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June 10, 2025

Mayor Jud Ashman and Members of the City Council
Gaithersburg City Hall
31 South Summit Avenue
Gaithersburg, MD 20877

Re: Zoning Map Amendment Application for Rezoning of CarMax Property from MXD
to C-2

Dear Mayor Ashman and City Councilmembers:

On behalf of our client, CarMax Auto Superstores, Inc. (“CarMax”), and pursuant to Section 24-12.3 of the Gaithersburg Zoning Ordinance (the “Zoning Ordinance”), we are pleased to submit this Zoning Map Amendment Application requesting the rezoning of approximately 13.34 acres of land located at 16383 and 16411 Shady Grove Road (the “Property”) from the MXD (Mixed Use Development) zone to the C-2 (General Commercial) zone.

Background

As you are aware, the Property was annexed into the City of Gaithersburg in 2012 under Petition No. X-184, with an associated Annexation Agreement (the “Agreement”). In addition to the annexation of the Property, the Agreement set forth detailed terms and conditions regarding the zoning and development of the Property, and affirmed that, upon annexation, the Property would be placed in the MXD zone, consistent with the recommendation of the City’s 2009 Land Use Plan (the “City Master Plan”). The City Master Plan’s recommendation of MXD zoning for the Property was based upon Montgomery County’s 2006 Shady Grove Sector Plan (“2006 County Plan”), which, at that time, envisioned the surrounding area redeveloping into a more urban, mixed-use form, making a future mixed-use redevelopment of the Property, including residential, the most desirable vision. Section 24-160D.1 of the Zoning Ordinance established the purposes and objectives of that MXD zone at that time¹ as being:

(d) To ensure the integration and internal and external compatibility of applicable residential and nonresidential uses by providing a suitable residential environment that is enhanced and complemented by uses such as commercial, recreational, open space, employment and institutional uses and amenities within a multi-use development. A multi-use development is defined as a single parcel or a group of contiguous parcels of land zoned MXD which, among the various

¹ The 2024 revised ordinance contains similar language.

parcels comprising that contiguous area, include residential, commercial, recreational, open space, employment and institutional uses and amenities.

However, in recognition of the fact that, at the time of the Agreement, Montgomery County was still operating its solid waste transfer station (“Transfer Station”) immediately to the south of the Property, as part of the annexation process a Declaration of Use Restriction, dated July 24, 2012 and recorded in the Land Records in Book 44493 at Page 190, was placed on the Property that provided, among other things, that no portion of the Property “shall be developed, leased, rented or occupied for residential use...for so long as the Transfer Station remains in operation on the County Land for the benefit of the general public” (“Use Restriction”).

Subsequent to the annexation and rezoning, the City approved Sketch Plan No. ASK-1746-2013 on April 2, 2013, allowing for an approximately 12,904 square foot Automobile Sales Establishment (“Dealership”), a future 225,000 square foot Office/ Commercial/ Restaurant building, and associated surface parking on the Property. On that same day, the City also approved Schematic Development Plan No. SDP-1747-2013 for a lot containing the Dealership and an outlet for the future commercial building. On February 19, 2024, the City approved Site Plan No. SP-3173-2013 to permit the development of a CarMax dealership and related improvements at 16411 Shady Grove Road, which were subsequently constructed. These plans were discussed as being longer term “interim” plans, with future redevelopment of the Property with a mix of residential and commercial uses being more likely after implementation of the 2006 County Plan.

Impacts of New Zoning Ordinance

As part of the adoption of the City’s new Zoning Ordinance on July 15, 2024, Automobile Sales Establishments were removed as permitted uses in the MXD zone, rendering the existing Dealership a legal nonconforming use. Under this status, CarMax is unable to expand and would lose its ability to operate if the Dealership ceased operations for more than ninety days for any reason, which reasons might include fire or another casualty event, a highly inequitable result for a long-standing, approved use. *See* Zoning Ordinance Section 24-10.4(C). To begin to address this situation, Carmax and the City recently entered into an Amendment to the Agreement (the “Amendment”), which, among other things, makes certain findings that are supportive of, and find appropriate, a rezoning of the Property from the MXD to the C-2 zone, which this application now seeks to accomplish.

Requested Rezoning

Maryland caselaw is clear that “original or comprehensive zoning may be changed... only by a subsequent piecemeal zoning, which in the case of a Euclidean zone may be granted only upon a showing of unforeseen changes in the surrounding neighborhood occurring since the prior original zoning or comprehensive rezoning or mistake of fact made by the zoning authority in the original zoning or previous comprehensive rezoning.” *County Council of Prince George’s County v. Zimmer Development Company*, 444 Md. 490, 512 (2015) (citations omitted). *See also White v. Spring*, 109 Md. App. 692, 697 (1996)(“individual petitions for rezoning...must generally be supported by substantial evidence showing either that a change in the neighborhood has occurred since the last comprehensive rezoning or that, when the prior comprehensive rezoning occurred,

the legislative entity relied upon mistaken or erroneous evidence. This principle has come to be termed the change/mistake rule.”)

