

IN THE MATTER OF : BEFORE THE
The Palmetto Group, Inc : ZONING BOARD
 : OF HOWARD COUNTY
PETITIONER : Zoning Board Case No. 1131M

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REPORT

On March 3, 2026, the undersigned, serving as the Howard County Zoning Board Hearing Examiner, and in accordance with the Zoning Board and Hearing Examiner Rules of Procedure, held the evidentiary hearing for the amended Petition of The Palmetto Group, Inc. to Amend the Zoning Map of Howard County. Petitioner requests that the Zoning Board determine that a mistake occurred during the last comprehensive rezoning and to correct this mistake by rezoning the subject Property from the TOD (Transit Oriented Development) to the R-SC (Residential: Single Cluster) zone.

The subject Property is identified as 6871 and 6875 Dorsey Road, is approximately .40 acre in combined size, and is located along the north side of Dorsey Road. The Petition is not a Site Plan rezoning therefore no documented Site Plan was submitted. If rezoned to a residential zone, Petitioner indicates that the Property will be developed with single-family detached dwellings.

The Hearing Examiner viewed the subject Property as required by the Zoning Board/Hearing Examiner Rules of Procedure. William Erskine, Esq. represented the Petitioner. Eric Bers (Property owner) and Micheal VanSant (civil engineer) testified on behalf of Petitioner. Julia Sauer (Division Chief for Public Service and Zoning Administration) testified on behalf of the Department of Planning and Zoning in support of the Petition. Joel Hurewitz, Esq. testified that he was not a protestant, but he wanted the Zoning Board to adopt legislation supportive of affordable housing. No one appeared in opposition.

The parties of record in the Petition are William Erskine, Esq., Nathaniel Foreman, Esq., and Joel Hurewitz. Memoranda of Law were filed by Petitioner and Zoning Counsel.

Petitioner introduced into evidence the following Exhibits:

1. Zoning Map Amendment Plan
2. Aerial locating the Property
3. Colorized Neighborhood Map
4. Site Development Plan for adjacent property, ICAT Logistics, Inc.
5. Site Landscape Plan for ICAT Logistics, Inc.
6. Colorized floodplains and wetlands map for the neighborhood
- 7.(a)-(g) Street view photos of the Property and the properties directly across Dorsey Road from the subject Property.
8. Aerial of the neighborhood

9. Aerial showing stream
10. Executive Order identifying Maryland's Affordable Housing Crisis

PRELIMINARY MOTION

On January 26, 2026, Joel Herewitz, Esq. (Protestant) filed a Joint Motion to Disqualify Joyce Nichols as Zoning Board Hearing Examiner and Motion to Disqualify Nathaniel Foreman as Zoning Counsel Until Such Time as They are Lawfully Appointed By the Howard County Council by Resolution and alternatively, a Motion for a Declaratory Ruling Pursuant to Section 2.408-Declaratory Ruling of the Rules of Procedure of the Howard County Zoning Board Declaring that the Positions of Zoning Board Hearing Examiner and Zoning Council Are Vacant. Although this Motion was originally filed in ZB-1130M, it was renewed orally in the instant hearing. This Motion was taken under advisement prior to the beginning of the evidentiary hearing March 3, 2026 and Petitioner and Zoning Counsel each address their opposition to this Motion in their Memoranda of Law in this Petition.

Protestant seeks the extraordinary relief of disqualifying both the Howard County Hearing Examiner and Zoning Counsel from this matter, and presumably any other matter. The disqualification is not premised on any alleged basis or inability to fulfill their respective contractual duties. Instead, Protestant seeks to disqualify them based on his misreading and misapplication of various provisions of the Howard County Charter (the "Charter") and the Howard County Code of Ordinances (the "HCCO"). Despite the long-standing administrative practice to fill the Hearing Examiner and Zoning Counsel

positions through contractual employment as allocated in the County budget, Protestant insists both positions must be filled by specific appointment of the Howard County Council (the "Council") through resolution. This position is without merit and must be rejected.

The Council contractually hired Joyce Nichols as the Howard County Hearing Examiner (the "Hearing Examiner") in January 2020 — six years ago. For the past six years, Ms. Nichols has lawfully presided over and adjudicated numerous conditional use, variance, and administrative appeal matters. Prior to Ms. Nichols' contractual employment as the Hearing Examiner, the position was filled by Michele Lefavre. In the same manner as Ms. Nichols, Ms. Lefavre was contractually employed by the Council from the inception of the Hearing Examiner position in the early 2000 until around 2019. During her employment, Ms. Lefavre presided over and adjudicated hundreds of conditional use, variance, and administrative appeal matters. Of note, neither Ms. Lefavre nor Ms. Nichols were appointed to the Hearing Examiner position by Council Resolution. The Council's long standing administrative practice has been to contractually hire the Hearing Examiner, not appoint them by resolution.

