

**BEFORE THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG,  
MARYLAND**

**IN THE MATTER OF THE APPLICATION OF  
SIENA CORPORATION FOR REZONING  
THE PROPERTY LOCATED AT  
14 FIRSTFIELD ROAD FROM THE C-2 ZONE  
TO THE E-1 ZONE**

\*  
\* **ZONING MAP AMENDMENT**  
\* **APPLICATION**  
\* **NO. Z-4355-2014**  
\*

**APPLICANT’S SUPPLEMENTAL STATEMENT IN SUPPORT OF  
ZONING MAP AMENDMENT APPLICATION NO. Z-4355-2014**

Siena Corporation (the “Applicant”) hereby provides this Supplemental Statement in support of Zoning Map Amendment Application No. Z-4355-2014 (the “Rezoning Application”) for the 3.13-acre of land located in the southeast quadrant of the intersection of Firstfield Road and Bank Street (the “Property”)<sup>1</sup>. As noted in the Applicant’s Statement filed with the Rezoning Application, Maryland law allows the legislative body to grant an amendment to change the zoning classification of a property based on a finding that there was a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification. Md. Land Use Code Ann. §4-204(b)(2) (2013). The basis for this Rezoning Application is a mistake in the existing zoning classification. In demonstrating mistake in zoning, there are several approaches, including (1) evidence showing that the initial premises of the Council with respect to the property were incorrect and consequently, the classification assigned at the time of the comprehensive zoning was improper; and (2) evidence of any events occurring subsequent to the time of the comprehensive zoning which would have proven that the Council’s assumptions and premises were incorrect with the passage of time.

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<sup>1</sup> For a more detailed description of the Property, see p. 1 of Applicant’s Statement filed with the Rezoning Application.

Z-4355-2014  
Exhibit #11

*Howard County v. Dorsey*, 292 Md. 351, 357-58 (1982). The latter approach is applicable in this case as discussed below.

At the time of annexation of the Property into the City (by Resolution R-21-67), the Property was rezoned from the C-P (Commercial Office Park) Zone to the then newly established E-1 (Urban Employment) Zone by the Mayor and Town Council on June 26, 1967 by Resolution R-9-67. Approximately 29 years later, in 1996, the Mayor and Council adopted the Neighborhood Five Land Use Plan that recommended changing the Property's land use designation from Industrial-Research-Office to Commercial and rezoning it from the E-1 Zone to the C-2 Zone (evidence that the uses allowed in the C-2 Zone are not appropriate for the Property). The Neighborhood Five Land Use Plan became part of the 1997 Master Plan. A copy of the relevant pages of the 1997 Master Plan is attached as Exhibit 1. The 1997 Master Plan recommendation for the Property states the following:

**Retain** part of Lot 2, Block C of Diamonds Farms (Map Designation 7) as **industrial-research-office** (Option A) or **redesignate to commercial** (Option B). Watkins-Johnson Corporation, owner of Lot 2, received site plan approval for this site in 1973 and the vacant portion is part of their stormwater management system. This vacant 3.3 acres could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed. By redesignating part of Lot 2 commercial, a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur.

**Land Use and Zoning Actions**

- Adopted commercial designation (Option B)
- Property rezoned to C-2

Prior to the completion of the 1997 Master Plan, the Mayor and Council chose to adopt the commercial designation and rezone the Property from the E-1 Zone to the C-2 Zone as part of a comprehensive rezoning of Neighborhood Five in 1996.

The assumptions made by the Mayor and Council at the time of the rezoning of the Property were that the Property “could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed” and that “a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur” by redesignating the Property commercial. As discussed below, events that occurred subsequent to the time of the comprehensive rezoning show that the Council’s assumptions that were the basis for comprehensively rezoning the Property from E-1 to C-2 in 1996 were proven incorrect. After the comprehensive rezoning, the Property was subdivided and a new stormwater management facility was approved for a 3-story office building in 2002 for Site Plan No. SP-02-0006. However, the office building was never constructed. No restaurant or retail uses, or any other commercial use have developed on the Property for the last 17 years and notwithstanding steady marketing efforts, the Property remains vacant since the Property was comprehensively rezoned to the C-2 Zone. Therefore, these events provide evidence showing that the assumptions made by the Mayor and Council at the time of the comprehensive rezoning in 1996 were proven incorrect.

Since the 1997 Master Plan, the Property has been the subject of two master plan amendments by the Mayor and Council, and in both instances, the Mayor and Council established that the comprehensive rezoning in 1996 was a mistake in that the assumptions made at that time supporting the rezoning to the C-2 Zone proved to be erroneous. In both instances, the Mayor and Council concluded as a matter of legislative policy that the correct land use and zoning recommendations for the Property should be the prior “Industrial-Research-Office” land use designation and the E-1 Zone, as reflected in both the 2003 and 2009 Master Plans (relevant

pages of which are attached as Exhibit 2 and Exhibit 3, respectively). The 2003 Master Plan (Exhibit 2) specifically recommends the following for the Property:

This land is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. This property was recently approved as an office building and subdivided into lots 8 and 9.

In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office.

**Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend Zoning change from C-2 to E-1.

In addition, the 2009 Master Plan (Exhibit 3) specifically recommends the following for the Property (referred to as the “northern portion of the lot” below):

This 4.6-acre lot is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office. This property was later approved for development with an office building and subdivided into lots 8 and 9. The northern portion of the lot is zoned C-2 and the southern portion is zoned E-1. It is recommended that the lot be given a uniform land use designation and zoning category.

...

**Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend zoning changes from C-2 to E-1 for the northern portion of the lot
- Retain E-1 zoning on the southern portion of the lot.

The change in the land use and zoning recommendations for the Property to be rezoned back to the E-1 Zone in two separate master plans (the 2003 and 2009 Master Plans) adopted by the Mayor and Council provides strong evidence that a mistake in the comprehensive rezoning of the Property to the C-2 Zone in 1996 was made.

