

From: [Nick Carrera](#)
To: [Planning Commission](#)
Cc: [Council Members](#); [County Executive](#)
Subject: Commission hearing on Case #R-22-03, Windridge farm rezoning, 2/08/2023
Date: Sunday, February 12, 2023 10:25:32 PM

[EXTERNAL EMAIL]

Planning Commissioners,

I have comments regarding the subject hearing I attended last week, on February, 8, 2023. I hope they will be helpful in conducting future hearings.

The issue for this hearing was a request for rezoning of a property adjoining the Eastalco site, now owned by Quantum Loophole and slated for a huge development of data centers (some claim that, when finished, it will be the largest concentration of data centers in the world, even without the "me-too" data centers that the Windridge decision portends). In Virginia, property values have soared into millions of dollars per acre -- in Ashburn last October, 10 acres sold for \$27 M to Vantage Data Centers, a company in Colorado. With so much money on the line -- or even a fraction of it -- the Windridge rezoning request is only the beginning of a gold rush here in Frederick. Because it paves the way and sets the example for future requests, it is unfortunate that greater care was not given to this decision.

As I read the staff report, the case looked simple. Under county regulations, the applicant had to prove -- *prove* -- either that the current zoning had been a mistake, or that a significant change in the neighborhood had occurred (details for this criterion are spelled out in the regulations). Note: *the criterion was whether significant change had occurred in the neighborhood, not whether it will occur or may occur in the neighborhood*. The applicant did not claim a zoning "mistake," so he was trying the "significant change has occurred in the neighborhood" route.

The county planning staff presented its report, which ended with the clear conclusion that the applicant had not met the criterion for rezoning. The applicant then offered his case, an extensive video presentation narrated by a lawyer. The presentation focused on *change that was expected to occur* in the neighborhood. There were impressive pictures of trenching activity and cable being buried, not at Eastalco, but expected eventually to reach the Eastalco site. There was discussion of the grand build-out of data centers to be expected at Eastalco; but none is there yet. In short, the talk was on what *will change* the neighborhood, not on what *has changed it*. Applicant offered several times that the request for rezoning was to get "an early start" on the change to come.

Next it was the turn of county citizens. There were perhaps a dozen of us there, and all had testified in opposition to the rezoning, when another person suddenly appeared. He claimed wide and relevant experience, and spoke strongly in favor of the rezoning. You might have been surprised at the questions the applicant's lawyer then had for this man; but first, a word about prior questions and cross-examining.

A comment early in the hearing was that this kind of rezoning request was rare. Commissioners asked for clarification and examples to help them understand the case and how precedents might bear on it. To my recollection, only one example could be offered by county staff, and in that case, the outcome was unfavorable to the applicant. The applicant's lawyer,

however, was quick to offer *possible* scenarios that would go the other way. Our county lawyer seemed unable to provide explanation or examples that would have been useful. So we were left mainly with one side's interpretation. To my surprise, Commissioners did not ask for, and planning staff did not offer, a better defense of the carefully substantiated report the county had prepared, which recommended denial of the rezoning request.

There was a question to one of the citizens that I thought shocking and out-of-line. It was clear to all, and was even acknowledged, that the rezoning would allow the applicant to sell his land for a data center, so most of the citizen commentary was about the undesirable aspects of data centers. After one citizen had offered such commentary, one of the Commissioners challenged him, asking what he would prefer instead of a data center. This question was improper. The question facing citizens and Commissioners alike was this -- Did the applicant meet the criterion for rezoning? It is not up to citizens to propose a better use of that land; the Commissioner's question, I say again, was entirely improper.

Now a word about the cross-examination of the surprise witness. The applicant's lawyer had asked only a few questions of other citizen commenters, but for this one he was ready with a special list. What followed was clearly pre-arranged. The commenter had prepared the groundwork with his claim of relevant expertise. The applicant's lawyer then put questions preceded with, "In your professional opinion ..." His clincher was something like, "In your professional opinion, have significant changes occurred in the neighborhood of this property?" You know his answer, and if you want the lawyer's exact wording, just ask him for the list of questions he was reading from.

One final observation, which perhaps excuses in part the failings I have brought to your attention. All this occurred at the end of a very long day for both Commissioners and staff. The session had begun at, I think, 9:30 in the morning, the dinner break was briefer than usual, and by the time the decision came due it was late in the evening. With everyone feeling more than a little weary, that was not the right time to render a momentous decision like this one. I suggest that, under similar conditions, the Commission postpone its decision until their next morning meeting.

I hope my comments will be of help to future meetings that deal with issues likely to have such an important impact on our county.

Nicholas Carrera; 2602 scenic Thurston Rd, Frederick 21704

From: [Planning Commission](#)
To: [Gaines, Kimberly](#); [Superczynski, Denis](#)
Subject: FW: Did the last speaker take the oath?
Date: Monday, February 13, 2023 1:48:46 PM

-----Original Message-----

From: Nick Carrera <mjcarrera@comcast.net>
Sent: Wednesday, February 8, 2023 11:05 PM
To: Planning Commission <PlanningCommission@FrederickCountyMD.gov>
Cc: Carrera, Nicholas <mjcarrera@comcast.net>
Subject: Did the last speaker take the oath?

[EXTERNAL EMAIL]

It just hit me after I got home: the "plant," the speaker who appeared at the end out of nowhere so Manalo could ask his pre-arranged "in your professional opinion" questions -- had he been sworn in? I don't remember seeing it, but you probably checked.

Interesting evening. Natelli's presence there I guess means he'll be the next one to apply, especially if this applicant is successful and thereby "changes the neighborhood" so Natelli's rezoning request can be a no-brainer (funny, that's an apt description).

Crazy things happen in a gold rush!

Will the vote be recorded on your web site?

Best regards, and we'll meet again next week.

Nick Carrera

From: [Planning Commission](#)
To: [Gaines, Kimberly](#); [Superczynski, Denis](#)
Subject: FW: Thank you
Date: Monday, February 13, 2023 1:48:01 PM

Sharing

From: Cheryl-Lynne Stunkel <drybranchhollow@yahoo.com>
Sent: Wednesday, February 8, 2023 10:50 PM
To: Planning Commission <PlanningCommission@FrederickCountyMD.gov>
Subject: Thank you

[EXTERNAL EMAIL]

My name is Cheryl Stunkel and my husband spoke last night. I wanted to but have such anxiety. I want to say thank you for listening. I also want you to know that we are not against data centers in general. Just the farm that wants to cash in so to speak. And yes, that data center will forever be in our yard as they have to out in "man hole" for repairs and such. They will be buried BUT they will have to dig them up from time to time which is bad for the soil. But with all said and done, something that you may not know. Although they are following the Potomac Edison lines, they do NOT have permission to use there entrances to get TO the lines. I can't imagine the mess on the main road if that farm sells to another data center. QLoop had said they will make it so it "looks" natural. I know we are talking about two different things. I just had to get this off my mind and was too anxious last night.

Thank you again for listening.

Thank you!

Cheryl Stunkel

240-367-7533

Drybranchhollow@yahoo.com

Facebook: Dry Branch Hollow

From: [Planning Commission](#)
To: [Craig Hicks](#); [Joel Rensberger](#); [Trekker The Boingo](#); [cjaarsepe](#); ["masai@masai-tech.com"](#); [Robert White](#); [BETH TRESSLER](#)
Cc: [Gaines, Kimberly](#); [Superczynski, Denis](#)
Subject: FW: Windridge Farm Rezoning Request
Date: Monday, February 6, 2023 3:04:58 PM

Comment received:

From: Brian Unruh <brianedwardunruh@gmail.com>
Sent: Monday, February 6, 2023 2:44 PM
To: Planning Commission <PlanningCommission@FrederickCountyMD.gov>
Subject: Windridge Farm Rezoning Request
[EXTERNAL EMAIL]

Frederick County Planning Commision:

My name is Brian Unruh. My wife Karen and I live in Adamstown, just south of Buckeystown, Maryland. We moved here in 2018 after living for twenty-six years in Montgomery County, Maryland. We truly enjoy Frederick County's rural, agricultural environment...

I learned recently that on 8 February you will be considering a request to rezone the Windridge Farm, from Agricultural to General Industrial, to make way for a datacenter next to the QuantumLoophole/Eastalco site. My understanding is that such a request assumes that a mistake was made during the original zoning and/or the character of the neighborhood has changed substantially. Given that neither of these has occurred, I would hope the Planning Commission will deny the rezoning request in short order.

I would hate to see Frederick County's woods and fields and farmland taken over by industrial buildings, asphalt parking lots, and urban sprawl. Frederick County is beautiful. Please keep it that way. Please deny the Windridge Farm rezoning request and resist any effort to rezone and/or further develop the wild areas west of I-270.

Thank you for your consideration.

Brian E. Unruh

From: [Sean Kirchhoff](#)
To: [Planning Commission](#)
Subject: Planning Meeting Feedback for Evening of 2/8
Date: Wednesday, February 8, 2023 3:10:58 PM

[EXTERNAL EMAIL]

Hello Planning Commission,

I have learned that there is a zoning map under consideration in tonight's meeting, Case # R-22-03, regarding Windridge Properties, LLC.

I am strongly opposed to the approval of this application. Our portion of Frederick County is still mainly farmland, and should remain as such. Despite the approved Quantum Loophole development near this Windridge property, it is not a part of their development plan, and there is no other reason for changing the zoning of this land.

According to the Staff Report, Criterion B has not been met, as there has not been a substantial change to the character of the neighborhood (B1), nor was there a mistake in the zoning of this site (B2).

Please do not approve this zoning change. We need to preserve and maintain our farming areas, and continue to keep our beautiful rural spaces consistent with the natural landscapes that surround us.

Sincerely,
Sean Kirchhoff
Adamstown, MD

From: Brian R. <brianaricketts@gmail.com>
Sent: Tuesday, February 14, 2023 8:27 PM
To: Brian R. <brianaricketts@gmail.com>
Subject: Windridge Properties rezoning app.

[EXTERNAL EMAIL]

Dear Sir or Madam,

I am a current resident in Adamstown and have lived on my farm since 2002 and plan to live out my life with my wife in the beautiful valley of Adamstown. Recently you received a recommendation to rezone the Windridge Properties from AG to GI. I read through the Staff Report and I have a few points to make. The Planning Commission has already voted to recommend the rezoning without paying attention to the criteria for such change for rezoning. The public hearing lasted until about 10:30pm that night and I'm sure people were tired. One planning commissioner stated that she was not in favor of it, but said that she would be outvoted so she voted for the recommendation. A couple of the planning commissioners were pushing things through without regard for the criteria that's been established for rezoning a property. I have included the criteria stated in the Staff Report.

As stated on page 14 of the Staff Report under section **Criterion B. "Change or Mistake" :**
"Approval of a request for an individual zoning map amendment may 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."

The applicant is not applying under a mistake being made, but a substantial change has been made to the neighborhood.

I just want to point out that it states that a substantial change must have been made already and not future changes.

Criterion B1.

"A determination as to whether or not a "substantial change in character of the neighborhood" has occurred cannot be based upon activities that have occurred as a result of an approved Comprehensive Plan. The most recent comprehensive planning document in Frederick County is 2019's Livable Frederick Master Plan."

Written right below this criterion from the staff:

"Physical changes to the character of the neighborhood surrounding the subject parcel have not occurred."

Under section B (1)

"There is no evidence that any substantial physical or significant visible changes to the character of the neighborhood have occurred that are not the result of and in accordance with prior Comprehensive Plans or since the last Comprehensive Plan update (Livable Frederick Master Plan, September 2019)"

The applicant tries to make a case for Frederick County acknowledging a change in the character of the neighborhood because the Planning Department made a recommendation of advanced

designation of "Planned Services" in the Water and Sewage Plan, but those are only plans, not current changes.

The applicant also tries to argue using case law.

I. Introduction

A. Maryland Case Law on "Substantial Change in the Neighborhood"

Third paragraph down:

"...the character of the neighborhood evolves more from uses of the property in the neighborhood, rather than the rezoning of the property where such rezoning has not been acted upon"

Currently the majority of the Quantum Loophole property is zoned GI and has been since Eastalco owned and operated on that same site. No business has been developed on the property currently, no buildings have been constructed, nor has any site plan been submitted for review. When Quantum Loophole starts selling off parcels of their land for development of data centers, the use will actually remain GI. So there has been no change to date nor will there be any change of use when the data centers are erected and in operation.

Most of the changes that the applicant makes note of are prior to that last Comprehensive Plan or he also lists plans for change, but no change has been made to date. The Eastalco buildings that were taken down on that property were taken down and removed in 2017, before the latest comprehensive plan, so that does not fit the criteria of change since the last comprehensive plan, which was in 2019.

I feel that ignoring or not adhering to the criteria set forth for change of rezoning a property will lead to every other property owner nearby wanting to change their zoning because this case sets a precedent for other property owners. Why have criteria if you don't follow it? The applicant is premature in his request since there have been no significant changes to the Quantum Loophole property to date.

Thank you for your time.

*Thank you,
Brian Ricketts*

Don't you realize that in a race everyone runs, but only one person gets the prize? So run to win! Cor. 9:24-25

Owner



Damascus & Ballenger Creek
301-253-2400 & 301-228-0990

TO: Frederick County Council Member, Mason Carter
FROM: L.D. Romane, M.D. (6401 Manor Woods Road, Frederick, MD)
DATE: February 10, 2023
RE.: Planning Commission Rezoning Case R-22-03
SUBJECT: Commission errors

On 2/8/23, Frederick County's Planning Commission made 3 errors in granting a rezoning. This overturned their staff's negative recommendation. Highlighting these errors will, hopefully, prevent you from perpetuating their mistakes.

Windridge Properties LC & Windridge Farms LLC applied for "piecemeal rezoning" of 223.54. acres of Agricultural Land (A) to General Industrial (GI). The property is off the intersection of Ballenger Creek Pike and Manor Woods Road in the East Alco area.

The three errors are defined by (a) Traffic Safety, (b) English grammar, and (c) Misunderstanding of their own staff analysis paper.

- (a) Error #1 (Safety): Manor Woods Road has two lanes, no shoulder, no passing, and a 30 mph speed limit. It is also the fastest shortcut to I-270 South. The Commission passed the rezoning without requesting a Traffic Safety Study.
- (b) Error #2 (Grammar): Commission staff analysis (page 14 – Item B) says: "approval of a request...may be granted only where a finding has been made that there was a substantial change in the character of the neighborhood. Both underlines indicate past tense. Planning staff agreed the required neighborhood changes have not occurred. Applicant's counsel had a slide show describing how rezoning would change the character of the neighborhood. That's future tense.
- (c) Error #3 (Commission misunderstanding of page 14 – Item B-1): The last sentence of paragraph one clearly says assertions of a comprehensive planning document "cannot be considered in analysis" for rezoning. Neither the Planning members nor their legal counsel understood this and repeatedly said so on the record.

Please consider this carefully. Your promise of "preservation of greenspace" shouldn't start with faulty rezoning of a working farm to General Industrial.

Sincerely,



Larry D. Romane, M.D. (romdiver@gmail.com)

RECEIVED

FEB 23 2023

Office of the
County Council

Frederick County Council
12 E Church St.
Frederick, MD 21701

3-6-2023

RE: Letter of support for rezoning case# R-22-03

Dear Frederick County Council Members:

Please accept this letter of support in favor of rezoning case# R-22-03 covering the Windridge property located at 3681 Cap Stine Rd, Frederick MD 21703. The Noffsinger Family Farm is at 3937 Cap Stine Rd and this property neighbors 3681 Cap Stine Rd. As such we are potentially directly impacted landowners of this rezoning case and we support the applicant's request to have the property rezoned to General Industrial. We understand that one of the potential uses allowed under the General Industrial zone is the construction of large data center buildings as well as other large scale industrial uses.

Sincerely,

David Noffsinger 3-12-23
Dolly Noffsinger Sullivan 3/12/23

Lois B. Noffsinger Spurrier Trust
David Noffsinger, TTEE
Dolly Noffsinger Sullivan, TTEE
3309 Cap Stine Rd
Frederick MD 21703

Real Property Data Search ()
Search Result for FREDERICK COUNTY

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 01 Account Number - 010190

Owner Information

Owner Name: SPURRIER LOIS B NOFFSINGER TR Use: COMMERCIAL/RESIDENTIAL
NOFFSINGER DAVID P TRUSTEE Principal Residence: NO
Mailing Address: 3909 CAP STINE RD Deed Reference: /09281/ 00007
FREDERICK MD 21701-

Location & Structure Information

Premises Address: 3937 CAP STINE RD Legal Description: 31.22 ACRES
FREDERICK 21701-0000 E/S CAP STINE RD.
NR. ADAMSTOWN

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:
0094 0002 0001 1010001.11 0000 2022 Plat Ref: 106/ 134

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
1890 2,668 SF 31.2200 AC

Stories Basement Type Exterior Quality Full/Half Bath Garage Last Notice of Major Improvements
2 YES STANDARD UNIT SIDING/ 3 1 full/ 1 half 1 Carport

Value Information

| | Base Value | Value | Phase-in Assessments | |
|--------------------|------------|------------|----------------------|------------|
| | | As of | As of | As of |
| | | 01/01/2022 | 07/01/2022 | 07/01/2023 |
| Land: | 106,300 | 111,800 | | |
| Improvements | 169,900 | 248,700 | | |
| Total: | 276,200 | 360,500 | 304,300 | 332,400 |
| Preferential Land: | 11,800 | 11,800 | | |

Transfer Information

| | | |
|-----------------------------|----------------------|------------|
| Seller: | Date: 12/27/2012 | Price: \$0 |
| Type: NON-ARMS LENGTH OTHER | Deed1: /09281/ 00007 | Deed2: |
| Seller: | Date: | Price: \$0 |
| Type: NON-ARMS LENGTH OTHER | Deed1: /00813/ 00550 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |

Exemption Information

| | | |
|-----------------------------------|------------|------------|
| Partial Exempt Assessments: Class | 07/01/2022 | 07/01/2023 |
| County: 000 | 0.00 | |
| State: 000 | 0.00 | |
| Municipal: 000 | 0.00 | 0.00 |
| Special Tax Recapture: None | | |

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Frederick County Council
12 E Church St.
Frederick, MD 21701

3-6-2023

RE: Letter of support for rezoning case# R-22-03

Dear Frederick County Council Members:

Please accept this letter of support in favor of rezoning case# R-22-03 covering the Windridge property located at 3681 Cap Stine Rd, Frederick MD 21703. We reside at 3925 Cap Stine Rd and our property neighbors 3681 Cap Stine Rd. As such we are potentially one of the most directly impacted landowners of this rezoning case and we support the applicant's request to have the property rezoned to General Industrial. We understand that one of the potential uses allowed under the General Industrial zone is the construction of large data center buildings as well as other large scale industrial uses.

