

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

ZONING MAP AMENDMENT

ZMA-2022-001

DECISION

Application: Request to Rezone from the RR Zone to RMF-48 Zone
Applicants: Land Development Investors II, LLC and Cottage City Mennonite Church, Inc./Marianne Davies Trust Development (Project Name)
Opposition: Wingate Homeowners Association, Inc., et. al.
Hearing Dates: February 8, 2023, February 22, 2023, and March 1, 2023
Hearing Examiner: Maurene Epps McNeil
Recommendation: Denial

NATURE OF REQUEST

(1) ZMA-2022-001 is a request for the rezoning of approximately 12.426 acres in the R-R (Residential, Rural) Zone to the RMF-48 (Residential, Multifamily-48) Zone. The subject property is located on the south side of Greenbelt Road (MD 193), approximately .35 miles west of its intersection with Lanham-Severn Road (MD 564), and identified as 10301 and 10303 Greenbelt Road, Lanham, MD.

(2) The Technical Staff and the Planning Board recommended disapproval of the request. (Exhibits 19 and 20)

(3) Several residents of the Wingate Subdivision and its Homeowner's Association appeared in opposition to the request.

(4) A few documents submitted prior to the final hearing were not entered into the record. As a result, some exhibit numbers changed from the numbering discussed in the transcripts.

(5) At the close of the final hearing the record was left open to allow the submittal of additional information. The information was received and the record was closed on March 3, 2023.

FINDINGS OF FACT

Subject Property

(1) The subject property is a combination of Parcels 420, 421, and 422 as shown on Prince George's County Tax Map 36-A2, and a portion of Lot 1 on the "Reuth's Addition to Glenn Dale" plat, as shown in Plat Book 48 at Plat 61 among the Land Records of Prince George's County, Maryland. (Exhibits 3, 18, 21, and 25) It is improved with two single-family dwellings, as noted *infra*.

Surrounding Property/Neighborhood

(2) The subject property is surrounded on the north by a single-family dwelling and Greenbelt Road (MD 193); on the east by a parcel owned by 1 Salon Studios, LLC, on the south and east by the Capitol Christian Fellowship Church (a/k/a the Cottage City Mennonite Church); and on the west a vacant and incomplete church, all in the R-R Zone. (Exhibits 4 and 21, p. 4) It is described more thoroughly below.

(3) The Technical Staff did not provide a neighborhood for the subject property. Applicant's land planner believes that the neighborhood has the following boundaries:

North:	Greenbelt Road (MD 193) and across, properties fronting on this road that "inform" the neighborhood context while being in a Planning Area governed by the 2006 Sector Plan and Sectional Map Amendment for the East Glenn Dale Area. (Exhibits 20 and 32)
South:	Palamar Drive/Forbes Boulevard
East:	Penn Line Railroad
West:	Good Luck Road

The neighborhood includes the Woodland Landing apartments in the RMF-20 Zone, the Arbor Terrace senior apartments in the CGO Zone, attached single-family dwellings in the RSF-A Zone, the Eastgate Shopping Center in the CGO Zone, a strip of commercial uses that includes a cell tower, gas station, the Glenn Dale Post Office, a few auto-related uses, and places of worship in the CGO and CS Zones. The uses to the north (that are not within the neighborhood proper) abutting Greenbelt Road include a gas station, consolidated storage, a church, a bank, a nine-story office building, and a grocery store in the RMF-12 and IE Zones. This Examiner accepts the neighborhood proffered by the land planner for the reasons stated below.

Master Plan/Sectional Map Amendment

(4) The property lies within an area governed by the 2010 Glenn Dale – Seabrook Lanham & Vicinity Sector Plan ("Sector Plan") and Sectional Map Amendment ("SMA"). The Sector Plan noted in its Future Land Use Section that the area covered "is

substantially developed, and its fundamental land use pattern will remain the same for the coming decades” and that long-term land use changes “are anticipated and desired” in two major locations. (Sector Plan, p. 200) These two locations were later identified as the Seabrook MARC Station Area along Lanham Severn Road (MD 564) and the Vista Gardens Marketplace Area. (Sector Plan, pp. 202-214)

(5) The Sector Plan also explained that the Residential Low-Medium category uses were folded into the Residential Low category. (Sector Plan p. 200) Despite this “folding” the Sector Plan defined the Residential Low land uses as 0.5 - 3.5 dwelling units per acre single-family detached units. Residential Medium land uses were defined as 3.6 to 8.0 dwelling units per acre and typically a mixture of smaller-lot, single-family detached townhouse units.

(6) The Sector Plan embraces “many of the individual goals and objectives of the 1993 Glenn Dale- Seabrook-Lanham and vicinity master plan, and emphasizes the interrelationship between plan elements. “ (Sector Plan, p. 6) The Sector Plan included the following recommendations for Living Areas within its boundaries:

- Provide a variety of densities and housing types.
- Ensure that infill development conforms to existing neighborhood character.
- Limit nonresidential expansion into neighborhoods and provide adequate buffering.
- Connect living areas to employment centers, public facilities, etc., through a trails network.
- Improve code enforcement.