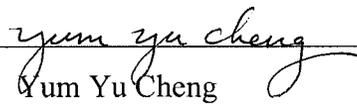
The Court of Appeals has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize rezoning. *Mayor & Council of Rockville v. Stone*, 271 Md. 655, 662 (1974). Furthermore, a zoning map should be in accordance with a comprehensive plan. *Hewitt v. County Comm'rs.*, 220 Md. 48, 58 (1959). Unfortunately, the Mayor and Council did not comprehensively rezone the Property after the adoption of the 2003 and 2009 Master Plans to correct the mistake made in 1996 and to zone the Property consistent with the prevailing comprehensive master plan for the area and the Property (and this void in the City not comprehensively enacting a zoning change to implement the amendments made in the 2003 and 2009 Master Plans could in itself be deemed a mistake). This Rezoning Application is both necessary and appropriate in order to implement the changes in land use and zoning adopted by the Mayor and Council with both the 2003 and 2009 Master Plans, which changes are predicated by findings made by the Mayor and Council in both Master Plans that the comprehensive rezoning of the Property to the C-2 Zone in 1996 was a mistake. To correct the omission by the Mayor and Council in not adopting a comprehensive zoning map amendment to implement the changes made in both the 2003 and 2009 Master Plans, this Rezoning Application is needed to effectuate the rezoning of the Property from the C-2 Zone to the E-1 Zone, consistent with the recommendations of the 2003 and 2009 Master Plans.

Accordingly, for the reasons stated above and in the Applicant's Statement filed with the Rezoning Application, and to bring the zoning of the Property into conformance with the prevailing Master Plan regulating the Property, the Applicant respectfully requests that the Mayor and Council grant approval of this request to rezone the Property from the C-2 Zone to the E-1 Zone.

Respectfully submitted,

**LINOWES AND BLOCHER LLP**

By:   
C. Robert Dalrymple

By:   
Yum Yu Cheng

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Suite 800  
Bethesda, MD 20814  
(301) 961-5219

Attorneys for Applicant,  
Siena Corporation

\*\*L&B v/.

CITY OF GAITHERSBURG

NEIGHBORHOOD FIVE  
LAND USE PLAN

A MASTER PLAN ELEMENT



*Gaithersburg*

Published July 1997

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NEIGHBORHOOD FIVE LAND USE PLAN  
Adopted April 1996

MAYOR AND CITY COUNCIL

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David B. Humpton

PLANNING AND CODE ADMINISTRATION

Jennifer Russel, Director

Long-Range Planning Team:

Michael La Place, Director

Glenn Mlaker, Planner\*

Publication Team:

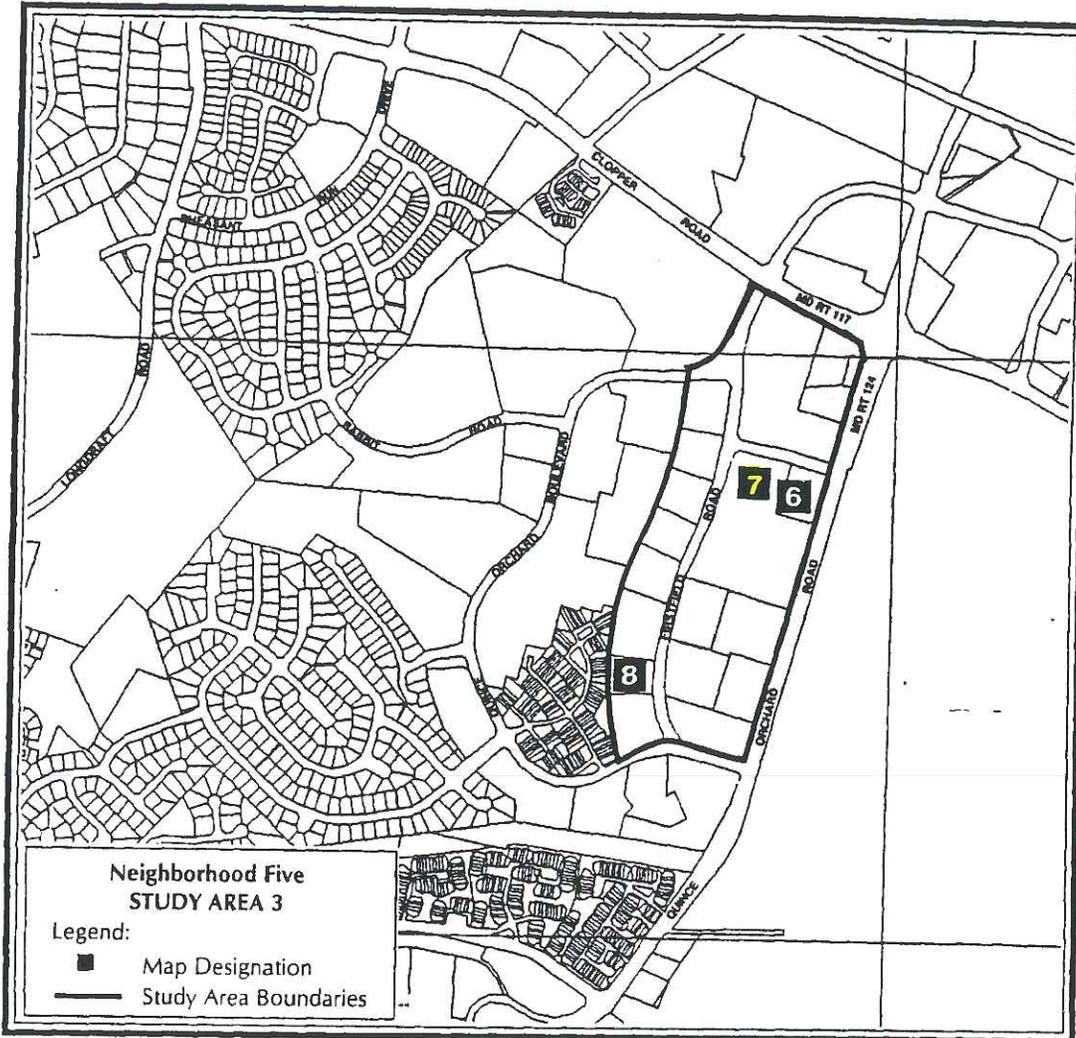
Patricia Patula, Publication Coordinator

Maria Fullerton, Graphics and Layout

Manisha Tewari, Geographic Information System

\* Principal Author

**STUDY AREA 3**



Total Area: 44 Acres  
 Predominant Land Use: Industrial-Research-Office

This study area is bounded on the north by Clopper Road (Maryland Route 117), to the east by Quince Orchard Road (Maryland Route 124), on the south by Quince Orchard Boulevard, and on the west by the rear property lines of the E-1 zoned office buildings and Quince Orchard Boulevard.

The northern portion of this study area consists of Quince Orchard Plaza which is a mixed commercial area comprised of a 245,657 square foot retail center, two freestanding restaurants and a seven-story 82,356 square foot office building. The middle and western parcels along Firstfield Road and Quince Orchard Road are industrial/research office buildings. The zoning consists of mainly E-1 and C-2.

