

**FINDINGS AND RECOMMENDATION
OFFICE OF PLANNING AND ZONING
ANNE ARUNDEL COUNTY, MARYLAND**

APPLICANT: Belle Grove Corporation

ASSESSMENT DISTRICT: 5th

CASE NUMBERS: 2022-0138-R

COUNCILMANIC DISTRICT: 1st

HEARING DATE: November 17, 2022

PREPARED BY: Donnie Dyott Jr.
Planner



REQUEST

The applicant is requesting a zoning reclassification from C4 - Highway Commercial District, R5 - Residential District, W2 - Light Industrial District and R10 - Residential District to W2 - Light Industrial District, R5 - Residential District and R10 - Residential District on property located on Hammonds Lane and Baltimore Annapolis Boulevard in Brooklyn.

LOCATION AND DESCRIPTION OF SITE

The subject site is approximately 148.68 acres and consists of several properties as follows:

Tax Map 4 Block 5 Parcel 16 consists of 67.150 acres and is split zoned R5 - Residential District and C4 - Highway Commercial District.

Tax Map 4 Block 5 Parcel 26 consists of 55.304 acres and is split zoned R5 - Residential District and R10 - Residential District.

Tax Map 4 Block 5 Parcel 31 consists of 22.378 acres and is split zoned R10 - Residential District and W2 - Light Industrial District.

Tax Map 4 Block 4 Parcel 332 Lots 1-21 consists of 3.847 acres. Lots 1 & 2 are zoned C4 - Highway Commercial District and Lots 3-21 are zoned R5 - Residential District.

The site is improved with a surface mine/sand and gravel operation and is not located within the Chesapeake Bay Critical Area. The applicant has included Parcels 11, 37 and 610 in their application and argument, however there are no proposed zoning changes on those parcels. As such, this Office has omitted them from the site description and application.

APPLICANT'S PROPOSAL

The applicant seeks approval to reclassify the zoning of the site as follows:

- Parcel 16 from R5 - Residential District and C4 - Highway Commercial District to W2 - Light Industrial District in its entirety (67.150 acres).
- 29.367 acres of Parcel 26 is proposed from R5- Residential District to W2 - Light Industrial District with 14.075 acres of R10 - Residential District zoning to remain unchanged.

2022-0138-R

- 8.813 acres of Parcel 31 is proposed to go from W2 - Light Industrial District to R10 - Residential District, making Parcel 31 R10 - Residential District in its entirety (22.378 acres).
- Parcel 332 Lots 1 & 2 (0.356 acres) is proposed to go from C4 - Highway Commercial District to W2 - Light Industrial District. Parcel 332 Lots 3-21 (3.492 acres) are proposed to go from R5 - Residential District to W2 - Light Industrial District, making Parcel 332 Lots 1-21 W2 - Light Industrial District in their entirety (3.848 acres).

ZONING HISTORY

At the time of the adoption of the 1952 Zoning Ordinance, most of the property was zoned Agricultural with some B2 Cottage and Light Commercial. As a result of the first comprehensive zoning for the Fifth Assessment District, the majority of the property was rezoned to R5 with a small portion in the northwest corner being rezoned to C3. In 1979 an administrative rezoning was granted to rezone Parcel 31 from R5 to W2. In 1986 Parcel 26 was administratively rezoned from R5 to RA. As a result of the second comprehensive zoning for the Fifth Assessment District in 1989, the C3 portion of the property was rezoned to C4, Parcel 26 was rezoned from RA to R5 and most of Parcel 31 was rezoned from W2 to R5. In 1991 the R5 portion of Parcel 31 was administratively rezoned back to W2. In 1993 a portion of Parcel 26 was administratively rezoned from R5 to RA. This same portion of Parcel 26 was changed back to R5 with the third comprehensive zoning in 2005. The most recent comprehensive zoning in 2011 changed the easterly portion of Parcel 26 from R5 to R10 and the southerly portion of Parcel 31 from W2 to R10 as a result of a request from the applicant.

NEIGHBORHOOD

The Office of Planning and Zoning defines the neighborhood for this request as that area bounded by MD 295 to the west, the Patapsco River to the north, Interstate 695 to the south and Interstate 895 to the east. The neighborhood consists mainly of residential zoning with some limited open space zoning to the north adjacent to the Patapsco River, industrial zoning at the northeast and southeast corners and some commercial zoning at the intersection of Baltimore Annapolis Boulevard, Camp Meade Road N. and Belle Grove Road.

