

APPLICANT:
Box Hill South Commercial, LLC

BEFORE THE
ZONING HEARING EXAMINER

REQUEST:
Rezoning pursuant to Section 267-12A
of the Harford County Code

FOR HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: August 5, 2015

Case Nos. 183

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Box Hill South Commercial LLC

LOCATION: 3305 Emmorton Road, Abingdon
Tax Map: 61 / Grid: 2F / Parcel: 387 / Deed 11033/139
First (1st) Election District

ZONING: R2 / Urban Residential

REQUEST: Rezone 1.63 acres from R2 Urban Residential to B3 General Business District

TESTIMONY AND EVIDENCE OF RECORD:

Four separate zoning reclassification cases were filed for adjoining parcels (Case No. 180, 181, 182 and 183). For purposes of judicial economy, all four cases were consolidated in order to present one consistent set of facts and avoid redundant testimony.

The Applicant, Box Hill South Commercial, LLC, is requesting rezoning 1.63 acres, located at 3305 Emmorton Road, Abingdon, from R2 Urban Residential, to B3 General Business District.

For the Applicant testified James Martin. Mr. Martin testified that the three (3) properties owned by Box Hill South Commercial, LLC totaled 7.22 in size. They are currently unimproved although there have been residences on the properties in past. The property is generally sloping with Natural Resources District impacting the rear of all three (3) properties. The properties front on Maryland Route 924 with the RO parcel having some frontage on Box Hill South Parkway.

Mr. Martin testified that he is also familiar with the property owned by Truth House Ministry Church which adjoins the Box Hill properties. He approached the Church regarding his plans for rezoning and they agreed to join in the applications. However, the Church property is not part of the Box Hill South Commercial plans at the present time. Mr. Martin also testified that he attempted to contact the owner of the property located between the Truth House Church property and the existing Giant food store but was unable to contact the owner to discuss their interest in a rezoning request.

Mr. Martin testified he is generally familiar with the zoning history of the properties in question. He participated in the Comprehensive Zoning process in both 2005 and 2009. In 2005, all four (4) parcels sought rezoning to the B2 classification. The properties at 3305 and 3309 Emmorton Road were not owned by Box Hill South Commercial at the time. They were owned by an entity known as Harford Health Ventures.

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The rezoning of all four parcels was approved by the Harford County Council in 2005 (Exhibit 16). However, that Comprehensive Zoning Bill was subsequently vetoed in its entirety by the County Executive.

Mr. Martin testified that, in 2009, the County reinitiated a Comprehensive Zoning process at which time he did apply for rezoning for the 10 Box Hill South Parkway from RO to B2. He is aware that the Truth House Ministry Church filed a similar application. Harford Health Ventures did not reapply. Both applications were denied by the Harford County Council in 2009 (Exhibit 21).

Mr. Martin testified that, at the time of both the 2005 and 2009 Comprehensive Zonings, the subject properties were shown as "high intensity" on the Harford County Master Land Use Plan (Exhibit 12). In 2012, those properties' designation was changed to "medium intensity" (Exhibit 14). Mr. Martin testified that he was aware of the re-designation of the R2 properties from "high intensity" to "medium intensity" in 2012. He was not aware of any facts which would justify the downgrading of those properties and he believes that the "high intensity" designation is still a more accurate characterization of the subject properties. However, Mr. Martin testified that the B3 zoning classification would be consistent with both "medium intensity" or "high intensity" designation (Exhibit 13 and 15).

Mr. Martin testified that he was familiar with the neighborhood as defined by Applicants' planning expert, Craig Ward (Exhibit 29). Mr. Martin described the neighborhood as a mix of commercial, residential and service uses with a significant concentration of commercial uses along 924 (Exhibit 28).

Mr. Martin testified that he believes there have been significant changes in the neighborhood of the subject property since the last Comprehensive Zoning. He noted that the original vision for the surrounding Box Hill Corporate Center was an office park. That area is shown as "industrial/employment" on the Master Land Use Plan (Exhibit 12).

That vision began to change as office uses moved away from the Route 24 corridor and closer to Aberdeen Proving Ground as a result of the BRAC relocation. Consequently, the business park began to focus more on retail uses. Eventually, the property owners obtained an Integrated Community Shopping Center (ICSC) approval in 2012 (Exhibit 30). Mr. Martin testified that the County Council would not have been aware of the ICSC approval at the time of the 2009 Comprehensive Zoning and that no discussions had been had with Council members or the Department of Planning and Zoning about the possibility of an ICSC on those parcels.

