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Zoning Map Amendment

A-9995

Application	General Data
Project Name: Bell Station Center Location: Southeast quadrant of the intersection of MD 193 and Bell Station Road. Applicant/Address: Broglen, LLC 10905 Fort Washington Road, Ste. 103 Fort Washington, MD 20744 Owner/Address: Vincent Palumbo and Richard Palumbo 1 Steffen Point Annapolis, MD 21401	Date Accepted: 9/10/2007
	Planning Board Action Limit: N/A
	Plan Acreage: 8.99
	Zone: C-M
	Dwelling Units: N/A
	Gross Floor Area: N/A
	Planning Area: 70
	Tier: Developing
	Council District: 04
	Municipality: N/A
	200-Scale Base Map: 207NE11

Purpose of Application	Notice Dates
Rezone from C-M to C-S-C	Adjoining Property Owners Previous Parties of Record Registered Associations: 6/11/2007 (CB-12-2003)
	Sign(s) Posted on Site and Notice of Hearing Mailed: N/A

Staff Recommendation		Staff Reviewer: Cynthia Fenton	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

TECHNICAL STAFF REPORT

March 9, 2009

TO: The Prince Georges County Planning Board
The Prince Georges County District Council

VIA: Jimi Jones, Zoning Supervisor

FROM: Cynthia Fenton, Planner Coordinator

SUBJECT: **Zoning Map Amendment A-9995**
Bell Station Center

REQUEST: **Rezoning from the C-M (Commercial Miscellaneous) Zone to the C-S-C**
(Commercial Shopping Center) Zone

RECOMMENDATION: **APPROVAL with conditions**

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 site is located in the southeast quadrant of the intersection of MD 193 and Bell Station Road. The subject property comprises 8.99 acres of a larger 10.8 acre parcel, Parcel B, in the C-M Zone. The subject property is wooded and undeveloped.
- B. **History:** The property was rezoned from the R-E Zone to the C-M Zone pursuant to the November 1993 *Approved Master Plan and Sectional Map Amendment for Glenn Dale-Seabrook-Lanham and Vicinity (Planning Area 70)*. Approximately 1.82 acres at the intersection of Bell Station Road and Annapolis Road (MD 450) are approved for a gas station, car wash and convenience store subject to Special Exception SE 4460 and Detailed Site Plan DSP 03081.
- C. **Master Plan Recommendations:**
- 2002 Prince George's County Approved General Plan:** The subject site is 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.
- 1993 Approved Master Plan and Sectional Map Amendment for Glenn Dale-Seabrook-Lanham and Vicinity (Planning Area 70).** The property is located in Planning Area 70. The master plan recommended service commercial uses for the subject property and envisioned "health and medical-related uses in a campus-like setting." (p.70) The master plan recognized the unique location of the subject property within the triangle formed in part by Glenn Dale Boulevard, Bell Station Road and Annapolis Road. A preliminary Glenn Dale master plan and sectional map amendment has been initiated to develop and implement policy recommendations of the 2002 *Prince George's County Approved General Plan* and update the 1993 Master Plan and Sectional Map Amendment.
- D. **Request:** This applicant is requesting a rezoning of the subject property from the C-M to the C-S-C Zone for retail commercial development.
- E. **Neighborhood and Surrounding Uses:** According to the applicant, the subject property is located in a neighborhood defined by the following boundaries:
- North—Washington-Baltimore-Annapolis Trail
 - South—US 50
 - East—Collington Branch/Pope's Creek Railroad
 - West—MD 193 (Glenn Dale Boulevard)

Staff does not agree with the boundaries set by the applicant. While the concept of a neighborhood is flexible, the neighborhood must comprise an area reasonably within the immediate area. Drawing neighborhood boundaries to include areas that have undergone physical change merely to prove that change has occurred in the neighborhood is not reasonable. The neighborhood defined by the applicant is quite a large, extending even beyond the area identified as Community VI in the *1991 Bowie-Collington-Mitchellville and Vicinity Master Plan*. For

planning purposes, neighborhoods are considered to be smaller units of a larger community, defined by streams or other natural features as well as major roads. The neighborhood considered for this analysis should relate more appropriately to the subject property, acknowledging that properties on the opposite side of boundaries may be considered within a neighborhood. Therefore, for purposes of this analysis, the following neighborhood boundaries are suggested:

- North—Washington-Baltimore-Annapolis Trail
- South—MD 450 (Annapolis Road)
- East—PEPCO power lines
- West—MD 193 (Glenn Dale Boulevard)

The property is surrounded by the following uses:

- North—Across Bell Station Road, single family detached homes in the R-R Zone
- South—Office uses in the C-O Zone
- East—Gas Station and Car Wash in the C-M Zone
- West—MD 913 (Glenn Dale Boulevard)

The neighborhood can be characterized as primarily single-family residential with office and retail commercial uses oriented toward MD 450. The Fairwood Green Shopping Center is visible from the subject site, directly across MD 450.

