



Zoning Map Amendment

Staff Report

Case #: R-23-01

Applicant: 2404 Ballenger Creek Pike LLC & 2518 Ballenger Creek Pike LLC
(The Suzanne Family Irrevocable Trust GI)

Request: Rezone 257.82 acres from Agricultural (A) to General Industrial (GI)

Site of Rezoning Request

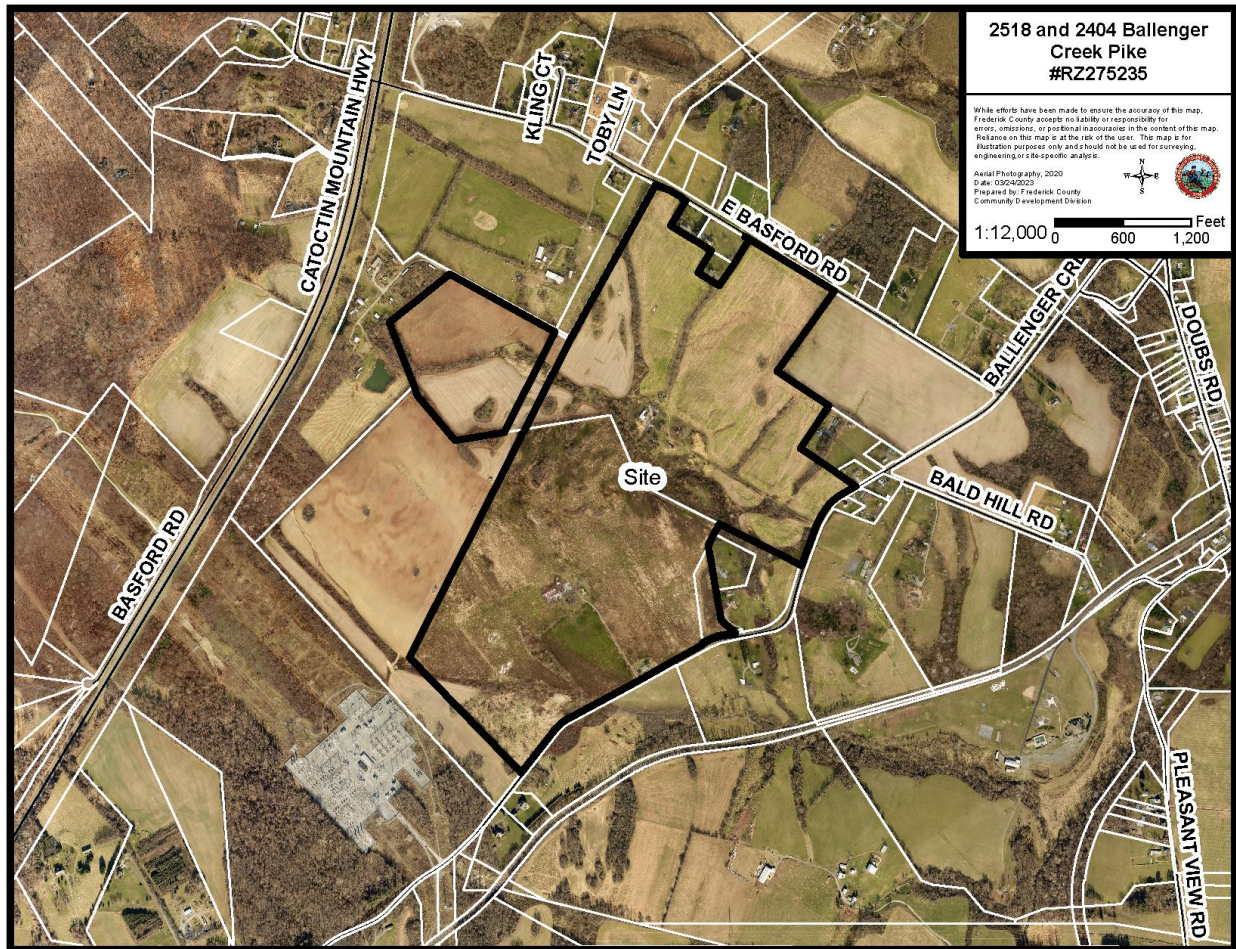


Figure 1 Aerial Map

Applicant's Proposal

The Application proposes to rezone 257.82 acres from Agricultural (A) to General Industrial (GI). The Applicant is requesting the rezoning to allow for Critical Digital Infrastructure (CDI) uses on the Site.

The Site consists of three properties. There are two parcels (2404 Ballenger Creek Pike; Tax ID # 01-012630 and 2518 Ballenger Creek Pike; Tax ID #01-005154) that currently serve as agricultural lands within the Suzanne Family Irrevocable Trust portfolio under the ownership of 2404 Ballenger Creek Pike, LLC and 2518 Ballenger Creek Pike, LLC. Two single-family detached homes and several agricultural buildings occupy approximately two and one-half (2.5) acres of land on the southern parcel (2404 Ballenger Creek Pike), and a single-family detached home, and several agricultural buildings occupy approximately two and one-half (2.5) acres of land on the northern property (2518 Ballenger Creek Pike). A single, vacant, 3-acre residential out-lot (Tax ID# 01-032100), located on Ballenger Creek Pike near the southeastern corner of 2404 Ballenger Creek Pike, is also included in the request.

The Applicant seeks a rezoning of the property, asserting that a substantial change in the character of the neighborhood has occurred as a result of the Quantum Loophole/Quantum Frederick data center project that is

currently under development.

No specific plan for development of this Site has been submitted as part of this Application.

Application At-A-Glance

What:

- Requesting a *piecemeal* rezoning (a change to the existing zoning map) of a 257.82-acre Site comprised of three separate parcels and currently occupied by three single-family homes and associated agricultural structures.
- Seeking to apply the General Industrial, or GI, zoning designation to the Site that is now zoned Agricultural (A).

Where:

- The Site is located outside the Eastalco Growth Area and the Adamstown Growth Area. It lies approximately 1.3 miles south of the Eastalco Growth Area boundary on Ballenger Creek Pike and 1.5 miles from the Quantum Loophole/Quantum Frederick data center campus project. It lies approximately 0.7 miles west of the Adamstown Growth Area. It is bounded by East Basford Road to the north and Ballenger Creek Pike to the east. It is located approximately 400 feet northeast of the Doubs Substation on Ballenger Creek Pike.

Why:

- The Applicant seeks to rezone the property to allow for Critical Digital Infrastructure (CDI) uses.
- As noted above, the property is approximately 1.3 miles from the Eastalco Growth Area and 1.5 miles from the proposed Quantum Loophole/Quantum Frederick data center campus project that proposes a comprehensive redevelopment of the former Eastalco site. The property is proximate to the Doubs Substation and is near the CSX/MARC rail corridor, but it does not have in-fee frontage on the railroad right-of-way. The applicant has also stated that the QLoop fiber connection to the Eastalco property from northern Virginia may pass through this property or in close proximity.

