

MEMORANDUM TO: Mayor and City Council
Planning Commission

FROM: Gregory Mann, Planner

DATE: April 16, 2014

SUBJECT: Staff Analysis:
Z-4355-2014
Map Amendment Application
14 Firstfield Road

APPLICANT

Craig Pittinger, Siena Corporation
8221 Snowden River Parkway
Columbia, MD 21045

Owner

ARE-14 Firstfield Road, LLC
946 Clopper Road
Gaithersburg, MD 20878

TAX MAP REFERENCE:

Tax Map: FT121

Tax Account Numbers:

Plat Number: 22015 – ID #09-03353020

REQUEST

The Siena Corporation has submitted a Zoning Map Amendment (rezoning) Application, Z-4355-2014. This Application is for a proposal to rezone 3.13 acres of land from a 4.60 acre parcel. The applicant is proposing to rezone the aforementioned land from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone.

Z-4355-2014
Exhibit #28



14 Firstfield Road (The Property)

GENERAL INFORMATION

Additional background information including Existing Land Characteristics and Adequate Public Facilities can be found in the Preliminary Staff Report, Exhibit #26 of Z-4355-2014.

LOCATION

The subject property is located at 14 Firstfield Road, in the southeast quadrant of the intersection of Firstfield Road and Bank Street, in the City of Gaithersburg, Maryland.

JOINT PUBLIC HEARING

The Mayor & City Council and the Planning Commission held a joint public hearing on application Z-4355-2014 on March 17, 2014¹. The Planning Commission record for this application closed April 7, 2014 and the Mayor and City Council record closes on April 17, 2014.

¹ The complete Z-4355-2014 record can be found and reviewed on the City's website: <http://www.gaithersburgmd.gov> on the City Projects Page.

REQUIRED ACTIONS

The applicant is requesting a map amendment from the C-2 Zone to the E-1 Zone, in accordance with §24-196 (Map Amendments) of the City Code. This is a rezoning from one Euclidean Zone to another (as opposed to one of the City's Floating Zones, such as MXD Zone or an optional method of rezoning.) As a result, there is no site plan or use review required for the rezoning.

The burden of proof is on the applicant seeking a zoning classification to establish that there is "...substantial change in the character of the neighborhood or a mistake in the original zoning or comprehensive rezoning..." *Agneslane v. Lucas, 247 Md. 612 (1967)*. The applicant is arguing there was a mistake in the 1997 comprehensive rezoning of the subject property.

ANNEXATION AND ZONING HISTORY:

Annexation:

The subject property was annexed in to the Gaithersburg municipal limits by the Mayor and Town Council as part of the Diamond Farm – Brown Station Road annexation (X-087) by resolution R-25-66, which became effective in 1967. At the time of the annexation approval, the Mayor and Town Council established C-P (Commercial Office Park) zoning for the subject property.

Master Plan Land Use and Zoning:

On June 26, 1967, the subject property was rezoned from C-P (Commercial Office Park) Zone to the newly established E-1 (Urban Employment) Zone by the Mayor and Town Council (Z-101, R-9-67, March 6, 1967). This was planned for the property during the annexation process as noted in Resolution R-21-67; however, the Town had not yet established the E-1 Zone.

In 1996, the City adopted the Neighborhood Five Land Use Plan. The aforementioned adopted Plan recommended changing the properties land use designation from Industrial-Research-Office to Commercial. The plan also recommended rezoning the subject property from the E-1 (Urban Employment) Zone to the C-2 (General Commercial) Zone. Please note that the Neighborhood Five Land Use Plan, which was adopted in 1996, is part of the 1997 Master Plan. In 1996, the Mayor and City Council subsequently adopted a comprehensive rezoning for the neighborhood, which included rezoning a portion of the subject property to the C-2 (General Commercial) Zone.

Over the next seven years, the property remained vacant. The property owner did receive site plan approval for SP-02-0006 on October 6, 2004 for an office/research facility, but it was not constructed.

During the hearing process of the Land Use Plan Element of the 2003 Master Plan, the Mayor and City Council agreed with the request of the property owner and changed the land use designation back to Industrial-Research-Office. Additionally, the aforementioned Master Plan, which was adopted April 6, 2004, recommended that the property be rezoned to the E-1 (Urban Employment) Zone. The Industrial-Research-Office land use and recommended E-1 zone was reconfirmed as part of the Land Use Plan Element of the 2009 Master Plan, adopted by the Mayor and City Council in December 2011 by Resolution R-88-11. The City did not comprehensively rezone any properties following the adoption of either the Land Use Plan Element of the 2003 or 2009 Master Plan.

