

IN RE: ZONING MAP CORRECTION	*	BEFORE THE
1777 Reisterstown Road	*	BOARD OF APPEALS
BALTIMORE COUNTY, MARYLAND	*	OF
a body corporate and politic	*	BALTIMORE COUNTY
	*	Case No.: M.C.-15-01

* * * * *

OPINION

Commerce Centre Venture LLP (Commerce Centre) is the fee simple owner of a 9.54-acre parcel of land improved with a commercial building known as Commerce Centre II. It is located on the northeast side of Reisterstown Road, just east of the intersection of Reisterstown Road and Hooks Lane, in the Pikesville area of Baltimore County, Maryland 21208 (the Property). The Property address is 1777 Reisterstown Road (Map 68, Parcel 189).

On February 13, 2013, David Karceski, Esq. (Karceski) of Venable LLP on behalf of Commerce Centre, sent a letter to Andrea Van Arsdale, Director of the Department of Planning (Planning), advising that a portion of his client's Property was incorrectly split-zoned R-O (Residential - Office) and B.R. (Business, Roadside). Mr. Karceski claimed the whole property should be zoned B.R. Karceski advanced several theories for his assertion. First, he claimed that before the adoption of the 2004 Comprehensive Zoning Maps by the County Council, the zone line followed the property boundary line but that thereafter it did not. He noted that following the adoption of the 2000 Comprehensive Zoning Maps, the County no longer made hand-drawn changes to paper zoning maps but rather converted to a GIS (Geographic Information System) digital format. Karceski believed that the zoning error on his client's Property was the result of a technical drafting error made by Planning before the GIS conversion. Therefore, he thought it

should be corrected by the County, at its expense, in accordance with the procedure outlined in §32-3-233 et seq of the Baltimore County Code (BCC). The County rejected this assertion and several others advanced by Mr. Karceski. After many conversations with Mr. Karceski and the rejection of the theories he advanced the County began its own investigation of the zoning for the Property. The County on August 15, 2014 filed a Petition for Zoning Map Correction.

HEARING

On November 12, 2014 we held an evidentiary hearing on a petition filed by Baltimore County Maryland under Article 32, Title 3, Part IV of the Baltimore County Code (“Code”) to correct an error in the zoning map. The Petition states the area in question is a .2 acre strip, more or less, running along the rear of the property, in a northeasterly direction from Reisterstown Road. The .2 acres is currently zoned Residential Office (RO) and the petition states the correct zoning is Business Roadside (BR). The remainder of the property is zoned BR.

Baltimore County was represented at the hearing by Nancy C. West, Assistant County Attorney. The petition was opposed by Reservoir Limited Partnership, represented by Alan P. Zukerberg, Green Tree Homeowners Association Inc., represented by Cynthia Hitt Kent, and Pikesville Communities Corporation, represented by Michael R. McCann. Carole S. Demilio, Deputy People’s Counsel for Baltimore County, also attended the hearing. The Protestants argued two preliminary motions, both concerned discovery issues. The first was a motion to compel discovery. The Second was a motion to compel testimony. We denied both motions for reason and will discuss later in this opinion. After the Board publically deliberated the preliminary motions the remaining issue is whether the Petition for Zoning Map Correction should be affirmed or denied.

The Petition alleges a technical error was made in transferring zoning imposed upon the site following a 1968 Petition for Reclassification from Business Local (BL) and Residential 10 (R-10) to Business Roadside (BR) filed with the Board of Appeals. The Petition was granted by our Predecessors in a 1970 opinion.

The County called one witness, Mr. Jeff Mayhew, to testify. Mr. Mayhew testified that he has been with the Department of Planning for 24 years, with the last three as Deputy Director. He has a B.S. in Economics from the University of Delaware and a M.A. in Public Administration from the University of Baltimore. Additionally, he has met the rigorous standards of the American Institute of Certified Planners and is recognized as a Certified Planner. As Deputy Director, he oversees the operations of the Development Review Section; Commercial Revitalization; the Zoning Process; and various Boards and Commissions, such as the Planning Board, Landmarks Preservation Commission, Design Review Panel, Commission on Disabilities, and the Agricultural Preservation Board.