How:

- The Zoning Ordinance allows an application for an individual zoning map amendment to be filed by a property owner or his duly authorized agent, a contract purchaser, or any other person with at least a 50% proprietary interest in the property.
- The Applicant asserts as justification for the rezoning that a substantial change in the character of the neighborhood has occurred since the County's 2012 Comprehensive Rezoning and the September 3, 2019, adoption of the Livable Frederick Master Plan (LFMP), which maintained the land use and zoning designations set forth in 2012. This justification is referred to colloquially as the change or mistake rule.
- A rezoning application is subject to a two-step review process:
 - 1) *Planning Commission* conducts a public hearing to consider the application and accept public input, after which the Commission submits its recommendation to the County Council.
 - 2) *County Council* holds its own public hearing to consider the application and accept public input, after which it decides whether or not to amend the zoning map. The Council *may place certain conditions* on the property if it decides to approve a piecemeal rezoning request.

- The County is not required to approve a request for rezoning, even if the applicant meets all of the requirements.
- If the application is approved and the zoning is changed to GI, any specific development activity proposed for the Site will be subject to all the normal review and approval processes required of proposed development, including Subdivision Plan and Site Development Plan reviews by the Planning Commission. The project will also be subject to other regulations such as the Adequate Public Facilities Ordinance, which considers the capacity of schools, roads, and water/sewer service.

Evaluation

General Land Use Factors

This Application, in seeking to rezone Agricultural (A) acreage to General Industrial (GI) acreage, requires consideration of the overall impacts on the supply of industrially zoned land in Frederick County, the suitability of the land for agricultural purposes, and the location of the property in the context of the State of Maryland and Frederick County's agricultural land preservation efforts.

In recent decades, the County has not incorporated any detailed assessment of its industrially zoned land inventory into its long-range land use plans. However, issues related to the availability of land with zoning designations that are supportive of non-office employment have arisen in this time.

General Industrial Areas – Once it was apparent that operations at the former Eastalco plant would cease, the County began to grapple with the prospect of nearly 1,100 acres of GI land being available for redevelopment. Several potential projects reached the level of initial discussions with County staff and elected officials in the years following the plant's demise. The 2010/2012 Comprehensive Plan preserved both the GI land use designations and the GI zoning at the area identified as the Eastalco Employment Area. The 2019 Livable Frederick Master Plan took a different approach by considering a mixed-use future for the redesignated "Eastalco Growth Area."

Today, much of the remaining land in the County zoned for General Industrial uses is concentrated in areas south of the City of Frederick. A significant portion of the industrial lands located in other areas of the County is either currently in use by an existing employer or encumbered by resource mining-related operations.

With the Quantum Frederick/Quantum Loophole project slated to occupy most of the Eastalco GI property, the County will need to consider its overall supply of GI property in a future planning document. In 2022, the Windridge GI rezoning application (Case #R-22-03) requested rezoning of 223.524 acres from Agricultural (A) to General Industrial (GI). However, unlike the properties that are the subject of this rezoning request, the Windridge GI property is located within the Eastalco Growth Area and possesses a designation of General Industrial within the framework of the approved Comprehensive Land Use Map.

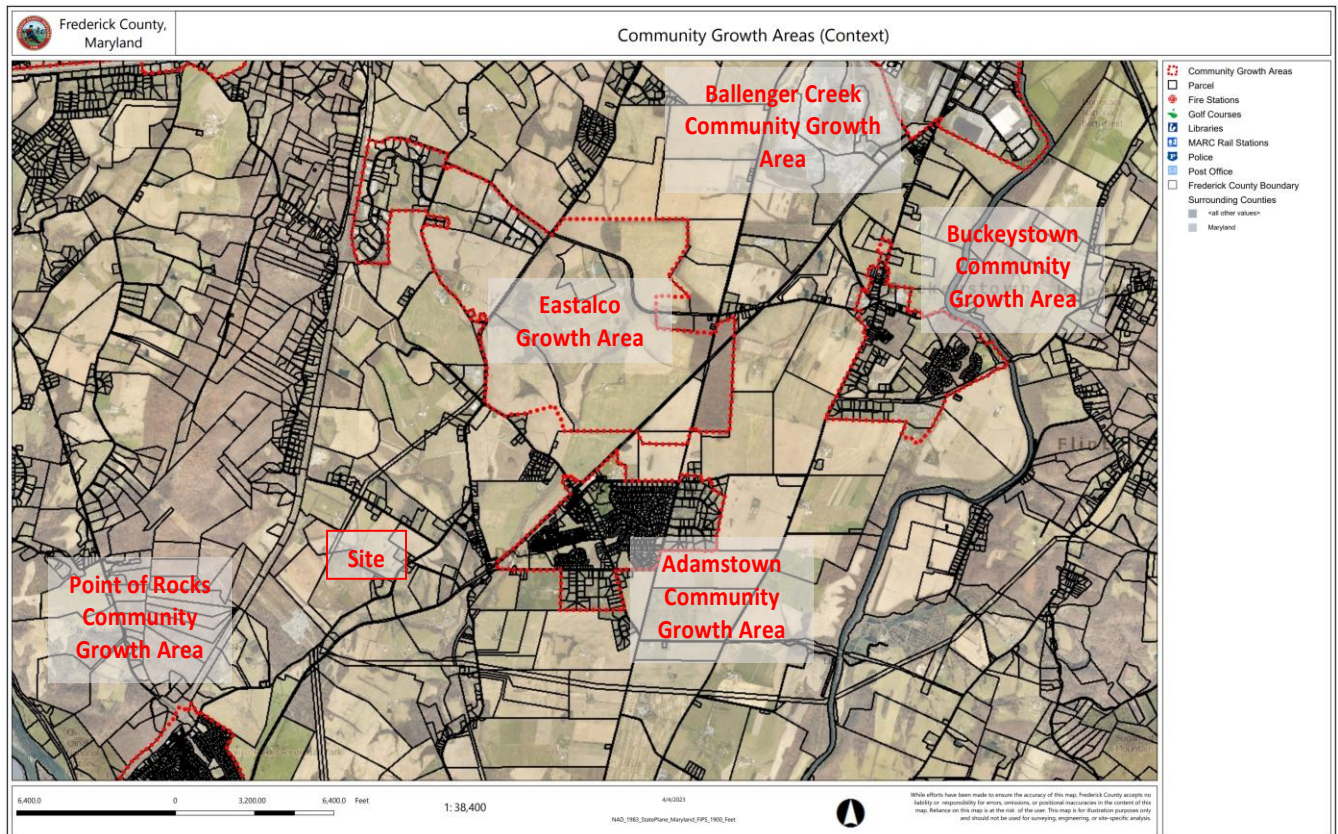


Figure 2 Growth Area Context Map

Limited Industrial Areas – Lands zoned Limited Industrial (LI) in Frederick County often provide the land resource necessary to support local, or smaller, employers who require lands that can support equipment and supply storage, and freedom from the burden of surrounding business and residential uses that may be negatively impacted by industrial operations. Concerns over the shrinking supply of LI-zoned property have focused more on the need to maintain a geographically distributed supply of lands, as opposed to the overall acreage available. With the growing needs of emerging tech and bio-sciences employers in the County, planners and elected officials should consider where best to provide this type of zoning in order to support local employment in these sectors. The South Frederick Corridors Plan will be the first planning effort to deal with this issue directly and may provide areas for this type of future employment growth.

