



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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TECHNICAL STAFF REPORT

*Petition Accepted on August 29, 2008
Planning Board Meeting of October 30, 2008
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-105 – Concerned Citizens of Western Howard County, Inc.

Request: Zoning Regulation Amendment to Section 118, the B-1 (Business: Local) regulations, and to Section 119, the B-2 (Business: General) regulations, to establish a new Section 118.F and 119.F. to add additional requirements for uses on properties located in the No Planned Service Area of the Howard County Master Plan for Water and Sewer.

Department of Planning and Zoning Recommendation:

DENIAL

I. DESCRIPTION OF PROPOSAL

- # **The Petitioner proposes two amendments to the Zoning Regulations, although there are slightly different alternatives of each amendment. The proposed amendments are generally described as follows:**
1. The amendments titled Alternative #1 would add a new Section 118.F and 119.F that for any property zoned B-1 or B-2 located in the No Planned Service Area of the Howard County Water and Sewerage Master Plan (the "NPSA"), such a property could only be "...used or developed" under the Section 117.1 BR (Business: Rural) regulations, except the Section 117.1.G. provisions concerning Procedure for Creation of a BR District and the Section 117.1.H. provisions concerning Conformance with Preliminary Development Plan would not be applicable.
 2. The amendments titled Alternative #2 are essentially identical to the Alternative #1 amendments described above, but add an additional criteria that any B-1 or B-2 property in the NPSA must also be "contiguous" with a parcel in the RC (Rural Conservation) District in order to be required to comply with the BR District regulations.
- # **The Petitioner explains the fundamental reasons for the proposed amendments as; although the General Plan promotes the preservation of the Rural West, there are B-1 and B-2 properties in the Rural West that if developed under the current B-1 and B-2 regulations would create "...an inconsistency between such development and the General Plan, as well as incompatibility between such uses and the surrounding land uses in the rural west."**

I. DESCRIPTION OF PROPOSAL

The Petitioner continues to detail how the proposed amendments would be in harmony with both the General Plan policies related to the Preservation of the Rural West, and those that refer to the relatively limited availability of commercial uses in the Rural West. The Petitioner then suggests that using the BR District regulations would be the best solution for the development of B-1 and B-2 properties in the NPSA, because the BR District regulations were adopted specifically for the purpose of creating commercial developments that are appropriate and compatible with the rural character.

- # **The Petitioner estimates that the amendments might be applicable to more than 12 properties that meet the criteria of being zoned B-1 or B-2, located in the NPSA, and contiguous with the RC District.**

In addressing the issue of how the amendments would affect existing commercial uses which may be located on B-1 or B-2 properties in the NPSA, the Petitioner explains that such uses could continue as nonconforming uses, but that "Only newly proposed uses or significant changes to existing uses will have to comply with the amendments."

- # **The subsections proposed to be amended and the amendment text is attached as Exhibit A – Petitioner’s Proposed Text (CAPITALS indicates text to be added; there is no text to be deleted).**

II. EXISTING REGULATIONS

- # **The B-1 and B-2 Districts were both established in the 1954 Zoning Regulations as the basic commercial retail and service districts in the County. The B-2 District has always been the primary such district, permitting the widest range of commercial uses, while the B-1 District was always intended to only permit those types of commercial retail and service use that are more compatible with adjacent residential districts.**

The most commonly used example of the difference between the two districts is that it is possible to propose a Conditional Use for a gasoline service station in the B-2 District, but it is not possible in the B-1 District

- # **Prior to the 1954 Zoning Regulations, there were only three zoning districts in the County. Of these, two were the commercial districts, Commercial A and Commercial B.**

The Commercial B areas were intended for the more industrial-like areas that existed or were planned to exist in the eastern area of the County, generally along and adjacent to the US 1 corridor. The Commercial A areas generally were established in areas of then-existing commercial uses, such as the US 40 corridor, in Ellicott City and Lisbon, at commercial crossroads in the western area of the County, and on individual properties scattered throughout the County. It was the Commercial A areas that were divided into the B-1 and B-2 Districts when they were created. So, many of the affected properties have existed since the 1950s.

