

DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND

ZONING MAP AMENDMENT A-10050 DECISION

Application: R-10 to C-S-C Zone
Applicants: Roma S. Bowman Living Trust, et. al.
Opposition: None
Hearing Date: July 17, 2019
Hearing Examiner: Maurene Epps McNeil
Recommendation: Approval w/Conditions

NATURE OF REQUEST

- (1) A-10050 is a request to rezone approximately 33,502-square-feet of R-10 (Multifamily High Density Residential) zoned land to the C-S-C (Commercial Shopping Center) Zone. The property consists of Lots 21, 22 and 23, located on the south side of Prince George's Avenue, and identified as 4935 and 4937 Prince George's Avenue, Beltsville, Maryland.
- (2) The Applicant is alleging that the District Council made mistakes in its adoption of the 2010 Master Plan and Sectional Map Amendment ("SMA") for Subregion I (Planning Areas 60, 61, 62 and 64) when the property was retained in the R-10 Zone.
- (3) The Technical Staff recommended disapproval of the Application. (Exhibit 16) The Planning Board adopted staff's recommendation as its own. (Exhibit 19)
- (4) No one appeared in opposition at the hearing held by the Examiner. A few residents in the area expressed approval of the request.
- (5) At the close of the hearing, the record was left open to allow Applicant to submit a few additional pictures. These items were submitted on July 22, 2019, and the record was closed at that time. (Exhibits 36 (a)-(h))

FINDINGS OF FACT

Subject Property

(1) The subject property has a legal description of Lots 21 through 23 of Beltsville, Section 2, recorded in 1930. It is approximately 33,502-square-feet in size. Lot 21 is improved with a 3,153-square-foot, two-story, nine (9) unit brick multifamily dwelling with basement. Lot 22 is improved with a 2,406-square-foot, 38-foot-high, two-story frame and siding building and a 621-square-foot, 16-foot-high, one-story brick and block building used as a garage. Lot 23 is improved with a concrete pad and gravel pavement. (Exhibits 13 and 14)

Neighborhood and Surrounding Uses

(2) The neighborhood is bounded to the north by Odell Road, to the south by Powder Mill Road, to the east by U.S. 1 and to the west by Rhode Island Avenue.

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

- North - Automotive sales and service uses in the C-M (Commercial Miscellaneous) Zone
- South - Single-family detached dwellings in the R-R (Rural Residential) Zone. Beyond Harford Avenue is a shopping center in the C-S-C Zone
- East - Commercial buildings in the C-S-C Zone, fronting on U.S. 1; beyond U.S. 1 are CSX railroad tracks and industrial uses in the I-2 (Heavy Industrial) Zone
- West - Single-family detached dwellings in the R-R Zone

(4) Applicants provided a detailed zoning history of the site in the Statement of Justification prepared by its land use planner:

In 1946, the Applicant's father, Clint Bowman, purchased the abutting 16,718 square-foot commercial lot situated on the southwest corner of Baltimore Avenue (US Route 1) and Prince George's Avenue just east of the Subject Property. This property is zoned C-S-C and has a premise address of 11172 Baltimore Avenue. This property includes parts of Lot 1 & 24, Block 23, and is improved with a storage building and a 7,020 square-foot, two-story commercial building that was constructed in 1947. The Applicant's family operated a furniture store, small commercial offices, and a pharmacy with a soda fountain on the first floor of the commercial building. The second floor of the building was primarily used as living quarters for the owners and for accessory offices. At the present time, the Applicant still owns the commercial building. Two units are currently leased within the commercial building and the remaining portion is owner occupied.

In 1960, the Bowman family purchased an old church and parsonage situated on Lots 21 thru 23, Block 23, along the south side of Prince George's Avenue just

west of the commercially-zoned property. These lots were rezoned from the R-R Zone to the R-10 Zone through the District Council's approval of Zoning Map Amendment, A-3970 on July 19, 1961.... The church building on Lot 21, Block 23 was originally constructed in approximately 1892 and was later converted in the mid-1960's to a 9-unit multi-family residential building. This building has no central air, washing machines or dryers. As a result, the rental income potential is very low and has reached its maximum potential. There are currently two (2) vacancies within the building. The Applicant is no longer accepting new leases for residential units within the building, so it will ultimately be vacant in the near future.

The parsonage, located just southeast of the old church, is currently vacant and will remain unoccupied. Numerous improvements would be required to bring this older building into conformance with minimum building code requirements. The cost of the improvements would far exceed the value of the structure itself and without these improvements a residential lease permit cannot be obtained from the county. As a result, the structure is currently unused and will remain vacant. Both the existing church building constructed in 1892 and the parsonage constructed in 1900 are already documented on a Maryland Inventory of Historic Properties Form (MHIP) on file with the Prince George's Planning Department's Historic Preservation Section.

