ZONING RECLASSIFICATION APPLICATION

Harford County Board of Appeals

Bel Air, Maryland 21014

Shaded Area For Office Use Only

Case No. 132

Date Filed 1/10/07

Hearing Date

Pre-Conf.

Receipt

Fee $800

RECEIVED JAN 30 2007 HARFORD COUNTY

Note

1. It is required that the applicant have a pre-filing conference with the Department of Planning and Zoning to determine the necessary additional information that will be required.
2. The burden of proof in any rezoning case shall be upon the Petitioner.
3. Any application in a zoning case and any amendment thereto shall contain specific allegations setting forth the basis for granting of the request.
4. Petition must contain names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.
5. Application will be reviewed for completeness within ten (10) working days of submittal. Applicant will be notified by mail of completeness of application.

Petitioner

Name N4 LLC Phone Number Call Attorney

Address 109 E. Jarrettsville Road Forest Hill MD 21050
Street Number *Street* *State* *Zip Code*

Property Owner Same as above Phone Number

Address
Street Number *Street* *State* *Zip Code*

Contract Purchaser Phone Number

Address
Street Number *Street* *State* *Zip Code*

Attorney/Representative Eric E. McLauchlin, Esquire Phone Number 410-893-7500

Address 11 South Main Street Bel Air MD 21014
Street Number *Street* *State* *Zip Code*

Land Description

Address and Location of Property (with nearest intersecting road) 2217 Commerce Road - Forest Hill Industrial Airpark (East Jarrettsville Road0

Subdivision Forest Hill Industrial Airpark Lot Number N4 Acreage/Lot Size 2.20 Acres Election District 03

Existing Zoning GI Proposed Zoning CI Acreage to be Rezoned 2.20 Acres

Tax Map No. 33 Grid No. 4F Parcel 470 Deed Reference 4027/129

Critical Area Designation N/A Land Use Plan Designation N/A

Present Use and ALL improvements: Commercial grade business structure - physical therapy.

Proposed Use (If for subdivision development, proposed number of lots, type of dwellings, and type of development. Example: Conventional, Conventional with Open Space, Planned Residential Development) Flex space for commercial and industrial use.

Is the property designated a historic site, or does the property contain any designated or registered historic structures?

No If yes, describe:

Estimated Time Requested to Present Case: One hour.

Required Information To Be Attached

(Submit three (3) copies of each):

(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.

(2) A statement as to whether there is an allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change.

(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.

(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:

(1) Location of site.

(2) Proposed nature and distribution of land use not including engineering drawings.

(3) Neighborhood (as defined by the Applicant).

(4) All surrounding zoning.

(5) Proposed public or private capital improvements.

(e) Previous individual rezonings and recommendation since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions.

(f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc.

(g) Property deed and a boundary survey prepared and sealed by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property.

(h) Private restrictions or covenants, if any, applicable to subject parcel.

(i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted.

(j) Availability of public water and sewer.

Additional Information as Required by the Department of Planning and Zoning

(a) Existing and proposed libraries, parks, schools, fire and police departments.

(b) Demonstration of compatibility of the proposed use with existing and proposed development for the area.

(c) Traffic impact study.

(d) Economic and Environmental impact studies.

(e) Estimated population for existing and proposed petitioned area and neighborhood, as defined.

(f) Soils analysis.

(g) Aerial photograph.

CASE 132 **MAP** 33 **TYPE** Rezoning

ELECTION DISTRICT 03 **LOCATION** 2217 Commerce Road, Forest Hill

BY N4 LLC, 109 E. Jarrettsville Road, Forest Hill, MD 21050

Appealed because a rezoning pursuant to Section 267-12A of the Harford County Code to rezone 2.20 acres from a GI District to a CI District requires approval by the Board.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the aforegoing affidavit are true and correct to the best of my/our knowledge, information, and belief.

12/11/06	12/11/06
Signature of Applicant/Owner *Date*	*Witness* *Date*
N4 LLC, ~~Robert F. Martin~~ Martin M. Martin	
Signature of Contract Purchaser/Owner *Date*	*Witness* *Date*
12/11/06	
Signature of Attorney/Representative *Date*	*Witness* *Date*
Eric E. McLauchlin, Esquire Gessner, Snee, Mahoney & Lutche, P.A.	
1/29/07	
Director of Planning and Zoning *Date*	*Zoning Staff* *Date*

2 : 1/10/07
9 : 10436
208401

ATTACHMENTS TO
ZONING RECLASSIFICATION APPLICATION

I. List of Persons With Legal or Equitable Interest:

TO BE PROVIDED.