II. EXISTING REGULATIONS

- # **The B-1 and B-2 Districts share one distinction which is very relevant to the proposed amendments; in both districts, the required structure and use setback from a residential district is 30 feet. This requirement is to provide a good buffer between the commercial uses and the residential areas, but one not so excessive so as to make it difficult to develop most B-1 or B-2 properties.**
- # **The BR District was established in the 1993 Zoning Regulations as a direct intent to realize the 1990 General Plan policies related to creating more opportunities in the Rural West for commercial retail and service uses.**

The BR District is a floating zone, which is created through the approval of a reasonably detailed Preliminary Development Plan by the Zoning Board. Although there is no specific minimum lot size requirement, it is easy to see that it is really intended for fairly large properties because the structure and use setback from a residential district is 100 feet, more than three times the same requirement in the B-1 and B-2 Districts. Also, the setback from a public street right-of-way is 50 feet, as compared to the requirements in B-1 and B-2 for a 30 foot structure and use setback, except for parking uses at 10 feet, and the BR District also has a lot coverage requirement of 30 percent, but the B-1 and B-2 District have no lot coverage requirement.

- # **The BR District has been little used and has not been very successful in its intended purpose to expand the commercial use opportunities for those in the Rural West. Fundamentally, the only BR use of direct benefit to the public in terms of typical services is a gasoline service station with convenience store on MD 97.**

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendments

- # **As proposed, the amendments would only be applicable to those types of properties that are specified; B-1 and B-2 zoned properties located in the NPSA that may, or may not, adjoin a property in the RC District.**

IV. EVALUATIONS AND CONCLUSIONS

- # **There are two significant ways the proposed amendments would limit the development potential of B-1 and B-2 properties in the NPSA; many of the uses permitted as a matter of right in the B-1 or B-2 Districts would be eliminated and replaced with the uses permitted as a matter of right in the BR District; and, the B-1 and B-2 Districts setback requirements would be eliminated and replaced with the much stricter BR District bulk regulations, including much greater setback requirements and a 30 percent maximum lot coverage requirement.**

Concerning the issue of uses, some of the BR District permitted uses are identical to those uses permitted in B-1 or B-2, such as animal hospitals, and some are quite different such as a contractor's office and outdoor storage facility.

IV. EVALUATIONS AND CONCLUSIONS

Another potentially incompatible use for a rural area that is technically allowable in BR, but not by right in B-1 or B-2, is a gasoline service station. But, as gasoline service stations are only permitted in BR subject to Zoning Board approval of the Preliminary Development Plan (PDP), and because the B-1 or B-2 properties in the NPSA would not be subject to the PDP requirements in the proposed amendments, it would appear that it would not be possible to develop one of the B-1 or B-2 properties with such a use.

- # **In terms of the B-1 and B-2 properties in the NPSA being required to follow the BR bulk regulations, although the Petitioner has not provided any details on the actual properties that would be affected by the amendments, it is believed that most are not very large, and imposing the stricter bulk regulations would likely significantly reduce the development potential of such properties, or even render them undevelopable without variance approvals.**

The Department of Planning and Zoning believes that it should be the responsibility of the Petitioner to determine the precise number of potentially affected properties, particularly because of the unconvincing necessity for the amendments. However, the Department has estimated that there may be approximately at least 90 properties that are zoned B-1 or B-2 in the NPSA.

A few of the properties are relatively large, such as the Lisbon shopping center or the site of the Howard County fairgrounds. But most are fairly small, such as the various rural crossroads properties or all of the many Lisbon properties that are almost all zoned B-1 or B-2. Although the Petitioner does not state this, it is assumed that the Alternative #2 amendments are proposed in consideration of the many Lisbon properties because most of those do not directly adjoin RC zoning.

- # **The Petitioner also does not directly mention this issue, but the proposed amendments would essentially “rezone” all B-1 and B-2 properties in the NPSA, or all those that also adjoin the RC District, by making these properties subject to the regulations originally intended for the BR District.**

As the Department has stated in previous Zoning Regulation Amendment cases, functionally causing "rezoning through regulation amendment" should be avoided in almost all cases because in doing so, it can cause major changes that happen disassociated with, and unforeseen by, the proper General Plan and Comprehensive Zoning Plan processes.

