



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

ZONING MAP AMENDMENT

A-10000

Application	General Data	
Project Name: Defiance Drive Location: Located at the terminus of Defiance Drive, approximately 160 feet east of its intersection with Star Drive. Applicant/Address: LMJ Real Properties and Investments 8804 Doris Drive Fort Washington, MD 20744 Owner/Address: Linda M. Jones 8804 Doris Drive Fort Washington, MD 20744	Date Accepted:	03/27/09
	Planning Board Action Limit:	N/A
	Plan Acreage:	5.068
	Zone:	R-E
	Dwelling Units:	N/A
	Gross Floor Area:	N/A
	Planning Area:	80
	Tier:	Developing
	Council District:	08
	Election District:	05
	Municipality:	N/A
200-Scale Base Map:	215SE02	

Purpose of Application	Notice Dates	
The case was reviewed by the Planning Board on May 28, 2009. The Planning Board has scheduled this application for a public hearing on July 9, 2009. Rezone from the R-E Zone to the R-R Zone	Informational Mailing:	11/26/08
	Acceptance Mailing:	03/13/09
	Sign Posting Deadline:	06/08/09

Staff Recommendation		Staff Reviewer: Tom Lockard	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

FINDINGS:

- A. **Location and Field Inspection:** The subject 5.06-acre site is located at the terminus of Defiance Drive, approximately 160 feet east of its intersection with Star Drive. The subject property consists of two parcels (Parcel 16 and Parcel 311) in the Residential-Estate (R-E) Zone. It is surrounded on all sides by residential development in the Aragona Village subdivision. The subject property is partially wooded and developed with a single-family residence and outbuildings.
- B. **History:** The subject property was retained in the R-E Zone by the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*. The site is a combination of two deed parcels which have never been subdivided.
- C. **Master Plan Recommendations:**
- 2002 General Plan:** This application is located 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 areas that are increasingly transit serviceable. Specifically, this application is consistent with Developing Tier Policy 1, “Encourage low- to moderate-density...development.” (p. 37)
- 2006 Approved Henson Creek-South Potomac Master Plan:** The property is located in Planning Area 80. The master plan recommends residential, low-density land use at a density up to 3.5 dwelling units per acre.
- D. **Request:** This application requests a zoning change from the R-E Zone to the R-R (Rural Residential) Zone to allow future subdivision of this property to lot sizes that will be more consistent with the lot sizes and character of surrounding development.
- E. **Neighborhood and Surrounding Uses:** The subject property is located in a neighborhood defined by the following boundaries:
- Aragona Boulevard to the north
 - Indian Head Highway Service Road to the west
 - Old Fort Road to the east
 - Christopher Lane/North Star Drive/Flagship Avenue to the south
- The property is surrounded on all sides by single-family residences on lots ranging from one-quarter to one-half acre in area in the Aragona Village subdivision. Although these lots are in the R-E Zone like the subject property, they were developed using the lot size averaging (LSA) technique, thus the smaller lot sizes than otherwise found in the R-E Zone (40,000 square foot, minimum). LSA development patterns generally result in smaller interior lots with larger lots along the periphery of the subdivision or in central areas controlled by a homeowners association.
- F. **Zoning Requirements:** Section 27-157(a) of the Zoning Ordinance provides that 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 argues that a mistake occurred in the 2006 sectional map amendment (SMA). It is their contention that the District Council failed to take into account then existing facts (i.e. that the LSA technique used to create the surrounding lots was no longer available to the applicant) so that the zoning was premised on a misapprehension. Because the initial premises of the District Council regarding the future development options for the subject property were incorrect, the assignment of the R-E Zone was improper. The applicant also notes that their burden in the proposed rezoning from the R-E Zone to the R-R Zone is less onerous than if they were changing from one use category to another.

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

1. A showing 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;
2. A showing that events that have occurred since the comprehensive zoning have proven that the District Council's initial premises were incorrect.

The applicant is correct that the LSA technique used by the surrounding property was not available to the applicant in this case. This technique, along with flag lots, varying lot size, and cluster subdivisions were legislatively abandoned in favor of the conservation subdivision method of development. Like the previous techniques before it, the conservation subdivision allows for smaller lots, however, because the "reduced" land area is made up somewhere else on the property, the overall density remains the same. Thus, it is not true that the applicant cannot avail themselves of alternative development techniques to place smaller lots on the site. There are many larger lots within the Aragona Village subdivision, some of which are in the middle of blocks, like the subject property. The difference between the two is that these other large lots are generally homeowners association land, while the subject property is privately owned.

The master plan Developing Tier Policy 1: Preserve and enhance existing suburban residential neighborhoods (p. 22), delineates the following strategies which apply to this application:

- **Ensure that the design of new development in suburban residential areas maintains and enhances the character of the existing community.**

- **Retain low-density residential land use classifications for undeveloped parcels in established single-family residential neighborhoods.**
- **Encourage a wide variety of single-family designs and lot sizes.**

Development in either the R-E Zone or the R-R Zone would be consistent with these master plan policies and strategies. While staff agrees that the Council could have easily reclassified this property in the R-R Zone and had it result in a compatible development, we are not convinced that failure to do so rises to the level of a mistake in the SMA, even at the less onerous level of burden.

Staff can find no substantial change to the character of the subject neighborhood since the last comprehensive rezoning over 20 years ago.

CONCLUSION

There is a strong presumption of validity of a comprehensive rezoning. A piecemeal rezoning request must present strong evidence of a mistake in the comprehensive rezoning or evidence of substantial change in the neighborhood. We agree that the property could be developed in a compatible manner in the R-R Zone. The same can be said of the R-E Zone or through the conservation subdivision technique. All of these choices were before the District Council in 2006. They chose to retain the R-E Zone. Staff can neither find evidence of mistake in the last comprehensive rezoning nor substantial change in the character of the neighborhood. We therefore recommend DENIAL of the requested rezoning.