

IN RE: * BEFORE THE
CORRIDOR SQUARE, LL. * HOWARD COUNTY
* ZONING BOARD
ZONING COUNSEL * CASE NO.: ZB-1130M

MEMORANDUM OF LAW

Comes now Zoning Counsel for Howard County’s (“Zoning Counsel”) Memorandum of Law filed herein pursuant to § III.D.11 of the Rules of Procedure of the Zoning Board Hearing Examiner (“Hearing Examiner”) in Case No.: ZB-1130M, which is a Zoning Map Amendment Petition from Corridor Square, LLC (“Petitioner”) to reclassify parcels of land from the Transit Oriented Development (“TOD”) District to the B-2 (Business General) District with a motor vehicle fueling facility, convenience store, and car wash located at 7253 Washington Boulevard in Elkridge, Maryland.

PRELIMINARY MOTION

Zoning Counsel objects to Protestant Joel B. Hurewitz’s Motion to Disqualify Hearing Examiner and Zoning Counsel and wishes to incorporate the arguments made in Petitioner’s Opposition to Protestant Joel B. Hurewitz’s Motion to Disqualify Hearing Examiner and Zoning Counsel, and supplement with additional information stated herein.

The Protestant made several declarations that are nothing more than misinterpretation of the cited law. For context, both the Hearing Examiner and Zoning Counsel positions—for as long as they have existed—have been filled by employment contract as approved in the County budget. Rule 1.015 of the Rules of Procedure of the County Council states that “the Council may, by resolution

or as provided in the County budget, employ such legal, financial, technical, or other assistance as it may from time to time deem necessary.” This Rule is explicit in stating that budget actions may take the place of resolutions within the context of certain hiring practices. We maintain that this situation is one of them.

Section 16.305 of the Howard County Code of Ordinances speaks to Terms of Service for the Zoning Board of Appeals states:

- (a) The budget for the Hearing Examiner shall be included in the Board of Appeals budget.
- (b) While holding the position of Hearing Examiner, the Hearing Examiner may not represent any client involving land use in Howard County.

This implies that employment of the Hearing Examiner for the Board of Appeals is approved through the budgetary process. While the Zoning Board and the Board of Appeals are different, the previous section stayed silent on the position of the Hearing Examiner for the Zoning Board and normal interpretation allows for the inference of a similar process for a similar position.

Furthermore, Section 16.1000 of the Code states, in pertinent part:

- (a) The County Council may employ a Zoning Counsel on a part-time, contractual basis. The Zoning Counsel shall be a member in good standing of the Bar of the Maryland Court of Appeals and at the time of appointment shall have been actively engaged in the general practice of law for at least 5 years.

The Code does require a vote of three Councilmembers to enter into the contract of employment, which occurred, but it simply does not demand a Council Resolution and its full public process to employ a Hearing Examiner or a Zoning Counsel. We contend that these positions are part of the administrative actions and proceedings of the Council- a human resources personnel process.

In addition to what we believe to be Protestant's misinterpretation of the law, the Motion should be dismissed for policy reasons, with the aim of serving the best interests of Howard County residents. Though the Charter proscribes adherence to certain legal requirements, within those confines, the County Council still has the ability to, and the duty to, decide the most expedient, efficient, and cost-effective ways to discharge its administrative duties. Granting this Motion would introduce delay and uncertainty to the whole zoning hearing process. As mentioned before, there is no substantive concern with the experience or qualifications of the current Hearing Examiner or Zoning Counsel. Though well intentioned, the desire for procedural accuracy should not be used to obsessively contemplate minutiae to the detriment of executing the business of serving residents.

STATEMENT OF FACTS

The subject of the present case consists of 3.91 acres on the south side of Washington Boulevard (US Route 1) approximately 2,000 feet west of the intersection of Route 1 and Route 100 as shown on Tax Map 37, Grid 23 and consisting of p/o Parcel 279, p/o Parcel 107 and Parcel 452 (“Subject Property” or “Property”). In 2013, the Subject Property was placed in the Transit Oriented Development (“TOD”) District from the CE-CLI (“Corridor Employment – Continuing Light Industrial”) District pursuant to Amendment 48 to Council Bill (CB) No. 32-2013. Petitioner alleges the Howard County Council (“County Council”)’s rezoning of the Subject Property to the TOD District was a legal mistake, and in support provide three (3) arguments in support:

1. The Subject Property is more than 3,500 feet from the Dorsey MARC Station required by the TOD District.
2. The Subject Property does not satisfy or promote TOD’s purpose of encouraging safe and convenient pedestrian access by commuters using the MARC Trains and other public transit links.

3. Amendment 48 to CB-13-2013, as enrolled, erroneously omitted the CR (Commercial Redevelopment) Overlay District designation evidenced by Councilmember Ball during the July 23, 2013, Howard County Council Work Session.

ZONING COUNSEL'S ROLE

Zoning Counsel's role pursuant to § 16.1000(c) of the Howard County Code ("County Code") is to produce evidence and testimony supporting comprehensive rezoning and to facilitate a complete record during hearings on piecemeal zoning map amendment requests. It is Zoning Counsel's understanding that, while the position is to defend the existing comprehensive rezoning, Zoning Counsel's responsibility does not extend defending clear cases of mistake or pursuing nonmeritorious arguments. Rather Zoning Counsel serves as a legal and technical expert in opposition to Petitioner's case given Protestants—especially if unrepresented—may not grasp the nuance and idiosyncrasies of a "change/mistake" argument in the context of a piecemeal zoning map amendment. In other words, Zoning Counsel should solicit evidence that may otherwise not be introduced into the record that would assist the Hearing Examiner in issuing the report required pursuant to § 16.203A(b) of the Code and the Zoning Board issuing a final decision pursuant to § 16.204(a) of the County Code.

CHANGE/MISTAKE IN CONTEXT OF PIECEMEAL REZONINGS

The Zoning Board for Howard County is authorized to grant piecemeal zoning map amendments based on findings required by law. § 16-204(i) of the County Code. In Maryland, piecemeal rezonings for Euclidean zones must comply with the "change-mistake" rule codified pursuant to § 4-204 of the Land Use Article, and analyzed in *Boyce v. Sembly*, 25 Md. App. 43 (1975). Change is not relevant to this matter so the focus will be solely on "mistake." In *Boyce*, the Court summarizes the mistake rule as follows:

[E]rror or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension.

Id. at 50-51. To prove that the Council's action was a mistake, "it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council." *Id.* at 52. Moreover, "a conclusion based on a factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing." *People's Counsel for Balt. Cnty. v. Beachwood I Ltd. P'ship*, 107 Md. App. 627, 645 (1995). The burden of proof necessary to satisfy the mistake rule has been described by Maryland Courts as "onerous." *See Stratakis v. Beauchamp*, 268 Md. 643 (1973), and must overcome the strong presumption of correctness which attaches to the adoption of a comprehensive rezoning. *Quinn v. Cnty. Comm'rs. of Kent Cnty.*, 20 Md. App. 413 (1974) (citations omitted).

The strong presumption of validity includes the premise that the County Council had before it and did, in fact, consider all relevant facts and circumstances during the comprehensive rezoning process. *See Beachwood I Ltd. P'ship*, 107 Md. App. at 645-46. Unsupported conclusions from expert witnesses are insufficient to generate a fairly debatable issue with respect to mistake. *See Beachwood I Ltd. P'ship*, 107 Md. App. at 651. Mistake can also be shown in situations where the passage of time has shown that the underlying assumptions or premises relied upon to justify a particular zoning classification were incorrect. *See Beachwood I Ltd. P'ship*, 107 Md. App. 627,

645 (1995) (citing *Mayor & Council of Rockville v. Stone*, 271 Md. 655 (1974)). In *Tennison v. Shomette*, 38 Md. App. 1 (1977), property was rezoned to allow a motel, but during the subsequent comprehensive rezoning process, the zoning classification was changed to a zone that prohibited a future motel. The Court found sufficient evidence to support a mistake based on the Planning Commission’s statement that there was no intent to undermine recent rezoning decisions and that the rezoning was fundamentally inconsistent with overall development scheme established in the governing plan. In *People’s Zoning Counsel for Baltimore Cnty. v. Williams*, 45 Md. App. 617 (1979), the County Council erred zoning a property to an industrial zone under the assumption that the site was a prime industrial site and that failure to rezone would decrease the supply of industrial zones available in Baltimore County. Evidence in the record proved both of these assumptions were “fairly debatable” because hundreds of acres of industrial property existed in close proximity to the site.

ANALYSIS OF PETITIONER’S ARGUMENT FOR MISTAKE

1. County Council mistakenly placed the Subject Property in the TOD District because the Subject Property was not within 3,500 feet of a MARC Station.

Petitioner relies on the purpose provision within the TOD District under § 127.4 of the Howard County Code (“County Code”), which states: “[t]he TOD District provides for the development and redevelopment of key parcels of land within 3,500 feet of a MARC Station.” Petitioner argues this is evidence of mistake because “[t]he Howard County Council knew or reasonably should have known, that the [Subject Property] was not within 3,500 feet of a MARC Station or other public transit link at the time they zoned the Subject Properties TOD in 2013.” Pet’r’s. Revised SOJ, pg. 3. In support of this premise, the evidence submitted by Petitioner clearly demonstrates the Subject Property being more than 3,500 feet from the train platforms at the Dorsey MARC

Station when drawing a straight line. Pet'r's. Ex. 5. Petitioner also demonstrated that the walking distance from the Subject Property using the nearest usual pedestrian route to the train platforms at the Dorsey MARC Station is approximately 1.4 miles. Pet'r's. Ex. 6. However, if straight line distance is calculated using the edge of the parking area for the Dorsey MARC Station, the distance between it and the Subject Property shrinks to approximately 2,800 feet. Pet'r's. Ex. 22.

For Petitioner to succeed, the zoning body must find that the 3,500-foot distance from a MARC Station is a strict locational requirement for the zone, and that this distance is measured from the train platform, not the outer limits of the train station property. Regarding the latter finding, Zoning Counsel believes the distance should be measured from the train platform, not the boundaries of the train station property. In support, § 127.4.A of the County Code. makes multiple references to TOD's goal of maximizing the potential for commuters to use MARC Stations "encourage the development. . . designed for safe and convenient pedestrian access by commuters using the MARC Trains and other public transit links"¹ and "the requirements of this district . . . will result in development that makes use of the commuting potential of the MARC system." Zoning Counsel believes the TOD District will encourage commuters to use mass transit stations only when the distance between the train platform and the commuters' destination is judged to be walkable. Walkability is not promoted or served by the distance between a parking lot and the commuters' place of origin.

¹ Zoning Counsel focuses on the TOD Zone in relation to MARC Stations because TOD Zones only are located in close proximity to MARC Stations. This understanding is buttressed by the testimony from Ms. Julia Sauer, Division Chief for Public Service and Zoning Administration, who testified that the TOD Zone was inappropriate for public transit links not near mass transit stations.

It is not untrue that the parking lot around Dorsey Station could be developed with offices to attract inbound commuters, but Zoning Counsel finds it more likely that the TOD District was designed to attract commuters to live in, and around, Dorsey MARC Station because it provides transit links to major employment centers in Baltimore and Washington D.C. In Zoning Counsel's opinion, the train platforms are the defining feature of the TOD District, not its outermost parking lot. As previously mentioned, and under Zoning Counsel's interpretation, the Subject Property exceeds the 3,500 feet distance. Thus, the question becomes: is this distance a mandatory requirement for the TOD District, and does it constitute a mistake for property to be in the TOD District if it is beyond 3,500 feet from a MARC Station?

It is not uncommon for other Howard County districts to include locational instructions or descriptions within their purpose statement, thereby lending credence to a distance requirement being considered mandatory. For instance, the R-APT (Residential: Apartments) District pursuant to § 112.1.A. of the County Code states: “[i]t is intended that the R-APT districts will adjoin arterial roadways and should have opportunities for pedestrian and bicycle access to surrounding areas,” but compare to the SC (Shopping Center) District pursuant to § 120.0:A., which states: “[t]he SC District is established to permit local retail and office use areas. The Shopping Center District permits the opportunity for one stop shopping for a neighborhood and community. Given the tendency for Howard County Zoning Districts to include (or exclude) locational criteria within the purpose statement for zoning districts, Zoning Counsel believes the distance requirement must be afforded due consideration or else these provisions are surplusage.

When interpreting a statute, Maryland Courts assign the words their ordinary and natural meaning. *See Lewis v. State*, 348 Md. 648, 653, 705 (1998). Maryland Courts will not “divine a legislative intention contrary to the plain language of a statute or judicially insert language to impose exceptions, limitations or restrictions not set forth by the legislature.” *Langston v. Langston*, 366 Md. 490, 515 (2001); *See also Breslin v. Powell*, 421 Md. 266, 287, (2011). (“[S]tatutes on the same subject are to be read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory.” (quotation marks and citations omitted)). “The TOD District provides for the redevelopment and redevelopment of **key parcels** of land within **3,500 feet of a MARC Station.**” § 127.4.A of the County Code (emphasis supplied). Zoning Counsel believes this language to be unambiguous and a clear, measurable standard—“within 3,500 feet of a MARC Station.” *See Coffey v. Maryland-National Capital Park & Planning Comm.*, 293 Md. 24 (1982) (reversing a preliminary plan of subdivision because the proposed density exceeded the maximum density posited by the area master plan).

Following the closing of the record for this matter, minutes and a transcript from the July 1, 2013, County Council Work Session were made available to Zoning Counsel. Zoning Counsel requests the Hearing Examiner take judicial notice of these documents and have the July 1, 2013 Comp. Zoning Work Session Minutes (“Minutes”) be entered as Zoning Counsel’s Exhibit 1 (attached hereto); and the July 1, 2023, Howard County Council Work Session Transcript (“Transcript”) be entered as Zoning Counsel’s Exhibit 2 (attached hereto). From the Minutes, the Subject Property is discussed as Amendment #48, which includes Map Amendments 37.003, 37.007, and 37.027

(Collectively “Map Amendments”).² The minutes show that the Map Amendments were to be rezoned from CE-CLI to TOD. However, the Transcript shows that certain important facts were unclear or misunderstood by the County Council regarding the distance this Property is from the MARC Station. The Transcript includes this response from Councilmember Ball regarding the distance requirement: “Thirty-five hundred feet I think it is and it’s, I think, half the property.” Zoning Counsel’s Ex. 2, pg. 2:18-19. The Transcript also include this exchange regarding the TOD District for the Subject Property:

MS. MCLAUGHLIN: It’s a little further than the definition of TOD now, so if we, if we want to do this, we might do an amendment, that would allow it to be a little bit further from the MARC station.

MR. BALL: Well, not necessarily. A portion of it is not further. And we did the same thing with Oxford Square. All of Oxford Square is not within the TOD. All of this is not within the TOD.

MR. FOX: So, as, so as long as it’s developed as one that actually encourages them to develop it as one –

MR. BALL: Exactly.

Zoning Counsel’s Ex. 2, pg. 4:1-14. Councilmember Ball assumed that a portion of the Subject Property was within the distance requirements for the TOD District. As shown on Pet’r’s. Ex. 5, none of the Property, let alone the cemetery, is located within 3,500 feet of the Dorsey MARC Station platform, which further strengthens Petitioner’s argument in favor of a mistake.

In sum, although Zoning Counsel believes it was a mistake to rezone the properties to the TOD District for the reasons stated above, Petitioner’s other contentions will be evaluated prior to moving to the second step of the process: whether the Subject Property must be rezoned.

² Pet’r’s. Ex. 8., pg. 8-9 shows that these Map Amendments correlate to the Subject Property.

2. The Subject Property does not satisfy or promote TOD's purpose of encouraging safe and convenient pedestrian access by commuters using the MARC Trains and other public transit links.

As mentioned previously, Petitioner demonstrates that the Subject Property is more than 3,500 feet from the train platforms at the Dorsey MARC Station when drawing a straight line. Pet'r's. Ex. 5. However, the record is devoid of facts or statements from the County Council that demonstrate it was either aware or ignorant of the Subject Property lacking safe and convenient pedestrian access for commuters using MARC Trains and other public transit links. Safe and convenient pedestrian access is not a measurable standard and there is no probative evidence to show the Council erroneously believed the Subject Property did not comply. Contrary to Petitioner's argument, the land between the Subject Property has become more pedestrian-friendly compared with when the Property was rezoned in 2013. Recent residential developments, "The Refinery" and "The Forge", (shown on Pet'r's. Ex. 21) have frontage along Dorsey Road and provide pedestrian connections and increased safety through installing (previously absent) sidewalks along Dorsey Road. For these reasons Zoning Counsel does not find this to be a mistake under zoning law.

3. Amendment 48 to CB-13-2013, as enrolled, erroneously omitted the CR (Commercial Redevelopment) Overlay Zoning District designation evidenced by Councilmember Ball during the July 23, 2013, Howard County Council Work Session.

Petitioner's final argument for mistake is based on the failure to carry forward the County Council's recommendation that the Subject Property be zoned TOD/CR³ rather than TOD. During the comprehensive rezoning, the Department of Planning and Zoning, as well as the Planning Board recommended the Subject Property be rezoned CE-CLI/CR through Amendment No. 27

³ The 2013 Comprehensive Zoning Plan created the CR overlay zoning district to encourage commercial redevelopment of certain properties on or near US Route 1. *See* § 121.1 of the County Code.

dated July 1, 2013. Protestants Ex. 8. However, on July 2, 2013, Councilmember Ball introduced Amendment No. 48, recommending that the “CE-CLI/CR” be substituted with “TOD.” Pet’r’s. Ex. 9. This amendment would be discussed by Councilmember Ball during a July 22, 2013, Work Session. Pet’r’s. Ex. 10. During the July 22, 2013, Work Session, Councilmember Ball states: “Could you make sure that the amendment will read TOD/CR”? Pet’r’s. Ex. 10, pg. 41:12-13. ⁴

Nevertheless, despite Councilmember Ball’s clear directive, on July 23, 2013, the Map Amendment Chart (Amendment 27) would carry forward only the “TOD” zoning designation. Pet’r’s. Ex. 8. Adding to the confusion, Amendment 1 to Amendment 27 dated July 25, 2013, showed that CB-32-2013 listed the Subject Property as CE-CLI/CR without any reference to the TOD or CR Districts as discussed by Councilmember Ball. Protestant’s Ex. 10.

Thus, the record before the Hearing Examiner includes conflicting legislative history on the proper district for the Subject Property, which can be summarized as:

- Amendment 1 to Amendment 27 recommending the CE-CLI/CR District,
- Amendment 48 recommending the TOD District, and
- Councilmember Ball directing the Subject Property be rezoned TOD/CR pursuant to Amendment 48.

Petitioner asserts that this evidence shows the County Council made a clear error because no CR overlay zone was carried forward as directed by the Councilmember. However, as stated above, the Subject Property does not meet the locational criteria for the TOD District. Therefore, even if it was an error to remove the CR designation from the TOD, and only implement the existing TOD

⁴ Councilmember Ball expressed hesitation regarding the adoption of the CR overlay district moments earlier: “I’m unsure whether or not the CR that is currently crafted will actually get passed.” Pet’r’s. Ex. 10. Pg. 40, line 13-14.

District, Zoning Counsel finds the Subject Property was not eligible for TOD designation, and therefore could not be zoned TOD/CR.

WHAT DISTRICT SHOULD BE APPLIED UPON A FINDING OF MISTAKE?

A. Background.

In Maryland, even if a mistake is found to have occurred during the comprehensive rezoning process, said finding of a mistake merely permits a rezoning, it is not compelled. *See Hardesty v. Dumphy*, 259 Md. 718 (1970). The only instance where a rezoning is compelled is when mistake amounts to an unconstitutional taking. *See Dill v. Jobar Corp.*, 242 Md. 16 (1966). In other words, only when applicant has demonstrated that the existing zoning has deprived the applicant of all reasonable use of the property and that it cannot be used for any of the permitted uses in the existing zone, is a rezoning compelled. *See Coppolino v. Cnty. Board of Appeals*, 23 Md. App. 358 (1974). Petitioner has not provided any evidence that they have been deprived of all reasonable use of the property or that it cannot be used for any of the permitted uses in the existing zone. Hence, the question before the Hearing Examiner is whether the mistake warrants rezoning? And if so, what is the appropriate classification?

B. Petitioner's Argument.

Petitioner asserts the mistake warrants rezoning and had the County Council not made a mistake, the Council would have zoned the Subject Property to the B-2 (Business: General) District. Pet'r's. SOJ pg. 3.

Rezoning the Subject Properties to B-2 will allow these underutilized and largely vacant properties to be developed with the retail and automotive uses that are shown on the accompanying Plan. The retail and automotive uses will serve the immediate area

and general public and are appropriate along this portion of Route 1 with its adjacency to the Route 100 interchange.

Id. The record *sub judice* provides more guidance than a normal change-mistake argument given this matter has been submitted pursuant to § 100.0.G.2. of the County Code. The Howard County Code provides Petitioner with an option to submit a site plan in conjunction with their request for a rezoning—Documented Site Plan (“DSP”). This request “includes documentation specifying the proposed development and use of the property under petition.” In addition to the finding of a change-mistake, to grant a DSP, the Zoning Board must also find:

- (1) The compatibility of the proposed development with the existing and potential land uses of the surrounding areas;
- (2) Protection of the environmental integrity of the subject property and adjoining areas in the location and design of site improvements;
- (3) The availability of safe road access for the proposed development; and
- (4) Compatibility of the proposed development with the policies and objectives of the Howard County General Plan.

While this information is irrelevant to the first prong of a change-mistake case, Zoning Counsel finds it relevant in determining whether the mistake warrants a rezoning and if so, what district is most appropriate. In support of the B-2 Zone for the Subject Property, Petitioner submitted the following evidence during the hearing:

1. January 28, 2025 press release extolling the creation of an Enterprise Zone—that includes the Subject Property—to generate capital investment and encourage redevelopment and jobs along Route 1 and Columbia Gateway District. Pet’r’s. Ex. 13.
2. Implementing Action No.1 under Policy Statement EP-5 from the 2023 General Plan, *HoCo by Design*, to “[a]llow redevelopment in activity centers through the Zoning Regulations to make a wide range of uses economically viable. Require activity center redevelopment to provide convenience retail and other local-serving amenities at the neighborhood level.” Pet’r’s. Ex. 14.
3. Excerpts from the *Route 1 Corridor: A Plan for Washington Boulevard*, adopted concurrently with *HoCo By Design*, promoting “new retail in mixed-use activity centers to support new and existing residents” and “to increase opportunities for reinvestment of commercial and industrial properties in the Route 1 Corridor to address blight through new and existing zoning tools and tax credits.” Pet’r’s. Ex. 15.

C. Zoning Counsel's Position.

Zoning Counsel believes the evidence clearly shows that had the County Council not erred in rezoning the Subject Property TOD, it would have been zoned CE-CLI/CR⁵ given that was the proposed zoning district until Amendment 48 removed the CE-CLI/CR designation and replaced it with TOD.

Zoning Counsel anticipates that Petitioner will object to the CE-CLI/CR District in lieu of the B-2 District for several reasons. Most notably, the CR overlay district has proven impracticable given it is only found on two properties (coincidentally or not situated across Route 1 from each other). Furthermore, Petitioner will argue that the B-2 District and the CR overlay accomplish the same goal, but the B-2 accomplishes it more efficiently. Pursuant to § 119.0 of the County Code, the B-2 District permits convenience stores and car washes by-right, while a motor vehicle fueling facility is permitted as a conditional use except when approved as part of a DSP. *See* § 100.0.G.2.g of the County Code. On the other hand, the CR District permits a car wash and convenience store by-right, and a motor vehicle fueling facility is permitted subject to the Optional Design Project process under § 121.1 of the County Code. Finally, Petitioner will argue that approving the B-2 District pursuant to the DSP provides greater accountability and oversight compared to the CR overlay district. Pursuant to § 16.204(j) of the County Code, if a property is rezoned pursuant to the DSP, the uses proposed and designs shown must conform with the development as proposed. Under the CR District, the Petitioner would not face similar restrictions in constructing the proposed convenience store or car wash.

⁵ Zoning Counsel believes the most appropriate zone would be TOD/CR, but for the reasons discussed *supra*, the Subject Property does not satisfy the 3,500-foot requirement for TOD Zone.

Zoning Counsel does not refute Petitioner’s arguments, and Petitioner may be correct that the B-2 District is superior to the CE-CLI/CR District. However, Zoning Counsel believes the task before the Hearing Examiner is to determine—but for the mistake what classification would the County Council have applied during the 2013 Comprehensive Rezoning? To this end, Zoning Counsel believes, for the reasons previously submitted, that the County Council would have placed the Subject Property in the CE-CLI/CR District.

DOCUMENTED SITE PLAN

If it is determined that a mistake was found during the 2013 Comprehensive Rezoning, and the Hearing Examiner recommends the CE-CLI/CR District, Zoning Counsel believes Petitioner would withdraw their DSP as they would now be subject to the Optional Design Project process. However, assuming *arguendo*, the Hearing Examiner recommends the Subject Property be placed in the B-2 District, the Hearing Examiner must make a recommendation to the Zoning Board regarding Petitioner’s DSP. The findings to approve a DSP, as mentioned previously, are set forth below with a discussion regarding each finding:

- (1) The compatibility of the proposed development with the existing and potential land uses of the surrounding areas;

Zoning Counsel adopts the analysis of the Department of Permitting and Zoning in their Technical Staff Report (“TSR”) and finds, based on this analysis, that the proposed uses will be compatible with the existing and potential land uses of the surrounding areas. From pages 6-7 of the TSR:

Most of the proposed motor vehicle fueling facility will be located on Parcel 279, which is an abandoned gas station site and is currently vacant. Parcel 279 is bordered to its west by a property developed with an auto repair use. The proposed convenience store will be located on the front portion of Parcel 107, which is directly east of

Parcel 279. This area is approximately 2.06 acres of the Rosa Bonheur Memorial Park and contains three dilapidated structures, the entrance drive and a retaining wall. The existing entrance to the Memorial Park will be redirected to the proposed access drive located on the western portion of Parcel 279. The Petitioner is proposing to preserve in perpetuity the remaining 4 acres of the Memorial Park as open or green space. The Petitioner is also proposing to construct a mausoleum and memorial to be located in the preserved area of the Memorial Park for the interment of any pet remains that may be disturbed with the proposed redevelopment.

