

Case No.: A-10045
Clavelli Property

Applicant: Loreto J. Clavelli, *et al.*

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

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, that Zoning Map Amendment Application Number 10045 (A-10045), to rezone approximately 11.95 acres of land, in the R-E (Residential-Estate) to the R-80 (One-Family Detached Residential) Zone, located on the west side of MD 337 (Allentown Road) approximately 1,200 feet north of the intersection of Allentown Road and Steed Road, also identified as 9005, 9009 and 9021 Allentown Road, Fort Washington, Maryland, is hereby DENIED.

A. Introduction

The original zone of the subject property was R-R (Rural Residential). Subsequently, the property was down-zoned to R-E (Residential-Estate)—a less intense zone than R-R. Despite the allegation that Council mistakenly down-zoned the property from its original zone, the applicant avers that the R-80 (One-Family Detached Residential) Zone—a more intense zone than the property's original R-R Zone—is most appropriate for the property.

As the basis for this final decision, the District Council adopts and incorporates, except as otherwise stated herein, the findings and conclusions of the Zoning Hearing Examiner. *See Templeton v. County Council of Prince George's County*, 23 Md. App. 596, 329 A.2d 428 (1974).

B. Procedural History

On or about December 1, 2017, applicant, Loreto J. Clavelli, *et al.*, filed a Zoning Map Amendment Application (A-10045) to rezone the subject property from the R-E (Residential-Estate) Zone to the R-80 (One-Family Detached Residential) Zone. As grounds to rezone the property, applicant alleges a mistake in the 1984 Henson Creek-South Potomac Master Plan and Sectional Map Amendment when the property was rezoned from the R-R (Rural Residential) to the R-E Zone.¹ The applicant also alleges a mistake in the 2006 Henson Creek-South Potomac Sectional Map Amendment (the current Sectional Map Amendment) for failing to correct the errors made in the 1984 Sectional Map Amendment. Ex. 1 – Application, Ex. 10 – Statement of Justification.

On or about March 1, 2018, Planning Board’s Technical Staff issued a comprehensive staff report and recommended disapproval of the application. Planning Board adopted Staff’s recommendation of disapproval. Ex. 37 – Technical Staff Report, Ex. 38(b) – Board’s Recommendation.

On or about February 26, 2019, the Zoning Hearing Examiner held an evidentiary hearing on the application. (2/26/2019, Tr.).

On June 11, 2019, the Examiner issued a recommendation of denial. ZHE’s Recommendation, 6/11/2019.

On July 10, 2019, applicant filed exceptions to the Examiner’s recommendation of denial, which will be discussed *infra*. Exceptions, 7/10/2019.

¹ The R-R Zone is more intense than the R-E Zone. And the R-80 Zone is more intense than the R-R Zone. PGCC § 27-109(b) – Class of zones.

On September 9, 2019, the District Council held oral arguments on exceptions filed by applicant. After the hearing, Council took the matter under advisement. (9/9/2019, Tr.).

On November 4, 2019, Council directed staff to prepare an order of denial consistent with the Examiner's recommendation of denial. Zoning Agenda, 11/4/2019.

C. Description of the Property

The subject property is located on the west side of Allentown Road, approximately 1,200 feet north of its intersection with Steed Road. The property is comprised of four abutting deed parcels (Parcel 122, Parcel 230, Parcel 117, and Parcel 4), which were legally established prior to 1978 in Liber 5006 at Folio 227, 228, and 229. The parcels total ±11.95 acres, which are considered acreage parcels created by deed dated September 30, 1978, and recorded in Liber 5006 at Folio 227, and October 25, 2006, recorded in Liber 26374 at Folio 756, 759 and 762.

The subject property is primarily wooded and undeveloped, except Parcel 122 and Parcel 11, which are improved with a single-story wood frame dwelling unit, a shed, and an associated parking area. The property has frontage on Allentown Road, a Master Plan 80-foot-wide collector roadway. Allentown Road provides access to the existing single-family.

