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**Frederick County Government**  
Division of Planning and Permitting



# Zoning Map Amendment

## Staff Report

Case #: R-22-04

Applicant: RJD Development Corp. (New Market East LI)

Request: Rezone 22.92 acres from Office/Research/Industrial (ORI) to Limited Industrial (LI), and 77.89 acres from Residential-5 (R-5) to Limited Industrial (LI)

### Site of Rezoning Request

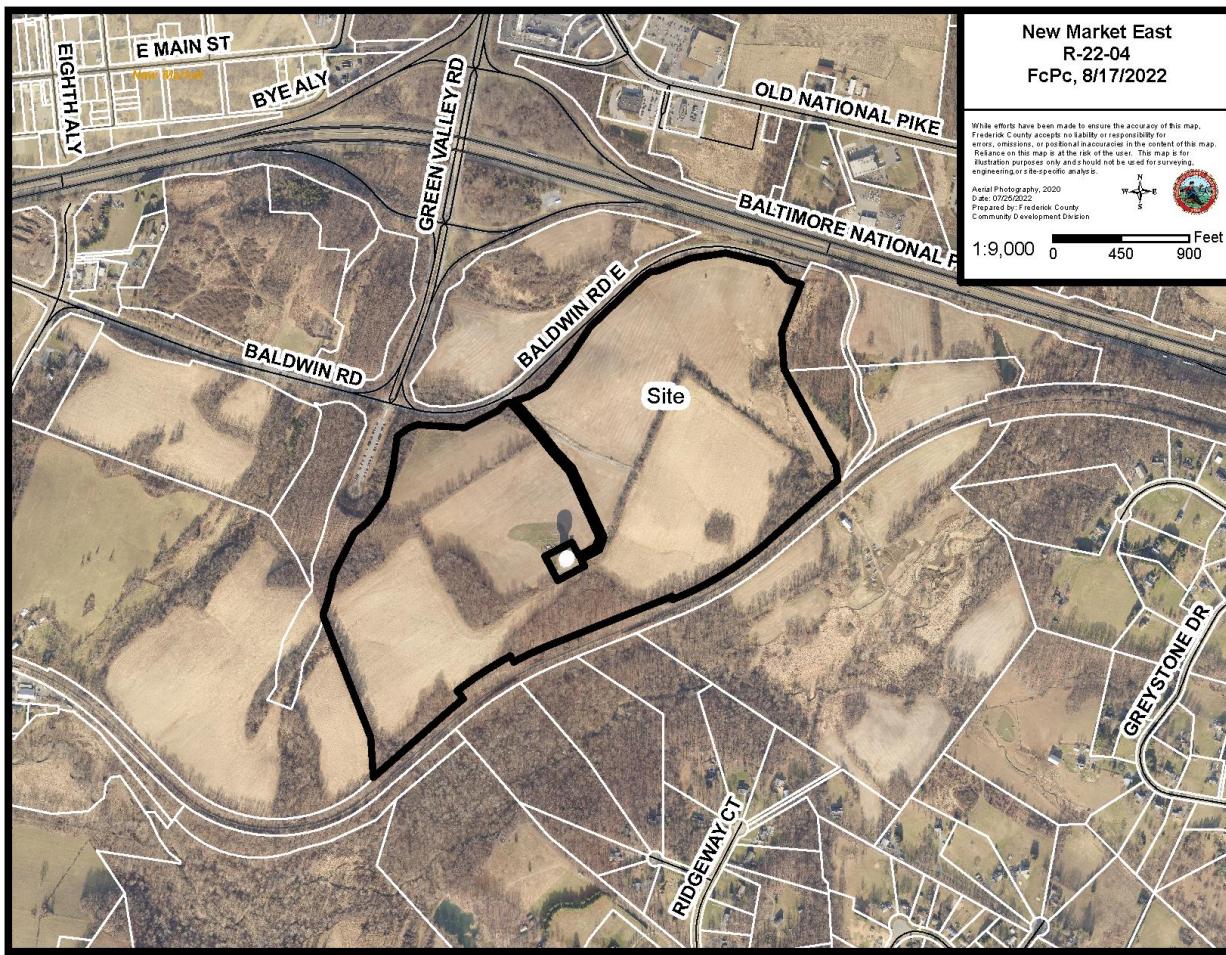


Figure 1 Aerial Map

## Applicant's Proposal

The Application proposes to rezone 77.89 acres from Residential-5 (R-5) to Limited Industrial (LI), and 22.92 acres from Office/Research/Industrial (ORI) to Limited Industrial (LI). The Applicant proposes to maintain 30.677 acres as Limited Industrial (LI), its current zoning classification. The Applicant is requesting the rezoning to allow for the development of a distribution center on the Site (see Attachment 1-Concept Plan).

The Site consists of a single parcel (south side of E. Baldwin Road; Tax ID # 09-317872) that is currently in agricultural use. No structures have been constructed on the Site. A single 1.7 acre outlot (not included in the Application) in the center of the Subject Parcel is the site of a County water tower.

The Applicant seeks a rezoning of the property, asserting that a substantial change in the character of the neighborhood has occurred since the County's 2012 Comprehensive Rezoning process and since the adoption of the Livable Frederick Master Plan in September 2019.

The Applicant has submitted a Concept Plan for a freight truck distribution center and it is the stated intention of the Applicant to pursue the development of the distribution center if the rezoning application is successful. However, it should be noted that the Applicant would not be constrained by this rezoning and that all uses available in the Limited Industrial zoning district would be available if the LI zoning classification were to be applied by the County Council.

# Application At-A-Glance

## What:

- Requesting a *piecemeal* rezoning (a change to the existing zoning map) of 100.81 acres of a 131.487-acre Site currently developed for agricultural use.
- Seeking to apply the Limited Industrial, or LI, zoning designation to the portions of the Site that are currently zoned Residential-5 (R-5, 77.89 acres) and Office/Research/Industrial (ORI, 22.92 acres). 30.677 acres of the Site are currently zoned Limited Industrial (LI), which the Applicant seeks to maintain with this Application.
- Although the land is designated on the County's Comprehensive Plan land use map for Office/Research/Industrial uses, it is currently in agricultural use.

