

Case No.: A-10000
Linda Jones/Defiance Drive
(Amendment of Condition)

Applicant: LMJ Real Properties
& Investments, Inc.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF DENIAL

IT IS HEREBY ORDERED that Applicant's request to amend Zoning Ordinance 11-2010, is hereby DENIED.

PROCEDURAL AND FACTUAL BACKGROUND

Facts Before Request for Amendment of Condition

In March 2009, the Planning Department accepted an application from the Applicant to rezone approximately 5.068 acres of land from the R-E (Residential Estate) Zone to the R-R (Rural Residential) Zone. The property is located at 1700 Defiance Drive, Fort Washington, Maryland. Application Form, 3/27/2009.

On October 26, 2010, the District Council did not rezone the entire 5.068 acres of the property to R-R. Instead, the District Council, at the request of the Applicant, partially rezoned the property as follows:

The Zoning Map for the Maryland-Washington Regional District in Prince George's County, Maryland, is hereby amended by rezoning in part the property that is the subject of Application No. A-10000 from the R-E to the R-R Zone. The center line of Defiance Drive, as extended by the applicant, shall be the dividing line between the portion of the property (to the west and south) remaining in the R-R Zone and the portion (north and east, closest to Defiance Drive) reclassified to the R-R Zone. By the rezoning, with a part of the subject property rezoned R-R and the remainder left in the R-E Zone, the applicant shall be permitted to construct, under current zoning densities (20,000 square feet per unit in R-R and 40,000

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square feet per unit in R-E), no more than six residential units on the subject property. The rezoning shall conform substantially to Exhibit A1, submitted by the applicant in October 2010. Zoning Ordinance No. 11-2010, p. 3.

On November 5, 2010, the Applicant, in writing, notified the Clerk of the Council as follows:

On behalf of the Applicant, Linda M. Jones and LMJ Real Properties and Investments Inc., and in compliance with Sec. 27-157(b) of the Zoning Ordinance this letter shall serve as timely, written acceptance of the findings of fact and conclusions of law and conditions as set forth in Section 1. of the District Council's Zoning Ordinance No. 11-2010.

Upon receipt of this written acceptance, please issue a final Order. Letter from Applicant, 11/5/2010.

On November 12, 2010, the Clerk of the Council mailed the Final Decision or Zoning Ordinance No. 11-2010, to the Applicant. Notice of Final Decision, 11/12/2010. In 2010, the District Council and the Clerk of the Council did not view the partial rezoning of the property as a conditional map amendment. Before the Clerk mailed the Notice of Final Decision to the Applicant on November 12, 2010, the Applicant filed a letter with the Clerk on November 5, 2010, which characterized the partial rezoning as conditional—*i.e.*, the Applicant improperly included a “C” after the application number. Applicant's Letter, 11/5/2010. But when the Clerk mailed the Notice of Final Decision to the Applicant on November 12, 2010, the application number—A-10000—was not followed by the letter “C,” because the rezoning was not conditional. Moreover, the Council never entered an order, pursuant to PGCC § 27-157(b)(5), to acknowledge the partial

rezoning of the property to R-R as a conditional rezoning.¹ Notice of Final Decision, 11/12/2010, PGCC § 27-157(b)(5)-(6).

The District Council's partial rezoning of the property became final on or about December 12, 2010. PGCC §§ 27-134, 27-135.

Request for Amendment of Condition

In March 2018 (9 years after the property was partially rezoned), the Applicant filed, pursuant to PGCC § 27-135, a request to amend Zoning Ordinance No. 11-2010. Request for Amendment of Condition, 3/22/2018. Section 27-135, in relevant part, provides:

- (b) Once a final decision has been made by the District Council, the decision may be reconsidered upon a written request filed by either the applicant or other person of record within thirty (30) days of the final decision if, based on the written request, the Council finds that there may have been an error in reaching the final decision that was caused by fraud, surprise, mistake, or inadvertence. The person of record filing the request for reconsideration shall, upon filing the request, send a copy to all other persons of record.
 - (1) If the District Council determines there may be grounds for reconsideration of their final decision, the Clerk of the Council shall schedule an evidentiary hearing on the request.
 - (2) After hearing, the District Council shall first vote to reconsider their final decision and, if an affirmative motion is adopted, vote on a new decision.
- (c) The District Council may (for good cause) amend any condition imposed or site plan approved (excluding Comprehensive Design Zone Basic Plans or R-P-C Zone Official Plans) upon the request of the applicant without requiring a new application to be filed, if the amendment does not constitute an enlargement or extension.
 - (1) In the case of an amendment of a condition (imposed as part of the approval of the zoning case), the request shall be directed,

¹ Based on the facts of this case, the District Council hereby removes the letter "C" after zoning map amendment application number A-10000. The Clerk of the Council is directed not to include the letter "C" after zoning map amendment application number A-10000 on the Notice of Final Decision.

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in writing, to the District Council, and shall state the reasons therefore. Before the Council amends a condition, the Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with Section 27-129, and shall notify all parties of record (including all parties of record on the original application and any amendments thereto) in the same manner as required for an original application. The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's decision with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing. PGCC § 27-135(b)-(c).

According to the Applicant:

Through the ZMA application, the Applicant and Property Owner requested that the entire property be rezoned to R-R and presented a schematic plan illustrating nine (9) 20,000 square foot lots. Instead, the Council conditioned the rezoning by split zoning the property along the centerline of future Defiance Drive extended to limit the number of lots at six (6).

Applicant and Property Owner hereby respectfully request that the District Council **reconsider** the condition to split zone the property and adopt language that zones the entire 5.068-acre subject property to the R-R Zone, caps the number of lots at eight (8) and requiring each of the 8 lots to be a minimum of 20,000 square feet in size, all of which are supported by the evidence in the record and the findings in Zoning Ordinance No. 11-2010.

On behalf of the Applicant and Property Owner we are hereby formally requesting that the District Council **reconsider** certain qualifying language of the referenced Zoning Ordinance and adopt an Amended Order. ...While this request is being filed more than 30 days after the final decision of the District Council, the District Council may waive that rule, **reconsider** its action and issue a Corrected Order. Request for Amendment of Condition, pp. 2-3, 3/22/2018. (Emphasis added).

Based on Applicant's request for amendment of condition, in Zoning Ordinance No. 11-2010, the Zoning Hearing Examiner held evidentiary hearings, pursuant to PGCC § 27-135, to consider the request. (5/9/2018, 5/22/2018, 9/5/2018). The Examiner issued a decision on November 8, 2018. The Examiner recommended denial of Applicant's request for amendment of condition. Examiner's Decision, 11/8/2018.

On November 26, 2018, the Applicant filed exceptions to the Examiner's recommendation of denial. Applicant's Exceptions, 11/26/2018. In relevant part, the Applicant notes the following two (2) exceptions:

Exception 1:

On page 8, under heading "Conclusions of Law," paragraphs (1) and (2) the Examiner found no good cause and erroneously characterizes the application as a request that the Council simply change its mind. Applicant's Exceptions, p.1.

The Applicant is not requesting that the District Council overturn its Decision due to a change of mind. Rather, as stated in its **request for reconsideration**, the Applicant's request is based on the "substantial reason" that following oral argument and its review of the record before it in 2010, the District Council affirmatively found that the 5.068 acre subject property was mistakenly left in the R-E (Residential Estate) Zone through the most recent Sectional Map Amendment, 2006 Henson Creek-South Potomac Master Plan and SMA. The District Council beginning at the bottom of page one and running to the top of page two of the Ordinance also found:

“WHEREAS, having reviewed the record in this case the District Council has determined, based on consideration of the entire record, that the subject property should be rezoned to the R-R Zone; and”

...After correctly making the appropriate findings that the property should be rezoned to R-R, the District Council mistakenly conditioned their approval on limiting the number of lots...

Applicant is requesting that the District Council **reconsider** the condition to split zone the property and adopt language that zones the entire 5.068 acre subject property to the R-R Zone...all of which are supported by the findings in Zoning Ordinance No. 11-2010. Applicant’s Exceptions, p. 2. (Emphasis added).

Exception 2:

...On page 7, under “Conclusions of Law,” paragraph (3) the ZHE questions whether the Zoning Ordinance adopted by the Council was conditional: The District Council titled the case as A-1000-C at the time it issued the Zoning Ordinance.

...Applicant takes exception to Examiner’s Decision...On behalf of LMJ Real Properties and Investments, Inc./Linda Jones, we are hereby formally requesting that the District Council **reconsider** certain language of the referenced Decision and adopt the revised language set forth on Exhibit 2. Applicant’s Exception, p. 2. (Emphasis added).

Exceptions 1 and 2 to the Examiner’s recommendation of denial are without factual or legal merit.

First, the District Council has no jurisdiction over Applicant’s request for a reconsideration of Zoning Ordinance 11-2010, because the request is statutorily time-barred. Zoning Ordinance No. 11-2010 became final on or about December 12, 2010. Therefore, Applicant’s request for reconsideration filed in March 2018, is over 8 years beyond the statutory deadline set forth in

PGCC § 27-135. Moreover, the District Council has no authority to waive the statutory deadline set forth in PGCC § 27-135.

Second, Applicant mischaracterizes the findings and conclusions in Zoning Ordinance No. 11-2010. In defiance of other specific findings and conclusions in Zoning Ordinance No. 11-2010, the Applicant relies on 1 whereas clause, out of context, to disingenuously suggest that the District Council rezoned the entire 5.068 acres of the property to R-R in 2010—but mistakenly retained a portion of the property in the R-E Zone. Applicant’s Exceptions, p. 2. In the Ordinance, after “WHEREAS, having reviewed the record in this case, the District Council has determined, based on consideration of the entire record, that the subject property should be rezoned to the R-R Zone; and,” the District Council included the following whereas clause and made the following findings and conclusions:

“WHEREAS, as the basis for this action, adopts the following as its findings of fact and conclusions of law in this case.”

B. The subject property at this time, on what is called Parcel 311, 1.06 acres, has a single-family dwelling, a barn, and other accessory buildings. The remainder of the tract, called Parcel 16, about four acres, has stables and other outbuildings. **The applicant initially proposed single-family detached residential development, with lots 20,000 square feet or larger, but in the applicant’s most recent revision, the rezoned property will have R-R zoning on only a part, as shown in the attached exhibit, and the remainder will be left in the R-E Zone.** Zoning Ordinance No. 11-2010, p. 2. (Emphasis added).

The Applicant’s “most recent revision” referenced in Paragraph B of the Zoning Ordinance was pursuant to an Order of Remand on the original application A-10000. Examiner’s Decision,

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p. 8, footnote 2.² The Order of Remand in A-10000 was adopted by the Council on July 12, 2010, which stated:

IT IS HEREBY ORDERED that Zoning Map Amendment No. 10000, for rezoning from the R-E Zone to the R-R Zone of property described as approximately 5.068 acres of land, located at the terminus of Defiance Drive, approximately 160 feet east of its intersection with Star Drive, also identified as 1700 Defiance Drive, Fort Washington, be and the same hereby is,

REMANDED to the Zoning Hearing Examiner, **to allow the applicant to place in the record a property description that will allow the District Council to approve a partial rezoning of the subject property**, to permit additional subdivided lots on the property. Order of Remand, 7/12/2010. (Emphasis added).

On remand, the Applicant submitted Exhibits 35(a) and (b). Exhibit 35(a) shows R-E zoning on proposed Lots 1-3, and R-R zoning on proposed Lots 4-6. Examiner's Decision, p. 8, footnote 2. The District Council did not mistakenly rezone a portion of the property to R-R. The District Council partially rezoned the property based on evidence submitted by the Applicant to partially rezone the property to R-R.

Third, Applicant's proposed Corrected Order or Exhibit 2 to rezone the property that is the subject of A-10000 from the R-E to the R-R Zone is not a remedy available under PGCC § 27-135. To rezone the R-E portion of the property, the Applicant must file a zoning map amendment application pursuant to PGCC § 27-157.

² The final decision in any zoning case shall be based only on the evidence in the record, and shall be supported by specific written findings of basic facts and conclusions. In addition, the Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision. PGCC § 27-141.

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Fourth, the Examiner was legally correct to conclude that Zoning Ordinance 11-2010, was not a conditional rezoning application. The District Council did not title the case as A-10000-C at the time it issued the Zoning Ordinance—the Applicant did. Notice of Final Decision, 11/12/2010. When the Clerk mailed the Notice of Final Decision to the Applicant on November 12, 2010, the application number—A-10000—was not followed by the letter “C,” because the rezoning was not conditional. Moreover, the Council never entered an order, pursuant to a PGCC § 27-157(b)(5), to acknowledge the partial rezoning of the property to R-R as a conditional rezoning. Notice of Final Decision, 11/12/2010, PGCC § 27-157(b)(5)-(6).

Finally, assuming *arguendo*, that Zoning Ordinance 11-2010, was a conditional rezoning application of the subject property, the Applicant has failed to meet its burden of proof to amend the Ordinance as set forth by Examiner. As the basis for this action, the District Council, adopts and incorporates by reference, except as otherwise stated herein, the findings and conclusions in the Zoning Hearing Examiner’s decision issued November 8, 2018.

Adopted this 25th day of February, 2019, by the following vote:

In Favor: Council Members Anderson-Walker, Davis, Dernoga, Franklin, Harrison,
Hawkins, Ivey, Streeter, Taveras, and Turner.

Opposed:

Abstained: Council Member Glaros.

Absent:

Vote: 10-0-1

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COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Todd M. Turner, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council