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Zoning Map General Plan Amendment: 2.001 Tax ID: 1404330366
 Current Zoning: RC-DEO Council District: 5
 Tax Map: 2 Grid: 19 Parcel: 102 Lot: N/A
 Address: 17530 FREDERICK RD

2.001 *RL*



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Andrea LeWinter, Of Counsel
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ATTORNEYS AT LAW

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Phone: 443.420.4075
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December 12, 2012

Councilman Greg Fox
Howard County Council
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043

Dear Councilman Fox:

I represent your constituents, Diane and Paul Larkin, in their effort to rezone their property at 17350 Frederick Road, Mt. Airy, from RC-DEO to B-1 during the comprehensive zoning process.

Enclosed please find a copy of the comprehensive rezoning application filed on their behalf.

Diane, Paul, and I had hoped to have the opportunity to meet with you prior to the filing, but certainly understand how busy you are and the difficulty of finding a mutually agreeable time.

We hope that you will have the opportunity to review the application. We would greatly appreciate the opportunity to meet with you before the Planning Board hearing to elaborate on why we believe the application should be granted and answer any questions you may have.

We will be in contact with your assistant to schedule a time to meet.

Thank you,

Andrea LeWinter, Esq.

HOWARD COUNTY COUNCIL
RECEIVED
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cc: Diane Larkin

Zoning Map Amendment Request Form

Howard County Comprehensive Zoning Plan Department of Planning and Zoning

[Handwritten/Typed Version]
Before filling out this form, please read the
Instructions section at the end of the form.

A. Property Information (Please print or type)

1 Address / Street (Only) 17530 Frederick Road
2 Tax Map Number 0002 Grid 0019
3 Parcel(s) 0102
4 Lot(s) N/A
5 Tax Account Data: District 04 Account # 330366
6 Size of Property: Acres .92 Square feet 40,075
7 The Property is currently zoned: RC-DEO
I request that the Property be rezoned to: B-1

B. Owner Information

8 Owner Name Paul Alan and Diane Patricia Larkin
9 Mailing street address
or Post Office Box 17530 Frederick Road
City, State Mt. Airy, MD
ZIP Code 21771-3626
Telephone (Main) 301-703-8163
Telephone (Secondary) 301-514-4054
10 E-Mail dplarkin@gmail.com

C. Representative Information

11 Name Andrea LeWinter
Mailing street address or Post Office Box 5850 Waterloo Road, Suite 140
City, State Columbia, MD
ZIP 21045
Telephone (Main) 410-300-7251
Telephone (Secondary) 443-420-4075
E-Mail alewinter@taylorlegal.com

12 Association with Owner attorney

D. Alternate Contact [If Any]

Name
Telephone
E-Mail

E. Explanation of the Basis / Justification for the Requested Rezoning

13 Please see attached for full explanation. In summary, the Department of Planning and Zoning has approved this property for a nonconforming use (commercial/light manufacturing) on the first floor of the existing building. The smaller second story houses a residential apartment. The nonconforming use is very narrow in scope and it has been difficult for the owners to find tenants able to utilize the site. Because of the existing building and extensive paving, any alternative non-commercial use of the property is impractical unless all construction were razed. Rezoning the property to B-1, the least intensive of business uses, will clarify permitted uses; streamline the zoning map; alleviate any confusion for the neighbors; and, make the property more marketable and useful. The property abuts a M-1 parcel and is just one parcel removed from a B-1 property and there are two BR parcels in the immediate vicinity, so a re-zone to B-1 is consistent with the character of the neighborhood.

F. List of Attachments/Exhibits

- 14
1. Full response to Section E. Explanation of the Basis, #13;
 2. Decision and Order awarding nonconforming use, case no. 11-004;
 3. Section of the Howard County Zoning map with subject property marked, showing other commercially zoned properties in the immediate vicinity.

G. Signatures

15 Owner

Quinn P. Leck

Date

12/11/2012

Owner (2)

Paul R. Leck

Date

12/11/12

Additional owner signatures? **X** the box to the left and attach a separate signature page.

16 Representative Signature

AS

Date

12/12/2012

DPZ Use Only		Amendment No.	
Notes			

ATTACHMENT 1

Since the 1940s, the main building on the premises has housed a commercial/manufacturing space on the first floor with a modest residential apartment above. There is also a one-story detached garage and two large paved areas, utilized for parking personal and delivery vehicles. The dual commercial/residential use has existed since the original purchase and development of the property, and the current owners, who reside on the second floor, continue to actively solicit tenants for the commercial space.

On November 16, 2011, DPZ confirmed the property's existing dual use, approving the property for a non-conforming use for "Manufacturing, compounding, assembling or treatment of articles or merchandise from previously-prepared materials such as: ceramics, clay, cloth, fiber, glass, leather, paper, pipe, plastics, precious or semi-precious metals or stones, wire and wood." See *Decision and Order, Nonconforming Use Case No. 11-004*. Of note, until 1990, the non-conforming use of welding also existed on the property. See *Id.*

Because of the unique construction of the building -- the first floor designed for warehouse and/or manufacturing use, not suitable for or connected to the living space -- and the wide swath of paving, commercial space is the most logical use of the property and other uses are impractical, unless the existing development were to be completely razed. Further, the property is adjacent to M-1 (Wally's Iron Works, across the street), only one property removed from a B-1 (a veterinary clinic), with two BR properties in the immediate vicinity. See *attached map*.

Unfortunately, the permitted nonconforming uses at this time are very narrow. The prior commercial tenant was a sewing kit manufacturer and future tenants must be similarly extremely low impact. The result has been that the current owners have had tremendous difficulty finding qualified tenants interested in the space and the commercial portion of the property has remained vacant for some months, causing a significant loss of income to the owners and a loss of tax revenue to the County.

From a land planning and community perspective, nonconforming uses pose difficulties because of the complexity of record-keeping, monitoring, and the on-going approval process, and because of community confusion about appropriate and approved uses. From a residential homeowner perspective, a nonconforming use is far from ideal because of the restrictions placed on allowable tenants and the impact on the marketability of title. From a business perspective, nonconforming uses severely limit the types of commercial vendors interested in investing in the property as they fear unavoidable restrictions on their ability to expand and develop, resulting in a development and tax loss to the County. If this property is rezoned to B-1, which permits a dwelling unit, there would be no need for continuation of the nonconforming

use and the permitted commercial uses of the property would be clear and easier to access. This would benefit the County, the property owner, and the community.

B-1 is also the least intensive of all business zones and so would not significantly extend the already approved uses. Further, as a practical matter, because the property is less than 1 acre, it is appropriate for only a limited number of uses within B-1; thus, any perceived or feared incompatibility with or nuisance to residential neighbors would be minimized. The B-1 zoning would also be compatible with the M-1, B-1, and BR properties in the immediate vicinity.

IN THE MATTER OF
PAUL AND DIANE
LARKIN,
PETITIONERS

* BEFORE THE DIRECTOR OF
* DEPARTMENT OF PLANNING & ZONING
* NONCONFORMING USE CASE NO. 11-004
* 17530 FREDERICK ROAD

DECISION AND ORDER

On October 25, 2011, the Designee for the Director of the Department of Planning and Zoning conducted a public hearing to consider the petition of Paul and Diane Larkin, for confirmation of a nonconforming use for the use of the subject property as a welding business, sewing kit manufacturing and small engine motor repair, as authorized under Section 100.H. and Section 129.D. of the Zoning Regulations. The notice of the hearing was posted on the subject property in accordance with all applicable regulations.

Prior to the introduction of testimony, the following items were incorporated into the record:

1. The current Howard County Zoning Regulations.
2. The Subdivision and Land Development Regulations.
3. The Administrative Procedures Act of the Howard County Code.
4. The 1948, 1954, 1961, 1977, 1985, 1993, and 2004 Howard County Zoning Regulations.
5. The Land Use map records of the Department of Planning and Zoning.
6. The aerial photograph records of the Department of Planning and Zoning.

During the hearing the following items were introduced as exhibits:

1. Petition, Nonconforming Use Plan and Documentation submitted by Petitioners, including all pre-hearing correspondence concerning the use of the property.
2. Photographs of the subject site submitted by the Department of Planning and Zoning.
3. Petitioner Exhibits #1-#4.
4. Opposition Exhibit #1.

Testimony in favor of the petition was presented by Paul Larkin, Diane Larkin, Dennis Wallace, Charles Ridgely, III, Lorraine Ridgely and Jackie Raines. The Petitioners were not represented by counsel. Beverly Blanchfield and Jane Athey testified in opposition to the petition.

Supporting testimony and cross examination:

Diane Larkin testified that the petition arose as a result of applying for permits to improve the second floor residential portion of the building. She said the Department of Inspections, Licenses and Permits would not

1 approve permits unless the building complied with certain fire code regulations and it became apparent at that
2 time that the current zoning of the property did not permit commercial uses. Ms. Larkin stated that before
3 undertaking further property improvements she wants to verify that operating a business on the property is
4 legal. She said she applied for a nonconforming use confirmation and originally thought the building was
5 constructed in 1957 but now believes it was constructed in 1947. She stated that there was a lease agreement
6 with Milton Morera who operated a small engine repair business on the property since January, 2011 but he
7 was released from the agreement at the end of September, 2011. She said that currently there is no tenant in
8 the lower level but she has been approached by a potential tenant to operate a chocolate production business
9 in the space.

