

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

**ZONING MAP AMENDMENT**

**ZMA-2023-002  
DECISION**

Application: Request to Rezone from the RSF-95 and IE  
Zones to the IE Zone  
Applicant: Suit & Forest Ol, LLC  
Opposition: None  
Hearing Date: August 7, 2024  
Decision Date: October 9, 2024  
Hearing Examiner: Maurene Epps McNeil  
Recommendation: Approval

**NATURE OF REQUEST**

(1) ZMA-2023-002 is a request to rezone approximately 14.19 acres that are split-zoned between the RSF-95 (Residential, Single-Family-95) and IE (Industrial, Employment) Zones to the IE Zone. The subject property also lies within the MIO (Military Installation Overlay) Zone and will remain in that zone if the request is approved. The subject property is located at 4110 Suit Road, District Heights, Maryland.

(2) The Technical Staff recommended approval of the request. (Exhibit 64 (b)) The Planning Board adopted the Staff's recommendation as its own. (Exhibit 64(a))

(3) No one appeared in opposition to the request. An adjacent resident did appear at the hearing to question whether the request would impact her residence.

(4) At the hearing's conclusion, the record was left open to allow the submission of additional information. The information was received, and the record was closed on August 9, 2024.<sup>1</sup>

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<sup>1</sup> The record in this case consists of 98 Exhibits and one transcript. The Technical Staff noted that it had received no comment from the community regarding the Application prior to its completion of the Technical Staff Report. (Exhibit 64, p. 14)

## **FINDINGS OF FACT**

### **Subject Property**

(1) The subject property is on the north side of Suitland Parkway to the west of its intersection with Forestville Road. It is also identified as Parcel 49, found in Tax Map 89, Grid F2. It is split-zoned, with approximately 8.78 acres in the IE Zone and approximately 5.41 acres in the RSF-95 Zone. The RSF-95 zoned portion of the site is narrowly triangular in shape. (Exhibits 73 and 76) The instant request seeks to cohesively place the entire property into the IE Zone. The entire property is within (and will remain within) the M-I-O (Military Installation Overlay) Zone. It is subject to the M-I-O Zone requirements for height and noise but does not lie within the safety zone area. (Exhibit 64, Backup p. 85; T. 45)

### **Surrounding Property/Neighborhood**

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

North:	Suit Road and single-family detached residences in the RSF-95, IE, and MIO Zones.
South:	Suitland Parkway, and beyond Suitland Parkway, the Home Depot Distribution Center, the Washington Metropolitan Area Transit Authority Andrews Federal Center Bus Garage, and apartment complexes in the IE and MIO Zones.
East:	Outdoor vehicle storage/towing uses in the IE and MIO Zones.
West:	Undeveloped land and single-single family detached residences in the RSF-A, RSF-95, and MIO Zones.

(3) As proffered by Staff and Applicant, the neighborhood has the following boundaries: Pennsylvania Avenue (MD 4) to the north; the Capital Beltway (I-95/495) to the east; Suitland Parkway to the south; and Washington, D.C. the West. (Exhibits 59 and 64) The neighborhood consists primarily of industrial uses but includes a smattering of commercial and residential uses. (Exhibit 64, p. 5) Applicant provided an exhaustive listing of the uses within the neighborhood in its Statement of Justification. (Exhibit 59)

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

(4) The property lies within an area governed by the 2014 General Plan ("Plan Prince George's 2035") and the 2010 Subregion 4 Master Plan and Sectional Map Amendment ("SMA"). The 1985 Suitland - District Heights and Vicinity Master Plan and the Planning Board's 1997 Resolution concerning a Preliminary Plan of Subdivision for the subject property also contain information necessary in the review of the instant request.

(5) The 1985 Master Plan for Suitland-District Heights and Vicinity, and its accompanying 1986 SMA, rezoned the property from the R-R to the R-80 and I-1 Zones in order to provide a future interchange for Suit Road and Suitland Parkway, as noted below:

Each intersection, interchange and roadway proposal is indicated as either an early or later need.... A "later need" will occur only when and if additional development within and/or outside the planning area generates a significant increase in the volume of traffic on local roads. No specific period of years is implied in either case. The priority for individual facilities may shift, depending on changing conditions during the planning period, ... revisions in federal, state and local capital improvement programs, and/or the scale and siting of local development.

