

IN RE: * **BEFORE THE**
CORRIDOR SQUARE LLC * **HOWARD COUNTY**
PETITIONER * **ZONING BOARD**
* **Case No.: ZB-1130M**
*

PETITIONER’S CLOSING MEMORANDUM

Corridor Square, LLC (“Petitioner”), by and through its undersigned counsel, and at the request and direction of the Howard County Zoning Board Hearing Examiner, files this Closing Memorandum summarizing the testimony and exhibits justifying the approval of Petitioner’s Mistake Rezoning Request and Documented Site Plan in ZB-1130M. In support thereof, Petitioner states as follows:

INTRODUCTION

Petitioner is seeking to amend the Zoning Map of Howard County, Maryland (the “Zoning Map”) to reclassify approximately 3.91 acres of land from the TOD (Transit Oriented Development) Zoning District to the B-2 (Business: General) Zoning District. The rezoning request includes a Documented Site Plan (the Plan) as permitted under Section 100.0.G.2 of the Howard County Zoning Regulations (the “HCZR”) for motor vehicle fueling facility, convenience store, and car wash uses.

STATEMENT OF FACTS

Petitioner presented testimony and exhibits through (1) Joseph W. Rutter, who is the former Director of the Howard County Department of Planning and Zoning and is a member of the American Institute of Certified Planners; (2) Christopher Malagari, who is a Professional Civil Engineer licensed through the State of Maryland and the President of Benchmark Engineering,

Inc.; (3) Mickey Cornelius, who is a Professional Traffic Operations Engineer and a Certified Road Safety Professional; (4) Brian Reetz, who is a Maryland Licensed Professional Landscape Architect; and (5) Jamie Fraser, who is the Vice President of Development for the Petitioner and holds a degree in civil engineering. The following is a summary of the facts elicited through the testimony and exhibits:

a. The Requested Rezoning Area & Subject Properties



(Copied from Petitioner’s Exhibit 21 – Existing Aerial of Rezoning Area).

The requested rezoning area is collectively 3.91 acres, more or less, and includes nearly 700 feet of underutilized and blighted Route 1 frontage between Dorsey Road (also known as Route 103) and Route 100. It is also located a little over 200 feet¹ from the on-ramp to the Route 100 interchange.

1. The Department Planning and Zoning’s Technical Staff Report (TSR) mistakenly indicates on the first page under “Location” that the Rezoning Area is located “2,000” feet west of the intersection of Route 1 and Route 100. The rezoning area, specifically Parcel 452, is located approximately 200 feet from the interchange with Route 100. This proximity is depicted on the

The rezoning area is comprised of the following 3 parcels that are collectively referred to herein as the “Subject Properties” or the “Site” and are shown and delineated by color on Sheet 2 of Petitioner’s Rezoning Plan, admitted into evidence as Petitioner’s (“Pet.”) Exhibit (“Ex.”) 1:

P/O Parcel 279, Portion of the Former Exxon, 7253 Washington Blvd., Elkridge, MD 21075 (Blue Area Shown on Sheet 2 of Rezoning Plan):

The rezoning area is approximately .46 acres. Petitioner is the fee-simple owner. The parcel was previously developed as an Exxon gas station and is currently vacant, other than the remaining impervious, surface parking areas from the former Exxon use.

P/O Parcel 107, Lots 51-53, P/O Lots 56 & 57, the Front Portion of the Memorial Park - 7239 Washington Blvd., Elkridge, MD 21075 (Green Area on Sheet 2 of the Rezoning Plan):

This is the front portion of the Rosa Bonheur Memorial Park (the “Memorial Park”). The area requested to be rezoned is approximately 2.06 acres. It is owned by Memorial LLC, which has authorized the Petitioner to submit the instant request as evidenced by the Property Owner Authorization form filed with the Petition. Petitioner is the contract purchaser of the entirety of Parcel 107, which also includes Lot 58, 59, 60, 61, 62, and 63. To be clear, these additional lots are not in the proposed development area.

The Memorial Park is a blighted and abandoned pet cemetery that has not been in operation for over 20 years. It is currently improved with 3 existing structures that are dilapidated, not currently in use, and proposed to be removed. *See*, Pet Ex. 4, p. 5. The Memorial Park opened in or around the 1930s for animal burials. In or around the 1970s, William Green purchased the Memorial Park and began offering human burials. He, however, never received licensure or

aerial image on p. 1 of the TSR, on the Existing Aerial Image copied above, and on Petitioner’s Rezoning Plan.

approval for human interments. He also failed to maintain or purposefully destroyed all records related to interments.

Consumers filed numerous complaints against Mr. Green for his operation of the Memorial Park that included mishandling of remains, discarding remains improperly, failing to delivery plot markers, and mixing up ashes. Mr. Green's conduct and operation was so nefarious that in the late 1990s the County pursued criminal and civil charges against him for theft and deceptive trade practices. Mr. Green was ultimately convicted and went bankrupt. The Memorial Park was foreclosed on and sold. There have not been any interments since the early 2000s and the property has sat in a deteriorated and blighted condition since that time.

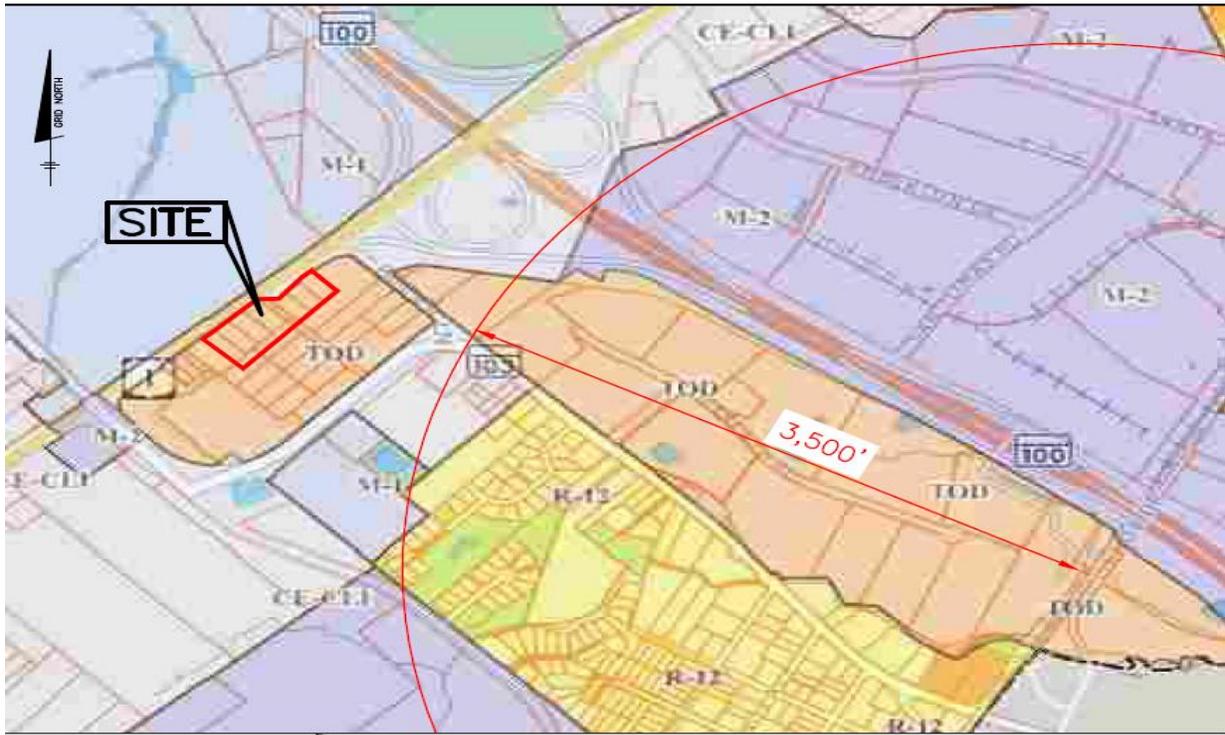
Parcel 452, Stockpile Yard - 7223 Washington Blvd., Elkridge, MD 21075 (Teal area shown on Sheet 2 of the Rezoning Plan Plan):

The rezoning area is approximately 1.39 acres. Petitioner is the fee-simple owner. It is currently undeveloped and used as a stockpile yard.

b. Adjacent Uses & Surrounding Area

The defining physical characteristic of the Subject Properties is their frontage on and proximity to Route 1. Adjacent uses include a mix of industrial, automotive, and retail uses. To the northeast of the Subject Properties (adjacent to Parcel 452) is an industrial property currently used for trailer or container storage, and the Route 100 interchange. To the direct southwest of the Subject Properties (adjacent to Parcel 279) is an auto repair and body shop use. Uses further southwest on Route 1 include general retail business, automotive, and industrial uses such a fast food, motor vehicle fueling, truck storage, office park, container storage, and car and auto part storage. *See*, Pet. Ex. 3, p.1 (showing an aerial view of uses and conditions southwest of the Subject Properties).

c. Distance to the MARC Station



(Copied from Pet. Ex. 1, Sheet 2)