10 Paul Larkin testified that a business has been on the property since 1947 and it recently became
11 apparent that business uses do not comply with current zoning regulations. He submitted Petitioner Exhibit
12 #1, a report of Metropolitan Regional Information Systems, Inc. which he stated shows a tax record that codes
13 the land use as commercial. He stated that income from a business is needed in order to make needed property
14 repairs and improvements.

15 Ms. Larkin submitted Petitioner Exhibit #2 comprising three deeds; Petitioner Exhibit #3, a portion of
16 the Howard County zoning map and Petitioner Exhibit #4, photographs of the first floor interior space. She
17 said the nearby property at 17500 Frederick Road is shown on Exhibit #3 as residentially zoned but she
18 believes there was a nonconforming use hearing for this site which changed the zoning to a business
19 classification. She said this map shows that there are several nearby properties which have industrial zoning.

20 Jane Athey asked the Petitioners how it came to be that a business that started as small engine repair
21 became an automotive repair business. Mr. Larkin responded that the lease was for small engine repair for
22 lawn mowers, farm equipment and tractors but the business gradually evolved to auto repair and that was a
23 reason the lease was terminated early. Ms. Athey also asked about the rezoning process and the Director's
24 Designee briefly explained that the petition, if granted would not rezone the property from residential to
25 commercial but that the hearing was solely for the confirmation of an alleged nonconforming use.
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27
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1 Beverly Blanchfield stated that a small engine repair business seems like it would involve things like
2 lawn mowers and small engines. She asked what the difference is between a small engine repair business and
3 an auto repair business. Ms. Larkin responded that she does not wish to have an auto repair business on the
4 property because fumes are an issue since she lives upstairs and that she would like the chocolate
5 manufacturing business to be able to operate on the site but that she does not know at this time what type of
6 business will occupy the space. Mr. Larkin responded that there was some confusion in the petition about the
7 requested confirmation. He said he wishes to amend the petition to allow chocolate manufacturing, a self
8 storage facility or office use.

9 Ms. Athey asked if a nonconforming use has to state what it is going to be and if the use will be
10 allowed to change. She said the Petitioners said small engine repair and now they are not sure what it will be.
11 She asked if the paved parking area is for residential or commercial use. Mr. Larkin said the parking area
12 could be used for either use.

13 Ms. Blanchfield questioned how the petition could meet the nonconforming use criteria if the
14 Petitioners do not know what kind of business will be on the site.

15 Dennis Wallace testified that his father had a welding and iron works business on the subject property
16 from 1970 until January, 1990. He said that when his father bought the property, he was told it had a
17 nonconforming use on it. Mr. Wallace said when he had the adjoining property to the west rezoned to M-1 to
18 operate Wally's Iron Works his intention was to move the nonconforming use from the subject property to the
19 adjacent M-1 zoned site but he did not because his father would have lost the income from the commercial
20 space. He said the sewing kit business came to the subject property in January, 1990 after the welding
21 business moved out.

22 Ms. Blanchfield asked what happens to the nonconforming use if the use changes. Mr. Larkin
23 responded that the tax record may support the nonconforming use.

24 Charles Ridgely, III testified that he purchased his house on the lot behind the subject property in
25 1953 and there was a house on the subject property at that time. He said Mr. Saas had long hay feeders on the
26 subject property and operated a welding business there. He said he has never had any problems with the
27 business operations on the site.

1 Lorraine Ridgely testified that when she and Mr. Ridgely bought the house behind the Saas property,
2 Mr. Saas was well established in the welding business. She said there was a nice apartment above the shop
3 and she never heard noise from the business operations. She said when the sewing business was there UPS
4 trucks would come into the driveway but she did not have complaints about the trucks and the parking area
5 has been there for as long as she can remember.

6 Jackie Raines testified that he remembers going to the subject property with his father to have
7 equipment repaired and there has always been a tenant in the apartment above the shop.

8 Opposition testimony and cross examination:

9 Jane Athey submitted Opposition Exhibit #1, a letter signed by residents of Country View Way. Ms. Athey
10 testified that she and several neighbors are opposed to the petition because they believe it represents a change
11 in use which would not qualify as a nonconforming use. She said she has lived in the area for about four years
12 and to her knowledge a small engine repair business was operating on the property when she moved there and
13 this business expanded to an automotive repair business. She said this involved large vehicles parked on the
14 concrete pad and she has concerns about oil and gas runoff leaking into the ground in an area where everyone
15 has a well. She said she is concerned about noncompliance with the criteria and questioned whether the
16 business will be for small engine repair or auto repair. She expressed concerns about the impact of traffic
17 from the business on the safety of children in the area since the subject property is in the immediate area of a
18 main bus stop.

19 Beverly Blanchfield testified that she has lived in the area for about 19 years and she is concerned
20 that a change in the type of business being operated would be approved and that the Petitioners do not seem
21 decided on what type of business would be located on the property. She said she is opposed to a business
22 which would bring large lawn mowers and other equipment which could leak gas and oil into the ground
23 water and would generate fumes. She also expressed concerns about the safety of neighborhood children
24 boarding buses near a business which involves large vehicles.

25 Summation:

26 Diane Larkin said the building has been on the property since 1947 and she is surprised that there are
27 concerns. She said she and Mr. Larkin have continued to improve the appearance of the property. Paul Larkin
28

1 stated that they have moved past wanting to have a welding shop or auto repair business and they are leaning
2 toward chocolate manufacturing. He said the chocolate business would require a large investment for building
3 conversions and suggested that a self storage facility may be operated as an alternative because only minor
4 interior changes would be required for such a facility. He requested that the petition be amended to include
5 chocolate manufacturing, self storage or office uses.

6 Jane Athey said a small engine repair shop would be problematic because it would bring increased
7 traffic and change the character of the neighborhood.

8 Beverly Blanchfield stated that a business involving large trucks and lawn mowers should not be
9 allowed but that she had no problem with the sewing kit shop.

10 Based upon the testimony and exhibits presented at the hearing, the description of the subject
11 property and vicinal properties resulting from a site inspection by a member of the planning staff, as well as
12 the plans and materials submitted by the Petitioners as part of the petition, the Director makes the following
13 Findings of Fact and Conclusions of Law:

14 FINDINGS OF FACT

- 15 1. The Petitioners, Paul and Diane Larkin, are the owners of the subject property of this proceeding. The
16 subject property is located on the north side of Frederick Road approximately 400 feet west of West
17 Watersville Road. This property is identified as Tax Map 2, Grid 19, Parcel 102, and the address is
18 17530 Frederick Road (the "Property"). The Property is located in an RC-DEO Zoning District, is
19 0.942 acres in area and is irregular in shape.
- 20 2. The Property is improved with a two-story block building (the "Two-story Building") located
21 approximately 31 feet from Frederick Road. The petition states the first floor has been a
22 nonconforming use and the second floor is residential consisting of a two bedroom apartment which
23 is occupied by the owners.

24 There is a one-story detached garage located to the northwest of the Two-story Building.
25 There is a large paved parking area in the southwest portion of the site between the Two-story
26 Building and the detached garage. There is a paved driveway/parking area on the east side of the
27 Two-story Building.

3. The Petitioners request the confirmation of a nonconforming use for a welding business, sewing kit manufacturing and small engine motor repair (collectively, the "Described Uses"). At the hearing Mr. Larkin requested the petition be amended to allow a chocolate manufacturing business, a self storage facility or office use (the "Amended Uses"). In the current RC District and DEO Overlay District zoning regulations, neither the Described Uses nor Amended Uses are permitted as a matter of right.

In response to the petition request to identify a date the use became nonconforming, the petition states "When constructed in what we now believe is 1947". The Petitioners allege the Property has been continuously used for business uses.

4. The Petitioners allege that the Property was first used for commercial purposes in approximately 1947, prior to the date of the first Zoning Regulations in Howard County, which were adopted on July 27, 1948 (the "Initial Zoning Regulations").

5. The full zoning history for the Property with regard to district designations, is that in 1948, the Property was zoned Residential; the 1954 Zoning Regulations retained the Residential district zoning; and the 1961 Comprehensive Zoning Plan zoned the Property R-40. The 1977 Comprehensive Zoning Plan rezoned the Property to the R District, and this R District zoning was retained by the 1985 Comprehensive Zoning Plan. The Property was rezoned RC-DEO in the 1993 Comprehensive Zoning Plan and this zoning was retained by the 2004 Comprehensive Zoning Plan and the 2005 Continuation of that Comprehensive Zoning Plan.

6. At the time of the Initial Zoning Regulations, the Property was zoned Residential. It should be noted that the Initial Zoning Regulations declared that any use of land existing prior to the adoption of those regulations that did not comply with the new zoning district designation automatically became a legal nonconforming use, without any need for a formal confirmation process.

7. As documentation in support of the nonconforming use, the Petitioners submitted documents and affidavits as the following petition attachments:

A – Charles and Lorraine Ridgely's statement that they have lived in area for 50 years and Mr. Saas built the building to have welding business on the first floor and an apartment on the second floor.

1 B - Harry M. Fleming, Jr.'s statement that the building was built by Clarence Saas in 1947
2 who lived in the apartment above the first floor welding business which was there until James
3 Wallace purchased the building and moved Wally's Iron Works to the Property.

4 C - Calvin Pickett's statement his brother worked for Mr. Saas in the late 1940s until James
5 Wallace moved his business to the property.

6 D - Jackie Raines' statement that his father took machines to the Property for welding repairs
7 in the 1940s and there was an apartment above the shop.

8 E - Bernard Dennison's statement that in 1952 there was a welding business on the first floor
9 of the Property which remained until James Wallace moved his business to the Property.

