

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND  
OFFICE OF THE ZONING HEARING EXAMINER**

**ZONING MAP AMENDMENT  
A-9995**

**DECISION**

Application: C-M to the C-S-C Zone  
Applicant: Broglen, LLC/Bell Station Center  
Opposition: Carolyn Narh, et. al.<sup>1</sup>  
Hearing Date: April 29, 2009  
Hearing Examiner: Maurene Epps Webb  
Recommendation: Approval with Condition

**NATURE OF REQUEST**

(1) A-9995 is a request to rezone approximately 8.99 acres of C-M (Commercial Miscellaneous) zoned land to the C-S-C (Commercial Shopping Center) Zone. The property is located in the southwest quadrant of the intersection of MD 450 and Bell Station Road, and is identified as 12300 Annapolis Road, Glenn Dale, Maryland.

(2) The Applicant is alleging that there has been a change in the character of the neighborhood since the District Council adopted the 1993 Sectional Map Amendment ("SMA") for Glenn Dale, Seabrook, Lanham and Vicinity, and that the District Council made a mistake when it placed the subject property in the C-M Zone. The Technical Staff recommended approval of the Application with conditions. (Exhibit 6) The Planning Board chose not to review the Application and adopted the Technical Staff's recommendation as its own. (Exhibit 19)

(3) Several residents of the Gabriel Run community appeared to discuss concerns with, if not strict opposition to, the request.

---

<sup>1</sup> The Gabriel's Run Homeowners Association and many residents within the Gabriel's Run community initially noted their opposition to the request. However, the residents ultimately testified that they were not opposed to the request provided they had input at the time of site plan review. The Homeowners Association submitted a letter subsequent to the hearing that indicates its conditional support of the request. (Exhibit 18)

## **FINDINGS OF FACT**

### **Subject Property**

- (1) The subject property is approximately 8.99 acres in size and is part of a larger 11-acre parcel.
- (2) The site is subject to the Woodland Conservation and Tree Preservation Ordinance and there is an approved Type II Tree Conservation Plan for the entire subdivision (TCP II/94/97) (Attachment to Exhibit 6, November 21, 2007 Memo from Shoulars to Jones)

### **Neighborhood and Surrounding Properties**

- (3) 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 – PEPCO power lines, and a gas station with car wash, food and beverage store and fast food restaurant
  - West – MD 193 (Glenn Dale Boulevard)
- (4) The neighborhood of the subject property proffered by Staff has the following boundaries:
- North – Washington-Baltimore-Annapolis Trail
  - South – MD 450 (Annapolis Road)
  - East – PEPCO power lines
  - West – MD 193 (Glenn Dale Boulevard)

Applicant's witness, accepted as an expert in land use planning, argued that the southern and eastern boundaries for the neighborhood should be US 50 and the Collington Branch of the Pope's Creek Railroad, respectively. In support of this argument he noted that the Fairwood (formerly known as the Turf Farm) development is directly across the street from the subject property and that it greatly impacted the area since Applicant's property was last rezoned. (Exhibit 11 depicts Staff's suggested neighborhood in magenta and the Applicant's in blue dots; T. 38) I agree that MD 450 should not be used as the southern border of Applicant's neighborhood since the thousand-acre Fairwood development is directly across from the subject property and clearly impacts development thereon. However, it is not necessary to include all of the Fairwood development in the neighborhood, nor to extend the eastern boundary beyond the PEPCO lines.

- (5) Accordingly, I find that the neighborhood for this Application has the following boundaries:

- North – Washington-Baltimore-Annapolis Trail
- South – Fairwood Parkway
- East – PEPCO power lines
- West – MD 193 (Glenn Dale Boulevard and Enterprise Road)

### **Master Plan/Sectional Map Amendment**

(6) The site lies within Planning Area 70, an area discussed in the 1993 Master Plan for Glenn Dale, Seabrook, Lanham and Vicinity. That Master Plan recommended service-commercial use of the property. The 1993 Sectional Map Amendment (“SMA”) rezoned the subject property from the R-E to the C-M Zone, in keeping with the vision of the Master Plan (and at Applicant’s request). The Master Plan included the following discussion relevant to the instant request:

In the northeast quadrant of MD 450 and MD 193 south of Bell Station Road, the Plan proposes a limited component of office and service-commercial land use for Parcel 57, with particular emphasis on health and medical-related uses in a campus-like setting. For the two adjacent parcels to the south (Parcels 74 and 138), the Plan recommends the office-commercial land use to encourage utilization of the properties as professional/medical offices in a townhouse office setting.

