

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**ZONING MAP AMENDMENT
A-10029**

DECISION

| | |
|-------------------|-----------------------------|
| Application: | R-R to C-M Zone |
| Applicant: | Santos, LLC |
| Opposition: | Richard Macchio |
| Hearing Dates: | March 27 and April 23, 2013 |
| Hearing Examiner: | Joyce B. Nichols |
| Disposition: | Denial |

NATURE OF REQUEST

- (1) A-10029 is a request for the rezoning of \approx 7.88 acres of R-R zoned land located at the eastern terminus of Woodcliff Court, \approx 1,100 feet southeast of Annapolis Road, being Tax Parcel 13, Map 46, Grid E-2, Bowie, Maryland, to the C-M Zone.
- (2) The Applicant argues that the District Council made a mistake in the zoning designation for the subject property in the most recent comprehensive rezoning of the area (the 2006 Master Plan and Sectional Map Amendment for Bowie and Vicinity). The Applicant does not allege a change in the character of the neighborhood since the 2006 Master Plan and Sectional Map Amendment.
- (3) The Technical Staff recommended that the Application be denied (Exhibit 9) and the Planning Board elected not to hold a public hearing but in lieu thereof adopted the recommendation of the Technical Staff. Exhibit 52 The subject property was annexed into the City of Bowie on March 4, 2011 and the City of Bowie is in support of the instant request for rezoning. (Exhibit 8)
- (4) The record was kept open for various documents and, upon receipt, the record was closed on July 16, 2013.

FINDINGS OF FACT

Subject Property

- (1) The subject property is undeveloped and predominately wooded. A portion of the eastern boundary of the subject property abuts the Popes Creek railroad tracks and wetlands associated with Collington Branch and the remainder surrounds a long, narrow parcel of land (Parcel 114) which in turn abuts the railroad tracks. A large storm water management facility is located in the southwest corner of the subject property which services the office uses constructed on adjacent property owned by the Applicant.

Master Plan/Sectional Map Amendment

(2) The 2006 Master Plan and Sectional Map Amendment for Bowie and Vicinity classified the subject site in the R-R Zone. The property has not been the subject of any previous zoning or subdivision Applications.

(3) The instant Application is located in the Developing Tier of the 2002 Prince George's County

Approved General Plan. 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.

(4) The subject property is located in Planning Area 71B of the 2006 Master Plan and Sectional Map Amendment for Bowie and Vicinity. The Application does not conform to the Master Plan and Sectional Map Amendment because it is not consistent with the residential low-density development recommendations of the Plan.

Preliminary versions of the Master Plan and Sectional Map Amendment recommended the rezoning of Parcel 13 from the R-R Zone to the C-M Zone. Change 12 (Exhibit 43) recommended the property be developed with a commercial use integrated with the existing commercial development along Woodcliff Road. It also recommended that a 100-foot buffer be provided between the C-M Zoned parcels and the existing Westview neighborhood to the south. The proposed Land Use Plan showed a striped land use pattern to indicate that this area was recommended to be part of a Mixed-Use Activity Center.

The District Council ultimately disagreed with the proposed zoning change (Change 12) and consequently retained Parcel 13 in the R-R Zone, excluding it from the West Bowie Village Mixed-Use Activity Center (County Council Resolution CR-1-2006, Amendment 8). The Council specifically addressed their reasoning for the change as being to:

Protect the quality of life in the Westview Forest residential neighborhood by limiting commercial development in that portion of West Bowie Village located in the southwestern quadrant of old MD 450 and the Pope's Creek railroad tracks. (Master Plan, p.26)

The Master Plan and Sectional Map Amendment did place Parcel 5 (to the north) and Parcel 114 (to the east) within the West Bowie Village Mixed-Use Activity Center and zoned those two properties to the C-M Zone.

Neighborhood/Surrounding Use

(5) The neighborhood is bounded on the north by Old Annapolis Road, on the east by Popes Creek railroad tracks, on the south by Westview Forest Drive and on the west by Church Road. The Applicants expert land planner, Mr. Francis Metro Silberholtz, orally accepted this neighborhood as delineated by the Technical Staff Report.

The Applicant originally proposed neighborhood boundaries which were more confined, ending at the residential subdivisions to the west and the south. While it is recognized that those two subdivisions were not within the confines of the Master Plan's West Bowie Village, the same can be said of the subject property as well. Considering that it was subject site's proximity to the residential subdivision to the south which led the District Council to retain the subject property in a residential zone, it is appropriate to include the surrounding residential area in the subject neighborhood. The neighborhood contains a mix of uses with the commercial uses along Woodcliff Road and Woodcliff Court being the core, surrounded by single-family residences to the south and west.

(6) The property is surrounded by the following uses:

| | |
|--------|---|
| North- | An undeveloped parcel (Parcel 5) in the C-M Zone. |
| East- | The Popes Creek railroad tracks, Collington Branch, and an undeveloped parcel (Parcel 114) in the C-M Zone. |
| South- | Single-family residences in the R-R Zone. |
| West- | A commercial park parcel consisting of two-story buildings housing a variety of uses in the C-M Zone. |

Applicant's Proposal

(7) The Applicant is requesting the rezoning of the subject property from the R-R Zone to the C-M Zone and is anticipating an extension of the existing commercial uses currently developed on Woodcliff Court.

Applicant's Position

(8) The Applicant contends that retaining the subject property in the R-R Zone in the 2006 Master Plan and Sectional Map Amendment for Bowie and Vicinity was a mistake. Their contention is that the assumptions or premises relied upon by the District Council at the time of the Master Plan and Sectional Map Amendments were invalid or have proven erroneous over time. The Applicant argues two distinct mistakes.

1. The District Council, by retaining the subject property in the R-R Zone, failed to recognize that they were precluding the development of Parcel 114, since subdivision regulations do not permit a private street or easement across residential land (the subject property) to serve commercial development (on Parcel 114). §24-128(d)(3)
2. The District Council, by retaining the subject property in the R-R Zone, failed to recognize that they were creating an inhospitable development scenario whereby

single-family residences would be located between an intensive commercial area (to the west) and the railroad tracks (to the east). Although the Master Plan recommends that the West Bowie Village area be developed in a mix of uses including residential, retail, office, and recreation, the Applicant argues that it is unreasonable to think that the “New Urbanism” model envisioned by the Plan would be implemented in any foreseeable future given that the commercial buildings to the northwest are only three to seven years in age.

APPLICABLE LAW

(1) The Applicants request for a rezoning to the C-M Zone must satisfy the provisions of §27-157(a) of the Zoning Ordinance, which provides in pertinent part:

(a) **Change/Mistake rule.**

- (1) 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.

(2) The Applicant must also further the purposes of the C-M Zone, §27-459(a)(1):

- (1) The purposes of the C-M Zone are:
- (A) To provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas;
 - (B) To provide these locations, where possible, on nonresidential streets; and
 - (C) To provide concentrations of these uses which are relatively far apart.

(3) There is a strong presumption of the correctness of original zoning and of comprehensive rezoning. Pattey v. Board of County Commissioners, 271 Md. 352, 317 A.2d 142 (1974). Accordingly, strong evidence is required to overcome that presumption:

[Z]oning and rezoning classifications are legislative functions. The role of the courts in zoning matters consists of a review of the zoning authority’s decision-making process to ensure that it has not acted arbitrarily, capriciously or unreasonably. Absent any of these irregularities, the courts will leave untouched the quasi-judicial decision of the zoning authority.

Chesapeake Ranch Club, Inc. v. Fulcher, 48 Md. App. 223, 426 A.2d 428, 430 (1981).

(4) The Applicant bears the burden of proof that its request to change the zoning classification for the subject property will not be a detriment to the public interest. The Bowman Group v. Dawson Moser, 112 Md. App. 694, 686 A.2d 643 (1996); Harford County v. Preston, 322 Md. 493, 588 A.2d 772 (1991). However, “a more liberal standard is applied when the property is being reclassified from one commercial subcategory to another than is applied when the reclassification involves a change from one use category to another.” Tennison v. Shomette, 38 Md. App. 1, 379 A.2d 187, 190 (1978).

(5) Once evidence of mistake or change is adduced, evidence must be presented which justifies the correctness of the new zone being sought. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975); Mayor & Council of Rockville v. Stone, 271 Md. 655, 319 A.2d 536 (1974)

CONCLUSION OF LAW

(1) Change 12 contained in the Preliminary Bowie and Vicinity Master Plan and Proposed Sectional Map Amendment (Exhibit 43) proposed the consideration of a zoning change from the R-R to the C-M Zone for the subject property.

Use and Location: The property is undeveloped and is located on Woodcliff Court, approximately 300 feet east of its intersection with Woodcliff Road. (Tax Map 46, Grid E-2, Parcel 13, Outlot A)

Discussion: The property abuts the C-M zoned properties to the north and west, railroad tracks to the west, and residential uses to the south. The only access to the property is from Woodcliff Court, a commercial-service road. It is recommended that the property be developed for commercial use integrated with the existing commercial development along Woodcliff Road. A 100-foot buffer should be provided between the C-M zoned area and existing residential neighborhood to the south.

(2) The transcript of the joint public hearing on the Preliminary Master Plan for Bowie and Vicinity and Sectional Map Amendment conducted by the District Council and the Planning Board on May 17, 2005 contains no testimony regarding the subject property. Exhibit 45

(3) Tina Santos provided testimony regarding the subject property during the District Council's November 22, 2005 public hearing on Proposed Amendments to the Adopted Map Plan and Endorsed Sectional Map Amendment for Bowie and Vicinity. Exhibit 46, T.p. 48-50.

Ms. Santos: Hi, my name is Tina Santos. I'm here representing Santos LLC out of Hyattsville, Maryland. I'm here to address Amendment Number 11. In the original Maryland-National Capital Park and Planning Commission Staff recommendations on the Agenda dated 3/31/05, the Agenda Item 21, Change Number 12, proposed to change the zoning of our property on Woodcliff Court from R-R to C-M. Now, we get this new Amendment Number 11 from the District Council, and it deletes the proposed plan.