Regardless of whether an individual proposal is indicated as either an early or later need, it may be built at any time if all necessary funding is secured from private sources and binding agreements for the completion of the project have been obtained. The relationship between construction of highway facilities financed from nonpublic sources and associated land development is considered as part of the Recommendations of the Plan Staging section within the "Ongoing Planning Process" Chapter....

Interchange Proposals ....

Construct a limited interchange at Suitland Parkway and the future extension of Suit Road to Rena Road, approximately one thousand feet west of the present at-grade intersection between Suitland Parkway and Forestville Road, which will be closed at the same time. (Movement on Suit Road will only be possible to and from the west.) Later need.

(1985 Suitland-District Heights and Vicinity Master Plan, pp. 217-219) The Master Plan stated that this proposed interchange would "isolate the existing line of single-family homes fronting Forestville [R]oad south of Suit Road, plus extensive areas of vacant land to their rear, from residential areas to the west." (1985 Suitland-District Heights and Vicinity Master Plan, p. 176)

(6) The Planning Board approved Preliminary Plat of Subdivision ["PPS"] 4-96112 for the subject property in May 1997. Its transportation staff provided a memo prior to the Planning Board's approval that included the following information:

This application proposes to subdivide one 14.19 acre tract into four parcels A-D, keyed to the proposals of the existing Master Plan. [Proposed Parcel A] is situated within the defined Suitland Community, [proposed Parcels C and D] are within the adjoining employment area, and [proposed Parcel B] defines the 80' right-of-way of the future extension of Suit Road which forms the boundary between the community and the employment area.

The 1985 Master Plan for Suitland-District Heights & Vicinity includes the proposal that existing Suit Road be extended through this property and across Suitland Parkway. A partial interchange is proposed at Suit Road and Suitland Parkway, requiring land within

proposed Parcel C to be placed in reservation by this plat. All land west of Suit Road, including proposed [P]arcel A, is included in an extensive area proposed for Suburban residential use at a density of 2.7 – 3.5 dus per acre. Land east of this road, including [P]arcel D and that portion of [P]arcel C not included in the future interchange, is within a large area situated between Forestville Road[,] Suit Road, and the Capital Beltway proposed for Employment (i.e. industrial) uses.

The 1986 SMA following the Master Plan rezoned the area now defined as proposed Parcel A to R-80 and the areas now defined as proposed [P]arcels C&D to I-1. The proposed right-of-way for Suit Road, identified as Parcel B, was zoned R-80 and I-1 respectively, with the boundary following the center line of the proposed collector highway....

(Exhibit 59)

(7) The Planning Board's subsequent approval of PPS 4-96112 included the following information germane to the instant request:

Although Suitland Parkway is located along the southern edge of the property, there are no noise impacts associated with this proposal since the purpose of this subdivision is to determine whether road reservation is necessary. Future development of the R-80 portion of this site may be subject to noise impacts and shall require a Noise Study which includes mitigation measures....

Based on several past visits to the site, the Natural Resources Division has concerns about the storage yards and potential soil contamination and/or groundwater contamination as a result of the types of uses in these areas. Signs of fluids leaking from vehicles was observed on the soil within and outside of the storage yards. Commercial operations within what is shown as Parcel D have resulted in several petroleum spills and storage of several unlabeled 55-gallon drums. Because of the nature of the spills and the practice of the operation, the Health Department is requesting that an Environmental Assessment Phases I and II be completed for this area prior to the approval of a Final Plat of Subdivision....

The Transportation and Public Facilities Planning Division reviewed the subject application. The subject property consists of approximately 14.19 acres of land in the I-1 and R-80 Zones. The property is located on the north side of Suitland Parkway approximately 500 feet west of Forestville Road. The applicant has prepared the subdivision in order to place two of the parcels being created in reservation. No development is being proposed by the applicant at this time....

The Transportation staff has referred the applicant[s] request for reservation of Parcel C to the County and the State, along with the Eastern Federal Lands Highway Division of the Federal Highway Administration. None of the responses received ... indicate a desire to purchase the reserved property within three years, which would be the period of reservation. Furthermore, a letter ... from the National Park Service to Mr. P. Michael Errico, former Director of the Department of Public Works and Transportation ... indicates the preference of the Federal government for an interchange design that will require no additional right-of-way outside of the existing Suitland Parkway/Rena Road interchange.

While the expanded ramp configuration at the Suitland Parkway/Rena Road interchange will remain in the Suitland-District Heights Master Plan until that Plan is superseded, the Transportation staff believes there is virtually no chance that the interchange will be constructed as shown in the Plan. Concerning future building permit requests, the considerations noted in this memorandum should be made a part of the proceedings concerning any future permits within Parcel C....

The *1985 Master Plan for Suitland-District Heights and Vicinity* reflects the extension of Suit Road through this property and across Suitland Parkway. All the land west of Suit [R]oad, including Parcel A, is included in an extensive area recommended for Suburban Residential use at a density of 2.7 to 3.5 dwelling units per acre. Land east of Suit Road, including Parcels C and D, situated between Forestville Road, Suit Road and the Capital Beltway, is recommended for Employment (industrial) uses....

The 1986 Sectional Map Amendment (SMA) for this area rezoned what is shown as parcel A to the R-80 Zone and what is shown as Parcels C and D to the I-1 Zone. The centerline of the area of Suit Road (shown as Parcel B) is the division between the R-80 and I-1 Zones....

(Exhibit 59 and Exhibit 64, Backup pp. 74 - 79)

(8) The 2010 Subregion 4 Master Plan and SMA recognized that the location of the PennBelt southern industrial area, which includes the subject property, "is very good for industrial uses with access to the Capital Beltway, Suitland Parkway, and Pennsylvania Avenue." (2010 Master Plan, p. 123) The Master Plan places the subject property within Living Area F. The Master Plan combined Living Area F, Living Area E, and adjoining industrial areas that extend all the way to the Capital Beltway, into Zone 3. (2010 Master Plan, p. 106) The Master Plan provided the following policies and land use recommendations for Living Area F and Zone 3 that are applicable to the review of this Application:

- Preserve and enhance existing industrial uses wherever possible, such as the miscellaneous remnant sites along the Capital Beltway Industrial areas along the south end of Forestville Road. (2010 Subregion 4 Master Plan, pp 123-124)
- Preserve and increase industrial land use wherever possible along the eastern perimeter of the subregion. (2010 Subregion 4 Master Plan, p. 116)
- The Existing and Proposed Roadways Map did not include the interchange that had been included in the 1985 Suitland-District Heights and Vicinity Master Plan. (2010 Subregion 4 Master Plan, p. 235)

(See, Exhibit 87)

(9) The 2014 General Plan places the property within the Established Communities, an area "most appropriate for context-sensitive infill and low-to medium-density development." (2014 General Plan, p. 20)

(10) The 2021 Countywide Map Amendment (“CMA”) retained the split-zoning of the property but renamed the zoning of the residential portion to the RSF-95 Zone and the industrial portion to the IE Zone since these two classifications were analogous to the prior zoning classifications. (Exhibit 59, Attachment A, p. 2) A recent decision from the Appellate Court of Maryland addressed whether the CMA satisfied the legal criteria to be considered a sectional map amendment. (See, County Council of Prince George’s County v. Robin Dale Land, LLC., Maryland Appellate Court Opinion No. 0255, September Term, 2021) Applicant addressed the impact this decision should have on the instant request as discussed below.

### **Applicant’s Request**

(11) Applicant Suit & Forest, OI has been issued a certificate of good standing to conduct business within the State of Maryland. (Ex. 24) Applicant operates a portfolio of several small regional businesses in the area under the Open Industrial Name.<sup>2</sup> When it purchased the subject property in January 2022, the property had what appeared to be several outdoor storage lots on the site with some encroaching on the residentially zoned portion. (T.11) As noted, *supra*, the prior owners had allowed soil and/or groundwater leakage to occur on the site. Dan Berger, the Director of Development, testified concerning the work Applicant has done to remedy problems that arose under the previous ownership.

Since we’ve acquired the property, we’ve cleared the site of all tenants... that were operating there under prior ownership, and eventually we’ve cleaned up the encroachments as well as the miscellaneous materials and debris that we left behind... It’s been a cleanup effort, for the most part, since we’ve acquired it. And eventually we’ve cleaned up the encroachments as well as all the miscellaneous material and debris that were left behind....

