

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

**ZONING MAP AMENDMENT  
A-10035**

**DECISION**

Application:	I-3 to I-2
Applicant:	Smithfield Properties
Opposition:	Town of Cheverly
Hearing Date:	July 26, 2016
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval

**NATURE OF PROCEEDINGS**

(1) A-10035 is a request for the rezoning of approximately 17.9 acres of land in the I-3 (Planned Industrial/Employment Park) Zone, located in the southwest quadrant of the intersection of Columbia Park Road and Cabin Branch Road, in Hyattsville, Maryland, to the I-2 (Heavy Industrial) Zone.

(2) The Technical Staff recommended denial of the Application (Exhibit 11) and the Planning Board did not elect to hold a hearing and instead adopted the recommendation of denial of the Technical Staff. (Exhibit 17)

(3) The Town of Cheverly sent a letter to the Technical Staff in opposition to the requested rezoning which the Technical Staff appended to its Technical Staff Report (Exhibit 11). The Town of Cheverly did not attend or participate in the evidentiary hearing before the Zoning Hearing Examiner.

(4) The subject property is not located within the limits of a municipality and no one appeared in opposition to the request.

(5) The record was closed on July 26, 2016 at the conclusion of the evidentiary hearing.

**FINDINGS OF FACT**

**Subject Property**

(1) The subject 17.9-acre site is located in the southwest corner of the intersection of Columbia Park Road and Cabin Branch Road within an industrial use area. The site is improved with a vacant 132,000-square-foot, one-story, brick and frame building that was used as the Smithfield Ham processing plant and its supporting asphalt/concrete parking lot with 12 loading docks. The entire

ham processing plant is separated from the adjacent properties by a chain-link fence. The site has an existing shed and a small security kiosk located along the west side of the parking lot. The site is partially wooded to the south. Access to the site is via a driveway entrance from Columbia Park Road.

(2) The subject property is located within the Beaver Dam Creek watershed of the Anacostia River Basin. It is located within the Environmental Strategy Area I (formerly the Developed Tier) of the Regulated Environmental Protection Area Map, as designated by the Prince George's 2035 Approved General Plan (Plan Prince George's 2035). The property has nontidal wetlands, streams, and 100-year floodplain. According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program, there are no rare, threatened, or endangered species found to occur on or in the vicinity of this property. No scenic or historic roads are affected by this proposal.

### **Zoning History**

(3) The existing building on the subject property was constructed in 1963 and was used as the Smithfield Ham processing plant. The 2010 Subregion 4 Master Plan and Sectional Map Amendment (Zoning Change LB4) reclassified the subject property at 5801 Columbia Park Road from the I-2 Zone to the I-3 Zone. This downzoning resulted in the processing plant becoming a nonconforming use, since that use is not permitted in the I-3 Zone. This facility closed in the fall of 2013.

### **Neighborhood and Surrounding Uses**

(4) The subject property is located in a neighborhood defined by the following boundaries:

<b>North-</b>	John Hanson Highway (US 50)
<b>South-</b>	Intersection of Sheriff Road and Marlwood Avenue
<b>East-</b>	Intersection of Columbia Park Road and Kentland Community Center Park to Martin Luther King Jr. Highway (MD 704)
<b>West-</b>	George M. Boyd Memorial Park to Marlwood Avenue south to Sheriff Road

The Applicant is in agreement with this neighborhood.

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

<b>North-</b>	Along Columbia Park Road are mixed industrial uses (i.e. ABC Supply Company, Inc., Washington Winnelson (plumbing fixtures and supplies store), and the Washington Woodworking Company) all in the I-1 (Light Industrial) and I-3 Zones.
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<b>East-</b>	Along Cabin Branch Drive are the Lyone Bakery, the Whole Foods Market, and other uses in the I-1 and I-2 Zones.
<b>South-</b>	Cabin Branch Drive and the Prince George's Business Park in the I-1 and I-2 Zones.
<b>West-</b>	The Cabin Branch Stream and associated floodplain, Fanell's Deli in the I-3 Zone, and the George M. Boyd Memorial Park, and beyond is the Englewood Subdivision in the R-55 (Single-Family Detached Residential) Zone.

