IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2015-0224-R

SARATOGA DEVELOPMENT, LLC

FOURTH ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 1, 2015

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: ROBERT KONOWAL

DATE FILED: DECEMBER 30, 2015
PLEADINGS

Saratoga Development, LLC, the applicant, seeks a zoning reclassification (2015-0224-R) from R1-Residential District to R10-Residential District on property located along the southeast side of Parkside Blvd., southeast of Annapolis Road, Jessup.

PUBLIC NOTIFICATION

The hearing notice was posted on the County’s website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. William Grau submitted an affidavit indicating that the property was posted on October 27, 2015 (Applicant’s Exhibit 1). I find and conclude that the requirements of public notice have been satisfied.

The Property

The subject property is owned by a number of individuals. The applicant is the contract purchaser of the parcels that make up the subject property. The four properties consist of 12.749 acres, more or less, and are identified as Parcels 51, 52, 53, and 102 in Block 18 on Tax Map 13.¹ They are zoned R1 Residential District.

¹ The parcels are more specifically identified on Sheet 1 of County Exhibit 2 and on County Exhibit 2A.
The Proposed Rezoning

The applicant seeks to rezone the subject parcels from R1-Residential to R10-Residential, as shown on the site plan introduced into evidence at the hearing as County Exhibit 2.

The Evidence Submitted At The Hearing

Robert Konowal, a planner with the Office of Planning and Zoning (OPZ), testified that the subject site consists of four parcels of land comprising approximately 13 acres, more or less. The site does not have frontage on a road but is located approximately 1,900 feet southeast of Annapolis Road. The site is zoned R1-Residential District as a result of comprehensive rezoning for the First and Fourth Council Districts, effective July 10, 2011.

The site is not located in the critical area. These lands are located in a planned public water and sewer service area. These properties are largely vacant with the exception of one existing residence and a number of non-habitable structures. These lands are intended to be developed in conjunction with lands located to the north that are currently being developed for mixed-use residential purposes.

Mr. Konowal testified that OPZ would define the neighborhood as that area bounded on the north by Annapolis Road, Clark Road to the south, Rockenbach Road to the east and Baltimore-Washington Parkway to the west.

Prior to the First Comprehensive Rezoning for the Fourth Assessment District, the subject site was zoned A–Agricultural District as a result of the
adoption of the Original Zoning Ordinance, effective July 1, 1952. With the adoption of the Second Comprehensive Rezoning for the Fourth Assessment District, effective October 15, 1973, the site was reclassified from A-Agricultural to R1–Residential. The R1 zoning was retained during the Second Comprehensive Rezoning effective June 12, 1989, the Third Comprehensive Rezoning for the Jessup/Maryland City effective June 21, 2004 and the Fourth Comprehensive Rezoning for the Fourth Council District, effective July 10, 2011.

Records maintained by OPZ indicate that no application was filed during the last comprehensive review to change the zoning of the subject site.

Mr. Konowal testified that there is compatibility between the uses of the property as reclassified and the surrounding land uses, so as to promote the health, safety, and welfare of present and future residents of the County.

The applicant contends that a mistake was made in the zoning of the subject property such that the assumptions upon which the zoning was predicated have proven to be erroneous with the passage of time. During the Third Comprehensive zoning of the County, lands abutting the subject lands to the north and also zoned R1 at that time were reclassified to MXD-R – Mixed Use Residential. According to the applicant the retention of the R1 zoning of the subject property was likely based on incorrect information that indicated these lands were part of Fort Meade. The applicant has pointed out that the County’s GIS system even today mistakenly shows the subject lands to be within the boundary of Fort Meade.
The Long Range Planning Division has advised that the subject lands were not considered for inclusion with the lands to the north that were reclassified MXD-R as they were believed to be part of Fort Meade military installation and not available for private sector residential development. Mr. Konowal testified that OPZ agrees with the applicant that the current R1 zoning is a mistake that warrants a zoning reclassification.

Mr. Konowal testified that since the applicant has shown the current zoning is a mistake and the Code only requires the applicant to show one of either a change or mistake the issue of neighborhood change will not be discussed.