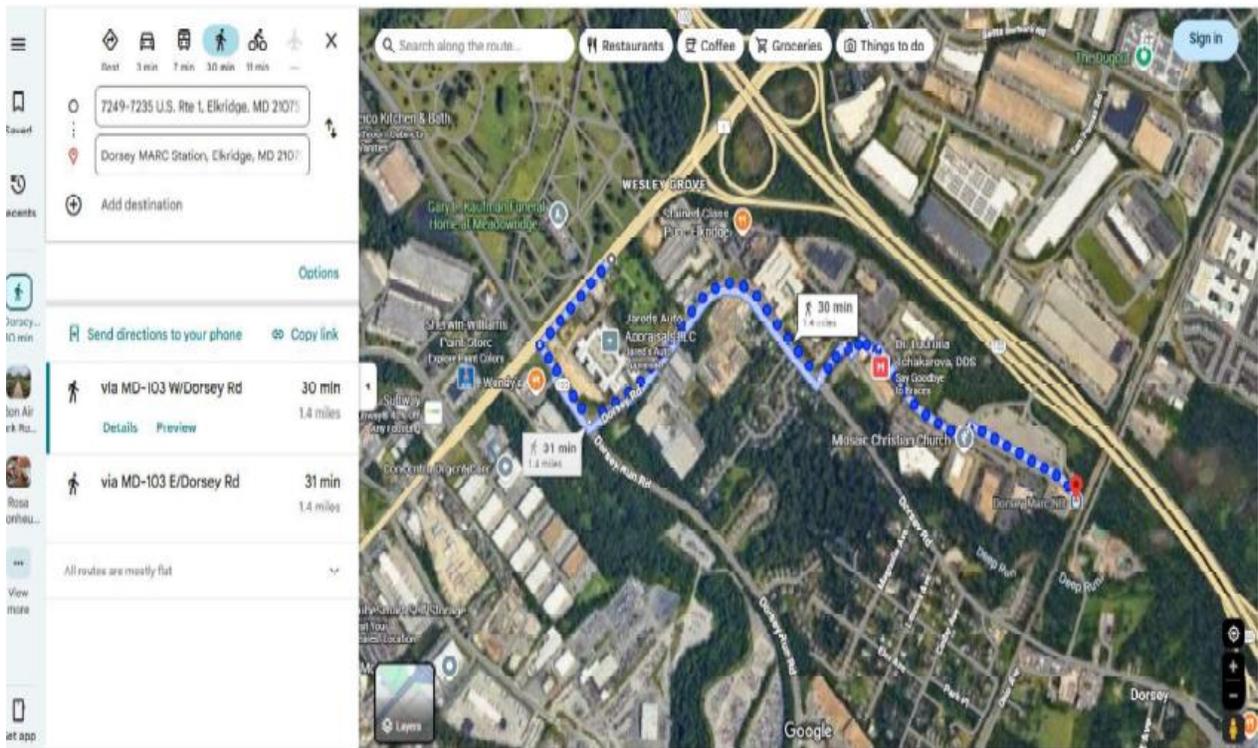
The closest MARC Station to the Site is the Doresy MARC Station. It is undisputed in this case that the requested rezoning area is greater than 3,500 feet from the MARC Station. In fact, the whole of the Memorial Park is located more than 3,500 feet from the MARC Station. This fact has been conceded by the Department of Planning and Zoning (“DPZ”) and Zoning Counsel.

d. Existing Route 1 Frontage and Conditions:

The Site’s existing Route 1 frontage lacks any convenient and safe pedestrian connectivity to adjacent and surrounding uses, including the MARC Station and the RTA bus stops located on the other side of Route 1 and Route 103. *See*, Pet. Exs. 4, 6 & 24. The existing Route 1 conditions are shown and depicted in Pet. Ex. 4. Image 2 of Pet. Ex. 4 is a view looking northeast on Route 1 and depicts the frontage of the existing auto repair use in the foreground and the former Exxon

property (Parcel 279) in the background. As shown, the properties currently front directly on the shoulder of Route 1 with no continuous sidewalks, walking paths, or bike lanes. Image 3 of Pet. Ex. 4 is a view looking northeast on Route 1 in front of the Memorial Park (Parcel 107). As shown, the property fronts directly on the right traffic lane of Route 1 without any shoulder separation. There are no sidewalks, walking paths or bike lanes. In addition, the existing retaining wall and utilities are in close proximity to the right traffic lane creating a hazardous condition. Image 4 of Pet. Ex. 4 is a view looking northeast on Route 1 near the Stockpile Yard (Parcel 452). Again, the property fronts directly on the right traffic lane of Route 1 without any sidewalks, walking paths, on a bus lane.

e. Walking Distance to the MARC Station.



(Copy of Pet. Ex. 6)

Even assuming for purposes of argument that there is safe pedestrian connectivity along the Route 1 frontage, the walking distance from the Site to the MARC station is approximately 1.4 miles. A pedestrian would have to walk along the Route 1 shoulder or in the right traffic lane to the intersection of Route 1 and Route 103 (Dorsey Road). A pedestrian would then have to travel down Route 103 to Doresy Run Road where admittedly there are sidewalk connections. The pedestrian, however, would have to continue to Deerpath Road with intermittent sidewalk connections and walk down Deerpath Road, which has no sidewalks, to the MARC Station.

f. The Site is located in the Eastern Howard County Enterprise Zone

The Site is located within the Eastern Howard County Enterprise Zone, which is the first Enterprise Zone in Howard County and was created in on around January 2025. *See*, Pet. Ex. 13a&b. The objective is to focus local and State resources on the encouragement of economic growth. As indicated in the County’s January 28, 2025 press release, the zone and incentive align with the General Plan and the Route 1 Corridor Plan goals to attract private investment and spur redevelopment enhancing the attractiveness and economic value of the area. Notably, the Subject Properties are the only properties on this section of Route 1 (between Route 103 and Route 100) with the enterprise zone designation.

g. Petitioner's Proposed Uses



(Copy of Image from Pet. Ex. 1, Sheet 6.)

Petitioner is proposing a MVFF, convenience store, and car wash uses for the Site. The proposed convenience store is 6,200 square feet and will be located on the front portion of parcel 107. *See*, Pet. Ex. 1, Sheet 3. The six fuel dispensary locations (12 pumps) and canopy will be located on the front portion of Parcel 107 and on a portion of Parcel 279 (the former Exxon Parcel), which is adjacent to the existing auto repair shop use. *Id.* The car wash is proposed to be located on Parcel 452 (the Stockpile Yard). *Id.*

The proposed development will result in Route 1 frontage improvements that will unify Route 1 between Route 103 and Route 100. Proposed improvements include (1) widening of Route 1 to provide an additional lane, (2) contiguous sidewalk connections, and (3) a shared use pedestrian and bicycle path. *See*, Pet. Ex.1, Sheets 3, 6, and Pet. Ex. 18. Petitioner is also proposing a new signalized intersection between Parcel 279 and the adjacent auto repair use that will provide

direct access to the Site, improving current traffic conditions. *Id.* Further, Petitioner’s proposed redevelopment of these underutilized sites will provide added tax base and revenue to the County.

h. Proposed Preservation and Beautification of Remainder of the Memorial Park



(Copy of Image from Pet. Ex. 1, Sheet 23)

Petitioner is also proposing to preserve and beautify the majority of the Memorial Park. About one-third of the Memorial Park, over 4 acres², which is location of the vast majority of interred animal remains, and the location of all known human remains, is not within the proposed development area. In the event the instant Petition is approved, and Petitioner becomes the owner of the Memorial Park, Petitioner is voluntarily offering to place this 4 plus acres of the Memorial Park in preservation as noted on Sheet 2 of Rezoning Plan. Petitioner is also proposing to (1) provide new safe and convenient pedestrian and vehicular access to the Memorial Park for the general public to utilize at the new signalized intersection, (2) preserve and relocate the existing retaining wall and entrance sign located along Route 1 to the new entrance, (3) construct a

² This area is the remaining portions of Parcel 107, Lots 56 & 57, and all of Lots 58-61.

mausoleum and memorial in honor of all pets interred at the Memorial Park, and (4) provide landscaping beautification, maintenance and upkeep as shown and delineated on the Plan. *See*, Pet's Ex. 1, Sheets 18-22. Of importance, as admitted in cross-examination by Candy Warden, this preservation area is believed to be the location of the elephant from the Baltimore Zoo, the war horse, and the other "historic" or "famous" pets referenced in Ms. Warden's oral written and written testimony. To be clear, the proposed development area will not affect or disturb any of these burial sites.

Additional facts will be provided below as necessary.

ARGUMENT

I. The Council's Zoning of the Subject Properties to the TOD Zoning District During the 2013 CZMP Qualifies as a Mistake under Maryland Law.

Maryland case law holds that "the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid." *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). An "[e]rror [or mistake] can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension." *Id.* (emphasis added). Further, "in considering whether this presumption has been overcome a more liberal standard is applied when the property is being reclassified from one commercial subcategory to another than is applied when the reclassification involves a change from one use category to another." *Tennison v. Shomette*, 38 Md. App. 1, 5 (1977).