Development History:

Following annexation, the subject property was plated as Lot 2, Block C, Diamond Farm Subdivision (Plat 10190/R-139), in 1972. The original subdivision included both the subject property and the currently addressed 700 Quince Orchard Road (Watkins Johnson/DRS).

The office building located at 700 Quince Orchard Road was approved in 1972, and the site plan included a stormwater management facility for Lot 2, Block C located on the subject property. In August 2001, the Planning Commission approved Amendment to Final Plan AFP-01-025, which was a preliminary subdivision for proposed Lots 8 and 9, Block C. Subsequently, a Final Subdivision Plat was approved by the Planning Commission in October 2001, known as Lots 8 and 9, Block C (R-1113, County Plat 22015).

In 2002, the subject property obtained Final Site Plan approval for a 96,300 square foot office building (SP-02-0006). Extensions of the Final Site Plan were approved in 2003 and 2004. The approved office building was never constructed, and the approval expired in 2005.

The adjacent property at 1 Bank Street was granted Final Site Plan approval in 1969 for an office/bank building (S-171). That property was subdivided in 2010 into Lots 10 and 11, Block C (Plat 24141/R-1262) and subsequently obtained Final Site Plan approval for Lot 11 for a stand-alone bank, addressed as 5 Bank Street (SP-07-0007).

As was requested at the Public Hearing, Staff has prepared the following chart which displays the development history of both the subject and adjacent properties. The adjacent properties are addressed as 700 Quince Orchard Road, 1 Bank Street, and 5 Bank Street.

<u>14 Firstfield</u>	<u>700 Quince Orchard Road</u>	<u>1 & 5 Bank Street</u>
Subdivision	Subdivision	Subdivision
Lot 8, Block C, Diamond Farm, Resubdivision of Lot 2, Block C, Diamond Farm 2001 – Subdivided into lots 8 and 9	Lot 9, Block C, Diamond Farm, Resubdivision of Lot 2, Block C, Diamond Farm 2001 – Subdivided into lots 8 and 9	Lots 10 & 11, Block C, Diamond Farm, Resubdivision of Lot 1, Block C, Diamond Farm 2010 - Subdivided to Lot 10 (Office Building) & Lot 11 (Bank)
Plat 22015/R-1113	Plat 22015/R-1113	Plat 24141/R-1262
Plated 02/11/1972, Plat 10190/R-139 Lot 2, Block C, Diamond Farm	Plated 02/11/1972, Plat 10190/R-139 Lot 2, Block C, Diamond Farm	Plated 10/29/1969, Plat 9435/152 Lot 1, Block C, Diamond Farm
Annexation	Annexation	Annexation
Annexation – X-087, DANAC - Diamond Farm - Brown Station Road, R-25-66	Annexation – X-087, DANAC - Diamond Farm - Brown Station Road, R-25-66	Annexation – X-087, DANAC - Diamond Farm - Brown Station Road, R-25-66
Annexation – 1966, zoned C-P	Annexation – 1966, zoned C-P	Annexation – 1966, zoned C-P
Development	Development	Development
S-304 (1972-1973) – Watkins Johnson (Office, Research Electronics development) for Lot 2. Included Stormwater Management facility for overall site (Lot 2) on current Lot 8	S-304 (1972-1973) – Watkins Johnson (Office, Research Electronics development) for Lot 2. Included Stormwater Management facility for overall site (Lot 2) on current Lot 8	S-171 (1969) – Approved office/bank building built on site, (1 Bank Street)
AFP-01-025 (2001) – Preliminary subdivision for proposed Lots 8 and 9, Block C	AFP-01-025 (2001) – Preliminary subdivision for proposed Lots 8 and 9, Block C	SP-07-0007 (2010) – Approval of bank and subdivision at 5 Bank Street.
2002, SP-02-0006 – Final Site Plan approval for 96,300 square foot office building (never constructed). Extension of Final Site Plan approval, 2003 & 2004. Expired 2005.		
Master Plan / Zoning	Master Plan / Zoning	Master Plan / Zoning
Originally zoned C-P	Originally zoned C-P	Originally zoned C-P
<i>Rezoned from C-P to E-1, 1967, Z-101</i>	<i>Rezoned from C-P to E-1, 1967, Z-101</i>	<i>Rezoned from C-P to E-1, 1967, Z-101</i>
<u>1970 Master Plan</u> Land use designation of Commercial-Industrial	<u>1970 Master Plan</u> Land use designation of Commercial-Industrial	<u>1970 Master Plan</u> Land use designation of Commercial-Industrial
<u>1974 Master Plan</u> Land use designation of Industrial-Research-Office	<u>1974 Master Plan</u> Land use designation of Industrial-Research-Office	<u>1974 Master Plan</u> Land use designation of Industrial-Research-Office
<u>1997 Master Plan</u> Adopted commercial designation and rezone to C-2 for part of parcel <i>Comprehensively rezoned from E-1 to C-2 for part of parcel</i>	<u>1997 Master Plan</u> Adopted Industrial-Research-Office designation and rezone to C-2 for part of parcel <i>Comprehensively rezoned from E-1 to C-2 for part of parcel</i>	<u>1997 Master Plan</u> Adopted commercial designation and rezone to C-2 <i>Comprehensively rezoned from E-1 to C-2</i>
<u>2003 Master Plan</u> Adopt Industrial-Research-Office land use designation and rezone to E-1 <i>Not comprehensively rezoned</i>	<u>2003 Master Plan</u> Not included as a specific map designation Retained Industrial-Research-Office designation	<u>2003 Master Plan</u> Not included as a specific map designation Retained commercial designation
<u>2009 Master Plan</u> Adopt Industrial-Research-Office land use designation and rezone to E-1 <i>Not comprehensively rezoned</i>	<u>2009 Master Plan</u> Not included as a specific map designation Retained Industrial-Research-Office designation	<u>2009 Master Plan</u> Not included as a specific map designation Retained commercial designation