As to the requirements of the 2009 Land Use Plan of the General Development Plan (GDP), as shown on Figure 7, the subject lands are designated as “Residential Low-Medium Density. Table 7-1 - Description of Land Use Plan Categories specifies the typical uses found in each land use designation. In the Residential Low–Medium Density category typical uses are single-family detached, semi-detached and townhouse dwellings. The corresponding zoning categories for the subject designation are the R2 and R5 Residential zoning districts. The allowable density in each of these districts is 2.5 units/acre and 5.0 units/acre respectively. The current R1 zoning is not consistent with the Residential Low-Medium Density designation as it currently restricts the maximum density of development to approximately 1.0 unit/acre. The current Residential Low-Medium Density category supports a rezoning that increases the residential density at this location.
Mr. Konowal testified that the subject site is located within a Managed Growth Area (Figure 7-3 Development Policy Areas) that may be according to the GDP characterized by low to high density residential uses. The subject property also lies within a designated Priority Funding Area (PFA). The PFA designation is a “Smart Growth” tool intended to direct growth in the state in a manner that ensures lands are used in an efficient and effective manner. Growth is to be encouraged in those areas that are already developed and where adequate infrastructure exists or can be readily provided so as to reduce pressure on critical farmland and natural resource areas.

The Smart and Sustainable Growth Act of 2009 does not require lands in a designated PFA to be consistent with the “land use” and “density” elements that are specified in the County’s GDP. The state excluded those terms in PFAs to provide a measure of flexibility and encourage local ordinances to allow for densities beyond those specified in a local comprehensive plan. This measure allows a local jurisdiction to further direct growth in PFA where feasible.

Mr. Konowal testified that the proposed R10 zoning allows for the same residential uses as the R2 and R5 districts specified by the Residential Low-Medium density designation as well as multifamily dwellings all at an increased density of 10.0 units/acre. Unlike the current R1 zoning, the proposed R10 zoning is consistent with the GDP. The proposed R10 zoning allows development at a density commensurate with a PFA designation that is supported by a particular set
of conditions, which in this case includes an isolated parcel of lands that abuts a higher density zoning and available services.

The proposed R10 zoning would be compatible with the abutting lands to the north and west that are zoned MXD-R which allows for residential land uses to be developed at a density of seven dwelling units per acre. These lands are now currently being developed as the “Parkside” mixed use development that consists of approximately 1,240 dwelling units, 330,000 square feet of office space and 330,000 square feet of retail space. The subject lands directly abut Phase Four of that development which consists of townhouses and open space. Abutting the subject site to the south and east is the Fort Meade Federal Military installation. It appears a telecommunications facility is located on this portion of Fort Meade.

Mr. Konowal testified that the proposed R-10 zoning, which provides for residential development at a density of 10 dwellings per acre, is a logical and orderly extension of the seven dwellings per acre residential density to the north and is an appropriate and compatible use of lands given surrounding land uses.

Finally, it is noted here that the extension of the MXD-R zoning from the north to the subject lands is not possible due to the restriction placed in Section 18-16-303, which states “a lot not designated as a mixed use development in the GDP or a small area plan may not be administratively rezoned to a mixed use district.” Since the subject property is designated as “Low-Medium Residential” in the GDP and not as “Mixed Use Development” in the GDP these lands cannot be reclassified to a MXD-R District.
The Development Division does not object to the rezoning.

The Long Range Planning Division advised that the 2009 GDP Land Use Plan retained the Residential Low-Medium land use designation for this site. During the Jessup/Maryland City SAP process, it was believed that these parcels were part of Fort Meade. The Parkside Development parcels were changed during the SAP process from Residential Low-Medium to Mixed Use Residential and subsequently rezoned to MXD-R. The parcels that are part of this application were not considered for Mixed Use-Residential or a different land use category as they were believed to be part of Fort Meade.

Given that these parcels are not part of Fort Meade, are adjacent to the Parkside Mixed Use Development and have access through this development, a higher density residential zone should be considered that would be compatible with the MXD-R (maximum residential net density of 7 units/acre) zone surrounding it such as R5 or R10.

