

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

**ZONING MAP AMENDMENT
A-10037**

DECISION

Application:	R-R to I-2 Zone
Applicant:	American Rescue Workers, Inc.
Opposition:	Joyce Brown, et al.
Hearing Dates :	May 10 and 24, 2017
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Denial of I-2 Zone, Approval of I-1 Zone

NATURE OF REQUEST

- (1) A-10037 is a request to rezone approximately 10.602 acres of land, located on the east side of Ritchie Road, approximately 2,200 feet north of its intersection with Walker Mill Road, also identified as 716 Ritchie Road, Capital Heights, Maryland, from the R-R (Rural Residential)/M-I-O (Military Installation Overlay) to the I-2 (Heavy Industrial)/M-I-O Zone.
- (2) The Applicant is alleging that there was a mistake in the adoption of the 2010 Subregion 4 Sectional Map Amendment whereby the District Council retained the subject property in the R-R Zone.
- (3) The Technical Staff recommended denial of the I-2 Zone and in lieu thereof recommended approval of the I-1 (Light Industrial) Zone. (Exhibit 18) The Planning Board did not schedule a hearing on the instant Application and instead adopted the recommendation of the Technical Staff as the Planning Board's recommendation. (Exhibit 19)
- (4) The subject property is not located within the limits of a municipality. Three persons appeared in opposition to the request, stating that they would like a use similar to the current use to be operated as a permitted/Special Exception use. An Adult Rehabilitation Center or Eleemosynary are both prohibited in the I-1 Zone however, the current use could continue to operate if it is certified as a Non-Conforming use.
- (5) At the conclusion of the evidentiary hearing the record was kept open for the inclusion of several additional documents, upon receipt of which the record was closed on June 9, 2017.

FINDINGS OF FACT

Subject Property

(1) The subject 10.602-acre property is located on the east side of Ritchie Road, approximately 2,200 feet north of the intersection of Ritchie Road and Walker Mill Road, and is developed with a use that provides treatment to men suffering from alcohol and/or drug addiction through a combination of work rehabilitation and religious services. The facility includes a single-family residence, a church, a three-story building containing administrative offices, eight dormitory-style living quarters, a communal kitchen, and apartments for employees and staff, a thrift store, an accessory warehouse, and a garage.

Zoning History

(2) The 2010 Approved Subregion 4 Master Plan and Sectional Map Amendment retained the subject property in the R-R Zone. Historical zoning decisions related to the subject property include the following:

SE-2650 On November 16, 1972, the District Council approved Special Exception SE-2650 for an eleemosynary and philanthropic institution in the R-R Zone on the subject property.

1986 SMA On March 4, 1986, the subject property was rezoned from the R-R Zone to I-1 Zone with the District Council's adoption of County Council Resolution CR-25-1986, which was the Sectional Map Amendment that followed the approval of the Suitland-District Heights and Vicinity Master Plan on December 3, 1985.

Revisory Petition In early 1986, the property owner filed a Revisory Petition with the District Council requesting the subject property be retained in the R-R Zone. On June 24, 1986, the District Council adopted CR-73-1986, which revised and amended the Sectional Map Amendment to change the I-1 Zone to the R-R Zone on the subject property.

Zoning Bill On October 20, 1987, the District Council adopted County Council Bill CB-108-1987 for the purposes of permitting the Adult Rehabilitation Center use in the I-2 Zone.

Neighborhood and Surrounding Uses

(3) The subject property is located in the Hampton Park/Steeplechase 95 Industrial Area defined by the following boundaries:

- North** – Central Avenue (MD 214)
- East** - Capital Beltway (I-495/95)
- South** - Walker Mill Road
- West** – Western Branch of the Patuxent River

(4) The vast majority of land within this neighborhood is zoned I-1 and is being used for industrial purposes. The approximate area of the neighborhood is 736 acres. Of that, approximately 38 acres is zoned M-X-T (Mixed Use-Transportation Oriented), 12.5 acres is zoned C-S-C (Commercial Shopping Center), 23 acres is zoned M-U-I (Mixed Use-Infill), 18 acres is zoned R-O-S (Reserved Open Space), and 10.6 acres is zoned R-R (subject property). The remainder of the neighborhood, approximately 634 acres or 86 percent of the land area in the neighborhood, is zoned I-1.

