PGCPB No. 12-60 File No. A-10024

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed A-10024, Fairview Commercial, requesting the rezoning of property from the R-80 Zone to the C-S-C Zone for development of retail commercial uses 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 June 14, 2012, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject 7.65-acre site is located at the northwest quadrant of the intersection of Martin Luther King, Jr. Highway (MD 704) and Whitfield Chapel Road, extending west to the Capital Beltway (I-95/495). In fact, it is completely surrounded by dedicated public streets; to the north is Fairview Avenue, a 50-foot-wide primary residential street. The subject property consists of a tax parcel (Parcel 109, Map 52, Grid C-3) and is classified in the One-Family Detached Residential (R-80) Zone. It is undeveloped and predominantly wooded.

B. **History:** The 1990 *Approved Master Plan and Adopted Sectional Map Amendment for Largo-Lottsford, Planning Area 73* (Master Plan) classified the subject site in the R-80 Zone. The property has been the subject of three preliminary plans of subdivision for residential subdivisions. Preliminary Plan of Subdivision 4-04135 was approved by the Planning Board (PGCPB Resolution No. 05-16) in 2005 for 12 lots and 1 parcel. A condition of that approval required a detailed site plan for a number of reasons, including evaluation of the noise wall and its appearance from abutting properties. The applicant filed a Detailed Site Plan (DSP-05108) which did not receive approval. Subsequent to that application, the preliminary plan expired (2007), with no extension of the validity period being requested by the applicant. In 2008, the applicant again filed a Preliminary Plan of Subdivision (4-08041) for 12 lots and 1 parcel. In that case, additional information was not received as requested by staff before the Planning Board hearing date and the application was withdrawn by the applicant. A third Preliminary Plan (4-09018) was approved in 2010 by the Planning Board for 12 lots and 2 parcels, again, with a requirement for a detailed site plan to address noise and buffering issues. It remains valid until December 31, 2013.

C. **Master Plan Recommendations:**

2002 General Plan—This application is located in the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable.

1990 Approved Master Plan for Largo-Lottsford—The property is located in Planning Area 73. The planning staff and Planning Board initially recommended low-intensity, locally-oriented businesses, such as insurance agents and medical offices, for the site in the

preliminary master plan. However, the District Council changed the recommendation to suburban-density residential in the resolution approving the Master Plan (County Council Resolution CR-70-1990, Amendment 5).

D. **Request:** This applicant is requesting rezoning of the subject property from the R-80 Zone to the Commercial Shopping Center (C-S-C) Zone for development of retail commercial uses.

E. **Neighborhood and Surrounding Uses:**

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

North— John Hanson Highway (US 50)
South— Ardwick-Ardmore Road
East— Bald Hill Branch
West— Capital Beltway (I-95/495)

This neighborhood correlates to the 1990 Master Plan boundary for Neighborhood A of the Enterprise Community. The neighborhood proposed by the applicant is confined to the triangle of land bounded by the Capital Beltway (I-95/495), John Hanson Highway (US 50), and Martin Luther King, Jr. Highway (MD 704). The applicant's neighborhood is too constrained and ignores the common characteristics of the residential areas north and south of MD 704. Most of the neighborhood is either developed or committed to development under recorded subdivision plats. The neighborhood consists of single-family detached units in the suburban and medium suburban density ranges, in keeping with its established character. Other uses in the neighborhood consist of several small churches, playgrounds, a school, and a riding stable.

The property is surrounded by the following uses:

North— Across Fairview Avenue are single-family dwellings in the Rural Residential (R-R) Zone.

South— Across Martin Luther King, Jr. Highway (MD 704) are single-family dwellings in the R-80 and R-R Zones.

East— Across Whitfield Chapel Road are single-family dwellings in the R-R Zone.

West— The Capital Beltway (I-95/495), across which is developed industrial properties in the Light Industrial (I-1) Zone.

F. **Zoning Requirements:**

Section 27-157(a)(1) 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

Change: The applicant does not put forth an argument of change to the character of the neighborhood.

Mistake: The applicant contends that retaining the subject property in the R-80 Zone in the 1990 Largo-Lottsford Sectional Map Amendment (SMA) was a mistake. The District Council failed to take into account then existing facts and failed to recognize reasonably foreseeable projects or trends. Further, events have occurred subsequent to the adoption of the Master Plan which has proven the District Council's initial premise to be incorrect. 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. The applicant points to two distinct mistakes.

