

* Before the Zoning Board of
* Howard County
* Zoning Board Case No. ZB-1107M

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DECISION AND ORDER

On October 24, 2016, the Zoning Board of Howard County, Maryland considered the petition of Olde Scaggsville, LLC for an amendment to the Zoning Map of Howard County so as to reclassify 1.99 acres of land located on the northwest corner of the intersection of Scaggsville Road and Old Columbia Road from the RR-MXD-3 Zoning District to the B-1 Zoning District. The proposed reclassification was submitted with a Documented Site Plan. The subject property is identified as Tax Map 46, Block 03, Parcel 200 & 226, in the Fifth Election District of Howard County (the “Property”).

The notice of hearing was advertised, the subject property was posted with notice of the hearing, 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 which were entered into the record. Pursuant to the Zoning Board's Rules of Procedures, 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 entered or incorporated into the record of the hearing. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition.

The Petitioner was represented by Sang W. Oh, Esq. Eileen Powers, Esq., the Zoning Counsel, appeared pursuant to Section 16.1000 of the Howard County Code, to support the comprehensive zoning of the subject property. There was no opposition to the petition.

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

FINDINGS OF FACT

1. The Petitioner requests rezoning of the Property from the RR-MXD-3 District to the B-1 Zoning District. The petition was filed with a documented site plan. All of the testimony in support of the petition was presented by Robert H. Vogel, a professional engineer.

2. The Petitioner's request for rezoning is based on a mistake in the last comprehensive zoning of the subject property. The testimony and documentary evidence produced the following undisputed facts.

3. The Property consists of two rectangular shaped parcels with a combined area of 1.99 acres. It is the only property that fronts the portion of the former MD 216 roadway west of the traffic circle.

4. The Property was zoned R-40 (Residential – One and Two family Detached) during the 1961 Comprehensive Zoning Plan, and rezoned to R (Rural) during the 1977 Comprehensive Zoning Plan. The Property was rezoned to the current RR-MXD-3 during the 1993 Comprehensive Zoning Plan.

5. The surrounding properties were also zoned R-40 in 1961, and remained so until 1992, when the R properties to the south of MD 216 were rezoned to RR-DEO. During the 1993 Comprehensive Zoning Plan, the R areas to the west, north, and east of the Property were rezoned to RR-MXD-3. Subsequently, the properties to the north and west of the Property were designated as an Employment Area of the Maple Lawn Mixed Use Development in 2000.

6. At the time of the 2013 Comprehensive Zoning Plan, the parcels were separately owned and had separate driveway access to the dead-end public street. Since the 2013 Comprehensive Zoning Plan, the two parcels were purchased by one owner. The process to purchase the portion of road in front of the parcels as excess public street right-of-way has started. The Property is currently developed with modular office buildings approved by Temporary Use 15-005.

7. Although the Property is within the MXD-3 Overlay District, it is not within the boundaries of the adjoining Maple Lawn Mixed Use Development, and it is below the 25 acre minimum lot size requirement. Therefore, it can only be developed under the RR District Regulations.

8. However, RR zones have been specifically designed for agricultural preservation and low density development in the western part of the County. The PlanHoward 2030 General Plan defines the Rural West as being “outside of the Priority Funding Area” and “not served by public water and sewer.”

9. Notwithstanding its zoning classification, the Property is within the Planned Service Area (“PSA”). The Howard County Code requires that all residential properties where public sewer is available be connected to public sewer. *See* HCC § 16.131(c)(2). However, under RR zoning, a property owner must use shared septic or individual septic. *See* Howard County Zoning Regulations, § 105.E.

10. The Petitioner proposes redeveloping the Property for a commercial development; specifically, the development of a three-story office building.

11. The Department of Planning and Zoning in its Technical Staff Report found that the RR-District is no longer an appropriate zoning district for the Property because (1) the Property is within the PSA; and, (2) RR-Zoning is intended for an area of the County which is already largely committed to low density residential subdivisions, and the Property is not within a rural environment low density residential subdivisions. The Department of Planning and Zoning further found that B-1 District is an appropriate zoning district because the areas to the west and north of the Property are developed and undeveloped commercial land in the Maple Lawn Development; and, the areas to the east of the Property are mostly institutional and commercial. It also noted that the B-1 district supports nonresidential growth that could lead to the creation of new jobs within the Targeted Growth and Revitalization Area.

12. The Zoning Counsel acknowledged in her presentation that there were facts in the record which would support the finding of mistake.

13. The Board, based on the undisputed facts above, finds that the Petitioner presented substantial evidence that the Zoning Authority erred when it adopted the comprehensive zoning map. The basis for this conclusion is that the Property is within the PSA but is zoned RR, which is a Rural West zoning district that is intended for properties outside of the PSA. Further, at the time of the 2013 Comprehensive Zoning Plan, it was clear that the Property was not part of the Maple Lawn Development and, therefore, that the MXD-3 Overlay was not applicable.

14. The Petitioner presented testimony and documentary evidence to support its contention that B-1 zoning was appropriate for the subject property. Areas to the west and north of the Property are developed and undeveloped land in the Maple Lawn Development. The areas to the east are largely institutional and commercial. Thus, the proposed development for the

Property is consistent with the General Plan policies and the commercial development pattern of the area.

CONCLUSIONS OF LAW

1. The Petitioner, as one seeking a piecemeal zoning reclassification, has the burden of demonstrating mistake in the last comprehensive zoning of the subject property and/or change in the character of the neighborhood of the subject property since the last comprehensive zoning. If this burden is met, the Board is permitted, but not compelled to grant the rezoning request.

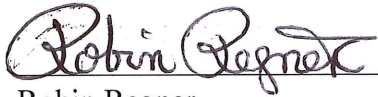
2. There is sufficient evidence in the record that supports finding a mistake in the 2013 Comprehensive Zoning of the subject property in the RR-MXD-3, as identified in the Department of Planning and Zoning's Technical Staff Report and the Board's findings of fact set forth above, sufficient to overcome the strong presumption of correctness attached to that comprehensive zoning.

3. The Petitioner has also presented sufficient evidence for the Board to conclude that the appropriate zoning category for the subject property is the B-1 District based on the Board's findings of fact No. 12 above, and the Board concludes that B-1 is the appropriate zoning for the subject property.

WHEREFORE, for the foregoing reasons, the Zoning Board of Howard County, on this 26th day of January 2017, hereby **GRANTS** the Petitioner's request for rezoning of the 1.99 acre subject property from the RR-MXD-3 to the B-1 Zoning District, as requested by the Petitioner.

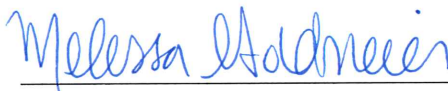
ATTEST:

ZONING BOARD OF HOWARD COUNTY

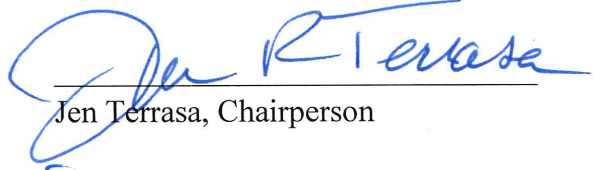


Robin Regner
Administrative Assistant

PREPARED BY HOWARD COUNTY
OFFICE OF LAW
GARY W. KUC
COUNTY SOLICITOR



Melissa E. Goldmeier
Assistant County Solicitor




Jen Terrasa, Chairperson



Mary Kay Sigaty, Vice Chairperson

Absent

Greg Fox



Calvin Ball

Absent

Jon Weinstein