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

- North** - Industrial uses in the I-1 Zone
- East** - Industrial uses in the I-1 Zone
- South** - Industrial uses in the I-1 zone and a powerline easement
- West** - Industrial uses in the I-1 Zone, privately held vacant land, and a powerline easement

Master Plan and Sectional Map Amendment

(6) The subject property is located within an Employment Area on the Plan Prince George's 2035 Approved General Plan Growth Policy Map. These areas are described as commanding the highest concentrations of economic activity in four targeted industry clusters - healthcare and life sciences; business services; information, communication, and electronics; and the Federal Government (page 106). Land-Use Policy 3.2 recommends that preliminary Master Plans and rezoning requests are reviewed to ensure that proposed development is consistent with the Growth Policy Map and the Center Classification System (page 112).

(7) The subject property is part of the Hampton Park Industrial Center as identified in the 2010 Subregion 4 Master Plan and Sectional Map Amendment. It is an isolated R-R Zone within an entire area surrounded by I-1 Zoned properties. The Subregion 4 Master Plan designates the subject property in the Industrial land use classification as the property was designated in the 1985 Suitland-District Heights and Vicinity Master Plan. The 1986 Suitland-District Heights and Vicinity Sectional

Map Amendment rezoned the property from the R-R Zone to the I-1 Zone. The I-1 Zone was changed back to the R-R Zone through a Revisory Petition per County Council Resolution CR-73-1986. The Subregion 4 Master Plan retained the R-R Zone. Research of the Subregion 4 joint public hearing transcript did not find an oral or written testimony for a rezoning of the subject property.

(8) The Applicant's request to change the zone to industrial is consistent with the Master Plan land-use recommendation, however, the intensity of the industrial at this location makes a great difference in terms of compatibility with the surrounding development in the I-1 Zone. Potential future introduction of other heavy industrial uses permitted in the I-2 Zone, beyond the existing I-1 uses, may be incompatible with the surrounding uses and other uses permitted in the I-1 Zone.

Applicant's Request

(9) The Applicant is requesting rezoning of the subject property from the R-R Zone to the I-2 Zone. The Applicant contends that the retention of the R-R Zone in the 2010 Subregion 4 Master Plan and Sectional Map Amendment was a mistake.

(10) The Applicant argues that affirming the zoning of the subject property in the R-R Zone rather than rezoning it to the I-2 Zone during the 2010 Subregion 4 Master Plan and Sectional Map Amendment was a mistake. The Applicant contends in their original Statement of Justification dated January 9, 2017, that the District Council failed to consider certain existing facts about the subject property, the result of which was the mistake in not rezoning the property to I-2 Zone. (Exhibit 7)

Mistake #1: In 1987 - the year after the Revisory Petition was granted - a new use was added to the Zoning Ordinance through the adoption of County Council Bill CB-108-1987, an "Adult Rehabilitation Center." This use was and remains a permitted use by right in the I-2 Zone. Section 27-107.01(a)(7.2) of the Zoning Ordinance defines and Adult Rehabilitation Center as:

An establishment, owned and operated by a bona fide nonprofit organization within the County, that provides on-site support for a service population, and also provides facilities for the refurbishing and resale of donated goods to the public by the resident service population.

The use on the subject property at the time of the approval of the 2010 Subregion 4 Master Plan and Sectional Map Amendment was consistent with this definition. The Applicant contends that the District Council erred by failing to understand that rezoning the subject property to the I-2 Zone, a zone which would be far more compatible with the other properties in this defined neighborhood, as described in the Sectional Map Amendment, could be accomplished without creating a nonconforming use.

Mistake #2: At some point between approval of the 1986 Revisory Petition and approval of the 2010 Sectional Map Amendment, Lot 1, Block D was developed within the I-1 Zone and has since been used without any significant adverse impact to the use on the subject property. The Applicant

also contends that the District Council erred by failing to consider that the concern regarding the impact of any future development on Lot 1 upon the subject property was no longer a matter of concern, and no longer a basis for retaining the zone upon the property.

Mistake #3: The Applicant further argues that if the District Council had not relied on an erroneous assumption, it would have rezoned the property to I-2 Zone. The I-2 Zone would have been most appropriate because the I-2 Zone promotes the goals of the Master Plan/Sectional Map Amendment and avoids the creation of a Nonconforming Use. The Master Plan acknowledged the industrial nature of the neighborhood by placing the Hampton Park Industrial Center in the Industrial land-use classification. The area is described in the Master Plan as a healthy industrial area that should remain primarily industrial. Because the current use on the subject property is only permitted in the I-2 Zone, the most appropriate way to protect the existing use on the subject property and the industrial land in the neighborhood is to rezone the property to I-2 Zone.

