BOARD OF APPEALS CASE NOS. 070/071	*	BEFORE THE
APPLICANT: Vineyard Oak LLC	*	ZONING HEARING EXAMINER
REQUEST: Rezone 1.058 acres parcel and .433 acres from AG to R1; 1602 and 1608 North Fountain Green Road, Bel Air	*	OF HARFORD COUNTY
	*	Hearing Advertised
HEARING DATE: July 31, 1996	*	Aegis: 6/12/96 & 6/19/96 Record: 6/14/96 & 6/21/96

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Vineyard Oaks LLC, is requesting reclassification of two separate parcels from the Agricultural classification to the Urban Residential classification.

The first parcel is owned by James and Jerilyn Zimmers and contains 1.058 acres, more or less, and is identified as Parcel No. 251, on Tax Map 41. The second parcel is owned by Lewis W. Stotler, Jr. and Erin R. Stotler, and contains .433 acres, more or less, and is identified as Parcel No. 493 on Tax Map 41. Both parcels are located in the Third Election District.

Mr. Morris H. Wolf appeared and testified that he is the president of Vineyard Oak LLC, which he said is the contract purchaser of both parcels. Mr. Wolf referred to a preliminary plan of Vineyard Oak prepared by Morris & Ritchie Associates, Inc., which was identified as Applicant's Exhibit No. 7. Mr. Wolf described the residential subdivision location on property adjacent to the subject parcels.

Mr. Wolf pointed out that the rezonings in the neighborhood include the Rachuba property in Case Nos. 060 and 062 and the Bregel property in Case No. 065. Further, he said that the character of the neighborhood has changed such that retaining the AG zoning for the subject properties would be improper and he said he did not believe rezoning the subject properties could cause any harm of any kind to anyone.

Ms. Jerilyn Zimmers appeared and confirmed that the contract of sale with Vineyard Oak LLC is contingent upon the property being rezoned from AG to R1.

Mr. Lewis Stotler appeared and also confirmed that the contract of sale with Vineyard Oak LLC is contingent upon the property being rezoned from AG to R1.

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Mr. Kevin McBride of Morris & Ritchie Associates, Inc., was accepted as an expert landscape architect. Mr. McBride said that Morris & Ritchie Associates prepared the preliminary plan of Vineyard Oak (Applicant's Exhibit No. 7) and pointed out that single-family detached dwellings will be located on the property. He also said that the subject properties are served by public water and sewer and said if rezoned, the subject parcels would be integrated into the existing Vineyard Oak development.

Mr. McBride explained that residential development is more appropriate than agricultural development for the subject properties. He said that changes in water and sewer service to the subject properties have occurred since the 1989 Comprehensive Rezoning and indicated that in 1989 the water pressure was poor and no sewer service existed. He said that the County Council could not have been aware of these changes when the subject properties were zoned Agricultural during the last comprehensive rezoning process. Finally, Mr. McBride testified that at the time of the last comprehensive rezoning the Hickory bypass project, was planned to be constructed in such a way as to impact Vineyard Oaks and the subject properties. After the comprehensive rezoning was completed, plans for the Hickory bypass project have effectively been abandoned. He said this, too, was a change of which the County Council could not have been aware at the time of the last comprehensive rezoning.

Mr. Denis Canavan was accepted as an expert land planner and said that he testified on behalf of the Applicant in Case No. 065 in which the property shown on the preliminary plan had been rezoned from AG to R1. In connection with his analysis, he said he reviewed the zoning application, the Staff Report, tax maps, Harford County Zoning Code, the 1988 Land Use Plan, current land use maps, current zoning maps, 1988 zoning maps, as well as all of the Applicant's exhibits. He testified that the subject properties were not the subject of a change or review during the Comprehensive Rezoning process.

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Mr. Canavan indicated that the subject properties are classified on the Master Plan as medium intensity and within the development envelope and that rezoning the subject properties is consistent with the Master Plan. The witness said that the subject properties are not well suited for agricultural uses given their size and said that retaining the Agricultural zoning would create adverse impact on surrounding residential uses. He also testified that rezoning the subject properties R1 is appropriate because of its frontage on MD Route 543 and because it represents a logical extension of the Vineyard Oak subdivision currently being developed.

Mr. Canavan went on to testify that it was his opinion a mistake was made in the last comprehensive rezoning by retaining the agricultural zoning for the subject properties and that rezoning the subject properties R1 would be a correction of those mistakes. He testified that the evidence showed that the County Council could not have known during the last comprehensive rezoning that water and sewer would be available to the subject properties, that the Hickory bypass project would not be built, or that the rezonings in Case No. 060, 062 and 065 would occur.

Mr. Canavan said had these factors been known by the County Council, in his opinion, the Council would not have zoned the subject properties AG. Mr. Canavan went on to testify that he also believes that the character of the neighborhood had substantially changed since the last comprehensive rezoning. Mr. Canavan said that the neighborhood of the subject properties consist of an area beginning at the intersection of U.S. Route 1 and Ruff's Mill Road to the north, then continuing along Ruff's Mill Road to the southeast to its intersection with Thomas Run Road, then continuing along Thomas Run Road to the south to its intersection with MD Route 543, then continuing north on Route 543 to Henderson Road, then continuing along Henderson to the west to its intersection with U.S. Route 1, then continuing north along U.S. Route 1 to the place of beginning. Mr. Canavan indicated that the neighborhood was primarily agricultural and undeveloped at the time of the last comprehensive rezoning.

He said that water and sewer lines necessary to develop the properties within the neighborhood did not exist and only since the last comprehensive rezoning have these public utilities been constructed. Furthermore, he said with the rezoning of the Rachuba and Bel Air Realty Associates Ltd. Partnership parcels and the Bregel property, the character of the neighborhood is now clearly residential. He said the subject property will be completely surrounded by residential development in the Vineyard Oak development and that agricultural uses would be clearly incompatible with residential uses in the Vineyard Oak development.

The Staff Report of the Department of Planning and Zoning recommended approval of the Applicant's request on the basis that a substantial change in the character of the neighborhood had occurred since the last comprehensive rezoning.

CONCLUSION:

The Applicant is requesting rezoning of two separate parcels and as a basis of the request is alleging that a mistake occurred in the last comprehensive rezoning and, further, that there has been a substantial change in the character of the neighborhood. Before a property can be rezoned, there must be strong evidence of mistake in the zoning classification or a change in the character of the neighborhood since the last comprehensive rezoning. Boyce v. Sembly, 25 Md. App. 43, 344 A.2d 137 (1975).

To determine whether a rezoning should be granted, there is a two-prong test. The first questions is whether there has been a change in the character of the neighborhood or a mistake in zoning which would permit the rezoning. The second question is whether or not the rezoning should be granted. Once is has been shown that there was a change in the character of the neighborhood or mistake in the comprehensive rezoning which would support a rezoning to the requested classification, then the property should be rezoned unless there is evidence of some real or substantial harm to the public health, safety or welfare.

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The evidence indicates that the subject properties are located within the development envelope and are classified medium intensity on the Master Plan. Given the size of both parcels, it is clear that neither of the parcels are suitable for agricultural use. Taking into consideration the rezoning of the Rachuba property and the Bel Air Realty property, as well as the construction of the Vineyard Oak development approved in Case No. 065, the subject properties are surrounded by residential development. Additionally, water and sewer services to the subject properties have been upgraded.

It is the finding of the Hearing Examiner that the above described changes amount to a substantial change in the character of the neighborhood. Further, it is the finding of the Hearing Examiner that the neighborhood as described by the Applicant's expert witness, Denis Canavan is reasonable.

It is the finding of the Hearing Examiner that there has been a substantial change in the character of the neighborhood which justifies rezoning the subject parcels from the Agricultural classification to the R1 classification. It is, further, the finding of the Hearing Examiner that no evidence was introduced to show that rezoning the subject properties would adversely impact the public health, safety or welfare of the neighborhood.

Therefore, it is the recommendation of the Hearing Examiner that the requested rezonings be granted based on the substantial change which occurred in the neighborhood. Having found that a substantial change did occur in the neighborhood, the Hearing Examiner does not find it necessary to address the Applicant's argument of mistake in the last comprehensive rezoning.

Date AUGUST 26, 1996

L. A. Hinderhofer

L. A. Hinderhofer
Zoning Hearing Examiner