

IN THE MATTER OF : BEFORE THE
Howard Research : ZONING BOARD
and Development Corp. : OF HOWARD COUNTY

PETITIONER : Zoning Board Case No. 1133M

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REPORT

On March 26, 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 Petition of Howard Research and Development Corp., 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 correct this mistake by rezoning the subject Property from the B-2 (Business: General) to the M-1 (Manufacturing: Light) zoning district.

The subject Property is identified as 9121 and 9131 S. Commerce Center Drive, Columbia, located on the east side of Commerce Center Drive approximately 100 feet southwest of the intersection of Snowden Square Drive and Commerce Center Drive. The Property is approximately 11.01 acres in combined size, Tax Map 42, Grid 6, Parcel 513, Lots A-71 (5.5 acres) and A-73 (5.51 acres), in Council District 3. The Petition is not a Site Plan rezoning therefore no Documented Site Plan was submitted.

The Hearing Examiner viewed the subject Property as required by the Zoning Board/Hearing Examiner Rules of Procedure. Thomas Coale, Esq. represented the Petitioner. Gabriel Chung (Property owner) and Dan Sweeney (civil engineer) testified on behalf of Petitioner. No one appeared in opposition.

The parties of record in the Petition are Thomas Coale, Esq., and Nathaniel Foreman, Esq.. A Memoranda of Law was filed by Petitioner.

Petitioner introduced into evidence the following Exhibits:

- 1.(a) Aerial of subject property
- (b) Current zoning overlay

PRELIMINARY MOTIONS

On February 24, 2026, Joel Herewitz, filed a Motion For A Bill of Particulars Regarding the Disclosure of Contributions to Friends of Opel Jones, a Motion to Provide the Ownership and Corporate Information required by Howard County Code Section 16.205(c)(1), a Motion to Disqualify Joyce Nichols as Zoning Board Hearing Examiner until such time as Joyce Nichols is Lawfully Appointed by the Howard County Council by Resolution, a Motion to Disqualify Nathaniel Forman as Zoning Counsel until such time as Foreman is Lawfully Appointed by the Howard County Council by Resolution, a Motion to Indefinitely Postpone Scheduling of ZB 1133M until such time as Zoning Counsel Nathaniel Foreman is Lawfully Appointed by the Howard County Council by

Resolution, and a Motion to Retain Jurisdiction of ZB 1133M until such time as Joyce Nichols is Lawfully Appointed as Zoning Board Hearing Examiner by the Howard County Council by Resolution.

Mr. Hurewitz did not appear at the March 26, 2026, evidentiary hearing despite having actual notice of the hearing, therefore no oral argument was had on these motions. As Mr. Hurewitz appears to have abandoned his Motions, Petitioner did not address them in its Memorandum of Law.

Although seemingly abandoned, your Examiner will briefly address the disqualification issue. Mr. Hurewitz 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, Mr. Hurewitz 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, Mr. Hurewitz 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. 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.

Pursuant to §16.1000 of the Howard County Code of Ordinances 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. 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-1122M

Pursuant to § 16.203A(a)(4), the Zoning Board held its initial administrative public meeting on this matter on March 25, 2026, and unanimously voted to forward the Petition to the Hearing Examiner. The initial hearing before the Hearing Examiner was scheduled for March 26, 2026. Mr. Hurewitz had actual knowledge of the March 25, 2026, initial administrative meeting as he was present at that Zoning Board meeting. Moreover, Mr. Hurewitz was 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." 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 collateral Motions that have no bearing on the merits of the Petition. Granting the Motions would unjustly delay and derail the pending matter causing prejudice to the Petitioner, and would inject uncertainty into all pending Zoning Board matters. As such, the Motions 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 it's 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. Mr. Hurewitz fails to cite any authority for his position that the Zoning Board has the authority to declare employment contracts entered into with the County Council void and the positions vacant.

Second, assuming for argument the Zoning Board does have the authority to void employment contracts without cause , §2.408 of the ZB Rules of Procedure requires Mr. Hurewitz 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, Mr. Hurewitz's Motions must be denied. They are an untimely and improper collateral attack that have not been filed timely in violation of the equitable doctrine of laches. Moreover, the arguments are without merit and the Zoning Board does not have the authority to issue the requested relief. Mr. Hurewitz was not even sufficiently interested in his own motions to attend the evidentiary hearing wherein Mr. Hurewitz was aware the Motions could be argued. Subject to the scope of jurisdiction granted to the Zoning Board Hearing Examiner these Motions are **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 adjacent parcels totaling 11.01 acres in size. Lot A-71 is currently undeveloped. The rezoning area is approximately 5.5 acres. GEAPE Land Holdings II, Inc. conveyed the lot to The Howard Research and Development Corporation (HRD) in 2009. Lot A-73 is currently undeveloped. The rezoning area is approximately 5.51 acres. The Howard Research and Development Corporation is the fee-simple owner.

2. Vicinal Properties.

Direction	Zoning	Land Use
North	M-1/B-2	Commercial/Industrial
South	M-1	Commercial/ Industrial

East	M-1	Industrial
West	B-2	Commercial

3. Roads. Commerce Center Drive has two travel lanes within a 30-foot right-of-way. Annual Average Daily Traffic data is not available for this portion of Commerce Center Drive. Commerce Center Drive is classified as a Private Road.

The nearest intersection is Commerce Center Drive and Snowden Square Drive, approximately 100 feet northwest of the parcels. Snowden Square Drive is classified as a Local Public Road.

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

5. The General Plan. The Property is designated as a Regional Activity Center on the Future Land Use Map adopted in the General Plan, HoCo By Design. HoCo By Design envisions Gateway transforming into a regional Activity Center and states that "Industrial, warehouse, and flex space buildings should be considered for specific areas in Gateway." Regional Activity Centers are identified as a Character Area consisting of the Columbia Gateway business park, an existing employment center with large-format buildings and surface parking lots that should be redeveloped as a large regional growth center in the future.

The Gateway Master Plan, adopted in December 2025, states that "The Gateway Innovation District will be a major hub for cybersecurity, defense, technology, artificial intelligence, quantum, and other emerging industries while also offering residents a well-connected, vibrant, and thriving community in which to live, work, and play." The Gateway

Master Plan further states, "Industrial uses will continue to thrive, in appropriate locations, and support the innovation ecosystem."

The Gateway Master Plan organizes the site into nine subareas, each with a different land use vision. The subject property is located in Subarea 6 (Snowden River Parkway), for which the Master Plan states: "This subarea includes properties with existing low-density industrial uses, where redevelopment within the 30-year horizon of this plan is unlikely. The master plan recommends that future development continue to have an employment focus where industrial coexists with other uses. This approach allows these areas to redevelop with a broader mix of uses or continue to thrive as industrial sites."

6. Zoning History.

Subject Property

The Property was zoned "Residential" in 1951 and was rezoned to the Business 2 District (B-2) in 1954. The Property remained B-2 until 1962, when it was rezoned to Residential (R-20). The Property was rezoned to Industrial Development (ID) in 1972 and retained this designation until 1992. In 1992, it was rezoned to M-1 and remained M-1 until 2004. In 2002, Map Amendment 42.01 was submitted for the previous addresses of 9141 Snowden River Parkway/9131 Robert Fulton Drive, Tax Map 42, Parcel 513, Lots A-71 & A-73, to request rezoning the lots from M-1 to B-2. During approval of this request, the Planning Board indicated that the proposed B-2 designation was an "appropriate extension of commercial zoning." During the 2004 Comprehensive Zoning Plan, the Property adopted the B-2 designation and retained this zoning through the 2013 Comprehensive Zoning Plan.

Adjacent Properties

The properties to the west share the same zoning history as the subject Property, until 1992 when the properties were rezoned to the current B-2 zoning designation. Conversely, the parcels to the east were rezoned from residential to ID in 1972, and rezoned to the current M-1 zoning designation in 1992.

7. Petitioners Proposal. The Petitioner, The Howard Research and Development Corporation, requests a Zoning Map Amendment to rezone the Property from Business: General (B-2) to Manufacturing: Light (M-1).

The B-2 district was established to provide for commercial sales and services that directly serve the general public.

The M-1 district was established to permit a mix of manufacturing, warehousing and business uses with provisions for limited retail sales.

The Petitioner asserts that the proposed Zoning Map Amendment is justified based on a mistake in Zoning made during the 2004 Comprehensive Zoning Plan (the "2004 CZP").

8. General.

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 conclusions 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 unrebutted 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.

LEGAL STANDARD FOR MISTAKE

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.

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).

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 B-2 District zoning of the subject Property.

MISTAKE IN THE 2013 COMPREHENSIVE ZONING

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.

THE MOST APPROPRIATE ZONING DISTRICT **FOR THE SUBJECT PROPERTY**

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 B-2 District to the subject property; and if so what zoning district should that be. Petitioner has demonstrated that the Zoning Board should rezone the subject Property from the B-2 District to the M-1 District.

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 Mr. Chung and Mr. Sweeney 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.

CONCLUSIONS OF LAW

The facts and law in this Petition do 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.

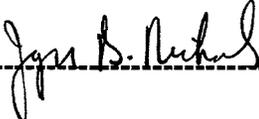
By the time of the 2014 Comprehensive Zoning Map Process, the County had before it clear, objective, and observable evidence that the property was not viable for retail development and that the surrounding area was functioning as an employment and industrial center. The decision to retain the B-2 zoning in the face of those facts was not

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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.

A mistake occurred in the retention of the B-1 zoning and Petitioner has met its burden of showing that Parcel 573 should be rezoned from B-1 to M-1 zoning district so that the property can be put to a productive, appropriate, and economically viable use consistent with the County's planning framework.

Respectfully submitted,



Joyce B. Nichols

Zoning Board Hearing Examiner

March 30, 2026