



The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

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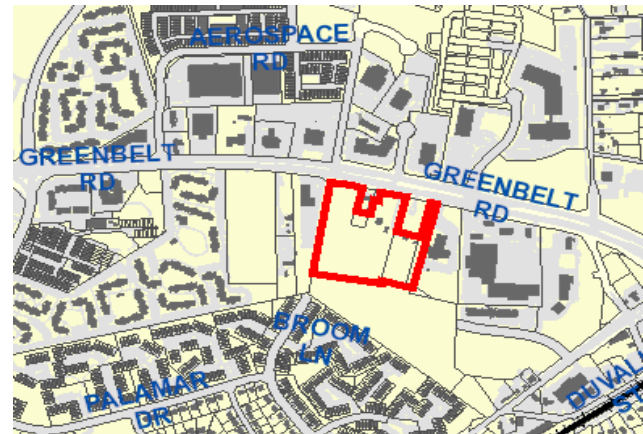
Zoning Map Amendment

ZMA-2022-001

Marianne Davis Trust Development

REQUEST	STAFF RECOMMENDATION
Request for Additional Review and Recommendation – Zoning map amendment request to rezone the subject property from Residential, Rural Zone (RR) to Residential, Multifamily-48 Zone (RMF-48).	With the conditions recommended herein: <ul style="list-style-type: none">Disapproval of Zoning Map Amendment ZMA-2022-001

Location: On the south side of MD 193 (Greenbelt Road), at its intersection with Forbes Boulevard.	
Gross Acreage:	12.43
Zone:	RR
Prior Zone:	R-R
Dwelling Units:	0
Gross Floor Area:	0
Planning Area:	70
Council District:	03
Municipality:	N/A
Applicant/Address: Land Development Investors II, LLC c/o Jay Attar 1 Stone Chapel Lane Pikesville, MD 21208	
Staff Reviewer: Dominique Lockhart Phone Number: 301-952-3411 Email: Dominique.Lockhart@ppd.mncppc.org	



Planning Board Date:	02/23/2023
Planning Board Action Limit:	N/A
Staff Report Date:	11/10/2022
Date Accepted:	09/23/2022
Informational Mailing:	07/13/2022
Acceptance Mailing:	09/21/2022
Sign Posting Deadline:	N/A

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

February 22, 2023

REFERRAL MEMORANDUM

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

FROM: Dominique Lockhart, Planner III, Zoning Review Section *DAL*
Development Review Division

VIA: Jeremy Hurlbutt, Supervisor, Zoning Review Section *JDH*
Development Review Division

SUBJECT: **Referral for Zoning Map Amendment ZMA-2022-001**
Marianne Davis Trust Development – Request for Additional Review and Recommendation

REQUEST

This application for a zoning map amendment, to rezone the subject property from Residential, Rural Zone (RR) to Residential, Multifamily-48 Zone (RMF-48), was accepted by the Prince George's County Planning Department on September 23, 2022, and is filed pursuant to Section 27-3601 of the Prince George's County Zoning Ordinance. On December 15, 2022, the Prince George's County Planning Board adopted staff's recommendation of DISAPPROVAL (dated November 10, 2022) of Zoning Map Amendment ZMA-2022-001.

On February 8, 2023, the Prince George's County Zoning Hearing Examiner requested that Planning Department staff address additional evidence submitted by the applicant's land planner, in support of the application. Staff's response is indicated in underlined text below.

Land Use

The subject property is located on the south side of MD 193 (Greenbelt Road), at its intersection with Forbes Boulevard. The site is comprised of 12.43 acres of mostly undeveloped land. An existing single-family residence is located on the eastern portion of the site.

The 2010 *Approved Glenn Dale-Seabrook-Lanham and Vicinity Sector Plan and Sectional Map Amendment* (sector plan and SMA) retained the prior Rural Residential (R-R) Zone on the subject property. The 2021 *Countywide Sectional Map Amendment* (CMA) rezoned the R-R Zone to the RR Zone on the subject property.

