



Note: Staff reports can be accessed at <http://mncppc.igm2.com/Citizens/Default.aspx>.

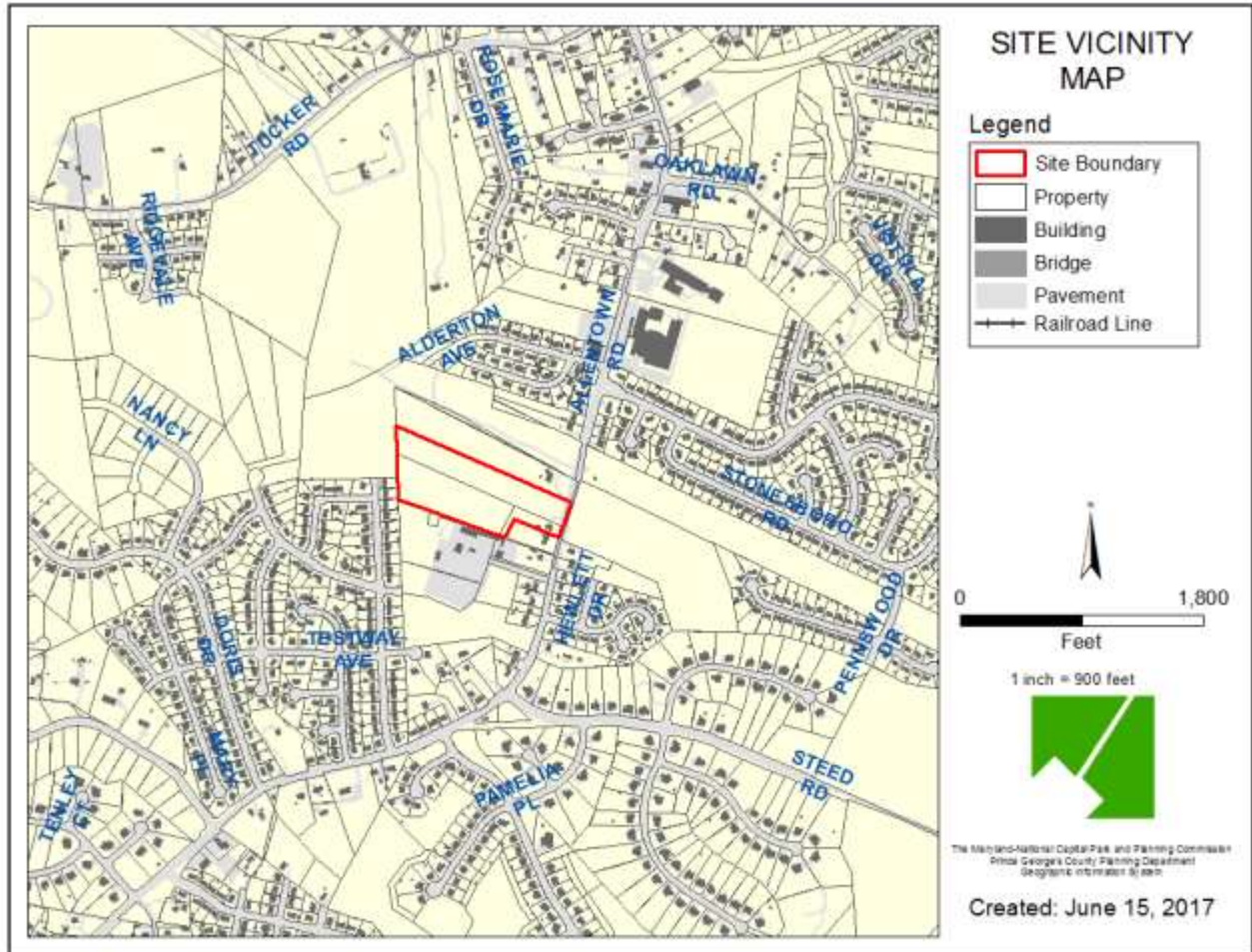
Zoning Map Amendment

A-10045

Application	General Data	
Project Name: Clavelli Property Location: On the west side of MD 337 (Allentown Road), approximately 1,200 feet north of the intersection of Allentown Road and Steed Road. Applicant/Address: Loreto J. Clavelli 3 Orchard Way North Potomac, MD 20854 Property Owner: Loreto J. Clavelli 3 Orchard Way North Potomac, MD 2085	Planning Board Hearing Date:	03/15/18
	Staff Report Date:	03/01/18
	Date Accepted:	12/01/17
	Planning Board Action Limit:	N/A
	Plan Acreage:	11.95
	Zone:	R-E
	Gross Floor Area:	N/A
	Lots:	N/A
	Parcels:	4
	Planning Area:	76B
	Council District:	08
	Election District	05
	Municipality:	N/A
	200-Scale Base Map:	212SE03

Purpose of Application	Notice Dates	
Request to rezone property from the R-E Zone to the R-80 Zone.	Informational Mailing	10/26/17
	Acceptance Mailing:	11/20/17
	Sign Posting Deadline:	N/A

Staff Recommendation		Staff Reviewer: Taslima Alam Phone Number: 301-952-4976 E-mail: Taslima.Alam@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	



MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE’S COUNTY PLANNING BOARD

TECHNICAL STAFF REPORT:

TO: The Prince George’s County Planning Board
The Prince George’s County District Council

VIA: Sherri Conner, Acting Supervisor, Subdivision and Zoning Section
Development Review Division

FROM: Taslima Alam, Senior Planner, Subdivision and Zoning Section
Development Review Division

SUBJECT: **Zoning Map Amendment Application No. A-10045**
Clavelli Property

REQUEST: **Rezone property from the R-E Zone to the R-80 Zone.**

RECOMMENDATION: **DISAPPROVAL**

NOTE:

The Planning Board has scheduled this application to be reviewed on the agenda date of March 15, 2018. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the request for a public hearing. All parties will be notified of the Planning Board’s decision.

A request to become a person of record for this application must be made in writing and addressed to the Prince George’s County Office of the Zoning Hearing Examiner, County Administration Building, Room 2184, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

FINDINGS

