

## LEONARDTOWN PROCEDURES FOR REZONING

*(Abstracted from Zoning Ordinance, St. Mary's County Procedures and Article 66-B)*

1. Applicant submits the completed Rezoning Application along with the following information:
  - a. A deed for the property, including a description, its location and size. This may be obtained by viewing the tax maps in the Courthouse. If the property is not easily identifiable, a survey may be required. If the property is eventually rezoned, a boundary survey may be required.
  - b. The names of all owners of the property, including the names of contract purchasers, if any. The owner of the property or a legal representative must sign the rezoning application.
  - c. A fee of \$750.00 is payable when the application is submitted. Applicant will be billed at a later date for the cost of certified mailings and legal advertising. This bill will be due before the first public hearing.
2. The application is scheduled for a public hearing before the Planning and Zoning Commission. Prior to the public hearing, the following steps shall be taken:
  - a. The Town Office shall advertise the date, time and place of the public hearing, at least one time and at least 14 days prior to the hearing date, in a newspaper of general circulation. (See Sample)
  - b. The applicant shall provide the Town Office with the names, addresses and phone numbers of adjacent property owners and existing residents.
  - c. The Town Offices shall notify each of these persons, by registered or certified mail, of the hearing. (Send copy of legal notice, see "2-a" above).
  - d. The property must be posted by applicant, with placard provided by the Town Office, at least 10 days prior to the hearing. This sign will advise the public of the purpose, time, place and date of the hearing.
3. During the hearing the applicant should address the issues listed in "Basis for Rezoning". The Town Planner or Town Administrator may submit a written report and questions and comments will be heard.
4. After the close of the public hearing, the Planning and Zoning Commission will form their recommendation, which will be forwarded to the Town Council.
5. After the Planning and Zoning Commission has issued their recommendation, the applicant shall request a public hearing before the Town Council. The Town Office and the applicant shall follow the same advertising, notification and posting procedures, as before. (See "2-a, c and d).
6. During the public hearing the Town Council will review the Planning and Zoning Commission's recommendation, as well as any staff report, and will hear questions and comments from those present.

7. Following the close of the public hearing, the Town Council will make their decision.
8. Whenever a rezoning petition has been denied by the Town Council, such petition, or one substantially similar, shall not be considered sooner than two years after the previous denial.
9. A written Resolution regarding the rezoning will be presented for approval.

## **BASIS FOR REZONING ANALYSIS**

*(Provided by: Robin Guyther, St. Mary's County Planner)*

**A. CHANGE OR MISTAKE RULE:** For any request to rezone, there must be proof that there has been a change in the neighborhood of the property since the adoption of the Zoning Ordinance and maps in May, 1974, or that the Ordinance or maps were in error regarding the applicant's property. The applicant must prove there has been a change in the neighborhood or that the subject property was zoned improperly for the Planning Commission to consider changing the zoning of the applicant's property. There are other issues to be addressed, but without a change or mistake, the other issues will not be relevant. The first three important issues to be addressed in analyzing a rezoning application are: neighborhood, change, and mistake.

**1. Neighborhood:** Neighborhood, Change and Mistake are vague terms, and not easy to define in a way which will apply to all cases, or even to most cases. Neighborhood is especially difficult to define in St. Mary's County because there are few natural or man-made barriers to define where the neighborhood is, in which the applicant's parcel is located.

For example, suppose rezoning was being requested for the Halfway House Restaurant and Bar. Would you call the neighborhood the Halfway House and the dozen or so houses around it? Or, would you go down to Oraville or up as far as Mechanicsville? The applicant, if he was arguing that there was a change in the neighborhood would want the neighborhood defined as broadly as possible, since the larger the neighborhood the more likely there was to have been a change somewhere. If he was arguing that there was a mistake (i.e. it should be zoned C-2 as opposed to R-1) the size of the neighborhood would probably be claimed to be smaller since with a larger neighborhood there may be other commercial properties zoned residential and listed as nonconforming uses. Staff may argue that a nonconforming use was not a mistake, as shown in other areas of the neighborhood which are nonconforming.

The applicant should attempt to define the neighborhood during the presentation before the Planning Commission. This makes the staff's job easier since we can simply accept the applicant's definition, unless it is out of line. If staff rejects applicant's neighborhood definition, we must redefine the neighborhood.

For a request in a residential area we can usually define the neighborhood by using common sense and knowledge of the County. For instance we can often see where a residential neighborhood ends. Moreover, if zoning for a residential parcel is being changed the property is probably in or near a town, village or concentration of other commercial properties, which makes the neighborhood fairly easy to define.

Commercial properties are usually in or near existing business areas. Thus, their neighborhood is already defined in most cases. For some of the out of the way places, their neighborhood can sometimes be defined as the farthest limits from which regular customers would normally drive to it.

(Don't worry about industrial. Most are now PUD's, which are analyzed differently.)

**2. Change:** This can and does get very confusing. Some changes are changes and some are not. Basically a change in the neighborhood must be something which was not foreseen when the Ordinance was adopted in March, 1974. For example, the expansion of Route 235 is not a “change in the neighborhood” because it has been planned and expected for years prior to 1974. Likewise, extensions of sewer lines are not a change in most cases because the extension was anticipated.

So what can be considered a legitimate change? One item often promoted as a change is the rezoning of another nearby property. However the mere fact that a parcel is rezoned does not change the neighborhood. Something different would have to be placed upon the rezoned property to constitute a change. As an example, rezoning 5 acres from residential to commercial does not change the neighborhood, but building a large supermarket on the site probably will change the character of the neighborhood.

However, though the basic rezoning of another parcel in the neighborhood does not meet the threshold requirements for change, the fact that another property nearby was rezoned sets a good precedent, since the arguments used in the prior rezoning should apply in whole or in part to another property in the same neighborhood.

In summary then, a change must meet the following criteria: look at the neighborhood; what changes have occurred since May, 1974; were those changes planned or even anticipated (check the appropriate plan, for example, sewer lines – was service to the area anticipated in the Water and Sewer plan?); a change must be something physical, not just a paper plan.

The applicant has the responsibility to formulate the argument for change. Staff has to determine whether the argument is valid. Remember though, just because there was a change does not require the Commission to rezone. The change only opens the issues for discussion.

**3. Mistake:** As more years pass from the adoption of the Ordinance in May, 1974 it becomes more difficult to prove there was a mistake in the original zoning. Applicants often argue that “not enough property was zoned” in the category requested. The other standard argument has to do with nonconforming uses. The applicant usually says it was a mistake to create a nonconforming use since the property was utilized for years (usually as Commercial). Under normal circumstance a nonconforming use was deliberately created in spots where planners wanted to discourage growth. Thus a nonconforming use is established to hold down growth at that spot. It was made somewhat difficult to greatly enlarge a nonconforming use and if the property was not used for a year the nonconforming use was lost and the property could only be used for that which it is zoned, usually residential.

In St. Mary’s County however this argument doesn’t work too well because so many nonconforming uses were established that it becomes apparent no standards were used. Additionally every property owner of a nonconforming use was by law supposed to be notified when the Ordinance was adopted. This notification was not made. Thus, in my opinion, the mistake argument, when applied to nonconforming uses, is often valid.

The main point in the mistake argument is that a mistake must have been made with regard to the particular parcel in question, not with a general set of circumstances. The argument that “not enough land was zoned to this

category” is not a good one because the mistake was not made with regard to any particular parcel.

**B. Finding of Fact:** Even though an applicant satisfies the change or mistake issues, there is no obligation to rezone the property. Successfully addressing the change or mistake question only puts the rezoning request on the table for discussion.

The Ordinance requires information in the following areas before a decision is made – population change, adequacy of public facilities, present and future transportation patterns, compatibility with existing and proposed development in the area, relationship to the comprehensive plan, fiscal impact on government and the suitability of the property for uses permitted within the existing and proposed classifications.

- 1. Population Change:** This generally is analyzed on the election district level, unless there is a smaller unit of measurement available. Population change should be referenced to 1974 if possible. If population has not changed much or if it has not increased more than was projected in the comprehensive plan, population is not a factor in rezoning.
- 2. Adequacy of Public Facilities:** This is probably the most important item within the findings of fact. Public facilities include water and sewer, roads, schools, police, parks, government services and fire and rescue services. Analysis must determine the impact that a rezoning would have on public facilities. Comments from the TEC agencies should help, but additional data usually has to be developed.
  - a. **Water and Sewer:** If the property is to use public water and sewer we must determine if capacity exists. Since both sewage plants are being expanded, this should not be a problem for the foreseeable future. Water is usually no problem but if a proposal will result in an abnormal water use, the issue must be addressed. In areas where public water and sewer systems are not available, Health Department comments will usually provide sufficient information. Most likely drain fields and a drilled well will be used and unless the operation will be an unusually large water user this should not be too much of a problem.
  - b. **Roads:** Traffic is usually the item which causes the most concern, both within the Planning Commission and among residents of the area at issue. We have tables for calculating traffic generation. In most cases traffic is not any problem except in the Lexington Park area. Traffic counts are available for many major roads. The existing traffic would be compared to that predicted if the rezoning is allowed and the land utilized. When no use is proposed for the parcel, analyze by

assuming the property will be developed to its most intense potential.

- c. **Schools**: In that most rezonings are to commercial, this is usually not a factor. For residential properties the Board of Education should be required to comment. Again formulas are available to calculate student increases.
- d. **Police**: Except for very large residential projects, this is a minimal problem. St. Mary's already is supposedly underserved, police-wise. Even for very large projects, an assessment is difficult to make.
- e. **Parks**: Only affected by residential projects. Most are required to provide parkland or money for same. Thus, parks are usually not negatively affected. Rely on Recreation and Parks comments for direction.
- f. **Government Services**: Any other aspect of government not addressed above should be reported here. These items will not apply to across the board. Certain services must be analyzed on a case by case basis. For example an operation which generates a lot of trash should be analyzed with respect to landfill capacity.
- g. **Fire and Rescue**: Except for an unusual project this is not much of an issue.

**3. Present and Future Transportation Patterns:** How will the project affect roads? Is it out in the middle of nowhere on back roads? Will it cost the County money to provided roads? If the project is primarily served by Route 5 or Route 235, service is generally adequate. However service from a secondary road may be a problem if a lot of traffic will be generated. If heavy trucks will be using secondary roads will damage result? County Engineer's Office can provide guidance.