

IN THE MATTER OF
COUNTY ORDINANCE 11-06

* BEFORE THE COUNTY
* COMMISSIONERS OF
* QUEEN ANNE'S COUNTY, MARYLAND

FINDINGS AND DECISION

A hearing was held on July 26, 2011 by the County Commissioners of Queen Anne's County ("the Commissioners") in the Commissioners' meeting room, Liberty Building, 107 North Liberty Street, Centreville, Maryland, 21617 on proposed County Ordinance 11-06, An Act Concerning a Citizen Sponsored Text Amendment to Eliminate the Maximum Gross Floor Area Requirement in the Suburban Commercial (SC) Zoning District in Queen Anne's County.

This matter was initiated by the filing of a Petition pursuant to Section 18:1-218 of the code of Public Local Laws by Mr. Peter Sheaffer proposing the deletion of the current maximum gross floor area of 65,000 square feet for certain uses in the Suburban Commercial (SC) Zoning District in Queen Anne's County by repealing Section 18-1-21.D.(3) of the Code.

The Petition was referred to the Queen Anne's County Planning Commission who conducted a hearing on April 14, 2011 at which they received comments and testimony from staff, the Petitioner and the public. The Planning Commission by majority vote issued a unfavorable recommendation on the proposal based upon a finding that the proposed amendment was inconsistent with the 2010 Comprehensive Plan and "the identification of growth areas". The Petition, staff report and recommendation of the Planning Commission are all

part of the record of this proceeding and have been considered by the Commission.

The County Commissioners have also considered the matters contained in the record and testimony (both verbal and written) presented at the hearing, the purposes set forth in Article 66B of the Annotated Code of Maryland, the 2010 Comprehensive Plan for Queen Anne's County, Chapter 18:1 of the County Code and the relationship of the amendment to the Comprehensive Plan and hereby make the following findings and decision:

A. Article 66B of the Annotated Code of Maryland grants zoning authority to local legislative bodies in order "to promote the health, safety, morals or general welfare of the community" (§4.01). Zoning regulations are to be adopted in accordance with a Comprehensive Plan, giving consideration to "the character of the district and its suitability for particular use", and should "encourage orderly development and the most appropriate use of the land" (§4.03). The purposes of zoning regulations are to :

1. Control congestion in the streets;
2. Secure the public safety;
3. Promote health and the general welfare;
4. Provide adequate light and air;
5. Promote the conservation of natural resources;
6. Prevent environmental pollution and avoid undue concentration of population; and

7. Facilitate the adequate provision of transportation, water, sewage, schools, recreation, parks and other public requirements.

B. Chapter 18:1 of the County Code comprises the County Zoning Ordinance adopted under Article 66B. Its stated purpose (§18:1-4) include “protecting the tax base by facilitating cost-effective development within the County”

C. The Suburban Commercial (SC) District “is intended to provide primarily for a variety of commercial uses and limited light industrial uses in predominantly rural or suburban areas not served by public sewer. Extensive landscaping requirements and other restrictions within the SC District are intended to mitigate commercial use impacts and preserve surrounding rural or suburban character” (§18:1-21.A.) The proposal before the County Commissioners does not expand the allowable uses in the SC Zone or allow more intensive development. It merely removes an apparently arbitrary size restriction on individual stores. Notably, the provisions proposed to be deleted do not restrict the size of any particular building or structure, they merely limit the size of a “individual use and/or tenant space in a structure” (§18:1-21.D.(3)). In other words, under current law a single building could home multiple 65,000 square foot uses or tenants but a single 65,001 square foot building with one use would not be allowed.

Despite the focus on a single property owned by the Petitioner, it is important to note that the proposed amendment is not site specific. It will apply equally to all SC zones in the County.

D. The Queen Anne's County Planning Commission apparently based its unfavorable recommendation on the fact that SC zones are generally not located in designated "growth areas" of the County. This conclusion ignores the intent of the SC zone as described in Chapter 18:1 and stated above. It also ignores the fact that such growth areas are generally located in areas when infrastructure (including sewer) are available or anticipated. SC Zones, by their definition, are not located in such areas. Testimony at the public hearing was unrefuted that the County Comprehensive Plan contains no *per se* prohibition on so-called "big box" stores nor any requirement that such large retailers must locate only in growth areas. We conclude that the finding and recommendation of the Planning Commission was based upon an erroneous interpretation of the Comprehensive Plan and we find the proposed amendment to be consistent with the County's Comprehensive Plan.

E. The Queen Anne's County 2010 Comprehensive Plan, ("Comprehensive Plan") Section 6, Economic Development & Tourism Element, has numerous policy statements concerning: increasing the commercial tax base; increasing opportunities for retail and service business expansion and diversification (Section 6.2.2); expanding commercial opportunities for the purpose of retaining the dollars spent by residents and visitors in the County (Section 6.3.4). Furthermore, nowhere in the Comprehensive Plan could we find

mention or reference to limiting the occupancy size or use of an individual retailer. For these reasons, the County Commissioners believe proposed Ordinance 11-06 is consistent with, and will help achieve and further the goals of the Comprehensive Plan.

F. The County Commissioners do not believe the location of growth areas (as noted by the Planning Commission) is relevant to this Petition. SC properties, by definition, are not located within “growth areas” as identified in the Comprehensive Plan. The purpose of the SC district is to provide for “a variety of commercial uses and limited light industrial uses in predominantly rural and suburban areas not served by public sewer.” County Code, Section 18:1-21 As testified to by Mr. Barry Griffith (a land planner and a representative of Petitioner) the same intensity of development and uses can occur in the SC district with or without the proposed amendment. Thus, the adoption of 11-06 allows no more or no less development in the SC district (or outside of a growth area) in terms of use, floor area, height, setbacks, environmental protection, traffic and architectural design standards than prior to its adoption. We believe the amendment proposed in Ordinance 11-06 is consistent with Chapter 18 in general (and SC provisions specifically) as well as the Comprehensive Plan. Furthermore, while the Comprehensive Plan encourages development within “growth areas” it does not prohibit all development outside of growth areas. Ordinance 11-06 does not increase the development of property outside of “growth areas” but removes a regulation that essentially prohibited large retailers from locating in the SC district.

G. We believe that removal of an impediment from the zoning ordinance that has discouraged many major national retailers from locating in Queen Anne's County serves is in the interest of the health, safety and welfare of the general public.

H. Many residents of Queen Anne's County travel to Easton, Middletown, Delaware, and Annapolis for retail services creating a leakage of retail dollars out of the County. According to the testimony, no new major large scale retailer (i.e. Lowes, Kohls etc) has located in Queen Anne's County since the 65,000 square foot cap went in place in 2003, and a store the size of the Kent Island K-Mart could not be built today. Furthermore, there was testimony at the hearing that without large retail anchor tenants, smaller tenants simply are unable to survive, thereby affecting retail development overall in the County. We believe that removing the cap on large retailers in Queen Anne's County in the SC district will encourage further economic development activity by allowing a large retail anchor to locate in the County.

I. We note that while this same restriction exists in all the other zoning districts that allow commercial development (Urban Commercial, Suburban Industrial, Light Highway Service, Village Center, Waterfront Village Center, Town Center Stevensville Historic Village Center, Grasonville Neighborhood Commercial, Grasonville Village Center, Kent Island Suburban Commissioner, Airport Protection and Kent Island Gateway), the Petitioner has only presented us

with the issue as it applies to the SC zone and that is all we can consider in this application.

J. We believe that greater consistency with the intent of Article 66B Annotated Code of Maryland, Land Use is created through the adoption of Ordinance 11-06, specifically with Article, Section 4.03. “Regulations-Adoption; Purpose” which essentially states that regulations adopted by a local legislative body shall be:

(a)(1) In accordance with the Plan.

Response: See Findings E and I above.

(a)(2) With reasonable consideration for, among other things, the character of the district and its suitability for particular uses:

Response: As stated above and supported in the record, the proposed amendment does not change the uses, intensity/density of development or location of development, but will allow an individual retailer to use or occupy greater than 65,000 square feet of space. Furthermore, Chapter 18 requires all retail development in the SC district to comply with strict architectural and design standards.

(a)(3) With view to conserving the value of building and encouraging orderly development and the most appropriate use of land.

Response: The proposed amendment does not change the location of development or permitted land uses as already established in the Comprehensive Plan and Chapter 18 because commercial structures and building

in excess of 65,000 square feet are already permitted. Ordinance 11-06 simply allows a single tenant to occupy more than 65,000 square feet.

(b) The regulations are designed to

(b)(1) Control congestion in streets;

Response: Allowing shopping opportunities by removing a regulation which has essentially prohibited larger retailers from locating in the County will reduce the need for County residents to travel to other jurisdictions for retail services, thus reducing travel time on both local and regional roads.

(b)(2) Secure Public Safety;

Response: See (b)(1) above.

(b)(3) Promote the health, safety and general welfare;

Response: The County Commissioners believe that removing a major impediment to large national retailers locating in Queen Anne's County is in the general welfare of the County in that it will stimulate economic growth, help create jobs, and provide the residents with diverse and less expensive, retail services.

(b)(4) Provide adequate light and air;

Response: Chapter 18 regulations regarding design, environmental controls and other provisions which concern the provision of "adequate light and air" remain unchanged by Ordinance 11-06.

(b)(5) Promote the conservation of natural resources;

Response: Chapter 18 (as well as other County) regulations regarding environmental controls, stormwater management, natural resource

protection, forest conservation, landscaping and buffering, mandatory open space, architecture and environmental design remain unchanged by Ordinance 11-06.

(b)(6) Prevent environmental pollution and prevent undue concentration of pollution;

Response: Chapter 18 (as well as other County) regulations regarding environmental controls, stormwater management, natural resource protection, forest conservation, landscaping and buffering, mandatory open space, architecture and environmental design remain unchanged by Ordinance 11-06.

(b)(7) Facilitate the adequate provisions for transportation, water, sewerage, schools, recreation, parks, and other public requirements.

Response: All local laws concerning adequacy of public facilities including transportation, sewer, water, school, parks, emergency services and other facilities will remain unchanged by Ordinance 11-06. Furthermore we believe that enhancing opportunities for retail development will generate greater tax revenue thereby helping the County fund public facilities such as schools and parks, for which retail development generally has little or no burden.

K. We also find based on the evidence and a review of the zoning maps that there are many properties this amendment will apply to, not simply that of the Petitioner.

BASED UPON THE FOREGOING, it is the finding of the a majority of the County Commissioners of Queen Anne's County that the proposed amendment is consistent with the purposes contained in Article 66B, in the Comprehensive Plan and in Chapter 18:1 of the County Code.

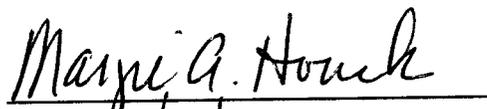
County Ordinance 11-06 be and is hereby ADOPTED.

THE COUNTY COMMISSIONERS
OF QUEEN ANNE'S COUNTY



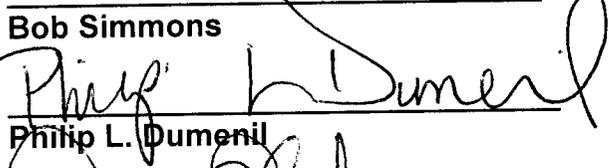
Steven J. Arentz

ATTEST:



Date 8/9/11

David L. Dunmyer

Bob Simmons


Philip L. Dumenil



Dave Olds