Sincerely,

James Noffsinger
Jennifer Noffsinger
3925 Cap Stine Rd.
Frederick, MD 21703




3-12-23

3/12/23

Search Result for FREDERICK COUNTY

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 01 Account Number - 045717

Owner Information

Owner Name: NOFFSINGER JAMES & JENNIFER Use: RESIDENTIAL
Principal Residence: YES
Mailing Address: 3925 CAP STINE RD Deed Reference: /06805/ 00757
FREDERICK MD 21703-7446

Location & Structure Information

Premises Address: 3925 CAP STINE RD Legal Description: LOT 2 SECT 1
FREDERICK 21703-7446 1.18 ACRES
VICTORY

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:
0094 0002 0102 1010001.11 0000 1 2 2022 Plat Ref: 0084/ 0095

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
2008 3,371 SF 1.1800 AC 000000

StoriesBasementType ExteriorQualityFull/Half BathGarage Last Notice of Major Improvements
2 YES STANDARD UNITSIDING/4 3 full 1 Attached

Value Information

| | Base Value | Value | Phase-in Assessments | |
|--------------------|------------|------------|----------------------|------------|
| | | As of | As of | As of |
| | | 01/01/2022 | 07/01/2022 | 07/01/2023 |
| Land: | 95,700 | 101,200 | | |
| Improvements | 346,200 | 435,600 | | |
| Total: | 441,900 | 536,800 | 473,533 | 505,167 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

Seller: NOFFSINGER, CHARLES R. & LOIS B. Date: 11/20/2007 Price: \$0
Type: NON-ARMS LENGTH OTHER Deed1: /06805/ 00757 Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:

Exemption Information

Partial Exempt Assessments: Class 07/01/2022 07/01/2023
County: 000 0.00
State: 000 0.00
Municipal: 000 0.00/0.00 0.00/0.00
Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date: 3-12-23

Frederick County Council
12 E Church St.
Frederick, MD 21701
3-6-2023

RE: Letter of support for rezoning case# R-22-03

Dear Frederick County Council Members:

Please accept this letter of support in favor of rezoning case# R-22-03 covering the Windridge property located at 3681 Cap Stine Rd, Frederick MD 21703. We reside at 3909 Cap Stine Rd and our property neighbors 3681 Cap Stine Rd. As such we are potentially one of the most directly impacted landowners of this rezoning case and we support the applicant's request to have the property rezoned to General Industrial. We understand that one of the potential uses allowed under the General Industrial zone is the construction of large data center buildings as well as other large scale industrial uses.

Sincerely,

David P. Noffsinger 3-12-2023
J. netie M. Noffsinger

David Noffsinger
Jeanette Noffsinger
3309 Cap Stine Rd
Frederick MD 21703

Search Result for FREDERICK COUNTY

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 01 Account Number - 028421

Owner Information

Owner Name: NOFFSINGER DAVID P & JEANETTE M Use: RESIDENTIAL
Principal Residence: YES
Mailing Address: 3909 CAP STINE RD
FREDERICK MD 21703-7446 Deed Reference: /02206/ 00563

Location & Structure Information

Premises Address: 3909 CAP STINE RD
FREDERICK 21703-7446 Legal Description: LOT 1 SECTION 1
1.9895 ACRES
VICTORY

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:
0094 0002 0102 1010001.11 0000 1 1 2022 Plat Ref: 0058/ 0185

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
1997 2,713 SF 1.9800 AC 000000

StoriesBasementType ExteriorQualityFull/Half BathGarage Last Notice of Major Improvements
2 YES STANDARD UNITSIDING/4 2 full/ 1 half 1 Attached

Value Information

| | Base Value | Value As of 01/01/2022 | Phase-in Assessments As of 07/01/2022 | As of 07/01/2023 |
|--------------------|------------|------------------------------|---|---------------------|
| Land: | 101,300 | 106,800 | | |
| Improvements | 279,000 | 347,000 | | |
| Total: | 380,300 | 453,800 | 404,800 | 429,300 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

Seller: NOFFSINGER, CHARLES R. & LOIS B. Date: 07/16/1996 Price: \$0
Type: NON-ARMS LENGTH OTHER Deed1: /02206/ 00563 Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:

Exemption Information

Partial Exempt Assessments: Class 07/01/2022 07/01/2023
County: 000 0.00
State: 000 0.00
Municipal: 000 0.00/0.00 0.00/0.00
Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Frederick County Council
12 E Church St.
Frederick, MD 21701

3-6-2023

RE: Letter of support for rezoning case# R-22-03

Dear Frederick County Council Members:

Please accept this letter of support in favor of rezoning case# R-22-03 covering the Windridge property located at 3681 Cap Stine Rd, Frederick MD 21703. I reside at 3937 Cap Stine Rd and I also own 3921 Cap Stine Road. These properties neighbor 3681 Cap Stine Rd. As such I am potentially one of the most directly impacted landowners of this rezoning case and I support the applicant's request to have the property rezoned to General Industrial. I understand that one of the potential uses allowed under the General Industrial zone is the construction of large data center buildings as well as other large scale industrial uses.

Sincerely,

Daniel J. Noffsinger 3-12-23

Mr. Daniel Noffsinger
3937 Cap Stine Rd
Frederick MD 21703

Search Result for FREDERICK COUNTY

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 01 Account Number - 045725

Owner Information

Owner Name: NOFFSINGER DANIEL Use: RESIDENTIAL
Mailing Address: 3937 CAP STINE RD Principal Residence: NO
FREDERICK MD 21703-7446 Deed Reference: /06805/ 00761

Location & Structure Information

Premises Address: 3921 CAP STINE RD Legal Description: LOT 3 SECT 1
0-0000 1.34 ACRES
VICTORY

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:
0094 0002 0102 1010001.11 0000 1 3 2022 Plat Ref: 0084/ 0095

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
1.3400 AC 000000

Stories Basement Type Exterior Quality Full/Half Bath Garage Last Notice of Major Improvements

Value Information

| | Base Value | Value | Phase-in Assessments | |
|--------------------|------------|------------|----------------------|------------|
| | | As of | As of | As of |
| | | 01/01/2022 | 07/01/2022 | 07/01/2023 |
| Land: | 96,800 | 96,800 | | |
| Improvements | 0 | 0 | | |
| Total: | 96,800 | 96,800 | 96,800 | 96,800 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

Seller: NOFFSINGER, CHARLES R. & LOIS B. Date: 11/20/2007 Price: \$0
Type: NON-ARMS LENGTH OTHER Deed1: /06805/ 00761 Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:

Exemption Information

Partial Exempt Assessments: Class 07/01/2022 07/01/2023
County: 000 0.00
State: 000 0.00
Municipal: 000 0.00 0.00 0.00
Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Frederick County Council
12 E Church St.
Frederick, MD 21701

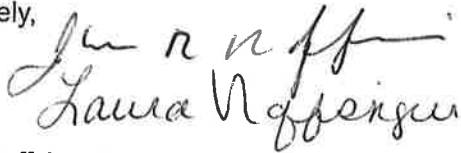
3-6-2023

RE: Letter of support for rezoning case# R-22-03

Dear Frederick County Council Members:

Please accept this letter of support in favor of rezoning case# R-22-03 covering the Windridge property located at 3681 Cap Stine Rd, Frederick MD 21703. We reside at 3917 Cap Stine Rd and our property neighbors 3681 Cap Stine Rd. As such we are potentially one of the most directly impacted landowners of this rezoning case and we support the applicant's request to have the property rezoned to General Industrial. We understand that one of the potential uses allowed under the General Industrial zone is the construction of large data center buildings as well as other large scale industrial uses.

Sincerely,



John Noffsinger

3-10-23

3-10-23

John Noffsinger
Laura Noffsinger
3917 Cap Stine Rd.
Frederick, MD 21703

Search Result for FREDERICK COUNTY

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 01 Account Number - 045741

Owner Information

Owner Name: NOFFSINGER JOHN & LAURA Use: RESIDENTIAL
Principal Residence: YES
Mailing Address: 3917 CAP STINE RD Deed Reference: /06805/ 00769
FREDERICK MD 21703-7446

Location & Structure Information

Premises Address: 3917 CAP STINE RD Legal Description: LOT 5 SECT 1
FREDERICK 21703-7446 1.77 ACRES
VICTORY

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:
0094 0002 0102 1010001.11 0000 1 5 2022 Plat Ref: 0084/ 0095

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
2008 4,153 SF 1.7700 AC 000000

StoriesBasementType ExteriorQualityFull/Half BathGarage Last Notice of Major Improvements
1 1/2 YES STANDARD UNITSIDING/5 3 full/ 1 half 1 Attached

Value Information

| | Base Value | Value | Phase-in Assessments | |
|--------------------|------------|------------|----------------------|------------|
| | | As of | As of | As of |
| | | 01/01/2022 | 07/01/2022 | 07/01/2023 |
| Land: | 99,800 | 105,300 | | |
| Improvements | 530,100 | 637,300 | | |
| Total: | 629,900 | 742,600 | 667,467 | 705,033 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

Seller: NOFFSINGER, CHARLES R. & LOIS B. Date: 11/20/2007 Price: \$0
Type: NON-ARMS LENGTH OTHER Deed1: /06805/ 00769 Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:

Exemption Information

Partial Exempt Assessments: Class 07/01/2022 07/01/2023
County: 000 0.00
State: 000 0.00
Municipal: 000 0.00/0.00 0.00/0.00
Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 01/04/2011

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Frederick County Council
12 E Church St.
Frederick, MD 21701

3-6-2023

RE: Letter of support for rezoning case# R-22-03

Dear Frederick County Council Members:

Please accept this letter of support in favor of rezoning case# R-22-03 covering the Windridge property located at 3681 Cap Stine Rd, Frederick MD 21703. We reside at 3913 Cap Stine Rd and our property neighbors 3681 Cap Stine Rd. As such we are potentially one of the most directly impacted landowners of this rezoning case and we support the applicant's request to have the property rezoned to General Industrial. We understand that one of the potential uses allowed under the General Industrial zone is the construction of large data center buildings as well as other large scale industrial uses.

Sincerely,

T. Sullivan 3/12/23
Dolly N. Sullivan 3/12/23

Timothy Sullivan
Dolly Noffsinger Sullivan
3913 Cap Stine Rd.
Frederick, MD 21703

Search Result for FREDERICK COUNTY

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 01 Account Number - 045733

Owner Information

| | | | |
|------------------|--|----------------------|---------------|
| Owner Name: | SULLIVAN DOLLY NOFFSINGER & TIMOTHY SULLIVAN | Use: | RESIDENTIAL |
| Mailing Address: | 3913 CAP STINE RD FREDERICK MD 21703- | Principal Residence: | YES |
| | | Deed Reference: | /06805/ 00765 |

Location & Structure Information

| | | | |
|-------------------|---------------------------------------|--------------------|---------------------------------------|
| Premises Address: | 3913 CAP STINE RD FREDERICK 21703- | Legal Description: | LOT 4 SECT 1 1.68 ACRES VICTORY |
|-------------------|---------------------------------------|--------------------|---------------------------------------|

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:
0094 0002 0102 1010001.11 0000 1 4 2022 Plat Ref: 0084/ 0095

Town: None

| | | | | |
|-------------------------|-------------------------|------------------------|--------------------|------------|
| Primary Structure Built | Above Grade Living Area | Finished Basement Area | Property Land Area | County Use |
| 2014 | 3,165 SF | 1000 SF | 1.6800 AC | 000000 |

| | | | | | | | |
|---------|----------|----------------|----------|----------------|----------------|--------|-----------------------------------|
| Stories | Basement | Type | Exterior | Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
| 1 1/2 | YES | STANDARD UNITS | SIDING/6 | 4 full/ 1 half | 1 Attached | | |

Value Information

| | Base Value | Value | Phase-in Assessments | |
|--------------------|------------|------------|----------------------|------------|
| | | As of | As of | As of |
| | | 01/01/2022 | 07/01/2022 | 07/01/2023 |
| Land: | 99,200 | 104,700 | | |
| Improvements | 500,700 | 603,400 | | |
| Total: | 599,900 | 708,100 | 635,967 | 672,033 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

| | | |
|--|----------------------|------------|
| Seller: NOFFSINGER, CHARLES R. & LOIS B. | Date: 11/20/2007 | Price: \$0 |
| Type: NON-ARMS LENGTH OTHER | Deed1: /06805/ 00765 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |

Exemption Information

| | | | |
|-----------------------------|-------|------------|------------|
| Partial Exempt Assessments: | Class | 07/01/2022 | 07/01/2023 |
| County: | 000 | 0.00 | |
| State: | 000 | 0.00 | |
| Municipal: | 000 | 0.00/0.00 | 0.00/0.00 |
| Special Tax Recapture: | None | | |

Homestead Application Information

Homestead Application Status: Approved 01/16/2018

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

From: Robert Butz

Subject: Biser letters of support

[EXTERNAL]

Noel,

I have attached letters of support from the the two residential property owners on the south side of the property. We no have letters of support from all the residential property owners adjoining our property

Robert Butz

Owner

3-24-2023

Mr. Gary Biser
3663-A Cap Stine Rd
Frederick MD 21703

RE: Letter of support for rezoning case# R-22-03

To whom it may concern

Please accept this letter of support in favor of rezoning case# R-22-03 covering the property located at 3681 Cap Stine Rd, Frederick MD 21703. I am the property owner and reside at 3663A Cap Stine Rd and my property directly adjoins 3681 Cap Stine on the south side. As such I am potentially one of the most directly impacted landowners of this rezoning case and I support the applicant's request to have the property rezoned to General Industrial. I understand that one of the potential uses allowed under the General Industrial zone is the construction of large data center buildings.

Sincerely,

Gary Biser



Enter search term [Home](#)[About](#)[Real Property](#)[Businesses](#)[Forms](#)[Reports](#)[Tax Credits](#)[Services](#)MARYLAND
DEPARTMENT OF ASSESSMENTS
AND TAXATION[Real Property Data Search \(\)](#)[Guide to searching the database](#) 

Search Result for FREDERICK COUNTY

[New Search](#)[Previous](#)[View Map](#)[View GroundRent Redemption](#)[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier:

District - 01 Account Number - 024124

Owner Information

Owner Name:

BISER GARY MELVIN &
BISER CHERYL LEE

Use:

Principal Residence:

RESIDENTIAL
YES

Mailing Address:

3663-A CAP STINE ROAD
FREDERICK MD 21703-7837

Deed Reference:

/07871/ 00093

Location & Structure Information

Premises Address:

3663A CAP STINE RD
FREDERICK 21703-7837

Legal Description:

LOT 1 SEC 1
1.50 ACRES
POPLAR THICKET

| Map: | Grid: | Parcel: | Neighborhood: | Subdivision: | Section: | Block: | Lot: | Assessment Year: | Plat No: | |
|------|-------|---------|---------------|--------------|----------|--------|------|------------------|-----------|--------|
| 0094 | 0014 | 0092 | 1010001.11 | 0000 | 1 | | 1 | 2022 | | 41 170 |
| | | | | | | | | | Plat Ref: | |

Town: None

Primary Structure Built:
1976Above Grade Living Area:
1,456 SF

Finished Basement Area

Property Land Area:
1.5000 AC

County Use

| Stories | Basement | Type | Exterior | Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
|---------|----------|---------------|----------|---------|----------------|-----------|-----------------------------------|
| 1 | YES | STANDARD UNIT | FRAME/ | 4 | 1 full/1 half | 1 Carport | |

Value Information

| | Base Value | Value | Phase-in Assessments | |
|--------------------|------------|---------------------|----------------------|---------------------|
| | | As of 01/01/2022 | As of 07/01/2022 | As of 07/01/2023 |
| Land: | 98,000 | 103,500 | | |
| Improvements | 144,600 | 186,900 | | |
| Total: | 242,600 | 290,400 | 258,533 | 274,467 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

Seller: BISER, GARY MELVIN
Type: NON-ARMS LENGTH OTHERDate: 06/15/2010
Deed1: /07871/ 00093Price: \$0
Deed2:Seller: BISER, GARY MELVIN
Type: NON-ARMS LENGTH OTHERDate: 03/30/2001
Deed1: /02838/ 01159Price: \$0
Deed2:Seller: BISER, GARY MELVIN & BRENDA JEAN
Type: NON-ARMS LENGTH OTHERDate: 11/10/1997
Deed1: /02349/ 00260Price: \$0
Deed2:

Exemption Information

| Partial Exempt Assessments: | Class | | 07/01/2022 | 07/01/2023 |
|-----------------------------|-------|--|------------|------------|
| County: | 000 | | 0.00 | |
| State: | 000 | | 0.00 | |
| Municipal: | 000 | | 0.00 0.00 | 0.00 0.00 |

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 09/15/2014

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application

Date:

3-24-2023

~~Ms. Paula Biser~~

3651 Cap Stine Rd
Frederick MD 21703

Paula B. Toney

RE: Letter of support for rezoning case# R-22-03

To whom it may concern

Please accept this letter of support in favor of rezoning case# R-22-03 covering the property located at 3681 Cap Stine Rd, Frederick MD 21703. I am the property owner and reside at 3651 Cap Stine Rd and my property directly adjoins 3681 Cap Stine on the south side. As such I am potentially one of the most directly impacted landowners of this rezoning case and I support the applicant's request to have the property rezoned to General Industrial. I understand that one of the potential uses allowed under the General Industrial zone is the construction of large data center buildings.