## Where:

- The Site is located in the New Market Community Growth District (LFMP, 2019), and more specifically within the New Market Community Growth Area (County) and Town of New Market Annexation Area (Municipal) on the south side of E. Baldwin Road, near the MD 75 interchange with I-70.

## Why:

- The Applicant seeks to rezone the property to allow for the development of a distribution center.
- The current zoning of the site would not support the proposed use.

## How:

- The Zoning Ordinance allows an application for an individual (piecemeal) zoning map amendment to be filed by a property owner or a duly authorized agent of the owner, a contract purchaser, or any other person with at least a 50% proprietary interest in the property.
- The Applicant asserts as justification for the rezoning that a substantial change in the character of the neighborhood has occurred since the County's 2012 Comprehensive Rezoning process and since the September 3, 2019 adoption of the Livable Frederick Master Plan (LFMP).
- Section 1-19-3.100.4(B) of the County Code allows a request for an individual zoning map amendment if a finding is 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. This is referred to colloquially as the *change or mistake rule*.
- A rezoning application is subject to a two-step review process:
  - 1) *Planning Commission* conducts a public hearing to consider the application and accept public input, after which the Commission submits its recommendation to the County Council.
  - 2) *County Council* holds its own public hearing to consider the application and accept public input, after which it decides whether or not to amend the zoning map. The Council *may place certain conditions* on the property if it decides to approve a piecemeal rezoning request.
- The County is not required to approve a request for rezoning, even if all requirements have been satisfied.
- If the application is approved and the zoning is changed to LI, any specific development activity proposed for the Site will be subject to all of the normal review and approval processes required of proposed development, including Subdivision Plan and Site Development Plan reviews by the Planning Commission. The project would also be subject to other regulations such as the Adequate Public Facilities Ordinance that considers the capacity of schools, roads, and water/sewer service.

# Evaluation

## Threshold Criteria – ‘Change or Mistake’

As a threshold issue, 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 a substantial change in the character of the neighborhood, or a mistake in the existing zoning classification has been identified.

Physical changes to the character of the neighborhood surrounding the subject parcel have not occurred since the adoption of the LFMP in September 2019. Physical changes since the Comprehensive Rezoning process of 2012 have been limited to those anticipated in previous county and municipal plans and have not been demonstrated to have brought significant physical or visual changes to the neighborhood surrounding the Applicant’s property.

The current zoning classifications and boundaries on the Applicant’s property are those specifically requested by the Applicant in 2012 in Comprehensive Zoning Request CPZ11-NM-06. There was no mistake made by the legislative body at the time, since the Board of County Commissioners relied on recently completed comprehensive planning efforts approved less than 2 years prior.

## General Land Use Factors

**Mixed Use Development on ORI-Designated Land** – With the development and adoption of the 2010 Comprehensive Plan, the County sought to designate well-situated parcels along transportation corridors as Office/Research, with the knowledge that many landowners would pursue the application of the County’s MXD floating zone in order to take advantage of the array of uses available in a planned development district. The County maintained the ORI land use designation on the Applicant’s property in the 2010 Comprehensive Plan cycle. In 2010, the property’s zoning was changed maintaining approximately 20 acres of ORI and 111 acres of Agricultural (A). This approach was consistent with the planning strategy adopted by the Town of New Market which considered the New Market East property a likely candidate for annexation and the development of employment uses.

The Applicant-requested rezoning that was approved by the Board of County Commissioners in 2012 changed the zoning classifications to the current mix, but maintained the ORI land use designation thus permitting the MXD floating zone to remain a possibility for the Site.

**Limited Industrial Areas** – Lands zoned Limited Industrial (LI) in Frederick County often provide the land resource necessary to support local, or smaller, employers who require lands that can support equipment and supply storage, and freedom from the burden of surrounding business and residential uses that may be negatively impacted by industrial operations. Concerns over the shrinking supply of LI-zoned property have focused more on the need to maintain a geographically-distributed supply of lands, as opposed to the overall acreage available.

The Applicant’s site remains one that may be appropriate for Limited Industrial or other employment-oriented uses at some point in the future as the result of a Community or Corridor planning effort by the County, or through annexation and subsequent zoning reclassification by the Town of New Market.

