

Corridor Square, LLC,

* Before the Zoning Board of

Petitioner

* Howard County

* Zoning Board Case No. ZB-1130M

DECISION AND ORDER

On November 17, 2025, 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 February 25 and 26, 2026, the Hearing Examiner held a hearing on the Petition, which was filed by Corridor Square, LLC, (“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 B-2 (Business: General) District, under the HCZR, § 119.0.

The subject Property is identified as 7253 Washington Boulevard (Rt. 1), is approximately 3.91 acres, and is located on the south side of US Route 1/Washington Boulevard approximately 200 feet west of the intersection of Route 1 and Route 100. The Petition includes a documented

site plan in addition to its petition to change the zoning. The Documented Site Plan (DSP) proposes a convenience store, a motor vehicle fueling facility, and a car wash facility.

The Hearing Examiner viewed the subject property as required by the Rules of Procedure. Christopher DeCarlo, Esq. represented the Petitioner. Chris Ogle of Benchmark Engineering; Mickey Cornelius, a traffic engineer; John Ideburg, a representative of Sheetz stores; Chad Bohn from WLR Automotive Group; Brian Reetz, a landscape architect; and Patrick Butler all testified on behalf of the Petitioner. Julia Sauer, the Division Chief for Public Service and Zoning Administration, testified on behalf of the Department of Planning and Zoning to provide its technical report. Joel Hurewitz, Anna Givens, Lauren Murphy, Ruth Bloise, Russell Allen, Candy Warren, Barry Walters, Curtis Anthony Gray, David Zinner and John Pelton all testified in opposition.

The parties of record, pursuant to the Hearing Examiner's Rules, are Christopher DeCarlo, Esq., Zoning Counsel Nathaniel Foreman, Esq., David Zinner, Shahid Mahmood and Joel Hurewitz. Memoranda of law were filed by the Petitioner, Zoning Counsel, and Mr. Hurewitz.

Petitioner introduced into evidence the following Exhibits:

Exhibit 1 - Rezoning Plan July 2025 (pages 1-23)

Exhibit 2- Joseph Rutter Resume

Exhibit 3 - Existing Conditions Aerials

Exhibit 4 - Existing Conditions Street View

Exhibit 5 - Distances to MARC Aerial

Exhibit 6- Google Walking Distance

Exhibit 7 - Map Issues 37.003, 37.007, 37.027

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Exhibit 8 - 2013 Comp Zoning Issue Chart

Exhibit 9 - Amendment 48 to CB-32-13

Exhibit 10-7-22-2013 Work Session Transcript Excerpt

Exhibit 11 - CB-32-2013

Exhibit 12 - GIS Zoning View Aerial

Exhibit 13 - (A) Enterprise Zone Map

(B) 1-28-25 CE Press Release

Exhibit 14 - HoCo By Design Policy 5.1

Exhibit 15 - Route 1 Corridor Plan Polices RTE 1-1, RTE 1-3, RTE 1-4

Exhibit 16 - Mickey Corneilus Resume

Exhibit 17- Traffic Conditions Aerial

Exhibit 18 - Route 1 Improvements Aerial

Exhibit 19-10-3-2025 SHA Letter

Exhibit 19-10-3-2025 SHA Letter

Exhibit 20 - Brian Reetz Resume

Exhibit 21 - Existing vs. Proposed Development Aerial

Exhibit 22 - Measurement from Marc Station Parking Lot

Exhibit 23 - Marc Station TOD

Exhibit 24 - Aerial Showing Distance from Bus Stops

Exhibit 25 - Walking Distance to Edge of Parking Lot

Exhibit 26 - Page 1 and Page 19 of Route 1 Manual

Exhibit 27 - ZRA192 DPZ Technical Staff Report

Protestants submitted the following exhibits:

Exhibit 1 - Sheet 1 of Petitioner's Exhibit 1 Outlining Rosa Bonheur Cemetery Property

and Location of Mr. Walter's Service Dog

Exhibit 2 - Redacted Testimony Letter from Candy Warden

Exhibit 3 - Bus Route to Marc Station [provided by David Zinner]

Exhibit 4 - Bus Stop [provided by David Zinner]

Exhibit 5 - Rosa Bonheur Memorial, Inc. Deed [provided by Anna Givens]

Exhibit 6- BA 00-59E Wawa, Inc. Technical Staff Report [provided by Joel Hurewitz]

Exhibit 7-37.002-37.007 and 43.017 Washington Boulevard [provided by Joel Hurewitz]

Exhibit 8 - Proposed Map Amendments with Council Notes 6/25/2013 [provided by Joel Hurewitz]

Exhibit 9 - Amendment 27 to CB32-2013 [provided by Joel Hurewitz]

Exhibit 10 - Amendment 1 to Amendment 27 to CB32-2013 [provided by Joel Hurewitz]

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Exhibit 11 - ZRA147 Petition [provided by Joel Hurewitz]

Exhibit 12-ZRA147 Technical Staff Report [provided by Joel Hurewitz]

Exhibit 13 - ZRA147 Planning Board Recommendation [provided by Joel Hurewitz]

Exhibit 14 - Enrolled CB1-2014 (ZRA147)

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.

Mr. Hurewitz filed a motion to disqualify the Hearing Examiner and the Zoning Counsel, which the Hearing Examiner denied. 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, including the conditions the Hearing Examiner recommended be additionally applied to the DSP. The Board

further modifies the DSP with addition conditions. The conditions recommended by the Hearing Examiner and accepted by the Board as well as the Board's additional conditions, all which Petitioner has affirmatively stated it consents to, are as set forth below and are conditions of approval of the DSP. Accordingly, the Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Based upon the evidence of record and as reported by the Hearing Examiners, the Zoning Board finds the following facts:

The property consists of multiple different parcels totaling 3.91-acres, located on Tax Map 37, Grid 23, Parcels 279, 107 (Lots 51-53, and partial Lots 56-57), 452, in Council District 3 and identified as 7256 Washington Boulevard, Elkridge, Maryland. Parcel 279, which is partially included in this rezoning request, was previously developed as an Exxon gas station. The site is currently vacant other than the remaining impervious surface parking areas from the former gas station. The portion of Parcel 279 included in this rezoning request is 0.46 acres. The Petitioner is the fee simple owner of Parcel 107, Lots 51-53 and part of Lots 56-57, are included in this rezoning request and are developed as part of the Rosa Bonheur Memorial Park ("Memorial Park"). The site is designated as a Howard County Historic Cemetery #37-9. It is also designated on the Howard County Historic Sites Inventory as HO-829. Parcel 107, Lot 53 is currently improved with three existing structures that are dilapidated, not currently in use, and are proposed to be removed with approval of the proposed DSP. Approximately 2.06 acres of the Memorial Park is included in the rezoning request. Memorial, LLC is the fee-simple owner of these parcels. Parcel 452 is currently undeveloped and used as a stockpile yard and contains wetland and wetland buffers as depicted on

the Existing Conditions Plan. The rezoning area is approximately 1.39 acres. The Petitioner is the fee-simple owner.

