-30 (Multifamily Low Density Residential) Zone, to “reinforce the mixed-use town center for Marlton.” (Master Plan/SMA, pp. 219, 236). The Countywide Map Amendment, approved by the District Council in CR-136-2021 and effective on April 1, 2022, reclassified the subject property to the LCD (Legacy Comprehensive Center) Zone and the RMF-12 (Residential, Multifamily-12 Zone).

### **Applicant’s Request**

- (6) Applicant Lake Marlton Land Holdings, LLC, is authorized to conduct business within the State of Maryland. (Exhibit 33)
- (7) Applicant requests approval to reclassify approximately 18 acres of Parcel 102 from the LCD Zone to the RMF-12 Zone to match the remaining land that it owns (Parcel 101, the approximately 7.75 acres remaining in Parcel 102, and Parcel 103) that is already in the RMF-12 Zone. Exhibit 16 below depicts the three Parcels outlined in red and the surrounding development. Parcel 101 is adjacent to the two rights-of-way near the bottom of the aerial.



(8) If the instant request is approved, Applicant intends to include all three parcels in a future preliminary plan of subdivision application and a new Detailed Site Plan application to develop a new townhouse community of approximately 150-170 single-family attached dwellings, although it does note that “it is not seeking to propose any specific development at the location at this time.” (Exhibit 27, Backup p. 121; T. 20) Applicant’s Statement of Justification, adopted by Applicant’s expert land use planner, notes that the development will “have a mixture of front and rear-loading townhouse residential dwelling units, allowing for a variety of unit types ... with architectural elevations consistent and compatible with the surrounding Marlton neighborhood [and using] ... primary roads and alleyways throughout the Property to connect residential dwelling units to the street network and proposed recreational facilities.... (Exhibits 14 and 27, Backup p. 7; T. 101-102) Applicant submitted a concept plan showing the proposed layout of the 150-170 townhouses (reduced from the originally proposed range of 200-247) to be constructed if the request is approved. (Exhibit 16) The Applicant believes that removing the split zoning currently in place will allow it to construct 150-170 townhouses on its property, more seamlessly, as the use is already permitted on the remainder of Parcel 101, Parcel 102, and Parcel 103.

(9) Mr. Patrick Ricker, a member of the LLC, was authorized by resolution to speak on its behalf. (Exhibit 41) Mr. Ricker commissioned a drone to film the subject property and its surroundings, showing Heathermore Boulevard, the main thoroughfare to the site, from US 301 and its terminus at woods not far from the subject property. (Exhibits 39 and 44; T. 26-35) Mr. Ricker testified that the property at the end of Heathermore “was once supposed to be phase 2 of Marlton...[,] was actually bought by the Girl Scouts of America ... and [has] since [been] sold to Park and Planning.” (T. 29) Mr. Ricker discussed his extensive development experience in the County, some within the Marlton community, and his belief that the land purchased by the Maryland-National Capital Park and Planning Commission will preclude the planned extension of Heathermore Boulevard. He concluded by noting Applicant’s commitment to the community to fulfill the promises he made to them during the community’s review of the Application to reduce the number of dwelling units originally proffered, increase the amount of open space, and provide more parking. (T. 37-38)

(10) Mr. Edward Steere, a planner and market analyst for Polestar Analysis, accepted as an expert in market analysis, testified and prepared a report on Applicant’s behalf. (Exhibit 9) Mr. Steere was hired to address “whether the development of a commercial use at this location was feasible due to the massive change of the original development plan, by removing 1300 residential units of East Marlton and the connection of Heathermore Boulevard to Croom Road.” (T. 85) To assess commercial market feasibility, Mr. Steere examined the likely public need and desire of commercial uses at

the location, the scale and growth rate of consumer demand for additional retail/service space at this location, and the convenience of additional retail/service space at this location (will it serve the community better than existing uses). (Exhibit 9, p. 1; T. 86)

The following is a synopsis of his analysis:

The subject site is ... located on the north side of Heathermore Boulevard and the east side of Woodstock Drive East.... The full parcel is approximately 25.78 acres, whereas the portion that is the subject of this rezoning is approximately 18 acres. The remainder is already zoned RMF-12. The site is presently unimproved forestland.

The subject site is zoned LCD, Legacy Comprehensive Design, based on prior zoning of L-A-C, Local Activity Center. The overall Marlton planned community is recognized in Prince George's zoning as an R-P-C, Residential Planned Community, dating to 1969. No specific uses have been approved for this site....

The subject site is deep within the residential neighborhood of Marlton, effectively surrounded by existing residential uses. On the West, North [,] and East sides of the property are townhomes. South is the Woods of Marlton garden apartments. It fronts Heathermore Boulevard, which was planned as the primary arterial spine road through the Marlton community, extending from US-301 to Duley Station Road. The road was never completed and terminates approximately 1,400 feet east of the subject [property]. This is the highest density portion of the community with townhomes that range in age from seven to 54 years old. The Woods of Marlton apartment community (the only general occupancy apartments in Marlton) were built in 1996, 29 years ago. The remaining mass of the Marlton community is single [-] family detached homes on lots between approximately one-quarter acre and 1.5 acres in size. Just to the west, beyond the townhomes on Pavilion Court is Marlton Elementary School, approximately 800 feet from the subject site. Immediately east of the subject site on Marlton Center Drive is a community park....

The site has frontage on three roads: Heathermore Boulevard, Woodstock Drive East, and Marlton Center Drive. Heathermore Boulevard was originally planned to be a principal arterial roadway in the Prince George's County transportation plan, extending from US-301 to Duley Station Road. However, upon the diminution of the East Marlton portion of the community to publicly ...owned open space, the road was terminated midpoint and has been reduced to a collector status. Heathermore was built as a four-lane divided boulevard from US-301 to Woodstock Drive East, where it transitions to a 36-foot-wide two-lane curbed road with parking across the frontage of the subject site. Approximately 350 feet further east from Marlton Center Drive, Heathermore narrows further to a 24[-] foot cross-section, serving only the last group of townhomes on the north side of the road....

Marlton Center Drive serves as a singular access point to 224 townhouses, and the Marlton community park parcel. There is a curb cut opposite Center Park Way to this site, that is being used as satellite parking for local residents. Sidewalk exists on the east side of Marlton Center Drive.

Woodstock Road East extends north, through a townhouse area of Marlton, and connects to Grandhaven Avenue, through the oldest part of the community, where single family homes were constructed in the late 1960's. [O]n the south side of Heathmore Boulevard, this road also serves townhomes dating to 1971. There is sidewalk on both sides of Woodstock Drive East, albeit with a sign that states, "Do Not Walk or Play In This Area". Although there are platted rights-of-way, there are no internal road connections to Croom Road....

Internally, the planned community of Marlton consists mostly of cul-de-sacs and dead-end roads. There is very little interconnectivity through the development to encourage or promote internal movements. The roads are constructed with broad cross-sections, ostensibly to permit on-street parking and two-way traffic, but given large lot sizes, there are few cars parked on the roads, especially in the southern regions of the community. This is a community designed and built for automobile travel, [and the] ... 2013 Subregion 6 Approved Master Plan stated that 'Marlton's civic core and the Marlton Community Park are inaccessible to southern Marlton residents by foot or bicycle....' That study further explained that the railroad tracks and the golf course are two additional physical barriers forcing residents to drive within the community. There is no internal road connection across the railroad tracks at the southern end of Marlton.

The road network and design [do] not support a community-based retail center, when an automobile is necessary for access and there are sufficient options nearby on US-301. The distance and time to drive to the two shopping centers, Marlton Plaza ... and Osborne Plaza [,] is equal to, or even quicker than, driving to the subject [property] for most of the residents of Marlton....

Presently, the only truck traffic in this community is delivery vehicles for remote shopping, school buses, garbage trucks, and occasional service to the school. The introduction of commercial space within the community would also introduce a form of traffic foreign to this peaceful residential atmosphere....

The planned community of Marlton was first conceptualized in 1965, as an all-inclusive community in the rural countryside outside of Washington, DC.... Marlton is ...in a commutable distance to the greater Washington, DC marketplace. The original zoning application was for approximately 2,000 acres, and a negotiated density of 16.8 persons per acre, suggesting 6,392 dwelling units ... 1,328 east of the railroad and [approximately] 4,500 on the west side. Like all major developments in rural areas, there were delays due to infrastructure and the community had a slow start. Additional developers entered the scene and picked up the pieces of the community, eventually constructing nearly all of the west side prior to 2010.... This is a very stable residential community.

The east side of Marlton, also known as East Marlton, as shown on the *Official Plan – Marlton R-P-C-Zone* never moved forward, due primarily with the issue of crossing the rampart of the railroad-right-of-way. This remaining land was donated to the Girl Scouts of the Nation's Capital Council with no development restrictions. That entity then sold

most of the donation to the Maryland-National Capital Park and Planning Commission in a deed executed in February 2024. This conveyance was funded with Program Open Space funds, and thus attached development restrictions to the property conveyed.... This transaction instantly eliminated the East Marlton portion of the community, approximately 1,300 dwelling units, from the master plan, as well as the necessary road connections to provide direct accessibility from residents east of the railroad to the collector road of Heathermore Boulevard....

There is a commercial site at the far southwestern corner of the Marlton master plan, which is the location of the Marlton Plaza shopping center and senior living center. This [shopping] center was opened in 1978 and completed with the McDonald's pad site in 1995 and Shell station in 1999. The senior living facility was opened [some years later]. This center is accessible internally only by residents of the northern half of the community via Fairhaven Avenue. Residents in the southern end of the community are cut off from direct access to US-301 or other areas of the Marlton community....

### **Findings and Conclusions**

Marlton, the planned community, as envisioned 60 years ago [,] was an oasis in the rural countryside of Prince George's County.... Marlton, like Reston and Columbia, was planned to provide an all-inclusive suburban village atmosphere in contrast to the hustle and bustle of the inner-urban areas.... These types of developments face many challenges to complete and in each of the cases listed above, are still incomplete nearly 60 years later....

At Marlton there is a freight railroad bisecting the planned community.... Additionally, over the course of 60 years the housing markets shift and financial markets roller coaster, interrupting the flow of development and in this case causing reconsideration of the original plans.... At Marlton, several different developers and builders have been involved and there were zoning amendments along the way to adjust the plans accordingly. The most major and recent change was the acquisition of East Marlton (all the lands east of the railroad, with the exception of 78 acres retained by the Girl Scouts) by the Maryland-National Capital Park and Planning Commission. This land was acquired with Program Open Space funds and therefore now restricted from development, effectively reducing the housing unit [count] of Marlton by approximately 1,300 units (~20%).

This dynamic caused the termination of Heathermore Boulevard at the power line right-of-way and railroad right-of-way, rendering the primary boulevard a "dead-end" collector road instead of the originally planned arterial.... As noted in the Subregion 6 Master Plan, the civic core and community park are inaccessible to most of the development and the golf course and railroad also create an impassable rampart separating the community. The master plan also noted the lack of sidewalks and pedestrian amenities throughout the development, which encourages the use of automobiles for all types of travel and errands.

So, for more than 40 years, two local shopping centers have been serving this community successfully. When there is a highway like US-301, which is a North-South bypass to I-95, Washington, DC, and Northern Virginia, commercial brokers will focus on frontage lots for commercial uses. The subject site, approximately 0.8 miles off of the highway in a residential neighborhood, is not prime commercial land. The uses previously established on the highway are not only serving the Marlton community, but also regional travelers and commuters. Any vendor who would locate deep within Marlton on a dead-end road would be serving only Marlton, which is a very limited market. Most of the housing units in Marlton have no direct access to the subject site, due to the cul-de-sac design and railroad division. These households are also equally close to the two existing shopping centers on the highway. Anything not available at these shopping centers is available within a 10-15 minute drive to Brandywine, Waldorf, Upper Marlboro, or Largo....

Given that retail and commercial services are available on highly visible and accessible locations just outside the Marlton development and nearby within 5-10 miles obviates the feasibility for placing similar facilities deep within the Marlton Community on a dead-end road.

(Exhibit 9, pp. 3-10, 29-30)

(11) At the hearing, the witness succinctly reiterated why his expert opinion is that a commercial use would not work at the subject property:

[T]his is an auto-dependent community. The county has recognized that it's an auto-dependent community. One of the opposition witnesses ... pointed out that it's an auto-dependent community, and she was thankful for that because there wasn't public transportation in this community. There's limited bicycle opportunities, so it's not like it's a walkable space to get from one end of this community to the other to serve a commercial site here.

[C]ommercial shopping centers or neighborhood shopping centers of any scale depend on both pedestrian and vehicle traffic.... [I]t's inconvenient to get to this site, and it's not on the way past most of the residents in the neighborhood. And[,] pedestrian wise, it would serve just the townhomes that are around it for the most part....

[T]he current zoning has minimums in it, which is not common.... And the minimum nonresidential floor area ratio is 0.2. And for residential units, its density is ten units per acre.... [T]his eighteen acres compute out to approximately 157,000 square feet of commercial space and 180 dwelling units. So the 157,000-square-foot commercial center would [be]... larger than all of the local shopping centers that are on Route 301....

[T]he opportunity for the residents of Marlton to purchase anything they need to purchase, or get services ... it's not just retail, but it's retail and service. So it could be doctors ... [or] [b]anking or ... whatever....It's accessible within a short drive from this community.... [T]hat's been that way for the lifetime of this development.

So let me jump to the supply.... The Marlton Plaza is part of the Marlton Plan Community. It is on Route 301. It is successful. It has no vacancies, which is amazingly good in a retail environment...[a]nd the uses that are there are in demand....

[T]he other key shopping center, which is Osborne Shopping Center ...[,] predated the development of Marlton, so it was there in the '60s. It was rebuilt and expanded in the mid-teens, twenty-teens. And it has a wide variety of uses there....

[There is a] Food Lion at Marlton Plaza, Safeway at Osborne Shopping Plaza, [and] a Weis Market at Marlborough Square. And across the street from Marlborough Square is Marlborough Crossroads with Giant Food. Those are all major grocery stores that are in the range of probably 50 to 80,000 square foot each, and there's no excess demand for more [grocery] in that ...area.

Just north of that, you've got a Home Depot. If we go eight miles south, we have Brandywine Crossing, which is actually a regional shopping center with major national tenants and a movie theater. They've got, I guess, Costco and ...there's a CarMax next door, things like that.

So, without getting off of Route 301, everybody in Marlton has access to everything you need for daily life today, and they have for the entire existence of Marlton as a planned community. There is no need to add to that. [A]nd if there was, there isn't any developer I've ever met or worked for who would go eight-tenths of a mile off of the highway on a dead-end road to build a commercial use....

