



2018-0001-MC

Board of Appeals of Baltimore County

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TO WCR
FYI
To: DD
mc file

September 22, 2017

Michael E. Field, County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of: Baltimore County, Maryland – Petitioner
24 Melrose Avenue
Case No.: MC-18-01

Dear Mr. Field:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: See Attached Distribution List

In Re: Baltimore County, Maryland – Petitioner
24 Melrose Avenue
MC-18-01

Distribution List
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JoAnne Booth, General Manager and Member/746 Associates, LLC
The Honorable Tom Quirk, 1st District, Baltimore County Council
Office of People's Counsel
Fred Homan, Administrative Officer
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Jeff Mayhew, Deputy Director/Department of Planning
Kui Zhao/Department of Planning
Renee Phillips-Farley, Assistant County Attorney/Office of Law
Nancy C. West, Assistant County Attorney/Office of Law

IN THE MATTER OF	*	BEFORE THE
746 ASSOCIATES, LLC - LEGAL OWNERS	*	
BALTIMORE COUNTY, MD - PETITIONER	*	BOARD OF APPEALS
FOR ZONING MAP CORRECTION ON THE	*	
PROPERTY LOCATED AT 24 MELROSE AVE	*	OF
1 ST ELECTION DISTRICT	*	
1 ST COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	
	*	CASE NO. MC-18-01

* * * * *

OPINION

The above entitled matter came for hearing before this Board on September 12, 2017 on a Petition for Zoning Map Correction filed by Michael E. Field, County Attorney, Renee Phillips-Farley, Assistant County Attorney, and Nancy C West, Assistant County Attorney, on behalf of Baltimore County, Maryland, Petitioner. The requested correction involves a technical drafting error and seeks to reclassify the existing zoning on land known as 24 Melrose Avenue located in the Catonsville section of Baltimore County from D.R. 5.5 (Density Residential 5.5) and R-O (Residential-Office) to B.L. (Business, Local) for the entire property.

This corrected zoning would comport with the legislative action of the County Council in reclassifying 1.144 acres during the 2004 Comprehensive Zoning Map Process (CZMP). The Petition is cognizable under Baltimore County Code (BCC) §§ 32-3-231 to 32-3-236, and, specifically, § 32-3-233 (a), which provides in general that “[t]he Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.”

Nancy C. West, Assistant County Attorney, and Renee Phillips-Farley, Assistant County Attorney, represented Baltimore County, Maryland. Carole S. Demilio, Deputy People’s Counsel for Baltimore County, participated. There were no Protestants.

At the conclusion of the September 12th hearing, this Board conducted a public deliberation

and unanimously agreed to approve the requested map correction. This Opinion follows, consistent therewith.

Decision

746 Associates LLC is the fee simple owner of land known and described as 24 Melrose Avenue located in the Catonsville section of Baltimore County, Maryland 21228 (the Property). The Property is improved by a parking lot located east of Egges Lane, west of Ingleside Avenue, and south of Fusting Avenue. It is located in the First Election District and the First Council District. A plat of the Property is recorded in the Land Records of Baltimore County at book 0079, folio 0424, and labeled as the “Booth Properties.”

On January 9, 2017 JoAnne Booth, General Manager and Member of 746 Associates LLC sent a letter to Jeff Mayhew, Deputy Director, Department of Planning (Planning), indicating that the zoning on the Property was incorrect. She attributed it to the implementation of a County Council decision made during the 2012 CZMP. Upon investigation, Planning agreed and filed a petition with this Board to correct the zoning that resulted from a technical drafting error.

Bill Skibinski (Skibinski) of Planning appeared for the County. Skibinski has been with Planning for two years and is a Community Planner for the western sector of the County. He testified that in reviewing the zoning history of the Property, he examined the archives of CZMP decisions starting in 2000. He noted that the CZMP takes place every four years on a schedule specified in the BCC. Any citizen may request a zoning change on any property in the County, although the usual participants in the process are individual landowners, contract purchasers, community organizations, County staff, the Planning Board and the County Council. The CZMP covers a period of approximately 12 months and results in zoning decisions that are reflected in a Final log of Issues. An “Issue” under the CZMP “means a tract or parcel of land proposed for a

change in zone or district classification.” See BCC § 32-3-211. Ultimately, the County Council decides on each Issue whether to retain the existing zoning or to enact a different zone(s) or district(s). Generally, each Issue is a single property, but an Issue may cover many adjoining properties and might even cover many hundreds of acres. The zoning on all properties which were not Issues is re-enacted without change.

