



ZONING MAP AMENDMENT A-9944

Application	General Data
Project Name: Errigo Properties Location North side of Virginia Manor Road, 700 ⁺ feet west of Virginia Manor Court Applicant/Address Errigo Properties 6872 Distribution Drive Beltsville, MD 20705 Correspondent George A. Brugger, Esq. 6404 Ivy Lane, Suite 720 Greenbelt, MD 20770	Date Accepted 3-6-00
	Planning Board Action Limit N/A
	ZHE Hearing Date Not Scheduled
	Plan Acreage 7.04 ACRES
	Zone R-R
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 60
	Council District 1
	Municipality Bladensburg
	200-Scale Base Map 218NE6R

Purpose of Application	Notice Dates
Rezoning from the R-R (Rural Residential) Zone to the I-1 (Light Industrial) Zone.	Adjoining Property Owners (CB-15-1998) 3/20/00
	Previous Parties of Record (CB-13-1997) N/A
	Sign(s) Posted on Site 6/9/00
	Variance(s): Adjoining Property Owners N/A

Staff Recommendation			Staff Reviewer: Elsabett Tesfaye
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

July 6, 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: Elsabett Tesfaye, Senior Planner

SUBJECT: **Zoning Map Amendment Application No. A-9944**

REQUEST: **R-R Zone to the I-1 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 is located on the north side of Virginia Manor Road, approximately 700 feet west of Virginia Manor Court. The site is irregularly-shaped, comprises approximately 7.4 acres of land and is currently unimproved. The property has approximately 460 feet of frontage on Virginia Manor Road (south).
- B. History: The property was retained in the R-R Zone in the approved 1990 Sectional Map Amendment for Subregion I.
- C. Master Plan Recommendation: The 1990 Approved Master Plan for Subregion I recommends the property for residential development at low-suburban density (single-family detached homes on lots of 20,000 square feet at an average of 1.85 dwellings per acre).
- D. Request: The applicant requests a rezoning from the R-R (Rural Residential) Zone to the I-1 (Light Industrial) Zone.
- E. Neighborhood and Surrounding Uses: Staff defines the following neighborhood boundaries for the subject application:

North and Northwest - Contee Road and Van Duren Road

East and southeast - Baltimore Avenue (US 1)

South - Ammendale Road

West - Interstate 95

These boundaries differ slightly from the applicant's mainly because the applicant included proposed roads; whereas, staff used only existing roads to define the neighborhood.

The subject property is surrounded by R-R-zoned properties to its immediate northwest, north and east. To the southwest across Virginia Manor Road is the Konterra M-X-T parcel that comprises approximately 488 acres. The area east of the subject site, abutting the northeastern portion of the property on one side and the west side of Virginia Manor court on the other, is an 11-acre tract of R-R-zoned land that is currently a customer parking lot for an automobile insurance auction business. The parking lot use was authorized by special exception (SE-4158). Further northeast across Virginia Manor Court are automobile-oriented industrial uses in the I-1 and I-3 Zones and a large tract of undeveloped land owned by the Maryland National Memorial Park in the I-3 and R-R Zones. The southeastern portion of the neighborhood is zoned E-I-A (Employment and Institutional Area).

F. Zoning Requirements:

Change/Mistake Findings:

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.**

The applicant puts forward arguments for both change and mistake. However, the application does not meet the time criteria for consideration of the mistake argument because the alleged mistake occurred more than six years ago, and the Subregion I Sectional Map Amendment was not adopted prior to 1990. Therefore, staff's analysis focuses only on the applicant's argument pertaining to substantial change in the character of the neighborhood.

G. Applicant's Position:

The applicant offers the following argument for substantial change in the character of the neighborhood:

■The applicant submits that there has been a substantial change in the character of the neighborhood since the adoption of the Subregion I Sectional Map Amendment in October 1990.●

■This change is the abandonment by the state of Maryland of its support of the Intercounty Connector. The keystone of the Subregion I Master Plan is the Intercounty Connector. This road can only be built with the support of the State of Maryland and the Governor has indicated that he has withdrawn support for the project. In fact, he has taken steps to initiate sale of right-of-way already purchased in Montgomery County, thus making the completion of the road impossible. The fate of the alignment within the neighborhood is now seriously in question and if the Intercounty Connector right-of-way is to be used at all it will be greatly diminished in importance. Without the Intercounty Connector, the State will presumably support a patchwork of mass transit and intersection improvements and some kind of road connection between Route 1 and Route 29. The Intercounty Connector was the bulwark of the Konterra project, which set the land use pattern and road network proposed in the

neighborhood.. Without the Intercounty Connector, the Master Plan will have to be restudied along with the zoning proposals that emanated from it.

