

RJD DEVELOPMENT CORP
LIMITED INDUSTRIAL (LI) ZONING MAP AMENDMENT APPLICATION
JUSTIFICATION STATEMENT

RJD Development Corp.(the “**Applicant**”) hereby submits this Justification Statement in support of this Zoning Map Amendment Application (this “**Application**”) for the rezoning of 131.487 acres +/- located off of Green Valley Road/Maryland Route 75 and Baldwin Road East, in Frederick, Maryland (Tax Map 088C, Parcel 11, Tax ID # 09-317872) (the “**Property**”) from Office/Research/Industrial (ORI) 22.92 acres; Limited Industrial (LI) 30.677 acres; and Residential Five (R-5) 77.89 acres; to Limited industrial (LI) for the entire 131.487 acres.

The Property is fronted by Baldwin Road on its northern border and by Interstate 70 (I-70) along its northeastern border. Along its southern boundary, the Property is bounded by an active CSX rail line. The western boundary adjoins a State Highway Administration (SHA) “Park and Ride” and the SHA right of way of Green Valley Road/Maryland Route 75.

Frederick County owns and maintains the Monrovia Water Storage Tank facility (the “**Existing Water Tank**”) on an Out Lot shown on those plats recorded among the Land Records of Frederick County, Maryland in Plat Book 63, folio 177 and Plat Book 74, folio 4.

Under the Frederick County Comprehensive Plan Map adopted September 13, 2012 which was re-adopted as part of the Livable Frederick Master Plan on September 3, 2019 (collectively, the “**Comprehensive Plan**” or the “**LFMP**”), the Property has a Land Use Plan designation of Office/Research Industrial (“**ORI**”). The Property had the same ORI Land Use Plan designation in the 2002 Frederick County Comprehensive Plan and in the 2010 Frederick County Comprehensive Plan adopted April 8, 2010. The Town of New Market Master Plan designates the Property for Economic Development Flex in the event of annexation.

The last comprehensive rezoning in Frederick County was adopted by the Board of County Commissioners (prior to the establishment of the current Charter form of government) in Ordinance No. 12-22-67 dated September 12, 2012 (the “**2012 Comprehensive Rezoning**”). As part of the 2012 Comprehensive Rezoning, the Property was rezoned from Agricultural (and ORI) to R-5, LI, and ORI in accordance with the Applicant’s. The ORI Land Use Designation for the entirety of the Property was not changed. The Property had been downzoned from a previously established mix of R-5, LI, and ORI to Agricultural (approximately 111 acres) and to ORI (approximately 20 acres) as part of the prior 2010 Frederick County Comprehensive Rezoning (“**2010 Comprehensive Rezoning**”).

The requested rezoning will facilitate the long-planned and intended development of the Property with a single user/industrial/warehouse (the “**Proposed Use**” or the “**Project**”), in keeping with the Limited Industrial zoning on a portion of the Property. LI zoning on the entire Property is also appropriate and compatible with the existing adjacent uses of the State Highway Administration (SHA) public right of way to the west which is currently used as Park and Ride facility; the existing Baltimore & Ohio Railroad line to the south; and the existing stream valley with 100-foot buffer to the east that will be buffered and protected as part of the development of the Property. Baldwin Road is the single point of access and its close proximity to the interstate system and I-70/Route 75/Route 144 interchange are ideal for a large industrial warehouse that relies on the interstate system for the transportation and distribution of goods.

At the time of the 2012 Comprehensive Rezoning, the need and demand generated by e-commerce (and a global pandemic) for retail distribution/fulfillment centers of the size and scale contemplated by the Project for the Property was not anticipated.

The Proposed Use will have a significant positive impact on employment opportunities as well as the economic outcomes for the New Market region and Frederick County with the addition of approximately 2,000 jobs during the regular season and flexing up to 4,000 during the retail holiday season.

