

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Zoning Map Amendment Application No. A-10036, Donnell Drive, requesting rezoning of the subject property from the R-T (Residential Townhouse) Zone to the C-M (Commercial Miscellaneous) Zone in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on April 14, 2016, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject 2.42-acre site is located at the southeast quadrant of the intersection of Pennsylvania Avenue (MD 4) and Donnell Drive in Forestville, Maryland. It is a combination of two adjoining parcels, Part of Parcel A and Parcel 240. Parcel 'A' was reviewed as preliminary plan of subdivision 12-2959. Records are no longer available for this case. The record plat was recorded on April 11, 1969, as Plat WWW 71-21. Parcel 240 has not been the subject of a preliminary plan of subdivision or record plat and is a legal acreage parcel. This part of Parcel A is improved with a vacant two-story office building last used as a bank and consists of approximately 1.073 acres, while Parcel 240 is unimproved and consists of approximately 1.35 acres. These parcels adjoin the remainder of Parcel A, which is not the subject of this application, to the south. Parcel A is accessed via two driveways from the east side of Donnell Drive. Parcel 240 has a long panhandle to Donnell Drive for frontage and access which is not developed. Neither parcel has access to Pennsylvania Avenue (MD 4).
- B. **History:** The 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* (Zoning Change LF8) reclassified the subject property from the C-O (Commercial Office) zoning category to the R-T (Residential Townhouse) Zone.
- C. **General Plan and Master Plan Recommendations:**

Plan Prince George's 2035 Approved General Plan

The *Plan Prince George's 2035 Approved General Plan* (Plan Prince George's 2035) designates this area in the Established Communities Growth Policy area. The vision for Established Communities is a context-sensitive infill and low to medium-density development. This is to be accomplished through maintaining and enhancing existing public services (police and fire/EMS), facilities (such as libraries and schools), and infrastructure in these areas (such as sidewalks) to ensure that the needs of the existing residents are met.

The Plan Prince George's 2035 land use goal is to direct future growth toward transit-oriented mixed-use centers in order to expand the commercial tax base, to capitalize on existing and planned infrastructure investments, and to preserve agricultural and environmental resources.

2010 Approved Subregion 4 Master Plan and Sectional Map Amendment

The 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* recommended the retention of the existing C-O (Commercial Office) zoning on both properties. A request for a zoning change from the C-O Zone to the R-T Zone for Lot 240 as part of a larger lot consolidation was submitted to the Public Hearing record. The Commission reviewed the request during the transcript analysis and the digest of testimony of the Public Hearing comments and recommended that Lot 240 be changed from the C-O Zone to the R-T Zone as requested as part of Change Number LF8. Somehow, this change was also applied to this part of Parcel A, as well.

- D. **Request:** The applicant is requesting rezoning of the subject property from the R-T Zone to the C-M (Commercial Miscellaneous) Zone.
- E. **Neighborhood and Surrounding Uses:** The subject property is located in a neighborhood defined by the following boundaries:

North— Pennsylvania Avenue (MD 4)

East— Forestville Road

South— Suitland Parkway

West— Walters Lane

The applicant extends the neighborhood north to Marlboro Pike (MD 725), which staff feels overemphasizes the commercial uses found between Pennsylvania Avenue and Marlboro Pike. Pennsylvania Avenue is a four- to six-lane divided highway which separates the residential areas to the south from the large shopping centers to the north. We believe it is unreasonable to have it bisecting a neighborhood rather than acting as its northern boundary. Staff's neighborhood contains a mix of uses with commercial uses predominating along the north side of Pennsylvania Avenue (MD 4), and directly to the rear of the site, where a self-storage building is located. Other commercial and industrial uses are found to the east along Forestville Drive and to the west at the intersection of MD 4 and Walters Lane. The remainder of the subject neighborhood to the west, east and further south is a mix of single-family and multifamily residences. The Forestville Military Academy is located to the south at the southern terminus of Donnell Drive. The Planning Board accepts staff's recommended boundaries.

The property is surrounded by the following uses:

North— Across Pennsylvania Avenue (MD 4) is the Penn Mar Shopping Center in the C-S-C Zone.

East— The Holly Hills Condominium complex in the R-18 Zone.

South— A self-storage business in the C-M Zone and undeveloped land in the R-T Zone.

West— Across Donnell Drive are the Penn Mar Apartments in the R-18 Zone.

F. **Zoning Requirements:** Section 27-157 (Map Amendment Approval) of the Prince George’s County Zoning Ordinance provides that no application shall be granted without the applicant proving that either:

(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.**

Applicant’s Position

Change: The applicant does not put forth an argument of change to the character of the neighborhood.

Mistake: The applicant contends that rezoning the subject property to the R-T Zone in the 2010 Subregion 4 Sectional Map Amendment was a mistake. Their argument, as summarized from their statement of justification, is three-fold:

Mistake #1: The District Council’s action was based on an incomplete factual predicate regarding the nature of the existing use on the Subject Property. The District Council was not presented with facts that the rezoning would create a non-conforming use.

Mistake #2: The District Council’s action was based on a misapprehension regarding the ability to develop the subject property within the R-T Zone due to an inaccurate illustrative development plan submitted to the District Council that does not satisfy the requirements of multiple provisions of the Zoning Ordinance and Subdivision Regulations.