10 F - Photographs of Mr. Saas and a dog taken at subject property developed in 1952.

11 G - Letter of Dennis Wallace, President of Wally's Iron Works stating that his father James
12 Wallace (now deceased) purchased the Property in September, 1970 from Mr. Sass who had a
13 welding shop at that address. James Wallace operated Wally's Iron Works on the Property from
14 September, 1970 until January, 1990 when Wally's Iron Works moved to the adjacent property and
15 another business moved in.

16 H - Letter of Lee Ann Asher, Owner of Lama Sewing Kits stating she operated a sewing kit
17 manufacturing and mail order business on the first floor from January, 1990 until September, 2010.

18 I - Commercial/Industrial Real Property Income Questionnaire for 2007-2009.

19 J - Rent checks to James Wallace from Lama Sewing Kits.

20 K - Letter of Milton Morera stating that he has a lease to operate an auto repair business for
21 the period January, 2011 through January, 2012.

22 L - Lease Agreement between Petitioners and Milton and Jessica Morera for the period
23 January, 2011 through January, 2012.

24 8. The following are documents of the Department of Planning and Zoning:

- 25 a. The Land Use Map of 1961 which depicted the Property as M 14, or "Light
26 manufacture of iron, steel and their products".
27 b. A record entitled "Nonconforming Uses Active as of January, 1977" containing
28 the annotation, "James Wallace, 442-2202, Route #144 (17535), Mt. Airy,
Maryland, Business operation, Iron Works - fabrication, Non-Conforming" (the
"Archived Record").
c. Site Development Plan 88-100, approved in March, 1988 for Wally's Iron
Works, depicts the subject Property with the notation "Existing 2 story steel
fabrication shop".

9. Properties on the north side of Frederick Road are zoned RC-DEO except for Parcel 54, the adjoining
property to the west which was rezoned from R to M-1 in ZBC 841M approved in April, 1987 and is
the site of Wally's Iron Works and a communications tower (SDPs 88-100 & 05-137).

CONCLUSIONS OF LAW

1
2 Section 129.D.1 of the Zoning Regulations permits the Director of Planning and Zoning to confirm
3 the existence of a nonconforming use. Based upon the foregoing Findings of Fact, the Director makes the
4 following Conclusions of Law:

- 5 1. There is evidence which supports the Petitioners' claim to a nonconforming use on the Property, but
6 not to the full extent of the Described Uses. With regard to the welding business, the Archived
7 Record is accepted as an administrative declaration that established the initial valid nonconforming
8 use on the Property. This Archived Record and the previously noted documents of the Department of
9 Planning and Zoning together with the petition statements and testimony constitute a preponderance
10 of evidence that a confirmed nonconforming use for a welding business (the "Confirmed Welding
11 NCU") existed on the Property until it ceased in January, 1990.
- 12 2. There is compelling evidence to support the Petitioners' claim that the Lama Sewing Kits
13 manufacturing and mail order business operated on the Property from January, 1990 until September,
14 2010. In order for a nonconforming use to be permitted to continue, there must not have been a lapse
15 in operation for a period of more than two years. The Department of Planning and Zoning deems this
16 sewing kit business to have constituted a continuation of a confirmed nonconforming use; however,
17 in this particular case this sewing kit business is a use of lower intensity than the Confirmed Welding
18 NCU. Once a lower intensity use is established on a Property, subsequent commercial uses on the
19 Property are permanently limited to this lower level of intensity, and no use of higher intensity is
20 subsequently permitted to be operated.
- 21 3. The last date a confirmed nonconforming use was in operation on the Property was September, 2010,
22 the cessation date of the Lama Sewing Kits business (the "Latest Confirmed NCU").
23

24 The Department of Planning and Zoning finds that the intensity and type of use on the
25 Property that was established with the Latest Confirmed NCU is most similar to uses described in the
26 Zoning Regulations as "Manufacturing, compounding, assembling or treatment of articles or
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merchandise from previously-prepared materials such as: ceramics, clay, cloth, fiber, glass, leather, paper, pipe, plastics, precious or semi-precious metals or stones, wire and wood”, thus commercial uses permitted to continue on the Property are specifically limited to similar types of light manufacturing uses classified within this category. The Amended Uses requested to be confirmed as nonconforming uses by the Petitioners are not similar types of uses classified within this category.

4. The Petitioners allege that a business which began as a small engine repair business and evolved into an automotive repair business (the “Repair Business”) operated on the Property from January, 2011 until September, 2011. By the reasoning noted in #2 above, the Repair Business represents a higher intensity use classification than the Latest Confirmed NCU and cannot be confirmed as a nonconforming use. As such, no type of Repair Business as described in the petition is permitted to operate on the Property.
5. The magnitude and extent of the Latest Confirmed NCU consists of the Two-story Building and the large paved parking area in the southwest portion of the site between the Two-story Building and the detached garage. The magnitude and extent of the Latest Confirmed NCU excludes the detached garage and the paved driveway/parking area on the east side of the Two-story Building.

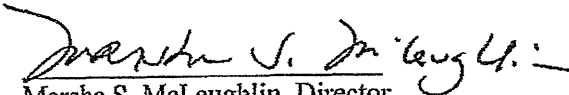
ORDER

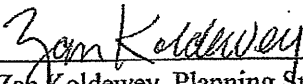
Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 16 day of November, 2011 by the Director of the Department of Planning and Zoning for Howard County, ORDERED that the petition of Paul and Diane Larkin, for confirmation of a nonconforming use for a welding business and a small engine motor repair business as enumerated in the petition are DENIED. The amended petition request to allow nonconforming uses for the Amended Uses of chocolate manufacturing, self storage and office use is DENIED. The request for confirmation of a nonconforming use for the Latest Confirmed NCU and uses described in the Zoning Regulations as “Manufacturing, compounding, assembling or treatment of articles or merchandise from previously-prepared materials such as: ceramics, clay, cloth, fiber, glass, leather, paper, pipe, plastics, precious or semi-precious metals or stones, wire and wood”, be and the same is hereby APPROVED with the

following advisory:

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1. The Petitioners are advised that if the operation of a nonconforming use lapses for a period of more than two years, the permissibility of any and all nonconforming uses on the Property is permanently extinguished. The last date the Latest Confirmed NCU existed on the Property is established as September, 2010.

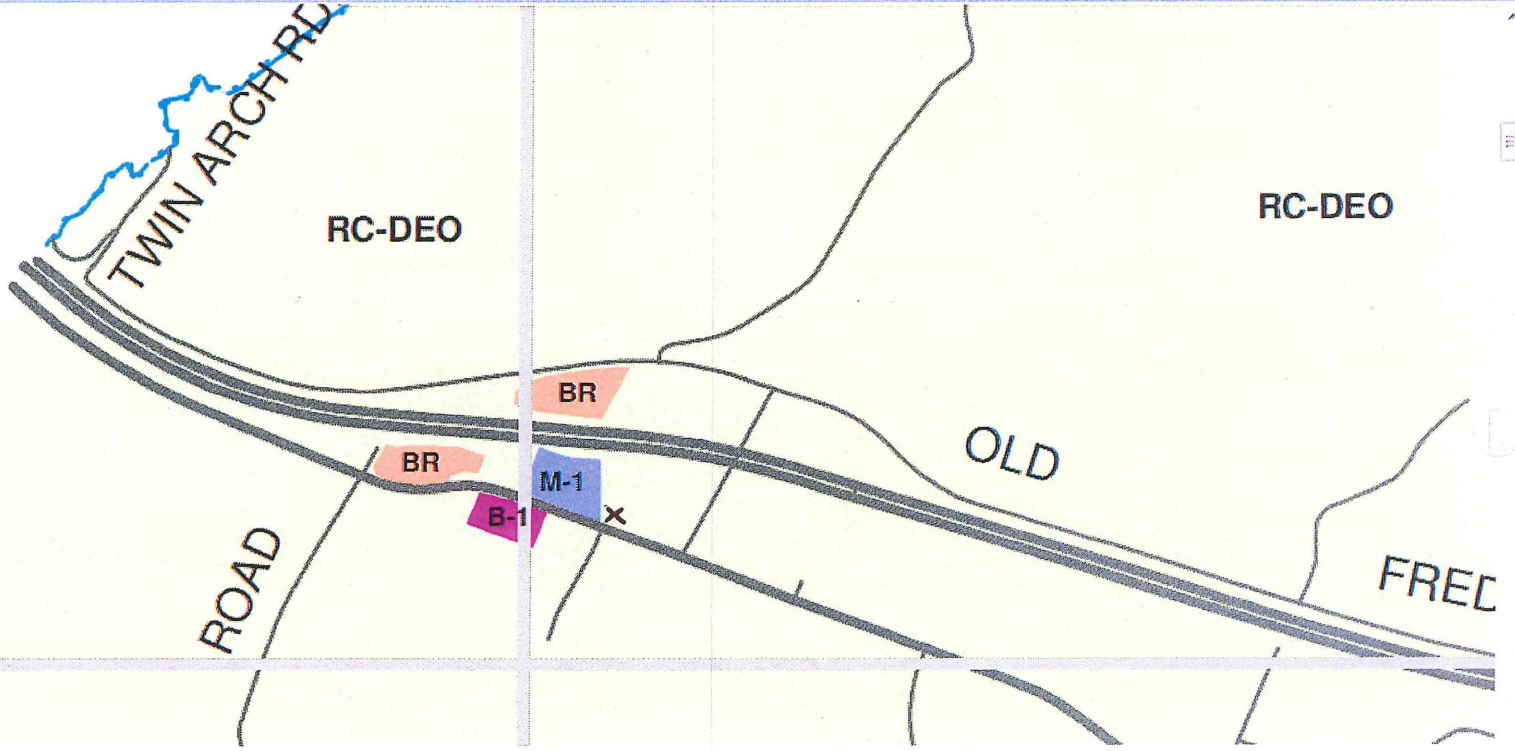
7 Prepared By:
8 Howard County Department of
9 Planning and Zoning,
10 Division of Public Service and
11 Zoning Administration


Marsha S. McLaughlin, Director
Department of Planning and Zoning


Zan Koldewey, Planning Specialist II
Director's Designee

12
13
14
15 A person aggrieved by this decision may appeal it to the Howard County Board of Appeals
16 within 30 days of the issuance of the decision. An appeal must be submitted to the Department of
17 Planning and Zoning on a form provided by the Department. At the time the appeal petition is
18 filed, the person filing the appeal must pay the appeal fees in accordance with the current
19 schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal
20 will bear the expense of providing notice and advertising the hearing.
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X = subject property

ADJOINING PROPERTY OWNERS FOR 17530 FREDERICK ROAD

Ronald Reese
17536 Frederick Road
Mt. Airy MD 21771-3626
(2.001)

Charles Ridgely
17524 Frederick Road
Mt. Airy, MD 21771-3656
(2.001)

DWW LLC
17560 Frederick Road
Mt. Airy, MD 21771-3626
(2.001)

"
"

Requested Zoning

Search Street:

FREDERICK RD

Property Information:

Amendment No.: 2.001

Current Zoning: RC-DEO

Requested Zoning: B-1

Tax Account ID.: 1404330366

Map: 2

Grid: 19

Parcel: 102

Lot:

Acres: 0.92

Address: 17530 FREDERICK RD

City/State/Zip: MT AIRY, MD 21771

Owner:

Name: WALLACE JAMES F JR

Email: dplarkin@gmail.com

Phone: 301-514-4054

Mailing Address: 6612 WESTCHESTER DR NE

City/State/Zip: WINTER HAVEN, FL 33881

Representative:

Name: Andrea LeWinter

Email: alewinter@taylorlegal.com

Phone: 443-420-4075

Mailing Address: 5850 Waterloo Rd. Suite 140

City/State/Zip: Columbia, MD 21045

Decision:

Planning Board Decision:

Planning Board Vote:

Council Decision:

Council Vote:

Zoning Map Amendment Request Form

Howard County Comprehensive Zoning Plan Department of Planning and Zoning

[Handwritten/Typed Version]
Before filling out this form, please read the
Instructions section at the end of the form.

A. Property Information (Please print or type)

1 Address / Street (Only) 17530 Frederick Road

2 Tax Map Number 0002 Grid 0019

3 Parcel(s) 0102

4 Lot(s) N/A

5 Tax Account Data: District 04 Account # 330366

6 Size of Property: Acres .92 Square feet 40,075

7 The Property is currently zoned: RC-DEO

I request that the Property be rezoned to: B-1

B. Owner Information

8 Owner Name Paul Alan and Diane Patricia Larkin

9 Mailing street address
or Post Office Box 17530 Frederick Road

City, State Mt. Airy, MD

ZIP Code 21771-3626

Telephone (Main) 301-703-8163

Telephone (Secondary) 301-514-4054

10 E-Mail dp.larkin@gmail.com



C. Representative Information

- 11 Name Andrea LeWinter
- Mailing street address or Post Office Box 5850 Waterloo Road, Suite 140
- City, State Columbia, MD
- ZIP 21045
- Telephone (Main) 410-300-7251
- Telephone (Secondary) 443-420-4075
- E-Mail alewinter@taylorlegal.com
- 12 Association with Owner attorney

D. Alternate Contact [If Any]

Name

Telephone

E-Mail

E. Explanation of the Basis / Justification for the Requested Rezoning

- 13 Please see attached for full explanation. In summary, the Department of Planning and Zoning has approved this property for a nonconforming use (commercial/light manufacturing) on the first floor of the existing building. The smaller second story houses a residential apartment. The nonconforming use is very narrow in scope and it has been difficult for the owners to find tenants able to utilize the site. Because of the existing building and extensive paving, any alternative non-commercial use of the property is impractical unless all construction were razed. Rezoning the property to B-1, the least intensive of business uses, will clarify permitted uses; streamline the zoning map; alleviate any confusion for the neighbors; and, make the property more marketable and useful. The property abuts a M-1 parcel and is just one parcel removed from a B-1 property and there are two BR parcels in the immediate vicinity, so a re-zone to B-1 is consistent with the character of the neighborhood.

F. List of Attachments/Exhibits

- 14
1. Full response to Section E. Explanation of the Basis, #13;
 2. Decision and Order awarding nonconforming use, case no. 11-004;
 3. Section of the Howard County Zoning map with subject property marked, showing other commercially zoned properties in the immediate vicinity.

G. Signatures

15 Owner *Dwain P. Leck*
Date *12/11/2012*

Owner (2) *Paul D. Leck*
Date *12/11/12*

Additional owner signatures? **X** the box to the left and attach a separate signature page.

16 Representative Signature *AS*
Date *12/12/2012*

DPZ Use Only	<i>JK</i>	Amendment No.	2,001
Notes			

ATTACHMENT 1

Since the 1940s, the main building on the premises has housed a commercial/manufacturing space on the first floor with a modest residential apartment above. There is also a one-story detached garage and two large paved areas, utilized for parking personal and delivery vehicles. The dual commercial/residential use has existed since the original purchase and development of the property, and the current owners, who reside on the second floor, continue to actively solicit tenants for the commercial space.

On November 16, 2011, DPZ confirmed the property's existing dual use, approving the property for a non-conforming use for "Manufacturing, compounding, assembling or treatment of articles or merchandise from previously-prepared materials such as: ceramics, clay, cloth, fiber, glass, leather, paper, pipe, plastics, precious or semi-precious metals or stones, wire and wood." *See Decision and Order, Nonconforming Use Case No. 11-004.* Of note, until 1990, the non-conforming use of welding also existed on the property. *See Id.*

Because of the unique construction of the building -- the first floor designed for warehouse and/or manufacturing use, not suitable for or connected to the living space -- and the wide swath of paving, commercial space is the most logical use of the property and other uses are impractical, unless the existing development were to be completely razed. Further, the property is adjacent to M-1 (Wally's Iron Works, across the street), only one property removed from a B-1 (a veterinary clinic), with two BR properties in the immediate vicinity. *See attached map.*

Unfortunately, the permitted nonconforming uses at this time are very narrow. The prior commercial tenant was a sewing kit manufacturer and future tenants must be similarly extremely low impact. The result has been that the current owners have had tremendous difficulty finding qualified tenants interested in the space and the commercial portion of the property has remained vacant for some months, causing a significant loss of income to the owners and a loss of tax revenue to the County.

From a land planning and community perspective, nonconforming uses pose difficulties because of the complexity of record-keeping, monitoring, and the on-going approval process, and because of community confusion about appropriate and approved uses. From a residential homeowner perspective, a nonconforming use is far from ideal because of the restrictions placed on allowable tenants and the impact on the marketability of title. From a business perspective, nonconforming uses severely limit the types of commercial vendors interested in investing in the property as they fear unavoidable restrictions on their ability to expand and develop, resulting in a development and tax loss to the County. If this property is rezoned to B-1, which permits a dwelling unit, there would be no need for continuation of the nonconforming

use and the permitted commercial uses of the property would be clear and easier to access. This would benefit the County, the property owner, and the community.

B-1 is also the least intensive of all business zones and so would not significantly extend the already approved uses. Further, as a practical matter, because the property is less than 1 acre, it is appropriate for only a limited number of uses within B-1; thus, any perceived or feared incompatibility with or nuisance to residential neighbors would be minimized. The B-1 zoning would also be compatible with the M-1, B-1, and BR properties in the immediate vicinity.

IN THE MATTER OF
PAUL AND DIANE
LARKIN,
PETITIONERS

* BEFORE THE DIRECTOR OF
* DEPARTMENT OF PLANNING & ZONING
* NONCONFORMING USE CASE NO. 11-004
* 17530 FREDERICK ROAD

DECISION AND ORDER

On October 25, 2011, the Designee for the Director of the Department of Planning and Zoning conducted a public hearing to consider the petition of Paul and Diane Larkin, for confirmation of a nonconforming use for the use of the subject property as a welding business, sewing kit manufacturing and small engine motor repair, as authorized under Section 100.H. and Section 129.D. of the Zoning Regulations. The notice of the hearing was posted on the subject property in accordance with all applicable regulations.

Prior to the introduction of testimony, the following items were incorporated into the record:

1. The current Howard County Zoning Regulations.
2. The Subdivision and Land Development Regulations.
3. The Administrative Procedures Act of the Howard County Code.
4. The 1948, 1954, 1961, 1977, 1985, 1993, and 2004 Howard County Zoning Regulations.
5. The Land Use map records of the Department of Planning and Zoning.
6. The aerial photograph records of the Department of Planning and Zoning.

During the hearing the following items were introduced as exhibits:

1. Petition, Nonconforming Use Plan and Documentation submitted by Petitioners, including all pre-hearing correspondence concerning the use of the property.
2. Photographs of the subject site submitted by the Department of Planning and Zoning.
3. Petitioner Exhibits #1-#4.
4. Opposition Exhibit #1.