The uncontroverted testimony of Mr. Mayhew is that he and his staff met with Mr. Karceski and his client on multiple occasions over the course of approximately 18 months concerning the property. Their first meeting occurred on February 6, 2013, and they met twice again in August 2013. Mr. Mayhew testified that the County simply disagreed with the theories Mr. Karceski's advanced concerning the Property. Mr. Karceski's and his client remained adamant that there were inaccuracies in the 2012 official zoning map for the Property that resulted from the scaling and transferring of the original paper maps to the GIS digital format. They argued that these inaccuracies, in conjunction with the discrepancy between the tax map property boundary and the actual property boundary, resulted in the zoning being depicted incorrectly on the Property. As Mayhew stated, the Planning staff continued to search the Comprehensive Zoning Map Process

(CZMP) records, looked at issue maps for each CZMP, and coordinated the maps with the log of issues in an attempt to verify the alleged inaccuracy.

On September 16, 2013, Stephen A. Warfield of Matis Warfield, Inc. and engineer for the property owner provided Planning some additional documentation in support of their position that the B.R.-R.O. zoning line located along the northwest property line had been mapped incorrectly. These materials included copies of the following plans that they believed reflected the correct zoning line corresponding with the actual property line:

- a CRG Plan for “Hooks Lane Executive Park”;
- a 2nd Refined CRG Plan for the “Executive Center at Hooks Lane” that was approved on 2/11/98;
- a JSPC Preliminary Plan for” Hooks Lane Park”- Unsigned- Preliminary Plan for Subject Property dated April, 1981;
- a Site Plan for Commerce Center Parking Deck, Permit # C-1549-85 – Revised/Dated 10/8/1985;
- a Record Plat “Commerce Centre” - EHK, JR. 49, FOLIO 110 filed 12/28/1982; and
- a final Grading Plan EXECUTIVE CENTER AT HOOKS LANE” - Approved October 10-12, 1994 (Adjacent Property).

Planning scrutinized these materials and concluded that they did not support a technical drafting error that it could correct. Mayhew noted that his staff disposed of these materials having considered them irrelevant. Undeterred, Karceski continued to plead his case to Planning and held additional meetings, one in January 2014 and two in March 2014. Each time the County’s response was the same, it simply could not agree that a technical drafting error had occurred that could be remedied.

Planning then decided to review its archives for possible variance and reclassification requests in connection with the Property to see if it could locate anything to support a finding of error. After extensive research, it discovered that an error had indeed occurred in mapping the Property. But it was unrelated to anything that Karceski had proffered. Rather Planning found a 1970 CBA decision involving a zoning reclassification in which the entire Property had been rezoned to B.R. However, when Planning mapped the zoning on the Property that had been approved by our Predecessors', it made a mistake which was then perpetuated for almost forty-five years. Mr. Mayhew testified that when the maps were adjusted to reflect the rezoning, the .2 acre sliver was not mapped as BR, although the remainder of the site was mapped in accordance with the Order of the Board. The .2 acre sliver is currently zoned Residential Office, which is also the zoning on a separate lot northeast of 1777 Reisterstown Road, adjoining the sliver. Mr. Mayhew's testimony at the hearing was clear that he believed, consistent with our Predecessors opinion in 1970 that the entire parcel should be zoned BR. The Protestants advance seven (7) arguments as to why the Board should deny the Petition for Map Correction. We will address them in the order they were briefed.

ARGUMENT

1. THE COUNTY'S CORNERSTONE EVIDENCE IS BASED ON ITS PRESENT DAY INTERPRETATION OF THE BOARD OF APPEALS' INTENT IN 1970 AND THE "CORRECTED" ZONING MAP IS BASED ON A 1999 CONFIRMATORY DEED DESCRIPTION AND SINCE EVIDENCE DOES NOT CONSTITUTE CLEAR CONVINCING CONTEMPORANEOUS EVIDENCE OF A TECHNICAL ERROR IN 1970, THE RELIEF MUST BE DENIED.

