

ORDINANCE NO. ORD-06-13

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND**

(RZ-06-014)

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (the *Zoning Ordinance*), McCB, LLC (the Applicant) has petitioned the Board of County Commissioners for Washington County, Maryland (the *Board*), for a zoning reclassification and a zoning map amendment of property more particularly identified in the Ordinance Amendment Application found in the record herein.

The Petition has been designated as Case No. RZ-06-014.

A public hearing was held on the application pursuant to Section 27.2 of the Ordinance, where the Applicant presented evidence and information relating to the zoning reclassification.

The Board has considered all information presented at the public hearing, the recommendation of the Planning Commission, and each of those factors set forth in Maryland Code Ann., Article 66B, Section 4.05 and Section 27.3 of the Zoning Ordinance.

The Board has made factual findings and conclusions of law which are set forth in the attached "Opinion and Finding of Facts." The findings of fact and conclusions of law are incorporated herein.

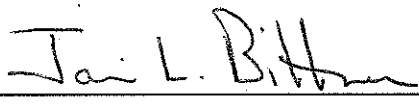
NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND, that the property which is the subject of Case No. RZ-06-014 be, and hereby is, reclassified from the Industrial Mineral (IM) classification to the Industrial, General (IG) classification.

IT IS FURTHER ENACTED AND ORDAINED, that the official Zoning Map be, and hereby is, amended accordingly.


Adopted and effective this 31st day of October, 2006.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND



Joni L. Bittner, Clerk

BY: 

Gregory I. Shook, President

Approved as to form and legal sufficiency:



Kirk C. Downey
Assistant County Attorney

Mail to:
Office of the County Attorney
100 W. Washington Street, Room 202
Hagerstown, MD 21740

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OPINION AND FINDINGS OF FACT
Rezoning Case RZ-06-014

Property Owner: McC, B, LLC
Applicant: McC, B, LLC
Requested Zoning Change: Industrial, Mineral Overlay (IM) to Industrial, General (IG)
Property: A short distance east of Western Maryland Parkway and South Enterprise Lane

Pursuant to Md. Code, Art. 66B, § 4.05 and Washington County Zoning Ordinance § 27.3, we make findings of fact with respect to the following matters: population change, availability of public facilities, present and future transportation patterns, and compatibility with existing and proposed development for the area. We also consider the recommendation of the Planning Commission and the relationship of such proposed amendment to the Plan. For the reasons set forth herein, we shall grant this application for rezoning.

The report and recommendation of the Planning Commission.

A public hearing was held on the subject petition on September 18, 2006. At its meeting on October 16, 2006, the Planning Commission recommended approval of the requested reclassification, noting that there is now no underlying Euclidean classification for the subject property, only an overlay zone.

Population change in the area of the proposed change.

A thirty-year period was analyzed for the basis of population change. This period reflects the population data compiled since the inception of zoning in 1973.

The subject property is located in the Cedar Lawn Election District (#24). The Population increased in this district moderately from 1970 to 1980, then there was a large leap in population between 1980 and 1990 and then the population slowed substantially between 1990 and 2000. The changes in population that occurred in this election district and in Washington County are enumerated in the table that follows.

	Election District 10	Washington County
1970 Population	827	103,829
% change	4.8%	8.9%
1980 Population	867	113,086
% change	30.2%	7.3%
1990 Population	1,129	121,393
% change	0.2%	8.8%
2000 Population	1,131	131,923

Source: U. S. Department of Commerce, Bureau of Census

Availability of public facilities in the area.

Water and Sewer

The Washington County Water & Sewerage Plan designates the subject property as having a water service priority designation of W-3, which means that water services are programmed for this area. A sewer service priority designation of S-3 means sewer facilities are programmed for this area. There is currently no public water or sewer service to the subject property.

The Washington County Water Quality Department stated in a letter dated August 15, 2006 that "the Department has no objection to the rezoning request as submitted. The subject property does not lie within the boundaries of an active sewer service area, but is eligible for public sewer service through the City of Hagerstown. Since this property lies outside the City's boundaries, this department must assign and track the allocation for it, as is procedure for all County properties proposing to utilize the City's treatment plant. The property was placed in the County's capacity management plan in December 2005 according to file plat 8529. Therefore, allocation can be secured according to the County's rules, policies, and regulations, subject to availability."

Emergency Services

The Volunteer Fire Company of Halfway, Maryland is located approximately 3.5 miles away from the subject property. Halfway Fire Company in a letter dated August 16, 2006 stated that it had no comments on the rezoning issue.

Public Transportation

The County Commuter currently does not have service available to the subject property.

Schools

The subject property is located within the school districts of Salem Elementary, Springfield Middle, and Williamsport High Schools. A reclassification to Industrial, General (IG) would not have an impact on area schools.

Present and future transportation patterns in the area.