The subject property is surrounded by the following uses:

- **North**—Abutting the site to the north is Lot 1, a privately owned property in the RR Zone, containing a single-family residence (10211 Greenbelt Road). Also abutting the subject property is MD 193, an arterial roadway, which is the northern boundary of the sector plan and SMA area. Across MD 193, are properties located within the 2006 *Approved Sector Plan and Sectional Map Amendment for the East Glenn Dale Area (Portions of Planning Area 70)*, with commercial and office uses in the Industrial, Employment Zone.
- **East**—Place of Worship in the RR Zone.
- **South**—Undeveloped land in the RR Zone.
- **West**—Place of Worship in the RR Zone.

Below is an overview of the zoning history for the subject property:

- 1993 *Approved Master Plan and Sectional Map Amendment for Glenn Dale-Seabrook-Lanham and Vicinity (Planning Area 70)*: Subject property zoned R-R
- 2010 *Approved Glenn Dale, Seabrook, Lanham and Vicinity Sector Plan and Sectional Map Amendment*: Subject property zoned R-R

The sector plan and SMA recommends residential low land use on the subject property, with a focus on single-family detached units. Per the plan, Residential Low is defined as 0.5 to 3.5 dwelling units per acre (page 200 and Map 36 – Proposed Land Use on page 202). The allowed density would permit between 6 and 43 single-family residences on the subject property. Per the Zoning Ordinance, the maximum density allowed in the RR Zone is 2.17 dwelling units per acre, with a minimum lot area of 20,000 square feet (Section 27-4202(c)). This would allow maximum density of 26 single-family residences on the 12.43-acre site. The proposed RMF-48 Zone is the most intense of the residential base zones, with a permitted maximum density of 48 dwelling units per acre and a minimum lot area requirement of 7,500 square feet (Section 27-4202(i)). This would allow a maximum of 596 dwelling units on the site.

Required Findings

The following analysis is based on the referrals received and the statement of justification (SOJ) submitted by the applicant, to address the required findings for approval. To approve the requested zoning map amendment, Section 27-3601(e) of the Zoning Ordinance states the following:

“In determining whether to adopt or disapprove a proposed zoning map amendment (ZMA), the District Council may consider many factors. No amendment to the CBCAO Zone shall be granted without the applicant demonstrating conformance with the decision standards in Section 27-3603(d), CBCAO Zoning Map Amendment Decision Standards. No other zoning map amendment shall be granted without the applicant demonstrating either:

- (1) There has been a substantial change in the character of the neighborhood; or
- (2) There was a mistake in the original zone for the land subject to the amendment which has never been the subject of an adopted sectional map amendment; or
- (3) There was a mistake in the current sectional map amendment.”

Background on the Change/Mistake Rule

Zoning decisions of the legislative body enjoy a strong presumption of correctness and validity. Accordingly, a request to rezone an individual parcel requires evidence that there has either been (i) a substantial change in the character of the neighborhood since the time the zoning was put in place, or (ii) a showing that there was a “mistake” at the time of the most recent rezoning.

The current RR zoning was put in place through the CMA adopted in November 2021. However, the standards in Section 27-3601(e) reference the current sectional map amendment as the most recent zoning, at least with regard to whether there was a “mistake” in the zoning applied to the property. Staff assumes that the Prince George’s County District Council also intended the most recent sectional map amendment as the basis for evaluating whether there has been a substantial change in the character of the neighborhood.

Analysis

The applicant contends that retaining the subject property in the prior R-R Zone was a mistake by the District Council. Their contention is that the District Council failed to consider existing facts and trends within the sector plan and SMA, which had they been considered, would have resulted in a rezoning of the subject property to the Multifamily High Density Residential (R-10) Zone. The R-10 Zone was the predecessor to the RMF-48 Zone in the Zoning Ordinance. The applicant points to two distinct mistakes (the provided SOJ contains additional details on each mistake outlined) as follows:

Mistake 1

The District Council failed to take into account that the RR Zone is not conducive to the type of residential development promoted by the sector plan and SMA along MD 193, and creates conflict with the Future Land Use Principles and Policies contained within the sector plan and SMA, the result of which constitutes an error.