### **General Plan/ Master Plan /Sectional Map Amendment**

(6) Plan Prince George's 2035 designates the area in which the subject property is located as a local transit center, which is one of its four local and suburban centers. The local transit center consists of small-scale mixed-use centers that are primarily residential areas (average 30 to 100 dwelling units/acre), well connected by transit, and a viable street grid offering local serving retail, with limited office uses. The subject property is located between the Cheverly and Landover Policy Center (Local Transit Center 15 and 16) of the Growth Policy Map (formerly the Developed Tier)

(7) The 2010 Subregion 4 Master Plan and Sectional Map Amendment created goals and policies to preserve and expand industrial land use wherever possible along the northern and eastern perimeter of the subregion. At the same time, the Plan also recommends buffering industrial land areas from other incompatible uses to protect residents, while maintaining the jobs and tax base that support residents of the Subregion (MP at 51). The subject property is identified as being located just outside the eastern fringe of the Cheverly Metro Center. The Master Plan recognizes that Subregion 4 provides industrial uses excellent access to local, regional and national markets.

### **Applicants Request**

(8) The Applicant does not put forth an argument of change to the character of the neighborhood.

(9) The Applicant contends that rezoning the subject property to the I-3 Zone in the Subregion 4 Sectional Map Amendment was a mistake. Their argument is as follows:

- **Mistake 1** – The District Council's action was based on unsubstantiated assumptions by the Planning Staff and the Planning Board that I-3 was an appropriate transition development density between heavy industrial (I-2) and single-family residential neighborhoods (R-55), while ignoring specific site conditions relating to the subject site.
- **Mistake 2** – The rezoning appears to contradict the many references in the Subregion 4 Master Plan recommending the preservation of industrial uses, including a specific reference to the subject property. The Applicant points to the recommendation of the

Master Plan that states, “Preserve and expand industrial land use wherever possible along the northern and eastern perimeter of the subregion. Action sites: I-295 frontage, I-295/US 50 and Metro triangle, Columbia Park Road, and Cabin Branch” (MP at 99). As evidence, the Applicant believes that the Master Plan intended to identify the subject property and its use for preservation and expansion.

- **Mistake 3 -** Although Smithfield Ham, the prior owner and operator of the processing plant located on the subject property, did not cease operation until the fall of 2013, the District Council relied on ill-informed guidance suggesting that, at the time of the Master Plan and Sectional Map Amendment approval in June 2010, the processing facility was vacant. The Master Plan reference states,

Furthermore, the section south and east of the Cheverly Metro Station is currently vacant. It is zoned as industrial, but there is a residential section between it and the metro station, since additional industrial development could be difficult there. Although, this area is categorized as a Type 5 (Healthy Industrial Area), it deserves further study because of its proximity to the metro station.

- **Mistake 4 -** The Applicant is challenging as false the rationale used by Staff to support the rezoning of the subject property which states, “Rezoning from I-2 to I-3 supports the goals, policies, and strategies of the General Plan and the Subregion 4 Master Plan to allow lighter intensity industrial uses adjacent to residential areas and at gateway locations.”
- **Mistake 5 -** The Applicant is contending that the distance between the subject site and the residential properties to the west of the site is significant and separated by a heavily vegetated floodplain that provides a permanent natural wooded buffer. A fact that, if highlighted before the Council, may have factored into the decision to rezone the subject property.

The Applicant argues that the five mistakes listed above overcome the presumption of validity of the comprehensive rezoning and suggests that the property should be placed back in the I-2 Zone.