Testimony in favor of the petition was presented by Paul Larkin, Diane Larkin, Dennis Wallace, Charles Ridgely, III, Lorraine Ridgely and Jackie Raines. The Petitioners were not represented by counsel. Beverly Blanchfield and Jane Athey testified in opposition to the petition.

Supporting testimony and cross examination:

Diane Larkin testified that the petition arose as a result of applying for permits to improve the second floor residential portion of the building. She said the Department of Inspections, Licenses and Permits would not

1 approve permits unless the building complied with certain fire code regulations and it became apparent at that
2 time that the current zoning of the property did not permit commercial uses. Ms. Larkin stated that before
3 undertaking further property improvements she wants to verify that operating a business on the property is
4 legal. She said she applied for a nonconforming use confirmation and originally thought the building was
5 constructed in 1957 but now believes it was constructed in 1947. She stated that there was a lease agreement
6 with Milton Morera who operated a small engine repair business on the property since January, 2011 but he
7 was released from the agreement at the end of September, 2011. She said that currently there is no tenant in
8 the lower level but she has been approached by a potential tenant to operate a chocolate production business
9 in the space.

10 Paul Larkin testified that a business has been on the property since 1947 and it recently became
11 apparent that business uses do not comply with current zoning regulations. He submitted Petitioner Exhibit
12 #1, a report of Metropolitan Regional Information Systems, Inc. which he stated shows a tax record that codes
13 the land use as commercial. He stated that income from a business is needed in order to make needed property
14 repairs and improvements.

15 Ms. Larkin submitted Petitioner Exhibit #2 comprising three deeds; Petitioner Exhibit #3, a portion of
16 the Howard County zoning map and Petitioner Exhibit #4, photographs of the first floor interior space. She
17 said the nearby property at 17500 Frederick Road is shown on Exhibit #3 as residentially zoned but she
18 believes there was a nonconforming use hearing for this site which changed the zoning to a business
19 classification. She said this map shows that there are several nearby properties which have industrial zoning.

20 Jane Athey asked the Petitioners how it came to be that a business that started as small engine repair
21 became an automotive repair business. Mr. Larkin responded that the lease was for small engine repair for
22 lawn mowers, farm equipment and tractors but the business gradually evolved to auto repair and that was a
23 reason the lease was terminated early. Ms. Athey also asked about the rezoning process and the Director's
24 Designee briefly explained that the petition, if granted would not rezone the property from residential to
commercial but that the hearing was solely for the confirmation of an alleged nonconforming use.

1 Beverly Blanchfield stated that a small engine repair business seems like it would involve things like
2 lawn mowers and small engines. She asked what the difference is between a small engine repair business and
3 an auto repair business. Ms. Larkin responded that she does not wish to have an auto repair business on the
4 property because fumes are an issue since she lives upstairs and that she would like the chocolate
5 manufacturing business to be able to operate on the site but that she does not know at this time what type of
6 business will occupy the space. Mr. Larkin responded that there was some confusion in the petition about the
7 requested confirmation. He said he wishes to amend the petition to allow chocolate manufacturing, a self
8 storage facility or office use.

9 Ms. Athey asked if a nonconforming use has to state what it is going to be and if the use will be
10 allowed to change. She said the Petitioners said small engine repair and now they are not sure what it will be.
11 She asked if the paved parking area is for residential or commercial use. Mr. Larkin said the parking area
12 could be used for either use.

13 Ms. Blanchfield questioned how the petition could meet the nonconforming use criteria if the
14 Petitioners do not know what kind of business will be on the site.

15 Dennis Wallace testified that his father had a welding and iron works business on the subject property
16 from 1970 until January, 1990. He said that when his father bought the property, he was told it had a
17 nonconforming use on it. Mr. Wallace said when he had the adjoining property to the west rezoned to M-1 to
18 operate Wally's Iron Works his intention was to move the nonconforming use from the subject property to the
19 adjacent M-1 zoned site but he did not because his father would have lost the income from the commercial
20 space. He said the sewing kit business came to the subject property in January, 1990 after the welding
21 business moved out.

22 Ms. Blanchfield asked what happens to the nonconforming use if the use changes. Mr. Larkin
23 responded that the tax record may support the nonconforming use.

24 Charles Ridgely, III testified that he purchased his house on the lot behind the subject property in
25 1953 and there was a house on the subject property at that time. He said Mr. Saas had long hay feeders on the
26 subject property and operated a welding business there. He said he has never had any problems with the
27 business operations on the site.

1 Lorraine Ridgely testified that when she and Mr. Ridgely bought the house behind the Saas property,
2 Mr. Saas was well established in the welding business. She said there was a nice apartment above the shop
3 and she never heard noise from the business operations. She said when the sewing business was there UPS
4 trucks would come into the driveway but she did not have complaints about the trucks and the parking area
5 has been there for as long as she can remember.

6 Jackie Raines testified that he remembers going to the subject property with his father to have
7 equipment repaired and there has always been a tenant in the apartment above the shop.

8 Opposition testimony and cross examination:

9 Jane Athey submitted Opposition Exhibit #1, a letter signed by residents of Country View Way. Ms. Athey
10 testified that she and several neighbors are opposed to the petition because they believe it represents a change
11 in use which would not qualify as a nonconforming use. She said she has lived in the area for about four years
12 and to her knowledge a small engine repair business was operating on the property when she moved there and
13 this business expanded to an automotive repair business. She said this involved large vehicles parked on the
14 concrete pad and she has concerns about oil and gas runoff leaking into the ground in an area where everyone
15 has a well. She said she is concerned about noncompliance with the criteria and questioned whether the
16 business will be for small engine repair or auto repair. She expressed concerns about the impact of traffic
17 from the business on the safety of children in the area since the subject property is in the immediate area of a
18 main bus stop.

19 Beverly Blanchfield testified that she has lived in the area for about 19 years and she is concerned
20 that a change in the type of business being operated would be approved and that the Petitioners do not seem
21 decided on what type of business would be located on the property. She said she is opposed to a business
22 which would bring large lawn mowers and other equipment which could leak gas and oil into the ground
23 water and would generate fumes. She also expressed concerns about the safety of neighborhood children
24 boarding buses near a business which involves large vehicles.

25 Summation:

26 Diane Larkin said the building has been on the property since 1947 and she is surprised that there are
27 concerns. She said she and Mr. Larkin have continued to improve the appearance of the property. Paul Larkin
28

1 stated that they have moved past wanting to have a welding shop or auto repair business and they are leaning
2 toward chocolate manufacturing. He said the chocolate business would require a large investment for building
3 conversions and suggested that a self storage facility may be operated as an alternative because only minor
4 interior changes would be required for such a facility. He requested that the petition be amended to include
5 chocolate manufacturing, self storage or office uses.

6 Jane Athey said a small engine repair shop would be problematic because it would bring increased
7 traffic and change the character of the neighborhood.

8 Beverly Blanchfield stated that a business involving large trucks and lawn mowers should not be
9 allowed but that she had no problem with the sewing kit shop.

10 Based upon the testimony and exhibits presented at the hearing, the description of the subject
11 property and vicinal properties resulting from a site inspection by a member of the planning staff, as well as
12 the plans and materials submitted by the Petitioners as part of the petition, the Director makes the following

13 Findings of Fact and Conclusions of Law:

14 FINDINGS OF FACT

- 15 1. The Petitioners, Paul and Diane Larkin, are the owners of the subject property of this proceeding. The
16 subject property is located on the north side of Frederick Road approximately 400 feet west of West
17 Watersville Road. This property is identified as Tax Map 2, Grid 19, Parcel 102, and the address is
18 17530 Frederick Road (the "Property"). The Property is located in an RC-DEO Zoning District, is
19 0.942 acres in area and is irregular in shape.
- 20 2. The Property is improved with a two-story block building (the "Two-story Building") located
21 approximately 31 feet from Frederick Road. The petition states the first floor has been a
22 nonconforming use and the second floor is residential consisting of a two bedroom apartment which
23 is occupied by the owners.

24 There is a one-story detached garage located to the northwest of the Two-story Building.
25 There is a large paved parking area in the southwest portion of the site between the Two-story
26 Building and the detached garage. There is a paved driveway/parking area on the east side of the
27 Two-story Building.

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3. The Petitioners request the confirmation of a nonconforming use for a welding business, sewing kit manufacturing and small engine motor repair (collectively, the "Described Uses"). At the hearing Mr. Larkin requested the petition be amended to allow a chocolate manufacturing business, a self storage facility or office use (the "Amended Uses"). In the current RC District and DEO Overlay District zoning regulations, neither the Described Uses nor Amended Uses are permitted as a matter of right.

In response to the petition request to identify a date the use became nonconforming, the petition states "When constructed in what we now believe is 1947". The Petitioners allege the Property has been continuously used for business uses.

4. The Petitioners allege that the Property was first used for commercial purposes in approximately 1947, prior to the date of the first Zoning Regulations in Howard County, which were adopted on July 27, 1948 (the "Initial Zoning Regulations").

5. The full zoning history for the Property with regard to district designations, is that in 1948, the Property was zoned Residential; the 1954 Zoning Regulations retained the Residential district zoning; and the 1961 Comprehensive Zoning Plan zoned the Property R-40. The 1977 Comprehensive Zoning Plan rezoned the Property to the R District, and this R District zoning was retained by the 1985 Comprehensive Zoning Plan. The Property was rezoned RC-DEO in the 1993 Comprehensive Zoning Plan and this zoning was retained by the 2004 Comprehensive Zoning Plan and the 2005 Continuation of that Comprehensive Zoning Plan.