The Department of Recreation and Parks indicated a portion of the site lies within the Patuxent Greenway. The greenway corridor in this area has already been altered with the adjacent Parkside subdivision.

The Department of Health indicated the property is served by public water and sewer facilities. The Health Department has no objection to the request.

Based upon the standards set forth in § 18-16-303 under which a zoning reclassification may be granted, Mr. Konowal testified that OPZ would
recommend that the requested reclassification of the subject property from R1-Residential to R10-Residential be approved.

The applicant was represented at the hearing by William Grau, a member of the applicant, who was assisted by Eric DeVito, Esquire. Evidence was presented through Mr. Grau and Andrew Chisholm, the applicant’s engineer, that the request to rezone the property is justified. Mr. Konowal’s findings and recommendations (history of the property; actions by the County Council; the neighborhood; the inability to develop the property as residential because of the fact that the property is isolated behind residential development equivalent to R10 zoning) were adopted. The applicant wishes to develop the property with residential development that will be consistent with the surrounding land in Anne Arundel County. (The property backs up to Ft. Meade.)

The applicant argued that the Council made a mistake when it rezoned the surrounding land to a category equivalent to R10 zoning but left the subject property zoned R1. They also argued that the ongoing redevelopment of the area also supports a finding of change; however, Mr. Konowal disputed this and indicated nearby development was taking place within the parameters of the existing zoning for the area.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.
Findings

A rezoning requires affirmative findings that:

(1) There was a mistake in the zoning map or the character of the neighborhood
    has changed to such an extent that the zoning map should be changed;

(2) The new zoning classification conforms to the General Development Plan
    (GDP) in relation to land use, number of dwelling units or type and
    intensity of nonresidential buildings, and location;

(3) There is compatibility between the uses of the property as reclassified and
    the surrounding land uses, so as to promote the health, safety, and welfare
    of present and future residents of the County;

The applicant has the burden of proof on all questions of fact. The burden
has been described as “onerous.” Agneslane v. Lucas, 247 Md. 612, 233 A.2d 757
(1967).

Change or Mistake

The Court of Appeals has provided a succinct statement of the change-
mistake rule applicable to piecemeal rezoning applications:

The “change-mistake” rule is a rule of the either/or type. The “change”
half of the “change-mistake” rule requires that, in order for a piecemeal
Euclidian zoning change to be approved, there must be a satisfactory
showing that there has been significant and unanticipated change in a
relatively well-defined area (the “neighborhood”) surrounding the
property in question since its original or last comprehensive rezoning,
whichever occurred more recently. The “mistake” option of the rule
requires a showing that the underlying assumptions or premises relied upon by the legislative body during the immediately proceeding original or comprehensive rezoning were incorrect. In other words, there must be a showing of a mistake of fact. Mistake in this context does not refer to a mistake in judgment. Additionally, even where evidence of a change or mistake is adduced, there is no reciprocal right to a change in zoning, nor is there a threshold evidentiary standard which when met compels rezoning. Even with very strong evidence of change or mistake, piecemeal rezoning may be granted, but is not required to be granted, except where a failure to do so would deprive the owner of all economically viable use of the property.


Applying the law to the facts in this case, I find and conclude that there is sufficient evidence of a mistake during the most recent comprehensive rezoning³

² See also, Case No. 2007-0420-R, _In Re: Regency Land Associates, LLC_ (March 13, 2008) at 7:

This office treads lightly into the considerable morass of conflicting evidence that piecemeal cases often engender. There are several reasons for caution: comprehensive zoning is the exclusive province of the County Council; piecemeal cases effect an amendment to the zoning maps; the mistake-change rule is intended to promote the public health, welfare and safety while recognizing private property rights; the rule is easily recited but hard to apply; the rule is supposed to be disjunctive but the operative facts can support both the mistake and the change prongs of the rule; mistake cases require evidence of incorrect assumptions or premises by the Council - mere error of judgment by the Council is insufficient; change contemplated in the comprehensive zoning process is typically _not_ evidence of substantial change in the character of the neighborhood under the rule; the applicant has a high burden of proof; even with proof of mistake or change, the rezoning is not compelled unless the owner is denied economically viable use; and other reasons.