The Council zoned the Site TOD during the 2013 Comprehensive Zoning Map Process (the “2013 CZMP”) through the enactment of Council Bill 32-2013 (“CB 32”). The Subject Properties were previously zoned CE (Corridor Employment) – CLI (Continuing Light Industrial). During the 2013 CZMP, the then owners sought to have the Subject Properties reclassified to the CAC (Corridor Activity Center) zoning district. The Subject Properties were assigned the following 2013 CZMP Issue Numbers: 37.003 (Parcel 107, the Memorial Park); 37.007 (Parcel 452, the Stockpile Yard), 37.027 (Parcel 279, the Former Exxon). *See*, Pet. Ex. 7.

The Department of Planning and Zoning, and the Howard County Planning Board (the “Planning Board”) both rejected the CAC zoning classification and instead recommended the Subject Properties remain CE-CLI, but with an additional CR (Commercial Redevelopment) overlay. *See*, Pet. Ex. 8, p. 8 (highlighted). Of note, the CR zoning district permits the uses allowed in the POR (Planned Office Research), B1 (Business Local) , **and B2 (Business General Zoning District)** through the Optional Design Project (“ODP”) process. *See*, HCZR § 121.B.1. (emphasis added). This includes convenience store and car washes uses. In addition, the CR zone specifically permits motor vehicle fueling facilities through the ODP process. *See*, HCZR §121.0.E.1. In fact, as testified to by Mr. Rutter, the only CR development to occur in the County since the 2013 CZMP is the Royal Farms and CVS development located on Route 1 and Montevideo Road. That MVFF and retail use was permitted through the CR’s ODP process. As such, all of Petitioner’s proposed uses would have been possible on the Subject Properties under the Planning Board and DPZ’s CR recommendation.

Despite DPZ and the Planning Board’s recommendation, on July 1, 2013, weeks before the final vote on CB-32, then Councilmember Calvin Ball introduced Amendment #48, which changed the Site from the CE-CLI/CR zoning district to the TOD zoning district. *See*, Pet. Ex. 9. On July

25, 2013, the Council voted to enact CB-32, presumably with Amendment #48, unamended (as will discussed below), rezoning the Subject Properties to the TOD zoning designation.

The Council's decision to zone the Site TOD represents a mistake under Maryland case law because (1) the Site is located outside of the 3,500 foot required radius from a MARC station and there is no safe and convenient pedestrian access to the MARC Station or other public transit links; (2) the Council rezoned the Site under the false presumption that it was within 3,500 feet of the MARC and could be developed as a single TOD development; and (3) Dr. Ball directed that Amendment 48 be amended to add the CR overlay back on the Subject Properties which was failed to be done.

A. The Site does not meet the legislative purpose of the TOD Zone.

- 1. The TOD's purpose Statement requires the Site to be located within 3,500 feet of a MARC Station and have safe and convenient pedestrian access for commuter using the MARC and other public transit links within the 3,500 foot MARC Station threshold.**

The TOD zoning district was created during the 2004 CZMP along with the CE-CLI and CAC zoning districts to be used in conjunction with the Route 1 manual and encourage redevelopment of properties along Route 1. *See*, TSR at 8. The Council provided location requirements in each purpose statement tying the districts to Route 1. The CAC district's purpose statement provides that CE developments "should be located **near** to Route 1 and close to residential communities that will benefit from a pedestrian-oriented local business area." HCZR § 127.5.A. (emphasis added). Similarly, the CE district's purpose statement provides that it is "intended to encourage the development and redevelopment of employment land **near** U.S. Route 1." HCZR § 127.2.a. (emphasis added). For the TOD zoning district, the Council, however, decided to enact a more stringent and specific locational requirement.

The TOD's legislative purpose statement provides two qualifiers for TOD properties that must be satisfied. First, the TOD zone must be located within 3,500 feet of a MARC Station -- full stop. "The TOD District provides for the development and redevelopment of key parcels of land **within 3,500 feet** of a MARC Station." HCZR § 127.4.A. (emphasis added). This first declaratory statement is unequivocal. Second, the TOD is "intended to encourage the development of multi-use centers combining office and high-density residential development that are located and **designed for safe and convenient pedestrian access by commuters using the MARC Trains and other public transit links.**" *Id.* (emphasis added).

Importantly, the second sentence's reference to "other public transit links" does not render the 3,500 foot distance limitation in the opening declaratory sentence void. The two sentences must be read together and harmonized as whole. "Whenever possible, the various parts of a statute should be reconciled and harmonized to be consistent with the statute's object and scope." *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 122 (2014) (citations omitted). When read together, the reference "to other public transit links" does not void the clear 3,500 foot distance limitation from a MARC Station in the opening sentence. In harmonizing the two sentences, the purpose statement requires the TOD zoning district to be located within 3,500 feet of MARC station and, within that 3,500 foot distance limitation, the TOD should encourage development of multi-use centers that are located and designed for safe and pedestrian connectivity to MARC trains and "other public transit links."

Indeed, if the reference to "other public transit links" were interpreted to mean that TOD zoning could be located anywhere there is a bus stop, the zoning district would be permitted virtually anywhere in the County. Such as result would be wholly illogical given the intent and purpose of limiting TOD development to MARC Stations. It would also render the first sentence

and the 3,500 foot distance requirement superfluous. Maryland law requires that a “statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense.” *Lockshin v. Semsker*, 412 Md. 257, 276 (2010) (citations omitted). “Moreover, whenever possible, the statute should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory.” *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 302 (2001) (citations omitted).

Unlike the CE and CAC districts, the Council deliberately chose to place a 3,500-foot distance requirement on the TOD from MARC Stations. The Council could have left the first sentence out and simply stated that the TOD was for properties located near Route 1 that have safe and convenient pedestrian access to the MARC Station and other public transit links. The Council, however, chose to include the distant requirement as the very first purpose of the TOD and the regulations should not be interpreted to render the Council’s clear intent meaningless.

Further, this is not a novel position taken by the Petitioner. Julie Sauer, Division Chief for the Public Service and Zoning Administration, within DPZ, stated during cross examination that TOD zoning would be inappropriate in a location that is not within the 3,500 feet of a MARC Station. She specifically stated that a property’s close proximity to a bus stop, such as the RTA stops located on the other side of Route 1 and Route 103 (See, Pet. Ex. 24), alone does not satisfy the intent and purpose of the TOD zoning district. Chief Sauer’s, and DPZ’s position, should be given considerable weight.

Maryland law requires that “an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 539 (2017). Indeed, “the expertise of the agency in its own field should be respected.”

Marzullo v. Kahl, 366 Md. 158, 172 (2001). Moreover, the “Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration” *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 459 (2002) (quoting *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).

In addition, the plain reading of the regulation requires the 3,500-foot measurement to be taken from the MARC station itself, not the MARC station property line or the property line of the adjacent parking lot owned by the State. It is a primary principle of statutory construction, that the plain language of the statute controls. *Lipitz v. Hurwitz*, 435 Md. 273, 284 (2013) (“We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.”).

Here, the Council specifically chose the word “MARC Station” not property line or parking lot. The zoning regulations are replete with examples of the Council requiring measurements from property lines or zoning district boundaries. For example, setbacks are often measured from property lines or a public street rights-of-way. The definition for “setback” is “the distance between a structure or use and a boundary such as a lot line, a project boundary, right-of-way line, or zoning district boundary.” HCZR § 103.0. The Council could have easily stated that the TOD is meant for properties “setback” 3,500 feet from the MARC Station *property*. The Council, however, chose to impose a 3,500 foot location requirement from the Station, not a setback or distance measurement from property lines or parking lots. The Council’s plain usage of the word “MARC Station” should not be improperly expanded upon.

In addition, words that are not defined in the Howard County Zoning Regulations “shall have the definition provided in any standard dictionary” HCZR §103.0. The Merriam-Webster

dictionary defines “Station” as “a stopping place: such as (1) a regular stopping place on a transportation route (2) the **building** connected with such a stopping place.” *Station*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/station> (last visited March 10, 2026) (emphasis added). In addition, the Collins English Dictionary defines “Station” or “Train Station” as “a **building** by a railroad track where trains stop so that people can get on or off.” *Station*, [collinsdictionary.com/us/dictionary/english/station](https://www.collinsdictionary.com/us/dictionary/english/station) (last visited March 10, 2026) (emphasis added).

Moreover, measuring the 3,500-foot distance requirement from the parking lot, especially the corner of the outer parking lot, would be wholly illogical given the purpose and intent of the TOD zoning district. It is undisputed that the TOD is “intended to encourage the development of multi-use centers combining office and high-density residential development that are located and designed for safe and convenient **pedestrian access** by commuters using the MARC Trains and other public transit links.” HCZR § 127.4.A. (emphasis added). The purpose is to encourage a high density mix-use development that will allow people living, working or visiting that development to **walk** to the MARC Station for public transportation, not walk to the outer parking lot. Indeed, as testified to by Mr. Malagari, the distance from the outer parking lot to the MARC Station is approximately 4 ½ football fields or over 1,400 feet. Because the purpose is to provide a distance that is “walkable” to the transit itself, it would be illogical to measure the distance from the parking lot instead of the station building where the transit connection is located. And again, Petitioner’s distance measurement is not novel. Chief Sauer testified that DPZ concurs that the measurement is taken from the MARC Station building not the parking lot. Further Chief Sauer acknowledged that the Route 1 Manual’s “Concept Plan for the TOD District” separates the Station from adjacent parking lots uses. *See*, Pet. Ex. 26, Figure 2.10.