There is a stream system located in the northwest corner of the overall site, with no 100-year floodplain or wetlands mapped on the property. A review of the mapping information on PG Atlas, indicates that the subject area is not within a sensitive species project review area and does not contain potential forest interior dwelling species habitat. The property is located within the Hunters Mill watershed of the Potomac River basin. Ex. 10, Ex. 37, pp. 4-11, (2/26/2019, Tr.), ZHE Decision, pp. 1-4.

D. Surrounding Neighborhood

The subject property is surrounded by the following:

North — Single-family detached residence, and the Potomac Electric Power Company (PEPCO) right-of-way improved with twin rows of public utility operating stations developed with high-voltage towers in the R-E Zone, that connect into a large I-1 (Light Industrial) Zoned PEPCO substation fronting on Tucker Road, the ‘Hunters Mill Estate’ subdivision, Allentown Fire Station, and Bethel Free Methodist Church and single-family residences all in the R-R Zone and the Arnez Garage (and other uses) in the R-R Zone, and C-M (Commercial Miscellaneous) Zone.

East — Allentown Road and on the opposite side of Allentown Road is the approximately 16- acre athletic field owned by the Roman Catholic Archdiocese of Washington in the R-E Zone, to the south of Archdiocese’s property is the ‘Green Valley’ subdivision in the R-E Zone, the Tayac Elementary School and the Isaac J. Gourdine Middle School in the R-R Zone; and beyond are the New Life Fellowship Church (in a former 7-Eleven Store) and a small neighborhood shopping center, both in the C-S-C (Commercial Shopping Center) Zone; and beyond is Tinker Creek Stream Valley Park in the R-O-S (Reserved Open Space) Zone and single-family detached residences in the R-R Zone.

West — Vacant wooded lands in the R-E Zone, single-family detached dwellings in the R-80, R-R, and R-E Zones, large stream valley steep slope areas, the sites of two large Class-3 landfills, and a commercial solar farm located predominately in the R-E Zone.

South — Single-family detached dwellings, a nonconforming Friendly Used Auto Parts salvage yard, Sellner Family Cemetery, all in the R-E Zone, and beyond are single-family detached developments in the Pinehurst Estates subdivision in the R-E and R-R Zones.

Ex. 10, pp. 3-4, Ex. 37, pp. 4-5, (2/26/2019, Tr.), ZHE Decision, pp. 2-4.

E. Zoning of the Property

In April 1959, the subject property was annexed into the Washington Regional District and zoned R-R (Rural Residential).

In 1968 and 1981, Master Plans for Henson Creek-South Potomac recommended that the property retain its original R-R Zone.

In 1984, the Henson Creek-South Potomac Sectional Map Amendment re-zoned the property from its original R-R Zone to the R-E Zone. 1984 MP & SMA.

In 2006, the Henson Creek-South Sectional Map Amendment retained the property in the R-E Zone. The 2006 Henson Creek Plan also recommended the property for residential-low land uses. 2006 MP & SMA, pp. 5, 107.

In 2014, the General Plan or Plan Prince George's 2035, placed the property in the Established Communities policy area. The vision for the Established Communities policy area is context-sensitive infill and low-to medium-density development. 2014 General Plan, p. 20. Ex. 10, pp. 1-6, Ex. 37, pp. 4-6, (2/26/2019, Tr.), ZHE Decision, p. 2.

F. Alleged Mistake in Rezoning

The applicant avers that Council make a mistake, in the 1984 MP & SMA, when it comprehensively rezoned the property from R-R to R-E. And that mistake or error was not redressed in the 2006 MP & SMA because Council retained the property in the R-E Zone. The applicant contends there were three (3) aspects to Council's alleged mistake, which, in relevant part, are as follows:

1. Council's action in 1984 was based on an incomplete factual predicate regarding the ability of the public infrastructure to support the single-family density permitted in the R-R Zone.
2. Council's action in 1984 and 2006 were based on incomplete information concerning the established ongoing development patterns within the neighborhood of the subject property.

3. Council's mistake was compounded in 2006 when it retained the property in the R-E Zone because it failed to address in detail, from the 1984 SMA, the redevelopment opportunities associated with those properties designated within "Policy Area B."

Ex. 10, pp. 8-10, Ex. 37, pp. 7-9, ZHE Decision, pp. 8-10.

G. Decision of the Examiner

The Examiner rejected applicant's alleged mistake made by the Council and recommended denial of the rezoning application. Council adopts and incorporates, except as otherwise stated herein, the findings and conclusions of the Examiner. ZHE Decision, 6/11/2019.

H. Exceptions

Timely exceptions were filed by the applicant. Exceptions, 7/10/2019. Exceptions are incorporated, as if fully restated, herein. The exceptions will be discussed *infra*.

I. Standard of Review

Under the County Code, a zoning map amendment, in relevant part, is subject to the following:

(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.

PGCC § 27-157(a).²

Under Maryland law, the original or comprehensive zoning *may*³ be changed (unless by a subsequent comprehensive zoning) only by a subsequent piecemeal zoning. In a Euclidean or conventional zone, the map amendment may be granted only upon a showing of unforeseen changes in the surrounding neighborhood occurring since the prior original zoning or comprehensive rezoning or mistake of fact made by the zoning authority in the original zoning or previous comprehensive rezoning.

The “change-mistake” rule is a rule of the either /or type. The “change” half of the “change-mistake” rule requires that, in order for a piecemeal Euclidean zoning change to be approved, there must be a satisfactory showing that there has been significant and unanticipated change in a relatively well-defined area (the “neighborhood”) surrounding the property in question since its original or last comprehensive rezoning, whichever occurred most recently. The “mistake” option of the rule requires a showing that the underlying assumptions or premises relied upon by the legislative body during the immediately preceding original or comprehensive rezoning were incorrect. In other words, there must be a showing of a mistake of fact. Mistake in this context does not refer to a mistake in judgment. Additionally, even where evidence of a change or mistake is adduced, there is no reciprocal right to a change in zoning, nor is there a threshold evidentiary

² The applicant does not seek rezoning based on § 27-157(a)(1)(A) and § 27-157(a)(1)(B)(i) does not apply because the property was rezoned since its original zoning. Ex. 10, p. 6, Ex. 37, p. 6.

³ The words “shall,” “must,” “may only” or “may not” are always mandatory and not discretionary. The word “may” is permissive. PGCC § 27-108.01(19). Maryland cases consistently interpret ‘may’ as permissive; by contrast, ‘shall’, is consistently interpreted as mandatory under Maryland case law. *Board of Physician Quality v. Mullan*, 381 Md. 157, 166, 848 A.2d 642, 648 (2004); *State v. Green*, 367 Md. 61, 82, 785 A.2d 1275, 1287 (2001); *Brodsky v. Brodsky*, 319 Md. 92, 98, 570 A.2d 1235, 1237 (1990).

standard which when met compels rezoning. Even with very strong evidence of change or mistake, piecemeal zoning may be granted, but is not required to be granted, except where a failure to do so would deprive the owner of all economically viable use of the property. In Maryland, the change-mistake rule applies to all piecemeal zoning applications involving Euclidian zones, including those involving conditional zoning. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 512-515, 120 A.3d 677, 689-691 (2015) citing *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 539, 814 A.2d 469, 483 (2002) (Although the zoning authority may rezone a property into a Euclidian zone only upon a threshold finding of a mistake of fact in the previous comprehensive rezoning or original zoning or an unforeseen change in the neighborhood occurring since then, the zoning authority is not required to rezone the property after making such a finding, unless a failure to do so would deprive the property owner of all economically viable use of the property).