Below are the applicable criteria requiring written justification, quoted from the Frederick County Zoning Ordinance (the “**Zoning Ordinance**”) in bold typeface, with the Applicant’s responses and proposed findings of fact.

This Justification Statement is provided in support of the other materials, plans, maps and exhibits submitted by or on behalf of the Applicant with this Application.

§ 1-19-5.250 INDUSTRIAL ZONING DISTRICTS

(B) The Limited Industrial District (LI) is intended to provide adequate area for development of industrial uses whose operations have a relatively minor nuisance value and provides a healthful operating environment secure from the encroachment of residential uses and protected from adverse effects of incompatible industries.

APPLICANT’S RESPONSE AND PROPOSED FINDINGS OF FACT: The LI zoning for the Property will allow and facilitate the Proposed Use and its fulfillment of the purpose and intent of the LI Zoning District. The Property is ideal for a LI use/warehouse fulfillment center and fits compatibly among the adjacent uses. The Property is located at the terminus of Baldwin Road East which is a Major Arterial classification roadway with limited access less than a mile off of Baltimore National Pike Route and I-70.

There are no residential uses to the immediate north of the Property. There is General Commercial (GC) zoning across Baldwin Road East. To the west is a public right of way for the future expansion of Maryland Route 75/Green Valley Road which is planned as a Minor Arterial classification roadway. This right of way is currently being used as a SHA Park and Ride facility. Beyond the Maryland Route 75/Green Valley Road right of way is property zoned General Commercial and to the southwest Limited Industrial. The property to the south is a CSX rail line and right of way which runs the entire length of the Property. This rail line (and the topography of the Property) creates a significant separation/barrier between the Property, the adjacent uses to the north, east and west, and the Resource Conservation areas to the south beyond the CSX rail line right of way.

While varying, the existing topography of the Property allows for grading to accommodate the proposed LI zoning and the Project in a way that it could not for a mixed use development that would include a residential component.

The existing slope, slope aspect and ridgeline on the Property face I-70, Major and Minor Arterial roads and the nearby LI and GC zoning. This creates a strong commercial, industrial, employment center core around the off-ramp to the interstate utilizing the existing transportation

corridors and public utility resources.

(A) The proposed development design and building siting are in accordance with the County Comprehensive Plan, and any applicable community and corridor plans.

APPLICANT’S RESPONSE AND PROPOSED FINDINGS OF FACT: As illustrated by the Concept Plan and other exhibits submitted as part of this Application, the Project’s development design and building siting are in accordance with the Comprehensive Plan. The Project’s ORI land use designation allows for the application of the Industrial uses (1-19-5.250 (E) states in pertinent part, “the Office/Research Industrial District (ORI) is intended to provide for the development of ... limited manufacturing uses in high visibility locations along major highways. Development in this district shall be characterized by an absence of nuisances in a clean and aesthetically attractive setting”). The topography and other natural features of the Property (that will be enhanced by landscaping (and Forest Resource Conservation ordinance requirements) as part of the development of the Project, create significant buffers, visual screening, noise attenuation, particularly to the south and east where there is existing residential development.

There are no current corridor plans for this region of the County.

§ 1-19-3.110.4. APPROVAL CRITERIA.

(A) Approval or disapproval of a request for an individual zoning map amendment or floating zone reclassification shall be determined through review of several criteria. The Planning Commission and County Council review will include, but not be limited to:

(1) Consistency with the Comprehensive Plan;

APPLICANT’S RESPONSE AND PROPOSED FINDINGS OF FACT: The LFMP supports this Application and the rezoning of the Property to LI. Part of the LFMP’s “Vivid Description” of its Vision is that: “Frederick County provides interesting and fulfilling JOBS and options for everyone to support their families. We embrace businesses of all types and sizes to ensure a vibrant and STRONG ECONOMY. We value our traditional industries while seizing the opportunity of THE FUTURE, healthcare biotech, advanced technology, and more.” (LFMP at 25). The requested rezoning will allow for LI warehouse/distribution/fulfillment uses to locate on the Property that will bring a substantial number of new, desirable job opportunities and options to expand the local economy.

