

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed A-10003 requesting rezoning from I-1 to C-S-C in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on July 3, 2008, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject 16.34-acre site is located along the east side of Forestville Road approximately 355 feet south of its intersection with Pennsylvania Avenue. The subject property consists of a portion of a parcel (Parcel 23) in the I-1 Zone. It is shown as Lots 1, 2, 4, 5, 6 and 7 on an approved Preliminary Plan of Subdivision, 4-06145 Jemal's Post, which was approved by the Planning Board on October 11, 2007. This subject property is wooded and undeveloped.
- B. **History:** The 1986 *Approved Master Plan and Sectional Map Amendment for Suitland-District Heights and Vicinity, Planning Areas 75A and 75B* rezoned the subject site from the R-R (Rural Residential) Zone to the I-1 (Light-Industrial) Zone.

A Preliminary Plan of Subdivision 4-06145, was approved by the Planning Board on October 11, 2007 (PGCPB No. 07-96), subdividing a 33.35-acre parcel, of which the subject property is the western half, into seven lots and one parcel. The subject site would be developed with retail-commercial uses while the portion to the east is proposed for a home improvement center.

- C. **Master Plan Recommendations:**

2002 General Plan: The subject site is in the Developed Tier within the Pennsylvania Avenue Corridor. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium-to-high density neighborhoods. Developed Tier corridors generally contain a higher intensity of residential and nonresidential uses, and a greater mix of uses that are regional in scope. Development should occur at selected corridor nodes and be planned as a transit-oriented development.

1985 Approved Master Plan for Suitland-District Heights & Vicinity: The property is located in Planning Area 75A. The master plan recommended employment-industrial type uses for the subject property and envisioned that the neighborhood would include employment-office, light manufacturing/business and accessory commercial uses. The master plan designated the property as the southern half of Employment Area 3 (Forestville Office and Industrial Area). Employment Area 3 is a large, light and heavy industrial land use park north and south of Pennsylvania Avenue (MD 4) along the west side of the Capital Beltway.

D. **Request:** This applicant is requesting a rezoning of the subject property from the I-1 to the C-S-C Zone for development of approximately 150,000 square feet of retail commercial.

E. **Neighborhood and Surrounding Uses:**

The subject property is located in a neighborhood defined by the following boundaries:

- Pennsylvania Avenue (MD 4) on the north
- Forestville Road on the west
- Capital Beltway on the east
- Suitland Parkway on the south

The property is surrounded by the following uses:

- North — Maryland State Police Barracks in the I-1 Zone
- South — Light industrial and older strip commercial uses in the I-1 Zone.
- East — An undeveloped portion of Parcel 23 (“Lot 3” on 4-06145) proposed for a home improvement center in the I-1 Zone.
- West — Across Forestville Road are single-family residences in the R-80 Zone, strip commercial uses in the C-S-C and C-M Zones and a concrete batching plant (SE-4474) in the I-2 Zone.

F. **Zoning Requirements:**

1. **Section 27-157(a) of the Zoning Ordinance provides that no application shall be granted without the applicant proving that either:**

(a) **There has been a substantial change in the character of the neighborhood; or**

(b) **Either**

(i) **There was a mistake in the original zoning for property which has never been the subject of an adopted sectional map amendment, or**

(ii) **There was a mistake in the current sectional map amendment.**

Applicant’s Position: The applicant contends that changing the zoning classification from R-R to I-1 on the property was a mistake in the 1985 Suitland-District Heights Master Plan and SMA. The District Council’s rezoning of the subject property in the industrial zones was based on a mistaken belief that the industrial zones were the best zones to achieve the area’s employment goals. However, this anticipated development never occurred in the more than 20 years that have elapsed since the approval of the master plan. Thus, the assumptions or premises relied upon by the District Council at the time of the master plan were invalid or have proven erroneous over time.

Secondly, the C-S-C Zone would permit flexibility of design and use of the property without limiting the property to industry oriented employment. The rezoning would achieve the county's goals for employment, by making productive use of undeveloped land. The C-S-C Zone would be more suitable to achieve the employment recommendations of the master plan and would, in fact, yield higher numbers and quality of jobs than would industrial uses. It would also help to establish a buffer use between the industrial uses to the south and east and the residential uses to the northwest.

The applicant has cited several court cases which define the change/mistake criteria for the subject rezoning and also cited the findings made in the District Council and Zoning Hearing Examiner's approval of the recent rezoning cases A-9980 and A-9990. These two applications rezoned properties in the I-1 and I-3 Zones along the US 301 corridor in Brandywine to the C-S-C Zone.

The applicant references a market study prepared for the application by Dr. Stephen S. Fuller entitled "Economic Trends and Market Opportunities in Prince George's County and their relationship to the Zoning of Subject Property" dated November 2007 in support of the subject rezoning application.

The applicant also contends that the impending construction of a home improvement center on the adjoining section of the site constitutes a substantial change to the character of the neighborhood, as does "rapid and explosive expansion along the corridor."

Staff's Analysis: There is a strong presumption of validity accorded a comprehensive rezoning. The presumption is that at the time of its adoption of the comprehensive rezoning, the District Council considered all of the relevant facts and circumstances then existing concerning the subject property. Mistake or error can be shown in one of two ways:

1. A showing that at the time of the comprehensive rezoning, the District Council failed to take into account then existing facts or reasonably foreseeable projects or trends or;
2. A showing that events that have occurred since the comprehensive zoning have proven that the District Council's initial premises were incorrect.