Land use options, identified by map designation numbers on the Neighborhood Five Study Area 3 map on page 13 and listed in the chart beginning on page 42, are described as follows:

### Land Use Options

- 6** Retain Lot 1, Block C of Diamond Farms (Map Designation 6) as **industrial-research-office** (Option A) or **redesignate to commercial** (Option B). On Lot 1, there currently exists an office building that contains a bank, several medical offices, and other office related businesses. Option A should be selected if this site, currently zoned E-1, is viewed as an employment center. Option B recognizes that some of the uses and the orientation of this building relate better to the adjoining commercial area of Quince Orchard Plaza on the north side of Bank Street. A redesignation to commercial might suggest C-2 as an alternate zoning.

#### Land Use and Zoning Actions

- Adopted commercial designation (Option B)
- Property rezoned to C-2

- 7** Retain part of Lot 2, Block C of Diamonds Farms (Map Designation 7) as **industrial-research-office** (Option A) or **redesignate to commercial** (Option B). Watkins-Johnson Corporation, owner of Lot 2, received site plan approval for this site in 1973 and the vacant portion is part of their stormwater management system. This vacant 3.3 acres could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed. By redesignating part of Lot 2 commercial, a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur.

#### Land Use and Zoning Actions

- Adopted commercial designation (Option B)
- Property rezoned to C-2

- 8** Redesignate P551 as **institutional** (Map Designation 8). This parcel contains the 10,340 square foot Diamond Farms Post Office on 1.84 acres. The redesignation from industrial-research-office is logical due to the long-term commitment of the United States Postal Service.

#### Land Use and Zoning Actions

- Adopted institutional designation
- Zoning to remain E-1

NEIGHBORHOOD FIVE

LAND USE PLAN DESIGNATIONS AND COMPREHENSIVE REZONING  
1996

NEIGHBORHOOD FIVE LAND USE PLAN 1997

MAP DESIG	STUDY AREA	SUBDIVISION/ PARCEL/LOT	ACRES	PROPERTY OWNERS	1994 ZONING	1974 LAND USE DESIGNATION	1994 DRAFT PLAN LAND USE DESIGNATION	PLANNING COMMISSION RECOMMENDATION	MAYOR & COUNCIL ADOPTION	ADOPTED ZONING
1	1	N746	2.23	City of Gaithersburg, Mont Co.	C-2	Comm	High Den Res	Inst	Inst	C - 2
2	1	Part of N770 Lot 10	1.06	McDonald Corporation	C-2	Comm	Comm	Comm	Comm	C - 2
3	1	N962, N904	2.21	Quince Tree Assoc. Partnership	C-2	Comm	Comm	Comm	Comm	C - 2
4	1	N39	6.46	Quince Tree Assoc. Partnership	C-2	Ind-Rsch-Off	Comm	Comm	Comm	C - 2
5	2	P15, P41, P67	2.60	Craig Dart Howard M. Mills	R-200 (County)	Low Den Res (County)	Low Den Res (Opt A) Res-Off (Opt B) Comm-Off-Res (Opt C) Comm (Option D)	Comm-Off-Res	Comm-Off-Res	
6	3	Lot 1 Block C	2.20	One Bank St. Ltd. Partnership	E-1	Ind-Rsch-Off Comm (Opt B)	Ind-Rsch-Off (Opt A)	Comm	Comm	C-2
7	3	Part of Lot 2 Block C	3.30	Watkins-Johnson	E-1	Ind-Rsch-Off	Ind-Rsch-Off (Opt A) Comm (Opt B)	Comm	Comm	C-2
8	3	P551	1.84	United States Postal Service	E-1	Ind-Rsch-Off	Inst	Inst	Inst	E - 1

CITY OF GAITHERSBURG



*Gaithersburg*  
*A Character Counts! City*

**City of Gaithersburg**  
**LAND USE PLAN**

**2003**  
MASTER PLAN

**Exhibit 2**

# **CITY OF GAITHERSBURG 2003 MASTER PLAN**

## **MAYOR AND CITY COUNCIL**

Mayor Sidney A. Katz  
Council Vice President Ann T. Somerset  
Council Member Stanley J. Alster  
Council Member Geri Edens  
Council Member Henry F. Marraffa, Jr.  
Council Member John B. Schlichting

## **PLANNING COMMISSION**

Chairperson Blanche Keller  
Commissioner John Bauer  
Commissioner Victor Hicks  
Commissioner Leonard Levy  
Commissioner Danielle L. Winborne