Secondly, Mr. Martin noted that an apartment complex under the Mixed Use provisions of the Harford County Development Regulations was approved behind the YMCA in close proximity to the subject parcels in 2013 (Exhibit 31). As with the ICSC, the County Council would not have known of the possibility of the apartment complex at the time of 2009 Comprehensive Zoning. In fact, the legislation for a mixed use development regime had not been applied anywhere in the Harford County until shortly before the approval of that particular site.

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Mr. Martin testified that his company has considered developing the subject properties for uses permitted under the current zoning designation. He does not believe that the subject properties would be appropriate for either R2 or RO development. In order to do higher density residential, such as conventional with open space townhouse development, a minimum 5-acre parcel is required. In addition, the existing NRD and related buffer areas required would severely restrict the development potential in the sites (Exhibit 26). In the time that they have owned the RO parcel, the applicant has not been approached by any potential users.

Mr. Martin testified that, if the requested rezoning is granted, the applicant is looking at developing a coordinated retail/service center with shared access and parking (Exhibit 24). He believes the present location is appropriate for such uses and would not have an adverse impact on surrounding properties.

On cross-examination, Mr. Martin testified that it makes more sense for this location to be retail. He stated it could be RO Residential Office. On re-direct, Mr. Martin testified that there was no interest by anyone for the property as RO. He said that brokers have had the property listed but there have been no inquiries.

The next witness to testify was Lydia Fulcher. Ms. Fulcher is a member of the Board of Directors for Truth House Ministry Church and the daughter of the pastor. She has been involved with the Church for approximately 18 years. Ms. Fulcher described the Church property as 1.86 acres in size. It is improved with the existing church property plus an out building and a parking area which they would like to expand.

Ms. Fulcher testified that the Church did apply for rezoning in 2005 to the B2 classification. That rezoning was approved prior to the veto by the County Executive. The Church reapplied in 2009 but was rejected. Other than expanding the parking area, the Church has no immediate plans to change the use on the subject property. However, they would like to increase the value of the property as well as the development potential in the future. She is aware of the fact that the natural resources district to the rear of the property would have to be maintained regardless of the zoning classification. She did not believe that the requested rezoning would be detrimental to the surrounding property owners and she believes it would be consistent with the existing development in the neighborhood surrounding the property.

On cross-examination, Ms. Fulcher testified that the properties are residential behind the church and across the street. Ms. Fulcher testified that business would be consistent with the area. She said Giant is a business. She does not know what the other property is zoned.

The next witness to testify was Craig Ward. Mr. Ward's qualifications were summarized in his CV which was offered in Applicants' Exhibit 23. He testified that he has previously been accepted as an expert land planner on numerous occasions before the Harford County Board of Appeals and other bodies. Mr. Ward was offered and accepted as an expert in land planning.

Mr. Ward testified that he is familiar with the properties which are the subject of the application as well as the area in question. He has reviewed the application, staff reports and related documents that have been submitted in the cases and is familiar with the comprehensive zoning maps and the zoning histories of the subject properties and the surrounding area and is familiar with the Harford County Master Land Use Plan.

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Mr. Ward testified that the properties are a total of 9.08 acres. The Box Hill South parcels are unimproved while the Truth House Ministry Church is located on their property. The properties are generally slightly sloping with substantial wooded areas to the rear as well as natural resource district. Mr. Ward summarized the zoning history of the property and confirmed the testimony offered by both Mr. Martin and Ms. Fulcher. Mr. Ward noted that the properties were all shown as "high intensity" under the Master Land Use Plan designation in 2005 and 2009 (Exhibit 12). In 2012, the designation was changed to "medium intensity" (Exhibit 14). Mr. Ward can offer no explanation as to why that occurred other than the County attempting to adjust land use designations to the actual zoning of properties. He was not aware of any circumstances which had changed in the vicinity of the subject property which would have justified a change in the land use designation.

