SCIENCE FICTION, LLC	:	BEFORE THE
Appellant	:	HOWARD COUNTY
v.	:	BOARD OF APPEALS
HOWARD COUNTY PLANNING BOARD	:	HEARING EXAMINER
Appellee	:	BA Case No. 735-D

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DECISION AND ORDER

On February 9 and 15, March 8, and July 20, 2017, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Science Fiction, LLC (Appellant). Appellant is appealing a November 4, 2016 Planning Board decision letter denying Appellant's Final Development Plan (FDP) 117-A-III application to add a liquor store as a permitted use on a parcel that consists of a full service grocery store.

Thomas Meachum, Esq. represented the Appellant. Paul Johnson, Deputy County Solicitor, represented the Planning Board. Andrew Robinson represented the Howard County Licensed Beverage Association (HCLBA). Ralph Uterro and Joseph Rutter testified on behalf of Appellant. Donald Barrick and Chris Alleva testified in opposition.

Appellant introduced into evidence the exhibits as follows.

1. Joseph Rutter, curriculum vitae
2. FDP 117 history
   A. FDP-117-A-I, adds communication tower on open space, January 25, 1994
   B. FDP-117-A-II, clarifies that full service food and grocery store, and related uses, are permitted, with amending language, September 29, 2007

C. FDP-117-A-III, draft amendment clarifies a liquor store does not have to be contained within the food and grocery store to be a permitted use, with amending language
D. FDP-117-A-III, DPZ proposed technical staff report wording of amending language

3. FDP-117-A-III, DPZ technical staff report
4. FDP-A-III, Final Development Plan Criteria Application, March 18, 2016
5. January 21, 2008 letter to Science Fiction, LLC, from Marsha McLaughlin, Planning Board Executive Secretary re: Planning Board approval of SDP-07-131 Wegmans Food Markets
6. BA 735-D decision and order
7. Sieling Industrial Center Land Use Map

Protestant Chris Alleva introduced into evidence the exhibits as follows.

1. Resume, Christopher Alleva
2. 2012 partial Preliminary Development Plan
3. A & B. Sieling Industrial Sketch Plan
4. .1-.7 Sieling Industrial Center FDP and FDP amendments
5. Planning Board letter to Science Fiction, from Marsha McLaughlin, January 31, 2008
6. Russell R. Reno, Non-Euclidean Zoning: The Use of the Floating Zone, 23 Md. L. Rev. 105, 107 (1963)
7. Zoning Board Case No. 915M, Grape II, Inc. Petitioner, re: General Electric Appliance Park rezoning
8. January 31, 1978 Letter to Thomas Harris, Howard County Planning Board Executive Secretary from R. Russell Sadler, Deputy County Solicitor re: permitted uses in New Town FDPs prior to new zoning regulations

BACKGROUND

Appellant Science Fiction, LLC (Science Fiction) is the owner of the 12.2-acre Parcel "D-2" in the Sieling Industrial Center, Section 1, Area 1 (SIC Sec. 1, Area 1), where a large full service food and grocery store (Wegmans) is located. SIC Sec. 1, Area 1 encompasses a 181+/-acre parcel of "New Town" zoned land on the west side of Snowden River Parkway between MD 175 and Oakland Mills Road. FDP-117-A-III application, pg. 2. The FDP-designated land use for most, but not all, of the entire Sieling Industrial Center is "Employment Center Land Use – industrial Land Use Areas."

The Howard County Licensed Beverage Association (HCLBA) is a loose coalition of Howard County liquor licensees.[1] Christopher Alleva is a Howard County resident opposed to the FDP amendment application.

Science Fiction petitioned the Planning Board in March 2016 to amend FDP-117-A-II, SIC Sec. 1, Area 1, in accordance with Howard County Zoning Regulations (HCZR) § 125.0.F to "clarify a liquor store does not have to be contained within the full service food and grocery store to be a permitted use" under Criteria Item 7D, "Employment Center-Industrial Land Use Areas."[2] FDP-117-A-III, pg. 2, application summary of proposal. The FDP-117-A-III application proposes to amend the 7D Permitted Uses text in subsection ".l" with the following language shown in caps.

> l. "full service food and grocery stores, and related uses, of 100,000 square feet or more" INCLUDING A LIQUOR STORE SEPARATE AND NOT PART OF THE GROCERY STORE BUT ON THE SAME PROPERTY.

After public hearing, the Planning Board by decision letter of November 4, 2016 informed Science Fiction of its denial of the requested FDP amendment. Hand written on the decision letter are two "factors" the Planning Board relied on for its denial: the "General Plan" and "New Town Uses." On November 23, 2016, Appellant filed a timely administrative appeal petition in which it alleges, among other things, the "majority vote declined to approve to protect other liquor stores

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[1] Then HCLBA counsel Andrea LeWinter informed the Hearing Examiner during the hearing that her client, HCLBA, is not a county affiliate of the Maryland State Licensed Beverage Association.

[2] The application on pg. 3 includes this statement: The Howard Research and Development Corporation joins in this Final Development Plan application, solely as the original Petitioner under the New Town Zoning Ordinance, in order to allow the Applicant to pursue this request. Such joinder is an administrative action only and does not imply or suggest that HRD is taking a position or making a judgment on the substantive question being presented in the application.

from competition. As DPZ and the Board's counsel repeatedly told the Board, the issue was whether a liquor store use is compatible with a grocery store." Appellant also asks the Hearing Examiner "to consider [the FDP amendment application] as a zoning matter, not a liquor licensing matter."

Based on the evidence of record from the February 10, February 15, and March 8, 2017 hearing, the Hearing Examiner found the Planning Board's reliance on the General Plan, New Town uses, and economic competition was contrary to law and therefore clearly erroneous, arbitrary and capricious. On March 13, 2017, the Hearing Examiner issued a Preliminary Remand Order to the Planning Board with retained jurisdiction of the appeal in the interest of quasi-judicial economy with the consent of Science, Fiction, HCBLA, and Chris Alleva, given the lengthy time between the filing of the application and the Planning Board decision. As the Hearing Examiner emphasized at the March 8, 2017 hearing, her primary purpose in remanding with retained jurisdiction was fair Planning Board consideration of the requested FDP application under the applicable law. The Preliminary Remand Order so narrowly limited the Planning Board remand to these matters.

1. The Planning Board shall convene a special meeting remand work session no later than 90 calendar days from the date of this Preliminary Order to consider Appellants' FDP-117-A-III application.
2. All five members of the Planning Board shall attend the special meeting remand work session.
3. Prior to convening, all five Planning Board members shall review the record of the case. The record of the case excludes the Planning Board's prior work session.[3]
4. The Planning Board shall apply only these criteria in its consideration of the application:

[3] Subsequent to the issuance of the Preliminary Remand Order, the number of serving Planning Board members dropped from 5 to 4. In response to a query from Val Lazdins, Executive Secretary to the Board, about 4 members considering the application in work session, and after input from Science Fiction and HCLBA, the Hearing Examiner instructed the Secretary to convene the work session with the 4-member Board.

a. **Howard County New Town Zoning Regulations § 125.0.D.2: General Provisions**
The Final Development Plan shall be considered by the Planning Board at a public meeting. In acting upon the Final Development Plan, the Planning Board shall be guided by the approved Comprehensive Sketch Plan, and comments received from the various public agencies which reviewed the Final Development Plan, and **shall not unreasonably disapprove or change the Final Development Plan**. (Emphasis added.) *

* The "comments received from the various public agencies" includes the Department of Planning and Zoning's technical staff report.

b. **Howard County New Town Zoning Regulations § 125.0.F.1: Amendments to a Final Development Plan Submitted by Original Petitioner**
A proposed Final Development Plan Amendment shall be reviewed in accordance with § 125.0.D.[2].

c. **FDP 117-A-II, Permitted Uses, per Howard County Zoning Regulations § 125.0.C.3.d(2) Criteria Item 7D. Employment Center Land Use – Industrial Land Use Areas**
All uses permitted in industrial districts or industrial land use zones are permitted including but not limited to, all uses permitted in M-1 district except, however [sic] that uses only permitted in M-2 Districts are prohibited. Commercial uses ancillary to, or compatible with, permitted industrial uses are permitted, including, but not limited to, all of the following:

a. Restaurants and lunchrooms, and similar establishments serving food and/or beverages
b. Personal service shops and retail stores which primarily sell or service merchandise manufactured on the premises.
c. Banks
d. Gasoline service station
e. Wholesale Distributors
f. Savings and Loan Associations
g. Business and Professional offices
h. Parking Lots or Garages
i. Building Supplies and Lumberyards
j. Storage of prepared dairy products and other food products to be distributed on truck vending routes
k. Such other ancillary uses as may be approved by the Howard County Planning Board
l. Full service food and grocery store, and related uses, of 100,000 square feet or more.

5. The Planning Board shall be assisted in its deliberations by the Sieling Industrial Park Land Use Map attached to this Preliminary Order.
6. The Planning Board shall consider only the land uses within Sieling Industrial Park, Section 1, Area 1.
7. The Planning Board shall not consider PlanHOWARD 2030 in its deliberations.
8. Upon making a decision, the Planning Board shall file its decision with the Hearing Examiner.
9. The Hearing Examiner shall retain jurisdiction of the instant appeal. Upon receiving the Planning Board's decision, the Hearing Examiner shall endeavor to reconvene the BA 735-D appeal within 30 calendar days for further proceedings as necessary.

By letter of May 19, 2017, the Planning Board stated in a form decision letter, it "approved" FDP-117-A-III, SIC Sec. 1, Area 1 "(inclusion of liquor store as permitted use)."

THE STANDARD OF REVIEW

Pursuant to Planning Board Rule of Procedure § 1.106.G, appeals to the Board of Appeals of decisions made pursuant to the Planning Board's administrative decision-making authority shall be heard de novo by the Board of Appeals in accordance with the Board of Appeal's Rules of Procedures. Per Howard County Code § 16.302(a) (jurisdiction of hearing examiner), when a matter is authorized to be heard and decided by the board of appeals, the matter will first be heard and decided by a hearing examiner. Hearing Examiner Rule of Procedure 10.2(c) assigns the burden of proof in an appeal from an administrative agency decision the burden of showing by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law.

Much of the March 8, 2017 hearing was colloquy between the Hearing Examiner and counsel on procedure, with the Hearing Examiner transparently exploring her Hearing Examiner Rule of Procedure Rule 10.5 options. Hearing Examiner Rule 10.5 authorizes the examiner to grant or deny the petition, grant the petition with modifications or conditions, or, in the case of an administrative appeal, remand the case to the agency for further proceedings. In reviewing the utility of a limited remand, the Hearing Examiner referenced exercising her discretionary authority to remand an issue to DPZ in recent administrative appeals, while retaining or

continuing jurisdiction and considering the department's responses in a final decision.[4] Counsel did not challenge as improper the boundaries of the Hearing Examiner's discretionary Rule 10.5 remand authority as foreclosing a limited remand to the Planning Board with jurisdictional retention. The parties clearly understood the status of both the Preliminary Remand Order and the May 17, 2017 "decision" letter, and that the Hearing Examiner's BA 735-D decision and order would be the final merits decision on the FDP amendment application. That is, Appellant and Protestants were strategically hedging their bets.

