



Board of Appeals of Baltimore County

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December 4, 2015

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RE: *In the Matter of: 127 Main Street, LLC*
Case No.: MC-16-01

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,

Krysundra "Sunny" Cannington
Administrator

KLC/
Enclosure
Multiple Original Cover Letter

c: 127 Main Street, LLC
The Honorable Vicki Almond, 2nd District, Baltimore County Council
Fred Homan, Administrative Officer
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Andrea Van Arsdale, Director/Department of Planning

**IN RE: PETITION FOR ZONING
MAP CORRECTION
127 MAIN STREET**

**BEFORE THE
COUNTY BOARD OF APPEALS**

**BALTIMORE COUNTY, MARYLAND
a body corporate and politic**

**OF
BALTIMORE COUNTY**

and

127 MAIN STREET, LLC

Case No.: M.C. 16-01

Petitioners

* * * * *

OPINION

The above entitled matter came on for hearing before this Board on November 18, 2015, on a Petition for Zoning Map Correction filed by Michael E. Field, County Attorney, and Nancy C West, Assistant County Attorney, on behalf of Baltimore County, Maryland, Petitioner, and by Christopher D. Mudd, Esquire, of Venable, LLP, on behalf of 127 Main Street, LLC, Co-Petitioner. The requested correction involves a technical drafting error and seeks to reclassify the existing zoning on approximately 0.59± acres located at 127 Main Street that is adjacent to and on the east side of Main Street, just north of Business Center Drive in the Reisterstown area of Baltimore County from B.L. (Business, Local), B.R. (Business, Roadside) and D.R. 3.5 (Density Residential 3.5) to B.L. for the entire property. This corrected zoning would comport with the legislative action of the County Council in reclassifying 0.598 acres during the 1988 Comprehensive Zoning Map Process (“CZMP”). The Petition is cognizable under Baltimore County Code (“BCC”) §§ 32-3-231 to 32-3-236, and, specifically, § 32-3-231(b)(3), which provides for such zoning map correction in the event of:

A technical drafting error made by the original petitioner for a zoning change, provided the error did not impact on the intent of the County Council to place a particular zoning classification on the particular property.

Nancy C. West, Assistant County Attorney, represented Baltimore County, Maryland and Christopher D. Mudd, Esquire, represented the legal owner, 127 Main Street, LLC. Carole Demilio, Deputy People's Counsel for Baltimore County, participated.

At the conclusion of the November 18th hearing, this Board conducted a public deliberation and unanimously agreed to approve the requested map correction. This Opinion follows, consistent therewith.

BACKGROUND

127 Main Street, LLC, (the "Owner") is the fee simple owner of a 0.59± acre parcel of land known as 127 Main Street and located adjacent to and on the east side of Main Street, just north of Business Center Drive in the Reisterstown area of Baltimore County, Maryland 21136, also being known as Tax Map 0048, Parcel 0917 (Tax ID No.: 04-0412059350) (the "Property"). The Property is located in the 4th Election District and the 2nd Councilmanic District. A deed of the Property is recorded in the Land Records of Baltimore County at Liber 34732, folio 313.

Prior to Baltimore County's 1988 CZMP, the Property was split-zoned R-O (Residential - Office) and D.R. 3.5 (Density, Residential). As part of and pursuant to the 1988 CZMP, the owners of the Property at the time, James and Patricia Long (collectively, "Long"), submitted an Application to the Office of Planning and Zoning¹ requesting that the Property, in its entirety, be rezoned to B.L. (Business, Local). See *County Exhibit 3* for CZMP Issue No. 3-049. It was the intent of Long, as applicant, to include the entire 0.59± acre Property within the Issue as evidenced

¹ As Petitioners noted in their filing in this case, with the passage of County Council Bill No. 69-95 the name of the "Office of Planning and Zoning" was changed to the "Office of Planning." Then in 2011 the County Council passed Bill No. 55-11 as part of a reorganization of County Government and the name was changed to "Department of Planning." For purposes of clarity, all references in this Opinion and Order shall be to the "Department" rather than "Office" of Planning regardless of the time frame.

