THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Prince George's County Planning Department
Community Planning Division

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Upper Marlboro, Maryland 20772
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October 15, 2018

MEMORANDUM

TO: Andree Green Checkley, Planning Director

VIA: Kipling Reynolds, AICP, Chief, Community Planning Division K.R. & KS
Debra Borden, Principal Counsel DSB
Fred Stachura, J.D., Supervisor, Neighborhood Revitalization Section, Community Planning Division FJS
Scott Rowe, AICP, CNU-A, Supervisor, Long Range Planning Section, Community Planning Division SR

FROM: Wendy Irminger, Planner Coordinator, Community Planning Division WI

SUBJECT: **Administrative Correction of the Official Zoning Map per Circuit Court Order in Piscataway Road, Clinton MD, LLC (CAL13-24868) and the 2013 Approved Subregion 5 Sectional Map Amendment**

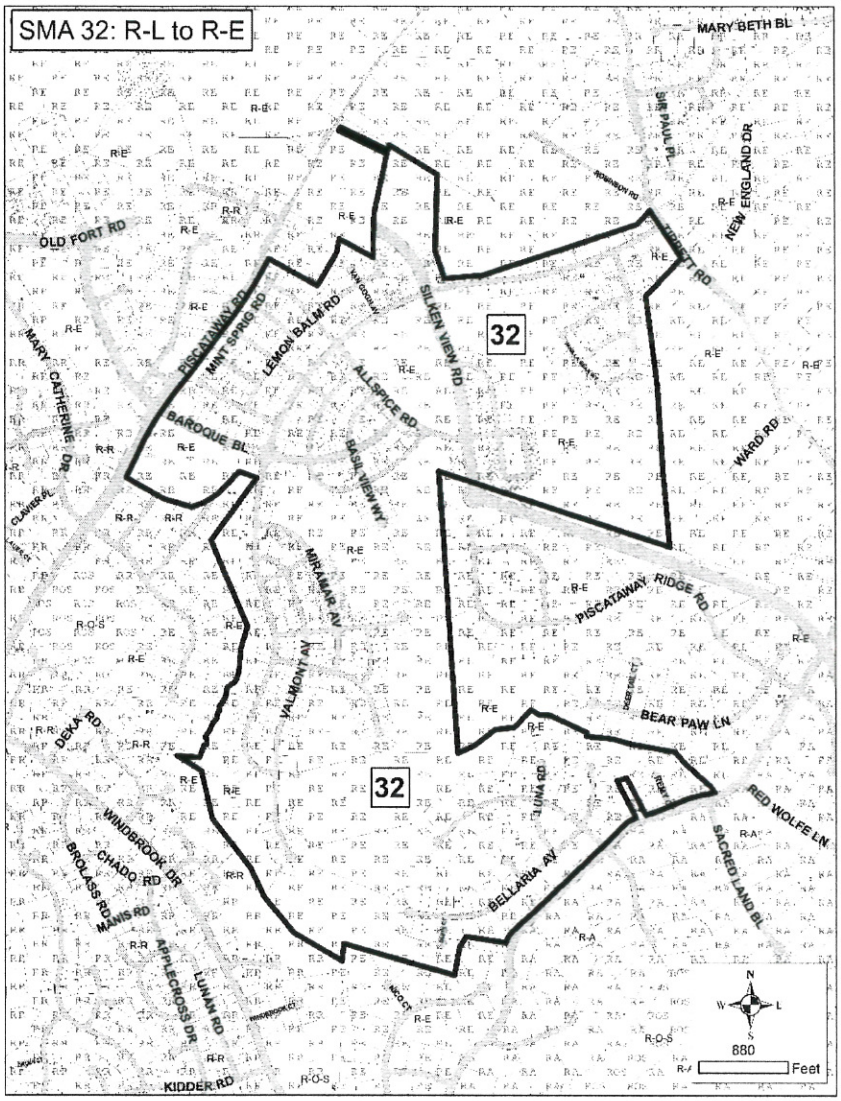
This memo requests authorization to administratively change the Official Zoning Map and update text to reflect the attached Circuit Court order reversing a zoning change approved in CR-81-2013, Subregion 5 Sectional Map Amendment (SMA), Piscataway property (also known as "Bevard East") on remand from the Court of Special Appeals, Appeal No. 1426, September Term 2014.

On July 24, 2013, the District Council approved CR-81-2013, which, *inter alia*, rezoned 491.98 acres that consists of land subject to Zoning Map Amendment A-9967 (2005) from the R-L (Residential-Low) Zone to the R-E (Residential-Estate) Zone (SMA, page 201). These properties were identified by tax accounts in Appendix 6 in the 2013 Approved Subregion 5 Sectional Map Amendment, CR-81-2013, Revision Two, and its Attachment A, Tax Accounts for Bevard East (SMA, pages 238-248). Staff notes a discrepancy between the acreages in the 2005 zoning case (562.85 acres), the 2013 SMA change #32 (491.98 acres) and the Court Order (272.12 acres). Staff observes that the intent of the Court Order was to reverse Zoning Change #32 in CR-81-2013 and revert the classification of the 491.98 acres contained within that Zoning Change to the R-L Zone, and that the 272.12 acres cited in the Court Order is erroneous.

Staff recommends that the GIS zoning layer be updated to show the R-L Zone on the subject properties identified in SMA change #32 and to perform corresponding updates of the 2013 Approved Subregion 5 Sectional Map Amendment. With your authorization, staff is prepared to revise the SMA text and maps and James Cannistra, Chief, Information Management Division, will instruct his staff to proceed with the GIS zoning layer update.

ADMINISTRATIVE CORRECTION

2013 Subregion 5 SMA Zoning Change # 32: To Be Deleted



READ AND AGREED

Andree Green Checkley
Andree Green Checkley, Planning Director

10/16/18
Date

Attachment:

cc: Derick Berlage, Chief, Countywide Planning Division
James Hunt, Chief, Development Review Division
James Cannistra, Chief, Information Management Division
Michael Shean, GISP, Supervisor, Geographic Information Services Section, Information Management Division
Jill Kosack, Planning Supervisor, Urban Design Section
Whitney Chellis, Planning Supervisor, Subdivision & Zoning Review Section
Sherri Conner, Acting Planning Supervisor, Subdivision & Zoning Review Section
Helen Smith, Supervisor, Planning Information Services
Daniel Hartmann, Administrative Manager, Office of Publications and Graphics

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PETITION OF PISCATAWAY ROAD CLINTON MD, LLC	
COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND, SITTING AS THE DISTRICT COUNCIL FOR JUDICIAL REVIEW OF THE DECISION BY THE COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND, SITTING AS THE DISTRICT COUNCIL IN THE CASE OF: CR-81-2013 THE SUBREGION V SECTIONAL MAP AMENDMENT. **On Remand from Court of Special Appeals, Appeal No. 1426, September Term 2014.**	Case No. CAL13-24868

ORDER

This matter comes before the court on remand from the Court of Special Appeals of Maryland. In an unreported opinion, the Court of Special Appeals reversed the judgment of this court, which previously affirmed the final decisions of the District Council in CR-80-2013 and CR-81-2013—council resolutions reapproving with certain revisions, the 2009 Subregion 5 Master Plan and Sectional Map Amendment, which this court previously invalidated in 2012. *Bazzarre v. County Council*, 2017 Md. App. LEXIS 565*, 2017 WL 2334472 (Md. Ct. Spec. App. May 30, 2017).

The Court of Special Appeals held that—in enacting the 2013 versions of the Subregion 5 Master Plan and SMA—the District Council exceeded its powers insofar as those statutes affected Petitioner's land that make up a 272.12-acre tract to the east of Windbrook Drive and the west of Thrift Road near Clinton, Maryland. The Court reversed the District Council's decision to rezone the Piscataway property from Residential-Low Development (R-L) Zone to the Residential Estate (R-E) Zone. *Bazzarre,* LEXIS 565 at *94-95, 122-125, 128.

The Court also held that this court's initial judgment in 2012 required the District Council to reconsider the 2009 Subregion 5 preliminary master plan and proposed SMA based upon the record presented to the 2009 District Council, supplemented by updated information as to the filing of ethics affidavits. According to the Court, once the ethics affidavits were updated, individual Council members, and the public, would know which members were barred from voting whether to approve the master plans and SMAs. The Court stated this was the appropriate reading of this court's initial judgment in 2012, and was, beyond any cavil, the way that the District Council initially interpreted the court's order. The Court further stated that such an approach is also consistent with PGCC § 27-227(a), which sets out an expedited process for reconsideration of an SMA when a prior approval has been reversed for a procedural defect. *Bazzarre,* LEXIS 565 at *95-96.

With respect to the Piscataway property, the Court of Special Appeals held that a reclassification of the Piscataway property to the Residential Estate (R-E) Zone would be an amendment to the 2009 SMA, in the parlance of PGCC § 27-226(c), which does not permit the District Council to adopt an amendment without a recommendation of the

Planning Board, an analysis by the planning staff, and a public hearing. Since this amendment process could not have occurred because the District Council was restricted to the 2009 record, a remand to the District Council would be an exercise in futility. *Bazzarre,* LEXIS 565 at *121-126.

Accordingly, it is this 20 day of July, 2018, by the Circuit Court for Prince George's County, Maryland,

ORDERED, that the District Council's decision to reclassify or rezone the Piscataway property from the Residential-Low Development (R-L) Zone to the Residential Estate (R-E) Zone is **REVERSED**. *Bazzarre,* LEXIS 565 at *125-128.

Leo E. Green, Jr., Judge,
Circuit Court for Prince George's County, Maryland

Copies to:

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