1. **Location and Field Inspection:** The site 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 in their entirety total approximately 11.95 acres. These parcels have never been the subject of a record plat; therefore, these properties are considered acreage parcels created by deed dated September 30, 1978, recorded in Liber 5006 at folio 227, and October 25, 2006, recorded in Liber 26374 at folio 756, 759 and 762. These parcels were legally established prior to 1978 in Liber 5006 at folio 227, 228, and 229. The subject site 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 site has frontage on Allentown Road, a master plan 80-foot-wide collector roadway. Access to the existing single-family detached dwelling is via Allentown Road.

According to PGAtlas, a stream system is 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 PGAtlas, 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 site is located within the Hunters Mill watershed of the Potomac River basin.

2. **History:** On April 28, 1959, the property was annexed into the Washington Regional District with R-R zoning designation. The 1968 Approved Master Plan for South Potomac Henson Creek, Planning Area 76A, 76B, and 80 and the 1981 Approved Master Plan for Subregion VII, Henson Creek, kept the subject property in the Rural Residential (R-R) Zone. The 1984 Approved Subregion VII Sectional Map Amendment rezoned the subject property from the R-R Zone to the Residential-Estate (R-E) Zone pursuant to the enactment of Prince George's County Council Resolution CR-100-1984 adopted on July 24, 1984. The 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* (Henson Creek-South Potomac Master Plan and SMA) retained the subject property (Parcels 4, 117, 230 and 122) in the R-E Zone confirming the 1984 SMA.
3. **Neighborhood and Surrounding Uses:** On page 3 of the applicant's statement of justification (SOJ) dated October 27, 2017 (Shipley to Summerline), states that the neighborhood surrounding the subject property may be defined by the linear segment of Allentown Road with following boundaries:

North— Allentown Road and Tucker Road

South— Allentown Road and Steed Road

East— Joselle Court (off of Allentown Road to the north; and Stoney Harbor Drive off of Steed Road to the south)

West— Rose Marie Drive (off Tucker Road to the north; and Pinehurst Drive off of Allentown Road to the south)

However, in planning, a neighborhood is considered a smaller unit of a community. Communities tend to be comprised of several neighborhoods. Significant natural features, or major roads, may define neighborhoods. Staff finds that the following boundaries create the neighborhood for the subject property because the master plan of the right-of-way shows these selected roads as a

collector, major collector, or freeway.