(T. 89-93)

(12) Mr. Ken Dunn, accepted as an expert in land use planning, testified and prepared a Land Planner Summary Report in support of the request. This summary concisely addressed the reasons why the instant request should be granted:

It is the applicant's position that there was a mistake made during the last sectional map amendment (27-3601 (e) (3)), and that there has been considerable and substantial change to the character of the neighborhood (27-3601 (e) (1)).

#### Change

The neighborhood generally referred to as Marlton has existed for many decades and was originally designed to be a neighborhood with a mixture of residential architectural types including single[-]family detached, single[-]family attached [,] and multi[-]family. Included in the vision were retail style elements also. However, recent property transfers and revisions to the proposed transportation infrastructure create a neighborhood character that is quite different from the original intent.

The largest piece of undeveloped land within greater Marlton was the property referred to as "East Marlton". Owned by a single entity [,] the majority of the

property was recently sold to MNCPPC and is now preserved as parkland. This reduces the overall envisioned density by 1300 residential units that were approved on the Marlton Official [P]lan. As a result of this property transfer, new use, and loss of density, the expansion of Heathermore Boulevard was reconsidered. As a part of the draft version of the Countywide Master Plan of Transportation, Heathermore Boulevard will not be extended past significant environmental and practical topographical challenges to connect to east Marlton.

The loss of significant infrastructure and ...units clearly signifies a significant change to the neighborhood. Additionally, it removes the need for any potential commercial/retail use which would normally be allowed under the LCD (previously LAC or Local Activity Center) zone making the LCD zone unnecessary and irrelevant. It is my opinion that the change from LCD to RMF-12, which is also consistent with the current zoning of the remainder of the property, is warranted.

#### Mistake

In addition to the change in character of the neighborhood, it is the applicant's position that a mistake was made during the current Sectional Map Amendment pursuant to 27-3601 (e) (3).

The reclassification of the property to the LCD also requires that one of two additional [criteria] be fulfilled also. These are:

1. That the land within the LCD must be fully developed in accordance with a Basic Plan, CDP or SDP which is clearly not the case with the subject property.
2. That the land that was placed in the LCD zone be the subject of a valid Basic Plan, CDP, or SDP.

While there is an approved Basic Plan for the property (A-6696-C and A-9731-C/03), the property was zoned C-2 and not LAC as a function of that Basic Plan. Because the C-2 zone was not a CDZ (Comprehensive Design Zone) it could not be reclassified as a LCD zone as part of [the] 2022 SMA [,] and therefore criterion 2 is not applicable.

The applicant acknowledges the recent decision published by the Maryland Supreme Court that rules the Countywide zone classification was a technical mapping exercise in *County of Prince George's v. Robin Dale Land LLC* however the identification of zoning classifications by the government as either a Zoning Map change or a technical exercise has no functional difference. One cannot ignore the zoning classification by a technical map exercise and act differently simply because it was not a Zoning Map change. In effect this technical exercise should have a lower standard for identification

of a mistake and given the nature of the original zone C-2, LCD is not appropriate and therefore can be considered a mistake....

### Conclusion

As summarized above, the applicant contends that there has been a change to the neighborhood and that a mistake was made and therefore the property should be reclassified to the RMF-12 zone. However, the application only needs one of these two contentions to be true.

In my opinion all the necessary criterion has been for met for the successful rezoning of the property from LCD to RMF-12 and therefore we respectfully request approval of ZMA 2024-005.

(Exhibit 40)

(13) Mr. Michael Lenhart, accepted as an expert in transportation planning and traffic engineering, prepared a Traffic Impact Analysis (Exhibit 25), and provided testimony concerning his findings:

We ... conducted a scoping agreement with Park and Planning staff. Transportation staff had a scoping meeting, which included DPI, DPW, State Highway Administration, Park and Planning staff, and ourselves. We identified ... 7 study intersections that were to be included, including Route 301 at Osbourne Road, Route 301 at Heathermore, Heathermore at Trump's Hill Road, Heathermore at Fairhaven, Heathermore at Marlton Center Drive, and then the site access points.

We conducted peak-hour traffic counts during the morning and evening peak periods. We added background data, we added the site traffic, and then we evaluated each of the intersections using standard methodology. The ... Park and Planning Transportation Review Guidelines [have] methodologies for evaluating signalized and unsignalized intersections separately.

The findings of our report were that all of the intersections passed the transportation review guidelines metrics, and the subdivision requirements for adequate public facilities.<sup>[2]</sup> Now that test will be repeated at the time of preliminary plan of subdivision. That is when it is standard and required for adequate public facilities to be tested, again at the time of preliminary plan.

At the time of the rezoning analysis and rezoning request, it's more of a ... link analysis, such that you would look at Heathermore Boulevard. And Heathermore Boulevard is a master planned major collector roadway. And ... that's [what] the master plan of transportation ... recommends. And that recommendation in the master plan has been

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<sup>2</sup> The Level of Service results are found on page 19 of Exhibit 25. None of the affected intersections are anticipated to operate below Level of Service D during the morning and peak hours if the request is approved.

deemed by transportation models through park and planning, to be adequate as a major collector road to serve all of the property in Marlton as currently zoned.

The ... test at the time of rezoning is really to look at it and say, will this rezoning generate more or less traffic, and will it ... negatively impact the master plan road network? And so just as far as the traffic study goes, we did look at a maximum ... of 200 dwelling units – that has since been decreased, now to a maximum of 170 units... and the ... findings would ... therefore be even ... better than what we found....

My opinion is the roadway network will be adequate to safely handle the traffic. And the proposed rezoning, not only would it not have any impacts on the health, safety, and welfare, it would actually have a beneficial impact.

The [current] ... LAC zoning would allow a mix of uses. It could be a minimum floor area ratio of 0.2 - and these are just some rough numbers – across eighteen acres, which could be approximately 157,000 square feet of retail. And that ... could be the possible minimum of ... shopping center that could be developed there.

For informational purposes, 157,000 square foot shopping center would generate 226 trips in the morning peak hour, 781 trips in the evening peak hour, and up to 10,000 trips per day, which would include large trucks and delivery vehicles that could be as many as fourteen tractor-trailer trips per day. That is a fairly impactful impact based upon the previous zone or the existing zoning.

Our proposal to rezone this would have a maximum of 170 dwelling units, would generate 119 morning peak hour trips, 136 evening peak hour trips, and 1,360 trips per day. So, ... ten to fifteen percent of the daily traffic of what could be generated if it were developed to its maximum potential under the existing zoning....

(T. 64-68)

(14) Mr. Lenhart stated that he agrees with the findings and conclusions of the Technical Staff (and accepted by the Planning Board) except for Condition 2, which requires that an analysis using Synchro modeling be completed at the time of preliminary plan of subdivision review. Using that alone would be inadequate in his expert opinion as Synchro is “not built to evaluate [a] six-lane divided, unsignalized intersection.” (T. 70) Applicant has proffered a revision to Condition 2 to allow the use of SIM traffic modeling, which is a better methodology when evaluating Heathermore Boulevard. (Exhibit 43) Upon cross-examination, the People’s Zoning Counsel questioned the need for the condition at all since the site will have to go through a preliminary plan of subdivision and an adequate public facilities analysis if the rezoning is approved, and Mr. Lenhart agreed there was no need but had no objection to the condition if it is clarified. (T. 77)

## Oppositions' Concerns

(15) Cindy Proctor provided the following testimony in opposition to the request:

[W]hat I have read is PG County has the highest rate of foreclosures. Also, we have a very horrendous problem with trash, people coming into the neighborhood, and then on their way out, they just throw it at the stop lights and... so forth. Plus, we have a problem with vandalism, mainly cars being broken into and also being stolen.