The proposed car wash will be located on Parcel 452, which is east of Parcel 107. Parcel 452 contains no structures and is currently used as a stockpiling site. A commercial/industrial use is developed east and south of Parcel 452; however, a site development plan to redevelop these parcels into a 242-apartment unit development has been determined Technically Complete by the Department of Planning and Zoning. As previously stated, the requested B-2 zoning district requires a 30-foot structure and use setback from all residential zoning districts. The drive aisle for the car wash is approximately 15-feet from the adjoining proposed apartment development property line.

The Petitioner is proposing substantial landscaping around the proposed development that will provide screening and ensure compatibility with the surrounding land uses.

Moreover, the Subject Property fronts onto Route 1 and the proposed uses will provide automobile-oriented services for residents in the area and drivers travelling north along Route 1. Ironically, residents living in the area wishing to drive to the MARC Station must pass by the Subject Property as no internal vehicle connection to the station is provided via Deerpath Road. Moreover, any resident living along Dorsey Run Road or Dorsey Road leaving in the direction of Route 100 will pass the Subject Property. The same for employees with offices or businesses along Dorsey Run Road or Dorsey Road. The Subject Property will provide last exit conveniences prior to the Route 100 on-ramp, which connects to I-95, I-97 and I-70. The record includes sufficient evidence to support this finding.

(2) Protection of the environmental integrity of the subject property and adjoining areas in the location and design of site improvements;

Zoning Counsel adopts the analysis contained within the TSR and finds, based on this analysis, that this development will protect the environmental integrity of the subject property and adjoining areas in the location and design of site improvements. From page 7 of the TSR:

The Existing Conditions Plan provided by the Petitioner indicates an approximate area of wetland and wetland buffer on Parcel 452 that will be impacted by the development. A wetland report must be submitted with the site development plan to delineate the wetland area and its 25-foot buffer. Prior to site development plan approval, the Petitioner must receive approval from the Maryland Department of the Environment and the Department of Planning and Zoning, Office of Community Sustainability and Department of Public Works for disturbance to the wetland and wetland buffers.

The record includes sufficient evidence to support this finding

(3) The availability of safe road access for the proposed development; and

Zoning Counsel adopts the analysis contained within the TSR and finds, based on this analysis, that safe road access is available for the proposed development. From page 7 of the TSR:

The DSP shows the proposed development will have access by a signalized intersection west of Parcel 279 and a right-in entrance directly from Route 1 to Parcel 107. The new access road from the proposed signalized intersection will connect to existing Barnett Lane and will provide future access to the Memorial Park. The Petitioner submitted a Traffic Impact Analysis with this Petition.

Maryland State Highway Administration (SHA) regulates access to Route 1. SHA is in general agreement with the roadway design. The Traffic Impact Study and Traffic Signal Warrant Analysis must be approved by SHA during the review of the site development plan.

The record includes sufficient evidence to support this finding.

(4) Compatibility of the proposed development with the policies and objectives of the Howard County General Plan.

Zoning Counsel adopts the analysis contained within the TSR and finds, based on this analysis, that this development is compatible with the policies and objectives of the *HoCo By Design*. From page 5 of the TSR:

General Plan Policy EP-5.1 states that the County should: “[a]llow redevelopment in activity centers through the Zoning Regulations to make a wide range of uses economically viable. Require activity center redevelopment to provide a convenience retail and other local-serving amenities at the neighborhood level.”

Likewise, Zoning Counsel adopts the statements from Petitioner in the Revised Statement of Justification as follows:

The proposed amendment and Plan are also in harmony with the Route 1 Corridor Plan’s (the “Corridor Plan”) Revitalization Strategy that encourages “private property reinvestment.” Corridor Plan at 32. And RTE 1-3 Policy Statement that seeks to “Foster revitalization in the Route 1 Corridor.” Corridor Plan at 38. Further, implementing Action 2b. calls for zoning changes to be implemented to “consider more flexibility.” *Id.*

It is also in harmony with RTE 1-4 Policy Statement which seeks to “[i]ncrease opportunities for reinvestment of commercial and industrial properties in the Route 1 Corridor to address blight through new and existing zoning tools...” *Id.* at 41.

Lastly, the Site is located within the new Eastern Howard County Enterprise Zone, which is the first Enterprise Zone in Howard County. Enterprise Zones were established by the Maryland Department of Commerce in 1982. The Eastern Howard County Enterprise Zone is one of just 36 in the State. The objective is to focus local and State resources on the encouragement of economic growth. As indicated in the County’s January 28, 2025 press release, the zone and incentive align with the General Plan and the Route 1 Corridor Plan goals to attract private investment and spur redevelopment enhancing the attractiveness and economic value of the area.

