

Case No.: A-10024-C
Fairview Commercial

Applicant: DD Land Holding, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

FINAL CONDITIONAL ZONING APPROVAL

AN ORDINANCE to incorporate the Applicant's acceptance of conditional zoning approved in Zoning Ordinance No. 10, 2015, and to grant final conditional zoning approval in Application No. A-10024-C.

WHEREAS, the District Council in enacting Zoning Ordinance No. 10, 2015, approved Application No. A-10024-C, to rezone 7.56 acres of land, from the R-80 (One-Family Detached Residential) to C-S-C (Commercial Shopping Center) Zone, attached conditions; and

WHEREAS, the District Council, pursuant to its decision in Zoning Ordinance No. 10, 2015, deems it appropriate to accept Applicant's consent to the conditions in Zoning Ordinance No. 10, 2015; and approve final conditional zoning.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. Final conditional zoning approval of Zoning Ordinance No. 10, 2015, is hereby granted. Applicant's written acceptance of the conditions in Zoning Ordinance No. 10, 2015, at the time of initial conditional zoning approval, is hereby incorporated into this amendment of the Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland.

SECTION 2. Use of the subject property, as conditionally reclassified, shall be subject to all requirements in the applicable zones and to the requirements in the conditions referenced

above. Failure to comply with any stated condition shall constitute a zoning violation, and shall constitute sufficient grounds for the District Council to annul the rezoning approved herein; to revoke use and occupancy permits; to institute appropriate civil or criminal proceedings; and/or to take any other action deemed necessary to obtain compliance.

SECTION 3. This Ordinance is effective 12, June, 2015, the date of receipt of the Applicant's acceptance of the conditions in Zoning Ordinance No. 10, 2015.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

Case No.: A-10024-C
Fairview Commercial

Applicant: DD Land Holding, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ZONING ORDINANCE NO. 10-2015

AN ORDINANCE to amend the Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland, by an individual Zoning Map Amendment, subject to conditions.

IT IS HEREBY ORDERED, that the application to rezone, from the R-80 (Medium Density) to C-S-C (Commercial Shopping Center) Zone, the property described as approximately 7.65 acres of land located at the northwest quadrant of the intersection of Martin Luther King, Jr., Highway (MD 704) and Whitfield Chapel Road, identified as Parcel 109, Map 52, Grid C-3, Lanham, in Planning Area 73, Council District 5, in the Developing Tier within the Growth Boundary of the County, be and the same is hereby APPROVED Subject to Conditions, pursuant to §§ 27-131, 27-132, and 27-157 of the Zoning Ordinance, and §§ 22-210, 22-214, and 25-204 of the Land Use Article of the Annotated Code of Maryland..

As the basis for this final decision, and as expressly permitted by law, namely Title 22 and Title 25 of the Regional District Act within the Land Use Article of the Annotated Code of Maryland, as well as the Zoning Ordinance of Prince George's County, being also Subtitle 27 of the Prince George's Code, we hereby adopt and incorporate, as if set forth fully herein, the findings and conclusions of the Zoning Hearing Examiner as the District Council's findings of

fact and conclusions of law in this case, except where otherwise stated in this Ordinance. *See Templeton v. County Council of Prince George's County*, 23 Md. App. 596, 329 A.2d 428 (1974).

FINDINGS AND CONCLUSIONS

Procedural History

On or about March 31, 2011, the Development Review Division of the Maryland-National Capital Park and Planning Commission accepted for filing Application No. A-10024, a request to rezone, from the R-80 (One-Family Detached Residential) to the C-S-C (Commercial Shopping Center) Zone, property described as approximately 7.65 acres of land located at the northwest quadrant of the intersection of Martin Luther King, Jr., Highway (MD 704) and Whitfield Chapel Road, identified as Parcel 109, Map 52, Grid C-3, Lanham, in Planning Area 73, Council District 5, in the Developing Tier within the Growth Boundary of the County. After review of the subject proposal by Technical Staff of the Prince George's County Planning Department ("Technical Staff"), a technical staff report ("TSR") was issued on March 8, 2012, in accordance with the requirements of the Zoning Ordinance and recommending disapproval of the subject request. *See* 03/08/2012 TSR, at 2. After supplying the required public notice in the manner set forth in § 27-154 of the Zoning Ordinance, the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission ("Planning Board") conducted a public hearing concerning the rezoning proposal on June 14, 2012. *See* PGCPB No. 12-60, at 1. *See generally* 06/14/2012 Tr.

