

RECOMMENDATION

Ordinance 09-038 Application 2009-0254-Z

1 Limousine Drive – CSX Right-of-way

(August 18, 2009)

DESCRIPTION

Location: East side Marsh Road, north of Interstate 95, and within the CSX Right of Way

Councilperson: Robert Weiner, District 2

Rezoning: 0.725 acre from NC6.5 (Neighborhood Conservation) to CR (Commercial Regional)

Applicant: New Castle County

ZONING & DEVELOPMENT PATTERN

The subject property is zoned NC6.5 and is part of the CSX Railroad right-of-way located between the south side of the railroad tracks and a small CR zoned parcel that backs up to the northern side of Interstate 95. The only improvement on this property is a driveway that serves as the access from Marsh Road to the commercial parcel. An easement allows the owner of the commercial parcel to use this driveway for access. Otherwise, the commercial parcel is landlocked. The section of right-of-way proposed for rezoning measures approximately 600 feet by 50 feet. The existing commercial parcel that it would serve is also a small sliver of land approximately 550 feet long and 85 feet at its widest point.

The area on the northwestern side of the railroad tracks consists almost exclusively of single family detached suburban developments in zoning districts NC6.5 and NC10. Immediately opposite the subject parcel lies the original section of Carrcroft which dates to 1925. Also nearby are Carrcroft Crest, Liftwood, Shellburne, and Normandy Manor. On the opposite side of Marsh Road across from Limousine Drive is an S (Suburban) zoning district containing Faith Presbyterian Church and a Delmarva Power electric substation.

On the southwestern side of I-95 is the 240-acre Bellevue State Park (zoned S), Bringhurst Woods (S) and Rockwood Office Park (zoned OR).

TECHNICAL ADVISORY AGENCY REVIEW

The Department did not seek comments from agencies on the Technical Advisory Committee (TAC) since there is no land development plan associated with this application.

BACKGROUND & ANALYSIS

This application concerns two properties, although only one is the subject of this rezoning application. The first is a portion of the residentially-zoned CSX Railroad right-of-way and the actual subject for rezoning. The other is a land-locked commercial parcel dependent on the railroad right-of-way for access, but not in need of rezoning for the businesses currently operating there.

A brief history of these properties will demonstrate how the commercial parcel came to be land locked. The railroad was originally the Baltimore and Ohio line constructed in the 1880s and the right-of-way under discussion was previously the location of Carrcroft Station. A series of reorganizations and buyouts in the early and mid-twentieth century resulted in the rail line being converted to freight service, eventually coming under the ownership of CSX. The commercial parcel was previously part of the acreage belonging to Bellevue Hall, William du Pont's country estate (now Bellevue State Park). As part of the estate, the parcel had its access on Carr Road, which then formed the parcel's southern border. In the mid-1960s the construction of I-95 resulted in Carr Road being shifted southward to allow room for I-95 to be built between Carr Road and the railroad. The parcel was reduced in size as a result of these takings and its Carr Road access was eliminated. It exists now as a remnant wedged between the rail line and the Marsh Road exit ramp. The parcel remained under du Pont family ownership until 1976. Since then, it has been used for a variety of commercial purposes with the access easement on Marsh Road.

The issue in need of remedy is the UDC prohibition on using the residentially zoned land to provide access to commercial uses. Although an easement providing right of access is recorded in the deed for the commercial parcel, the inconsistency of the zoning classification is still at issue. This situation has been the subject of a number of administrative and legal actions over the past several years.

In 2004 a Memorandum of Understanding (MOU) was executed between the property owner and New Castle County in an effort to resolve the disputes and to provide for the commercial parcel to be used in a manner to retain its value as a CR zoned parcel while also protecting the interests of the residents of Carrcroft. This MOU required the property owner to file an exploratory plan to bring the property into compliance with the UDC and consistency with a Declaration of Restrictions attached to the MOU. These restrictions limit the uses and operation of any commercial business in such a way that the property will not be a nuisance to the residents of Carrcroft. In addition, the MOU directed the County to prepare an ordinance which would propose to proactively rezone the access drive to a zoning category which would permit the legal

use of that driveway to the commercial parcel so that parcel may continue to be used in a manner consistent with its commercial zoning.

In preparation for proceeding to this proactive rezoning application, the property owner has volunteered a new Declaration of Restrictions with the purpose of allowing the property “to retain its value as a ‘CR’ zoned parcel, while also recognizing and protecting the concerns and interests of the residents of Carrcroft.” The Declaration would limit use of the driveway access easement to ingress and egress only, and prohibit parking, storage, and erection of improvements within the right-of-way. In addition, restrictions are proposed for the commercial parcel such as limiting building height to twenty-two (22) feet, preventing the use of Carrcroft streets and the Faith Presbyterian Church property as a turnaround for vehicles exiting the premises intending to access southbound Marsh Road, and limiting the type of commercial business to those that do not generate constant customer visits. Examples of prohibited businesses include restaurants, automobile repair and body shops, vehicle sales, and retail sales. Examples of permitted uses with low traffic volumes include mini-storage/warehousing, limousine/transportation service, and contractor’s offices. The declaration would run with the land, and as drafted, proposes that the Carrcroft Civic Association and New Castle County be parties to it. However, the Department of Land Use recommends that New Castle County not be included as a party since the proposed restrictions are the result of private negotiations with Carrcroft Civic Association.

August 4, 2009 Public Hearing –

There was no comment from the public at the hearing.

Standards for Zoning Map Amendment - Section 40.31.410 of the New Castle County Code

In determining whether a zoning map amendment should be recommended or approved, all of the following factors shall be considered:

A. Consistency with the Comprehensive Development Plan and the purposes of this Chapter.

The 2007 Comprehensive Development Plan Update classifies this property as “medium density residential” and this rezoning, if approved, would require an amendment to the plan to “community redevelopment.” This is a land-locked remnant parcel not suitable for residential use.

B. Consistency with the character of the neighborhood.

The character of the property itself is industrial due to the very close proximity of the railroad tracks and I-95. Although residential subdivisions are nearby, they are located on the opposite side of the rail road tracks which form a distinct physical barrier.

C. Consistency with zoning and use of nearby properties.

The commercial parcel and the driveway proposed for rezoning are under absolute physical limitations formed by the railroad, limited access highway, and local road that surround them on all sides. While the community's concern is more with the potential nuisance of the commercial parcel, it should be noted that that parcel is less than one acre, and due to its circumstances, is impossible to enlarge. The long, narrow shape of that parcel also severely limits the way the property can be improved.

D. Suitability of the property for the uses for which it has been proposed or restricted.

As it exists today, this is a sliver of land that is part of a freight railroad right-of-way which functions as an element of an industrial transportation corridor. The neighboring commercial parcel which is in need of the rezoning to obtain legal access is a remnant parcel that had its original access taken during land acquisitions for a highway project. The owner of the commercial parcel is seeking reasonable access and the existing driveway on the CSX property is the only possible access available.

E. Effect on nearby properties.

The nearby residential communities are physically separated from the driveway and the commercial parcel by the CSX railroad tracks. In addition, the proposed Declaration of Restrictions addresses the communities concerns regarding traffic on Marsh Road and the potential future uses of the property. The nearby parkland is already separated from the properties by I-95 and Carr Road.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department has considered the *Standards for Zoning Map Amendment* in Section 40.31.410, A through E, the proposed plan, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommends **APPROVAL** of Ordinance 09-038. The Department further recommends that New Castle County not be included as a party to the Declaration of Restrictions being offered by the property owner since it represents a private agreement with the Carrcroft Civic Association.

In evaluating this remnant land that is wedged between an interstate highway and a railroad line, the Department is of the opinion that rezoning a portion of the railroad right-of-way to support the continued commercial use of the remnant parcel is appropriate.

PLANNING BOARD RECOMMENDATION

At its business meeting held on August 18, 2009 the Planning Board considered the recommendation offered by the Department of Land Use.

The Planning Board concurred with the Department of Land Use analysis and reasoning and on a motion by Mr. Wilson and seconded by Mr. Weinberg voted to recommend **APPROVAL** of Ordinance 09-038. The motion was adopted by a vote of **7-0-1** (*Yes: Anderson, MacArtor, McDowell, McGlinchey, Singer, Weinberg, Wilson; No: none; Absent: Udo*).

The following discussion preceded the Board's vote on the motion:

Mr. McDowell questioned how traffic exiting the site would negotiate the local roads for travel south on Marsh Road. The Department noted that this was one of the main issues of the Carrcroft community and their fear that trucks and other commercial vehicles would use their local roads to turn around and then turn left on Marsh Road. Clearly the lack of a left turn out of the site is a big disadvantage to any business on the property. The private agreement between the property owner and the Carrcroft community addresses the issue by discouraging u-turns on the local neighborhood streets and the church property, but will not prevent someone from executing such a maneuver.

Mr. Singer asked if the Department would still be in favor of the rezoning if the County were also made party to the private restrictions between the property owner and the Carrcroft community. Mr. Culver noted that the approval recommendation is on the rezoning and that the private restrictions should remain private and not engage New Castle County as a third party participant.

Mr. McDowell questioned the legality of the private restrictions. Mr. Culver noted that the enforcement of the private restrictions would be through the Carrcroft Civic Association. The County would not enforce a set of restrictions to which it was neither a party to nor a participant in its creation. Mr. Singer agreed that the County should not be in the business of enforcing private agreements on DeIDOT right-of-ways.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning would promote the convenience, order, and welfare of the present and future inhabitants of this state.

NOTE: It is the applicant's responsibility to coordinate with the Clerk of County Council and the sponsor of the ordinance as to the date and time of the County Council hearing on this application.

[SIGNED – 8/31/09]

[SIGNED – 8/31/09]

Victor Singer, Chair
Planning Board

David M. Culver, General Manager
Department of Land Use