The Preliminary Remand Order being procedural abeyance of the issuance of the final BA 735-D decision and order on the merits pending the Planning Board's work session consideration, the Hearing Examiner's charge in this appeal is still to hear de novo the Planning Board's November 4, 2016 FDP amendment adverse decision, supplemented by its May 19, 2017 "decision" letter approval ("inclusion of liquor store as permitted use"). In plain English, this means the Hearing Examiner steps into and stands in the shoes of the Planning Board (how the appeal is heard) and takes new evidence (what is being heard). We now turn to the merits of this appeal.

DISCUSSION

Note: Under Hearing Examiner Rule 10.1, Evidence to be Considered, the hearing examiner may only consider the evidence in the record when making a decision; however, the hearing examiner

[4] In this regard, the Preliminary Remand Order is procedurally coextensive with other Hearing Examiner decisions defining the scope of a Hearing Examiner's discretionary authority. See pgs. 42-44 of BA 10-001C (Donaldson Funeral Home), discussing Hearing Examiner's broad discretionary authority to deny a petition to be located on a state road where petitioner did not demonstrate safe ingress/egress. In BA 734-D (Felicio) and BA 737-D (Flathman) the Hearing Examiner retained jurisdiction and issued preliminary remand orders to DPZ to supplement adverse administrative nonconforming use orders because DPZ failed to cite fully to certain regulations informing the denials, violating petitioners' procedural due process right.

> may use his or her experience, expertise, and knowledge of the property and the area in making a decision. During the proceeding, the Hearing Examiner discussed/surveyed/referenced multiple area FDPs, including "Industrial Center" FDPs, FDPs along the Snowden River Parkway, and the broader zoning history of the area. My purpose in doing so was first to be transparent in my evaluation of the appeal, as this knowledge, to the legal extent possible, might factor into my decision-making. It is also the Hearing Examiner's practice to provide perspective and context where appropriate.
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> The Hearing Examiner's knowledge of this area is gained from several administrative agency appeals involving site development plans, environmental concept plans, FDPs, and site development plan redlines. This knowledge is also necessarily informed by the Hearing Examiner's long-term study of Maryland case law pertaining to New Town zoning and reviewed with the parties during the hearing.

The applicable New Town Zoning Regulations are set forth in "order" #4 of the above Preliminary Remand Order to the Planning Board. Undergirding the Hearing Examiner's evaluation of the proposed FDP 117-A-III amendment is the application and interpretation of HCZR § 125.0.D.2, which instructs the Planning Board it "shall not unreasonably disapprove or change the Final Development Plan," and the “Employment Center-Industrial Land Use Areas" FDP 117-A-II 7D text criteria: "Commercial uses ancillary to, or compatible with, permitted industrial uses are permitted, including, but not limited to" uses ".a" through ".l"; ".l" being a "full service food and grocery store, and related uses, of 100,000 square feet or more." By direction of HCZR §§ 125.0.D.2, & F.1, in acting upon an FDP amendment, the Hearing Examiner is to be guided by the approved Comprehensive Sketch Plan, and comments received from the various public agencies which reviewed the Final Development Plan.

The Hearing Examiner's limited remand was an opportunity for the Board to apply and interpret this language in work session, and which might have provided guidance to the Hearing Examiner in her interpretation and application of the law to the FDP amendment application.

Absent this guidance, but acknowledging the Board's ultimate "inclusion of liquor store as permitted use" amendment, the Hearing Examiner in making her decision stands in the shoes of the Planning Board and after weighing the evidence of record, approves the requested FDP amendment as modified.

I.
FDP 117-A-II Criteria 7D
Commercial Uses Ancillary to, or Compatible With, Permitted Industrial Uses

The pertinent SIC Sec. 1 Area 1 Parcel "D" FDP land use language is contained in FDP 117-A-II text criteria 7D.

> All uses permitted in industrial districts or industrial land use zones are permitted including but not limited to, all uses permitted in M-1 district except, however [sic] that uses only permitted in M-2 Districts are prohibited. *Commercial uses ancillary to, or compatible with, permitted industrial uses are permitted, including, but not limited to, all of the following:*
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> a. Restaurants and lunchrooms, and similar establishments serving food and/or beverages
> b. Personal service shops and retail stores which primarily sell or service merchandise manufactured on the premises.
> c. Banks
> d. Gasoline service station
> e. Wholesale Distributors
> f. Savings and Loan Associations
> g. Business and Professional offices
> h. Parking Lots or Garages
> i. Building Supplies and Lumberyards
> j. Storage of prepared dairy products and other food products to be distributed on truck vending routes
> k. Such other ancillary uses as may be approved by the Howard County Planning Board
> l. *Full service food and grocery store, and related uses, of 100,000 square feet or more.*

Emphasis added. The April 4, 2016 technical staff report (TSR) is an "agency comment" on the FDP Amendment. Joseph Rutter and Chris Alleva testified to DPZ having lost the older paper land use text for the SIC comprehensive sketch plan during the remodeling of the county office building. Hence this DPZ TSR statement.

> If a Comprehensive Sketch Plan or Comprehensive Sketch Plan Amendment is required, upon its approval, the petitioner may submit a Final Development Plan or Final Development Plan Amendment to the Department of Planning and Zoning for approval by the Planning Board. The petition may cover all or a portion of the land covered by the Comprehensive Sketch Plan. The drawings shall delineate the various land use areas by courses and distances. The text (criteria) shall be that which was approved by the Planning Board as part of the Comprehensive Sketch Plan.
>
> DPZ could only locate a Comprehensive Sketch Plan map for this area, which identifies the subject property as Employment Center-Industrial. Comprehensive Sketch Plan text criteria could not be located. However, the text criteria approved by the Planning Board in 1972 on the original FDP for this phase is the same as that approved by the Planning Board previous to that as part of the Comprehensive Sketch Plan. Therefore, the text criteria for FDP 117 can serve as the "guide" for the Planning Board pursuant to Section 125.0.D.2. below [sic] Planning Board approves criteria with the Final Development Plan.

In the Hearing Examiner's view, for the limited purposes of this application, DPZ's opinion of the SIC FDP 117, Sec. 1 Area 1 7D text criteria as a commensurate benchmark for consideration of the FDP amendment application is reasonable. With de minimus exception, the SIC Sec. 1, Area 1, FDP 117, 7D text criteria, remains consistent, as reported by DPZ staff. The Hearing Examiner reasonably concludes, on balance, the proposed Liquor Store land on the same property as a full service grocery store, as a supportive "related use" to a permitted use, is compatible with SIC industrial land uses.

When property owner and developer Howard Research and Development Corporation (HRD) went before the Planning Board in 1972 for approval of FDP 117, SIC Sec. 1, Area 1 it requested, and the Planning Board approved, a subclass of "FDP commercial zoning regulations" giving HRD some flexibility on its build out. The only "zoning" limitation on these uses was they be "ancillary to – or compatible with" permitted industrial uses. With the next FDP 117

amendment, FDP 117-A, HRD modified this language to include "reference" commercial uses and text criterion 7D.k, "Such other ancillary uses as may be approved by the Howard County Planning Board." Appellant Exhibit 2, Protestant Exhibit 4.

Reproduced on pgs. 17 & 18 are the actual FDP 117 and 117-A 7D text criteria. Appellant Exhibit 2, Protestant Exhibit 4. These sheets illustrate the functional process by which HRD established land uses in the SIC. Note that in the 1970s, adding FDP text criteria was a "cut and paste" job from other FDPs, not fresh text. Drafters added new land uses in script when HRD sought an FDP amendment.

Three aspects of the SIC FDPs merit attention**.** First, the underlying M-1 zoning in 1972 permitted a broad range of employment center uses not commonly perceived as "industrial." Before that, when the New Town zoning district was enacted in 1965 through Zoning Case No. 398, § 15.011 of the M-1 (Manufacturing: Light) zoning district regulations permitted as a matter of right "[u]ses in the B-2 and M-R Districts, except as provided in Section 15.09." The B-2 (Business: General) district, in turn, per § 12.011, permitted as a matter of right "uses permitted in the B-1 District."

Second, the SIC as planned included a commercial component**.** Protestant Exhibit 3 is a portion of the 1972 comprehensive sketch plan map (CSP) for Sieling Industrial Center. It tabulates the allocation of non-open space and right-of-way land uses within the SIC as comprising 172.8 industrial acres and a 9.2-acre separate commercial area. The two-page exhibit assigns certain areas for "Industrial" use but does not appear to include that portion of the map

with the general location of the commercial land use, assuming the land use was assigned to a specific area. Under then HCZR § 119.C.8, a CSP is a series of drawings setting forth, with respect to the phase of the New Town District being proposed for development, the approximate boundaries and acreage of the permitted land uses together with appropriate text material (the FDP criteria). Is this area the commercial land use acreage in the 12±–acre FDP 133 for SIC Sec. 1, Area 3 and designated in text criteria 7D for "Employment Land Use – Industrial Land Uses – *Commercial"*? Emphasis added. The FDP 133 7D text is reproduced on pg. 19**.** SIC Sec. 1, Area 3 is shown on the southern portion of Appellant's Sieling Industrial Center Land Use Map. Appellant Exhibit 7 reproduced on pg. 20.

Third, the FDP 133 7D text criteria revised the standard "cut and paste" FDP criteria "ancillary to, or compatible with" text: "Location of commercial uses ancillary to, or compatible with, permitted industrial uses are permitted and planned as an integral part of the predominately industrial area are permitted as approved by the Howard County Planning Board." This language did not restrict commercial uses in SIC. Rather, where applicable, it commanded ancillary or compatible commercial uses were permitted (subject to the underlying zoning) if "planned" as an integral part of SIC.

The CSP map and 7D text criteria together indicate HRD's interest in some zoning flexibility as it developed SIC; hence the commercial land use acreage and the "ancillary to, or compatible with" language. Over the BA 735-D four-day hearing as exhibits were sought to be introduced, there was more colloquy between the Hearing Examiner, witnesses, and counsel,

and argument in the form of objections, about HRD's "original industrial land use" intentions and its relevancy to Petitioner's application. The Hearing Examiner referenced - and this is dicta provided for context and perspective - what she considers to be a foundational document speaking to these intentions, what I call the "Brown Plan," the cover of which is reproduced on pg. 21. Its official title is "COLUMBIA: A NEW TOWN FOR HOWARD COUNTY, a Presentation to the Officers and Citizens of Howard County by Community Research and Development, Inc., Baltimore, Maryland, November 11, 1964."[5] Reproduced on pg. 22 is the text for the planned industrial areas in what would become the New Town Employment Center areas. The developer's stated priority is planned industry for "research and science oriented companies" with "skilled professional employees."

One informing influence on the "Brown Plan" was the 1960s local and national zoning and planning environment in which Community Research and Development, Inc. was operating, and when Howard County was in the early stages of becoming a charter county with different planning and zoning authority. The limits of "Euclidian zoning" (zoning districts with set boundaries and uses) were being manifested in the increasing popularity of "floating zones", mixed-use zoning districts not mapped until a property owner applied for the zone. Protestant Exhibit 6 is a 1963 law review article on floating zones. The New Town zoning district is a floating zone.