- North—** Tucker Road (major collector)
- South—** Old Fort Road (major collector)
- East—** Allentown Road (collector)
- West—** MD 210 (Indian Head Highway) (freeway)

Given the perimeter roadways delineating the neighborhood as identified by staff, the property is surrounded by the following uses:

- North—** Abutting a seven-acre property developed with a single-family detached dwelling in the R-E Zone; further north by a 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; and to the north of the PEPCO right-of-way are single-family detached developments in the R-R Zone.
- South—** Abutting Parcel 122 is residential single-family detached dwellings, and north of the single-family homes is a nonconforming Friendly Used Auto Parts salvage yard; west of the auto salvage yard is a small Sellner Family Cemetery, all in the R-E Zone, and beyond are single-family detached developments in the R-R and One-Family Detached Residential (R-80) Zones.
- East—** Allentown Road, a master plan collector roadway with an ultimate right-of-way (ROW) of eighty feet.
- West—** Vacant wooded lands in the R-E Zone; south and west of the vacant land is single-family detached dwellings in the R-R Zone.

The subject property is primarily surrounded by low-density residential land uses to the north, to the southwest, and to the east across Allentown Road. A nonconforming salvage yard to the south and undeveloped land to the west. The property is surrounded by properties zoned R-E (see Appendix A: Existing Zoning, in the Environmental Planning memorandum dated December 27, 2017 (Lester to Alam)), except for the southwest border, which abuts property zoned R-R.

4. **Request:** The applicant is requesting to rezone approximately 11.95 acres of lands (Parcels 117, 122, 230, and 4) from the R-E Zone to the R-80 Zone.

5. **General Plan and Master Plan Recommendations:**

General Plan—The 2014 *Plan Prince George's 2035 Approved General Plan* locates 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 (page 20). The land use recommendation is for residential-low land uses on the subject property, with densities up to 3.5 dwelling units per acre (DU/A) (pages 100–101), which is consistent with densities allowed in the R-E Zone, which has a maximum density of up to 1.08 and the R-R Zone, which has a maximum density of 2.17. The R-80 Zone, requested by the applicant, has a maximum density of up to 4.5.

Master Plan—The 2006 Henson Creek-South Potomac Master Plan and SMA recommends residential-low land uses on the subject property, with densities up to 3.5 DU/A (pages 5 and 107). The master plan retained the subject property in the R-E Zone, confirming the 1984 SMA. As stated, the applicant’s request would allow densities that are not consistent with the master plan land use recommendations.

6. **Zoning Requirements:**

Section 27-157(a)(1) of the Zoning Ordinance, provides that no request for rezoning shall be granted without the applicant providing evidence of one of the following:

(A) There has been a substantial change in the character of the neighborhood; or

In the submitted SOJ, the applicant does not put forth an argument of change to the character of the neighborhood, and therefore an analysis of a change in character has not been evaluated.

(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

In the SOJ, the applicant submits that the Prince George’s County Council, sitting as the District Council, (the “Council”), initially erred in adopting the R-E Zone for the subject property, pursuant to the SMA adopted in 1984 for the Subregion VII Henson Creek-South Potomac Master Plan and SMA. The applicant further stated that at the “Council,” at the time of the 1984 SMA and subsequent 2006 master plan, failed to account for the then existing facts, or reasonable foreseeable projects or trends that the facts relied upon by the “Council” in its decision-making process, were incomplete and the action was premised on a misapprehension, or the “Council’s” initial premises were incorrect.