(Sector Plan, p. 10)

Applicant’s Request

(7) The subject property’s ownership is apportioned between the Marianne Davies Trust, with two daughters of Marianne Davies (deceased) serving as Trustees (Diane O’Neil and Doreen Kramer); Doreen Kramer and her husband Robert Kramer; and the Cottage City Mennonite Church (a/k/a Capital Christian Fellowship Church). Applicants Land Development Investors, II, LLC, and the Cottage City Mennonite Church have been issued a certificate in good standing to transact business within the State of Maryland by the State Department of Assessments and Taxation. (Exhibits 22 26)

(8) Mr. Daniel O’Neil testified on behalf of his wife, Diana O’Neil, and his sister-in-law, and brother-in-law Mr. and Mrs. Kramer – all trustees of the Marianne Davis Trust. He noted that he has been married to Mrs. Marianne Davies’s daughter for over forty years and a part of the family since that time. He provided detail as to the history of the ownership of the property and its original size. There are homes currently on the subject property-one owned by the Trust and the other, closer to the Capital Christian Fellowship Church, by the Kramer’s.

(9) Mr. Kramer testified that the property owners have not requested a rezoning in the past and did not do so as a part of the Sectional Map Amendment process in 2010 or the 2022 Countywide Map Amendment process. However, the beneficiaries of the trust are over sixty years in age, and in varying degrees of health and would now like to sell the land and live on the proceeds.

(10) Mrs. Diana O'Neil and Mrs. Kramer testified briefly that they did authorize Mr. O'Neil to speak on their behalf, and that they agreed with his testimony. (February 8, 2023, T. 27-29)

(11) Mr. Mark Ferguson, accepted as an expert in Land Use Planning, testified on Applicant's behalf. He also prepared a Land Planning Analysis that included the following support for his opinion that the Application should be approved:

[T]he subject property is located on the south side of Greenbelt Road, roughly midway between the eastern and western edge of the neighborhood (which are separated by a mile). The property is largely wooded, and is occupied by two single-family dwellings served by driveways from Greenbelt Road. The subject property wraps around two enclaved parcels of land which also front on Greenbelt Road, the western of which, owned by Adem Buyukacar, et. al., is occupied by a single-family dwelling and is the subject of ... SE-4337. The eastern enclaved parcel, [owned] by 1 Salon Studios, LLC, was formerly occupied by a single-family dwelling that was demolished in 2002

The topography of the subject site generally slopes from north to south. Along the southern edge of the property, there is a perennial stream with associated one-hundred-year floodplain and nontidal wetlands, which is an unnamed but significant tributary of the Folly Branch

The Applicant contends that there has been both a substantial change in the character of the neighborhood and several mistakes in the current Sectional Map Amendment....

(Exhibit 24, pp. 3-5)

(12) In short, the mistakes and changes that Applicants and Mr. Ferguson cite to support the request can be summarized as follows:

- It was a mistake to retain the R-R zoning of the subject property in the 2010 SMA since this zoning did not serve the goals of the Master Plan with respect to designing infill to be compatible with existing neighborhood scale and character.
- It was a mistake for the District Council to not consider the effects of the alignment of the C-340 roadway.

- It was a mistake for the District Council to not have considered a recommendation of the 2002 General Plan to place the neighborhood of the subject property in the University Boulevard Corridor.
- There has been a change in the character of the neighborhood since the District Council's adoption of Council Bill 71-2016 which allowed one of the enclaved properties to operate a commercial use (a beauty salon) on site.

Mr. Ferguson fleshed out his reasoning as to the first listed mistake by noting that the Sector Plan made a broad statement that its version would be to maintain the current densities of residential neighborhoods, and the SMA "only saw fit to make three map amendments throughout the whole of the Sector Plan area." (Exhibit 24, p. 7) The Sector Plan then included a Table of "Future Land Use Principles and Policies" that contained eight principles that the expert believed were not followed. (Exhibit 24, pp. 7-8) The last of these principles was to "[e]ncourage land uses that provide sensitive transitions between commercial and employment centers and residential areas" and Mr. Ferguson argued that:

the explicit direction of the plan's vision to 'leave things as they were,' regardless of its own stated principles for guiding land use decisions, made it clear to this planner that facts, ... projects or trends which were reasonably foreseeable of fruition in the future were not considered in the District Council's action in approving the Sectional Map Amendment

(Exhibit 24, p.8)

As to the second basis for finding mistake Mr. Ferguson believed that the District Council did not consider the effect of C-340 (relocated Forbes Boulevard) since the Master Plan of Transportation and the Sector Plan discouraged the use of collector roadways serving individual lots. Additionally, he noted that Section 27-6206(d) of the Zoning Ordinance prohibits access from collector roadways if direct access from a lower-access way is available or feasible to provide.

Mr. Ferguson explained the basis for his finding the third mistake in the retaining the R-R zoning of the property thusly:

[T]his planner observes that the General Plan which was in force [at the time] of the Sector Plan's adoption included the neighborhood of the subject property within its designated University Boulevard Corridor, one of seven corridors designated by that plan.

