

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

**ZONING MAP AMENDMENT  
A-10045**

**DECISION**

|                   |                   |
|-------------------|-------------------|
| Application:      | R-E to R-80 Zone  |
| Applicant:        | Loreto Clavelli   |
| Opposition:       | N/A               |
| Hearing Date:     | February 26, 2019 |
| Hearing Examiner: | Joyce B. Nichols  |
| Recommendation:   | Denial            |

**NATURE OF PROCEEDINGS**

- (1) A-10045 is a request to rezone approximately 11.95 acres of land, in the R-E (Residential-Estate) to the R-80 (One-Family Detached Residential) Zone, located on the west side of MD 337 (Allentown Road) approximately 1,200 feet north of the intersection of Allentown Road and Steed Road, also identified as 9005, 9009 and 9021 Allentown Road, Fort Washington, Maryland.
- (2) The Applicant is alleging a mistake in the 1984 Henson Creek-South Potomac Master Plan and Sectional Map Amendment when the property was zoned from the R-R (Rural Residential) to the R-E Zone, and also a mistake in the 2006 Henson Creek-South Potomac Sectional Map Amendment (the current Sectional Map Amendment) for failing to correct the errors made in the 1984 Sectional Map Amendment. The Applicant asserts that the R-80 (One-Family Detached Residential) Zone is the zone most appropriate to correct these prior mistakes.
- (3) The Technical Staff recommended disapproval (Exhibit 37) and the Planning Board did not schedule this Application for public hearing, therefore the Technical Staff's recommendation of disapproval constitutes the Planning Board's recommendation. (Exhibit 38(b))
- (4) No one appeared in opposition.
- (5) The record was kept open for several documents, upon receipt of which the record was closed on May 23, 2019.

**FINDINGS OF FACT**

**Subject Property**

- (1) The site is located on the west side of Allentown Road, approximately 1,200 feet north of its intersection with Steed Road. The property is comprised of four abutting deed parcels (Parcel 122, Parcel 230, Parcel 117, and Parcel 4), which in their entirety total approximately 11.95 acres. These parcels have never been the subject of a record plat; therefore, these properties are considered

acreage parcels created by deed dated September 30, 1978, recorded in Liber 5006 at Folio 227, and October 25, 2006, recorded in Liber 26374 at Folio 756, 759 and 762. These parcels were legally established prior to 1978 in Liber 5006 at Folio 227, 228, and 229.

(2) The subject site is primarily wooded and undeveloped, except Parcel 122 and Parcel 11, which are improved with a single-story wood frame dwelling unit, a shed, and an associated parking area. The site has frontage on Allentown Road, a Master Plan 80-foot-wide collector roadway. Access to the existing single-family detached dwelling is via Allentown Road.

(3) A stream system is located in the northwest corner of the overall site, with no 100-year floodplain or wetlands mapped on the property. A review of the mapping information on PG Atlas, indicates that the subject area is not within a sensitive species project review area and does not contain potential forest interior dwelling species habitat. The site is located within the Hunters Mill watershed of the Potomac River basin.

### **Zoning History**

(4) On April 28, 1959 the subject property was annexed into the Washington Regional District with the R-R (Rural Residential) zoning designation. Both the 1968 Master Plan for Henson Creek-South Potomac, Planning Area 76A, 76B, and 80 and the 1981 Master Plan for Henson Creek-South Potomac, recommended the subject property in the R-R Zone. The 1984 Henson Creek-South Potomac Sectional Map Amendment zoned the subject property from the R-R Zone to the R-E Zone pursuant to the enactment of Prince George's County Council Resolution CR-100-1984 adopted on July 24, 1984. The 2006 Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac retained the subject property in the R-E Zone.

### **Neighborhood and Surrounding Properties**

(5) The neighborhood of the subject property as proffered by Staff has the following boundaries:

|               |  |
|---------------|--|
| <b>North-</b> | Tucker Road (major collector)          |
| <b>South-</b> | Old Fort Road (major collector)        |
| <b>East-</b>  | Allentown Road (collector)             |
| <b>West-</b>  | MD 210 (Indian Head Highway) (freeway) |

Significant natural features and major roads may define neighborhoods. Staff finds that these boundaries create the neighborhood for the subject property because the Master Plan rights-of-way show these selected roads as a collector, major collector, or freeway.

(6) The Applicant originally proposed a more gerrymandered neighborhood as defined by the linear segment of Allentown Road with the following boundaries:

|               |  |
|---------------|--|
| <b>North-</b> | Allentown Road and Tucker Road   |
| <b>East-</b>  | Joselle Court (off of Allentown Road to the north and Stoney Harbor Drive off of Steed Road to the south)            |
| <b>South-</b> | Allentown Road and Steed Road  |
| <b>West-</b>  | Rose Marie Drive (off Tucker Road to the north; and Pinehurst Drive off of Allentown Road to the south) (Exhibit 46) |

(7) After further consideration, the Applicant requests that the neighborhood surrounding the subject property may be defined by that area of Prince George's County that is predominately developed with more moderately sized dwellings on smaller lot subdivisions. These subdivisions are commonly found on land that has more relaxed or moderate topographic site conditions. The subject property is located at what is essentially the western edge of the flatter land which is the dominate site condition for those extensive R-R and R-80 zoned developments located immediately to the north, east, and northeast of the subject property. Based on the above, the Applicant requests that the subject neighborhood be defined as follows:

|               |   |
|---------------|---|
| <b>North-</b> | Beginning at the intersection of Palmer Road and Tucker Road continuing in an easterly direction on Tucker Road until its intersection with Allentown Road; South on Allentown Road from its signalized intersection with Tucker Road approximately one-quarter (0.25) to its intersection with Oak Lawn Road.  |
| <b>East-</b>  | Proceed on an easterly line on Oak Lawn Road approximately one (1) mile to its intersection with Tinker Creek in Tinker Creek Stream Valley Park.   |
| <b>South-</b> | Tinker Creek south approximately eight-tenths (0.8) mile until its intersect with Steed Road, and at that intersect running in a westerly direction approximately three-quarters (0.75) mile until the signalized intersection with Allentown Road; left/west on Allentown Road approximately one-half (0.5) mile until the intersection with Washington Overlook Drive.  |
| <b>West-</b>  | Proceeding in a northerly direction at the intersection of Washington Overlook Drive and following the common subdivision boundary separating the Washington Overlook subdivision on the west/left and The Forest at Hunters Mill subdivision on the east/right in a general north/northwesterly direction Synergen Community Solar Farm; and continuing in a northerly direction until it intersects Palmer Road; turning east on Palmer Road approximately 750 feet until the point of beginning. (Exhibit 57(b)) |

(8) Your Examiner accepts the revised neighborhood as submitted by the Applicant for the planning arguments propounded in Exhibit 57. Given this neighborhood, the subject property is surrounded by the following uses:

**North** —Single-family detached residence, and the Potomac Electric Power Company (PEPCO) right-of-way improved with twin rows of public utility operating stations developed with high-voltage towers in the R-E Zone, that connect into a large I-1 (Light Industrial) Zoned PEPCO substation fronting on Tucker Road, the ‘Hunters Mill Estate’ subdivision, Allentown Fire Station, and Bethel Free Methodist Church and single-family residences all in the R-R Zone and the Arnez Garage (and other uses) in the R-R Zone, and C-M (Commercial Miscellaneous) Zone.

**East** — Allentown Road and on the opposite side of Allentown Road is the approximately 16-acre athletic field owned by the Roman Catholic Archdiocese of Washington in the R-E Zone, to the south of Archdiocese’s property is the ‘Green Valley’ subdivision in the R-E Zone, the Tayac Elementary School and the Isaac J. Gourdine Middle School in the R-R Zone; and beyond are the New Life Fellowship Church (in a former 7-Eleven Store) and a small neighborhood shopping center, both in the C-S-C (Commercial Shopping Center) Zone; and beyond is Tinker Creek Stream Valley Park in the R-O-S (Reserved Open Space) Zone and single-family detached residences in the R-R Zone.

**South** —Single-family detached dwellings, a nonconforming Friendly Used Auto Parts salvage yard, Sellner Family Cemetery, all in the R-E Zone, and beyond are single-family detached developments in the Pinehurst Estates subdivision in the R-E and R-R Zones.

**West** — Vacant wooded lands in the R-E Zone, single-family detached dwellings in the R-80, R-R, and R-E Zones, large stream valley steep slope areas, the sites of two large Class-3 landfills, and a commercial solar farm located predominately in the R-E Zone.

### **General Plan/Master Plan**

(10) The 2014 Plan Prince George’s 2035 Approved General Plan locates the property in the Established Communities policy area. The vision for the Established communities’ policy area is context-sensitive infill and low-to medium-density development (page 20). The land use recommendation is for residential-low land uses on the subject property, with densities up to 3.5 dwelling units per acre (DU/A) (pages 100-101), which is consistent with densities allowed in the R-E Zone, which has a maximum density of up to 1.08 and the R-R Zone, which has a maximum density of 2.17. The R-80 Zone requested by the Applicant, has a maximum density of up to 4.5.

(11) The 2006 Henson Creek-South Potomac Master Plan and Sectional Map Amendment recommends residential-low land uses on the subject property, with densities up to 3.5 DU/A (pages 5 and 107). The Master Plan retained the subject property in the R-E Zone, confirming the 1984 Sectional Map Amendment. The Applicant’s request would allow densities that are not consistent with the Master Plan land use recommendations.

### **Applicant's Request**

(12) The Applicant requests that the subject property be rezoned from the R-E to the R-80 Zone on the basis that a mistake or error was made when the property was rezoned to the R-E Zone at the time of the 1984 Sectional Map Amendment for Henson Creek-South Potomac; and, that mistake was not redressed in the subsequent 2006 Sectional Map Amendment for Henson Creek-South Potomac pursuant to the enactment of CR-30-2006. The Applicant contends that at the time of the 1984 Sectional Map Amendment, the existing R-R Zoned subdivisions surrounding the subject property were established when the Zoning Ordinance permitted single-family detached development on lots with a net lot area as small as 10,000 square feet; and, these existing subdivisions were approved prior to the establishment of contemporary subdivision, zoning, and environmental regulations that ultimately result in the setting aside of land necessary in meeting these regulations. The Applicant argues that the R-80 Zone designation for the subject property is proposed as an appropriate and comparable residential density to the established historic lotting pattern of the neighborhood.

### **LAW APPLICABLE**

(1) The R-80 Zone is a conventional zone as defined in the Zoning Ordinance and may only be approved in accordance with the strictures of §27-157(a). This provision of law generally holds that no Application may be granted without the Applicant proving that there was a mistake in the original zoning or subsequent Sectional Map Amendment or that there has been a substantial change in the character of the neighborhood. §27-157, 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.

**(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.

### **Mistake**

(2) 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 is required to overcome the presumption. Pattery 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 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

### **Burden of Proof**

(3) 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 of Prince George's County. (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, infra. Finally, sufficient evidence to "permit" a rezoning does not "require" a rezoning unless an Applicant is denied all reasonable use of the property. Valenzie 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).

(4) In People's Counsel for Baltimore County v. Prosser Co., 119 Md. App. 150,178-179, 704 A. 2d 483 (1998), the Court of Appeals more succinctly noted that "[i]n order to find legal mistake, there must be evidence that assumptions or premises relied on by the County Council were invalid... [and not just] the exercise of bad judgment based on complete and accurate information." Moreover, it is generally held that the existence of a mistake by the District Council in retaining the R-R zoning of the property in its adoption of the 2013 SMA does not mandate that it approve the instant request. Chesapeake Ranch Club v. Fulcher, 48 Md. App. 223, 426 A20 428(1981)

(5) In Rockville v. Henley, 268 MD 469, 473, 302 A.2d 45 (1973), the Court noted that in meeting its high burden of proving change Applicant must show: what area reasonably constitutes the neighborhood; the changes that have occurred in that neighborhood since the comprehensive rezoning; and that these changes resulted in a change in the character of the neighborhood. Courts have upheld a finding of change in the character of the neighborhood when highway improvements were made (and not just proposed); when other rezoning had occurred nearby; and when lots contiguous to the subject property were rezoned to the requested zone at issue and considerable development had occurred. All changes must be considered cumulatively in determining whether Applicant has met its burden – not individually. Bowman Group v. Moser, 112 Md. App. 694, 678 A.2d 643 (1996) Finally “proof of change merely permits the legislative body to grant the rezoning; it does not compel it to do so.” Henley, at 473.

### CONCLUSIONS OF LAW

(1) Change Number FRI-2 of the 1984 Henson Creek-South Potomac Sectional Map Amendment zoned the subject property from the R-R to the R-E Zone (CR-100-1984).

The Master Plan recommends M-NCPPC parkland (unacquired) and low suburban residential land use (1.6-2.6 du/ac) during the THIRD STAGE OF FUTURE DEVELOPMENT as described on page 161 of the Plan text. However, development of these densities ultimately recognized by the Plan is considered well beyond the “foreseeable future” time-frame encompassed by this Sectional Map Amendment and as such is not encouraged. In accordance with Sectional Map Amendment staging policies discussed in a previous chapter of this report, staged future development areas in this part of the subregion are considered low density living areas for the foreseeable future and perhaps much longer. The R-E Zone is proposed as consistent with rezoning policies for low density living areas and as most suitable to accommodate limited development pressures that might be considered appropriate during this unspecified period of time. Proposals for comprehensive design zoning (R-S 1.6-2.6) which address the staging issues referenced in the Master Plan may be justifiable at some point in the future as well. (Exhibit 26)

(2) Change Number FRI-2 zoned 154.8 acres from the R-R to the R-E Zone, specifically acknowledging 19 single-family homes in the 9000-9200 block of Allentown Road which includes the subject property. (Exhibit 26)

(3) The subject property is located in Staging Policy SMA Implementation Policy Area B (Exhibit 27). Specific policies for this area include:

- Comprehensively rezone all properties designated as permanent low density or staged future development to a maximum density of approximately one dwelling unit per acre, e.g. the R-E Zone.
- Rely on the adequate public facility test imposed during review of subdivision proposals to balance commitments to further subdivision development (even for large lot,

permanent low-density subdivisions) in this area.

- Discourage allocation of sewer capacity or other urban services to development projects in these areas.
- Discourage rezoning or allocation of sewer capacity to projects in these areas until commitments are made to program the major transportation facilities designated by the staging plan.
- Reevaluate the situation in the next cycle of comprehensive rezoning.

### **Mistake #1**

(4) The Applicant contends the Council's action at the time of the 1984 Sectional Map Amendment was based on an incomplete factual predicate regarding the ability of the public infrastructure to support the single-family density permitted in the R-R Zone. The District Council placed those properties in FRI-2 (and many others) in a holding zone pending a re-evaluation at the next comprehensive rezoning. Nowhere does the Council state that the sole reason for placing these properties in a holding zone is the lack of all types of public infrastructure. Indeed, the Council did not even contemplate zoning these properties to a higher density zone regardless of the status of infrastructure existing in 1984. There are simply no facts to support the Applicant's argument for Mistake #1. In accordance with the 1984 adopted policies (supra), the District Council did review existing public infrastructure and its capacity, and made recommendations for proposed improvement based on a comprehensive analysis of the areas needs and the anticipated build out scenario during the 2006 Master Plan for Henson Creek-South Potomac.

### **Mistake #2**

(5) The Applicant also argues that the District Council failed to recognize the existing higher density residential development patterns of the established neighborhoods in the vicinity of the subject property. The Applicant states that the R-R Zoned subdivisions in the vicinity of the subject property exhibit greater densities than the density currently allowed in the R-R Zone (generally 2.17 DU/A) but are more aligned with densities comparable to the current version of the R-80 Zone (generally 4.58 DU/A). (Exhibit 10) There are older subdivisions in the area, such as Hunter Mill Estates (1962), Maplewood (1962), Green Valley (1967), and Pinehurst Estates, Section 2 (1962), that do include densities comparable to the current requirements of the R-80 Zone but are grandfathered as to lot sizes that would not be allowed and are no longer permitted in the R-R Zone. However, only one of these developments are adjacent to the subject property, with only a small portion of the subject property sharing a border (approximately 170 feet) with one of the R-R zoned subdivisions (Pinehurst Estates, Section 2) with higher-than-currently permitted density. Other nearby subdivisions which existed in 1984 are zoned R-E and developed consistent with the density currently required in the R-E Zone, which include Bird Lawn to the west and Steed Estates to the south (see Appendix C: nearby subdivisions in the memorandum dated December 27, 2017, (Lester



to Alam)). It was not a mistake to not zone the subject property R-R or R-80 due merely to the presence of higher-density subdivisions in the general vicinity of the subject property.

(6) The Applicant argues that the R-80 Zone is appropriate because it is a comparable residential density to the established historic lotting patterns of four nearby subdivisions that existed in 1984. The issue of the corrective zone cannot be reached until there is a finding of mistake in the most recent comprehensive zoning, here the 2006 Henson Creek-South Potomac Sectional Map Amendment.

(7) Although the subject property is located relatively near to higher low-density subdivisions, suburban development patterns have evolved in the County over the last 50 years. Environmental awareness and a desire to limit low-density, auto-oriented development and protect environmental features caused a shift in zoning and planning practices, striving to reduce and correct the environmentally impactful development patterns of the past (e.g., higher density developments scattered throughout the County). This is evident in the changes in the Zoning Ordinance, Sectional Map Amendments, and the Master Plans that started providing and recommending lower density zones in sensitive environmental areas and directing higher density development to designated centers.

Furthermore, there are many factors under consideration when rezoning a property during an Sectional Map Amendment. Public infrastructure and existing development patterns may be relevant factors in this decision, but they are not the only two factors as determined appropriate by the District Council. In the 2005 Approved Countywide Green Infrastructure Plan (Green Infrastructure Plan), the subject property was categorized as being within the evaluation and network gap areas (see Appendix B: Green Infrastructure Network, 2005 Countywide Green Infrastructure Plan, in the Community Planning referral memorandum for this case dated December 27, 2017 (Lester to Alam)). Evaluation areas are defined as those containing environmentally-sensitive features, such as interior forests, colonial water bird nesting sites, and unique habitats that are not currently regulated during development review (page 1); and network gap areas are defined as areas that are critical to the connection of the regulated and evaluation areas and are targeted for restoration to support overall function and connectivity of the green infrastructure network.

The 2006 Master Plan recognized the status of these properties in the Environmental Infrastructure chapter starting on page 61. The Master Plan states, as a goal, that it wishes to implement a desired development pattern that protects sensitive environmental features (page 61). The subject property is then identified and categorized on page 62, Map 24, Green Infrastructure Network and Special Conservation Areas, in line with 2005 Green Infrastructure Plan. Given the Master Plan's awareness of the sensitive environmental features on the property, and how connecting the network gap plays a crucial role in creating a cohesive green infrastructure network, the lower density zoning of R-E was not a mistake and based on "unsubstantiated assumptions" as indicated by the Applicant. This is further supported by the fact that the property is surrounded by R-E zoning (see Appendix A: Existing Zoning, in the Community Planning referral memorandum for this case dated December 27, 2017 (Lester to Alam)), and that R-E zoning, as well as other lower density zones (mostly Open Space (O-S) and Reserved Open Space (R-O-S)), generally follow the green

infrastructure network as defined (see Appendix D: Existing Zoning with Green Infrastructure Network Overlay, in the Community Planning referral memorandum dated December 27, 2017 (Lester to Alam)). In fact, within the green infrastructure network, there are 9,526.44 acres zoned R-E, as opposed to only 3,270.81 acres zoned R-80; a difference of 6,255.63 acres (see Appendix E: Total Acres by Zoning Class within the Green Infrastructure Network, in the Community Planning referral memorandum dated December 27, 2017 (Lester to Alam)).

The 2005 Green Infrastructure Plan also states that “Properties that contain evaluation areas will develop in keeping with the underlying zoning...however, consideration must be given to the resources that exist on the site and their priority for preservation and permanent conservation” (page 19). This suggests that the R-E Zone, as opposed to R-80, and similar low-density zones are purposefully used to protect environmental features throughout the County, while still allowing limited development in less sensitive areas on individual properties within the network. Overall, the lower density of the R-E Zone is better suited than R-80 for environmental protection, which is why R-E is generally used along the green infrastructure network more so than the R-80 Zone.

### **Mistake #3**

(8) The Applicant also argues that the District Council made a mistake in its adoption of the 2006 Master Plan and Sectional Map Amendment for Henson Creek-South Potomac by “failing to address in detail the redevelopment opportunities associated with those properties designated within “Policy Area B” by the 1984 Sectional Map Amendment and by maintaining the subject property in the R-E Zone.” The Applicant concedes that he did not participate in the 2006 Master Plan and Sectional Map Amendment process nor did the property owner request a different zone for the subject property. The subject property was not brought to the attention of the M-NCPPC or the District Council and the subject property was not individually discussed during the 2006 process. The Applicant notes that the 2006 Sectional Map Amendment is an excellent document for promoting urban design standards and objectives by directing future growth to the proposed mixed-use areas such as the National Harbor Center and other centers, commercial pockets, and connecting corridors; however, the document is all but silent on those less traveled suburban communities that are more removed or remote from the identified centers and corridors. (Exhibit 10)

(9) The failure of the District Council to review the subject property in detail, especially considering the property owners lack of participation in the process, and the failure of the District Council to review all single-family detached residential properties in detail, does not constitute a mistake in the Sectional Map Amendment sufficient to meet the required findings of §27-157. Given the geographical size and scope of the Sectional Map Amendment, the standard approach is to limit zoning changes to where changes in land use policy or development potential is in concert with the County’s land use goals. Sectional Map Amendment zoning changes are recommended based on best planning practices, the land use and associated goals, policies, and strategies produced during the Master Planning process, and the best opportunities to meet the goals of the Master Plan by permitting types of uses and densities at strategic locations that implement the County’s development goals. The stability of suburban and urban communities and environmentally-sensitive areas generally means that there are few recommendations or goals for these areas, since the goal is often

to maintain existing conditions and communities.

(10) The Applicant is borrowing support for the rezoning from the 2014 General Plan, even though the 2002 General Plan would have been the applicable General Plan at the time of the 2006 Master Plan. Since the 2006 Master Plan amended the 2002 General Plan, its recommendations for the property are relevant to the subject Application; the recommendations of the 2014 General Plan are not.

(11) The Applicant argues that, because the 2006 Master Plan list R-80 as an appropriate zone (page 107) to achieve the Plan's goals for low-density development, the subject property should be rezoned to the R-80 Zone. However, the Applicant failed to recognize that the R-80 Zone allows densities at 4.5 DU/A in excess of the maximum established by the Master Plan (page 107) for the subject property.

(12) Given the subject property's environmental features and adjacency to properties already zoned R-E, R-80 is not the most appropriate zone. The Applicant also failed to recognize that the Master Plan only considers a maximum of 3.5 DU/A as "low density" within the Developing Tier, while R-80 allows a maximum density of up to 4.58 DU/A. This means that the Applicant could potentially develop the property well beyond what the Master Plan considers low-density development for the Developing Tier with R-80 zoning. It must also be noted that there are no specific goals, policies, or strategies in the 2006 Master Plan that would directly support the up-zoning of the subject property.

(13) There is no evidence to support a finding of a mistake in the 2006 Henson Creek-South Potomac Master Plan and Sectional Map Amendment sufficient to overcome the presumption of validity of the Master Plan and Sectional Map Amendment. Indeed, neither the subject property nor similar properties located in a single-family residential zone were considered in the Master Plan process and there is no legal requirement that every property located within geographical boundaries must be addressed. As there is no finding of mistake the issue of the appropriate corrective zone is not addressed.

## **RECOMMENDATION**

DENIAL of A-10045.