As stated in Subsection 3 above, the subject property was designated in the R-R zoning on April 28, 1959. The subsequent master plans of 1968 and 1981, for Henson Creek, retained the original R-R zoning designation until the 1984 Master Plan was approved. Afterward, in 1984, the property was rezoned from the R-R Zone to the R-E Zone by the 1984 Subregion VII Henson Creek-South Potomac Master Plan and SMA. The SMA based the rezoning on the goals of the 1981 Subregion VII Master Plan, which desired to limit residential development in this area for the foreseeable future. The plan recommended densities of 1.6 to 2.6 dwelling units per acre (DU/A) for the property, but stated that these densities should only occur beyond the plan’s horizon.

To accommodate for very limited residential development, the property was downzoned to R-E to allow densities up to 1.08 DU/A. The R-E zoning was confirmed in 2006 and was retained by the 2006 Henson Creek-South Potomac Master Plan and SMA. Given the fact that the property has been subjected to rezoning consideration twice, Section 27-157(a)(1)(B)(i) of the Zoning Ordinance does not apply.

(ii) There was a mistake in the current Sectional Map Amendment.

The applicant asserts that the District Council made three mistakes in the zoning consideration for the subject property. Two of the mistakes occurred during the 1984 rezoning of the property from R-R to R-E. However, evaluating the 1984 SMA for mistakes is not relevant to the analysis for Section 27-157(a)(1)(B)(ii) because the zoning of the property has subsequently been confirmed by the 2006 SMA. Notwithstanding the specific regulation, the applicant states that these 1984 SMA mistakes were not addressed in the 2006 master plan and SMA, implying that these mistakes were repeated by the District Council during the 2006 SMA decision and, therefore, should be evaluated.

Mistake 1: Failure to recognize the existing level of public services and infrastructure at the time of the subject property's rezoning in 1984.

The applicant states that the District Council failed to recognize the existing level of public infrastructure and its ability to support the permitted single-family density allowed in higher low-density residential zones, such as R-80. The applicant continues to list existing public infrastructure in the master plan area regarding transportation, water and sewer, schools, and fire and rescue. This statement is inaccurate because the 2006 master plan did review existing public infrastructure and its capacity, as is evident on pages 79–80, and makes recommendations for proposed improvements based on a holistic and comprehensive analysis of the area's needs and the anticipated buildout scenario.

Mistake 2: Failure to recognize the existing residential density of the established historic lotting pattern of the subject property's surrounding neighborhood at the time of the subject property's rezoning in 1984.

The applicant also claims 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). 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 size that would not be allowed and are no longer permitted in the R-R Zone. However, all but 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. The applicant fails to point out other nearby subdivisions that are zoned R-E and developed consistent with the density currently required in the R-E Zone, which includes 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)). Thus, 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 also states that R-80 is appropriate because it is a comparable residential density to the established historic lotting pattern of nearby neighborhoods. Though the subject property is 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, SMAs, and 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 an SMA. 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 the 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 suggests 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.

Mistake 3: Failure to review the property in detail and correct the two mistakes listed above during the 2006 SMA.

The applicant also claims that the District Council failed to review the property in detail and that the 2006 master plan was all but silent on existing single-family detached residential neighborhoods. Given the size and scope of an SMA, 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. SMA zoning changes are recommended

based on planning best 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 lists R-80 as an appropriate zone (page 107), to achieve the plan's goals for low-density development, it should be rezoned to R-80. 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).

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.

7. **Conformance with the Purposes of the R-80 Zone:** In staff's opinion, the applicant has failed to overcome the first burden of proof demonstrating that the District Council erred at the time of the 2006 comprehensive zoning. Staff has provided the following analysis of the purposes of the R-80 Zone that are contained in Section 27-429(a)(1) of the Zoning Ordinance as follows:

- (A) **To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;**

If the proposed rezoning were to be approved, the future development will ensure conformance to this purpose.

- (B) **To facilitate the planning of one-family residential developments with medium-sized lots and dwellings of various sizes and styles;**

The adjoining properties are zoned residential and are developed with single-family residences of various sizes and styles. If approved, development will conform to the required lot size.

(C) To encourage the preservation of trees and open spaces; and

The project is subject to the environmental regulations of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) contained in Subtitles 24, 25, and 27 that came into effect on September 1, 2010 and February 1, 2012. The WCO requires a 25 percent woodland conservation threshold (WCT) and a 20 percent afforestation threshold. If the zoning request is granted to change the current R-E Zone to R-80, the allowable density would increase, and the thresholds would reduce to 20 percent and 15 percent, respectively, reducing the tree preservation requirement.

(D) To prevent soil erosion and stream valley flooding.

According to the 2017 *Countywide Green Infrastructure Plan* (2017 Green Infrastructure Plan), approximately 95 percent of the property is within regulated areas and evaluation areas. The regulated area, which bisects the property, is indicative of the location of regulated environmental features, such as streams, wetlands, and/or floodplain, where development impacts are limited to preserve this area. Over 95 percent of the property is also wooded.

Given the location of the property within the evaluation and network gap areas of the 2017 Green Infrastructure Plan, the up-zoning of the property to the R-80 Zone may result in greater density and a reduction of woodland preservation.

8. **Referrals:** Referral memorandum comments submitted for this application were included in part in this technical staff report. Referral memorandums were received as follows and are included as back-up to this technical staff report and adopted by reference herein:

Community Planning dated December 27, 2017, Lester to Alam.

Historic Preservation dated December 15, 2017, Stabler to Alam.

Transportation dated December 13, 2017, Hancock to Alam.

Trails dated December 14, 2017, Shaffer to Alam.

Environmental dated December 7, 2017, Schneider to Alam.

CONCLUSION

Pursuant to Section 27-157(a)(1)(B) of the Zoning Ordinance, staff finds that the applicant has failed to meet their burden to present strong and probative evidence that the District Council made a mistake in the 2006 comprehensive zoning approval, and has not overcome the presumption of correctness attached to the District Council's action in the approval. The limit placed on the applicant in Section 27-157(a)(1)(B) of the Zoning Ordinance, to demonstrate that there was a mistake in the *current* Sectional Map Amendment (emphasis added) is predicated on the independence of each SMA as a

standalone decision which is presumptively correct as a legislative act. The 2006 comprehensive zoning was confirmatory of the action in 1984, and the 1984 comprehensive zoning is not up for debate as it relates to this standard of review.

In the applicant's SOJ dated October 27, 2017, the applicant set forth three arguments; alleged Mistake #1, is that there was a mistake in the 1984 comprehensive zoning, and as stated above, this argument is not relevant to the standard of review in this instant request. Alleged Mistake #2, is that both the 1984 and 2006 comprehensive rezoning failed to recognize the existing residential density to the established historic lotting pattern of the subject properties neighborhood. However, there is no legal requirement for the District Council to take this into consideration and therefore, appears to be a mere disagreement in the methodology used by the District Council in their 2006 decision. Mistake #3, appears to be that the District Council erred in not considering redevelopment opportunities, ignored specific site conditions related to the subject property, and failed to take into consideration more restrictive "contemporary" regulations. Again, there is no legal requirement for the District Council to consider these matters in a comprehensive zoning process and the applicant has failed to provide evidence of an actual mistake.

The applicant's argument related to insufficient analysis of infrastructure is not clearly laid out, but for its value in this discussion, staff notes that infrastructure needs for single-family dwellings, whether in the R-E or R-80 Zones, are similar if not identical when evaluating public facilities at the level of comprehensive zoning and the argument fails to get traction. The 2006 master plan land use recommends low density residential (page 107), for the subject property with a maximum density of 3.5. The applicant requests the R-80 Zone, which allows a maximum density of 4.5. Staff finds that the zoning requested would allow densities that are not consistent with, and contrary to the land use densities recommended in the master plan.

Staff recommends **DISAPPROVAL** of the applicants request to rezone the property from the R-E to the R-80 Zone.