(T. 11-12)

(12) Mr. Berger explained that the site has been accepted into the Maryland Department of the Environment’s “Voluntary Cleanup Program”. Such acceptance requires a remediation of certain environmental issues on site caused by the prior owners. It also requires that any future use of the site be limited to nonresidential uses and may also require groundwater use restrictions. (T. 13) The Applicant’s environmental consultant prepared a document outlining the work that must be done on-site and what is required in the Voluntary Cleanup Program. (Exhibit 60)

(13) Kevin Foster, accepted as an expert in land use planning, testified on Applicant’s behalf and prepared a Land Use Report. (Exhibit 9) He described the property’s surroundings as follows:

The surrounding areas... are basically [contractor] yards that are being cleaned up. The larger [RSF-A] property to the northwest of the subject property is wooded, it is owned

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<sup>2</sup> Open Industrial is the same entity as Suit & Forest OI, LLC. (T. 20)

by Pepco, [and is] currently not being used. The area ... to the opposite side of Suit Road from the subject property [is] zoned RSF-95, and is currently single-family detached houses along there. Some of those houses are being used for ...[something] other than residential uses, ... with a couple of businesses operating out of there. And then the areas along Forestville Road to the east of the subject property are all zoned IE and are industrial uses which would certainly be appropriate for the location adjacent to Andrews Air Force Base....

(T. 29-30) As noted above, there were concerns by County agencies at the time that the Planning Board issued its resolution approving PPS 4-96112, *supra*, that there was potential soil or groundwater contamination on the site. In its Statement of Justification, Applicant was required to address the legal basis for its request to rezone the subject property and “any factual reasons showing why approval of the request will not be detrimental to the public health, safety, and welfare.” (Prince George’s County Zoning Ordinance, Section 27-3601(c)(5)(G)) Applicant explained that its cleanup efforts and preliminary acceptance into the State Voluntary Cleanup program will actually improve the property and diminish any adverse impact on the public health, safety and welfare. (Exhibit 59; T. 52)

(14) Applicant is requesting the instant rezoning to better utilize the property, as noted in its Land Use Report:

The impetus for this Application is to provide the Applicant with the ability to reuse the entire ... property and maximize the area for a larger IE zone permitted use. The current unique narrow triangular shape of the RSF-95 zoned portion of the property is not conducive to new residential development ... and will not result in the efficient redevelopment and use of this area. Rezoning the RSF-95 portion of the property so that the entire property would be zoned IE will allow the Applicant to utilize the full (325’ – 1,200’) width of the property for redevelopment use, rather than the much more restrictive existing (300’ – 675’) width of the current IE zoned portion located on the eastern side of the property.

(Exhibit 19)

(15) Mr. Foster believes the District Council made a mistake in the 2010 Master Plan by allowing the split-zoning of the property to remain despite the fact that the Transportation Map in that plan removed the Suitland Road interchange that was the impetus for the split-zoning in the 1985 Master Plan and 1986 SMA. The witness offered the following explanation of what occurred in the 1985 Master Plan and 1986 SMA, using Exhibit 86:

This document illustrates ... parts of the 1985 Master Plan put into one exhibit. The upper left-hand corner, from the circulation transportation section, ... talks about the intersection of Suitland Parkway and Forestville Road. And the Suit Road is to be used as a -- as the on-ramp, basically, to Suitland Parkway.

In the upper right-hand corner ... it shows Capital Beltway, Forestville Road, Suitland Parkway to the bottom. And in red it generally show where Suit Road is and ... where

it's going to become the on-ramp, basically, to Suitland Parkway. And that basically is the genesis of the zoning map that's in front of you.

It shows that curved line on the subject property with R-80 on one side, and I-1 on the other, the center line of the road was the split between the zoning. And then R-80 was going to ... be a buffer for the residential areas to the northwest and the industrial to the east.

(T. 33)

(16) Mr. Foster also cited the Planning Board's discussion in its approval of PPS 4-96112 to explain why the interchange was never constructed:

[In Preliminary Plan of Subdivision 4-96112 the Planning Board stated its staff found]... that based off feedback from the Federal Government... the expanded reconfiguration at Suitland Parkway and Rena Road interchange will remain in the [Suitland] – District Heights Master Plan until superseded [but] [T]ransportation staff believes that there is virtually no chance that the interchange will be constructed as shown on the plan. [The Planning Board therefore did not require the reservation of land along Suit Road to be extended.]