**New Market Community District** – The 2019 Livable Frederick Master Plan identifies several Community Districts in the

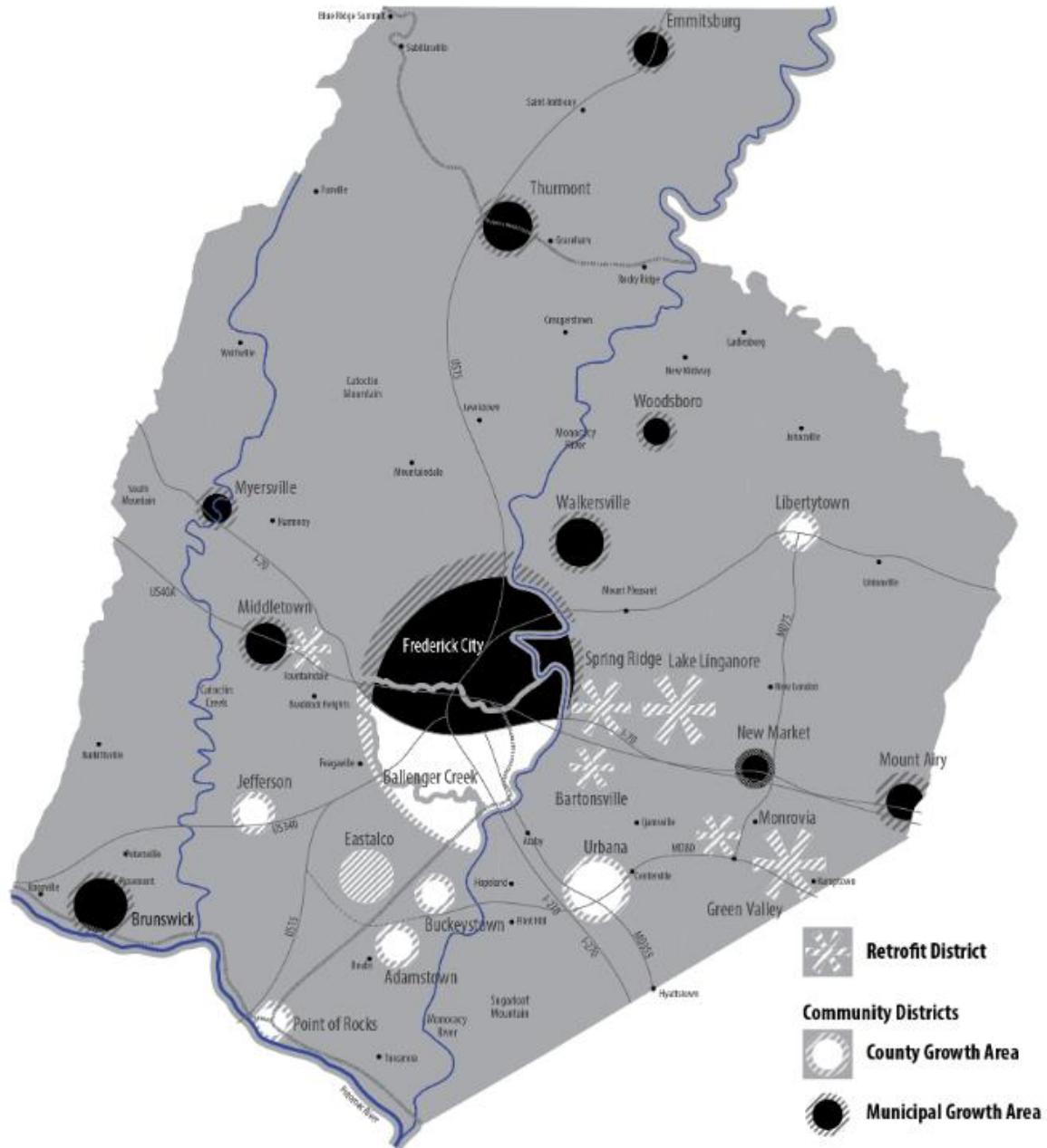
section titled “Development Framework.” Specifically, in describing the geography of growth patterns in the Secondary Growth Sector, the plan provides a description for growth and development surrounding both incorporated and unincorporated communities in Frederick County. (LFMP, Pages 46-47):

#### *Community Districts*

*As described above, the Community Concept is the growth strategy that has historically guided and structured growth in the county. Community Districts are the continuation of the traditional Community Concept strategy of directing growth into existing communities, many of which are municipalities that are served with water and sewer. In fact, this approach continues as the underlying strategy for all growth and development in the county.*

*Community Districts align with the many Community Growth Areas identified on the Comprehensive Plan Map. Most of these growth areas are designated around the many existing municipalities in the county. They focus on the creation of distinct places that: keep agricultural and natural landscapes intact; maintain safe, healthy, and vital neighborhoods; provide robust systems of public infrastructure; provide ample and convenient connections to parks, trails and natural landscapes; and, ensure excellence in design and efficiency.*

*Inherent to Community Districts is the intent that a share of future growth and development will continue to occur within and around existing communities and municipalities. Cities, towns, and unincorporated places will continue to grow and thrive with new growth and redevelopment opportunities.*



**Figure 2 The Secondary Growth Sector (LFMP)**

The Community Growth Area surrounding the Town of New Market – as mapped on the County’s Comprehensive Plan Map – acknowledges the Town’s growth boundary established in its own comprehensive planning efforts. New Market’s 2016 Master Plan identifies the New Market East site within its Annexation Area and specifically describes the parcel as one of eleven areas considered most practical for annexation within the 20-year time frame of its plan.