The purpose of the RR Zone is to encourage and facilitate single-family residential development upon moderately large lots. The development regulations of the RR Zone contravene the land use goals and principles contained within the sector plan and SMA. Recommendations 1 and 4 for the SMA Living Areas (page 1) state to “maintain and strengthen the character of existing neighborhoods” and “design residential infill to be compatible with existing neighborhood scale and character.” The SMA future land use principles and policies (page 200) outlines eight policies which include “promote infill development on vacant lots in existing residential areas” and “encourage land uses that provide sensitive transitions between commercial and employment centers and residential areas.”

No other property within Living Area 4 is zoned RR. The nearest RR zoned property lies to the east, beyond MD 564 (Lanham Severn Road), referred to as Living Areas 7, 8, and 9,

which contains a contrasting residential character compared to Living Area 4. The single-family nature of Living Area 4 is compromised by the surrounding development of office buildings, townhomes, high density residential, and commercial retail. Large single-family homes would weaken the character of the area, promote incongruent housing types, and create an awkward transition from surrounding non-residential development. In addition, a community design issue specified with the sector plan and SMA (page 65) is “incompatible residential infill” that disparages the trend towards construction of larger single-family residences. The RR Zone requires large lots which directly encourages the construction of large homes. Retaining the RR Zone unnecessarily exacerbates this construction trend. The RMF-48 Zone development would be harmonious with existing land uses along MD 193, including townhomes, apartments, commercial retail, and offices.

Mistake 2

The District Council failed to take into account that transportation improvements within the sector plan and SMA would undercut the viability of development within the RR Zone upon the subject property, thereby constituting an error.

One of the recommended roadway improvements found in the sector plan and SMA (page 168) is the relocation of Forbes Boulevard through Collector Road C-340. When constructed, the road will bisect the subject property. With the proposed alignment of C-340, development of the subject property in accordance with the RR Zone regulations would be practically impossible. Proposed roadway C-340 dates to at least the 1993 *Approved Master Plan and Sectional Map Amendment for Glenn Dale-Seabrook-Lanham and Vicinity (Planning Area 70)*, in which the roadway was referenced as C-339R. Both the 2009 *Approved Countywide Master Plan of Transportation (MPOT)* and 1993 *Approved Master Plan and Sectional Map Amendment for Glenn Dale-Seabrook-Lanham and Vicinity (Planning Area 70)* discourage access to individual residential driveways from collector and arterial roads.

Given the size of the subject property, the development restrictions of the RR Zone, and the alignment of C-340, it is impossible to develop the site with single-family detached homes as there is not available space for a residential street. The RMF-48 Zone provides for a level of density that would make development economically feasible considering the site constraints, which includes numerous environmental constraints, and the potential bisecting of the subject property if collector road C-340 is constructed. It was an error on the part of the District Council to retain the RR Zone for the subject property along with the proposed alignment of roadway C-340.

Staff Findings

Staff finds that the retention of the subject property in the RR Zone was intended, and that there was no mistake made by the District Council in its approval of the sector plan and SMA. The following is staff's collective analysis of the two mistakes stated by the applicant:

Mistake

The “mistake” prong requires a showing that the underlying assumptions or premises relied upon by the District Council during the rezoning were incorrect. For example, there was some incorrect fact or evidence that the Council relied on when making its decision that resulted in it applying the wrong zoning. It does not, however, refer to a mere mistake in judgment.

Mistake 1: Master Plan Analysis

The applicant states that the RR Zone is not conducive to the type of residential development promoted by the sector plan and SMA along MD 193.

Staff finds that, pursuant to Section 27-3601(e)(3), there was not a mistake in the sector plan and SMA. The current RR zoning classification is appropriate for the subject property.