II. List of Property Owners Within 500 Feet of Subject Parcel:

SEE ATTACHED AT TAB A.

III. Statement Of The Grounds For The Application:

The Petitioner alleges a mistake as to the existing zoning. The Harford County Council made a mistake in zoning the subject property GI during the 1997 comprehensive zoning process.

The property was originally zoned GI for the purposes of allowing a specific industrial user to construct and operate its large business. That user ultimately abandoned its intended use; however, the zoning remained GI thereafter. The property is designated as an Industrial/Employment area in the Master Land Use Plan, and the Airpark is described in the Master Plan as a significant employment center.

Transportation within the Airpark circulates from Jarrettsville Road to Industry Lane and/or Commerce Road, then back to Jarrettsville Road. At the time of the 1997 comprehensive rezoning process, and at the time that the Council zoned the subject property GI, the owner and the County believed that the Airpark would have no access on to Maryland Route 23 and that access would remain on Jarrettsville Road. The 2004 Master Plan notes, for example, that significant road improvements "such as the Hickory Bypass, have been constructed to reduce traffic flow through the villages and accommodate truck traffic from the Forest Hill Industrial Airpark ..."

Events occurring after the comprehensive have allowed the Airpark owner(s) to now connect Commerce Road to Maryland Route 23, which will significantly change traffic circulation within the Airpark and significantly reduce trips and truck traffic on Jarrettsville Road and through the villages. Commerce Road will no longer be classified as a Local Road. The resulting change will reorient the "front" of the Airpark toward Route 23, and the uses permitted within the CI zone are more consistent with such frontage than those general industrial uses permitted within the GI zone. The change in traffic flow will substantially change the character of the neighborhood where transportation is concerned. The applicant defines the neighborhood of the property as set forth on the

attached Concept Plan as roughly Jarrettsville Road to the north, Maryland Route 23 to the south, Route 1 to the east and Maryland Route 24 to the west.

Furthermore, the subject property is not appropriate for general industrial uses, many of which (e.g., factory and manufacturing type uses) would have greater and less desirable impacts on adjoining properties in the community than would the uses permitted in the CI zoning category. Although the Airpark functions as a single commercial development, it is nonetheless essentially "split-zoned" in to CI and GI sections. Despite the veto of the legislation which resulted from the most recent comprehensive rezoning process, the property was recommended for an approved change in zoning to CI by the Department of Planning and Zoning, the Planning Advisory Board and the County Council.

In addition, the market forces that drive the type and location of tenants in the Airpark have experienced an unanticipated influence. The Base Realignment and Closure (BRAC) process will result in the relocation and/or expansion of thousands of jobs to the Aberdeen Proving Ground and Edgewood Arsenal. As such, the need for commercial and industrial uses as envisioned by the Property Owner has and will become even greater. The ability to locate these uses at key transportation points such as airports, and key highways such as Maryland Route 23 is essential. The availability of air transportation provides a unique opportunity for those users who would relocate to the Airpark. The BRAC process poses a substantial change to the character of the neighborhood, which change was not fully anticipated and which occurred entirely after the most recent comprehensive rezoning. Neither the 1996 Master Land Use Plan nor the Council's 1997 comprehensive rezoning bill took BRAC into account.

IV. Concept Plan:

SEE ATTACHED AT TAB B.