Rural Reserve – While the Livable Frederick Master Plan acknowledges the need to foster innovation and business development, it also recognizes the rich farming history and vibrant agricultural sector within Frederick County on Pages 60 – 65 of the Livable Frederick Master Plan. The Rural Reserve component of the plan is intended to identify and promote the rural agricultural characteristics of Frederick County. This Site is located within the Rural/Agricultural Corridor indicated on Page 60 of the Livable Frederick Master Plan (Figure 3). This Rural / Agricultural corridor also includes much of the Carrollton Manor Rural Legacy Area identified by the Maryland Department of Natural resources (<https://dnr.maryland.gov/land/pages/rurallegacy/all-rural-legacy-areas.aspx>) in the Rural Legacy Program documentation. The Rural Legacy Program was created by the State to provide funding to preserve large, contiguous tracts of land and to enhance natural resource, agricultural, forestry, and environmental protections.



Figure 3 Livable Frederick Master Plan Agricultural Infrastructure

Priority Preservation – This Site is also located within the Carrollton Manor Priority Preservation Area (PPA) as indicated in Figure 4. According to MD Code Ann. § 2-518, a Priority Preservation Area (PPA) shall, “contain productive agricultural or forest soils, or be capable of supporting profitable agricultural and forestry enterprises where productive soils are lacking; be governed by local policies that stabilize the agricultural and forestland base so that development does not convert or compromise agricultural or forest resources; and, be large enough to support the kind of agricultural operations that the county seeks to preserve, as represented in the Comprehensive Plan.”

Among the criteria used to identify Priority Preservation Areas are areas identified as prime farmland soil by the USDA/NRCS Soil Survey for Frederick County, land with existing clusters of agricultural preservation easements, land with the predominance of large farm parcels (100 acres or more), and land containing high value agricultural enterprises such as dairy farms, wineries, and greenhouse/nursery operations. This Site possesses three of the four characteristics set forth for preservation of agricultural lands within Priority Preservation Areas.

The Livable Frederick Master Plan also states that Priority Preservation Areas are established to prioritize properties with the qualifying characteristics for easement purchases or other incentives to preserve land.

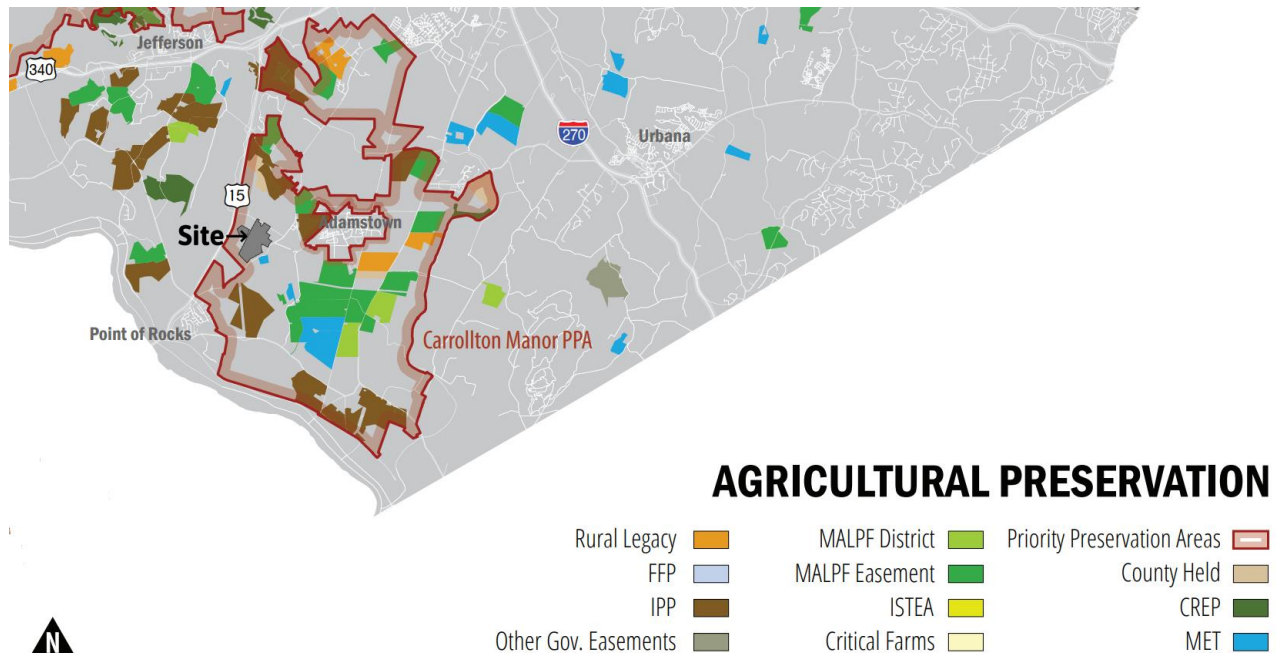


Figure 4 Carrollton Manor PPA

Approval Criteria for Rezoning

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

Criterion A1. Consistency with the Comprehensive Plan

LFMP Development Framework - As mentioned previously, the Site is not located within the Eastalco Growth Area or the Adamstown Community Growth Area. The Site carries a land use designation of Agricultural / Rural (see Figure 5) and it is located within a Priority Preservation Area as identified by the Livable Frederick Master Plan. The proposed rezoning to General Industrial (GI) is not consistent with Rural / Agricultural land use designation set forth in the 2012 Comprehensive Plan.

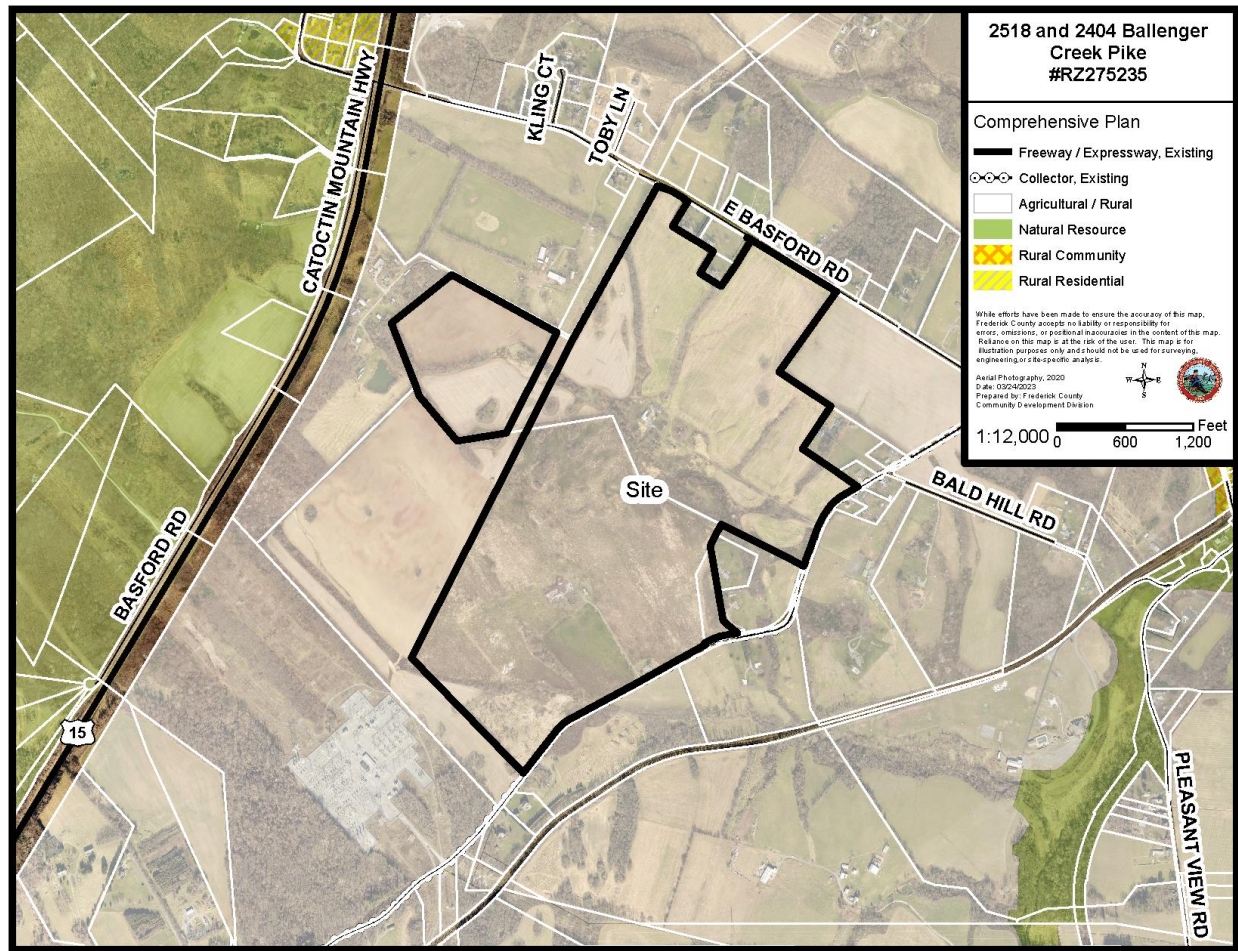


Figure 5 Comprehensive Land Use Plan Map

LFMP Vision Statement – While the Livable Frederick Master Plan does include visioning elements that address the need for a vibrant business community, the rezoning of the property from Agricultural (A) to General Industrial (GI) is not supported by the LFMP’s *Vision* statements. The land is designated on the County’s Comprehensive Plan land use map for Agricultural / Rural uses, and it is currently an actively farmed property within the Carrollton Manor Priority Preservation Area. Notable points regarding the preservation of priority agricultural land and the agricultural industries include the following:

Frederick County provides interesting and fulfilling jobs and options for everyone to support their families.

We embrace businesses of all types and sizes to ensure a vibrant and strong economy.

Agriculture is vibrant and viable. People love fresh food and farm to fork.

Frederick County planning enhances our towns and neighborhoods, while preserving what we love: farms, history, outdoor activities and the environment.

LFMP Action Framework - There has not been a specific Community or Corridor Plan developed for properties outside the Eastalco Growth Area or within this portion of the Rural / Agricultural Corridor. Section 3.2 of the LFMP’s Action Framework does, however, provide support for preserving agricultural land and fostering agribusiness in Frederick

County.

3.2. Existing Business and Industry Clusters (A Related Goals)

Goals in this category target opportunities and innovation to support, attract, and grow business prospects and industry clusters that traditionally are a foundation of the local economy and are part of the culture of the broader Frederick County community.

Goals

3.2.2. Agriculture

Support and protect Frederick County's agricultural community and existing and emerging agricultural industries, to promote an environment where agriculture operations continue to be competitive, sustainable and profitable in Frederick County.

Initiatives

3.2.2.1. Land Use

Minimize non-agricultural land uses within the agricultural zoning district in order to protect the land for food and fiber production and maintain the viability of agricultural operations, while allowing for diversification of farms.

Supporting Initiatives

3.2.2.1.1. Ensure that zoning and other regulations support agricultural related businesses in rural areas of the county.

3.2.2.1.2. Support agricultural industries by evaluating the compatibility of uses withing the Agricultural Zoning District.

Staff would consider the application of GI zoning to the Site to be inconsistent with the Livable Frederick Master Plan and Comprehensive Plan Land Use Map as it would result in the loss of historic, priority farmland within the Carrollton Manor Priority Preservation Area.

Criterion A2. Availability of Current and Planned Public Facilities

Water & Sewer Service

The property currently has a designation of “No Planned Service” under the Water and Sewerage Plan (see Figure 6). This designation is a result of two significant factors, including its location outside of any designated Growth Area and the existing Agricultural/Rural land use designation. To be considered for water and sewer service under the Water and Sewerage Plan, the property would need to be incorporated into a Growth Area and have its land use amended under the Comprehensive Land Use Plan to a use other than Agricultural/Rural. As part of the Rezoning application submitted by 2404 Ballenger Creek Pike LLC and 2518 Ballenger Creek Pike LLC, the applicant referred to the Windridge GI rezoning (Case #R-22-03) in 2022 regarding the availability of infrastructure to serve CDI uses and

made a comparison between the Windridge Site and this Site. It should be noted that the Windridge property is located within a designated Growth Area (Eastalco), possessed a land use designation of General Industrial on the Comprehensive Land Use Map, and Planned Service designations in the Water and Sewerage Plan. These are important distinctions to consider when evaluating infrastructure available for the desired use.

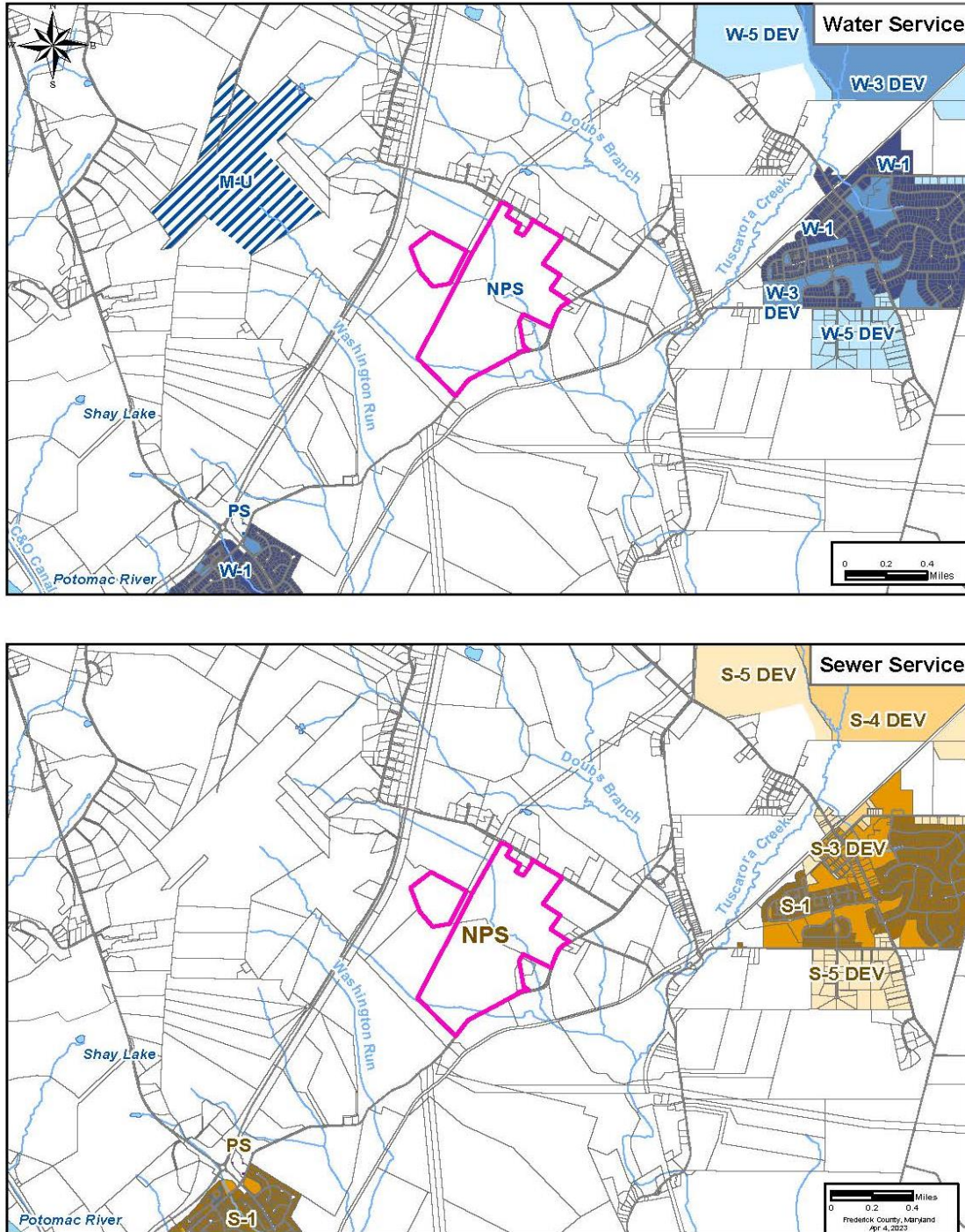


Figure 6 Water and Sewerage Plan Designations

Public Schools

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

Public Safety

The Site is served by the Carroll Manor Volunteer Fire Company, Station 14, and the Carroll Manor Point of Rocks Station, Station 28. From the Frederick County DFRS Fire-Rescue Service Plan (CY2019-CY2029):

With the exception of the Eastalco Employment Area, the Adamstown Planning Area is a low-risk fire – rescue service area that requires a basic level of fire and emergency medical service delivery capability to meet the current and potential service demand. The industrial development in the Eastalco Employment Area is a moderate risk development zone, but in and of itself, does not generate a significant service demand at this time.

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

A replacement station for Carroll Manor (Station 14) will receive design funding in FY2024 (next year). The new station will be located at the intersection of MD 85 (Buckeystown Pike) and Adamstown Road, approximately four miles (driving distance) from the Suzanne Family Irrevocable Trust properties.

Libraries

Occupants of any approved development on this Site would be served by any of the three public libraries in this part of the County including C. Burr Artz Library located in Downtown Frederick, the Urbana Regional Library in the Village of Urbana, and the Edward F. Fry Library at Point of Rocks.

Parks

The proposed rezoning would not significantly impact park and recreation facilities.

Criterion A3. Adequacy of Existing and Planned Transportation Systems

The existing transportation network available to immediately serve many of the uses available to owners of GI-zoned property in the Eastalco Growth Area and immediate surroundings is limited. However, the Quantum Frederick project may, over time, improve the capacity and functionality of local roadways to the north of the Site.

Existing Site Access Characteristics

The Site has approximately 3,050 feet of frontage along Ballenger Creek Pike, a 2-lane minor arterial roadway providing north-south access through this largely rural area. The parcel's 1,180 feet of East Basford Road frontage begins, roughly, 1,800 feet west of the intersection of East Basford Road and Ballenger Creek Pike. Access to US 15, west of the Site, is provided via East Basford Road or by Maryland 464, which intersects with Ballenger Creek Pike near Point of Rocks, MD. Currently, there are no signalized intersections in the vicinity of the Site.

Comprehensive Plan Map Designations for Adjoining Roads

Ballenger Creek Pike – *Minor Arterial*

East Basford Road – *Local Access/No Designation*

Pedestrian and Bicycle Facilities

Pedestrian and bicycle access to (and surrounding) the Site is severely restricted at the present time.

Ballenger Creek Pike is listed as an on-street bikeway. Development of this Site would likely require frontage improvements consistent with surrounding new development in the form of on-street bike lanes or other acceptable multimodal alternatives (multi-use or shared use paths).

Rail Access

CSX freight rail trackage, which also serves as the route for the Frederick spur of Maryland's MARC passenger service, passes to the east of the Site. The Site does not possess in-fee frontage on the railroad right-of-way.

Traffic Impact Analysis (TIA) Highlights

General land uses proposed in this rezoning application provide some indication of potential impacts to the existing and planned vehicular network serving this Site. However, the Applicant is seeking a change of zoning that would enable many types of potential land uses and would not be limited to those described as Critical Digital Infrastructure uses. It is anticipated that development of the 257+/- acres would result in trip generation significantly above 50 peak hour trips and likely above 100 peak hour trips subjecting the development to a level of service (LOS) "D" as part of a potential Adequate Public Facilities review. A traffic impact analysis was not provided as part of the application.

Trip Generation: No trip generation was provided.

Quantum Frederick Planned Improvements:

There are several planned transportation improvements associated with the Quantum Frederick project that, upon completion, will provide additional capacity and functionality to the roadway network to the north of the subject properties. These improvements consist of separate turn lanes, roadway widening, roundabouts, and traffic signal installation at various stages of development. Many of these improvements will not be constructed prior to 2030, as they are phased improvements based on actual peak hour trip generation associated with build-out of Quantum Frederick. These improvements do not address vehicular connectivity between Quantum Frederick and the Applicant's properties on Ballenger Creek Pike.

Site Access

Specific access to the Site has not been determined as part of this application.

Transportation Summary

The Comprehensive Plan maps future major roadway alignments identifying significant expansions to the network at a conceptual level. One such roadway alignment is that of MD 80's westward extension, originally conceived as an arterial connection between I-270 at Urbana and the southern leg of US 15 as it passes to the west of the vast industrially zoned lands in this area. Planning for the Quantum Frederick project has established a pattern of roadway improvements that will facilitate this east-west connection, between Ballenger Creek Pike and New Design Road, by Phase IV of development.

Any proposed rezoning and associated development would be expected to provide necessary road improvements or contribute pro-rata shares as part of the APFO approval process, upon determination that the transportation network is adequate through a traffic impact analysis. Site specific trip generation, distribution, or technical transportation network analysis was not submitted as part of this application.

Criterion A4. Compatibility with Existing and Proposed Development

Adjoining land uses include agricultural and natural resources to the north, south, east, and west. The communities of Doubs and Adamstown are located approximately one mile to the east and are predominantly residential in terms of land use. As noted previously in this report, the Doubs Substation lies approximately 400 feet to the south of the Site on Ballenger Creek Pike, but it possesses an Agricultural land use designation under the Comprehensive Land Use Map and an Agricultural (A) zoning designation.

Staff finds the proposed GI zoning to be generally incompatible with surrounding zoning and land uses.

Furthermore, staff believes the Agricultural zoning and land use designations of immediately adjacent parcels does not represent a land use parity with the GI zoning designation. Although the Applicant states that the future use of the Site will be for CDI uses, if the GI zoning is approved, that approval would allow any permitted use in the GI zoning district, as it is regulated now, or may be regulated in the future.

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

The Applicant has provided the following statement regarding population change over the next 10 years and its relationship to this Application:

The presence of the substation and high transmission lines make the site untenable for any future residential development.

Staff find that this Application has no direct impact upon population change, as it is understood in Criterion A5.

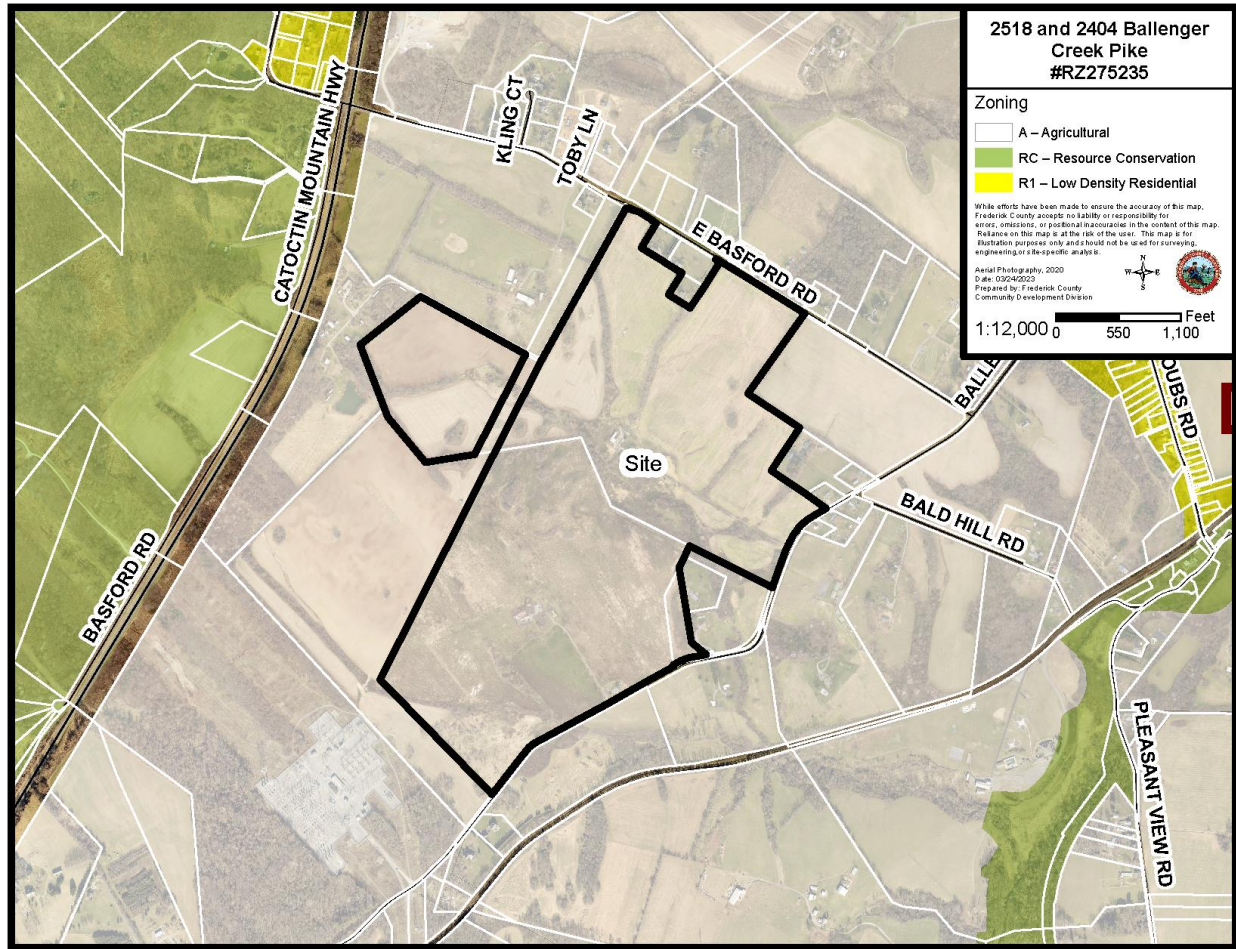


Figure 7 Zoning Map

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

The Application does not propose a specific schedule for development of the Site. There is existing road access and capacity that could support only very modest development of the Site to occur at this time. Most transportation improvements are linked to the Quantum Frederick project and are planned to occur in the 10–15-year time horizon. Those improvements do not address vehicular connectivity between the Quantum Frederick campus and this Site.