F. Zoning Requirements:

Section 27-157(a)(1) 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.**

The applicant has submitted arguments supporting both criteria—that there has been a substantial change in the character of the neighborhood, and that a mistake was made in the current sectional map amendment. The applicant believes there have been several documented changes in the character of the neighborhood since the last SMA which, cumulatively considered, justify the requested rezoning to the C-S-C Zone. The applicant also contends that there was a mistake made in the adoption of the 1986 SMA (CR-25-1986) that would support the subject property being placed in the C-S-C Zone.

Change Argument/Applicant's Position: The applicant contends that four factors have

contributed to a substantial change in the character of the neighborhood:

- The amount of physical development within the neighborhood that has occurred within the last ten years
- The effect of the Fairwood Community, including the Fairwood Green Shopping Center, on the subject property, as well as the development of the C-O zoned property directly south of the subject site
- The shift from small, highway-oriented, commercial miscellaneous uses to retail-oriented uses
- The redesign, widening and reconstruction of MD 450

The applicant states the most obvious example of change in the neighborhood has been the rezoning and development of the Fairwood community located within the limits of the Bowie-Collington-Mitchellville and vicinity master plan, and directly across MD 450 from the subject property. The 1991 Bowie-Collington-Mitchellville and Vicinity master plan recommended suburban estate development or an “alternative low-density development technique concept” for the 1,057-acre property, located directly across MD 450 from the subject property. Fairwood was rezoned from R-E to M-X-C Zone in 1994, after the subject property was rezoned to C-M, pursuant to Zoning Ordinance 24-1994. The M-X-C Zone allows for a higher residential density and a more significant commercial component than that allowed by recommended zoning options in the master plan. The applicant claims that the Fairwood Green Shopping Center has had the most dramatic impact on the subject property, as it represents a significant departure from the development originally anticipated.

The applicant further asserts that the rezoning of the 4.5 acre Melvin Motors property from the C-M to C-S-C Zone represents a shift away from miscellaneous commercial uses to retail, consumer service and professional office-oriented uses along the MD 450 corridor. Other examples cited in the statement of justification to support evidence of change in the neighborhood include construction of the Shoppes at Highbridge, a catering business at the site of a former take-out restaurant, and the recommendation in the February 2006 *Approved Master Plan for Bowie and Vicinity and Sectional Map Amendment for Planning Areas 71A, 71B, 74A, 74B* for vacant and underutilized properties along Old MD 450 in West Bowie Village to be redeveloped as community-oriented mixed uses. Closer to the subject property the applicant points to the subdivision Gabriel’s Run directly across Bell Station Road, the medical/ professional offices currently under construction just south of the site, and improvements to MD 450 as evidence of change, which has transformed the character of the neighborhood from rural/agricultural to suburban. The applicant concludes that these changes, evaluated in their totality, constitute a substantial change in the neighborhood.

Change Argument/Staff’s Analysis:

Changes to the neighborhood since the last comprehensive rezoning over 20 years ago may be substantial, but they were hardly unanticipated. The rezoning of the Fairwood Turf Farm from R-E to M-X-T simply represents an intensification of the mix of uses that was recommended in the 1990 Bowie master plan. The same is true for the development of the C-O zoned property south of the subject property. Although the relocation of the historic home was not contemplated during the last comprehensive rezoning, the newly constructed office buildings on the C-O zoned parcel immediately south of the subject property conform to the recommended land use for that

property, though the configuration (four story office building v. townhouses) differs from the master plan recommendation. Their presence, as well as water and sewer extensions and road improvements documented by the applicant, merely reflect the fruition of established zoning.