Mistake #3: The District Council’s action directly violates the recommendation of the Subregion 4 Master Plan which states “Reinforce commercial development along main streets and in corridor nodes and regional centers.”

The applicant contends that the cumulative impact of these three mistakes overcomes the presumption of validity of the comprehensive rezoning and suggests that the property should be placed in the C-M Zone.

Analysis

Change: There has been no substantial change to the character of the neighborhood since the last comprehensive zoning of the area in 2010.

Mistake: The Planning Board notes that there is a strong presumption of validity accorded a comprehensive rezoning. The presumption is that, at the time of its adoption of the comprehensive rezoning, the District Council considered all of the relevant facts and circumstances then existing concerning the subject property. Mistake or error can be shown in one of two ways:

1. A showing at the time of the comprehensive rezoning, that the District Council failed to take into account then existing facts or reasonably foreseeable projects or trends; or
2. A showing of events that have occurred since the comprehensive zoning have proven that the District Council's initial premises were incorrect.

By reclassifying the property from the C-O Zone to the R-T Zone, the District Council created a nonconforming use. While this practice would generally be precluded by **Section 27-223(g)(2)** of the Zoning Ordinance, such actions are permitted if there is a significant public benefit to be served by the zoning based on facts peculiar to the subject property and the immediate neighborhood. In this case, the 2010 Subregion 4 Master Plan speaks to the need to lessen the potential impacts for commercially-zoned properties where they adjoin residential properties. The site abuts residentially-zoned properties to the east, west, and south. While that same section of the County Code requires the Planning Board to identify the properties on which nonconforming uses are being created, the failure to do so, or the failure to provide a written justification, does not invalidate later District Council action in the approval of the sectional map amendment.

The Planning Board resolution that adopted the 2009 *Preliminary Subregion 4 Master Plan and Proposed Sectional Map Amendment* (PGCPB Resolution No. 09-163), proposed amendments to the preliminary plan including the following excerpt which was transmitted to the District Council for final action:

“XIII Chapter 14: Sectional Map Amendment, Number 24. On page 512, change the proposed zoning for LF8 to R-T zoning on Parcel 240 and the 2.21 acre portion of Parcel A and retain the C-M Zone on the area containing the self-storage facility. Update the zoning and land use maps to reflect these changes.”

The District Council resolution proposed amendments that required a second Joint Public Hearing. That resolution, CR-15-2010, listed Amendment 17 to include SMA Change No. LF8. Erroneously, this change number described another parcel on 5700 Suitland Road that was proposed to change from the R-T Zone to the C-S-C Zone. The erroneous assignment of Change No. LF8 continued in the resolution that approved the plan, CR-49-2010. This resolution of approval listed Amendment 30 as Change No. LF8 instead of LF6, which described the property on Suitland Road. Therefore, there was no reference in the resolutions directing an amendment to change Parcel A from the C-O Zone to the R-T Zone. As a result, it is unclear how Parcel A was rezoned to the current R-T Zone. Furthermore, the change table with Change No. LF8 of the approved Subregion 4 master plan document (page 482) erroneously included the bank on the use and description row, but did not include the bank on the area of change column and the property description row.

Consequently, two different future land use designations are shown for the subject property in the approved plan document. A land use map on page 380 designates the commercial land use on Parcel A and Medium-High Density Residential on Lot 240. A foldout map accompanying the plan document designates commercial land use on the subject property and the entire southeast quadrant including the portion rezoned to R-T. Given limited discussion in the plan text on the vision of the subject property and a total lack of documentation on the rezoning of Parcel A containing the bank building, the Planning Board believes that a mistake was made in the rezoning of Parcel A from the C-O Zone to the R-T Zone. Based on the well-documented lack of demand for office space, the Board agrees with the applicant that the new zone to correct the mistake is the C-M Zone.

The overriding purpose of the master plan is found on page four of the plan and is "To enhance the quality and character of the existing communities." The C-M Zone, as requested, allows uses that may not be compatible or enhance the quality and character of the established residential communities. However, a requirement for detailed site plan review can address the compatibility issues. Uses allowed on the subject property should not negatively affect the quality and character of the existing residential neighborhood.

- G. **Conformance with the Purposes of the C-M Zone:** The purposes of the C-M Zone are contained in Section 27-459(a)(1) of the Zoning Ordinance and are as follows:
- (A) **To provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas;**
 - (B) **To provide these locations, where possible, on nonresidential streets; and**
 - (C) **To provide concentrations of these uses which are relatively far apart.**

CONCLUSION

The 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* created goals and policies to enhance the quality and character of the existing communities. The Planning Board believes that the three mistakes presented by the applicant overcome the presumption of validity afforded the 2010 *Approved Subregion 4 Sectional Map Amendment*. The Board agrees with the applicant's conclusion that the C-M Zone is the proper zone to remedy the mistake.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the above-noted application, subject to the following conditions:

1. A detailed site plan shall be approved prior to issuance of any building permit.
2. A 75-foot-wide vegetative buffer shall be established along the eastern boundary of Parcel 240, Tax Map 89 (3710 Donnell Drive).

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, and Hewlett voting in favor of the motion, and with Commissioner Shoaff opposing the motion, and with Commissioner Geraldo temporarily absent at its regular meeting held on Thursday, April 14, 2016, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 5th day of May 2016.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator