

March 1, 2000

TECHNICAL STAFF REPORT:

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

VIA: Arie Stouten, Zoning Supervisor

FROM: Catherine H. Wallace, Planner Coordinator

SUBJECT: **Zoning Application No. A-9942**

REQUEST: **R-55 Zone to the R-R Zone**

RECOMMENDATION: **DENIAL**

NOTE:

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. 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 public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. 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 301-952-3280.

FINDINGS:

- A. Location and Field Inspection: The subject property consists of two parcels (one, a flag lot) fronting on the west side of Chestnut Street in the southern section of the Huntington portion of the City of Bowie. The parcels total 1.9 acres in size and each is developed with a single-family detached residence. The two parcels surround two smaller lots also developed with single-family homes and fronting on Chestnut Street. To the north are several single-family residences on partially developed lots in the R-55 Zone. To the south, five residences in the R-55 Zone back up to the subject property.
- B. History: The subject property was rezoned from the R-R Zone to R-55 Zone in 1975, as part of the Sectional Map Amendment (SMA) for Bowie-Collington and Vicinity. It was retained in that zone during the 1991 Master Plan and SMA for Bowie-Collington-Mitchellville and Vicinity.
- C. Master Plan Recommendation: The Master Plan for Bowie-Collington-Mitchellville (1991) recommends medium-density suburban development with an average density of 4.2 dwelling units to the acre. This recommendation reflects the density that makes up most of the developed section of the old Huntington Subdivision.
- D. Request: Rezoning from the R-55 (One-family detached residential) to the R-R (Rural residential) Zone
- E. Neighborhood and Surrounding Uses: The applicant defines the neighborhood boundaries as MD 450, Popes Creek Railroad, and US 50. This is probably an unintentional error on the applicant's part as these boundaries coincide with Community VI of the master plan, and the subject property is located in Community V. The staff defines the following significant manmade and natural boundaries for the neighborhood:

North - Pennsylvania Railroad

East - MD 197 (Laurel-Bowie Road)

South - Horsepen Branch

West - Pennsylvania Railroad

This neighborhood comprises an area characteristic of an old rural town surrounded by open rural-agricultural land, which is beginning to give way to more recent suburban growth. The residential portions of the old Huntingtown subdivision were placed in the R-55 Zone to reflect the density of existing development and the availability of public sewer and water.

Immediately surrounding the subject property are residences in the R-55 Zone (north and south), and in the R-R Zone directly east across Chestnut Avenue. One block south of the site, homes tend to be on somewhat larger lots in the R-R Zone and horses are kept on one lot. To the southeast across Chestnut Avenue is a cluster subdivision in the R-R Zone (Rolling Hills). Another R-R cluster subdivision (Huntington South) is located farther east. These subdivisions have homes on lots similar to the R-55 Zone. Just west of the subject property, and on the opposite side of the

Pennsylvania Railroad is an industrially-zoned area which is developed with a landscaping firm and other industrial uses.

F. Zoning Requirements:

1. Change/Mistaking Findings: [27-157(a)]

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 and such mistake occurred not more than six years prior to the filing of an application for the proposed zoning map amendment providing, however, that for those properties for which the current Sectional Map Amendment has been adopted prior to 1990 such mistake shall have occurred not more than 10 years prior to the filing of an application for the proposed zoning map amendment.

G. Applicant's Position: The applicant contends that the requested rezoning is warranted based upon a substantial change in the character of the neighborhood. The Statement of Justification notes that the Master Plan and Sectional Map Amendment relied upon the construction of A-44 to relieve local collectors and MD 197 of a portion of the north-south traffic to facilitate additional development. At page 85 the plan states:

The provision of A-44 and its interchanges with MD 450 and Lanham-Severn Road Extended (A-19), would facilitate north-south traffic movements during later stages of community development, thereby relieving local collectors and MD 197 of a portion of the north-south traffic.

The applicant goes on to note that the construction of A-44 is not expected within the next 20 years, and that this development constitutes a significant change in the character of the neighborhood. The statement further notes that a downzoning request within a residential subcategory entails a lesser legal burden to show change or mistake than would a request from residential to commercial or industrial.

H. Staff's Analysis: The staff disagrees with the applicant that the delay or even ultimate failure to construct A-44 constitutes a significant change in the character of the neighborhood. Maryland case law states that ■Contemplated road improvements do not change the character of the neighborhood. (Clayman v. Prince George's County, 1972) It would be illogical then to presume that the failure to provide a contemplated road improvement, could in and of itself, change the character of the neighborhood. In Dustin v. Mayor & Council of Rockville (1974) the court held, ■The existence of

new roads or road changes is a factor to be taken into consideration, but without some other change in the community or neighborhood, rezoning cannot be justified. • This decision further states, ■The common thread running through these....cases is that road changes, to justify a piecemeal zoning reclassification, must destroy the strong presumption of the correctness of original zoning and constitute strong evidence that such change has affected the character of the neighborhood. • The court goes on to note that the change should be one of a physical nature affecting the subject and neighboring lands.

Even an argument for mistake, which cannot be raised in this case due to time constraints, based upon the failure to construct or program A-44 for construction, would have to be strong enough to overcome the presumption of validity of the existing zoning, based upon prevailing land use characteristics in the area.

I. Conformance with the Purposes of the Zone Requested:

The purposes of both the R-R Zone and the R-55 Zone are identical with respect to everything but the size of the lots:

Sec. 27-428. R-R Zone (Rural Residential).

(a) **Purposes.**

(1) **The purposes of the R-R Zone are:**

- (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;**
- (B) **To facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles;**
- (C) **To encourage the preservation of trees and open spaces; and**
- (D) **To prevent soil erosion and stream valley flooding.**

(b) **Uses.**

(1) **The uses allowed in the R-R Zone are as provided for in the Table of Uses (Division 3 of this Part).**

The R-55 Zone uses the term ■small lots• instead of ■moderately large lots. • Therefore, the difference in residential usage is strictly one of density.

The actual differences between the two zones are more clearly seen in the types of other uses permitted in both zones in the Table of Uses. The following is a list of some uses permitted (P), or permitted by special exception (SE), in the R-R Zone, but not permitted in the R-55 Zone. It can be seen from the list that these uses are frequently those commonly found in rural-agricultural areas, but not always compatible with dwelling unit densities in the R-55 Zone:

Animal Hospital (SE)
Antique Shop (SE)
Kennel, on a lot exceeding 1.8 acres (P)
Landscaping Contractor (SE)
Riding Stable, on a lot exceeding .5 ac (SE)
Miniature Golf Course (SE)
Recreational Campground (SE)
Shooting Range (SE)
Skating Facility (SE)
Boardinghouse (P)

Although the size of the combined lot requested for rezoning is 1.9 acres, the above listed uses would be incompatible with the residential density found immediately south of the subject property as well as in other locations in the neighborhood. Therefore, staff concludes that the purposes of the R-R Zone are not in harmony with the residential densities of surrounding properties.

CONCLUSION:

The densities of the old Huntington Subdivision shown in the Bowie-Collington-Mitchellville Master Plan and SMA represent a continuation of the existing patterns of development. They are distinct from the surrounding rural areas and even from the more recently approved cluster subdivisions. This area reflects an older, historic, small town part of Bowie's past. Although some larger lots remain in this older R-55 Zoned area, their development with single-family detached residences is most compatible with the original development of the area.

Staff recommends DENIAL of this application, in light of the lack of evidence of change in the character of the neighborhood. Furthermore, staff finds that the purposes of the requested zone are not in harmony with existing residential densities.