The 2002 Plan described the purpose of Corridors as "to provide for more intensive uses at appropriate locations within one-quarter mile of these key transportation routes in the County." While the Plan's introduction

recognized that Greenbelt Road is a designated corridor ... and stated that, "this 2010 sector plan update reinforces the 2002 General Plan recommendations and explores the appropriate intensity and mix of uses for the ... portions of Annapolis and Greenbelt Roads designated as corridors, ... there is no evidence in the Plan's text that this exploration was ever conducted. The Future Land Use element does not mention the Greenbelt Road corridor at all, while it does discuss the Annapolis Road corridor in its discussion of the context of its recommendations for the Vista Garden Marketplace planned mix-use area.

[There] is ... no discussion anywhere in the text of the entire Sector Plan evaluating land uses in the Greenbelt Road corridor.

Given the intensity of activity surrounding the subject property, both in the Glenn Dale Sector Plan area and the abutting East Glenn Dale Sector Plan area, this planner would have identified the neighborhood area as an activity node, and recommended appropriate land uses. It is clear from the absence of discussion in the Sector Plan that the District Council did not even take the first step of considering that fact in arriving at its land use decisions in the Sectional Map Amendment.

(Exhibit 24, p. 9)

(13) Mr. Ferguson provided the following in support of his belief that there has been substantial change in the character of the neighborhood since the adoption of the Sector Plan:

Subsequent to the approval of the Sectional Map Amendment in 2010, the District Council approved CB-71-2016, which amended the former Zoning Ordinance to permit the use of property in the R-R Zone for a Beauty Shop, providing it met certain conditions laid out in Footnote 114 to Section 27-441(b)

Pursuant to these provisions, the owner of Parcel 1 "1 Salon Studios," which is a parcel of land of 1.3709 acres in the area which the subject property surrounds on three of its four sides (the fourth being its frontage on Greenbelt Road), received approval of Detailed Site Plan DSP-17012, and has received technical and MNCPPC approvals of grading permit 17628-2019 and building permit 23235-2022, with permit issuance only pending receipt of final SHA approval.

The construction of this development, which features a 10,400 SF commercial building surrounded by 57 parking spaces will change the character of the immediate vicinity of the subject property from largely wooded with two churches, to a more commercial character. This change

would result in an environment further unsuited to the retention of the existing RR zoning.

(Exhibit 24 p. 10)

(14) Mr. Ferguson analyzed the purposes for all zones, in general, and for all residential base zones (Exhibit 24, pp. 10-16), and concluded that the requested zoning would best satisfy many of these purposes:

The application of the RMF-48 Zone to the subject site would protect and promote the health, safety, morale, comfort, convenience, and welfare of the inhabitants of the County by allowing for uses which are compatible with the subject property's location on an arterial roadway, and in the middle of a concentration of higher-intensity land uses

Plan Prince George's 2035, the County's General Plan, classified the subject site in its Growth Policy Map as part of the 'Established Communities' component

The General Plan describes Established Communities as, 'most appropriate for context-sensitive infill;' this planner would contend that the presence of the surrounding intense land [uses], the abutting arterial roadway, and the presence of the alignment of the planned C-340 roadway indicate that approval of the RMF-48 Zone would be far more context-sensitive than retention of the existing RR zoning

The Master Plan of Transportation designates Greenbelt Road as an arterial roadway (A-16) and Forbes Boulevard Relocated as a collector roadway (C-340). The approval of the RMF-48 Zone would not affect either of these planned facilities

The approval of the [request] would abet the orderly growth and development of the County by providing for land uses at the subject property which are compatible with the surrounding arterial roadways, the realigned Forbes Boulevard, and the surrounding higher-intensity land uses

The approval of the [request] would enable the extension of the existing pedestrian network along Greenbelt Road and the planned bicycle network running through and along the subject property, and would promote the use of the Metrobus G14 line which runs across the subject property's frontage on Greenbelt Road

The subject property is a substantial part of an undeveloped 'hole' of RR-zoned land in the middle of an established doughnut of higher-intensity uses. The approval of the instant request would

actively support infill development in an established area of the County

Because the requested Zone is far more compatible with its surrounding uses and high-classification roadways, the approval of the RMF-48 Zone would afford a more use – appropriate level of privacy than the existing R-R zoning ...

[T]he approval of the subject rezoning would be in harmony [with the purpose to encourage economic development activities] because the greater density of new households it would allow for would reinforce the level of economic activity surrounding the subject property. ...

The noise from the surrounding high-classification roadways can be better mitigated by the construction techniques found in the construction of higher-density buildings, and the proposed land use is far more compatible with the intense land uses of its surroundings than its existing RR zoning would be

[T]he subject property sits in a largely – undeveloped (or otherwise institutionally – used) ‘hole’ of RR Zoned land in the middle of an established doughnut of higher–intensity uses, and as such is not a part of an established residential neighborhood. The existing townhouses in the Woodstream neighborhood to the south will be well-buffered from the subject property by the intervening floodplain of the Folly Branch tributary which runs along its southern edge. For all of these reasons, the approval of the subject application will protect the established character of the residential community

Because of the surrounding high-intensity land uses and high classification roadways, the approval of the subject application would provide appropriately-located land for higher-density residential development, and would be consistent with the General Plan’s policy for promoting context-sensitive development in the Established Communities, and with the Sector Plan’s Table of Future Land Uses and Policies

The approval of the requested RMF-48 Zone would better promote housing affordability and diversity than the existing RR Zone, and would be part of the spectrum of available and varying densities, types and designs, which are reflected by the range of the Base Residential Zones provided in the Ordinance from low-to-high-density

The approval of the subject application ... [will afford density sufficient to] reduce the pressure to impact the natural features of the land, and will support walkability by the subject property's close proximity to supporting retail, employment and services, and by the implementation of the planned bikeways and trails that traverse or pass along the property's perimeter

(Exhibit 24, pp. 12-16)

Oppositions' Comment

(15) Mr. Jon Robinson testified in opposition to the request. He has served on the Board of the Sierra Club in the past and spent much of his career working with Goddard Space Flight Center updating geographic information systems and providing analysis of land use and land cover. (Exhibit 39) He did not seek admission as an expert witness. He believed that Applicant made blanket assertions that the present zoning would make it impractical to build single-family homes and that the requested zoning would not detract from the public health, safety, and welfare:

The applicant makes many assertions but offers few facts that support its application. On the one hand the applicant claims that the potential connection of an incomplete arterial connector road from Lanham-Severn Road to Greenbelt Road will make it impractical to build 26 or so single family homes as allowed by law in the RR zone because of difficulty designing entrance and exit routes from the community. On the other hand, the applicant asserts without evidence that allowing up to 596 dwelling units on the site will alleviate these problems.... Perhaps the expert can explain how a potential 596 residential units would have easier access to Greenbelt Road than 26 single family residential units. Of course, at this time it is impossible to know if the connector road will ever be completed. All one needs to do is look at many unconnected segments of Forbes Blvd

The applicant asserts that the rezoning from RR to RMF-48 will have no detrimental impact on the public health, safety and welfare to the residents of Prince George's County nor areas beyond. This of course is a precondition to arguing for the ZMA; however, beyond this assertion, the applicant provides no evidence. Simply on logical grounds it would figure that adding up to 596 residential units would increase traffic on Greenbelt Road and surrounding areas much more than 26 units. It is a simple matter of elementary probability that adding 596 residential units and their inhabitants will increase the likelihood of accidents much more than having 26 residential units and their inhabitants....

(Exhibit 39)

(16) Dr. Yonette Thomas, President of the Wingate Homeowner's Association Board of Directors, testified in opposition to the request. Dr. Thomas has lived in her home

since 1994 and is very familiar with the area, including the subject property. The Wingate community has a zoning and planning committee “that tracks zoning and planning issues that impact Wingate and its environs ... [along] a ten-mile swath which [we consider] broadly our neighborhood.” (March 1, 2023, T. 106) She expressed the following concerns with the Application:

Wingate has three entrances. Where our monuments are on Lanham Severn, that’s considered the main entrance. There’s also Good Luck Road entrance that most of us use. And there’s also Springfield Road entrance. So, I traverse that area . I run over to that area [the subject property]. I bike over that area... [and] I’m so familiar that we have actively been concerned about the traffic congestion in that area and the fact that people in ... a multifamily community are actively parking on the street – both a safety and a hazard, traffic hazards....

I’m sensitive and protective against indiscriminate development. My role as the president of Wingate board of directors has activated my advocacy in this area....

Wingate is a 256-home community which was developed in 1988.... [We are] deeply invested in development within a ten-mile radius of Wingate....

We understand that developers will not generate as much revenue building single-family detached units as they would dense multifamily housing. We get that. But ...[t]he proposed RMF-48 zone is the most intense of the residential based zones. We already have a severe parking issue and congestion on that section of Greenbelt Road. It’s also a security issue. Single family homes will mean that homeowners can park their multiple cars on their properties, and will not need to rely on busy roadside parking as the multifamily occupants currently do. Again, which is both a safety and security hazard. That’s our perception.

Again, the RMF-48 zone ... upends the community’s character in our estimation. And we ask for respect for the character of the community. And we ask for respect for the character of the community. And that there be adherence to the 2010 approved Glendale Seabrook Lanham and vicinity approved sector plan and sectional map amendment, the SMA that recommends residential low land use on the subject property with a focus on single family detached units....

(March 1, 2023, T. 103, 107-108)

(17) Carol Hurwitch testified in opposition to the request. While not a resident of the neighborhood defined by Applicant she testified “as a concerned citizen and neighbor” opposed to a perceived “countywide thrust to densify ... even beyond master plans and the sectional map amendments call for.” (March 1, 2023, T. 126)

The subject property is bound by the north, east, south, and west by properties all of which are currently zoned RR. And the sector plan and SMA recommends residential low land use on the subject property with a focus on single family detached units. This allows for low density as you know about 2.17 units per acre. And ultimately allows already for 26 family lots on the 12.43 acre property.

The proposed RMF 48 zone is the most intensive of residential base zones with a permitted maximum density of 48 dwelling units per acre [T] his allows 596 dwelling units on site and I have to ask, how is the surround infrastructure going to accommodate this? And it doesn't preserve the character of the neighborhood

The claim that single family homes will help promote incongruent housing types and create an awkward transition from surrounding nonresidential development, I think is [spurious]. We strongly object, I strongly object to the assertion that the SMA disparage, the trend for construction of larger single family residences. I mean that's the character of the neighborhood.

We strongly object to the assertion that the RMF 48 zoned property would be harmonious with existing land uses along the Maryland 198 corridor. I live along the Maryland 193 corridor. I used to live in the Seabrook area. I still frequent the NASA Credit Union and do some shopping and I have many friends up there. So, I understand the structures and traffic problems already there.

And finally, the RMF 48 rezone exacerbates the existing parking tensions directly in front of the subject property. Residents are currently parking on the shoulders of Greenbelt [Road]

(March 1, 2023, T. 127-129)

Agency Comment

(18) The Long-Range Planning Section, Community Planning Division of the Maryland-National Capital Park and Planning Commission ("MNCPPC") noted that the subject property lies within the 2014 General Plan's Established Communities Growth Policy Area. This area is "most appropriate for context-sensitive infill and low to medium-density development." (Exhibit 20, Backup pp. 11-12) MNCPPC'S Subdivision Section noted that subdivision will be required, and that since the property is adjacent to a master planned arterial (MD 193) "applicant will be required to demonstrate compliance with Section 27-6206(d)(1), which limits direct access along arterial or collector streets, at the time of [preliminary plan of subdivision review]." (Exhibit 20, Backup p. 13)

(19) MNCPPC's Historic Preservation Section had comments concerning two houses on the property, one constructed in 1911 and the other in 1930, that are proposed to be demolished, and small streams on the site:

Prehistoric archeological resources are often found near Freshwater streams. Several prehistoric archeological sites have been identified in previous surveys in the vicinity of the subject property.... All structures located on the subject property should be conducted to determine who resided in the houses and to determine the construction dates of each building.... Because of the moderate-to-high probability of

the subject property to contain significant prehistoric and historic archeological resources, a Phase I archeology survey is recommended....

(Exhibit 20, Backup pp. 15-16)

(20) MNCPPC's Transportation Planning Section provided the following comment:

[T]he site is subject to the recommendations of the 2009 MPOT for ... master plan right of ways and bicycle pedestrian facilities. This application is seeking a rezoning of the site that would increase the allowable density. Staff finds that given the proposed increase of density to the site, the construction of the master plan roadway, C-340, will be needed to support the trips generated by the site and will help relieve congestion on the surrounding network. As a condition of approval, staff recommends that the applicant dedicate the ultimate right-of-way for C-340 within the limits of the property consistent with the MPOT recommendation.

(Exhibit 20, Backup pp. 18-19)

(21) The Technical Staff recommended that the request not be approved in its original Staff Report dated December 21, 2022. (Exhibit 20) Much of Staff's original analysis in support of its recommendation was repeated in its revised report and it is, therefore, not necessary to address this one separately herein.

(22) On February 22, 2023, the Technical Staff submitted its additional comment in response to Mr. Ferguson's Land Planning Analysis. (Exhibit 32) Staff did not change its recommendation that the request be disapproved, reasoning as follows:

The sector plan and SMA recommends residential low land use on the subject property, with a focus on single-family detached units. Per the plan, Residential Low is defined as 0.5 to 3.5 dwelling units per acre (page 200 and Map 36 – Proposed Land Use on page 202). The allowed density would permit between 6 and 43 single-family residences on the subject property. Per the Zoning Ordinance the maximum density allowed in the R-R Zone is 2.17 dwelling units per acre, with a minimum lot area of 20,000 square feet (Section 27-4202(c)). This would allow maximum density of 26 single-family residences on the 12.43-acre site. The proposed RMF-48 Zone is the most intense of the residential base zones, with a permitted maximum density of 48 dwelling units per acre and a minimum lot area requirement of 7,500 square feet (Section 27-4202(i)). This would allow a maximum of 596 dwelling units on the site....

On February 8, 2023, Mark G.L. Ferguson of RDA Engineering Company, Inc. submitted a "Land Planning Analysis" expanding on the applicant's contention that retaining the subject property in the prior R-R Zone was a mistake by the District Council. The Land Planning Analysis also introduced a new legal argument that was not in the applicant's original application, to wit: that there has been a substantial change in the character of the neighborhood.