Lastly, as testified to by Mr. Fraser and Mr. Malagari, the State is seeking to develop the parking lot adjacent to the MARC Station with its own TOD oriented development. And as testified to by Mr. Corneilus, the parking lot in question does not have vehicular connection to Deerpath Road or Doresy Run Road. It can only be accessed by Route 100 further demonstrating that it should not be used as the measuring point for the TOD locational requirement.

2. The Site is not within 3,500 feet of the MARC Station and does not provide safe and convenient pedestrian access to the MARC station or other public transit links within that 3,500 foot MARC Station threshold.

The Site does not meet the locational requirement for the TOD zoning district. Locational requirements are not uncommon in the Zoning Regulations. For example, the purpose statement for the R-A-15 district specifically states that the purpose is “to provide for moderate density apartment and single-family attached dwelling unit developments in appropriate locations which generally adjoin or are adjacent to an arterial or collector highway, or adjoin a non-residential zoning district...” HCZR § 112.0A. And as indicated above, both the CE and CAC zoning districts provide that they should be located near Route 1. *See*, HCZR 127.2 & 127.5.

Maryland Courts have sustained a mistake in zoning when the property’s location fails to meet the purpose for the zoning district as demonstrated through evidence at hearing. In *Tennison v. Shomette*, the subject property had originally been rezoned commercial to permit construction of a motel. *Tennison v. Shomette*, 38 Md. App. 1, 2-4 (1977). Prior to the construction of the motel, the county adopted a new comprehensive zoning ordinance reclassifying the property as C-1, a designation that did not permit a motel use. *Id.* At the hearing, the petitioner’s expert planner testified that the property’s location and lack of connectivity to neighboring residential uses was inconsistent with the purpose of the C-1 zone. *Id.* at 4. He went on to testify that the property’s location to a proposed major interchange and lack of proximity to residential uses fit with the

purpose of the C-2 district making it ideal for a motel use. *Id.* at 4-5. The county’s planning commission concurred with the petitioner’s planning expert. *Id.* 5-6. The Court upheld the finding of mistake based on the planning expert’s testimony: “Mr. Parker stated that the property was not suitable for a C-1 classification. This testimony was supported by factual evidence, **and thus serves as strong evidence of mistake.**” *Id.* at 8. (emphasis added).

Nor is it unprecedented for the Zoning Board to find a mistake in comprehensive zoning based on the location of the property not meeting the locational requirements for underlying zoning district. Indeed, the Zoning Board has found a mistake when the purpose of the zoning district cannot be met because of the location of the property. For example, in *Music Fair Road Limited Partnership*, ZB 1075M (Decision & Order June 9, 2009) the petitioner sought a reclassification of the subject parcel from the CE-CLI zoning district to the POR zoning district. The legislative purpose statement for the CE zone states that the zone is intended to “encourage consolidation of fragmented parcels.” HCZR § 127.2.A. The alleged mistake was based in part on the subject property’s inability to comply with CE purpose to encourage the consolidation and assembly of underutilized parcels near US 1 for redevelopment. The location of the property at issue was isolated from other parcels and could not be consolidated. ZB 1075M at 4. The Zoning Board found a mistake in the prior comprehensive zoning based, in part, on the “failure to recognize that the subject property could not meet the main purpose of the CE District, to encourage consolidation...” *Id.*

Similarly, in both *Bozzuto Homes, LLC*, ZB-1190M (Decision & Order November 6, 2017) and *Meadowood Maple Lawn, LLC*, ZB 1122M (Decision & Order August 17, 2020), the respective petitioners sought rezoning of the properties from the RR (Rural Residential Zoning District) to the R-SA-8 zoning district. The petitioners in both cases argued that the RR zoning

district was designated for properties located in the Rural West, outside of the Planned Service Area. And that the properties at issue were located inside the Planned Service Area. In both cases the Zoning Board found a mistake and stated that “the basis for this conclusion is that the Property is within the PSA but is zoned RR, which is a Rural West zoning district that is intended for properties outside of the PSA.” *See*, ZB-1190M at 5 and ZB-1122M at 5.

Likewise, here the Site’s location does not conform with the zone’s purpose. As indicated above, the Subject Properties are located greater than 3,500 feet from the MARC Station. *See*, Pet. Ex. 5, Ex. 1, at Sheet 2. This should automatically disqualify the Site from the TOD district. Of note, Chief Sauer, and DPZ, concur that Petitioner’s measurements are correct and that the Site is greater than 3,500 feet from the MARC Station. *See also* TSR at 8 “Staff concurs the Property is outside of the 3,500-foot radius targeted for TOD” and Agency Comment from Office of Transportation attached to the TSR, “the Petitioner is correct—the site exceeds the distance threshold from the station.”

Moreover, given the Site’s direct frontage on Route 1, it is not suited for development as a multi-use center combining office and high-density residential development with safe and convenient pedestrian access to the MARC Station or other public transit links. First, as detailed above there is no safe pedestrian access to the MARC Station or other public transit links due to the lack of sidewalk connections, and the Site’s frontage on Route 1. Additionally, even assuming consistent sidewalks and safe pedestrian access to the MARC Station, the walk would be approximately 1.4 miles and take roughly 30 mins. *See*, Pet. Ex. 6. As testified to by Mr. Cornelius, “walking distance” is generally determined to be between a quarter of a mile to a half mile. The 1.4 mile walking distance to the MARC is nearly 3 times that distance.

In fact, as testified to by Mr. Rutter and Mr. Fraser, the only way to cut the walking distance, and provide safe and convenient pedestrian access consistent with the TOD, would be to develop the whole of the Memorial Park parcel as a traditional TOD high density development, like the neighboring Refinery Apartments. The development would have to front-on Doresy Run Road, instead of Route 1. This, however, would require the destruction of the entirety of the Memorial Park, specifically the location of the “famous” and “historical” pet remains, and the location of the known human remains. Petitioner’s limitation of the proposed rezoning and development area to only 3.91 acres and the Route 1 frontage would not result in such disturbance and destruction of the Memorial Park.

B. There is probative evidence that the Council mistakenly believed at the time of the rezoning that the Site was within 3,500 feet of the MARC Station and could be developed as a single TOD development.

As indicated above, Maryland case law holds that “the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid.” *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). Here, the Council premised the TOD designation on the belief that a portion of Parcel 107 was within 3,500 feet of the MARC Station.

Amendment 48 was introduced and discussed during the July 1, 2013 Council Work Session. Dr. Ball expressed during the work session that the Site qualified for the TOD district because a portion of it was within 3,500 feet of the MARC Station. *See*, Transcript Excerpt of July 1, 2013 Council Work Session, Zoning Counsel’s Exhibit 1.³ Specifically, Dr. Ball states that

³ Petitioner sought from the County the audio recording of the July 1, 2013 Council Work session prior to the February 25 and 26, 2026 hearings on this matter. The recording, however, was unavailable due to a County information technology (IT) issue making it impossible for Petitioner

Parcel 107, which he refers to as the pet cemetery, meets the TOD because it is located within the 3,500 feet from the MARC Station.

8 MS. TERRESA: Okay. Number 48, Dr. Ball.
9 MR. BALL: That was just the placeholder for that one
10 property that is slated to be CR, in case there's a problem
11 with CR down the road.
12 MS. TERRESA: And so, you're suggesting possibly TOD?
13 MR. FOX: One more time?
14 MR. BALL: Um hm. Remember the pet cemetery?
15 MS. TERRESA: Um hm.
16 MR. FOX: Yeah. Does it meet the TOD? I can't
17 remember.
18 MR. BALL: Thirty-five hundred feet I think it is and
19 it's, I think, half the property.
20 MR. FOX: I remember.
21 MS. TERRESA: Oh, I thought --
22 MS. MCLAUGHLIN: This is not the, this is all of the
23 pieces? And I can check that.
24 MS. TERRESA: Yeah, I thought they --
25 MS. MCLAUGHLIN: There's a lot of pieces, okay.

(Pet. Appendix 1, Transcript Excerpt of July 1, 2013 Council Work Session at p. 2.

to review and present during the hearings. After the hearings, Petitioner was informed the IT issue had been resolved and the recording was posted on the County's website and available for review. Petitioner had the relevant portion transcribed and requests the Hearing Examiner take judicial notice of the work session and supplement the record so the Zoning Board has a full and complete record before it. The full audio recording is now published on the County's website at the following link <https://howardcounty.granicus.com/player/clip/6610?redirect=true>. The 7-1-2013 Work Session Minutes, the Transcript Excerpt, and the emails indicating the recording was not available prior the hearings is attached hereto as Petitioner's Appendix 1.

In further discussion, then DPZ Director Marsha Mclaughlin indicates that Parcel 107 is farther than the definition of TOD and indicates that it might require an amendment “that would allow it to be a little bit further from the MARC station.” *Id.* at 3. Councilmember Ball responds that “a portion of its not further.” *Id.* Dr. Ball and Councilmember Fox then go on to indicate that TOD is appropriate only if the property is developed as a single TOD development. *Id.*

This transcript provides prohibitive evidence of a mistake in fact during the 2013 CZMP. The Council’s initial underlying premises for the change to TOD – that a portion of Parcel 107 is within 3,500 feet of the MARC station— is a factual mistake. It is a matter of undisputed fact, that the entirety of the Parcel 107 is more than 3,500 feet from the MARC Station. *See*, Pet. Ex.1, Sheet 2, and Pet. Ex. 5; TSR, and Chief Sauer’s testimony described above. In addition, the Council premised the TOD decision on the assumption that Parcel 107 could be developed as a single TOD development. This assumption is also incorrect.

