

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

**ZONING MAP AMENDMENT
A-10033**

DECISION

Application:	I-3 to I-1 Zone
Applicant:	Virginia Linen Service of Maryland, Inc.
Opposition:	None
Hearing Dates :	February 17 and March 23, 2016
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval

NATURE OF REQUEST

- (1) A-10033 is a request to rezone approximately 5.592 acres of land, located in the south east quadrant of the intersection of Sheriff Road and Glen Willow Drive, also identified as 6101 Sheriff Road, Capital Heights, Maryland, from the I-3 (Planned Industrial/Employment Park) to the I-1 (Light Industrial) Zone. The subject property is comprised of two adjoining lots, Lot 2 and Lot 3.
- (2) The Applicant is alleging that there was a mistake in the adoption of the 2010 Subregion 4 Sectional Map Amendment (SMA) whereby the District Council placed the subject property in the I-3 Zone.
- (3) The Planning Board recommended approval of the I-1 Zone, Exhibit 33, but the Technical Staff recommended approval, not of the I-1 Zone, but of the I-4 (Limited Density Industrial). Exhibit 13
- (4) The subject property is not located within the limits of a municipality and no one appeared in opposition to the request.
- (5) The record was closed on March 23, 2016 at the conclusion of the evidentiary hearing.

FINDINGS OF FACT

Subject Property

- (1) Lot 2 is developed with a 36,000 square foot concrete building, with an exterior loading dock, surface parking, a one-story shed, and several external fuel storage tanks. Lot 2 is accessed via two driveways from the south side of Sheriff Road with a pedestrian entrance facing Glen Willow Drive. The long term existing use is by Virginia Linen, a laundry plant for a large uniform and linen service.

(2) Lot 3 is currently undeveloped and wooded and has frontage on Sheriff Road. The stream valley of Cabin Branch runs along the eastern edge of Lot 3 before meandering to the west towards the southern edge of Lot 3.

Zoning History

(3) The 2010 Subregion 4 Master Plan and Sectional Map Amendment (Zoning Change LB21) reclassified the subject property from the I-1 to the I-3 Zone. This action resulted in the laundry plant becoming a nonconforming use since that use is not permitted in the I-3 Zone.

(4) The existing building on the subject property (Lot 3) was constructed in 1969. Since that time the site has been the subject, in part, of several Applications:

V-152-99 - On October 20, 1999, the Board of Zoning Appeals approved a variance from the 25-foot building setback requirements for the existing building along Glen Willow Drive.

AC-99049 - The Planning Director approved Alternative Compliance Application AC-99049 on November 22, 1999. The Alternative Compliance Application was for relief from the landscape yard requirements of Section 4.2 of the 1989 Prince George's County Landscape Manual along Sheriff Road. On March 18, 2005, a revision to the Alternative Compliance (AC) was denied by the Planning Director in conjunction with Permit No. 42023-2004-SGU.

DDS-555 - On March 9, 2006, the Planning Board approved a Departure from Design Standards (DDS) for the required bufferyard along the southern property line, where the property adjoins the Glen Willow apartment complex.

Neighborhood and Surrounding Uses

(5) The subject property is located in a neighborhood defined by the following boundaries:

North – Sheriff Road, including the industrially-zoned properties on the north side
East &
South - Martin Luther King, Jr. Highway (MD 704)
West – Addison Road

(6) The neighborhood contains a mix of uses with commercial and light and heavy industrial uses predominating along the north side of Sheriff Road, and to the east along the south side of Sheriff Road. West of the subject property, south of Sheriff Road, is residential in character, as is the area south to MD 704 and west to Addison Road. The definition of neighborhood is not material as

the Applicant is not alleging that there has been a substantial change to the character of the neighborhood since the last comprehensive rezoning in 2010.

(7) The neighborhood of the subject property has two generally distinct characters: the northern part of the neighborhood is industrial in both character and zoning, and extends along the northern side of Sheriff Road across the entire width of the neighborhood, as well as the south side of Sheriff Road east of the subject site. Uses in this area include automotive repair uses in the vicinity of Marblewood Drive, the Chapel Oaks fire station, some developed but vacant industrially-zoned lots off the (closed-off) Claybrick Road, heavy industrial uses including Brandywine Sand & Gravel's construction waste Transfer Station and recycled aggregates operation, the EP Henry landscape material Distribution Center, the ADS Aggregates Concrete Recycling Facility, the Cabin Branch Distribution Center, Giant Food's former Landover Distribution Center now occupied by Zip Mailing, the former Giant Food headquarters building, and the Maurice Electric distribution center. There are also a commercial uniform service, a Vehicle Trailer Storage Lot, and a vacant graded lot (formerly occupied by the TIP vehicle (semi-) trailer rental facility) on the south side of Sheriff Road.

