



APPLICATION FILED: August 7, 2003
APPLICATION REACTIVATED: April 3, 2006
PLANNING COMMISSION: June 15, 2006
BOARD OF SUPERVISORS: July 10, 2006 at 3:30 PM

County of Fairfax, Virginia

May 31, 2006

STAFF REPORT ADDENDUM II

APPLICATION RZ 2003-MV-036

MOUNT VERNON DISTRICT

APPLICANT: Roubin Associates, LLC and
Mary Anne Pearson Sanko Revocable Trust

PRESENT ZONING: R-1

REQUESTED ZONING: I-4 or I-5

PARCEL(S): 99-1 ((1)) 5E

ACREAGE: 6.39 acres

FAR: 0.50

OPEN SPACE: 15%

PLAN MAP: Industrial Use

PROPOSAL: To rezone the subject site from the R-1 District to the I-4 or I-5 District to permit the development of industrial use

STAFF RECOMMENDATIONS:

Because the Applicant never submitted any proffers, as contemplated by the Circuit Court's Final Decree, that would allow the Board to consider rezoning the subject property from the R-1 District to the I-5 District that option is not before the Board. Therefore, staff recommends denial of rezoning the site to the I-5 District, unproffered.

Staff recommends that the subject property located at Tax Map Parcel 99-1 ((1)) 5E be rezoned from the R-1 District to the I-4 District.

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Department of Planning and Zoning

Zoning Evaluation Division
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Fairfax, Virginia 22035-5509
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It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

For information, contact the Zoning Evaluation Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035-5505, (703) 324-1290.



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

BACKGROUND

On August 7, 2003, the applicant, Roubin Associates, LLC, and the Mary Anne Pearson Sanko Revocable Trust, filed an application to rezone the 6.39 acre subject property located at Tax Map No. 99-1((1)) parcel 5E from the R-1 District to the I-6 District, subject to proffered conditions that permitted the development of certain industrial uses at an intensity of 0.06 FAR with 20% open space. Under the original proffers, the applicant sought to construct a 17,500 square foot (SF) structure, which would contain a two-story office building and a contractor's shop with bays subject to a maximum height limitation of 40 feet. A large portion of the property was to be used for outdoor storage. Access to the site was proposed from Newington Road. Under the then-proposed draft proffers, the applicant committed that the subject property could be developed with one or more of the following principal uses:

- Contractor's offices and shops;
- Establishments for printing of any size, production, processing, assembly, manufacturing, compounding, preparation, cleaning, servicing, testing, repair or storage of materials, goods or products, and associated retail sales (except those particular heavy industrial uses set forth in Par. 13 of Sect. 9-501 of the Zoning Ordinance);
- Establishments for scientific research, development and training;
- Light public utility uses;
- Offices (limited to less than 6,500 sq. ft. of gross floor area);
- Non-retail building materials yard;
- Warehousing; and
- Wholesale trade establishments.

In addition, the proffers would have allowed special permit and special exception uses with Board of Zoning Appeals or Board of Supervisors' approval, as applicable, without the necessity of a proffered condition amendment (PCA).

On February 19, 2004, the Staff Report for RZ 2003-MV-036 was published. In this report, staff recommended approval of the application. However, in its report, staff noted that it would be preferable to have the site access from Terminal Road, rather than Newington Road because a site entrance along Terminal Road would provide better and safer access to the site, particularly if the applicant sought to intensify development on the site in the future.

On March 3, 2004, a public hearing was held before the Planning Commission on RZ 2003-MV-036. At the conclusion of that hearing, the Planning Commission deferred its decision on the application until March 25, 2004.

On April 6, 2004, the applicant submitted revised proffers and a revised Generalized Development Plan (GDP), which moved site access from Newington Road to Terminal Road and provided for a vegetated buffer along Newington Road. The revised proffers also limited the height of any construction materials stored outdoors to five (5) feet in height. On April 14, 2004, the Planning Commission voted to recommend approval of RZ 2003-MV-036, subject to the proffers dated April 6, 2004, and a first addendum to the Staff Report was published shortly thereafter to reflect the Planning Commission's recommendation.

A public hearing before the Board of Supervisors on this application was first scheduled for May 24, 2004, and was deferred several times thereafter. On August 2, 2004, the Board held the public hearing on RZ 2003-MV-036 and deferred the decision on the application until September 13, 2004.