Sincerely,

~~Paula Biser~~

Paula B. Toney

Enter search term

Home About Real Property Businesses Forms Reports Tax Credits Services



MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION



Real Property Data Search ()

Guide to searching the database

Search Result for FREDERICK COUNTY

New Search Previous

View Map

View GroundRent Redemption

View GroundRent Registration

Special Tax Recapture: None

Account Identifier:

District - 01 Account Number - 024949

Owner Information

Owner Name:

TOMEY GARY WAYNE & PAULA BISER

Use:

RESIDENTIAL

Principal Residence:

YES

Mailing Address:

3651 CAP STINE ROAD
FREDERICK MD 21703

Deed Reference:

/01710/ 01224

Location & Structure Information

Premises Address:

3651 CAP STINE RD
FREDERICK 21703

Legal Description:

LOT 1 SECTION 2
1.512 ACRE
POPULAR THICKET

| Map: | Grid: | Parcel: | Neighborhood: | Subdivision: | Section: | Block: | Lot: | Assessment Year: | Plat No: | 44 35 |
|------|-------|---------|---------------|--------------|----------|--------|------|------------------|-----------|-------|
| 0094 | 0014 | 0092 | 1010001.11 | 0000 | 2 | | 1 | 2022 | Plat Ref: | |

Town: None

| Primary Structure Built | Above Grade Living Area | Finished Basement Area | Property Land Area | County Use |
|-------------------------|-------------------------|------------------------|--------------------|------------|
| 1993 | 1,516 SF | | 1.5100 AC | |

| Stories | Basement | Type | Exterior | Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
|---------|----------|---------------|----------|---------|----------------|--------|-----------------------------------|
| 1 | YES | STANDARD UNIT | SIDING/ | 4 | 2 full | | |

Value Information

| | Base Value | Value | Phase-in Assessments |
|--------------------|------------|---------------------|----------------------|
| | | As of 01/01/2022 | As of 07/01/2022 |
| Land: | 98,000 | 103,500 | |
| Improvements | 147,300 | 193,100 | |
| Total: | 245,300 | 296,600 | 262,400 |
| Preferential Land: | 0 | 0 | 279,500 |

Transfer Information

| Seller: | Date: | Price: |
|-----------------------------|----------------------|--------|
| BISER, PAUL M. & BLANCHE M. | 05/31/1991 | \$0 |
| Type: ARMS LENGTH MULTIPLE | Deed1: /01710/ 01224 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |

Exemption Information

| Partial Exempt Assessments: | Class | 07/01/2022 | 07/01/2023 |
|-----------------------------|-------|------------|------------|
| County: | 000 | 0.00 | |
| State: | 000 | 0.00 | |
| Municipal: | 000 | 0.00 0.00 | 0.00 0.00 |

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 01/12/2010

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

From: Michele Rosenfeld <michele@marylandpropertylaw.com>

Sent: Monday, April 17, 2023 8:01:04 AM

To: Council Members <CouncilMembers@FrederickCountyMD.gov>

Cc: Young, Brad <BYoung@FrederickCountyMD.gov>; Duckett, Kavonte

<KDuckett@FrederickCountyMD.gov>; Knapp, Renee <RKnapp@FrederickCountyMD.gov>; Donald, Jerry

<JDonald@FrederickCountyMD.gov>; McKay, Steve <SMcKay@FrederickCountyMD.gov>; Keegan-Ayer,

MC <MCKeegan-Ayer@FrederickCountyMD.gov>; Carter, Mason <MCarter@FrederickCountyMD.gov>

Subject: Piecemeal Rezoning Case # R-22-03 (Windridge): April 18, 2023 Public Hearing

[EXTERNAL EMAIL]

President Young:

Please enter the attached written testimony in opposition to Rezoning Case # R-22-03, filed on behalf of my client Sugarloaf Association, Inc., into the public hearing record for this matter.

Respectfully submitted,

Michele Rosenfeld

The Law Office of Michele Rosenfeld LLC

1 Research Court, Suite 450

Rockville MD 20850

michele@marylandpropertylaw.com

301-204-0913





April 17, 2023

Mr. Brad Young, Council President
Frederick County Council
12 E Church Street
Frederick MD 21701
councilmembers@frederickcountymd.gov

RE: Piecemeal Rezoning Case # R-22-03
Basis for application: "Substantial Change in the Neighborhood"
April 18, 2023 Public Hearing
Applicant: Windridge Properties L.C. and Windridge Farm L.L.C. ("Windridge")

Dear President Young and Council Members:

Please accept into the record this testimony, filed on behalf of my client Sugarloaf Alliance, Inc., in opposition to the above-reference request to rezone property from the Agricultural Zone to the General Industrial Zone ("Site"). As explained herein, the application must be denied because (a) Windridge failed to delineate a "reasonable neighborhood," the required baseline information needed to consider the application; and (b) there has been no "substantial change in the character of the neighborhood," thus there is no factual or legal basis to approve a piecemeal rezoning predicated on "change."

I. INTRODUCTION

Maryland law has clear review standards for a "piecemeal" rezoning application such as this one, which has different standards from a rezoning case filed pursuant to zone-specific review standards by the zoning code (e.g., a rezoning application for a planned unit development). In this case, the legal review standards for a piecemeal application are largely established by the courts.

The following overriding principles provide the framework for the Council's review:

1. A property owner has a very high burden of proof¹ to show there has been a "substantial change to the character of the neighborhood" since the last comprehensive plan was adopted (*i.e.*, the September 2019 *Liveable Frederick Master Plan* ("2019 Comprehensive Plan").
2. The "2019 Comprehensive Plan affirmed the property's then-existing Agricultural zoning.

¹ *Buckel v. Bd. of Cty. Comm'rs of Frederick County*, 80 Md. App. 305, 562 A.2d 1297 (1989)(holding neighborhood changes that occurred before the last comprehensive rezoning cannot be considered when evaluating substantial change to the character of the neighborhood in a piecemeal rezoning case). Staff has confirmed this review standard: "A determination as to whether or not a 'substantial change in the character of the neighborhood has occurred' cannot be based upon activities that have occurred as a result of an approved Comprehensive Plan." Undated FcPc Staff Report p. 14 (emphasis in original.)

3. To prove it is eligible for piecemeal rezoning, an applicant must:
 - a. Define the relevant neighborhood ("Neighborhood");²
 - b. Explain what changes have occurred in the Neighborhood since the 2019 Comprehensive Plan was adopted ("Neighborhood Changes");³ and
 - c. Prove that the Neighborhood Changes result in a *substantial change in the character* of the defined neighborhood ("Substantial Change").⁴
4. Substantial Change does not include:
 - a. Zoning Text Amendments that merely amend an existing zone;
 - b. "Changes" to the neighborhood that pre-date the 2019 Comprehensive Plan;⁵
 - c. Rezoning of neighboring property;⁶ or
 - d. The Site's long-term land use designation in the Comprehensive Plan.⁷

Significantly, the FcPc Staff Report notes that **"Physical changes to the character of the neighborhood surrounding the subject parcel have not occurred."** P. 14 (emphasis added).

5. Even if an applicant proves that there has been a substantial change in the character of the defined neighborhood, Council has no obligation to approve the rezoning request.⁸

² "In order to determine whether or not there has been a substantial change in the character of the neighborhood, one must first determine what constitutes the neighborhood. Of course, the burden of proof in this regard rests with those seeking the rezoning." *Messenger v. Board of County Commissioners*. The proposed neighborhood must be "reasonable." *Montgomery v. Bd. of Co. Comm'rs for Prince George's Co.*, 256 Md. 597, 261 A.2d 447 (1970). In a rural or semirural area, the neighborhood would be larger than "in a city or suburban area," and extends beyond those properties immediately "within sight." *Montgomery v. Bd. of Cty. Comm'rs*, 263 Md. 1, 4-5, 280 A.2d 901, 903-04 (1971), citing *Hardesty v. Dunphy*, *supra*, at 724-725

³ There is a "heavy yoke thrust upon one seeking to rezone their property in the interim between comprehensive zonings. *Buckel v. Bd. of Cty. Comm'rs of Frederick County*, 80 Md. App. 305, 314, 562 A.2d 1297, 1301 (1989).

⁴ *Rockville v. Stone*, 271 Md. 655, 661, 319 A.2d 536, 540 (1974).

⁵ Finding "change" based on increased commercial and residential development "was error" when "'changes' conformed with prior zoning and general plan for area. *Buckel v. Bd. of Cty. Comm'rs of Frederick County*, 80 Md. App. 305, 313, 562 A.2d 1297, 1301 (1989).

⁶ Rezoning neighboring property does not require the rezoning of the applicant's property. *Valenzia v. Zoning Bd. of Howard Cty.*, 270 Md. 478, 483-84, 312 A.2d 277, 280 (1973) (citations omitted).

⁷ The general commercial "intended future use of this property, as evidenced by the [Comprehensive Plan] . . . is not compellingly relevant where the life of such a master plan extends sixteen years into the future." *Buckel v. Bd. of Cty. Comm'rs of Frederick County*, 80 Md. App. 305, 315, 562 A.2d 1297, 1302 (1989). The GI recommendation for the Site in the 2019 Comprehensive Plan extends for 17 years, to 2040, and as such is not "compellingly relevant."

⁸ FcPc Staff Report p. 3.

II. The Rezoning Application Fails To Satisfy Piecemeal “Substantial Change” Standards At Every Level.

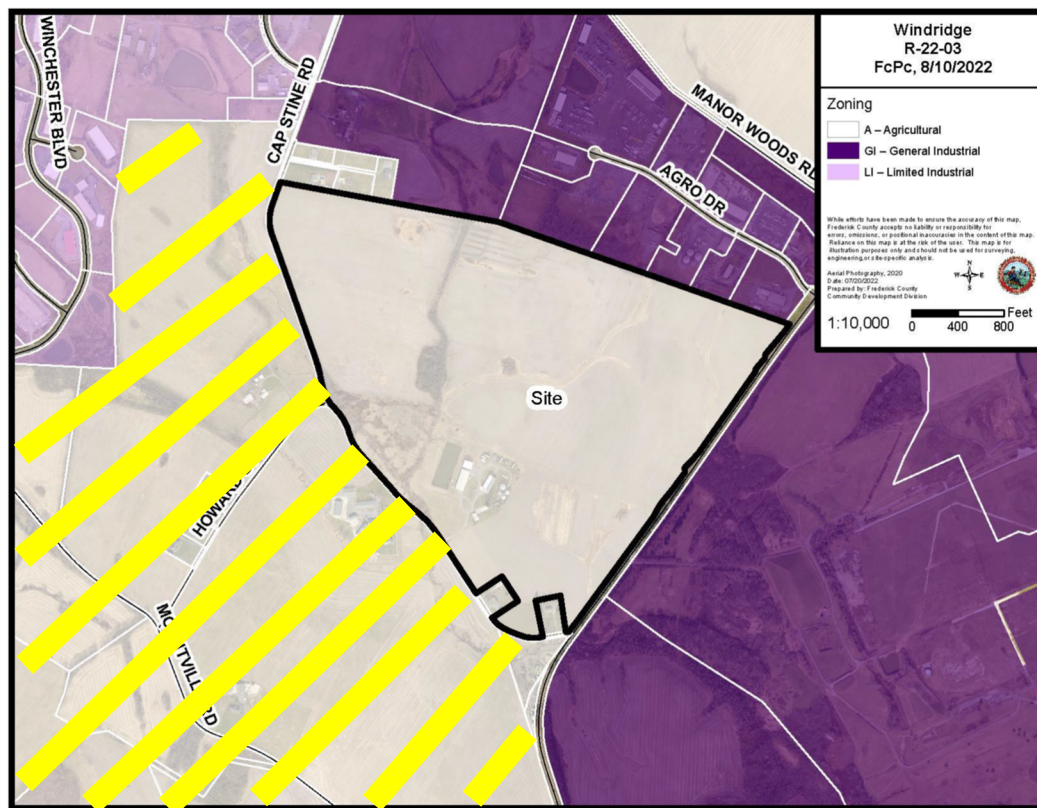
A review of the factors that Maryland courts have established as the threshold considerations for a piecemeal rezoning predicated on substantial change to the neighborhood confirms that this application fails to satisfy those standards at every level.

A. The Proposed “Neighborhood” Boundaries Unreasonably Exclude Surrounding Properties.

Windridge’s proposed neighborhood is defined as “the Eastalco Community Growth Area as shown on the County Comprehensive Plan” (Statement of Justification Section B.1) but is more specifically delineated as “Stanford Industrial Park to the west of the Property, the Agro Drive Properties to the north, and all of the former Eastalco holdings to the east of the Property.” January 27, 2023 letter from Noel Manalo (“Letter”) p. 2.

Remarkably, Windridge’s proposed neighborhood omits all contiguous and nearby land zoned Agricultural (the same land use designation as the Site). This delineation falls far short of the required “reasonable” delineation of the neighborhood, which requires (at a minimum) all properties within sight. Under no reading of Maryland law does a “reasonable” neighborhood delineation exclude abutting properties which – in the 2019 Comprehensive Plan – were confirmed to have the same land use designation as the Site. Properties excluded from the defined neighborhood are identified in Figure 1.

Figure 1:



Windridge has the burden of proof in establishing a reasonable neighborhood. Sugarloaf does not have that burden. We do submit, however, that at a minimum the neighborhood must include

all of the properties shown in Figure 1 that are zoned Agricultural. Additionally, any reasonable neighborhood must extend beyond the site a comparatively similar distance on all sides.

The rezoning application should be denied solely on the grounds that the Windridge has failed to delineate a reasonable neighborhood in which “substantial change to the character of the neighborhood” can be evaluated. Notably, there is no evidence that there have been any changes to the surrounding Agriculturally zoned properties.

B. The 2022 CDI Legislation Is Not A “Zoning” Change, Does Not Qualify As A “Change” Under Piecemeal Rezoning Standards, And Provides No Basis For The Requested Rezoning.

At its core, Windridge’s case rests on a two-step argument stemming from a 2022 Zoning Text Amendment (“2022 ZTA”) which added “critical digital infrastructure electric substation” and “critical digital infrastructure facility” (“CDI Use”) as a permissible use in the General Industrial (“GI”) zone. First Windridge argues that the legislation itself constitutes a “change.”⁹ Second, Windridge argues that the construction and installation of CDI facilities on land already zoned GI also constitutes a “change.” Both arguments are facially and factually incorrect.

Amending the Code to add a new use to an existing zone fails to qualify as a “substantial change” for purposes of a piecemeal rezoning application for several reasons.

First - generally - if each time the Council added a new permissible use to any zone that legislative act alone opened the door to a “substantial change in the character of the surrounding neighborhood,” the Council would be inundated with this type of rezoning application.¹⁰ It is important to note that the 2022 ZTA applies to all properties throughout Frederick County zoned GI. If this pending rezoning application is approved, it then would serve as a springboard for any property in this classification to follow suit.¹¹ A zoning amendment alone does not constitute “change.”

Second, even if a zoning text amendment could qualify as such a “change,” in this case it certainly did not, as evidenced by the Zoning Code itself. The minimum lot size, road frontage, setbacks and height limits for the CDI use fall well within the lot size, road frontage, setbacks and height limits established for every other use allowed in the zone. The GI Zone allows for a wide range of uses, including but not limited to communication towers; private schools; bus depots; laboratory, self-storage and warehouse space; and non-governmental utilities and non-governmental electric substations. Exhibit 2. Nothing about the addition of the CDI use changed the nature or intensity

⁹ “It is such a substantial change that the CDI use did not even exist in the Frederick County Zoning Ordinance until 2022 (See Frederick County Bill No. 22-05). Statement of Justification § B.1. To state the obvious, Windridge’s reference to Maryland’s adoption of the “Data Center Maryland Sales and Use Tax Exemption Incentive Program,” effective July 1, 2020 is utterly irrelevant to this rezoning case. Statement of Justification § B.1.