V. Environmental Features Map:

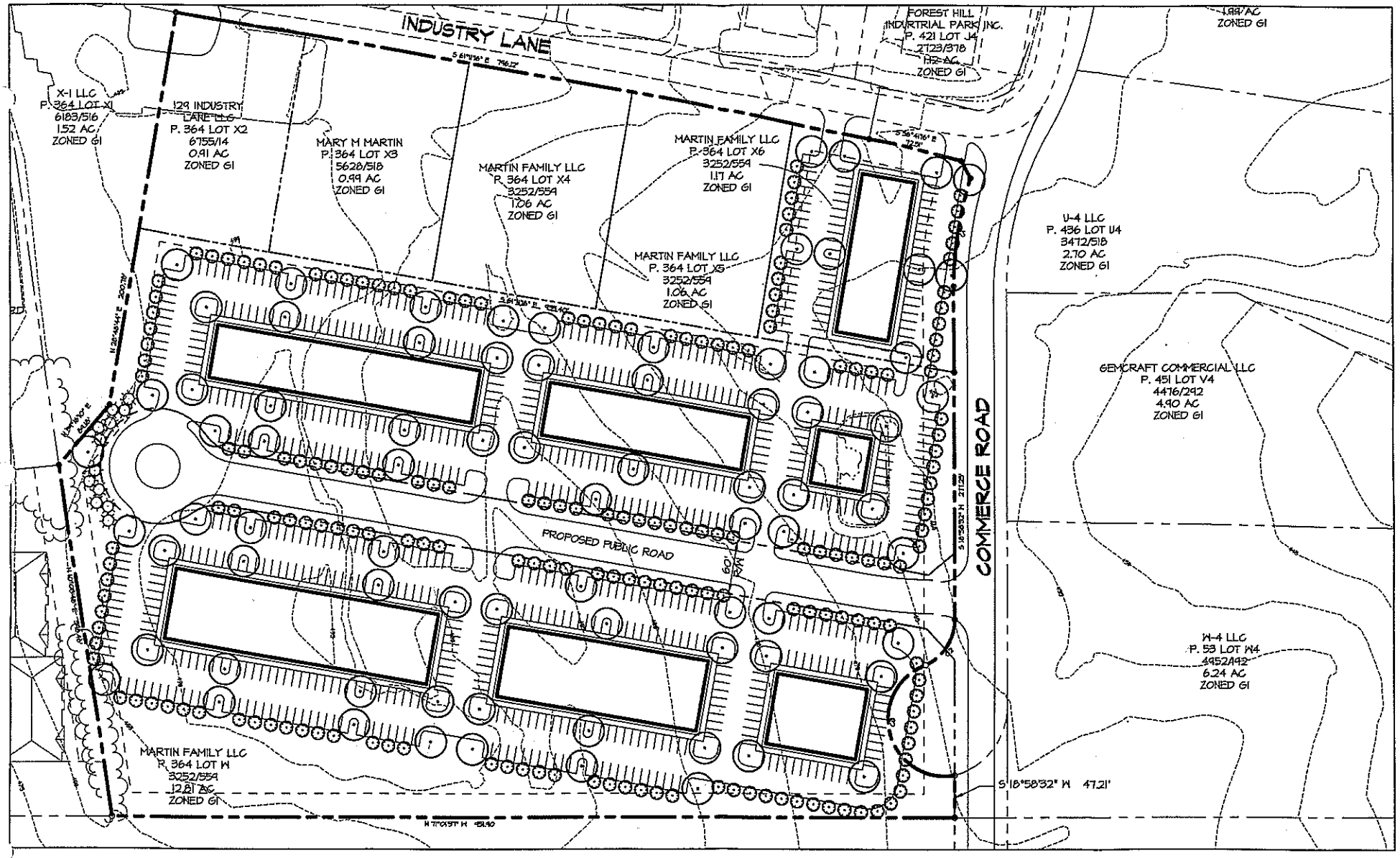
SEE ATTACHED AT TAB C.

V. Property Deed And Boundary Survey

SEE ATTACHED AT TAB D.

VI. Restrictive Covenants

SEE ATTACHED AT TAB E.



CONCEPT PLAN - MARTIN FAMILY LLC
2200 COMMERCE ROAD, FOREST HILL, MD 21050

MRA

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO
DIRECTOR OF ADMINISTRATION

C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

APR 2007

April 3, 2007

STAFF REPORT

BOARD OF APPEALS CASE NO. 132

APPLICANT/OWNER:	N4, LLC 109 E. Jarrettsville Road, Forest Hill, Maryland 21050
REPRESENTATIVE:	Eric E. McLauchlin, Esquire Gessner, Snee, Mahoney & Lutche, P.A. 11 South Main Street, Bel Air, Maryland 21014
LOCATION:	2217 Commerce Road, Forest Hill, Maryland 21050 Tax Map: 33 / Grid: 4F / Parcel: 470 Election District: Three (3)
ACREAGE:	2.20 acres
ACREAGE TO BE REZONED:	2.20 acres
EXISTING ZONING:	GI/General Industrial District
PROPOSED ZONING:	CI/Commercial Industrial District
DATE FILED:	January 10, 2007
HEARING DATE:	April 11, 2007

APPLICANT'S REQUEST and JUSTIFICATION:

Request:

The Applicants are requesting to rezone 2.20 acres from GI/General Industrial District to CI/Commercial Industrial District.