As noted in the discussion of Criterion A2., given that the property is not located within a designated Growth Area and the land use designation is Agricultural / Rural, public water and sewer service to this property is not planned.

The Site would ultimately be subject to subsequent subdivision, site plan, and APFO review, if rezoned.

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

The Site currently contains three existing residential structures and associated agricultural outbuildings, driveways, and other agricultural infrastructure. The three parcels are sparsely vegetated, with most of the mature vegetation occurring

along the two streams that run from west to east through the property. FEMA 100-year floodplain areas (Flood Zone A) encompass both streams. The rezoning application does not contain information about any specimen trees or forest resources present on the Site. The highest elevation areas on the parcels are located on the western quadrants (350 ft), with lower areas located along the streams and adjacent to Ballenger Creek Pike (290 ft).

Predominant soil types on the parcels consist primarily of the following (in order of prevalence according to the USDA/NRCS Soil Survey for Frederick County):

Springwood gravelly loam, 3 to 8 percent slopes (SpB, 35.1% +/-)
Penn loam, 3 to 8 percent slopes (PaB, 15.4% +/-)
Springwood-Rock outcrop complex, 3 to 8 percent slopes (SqB, 13.6% +/-)
Trego-Foxville complex, 0 to 8 percent slopes (TxB, 10.6% +/-)
Morven loam, 0 to 3 percent slopes (MbA, 9.2% +/-)
Klinesville channery silt loam, 8 to 15 percent slopes (KnC, 6.3% +/-)
Morven loam, 3 to 8 percent slopes (MbB, 3.5% +/-)
Klinesville very channery silt loam, 8 to 15 percent slopes (KeC, 2.3% +/-)
Springwood gravelly loam, 0 to 3 percent slopes (SpA, 1.6% +/-)
Rowland silt loam, 0 to 3 percent slopes (RwA, 1.0% +/-)
Other soil types (1.4% +/-)

The USDA/NRCS identifies all areas of Springwood gravelly loam, Penn loam, and Morven loam, and Rowland silt loam as “prime farmland.” While Springwood-Rock outcrop complex and Trego-Foxville complex are not identified as prime farmland, Klinesville channery silt loam and very channery silt loam is identified as “farmland of statewide importance.” Soils identified as “prime farmland” and “farmland of statewide importance” make up approximately 69.3% +/- of the site area.

No detailed development plan identifying impacts to the environmental features has been provided as part of this Application.

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

The Maryland Historical Trust identifies the parcel at 2518 Ballenger Creek Pike as the J. Johnston Farm (MIHP #F-1-136) and the parcel at 2404 Ballenger Creek Pike as the Samuel Thomas Farmstead and/or Thomas’s Profit (MIHP #F-1-137):

Description of 2518 Ballenger Creek Pike: The property at 2518 Ballenger Creek Pike, known as the J. Johnson Farm (F-1-136), is an abandoned farmstead consisting of a two-story vernacular residence, a single-wide modular home, a dairy barn, a silo, an open pole barn, and a pressed block shed set upon 141 acres. This property was previously surveyed in 1982 and was at that time determined by the Maryland Historic Trust (MHT) to be potentially eligible for listing on the State and National Register of Historic Places (S/NRIIP). A subsequent survey completed in 2002 determined that the property was no longer S/NRI-IP-eligible due to a lack of significance under the National Register Criteria A and C. The 1858 Bond Map of Frederick County, Maryland indicates that the property was owned by "Mrs. C. Johnson." The 1873 Lake Atlas of Frederick County, Maryland indicates the property is owned by "J. Johnson." Maryland Department of Assessment and taxation records for this parcel indicate the primary residence was built in 1890. The property has been completely abandoned, and the structures are in varying states of deterioration or collapse. Vegetation and substantial tree growth have disturbed the original agricultural setting of the property by

breaking up the visual landscape, and the property has lost much of its historic integrity. Therefore, the property at 2518 Ballenger Creek Pike, known as the J. Johnson Farm, is recommended as not eligible for listing in the State or National Register of Historic Places.

Description of 2404 Ballenger Creek Pike: The property at 2404 Ballenger Creek Pike, known as the Samuel Thomas Farmstead (F-I-137), is an historic farmstead consisting of a two-story vernacular residence, three sheds, a cistern, a cement block dairy barn, a collapsed dairy barn, and an open pole barn set upon 113.82 acres. This property was previously surveyed in 1982 and again in 2002 and in each instance was determined by the Maryland Historic Trust (MHT) to be potentially eligible for listing on the State and National Register of Historic Places (S/NRIIP) under the National Register Criteria A and C. The identity and history of Samuel Thomas, the property's namesake, remains obscure, and it is thought that the Thomas family associated with this property is not related to the Thomas family descended from the early German settlers of southern Frederick County. The 1858 Bond Map of Frederick County, Maryland, and the 1873 Lake Atlas of Frederick County, Maryland, indicate that the property was owned by "Miss Thomas." Maryland Department of Assessment and taxation records for this parcel indicate the primary residence was built in 1900. The property has been completely abandoned, and the structures are in varying states of deterioration or collapse. Vegetation and substantial tree growth have disturbed the original agricultural setting of the property by breaking up the visual landscape, and the property has lost much of its historic integrity. Therefore, the property at 2404 Ballenger Creek Pike, known as the Samuel Thomas Farmstead, is recommended as not eligible for listing in the State or National Register of Historic Places.

As noted in the descriptions, the Maryland Historical Trust determined (April 2019) that both properties are not eligible for the State and National Register of Historic Places (S/NRHP).

There is evidence of a cemetery on the 2518 Ballenger Creek Pike parcel that has been described in the land records of Frederick County at Liber WIP 9, Folio 120. Records indicate that the cemetery is occupied by 9 gravesites. Six gravesites within the cemetery can be attributed to the following members of the Johnson family through references to their markers included in "Names in Stone: 75,000 Cemetery Inscriptions in Frederick County, Maryland," by Jacob M. Holdcraft (1985). They include:

Thomas Johnson II: August 24, 1729 – October 2, 1778
Susan Johnson: 1767 – April, 1801
Thomas Johnson III: April 19, 1768 - (Unknown)
Fayette Johnson: October 15, 1781 – September 24, 1829
Richard Johnson: (Unknown) – August, 1828
Mi(eroded) Johnson: May, 1829 – Broken Fragment

Potential impacts to the cemetery and/or preservation measures for the cemetery were not addressed in the application.