Thereafter, at its public meeting held on July 12, 2012, Planning Board adopted

Resolution No. PGCPB No. 12-60 with the disposition recommendation of disapproval for the subject rezoning proposal embodied therein.

The Zoning Hearing Examiner conducted public hearings as to the subject application pursuant to §§ 27-129 and 27-155 of the Zoning Ordinance on August 1, 2012, and August 22, 2012, respectively, and filed a disposition recommendation of disapproval as to A-10024 thereafter with the Clerk of the District Council on December 21, 2012. *See generally* 12/31/2012 ZHE Dec'n.

In turn, on January 29, 2013, pursuant to § 27-131(a) of the Zoning Ordinance, counsel for Applicant filed exceptions from the December 31, 2012, disposition recommendation of the Zoning Hearing Examiner and requested oral argument before the District Council. *See generally* 01/15/2015 App. Mem., Exceptions from 12/12/2014 ZHE Dec'n. In turn, the Clerk of the District Council gave notice in the manner set forth in §§ 27-125.04 and 27-131 of the Zoning Ordinance as to the oral argument scheduled for May 6, 2013. Thereafter, the District Council conducted oral argument as scheduled on May 6, 2013, as to application A-10024 in accordance with §§ 27-131 and 27-132 of the Zoning Ordinance, as well as Rule 6 of its District Council Rules of Procedure, and at the conclusion of the proceedings, took this matter under advisement. *See generally* 05/06/2013, Tr.

On May 13, 2013, the District Council voted to remand this matter to the Zoning Hearing Examiner pursuant to § 27-133 of the Zoning Ordinance, with express direction for the Examiner to reopen the administrative record, to take further testimony, reconsider its decision, and to allow additional public comment regarding access to and from the site proposed for rezoning and

Martin Luther King, Jr., Highway (MD 704); to allow additional evidence and testimony from the Maryland State Highway Administration (“SHA”) concerning its recommendation regarding access to Martin Luther King, Jr., Highway from the subject property proposed for rezoning; to allow submission of further evidence and testimony concerning outreach efforts by Applicant, such as meetings and other discussions between Applicant and registered civic associations in the vicinity of the site proposed for rezoning regarding the proposed tenants to locate at the site, if the District Council approved the requested rezoning of the property from the R-80 to C-S-C Zone; and to allow interested parties to become persons of record in this case for purposes of participation in the proceedings in this case, and to submit evidence and testimony at the public hearing before the Zoning Hearing Examiner. *See* 05/13/2013 Order of Remand, at 2–4.

On August 28, 2014, the Zoning Hearing Examiner conducted an evidentiary hearing as to the subject application in accordance with the District Council’s May 13, 2013, Order of Remand in this case, and in the manner prescribed by § 27-129 of the Zoning Ordinance. Thereafter, on December 12, 2014, the Zoning Hearing Examiner filed a new disposition recommendation of disapproval as to the subject application with the Clerk of the District Council. *See generally* 12/12/2014 ZHE Dec’n. In turn, on January 12, 2015, pursuant to § 27-131(a) of the Zoning Ordinance, counsel for Applicant filed exceptions from the December 12, 2014, disposition recommendation of the Zoning Hearing Examiner as to A-10024 and requested oral argument before the District Council. *See generally* 01/15/2015 App. Mem., Exceptions from 12/12/2014 ZHE Dec’n.

Accordingly, on March 27, 2015, in accordance with §§ 27-125.04 and 27-131 of the Zoning Ordinance, the Clerk of the District Council gave notice of the oral argument scheduled for May 4, 2015. The District Council conducted Oral Argument as scheduled on May 4, 2015, in the manner prescribed by §§ 27-131 and 27-132 of the Zoning Ordinance, as well as Rule 6 of its District Council Rules of Procedure, and at the conclusion of the proceedings took this matter under advisement. *See generally* 05/04/2015 Tr.

After reviewing the evidence within the administrative record for the subject application, including the testimony supplied during the oral argument conducted on May 4, 2015, the District Council determined that Application No. A-10024 should be approved, and voted to refer this matter to staff for preparation of an Order of Approval with Conditions on May 12, 2015.

Applicable Law

The purposes of the Zoning Ordinance are:

- (1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;
- (2) To implement the General Plan, Area Master Plans, and Functional Master Plans;
- (3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;
- (5) To provide adequate light, air, and privacy;
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;
- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;

- (10) To prevent the overcrowding of land;
- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;
- (12) To insure the social and economic stability of all parts of the County;
- (13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;
- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

See §27-102, PGCZO.

Applicant's request to rezone the subject property must also satisfy the provisions of §27-157(a) of the Zoning Ordinance, requiring, in pertinent part, as follows:

- (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.

Next, the subject proposal must also further the purposes of the C-S-C Zone, as set forth in §27-454 of the Zoning Ordinance, as follows:

- (a) **Purposes.**
 - (1) The purposes of the C-S-C Zone are:
 - (A) To provide locations for predominantly retail commercial shopping facilities;
 - (B) To provide locations for compatible institutional, recreational, and service uses;
 - (C) To exclude uses incompatible with general retail shopping centers and institutions; and

(D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

(b) **Landscaping and screening.**

(1) Landscaping and screening shall be provided in accordance with Section 27-450.

(c) **Uses.**

(1) The uses allowed in the C-S-C Zone are as provided for in Table of Uses I (Division 3 of this Part).

(d) **Regulations.**

(1) Additional regulations concerning the location, size, and other provisions for all buildings and structures in the C-S-C Zone are as provided for in Divisions 1 and 5 of this Part, the Regulations Table (Division 4 of this Part), General (Part 2), Off-Street Parking and Loading (Part 11), Signs (Part 12), and the Landscape Manual.

There is a strong presumption of the correctness of original zoning and of comprehensive rezoning. *Pattey v. Board of County Commissioners of Worcester County*, 271 Md. 352, 317 A.2d 142 (1974). Moreover, there is a rebuttable presumption that, at the time of adoption of a comprehensive rezoning, the District Council considered all relevant facts and circumstances, then existing, concerning the land in question. *See Howard County v. Dorsey*, 292 Md. 351, 438 A.2d 1339 (1982). Accordingly, strong evidence is required to overcome that presumption:

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

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

The Applicant bears the burden of proof that its request to change the zoning classification for the subject property will not be a detriment to the public interest. *The Bowman Group v. Dawson Moser*, 112 Md. App. 694, 686 A.2d 643 (1996); *Harford County v. Preston*, 322 Md. 493, 588 A.2d 772 (1991). However, "a more liberal standard is applied when the

property is being reclassified from one commercial subcategory to another than is applied when the reclassification involves a change from one use category to another.” *Tennison v. Shomette*, 38 Md. App. 1, 379 A.2d 187, 190 (1978).

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

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. Moreover, the mistake must have occurred in the rezoning, and not in the Master Plan. *See Dorsey, supra*.

We take further administrative notice of § 27-142 of the Zoning Ordinance, which states that the burden of proof in any zoning case shall be the Applicant’s. Moreover, the Ordinance provides that zoning cases are those matters designated by the District Council for evidentiary hearings before the Zoning Hearing Examiner. *See 27-107.01(a)(266)*, PGCZO. Thus, in the instant case, Applicant must meet the burden of proving that the rezoning request will not be a real detriment to the public. *See Bowman, supra*.

Here, we find persuasive the evidence submitted by Applicant in its January 15, 2015, memorandum filed with the Clerk and stating exceptions from the December 12, 2014, disposition recommendation of the Zoning Hearing Examiner. Specifically, we are persuaded

that Applicant has complied with the requirements set forth in the May 13, 2013, Order of Remand adopted by the District Council concerning access from the subject property to Martin Luther King, Jr., Highway (MD 704), and specifically to take additional evidence and testimony from the Maryland State Highway Administration (“SHA”) concerning its recommendation as to access to Martin Luther King, Jr., Highway from the site proposed for rezoning.” *See* 01/15/2015 App. Mem., Exceptions from 12/12/2014 ZHE Dec’n, at 2–3. As stated therein, Applicant offered evidence to refute allegations from the Citizens Opposition at the evidentiary hearing on remand conducted by the ZHE on August 28, 2013. We find particularly persuasive the testimony offered at that hearing by Applicant’s expert in the area of traffic engineering, Mr. Kenneth Schmid, that “the intersection of Whitfield Chapel Road and Martin Luther King, Jr., Highway would operate at level of service A or B if the subject site were developed with a neighborhood commercial center, that the ‘right-in, right-out’ from MD 704 would eliminate left turns into the site from Whitfield Chapel Road.” *See* 01/15/2015 App. Mem., Exceptions from 12/12/2014 ZHE Dec’n, at 2–3.

We are also persuaded by evidence in the record consisting of the August 22, 2013, letter from SHA stating that the agency had determined that it could allow a right-in and right-out from MD 704, subject to further review. *See* Exhibit R9(e). *See also* 01/15/2015 App. Mem., Exceptions from 12/12/2014 ZHE Dec’n, at 3; 05/04/2015, Tr.

Moreover, we find that the ZHE erred in finding that “[t]he surrounding area was primarily residential in nature at the time of the adoption of the SMA, as it is today.” *See* 12/12/2014 ZHE Dec’n, at 6. By contrast, we find persuasive the evidence in the record that, in

fact, at the time of the July 24, 1990, adoption of 1990 *Largo-Lottsford Master Plan and Sectional Map Amendment*, the current master plan for the area of the site proposed for rezoning, the subject property, the site was completely surrounded by public road rights-of-way, and the property was at that time and is currently isolated from the surrounding residential properties.” See 01/15/2015 App. Mem., Exceptions from 12/12/2014 ZHE Dec’n, at 5. Consequently, we concur with Applicant’s exception that the ZHE erred in concluding within the December 12, 2014, disposition recommendation that the property is isolated from the surrounding residential properties. *Id.* Moreover, we independently find, based on plain language approved in the 1990 *Largo-Lottsford Master Plan and Sectional Map Amendment* impelling “careful site planning [to ensure ... cohesive pedestrian connections that link community facilities, employment areas, and residential areas.” See 1990 *Largo-Lottsford Master Plan and Sectional Map Amendment*, at 58.

We also conclude from our review of the record, as well as the rule of Maryland case law announced in the *Dorsey* case, that mistake may be proven by “showing that events that have occurred since the comprehensive zoning have proven that the District Council’s initial premises were incorrect,” and thus the ZHE erred in finding that Applicant did not meet the requirements of change or mistake in the current SMA as set forth in §27-157 of the Zoning Ordinance. See *Dorsey, supra*. See also 01/15/2015 App. Mem., Exceptions from 12/12/2014 ZHE Dec’n, at 6. Here, we instead find that Applicant demonstrated, at the August 2013 evidentiary hearing, as well as at oral argument conducted by the District Council on May 4, 2015, that, under *Dorsey*, “developments over time in the area of the subject property have occurred since the comprehensive rezoning that demonstrate at District Council’s initial premises were incorrect.”

See Dorsey, 292 Md. 351, 438 A.2d 1339 (1982). *See also* 08/28/2013 Tr.; 05/04/2015 Tr.; 01/15/2015 App. Mem., Exceptions from 12/12/2014 ZHE Dec'n, at 4–5.