For zoning purposes, Mr. Ward defined the neighborhood of the subject property as outlined in Applicants' Exhibit 27. He used the western boundary as running through the neighborhoods on the opposite side of Route 924 that face and/or access off of Route 924. He did not go further into those neighborhoods as they generally oriented toward Route 24 toward Woodsdale Road. To the south he used the confluence of Maryland 924 and Route 24. To the north he defined the neighborhood boundary as Singer and Abingdon Road and to the east a stream which generally bisects the commercial development of Box Hill Corporate Center from the residential communities. He characterized this neighborhood as being a mix of commercial and residential uses with a concentration of commercial along the Route 924 corridor.

Based on Mr. Ward's review of the history of the properties and zoning, he believes there has been a change in the character of the neighborhood since the last comprehensive rezoning. He noted that the original designation of the Box Hill Corporate Center to the south of the subject properties was "industrial/employment". That has changed considerably as office uses have gone elsewhere in the county and the properties have been developed for more retail uses. Specifically, an integrated community shopping center (Exhibit 30) has been granted for the site in 2012. Mr. Ward said that is a highly unusual approval in Harford County. As a result, business parks typically include service uses which may be of the type of uses which would be expected on the subject properties if developed. Because the larger parcel is not developed as a business park, such service uses are not included. Given the changes in the actual development of the properties, Mr. Ward believed the Master Land Use Plan designation for the Box Hill Corporate Center should have been changed in 2012 from Industrial/Employment" to "High Intensity".

In addition, Mr. Ward noted the 2013 approval of the apartment complex to rear of the YMCA in close proximity of the subject properties (Exhibit 31). This approval was effectuated by the approval of new legislation for a mixed use overlay designation which had not been applied anywhere in Harford County at the time of the 2009 comprehensive zoning on the subject properties. In addition, Mr. Ward noted that the designation of Box Hill South Parkway on the Harford County Major Road Plan has changed from a "local road" to an "urban collector road." This designation demonstrates that the road is viewed as being used more frequently and by a larger population than a local road. Lastly, Mr. Ward pointed out the substantial amount of road improvements that have taken place on Routes 924 and 24 including the fly-over reconfiguration of Route 24. Mr. Ward believes that the Council would not have cumulatively known of all of these changes at the time of the 2009 Comprehensive Zoning. Moreover, he believes that, in evaluating a change in the neighborhood, one must look at the land use designation at the time of the comprehensive.

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This designation at the time in 2009 was "high intensity." The change to "medium intensity" does not affect his opinion as the B3 zoning classification would be appropriate in either designation. Based on the changes that he has outlined, he believes that the rezoning of the subject property to B3 is appropriate as it would result in the highest and best use of the property and be consistent with surrounding uses.

Mr. Ward also testified that the County Council made a mistake in zoning the properties in retaining the zoning classifications on the properties in 2009. He noted that the R2 and RO zoning was inconsistent with surrounding development. He also pointed out that the property owners would have difficulty developing the properties for residential uses given the size and environmental constraints to the properties. He also believes that the properties were not desirable from a residential prospective which would decrease the likelihood of new residential development on these locations. He believes the R2 and RO zoning classifications were inconsistent with the "high intensity" designation for the property in 2009 (Exhibit 13).

Mr. Ward also testified at length as to the lack of a true comprehensive zoning process in 2009. He noted that the County Development Regulations called for a review of all properties in the county. However, the comprehensive rezoning which has been conducted by Harford County in the past is, essentially, application driven. In 2009, only seven issues were introduced by the County Department of Planning and Zoning without a request from property owners. Three of those properties were owned by the State Highway Administration. As a result, only four private parcels of land were introduced by the County for potential rezoning. He believes that it was a mistake for the Council to not consider the parcels owned by Harford Health Venture at the time as consideration of those properties would have lead them to believe that the rezoning of the entire strip to a commercial designation was appropriate. Instead, the Staff Reports for those properties, at the time of the Comprehensive Zoning, noted that the rezoning of the properties would result in "isolated islands of commercial." This would not have been true if all four parcels had been considered and rezoned comprehensively.

Mr. Ward believes that this mistake justifies the rezoning of the property to B3. He noted that the B3 zoning classification would be consistent with both "high intensity" or "medium intensity" land use designation. Conversely, he does not believe that the R2 and RO classification was consistent with the "high intensity" designation which was in place in 2009.

Mr. Ward agreed with the testimony of James Martin that the development of these properties for R2 or RO residential uses is highly unlikely. He believes that the rezoning of the subject properties will not result in an adverse impact on surrounding properties and would be consistent with the Master Land Use Plan and existing developments of the surrounding neighborhood. He noted that any development would require the maintenance of a significant natural buffer and would result in an appropriate transition from commercial to high density residential located to the rear of the subject properties.