The record includes sufficient evidence to support this finding.

CONCLUSION

For all the above-referenced reasons, Zoning Counsel respectfully submits that there is sufficient evidence in the record to show that it was a mistake to rezone the Subject Property to the TOD District during the 2013 Comprehensive Rezoning. Zoning Counsel believes this mistake warrants a rezoning, but does not agree with Petitioner’s proposed zone. Zoning Counsel believes that correcting the mistake—as discussed *supra*—results in imposing the CE-CLI/CR Zone. Alternatively, if the Hearing Examiner were to find the B-2 District an appropriate remedy, Zoning Counsel believes Petitioner has satisfied all required findings pursuant to § 100.0.G.2.

Respectfully submitted,

By: 

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Zoning Counsel for Howard County

**COMP. ZONING WORKSESSION
CVG ROOM
JULY 1, 2013**

COUNCIL MEMBERS PRESENT:

J. Terrasa; C. Watson; MK Sigaty; C. Ball; G. Fox

Staff: S. Tolliver; T. Wimberly; R. Regner;

P. Johnson; M. McLaughlin

4:08 Worksession Begins:

I. River Hill Nursery Follow-Up – To Decide whether to put this rezoning proposal in as a substantive amendment

A. Mr. Erskine speaks to Council

1. Explains Presubmission Community Meeting held on River Hill Nursery project
There was a misunderstanding at this meeting
2. No fast food restaurants or drive-thrus are permitted on this site
3. Chick-Fil-A was only used as an example – even though it is not permitted

B. David Elsaesser, neighbor:

1. Concerned with lighting, proposed Chick-Fil-A/drive-thru & traffic

C. Marsha McLaughlin

1. Mr. Klein will need to do improvements on road – very extensive and expensive.

D. Stephen Klein/River Hill Garden Center

1. He met with SHA – 108 must be brought up to today's standards i.e., entrance, storm water management, sight distance on 108

E. Tim Shaw - 4729 Whistling Woods Way – neighbor

1. Will have a shopping center in his back yard - parking and lights – River Hills is a good, quiet neighbor – concerned with parking lot

II. CAC text amendment

A. Jeff Kirby – Real Estate Developer/purchaser

1. Regarding a property on Furnace Ave. next to Furnace Inn –wants regulations amended – working with Tom Carbo/Housing about a mixed income apartment project with no commercial/retail requirement.

2. Proposed on 4.8 acres for 112 units
3. Abuts to Patapsco State Park
4. Commercial is not viable at this site

B. Discuss whether to put in as substantive amendment

1. JT: has no problem with residential
2. GF suggests R-A-25 rather than CAC
3. MM – lack of visibility would make poor retail at this site

III. Vote on Substantive Amendments and Whether to Consider

#20 - yes

#21 – to add 24.014 - Ozcan – 10207 Baltimore National Pike - no

#22 – to add 28.003 - Orndorf – 4844 Greens Bridge Road - yes

#23 – to add 41.001 - Lois Peters – 11584 Scaggsville Road – yes

#24 – to add 41.002 - 7590 Sanner Road – no

#25 – to add 41.003 – 7582 Sanner Road – no

#26 – to add 41.004 – 7598 Sanner road – no

IV. The Council reviewed the following amendments:

#27 – new summary chart

#28 – 14.001 – correct map substituted

#29 – 12962, 12966, 12980 Livestock Road – correction on maps

#30 – Withdrawn - not substantive

#31 – 38.003 - 5820 Washington Blvd.

#32 - 40.004 – 13325 Clarksville Pike - map clarification

#33 - 4 properties – Kit Kat Road (32.001, 43.002, 43.004, 43.013 –

Technical correction

#34 – 43.018 – 7720 Port Capital Drive – new map

#35 – 43.021 – 7700 Port Capital Drive – new map

(CLOSED session to meet with counsel about process)

#36 – 44.001 – technical correction to map

#37 – 24.004 – substitute correct map

#38 – 37.012 – substitute correct map

#39 – wording change – R-SA-8 zoning district

#40 – wording change – R-A-15 zoning district

#41 – remove option to develop up to 25 du per acre in R-A-15

#42 – add Daisy, Lisbon & Glenwood to list of areas for proposed BRX District

#43 – add Nursing homes and residential care facilities as permitted uses in BRX

#44 – add R-SC as a sending option in the Neighborhood Preservation Density Exchange

Option Program

- #45 – 15.004 from RC-DEO to B-1
- #46 – 15.006 from RC-DEO to B-1
- #47 – 15.007 from RC-DEO to B-1
- #48 – 37.002, .003, .005, .006, .007, .014, .015, .016, .027, and 43.017 - change zoning from CE-CLI to TOD
- #49 – 38.013 – (Buttermilk Tavern) add parcel – rezone to B-1
- #50 - 40.004 – RR-DEO to CCT
- #51 – 46.001 (Maple Lawn) to – MXD-3
- #52 – withdrawn – duplicate of #51
- #53 – 47.003 from CAC/CE-CLI to CE-CLI/CR – correct map
- #54 - 47.005 from CAC/CAC-CLI/CR to CE-CLI/CR
- #55 – 47.006 – CAC-CLI/CR to R-A-15/CR
- #56 – New map amendment 14.003 - RR-DEO to B-1 – 2890 McKendree Road
- #57 – 47.001 and 47.010 from R-A-15 to R-SA-H
- #58 – add R-SA-H zoning district (historic townhouse district)
- #59 - 24.001 from R-A-15 or CEF to R-12; 24.004 from R-SC or CEF to R-12;
24.005 from R-A-15 or CEF to R-12
- #60 – Revises permitted uses for conditional uses