³ Of course, it is presumed that the Council knows what it is doing when it comprehensively rezones a part of the County. Furthermore, the mistake must be of fact, not judgment, i.e., whether the result was dissatisfactory to some is not a basis for finding a mistake was made.
to support a decision that the continued zoning of the subject property as R1 Residential was a mistake. The property has been ‘orphaned’ between Ft. Meade to the southwest and the R10-zoned land on the remaining three sides of the property. The testimony of the applicant that the subject property cannot be developed as R1 in light of the R10 zoning through which any prospective buyers and owners would have to pass to access the property.

Conformity with the General Development Plan

§ 18-16-303(b)(2) of the Code requires that the new zoning classification conform to the GDP in relation to land use, number of dwelling units or type and intensity of nonresidential buildings, and location. Given the subject lands are located in a priority funding area that provides for increased residential density beyond what the GDP land use designation allows I find that the proposed rezoning complies with the GDP.

Compatibility with Surrounding Land Uses

§ 18-16-303(b)(3) of the Code requires that the uses of the property as reclassified and the surrounding land uses are compatible, so as to promote the health, safety, and welfare of present and future residents of the County. I find that the proposed rezoning will meet this element of the Code. The property is surrounded on three sides by the equivalent of R10 zoning. The requested R10 zoning will be compatible with the residentially-zoned uses that surround the property.
The Description of the Land to be Rezoned

The land to be rezoned is described as Parcels 51, 52, 53 and 102 in Block 18 on Tax Map 13, Jessup, Maryland, consisting of 12.749 acres, more or less, as shown on County Exhibit 2.

ORDER

PURSUANT to the application of Saratoga Development, LLC, petitioning for a zoning reclassification from R1 Residential to R10 Residential; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 30th day of December, 2015,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant’s request to rezone the subject property, approximately 12.749 acres, and described as Parcels 51, 52, 53 and 102 in Block 18 on Tax Map 13 in Jessup, Maryland, as shown on County Exhibit 2 and County Exhibit 2A attached hereto, is hereby granted.

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.
The following properties are subject to the foregoing Rezoning Application:

<table>
<thead>
<tr>
<th>Property (Owner and Address)</th>
<th>TM 0013 Parcel No.</th>
<th>Tax Account Number</th>
<th>Area (acres)</th>
<th>Deed Title Reference (Date of Deed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Wesley &amp; Elizabeth Davis 2711 Annapolis Rd., Jessup, MD 20794</td>
<td>0051</td>
<td>04-000-01418500</td>
<td>4.04</td>
<td>L. 1168 f. 452 (11/18/1957)</td>
</tr>
<tr>
<td>2 Walter F. Wiatr Revocable Trust, Wilhelmina Watnoski, Trustee Annapolis Rd., Jessup, MD 20794</td>
<td>0052</td>
<td>04-000-06321700</td>
<td>3.46</td>
<td>L. 24340 f. 163 (12/20/2011)</td>
</tr>
<tr>
<td>4 Michael &amp; Elizabeth Kozlowski 2713 Annapolis Rd., Jessup, MD 20794</td>
<td>0102</td>
<td>04-000-90052645</td>
<td>1.509</td>
<td>L. 4263 f. 551 (12/19/1986)</td>
</tr>
<tr>
<td><strong>Total Area (Acres)</strong></td>
<td></td>
<td></td>
<td><strong>12.749</strong></td>
<td></td>
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</tbody>
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The above parcels do not have frontage on a publicly dedicated street. However, they are adjacent to the Parkside/Blob's Park subdivision and will have access to the Parkside road infrastructure. The northernmost parcel (Parcel 51) is located approximately 2,500 feet from the eastbound off-ramp intersection of Maryland Route 175 and the Baltimore-Washington Parkway. Access to MD RTE 175 will be available through the Parkside subdivision.