The vicinal properties are described as follows: to the north is property zoned CE-CLI Washington Blvd (Rt 1), to the south, east and west is TOD, with commercial and residential properties and the Rosa Bonheur Memorial Park. The roads are a portion of Route 1 that adjoins the property to the north, which has an estimated Annual Average Daily Traffic (AADT) count of 28,184. Route 1 is owned by the Maryland State Highway Administration and is classified as an Intermediate Arterial Road. The nearest intersection, as indicated on the Plan, is Dorsey Road and Route 1. Dorsey Road has an AADT of 12,924 and is classified as a Major Collector Road. Both AADT's for Route 1 and Dorsey Road were taken from the Maryland State Highway Administration calculations.

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

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 Route 1 Corridor is also part of the Thriving Business District from the General Plan, serving as a critical eastern transportation corridor, connecting major employment centers in Baltimore and Washington D.C. 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.

The property was zoned "Commercial B" in 1951 and was rezoned to M-1 (Manufacturing Light) in 1954. The property remained M-1 until 1977 when it was rezoned to M-2 (Manufacturing Heavy). The property was rezoned to CECLI (Corridor Employment - Continuing Light Industrial) with the 2004 Comprehensive Zoning Plan and rezoned to TOD with the 2013 Comprehensive Zoning Plan. The surrounding properties south of Route 1 followed the same zoning history as the subject property. The surrounding properties were zoned M-2 in 1977 and rezoned to CECLI in 2004. The surrounding properties were zoned TOD (their current zoning) with the adoption of the 2013 CZP. Route 1 is currently zoned CE-CLI. Prior to its CE-CLI zoning, Route 1 had been zoned M-1 since 1966.

Petitioner is seeking to amend the Zoning Map of Howard County, Maryland (the "Zoning Map") to reclassify approximately 3.91 acres of land from the TOD (Transit Oriented Development) Zoning District to the B-2 (Business: General) Zoning District. The rezoning request includes a Documented Site Plan, as permitted under Section 100.0.G.2 of the Howard County Zoning Regulations (the "HCZR"), to develop motor vehicle fueling facility, convenience store, and car wash uses.

Petitioner presented testimony and exhibits through (1) Joseph W. Rutter, who is the former Director of the Howard County Department of Planning and Zoning and is a member of the American Institute of Certified Planners; (2) Christopher Malagari, who is a Professional Civil Engineer licensed through the State of Maryland and the President of Benchmark Engineering Inc.; (3) Mickey Cornelius, who is a Professional Traffic Operations Engineer and a Certified Road

Safety Professional; (4) Brian Reetz, who is a Maryland Licensed Professional Landscape Architect; and (5) Jamie Fraser, who is the Vice President of Development for the Petitioner and holds a degree in civil engineering.

The Hearing Examiner presented the following summary of the facts elicited through the testimony before her, which upon review and after hearing all exceptions, the Board adopts as its own facts:

The requested rezoning area is collectively approximately 3.91 acres and includes nearly 700 feet of underutilized and blighted Route 1 frontage between Dorsey Road (also known as Route 103) and Route 100. It is also located a little over 200 feet from the on-ramp to the Route 100 interchange.

The rezoning area is comprised of the following 3 parcels that are collectively referred to herein as the "Subject Properties" or the "Site" and are shown and delineated by color on Sheet 2 of Petitioner's Rezoning Plan, admitted into evidence as Pet. Ex. 1:

P/O Parcel 279, Portion of the Former Exxon, 7253 Washington Blvd., Elkridge, MD 21075 (Blue Area Shown on Sheet 2 of Rezoning Plan): The rezoning area is approximately .46 acres. Petitioner is the fee-simple owner. The parcel was previously developed as an Exxon gas station and is currently vacant, other than the remaining impervious, surface parking areas from the former Exxon use.

P/O Parcel 107, Lots 51-53, P/O Lots 56 & 57, the Front Portion of the Memorial Park 7239 Washington Blvd., Elkridge, MD 21075 (Green Area on Sheet 2 of the Rezoning Plan):

This is the front portion of the Rosa Bonheur Memorial Park (the "Memorial Park"). The area requested to be rezoned is approximately 2.06 acres. It is owned by Memorial LLC, which has authorized the Petitioner to submit the instant request as evidenced by the Property Owner Authorization form filed with the Petition. Petitioner is the contract purchaser of the entirety of Parcel 107, which also includes Lot 58, 59, 60, 61, 62, and 63. These additional lots are not in the proposed development area. The Memorial Park is a blighted and abandoned pet cemetery that has not been in operation for over 20 years. It is currently improved with 3 existing structures that are dilapidated, not currently in use, and proposed to be removed. *See*, Pet Ex. 4, p. 5. The Memorial Park opened in or around the 1930s for animal burials. In or around the 1970s, William Green purchased the Memorial Park and began offering human burials. He never received licensure or approval for human interments. He also failed to maintain or purposefully destroyed all records related to interments.

Consumers filed numerous complaints against Mr. Green for his operation of the Memorial Park that included mishandling of remains, discarding remains improperly, failing to deliver plot markers, and mixing up ashes. Mr. Green's conduct and operation was so nefarious that in the late 1990s the County pursued criminal and civil charges against him for theft and deceptive trade practices. Mr. Green was ultimately convicted and went bankrupt. The Memorial Park was foreclosed on and sold. There have not been any interments since the early 2000s and the property has sat in a deteriorated and blighted condition since that time.

Parcel 452, Stockpile Yard - 7223 Washington Blvd., Elkridge, MD 21075 (Teal area shown on Sheet 2 of the Rezoning Plan Plan): The rezoning area is approximately 1.39 acres. Petitioner is the fee-simple owner. It is currently undeveloped and used as a stockpile yard.

The defining physical characteristic of the Subject Properties is their frontage on and proximity to Route 1. Adjacent uses include a mix of industrial, automotive, and retail uses. To the northeast of the Subject Properties (adjacent to Parcel 452) is an industrial property currently used for trailer or container storage, and the Route 100 interchange. To the direct southwest of the Subject Properties (adjacent to Parcel 279) is an auto repair and body shop use. Uses further southwest on Route 1 include general retail business, automotive, and industrial uses such as fast food, motor vehicle fueling, truck storage, office park, container storage, and car and auto part storage. See, Pet. Ex. 3, p.1 (showing an aerial view of uses and conditions southwest of the Subject Properties).

The closest MARC Station to the Site is Dorsey MARC Station. The requested rezoning area is greater than 3,500 feet from the MARC Station. In fact, the whole of the Memorial Park is located more than 3,500 feet from the MARC Station as conceded by the Department of Planning and Zoning ("DPZ") and Zoning Counsel.

The Site's existing Route 1 frontage lacks any convenient and safe pedestrian connectivity to adjacent and surrounding uses, including the MARC Station and the RTA bus stops located on the other side of Route 1 and Route 103. See, Pet. Ex's. 4, 6 & 24. The existing Route 1 conditions are shown and depicted in Pet. Ex. 4. Image 2 of Pet. Ex. 4 is a view looking northeast on Route 1 and depicts the frontage of the existing auto repair use in the foreground and the former Exxon property (Parcel 279) in the background. The properties currently front directly on the shoulder of Route 1 with no continuous sidewalks, walking paths, or bike lanes. Image 3 of Pet. Ex. 4 is a view looking northeast on Route 1 in front of the Memorial Park (Parcel 107). The property fronts directly on the right traffic lane of Route 1 without any shoulder separation. There are no

sidewalks, walking paths or bike lanes. In addition, the existing retaining wall and utilities are in close proximity to the right traffic lane creating a hazardous condition. Image 4 of Pet. Ex. 4 is a view looking northeast on Route 1 near the Stockpile Yard (Parcel 452). The property fronts directly on the right traffic lane of Route 1 without any sidewalks or walking paths, on a bus lane.

The walking distance from the Site to the MARC station is approximately 1.4 miles. A pedestrian would have to walk along the Route 1 shoulder or in the right traffic lane to the intersection of Route 1 and Route 103 (Dorsey Road). A pedestrian would then have to travel down Route 103 to Dorsey Run Road where there are sidewalk connections. A pedestrian, however, would have to continue to Deerpath Road with intermittent sidewalk connections and walk down Deerpath Road, which has no sidewalks, to the MARC Station.

The Site is located within the Eastern Howard County Enterprise Zone, which is the first Enterprise Zone in Howard County and was created in on around January 2025. *See*, Pet. Ex.13a&b. The objective is to focus local and State resources on the encouragement of economic growth. As indicated in the County's January 28, 2025, press release, the zone and incentive align with the General Plan and the Route 1 Corridor Plan goals to attract private investment and spur redevelopment enhancing the attractiveness and economic value of the area. Notably, the Subject Properties are the only properties on this section of Route 1 (between Route 103 and Route 100) with the enterprise zone designation.

Petitioner's Proposed Documented Site Plan

Petitioner is proposing a MVFF, convenience store, and car wash uses for the Site. The proposed convenience store is 6,200 square feet and will be located on the front portion of parcel

107. See, Pet. Ex. 1, Sheet 3. The six fuel dispensary locations (12 pumps) and canopy will be located on the front portion of Parcel 107 and on a portion of Parcel 279 (the former Exxon Parcel), which is adjacent to the existing auto repair shop use. The car wash is proposed to be located on Parcel 452 (the Stockpile Yard).

The proposed development will result in Route 1 frontage improvements that will unify Route 1 between Route 103 and Route 100. Proposed improvements include (1) widening of Route 1 to provide an additional lane, (2) contiguous sidewalk connections, and (3) a shared use pedestrian and bicycle path. See, Pet. Ex.1, Sheets 3, 6, and Pet. Ex. 18. Petitioner is also proposing a new signalized intersection between Parcel 279 and the adjacent auto repair use that will provide direct access to the Site, improving current traffic conditions. Id. Further, Petitioner's proposed redevelopment of these underutilized sites will provide added tax base and revenue to the County.

Petitioner is also proposing to preserve and beautify the majority of the Memorial Park. About one-third of the Memorial Park, over 4 acres, which is location of the vast majority of interred animal remains, and the location of all known human remains, is not within the proposed development area. Petitioner proposed and has agreed to place this 4 plus acres of the Memorial Park in preservation as noted on Sheet 2 of Rezoning Plan. Petitioner is also proposing to (1) provide new safe and convenient pedestrian and vehicular access to the Memorial Park for the general public to utilize at the new signalized intersection, (2) preserve and relocate the existing retaining wall and entrance sign located along Route 1 to the new entrance, (3) construct a mausoleum and memorial in honor of all pets interred at the Memorial Park, and (4) provide landscaping beautification, maintenance and upkeep as shown and delineated on the Plan. See, Pet's Ex. 1, Sheets 18-22. Of importance, as admitted in cross-examination by Candy Warden, this

preservation area is believed to be the location of the elephant from the Baltimore Zoo, the war horse, and the other "historic" or "famous" pets referenced in Ms. Warden's oral written and written testimony. The proposed development area will not affect or disturb any of these burial sites.

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.*, 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. Maryland courts apply a more flexible standard where a

proposed rezoning involves movement between similar use categories. “In considering whether this presumption [in favor of the correctness of comprehensive zoning] has been overcome a more liberal standard is applied when the property is being reclassified from one commercial subcategory to another than is applied when the reclassification involves a change from one use category to another.” *Tennison v. Shomette*, 38 Md. App. 1, 5 (1977).

The Petitioner has alleged and demonstrated that a mistake occurred when the County Council adopted the last comprehensive zoning in 2013 which applied the TOD District zoning of the subject properties. The Council zoned the Site TOD during the 2013 Comprehensive Zoning Map Process (the "2013 CZMP") through the enactment of Council Bill 32-2013 ("CB 32"). The Subject Properties were previously zoned CE (Corridor Employment) - CLI (Continuing Light Industrial). During the 2013 CZMP, the then owners sought to have the Subject Properties reclassified to the CAC (Corridor Activity Center) zoning district. The Subject Properties were assigned the following 2013 CZMP Issue Numbers: 37.003 (Parcel 107, the Memorial Park); 37.007 (Parcel 452, the Stockpile Yard), 37.027 (Parcel 279, the Former Exxon). *See*, Pet. Ex. 7.

The Department of Planning and Zoning and the Howard County Planning Board (the "Planning Board") both rejected the CAC zoning classification and instead recommended the Subject Properties remain CE-CLI, but with an additional CR (Commercial Redevelopment) overlay. *See*, Pet. Ex. 8, p. 8 (highlighted). Of note, the CR zoning district permits the uses allowed in the POR (Planned Office Research), B1 (Business Local), and B2 (Business General Zoning District) through the Optional Design Project (ODP) process. *See*, HCZR § 121.B.1. (emphasis added). This includes convenience store and car washes uses. In addition, the CR zone specifically permits motor vehicle fueling facilities through the ODP process. *See*, HCZR §121.0.E.1. In fact,

as testified to by Mr. Rutter, the only CR development to occur in the County since the 2013 CZMP is the Royal Farms and CVS development located on Route 1 and Montevideo Road. That MVFF and retail use was permitted through the CR's ODP process. As such, all of Petitioner's proposed uses would have been possible on the Subject Properties under the Planning Board and DPZ's CR recommendation.

On July 1, 2013, prior to the final vote on CB-32, then Councilmember Calvin Ball introduced Amendment #48, which changed the Site from the CE-CLI/CR zoning district to the TOD zoning district. *See*, Pet. Ex. 9. On July 25, 2013, the Council voted to enact CB-32, presumably with Amendment #48, unamended, rezoning the Subject Properties to the TOD zoning designation. The Council's decision to zone the Site TOD represents a mistake under Maryland case law because (1) the Site is located outside of the 3,500-foot required radius from a MARC station and there is no safe and convenient pedestrian access to the MARC Station or other public transit links; (2) the Council rezoned the Site under the false presumption that it was within 3,500 feet of the MARC and could be developed as a single TOD development; and (3) Dr. Ball directed that Amendment 48 be amended to add the CR overlay back on the Subject Properties which failed to be done.

The TOD's purpose statement describes properties in the district as being located within 3,500 feet of a MARC Station and having safe and convenient pedestrian access for commuter using the MARC and other public transit links within the 3,500-foot MARC Station threshold. The TOD zoning district was created during the 2004 CZMP along with the CE-CLI and CAC zoning districts to be used in conjunction with the Route 1 manual and encourage redevelopment of properties along Route 1. *See*, TSR at 8. The Council provided location requirements in each

purpose statement tying the districts to Route 1. The CAC district's purpose statement provides that CE developments "should be located near to Route 1 and close to residential communities that will benefit from a pedestrian-oriented local business area." HCZR §127.5.A. (emphasis added). Similarly, the CE district's purpose statement provides that it is "intended to encourage the development and redevelopment of employment land near U.S. Route 1." HCZR § 127.2.a. (emphasis added). For the TOD zoning district, the Council, however, decided to enact a more stringent and specific locational requirement.

The TOD's legislative purpose statement provides two qualifiers for TOD properties. First, the TOD zone is located within 3,500 feet of a MARC Station. "The TOD District provides for the development and redevelopment of key parcels of land within 3,500 feet of a MARC Station." HCZR §127.4.A. Second, the TOD is "intended to encourage the development of multi-use centers combining office and high-density residential development that are located and designed for safe and convenient pedestrian access by commuters using the MARC Trains and other public transit links." *Id.* In harmonizing the two sentences, the purpose statement identifies the TOD zoning district as located within 3,500 feet of MARC station and, within that 3,500-foot distance limitation, to encourage development of multi-use centers that are located and designed for safe and pedestrian connectivity to MARC trains and "other public transit links." If the reference to "other public transit links" were interpreted to mean that TOD zoning could be located anywhere there is a bus stop, the zoning district would be permitted virtually anywhere in the County and would render the first sentence and the 3,500-foot distance requirement superfluous. Unlike the CE and CAC districts, the Council deliberately chose to place a 3,500-foot distance requirement on the TOD from MARC Stations.

Julie Sauer, Division Chief for the Public Service and Zoning Administration provided testimony that TOD zoning would be inappropriate in a location that is not within the 3,500 feet of a MARC Station. She specifically stated that a property's close proximity to a bus stop, such as the RTA stops located on the other side of Route 1 and Route 103, *see*, Pet. Ex. 24, does not by itself satisfy the intent and purpose of the TOD zoning district. Ms. Sauer's, and DPZ's position, deserves weight in the Board's analysis and is persuasive when considered with all of the other evidence and argument as to mistake in the zoning at issue.

Maryland law provides that "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 539 (2017). Indeed, "the expertise of the agency in its own field should be respected." *Marzullo v. Kahl*, 366 Md. 158, 172 (2001).

Moreover, the "Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration" *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 459 (2002) (quoting *Udall v. Tallman*, 380 U.S. 1, 16 (1965)). In addition, the plain reading of the regulation requires the 3,500-foot measurement to be taken from the MARC station itself, not the MARC station property line or the property line of the adjacent parking lot owned by the State. It is a primary principle of statutory construction, that the plain language of the statute controls. *Lipitz v. Hurwitz*, 435 Md. 273, 284 (2013) ("We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole

to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.").

Here, the Council specifically chose the word "MARC Station" not property line or parking lot. The zoning regulations are replete with examples of the Council requiring measurements from property lines or zoning district boundaries. For example, setbacks are often measured from property lines or a public street rights-of-way. The definition for "setback" is "the distance between a structure or use and a boundary such as a lot line, a project boundary, right-of-way line, or zoning district boundary." HCZR § 103.0. The Council could have easily stated that the TOD is meant for properties "setback" 3,500 feet from the MARC Station property. The Council, however, chose to impose a 3,500 foot location requirement from the Station, not a setback or distance measurement from property lines or parking lots. The Council's plain usage of the word "MARC Station" should not be improperly expanded upon.

In addition, words that are not defined in the Howard County Zoning Regulations "shall have the definition provided in any standard dictionary" HCZR §103.0. The MerriamWebster dictionary defines "Station" as "a stopping place: such as (1) a regular stopping place on a transportation route (2) the building connected with such a stopping place." Station, Merriam-Webster, <https://www.merriam-webster.com/dictionary/station> (emphasis added). Moreover, measuring the 3,500-foot distance requirement from the parking lot, especially the corner of the outer parking lot, would be wholly illogical given the purpose and intent of the TOD zoning district. It is undisputed that the TOD is "intended to encourage the development of multi-use centers combining office and high-density residential development that are located and designed for safe and convenient pedestrian access by commuters using the MARC Trains and other public

transit links." HCZR §127.4.A. (emphasis added). The purpose is to encourage high-density mix-use development that will allow people living, working or visiting that development to walk to the MARC Station for public transportation, not walk to the outer parking lot. As testified to by Mr. Malagari, the distance from the outer parking lot to the MARC Station is approximately 4 1/2 football fields or over 1,400 feet. Because the purpose is to provide a distance that is "walkable" to the transit itself, it would be illogical to measure the distance from the parking lot instead of the station building where the transit connection is located. Ms. Sauer testified that DPZ concurs that the measurement is taken from the MARC Station building not the parking lot. Further Ms. Sauer acknowledged that the Route 1 Manual's "Concept Plan for the TOD District" separates the Station from adjacent parking lots uses. *See*, Pet. Ex. 26, Figure 2.10.

As testified by Mr. Fraser and Mr. Malagari, the State is seeking to develop the parking lot adjacent to the MARC Station with its own TOD oriented development. And as testified by Mr. Corneilus, the parking lot in question does not have vehicular connection to Deerpath Road or Dorsey Run Road. It can only be accessed by Route 100, further demonstrating that it should not be used as the measuring point for the TOD locational requirement.

For all of these reasons, the subject property does not meet the locational requirement for the TOD zoning district.

Maryland case law holds 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." *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). Here, the Council premised the TOD designation on the belief that a portion of Parcel 107 was within 3,500

feet of the MARC Station. Amendment 48 was introduced and discussed during the July 1, 2013 Council Work Session. Dr. Ball expressed during the work session that the Site qualified for the TOD District because a portion of it was within 3,500 feet of the MARC Station. *See*, Transcript Excerpt of July 1, 2013 Council Work Session, Zoning Counsel's Exhibit 1.3 Specifically, Dr. Ball states that Parcel 107, which he refers to as the pet cemetery, meets the TOD because it is located within the 3,500 feet from the MARC Station. In further discussion, then DPZ Director Marsha McLaughlin indicates that Parcel 107 is farther than the definition of TOD and indicates that it might require an amendment "that would allow it to be a little bit further from the MARC station." *Id.* at 3. Councilmember Ball responds that "a portion of it's not further." *Id.* Dr. Ball and Councilmember Fox then go on to indicate that TOD is appropriate only if the property is developed as a single TOD development. *Id.*

This transcript provides prohibitive evidence of a mistake in fact during the 2013 CZMP. The Council's initial underlying premises for the change to TOD - that a portion of Parcel 107 is within 3,500 feet of the MARC station- is a factual mistake. It is a matter of undisputed fact, that the entirety of the Parcel 107 is more than 3,500 feet from the MARC Station. *See*, Pet. Ex.1, Sheet 2, and Pet. Ex. 5; TSR, and Ms. Sauer's testimony, *supra*. In addition, the Council premised the TOD decision on the assumption that Parcel 107 could be developed as a single TOD development. This assumption is also incorrect. First, Parcel 107 is not a single parcel, but a collection of lots, which the Council did not note. Moreover, the Parcel 107 lots cannot be reasonably consolidated to facilitate a single TOD development. As indicated above, and as is clear from the layout, consolidating all the lots that make up Parcel 107 and developing it as a single TOD would require the construction of a high-density mixed-use project with frontage directly on Dorsey Run Road. This would result in the destruction of the entirety of the Memorial Park. Accordingly, the July 1,

2013 work session demonstrates that the Council's reasoning for placing the TOD on the Site was premised on a mistake of fact --- that a portion of the Memorial Park was located within the TOD --- and the invalid assumption that the entire area that was rezoned to TOD could be developed as a single TOD development.

For the reasons detailed supra, the TOD zoning district is not the appropriate Zoning district for the Site. Given the Site's frontage on Route 1, the adjacency to the Route 100 interchange, and its location in the Eastern Howard County Enterprise Zone, the B-2 is the appropriate zoning district for the Site. The purpose of the B-2 Zoning District is "to provide for commercial sales and services that directly serve the general public." HCZR § 119.0.A. As testified by Mr. Rutter and Mr. Fraser, the defining physical characteristic of the Subject Properties is their frontage on and proximity to Route 1. In addition, adjacent uses include a mix of industrial, automotive, and retail uses which are compatible to B-2.

Rezoning the Subject Properties to B-2 will allow these underutilized and largely vacant properties to be developed with the retail and automotive uses that are shown on the Petitioner's Plan. The retail and automotive uses will serve the immediate area and the general public and are appropriate along this portion of Route 1 with its adjacency to the Route 100 interchange. Moreover, B-2 is typically located adjacent to state road interchanges. Of note, the B-2 zoning district is located at the Route 1 and Route 175 interchange. *See*, Pet. Ex. 12. It would be a logical pattern of zoning to also place B-2 on the Site, which is at the interchange of Route 1 and Route 100.

The property is located in the newly created and only Howard County state designated enterprise zone. *See*, Pet. Ex. 13a&b. The purpose is to incentivize and encourage economic

development along the Route 1 corridor. *Id.* These properties are the only properties on this section of the Route 1 frontage with the enterprise zone designation. *Id.* As indicated in the County's January 28, 2025, press release, the zone and incentive align with the General Plan and the Route 1 Corridor Plan goals to attract private investment and spur redevelopment enhancing the attractiveness and economic value of the area. The requested B-2 designation fits with the enterprise designation more than the TOD which is focused on high density residential and office. B-2 will allow commercial redevelopment which is the focus of the enterprise zone. The Planning Board and DPZ both acknowledge that B-2 uses are appropriate for the Subject Properties. DPZ and the Planning Board recommended a CR overlay for the Site during the 2013 CZMP. During the 2013 Comprehensive Zoning, the Council also sought to amend Amendment 48 to zone the Site TOD/CR specifically because of the Site's frontage on Route 1. The CR Zone permits B-2 uses through the ODP process. HCZR § 121.1.B(1). And specifically motor vehicle fueling uses. HCZR § 121.1.E(1). In fact, the only CR development is the Royal Farms and CVS located on Route 1 and Montevideo Road. Because the Petitioner is requesting approval of a Documented Site Plan for specific B-2 uses, as a practical matter it makes logical sense and is more appropriate to zone the Site B-2, which is an assumed zoning district in the CR, instead of CR.

Petitioner is requesting approval of a Documented Site Plan for a MVFF, convenience store, and car wash uses as shown on Sheet 3, of Pet. Ex. 1. Although MVFF's are conditional uses in the B-2 zoning district, the use may be permitted as a by right use through the Documented Site Plan process. *See*, HCZR §100.0.G.2.g. As such, the MVFF will not be required to go through a conditional use process pursuant to the HCZR.

Additionally, the documented site plan process specifically allows the Zoning Board to approve the location of a proposed use or structure that would otherwise require a variance from the underlying bulk regulations: "A site plan zoning petition approved by the Zoning Board may include ... a use or structure which would otherwise require a variance to the bulk regulations... If this occurs ... the use or structure shall be permitted in the approved location, in accordance with the site plan approved by the Zoning Board, and shall not require approval by the Hearing Authority." *Id.*

The B-2 zone requires a use and structure setback of 30 feet from the public right-of-way and 30 feet from residential zoning districts. HCZR § 119.0.D.1.2 As testified by Mr. Malagari, the proposed uses meet all the underlying bulk regulations of the B-2 zoning district based on the existing adjacent property uses. As currently situated, none of adjacent properties qualify as a residential zoning district requiring a 30' use and structure setback.

For the proposed car wash use on Parcel 452, the structure is located more than 30 feet from the adjacent property line. The access lane to the carwash is located 10' feet from the property line. The property immediately adjacent to the proposed car wash is currently a commercial/industrial property used for container storage. The owner of that property, however, is pursuing approvals for an apartment development. The development has yet to receive final site development plan approval, and it is unknown if it will ever come to fruition. For this reason, the Petitioner contends that the 30' use setback from an adjacent residential district is not applicable and the car wash use complies with the B-2 setbacks.

If it is determined that the residential use setback must be applied for a potential, future development, Petitioner requests approval of the reduced 10' setback as permitted under HCZR

§100.0.G.2.g. As testified to by Mr. Reetz, Petitioner is proposing landscaping between the access lane and the adjacent parcel that will exceed the minimum landscape manual requirements. The proposed landscaping will appropriately buffer the access lane from the adjacent property. Moreover, the structure itself, which is the car wash tunnel, is setback greater than 30' from the adjacent parcel, and the drying parking spots are located on the other side of the structure near Route 1. This design was purposefully chosen to mitigate any potential for noise from the carwash affecting adjacent properties, and to avoid the access drive fronting on Route 1. The access drive's location within the 30' setback will not cause any disturbance, especially given the proposed landscape screening.

The Board finds that the Petitioner's proposed uses meet the approval criteria found in HCZR §100.G.2.d. As testified to by all of Petitioner's witnesses, the proposed development will be compatible, or capable of existing in harmony, with the existing and potential land uses of the surrounding areas. As shown on Sheet 3, of Pet. Ex. 1, Petitioner is proposing a motor vehicle fueling facility ("MVFF"), convenience store, and carwash along the frontage of Route 1 adjacent to the interchange with Route 100. The frontage along this portion of Route 1 contains a mix of automotive, industrial, and retail uses. Petitioner's proposed development will enhance and revitalize this portion of Route 1 providing productive uses on underutilized properties. Indeed, the proposed uses will provide automobile-oriented services and convenience retail for area residents and commuters travelling north along Route 1.

As noted by representatives from two area businesses, the property management company for the Refinery Apartments and the Stained Glass Pub, the current conditions of the Site are run down. The proposed development will provide convenience retail services and amenities for the

residents of the Refinery Apartments. It will also attract more commuters to the area providing for revitalization and additional customer base for the Stained Glass Pub.

Regarding the proposed development on the specific parcels, Petitioner has designed the layout to ensure compatibility with adjacent uses. As discussed above, the MVFF will be partially located on parcel 279, which is the abandoned Exxon site and is currently vacant. Parcel 279 is bordered to its west by a property developed with an auto repair building and business. The proposed convenience store will be located on the front portion of Parcel 107, which is directly east of Parcel 279. This area is approximately 2.06 acres of the Memorial park and contains 3 dilapidated structures, the entrance drive and a retaining wall. The entrance to the Memorial Park will be redirected to the proposed signalized intersection located on the western portion of Parcel 279 as shown on the Plan.

As detailed supra, Petitioner is not disturbing the majority of the Memorial Park. The interior of the Memorial Park, over 4 acres, will be placed in preservation. This will preserve the area in perpetuity as open or green space. In addition, the existing retaining wall is proposed to be repurposed at the new entrance of the Memorial Park. And Petitioner is proposing to construct a mausoleum and memorial to be located in the preserved area of the Memorial Park for the interment of any pet remains that may be disturbed with the proposed redevelopment. *See*, Pet. Ex. 1, at Sheets 18 through 22. As testified by Mr. Fraser, it is anticipated preservation will be accomplished through a declaration of restrictive covenants to be recorded in the Land Records of Howard County, Maryland restricting any future development of the identified area of the Memorial Park. The covenants will include long-term maintenance and care of the property. Further, it should be noted that the Petitioner is willing to transfer ownership of the preserved

portion of the Memorial Park (at no cost) to a qualified and interested entity such as the Rosa Bonheur Society. In addition, the Petitioner is willing to bond the construction of the mausoleum to alleviate any concern that it will not be constructed.

As discussed supra, the proposed car wash will be located on Parcel 452, which is to the northeast of Parcel 107. Parcel 452 contains no structures and is currently used as a stockpiling site and is adjacent to Route 100 interchange. As testified by Mr. Reetz and as shown on Sheets 4, and 5 of Pet. Ex. 1, Petitioner is proposing perimeter and internal landscaping around the entirety of the uses that will effectively buffer the uses from adjacent properties. The design, layout and architectural style of the proposed uses is compatible with Route 1 and the surrounding land uses. *See*, Pet. Ex. 1 at Sheets 10 & 11 showing the elevations and high-quality building materials for the proposed uses. *See also*, Pet. Ex. 1 at Sheets 13 through 17 showing the scale of the proposed uses in relation to the surrounding area. The proposed layout and design was reviewed by the Design Advisory Panel (DAP). As testified by Mr. Reetz, who presented to the DAP, DAP was generally favorable of the proposed development and that it provided unified frontage on Route 1 and fit with the overall area. DAP did have minor comments on the proposed development as stated in their minutes. As indicated by Mr. Malagari and Mr. Reetz, if this Petition is approved, Petitioner is committed to complying with all DAP comments at the Site Development Plan stage.

Petitioner's proposed development will provide much needed improvements to the Route 1 frontage that will unify Route 1 between Route 103 and Route 100. These include: (1) widening of Route 1 to provide an additional lane, (2) continuous sidewalk connections, and (3) a shared use pedestrian and bicycle path. *See*, Pet. Ex.1, Sheet 3, 6, and Pet. Ex. 18. Petitioner is also proposing

a new signalized intersection between Parcel 279 and the adjacent auto repair use that will provide direct access to the Site, improving current traffic conditions. *Id.*

Petitioner's site design for the proposed development was chosen in order to protect the environmental integrity of the Subject Properties and adjoining areas. In particular, the underground fuel tank for the MVFF was designed to be located on the former Exxon site, Parcel 279, to minimize environmental impact.