Mistake 1: Master Plan Analysis

The Land Planning Analysis restates the same five master plan recommendations (page 1 of the Sector Plan), two Land Use Principles and Policies (Table on page 200), and community design issue (Incompatible Residential Infill (page 4) contained in the applicant's original SOJ. In the November 10, 2022 letter, staff previously found that those recommendations and policies were outweighed by more specific provisions in the sector plan that supported the District Council's decision to retain the property in the R-R Zone. The sector plan specifically identified the property for residential low land uses (page 202, Map 36). Residential low land uses conformed to the plan's goal of maintaining current densities for residential neighborhoods (page 3), and the purpose of the RR Zone (encouraging variations of single-family detached residential lots and preservation of trees and open space) aligned with this category. Staff also noted that the five master plan recommendations were outweighed by the more specific recommendations for the Glenn Dale-Seabrook-Lanham area (page 1). Staff, therefore, will not further analyze the same arguments made by the applicant in its SOJ.

The Land Planning Analysis also challenges staff's conclusion that RR zoning conforms to the sector plan's goal to "maintain the current densities of residential neighborhoods." According to the Analysis, the fact the District Council only chose to make three map amendments and that the plan's Land Use Element is only 15 pages is evidence the Council did not consider this goal when zoning the subject property.

Staff does not find that an absence of rezoning or a 15-page Land Use Element is sufficient evidence that the Council did not consider this goal or any of the other goals, policies, and recommendations in the sector plan. All such goals, policies, and recommendations were before the Council at the time of its consideration of the joint plan and sectional map amendment and, as such, leads to the conclusion that the Council did consider its own policies when deciding to retain RR zoning for the subject property. In addition, as stated above, there are a significant number of goals and policies that support RR zoning for the property.

The Land Planning Analysis also cites to six additional Land Use Principles and Policies (page 200), as support for more intense zoning on the property. Staff [finds] that those same six principles apply equally to property zoned RR, as it would to property zoned RMF-48 and, in some cases, more substantially furthers those goals. Both zones preserve residential neighborhoods, promote

infill development on vacant lots in existing residential areas. encourage new residential development that emphasizes connectivity and walkability, and encourages land uses that provide sensitive transitions between commercial and employment centers and residential areas. R-R zoning, however, provides more space to protect open space resources within parks and along stream valley corridors and trails, and can more likely enhance the open space network through green infrastructure connections.

Staff, therefore, find no evidence in the Land Planning Analysis that the underlying assumptions or premises relied upon by the District Council, when it adopted the sectional map amendment (or at the time it approved the Countywide Map Amendment) were incorrect or otherwise met the standard for a mistake of fact. Instead, staff find that the Land Planning Analysis merely argues that the Council made a mistake in judgment, when it chose not to rezone the subject property, and that does not satisfy the requirements of Section 27-3601(e)(3).

Mistake 2: Transportation Analysis

The Land Planning Analysis did not provide any additional evidence regarding Mistake 2, so no further staff analysis is required.

Mistake 3: Lack of Consideration of the University Boulevard General Plan Corridor

The Land Planning Analysis provided evidence in support of a third “Mistake,” not otherwise contained in the applicant’s original application. According to the Analysis, the 2002 *Prince George’s County General Plan*, in effect at the time of adoption of the sector plan, included the property in one of seven “corridors,” designated by the General Plan. While acknowledging the sector plan states that it reinforces the 2002 General Plan, explores the appropriate intensity and mix of uses for the Annapolis and Greenbelt corridors, and includes a map of the Greenbelt Corridor in the Transportation Element, along with identifying “key transportation issues,” the Analysis argues that the sector plan should have also included further analysis of land uses in the corridor. The author adds, “this planner would have identified the neighborhood areas as an activity node, and recommended appropriate land uses.”

As noted above, the absence of language in a sector plan is not evidence that the District Council failed to consider and evaluate land uses. Furthermore, the evidence of the consideration of relevant issues in the Greenbelt Corridor, identified by the land

planner, suggests that the Council did evaluate assumptions and premises impacting the subject property that were part of the General Plan and incorporated into the sector plan. Furthermore, what the land planner might have done, if given the opportunity to approve the sector plan, is not relevant to an analysis of whether the Council made a mistake under the standards applicable to a ZMA application in Section 27-3601(e)(3). Instead, as in Mistake 1, staff find that the Land Planning Analysis is merely arguing that the Council made a mistake in judgment that does not satisfy the requirements of the Zoning Ordinance.

Change in Character of the Neighborhood – Council Bill CB-71-2016

The Land Planning Analysis introduces a new legal argument that was not in the applicant's original application. In 2016, the District Council approved Council Bill CB-71-2016, adding beauty shops as a special exception use (including eating and drinking) in the RR Zone, subject to a footnote restricting the location to only property meeting specific criteria. Since that time, an application has been filed and approved for a detailed site plan and permits granted for construction of a salon on 1.3709 acres, adjacent to the subject property. The land planner argues that this development "will change the character of the immediate vicinity of the subject property."

According to Section 27-3601(e)(1), an applicant must show "there has been a substantial change in the character of the neighborhood." Staff first notes that the Land Planning Analysis argues staff's initial interpretation that the area surrounding the property was too small. Instead, the Analysis states that staff should have defined the "neighborhood of the subject property" as the 270-acre area surrounding the subject property sharing boundaries with the sector plan's "Living Area 4" (pages 3–4 of Analysis).