ZONING RECLASSIFICATION STANDARDS

The standards by which a zoning reclassification may be granted are set forth in §18-16-303 of the Anne Arundel County Zoning Ordinance, including an affirmative finding that:

1. There was a mistake in the zoning map or the character of the neighborhood has changed to such an extent that the zoning map should be changed;
2. The new zoning classification conforms to the County General Development Plan in relation to land use, number of dwellings units or type and intensity of nonresidential buildings, and location;
3. There is compatibility between the uses of the property as reclassified and the surrounding land uses, so as to promote the health, safety, and welfare of present and future residents of the County;
4. For a property located in the Critical Area: (Not Applicable)
 - (i) the uses allowed in the proposed zoning classification are compatible with the Critical Area land use designation and development standards for the property; and

- (ii) the Critical Area Commission staff has recommended approval of the rezoning if the basis for the rezoning is that the character of the neighborhood has changed to such an extent that the zoning map should be changed.

AGENCY COMMENTS

The **Anne Arundel County Department of Health** has no objection to the request.

The **Long Range Planning Division** of the Office of Planning and Zoning commented that the entire site is within the Priority Funding Area. Plan2040 designates the site in the Neighborhood Preservation Development Policy Area. No request for a land use change was submitted during the development of the Plan2040 Planned Land Use map. The Plan2040 Land Use Map designates the majority of the site as Low-Medium Density while Parcels 31 and 37 on the eastern side of the site are designated as Medium Density, and two lots of Parcel 16 are designated as Commercial. Surrounding Planned Land Uses are as follows:

- To the north: Primarily Low-Medium Density, with Mixed Use along Belle Grove Road, Parks/Open Space at Pumphrey Park, and Industrial north of Parcel 31.
- To the east: Low-Medium Density Residential, with Commercial and High Density Residential along Hammonds Lane.
- To the south: Low-Medium Density Residential, with some Commercial along Hammonds Lane
- To the west: Low-Medium Density Residential, High Density Residential, and Mixed Use.

General Development Plan (Plan2040):

Plan2040 noted that the site is planned for residential use on the County’s Land Use Plan, serving as an important redevelopment opportunity once the reclamation process is complete (Volume II, page 223). Otherwise, Plan2040 does not have recommendations that are specific to this site. The proposal for W2 zoning on Parcels 16 and 26 is not consistent with the goals, policies and recommendations of Plan2040, but the proposal to change Parcel 31 to R10 is consistent with Plan2040.

Comprehensive Zoning:

An application for rezoning was filed during the 2004 Comprehensive Rezoning effort (BKP005) to request maintaining Parcel 31 as W2; the request was granted. During the same time period, a 17-acre portion of Parcel 26 was changed (without application) from RA to R5 to “promote future residential development that is compatible with the surrounding area.”

During the 2010 Comprehensive Zoning effort, an application was filed to change Parcels 26, 31 and 37 from W2 and R5 to R10 (CZ09-1338). Staff recommended maintaining Parcels 26 and 37 as R5 and changing Parcel 31 to R5, noting for the latter that “the property abuts two large tracts of undeveloped land zoned R5” and that the tract was “considered a key infill opportunity site for new residential development in Brooklyn Park.” Ultimately, Bill 12-11, through Amendment 2, changed Parcels 26 and 37 from R5 to R10, and changed the remaining portion of Parcel 31 from R5 to W2.

2017 Water and Sewer Master Plan:

The Water and Sewer Master Plan places the site in the Existing Water Service category (Glen Burnie High Water Pressure Zone) and the Planned Sewer Service category (Baltimore City Sewer Service Area). The proposal is consistent with the Water and Sewer Master Plan.

FINDINGS – ZONING RECLASSIFICATION

Evidence of mistake or change presented by the applicant

The justification provided by the applicant claims both mistake and change. The mistake argument presented is based on the premise that the Council did not fully consider the industrial nature of the site, the existing mining operations and licensure or the previous finding by the Board of Appeals that the Council erred in the 1989 comprehensive zoning.

The applicant contends that the many attempts to legalize the long standing industrial use of the western portion of the property, which predates the existence of zoning in 1952, and the failure of the Council to consider the entire property and its long established uses constitutes a mistake. The industrial nature of the site is clearly incompatible with the residential zoning and it appears the Council's attempts to keep it classified as residential assumed that the mining operations would cease. However, at the time of the 2011 comprehensive zoning, the site had valid mining and crushing/screening permits by the State of Maryland. Furthermore, the retention of residential zoning on a site at various stages of reclamation was inconsistent with the obvious use of the property.