The only environmental feature on the Site is a relatively small portion of a wetlands, approximately 500 square feet, that is located between Parcel 107 and Parcel 452. The wetland is not naturally occurring and is likely the result of stormwater runoff from Route 1. Petitioner designed the Site to avoid disturbance to the wetland as much as possible. The proposed access road for the car wash, however, could not be relocated and will impact the wetland, requiring approval from MDE. As indicated by Mr. Malagari, because the wetland is only approximately 500 square feet, MDE will likely permit it to be filled in. As shown on Sheet 3, of Pet. Ex. 1, Petitioner is providing stormwater management that will treat both quality and quantity of runoff in accordance with the Howard County Code. The former Exxon property, Parcel 279, is currently covered with impervious surface with zero stormwater management. Similarly, Parcel 452, the Stockpile yard, is compacted ground without any stormwater management. As such, Petitioner's proposed stormwater management will improve environmental conditions on the property and vicinal properties by providing treatment and managing flow for existing stormwater runoff.

Ms. Warden alleges in her oral and written testimony that Petitioner's development would cause environmental threats by disturbing graves and releasing embalming chemicals without providing supporting evidence. At this time there are no known human remains in the development

area that will be disturbed; therefore it is unknown whether embalming chemicals or other toxins will be released as a result of Petitioner's proposed development.

The proposed development has frontage on and direct access to Route 1. Primary access to the proposed development will be at the new signalized intersection shown on Sheet 3, of Pet. Ex. 1. Petitioner is also proposing right-in only access off of Route 1 between the proposed convenience store and car wash uses. *See*, Pet. Ex. 1, Sheet 3.

Mr. Corneilus, who is a POTE and a Certified Road Safety Professional, reviewed the proposed access points and determined that in his professional opinion they can accommodate safe road access for the proposed development. In addition, Mr. Corneilus reviewed the internal site circulation and opined that there was no concern regarding queuing on Route 1 for vehicles entering the Site.

Although not required by the criterion, Mr. Corneilus also prepared a traffic impact Study (TIS), which was submitted with the Petition. The TIS demonstrated that none of the surrounding intersections are operating at a failing level of service. Further, the TIS concluded that traffic from the proposed development will not cause any of the intersections to operate at a failing of service. In fact, the proposed signalized intersection will result in an improved level of service at the Dorsey Road and Route 100 intersection. Mr. Cornelius opined that the proposed development would improve traffic conditions on Route 1 with the addition of the signalized intersection and the Route 1 improvements noted supra and shown in Pet. Ex. 18. The TIS was submitted to the Maryland State Highway Administration (SHA) and SHA concurred with the TIS's findings. *See*, Pet. Ex. 19, Oct. 3, 2025, SHA Letter.

As testified by Mr. Rutter, and as noted by DPZ in the TSR, the proposed Development is compatible with the General Plan. The proposed development will enhance accessibility and convenience by integrating automotive services along Route 1 that cater to the needs of residents, commuters, and businesses. This will provide essential amenities that support daily activities and contribute to the Route 1 Corridor's vibrancy. It will also promote economic vitality allowing specific B-2 uses that can attract investment and stimulate economic growth. This will create employment opportunities strengthening the local economy and supporting the Route 1 Corridor's revitalization efforts. In addition, it will improve the streetscape and design along this portion of Route 1 by implementing stringent design guidelines from the Route 1 Manual that promote cohesive architectural themes, pedestrian-friendly features, and landscaping that enhance the overall visual appeal of the corridor. Specifically, the proposed development is consistent with General Plan Policy 5.1 which seeks to "allow redevelopment in activity centers through the Zoning Regulations to make a wide range of uses economically viable. Require active center development to provide convenience retail and other local serving amenities at a neighborhood level." *See*, Pet. Ex. 14.

In addition, the proposed development is in harmony with the Route 1 Corridor Plan's (the "Corridor Plan") Revitalization Strategy that encourages "private property reinvestment." Corridor Plan at 32. And RTE 1-3 Policy Statement that seeks to "Foster revitalization in the Route 1 Corridor." Corridor Plan at 38. Further, implementing Action 2b. calls for zoning changes to be implemented to "consider more flexibility." *Id. See*, Pet. Ex. 15. Moreover, the proposed development is harmony with RTE 1-14 policy statement which seeks to "[i]ncrease opportunities for reinvestment of commercial and industrial properties in the Route 1 Corridor to address blight through new and existing zoning tools..." *Id.* at 41. (emphasis added). *See*, Pet. Ex. 15.

Protestants' primary arguments against the Petition are not aimed at the requested B-2 zoning district or the proposed zoning uses provided in Petitioner's Documented Site Plan. Protestants arguments and concerns are focused on the ultimate development of the Memorial Park and the safe and humane relocation of the pet and human remains on the subject properties and the resolution of the property rights held by owners of the burial plots. These concerns would apply to any development of the Memorial Park property regardless of the zoning designation. Ms. Warden stated that she opposed the zoning of the Memorial Park to the TOD zoning district in 2013 for these reasons. Unfortunately, these same concerns would be present, and in fact greater, if Petitioner, instead of seeking this re-zoning request, decided to develop the whole of the Memorial Park under the current TOD zoning district with a high-density mix-used development fronting on Dorsey Run Road.

Zoning and development under the Subdivision and Land Development Regulations are separate and distinct processes. *See, Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 505 (2015). "Zoning is used to describe the process of setting aside disconnected tracts of land varying in shape and dimensions and dedicating them to particular uses designed in some degree to serve the interests of the whole territory affected by the plan." *Id.* The subdivision and development process "attempt[s] to respond to issues that are not so well-addressed through zoning, the initial step in the development process." *Id.* at 523. Here, Protestants' concerns are just that, issues that "are not so well addressed through zoning." The instant matter involves the initial zoning stage. Petitioner is seeking a change in the zoning classification and in addition is seeking to lock-in specific zoning uses through the Documented Site Plan process. The Documented Site Plan approval criteria do not require the Petitioner to demonstrate the proposed uses will not have

an adverse impact on historic resources like in conditional use cases. *Compare*, HCZR § 100.G.2.d with HCZR § 131.0.B.3.f.

Instead, the Documented Site Plan criteria more generally require the proposed uses to be compatible with surrounding land uses. Specific review to ensure protection of historic resources, including protection of historic cemeteries, is left to the development stage. As testified by Ms. Sauer, zoning approval does not allow any shovels to go in the ground. It does not approve the technical aspects of the development project. If approved, Petitioner's proposed development is simply allowed to move to the subsequent subdivision and development stage like any other permitted use.

