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September 20, 2023

Submitted via the Anne Arundel County Land Use Navigator web based application

Sterling Seay, Planning Administrator
Anne Arundel County Office of Planning and Zoning
2664 Riva Road, Third Floor (MS 6301)
Annapolis MD 21401

Re: Rezoning Letter of Explanation
Applications for Rezoning Classification from C1 and SB to C4
1361, 1365 & 1419 Defense Highway, Crofton
(Tax Map 43, Parcel 3, lots 7 & 8 and Parcel 33)

Dear Ms. Seay:

This law firm represents John I. Jelich (the “Applicant” herein), the owner of the above-referenced parcels of land (“Parcels”). Mr. Jelich’s application for reclassification of the Parcels from the current zoning classifications of C-1 (Local Commercial) and SB (Small Business) to C4 (Highway Commercial) are enclosed.

Parcels

The Applicant is the sole owner of the following three (3) parcels of land (the “Parcels”) located in Crofton and seeks to have each rezoned as indicated:

1. 1361 Defense Highway (Tax Map 43, Parcel 3, lot 8; Tax ID # 261912612500)
rezoned from C1 to C4;
2. 1365 Defense Highway (Tax Map 43, Parcel 3, lot 7; Tax ID # 261912618400)
rezoned from SB to C4; and
3. 1419 Defense Highway (Tax Map 43, Parcel 33; Tax ID # 200008847100)
rezoned from SB to C4.

Neighborhood

The subject properties are located along the south side of Defense Highway, west of Davidsonville Road. The neighborhood referenced in this Application is generally characterized

as “Staples Corner and Vicinity.” This geographical area loosely translates to the commercial area that has evolved in and around the intersection of Md. Routes 424 and 450 and is directly attributable to increased vehicular traffic on these two (2) state roadways and the attendant increase in intensity and volume of non-residential development along these two roadways in this vicinity. In more specific terms, it could be defined as an ovoid area connecting the points 3,000’ west of the intersection on MD 450, 1,000’ north of the intersection on MD 424, 1,500’ east of the intersection on MD 450, and 1,500’ south of the intersection on MD 424.

Authority for Rezoning Application

This Application is made pursuant to Anne Arundel County Code (hereinafter “AACo Code”) § 18-16-303 requesting that above identified Parcels be rezoned from their existing C1/SB to C4. The application for rezoning of these parcels to C4 meets the requirements of AACo Code § 18-16-303(b) which requires the following findings be made to approve a rezoning application:

- (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 in relation to land use, number of dwelling units or type and intensity of nonresidential buildings, and location; and
- (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.

See, AACo Code § 18-16-303. The requirements of § 18-16-303(b)(4) are not applicable as the parcels are not located in the Critical Area.

Changes in Character of Neighborhood

The Application is based on the change in the character of the neighborhood. AACo Code § 18-16-303(b)(1). The principal changes in the neighborhood have occurred along the east - west corridor of Defense Highway where these Parcels are located. The application meets the necessary showing for approval based on the changes to the neighborhood. See e.g., *Mayor and City Council of Rockville v. Rylyns*, 372 Md. 514 (2002).

An applicant may satisfy its burden of demonstrating changes in the neighborhood based upon the aggregate or cumulative impact of changes that have occurred to the character of the neighborhood, including previous rezonings and new commercial development. *Bowman Group v. Dawon Moser*, 112 Md. App. 694 (1996)(citing *County Comm'rs of Howard County v. Merryman*, 222 Md. 314, 321(1960) and *Town of Somerset v. County Council for Montgomery*, 229 Md. 42, 48, 181 A.2d 671 (1962) (upholding a zoning agency's decision to rezone in which the agency based its finding on the cumulative changes occurring since the prior zoning). In general, the relevant time period for showing a change in the neighborhood is from the last comprehensive rezoning to the present. *Chevy Chase Village v. Montgomery County Council*, 258 Md. 27 (1970). The latest comprehensive rezoning in Anne Arundel County was done

approximately 14 years ago following the County Council adoption of the 2009 General Development Plan.

The property located at 1300 Defense Highway was rezoned to C4 in or around 2012. A second gasoline filling station with a convenience store was constructed in 2018 at 1329 Defense Highway, which was previously a wooded parcel. The residential population of the area has grown substantially since the last comprehensive rezoning, increasing the vehicular traffic and changing the intensity of the use of the neighborhood's commercial operations. Defense Highway widening is planned by the State in the near future.

The subject properties at 1361 & 1365 are adjacent to a bar, making continued use as residential rental properties exceedingly difficult. This also impacts the ability to make use of the properties for small business development. The planned road widening will further limit the ability to continue using these properties as residential rentals. The neighborhood provides needed commercial services for the area's growing residential population. The requested zoning change is necessary in order to have viable future uses for the Parcels.