The subject property can be accessed utilizing Enterprise Lane (a private road) and corresponding easements to Western Maryland Parkway, the nearest public road. This road is a state road, with the state having jurisdiction over it. The only traffic count that is available is the intersection of Western Maryland Parkway and the entrance ramp onto Interstate 81. The average daily traffic in 2005 at that location was 4,750 trips.

The State Highway Administration commented that it had no objection except that it would need to review the site plan to determine if a traffic study plan will be needed for the MD 144 intersections in the area of the subject property.

Compatibility with existing and proposed development in the area, including indication of neighboring sites identified by the Washington County Historic Sites Survey and subsequent revisions or updates.

The intent of the IM overlay zone was to protect areas with the potential to produce mineral resources from incompatible land uses.

The Applicant has requested that the subject property be zoned Industrial, General (IG) based on the Comprehensive Plan designation of Industrial Policy Area, and to be consistent with 75% of the surrounding area. The only portion that is not zoned IG is to the east and that is zoned IM.

There is one site listed on the Washington County Historic Site Survey within 0.5 miles of the subject property. This site is located east of Hopewell Road and is part of "Hager's Long Hickory" land grant. The house and barn have significant architectural features and the appearance of the house would suggest that it was constructed in the late 19th century. The house and barn were recently demolished so there will be no effect on the historic property by this reclassification.

The relationship of the proposed change to the Adopted Plan for the County, Development Analysis Plan Map, and Policies.

The Washington County Comprehensive Plan identifies two distinct areas for implementation of land use development policies:

1. Urban and Town Growth Areas are areas in the County where growth and development in existing urban areas is encouraged. These areas have existing infrastructure or infrastructure that can be extended efficiently and economically. The Plan states that all types of development – residential, commercial, institutional, and industrial should be encouraged in the growth area in order to maximize the use of the investments already made in public infrastructure. The areas identified as Urban and Town Growth Areas have adopted and mapped boundaries around;

2. The Rural/Agricultural Area, composes the remainder of the County, and will receive encouragement to preserve agricultural lands. The Plan also has recommendations for land and businesses, open space and other activities that preserve this rural and agricultural setting.

The subject property is located within the adopted Urban Growth Area. The Comprehensive Plan designates the area as being in the Industrial Policy Area. The Comprehensive Plan describes the Industrial Policy Area as... "intended for the most intensive industrial uses in the County."

The Comprehensive Plan also states that, in 1983, Industrial Mineral zoning was changed to an Overlay zone and "New high volume mineral extractions were only permitted outside of the Urban Growth Area." The current Zoning Ordinance provides, "new "IM" District may not be established within the adopted urban growth area, town growth areas, or rural villages." By rezoning the subject property, it will lessen the amount of acreage zoned IM left in the Urban Growth Area. Portions still zoned IM would be the adjacent parcel to the subject property, which is a quarry now filled with water, and a small corner of a quarry in Williamsport.

According to the Comprehensive Plan's Land Use map, the surrounding contiguous properties also have the Industrial Policy Area designation.

Whether there has been a substantial change in the character of the neighborhood were the property is located.

Applicant presented a case based entirely on mistake.

Whether there was a mistake in the existing zoning classification.

The applicant argued that when the original Euclidean Industrial, Mineral Zone was replaced by the Industrial, Mineral floating zone and no underlying zoning classification was placed upon the property, a mistake was made by the zoning authority. The applicant contends that the failure of the zoning authority to assign an

underlying classification to the property to support the floating zone. We agree. It contradicts traditional zoning theory to have a property designated as a floating zone without the property having an underlying Euclidean classification.

Whether there has been a convincing demonstration that the proposed rezoning would be appropriate and logical for the subject property.

Assignment of the Industrial, General classification to the subject property would provide consistency with uses in the area and the Comprehensive Plan.

Conclusion

To sustain a piecemeal change in the zoning classification of a property, "... 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...."¹ A change in the character of the neighborhood is demonstrated by the following: "... (a) what area reasonably constituted the 'neighborhood' of the subject property, (b) the changes which have occurred in that neighborhood since the comprehensive rezoning[,] and (c) that these changes resulted in a change in the character of the neighborhood. "²

The facts in this case clearly present a situation where a mistake in the original zoning was made. No underlying zoning classification supports the floating zone now attached to the property and proposed to be removed. Accordingly, the designation of an underlying Euclidean zone is both necessary and desirable.

Having considered all of the evidence presented herein and the Commissioners' "extensive local knowledge in determining zoning issues[,] "³ this application for zoning district reclassification is hereby granted.

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¹ *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

² *Montgomery v. Board of County Comm'rs for Prince George's County*, 256 Md. 597 (1970).

³ *Burgess v. 103-29 Ltd. Partnership*, 123 Md.App. 293, 301 (1998).