A 621 square-foot, one-story, storage building is located on Lot 22, Block 23, directly behind the parsonage. This brick and block storage building was retrofitted to a one-bedroom residential rental unit in the mid to late 1960's. This building is currently vacant. Lot 23, Block 23 contains no structures. This lot was primarily used [as] a gravel parking area to serve the church and parsonage.

Although the abutting C-S-C Zoned property is owned by the Applicant, it has no need to be included in the Subject Application because it is already commercially zoned. The commercial building on the abutting property was built in 1947 and is unable to meet current setback requirements, which includes the required setbacks from US Route 1 and Prince George's Avenue. The abutting C-S-C Zoned property is also unable to comply with the current parking, loading and driveway aisle requirements in Part 11 of the Zoning Ordinance. The commercial building's footprint occupies a majority of the lot and only allows a few "pull in" parking spaces to be provided on the property.

With the C-S-C Zoned property located at the corner of US Route 1 and Prince George's Avenue, and the 1.03 acres of R-10 and R-R Zoned included in the Subject Application, the applicant owns a 1.54-acre tract of continuous land. However, this small tract of land has three different zoning designations, (C-S-C, R-R & R-10), making it both incompatible with one another and unsuitable for future development....

(Exhibit 3, pp. 3-5)

General Plan and Master Plan

(5) The 2014 General Plan (Plan Prince George's 2035) places the subject property within the Established Communities Growth Policy area. The vision for this area is "context – sensitive infill and low-to medium-density development." (2014 General Plan, p. 20) The General Plan "Generalized Future Land Use Map" recommends mixed use for the area. (2014 General Plan, pp. 100-101; Exhibit 3, p. 8)

(6) The 2010 Master Plan and Sectional Map Amendment for Subregion 1 (Planning areas 60, 61, 62 and 64) retained the subject property in the R-10 Zone, and incorrectly noted that Lot 5, Block 23 (originally part of the instant Application) was zoned R-R. The subject property lies within the Beltsville Community. The Approved Future Land Use for Subregion 1 (Map 13) recommends mixed-use commercial for the property. (2010 Subregion 1 Master Plan, p. 160; Exhibit 3, pp. 6-7)

Applicants Request

(7) The Applicants became owners of the subject property in 2008, upon transfer from Clinton and Roma Bowman. (Exhibit 26) As noted above, Clinton Bowman, now deceased, had owned the subject property, as well as adjacent land on which sits a two-story commercial building, since 1960-1961.¹ (T. 13) Applicants seek a rezoning for the subject property from the R-10 to the C-S-C Zone.

(8) Marsha Bowman, Trustee, appeared on behalf of the Roma Bowman Trust and the Marsha Bowman Trust. Ms. Bowman testified that there are three buildings on the subject property: a 9-unit multifamily building; a two-story single-family dwelling; and a garage. (Exhibit 14; T.11-12) Ms. Bowman is the manager of the facilities and she and her husband have done all maintenance. Neither of the residential buildings have central air conditioning or washer/dryers. The single-family dwelling is vacant and will remain so because it would be cost-prohibitive to bring it and the garage up to current code standards. The 9-unit building is not fully leased and Ms. Bowman stated that all tenants will be gone by the end of the year. If the request is granted Applicants intend to develop the site with a small office or commercial building. Applicants submitted pictures which represent the current condition of the property. (Exhibits 33 and 34(a) - (h))

(9) Ms. Bowman noted that she has tried to sell the subject property as well as the commercial property owned by Applicants located to the east of the subject property. She has been told that the properties have little value by themselves, but might be valuable if sold together, and if the instant request is approved. (T. 17-19)

(10) Ms. Bowman also stated that she apprised all neighboring property owners (in writing and in person, for some) and the Beltsville Civic Association of the request to rezone the subject property. (Exhibits 21(a) - (b) and 22; T. 20) No one expressed opposition to the request. Indeed, some close residents, as well as a renter of one of the small apartments on site, submitted letters in support of the request, although they did not appear at the hearing. (Exhibits 28- 31)

(11) Michael Stello lives approximately two blocks from the subject property. He testified in support of the Application:

¹ The other property owned by Applicants was never part of the instant request, but is of some import to Applicants in their argument, discussed below, that the subject property was mistakenly left in the R-10 Zone.

