

IN THE MATTER OF THE
APPLICATION OF AYS MARINE
ENTERPRISES, LLC FOR A
REZONING OF PARCEL 77 (DEED
PARCEL 1) ON QUEEN ANNE'S
COUNTY SECTIONAL ZONING MAP
NO. 56 FROM KISC (KENT ISLAND
SUBURBAN COMMERCIAL
ZONING DISTRICT
TO SI (SUBURBAN INDUSTRIAL
ZONING DISTRICT)

* BEFORE THE COUNTY
* COMMISSIONERS OF
* QUEEN ANNE'S COUNTY
* COUNTY ORDINANCE NO. 18-03
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FINDINGS AND DECISION

A hearing was held on July 24, 2018 in the County Commissioner's meeting room, the Liberty Building, 107 N Liberty Street, Centreville, Maryland on the application of AYS Marine Enterprises, LLC to rezone Parcel 77 (Deed Parcel 1) on Queen Anne's County Sectional Zoning Map No. 56 from KISC (Kent Island Suburban Commercial) Zoning District to SI (Suburban Industrial) Zoning District.

The hearing was properly advertised and the property posted with notice prior to the hearing. The applicants were represented by Michael R. Foster, Esquire who presented testimony and exhibits in support of the rezoning. Two citizens testified in opposition. Several letters from adjacent property owners in opposition were received and considered. The Report and Recommendation of the Queen Anne's County Planning Commission which recommended approval of the request on the basis of "mistake" was received and considered.

Mr. Foster presented evidence indicating that his client was in the business of boat sales and currently operated the Bay Bridge Marina. They purchased the subject property and an adjoining parcel in January, 2017 in order to conduct a boat storage and service facility. The adjoining property as well as the other properties to the north

and south of the subject parcel are zoned Suburban Industrial (SI). The subject property is zoned Kent Island Suburban Commercial (KISC). Mr. Thomas Turner testified that he lived three houses down from the subject property, his grandfather built the house on the property and his mother, Edith Turner, operated an antiques store thereon for a number of years. He did not see anything detrimental about the proposed rezoning.

The opposition testified that the parcel in question was adjacent to the Stevensville Historical Preservation District and they opposed any further industrialization of the area.

The evidence presented by the applicant and the report from the Planning Commission indicated the property was originally zoned B-2 (General Commercial Business District) in 1967 under the original Queen Anne's County Zoning Ordinance. In 1987 the property was zoned Suburban Industrial (SI) during the comprehensive rezoning process. In March of 1989 the then owners sought to have the property rezoned to UC (Urban Commercial). This application was put "on hold" but in November of 1989 the property was rezoned to Suburban Commercial (SC). The property remained zoned SC through two comprehensive rezonings (1994 and 2004). It was rezoned from SC to KISC (Kent Island Suburban Commercial) in 2009 when all SC zoned parcels on Kent Island were given the KISC designation. The property retained its KISC zoning classification during the 2010 comprehensive rezoning process.

Under long standing Maryland precedent a piecemeal rezoning request has the burden of establishing either a change in the character of the neighborhood or a

mistake in the current zoning of the property. Applicant seek to justify the current rezoning request solely on the basis of “mistake”.

The burden on the applicant was explained in Quinn v. County Commissioners of Kent County, 20 Md. App. 413 (1974) as follows:

“While in recent years, we have occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances..., strong evidence of mistake in the original zoning or comprehensive rezoning which, necessarily, includes a mindful legislative decision to retain the zoning classification of a property as well as evidence of substantial change in the character of the neighborhood must be produced: (emphasis supplied) (citations omitted).”

It is apparent from the record that the subject property was intentionally rezoned as SC in 1989. It has retained such zoning through no less than three comprehensive rezonings (1994, 2004 and 2010). Such zoning is therefore presumptively correct.

The error in Applicant’s argument (and in the recommendation of the Planning Commission) is in the failure to properly comprehend the type of “mistake” required to be shown to justify a rezoning. Both Applicant and the Planning Commission argue in effect that the zoning of the property, given the surrounding zoning and land uses, would have been more appropriately Suburban Industrial. Even assuming, from a land-use viewpoint, that such argument is correct, it is not the proper basis for a finding of mistake.

In People’s Counsel for Baltimore County v. Beechwood Limited Partnership, 107 Md. App. 627 (1995), Judge Moylen articulated the type of mistake required to justify a piecemeal rezoning:

[A] conclusion on the part of the County Board of Appeals that the comprehensive zoning of the County Council under review was wrong, ill-

advised, or unsuitable is not an adequate finding of an actual mistake or error within the contemplation of zoning law. The legal meaning of "mistake" or "error" is far more restricted:

In order to assess the evidence before the Board, it is necessary to understand the inherent nature of the terms "mistake" or "error" as they are used in zoning law. A perusal of cases, particularly those in which a finding of error was upheld, indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension.

In this case the argument is, simply that the various comprehensive rezoning of the property were "wrong, ill-advised, or unsuitable." There was no evidence presented that they were based upon factual mistakes that were incomplete or inaccurate.

Applicants (and the Planning Commission) argue that the zoning of the property was bad judgment. As stated in Beachwood, at p. 645, "A conclusion based on a factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second guessing."

The Board of County Commissioners further note that even if a mistake were found, such a finding only permits, it does not mandate, a rezoning, White v. Springs, 109 Md. App. 692 (1995); A.A. County v. A-PAC Ltd. 67 Md. App. 122 (1986). Even had Applicant established a zoning mistake, the Board would decline to exercise its discretion to rezone the property.

The application for rezoning is DENIED.

WITNESS the hands and seals of the County Commissioners of Queen Anne's

County, this 27 day of Nov, 2018.0

THE COUNTY COMMISSIONERS OF
QUEEN ANNE'S COUNTY



Stephen Wilson

Abstain

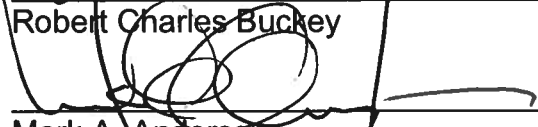
James J. Moran

Abstain


Jack M. Wilson, Jr.



Robert Charles Buckey



Mark A. Anderson



Margie Heuck