1. Failure to properly cite the 1982 General Plan: The District Council failed to properly cite the policies applicable to the subject property in the 1982 General Plan. The 1982 General Plan, which the 1990 Master Plan was meant to implement, placed the subject property in the Category I policy area. Category I policy areas are somewhat analogous to the "Developed Tier" of the present 2002 *Prince George's County General Plan*, being developed areas of the county within or near the Capital Beltway acknowledged to have a more urban character than the more suburban and exurban Category II and III policy areas. The 1990 Master Plan, on page 21 states in part that "Only two of the policy areas are present in the Largo-Lottsford Planning Area…" (meaning Categories II and III). The applicant claims this misidentification of the policy area caused the District Council to apply the wrong policies to the subject property in the Master Plan, carrying through to the SMA. Specific Category I policy area policies contained in the 1982 General Plan the applicant mentions are:

   (a) Giving emphasis to those measures contributing to an orderly infill process;

   (c) Capitalizing on appropriately located Metro station areas as focal points of commercial, office and community activities; and

   (j) Encouraging development of bus, bicycle and pedestrian access to shopping, metro, employment and recreation areas; and

(m) Utilizing urban design principles to encourage the beautification of existing development, to guide improvements to community appearance and to develop effective buffering between conflicting adjacent land uses.

2. Failure to provide adequate commercial centers: The applicant contends that the District Council failed to provide for adequate commercially-zoned land to serve the Enterprise Community in the 1990 SMA. The District Council knew that the Largo-Lottsford Planning Area and the Enterprise Community were projected to experience rapid growth between 1990 and 2010 (40 percent increase in population and 60 percent increase in dwelling units) yet only two-tenths of one percent of the existing land use in the planning area was retail commercial. The District Council failed to recognize the subject property as being appropriate for a neighborhood activity center, given its access to, and noise from, the surrounding roads.

   The plan recommended that growth in the Enterprise community could be served by a new village activity center at the southeast quadrant of the intersection of Ardwick-Ardmore Road and St. Joseph's Drive. Originally envisioned as a 100,000-square-foot center, subsequent revisions to the development plan have resulted in a smaller, 39,964-square-foot retail center being proposed for that site. The applicant argues that the District Council relied on the larger retail commercial center to meet the future needs of the Enterprise community. Through time, their premise has proven incorrect, since the developer of the center has since scaled back the size, leaving additional unmet commercial demand that could be met by the subject property.

Analysis

Change: Regardless of which neighborhood is considered; there has been no substantial change to its character since the last comprehensive zoning of the area in 1990.

Mistake: 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:

A. 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;

B. A showing that events that have occurred since the comprehensive zoning have proven that the District Council's initial premises were incorrect**.**

The 1990 Approved Master Plan for Largo-Lottsford recommends residential development for the subject property. The preliminary master plan which was transmitted to the District Council recommended locally-oriented commercial office uses. In fact, there was a pending Zoning Map Amendment (A-9690) on the site (then referred to as the Scruggs Property) seeking a zoning

change from the R-80 Zone to the C-S-C Zone when the preliminary master plan was being decided. When the District Council approved the Master Plan, their resolution (CR-70-1990) contained a specific amendment regarding the subject property:

> **5. Show the Scruggs property in the northwest quadrant of the intersection of Martin Luther King, Jr. Highway and Whitfield Chapel Road as Suburban density residential. Delete the two sentences describing this property under "Other Employment Areas" in the Employment Areas Chapter.**

When the subsequent 1990 SMA for Largo-Lottsford was adopted, the District Council amended the proposed C-O (Commercial Office) Zoning for the site in order to retain the R-80 Zoning, reasoning:

> **Amendment 4 (E-1): Retain the R-80 Zone for the 7.66 acre Scruggs Property in the northwest quadrant of the intersection of Martin Luther King, Jr. Highway and Whitfield Chapel Road. The property is better suited for residential development than for low intensity office use in light of the existing residential character of the surrounding neighborhood. Accordingly, the Approved Master Plan shows the property in the Suburban Density Residential land use category.**" (CR-71-1990)

In short, the District Council considered commercial uses for the site (albeit office commercial, not retail) and concluded that commercial uses at this location were inappropriate because of the residential character of the surrounding properties.

The applicant's first argument, that the Master Plan failed to correctly identify the subject property as being in the 1982 General Plan's Category I policy area may show a mistake in the Master Plan, but fails to show a mistake in the comprehensive rezoning of a magnitude to overcome the presumption of correctness. The 13 policies for Category I properties apply in differing degrees to the properties contained therein. For example, the first policy relied upon by the applicant, "contributing to an orderly infill process," could just as easily be argued to support the Council's action in retaining the R-80 Zone. Another promoting "(s)trengthening and revitalizing existing commercial areas," would not seem to support the present request to add a new commercial center to the area.