On cross-examination, Mr. Ward testified that it was a mistake not to apply the principles of the Code for the comprehensive review. He said the nature of the area is a commercial corridor and that would be the appropriate zoning. Across the street is R2 Urban Residential. The properties should be zoned high-intensity. He referenced Applicants' Exhibit No. 29, noting that the neighborhood where the traffic would be as a guide. He noted that B3 zoning was requested in 2005 and the County Council gave the property B2.

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The next witness to testify was Shane Grimm, the Chief of Long Range Planning of the Department of Planning and Zoning. Mr. Grimm summarized the Staff Report submitted by the Department in these cases. He noted that the Department's definition of the neighborhood is somewhat slightly more expansive than the Applicants' and that the Department used roadways to delineate the neighborhood as opposed to natural features. However, he did not believe that the characterization of the neighborhood is significantly different.

Mr. Grimm testified that the Department concurs with the Applicants' change argument. The Department agrees that substantial changes, as outlined by the Applicants' witnesses, have occurred which would justify the rezoning of the subject properties to B3. He confirmed that there is an extensive line of B3 zoned property directly to the north of the subject property on MD Route 924.

On cross-examination by People's Counsel, Mr. Grimm testified that he believed that what occurred in 2009 was not a mistake. He believes that the change in zoning is based upon a change in the area and not a mistake. He noted that all four properties were approved in 2009 for a change in zoning. In 2009, Harford Health Ventures did not apply. He noted that the west side of MD Route 924 is as different as it is residential. He said it was not uncommon for the property owners to bring multiple properties for change in zoning.

Mr. Grimm testified that to the north is commercial and to the east and west. The south is also commercial. St. Clair Drive and Trellis Lane is primarily residential on the west side. With respect to the neighborhood, he explained that he used major roads as his boundaries. He felt that to determine the neighborhood is more of an art than a science. He felt that it did not make a substantial difference between his version of the neighborhood and Mr. Ward's version of the neighborhood.

Several witnesses testified in opposition to the rezoning petitions. The first witness to testify was Sherry Ramsey, 3308 Emmorton Road, which is located across Route 924 from the subject property. Ms. Ramsey has lived at her house since 2006 and resides with her husband and three children. The property is zoned residential and is on one-half acre. At the current time, there are woods across the street. She described the neighborhood as a nice community that is "separated but still together". The woods across the street keep it in a separated area. She says it is a nice environment. It allows the children to get on the bus and can walk in the neighborhood. She feels that if the request is approved, she will be impacted as property values will decrease, there will be safety issues for children, there be an increase in vehicles, and driving will be difficult because of the increase in traffic. It would not be a pleasant neighborhood if this occurs.

Ms. Ramsey submitted a document identified as Protestant's Exhibit 1 wherein she defined the neighborhood of the subject properties as encompassing the subject properties themselves plus the residential properties across the street. No other properties were included in the neighborhood she defined. She referred to this area as a "bubble" which was surrounded by commercial development. She confirmed Applicants' Exhibit 28 which identified a variety of commercial uses along the 924 corridor. Her objections to the rezoning primarily centered on safety and property values. Ms. Ramsey confirmed that she is not a land planner or an appraiser and has not conducted any studies pertaining to her opinions.

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The next witness to testify was Aaron Goodson who resides at 3304 Emmorton Road. Mr. Goodson is a tenant and does not own the property in question. Mr. Goodson agreed with Ms. Ramsey's definition of the neighborhood of the subject property and does not believe that any of the businesses surrounding the subject properties are part of the neighborhood. He noted that they are not a part of the neighborhood because they are not in the "bubble". Mr. Goodson said he would not be inclined to purchase his current residence if commercial development was allowed on the subject properties.

Mr. Goodson testified that if the change is approved, it would not be a good place to raise children as the area will be too busy. He said this is a nice, residential strip and the businesses will eliminate the neighborhood. This is a perfect distance to walk or hike but not that close to other businesses. He described the neighborhood as being residential. He said there are residences on the adjacent streets near his property. He said the businesses are not part of his neighborhood but are outside of the bubble.