The southern part of the neighborhood is residential in character, with a mix of housing types, including older single-family dwellings in Fairmont Heights, multi-family dwellings immediately to the south of the site along Glen Willow Drive, and duplexes in the Booker T. Homes subdivision off of Martin Luther King Highway.

(8) The subject property is surrounded by the following uses:

- Across Glen Willow Drive to the west, the Cedar Heights Community Center in the R-55 (One-Family Detached Residential) Zone.
- Across Sheriff Road to the north, the ADS Aggregates Concrete Recycling Facility in the I-3 Zone, the Cabin Branch stream valley, Cabin Branch Drive, and the Cabin Branch Distribution Center in the I-2 (Heavy Industrial) Zone.
- Adjacent to the east, a vacant, cleared and graded lot in the I-3 Zone.
- Adjacent to the south, the Glen Willow Apartments in the R-18 (Multi-Family Medium Density Residential) Zone and M-NCPPC property in the R-O-S (Reserved Open Space) Zone.

Master Plan and Sectional Map Amendment

(9) The subject property is located within the Established Communities Policy Area. The 2014 Plan Prince George's 2035 General Plan (Plan Prince George's 2035) recommends maintaining and enhancing existing public services (police and fire/EMS), facilities (i.e. libraries and schools), and infrastructure (i.e. sidewalks) in these areas to ensure that the needs of the existing residents are met.

The Plan Prince George's 2035 land use goal is to direct future growth toward transit-oriented mixed-use centers in order to expand the commercial tax base, to capitalize on existing and planned infrastructure investments, and to preserve agricultural and environmental resources.

(10) The 2010 Subregion 4 Master Plan and Sectional Map Amendment created goals and policies to preserve and expand industrial land use wherever possible along the northern and eastern perimeter of the Subregion, while at the same time recommending the reassignment of industrial land use parcels adjacent to single-family detached and attached residential areas if the industrial land use is disadvantageous, blighted, or under-utilized.

The subject property is located in Living Area B. The Subregion 4 Master Plan recommends both the transitioning of this area to Residential Medium land uses, while preserving industrial areas buffered from other incompatible uses to protect residents while maintaining jobs and tax base that support the residents of the Subregion. However, the Plan does not make specific recommendations for the reclassification of the non-residential uses along the southern side of Sheriff Road.

The Proposed Sectional Map Amendment recommended the subject property be rezoned from the I-1 Zone to the I-4 Zone in order to direct lighter industrial zoning adjacent to residential areas and to create an appropriate transition between land uses. However, upon receiving testimony from an adjoining property owner whose land was also recommended for the I-4 Zone, the Technical Staff, Planning Board, and District Council changed the zoning to the I-3 Zone, reasoning that the I-3 Zone would allow for greater flexibility for the property owners. In fact, placing the site in the I-3 Zone had the effect of rendering the laundry plant a nonconforming use, since such uses are not permitted in the I-3 Zone.

Applicant's Request

(11) The Applicant is requesting rezoning of the subject property from the I-3 Zone to the I-1 Zone. The Applicant contends that rezoning the subject property to the I-3 Zone in the 2010 Subregion 4 Sectional Map Amendment was mistake. Their argument, as summarized, is five-fold:

Mistake #1: The Council's action was based on an incomplete factual predicate regarding the nature of the existing use on the subject property. The Council was not presented with facts that the rezoning would create a non-conforming use.

Mistake #2: The Council's action was based on an incomplete factual predicate regarding the ability to develop the subject property within the I-3 Zone which is generally limited to contiguous areas of land containing 25 acres or more.

Mistake #3: The Council's action was premised on a misapprehension that the current use on the site would be in keeping with the purposes of the I-3 Zone.

Mistake #4: The Council's action was partially premised on the subject property's proximity to the residentially zoned property which is a mistake because the Master Plan clearly states that the recommendation to "reassign industrial land use parcels" is based not on proximity to residentially zoned property but rather on those parcels being "disadvantageous, blighted or underutilized." (Subregion 4 Master Plan, p. 99)

Mistake #5: The Council's action directly violates the recommendation of the Master Plan which states "Encourage development that supports a healthy economy and provides a variety of living wage jobs". (Subregion 4 Master Plan, p. 106)

The Applicant contends that the cumulative impact of these five mistakes overcomes the presumption of validity of the comprehensive rezoning and suggest that the property should be rezoned back to the I-1 Zone.

APPLICABLE LAW

(1) The I-1 Zone is a conventional zone as defined in the Zoning Ordinance and must be approved in accordance with the strictures of §27-157, which provides, in pertinent part, as follows:

(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.

*

*

*

*

*

*

(d) **Approval of a zone different from that requested.**

(1) The District Council may approve a less intense zone than that requested by the applicant for any part of the subject property involved in the application.

(2) If the subject property is located within the boundaries of a municipality, a less intense zone may only be approved if there was testimony on the less intense zone before the Zoning Hearing Examiner, and an opportunity given for the municipality to make a recommendation. If there was no testimony or opportunity, the application shall be remanded to the Zoning Hearing Examiner for this purpose (Section 27-133). Upon remand, the Hearing Examiner shall notify all persons of record and any municipality in which the property is located. The Hearing Examiner shall conduct further hearings if the case warrants.

(2) No property may be zoned to a less intense zone as established by §27-109(b) (here the I-3 Zone is less intense than the I-1 Zone) if:

Based on existing physical development at the time of adoption of the Sectional Map Amendment, the zoning would create a nonconforming use. This zoning may be approved, however, if there is a significant public benefit to be served by the zoning based on facts peculiar to the subject property and the immediate neighborhood. In recommending the zoning, the Planning Board shall identify these properties and provide written justification supporting the zoning at the time of transmittal. The failure of either the Planning Board or property owner to identify these properties, or a failure of the Planning Board to provide the written justification, shall not invalidate any Council action in the approval of the Sectional Map Amendment. §27-223(g)(2)

(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 are 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) 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 fact 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*.

(4) In People's Counsel for Baltimore County v. Prosser Co., 119 Md. App. 150, 179, 704 A.2d 483 (1998), the Court of Appeals explained further what must be shown in order to support an argument of mistake in the comprehensive rezoning:

In order to find legal mistake, there must be evidence that assumptions or premises relied on by the County Council were invalid. Beachwood, 107 Md. App. At 645. This situation is different from the exercise of bad judgment based on complete and accurate information....The burden is on the entity seeking reclassification to show the conditions that made the comprehensive rezoning incorrect and the failure of the Council to have considered those conditions....Hardship and economic disadvantage are insufficient; in that connection, there must be a showing that the owner is deprived of all reasonable use of his property.

The Court further noted that "the consistency of the proposed use with the Master Plan would have been insufficient alone" to show mistake in the comprehensive rezoning. Id., 119 Md. App. at 179.

CONCLUSIONS OF LAW

(1) The specific Master Plan recommendation for the subject property is found in the Development Pattern Element, under Policy 8 of the "Proposed Land Use Plan." This Policy is,

Reassign isolated commercial parcels that are no longer economically viable as neighborhood-serving commercial clusters to medium or medium-high residential land use.

- Designate the parcels on the south side of Sheriff Road frontage between the Cedar Heights Community Center and Hill Road for future residential medium-high density uses (Zone 2).¹

(2) The Master Plan's placement of the property as an "isolated commercial parcels that are no longer economically viable as neighborhood-serving commercial clusters" is curious, as the subject site is neither isolated, nor commercial, and certainly no longer economically viable: the instant rezoning is in fact being sought because the Applicant's plans for expansion were thwarted by the Sectional Map Amendment's application of the I-3 Zone.

(3) Despite the Master Plan's ultimate recommendation for "Residential Medium High" land use, the District Council in its adoption of the Sectional Map Amendment chose to leave nonresidential zoning in place in the areas of the neighborhood along the south side of Sheriff Road which had formerly been zoned I-1 and C-M (Commercial Miscellaneous), owned by four unrelated owners. Instead of leaving the existing zoning in place, the District Council opted in lieu thereof to apply the I-3 Zone.

(4) While the retention of industrial zoning was appropriate given the totality of the Master Plan's recommendations, the specific application of the I-3 Zone was based (at a minimum) on some misapprehensions of the recommendations of the Master Plan, and on misapprehensions of testimony received during the course of the Councils' review of the Sectional Map Amendment.

(5) Beyond its curious specific recommendation, the Master Plan made a number of other recommendations which are relevant to the subject site and would have supported the retention of the I-1 Zone. In its "Overall Approach to Forming Land Use Recommendations for Subregion 4", the Master Plan laid out a number of Policies and Strategies.

Policy 3

Heighten the image and attraction of the industrialized areas of Subregion 4 to attract a higher quality of light industrial, research and development, and business park uses, offering expanded employment opportunities for residents of Prince George's County and the region.

¹ M-NCPPC, Approved Subregion 4 Master Plan and Sectional Map Amendment (June, 2010), p. 67.

Strategies

- Encourage the relocation of heavy industrial and industrial areas with negative environmental impacts within Subregion 4 away from existing residential uses.
- Strengthen buffer requirements for industrial uses adjacent to nonindustrial uses.²

(6) The use at the subject site has no negative environmental impacts. It disturbs no regulated natural features, and all operations are carried out in a fully-enclosed building such that there are no noise impacts. Virginia Linen does not use dry cleaning or the associated chemicals in its operations, so there are no adverse air impacts from its operations.

(7) In the Master Plan's Recommendations, in its Living Areas and Industrial Centers Element, the Plan states:

Reassign industrial land use parcels adjacent to single-family detached and attached residential areas if the industrial use is disadvantageous, blighted, or underutilized.

- Action Sites: Marblewood Avenue/Cedar Heights Industrial³

In its discussion of Industrial Centers, the Plan specifically describes the area of Cabin Branch/US50 (which includes the subject property) as a "Category 5 (healthy industrial area)"⁴ suggesting that the use is neither blighted nor underutilized. Its high level of upkeep, existing buffer to the adjoining multi-family residential, interior-contained operations and exclusive vehicular orientation to Sheriff Road all militate strongly against any description of the subject property as disadvantageous.

(8) The Plan articulates Policies and Strategies for its Proposed Industrial Use Development Pattern.

Policy 1

Preserve and enhance existing industrial uses wherever possible along the northern and eastern perimeter of the subregion.

Sites where policy should be enacted:

2 Master Plan, p. 60

3 Ibid., p. 99.

4 Ibid., p. 120.

- Columbia Park Road and Cabin Branch area (Zone 2)⁵

Policy 5

Reassign industrial parcels adjacent to residential areas if industrial is impactful, blighted, or underutilized.

Sites where policy should be enacted:

- Marblewood Avenue/Cedar Heights industrial area (Zone 2)⁶

The subject property is neither impactful, blighted nor underutilized.

(9) In the Preliminary Subregion 4 Master Plan and Proposed Sectional Map Amendment (August 2009), the recommendation was for the rezoning of the collection of separately-owned parcels on the south side of the Sheriff Road frontage between the Cedar Heights Community Center and Hill Road to be rezoned to I-4. There was no recitation or description of the various uses on the properties, and the accompanying discussion was that the rezoning “supports the goals, policies and strategies of the General Plan and the Subregion 4 Master Plan to allow for lighter intensity industrial uses adjacent to residential areas and at gateway locations and encourage comprehensive plans.”⁷ This generic discussion is misleading because it does not include the repeated proviso of the Master Plan for reclassifying industrial land if it is impactful, blighted, or underutilized.

(10) After the release of the Preliminary Master Plan, a single property owner at the east end of the affected area wrote to object to the imposition of the I-4 Zone, and requested retention of the I-1 Zone.

(11) In its digest of testimony, the Planning Staff provided a somewhat-extended discussion of the property owner’s request. Staff properly noted that the site is across Sheriff Road from the Marblewood Avenue Industrial Area Redevelopment Opportunity, and while defending its earlier recommendation for the I-4 Zone changed its recommendation for the entire strip of properties to the I-3 Zone, “to maintain the plan vision for the area while allowing the property owner more flexibility in utilizing the site.” How the I-3 Zone affords anybody more flexibility when it provides for a far more restrictive Table of Uses while imposing both a more arduous approval process as well as greater setbacks and more green area requirement, is not explained. Nevertheless, the District Council accepted the Staff’s recommendation and rezoned the entire strip, including the subject property, to the I-3 Zone.