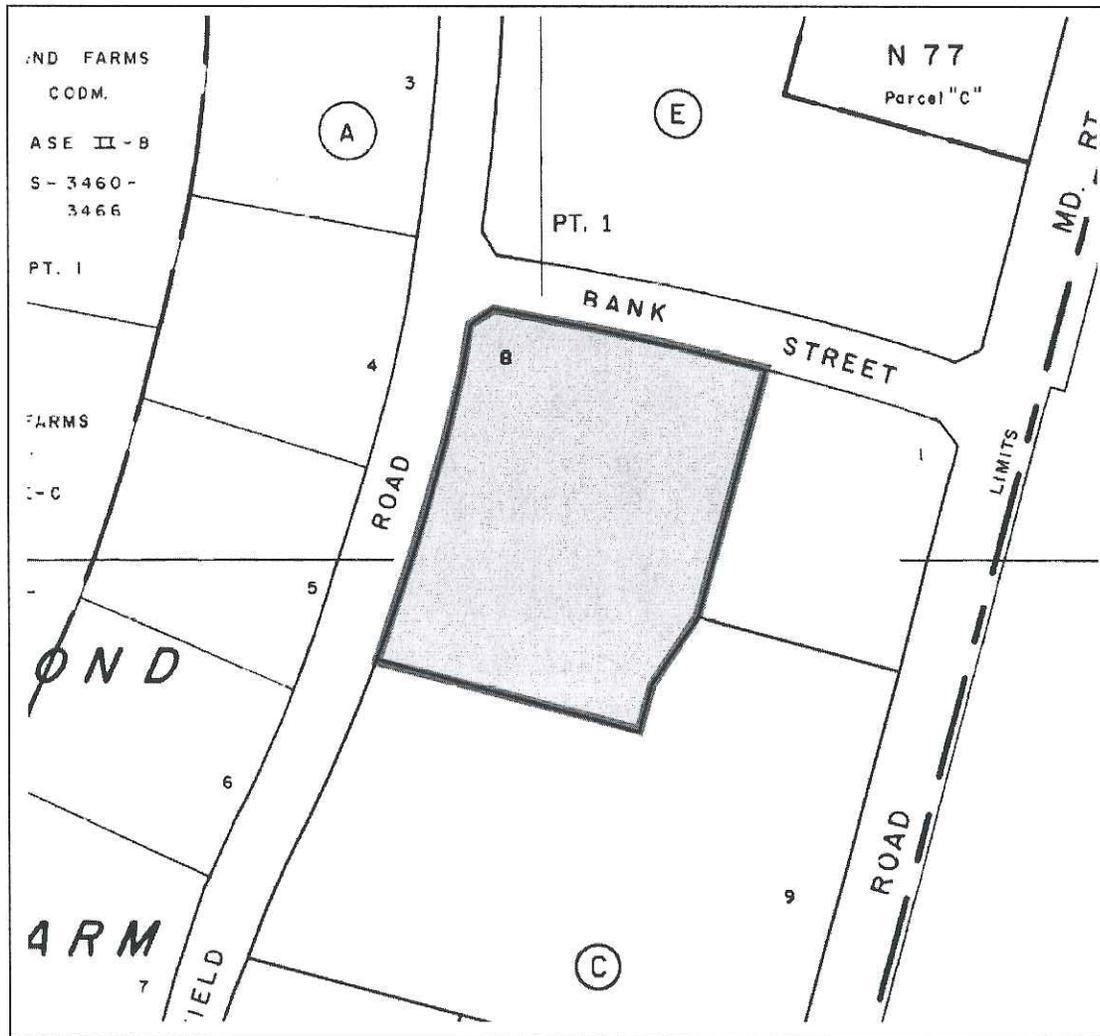
## **CITY MANAGER**

David B. Humpton

## **PLANNING AND CODE ADMINISTRATION**

Long Range Planning Team:  
Mark DePoe, Long Range Planning Director  
Kirk Eby, GIS Planner  
Daniel Janousek, Planner

**51.** Designate Lot 8 Block C Diamond Farm as Industrial-Research-Office.



This land is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. This property was recently approved as an office building and subdivided into lots 8 and 9. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office.

**Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend Zoning change from C-2 to E-1.



*Gaithersburg*  
*A Character Counts! City*

**City of Gaithersburg**

**LAND USE  
PLAN**

**A Master Plan Element**

*Published December 20, 2011*

**2009**  
MASTER PLAN

Exhibit 3

# **CITY OF GAITHERSBURG 2009 MASTER PLAN**

## **LAND USE ELEMENT**

Planning Commission Approval: 11/16/2011, Resolution PCR-1-11  
Mayor and City Council Adoption: 12/19/2011, Resolution R-88-11

### **MAYOR AND CITY COUNCIL**

Mayor Sidney A. Katz  
Council Vice President Ryan Spiegel  
Jud Ashman  
Cathy C. Drzyzgula  
Henry F. Marraffa, Jr.  
Michael A. Sesma

### **PLANNING COMMISSION**

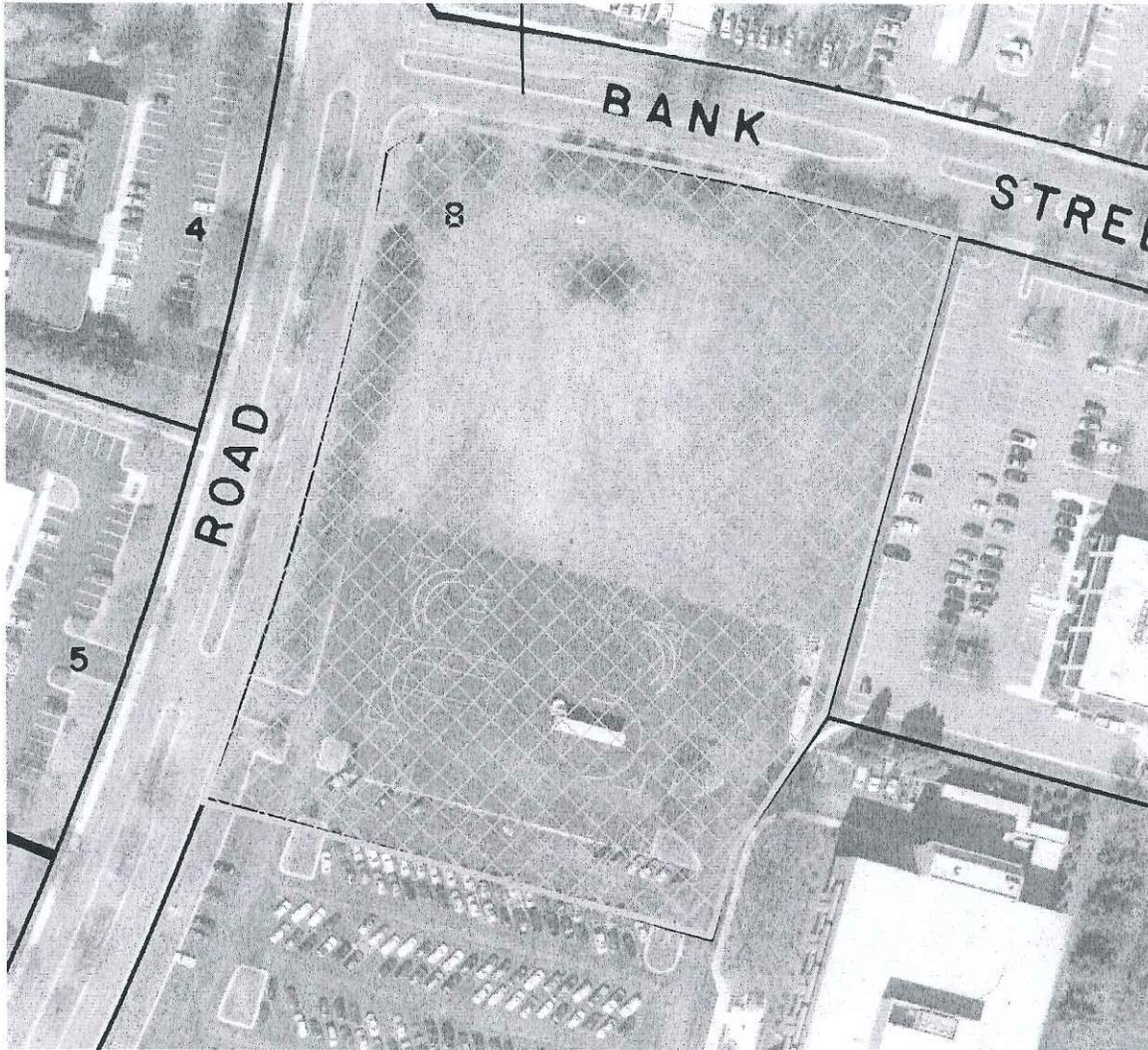
Chair John Bauer  
Vice-Chair Lloyd S. Kaufman  
Commissioner Matthew Hopkins  
Commissioner Geraldine Lanier  
Commissioner Danielle L. Winborne  
Alternate Commissioner Joseph Coratola

