

IN RE:	*	BEFORE THE
OLDE SCAGGSVILLE, LLC	*	HOWARD COUNTY
G&R MAPLE LAWN, INC.	*	ZONING BOARD
ZONING COUNSEL	*	CASE NO.: ZB-1134M & 1134PDP
* *	*	* *

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MEMORANDUM OF LAW

Comes now Zoning Counsel for Howard County’s (“Zoning Counsel”) Memorandum of Law filed herein pursuant to § III.D.11 of the Rules of Procedure of the Zoning Board Hearing Examiner (“Hearing Examiner”) in Case Nos.: ZB-1134M and ZB-1134PDP. ZB-1134M is a Zoning Map Amendment Petition from Olde Scaggsville, LLC and G&R Maple Lawn, Inc. (collectively, “Petitioners”) to reclassify approximately two (2.0) acres of land from the B-1 (Business: Local) Zoning District to the RR-MXD-3 (Mixed Use Development) Zoning District. ZB-1134PDP seeks four (4) amendments to the existing Maple Lawn Preliminary Development Plan, hereinafter collectively referred to as the Second Amended Preliminary Development Plan (“Second Amended PDP”).

PRELIMINARY MOTION

Zoning Counsel objects to Protestant Joel B. Hurewitz’s Motion to Disqualify Hearing Examiner and Zoning Counsel and wishes to incorporate the arguments made in Petitioner’s Opposition to

Protestant Joel B. Hurewitz's Motion to Disqualify Hearing Examiner and Zoning Counsel, and supplement with additional information stated herein.

The Protestant made several declarations that are nothing more than misinterpretation of the cited law. For context, both the Hearing Examiner and Zoning Counsel positions—for as long as they have existed—have been filled by employment contract as approved in the County budget. Rule 1.015 of the Rules of Procedure of the County Council states that “the Council may, by resolution or as provided in the County budget, employ such legal, financial, technical, or other assistance as it may from time to time deem necessary.” This Rule is explicit in stating that budget actions may take the place of resolutions within the context of certain hiring practices. Zoning Counsel maintains that this situation is one of them.

Section 16.305 of the Howard County Code of Ordinances speaks to Terms of Service for the Zoning Board of Appeals states:

- (a) The budget for the Hearing Examiner shall be included in the Board of Appeals budget.
- (b) While holding the position of Hearing Examiner, the Hearing Examiner may not represent any client involving land use in Howard County.

This implies that employment of the Hearing Examiner for the Board of Appeals is approved through the budgetary process. While the Zoning Board and the Board of Appeals are different, the previous section stayed silent on the position of the Hearing Examiner for the Zoning Board and normal interpretation allows for the inference of a similar process for a similar position.

Furthermore, Section 16.1000 of the Code states, in pertinent part:

- (a) The County Council may employ a Zoning Counsel on a part-time, contractual basis. The Zoning Counsel shall be a member in good standing of the Bar of the Maryland Court of Appeals and at the time of appointment shall have been actively engaged in the general practice of law for at least 5 years.

The Code does require a vote of three Councilmembers to enter into the contract of employment, which occurred, but it simply does not demand a Council Resolution and its full public process to employ a Hearing Examiner or a Zoning Counsel. Zoning Counsel contends that these positions are part of the administrative actions and proceedings of the Council—a human resources personnel process.

In addition to what Zoning Counsel believes to be Protestant's misinterpretation of the law, the Motion should be dismissed for policy reasons, with the aim of serving the best interests of Howard County residents. Though the Charter proscribes adherence to certain legal requirements, within those confines, the County Council still has the ability to, and the duty to, decide the most expedient, efficient, and cost-effective ways to discharge its administrative duties. Granting this Motion would introduce delay and uncertainty to the whole zoning hearing process. As mentioned before, there is no substantive concern with the experience or qualifications of the current Hearing Examiner or Zoning Counsel. Though well intentioned, the desire for procedural accuracy should not be used to obsessively contemplate minutiae to the detriment of executing the business of serving residents.