In the instant case, significant unforeseen changes have occurred in the neighborhood of the Property since its annexation into the City that render the original MXD zoning designation no longer appropriate. First, the County amended the 2006 County Plan in 2021 (“2021 County Plan”) and affirmed the surrounding institutional and industrial land uses and zoning, including the Transfer Station immediately to the south of the Property. This revised County Plan does not envision the area being redeveloped as was expected in 2012, but instead notes “[t]his Sector Plan confirms the importance of the [Transfer Station] at this location since the facility utilizes the existing rail tracks. The relocation of this facility to another part of the county is not anticipated in the long term.” *See* 2021 County Plan, p. 63. As such, the Use Restriction prohibiting residential uses on the Property will remain in place for the foreseeable future, effectively precluding the mixed-use redevelopment the MXD zone was designed to encourage and accommodate.

Other changes have also occurred in the area immediately surrounding the Property consistent with the 2021 County Plan that have established a more commercial and industrial character than the mixed-use form envisioned in 2012. Immediately to the west of the Property, at 16251 Frederick Road, a surface parking lot was constructed, and a myriad of industrial uses have been constructed near the intersection of Shady Grove Road and Crabbs Branch Way just to the east of the Property, such as the Montgomery County Division of Fleet Management Services, located at 16700 Crabbs Branch Way, and the Maryland Transportation Authority facility located at 16902 Crabbs Branch Way. These uses, in combination with the existing post office facility immediately to the east of the Property, have established a corridor of auto-oriented, commercial, and light industrial uses that is markedly different than the mixed-use area anticipated when the Property was placed in the MXD Zone in 2012. *See* aerial exhibit attached. Thus, a rezoning of the Property to a commercial zone reflective of the surrounding area, and comparable to the pre-annexation County R-D zoning, is an appropriate action for the Council to take at this time.

Finally, pursuant to Section 4-204 of the Maryland Land Use Article, the Mayor and Council can make the required findings to support the map amendment, as detailed below:

(b) (1) If the purpose and effect of a proposed map amendment is to change a zoning classification, the legislative body shall make findings of fact that address:

(i) population change;

The Use Restriction prohibits any residential use “for so long as the Transfer Station remains in operation,” and the proposed C-2 zone likewise allows only commercial uses. Therefore, the proposed rezoning will not generate any new dwelling units, nor will it increase the City’s population. Population impacts therefore remain neutral.

(ii) the availability of public facilities;

The Property is already served by public water, sewer, police, fire/EMS, and a sufficient transportation network. As no changes to the Property are proposed as part of the rezoning request, no additional demand will be placed on public facilities.

(iii) present and future transportation patterns;

The site fronts Shady Grove Road, which provides direct access to MD 355, I-270, and MD 200, and the Dealership has operated on the Property since 2013. No new improvements or operational changes are proposed as party of the rezoning application, meaning the application will have no material change to present of future transportation patterns.

(iv) compatibility with existing and proposed development for the area;

As reviewed above, the area immediately surrounding the Property has evolved into a corridor of auto-oriented, commercial, and light industrial uses since the Property's placement in the MXD zone in 2012. The proposed rezoning to C-2 zone will better align the Property with existing and proposed uses in the area.

(v) the recommendation of the planning commission; and

For all of the reasons detailed herein, we believe the Planning Commission will formulate a positive recommendation on the rezoning application. Moreover, in light of the above, we believe that, in its review of this rezoning application, it is appropriate for the Planning Commission to find that "events have occurred to render the current applicable master plan recommendation no longer relevant," pursuant to Section 24-12.3(F)(2) of the Zoning Ordinance. The City Master Plan, which is now 16 years old, recommended MXD zoning for the Property based on assumptions regarding the future redevelopment of the area surrounding the Property that have simply not occurred and will not going forward. On the contrary, recent surrounding developments have established a markedly commercial and light-industrial nature. The proposed rezoning of the Property is intended to make it consistent with the actual land use context surrounding the Property today.

(vi) the relationship of the proposed amendment to the local jurisdiction's plan.

As described above, the MXD zoning recommendation of the City Master Plan was largely based on the 2006 County Plan, which envisioned a much different redevelopment of the area than has occurred. Because the 2006 County Plan has now been amended by the 2021 County Plan, which affirms the commercial and industrial character of the area surrounding the Property, the City Master Plan should no longer be viewed as controlling on the Property. Instead, the Amendment, which recognizes that C-2 zoning for the Property is appropriate, provides a better reflection of the City's current intent and recommendations for the Property.

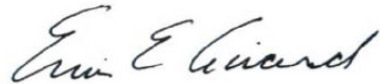
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We appreciate your consideration of this request. Should you have any questions, or would like any additional information in support of this application, please do not hesitate to contact me.

Sincerely,

LERCH, EARLY & BREWER, CHTD.

A handwritten signature in black ink, appearing to read "Erin E. Girard". The signature is written in a cursive style with a large initial "E".

Erin Girard

cc: Steve Hudak
Bradley Escobar



CarMax
16383 and 16411 Shady Grove Road, Gaithersburg