### **CITY MANAGER**

Angel L. Jones

### **PLANNING AND CODE ADMINISTRATION**

Raymond Robinson III, Lead, Long Range Planning  
Kirk Eby, GIS Planner

**10. 14 Firstfield Rd, 1 parcel, 4.6 acres****Lot 8 Block C Diamond Farm**

This 4.6-acre lot is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office. This property was later approved for development with an office building and subdivided into lots 8 and 9. The northern portion of the lot is zoned C-2 and the southern portion is zoned E-1. It is recommended that the lot be given a uniform land use designation and zoning category.

**Applicable Strategic Direction: Planning**

**Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend zoning change from C-2 to E-1 for the northern portion of the lot
- Retain E-1 zoning on the southern portion of the lot

## MEMORANDUM

TO: Mayor and City Council  
Planning Commission

FROM: Frank Johnson, Assistant City Attorney

CC: Tony Tomasello, City Manager  
N. Lynn Board, City Attorney  
John Schlichting, Director of Planning and Code Administration

RE: Siena Corporation Application for Rezoning – 14 Firstfield Road

DATE: March 11, 2014

Siena Corporation has applied for rezoning of a 4.6 acre lot at 14 Firstfield Road to E-1 zoning. The property is currently partly zoned C-2; about 1.47 acres on the southern portion is already zoned E-1. In making their rezoning application, Siena Corporation asserts the current C-2 zoning is a mistake, as the property has not developed as the 1997 master plan predicted. This Memorandum updates the legal issues involved in considering whether the zoning is a mistake and in any rezoning.

### 1. Background

Siena Corporation has purchased the lot at 14 Firstfield Road, at the corner of Firstfield Road and Bank Street. It is partly zoned C-2; the southern portion, about 1.47 acres, is zoned E-1. Adjoining property further south is zoned E-1; property across Firstfield Road is zoned C-2, as is the adjacent lot on the side of 14 Firstfield Road, where a bank operates. Siena has applied to have the lot rezoned entirely to E-1 zoning.

No development has occurred on the property, and Siena Corporation indicates they wish to develop a 150,000 square-foot ezStorage facility. Such a warehousing facility would not be permitted within the C-2 zone. But such a facility would be permitted in E-1, so Siena seeks that zoning. The C-2 and E-1 zones are Euclidian zones, which cannot be changed outside of comprehensive rezoning, unless there is a showing of change or mistake. *Mayor and Council of Rockville v. Rylyns Enterprises*, 372 Md. 514 (2002), citing *Stratakis v. Beauchamp*, 268 Md. 643 (1973). Further, §4-204 of the Land Use Article of the Annotate Code of Maryland provides that an amendment to the zoning classification for property may be granted upon a finding by the legislative body that there was a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification.

## 2. Siena's Assertion of Mistake

Siena in its initial statement asserts the property “for whatever reason” was not rezoned to the recommended E-1 zoning after both the 2003 and 2009 master plan adoptions, and argues rezoning to E-1 is necessary and appropriate. Siena also argues that the 2003 and 2009 recommendations show the City Council made a mistake in rezoning the property C-2 in the first place, in 1997.

Siena filed a Supplemental Statement, in which it further argues how the Mayor and City Council made a mistake in the original 1997 rezoning of the property to the C-2 zone. Siena argues the Council based its rezoning decision on statements in the 1996 Neighborhood Five Land Use Plan, which they adopted and which became part of the 1997 Master Plan and which stated that the property “could be developed with a commercial use,” and that a restaurant or retail uses compatible with Quince Orchard Plaza – the shopping center across the street – could occur. Siena asserts subsequent events have proven these statements that such retail “could occur” were incorrect, as no retail, restaurant or any other commercial use has developed. Siena also argues that the 2003 and 2009 Master Plan recommendations to rezone the property to E-1 also provide “strong evidence” that the 1997 C-2 rezoning was a mistake.

## 3. Standards for Showing Mistake

*Presumption of zoning validity.* There is a “presumption of validity accorded to a comprehensive zoning” that must be overcome by evidence of a mistake or neighborhood change. *Boyce v. Sembly*, 25 Md. App. 43 (1975). Additionally, there is no requirement that zoning and the master plans conform. *People's Counsel of Baltimore County v. Beachwood I Ltd. Ptnrshp.*, 107 Md. App. 627 (1995).

*Burden is on the Applicant to show mistake.* The applicant has the burden to provide “strong evidence” of a mistake to overcome the presumption that the zoning is valid and to justify a piecemeal rezoning affecting one property. *Stratakis*, 268 Md. at 652-53. This can be a heavy burden, *Anne Arundel County v. Maryland National Bank*, 32 Md. App. 437 (1976), that requires direct evidence of an “actual and basic mistake” by the legislative body in designating the property’s zoning classification. *Bartnik v. Calvert County Hospital*, 262 Md. 434 (1971). But it should be noted the courts have held a “more liberal,” less stringent burden can be used when property would, as in this case, be reclassified among commercial categories – rather than being changed from a residential to a commercial zone. *Tennison v. Shomette*, 38 Md. App. 1 (1977).

In any event, evidence of the error must be demonstrated through the legislative body’s prior statements and findings. *Tennison*, 38 Md. App. at 7-8. And rather than a simple “mistake of judgment,” the evidence must show that “underlying assumptions or premises relied upon” were erroneous. *Mayor and Council of Rockville v. Rylins Enterprises*, 372 Md. 514 (2002).

*Possible mistakes may include inaccuracies, misunderstandings and erroneous predictions.* Mistakes can include the legislative body's failure to take into account existing facts or a misunderstanding of existing facts. *Beachwood*, 107 Md. App. at 645. Mistakes can also result from the failure to accurately predict future events that would bear on a parcel's land use – either because the legislative body failed to consider certain facts, or their prediction became inaccurate due to later events “which the Council could not take account of.” *Anne Arundel County v. A-PAC, Ltd.*, 67 Md. App. 122 (1985).

