

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

**ZONING MAP AMENDMENT  
A-10024**

**DECISION**

Application: R-80 to the C-S-C Zone  
Applicant: DD Land Holding, LLC/Fairview Commercial  
Opposition: Judith Dobbins, et. al.  
Hearing Date: August 1, 2012 and August 22, 2012  
Hearing Examiner: Maurene Epps Webb  
Recommendation: Denial

**NATURE OF REQUEST**

- (1) A-10024 is a request to rezone approximately 7.65 acres of R-80 (One-Family Detached Residential) zoned land to the C-S-C (Commercial Shopping Center) Zone. The property is located at the northwest quadrant of the intersection of Martin Luther King, Jr. Highway (MD 704) and Whitfield Chapel Road, identified as Parcel 109, Map 52, Grid C-3, Lanham, Maryland.
- (2) The Applicant is alleging that there was a mistake in the adoption of the 1990 Sectional Map Amendment ("SMA") for Largo-Lottsford when the District Council rezoned the property to the R-80 Zone.
- (3) The Technical Staff recommended disapproval of the Application. (Exhibit 15) The Planning Board also recommended that the Application be denied. (Exhibit 28)
- (4) Several residents, and a representative of the Carsondale Civic Association, appeared in opposition to the request.

**FINDING OF FACTS**

**Subject Property**

- (1) The subject property is approximately 7.65 acres in size, and irregularly-shaped. It is completely surrounded by dedicated public streets. Moreover, the entire property lies within the unmitigated 65dBA Ldn noise contour. (Exhibits 16(b) and 23)

(2) The site is undeveloped and primarily wooded. It has been the subject of three (3) preliminary plans of subdivision. The Technical Staff Report includes an excellent synopsis of the prior zoning for the property. (Exhibit 15) The most recent plan of subdivision was for 12 lots and two (2) parcels subject to the approval of a detailed site plan to address noise and buffering issues.

### **Neighborhood and Surrounding Properties**

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

- North – Across Fairview Avenue are single-family dwellings in the 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)

(4) The neighborhood of the subject property proffered by Staff has the following boundaries:

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

### **Master Plan/Sectional Map Amendment**

(5) The site lies within Planning Area 73 in the Enterprise Community, an area discussed in the 1990 Master Plan for Largo-Lottsford and Vicinity. The Enterprise Community is comprised of all the land north of Lottsford Road and MD 202 to US 50, between the Capital Beltway and Enterprise Road. The subject property lies within Neighborhood A. The Master Plan provided the following analysis for Neighborhood A:

Neighborhood A. Neighborhood A is bounded by the Capital Beltway, realigned Ardwick-Ardmore Road, US 50, and Bald Hill Branch. Most of the neighborhood is either developed or committed to development under approved subdivision plans. The neighborhood is recommended to consist of single-family detached units in the Suburban and Medium Suburban density ranges in keeping with its established character. The neighborhood also contains a 7.9-acre commercial property north of Martin Luther King, Jr. Highway adjacent to the Capital Beltway. Access is limited, and its development in retail commercial uses is considered incompatible with the residential uses nearby. This property should be developed as a low-intensity community oriented office area.

(1990 Largo Lottsford Master Plan, p. 59)

(6) The 1990 Sectional Map Amendment (“SMA”) retained the R-80 zoning of the subject property.

(7) The site also lies within the Developing Tier, discussed in the 2002 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.” (2002 General Plan, p. 36)

### **Applicant’s Request**

(8) The Applicant seeks a rezoning for the subject property from the R-80 to the C-S-C Zone. If the request is granted Applicant intends to develop the site with “a neighborhood-oriented commercial development planned to contain approximately 35,000 square feet of retail uses, together with associated parking and landscaping.” (Exhibit 38, p. 4) Applicant alleges that the retention of the R-80 zoning of the property in the last SMA constitutes a “mistake” under Section 27-157(a) of the Zoning Ordinance. Applicant properly notes that case law has elucidated that mistake can be established by showing either the District Council failed to take into consideration then existing facts or failed to recognize reasonably foreseeable projects or trends; or that events occurring subsequent to the Master Plan have proven that the District Council’s initial premises were incorrect.

(9) Applicant’s witness, accepted as an expert in the area of real estate marketing analysis, reviewed the applicable plans for the area in which the subject property lies and prepared a market analysis for the proposed use of the site. (Exhibit 35) The trade area for his analysis encompassed a polygonal area within a one-mile radius from the subject property. (Exhibit 35). The witness opined that a need exists for the instant request, reasoning as follows:

There is a total of approximately 15,000 sf of retail oriented existing properties located within the identified trade area representing 5 properties plus an allocation for convenience store space at two service stations. All of this existing supply of retail space is found in the southwestern portion of the trade area proximate to Martin Luther King Jr. Highway. With the exception of an updated gas station, all of the space predates 1990. There is one focal point of additional older retail space just beyond the southeast edge of the trade area totaling 17,000 sf. None of the existing retail space in the trade area has much vacancy, and very little is well suited to accommodating potential new retailers due to non-generic physical configurations. A recently approved CVS drug store at the corner of Martin Luther King Jr. Highway and Ardwick-Ardmore Road, if built, will introduce 13,225 sf of modern retail space into the trade area, affirming retailer interest and offering neighborhood consumers a convenient shopping option heretofore unavailable in the market area....

Based on the size and economic characteristics of the neighborhood population, the local road network, and existing retailing alternatives, it is clear that the trade area has the potential to support additional local serving retail related space. While a case could be made that neighborhood residents are underserved by proximate retail space, the reality of course is that they can travel further afield, primarily to more distant shopping centers. What would seem deficit, however, is that despite close to a 40% increase in the number of households in the defined trade area since 1990, a key planned retail center just outside of the trade area has been scaled down and not been built (and may never occur).

Finally, there is an inadequate supply of alternative sites available to facilitate retailing competition. With the exception of the planned CVS, all existing or potential sites are outside of the trade area. That the

subject property is in the middle of an underserved market area, arguably at a superior location in terms of road access compared with the unbuilt alternative St. Joseph's location, and with no other alternatively appropriate sites, suggests that allowing for the proposed rezoning would help rebalance the supply of neighborhood based retailing opportunities.

(Exhibit 35, pp. 2, 4)

(10) Applicant's witness, accepted as an expert in the area of land use planning, opined that the District Council made a mistake in placing the property in the R-80 Zone, reasoning as follows:

The essential mistake lies in the fact that the development of the Woodmore Town Centre project subsequent to the approval of the Master Plan and the Sectional Map Amendment have proved the District Council's assumptions regarding (1) the location, amount and the character of commercial space in the Planning Area, and (2) the development available to support the planned commercial activity center to be incorrect.

The Commercial Areas and Activities element of the 1990 Largo-Lottsford Master Plan contained a clear statement of the Plan's intent [to] 'provide for adequate commercial space to meet the needs of the resident of the Largo-Lottsford area....' In order to meet this intention, the Master Plan provided that a Village Activity Center be designated at the intersection of the (then) planned extension of St. Joseph's Drive with Ardwick-Ardmore Road. This single activity center was the only commercial activity center to be designated in the Enterprise Community, which comprises the northern third of the Planning Area. The site was chosen because it was central to the designated area of the Enterprise Community, and further "because of the availability of undeveloped land." [Footnote omitted]

The Master Plan intended that Village Activity Centers contain "4 to 15 acres of commercial development (40,000 to 150,000 square feet of gross leasable area, with an average 0.23 FAR)...serve a population of about 15,000 people, have a service area of about 1.5 miles in radius" and be "anchored by a supermarket and may also include a restaurant/fast-food/carry out, clothing store, card store, drug store and florist, in addition to those uses listed under Neighborhood Activity Center." [Footnote omitted] The scale of the planned activity center was proportioned to the built-out capacity of the Enterprise Community.

The Plan went on to state that, "The proposed centers...are the only retail centers oriented to Planning Area residents that should be located within Largo-Lottsford. There may be retail components of the larger employment areas (described in the Employment Areas chapter). However, *these areas should be limited and oriented to the workers within those employment areas....*"

The area which became Woodmore Town Centre development was not covered by the Commercial Areas and Activities element, but rather by the Employment Areas element. The area to the north and west of Route 202 was planned as "Employment Area 3," approximately half of which was what became Woodmore Town Centre, and was then known as "Inglewood II"....

As events eventually transpired, however, Woodmore Town Centre actually developed principally as a regional retail center (though anchored by a Wegman's super-supermarket), with a department store with food sales (Costco), a conventional department store (J.C. Penney's), a Best Buy electronics store, a Petco pet store, Men's Wearhouse and Old Navy clothing stores, and a Sleepy's mattress store, together with a number of smaller stores that would also be typically found in a neighborhood retail center such as a bank, a CVS pharmacy, a beauty and nail salons, a tailor[,] a wine & spirits store, and a number of restaurants.

The retail-oriented development of Woodmore Town Centre changed the character of retail demand in the Planning Area (and more particularly within the Enterprise Community) such that the construction of a supermarket-anchored Village Activity Center at the planned location is no longer appropriate. Instead, sufficient supporting demographics might remain for a more locally-oriented retail center, of a scale commensurate with the next tier down in the Activity Center classification, a Neighborhood Activity Center, containing “2 to 6 acres of commercial development (20,000 to 50,000 square feet of gross leasable area, with an average 0.18 FAR) . . . serve a population of about 8,000 people, have a service area of about 1 mile in radius” and be “anchored by a grocery store or drug store and may also include a bank and liquor store, in addition to those uses listed under Convenience Activity Center.”

This scale of facility is in fact closely commensurate with what was actually approved in 2009 (but not yet built) under SDP-9612-03 for Parcel H, Bellehaven Estates, which provided for 39,964 SF of gross floor area on a site of 4.98 acres, anchored by a drug store and a day care center. The reduced scale is particularly appropriate in light of the lighter traffic passing by the facility: Recent traffic counts conducted by the Department of Public Works and Transportation indicate that the average daily traffic (ADT) on Ardwick-Ardmore Road in the vicinity of Bellehaven Estates is 9,779 vehicles per day (VPD), while the traffic on St. Joseph’s Drive is only 5,873 VPD. This comparatively low volume of passing vehicles is indicative of the local character of the traffic on the two roads; this condition makes it much more difficult for the center to capture significant patronage from customers who are not local residents.

As noted above, the stated intent of the Master Plan was to “provide for adequate commercial space to meet the needs of the residents of the Largo-Lottsford area.” The change in the character of development at “Employment Area 3” and the resultant reduction in scale of the activity center at Bellehaven Estates has, however, left a portion of the Planning Area underserved by retail uses.

Compounding the shortcomings induced by the changed character of the development of Woodmore Town Centre from employment uses to a regional commercial center, the area around the subject site suffers from its location in the very corner of the Planning Area. Indeed, it lies very near the intersection of three different Master Plans; the aforementioned Largo-Lottsford Plan, the March 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment (Planning Areas 72, 75A & 75B)*, and the March, 2010 *Approved Glenn Dale-Seabrook-Lanham and Vicinity Sector Plan and Sectional Map Amendment* (which left essentially unchanged the land use recommendations of the November, 1993 *Approved Master Plan and Sectional Map Amendment for Glenn Dale-Seabrook-Lanham and Vicinity (Planning Area 70)*).

The Subregion 4 Plan seeks to strengthen existing retail at the intersection of Martin Luther King, Jr. Highway and Landover Road (the Dodge Park area), almost two miles from the subject site. Similarly, the Glenn Dale-Seabrook-Lanham Plan provided for retail activity in Lanham, in the area around the Enterprise Plaza shopping center, again almost two miles from the subject site. These two plans, together with the effect of the alternative Woodmore Town Centre development in the subject Planning Area leave a “hole” of appropriate size for a neighborhood center of 20,000 to 50,000 square feet of gross leasable area, serving a population of about 8,000 people, with a service area of about 1 mile in radius, anchored by a drug store.

The viability of this location will be supported by passing traffic as well; the traffic counts conducted by SHA and DPW&T indicate that the ADT on Whitfield Chapel Road passing by the subject site is 10,452 VPD, while the traffic on Martin Luther King, Jr. Highway is 25,102 VPD.

(Exhibit 38, pp. 5-7)

## (11) The witness expounded further upon this argument at the hearing:

[M]y contention is that the mistake that was not foreseen by the District Council was the development of Woodmore Town Center in the way that it was, in fact, realized. In the 1990 Master Plan, the area of Woodmore Town Center – and including some properties further to the southeast – was called Employment Area 3. At that time – even though the zoning at that time was the current M-X-T zoning, the anticipation was that it would be developed principally with Office and Light Industrial....

So, when you have a reconfiguration of essentially the whole retail environment that does serve the Enterprise community of the Largo-Lottsford Plan, then you bring more into play the fact of this site's – and really the surrounding community's – location in the very corner of the Planning Area and similarly the very southern part of the neighborhoods off Whitfield Chapel Road are at an extended [distance] from the shopping on Annapolis Road, similarly the western part of the Landover Planning Area and Subregion IV is also really left out there.

The Subregion IV Master Plan directs new retailing to be located down around the Dodge Park area – as they call it at the intersection of Martin Luther King Boulevard and Landover Road.

So, you have all these three corners of Planning Area 72, Planning Area 70 and Planning Area 73 – the subject one – which are really off in the corner and have been starved of neighborhood-oriented retail such as what is proposed at the subject site.

(T. 39, 41-42)

(12) The witness acknowledged that there are residences all along Whitfield Chapel Road that also back up to the Capital Beltway. (T. 49) However, given the constraints of the approved subdivision plan for the subject property<sup>1</sup>, the witness concluded as follows:

[The site] certainly has many, many constraints that would make it less desirable as a residential location than it would as a commercial location. Many of the things that make it undesirable for residential development – or make it less desirable for residential development – make it more desirable for commercial development....

This site is located at the intersection of an arterial roadway – Martin Luther King, Jr. Highway – and a collector roadway – Whitfield Chapel Road – and certainly that is a typical place where you find commercial development....

[T]his neighborhood really does lie in a hole for neighborhood-oriented commercial space. Certainly, if you drive far enough you can find other uses that would fit here, but the purpose of neighborhood-oriented space is that it is easily accessible so that you don't have to drive far, so that you don't have to put as many miles on your car, as many trips on the road, as much exhaust into the air and all of those sorts of things, which is a public benefit beyond whatever convenience there may be to you in terms of your time savings.

[T]his site is surrounded by single-family dwellings and the majority of the area certainly – well, on both

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<sup>1</sup> The approved Preliminary Plan requires Applicant to extend the sound barrier wall adjacent to the Capital Beltway around the entire subdivision. (Exhibit 39; T. 51)

sides of the Beltway – is developed, so in terms of vacant sites there aren't very many that exist to serve the economic demand that's been identified and to be able to provide convenient neighborhood-oriented space for the people who do live in this area...

(T. 47, 60)

### **Opposition's Comment**

(13) Many opposed to the request noted the site distance problem along Whitfield Chapel Road that has resulted in several accidents and at least one (1) fatality. Thus, it is assumed that the only safe access to the site would be from Fairview Avenue and it would be unfair to dump additional commercial traffic on that residential street.

(14) They also stressed there is no need for an additional shopping center at the site:

The reality is this – we don't need another shopping center. Over the 24 year period, shopping centers have grown up all around us – even within walking distance.

Some of the centers are Enterprise Plaza, Vista Gardens, Wegman's and Costco, New Carrollton – Bowie is only 10 minutes away if you want to go to the movies after you shop. We are hemmed in by two 7-11s, several banks, not to mention liquor stores, pizza shops, I-Hop, Asian Cuisine is minutes away, Red Lobster, McDonald's and of course, we're blessed with several churches as well....

If we can represent ourselves, we want to make it clear that we don't want another shopping center. I ... implore you ... to protect minority communities from the free-for-all from developers. How dare D&D Land Holdings seek to redefine our neighborhood as an urban community for their self-serving purpose of forcing a shopping center where none is wanted or needed....

[T]he other street bordering the property is Fairview Avenue, which is a narrow residential street that dead ends with only one way in and out – and that is by Whitfield Chapel Road. The corner of Fairview and Whitfield Chapel Road is also where the school children gather to catch the school bus which has always appeared unsafe ... as there are no sidewalks to support their safety.

When the County Council made the decision not to allow that property to be rezoned commercial, they took many conditions and issues into consideration and, indeed, they got it right 24 years ago....The property is zoned residential and that is what it should remain. While D&D contends that the noise from traffic makes it less desirable to develop, please consider that over 100 residential properties are now located in the adjacent area that are fully occupied. Indeed, there are noise barriers that can be constructed [that] can address concerns about noise.

(T. 75-76)

(15) A representative of the Carsondale Civic Association testified that the Association has "voiced concerns over the years about increased traffic and the dangerous intersection of Whitfield Chapel Road/MLK, Jr., Highway [and] [p]utting commercial establishments at this intersection will exacerbate these problems and create others." (T. 78)

## Agency Comment

(16) The State Highway Administration reviewed the Application and noted that it would not likely agree to any request for access to the site via MD 704. (Exhibit 16 (c))

(17) Staff's Environmental Planning Section noted that the application meets all applicable environmental requirements. There are no rare, threatened, or endangered species found to occur in the vicinity of the site. No streams, wetlands, areas of 100-year floodplain or steep slopes in excess of 15% exist. No revisions were necessary for conformance to the Natural Resources Inventory (NRI/038/08) and "[n]either the subject property nor any adjacent properties are within the designated network of the Countywide Green Infrastructure Plan."

