

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed A-10000, Defiance Drive requesting a zoning change from the R-E Zone to the R-R (Rural Residential) Zone in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on July 9, 2009, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject 5.06-acre site is located at the terminus of Defiance Drive, approximately 160 feet east of its intersection with Star Drive. The subject property consists of two parcels (Parcel 16 and Parcel 311) in the Residential-Estate (R-E) Zone. It is surrounded on all sides by residential development in the Aragona Village subdivision. The subject property is partially wooded and developed with a single-family residence and outbuildings.
- B. **History:** The subject property was retained in the R-E Zone by the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*. The site is a combination of two deed parcels which have never been subdivided.
- C. **Master Plan Recommendations:**
- 2002 General Plan:** This application is located 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. Specifically, this application is consistent with Developing Tier Policy 1, "Encourage low- to moderate-density...development" (p. 37), considering the R-R Zone only allows for residential development at such a density.
- 2006 Approved Henson Creek-South Potomac Master Plan:** The property is located in Planning Area 80. The master plan recommends residential, low-density land use at a density up to 3.5 dwelling units per acre, as further addressed in Part F, below.
- D. **Request:** This application requests a zoning change from the R-E Zone to the R-R (Rural Residential) Zone to allow future subdivision of this property to lot sizes that will be more consistent with the lot sizes and character of surrounding development.
- E. **Neighborhood and Surrounding Uses:** The subject property is located in a neighborhood defined by the following boundaries:
- Aragona Boulevard to the north
 - Indian Head Highway Service Road to the west

- Old Fort Road to the east
- Christopher Lane/North Star Drive/Flagship Avenue to the south

The property is surrounded on all sides by single-family residences on lots ranging from one-quarter to one-half acre in area in the Aragona Village subdivision. Although these lots are in the R-E Zone like the subject property, some were lotted when they were still in the R-R Zone or were developed using the lot size averaging (LSA) technique. LSA development patterns generally result in smaller interior lots with larger lots along the periphery of the subdivision or in central areas controlled by a homeowners association.

F. **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.**

Applicant's Position: The applicant argues that a mistake occurred in the 2006 sectional map amendment (SMA). The District Council carried forward the R-E Zoning on the site, ignoring the fact that the subdivision is developed in the old R-R standards of 10-20,000 square foot lots. Also, it is their contention that the District Council failed to take into account then existing facts (i.e. that the LSA technique used to create the surrounding lots was no longer available to the applicant) so that the zoning was premised on a misapprehension. Because the initial premises of the District Council regarding the future development options for the subject property were incorrect, the assignment of the R-E Zone was improper. The applicant also notes that their burden in the proposed rezoning from the R-E Zone to the R-R Zone is less onerous than if they were changing from one use category to another.

Analysis: 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.

The majority of the Aragona Village Subdivision was platted in the 1960s, when the neighborhood was in the R-R zone, which allowed lots as small as 10,000 square feet. The applicant is correct that the LSA technique used on some of the surrounding neighborhood was not available to the applicant in this case. This technique, along with flag lots, varying lot size, and cluster subdivisions were legislatively abandoned in favor of the conservation subdivision method of development. Like the previous techniques before it, the conservation subdivision allows for smaller lots, however, because the "reduced" land area is made up somewhere else on the property, the overall density remains the same. Thus, it is not true that the applicant cannot avail themselves of alternative development techniques to place smaller lots on the site. There are many larger lots within the Aragona Village subdivision, some of which are in the middle of blocks, like the subject property. The difference between the two is that these other large lots are generally homeowners association land, while the subject property is privately owned.

The master plan Developing Tier Policy 1: Preserve and enhance existing suburban residential neighborhoods (p. 22), delineates the following strategies which apply to this application:

- **Ensure that the design of new development in suburban residential areas maintains and enhances the character of the existing community.**
- **Retain low-density residential land use classifications for undeveloped parcels in established single-family residential neighborhoods.**
- **Encourage a wide variety of single-family designs and lot sizes.**

Development in either the R-E Zone or the R-R Zone would be consistent with these master plan policies and strategies. While the Board agrees that the Council could have easily reclassified this property in the R-R Zone and had it result in a compatible development, we are not convinced that failure to do so rises to the level of a mistake in the SMA, even at the less onerous level of burden.

The Planning Board can find no substantial change to the character of the subject neighborhood since the last comprehensive rezoning.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and

Planning Commission adopted the findings contained herein and recommends to the District Council for Prince George's County, Maryland that the above-noted application be DENIED.

* * * * *

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Clark, seconded by Commissioner Cavitt, with Commissioners Clark, Cavitt and Parker voting in favor of the motion, with Commissioner Vaughns abstaining, and with Commissioner Squire absent at its regular meeting held on Thursday, July 9, 2009, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 30th day of July 2009.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

OSR:FJG:TL:arj

DRAFT