We have ... put humps throughout the main road... because of the racing and the loud cars that come through in and out....

So I would like to see the developer have to do something for the neighborhood, widening the road at... Heathermore so that it doesn't still feed down to one lane would be a suggestion. When this was first proposed, they were going to put in some type of rec center in that spot or a little... strip mall- which is not really the right term- but a couple [of] little stores there.

Which, to me, would be better, only because you're only going to have traffic, hopefully, during the day or for minimal hours... I've just seen over my 40-some years [the] deterioration of the neighborhood, and it concerns me.

(T. 9-11)

(16) Ms. Aisha Bryant was opposed because she did not see any benefit to allowing the rezoning "other than to the pockets of the people that want to create it." She concluded the Applicant did not address how the current traffic, crowded schools, and lack of community spaces would be improved if the request is granted. (T. 125-126)

(17) Ms. Aarae Alexander also argued there would be no real benefit to the community if the request were approved, and noted that no one purchased their houses to look at other houses. She believed the rezoning would lead to a loss of green space that currently exist, and concluded that she "understand[s] that things change, but this just is not beneficial to those in the community." (T. 128)

(18) Ms. Asha Henson testified that she is opposed to the request for many of the same reasons, and concluded as follows:

I do agree that this should not be commercial, but I also agree that it should not be residential. And I understand that ... unfortunately, it might have been a negative investment for the developer who probably wants their money. But ... for those who actually live here, because the developer or no one on his team actually lives in our community, it does not seem that it would be providing any benefit, which they didn't speak about....[T]hey didn't speak about how they would support the schools that would likely overflow because we just had the closing of Mattaponi. And so now we have only Marlton. Where will all those

kids go....? We're not speaking about the ways in which we're just packing people in.

The environmental concerns – it's seventy degrees [in] ... November. Right? And so I just don't understand how this is going to ... benefit those of us who live here. And I think that's a point that should be addressed thoroughly ... [i]f we're going to approve this in any way....

(T. 131-132)

(19) Ms. Teri Wade also expressed concern about the impact on schools and parking, and questioned how this request would be a proper use for the Girl Scouts property. The People's Zoning Counsel and Applicant's counsel briefly explained that the subject request does not involve the Girl Scouts property, and issues related to the schools, traffic or other public facilities would be addressed at the time of preliminary plan of subdivision review if the rezoning is approved. (T. 136-137)

(20) Ms. Arliss Press averred that there are many other residents opposed to the request even though they were not present at the hearing. The People's Zoning Counsel addressed her questions concerning any appeal of the Zoning Hearing Examiner's decision, and the possibility of having the developer reduce the number of homes it wishes to construct, noting that the latter is something that can be addressed at future hearings if the instant request is approved. (T. 140-145)

### **Agency Comment**

(21) The Prince George's County Planning Department's Transportation Planning Section provided its analysis of the request from the transportation standpoint, paraphrased as follows:

The subject property is located within TSA 2 as defined in the [2014 General Plan].... A [Traffic Impact Statement] TIS was submitted for review with this application. The results at this time yield that all intersections will meet the adequacy standards. However, the determination of adequacy will be evaluated with a subsequent application....

This application is subject to the 2009 *Approved Countywide Master Plan of Transportation* (MPOT) and the 2013 *Approved Subregion 6 Master Plan and Sectional Map Amendment*...

[After reviewing the portions of those plans applicable to the application, most concerning road dedication, provision of sidewalks, marked crosswalks, ADA curb ramps, and bicycle-friendly roadways,] staff find that transportation facilities as well as pedestrian and bicycle facilities within the proposed application are consistent with Section 27-3601 [of the Zoning Ordinance.] The proposed rezoning of the property will

not impair the ability to make transportation-related recommendations that are supported by an approved Master Plan or Functional Master Plan, or included in the subdivision regulations and zoning ordinance.

(Exhibit 27, Backup pp. 118 -120)

(22) The Prince George's County Planning Department Subdivision Section made no recommendation on the request, noting that Preliminary Plan of Subdivision review will be necessary if the application is approved:

The property was previously subject to Preliminary Plan of Subdivision (PPS) 4-94029 (Marlton Town Center), approved in 1994 for Parcels 101, 102, and 103. That approval has since expired. As the property remains undeveloped and the applicant proposes multiple dwelling units, a new PPS is required to re-subdivide the property and support the proposed residential development.... The proposed site layout and lotting pattern will be further evaluated at the time of PPS and must comply with all applicable design standards contained in the Subdivision Regulations. A final plat of subdivision is required following approval of this zoning map amendment and PPS, and prior to approval of any permits for development of the site.

(Exhibit 27, Backup p.121)

(23) The Maryland-National Capital Park and Planning Commission ("MNCPPC") Department of Parks and Recreation provided a synopsis of the prior zoning and recommended certain conditions pertaining to the preservation of environmental areas on the site for future use as parkland:

The Concept Plans [submitted by Applicant] identify on-site active recreation areas and conservation of environmentally sensitive land....

The property is located at the northeastern corner of the intersection of Heathermore Boulevard and Woodstock Drive East in Marlton. Previous reviews of the subject property were as A-6669 Marlton, which rezoned 1,157 acres to the R-P-C Zone. District Council Decision via 92-1969, ... approved the Official "Marlton" Plan permitting the development of 6,192 dwelling units. The Official Plan was amended twice, increasing the permissible dwelling units by 200 to 6,392 (4,213 in West Marlton and 2,179 in East Marlton). Amendment A-9730 added 431.5 acres in East Marlton, located along the Penn-Central Railroad between Croom Road and Duley Station Road. Amendment A-9731 added 1.86 acres in West Marlton.

The subject site became part of the Marlton Town Center Preliminary Plan of Subdivision, PPS 4-94029. The site was designated for mixed commercial and residential use across three parcels, Parcel B (now Parcels 101, part of 102, and 103) was designated for multifamily. Parcels E and F (including the remaining part of Parcel 102) were designated for commercial use. Condition 9 of the PPS required the provision of onsite recreation facilities, which were provided in the form of tennis courts. The subject property was included in a 2000 amendment to the Official Plan via A-6696-C, A-

9730-C, and A-9731-(C)03, supporting the development of multifamily dwellings on Parcel B. Zoning amendment A-6696-07 set the total number of approved dwellings in West Marlton at 3,473.

The property is subject to the 2013 *Approved Subregion 6 Master Plan and Sectional Map Amendment*; *Plan Prince George's 2035 Approved General Plan*; the 2022 *Land Preservation, Parks and Recreation Plan for Prince George's County*, and *Formula 2040, Functional Master Plan for Parks, Recreation and Open Space*. The 2013 *Approved Subregion 6 Master Plan and Sectional Map Amendment* ("Master Plan") incorporates sustainability policies and strategies to support the development of quality communities. The Master Plan provides goals and policies related to parks and recreation (pages 130-139). The Master Plan specifically cites Planning Areas 79 and 82A as priority land acquisition areas due to anticipated population growth....

The site is contiguous with public land (PEPCO right-of-way) and existing M-NCPPC parkland, Charles Branch Conservation Park, making it a logical extension of the County's green infrastructure network which is in alignment with Zoning Ordinance Section 27-1300 (p), (q), and (r) General Purpose and Intent to provide open space to protect the natural features of the County; provide adequate recreational space; encourage the preservation of stream valleys and protect and conserve natural resources. The applicant has acknowledged the importance of limiting development within the PMA and has proposed a development pattern that concentrates residential uses away from the environmental area.

