



FOR PLANNING COMMISSION USE ONLY  
 Rezoning No. RZ-18-003  
 Date Filed: 6-15-18

WASHINGTON COUNTY PLANNING COMMISSION  
 ZONING ORDINANCE MAP AMENDMENT APPLICATION

P Overlook LLLP

Applicant

- Property Owner     Contract Purchaser
- Attorney             Consultant
- Other: \_\_\_\_\_

125 S Carroll St, Ste 150, Frederick, MD 21701  
 Address

Jason M. Divelbiss

717-593-7200 / 301-791-9222

Primary Contact

Phone Number

11125 Bemisderfer Rd, Greencastle, PA 17225  
 Address

jdivelbiss@divelbisslaw.com

E-mail Address

Property Location: 24.32 Acres located near the intersection of Maryland Rte 340 and  
 Tax Map: 0087    Grid: 0018    Parcel No.: 0010    Acreage: 24.32    Keep Tryst Rd.

Current Zoning: RV (Rural Village) with Nine(9) lot density restriction  
 Requested Zoning: RV (Rural Village) without nine(9) lot density restriction

Reason for the Request:     Change in the character of the neighborhood  
     Mistake in original zoning

**PLEASE NOTE: A Justification Statement is required for either reason.**

  
 Applicant's Signature

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires on \_\_\_\_\_  
 Notary Public

FOR PLANNING COMMISSION USE ONLY

- Application Form
- Fee Worksheet
- Application Fee
- Ownership Verification
- Boundary Plat (Including Metes & Bounds)
- Names and Addresses of all Adjoining & Confronting Property Owners
- Vicinity Map
- Justification Statement
- 30 copies of complete Application Package





Washington County  
Department of Planning & Zoning  
Owner's Representative Affidavit

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This is to certify that P Overlook LLLP ("Overlook") is the owner of that certain +/- 24.32 acre parcel of real property located near the intersection of Maryland Rte. 340 and Keep Tryst Road (the "Property"), and that Jason M. Divelbiss, its Attorney representative, is hereby authorized to make application for the piecemeal rezoning of the Property from its current zoning classification of RV (Rural Village) with Nine (9) lot density restriction to RV (Rural Village) without Nine (9) lot density restriction.

**OWNER:**

**P Overlook LLLP**

By: Buckeye Development LLC, General Partner

By: \_\_\_\_\_

Name: Edward G. Smariga

Title: Managing Member

125 South Carroll Street, Ste. 150  
Frederick, MD 21701



<b>ADJACENT PROPERTY OWNERS</b>					
	<u>NAME</u>	<u>PREMISES ADDRESS</u>	<u>LIBER/FOLIO</u>	<u>MAILING ADDRESS</u>	<u>TAX MAP/PARCEL</u>
1	Church United Methodist of Sand HK	19018 Sandyhook Rd. Knoxville, MD 21758	1549/533	19018 Sandyhook Rd. Knoxville, MD 21758	0087/0039
2	Cristy F. Elkins & Gene E. Hannold	19028 Sandyhood Rd. Knoxville, MD 21758	4064/376	19028 Sandyhood Rd. Knoxville, MD 21758	0087/0079
3	Cynthia J. Hallberlin & Joel S. Kante	19032 Sandyhook Rd. Knoxville, MD 21758	3847/237	7113 Poplar Ave Takoma Park, MD 20912	0087/0078
4	Cynthia J. Hallberlin & Joel S. Kante	19038 Sandyhook Rd. Knoxville, MD 21758	3847/237	7113 Poplar Ave Takoma Park, MD 20912	0087/0077
5	Jerry L. Poston	19040 Sandyhook Rd. Knoxville, MD 21758	1376/1019	19040 Sandyhook Rd. Knoxville, MD 21758	0087/0048
6	Mervin F. Nuice	19104 Sandyhook Rd. Knoxville, MD 21758	4147/279	19104 Sandyhook Rd. Knoxville, MD 21758	0087/0025
7	Edward R. Kornacki, et al	19108 Sandyhook Rd. Knoxville, MD 21758	2997/54	19108 Sandyhook Rd. Knoxville, MD 21758	0087/0075
8	Sandy Hook, LLC	19112 Sandyhook Rd. Knoxville, MD 21758	5498/250	7005 Gilardi Rd. Boonsboro, MD 21713	0087/0074
9	Michael Vernon Brown	Sandyhood Rd. Knoxville, MD 21758	5299/0047	7005 Gilardi Rd. Boonsboro, MD 21713	0087/224
10	Jennifer Hymiller & Curtis Wolfe	19126 Sandyhook Rd. Knoxville, MD 21758	4058/393	19126 Sandyhook Rd. Knoxville, MD 21758	0087/149
11	Daniel L. Patterson	19200 Sandyhook Rd. Knoxville, MD 21758	5264/282	19200 Sandyhook Rd. Knoxville, MD 21758	0087/222
12	Marlene L Hackley L/E	19204 Sandy Hook Rd. Knoxville, MD 21758	5561/481	19204 Sandy Hook Rd. Knoxville, MD 21758	0087/0073
13	Wash Co Sanitary	19223 Keep Tryst Rd. Knoxville, MD 21758	1002/102	C/O Wash Co Water & Sewer 16232 Elliott Pkwy Williamsport, MD 21795	0088/0119
14	Donley Holdings, LLC	19311 Keep Tryst Rd. Knoxville, MD 21758	4213/0070	716 S. Philadelphia Blvd. Aberdeen, MD 21001	0088/0039
15	Narayan Swarupdas Corp	19105 Keep Tryst Rd. Knoxville, MD 21758	2213/0677	8005 Pulaski Hwy. Baltimore, MD 21237	0087/0023
16	June Z. Gilbert Trustee	19119 Keep Tryst Rd. Knoxville, MD 21758	3796/503	6 Wagon Shed Lane Middletown, MD 21769	0087/0027
17	Robert & Wendy Rensburg	19128 Keep Tryst Rd. Knoxville, MD 21758	5379/210	19128 Keep Tryst Rd. Knoxville, MD 21758	0087/158
18	Ilani A & Gerald Briand Donley	504 Prospect Hill Rd. Knoxville, MD 21758	44446/115	504 Prospect Hill Rd. Knoxville, MD 21758	0088/0105