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[5] The Community Research and Development, Inc. was James Rouse's development company, which became part of The Rouse Company in the mid-1960s. HRD in the 1960s was a subsidiary of The Rouse Company. The "Brown Plan" is available online at https://issuu.com/columbiaarchives/docs/columbia_a_new_town/51. It appears The Columbia Archives uploaded it to the digital publishing platform site "Issuu" in 2011. Site visited in 2014.

When the County Commissioners in 1965 enacted the New Town zoning district as a "floating zone," HRD was stretching the zoning/land use limits of what could be achieved at the FDP stage, given the underlying M-1 Euclidian zone, spurring HRD's inclusion of the commercial "ancillary to, or compatible with" language. The Hearing Examiner surveyed this "long zoning history" during the hearing in reference to *Chatham Corp. v. Beltram*, 243 Md. 138, 220 A.2d 589 (1966) and *Bowie v. Board of County Com'rs of Howard County*, 253 Md. 602, 253 A.2d 727 (1969).

Bowie illustrates HRD's economic interests in attracting industry to Columbia and its specific interest in landing General Electric as a major employer. To this end, HRD petitioned the Board of County Commissioners to remove some 377 acres of the 14,000 acres classified as a New Town District "employment uses" area on the Preliminary Plan, where "the regulations permit local and general business, motels, shopping centers, and light and restricted manufacturing." This area lay opposite the SIC on the east side of Snowden River Parkway. HRD also filed a petition to create a new zoning district, the Industrial Development (ID) Zoning District, "HRD and GE seem[ing] to have agreed that the county's existing zoning classifications were not *compatible* with GE's proposed use of the property." Emphasis added. *Bowie*, 253 Md. at 604-605, 253A.2d at 728-729. (The court also reviewed the New Town zoning district as a type of floating zone.) Protestant Exhibit 7, the 1991 Zoning Board Case No. 915M, details HRD's successful application to rezone the GE site when the company closed shop in 1989-1990. In approving that rezoning, the Zoning Board considered industrial production trends along the East Coast, where many large industrial plants were closing "as the economy has shifted from a

manufacturing on to a service oriented one." "This property which is centrally located between Baltimore and Washington is no longer suited for a large single user but would be more appropriate for commercial business seeking a central location but requiring smaller amounts of space." Conclusion of Law #1 (pg. 6).

The county's historical aerial photography database offers an objective assessment of the "fluidity" of the 7D text "industrial land use" criteria and historical shifts in M-1 "industrial land uses." Pages 23-27 show the SIC in 1970, 1977, 1993, 1998 and 2016. In 1977, the area south of McGaw Road is developed with warehouse, office, and distribution structures, although we do not know the actual uses. By 1993, the FDP 117A area north of McGaw Road is being cleared and developed per the Planning Board-approved S-87-24 plan for the "Columbia Corporate Park" along Stanford Boulevard. The very name of this park implies a land use seeking to distinguish itself from its "industrial" land use neighbors on the south side of McGaw Road. Later years see more development, including a satellite university campus, motor vehicle sales, restaurants, hotels, banks, and offices, further indicating a permitted shift in primary M-1 land use from "industrial" to "service".

Over the years, Howard County has sought to update the HCZR to reflect industrial land use best practices by adding to the long list of permitted uses within the M-1 zoning district. Even so, it was not until the 2004 comprehensive zoning process that DPZ and the county legislature sought to add a definition of "flex space" to the HCZR and permitted flex space uses as a matter of right in the zoning district. These are the 2004 DPZ-preliminary and county legislature-enacted

definitions.

> Preliminary definition. Flex space: a building that is designed with modular bays to accommodate business of varying sizes, and used for offices, research and development, light manufacturing, assembly, storage, and similar uses. Flex space buildings have rear loading only and generally have 25 percent or more of the space devoted to office uses.
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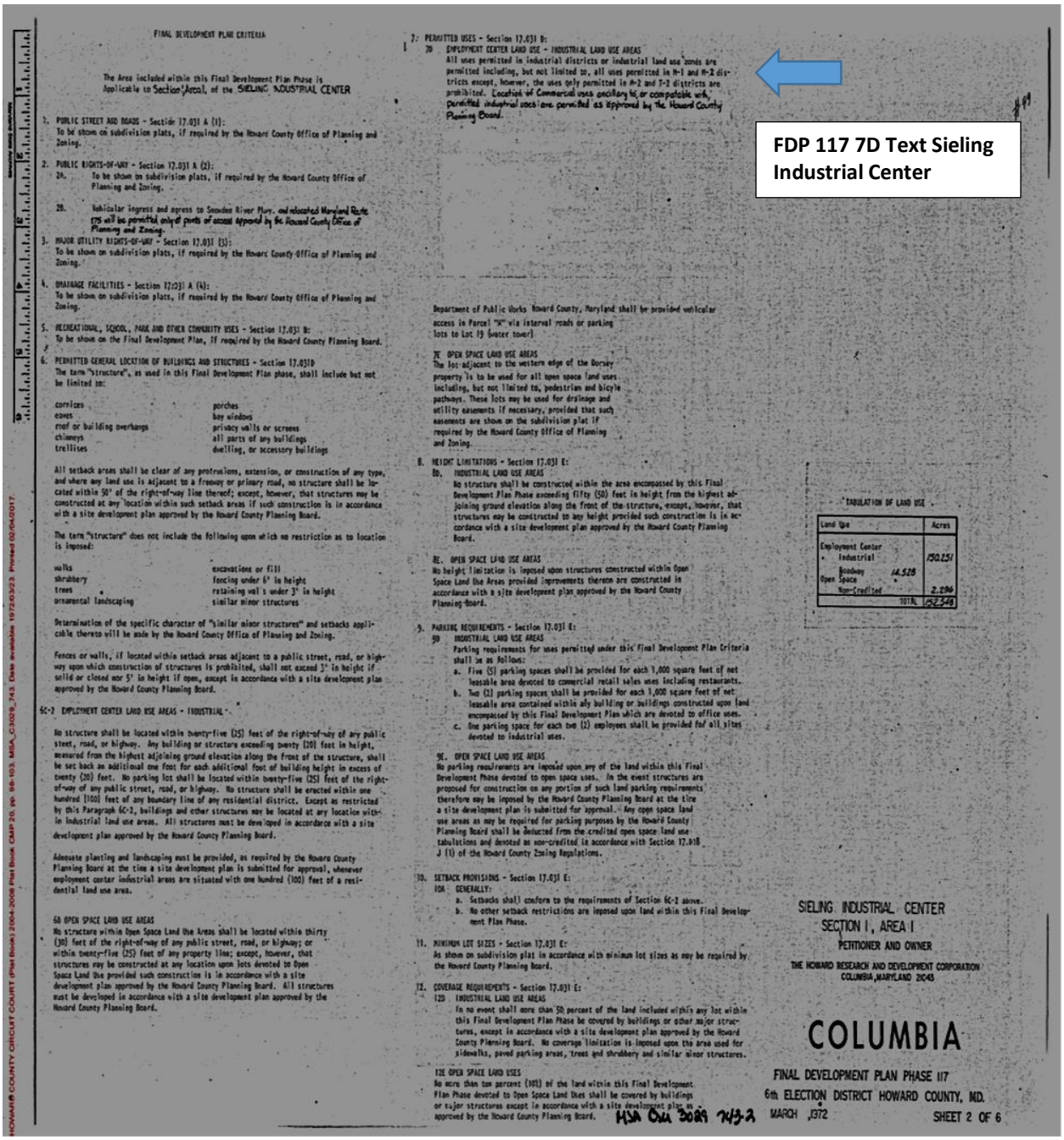
> Enacted definition. Flex space: a building that is designed in modular bays to accommodate business of varying sizes, and used for offices, research and development, light manufacturing, assembly, storage, sales, and similar uses, including business community support retail up to 15% of the buildings in the project. Flex space buildings have rear loading only and generally have 25 percent or more of the space devoted to office uses.

The county revisited the definition during the 2013 comprehensive zoning process. These are the 2013 DPZ-preliminary and county legislature-enacted definitions, which reflect continuing refinement to the percentage of commercial or retail use deemed legislatively appropriate and consistent with PlanHOWARD 2030.

> Preliminary redefinition. Flex Space: A building that is designed with three or more modular bays to accommodate businesses of varying sizes, with the modular bays capable of being used for a variety of commercial and light industrial uses, including offices, research and development, light manufacturing, commercial service businesses, storage, accessory sales, and similar uses. All principal activities of thee various uses shall be conducted wholly within an enclosed building but accessory outdoor storage may be conducted as permitted by these regulations. Flex space buildings have rear loading only and generally have a portion of each modular bay space devoted to office uses.
>
> Enacted redefinition. Flex Space: A building that is designed with three or more modular bays to accommodate businesses of varying sizes, with the modular bays capable of being used for a variety of uses, including offices, research and development, light manufacturing, service agencies, and accessory storage and sales, provided that the uses are limited to those uses permitted by the zoning district or final development plan in which the flex space is located. All principal activities of the various uses shall be conducted wholly within an enclosed building, but accessory outdoor storage may be conducted as permitted by these regulations. Flex space buildings have rear loading.



FINAL DEVELOPMENT PLAN CRITERIA

The Area included within this Final Development Plan Phase is Applicable to Section/Area1, of the SIELING INDUSTRIAL CENTER

1. PUBLIC STREET AND ROADS - Section 17.031 A (1):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

2. PUBLIC RIGHTS-OF-WAY - Section 17.031 A (2):
2A. To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

2B. Vehicular ingress and egress to Snowden River Pkwy. and relocated Maryland Route 175 will be permitted only at points of access approved by the Howard County Office of Planning and Zoning.

3. MAJOR UTILITY RIGHTS-OF-WAY - Section 17.031 (3):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

4. DRAINAGE FACILITIES - Section 17.031 A (4):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

5. RECREATIONAL, SCHOOL, PARK AND OTHER COMMUNITY USES - Section 17.031 B:
To be shown on the Final Development Plan, if required by the Howard County Planning Board.

6. PERMITTED GENERAL LOCATION OF BUILDINGS AND STRUCTURES - Section 17.031D
The term "structure", as used in this Final Development Plan phase, shall include but not be limited to:

cornices	porches
eaves	bay windows
roof or building overhangs	privacy walls or screens
chimneys	all parts of any buildings
trellises	dwelling, or accessory buildings

All setback areas shall be clear of any protrusions, extension, or construction of any type, and where any land use is adjacent to a freeway or primary road, no structure shall be located within 50' of the right-of-way line thereof; except, however, that structures may be constructed at any location within such setback areas if such construction is in accordance with a site development plan approved by the Howard County Planning Board.

The term "structure" does not include the following upon which no restriction as to location is imposed:

walks	excavations or fill
shrubbery	fencing under 6' in height
trees	retaining wall under 3' in height
ornamental landscaping	similar minor structures

Determination of the specific character of "similar minor structures" and setbacks applicable thereto will be made by the Howard County Office of Planning and Zoning.

Fences or walls, if located within setback areas adjacent to a public street, road, or highway upon which construction of structures is prohibited, shall not exceed 3' in height if solid or closed nor 5' in height if open, except in accordance with a site development plan approved by the Howard County Planning Board.

6C-2 EMPLOYMENT CENTER LAND USE AREAS - INDUSTRIAL -

No structure shall be located within twenty-five (25) feet of the right-of-way of any public street, road, or highway. Any building or structure exceeding twenty (20) feet in height, measured from the highest adjoining ground elevation along the front of the structure, shall be set back an additional one foot for each additional foot of building height in excess of twenty (20) feet. No parking lot shall be located within twenty-five (25) feet of the right-of-way of any public street, road, or highway. No structure shall be erected within one hundred (100) feet of any boundary line of any residential district. Except as restricted by this Paragraph 6C-2, buildings and other structures may be located at any location within Industrial land use areas. All structures must be developed in accordance with a site development plan approved by the Howard County Planning Board.

Adequate planting and landscaping must be provided, as required by the Howard County Planning Board at the time a site development plan is submitted for approval, whenever employment center industrial areas are situated with one hundred (100) feet of a residential land use area.

6B OPEN SPACE LAND USE AREAS
No structure within Open Space Land Use Areas shall be located within thirty (30) feet of the right-of-way of any public street, road, or highway; or within twenty-five (25) feet of any property line; except, however, that structures may be constructed at any location upon lots devoted to Open Space Land Use provided such construction is in accordance with a site development plan approved by the Howard County Planning Board. All structures must be developed in accordance with a site development plan approved by the Howard County Planning Board.

7: PERMITTED USES - Section 17.031 D:
7D EMPLOYMENT CENTER LAND USE - INDUSTRIAL LAND USE AREAS
All uses permitted in industrial districts or industrial land use zones are permitted including, but not limited to, all uses permitted in M-1 and M-2 districts except, however, the uses only permitted in M-2 and T-2 districts are prohibited. Location of Commercial uses ancillary to, or compatible with, permitted industrial uses are permitted as approved by the Howard County Planning Board.

FDP 117 7D Text Sieling Industrial Center

Department of Public Works Howard County, Maryland shall be provided vehicular access in Parcel "M" via interval roads or parking lots to Lot 19 (water tower)

7E OPEN SPACE LAND USE AREAS
The lot adjacent to the western edge of the Dorsey property is to be used for all open space land uses including, but not limited to, pedestrian and bicycle pathways. These lots may be used for drainage and utility easements if necessary, provided that such easements are shown on the subdivision plat if required by the Howard County Office of Planning and Zoning.

8. HEIGHT LIMITATIONS - Section 17.031 E:
8D. INDUSTRIAL LAND USE AREAS
No structure shall be constructed within the area encompassed by this Final Development Plan Phase exceeding fifty (50) feet in height from the highest adjoining ground elevation along the front of the structure, except, however, that structures may be constructed to any height provided such construction is in accordance with a site development plan approved by the Howard County Planning Board.

8E. OPEN SPACE LAND USE AREAS
No height limitation is imposed upon structures constructed within Open Space Land Use Areas provided improvements thereon are constructed in accordance with a site development plan approved by the Howard County Planning Board.

9. PARKING REQUIREMENTS - Section 17.031 E:
9D INDUSTRIAL LAND USE AREAS
Parking requirements for uses permitted under this Final Development Plan Criteria shall be as follows:
a. Five (5) parking spaces shall be provided for each 1,000 square feet of net leasable area devoted to commercial retail sales uses including restaurants.
b. Two (2) parking spaces shall be provided for each 1,000 square feet of net leasable area contained within any building or buildings constructed upon land encompassed by this Final Development Plan which are devoted to office uses.
c. One parking space for each two (2) employees shall be provided for all sites devoted to industrial uses.

9E. OPEN SPACE LAND USE AREAS
No parking requirements are imposed upon any of the land within this Final Development Phase devoted to open space uses. In the event structures are proposed for construction on any portion of such land parking requirements therefore may be imposed by the Howard County Planning Board at the time a site development plan is submitted for approval. Any open space land use areas as may be required for parking purposes by the Howard County Planning Board shall be deducted from the credited open space land use tabulations and denoted as non-credited in accordance with Section 17.018 J (1) of the Howard County Zoning Regulations.

10. SETBACK PROVISIONS - Section 17.031 E:
10A GENERALLY:
a. Setbacks shall conform to the requirements of Section 6C-2 above.
b. No other setback restrictions are imposed upon land within this Final Development Plan Phase.

11. MINIMUM LOT SIZES - Section 17.031 E:
As shown on subdivision plat in accordance with minimum lot sizes as may be required by the Howard County Planning Board.

12. COVERAGE REQUIREMENTS - Section 17.031 E:
12D INDUSTRIAL LAND USE AREAS
In no event shall more than 50 percent of the land included within any lot within this Final Development Plan Phase be covered by buildings or other major structures, except in accordance with a site development plan approved by the Howard County Planning Board. No coverage limitation is imposed upon the area used for sidewalks, paved parking areas, trees and shrubbery and similar minor structures.

12E OPEN SPACE LAND USES
No more than ten percent (10%) of the land within this Final Development Plan Phase devoted to Open Space Land Uses shall be covered by buildings or major structures except in accordance with a site development plan as approved by the Howard County Planning Board. HSA Ckd 3089 7/13/2

TABULATION OF LAND USE

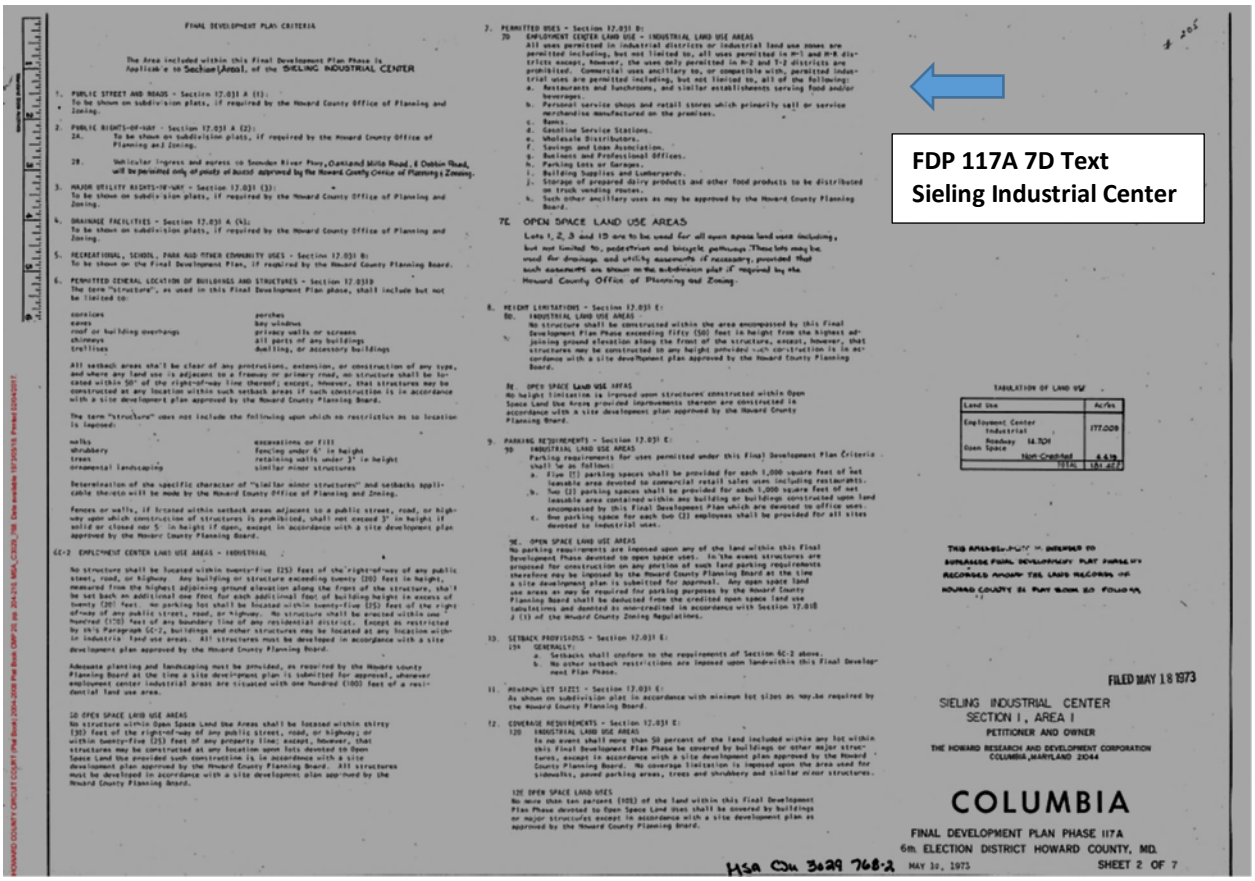
Land Use		Acres
Employment Center		
Industrial		150.251
Roadway	14.528	
Open Space		
Non-Credited		2.296
TOTAL		167.548

SIELING INDUSTRIAL CENTER
SECTION 1, AREA 1
PETITIONER AND OWNER
THE HOWARD RESEARCH AND DEVELOPMENT CORPORATION
COLUMBIA, MARYLAND 21045

COLUMBIA

FINAL DEVELOPMENT PLAN PHASE II7
6th ELECTION DISTRICT HOWARD COUNTY, MD.
MARCH ,1972 SHEET 2 OF 6

HOWARD COUNTY CIRCUIT COURT (Plat Books) 2004-2008 Plat Book CMP 20, pp. 98-103, MSA_C3089_743. Date available 10/23/2023. Printed 02/04/2017.



FINAL DEVELOPMENT PLAN CRITERIA

The Area included within this Final Development Plan Phase is Applicable to Section/Area I, of the SIELING INDUSTRIAL CENTER

1. PUBLIC STREET AND ROADS - Section 17.031 A (1):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

2. PUBLIC RIGHTS-OF-WAY - Section 17.031 A (2):
2A. To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

2B. Vehicular ingress and egress to Snowden River Pkwy., Oakland Mills Road, & Dobbin Road, will be permitted only at points of access approved by the Howard County Office of Planning & Zoning.

3. MAJOR UTILITY RIGHTS-OF-WAY - Section 17.031 (3):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

4. DRAINAGE FACILITIES - Section 17.031 A (4):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

5. RECREATIONAL, SCHOOL, PARK AND OTHER COMMUNITY USES - Section 17.031 B:
To be shown on the Final Development Plan, if required by the Howard County Planning Board.

6. PERMITTED GENERAL LOCATION OF BUILDINGS AND STRUCTURES - Section 17.031D
The term "structure", as used in this Final Development Plan phase, shall include but not be limited to:

cornices	porches
eaves	bay windows
roof or building overhangs	privacy walls or screens
chimneys	all parts of any buildings
trellises	dwelling, or accessory buildings

All setback areas shall be clear of any protrusions, extension, or construction of any type, and where any land use is adjacent to a freeway or primary road, no structure shall be located within 50' of the right-of-way line thereof; except, however, that structures may be constructed at any location within such setback areas if such construction is in accordance with a site development plan approved by the Howard County Planning Board.

The term "structure" does not include the following upon which no restriction as to location is imposed:

walks	excavations or fill
shrubbery	fencing under 6' in height
trees	retaining walls under 3' in height
ornamental landscaping	similar minor structures

Determination of the specific character of "similar minor structures" and setbacks applicable thereto will be made by the Howard County Office of Planning and Zoning.