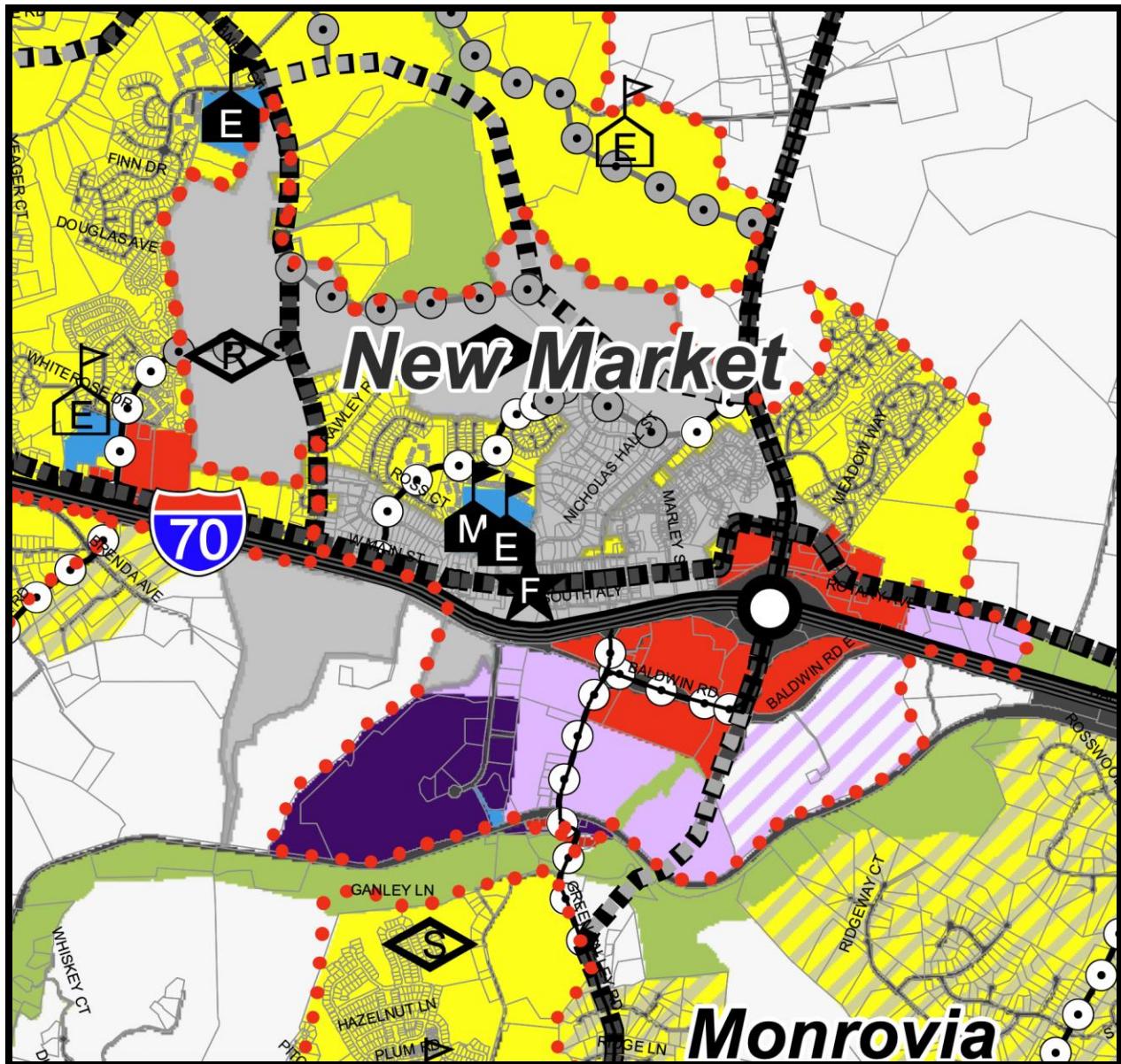


Figure 3 Excerpt of County's Comprehensive Plan Map

## Approval Criteria for Rezoning

The following sections of this report address each of the criteria set forth in Section 1-19-3.110.4 of the Frederick County Zoning Ordinance.

### Criterion A1. Consistency with the Comprehensive Plan

LFMP Development Framework - As mentioned previously, the Site is located within the New Market Community Growth Area and represents an opportunity for employment growth within an area generally supported by appropriate infrastructure and resources (existing and planned). The Site carries a land use designation of Office/Research/Industrial and can be considered staged for future rezoning to support development, if such development were to occur under the jurisdiction of Frederick County.

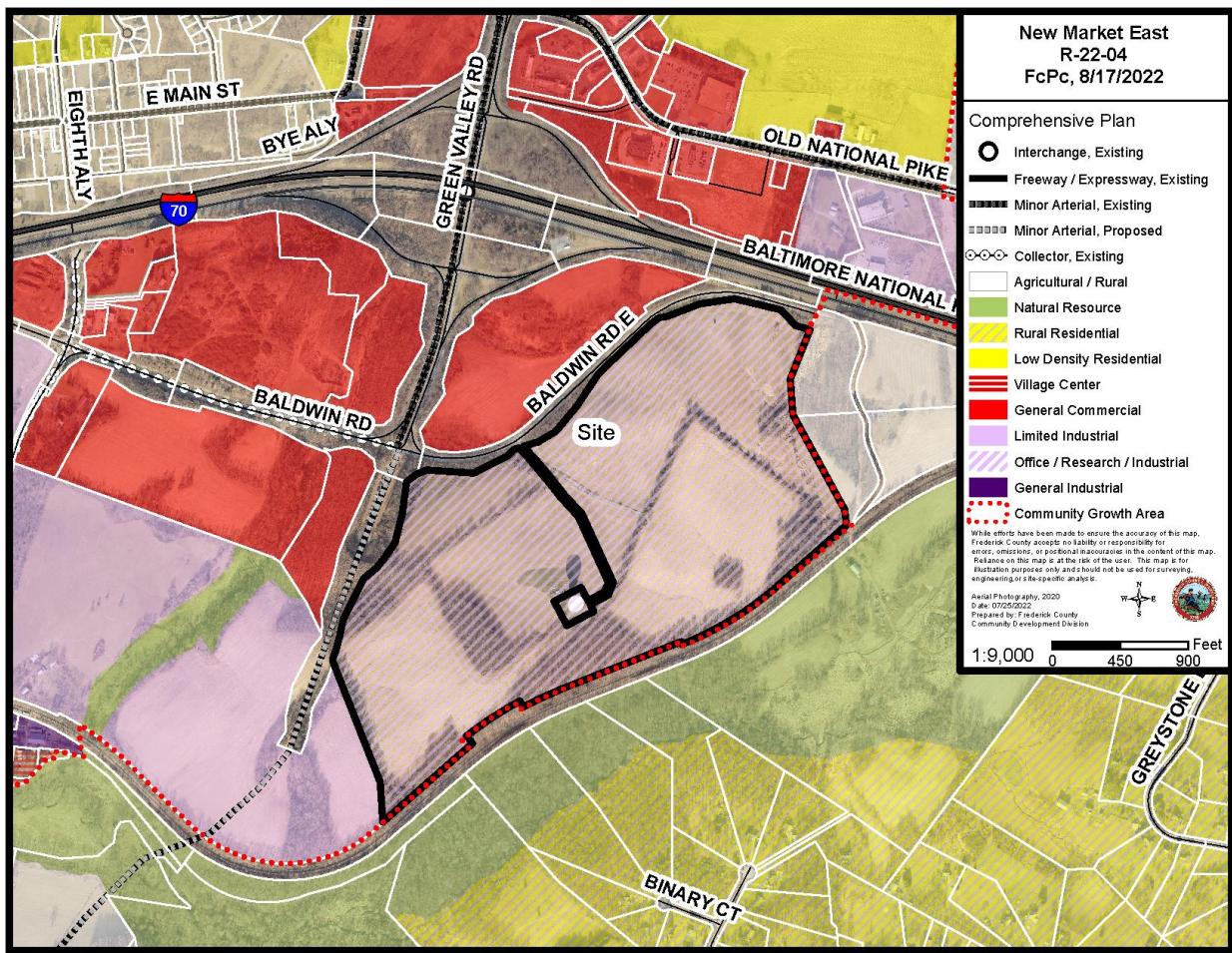


Figure 4 Comprehensive Land Use Plan Map

LFMP Vision Statement - The application of LI and other employment-based zoning to the Site is supported by the LFMP's Vision statement including the following notable points:

*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 Action Framework - There has not been a specific Community or Corridor Plan developed for the New Market Community Growth Area. However, the County does state its support for fostering collaboration with its municipal planning partners:

