



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

ZONING MAP AMENDMENT PETITION NO. 9957

Application	General Data
Project Name Boone Property Location Southeast corner of MD 202 and Wood Ember Drive, known as 2210 Old Largo Road. Applicant/Address Michael Boone 2210 Old Largo Road Upper Marlboro, Maryland 20774 Correspondent Norman D. Rivera Rifkin, Livingston, Levitan & Silver 9305 Ivy Lane, Suite 500 Greenbelt, MD 20770	Date Accepted 9/6/02
	Planning Board Action Limit N/A
	Plan Acreage 5.38
	Zone R-E
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 79
	Council District 06
	Municipality N/A
	200-Scale Base Map 203SE12

Purpose of Application			Notice Dates	
Rezoning from R-E to R-R			Adjoining Property Owners (CB-15-1998)	9/10/02
			Previous Parties of Record (CB-13-1997)	N/A
			Sign(s) Posted on Site	N/A
			Variance(s): Adjoining Property Owners	N/A
Staff Recommendation			Staff Reviewer: Elsabett Tesfaye	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION	
		X		

November 13, 2002

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. 9957**

REQUEST: **Rezoning from the R-E 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 301-952-3530.

FINDINGS:

- A. Location and Field Inspection:** The subject property is located on the southeast corner of MD 202 and Wood Ember Drive, approximately 400 feet northeast of the intersection of Town-Farm Road and MD 202. The property consists of 5.38 acres of land and is improved with a one-story single-family dwelling with an accessory garage. It has 197 feet of frontage on MD 202 and approximately 718 feet of frontage on Wood Ember Drive.

B. Development Data Summary:

	EXISTING	PROPOSED
Zone(s)	R-E	R-R
Acreage	5.38	5.38
Use(s)	Residential	Residential
Density/ DU	0.8-1.5	1.6-2.6
Minimum Lot Area	40,000	20,000

- C. History:** The property was retained in the R-E Zone in the approved 1994 *Sectional Map Amendment for Subregion VI*.

- D. Master Plan Recommendation:** The 1993 approved *Master Plan for Subregion VI* recommends the property for residential development at estate density (single-family detached homes on lots of 40,000 square feet at an average of 1.0 dwelling per acre). In the Living Area Section (page 90) under Specific Community Recommendations, the master plan recommends the following:

“Given the existing pattern of residential densities and the need to maintain compatible land use relationships within the Marlboro Community, it is recommended that the master plan reinforce existing land use and the related zoning. This includes extensive areas of Residential Estate Use (with R-E zoning) in the Brown Station Road and Largo Road corridors....”

- E. Request:** The applicant requests a rezoning of the property from the R-E (Estate-Residential) Zone to the R-R (Rural-Residential) Zone.

- F. Neighborhood and Surrounding Uses:** Staff defines the following neighborhood boundaries for the subject application:

North: MD 193/Oak Grove Road

East: Conrail Tracks

South: Town Farm Road

West: MD 202

These boundaries are consistent with the Zoning Hearing Examiner’s boundaries for A-9945.

The surrounding neighborhood is characterized by low-density, single-family residential developments, farmland and townhouses. Three R-E-zoned, undeveloped properties abut the subject

property to the south. The Brock Hall Gardens Park that is owned by The Maryland-National Capital Park and Planning Commission abuts the property to the east. The park is zoned R-E. To the west across MD 202 is located the University of Maryland Experimental Farm in the O-S Zone and an R-E-zoned property.

To the north and northeast, across Wood Ember Drive, is located the Rustic Ridge Subdivision (including the Howard property that was the subject of A-9945) in the R-R Zone. There is also .33-acre of R-E-zoned land abutting the property at its northeastern corner.

The portion of the subdivision that is directly across the subject property contains two small areas (1.72 acres and .97 acre) that are zoned R-E. These areas, because of their shape and location, are incorporated into the layout of the R-R zoned subdivision and will be developed accordingly.

G. 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 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.

H. Applicant's Position: The applicant claims that the character of the neighborhood was substantially changed by the development of the surrounding area in the R-R Zone (Rustic Ridge subdivision and Howard property [A-9945]), and by the use of a net lot averaging development technique (Rustic Ridge). The applicant also claims that the abandonment of the master plan extension of Gadsen Road, the construction of Old Largo Road, and the provision of water and sewer lines for the subject property in conjunction with the development of the Rustic Ridge subdivision have provided a cumulative substantial change to the character of the neighborhood.