In addition, because this case is a Zoning Regulation Amendment proposal, there is no direct notification to the owners of properties that may be affected, so such an owner may not have the opportunity to oppose the proposal because the owner is not aware of the potential regulation changes to the property.

- # **Considering the effects the proposed amendments would likely have on the development potential of the B-1 and B-2 properties in the NPSA, and therefore the value of such properties, it almost unimaginable that the amendments would be given an opportunity to be debated until such notification did take place.**

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IV. EVALUATIONS AND CONCLUSIONS

Even during the 2004 Comprehensive Zoning process, although there was no specific requirement to notify property owners of significant regulation changes that could affect their properties, such as the US 1 Corridor related regulations, the Department of Planning and Zoning at least made an earnest effort to provide such notifications, which did spur the involvement of many property owners into the procedures, and certainly did lead to revisions in the proposed amendments.

- # **In its justification statements for the amendments, the Petitioner implies that the amendments would not excessively affect those properties that are currently developed, because such developments would become nonconforming uses.**

A true perspective on this issue is that having these existing commercial developments become nonconforming uses would cause many difficulties. It could prevent the introduction of new uses to replace existing uses when the new uses are not permitted in the BR District. The ability to obtain refinancing for the property might be affected, and areas of the existing improvements would likely become noncomplying to the stricter BR District bulk regulations.

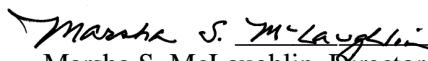
- # **The basic premises of the proposed amendments are that the potential for development of some uses permitted in the B-1 and B-2 Districts on properties in the Rural West could be out of character with the predominant rural character, and, that the potential intensity of such developments could also be out of character because of the relatively low setback and buffering requirements in the B-1 and B-2 Districts, and because there is no maximum coverage requirement in those districts.**

With its negative recommendation for the proposed amendments, the Department of Planning and Zoning does not mean to imply that such premises are not without merit, because they do express valid concerns about the compatibility of potential commercial development in the Rural West.

But, the proper way to achieve such premises is through the General Plan and Comprehensive Zoning Plan processes, where the need for changes can be determined through the establishment of well considered policies, and the zoning can be adjusted accordingly, if need be.

V. RECOMMENDATION DENIAL

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-105 be DENIED.

 10/16/08
Marsha S. McLaughlin, Director Date

MM/JRL/jrl

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.

Exhibit A – Petitioner’s Proposed Text

Section 118.F. and Section 119.F. (Alternative #1)

F. ADDITIONAL REQUIREMENTS - USES IN NO PLANNED SERVICE AREA

ANY PROPERTY LOCATED IN THE NO PLANNED SERVICE AREA OF THE HOWARD COUNTY WATER AND SEWERAGE MASTER PLAN SHALL BE USED OR DEVELOPED IN CONFORMANCE WITH ALL THE PROVISIONS AND REQUIREMENTS OF SECTION 117.1 (BR - BUSINESS RURAL DISTRICT), EXCEPT AS FOLLOWS:

1. THE PROVISIONS OF SECTION 117.1.G. AND H. SHALL NOT APPLY.

Section 118.F. and Section 119.F. (Alternative #2)

F. ADDITIONAL REQUIREMENTS - USES IN NO PLANNED SERVICE AREA AND CONTIGUOUS TO RC ZONED PARCEL

ANY PROPERTY LOCATED IN THE NO PLANNED SERVICE AREA OF THE HOWARD COUNTY WATER AND SEWERAGE MASTER PLAN AND CONTIGUOUS TO A PARCEL LOCATED IN THE RC (RURAL CONSERVATION) DISTRICT SHALL BE USED OR DEVELOPED IN CONFORMANCE WITH ALL THE PROVISIONS AND REQUIREMENTS OF SECTION 117.1 (BR - BUSINESS RURAL DISTRICT), EXCEPT AS FOLLOWS:

1. THE PROVISIONS OF SECTION 117.1.G. AND H. SHALL NOT APPLY.