

ZONING RECLASSIFICATION APPLICATION

Harford County Board of Appeals

Bel Air, Maryland 21014

JUL - 2 2008

Shaded Area For Office Use Only

Case No. 178

Date Filed 6/30/08

Hearing Date _____

Pre-Conf. _____

Receipt _____

Fee 800.00

Note

1. It is required that the applicant have a pre-filing conference with the Department of Planning and Zoning to determine the necessary additional information that will be required.
2. The burden of proof in any rezoning case shall be upon the Petitioner.
3. Any application in a zoning case and any amendment thereto shall contain specific allegations setting forth the basis for granting of the request.
4. Petition must contain names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.
5. Application will be reviewed for completeness within ten (10) working days of submittal. Applicant will be notified by mail of completeness of application.

Petitioner

Name Kathleen A. & Michael D. O'Connell Phone Number _____

Address 606 Lancelot Lane Bel Air MD 21014
Street Number Street State Zip Code

Property Owner same as above Phone Number _____

Address same as above
Street Number Street State Zip Code

Contract Purchaser _____ Phone Number _____

Address _____
Street Number Street State Zip Code

Attorney/Representative John J. Gessner, Esquire Phone Number 410-893-7500

Address 11 South Main Street Bel Air MD 21014
Street Number Street State Zip Code

Land Description

Address and Location of Property (with nearest intersecting road) Tollgate Road and
West Ring Factory Road

Subdivision _____ Lot Number _____ Acreage/Lot Size 7.38 ac Election District 03-14

Existing Zoning AG Proposed Zoning R2 Acreage to be Rezoned 7.38 ac

Tax Map No. 56 Grid No. 1A Parcel 207 Deed Reference 1157/775

Critical Area Designation none Land Use Plan Designation Low intensity

Present Use and ALL improvements: wooded, no improvements

Proposed Use (If for subdivision development, proposed number of lots, type of dwellings, and type of development.

Example: Conventional, Conventional with Open Space, Planned Residential Development) _____

Residential

Is the property designated a historic site, or does the property contain any designated or registered historic structures?

No If yes, describe: _____

Estimated Time Requested to Present Case: half hour

Required Information To Be Attached

(Submit three (3) copies of each):

(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.

(2) A statement as to whether there is an

allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change.

(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.

(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:

(1) Location of site.

(2) Proposed nature and distribution of land uses, not including engineering drawings.

(3) Neighborhood (as defined by the Applicant).

Additional Information as Required by the Department of Planning and Zoning

- (4) All surrounding zoning.
- (5) Proposed public or private capital improvements.
- (e) Previous individual rezonings and recommendation since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions.
- (f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc.
- (g) Property deed and a boundary survey prepared and sealed by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property.
- (h) Private restrictions or covenants, if any, applicable to subject parcel.
- (i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted.
- (j) Availability of public water and sewer.

- (a) Existing and proposed libraries, parks, schools, fire and police departments.
- (b) Demonstration of compatibility of the proposed use with existing and proposed development for the area.
- (c) Traffic impact study.
- (d) Economic and Environmental impact studies.
- (e) Estimated population for existing and proposed petitioned area and neighborhood, as defined.
- (f) Soils analysis.
- (g) Aerial photograph.

CASE 178 MAP 56 TYPE Rezoning
ELECTION DISTRICT 03 LOCATION Tollgate and West Ring Factory Road
BY Kathleen & Michael O'Connell, 606 Lancelot Lane, Bel Air 21014
Appealed because a rezoning pursuant to Section 267-12A of the Harford County Code to rezone 7.38 acres from a AG District to a R2 District requires approval by the Board.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my/our knowledge, information, and belief.

Kathleen A. O'Connell 6/30/08
Michael P. O'Connell 6/30/08
 Signature of Applicant/Owner Date

Aug 10/08 6/30/08
 Witness Date

 Signature of Contract Purchaser/Owner Date

 Witness Date

John J. [Signature] 6/30/08
 Signature of Attorney/Representative Date

Aug 10/08 6/30/08
 Witness Date

[Signature] 7/1/08
 Director of Planning and Zoning Date
 SPG

 Zoning Staff Date

6 : 6/30/08
2 : 25567
301670

ATTACHMENT A-1
FOR ZONING RECLASSIFICATION PETITION
MICHAEL D. O'CONNELL AND KATHLEEN A. O'CONNELL, PETITIONERS

The Zoning Reclassification Application, in Part IV, requests the following information. Petitioners' submission is as follows:

"(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation."

Petitioners: See Attachment A-2.

"(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation."

Petitioners: The subject property consists of that property owned by Petitioners designated as Tax Map 56, Parcel 207 (the "Subject Property") as shown among the records of the State Department of Assessments and Taxation ("SDAT"). The Petitioners are requesting that the Subject Property be rezoned from its current AG, Agricultural classification to the R-2, Urban Residential Classification. Petitioners allege that a mistake was made as to the existing zoning of the Subject Property for the following reasons.

1. At the time of the last comprehensive rezoning, the County Council assumed that the Subject Property was still appropriate for agricultural uses. Since that time, impacts from surrounding residential development have made the Subject Property no longer viable for appropriate agricultural uses.

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2. At the time of the last comprehensive rezoning, no plans existed to locate a regional sewage pumping station on the nearby property owned by Magness. Now such plans exist.
3. At the time of the last comprehensive rezoning, the increased need for residentially zoned land to accommodate impacts from the "BRAC" process were unknown. Since that time the need for residentially zoned land as a result of the BRAC process is now known.

The County Council could not have known that these changes would take place. If the County Council had known of these changes it would not have retained the AG zoning on the Subject Property. The County Council made a mistake in the legal sense when the Subject Property was zoned AG in the last comprehensive rezoning.

"(2) A statement as to whether there is an allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change."

Petitioners: Petitioners allege that there has been a substantial change in the character of the neighborhood. The neighborhood is designated in red on Attachment A-3. The neighborhood has changed from agricultural to residential.

"(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion."

Petitioners: The Subject Property is classified as "Low Intensity" on the 2004 Master Plan. The proposed R2, Urban Residential Zoning is consistent with that classification.

"(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:

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- (1) Location of Site.
- (2) Proposed nature and distribution of land uses, not including engineering drawings.
- (3) Neighborhood (as defined by the Applicant).
- (4) All surrounding zoning.
- (5) Proposed public or private capital improvements.

Petitioners: See Attachment A-4, entitled "Concept Plan for the O'Connell Property" prepared by Morris & Ritchie Associates, Inc.

"(e) Previous individual rezonings and recommendations since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions."

Petitioners: Application of Kathleen A. O'Connell and Michael D. O'Connell, Case No. 165, decision dated January 17, 2008, rezoning property from AG, Agricultural to R1, Urban Residential. .

"(f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc."

Petitioners: See Attachment A-5, entitled "Environmental Features Map for the O'Connell Property" prepared by Morris & Ritchie Associates, Inc.

"(g) Property deed and a boundary survey prepared and sealed by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property."

Petitioners: See Title Deed - Attachment A-6.

"(h) Private restrictions or covenants, if any, applicable to subject parcel."

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Petitioners: None

“(i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted.”

Petitioners: None.

“(j) Availability of public water and sewer.”

Petitioners: Available.

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO
DIRECTOR OF ADMINISTRATION



C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

August 19, 2008

STAFF REPORT

BOARD OF APPEALS CASE NO. 178

APPLICANT/OWNER: Kathleen A. & Michael D. O'Connell
606 Lancelot Lane, Bel Air, MD 21014

REPRESENTATIVE: John J. Gessner, Esquire
Gessner, Snee, Mahoney & Lutche
11 South Main Street, Bel Air, MD 21014

LOCATION: Tax Map: 56 / Grid: 1A / Parcel: 207
Election District: Three (3)

ACREAGE: 7.38+/- acres

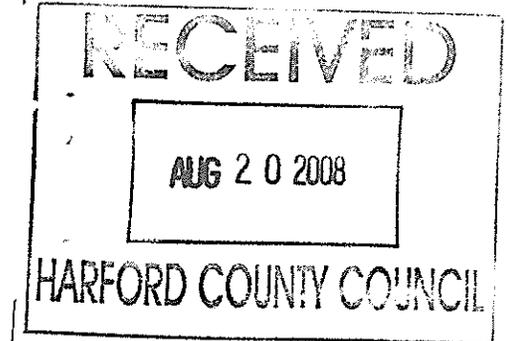
ACREAGE TO BE REZONED: 7.38+/- acres

EXISTING ZONING: AG/Agricultural District

PROPOSED ZONING: R2/Urban Residential District

DATE FILED: June 30, 2008

HEARING DATE: September 17, 2008



APPLICANT'S REQUEST and JUSTIFICATION:

Request:

The Applicant is requesting to rezone 7.38+/- acres from AG/Agricultural District to R2/Urban Residential District.

Preserving Harford's past; promoting Harford's future

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Kathleen A. & Michael D. O'Connell

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Justification:

See ATTACHMENT 1.

LAND USE AND ZONING ANALYSIS:

Location and Description of Neighborhood:

The Applicant's property is located south of the Town of Bel Air. The parcel is landlocked and is located approximately 1,600-feet north of Ring Factory Road and approximately 1,600-feet west of Tollgate Road. A location map and a copy of the Applicant's site plan are enclosed with the report (Attachment 2 and 3).

The Department generally agrees with the neighborhood defined by the Applicant. The Department defines the neighborhood as all those properties west of MD Route 24, north of Plumtree Road, east of Winters Run, and south of MacPhail Road. The neighborhood defined by the Applicant extends further south to Wheel Road. Enclosed with the report is a copy of a map showing the neighborhood defined by the Department (Attachment 4). The neighborhood defined by the Applicants is also enclosed (Attachment 5).

Land Use – Master Plan:

The subject property is located on the north side of Ring Factory Road west of Tollgate Road. The predominant Land Use designation in the area is Low Intensity. The Natural Features Map reflects Agricultural Preservation Districts and Easements, and Stream Systems. The subject property is located within the Development Envelope and is designated as Low Intensity which is defined by the 2004 Master Plan as:

Low Intensity – Areas within the Development Envelope where residential development is the primary land use. Density ranges from 1.0 to 3.5 dwelling units per acre. Neighborhood commercial uses such as convenience stores, doctors' offices, and banks are examples of some of the nonresidential uses associated with this designation.

Enclosed with the report are copies of the 2004 Land Use Map and the Natural Features Map (Attachments 6 and 7).

Land Use – Existing:

The existing land uses generally conform to the intent of the Master Plan. The area predominately contains single-family residential dwellings and agricultural uses. Commercial uses are generally located in the Town of Bel Air and on the east side of MD Route 24.

The subject property is nearly rectangular in shape, is approximately 7.38+/- acres in size and is landlocked. Access to the property is provided via a 20-foot right-of-way as described in Deed 1157-775. The topography within the area ranges from rolling to steep; with very steep slopes along the banks of Winters Run. The subject property is moderate to steeply sloping from the

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north to the south. There are areas of slope in excess of 20% as the property slopes down towards a tributary of Winters Run. The subject property is entirely wooded with mature forest. Enclosed with the report are copies of the topography map and the aerial photograph (Attachments 8 and 9).

The subject property is bordered to the north, west and south by large parcels that are either undeveloped and heavily wooded or actively farmed. There are two parcels that abut the subject property to the east along the west side of Tollgate that are improved with single family dwellings. Enclosed with the report are site photographs (Attachment 10).

Zoning and Zoning History:

Zoning:

The zoning classifications in the area are generally consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning includes R1 and R2/Urban Residential Districts. There are several parcels that are zoned AG/Agricultural within the neighborhood defined by the Department of Planning and Zoning. The subject property is zoned AG/Agricultural District as shown on the enclosed copy of the Zoning Map (Attachment 11).

Zoning History:

The subject property has remained zoned AG/Agricultural District since 1957 (Attachments 12 - 15). The Applicants requested that the property be rezoned to R2/Urban Residential District during the 2005 review. The County Council voted to change the property to R1/Urban Residential District. However, the County Executive vetoed the Legislation and the County Council did not override the veto. Therefore, the zoning assigned to the property in 1997 remains in effect. Attached are copies of the 2005 zoning log and issues map (Attachment 16 and 17).

BASIS FOR INDIVIDUAL REZONING REQUEST:

Under Maryland case law, the burden of proof lies with the Applicant to provide information that there has been a substantial change in the overall character of the neighborhood or that the County made a mistake during the last comprehensive zoning review process. It should be noted that the Courts have stated that any argument for change cannot be based on existing changes that were anticipated during the last comprehensive review.

Substantial Change Argument:

The Applicants argue that the subject property can no longer be used for Agricultural uses. The Applicants states that, "Petitioner alleges that there has been a substantial change in the character of the neighborhood. The neighborhood is designated in red on Attachment A-3. The neighborhood has changed from Agricultural to Residential."

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The Department of Planning and Zoning disagrees with the Applicant that a substantial change has occurred in the subject neighborhood. The land use in the area predominately consists of single-family dwellings. The surrounding residential communities within the neighborhood that have been developed since the 1997 Comprehensive Rezoning were developed in accordance with existing zoning. These parcels are all located within the Development Envelope. The development of these parcels for residential uses is consistent with the 1996 and 2004 Master Plans and existing zoning.

As stated above, the development which has occurred in the area is consistent with the existing zoning and Land Use Plan. Therefore, the Department finds that there has not been a substantial change in the neighborhood.

Mistake:

The Applicant states that, "The subject property consists of that property owned by Petitioner designated as Tax Map 56, Parcel 207 (the "Subject Property") as shown among the records of the State Department of Assessments and Taxation ("SDAT"). The Petitioner is requesting that the Subject Property be rezoned from its current AG, Agricultural classification to the R-2, Urban Residential Classification. Petitioner alleges that a mistake was made as to the existing zoning of the Subject Property for the following reasons.

1. At the time of the last comprehensive rezoning, the County Council assumed that the Subject Property was still appropriate for agricultural uses. Since that time, impacts from surrounding residential development have made the Subject Property no longer viable for appropriate agricultural uses.
2. At the time of the last comprehensive rezoning, no plans existed to locate a regional sewage pumping station on the nearby property owned by Magness. Now such plans exist.
3. At the time of the last comprehensive rezoning, the increased need for residentially zoned land to accommodate impacts from the "BRAC" process were unknown. Since that time the need for residentially zoned land as a result of the BRAC process is now known.

The County Council could not have known that these changes would take place. If the County Council had known of these changes it would not have retained the AG zoning on the Subject Property. The County Council made a mistake in the legal sense when the Subject Property was zoned AG in the last comprehensive rezoning."

The Applicant's statement that the subject property is "no longer viable for farming" is unfounded. The subject property has not been actively farmed since at least before 1957. Historic photography documents that the subject property has been entirely wooded since at least 1957. It is also important to note that single family residential dwellings are also a permitted use

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in the AG/Agricultural District. A single-family dwelling could be constructed on the subject property.

The Applicant also states that plans now exist to locate a sewage pumping station on the adjacent Magness Property. The Magness Property is zoned AG/Agricultural District and is the subject of rezoning Case No. 174. As of the date of this Staff Report, the Board has not ruled on that rezoning request. It should be noted that sewage pumping stations are permitted in all zoning districts, including the AG/Agricultural District. The need for a regional pumping station does not require the rezoning of the Magness Property or the subject property.

The Department disagrees with the Applicants that the County is not prepared for growth that will result from BRAC. The Department has been monitoring BRAC and is continuing to update and revise the County's housing projections based on current inventory and trends in building permits for new construction.

Therefore, the Department disagrees that a mistake occurred in the zoning of the subject property during the 1997 Comprehensive Zoning review.

ANALYSIS OF INDIVIDUAL ZONING REQUEST:

Conformance with the Master Plan and Land Use Element Plan:

The proposed rezoning is in conformance with the intent of the 2004 Master Plan. The Land Use Plan shows the area designated as Low Intensity.

Impact on the neighborhood:

The requested rezoning would not adversely impact the neighborhood.

COMMENTS FROM ADVISORY GROUPS:

History Preservation Commission:

This property is not in a historic district and there are no historic sites on the property.

Planning Advisory Board:

The Planning Advisory Board (PAB) reviewed the request at their meeting on August 13, 2008. The PAB voted 3-0 to recommend that the requested change in zoning be denied (Attachment 18).

STAFF REPORT

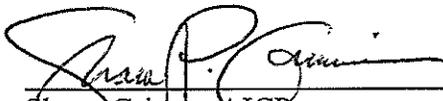
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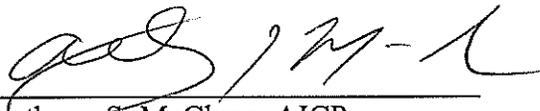
RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the request to rezone the subject property from AG/Agricultural District to R2/Urban Residential District be denied.



Shane Grimm, AICP
Chief, Site Plans & Permits Review

SPG/ASM/jf



Anthony S. McClune, AICP
Deputy Director, Planning and Zoning