In reviewing the subject application, we also examined the 1990 *Largo-Lottsford Master Plan and Sectional Map Amendment* (“SMA”) and take further administrative notice of the provisions of CR-71-1990, a resolution adopted by the District Council to approve, subject to recited amendments therein, the 1990 *Largo-Lottsford SMA*. On page 5 of CR-71-1990, within Amendment 4 to the 1990 SMA, the District Council adopted an amendment to the Endorsed SMA and specifically rejecting Planning Board’s and Technical Staff’s recommendation to approve Proposed Zoning Change (E-1), voting instead to retain the R-80 Zone classification for this property, styled therein as “7.66+/- acre Scruggs property in the northwest quadrant of the intersection of Martin Luther King, Jr., Highway and Whitfield Chapel Road.” *See* CR-71-1990, at 5. Despite the evidence in the record of public hearing testimony supporting the requested rezoning at that time, the 1990 District Council made findings in CR-71-1990 to the contrary, and stating that “[t]his property is better suited for residential development than for low intensity office use in light of the existing residential character of the surrounding neighborhood.” *Id. See also* 03/08/2012 TSR, at 6–7. Accordingly, the Master Plan as approved by the District Council shows the property in the “Suburban Density Residential land use category.” *Id. See also* 03/08/2012 TSR, at 6.

Finally, we note that Maryland courts have generally held that evidence deemed sufficient to “permit” a rezoning does not rise to “require” its rezoning, unless an Applicant is denied all reasonable use of the property, as follows:

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

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

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

We shall additionally note, based on the case law cited above, that while we find that the evidence in the administrative record for the subject proposal may not rise to warrant our finding that all reasonable use of Applicant's property is denied, which would necessarily *compel* a rezoning of the subject property, we nevertheless find that there is ample evidence within the administrative record to plainly demonstrate mistake in the current SMA that was approved by the 1990 District Council pursuant to the criteria stated in § 27-157 (a) of the Ordinance. *See* 02/09/2011 App. Stmt. of Just'n, at 9. Moreover, we find persuasive the testimony offered by counsel for Applicant during the oral argument conducted on May 4, 2015, as well as the February 8, 2012, correspondence in the administrative record from Applicant's counsel addressed to Mr. Thomas Lockard concerning salient tenets of the Change or Mistake Rule that is well-established in the Maryland case law that persuasively demonstrates change, over time, which constructively constitutes "mistake" by the District Council as to the zoning of the subject property in accordance with § 27-157(a)(1)(B)(ii) of the Zoning Ordinance. *See* 02/08/2012 Ltr., Nagy to Lockard, at 2-3. Moreover, we are also persuaded by evidence within Applicant's exceptions to the December 12, 2014, disposition recommendation of the ZHE concerning the

development of surrounding properties establishing that certain development activities in the area surrounding the subject property proposed for rezoning, along with the lack of any residential development activity on the property since the 1990 *Largo-Lottsford* SMA was approved nearly 25 years ago, plainly support our conclusion that the 1990 District Council's "initial premises" which prompted the zoning of the subject property in the 1990 SMA were incorrect, and therefore meet the criteria needed as a basis for its rezoning based on change or mistake within § 27-157(a)(1)(B)(ii) of the Zoning Ordinance. *See* 02/08/2012 Ltr., Nagy to Lockard, at 3; PGCPB No. 12-60, at 6; 01/12/2015 App. Mem. of Exceptions to 12/12/2014 ZHE Dec'n, at 3; 05/04/2015 Tr.

As a result, and squarely based on evidence within the administrative record for this case as well as testimony supplied during the Oral Argument proceedings conducted on May 4, 2015, we hereby make the following additional findings in this case:

1. We find persuasive the testimony supplied by counsel for Applicant during the oral argument proceedings before us on May 4, 2015, as to the cost-prohibitive nature of the sound attenuation walls that would be required on three (3) sides of the subject property in order to comply with State-mandated noise regulations for residential development. *See* 05/04/2015 Tr. To this end, we find the findings of Planning Board within PGCPB No. 12-60 regarding the prior history of the subject property demonstrates its unsuitability for residential development for the eventual residents of the residential uses on the subject property, and would serve also to negatively impact residents in the existing residential uses in the vicinity of the subject property. *See* PGCPB No. 12-60, at 1; 02/09/2011 App. Stmt. of Just'n, at 4. *See also* 05/04/2015 Tr. The