■Without the Intercounty Connector, the feasibility of the Konterra Shopping Center and indeed the entire Konterra project is called into question. This change will cause the need for a reexamination of existing land uses including industrial uses. Industrial uses presently determine the character of the neighborhood. Without Konterra, a continuation of the existing industrial pattern in the neighborhood would be logical. The change caused by the Governor's Intercounty Connector decision shows how the neighborhood was held hostage to the Konterra development since it was so heavily dependent on new roads. Without Konterra, there will be road capacity for the continued industrial development of the neighborhood. This change fulfills the requirement of substantial change in the character of the neighborhood.●

H. Staff's Analysis:

Mr. Steve Fisher from the Community Planning Division offers the following comments:

■The applicant proffers a change argument based upon the decision to abandon the Intercounty Connector. It is asserted that:

The Intercounty Connector was the bulwark of the Konterra project, which set the land use pattern and road network proposed in the neighborhood. Without the Intercounty Connector, the Master Plan will have to be restudied along with the zoning proposals that emanated from it. Without the Intercounty Connector, the feasibility of the Konterra shopping center and indeed the entire Konterra project is called into question.

■What is actually necessary for the Konterra project to proceed is access to I-95. The *Master Plan for Subregion I* recommends two such access points. One access point would be the Intercounty Connector and the other would be at Contee Road (extended). The State has not abandoned that portion of the Intercounty Connector from US 1 to US 29, to include an interchange with I-95. Further, the proposed interchange at Contee Road (extended) has received Federal Location Approval. The costs involved in obtaining Location Approval were borne by the shopping center developer. Hence, there is no reason to conclude at this juncture that the Konterra project should no longer be considered in land use decisions.

■Nor has the Intercounty Connector decision precipitated a decision to reexamine the *Master Plan for Subregion I*, as postulated in the change argument, or even a sense that any such reexamination has to be done. Even if such a reexamination were contemplated, it cannot be presupposed that the subject property would ultimately be recommended for industrial use. The master planning process in this jurisdiction is a long and complicated affair involving many parties and is consequently one which precludes reliable guesses as to the fate of particular properties in advance of undertaking the actual planning process.

■Indeed, it is far from certain that industrial zoning would even be considered during such a reexamination as implied in the change argument: "This change will cause the need for a reexamination of existing land uses including industrial uses." As noted in the master plan:

Transportation is a critical issue in Subregion I and the most important issue addressed in this Plan. Extensive road construction will be necessary in order to serve the Subregion's future transportation needs. In addition, future development in the Subregion must be carefully balanced with the capacity of the planned transportation system to insure an adequate level of service.

■To date, there is no evidence that this situation has changed and, accordingly, no reason to postulate that additional high trip-generating zones would even be considered during a master plan reexamination.

■The applicant also makes the following assertion in support of his change argument:

Industrial uses presently determine the character of the neighborhood. Without Konterra, a continuation of the existing industrial pattern in the neighborhood would be logical...Without Konterra, there will be road capacity for the continued industrial development of the neighborhood.