(T. 35-37)

(17) Mr. Foster concluded that the site is not suitable for residential zoning since:

- The triangular shape of the residentially zoned portion of the property is not conducive to residential development.
- The cleanup of environmental concerns on the site will preclude residential development in the future.
- The site's location within the Military Overlay noise zone and adjacency to Suitland Parkway is not ideal for residential development.

(18) Mr. Foster next noted that the transportation map in the 2010 Subregion 4 Master Plan "clearly [showed] that the interchange where Suit Road extended at Suitland Parkway ... [was removed][but] the split zoning of the property was still shown in the [s]ectional [m]ap [a]mendment." (T. 36) The Sectional Map Amendment did rezone properties around the subject property. The witness believed this to be an indication that "there was some analysis of the area... but it did not change the [zoning for] the subject property." (T. 37-38) He concluded that the District Council made a mistake in retaining the split-zoning of the subject property because in 2010 when reviewing the Subregion 4 Master Plan, the District Council should have been aware of the removal of the Suit Road/Suitland Parkway interchange from the Transportation Map. Since the 1985 Master Plan cited this interchange as the basis for the split-zoning of the property the removal of the interchange should have alerted the Council that the



predicate for its decision to split zone the property no longer existed. The 2021 Countywide Map Amendment continued the mistake.<sup>3</sup> (T. 53)

(19) Ms. Kim Smallwood attended the hearing. She explained that she was not opposed to the request but was seeking further information on its impact on her property. She has been experiencing strange vibrations at her home since November 2022 and wondered if they were related to the clean-up efforts on the subject property. Applicant's counsel proffered that he has spoken to Ms. Smallwood several times and reached out to the Department of Permitting, Inspections and Enforcement to see if her experience may result from activities on other adjacent properties. (T. 59) Mr. Berger advised that the property is vacant, and Applicant has not undertaken any activity on site other than the removal of some debris that was done long ago. (T. 59-60) Counsel stated that he would continue to keep Ms. Smallwood up to date on Applicant's activities once the remediation efforts on site are underway. (T. 61)

### **Agency Comment**

(20) The Department of Permitting Inspection and Enforcement ("DPIE") noted that Applicant may have to provide some improvements along Suit Road at the permitting stage but otherwise "has no objection to the proposed rezoning." (Exhibit 64, Backup, pg. 92)

(21) 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 an area governed by the 2010 Subregion 4 Master Plan and Sectional Map Amendment ("SMA"). The SMA retained the residential portion of the property in the R-80 Zone and the remainder in the I-1 Zone.<sup>4</sup> It also envisioned "balancing new development that optimizes existing infrastructure, with maintaining and reutilizing existing neighborhoods and commercial areas through redevelopment, adaptive reuse, preservation, and conservation." (2010 Master Plan, p. 48) The Long-Range Planning Section also noted that the subject property is within Living Area F and the Master Plan recommended that industrial land uses be preserved or increased along the eastern perimeter of the subregion. (Exhibit 64, Backup pp. 84-85) The Master Plan included a policy for the PennBelt area (which includes the subject property) to "[r]ezone blighted, vacant, or underutilized properties adjacent to existing industrial areas to expand the local industrial base and reduce inconsistent development patterns." (Exhibit 64, Backup pp. 84-85) The Long-Range Planning Section opined that the Application would "further the Master Plan's recommendations,

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<sup>3</sup> Applicant's counsel explained that the recent decision by the Appellate Court should not affect the Application since the mistake truly occurred in the SMA immediately prior to the Countywide Map Amendment – the 2010 Subregion 4 SMA.

<sup>4</sup> The 2022 Countywide Map Amendment carried forward the split zoning but applied the new nomenclature ( RSF-95 and IE). (Ex 64, Backup p. 82)

provide incentives to industrial property owners, and improve compatibility of the existing property to the adjacent uses.” (Exhibit 64, Backup p. 85)

(22) MNCPPC’s Historic Preservation Section stated that none of the 2010 Master Plan’s goals/policies related to historic preservation are applicable to the subject property, and the property does not contain, nor is adjacent to, any designated Historic Site or resource. It, therefore, recommended approval of the instant request. (Exhibit 64, Backup p. 81)

(23) MNCPPC’s Transportation Planning Section provided the following comment:

The subject property has frontage but no access to Suitland Parkway.... This section of the Parkway is designated as a two to four lane access-controlled freeway.