The conveyance of approximately 11 acres of land to The Maryland-National Capital Park and Planning Commission (M-NCPPC) as undeveloped parkland aligns with the intent of Section 27-3601(d)(9)(A)(i) of the Prince George's County Zoning Ordinance. This provision authorizes the imposition of conditions necessary to mitigate potential adverse impacts of a proposed Zoning Map Amendment (ZMA) on surrounding properties. The dedication supports the protection of environmentally sensitive areas, advances the goals of adopted functional master plans, and leverages the Department of Parks and Recreation's (DPR) expertise in the stewardship of stream valley parklands....

The Park Planning & Development Division of the Department of Parks and Recreation (DPR) has no objections to the zoning change request and offers the following recommendations as conditions of approval:

1. The applicant shall convey approximately 11-acres of the Environmental Area (as identified in green on the Concept Plan) to M-NCPPC as undeveloped parkland. The timing of the conveyance will occur at the appropriate development stage.

(Exhibit 27, Backup pp. 123-125)

(24) The Prince George's County Planning Department Community Planning Division reviewed the Application's conformance with the General Plan, the Master Plan, and the SMA and provided a detailed analysis, summarized in part, as follows:

The proposed application to rezone the property for the future development of 150 to 170 townhouse dwelling units is consistent with [the 2014 General Plan] Plan 2035 because it represents context-sensitive infill [development]....

The... Master Plan recommends Residential Medium-High land uses on the northern portion , and Mixed Use land uses on the southern portion of the property. The Master Plan defines Residential Medium-High land use as 'Residential areas between 8 and 20 dwelling units per acre. Mix of dwelling unit types including apartments,'(p 40) and defines Mixed Use land use as 'areas of mixed residential, commercial, employment, and institutional uses. Residential uses are expected to dominate overall land use in the designated area and may include a range of unit types....'

The subject application is not consistent with the recommended land use in the... Master Plan... because there are no remaining parcels on which a mix of uses... could occur....

Although originally envisioned as a residential community with a commercial core, Marlton has evolved into a wholly residential community. This represents 'a substantial change in the character of the neighborhood'....

The proposal to rezone Parcel 102 to the RMF-12 zone will enhance residential housing opportunities and is compatible with the surrounding residential development but differs from the land use recommendations in the Master Plan....

The subject Property is located within the Charles Branch watershed area, which is a secondary corridor by the Master Plan. A stream that connects to Charles Branch is within the subject Property. Staff recommends the applicant pursue measures to ensure the protection of the stream by adding adequate stream buffers, preserving existing tree canopy around the bank, limiting impervious surfaces, and providing adequate on-site stormwater management facilities to protect the water quality of the creek. In addition, it is recommended the applicant preserve and connect wildlife habitat areas to the fullest extent possible.

It is further recommended that the architecture and site design for the future development incorporate green building techniques and renewable energy sources such as solar power during construction of the dwellings and site improvements on the property when the site details and dwelling units will be examined....

The conceptual plan demonstrates three new access points to the site. Two (2) access points will utilize two-way driveways to connect to the local street network at Marlton Center Drive and at Woodstock Drive East. The third access point contemplates a pair

of one-way driveways with connections to Heathermore Boulevard. Staff recommend continuous sidewalks for pedestrians and bicyclists, along these new access roads and throughout the proposed development....

This application is not located within the Military Installation Overlay Zone....

The 2013 *Approved Subregion 6 Sectional Map Amendment* area reclassified the subject property from the C-2 (General Commercial) to the L-A-C (Local Activity Center) Zone....

(Exhibit 27, Backup pp. 108-112)

(25) The Prince George's County Planning Department Environmental Planning Section provided the following comment, redacted for brevity:

This site is within the Environmental Strategy Area 2 (formerly the Developing Tier) as designated by *the 2014 Plan Prince George's 2035 Approved General Plan (Plan 2035)*. The site does contain forest interior dwelling species (FIDS) habitat. The property is within the Western Branch of the Patuxent River watershed, which is not a Tier II waterway. The project is not within the boundaries of a transit-oriented center (TOC) as identified in Plan 2035.

According to available information from the Maryland Department of Natural Resources Natural Heritage Program, rare, threatened, and endangered species are not on the site. The site does not front on a historic or scenic roadway....

Previous entitlement cases associated with this site include 4-9029 with TCP1-018-94 (resolution number 94-219) and DSP-96010 with TCP2-039-95 (resolution number 96-304), However, the conditions associated with each of these approvals do not apply to this application because it is a new rezoning request....

An approved Natural Resources Inventory (NRI-144-2022) was included in the application, although not required. The plan shows the site is undeveloped and primarily wooded. Regulated environmental features (REF) as defined by Subtitle 24 of the County Code are located on-site, including streams, wetlands, and their associated buffers. These REF comprise the primary management area (PMA), and adjacent steep slopes are also present on-site. The 100-year floodplain is not mapped on-site....

The project is subject to the 2024 WCO and the environmental regulations contained in Subtitles 24 and 27 of County Code. The woodland conservation and afforestation thresholds from the approved TCP2-039-95-03 were based on the prior General Commercial, Existing (C-2) [,] and Multifamily Low Density Residential (R-30) zoning, which makes up the LCD zone. The C-2

zone had a woodland conservation threshold of 15 percent and an afforestation threshold of 15 percent.

The R-30 zone had a woodland conservation threshold of 20 percent and an afforestation threshold of 15 percent. Since the RMF-12 zone has a 20 percent woodland conservation threshold and 15 percent afforestation threshold, rezoning the property to RMF-12 may result in an overall increase/ in the woodland conservation threshold, depending on the acreage of R-30 being converted to RMF-12.

Since TCP2-039-95-03 covers a greater area than this application, it is recommended that at the time of the detailed site plan (DET), the area of this application is removed from TCP2-039-95-03 through a Type 2 tree conservation plan (TCP2) revision, and a separate TCP2 that covers the area of the DET is created. This is recommended so that the properties covered under TCP2-039-95-03 outside the limits of this application retain their grandfathering and are not responsible for any additional requirements....

The approved NRI-137-2024 identifies 36 specimen trees, as defined in Subtitle 25-118(b) of the 2024 WCO, are located on-site.... At the time of application of the PPS, a variance request in accordance with Section 25-119(d) of the 2024 WCO will be required for consideration to remove any specimen trees from the site....

Regulated environmental features (REF) are located on-site, which include streams, wetlands, and their associated buffers. Primary management-area (PMA) comprised of the REF and adjacent steep slopes also are present on-site. The approved NRI-161-2021 shows 9.06 acres of PMA. Eight isolated wetlands are located on the southern portion of the site, while a stream system traverses the northern portion of the property. Any proposed impacts to REF will be evaluated at the time of PPS and DET. Section 25-121(c)(1)(c) of the 2024 WCO requires any unforested riparian buffers on-site to be afforested....

A site development concept is required to be reviewed by DPIE. The concept shall be submitted and reviewed with the future preliminary plan of subdivision and detailed site plan with a layout consistent with the tree conservation plans....

The predominant soil found to occur, according to the U.S. Department of Agriculture Natural Resource Conservation Service Web Soil Survey, is Marr-Dodon complexes, Marr-Dodon-Urban Land complexes, and Westphalia and Dodon soils.

Steep slopes are present on-site. No soils containing Christiana complexes are mapped on-site; however, Marlboro clay is mapped in proximity to the north or northeast from the site. A geotechnical report verifying whether the

problematic clay is present and the site is safe for the proposed development will be required at the time of preliminary plan of subdivision application. A slope stability analysis shall be included in the report if the clay is present....