After attending the Bowie Master Plan (indiscernible) meetings and reviewing the Bowie Village Proposed Zoning Map, we agree that the recommendation from the Park and Planning Staff fulfills the need of the Master Plan. Therefore we agree that it should be rezoned to C-M.

As stated in the discussion from the Staff, the only access to the property is from Woodcliff Court, which is a commercial service road. Leaving the site R-R would make a bad transition for a residential site. Also, with the wetlands delineation on the property, there would be ample buffers between the C-M property and the R-R neighboring properties.

I've turned in a map of the whole area showing where all the wetlands are, and it shows where all the buffers are. After speaking to – as you can see by the wetlands on the things, there's about a 50-foot

buffer before the end of the land. Then there's a railroad track and another buffer before any kind of neighboring properties.

After speaking to Dick Padgett in regards to this matter, he suggested possibly we could rezone part of the property to leave it R-R and possibly put part of the property C-M.

(4) The adopted 2006 Master Plan and Sectional Map Amendment for Bowie and Vicinity did not include proposed Change 12 and in lieu thereof retained the subject property in the R-R Zone.

(5) §24-128(d)(3) of the County Subdivision Ordinance was enacted by the Council in the mid 1980's, long before the Council's consideration of proposed Change 12 in 2005. Thus the District Council was aware that by retaining the subject property in the R-R Zone, access to Parcel 114 could not be obtained via Parcel 13. Since access to Parcel 114 could not have been obtained via Parcel 13 prior to the adoption of the 2006 Master Plan and Sectional Map Amendment for Bowie and Vicinity status quo was maintained.

(6) The Master Plan and Sectional Map Amendment process is not designed to provide an assurance of access to every piece of property within the study area. That is a function of the subdivision process. There is currently no access easement or right-of-way secured across the subject property to serve Parcel 114. The Applicant presumes that the only possible access to Parcel 114 would be a private street or easement across the subject property. It can just as easily be presumed that if and when the subject property is subdivided for development, the resulting lot(s) will be served via an extension of Woodcliff Court, a public street. This same public street could also provide access to Parcel 114, since there is no preclusion from doing so, further presuming that access would be allowed across the wetlands along the eastern portion of the site.

(7) Proposed Change 12, Exhibit 43, and the testimony provided by Ms. Santos during the November 22, 2005 public hearing (Exhibit 46) make clear that the Council was aware of all of the facts surrounding the subject property. The District Council chose to follow the recommendation of the Master Plan and restrict new commercial development because of concerns with potential impacts on the residences to the south. The Applicant correctly points out that the Council could have retained a portion of the site in the residential zone and rezoned the remainder to commercial. However, the District Council chose to retain the entirety of the site in the R-R Zone. The Applicant also presumes that only single-family residences would be built on the subject property. A review of the Table of Uses for the residential zones reveals that literally dozens of nonresidential uses are permitted in that zone, either by right or by Special Exception. It can easily be presumed that some of those uses would be appropriate for this location.

(8) There is a presumption of validity accorded comprehensive rezoning and the presumption is that at the time of its adoption, the District Council considered all of the relevant facts and circumstances, then existing, concerning the land in question. Howard County v. Dorsey, 292 Md. 351, 438 A.2d 1339 (1982). *Strong* evidence of mistake and/or evidence of a *substantial* change in the character of the neighborhood is required to overcome the presumption. Pattey v. Board of County Commissioners for Worcester County, 271 Md. 352, 317 A. 2d 142 (1974); Clayman v.

Prince George's County, 266 Md. 409 (1971)

(9) 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 mistake must have occurred in the rezoning and not in the Master Plan. Dorsey, supra.

(10) The burden of proof in any zoning case shall be the Applicant's. §27-142(a) Zoning cases are those matters designated to be heard before the Zoning Hearing Examiner by the Zoning Ordinance of Prince George's County. (§ 27-107.01(a)(266)) In an attempt to rezone its property, Applicant has the burden of proving that the request will not be a real detriment to the public. Bowman, supra. Finally, courts have generally held that sufficient evidence to "permit" a rezoning does not "require" a rezoning unless an Applicant is denied all reasonable use of the property:

The drawing of the line between zones is a function of the legislative body and the fact that the legislative body has rezoned an adjoining or nearby property does not require it to rezone the property under consideration....

Even if an Applicant meets his burden of proving that there was a mistake in the original comprehensive zoning or that changes have occurred in the neighborhood causing a change in the character of the neighborhood, this merely *permits* the legislative body to grant the requested rezoning but does not *require* it to do so.

(11) The 2006 Master Plan and Sectional Map Amendment for Bowie and Vicinity recommend residential development for the subject property. The Master Plan and Sectional Map Amendment which was transmitted to the District Council recommended commercial uses as part of a mixed-use Center in the West Bowie Village. When the District Council approved the Master Plan, it contained specific reasoning for their decision to retain the residential zoning. In short, the District Council considered commercial uses for the site and concluded that commercial uses at this location were inappropriate because of the residential character of the surrounding properties.

RECOMMENDATION

Denial of A-10029.

Note: Two-thirds vote of the Council is required to approve a Zoning Map Amendment not in conformance with the Master Plan.