J. Conclusion

- Exceptions — Alleged Mistakes 1 and 2

Primarily, applicant objects to the Examiner's decision rejecting alleged Mistakes 1 and 2 because it claims the Examiner relied heavily upon Technical Staff's report, which was erroneous on alleged Mistakes 1 and 2. Applicant avers, through testimony and exhibits, it has shown the 2006 SMA erroneously retained the property in the R-E Zone. Exceptions, pp. 3-4, ¶¶'s 8-12. Council disagrees and will deny applicant's exceptions to alleged Mistakes 1 and 2.

Addressing the change in the 1984 SMA, as proffered by the applicant, the Examiner found as follows:

Change Number FRI-2 of the 1984 Henson Creek-South Potomac Sectional Map Amendment zoned the subject property from the R-R to the R-E Zone (CR-100-1984).

The Master Plan recommends M-NCPPC parkland (unacquired) and low suburban residential land use (1.6-2.6 du/ac) during the THIRD STAGE OF FUTURE DEVELOPMENT as described on page 161 of the Plan text. However, development of these densities ultimately recognized by the Plan is considered well beyond the “foreseeable future” time-frame encompassed by this Sectional Map Amendment and as such is not encouraged. In accordance with Sectional Map Amendment staging policies discussed in a previous chapter of this report, staged future development areas in this part of the subregion are considered low density living areas for the foreseeable future and perhaps much longer. The R-E Zone is proposed as consistent with rezoning policies for low density living areas and as most suitable to accommodate limited development pressures that might be considered appropriate during this unspecified period of time. Proposals for comprehensive design zoning (R-S 1.6-2.6) which address the staging issues referenced in the Master Plan may be justifiable at some point in the future as well. (Exhibit 26).

Change Number FRI-2 zoned 154.8 acres from the R-R to the R-E Zone, specifically acknowledging 19 single-family homes in the 9000-9200 block of Allentown Road which includes the subject property. (Exhibit 26).

The subject property is located in Staging Policy SMA Implementation Policy Area B (Exhibit 27). Specific policies for this area include:

- Comprehensively rezone all properties designated as permanent low density or staged future development to a maximum density of approximately one dwelling unit per acre, e.g. the R-E Zone.
- Rely on the adequate public facility test imposed during review of subdivision proposals to balance commitments to further subdivision development (even for large lot, permanent low-density subdivisions) in this area.
- Discourage allocation of sewer capacity or other urban services to development projects in these areas.

- Discourage rezoning or allocation of sewer capacity to projects in these areas until commitments are made to program the major transportation facilities designated by the staging plan.

Reevaluate the situation in the next cycle of comprehensive rezoning.

ZHE Decision, pp. 7-8.

Next, the Examiner made the following findings on alleged Mistakes 1 and 2:

Mistake #1

The Applicant contends the Council's action at the time of the 1984 Sectional Map Amendment was based on an incomplete factual predicate regarding the ability of the public infrastructure to support the single-family density permitted in the R-R Zone. The District Council placed those properties in FRI-2 (and many others) in a holding zone pending a re-evaluation at the next comprehensive rezoning. Nowhere does the Council state that the sole reason for placing these properties in a holding zone is the lack of all types of public infrastructure. Indeed, the Council did not even contemplate zoning these properties to a higher density zone regardless of the status of infrastructure existing in 1984. There are simply no facts to support the Applicant's argument for Mistake #1. In accordance with the 1984 adopted policies (*supra*), the District Council did review existing public infrastructure and its capacity, and made recommendations for proposed improvement based on a comprehensive analysis of the areas needs and the anticipated build out scenario during the 2006 Master Plan for Henson Creek-South Potomac.