The Protestants first argument is that the County's only evidence was presented through Mr. Mayhew and they questioned his credentials as being insufficient to discuss the zoning maps. We disagreed. The Board found Mr. Mayhew's testimony to be substantial, clear and convincing. The board reviewed the 1970 opinion of our Predecessors and analyzed Mr. Mayhew's testimony to determine that the entire parcel should have been zoned BR.

The official zoning map is enacted by the Baltimore County Council. There are three principle ways by which it can be changed, namely, the Comprehensive Zoning Map Process and Cycle Zoning. The zoning map may also be changed through a Zoning Map Correction.

As Mayhew testified, the CZMP takes place every four years on a schedule specified in the BCC. Any citizen may request a zoning change on any property in the County, although the usual participants in the process are individual landowners, contract purchasers, community organizations, County staff, the Planning Board and the County Council. The CZMP covers a period of approximately 12 months and results in zoning decisions that are reflected in a final log of issues. Ultimately, the County Council decides on each issue whether to retain the existing zoning or to enact a different zone(s) or district(s). Generally, each issue is a single property, but an issue may cover many adjoining properties and might even cover many hundreds of acres. The zoning on all properties which were not issues is re-enacted without change.

Mayhew emphasized that 1971 was the first CZMP that laid out a process for the County Council to decide the zoning on property. Before that time all zoning requests were heard and decided by the Zoning Commissioner. Accordingly, in 1968, then owners William Gladstone Keir, Margaret V. Keir, Elizabeth Ruth Cooper, Marion F. Cooper, Wilfred Grenfell Keir and Blanche S. Keir (collectively, Keir), petitioned for a reclassification of the Property from a split zoning of

R-10 Residential (10 units per acre) and B.L. (Business, Local) to B.R. (Business, Roadside). Keir contended that the R-10 zoning was erroneous and could not be justified, and that the B.L. zoning was out of character with the actual commercial development in the area. The Zoning Commissioner (ZC) denied the requested relief on September 26, 1968 in Case No. 68-215-R. Thereafter, the matter was appealed to the CBA which reversed the ZC and granted Keir's request that the entire Property be rezoned from R-10 and B.L. to B.R.

In its April 27, 1970 Order, the CBA articulated in its factual findings that:

“.....it would be unfeasible to develop the rear of the subject property in its present R-10 classification due to the severe topography and the exorbitant costs of extending utilities to the property, and the impact of the Beltway and the Beltway Interchange on the marketability of residences on the subject property. We further find factually that the extensive changes that have occurred in the immediate neighborhood more than justify the requested reclassification, and that the proposed single purpose commercial use of the property would have a much lesser impact on traffic conditions, water and sewer demands, and other public services than if the property were developed in its present category. For those reasons the Board will grant the requested reclassification”

Id. at p. 6.

It was clear to the current Board that the intent of the original re-classification in Case No. 68-215R was to rezone the entire Property to B.R. It was also clear based on testimony that when Planning implemented the CBA decision in 1970 it incorrectly mapped the zoning on the Property. And it occurred at a time when the Planning staff was still hand drawing the maps. Mayhew emphasized that the error had been perpetuated from 1970 to the present. Further, he opined that this technical drafting error by Planning was independent of and not associated with any issue that was raised by any party in any CZMP since 1970.

Protestant also attempted to impeach Mr. Mayhew by questioning an immaterial discrepancy of the legal description of the property when comparing a 1990 deed with other public