I just think what's there now is out of date and I don't think it's feasible for that kind of apartment housing anymore.... To me, one single commercial building would be more suitable to the way things are changing around here....

(T. 44-45)

(12) Applicants allege that the retention of the R-10 zoning of the property in the last comprehensive rezoning of the area constitutes a "mistake" under Section 27-157(a) of the Zoning Ordinance. This issue of mistake was addressed by Applicant's witness, John Ferrante recognized as an expert in the area of land use planning.

(13) Mr. Ferrante offered the following testimony in support of the Application:

The property is located north of Hartford Avenue, south of Prince George's Avenue, about 200 feet west of Baltimore Avenue. The property has a legal description of Lots 21 through 23 and Lot 5 Block 23.... [W]e submitted documentation showing that the 1990 Master Plan actually rezoned [Lot 5 Block 23] ... from R-R to C-S-C, however the Zoning Maps never showed the commercial zoning. So, the staff has administratively corrected that and it is now C-S-C, so our application today is restricted to the R-10 zoning along Prince George's Avenue ... [which is] 33,502 square feet....

[T]he property to the immediate east between the subject property and U.S. 1 ... [is] a 16,000 square foot lot and the commercial building is roughly ... 7,000 square feet or so.... [It is owned by the applicant] [a]nd ... [m]ost of the ... top floor is ... owner occupied but I believe the only building in there now is the barber shop....

Through the years Baltimore Avenue has expanded its right-of-way and there is very little macadam out there except pull in parking.... I mean less than four spaces can fit on the property, that actually wouldn't extend into the right-of-way.... [I]t no longer meets current setbacks for parking standards....

[The subject property also] would not [meet current zoning requirements].... The only thing it can meet is the 20,000 square foot minimum net lot area which actually seems to be very small for the R-10 Zone. But it can't comply with the lot coverage requirement of 50 percent, a green area requirement of 50 percent or the minimum height required in that zone....

It's my testimony that it definitely was a mistake when the 2010 Subregion Master Plan retained the R-10 for the property.... I believe the Subregion 1 Plan should have recognized that the R-10 portion of the property was in no way large enough to support a mix of uses or comply with current setbacks, parking, landscaping, storm water management, tree preservation or any other requirements needed for mixed-use development....

I believe the 2010 Master Plan also didn't recognize that the property is directly across from Prince George's Avenue and [the] very heavy commercial uses including vehicle storage, vehicle repair....

Well since the property is no longer suitable for R-10 it has to be reclassified to another zone. [T]his property ... [is] the dividing line between the C-S-C properties fronting Baltimore Avenue to the south and all of the automotive C-M uses going to the north, and it runs for blocks [in] either direction.... So I believe that the most appropriate thing to do would be what they did to the block to the south which is

C-S-C [which] is more compatible with residential than C-M.... [G]enerally the uses that are permitted in ... the C-S-C is generally retail, office [and] I believe what they've considered possibly going here is something like a wellness center, a medical, so a small commercial use... [b]ut if there is C-M zoning they could [do] exactly what they do across the street which is vehicle repair, tire repair directly abutting residential uses to the west. So that would not be an ideal situation.

(T. 54-55, 58, 60, 62, 66-67)

(14) Mr. Ferrante concluded that the best use of the property would be to change the zoning to C-S-C so it could be merged with Applicant's adjacent C-S-C zoned land to create a single-use commercial property approximately 1¼ -acre in size. In that manner "anywhere from a 3,000 square foot to possibly a nine or 10,000 square foot commercial building" with "appropriate room [for] required parking and storm water management and landscaping" could be developed. (T. 68)

Agency Comment

(15) The Technical Staff recommended that the Application be denied. It offered the following analysis in support of its recommendation:

The concurrent SMA's approach to mixed-use zoning is explained on page 139 of the SMA:

"This plan identifies areas for mixed-use zoning. Applications for a mixed-use zone may be filed for evaluation and approval based only on the concepts and guidelines contained in the text of this document. Approval should be given for those applications that meet the intent, concepts and guidelines of the future land use plan (see Map 13 on the following page)

The M-X-T (Mixed-Use Transportation Oriented) Zone serves as an adequate zoning technique to implement the recommendations of the master plan for higher intensity, mixed-use development concentrated in and around the Konterra Town Center and at some neighborhood-serving mixed-use activity centers designated by the master plan. To be most effective, it is recommended that the land use recommendations of the master plan be viewed comprehensively, and that review of site plan applications in the M-X-T Zone be flexible. Rather than requiring a mix of uses for each application, there should be a concentrated effort to ensure that the Konterra Town Center and the U.S. 1 Corridor develop the cohesive, horizontal and vertical mix of uses described by the master plan as a whole.

