

Jesse Tubb,

PETITIONER

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BEFORE THE ZONING BOARD

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OF HOWARD COUNTY

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ZONING BOARD CASE NO. 1092M

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DECISION AND ORDER

On November 30, 2011, the Zoning Board of Howard County, Maryland considered the petition of Jesse Tubb ("Mr. Tubb") to amend the Zoning Map of Howard County so as to reclassify from the CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) District to the R-MH (Residential: Mobile Home) District, 4,266 square feet of land located on the east side of US 1, approximately 530 feet north of Gatewood Drive, identified as Tax Map 43, Grid 20, Parcel 506, Lot 4; 8283 Washington Boulevard in the 6th Election District of Howard County, Maryland.

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. The Department of Planning and Zoning and the Planning Board recommended that the subject property be rezoned to R-MH.

Mr. Tubb represented himself. No residents appeared in opposition to the proposed rezoning. Eileen Powers, Esquire, Zoning Counsel, appeared pursuant to Section 16.1000 of the Howard County Code, but did not oppose the proposed rezoning.

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. Mr. Tubb adopted The Department of Planning and Zoning's Technical Staff Report as his evidence in support of the piecemeal rezoning request.

2. The pertinent facts as found by the Department of Planning and Zoning in its Technical Staff Report on the issue of mistake in the 2005 Comp Lite zoning of the subject property are as follows:

a. The subject property is part of a small development of five residential lots with access via a private driveway that existed from the 1940s until the 2005 Comp Lite, and that has existed as an established R-MH-zoned residential community for that entire time period;

b. The subject property, along with the other lots on this private driveway was rezoned to CE-CLI in the 2005 Comp Lite, through Amendment 43.80 in the Comp Lite process;

c. Amendment 43.80's purpose was to "swap" the zoning of two larger irregularly-shaped parcels, one from CE-CLI to R-MH, and the other from R-MH to CE-CLI. The subject property was included in the latter proposal.

d. Amendment 43.80, which was approved, overlooked the fact that the five lots existed as an established residential community, that a stream and a floodplain to the north of this community completely separated it from the rest of the CE-CLI-zoned land further to the north, and that this community immediately bordered the Brentwood Mobile Home Park property to the south.

3. The Department of Planning Zoning found that the CE-CLI zoning of the subject property in the 2005 Comp Lite was a mistake based on these facts.

4. The Department of Planning & Zoning found that R-MH Zoning for the subject property was the most appropriate zoning since it would be only a minor extension of the R-MH zoning to the south.

5. The Zoning Counsel indicated that she agreed with the Department of Planning and Zoning's findings as to the mistaken CE-CLI zoning of the subject property in the 2005 Comp Lite and the appropriateness of R-MH zoning for the subject property.

CONCLUSIONS OF LAW

1. Mr. Tubb, 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.

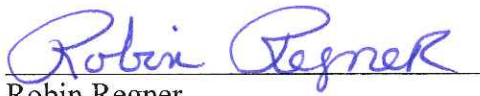
2. There is ample evidence in the record demonstrating mistake in the 2005 Comp Lite zoning of the subject property to the CE-CLI District, as identified in the Department of Planning and Zoning's Technical Staff Report and the Board's findings of fact one through four above, to overcome the strong presumption of correctness attached to that comprehensive zoning. Specifically, the evidence demonstrates that Amendment 43.80's zoning swap of two larger parcels overlooked the fact that an established residential community, completely separated from the rest of the CE-CLI District by a stream and floodplain, was being zoned for commercial use even though it had existed as a residential community for 70 years. Accordingly, Mr. Tubb has met the onerous burden of proving strong evidence of mistake in the comprehensive zoning of the subject property sufficient enough to permit the requested rezoning.

3. Mr. Tubb has presented sufficient evidence for the Board to conclude that the appropriate zoning category for the subject property is the R-MH Zoning District; given the R-MH zoning that borders the subject property to the south. Accordingly, the Board concludes that R-MH is the appropriate zoning for the subject property.

For the foregoing reasons, the Zoning Board of Howard County, on this 20th day of December, 2011, hereby GRANTS Mr. Tubb's request for rezoning of the 4,266 square feet subject property from the CE-CLI to the R-MH Zoning District.

ATTEST:


ZONING BOARD OF HOWARD COUNTY


Robin Regner
Administrative Assistant

PREPARED BY HOWARD COUNTY
OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR

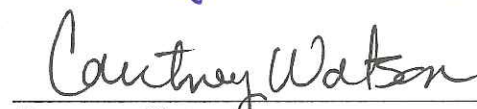

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