

ORDINANCE NO. 718

INTRODUCED BY: _____

AN ORDINANCE OF THE TOWN OF DENTON GRANTING THE APPLICATION OF J. RICHARD BULLOCK AND ELIZABETH J. BULLOCK TO REZONE PARCELS 998 AND 1000 ON CAROLINE COUNTY TAX MAP 103 FROM TOWN SCALE RESIDENTIAL (TR) TO GENERAL COMMERCIAL (GC)

WHEREAS, the Denton Town Council is authorized by Md. Code Ann., Land Use § 4-204 to amend, repeal, and modify the Zoning Ordinance of the Town of Denton (the “Town”) and all Zoning Maps contained therein including to change the zoning classification for one or more parcels of land in the Town; and

WHEREAS, J. Richard Bullock and Elizabeth J. Bullock are the owners of a .499 acre tract of land (Parcel 998) and a .371 acre tract of land (Parcel 1000) on Caroline County Tax Map 103 which are currently zoned Town Scale Residential (TR); and,

WHEREAS, the Bullocks have requested that their property be zoned General Commercial (GC); and

WHEREAS, the Denton Planning Commission has reviewed the proposed change in zoning classification and recommended approval of the change; and

WHEREAS, the Denton Town Council conducted a public hearing on the application on July 1, 2021; and

WHEREAS, for the reasons expressed in the findings of fact, which are attached to this Ordinance as Exhibit “A”, the Denton Town Council concludes that the change in zoning classification for Parcels 998 and 1000 from Town Scale Residential (TR) to General Commercial (GC) should be granted.

NOW, THEREFORE, BE IT ENACTED, the Denton Town Council hereby ordains as follows:

SECTION 1: The Findings of Fact attached hereto as Exhibit “A” are hereby incorporated into this Ordinance by reference.

SECTION 2: The application of Rick and Elizabeth Bullock for a rezoning of Parcels 998 and 1000 from Town Scale Residential (TR) to General Commercial (GC) is hereby approved.

SECTION 3: The change in zoning approved herein shall be reflected on the Official Zoning Map of the Town of Denton promptly after the effective date of this Ordinance.

SECTION 4: All ordinances or parts of ordinances of the Town of Denton inconsistent herewith are repealed to the extent of such inconsistency.

SECTION 5: Severability. Should any provision, section, paragraph, sentence, or word of this Ordinance be determined unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance or of the Code of the Town of Denton, it being the intent of the Denton Town Council that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

SECTION 6: The title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

SECTION 7: In accordance with § C3-12 of the Town Charter, this Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect seven (7) days from and after the date of its final passage and adoption, except that in accordance with Md. Code Ann., Land Use §§ 4-203(b)(3) and 4-204(b)(5), this Ordinance shall not be effective until at least ten (10) days after a public hearing is held.

ADOPTED THIS _____ DAY OF _____, 2021.

DENTON TOWN COUNCIL:

Abigail McNinch, Mayor

Dallas Lister, Councilperson

Lester L. Branson, Councilperson

Walter Keith Johnson, Councilperson

Doncella Wilson, Councilperson

ATTEST:

Karen L. Monteith, Clerk-Treasurer

Approved for legal sufficiency this _____ day of _____, 2021.

Christopher F. Drummond, Town Attorney

Date Introduced _____

Date Amendments Introduced _____

Date Passed _____

Effective Date _____

EXHIBIT A
J. RICHARD BULLOCK AND ELIZABETH J. BULLOCK REZONING
APPLICATION
FINDINGS OF FACT AND RECOMMENDED CONCLUSIONS OF LAW

J. Richard Bullock and Elizabeth J. Bullock (collectively, the “Applicant”) own a 0.449 acre and a 0.372 acre tract of land within the corporate limits of the Town of Denton. The properties are shown on Caroline County Tax Map 103 as Parcels 998 and 1000 respectively (collectively, the “Property”). Parcels 998 and 1000 are contiguous and are located on the east side of 6th Street and the north side of Camp Road.

Population Change

The 2010 census indicated a population for Denton of 4,418. The 2020 census data has not yet been received. The Census Bureau, American Community Survey (ACS) estimates the 2019 Denton population to be 4,429 with a margin of error of 22. The 2010 Comprehensive Plan projected a population of 5,101 by 2020 and 6,125 by 2030. The proposed zoning amendment that changes the potential use of the Property from residential to commercial will not affect population change significantly.

Availability of Public Facilities

Based on current capacity estimates, there are adequate road, water, and sewer capacity to serve the Property. The proposed zoning is commercial, so school and park capacity are not applicable.