(12) In the Approved Master Plan, the Use and Description of the affected properties was

5 Ibid., p. 123.

6 Ibid., p. 123.

7 M-NCPPC, Preliminary Subregion 4 Master Plan and Proposed Sectional Map Amendment (August, 2009), p. 459.

amended to include, “Trailer parking lot; Wooded; U-1st Industrial Facility.”⁸ Again, the existence of the use on the subject property was not recognized, suggesting that there was no actual consideration of the impact of the proposed rezoning on the subject property.

(13) The Applicant has contended that five mistakes were made by the District Council in applying the I-3 Zone to the subject property. The first mistake alleged is that in contravention of the provisions of §27-223(g)(2), the District Council created a Nonconforming Use on the subject property without identification of a significant public benefit and justification of the proposed rezoning; the existing use at the subject site, laundry plant, is not a permitted use in the I-3 Zone. Staff has suggested in its review of the instant Application that a laundry plant is permitted in the I-4 Zone, however, the limitation of Floor Area Ratio in the I-4 Zone would bar the Applicant from construction of a desired addition to its building to accommodate its need for the additional staff that is required to meet its increased book of business. Additionally, the I-4 Zone contains regulations for expanded green area, which the existing development does not meet.

(14) The second and third mistakes alleged are related to the fact that the I-3 is intended to support the development of planned office/industrial parks with a synergistic group of uses; the single use (which is not even permitted in the I-3 Zone) and environmental constraints of the subject property do not support the comprehensive planning of an office park envisioned by the I-3 Zone’s regulations. Furthermore, the I-3 Zone’s regulations ordinarily require an area of 25 contiguous acres for application of the Zone and the subject property contains only 5.592 acres of land.

(15) The fourth and the fifth mistakes argued have been discussed at length above; the decision to rezone an industrial parcel which is not is impactful, blighted, or underutilized, and the decision not to preserve and enhance existing industrial uses wherever possible.

(16) The Applicant’s expert land planner, Mr. Mark Ferguson, opined that a mistake was made in its application of the I-3 Zone to the subject property for the reasons cited by the Applicant. Mr. Ferguson further opined that because of the physical character of the existing development, the most appropriate zone is the restoration of the requested I-1 Zone, as it would not create additional nonconformities to the I-4 Zone’s regulations.

(17) By reclassifying the property from the I-1 Zone to the less intensive I-3 Zone, the District Council created a nonconforming use. While this practice would generally be precluded by §27-223(g)(2) of the Zoning Ordinance, such actions are permitted if there is a significant public benefit to be served by the zoning based on facts peculiar to the subject property and the immediate neighborhood. The 2010 Subregion 4 Master Plan speaks to the need to protect residential areas from industrial uses which are disadvantageous, blighted or underutilized. The subject use is none of these things. The building is well maintained and the site is generously landscaped. The site is not visible from the apartments to the south due to a change in topography and the existence of a wide wooded buffer. All vehicular access is from Sheriff Road, with no access from Glen Willow Drive.

⁸ Master Plan, p. 437.

The Applicant has worked with, and gained the support of, several of the community groups in the area. There were no parties in opposition at the hearing, despite both the posting of signs and the mailing of notices to all parties of record.

(18) Based on the foregoing, the District Council's decision to downzone the subject property from the I-1 Zone to the I-3 Zone constitutes a mistake in the 2010 Approved Subregion 4 Master Plan and Sectional Map Amendment. The District Council failed to fully comprehend that the long-compatible use of the site as a laundry plant did not meet any of the Master Plan's suggested criteria for downzoning of industrial properties, rather, the District Council should have followed the Master Plan's recommendations to preserve appropriate industrial areas and thereby maintaining jobs and tax base that support the residents of the Subregion. The subject property should be placed back in the I-1 Zone to remedy this mistake. There is insufficient justification for the I-4 Zone as suggested by Technical Staff, or for an approach which would split the zoning of the two lots between the I-1 and I-4 Zones.

RECOMMENDATION

APPROVAL of A-10033 from the I-3 to the I-1 Zone.