Section 27-6805 of the Zoning Ordinance requires an approved Grading, Erosion, and Sediment Control Plan....

Erosion and sediment control will be addressed at the time of preliminary plan of subdivision and the detailed site plan review along with the TCP1 and TCP2, respectively....

If the proposed ZMA is approved to rezone the property from LCD to RMf-12, the woodland afforestation thresholds will remain unchanged. The woodland conservation threshold may increase within the ZMA project area, depending on how much previously zoned C-2 area changes to RMF-12. Staff recommend that the thresholds of the RMF-12 apply to the ZMA area

(Exhibit 27, Backup pp. 114-117)

(26) The Technical Staff noted that the State Highway Administration, the Washington Suburban Sanitary Commission, the Prince George's County Fire Department, and the Department of Public Works did not submit any comments on the Application. It did receive two letters in opposition – one from the Vice President of the Marlton Control Commission ( the “MCC”) and one from the President of the MCC, which included a petition signed by residents opposed to the request. These were not included in the record for reasons noted, *supra*.

The Technical Staff ultimately recommended approval with conditions (addressed below), reasoning in pertinent part as follows:

The Growth Policy Map places this application in the Established Communities, as defined by Plan 2035. Established communities are existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers. These areas are considered most appropriate for context-sensitive infill and low-to medium-density development. Plan 2035 recommends maintaining and enhancing existing public services (police and fire/EMS), community facilities (such as libraries, schools, park, and open space), and infrastructure (such as sidewalks) to ensure that the needs of existing residents are met (page 20).

The Subregion 6 Master Plan and SMA [recommend] Residential Medium-High land uses on the northern portion, and Mixed-Use land uses on the southern portion of the property. The master plan defines Residential Medium-High land use as ‘Residential areas between 8 and 20 dwelling units per acre and a mix of dwelling unit types including apartments,’ (page 40). Mixed-Use land use is defined in the master plan as “Areas of mixed residential, commercial, employment, and institutional uses. Residential uses are expected to dominate overall land use in the designated area and may include a range of unit types, “ (page 40).

The subject property (Parcel 102) is labeled as an activity center on Appendix C, p. 256 of the master plan. An activity center is defined as, 'A community focal point providing for the combination, rather than scatteration, of general retail, service, commercial, professional office, higher density housing, and appropriate public/quasi-public uses,' (p. 259). Parcel 102 is zoned as 'a comprehensive design zone, L-A-C, which would permit the mix of residential and commercial uses envisioned for this site. This comprehensive design zone would also allow for a specific design plan that could incorporate a high-quality design for the buildings and public spaces,' (p.209)....

The applicant states that the District Council failed to consider that the subject property was never issued a CDP or SDP hindering the property from reaching full development. Per Section 27-4205(c)(2) of the Zoning Ordinance, the first alternative criterion is that land within an L-A-C Zone is fully developed in accordance with an approved basic plan, CDP, or SDP prior to April 1, 2022.

The property was rezoned with the adoption of the Subregion 6 Master Plan and SMA. This amendment rezoned a portion of Parcel 102, which was split-zoned, from the C-2 Zone overlaid by the R-P-C Zone to the L-A-C-Zone.

Per Section 27-478 (a) of the prior Zoning Ordinance, properties in a comprehensive design zone require three-phase development plan review, the first of which is basic plan approval at the time of rezoning.... [T] prior Zoning Ordinance established specific planned community zones, which were comprehensive design zones under the prior Zoning Ordinance.

Section 27-538 of the prior Zoning Ordinance established the R-P-C Zone, which the subject property was placed in with the approval of A-6696, in 1969. This zoning approval included the Official Plan for Marlton, which was adopted by the Prince George's County Planning Board on July 13th, 1970. This plan is the original basic plan for Marlton. It included the subject property, and it established the general scale of development, and the proposed land uses for this large-scale planned community. Basic plans are valid indefinitely, as they establish the initial framework for development and place land into comprehensive design zones. The applicant acknowledges that the original basic plan remains valid....

The subject property did not receive a CDP or SDP approval under the prior Zoning Ordinance. Further, the subject property did not receive approvals that would permit access to the current Zoning Ordinance's grandfathering clause.

The applicant further contends that the pathway to development of the property is hindered due to procedural issues in the development process. The applicant states that the property never received approval of a CDP or SDP under the prior Zoning Ordinance, and due to this, the current Zoning Ordinance is not clear on the pathway to development. The applicant contends the District Council made a mistake placing the property within an LCD zone, because all required approvals were not issued prior to the rezoning.

There are conflicting development plan requirements. The LCD portion of Parcel 102 requires development in accordance with its prior L-A-C Zone, which would require a basic plan amendment, CDP, PPS, and SDP/detailed site plan....

Staff agree that procedural issues exist regarding the development approval process for the subject property; however the assertion that the District Council failed to consider that the subject property was never issued a CDP or SDP to facilitate the full development of the property does not constitute a 'mistake'....

The applicant alleges the District Council failed to consider that the subject property was not within a comprehensive design zone at the time a basic plan amendment was approved.... The applicant states that the property was within the C-2 zone, and therefore, ineligible to be rezoned to LCD.

As established above, the Official plan for Marlton was approved with A-6696, in 1969, which placed the subject property in the R-P-C zone. The applicant contends that the property was in the C-2 zone when a basic plan amendment was approved. A 19.91-acre portion of the property was rezoned from C-2 to L-A-C under the Subregion 6 Master Plan and SMA. Therefore, at the time of the latest CMA, adopted in November 2021, the property was within a comprehensive design zone. Staff did not find any mistake in this regard....

The District Council considered the Official Plan of Marlton, which identified the subject property as a Local Activity Center. In addition, the Subregion 6 Master Plan and SMA was considered, which incorporates the Official Plan of Marlton in Appendices B, C, and D. The purpose of the LCD Zone is to recognize comprehensive design zones established prior to April 1, 2022, which includes capturing and bringing forward any development approvals, conditions and requirements approved by valid basic plan....

Staff find that the applicant's argument that the subject property was not in a comprehensive design zone at the time of the most recent sectional map amendment is not justified....

However, staff find that a substantial change in the character of the neighborhood has occurred since the last comprehensive rezoning, making the current zoning inappropriate. The most recent sectional map amendment was approved in 2013. On July 15, 2021, M-NCPPC's Transportation Planning Section requested that the County Council initiate a new master plan of transportation. The County Council approved the initiation on September 21, 2021. It wasn't until January 30th, 2025, that permission was granted to print the resulting Go Prince George's plan which was published on February 27 2025, and is currently under public review and comment. This plan is not expected to be fully adopted until 2026. Therefore, the decision to downgrade Heathermore Boulevard's road classification and maintain its dead-end status occurred after the approval of the most recent sectional map amendment. In addition, the sale of 537 acres of land to M-NCPPC was finalized in 2024, also after the adoption of the most recent sectional map amendment. Staff also note that a more relaxed standard is applied by the Maryland courts when the request is to rezone the property within the

same Euclidean category to another ... as opposed to different categories..... Here, the existing L-A-C zoning permitted approximately 19.91 acres to be developed with a maximum residential density of 15 dwelling units per gross residential acre. The requested zoning (RMF-12) will allow 12 dwelling units per acre of net lot acreage for townhouse dwelling units. The proposed change in zoning does not provide a higher density than allowed by the current zone....