records. As Ms. West correctly pointed out at the hearing legal descriptions can contain minor discrepancies. The 1970 CBA decision indicated that the Property was 9.76 acres while the current MSDAT records indicate the Property is 9.5359 acres with a property land area of 9.5400 acres. The County used the 9.54 acres in its Petition. Some subdivision plats and legal descriptions do not close, from a few tenths of a foot to several feet. Depending on equipment and methods, the same line will be measured differently and the basis of bearing (direction of the lines) will differ. More often, modern surveys will be very close to the same distances and direction between objects measured on the ground. This is due in part to the standardization of those procedures and requirements of the surveyor. Also some areas have little to no monuments while others have multiple monuments set at the same corner. When you have deeds that do not close because of lack of monuments or multiple monuments at the same corner, this also comes into play on the differences along lines. Finally, the placement of County and State right-of ways may also impact the distances of a surveys. Protestants argument that we should deny the petition because of this minor discrepancy in the Property description is without merit. The 1970 CBA ordered that the entire Property should be rezoned B.R. On cross examination, Mr. Mayhew did not attach any significance to minor discrepancies in the acreage of the site, noting its small size and toothpick shape. He also stated that while split zoning may be appropriate as a buffer on some sites, this property did not meet the criteria. Mr. Mayhew testified he would not recommend RO zoning on the .2 acre sliver under any zoning scenario. The opposing parties presented no witness to refute Mr. Mayhew's testimony or to justify retaining RO zoning on the area. Their 1970 Board order is not ambiguous. It is undisputed that the 1968 petition and Board Order conformed to the legal process for cycle rezoning at the time.

2. THE COUNTY FAILED TO PROVE TECHNICAL ERROR IN ACCORDANCE WITH SECTION 32-3-321 ET SEQ.

The Protestants second argument is that the County failed to comply with the provisions of §32-3-231(b) of the BCC. In particular they assert the error alleged by the County does not fit into one of the statutory provisions and therefore cannot be corrected. There was some argument at trial as to whether the Board should accept jurisdiction of this matter under BCC 32-3-231 or BCC 32-3-232. We reviewed all provisions of the BCC and determined that the Department of Planning complied with the standards and procedures in the relevant parts of the BCC. Mr. Mayhews' testimony was clear and uncontroverted. It was he and his Department which discovered the correct facts to support the map correction and not the theories advanced by the taxpayer. Therefore, it was proper for the County to file the petition for the correction to the Board. We have determined that filing the petition under either provision of the Statute would lead us to the same result.

Any reference by the County to the provisions of 32-3-231 (the provisions of the BCC whereby the taxpayer files the petition for map correction) are immaterial to the facts and circumstances of this hearing. The County proceeded at the hearing under the provisions of BCC 32-3-232. Protestants claimed that principles of due process have been violated since there was argument about which statute gave the Board jurisdiction in this matter. We disagree.

The authority of the Board is found in Baltimore County Code ("Code") § 32-3-231 et seq. The statute states two procedures for correction: (1) § 32-3-231 provides that a property owner who discovers the error must report to the Department of Planning ("Planning") that the zoning map ". . . does not accurately reflect the zoning classification enacted by the County Council on

the owner's property during any comprehensive zoning process.” (emphasis added); (2) § 32-3-233 (a) provides “The Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.” So the alleged error may originate with the property owner who reports to Planning, or with the Department of Planning.

BCC§ 32-3-235 requires the Board to conduct a hearing as close as its schedule permits 30 days after the petition is filed. If there is no opposition to the petition, the Board must issue its Order within 10 days after the hearing. If opposed, the Board may schedule hearing dates as needed and, presumably, the 30 day requirement would not apply.

The statute does not enumerate specific standards to grant or deny the petition. It is presumed the decision, like all Board decisions, must be supported by “substantial evidence”. Monkton Preservation Ass'n v Gaylord Brooks Realty Corp, 107 Md. App. (1996) cert. denied, 675 A.2d 993 (1996). Similarly, the Board's decision must be in accordance with the law. People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491, 496-97 (1989). “**The Board's decision may be set aside as not in accordance with law if it is arbitrary, illegal or capricious.**” (citation omitted) Art Wood v. Wiseburg, 88 Md. App. 723 (1991), cert. denied 325 Md. 397 (1992). We were unanimous that Mr. Mayhews' testimony was substantial, clear and convincing, to justify the correction. It was clear from the facts presented at trial that the entire Property should have one zoning designation. It was also clear to us from Mr. Mayhew's testimony as to how the technical error occurred and that the County is now seeking the proper remedy under the correct statutory provisions of the BCC.

3. THE COUNTY FAILED TO PROVIDE PROPER NOTICE TO THE COUNTY COUNCIL AS REQUIRED BY THE STATUTE AND THEREFORE, THE

REQUESTED MUST BE DENIED.

The Protestants third argument is that the Department of Planning did not give proper notice to the County Council under the provisions of BCC as it only notified one Council Member of its intention to file a petition. The Protestants argue that the clear intent of legislature is that ALL members of the County Council be notified. We disagree. This Board has had a long standing practice that in map correction matters the council person who serves in the District that the property sits is sufficient to receive the statutory required notice. This is analogous to a Resident Agent receiving notice for a Corporation. In this particular case Ms. Almond is an experienced Councilwoman member and is well versed in land use matters. We find no violation of the Protestants due process. The evidence is clear that on June 27, 2014 Planning sent letters to Karceski, and to the Honorable Vicki Almond, Councilwoman for the Second District, advising them of the zoning map error on the Property and that it would take the necessary steps to remedy it as provided by the BCC. We find this notice sufficient.

4. THE COUNTY FAILED TO PROVIDE PROPER NOTICE TO PROPERTY OWNERS.

The Protestants fourth argument is that the County failed to provide proper notice to the taxpayers of Baltimore County. In particular, the Protestants read the statute as mandating that the County provide notice to all “affected” property owners to include all surrounding property owners. At dispute here is whether or not the legislature intended to mean the word “affected” to include ALL surrounding property owners. Protestant argue that the County had a duty to notify in writing all property owners whose property is contiguous to or in the immediate vicinity of 1777

Reisterstown Rd. Protestant further argue it is common sense that such a change may have some effect on contiguous properties, *albeit* via a map error process, rather than the CZMP. The Protestants also argue since the County is suggesting that the “correction” be on the property boundary lines more extensive notice is required. As a result of the failure to provide notice to contiguous affected property owners, the Petition should be denied. We disagree. Once this Hearing was scheduled, Planning posted a public notice of the CBA hearing date. It was posted at Hooks Lane on two separate occasions because the hearing had been rescheduled.

The Petition in the instant case was filed pursuant to BCC, § 32-3-233 which provides as follows:

§ 32-3-233. PETITION BY THE DEPARTMENT OF PLANNING.

(a) In general. The Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.

(b) Notice of petition. The Department of Planning shall provide written notice to property owners affected by a petition under subsection (a) of this section. (1988 Code, § 26-134) (Bill No. 42, 1990, §1; Bill No. 103-02, §2, 7-1-2004; Bill No. 55-11, §§ 1, 2, 10-16-2011)

The legislative history sheds light on who is entitled to get the written notice as a “property owner.” In 1990, Bill No. 42-90 revised what was previously codified at BCC § 22-25, Correction of Zoning Map. Subsection (D) was revised as follows:

The Office of Planning and Zoning may initiate such a petition on its own if it discovers a technical error, as defined in subsection (a), with written notice to the affected property owners. (Emphasis in the original)

Then in 2002, the County Council enacted various changes to the Baltimore County Code, 1998-Twenty-Second Enactment with the passage of Bill No. 103-02. The current BCC, § 32-3-

233 replaced the former BCC, § 26-134 which authorized the Department of Planning to initiate a petition on its own if it discovered a technical error in the zoning map. The Revisor’s Note in the bill states:

This section is new language derived without substantive change from former §26-134(d). In subsection (b) of this section, the reference to the “Office of Planning” is added to clarify who is required to provide notice to the property owner. (Emphasis added)

Id. at 73. Clearly, the intent of this section is that the County must provide notice to the property owner, arguably the fee simple property owner. The Legislative intent was never to impose a burden on the County to notify all potentially interested property owners, whether they be adjacent, surrounding, contiguous or a certain distance from the property at issue. Our opinion was unanimous that the County complied with the requisite notice under BCC § 32-3-233 when it sent Karceski a letter on June 27, 2014 of its intention to correct the map error by filing a petition with the CBA and subsequently posted on the property.