At the subsequent subdivision and development stage, Petitioner will be required to submit and receive approval of an Environmental Concept Plan and Site Development Plan. As Ms. Sauer stated, it is at this later stage that the development will have to meet all the technical requirements of the Howard County Subdivision and Land Development Regulations. Petitioner will be required to appear before the Howard County Cemetery Preservation Board for advisory comments regarding development of the Memorial Park. Petitioner will be required to submit a Cemetery Boundary Documentation and Accommodation Plan that will be reviewed at a public meeting before the Planning Board and ultimately must be approved by DPZ pursuant to the Planning Board's recommendation prior to any proposed development moving forward. Howard County Code of Ordinances, §16.1304. It is at this stage that Protestant's concerns articulated during the instant evidentiary hearing should be voiced and will be taken into account.

Two of the Protestants indicated that they have pets interred in the proposed development area, Mr. John Pelton and Mrs. Ruthe Bloise. Petitioner is willing to meet with both Mr. Pelton

and Ms. Bloise, and any other concerned persons to identify the exact location of their interred pets or human remains and provide for the respectful and dignified disinterment and reinterment of those pets or humans in a proper cemetery, or any other place of their choosing, at Petitioner's cost and expense. Petitioner is willing to provide this at its expense for any person that can identify their pet is buried in the development area. As testified to by Mr. Fraser, it is the Petitioner's desire to work with the Rosa Bonheur Society and allow meaningful input on the handling of pet or human remains and on the details of the mausoleum to ensure the work is done in a respectful and dignified manner.

Mr. Green, the former owner of the Memorial Park, failed to keep any records including deeds for plots. To the extent deeds exists, they do not appear to be recorded in the land records. This is true of the 1944 "Deed" submitted by Anna Givens. *See*, Protestants' Ex. 5. The deed is for the interment of a pigeon and does not contain any recording reference. It is also unclear if this deed is related to a plot within the proposed development area.

The Petitioner consented to the following conditions of approval in its Petition and at the hearings on the Petition:

- Petitioner shall comply with the DAP comments during the Site Development Plan stage.
- Petitioner shall provide an increased landscape buffer, Type C, along the perimeter of the car wash access drive and the adjacent property that may be developed as an apartment complex.

- Petitioner shall preserve the remainder of the Memorial Park in perpetuity through the recordation of a Declaration of Restrictive Covenants in the Land Records of Howard County, Maryland restricting any future development of the identified area (over 4 acres) of the Memorial Park. The Covenants will include perpetual maintenance and care of the property.
- Petitioner shall provide new safe and convenient vehicular access to the Memorial Park for the general public from the new signalized intersection.
- Petitioner will repurpose salvageable portions of the existing retaining wall and entrance sign currently located along Route 1 to the new entrance; and
- Petitioner shall construct a mausoleum and memorial in honor of all pets interred at the Memorial Park.

The Hearing Examiner additionally recommended conditions governing the location and relocation of any human remains and also that the Petitioner obtain "quiet title" from anyone who has a "deed" to a portion of the subject properties, and the approval of a variance for the reduced 10 ft setback from the carwash in accordance with HCZR §100.0.G.2.g.

The Board finds the following conditions, to which Petitioner consented at the exceptions hearing before the Board, to be necessary and appropriate in order for the documented site plan to

be in harmony with the vicinal properties, the General plan, the Route 1 Manual, and the public health, safety and welfare, including roads and economic and community development needs.

Petitioner shall comply with the Design Advisory Panel (DAP) comments during the Site Development Plan Stage. Petitioner shall provide an increased landscape buffer, Type C, along the perimeter of the car wash access drive and the adjacent property that may be developed as an apartment complex. Petitioner shall preserve the remainder of the Memorial Park in perpetuity through the recordation of a Declaration of Restrictive Covenants in the Maryland Land Records of Howard County, Maryland, restricting any future development of the identified area (over 4 acres) of the Memorial Park. The Covenants will include perpetual maintenance and care of the property. Petitioner shall provide new safe and convenient vehicular access to the Memorial Park for the general public from the new signalized intersection if approved by the State Highway Administration (SHA). Petitioner will repurpose salvageable portions of the existing retaining wall and entrance sign currently located along Route 1 to the new entrance. Petitioner shall construct a mausoleum and memorial in honor of all pets interred at the Memorial Park. The variance for the reduced 10-foot setback from the carwash is approved. Petitioner will be financially responsible for all Route 1 improvements. All conditions of this approval will be noted on the site plan, are conditions of approval of the documented site plan, and shall not be waived or modified, regardless of any provision of the Zoning Regulations that might otherwise permit waiver or modification. All conditions must be fully met prior to the issuance of the first Use and Occupancy permit. Petitioner will provide, at its expense, for the disinterment and reinternment of any pet for any person who is able to identify that their pet is buried in the development area and who holds a deed.

ORDER

WHEREFORE, for the foregoing reasons, the Zoning Board of Howard County, on this 22nd day of June, 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 B-2, which the Board finds to be the most appropriate zoning district. Additionally, the Board approves the proposed documented site plan as proposed, with the following additional conditions, noting that Petitioner has consented to all of these:


- Petitioner shall comply with the Design Advisory Panel (DAP) comments during the Site Development Plan Stage.
- Petitioner shall provide an increased landscape buffer, Type C, along the perimeter of the car wash access drive and the adjacent property that may be developed as an apartment complex.
- Petitioner shall preserve the remainder of the Memorial Park in perpetuity through the recordation of a Declaration of Restrictive Covenants in the Maryland Land Records of Howard County, Maryland, restricting any future development of the identified area (over 4 acres) of the Memorial Park. The Covenants will include perpetual maintenance and care of the property.
- Petitioner shall provide new safe and convenient vehicular access to the Memorial Park for the general public from the new signalized intersection if approved by the State Highway Administration (SHA).
- Petitioner will repurpose salvageable portions of the existing retaining wall and entrance sign currently located along Route 1 to the new entrance.
- Petitioner shall construct a mausoleum and memorial in honor of all pets interred at the Memorial Park.
- The variance for the reduced 10-foot setback from the carwash is approved.
- Petitioner will be financially responsible for all Route 1 improvements
- All conditions of this approval will be noted on the site plan, are conditions of approval of the documented site plan, and shall not be waived or modified, regardless of any provision of the Zoning Regulations that might otherwise permit waiver or modification.

- All conditions must be fully met prior to the issuance of the first Use and Occupancy permit.
- Petitioner will provide, at its expense, for the disinterment and reinternment of any pet for any person who is able to identify that their pet is buried in the development area and who holds a deed.

ATTEST:

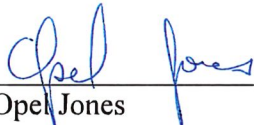
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