(11) The Applicant submitted a Supplemental Statement of Justification on March 3, 2017 (Exhibit 18, p. 52-53) that outlines policy reasons why the I-1 Zone may be appropriate for the subject property. The supplemental information states “[the District Council] could have rezoned the Subject Property to the I-1 Zone, which would have been justifiable for the reasons discussed herein...While it is true that a rezoning of the Subject Property to the I-2 Zone would avoid the creation of a nonconforming use, there is countervailing public policy to justify a rezoning of the Subject Property to the I-1 Zone. The Zoning Map for the Subject Property and the surrounding areas illustrates that the Subject Property is surrounded by a virtual sea of land in the I-1 Zone, within the area bounded by Central Avenue to the north, Ritchie Road to the west and south, and the Capital Beltway to the east....”

(12) The Supplemental Statement of Justification goes on to make the following points supporting rezoning the subject property to the I-1 Zone:

1. The Hampton Park/Steeplechase 95 Industrial Area is highly desirable to industrial uses.
2. Subregion 4 provides excellent access to local, regional, and national markets.
3. The District of Columbia government has limited or eliminated industrial uses within its borders, pushing industrial demand into Subregion 4.
4. Policy 4 on page 124 of the Subregion 4 Master Plan calls for rezoning blighted, vacant, or underutilized properties adjacent to existing industrial areas to expand the local industrial base and reduce inconsistent development patterns. Rezoning the subject property to I-1 would be consistent with the Master Plan policy regarding industrial properties, as well as being more consistent with the zoning of the properties surrounding the Subject Property.

APPLICABLE LAW

(1) The I-1 and the I-2 Zones are both conventional Euclidean Zones as defined in the Zoning Ordinance and may only be approved in accordance with the strictures of §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.

* * * * *

(d) Approval of a zone different from that requested.

(1) The District Council may approve a less intense zone than that requested by the applicant for any part of the subject property involved in the application.

(2) If the subject property is located within the boundaries of a municipality, a less intense zone may only be approved if there was testimony on the less intense zone before the Zoning Hearing Examiner, and an opportunity given for the municipality to make a recommendation. If there was no testimony or opportunity, the application shall be remanded to the Zoning Hearing Examiner for this purpose (Section 27-133). Upon remand, the Hearing Examiner shall notify all persons of record and any municipality in which the property is located. The Hearing Examiner shall conduct further hearings if the case warrants.

(2) 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.

(3) 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 Applicant does not argue that there has been a substantial change in the character of the neighborhood since the most recent comprehensive zoning in 2010. §27-157(a)(1)(A)

(2) There is a strong presumption of validity accorded a comprehensive rezoning. The presumption is that, at the time of its adoption of the comprehensive rezoning, the District Council considered all of the relevant fact and circumstances then existing concerning the subject property. Mistake or error can be shown in one of two ways:

1. A showing at the time of the comprehensive rezoning, that the District Council failed to take into account then existing facts or reasonably foreseeable projects or trends: or
2. A showing of events that have occurred since the comprehensive zoning have proven that the District Council’s initial premises were incorrect.

(3) In the absence of a request for rezoning to the I-1 Zone filed by the Applicant during the 2010 Subergion 4 Master Plan/Sectional Map Amendment process, the District Council relied on the last request by the Applicant, which was the Revisory Petition filed in 1986 to retain the property in the R-R Zone. The existing use on the property was protected through the Special Exception (SE-2650), which runs with the land, so there was no urgent or compelling reason for the District Council to rezone the property as part of the 2010 Sectional Map Amendment.

(4) Your Zoning Hearing Examiner does not agree with the Applicant’s assertion that the District Council must review 15 years of Zoning Ordinance text amendment to determine the best zone for the property according to the existing use. Sectional Map Amendment’s provide for the systematic review of land use and zoning and how they conform to the principles of orderly comprehensive land use planning, staged development as reflected in approved public plans and policies, and planned public facilities. Sectional Map Amendments zone property to bring existing individual uses or future desired uses on properties into conformance with the overall Master Plan vision for use

classifications across neighborhoods. They do not ensure an existing use is a permitted use according to the Zoning Ordinance Use Table. In this case, the only use permitted by right in the Zoning Ordinance that matches the existing American Rescue Workers use, is a use that is permitted in the I-2 Zone, a zone that permits heavy industrial uses by right or by Special Exception that are out of character with over 95 percent of the zoning and land use in the defined neighborhood. While it is preferable not to create nonconforming uses through the approval of a Sectional Map Amendment, nonconforming uses have historically been created in the County through this process when a Master Plan vision for an area seeks to move land use in a new or different direction.

