

KEN CLEMENTS,  
PETITIONER

BEFORE THE ZONING BOARD  
\*  
OF HOWARD COUNTY  
\*  
ZONING BOARD CASE NO. 1063M

\* \* \* \* \*

**DECISION AND ORDER**

On July 19, 2006, the Zoning Board of Howard County, Maryland considered the petition of Ken Clements for an amendment of the Zoning Map of Howard County, so as to reclassify from the RC-DEO (Rural Conservation-Density Exchange Option) to the BR (Business-Rural) Zoning District 13.0 acres of land, located on the east side of MD 27 south of I-70 and approximately 170 feet south of Penn Shop Road in the Fourth Election District of Howard County and described as Tax Map 6, Grid 2, Parcel 106.

The notice of the hearing was advertised, the subject property was posted, and the adjoining property owners were mailed notice of the hearing, as evidenced by the certificates of posting, advertising and mailing to adjoining property owners, all of which were made part of the record of the hearing. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's Recommendation, were made part of the record of the hearing. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition provided the Petitioner describes the proposed uses mentioned in the petition other than a sawmill and that a determination is made that these other uses are permitted uses in the BR District.

The Petitioner was represented by Richard B. Talkin, Esq. and Sang Oh, Esq. There was no opposition to the petition.

After careful evaluation of all the information presented, the Zoning Board makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. The Petitioner requests rezoning of the 13.0 acre subject property from the RC-DEO District to the BR District. Because the BR District is a floating zone, the Petitioner presented testimony and evidence relating to the criteria in Section 117.1G.3 of the Howard County Zoning Regulations rather than to the change-mistake rule applicable to Euclidean rezoning cases.

2. As required by the BR District requirements, the Petitioner submitted a Preliminary Development Plan (PDP) with the petition showing the proposed development of the subject property, the continued use of the sawmill use. The Petitioner adopted the Department of Planning and Zoning's Technical Staff Report as its principal evidence in support of the petition. In addition the Petitioner presented an aerial photo of the subject property and its environs, a sight distance analysis and a letter from the State Highway Administration.

3. The Department of Planning and Zoning indicated that a sawmill use will support the agricultural industry and will serve the needs of the rural residential and farming communities, and therefore will accomplish the purposes of the BR District pursuant to Section 117.1G.3.a. of the Zoning Regulations. The Board agrees with and adopts this finding.

4. The Department of Planning and Zoning indicated that the site meets the criteria of Section 117.1B of the Zoning Regulations, specifically that the proposed BR District is within the No Planned Service Area of the Howard County Water and Sewerage Master Plan, the proposed BR District has safe road access and at least 60 feet of frontage on a collector or

arterial highway, MD 27, and that a BR District at the proposed location will be compatible with existing land uses in the vicinity of the site.

With respect to the compatibility criterion, DPZ specifically found that a sawmill, the proposed use with this application for a BR District, has been located on the subject property since at least 1961, and that it is compatible with the surrounding area which is rural-residential and agricultural in nature, with a commercial zoning district located nearby. DPZ also found that a sawmill use is a permitted use under BR zoning, and that the structures on the property are well buffered by distance and a thick stand of woods on the perimeters of the property, and are not visible from adjacent roadways or properties. DPZ also found that the sawmill use is appropriate given the secluded location of the structures on the subject property, and the fact that only a 13.0 acre portion of the larger 141.5 acre parcel owned by Petitioner will be used for the sawmill use.

The Board agrees with and adopts the findings of DPZ as to the site meeting the criteria of Section 117.1B and therefore also 117.1G.3.b of the Howard County Zoning Regulations.

5. The Department of Planning and Zoning indicated that MD 27, the road providing access to the site, would be appropriate for serving the business-related traffic generated by the proposed district pursuant to Section 117.1G.3.c. The Board agrees with and adopts this finding, and also notes that the subject property as a non-conforming use has been generating business-related traffic onto MD 27 for many years.

6. The Department of Planning and Zoning indicated that it found that sight distance from the driveway on MD 27 appears adequate and the State Highway Administration commented favorably on the adequacy of sight distance pursuant to Section 117.1G.3.d. The Board agrees with and adopts this finding and further notes that Petitioner's sight distance analysis substantiated the adequacy of sight distance at the site's point of access onto MD 27.

7. The Department of Planning and Zoning indicated that the densely wooded buffers along the property's boundaries provide an adequate buffering from land uses in the vicinity, and further noted that the secluded location of the sawmill and the distance of more than ¼ mile between any structures on the site and off-site structures far exceeds the requirement for adequate buffering pursuant to Section 117.1G.3.e. The Board agrees with and adopts this finding.

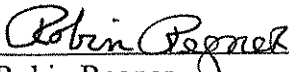
#### CONCLUSIONS OF LAW

1. The Petitioner, as one seeking a piecemeal reclassification to the BR District, has the burden of meeting the criteria of Sections 117.1G.3. of the Howard County Zoning Regulations.

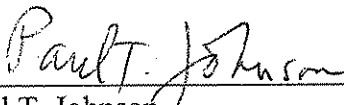
2. The evidence which the Petitioner presented establishes that he has met the burden of meeting the criteria of Section 117.1G.3. based on the findings of the Board.

For the foregoing reasons, the Zoning Board of Howard County, Maryland, on this 5<sup>th</sup> day of September, 2006, hereby GRANTS the Petitioner's request for reclassification of the 13.0 acre subject property from the RC-DEO to the BR District, for the existing use of a sawmill and permitted accessory uses to that use, as provided on Petitioner's Preliminary Development Plan.


ATTEST:

  
Robin Regner  
Administrative Assistant

PREPARED BY HOWARD COUNTY  
OFFICE OF LAW  
BARBARA M. COOK  
COUNTY SOLICITOR

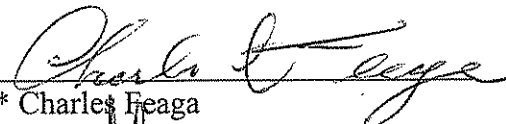
  
Paul T. Johnson  
Deputy County Solicitor

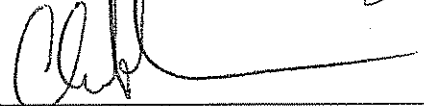
HOWARD COUNTY ZONING BOARD

  
Guy Guzzone, Chairperson

  
Ken Ulman, Vice Chairperson

  
Calvin Ball

  
\* Charles Feaga

  
Christopher J. Merdon

\* The above-signed Board member hereby certifies that he has listened to a recording of the portions of the hearing(s) from which he was absent and has reviewed the evidence of record.