Justification:

See ATTACHMENT 1.

LAND USE and ZONING ANALYSIS:

Location and Description of Neighborhood:

The Applicant's property is located on the southeast corner of Jarrettsville Road and Commerce Road. A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 2 and 3).

The Applicant has submitted a map delineating their suggested neighborhood with the application (Attachment 4). The Department generally agrees with the Applicant's suggested neighborhood. The eastern limit of the Applicant's defined neighborhood is the parcels on the east side of Commerce Road. The Applicant's written description in their application, however, states that the neighborhood extends further east to US Route 1. The neighborhood defined by the Department extends approximately 1,500-feet east of Commerce Road to Dixie Drive Enclosed is a map showing the neighborhood as defined by the Department (Attachment 5).

Land Use – Master Plan:

The subject property is located within the Development Envelope on the southeast corner of Jarrettsville Road and Commerce Road. The primary Land Use designation in this area is Industrial/Employment. The Natural Features Map reflects Stream Systems. The Rural Village of Forest Hill is located to the west of the subject property at the intersection of MD Route 24 and Jarrettsville Road. The subject property is designated as Industrial/Employment which is defined by the 2004 Master Plan as:

> ***Industrial/Employment*** *– Areas of concentrated manufacturing, distribution, technical, research, office, and other activities generally located along major transportation corridors.*

Enclosed with the report are copies of portions of the 2004 Land Use Map and the Natural Features Map (Attachments 6 and 7).

Land Use – Existing:

The existing land uses generally conform to the intent of the Master Plan. The area contains a mix of uses including single-family dwellings, institutional uses, personal and professional services and commercial/industrial uses. Some of the commercial uses in the area include small individual retail stores and a gas station/convenience store.

The subject property is located within the Forest Hill Industrial Airpark and is designated as Lot N4. The subject property is currently improved with an approximately 20,700 square foot commercial building. Similar commercial buildings are located on the lots to the south and west across Commerce Road. The buildings on the developed lots within the Airpark house a variety of tenants such as construction services, contractor/building supplies, and corporate offices. There are two single-family residential lots located to the north of the subject property across Jarrettsville Road. The Tuchahoe Farms single-family residential subdivision abuts the subject property to the east.

The subject property is nearly rectangular in shape, contains 2.20 acres and has approximately 300-feet of road frontage along Jarrettsville Road and 330-feet of frontage along Commerce Road. The topography within this area ranges from rolling to steep, especially near the stream valleys. The subject property is gently sloping from the west to the east. Enclosed with the report are a copy of the topography map and the aerial photograph (Attachments 8 and 9).

Enclosed with the report are site photographs (Attachments 10).

Zoning and Zoning History:

Zoning:

The zoning classifications in the area are generally consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning in the area includes VR/Village Residential District and R3/Urban Residential District. Commercial zoning in the area includes VB/Village Business District and CI/Commercial Industrial District. The industrial zoning in the area is GI/General Industrial District. The subject property is zoned GI/General Industrial District as shown on the enclosed copy of the zoning map (Attachment 11). The Airpark itself is split zoned GI/General Industrial District and CI/Commercial Industrial District.

Zoning History:

1957 Comprehensive Zoning Review: In 1957 the subject property was zoned AG/Agricultural District (Attachment 12).

1982 Comprehensive Zoning Review: In 1982 the subject property remained zoned AG/Agricultural District (Attachment 13).

1989 Comprehensive Zoning Review: In 1989 the subject property was rezoned from AG/Agricultural District to GI/General Industrial District (Attachment 14).

1997 Comprehensive Zoning Review: The owners of the subject property requested that the property be rezoned to CI/Commercial Industrial District during the 1997 review. The County Council voted to keep the property zoned GI/General Industrial District. Enclosed with the report is a copy of the 1997 zoning log and map (Attachment 15 and 16).

2005 Comprehensive Zoning Review: The Applicant requested that the property be rezoned to CI/Commercial Industrial District during the 2005 review. The County Council voted to change the property to CI/Commercial Industrial District. However, the County Executive vetoed the Legislation and the County Council did not override the veto. Therefore, the zoning assigned to the property in 1997 remains in effect. Enclosed with the report is a copy of the 2005 zoning log (Attachment 17).