The next witness to testify was Patricia Sussin who resides at 3302 Emmorton Road. Ms. Sussin has lived at that property for forty-one years. Ms. Sussin stated that she agreed with the neighborhood definition previously put forth by other Protestants. Ms. Sussin testified that she raised her two children on the property. However, she noted that nothing is like when she bought her property. There were no commercial developments nor was the current MD Route 24 constructed at the time. Despite this, Ms. Sussin believes that the neighborhood of the subject properties is completely residential. She liked the area because of the trees behind and in front of their property. She said if the change is approved, it will destroy the neighborhood.

Ms. Sussin described the neighborhood as a bubble in between where the businesses are and the businesses are not part of the neighborhood. She felt that the impact on her would be that she would need a fence in her front yard to block from the businesses and to block her pool. She said she has a nice garden. They do not want to have to move because she does not know where she will go. She does not want to see the businesses and she feels the property should remain R2.

On cross-examination, Ms. Sussin testified there had been a lot of changes. When they moved there, none of those properties existed and it was rural. The traffic has increased dramatically. She noted the character of the neighborhood has changed but not for the better. She said her neighborhood is in a bubble and that bubble has not changed.

The next witness to testify was Philip McCall. Mr. McCall resides at 3156 Hidden Ridge Terrace and is the Vice President of the Box Hill Homeowners Association. Mr. McCall has resided at his current address for 8 years. There are 530 homes in the area. There are 64 homes on Hidden Ridge Terrace. There are other residences that do not show on the map. He said this will impact the area as it will remove the screening of the area from MD Route 924. The prior development removed some of the screening and the buffering that occurred and now they can hear the echo of Boyle Buick with the increase in commercial development. They also note that more noise and lighting will be reflected. He also testified there will be an increase in traffic on the Box Hill South corridor. He explained that the four properties at issue are part of the neighborhood because they are part of the screening.

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On cross-examination, Mr. McCall testified that when he bought his property, he was aware of the Box Hill development and he knew it was going to become a corporate center. He explained the issue is that the screening has now been removed. He understands that the wetlands would remain.

Mr. McCall expressed concerns about the lack of screening and vegetative buffering that has resulted from existing commercial developments and the possibility of the development of the subject properties.

The next witness to testify was Joshua Crane from 3171 Hidden Ridge Terrace. Mr. Crane was concerned about losing the buffer and increased lighting as a result of the development of the subject properties. He noted that traffic on Maryland Route 924 is already backed up. He believes development of the subject properties would result in a decrease in property values. Mr. Crane testified that the businesses are not part of the community. He said the neighborhood will be impacted because they will lose the buffer, there will be an increase in light and traffic, and it will also decrease home values.

The next witness to testify was Don Johnson of 3138 Hidden Ridge Terrace. Mr. Johnson testified that, when he moved to his property nineteen years ago, the property across the street from him (the Box Hill Corporate Center) was a "park". He testified that traffic is a nightmare in the vicinity of the subject property. He was also concerned about wetland impact and noise. He noted that there have been several changes to the area surrounding the subject property over the last nine years.

On cross-examination, Mr. Johnson testified that he understood there is not specific development before the hearing examiner. He understood that there are other steps the Applicants will need to through for final approval.

The next witness to testify was Earl Gray who resides at 3151 Eden Drive off of St. Clair Drive. Mr. Gray defined the neighborhood as residential properties on his side of Route 924 and the residential homes in Box Hill South on the east side of Route 924. Mr. Gray is concerned about traffic using St. Clair Drive to cut through to Singer Road and Maryland Route 24.

On cross examination, he specifically excluded the commercial properties along MD Route 924 which separate those two communities.

The last witness to testify was Andrew Lucot who resides at 7 Porter Drive since 1999. Mr. Lucot distinguished between a "local neighborhood" which he specifically identifies as people he knew who have shared common interest as opposed to a "global neighborhood." Mr. Lucot is concerned with noise, increased light, environmental impact, traffic concerns and decreased property values.

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APPLICABLE LAW:

Section 267-12 A. Zoning Reclassifications states:

- “A. *Application initiated by property owner.*
- (1) *Any application for a zoning reclassification by a property owner shall be submitted to the Zoning Administrator and shall include:*
- (a) *The location and size of the property.*
 - (b) *A title reference or a description by metes and bounds, courses and distance.*
 - (c) *The present zoning classification and the classification proposed by the applicant.*
 - (d) *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.*
 - (e) *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.*
 - (f) *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 Applicant requests a change in the zoning of the property. In determining whether any such request should be granted;

“It is presumed that the original zoning was well planned, and designed to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justifies the amendatory action.” See Wakefield v. Kraft, 202 Md. 136 (1953).

