

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed A-9992 requesting rezoning from the I-3 Zone to the R-T 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 November 15, 2007, the Prince George's County Planning Board finds:

FINDINGS:

- A. **Location and Field Inspection:** The subject property in the I-3 Zone is undeveloped and is located on the north side of Ritchie-Marlboro Road, west of Whitehouse Road and to the east of the new Ritchie Marlboro Interchange. The property that is the subject of A-9991 is 5.99 acres and the property that is the subject of A-9992 is 10.67 acres. The property is part of a larger tract consisting of 67.5 acres, which is now owned by the Greater Morning Star Pentecostal Church.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	I-3	R-55 and R-T
Use(s)	N/A	N/A
Acreage	A-9991 - 5.99 A-9992 - 10.67	A-9991 – 5.99 A-9992 – 10.67
Lots	2	2

- C. **History:** The property was originally placed in the R-80 Zone. It was previously known as the Greenwood Manor subdivision prior to its rezoning to I-3. Before its rezoning, the site had approval of a Cluster Development Plan.

The 1990 *Approved Largo-Lottsford Master Plan Amendment and Adopted Sectional Map Amendment* classified the subject property in the I-3 Zone and recommended office and commercial uses on this development site. The 1990 Largo-Lottsford Master Plan and SMA amended the 1977 Largo-Lottsford Master Plan.

- D. **Master/General Plan Recommendations:** The 1990 *Approved Largo-Lottsford Master Plan Amendment and Adopted Sectional Map Amendment* classified the property in the I-3 Zone and recommended office and commercial uses on this development site.

The Master Plan placed the subject property in Planning Area 73, Largo Community, Neighborhood B. The Master Plan (Pages 84, 85 and 90) also designated land in the northeast quadrant of the proposed Ritchie-Marlboro Road interchange, including the subject property as Employment Area 4.

The Master Plan (Page 67) recommended that Neighborhood B south of the PEPCO transmission line be maintained as an area of suburban single-family residences with the exception of a limited employment area adjacent to the proposed interchange at the Capital Beltway and

Ritchie-Marlboro Road. A 150-foot building setback along this area's eastern border was specified to buffer future single-family residential development to the east from the proposed employment center uses. The Master Plan had previously identified a proposed fire station in the southeast corner of the subject property at the Ritchie Marlboro Road/White House Road intersection. Page 70 of the Master Plan contains guidelines that encourage setbacks, open space, berming, landscaping, and fencing to protect residential areas from any impacts associated with the proximity to major roadways and incompatible non-residential uses.

The 2002 General Plan indicates that the subject property is in the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial centers, and employment centers that are increasingly transit serviceable.

- E. **Request:** The applicant is proposing to rezone the subject property, currently zoned I-3 to the R-55 (one-family detached residential) and R-T (townhouse) Zones. If the applicant's rezoning requests are approved, the property will be developed with 95 single-family residential dwelling units on 5.99 acres of land to be rezoned R-55. The remaining 10.67 acres of land to be rezoned R-T will be developed with metropolitan townhouse units.
- F. **Neighborhood and Surrounding Uses:** The applicant defines the neighborhood as consisting of 3.99 square miles and it is being delineated as follows:
- Southwest Branch to the north
 - Westphalia Road/Turkey Branch to the south
 - Brown Station Road to the east
 - Capital Beltway to the west

The applicant has used natural breaks in the land as boundaries of the neighborhood and has included land south of Ritchie Marlboro Road to better discern the impacts of development on both sides of the street.

Staff does not agree with the boundaries set by the applicant. From a planning standpoint, a neighborhood is part of a larger community and it usually defined by major roads or natural features that separate it from other areas. The applicant suggests boundaries that are quite large and include major roads as well as subdivisions which could be neighborhoods all unto themselves (Largo Woods, Little Washington, Greenwood Manor, etc.). In addition, the land to the south of Ritchie Marlboro Road is not a part of the same planning area. It is included in the Westphalia sector plan and sectional map amendment.