Fences or walls, if located within setback areas adjacent to a public street, road, or highway upon which construction of structures is prohibited, shall not exceed 3' in height if solid or closed nor 5' in height if open, except in accordance with a site development plan approved by the Howard County Planning Board.

6C-2 EMPLOYMENT CENTER LAND USE AREAS - INDUSTRIAL

No structure shall be located within twenty-five (25) feet of the right-of-way of any public street, road, or highway. Any building or structure exceeding twenty (20) feet in height, measured from the highest adjoining ground elevation along the front of the structure, shall be set back an additional one foot for each additional foot of building height in excess of twenty (20) feet. No parking lot shall be located within twenty-five (25) feet of the right of-way of any public street, road, or highway. No structure shall be erected within one hundred (100) feet of any boundary line of any residential district. Except as restricted by it's Paragraph 6C-2, buildings and other structures may be located at any location within industrial land use areas. All structures must be developed in accordance with a site development plan approved by the Howard County Planning Board.

Adequate planting and landscaping must be provided, as required by the Howard County Planning Board at the time a site development plan is submitted for approval, wherever employment center industrial areas are situated with one hundred (100) feet of a residential land use area.

6D OPEN SPACE LAND USE AREAS
No structure within Open Space Land Use Areas shall be located within thirty (30) feet of the right-of-way of any public street, road, or highway; or within twenty-five (25) feet of any property line; except, however, that structures may be constructed at any location upon lots devoted to Open Space Land Use provided such construction is in accordance with a site development plan approved by the Howard County Planning Board. All structures must be developed in accordance with a site development plan approved by the Howard County Planning Board.

7. PERMITTED USES - Section 17.031 D:
7D EMPLOYMENT CENTER LAND USE - INDUSTRIAL LAND USE AREAS
All uses permitted in industrial districts or industrial land use zones are permitted including, but not limited to, all uses permitted in M-1 and M-2 districts except, however, the uses only permitted in M-2 and T-2 districts are prohibited. Commercial uses ancillary to, or compatible with, permitted industrial uses are permitted including, but not limited to, all of the following:
a. Restaurants and lunchrooms, and similar establishments serving food and/or beverages.
b. Personal service shops and retail stores which primarily sell or service merchandise manufactured on the premises.
c. Banks.
d. Gasoline Service Stations.
e. Wholesale Distributors.
f. Savings and Loan Association.
g. Business and Professional Offices.
h. Parking Lots or Garages.
i. Building Supplies and Lumberyards.
j. Storage of prepared dairy products and other food products to be distributed on truck vending routes.
k. Such other ancillary uses as may be approved by the Howard County Planning Board.

7E OPEN SPACE LAND USE AREAS
Lots 1, 2, 3 and 15 are to be used for all open space land uses including, but not limited to, pedestrian and bicycle pathways. These lots may be used for drainage, and utility easements if necessary, provided that such easements are shown on the subdivision plat if required by the Howard County Office of Planning and Zoning.

8. HEIGHT LIMITATIONS - Section 17.031 E:
8D. INDUSTRIAL LAND USE AREAS
No structure shall be constructed within the area encompassed by this Final Development Plan Phase exceeding fifty (50) feet in height from the highest adjoining ground elevation along the front of the structure, except, however, that structures may be constructed to any height provided such construction is in accordance with a site development plan approved by the Howard County Planning Board.

8E. OPEN SPACE LAND USE AREAS
No height limitation is imposed upon structures constructed within Open Space Land Use Areas provided improvements thereon are constructed in accordance with a site development plan approved by the Howard County Planning Board.

9. PARKING REQUIREMENTS - Section 17.031 E:
9D INDUSTRIAL LAND USE AREAS
Parking requirements for uses permitted under this Final Development Plan Criteria shall be as follows:
a. Five (5) parking spaces shall be provided for each 1,000 square feet of net leasable area devoted to commercial retail sales uses including restaurants.
b. Two (2) parking spaces shall be provided for each 1,000 square feet of net leasable area contained within any building or buildings constructed upon land encompassed by this Final Development Plan which are devoted to office uses.
c. One parking space for each two (2) employees shall be provided for all sites devoted to industrial uses.

9E. OPEN SPACE LAND USE AREAS
No parking requirements are imposed upon any of the land within this Final Development Phase devoted to open space uses. In the event structures are proposed for construction on any portion of such land parking requirements therefore may be imposed by the Howard County Planning Board at the time a site development plan is submitted for approval. Any open space land use areas as may be required for parking purposes by the Howard County Planning Board shall be deducted from the credited open space land use tabulations and denoted as non-credited in accordance with Section 17.018 J (1) of the Howard County Zoning Regulations.

10. SETBACK PROVISIONS - Section 17.031 E:
10A GENERALLY:
a. Setbacks shall conform to the requirements of Section 6C-2 above.
b. No other setback restrictions are imposed upon landwithin this Final Development Plan Phase.

11. Minimum LOT SIZES - Section 17.031 E:
As shown on subdivision plat in accordance with minimum lot sizes as may be required by the Howard County Planning Board.

12. COVERAGE REQUIREMENTS - Section 17.031 E:
12D INDUSTRIAL LAND USE AREAS
In no event shall more than 50 percent of the land included within any lot within this Final Development Plan Phase be covered by buildings or other major structures, except in accordance with a site development plan approved by the Howard County Planning Board. No coverage limitation is imposed upon the area used for sidewalks, paved parking areas, trees and shrubbery and similar minor structures.

12E OPEN SPACE LAND USES
No more than ten percent (10%) of the land within this Final Development Plan Phase devoted to Open Space Land Uses shall be covered by buildings or major structures except in accordance with a site development plan as approved by the Howard County Planning Board.

HSA Cm 3029 768-2

FDP 117A 7D Text
Sieling Industrial Center

TABULATION OF LAND USE

Land Use	Ac/Lo
Employment Center Industrial	177.009
Roadway 14.704 Open Space	
Non Credited	6.619
TOTAL	183.628

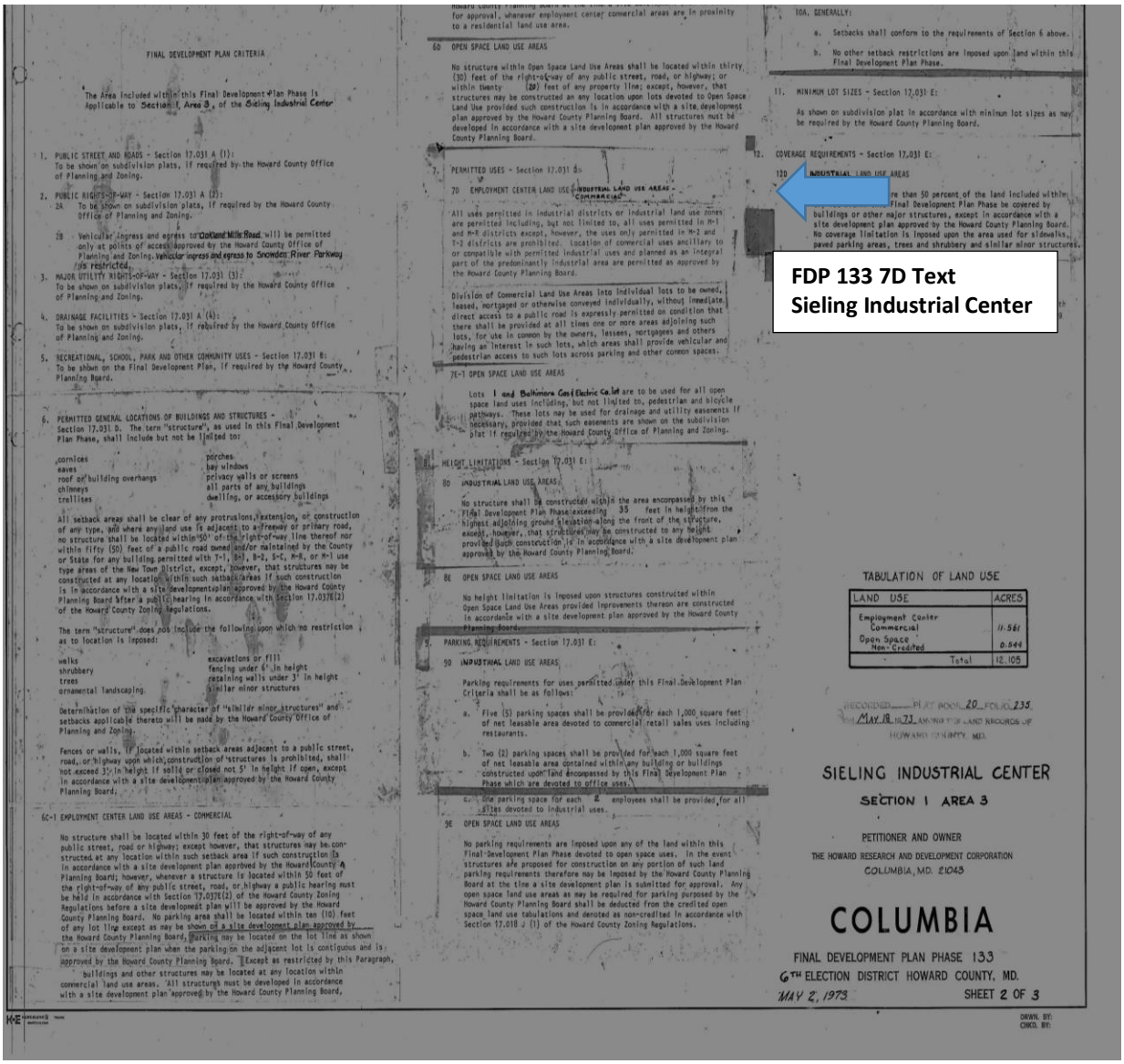
THIS AMENDMENT IS ADDENDUM TO SUBMISSION FINAL DEVELOPMENT PLAT PHASE I AS RECORDED AMONG THE LAND RECORDS OF HOWARD COUNTY IN PLAT BOOK 20 FOLIO 44

FILED MAY 18 1973

SIELING INDUSTRIAL CENTER
SECTION 1, AREA 1
PETITIONER AND OWNER
THE HOWARD RESEARCH AND DEVELOPMENT CORPORATION
COLUMBIA, MARYLAND 21044

COLUMBIA

FINAL DEVELOPMENT PLAN PHASE 117A
6th ELECTION DISTRICT HOWARD COUNTY, MD.
MAY 30, 1973 SHEET 2 OF 7



FINAL DEVELOPMENT PLAN CRITERIA

The Area included within this Final Development Plan Phase is Applicable to Section 1, Area 3, of the Sieling Industrial Center

1. PUBLIC STREET AND ROADS - Section 17.031 A (1):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

2. PUBLIC RIGHTS-OF-WAY - Section 17.031 A (2):
2A To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

2B Vehicular ingress and egress to Oakland Mills Road will be permitted only at points of access approved by the Howard County Office of Planning and Zoning. Vehicular ingress and egress to Snowden River Parkway is restricted.

3. MAJOR UTILITY RIGHTS-OF-WAY - Section 17.031 (3):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

4. DRAINAGE FACILITIES - Section 17.031 A (4):
To be shown on subdivision plats, if required by the Howard County Office of Planning and Zoning.