In a supplemental submission dated November 1, 2002, the applicant stated the following:

The applicant in zoning map amendment application number A-9957 proffers a neighborhood that the zoning authority has delineated (The Court will defer to the Zoning authority regarding scope of the neighborhood to be drawn. See Sedney v. Lloyd, 410 A.2d 616, 44 MD.APP. 633, 640, citing Pettey v. Board of Co. Comm'rs, 271 MD. 352, 363, 317 A.2d 142 (1974). Secondly, the applicant has acknowledged that the subject property is indeed not completely surrounded but partially surrounded by R-R zoned property; however, we point out that according to a body of Maryland caselaw, a landowner need only establish that a change has occurred in the character of the neighborhood rather than applied to every surrounding property. Moreover, the improvements that have arrived and/or will arrive with development of neighboring Rustic Ridge and rezoning of the Howard Property allow the

applicant to establish a *Bowman Group*-type argument for cumulative change to the character of the neighborhood.

- I. Staff's Analysis:** The rezoning from R-E to R-R of the 89-acre Largo-Marlboro (DeCesaris) property that subsequently subdivided into the 149-lot, single-family development (Rustic Ridge) occurred as part of the adoption of the Subregion VI Sectional Map Amendment (SMA) in 1994. The rezoning was based on the argument that the R-R Zone would provide an effective buffer between the R-S Zone to the north and R-E Zone to the south. The master plan recommends Estate-Residential use for this property and for most of the MD 202 Corridor. The SMA indicates that the R-R Zone was approved to reflect the density of the adjoining Perrywood development, which is in the R-S Zone (Amendment 11, CR-54-1994).

With respect to the 5.53-acre Howard property (A-9945), this property is surrounded on three sides by R-R-zoned property (DeCesaris) and its rezoning was based on the finding of mistake in the current Sectional Map Amendment. In her decision of April 24, 2001, the Zoning Examiner concluded that the exclusion of the Howard property from the rezoning amendment to the R-R Zone (for the DeCesaris property) during the 1994 Subregion VI Sectional Map Amendment was a mistake. Therefore, the rezoning of the Howard property was granted to correct the mistake, and it should not be relied upon as a basis for a change in the character of the neighborhood.

The subject property is not surrounded by R-R-zoned properties as implied in the applicant's justification statement. The northern and eastern portion of the subject property is separated from the two R-R-zoned properties by an access road with a 60-foot-wide right-of-way and a 20-acre park owned by M-NCPPC. The subject property abuts R-E-zoned properties to the east and south. The R-E-zoned area east of the property extends to the Conrail tracks (the eastern boundary of the neighborhood). South of the property, the R-E-zoned area extends far beyond Town Farm Road (the southern boundary of the neighborhood).

In addition, the applicant fails to recognize that the lot size averaging provisions (used to develop these subdivisions) were available at the time of the SMA adoption. Therefore, the resulting development was contemplated at that time. Furthermore, the extension of water and sewer lines to serve new development at either R-R or R-E densities was likewise anticipated. The Marlboro Community is located within the service envelope defined by the county's water and sewerage plan.

- J. Conformance with the Purposes of the R-R and R-E Zones:** The purposes of the R-R Zone are contained in *Section 27-428 (a)* of the Zoning Ordinance:

- (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

The purposes of the R-R E Zone are contained in *Section 27-427 (a)* of the Zoning Ordinance:

- (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 large lots and dwellings of various sizes and styles;
- (C) To encourage the preservation of trees and open spaces in order to create an estate-like atmosphere; and
- (D) To prevent soil erosion and stream valley flooding.

The subject property can readily conform to the purposes of either zone. However, the proposed R-R Zone at this location conflicts with the *1993 Approved Master Plan for Subregion VI* recommendation for residential development at the estate density. The existing R-E zoning of the subject property is in conformance with the master plan's recommendations.

CONCLUSION:

The applicant's argument of change is mainly based upon the development of two nearby properties—one of which was zoned with the adoption of the SMA, and the other as an amendment to correct a mistake in the SMA adoption. The applicant has failed to show that the character of the neighborhood has been substantially altered by the changes cited or that the resulting development was not anticipated by the District Council when the *Subregion VI Sectional Map Amendment* was adopted. Therefore, it is recommended that this application be DENIED.