## **APPLICABLE LAW**

(1) The I-2 Zone is a conventional zone as defined in the Zoning Ordinance and must be approved in accordance with the structures of the §27-157, which provides, in pertinent part, as follows:

- (a) **Change/Mistake rule.**

- (1) No application shall be granted without the applicant proving that either:

- (A) There has been a substantial change in the character of the neighborhood; or
- (B) Either:
  - (i) There was a mistake in the original zoning for property which has never been the subject of an adopted Sectional Map Amendment; or
  - (ii) There was a mistake in the current Sectional Map Amendment.

(2) No property may be zoned to a less intense zone as established by §27-109(b) (here the I-3 Zone is less intense than the I-2 Zone) if:

Based on existing physical development at the time of adoption of the Sectional Map Amendment, the zoning would create a nonconforming use. This zoning may be approved, however, if there is a significant public benefit to be served by the zoning based on facts peculiar to the subject property and the immediate neighborhood. In recommending the zoning, the Planning Board shall identify these properties and provide written justification supporting the zoning at the time of transmittal. The failure of either the Planning Board or property owner to identify these properties, or a failure of the Planning Board to provide the written justification, shall not invalidate any Council action in the approval of the Sectional Map Amendment. §27-223(g)(2)

(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 are required to overcome the presumption. Pattey v. Board of County Commissioners for Worcester County, 271 Md. 352, 317 A.2d 142 (1974); Clayman v. Prince George's County, 266 Md. 409 (1971) Mistake or error can be shown in one of two ways: (a) a showing that at the time of the comprehensive rezoning the District Council failed to take into account then existing fact 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 People's Counsel for Baltimore County v. Prosser Co., 119 Md. App. 150, 179, 704 A. 2d 483 (1998), the Court of Appeals explained further what must be shown in order to support an argument of mistake in the comprehensive rezoning:

In order to find legal mistake, there must be evidence that assumptions or premises relied on by the County Council were invalid. Beachwood, 107 Md. App. At 645. This situation is different from the exercise of bad judgment based on complete and accurate information....The burden is on the entity seeking reclassification to show the conditions that made the comprehensive rezoning incorrect and the failure of the Council to have considered those conditions....Hardship and economic disadvantage are insufficient; in that connection, there must be a showing that the owner is deprived of all reasonable use of his property.

The Court further noted that “the consistency of the proposed use with the Master Plan would have been insufficient alone” to show mistake in the comprehensive rezoning. Id., 119 Md. App. at 179.

## CONCLUSIONS OF LAW

(1) The 2010 Subregion 4 Master Plan locates the subject property within the “Cabin Branch/US 50” industrial area. (MP at 120-121) Although the Smithfield Ham processing plant did not cease its operations until the fall of 2013, the District Council erroneously believed the subject property to be unoccupied and vacant during its consideration of the 2010 Master Plan. Chapter 5 – Living Areas and Industrial Centers, Industrial Uses, Cabin Branch/US 50 states:

Furthermore, the section south and east of the Cheverly Metro Station is currently vacant. It is zoned as industrial, but there is a residential section between it and the Metro station. Rezoning should be considered in order to maximize the use around the Metro station, since additional industrial development could be difficult there. Although this area is categorized as a Type 5 (healthy industrial area), it deserves further study because of its proximity to the Metro station. (MP at 121)

(2) Google Earth Aerial’s dated 10/2009 (Exhibit 46(a)), 8/2010 (Exhibit 46(b)), 10/2011 (Exhibit 46(c)), and 10/2012 (Exhibit 46(d)) support the Applicant’s assertion that the subject property was occupied during the pendency of the Master Plan. Google Earth Aerial’s dated 10/2014 (Exhibit 46(e)) and 4/2015 (Exhibit 46(f)) show the subject property as vacant.

(3) Although the subject property is clearly well beyond the boundaries that the Master Plan defines as the “Cheverly Metro Center” (MP at 183, Map 6-11, and Exhibit 52), the above quotation mistakenly suggests that the areas outside of the “Cheverly Metro Center” should be rezoned to maximize the development of land around the Metro Station.

