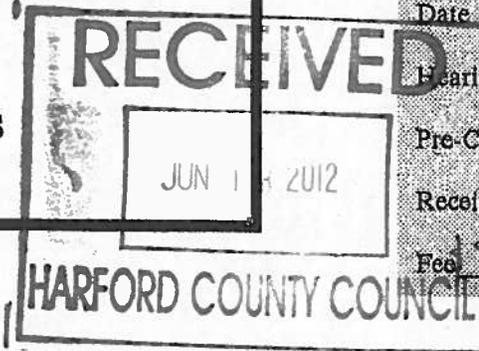


ZONING RECLASSIFICATION APPLICATION

**Harford County
Board of Appeals**

Bel Air, Maryland 21014

Shaded Area For Office Use Only



Case No. 179
Date Filed 6/7/12
Hearing Date _____
Pre-Conf. _____
Receipt _____
Fee 800

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 Lot 83 Newport Drive, LLC Phone Number Call Attorney

Address 2101 Rock Spring Road, Forest Hill, Maryland 21050-2617
Street Number Street State Zip Code

Property Owner Same Phone Number _____

Address Same
Street Number Street State Zip Code

Contract Purchaser N/A Phone Number _____

Address _____
Street Number Street State Zip Code

Attorney/Representative Robert S. Lynch, Esquire Phone Number (410) 879-2222

Address Stark and Keenan, P.A., 30 Office Street, Bel Air, MD 21014
Street Number Street State Zip Code

Land Description

Address and Location of Property (with nearest intersecting road) 2A Newport Dr., Forest Hill, MD
Northeast corner of the intersection of Md Route 24 (Rock Spring Rd.) and
Newport Drive
Subdivision North Forest Lot Number 83 Acreage/Lot Size 1.217 ac Election District 3rd
Existing Zoning VR Proposed Zoning CI Acreage to be Rezoned 1.217 ac.
Tax Map No. 33 Grid No. 4D Parcel 421 Deed Reference 5299/469
Critical Area Designation None Land Use Plan Designation High Intensity
Present Use and ALL improvements: Lot is current unimproved and there are no
structures on the lot.

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) Commercial

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: 2 hours.

Required Information To Be Attached

(Submit three (3) copies of each):

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

AMENDED BOARD OF APPEALS APPLICATION
CASE NO. 179

ATTACHMENTS

Lot 83 Newport Drive, LLC

Board of Appeals Application

- (a) The names and addresses of all persons, organizations, corporations or groups owning land, any part of which lies within five hundred feet (500') of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.
- See Attachment No. 1.
- (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.**
- **See Amended Attachment No. 2.**
- (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.
- Not applicable.
- (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.
- The proposed rezoning from VR to CI is consistent with the Harford County Land Use Designation of "High Intensity."
- (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.

- See Attachment No. 3.
- (2) **Proposed nature and distribution of land uses, not including engineering drawings.**
- See Amended Attachment No. 3.
- (3) Neighborhood (as defined by the Applicant).
- Not applicable. Change in the neighborhood is not asserted.
- (4) All surrounding zoning.

	<u>Zoning</u>	<u>Land Uses</u>
North	VR	Residential - Single Family Dwelling
South	CI/VR	Strip Retail
East	CI	Restaurant (Enotria)
West	RR	Unimproved/Church

- (5) Proposed public or private capital improvements.
- None.
- (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.
- None.
- (f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc.
- The property is an open field with no wetlands, streams or floodplains. The property is not located within the Chesapeake Bay Critical Area.

- (g) Property deed and boundary survey prepared and seal by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property.
- See Attachment Nos. 4 and 5.
- (h) **Private restrictions or covenants, if any, applicable to the subject parcel.**
- **See Agreement dated September 18, 1981 between Morton J. Miller and Anthony Piccinini and Christ Episcopal Church, Mary M. Ward, Donald E. Wrede and Cypert O. Whitfill (see Attachment No. 6).**
- (i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted.
- Not applicable.
- (j) Availability of public water and sewer.
- Public water and sewer is available to the site.