In December 2021, the Council passed Council Bill 77-2021 expanding the role of the Hearing Examiner to certain zoning matters, including change or mistake zoning cases, under the jurisdiction of the Zoning Board. See, CB 77-2021.2 In May 2023, the Council passed Council Bill 10-2023, clarifying the role of the Hearing Examiner to hear Zoning Board matters and specifying the powers, duties and procedures of the Hearing Examiner in those cases. See, CB-10-2023.3

Pursuant to §16.1000 of the Howard County Code of Ordinances ("HCCO"), the

Council "may employ a Zoning Counsel on a part-time, contractual basis." The Zoning Counsel position was created in or around 2000 with the passage of Council Bill 37-2000. See, CB 37 2000.4 From the early 2000s until around at least 2020, the Zoning Counsel contractual position was filled by Eileen Powers. Ms. Powers acted as Zoning Counsel in numerous change or mistake zoning cases in her tenure. Of note, Ms. Powers was never appointed to the position by Council Resolution. Interestingly, Mr. Hurewitz has participated in opposition in a least one prior mistake zoning case with Ms. Powers as Zoning Counsel and did not raise any issue with her qualification to serve as Zoning Counsel. See, ZB-1122M5

Petitioner and Zoning Counsel urge that the Motion should be denied because it is not supported by law.

Pursuant to § 16.203A(a)(4), the Zoning Board held its initial administrative public meeting on this matter on February 25, 2026, and unanimously voted to forward the Petition to the Hearing Examiner. The initial hearing before the Hearing Examiner was scheduled for March 3, 2026. Protestant had actual or constructive knowledge of the February 25, 2026, initial administrative meeting. Moreover, Protestant was admittedly aware that the Hearing Examiner was not appointed by resolution years before this Petition and case was scheduled. On or around February 24, 2022, Mr. Hurewitz filed a public information act request with the County seeking "a copy of any contract for Hearing Examiner Joyce Nichols and any associated resolution and/or minutes of the County Council regarding its approval." See, Protestant's Motion to Disqualify at p. 5-7. The County responded to Mr. Hurewitz on or around February 28, 2022, by providing him the Hearing Examiner Contract and amendments, and by

informing him that there were no resolutions or minutes related to the contract. Id. The County further informed Mr. Hurewitz that the 2022 Hearing Examiner contract was approved by affirmative of a majority of the Council. Id.

Despite having knowledge in 2022 of the alleged issue raised in his Motion, Mr. Hurewitz sat on his hands for nearly four years. Instead of timely raising his alleged issues through the filing of a declaratory judgment action with the Circuit Court, he decided to hi-jack the instant matter through the filing of a collateral Motion that has no bearing on the merits of the Petition.

Making matters worse, Mr. Hurewitz failed to properly raise the issue prior to the Zoning Board administrative meeting. If he had done so, the Zoning Board would have had the opportunity to address the allegations prior to sending the Petition to the Hearing Examiner. Instead, Mr. Hurewitz chose to wait until the start of the Hearing Examiner public hearing removing any ability for the Zoning Board to consider and rule on the Motion without causing prejudice and delay to the Petitioner.

In short, Mr. Hurewitz challenges the legitimacy of contractual positions that have existed and that he has been aware of for years. Despite this knowledge, he raises the issue only after this zoning case has commenced See, § 2.403.D.5.a of the ZB Rules of Procedure requiring preliminary motions to be filed at least 30 days prior to the hearing. Granting the Motion would unjustly delay and de-rail the pending matter causing prejudice to the Petitioner, and would inject uncertainty into all pending Zoning Board matters. As such, the Motion should be denied.

Additionally, the Charter and Code do not require the Hearing Examiner and Zoning Counsel to be appointed by resolution. As detailed above, the Hearing Examiner

and Zoning Counsel positions have existed since the early 2000s. Since their inception, neither position has been filled by Council appointment or resolution. The Council instead has contractually hired the Hearing Examiner and Zoning Counsel utilizing funds allocated for the positions in the County's budget or supplemental appropriation. Indeed, Rule 1.015 of the Rules of Procedure of the County Council provides 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. There is also no Howard County Code or Charter provision that requires the Hearing Examiner to be appointed by resolution. This is especially true in the context of zoning cases authorized under § 16.203A in which the Hearing Examiner is not charged with final decision making. Similarly, under the Code and Charter, Zoning Counsel is not required to be appointed by resolution. §16.1000 of the HCCO governs the employment of Zoning Counsel. It states, in pertinent part, that "[t]he County Council may employ a Zoning Counsel on a part-time, contractual basis."

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. These positions are part of the administrative actions and proceedings of the Council- a human resources issue.