Mistake # 2

The Applicant also argues that the District Council failed to recognize the existing higher density residential development patterns of the established neighborhoods in the vicinity of the subject property. The Applicant states that the R-R Zoned subdivisions in the vicinity of the subject property exhibit greater densities than the density currently allowed in the R-R Zone (generally 2.17 DU/A) but are more aligned with densities comparable to the current version of the R-80 Zone (generally 4.58 DU/A). (Exhibit 10). There are older subdivisions in the area, such as Hunter Mill Estates (1962), Maplewood (1962), Green Valley (1967), and

Pinehurst Estates, Section 2 (1962), that do include densities comparable to the current requirements of the R-80 Zone but are grandfathered as to lot sizes that would not be allowed and are no longer permitted in the R-R Zone. However, only one of these developments are adjacent to the subject property, with only a small portion of the subject property sharing a border (approximately 170 feet) with one of the R-R zoned subdivisions (Pinehurst Estates, Section 2) with higher-than-currently permitted density. Other nearby subdivisions which existed in 1984 are zoned R-E and developed consistent with the density currently required in the R-E Zone, which include Bird Lawn to the west and Steed Estates to the south (see Appendix C: nearby subdivisions in the memorandum dated December 27, 2017, (Lester to Alam)). It was not a mistake to not zone the subject property R-R or R-80 due merely to the presence of higher-density subdivisions in the general vicinity of the subject property.

The Applicant argues that the R-80 Zone is appropriate because it is a comparable residential density to the established historic lotting patterns of four nearby subdivisions that existed in 1984. The issue of the corrective zone cannot be reached until there is a finding of mistake in the most recent comprehensive zoning, here the 2006 Henson Creek-South Potomac Sectional Map Amendment.

Although the subject property is located relatively near to higher low-density subdivisions, suburban development patterns have evolved in the County over the last 50 years. Environmental awareness and a desire to limit low-density, auto-oriented development and protect environmental features caused a shift in zoning and planning practices, striving to reduce and correct the environmentally impactful development patterns of the past (e.g., higher density developments scattered throughout the County). This is evident in the changes in the Zoning Ordinance, Sectional Map Amendments, and the Master Plans that started providing and recommending lower density zones in sensitive environmental areas and directing higher density development to designated centers.

Furthermore, there are many factors under consideration when rezoning a property during a Sectional Map Amendment. Public infrastructure and existing development patterns may be relevant factors in this decision, but they are not the only two factors as determined appropriate by the District Council. In the 2005 Approved Countywide Green Infrastructure Plan (Green Infrastructure Plan), the subject property was categorized as being within the evaluation and network gap areas (see Appendix B: Green Infrastructure Network, 2005 Countywide Green Infrastructure Plan, in the Community Planning referral memorandum for this case dated December 27, 2017 (Lester to Alam)). Evaluation areas are defined as those containing environmentally-sensitive features, such as interior forests, colonial water bird nesting sites, and unique habitats that are not currently regulated during development

review (page 1); and network gap areas are defined as areas that are critical to the connection of the regulated and evaluation areas and are targeted for restoration to support overall function and connectivity of the green infrastructure network.

The 2006 Master Plan recognized the status of these properties in the Environmental Infrastructure chapter starting on page 61. The Master Plan states, as a goal, that it wishes to implement a desired development pattern that protects sensitive environmental features (page 61). The subject property is then identified and categorized on page 62, Map 24, Green Infrastructure Network and Special Conservation Areas, in line with 2005 Green Infrastructure Plan. Given the Master Plan's awareness of the sensitive environmental features on the property, and how connecting the network gap plays a crucial role in creating a cohesive green infrastructure network, the lower density zoning of R-E was not a mistake and based on "unsubstantiated assumptions" as indicated by the Applicant. This is further supported by the fact that the property is surrounded by R-E zoning (see Appendix A: Existing Zoning, in the Community Planning referral memorandum for this case dated December 27, 2017 (Lester to Alam)), and that R-E zoning, as well as other lower density zones (mostly Open Space (O-S) and Reserved Open Space (R-O-S)), generally follow the green infrastructure network as defined (see Appendix D: Existing Zoning with Green Infrastructure Network Overlay, in the Community Planning referral memorandum dated December 27, 2017 (Lester to Alam)). In fact, within the green infrastructure network, there are 9,526.44 acres zoned R-E, as opposed to only 3,270.81 acres zoned R-80; a difference of 6,255.63 acres (see Appendix E: Total Acres by Zoning Class within the Green Infrastructure Network, in the Community Planning referral memorandum dated December 27, 2017 (Lester to Alam)).