AMENDED ATTACHMENT 2

BOARD OF APPEALS APPLICATION

CASE NO. 179

(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.

A. There was a Mistake as to the designation of the VR zoning on the subject property.

In a Private Agreement executed in 1981 between neighbors of the prior property owner, a VR (Village Residential) zoning line was established for a small portion of the subject property (see Amended Attachment No. 2a). In 1982, during the Comprehensive Rezoning, the Department of Planning and Zoning attempted to conform the VR zoning line to the line designated in the Agreement. However, a drafting error caused the line to be incorrectly extended farther to the east (see attached Amended Attachment No. 2a). The diagonal VR zoning line was supposed to be farther to the west in order to conform with the residential/agricultural area delineated in the Agreement. Subsequently, the drafting error was repeated when the incorrect VR line was further extended eastward to encompass the entire subject property. A drafting error was first recognized in Board of Appeals Case No. 120 “Lismore Limited Liability Company,” wherein the Board of Appeals found that:

According to Mr. Leonard, the original agreement between the then owners of the Forest Hill Business Center and certain of the neighbors which was executed in 1981, was clearly an intent to segregate the more intensive commercial activities of the Forest Hill Business Center from existing agricultural and residential uses along Maryland Route 24. A line of division was set forth in the Agreement. Subsequent zoning of the parcel was based upon that line of division as testified to by Anthony McClune and as well documented by letters in the file. However, when comparing the line of agreement with the actual zoning maps, Mr. Leonard determined that the line is being inaccurately followed on the zoning maps. The line of division should be some 100 feet more to the west (emphasis supplied).

On the current zoning maps, the subject property is shown as VR zoned in its entirety. The correct zoning of the property should be split zoned VR/CI, with the VR zone designated pursuant to the Agreement and the balance of the Property should be CI. This rezoning request seeks to rezone the subject property to CI.

Mistake Argument:

B. A Mistake occurred when the County Council, at the time of the 2009 Comprehensive Zoning, failed to rezone, the Applicant's Property to CI even though the Property during the prior 2005 Comprehensive Zoning had been previously granted a CI zone.

During the 2005/2006 Comprehensive Zoning Review, the Property was submitted as part of the Comprehensive Zoning change and was noted on the Comprehensive Zoning Log as Issue No. D033. Upon the recommendation of the Department of Planning and Zoning and the Planning Advisory Board (PAB), the Harford County Council rezoned the

property to CI. The Department of Planning and Zoning Assessment Report stated, “the type of request is appropriate, however, the intensity has been modified based on compatibility with surrounding land uses and zoning.” This was the basis of recommending that the Property be rezoned from VR to CI, instead of a B3 classification, which was the original Comprehensive rezoning request. The Comprehensive Rezoning was subsequently vetoed.

In the subsequent Comprehensive Zoning which occurred in 2008/2009, this property retained a VR zoning classification. A review of the Comprehensive Zoning logs for 2008/2009 indicates that this property was not considered. The 2009 Comprehensive Zoning was strictly petition driven in that only those property owners who filed a Comprehensive Zoning request were considered for a rezoning. The applicants also had to pay an increased filing fee in order to be considered. The Council failed to consider this property for a rezoning since it was not shown on the Comprehensive Zoning log even though it was the exact same Property that the Council had previously zoned to CI. The County Council limited its review to only those parcels where petitioners filed an application and paid the increased filing fee. Anyone not willing to file a petition or pay the processing fee was excluded from the process. By its very definition, Comprehensive Zoning is to be comprehensive in nature and all property outside the municipal towns are to be reviewed and analyzed for a possible zoning change.

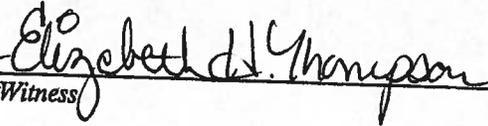
- (4) All surrounding zoning.
- (5) Proposed public or private capital improvements.
- (e) Previous individual rezonings and recommendation since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions.
- (f) Environmental 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.

Additional Information as Required by the Department of Planning and Zoning

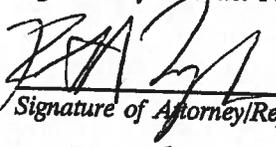
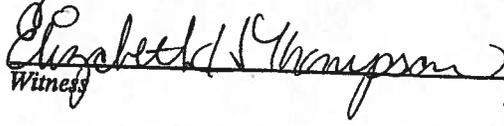
- (a) Existing and proposed libraries, parks, schools, fire and police departments.
- (b) Demonstration of compatibility of the proposed use with existing and proposed development for the area.
- (c) Traffic impact study.
- (d) Economic and Environmental impact studies.
- (e) Estimated population for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

CASE 179 MAP 33 TYPE Rezoning
ELECTION DISTRICT 03 LOCATION 2A Newport Drive, Forest Hill 21050
BY Lot 83 Newport Drive, LLC, 2101 Rock Spring Road, Forest Hill 21050
Appealed because a rezoning pursuant to Section 267-12A of the Harford County Code to rezone 1.217 acres from a VR District to a CI 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.

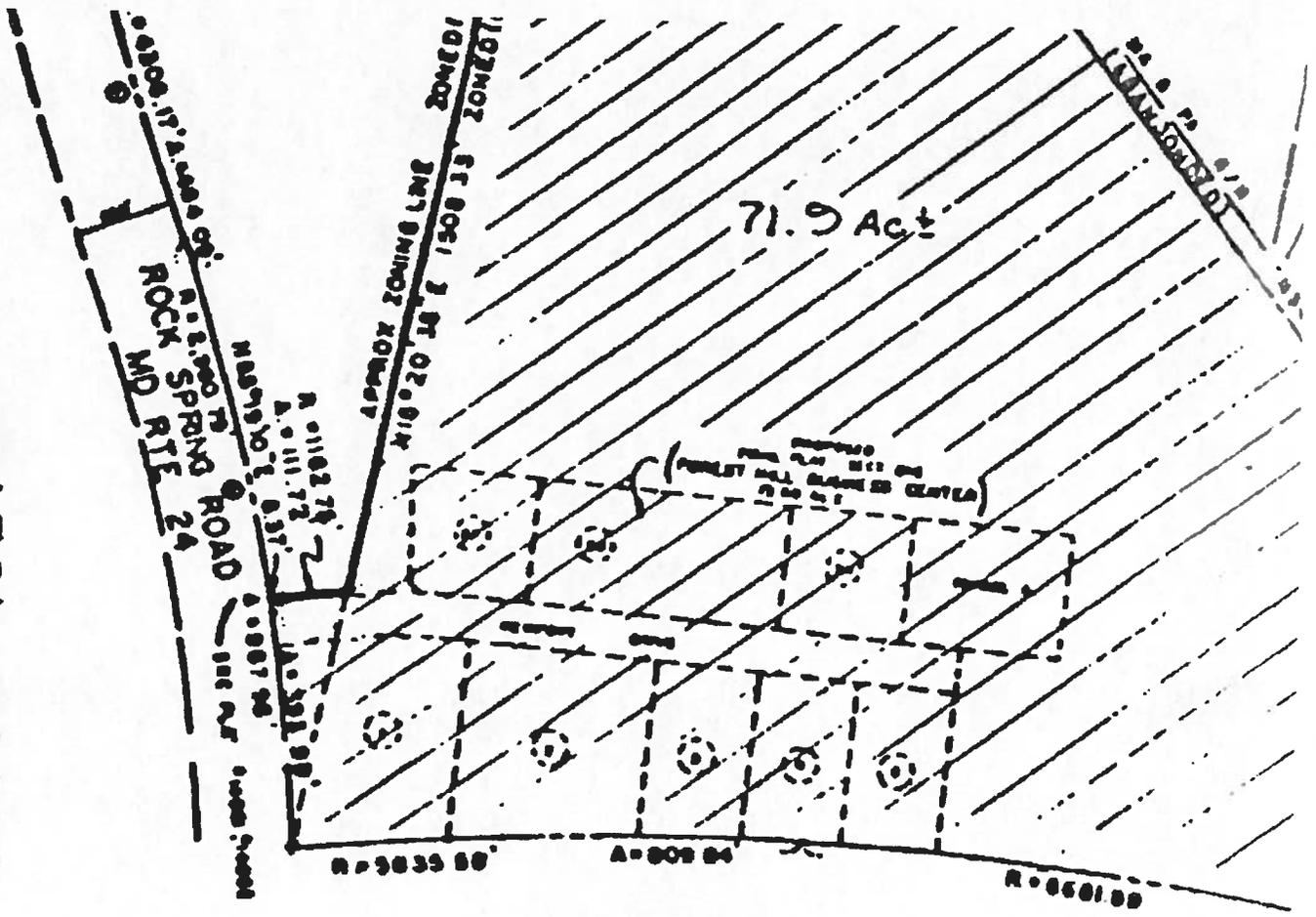
 5-30-2012  5/30/12
 Signature of Applicant/Owner Date Witness Date

 Signature of Contract Purchaser/Owner Date Witness Date

 6/1/12 
 Signature of Attorney/Representative Date Witness Date

 6/1/12
 Director of Planning and Zoning Date Zoning Staff Date

LIBER 1534 FOLIO 228



DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE



C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

MARY F. CHANCE
DIRECTOR OF ADMINISTRATION

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

August 8, 2012

STAFF REPORT

BOARD OF APPEALS CASE NO. 179

APPLICANT/OWNER: Lot 83 Newport Drive, LLC
2101 Rock Spring Road
Forest Hill, Maryland 21050

REPRESENTATIVE: Robert S. Lynch, Esquire
30 Office Street, Bel Air, MD 21014

LOCATION: 2A Newport Drive, Forest Hill, Maryland 21050
Tax Map: 33 / Grid: 4D / Parcel: 421 / Deed 5299/469
Election District: Three (3)

ACREAGE: 1.217 acres

ACREAGE TO BE REZONED: 1.217 acres

EXISTING ZONING: VR/Village Residential District

PROPOSED ZONING: CI/Commercial Industrial

DATE FILED: June 7, 2012

HEARING DATE: August 15, 2012



APPLICANT'S REQUEST and JUSTIFICATION:

See ATTACHMENT 1.

Preserving Harford's past; promoting Harford's future

STAFF REPORT

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Lot 83 Newport Drive, LLC

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LAND USE AND ZONING ANALYSIS:

Location and Description of Neighborhood:

The Applicant's property is located on the northeast corner of the intersection of Newport Drive and Rocks Road (MD Route 24), north of MD Route 23. Although the property appears to be within the Forest Hill Business Center, Lot 83 was recorded as a lot within the adjacent North Forest residential subdivision as shown on Plat 89-91 (Attachment 2). A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 3 and 4).

The Department of Planning and Zoning defines the neighborhood as all those properties fronting on the west side of MD Route 24, south of Jarrettsville Road and north of MD Route 23. The neighborhood then extends south to include those properties on the east and west side of MD Route 24, including the commercially zoned properties along Osborne Parkway and Colgate Drive. Enclosed with this report is a map of the neighborhood as defined by the Department of Planning and Zoning (Attachment 5). The Applicant is not arguing that a substantial change in the neighborhood has occurred.

Land Use – Master Plan:

The subject property is located within the Development Envelope. Land use designations in this area of the County include Agricultural, Medium and High Intensities and Industrial/Employment. The Rural Village of Forest Hill is located at the intersection of Jarrettsville Road and MD Route 24. A Neighborhood Center is also located on the south side of MD Route 23 along MD Route 24. The Natural Features Map shows Stream Systems and Sensitive Species Project Review Areas. The Applicant's property is designated as High Intensity which is defined by the 2012 Master Plan as:

***High Intensity** - Areas within the Development Envelope that are intended for higher density residential development, exceeding 7.0 dwelling units per acre. These areas are also appropriate for a wide range of commercial uses including retail centers, home improvement centers, automotive businesses and professional offices.*

Enclosed with the report are copies of a the 2012 Land Use Map for the Forest Hill Community Area and the Natural Features Map (Attachments 6 and 7).

Land Use – Existing:

The existing land uses in the area generally conform to the overall intent of the Master Plan. Residential development includes single family dwellings, townhouses, garden apartments, condominiums and assisted living facilities. Commercial uses include single retail businesses, shopping centers, automotive related uses, restaurants, and personal and professional services.

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Lot 83 Newport Drive, LLC

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Institutional uses include churches, schools, parks and a post office. Industrial uses are generally found within the Forest Hill Airpark and Bynum Run Business Center.

The subject property is irregularly shaped and is approximately 1.22+/- acres in size. The subject property is unimproved with the entire lot being maintained as lawn. The topography of the subject property is flat to gently sloping. A topography map, aerial photograph and site photographs are enclosed with the report (Attachments 8, 9 and 10).

Zoning and Zoning History:

Zoning:

The zoning classifications in the area are generally consistent with the 2012 Master Plan as well as the existing land uses. Residential zoning includes RR/Rural Residential District, VR/Village Residential District, and R2/Urban Residential District. Commercial and Industrial zoning in the area includes B2/Community Business District, VB/Village Business District, CI/Commercial Industrial and GI/General Industrial Districts. The subject property is zoned VR/Village Residential District. Enclosed with the report is a zoning map of the immediate area (Attachments 11).

Zoning History:

1957 Comprehensive Zoning Review: In 1957, the subject property was part of a larger tract of land which was split zoned A-1/Agricultural, R-1/Suburban Residence and M-1/Light Industrial. The subject property was located within the A-1/Agricultural zoned portion of the overall tract (Attachment 12).

1982 Comprehensive Zoning Review: Prior to the 1982 Comprehensive Rezoning, a private agreement between the previous owners of the subject property and property owners within the community was executed in 1981. This Agreement stipulated several conditions in exchange for the community's support of the property owner's rezoning request during the 1982 Comprehensive Zoning. The Agreement stipulated in part that the owners of the subject property would create a buffer of residential or agricultural zoning along MD Route 24 in exchange for the community's support of the subject property owner's request to rezone the remainder of their tract to M-1/Light Industrial District. The buffer zoning was shown on a map attached to the Agreement.

Approximately 9.0 acres of the overall tract was then rezoned VR/Village Residential District along MD Route 24 and the remainder of the tract was rezoned GI/General Industrial District. However, the Zoning Maps did not accurately reflect the "buffer" of residential zoning shown on the maps attached to the private Agreement. The VR/Village Residential zoning was extended approximately 100-feet east beyond what was established in the private Agreement. The zoning line ran approximately through the middle of the subject property, although Lot 83 was still part of the overall tract at that

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Lot 83 Newport Drive, LLC

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time. A copy of the Agreement is enclosed with this report (Attachment 13). This error has been established in Piecemeal Rezoning Case No. 120 for 1 Newport Drive where in the Board granted a rezoning from VR/Village Residential District to CI/Commercial Industrial District based on the mistake in the location of the zoning line. Enclosed with this report is a copy of the Hearing Examiner's Decision in Case No. 120 (Attachment 14).

The Zoning Code was amended in 1982 to eliminate the M-1/Light Industrial District which was replaced with the CI/Community Industrial and GI/General Industrial zoning districts. The County chose to rezone the majority of the property GI/General Industrial District zoning.

The owners of the subject property discovered several years later that the GI/General Industrial District zoning given to the property in 1982 was in error and contrary to the private Agreement. In keeping with the Department's policy at that time, the zoning of the parcel should have been converted from M-1/Light Industrial to CI/Commercial Industrial District based on changes to the Zoning Code and zoning districts. Furthermore, the private Agreement specifically stated that, "This Agreement is contingent upon the property of the Developer being zoned for a M-1, Light Industrial, use or for a *comparable district under future zoning ordinances.*" Clearly, GI/General Industrial District zoning was not comparable to the M-1/Light Industrial District applicable in 1981.