Protestant's request for declaratory relief is improper because the Zoning Board does not have the jurisdiction to issue a declaratory ruling in this matter. In addition to disqualification, Protestant requests the Zoning Board issue a declaratory ruling that the Hearing Examiner and Zoning Counsel positions are vacant. First, the Zoning Board does not have the authority to issue such a declaratory ruling. § 2.408 of the Zoning Board Rules of Procedure only grants the Zoning Board the authority "to issue a declaratory ruling with respect to the applicability to any person, corporation, property or state of facts of any rule adopted by the Zoning Board, or the Zoning Enabling Act, or the Zoning Regulations or the Zoning Map of Howard County."

Protestant's request does not involve the applicability of the aforementioned provisions. It instead seeks a ruling that would invalidate the Council's contract with the Hearing Examiner and Zoning Counsel. The Zoning Board does not have the authority to declare employment contracts entered into with the Council void and the positions vacant.

Second, assuming for argument the Zoning Board does have the authority to issue such a declaratory ruling, §2.408 of the ZB Rules of Procedure requires Protestant to file a separate action requesting declaratory relief ---"Any interested person may petition the Zoning Board to issue a declaratory ruling ..." ("emphasis added"). Further, the petition must be publicly advertised and requires a public hearing. In short, the Rules do not allow Protestant to back-door a request for declaratory ruling in a pending matter.

For the foregoing reasons, Protestant's Motion must be denied. It is an untimely and improper collateral attack that should have at the very least, been filed prior to the initial Zoning Board administrative meeting. In addition, Protestant failed to timely file the Motion with the Zoning Board or with the Zoning Board Hearing Examiner who has jurisdiction over this matter. Moreover, the arguments are without merit and the Zoning Board does not have the authority to issue the requested declaratory judgement. Subject to the scope of jurisdiction granted to the Zoning Board Hearing Examiner the Motion is **DENIED**.

FINDINGS OF FACT

Based upon the evidence of record, the Zoning Board Hearing Examiner finds the following facts:

1. Property Identification. The Property consists of two different parcels totaling 0.40-acre. Parcel 706 is currently undeveloped and contains forested land. The rezoning area is approximately 0.199-acres. The Petitioner is the fee-simple owner. Parcel 726 is currently undeveloped and contains forested land. The rezoning area is approximately 0.208-acres. Mr. Edward Riemer is the fee-simple owner.

The subject Property is located on the north side of Dorsey Road approximately 530 feet southeast of the intersection of Dorsey Road and Douglas Legum Drive, Tax Map 43, Grid 6, Parcels 706 and Parcel 726, also identified as 6871 and 6875 Dorsey Road (the "Property").

2. Vicinal Properties.

Direction	Zoning	Land Use
North	TOD	Commercial/Office
South	R-12	Dorsey Road/Residential
East	TOD	Commercial/Office
West	R-12	Dorsey Road/ Residential

3. Roads. Dorsey Road has two travel lanes and a variable right-of-way width. The speed limit is 45 miles per hour. Annual Average Daily Traffic data is not available for this portion of Dorsey Road. Dorsey Road is classified as a Major Collector Road. The nearest intersection is Dorsey Road and Douglas Legum Drive. Douglas Legum Drive is a local public road.

4. Water and Sewer Service. The Property is within the Metropolitan District and Planned Service Area for Water and Sewer.

5. The General Plan. The Property is designated as a Transit Activity Center in the Future Land Use Map adopted in the General Plan, HoCo By Design. Transit Activity Centers are identified as a Character Area to create opportunities for compact, mixed-use development that maximizes residential, commercial, and open spaces within walking distance of premium public transit. The Property is also subject to the Route 1 Manual, adopted in 2009, and the Route 1 Plan: A Plan for Washington Boulevard ("Route 1 Plan") that was adopted alongside the General Plan.

6. Zoning History. The Property was zoned "Commercial B" in 1951 and was rezoned to M-2 (Manufacturing: Heavy) in 1954. The Property remained M-2 until 2004 when it was rezoned to TOD. The Property was rezoned to TOD with the 2004 CZP and retained this designation through the 2013 CZP.

The surrounding properties north of Dorsey Road followed the same zoning history as the Property. The surrounding properties to the south were zoned "Commercial B" in 1951 and rezoned to R-12 in 1961. These properties retained the R-12 zoning through the 2013 Comprehensive Zoning Plan.

7. General.

On October 29, 2025, the Petitioner filed a Petition to Amend the Zoning Map of Howard County. The Petition requested that the Zoning Map of Howard County be amended to change the zoning of the subject properties designated as Parcel 706 on

Howard County Tax Map 43 (also known as 6871 Dorsey Road, Elkridge, MD 21075) and Parcel 726 on Howard County Tax Map 43 (also known as 6875 Dorsey Road, Elkridge, MD 21075) from the TOD (Transit Oriented Development) District to the R-12 (Residential: Single) District. On January 8, 2026, the Planning Board of Howard County, Maryland, held a meeting to consider the Petition to Amend the Zoning Map.