Staff find that substantial change has occurred in the character of the neighborhood after the adoption of the last comprehensive rezoning, making the current LCD zone inappropriate for the community.

(Exhibit 27, pp. 6-13)

## **APPLICABLE LAW**

(1) The District Council must apply the decision standards found in Section 27-3601(e) of the Zoning Ordinance, below. I have enclosed the entire Section for informational purposes (omitting a chart):

27-3601. Zoning Map Amendment (ZMA)

**(a) General**

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

**(b) Applicability**

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

**(1)** Under no circumstance shall a zoning map amendment be approved to reclassify lands wholly or partially within the Safety Zones of the MIO Zone into the following zones: any Transit-Oriented/Activity Center base zone, any Planned Development (PD) zone, or the RMF-12, RMF-20, RMF-48, IE, CGO, CN, or CS zones.

**(2)** Under no circumstance shall a zoning map amendment be approved to reclassify lands to any of the following zones: RMH, LCD, LMXC, or LMUTC.

**(3)** No application shall be filed requesting more than one zone.

**(c) Zoning Map Amendment Submittal Requirements**

**(1)** The zoning map amendment application shall be submitted to the Planning Director.

- (2)** Zoning map amendment plats and site plans shall be prepared by a licensed professional engineer, architect, landscape architect, or land use planner.
- (3)** Upon filing the application, the applicant shall pay to the Planning Board a fee to help defray the costs related to processing the application.
- (4)** If more than 1 drawing is used, all drawings shall be at the same scale (where feasible).
- (5)** A zoning map amendment application shall include the following:
  - (A)** A signed application form, which shall include:
    - (i)** The name, address, and telephone number of the applicant, and an indication of the applicant's status as contract purchaser, agent, or owner;
    - (ii)** The street address of the property, name of any municipality the property is in, and name and number of the Election District the property is in;
    - (iii)** The name, address, and signature of each owner of record of the property. Applications for property owned by a corporation must be signed by those officers empowered to act for the corporation;
    - (iv)** The name, address, and telephone number of the correspondent;
    - (v)** A statement listing the name, and the business and residential addresses, of all individuals having at least a five percent (5%) financial interest in the property or the contract purchaser(s);
    - (vi)** If any owner or contract purchaser(s) is a corporation, a statement listing the officers of the corporation, their business and residential addresses, and the date on which they assumed their respective offices. This statement shall also list the current Board of Directors, their business and residential addresses, and the dates of each Director's term. An owner that is a corporation listed on a national stock exchange shall be exempt from the requirement to provide residential addresses of its officers and directors; and
    - (vii)** If the owner or contract purchaser(s) is a corporation (except one listed on a national stock exchange), a statement containing the names and residential addresses of those individuals owning at least five percent (5%) of the shares of any class of corporate security (including stocks and serial maturity bonds).
  - (B)** Four copies of an accurate plat, prepared, signed, and sealed by a registered engineer or land surveyor, which shall show:
    - (i)** The present configuration of the property, including bearings and distances (in feet) and the total area of the property (in either acres or square feet);
    - (ii)** The property's lot and block number, subdivision name, and plat book and page number, if any; or a description of its acreage, with reference to liber and folio numbers;
    - (iii)** The names and owners of record, or subdivision lot and block numbers, of adjoining properties;

- (iv) The name, location, distance to the center line, and right-of-way width of all abutting streets. If the property is not located at the intersection of 2 streets, the distance to, and the name of, the nearest intersecting street shall be indicated;
  - (v) A north arrow and scale (no smaller than 1 inch equals 400 feet);
  - (vi) The total area of the property (in either square feet or acres);
  - (vii) The location of all existing buildings on the property; and
  - (viii) The subject property outlined in red.
- (C) Four copies of the zoning map page on which the property is located, plotted to scale and outlined in red;
  - (D) A vicinity map;
  - (E) A copy of the applicant's informational mailing letter, list of addresses, and signed affidavit of mailing;
  - (F) Any required State Ethics Commission affidavits;
  - (G) A statement of justification detailing the legal basis by which the requested amendment can be approved, and any factual reasons showing why approval of the request will not be detrimental to the public health, safety, and welfare; and
  - (H) Any other pertinent information deemed necessary by the District Council, Zoning Hearing Examiner, or Planning Board.
- (d) Zoning Map Amendment (ZMA) Procedure**

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

**(1) Pre-Application Conference**

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

**(2) Pre- Application Neighborhood Meeting**

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

**(3) Application Submittal**

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

**(4) Determination of Completeness**

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

**(5) Staff Review and Action**

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

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

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

**(6) Scheduling Public Hearing and Public Notice**

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

**(7) Review and Recommendation by Advisory Board or Official**

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

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

- (D) At least thirty (30) days after receiving the Planning Board's recommendation, the ZHE shall provide notice, schedule, and conduct an evidentiary hearing on the application in accordance with Section 27-3412, Evidentiary Hearing, and make a recommendation. The ZHE shall issue its decision not more than 100 days after the date of its last hearing on the application. The ZHE shall, following the ZHE's Rules of Procedure, consider the original application, relevant support materials, the Planning Board's recommendation, the applicant's and any party of record's testimony and materials, and any public comments. At the conclusion of the hearing, the ZHE shall make a recommendation on the application in accordance with Section 27-3601(d), Zoning Map Amendment (ZMA) Decision Standards.
- (E) After the hearing is concluded and the record is closed, the ZHE shall prepare and serve upon all persons of record a written decision containing specific findings of basic facts, conclusions of law, and a recommended decision.

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

See Section 27-3409, Review and Decision by Decision-Making Body or Official.

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

**(9) Conditions of Approval**

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

- (A) The following conditions of approval are allowed:

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

**(10) Notification**

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

**(11) Post-Decision Actions**

**(A) Designation on Official Zoning Map**

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

**(B) Effect on Special Exceptions**

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

- (i) If, at the time of the rezoning, the approved use requires the approval of a special exception in the new zone, and the specific special exception requirements governing the use are the same in both zones, the special exception, as approved, shall remain in full force and effect.

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

**(C) Resubmitting Application**

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

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

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

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

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

**(f) Appeal**

The applicant or any aggrieved person of record may appeal file an action for judicial review with the Circuit Court within thirty (30) days of the decision.

(2) Applicant argues that a mistake was made by the District Council when it imposed the LAC Zone, in part, because the decision did not satisfy the following requirements found in Section 27-4205(c):

**Legacy Comprehensive Design (LCD) Zone**

**(1) Purpose**

The purpose of the Legacy Comprehensive Design (LCD) Zone is to recognize comprehensive design zones established prior to April 1, 2022 for which a Basic Plan, Comprehensive Design Plan (CDP), or Specific Design Plan (SDP) was approved prior to April 1, 2022 or for lands that were subject to a Zoning Map Amendment (ZMA) and Basic Plan for a comprehensive design zone that was pending prior to April 1, 2022, and was approved pursuant to Section 27-1700, Transition Provisions, after April 1, 2022.

**(2) Establishment of Legacy Comprehensive Design (LCD) Zone**

The LCD Zone includes all lands located within the following comprehensive design zones on April 1, 2022 for which a Basic Plan, CDP, or SDP was approved prior to April 1, 2022, if either 1) the land in the zone is fully developed in accordance with the approved Basic Plan, CDP, or SDP prior to April 1, 2022, or 2) the approved Basic Plan, CDP, or SDP remains valid in accordance with Section 27-1700, Transitional Provisions, on April 1, 2022:

- (A)** The Major Activity Center (M-A-C) Zone;
- (B)** The Local Activity Center (L-A-C) Zone;
- (C)** The Employment and Institutional Area (E-I-A) Zone;
- (D)** The Residential Urban Development (R-U) Zone;
- (E)** The Residential Medium Development (R-M) Zone;
- (F)** The Residential Suburban Development (R-S) Zone;
- (G)** The Village-Medium (V-M) Zone;
- (H)** The Village-Low (V-L) Zone; and
- (I)** The Residential Low Development (R-L) Zone.