Washington County, MD



- |  |                                      |                                    |                              |                   |
|--|--------------------------------------|------------------------------------|------------------------------|-------------------|
| Historic Preservation Overlay                    | Agricultural                         | Highway Interchange - 1            | Rural Business, New          | Urban Growth Area |
| Mineral Overlay                                  | Agricultural (Rural)                 | Industrial, General                | Residential Multi-Family     | Parcels           |
| Annetam Overlay 1                                | Agricultural (Historic Preservation) | Industrial, Restricted             | Residential Rural            |                   |
| Annetam Overlay 2                                | Airport                              | Education, Research and Technology | Residential Suburban         |                   |
| Annetam Overlay 3                                | Business, General                    | Office, Research and Technology    | Residential Transition       |                   |
| Mixed Use-Residential                            | Business, Local                      | Office, Research and Industrial    | Residential Urban            |                   |
| Mixed Use-Residential and Commercial             | Business, Transitional               | Preservation                       | Rural Village                |                   |
| Mixed Use-Residential, Commercial and Employment | Conservation                         | Planned Business                   | Special Economic Development |                   |
| Planned Unit Development                         | Environmental Conservation           | Planned Industrial                 | Municipal                    |                   |
|  | Highway Interchange                  | Rural Business, Existing           |                              |                   |

June 14, 2018

Department of Planning & Zoning  
Attn: Stephen Goodrich, Director  
Washington County Admin. Complex  
100 W. Washington Street, Suite 2600  
Hagerstown, MD 21740

**Re: Piecemeal Rezoning of +/- 24.32 Acres of Real Property Located near the intersection of Maryland Rte. 340 and Keep Tryst Road, Knoxville, MD 21758**

Dear Mr. Goodrich:

P Overlook LLLP (“**Overlook**” or “**Applicant**”) is the owner of that certain parcel of real property located near the intersection of Maryland Rte. 340 and Keep Tryst Road in Knoxville, MD 21758 (Map 87, Parcel 10; Tax Acct. No. 11-007872) containing +/- 24.32 acres which is shown and depicted on the Zoning, Tax Parcel Map attached hereto as **Exhibit #1**. (the “**Property**”).

**Overlook hereby requests a change in the zoning classification for the Property from RV (Rural Village) with Nine (9) lot density restriction to RV (Rural Village) without Nine (9) lot density restriction.**

**Current Zoning**

In October 2003, the Property was rezoned by the Board of County Commissioners from Business General (BG) to Rural Village (RV) (Piecemeal Rezoning Case RZ-03-001) (the “**2003 Piecemeal Rezoning**”). The Property had been zoned BG since 1983 and is the location of the former Hillside Motel.