On January 16, 2026, the Planning Board issued its recommendation to the Zoning Board wherein it stated "... the Planning Board of Howard County, Maryland, on this 16th day of January 2026, recommends that ZB-1131M, as described above, allow the Zoning Board to accept the 2013 mapping error and consider alternative zoning districts for the parcels."

Responding to the Planning Board's recommendation, the Petitioner, on January 27, 2026, filed an amendment to the Petition requesting that the Zoning Board consider as an alternative rezoning the subject properties to the R-SC (Residential: Single Cluster) District. On March 3rd, 2026, a hearing on the Petition was held before the Howard County Hearing Examiner. A summary of the relevant evidence and testimony presented at the hearing is as follows:

- Referring to Petitioner's Exhibit 3 (Map of Neighborhood), the Petitioner's President, Mr. Eric Bers, identified the location of the subject properties.
- Mr. Bers testified that the subject properties were created as a result of the realignment of Dorsey Road.
- Referring to Petitioner's Exhibit 3, Mr. Bers identified an area of R-12 zoned properties located very near the MARC train station but separated from the train station by the Dorsey Run.

- Referring Petitioner's Exhibit 3, Mr. Bers stated that these R-12 zoned properties located very near the MARC train station all had frontage and direct access onto Dorsey Road.
- Mr. Bers stated that there were no existing bridges or crossings over the Deep Run. He further testified that the development regulations do not permit stream crossings or disturbances of the buffer area without an approved waiver.
- Referring to Petitioner's Exhibit 4 (Dorsey Business Center SDP), Mr. Bers testified that the subject properties also had frontage and direct access onto Dorsey Road. He stated that the subject properties were similarly separated from the TOD District by environmental features including wetlands, a storm water management pond, and a SWM easement.
- Mr. Bers stated that there was no connectivity between the subject properties and the TOD District.
- Referring Petitioner's Exhibit 6 (Ho. Co. GIS Floodplain Map), Mr. Bers stated that the subject properties were isolated from the TOD District without any connectivity by the presence of an environmental wetland area.
- Mr. Bers stated that the individual subject properties were not shown on the 2013 Comprehensive Zoning Map; but rather the entire area was shown as a single 1.11 acre parcel.
- Mr. Bers stated that the area of his parcel and Mr. Riemer's parcel are both less than 9,000 sq.ft.
- Mr. Bers testified in detail regarding the efforts taken to market the subject properties for sale over the last 22 years.

- Referring to Petition Exhibit C (MLS Listing Report, Auction Receipts, Tax Payment History) Mr. Bers testified that despite lowering the price well below its assessed value, and despite offering a premium 5% sales commission, no one was interested and that neither he nor Mr. Riemer ever received a single offer to purchase either property.
- Mr. Bers testified that he listed his property for sale almost continuously from 2004 through 2010. Despite this, he received no offers.
- Mr. Bers stated that in 2013 he listed his property for an entire year with a commercial broker and advertised it as TOD property. Still, he received no purchase offers.
- Mr. Bers stated that he listed his property for sale again in 2023 – 2024 but he received no offers, but a couple of people contacted him and as soon as he said no, it's not residential. That was it.
- Mr. Bers testified that he and Mr. Riemer hired Cooper Auctioneers to sell their properties either separately or combined. Despite advertising both parcels for sale by auction in several newspapers they received no offers. In fact, only one person showed up for the auction out of curiosity.
- Mr. Bers testified that Mr. Riemer might be a shrewder businessman than he because in 2007 Mr. Riemer decided to stop paying property taxes if he wasn't able to develop his property.
- Mr. Bers stated that in retrospect, maybe that was something he should have done. He stated that he has paid over \$36,000 in taxes over the years and that all taxes on his parcel are current.
- Mr. Bers stated that the outstanding property taxes on Mr. Riemer's property will be in excess of \$70,000 as of next July 1st.

- Mr. Bers stated that since 2007 no one was willing to purchase Mr. Riemer's property at tax sale and then foreclose the right of redemption. He stated that one person purchased the tax certificate but never proceeded for foreclose the right of redemption.
- Mr. Bers stated that his annual tax bill on his property is in excess of \$2,000 and its becoming a financial burden.
- When asked whether he thought that the current TOD zoning of his property has deprived him of any reasonable, viable economic use of his property, Mr. Bers stated that he could not build there and that the economics were such that he wasn't sure what type of building could actually be built there to rent or to sell. He stated that he hasn't had use of his property for 26 years and that he didn't see any factors that could possibly change it. He stated that he can't have access into Dorsey Business Park and that walking down the street to the MARC train station along Dorsey Road is certainly not a reasonable, viable or feasible option. He stated that no one is going to put a bridge over a wetland to link one or two properties over to the TOD because it's not economically viable.
- Referring to Petitioner's Exhibit Nos. 7A – 7G (Dorsey Road Street View Images), Mr. Bers stated that the subject properties were located on a section of Dorsey Road that does not have sidewalks.
- Mr. Bers indicated that the subject properties were shown on the left side of the road in the series of street view images, directly across Dorsey Road from numerous single-family detached homes.
- Referring to Petitioner's Exhibit No. 9 (Ho Co. Pictometry Image), Mr. Bers identified the location of the Dorsey Run stream. He further identified the location of numerous R-

12 zoned properties that were very close to the train station but were physically separated from the train station due to environmental features.

- Mr. Bers testified that he chose to file the Petition to Amend the Zoning map because the taxes were burdensome and were causing him financial harm. He explained that normally comprehensive zoning is held every 10 years but we are 3 years past that timeframe and there is no schedule to hold a comprehensive rezoning.
- Mr. Bers stated that Howard County is experiencing a housing crisis and that he builds entry level homes to serve this segment of the market.
- Mr. Bers stated that he has been denied economic use of the property.
- Petitioner's Counsel confirmed on the record that the Petitioner was seeking R-SC zoning for the subject properties.
- When asked by Zoning Counsel if he'd had a chance to go into all the different uses that are allowed in the TOD zone such as uses like a commercial communication antenna or conservation area, Mr. Bers stated that he did talk to his engineer as well as his attorney. He explained that he's paying \$2000 a year in taxes, so he'd have to generate some type of income that would be more than \$2000. He stated that he did not think he would be able to put a billboard there, and that he actually did try to donate it to a state agency for conservation but they would not accept it. They didn't want something of that size because they didn't want to maintain it. They didn't want to cut the grass or trim the trees. Mr. Bers stated that he can't even give the property away, but he did investigate that.
- The Petitioner's consultant, Michael VanSant of Vanmar Engineering, testified as to the physical attributes and constraints of the subject properties. He stated that directly behind

the property there is a stormwater management facility and an easement associated with that. Then there is a drain outfall from that facility. That creates an environmental feature that containing wetlands. The wetlands is a protected environmental feature. We are required to keep development away from it by any certain distance. There's a 25 foot set back from the edge of the wetlands.

- Mr. VanSant stated that it would not be possible to connect the subject properties to the larger TOD property without receiving waivers and variances from environmental regulations. To build a footpath or something like that we would need permission from that landowner. We would probably require mitigation for whatever gets disturbed.
- Mr. VanSant stated that it would be tough to justify disturbances to the wetlands given that the subject properties have frontage and direct access to Dorsey Road. The cleanest path would be to follow Dorsey Road up until it intersects with the TOD main entrance in that road. The problem is that there are no sidewalks along Dorsey Road. So, inviting pedestrian traffic in that area would not be advisable. He stated that if there were to be some connection, it would have to go through a subdivision process. A waiver of disturbances in the wetlands and probably mitigation for that disturbance would be required. It's not impossible, engineering firms, we think there's probably nothing impossible. Non practical is what I would respond.
- Mr. VanSant explained that changing the designation to R-SC would be advantageous because you would have the ability to adjust that internal lot line and still stay within the 6000 square foot minimum lot area. The setbacks are very similar in the R-SC. You have a zero lot line option so there are several factors that I would say now R-SC would be the

most advantageous zoning category. You would not have to maintain a side yard setback of seven and a half feet. In addition to that, you'd have flexibility to even relocate or reconfigure that internal lot line.

- Comparing commercial development under TOD to residential development under R-SC, Mr. VanSant stated that you would have approximately half of the impervious area in the residential structure and greater than half of the impervious area in a single family home versus a commercial.
- Mr. VanSant also stated that he went down to the property and looked at potential building and looked across the street and saw nothing but residential homes and didn't get the feeling that a commercial building would be welcomed in that neighborhood.
- When asked by the Hearing Examiner, Mr. Vansant indicated that the subject properties could not be further subdivided regardless of whether they were zoned R-12 or R-SC. He explained that the parcels were each under 9,000 sq.ft. and that a combined area of over 18,000 sq.ft. would be required in order to subdivide.
- When asked by the Hearing Examiner, Mr. VanSant indicated that he did not envision that there would be any substantial difference in appearance if the subject properties were developed under R-SC zoning compared to the R-12 development on the other side of Dorsey Road. The subject property would be developed with two single family homes like the right side of the street.
- Julia Sauer, Division Chief for the Public Service and Zoning Administration, was called to testify by the Zoning Counsel.
- When asked by Zoning Counsel whether the subject properties could be permitted under

the subdivision regulations to have driveway access directly onto Dorsey Road, Ms. Sauer indicated that Dorsey Road is classified as a major collector roadway and the subdivision regulations state for residential development that access should be from a non-major collector road. If there is no other means of access to the property except from a major collector road or higher classification, then a single driveway would be permitted. Ms. Sauer indicated that these two properties only have access to Dorsey Road, so that is where they would get their access. Ms. Sauer also indicated that the environmental features in the rear of the property are supposed to remain undisturbed. She explained that the county's position typically is to not impact environmental features, so access onto Dorsey Road would likely be permitted provided there is safe sight distance. She indicated that Dorsey Road appears to be pretty straight in the vicinity of the properties, so she did not think that accessing directly onto Dorsey Road would be an issue.

- When asked by Zoning Counsel if she was familiar with the TOD District and that one of the major purposes of the TOD zone is to provide for the development and redevelopment of key parcels within 3500 feet of a MARC station and whether the zoning regulations provided guidance on when and how land is considered a key parcel, Ms. Sauer stated she was familiar with the TOD regulations but that the regulations did not provide guidance on the meaning of key parcels. She expressed that in her opinion the purpose of the TOD District is to allow mixed-use development with high density residential to provide connectivity to the MARC station and other public transit. She indicated that the TOD District is typically intended for larger areas. Ms. Sauer indicated

that in her opinion a key parcel would have a large developable area or a smaller parcel if it provides vehicular or pedestrian access. She further indicated that in her opinion, these two parcels were not necessary to have an integrated development.

- Ms. Sauer also confirmed that the subject parcels were too small to be developed for residential uses under the TOD District regulations without being incorporated into a larger TOD development.

MISTAKE IN THE 2013 COMPREHENSIVE ZONING

Howard County Code, §16-204 (a) authorizes the Zoning Board to make decisions on piecemeal map amendments and development plans in pursuance of a petition filed in accordance with Howard County Code, §16.205 et seq. 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.” Piecemeal (non-floating) rezonings must comply with the “change-mistake” rule set forth in *Boyce v. Sembly*, 25 Md. App. 43 (1975) wherein the court explained:

A perusal of cases, particularly those in which a finding of error was upheld, indicates that the presumption of validity accorded to a comprehensive zoning is overcome and 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 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*, *supra*, at 645-46. Unsupported conclusions from expert witnesses are insufficient to generate a fairly debatable issue with respect to mistake. See *Beachwood*, *supra*, 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*, *supra*, at 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.

In *Anne Arundel County v. A-PAC Ltd.*, 76 Md. App 122 (1986), the court further explained that,

It is well settled that in zoning an original error or mistake may be established by showing that the assumption, upon which a particular use was predicated, proves with the passage of time to have been erroneous.

Id. at 127.

The Petitioner does not allege that there has been a change in the character of the Neighborhood subsequent to the last comprehensive zoning in 2013. Rather, the Petitioner has alleged and demonstrated that a mistake occurred when the County Council adopted the last comprehensive zoning in 2013 which applied (or carried over from 2004) the TOD District zoning of the subject Properties.

The Petitioner's witness, Mr. Bers, explained that the basis of the 2013 zoning mistake was two-fold. The first basis of zoning mistake was caused by the County Council acting under a mistake of fact during its consideration of the 2013 Comprehensive Zoning Map. Specifically, the Council did not know that the subject Properties, Parcel 706 and Parcel 726, were in fact separate parcels. It is undisputed that the 2013 Comprehensive Zoning Map presented to the County Council mistakenly represented the area containing the subject Properties as being a single and much larger parcel consisting of approximately 1.11 acres. See, Petition, Exhibit A. In actuality, the area shown on the

2013 Comprehensive Zoning Map was not a single parcel. Rather, it was comprised of four (4) separate and much smaller parcels under diverse ownership. See, Petition, Exhibit B.

Mr. Bers testified that at the time the County Council adopted the 2013 Comprehensive Zoning Map, the Council reasonably believed that the much larger 1.11 Acre parcel depicted on the zoning map was capable of being developed for uses permitted under the TOD District zoning regulations. Had the County Council been aware of the actual size of the subject Properties, they would have realized that they were not large enough to be developed as viable TOD District zoned properties given the lack of adequate space for setbacks, non-residential parking areas, and storm water management. Had the County Council been aware of these circumstances, they would not have chosen to apply the TOD District zoning to the subject properties.

Mr. Bers also testified to facts establishing a second basis of zoning mistake resulting from the County Council's decision to apply the TOD District to the subject Properties during the 2013 Comprehensive Zoning. Mr. Bers testified that the underlying assumption relied on by the Council during the 2013 Comprehensive Zoning was that there was a viable market for TOD District development in the particular location where the subject properties are located, or that such a viable market would develop in the reasonable future. Mr. Bers, a licensed Maryland real estate agent, testified that with the passage of time, this assumption has proven to be a mistake. He testified that a market for TOD zoned properties in the particular location of the subject properties has failed to materialize and is unlikely to materialize in the future.

Mr. Bers testified that the subject properties were initially zoned TOD during the 2004 Comprehensive Zoning and that beginning in 2004 and continuing through the date of this Petition, both the Petitioner and the owner of Parcel 726 have aggressively marketed their respective properties for sale. He further testified that despite exhaustive ongoing efforts to sell the properties (including numerous listings on a multiple list service

and the engagement of a professional auctioneer) neither parcel has received a single purchase offer. Mr. Bers testified in considerable detail regarding the exhaustive joint efforts undertaken by the Petitioner and the owner of Parcel 726 to market the subject properties. Mr. Bers then testified in great detail regarding the contents of Petition, Exhibit C. He testified that this 46-page exhibit contains copies of documents evidencing efforts to market the subject properties including multiple listings, a newspaper advertisement for an auction sale, auctioneer invoices, and property tax assessments and payment history.

Mr. Bers testified that the property taxes on Parcel 726 have been unpaid by the owner for over 19 years. As a result, this parcel has been offered at tax sale for the last 19 consecutive years. Despite this, no purchaser has ever shown an interest in the property by purchasing the tax lien certificate and then proceeding to foreclose on the right of redemption. The property tax arrears on this parcel will be in excess of \$70,000 as of July 1st.

Mr. Bers testified that during this time, both the Petitioner and the owner of Parcel 726 have been licensed real estate agents in the State of Maryland. It is Mr. Bers' opinion as a local Maryland real estate agent that a viable market for small, irregular shaped TOD zoned parcels simply does not exist at this particular location; nor is one likely to develop in the foreseeable future. Therefore, with the passage of time, the Council's assumption in 2013 that a market for TOD parcels at this location existed or would develop within a reasonable time has proven to be a mistake. Had the County Council been aware that a viable market for TOD District zoned properties would fail to develop in the reasonable future, they would not have chosen to apply the TOD District zoning to the subject properties.

THE MOST APPROPRIATE ZONING DISTRICT
FOR THE SUBJECT PROPERTIES

Having demonstrated that an actual mistake occurred when the County Council applied the TOD District zoning to the subject properties upon the adoption of the 2013 Comprehensive Zoning, the next consideration is whether the Zoning Board should apply a zoning district other than the TOD District to the subject properties; and if so what zoning district should that be. Petitioner has demonstrated that the Zoning Board should rezone the subject Properties from the TOD District to the R-SC District.

Petitioner's consultant, Mr. VanSant, testified about the attributes of the subject properties and why they are not conducive to development under the TOD District regulations. Mr. VanSant explained that the inability to use the properties under TOD District zoning relates to the limited nature of the permitted uses under the TOD District. He testified that the TOD District regulations only permit apartment or single family attached dwellings within a development project encompassing at least 3 gross acres of TOD-zoned land with a minimum residential density of 20 units per net acre of residential development. Mr. VanSant testified that the subject properties are far too small to accommodate any residential development. With respect to non-residential uses permitted in the TOD District, Mr. Vansant testified that these uses are likewise not viable on the subject properties because the parcels are simply too small to accommodate the required parking areas associated with non-residential development. He testified that a minimum of 3.3 parking spaces per 1,000 sq. ft. of development is required to accommodate the parking needs for most non-residential uses. Mr. VanSant testified that the subject properties are simply too small to accommodate the parking requirements of a viable TOD District development.

Mr. Vansant also testified that although the subject properties are within 3,500 feet of the MARC train station, it is not reasonably feasible to achieve safe and convenient

pedestrian access from the subject properties to the train station. The reason for this he explained was due to the existence of sensitive environmental features, including a stream and associated wetlands separating the subject Properties from the main area of the TOD District. In addition, access and connectivity to the train station is hindered by the existence of an off-site storm water management easement that further separates the subject Properties from the main TOD District and the train station. Finally, Mr. VanSant testified that it is not possible to achieve safe and convenient pedestrian access from the subject properties to the train station because Dorsey Road does not have sidewalks in the vicinity of the subject properties.

Both Mr. Bers and Mr. VanSant separately testified that the most appropriate zoning for the subject properties is the R-SC District. They each explained that the character of the neighborhood where the subject Properties are located is decidedly residential, consisting of single-family detached homes. They both further testified that the subject Properties do not have internal access to the developed TOD zoned area adjacent to the Dorsey Marc Station. They also testified that the subject Properties have frontage and direct access on the north side of Dorsey Road where they face the established single-family detached homes on the south side of Dorsey Road.

Referring to Petitioner Exhibit 3 (Neighborhood Map) and Petitioner Exhibits 7A – 7G (Street View Images depicting single-family detached residences fronting on south side of Dorsey Road), Mr. Bers expressed his opinion, as a local real estate agent and custom home builder, that the development of non-residential uses on the subject properties and along this particular segment of Dorsey Road would be very disruptive and out of character with the remainder of the residential neighborhood. He further expressed concern that the development of commercial uses on the subject Properties would result in additional commercial traffic, vehicles, and parking of large trucks not in keeping with the character of the neighborhood.

