

**HOWARD RESEARCH
AND DEVELOPMENT
Petitioner**

*** BEFORE THE HOWARD COUNTY
* ZONING BOARD**

*** Zoning Board Case No. 1133M

*** * * * ***

PETITIONER’S MEMORANDUM

Howard Research and Development (“HRD”), by and through undersigned counsel, respectfully submits this Closing Memorandum in support of its request to amend the zoning classification of the Gateway Parcel from B-2 (Business: General) to M-1 (Light Industrial). This Memorandum summarizes the testimony, exhibits, and planning analysis in the record and demonstrates that the existing B-2 zoning is the result of a mistake of fact under Maryland law and that M-1 is the appropriate corrective classification.

I. INTRODUCTION

This case presents a direct and compelling application of Maryland’s “change or mistake” rule. The evidence in the record establishes that the Gateway Parcel has not developed for retail or customer-facing commercial use despite decades of opportunity, that it is located within and functions as part of an employment and industrial district, and that the assumptions underlying its B-2 zoning—most notably that the property was viable for retail development—have proven incorrect.

As explained through the testimony of Gabriel Chung on behalf of HRD and Dan Sweeney, Petitioner’s civil engineer, these are not new or evolving conditions. They are longstanding, observable facts that existed well before and at the time of the 2014 Comprehensive Zoning Map Process. The failure to correct the zoning classification in light of those facts constitutes a mistake of fact within the meaning of Maryland zoning jurisprudence.

II. STATEMENT OF FACTS

A. The Property and Planning Context

The Gateway Parcel is located within the Columbia Gateway area, a planned and developed employment center. As established through the testimony of Dan Sweeney, the property is currently zoned B-2, a classification intended for customer-facing commercial and retail uses, and HRD seeks to rezone the property to M-1 to allow light industrial and employment uses consistent with the surrounding area and current market conditions.

Mr. Sweeney testified that he reviewed the Department of Planning and Zoning Technical Staff Report, zoning history, and applicable planning documents, and concluded that the Gateway area is planned for and functions as an employment center. He also referenced the Gateway Master Plan, which has included this parcel in Subarea 6. Subarea 6 recommends light industrial uses consistent with M-1 zoning. The Gateway Master Plan does not support retail uses for this parcel. These conclusion are consistent with the Technical Staff Report, which recognizes that industrial, flex, and employment uses are appropriate for the area. See Technical Staff Report at 6–8.

B. Surrounding Area and Zoning Pattern

Mr. Sweeney testified that the surrounding zoning pattern is overwhelmingly industrial and employment-oriented and that the subject property is an outlier, effectively carved out as B-2 within an otherwise cohesive M-1 environment. He explained that this mismatch reflects a disconnect between the purpose of the B-2 zone and the actual context of the property, which is surrounded by industrial and employment uses. This testimony was un rebutted and aligns with the planning context described in the Technical Staff Report.

C. Long-Term Failure of Retail Development

The record establishes that the property has remained undeveloped for retail use for decades. Gabriel Chung testified that the parcel has remained undeveloped for retail commercial purposes for well over a decade despite consistent, good-faith efforts to evaluate and market the property for such uses. Mr. Chung explained that these efforts have not resulted in any viable retail project and that no feasible development has emerged despite sustained attempts.

Mr. Sweeney similarly testified that the property has not developed with retail uses for over forty years, further reinforcing the conclusion that the parcel is not viable for retail development.

Mr. Chung testified that the parcel lacks the visibility and frontage required by modern retailers, is not located along a primary commercial corridor, and does not benefit from the surrounding density and co-tenancy necessary to support retail activity. He further explained that retail development depends on tenant commitments and lender support, neither of which can be obtained for this parcel given its characteristics.

D. Physical and Market Constraints

Mr. Sweeney testified that the parcel is located within an industrial business park and is subject to access and visibility constraints that make it unsuitable for retail use. He explained that the property's location within the Gateway area, combined with its lack of exposure to a primary commercial corridor, undermines its ability to support customer-facing uses.

These conditions are consistent with the Technical Staff Report, which emphasizes the employment-oriented nature of the area and does not identify a retail planning framework for the subject parcel. See Technical Staff Report at 7–9.

III. LEGAL STANDARD

Maryland law requires that a piecemeal rezoning be supported by evidence of either a change in the character of the neighborhood or a mistake in the original comprehensive zoning. *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514 (2002). A mistake exists where the zoning authority relied on assumptions that were incorrect, failed to consider then-existing facts, or acted on a misapprehension of conditions. *People's Counsel for Balt. Cnty. v. Beachwood I Ltd. P'ship*, 107 Md. App. 627, 669–70, 670 A.2d 484 (1995).

Maryland courts have long recognized that mistake may be shown where:

error 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., 107 Md. App. at 644-45 (emphasis from the original), *citing Boyce v. Sembly*, 25 Md. App. 43, 334 A.2d 137 (1975), *see also Mayor & Council of Rockville v. Stone*, 271 Md. 655, 662, 319 A.2d 536 (1974); *Rohde v. County Bd. of Appeals*, 234 Md. 259, 267–68, 199 A.2d 216 (1964); *Pressman v. Mayor & City Council of Balt.*, 222 Md. 330, 338–39, 160 A.2d 379 (1960).