Present and Future Transportation Plans

The Property is located near the intersection of 6th Street and Camp Road. Both 6th Street and Camp Road are major collector roads in Denton and provide access to and from larger residential communities developed between 2000 and 2010, as well as more established residential neighborhoods. A change in zoning for the Property from Town Scale Residential (TR) to General Commercial (GC) will not significantly impact present and future transportation patterns. Based on the analysis of Peter Johnston, the Town’s planning consultant, even with proposed commercial development on the Property, 6th Street would operate below 25 percent of its capacity.

Compatibility with the Existing and Proposed Development

To the north of the Property are Riverwoods at Denton apartments, a Best Western hotel, McDonalds, Burger King, 7-Eleven, and Coastal Care, all within a half mile of the Property.

Maryland Route 404 is further north. Along 6th Street before Maryland Route 404 are commercial rental properties. Also, to the North are single-family residential uses.

To the east of the Property are residential homes along Camp Road, including the Sandy Meadow housing development. Further east is Maryland Route 404.

To the southeast is Parcel 903 on Tax Map 103, an approximately 21-acre property originally zoned Recreation and Parks (RP) and recently rezoned to Mixed Residential (MR).

To the immediate south of the Property is Camp Road near its intersection with 6th Street. Bullock's Deli, a Sunoco gas station, Fisher Auto Parts, and H & R Block are along 6th Street and across Camp Road from the Property. Further south are B&R Auto Parts, Choptank Supply, and Rick Breeding Excavating.

To the west of the Property and across 6th Street is a large open area and some residential homes. Further to the west are the Maryland Department of Transportation State Highway Administration building and the Lockerman Middle School.

The Property is proposed for commercial development similar to the adjacent developed property at Bullocks Plaza Shopping Center. The area surrounding the Property is a mix of residential and commercial property. Neighborhood commercial is typically located on smaller sites with good vehicle access and locations more accessible to pedestrians. Neighborhood commercial can be located within and coexist with residential areas. Section 128-94 of the Denton Zoning Ordinance that authorizes the Board of Appeals to permit neighborhood centers deemed compatible with existing uses in an established neighborhood reflects a policy of accepting mixed-use development in predominately residential settings.

Consistency with the Comprehensive Plan

The following sections of the Comprehensive Plan support the rezoning of the property:

- Economic development that promotes employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities is encouraged. (Page 3-2)
- One of the goals of the Comprehensive Plan is to encourage growth with land use policies that retain and expand existing businesses, and promote the emergence of new businesses in locations that provide optimal benefit to the community. (Page 3-3)
- Ensure an appropriate mix of residential, commercial, and light industrial uses within the Town, including a full array of commercial services that increases employment

opportunities while meeting the needs of the community and surrounding market areas. (Page 3-4)

- Support development of a viable economic base which encourages further economic investment, business retention, diversification and expansion and which offers a broad range of employment and business opportunities. (Page 3-4)
- Set aside land for development of employment uses, including small business and light industrial uses to meet the projected needs of residents. (Page 3-4)
- The purpose of the General Commercial zoning district is to provide sufficient space in appropriate locations for a wide variety of business, commercial, and service activity, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or the nuisance factors of dust, odor, and noise associated with manufacturing. The overall intent of this area is to provide areas for local commercial needs within the core areas of the Town which are compatible with Town character. (Page 3-24)
- Accommodate growth in the Town by encouraging and facilitating new development on vacant, bypassed, and underutilized land. (Page 3-17)
- Neighborhood stability is to encourage re-investment in older properties and appropriate infill and redevelopment. (Page 3-17)
- Encourage appropriate infill and redevelopment (Page 4-25)
- Make efficient use of existing infrastructure. (Page 4-25)

Planning Commission Recommendation

The Planning Commission unanimously recommended to support the request for a rezoning from Town Residential (TR) to General Commercial (GC) for the Property.

Mistake

The Town Council may grant the proposed rezoning upon a finding that there was a mistake in the existing zoning classification and that a change in zoning would be more desirable in terms of the objectives of the Town of Denton Comprehensive Plan. The following findings of fact are supportive of a mistake in the existing zoning classification.

1. During the comprehensive rezoning update in 2010, the need for additional commercially zoned property to serve the large residential communities developed or under development between 2000 and 2010 was not adequately addressed.

2. The classification of the Property within the TR District in 2010 did not consider the need for additional commercially zoned land on and near 6th Street in light of the significant

nearby residential growth occurring in the decade prior to the adoption of the 2010 Comprehensive Plan.

3. In retrospect, the TR District classification of the Property was a mistake. An appropriate classification for the Property is the GC District given the Property's location on and near 6th Street and proximity to other GC District zoned lands.

4. The Applicant's Property is ill-suited for residential development.

5. The Town is in need of appropriately zoned commercial property to serve a population that has nearly doubled since the 2000 census relied upon in the 2010 Comprehensive Plan update.

6. The Applicant has proposed that the Property be rezoned to the GC District on the grounds that the TR District designation given to the Property in 2010 was a mistake, or that there has been a substantial change in the neighborhood where the Property is located.

7. "[W]hen subsequent events demonstrate that any significant assumption made by the [Town] Council at the time of comprehensive rezoning was invalid, the presumption of validity accorded to the comprehensive rezoning is overcome." *Boyce v. Sembly*, 25 Md. App. 43, 53 (1975). "[M]istake may be established by showing that the assumption, upon which a particular use was predicated, proves with the passage of time to have been erroneous." *Anne Arundel County v. A-Pac Limited*, 67 Md. App. 122, 127 (1986).

8. The assumption implicit in the TR zoning of the Applicant's Property was that additional commercial uses on 6th Street and Camp Road in the vicinity of new residential communities was unnecessary and undesirable.

9. That assumption is now known to be invalid.

10. The Applicant has demonstrated that the TR Zoning District zoning of its Property in 2010 was a mistake that justifies a change in the zoning designation.

11. Rezoning the Applicant's Property to the GC District is consistent with the uses on adjacent and nearby properties and the traffic volumes now experienced on 6th Street and Camp Road.

12. GC Zoning for the Property is more desirable to meet the objectives of the Town of Denton Comprehensive Plan as previously referenced.

Change in the Neighborhood

The Town Council may grant the proposed rezoning upon a finding that there was a substantial change in the character of the neighborhood where the property is located. The following findings of fact are supportive of a substantial change in the character of the neighborhood.

1. The immediate neighborhood is bounded on the north and east by Maryland Route 404, on the south by the old railroad right of way, and on the west by the Choptank River.

2. The concept of neighborhood for rezoning purposes is a flexible one, and will vary according to the geographical locations involved. In a rural or semi-rural Town such as Denton, the “neighborhood” will be larger and more fluid than in a larger city. *Montgomery v. Board of County Comm’rs for Prince George’s County*, 263 Md. 1, 280 A.2d 901 (1971). Therefore, in addition to the immediate neighborhood, the Town Council can consider some of the development farther away, such as the Walmart Supercenter and the surrounding development on Legion Road, including residential housing development on Legion Road, all of which affects the Property.

3. The Property for rezoning is approximately 0.4 miles from Maryland Route 404, which is the boundary of the immediate neighborhood. Traffic on Route 404 has increased from 18,400 in 2010 to 25,960 in 2019. Maryland Route 404 has been upgraded since the last comprehensive rezoning to help reduce traffic congestion.

4. There has been substantial residential growth in the immediate neighborhood since the last comprehensive rezoning in 2010. The Riverwoods of Denton is a 36-unit apartment complex located on Fleetwood Road. It was developed in approximately 2017. Sandy Meadows housing development is a 58-unit project located within a block of the Property on the North side of Camp Road. While the project was started in 2005, most of the properties were sold after 2010. The project is currently 74% built out. Parcel 903 is an approximately 21-acre property originally zoned Recreation and Parks (RP) in the last comprehensive rezoning, but was rezoned to Mixed Residential (MR) in 2018 as a result of a mistake in the original zoning. At the maximum permitted density, Parcel 903 could have an additional 124-170 dwelling units on it. This additional residential development was not contemplated in the comprehensive rezoning in 2010.

5. The three residential developments mentioned in the immediate neighborhood indicate an increase in the population of the neighborhood of up to approximately 264 households when they are fully developed. Neighborhood scale commercial development is necessary to support this increased population.

6. While some of the increased households in the neighborhood were contemplated in the 2010 Comprehensive Plan, some were not. Zoning and other changes occurring prior to the

last comprehensive rezoning need not be wholly disregarded in a local map amendment case coupled with changes occurring subsequent thereto. *Runyon v. Glackin*, 45 Md. App. 457, 413 A.2d 291 (1980).

7. The other factor not considered was the potential household locations relative to the location of vacant GC properties to provide neighborhood commercial to support the increased residential development in the neighborhood. Development of uses offering goods and/or services to this neighborhood are more closely aligned with objectives related to efficient use of existing infrastructure, alternatives to driving, and encouraging the development of vacant, bypassed, and underutilized land.

8. The Applicant has demonstrated that there is a substantial change in the immediate neighborhood surrounding the Property (and even more change when considering the development on Legion Road), and that the need for GC vacant land in close proximity to the substantial residential development was not adequately considered in the Comprehensive Plan.

9. GC Zoning for the Property is more desirable to meet the objectives of the Town of Denton Comprehensive Plan as previously referenced.