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It is a “rudimentary” principle of zoning review that there exists a:

“. . . strong presumption of correctness of the original zoning and of comprehensive rezoning to sustain a piecemeal change. Strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced.”

See Stratakis v. Beauchamp, 268 Md. 643 (1973).

See also Hardesty v. Dumphy, 259 Md. 718 (1970).

Furthermore, legally sufficient evidence must exist to show “substantial change” in the character of the neighborhood, and not a “mere change” which may very well fail to rise to the level of legally sufficient evidence to justify a finding of change in the neighborhood. See, generally, Buckel v. Board of County Commissions of Frederick County, 80 Md. App. 05 (1989).

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The first issue to be decided with an application for zoning reclassification is determining the appropriate neighborhood. The witnesses offered testimony of three different definitions of the neighborhood. The Protestants testified that the neighborhood is residential in character and includes the subject properties. The subject properties are suitable for residential use. They also testified the neighborhood is smaller than what was identified by the Applicants and the Department of Planning and Zoning, and included residences to the north and south of the subject properties. The Applicants argue the neighborhood is distinct from the I-95 interchange businesses to the south and the MD Route 924 commercial development to the north. In their brief, that reclassifying the subject properties to business would bifurcate the residential community between the business properties. It would also leave one residentially zoned property on the north side of MD Route 924 adjacent to the subject properties and across from the residences to the south of Route 924, but sitting between businesses on Route 924.

Protestants offered testimony and argument concerning their two main designations of the neighborhood. The Protestants argued that their designations are more accurate than that identified by the Applicants. The first designation was offered by Ms. Ramsey and included homes constructed during a similar time period, accessed by Route 924 and between newer developments. The second main designation offered was also residential in nature. The neighborhood includes the properties constrained by MD Route 24, access through MD Route 924, Trellis Lane, St. Clair Drive, and the properties accessed by Box Hill South Parkway and Abingdon Road. The neighborhood consists of the properties accessible and contained by a reasonable number of roads and is depicted on the case location maps.

The Department of Planning and Zoning offered a larger neighborhood designation. The Protestants argued that the Planning and Zoning designation is too large for the community. The Department of Planning and Zoning’s neighborhood definition went entirely to MD Route 24 to the west and using roadways as boundaries to the east. Mr. Grimm, on behalf of the Department of Planning and Zoning, noted that there was little distinction between the neighborhood he defined and the one offered by the Applicants.

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The Applicants' offered a neighborhood definition by their expert, Craig Ward. Mr. Ward defined the neighborhood of the subject properties as shown on Applicant's Exhibit No. 29. He noted that the neighborhood was oriented toward MD Route 924 and included the entire corridor of MD Route 24, from its confluence with MD Route 24 to the south and Singer/Abingdon Road to the north, as well as the properties to the west of MD Route 924, which fronted or accessed Route 924. He included the properties to the east side of Route 924 which bordered the subject property to the north and south.

The Protestants suggest a relatively compact area for the neighborhood. The neighborhood must, of course, be defined in order to determine if changes have occurred. The Protestants neighborhood is unduly narrow and intentionally excludes the substantial area of commercial development in the Route 924 corridor. The neighborhood of the Protestants is rejected as their neighborhood only included their residential community and the subject properties. They essentially bypassed or skipped over the commercial properties which exist between the two neighborhoods. The Courts have rejected this type of neighborhood definition in the past. Sedney v. Lloyd, 44 Md. App. 633, 410 A.2d 616 (1980).

The Protestants' neighborhood ignores the uses throughout the Route 924 corridor. These uses cannot be ignored and their impact on the subject properties, and vice versa, are and will now continue to be substantial. One cannot define a neighborhood by simply excluding uses which do not conform with one's desired definition. Indeed, if one used natural landmarks or features in order to determine the neighborhood, which is an acceptable manner of defining neighborhood limits, then Mr. Ward clearly presents the more convincing definition. Mr. Ward's definition of the neighborhood oriented toward MD Route 24 and to include the entire corridor of Route 924 from its confluence with Route 24 to the south and Singer/Abingdon Roads to the north, as well as the properties to the west of Route 924 which fronted or accessed Route 924 is the appropriate neighborhood containing both residential and commercial uses, Mr. Ward's definition is more appropriate. It is noted that the Department of Planning and Zoning opined that there was little distinction between the neighborhood described by the Applicants and the neighborhood offered by the Department of Planning and Zoning.

