

IN THE MATTER OF
PETITION FOR ZONING MAP CORRECTION
ON THE PROPERTY LOCATED AT
8228 BELAIR ROAD

BALTIMORE COUNTY, MARYLAND
PETITIONER

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: MC-19-01

* * * * *

OPINION

The above-entitled matter came for hearing before the Board of Appeals on April 30, 2019 on a Petition for Zoning Map Correction filed by Michael E. Field, 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 the portion of a property known as 8228 Belair Road (the “McQuade Property”), which is located in the Nottingham area of Baltimore County, that is currently zoned D.R.1-N.C. (Density Residential 1 – Neighborhood Commons), from D.R.1-N.C. to B.R. (Business, Roadside). The portions of the McQuade Property that are currently zoned B.R. and D.R.16 (Density Residential 16) would retain their zoning classifications.

This corrected zoning would comport with the legislative intent of the County Council in reclassifying approximately 113.74 acres of land to D.R.1-N.C. during the 2016 Comprehensive Zoning Map Process (“CZMP”). The Petition is cognizable under Baltimore County Code (“BCC”) § 32-3-233 which provides that the Department of Planning (“Planning”) may initiate a petition to correct a technical error in the zoning map.

At the Board’s public hearing, Nancy C. West, Assistant County Attorney, represented Baltimore County, Maryland. Carole S. Demilio, Deputy People’s Counsel for Baltimore

County, also participated. Justin A. Williams, Esq. and Adam D. Baker, Esq., attended the hearing on behalf of the owner of the McQuade Property, Mark McQuade. There were no Protestants.

At the conclusion of the April 30th hearing, this Board conducted a public deliberation and unanimously agreed to approve the requested map correction. This Opinion follows, consistent therewith.

BACKGROUND

Mark McQuade (the “Owner”) is the fee simple owner of the McQuade Property, which is located adjacent to and on the west side of Belair Road, just north of MD Route 43 in the Nottingham area of Baltimore County, Maryland 21236, also being known as Tax Map 0071, Parcel 0501 (Tax Id No.: 14-1418000625). The McQuade Property is located within the 5th Council District and is primarily located within the 14th Election District, with slivers located within the 11th Election District. A deed of the McQuade Property is recorded in the Land Records of Baltimore County at Liber 6420, folio 73. The McQuade Property is improved with a commercial building housing multiple tenants, and a single-family dwelling along with various out buildings.

As indicated in an affidavit from the Owner introduced as *County Exhibit 1*, the Owner has entered into a contract to sell the McQuade Property to NorthPoint Development. On July 13, 2018, counsel for NorthPoint Development, Justin A. Williams, Esq., with the consent of the Owner, sent a letter to Andrea Van Arsdale, Director of Planning, requesting that the County correct an alleged zoning error on the McQuade Property. *See County Exhibit 2*. In his letter, Mr. Williams attributed the zoning error to the implementation of a County Council decision made during Baltimore County’s 2016 CZMP. In a letter dated March 8, 2019 from Jeff Mayhew,

Acting Director of Planning to Mr. Williams, Planning concluded that a technical drafting error occurred and provided notification of its intent to file the instant petition to correct the error.

DECISION

In the County's case-in-chief, it presented one witness, Jessie Bialek, a Planner II in the Development Review Section of Planning. Ms. Bialek testified that she worked for Baltimore County Government for 14 years, the last 13 of which were with Planning after a one-year stint in the Office of Information Technology ("OIT") Geographic Information Systems ("GIS"). Ms. Bialek testified that upon receipt of Mr. Williams' letter, she investigated the zoning history of the McQuade Property, as well as the zoning of the immediately adjacent property owned by the State Highway Administration ("SHA"). This adjacent property is improved with an on/off ramp connecting MD Route 43 with Belair Road.