The sector plan recommends residential low land use on the subject property. The future land use recommendations include maintaining the current densities for residential neighborhoods (page 3). Per the plan, Residential Low is defined as 0.5 to 3.5 dwelling units per acre (page 200 and Map 36 – Proposed Land Use on page 202). The purpose of the RR Zone to encourage variations of single-family detached residential lots and the preservation of trees and open spaces aligns with the residential low land use category goals. The purpose of the proposed RMF-48 Zone directly contrasts the residential low land use recommendation by encouraging high-density multifamily residential development.

In addition, page 1 of the SMA states that the vision for the Glenn Dale-Seabrook-Lanham area “will continue to be a lower density suburban community comprising stable single-family neighborhoods, successful commercial and employment centers, and open space amenities.”

The subject property is specifically located within Living Area 4 of the SMA. Key recommendations for all living areas include ensuring that infill development conforms to and complements the existing neighborhood character (pages 10–11). Abutting properties to the east, west, and south are places of worship and undeveloped land in the RR Zone, which is the same zone as the subject property. In addition, directly to the north of the subject property is an existing single-family residence in the RR Zone. The SMA does specify two areas that are envisioned for long-term higher-density redevelopment, which includes the Seabrook MARC station area and the Vista Gardens Market Place area (page 163).

In addition, the most recent rezoning was the adopted Countywide Map Amendment (Prince George’s County Council Resolution CR-136-2021), that became effective on April 01, 2022. On July 23, 2019, the Prince George’s County Council authorized the Maryland-National Capital Park and Planning Commission (through Council Resolution CR-27-2019) to prepare a Countywide Map Amendment (CMA), to implement the zones contained in a new Zoning Ordinance for the County. The subject property retained its zoning of RR.

The Planning Board staff, as part of the CMA’s Public Participation Program, held three regional education sessions, numerous meetings with community and agency stakeholders, meetings with municipal agencies, virtual office hours, and advertised public hearings were held on the CMA zoning map. A search of the analysis testimony during the CMA Public Hearing Process revealed that no testimony or written correspondence was submitted refuting the proposed RR Zone for the subject property.

Mistake 2: Transportation Analysis

The applicant states that transportation improvements within the sector plan and SMA would undercut the viability of development upon the subject property, and that access to individual residential driveways from a collector road is discouraged.

Driveway access from both arterial and collector streets is discouraged but not prohibited. Section 27-6206(d)(1) of the Zoning Ordinance provides criteria for allowing driveway access from an arterial or collector street in order to provide safe mobility design options.

The street network for a development is to be served by a system of vehicular accessways and internal circulation, which can include design solutions such as driveways, shared driveways, turnarounds, and alleys. In addition, new single-family residential subdivisions processed with a preliminary plan of major subdivision will have to achieve a specified internal street connectivity index score in accordance with Table 27-6206(f)(1).

Transportation recommendations from the SMA include reducing traffic congestion on local streets, collectors, and arterials, and encourages alternative means of transportation within the sector plan area (pages 161–162). Roadway C-340 is a proposed collector roadway that will connect Lanham Severn Road to Greenbelt Road (Table 37, page 168 and Map 31, page 169) bisecting the subject property. In addition, there is a recommended designated bike lane connecting Forbes Boulevard (Map 26, page 153 and Table 38, page 171) located along the western boundary of the subject property.

The MPOT also identifies the same master-planned roadway on the subject property. The MPOT designates C-340 as a collector road, with an 80-foot ultimate right-of-way that extends within the limits of the subject site. The MPOT states that “these alignments are all subject to change in light of new information and discussions with property owners, prospective developers, and National Environment Protection Act review processes (page 58).” Therefore, the recommended roadway and bike lane does not preclude any development on the subject property. Staff finds that residential uses, that are compatible with the recommended density and surrounding uses, can be implemented upon the subject property under the current zoning.

Evidence Submitted at the February 8, 2023 Hearing Before the Zoning Hearing Examiner

On February 8, 2023, Mark G.L. Ferguson of RDA Engineering Company, Inc. submitted a “Land Planning Analysis” expanding on the applicant’s contention that retaining the subject property in the prior R-R Zone was a mistake by the District Council. The Land Planning Analysis also introduced a new legal argument that was not in the applicant’s original application, to wit: that there has been a substantial change in the character of the neighborhood.