The applicant further contends that the Council did not have a complete record relating to the property before it during the 2011 comprehensive zoning. This was due in part to the fact that only a portion of the property was under consideration for rezoning and there does not appear to have been an inquiry as to the status of the mining operations or what was happening with the rest of the property. Additionally, the applicant argues that the 1993 Board of Appeals decision where it was found that the Council made a mistake during the 1989 comprehensive zoning was not in the record nor does it appear to have been considered by Council.

The change argument presented is based on the areas that are proposed to be rezoned being visibly used industrially and that the property has been consistently authorized for surface mining and sand/gravel operations since 1951, including the period following the 2011 comprehensive zoning. It is also pointed out that since the 2011 zoning, the County has approved a twenty year registered use (Case 2018-0083-Y) for a recycling operation dating back to the 1980's. While the mining and recycling operations have continued, Belle Grove has continued to reclaim the land as evidenced by the aerial photographs.

Conformance to the General Development Plan

The applicant acknowledges that Plan2040 recommends retaining the low-medium density residential zoning for the site (with the exception of medium density residential on Parcel 31) but offers that the proposed zoning reclassification would conform to many of Plan2040's stated goals and policies and provides several specific examples. The applicant argues that the proposal strikes a balance between Plan2040's recommendation of development and enhancing employment centers, particularly those close to transit, and the need for developing housing, particularly for a variety of income levels.

It is also noted that the subject property lies within a designated Priority Funding Area (PFA). The Maryland State Smart and Sustainable Growth Act of 2009 does not require lands in a designated Priority Funding Area to be consistent with the "land use" and "density" elements that are specified in the County's General Development Plan. The State excluded those terms in PFAs to provide a measure of flexibility and encourage local ordinances to allow for densities beyond those specified in a local comprehensive plan. This measure allows a local jurisdiction to further direct growth in Priority Funding areas where feasible.

2022-0138-R

This Office does find that the proposed R10 residential zoning is consistent with the Plan2040 designated land use of medium density residential. While the proposed W2 zoning does not comply with the low-medium density residential land use designation, the site being located within the PFA provides a measure of flexibility in interpreting compliance with the GDP as previously noted. The applicant has noted how the proposal would forward various goals and policies of Plan2040, and as such, the proposed W2 zoning can be viewed as consistent with Plan2040.

Compatibility with surrounding land use

The applicant notes that the use of property will remain unchanged and that the rezoning is being sought to allow for future industrial-related development as the site is reclaimed and mining operations cease. It is argued that the proper zoning would attract investment, allow for final reclamation of the land and cessation of nonconforming uses.

CONCLUSIONS

This Office does not find the argument presented by the applicant with regard to change to be convincing. When addressing change, the applicant has failed in their justification to clearly define the neighborhood and outline the change that has occurred within that defined area. The change described in the argument centers solely on changes that have occurred on the subject property and does not reflect neighborhood change. As such, a rezoning based on change cannot be supported.

The mistake argument presented does appear to have merit given the back and forth nature of the zoning history on the site. It is apparent that the mining operations have been ongoing prior to the existence of zoning in Anne Arundel County in 1952. Given the historic and current industrial use of the site, it is feasible that the Council did not have a complete record of the site at the time of the 2011 comprehensive zoning process. Furthermore, the residential zoning could be considered incompatible with the industrial nature of the site and the Council's attempts to retain this residential zoning can be viewed as evidence of a mistake. The assumption that the mining operations would cease has proven to be invalid as the site has been continuously operating under crushing/mining permits issued by the State.

The proposed W2 zoning will provide employment opportunities in close proximity to transit as the property is within walking distance to the Linthicum Light Rail Station and allow for a natural transition from heavy industrial uses to light industrial/flex space uses. The proposed R10 zoning will provide flexibility for development of various housing types including multi-family, townhomes, single family and adult independent dwellings for a variety of income levels. As such, the proposed rezoning appears to be compatible with the surrounding land use. Given the flexibility afforded by the PFA designation, the proposed rezoning can also be viewed as consistent with Plan2040.

RECOMMENDATION

Based upon the standards set forth in §18-16-303 of the Code, under which a zoning reclassification may be granted, the Office of Planning and Zoning has ***no objection*** to the proposed zoning reclassification.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.