Plans in the County identify future land use in order to set the vision for each area, to be delivered through a long-range plan. It is neither possible nor practical to rezone all properties at the time a plan is adopted. The preferred, stated, zoning approach for the mixed-use areas of the U.S. 1 Corridor (including the subject property) was for individual applicants to apply for reclassification to the M-X-T Zone (see Subtitle 27, Part 3, Division 2, Subdivision 4, of the Prince George's

County Code), where rezoning and subsequent development proposals could be evaluated “based only on the concepts and guidelines contained in the text of the 2010 Master Plan and SMA, but also “comprehensively” and utilizing “flexible” review of site plans, so that the corridor develops “with the cohesive, horizontal and vertical mix of uses described by the master plan as a whole” (page 159).

Pursuant to this policy, while the 2010 SMA rezoned 404.74 acres within Subregion 1 to the M-X-T Zone, no properties along U.S. 1 were reclassified M-X-T.

Accordingly, the decision to retain the subject properties in the R-10 Zone was intentional, in keeping with the SMA’s policy supporting piecemeal, market-responsive (rather than comprehensive), mixed-use zoning along the U.S. 1 Corridor, and not a mistake....

In order for a mistake to be a legally justifiable basis for rezoning, there must have been a basic and actual mistake by the legislative body, in this case the District Council....

Pursuant to Section 27-157(a)(1)(B) of the Zoning Ordinance, there was not a mistake made in the *2010 Approved Master Plan and Sectional Map Amendment for Subregion 1 (Planning Areas 60, 61, 62 and 64)* on properties known as Lots 21-23, Block 23. These properties have been zoned Multi-Family High-Density Residential (R-10) since 1961. The comprehensive reclassification of properties designated for mixed-use commercial future land uses along the U.S. 1 Corridor was not recommended during the 2010 SMA, which instead recommended project-by-project rezoning to the Mixed Use-Transportation Oriented (M-X-T) Zone for these areas; consequently, there was no mistake in retaining the properties in the R-10 Zone....

(Exhibit 16, pp. 7-9)

(16) The Transportation Planning Section concluded that it is likely that any development of the property pursuant to the requested zone (C-S-C) would increase AM peak hour trips by 9 into the site, and the PM peak hour trips would likely increase by 19 into the site and 28 out of the site. However, it also noted that “the adequacy or inadequacy of transportation facilities is not a central issue pertaining to the change or mistake finding required for a Euclidean rezoning” [and] “[b]ased on potential trip generation, the proposed rezoning would have little if any impact on existing transportation facilities in the are of the subject property.” (Exhibit 16, p. 7)

(17) The Special Projects Section of the Countywide Planning Division within MNCPPC provided the following information:

[For Police Facilities] [t]he U.S. Census Bureau population estimate for the county as of July 1, 2017, was 912,756. The national standard of 141 square feet per 1,000 residents requires 128,698 square feet of space for police.... The current amount of space is 267,660 square feet and is within the guideline....

Beltsville Volunteer Fire/EMS Co.818 [is] located at 4911 Prince George’s Avenue in Beltsville.... Applying the national standards, the property does pass the adequacy test because the total response time will not exceed five minutes to the location....

The subdivision has been reviewed for impact on school facilities in accordance with Section 24-122.02 of the Subdivision Regulations and the *adequate Public Facilities Regulations for Schools* ... Staff concluded that the commercial/retail portion of the subdivision is exempt from a review for schools because it is a nonresidential use.

(Exhibit 16, p. 13 of Backup)

(18) The State Highway Administration indicated that it has “no comments or objections” to the Application. (Exhibit 16, p. 14 of backup materials)

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 Application must also meet the purposes of the commercial zones in general, and the C-S-C Zone, in particular, found in Sections 27-446 and 27- 454 of the Zoning Ordinance. These sections provide as follows:

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. 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*.

(4) In White v. Spring, 109 Md. App. 692, 675 A.2d 1023 (1995) the Court of Special Appeals held that a mistake in the prior comprehensive critical area rezoning occurred where erroneous assumptions proffered by the Talbot County Council's planning staff led to the Council's decision to place the subject property in a less dense zone, and that mistake was sufficient basis to approve a later piecemeal zoning request for the property, reasoning as follows:

We ... note that individual petitions for rezoning (as opposed to comprehensive rezoning) ... must generally be supported by substantial evidence showing either that a change in the neighborhood has occurred since the last comprehensive rezoning or that, when the prior comprehensive rezoning occurred, the legislative entity relied upon mistaken or erroneous evidence. This principle has come to be termed the change/mistake rule. If a petitioner can establish a zoning mistake, a zoning change is permitted, but, even then, it is not required....