■In fact, the neighborhood defined by the applicant contains few industrial uses. These are confined to the east side of Virginia Manor Road and even that is not fully developed. A large tract owned by Maryland National Memorial Park is zoned I-3 but is vacant. A potential developer has recently obtained a zoning text amendment to allow senior citizen housing in the I-3 Zone. This factor indicates a trend in a direction opposite to the asserted continued industrial development of the neighborhood.●

Mr. Tom Masog from Transportation Section also provides additional comments on the asserted abandonment of the ICC:

- 1. The statement that the State of Maryland has abandoned its support of the Intercounty Connector is misleading. The governor does support further study and potential implementation of a multilane facility between US 1 and US 29. A project planning study is included in the State Consolidated Transportation Program which would study east-west link improvements within the A-44 study area, including the US 1/US 29 connector facility.
- 2. The statement that the governor did initiate sale of Intercounty Connector right-of-way is correct, but that effort was stopped by intervention from the State Comptroller as well as other elected officials. No action has been taken that renders future construction of the roadway to be impossible.
- 3. Given traffic projections done as part of the Intercounty Connector study, it is unreasonable to state that this roadway will be diminished in importance. The traffic assignments indicated that most of the traffic using the Intercounty Connector was not using the facility from end to end, but was making much shorter trips in order to bypass local neighborhood facilities.
- 4. As the most objectionable impacts of the Intercounty Connector appeared to be woodland and stream impacts in Montgomery County, with very little evidence of significant environmental concerns in Prince George's County, the statement that "the fate of the alignment within the neighborhood is now seriously in question" is patently false.

- 5. The Konterra project has never been driven by the Intercounty Connector, but is much more dependent on two additions to the road network: (a) a connection between US 1 and US 29, which is under study in the Consolidated Transportation Program; and (b) access to I-95 at Contee Road, which is also under study in the Consolidated Transportation Program. While the mix of eventual uses within Konterra may be different if it is not to be connected to I-270 by a direct multilane highway, no evidence has been provided to suggest that Konterra is infeasible. It is wrong to suggest that Konterra is heavily dependent on the Intercounty Connector.
- 6. The Intercounty Connector is not officially dead, as suggested by the applicant. Neither county has taken the roadway off their Master Plans, or otherwise developed Master Plans that do not include it.●

From a legal perspective, 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 a 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.

I. Conformance With the Purposes of the Requested I-1 Zone:

Sec. 27-469. I-1 Zone (Light Industrial).

(a) Purposes.

(1) The purposes of the I-1 Zone are:

- (A) To attract a variety of labor-intensive light industrial uses;**
- (B) To apply site development standards which will result in an attractive, conventional light industrial environment;**
- (C) To create a distinct light industrial character, setting it apart from both the more intense Industrial Zones and the high-traffic-generating Commercial Zones; and**
- (D) To provide for a land use mix which is designed to sustain a light industrial character.**

The subject property is surrounded by R-R (Rural-Residential) zoned properties. The 1990 Approved Master Plan for Subregion I recommends for these properties and the subject property residential development at low-suburban density (single-family detached homes on lots of 20,000 square feet at an average of 1.85 dwellings per acre). There are several levels of residential and commercial zoning categories, with varying degrees of development standard and intensity, between the R-R Zone and the I-1 Zone. The I-1 Zone is intended to serve as a transition from commercially-zoned areas to industrially-zoned areas, creating a balance of traffic generation and development/labor intensity. Given the prevailing character of the subject residential neighborhood, the proposed rezoning of the subject property is not likely to serve this intent and would not be in conformance with the purposes of the I-1 Zone.

J. Conformance With the Purposes of the Requested R-R Zone:

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.**

As noted, the subject property is surrounded by R-R (rural residential) zoned properties. The area is predominantly wooded with scattered development of single-family houses. The proposed I-1 (light industrial) Zone represents a much more intense pattern of development and would generate more traffic than permitted under the existing R-R Zone. A comparison analysis of estimated trip generation within the two zoning categories indicate that the proposed zoning change would deteriorate traffic service levels in the area (see attachment-Transportation Section). The proposed rezoning of the subject property from R-R to I-1 would not be in conformance with the purposes of the R-R Zone.

CONCLUSION:

There has been no change in the character of the neighborhood since the adoption of the 1990 Sectional Map amendment. The applicant's argument is based upon the asserted abandonment of the proposed Intercounty Connector. The proposed rezoning is not in conformance with the purposes of the requested I-1 Zone. Moreover, there is no evidence to suggest that the existing R-R Zone has deprived the applicant of all reasonable use of the subject property. There are a number of uses permitted by right and special exception in the R-R Zone which would be consistent with the land use recommendation of the Master Plan and could be supported with sound land use rationale. Therefore, it is recommended that this application be DENIED.