

THE EFFECTIVE DATE OF THIS RESOLUTION IS May 23, 2023
RESOLUTION NO. 23-09

**RESOLUTION OF
THE COUNTY COUNCIL
OF FREDERICK COUNTY, MARYLAND**

Re: Application of Windridge Properties L.C. and Windridge Farm, L.L.C.
Rezoning Case No. R-22-03

OPINION AND FINDINGS

Windridge Properties L.C. and Windridge Farm, L.L.C. (collectively, Applicant) filed this application to rezone 223.524 acres from Agricultural (A) to General Industrial (GI). The property is located in the Eastalco Growth Area at the intersection of Cap Stine Road and Ballenger Creek Pike, southwest of the Ballenger Creek and South Frederick Corridors areas (the Site). The Applicant is requesting the rezoning in this Application to allow for Critical Digital Infrastructure (CDI) uses on the site.

This rezoning request is to change the zoning classification of this 223.524 acres from Agricultural (A) to General Industrial (GI). The basis for this request is a claim of substantial change in the character of the neighborhood, commonly referred to as the “change or mistake rule.” The Applicant has the burden of proof in establishing that such a change has occurred, and even if the Applicant meets this burden, approval of the requested rezoning is not required.

The Frederick County Planning Commission held a public hearing on this matter on February 8, 2023. The Planning Commission recommended approval of this Application in a 5-2 vote. The County Council held a public hearing on this matter on April 18, 2023. On May 2, 2023, the Council voted 6-1 to deny this Application.

Based upon all of the evidence submitted in this case, the County Council makes the following specific findings of fact for the items below as identified in the Annotated Code of Maryland, Land Use Article §4-204(b) and in Chapter 1-19 of the County Code:

Approval Criteria

I. § 1-19-3.110.4 (A) – Approval Criteria for Zoning Map Amendments

(1) Consistency with the comprehensive plan;

The Site is designated General Industrial on the current Comprehensive Plan Map which is consistent with the application of requesting zoning to General Industrial (GI). This Site is located within the Eastalco Growth Area.

(2) Availability of public facilities;

The proposed rezoning will have no direct impact on schools, and will not likely significantly impact parks, public safety, or library facilities. Water would be supplied by the New Design Water Treatment Plant. Sewer would be treated by the Ballenger McKinney Wastewater Treatment Plant. Public water and sewer service to this Site is not currently available and there are no County Capital Improvement projects planned to extend water or sewer mains to the Site. No analysis has been performed as to the availability of water for cooling purposes for the proposed CDI use.

(3) Adequacy of existing and future transportation systems;

The existing transportation network available to immediately serve many of the uses available to owners of GI-zoned property in the Eastalco Growth area is limited. Projects in the area currently in the planning process may provide additional functionality to the transportation network serving the Eastalco Growth Area; however, the adequacy of these systems may be constrained by the existing or improved roads network.

(4) Compatibility with existing and proposed development;

Land uses of the properties adjoining the Site include agricultural and rural residential uses to the south and west, proposed industrial (CDI) uses to the east, and industrial uses to the north. Proposed GI zoning is generally compatible with surrounding zoning and land uses.

(5) Population change;

There will be no population change as a result of this proposed rezoning, as the requested zoning is non-residential.

(6) The timing of development and facilities;

The Application does not propose a specific schedule for development of the Site. Development of some permitted uses on the Site may be possible within the first five years; however, the public facilities necessary to support substantial and intensive use of the Site, water, sewer, and roads, would be dependent upon improvements to and extensions of those public facilities by others. Fire and rescue services are likely adequate to handle many of the proposed uses permitted in the GI zoning district. The planned replacement of Carroll Manor Station 14 in FY2026 would provide service to the Eastalco Growth Area after construction.

(7) Identification of sensitive environmental resources;

The Site of the proposed rezoning is currently in Agricultural Use, and has an intermittent stream running through the property. Any applicable regulations regarding Environmental Site Design, Forest Resource Ordinance, FEMA floodplain and stream buffers, or other sensitive natural resources would be addressed at the time of subdivision and site plan review.

(8) Historic Resources identified and the impact to them.

The Maryland Historical Trust identifies this Site on the Maryland Inventory of Historic Places (MIHP) as the J. Franklin. Thomas Farmstead (MIHP# F-1-190). The Maryland Historical Trust has made a determination (April 2019) that the property is not eligible for the State and National Register of Historic Places (S/NRHP). No additional impacts to historic resources have been identified.

II. Substantial Change in the Character of the Neighborhood Where the Property is Located

In addition to the criteria identified above, under Maryland Law, approval of a request for an individual zoning map amendment may be granted only where substantial evidence has been provided to support a finding that there has been a substantial change in the character of the neighborhood, or a mistake was made in establishing the existing zoning classification. The Applicant has the burden of: a) establishing the area constituting the neighborhood, b) identifying all changes that occurred in that neighborhood since the last comprehensive zoning affecting the property, and c) specifying what type of change has occurred in the character of the neighborhood. The Applicant asserted that substantial change in the character of the Site neighborhood has occurred since the 2012 County Comprehensive Plan and the September 3, 2019 adoption of the Livable Frederick Master Plan.

Based on the application and the evidence presented at the public hearing, the County Council made the following findings with respect to the Applicant's arguments:

a) Failure to adequately define the neighborhood

The Applicant chose to define the neighborhood as constituting the Eastalco Community Growth Area. While the Site is located within the growth area, it also adjoins properties lying to

the west and south that are designated natural resource and agricultural on the Comprehensive Plan. The Applicant's neighborhood definition failed to include nearly 40% of the immediate properties surrounding the Site, which are outside the Community Growth Area and have not changed nor are they projected to change.

b) Lack of substantial changes in the character of the neighborhood

The Applicant's written justification for the proposed rezoning change and the testimony provided was largely based on "paper changes," i.e. transfer of title to property previously owned by Eastalco, changes to the County's zoning regulations, and a Water and Sewerage Plan designation change to the Site, and not based on change that has actually and physically occurred.

In order to justify a piecemeal rezoning based on change, changes to the neighborhood must be actual, physical, and visible. The Applicant's evidence focused on the presumed future development of the Quantum Loophole Data Center campus on property adjoining one side of the Site. Multiple members of the community provided testimony pointing out that currently, the Quantum Loophole property has no buildings, and that Eastalco's smelting plant had been removed years ago, making the neighborhood appear more Agricultural. The underlying zoning of the Quantum Loophole property has remained unchanged for decades, and the proposed future use is consistent with allowable uses in a GI zoning. The change in the character of the neighborhood asserted by the Applicant has not occurred.

The Applicant failed to provide sufficient persuasive evidence that would support a finding that any change in the neighborhood has occurred, and therefore also failed to demonstrate that substantial change in the character of the neighborhood has occurred.

c) Mistake in the Existing Zoning

The applicant did not assert that there had been a mistake when the Agricultural zoning designation was established at the Site.

d) Additional Findings

The written submission and testimony received demonstrated that other properties surrounding the Site have remained largely unchanged, and were not considered by the Applicant as part of the neighborhood since they would not have provided support for the requested rezoning.

Even if the Quantum Loophole data center campus is built on the former Eastalco property, that property use will change from a prior intensive general industrial usage in 2012 to a less intensive general industrial use in the future.

The approximately 2,100 acres of the former Eastalco site, currently zoned GI, is in the process of obtaining approvals necessary to proceed with a type of development/use, Critical Data Infrastructure (CDI), which is new to Frederick County. The impact the CDI use(s) will have on water, sewer, electric, and other resources and infrastructure remains unknown at this time, making it premature to rezone additional property for such use(s) until one or more CDI uses have been established and are operational so that the impacts on and availability of those resources can be evaluated.

Based on the findings and reasons set forth herein, the County Council has determined that the Applicant failed to meet its burden of proof and persuasion and hereby denies the application for a zoning change to GI.

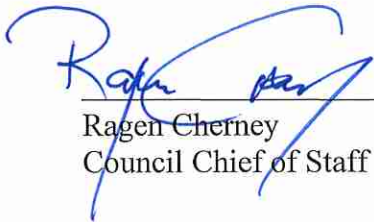
NOW THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND, that Rezoning Case R-22-03 for the rezoning of



223.524 acres from Agricultural (A) to General Industrial (GI) is hereby **DENIED** and the property shall retain its existing zoning.


The undersigned hereby certifies that this Resolution was approved and adopted on this 2nd day of May, 2023.

ATTEST:

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND


Ragen Cherney
Council Chief of Staff


By: 
Brad W. Young, President 


Steve McKay, Council Member


Jerry Donald, Council Member



M.C. Keegan-Ayer, Council Member



Renee Knapp, Council Member


Mason Carter, Council Member

Council Vice President Kavonte Duckett did not vote in favor of this rezoning.

Received by the County Executive: 5/24/2023

County Executive Action:  Approve Veto No Action


Jessica Fitzwater, County Executive
Frederick County, Maryland

5/30/23
Date