

Forest Venture II, LLC,

* Before The Zoning Board of Howard County

Petitioner

* ZB Case 1084M

* * * * *

DECISION AND ORDER

On March 3, 2010, the Zoning Board of Howard County, Maryland considered the petition of Forest Venture II, LLC for an amendment to the Zoning Map of Howard County, Maryland so as to reclassify 1.37 acres of land from the R-20 to the B-1 Zoning District. The petition was filed with a documented site plan proposing a two-story building of 3500 square feet of retail space on the first floor and 1500 square feet of residential space on the second floor. The subject property is located on the south side of US 40 approximately 900 feet east of Centennial Lane/Bethany Lane and is identified as Tax Map 24, Grid 2, Parcel 1172, 1011 US 40 (Baltimore National Pike), Ellicott City, Maryland.

The notice of the hearing was advertised, the subject property was posted, and adjoining property owners were mailed notice of the hearing as evidenced by certificates of advertising, posting and mailing to adjoining property owners, all of which were made part of the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's Recommendation, were made part of the record. The Department of Planning and Zoning and the Planning Board both recommended approval of the petition.

The Petitioner was represented by Sang Oh, Esquire. No one appeared in opposition to the petition. Eileen Powers, Esquire, the Zoning Counsel, appeared pursuant to Section 16.1000 of the Howard County Code to support the comprehensive zoning of the subject property.

After careful evaluation of all the information presented, the Zoning Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner proposes rezoning with a documented site plan as described below for 1.37 acres of land from the R-20 to the B-1 Zoning District. The subject property is located on the south side of and fronting on US 40, approximately 900 feet east of the Centennial Lane/Bethany Lane intersection with US 40. As testified to by Michael Weal, one of the principals of the Petitioner, the subject property is just east of the parcel on which the Forest Motel/Forest Diner/Soft Stuff Ice Cream store is located, and has always been a vacant lot in between these longstanding commercial uses/zoning to the west and the Oak Lea residential subdivision to the east.

2. The Petitioner's asserted basis for mistake in comprehensive zoning was that the County Council could not have known at the time of the 2004 Comprehensive Zoning that the Forest Motel and Diner would be closing, and that the subject property would be assembled as part of a planned coordinated development with the Motel/Diner properties and several nonconforming residential lots to the south.

3. The Howard County Department of Planning and Zoning ("DPZ") in its Technical Staff Report rejected the above assertion as a basis for finding mistake, finding that this reflected "Petitioner's choice and not necessarily an indication of a failure of the County to recognize potential future site changes". The Board agrees with and adopts DPZ's reasoning in this regard.

4. DPZ did find that mistake in comprehensive zoning could be supported "on the basis that the direct access to US 40 which is an atypical condition for most residentially-zoned properties in the Route 40 corridor causes the property to be unsuitable for the uses permitted

under the current R-20 zoning and renders it more logical to be developed as part of a larger assemblage of business-zoned parcels. The Property is oriented toward US 40 while adjoining residentially-zoned properties are oriented toward Frederick Road. The Property is visually and topographically isolated from adjoining residential properties, a unique condition of the property.” The Petitioner, through its planning witness, Joseph Rutter, former Howard County DPZ Director, agreed with this evidence as to mistake. The Zoning Counsel indicated that DPZ’s finding of mistake, if accepted by the Zoning Board, would constitute an acceptable basis for granting the requested rezoning. The Zoning Board agrees with and accepts DPZ’s findings of fact in this regard.

5. The Petitioner, through its architect, Lee Driskill, testified as to “the Forest Mills Plan”. This plan consists of a proposed development over a larger 6.2 acres, of which the 1.37 acre subject property is only a part. In this case, the Board may only approve the proposed documented site plan for the 1.37 acre subject property. The overall plan on the entire 6.2 acres would consist of a combination of retail and residential uses and may be considered in terms of the proposed development’s compatibility “with existing and potential land uses of the surrounding areas” pursuant to the DSP approval criteria . On the subject property, the documented site plan shows a 3500 square foot first floor commercial space with a second floor of 1500 square feet for a residential use. Mr. Weal indicated that the soft-stuff ice cream store would be located on the first floor, while his father would live on the second floor of the proposed building as shown on the documented site plan.

Mr. Driskill indicated that the development as shown on the documented site plan could exist by itself without the rest of the proposed Forest Mills development but that it would make much more sense as part of the entire development.

6. Mr. Chuck Crovo, a Civil Engineer, testified as to traffic/ road access issues. Mr. Crovo indicated that the proposed access for the entire Forest Mills Plan would be on the subject property if rezoning were granted and that this is the best access point for the entire coordinated development based on the grades on the property. Mr. Crovo indicated that the construction of the new consolidated access was approved by the State Highway Administration and would make traffic access safer and eliminate several unsafe existing access points. Mr. Crovo added that there was safe sight distance at the proposed access point on the subject property. Mr. Crovo indicated that the existing accel-decel lane would continue and that the access would be a right in and right out.

Mr. Rutter also provided some testimony on traffic access issues. Mr. Rutter indicated that the access on the subject property for the commercial/residential development on the larger 6.2 acre property was a critical component for that development. This access could not be effectuated without the rezoning, Mr. Rutter added, because commercial access through residential property is considered inappropriate and would not be allowed under Howard County's development regulations. The Board finds that new proposed access, based on the testimony of Mr. Crovo and Mr. Rutter will clearly be safe and much safer than the existing access provided to the adjoining commercial properties.