Mistakes based on inaccurate predictions are based on “assumptions upon which a particular use was predicated” which are proven “with the passage of time to be incorrect.” *A-PAC, Ltd.*, 67 Md. App. at 127, *citing Rockville v. Stone*, 271 Md. 655, 662 (1975) and *Boyce*, 25 Md. App. at 51. The evidence would simply have to show the legislative body based zoning on a prediction that turned out to be incorrect. *White v. Spring*, 109 Md. App. 692 (1996).

While mistakes are usually factual, they can consist of legal errors, such as those including the legislative body's zoning authority in particular cases. *Rylyns Enterprises*, 372 Md. at 574-75. Regardless of the basis, the evidence must show what incorrect factual or legal presumptions were made, and that they were relied upon by the legislative body in making the zoning decision in question. *White v. Spring*, 109 Md. App. 692(1996).

4. If mistake is shown, the Mayor and City Council would have discretion either to rezone to the E-1 zone or leave the property C-2.

When a mistake is proven in a Euclidean zone, piecemeal rezoning of a single affected property such as 14 Firstfield Road is an option. *Strakatis*, 268 Md. 652-53. But the legislative body would not likely be required to make such a change. *White*, 109 Md. App. at 708; *Chesapeake Ranch Club v. Fulcher*, 48 Md. App. 223 (1981). Such a change is only required when the evidence shows the property would lose “all reasonable use” unless it is rezoned. *People's Counsel of Baltimore County v. Prosser*, 119 Md. App. 150 (1998). Thus, even if a mistake is proven, the rezoning decision would remain within the City Council's discretion barring proof the property would have no reasonable use if it is not entirely rezoned to E-1.

Additionally, only “rectification of the mistake” would be permitted. *Mack v. Crandell*, 244 Md. 193 (1966). Thus, if the City Council finds a mistake, it would only have the ability to (i) leave the property in the C-2 zone despite the mistake, or (ii) correct the mistake and rezone the property into the E-1 zone. *Overton v. Board of County Commissioners of Prince George's County*, 225 Md. 212 (1961).