Criterion B. 'Change or Mistake'

In addition to the criteria above, approval or disapproval 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. Even if an Applicant provides evidence of a change in the character of the neighborhood, approval of the request to rezone is not required.

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

A determination as to whether or not a “substantial change” has occurred cannot be based upon activities that have occurred as a result of an approved Comprehensive Plan or Comprehensive Rezoning. The most recent comprehensive planning document addressing the Eastalco area is Frederick County’s 2019’s Livable Frederick Master Plan. However, it should be noted, that the Livable Frederick Master Plan held intact land-use and zoning designations established under the 2012 Comprehensive Land-Use Plan and Comprehensive Rezoning. This factor is critical in determining whether the Application meets this criterion since changes that are anticipated in a comprehensive planning document are implemented in the period following adoption of the document in order to achieve the vision articulated in the plan and cannot be considered.

The applicant has provided the following as a listing of key events and actions that have occurred in the time period following the adoption of the LFMP in September 2019 (per the Applicant’s written justification):

In 2019 the Livable Frederick Master Plan was adopted and included references to a future development corridor running from Eastalco to Point of Rocks, which would place the Ballenger Creek site directly in its path.

In 2020 the Maryland General Assembly passed laws specifically to encourage Data Center development within Maryland, including a sales tax exemption.

In 2021 Quantum Loophole purchased the Alcoa aluminum foundry.

In March of 2022 Frederick County amended laws to encourage Data Center development.

In June of 2022 Quantum Loophole began construction on its Gigawatt capacity data center campus.

In October of 2022 First Energy announced the construction of a new 1000-Megawatt capacity substation approximately one mile from the Ballenger Creek site and interconnected with the Doubs substation directly connected to the site.

In December of 2022 Aligned Data Centers announced construction plans for 1.7 million square feet of data center proximate to the Ballenger Creek Site.

In February of 2023 it was learned that QLoop would be running fiber either through the easement on the subject property or through the property itself.

In February of 2023 the Windridge property also located on Ballenger Creek Pike was recommended for rezoning, although it lacked the presence of heavy infrastructure on site or a directly neighboring site with General Industrial zoning, both of which the subject property has.

It should be noted that the final justification statement provided by the applicant is not correct because no properties in the immediate vicinity of this Site possess a General Industrial (GI) zoning designation and because the Staff Report for the Windridge property did not result in a staff recommendation that the threshold for change (or mistake) had been met by the applicant.

Additionally, the statement regarding the adoption of the CDI zoning overlay to encourage data center development could be considered a mischaracterization. The CDI overlay was adopted as an effort on behalf of Frederick County

to mitigate certain negative aspects associated with this particular land use.

Lastly, it should be noted that the application for Zoning Map Amendment did not include a statement defining the “neighborhood” that should be evaluated as under the request (as is typically required by precedent), but references to other properties and uses generally within one mile of the site were provided. The applicant has also stated that physical changes to the character of the neighborhood surrounding the subject parcel have occurred in the form of a 36,518 square foot industrial style metal warehouse was constructed at 2500 E Basford Road, across from the subject property. Staff notes that this warehouse is associated with the hydroponic, organic, leafy greens growing operations of District Farms.

Criterion B2. A Mistake in the Existing Zoning Classification

The Applicant has not asserted that a mistake was made in the zoning of the Site as Agricultural (A). Therefore, Criterion (B)2 does not apply in this case.

Summary of Findings

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

(1) Consistency with the comprehensive plan;

The Site is designated Agricultural / Rural on the current Comprehensive Plan Map which is not consistent with the application of the General Industrial zoning district. The Site is not located within the Eastalco Growth Area or Adamstown Community Growth Area. The proposal would not be consistent with the Livable Frederick Master Plan, as noted in these specific components:

The LFMP Thematic Plan Diagram;
The LFMP Vision Statement;
The LFMP Development Framework; and,
Key Goals and Initiatives stated in the LFMP Action Framework.

(2) Availability of current and planned public facilities;

(3) The rezoning of this Site will have no direct impact on schools, and will not likely significantly impact parks, public safety, or library facilities. As noted previously in this report, this property is in the No Planned Service area for water and sewer. Adequacy of existing and planned future transportation systems;

Existing planned projects, as well as modest improvements in the immediate vicinity of the Eastalco Growth Area, have been designed to provide additional functionality to the transportation network to the north of this Site. No analysis of the roads network between this Site and the Eastalco Growth Area has been provided by the applicant.

(4) Compatibility with existing and proposed development;

The proposed GI zoning is generally incompatible with surrounding zoning and land uses. All surrounding land uses are primarily residential or agricultural in nature, with the exception of the Doubs substation.

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

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

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

The Application does not propose a specific schedule for development of the Site. Development of some permitted uses on the Site may be possible within the first five years if rezoning were to occur; however, many of the public facilities necessary to support substantial and intensive use on the Site would be dependent upon improvements to public facilities by others. Uses that result in an excessive number of peak hour trips may not be able to progress without substantial improvements to the roads network.

Fire and rescue services are likely adequate to handle many of the proposed uses permitted in the General Industrial zoning district, but certain uses may require additional or enhanced service improvements. The planned replacement of Carroll Manor Station 14 in FY2026 will provide enhanced service capabilities to the Eastalco Growth Area, but this property is located outside of that growth area.

The property's water and sewer designation of No Planned Service (NPS) is also a significant factor to consider when evaluating the timing of development. The NPS designation carries no foreseeable time horizon at which public water or sewer would be available to serve the property.

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

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

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

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

The Maryland Historical Trust identifies the parcel at 2518 Ballenger Creek Pike as the J. Johnston Farm (MIHP #F-1-136) and the parcel at 2404 Ballenger Creek Pike as the Samuel Thomas Farmstead and/or Thomas's Profit (MIHP #F-1-137). The Maryland Historical Trust made a determination (April 2019) that the property is not eligible for the State and National Register of Historic Places (S/NRHP). Potential impacts to the cemetery that currently exists on 2518 Ballenger Creek Pike have not been addressed as part of the application.

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

Between September 2019 and March 2022, a series of alterations in the fiscal and regulatory landscape have set the stage for future physical changes within the Eastalco Growth Area. However, this site is not within the Growth Area, and there is no evidence that any substantial physical or significant visible changes to the character of the immediate neighborhood (within one mile in any direction) have occurred since the last Comprehensive Plan update (*Livable Frederick Master Plan*, September 2019).

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

A mistake in the current zoning has not been asserted by the Applicant and Staff has found no mistake in the current zoning of the Site as Agricultural (A). Therefore, Criterion (B)2 does not apply in this case.

Planning Commission Review and Action

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

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

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

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

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

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

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

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

Options for Planning Commission Action

After consideration of all of the evidence in the record, the Planning Commission may take either of the following

actions regarding this application:

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

Proposed Conditions

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

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

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