5. RECREATIONAL, SCHOOL, PARK AND OTHER COMMUNITY USES - Section 17.031 B:
To be shown on the Final Development Plan, if required by the Howard County Planning Board.

6. PERMITTED GENERAL LOCATIONS OF BUILDINGS AND STRUCTURES - Section 17.031 D. The term "structure", as used in this Final Development Plan Phase, shall include but not be limited to:

cornices	porches
eaves	bay windows
roof of building overhangs	privacy walls or screens
chimneys	all parts of any buildings
trellises	dwelling, or accessory buildings

All setback areas shall be clear of any protrusions, extension, or construction of any type, and where any land use is adjacent to a freeway or primary road, no structure shall be located within 50' of the right-of-way line thereof nor within fifty (50) feet of a public road owned and/or maintained by the County or State for any building permitted with R-1, R-2, B-2, S-C, M-S, or M-1 use type areas of the New Town District, except, however, that structures may be constructed at any location within such setback areas if such construction is in accordance with a site development plan approved by the Howard County Planning Board after a public hearing in accordance with Section 17.037E(2) of the Howard County Zoning Regulations.

The term "structure" does not include the following upon which no restriction as to location is imposed:

walks	excavations or fill
shrubbery	fencing under 6' in height
trees	retaining walls under 3' in height
ornamental landscaping	similar minor structures

Determination of the specific character of "similar minor structures" and setbacks applicable thereto will be made by the Howard County Office of Planning and Zoning.

Fences or walls, if located within setback areas adjacent to a public street, road, or highway upon which construction of structures is prohibited, shall not exceed 3½ in height if solid or closed nor 5' in height if open, except in accordance with a site development plan approved by the Howard County Planning Board.

GC-1 EMPLOYMENT CENTER LAND USE AREAS - COMMERCIAL

No structure shall be located within 30 feet of the right-of-way of any public street, road or highway; except however, that structures may be constructed at any location within such setback area if such construction is in accordance with a site development plan approved by the Howard County Planning Board; however, whenever a structure is located within 50 feet of the right-of-way of any public street, road, or highway a public hearing must be held in accordance with Section 17.037E(2) of the Howard County Zoning Regulations before a site development plan will be approved by the Howard County Planning Board. No parking area shall be located within ten (10) feet of any lot line except as may be shown on a site development plan approved by the Howard County Planning Board. Parking may be located on the lot line as shown on a site development plan when the parking on the adjacent lot is contiguous and is approved by the Howard County Planning Board. Except as restricted by this Paragraph, buildings and other structures may be located at any location within commercial land use areas. All structures must be developed in accordance with a site development plan approved by the Howard County Planning Board, for approval, wherever employment center commercial areas are in proximity to a residential land use area.

6G OPEN SPACE LAND USE AREAS

No structure within Open Space Land Use Areas shall be located within thirty (30) feet of the right-of-way of any public street, road, or highway; or within twenty (20) feet of any property line; except, however, that structures may be constructed at any location upon lots devoted to Open Space Land Use provided such construction is in accordance with a site development plan approved by the Howard County Planning Board. All structures must be developed in accordance with a site development plan approved by the Howard County Planning Board.

7. PERMITTED USES - Section 17.031 D:

7D EMPLOYMENT CENTER LAND USE AREAS - INDUSTRIAL LAND USE AREAS - COMMERCIAL

All uses permitted in industrial districts or industrial land use zones are permitted including, but not limited to, all uses permitted in M-1 and M-R districts except, however, the uses only permitted in M-2 and I-2 districts are prohibited. Location of commercial uses ancillary to or compatible with permitted industrial uses and planned as an integral part of the predominantly industrial area are permitted as approved by the Howard County Planning Board.

Division of Commercial Land Use Areas into individual lots to be owned, leased, mortgaged or otherwise conveyed individually, without immediate direct access to a public road is expressly permitted on condition that there shall be provided at all times one or more areas adjoining such lots, for use in common by the owners, lessees, mortgagees and others having an interest in such lots, which areas shall provide vehicular and pedestrian access to such lots across parking and other common spaces.

7E-1 OPEN SPACE LAND USE AREAS

Lots 1 and Baltimore Gas & Electric Co. lot are to be used for all open space land uses including, but not limited to, pedestrian and bicycle pathways. These lots may be used for drainage and utility easements if necessary, provided that such easements are shown on the subdivision plat if required by the Howard County Office of Planning and Zoning.

8. HEIGHT LIMITATIONS - Section 17.031 E:

8D INDUSTRIAL LAND USE AREAS

No structure shall be constructed within the area encompassed by this Final Development Plan Phase exceeding 35 feet in height from the highest adjoining ground elevation along the front of the structure, except, however, that structures may be constructed to any height provided such construction is in accordance with a site development plan approved by the Howard County Planning Board.

8E OPEN SPACE LAND USE AREAS

No height limitation is imposed upon structures constructed within Open Space Land Use Areas provided improvements thereon are constructed in accordance with a site development plan approved by the Howard County Planning Board.

9. PARKING REQUIREMENTS - Section 17.031 E:

9D INDUSTRIAL LAND USE AREAS

Parking requirements for uses permitted under this Final Development Plan Criteria shall be as follows:

a. Five (5) parking spaces shall be provided for each 1,000 square feet of net leasable area devoted to commercial retail sales uses including restaurants.

b. Two (2) parking spaces shall be provided for each 1,000 square feet of net leasable area contained within any building or buildings constructed upon land encompassed by this Final Development Plan Phase which are devoted to office uses.

c. One parking space for each 2 employees shall be provided for all sites devoted to industrial uses.

9E OPEN SPACE LAND USE AREAS

No parking requirements are imposed upon any of the land within this Final Development Plan Phase devoted to open space uses. In the event structures are proposed for construction on any portion of such land parking requirements therefore may be imposed by the Howard County Planning Board at the time a site development plan is submitted for approval. Any open space land use areas as may be required for parking purposed by the Howard County Planning Board shall be deducted from the credited open space land use tabulations and denoted as non-credited in accordance with Section 17.018 J (1) of the Howard County Zoning Regulations.

10A. GENERALLY:

a. Setbacks shall conform to the requirements of Section 6 above.

b. No other setback restrictions are imposed upon land within this Final Development Plan Phase.

11. MINIMUM LOT SIZES - Section 17.031 E:

As shown on subdivision plat in accordance with minimum lot sizes as may be required by the Howard County Planning Board.

12. COVERAGE REQUIREMENTS - Section 17.031 E:

12D INDUSTRIAL LAND USE AREAS

re than 50 percent of the land included within Final Development Plan Phase be covered by buildings or other major structures, except in accordance with a site development plan approved by the Howard County Planning Board. No coverage limitation is imposed upon the area used for sidewalks, paved parking areas, trees and shrubbery and similar minor structures.

FDP 133 7D Text
Sieling Industrial Center

TABULATION OF LAND USE

LAND USE	ACRES
Employment Center Commercial	11.561
Open Space Non-Credited	0.544
Total	12.105

RECORDED PLAT BOOK 20 FOLIO 235
MAY 8, 1973 AMONG THE LAND RECORDS OF HOWARD COUNTY, MD.

SIELING INDUSTRIAL CENTER

SECTION 1 AREA 3

PETITIONER AND OWNER

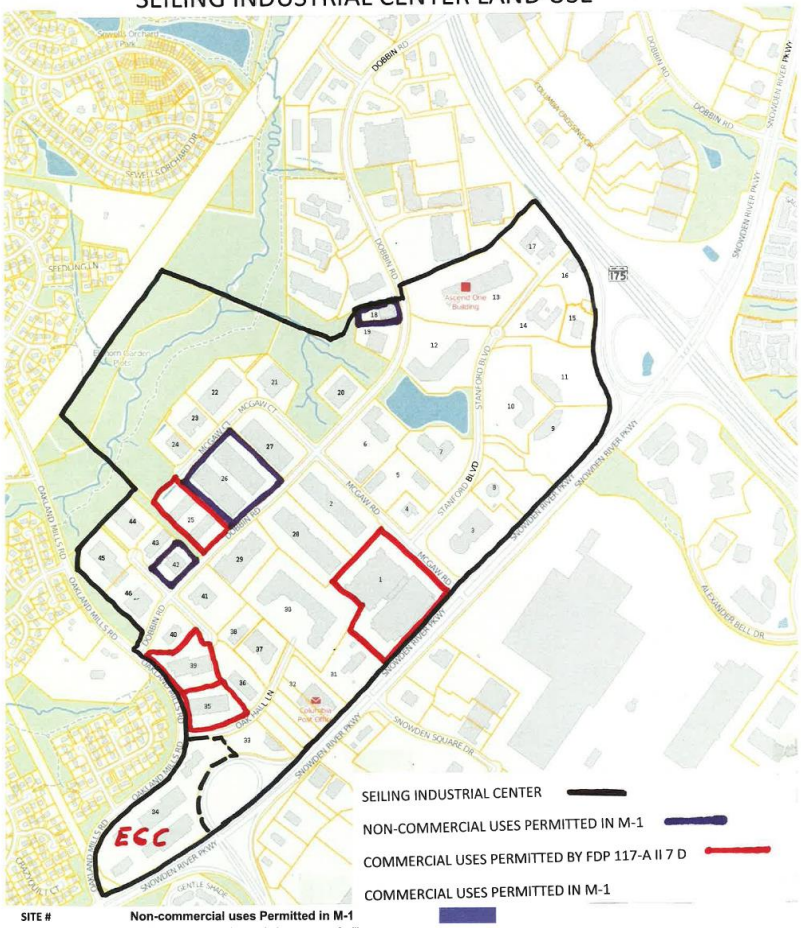
THE HOWARD RESEARCH AND DEVELOPMENT CORPORATION
COLUMBIA, MD. 21043

COLUMBIA

FINAL DEVELOPMENT PLAN PHASE 133
6TH ELECTION DISTRICT HOWARD COUNTY, MD.
MAY 2, 1973 SHEET 2 OF 3

DRWN. BY:
CHKD. BY:

SEILING INDUSTRIAL CENTER LAND USE



SITE #	Non-commercial uses Permitted in M-1
18	Contractor's office and outdoor or indoor storage facility.
26,42	Warehouses, truck terminals, and moving and storage establishments.