STAFF ANALYSIS AND RECOMMENDATION

Legal Analysis²:

1. Showing “mistake” in prior zoning

There is a “presumption of validity accorded to a comprehensive zoning” that must be overcome by evidence of a mistake or neighborhood change. *Boyce v. Sembly*, 25 Md. App. 43 (1975). Additionally, lack of conformity between the zoning category and the master plan does not show an error, as there is no requirement that zoning and the master plans conform. *People’s Counsel of Baltimore County v. Beachwood I Ltd. Ptnrshp.*, 107 Md. App. 627 (1995).

The applicant has the burden to provide “strong evidence” of a mistake to overcome the presumption that the zoning is valid and to justify a piecemeal rezoning affecting one property. *Stratakis v. Beauchamp*, 268 Md. 643 (1973). This can be a heavy burden, *Anne Arundel County v. Maryland National Bank*, 32 Md. App. 437 (1976), that requires direct evidence of an “actual and basic mistake” by the legislative body in making the decision to designate the property’s zoning classification. *Bartnik v. Calvert County Hospital*, 262 Md. 434 (1971). Courts have noted that a “more liberal” burden can be used when property would, as in this case, be reclassified among commercial categories – rather than being changed from a residential to a commercial zone. *Tennison v. Shomette*, 38 Md. App. 1 (1977). But evidence of the mistake must be presented, and it must emanate from the legislative body making the zoning decision – such as through the legislative body’s prior statements and findings. *Tennison*, 38 Md. App. at 7-8. And rather than a simple “mistake of judgment,” the evidence must show that “underlying assumptions or premises relied upon” were erroneous. *Mayor and Council of Rockville v. Rylyns Enterprises*, 372 Md. 514 (2002).

Mistakes based on inaccurate predictions cannot simply consist of inaccurate judgments, but must include evidence that “assumptions upon which a particular use was predicated” were proven “with the passage of time to be incorrect.” *Anne Arundel County v. A-PAC, Ltd.*, 67 Md. App. 122, 127 (1985), *citing Rockville v. Stone*, 271 Md. 655, 662 (1975) *and Boyce*, 25 Md. App. at 51. The evidence would have to show the legislative body based the zoning decision on a prediction of future events that turned out to be incorrect. *White v. Spring*, 109 Md. App. 692 (1996). Mistakes can also result from the failure to accurately predict future events that would bear on a parcel’s land use – either because the legislative body failed to consider certain facts, or their prediction became inaccurate due to later events “which the Council could not take account of.” *Anne Arundel County*, 67 Md. App. 122.