First, Parcel 107 is not a single parcel, but a collection of lots, which the Council completely ignored. Moreover, the Parcel 107 lots cannot be reasonably consolidated to facilitate a single TOD development. As indicated above, and as is clear from the layout, consolidating all the lots that make up Parcel 107 and developing it as a single TOD would require the construction of a high-density mixed-use project with frontage directly on Doresy Run Road. This would result in the destruction of the entirety of the Memorial Park. Accordingly, the July 1, 2013 work session demonstrates that the Council’s reasoning for placing the TOD on the Site was premised on a mistake of fact --- that a portion of the Memorial Park was located within the TOD --- and the invalid assumption that the entire area that was rezoned to TOD could be developed as a single TOD development.

C. Despite the Council's direction to Amend Amendment 48 to include the CR overlay on the Site, the CR Overlay was not carried through to the enrolled CB-32.

As detailed above, DPZ and the Planning Board recommended the Subject Properties be zoned CE-CLI/CR. *See*, Pet. Ex. 8. On July 1, 2013, Councilmember Ball introduced Amendment 48 changing the zoning to the TOD. On July 22, 2013, however, which was the final work session on CB-32, and three days before the vote, the Council discussed the appropriateness of the TOD zoning district for the Subject Properties given their frontage on Route 1. *See*, Pet. Ex. 10, Transcript Excerpt of the July 22, 2013 Council Work Session. In discussing the Site⁴, the Council specifically noted that “a CR right on Route 1 might be perfect.” *Id.* at 41:2-8. Dr. Ball then directed the Council Administrator, Dr. Sheila Toliver, to “make sure that the amendment will read TOD/CR...” *Id.* at 49:12-15.

Amendment 48, however, was presumably not changed to read TOD/CR because the CB-32 was voted on 3 days later on July 25, 2013, and the Site was zoned TOD without any CR overlay. If Amendment 48 would have been changed to include the CR overlay as directed by Dr. Ball, the Petitioner's proposed use would be permitted on the Subject Properties through the ODP process as discussed above. Instead, due the apparent failure of the administrator to amend Amendment 48 as directed by Dr. Ball, the CR was not added, and the Site was zoned just TOD. This, in and of itself, represents a mistake warranting rezoning.

II. The B-2 Zoning District is the appropriate zoning district for the Property

For the reasons detailed above, the TOD zoning district is not the appropriate zoning district for the Site. Given the Site's frontage on Route 1, the adjacency to the Route 100

⁴ In the July 22, 2013 Transcript Excerpt, the Council references the assemblage of properties as being owned by Tertel. *See*, Pet. Ex. 10 at 39. Tertel was the owner of Parcel 452 at that time. *See*, Pet. Ex. 8, at p. 8.

interchange, and its location in the Eastern Howard County Enterprise Zone, the B-2 is the appropriate zoning district for the Site. The purpose of the B-2 Zoning District is “to provide for commercial sales and services that directly serve the general public.” HCZR § 119.0.A. As testified to by Mr. Rutter and Mr. Fraser, the defining physical characteristic of the Subject Properties is their frontage on and proximity to Route 1. In addition, adjacent uses include a mix of industrial, automotive, and retail uses which are compatible to B-2.

Rezoning the Subject Properties to B-2 will allow these underutilized and largely vacant properties to be developed with the retail and automotive uses that are shown on the Petitioner’s Plan. The retail and automotive uses will serve the immediate area and general public and are appropriate along this portion of Route 1 with its adjacency to the Route 100 interchange. Moreover, B-2 is typically located adjacent to state road interchanges. Of note, the B-2 zoning district is located at the Route 1 and Route 175 interchange. *See*, Pet. Ex. 12. It would be a logical pattern of zoning to also place B-2 on the Site, which is at the interchange of Route 1 and Route 100.

Furthermore, the Site is located in the newly created and only Howard County state designated enterprise zone. *See*, Pet. Ex. 13a&b. The purpose is to incentivize and encourage economic development along the Route 1 corridor. *Id.* These properties are the only properties on this section of the Route 1 frontage with the enterprise zone designation. *Id.* As indicated in the County’s January 28, 2025 press release, the zone and incentive align with the General Plan and the Route 1 Corridor Plan goals to attract private investment and spur redevelopment enhancing the attractiveness and economic value of the area. The requested B-2 designation fits with the enterprise designation more than the TOD which is focused on high density residential and office. B-2 will allow commercial redevelopment which is the focus of the enterprise zone.

Lastly, the Council, the Planning Board, and DPZ have all acknowledged that B-2 uses are appropriate for the Subject Properties. As detailed above, DPZ and the Planning Board recommended a CR overlay for the Site during the 2013 CZMP. The Council also sought to amend Amendment 48 to zone the Site TOD/CR specifically because of the Site's frontage on Route 1. The CR Zone permits B-2 uses through the ODP process. HCZR § 121.1.B(1). And specifically motor vehicle fueling uses. HCZR § 121.1.E(1). In fact, the only CR development is the Royal Farms and CVS located on Route 1 and Montevideo Road. Because the Petitioner is requesting approval of a Documented Site Plan for specific B-2 uses, as a practical matter it makes logical sense and is more appropriate to zone the Site B-2, which is an assumed zoning district in the CR, instead of CR. The Documented Site Plan locks in the uses for the Site, which will only be B-2 uses.

III. Petitioner Meets the Criteria in §100.0.G.2.d. for approval of the Documented Site Plan.

Petitioner is requesting approval of a Documented Site Plan for a MVFF, convenience store, and car wash uses as shown on Sheet 3, of Pet. Ex. 1 and detailed above. Of note, though MVFF's are conditional uses in the B-2 zoning district, it may be permitted as a by right use through the documented site plan process. *See*, HCZR § 100.0.G.2.g. As such, the MVFF conditional use criteria is not applicable in this matter.

In addition, the documented site plan process specifically allows the Zoning Board to approve the location of a proposed use or structure that would otherwise require a variance from the underlying bulk regulations: "A site plan zoning petition approved by the Zoning Board may include ... a use or structure which would otherwise require a variance to the bulk regulations ... If this occurs ... the use or structure shall be permitted in the approved location, in accordance

with the site plan approved by the Zoning Board, and shall not require approval by the Hearing Authority.” *Id.*

The B-2 zone requires a use and structure setback of 30 feet from the public right-of-way and 30 feet from residential zoning districts . HCZR § 119.0.D.1.2 As testified to by Mr. Malagari, the proposed uses meet all the underlying bulk regulations of the B-2 zoning district based on the existing adjacent property uses. As currently situated, none of adjacent properties qualify as a residential zoning district requiring a 30’ use and structure setback.

For the proposed car wash use on Parcel 452, the structure is located more than 30 feet from the adjacent property line. The access lane to the carwash is located 10’ feet from the property line. The property immediately adjacent to the proposed car wash is currently a commercial/industrial property used for container storage. The owner of that property, however, is pursuing approvals for an apartment development. The development has yet to receive final site development plan approval, and it is unknown if it will ever come to fruition. For this reason, the Petitioner contends that the 30’ use setback from an adjacent residential district is not applicable and the car wash use complies with the B-2 setbacks.

If it is determined, however, that the residential use setback must be applied for a potential, future development, Petitioner requests approval of the reduced 10’ setback as permitted under HCZR § 100.0.G.2.g. As testified to by Mr. Reetz, Petitioner is proposing landscaping between the access lane and the adjacent parcel that will exceed the minimum landscape manual requirements. The proposed landscaping will appropriately buffer the access lane from the adjacent property. Moreover, the structure itself, which is the car wash tunnel, is setback greater than 30’ from the adjacent parcel, and the drying parking spots are located on the other side of the structure near Route 1. This design was purposefully chosen to mitigate any potential for noise from the car

wash affecting adjacent properties, and to avoid the access drive fronting on Route 1. The access drive's location within the 30' setback will not cause any disturbance, especially given the proposed landscape screening.

The Petitioner's proposed uses meet the approval criteria found in HCZR §100.G.2.d:

A. The compatibility of the proposed development with the existing and potential land uses of the surrounding areas.

As testified to by all of Petitioner's witnesses, the proposed development will be compatible, or capable of existing in harmony, with the existing and potential land uses of the surrounding areas. As shown on Sheet 3, of Pet. Ex. 1, Petitioner is proposing a motor vehicle fueling facility ("MVFF"), convenience store, and carwash along the frontage of Route 1 adjacent to the interchange with Route 100. The frontage along this portion of Route 1 contains a mix of automotive, industrial, and retail uses. Petitioner's proposed development will enhance and revitalize this portion of Route 1 providing productive uses on underutilized properties. Indeed, the proposed uses will provide automobile-oriented services and convenience retail for area residents and commuters travelling north along Route 1.