6. At the time of the Initial Zoning Regulations, the Property was zoned Residential. It should be noted that the Initial Zoning Regulations declared that any use of land existing prior to the adoption of those regulations that did not comply with the new zoning district designation automatically became a legal nonconforming use, without any need for a formal confirmation process.

7. As documentation in support of the nonconforming use, the Petitioners submitted documents and affidavits as the following petition attachments:

A – Charles and Lorraine Ridgely's statement that they have lived in area for 50 years and Mr. Saas built the building to have welding business on the first floor and an apartment on the second floor.

1 B - Harry M. Fleming, Jr.'s statement that the building was built by Clarence Saas in 1947
2 who lived in the apartment above the first floor welding business which was there until James
3 Wallace purchased the building and moved Wally's Iron Works to the Property.

4 C - Calvin Pickett's statement his brother worked for Mr. Saas in the late 1940s until James
5 Wallace moved his business to the property.

6 D - Jackie Raines' statement that his father took machines to the Property for welding repairs
7 in the 1940s and there was an apartment above the shop.

8 E - Bernard Dennison's statement that in 1952 there was a welding business on the first floor
9 of the Property which remained until James Wallace moved his business to the Property.

10 F - Photographs of Mr. Saas and a dog taken at subject property developed in 1952.

11 G - Letter of Dennis Wallace, President of Wally's Iron Works stating that his father James
12 Wallace (now deceased) purchased the Property in September, 1970 from Mr. Saas who had a
13 welding shop at that address. James Wallace operated Wally's Iron Works on the Property from
14 September, 1970 until January, 1990 when Wally's Iron Works moved to the adjacent property and
15 another business moved in.

16 H - Letter of Lee Ann Asher, Owner of Lama Sewing Kits stating she operated a sewing kit
17 manufacturing and mail order business on the first floor from January, 1990 until September, 2010.

18 I - Commercial/Industrial Real Property Income Questionnaire for 2007-2009.

19 J - Rent checks to James Wallace from Lama Sewing Kits.

20 K - Letter of Milton Morera stating that he has a lease to operate an auto repair business for
21 the period January, 2011 through January, 2012.

22 L - Lease Agreement between Petitioners and Milton and Jessica Morera for the period
23 January, 2011 through January, 2012.

24 8. The following are documents of the Department of Planning and Zoning:

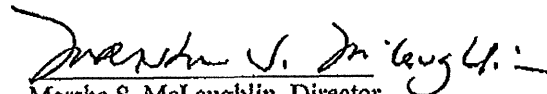
- 25 a. The Land Use Map of 1961 which depicted the Property as M 14, or "Light
26 manufacture of iron, steel and their products".
- 27 b. A record entitled "Nonconforming Uses Active as of January, 1977" containing
28 the annotation, "James Wallace, 442-2202, Route #144 (17535), Mt. Airy,
Maryland, Business operation, Iron Works - fabrication, Non-Conforming" (the
"Archived Record").
- c. Site Development Plan 88-100, approved in March, 1988 for Wally's Iron
Works, depicts the subject Property with the notation "Existing 2 story steel
fabrication shop".

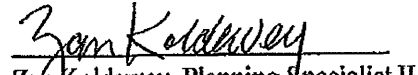
9. Properties on the north side of Frederick Road are zoned RC-DEO except for Parcel 54, the adjoining
property to the west which was rezoned from R to M-1 in ZBC 841M approved in April, 1987 and is
the site of Wally's Iron Works and a communications tower (SDPs 88-100 & 05-137).

following advisory:

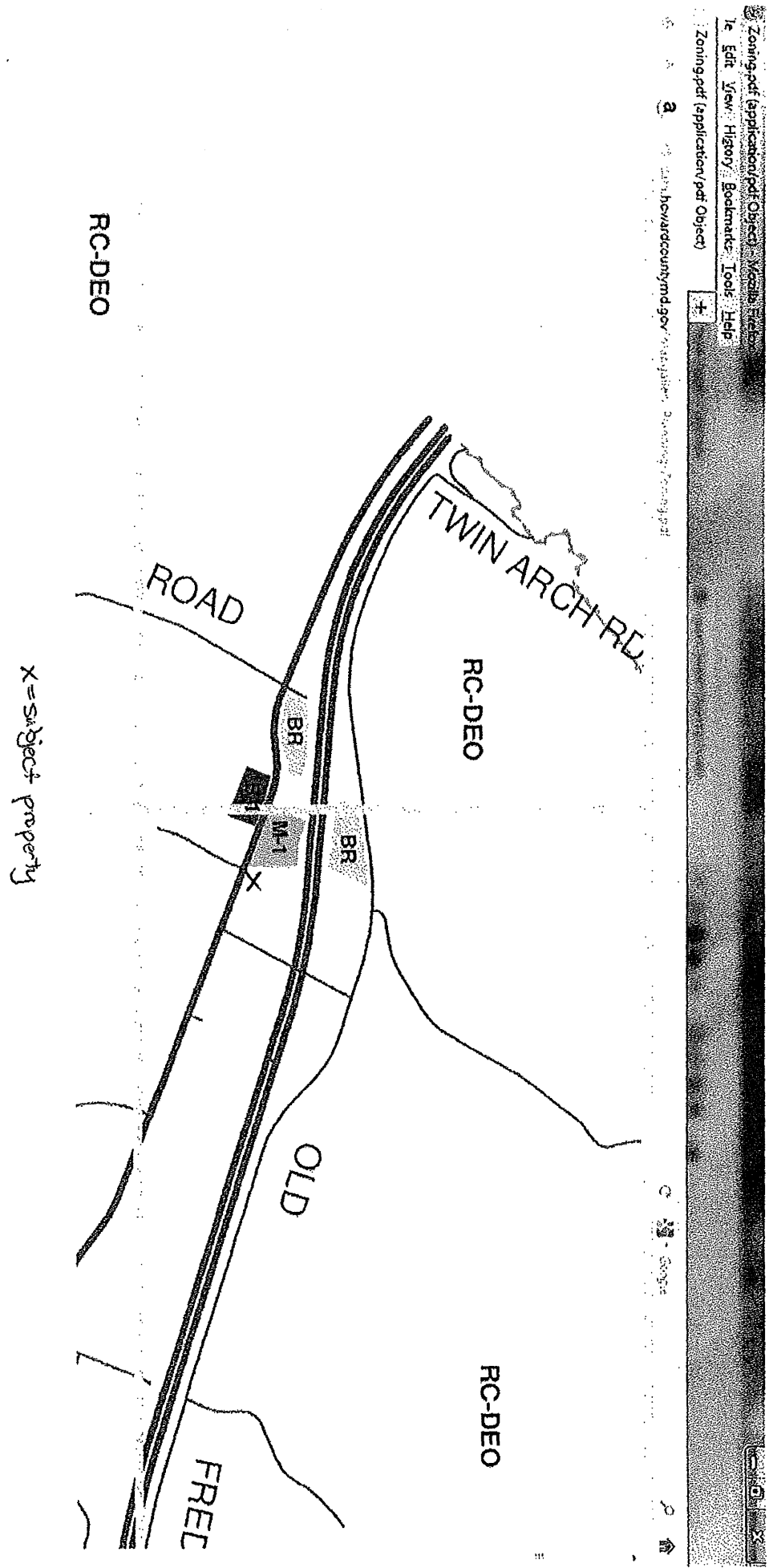
1. The Petitioners are advised that if the operation of a nonconforming use lapses for a period of more than two years, the permissibility of any and all nonconforming uses on the Property is permanently extinguished. The last date the Latest Confirmed NCU existed on the Property is established as September, 2010.

Prepared By:
Howard County Department of
Planning and Zoning,
Division of Public Service and
Zoning Administration


Marsha S. McLaughlin, Director
Department of Planning and Zoning


Zan Koldewey, Planning Specialist II
Director's Designee

A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.





Howard County Council

George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043-4392

COUNCILMEMBERS

Jennifer Terrasa, Chairperson
District 3
Mary Kay Sigaty, Vice Chairperson
District 4
Courtney Watson
District 1
Calvin Ball
District 2
Greg Fox
District 5

March 11, 2013

Paul and Diane Larkin
17530 Frederick Road
Mt. Airy, MD 21771

Dear Mr. and Mrs. Larkin:

You are receiving this letter because you filed a Zoning Map Amendment Request Form/Howard County Comprehensive Zoning Plan or a Zoning Regulation Amendment Request Form/Howard County Comprehensive Plan.

Please be advised that on March 7, 2013, the Howard County Ethics Commission determined that the Zoning Map Request Form needs to be accompanied by certain affidavits and disclosures. The Commission also determined that the Zoning Regulation Amendment Form needs to be accompanied by certain affidavits and disclosures when the Form proposes to "increase the density of the land of the applicant."

The Commission directed me to notify applicants of their obligation to file the affidavit and disclosure. The obligation is set forth in Md. Code Ann., St. Gov't, Sec. 15-849(b), which provides in part, **"the affidavit or disclosure shall be filed at least 30 calendar days prior to any consideration of the application by an elected official."**

Accordingly, I am enclosing for your use the approved affidavit packet. Completed forms may be mailed to the Administrative Assistant to the Zoning Board at 3430 Court House Drive, Ellicott City, MD 21043.

Very truly yours,

Stephen M. LeGendre
Administrator

Regner, Robin

From: Andrea LeWinter <alewinter@taylorlegal.com>
Sent: Friday, May 17, 2013 1:18 PM
To: Watson, Courtney; Ball, Calvin B; Terrasa, Jen; Sigaty, Mary Kay
Subject: Comprehensive Zoning application 2.001

Dear Councilmembers Watson, Ball, Terrasa and Sigaty:

I write to you on behalf of my clients, Diane and Paul Larkin, who have submitted an application to rezone their property from RC-DEO to B-1. Their property is a small .92 acre parcel located on Frederick Road, in Western Howard County, and has been utilized for light manufacturing and as a residence since 1947 pursuant to a non-conforming use. This non-conforming use was formalized by DPZ on November 16, 2011 and we would be happy to provide a copy of the Decision and Order if it would be of interest to you.

The property contains a modest two-story building. The top story is used by the Larkins as their personal residence. The bottom story has been rented out to a series of light manufacturing companies. There is also sufficient paving for the parking of five cars. Across the street is Wally's Iron Works, which is zoned M-1, and there are a number of other B-1 and BR properties in the immediate vicinity of this well-traveled road.

This application has been recommended for approval by both DPZ and the Planning Board. We believe that both DPZ and the Planning Board appreciate the Larkin's rationale for asking for B-1. Under the non-conforming use, it is confusing and complicated for tenants and prospective tenants to understand which uses are permitted and which regulations they are subject to. A B-1 designation would not result in any substantive change in the use of the property but would allow for clarity in the land records and would help optimize use of the property, as more tenants would be willing to invest and operate at the location.

There is a neighbor who abuts the property and some of his acquaintances who do object to this formalization of the nonconforming use with a rezoning. In actuality, however, this neighbor's objections stem from some "bad blood" between the Larkin family and this neighbor over the neighbor's storage of personal property on the Larkin's land and has nothing to do with the proposed business use of the property. Again, in practice there would not be any real difference between the current use and a B-1 use. There are also a number of neighbors in support of the rezoning.

I would be happy to answer any additional questions via email or phone. We will be testifying at the County Council comprehensive zoning hearings. We appreciate your time and, hopefully, support for this proposal.

Sincerely yours,
Andrea LeWinter

Andrea LeWinter, Esq.



TAYLOR LEGAL™
ATTORNEYS AT LAW

5850 WATERLOO ROAD, SUITE 140
COLUMBIA, MARYLAND 21045

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www.taylorlegal.com

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Testimony on Behalf of Diane and Paul Larkin
in Support of Amendment 2.001

Testimony by: Andrea LeWinter, Esq.
Taylor Legal, Katherine L. Taylor P.A.
5850 Waterloo Road
Columbia, MD 21045

On behalf of: Owners Diane and Paul Larkin
17530 Frederick Road
Mount Airy, MD 21771

I represent the applicants, Diane and Paul Larkin, who own 17530 Frederick Road in Mount Airy.

Since I provided a brief overview of this proposal on June 3, I will not be repetitive and instead will focus on addressing the objections that have been raised to this proposal. Before I do, I will quickly reiterate that this amendment is recommended by both DPZ and the Planning Board, and is basically a formalization of the existing nonconforming business use; this property has been used commercially since 1947. This zoning change will clarify County land records and make actual use of the property by the owners and tenants simpler and more feasible. I have attached a copy of my June 3rd testimony in which I explain the history of the parcel and need for rezoning.

I will also point out that there are many neighbors in support of the proposal. A number have submitted letters and emails directly to you. Others are here tonight and I will ask them to stand now to show their support. You have also heard or will hear a few of them testify.

In terms of opposition, in submissions to the Planning Board and County Council, some of neighbors have complained about aesthetics and possible noise and safety issues if this property is rezoned. Almost universally, these neighbors do not seem

aware that this parcel has been operating commercially during the entire time that they have resided in their homes. This can only indicate how minimal any impact or nuisance from commercial operations on this property have been. Also, some neighbors appear to have confused this property with Wally's Iron Works (when they refer to noise and alarms), which is located to the East of this property. Wally's is an M-1 property and may well be a use that it is unappealing to the neighbors, but it is separate and not the subject of this petition.

All of the residents adjacent to this parcel on Frederick Road purchased their properties in 1970, 1972 and 1983. All the residents on Country View Lane, which intersects with Frederick Road at the Larkin's property, purchased their homes after 1988, the majority after 2000. Thus, those living near the property have **only** experienced it as a commercial as well as a residential space.

As the pictures you have been provided show, the property is not unsightly or discordant with the neighborhood and, indeed, is not even easily visible to the residents of Country View Road.

Some in opposition have expressed concern about the myriad of options available by right and for conditional use on a B-1 parcel. These neighbors do not recognize that the small size of this parcel, just under an acre, and the existing structure on the property, which the Larkins reside in and intend to continue to reside in, place natural constraints on what the property can actually be used for. Thus, realistically, because of regulatory requirements and the limits of the building and parking, the parcel will only be appropriate for small scale, low intensity businesses. For example, Ms.

Larkin has gotten inquiries from a candy maker. Any other type of use will require an entire razing of the property, which the Larkins do not desire or intend.

The Larkins did not ask to rezone to M-1 or B-2, both of which allow for more intensive uses, because they respect and want to maintain the character of the area. They are not trying to unduly increase the intensity of use; they are simply asking to formalize and simplify their right to make their property financially viable.

In terms of school bus safety, this seems a manufactured issue. The majority of the time, the bus pulls off past the corner to the opposite side of Frederick Road from the Larkins' property. It is hard to imagine any business operating on the Larkins' small lot that could create sufficient traffic to impact this relatively sheltered bus stop across the street.

Thus, it is simply unfair to assert that rezoning this property will change the look or character of the neighborhood, or create some type of nuisance, especially with the other commercial properties nearby on Frederick Road.

There is one neighbor located behind the Larkins who has been the most strenuous objector. Unfortunately, his opposition is based on a personal conflict and not legitimate concerns about zoning. Ms. Larkin's parents, the Wallaces, who owned this parcel previously, initially had a positive relationship with this neighbor, he even worked for Ms. Larkin's father for a time. In fact, the neighbor supported the zoning change to M-1 of the property across the street that houses Wally's Iron Works, a property also owned by the Wallace family. Issues developed later when the neighbor repeatedly stored personal items on the Wallace's property without permission. The Wallace family had to formally request that the items be removed and eventually the

Larkins felt the need to erect a fence to ensure that there were no additional trespasses. Since that point, relations have been strained. This personal dispute should not influence your decision-making regarding the best and most equitable zoning of this property.

I want to assure the Council that the Larkins took great pains to ensure that all of the neighbors were aware of this rezoning request. Ms. Larkin personally visited each neighbor on Frederick Road and Country View Way twice to explain what she was asking for.

B-1 really is the most appropriate and equitable zoning for this parcel and we urge you to vote in favor of this amendment. Thank you for your time and consideration.

**TESTIMONY ON BEHALF OF DIANE AND PAUL LARKIN
IN SUPPORT OF APPLICATION 2.001**

My name is Andrea LeWinter, I am an attorney representing Diane and Paul Larkin, owners of 17-53-0 Frederick Road, who have applied to have their property rezoned from RC-DEO to B-1. The Larkins' application has been recommended for approval by both DPZ and the Planning Board.

The property has been designated by DPZ as a non-conforming use, commercial light manufacturing. The property has continuously operated in a commercial capacity since 1947. Ms. Larkin's family purchased the property in 1970 and operated it as Wally's Iron Works until 1990. Since then, a series of small businesses have occupied the commercial space on the bottom floor. There is also a residential space on the top floor, where the Larkins currently live.

We are requesting the zoning change basically to formalize the existing use. It is complicated for County record keeping and difficult for zoning enforcement to maintain nonconforming uses, and a County goal is to eliminate these designations when possible. The non-conforming use is also difficult for the Larkins as it limits the marketability of the property and is complicated for prospective tenants to understand. Designating this property B-1 will "clean up" the land records and optimize the use of the parcel, permitting increased tax revenue for the County. Frederick Road is major thoroughfare, there is a M-1 parcel across the street and a B-1 and 2 BR parcels in the immediate vicinity, thus there is substantial precedent for commercial use in this area.

All residents abutting and adjacent to this parcel and on Country View Lane, which intersects at the corner of the property, purchased their homes after 1988 and

have **only** experienced this property as a commercial space. As the pictures show, the property is not unsightly or discordant with the neighborhood.

This parcel is relatively small, just under an acre, and the existing structure is very modest. Thus, while a B-1 zoning designation will provide for a range of commercial uses, realistically, because of size, parking, and location constraints, this space will be most attractive and appropriate for small scale, low intensity businesses.

County Council:

Hello, my name is Dennis Wallace, I am the president of Wally's Iron Works, and I am here in support of rezoning 17530 Frederick Rd., Mt. Airy, MD to B-1.

My father purchased this building from Mr. Sass in 1970, who originally built the building to house an apartment for him and his wife, and to have his welding business on the first floor.

Wally's Iron Works was housed in this building from 1970 to 1990 until the business outgrew the building, which is obvious from the photo on the display that was taken several years prior to 1990. While Wally's was in this building, Country View Way was developed (just to the South) and the lots were sold during this time period. The neighbor behind subject property, Mr. Reese who is objecting to the rezoning of this property, moved into his home while Wally's was at this location. When we requested rezoning of the property where Wally's is currently located (just to the West of his property) he even came to the county offering his full support to rezone this parcel to M-1.

Since that time, this building has been rented to several different companies and has been used since its origination as commercial on the 1st floor, and an apartment on the second floor.

It is obvious from the large concrete pad, the tall roll up door, that this building is not a "typical" residential building.

Thank you for your time.

My name is Charles H. Ridgely III
I reside at 17524 Frederick Road, Western Howard Co.

My wife Lorraine and I have lived just East of the Larkin property for 42 1/2 years. Paul and Diane have made amazing improvements to their home's exterior appearance at 17530 Frederick Road. We are here tonight to give them our full support.

October 17, 1953 we purchased our first home, a small structure on 1/4 acre, behind the subject property, from Clarence & Mary Sear who resided on the 2nd floor and operated the Tri-County Welding Shop on the ground level. Large Commercial trucks delivered steel and farmers brought farm machinery for repair. Ridgely Nursery trucks traveled the access road just West of the welding shop and, in front of our home, to get to their property. We lived at 17536 Frederick Road for 17 years.

December 17, 1970 - Present

Having sold our first home (now owned by Ron & Pat Reese) which is behind the welding shop, we moved across the lawn to our present address 17524 Frederick Road and which is East of the Larkin property.

Since then, there have been small businesses such as welding, mechanics, lawn mower repair, and the last was a small mail order business from which UPS picked up and delivered daily.

It was probably the late 1970's to mid 1980's when the new street came into existence - "Country View Way" which is directly across the road (RT. 144) from the original welding shop. Since then, there have been school buses picking up and dropping school children off.

To our knowledge, there have been NO mishaps involving children and NO known traffic problems, from Oct. 17, 1953 - June 22, 2013, at this location, 17530 Frederick Rd.

2.001

410-442-2202

301-829-2393

EVENINGS: 410-795-4942

WASH. METRO: 301-831-5550

FAX: 410-549-3928

WALLY'S IRON WORKS, INC.

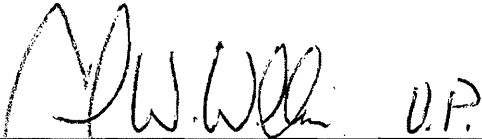
Ornamental Iron & Steel Fabrication

17560 FREDERICK RD. - MT. AIRY, MD. 21771

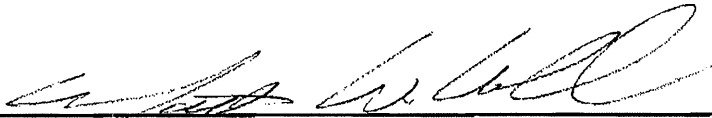
The Owners/Officers of Wally's Iron Works, Inc., are in favor for the rezoning of 17530 Frederick Rd., Mt. Airy, MD, to B-1 .



Dennis W. Wallace



Carl Wallace



Matthew Wallace

Notarized on 3/4/13 by: *Susan K. Beverly*
My Commission expires on: *December 11, 2016*

Dear Howard County Commissioners:

Paul Larkin and his wife Diane, (owners of 17530 Frederick Rd., Mt. Airy, MD), talked to us as neighbors and explained that they are requesting a zoning change from Residential to Commercial, B1, application 2.001

Diane explained that they are seeking to rezone ONLY their property, and have not asked to change zoning for any other property.

She also explained the reasons for requesting this zoning for their property. We agree that this property has always been used as a commercial business on the first floor, and a residence on the second floor.

This building originally operated as a welding business, material kit manufacturing business, small engine repair shop and Mr. Larkin has recently has been using the downstairs as storage, and for testing using his sound equipment.

The Larkin's live in the 2nd floor apartment and have made major improvements to this building. We trust that it will continue to be well maintained, and are NOT OPPOSED to their request.

Thank you,

Name KEVIN B. ROGERS
Address KB
17532 COUNTRY VIEW WAY
Signature & Date MOUNTAIN AIRY, MD 21771
6/9/2013

Dear Planning Commission:

Paul Larkin and his wife Diane, (owners of 17530 Frederick Rd., Mt. Airy, MD), talked to us as neighbors and explained that they are requesting a zoning change from Residential to Commercial, B1 **2.001**

Diane explained that they are seeking to rezone ONLY their property, and have not asked to change zoning for any other property.

She also explained the reasons for requesting this zoning for their property. We agree that this property has always been used as a commercial business on the first floor, and a residence on the second floor.

This building originally operated as a welding business, material kit manufacturing business, and most recently a small engine repair shop. Mr. Larkin has recently been using the downstairs as storage, and for testing using his sound equipment.

The Larkin's live in the 2nd floor apartment and have made major improvements to this building. We trust that it will continue to be well maintained, and are NOT OPPOSED to their request.

Thank you,

Name

Timothy K Cahall

Address

17502 County View Way, Mt Airy MD 21771

Signature & Date



6/18/15

**17530 Frederick Road
Mount Airy, MD 21771
Comprehensive Zoning Request 2.001**



Front of Property from Frederick Road

PROPERTY WHEN OCCUPIED BY WALLY'S IRON WORKS





Property when purchased by the Larkin's December 2010



WEST SIDE OF PROPERTY



EAST & SOUTH SIDE OF PROPERTY

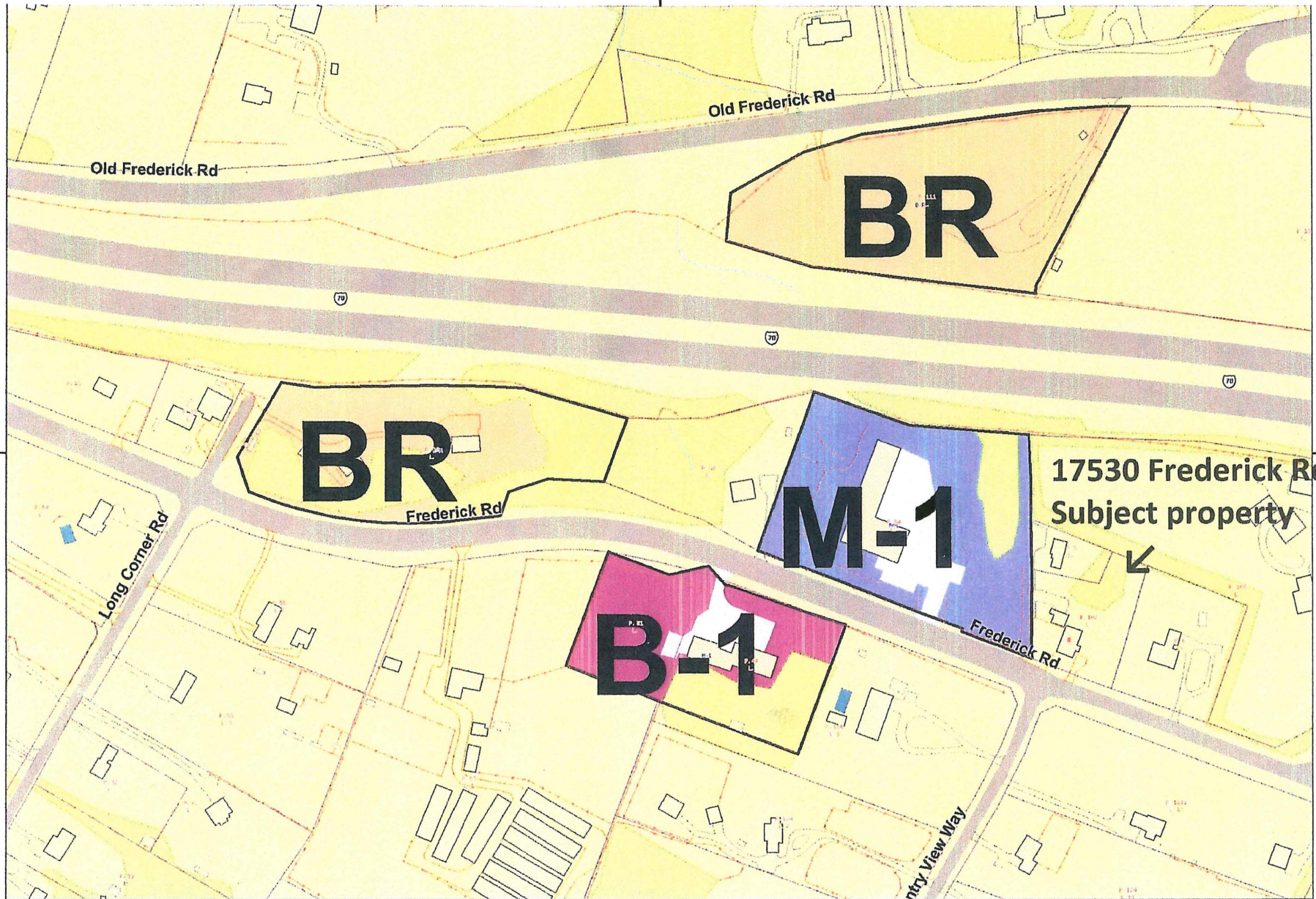


VIEW OF COUNTRY VIEW WAY FROM PROPERTY

-77°7.39"



39°21'70"



39°21'70"

Disclaimer: Howard County, Maryland assumes no responsibility for the accuracy of this report or the information contained herein or derived therefrom. The user assumes all risks and liabilities whatsoever resulting from or arising out of the use of this information. There are no oral agreements or warranties relating to the use of this report.

-77°7.39"



Howard County
 M A R Y L A N D

By:
 Office:
 Map Width: 2,639.96 ft.
 Print Date: 10/7/2011