(4) This enunciated vision is directly contradicted by the “Living Areas and Industrial Centers, Recommendations, Land use and Community Design” which recommends that the County:

Preserve and expand industrial land use wherever possible along the northern and eastern perimeter of the subregion. Action Sites: I-295 frontage, I-295/US 50 and Metro triangle, Columbia Park Road, and Cabin Branch (emphasis added). (Exhibit 48)

The Master Plan thus clearly identifies the subject industrial property and use for preservation and possible future expansion.

(5) The preservation of the subject property as industrial land use is further emphasized in the “Proposed Industrial Use Development Pattern”

## Policy 1

Preserve and enhance existing industrial uses wherever possible along the northern and eastern perimeter of the subregion.

Sites where policy should be enacted:

- Ardwick-Ardmore industrial areas (Zone 1)
- I-295 frontage (Zone 2)
- I-295/US 50 and Metro rail triangle (Zone 2)
- Columbia Park Road and Cabin Branch area (Zone 2)
- Forestville Plaza site and surrounding Forestville Center industrial sites (Zone3)
- Miscellaneous remnant sites along the Capital Beltway industrial areas along the south end of Forestville Road (Zone 3). (Emphasis Added) (MP at 123-124, and Exhibit 49)

(6) The Land Use Plan (MP at 58) contains Policies and Strategies, of which Policy 3's recommendation to

Heighten the image and attraction of the industrialized areas of Subregion 4 to attract a higher quality of light industrial, research and development, and business park uses, offering expanded employment opportunities for residents of Prince George's County and the region. (MP at 60)

supports the retention of the I-2 Zone, and the Master Plan's strategys "Strengthen buffer requirements for industrial users adjacent to nonresidential uses" (Exhibit 53, MP at 60) is a strategy to heighten the image and attraction of the industrial areas of Subregion 4.

(7) The Sectional Map Amendment's "Discussion" for zoning "Change Number LB4" that encompasses the subject and other industrial properties stating that: "Rezoning from I-1 and I-2 to I-3 supports the goals, policies and strategies of the General Plan and the Subregion 4 Master Plan to allow for lighter intensity industrial uses adjacent to residential areas and at gateway locations" is a mistake and a broad overstatement of facts as they exist on the subject property. (Exhibit 51, MP at 415)

(8) To the west, the subject property is technically located adjacent to R-55 Zoned residential land. However, a closer inspection of the subject property's immediate neighborhood reveals an environment that is quite different from the image depicted by the Master Plan. The subject site improvements are separated from the adjacent properties to the west by a heavily vegetated floodplain that provides a permanent natural wooded buffer. The Land Records of the State of Maryland identify the neighboring properties as being under the ownership of "The Lands N/F Mayor and Town Council of Cheverly" and is the site of the George M. Boyd Memorial Park. To the west of the Park, across 64<sup>th</sup> Avenue, are the nearest residentially occupied properties, which is a

distance of more than 470 feet from the subject property. (Exhibits 29, 32(q) and (aa), 38(a)-(c))

(9) The Applicant's expert land planner, Mr. Francis Silberholtz, opined that a mistake was made in its application of the I-3 Zone to the subject property for the reasons cited by the Applicant. Mr. Silberholtz further opined that the most appropriate zone is the restoration of the requested I-2 Zone.

(10) Based on the foregoing, the District Council's decision to downzone the subject property from the I-2 Zone to the I-3 Zone constitutes a mistake in the 2010 Subregion 4 Master Plan and Sectional Map Amendment. The District Council failed to fully comprehend that the long-compatible use of the site as a processing plant did not meet any of the Master Plan's suggested criteria for downzoning of industrial properties, rather, the District Council should have followed the Master Plan's recommendations to preserve appropriate industrial areas and thereby maintaining jobs and tax base that support the residents of the Subregion. The subject property should be placed back in the I-2 Zone to remedy this mistake.

### **RECOMMENDATION**

APPROVAL of A-10035 from the I-3 to the I-2 Zone.