As noted by representatives from two area businesses, the property management company for the Refinery Apartments and the Stained Glass Pub, the current conditions of the Site are run down. The proposed development will provide convenience retail services and amenities for the residents of the Refinery Apartments. It will also attract more commuters to the area providing for revitalization and additional customer base for the Stained Glass Pub.

Regarding the proposed development on the specific parcels, Petitioner has designed the layout to ensure compatibility with adjacent uses. As discussed above, the MVFF will be partially located on parcel 279, which is the abandoned Exxon site and is currently vacant. Parcel 279 is bordered to its west by a property developed with an auto repair building and business. The

proposed convenience store will be located on the front portion of Parcel 107, which is directly east of Parcel 279. As indicated above, this area is approximately 2.06 acres of the Memorial park and contains 3 dilapidated structures, the entrance drive and a retaining wall. The entrance to the Memorial Park will be redirected to the proposed signalize intersection located on the western portion of Parcel 279 as shown on the Plan.

As detailed above, Petitioner is not disturbing the majority of the Memorial Park. The interior of the Memorial Park, over 4 acres, will be placed in preservation. This will preserve the area in perpetuity as open or green space. In addition, the existing retaining wall is proposed to be repurposed at the new entrance of the Memorial Park. And Petitioner is proposing to construct a mausoleum and memorial to be located in the preserved area of the Memorial Park for the interment of any pet remains that may be disturbed with the proposed redevelopment. See, Pet. Ex. 1, at Sheets 18 through 22.

As testified to by Mr. Fraser, it is anticipated preservation will be accomplished through a declaration of restrictive covenants to be recorded in the Land Records of Howard County, Maryland restricting any future development of the identified area of the Memorial Park. The covenants will include long term maintenance and care of the property. Further, it should be noted that the Petitioner is willing to transfer ownership of the preserved portion of the Memorial Park (at no cost) to a qualified and interested entity such as the Rosa Bonheur Society. In addition, the Petitioner is willing to bond the construction of the mausoleum to alleviate any concern that it will not be constructed.

As discussed above, the proposed car wash will be located on Parcel 452, which is to the northeast of Parcel 107. Parcel 452 contains no structures and is currently used as a stockpiling site and is adjacent to Route 100 interchange.

As testified to by Mr. Reetz and as shown on Sheets 4, and 5 of Pet. Ex. 1, Petitioner is proposing perimeter and internal landscaping around the entirety of the uses that will effectively buffer the uses from adjacent properties. Moreover, as testified to by Mr. Reetz, the design, layout and architectural style of the proposed uses is compatible with Route 1 and the surrounding land uses. *See*, Pet. Ex. 1 at Sheets 10 & 11 showing the elevations and high quality building materials for the proposed uses. *See also*, Pet. Ex. 1 at Sheets 13 through 17 showing the scale of the proposed uses in relation to the surrounding area.

In addition, the proposed layout and design was reviewed by the Design Advisory Panel (DAP). As testified to by Mr. Reetz, who presented to the DAP, DAP was generally favorable of the proposed development and remarked that it provided unified frontage on Route 1 and fit with the overall area. DAP did have minor comments on the proposed development as stated in their minutes. As indicated by Mr. Malagari and Mr. Reetz, if this Petition is approved, Petitioner is committed to complying with all DAP comments at the Site Development Plan stage.

Moreover, as indicated above, Petitioner's proposed development will provide much needed improvements to the Route 1 frontage that will unify Route 1 between Route 103 and Route 100. These include (1) widening of Route 1 to provide an additional lane, (2) continuous sidewalk connections, and (3) a shared use pedestrian and bicycle path. *See*, Pet. Ex.1, Sheet 3, 6, and Pet. Ex. 18. Petitioner is also proposing a new signalized intersection between Parcel 279 and the adjacent auto repair use that will provide direct access to the Site, improving current traffic conditions. *Id.*

B. Protection of the environmental integrity of the subject property and adjoining areas in the location and design of site improvements.

As testified to by Mr. Malagari, Petitioner's site design for the proposed development was chosen in order to protect the environmental integrity of the Subject Properties and adjoining areas.

In particular, the underground fuel tank for the MVFF was designed to be located on the former Exxon site, Parcel 279, to minimize environmental impact.

The only environmental feature on the Site is a relatively small portion of a wetlands, approximately 500 square feet, that is located between Parcel 107 and Parcel 452. The wetland is not naturally occurring and is likely the result of stormwater runoff from Route 1. Petitioner designed the Site to avoid disturbance to the wetland as much as possible. The proposed access road for the car wash, however, could not be relocated and will impact the wetland, requiring approval from MDE. As indicated by Mr. Malagari, because the wetland is only approximately 500 square feet, MDE will likely permit it to be filled in.

In addition, as shown on Sheet 3, of Pet. Ex. 1, Petitioner is providing stormwater management that will treat both quality and quantity of runoff in accordance with the Howard County Code. As noted above, the former Exxon property, Parcel 279, is currently covered with impervious surface with zero stormwater management. Similarly, Parcel 452, the Stockpile yard, is compacted ground without any stormwater management. As such, Petitioner's proposed stormwater management will improve environmental conditions on the property and vicinal properties by providing treatment and managing flow for existing stormwater runoff.

Lastly, Ms. Warden baselessly alleges in her oral and written testimony that Petitioner's development would cause environmental threats by disturbing graves and releasing embalming chemicals. To be clear, there are no known human remains in the development area that will be disturbed. As such there is no reasonable risk that embalming chemicals or other toxins will be released as a result of Petitioner's proposed development.

C. The availability of safe road access for the proposed development:

The proposed development has frontage on and direct access to Route 1. Primary access to the proposed development will be at the new signalized intersection shown on Sheet 3, of Pet. Ex. 1. Petitioner is also proposing right-in only access off of Route 1 between the proposed convenience store and car wash uses. *See*, Pet. Ex. 1, Sheet 3.

Mr. Corneilus, who is a POTE and a Certified Road Safety Professional, reviewed the proposed access points and determined that in his professional opinion they can accommodate safe road access for the proposed development. In addition, Mr. Corneilus reviewed the internal site circulation and opined that there was no concern regarding queuing on Route 1 for vehicles entering the Site.

Although not required by the criterion, Mr. Corneilus also prepared a traffic impact study (TIS), which was submitted with the Petition. The TIS demonstrated that none of the surrounding intersections are operating at a failing level of service. Further, the TIS concluded that traffic from the proposed development will not cause any of the intersections to operate at a failing of service. In fact, the proposed signalized intersection will result in an improved level of service at the Doresy Road and Route 100 intersection. Indeed, Mr. Cornelius specifically opined that the proposed development would improve traffic conditions on Route 1 with the addition of the signalized intersection and the Route 1 improvements noted above and shown in Pet. Ex. 18. Of note, the TIS was submitted to the Maryland State Highway Administration (SHA) and SHA concurred with the TIS's findings. *See*, Pet. Ex. 19, Oct. 3, 2025, SHA Letter.

D. Compatibility of the proposed development with the polices and objectives of the Howard County General Plan.

As testified to by Mr. Rutter, and as noted by DPZ in the TSR, the proposed development is compatible with the General Plan. The proposed development will enhance accessibility and convenience by integrating automotive services along Route 1 that cater to the needs of residents, commuters, and businesses. This will provide essential amenities that support daily activities and contribute to the Route 1 Corridor's vibrancy. It will also promote economic vitality allowing specific B-2 uses that can attract investment and stimulate economic growth. This will create employment opportunities strengthening the local economy and supporting the Route 1 Corridor's revitalization efforts. In addition, it will improve the streetscape and design along this portion of Route 1 by implementing stringent design guidelines from the Route 1 Manual that promote cohesive architectural themes, pedestrian-friendly features, and landscaping that enhance the overall visual appeal of the corridor.

Specifically, the proposed development is consistent with General Plan Policy 5.1 which seeks to “allow redevelopment in activity centers through the Zoning Regulations to make a wide range of uses economically viable. Require active center development to provide convenience retail and other local serving amenities at a neighborhood level.” *See*, Pet. Ex. 14.

In addition, the proposed development is in harmony with the Route 1 Corridor Plan's (the “Corridor Plan”) Revitalization Strategy that encourages “private property reinvestment.” Corridor Plan at 32. And RTE 1-3 Policy Statement that seeks to “Foster revitalization in the Route 1 Corridor.” Corridor Plan at 38. Further, implementing Action 2b. calls for zoning changes to be implemented to “consider more flexibility.” *Id. See*, Pet. Ex. 15. Moreover, the proposed development is harmony with RTE 1-14 policy statement which seeks to “[i]ncrease opportunities for reinvestment of commercial and industrial properties in the Route 1

Corridor to address blight through new and existing zoning tools...” *Id.* at 41. (emphasis added). *See*, Pet. Ex. 15.

IV. Protestants’ Arguments

Protestants’ primary arguments against the Petition are not aimed at the requested B-2 zoning district or the proposed zoning uses provided in Petitioner’s Documented Site Plan. Instead, their arguments and concerns are entirely focused on the ultimate development of the Memorial Park. This concern, however, would apply to any development of the Memorial Park property regardless of the zoning designation. In fact, Ms. Warden admitted that she opposed the zoning of the Memorial Park to the TOD zoning district in 2013 for this every reason. Indeed, these same concerns would be present, and in fact greater, if Petitioner, instead of seeking this re-zoning request, decided to develop the whole of the Memorial Park under the current TOD zoning district with a high density mix-used development fronting on Dorsey Run Road.