#### *1.1. Infrastructure Design*

*Goals in this category concern the planning, collaboration, and technical problem solving that ensures that the design of the physical form and spatial patterns of our transportation and public infrastructure provides the best match for the desired function, behavior, or outcome.*

##### *Goals*

###### *1.1.2. Planning Methods*

*Employ and develop up-to-date and appropriate methods to provide accountability as well as effective, efficient, resilient, and innovative planning and design.*

##### *Initiatives*

###### *1.1.2.1. Small Area Planning*

*Implement small area planning through the Community and Corridor planning process that targets areas that are within growth areas or along transportation corridors between growth areas.*

###### *1.1.2.5. Collaboration and Coordination*

*Foster cooperation, participation, and coordination within and between government agencies including municipalities, citizens, and other interested organizations when developing plans.*

Staff would consider the application of LI zoning to the Site to be partially-consistent with the Livable Frederick Master Plan and Comprehensive Plan Land Use Map since it would allow for potential employment growth in an area generally planned for such development. However, the proposal fails to remain consistent with a fundamental principle of the LFMP that establishes the Small Area Planning process as the correct and appropriate vehicle for implementing zoning changes intended to create the regulatory framework for new land use patterns in a particular planning area. Additionally, the Site is specifically identified as a potential annexation area in an adopted municipal master plan.

## **Criterion A2. Availability of Current and Planned Public Facilities**

An existing 18" water line is adjacent to the site. The proposed change in zoning would not significantly change the planned water demand for this property, acknowledging that LI zoning permits a wide range of uses. Water treatment capacity, adequate pressure, water storage volume, and piping alignments required to adequately serve this area must be analyzed by developer-funded engineering efforts and approved by the Division of Water and Sewer Utilities as part of any future

development or redevelopment processes.

The site would require an extension of sewer service from the Bush Creek Interceptor to the site. The proposed change in zoning would not significantly change the planned sewer demand for the site, acknowledging that LI zoning supports a broad range of potential land uses. Sewer collector and treatment capacity and piping alignments required to adequately serve this area must be analyzed by developer-funded engineering efforts and approved by the Division of Water and Sewer Utilities as part of future development or redevelopment processes.

Generally:

Water and sewer capacity is not guaranteed and is available on a first-come, first-served basis.

#### **Water Service**

Water would be supplied to the Site from the New Design Water Treatment Plant. This plant has a permitted withdrawal capacity of 16 million gallons/day (MGD) (average daily) and has a current average daily demand of approximately 6 MGD.

#### **Sewer Service**

Sewage treatment would be provided by the Ballenger-McKinney wastewater treatment plant (WWTP), which has a permitted capacity of 15 MGD and currently discharges into the Monocacy River. In 2020, average daily treatment flow at the Ballenger-McKinney WWTP was 7.3 MGD.

#### **Public Schools**

This proposed rezoning would have no direct impacts upon Frederick County Public Schools.

#### **Public Safety**

The Site is served by the following fire/rescue stations: New Market District Volunteer Fire Company – Station 15, and the United Steam Fire Engine Company - Spring Ridge – Station 33, and is located within the Division of Fire and Rescue Services (DFRS) New Market Planning Area. From the Frederick County DFRS Fire-Rescue Service Plan (CY2019-CY2029):

*The New Market Planning Area is a low risk fire – rescue service area that requires a basic level of fire and emergency medical service delivery capability to meet the current and potential service demand. Freight rail passes through the service area and high volume highway corridors include sections of I-70, MD 75 and MD 144.*

Future development of the subject Site may require additional fire and rescue service resources depending upon the proposed uses.

Construction funding for a new fire station in the Green Valley/Monrovia area is scheduled for FY2024 after completion of water and sewer line extensions in FY2023.

#### **Libraries**

Occupants of any approved development on this Site would be served primarily by the C. Burr Artz Library located in Downtown Frederick. A public library located in the Linganore Town Center area is scheduled for construction funding in FY2027. The proposed rezoning would not significantly impact library services or facilities.

#### **Parks**

Old National Pike Park, a County facility, is located approximately one mile from the Site. Several County and municipal park and recreation facilities are located within five miles of the proposed rezoning Site. The proposed rezoning would not significantly impact park and recreation facilities.

### **Criterion A3. Adequacy of Existing and Planned Transportation Systems**

The existing transportation network to immediately serve many of the uses available to owners of LI-zoned property in the vicinity of the Site is likely acceptable with minor localized improvements to E. Baldwin Road. However, the Concept Plan proposed by the Applicant provides more specific knowledge of the possible impacts on the transportation infrastructure from a 1.4 million-square-foot truck-based distribution center.

#### **Existing Site Access Characteristics**

The Site has approximately 3,000 feet of frontage along E. Baldwin Road, a 2-lane local roadway providing direct access to MD 75, at a point less than 1,000 feet from its interchange with I-70 (both eastbound and westbound access). The parcel also maintains frontage along the MDOT-SHA Park and Ride lot, which is located on the stubbed roadway of what was planned to be a southward extension of MD 75. Access to MD 144 (Old National Pike) is situated north of the I-70 interchange providing local access to New Market and Mount Airy.

Driveway access to the County water tower is located along the E. Baldwin Road frontage. The Concept Plan for the Distribution Center provided with this Application appears to propose a relocation of the water tower.

E. Baldwin Road provides sole access to two properties east and south of the New Market East Site, one of which is occupied by a single-family residence.

#### **Comprehensive Plan Map Designations for Adjoining Roads**

MD 75 (Green Valley Road) – Minor Arterial

I-70 – Interstate

Baldwin Road West – Collector

Baldwin Road East – Local/No designation

#### **Pedestrian and Bicycle Facilities**

There are no existing sidewalks along Baldwin Road East/West or MD 75. However, Baldwin Road West and MD 75 north of the intersection, have wide shoulders generally compatible for bicycle or pedestrian access.

#### **Planned Improvements**

Planned transportation improvements in the vicinity of the Site include the completion of the I-70/Meadow Road full movement interchange.

#### **Freight Rail Access**

Although the property borders the CSX freight rail right-of-way (the old main line of the Baltimore & Ohio Railroad) along its southern boundary, there is no direct existing rail spur or road access to the rail line. Any potential connection with the railroad would be developed privately between the landowner and CSX.

#### **Traffic Impact Analysis (TIA) Highlights**

*Trip Generation:* The proposed rezoning analyzed a trip generation associated with a warehouse/distribution center. The weekday peak hour trips this type of use would generate, per the ITE Trip Generation Manual, 11<sup>th</sup> Edition, is 208AM and 222PM trips. The proposed distribution and assignment patterns for passenger vehicles and truck trips were considered as part of the Traffic Impact Analysis (TIA). Due to the height restriction on MD 75, south of Baldwin Road West, truck trips are restricted from using this route and

assigned to the I-70 interchange. The passenger vehicle traffic distribution was dispersed along I-70 and the local road network.

The Applicant is seeking a change of zoning that would enable access to many types of potential land uses, and would not be limited to those described in the TIA. Further evaluation by MDOT-SHA and the County at the time of APFO may result in additional transportation improvement considerations.

*Site Access:* Multiple site access locations to Baldwin Road East are anticipated and were analyzed as part of the TIA. No access was considered to MD 75, which is proposed to be realigned and relocated in the future, along the western property line of the Site.

*Signal Operation:* All existing signals studied in the TIA operate now, and will continue to operate, at acceptable levels of service.

*Unsignalized Intersections:* All existing unsignalized intersections studied in the TIA operate now, and will continue to operate, at acceptable levels of service.

### **Transportation Summary**

Transportation network adequacy was shown to meet acceptable levels of service, as displayed in the rezoning TIA, based on the proposed warehouse/distribution use. The proposed rezoning and associated development would be expected to coordinate and provide the necessary road improvements or pro-rata escrow contributions based on the development and trip generation ultimately proposed at the time of APFO. Transportation network adequacy will likely be achieved through a combination of planned improvements and pro-rata escrow shares; however, further evaluation by MDOT-SHA and the County at the time of APFO may result in the consideration of additional transportation improvements.

### **Criterion A4. Compatibility with Existing and Proposed Development**

Adjoining land uses include agricultural and rural residential uses to the south and east, commercial and industrial uses to the west, and commercially-zoned properties to the north. The I-70 corridor essentially forms a northern land use barrier to more intensive commercial and residential uses associated with the Town of New Market north of I-70.

The proximity of the I-70 interchange (at MD 75) to the proposed rezoning Site is highly compatible with uses typically associated with the Limited Industrial zoning district in Frederick County.

Staff finds the proposed LI zoning to be generally compatible with surrounding zoning and land uses to the extent that any future uses on this Site will be reviewed and approved in consideration of potential negative impacts on proximate residences and agricultural or industrial operations.

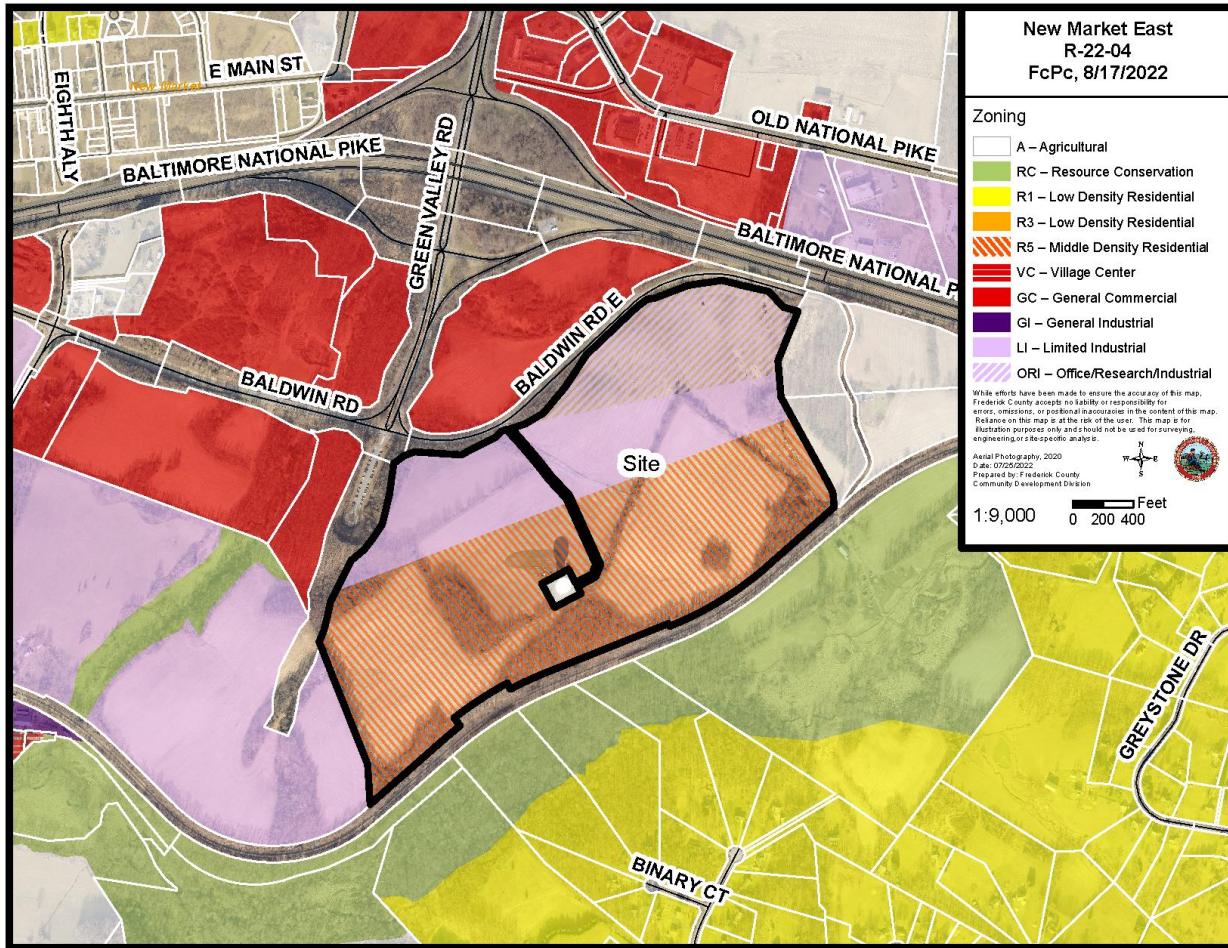


Figure 5 Zoning Map

#### **Criterion A5. Population Change, Including Availability and Location of Land Zoned to Meet the Ten-Year Need for Residential Development**

The Applicant is proposing a non-residential rezoning of the property.

Indirect impacts of this rezoning include the potential increase in the number of employees who may wish to live closer to their place of work. However, this proposed rezoning will have no direct impact upon population change, as it is understood in Criterion A5.

#### **Criterion A6. The Timing of Development, Planned Future Transportation Systems and Planned Public Facilities**

The Application does not propose a specific schedule for development of the Site. There is existing road access and capacity to likely allow for development of the Site to occur imminently. The combination of existing road conditions and planned improvements demonstrate that the adequacy of the transportation network would likely meet acceptable levels if the Site were developed as a distribution center. As noted in the discussion of Criterion A2., public water and sewer service to this property is not currently available and there are no County Capital Improvement Program (CIP) projects planned to extend

water or sewer mains to the parcel. However, points of physical connection to these systems exist within  $\frac{1}{4}$  mile of the proposed rezoning Site. Water treatment capacity, adequacy of water pressure, water storage volume, and piping alignments required to adequately serve the parcel must be analyzed by developer-funded engineering efforts and approved by the Division of Water and Sewer Utilities as part of the future development process, as will sewer collector and treatment infrastructure necessary to provide public wastewater treatment to the Site. The Site will ultimately be subject to subsequent subdivision, site plan, and APFO review, if rezoned.

### **Criterion A7. Sensitive Environmental Resources Have Been Identified and Impacts to These Resources are Avoided or Minimized to the Maximum Extent Practicable**

The Site is currently developed for agricultural uses although there are no agricultural structures present on the Site. The parcel is sparsely vegetated with most of the mature vegetation occurring along the intermittent stream that runs north-south through the property along its eastern edge. There is no mapped FEMA floodplain on the property. Application requirements of the Forest Resource Ordinance would reveal any specimen trees or forest resources present on the Site. The highest elevation areas on the parcel are located on either side of the water tower access drive (560 ft), with lower areas located along the railroad right-of-way along the southern property boundary (450 ft).

Based upon the Concept Plan (see Attachment 1) submitted as part of this Application, the post-development condition of the Site would result in impervious surface coverage of most of the parcel's land area (buildings, vehicular access, and truck/vehicle parking).

### **Criterion A8. Historic Resources Have Been Identified and Impacts to These Resources are Avoided or Minimized to the Maximum Extent Practicable**

No historic or cultural resources have been identified on the Site.

### **Criterion B. 'Change or Mistake'**

As a threshold issue, approval or disapproval of a request for an individual zoning map amendment shall be granted **only** where a finding has been made, based upon record evidence, that there was a substantial change in the character of the neighborhood, or a mistake in the existing zoning classification has been identified.

### **Criterion B1. A Substantial Change in the Character of the Neighborhood Where the Property is Located**

A determination as to whether or not a "substantial change" has occurred cannot be based upon activities that have occurred as a result of an approved Comprehensive Plan and Comprehensive Rezonings. The most recent comprehensive planning document in Frederick County is 2019's Livable Frederick Master Plan. This factor is critical in determining whether the Application meets this criterion since changes that are anticipated in a comprehensive planning document are implemented in the period following adoption of the document in order to achieve the vision articulated in the plan and cannot be considered.

Physical changes to the character of the neighborhood surrounding the subject parcel have not occurred since the adoption of the LFMP in September 2019. Physical changes since the Comprehensive Rezoning process of 2012 have been limited to those anticipated in previous county and municipal plans and have not been demonstrated to have brought significant

physical or visual changes to the neighborhood surrounding the Applicant's property. The Applicant concurs with this notion as indicated on Page 8 of the Justification Statement:

*"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...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."*

### **Criterion B2. A Mistake in the Existing Zoning Classification**

Quoting a sentence from a July 2012 Staff Report entitled 2011 Comprehensive Plan and Zoning Review Approved Requests Analysis, the Applicant asserts that a mistake in the zoning of the property occurred due to the 'arbitrary' locations of the current zoning boundaries on the Site. However, **these current zoning boundaries are those specifically requested by the Applicant in 2012 in Comprehensive Zoning Request CPZ11-NM-06.** There was no mistake made by the legislative body at the time, since the Board of County Commissioners relied on recently completed comprehensive planning efforts approved less than 2 years prior. To quote the Applicant's own Justification Statement (Page 7):

*"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."*

Therefore, neither Criterion (B) (1) or (2) are satisfied in this case, and the other factors discussed above (A) (1)-(8), are irrelevant.

## Summary of Findings

### § 1-19-3.110.4 (A) (Approval Criteria for Zoning Map Amendments)

#### (1) Consistency with the comprehensive plan;

The Site is designated Office/Research/Industrial on the current Comprehensive Plan Map which is generally inconsistent with the application of the Limited Industrial (LI) zoning district. The corresponding zoning district for lands designated ORI on the Comprehensive Plan Map is Office/Research/Industrial (ORI) which also permits the application of the Mixed Use Development (MXD) floating zone upon application by a landowner. The Site is located within the Secondary Growth Sector, the New Market Growth District, and the New Market Community Growth Area. The Site is also located in the Town of New Market's mapped Annexation Area. The proposal would be partially inconsistent with the Livable Frederick Master Plan, as noted in these specific components:

The LFMP Development Framework (timing mechanisms via community/corridor planning); and, Key Goals and Initiatives stated in the LFMP Action Framework (p. 94 Planning Methods, Collaboration and Coordination).

Some comprehensive plan consistency is maintained through goals and initiatives that promote employment uses and strive to support a diverse inventory of appropriate business locations (LFMP, p. 163).

Overall, the Application remains inconsistent with the County's comprehensive planning efforts by attempting to rezone a property within an identified community growth area that is not subject to a community or corridor plan, and is specifically identified as a potential annexation area in an adopted municipal master plan.