¹⁰ See Exhibit 1: CDI text amendment adding defined terms for CDI Use and amending the land use table.

¹¹ Indeed, it appears that floodgate has already opened. An application to rezone 215 acres of land off Ballanger Creek Pike from Agricultural to GI, relying on the same arguments as presented in this case, has already been filed with the Planning Department.

of the underlying GI Zone in a manner that even arguably constitutes a “substantial change in the character” of properties in the GI Zone. See also Exhibit 3 (Development Standards).

Finally, the 2022 ZTA furthers the very 2019 Comprehensive Plan goals cited by the Applicant, and so cannot constitute a “change” from the carefully considered 2019 Comprehensive Plan long-range planning recommendations. Notwithstanding the long-term GI zoning on recommendation in the 2019 Comprehensive Plan, the existing current Agricultural zoning for the Site was affirmed as Agricultural – which serves as compelling evidence that the current Agricultural zoning is consistent with the 2019 Comprehensive Plan goals. This is particularly underscored by the fact that the 2019 Comprehensive Plan reflects a long-term planning vision that extends to 2040, and as such its freshly-adopted recommendations carry great weight.

C. Physical Construction Associated With The Eastalco Site Does Not Constitute A Substantial Change in the Character of the Neighborhood.

Windridge erroneously argues that “Developing and locating a “master planned gigawatt scale data center community” across the road from the Site is a “substantial change in the character of the neighborhood.”¹² The Maryland courts disagree.

Windridge’s “construction” arguments, as addressed by the courts, include:

1. 2012 - 2017:

- a. 2012 – 2014 assessment of Alcoa property for environmental contamination;
- b. 2017 Covenant imposing environmental remediation requirements;
- c. 2017 demolition of Alcoa “industrial substation;”
- d. 2014 construction of Mullinex Agro Industrial Park;
- e. Pre-2019 approval of 4500 East Basford Road hydroponic complex (now constructed) and 3-lot construction in Stanford Industrial Park.

Response: Changes to the neighborhood prior to the last comprehensive rezoning are irrelevant when evaluating substantial change to character of neighborhood in piecemeal rezoning case.¹³

2. Three press releases cited by the applicant.

Response: Media coverage cannot constitute a “substantial change to the character of the neighborhood” analysis and is so far removed from a legitimate basis for consideration that this proffered “proof” is not even addressed by the courts.

¹² Statement of Justification § B.1. While the FcPc Staff Report evaluated general considerations applicable to all rezoning applications (piecemeal and statutory PUD-type rezoning) (“Approval Criteria For Rezoning,” FcPc Staff Report pp. 6 – 13) there was almost no analysis of the application in the context of whether it satisfies the very high burden of proof associated with a piecemeal “change” rezoning application. These general considerations evaluated in the Staff Report *only* become relevant if the applicant can overcome its burden of proof to (a) establish the boundaries of a “reasonable” neighborhood” and (b) that there has been a substantial change in the character of the defined neighborhood. As explained herein, the applicant has failed to prove both elements.

¹³ *Buckel v. Bd. of Cty. Comm'rs of Frederick County*, 80 Md. App. 305, 562 A.2d 1297 (1989).

3. 2022 construction of a road/entrance to the Estalcoa site and “proposed extension of public sewer and water systems to the Applicant’s defined neighborhood.

Response: “[T]he availability of sewer and water services does not result in a change in the character of the neighborhood” because those services are equally important to residential and commercial development.¹⁴ Likewise, “contemplated road improvements” (construction of MD 80 which is – at best – years away) and road access into and within the site, which would be required for any redeveloped industrial use, do not change the character of a neighborhood.¹⁵”

III. CDI CONSTRUCTION ON THE EASTALCO SITE IS NOT SUBSTANTIALLY DIFFERENT (EXCEPT PERHAPS TO BE LESS INTENSIVE) THAN THE PRIOR USE.

The images provided by the applicant showing the current construction activities on the former Eastalco site do not accurately compare the “before” and “after” changes that the applicant argues supports “change.” Figure 2 shows how the site was developed and used in 2013:

By Ike Wilson News-Post Staff Aug 26, 2013 8



¹⁴ *Chatham Corp. v. Beltram*, 252 Md. 578, 585-86, 251 A. 2d 1, 5 (1969) and *Smith v. Board of County Commissioners of Howard County*, 252 Md. 280, 285, 249 A. 2d 708, 711 (1969), and cases therein cited.

¹⁵ *Clayman v. Prince George's Cty.*, 266 Md. 409, 419, 292 A.2d 689, 695 (1972); *Howard Research & Dev. Corp. v. Zoning Bd. of Howard Cty.*, 263 Md. 380, 387, 283 A.2d 150, 153 (1971)(lacking evidence that road improvements not "reasonably probable of fruition in the foreseeable future" possible future roads are not eligible for consideration in "change" piecemeal rezoning case).

As is self-evident, the neighborhood (even as defined by the applicant) for decades was the location of a high-intensity industrial use. Other permissible uses in the GI zone include:

- Petroleum products storage;
- School bus parking;
- Truck stop;
- Limited and general manufacturing;
- Private aircraft landing and storage areas;
- Recycling pickup and distribution center.

As Figure 2 confirms, uses allowed in the GI zone are by their very nature high intensity industrial uses, and nothing about the CDI Use is inconsistent with the nature, scale or intensity of the type of use that otherwise would be permitted on the Site.

IV. CONCLUSION

The Applicant has failed to establish grounds for its rezoning request, starting with the fact that it has not delineated a "reasonable neighborhood," which is the predicated for undertaking an inquiry into whether there has been a substantial change in the character of the neighborhood, and must be denied on this basis alone.

As for the "change" arguments, the grounds offered in support of the proposed piecemeal rezoning pre-date the 2019 Comprehensive Plan or are otherwise ineligible for consideration. Additionally, the current Site zoning and adjoining redevelopment of the Eastalco site fall squarely within the recommendations of the freshly-minted 2019 Comprehensive Plan, confirming that there is no "substantial change in the character of the neighborhood" that would justify this application in any respect.

Please deny the rezoning application for all of the reasons stated herein.

Respectfully Submitted,

Michele McDaniel Rosenfeld

Michele McDaniel Rosenfeld



Bill No. 22-05

Concerning: Amending Chapter 1-19 of the County
Code (Zoning Ordinance) to add Critical Digital
Infrastructure as a New Use

Introduced: February 1, 2022

Revised: _____ Draft No. _____

Enacted: _____

Effective: _____

Expires: May 2, 2022

Frederick County Code, Chapter 1-19

Section(s) 11.100, 5.310, 6.100, 8.402, 8.403, 2.170

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President M. C. Keegan-Ayer on behalf of County Executive Jan Gardner

AN ACT to: Amend Chapter 1-19 of the Frederick County Code (Zoning Ordinance) to add Critical Digital Infrastructure as a new use.

Date Council Approved: _____ Date Transmitted to Executive: _____

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

Date returned to Council by County Executive with no action: _____

By amending:

Frederick County Code, Chapter, 1-19 Section(s) 11.100, 5.310, 6.100, 8.402, 8.403, and 2.170

Other: _____

Boldface

Underlining

[Single boldface brackets]

* * *

Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

1 Bill No. 22-05

2 The County Council of Frederick County, Maryland, finds it necessary and appropriate to
3 amend the Frederick County Code to amend Chapter 1-19 of the Frederick County Code (Zoning)
4 to add Critical Digital Infrastructure as a new use.

5 NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF
6 FREDERICK COUNTY, MARYLAND, that Chapter 1-19 of the Frederick County Code be, and
7 it is hereby, amended as shown on the attached Exhibit 1.

8 AND BE IT FURTHER ENACTED AND ORDAINED that the following transitional
9 provisions shall apply:

10 The requirements set forth under 1-19-8.402(B)(5) regarding review by the Architectural
11 Review Committee shall not take effect until the Committee has been appointed by the
12 County Executive and confirmed by the County Council.
13
14
15

16 _____
17 M. C. Keegan-Ayer, President
18 County Council of Frederick County,
19 Maryland

§ 1-19-11.100. DEFINITIONS.

Critical Digital Infrastructure Electric Substation: A high-voltage electric system facility used to switch generators, equipment, and circuits or lines in and out of a system, change AC voltages from one level to another, or change alternating current to direct current or direct current to alternating current. Critical Digital Infrastructure Electric Substations may only be constructed in conjunction with a Critical Digital Infrastructure Facility.

Critical Digital Infrastructure Facility: A facility consisting of one or more buildings used primarily for the storage, management, processing, and transmission of digital data, and which houses computer or network equipment, systems, servers, appliances, and other associated components related to digital data operations. The facility may also include customary accessory uses such as an office use, air handlers, power generators and storage, water cooling and storage facilities, and associated utility infrastructure needed to support sustained operations of the digital infrastructure.

§ 1-19-5.310. USE TABLE.

| Uses | RC | A | R1 | R3 | R5 | R8 | R12 | R16 | VC | MX | GC | ORI | LI | GI |
|--|----|---|----|----|----|----|-----|-----|----|----|----|-----|----|----|
| | | | | | | | | | | | | | | |
| Limited manufacturing and assembly use | | | | | | | | | | | | PS | PS | PS |
| General manufacturing | | | | | | | | | | | | | | PS |

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

| | | | | | | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|--|----|--|-----------|-----------|
| <u>Critical Digital Infrastructure Facility</u> | | | | | | | | | | | | | <u>PS</u> | <u>PS</u> |
| <u>Critical Digital Infrastructure Electric Substation</u> | | | | | | | | | | | | | <u>PS</u> | <u>PS</u> |
| <u>Nongovernmental Utility</u> | E | E | E | E | E | E | E | E | E | | PS | | PS | PS |
| <u>Nongovernmental electric substation</u> | | | | | | | | | | | | | E | E |

1

2 § 1-19-6.100. DESIGN REQUIREMENTS FOR SPECIFIC DISTRICTS.

3

| <i>Use Classification</i> | <i>Minimum Lot Area</i> | <i>Minimum Lot Area per Unit</i> | <i>Lot Width</i> | <i>Front Yard</i> | <i>Side Yard</i> | <i>Rear Yard</i> | <i>Height</i> |
|--|-------------------------|----------------------------------|------------------|-------------------|------------------|------------------|---------------|
| <i>Limited Industrial District LI</i> | | | | | | | |
| Natural resources | 5 acres | - | 300 | 40 | 50 | 50 | 30' |
| Industrial | 20,000 | - | 100 | 25 | * | 20 | 60' |
| Automobile services | 20,000 | - | 100 | 25 | * | 20 | 60' |
| Wholesaling/processing | 20,000 | - | 100 | 25 | ** | 20 | 60' |
| Open space uses | No minimum | - | - | - | - | - | - |
| Governmental and public utility | 20,000 | - | 200 | 40 | 40 | 40 | 30' |
| Nongovernmental utility, nongovernmental electric substation | 20,000 | - | 200 | 50 | 50 | 50 | 30' |
| Self-storage units | 20,000 | - | 100 | 25 | 10 **** | 25 ***** | 60' **** |
| Solar facility, commercial | 20,000 sq. ft. | | 200 | 50 | 50 | 50 | 30' |

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

| | | | | | | | |
|--|---------------|--|------------|-----------------------|-----------------------|-----------------------|-----------|
| <u>Critical Digital Infrastructure Facility</u> | <u>80,000</u> | | <u>200</u> | <u>50²</u> | <u>50²</u> | <u>50²</u> | <u>60</u> |
| <u>Critical Digital Infrastructure Electric Substation</u> | <u>20,000</u> | | <u>200</u> | <u>50</u> | <u>50</u> | <u>50</u> | <u>30</u> |

1

2

| <i>Use Classification</i> | <i>Minimum Lot Area</i> | <i>Minimum Lot Area per Unit</i> | <i>Lot Width</i> | <i>Front Yard</i> | <i>Side Yard</i> | <i>Rear Yard</i> | <i>Height</i> |
|--|--------------------------------|---|-------------------------|--------------------------|-------------------------|-------------------------|----------------------|
| <i>General Industrial District GI</i> | | | | | | | |
| All permitted uses | 1 acre | - | 150 | 25 | 15 | 40 | 60' |
| Open space uses | No minimum | - | - | - | - | - | - |
| Governmental and public utility | 1 acre | - | 200 | 40 | 40 | 40 | 30' |
| Nongovernmental utility, nongovernmental electric substation | 1 acre | - | 200 | 50 | 50 | 50 | 30' |
| Self-storage units | 20,000 | - | 100 | 25 | 10 **** | 25 ***** | 60' **** |
| Solar facility, commercial | 1 acre | | 200 | 50 | 50 | 50 | 30' |
| <u>Critical Digital Infrastructure Facility</u> | <u>80,000</u> | | <u>200</u> | <u>50²</u> | <u>50²</u> | <u>50²</u> | <u>60</u> |
| <u>Critical Digital Infrastructure Electric Substation</u> | <u>20,000</u> | | <u>200</u> | <u>50</u> | <u>50</u> | <u>50</u> | <u>30</u> |

4

5

6 * Equal to the height of structure.

7 ** Minimum 10' green area no parking within area

8 *** For development within the Village Center Zoning District see also §§ [1-19-7.500\(B\)\(2\)](#) and (3)

10 **** Or as determined under §§ [1-19-7.500\(B\)\(3\)](#), whichever is greater

11 ***** Except as provided in § [1-19-8.450\(B\)\(2\)](#) and § [1-19-8.450\(D\)\(1\)](#).

12 1 Any proposed addition would have to meet setbacks required for new structures.

13 Parking requirements of §§ [1-19-6.200](#) through [1-19-6.240](#).

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

2 As shown or equal to height of structure, whichever is greater.
3 Development within the VC zoning district may not exceed the density as specified
within §§ 1-19-7.500(B)(1).

§ 1-19-7.600. INDUSTRIAL DISTRICTS

(F) The requirements of 1-19-8.402 apply to a Critical Digital Infrastructure Facility.

1-19-8.402 Critical Digital Infrastructure Facilities in the LI and GI Districts.

The following provisions apply to Critical Digital Infrastructure Facility in the LI and GI Districts.

(A) Bulk Regulations

(1) The Planning Commission may approve a reduction to, but not elimination of, the required yard setbacks in § 1-19-6.100 between adjoining Critical Digital Infrastructure Facilities in the LI and GI Districts during the site plan review process, if the Planning Commission finds that reducing the setbacks:

- a. increases the size and usability of open space areas;
- b. increases the landscape buffer areas along other adjacent property lines with different land uses;
- c. provides additional buffer areas for environmentally sensitive areas or resources; or
- d. facilitates compliance with the design criteria listed under §1-19-8.402(B).

Notwithstanding any reduction approved by the Planning Commission, the distance between structures must comply with applicable building code requirements.

(B) Design Requirements

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

- 1 (1) Buildings must be predominantly designed and constructed to include
2 finishes and materials of consistent quality and design on all sides. All
3 building facades that are in public view must avoid the use of
4 undifferentiated facades and long, plain wall sections by including a
5 combination of the following design elements: change in building height,
6 building step-backs or recesses, windows, doors, changes in building
7 material, patterns, textures, colors, or use of accent materials.
8 Architectural renderings or plans must be submitted as part of the Site
9 Development Plan application for approval by Staff and the Planning
10 Commission to assure that the appearance, type of building materials, or
11 other aspects of the building are consistent with the purposes and intent of
12 the Critical Digital Infrastructure design requirements.
- 13 (2) Building entrances must be designed and oriented in terms of their
14 relationship to the human scale and must reflect this relationship through
15 the inclusion of human-scaled architectural elements.
- 16 (3) Refuse and recycling dumpsters, service doors, and mechanical
17 equipment must face away from roadways, pedestrian routes, and public
18 areas.
- 19 (4) In order to minimize visibility from adjacent roads and adjacent properties,
20 ground level and roof top mechanical equipment, power generators, water
21 cooling and storage facilities, utility substations, and other associated
22 utility infrastructure to support sustained operations of the infrastructure
23 must be screened. This screening may be provided by a principal building.
24 Mechanical equipment not screened by a principal building must be
25 screened by a visually opaque fence, screen wall or panel, parapet wall,
26 or other visually opaque screen that must be constructed of materials
27 compatible with those used in the exterior architectural finishes of the
28 principal building.
- 29 (5) Staff shall refer site plans to the Architectural Review Committee for
30 review prior to the site plan being scheduled for Planning Commission.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

1 The recommendations of the Architectural Review Committee may be
2 considered by the Planning Commission.

3 (6) In addition to §1-19.6.400 the following landscaping, screening, and
4 buffering requirements must be met.