QUINCE ORCHARD BLV

14 Firstfield Road  
Zoning Map Amendment Application

FIRSTFIELD RD

BANK ST

124

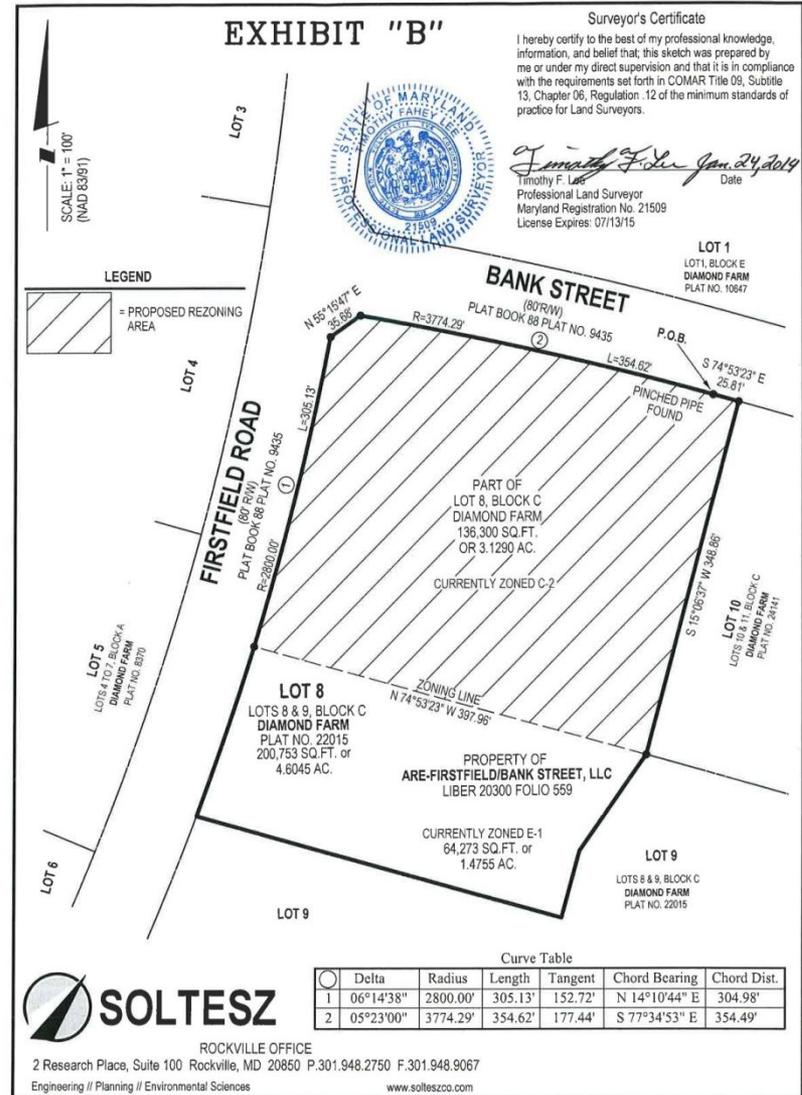
QUINCE ORCHARD RD

Z-4355-2014  
Exhibit #13

# Rezoning Request

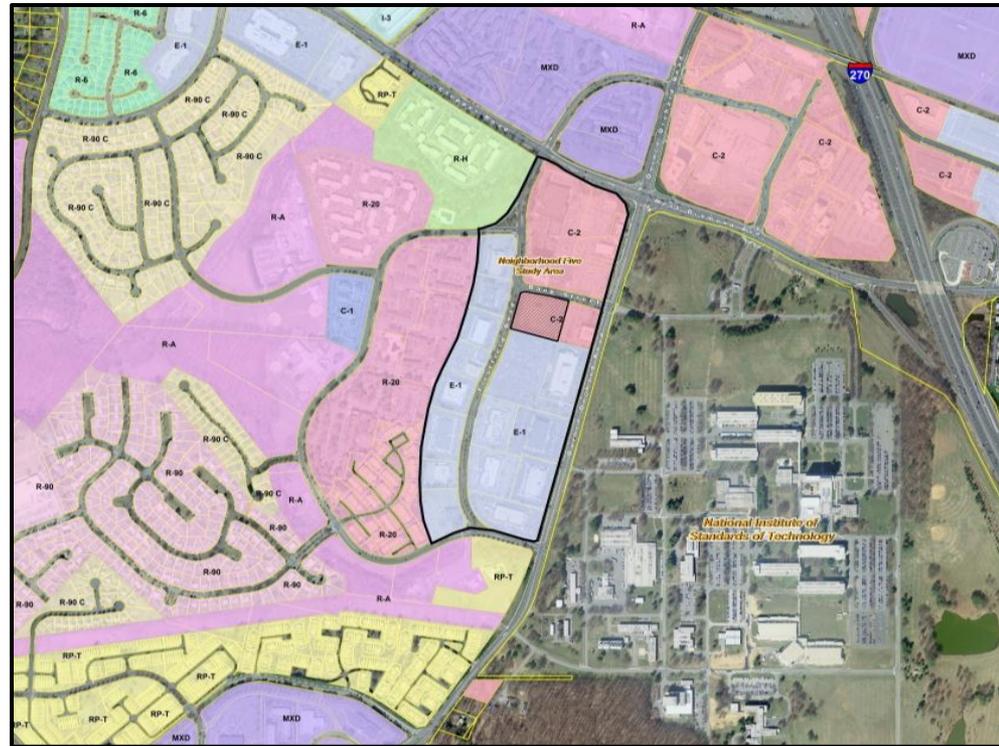
- The property is currently split-zoned with the southern portion zoned E-1 (Urban Employment) and the northern portion zoned C-2 (General Commercial).
- The request is to rezone the northern portion (3.13 acres) from C-2 to E-1 in conformance with the current master plan recommendation for this lot to be given a uniform E-1 zoning category.

Z-4355-2014  
Exhibit #14



# Surrounding Neighborhood

- To the south and west of the property are properties zoned E-1 and developed with office buildings.
- To the east of the Property are properties zoned C-2 and developed with a freestanding bank and an office building.
- To the north of the Property are properties also zoned C-2 and developed with commercial uses such as a retail shopping center (Quince Orchard Plaza Shopping Center), an office building, and freestanding restaurants.
- The boundaries of the surrounding neighborhood are the same as those of Study Area 3 of Neighborhood Five described and shown in the 1997 Master Plan.



# Basis for Rezoning

- Maryland law allows a property to be rezoned from one Euclidean to another Euclidean zone (C-2 to E-1 in this case) based on either a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification.
- The basis for this Rezoning Application is a mistake in the existing zoning classification.

# Mistake in Zoning

- Maryland case law provides that mistake in zoning can be demonstrated by providing evidence of events that occurred subsequent to the time of the comprehensive zoning of the property to C-2, which have proven that the Council's assumptions and premises were incorrect with the passage of time.
- We will review the history of the property, the assumptions made by the Council, and the events that occurred proving those assumptions were incorrect.

# History of Property

- **1967** - Property annexed into the City by Resolution R-21-67 and rezoned from the C-P (Commercial Office Park) Zone to the then newly established E-1 (Urban Employment) Zone by Resolution R-9-67.
- **1996** - Mayor and Council adopted the Neighborhood Five Land Use Plan that recommended retaining the Industrial-Research-Office land use designation or redesignating the Property to Commercial, and then adopted the Commercial designation and comprehensively rezoned the Property from E-1 to C-2.
- **1997 Master Plan** - The Neighborhood Five Land Use Plan became part of this master plan which made the following recommendation for the Property:

**Retain** part of Lot 2, Block C of Diamonds Farms (Map Designation 7) as **industrial-research-office** (Option A) or **redesignate to commercial** (Option B). Watkins-Johnson Corporation, owner of Lot 2, received site plan approval for this site in 1973 and the vacant portion is part of their stormwater management system. This vacant 3.3 acres could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed. By redesignating part of Lot 2 commercial, a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur.

## **Land Use and Zoning Actions**

- Adopted commercial designation (Option B)
- Property rezoned to C-2

# Assumptions of the Council

- Assumptions made by the Council at the time of the rezoning of the Property were:
  - the Property “could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed”; and
  - “a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur” by redesignating the Property commercial.

# Subsequent Events Proving Assumptions Incorrect

- Events that occurred subsequent to the time of the comprehensive rezoning show that the Council's assumptions that were the basis for comprehensively rezoning the Property from E-1 to C-2 in 1996 were proven incorrect:
  - The Property was subdivided and a new stormwater management facility was approved for a 3-story office building in 2002 (Site Plan No. SP-02-0006). However, the office building was never constructed.
  - No restaurant or retail uses, or any other commercial use have developed on the Property and notwithstanding steady marketing efforts, the Property remains vacant since the Property was comprehensively rezoned to the C-2 Zone.

# Subsequent Events Proving Assumptions Incorrect

- Since the 1997 Master Plan, the Property has been the subject of two master plan amendments.
- In both master plan amendments, the Mayor and Council established that the comprehensive rezoning in 1996 was a mistake in that the assumptions made at that time supporting the rezoning to the C-2 Zone proved to be erroneous.
- In both instances, the Mayor and Council concluded as a matter of legislative policy that the correct land use and zoning recommendations for the Property should be the prior “Industrial-Research-Office” land use designation and the E-1 Zone, as reflected in both the 2003 and 2009 Master Plans.

# **Subsequent Events Proving Assumptions Incorrect**

- **2003 Master Plan Recommendations:**

This land is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. This property was recently approved as an office building and subdivided into lots 8 and 9. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office.

### **Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend Zoning change from C-2 to E-1.

# Subsequent Events Proving Assumptions Incorrect

- **2009 Master Plan Recommendations**

(the Property is referred to as the “northern portion of the lot”):

This 4.6-acre lot is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office. This property was later approved for development with an office building and subdivided into lots 8 and 9. The northern portion of the lot is zoned C-2 and the southern portion is zoned E-1. It is recommended that the lot be given a uniform land use designation and zoning category.

...

## **Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend zoning changes from C-2 to E-1 for the northern portion of the lot
- Retain E-1 zoning on the southern portion of the lot

# Finding of Mistake

- The change in the land use and zoning recommendations for the Property to be rezoned back to the E-1 Zone in 2 separate master plans (the 2003 and 2009 Master Plans) adopted by the Mayor & Council provides strong evidence that a mistake in the comprehensive rezoning of the Property to the C-2 Zone in 1996 was made.
- Accordingly, based on the subsequent events that occurred after the comprehensive rezoning of the Property from E-1 to C-2 in 1996 proving the assumptions made at the time of the comprehensive rezoning were incorrect, the Council can make a finding of mistake.