The 1985 approved master plan for Suitland-District Heights and vicinity recommends industrial development for the subject property. The zoning to achieve the master plan's recommendation was placed on the property during the 1986 sectional map amendment. The applicant argues that rezoning the site from the R-R Zone to the I-1 Zone was a mistake because the industrial uses envisioned have not come to fruition. The applicant is requesting that the subject property be placed in the C-S-C Zone. A critical element in the review of a rezoning request based on a mistake is the question of "what is the appropriate zone to correct the mistake."

The second point of the applicant's mistake argument similarly takes on the question of what is the appropriate zone to correct the mistake. The applicant is requesting commercial zoning. This site is also in close proximity to a residential area. The development of the site for intense commercial (C-S-C) use will generate additional traffic on Forestville Road and Pennsylvania Avenue, which may have a negative impact on the community. Such decisions should generally not be made on

an *ad hoc* basis, but rather comprehensively. The applicant's assertion that commercial uses will provide better numbers and quality of employment than industrial uses strikes the Board as somewhat presumptuous. In fact, retail jobs, while perhaps more numerous, are often low-paying, if not minimum wage in nature. While it may be also presumptuous that the District Council weighed all of these factors in their discussion during the comprehensive rezoning of the area, at least that presumption is long-held and court tested.

The applicant's argument raises valid points about the amount of time that has elapsed since the last comprehensive rezoning. The applicant points to the language from the approval resolution for the master plan and SMA that describes the intent of the 1985 plan as to define long-range land use and development policies and detailed zoning proposals for a period of six to ten years. Many years have passed and the industrial employment envisioned by the plan has not materialized. The District Council subsequently enacted a zoning text amendment that permits retail uses in the form of a home improvement store (Lowes) on the adjoining section of the subject property with which the applicant asserts the proposed retail would be compatible with and which amounts to a change in the character of the neighborhood. While it is widely recognized that a planning area should undergo comprehensive rezoning more frequently than 20 years, we do not agree that failure to engage in comprehensive rezoning constitutes a mistake. In fact, the District Council may desire retail rather than industrial development on the property. However, we do not believe that changing their minds on the type of development constitutes a mistake.

The Planning Department's Research Section is working with the University of Maryland on a study to analyze trends and make recommendations as to the amount of industrial land needed in Prince George's County. It is anticipated that the study will be completed by the end of 2008. In addition, the Subregion IV Master Plan and Sectional Map Amendment will be initiated in the near future to develop and implement policy recommendations of the 2002 *Prince George's County Approved General Plan* and update the 1985 Suitland-District Heights and Vicinity Master Plan and Sectional Map Amendment and other master plans within the Subregion IV area. The proposed application should be evaluated in concert with the Industrial Land Use Study and the Subregion IV master plan when we can fully understand the impact of the proposed rezoning.

With respect to change in the character of the neighborhood, the applicant does not, in the Board's opinion, provide very persuasive arguments. The test is **substantial change** in the character of the neighborhood. The fact that the District Council amended to Zoning Ordinance to allow for a home improvement center on the property and its "impending" construction does not create a substantial change in the character of the neighborhood. The applicant also asserts:

"The rapid and extensive expansion along the corridor makes this area a prime location for commercial uses with which to support the explosion of residential development within the County." (Statement of Justification, p. 17)

The Board is uncertain what the applicant is referring to as "rapid and extensive expansion along the corridor." They do not identify which development they are referring to, or if this development is or is not in accordance with the 1985 Master Plan. Certainly, there has been some development along the MD 4 corridor over the past 20 years; however, if it is development that is in accordance with the plan, that is not evidence of change in the character of the neighborhood,

neither would it be an argument for mistake. The subject neighborhood does not contain substantial portions of the MD 4 corridor. In fact, the area of the neighborhood along MD 4 has remained in the same public use (the State Police Barracks) for many years. The Board can find no substantial change to the character of the subject neighborhood since the last comprehensive rezoning over 20 years ago.

CONCLUSION

There is a strong presumption of validity of a comprehensive rezoning. A piecemeal rezoning request must present strong evidence of a mistake in the comprehensive rezoning or evidence of substantial change in the neighborhood. The last comprehensive rezoning of this community occurred over 20 years ago. The fact that a property has not developed in accordance with the zoning assigned to it does not necessarily mean such zoning is a mistake. If that were true, numerous properties in the neighborhood as well as in the county could be eligible for rezoning based on mistake. The applicant's discussion about "impending" development pursuant to a text amendment by the District Council to allow the type of retail uses permitted in the C-S-C Zone at best suggests to us that Council may have changed its mind regarding the type of development desired for the property. However, this use has not yet gained site plan approval, much less physical construction, and thus not a change to the character of the neighborhood.

As planners, we are concerned about the impact a large retail center may have on existing retail areas. The recommendation for industrial development of the property in the master plan was the result of a comprehensive study of employment needs. The same is true of the recommendations for commercial development in the planning area. The Board is concerned that a piecemeal decision to change the property to a(n) (unplanned) major commercial center may have a detrimental impact on other distressed commercial in the neighborhood and the general MD 4 corridor. We have observed how the development of new commercial centers has accelerated the decline of older commercial areas. A comprehensive approach to planning these developments gives an opportunity to more effectively address the commercial and industrial development needs of the county.

The Board can neither find evidence of mistake in the last comprehensive rezoning nor **substantial** change in the character of the neighborhood and therefore recommends DENIAL of the requested rezoning.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George' s County Code, the Prince George' s County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and recommends to the District Council for Prince George' s County, Maryland that the above-noted application be DENIED.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Vaughns, seconded by Commissioner Cavitt, with Commissioners Vaughns, Cavitt and Parker voting in favor of the motion, and with Commissioners Clark and Squire opposing the motion at its regular meeting held on Thursday, July 3, 2008, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 31st day of July 2008.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator