

DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND

OFFICE OF ZONING HEARING EXAMINER

**AMENDMENT OF BASIC PLAN
A-9775-C/01**

DECISION

Application: Amendment of Basic Plan & Conditions
Applicant: Klein Bellehaven, LLC/ Springdale Estates
Opposition: The Ardmere-Springdale Civic Association
Hearing Date: December 8, 2014
Hearing Examiner: Maurene Epps McNeil
Recommendation: Denial

NATURE OF REQUEST

- (1) Applicant seeks an amendment of the Basic Plan for Springdale Estates¹ to remove the 50,000 of commercial retail space approved by the District Council in A-9775-C and add a residential component of 15 dwelling units per acre or approximately 70 townhouses on 4.98 acres of land in the L-A-C (Local Activity Center) Zone. The subject property is located at the southwest quadrant of the intersection of St. Joseph's Drive and Ardwick-Ardmore Road.
- (2) The Technical Staff and Planning Board reviewed the Application and recommended approval. (Exhibits 33 and 34)
- (3) Paulette Spencer, on behalf of the Ardmere-Springdale Civic Association, appeared in opposition at the hearing held by this Examiner.
- (4) At the conclusion of the hearing the record was left open to allow the Applicant to submit additional information. Most of these items were received on January 20, 2015 and the record was closed at that time.

FINDINGS OF FACT

- (1) Applicant is requesting that the Basic Plan for 33.1 acres in the L-A-C Zone (that was rezoned from the R-R Zone to the L-A-C Zone by the District Council upon its approval of the 1990 Master Plan and Sectional Map Amendment for Largo-Lottsford

¹The development was changed from Bellehaven Estates to Springdale Estates in 2013. (Exhibit 27(a))

Planning Area 73 (discussed below)) be divided to carve out the unimproved 4.98 acres Pursuant to the approved Basic Plan (A-9775-C) approved in 1996 and subsequent Comprehensive Design Plan (CDP-9601), those 4.98 acres were to be developed with 55,756 square feet of commercial use.² Applicant proposes to delete the requirement that it be developed with commercial uses, and allow it to construct up to 70 attached dwellings.

(2) The 4.98 acres has frontage on St. Joseph's Drive and Ardwick-Ardmore Road. Both are collector roadways with an 80-foot right-of-way. (T.9)

(3) There are no streams, 100-year floodplain, severe slopes, or steep slopes with highly erodible soils on the site. There are no scenic or historic roads located in the area. The site does not contain any elements of the Countywide Green Infrastructure Plan.

Surrounding Uses

(4) The subject property is surrounded by the following uses:

- North – across Ardwick-Ardmore Road, single family dwellings in the R-80 Zone
- South - A fire station and single-family attached dwellings in the L-A-C Zone
- East – Single-family dwellings (attached and detached) in the L-A-C Zone
- West - Across St. Joseph's Drive, Dr. Charles Herbert Flowers High School in the R-R Zone

(5) The neighborhood, in which the subject property is located, is defined by the following boundaries:

- North - John Hanson Highway (US 50)
- South - Lottsford Road/Landover Road (MD 202)
- East - Lottsford – Vista Road
- West - The Capital Beltway (I-95/495)

(6) The neighborhood is generally residential in character. However, a large mixed-use planned community, Woodmore Towne Centre, is located in the southwest corner. It is approximately one-half mile from the subject property.

² An excellent recitation of the zoning history of the subject property is set forth in the Technical Staff Report. (Exhibit 34)

Master Plan/Zoning

(7) In its approval of the 1990 Master Plan and Sectional Map Amendment for Largo-Lottsford Planning Area 73 two separate Zoning Map Amendments - A-9774 (R-S Zone) and A-9775 (L-A-C zone) – were approved for Bellehaven Estates. In 1996 the District Council approved A-9775-C wherein the 1990 Basic Plan was amended, in pertinent part, to revise the 28.0 acres of L-A-C and R-S zoned land to 33.1 acres of L-A-C zoned land, to reduce the commercial square footage from 100,000 square feet to 50,000 square feet, and to increase the residential component from 85 dwelling units to 163 dwellings (150 attached and 13 detached). (Exhibits 12 and 13)

(8) In 2009 the District Council approved a Specific Design Plan (SDP-9612/03) for the commercial portion of the revised Basic Plan, consisting of 39,964 square feet of gross floor area in four buildings, to include a pharmacy and day care center. (Exhibit 36)

General Plan

(9) The Plan Prince George's 2035 General Plan makes no specific recommendations concerning this property.

Applicant's Request

(10) The Applicant seeks to amend the Basic Plan for Springdale Estates to add 70 townhouse units and delete the commercial component approved by the District Council in its prior rezoning. Applicant noted that it had expended "significant time and effort to market the property" over the years but "as a result of location and market conditions" was unable to develop commercial/retail uses on the 4.98 acres. (Exhibit 44)

(11) Micheal Lenhart, accepted as an expert in traffic engineering and transportation planning, prepared a traffic analysis for the Application and concluded that the request meets the requirements of transportation Section 27-195(b)(1)(C) of the Zoning Ordinance. He offered the following testimony in support of his conclusion:

27-195(b)(1)(C) states that transportation facilities, including streets and public transit which are existing, which are under construction, or which 100 percent of the construction funds are allocated within the adopted County Capital Improvement Program within the State consolidated transportation program, or will be provided by the Applicant will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved general or master plans, or urban renewal plans. And the traffic report that we did dated September 10th, 2013 essentially evaluates the approved basic plan, which included 55,000 square feet of commercial space, which included a 5,000 foot daycare center. When you compare that 55,000 square feet of commercial space which was previously approved to the townhouse units that we have in this situation the project generates, or the property would

generate 69 fewer trips in the morning peak hour, 216 fewer trips in the evening peak hour, and 2,227 fewer trips on a daily basis than the 55,000 square feet of commercial. Therefore, this amendment would actually reduce the traffic demands on the roadway network, therefore it would satisfy criteria 27-195(b)(1)(C).

27-195(b)(2) states that notwithstanding subparagraphs C and D above where the application anticipates construction schedule for more than six years, public facilities existing were scheduled for construction in the first six years will be adequate to serve the development proposed to occur within the first six years. The Council shall also find that public facilities probably will be adequately supplied for the remainder of the project, and considering the probability of future public facilities construction the Council may consider such things as existing plans for construction, budgetary constraints on providing public facilities, the public interest and public need for the particular development, relationship of the development to public transportation, or any other matter that indicates public or private funds will likely be expended for the necessary facilities. And again, based upon our report dated September 10th, 2013, this amendment will reduce the traffic generated by this property thereby satisfying that criteria, and that was also stated by Staff in the Staff Report that they concurred with that finding.

(T. 9-11)

(12) Joseph DelBazo, accepted as an expert in land use planning, provided an orientation as to the location of the subject property, using an aerial of the area. (Exhibit 39) He also opined that the request satisfied all applicable provisions of the Zoning Ordinance, and various Plans, reasoning as follows:

27-195(b)(1)(A) requires that the basic plan be in conformance with either the general plan map, the area plan map, or an urban renewal map, or that it is in conformance with the principles and design guidelines set forth in those plans.... [I]n 1990 the Largo-Lottsford Master Plan was adopted, and that placed a village activity center in the area of this intersection ... where the property is. The 1990 plan cut up the Largo-Lottsford Master Plan area into three separate communities, and the Enterprise Community is the northern community in that plan....

So, on Exhibit 39 the staff identified Landover Road/Lottsford Road as the ... southern boundary of the neighborhood; Lottsford Vista Road as the eastern; U.S. 50 as the northern; and the Beltway as the western boundary.... So, ... the Enterprise Community includes the area that became Woodmore Towne Center, the subject property, and the parks just to the east of this site.

So, the Master Plan from 1990, which is still the Master Plan here, 24-year old Master Plan, ... recommended 15 dwelling units, up to 15 dwelling units per acre in this Enterprise Community, and specifically within this village activity center, that's the floating zone, floating symbol that's on top of this property. The Master Plan also recommended in this Enterprise Community 40,000 to 150,000 square feet of commercial, new commercial....

In 1996 the basic plan was approved, and in that basic plan the Council based on a market study that was done by the applicant the Council approved 50,000 square feet of retail, specifically....

[T]he Council approved 50,000 square feet on the five-acre property in Springdale Estates. In 2000 the high school was built across the street, and then in 2002 the General Plan came around. Now, the General Plan established the three tiers, developed, developing and ... rural tier, and within those tiers it established a series of corridors and centers.... There was a little policy shift, I think, and that went from starting to focus in on centers, rather than so much the corridors and the wedges that were from the old plan.... This property is not within a center, the general plan created the Landover Mall Regional Center which includes, on that Exhibit 39 it include Woodmore Towne Centre, the old Landover Mall site, and the properties to the south of the interchange....

In 2006 Woodmore Towne Center started to develop, or it was approved, and it was approved with 750,000 square feet of retail which, again, if you go back to the '90 Plan, the 750,000 square feet of retail is five times what was anticipated for the Enterprise Community....

So, then in 2009 Woodmore started to develop; in 2010 the fire station was constructed; and now ... Woodmore Towne Centre has almost 550,000 square feet of retail constructed with another 200,000 square feet already approved by the preliminary plan that was approved in 2006....

The ... 2014 plan placed its property in an established community, and the established community recognizes that there is going to be additional residential growth within the established community [but the policies] ... relating to commercial uses says ... to limit the expansion of new commercial zoning outside of the regional transit districts and the local centers to encourage reinvestment and growth in designated centers and existing commercial areas.... So this doesn't say you can't have commercial outside of regional transit site[s], but it does say, let's ... look at focusing our development into those areas. So, with the two regional transit sites nearby, the Largo Town Center, Metro Regional Transit Center, and the Landover Metro Local Center, I think it's appropriate, and in conformance with the plan to remove the commercial from this site and add the dwelling units that are up to 15 dwelling units per acre as approved in the original Master Plan, and recognized in the General Plan.

(T. 19-24)

(13) When asked by this Examiner whether the request satisfies the purposes of the L-A-C zone if only one use is being developed, Mr. DelBazo noted that the mix of uses are not required to be located on applicant's property. (T. 38)

(14) Applicant believes its request to amend the Basic Plan should, therefore, be granted, since the L-A-C does not require commercial uses; major commercial uses have developed nearby, vitiating the need for them at the subject property; and the more compatible use for the property would be additional attached housing.

(Ex. 34, pp. 10-12; T. 38-39)

Opposition's Concerns

(15) The Ardmore-Springdale Civic Association is opposed to the Application. The President of the Association provided the following basis for its position:

The Civic Association is opposed to it because we do not feel that Klein Enterprises have satisfied us in reference to getting viable commercial businesses in that community.... What we did not want was a pizza shop, places that ... drew in a crowd being it's right across the street from a high school

[T]hen we heard that [Klein Enterprises] wanted to rezone it ... for residential, and I'm not a person good with 4.9 acre visualization, but some of my members are, and they thought it was a tight fit to have 70 attached homes....

So, if ... we said maybe we could settle with 50 townhomes, anything less than 70, we just feel that 70 in an area where it's one way in and one way out and it's close, the fire station is next door, more or less, so you've got the fire station interaction going on with the community, got the school across the street, and we just feel that 70 townhomes was just a tad too much for 4.98 acres of land use.

(T. 52-54)

Agency Comment

(16) The Urban Design Staff expressed concern with the Application:

One of the stated purposes of the L-A-C Zone in the Zoning Ordinance is to "Group uses serving public, quasi-public, and commercial needs together for the convenience of the populations they serve." An additional purpose is to integrate residential uses in a manner that "provides the convenience of proximity to an activity center." The original basic plan and subsequent CDP were approved with a mix of commercial and residential uses which included over 50,000 square feet of commercial development including a day care for children and a fire station, and a mix of single-family detached and attached units. While most of the residential units and the fire station have been constructed, none of the commercial retail area, which was approved to be located adjacent to the fire station, has been developed. The proposed residential use is a permitted use in the L-A-C Zone, but from an urban design perspective it is not clear how the site will continue to meet the purposes of the zone. The fire station may serve as a community focal point or activity center depending upon how well-integrated it is programmatically within the community. It appears the fire station might be the extent of sustainable nonresidential uses for this neighborhood considering the site's proximity to the Woodmore Towne Centre, a significant retail center, which is less than one mile away....

(Exhibit 34, pp. 9-10)

(17) The Transportation Planning Section reviewed the effect the Application would have on the roadways within the study area of the site and offered the following comment:

The subject property is located within Transportation Service Area (TSA) 2, as defined in the *Plan Prince George's 2035 Approved General Plan*. As such, the subject property is evaluated according to the following standards:

Links and signalized intersections: Level of Service (LOS) D, with signalized intersections operating at a critical lane volume (CLV) of 1,450 or better. Mitigation, as defined by Section 24-124(a)(6) of the Subdivision Ordinance, is permitted at signalized intersections within any tier subject to meeting the geographical criteria in the Guidelines.

Unsignalized intersections: The procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. A three-part process is employed for two-way stop-controlled intersections: (a) vehicle delay is computed in all movements using the *Highway Capacity Manual* (Transportation Research Board) procedure; (b) the maximum approach volume on the minor streets is computed if delay exceeds 50 seconds, (c) if delay exceeds 50 seconds and at least one approach volume exceeds 100, the CLV is computed. A two-part process is employed for all-way stop-controlled intersections: (a) vehicle delay is computed in all movements using the *Highway Capacity Manual* (Transportation Research Board) procedure; (b) if delay exceeds 50 seconds, the CLV is computed. Once the CLV exceeds 1,150 for either type of intersection, this is deemed to be an unacceptable operating condition at unsignalized intersections. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency....

The applicant proposes to eliminate the commercial uses, including the day care center. The comparison of estimated site trip generation indicates that the proposal would generate less traffic if developed as single family attached residential than it would if the retail and day care uses were to be developed. It is therefore determined that the proposed change would have no net impact on any critical intersections in the area. Therefore, the transportation staff believes that past findings of transportation adequacy do accommodate the subject proposal for 75 single family residences.

CDP-9601 placed limits on vehicular access points to St. Joseph's Drive. It is recommended that individual residential and commercial lots should not have direct access to St. Joseph's Drive. A-9775/01 shows one access point onto St. Joseph's Drive, and appears to comply with this condition. It is noted that several alleys are shown without turnarounds on this plan. This should be addressed at the preliminary plan and specific design plan stages.

It is noted that a traffic study will be required at the preliminary plan stage of development. The "Transportation Review Guidelines, Part 1" require a traffic study for any proposed subdivision generating more than 50 or more new trips

during any peak hour. Critical intersections to be included in the traffic study will be identified at that stage.

Ardwick-Ardmore Road and St. Joseph Drive are both listed in the *Approved Master Plan Amendment and Adopted Sectional Map Amendment for Largo-Lottsford* as collector roadways with 80 foot rights-of-way. It does not appear that any further dedication is required although this will be reviewed at a later stage.

Transportation facilities will be adequate to carry the anticipated traffic generated by the development based on the proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems.

Conclusion

Based on the preceding findings, the Transportation Planning Section would conclude that existing transportation facilities and those to be provided by the applicant will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. Furthermore, the uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved Area Master Plan, in accordance with Section 27-195 of the Prince George's County Code, particularly based upon the proposed residential density and use. Given that the application is a revision to a basic plan which is largely otherwise developed, no conditions are recommended at this time.

(Exhibit 34, pp. 40-42)

(18) Staff reviewed the effect that the request would have on public facilities and found that the Application would not have an adverse impact upon police, fire and rescue, school or water and sewer facilities. (Exhibit 34, pp. 37-39)

(19) The Planning Board also recommended that the Application be approved. It offered the following support for its recommendation:

The Planning Board finds that the requested revision in land use from commercial to residential is reasonable, given the significant changes in neighborhood character that have taken place since the 1996 Planning Board approval. The most significant change is the existence of a major commercial retail center within walking distance of the site. The proposed residential use is also compatible with existing townhouse units immediately east of the development site. It is recommended, however, that the applicant explore the possibility of a pedestrian connection between the existing townhomes and the new development. Such a connection will enhance pedestrian connectivity between the new townhomes and the surrounding community.

The existing L-A-C zoning on the site permits residential and/or nonresidential uses configured as a neighborhood-serving activity center. However, the proposed site appears to be too small to permit such an activity center to develop at a scale that will ensure its economic viability. The proximity of the Woodmore Towne Centre shopping center presents an added barrier to the potential success of any commercial development at this site. For these reasons, the Planning Board supports the applicant's request to amend the basic plan to permit the proposed residential development....

(Exhibit 33, p. 9)

(20) The Technical Staff ultimately recommended approval of the request, for the same reasons propounded by the Planning Board. (Exhibit 34, p. 11)

(21) The State Highway Administration (“SHA”) advised that it had no objection to the request, but did ask that if a traffic impact study is required, a copy be forwarded to SHA if it reveals any impact to a State road network. (Exhibit 34, p. 46)

APPLICABLE LAW

(1) The instant request requires a review of several provisions of the Zoning Ordinance. I would first note that Applicant and Staff have phrased the request as one that does not involve a change in land area. If this is the case, the use must satisfy the following provisions of Section 27-197 (c) of the Zoning Ordinance:

Sec. 27-197. Amendment of approved Basic Plan.

* * * *

(c) If an amendment of an approved Basic Plan does not involve a change in land area or an increase in land use density or intensity, or is for the purpose of adding a Planned Environmental Preservation Community, the Plan may be amended by the Council in accordance with the following procedures:

(1) The applicant shall file the request (in triplicate) with the Clerk of the Council. The petition shall be accompanied by a new reproducible copy of the proposed new Basic Plan (graphic only) or three (3) copies of the proposed new Basic Plan Text (as necessary depending on the amendment proposed). The Clerk's office shall advise the applicant (in writing) that the Technical Staff has found that the request is complete. If an amendment to an approved Basic Plan is proposed for the purpose of adding a Planned Environmental Preservation Community, the applicant must hold a meeting to solicit public comment on the Plan for the purpose of incorporating comments concerning use, design, and density, to the extent possible, into the Plan. The applicant shall send by certified mail notice of the date, time, place and subject matter of the meeting to all adjoining property owners, including owners whose properties lie directly across a street, alley, or stream, to all persons of record in the original application, and to every municipality located within one (1) mile of the applicant's property. Evidence that the applicant has complied with this requirement shall be provided prior to the acceptance of the applicant's petition by the Clerk of the Council.

(2) The Clerk of the Council shall refer copies of the request and accompanying documents to the Planning Board and to the People's Zoning Counsel. The Planning Board and the People's Zoning Counsel shall submit any comments which they have on the request to the Council, the Zoning Hearing Examiner, the petitioner, and all persons of

record in the original Zoning Map Amendment application. The comments shall be submitted not later than sixty (60) days after the date the Clerk refers the petition to them, unless such deadline is waived in writing by the applicant.

(3) Within one hundred twenty (120) days after referral of the petition to the Planning Board and People's Zoning Counsel, the Zoning Hearing Examiner shall conduct a public hearing on the petition. The hearing shall be held in accordance with Section 27-129. The hearing shall not be held until after the sixty (60) day review period has expired, unless both the Planning Board and People's Zoning Counsel have submitted their comments.

(4) Within thirty (30) days from the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council, unless such deadline is waived in writing by the applicant.

(5) Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council.

(6) Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

(7) In approving the petition, the District Council shall find that the requirements of Section 27-195(b) have been met. If the Council does not act within forty-five (45) days of the filing of the written recommendation, the petition shall be considered to have been denied.

(2) However, if the request is viewed as one that amends an approved Basic Plan by dividing a single approved Plan into two or more separate Plans, Section 27-197(c) of the Zoning Ordinance apply:

Sec. 27-197. Amendment of approved Basic Plan.

* * * *

(b) An amendment of an approved Basic Plan which results in dividing a single approved Basic Plan into two (2) or more separate Basic Plans may be approved by the District Council where significant changes in circumstances with regard to the approved Basic Plan have created practical difficulties for the applicant to the extent that, unless the Basic Plan is amended to separate a specified amount of land area, the applicant will be unable to proceed to the Comprehensive Design Plan phase. An amendment will not be granted where the practical difficulty is self-created or self-imposed, or where the applicant had knowledge of, and control over, the changing circumstances and the problems bringing about the practical difficulty at the time the Basic Plan was approved. The following procedures shall apply to consideration of any such amendment in lieu of the requirements of Subsection (c), below:

(1) The applicant shall file the request in triplicate with the Clerk of the Council. The petition shall be accompanied by a new reproducible copy of the proposed new Basic Plan graphic showing how the Basic Plan is to be divided and any other proposed revisions, three (3) copies of the proposed new Basic Plan Text if any, and the names and addresses of the current owners of the

property separated by the proposed amendment. The Clerk's office shall advise the applicant in writing that the Technical Staff has found that the request is complete.

(2) The Clerk of the Council shall refer copies of the request and accompanying documents to the Planning Board and to the People's Zoning Counsel. The Planning Board and the People's Zoning Counsel shall submit any comments which they have on the request to the District Council, the Zoning Hearing Examiner, the petitioner, and all persons of record in the original Zoning Map Amendment application. The comments shall be submitted not later than sixty (60) days after the date the petition is referred, unless such deadline is waived in writing by the applicant.

(3) Within one hundred twenty (120) days after referral of the petition to the Planning Board and People's Zoning Counsel, the Zoning Hearing Examiner shall conduct a public hearing on the petition. The hearing shall be held in accordance with Section 27-129. The hearing shall not be held until after the sixty (60) day review period has expired, unless both the Planning Board and People's Zoning Counsel have submitted their comments.

(4) In approving the petition, the applicant shall establish, and the District Council shall find, that:

(A) The approval of the amended Basic Plan will not result in a change in land area, or an increase in land use density or intensity, for the overall area included in the original, approved Basic Plan;

(B) The approval of the amended Basic Plan will not significantly impair the character of the original, approved Basic Plan with respect to land uses, density ranges, unit types, circulation, accessibility, public facilities, public benefit features, and open space;

(C) The proposed amended Basic Plan conforms to the requirements of Section 27-195(b);

(D) The separate Basic Plans that result will be capable of standing by themselves as individual, cohesive developments;

(E) Any staging of development that was required in the approval of the original Basic Plan, and that is still appropriate, is included as part of the amended Basic Plan; and

(F) No owner of any land which is included in the original, approved Basic Plan will, by the approval of the proposed amended Basic Plan, be denied reasonable use of his property.

(5) Within thirty (30) days from the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council, unless such deadline is waived in writing by the applicant.

(6) Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council.

(7) Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

(8) If the Council does not act within forty-five (45) days of the filing of the written recommendation, the petition shall be considered to have been denied.

(3) I believe that the request is one envisioned in Section 27-197 (b) because it divides an approved Basic Plan into two since the Exhibits all refer to a 4.98 parcel and not the entire area that was approved by the District Council in 1990. However, the primary distinction between the two sections is that the amended Basic Plan must not significantly impair the character of the original approved Basic Plan.

(4) Under either section the request must be reviewed pursuant to the provisions of Section 27-195 (b) of the Zoning Ordinance. Section 27-195 (b) provides, in pertinent part, as follows:

(b) Criteria for approval.

(1) Prior to the approval of the application and the Basic Plan, the applicant shall demonstrate, to the satisfaction of the District Council, that the entire development meets the following criteria:

(A) The proposed Basic Plan shall either conform to:

(i) The specific recommendation of a General Plan map, Area Master Plan map; or urban renewal plan map; or the principles and guidelines of the plan text which address the design and physical development of the property, the public facilities necessary to serve the proposed development, and the impact which the development may have on the environment and surrounding properties; or

(ii) The principles and guidelines described in the Plan (including the text) with respect to land use, the number of dwelling units, intensity of nonresidential buildings, and the location of land uses.

(B) The economic analysis submitted for a proposed retail commercial area adequately justifies an area of the size and scope shown on the Basic Plan;

(C) Transportation facilities (including streets and public transit) (i) which are existing, (ii) which are under construction, or (iii) for which one hundred percent (100%) of the construction funds are allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or will be provided by the applicant, will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved General or Area Master Plans, or urban renewal plans;

(D) Other existing or planned private and public facilities which are existing, under construction, or for which construction funds are contained in the first six (6) years of the adopted County Capital Improvement Program (such as schools, recreation areas, water and sewerage systems, libraries, and fire stations) will be adequate for the uses proposed;

(E) Environmental relationships reflect compatibility between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District.

(2) Notwithstanding subparagraphs (C) and (D), above, where the application anticipates a construction schedule of more than six (6) years (Section 27-179), public facilities (existing or scheduled for construction within the first six (6) years) will be adequate to serve the development proposed to occur within the first six (6) years. The Council shall also find that public facilities probably will be adequately supplied for the remainder of the project. In considering the probability of future public facilities construction, the Council may consider such things as existing plans for construction, budgetary constraints on providing public facilities, the public interest and public need for the particular development, the relationship of the development to public transportation, or any other matter that indicates that public or private funds will likely be expended for the necessary facilities.

* * * *

(5) The Application must also satisfy the purposes of the L-A-C Zone found in Section 27-494 of the Zoning Ordinance:

Sec. 27-494. Purposes.