Regarding the applicant's second argument (i.e., that the District Council failed to provide for adequate commercial centers), the Planning Board fails to find mistake in the comprehensive rezoning. The District Council chose to follow the recommendation of the Master Plan and restrict new commercial development to the identified village activity center on the Beall Property at the southeast quadrant of the intersection of Ardwick-Ardmore Road and St. Joseph's Drive. The Master Plan describes a village activity center as 10 to 20 acres overall size with 40,000 to 150,000 square feet of gross leasable space (on 4 to 15 acres) and 10 to 15 dwellings per gross residential acre. The plan noted that a village activity center is anchored by a supermarket and could include, among other quasi-public uses, a day care center.

The Master Plan text in the Commercial Areas and Activity Center chapter describes (in part) this particular center as follows (p. 76):

> **The size and staging of the activity center should be based on a market study. The study should consider the impact of existing and planned competing centers. Special attention should also be given to buffering the commercial portion of the activity center from the adjacent residential area and proposed high school site. This center may also contain a fire station. An appropriate quasi-public use would be a day care center.**

The Largo-Lottsford SMA (CR-71-1990) was prepared and approved concurrently with the Master Plan. The two rezoning applications for Beall Property (A-9774—R-S and A-9775—L-A-C) were part of the approved SMA (CDZ Amendments 1 and 2, respectively). Zoning Map Amendment A-9775 approved the L-A-C Zone with a maximum commercial area of 100,000 square feet and a maximum of 85 single-family attached dwellings. Among the conditions for A-9775 was a requirement that the District Council review the comprehensive design plan "with particular regard to the total amount of retail space as well as the interrelationship between the retail component and nearby planned residential areas." County Council Resolution CR-71-1990 noted that the 100,000 square feet of commercial space was below the zone minimum permissible; however, the amount was limited in conformance with the applicant's market study. Similarly, the number of dwellings was limited partially because of the applicant's traffic study.

In effect, the Master Plan reflects concern over the size of the commercial component as per the recommendation for a market study for this specific center. This concern is reinforced in the condition for District Council comprehensive design plan (CDP) review. In the final analysis, the Council found the applicant's market study showed that a decrease in the size of the commercial center to a maximum of 50,000 square feet was justified, thus concluding that the recommendation of the Master Plan would permit a center of a smaller size. It did not find, as the applicant suggests, that the reduction of the retail area would no longer be sufficient to serve the needs of the Enterprise community. Of course, while the recommended center has never been built, it does have site plan approval for 39,964 square feet of retail development. The fire station envisioned as part of the development has been built.

Additionally, it should be noted that the Master Plan did not take into account the Woodmore Town Center, located within the Enterprise community, developing with approvals for more than 700,000 square feet of retail. In addition, a large stand-alone CVS Pharmacy is pending approval just south of the subject property at the intersection of Martin Luther King, Jr. Highway (MD 704) and Ardwick-Ardmore Road. Finally, while noise intrusion from the roads surrounding the site would be more conducive to a commercial development, failure to zone a property other than residential due to noise cannot be considered evidence of mistake. Otherwise, few (if any) properties fronting on an arterial or larger right-of-way would be considered appropriate for residential development.

G. **Conformance with the Purposes of the C-S-C Zone:** The purposes of the C-S-C Zone are contained in Section 27-454(a)(1) of the Zoning Ordinance and are as follows:

(A) To provide locations for predominantly retail commercial shopping facilities;

(B) To provide locations for compatible institutional, recreational and service uses;

(C) To exclude uses incompatible with general retail shopping centers and institutions; and

(D) For the C-S-C Zone to take the place of the C-1, C-2, C-C and C-G Zones.

If the proposed rezoning were approved, the subject property would conform to most of the above purposes. However, a condition of approval would need to be added to require the applicant to file a detailed site plan application to ensure compatibility with the surrounding residential development.

CONCLUSION

The 1990 *Approved Master Plan and Adopted Sectional Map Amendment for Largo-Lottsford* recommends residential land uses for the subject property. This is not a case where we must question whether the applicant's property was overlooked during the comprehensive rezoning. The District Council specifically considered this site for commercial uses, but chose to retain the residential zoning due to the character of the surrounding neighborhood. That is their prerogative. The requested rezoning to the C-S-C Zone would allow for additional commercial retail development and primarily automobile-oriented transportation travel patterns that were not anticipated by the Master Plan. The Planning Board, finding neither substantial change to the character of the neighborhood or mistake in the comprehensive rezoning, recommends DENIAL of Zoning Map Amendment No. A-10024.

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 Washington, seconded by Commissioner Shoaff, with Commissioners Washington, Shoaff, Bailey, Squire and Hewlett voting in favor of the motion at its regular meeting held on Thursday, June 14, 2012, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 12th day of July 2012.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

PCB:JJ:TL:arj