The only evidence of change provided by the applicant, since adoption of the sectional map amendment, is a single change of use approved by the District Council for a specific property. That property, consisting of 1.3709 acres, is less than one percent of the entire neighborhood, defined by the land planner as the appropriate context in which to evaluate the application. In addition, its location, at the far northeast corner of the subject property would not impede the future development of the property under the approved zoning. Furthermore, the District Council did not rezone the 1.3709-acre parcel, but merely allowed one commercial use to be operated on the site, while retaining its RR zoning. Based on these findings, staff does not find the adoption of CB-71-2016 and the proposed development of the site sufficient evidence of a substantial change in the character of the neighborhood that would satisfy the requirements of Section 27-3601(e)(1)

(Exhibit 32, pp. 3, 7-9, emphasis omitted)

APPLICABLE LAW

(1) The District Council may not approve the instant request unless Applicant presents sufficient credible evidence that the following strictures found in Section 27-3601(e) are satisfied:

(e) Zoning Map Amendment (ZMA) Decision Standards

In determining whether to adopt or disapprove a proposed zoning map amendment (ZMA), the District Council may consider many factors. No amendment to the CBCAO Zone shall be granted without the applicant demonstrating conformance with the decision standards in Section 27-3603(d), CBCAO Zoning Map Amendment Decision Standards. No other zoning map amendment shall be granted without the applicant demonstrating either:

- (1) There has been a substantial change in the character of the neighborhood; or
- (2) There was a mistake in the original zone for the land subject to the amendment which has never been the subject of an adopted sectional map amendment; or
- (3) There was a mistake in the current sectional map amendment.

(2) It would also be helpful to review the purposes of the residential base zones, in general, and the R-R and RMF-48 Zones, in particular, all found in Sections 27-4202 (a), (c)(1) and (i)(1). These Sections provide as follows:

27-4202. Residential Base Zones

(a) General Purposes of Residential Base Zones

The Residential base zones established in this Section are intended to provide a comfortable, healthy, safe, and pleasant environment in which to live and recreate. More specifically, they are intended to:

- (1) Provide appropriately located lands for residential development that are consistent with the goals and policies of the General Plan and the applicable Area Master Plan or Sector Plan;
- (2) Ensure adequate light, air, privacy, and open space for each dwelling, and protect residents from the negative effects of noise, excessive population density, flooding, and other significant adverse environmental impacts;
- (3) Ensure protection from fires, explosions, toxic fumes and substances, and other public safety hazards;
- (4) Provide for residential housing choice, affordability, and diversity with varying housing densities, types, and designs;
- (5) Provide for safe and efficient vehicular, bicycle, and pedestrian access and circulation, and neighborhoods that promote multiple forms of mobility;
- (6) Provide for the public services and facilities needed to serve residential development;

- (7) Protect the existing character of lands in the residential zones from incompatible development;
- (8) Accommodate new infill development and redevelopment that is consistent with the context and the character of the residential zone in which it is located; and
- (9) Promote sustainable development in terms of energy efficiency and conservation, greenhouse gas reductions, food security, materials recycling, and similar sustainability goals.

Section 27-4202 (c)(1)

The purposes of the Residential, Rural (R-R) Zone are:

- (A) To provide for and encourage variation in the size, shape, and width of single-family detached residential subdivision lots, in order to better utilize their natural terrain;
- (B) To facilitate the planning of single-family residential developments with moderately large lots and dwellings of various sizes and styles;
- (C) To encourage the preservation of trees and open spaces; and
- (D) To prevent soil erosion and stream valley flooding

Section 27-4202(i)(1)

The purposes of the Residential, Multifamily-48 (RMF-48) Zone are:

- (A) To provide suitable sites respectful of the natural features of the land for high-density multifamily residential development and other forms of development that support residential living and walkability;
- (B) To provide for this type of development at locations recommended by an Area Master Plan or Sector Plan, proximate to centers (including transit centers) or at other locations which are found to be suitable by the District Council; and
- (C) To ensure development is compatible with surrounding lands.

Change or Mistake

(3) The Applicant is required to show that there has either been a change in the character of the neighborhood or that there is strong evidence of a mistake in the original zoning of the property or the most recent comprehensive rezoning. The burden of proving either is the Applicants. (Anne Arundel County v. Maryland National Bank, 32 Md. App. 437, 361 A.2d 134 (1975)) Finally, the District Council is not required to grant the request even where Applicant adduces strong evidence of change or mistake. (Mayor & Council of Rockville v. Rylyns Enterprises, 372 Md.514,814 A.2d 469 (2002))

(4) 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 are 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 (1972) 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.

In People's Counsel for Baltimore County v. Prosser Co., 119 Md. App. 150,179, 704 A.2d 483 (1998), the Court of Appeals (whose name was recently changed to the Supreme Court) explained further what must be shown in order to support an argument of mistake in the comprehensive rezoning:

In order to find legal mistake, there must be evidence that assumptions or premises relied on by the County Council were invalid. Beachwood, 107 Md. App. At 645. This situation is different from the exercise of bad judgment based on complete and accurate information.... The burden is on the entity seeking reclassification to show the conditions that made the comprehensive rezoning incorrect and the failure of the Council to have considered those conditions.... Hardship and economic disadvantage are insufficient; in that connection, there must be a showing that the owner is deprived of all reasonable use of his property.