In investigating the McQuade Property, Ms. Bialek examined the archives of decisions made during the CZMP, which were ultimately reflected in a Final Log of Issues, introduced as *County Exhibit 4*. As indicated in the Final Log of Issues, the County Council initiated Issue No. 5-133 during the 2016 CZMP, which *inter alia*, proposed to rezone 113.74 acres of land north of White Marsh Boulevard to D.R.1-N.C. The parcel boundaries used to delineate the land associated with Issue No. 5-133 were mapped in Baltimore County's GIS based on Coordinate Geometry. The parcel boundaries so used are shown on the Issue Map for Issue No. 5-133 which was introduced as *County Exhibit 5*. Ms. Bialek prepared a map that she described as depicting a portion of the property boundaries included in Issue No. 5-133 and the boundary of the McQuade Property as Baltimore County's GIS system represented it in 2016. *See County Exhibit 6*. Ms. Bialek opined that during the 2016 CZMP, the boundaries of the parcel identified on *County Exhibit 6* as "Parcel A" were incorrectly represented on the GIS system. As a result,

Parcel A, which is owned by SHIA, was incorrectly shown as extending into the southwestern edge of the McQuade Property. As a result of this GIS error, when the 2016 CZMP maps were adopted and Issue No. 5-133 was approved, a portion of the McQuade Property was improperly re-zoned to D.R. 1-N.C. Planning perpetuated this technical drafting error when it transferred the zoning classification enacted by the County Council in the 2016 CZMP to the official zoning map. Ms. Bialek noted that SHIA had performed roadwork in the vicinity of the McQuade Property in early 2018 and sent updated property boundary data to Baltimore County's OIT, and as a result, the boundaries of the McQuade Property are now accurately reflected in the GIS system.

Ms. Bialek averred that Planning conducted a thorough review of its files before reaching the conclusion that a technical drafting error was made in transferring the legislatively approved zoning classification during the 2016 CZMP.

This Board finds that the requirements of BCC §32-3-233 have been satisfied. As a condition precedent to the filing of the Petition in this matter, on March 8, 2019, Planning sent a letter to the Honorable David Marks of the 5th Council District advising him of its intention to correct the zoning map error on the McQuade Property as provided in the BCC. *See County Exhibit 8.* Likewise, Planning sent a letter of the same date to Mr. Williams advising him of its intention to correct the zoning map error. *See County Exhibit 9.*

Finally, this Board finds that the notice provisions of BCC §32-3-234 have been met, as Ms. Bialek testified that the McQuade Property was duly posted with the required information at least 15 days prior to the scheduled hearing date. *See County Exhibit 10.*

In considering the thorough and reasoned testimony of Ms. Bialek, along with a review of the exhibits introduced by the County detailing the zoning history of the McQuade Property,

this Board is persuaded that a technical drafting error occurred when Planning incorrectly transferred the legislatively approved zoning classification during the 2016 CZMP to the official zoning maps. Finally, The Board takes notice of Section 259.14.C.1 of the Baltimore County Zoning Regulations, which states that “the N.C. District shall be applied only to a property, or portion thereof, located inside the URDL” and only to public (or publicly used) properties such as land owned by the SHA. Because the McQuade Property is privately owned, it is ineligible for the N.C. District overlay zoning.

For all of the above reasons, it is clear that the legislative intent of the County Council was not to re-zone the McQuade Property during the 2016 CZMP.

ORDER

IT IS, THEREFORE, this 20th day of May, 2019, by the Board of Appeals of Baltimore County hereby

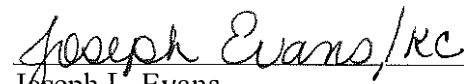
ORDERED that the Department of Planning reclassify the zoning of the portion of the property known as 8228 Belair Road in the Nottingham area of Baltimore County, Maryland, which is zoned D.R. 1-N.C. (Density Residential 1 – Neighborhood Commons) to B.R. (Business, Roadside) in accordance with the legislative intent of the County Council as reflected on *County Exhibit 7*; and it is further

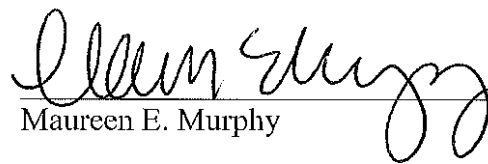
ORDERED that the Department of Planning make the necessary changes to the official zoning maps as reflected on *County Exhibit 7*.

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 of Procedure.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Jason S. Garber, Chairman

Joseph L. Evans

Maureen E. Murphy



Board of Appeals of Baltimore County

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May 20, 2019

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Re: In the Matter of: *Baltimore County, Maryland – Petitioner*
(8228 Belair Road)
Case No.: MC-19-01

Dear Counsel:

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,

A handwritten signature in cursive script, reading "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: Mark McQuade
North Point Development
The Honorable David Marks, 5th District, Baltimore County Council
Stacy L. Rodgers, Administrative Officer
Office of People's Counsel
Michael Mallinoff, Director/PAI
C. Pete Gutwald, Director/Department of Planning