(Exhibit 16 (h), p. 2)

(18) The Urban Design Section recommended several conditions be imposed if the request is granted, "due to the multiple, adjacent single-family residential properties, north and east of the subject property, and the high visibility of the site from surrounding roadways...." (Exhibit 16(b), p. 1) The conditions can be achieved via approval of a detailed site plan prior to the issuance of building permits.

(19) The Transportation Planning Section noted that the request would result in an additional 5,266 vehicular weekday trips to the site – to include approximately 170 trips during the AM peak hours and approximately 600 trips during the PM peak hours. (Exhibit 16(a). The Transportation Planning Section concluded as follows:

Transportation staff is aware that the adequacy or inadequacy of transportation facilities is not a central issue pertaining to the change or mistake finding required for a Euclidean rezoning. Based on the potential trip generation, the proposed rezoning would have a sizable impact on the existing transportation facilities in the area of the subject property. While no transportation facility conditions are warranted as a means of ensuring the coordinated, harmonious, and systematic development of the Regional District, a number of issues are identified that will need to be addressed during review of the preliminary plan of subdivision.

(Exhibit 16(a), p. 3)

(20) Staff ultimately concluded that the Application should be denied, reasoning as follows:

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 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), staff 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 -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 Largo-Lottsford SMA (CR-71-1990) was prepared and approved concurrently with the Master Plan. The two rezoning applications for Beall Property ... 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.

(Exhibit 15, pp.5-6)

(21) The Planning Board also considered the Application and recommended that it be denied. (Exhibit 28) In reaching this recommendation the Planning Board offered the following commentary:

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 [to show the property as suburban density residential]....

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.... 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. (Exhibit 28, pp 4-5)

## **LAW APPLICABLE**

(1) The C-S-C Zone is a conventional zone as defined in the Zoning Ordinance and must be approved in accordance with the strictures of Section 27-157(a). This provision of law generally holds that no application can be granted without the Applicant proving that there was a mistake in the original zoning or subsequent SMA or that there has been a substantial change in the character of the neighborhood. It provides, in pertinent part, as follows:

### **Sec. 27-157. Map Amendment approval.**

(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.

(b) **Conditional approval.**

- (1) When it approves a Zoning Map Amendment, the District Council may impose reasonable requirements and safeguards (in the form of conditions) which the Council finds are necessary to either:
- (A) Protect surrounding properties from adverse effects which might accrue from the Zoning Map Amendment; or
  - (B) Further enhance the coordinated, harmonious, and systematic development of the Regional District.
- (2) In no case shall these conditions waive or lessen the requirements of, or prohibit uses allowed in, the approved zone.
- (3) All building plans shall list the conditions and shall show how the proposed development complies with them.
- (4) Conditions imposed by the District Council shall become a permanent part of the Zoning Map Amendment, and shall be binding for as long as the zone remains in effect on the property (unless amended by the Council).
- (5) If conditions are imposed, the applicant shall have ninety (90) days from the date of approval to accept or reject the rezoning as conditionally approved. He shall advise (in writing) the Council, accordingly. If the applicant accepts the conditions, the Council shall enter an order acknowledging the acceptance and approving the Map Amendment, at which time the Council's action shall be final. Failure to advise the Council shall be considered a rejection of the conditions. Rejection shall void the Map Amendment and revert the property to its prior zoning classification. The Council shall enter an order acknowledging the rejection, voiding its previous decision, and reverting the property to its prior zoning classification, at which time the Council's action shall be final.

(6) All Zoning Map Amendments which are approved subject to conditions shall be shown on the Zoning Map with the letter "C" after the application number.

\* \* \* \*

### **Change or Mistake**

(2) 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)

(3) 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*.

(4) The burden of proof in any zoning case shall be the Applicant's. (Prince George's County Code, Section 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. (Section 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.

(Messenger v. Board of County Commissioners, 259 Md. 693, 703, 271 A.2d 166, 171(1970))

### **CONCLUSIONS OF LAW**

The surrounding area was primarily residential in nature at the time of the adoption of the SMA, and it remains so today. Applicant submitted some evidence that supports its belief

that the District Council may have made a mistake when it retained the R-80 zoning of the subject property; however, I don't believe it rose to the level of mandating approval of the instant request. Applicant has not shown that it will be denied all reasonable use of its property if the request is not granted, just that it would prefer to develop a commercial use on the site.

### **RECOMMENDATION**

I recommend denial of A-10024.