Skibinski first contacted the Office of Information Technology which conducted a geospatial analysis and determined that the parcel lines for the Property were correct within Baltimore County’s Geographic Information System (GIS) application as depicted on the “Booth Properties” plat. He stated that GIS is designed to capture, store, manipulate, analyze, manage, and present spatial or geographic data. Skibinski noted that the Property is currently zoned D.R.5.5 and R-O and is part of and incorporated into a large polygon of multiple properties that are zoned D.R.5.5 and R-O in GIS. He emphasized that the Property was zoned R-O (Residential-Office) in 2000 along with other adjacent properties along Melrose Avenue. During that time, Skibinski stated that the Property was part of the R-O polygon along Melrose Avenue.

During the 2004 CZMP Skibinski testified that Issue No. 1-012 was raised by the property owner which resulted in the rezoning of the Property from R-O to B.L. He emphasized that no other Issues were raised during the 2004 CZMP within 1,000 feet of Issue No. 1-012. Copies of the redacted 2004 Final Log of Issues for Issue No. 1-012 and the final County Council Issue Map were introduced as *County Exhibits 6 and 8*, respectively. During the 2004 CZMP, the County Council enacted B.L. zoning on the Property. Thereafter, when Planning mapped the Property, Skibinski opined that it was integrated into the multi-part B.L. polygon layer of surrounding properties in that area as depicted in *County Exhibit 8*. The Property retained the B.L. zoning from 2004 through 2012.

The County Council initiated Issue No. 1-020 during the 2012 CZMP. Issue No. 1-020 included one of the properties, namely, 1 Delray Avenue, contained within the multi-part B.L. polygon. The 2012 CZMP Issue No. 1-020 requested that the zoning be changed from B.L. and B.L. - A.S. (Business, Local - Automotive Service) to B.L. and D.R.5.5. as depicted in *County Exhibit 9*. By enacting Bill No. 53-12 the County Council changed the zoning on 0.68 acres from B.L. to D.R.5.5 within the boundary of Issue No. 1-020. Copies of the redacted 2012 Final Log of Issues and map result for Issue No. 1-020 were introduced as *County Exhibits 10 and 11*, respectively.

When 1 Delray Avenue was rezoned in GIS to D.R.5.5 in 2012, the entire multi-part B.L. polygon was inadvertently rezoned to D.R.5.5, which included 24 Melrose Avenue, as depicted in *County Exhibit 12*. Planning perpetuated the technical drafting error - as reflected on the 200' scale zoning map - when it transferred the zoning classification enacted by the County Council in the 2012 to the official zoning map. Skibinski testified that this technical error has been perpetuated from 2012 through 2017. Further, he opined that this error by Planning was independent of and not associated with any Issue that was raised by any party in any CZMP since 2012.

Skibinski averred that Planning conducted a thorough review of its archived CZMP files and zoning changes/polygons through time before concluding that a technical drafting error was made in transferring the legislatively approved zoning classification during the 2012 CZMP.

On June 23, 2017 Planning sent a letter to the Honorable Tom Quirk of the 1st Council District and other members of the County Council of its intention to correct the zoning map error as provided in the BCC. Skibinski testified that he met with Councilman Quirk to discuss the matter before filing the Petition. Likewise, Planning sent a letter of the same date to Ms. Booth of its intention to pursue a zoning map correction with this Board.

Finally, this Board finds that the notice provisions of the BCC § 32-3-234 have been met as Skibinski testified that the Property was duly posted with the requisite particulars at least 15 days before the scheduled hearing date.

In considering the thorough and articulate testimony of Skibinski, along with a review of the extensive exhibits introduced by the County detailing the history of the Property since 2000, this Board is persuaded that a technical drafting error occurred when Planning incorrectly transferred the legislatively approved zoning classification during the 2012 CZMP to the official zoning maps.

ORDER

IT IS, THEREFORE, this 22nd day of September, 2017, by the Board of Appeals of Baltimore County hereby

ORDERED that the Department of Planning reclassify the zoning on the property known as 24 Melrose Avenue in the Catonsville area of Baltimore County, Maryland from D.R.5.5 (Density Residential - 5.5) and R-O (Residential -Office) to B.L. (Business, Local) in accordance with the legislative intent of the County Council as reflected on *County Exhibit 15*; and it is further

ORDERED, that the Department of Planning make the necessary changes to the official zoning maps as reflected on *County Exhibit 15*.

Finally, this Board finds that the notice provisions of the BCC § 32-3-234 have been met as Skibinski testified that the Property was duly posted with the requisite particulars at least 15 days before the scheduled hearing date.

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