The 2005 Green Infrastructure Plan also states that "Properties that contain evaluation areas will develop in keeping with the underlying zoning...however, consideration must be given to the resources that exist on the site and their priority for preservation and permanent conservation" (page 19). This suggest that the R-E Zone, as opposed to R-80, and similar low-density zones are purposefully used to protect environmental features throughout the County, while still allowing limited development in less sensitive areas on individual properties within the network. Overall, the lower density of the R-E Zone is better suited than R-80 for environmental protection, which is why R-E is generally used along the green infrastructure network more so than the R-80 Zone.

ZHE Decision, pp. 8-10.

Upon review of Technical Staff's report on alleged Mistakes 1 and 2, Council finds no reversible error. Ex. 37, pp. 6-9. Similarly, upon review of the Examiner's decision on alleged Mistakes 1 and 2, Council finds that even if the Examiner relied heavily upon Staff's report, the Examiner made independent findings of fact, on alleged Mistakes 1 and 2, based on the entire record, including the evidentiary hearing. Moreover, the decision of the Examiner on alleged Mistakes 1 and 2 was supported by substantial evidence in the record and not premised upon an erroneous conclusion of law. ZHE Decision, pp. 5-10.

- Exceptions — Alleged Mistake 3

Finally, applicant objects to the Examiner's decision concerning the appropriate density for the property. Applicant avers, through testimony and exhibits, it has shown that the appropriate zone for the property, with respect to density, is R-80 as opposed to R-E. Exceptions, pp. 4-5, ¶¶'s 13-20. Council disagrees and will deny applicant's exceptions to alleged Mistake 3. The Examiner made the following findings on alleged Mistake 3:

The Applicant also argues that the District Council made a mistake in its adoption of the 2006 Master Plan and Sectional Map Amendment for Henson Creek-South Potomac by "failing to address in detail the redevelopment opportunities associated with those properties designated within 'Policy Area B' by the 1984 Sectional Map Amendment and by maintaining the subject property in the R-E Zone." The Applicant concedes that he did not participate in the 2006 Master Plan and Sectional Map Amendment process nor did the property owner request a different zone for the subject property. The subject property was not brought to the attention of the M-NCPPC or the District Council and the subject property was not individually discussed during the 2006 process. The Applicant notes that the 2006 Sectional Map Amendment is an excellent document for promoting urban design standards and objectives by directing future growth to the proposed mixed-use areas such as the National Harbor Center and other centers, commercial pockets, and connecting corridors; however, the document is all but silent on those less traveled

suburban communities that are more removed or remote from the identified centers and corridors. (Exhibit 10).

The failure of the District Council to review the subject property in detail, especially considering the property owners lack of participation in the process, and the failure of the District Council to review all single-family detached residential properties in detail, does not constitute a mistake in the Sectional Map Amendment sufficient to meet the required findings of §27-157. Given the geographical size and scope of the Sectional Map Amendment, the standard approach is to limit zoning changes to where changes in land use policy or development potential is in concert with the County's land use goals. Sectional Map Amendment zoning changes are recommended based on best planning practices, the land use and associated goals, policies, and strategies produced during the Master Planning process, and the best opportunities to meet the goals of the Master Plan by permitting types of uses and densities at strategic locations that implement the County's development goals. The stability of suburban and urban communities and environmentally-sensitive areas generally means that there are few recommendations or goals for these areas, since the goal is often to maintain existing conditions and communities.

The Applicant is borrowing support for the rezoning from the 2014 General Plan, even though the 2002 General Plan would have been the applicable General Plan at the time of the 2006 Master Plan. Since the 2006 Master Plan amended the 2002 General Plan, its recommendations for the property are relevant to the subject Application; the recommendations of the 2014 General Plan are not.

The Applicant argues that, because the 2006 Master Plan list R-80 as an appropriate zone (page 107) to achieve the Plan's goals for low-density development, the subject property should be rezoned to the R-80 Zone. However, the Applicant failed to recognize that the R-80 Zone allows densities at 4.5 DU/A in excess of the maximum established by the Master Plan (page 107) for the subject property.

Given the subject property's environmental features and adjacency to properties already zoned R-E, R-80 is not the most appropriate zone. The Applicant also failed to recognize that the Master Plan only considers a maximum of 3.5 DU/A as "low density" within the Developing Tier, while R-80 allows a maximum density of up to 4.58 DU/A. This means that the Applicant could potentially develop the property well beyond what the Master Plan considers low-density development for the Developing Tier with R-80 zoning. It must also be noted that there are no specific goals, policies, or strategies in the 2006 Master Plan that would directly support the up-zoning of the subject property.

ZHE Decision, pp. 10-11.

Upon review of the Examiner's decision on alleged Mistake 3, Council finds that the Examiner did not ignore testimony from applicant's witnesses concerning practical maximum density for the property. Instead, the Examiner considered whether testimony of practical maximum density constituted a mistake to warrant rezoning from R-E to R-80. Moreover, the decision of the Examiner on alleged Mistake 3 was supported by substantial evidence in the record and not premised upon an erroneous conclusion of law. ZHE Decision, pp. 5-11.

Alternatively, assuming *arguendo*, if practical maximum density for the property was ignored, there is no reciprocal right to a change in zoning, nor is there a threshold evidentiary standard which when met compels rezoning. Even with very strong evidence of change or mistake, piecemeal zoning *may* be granted, but is not required to be granted, except where a failure to do so would deprive the owner of all economically viable use of the property. *Zimmer Dev. Co.*, 444 Md. 490, 519-520, 120 A.3d 677, 694-695 (2015) citing *Rylyns Enterprises, Inc.*, 372 Md. 514, 539, 814 A.2d 469, 483 (2002) (Although the zoning authority may rezone a property into a Euclidian zone only upon a threshold finding of a mistake of fact in the previous comprehensive rezoning or original zoning or an unforeseen change in the neighborhood occurring since then, the zoning authority is not required to rezone the property after making such a finding, unless a failure to do so would deprive the property owner of all economically viable use of the property). There is no evidence in the record that the applicant would be deprived of all economically viable use of its property. To the contrary, the property is ±11.95 acres and each acre in the R-E Zone may be

developed with up to 1.08 dwelling units per acre. Ex. 10, Ex. 37, (2/26/2019, Tr.), ZHE Decision, 6/11/2019, (9/9/2019, Tr.).

For the reasons set forth above, Zoning Map Amendment Application Number 10045 (A-10045), to rezone approximately 11.95 acres of land, in the R-E (Residential-Estate) to the R-80 (One-Family Detached Residential) Zone, located on the west side of MD 337 (Allentown Road) approximately 1,200 feet north of the intersection of Allentown Road and Steed Road, also identified as 9005, 9009 and 9021 Allentown Road, Fort Washington, Maryland, is hereby DENIED.

ENACTED this 18th day of November, 2019, by the following vote:

In Favor: Council Members Anderson-Walker, Davis, Glaros, Harrison, Hawkins
Ivey, Streeter, Taveras, and Turner.

Opposed:

Abstained:

Absent: Council Members Dernoga and Franklin.

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: _____
Todd M. Turner, Chair

ATTEST:

Donna J. Brown
Acting Clerk of the Council