CONCLUSIONS OF LAW

Approval of the requested zoning map amendment will not be detrimental to the public health, safety, and welfare because the properties have frontage and direct access on Dorsey Road at a location that will permit safe ingress and egress with adequate site distance. The parcels are proposed to be developed with single-family detached dwellings. The proposed use has a very low intensity and will not create any adverse impacts or nuisance conditions on adjacent properties. The proposed use will not create any atypical adverse conditions such as excessive levels of noise, dust, odors, fumes, or vibrations. Granting these rezoning requests will increase the supply of much needed housing in close proximity to mass transit; thereby serving the public health, safety, and welfare of the residents of Howard County.

The proposed zoning map amendment will be in harmony with the General Plan for Howard County (HoCo By Design) and will not have the potential to adversely affect the surrounding and vicinal properties. Specifically, the proposed zoning map amendment is in harmony with HOCO By Design DN-3 Policy Statement because it will promote homeownership in Howard County. The proposed rezoning of the subject Properties will also serve the growing population of Howard County, as well as the population in the vicinity of the subject properties which has increased substantially since the 2013 Comprehensive Zoning. See, 2010, 2013, and 2018 Census Data set forth in Petition Exhibit C (THUR RETAIL – Demographic and Income Profile). See also, HOCO BY DESIGN, Chapter 10: Managing Growth, Page MG-17, Graph 10-1 (Residential Building Permits Issued 2001 through 2022 Howard County) and Page MG-18, Graph 10-2: Residential Building Permits Issued – By Unit Type Howard County. Consistent with HoCo By Design, Public Facilities are available to serve the development of the subject Properties if they are rezoned to the R-SC District. See, HOCO BY DESIGN, Chapter 9: Supporting Infrastructure.

In addition, the subject Properties are in the Metropolitan District and

Planned Service Area for water/sewer. See, Technical Staff Report & Agency Comments, Section D. Consistent with HoCo By Design, the subject Properties also receive Howard County police services by the Northern Patrol District. See, HOCO BY DESIGN, Chapter 9: Supporting Infrastructure, Pages INF-15/16, Map 9-1: Police Patrol District. The subject Properties also receive fire and rescue services from Howard County Fire Station No. 12. See, HoCo By Design, Pages INF-21/22, Map 9-2: Fire Response Areas. Additionally, school-age children residing on the subject Properties are eligible to attend schools in the Howard County Public School System. See, HOCO BY DESIGN, Chapter 8: Public School Facilities, Pages PS-7 – PS-28. Finally, the present and future transportation patterns in the vicinity of the subject Properties are shown on HOCO BY DESIGN, Chapter 4: County in Motion, Map 4-3: Functional Road Classifications, Pages CIM-41/42. The subject Properties have frontage and direct access onto Dorsey Road which is classified as a Major Collector. Map 4-3 does not propose changes to existing transportation patterns in the vicinity of the subject properties.

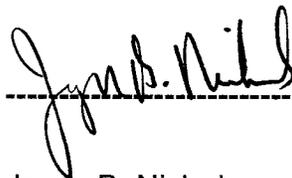
On January 8, 2026, the Planning Board of Howard County, Maryland, considered the Petition to Amend the Zoning Map to rezone the subject Properties from the TOD District to the R-12 District. After considering the Petition (as initially filed), the Technical Staff Report, the testimony of witnesses including DPZ staff member, Justin Tyler, and two members of the public, the Planning Board unanimously adopted a motion to recommend that the Zoning Board accept that a mapping error occurred during the 2013 comprehensive zoning and to consider alternative zoning districts for the parcels other than the TOD District. The Planning Board did not, however, unanimously find that the R-12 District was the most appropriate zoning for the properties. Rather, the Planning Board recommended that the Zoning Board consider alternative zoning districts for the subject properties. The Planning Board did not recommend a specific zoning district.

The Planning Board in its recommendation expressed concerns that the subject Properties were too small to be developed under TOD District zoning, but that the parcels might also be too small to be developed under the R-12 District regulations. Mr. VanSant's

testimony confirmed the Planning Board's concern about the size of the parcels. He testified that the R-SC District has an advantage not provided by the R-12 District; that being, the R-SC District has a significantly reduced minimum lot size as compared to the R-12 District (6,000 sq.ft vs. 12,000 sq.ft.). Mr. VanSant testified that the reduced minimum lot size required under the R-SC District would permit the subject Properties to be conforming in terms of lot size. In addition, he stated that the reduced minimum lot size required under the R-SC District would also afford the Petitioner some flexibility to reconfigure the interior lot lines between the two parcels to mitigate the effects of required side-yard setbacks. When asked by the Hearing Examiner, Mr. Vansant testified that the subject Properties could not because of their size be further subdivided regardless of whether they were rezoned to the R-12 District or to the R-SC District.

Additionally, rezoning the subject Properties to the R-SC District is in the public interest as well as the Petitioner's interest because it is responsive to the housing crisis the State of Maryland is facing as evidenced by Executive Order 01.01.2025.19 issued by Governor Wes Moore. See, Petitioner's Exhibit 10.

Respectfully submitted,



Joyce B. Nichols

Zoning Board Hearing Examiner

March 19, 2026