If approved, this Application will provide much needed LI-zoned property for this growing and important Proposed Use, that is integral to the current economic needs of the County, State and Nation. As such, rezoning the Property and allowing for LI uses will provide interesting and fulfilling jobs, will allow for ensuring a strong economy and will seize opportunity for future industry growth in this vital growing sector, consistent with the LFMP Vision’s Vivid Description.

Consistent with these provisions, the Applicant is seeking approval of a Limited Industrial (LI) zone to allow for the development (or redevelopment) of the Property from an open farm field to a “Distribution & Fulfillment Center” containing up to 1,386,880 square feet +/- within one single-story building. Additionally, the Project will be consistent with the other applicable recommendations of the LFMP, as follows:

The Project will utilize existing roads and potential future road improvements as discussed

in the Traffic Study completed by Traffic Concepts Incorporated, dated as of May 27, 2022, and submitted with this Application (the “**Traffic Study**”), and sewer and water infrastructure. It will complement and build upon existing employment and industrial development in the New Market area, particularly south of I-70.

- The LFMP encourages the incorporation of open and green space in development project:
 - Provide and maximize native species natural landscaping and planting within street rights-of-way at commercial and residential development and within public and private open space as a part of community specific and corridor specific planning in the county. Id. at 141.
 - Protect critical open spaces within the built environment. Id. at 189.

The Project will incorporate approximately 5.41 acres of open space (4.11% of the land area of the Property) primarily around its perimeter. This interconnected green network will provide recreational opportunities for the employees and other users of the Project and area residents. Other integrated greenspace can be accommodated in and around the internal workings of the Property as determined during the later stages of the design review process.

- The LFMP promotes economic development.

The Project will provide significant and long-term sustainable fiscal impact to the County through property tax collection, fees, and business taxes. Again, the March 18, 2019 “Cost of Land Use Fiscal Impact Analysis” prepared for the City of Frederick and Frederick County by TischlerBise, found that only “office and industrial land uses generate sufficient revenues to offset their cost impacts” to the tax base while other uses such as residential, create far more demands on public services that are not offset by the tax revenue they generate.

Beyond bolstering the County’s tax base and creating new jobs, the Project itself will support existing businesses (all goals of the LFMP). At full occupancy, the Applicant’s development of the Property will provide an attractive, accessible, and high-quality location for up to 2,000 year-round and 4,000 peak holiday season jobs.

(2) Availability of current and planned public facilities.

APPLICANT’S RESPONSE AND PROPOSED FINDINGS OF FACT: The Property is designated W4/S4 on the Frederick County Water & Sewerage Plan. There is an existing public water main within Baldwin Road East in front of the Property that connects to the Existing Water Tank. The Applicant’s engineers (KCI) have recently met with County staff in regard to the Existing Water Tank that the County will require be maintained in service on the Property to ensure reliable pressure and supply to its water system customers. If this Application is approved, as part of the Project, the Existing Water Tank will be demolished to accommodate the footprint of the building structure and paved areas and a new elevated water tank facility of the same capacity and overflow elevation as the Existing Water Tank will need to be designed, permitted, constructed and put into service at another location in the northeasterly portion of the Property prior to the demolition of the Existing Water Tank (the “**New Water Tank**”) (See: Concept Plan). Once the New Water Tank is in place and in service, public water will be available to the Property. The Existing Water Tank will be decommissioned and removed.

This existing water line within Baldwin Road East will remain in place and will be extended approximately 1,400 feet to the New Water Tank. The part of the existing water line extending from Baldwin Road East to the Existing Water Tank will be removed as part of the Project's development once the New Water Tank is constructed and in service. Water for the Project will be supplied by the water main from Baldwin Road East. It will provide potable water and fire protection for the Project.

Public sewer is available approximately 1,400 feet to the west of the Property along Davis Branch. Based on the elevation change and topography, gravity flow sewer service can be extended from Davis Branch to serve the Project. The proposed sewer line would be installed within the public right of way of Baldwin Road East. The Project will connect to this new sanitary sewer line.

Public sewer treatment will be provided via the Ballenger McKinney Wastewater Treatment Plant. This facility currently has an available capacity of 6.8 million gallons per day with a design capacity of 15 million gallons per day (based on 2021 annual flow data).

At the appropriate stage of development after rezoning, the Project will be tested for compliance with the County's Adequate Public Facilities Ordinance ("APFO") requirements to the extent applicable.

(3) Adequacy of existing and planned future transportation systems.

APPLICANT'S RESPONSE AND PROPOSED FINDINGS OF FACT: As evidenced by the Traffic Study completed by Traffic Concepts Incorporated and included as part of this Application, the combination of existing and planned future transportation systems are adequate for this Project. Few properties in Frederick County enjoy the interstate, state, and local road and railroad proximity and ease of access as does this Property.

(4) Compatibility with existing and proposed development.

APPLICANT'S RESPONSE AND PROPOSED FINDINGS OF FACT: The Property is ideal for the Proposed Use and the Project due to its location within 1 mile of I-70 and a major interchange off of Baldwin Road East with Green Valley Road/Maryland Route 75 on the western boundary and the current right of way containing the SHA Park and Ride. The existing CSX rail line in the rear is also compatible with the Proposed Use. In particular, the character of development immediately south of I-70 is commercial and industrial in nature and there are substantial natural and man-made buffers to residential uses to the south (railroad and topography), east (existing stream and topography), north (I-70) and west (heavier industrial development and commercial development at Adventure Park). The adjoining property to the north is also zoned for general commercial development which is again compatible with the LI zoning requested by this Application.

(5) Population change, including availability and location of land zoned to meet the ten-year need for residential development.

APPLICANT'S RESPONSE AND PROPOSED FINDINGS OF FACT: Not applicable. No residential development is proposed on the Property.

(6) The timing of development planned future transportation systems and planned public facilities.

APPLICANT’S RESPONSE AND PROPOSED FINDINGS OF FACT: The adjacent transportation system that will be impacted by this Application and the Project is defined and documented by Frederick County in its approved “Scope of Services” letter and addressed in the Traffic Study. The following key intersections, as recommended by Frederick County, define the adjacent transportation system.

Signalized Intersections:

- i. MD 75 at MD 80 (west)
- ii. MD 75 at I-70 EB Ramps
- iii. MD 75 at I-70 WB Ramps
- iv. MD 75 at Old National Pike
- v. Old National Pike at Boyers Mill Road
- vi. Old National Pike @ Morning Gate Lane
- vii. Old National Pike @ CVS/Food Lion Access
- viii. Meadow Road at I-70 WB Ramps

Unsignalized Intersections:

- i. MD 75 at Baldwin Road East
- ii. MD 75 at Baldwin Road West
- iii. Old National Pike at Meadow Road

The results of the Traffic Study indicate that (i) all key intersections would continue to operate with acceptable Levels of Service (LOS) with the full build-out of the Project’s proposed 1,386,880 square foot warehouse when analyzed with the CLV and HCM Methodologies; and (ii) all left turn storage bays, at the signalized key intersections, can accommodate the future peak hour vehicle queues. Based on the adequate intersection LOS and queuing results established under the future traffic conditions, the adjacent transportation system has capacity to support the new traffic generated by the Project’s 1,386,880 square foot warehouse proposed by the Applicant hereunder. There are currently improvements taking place on the Maryland Route 75 bridge over I-70 that will be completed over the next several months. Other improvements under consideration by SHA that have not yet been funded are the extension of Maryland Route 75 and a multilane reconstruction between Maryland Route 355 and I-70.

(7) Sensitive environmental resources have been identified and impacts to these resources are avoided or minimized to the maximum extent practicable; and

APPLICANT’S RESPONSE AND PROPOSED FINDINGS OF FACT: The design of the Project takes into consideration the existing stream valley traversing the eastern portion of the Property that will be protected with buffers and enhanced with native plantings in accordance with the County’s Forest Resource Conservation Ordinance (“**FRO**”) and shall provide for adequate and appropriate stormwater management facilities. The tributary to Bush Creek is part of the Lower Monocacy River watershed. There is a 100-foot buffer provided and no grading is proposed within this area. Retaining walls will be used to avoid unnecessary disturbances or grading within the required setback areas.

_____ Visibility into the Property from areas south and east will be limited due to the proposed FRO areas and supplemental planting proposed. Furthermore, existing vegetation associated with the stream channel along the eastern boundary of the Property will screen views from the east. The existing and proposed grades will further limit views from the areas south and east of the Property that are more rural and residential in nature. Substantial landscaping will also be provided along

the Baldwin Road East and I-70 frontage and within the proposed employee parking areas in accordance with Frederick County site plan requirements and regulations. This will create attractive views along the Baldwin Road and I-70 Road frontage. The setback along Maryland Rte. 75 and Baldwin Road East, in addition to the supplemental landscaping and existing vegetation, will reduce visibility from the north and the west and allow it to blend with the other features of the Property.

The proposed end user is also committed to using sustainable practices to reduce the greenhouse gas footprint to the maximum extent practicable and in keeping with the requirements and regulations of First Energy, state and local agency requirements. These practices could include, solar power, daylighting, sustainable products, LED lighting, water reuse and EV charging.

- (8) Historic resources have been identified and impacts to these resources are avoided or minimized to the maximum extent practicable.**

APPLICANT’S RESPONSE AND PROPOSED FINDINGS OF FACTS: Not applicable. There are no historic resources existing on the Property.

(B) In addition to the criteria above, approval or disapproval of a request for an individual zoning map amendment shall be granted only where a finding has been made that there was:

- (1) A substantial change in the character of the neighborhood where the property is located; or**
- (2) A mistake in the existing zoning classification.**

APPLICANT’S RESPONSE AND PROPOSED FINDINGS OF FACT: Under Maryland law, the adoption of a comprehensive rezoning by a legislative body and the assignment of zoning categories to individual properties is presumed to be correct. Stratakis v. Beauchamp, 268 Md. 643, 652–53, 304 A.2d 244, 249 (1973). The “presumption of correctness” is founded on the policy and assumption that a legislative body has conducted a comprehensive review and study of a large area, solicited public comment and input from other governmental agencies, its planning staff and other land use experts. Anne Arundel County v. Maryland Nat’l Bank, 32 Md. App. 437, 440, 361 A.2d 134, 136 (1976). To overcome that presumption of correctness and justify the legislative body’s approval of a rezoning application for an individual property outside of the comprehensive rezoning cycle, an applicant must provide substantial evidence that the character of the rezoning neighborhood around the property has substantially changed to a character not anticipated during the comprehensive rezoning that now justifies a change to that zoning or that a zoning mistake was made during the comprehensive rezoning. Mayor & Council of Rockville v. Rylins Cnters., 372 Md. 514, 814 A.2d 469 (2002) (see also Pressman v. City of Baltimore, 222 Md. 330, 160 A.2d 379, 383 (1960) (“Whether this should be regarded as an error in original zoning or the result of changed conditions may be a matter of a choice of words or of approach”). Although a drawing or mapping error can be a zoning mistake, typically it does not mean that there was negligence, error, lack or failure of due diligence by the legislative body during the comprehensive rezoning. People’s Counsel for Baltimore County v. Prosser Co., 119 Md. App. 150, 704 A.2d 483 (1998). A zoning mistake is more often found where there are conditions or circumstances involving the property that are incorrect or unknown at the time of the comprehensive rezoning or assumptions made at that time about the property that later prove to be incorrect. Id. As a result, the presumption of correctness about the zoning decision made on the property in question during the last comprehensive rezoning is

overcome because it was based on incorrect or unknown information or assumptions that prove to be incorrect. Id.; see also Anne Arundel County v. A-Pac Limited, 67 Md. App. 122, 506 A.2d 671 (1986).

(1) Substantial Change. Substantial change in character of the Property's neighborhood has occurred since the 2012 County Comprehensive Rezoning and even since the adoption of the LFMP on September 3, 2019. For the purposes of determining substantial change in its character to support rezoning, the neighborhood of the Property (the "**Rezoning Neighborhood**") is proximate and connected via Major and Minor arterial roadways but has a significantly different character south of I-70 as compared to the north side of I-70. The Rezoning Neighborhood can be reasonably defined for the purposes of determining a substantial change in its character since the 2012 Comprehensive Rezoning as follows: that geographic area bounded to the north by Maryland Route 144 (Old National Pike), to the south by the CSX rail line, to the east by the Agriculturally zoned parcels along the terminus of Baldwin Road East abutting the CSX rail lines (Parcels 247 and 51), and to the west by Adventure Park, the municipal limits of the Town of New Market and the industrially developed parcels along Intercoastal Drive.

The Rezoning Neighborhood can be characterized as predominantly rural, farmland to the east but transitioning to industrial at the CSX rail line to the south and commercial at the Adventure Park entertainment center, rural and residential to the south of the CSX rail line (beyond the resource conservation), commercial, major interchange and the Town of New Market to the north and rural, farmland to the east including Interstate I-70.

Although not a physical change per se, there has been a substantial change since the 2012 Comprehensive Rezoning in the social, economic, political and recreational environment in which the residents, businesses and institutions of Frederick County now exist. At the time of the 2012 Comprehensive Rezoning no one could have imagined that the United States, the State of Maryland, Frederick County and the Town of New Market would be involved in a Global Pandemic that would last for over 2 years and is ongoing. This cataclysmic event has completely altered the way in which the residents of Frederick County live, shop and receive goods and the manner in which business is conducted. Due to the significant modification from "brick-and-mortar" shopping to "e-commerce" the market has substantially altered the way that goods are advertised, purchased, shipped and delivered to residents, businesses, government and other institutions. Due to this major shift in the operation of the marketplace, larger distribution centers are needed to support the burgeoning created by this new demand.

Major changes have occurred in the northern portion of the Rezoning Neighborhood with the rezoning of the Blentlinger and Casey properties and the ensuing Development Rights and Responsibilities Agreements associated with those developments. In 2014, the Town of New Market annexed the Smith and Cline and the Delaplaine properties for residential and employment development (respective) that included the developer-funded construction of the New Market Bypass to connect Boyers Mill Road to Maryland Route 75. There is a long and controversial history between Frederick County and the Town of New Market associated with the Smith and Cline annexation supporting the finding that this annexation and rezoning in 2014 (including Economic Development Flex designation for the Delaplaine property which is most proximate to the Property) was not planned. Additionally, the Town of New Market Master Plan contemplated the potential annexation of the Property and development under the Economic Development Flex designation. However, the zoning of the Property in the 2012 Comprehensive Rezoning effectively eliminated the annexation option.

(2) Zoning Mistake. While the Comprehensive Plan designates the Property ORI, the current official Frederick County Zoning Map adopted as part of the 2012 Comprehensive Rezoning splits the Property into three (3) different zoning classifications: Office/Research/Industrial (ORI) 22.92 acres located solely in the northeastern portion of the Property; Limited Industrial (LI) 30.677 acres running east to west along the entire middle portion of the Property; and Residential Five (R-5) 77.89 acres along the entire southern portion of the Property abutting the CSX rail line and right of way. On its face, this is a highly unusual and generally not desirable zoning allocation for one parcel of property.