In 1986, the owners of the subject property then requested a Piecemeal Rezoning (Case No. 011) of the GI/General Industrial District portion of the overall tract to CI/Commercial Industrial District to correct the error. The Piecemeal Rezoning request was granted and the overall tract was split zoned VR/Village Residential District and CI/Commercial Industrial District.

Enclosed with this report are copies of the Hearing Examiner's Decision in Case No. 11 and the 1982 Zoning Map reflecting the split zoning (Attachment 15 and 16)

1989 Comprehensive Zoning Review: Prior to the 1989 Comprehensive Zoning, a portion of the overall tract was subdivided to create the CI/Commercial Industrial zoned Forest Hill Business Center. The lot that is the subject of this request was not included as part of the Business Center and was included in the remaining lands of the property owners. A request was made to rezone the subject property during the 1989 Comprehensive Zoning Review from VR/Village Residential to B3/General Business. The County Council voted to maintain the VR/Village Residential zoning. The VR/Village Residential District zoning line was moved further to the east to include all of the land that was to eventually become Lot 83. The shift in the zoning line to include the entire lot appears to have been a drafting error. Enclosed with the report is a copy of the 1989 Zoning Maps and a portion of the issues log (Attachment 17 & 18)

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Lot 83 Newport Drive, LLC

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1997 Comprehensive Zoning Review: In 1997 the subject property remained zoned VR/Village Residential District (Attachment 19). It is important to note that prior to the 1997 Comprehensive Rezoning Review, the North Forest residential subdivision was created in 1996. The subject property was created as Lot 83 of North Forest.

2005 Comprehensive Zoning Review: The subject property was an issue during the 2005 Comprehensive Zoning Review. The property owners requested that the property be rezoned from VR/Village Residential District to B3/General Business District. The Department of Planning and Zoning recommended that the property be rezoned to CI/Commercial Industrial District which was approved by the County Council. However, the County Executive vetoed the Legislation and the County Council did not override the veto. The 1997 zoning remained in effect. Enclosed with this report is a copy of the Department's Assessment and the proposed 2006 Zoning Map (Attachments 20 and 21)

2009 Comprehensive Zoning Review: The subject property was not an issue during the 2009 Comprehensive Zoning Review. Enclosed with this report is a copy of the 2009 Zoning Map (Attachment 22).

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 Applicant is not claiming that a substantial change in the neighborhood has occurred. The Department agrees that a substantial change in the neighborhood has not occurred since the time of the last Comprehensive Zoning in 2009.

Mistake:

The Applicant has proffered two arguments that there is a mistake in the existing zoning. The Applicant first argues that:

"In a Private Agreement executed in 1981 between neighbors of the prior property owner, a VR (Village Residential) zoning line was established for a small portion of the subject property (see Amended Attachment No. 2a). In 1982, during the Comprehensive Rezoning, the Department of Planning and Zoning attempted to conform the VR zoning line to the line designated in the Agreement. However, a drafting error caused the line to be incorrectly extended farther to the east (see attached Amended Attachment No. 2a).

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The diagonal VR zoning line was supposed to be farther to the west in order to conform with the residential/agricultural area delineated in the Agreement. Subsequently, the drafting error was repeated when the incorrect VR line was further extended eastward to encompass the entire subject property. A drafting error was first recognized in Board of Appeals Case No. 120 "Lismore Limited Liability Company," wherein the Board of Appeals found that:

According to Mr. Leonard, the original agreement between the then owners of the Forest Hill Business Center and certain of the neighbors which was executed in 1981, was clearly an intent to segregate the more intensive commercial activities of the Forest Hill Business Center from existing agricultural and residential uses along Maryland Route 24. A line of division was set forth in the Agreement. Subsequent zoning of the parcel was based upon that line of division as testified to by Anthony McClune and as well documented by letters in the file. However, when comparing the line of agreement with the actual zoning maps, Mr. Leonard determined that the line is being inaccurately followed on the zoning maps. The line of division should be some 100 feet more to the west (emphasis supplied).