Having now defined the neighborhood, the Applicants first argue that there was a mistake made by the County Council in the 2009 Comprehensive Rezoning in retaining the R2 and RO zoning the subject properties. The Applicant has a high standard to meet in the request for rezoning. A presumption exists that the existing zoning is correct. See Stratakis v. Beauchamp, 268 Md. 643 (1973).

The Applicant requests a change in the zoning of the property. In determining whether any such request should be granted;

"It is presumed that the original zoning was well planned, and designed to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justifies the amendatory action." See Wakefield v. Kraft, 202 Md. 136 (1953).

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It is a “rudimentary” principle of zoning review that there exists a:

“. . . strong presumption of correctness of the original zoning and of comprehensive rezoning to sustain a piecemeal change. Strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced.”

The burden of proof upon the applicant to show mistake is so difficult to meet that it often described as “onerous”. See also *Hardesty v. Dumphy*, 259 Md. 718 (1970). It can, accordingly, be seen that the burden upon an applicant to show mistake is great. The Council is presumed at the time of the 2009 Comprehensive Rezoning to have had before it all relevant facts. An applicant must, therefore, show by probative evidence that those assumptions or premises were incorrect.

The Applicants, unfortunately for them, and despite fully presenting convincing evidence of the appropriateness of B3 zoning for their property, failed to meet the ‘onerous’ burden of showing mistake.

The Applicants argue that the properties were “high-intensity” on the Master Land Use Plan at the time of the 2009 Comprehensive Rezoning. Zoning the properties to R2 and RO designations was inconsistent with the Master Land Use Plan’s high-intensity designation. Further, the properties could not reasonably be developed for high density residential uses as contemplated under the R2 designation or RO development based on the size limitations and environmental restrictions on the properties. The Applicants also offered testimony that they had not been approached by a single user for RO permitted use on the site, and also argued that the County Council would not have known these facts at the time of the Comprehensive Rezoning. They essentially argued that the zoning in 2009 to R2 and RO is inconsistent with the Master Land Use Plan designation of “high-intensity” and is inconsistent with the surrounding development. The properties contain substantial development constraints and the properties would not be a desirable location for residential development.

The Department of Planning and Zoning, through Shane Grimm, offered testimony that there was no mistake at the time of the last Comprehensive Rezoning. The Applicants argued that the County’s change to the Land Use Plan designation of the subject properties to medium-intensity in 2012 essentially attempted to cause the land use designation to conform to the existing zoning, while retaining the high-intensity designation of other properties in the surrounding areas. The Department of Planning and Zoning, through Mr. Grimm and the Staff Reports that are incorporated herein by reference, disagreed with the Applicants’ argument of mistake. The Department of Planning and Zoning noted that the change in the Master Land Use designation from high-intensity to medium intensity in 2012 did not constitute a mistake in the Comprehensive Rezoning.

Clearly, that the Master Land Use Plan change from high-intensity to medium-intensity in 2012 is not a mistake. The fact that the County chose to downgrade the intensity is not bearing upon B3 or R2 zoning as there is significant R2 and other residential zoning designations in the neighborhood.

Further, the record showed that the rezoning to RO was done as transitional accommodation to the Applicant from business to residential properties, pursuant to the request for B3 zoning. Accordingly, the Council chose to uniquely use the RO designation here and it was an intentional decision as an accommodation and a recognition of the nature of the change from a business use on the Box Hill corridor and not a mistake.

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Clearly, the County intended to maintain this consistency with the denial of the B3 zoning and the preservation of that area at that time. Although the Applicant presented two well respected experts in Mr. Ward and Mr. Martin, unfortunately, they were unable to overcome the onerous burden to show that the County Council made a mistake. The Applicants failed to show that in 2009 the Harford County Council ignored, or even knew of, the coming of the change in the Box Hill corridor. It is not correct to state that the Council made a mistake in 2009 by not anticipating the change in the neighborhood which included changes along the Box Hill corridor, and the eventual ICSC uses.

Accordingly, it cannot be found that the County Council made a mistake by not designating the property B3 at the time of the last Comprehensive Rezoning in 2009.