Importantly, Maryland courts apply a more flexible standard where the rezoning involves movement between similar use categories: “A more liberal standard is applied when the property is being reclassified from one commercial subcategory to another...” *Chapman v. Montgomery Cnty. Council*, 259 Md. 641, 271 A.2d 156 (1970).

IV. A MISTAKE OCCURRED IN THE RETENTION OF B-2 ZONING IN 2013

A. The Underlying Assumption of Retail Viability Was Incorrect

The B-2 zoning of the Gateway Parcel rests on a fundamental factual assumption that the property was viable for retail or customer-serving commercial use. The record demonstrates

through the testimony of Mr. Sweeney and Mr. Chung, and the prolonged vacancy of this parcel, that this assumption was incorrect.

Mr. Sweeney testified that zoning decisions inherently rely on assumptions about feasibility and that in this case the assumption of retail viability has been disproven by the property's long-term non-development and by observable market trends. Mr. Chung corroborated this conclusion, explaining that despite sustained efforts, no viable retail development has materialized and that the market does not support retail use on this parcel.

B. Long-Term Vacancy Demonstrates Zoning Failure

Mr. Sweeney testified that long-term vacancy is one of the clearest indicators that zoning does not reflect a property's actual suitability. The Gateway Parcel has remained undeveloped for retail use for decades. That fact alone is compelling evidence that the zoning classification is misaligned with reality.

C. The Zoning Authority Failed to Act on Known Facts in 2014

The record establishes that these conditions were evident at the time of the 2014 Comprehensive Zoning Map Process. Mr. Sweeney testified that by 2014 the property had already remained undeveloped for more than a decade and that the zoning authority would have been aware of this fact. He further testified that the continued reliance on retail viability in the face of this evidence constitutes a mistake of fact. In his opinion, the zoning authority failed to recognize that the factual assumptions underlying the B-2 designation had already been disproven.

Mr. Chung's testimony reinforces that the factors preventing retail development—lack of visibility, insufficient surrounding activity, and evolving market conditions—were already present and impacting the property's viability at that time. The Technical Staff Report supports

this conclusion by confirming that the Gateway area is characterized by employment and industrial uses and by not identifying a planning rationale supporting retail use on the subject parcel. *See* Technical Staff Report at 7–9.

V. M-1 IS THE APPROPRIATE ZONING CLASSIFICATION

A. Consistency with Planning Policy

Mr. Sweeney testified that M-1 zoning aligns with County planning documents and with the existing zoning pattern in the Gateway area. This is consistent with the Technical Staff Report, which recognizes that industrial and employment uses are appropriate within this area. *See* Technical Staff Report at 6–8.

B. Compatibility with Surrounding Uses

M-1 zoning brings the property into conformity with the surrounding industrial and employment uses and eliminates the current inconsistency created by the isolated B-2 designation.

C. Market Feasibility and Public Benefit

Mr. Chung testified that M-1 zoning allows uses that are viable given the parcel's characteristics. He explained that light industrial and employment uses do not depend on visibility, co-tenancy, or consumer traffic and are therefore well-suited to the property. He further testified that such uses are actively in demand and would allow the property to be developed in a manner that is economically feasible.

Both witnesses testified that rezoning the property to M-1 would allow it to become a productive, employment-generating site and contribute to the County's tax base, rather than remaining in a state of non-use.

VI. CONCLUSION

This case does not present a close call. The record does not merely suggest that the existing zoning is suboptimal or outdated; it demonstrates that the factual premise underlying the B-2 classification has failed and has failed for a long time. The Gateway Parcel has sat undeveloped for retail use through multiple economic cycles, through shifts in consumer behavior, and through the maturation of the surrounding Gateway employment district. That sustained non-development is not incidental. It is conclusive evidence that the zoning does not reflect reality.

By the time of the 2014 Comprehensive Zoning Map Process, the County had before it clear, objective, and observable evidence that the property was not viable for retail development and that the surrounding area was functioning as an employment and industrial center. The decision to retain the B-2 zoning in the face of those facts was not a matter of judgment or policy preference; it was a failure to recognize and act upon known conditions. Under Maryland law, that is the definition of a mistake of fact.

Continuing to apply B-2 zoning today perpetuates that mistake and ensures that the property will remain in a state of non-use. The Zoning Board is not required to accept that outcome. The law provides a mechanism to correct precisely this type of error, and the record provides more than sufficient evidence to do so.

For these reasons, HRD respectfully requests that the Zoning Board find that a mistake occurred in the retention of the B-2 zoning and approve the requested rezoning of the Gateway Parcel to M-1 so that the property can finally be put to a productive, appropriate, and economically viable use consistent with the County's planning framework.

Respectfully submitted,

/s/ Thomas G. Coale

Thomas G. Coale
54 State Circle
Annapolis, MD 21401
(443) 630-0507

tom@perryjacobson.com

*Attorney for Howard Research and
Development*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2026, a copy of the foregoing Memorandum was served via electronic mail to:

Nathaniel A. Forman
Howard County Zoning Counsel
Nforman@omng.com
O'Malley, Miles, Nylen & Gilmore
60 West St. #203
Annapolis, Maryland 2140

/s/ Thomas G. Coale