The LCD Zone shall also include all lands that were subject to a Zoning Map Amendment (ZMA) for one of the above listed comprehensive design zones that was pending prior to April 1, 2022 and was approved for rezoning for which a Basic Plan was approved pursuant to Section 27-1700, Transitional Provisions, after April 1, 2022, as the appropriate replacement zone to the prior comprehensive design zones.

**(3) Legacy Comprehensive Design (LCD) Zone Procedures, Standards, and Permitted Uses**

Development within the LCD Zone shall comply with the applicable approved Basic Plan, CDP, and SDP, and with the procedures and standards applicable in the zone listed in Subsections (2)(A) through (2)(I) above in which the development was located prior to its placement in the LCD Zone, in accordance with Section 27-1700, Transitional Provisions. Uses permitted in the LCD Zone shall comply with the uses permitted in the zone listed in Subsections 2(A) through 2(I) above in which the development was located prior to its placement in the LCD Zone....

**Change or Mistake**

(3) There is a presumption of validity accorded comprehensive rezoning and the presumption is that at the time of its adoption the District Council considered all of the relevant facts and circumstances, then existing, concerning the land in question. Howard County v. Dorsey, 292 Md. 351, 438 A.2d 1339 (1982). *Strong* evidence of mistake and/or evidence of a *substantial* change in the character of the neighborhood are required to overcome the presumption. Pattey v. Board of County Commissioners for Worcester County, 271 Md. 352, 317 A. 2d 142 (1974); Clayman v. Prince George's County, 266 Md. 409 (1971); City of Hyattsville v. Prince George's County Council, 254 Md. App. 1, 42 (2022). It has been held that a more liberal standard of "change in the character of the neighborhood" can be applied when the request is to rezone a property from one residential zone to another, as requested under the instant facts. See, Tennison v. Shomette, 38 Md. App. 1, 379 A.2d 187 (1977). The burden of proof is the Applicant's to bear. (Anne Arundel County v. Maryland National Bank, 32 Md. App. 437, 361 A.2d 134 (1975))

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

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

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

(6) In Clayman v. Prince George’s County, 266 Md. 1972, the Court of Appeals (since renamed the Supreme Court) held that the “neighborhood” must be the immediate neighborhood of the subject property and the change must have occurred subsequent to the time of the most recent comprehensive rezoning.

(7) In Rockville v. Stone, 271 Md. 655, 661-662, the Court sustained the City’s finding of change in the character of the neighborhood, citing Rockville v. Henley, 268 Md. 469, 302 A.2d 45 (1973):

‘The present portrait of the neighborhood sharply contrasts with that painted for this court in England v. Rockville (citations omitted) .... The 8 1/2% increase in population in recent years, the construction of 40 new residences, and the demolition of four or more buildings which could have been described as eyesores lays to rest the 1962 prediction of doom forecast in England for the residential character of this area. The community’s revitalization, aided by a ... federal grant for public improvements, has effectively turned the tide and, although at one time this area may have flirted with industrial development, it is now a viable residential community.’ *Id.* at 475.

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

## **CONCLUSIONS OF LAW**

(1) Pursuant to Section 27-3601 (e), Applicant has the burden of showing either a substantial change in the character of the neighborhood, a mistake in the original zone for the land subject to the request which has never been the subject of an adopted

sectional map amendment (inapplicable under the instant facts), or a mistake in the current sectional map amendment.<sup>3</sup> Applicant's argument is predicated on both a mistake in the most recent sectional map amendment for the area in which the subject property is located and a change in the character of the neighborhood surrounding the subject property, although its change argument is the primary one proffered.

(2) Applicant believes it was a mistake for the District Council to have rezoned the portion of Parcel 102 at issue to the L-A-C Zone, and to later rezone to the LCD Zone as part of the Countywide Map Amendment, for the reasons noted above. However, I cannot conclude that the District Council made a mistake by failing to rezone the property and would adopt the Technical Staff's reasoning for this position. As noted in Prosser, above, "in order to find legal mistake, there must be evidence that assumptions or premises relied on by the County Council were invalid...[and] [t]his situation is different from the exercise of bad judgment based on complete and accurate information." Applicant did not point to any incorrect premises that the District Council relied on, other than its decision to impose the L-A-C zoning at the time of the 2013 SMA, and to change that zoning to the LCD Zone upon adoption of the Countywide Map Amendment. If that decision was incorrect, it falls into the category of bad judgment based on accurate information, which cannot support a finding of mistake.

(3) The 2024 restricted sale of the extensive acreage owned by the Girl Scouts of America to MNCPPC in the area referred to as East Marlton greatly reduced the number of residential dwellings to be constructed within the planned community, and the extension of Heathermore Boulevard to the homes in East Marlton was scrapped, causing that main thoroughfare to dead-end just a few feet from the subject property. As noted by Mr. Steere, the expert market analyst, and Mr. Dunn, the expert land planner, both events will further reduce the likelihood of attracting commercial development to this site. The likelihood is further diminished by the plethora of accessible retail close to the Marlton community. These changes are akin to those found apposite in Rockville v. Stone, cited in Clayman, above, although it is a reverse of the Court's discussion – the homes failed to materialize, and Heathermore Boulevard will not be extended so these changes that have occurred in the "immediate" neighborhood of the subject property, and the "present portrait" of this neighborhood clearly contrast with what existed in 2013. Moreover, the requested rezoning is to another residential zone, so a more liberal standard of change or mistake can be applied. (Tennison, *supra*) I, therefore, agree with Applicant and the Technical Staff that sufficient evidence of change in the character of the neighborhood exists to support the instant rezoning request.

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<sup>3</sup> The Maryland Supreme Court held that the recent Countywide Map Amendment (that took effect in 2022) was not a comprehensive rezoning due to procedural mistakes. County Council of Prince George's County v. Robin Dale Land, LLC, 491 Md. 105 (2025). As a result, change or mistake in the 2013 Subregion 6 Sectional Map Amendment (the most recent SMA) must be established by the Applicant.

(4) Finally, while not a required finding for the approval of the request, it is important to note that although those opposed were rightly concerned with the problems that might occur if the additional townhouses are allowed, the number of townhouses proposed by Applicant is lower than the density/intensity that can be developed on the site under its present zoning. Traffic, buffering of uses, compatibility of architecture with the existing neighborhood, adequacy of public facilities, etc., will all be addressed at future hearings on the required applications to be filed if the rezoning is approved, and all of those opposed Persons of Record in this case will be provided notice of those hearings and the opportunity to be heard.

### **RECOMMENDATION**

I recommend APPROVAL of ZMA-2024-005, subject to the following conditions:

1. At the time of Detailed Site Plan review, the Applicant shall remove the area of this application from Type 2 Tree Conservation Plan TCP2-039-095-03 through a TCP2 revision and submit a separate TCP2 that covers the area of the Detailed Site Plan application.
2. At the time of Preliminary Plan of Subdivision review, the Applicant shall revise the traffic impact analysis to provide Synchro and/or SimTraffic modeling to include all intersection modeling geometry features to help determine if capacity is met, as well as queue lengths.