Furthermore, legally sufficient evidence must exist to show “substantial change” in the character of the neighborhood, and not a “mere change” which may very well fail to rise to the level of legally sufficient evidence to justify a finding of change in the neighborhood. See, generally, Buckel v. Board of County Commissions of Frederick County, 80 Md. App. 05 (1989).

Although the Applicants have been unable to establish a mistake, they have presented substantial evidence to show a substantial change in the character of the neighborhood of the subject properties since the last Comprehensive Rezoning. The Applicants offered the testimony of experts James Martin and Craig Ward. The Department of Planning and Zoning, through Shane Grimm, also offered testimony concerning the substantial change in the neighborhood.

Mr. Martin was involved in the commercial development of the Box Hill area and participated in both the 2005 and 2009 Comprehensive Rezonings. He noted the original vision of the Box Hill Center was as an office park and was shown on the Master Land Use Plan as “industrial/employment”. That vision changed as offices moved away from the Route 24 corridor and closer to the Aberdeen Proving Ground as a result of the BRAC relocation. The business park then began to focus more on retail uses and eventually Integrated Community Shopping Center (ICSC) approval was granted to the properties to the south in 2012. Mr. Martin testified that the County Council would not have been aware of the ICSC and shift of focus of office uses in the 2009 Comprehensive Rezoning. In addition, Mr. Martin testified an apartment complex had been approved in 2013 under the “mixed use overlay”, which had not been used anywhere in Harford County at the time of 2009 Comprehensive Rezoning.

The Applicants’ second expert, Craig Ward, agreed that the changes identified by Mr. Martin justified the rezoning of the property to B3. Mr. Ward had also testified to changes of the designation of Box Hill South Parkway on the Harford County Major Road Plan. At the time of the 2009 Comprehensive Rezoning, Box Hill South Parkway was shown as a “local road”, and has since been upgraded to an “urban collector road”, which is based upon the increase of drivers from a wider area. Mr. Ward also noted that substantial road improvements have taken place on both Routes 924 and 24, including a “fly-over” reconfiguration of Route 24. He also testified that the development of the Box Hill Corporate Center mandated the land use plan designation for that area is changed in 2012 from “industrial/employment” to high intensity.

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Mr. Grimm also offered testimony concerning the change in the character of the neighborhood. Further, several of the Protestants testified the changes they had seen over the years in the area surrounding their property. They spoke of increased traffic, noise and light associated with commercial development.

The Applicants having established a substantial change in the character of the neighborhood since the 2009 Comprehensive Rezoning have also established B3 zoning as the appropriate zoning for the properties. It is noted that, with the exception of the subject properties, there is a strip of B3 zoning extending up Route 924 to Abingdon Road and beyond. The B3 zoning would be consistent with both “high intensity” land use designation which was in place at the time of the 2009 Comprehensive Rezoning, as well as the “medium intensity” designation currently applied to the properties.

The Applicants have proven that a significant change in the character of the neighborhood has occurred since the 2009 Comprehensive Rezoning. As such, the appropriate zoning for the subject property is the B3 classification.

A review of Section 267-9I, “Limitations, Guides and Standards”, is applicable to the request and also results in no findings of concern. That Section is discussed as follows:

- (1) *The number of persons living or working in the immediate area.*

The requested rezoning should have no impact on the number of persons working or living in the area. The proposed rezoning will be consistent with the uses in the Route 924 corridor and the neighborhood and should not cause any significant impact on the number of persons living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

There is no evidence that the rezoning of the property would adversely impact existing traffic conditions.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

There is no evidence that the rezoning of the property would adversely impact the orderly growth of the neighborhood and community. Any fiscal impact should be positive given the commercial nature of the proposed use.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

There should be no adverse impact from any of these effects.

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- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The property is served by public water and sewer and fire and police protection is more than adequate.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

It is found that the rezoning is consistent with generally accepted engineering and planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The property is consistent with the Harford County Master Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There will be no adverse environmental impact.

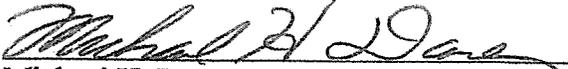
- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

CONCLUSION:

Accordingly, it is recommended that the proposed rezoning of the subject parcel from R2 Urban Residential to B3 General Business District, be approved.

Date: November 19, 2015


Michael H. Daney
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on December 21, 2015.