In no other location in Frederick County does Residential-5 (R-5) zoning exist next to heavy-duty railroad tracks and it is certainly not appropriate at this location. Residential development should also not be surrounded by industrial uses on all sides including a rail line creating an enclave of residential homes without connectivity to other neighborhoods or resources.

The existing steep slopes (5%-22%) and grade changes in this area will also make the residential use difficult to develop due to the necessary internal road, sidewalk and other grading requirements. The R-5 zoned portion of the Property is not adjacent to a right of way that contains road access, and any design would require the residential use to share an access with the Limited Industrial uses.

The existing topography of the Property also does not lend itself to the split zoning: ORI-22.92 acres, with an average slope of 11.7%; LI-30.677 acres, with an average slope of 15.27%; and R-5-77.89 acres, with an average slope of 22.34%.

Other adjacent parcels of similar size, scale and location are all denoted with a single zoning classification. The adjacent site to the west has a single zoning classification of LI while the smaller adjacent parcels have a zoning classification of General Commercial (GC) which is appropriate for their size and location. The Property is unique with its boundaries being defined by some of the largest and most heavily travelled roadways in Frederick County as well as a major interchange including Baltimore National Pike/I-70, Baldwin Road East and Green Valley Road/Maryland Route 75, and off ramp to I-70. Significantly, for the purpose of determining whether a zoning mistake occurred during the last comprehensive rezoning, there is no evidence in the public record of the 2012 Comprehensive Rezoning that the topography and natural features of the Property were taken into consideration when the split zoning was approved.

The zoning history of the Property merits careful consideration in terms of whether a zoning mistake was made during the 2012 Comprehensive Rezoning. On information and belief, the Applicant maintains that the 2012 Comprehensive Rezoning resulted, at least politically, from the 2010 Comprehensive Rezoning that resulted in the downzoning of numerous parcels throughout the County. As part of the 2010 Comprehensive Rezoning, the Property was downzoned from a previously established mix of R-5, LI, and ORI to ORI (approximately 20 acres) and Agricultural (approximately 111 acres).

The downzoning approved as part of the 2010 Comprehensive Rezoning fueled a significant political upheaval among many County landowners whose property had been downzoned by that process, founded on the preservation of private property rights. See McCarthy, Pete, "Frederick County Commissioners to Tackle Land-Use Plan," The Frederick News Post, December 21, 2011, <https://www.fredericknewspost.com/archive/frederick-county-commissioners-to-tackle-land-use->

plan/article_86963dae-aceea-5db6-b1ed-adc0d1915572.html.. Several of the successful County Commissioner campaigns in the 2010 election season proposed restoration of these downzoned properties. The Applicant avers that in many individual rezoning requests approved during the 2012 Comprehensive Rezoning, this political background, more than sound planning principles, formed the basis for that legislative decision by the County Commissioners. The public record of the 2012 Comprehensive Rezoning bears out this statement.

As part of the 2012 Comprehensive Rezoning process, the Applicant and Property owner, RJD Development Corporation/Richard Demmitt (“**RJD**”) submitted an application to the County Commissioners under Case No. CPZ11-NM-06 requesting the restoration of the prior zoning on the Property from Agricultural and Office Research/Industrial to its current R-5, Limited Industrial, and Office Research/Industrial zoning (the “**2012 RJD Zoning Request**”). RJD also requested a corresponding Comprehensive Plan land use designation change from ORI to ORI/LI/LDR that it subsequently withdrew. As part of the 2012 Comprehensive Rezoning, the County Planning Department (the “**County Staff**”) issued a document entitled, “Comprehensive Plan & Zoning Review-Property Owner Request-Adopted September 13, 2012” (the “**2012 Property Owner Requests**”). A copy of the 2012 Property Owner Requests is attached hereto as **Exhibit 1**. The 2012 Property Owner Requests briefly summarizes the County Staff’s recommendation and opposition to the 2012 RJD Zoning Request as being inconsistent with the ORI land use designation.