Planning Conformity

The requested zoning classification, C4, conforms to the General Development Plan as set forth in the County's Plan2040 Land Use Map and planning text. The neighborhood has had multiple commercial uses for some time. The above assessment of the 'neighborhood' for purposes of this Application is consistent with the commercial designations made on the Plan2040 Land Use Map (effective July 27, 2021). This application makes no change in density allowed on the Parcels. The requested C4 zoning classification also conforms with Plan2040's designation of the neighborhood area as a "Critical Corridor" with existing commercial development along major roads. Road widening for Defense Highway is already planned, and rezoning these Parcels to C4 will facilitate the growth and redevelopment to satisfy the commercial needs of the area as contemplated in Plan2040. *See*, AACo Code § 18-16-303(b)(2).

Use Compatibility

The uses allowed in C4 zoning classification are compatible with, and would not be detrimental to existing adjacent uses or others within the neighborhood. The rezoning supports and promotes the health, safety, and welfare of present and future residents of the County. Existing uses include an adjacent bar, auto sales and repair establishments, as well as stores, restaurants and two gasoline filling stations with convenience stores. *See*, AACo Code § 18-16-303(b)(3).

Conclusion

The requested rezoning is compatible with the existing zoning of the neighborhood and with the Plan2040 land use map. As a designated "Critical Corridor," approving the application to rezone these Parcels to C4 will facilitate the growth and redevelopment envisioned in Plan2040 to provide the commercial services needed by the area population. Rezoning will also promote the health, safety, and welfare of present and future residents of the County. For these reasons,

Sterling Seay, Planning Administrator
September 20, 2023
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and as detailed above, the Applicant requests approval of the rezoning request as depicted on the Administrative Site Plans enclosed with its Rezoning Applications.

Sincerely,

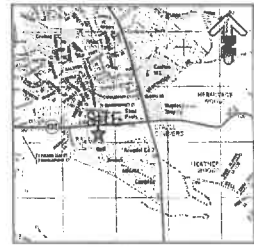
A handwritten signature in black ink, appearing to read 'Anthony G. Gorski', with a long, sweeping flourish extending upwards and to the right.

Anthony G. Gorski

Enclosures:

Executed Rezoning Application
Administrative Site Plan

cc: John I. Jelich



VICINITY MAP
SCALE: 1"=2000'
COPYRIGHT AND THE MAP PEOPLE, BY PERMISSION
PERMIT USE NO. 06301200

No.	By	Date	Description

Copyright 2023
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Date: SEPTEMBER, 2023
 Job Number: 22-082
 Scale: 1"=40'
 Drawn By: J.L.S.
 Approved By: T.J.M.
 Folder Reference:

PRE-FILE SITE PLAN FOR
JOHN I. JELICH
 1941, 1968 & 1410 DEFENSE HIGHWAY, GAMBELL
 WEST VIRGINIA, U.S.A. 26032
 SECOND DISTRICT - ANNE ARUNDEL COUNTY



OFFICE OF PLANNING AND ZONING

CONFIRMATION OF PRE-FILE MEETING

DATE OF COMMENTS December 15, 2021

P&Z STAFF J Jenkins, R Konowal, D Dyott & LRP Eric Kettering

APPLICANT/REPRESENTATIVE John Jelich/Tony Gorski EMAIL AGG@aggorski.com

SITE LOCATION 1361, 1365 and 1419 Defense Hwy LOT SIZE 2.45 ac, 2.61 ac, 2.66ac ZONING C1 and SB to C4

CA DESIGNATION n/a BMA _____ or BUFFER _____ APPLICATION TYPE Rezoning

The subject properties are currently zoned SB - Small Business District and C1-Local Commercial. The applicant seeks to rezone each of the three properties in their entirety to C4 - Highway Commercial District. The applicant claims the rezoning is justified due to change in the character of the neighborhood and that the properties have been identified as "commercial" in the GDP.

COMMENTS

Long Range Planning: See attached comments.

Zoning:

The site plans provided are inadequate for a rezoning package submittal. If the applicant wishes to pursue the rezoning applications, site plans drawn to scale with grid tick marks must be provided in accordance with #3 of the rezoning instructions page copied below. The applications cannot be accepted without proper site plans.

All administrative site plans must be drawn at an engineering scale no smaller than 1"=40' showing the entire property in question. Site plans on paper larger than 8.5" x 14" must be folded. Provide an electronic .pdf version for site plans larger than 11" x 17". The site plan shall also include a metes and bounds description and the bearings and distances related to the County coordinate system, and at least three grid ticks, Maryland State grid coordinate of the property proposed for rezoning. The site plan shall be prepared and certified by an engineer, architect, landscape architect, or land surveyor registered to practice in the State of Maryland.