These recommendations are made in recognition of the unique location of these properties in the triangle partially formed by two major roads; the potential impact on this area by these roads; and the properties’ access on MD 450.

To promote compatibility with the community and within this triangular area – the following safe-guards should be considered:

- Area should develop in a comprehensive manner with internal circulation.
- Development should be oriented toward MD 450.
- Development should have integrated access on MD 450 and Bell Station Road only.
- Architectural style of historic site (Parcel 138) should be incorporated throughout the development.
- Buffering/screening should be provided along western (MD 193) and northern (Bell Station Road) boundaries to include landscaping and berms.
- There should be no signage on MD 193.
- Site Plan review should be encouraged.

(7) The site is directly across the street from a planning area governed by the 2006 Master Plan for Bowie and Vicinity.

(8) The site also lies within the Developing Tier, discussed in the 2002 General Plan. 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.” (2002 General Plan, p. 36)

### **Applicant's Request**

(9) The Applicant seeks a rezoning for the subject property from the C-M to the C-S-C Zone. If the request is granted, Applicant intends to develop the site with a 40,000 square foot shopping center hopefully anchored by a small grocery store. (T. 8-10) In support of the request Applicant alleges the District Council made a mistake when it placed the site in the C-M Zone and that there has been a change in the character of the neighborhood since adoption of the most recent SMA.

(10) Applicant suggested that the District Council was mistaken when it rezoned the site to the C-M Zone since:

- (a) The Council failed to consider then existing facts or projects or trends which were reasonably foreseeable in the future – in particular, that the Turf Farm was recommended for mixed development by the adjoining Bowie, Collington & Vicinity Master Plan;
- (b) The Council could not have taken into account projects or trends that occurred in the future such as the fact that the adjoining historic site would be moved and the property developed as a medical office in 4-story buildings, thereby fulfilling the anticipated market for medical offices in the vicinity;
- (c) The Council's action was premised on the subject property developing in a manner consistent with the purposes of the C-M Zone, and these purposes are not satisfied given the fact that there is another C-M zoned property further west on MD 450 relatively close to the subject property, and that the Fairwood Shopping Center and soccer park are uses that would not be compatible with C-M Zone uses;
- (d) The Council failed to take into account the fact that Bell Station Road was changed from a cul-de-sac to a collector roadway with interconnection to MD 193 at the time of adoption of the Master Plan and SMA.

(Exhibits 2 and 5)

(11) Applicant cites the following as indicia of change in the character of the neighborhood since the District Council's adoption of the 1993 SMA:

- (a) The rezoning and development of Fairwood (formerly known as the Turf Farm), whose northern boundary is directly across MD 450. The 1991 Bowie Master Plan did recognize the Turf Farm as a dominant feature of the community that should be developed as a planned community under the alternative low density development techniques allowed in the Zoning Ordinance at that time. However, the law at that time would have only allowed a maximum of 1.3 dwelling units per acre and a limited amount of commercial uses. In 1993, the District Council enacted the M-X-C Zone which allows residential density of 2.0 dwelling units per gross acre, a greater potential for a variety of housing types, and more commercial uses. The Turf Farm was developed in the M-X-C Zone on May 9, 1994, and was permitted to construct 1,799 dwelling units of various types, 100,000 square feet of commercial retail space, and 250,000 square feet of commercial office/service/institutional uses.

- (b) The rezoning of the Melvin Motors property to the north of the subject property. Again, this site lies within a planning area governed by the Bowie Master Plan. However, it was rezoned from the C-M Zone to the C-S-C Zone in the 2006 SMA for Bowie and Vicinity. Thus, it is an example of “a slow shift away from miscellaneous, highway-dependent commercial uses to retail, consumer service and professional office-oriented uses in the [area].” (Exhibit 5)
  - (c) The relocation of the historic home from the triangular area of land in which the subject property is located. The 1993 Master Plan for Glenn Dale, Seabrook, Lanham and Vicinity recommended that the “[a]rchitectural style of [the] historic site ... should be incorporated throughout the development.” (1993 Master Plan, p. 70) The removal of the historic site negated the need for this recommendation and, as a result, the medical offices that were constructed in the triangular area were not built as townhouses but were placed in four-story office buildings.
  - (d) The relocation and widening of MD 450. This road was a two-lane meandering “country” road at the time that the subject property was placed in the C-M Zone. It has since been widened to a four-lane arterial with additional turning lanes at several intersections.
- (12) Applicant believes the C-S-C Zone would be a better fit for the subject site since there is a limited amount of retail service uses in the area and a significant spurt in residential and office service uses. Moreover, the site would be an ideal location for a predominantly retail shopping center given its accessibility to major roadways and its integration with the gas station.
- (13) Applicant proposes that the site be accessed from MD 193 and Bell Station Road. Applicant’s witness, accepted as an expert in the area of transportation planning opined that the safest access for the site would be a right in/right out access to MD 193 since this would minimize potential conflicts for those traveling along that roadway. (T. 16) If detailed site plan approval is required, safe access to the site will be further discussed at that time, and will be subject to approval by the Department of Public Works (for Bell Station Road) and the State Highway Administration (for MD 193).
- (14) Applicant noted its acquiescence to the condition suggested by Staff. (T. 6)

### **Oppositions’ Concerns**

- (15) The Gabriel’s Run Homeowners Association originally noted its opposition to the request. However, in a letter sent subsequent to the hearing it noted its support, reasoning as follows:

The Association voted unanimously to support the request to rezone 8.99 acres located in the southwest quadrant of the intersection of Maryland Route 450 and Bell Station Road from its existing C-M (Commercial-Miscellaneous) zoning classification to the C-S-C (Commercial-Shopping Center) Zone. In light of the significant residential development that has occurred over the last ten years or so in our subdivision and in adjacent communities like Fairwood, the placement of a disruptive commercial zone across the street from our single-family residential community is not in our best interest. A reasonable amount and distribution of various types of retail stores in an attractive well-located setting is a less intrusive option and better for the community. Likewise, we do support and are most desirous of having a right-in, right out access on Glenn Dale Boulevard (MD 193).

(Exhibit 18)

(16) The Homeowner's Association continued to note that it had concerns with traffic flow, safety, and the aesthetic appearance of the site, and expressed its support for the requirement that any development undergo detailed site plan review and approval.

(17) Other residents in the area were concerned, if not opposed to the request, because they believed that the wrong type of development would lower property values, could lead to an increased crime rate in the area, and could exacerbate traffic. (Exhibit 15; T. 71-81)

### **Agency Comment**

(18) Staff ultimately concluded that the Application should be approved, reasoning as follows:

[T]he 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....

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 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.... 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.

(Exhibit 6, pp. 5-7)

Staff also recommended that detailed site plan approval be required given the suggestions for development of the site set forth in the 1993 Master Plan.

### **LAW APPLICABLE**

(1) The C-S-C Zone is a conventional zone as defined in the Zoning Ordinance and must be approved in accordance with the strictures of Section 27-157(a). This provision of law generally holds that no application can be granted without the Applicant proving that there

was a mistake in the original zoning or subsequent SMA or that there has been a substantial change in the character of the neighborhood. It provides, in pertinent part, as follows:

**Sec. 27-157. Map Amendment approval.**

(a) **Change/Mistake rule.**

- (1) 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.

(b) **Conditional approval.**

- (1) When it approves a Zoning Map Amendment, the District Council may impose reasonable requirements and safeguards (in the form of conditions) which the Council finds are necessary to either:

- (A) Protect surrounding properties from adverse effects which might accrue from the Zoning Map Amendment; or
  - (B) Further enhance the coordinated, harmonious, and systematic development of the Regional District.

- (2) In no case shall these conditions waive or lessen the requirements of, or prohibit uses allowed in, the approved zone.

- (3) All building plans shall list the conditions and shall show how the proposed development complies with them.

- (4) Conditions imposed by the District Council shall become a permanent part of the Zoning Map Amendment, and shall be binding for as long as the zone remains in effect on the property (unless amended by the Council).

- (5) If conditions are imposed, the applicant shall have ninety (90) days from the date of approval to accept or reject the rezoning as conditionally approved. He shall advise (in writing) the Council, accordingly. If the applicant accepts the conditions, the Council shall enter an order acknowledging the acceptance and approving the Map Amendment, at which time the Council's action shall be final. Failure to advise the Council shall be considered a rejection of the conditions. Rejection shall void the Map Amendment and revert the property to its prior zoning classification. The Council shall enter an order acknowledging the rejection, voiding its previous decision, and reverting the property to its prior zoning classification, at which time the Council's action shall be final.

- (6) All Zoning Map Amendments which are approved subject to conditions shall be shown on the Zoning Map with the letter "C" after the application number.

\*

\*

\*

\*

- (2) The request must also further the purposes of commercial zones, in general, and the C-S-C Zone in particular. These purposes are found in Sections 27-446(a) and 27-454(a) of the Zoning Ordinance:

**Sec. 27-446. General purposes of Commercial Zones.**

(a) The purposes of Commercial Zones are:

- (1) To implement the general purposes of this Subtitle;
  - (2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;

- (3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;
- (4) To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;
- (5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;
- (6) To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;
- (7) To increase the stability of commercial areas;
- (8) To protect the character of desirable development in each area;
- (9) To conserve the aggregate value of land and improvements in the County; and
- (10) To enhance the economic base of the County.

#### **Sec. 27-454. C-S-C Zone (Commercial Shopping Center).**

(a) **Purposes.**

- (1) The purposes of the C-S-C Zone are:
  - (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 the C-1, C-2, C-C, and C-G Zones.

#### **Change or Mistake**

(3) There is a presumption of validity accorded comprehensive rezoning and the presumption is that at the time of its adoption the District Council considered all of the relevant facts and circumstances, then existing, concerning the land in question. Howard County v. Dorsey, 292 Md. 351, 438 A.2d 1339 (1982). *Strong* evidence of mistake and/or evidence of a *substantial* change in the character of the neighborhood is required to overcome the presumption. Pattey v. Board of County Commissioners for Worcester County, 271 Md. 352, 317 A. 2d 142 (1974); Clayman v. Prince George's County, 266 Md. 409 (1971)

(4) Mistake or error can be shown in one of two ways: (a) 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 (b) a showing that events that have occurred since the comprehensive zoning have proven that the District Council's initial premises were incorrect. The mistake must have occurred in the rezoning and not in the Master Plan. Dorsey, *supra*.

(5) The zoning agency may review cumulative changes in the neighborhood since the prior rezoning when assessing whether a zoning amendment request should be granted. Town of Somerset v. County Council for Montgomery, 229 Md. 42, 181 A. 2d 671 (1962); Montgomery County v. Greater Colesville Citizens Assn., 170 Md. App. 374, 521 A.2d 770 (1987). Some cumulative changes that may be indicative of substantial change in the character of the neighborhood are road upgrades, prior rezonings, new and modified infrastructures, population growth, and new development. Bowman Group v. Moser, 112 Md. App. 694, 686 A.2d 643 (1996); Pattey, *supra*; Hummelheber v. Charnock, 258 Md. 636, 267 A.2d 179

(1970). It is clear, however, that the change cannot be something anticipated at the time of the adoption of the SMA, and must occur in the immediate neighborhood and be of such a nature as to have affected its character. A more liberal view of change in the character of the neighborhood is allowed when the request is a reclassification of one commercial subcategory to another. Tennison v. Shomette, 38 Md. App. 1, 379 A.2d 187 (1977).

### **Burden of Proof**

(6) The burden of proof in any zoning case shall be the Applicant's. (Prince George's County Code, Section 27-142(a)) Zoning cases are those matters designated to be heard before the Zoning Hearing Examiner by the Zoning Ordinance. (Prince George's County Code Section 27-107.01(a)(266)) In an attempt to rezone its property, Applicant has the burden of proving that the request will not be a real detriment to the public. Bowman, supra. Finally, sufficient evidence to "permit" a rezoning does not "require" a rezoning unless an Applicant is denied all reasonable use of the property. Valenzia v. Zoning Board, 270 Md. 479, 484, 312 A.2d 277 (1973); Messenger v. Board of County Commissioners, 259 Md. 693, 271 A.2d 166, 171(1970).

### **CONCLUSIONS OF LAW**

(1) I don't believe that Applicant has met its burden of showing that the District Council made a mistake when it placed the subject property in the C-M Zone since it did so at Applicant's request and much of the support given for Applicant's mistake argument involved projects or trends that were not reasonably foreseeable at the time of the adoption of the SMA.

(2) However, Applicant did submit sufficient evidence that supports its belief that there has been a change in the character of the neighborhood since the adoption of the most recent SMA. The Turf Farm developed in a manner that was not anticipated at the time of the Council's approval of the Glenn Dale, Seabrook, Lanham & Vicinity SMA and the M-X-C Zone allowed much more density and more commercial uses. (Prince George's County Code, Section 27-546.03) As a result, the roadways were widened and realigned, and MD 450 changed from a country lane to an arterial. The historic property that was in the same triangular area as the subject property was removed and several recommendations of the Master Plan concerning the triangular parcel in which the subject property lies were ignored once development occurred therein. Finally, Applicant's burden is less onerous given the fact that it requests a change from one commercial subcategory (C-M) to another (C-S-C).

(3) The Application will further the general purposes of the commercial zones as well as the specific purposes of the C-S-C Zone since the request will exclude non-compatible C-M uses and will enable Applicant to develop the property in a manner compatible with the existing office building, gas station and other commercial uses in the area. It will also satisfy the General Plan's admonition against the development of isolated commercial development.

**RECOMMENDATION**

I recommend APPROVAL of A-9995 with 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.