by the Application for Issue No. 3-049. The Department of Planning and the Planning Board recommended that the entire 0.59± acre Property be rezoned to B.L. At the conclusion of the 1988 CZMP, the County Council enacted Bill No. 146-88, which adopted the recommendations to rezone the entire 0.59± acres to B.L. See *County's Exhibit 8*. The Department of Planning ("Planning") perpetuated the technical drafting error made by the original petitioner when transferring the zoning classification enacted by the County Council to the comprehensive zoning map as Planning rezoned only a portion of the Property, namely 0.36 acres, rather than the entire 0.59± acres to B.L.

Since the 1988 County Council decision with regard to the rezoning of the Property, no other Issue has been filed on this Property.

FACTS

In the County's case-in-chief, it presented one witness, Michael Jeffrey Mayhew ("Mayhew"). He established his bona fides having been with Planning for 24 years, with the last four years as Deputy Director. Mr. Mayhew 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 achieved the coveted AICP designation. As Deputy Director since June 2011, Mr. Mayhew 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. He works with the County Council on legislation, develops community plans and is involved with the development of Baltimore County's Master Plan every ten years as required by the Baltimore County Charter. Mr. Mayhew's Curriculum Vitae was entered as *County Exhibit 1*.

After extensive *voir dire*, the County offered and this Board accepted Mr. Mayhew as an expert in the areas of Baltimore County's quadrennial comprehensive zoning map process and cycle zoning processes, the development and adoption of community plans and growth management policies to align with the Baltimore County Master Plan, and the 10-year water and sewer plan projects.

On August 18, 2014, Christopher D. Mudd, Esquire, of Venable, LLP ("Mudd"), on behalf of the Owner, sent a letter to Andrea Van Arsdale, Director of Planning, requesting that the County correct a zoning error on the Owner's Property. The Owner had recently purchased the Property and during its due diligence discovered the zoning error which it attributed to a technical drafting error on the County's part. Mr. Mudd claimed that on the official 1998 CZMP map produced following the County Council vote, only a portion of the Owner's Property, namely approximately 0.36 acres, was rezoned to B.L., while the remainder was reflected on the map as being zoned D.R.3.5.

The official zoning map is enacted by the Baltimore County Council. As Mr. Mayhew testified, there are two principal ways by which it can be changed, namely, the CZMP and Cycle Zoning. The zoning map may also be changed through a Zoning Map Correction.

The CZMP takes place every four years on a schedule specified in the BCC. As Mr. Mayhew emphasized, any citizen may request a zoning change on any property in the County, although the usual participants in the process are individual landowners, contract purchasers, community organizations, County staff, the Planning Board and the County Council. The CZMP covers a period of approximately 12 months and results in zoning decisions that are reflected in a final log of Issues. An "Issue" under the CZMP "means a tract or parcel of land proposed for a change in zone or district classification." See, BCC § 32-3-211. Ultimately, the County Council

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

After receiving Mr. Mudd's letter, Mr. Mayhew testified that his staff began the arduous process of researching Planning's archived CZMP files beginning in 1988. They determined that after the County Council approved Long's request to rezone the entire 0.598 acres that comprised the Property to B. L. in 1988, no other Issue had been filed in subsequent CZMP years, namely, 1992, 1996, 2000, 2004, 2008 or 2012.

As Mr. Mayhew testified, Planning staff perused the October 13, 1987 Application submitted by Long and concluded that Long's intent was to rezone the entire Property from R.O. to B.L. He noted that James O. Long, in his own handwriting, stated on line 11 of the Application that the "Acreage or lot size" was "0.598 Ac±." On line 12, Mr. Long stated that the "Existing zoning by acres" was "RO (0.598 Ac±)" and on line 13, he stated that the "Requested zoning by acres" was "BL (0.598 Ac±)." Additionally, Mr. Mayhew opined that the accompanying maps, namely, the 200' scale zoning map and the 600' scale tax map, depicting the area for rezoning submitted with the Long application were inconsistent. This inconsistency led to the technical drafting error made by the original petitioner during the 1988 CZMP.