According to staff, the subject property is located in a neighborhood defined by the following boundaries:

- MD 214 Central Avenue to the north
- Ritchie Marlboro Road and Whitehouse Road to the south
- MD 202 Largo Road to the east
- Capital Beltway to the west

The property is surrounded by the following uses:

- North - Church in the I-3 Zone
- South - Ritchie Marlboro Road and Whitehouse Road and vacant land in the M-X-T Zone across from Ritchie Marlboro Road and Whitehouse Road
- East - Single-family residential in the R-80 Zone
- West - Open space in the R-80 Zone and vacant lot zoned I-3

G. Required Findings:

Section 27-157. Map Amendment Approval

(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: The applicant contends that placing the subject property in the I-3 Zone was a mistake during the adoption of the *1990 Approved Largo-Lottsford Master Plan Amendment and Adopted Sectional Map Amendment*.

The master plan recommended the addition of two new employment areas, one of which, Employment Area 4, is part of this rezoning request. The concept of employment areas was developed based on the intent to capitalize on the location of the Largo-Lottsford area on two major interchanges of the Capital Beltway. However, the master plan failed to examine and plan for the supporting components necessary for a successful employment center (supporting retail, restaurants, entertainment, high density residential and mixed-use development). The master plan did not evaluate the transit serviceability of the property. The property is not adjacent to a Metro station and the absolute minimum density required to support a street bus service is 6 to 8 units per acre. The residential zoning abutting a property does not allow for greater densities. The location of this property is in contradiction to the General Plan's mandate that employment areas must be transit serviceable. The master plan failed to consider the benefits of locating residential uses instead of industrial uses along these interchanges. It overlooked the idea that mobility

matters not just for industrial uses, but for residential uses as well.

The master plan failed to take into account the impact of overzoning land for industrial/employment uses in the planning area. It recognized that planned employment areas were extensive and estimated a total of over 12 million square feet. The employment market in this planning area is not sufficient to absorb 12 million square feet of employment. Therefore, the subject property has remained vacant.

The master plan underestimated the compatibility problems involved with establishing a new employment area within a predominately residential neighborhood. If the rezoning is approved, the applicant contends that the proposed uses will be more compatible with the existing community than the uses permitted in the I-3 Zone. The R-55 and R-T Zones would more fully implement the goals of the 2002 General Plan which calls for 66 percent of the county's residential growth to be located in the Developing Tier over the next 25 years.

The preliminary proposal for the subject property was for R-80 zoning. However, during the procedure for the adoption of the master plan and SMA, the subject property was rezoned to I-3 at the request of the previous owners of the property. At that time, the feasibility of a new employment area within a predominantly residential area was discussed. In order to mitigate the impact of placing more intensive land uses directly adjacent to residentially zoned land, the master plan imposed specific development restrictions like setbacks, vegetation and berming on the future development of the subject property.

The assumption that the I-3 zoning classification is the most appropriate zone for developing this property has proven false, as evidenced by the recent residential and mixed use rezonings from I-3 in the vicinity of the property and in surrounding areas and the large amounts of vacant industrial land. The applicant contends that an assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning.

The applicant contends that there is a sufficient evidence of substantial change in the character of the neighborhood to support a rezoning.

The applicant defines the neighborhood as consisting of 3.99 square miles and it is being delineated as follows:

- Southwest Branch to the north
- Westphalia Road/Turkey Branch to the south
- Brown Station Road to the east
- Capital Beltway to the west

The applicant has used natural breaks in the land as boundaries of the neighborhood and has included land south of Ritchie Marlboro Road to better discern the impacts of development on both sides of the street.

Zoning changes have occurred in the neighborhood with the adoption of the Westphalia Plan, which seek to implement the policy recommendations of the General Plan to locate

industrial/employment centers within centers and corridors and to locate a greater percentage of residential development in the developing tier of the County. Other industrially zoned land in the vicinity of the subject property have been rezoned to mixed-use or residential zones. So, it is impractical to assume that quality industrial uses would locate on the applicant's property. With more residential development proposed for the neighborhood, the subject property would be the only I-3-zoned land on the east side of I-495, south of MD 214, north of Ritchie Marlboro Road, and west of MD 202.

Fifty-six acres of the northern portion of the overall 67-acre property are developed with a church. Only a small portion of the overall site (16.6 acres) remains available for industrial use. The 16.6-acre property does not meet the minimum 25-acre area requirement of the Zoning Ordinance for the development of a planned industrial/employment park. Therefore, the recommendations of the master plan can no longer be implemented.

In conclusion, the applicant contends that a mistake occurred at the time of the enactment of the master plan and SMA and that there is a change in the character of the neighborhood. Therefore, the applicant requests a rezoning to the R-55 and R-T Zones.

Staff's Analysis: Staff does not concur with the applicant's position. The Master Plan specifically recommends the subject property to be designated as Employment Area 4. Industrial park/business campus uses are planned for this area. The main objectives of providing employment areas are:

- To create job opportunities for local and County residents
- To locate industrial areas in locations that will have minimum adverse effects on transportation
- To capitalize on the location of the Largo-Lottsford area on two major interchanges of the Capital Beltway
- To prevent the intrusion of employment areas in areas that are not appropriate for employment uses
- To provide development guidelines that will establish a physical separation between employment areas and residential areas.

The I-3 Zone for the subject property will achieve the above objectives of the master plan.

The applicant contends that the supporting components for a successful employment center (high-density residential, retail, mixed use) are not available in the vicinity of the property and the property is not transit serviceable. The intent of the master plan is to provide employment opportunities for local residents. The subject property meets the intent of the master plan because it is located near major intersections and residential development, and it will provide employment opportunities for local residents. Transit serviceability of the subject property is not an issue with this employment area because it is intended to provide employment opportunities for local residents. This employment area was not intended to be a transit-oriented use.

The applicant contends that it is more beneficial to locate residential areas along interchanges. Staff contends that employment areas are also beneficial along interchanges because they provide employment opportunities that are easily accessible for local and county residents.

The applicant contends that the master plan failed to take into account the impact of overzoning land for industrial/employment uses in the planning area. Staff disagrees. The I-3 Zone is not an industrial zone but a planned employment park. The intent of the master plan is to provide employment areas at appropriate locations within the planning areas that are easily accessible to local county residents. The subject property meets the intent of the master plan. The intent of the master plan is to increase the employment base of the county. Staff does not agree that there is an overzoning of employment uses in this planning area.

The applicant contends that the master plan underestimated the compatibility problems involved with establishing a new employment area within a predominately residential neighborhood and that the proposed uses are more compatible with the surrounding residential development. Staff disagrees. The master plan provides several design, buffering and screening guidelines for establishing a physical separation between employment areas and residential areas. During the adoption of the master plan, the feasibility of employment areas near residential areas was thoroughly evaluated.

The applicant contends that the I-3 zoning was not initially proposed at the time of the adoption of the Master Plan and SMA. It was granted at the request of the previous owners of the subject property. It is not a mistake to grant an applicant's/owner's request as long as the rationale for that action is fully explained in the text of the plan and SMA.

The applicant contends that the assumption that the I-3 zoning classification is the most appropriate zone for developing this property has proven false, as evidenced by the recent residential and mixed-use rezonings from I-3 in the vicinity of the property. Staff disagrees. The recent rezonings in the vicinity of the subject property are not within the same neighborhood as the subject property and will not impact the continued employment use of the subject property. The intent of the I-3 designation for the subject property is to provide employment opportunities that will serve the surrounding residential development. Staff is aware that rezonings have been granted for other properties. These rezonings were granted for properties that are not in the neighborhood of the subject property. The Planning Board, however, recognizes the impact of the rezonings on the subject property.

The applicant contends that there is a sufficient evidence of substantial change in the character of the neighborhood to support a rezoning. The applicant has included the land to the south of Ritchie Marlboro Road which is within the Westphalia neighborhood as part of the neighborhood for this property. Staff does not agree with the boundaries set by the applicant. From a planning standpoint, a neighborhood is part of a larger community, and it is usually defined by major roads or natural features that separate it from other areas. The boundaries, in our opinion, are too large and encompass several subdivisions and communities. In addition, the land to the south of Ritchie Marlboro Road is not a part of the same Planning Area. It is included in the Westphalia Sector Plan and Sectional Map Amendment. The zoning changes in the Westphalia neighborhood cannot be considered to be zoning changes in the subject property's neighborhood. Therefore, staff disagrees with the applicant that there is a substantial change in the neighborhood.

The applicant contends that the area of the subject property (16.6 acres) does not meet the minimum 25-acre area requirement of the Zoning Ordinance for the development of a planned industrial/employment park. There is no requirement for a minimum 25 acres via an SMA. Although the subject property does not meet the minimum area requirements for an employment park, it can be combined with the other I-3-zoned property to the west to have a minimum area of 25 acres. Section 27.471 (i)(3), minimum area for development, of the Zoning Ordinance states that a property with an area less than 25 acres may be classified in the I-3 Zone when the property adjoins property in the I-3 or E-I-A Zone. The area of the property exceeds the minimum net lot area requirements of the I-3 Zone (87,120 square feet).

H. Referral Comments:

1. The Subdivision Section (memorandum dated September 12, 2007) states that the subject property is a part of Lot 1 of the Greenwood Park subdivision, which was recorded on May 1, 1998, at Plat Book VJ 183, Plat No. 21. The preliminary plan of subdivision limited the development of Lots 1, 2 and 3 to uses permitted in the I-3 Zone and that generate no more than 203 AM peak-hour and 243 PM peak-hour trips. If the rezoning is approved for residential uses, new preliminary plans will be necessary to assure adequacy of public facilities.
2. The Washington Suburban Sanitary Commission (memorandum dated June 12, 2007) states that the existing water and sewer mains on the subject property will have to be abandoned.
3. The Transportation Planning Section (memorandum dated July 5, 2007) states that there are no master plan trails issues in the adopted and approved Largo-Lottsford master plan that impact the subject property. The section has recommended a standard sidewalk along the subject site's frontage on Ritchie Marlboro Road and standard sidewalks on both sides of all internal roads according to the requirements of the Department of Public Works and Transportation.
4. The Transportation Planning Section (memorandum dated June 14, 2007) states that the proposed rezoning could have an impact of 40 fewer trips on area roadways for the 5.99-acre property and an impact of 57 fewer trips for the 10.67-acre property during either peak hour. The subject site is now within or adjacent to any master plan

transportation facilities. The right-of-way adjacent to the subject property is consistent with current master plan recommendations, and no additional dedication will be required of the subject property at the time of preliminary plan. The proposed rezoning would have no impact on the existing transportation facilities in the area of the subject property.

5. The Environmental Planning Section (memorandum dated August 7, 2007) states that there are no streams, wetlands or 100-year floodplain on the lands proposed for rezoning. The principal soils on the site are in the Adelphia and Collington series. There are no rare, threatened, or endangered species found to occur on this property or on adjacent properties. Ritchie Marlboro Road and White House Road are sources of traffic-generated noise. The Largo-Lottsford master plan does not identify any environmental issues associated with the subject site. The subject site does not contain any network elements of the Countywide Green Infrastructure Plan. The property is subject to the provisions of the Woodland Conservation Ordinance because the site has previously approved tree conservation plans (TCPI/067/97 and TCPII/053/02). If revised development proposals are submitted under the new zoning, revisions to the approved TCPs will be required.
6. The Historic Preservation and Public Facilities Planning Section (memorandum dated May 18, 2007) states that the existing fire and police services are adequate. The proposed residential development is subject to the school facilities surcharge fees established by County Council bill CB-31-2003. Compliance with the requirements of CB-31-2003 will be reviewed during the subdivision review process for the subject proposal.
7. The Urban Design Review Section (memorandum dated July 25, 2007) has no comments on the proposed rezoning. However, the section has stated that if the rezoning is approved, the screening and buffering of the subject property and the streetscape along Ritchie Marlboro Road must be addressed during the subdivision/site plan review process.
8. The State Highway Administration (memorandum dated May 20, 2007) has no objections to the rezoning of the property.
9. The Community Planning Division (memorandum dated June 20, 2007) states that the proposal is consistent with the 2002 General Plan for the Developing Tier but it does not conform to the land use recommendations of the *1990 Approved Largo-Lottsford Master Plan Amendment and Adopted Sectional Map Amendment* for employment-related development. The required 150-foot buffer limits the amount of developable space for the subject property. There are single-family residences to the east of the applicant's site. The *2007 Approved Westphalia Sector Plan and Sectional Map Amendment* has recommended a neighborhood center and additional low-density suburban residential uses to the south of the subject site. Since Ritchie Marlboro Road is an arterial with a significant amount of commercial traffic, the Division has suggested that the applicant work with the Prince George's County Department of Public Works and Transportation to assess mitigation measures such as berming and landscaping.

The memorandum from the Community Planning Division states that:

“DETERMINATION

- “- The application is consistent with the 2002 General Plan Development Pattern policies ~~Developing~~ Tier.
- “- The application does not conform to the land use recommendations of the *1990 Approved Largo-Lottsford Master Plan Amendment and Adopted Sectional Map Amendment* for office and commercial uses on this development site. The applicant requests that the property be rezoned from I-3 to R-55.

“BACKGROUND

- “Location: North side of White House Road at its intersection with Ritchie Marlboro Road
- “Size: 5.99 acres
- “Existing Uses: Undeveloped
- “Proposal: To rezone from the I-3 (Planned Industrial/Employment Park) to R-55 (One-Family Detached Residential) to permit the development of single-family detached and attached residences

“GENERAL PLAN, MASTER PLAN AND SMA

- “2002 General Plan: This application is located within the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial Centers, and employment centers that are increasingly transit serviceable.
- “Master Plan: *Largo-Lottsford Approved Master Plan Amendment & Adopted Sectional Map Amendment* (1990).
- “Planning Area/
Community: Planning Area 73/Largo Community, Neighborhood B
- “Land Use: Undeveloped

“The master plan (page 67) recommended that Neighborhood B south of the PEPCO transmission line be maintained as an area of suburban single-family residences ‘... with the exception of a limited employment area adjacent to the proposed interchange at the Capital Beltway and Ritchie-Marlboro Road.’ The master plan (pages 84, 85, and 90) also designated land in the northeast quadrant of the proposed Ritchie-Marlboro Road interchange, including the applicant property, as Employment Area 4. The master plan also specified a minimum 150-foot building setback along this area’s eastern border in order to buffer future single-family residential development to the east from proposed employment center uses.

“The Ritchie Marlboro Road/I-95 interchange opened to traffic in 2004. However, no development has taken place since the opening of the new interchange. Nor has any development occurred in Employment Area 4 since the 1990 Largo-Lottsford master plan was approved.

“Environmental: None identified

“Historic Resources: None identified

“Transportation: Ritchie Marlboro/White House Road is an existing arterial (A-36). The nearest Metrorail facility is the Largo Town Center Metro Station.

“Public Facilities: The master plan identified a proposed fire station in the southeast of the applicant ~~property~~ at the Ritchie Marlboro Road/White House Road intersection.

“Parks & Trails: None identified

“SMA/Zoning: The 1990 *Largo-Lottsford Master Plan*/SMA classified the property in the I-3 (Planned Industrial/Employment Park) Zone.

“PLANNING COMMENTS

“The only master plan issue raised by this application is its non-conformance with the land use recommendations of the 1990 Largo-Lottsford master plan. Unfortunately, the required 150-foot buffer and the limited amount of developable space at this location have apparently rendered Employment Area 4 an unattractive location for employment-related development. In addition, new single-family detached residences have been constructed immediately east of the applicant site. Finally, the 2007 approved Westphalia sector plan and sectional map amendment has recommended the development of a neighborhood center and additional low-density suburban residential uses south of Ritchie Marlboro Road opposite the applicant site.

“With respect to the applicant site’s location, the master plan (page 70) contains guidelines that encourage setbacks, open space, berming, landscaping, and fencing to protect residential areas from any impacts associated with the proximity to major roadways and incompatible non-residential uses. Another guideline (page 70) encourages residential structures to be designed in harmonious relationship to one another, to the terrain, and to be situated to create interesting spaces.

“Ritchie Marlboro Road is an arterial that carries a significant amount of commercial traffic. Because of the applicant property’s proximity to Ritchie Marlboro Road, the applicant should work with the Prince George’s County Department of Public Works & Transportation (DPW&T) to assess the feasibility of mitigating measures such as berming and enhanced landscaping.”

- I. **Conclusion:** The basic test considered in a contention of error is whether the legislative body made a basic and actual mistake when it adopted a comprehensive zoning map placing the property in its present zoning classification. Maryland courts have established that there is a strong presumption of correctness of original zoning and of comprehensive rezoning. To sustain a

change in circumstances, a strong evidence of mistake must be produced

The change/mistake finding merely justifies consideration of rezoning but does not mandate rezoning. However, where a mistake in zoning exists, and the existing zoning deprives the owner of all economically viable use, the rezoning is mandated.

The applicant contends that placing the subject property in the I-3 Zone was a mistake because:

- The supporting components for a successful employment center (high density residential, retail, mixed use) are not available in the vicinity of the property
- The property is not transit serviceable
- It is more beneficial to locate residential areas along interchanges
- The impact of overzoning land for employment uses was not considered
- Compatibility issues with adjacent properties was not considered
- The recent rezonings to residential in the neighborhood shows that there is a substantial change in the character of the neighborhood
- The development constraints of the master plan limit the amount of developable space for the subject property.

Therefore, the proposed rezoning to residential uses is more appropriate.

The Board does not concur with the applicant's position because:

- The subject property will achieve the objectives of the master plan for employment areas because it will provide employment opportunities for local residents.
- Transit serviceability of the subject property was not an issue with this employment area because it is intended to provide employment opportunities for local residents. This employment area was not intended to be a transit-oriented use.
- Proximity to major interchanges is more critical for employment uses compared to residential uses.
- The subject property meets the intent of the master plan to increase the employment base of the county. There is no overzoning of employment uses in this planning area.
- Compatibility of the employment uses for the subject property was not the intent of the master plan. The intent of the employment areas is not to provide compatible uses but to provide employment opportunities for local residents.
- Even with the development constraints set by the master plan, the property can be

developed for employment uses.

While the Planning Board agrees with the neighborhood boundaries offered by the applicant, and the possible impact of recent rezonings on the subject property, the Board finds that the applicant has failed to demonstrate that the I-3 zoning for the subject property will not achieve the objectives for employment areas for this planning area. The applicant's argument also does not provide strong evidence that the property cannot be developed with employment uses. There is no strong evidence that the existing zoning will deprive the owner of all economically viable use of the property. There is no change in circumstances or evidence that the original zoning is a mistake. At best, the applicant presents arguments that suggest earlier master plan recommendations should be reconsidered. Absent strong evidence of change or mistake, the Board believes this land use decision should be made within the context of a comprehensive rezoning.

Based on the above, the Planning Board concludes that there is no mistake in the current Largo-Lottsford Master Plan Amendment and Sectional Map Amendment according to the above Section 27-157(a)(1) of the Zoning Ordinance and there has been no substantial change in the neighborhood.

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 recommends to the District Council for Prince George's County, Maryland that the above-noted application be DENIED.

* * * * *

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 Clark, seconded by Commissioner Vaughns, with Commissioners Clark, Vaughns, Cavitt and Parker voting in favor of the motion, and with Commissioner Squire temporarily absent at its regular meeting held on Thursday, November 15, 2007, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 20th day of December 2007.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator