



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
2/26/04
Item #1

MEMORANDUM – CORRECTIVE MAP AMENDMENT

DATE: February 20, 2004
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Community-Based Planning *JC*
FROM: Bill Landfair, AICP, for the Department of Park and Planning
(301) 495-4555 *WAL*

SUBJECT: **Corrective Map Amendment No. G-816:** Application for reclassification of 7,350 square feet of land from the R-60/TDR Zone to the C-2 Zone – located at 4504 Walsh Street, Chevy Chase – Bethesda CBD Sector Plan

STAFF RECOMMENDATION

Approval to file Corrective Map Amendment No. G-816 for property located at 4504 Walsh Street, Chevy Chase, also known by legal description as Lot 8, Block D, Chevy Chase, Section 8. The Amendment reclassifies the property from the R-60/TDR Zone to the C-2 Zone in accordance with a Circuit Court order that the C-2 Zone was vested at the time of the Sectional Map Amendment.

BACKGROUND

On July 14, 1994, the County Council, sitting as the District Council, approved the Bethesda CBD Sector Plan by Resolution No. 12-740. On July 20, 1994, the M-NCPPC adopted the approved Bethesda CBD Sector Plan by Resolution No. 94-13.

On October 11, 1994, the County Council approved Sectional Map Amendment (SMA) G-711 by Resolution No. 12-1826. The SMA covered approximately 451 acres, and reclassified approximately 47 acres, with the remaining acreage reconfirmed as currently zoned.

acquired vested rights to continue and complete the construction of a building pursuant to the herein referenced permits and any lawful revisions or amendments thereto...

While the Court reinstated the building permit and allowed the building to be constructed it concurred with the County Council's position that the Court did not have jurisdiction to rezone the property back to the C-2 Zone, instead leaving that obligation to the Council. As such, while the construction of the building was allowed to proceed, the building remained a non-conforming structure.

CORRECTIVE MAP AMENDMENT

The current property owner has requested that the Planning Board initiate a Corrective Map Amendment to eliminate the non-conforming status of the existing commercial building on the subject property. The property owner supports this process because it is the most direct way in which to reclassify the property. In the alternative, the property owner would have to file a Local Map Amendment.

Generally, the process for a Local Map Amendment is more complicated and time consuming than that of a Corrective Map Amendment. In terms of timing, a Local Map Amendment will take about six to seven months to be processed, compared to a Corrective Map Amendment, which can be processed in about three months. Local Map Amendments are filed as "change or mistake" applications. Arguments for "mistake" are the most common type of application and revolve around what the County Council knew, or should have known, at the time of the original zoning. The purpose of Corrective Map Amendments is to correct technical errors or inaccurate depictions of zoning boundary lines on an adopted map that are known as the result of mapping, surveying, or other technical information.

The property owner asserts that if the County Council had known the Circuit Court's ruling on October 11, 1994, it would not have rezoned the subject property. The property owner believes the non-conforming status of the building is contrary to the intent of the Bethesda CBD Sector Plan. The Sector Plan called for retaining the C-2 Zone if, as subsequently determined by the Circuit Court, rights to construct the building were vested at the time of the SMA. Unfortunately, from the perspective of the property owner, the Court ruled five months after the Council had acted on the SMA.

The Town of Chevy Chase, a municipal corporation, whose boundaries are in close proximity to that of the subject property has expressed an interest in the case and submitted a letter to the Planning Board (attached as an exhibit). In that letter, the Town contrasts the language found in the Circuit Court's Consent Order dated December 21, 1994 with that of the language found in the Court's Order of March 4, 1995. In the 1994 Consent Order, the Court attempted to

impose the C-2 Zone. However, while the later Order confirmed the vesting for the right to complete construction of the building and that the use is in accordance with the C-2 Zone but as a non-conforming building, the Court declined to rezone the property to C-2.

The Town states that under Maryland law, zoning is not vested merely by the issuance of a building permit but rather vesting is based upon the extent of construction done prior to the effective date of the rezoning action. Therefore, the Town believes that the legal and factual issue to be determined in connection with the Corrective Map Amendment is whether the construction authorized by the building permit had commenced to a point, as recognized by Maryland case law, prior to the County Council's adoption of the SMA, that the C-2 Zone was vested.

Based on the information available to date, the Town is not yet convinced that the rationale provided supports the requested rezoning to C-2 through the Corrective Map Amendment procedure. The Town makes clear, however, that it is neither in support nor opposed to reclassifying the subject property to the C-2 Zone. The Town's only concern at this point is that the proper procedure be utilized.

CONCLUSION

In staff's opinion, we believe that while the facts surrounding this case push the envelope of a "technical" correction, the facts are unique and will not establish a precedent for purposes of the application of the Corrective Map Amendment process in the future. Staff believes that if the County Council had the benefit of the findings of the Circuit Court prior to taking action on the SMA, it would not have rezoned the property to R-60/TDR, because text in the Sector Plan confirms that the Council did not want to create a non-conforming building.

If the County Council had the benefit of a legally binding conclusion that the property owner was vested, notwithstanding that they might have disagreed with that finding, it is staff's belief that they would not have rezoned the subject property to R-60/TDR. We agree with the property owner that in this instance, the most expedient procedure for reclassifying the property to the C-2 Zone is through a Corrective Map Amendment. Staff therefore recommends that Corrective Map Amendment No. G-816 be filed with the County Council with a Planning Board recommendation of approval.

Attachments

Attachment 1	Vicinity Map
Attachment 2	Property Survey
Attachment 3	Existing Zoning Map

Attachment 4	Proposed Zoning Map
Attachment 5	Circuit Court Consent Order
Attachment 6	Circuit Court Order
Attachment 7	Figure 4.32 Bethesda CBD Sector Plan
Attachment 8	Holland & Knight letter of December 22, 2003
Attachment 9	Lerch Early & Brewer letter of January 2, 2004
Attachment 10	Holland & Knight letter of January 27, 2004