(a) The purposes of the L-A-C Zone are to:

(1) Establish (in the public interest) a plan implementation Zone, in which (among other things):

(A) Permissible residential density and building intensity are dependent on providing public benefit features and related density/intensity increment factors; and

(B) The location of the zone must be in accordance with the adopted and approved General Plan, Master Plan, Sector Plan, public urban renewal plan, or Sectional Map Amendment Zoning Change;

(2) Establish regulations through which adopted and approved public plans and policies (such as the General Plan, Master Plans, Sector Plans, public urban renewal plans, and Sectional Map Amendment Zoning Changes for Community, Village, and Neighborhood Centers) can serve as the criteria for judging individual physical development proposals;

(3) Assure the compatibility of proposed land uses with existing and proposed surrounding land uses, and existing and proposed public facilities and services, so as to promote the health, safety and welfare of the present and future inhabitants of the Regional District;

(4) Encourage and stimulate balanced land development;

(5) Group uses serving public, quasi-public, and commercial needs together for the convenience of the populations they serve; and

(6) Encourage dwellings integrated with activity centers in a manner which retains the amenities of the residential environment and provides the convenience of proximity to an activity center.

CONCLUSIONS OF LAW

(1) This request to amend the Basic Plan for Springdale Estates must be found to comport with the above referenced requirements of the Zoning Ordinance. I agree there has been a significant change in circumstances since the initial rezoning of the entire 33 acres given the development of Woodmore Towne Centre. However, I cannot find that all applicable provisions of the Zoning Ordinance are satisfied since the request is not a review of the entire Basic Plan approved by the District Council, but is solely a review of the 4.98 acres that were originally to provide a commercial component.

(2) Applicant has not provided any mix of uses on this 4.98 acre site. While the L-A-C Zone does not expressly state there must be a mix of uses, general principles of statutory construction infer a mix since the Zone is a "Local Activity Zone"; and the purposes of said Zone note that there must be compatibility between "proposed land uses" with existing and proposed surrounding land uses, that "residential density and building intensity are dependent on providing public benefit features" that uses serving public, quasi-public and commercial needs should be grouped together; and dwellings should be integrated with activity center. The request merely proposes a maximum of 70 townhouses – one type of residential use, not a mix of uses.

(3) Moreover, the request must not vitiate the District Council's prior approval of a Basic Plan amendment for the subject property (A-9775-C) wherein the District Council found that the Application satisfied the purposes of the L-A-C reasoning, in part, as follows:

The District Council finds that the application is in accordance with Section 27-494(a)(2) in that regulations are extant (Secs. 27-195 & 27-197) which serve to judge the development proposal (Basic Plan)....

The District Council finds that the application is in accordance with Section 27-494(a)(3). The L-A-C Zone is located in such as to provide for an activity center which is aesthetically associated with the residential component of this zone and adjoining residential subdivisions, including the R-S Zone....

The District Council finds that the application is in accordance with Section 27-494(a)(4). Basic to this application is the multiple uses included in the Basic Plan which the L-A-C Zone incorporates as balanced land use....

The District Council finds that the application is in accordance with Section 27-494(a)(5). The Basic Plan includes a grouping of uses, including commercial, educational (day care) and public (fire station and other public facilities) useful to the population of Neighborhood D & E of the Enterprise Community. The consensus of the neighbors is that they would prefer a large grocery store but the market survey does not agree. However, the market at the time of development may support a larger center....

The District Council finds that the application is in accordance with Section 27-494(a)(6) in that the dwelling proposed will be adequately integrated with the commercial center by the approvals in the three step implementation process....

(Exhibit 12, pp. 3-4)

(4) The instant Application does not provide a similar mix of uses that the District Council found to be necessary in the original approval, nor does it include a village activity center, as recommended in the 1990 Largo-Lottsford Master Plan and Sectional Map Amendment. This is partially remedied by including the entire Basic Plan in the instant Application. In that manner the existing fire station and any recreation areas already constructed and built might provide the mix anticipated in a Local Activity Center.

(5) If the Application is not amended, Applicant should be required to provide some other use, such as the Day Care Center approved in 2009, and to list any conditions and/or considerations that should still remain in effect.

RECOMMENDATION

It is recommended that the request be Denied, and remanded to have Applicant include the entire 33.1 acres and show the mix of uses; or to add a non-residential use, such as the approved Day Care Center, to the 4.98 acres as configured in the instant request.