- 5 a. Front yard(s) abutting a roadway must include a landscaped buffer.
6 b. Except where adjoining a Critical Digital Infrastructure use, side
7 and rear yards must include a landscaped buffer.
8 c. A landscaped buffer must include a four-season visual screen
9 resulting in multi-layered, staggered rows of overstory and
10 understory trees and shrubs that are a mix of evergreen and
11 deciduous vegetation, with an emphasis on species that are native
12 to Frederick County.
13 d. The minimum height of overstory trees within a landscape screen
14 or buffer at planting must be a minimum of 6 feet with a minimum
15 caliper of 2 inches. The minimum height of understory trees and
16 shrubs at the time of planting must be 3 gallon or larger. Trees and
17 shrubs larger than the minimum sizes listed above will be required
18 where the minimum planting sizes will not provide adequate
19 screening or buffering within 2 years. Vegetation used to establish
20 a visual screen shall not be trimmed so as to stunt upward and
21 outward growth or to otherwise limit the effectiveness of the visual
22 screen.
23 e. A berm, wall, or fence may be used in combination with vegetation
24 to satisfy the screening requirement where deemed appropriate by
25 County Staff and the Planning Commission. Walls and fences
26 must be made of quality materials and enhance rather than detract
27 from the beautification of the site. Walls and fences that are in
28 public view must avoid long, undifferentiated facades and long,
29 plain sections by including a combination of the following design

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

- elements: variations in height, step-backs or recesses, changes in material, patterns, textures, colors, or use of accent materials.
- f. If security fencing is proposed, vegetative screening must be placed between the fence and the public view. Fencing must be made of high quality materials. Chain-link and similar woven metal or plastic fencing shall not be used.
 - g. If forest or hedgerows exist where screening or buffering is required, it must be preserved to the maximum extent practicable and supplemented with new plantings where necessary to provide the desired screening or buffering.
 - h. All landscaping, screening, and buffering must be maintained in living condition.
 - i. Applicant must submit a landscape, buffering, and screening plan as part of the site plan application addressing the requirements and timing of plantings. Screening and buffering must be installed as early in the development process as possible. Occupancy shall not be granted if screening and buffering requirements are not installed in accordance with the approved site plan.
 - j. The Planning Commission may approve a modification to the landscaping, buffering, and screening standards where an alternate landscaping, buffering, and screening plan is provided that meets the purpose and intent of these design requirements.
- (7) Parking, loading, and signage must be provided in accordance with §1-19-6.200 through §1-19-6.340.
- (8) Lighting must comply with §1-19-6.500, but light poles must not exceed a height of 18 feet. The Planning Commission may require more restrictive lighting heights where deemed appropriate by the Planning Commission.
- (9) Bicycle rack requirements shall be in accordance with industrial parks in table §1-19-6.220 (H) (1).

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

1 (9) Critical Digital Infrastructure Facilities must meet all criteria found in §§1-
2 19-7.600 and 1-19-7.610.

3 (C) Subdivision and Street Frontage

4 (1) Subdivision of lot(s) for Critical Digital Infrastructure uses shall comply with
5 Chapter 1-16 of the County Code.

6 (2) Where two or more lots are proposed for Critical Digital Infrastructure
7 uses, the lot frontage requirement of §1-19-4.520 may be met by
8 construction of a private street subject to Planning Commission approval
9 and the following:

- 10 a. The lot or parcel from which the new lot is being created has fee-
11 simple frontage on a public street.
- 12 b. The private street connects directly to a public road.
- 13 c. The private street will not serve any uses that would be frequented
14 by the general public.
- 15 d. For the purposes of establishing bulk regulations (setbacks, lot
16 width, etc.), the measurements along the portion of the lot(s)
17 fronting a private street must be the same as established for public
18 streets.
- 19 e. The design of the private street must comply with Chapter 1-16 of
20 the County Code.
- 21 f. Private streets may not create long, dead-end street networks and
22 must serve a limited number of lots and sites, as determined by the
23 Planning Commission.
- 24 g. Private streets must be maintained by a property owner association
25 or similar organization.
- 26 h. Easements, maintenance agreements, and covenants must be
27 provided to the County for review with the submission of a Final
28 Plat, and must be recorded by the applicant prior to lot recordation
29 and the recording reference noted on the final plat.

30 (D) Performance Standards

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

These performance standards for Critical Digital Infrastructure Facilities are intended to mitigate potential detrimental effects on adjacent properties and the neighborhood. All applications for site plan approval must be accompanied by a registered engineer's certification that the use complies with all of the performance standards. If, after occupancy of the structures, continuous or frequent (even if intermittent) violations of the performance standards occur, and after notice is given, bona fide and immediate corrective work is not performed which successfully prevents the violation(s) from reoccurring, the Zoning Administrator may suspend or revoke the Zoning Certificate and the Certificate of Occupancy and require the operations and occupancy to immediately cease. The Zoning Certificate and Certificate of Occupancy will be reinstated after the property owner demonstrates to the Zoning Administrator's satisfaction, that operation of the facilities is able to conform to these requirements.

(1) Noise:

- a. Noise must be measured with a sound level meter.
- b. The maximum sound pressure levels permitted from any source, measured within an adjacent property line, are set forth below:

| <u>Sound Measured to:</u> | <u>Decibels Continuous Slow Meter Responses</u> |
|--|---|
| <u>Industrial Uses</u> | <u>70</u> |
| <u>Commercial Uses</u> | <u>64</u> |
| <u>Residential Uses in any Zoning District</u> | <u>55</u> |
| <u>Institutional Uses</u> | <u>55</u> |
| <u>All Other Uses</u> | <u>55</u> |

c. The provisions of this section do not apply to:

1. Transportation vehicles not under the control of the use.
2. Occasionally used safety signals, warning devices, and emergency pressure relief valves.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

1 3. Temporary construction activity between 7:00 a.m. and 7:00
2 p.m.

3 4. Other exemptions identified in §1-11-6- (F).

4 d. Air handlers, generators, and other mechanical devices must
5 comply with subsection (1)(b) above.

6 (2) Vibration: No vibration may be produced which is transmitted through the
7 ground and is discernible without the aid of instruments at any point
8 beyond the property line; nor may any vibration produce a particle velocity
9 of 2 inches per second measured at or beyond the property line. This
10 provision does not apply between adjoining Critical Digital Infrastructure
11 Facilities uses.

12
13 **1-19-8.403 Critical Digital Infrastructure Electric Substation in the LI and GI**
14 **Districts.**

15 The following provisions apply to Critical Digital Infrastructure Electric Substations in the
16 LI and GI Districts:

17 (A) A Critical Digital Infrastructure Electric Substation may only be constructed for
18 the purpose of providing power to Critical Digital Infrastructure Facilities, and
19 when a Critical Digital Infrastructure Facility has received site plan approval from
20 the Planning Commission. An application for a Critical Digital Infrastructure
21 Electric Substation may be processed concurrently with an application for a
22 Critical Digital Infrastructure Facility.

23 (B) A Critical Digital Infrastructure Electric Substation may be connected to another
24 electrical system within the region. Any expansion of a Critical Digital
25 Infrastructure Electric Substation for the purpose of supporting other uses or
26 users must follow the rules, regulations, and procedures applicable to
27 Nongovernmental Electric Substation use.

28 (C) An application for a Critical Digital Infrastructure Electric Substation must include
29 the following:
30

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

- 1 (1) Information indicating the general conditions of use and existing
2 improvements on adjoining properties within a 1,000-foot radius surrounding
3 the subject property.
4
5 (2) A description of the potential environmental and ecological (including water,
6 air, wildlife, and vegetation) effects of the proposed Critical Digital
7 Infrastructure Electric Substation on properties in the vicinity of the proposed
8 development.
9
10 (3) An assessment of the impact on nearby properties from electromagnetic
11 fields to be generated by the Critical Digital Infrastructure Electric Substation.
12
13 (4) An assessment of safety and reliability, including provisions for emergency
14 operations and shutdowns.
15
16 (5) Information as to how the applicant proposes to address the visual impact of
17 the Critical Digital Infrastructure Electric Substation on designated
18 preservation areas, such as rural legacy areas, agricultural preservation
19 areas, critical farms, Monocacy scenic river, designated heritage areas,
20 historic sites and sites eligible for historic designation.
21
22 (6) A description of methods to be utilized to mitigate any waste disposal, air
23 quality, visual or noise impacts associated with the development or operation
24 of the Critical Digital Infrastructure Electric Substation.
25

26 (D) Design Requirements

27 (1) Landscaping, Screening, and Buffering

- 28 a. A landscaped buffer must include a four-season visual screen
29 resulting in multi-layered, staggered rows of overstory and
30 understory trees and shrubs that are a mix of evergreen and
31 deciduous vegetation, with an emphasis on species that are native
32 to Frederick County.
33 b. The minimum height of overstory trees within a landscape screen
34 or buffer at planting must be a minimum of 6 feet with a minimum
35 caliper of 2 inches. The minimum height of understory trees and
36 shrubs at the time of planting must be 3 gallon or larger. Trees and
37 shrubs larger than the minimum sizes listed above will be required

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

1 where the minimum planting sizes will not provide adequate
2 screening or buffering within 2 years. Vegetation used to establish
3 a visual screen shall not be trimmed so as to stunt upward and
4 outward growth or to otherwise limit the effectiveness of the visual
5 screen.

- 6 c. A berm, wall, or fence may be used in combination with vegetation
7 to satisfy the screening requirement where deemed appropriate by
8 County Staff and the Planning Commission. Walls and fences must
9 be made of quality materials and enhance rather than detract from
10 the beautification of the site. Walls and fences that are in public
11 view must avoid long, undifferentiated facades and long, plain
12 sections by including a combination of the following design
13 elements: variations in height, step-backs or recesses, changes in
14 material, patterns, textures, colors, or use of accent materials.
- 15 d. If security fencing is proposed, vegetative screening must be
16 placed between the fence and the public view. Fencing must be
17 made of high quality materials. Chain-link and similar woven metal
18 or plastic fencing shall not be used.
- 19 e. If existing forest or hedgerows exist where screening or buffering is
20 required, it must be preserved to the maximum extent practicable
21 and supplemented with new plantings where necessary to provide
22 the desired screening or buffering.
- 23 f. All landscaping, screening, and buffering must be maintained in
24 living condition.
- 25 g. The Planning Commission may approve a modification to the
26 landscaping, buffering, and screening standards where an alternate
27 landscaping, buffering, and screening plan is provided that meets
28 the purpose and intent of this section.
- 29 h. Applicant must submit a landscape, buffering, and screening plan
30 as part of the site plan application addressing the requirements and

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

1 timing of plantings. Screening and buffering must be installed as
2 early in the development process as possible. Occupancy shall not
3 be granted if screening and buffering requirements are not installed
4 in accordance with the approved site plan.

5 (2) Lighting, if provided, must comply with §1-19-6.500, and light poles shall
6 not exceed a height of 18 feet. The Planning Commission may reduce lighting
7 height(s) where deemed appropriate by the Planning Commission.

8 (3) Noise:

- 9 a. Noise will be measured with a sound level meter.
10 b. The following table describes the maximum sound pressure level
11 permitted from any source and measured at any adjacent property
12 line.

13

| <u>Sound Measured to:</u> | <u>Decibels Continuous Slow Meter Responses</u> |
|--|---|
| <u>Industrial Uses</u> | <u>70</u> |
| <u>Commercial Uses</u> | <u>64</u> |
| <u>Residential Uses in any Zoning District</u> | <u>55</u> |
| <u>Institutional Uses</u> | <u>55</u> |
| <u>All Other Uses</u> | <u>55</u> |

14 c. The following sources of noise are exempt:

- 15
16 1. Transportation vehicles not under the control of the use.
17 2. Occasionally used safety signals, warning devices, and
18 emergency pressure relief valves.
19 3. Temporary construction activity between 7:00 a.m. and 7:00
20 p.m.

21 (4) Vibration: No vibration may be produced which is transmitted through the
22 ground and is discernible without the aid of instruments at any point
23 beyond the property line; nor may any vibration produce a particle velocity

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

1 of 2 inches per second measured at any point beyond the property line.
2 This provision does not apply between adjoining Critical Digital
3 Infrastructure uses.

4 (5) Height: The Planning Commission may approve an increase in the
5 maximum height established in §1-19-6.100, if it finds the increased height
6 would not have an adverse impact on properties in the vicinity of the
7 proposed Critical Digital Infrastructure Electric Substation. For each 3 foot
8 increase in the height above the maximum height established in 1-19-
9 6.100, , the required front, side, and rear yards set back measurements
10 must be increased by one additional foot.

11 *****

12
13 **§1-19-2.170. ARCHITECTURAL REVIEW COMMITTEE.**

14
15 **A. ESTABLISHED.**

16 There is hereby established an Architectural Review Committee.

17
18 **B. MEMBERS.**

19 (1) The Architectural Review Committee shall consist of 5 members appointed by the
20 County Executive, subject to confirmation by the County Council. The Committee
21 members shall be appointed for staggered 5 year terms of office. At the end of a term,
22 a member continues to serve until a successor qualifies and is appointed. A member
23 who is appointed after a term has begun will serve only for the remainder of the term
24 and until a successor qualifies and is appointed.

25 (2) Members may not be related to, either by blood or marriage, or associated with
26 any person or corporation who is currently working on or is invested in a Critical Digital
27 Infrastructure project in the county, or who has had such relations or interests in a
28 Critical Digital Infrastructure project in the county within a year prior to the member's
29 date of appointment.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

**** - indicates existing law unaffected by bill.*

Bill No. 22-05

1 (3) Members should have a license, certificate, degree, training or work experience
2 in architecture, landscape architecture, experience in related commercial/industrial
3 construction and development, or other areas of experience or interest as
4 determined to be relevant by the appointing official.

5
6 **C. FUNCTIONS.**

7 (1) The Architectural Review Committee will meet as needed to review site
8 development plans for proposed Critical Digital Infrastructure Facilities. The Committee
9 will provide recommendations to the Planning Commission regarding an application's
10 compliance with §1-19-8.402(B)(1-5). The Committee may also perform other related
11 functions as delegated from time to time by the county.

12

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 22-05

§ 1-19-5.310. USE TABLE.(A) *Permitted uses and required development review.*

- P Principal permitted use subject to design regulations
 PS Principal permitted use subject to site development plan approval. See §§ 1-19-2.160, and 1-19-3.300 through 1-19-3.300.4
 E Principal permitted use as a special exception with site development plan approval. See §§ 1-19-8.320 and following
 T Permitted as temporary use as a special exception. See § 1-19-8.300
 X Permitted as temporary use only. See § 1-19-8.700
 SW Solid Waste Floating Zone
 A blank indicates that the use is not permitted under any situation

| Uses | Zoning Districts | | | | | | | | | | | | | |
|---|------------------|-----------|----|----|----|----|-----|-----|----|----|----|-----|----|----|
| | RC | A | RI | R3 | R5 | R8 | R12 | R16 | VC | MX | GC | ORI | LI | GI |
| <i>Natural Resources Uses</i> | | | | | | | | | | | | | | |
| Agricultural activities | P | P | P | P | P | P | P | P | P | P | P | P | P | P |
| Limited agricultural activity | | | E | E | E | E | E | E | | | | | | |
| Apiary | P | P | P | P | P | P | P | P | P | P | P | P | P | P |
| Agricultural value added processing | P*** | P*** | | | | | | | | | | | | |
| Agritourism enterprise | P | P | P | P | P | P | P | P | P | P | P | P | P | P |
| Nursery retail | PS | PS | | | | | | | | | PS | | PS | PS |
| Nursery wholesale | P | P | | | | | | | | | P | | P | P |
| Farm distillery | P*** | P*** | | | | | | | | | | | | |
| Farm distillery tasting room | PS** * | PS** * | | | | | | | | | | | | |
| Farm winery | P*** | P*** | | | | | | | | | | | | |
| Farm winery tasting room | PS*** | PS*** | | | | | | | | | | | | |
| Limited farm alcoholic beverages tasting room | P*** | P*** | | | | | | | | | | | | |
| Farm brewery | P*** | P*** | | | | | | | | | | | | |
| Farm brewery tasting room | PS*** | PS*** | | | | | | | | | | | | |

| | Zoning Districts | | | | | | | | | | | | | |
|---|-------------------------|----------|-----------|-----------|-----------|-----------|------------|------------|-----------|-----------|-----------|------------|-----------|-----------|
| <i>Uses</i> | <i>RC</i> | <i>A</i> | <i>RI</i> | <i>R3</i> | <i>R5</i> | <i>R8</i> | <i>R12</i> | <i>R16</i> | <i>VC</i> | <i>MX</i> | <i>GC</i> | <i>ORI</i> | <i>LI</i> | <i>GI</i> |
| <i>Natural Resources Uses (Cont'd)</i> | | | | | | | | | | | | | | |
| Limited roadside stand | P | P | PS | PS | | | | | PS | PS | PS | | | |
| Commercial roadside stand | PS | PS | PS | PS | | | | | PS | PS | PS | | | |
| Forestry | P | P | P | P | P | P | P | P | | | P | | P | P |
| Sawmill | E | E | | | | | | | | | | | | PS |
| Mineral extraction | | | | | | | | | | | | | | PS |
| Mineral processing | | | | | | | | | | | | | | PS |
| Spring water harvesting and storage | E | | | | | | | | | | | | | |
| Intensive swine farm | | | | | | | | | | | | | | |
| <i>Residential Uses</i> | | | | | | | | | | | | | | |
| Single-family detached | P | P | P | P | P | P | P | P | P | P | | | | |
| Duplex dwelling | | | P | P | P | P | P | P | P | P | | | | |
| Two-family dwelling | | P | P | P | P | P | P | P | P | P | | | | |
| Townhouse | | | | PS* | PS | PS | PS | PS | PS | PS | | | | |
| Multifamily dwellings | | | | | | PS | PS | PS | PS | PS | | | | |
| Multifamily group developments | | | | | | PS | PS | PS | PS | PS | | | | |
| Mobile homes | P | P | | | | | | | | | | | | |
| Caretaker residence in conjunction with a permitted use | PS | PS | | | | | | | PS | PS | P | | P | P |
| Accessory dwelling unit ***** | E | E | E | E | E | E | E | E | E | E | | | | |
| <i>Temporary Housing</i> | | | | | | | | | | | | | | |
| Bed and breakfast | PS | PS | E | E | E | E | E | E | PS | PS | PS | | | |
| Motel, hotel | | | | | | | | | PS | PS | PS | PS | PS | |
| <i>Commercial Uses – Retail</i> | | | | | | | | | | | | | | |
| Antique, artisan and craft shops | | | | | | | | | PS | PS | PS | | PS | |
| Apparel store | | | | | | | | | PS | PS | PS | | | |
| Appliance sales and service | | | | | | | | | PS | PS | PS | | | |

| Uses | Zoning Districts | | | | | | | | | | | | | |
|---|------------------|---|----|----|----|----|-----|-----|----|----|----|-----|----|----|
| | RC | A | R1 | R3 | R5 | R8 | R12 | R16 | VC | MX | GC | ORI | LI | GI |
| Commercial Business and Personal Services (Cont'd) | | | | | | | | | | | | | | |
| Pawn shop | | | | | | | | | | | PS | | | |
| Photography studio **** | | | | | | | | | PS | PS | PS | | PS | |
| Restaurant | | | | | | | | | PS | PS | PS | PS | PS | |
| Satellite simulcast betting facility | | | | | | | | | | | PS | | PS | PS |
| Country inn | E | E | | | | | | | | | | | | |
| Facility for functions | E | E | E | E | E | E | E | E | E | E | E | E | E | E |
| Wholesaling and Processing | | | | | | | | | | | | | | |
| Agricultural products processing | E | E | | | | | | | | | PS | | PS | PS |
| Bottling plant | | | | | | | | | | | PS | | PS | PS |
| Contractors, equipment and material storage yard | | | | | | | | | | | | | | PS |
| Carpet or rug cleaning **** | | | | | | | | | | | PS | | PS | PS |
| Contractors office and storage | | | | | | | | | | | | | PS | |
| Petroleum products storage **** | | | | | | | | | | | | | PS | PS |
| Laboratory research, experimental or testing | | | | | | | | | | | PS | PS | PS | PS |
| Industrial laundry and dry cleaning **** | | | | | | | | | | | | | PS | PS |
| Self-storage units | | | | | | | | | | | PS | | PS | PS |
| Stone monument processing | | | | | | | | | | | PS | | PS | PS |
| Wholesaling and/or warehouse | | | | | | | | | | | PS | | PS | PS |
| Yard storage | | | | | | | | | | | | | | PS |
| Automobile and Related Services | | | | | | | | | | | | | | |
| Part sales and installation | | | | | | | | | PS | PS | PS | | PS | |
| Automobile filling and service station **** | | | | | | | | | PS | PS | PS | | PS | PS |
| Carwash | | | | | | | | | PS | | PS | | PS | |
| Automobile repair or service shop **** | | | | | | | | | E | E | PS | | PS | PS |
| Sales and service center **** | | | | | | | | | | | PS | | PS | PS |
| Salvage yard **** | | | | | | | | | | | | | | PS |

| Uses | Zoning Districts | | | | | | | | | | | | | |
|---|------------------|----|----|----|----|----|-----|-----|----|----|----|-----|----|----|
| | RC | A | R1 | R3 | R5 | R8 | R12 | R16 | VC | MX | GC | ORI | LI | GI |
| <i>Automobile and Related Services (Cont'd)</i> | | | | | | | | | | | | | | |
| School bus parking | E | E | | | | | | | E | | PS | | PS | PS |
| Truck stop and filling station service facility **** | | | | | | | | | | | | | | PS |
| Recreational vehicle storage facility | | E | | | | | | | | | PS | | PS | PS |
| Motor freight terminal **** | | | | | | | | | | | | | PS | PS |
| <i>Animal Care and Service</i> | | | | | | | | | | | | | | |
| Animal hospital or veterinary clinic | | E | | | | | | | E | PS | PS | | | |
| Kennel | | E | | | | | | | E | | E | | | |
| Auction sales – animals | | PS | | | | | | | | | PS | | PS | PS |
| <i>Commercial Amusements</i> | | | | | | | | | | | | | | |
| Bowling alley | | | | | | | | | PS | PS | PS | | | |
| Carnival, circus | | X | X | | | | | | X | X | X | | X | X |
| Race tracks | | | | | | | | | | | PS | | PS | PS |
| Motorcycle hill climb | | | | | | | | | | | | | | T |
| Health club, fitness center, vocational training facility | | | | | | | | | PS | PS | PS | | PS | |
| Tennis club | | | | E | E | E | E | E | | PS | PS | | | |
| Golf course **** | | | PS | PS | PS | PS | PS | PS | | | | | | |
| Skating rink | | | | | | | | | | PS | PS | | | |
| Swimming pool, commercial | | | | | | | | | | PS | PS | | | |
| Theater, drive-in or outdoor stage | | | | | | | | | | | PS | | PS | PS |
| Theater, indoor | | | | | | | | | PS | PS | PS | | PS | |
| Zoo/botanical garden/arboretum | | | | | | | | | | | PS | | | |
| Museums/gallery | | | | | | | | | PS | PS | PS | | | |
| Night club, tavern, lounge | | | | | | | | | | | PS | | PS | |
| Outdoor sports recreation facility | | PS | | | | | | | | | PS | | PS | PS |

| Uses | Zoning Districts | | | | | | | | | | | | | |
|--|------------------|----|----|----|----|----|-----|-----|----|----|----|-----|----|----|
| | RC | A | R1 | R3 | R5 | R8 | R12 | R16 | VC | MX | GC | ORI | LI | GI |
| Commercial Amusements (Cont'd) | | | | | | | | | | | | | | |
| Rodeo | | E | | | | | | | | | | | | |
| Indoor sports recreation facility | | | | | | | | | | PS | PS | | PS | |
| Industrial Uses | | | | | | | | | | | | | | |
| Limited manufacturing and assembly use | | | | | | | | | | | | PS | PS | PS |
| General manufacturing | | | | | | | | | | | | | | PS |
| Critical digital infrastructure facility | | | | | | | | | | | | | PS | PS |
| Critical digital infrastructure electric substation | | | | | | | | | | | | | PS | PS |
| Nongovernmental utility | E | E | E | E | E | E | E | E | E | | PS | | PS | PS |
| Nongovernmental electric substation | | | | | | | | | | | | | E | E |
| Open Space and Institutional | | | | | | | | | | | | | | |
| Airports, public **** | | | | | | | | | | | | | PS | PS |
| Cemetery/memorial gardens | | PS | PS | | | | | | | | | | | |
| Fairground | | | | | | | | | | | PS | | PS | PS |
| Shooting range/club - trap, skeet, rifle, archery | E | E | | | | | | | | | | | PS | PS |
| Aircraft landing and storage areas, private | | E | | | | | | | | | | | E | E |
| Aircraft landing and storage areas, private - commercial use | | E | | | | | | | | | | | E | E |
| Tent campground | E | E | | | | | | | | | | | | |
| Rustic retreat/camp/outdoor club | E | E | | | | | | | | | | | | |
| Private park | PS | | | | | | | | | | | | | |
| Institutional | | | | | | | | | | | | | | |
| Child care center/nursery school | | E | E | E | E | E | PS | PS | PS | PS | PS | | E | |
| Civic community center | | E | PS | PS | PS | PS | PS | PS | PS | PS | PS | | | |
| Civic service clubs | | E | P | | | | PS | PS | PS | PS | PS | | | |
| Comprehensive physical rehabilitation facility | | | | | | | | PS | PS | PS | PS | PS | | |
| Group homes, small private | P | P | P | P | P | P | P | P | P | P | | | | |

| | <i>Zoning Districts</i> | | | | | | | | | | | | | |
|---|-------------------------|----------|-----------|-----------|-----------|-----------|------------|------------|-----------|-----------|-----------|------------|-----------|-----------|
| <i>Uses</i> | <i>RC</i> | <i>A</i> | <i>R1</i> | <i>R3</i> | <i>R5</i> | <i>R8</i> | <i>R12</i> | <i>R16</i> | <i>VC</i> | <i>MX</i> | <i>GC</i> | <i>ORI</i> | <i>LI</i> | <i>GI</i> |
| <i>Institutional (Cont'd)</i> | | | | | | | | | | | | | | |
| Group home, large | | PS | PS | PS | PS | PS | PS | PS | PS | PS | | | | |
| Hospital | | | | | | | | PS | PS | PS | PS | | | |
| Assisted living facility | | | PS | PS | PS | PS | PS | PS | PS | PS | PS | | | |
| Nursing home | | | PS | PS | PS | PS | PS | PS | PS | PS | | | | |
| Place of worship | E | PS | PS | E | PS | PS | PS | PS | PS | PS | PS | | PS | |
| Private school | | PS | PS | PS | PS | PS | PS | PS | PS | PS | T | T | T | |
| Community fire and rescue service | | PS | PS | PS | PS | PS | PS | PS | PS | PS | PS | PS | PS | PS |
| <i>Governmental and Nongovernmental Utilities</i> | | | | | | | | | | | | | | |
| Arena or stadium | | | | | | | | | | | PS | | PS | PS |
| College or university | | | PS | PS | PS | PS | PS | PS | PS | PS | PS | | | |
| Public school | - | PS | PS | PS | PS | PS | PS | PS | PS | PS | T | T | T | |
| Nongovernmental utility | E | E | E | E | E | E | E | E | E | | PS | | PS | PS |
| Nongovernmental electric substation | | | | | | | | | | | | | E | E |
| Solar facility, commercial | | | | | | | | | | | | | PS | PS |
| <i>Solid Waste Operations</i> | | | | | | | | | | | | | | |
| Borrow pit operations | | PS | | | | | | | | | | | PS | PS |
| Industrial waste landfill **** | | E | | | | | | | | | | | | E |
| Rubble landfill | | SW | | | | | | | | | | | | SW |
| Recycling pickup and distribution centers | | | | | | | | | | | | | PS | PS |
| RRF (Resource Recovery Facility - Separated Recyclables) | | SW | | | | | | | | | | | SW | SW |
| RRF (Resource Recovery Facility - Nonseparated Materials) | | | | | | | | | | | | | | SW |
| Composting: | | | | | | | | | | | | | | |
| Limited food waste composting: agricultural activity **** | | P | | | | | | | | | | | | |
| Limited food waste composting: commercial activity **** | | PS | | | | | | | | | | | | |

| Uses | Zoning Districts | | | | | | | | | | | | | |
|---|------------------|----|----|----|----|----|-----|-----|----|----|----|-----|----|----|
| | RC | A | R1 | R3 | R5 | R8 | R12 | R16 | VC | MX | GC | ORI | LI | GI |
| <i>Solid Waste Operations (Cont'd)</i> | | | | | | | | | | | | | | |
| Limited wood waste recycling facility | | E | | | | | | | | | | | | E |
| Unlimited wood waste recycling facility | | SW | | | | | | | | | | | | SW |
| Sludge amended yard waste | | SW | | | | | | | | | | | SW | SW |
| Solid waste composting | | SW | | | | | | | | | | | SW | SW |
| Sludge pit | | E | | | | | | | | | | | | |

* Townhouses will be permitted only within MPDU developments; however, in no event shall the number of townhouses exceed 50% of the total number of units within the MPDU project.

** Communication towers not permitted in residential districts, PUD, or MXD districts with a residential component

*** A zoning certificate is required to be obtained prior to the initiation of the processing operation and/or prior to any building construction related to farm winery, farm brewery, farm distillery, farm distillery tasting room, farm winery tasting room, farm brewery tasting room, or limited farm alcoholic beverages tasting room.

**** These uses are prohibited within wellhead protection areas; outside of WHPA the location and containment of hazardous substance for these uses must meet the requirements of § 1-6-50.

***** A limited accessory dwelling unit may be approved as an accessory use where the provisions in § 1-19-8.212 are met (see also § 1-19-8.240, and § 1-19-8.321)

(B) *Permitted uses and required development review for limited zoning districts.*

(1) *Euclidean Institutional Zoning District (Ie).* The following uses are permitted within the Euclidean Institutional Zoning District:

(a) College or university, public school, private school, private school in conjunction with a place of worship, or residential treatment center in conjunction with a private school, a continuing care retirement community (CCRC), and agricultural activities as defined in § 1-19-11.100, subject to all other requirements of this chapter. The continued or further application of this zoning district to land uses not meeting these standards is not permitted. Caretaker residence in conjunction with a permitted use is specifically allowed as an accessory use. (See also § 1-19-8.480.)

(Ord. 77-1-78, §40-61A, 1-24-1977; Ord. 79-5-131, 3-27-1979; Ord. 79-19-145, 8-7-1979; Ord. 80-24-176, 8-26-1980; Ord. 80-25-177, 8-26-1980; Ord. 80-31-183, 10-7-1980; Ord. 81-2-192, 1-27-1981; Ord. 81-29-219, 9-29-1981; Ord. 82-19-263, 9-7-1982; Ord. 83-15-282, 6-7-1983; Ord. 83-23-290, 10-11-1983; Ord. 83-29-296, 12-20-1983; Ord. 84-5-301, 4-3-1984; Ord. 84-34-331, 12-24-1984; Ord. 85-6-338, 1-8-1985; Ord. 85-34-366, 8-8-1985; Ord. 85-45-377, 12-3-1985; Ord. 86-5-382, 4-22-1986; Ord. 86-16-393, 5-13-1986; Ord. 86-37-414, 8-26-1986; Ord. 86-49-426, 9-23-86; Ord. 86-53-130, 10-28-1986; Ord. 88-12-489, 5-3-1988; Ord. 89-1-532, 1-3-1989; Ord. 89-14-545, 3-7-1989; Ord. 89-51-582, 8-15-1989; Ord. 90-03-601, 2-6-1990; Ord. 90-30-628, 6-19-1990; Ord. 90-44-642, 11-20-1990; Ord. 90-46-644, 11-20-1990; Ord. 91-02-002, 3-22-1991; Ord. 91-13-013, 6-4-1991; Ord. 91-32-032, 11-19-1991; Ord. 92-22-057, 10-06-1992; Ord. 92-23-058, 10-6-1992; Ord. 93-19-083, 9-13-1993; Ord. 93-28-092, 11-9-1993; Ord. 95-02-126, 3-2-1995;

| <i>Use Classification</i> | <i>Minimum Lot Area</i> | <i>Minimum Lot Area per Unit</i> | <i>Lot Width</i> | <i>Front Yard</i> | <i>Side Yard</i> | <i>Rear Yard</i> | <i>Height</i> |
|--|-------------------------|----------------------------------|------------------|-------------------|------------------|------------------|---------------|
| General Industrial District GI | | | | | | | |
| <i>Use Classification</i> | <i>Minimum Lot Area</i> | <i>Minimum Lot Area per Unit</i> | <i>Lot Width</i> | <i>Front Yard</i> | <i>Side Yard</i> | <i>Rear Yard</i> | <i>Height</i> |
| General Industrial District GI | | | | | | | |
| All permitted uses | 1 acre | - | 150 | 25 | 15 | 40 | 60' |
| Open space uses | No minimum | - | - | - | - | - | - |
| Governmental and public utility | 1 acre | - | 200 | 40 | 40 | 40 | 30' |
| Nongovernmental utility, nongovernmental electric substation | 1 acre | - | 200 | 50 | 50 | 50 | 30' |
| Self-storage units | 20,000 | - | 100 | 25 | 10 **** | 25 ***** | 60' **** |
| Solar facility, commercial | 1 acre | | 200 | 50 | 50 | 50 | 30' |
| Critical digital infrastructure facility | 80,000 | | 200 | 50 ² | 50 ² | 50 ² | 60 |
| Critical digital infrastructure electric substation | 20,000 | | 200 | 50 | 50 | 50 | 30 |
| | | | | | | | |

From: Nick Carrera <mjcarrera@comcast.net>

Sent: Sunday, April 16, 2023 10:09 PM

To: Council Members <CouncilMembers@FrederickCountyMD.gov>

Cc: Carrera, Nicholas <mjcarrera@comcast.net>; Carrera, Alexandra <sasha.carrera@gmail.com>; Carrera, Johnny <johnnyquercus@me.com>

Subject: Windridge rezoning, Case #R-22-03

[EXTERNAL EMAIL]

Windridge Rezoning April 16 email to County Council: Windridge Rezoning, Case #R-22-03

“Take your time; make sure this is done right.”

At the February 8 hearing, Kathy Mitchell stressed that this Case was a “big deal” that could set a precedent. Planning Commissioners, tired from a long day of hearings, ignored her warning, disbelieved the staff report that rezoning was not justified, and rushed a decision that deserved more discussion. Why the rush? The applicant could have requested the change eleven years ago, in the 2012 comprehensive rezoning. He can now wait a little longer while the Council gives the issue more time than the Planning Commission was willing to do. There is every reason to do so.

The Quantum Loophole Project will accommodate a large number of data centers, a challenge for the county to digest. Each center will need large amounts of power and water, and total needs may exceed what can be supplied easily, without impacting residents and other businesses. In nearby Virginia, the rush to data centers is seriously straining power resources. A prudent approach for Frederick would be to see how well things go with Quantum Loophole, before committing to yet more data centers.

The Council approved the Livable Frederick Master Plan (LFMP) as our overall guide. Page 8 names four topics for action, putting Environment on equal footing with Community, Health, and Economy. Its four categories, land, air, water, and climate and energy, are all affected by data centers. Quantum Loophole promises to be “environmentally friendly.” Fine, but they won't control the companies that will build and operate there. In Northern Virginia, “responsible” operators are suggesting “solving” their power problem by changing air pollution regulations, to allow diesel-run generators to operate when commercial power is inadequate. Sound pollution falls under the “air” category. Numerous articles have appeared in Virginia papers, in *The Washington Post*, and in our own *Frederick News-Post* concerning the anguish Northern Virginia citizens now experience from the constant and unendurable noise from data centers. Water, both its limited supply and its safe disposal after use, is a critical consideration. And the category of land? Well, once farm and forest disappear to make way for data centers, an important buffer against climate change is lost. Maybe all these considerations were addressed before approval of Quantum Loophole's plans at the Eastalco site. But what about the other sites that owners and developers are rushing to have approved for data centers? Environmental issues had not been considered for the sites near Urbana, Brunswick, or Buckeystown that the previous County Executive wanted to have approved, and I doubt they've been considered yet for the Windridge site. And what about other requirements in the LFMP? Pages 43 and following “require a detailed assessment” of many elements *before* approval can be considered for development in the Eastalco Growth Area. Those assessments are lacking, and will need time adequately to prepare.

I again emphasize the troublesome precedent posed by the Windridge case. We've already seen moves by the Susanne Family Trust to piggy-back on that case; others will follow if this piecemeal rezoning

approach is approved. Before allowing data-center proliferation, the CDI Overlay ordinance should be completed, to address sound, lighting, environmental concerns, energy standards, and other issues, so that Frederick does not fall victim to the problems that currently bedevil communities in Northern Virginia. We have time -- we must *make* time -- to do it right.

Thank you for your responsible, deliberate action in considering this Case.

Nick Carrera, 2602 scenic Thurston Road, Frederick 21704

From: Nick Carrera <mjcarrera@comcast.net>
Sent: Saturday, April 15, 2023 4:58 PM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Comments on Windridge Rezoning Case R-22-03

[EXTERNAL EMAIL]

Council Members,

Following are excerpts from the email I sent 2/12/2003 to the Planning Commissioners, regarding their 2/08/2023 hearing and decision regarding rezoning of the Windridge property, aimed at building data centers there. The comments are still relevant, and have added a few further comments, in italics. I urge you to make time to watch for yourselves the video of that 2/08/2023 hearing. It will surprise you.

Excerpts follow.

"The issue for this hearing was a request for rezoning of a property adjoining the Eastalco site, now owned by Quantum Loophole and slated for a huge development of data centers (some claim that, when finished, it will be the largest concentration of data centers in the world, even without the "me-too" data centers that the Windridge decision portends). "

"As I read the staff report, the case looked simple. Under county regulations, the applicant had to prove -- *prove* -- either that the current zoning had been a mistake, or that a significant change in the neighborhood had occurred. Note: *the criterion was whether significant change had occurred in the neighborhood, not whether it will occur or may occur in the neighborhood.* The applicant did not claim a zoning "mistake," so he was trying the "significant change has occurred in the neighborhood" route. "

"The county planning staff presented its report, which ended with the clear conclusion that the applicant had not met the criterion for rezoning. The applicant then offered his case ... The presentation focused on *change that was expected to occur* in the neighborhood. ... [T]he talk was on what *will change* the neighborhood, not on what *has changed* it. Applicant offered several times that *the request for rezoning was to get "an early start" on the change to come.*"[emphasis added]

"A comment early in the hearing [by Kathy Mitchell; see also my comment below] was that this kind of rezoning request was rare. Commissioners asked for clarification and examples to help them understand the case and how precedents might bear on it. To my recollection, only one example could be offered by county staff, and in that case, the outcome was unfavorable to the applicant. The applicant's lawyer, however, was quick to offer *possible* scenarios that would go the other way. Our county lawyer seemed unable to provide explanation or examples that would have been useful. So we were left mainly with one side's interpretation. To my surprise, Commissioners did not ask for, and planning staff did not offer, a better defense of the carefully substantiated report the county had prepared, which recommended denial of the rezoning request."

After perhaps a dozen county citizens all testified in opposition to the rezoning, Jonathan Warner, a witness for the applicant, appeared. Warner is closely associated with applicant Robert Butz and his Windridge property, judging from the fact that they both met with the County Executive on October 18, 2022, to discuss the Windridge property.

"... all had testified in opposition to the rezoning, when another person [Warner] suddenly appeared. He claimed wide and relevant experience, and spoke strongly in favor of the rezoning. ... The applicant's lawyer had asked only a few questions of other citizen commenters, but for this one he was ready with a special list. What followed was clearly pre-arranged. The commenter [Warner] had prepared the groundwork with his claim of relevant expertise. The applicant's lawyer then put questions preceded with, "In your professional opinion ...". His clincher was something like, "In your professional opinion, have significant changes occurred in the neighborhood of this property?" You know his answer, and if you want the lawyer's exact wording, just ask him for the list of questions he was reading from."

"One final observation, which perhaps excuses in part the failings I have brought to your attention. All this occurred at the end of a very long day for both Commissioners and staff. The session had begun at, I think, 9:30 in the morning, the dinner break was briefer than usual, and by the time the decision came due it was late in the evening [the evening session lasted 3 hours 41 minutes]. With everyone feeling more than a little weary, that was not the right time to render a momentous decision like this one. "

An added comment: Kathy Mitchell offered, about 33 minutes into the hearing, that this was an unusual case, a "big deal" that could be precedent-setting. She added, "I think there's one more coming," but Commissioners did not ask for any details. They should have asked. The county is being asked by the Suzanne Family Trust for a similar piecemeal rezoning, citing the Windridge precedent, for the purpose of building data centers. They own over 250 acres and, according to the list they offer, are seeking to acquire another twenty-one "confronting or adjoining properties" to greatly enlarge the area that would be devoted to data centers. The Quantum Loophole site does not have even one data center, yet we are seeing a rush to build still more data centers -- by the Windridge owner, by the Suzanne Family Trust, and also by Tom Natelli, on his Map 94 Parcel 54 that adjoins the Windridge property. I can't stress too strongly, drawing on Kathy Mitchell's words, that the Windridge rezoning, if Council approves it, is a BIG DEAL!

Nicholas Carrera; 2602 scenic Thurston Rd, Frederick 21704

From: Dave Braslow <dbraslow@yahoo.com>

Sent: Saturday, April 15, 2023 2:33 PM

To: Superczynski, Denis <DSuperczynski@FrederickCountyMD.gov>

Subject: Zoning changes in the ag reserve

[EXTERNAL EMAIL]

My name is David Braslow. I live at 19708 Bucklodge Rd. in Boyds. I've been seeing the zoning requests to change from agriculture to General industrial by windrige. I just wanted to voice my opinion that I am so against it. The whole reason we moved to the agriculture reserve was because it was protected by the government. By changing the zoning, you are tarnishing the agriculture reserve in the name of greed.

Please keep the agriculture reserve intact. If you'd like to discuss this matter, I'd be happy to. My number is 443-462-2344. Good luck and thank you for keeping the agriculture reserve the beautiful place it is.

Regards

Dave Braslow

Sent from my iPhone

From: Bianca <italartus@yahoo.com>
Sent: Sunday, April 16, 2023 9:29 PM
To: Superczynski, Denis <DSuperczynski@FrederickCountyMD.gov>
Subject: No at Rezoning on Manor Woods Rd.

[EXTERNAL EMAIL]

Dear Mr. Superczynski,

I'm a resident in Buckeystown, and to be honest your signs have been the talk of the town and there is not one positive comment about the re zoning. We do not want the zoning. Making agricultural area into a general industrial area will not improve the life of the towns around. In this case Buckeystown and Adamstown. My children go to school in Adamstown, so in some way we are part of both communities. As I've been reading about it once the zoning is changed then a data centers warehouse will be built less than 10000 feet from Buckeystown. In the article on the Frederick News post is said that the sound could go up to 70 decibels. That will be 20 db higher then the one in Virginia that is causing problems with local residents migraines, tinnitus, and a constant hum audible by day and worse at night. With a quick research on the Internet it comes out that at that level the sound can cause problems to the brain and to the hearing, causing early dementia, headaches, problems to the brain to distinguish everyday sounds. With more researched articles from Virginia had pop up and the locals are very unhappy with the result of having those facilities around them. On top of that more people from those area have been reporting headaches caused by the db sounds coming from the facilities. I'm shocked to read that the Frederick County Council, that is supposed to be there to represent us and protect our interests would choose to cause us health issues.

My husband and I among a lot of Buckeystown citizens are not happy with this bad twist in our life. It will most likely impact the values of all our properties! So many of us are investing in maintaining our Historic houses and improving them. I see Buckeystown and Adamstown town dying once that data center will be built, causing the loss of 2 historic towns and countless of wonderful Victorian homes left to close and being destroyed to build more ugly facilities.

What will happen to the wild life in the area? In my backyard alone there been countless of birds, mourning doves, hawks, Vultures, cardinals, Jay birds, Red Robin to name a few. It's the home for Grounds hogs, snap turtles, rabbits, squirrels, foxes and more. Last year there was a sight of a mountain lion down the street near the pub. In the summer nights you can hear all sorts of animals including coyotes howling. All that will disappear. Animals won't put up with the constant noise they'll simply move on, what about the insects like honey bees are numerous in this area(at least in my backyard) and the apiaries are down the street from us. What about the cow farmers? All this businesses will be destroyed by the constant hum interfering with natural cycles and senses. How is that improving Frederick County living?

Respectfully,
Bianca Ferrario and Michael Roschuni

Sent from my iPhone

From: Susan Trainor <sue.trainor.music@gmail.com>
Sent: Tuesday, April 18, 2023 9:38 AM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Windridge Rezoning

[EXTERNAL EMAIL]

Dear Frederick County Council Members:

I attended the Planning Commission meeting where the Commissioners voted on the Windridge rezoning. They were in the midst of a very long day of very complex and contentious issues, and I believe they made an error in their recommendation to you.

- **Staff recommended against approval**, because the proposed zoning change doesn't meet the criteria for piecemeal zoning. There has been no substantial change in the neighborhood.
- I am concerned that approval to rezone this property at this time would set a **precedent for piecemeal zoning** that would result in a parade of similar requests. If piecemeal zoning is allowed to become a tool for development, it would seem that the value comprehensive zoning plans would be diminished.

Thank you for your consideration.

Sincerely,
Sue Trainor
8089 Fingerboard Road
Frederick 21704



April 17, 2023

Mr. Brad Young, Council President
Frederick County Council
12 E Church Street
Frederick MD 21701
councilmembers@frederickcountymd.gov

RE: Piecemeal Rezoning Case # R-22-03
Basis for application: "Substantial Change in the Neighborhood"
April 18, 2023 Public Hearing
Applicant: Windridge Properties L.C. and Windridge Farm L.L.C. ("Windridge")

Dear President Young and Council Members:

Please accept into the record this supplemental testimony, filed on behalf of my client Sugarloaf Alliance, Inc., in opposition to the above-reference request to rezone property from the Agricultural Zone to the General Industrial Zone.

The enclosed "Summary of Court Decisions Evaluating What Constitutes "Change" In Piecemeal Rezoning Cases" provides a summary overview of relevant Maryland court decisions applicable to this case.

I note that the most recent decisions date from the 1980s. This timeframe confirms that the legal standards in a rezoning case predicated on "change in the character of the neighborhood" are so settled that the application of these standards has not been challenged in more than three decades.

Please deny the application as failing to meet the threshold standards for rezoning eligibility - let alone approval - as explained in my earlier-filed letter of today's date and further clarified by the courts' findings highlighted in the enclosed summary.

Respectfully Submitted,

Michele McDaniel Rosenfeld

Michele McDaniel Rosenfeld

Enclosure

Summary of Court Decisions
Evaluating What Constitutes “Change” In Piecemeal Rezoning Cases

| Case Name | Type of changes argued by applicant or adopted by rezoning agency in support of “substantial change in character of neighborhood” | Whether court found adequate evidence to support finding of “substantial change in character of neighborhood” |
|--|--|--|
| | | |
| <i>Buckel v. Board of County Com’rs of Frederick County</i> , 80 Md.App. 305, 562 A.2d 1297 (1989) | BOCC granted “change” piecemeal rezoning request (7 acres of Agricultural to General Commercial) on basis of: <ul style="list-style-type: none"> • Forty new residential dwellings in the neighborhood • Properties north, west, and south zoned General Commercial • Several rezonings took place subsequent to 1977 – two were Agricultural to General Commercial • Subject property is adjacent to a shopping center under construction • Site plans for another shopping center across Rt 144 • Restaurant and motel to the west across Rt 75 approved | Court found insufficient evidence of substantial change because: <ul style="list-style-type: none"> • Shopping center land was zoned General Commercial prior to 1977 comprehensive plan, so not relevant • Increase in residences does not <i>per se</i> result in change • Strong presumption of correctness of original zoning and comprehensive rezoning is hard to overcome. |
| <i>Cardon Inv. v. New Mkt.</i> , 302 Md. 77, 485 A.2d 678 (1984) | Applicant argued factors supported finding of “change”: <ul style="list-style-type: none"> • Increase in traffic flow in designated neighborhood • Rezonings in the neighborhood • Installation and expansion of utilities in the neighborhood | Court held insufficient evidence of change in the character of the neighborhood citing: <ul style="list-style-type: none"> • Applicant’s primary reliance on increased traffic flow, and changes that occurred prior to comprehensive zoning in 1977 |
| <i>Pattey v. Bd. of Cnty. Comm’rs</i> , 271 Md. 352, 317 A.2d 142 (1974) | Board argued: <ul style="list-style-type: none"> • Neighborhood delineation unnecessary; • Availability of sewerage system • Establishment of a National Seashore Park | Court overturned rezoning based on: <ul style="list-style-type: none"> • failure properly to delineate neighborhood (relying on “changes” up to 17 miles away); • reliance on changes known at the time of original zoning |

| | | |
|---|--|--|
| <i>Chevy Chase Vill. v. Jagers</i> , 261 Md. 309, 275 A.2d 167 (1971) | <p>Jagers argued:</p> <ul style="list-style-type: none"> • Non-residential uses allowed in residential plan -- e.g., lots used for church, doctor's office, public utilities -- means a failure of the original plan and a substantial change in the neighborhood characteristics to render covenants unenforceable | <p>Court concluded:</p> <ul style="list-style-type: none"> • Minimal deviations from the original plan are insufficient to show a change in the neighborhood that is complete or radical. |
| <i>Howard Rsch. & Dev. Corp. v. Zoning Bd. of Howard Cnty.</i> , 263 Md. 380, 283 A.2d 150 (1971) | <p>Howard argued:</p> <ul style="list-style-type: none"> • Installation of sewer line in the bed of Little Patuxent • Moving the golf course and future potential apartments and townhouses • County acquisition of 200-300 acres for park • Road Commission considering a road relocation | <p>Court concluded:</p> <ul style="list-style-type: none"> • improvement in water and sewage facilities, solidification of existing residential character of neighborhood, and improvements in highways contemplated at the time of zoning map are inadequate to establish substantial change |
| <i>Miller v. Abrahams</i> , 257 Md. 126, 262 A.2d 524 (1970) | <p>Abrahams argued:</p> <ul style="list-style-type: none"> • Population increase • Substantial development of housing units | <p>Court concluded:</p> <ul style="list-style-type: none"> • population increase; • widening of nearby road; and • intensification of residential rezoning where almost no building had taken place on rezoned land insufficient to establish substantial change |
| <i>Harley, et al. v. Aluisi, et al.</i> , 259 Md. 275, 269 A.2d 575 (1970) | <p>Applicant argued:</p> <ul style="list-style-type: none"> • Commercial and industrial rezonings had occurred near the property | <p>Court found Prince George's BOCC rezoning approval invalid because:</p> <ul style="list-style-type: none"> • intensification of residential use; and • remote possibility of road improvements insufficient to sustain Board's decision |
| <i>Chatham Corp. v. Beltram</i> , 252 Md. 578, 251 A.2d 1 (1969) | <p>Chatham argued:</p> <ul style="list-style-type: none"> • New public sewerage and water installed; • New interchange and new I-70 N highway construction; • New nearby commercial construction • A "feeling" population growth will be fastest in the area | <p>Court found Howard County BOCC rezoning approval invalid because:</p> <ul style="list-style-type: none"> • improvement to water and sewage facilities contemplated at time of plan is not sufficient evidence of substantial change |

| | | |
|---|---|---|
| <p><i>Smith v. Board of County Com'rs of Howard County</i>, 252 Md. 280 249 A.2d 708 (1969)</p> | <p>BOCC argued:</p> <ul style="list-style-type: none"> • Mistake in original zoning • Land opposite the property was zoned commercial and recently built • Property is a large corner property, a lot of traffic at the intersection, and a good sight distance both ways • Hundreds of houses recently built and residents signed in favor of rezoning | <p>Court said</p> <ul style="list-style-type: none"> • reliance on changes such as increased commercial and residential development was error where such “changes” were in conformity with prior zoning and general plan for area” • recent commercial development and building of 300 to 400 houses not sufficient evidence of substantial change where such development was in conformity with the zoned uses and in conformity with the plan |
| <p><i>Randolph Hills, Inc. v. Whitley</i>, 249 Md. 78, 238 A.2d 257 (1968)</p> | <p>Appellant argued:</p> <ul style="list-style-type: none"> • List of 80 zoning changes since 1946 support “substantial change” in the area | <p>Court concluded</p> <ul style="list-style-type: none"> • changes outside the neighborhood or in conformance with original master plan could have no effect on character of the neighborhood |
| <p><i>Bd. of Cnty. Comm'rs v. Turf Valley Assocs.</i>, 247 Md. 556 (1967)</p> | <p>Applicant argued:</p> <ul style="list-style-type: none"> • No property owners protested • Rezoning would not adversely affect the surrounding properties • Rezoning would be compatible with the General Plan | <p>Court upheld BOCC’s denial of rezoning because:</p> <ul style="list-style-type: none"> • There had not been sufficient subsequent changes in the neighborhood to diverge from the General Plan |

Superczynski, Denis

From: Karen Lucado <kpl0209@gmail.com>
Sent: Tuesday, April 18, 2023 12:12 PM
To: Superczynski, Denis
Subject: Windridge GI rezoning application

[EXTERNAL EMAIL]

Dear Mr Superczynski:

I don't agree with the plan to rezone 223 acres of agricultural land to General industrial.