The Commissioners’ “Findings of Fact and Articulation of Reasons for Decision” in the 2003 Piecemeal Rezoning case reached the following conclusion:

“[T]he Board finds that the Rural Village zoning is appropriate and logical for the subject property and the same is hereby granted, with the condition that no more than nine (9) lots may be developed on the subject property.” (the “**9-Lot Density Restriction**”)



In July 2005, as part of the County's Comprehensive Rural Area Rezoning (the "2005 Comprehensive Rezoning"), the Property's RV zoning classification was confirmed with no specific reference to the 9-Lot Density Restriction or any other special conditions or restrictions.

By letter dated September 13, 2006 (the "2006 Thompson Letter"), Planning Director Mike Thompson, took the position that "the density limit still applies to the Property" notwithstanding the 2005 Comprehensive Rezoning. This remains the position of the County.

### Rezoning Request

Applicant contends that in this case a 'mistake' was made in the original zoning of the Property.

The 2006 Thompson Letter referenced above was appealed to the Board of Zoning Appeals by Overlook, who purchased the Property from William and Sylvia Martin in February 2004. That Appeal was denied by the Board of Zoning Appeals, affirmed by the Circuit Court, and culminated in a reported opinion by the Court of Special Appeals which found the following:

- The 2006 Thompson Letter was simply reporting and confirming past events and thus did not constitute an appealable order, requirement, decision or determination of the County. All of the Property Owner's substantive legal challenges to the 9-Lot Density Restriction could have been and, if objectionable, should have been pursued in an action for judicial review of the 2003 Piecemeal Rezoning.
- Even if the 2006 Thompson Letter were appealable, the Board of Zoning Appeals was correct in finding that the Property Owner should be equitably estopped from challenging the 9-Lot Density Restriction. The Property Owner was aware of and actively participated in both the 2003 Piecemeal Rezoning and 2005 Comprehensive Rezoning processes and thus should not be allowed to collaterally attack those actions.

Thus, the substance of Applicant's arguments that (i) the 9-lot Density Restriction imposed as part of the 2003 Piecemeal Rezoning was impermissible; and (ii) even if the 9-lot Density Restriction was permissible, the legal effect of the 2005 Comprehensive Rezoning was to replace and supplant the 2003 Piecemeal Rezoning and assign an unaltered "RV" zoning classification to the Property.

MD Code, Land Use, § 4-103 permits a legislative body to impose conditions or limitations that they consider "appropriate to improve or protect the general character and design" of the land being zoned or the surrounding area. However, when a local



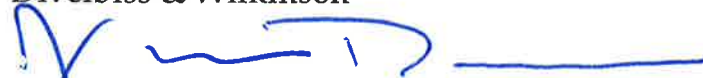
government enters into an agreement whereby the government exacts a performance or promise in exchange for its agreement to rezoning property, the government has engaged in illegal contract zoning. See, e.g., *Brandywine Enterprises, Inc. v. Prince George's County*, 117 Md. App. 525, 700 A.2d 1216 (1997); *Baltimore County v. Beachwood I Ltd Partnership*, 107 Md. App. 627, 670 A.2d 484 (1995); and *Baylis v. City of Baltimore*, 219 Md. 164, 148 A.2d 429 (1959).

Based upon the record in this case, including a statement in the minutes from the 2003 Piecemeal Rezoning that the County and rezoning applicant were "bartering" over the level of permissible development on the Property, it is clear that the 9-Lot Density Restriction was illegal contract zoning and violative of the requirement of uniformity within zoning districts (see MD Code, Land Use, § 4-201). See also the 2006 Thompson Letter which states: "[w]ithout [the 9-lot density] condition, the Board would not have supported the revised request."

In further support of the Applicant's argument that a 'mistake' was made, when the Property was comprehensively rezoned in 2005 to RV without any reference to the 9-Lot Density Restriction there was no legal basis for concluding that the Restriction, or any other component of the 2003 Piecemeal Rezoning survived. It is simply inconceivable and contrary to fundamental principles of zoning law that the 2005 Comprehensive Rezoning did not consume and replace the 2003 Piecemeal Rezoning in its entirety. Again, the minutes from the 2003 Piecemeal Rezoning are instructive when they note the County Attorney's belief that the Commissioners' action on the applicant's rezoning request "would otherwise be consumed by the comprehensive rezoning, absent the execution of a development rights easement."

**Applicant requests that the County take legislative action to acknowledge and correct the errors made in 2003 and 2005 by "rezoning" the Property from RV with a 9-Lot Density Restriction to RV without a 9-Lot Density restriction.**

Very truly yours,  
**Divelbiss & Wilkinson**



Jason M. Divelbiss  
*Attorney at Law*

*Email:* [jdivelbiss@divelbisslaw.com](mailto:jdivelbiss@divelbisslaw.com)