SITE #	Commercial uses Permitted by FDP 117-A-II 7 D.
1	Food stores. FDP-117 A-II 7 D i
25,34,35,39	Personal service establishments. FDP-117 A-II 7 D b
34	Specialty stores. Seiling Industrial Center Sec 1 Area 3 Land Use Employment Center Commercial

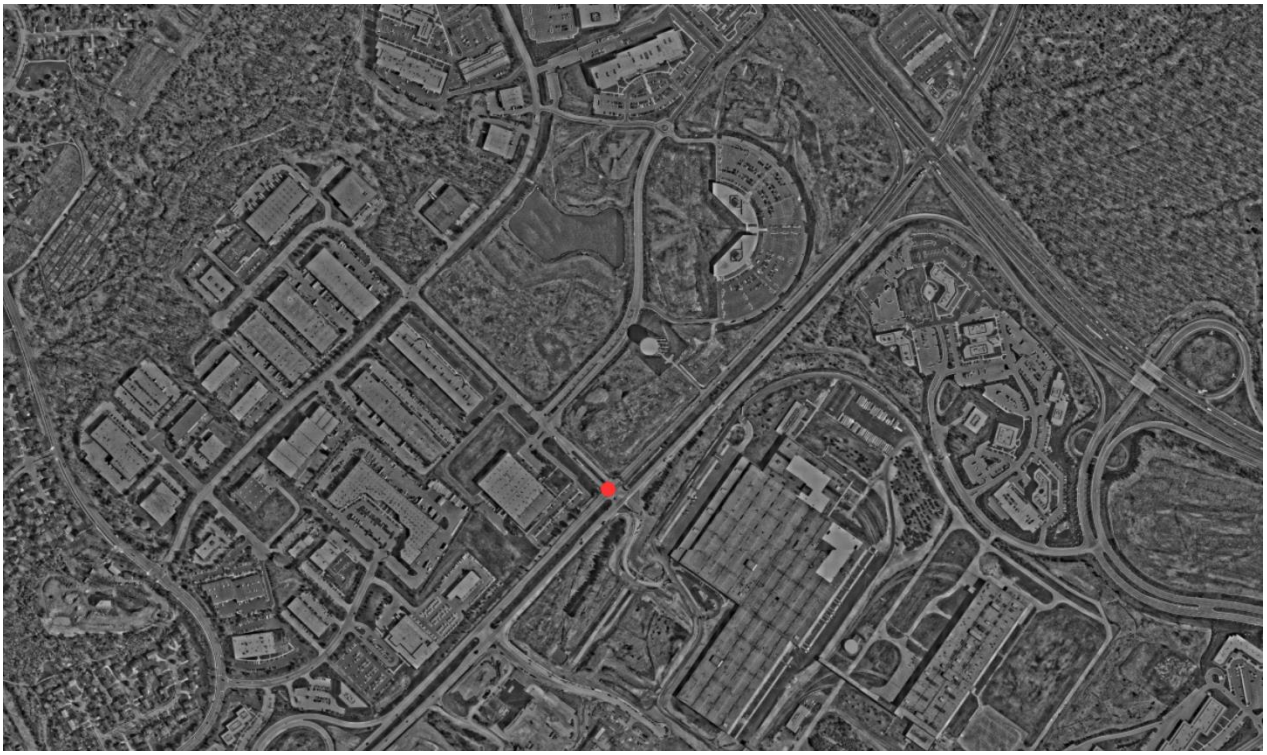
SITE #	Commercial uses Permitted in M-1
20	Athletic Facility, Commercial
4	Banks, savings and loan associations, Also enumerated on FDP-117-A-II 7 D c & f
34	Child day care centers and nursery schools.
2	Furniture stores.
8,13,31,32	Government structures, facilities and uses, including public schools and colleges.
14,17	Hotels, motels, conference centers and country inns.
21,22,36	Motor vehicle, construction equipment and farm equipment maintenance, repair and painting facilities.
3	Motor vehicle, construction equipment and farm equipment sales and rentals.
7,10,11,12,15	Offices, professional and business. Also enumerated on FDP-117-A-II 7 D g
19,23,24,25,28,29,30,33,37,38,40,43,44,45,46	
20	Religious facilities, structures and land used primarily for religious activities.
5,16	Restaurants, carryout.
5,6,12,16	Restaurants, standard, and beverage establishments. FDP-117 A-II 7 D a
41	Schools, commercial.
6	Schools, private academic, including colleges and universities.

1964 Columbia "Plan" Presentation

1964 Columbia "Plan" Presentation
Plan for Industry

1970

1977



1993

1998

2016

II.
Testimony of Protestant Christopher Alleva

Protestant Christopher Alleva argued through his testimony for the denial of the application in pertinent part because none of what he identified as the five Employment Center Industrial FDPs "zone" for a liquor store land use. This argument lacks merit for two key reasons. First, the "comparative" FDP land use argument effectively sets up an impermissible, extra-legislative, subjective standard to support denial. Second, the land use text criteria specific to each FDP are the sole and controlling "zoning regulations," which in this appeal is text criteria 7D.

HCZR § 125.0.D.2 charges the Planning Board, and the Hearing Examiner on appeal, to properly cabin the evaluation of a proposed FDP amendment to the applicable land use text criteria**.** When considering an FDP land use text amendment, the relevant zoning geography is the land area within and controlled by the FDP, not the larger zoning geography of New Town or other "industrial use" FDPs. This larger geography was previously delimited by the HCZR procedures for establishing a New Town zoning district through Preliminary Development and Comprehensive Sketch Plans. When mindful of their limited charge under HCZR § 125.0.D.2, the Planning Board has approved FDP-specific amendments that might be inappropriate in the land use geography of a different FDP, including:

- FDP 25-A-IV. Oakland Ridge Industrial Park, Sec. 2, portion of Parcel A, Sec. 3 - specifically permitting a religious facility **within the limits of an existing structure**
- FDP 3-A. Oakland Ridge Industrial Park, Sec. 1, limiting certain uses on specific lots and specifically prohibiting a liquor store
- FDP-184- A-IV. Rivers Corporate Park, which through FDP 184, specifically permitted 25 land uses. The 4th FDP amendment added religious activities
- FDP 184-A-V. Rivers Corporate Park, Sec. 1 Areas 1 & 2, adding 7.D.a Permitted uses on Parcel F-3 to include **animal hospitals, completely enclosed**

- FDP 239. Snowden River Business Park Sec. 1, Area 1, specifically permitting 12 uses, including specialty retail stores, residential convents and monasteries, museums, nursing homes, "legitimate" and dinner theaters, service agencies, and housing for the elderly

Note the above highlighted land uses permitted by FDP amendment have tight physical delimitations or structural locational confines: a religious facility "within the limits of an existing structure" and a "completely enclosed" animal hospital, the purpose of which is to ensure compatibility with other FDP land uses. Science Fiction is similarly proposing a tightly delimited, locationally confined land use.

III.
The Legal Effect of the General Plan

Zoning "harmony" with the general plan. Zoning "conformity" with the general plan. Zoning "consistency" with the general plan. The regulated relationship, or more aptly, the legal tension, between zoning and a general plan has a history going back to the earliest zoning regulations (the 1916 New York Zoning Ordinance), the 1926 Standard Model Zoning Enabling Act, and the 1928 Standard City Planning Enabling Act, three keystones of American zoning and planning law.[6]

Land use scholars for decades have interrogated the planning jurisprudence of regulatory policy consistency between zoning actions and a general plan and its policies.[7] For Maryland plan

[6] On the two enabling acts, see Ruth Knack, Stuart Meck AICP, & Israel Stollman, Land Use Law & Zoning Digest, Volume 48, 1996 - Issue 2: Cases 37-74.

[7] The definitive law review article on the subject is Daniel R. Mandelker, The Role of the Local Comprehensive Plan in Land Use Regulation, 74 MICH. L. REV. 899 (1976). See also Stuart Meck, The Legislative Requirement that Zoning and Land Use Controls Be Consistent with an Independently Adopted Local Comprehensive Plan: A Model Statute, 3 WASH. U. J. L. & POL'Y 295 (2000) and Charles M. Haar, "In Accordance with a Comprehensive Plan," 68 HARV. L. REV. 1154 (1955).

jurisprudence, see *Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md.App. 607, 701 A.2d 879 (1997) and *People's Counsel v. Beachwood*, 107 Md.App. 627, 670 A.2d 484 (1996). In Maryland, this planning jurisprudence and commentary must reckon with the state's delegations of state police power control of zoning to political subdivisions: municipalities, Baltimore City, non-charter counties, and charter counties.[8] Understanding the historical statutory constraints of these delegations is essential because they set the conditions under which state or local law governs "consistency" with a plan for different categories of zoning actions; i.e., the controlling state or local law requires the action to be consistent with the plan, guided by the plan, or reviewed independently of the plan. This relationship constitutes the legislative policy nexus between specific types of zoning decision-making and a general plan.

The Maryland General Assembly (the state legislature) enacted its first zoning enabling act in 1927, codified as MD. ANN. CODE Article 66B.Land Use. Art. 66B delegated zoning powers to cities and incorporated towns of more than 10,000 inhabitants. In 1933, the General Assembly enacted the Maryland Zoning and Planning Enabling Act, amending Art. 66B to add provisions authorizing municipalities to enact and administer planning, zoning and subdivision control regulations. This delegation of power tightly regulated and restricted what these political subdivisions may do in the process of zoning. In 1970, the General Assembly recodified Art. 66B and added a definition of "special exception": "`[a] grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain

[8] The state law applicable to Baltimore City, Montgomery County, and Prince George's County is not referenced here. This historical overview is necessarily telescoped. The Hearing Examiner intends this section as a "primer."

conditions governing special exceptions as detailed in the zoning ordinance exist, that the use *conforms to the plan and is compatible* with the existing neighborhood." Emphasis added.

A third historical statute implicating local zoning and planning powers was the 1918 Express Powers Act delegating local legislative power exercised by a charter county (counties with a ratified charter form of government). As codified, then Md. Code Article 25A § 5(X) broadly authorized charter counties to enact zoning laws. *Turf Val. Associates v. Zoning Bd. of Howard County*, 262 Md. 632, 278 A.2d 574 (1971) overviews the statutory shift in Howard County's zoning and planning powers when in 1968 the county ratified the charter form of government, making Art. 25A, § 5(X) the basis of the county's power to zone.[9]

In 1992, the General Assembly enacted the Economic Growth, Resource Protection, and Planning Act of 1992 (the 1992 Growth Act). Art 66B § 4.09 codified the 1992 act requirement that "a local jurisdiction shall ensure that the implementation of the provisions of the [comprehensive] plan...are achieved through the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are consistent with the plan." The 1992 Growth Act also required all local planning commissions to draft comprehensive plans containing certain prescribed elements ("visions") and to review the plan periodically.[10]

Then came the Court of Appeals decision in *Trail v. Terrapin Run*, 943 A.2d 1192, 403 Md.

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[9] Article 25A § 5(X) is now codified in Local Government Article § 10-324.

[10] The General Assembly in 2013 revised certain statutory comprehensive plan review requirements.

523 (2008).[11] The Terrapin Run Court held the special exception "conforms to the plan" language in the 1992 Growth Act and in Art. 66B was not state mandate commanding a special exception's harmony or conformity with a general plan. Rather, under state law a general plan is a guide in the zoning process unless a local zoning ordinance provides otherwise because Art. 66B does not mandate consistency. This judicial construction propelled the Court's affirmation of the (non-charter) Alleghany County Board of Zoning Appeals action approving a special exception petition for a 4,300 dwelling planned development in an agricultural zoning district. The State of Maryland and its Department of Planning, agitated by the *Terrapin Run* decision and wary it would be misinterpreted as applicable to all local government zoning actions, drafted corrective legislation known as the Smart, Green, and Growing – Smart and Sustainable Growth Act of 2009, which the General Assembly enacted through Senate Bill 280 and House Bill 297.

The law requires non-charter counties and municipalities, if they elect to exercise delegated zoning and planning powers, to comport with statutory "consistency" mandates contained in the definitions of "consistency," and zoning "action" and expressly details what actions require consistency with a comprehensive plan.[12] Pivotally, charter counties that have

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[11] *Trail v. Terrapin Run* provides a sustained analysis of the legislative history of the "consistency" requirement. The State's disputation of this analysis and the 2009 corrective legislation is essayed in Shelley Wasserman and Richard Hall, "*Terrapin Run* a Year Later," Planning & Environmental Law, September 2008, Vol. 61, No. 99, pg. 11.