In Tennison v. Shomette, 38 Md. App 1, 379 A.2d 1 (1977) the Court of Special Appeals (whose name was recently changed to the Appellate Court) provided further clarification as to the Applicant's burden in proving mistake:

There is a strong presumption that the original comprehensive zoning plan was correct and in order to sustain a piecemeal change there must be strong evidence of mistake ... In considering whether this presumption has been overcome 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

(38 Md. App at 8-9)

(5) A neighborhood must be defined before one can assess substantial change in its character:

The concept of a neighborhood is a flexible one and will vary according to the geographical location involved. However, it is clear that in a rural or semirural area, the neighborhood is going to be larger and more fluid than in a city or suburban area

(Montgomery v. Board of County Commissioners for Prince George's County), 263 Md 1,5,280 A.2d 901, 903 (1971))

The Court in Prince George's County Council v. Prestwick, 263 Md 217, 226 (1971) expounded further:

In respect to the question of substantial changes in the character of the neighborhood the appellee's case is seriously flawed in that it fails to

meet the burden of proof which it has to delineate the neighborhood.... This is true, unless we take as the definition of the neighborhood the description given by the witness Ben Dyer, which includes the entire South Potomac area. This would embrace a triangular area with a base of some 3 ½ miles and side boundaries of approximately 6 ½ miles. Although this Court has frequently stated that neighborhood is a flexible one, and will vary according to the geographical location involved and that in a rural area the neighborhood tends to be larger and more fluid than in a city or suburban area, ... nonetheless, in the absence of supporting evidence it appears to this court to be unreasonable to argue that neighborhood could be as general or as extensive as here contended ... Certainly, this Court has unlevied a change in, the character of the neighborhood as applying to a more restricted area than is argued by the appellee

Finally, in Wright v. McCubbin, 260 Md. 11, 271 A.2d 365 (1970) the Court affirmed the Baltimore County Zoning Commissioner and Board of Appeals decisions to deny the requested rezoning. The facts in the record indicated that the land surrounding the subject property had been rezoned to a zone that allowed the development of hundreds of apartments. Applicant cited this as a change in the character of the neighborhood that would support its request to rezone to a commercial service area and construct a small shopping center. In affirming the denial, the court opined as follows:

Essentially, if not entirely, the changes relied on to support the requested rezoning for a commercial zoning area were intensification of adjacent or supporting residential uses. The cases have held that this of itself is not enough Even if there had been some significant evidence of substantial change in the character of the neighborhood it is established that change which would support a rezoning does not compel it absent probative evidence that no reasonable use can be made of the property in its current zoning classification

(McCubbin, at 13; Citations omitted)

CONCLUSIONS OF LAW

(1) The subject property is surrounded on all sides by RR-zoned property, but the remainder of the lots within the neighborhood are in the RSF-A, RMF-20, CGO or CS Zones. Applicants believe it was either a mistake for the District Council to have retained the RR zoning for the subject property, or that a substantial change in the character of the neighborhood has occurred since the adoption of the SMA.

(2) I accept the neighborhood proffered by Applicant's expert land use planner since it is of a reasonable size and it has definable boundaries. I agree that the subject property is akin to an undeveloped "donut hole" in the middle of an eclectic neighborhood that would not be described as "rural residential" given its mix of uses. It

was not improper to exclude the Wingate neighborhood from said boundaries, since it, and other properties to the north of Greenbelt Road lie within a separate Sector Plan.

(3) Applicants and their expert land use planner found that the District Council was mistaken in retaining the RR zoning, given some of the policies, goals and reasoning set forth in the Master Plan. Assuming, for the sake of arguendo, the District Council's failure to discuss the provisions cited by Applicants when it retained the RR zoning, I cannot find that the mistake is sufficient to justify the instant request, nor can I find that there has been a substantial change in the character of the neighborhood.

(4) As noted in Prosser, above, "in order to find legal mistake, there must be evidence that assumptions or premises relied on ... were invalid ...[and this] ... is different from the exercise of bad judgment based on complete and accurate information." Applicants didn't point to any incorrect premises that the District Council relied on, other than its decision to retain the RR zoning despite the congruent zoning of the surrounding donut. If that failure is incorrect it falls into the category of bad judgment based on accurate information which cannot support a finding of mistake. Moreover, Applicants have not submitted sufficient justification to support a rezoning from one of the lease-dense residential zoning categories (RR) to the densest (RMF-48). They have only noted that the RMF-48 Zone would be more economically feasible, not that there can be no reasonable use of the property in its current zoning.

(5) Finally, as noted in McCubbin, above, the new Beauty Salon (a permitted use in the RR Zone) is merely an intensification of an adjacent residential use, and not indicia of substantial change.

RECOMMENDATION

I recommend Denial of ZMA -2022-001.