Mistake 1: Master Plan Analysis

The Land Planning Analysis restates the same five master plan recommendations (page 1 of the Sector Plan), two Land Use Principles and Policies (Table on page 200), and community design issue (Incompatible Residential Infill (page 4) contained in the applicant’s original SOJ. In the November 10, 2022 letter, staff previously found that those recommendations and policies were outweighed by more specific provisions in the sector plan that supported the District Council’s decision to retain the property in the RR Zone. The sector plan specifically identified the property for residential low land uses (page 202, Map 36). Residential low land uses conformed to the plan’s goal of maintaining current densities for residential neighborhoods (page 3), and the purpose of the RR Zone (encouraging variations of single-family detached residential lots and preservation of trees and open space) aligned with this category. Staff also noted that the five master plan recommendations were outweighed by the more specific recommendations for the Glenn

Dale-Seabrook-Lanham area (page 1). Staff, therefore, will not further analyze the same arguments made by the applicant in its SOJ.

The Land Planning Analysis also challenges staff's conclusion that RR zoning conforms to the sector plan's goal to "maintain the current densities of residential neighborhoods." According to the Analysis, the fact the District Council only chose to make three map amendments and that the plan's Land Use Element is only 15 pages is evidence the Council did not consider this goal when zoning the subject property.

Staff does not find that an absence of rezoning or a 15-page Land Use Element is sufficient evidence that the Council did not consider this goal or any of the other goals, policies, and recommendations in the sector plan. All such goals, policies, and recommendations were before the Council at the time of its consideration of the joint plan and sectional map amendment and, as such, leads to the conclusion that the Council did consider its own policies when deciding to retain RR zoning for the subject property. In addition, as stated above, there are a significant number of goals and policies that support RR zoning for the property.

The Land Planning Analysis also cites to six additional Land Use Principles and Policies (page 200), as support for more intense zoning on the property. Staff find that those same six principles apply equally to property zoned RR, as it would to property zoned RMF-48 and, in some cases, more substantially furthers those goals. Both zones preserve residential neighborhoods, promote infill development on vacant lots in existing residential areas, encourage new residential development that emphasizes connectivity and walkability, and encourages land uses that provide sensitive transitions between commercial and employment centers and residential areas. RR zoning, however, provides more space to protect open space resources within parks and along stream valley corridors and trails, and can more likely enhance the open space network through green infrastructure connections.

Staff, therefore, find no evidence in the Land Planning Analysis that the underlying assumptions or premises relied upon by the District Council, when it adopted the sectional map amendment (or at the time it approved the Countywide Map Amendment) were incorrect or otherwise met the standard for a mistake of fact. Instead, staff find that the Land Planning Analysis merely argues that the Council made a mistake in judgment, when it chose not to rezone the subject property, and that does not satisfy the requirements of Section 27-3601(e)(3).

Mistake 2: Transportation Analysis

The Land Planning Analysis did not provide any additional evidence regarding Mistake 2, so no further staff analysis is required.

Mistake 3: Lack of Consideration of the University Boulevard General Plan Corridor

The Land Planning Analysis provided evidence in support of a third "Mistake," not otherwise contained in the applicant's original application. According to the Analysis, the 2002 Prince George's County General Plan, in effect at the time of adoption of the sector plan, included the property in one of seven "corridors," designated by the General Plan. While acknowledging the sector plan states that it reinforces the 2002 General Plan, explores the appropriate intensity and mix of uses for the Annapolis and Greenbelt corridors, and includes a map of the Greenbelt Corridor in the Transportation Element, along with identifying "key transportation issues," the Analysis argues that the sector plan should have

also included further analysis of land uses in the corridor. The author adds, “this planner would have identified the neighborhood areas as an activity node, and recommended appropriate land uses.”