Here are my reasons:

1. This is in the Frederick Plan as Agricultural and should stay that way.
 2. A change to GI will impact the quality of life for the surrounding residents.
 3. when someone buys a property surrounded by Agricultural land, that drives their decision to live there.
 4. Frederick planning should think long term about the effects of climate change and quality of life for its citizens.
- In every decision you make about planning should you need to consider the residents above all else.

I can think of many more positive uses for this land. Consider that we are an agricultural community.

We could use that land to :

open a new county or state park, to provide more greenspace. We really don't have enough and we lag sorely behind other countries in providing adequate greenspace for its citizens.

we could use some of the space as a demonstration of sustainable agriculture. Climate change is real and we need to get prepared. A food forest can be created. as well. Educational programs can be started/ enhanced at FCC around sustainable agriculture, landscaping for support of native pollinators. creating meadows, monarch way stations. -There are many nonprofit groups that could help plan a better use of that land. (Silvoculture,UMD Master Gardeners extension office,..FFA for sustainable agriculture.)

Let's plan for a better future and be a leader for positive change, and how Frederick county measures up in forward thinking and planning. Let's be a county that shows a better way of doing things. Please don't turn us into another Montgomery county. We all moved here to get away from that.

A change to GI will just drive many residents out of this county.

--

Karen Lucado

April 18, 2023

Mr. Brad Young, Council President
Frederick County Council
12 E Church Street
Frederick MD 21701
councilmembers@frederickcountymd.gov

RE: Piecemeal Rezoning Case # R-22-03
Basis for application: "Substantial Change in the Neighborhood"
April 18, 2023 Public Hearing
Applicant: Windridge Properties L.C. and Windridge Farm L.L.C. ("Windridge")

Dear President Young and Council Members:

I write on behalf of the Sugarloaf Citizens Association, a non-profit citizen advocacy organization representing 300 people and families. SCA has members in Frederick County as well as Montgomery County. My wife, Sharon Crane, and I live in Frederick County.

SCA strongly opposes the proposed rezoning of Windridge Farm. The Planning Commission staff report recommended against the rezoning because it would not be in accordance with the criteria for rezoning. Windridge Farm has always been located next to the Eastalco site that is zoned general industrial, and nothing has changed except the construction of a data center and the resulting massive increase in value of such a property.

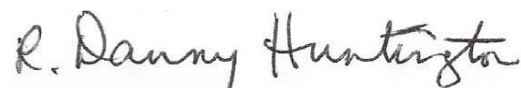
Rezoning that property would set a precedent that would allow a cascading effect of farms being rezoned. Indeed, the letters supporting the rezoning at the following link are all neighboring properties that will no doubt use the rezoning to sell their properties for vastly increased amounts of money so they can also be rezoned and used to construct data centers:

<https://www.frederickcountymd.gov/DocumentCenter/View/342692/Windridge-Public-Comment-February-6-2023---March-24-2023-?bidId=>

We understand there is already another farm down the road from Windridge next in process. Rezoning should not be done on a piecemeal basis, but rather on the basis of a master plan.

We also support the detailed analysis and conclusion in the letter filed on April 17, 2023, by Michele McDaniel Rosenfeld on behalf of the Sugarloaf Alliance, Inc., and believe the application for rezoning should be denied.

Respectfully submitted,



Robert Danny Huntington
1137 Sugarloaf Mountain Road
Dickerson, MD 20842

From: goldbergn@gmail.com <goldbergn@gmail.com>
Sent: Monday, April 17, 2023 7:12 PM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: I oppose the Windridge rezoning application

[EXTERNAL EMAIL]

Dear Council members:

I oppose the Windridge rezoning application because this proposed zoning change doesn't meet the criteria for piecemeal zoning. I am also concerned that a poor precedent would be set if this application is approved.

Sincerely,

Robert Goldberg

From: Barbara Luchsinger <blagluch@gmail.com>
Sent: Monday, April 17, 2023 5:43 PM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Cc: barbara luchsinger <blagluch@gmail.com>
Subject: Opposed to Windridge zoning request

[EXTERNAL EMAIL]

Dear Council Members:

We oppose the Windridge zoning application on the basis that the proposed change doesn't meet the criteria for piecemeal zoning.

Once the precedent is set, should this application be approved, further such approvals will follow, thwarting the comprehensive approach desired by county residents and those who worked so hard to devise a suitable plan.

Barbara Luchsinger

Thurston Road

From: Christine Rai <sunny_rai@verizon.net>
Sent: Tuesday, April 18, 2023 7:56 AM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Opposing Windridge rezoning

[EXTERNAL EMAIL]

Good Morning Honorable Councilmembers,

I am writing to you to voice my opposition to the Windridge rezoning.

The proposed zoning change does not meet the criteria for piecemeal zoning and I am very concerned about the precedent that would be set if this application is approved.

Thank you for continuing to support the Sugarloaf area for agriculture, history, and open spaces, not development and industrial uses.

Kind regards,

Christine Rai
sunny_rai@verizon.net
(301) 980-5159

Taste Travel Teach
www.christinera.com

From: David Luu <davidthangluu@icloud.com>

Sent: Monday, April 17, 2023 5:51 PM

To: Council Members <CouncilMembers@FrederickCountyMD.gov>

Subject: Opposition to Windridge Rezoing Application before the County Council

[EXTERNAL EMAIL]

I oppose the Windridge rezoning application at this time, because the proposed zoning change doesn't meet the criteria for piecemeal zoning. I am concerned about the precedent that would be set if this application is approved.

David Luu, Esq.
1451 Sugarloaf Mountain Rd.
Dickerson, MD 20842

From: Karen Lazo <LazoBiz@comcast.net>
Sent: Tuesday, April 18, 2023 2:14 PM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Rezoning Case #R-22-03 Windridge General Industrial
Importance: High

[EXTERNAL EMAIL]

Respectable Council Members
RE: Rezoning Case #R-22-03 Windridge General Industrial

Please do not allow the rezoning of this piece of property from Agricultural to General Industrial. We moved to Frederick County in part because of its abundance of green space, and we don't want to lose more of the lovely land! Please keep Frederick County's agricultural land! We don't want more development!

Thank-you, Karen Lazo
1731 Fletchers Dr
Point of Rocks, MD 21777

From: Brittney Rahmy <bribri810@gmail.com>
Sent: Tuesday, April 18, 2023 12:31 PM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Rezoning Case #r-22-03 Windridge GI

[EXTERNAL EMAIL]

To Whom It May Concern,

It is my understanding that this rezoning request stems from a desire to sell the property to be made into a data center. I implore this panel to *unequivocally reject this request*.

A quick google search will deliver community complaints against data centers, often with **no recourse** for the affected community as there are zero regulatory bodies governing acceptable usage and practice of these facilities.

The most common complaint I researched was Noise

-Braxton Boren, Assistant Professor of Audio Technology at American University, has stated that due to the low level frequency/low wavelengths of the noise these facilities produce, that traditional sound barriers don't work. Through a process called Diffraction, the waves bend instead of stop. It's also notable that many of these low level noises are not covered by noise ordinances and the community has no recourse because the criteria is for level, not the consistency of the noise, which is 24/7. Even as we become used to the noise, our audio processing, and so our brains, are always tuned into the noise. Our brains will not rest from them.

-Per the CDC, constant exposure to such noise can cause stress, anxiety, and even heart disease for community members with continual exposure. We all wore masks at the CDC's recommendations, we should head them here too. Data centers will take a physical toll on your constituents. I've referenced a University of Michigan presentation listed on the CDC website on chronic noise concerns at the bottom of this email as well.

-SensEar, a hearing safety company, undertook their own study that showed that the average Data Center operates at an average of 92-96 dB(A). OSHA's threshold for requiring protection is 85 dB(A). And 90 dB(A) is not recommended for more than 8 hours.

-An MIT case study by Steven Gonzalez Monserrate for their Case Studies In Social And Ethical Responsibilities of Computing series indicates there may be additional health concerns for residents beyond the CDC's reporting, including but not limited to Increased Blood Pressure, Hypertension, Increased Cortisol, and Insomnia. University of Michigan also has produced possible health concerns requiring a better understanding of this type of noise issue.

Energy Usage for Data Centers

-In Chandler, Arizona, approval for new data centers was put on hold to create new criteria for new approvals. "City staffers and elected leaders say data centers **aren't** sustainable, **don't** generate quality jobs, and produce disturbing noise to nearby residents." (AZcentral.com) Vice Mayor Mark Stewart is quoted as calling data centers a "drain on water and energy."

-Per the above mentioned MIT study, data centers can consume the equivalent of 50,000 homes. At 200 terawatt hours (TWh) annually, data centers collectively devour more energy than some nation states. Simply cooling the NSA's Utah Data Center reportedly consumes seven million gallons of water daily to operate, all while local residents face shortages. The cloud/data centers now have a larger carbon footprint than the entire airline industry.

Lack of Legal Recourse after the fact

-In Virginia, Prince William County residents have been seeking legal recourse to their complaints for **multiple** years. When asked for comment, the data centers have maintained during this stretch of time that they are working with the community while doing nothing and/or making little to no change.

-In Oregon, Google and the City fought a 13 month legal battle (against the people) to avoid transparency before Google yielded. Google not only paid the settlement, but also the city's legal fees, which highlights the issue of local governments deferring to big business instead of their constituents. If we're being honest with ourselves, this isn't something that could only happen in Oregon.

-As stated in the MIT case study, corporate pledges {to do better, reduce emissions, reduce noise, etc}, while laudable, are not enforceable without the regulatory bodies and laws to do so.

-And as reported in the Washington Post, lawmakers will agree that comp guides for "doing better" are not legally binding.

Data centers across the USA are full of buyers' remorse from local residents who wish they'd never been approved, and for good reason. I believe that this panel would be *hard pressed* to determine that a rezoning request to turn agricultural land into a data center is 1) good for people, and 2) good for the land/energy resources; and so I ask that as our representatives this request is rejected.

Thank you,
Brittney Rahmy
Osprey Way, Frederick 21701

AZCentral.com

Monserate, Steven Gonzalez. 2022. "The Cloud Is Material: On the Environmental Impacts of Computation and Data Storage."
MIT Case Studies in Social and Ethical Responsibilities of Computing,
no.

Winter 2022 (January).

<https://doi.org/10.21428/2c646de5.031d4553>.

<https://www.wusa9.com/article/news/verify/verify-whats-all-the-data-center-noise-about/65-0a695ecf-9eac-44bc-93f8-9fd7f4bbfd88>

https://www.cdc.gov/nceh/hearing_loss/docs/CDCPresentationNeitzel-508.pdf

<https://www.osha.gov/noise#:~:text=OSHA%20sets%20legal%20limits%20on,for%20an%208%20hour%20day>.

<https://www.cdc.gov/vitalsigns/hearingloss/index.html>

<https://www.washingtonpost.com/dc-md-va/2022/11/02/prince-william-vote-data-center/>

<https://www.wusa9.com/article/news/local/virginia/the-battle-over-data-centers-in-prince-william-county/65-96ba9976-18ae-41c2-b9e4-070a1e97391b>

From: Brian Sweeney <briansweeney8911@gmail.com>
Sent: Tuesday, April 18, 2023 2:48 PM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Windridge Farm Rezoning

[EXTERNAL EMAIL]

County Executive & Council Members,

Good afternoon, my name is Brian Sweeney and I live and farm outside of Adamstown in close proximity to the quantum loophole property and the proposed data center construction. I am writing in regards to tonight's meeting and my concerns with the rezoning of adjacent property from agricultural to general industrial. I urge you to carefully consider the consequences of this decision.

The sale of the alcoa property and proposed data center construction was pitched to the residents of Frederick County as the alternative to northern Virginia's data center sprawl. Industrial development can be just as detrimental to an area as residential sprawl, which this council has worked so hard to prevent. To disregard the work this council has done and abandon the plan to control the data centers to a strategic location, essentially opening the floodgates before the quantum loophole property is even utilized would be reckless and irresponsible.

If the rezoning of Windridge Farm is approved tonight a message is sent to all surrounding landowners that the time to sell is now. This would accelerate the loss of prime farmland and destroy the agricultural community. The area is designated as the Carrollton Manor Rural Legacy Area and every acre lost to upzoning will detract from the state funds contributing to our land preservation programs that council members have praised and promoted. Land values will soar to the point that the next generation of farmers such as myself will not have the ability to purchase land even with assistance from these programs. The rural beauty and character of the surrounding towns and communities will be lost and the problems of northern Virginia will transfer to Frederick County. I urge you to continue to stand with the farmers and residents of the agricultural and rural communities to protect Frederick County. Thank you

Brian Sweeney
Calico Farm
3040 Ballenger Creek Pike
Frederick, MD 21703

From: Robert Stevens <pbookbob@icloud.com>
Sent: Tuesday, April 18, 2023 10:36 AM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Windridge Rezoning - For the Public Record

[EXTERNAL EMAIL]

Council Members,

We join the group that is opposed to the rezoning. As Adamstown residents we feel that this will change the nature of the area and that this area has not already changed in regards to becoming more industrial. The only change we can see that applies to this request is that land that was already zoned industrial (the former Eastalco property) will in the near future once again be utilized in that way.

This southern area of the county is still mostly residential and agricultural. This rezoning will itself create the change as neighboring properties will have a much easier path to having their properties rezoned.

Thank you for your consideration,

Robert and Jody Stevens
Adamstown, MD

From: Sue Fortin <ccsfortin@gmail.com>
Sent: Tuesday, April 18, 2023 4:28 AM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Windridge Rezoning

[EXTERNAL EMAIL]

I oppose the piecemeal Windridge rezoning. It does not meet the exception criteria and its approval would undermine the principle of the comprehensive planning and zoning process.

From: Catherine Marcoux <katerihusky@gmail.com>
Sent: Monday, April 17, 2023 6:31 PM
To: Council Members <CouncilMembers@FrederickCountyMD.gov>
Subject: Re: Windridge

[EXTERNAL EMAIL]

I oppose the Windridge rezoning application request at this time, because the proposed zoning change doesn't meet the criteria for piecemeal zoning.

I am concerned about the precedent that it would set if the application was approved.

Thank you for listening to my concerns.

Catherine Marcoux
2808 Chevy Chase Cir, Jefferson, MD 21755
240-656-9248

From: Elizabeth Law <bettybob1758@gmail.com>

Sent: Monday, April 17, 2023 1:48 PM

To: Council Members <CouncilMembers@FrederickCountyMD.gov>

Subject: Please postpone piecemeal zoning change on Westridge

Dear Council Members,

Thank you for the opportunity to ask you to postpone, at least for now, Westridge's request for a piecemeal rezoning change to Light Industrial from agricultural.

I am an Electric Power Engineer and as such understand the monumental infrastructure changes the CDIs will bring to this county. As an engineer I am deeply concerned that Frederick County will stumble into the same ill-conceived results we see in Northern Virginia.

Frederick County needs an engineering analysis of the full extent of power, water, and air quality impact of projected datacenters. This study should at minimum be based on the full projected buildout at Quantum Loophole, Westridge, Suzanne Family Irrevocable Trust and any other agricultural land in line for zoning changes from AG to IG so that comprehensive planning can be done. How many megawatts (MW) will be coming into this area? What are the millions of gallons per day (mgd) required for each datacenter? At what level must our water treatment and stormwater management systems be upgraded to meet this demand? What will be the cost to taxpayers?

Moreover, the current CDI Ordinance is insufficient to regulate what is actually a heavy industry – given the operational requirements for power and water and the level of noise and high level emissions that will be produced by hundreds of cooling fans and diesel generators.

Council Members Knapp and Keegan-Ayer and staff will be producing an amendment to the CDI Ordinance that will address power and water regulations needed to avoid the mistakes made in Northern Virginia.

I appeal to you to postpone these piecemeal zoning changes until after a CDI Ordinance Amendment that protects the environment and the public has been approved.

Thank you,

Elizabeth Law

1758 Wheyfield Drive

Frederick, MD