² Analysis prepared by Assistant City Attorney, Frank Johnson

2. Siena's Assertion of Mistake

Siena points out in both its original and supplemental statements that the existing zoning does not conform to the 2003 and 2009 Master Plans. But there is no requirement that zoning and the master plans conform. *People's Counsel of Baltimore County v. Beachwood I Ltd. Ptnrshp.*, 107 Md. App. 627 (1995), *citing Howard County v. Dorsey*, 292 Md. 351 (1982). Siena also makes the general claim, in its original statement, that an error was committed "for whatever reason," but does not identify a specific error, such as in the "adequacy and accuracy" of the basis supporting the legislative body's decision. *White v. Spring*, 109 Md. App. 692, 699 (1996).

Siena filed a Supplemental Statement, in which it further argued how the Mayor and City Council made a mistake in the original 1997 rezoning of the property to the C-2 zone. Siena does not present additional evidence, but argues the Council based its rezoning decision on statements in the 1996 Neighborhood Five Land Use Plan, which stated that the property "could be developed with a commercial use," and that a restaurant or retail uses compatible with Quince Orchard Plaza – the shopping center across the street – could occur. Siena asserts subsequent events have proven these statements that such retail "could occur" were incorrect, as no retail, restaurant or any other commercial use has developed. But it has not argued that such retail could not occur. In referencing only the master plan, Siena has not provided any direct Council statement or direct finding beyond the statements in the 1997 master plan.

3. Even if mistake is shown, the Mayor and City Council would have discretion to leave the property C-2.

If Siena provides proof of an error by the City Council in zoning the property C-2 and not E-1 in 1997, rezoning it to E-1 now would be justified. *Strakatis*, 268 Md. 652-53. But it would not be mandated, as the City Council would not be required to make such a change. *White*, 109 Md. App. at 708; *Chesapeake Ranch Club v. Fulcher*, 48 Md. App. 223 (1981) *citing Hardesty v. Dunphy*, 259 Md. 718 (1970). Such a change has only been mandated when the property owner could show a deprivation of "all reasonable use" of the property if not rezoned. *People's Counsel of Baltimore County v. Prosser*, 119 Md. App. 150, 179 (1998) *citing Beachwood*, 107 Md. App. at 653. Thus, the rezoning decision would remain within the City Council's discretion as Siena has not asserted or provided evidence they would be deprived of all reasonable use of the property if it is not rezoned.

Planning Analysis:

The applicant's request to rezone the property back to the E-1 zoning classification is in conformance with the currently adopted 2009 Master Plan. As such, staff would support both adopting the recommended land use designation and a unified zoning classification for the subject property, as is envisioned in the both the 2003 and 2009 Master Plans, if the applicant was found to meet their burden of proof to show a mistake was made in the subject property's current zoning.

The 2003 and 2009 Master Plan recommends the following land use and zoning actions:

- *Adopt Industrial-Research-Office land use designation*
- *Recommend zoning change from C-2 to E-1 for the northern portion of the lot*
- *Retain E-1 zoning on the southern portion of the lot*

Conclusion:

While this application, Z-4355-2014, is in conformance with the both the 2003 and 2009 Master Plan recommendations, the applicant is required to prove there was a mistake with the 1997 comprehensive rezoning of the property, as the applicant has asserted. While staff is supportive of the recommendations of the 2009 Master Plan, it is important to note that consistency with the approved Master Plan is insufficient evidence to prove mistake, as stated earlier by Assistant City Attorney Johnson.

If the applicant provides evidence of a City Council error in zoning the property C-2 in 1997, rezoning the subject property to E-1 would be justified. If the rezoning requested is proven to be justified, Staff would have supported the requested Map Amendment, as it would bring the property into conformance with the approved 2009 Master Plan. However, based on the legal analysis provided by the Assistant City Attorney, it is Staff's opinion that the applicant has not submitted sufficient evidence to prove that a mistake was made by the Mayor and City Council in rezoning the property in accordance with the 1996 comprehensive rezoning.

STAFF RECOMMENDATION:

Staff recommends **THAT THE PLANNING COMMISSION, BASED ON THE EVIDENCE OF RECORD AND THE STAFF ANALYSIS, RECOMMEND TO THE MAYOR & CITY COUNCIL DENIAL OF MAP AMENDMENT APPLICATION Z-4355-2014, AS THE APPLICANT HAS NOT MEET THE BURDEN TO PROVIDE STRONG EVIDENCE OF A MISTAKE TO OVERCOME THE PRESUMPTION THAT THE ZONING IS VALID AND TO JUSTIFY A PIECEMEAL REZONING AFFECTING THE PROPERTY.**

Date: April 14, 2014

To: Gaithersburg Mayor, Council, and Planning Commission

From: Alan Fraser, City Resident

Re: Proposed Zoning Change for 3.13 Acres at 14 Firstfield Road near Quince Orchard Plaza

My wife and I have been City of Gaithersburg, MD, residents for over 42 years and live in West Riding, along with Council members Mike Sesma and Henry Marraffa. Gaithersburg is a caring and tastefully (for the most part) developed city. I should know, having served on the city Board of Appeals (7 years) and the Planning Commission (10 years). It's a big city now while still retaining its small town approach to how it handles the details of its continuing development.

Specifically, the proposed zoning change for the corner property at Firstfield Road and Bank Street to allow a 2-story self-storage facility seems clearly incompatible with the surrounding developed area.

This area already contains a one-story retail shopping center with approximately 15 stores, a one-story neighborhood bank, several (around 10) relatively small, free-standing, one-story business office park buildings, and a one-story church, all of which are surrounded by residential single family homes, townhouses, and condominium apartments. There are no warehouse facilities in this entire surrounding area, nor should there be. Another business office building or commercial building (such as for real estate) would be a more compatible use for this property and fit in better with the surrounding established community. I drive by this site twice a day as I commute to and from our West Riding home to Asbury Methodist Village in Gaithersburg where I work. **I enjoy the open, unfenced feel of the current office buildings along Firstfield Road.** They are relatively small, self contained, and don't have any fences surrounding them. A large 2-story, high fenced-in, 24/7 access, nondescript (architecturally speaking) public self-storage building (warehouse), as proposed for this location, simply is not the right or compatible use for this property. Therefore, the existing general commercial zoning should not be changed, but rather respected to keep the overall uncluttered nature and character of this area unchanged. **A warehouse area this area is not!**

Thank you for the opportunity to comment on this matter. This reflects one of the best aspects of living in Gaithersburg – freely solicited and shared citizen input from 24/7 city residents who care and want the best for their community as an integral part of our city.

Respectfully,



Alan Fraser, 790 West Kimberly Court, Gaithersburg, MD 20878

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

FROM: Planning Commission

DATE: April 16, 2014

SUBJECT: Z-4355-2014 -- Application to rezone 3.13 acres of land from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone, in accordance with § 24-196 (Map Amendments) of the City Code. The Property is located at 14 Firstfield Road, in the southeast quadrant of the intersection of Firstfield Road and Bank Street in the City of Gaithersburg, Maryland.

At its regular meeting on April 16, 2014, the Planning Commission made the following motion:

Commissioner Kaufman moved, seconded by Commissioner Lanier to recommend Zoning Map Amendment Z-4355-2014 for DENIAL to the Mayor and City Council, based on the evidence of record and the Staff Analysis, as the applicant has not met the burden to provide strong evidence of a mistake to overcome the presumption that the zoning is valid and to justify a piecemeal rezoning affecting the property.

Vote: 4-0

Z-4355-2014
Exhibit #30

Gregory Mann

From: John Schlichting
Sent: Wednesday, April 16, 2014 8:06 PM
To: billfallon@wefallon.com
Cc: Gregory Mann; Britta Monaco
Subject: FW: Proposed EZ storage

Mr. Fallon,

Thank you for your email which will be added to the Mayor and City Council's record on Zoning Map Amendment Z-4355-2014 which closes tomorrow, April 17, 2014 at 5:00 pm. The Mayor and City Council are scheduled for Policy Discussion on this matter at their regular Meeting on Monday, May 5, 2014 at 7:30 pm in the Council Chambers at Gaithersburg City Hall.

John Schlichting

Director, Planning and Code Administration
City of Gaithersburg, Maryland
31 South Summit Avenue
Gaithersburg, MD 20877
Office 301.258.6330
Cell 240.421.0812
jschlichting@gaitthersburgmd.gov

From: William Fallon [<mailto:billfallon@wefallon.com>]
Sent: Tuesday, April 15, 2014 1:00 PM
To: CityHall External Mail
Subject: Proposed EZ storage

Gail and I are late in following the proposed rezoning of land to allow for a garish EZ storage Facility on First Field. We adamantly oppose this for all the reasons previously stated by many residents in their emails to you.

I am unclear as to how and when the Council will rule on this request. Could you please advise me.

Thank you

Bill Fallon
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Gaithersburg MD 20878
Home: 301-840-0054
Mobile: 240-246-4260
eMail: billfallon@wefallon.com