As noted above, the absence of language in a sector plan is not evidence that the District Council failed to consider and evaluate land uses. Furthermore, the evidence of the consideration of relevant issues in the Greenbelt Corridor, identified by the land planner, suggests that the Council did evaluate assumptions and premises impacting the subject property that were part of the General Plan and incorporated into the sector plan. Furthermore, what the land planner might have done, if given the opportunity to approve the sector plan, is not relevant to an analysis of whether the Council made a mistake under the standards applicable to a ZMA application in Section 27-3601(e)(3). Instead, as in Mistake 1, staff find that the Land Planning Analysis is merely arguing that the Council made a mistake in judgment that does not satisfy the requirements of the Zoning Ordinance.

Change in Character of the Neighborhood – Council Bill CB-71-2016

The Land Planning Analysis introduces a new legal argument that was not in the applicant’s original application. In 2016, the District Council approved Council Bill CB-71-2016, adding beauty shops as a special exception use (including eating and drinking) in the RR Zone, subject to a footnote restricting the location to only property meeting specific criteria. Since that time, an application has been filed and approved for a detailed site plan and permits granted for construction of a salon on 1.3709 acres, adjacent to the subject property. The land planner argues that this development “will change the character of the immediate vicinity of the subject property.”

According to Section 27-3601(e)(1), an applicant must show “there has been a substantial change in the character of the neighborhood.” Staff first notes that the Land Planning Analysis argues staff’s initial interpretation that the area surrounding the property was too small. Instead, the Analysis states that staff should have defined the “neighborhood of the subject property” as the 270-acre area surrounding the subject property sharing boundaries with the sector plan’s “Living Area 4” (pages 3–4 of Analysis).

The only evidence of change provided by the applicant, since adoption of the sectional map amendment, is a single change of use approved by the District Council for a specific property. That property, consisting of 1.3709 acres, is less than one percent of the entire neighborhood, defined by the land planner as the appropriate context in which to evaluate the application. In addition, it’s location, at the far northeast corner of the subject property would not impede the future development of the property under the approved zoning. Furthermore, the District Council did not rezone the 1.3709-acre parcel, but merely allowed one commercial use to be operated on the site, while retaining its RR zoning. Based on these findings, staff does not find the adoption of CB-71-2016 and the proposed development of the site sufficient evidence of a substantial change in the character of the neighborhood that would satisfy the requirements of Section 27-3601(e)(1).

Conclusion

Retention of the RR Zone on the subject property was intended to preserve compatible residential land uses and promote stable single-family neighborhoods. The existing RR Zone allows uses and a density that supports the implementation of the sector plan and SMA. The District Council chose to retain the zoning due to the character of the surrounding neighborhood and future land use recommendations for the area.

For a mistake to be a legally justifiable basis for rezoning, there must have been a basic and actual mistake by the legislative body, in this case the District Council. Staff finds the applicant's argument that the District Council erred by not considering the surrounding developments and the proposed C-340 roadway alignment is not justified. The proposed Zoning Map Amendment, ZMA-2022-001, does not meet the requirements of Section 27-3601(e) stating that a mistake was made in the sector plan and SMA in retaining the RR Zone for the subject property.

The additional evidence submitted by the land planner does not support a change in staff's original conclusions.

Referrals

The following referral memorandums were received, which discuss the proposed zoning map amendment, are included as backup to this memorandum, and are incorporated by reference herein:

- a. Community Planning Division, dated October 19, 2022 (Calomese to Lockhart)
- b. Subdivision Section, dated October 21, 2022 (Mahsa to Lockhart)
- c. Historic Preservation Section, dated October 24, 2022 (Stabler, Smith, and Chisholm to Lockhart)
- d. Environmental Planning Section, dated October 25, 2022 (Juba to Lockhart)
- e. Transportation Planning Section, dated October 26, 2022 (Patrick to Lockhart)

RECOMMENDATION

Staff recommends **DISAPPROVAL** of Zoning Map Amendment ZMA-2022-001, for Marianne Davis Trust Development.