[T]he previous Subregion 4 Master Plan ... identified Suit Road as the location of a new interchange with Suitland Parkway. That project was not constructed, and those plans were not realized. Currently, this project has frontage and access onto Suit Road, but this road does not have a master plan designation....

There are no master plan facilities that directly impact the site.... At the PPS stage of development bicycle and pedestrian adequacy will be further evaluated. The applicant will be required to provide bicycle and pedestrian facilities to serve the subject site....

(Exhibit 64, Backup pp. 81-89)

(24) The MNCPPC Environmental Planning Section provided the following comment:

The site is sparsely wooded with ...an existing industrial use. Per [Section] 27-3601 (c) neither a natural resources inventory (NRI) nor a tree conservation plan (TCP) are required for this application type; however, the site does have an approved NRI (NRI-022-2024). A TCP2 (TCPII-085-91) was approved on the site in 1991 which established two woodland conservation tree save areas for the proposed development. While these areas were not placed in an easement, the future TCP plans shall reflect the woodland limits and woodland conservation tree save areas established with TCPII-085-91.

Staff has no objections to the proposed zoning change; however, it will result in changes to the existing woodland conservation thresholds. As this site is currently split-zoned, changing to one zone will result in a uniform threshold for the site. The current woodland conservation threshold for the RSF-95 portion is 20 percent and the afforestation threshold is 15 percent. For the IE zoned portion, the woodland conservation threshold is 15 percent, and the existing afforestation threshold is 15 percent....

(Exhibit 64; Backup p. 86)

(25) The Technical Staff recommended that the Application be approved, reasoning as follows;

For a mistake to be a legally justifiable basis for rezoning, there must have been a basic and actual mistake by the legislative body, in this case, the District Council. Staff find the applicant's argument that the District Council's error by not considering the cause of the original split zoning, which was for the transportation improvement that is no longer recommended, is justified. The proposed rezoning meets the requirements of Section 27-3601(e), stating that a mistake was made in the 2010 SMA and carried forward in the CMA, in retaining the RSF and IE Zones for the subject property.

In the original 1985 Master Plan and SMA, split zoning of the subject property was intended to separate and provide a buffer between residential and industrial uses through the recommended Suit Road extension. The 2010 Master Plan and SMA removed the recommendation for the Suit Road extension. It further rezoned the land immediately west of the subject property to the R-T Zone, to serve as the buffer between industrial and residential uses. The District Council failed to consider whether the subject property's split zoning remained appropriate in light of these changes. This constitutes a mistake. The proposed IE zoning for the property in its entirety would support the goals and policies of the 2010 Master Plan and SMA, which recommends industrial uses for the property.

(Exhibit 64, pp. 12-13)

### **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 nonresidential base zones, in general, and the I-E Zone, in particular, all found in Sections 27-4203 (a), and (e)(1). These Sections provide as follows:

*27-4203. Nonresidential Base Zones*

**(a) General Purposes of Nonresidential Base Zones**

The Nonresidential base zones are established for the general purpose of ensuring there are lands in the County that provide a wide range of retail, office, service, employment, light industrial, heavy industrial, and related uses to meet the needs of County residents and the region, and more specifically to:

- (1) Provide appropriately located lands for the full range of business uses needed by the County's residents, businesses, and workers, consistent with the goals and policies of the General Plan and the applicable Area Master Plan or Sector Plan to support quality economic growth;
- (2) Strengthen the County's economic base, and provide employment opportunities close to home for County residents;
- (3) Create suitable environments for various types of businesses, and protect them from the adverse effects of incompatible development;
- (4) Create suitable environments for various types of mixed-use development, where business, office, retail, and residential development is designed and integrated in compatible ways;
- (5) Accommodate new infill development and redevelopment that is consistent with the context and the character of the nonresidential zone in which it is located;
- (6) Ensure nonresidential development is located and designed to protect and preserve the character of existing single-family zones and neighborhoods; and
- (7) Promote sustainable development that conserves energy and is energy-efficient, reduces the emission of greenhouse gases, provides physical and economic access to nutritious foods, employs sustainably-sourced and recycled materials, and meets similar sustainability goals.