7. Mr. Rutter also testified as to the proposed development's consistency with the Howard County General Plan. Mr. Rutter indicated that the approval of the documented site plan in relation to the larger development would further several General Plan policies including Box 4.3, the benefit of Mixed Use Centers, particularly mixed use development as a community focus, community enhancement and the revitalization of the Route 40 corridor. Mr. Rutter testified that the proposed documented site plan would also further policy 5.10, improving the

design of commercial areas, and policy 5.11, making existing commercial centers and commercial corridors more efficient and attractive. The Board finds that the development of the subject property as proposed on the documented site plan will help to further these General Plan policies, even though the Board notes that the only development actually proposed as part of this case is as shown on the DSP for the 1.37 acre subject property, not the Forest Mills development plan on the larger 6.2 acre property.

8. Richard Talkin, Esquire, testified as a principal of the proposed development. Mr. Talkin testified that the proposed development complies with the vision of the Route 40 corridor revitalization, both in terms of providing a vibrant new commercial center on Route 40 and improving the access to that commercial center.

9. The Board finds that the R-20 zoning of the subject property was a mistake in the 2004 Comprehensive Zoning based on its findings in finding of fact 4. Because the Board makes this finding of fact as to mistake, it need not reach Petitioner's other grounds regarding mistake or its grounds for alleging change in the character of the neighborhood.

10. The Board finds that the most appropriate zoning of the subject property is B-1. This zoning category will allow the subject property to be the location of the safest possible access for the subject property's commercial development and the coordinated commercial development on the larger 6.2 acre Forest Mills Plan, a planned commercial/residential mixed use development. B-1 zoning will also allow the subject property to be used for a mixed commercial/residential building development that is very appropriate as a transition between the planned commercial development to the west and the existing Oak Lea residential development to the east along Route 40.

11. The Board also finds that the Petitioner has submitted sufficient evidence for the Board to find that the use of the subject property for a commercial/residential mixed use as proposed on the documented site plan, meets all the requirements for approval of documented site plans under Section 100.G.2.d of the Zoning Regulations based on the Department of Planning and Zoning's evaluation in its Technical Staff Report, an evaluation which the Board accepts as correct and adopts as its own, and based on the Board's findings in findings of fact 5 through 7 above. In particular, the Board finds that the proposed development of the subject property as shown on the DSP will be compatible with whatever commercial development occurs to the west as part of the Forest Mills plan, of which the subject property's development is an integral part, in terms of access and proposed design, and will be compatible with the existing residential development in the Oak Lea subdivision to the east because of the severe topographical differences between the two, the orientation and access of Oak Lea to Frederick Road and the existing wooded buffer between the two areas.

CONCLUSIONS OF LAW

1. The Petitioner, as one seeking a piecemeal zoning reclassification, has the burden of demonstrating mistake in the last comprehensive zoning of the subject property and/or change in the character of the neighborhood of the subject property since the last comprehensive zoning. If this burden is met, the Board is permitted, but not compelled to grant the rezoning request.

2. There is sufficient evidence in the record regarding mistake in the 2004 Comprehensive Zoning of the subject property in the R-20 District, as identified in the Department of Planning and Zoning's Technical Staff Report and the Board's findings of fact 3, 4 and 9 above, to overcome the strong presumption of correctness attached to that comprehensive zoning. Petitioner's evidence and arguments as to other grounds for alleged

mistake and its arguments and evidence as to alleged change in the character of the neighborhood as a basis for justifying rezoning need not and will not be addressed in this decision because of the Board's findings as to mistake in comprehensive zoning as noted above.

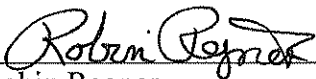
3. Petitioner has met the onerous burden of proving strong evidence of mistake in the comprehensive zoning of the subject property sufficient enough to permit the requested rezoning.

4. The Petitioner has presented sufficient evidence for the Board to conclude that the appropriate zoning category for the subject property is the B-1 Zoning District, and the Board concludes that B-1 is the appropriate zoning for the subject property.

5. The Petitioner met all the criteria contained in Section 100.G.2.d of the Zoning Regulations for the approval of the documented site plan for the use of the commercial/residential building as shown on the documented site plan based on the Board's findings of fact 5 through 7 and 11 above.

For the foregoing reasons, the Zoning Board of Howard County, on this 2nd day of July, 2010, hereby GRANTS the Petitioner's request for rezoning of the 1.37 acre subject property from the R-20 to the B-1 Zoning District, and GRANTS approval of the proposed documented site plan as requested by the Petitioner.

ATTEST:



Robin Regner
Administrative Assistant

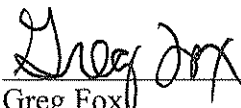
PREPARED BY HOWARD COUNTY
OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR

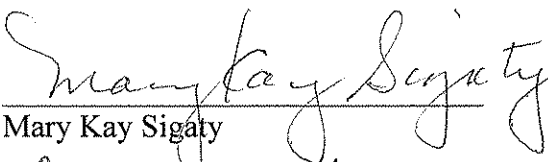

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