OVERVIEW AND PETITIONER'S REQUEST

The subject of ZB-1134M consists of approximately 2.47 acres on the north side of Buch Way approximately 300 feet northwest of the intersection of MD Route 216 and Buch Way and shown as Parcels 200 and 226 on Howard County Tax Map 46, Grid 3 (“Buch Property”). Of the 2.47 acres of the Buch Property approximately 0.47 are in the RR-MXD-3 Zoning District with the

remaining acreage in the B-1 Zoning District. This request is to consolidate the Buch Property into a single zoning classification—RR-MXD-3. The Petitioners allege rezoning is justified based on substantial changes in the character of the neighborhood since 2016 following approval of Zoning Map Amendment Case No.: ZB-1107M. Pet’rs’ M Ex. 4. In 2016, Olde Scaggsville, LLC (one half of the Petitioners in the present case) requested the Buch Property be rezoned from RR-MXD-3 to the B-1 Zoning District based on a mistake in the 2013 Comprehensive Zoning Plan. Petitioners presented expert testimony explaining the basis for the 2016 rezoning and why that case should not impact the present request. After considering Petitioners’ testimony and reviewing the decision in ZB-1107M, Zoning Counsel agrees that the facts and underlying basis for the rezoning in 2016 are irrelevant to the subject request and should not prejudice their argument for change in the character of the neighborhood beyond establishing the date (2016) from which change in the character of the neighborhood must be determined. *See Shapiro v. Montgomery Cnty.*, 269 Md. 380 (1973) (date for determining change in the neighborhood was considered from the previous rezoning attempt (1968), not date of most recent comprehensive rezoning (1958)); *See also Brown v. Wimpress*, 250 Md. 200 (1968) (holding that changes in the neighborhood should be considered from the time of the prior rezoning denial).

In conjunction with ZB-1134M, Petitioners submit ZB-1134PDP to amend the Maple Lawn Farms Preliminary Development Plan (“PDP”) for a second time (“Second Amended PDP”). The specifics of this request are as follows:

1. Increase the maximum overall density from 2.2 dwelling units per gross acre to 3.0 dwelling units per gross acre;
2. Increase the permitted units on the Maple Lawn West District (Old Farm District) from thirty-two (32) detached dwelling units to 253 single-family detached dwelling units;

3. Increase the boundaries of the PDP Boundary to include the Buch Property, subject of ZB-1134M; and
4. Change a portion of the land use designation of the Maple Lawn Business District from “Employment” to “Other Residential” and allow for the additional of 260 apartment units.

The MXD District is an overlay zone that is “established to permit flexible and efficient use of large parcels at key locations by combining housing, employment, local commercial and open space uses in accordance with a unified design.” HCZR § 127.0A. Until such time as a PDP is approved by the Zoning Board, however, land in the MXD District is subject to the guidelines and regulations applicable to the underlying zoning district. In the present instance, the Maple Lawn PDP was approved on December 29, 2000, pursuant to ZB 995M for 507.9 acres consisting of 485 single-family detached dwelling units, 395 single-family attached dwelling units, 236 apartments and a maximum of 1,175,460 sq. ft. of employment including 152,370 square feet of retail. The PDP created distinct districts for Maple Lawn and set forth anticipated patterns of development, as well as development criteria to govern each district.

The PDP was amended on March 20, 2006, to create an additional district, add 97.4 acres to the overall site, increase the total number of dwelling units from 1,116 to 1,340 (consisting of 383 single-family attached dwelling units) and add 29,220 square feet of retail and 655,332 square feet of office. In 2021, a request was submitted to amend the PDP but was withdrawn after receiving negative feedback from the community. Petitioners presented evidence that the Second Amended PDP has been revised in response to the community’s negativity towards the 2021 proposal.

ZONING COUNSEL’S ROLE

Zoning Counsel's role pursuant to § 16.1000(c) of the Howard County Code ("County Code") is to produce evidence and testimony supporting comprehensive rezoning and to facilitate a complete record during hearings on piecemeal zoning map amendment requests. It is Zoning Counsel's understanding that, while the position is to defend the existing comprehensive rezoning, Zoning Counsel's responsibility does not extend to defending clear cases of mistake or change let alone pursuing nonmeritorious arguments. Rather Zoning Counsel serves as a legal and technical expert in opposition to Petitioner's case given Protestants—especially if unrepresented—may not grasp the nuance and idiosyncrasies of a "change/mistake" argument in the context of a piecemeal zoning map amendment. In other words, Zoning Counsel should solicit evidence that may not otherwise be introduced into the record that can assist the Hearing Examiner in issuing the report required pursuant to § 16.203A(b) of the County Code and the Zoning Board issuing a final decision pursuant to § 16.204(a) of the County Code.