Further, the case law in Maryland is clear regarding notice for a public hearing. The Court of Special Appeals has held that the requirement of notification for a public hearing may be satisfied by “actual” notice, which is the case here. Largo Civic Ass’n v. Prince George’s Co., 21 Md. App. 76, 85-86 (1974); McLay v. Maryland Assemblies, Inc., 269 Md. 465, 477 (1973). In Largo, the Court reasoned that the appellants in that case “arrived at the hearing prepared to contest,” the requested zoning relief, which sufficed for actual notice. Largo, 21 Md. App. at 86. In McLay, the Court held that there can be no showing of prejudice when appellants “appeared at and participated in the hearing.” McLay, 269 Md. at 476. In other words, notice requirements serve the purpose of alerting individuals and community associations who may oppose the requested relief of the time and location of the public hearing and the nature of the requested relief. In Largo

and McLay, the Court of Special Appeals held that sufficient notice was established by the appellants' presence and participation at the public hearing. We find no violation of the BCC or the Due Process of the Protestants ability to be heard. In fact, this board agreed to postpone the original hearing to allow the Protestants extra time to prepare. Protestants were fully aware of the Petition and had substantial time to prepare for the Hearing, the opportunity to present evidence, cross-examine the County's witness and otherwise fully participate.

5. THE COUNTY FAILED TO SUPPLY FULL AND COMPLETE SUPPORTING MATERIALS, THEREFORE THE PETITION SHOULD BE DENIED.

The Protestants fifth argument is that they were not provided discovery materials prior to the hearing. The Protestants served various government agencies seeking information concerning the Property. Ms. West, in her preliminary motions argument proffered that over 250 pages of information was provided to the Protestants. Further, this Board granted the Protestants a lengthy postponement of the hearing to allow them to prepare and conduct discovery. This Board does not have enforcement powers and cannot compel parties to share information before a hearing. We are empowered only to consider evidence presented at the hearing and gave the Protestant sufficient time to prepare for the hearing.

6. THE PETITION SHOULD BE DENIED FOR COUNTY'S FAILURE TO COMPLY WITH LEGISLATIVE INTENT.

Protestants sixth argument is similar to its other procedural and due process arguments.

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The Protestant accuse the Department of Planning and this Board of participating in piecemeal rezoning by not following the clear intent of the Legislature They cite a case, Mayor & Council of Rockville v. Rylyns Enters., 372 Md. at 532,814 at 479

("[A] fundamental distinction between original zoning, comprehensive zoning, and piecemeal zoning is that the two are purely legislative processes, while piecemeal rezoning is achieved, usually at the request of the property owner, through a quasi-judicial process leading to a legislative act.").

Protestant asserts this apportionment of duties with respect to zoning is further indication that this process is not meant to correct errors created by Board of Appeals decisions. The Protestant assert that this Board does not have jurisdiction to correct the zoning maps. In substance the Protestant claims the petition should have been brought in the name of the owner because the owner initially advised Planning of an error. They claim a drafting or technical error made as a result of a rezoning by the Board of Appeals is beyond the purview of the conditions in § 32-3-231(b) (1) (2) (3). We disagree. The error was discovered by Planning based on their own independent review of over fifty years of County records.

This raises the question whether the two types of petitions (owner initiated and Planning initiated) are bound by the same standards. The statute does not contain specific language limiting Planning's investigation to the three scenarios in § 32-3-231(b). Indeed there is no limitation imposed on Planning - § 32-3-233(a) simply authorizes Planning to file a petition on behalf of Baltimore County if “. . . it discovers a technical error in the zoning map.” If the County Council intended to limit the circumstances in which the zoning occurred, as opposing parties here contend, there must be some statutory meaning or purpose to justify such an interpretation.

It is reasonable to establish some guidelines when an owner alleges an error. Planning is given some direction in its investigation and an owner cannot make a frivolous and baseless claim.

More importantly, it is unreasonable to assume the statute would treat an error resulting from a cycle zoning Board order differently. The clear purpose of the statute is to assure the zoning maps coincide with the intended zoning on a site. A Board rezoning carries the same weight and is tantamount, not substandard, to one or more of the criteria in § 32-3-231(b).