On the current zoning maps, the subject property is shown as VR zoned in its entirety. The correct zoning of the property should be split zoned VR/CI, with the VR zone designated pursuant to the Agreement and the balance of the Property should be CI. This rezoning request seeks to rezone the subject property to CI"

The Department agrees with the Applicant that a mistake occurred during the drafting of previous Zoning Maps. Based on the testimony in Piecemeal Rezoning Case No. 120 from 2006, it is clear that the Zoning Maps since 1982 have not correctly reflected the zoning line delineated in the private Agreement from 1981.

The Applicant has provided an overlay map that shows the zoning line from the 1981 Agreement compared to the zoning line shown on the 1982 Zoning Map. It is clear that during the drafting of the 1982 Zoning Maps that an error occurred causing the zoning line to be shifted approximately 100-feet to the east. The drafting error reduced the CI/Commercial Industrial District zoning of the subject property significantly. In 1989, the VR/Village Residential District zoning line was moved further to the east to include all of the future Lot 83. Enclosed with this report is the Applicant's overlay map demonstrating the incorrect location of the zoning line in 1982 (Attachment 23).

The Applicant's second argument states:

"B. A Mistake occurred when the County Council, at the time of the 2009 Comprehensive Zoning, failed to rezone, the Applicant's Property to CI even though the Property during the prior 2005 Comprehensive Zoning had been previously granted a CI zone.

STAFF REPORT

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During the 2005/2006 Comprehensive Zoning Review, the Property was submitted as part of the Comprehensive Zoning change and was noted on the Comprehensive Zoning Log as Issue No. D033. Upon the recommendation of the Department of Planning and Zoning and the Planning Advisory Board (PAB), the Harford County Council rezoned the property to CI. The Department of Planning and Zoning Assessment Report stated, "the type of request is appropriate, however, the intensity has been modified based on compatibility with surrounding land uses and zoning." This was the basis of recommending that the Property be rezoned from VR to CI, instead of a B3 classification, which was the original Comprehensive rezoning request. The Comprehensive Rezoning was subsequently vetoed. In the subsequent Comprehensive Zoning which occurred in 2008/2009, this property retained a VR zoning classification. A review of the Comprehensive Zoning logs for 2008/2009 indicates that this property was not considered. The 2009 Comprehensive Zoning was strictly petition driven in that only those property owners who filed a Comprehensive Zoning request were considered for a rezoning. The applicants also had to pay an increased filing fee in order to be considered. The Council failed to consider this property for a rezoning since it was not shown on the Comprehensive Zoning log even though it was the exact same Property that the Council had previously zoned to CI. The County Council limited its review to only those parcels where petitioners filed an application and paid the increased filing fee. Anyone not willing to file a petition or pay the processing fee was excluded from the process. By its very definition, Comprehensive Zoning is to be comprehensive in nature and all property outside the municipal towns are to be reviewed and analyzed for a possible zoning change".

The Department does not agree with the Applicant's second mistake argument. The Applicant's failure to make an application for rezoning during the 2009 Comprehensive Zoning is not a valid mistake argument. During any Comprehensive Zoning, the Department reviews the existing zoning patterns and determines whether any changes are necessary based on the Land Use Plan, existing zoning and the requested applications. The County Council also has the ability to raise issues that it feels need to be reviewed.

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 2012 Master Plan. The Land Use Plan shows the parcel designated as High Intensity.

Impact on the neighborhood:

The requested rezoning would not adversely impact the neighborhood.

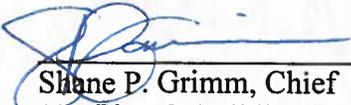
COMMENTS FROM ADVISORY GROUPS:

Planning Advisory Board:

The Planning Advisory Board (PAB) reviewed this request at their meeting on July 11, 2012. The PAB voted 5-0 to recommend denial of the requested rezoning (Attachment 24). It is important to note that the PAB reviewed the Applicant's original request and mistake arguments during their meeting. The Applicant has since amended their arguments which have been incorporated into this Staff Report.

RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the request to rezone the 1.217 acres from VR/Village Residential to CI/Commercial Industrial be approved.



Shane P. Grimm, Chief
Site Plan & Building Permits Review



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

SG/ASM/jf