The courts have held that an increase in the number of residential dwelling units, resulting from an intensification of residential zoning, such as what occurred at Fairwood, are not changes which *per se* warrant rezoning. By the same token, the collective extension of sewer and water facilities, completion of previously contemplated road improvements, increased traffic, and intensified residential growth were held insufficient evidence of change to justify a rezoning from a residential to a commercial zone. However, the burden of proof for either change or mistake is significantly less onerous when rezoning from one commercial subcategory to another. In this case, the applicant is proposing a less intensive zone than the existing one on the property. Therefore, in staff's opinion, the physical changes cited by the applicant, when considered collectively, are enough to find that there has been a substantial change in the neighborhood.

Mistake Argument/Applicant's Position:

The applicant also contends that the District Council erred in adopting the C-M Zone for the subject property in the 1993 SMA. The applicant argues the District Council failed to take into account existing facts; the facts relied upon were incomplete; and that the action was premised on a misapprehension. The applicant has presented "four aspects to the mistake, which, taken together, constitute a mistake occurred at the time of adoption of the SMA." These are summarized as follows:

Mistake 1—The Council failed to take into account that Fairwood was recommended for mixed-use development by the adjoining Bowie-Collington-Mitchellville and Vicinity master plan. Although the master plan text recognized Fairwood (then referred to as the "Turf Farm") as a "Dominant Feature" of the community, it was expected to be developed under V-L or R-S zoning rather than the M-X-C Zone which allows a higher density. The development ultimately became a dominant feature of the adjoining Glenn Dale master plan areas as well as the Bowie area. In addition, the internal nature of the Fairwood Green Shopping Center, "located a distance into the community, provides services predominately to the Fairwood community... More convenience retail uses, such as gas stations and other convenience stores are more appropriately located outside of the planned community where they can serve the entire neighborhood, such as the subject property."

Mistake 2—The Council could not have taken into account the fact that the owners of the adjoining C-O zoned property to the south would receive approval to have the historic site on the property relocated, allowing them to develop over 100,000 square feet of medical uses in two four-story buildings rather than a townhouse office setting, and which effectively absorbed the anticipated market for medical office uses in the vicinity. The Council also could not have foreseen that the master plan recommendations for developing the C-O and C-M zoned triangle area in an integrated manner could not come to fruition.

Mistake 3—The subject property was not an appropriate location for the C-M Zone at the time the SMA was adopted. The designation of the C-M Zone on the subject property directly conflicts with the purposes of the zone, given its proximity to a planned mixed-use development. The applicant submitted a second amendment to the statement of justification on February 13, 2009 in further support of this argument. The applicant contends that had the District Council correctly considered the impact of the Fairwood mixed-use development and reconstructed MD 450, which, in proximity to the subject property functions as a limited access roadway with a

decidedly non-highway feel, it would not have granted the C-M Zone to the property.

Mistake 4—The premises relied upon by the District Council were invalid as they failed to take into account the fact that Bell Station Road was redesigned from a cul-de-sac to a collector roadway intersecting with MD 193 and that the zoning granted to the subject property and master plan text recommendations were based on the cul-de-sac configuration. The applicant contends that the failure to take this into account resulted in the Council’s action being based on misapprehension.

Mistake Argument/Staff’s Analysis

Unlike the change argument, evidence of mistake is not considered collectively in order to justify a rezoning. There either was, or was not, a mistake. 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.

Staff provides the following comments on the mistake arguments presented by the applicant.

Mistake 1—The rezoning of Fairwood to the M-X-C Zone merely represents an intensification of what was recommended in the 1991 Bowie Master Plan; on page 88 it states, “[e]stablishment of an overall planned community characterized by distinct neighborhoods of *mixed uses*...is the Plan’s goal.” (Emphasis added) The recommended development concept included a proposal for a mix of uses “within a framework that supports a self-sufficient community.” (Bowie Master Plan page 88) Thus, the vision for Fairwood, even in 1991, was for mixed-use development.

Mistake 2—The applicant has not provided any evidence that there is no longer a market for medical-related office uses in the vicinity, nor has any evidence been provided that the intensity of office development has significantly increased over what was anticipated in the last comprehensive rezoning. The fact that the property has not yet been developed does not mean that such development is precluded, or that the District Council made a mistake in granting the C-M Zone just because no development has yet occurred on the subject property. However, as discussed below, staff, in fact, concurs with the applicant in that the District Council erred in classifying the subject property C-M based on its proximity to a retail commercial center and the resulting conflict with the purposes of the C-M Zone.