As the Hearing Examiner is aware, though related, zoning and development under the subdivision and land development regulations are separate and distinct processes. *See, Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 505 (2015). “Zoning is used to describe the process of setting aside disconnected tracts of land varying in shape and dimensions, and dedicating them to particular uses designed in some degree to serve the interests of the whole territory affected by the plan.” *Id.* The subdivision and development process “**attempt[s] to respond to issues that are not so well-addressed through zoning, the initial step in the development process.**” *Id.* at 523. Here, Protestants’ concerns are just that – issues that are not so well addressed through zoning.

The instant matter involves the initial zoning stage. Petitioner is seeking a change in the zoning classification and in addition is seeking to lock-in specific zoning uses through the

documented site plan process. Notably, the documented site plan approval criteria do not require the Petitioner to demonstrate the proposed uses will not have an adverse impact on historic resources like in conditional use cases. *Compare*, HCZR § 100.G.2.d with HCZR § 131.0.B.3.f. Instead, the documented site plan criteria more generally require the proposed uses to be compatible with surrounding land uses. Specific review to ensure protection of historic resources, including protection of historic cemeteries, is left to the development stage. Indeed, as testified to by Chief Sauer, zoning approval does not allow any shovels to go in the ground. It does not approve the technical aspects of the development project. If approved, Petitioner's proposed development is simply allowed to move to the subsequent subdivision and development stage like any other permitted use.

At the subsequent subdivision and development stage, Petitioner will be required to submit and receive approval of an environmental concept plan and site development plan. As Chief Sauer indicated, it is at this stage that the development will have to meet all the technical requirements of the Howard County Subdivision and Land Development Regulations. And Petitioner will be required to appear before the Howard County Cemetery Preservation Board for advisory comments regarding development of the Memorial Park. In addition, Petitioner will be required to submit a Cemetery Boundary Documentation and Accommodation Plan that will be reviewed at a public meeting before the Planning Board and ultimately must be approved by DPZ pursuant to the Planning Board's recommendation. Howard County Code of Ordinances, §16.1304. It is at this stage that Protestant' concerns voiced during this hearing are relevant.

It should also be noted that Protestants seemingly fail to acknowledge, or perhaps misunderstood prior to the hearing, that the majority of the Memorial Park is proposed for beautification and preservation. Indeed, only two of the Protestants indicated that they have pets

interred in the proposed development area – Mr. John Pelton and Mrs. Ruthe Bloise.⁵ As indicated during the hearing, Petitioner is willing to meet with both Mr. Pelton and Ms. Bloise, to identify the exact location of their interred pets and provide for the respectful and dignified disinterment and reinterment of those pets in a proper cemetery, or any other place of their choosing, at Petitioner’s cost and expense. Indeed, Petitioner is willing to provide this at its expense for any person that can identify their pet is buried in the development area. As testified to by Mr. Fraser, it is the Petitioner’s desire to work with the Rosa Bonheur Society and allow meaningful input on the handling of pet remains and on the details of the mausoleum to ensure the work is done in a respectful and dignified manner.

Further, it needs to be acknowledged that Mr. Green, the former owner of the Memorial Park, failed to keep any records including deeds for plots. To the extent deeds exists, they do not appear to be recorded in the land records. This is true of the 1944 “Deed” submitted by Anna Givens. *See*, Protestants’ Ex. 5. The deed is for the interment of a pigeon and does not contain any recording reference. It is also unclear if this deed is related to a plot within the proposed development area.

Lastly, it must be noted that there were no neighboring residents or businesses that testified in opposition to Petitioner’s rezoning request. In fact, as detailed above, two neighboring businesses testified in support. Further, it should be highlighted that the primary Protestants, Candy Warden and David Zinner, do not have any pets interred in the Memorial Park, nor do they live in the vicinity of the Site. Ms. Warden’s provided address is 10240 Harvest Fields Drive,

⁵ The location that Mr. Barry Walters marked for the interment of his police service dog Loki is not in the development area. It is in the area designated for preservation. *See*, Protestants’ Ex. 1. To the extent Mr. Walters was mistaken on the location and Loki is interred in the development area, Petitioner would extend the same offer expressed above to Mr. Pelton and Mrs. Bloise.

Woodstock, MD 21163, which located in Baltimore County. Similarly, Protestant David Zinner's provided address is on Sea Water Path Road, Columbia, Maryland 21045, which is miles from the Subject Property.

V. Petitioner's Proposed Approval Conditions

The Petitioner agrees to the following conditions of approval as stated in the Petition, shown on the Rezoning Plan. (Pet. Ex. 1) or as stated during testimony:

- Petitioner shall comply with the DAP comments during the site development plan stage.
- Petitioner shall provide an increased landscape buffer, Type C, along the perimeter of the car wash access drive and the adjacent property that may be developed as an apartment complex.
- Petitioner shall preserve the remainder of the Memorial Park in perpetuity through the recordation of a declaration of restrictive covenants in the Land Records of Howard County, Maryland restricting any future development of the identified area (over 4 acres) of the Memorial Park. The covenants will include perpetual maintenance and care of the property.
- Petitioner shall provide new safe and convenient vehicular access to the Memorial Park for the general public from the new signalized intersection.
- Petitioner will repurpose salvageable portions of the existing retaining wall and entrance sign currently located along Route 1 to the new entrance; and
- Petitioner shall construct a mausoleum and memorial in honor of all pets interred at the Memorial Park.

Under Section HCZR § 100.0.G.2.e, the Zoning Board may place additional requirements or conditions on the approval of documented site plans. Moreover, requiring off-site conditions is not unprecedented. Indeed, the Zoning Board in its last mistake case, ZB-1122M, required the petitioner to “financially contribute” to the moving of a sign on the adjacent church property. To the extent the Hearing Examiner, or the Zoning Board, concludes it is necessary to include the

entirety of Parcel 107 (the Memorial Park) in the proposed rezoning area to implement any proposed condition, the Petitioner agrees to amend the plan to accommodate such. It should be noted, however, that regardless of jurisdiction, these are conditions the Petitioner is voluntarily seeking and would not challenge. Moreover, Petitioner specifically included the note on the Plan -- that the remainder of the Memorial Park would be preserved -- to ensure it would be a requirement of the approval.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests approval of the Petition. Petitioner has demonstrated a mistake during the last comprehensive rezoning justifying reclassification, has demonstrated that the B-2 is the appropriate zoning district, and has met all the criteria of approval for its Documented Site Plan uses.

Dated: March 16, 2026

/s/ Christopher M. DeCarlo
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Certificate of Service

I hereby certify that on this 16th of March, 2026, a copy of the foregoing was sent by electronic mail to the following:

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Christopher M. DeCarlo

Petitioner's Appendix 1

7-1-2013 Council Work Session Transcript Excerpt

**COMP. ZONING WORKSESSION
CVG ROOM
JULY 1, 2013**

COUNCIL MEMBERS PRESENT:

J. Terrasa; C. Watson; MK Sigaty; C. Ball; G. Fox

Staff: S. Tolliver; T. Wimberly; R. Regner;

P. Johnson; M. McLaughlin

4:08 Worksession Begins:

I. River Hill Nursery Follow-Up – To Decide whether to put this rezoning proposal in as a substantive amendment

A. Mr. Erskine speaks to Council

1. Explains Presubmission Community Meeting held on River Hill Nursery project
There was a misunderstanding at this meeting
2. No fast food restaurants or drive-thrus are permitted on this site
3. Chick-Fil-A was only used as an example – even though it is not permitted

B. David Elsaesser, neighbor:

1. Concerned with lighting, proposed Chick-Fil-A/drive-thru & traffic

C. Marsha McLaughlin

1. Mr. Klein will need to do improvements on road – very extensive and expensive.

D. Stephen Klein/River Hill Garden Center

1. He met with SHA – 108 must be brought up to today's standards i.e., entrance, storm water management, sight distance on 108

E. Tim Shaw - 4729 Whistling Woods Way – neighbor

1. Will have a shopping center in his back yard - parking and lights – River Hills is a good, quiet neighbor – concerned with parking lot

II. CAC text amendment

A. Jeff Kirby – Real Estate Developer/purchaser

1. Regarding a property on Furnace Ave. next to Furnace Inn –wants regulations amended – working with Tom Carbo/Housing about a mixed income apartment project with no commercial/retail requirement.

2. Proposed on 4.8 acres for 112 units
3. Abuts to Patapsco State Park
4. Commercial is not viable at this site

B. Discuss whether to put in as substantive amendment

1. JT: has no problem with residential
2. GF suggests R-A-25 rather than CAC
3. MM – lack of visibility would make poor retail at this site

III. Vote on Substantive Amendments and Whether to Consider

#20 - yes

#21 – to add 24.014 - Ozcan – 10207 Baltimore National Pike - no

#22 – to add 28.003 - Orndorf – 4844 Greens Bridge Road - yes

#23 – to add 41.001 - Lois Peters – 11584 Scaggsville Road – yes

#24 – to add 41.002 - 7590 Sanner Road – no

#25 – to add 41.003 – 7582 Sanner Road – no

#26 – to add 41.004 – 7598 Sanner road – no

IV. The Council reviewed the following amendments:

#27 – new summary chart

#28 – 14.001 – correct map substituted

#29 – 12962, 12966, 12980 Livestock Road – correction on maps

#30 – Withdrawn - not substantive

#31 – 38.003 - 5820 Washington Blvd.

#32 - 40.004 – 13325 Clarksville Pike - map clarification

#33 - 4 properties – Kit Kat Road (32.001, 43.002, 43.004, 43.013 –

Technical correction

#34 – 43.018 – 7720 Port Capital Drive – new map

#35 – 43.021 – 7700 Port Capital Drive – new map

(CLOSED session to meet with counsel about process)

#36 – 44.001 – technical correction to map

#37 – 24.004 – substitute correct map

#38 – 37.012 – substitute correct map

#39 – wording change – R-SA-8 zoning district

#40 – wording change – R-A-15 zoning district

#41 – remove option to develop up to 25 du per acre in R-A-15

#42 – add Daisy, Lisbon & Glenwood to list of areas for proposed BRX District

#43 – add Nursing homes and residential care facilities as permitted uses in BRX

#44 – add R-SC as a sending option in the Neighborhood Preservation Density Exchange

Option Program

- #45 – 15.004 from RC-DEO to B-1
- #46 – 15.006 from RC-DEO to B-1
- #47 – 15.007 from RC-DEO to B-1
- #48 – 37.002, .003, .005, .006, .007, .014, .015, .016, .027, and 43.017 - change zoning from CE-CLI to TOD
- #49 – 38.013 – (Buttermilk Tavern) add parcel – rezone to B-1
- #50 - 40.004 – RR-DEO to CCT
- #51 – 46.001 (Maple Lawn) to – MXD-3
- #52 – withdrawn – duplicate of #51
- #53 – 47.003 from CAC/CE-CLI to CE-CLI/CR – correct map
- #54 - 47.005 from CAC/CAC-CLI/CR to CE-CLI/CR
- #55 – 47.006 – CAC-CLI/CR to R-A-15/CR
- #56 – New map amendment 14.003 - RR-DEO to B-1 – 2890 McKendree Road
- #57 – 47.001 and 47.010 from R-A-15 to R-SA-H
- #58 – add R-SA-H zoning district (historic townhouse district)
- #59 - 24.001 from R-A-15 or CEF to R-12; 24.004 from R-SC or CEF to R-12;
24.005 from R-A-15 or CEF to R-12
- #60 – Revises permitted uses for conditional uses

Worksession Adjourned at 7:37

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**HOWARD COUNTY COUNCIL
WORK SESSION**

July 1, 2013

Christine R. Leary
crleary1@comcast.net

1 [ON RECORD - 02:00:20]

2 MR. FOX: And it's all B-2 and B-1 for the most part
3 on the road.

4 MS. WATSON: I don't mind (inaudible).

5 MR. FOX: Right.

6 MS. WATSON: (inaudible).

7 MR. FOX: All right.

8 MS. TERRESA: Okay. Number 48, Dr. Ball.

9 MR. BALL: That was just the placeholder for that one
10 property that is slated to be CR, in case there's a problem
11 with CR down the road.

12 MS. TERRESA: And so, you're suggesting possibly TOD?

13 MR. FOX: One more time?

14 MR. BALL: Um hm. Remember the pet cemetery?

15 MS. TERRESA: Um hm.

16 MR. FOX: Yeah. Does it meet the TOD? I can't
17 remember.

18 MR. BALL: Thirty-five hundred feet I think it is and
19 it's, I think, half the property.

20 MR. FOX: I remember.

21 MS. TERRESA: Oh, I thought --

22 MS. MCLAUGHLIN: This is not the, this is all of the
23 pieces? And I can check that.

24 MS. TERRESA: Yeah, I thought they --

25 MS. MCLAUGHLIN: There's a lot of pieces, okay.

1 MR. BALL: It should be all.

2 MS. MCLAUGHLIN: Okay.

3 MS. TERRESA: If we go forward with this, I think we
4 may have to have an amendment to TOD to extend it (inaudible).

5 MS. MCLAUGHLIN: Yeah.

6 MS. TERRESA: Wasn't that what she was saying? Or
7 you don't --

8 MR. BALL: Personally, I don't think we need that,
9 but we'll see.

10 MS. MCLAUGHLIN: We'll, I'll check distance.

11 MR. FOX: Can you, can you get the, the book that's
12 in the, that's got, that's got this stuff in it, please? You
13 know what I'm talking about, (inaudible)?

14 MS. TERRESA: Thirty-nine? Is what, sorry, forty-
15 nine.

16 MS. MCLAUGHLIN: That's the one we're talking about
17 the Tertel and the pet cemetery?

18 MS. TERRESA: The TOD.

19 MS. WATSON: They're turning that into --

20 MR. BALL: Well, right now it's slated to be under
21 CR, but if CR, if something doesn't go right with CR, --

22 MR. FOX: You're looking for a backup plan?

23 MR. BALL: Right.

24 MS. WATSON: Is it near the --

25 MR. BALL: Yes.

1 MS. MCLAUGHLIN: It's a little further than the
2 definition of TOD now, so if we, if we want to do this, we
3 might do an amendment, that would allow it to be a little bit
4 further from the MARC station.

5 MR. BALL: Well, not necessarily. A portion of it is
6 not further. And we did the same thing with Oxford Square.
7 All of Oxford Square is not within the TOD. All of this is not
8 within the TOD.

9 MR. FOX: So, as, so, as long as it's developed as
10 one, that actually encourages them to develop it as one --

11 MR. BALL: Exactly.

12 MR. FOX: -- because if they wanted to reach it then
13 they'd have to --

14 MR. BALL: Exactly.

15 MR. FOX: Rather than making a change, gotcha.

16 MS. TERRESA: Okay, 49, Ms. Watson?

17 MS. WATSON: Oh, which one is this? Is this
18 Buttermilk?

19 MS. MCLAUGHLIN: Buttermilk.

20 MS. WATSON: Yes, (inaudible).

21 MR. BALL: That is such a cool name for a street.
22 Makes me happy every time I hear it.

23 MS. TERRESA: I know. It's, it's a happy sound.

24 MS. WATSON: It should be B-1, not B-2.

25 MS. TERRESA: So, this is incorrect?

1 MR. FOX: Which one?

2 MS. WATSON: (inaudible).

3 MS. MCLAUGHLIN: That's the current zoning, proposed
4 is B-1.

5 MS. TERRESA: Wait, wait.

6 MS. WATSON: Yes, but it says proposed (inaudible)
7 substitute B-2. It should be B-1.

8 M-VOICE: No, it says B-1.

9 MS. TERRESA: It says B-2 on the one we have right
10 here.

11 MR. FOX: I've got B-2 on the one I've got.

12 M-VOICE: I have B-2 too.

13 MR. FOX: Mine says B-2. I'm on Amendment 49.

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25 [OFF RECORD - 02:03:00]

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CERTIFICATE OF TRANSCRIBER

I hereby certify that the work session of the Howard County Council, held on July 1, 2013, was recorded digitally.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 5 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 6th day of March 2026.

Christine R. Leary

Christine R. Leary

Transcriber

DeCarlo, Christopher M.

From: Berg, Kel <kberg@howardcountymd.gov>
Sent: Tuesday, March 3, 2026 4:29 PM
To: DeCarlo, Christopher M.
Subject: RE: video links

Caution: External Email

They should be working now. Lmk.

Kel L. Berg
Board Administrator
Howard County Boards Office
410 313 3114

From: DeCarlo, Christopher M. <CMDDeCarlo@Venable.com>
Sent: Friday, February 27, 2026 4:45 PM
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Thank you.

-Chris

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CMDDeCarlo@Venable.com | www.Venable.com

From: Berg, Kel <kberg@howardcountymd.gov>
Sent: Friday, February 27, 2026 4:44 PM
To: DeCarlo, Christopher M. <CMDDeCarlo@Venable.com>
Subject: RE: video links

Caution: External Email

Not yet. I circled back on Tuesday before the hearing. They are still trying to get them to work.

Kel L. Berg
Board Administrator
Howard County Boards Office
410 313 3114

From: DeCarlo, Christopher M. <CMDDeCarlo@Venable.com>
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Any luck with these.

Thanks,

Chris

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CMDDeCarlo@Venable.com | www.Venable.com

From: Berg, Kel <kberg@howardcountymd.gov>
Sent: Thursday, February 12, 2026 12:02 PM
To: DeCarlo, Christopher M. <CMDDeCarlo@Venable.com>
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As an update the technology team is working on these videos. Because they are old they currently can't get them to play.

Kel L. Berg
Board Administrator
Howard County Boards Office
410 313 3114

From: DeCarlo, Christopher M. <CMDDeCarlo@Venable.com>
Sent: Friday, February 6, 2026 9:08 AM
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Sent: Friday, February 6, 2026 9:05:21 AM
To: DeCarlo, Christopher M. <CMDeCarlo@Venable.com>
Subject: video links

Caution: External Email

Hi. The technology team is looking into this. Will let you know when they are back online.

Kel L. Berg
Board Administrator
Howard County Boards Office
410 313 3114

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