# Finding of Facts

Maryland law provides that if the purpose and effect of a proposed map amendment is to change a zoning classification, the legislative body is required to make findings of fact that address:

- 1) population change;
- 2) availability of public facilities;
- 3) present and future transportation patterns;
- 4) compatibility with existing and proposed development for the area;
- 5) recommendation of the planning commission; and
- 6) relationship of the proposed amendment to the local jurisdiction's plan.

## **Finding of Facts: (1) Population Change**

- According to the City's "Dwelling Units and Estimated Population" report dated July 2013, the City's current population is based on occupied dwelling units and the City's projected future population is based on completion of all approved residential units.
- Since the rezoning request is from a commercial zoning (C-2) to an urban employment zoning (E-1), the change in population will be minimal.

## **Finding of Facts: (2) Availability of Public Facilities**

- On October 2, 2002, the Planning Commission approved a site plan for a 3-story office building on the Property (Site Plan No. SP-02-0006).
- It was determined at the time that the Property can be adequately served by the public facilities.
- The proposed use is a less intensive use than the approved office building.
- Therefore, the public facilities found to be adequate for the office use will be adequate for the proposed use.
- Also, there will be no impact on the public education facilities.

# Finding of Facts: (3) Present & Future

## Transportation Patterns

- Since the Property is vacant, there is currently no traffic going in and out of the Property.
- Firstfield Road (adjacent to the western boundary of the Property) is classified as a Collector Street with a minimum right-of-way of 80 feet and recommended for four lanes, which have been built.
- Bank Street (adjacent to the northern boundary of the Property) is classified as a Minor Collector with a right-of-way of 80 feet and recommended for four lanes, which also have been built.
- The Transportation Master Plan lists the closest intersection to the Property (MD 117 and Firstfield Road) as adequate during both the AM and PM peak hour trips and that the Property is located near a Ride-On bus stop serving Ride-On Bus Route 56.

## Finding of Facts: (3) Present & Future Transportation Patterns

- The CCT following a 9-mile long alignment from the Shady Grove Metro Rail Station to the Metropolitan Grove MARC Station, with a portion of the alignment along MD 124 just east of the Property. The CCT operations are currently scheduled to begin in the year 2021, but significant planning, design, and construction needs to occur before operations can begin.
- The Bicycle and Pedestrian Plan for the area shows that sidewalk is currently available on the north side of Bank Street and on the west side of Firstfield Road.
- Also, the Transportation Master Plan calls for a proposed bike lane along Firstfield Road and no upgrades are proposed along Bank Street.

# **Finding of Facts: (4) Compatibility with Existing and Proposed Development**

- If the Property is rezoned back to the E-1 Zone, the proposed project will be required to go through the site plan process, which will ensure that the proposed use will be compatible with existing and proposed development for the area.
- The properties to the south and west of the Property are zoned E-1 and developed with office buildings and surface parking spaces; to the east of the Property are properties zoned C-2 and developed with a freestanding bank and an office building; and to the north of the Property are properties zoned C-2 and developed with commercial uses such as a retail shopping center, an office building, and freestanding restaurants.

## **Finding of Facts: (5) Recommendation of the Planning Commission**

- The 2009 Master Plan's land use and zoning recommendations for the Property for the Industrial-Research-Office land use designation and E-1 Zone were approved by the Planning Commission on November 16, 2011 by Resolution PCR-1-11.
- Accordingly, this rezoning request to rezone the Property to the E-1 Zone will achieve the Planning Commission's recommendations for the Property.

## **Finding of Facts: (6) Relationship of Proposed Amendment to Local Jurisdiction's Plan**

- The 2009 Master Plan recommends the Industrial Research-Office land use designation and E-1 Zone for the Property.
- Accordingly, this request to rezone the Property from the C-2 Zone to the E-1 Zone will achieve the 2009 Master Plan's recommendations for the Property.

# Public Interest

It would be in the public interest to grant this rezoning request because:

- 1) The rezoning will achieve the Master Plan recommendation to rezone the Property from the C-2 Zone to the E-1 Zone.
- 2) The rezoning will allow the proposed use on the Property and the development of an attractive, functional building that will be compatible with the surrounding area or neighborhood. As a result of the proposed improvement, the tax assessment for the Property will increase, providing needed revenue to the State of Maryland, Montgomery County, and City of Gaithersburg.
- 3) The rezoning will allow a less intensive use than the uses allowed in the commercial zone that can be adequately served by the public facilities and have no impact on the public education facilities.
- 4) The rezoning will allow the proposed use that will have minimal impact on population and traffic.

## Gregory Mann

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**From:** John Schlichting  
**Sent:** Monday, March 24, 2014 4:51 PM  
**To:** Lauren Pruss; Trudy Schwarz; Gregory Mann  
**Subject:** FW: Opposed to Zone Change on Firstfield Road

FYI.

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**From:** Sidney Katz  
**Sent:** Monday, March 24, 2014 10:29 AM  
**To:** Pamela Parmer  
**Cc:** Tony Tomasello; Doris Stokes; Monica Sanchez; Sidney Katz; Lynn Board; Cindy Hines; Dennis Enslinger; Cathy Drzyzgula; Michael Sesma; Henry Marraffa - External; Sidney Katz; Jud & Lee Ashman; Ryan Spiegel; John Schlichting  
**Subject:** Re: Opposed to Zone Change on Firstfield Road

Ms. Parmer,

Thank you for your email. I am forwarding it to the city council and city staff so that they are aware of your thoughts as well. Sincerely,  
Sidney Katz

Sent from my iPhone

On Mar 24, 2014, at 10:16 AM, "Pamela Parmer" <[parmerpj@yahoo.com](mailto:parmerpj@yahoo.com)> wrote:

Dear Mayor Katz,  
I would like to register my opposition to changing the zone classification for 3.13 acres at 14 Firstfield Road.

I think it's obvious that warehouse use is not compatible with the surrounding area and in my opinion will not only be unsightly, but will also encourage more unsightly facilities. I realize that my opposition to this change is likely futile and we will ultimately have an ugly, ezStorage facility in our neighborhood anyway. I expect you would feel the same if you still lived in West Riding.

I hope the zoning change fees and taxes to Siena Corp of Columbia will discourage them from purchasing the land; and that they move on to an industrial area where no zoning change would be required and where our community is not degraded and devalued as a result.

Pam Parmer  
728 Tiffany Court  
Gaithersburg MD 20878