record reflects three (3) prior applications for preliminary plans of subdivision for residential development on the subject property, as follows: Preliminary Plan of Subdivision 4-04135, approved by Planning Board in 2005 for 12 lots and 1 parcel, with a condition of approval imposed therein requiring a detailed site plan process to evaluate the required noise wall to assess its effects on and its appearance from abutting properties with existing residential uses; and two (2) other preliminary plan applications, as reflected in the administrative record—one withdrawn upon Applicant’s failure to submit information, and the other—Preliminary Plan of Subdivision (4-09018)—also conditionally approved with a mandatory detailed site plan process to address and mitigate noise and buffering issues in order to meet standards applicable for residential development on the subject property. *See* PGCPB No. 12-60, at 1; 02/09/2011 App. Stmt. of Just’n, at 4. *See also* 05/04/2015 Tr. We lastly note the record evidence reflecting the following discussion as the impact of noise affecting development of the subject property:

[d]ue to the property’s proximity to two major noise generating roadways, (I-495 and MD 704) the plan was approved subject to a limited detailed site plan to allow further evaluation of the sound attenuation measures necessary to make the site suitable for residential development. Because the *entire property* lies within the unmitigated *65 dBA Ldn noise contour*, the owner is required to construct a six to eight foot (6–8’) high noise attenuation barrier around nearly three quarters of the perimeter of the site. The noise wall begins on Fairview Avenue, runs the entire length of the property along the Capital Beltway and Martin Luther King, Jr., Boulevard and nearly the entire frontage along Whitfield Chapel Road. Even with the installation of the noise barrier staff was concerned with upper level (second story) noise on several lots and also has conditioned the issuance of building permits for all of the 12 lots on an acoustical analysis of the proposed residences to ensure interior noise levels of 45 dBA Ldn or less.

See 02/09/2011 App. Stmt. of Just’n, at 3–4 (*emphasis added*).

2. Along similar lines as the finding in Paragraph 1, above, we further find persuasive testimony from the Citizens Opposition during the oral argument conducted by the District Council on May 4, 2015, as to the potential negative impact of drive-through uses, automobile-oriented uses, food service uses, or 24-hour business, excluding emergency medical facility uses. *See* 5/04/2015 Tr. In like fashion, we note support in the 1990 *Largo-Lottsford Master Plan and SMA* recommending should be encouraged for “low intensity, locally-oriented businesses, such as insurance agents and medical offices” that was incorporated in the Preliminary recommendation of Technical Staff and adopted by the Planning Board in its resolution adopting its recommendation for the 1990 *Largo-Lottsford Master Plan*. *See* PGCPB No. 12-60, at 1–2, 5, 7. *See also* 05/04/2015 Tr. Moreover, we agree with the finding of Planning Board that “if the proposed rezoning were approved, the subject property would conform to most of the above purposes. However, a condition of approval would need to be added to require the applicant to file a detailed site plan application to ensure compatibility with the surrounding [existing] residential development.” *See* PGCPB No. 12-60, at 7.

3. We find the evidence in the record, specifically the recommendations within the 1990 *Largo-Lottsford Master Plan* calling for residential development throughout the planning area in the vicinity of the site proposed for rezoning lends further support for a finding of need to harmonize the proposed uses on the subject property with existing residential uses in the immediate area, namely the guidelines set forth in the Master Plan calling for development of properties along major County rights-of-way to ensure that the development preserve existing vegetation and/or have a landscape/buffering plan approved so that the plans provide appropriate

noise and visual mitigation measure to reduce the impact of these new or improved transportation facilities on future development. *See* 1990 *Largo-Lottsford Master Plan and Sectional Map Amendment*, at 45–46. Moreover, we find further corroboration in the plan language stating that “properly designed street networks should be provided to facilitate the desired traffic flow and circulation. Residential streets should be designed to discourage through traffic; and points of ingress and egress should be minimized to avoid conflicts with through traffic flow while retaining adequate access to properties. *Id.* We find pertinent to this subject request the recommendation of the 1990 master plan that “in order to facilitate transportation efficiency in the vicinity of high intensity uses, provision should be made for adequate access to collector and arterial highways, deceleration and acceleration lanes, and appropriate signalization.” *Id.* We find these master plan recommendations consistent with the evidence in the record as to citizens’ concerns regarding potential through-traffic on Whitfield Chapel Road, as well as a concern about automobile parking at the rear portion of the proposed development on the site. *See* 05/04/2015 Tr. *See also* 1990 *Largo-Lottsford Master Plan and Sectional Map Amendment*, at 45–46.

