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Route 100 zoning petition thwarted

by a sun reporter

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Some ideas seem snakebitten from the outset. One of them is a proposal to develop commercially a modest parcel along Route 100.

The bid has suffered more setbacks than efforts to achieve peace in Iraq. It was impeded further when the Planning Board gave a resounding thumbs-down to a petition to rezone the property, which is necessary for the plan to proceed.

David A. Carney, an attorney representing the estate of Carroll and Ruth Braun, will take the case to the Zoning Board. If he loses again, he probably will appeal. If he loses again, he will have to wait - perhaps indefinitely.

He said the 27.5-acre parcel, at Routes 100 and 103, would most likely be developed for offices, a restaurant or age-restricted housing if rezoned.

The petition was attacked aggressively by Katherine L. Taylor, an attorney retained by opponents, including two homeowners associations, and the Planning Board was unmoved by any of Carney's arguments.

The board denied the petition on a 4-0 vote Thursday night. The case now goes to the Zoning Board, which is made up of the County Council members. But if the appeal is rejected, an appeal can be filed. A loss at that level probably would force the plan to be shelved at least until after the November elections, and perhaps much longer.

The rezoning was approved once, but thrown into limbo by a referendum challenging all changes approved last year during what is often referred to as Comp Lite. The referendum is scheduled to be decided by voters in the general election.

Carney was seeking to free the property from the shackles of the referendum. But that is a difficult challenge, because it requires that he prove a mistake was made by the county or that the character of the neighborhood has changed substantively and thus the current zoning is no longer realistic.

He argued that the County Council erred two years ago when it failed to rezone the property during the comprehensive zoning process, deciding instead to kick the matter over to Comp Lite, and that the area is no longer suitable for residential development.

"The change has been overwhelming" because of commercial development along Route 100, Carney said.

Taylor attacked both arguments.

"There hasn't been a substantial change in the neighborhood - not since 2004 or since 1993," she said. " ... That whole neighborhood remains almost totally residential."

She also said that failure to change the permitted uses of the property during comprehensive rezoning is not a mistake.

"It is presumed by the law to be correct," Taylor said.

While the differences between the two lawyers could not have been more distinct, they, and, it seemed, everyone else in the room, were in complete harmony on one point: The County Council blundered two years ago when it arbitrarily ended the comprehensive zoning process - saving huge swaths of land to be acted on during Comp Lite.

That decision, coupled with the referendum, was alternately described as a "fiasco," a "mess" and "bad judgment."

Taylor suggested that the Comp Lite process might have been illegal. "It can't do so on a piecemeal basis. It must be comprehensive."

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