ZB-1134M REZONING

A. Change or Mistake in General

The Zoning Board for Howard County is authorized to grant piecemeal zoning map amendments based on findings required by law. § 16-204(i) of the County Code. In Maryland, piecemeal rezonings for Euclidean zones must comply with the "change-mistake" rule promulgated by Maryland case law. In effect the "change-mistake" rule is a disjunctive legal rule where a piecemeal rezoning request may be granted upon a finding of either strong evidence of mistake in original or subsequent zoning or evidence of substantial change in the character of the neighborhood. *See Stratakis v. Beauchamp*, 268 Md. 643 (1973). The change-mistake rule sets a

high bar for success because it “endeavors to serve the important function of preventing the arbitrary use and/or abuse of the zoning power.” *See Mayor & Council of Rockville v. Rylyns Enters.*, 372 Md. 514, 538 (2002). In the present case, Petitioners allege that this piecemeal rezoning is justified based on substantial and unanticipated change in the character of the neighborhood since the Buch Property was rezoned B-1 in 2016.

Under Maryland case law, successful demonstration of substantial change in the character of the neighborhood is contingent upon satisfying three (3) elements, set forth below:

1. What area reasonably constituted the “neighborhood” of the subject property;
2. The changes which have occurred in that neighborhood since the original or last comprehensive zoning affecting the property.
3. That these changes resulted in a change in the character of the neighborhood which would justify reclassification to the category requested.

The burden of proof is on Petitioners to establish all factors in support of the rezoning. *See Clayman v. Prince George’s Cnty.*, 266 Md. 409 (1972).

B. Analysis of Petitioners’ Argument in Support of Change

1. What area reasonably constituted the “neighborhood” of the subject property?

Petitioners’ expert land planner, Mr. Kevin Foster, with Gutschick, Little and Weber, testified regarding the area that he reasonably believed to constitute the neighborhood. Mr. Foster testified that he believed the boundaries of the neighborhood were Johns Hopkins Road to the north, US 29 to the east, MD Route 216 to the south and Pindell School Road to the west. Zoning Counsel agrees with Petitioner’s definition of neighborhood for purposes of this application. To paraphrase Mr. Foster, a neighborhood must be considered and analyzed beyond a single development approval—

such as the PDP boundary. Instead, a neighborhood is defined by the physical development patterns, continuity of development and natural and manmade barriers that separate and define an area. Zoning Counsel is not persuaded by opponent's assertions that neighborhood should be confined solely to the adjoining or adjacent parcels to the Buch Property. *See Sedney v. Lloyd*, 44 Md. App. 633 (1982) (holding neighborhood implies an area immediately larger than the property itself and its neighbors).

Zoning Counsel's opinion is informed by Maryland case law that, while not establishing bright line rules, nevertheless provides examples and principles to consider when defining a neighborhood. The concept of a neighborhood is a flexible one and will vary according to the geographical locations involved. *See Montgomery v. Bd. of Cnty. Comm'rs for Prince George's Cnty.*, 263 Md. 1 (1971). Moreover, the law governing a neighborhood in a piecemeal rezoning is not and should not be precisely and rigidly defined but should vary from case to case. *See Clayman v. Prince George's County*, 266 Md. 409 (1972).

Notwithstanding Zoning Counsel's position, given the size of the Maple Lawn District there is an argument that the neighborhood could reasonably be confined to the limits of the PDP because using only roadways or natural features could result in a more expansive boundary than is necessary. This alternative position depends upon differentiating neighborhoods based on density and lotting patterns. Thus, Maple Lawn can be considered a unique and distinct neighborhood from the single-family detached units east of Pindell School Road and south of Johns Hopkins Road in the RR-DEO District. This definition of neighborhood would incorporate Maple Lawn South consisting of 176 single-family detached dwelling units on the south side of MD 216 in the R-ED-

MXD-3 District, but otherwise outside of the Maple Lawn PDP. It could also expand to the Gates of Maple Lawn age-restricted community consisting of fifty-seven (57) townhouse condominiums in the R-SA-8 District on the south side of MD 216 and east of Maple Lawn South.

At bottom, Zoning Counsel agrees with Petitioner's defined neighborhood, although the actual definition of neighborhood is fairly debatable.

2. The changes which have occurred in that neighborhood since the original or last comprehensive zoning affecting the property.