BASIS FOR INDIVIDUAL REZONING REQUEST:

Under Maryland case law, the burden of proof lies with the Applicant to provide information that there has been a substantial change in the overall character of the neighborhood or that the County made a mistake during the last comprehensive zoning review process. It should be noted that the courts have stated that any argument for change cannot be based on existing changes that were anticipated during the last comprehensive review.

Substantial Change Argument:

The Applicant states that "In addition, the market forces that drive the type and location of tenants in the Airpark have experienced an unanticipated influence. The Base Realignment and Closure (BRAC) process will result in the relocation and/or expansion of thousands of jobs to the Aberdeen Proving Ground and Edgewood Arsenal. As such, the need for commercial and industrial uses as envisioned by the Property Owner has and will become even greater. The ability to locate these uses at key transportation points such as airports and key highways such as Maryland Route 23 is essential. The availability of air transportation provides a unique opportunity for those users who would relocate to the Airpark. The BRAC process poses a substantial change to the character of the neighborhood, which change was not fully anticipated and which occurred entirely after the most recent comprehensive rezoning. Neither the 1996 Master Land Use Plan nor the Council's 1997 comprehensive rezoning bill took BRAC into account."

The Department of Planning and Zoning is aware of BRAC and has been actively involved with State, Federal and Military officials in planning for the relocation process. This Department, however, disagrees with the Applicants argument that the BRAC process has caused a substantial change in the subject neighborhood.

Mistake:

The Applicant states that "The property was originally zoned GI for the purposes of allowing a specific industrial user to construct and operate its large business. That user ultimately abandoned its intended use; however, the zoning remained GI thereafter. The property is designated as an Industrial/Employment area in the Master Land Use Plan, and the Airpark is described in the Master Plan as a significant employment center."

"Transportation within the Airpark circulates from Jarrettsville Road to Industry Lane and/or Commerce Road, then back to Jarrettsville Road. At the time of the 1997 comprehensive rezoning process, and at the time that the Council zoned the subject property GI, the owner and the County believe that the Airpark would have no access on to Maryland Route 23 and that access would remain on Jarrettsville Road. The 2004 Master Plan notes, for example, that significant road improvements "such as the Hickory Bypass, have been constructed to reduce traffic flow through the villages and accommodate truck traffic from the Forest Hill Industrial Airpark…"

"Events occurring after the comprehensive have allowed the Airpark owner(s) to now connect Commerce Road to Maryland Route 23, which will significantly change traffic circulation within the Airpark and significantly reduce trips and truck traffic on Jarrettsville Road and through the villages. Commerce Road will no longer be classified as a Local Road. The resulting change will reorient the "front" of the Airpark toward Route 23, and the uses permitted within the CI zone are more consistent with such frontage than those general industrial uses permitted within the GI zone. The change in traffic flow will substantially change the character of the neighborhood where transportation is concerned. The applicant defines the neighborhood of the property as set forth on the attached Concept Plan as roughly Jarrettsville Road to the north, Maryland Route 23 to the south, Route 1 to the east and Maryland Route 24 to the west."

"Furthermore, the subject property is not appropriate for general industrial uses, many of which (e.g. factory and manufacturing type uses) would have greater and less desirable impacts on adjoining properties in the community than would the uses permitted in the CI zoning category. Although the Airpark functions as a single commercial development, it is nonetheless essentially "split-zoned" in to CI and GI sections. Despite the veto legislation which resulted from the most recent comprehensive rezoning process, the property was recommended for an approved change in zoning CI by the Department of Planning and Zoning, the Planning Advisory Board and the County Council."

The Department finds that a mistake has occurred in the existing zoning. The Applicant has provided correspondences dating back to 1991 that detail the history of their attempts to obtain access to MD Route 23 by connecting Commerce Road (Attachment 18). The Department of Planning and Zoning wrote a letter on August 23, 1991 to the counsel for the owners' of the Airpark stating that the County had begun reviewing the connection proposal in conjunction with the update of the Harford County Major Road Plan. In fact, discussions between the County and

the owners' of the Airpark had begun in 1989. There had been no involvement from the State regarding the proposal during this time.