#### (2) Availability of current and planned public facilities;

The rezoning of this Site would have no direct impact on schools, and would 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. Both systems currently have adequate treatment and supply capacity to serve many uses permitted in the LI zoning district. The County's current Water and Sewer Plan designations for the Site are W-4/S-4.

#### (3) Adequacy of existing and planned future transportation systems;

Transportation network adequacy will likely be achieved through a combination of planned improvements and pro-rata escrow shares; however, further evaluation by MDOT-SHA and the County at the time of APFO may result in the consideration of additional transportation improvements.

#### (4) Compatibility with existing and proposed development;

The proposed LI zoning is generally compatible with surrounding zoning and land uses to the extent that any future limited industrial uses on this Site would be reviewed and approved only after consideration of potential negative impacts on proximate residences and agricultural or industrial operations.

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

The proposed rezoning will have no direct impact upon population change, as it is understood in Criterion A5.

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

The Application does not propose a specific schedule for development of the Site. There is existing road access and capacity to likely allow for development of the Site to occur imminently. The combination of existing road conditions and planned improvements demonstrate that the adequacy of the transportation network would likely meet acceptable levels after development of the Site as a distribution center. Public water and sewer service to this property is not currently available and there are no County Capital Improvement Program (CIP) projects planned to extend water or sewer mains to the parcel. However, points of physical connection to these systems exist within ¼ mile of the proposed rezoning Site. Water treatment capacity, adequacy of water pressure, water storage volume, and piping alignments required to adequately serve the parcel must be analyzed by developer-funded engineering efforts and approved by the Division of Water and Sewer Utilities as part of the future development process, as will sewer collector and treatment infrastructure necessary to provide public wastewater treatment to the Site.

If rezoned, the Site will be subject to subsequent subdivision, site plan, and APFO review.

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

The Site of the proposed rezoning is currently developed for Agricultural use. Any applicable regulations regarding Environmental Site Design, FRO (including specimen trees), or other sensitive natural resources would be addressed at the time of subdivision and site plan review. Existing FEMA floodplain and stream buffers would be addressed at the time of plan review.

The development of the Site as a distribution center would result in most of the parcel's land area being covered by impervious surfaces (buildings, access driveways, parking/loading areas).

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

No impacts to historic resources have been identified.

(B)(1) A Substantial Change in the Character of the Neighborhood Where the Property is Located.

The Applicant has presented no evidence that any substantial physical or significant visible changes to the character of the neighborhood have occurred since the last Comprehensive Plan update (*Livable Frederick Master Plan*, September 2019) – as the Applicant has acknowledged in their Justification Statement (Page 8, paragraph 3) – since the 2012 County Comprehensive Rezoning, when the Applicant requested the zoning classifications currently in place on the Site.

(B)(2) A Mistake in the Existing Zoning Classification.

The Applicant has asserted that there is a mistake in the current zoning due to the configuration of current zoning classification boundary lines. However, Staff has found no mistake in the current zoning of the Site, and notes that the current zoning boundaries were requested by the Applicant and established by the County's legislative body at the time, the Board of County Commissioners, as part of a Comprehensive Rezoning Process undertaken less than two years following the adoption of a countywide Comprehensive Plan. The current zoning classifications on the Site, including the boundaries of those districts as applied to the Site in 2012, **are those requested by the Applicant in 2012 as**

**Comprehensive Zoning Request CPZ11-NM-06** (RJD Development Corp.). Therefore, Criterion (B)2 does not apply in this case.

## Planning Commission Review and Action

The Planning Commission makes its recommendation to the County Council, basing its findings on the information in the record, including testimony presented at the hearing. Such findings shall be based upon review of the Approval Criteria as set forth in §1-19-3.110.4.

When approval criteria call for findings of consistency with the County's comprehensive plan, the Planning Commission shall consider the Livable Frederick Comprehensive Plan which includes the *Livable Frederick Master Plan* (2019), the *Comprehensive Plan Map* (Land Use Map), and other plan elements as adopted by the County Council.

### § 1-19-3.110.4. APPROVAL CRITERIA. (for Zoning Amendments)

(A) Approval or disapproval of a request for an individual zoning map amendment 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**;
- (2) Availability of current and planned **public facilities**;
- (3) Adequacy of existing and planned future **transportation systems**;
- (4) **Compatibility** with existing and proposed development;
- (5) **Population change**, including availability and location of land zoned to meet the ten-year need for residential development;
- (6) The **timing of development**, planned future transportation systems and planned public facilities;
- (7) **Sensitive environmental resources** have been identified and impacts to these resources are avoided or minimized to the maximum extent practicable; and
- (8) **Historic resources** have been identified and impacts to these resources are avoided or minimized to the maximum extent practicable.

(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 to the character of the neighborhood where the property is located; or,
- (2) A mistake in the existing zoning classification.

The Planning Commission shall forward its recommendation to the County Council within 62 days of its first public hearing. A failure to make a recommendation within 62 days of the first public hearing shall be deemed as providing no recommendation on the request.

## Options for Planning Commission Action

After consideration of all of the evidence in the record, the Planning Commission may take either of the following actions regarding this application:

1. If there is sufficient evidence in the record to support a finding of change in the character of the neighborhood, the Planning Commission may, but is not required to, recommend approval of the application.
2. Recommend denial of the application.

## **Proposed Conditions**

Section 1-19-3.110.5 of the Zoning Ordinance allows the County Council impose conditions upon the granting of a zoning map amendment:

*The County Council may impose, upon the granting of a zoning map amendment or floating zone reclassification, such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, enhance, or protect the general character and design of the lands and improvements being zoned or rezoned or of the surrounding or adjacent lands and improvements. The county may, upon the zoning or rezoning of any land, retain or reserve the power and authority to approve or disapprove the design of structures, construction, landscaping or other improvements, alterations and changes made or to be made on the subject land or lands to assure conformity with the intent and purposes of this chapter. Conditions imposed or requested may not include the prohibition of any uses expressly permitted in the requested zoning district.*

Should the Planning Commission decide to recommend approval of this application, the Commission may recommend conditions for the approval provided those conditions do not prevent any other uses allowed in the Limited Industrial (LI) zoning district.

## **Attachment 1:**

Concept Site Plan-New Market East Distribution Center

May 31, 2022