[12] The 2009 Act is now codified in main part in Title 1, Subtitle 3 of the Land Use Article. Sec. 1-301 defines "action" as: (1) the adoption of a local law or regulation concerning: (i) a special exception under § 1–101(p) of this title (Definitions – "Special exception"); or (ii) plan implementation and review under § 1–417 of this title or § 3–303 of this article; (2) a requirement under § 9–505(a)(1) of the Environment Article and § 4–415(c) of the Local Government Article (Municipal annexation); or (3) a required finding under §§ 9–506(a)(1) and 9–507(b)(2) of the Environment Article (Water and sewer plan review). Sec. 1-303 defines "consistency": [w]hen a provision in a statute listed under § 1-302 of this subtitle requires an action to be "consistent with" or have "consistency with" a comprehensive plan,

elected to exercise planning and zoning powers are not subject to these "consistency" directives. They are subject only to these current provisions of the Land Use Article.

- § 1-101, defining "plan," "priority funding area," and "sensitive area"
- § 1.01, the visions that must be implemented in all comprehensive plans
- § 1-201, concerning the "visions" that must be implemented in all comprehensive plans
- § 1-206, establishing certain educational requirements for planning commissioners and members of boards of appeal
- § 1-207 and § 1-208, concerning certain annual reporting requirements
- *Title 1, Subtitle 3, requiring consistency between comprehensive plan & local implementation of plan*
- Title 1, Subtitle 4, Parts II and III, regarding requirement elements of a comprehensive plan and plan implementation
- Title 1, Subtitle 5, regarding growth tiers
- § 4-104(b), concerning provision for bicycle parking
- § 4-208, concerning parking space provisions in accordance with the Maryland Accessibility Code
- § 4-210, concerning permits and variances for solar panels
- § 5-102(d), concerning subdivision regulations related to easements for burial sites
- § 5-104, concerning major subdivision review in Tier III areas
- Title 7, Subtitle 1 and 2, regarding Development Mechanisms and Transfer of Development Rights
- Title 7, Subtitle 3, concerning Development Rights and Responsibilities Agreements, excepting Montgomery and Prince George's Counties
- Title 7, Subtitle 4, concerning inclusionary zoning
- § 8-401, regarding conversion of overhead facilities
- Title 11, Subtitle 2, concerning civil penalties for zoning violations
- Certain single-county provisions for Baltimore, Howard and Talbot Counties

Emphasis added. In Howard County, then, state planning law mandates zoning action consistency with the general plan only when the county legislature implements the plan through the adoption of a comprehensive zoning ordinance – an "action." When Howard County enacted the zoning text in the 2013 Comprehensive Zoning Plan, it was implementing the general plan subject to the statutory mandate that this text be consistent with PlanHOWARD 2030 policies.[13]

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the term shall mean an action taken that will further, and not be contrary to, the following items in the plan: (1) policies; (2) timing of the implementation of the plan; (3) timing of development; (4) timing of rezoning; (5) development patterns; (6) land uses; and (7) densities or intensities.

[13] The Hearing Examiner notes here the requirement of consistency of ordinances with the local comprehensive plan in charter counties was already required in the 1992 Growth Act, to be implemented by July 1, 1997.

How, then, does state law plan "consistency" operate in relation to Science Fiction's FDP amendment – a zoning action - before the Planning Board and the Hearing Examiner on appeal? Because Howard County is a charter form of government electing to exercise zoning and planning power, it has no applicability – state planning law consistency is not tested at the site-specific zoning action level. Consequently, in the instant appeal we look to the New Town zoning district regulations contained in HCZR § 125.0 to apprehend how the county exercises its zoning and planning power.[14]

Pursuant to HCZR §§ 125.0.B.1 & 3, the general plan is consulted when the "beneficial owner" petitions the Zoning Board to designate the property described in the petition as an NT District.

> *The Zoning Board shall consider the following guides and standards in reviewing the petition: the appropriateness of the location of the NT District as evidenced by the General Plan for Howard County*; the effect of such District on properties in the surrounding vicinity; traffic patterns and their relation to the health, safety and general welfare of the County; the physical layout of the County; the orderly growth of the County; the availability of essential services; the most appropriate use of the land; the need for adequate open spaces for light and air; the preservation of the scenic beauty of the County; the necessity of facilitating the provision of adequate community utilities and facilities such as public transportation, fire-fighting equipment, water, sewerage, schools, parks and other public requirements, population trends throughout the County and surrounding metropolitan areas and more particularly within the area considered; the proximity of large urban centers to the proposed NT District; the road building and road widening plans of the State and County, particularly for the area considered; the needs of the County as a whole and the reasonable needs of the particular area considered; the character of the land within the District and its peculiar suitability for particular uses; and such other matters relevant and pertinent to the relationship of the District to the comprehensive zoning plan of the area.

Even here, the general plan is a "guide and standard." Consistency is not compelled. (Similarly,

[14] The New Town zoning district contains a subset of regulations applicable to Downtown Columbia not reviewed in this decision and order.

the HCZR § 131.0.B.1 general conditional use approval standard legislates only that the Conditional Use plan be in "harmony" with the land uses and policies in the Howard County General Plan which can be related to the proposed use. This "harmony" standard assigns the general plan "guide" status.)

IV.
Economic Competition

To the extent the Planning Board considered economic competition in its November 4, 2016 denial, meaning the impact of the proposed FDP amendment on other liquor stores, the Board's action was arbitrary and capricious. *Kreatchman v. Ramsburg, et al*., 224 Md. 209, 219-220, 167 A.2d 345 (1961) (holding a liquor store owner in the Normandy Heights shopping center whose sole reason for objecting to a Zoning Board action was prevention of competition from a proposed shopping center further west on US 40 was not aggrieved when "[h]is only concern is with the threat of competition from a possible package liquor store in the [other] shopping center. It is to protect himself against that possible competition that he seeks the protection of the zoning regulations.") Appellant Exhibit 6 is a Hearing Examiner decision and order addressing the inapplicability of economic competition considerations in zoning actions.

V.
The FDP 117-A-III Application, the DPZ TSR Evaluation, and Recommendations, & Approved 7D Text Criterion Subsection ".m"

Science Fiction's FDP amendment application states in the proposal summary section the purpose of the amendment is to "clarify that a liquor store does not have to be contained within the grocery store to be a permitted use." To this end, it proposes to amend the 7D land use text

criteria with this language:

> l. Full service food and grocery store, and related uses, of 100,000 square feet or more*, including a liquor store separate and not part of the food and grocery store but on the same property.*

Emphasis added. FDP 117-A-III Application, pg. 1. DPZ evaulated the proposed amendment in the TSR to conclude the request is more than a "clarification" and should be "viewed as a request to amend the current FDP and clearly state that a liquor store is a use that is supportive of a full service food and grocery store, but for State regulations, it cannot be contained within a grocery store." DPZ recommends the FDP amendment be approved but with a new subsection ".m" language including a liquor store as a separate use. Appellant Exhibit 3, TSR, pg. 3.

> L. [sic]Full service food and grocery store, and related uses, of 100,000 square feet or more.
> M. [sic] Liquor store - located on the same property as a full service food and grocery store, but separate and not directly accessible to that store.

While concurring with DPZ's evaluation of the proposal as a separate "related" use, but for reasons rooted in regulatory drafting principles and conventions, the Hearing Examiner in approving the requested amendment is doing so subject to revised subsection ".m" language. The Hearing Examiner does not consider the Planning Board's May 19, 2017 subsection ".m" modification language, being beyond the scope of the limited remand.

The Hearing Examiner therefore approves the requested FDP amendment through the addition of new subsection ".m" as follows.

> m. Liquor store - located on the full service food and grocery store property and partitioned from the service food and grocery store building. The liquor store has an independent entrance for deliveries and customers. "Partitioned" means walls or other physical divisions separating the full service food and grocery store and liquor store uses.

A Final Note

The Hearing Examiner appreciates a lengthening number of FDP text amendments and other Planning Board-required reviews are sometimes disfavored for not being a "true" employment center industrial land use or for other extra-legislative considerations. (On August 17, 2017, the Planning Board approved an amendment to the text criteria of FDP 36-A, Oakland Mills Industrial Park, to accommodate a new courthouse and courthouse related uses. The underlying M-1 zones permits "government structures, facilities and uses" as a matter of right.) This decision and order has sought to clarify the FDP process and the zoning/land use boundaries of "light industrial land uses" for future guidance to the Planning Board and the county's zoning rewrite.

At one point during the appeal hearing, I questioned Former Planning Director Joe Rutter about how "changes in use" are managed in the New Town zoning district, "changes in use" being a core element of zoning decision-making and administration.[15] Mr. Rutter's response was that my question went to the heart of the FDP process. HCZR § 125.0.A.8 states, "[s]ubject to any additional specific permitted uses of land which may be designated on an approved Final Development Plan pursuant to Section 125.0.C. of these Regulations, if an approved Final Development Plan designates POR, B-1, B-2, SC or M-1 District uses or any combination thereof for a specific area, then the general permitted uses for such area shall be those uses permitted as a matter of right in those districts. However, the bulk regulations for those districts regulating

[15] This "broadness" in the administration of FDP "changes in use" is not unique. There are parallel "change in use" regulations in the HCZR for conditional and nonconforming uses.

the location of structures, height limitations, setback provisions, minimum lot sizes, and coverage requirements shall not apply inasmuch as the controls therefore shall be included in the Final Development Plan approved by the Planning Board as provided under these Regulations." HCZR § 125.0.D.6 further instructs us that after an FDP is recorded among the Land Records of Howard County, "no new structure shall be built, no new additions to existing structures made, and no change in primary use different from that permitted in the Final Development Plan or Final Development Plan Amendment except by an amendment to the Final Development Plan." What is a "general permitted use?" What is a "primary" use? How is a "change in primary use effected different from that permitted" in the FDP measured? Who determines when there is a "change in primary use different from that permitted"? How is the community informed of any DPZ construction and application of these terms? How has the Planning Board construed and applied these terms? Notwithstanding the larger issue of Columbia as a planned community, or that economic competition may never be a factor in zoning actions, a background issue beyond the scope of this appeal is the administration, review, and approval of nonresidential New Town land use/zoning changes in use through site development plans, site development plan redlines, and FDP applications or amendments.

Even so, neither the Planning Board nor the Hearing Examiner may "write" zoning policy through their decision-making. Our narrow assignment under state and local law is to apply zoning law to specific requests. Only the county legislature writes zoning policy.

ORDER

Based upon the foregoing, it is this **22nd Day of August 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the FDP-117-A-III application of Appeal of Science Fiction, LLC to amend FDP-117-A-II by adding new subsection ".m" to the § 7D Permitted Uses text criteria, is hereby **APPROVED.**

> m. Liquor store - located on the full service food and grocery store property and partitioned from the full service food and grocery store building. The liquor store has an independent entrance for deliveries and customers. "Partitioned" means walls or other physical divisions separating the full service food and grocery store and liquor store uses.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.