The overwhelming testimony at the hearing was that a technical drafting error was after the Board of Appeals decision in 1970. We find the Protestants argument illogical. It is clear the Board of Appeals has the statutory authority to correct the zoning map. Under the rules of statutory construction, the courts can look at the spirit and intent of the legislation to ascertain its meaning. The position of the Protestants conflict with the purpose and intent of the BCC.

7. THE BOARD OF APPEALS SHOULD NOT HAVE REFUSED TO REQUIRE MR. KARCESKI TO PROVIDE NON-REDACTED MATERIALS IN RESPONSE TO PROTESTANTS SUBPOENA DUCES TECUM, OR TO HAVE MR. KARCESKI AND DIRECTOR VAN ARSDALE TO PERSONALLY ANSWER SUBPOENAS.

The Protestants seventh and final argument is that the Board should have compelled the testimony of two parties and enforced subpoenas. Protestant asserts that Mr. Karceski and Director Van Arsdale were key witnesses. Protestants also assert that Mr. Karceski should be required to produce copies of non-redacted documents for inspection because the County cannot claim attorney-client privilege or work product privilege for correspondences with a non-party. This

Board has been very reluctant to compel testimony of attorneys when there are issues of attorney client privilege. Protestants argue that Mr. Karceski and his client are not a party to this proceeding and as such the Privilege cannot be asserted. We disagree. The uncontroverted testimony of Mr. Mayhew was that the Department of Planning reached the decision to file this petition on their own after an independent review of fifty years of County records. Conversations between Mr. Karceski and the County were irrelevant as no theory for the correction advanced by Mr. Karceski was adopted by the County. Further, The Board deemed Mr. Mayhew competent to testify and found his testimony professional, accurate, clear and substantial. We found no reason to compel the testimony of Director Van Arsdale, even if we had those powers. Finally, as stated above we do not have powers to compel discovery. We are frequently presented with motions to mandate discovery compliance. Unfortunately, we do not have statutory powers to compel discovery request.

ORDER

IT IS THEREFORE, this 2nd day of February, 2015 by the Board of Appeals of Baltimore County

ORDERED that Tax Map 68 Parcel 189 at 1777 Reisterstown Road be reclassified from its current split zoning of RO and BR to BR.

ORDERED that the Department of Planning make the necessary change and correction as set out herein, on the latest Comprehensive Zoning Map for Baltimore County with regard to the subject property.

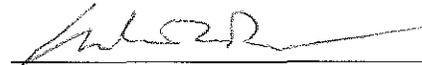
In the matter of: Baltimore County, MD – Petitioner
Commerce Centre Venture, LLC - Legal Owner
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Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

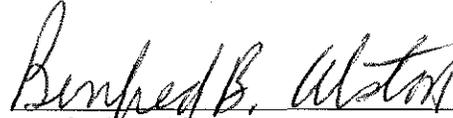
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



David L. Thurston, Chairman



Andrew M. Belt



Benfred B. Alston



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 2, 2015

Alan Zukerberg, Esquire
7919 Long Meadow Road
Baltimore, Maryland 21208

Cynthia Hitt Kent, Esquire
Sarah L. Narsavage, Esquire
10 Crossroads Drive, Suite 107
Owings Mills, Maryland 21117

Michael McCann, Esquire
118 W. Pennsylvania Avenue
Towson, Maryland 21204

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

Carole S. Demilio, Deputy People's Counsel
People's Counsel for Baltimore County
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: In the Matter of: Baltimore County, Maryland – Petitioner
Commerce Centre Venture, LLP – Legal Owner
Case No: MC-15-01

Dear Counsel:

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

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

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

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Commerce Centre Venture, LLP – Legal Owner

Distribution List

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David Karceski, Esquire
James A. Dunbar, Esquire
Commerce Centre Venture, LLC
Reservoir Limited Partnership
Greene Tree Homeowners Assoc., Inc.
Pikesville Community Association
The Honorable Vicki Almond, 2nd District, Baltimore County Council
Fred Homan, Administrative Officer
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Jeff Mayhew, Deputy Director, Department of Planning