The second prong necessary to demonstrate change requires listing the changes that occurred in the neighborhood. Since rezoning in 2016, Petitioners' evidence of change can be summarized as:

- a. Howard County and the region are experiencing a substantial and well documented housing shortage, including an increase in demand for multifamily and moderate-income housing options.
- b. The neighborhood's economic and land use context has shifted significantly since the COVID-19 pandemic, and
- c. Improving relationship between owners of Maple Lawn and Buch Property previously absent that would allow for integration of the Buch Property into the overall Maple Lawn development scheme.

Petitioners produced testimony in support of these purported changes in addition to the evidence already presented by Mr. Kevin Foster. Mr. Mike Buch of Buch Construction owns the Buch Property and wants to develop it with residential uses after an approximately 80,000 sq. ft. office building was cancelled because of the COVID-19 pandemic. Mr. Micheal Greenbaum of Greenebaum Enterprises is the master developer for Maple Lawn. Mr. Greenebaum testified regarding the downturn in the office and retail markets caused by the COVID-19 pandemic exemplified by empty parking lots around the office buildings that suffer approximately 30%

vacancies. Evidence concerning market conditions and demand for rental housing was introduced by Daraius Irani, Ph.D, Chief Economist with Towson University Regional Economic Studies Institute and Ms. Jessamine Duvall, Executive Director of Columbia Housing Center, respectively.

After careful consideration of the evidence and testimony, Zoning Counsel finds that Petitioners have not provided evidence to justify a change in the character of the neighborhood. To justify a rezoning based a change, the evidence submitted must be specific to material changes within the neighborhood as it has been defined. *See Mayor & Council of Rockville v. Rylyns Enters.*, 372 Md. 514, 538 (2002) (holding the legal standard for piecemeal rezoning based on change is limited to significant and unanticipated changes in the defined neighborhood.). In the present matter two (2) of Petitioners' arguments concern shortage of available housing, but as a general matter, and not confined to the surrounding neighborhood. In fact, the desire to convert underutilized office space into rental apartments could conceivably justify any office zone that is being underutilized. Such a justification contravenes the fundamental purpose of Euclidean zoning.

Their final argument relies on a change in the relationship between two (2) adjoining landowners—hardly the significant or unanticipated change contemplated by the Court in *Rylyns*. Euclidean zoning is rigid by design in order to provide stability and predictability in land use planning and zoning. *See Cnty. Council for Prince George's Cnty. v. Zimmer Dev. Corp.*, 444 Md. 490, 511-13 (2015). In short, the facts or changes relied upon are simply not of a class or character sufficient to justify piecemeal rezoning.

- 3. That these changes resulted in a change in the character of the neighborhood which would justify reclassification to the category requested.**

Even assuming arguendo these changes were satisfactory evidence of change, for the reasons explained in greater detail below Zoning Counsel finds that the evidence presented by Petitioners is insufficient to demonstrate change in the character of the neighborhood in accordance with Maryland case law.

The strict standard for change is evident when reviewing Maryland cases that involve rezoning based on change. In *Bowman Group v. Moser*, 112 Md. App. 694 (1996), the Appellate Court of Maryland found that there was sufficient evidence in the record to reinstate the Mayor and City Council of Hagerstown's rezoning from high-density residential to commercial based on change in the neighborhood. In *Bowman Group* the Circuit Court incorrectly discounted rezonings in the area, intersection and interstate upgrades, as well as extending water and sewer lines to the property. In admonishing the Circuit Court, the Appellate Court ruled that that the changes should have been considered cumulatively to determine whether it was fairly debatable that there had been a substantial change in the character of the neighborhood to justify the rezoning. 112 Md. App. at 700. The Circuit Court erred in considering each argument independently and did not give the cumulative effect from all changes when reviewing the Mayor and City Council's decision.

Even if there is evidence of change, the changes must have occurred in the immediate neighborhood to such a degree that the character of the area has been impacted. *Clayman v. Prince George's Cnty.*, 266 Md. 409 (1972). Although the Court's decision in *Clayman* ultimately hinged on the failure of the District Council to adequately describe the neighborhood, the Court also opined on the evidence in support of the change and found it wanting. Even when all evidence of

change was considered together the Court was not persuaded the evidence supported the rezoning from a residential zone to a commercial zone. In short, the Court was not persuaded by extending sewer to nearby residential subdivisions, plans to widen and extend roadways in the vicinity of the property, vague sentiment that there had been an “increase in traffic,” subdivision growth and increased density. *Clayman*, 266 Md. at 419. The Court relied upon previous precedent in support of its decision.