**(e) Industrial, Employment (IE) Zone**

**(1) Purposes**

The purposes of the Industrial, Employment (IE) Zone are::

- (A) To provide for a mix of employment, research and development, and light industrial development, with an expectation of high-quality design that is set apart from the high-traffic-generating commercial zones and residential communities;
- (B) To provide lands to serve light industrial uses while prohibiting more intensive forms of industrial development;
- (C) To accommodate limited residential development; and
- (D) To ensure compatibility between industrial development and nearby residential uses.

**Mistake**

(3) The Applicant is required to show that there is strong evidence of a mistake in the original zoning of the property or the most recent comprehensive rezoning. City of Hyattsville v. Prince George's County Council, 254 Md. App. 1, 42 (2022) The burden of proof is the Applicant's to bear. (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 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 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 (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*; Boyce v. Sembly, 25 Md.App. 43 (1975))

(5) 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.

## CONCLUSIONS OF LAW

(1) The subject property lies within Living Area F as described in the 2010 Subregion 4 Master Plan. The subject property also lies within the PennBelt industrial area (which also is within Living Area F). This area is the most southern industrial area within Subregion 4 with a location accessible to the Capital Beltway, Suitland Parkway, and Pennsylvania Avenue (MD 4). The subject property is surrounded on the north, east, and south by properties within the IE Zone, and some RSF-95 to the north. It is surrounded to the west by undeveloped land and single-family detached residences in the RSF-A, and RSF Zones. All of the surrounding properties lie within the MIO-Zone for noise. The request to rezone would not adversely impact the neighborhood given its industrial nature and given the improvements to the property that must occur now that it has been accepted into the State Voluntary Clean Program. (Section 27-3601 (c)(5)(G))

(2) The request would further the applicable purposes of the Nonresidential Base zones since the rezoning would provide industrial land within an area discussed within the 2010 Subregion 4 Master Plan that included the goal of increasing and supporting

industrial uses; the light industrial uses that could be developed on the site would be buffered from the few adjacent residential uses, and would have to satisfy the Neighborhood Compatibility Standards found in Part 6 of the Zoning Ordinance, thereby ensuring the protection and preservation of the few residential properties nearby; the provision of new industrial uses in this area would strengthen the County's economic base and provide economic opportunities for Prince George's County residents; and cohesive zoning on the property would provide the opportunity for the type of infill development that is consistent with the character of the IE Zone. (Section 27-4203(a))

(3) The request could also be found to satisfy the purposes of the I-E Zone, since the property would be set apart from high traffic generating commercial and residential uses; its location so close to the Capital Beltway, Suitland Parkway, and Pennsylvania Avenue has been determined in the Subregion 4 Master Plan to be ideal for light industrial uses; and the property will be buffered from the few neighboring residential properties and would have to meet the Neighborhood Compatibility standards found in Part 6 of the Zoning Ordinance. (Section 27-4203(e)(1))

(4) Finally, a review of the record, including the Technical Staff Report and Backup, the Land Use Report, the applicable Master Plans, and the hearing testimony clearly support a finding that a legal mistake occurred when the District Council retained the split-zoning of the property in the 2010 Subregion 4 Master Plan. In 1985 the idea of an interchange at Suit Road and Suitland Parkway was born. The 1986 SMA appropriately rezoned the subject property to preserve the needed right-of-way for said interchange, and to buffer the existing residential uses to the west, and the interchange was shown on the map. However, the record clearly reveals that a decade later, the Planning Board and its transportation staff reported that the support for the interchange had waned, and the Planning Board chose not to place in reservation those portions of the property that had been intended to be used for the interchange. Twenty years later, the 2010 Subregion 4 Master Plan and SMA were adopted without the interchange, but the split-zoning remained. Thus, a fact considered by the District Council as the basis to split zone the subject property had been abandoned at the time of the most recent comprehensive rezoning, and it would be proper for the District Council to address the mistake by approving the Application.

### **RECOMMENDATION**

I recommend that the District Council APPROVE ZMA-2023-002.