Judge Moylan ... elucidated [in People's Counsel v. Beachwood I Ltd. Partnership, citation omitted] the operative concern, in respect to the consideration of a zoning mistake:

'The finding of a mistake or error is not so much concerned with the logical validity or merit of ultimate conclusion-drawing as it is with the adequacy and accuracy of the factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing....'

Upon reflection, this simplified statement accurately and fully states the law.... The standard encompassed within the statement serves to guide a review of traditional zoning mistake issues fully, presuming, of course, that proper procedure is followed and there are no police power or taking issues present.

Id. At 697-698. See also, Pattey v. Board of County Commissioners for Worcester County, 271 Md. 352, 317 A. 2d 142 (1974)(A mistake in the comprehensive zoning, zoning map or zoning classification may support a rezoning.)

(5) 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. (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, courts have generally held that sufficient evidence to "permit" a rezoning does not "require" a rezoning unless an Applicant is denied all reasonable use of the property:

The drawing of the line between zones is a function of the legislative body and the fact that the legislative body has rezoned an adjoining or nearby property does not require it to rezone the property under consideration....

Even if an applicant meets his burden of proving that there was a mistake in the original comprehensive zoning or that changes have occurred in the neighborhood causing a change in the character of the neighborhood, this merely *permits* the legislative body to grant the requested rezoning but does not *require* it to do so.

Messenger v. Board of County Commissioners, 259 Md. 693, 703, 271 A.2d 166, 171(1970)

CONCLUSIONS OF LAW

(1) The subject property is relatively small in area – approximately 0.77 acre. If Lot 5, Block 23 on Harford Avenue (originally part of the request), was still included the property would expand to approximately 1.03 acres. This request will allow the totality of properties owned by Applicants (including property along Baltimore Avenue) to be combined and possibly developed with a use that can meet the requisite setbacks for the C-S-C Zone, and one more economically feasible given the increased (approximately 1.54 acres)² size of the combined area.

(2) More importantly, the failure to properly identify the 1990 rezoning of Lot 5, Block 23 from the R-R to the C-S-C Zone in the 2010 SMA is arguably a mistake envisioned by the language in Section 27-157 of the Zoning Ordinance and in Maryland caselaw since the "legislative entity relied upon mistaken or erroneous evidence" when the 2010 comprehensive rezoning occurred. (*Id.*, White v. Spring) Clearly the District Council need not rezone the subject property as a result of this incorrect zoning of Lot 5, Block 23, but it should be given the opportunity to consider the mistake and determine the proper zoning based on all of the relevant facts available at the time of the last comprehensive rezoning. Applicants' other grounds for mistake (failure to consider the smaller size of the site, or to consider the vehicular uses on the C-M zoned properties nearby) are arguably more akin to making a bad judgment on full and accurate information and therefore not true grounds to find that a mistake in the comprehensive rezoning occurred.

(3) The request would satisfy the purposes of the commercial zones, in general, and the C-S-C Zone, in particular since: it will allow infill development of sufficient size for a small commercial use that could serve the needs of residents/businesses in the area (Section 27-446(a)(2)); said commercial use could enhance the economic base of the County (Section 27-446 (a)(10)); and the use could be developed in a manner that is compatible with the

² (See, Exhibit 3, p. 5)

institutional, recreational and service uses in the area (Section 27-454 (a)(1)(B)). The C-S-C Zone is a logical zone for the District Council to consider given the zoning of the uses to the east of the subject property.

(4) For all of these reasons, the District Council could find that the requested zone will not be a detriment to the public.

(5) If the Application is approved the development should be subject to detailed site plan approval to ensure compatibility with the other commercial uses on the block to the east and reduce any negative impact on the residential properties clustered to the south and west.

RECOMMENDATION

I recommend Approval of A-10050, subject to the following conditions:

(1) Prior to the issuance of permits, Applicants shall revise Exhibit 14 to show the proper zoning of Lot 5 (C-S-C), revise the name to Zoning Plat, and submit it to the Office of the Zoning Hearing Examiner for review and inclusion in the record.

(2) Prior to the issuance of permits, Applicants shall obtain approval of a Detailed Site Plan to ensure compatibility with the surrounding properties. The approved Detailed Site Plan shall be submitted to the Clerk of the Council for inclusion in the record of A-10050.