The applicant has provided little to no justification on how the proposals meet the test of change or mistake found in 18-16-303 of the Code. Regardless of the land use designation in the GDP, the applicant has the burden of proof to prove that 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. An individual piecemeal zoning reclassification is intended to correct mistakes and/or to account for significant and unanticipated change(s) since the last comprehensive zoning. The applicant contends that the rezonings are appropriate due to the changes in the character of the neighborhood. The applicant writes that at least one property in this neighborhood has recently been rezoned to C4 but has not specified the property nor could we locate same.

Notwithstanding the new GDP land use designation from SB-Small Business to Commercial, the specific implementing zoning (e.g. C1, C2, C3 or C4) should be determined by Council during the upcoming comprehensive zoning process, which is anticipated to begin in April 2024, rather than by the Administrative Hearing Officer at this time. Furthermore 18-2-103 (b) of the Code provides that the adoption of the GDP may not be construed to evidence or constitute a mistake in the zoning map then existing or a change in the character of any neighborhood.

The applicant has also failed to define the neighborhood for this application. Given that the proposed C4 zoning of these parcels would be surrounded by Open Space, Small Business and Residential Zoning and no other C4 zoning, it does not appear that the proposed zoning would be consistent or compatible with the surrounding zoning and land use. While the properties zoned SB allow residential uses, that zoning also allows those properties to be used commercially per the use chart found in 18-9-402 making the argument that the properties are hard to utilize for residential purposes irrelevant.

INFORMATION FOR THE APPLICANT

Section 18-16-201 (b) Pre-filing meeting required. Before filing an application for a variance, special exception, or to change a zoning district, to change or remove a critical area classification, or for a variance in the critical area or bog protection area, an applicant shall meet with the Office of Planning and Zoning to review a pre-file concept plan or an administrative site plan. For single lot properties, the owner shall prepare a simple site plan as a basis for determining what can be done under the provisions of this Code to avoid the need for a variance.

*** A preliminary plan checklist is required for development impacting environmentally sensitive areas and for all new single-family dwellings. A stormwater management plan that satisfies the requirements of the County Procedures Manual is required for development impacting environmentally sensitive areas OR disturbing 5,000 square feet or more. State mandates require a developer of land provide SWM to control new development runoff from the start of the development process.

Section 18-16-301 (c) Burden of Proof. The applicant has the burden of proof, including the burden of going forward with the production of evidence and the burden of persuasion, on all questions of fact. The burden of persuasion is by a preponderance of the evidence.

A variance to the requirements of the County's Critical Area Program may only be granted if the Administrative Hearing Officer makes affirmative findings that the applicant has addressed all the requirements outlined in Article 18-16-305. Comments made on this form are intended to provide guidance and are not intended to represent support or approval of the variance request.



ANNE
ARUNDEL
COUNTY

M A R Y L A N D

Office of Planning and Zoning

Steve Kaii-Ziegler, AICP

Planning and Zoning Officer

MEMORANDUM

TO: Zoning Division

FROM: Eric Ketterling, Senior Planner, Long Range Planning

THROUGH: Cindy Carrier, Planning Administrator, Long Range Planning

SUBJECT: Long Range Planning Comments

DATE: December 13, 2021

Name of Project: Pre-file Application, 1419 Defense Highway

Location: 1419 Defense Highway, Crofton

Tax Map 43, Grid 19, Parcel 33

Region Planning Area: 8

Summary:

The applicant is seeking a zoning change from SB to C4 for the property located at 1419 Defense Highway. The applicant has also submitted rezoning applications for properties located at 1361 and 1365 Defense Highway. Each of these applications propose a zone change to C4 as well.

The approximate 2.66 acre site is currently zoned SB and is classified as Commercial on the Plan2040 General Development Plan Land Use Map. The surrounding properties are zoned SB to the east and west, R5 to the north, and OS to the south. The surrounding areas are classified as Commercial to the east and west, Residential Low-Medium Density to the north, and Parks and Open Space to the south on the Plan2040 GDP Land Use Map.

The site and its surrounding area are within the Rural and Agricultural Policy Area. The subject site is within the Priority Funding Area. This proposal is within Region Planning Area 8. The Region Plan process for Region 8 is anticipated to begin in April, 2024 and will include comprehensive rezoning.

Findings:

Plan2040 General Development Plan: The Planned Land Use for the site was changed from Small Business to Commercial with the adoption of Plan2040. The rezoning application is consistent with the overall goals and policies of Plan2040.

2017 Water and Sewer Master Plan: The site is within the Planned sewer category within the Patuxent Service area and the Planned Service water category in the Crofton 290 Water Pressure Zone. The proposed zoning is consistent with the 2017 Water and Sewer Master Plan.

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