In contrast to the case above, in *Meginniss v. Trustees of Sheppard and Enoch Pratt Hospital*, 246 Md. 704 (1967), the Maryland Supreme Court found the record sufficient to support change. While the appellees in *Meginniss* relied on certain platitudes such as the need for more housing, changes in road patterns and rezonings, these conclusions were supported by empirical facts. Regarding changes in road patterns, the Court in *Meginniss* found that at the time of the hearing several roadway improvements—including new arterials—were under construction that would have a significant impact on travel. Significant changes to institutional uses in the immediate vicinity were found to contribute to a change in the character of the neighborhood. Nearby Towson University had doubled in size and projected the class for 1970 to be 10,000 students. Greater Baltimore Medical Center was constructed since the prior comprehensive rezoning and will have 600 beds at full build-out with approximately 1,000 to 1,200 employees. Finally, St. Joseph’s Hospital, a 322-bed hospital with a school for 120 nurses had been constructed. Underpinning the Court’s decision in support of change was the finding that the quiet, bucolic atmosphere of 1955 had changed to one of great activity. 246 Md. at 710. All evidence of change supported this general proposition, which Zoning Counsel finds instructive for understanding how to interpret “change in the character of the neighborhood.”

C. **Zoning Counsel's Argument and Conclusion**

In the present case, Zoning Counsel is unable to point to a single fact in the record that can support, let alone justify, satisfaction of the “change-mistake” rule argued by Petitioner. As mentioned previously, Petitioner relies on state-wide changes in demographics, the market and policies as support for change. “Howard County and the region are experiencing a substantial and well documented housing shortage, including an increased demand for multifamily and moderate-income housing options. *HoCo By Design* emphasizes that future growth must be directed into existing housing opportunities across a range of housing types and price points.” Pet’rs’ M SOJ pg. 4. Petitioners cite *Megininnis* for support that a significant increase in housing demand may constitute a change sufficient to justify rezoning. As previously discussed, the increase in housing demand was not the sole factor relied upon by the Court in *Megininnis*. Moreover, the underlying justification was the drastic transformation in the neighborhood from rural to urban since the prior comprehensive zoning. An increase in the demand for housing was just one of the factors evidenced by this change. Moreover, it was not an abstract increase in demand, but concrete demand generated by the growth of Towson University, Greater Baltimore Medical Center and St. Joseph’s Hospital. Petitioners are unable to supply a similar catalyst for increased housing demand within Maple Lawn excepting the promulgation of public policies that encourage constructing additional housing. But changes in public policy cannot be used to justify piecemeal rezonings. The proper avenue for aligning zones public policy is through the comprehensive zoning process, not piecemeal rezoning.

Petitioners also rely on drastic shifts in the market and economic factors arising from the COVID-19 pandemic in support. “Office and commercial market conditions have evolved toward increased vacancy and reduced demand for traditional office development. This change has increased the importance of complementary residential uses that support business district vitality, strengthen walkability and promote activity throughout the day.” Pet’rs’ M SOJ pg. 4. Fluctuations in market conditions and consumer attitudes are insufficient to support a rezoning based on change. Fewer cars in a parking lot is not evidence of a change similar to how an increase in traffic on neighborhood roadways is not evidence of change. *See Heller v. Prince George’s Cnty.* 264 Md. 410 (1972). Rezoning requests based on market conditions would consequently erode stability and predictability inherent to Euclidean zoning.

Finally, and not explicitly stated by Petitioners, changing sentiment or attitudes from the community towards development cannot be used to support a piecemeal rezoning based on change or mistake. “A plebiscite of the neighborhood does not determine zoning.” *See Quinn v. Cnty. Comm’rs of Kent Cnty.*, 20 Md. App. 413, 417 (1974). Although, this legal principle is generally utilized when neighbors are attempting to deprive an owner of their property rights, the inverse is also true. *See Montgomery Cnty. Council v. Scrimgeour*, 211 Md. 306 (1956) (holding that petition in support of rezoning was inconsequential to deciding if rezoning was fairly debatable).

The neighborhood, as defined by Petitioners, exists today more or less as it did in 2016. Therefore, the rezoning of the Buch Property cannot be justified based on a change in the character of the neighborhood as required by Howard County Code. Notwithstanding Zoning Counsel’s conclusion, the evidence presented by Petitioner might support an argument that the Zoning Board

mistakenly rezoned the Buch Property in 2016. Mistake can be shown in situations where the passage of time has shown that the underlying assumptions or premises relied upon to justify a particular zoning classification were incorrect. *See Beachwood I Ltd. P'ship*, 107 Md. App. 627, 645 (1995) (citing *Mayor & Council of Rockville v. Stone*, 271 Md. 655 (1974)). However, Petitioners did not argue for mistake, and Zoning Counsel will not speculate on the potential merits of this position.

ZB-1134PDP AMENDMENT

In conjunction with Petitioners' application to rezone is a request to amend the Maple Lawn Preliminary Development Plan ("PDP") for a second time ("Second Amended PDP"). As mentioned previously, the Petitioners request four (4) amendments to the PDP, which are as follows:

1. Increase the maximum overall density from 2.2 dwelling units per gross acre to 3.0 dwelling units per gross acre;
2. Increase the permitted units on the Maple Lawn West District (Old Farm District) from thirty-two (32) detached dwelling units to 253 single-family detached dwelling units;
3. Increase the boundaries of the PDP Boundary to include the Buch Property, subject of ZB-1134M; and
4. Change a portion of the land use designation of the Maple Lawn Business District from "Employment" to "Other Residential" and allow for the additional of 260 apartment units.

These requests concern an existing area of Maple Lawn and presume the successful rezoning of the Buch Property from the B-1 to the RR-MXD-3 district. However, if the Buch Property is not rezoned, there is no reason to analyze Request Nos.: 3 and 4. Moreover, Request No.:1 would need to be modified to permit less than the maximum density permitted in the district. Thus, for purposes

of this Memorandum of Law, Zoning Counsel will assume *arguendo* that the Zoning Board will grant Petitioners' rezoning request.

A. Background

The West District (previously the Old Farm District) was shown on the original PDP and First Amended PDP. Zoning Counsel Ex. 1. According to expert testimony from Mr. Kevin Foster, the West District is approximately 110 acres and was planned to be improved with thirty-two (32) single-family detached dwelling units of various lot sizes, but significantly larger than those found in other Maple Lawn Districts. If the Second Amended PDP is approved, the number of dwelling units in the West District would increase to 253 with lot sizes akin to others throughout Maple Lawn. The Buch Property (presuming it was rezoned) is currently designated as Employment within the Business District. Per Mr. Foster, the Second Amended PDP would redesignate approximately 4.1 acres of Employment as Other Residential to include the Buch Property and surrounding area as shown on Pet'rs' PDP Ex. 1. The Buch Property would be improved with 260 apartments. Together, these changes would increase the overall density from 2.2 dwelling units/acre to 3.0 dwelling units/acre, which is the maximum permitted in the MXD-3 District.

Testimony from Mr. Michael Breenebaum elucidated on the evolution of Maple Lawn and the genesis for the Second Amended PDP. Generally, the Second Amended PDP is designed to meet the increased demand/need for housing within Maple Lawn by increasing the number of dwelling units in the West District and converting space dedicated to office parking into apartments. Zoning Counsel has no objection to Mr. Greenebaum's testimony but notes for the record that many of the proposed revisions in the Second Amended PDP are reflective of negative community feedback

generated by the proposed 2021 amendment that was ultimately withdrawn. As explained by Mr. Greenebaum, apartments were proposed for the West District in 2021, which generated criticism from the community. The Second Amended PDP still proposes apartments but shifts them further east and retains single-family detached dwelling units in the West District.

Because Preliminary Development Plans, generally, and the Second Amended PDP, specifically, are concerned with planning—as opposed to zoning—community feedback should not be discounted. “Planning concerns the development of a community, not only with respect to the uses of lands and buildings, but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience.” *Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 505 (2015). To plan for a better community, Petitioners engaged with the community on a range of issues related to the location and distribution of residential density, the relationship between residential and business uses, traffic circulation, preservation of established community features, and overall integration within the Maple Lawn framework. Pet’rs’ PDP SOJ, pg. 8. A Memorandum of Understanding (“MOU”) was generated between the Petitioners and the Maple Lawn Homeowners Association to communicate and collaborate as the project receives the required development approvals. Pet’rs’ PDP Ex. 4. Notably, the MOU does not explicitly state that the HOA supports or will support the Second Amended PDP only that “the MOU reflects [the HOA’s] intent to continue to work constructively and in good faith with the Developer as the proposal advances.” Pet’rs’ PDP Ex. 4, pg. 2.

Pursuant to HCZR § 127.0.D.8 the Zoning Board is authorized to approve amendments to Preliminary Development Plans for the MXD District in accordance with the review procedures established in HCZR §§ 127.0.D.4-6. The amendment may only be approved if the Zoning Board determines that the Mixed Use Development, with the proposed amendments, will: (1) satisfy the design criteria given in HCZR § 127.0.D.7; and (2) be characterized by a unified design.

B. PDP Review and Analysis

Zoning Counsel finds that the amended PDP will be characterized by a unified design in accordance with existing development at Maple Lawn. The mixed-use districts were established to permit flexible and efficient use of large parcels at key locations by combining housing, employment, local commercial and open space uses under a unified, comprehensive design. Zoning Counsel concurs with Petitioners that the approved limited residential density in the West District artificially and needlessly constrains Maple Lawn's ability to achieve its full potential as a complete, inclusive and vibrant mixed-use community. *See Pet'rs' PDP SOJ pg. 13.*

1. Evaluation of the Petition Concerning Section 127.0.D.7, Criteria for Approval of Preliminary Development Plan.

a. The plan and criteria will foster orderly growth, integration of uses, and development consistent with the purposes of the MXD District.

Petitioners satisfy this criterion. The introduction of apartment units on the Buch Property complement the Vine Apartments in the vicinity of Maple Lawn and introduces a different housing type into Maple Lawn proper. Apartments on the Buch Property represents an evolution to Maple Lawn that is responsive to changing economic and social conditions, while maximizing the potential for infill

development on underutilized parcels. The proposal to increase the development potential for the West District is consistent with other districts throughout Maple Lawn. The Second Amended PDP is a logical extension of the original vision for Maple Lawn.

- b. The Mixed Use Development will be phased to conform to the phasing of road improvements that are needed to serve the proposed development, including improvements to road links, intersections and interchanges for both State and County roads.**

The application conforms with this requirement. These two developments will utilize existing transportation improvements and make upgrades, as necessary, to accommodate the additional development.

- c. The staging plan establishes the earliest reasonable time frame for development of the focal point and recordation of subdivision plats for a proportionate mix of land uses in accordance with Section 127.0.C.3.d.**

No focal point is required for this phase of the development.

- d. The plan and criteria are consistent with all applicable environmental policies and requirements.**

Environmentally sensitive features are preserved to the maximum extent practicable for the West District, which will be evaluated in greater detail during later stages of development.

- e. The minimum area, proportions of uses and the density or intensity of development will be consistent with the requirements of Section 127.0.C.**

The proposed development is consistent with these requirements.

- f. The relative proportions of residential, employment, and open space uses will be appropriate to the area surrounding the MXD District.**

Zoning Counsel agrees with Petitioners that the proposed PDP amendment satisfies this criterion. As Petitioners state:

Larger SFD dwellings are located along the perimeter adjacent to RR-DEO zoned land, with smaller dwellings located internally, creating a graduated transition in intensity . . . [t]he proposed multifamily apartment building is located within the southeastern portion of the Business District adjacent to MD Rout 216, where high-intensity residential development is appropriate and consistent with the mixed-use character of the area.

Pet'rs' PDP SOJ, pg. 25.

- g. If required, the development will include at least one integrated focal point of sufficient size and variety of land uses to be a distinct focus for the community. A focal point is required only for the first Preliminary Development Plan within an MXD District.**

The focal point was developed during an earlier phase of construction. No focal point is proposed or required as part of this request.

- h. The location of land designated for retail centers is appropriate for retail and personal service uses which will serve the local neighborhood or community.**

No retail uses are proposed.

- i. The development will provide a mix of housing types.**

The proposed amendment increases the number of single-family detached dwelling units, which is the most common residential unit available within Maple Lawn. Incorporating and constructing the Buch Property with a 260-unit apartment building increases the type of housing available in Maple Lawn. Moreover, rental housing (with 15% moderate income units) offers an alternative entry point to living in Maple Lawn compared to fee simple ownership.

- j. When feasible, public transit facilities and routes will be integrated into the development.**

No additional public transit facilities or routes will be integrated into the development.

- k. The intensity and scale of land use, as determined by proposed densities, F.A.R. limits and other requirements, will be appropriate in relation to the environmental constraints of the site and the character of existing and planned development in the vicinity of the site.**

The maximum density proposed and mix of uses conform with the requirements for the MXD-3 Zone and are appropriate in relation to adjoining development.

- l. The development will be compatible with existing and planned vicinal land uses. One or more of the following methods may be used to ensure an appropriate relationship between the Mixed Use Development and surrounding land:**

- (1) Protection and enhancement of a natural feature on the boundary of the Mixed Use Development, such as a forest, wooded stream valley or grade change, to provide a natural edge to the Mixed Use Development.**
- (2) Creation of open space to provide a transition or a connection between the Mixed-Use Development and adjacent land uses, including off-site open space areas.**
- (3) Use of an existing or planned major road on the edge of the Mixed-Use Development as a separation between different uses.**
- (4) Establishment of landscape design concepts applicable to the edges of the MXD District where specified types of land uses abut. Such standards may include the use of vegetation, berms, walls or fences.**
- (5) Establishment of setback requirements, accompanied by landscape design standards, along the edges of the Mixed-Use Development where different land uses will meet.**
- (6) Control of the size of buildings along the edges of the Mixed-Use development through limits on building height, F.A.R. or other requirements. Provision of a transition in land uses such that uses on the edge of the Mixed Use Development are similar to adjacent land uses outside the development.**

The environmental constraints on the boundary of the West District consist of a stream and wetland along the north property line and small wetland areas on the south portions of the Property. These areas will be protected and preserved within a large open space area, except for the internal road which was contemplated in the original PDP. No open space is proposed as part of the Buch Property and that is consistent with its location and status as infill development. Petitioner should ensure residents of the Buch Property have access to open space/recreational areas following construction.

Petitioners request a modification to development criteria to decrease the minimum setback from MD 216 right-of-way for multi-story residential apartments to 30 feet. Current standards require a 300-foot setback for all residential properties from MD 216 right-of-way.

Zoning Counsel supports Petitioners' request. As testified by Julia Sauer, Division Chief Zoning and Public Service for Howard County, the R-A-15 and R-APT districts, which allow apartments, only require a 30-foot setback. Thus, the proposed setback for the Buch Property will be consistent with other districts that permit apartments. Furthermore, as testified by Mr. Kevin Foster, as a practical matter, the unique configuration of the Buch Property and its relation to MD 216 means any residential building will be setback approximately 80-100 feet from the actual roadway, but only 30 feet from the right-of-way.

m. The proposed major open space network will accomplish the following:

- (1) Connect, wherever possible, to existing and planned open space adjoining the development.**
- (2) Protect major environmental features such as large forest stands or stream valleys; and**
- (3) Provide adequate useable land in appropriate locations for parks or recreational facilities. The determination of compliance with this criterion shall be based on a finding that at least 10% of the gross open space shall be usable for active recreation facilities. Active recreation facility includes but is not limited to ball fields, indoor sports facilities, play meadows, tot lots, and pedestrian, biking pathway system.**
- (4) Provide appropriate sites for needed public facilities such as schools and libraries.**

The proposed development will utilize much of the existing open space infrastructure and will enhance and provide additional open spaces as appropriate.

The West District is impacted by a stream and wetland along the north property line and small wetland areas on the south portions of the Property. These areas will be preserved to the maximum extent possible. There is insufficient space to provide open space for the Buch Property, but the limited size of the Buch Property will not impact the overall amount of open space already provided throughout Maple Lawn.

- n. The proposed development will provide housing and jobs within pedestrian access of each other.**

The proposed development will provide housing within pedestrian access to approximately 1.86 million square feet of approved employment uses within Maple Lawn. Moreover, the Buch Property will be carved out from the Employment Area, thereby providing residents with easy access to jobs after construction.

CONCLUSION

For all the above-referenced reasons, Zoning Counsel respectfully submits that there is insufficient evidence in the record to rezone the Buch Property based on change in the character of the neighborhood since the last rezoning pursuant to Maryland law. However, irrespective of the rezoning request, Zoning Counsel finds that Petitioners satisfied their burden of proof regarding their request to amend the Maple Lawn PDP pursuant to § 127.0.D.7 of the Howard County Zoning Regulations. The exact nature of the amendments will be contingent upon whether the Zoning Board approves the rezoning of the Buch Property.

Respectfully submitted,

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