Mistake 3—It appears that a mistake occurred on the part of the District Council in granting the C-M classification to the subject property in the 1993 Glenn Dale SMA. Although requested by the current owner for a health campus, the owner now contends that a health campus cannot be constructed. Since the C-M Zone may be developed with any use permitted in that zone, the applicant has not been denied use of his property regardless of whether a health campus can or cannot be constructed. But, a question remains as to whether the C-M Zone, which is appropriate for highway oriented service-commercial uses, was an appropriate choice for the subject property when the zoning was granted. Staff finds that the District Council erred in approving the C-M

Zone in 1993. The Council based its decision on the property's location within a triangle of three roadways and its access to MD 450. However, what the Council apparently failed to consider, was whether the purposes of the zone could be met given anticipated development in the immediate vicinity at that time. One of the purposes of the C-M Zone is to **provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas.** Another purpose is [t]o **provide concentrations of these uses which are relatively far apart.** The Fairwood Turf Farm was recommended in 1991 for mixed-use development that, ostensibly, would include a retail component. The District's Council's action in 1993 was subsequently inappropriate, based on the subject property's proximity to an anticipated mixed use development, and the fact that it was not part of a concentration of other C-M zoned properties—which created, in effect, a spot zone. Such zoning has been held invalid when found inconsistent with other uses in the area and when it serves the private interests of the property owner rather than the public good. The C-M Zone is clearly at odds with the immediate area, particularly regarding its proximity to the Fairwood Green shopping center and overall character along this portion of MD 450. Though a health complex may have served the public good, there was nothing mandating the property owner to construct that specific use. Other uses permitted in the C-M Zone, particularly auto-related uses, would indeed be inconsistent with the residential and commercial uses currently existing in the neighborhood.

There is generally a presumption of correctness applied to a comprehensive rezoning which requires a “substantial demonstration” that the District Council made a mistake at the time it classified the property. However, the courts have held that in a case such as this, where the applicant is requesting a less intense zoning subcategory, that the test is significantly less onerous. Because the issue of whether the District Council took the correct action in 1993 is fairly debatable, staff believes the applicant has, in this case, adequately demonstrated that the District Council erred when it rezoned the subject property to C-M, and, that the C-S-C Zone would have been the appropriate zone.

Mistake 4—Just because the District Council ultimately approved a different road configuration than was preliminarily presented, it cannot be summarily concluded that zoning the property C-M was invalid. The District Council specifically modified the cul-de-sac to a collector road, consistent with the recommendation for Bell Station Road found in the 1991 Bowie master plan. The applicant has not provided any evidence indicating how the provision of a through roadway adjacent to the subject property resulted in the invalidation of the C-M Zone as opposed to the C-S-C Zone.

G. **Conformance with the Purposes of the Zone Requested:**

The purposes of the C-S-C Zone (Commercial Shopping Center) are contained in Section 27-454(a)(1) of the Zoning Ordinance:

- (A) **To provide locations for predominantly retail commercial shopping facilities;**
- (B) **To provide locations for compatible institutional, recreational, and service uses;**
- (C) **To exclude uses incompatible with general retail shopping centers and institutions; and**
- (D) **For the C-S-C Zone to take the place of C-1, C-2, C-C, and C-G Zones.**

Staff Comment: Staff believes that the C-S-C Zone is a more appropriate zone for the subject property than the existing C-M zoning based on the current surrounding land uses and General Plan policies for the Developing Tier. The General Plan specifically discourages new isolated commercial development and encourages uses that are pedestrian friendly. The C-S-C Zone is compatible with the existing residential and retail commercial uses in the neighborhood. The applicant has not proposed a specific use to determine whether it would meet the purposes of the C-S-C Zone. Staff notes, however, that the approval of a Euclidean rezoning request merely approves the zone. A review of specific uses does not occur at this stage.

CONCLUSION

A piecemeal rezoning request such as the instant application must present evidence of either substantial change in the neighborhood or evidence of a mistake in the last comprehensive rezoning. The applicant has provided sufficient evidence that both substantial change in the neighborhood has occurred and that the District Council made a mistake when it originally classified the subject property in the C-M Zone. Therefore, it is recommended that Zoning Map Amendment A-9995 be APPROVED, subject to the following condition:

1. A detailed site plan shall be required to ensure visual compatibility with the surrounding residential and commercial uses, safe access, and efficient internal circulation and pedestrian connectivity.