Based on the foregoing, we hereby REVERSE the disposition recommendation of the Zoning Hearing Examiner and APPROVE Application No. A-10024 for a zoning map amendment reclassification of the subject property from R-80 to the C-S-C Zone, subject to conditions.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. The Zoning Map for the Maryland–Washington Regional District in Prince George’s County, Maryland, is hereby amended by rezoning the property which is the subject of Application No. A-10024 from the R-80 to the C-S-C Zone.

SECTION 2. To protect surrounding properties from adverse effects that might accrue from the approval of Application No. A-10024 for a zoning map amendment reclassification of the subject property from R-80 to the C-S-C Zone, and in order to further enhance the coordinated, harmonious, and systematic development of the regional district, Application No. A-10024 is subject to the following conditions:

a. Prior to the issuance of any building permit for the subject property a Detailed Site Plan including architectural elevations shall be approved by the Prince George’s County Planning Board, and if necessary the Prince George’s County Council sitting in its capacity as the District Council.

b. Access to the subject property from Whitfield Chapel Road shall be evaluated at the time of any preliminary plan of subdivision and, if necessary, at the time of detailed site plan approval. At the time of preliminary plan of subdivision and, if necessary, at the time of detailed site plan approval, options for the entrance to the subject property shall not be limited to access from Whitfield Chapel Road. To the extent that there is substantial evidence in the record at the time of preliminary plan of subdivision or, at the time of detailed site plan approval, that the development is not viable without access to the subject property from Whitfield Chapel Road,

Applicant shall submit proposed alternative transportation improvements to mitigate the potential negative impacts on surrounding properties with existing residential uses. Alternative improvements shall include, but shall not be limited to, widening of Whitfield Chapel Road adjacent to the subject property, but shall not include direct access to the subject property from Whitfield Chapel Road via left turn. Any access to the subject property from Whitfield Chapel Road shall be right-in/right-out.

c. Applicant shall consider the impact of the proposed development project on surrounding properties with existing residential uses, including potential negative impacts on surrounding residential uses near the property, and shall not include drive-through uses unless the drive-through service component is associated with a financial institution, such as a bank.

d. Applicant, its successors and assigns, shall consider the impact of the proposed development project on surrounding properties with existing residential uses, including potential negative impacts on surrounding residential uses near the property. The Applicant shall meet with members of the surrounding community, homeowners associations (local community representatives) and persons of record prior to the submission of any Preliminary Plan of Subdivision and Detailed Site Plan to specifically discuss compatible proposed land uses as well as suitable ingress and egress issues for the development. The Applicant is encouraged to enter into private land use covenants with the local community representatives to consider appropriate permitted land uses for the subject property and to focus on “low intensity, locally-oriented businesses” as specified within the 1990 Master Plan recommendations.

e. In order to maintain the character of the neighborhood, commercial tenants shall not include automobile-oriented uses such as an eating and drinking establishment with a drive-through service window component or carry-out food service window component. Commercial tenants may include all other eating and drinking establishments.

f. Commercial tenants shall not include 24-hour businesses except emergency medical facility uses. Applicant shall use its best efforts to encourage “low intensity, locally-oriented businesses,” which was specified within the 1990 Master Plan recommendations.

SECTION 3. BE IT FURTHER ENACTED that this Ordinance shall become effective initially on the date of its enactment, as conditionally approved, and shall become final and effective when the Applicant accepts in writing the conditions of approval herein.

ENACTED this 12th day of May, 2015, by the following vote:

In Favor: Council Members Davis, Franklin, Glaros, Harrison, Lehman, Patterson, Taveras, Toles and Turner.

Opposed:

Abstained:

Absent:

Vote: 9-0

COUNTY COUNCIL OF PRINCE GEORGE’S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE’S COUNTY,
MARYLAND

By: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council