On September 13, 2004, the Board unanimously denied RZ 2003-MV-036 relying upon, among other things, the fact that the GDP and the proffers amended most recently on July 22, 2004, proposed an extraordinary amount of outdoor storage (measuring approximately 111,600 square feet in area). The Board noted that although the properties surrounding the subject property were characterized by industrial uses, none had outdoor storage areas that approximated the size proposed by the applicant. Based on these concerns, the Board found that the intensification of the use proposed by RZ 2003-MV-036 was too great, and it denied the application.

On October 12, 2004, Roubin Associates filed a Petition for Declaratory Judgment, Injunction, and Other Relief (Bill of Complaint) in the Fairfax County Circuit Court against the Board pursuant to Va. Code Ann. § 15.2-2285(F)(2003) challenging the Board's denial of RZ 2003-MV-036. The case was set for trial beginning on October 24, 2005, before Fairfax County Circuit Court Judge M. Langhorne Keith. At the conclusion of the trial on October 26, 2005, Judge Keith continued the case until November 18, 2005, for a decision.

On November 18, 2005, Judge Keith stated that he had concluded that the trends of growth and change in the area surrounding the subject property were toward lighter industrial warehousing-type uses and away from outside storage. Based on this trend, Judge Keith found that although the existing R-1 District zoning for the subject property was unreasonable, the Board's denial of the rezoning application was fairly debatable and thus reasonable because the Board could reasonably conclude that the extensive amount of outside storage proposed in the rezoning application was inconsistent with the recent pattern of development in the area surrounding the subject property. Based on these findings, the Court entered a Final Decree on November 18, 2005, finding in favor of the Board and dismissing the Bill of Complaint.

On November 23, 2005, Roubin Associates filed a Motion for Reconsideration, arguing that the Court was compelled, based on several precedents from the Supreme Court of Virginia, to remand the case to the Board to rezone the subject property because of its unreasonable existing zoning district classification. Judge Keith subsequently granted the motion and entered a Decree on January 20, 2006, that vacated the Final Decree entered on November 18, 2005. Judge Keith later ruled on March 23, 2006, that although the Board acted reasonably in denying the application, the existing zoning district classification for the subject property is unreasonable and the subject property must be rezoned to a reasonable zoning district classification pursuant to several controlling decisions from the Supreme Court of Virginia. Accordingly, the Court entered a revised Final Decree on March 23, 2006 (appended as Attachment 2) (Final Decree), remanding the case to the Board to take further legislative action within 120 days after entry of the Final Decree (that is, by July 21, 2006).

The Final Decree establishes three options for rezoning the subject property that the Board may consider on remand. These options are: the I-4 (Medium Intensity Industrial) District, unproffered; the I-5 (General Industrial) District if proffered in a manner acceptable to the Board; or the I-6 District as originally proffered by Roubin Associates. The Final Decree suspends any finding as to the unreasonableness of the existing R-1 District zoning during the 120-day period provided for the Board to act and enjoins Roubin Associates during that time from putting the subject property to any use not permitted by the existing R-1 District regulations. In the event the Board fails to take further legislative action to rezone the subject property within the 120-day period, then the adjudication of the invalidity of the existing zoning would become operative, and Roubin Associates would be free to put its property to any of the uses shown by the record to be reasonable for the subject property. Based on all of these provisions of the Final Decree, the Board must rezone the subject property on or before July 21, 2006, to one of the three zoning district classifications found to be reasonable for the subject property in the Final Decree, and the Board may not choose any other zoning district classification not specifically identified as reasonable in the Final Decree.

In light of the timeframes established by the Court for rezoning the subject property, public hearings before the Planning Commission and the Board were scheduled shortly after the Final Decree was entered, with the Planning Commission hearing set for June 15, 2006, and the Board hearing for July 10, 2006. Because the Board will be unable to defer its decision on this application, it approved a motion on May 15, 2006, that directs the Planning Commission to expedite the reporting of its recommendations. Specifically, that motion directs the Planning Commission, on or before June 30, 2006, to report to the Board its recommendations on all of the Board's options under the Final Decree.

To date, the applicant has not submitted any revised proffers since this application originally was denied by the Board on September 13, 2004. A copy of Roubin Associates' original proffers most recently amended on July 22, 2004, and the GDP previously submitted with RZ 2003-MV-036 and denied by the Board of Supervisors on September 13, 2004, are contained in Attachment 4 of this addendum. Again, these are the most recent submission by the applicant.

ANALYSIS

Site Description:

The subject property is bounded by Newington Road to the north and the Richmond, Potomac and Fredericksburg Railroad to the east. The site is located at the northernmost terminus of Terminal Road. However, there is a steep slope in the southwestern corner of the site at the terminus of Terminal Road. The existing Terminal Road cul-de-sac is at an elevation of 148 feet. The site drops off significantly to an elevation of 122 feet at this location. The site was previously developed with a single-family detached dwelling, which sustained fire damage and has since been demolished. The site is now vacant. However, an unpaved one-lane road from Newington Road into the site, which was originally used to access the now demolished single family dwelling, remains.

Surrounding Area Description:

Like the surrounding area, the subject site is planned for industrial uses. Along Newington Road and the southern portion of Cinder Bed Road to the east of the Richmond, Fredericksburg and Potomac Railroad, the properties have developed as industrial business parks. These industrial parks contain two-story buildings which house a variety of lighter industrial uses, including wholesale trade and warehousing establishments. The vast majority of these industrial business parks maintain little or no outdoor storage.

Analysis:

Pursuant to the Final Decree, as detailed more fully above, the Board must rezone the subject property to one of the zoning district classifications found by the Court to be reasonable for the subject property. The Board has already denied Roubin Associates' request to rezone the subject site to the I-6 District subject to the proffers most recently amended on July 22, 2004, so that further discussion of that option is not required.

The remaining options for the Board under the Final Decree are the I-4 District, unproffered, or the I-5 District, if proffered in a manner acceptable to the Board. The applicant has not submitted any proffers seeking a rezoning to the I-5 District, and thus that option is not in practical terms available to the Board. For purposes of discussion, however, the I-4 and I-5 District regulations are briefly compared in support of staff's recommendations concerning the remaining option of rezoning the subject property to the I-4 District, unproffered.

The I-4 District is designed to accommodate a broad spectrum of clean industries, operating under high performance standards. On the other hand, the I-5 District is intended for more intensive industrial uses, including those uses which may create some noise, vibration, and other environmental pollutants.

The I-4 and I-5 District also differ significantly in their regulation of outdoor storage. Outdoor storage is not permitted in the I-4 District pursuant to Par. 2 of Sect. 5-405, which states:

All operations, activities and storage shall be conducted within a completely enclosed building, except for biological research when exposure to sunlight is required, and outdoor seating provided in association with an eating establishment, those permitted uses, accessory uses set forth in Part 1 of Article 10 and special permit and special exception uses which by their nature must be conducted outside a building. All storage of vehicles and activities associated with a vehicle transportation service establishment shall be conducted within a completely enclosed building.

This restriction also applies to motor vehicle storage and impoundment facilities pursuant to Par. 4 of Sect. 5-405. On the other hand, outdoor storage is generally permitted in the I-5 District, subject only to the applicable set back, open space, and transitional screening areas established for the I-5 District.

One of the major reasons cited by the Board in unanimously denying RZ 2003-MV-036 was the amount of outdoor storage (approximately 111,600 square feet in area) proposed for the site. Roubin Associates has not revised its proffers since the Board's original public hearing on this application on August 2, 2004. Because Roubin Associates has not proffered to make any changes in the amount of outdoor storage that it proposes to maintain on the subject property, nor has it otherwise attempted to address the Board's concerns about the manner in which that proposed outdoor storage would be maintained on the subject property, staff recommends that the Board rezone the subject site to the I-4 District. The district regulations for the I-4 District will prevent any outdoor storage from being maintained on the subject site, thereby addressing the Board's original concerns about this application. Additionally, a rezoning to the I-4 District will permit the establishment of "clean industries," which is more consistent with the recent trend and pattern of growth and development in the area surrounding the subject property.

RECOMMENDATIONS

Because the Applicant never submitted any proffers, as contemplated by the Circuit Court's Final Decree, that would allow the Board to consider rezoning the subject property from the R-1 District to the I-5 District that option is not before the Board. Therefore, staff recommends denial of rezoning the site to the I-5 District, unproffered.

Staff recommends that the subject property located at Tax Map Parcel 99-1 ((1)) 5E be rezoned from the R-1 District to the I-4 District.

It should be noted that it is not the intent of the staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

ATTACHMENTS

1. Affidavit
2. Revised Final Decree, dated March 23, 2006
3. VDOT Memorandum dated April 25, 2006
4. Proffers and GDP previously submitted with RZ 2003-MV-036, as denied by the Board of Supervisors on September 13, 2004