Worksession Adjourned at 7:37

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HOWARD COUNTY COUNCIL
WORK SESSION

July 1, 2013

Christine R. Leary
crleary1@comcast.net

1 [ON RECORD - 02:00:20]

2 MR. FOX: And it's all B-2 and B-1 for the most part
3 on the road.

4 MS. WATSON: I don't mind (inaudible).

5 MR. FOX: Right.

6 MS. WATSON: (inaudible).

7 MR. FOX: All right.

8 MS. TERRESA: Okay. Number 48, Dr. Ball.

9 MR. BALL: That was just the placeholder for that one
10 property that is slated to be CR, in case there's a problem
11 with CR down the road.

12 MS. TERRESA: And so, you're suggesting possibly TOD?

13 MR. FOX: One more time?

14 MR. BALL: Um hm. Remember the pet cemetery?

15 MS. TERRESA: Um hm.

16 MR. FOX: Yeah. Does it meet the TOD? I can't
17 remember.

18 MR. BALL: Thirty-five hundred feet I think it is and
19 it's, I think, half the property.

20 MR. FOX: I remember.

21 MS. TERRESA: Oh, I thought --

22 MS. MCLAUGHLIN: This is not the, this is all of the
23 pieces? And I can check that.

24 MS. TERRESA: Yeah, I thought they --

25 MS. MCLAUGHLIN: There's a lot of pieces, okay.

1 MR. BALL: It should be all.

2 MS. MCLAUGHLIN: Okay.

3 MS. TERRESA: If we go forward with this, I think we
4 may have to have an amendment to TOD to extend it (inaudible).

5 MS. MCLAUGHLIN: Yeah.

6 MS. TERRESA: Wasn't that what she was saying? Or
7 you don't --

8 MR. BALL: Personally, I don't think we need that,
9 but we'll see.

10 MS. MCLAUGHLIN: We'll, I'll check distance.

11 MR. FOX: Can you, can you get the, the book that's
12 in the, that's got, that's got this stuff in it, please? You
13 know what I'm talking about, (inaudible)?

14 MS. TERRESA: Thirty-nine? Is what, sorry, forty-
15 nine.

16 MS. MCLAUGHLIN: That's the one we're talking about
17 the Tertel and the pet cemetery?

18 MS. TERRESA: The TOD.

19 MS. WATSON: They're turning that into --

20 MR. BALL: Well, right now it's slated to be under
21 CR, but if CR, if something doesn't go right with CR, --

22 MR. FOX: You're looking for a backup plan?

23 MR. BALL: Right.

24 MS. WATSON: Is it near the --

25 MR. BALL: Yes.

1 MS. MCLAUGHLIN: It's a little further than the
2 definition of TOD now, so if we, if we want to do this, we
3 might do an amendment, that would allow it to be a little bit
4 further from the MARC station.

5 MR. BALL: Well, not necessarily. A portion of it is
6 not further. And we did the same thing with Oxford Square.
7 All of Oxford Square is not within the TOD. All of this is not
8 within the TOD.

9 MR. FOX: So, as, so, as long as it's developed as
10 one, that actually encourages them to develop it as one --

11 MR. BALL: Exactly.

12 MR. FOX: -- because if they wanted to reach it then
13 they'd have to --

14 MR. BALL: Exactly.

15 MR. FOX: Rather than making a change, gotcha.

16 MS. TERRESA: Okay, 49, Ms. Watson?

17 MS. WATSON: Oh, which one is this? Is this
18 Buttermilk?

19 MS. MCLAUGHLIN: Buttermilk.

20 MS. WATSON: Yes, (inaudible).

21 MR. BALL: That is such a cool name for a street.
22 Makes me happy every time I hear it.

23 MS. TERRESA: I know. It's, it's a happy sound.

24 MS. WATSON: It should be B-1, not B-2.

25 MS. TERRESA: So, this is incorrect?

1 MR. FOX: Which one?

2 MS. WATSON: (inaudible).

3 MS. MCLAUGHLIN: That's the current zoning, proposed
4 is B-1.

5 MS. TERRESA: Wait, wait.

6 MS. WATSON: Yes, but it says proposed (inaudible)
7 substitute B-2. It should be B-1.

8 M-VOICE: No, it says B-1.

9 MS. TERRESA: It says B-2 on the one we have right
10 here.

11 MR. FOX: I've got B-2 on the one I've got.

12 M-VOICE: I have B-2 too.

13 MR. FOX: Mine says B-2. I'm on Amendment 49.

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25 [OFF RECORD - 02:03:00]

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CERTIFICATE OF TRANSCRIBER

I hereby certify that the work session of the Howard County Council, held on July 1, 2013, was recorded digitally.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 5 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 6th day of March 2026.

Christine R. Leary

Christine R. Leary

Transcriber