

Howard Research and Development Corp., * Before the Zoning Board of
Petitioner * Howard County
* Zoning Board Case No. ZB-1133M

DECISION AND ORDER

On March 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 26, 2026, the Hearing Examiner held a hearing on the Petition, which was filed by Howard Research and Development Corp., (“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 B-2 (Business: General) District, under the Howard County Zoning Regulations (“HCZR”), §119.0, to the M-1 (Manufacturing: Light) District, under the HCZR, § 122.0.

The subject Property is identified as 9121 and 9131 S. Commerce Center Drive, Columbia, located on the east side of Commerce Center Drive approximately 100 feet southwest of the intersection of Snowden Square Drive and Commerce Center Drive. The Property is approximately

11.01 acres in combined size, Tax Map 42, Grid 6, Parcel 513, Lots A-71 (5.5 acres) and A-73 (5.51 acres), in Council District 3. Petitioner has not filed a request for approval of a documented site plan.

The Hearing Examiner viewed the subject properties prior to the hearing. Thomas Coale, Esq. represented the Petitioner. Gabriel Chung testified on behalf of the Petitioner as owner of the property and Dan Sweeney, a civil engineer, testified on behalf of Petitioner. No one appeared in opposition.

Nathanial Foreman, Esq. appeared as Zoning Counsel for the purposes of producing evidence and testimony supporting the last comprehensive rezoning and facilitating the compilation of a complete record.

Petitioner introduced into evidence the following Exhibits: aerial image of the subject property; current zoning overlay.

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.

On February 23, 2026, Mr. Joel Hurewitz filed several motions, which he characterized as follows: a “Motion For A Bill of Particulars Regarding the Disclosure of Contributions to Friends of Opel Jones,” a “Motion to Provide the Ownership and Corporate Information required by Howard County Code Section 16.205(c)(1),” a “Motion to Disqualify Joyce Nichols as Zoning Board Hearing Examiner until such time as Joyce Nichols is Lawfully Appointed by the Howard County Council by Resolution,” a “Motion to Disqualify Nathaniel Forman as Zoning Counsel until such time as Foreman is Lawfully Appointed by the Howard County Council by Resolution,” a “Motion to Indefinitely Postpone Scheduling of ZB 1133M until such time as Zoning Counsel Nathaniel Foreman is Lawfully Appointed by the Howard County Council by Resolution,” and a “Motion to Retain Jurisdiction of ZB 1133M until such time as Joyce Nichols is Lawfully Appointed as Zoning Board Hearing Examiner by the Howard County Council by Resolution.”

Mr. Hurewitz did not appear at the March 26, 2026 evidentiary hearing despite having actual notice of the hearing and no oral argument was held with respect to his motions. Because Mr. Hurewitz appeared to have abandoned his motions, Petitioner did not address them in a memorandum of law it filed as a part of its presentation to the Hearing Examiner. While the Hearing Examiner, in an abundance of caution, addressed Mr. Hurewitz’s motions in her report to the Board, these legal issues could be found to have been abandoned by Mr. Hurewitz in light of all of the circumstances, including his failure to appear before the Hearing Examiner as a party opponent to the Petition. However, Mr. Hurewitz subsequently filed exceptions to Hearing Examiner’s report to the Board.

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

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

The subject property consists of two adjacent parcels totaling 11.01 acres. Lot A-71 is currently undeveloped. The rezoning area is approximately 5.5 acres. GEAPE Land Holdings II, Inc. conveyed this lot to The Howard Research and Development Corporation (Petitioner) in 2009. Lot A-73 is currently undeveloped. The rezoning area is approximately 5.51 acres. The Howard Research and Development Corporation is the fee-simple owner.

The vicinal properties land uses are as follows: to the north M-1 light industrial and B-2 Commercial; to the south M-1 light industrial; to the east M-1 light industrial; to the west B-2 commercial.

As to the applicable roads, Commerce Center Drive has two travel lanes within a 30-foot right-of-way. Annual average daily traffic data is not available for this portion of Commerce Center Drive. Commerce Center Drive is classified as a private road. The nearest intersection is Commerce Center Drive and Snowden Square Drive, approximately 100 feet northwest of the parcels. Snowden Square Drive is classified as a local public road.

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

The subject property is designated as within a Regional Activity Center on the Future Land Use Map adopted in the current General Plan, HoCo By Design and are within the area addressed in the Gateway Master Plan, adopted in December 2025. HoCo By Design envisions Gateway developing into a Regional Activity Center and states that "Industrial, warehouse, and flex space buildings should be considered for specific areas in Gateway." Regional Activity Centers are identified as a Character Area consisting of the Columbia Gateway business park, an existing employment center with large-format buildings and surface parking lots that should be redeveloped as a large regional growth center in the future.

The Gateway Master Plan states that, "The Gateway Innovation District will be a major hub for cybersecurity, defense, technology, artificial intelligence, quantum, and other emerging industries while also offering residents a well-connected, vibrant, and thriving community in which to live, work, and play." The Gateway Master Plan further states, "Industrial uses will continue to thrive, in appropriate locations, and support the innovation ecosystem." The Gateway Master Plan identifies the subject property as being located in "subarea 6" (Snowden River Parkway), for which the Master Plan states: "This subarea includes properties with existing low-density industrial uses, where redevelopment within the 30-year horizon of this plan is unlikely.

The master plan recommends that future development continue to have an employment focus where industrial coexists with other uses. This approach allows these areas to redevelop with a broader mix of uses or continue to thrive as industrial sites."

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

The proposed M-1 district was established to permit a mix of manufacturing, warehousing and business uses with provisions for limited retail sales. The Petitioner asserts that the proposed Zoning Map Amendment is justified based on a mistake in zoning made during the 2004 Comprehensive Zoning Plan (the "2004 CZP").

Dan Sweeney, Petitioner's witness and an engineer, testified that the property is currently zoned B-2, a classification intended for customer-facing commercial and retail uses and Petitioner seeks to rezone the property to M-1 to allow light industrial, and employment uses consistent with the surrounding area and current market conditions. Mr. Sweeney testified that he reviewed the

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

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

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

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

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

Mr. Sweeney testified that the parcel is located within an industrial business park and is subject to access and visibility constraints that make it unsuitable for retail use. He explained that the property's location within the Gateway area, combined with its lack of exposure to a primary commercial corridor, undermines its ability to support customer-facing uses. These conditions are consistent with the Technical Staff Report, which emphasizes the employment-oriented nature of the area and does not identify a retail planning framework for the subject parcel.

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).

Petitioner’s principal assertion of mistake in the last comprehensive rezoning is that there was an assumption of that retail uses on the property were viable, which has proven with time to be incorrect. The B-2 zoning of the property rests on a fundamental factual assumption that the property was viable for retail or customer-serving commercial use. The record demonstrates through the testimony of Mr. Sweeney and Mr. Chung and the prolonged vacancy of this parcel that this assumption was incorrect.

Mr. Sweeney testified that zoning decisions inherently rely on assumptions about feasibility and that in this case the assumption of retail viability has been disproven by the

property's long-term non-development and by observable market trends. Mr. Chung corroborated this conclusion, explaining that despite sustained efforts, no viable retail development has materialized and that the market does not support retail use on this parcel.

Mr. Sweeney testified that long-term vacancy is one of the clearest indicators that zoning does not reflect a property's actual suitability. The property has remained undeveloped for retail use for decades. That fact alone, petitioner argues and this Board accepts on the unique facts of this case as set out in the proposed factual findings of the Hearing Examiner and which this Board adopts, is compelling evidence that the zoning classification is misaligned with reality.

The record establishes that these conditions were evident at the time of the 2013 comprehensive rezoning process. Mr. Sweeney testified that by that time, the property had already remained undeveloped for more than a decade and that the zoning authority would have been aware of this fact. He further testified that the continued reliance on retail being viable in the face of this evidence constitutes has been shown to be mistaken.

Mr. Chung's testimony reinforces that the factors preventing retail development, including lack of visibility to the retail public, insufficient surrounding activity to draw in retail shoppers, and evolving market conditions, were already present and impacting the property's viability at that time. The Technical Staff Report supports this conclusion by confirming that the area is characterized by employment and industrial uses and does not identify a planning rationale supporting retail use on the subject parcel.

The Petitioner has alleged and the Board finds that Petitioner has demonstrated that a mistake occurred when the County Council adopted the last comprehensive zoning in 2013 which

applied the B-2 District zoning to these subject properties. Having demonstrated that a mistake of fact occurred when the County Council applied the B-2 District zoning to the subject properties upon the adoption of the 2013 Comprehensive Zoning, the next consideration is whether the Zoning Board should apply a zoning district other than the B-2 to the subject properties, and, if so, what zoning district should that be. Petitioner demonstrated that the Zoning Board should rezone the subject Properties from the B-2 District to the M-1.

Mr. Sweeney testified that M-1 zoning aligns with County planning for the area and with the existing zoning pattern in the area, particularly in light of the Gateway Master Plan. This is consistent with the Technical Staff Report, which recognizes that industrial and employment uses are appropriate within this area.

M-1 zoning brings the property into conformity with the surrounding industrial and employment uses and eliminates the current inconsistency created by the isolated B-2 designation. Mr. Chung testified that M-1 zoning allows uses that are viable given the parcel's characteristics. He explained that light industrial and employment uses do not depend on visibility, co-tenancy, or consumer traffic and are therefore well-suited to the property. He further testified that such uses are actively in demand and would allow the property to be developed in a manner that is economically feasible.

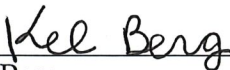
Both Mr. Chung and Mr. Sweeney testified that rezoning the property to M-1 would allow it to become a productive, employment-generating site and contribute to the County's tax base, rather than remaining in a state of non-use.

ORDER

WHEREFORE, for the foregoing reasons, the Zoning Board of Howard County, on this 5th 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 B-2 to M-1, which the Board finds to be the most appropriate zoning district.

ATTEST:

ZONING BOARD OF HOWARD COUNTY



Kel Berg
Board Administrator




David Yungmann, Chairperson



Elizabeth Walsh, Vice Chairperson

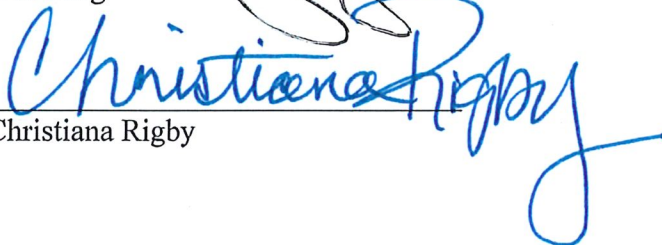
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