

Case No.: A-10003-C

Applicant: Jemal's Post, LLC

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

ZONING ORDINANCE NO. 2 - 2010

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, with conditions.

WHEREAS, Application No. A-10003 was filed for property described as approximately 16.34 acres of land in the I-1 Zone, located on the east side of Forestville Road, approximately 355 feet south of its intersection with Pennsylvania Avenue (MD Rt. 4), identified as 3700 Forestville Road, Forestville, Maryland, to rezone the property to the C-S-C Zone; and

WHEREAS, the application was advertised and the property posted prior to public hearing, in accordance with all requirements of law; and

WHEREAS, the application was reviewed by the Technical Staff and the Planning Board, which filed recommendations with the District Council; and

WHEREAS, a public hearing was held before the Zoning Hearing Examiner; and

WHEREAS, the Zoning Hearing Examiner's recommendations were duly filed with and considered by the District Council; and

WHEREAS, having reviewed the record in this case, the District Council has determined, based on consideration of the entire record, that the subject property should be rezoned to the C-S-C Zone; and

WHEREAS, as the basis for this action, the District Council adopts the following

as its findings of fact and conclusions of law in this case:

A. The District Council adopts as its own the technical staff findings and conclusions in its report, received in the A-10003 record on 1 May and presented to the Planning Board on 15 May 2008, in paragraph A, which describes the subject property; paragraph B, which gives the recent zoning and subdivision history of the property; paragraph C, as to the recommendations of the 2002 General Plan, but not the 1985 Suitland-District Heights Master Plan, which is long out of date and which is currently being revised, in proceedings on the Subregion 4 Master Plan and Sectional Map Amendment; paragraph D, which defines the neighborhood of the subject property and the surrounding properties and uses; and paragraph E, as to the applicant's position regarding proof of change or mistake, as required in the Zoning Ordinance and Maryland zoning cases.

B. As to property description, the Council notes, as staff and applicant point out (in the instant case and in Prel. Plan App. No. 4-06145), that the subject tract, over 16 acres in area, is part of a larger 33.35-acre tract currently owned by the applicant and zoned I-1. The eastern portion of this larger tract is the subject of a detailed site plan and is proposed for use as a Lowe's building supply store. The western portion, the subject of the instant case, is proposed for retail uses to complement those on the Lowe's property.

C. As to Master Plan recommendations, the 2002 General Plan indicates that the subject tract is within the Developed Tier corridor of Pennsylvania Avenue; that such corridors are generally intended to contain a higher intensity of residential and nonresidential uses, as well as a more varied mix of uses, to serve a regional rather

than local area; and that development should occur at selected corridor nodes. The proposed commercial retail center at the subject site is not inconsistent with these General Plan recommendations.

D. The 1985 Master Plan for Suitland-District Heights and Vicinity recommends industrial uses, not commercial retail, at the subject site. That Master Plan, however, was over 20 years old before this application was filed, and its recommendations should not necessarily be recognized or followed.

Section 27-221 (b) of the Zoning Ordinance provides that sectional map amendments for each planning area or other designated comprehensive rezoning areas of the County should be scheduled and approved at least every ten years. A master plan that is over 20 years old, plainly out of compliance with this requirement, will not be current enough to provide land use guidance to the District Council. The Subregion 4 Master Plan and SMA, to be approved in 2010, will bring planning policies and recommendations up to date, for the subject property and its vicinity.

E. After full review of the administrative record, the District Council must agree with the applicant that the 1985 I-1 zoning placed on the subject property was the result of mistake, within the meaning of Maryland zoning cases generally and § 27-157 (a) (1) (B) of the Zoning Ordinance in particular. In 1985 and 1986, the District Council's vision for this area, just south of Pennsylvania Avenue and west of the Capital Beltway, was that vacant tracts like this one, originally 33.35 acres, should be developed for planned, coordinated light industrial uses. That vision has not come to fruition, and the subject property in particular, with I-1 zoning, has remained vacant for 25 years now, even though the Master Plan recommends light industrial and the

property lies within the Pennsylvania Avenue corridor, a short distance from the Beltway.

F. To protect nearby properties, the Council is requiring detailed site plan review of all development on the subject land.

WHEREAS, to protect adjacent properties and the general neighborhood, approval of the C-S-C Zone for the subject property is granted 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 that is the subject of Application No. A-10003-C from the I-1 to the C-S-C Zone.

SECTION 2. Approval of Application No. A-10003-C is subject to the following conditions:

1. Before permits are issued for any proposed uses on the subject property, the owner shall obtain approval of a detailed site plan. The detailed site plan shall address any legislatively enacted site design guidelines applicable to development of properties located in APZ I of Andrews Air Force Base.

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 in Section 2.

Enacted this 8th day of March, 2010, for initial approval, by the following vote:

In Favor: Council Members Dernoga, Bland, Campos, Dean, Olson, Knotts and Turner.

Opposed:

Abstained:

Absent: Council Members Exum and Harrison.

Vote: 7-0

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: _____
Thomas E. Dernoga, Chairman

ATTEST:

Redis C. Floyd,
Clerk of the Council

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 and to grant final conditional zoning approval.

WHEREAS, the District Council in approving Application No. A-10003-C, to rezone the subject property from the I-1 Zone to the C-S-C Zone, attached conditions; and

WHEREAS, the District Council, having reviewed the application and the administrative record, deems it appropriate to accept the applicant's consent to the conditions and to approve final conditional rezoning.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. Final conditional zoning approval of Application No. A-10003-C is hereby granted. The applicant's written acceptance of the conditions referred to above, 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 referred to above. Failure to comply with any stated condition shall constitute a zoning violation and shall be 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; or to take any other action deemed necessary to obtain compliance.

SECTION 3. This Ordinance is effective March 19, 2010, the date of receipt of the applicant's acceptance of the conditions imposed.

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