(5) Your Zoning Hearing Examiner agrees that a mistake was made, but the mistake was not rezoning the American Rescue Workers property to the I-1 Zone during the 2010 Subregion 4 Master Plan and Sectional Map Amendment. The District Council made the correct decision in 1986 when it originally rezoned the property to the I-1 Zone consistent with the Master Plan vision and zoning for the overall Hampton Park/Steeplechase 95 Industrial Area. The Applicant in its Supplemental Statement of Justification makes two strong points that should be heavily weighted. First, the Supplemental Statement of Justification references page 124 of the 2010 Subregion 4 Master Plan which states, “Rezone blighted, vacant, or underutilized properties adjacent to existing industrial areas to expand the local industrial base and reduce inconsistent development patterns.” The existing eleemosynary use on the American Rescue Workers property does represent an underutilization of the property from that which could be achieved under the I-1 Zone. Second, the District of Columbia’s decision to limit or eliminate industrial uses within its borders, has pushed demand for industrially zoned land east into Prince George’s County and the Hampton Park/Steeplechase 95 Industrial Area is well positioned to accommodate the demand.

(6) The Applicant’s expert Land Planner, Mr. Mark Ferguson, opined that a mistake was made in the District Council’s retention of the R-R Zone on the subject property for reasons cited in his Land Planning Analysis, Exhibit 21, which were accepted only in part (see above) by your Zoning Hearing Examiner. Mr. Ferguson further opined that because of the provisions of the text amendment of CB-108-1987 which created the Adult Rehabilitation Center use as a permitted use in the I-2 Zone, the most appropriate zone is the grant of the requested I-2 Zone, as it would not create a nonconforming use.

Impact of the Military Installation Overlay Zone

(7) The site is also classified in the Military Installation Overlay (M-I-O) Zone; this classification would not be affected by the requested rezoning. Part 10C of the Zoning Ordinance includes three Impact Maps which establish the boundaries of the M-I-O Zone. Figure A establishes the area subject to restrictions related to height, Figure B establishes the area subject to restrictions related to noise, and Figure C establishes the area subject to the restrictions related to Accident Potential/Clear Zones North and South. Based upon a review of the Impact Maps, the subject site is included within the boundaries of the Impact Map on Figure A, which establishes the area subject to restrictions related to height, but is not within the boundaries established by any other Impact Map.

(8) Requirements for maximum permissible structure height in the M-I-O Zone are found in Section 27-548.54. The subject site is located under the limits of Approach-Departure Clearance Surface B, and as such is subject to the height restrictions. The provisions §27-548.54(d)(2)(B) apply as follows: The distance between Surface A and the nearest boundary of the Subject Property is 19,420 feet; 19,420 divided by 50=388 feet. §27-548.54(e)(2) then requires that the difference between the highest elevation on the Subject Property (163) and the height of the runway surface (274), or one hundred eleven (111) feet, be added to the 388-foot result to yield a highest permissible structure of 499 feet.

Given the very high permissible limit, the provisions of the M-I-O Zone will not restrict the subject site from being reasonably developed with the permitted uses provided for in the Table of Uses for the I-2 Zone.

(9) As noted above, the subject property is not within the limit of the 60dB contour, so no sound reduction certification is applicable, nor is it in the High-Intensity Noise Area as delineated on Figure B, and as such would not be subject to the seven categories of prohibited uses laid out in §27-548.55(c)(1)(C).

(10) With respect to the use restriction listed in Section 27-548.56, the subject site is not located within the limits of any of the Safety Zones (to wit, the Clear Zone and the Accident Potential Zones 1 and 2); as such, these restrictions are not applicable to the subject site.

(11) The purposes of the M-I-O Zone, are laid out in Section 27-548.51, as follows:

The purposes of the Military Installation Overlay Zone are to regulate the development and use of structures and property in order to promote land uses compatible with operations at Joint Base Andrews; to protect the safety and welfare of individuals in the area from the adverse impacts associated with high levels of noise from flight operations and the potential for aircraft accidents associated with proximity to Joint Base Andrews operations. The intent of the regulations is to recognize the rights of individual property owners while reducing interference with the military operations at Joint Base Andrews.

As indicated by the foregoing analysis of Part 10C's limitations on structure height, noise impacts, land uses and interference with communications, the approval of the subject Application will be in conformance with the purposes of the M-I-O Zone.

(12) Based on the foregoing, the District Council's decision to retain the subject property as an island of the R-R zoned land entirely surrounded by Hampton Park/Steeplechase 95 Industrial Area in the I-1 Zone was a mistake. The Applicant's request to rezone the subject property to the I-2 Zone, thereby creating an I-2 zoned island in the I-1 zoned industrial park would not remedy the original mistake and would instead compound the original mistake.

RECOMMENDATION

Approval of A-10037 from the R-R Zone to the I-1 Zone, and Disapproval of A-10037 from the R-R Zone to the I-2 Zone.