In 1988 the Planning Board had recommended that the entire 0.598± acre Property be rezoned to B.L. And the County Council adopted the Planning Board's recommendation. Yet Planning perpetuated the technical drafting error made by Long - as reflected on the 200' scale zoning map - when it transferred the zoning classification enacted by the County Council to the official zoning map. Specifically, Planning rezoned only a portion of the Property, namely 0.36

acres, rather than the entire 0.59± acres to B.L.

Mr. Mayhew averred that Planning conducted a thorough review of its archived CZMP files before concluding that a technical drafting error was made in transferring the legislatively approved zoning classification during the 1988 CZMP.

As a condition precedent to the filing of the Petition in this case, Planning sent a letter on July 9, 2015 to the Honorable Vicki Almond of the 2nd Councilmanic District of its intention to correct the zoning map error as provided in the BCC. Likewise, Planning sent a letter of the same date to Mr. Mudd of its intention to file a petition to correct the error. Mr. Mayhew testified that he met with Mrs. Almond to discuss the matter before filing the Petition, and that she did not oppose it. Further, Mr. Mayhew and other Planning staff attended a meeting on October 5, 2015 with the Reisterstown, Owings Mills and Glyndon Community Association to advise them of the County's intention to file a petition to correct the technical drafting error.

Finally, this Board finds that the notice provisions of the BCC § 32-3-234 have been met, as Mr. Mayhew testified that the Property was duly posted with the requisite particulars at least 15 days before the scheduled hearing date. See *County Exhibit 13*.

While not a party to the above entitled proceedings, Tanya Clifton, Council President, and Dennis Jensen, Property Chairman, of Trinity Lutheran Church that is adjacent to the Property, were present throughout the course of the hearing. Ms. Clifton wished to testify, and was allowed to do so by this Board. She provided some historical information relative to the Property and Long. She opined that she was not opposed to the rezoning request once she understood Petitioners reasons, and the rationale of Planning.

In considering the articulate and reasoned testimony of the County's expert witness, Michael Jeffrey Mayhew, Deputy Director of the Department of Planning, along with a review of

the extensive exhibits introduced by the County, the testimony of Tanya Clifton, Council President of the adjacent Trinity Lutheran Church, and arguments of counsel presented at the hearing, this Board is persuaded that a technical drafting error occurred when Planning incorrectly transferred the legislatively approved zoning classification during the 1988 CZMP to the official zoning maps.

ORDER

IT IS, THEREFORE, this 4th day of December, 2015, by the Board of Appeals of Baltimore County hereby

ORDERED that the entire 0.59± acres located at 127 Main Street that is adjacent to and on the east side of Main Street, just north of Business Center Drive in the Reisterstown area of Baltimore County be rezoned to B.L. (Business, Local) in accord with the legislative intent of the County Council in 1988 as reflected on *County Exhibit 4*; and it is further

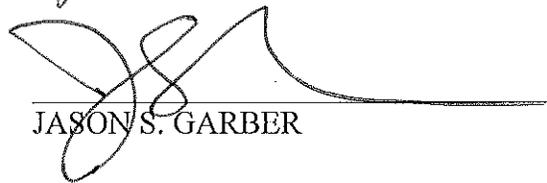
ORDERED, that the Department of Planning make the necessary changes to the official zoning maps as reflected on *County Exhibit 12*.

Any petition for judicial review from this decision must be in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


MAUREEN E. MURPHY, Chair

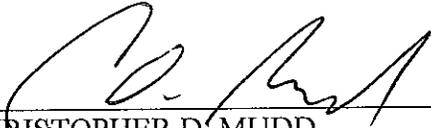

JANE M. HANLEY


JASON S. GARBER

Reviewed and Approved as to Form
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