

The Palmetto Group, Inc,

\* Before the Zoning Board of

Petitioner

\* Howard County

\* Zoning Board Case No. ZB-1131M

\*\*\*\*\*

**DECISION AND ORDER**

On February 25, 2026, the Zoning Board of Howard County (“the Board”) held an administrative meeting regarding the above-captioned petition for a piecemeal amendment of the county zoning map under the Howard County Code of Ordinances, §§ 16-201 and 16-204 (“the Petition”). Pursuant to the Howard County Code of Ordinances, §16-203A and the Rules of Procedure of the Howard County Zoning Board, Rule 2-402.A.1, the Board decided to assign the Howard County Zoning Board Hearing Examiner (“the Hearing Examiner”) to first hear the petition in this matter, in order to conduct an evidentiary hearing and to provide the Board with a report.

On March 3, 2026, the Hearing Examiner held a hearing on the Petition, which was filed by The Palmetto Group, Inc. (“Petitioner”). Petitioner requests that the Zoning Board determine that a mistake occurred during the last comprehensive rezoning in 2013 and rezone the subject property from the TOD (Transit Oriented Development) District, under the Howard County Zoning Regulations (“HCZR”), §127.4, to the R-SC (Residential: Single Cluster) District, under the HCZR, § 110.0.

The subject properties are identified as 6871 and 6875 Dorsey Road, are approximately .40 acre in combined size, and are located along the north side of Dorsey Road. The properties are approximately 530 feet southeast of the intersection of Dorsey Road and Douglas Legum Drive

and are identified as Tax Map 43, Grid 6, Parcels 706 and Parcel 726. While Petitioner has not filed a request for approval of a documented site plan, Petitioner has indicated that if the requested zoning is approved, the intent is to develop single-family detached dwellings.

The Hearing Examiner viewed the subject properties prior to the hearing. William Erskine, Esq. represented the Petitioner. Nathaniel Foreman, Esq., the Zoning Counsel, appeared pursuant to Section 16.1000 of the Howard County Code, to support the comprehensive zoning of the subject property. Petitioner's witnesses were Eric Bers, who testified on behalf of The Palmetto Group, and Micheal VanSant, a civil engineer. Julia Sauer, Howard County's Division Chief for Public Service and Zoning Administration, testified on behalf of the Department of Planning and Zoning ("DPZ") to present the Technical Staff Report. Joel Hurewitz testified that he was not a protestant to the Petition but that he wanted the Zoning Board to adopt legislation supportive of affordable housing. No one appeared in opposition.

Petitioner introduced the following exhibits which were accepted into evidence:

1. Zoning Map Amendment Plan
2. Aerial image locating the properties
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 level photos of the properties and the properties directly across Dorsey Road from the subject property.

8. Aerial image of the neighborhood
9. Aerial image showing stream
10. Executive Order identifying Maryland's Affordable Housing Crisis

The first date of the hearing, the administrative meeting to determine whether to delegate the evidentiary hearing to the Hearing Examiner, was advertised and all subsequent dates were continuances, pursuant to the Zoning Board Rules. The subject properties were posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing. Pursuant to the Zoning Board's Rules of Procedures, all the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report (TSR) of the Department of Planning and Zoning, and the Planning Board's recommendation, were entered or incorporated into the record of the hearing.

Prior to the conduct of the evidentiary hearing, Mr. Hurewitz made a motion, asserting that the hearing examiner and zoning counsel have not been properly appointed. The motion was taken under advisement prior to the beginning of the evidentiary hearing March 3, 2026, for the other parties to respond.

Mr. Hurewitz seeks to disqualify both the Howard County Hearing Examiner and Zoning Counsel retained by the County Council from this matter. Mr. Hurewitz asserts that both positions may be filled only by adoption of a County Council resolution appointing each to their respective

positions, despite the long-standing administrative practice to fill the Hearing Examiner and Zoning Counsel positions through contractual employment as allocated in the County budget. The Zoning Board finds the analysis of this issue, as set forth in the Report provided to the Board by the Hearing Examiner, to be persuasive and adopts that reasoning for purposes of denying Mr. Hurewitz's exception to the Hearing Examiner's Report on this issue.

After careful evaluation of all the information presented, including the Hearing Examiner's Report and the exceptions thereto, the Zoning Board of Howard County accepts the Hearing Examiner's Report as to the proposed findings of fact and proposed conclusion of law. Accordingly, the Board makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

The properties consist 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 properties are 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 vicinal properties can be described as follows: to the north is a commercial/office property zoned TOD; to the south is Dorsey Road and residential property zoned R-12; to the east is a commercial/office property zoned TOD; and to the west is Dorsey Road and residential property zoned R-12.

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.

The properties are within the Metropolitan District and Planned Service Area for Water and Sewer.

The properties are designated as within 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 properties are 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.

The properties were zoned "Commercial B" in 1951 and rezoned to M-2 (Manufacturing: Heavy) in 1954. The properties remained M-2 until 2004 when they were rezoned to TOD. The properties retained this designation through the last comprehensive rezoning, in 2013.

The surrounding properties north of Dorsey Road followed the same zoning history as the subject properties. 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.

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.

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. 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 are no existing bridges or crossings over the Deep Run waterway. 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 SOP), Mr. Bers testified that the subject properties also have frontage and direct access onto Dorsey Road. He stated that the subject properties are separated from the TOD District by environmental features including wetlands, a storm water management pond, and a storm water management easement. Referring to 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 properties were not shown individually on the 2013 Comprehensive Zoning Map but rather that they were depicted collectively, and mistakenly, as part of a single, 1.11 acre parcel. Mr. Bers stated that the area of his parcel and Mr. Riemer's parcel are each less than 9,000 sq. ft.

Mr. Bers testified in detail regarding various efforts to market the subject properties for sale over the last 22 years. Referring to Petitioner's 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 and that when the couple of people who did contact him received confirmation from him that his property is not zoned residential, they were not interested.

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 is, 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 exceed \$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 toward foreclosure of the right of redemption. Mr. Bers stated that his annual tax bill on his property is over \$2,000 and is 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 was not sure what type of building could actually be built there to rent or to sell. He stated that he has not had use of his property for 26 years and that he does not see any factors that could possibly change it. He stated that he cannot have access to Dorsey Business Park and that walking down the street to the MARC train station along Dorsey

Road is 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 is 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 properties are 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 (Howard County 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 his understanding is that normally comprehensive zoning is held every 10 years, but it is 3 years past that time frame and he believes 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 has considered all the different uses that are allowed in the TOD zone, including a commercial communication antenna or a conservation area, Mr. Bers stated that he did talk to his engineer as well as his attorney. He explained that he is paying \$2000

a year in taxes, so he would 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 did try to donate the property to a state agency for conservation purposes but that they would not accept it. He stated that the State did not want something of that size because they did not want to maintain it. Mr. Bers stated that he cannot even give the property away, but he did investigate that.

The Petitioner's consultant, Michael VanSant of VanMar Engineering, testified 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. There is also a drain outfall from that facility. Combined, those two features create an environmental feature that contains wetlands, which he testified is a protected environmental feature, which requires that development be kept away from it by any certain distance. He testified that there is 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 would need permission from affected landowners and 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 on that road, however there are no sidewalks along that portion of Dorsey Road. 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. He opined that it is not impossible, from an engineering perspective, but he would label it as not practical.

Mr. VanSant explained that changing the designation to R-SC would be advantageous because you would have the ability to adjust the internal lot line and still stay within the 6000 square foot minimum lot area. He stated that the setbacks are very similar in the R-SC and that there is a zero lot-line option so there are several factors pursuant to which he believes R-SC would be the most advantageous zoning category, including there would be no requirement for a side yard setback of seven and a half feet and flexibility to even relocate or reconfigure the 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 building potential and looked across the street and saw nothing but residential homes and did not get the feeling that a commercial building would be welcomed in that neighborhood. 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 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 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 not to 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 relatively 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 asked whether the zoning regulations provide 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 explained that 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. She further indicated that in her opinion, these two parcels were not necessary for relevant TOD District to have an integrated development.

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

### **CONCLUSIONS OF LAW**

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, as set forth in the case law. The Petitioner's request for rezoning is based on a mistake in the last comprehensive zoning of the subject property and does not allege a change in the neighborhood.

Piecemeal rezonings must comply with the "change-mistake" rule set forth in *Boyce v. Sembly*, 25 Md. App. 43, 50-51 (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 was premised initially on a misapprehension.

To demonstrate a mistake in comprehensive rezoning, "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. "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 Couns. for Baltimore Cnty. v. Beachwood I Ltd. P'ship*, 107 Md. App. 627 (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. 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 to *Mayor & Council of Rockville v. Stone*, 271 Md. 655 (1974)).

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 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.*, 76Md. 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 has alleged and, the Board finds, has 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, and this Board finds, that there were two factual mistakes present in the 2013 comprehensive rezoning. 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 by knowing 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 the individual properties 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 specific 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 properties' location 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 detail regarding the exhaustive efforts undertaken by the Petitioner and the owner of Parcel 726 to market the subject properties. Mr. Bers also testified regarding the evidence of 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 exceed \$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 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.

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 these properties under the 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 that meets these criteria. With respect to the 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 feasible to achieve safe and convenient pedestrian access from the subject properties to the train station. He explained this is 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 properties from the main TOD District and the train station. Finally, Mr. VanSant

testified that pedestrian access from these properties to the train station is impaired because Dorsey Road does not have sidewalks in the vicinity of the subject properties.

Both Mr. Bers and Mr. VanSant 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 residential, consisting of single-family detached homes. They 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 these 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's Exhibit 3 (Neighborhood Map) and Petitioner's Exhibits 7A-7G (Street View Images depicting single-family detached residences fronting on south side of Dorsey Road), Mr. Bers expressed the 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.

The Zoning Board finds that 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. This

proposed use can be developed on these parcels without creating any adverse impacts or nuisance conditions on adjacent properties.

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. *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 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 properties 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, and 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. School-age children residing on the 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 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 properties.

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 and recommended considering alternative zoning districts for the properties. The Planning Board did not recommend a specific zoning district. The Planning Board expressed concern that while the properties are too small to be developed under TOD District zoning, they 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 over the R-12 District because the R-SC permits smaller lots than the R-12 (6,000 sq. ft vs. 12,000 sq. ft.). Mr. VanSant testified that the smaller minimum lot size would permit the properties to be conforming in terms of lot size. He stated that the reduced lot size would also afford the Petitioner flexibility to reconfigure the interior lot lines between the two parcels to mitigate the effects of required side-yard setbacks. Mr. VanSant testified that the properties could not be further subdivided regardless of whether they were rezoned to the R-12 District or to the R-SC District because of their size. 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.


**ORDER**

WHEREFORE, for the foregoing reasons, the Zoning Board of Howard County, on this 21<sup>st</sup> day of May, 2026, **GRANTS** the Petitioner's request, finding a mistake was made during the last comprehensive rezoning, and hereby **GRANTS** the Petitioner's request to rezone the properties from TOD to R-SC, which the Board finds to be the most appropriate zoning district.


ATTEST:

  
\_\_\_\_\_  
Kel Berg  
Board Administrator

ZONING BOARD OF HOWARD COUNTY  
  
\_\_\_\_\_  
David Yungmann, Chairperson


  
\_\_\_\_\_  
Elizabeth Walsh, Vice Chairperson

PREPARED BY HOWARD COUNTY  
OFFICE OF LAW  
GARY W. KUC  
COUNTY SOLICITOR

  
\_\_\_\_\_  
Opel Jones

  
\_\_\_\_\_  
Deb Jung

  
\_\_\_\_\_  
Christiana Rigby

  
\_\_\_\_\_  
David R. Moore  
Senior Assistant County Solicitor