In a previous document issued by County Staff entitled, “2011 Comprehensive Plan and Zoning Review Approved Requests Analysis” dated July 3, 2012, it states in regard to the ORI land use designation of the Property, “Staff would not object to the ORI plan designation, even though it would be inconsistent with the LI and R-5 zoning, since the ultimate goal is to facilitate MXD zoning. The MXD floating zone could not be applied to land designated residential. It should be noted that maintaining County zoning on this parcel would likely preclude it from being considered for annexation into New Market.”

While the 2012 Comprehensive Rezoning was pending, the Town of New Market was conducting an update of its own comprehensive plan. As part of the New Market Master Plan update, the Property was identified as an area that the Town planned to annex into its corporate limits for development under its Economic Development Flex designation (EDF) stating, “The EDF is intended to provide maximum flexibility to encourage employment related business development...These uses do not have objectionable operational aspects such as noise, smoke, odors, or hazards from fire.”

In the 2012 Property Owner Requests, the County Staff states the following with regard to the New Market Master Plan update in relation to the 2012 RJD Zoning Request for the Property, “Town of New Market identifies this parcel for annexation as Economic Development Flex. Staff supports the retention of the ORI designation and ORI/Ag zoning in order to facilitate an MXD development. This will allow greater development flexibility and better overall site design that can be realized from the past **arbitrary** locations of the R-5, LI, and ORI zoning that previously existed. (emphasis added). The use of the term “arbitrary” in the County Staff’s statement is particularly significant to this requested rezoning of the Property in terms of the lack of planning basis for the current R-5, LI, and ORI zoning of the Property.

The Staff’s recommendation on the 2012 RJD Zoning Request was clearly intended to facilitate a future Mixed Use Development (MXD) floating zone reclassification for the Property. The MXD floating zone allows a mixture of land uses including employment, commercial, and

residential. It can also be developed without a residential component. However, the MXD zoning contemplated for this Property does not conflict with the Limited Industrial (LI) zoning requested by this Application. Under the Zoning Ordinance, the MXD is permitted on land with ORI land use designation and on land zoned Limited Industrial (LI). In fact, **the MXD zone only allows those employment uses permitted in the LI zone**, so the correlation between MXD and LI is apparent and still within the type of zoning and development contemplated by County Staff for the Property during the 2012 Comprehensive Rezoning.

When viewed together with (i) the unique configuration of three (3) separate zoning designations on the Property, (ii) the railroad tracks adjoining the R-5 zoning, (iii) the topography of the Property that runs contrary to the current zoning due to steep slopes and ridgelines conflicting with zoning lines that will create significant grading, stormwater management and engineering issues with the provision of water and sewer to the Property, (iv) the County Staff's reference to the zoning of the Property as "**arbitrary**" in the 2012 Property Owner Requests, (v) the dramatic and unanticipated shift in market conditions and the manner of purchase and delivery of goods resulting from the Global Pandemic, (vi) the recognized motivation by the Board of County Commissioners during the 2012 Comprehensive Rezoning to restore the same zoning as previously existed on County properties that were downzoned during the previous 2010 Comprehensive Rezoning rather than basing the decision on planning principles or County Staff recommendations, (vii) the absence of evidence in the public record of the 2012 Comprehensive Rezoning that the topography and natural features of the Property were considered, and (viii) despite the assumption by the County Commissioners during (and even before) the 2012 Comprehensive Rezoning that the unusual split zoning of the Property would result in it being developed under the MXD floating zone designation with a residential component, that has not occurred, the presumption of correctness of the three (3) different zoning classifications placed on the Property during the 2012 Comprehensive Rezoning is clearly overcome by this Application.

CONCLUSION

For the above reasons, and as further described and identified in this Application, the Applicant submits that this Application meets all of the applicable criteria for the requested Limited Industrial (LI) zoning and its approval by the County Council would be appropriate and in the public interest of the Frederick County community. The Applicant will supplement the above and the Application as needed, including with additional testimony during the public hearings on the Application.