By November of 1991 the County had reviewed an access plan and study as well as analyzing the transportation network and future land use in the area. The Department of Planning and Zoning informed the owners' of the Airpark in a letter dated November 18, 1991 that "...Harford County will support this connection in your application for an access permit from the State Highway Administration." The County was prepared to include an amendment in the update of the Major Road Plan being prepared at the time for adoption by the County Council; subject to several conditions required of the owners' of the Airpark. The most important condition being that the connection could only be supported as a new major collector road which would require Commerce Road to be constructed to the Business/Industrial collector road standards of the Harford County Road Code applicable at the time.

In the years leading up to the 1997 Comprehensive Zoning Review, the logistics of the connection were being reviewed by the County. In a letter dated September 29, 1997, then Director of Public Works William T. Baker, Jr. informed David J. Malkowski of the State Highway Administration (SHA) of the County's support for the connection provided that the above mentioned conditions could be met.

In separate letters sent by then Director of Public Works Edward C. Adams, Jr. to the owners' of the Airpark and SHA, the County once again reiterated its support for the connection provided that the above mentioned conditions were met in addition to condition set forth in a Preliminary Plan Approval letter dated September 17, 1997. The owners' of the Airpark continued to lobby for the connection over the next several years. The SHA acknowledged in 2003 that they were continuing their review of the proposal. It is important to note that the owners' of the Airpark still had not met the above referenced conditions necessary for the County to provide their support for the connection. Additionally, Commerce Road still had not been added to the County's Master Transportation Plan.

In 2003, the SHA wrote Mr. Robert J. Martin, President of Forest Hill Airpark Inc., and acknowledged that they would continue their review since Mr. Martin had agreed to the original conditions required by the County. The SHA required that Mr. Martin submit additional information necessary to continue their review.

County Executive James Harkins again reiterated the County's support for the connection in a letter to the SHA dated March 24, 2004. The County Executive acknowledged in his letter that the owners' of the Airpark were willing to upgrade Commerce Road and meet all County Road Code standards. The SHA continued its review of the traffic analysis and conceptual intersection design. The SHA also estimated the appraised value of the break-in point at $100,000.00

The SHA performed an onsite Preliminary Investigation on August 9, 2005 and had further discussions with the Airpark's engineer concerning geometric design issues and stormwater management concepts for the construction of a roundabout where the proposed connection with

MD Route 23 would be made. In a letter dated October 17, 2005, Steven D. Foster of the SHA provided Jeff Deegan of Wilson Deegan & Associates with comments regarding submission of additional plans to the SHA for review.
J. Robert Martin, Jr. subsequently wrote a commitment letter to the SHA dated January 23, 2006 for the approved appraisal amount of $86,000.00 for the break-in access fee.

The Department finds that a mistake has occurred in the existing zoning. It is clear that the owners of the Airpark have desired a connection to MD Route 23 since 1989. Continuing efforts have been made since 1989 to have the connection approved. The County Council could not have known whether the SHA would eventually approve the connection of Commerce Road to MD Route 23.

The owners' of the Airpark originally intended to accommodate large industrial users. The anticipation that large industrial users would occupy the Airpark has not come to fruition. The owners' of the Airpark have subsequently created smaller lots more suitable for uses permitted in the CI/Commercial Industrial District.

The proposed access to MD Route 23 will reduce the amount of traffic along Jarrettsville Road. MD Route 23 is classified as a Principal Arterial road and can better accommodate commercial traffic.

ANALISIS OF INDIVIDUAL ZONING REQUEST:

Conformance with the Master Plan and Land Use Element Plan:

The proposed rezoning is in conformance with the intent of the 2004 Master Plan. The Land Use Map shows the area designated as Industrial/Employment.

Impact on Requested Zoning:

The proposed rezoning would not adversely impact the neighborhood.

COMMENTS FROM ADVIOSRY GROUPS:

Historic Preservation Issues:

There are no historic sites on the property. No preservation easements impact the property.

Planning Advisory Board:

The Planning Advisory Board (PAB) reviewed the request at their meeting on March 14, 2007. The PAB voted 3-0 to recommend that the requested change in zoning be denied (Attachment 19).

RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the request to rezone the subject property from GI/ General Industrial District to CI/Commercial Industrial District be approved.

Shane Grimm, Chief
Site Plans & Permits Review

Anthony S. McClune, AICP
Deputy Director, Planning and Zoning

SPG/ASM/jf