



**Carroll County Planning Commission
Report and Recommendation to the
Board of County Commissioners**

CARROLL COUNTY PLANNING COMMISSION STAFF REPORT

**Rezoning Case No. 220
Property Located at Old Gamber and Gamber Road**

Summary:

Petitioner:	Brian DiMaggio, petitioner 1954 Old Westminster Pike Finksburg, MD 21048
Petitioner's Attorney:	None
Current Zoning:	"B-NR" Business Neighborhood Retail
Requested Zoning:	"B-G" Business General
Total Acreage:	4.45 acres
Existing Use of Land:	Vacant
Comprehensive Plan:	<i>1981 Finksburg Area and Environs Comprehensive Plan</i>
Land Use Designation:	Commercial
Public Water Service Area:	No Planned Service Area (W-7)
Public Sewer Service Area:	No Planned Service Area (S-7)
PC recommendation:	Recommend that the Board of County Commissioners reaffirm the current zoning of "B-NR."

Request Description:

The request is to reclassify 4.45 acres from Business Neighborhood Retail (B-NR) to Business General (B-G). The property is located at the intersection of Old Gamber Road (MD 879) and Gamber Road (MD 91), in election district 4. The property has a land use designation of Neighborhood Business in the *1981 Finksburg Area and Environs Comprehensive Plan*.

Request in Detail:

The property comprises 4.45 acres located at the intersection of Old Gamber Road (MD 879) and Gamber Road (MD 91). The property is the remaining portion of what used to be a 15.47 acre parcel. (see Exhibit A – Rezoning Plat).

The property is covered under the *1981 Finksburg Area and Environs Comprehensive Plan* and has a land-use designation of Neighborhood Business in this plan (see Exhibit B – Land Use Designations). This property is not covered under the *2013 Finksburg Corridor Plan* and will

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continue to be covered by the *1981 Finksburg Area and Environs Comprehensive Plan* until the Carroll County Master Plan is complete.

The rezoning petition is based on an argument of mistake in the current zoning designation (see Exhibit C – Rezoning Petition).

Background of Request:

The Carroll County Bureau of Comprehensive Planning accepted the subject petition on September 9, 2013, in accordance with the Carroll County Procedures for Rezoning.

Findings:

1. Property Use and Development History

The property owners in 1963, William and Mary Grace Osterhus, owned two congruent parcels a 55.6 acre parcel and a 15.47 acre parcel. The 15.74 acre parcel was split by what is now Gamber Road. The portion of the parcel on the east side of Gamber Road became part of the Clover Meadow Subdivision. The portion of the parcel on the west side of Gamber Road became a 4.45 acre triangular parcel between Old Gamber Road and Gamber Road. Currently the property is vacant and has two billboard sites on it. The petitioner is requesting that the 4.45 acre parcel located at the intersection of Old Gamber Road (MD 879) and Gamber Road (MD 91) be rezoned from Business Neighborhood Retail (“B-NR”) to Business General (“BG”).

2. Soils

The property lies within three soil series as identified by USDA’s Natural Resources Conservation Service (NRCS) and are defined by the Carroll County Soil Survey as the following: Glenelg Loam (GdC- This soil classification is well drained with 8 to 15 percent slopes This classification represents approximately 3.34 acres of property), Manor Loam (MaB- This soil type is severely eroded and erosion has removed all of the original surface layer and part of the subsoil from this sloping soil. Few to many gullies have formed and some of them are deep. This classification represents approximately 0.16 acres of the property with 3 to 8 percent slopes) and Manor Loam (MaD- This moderately steep soil is cut by shallow gullies in some places. It is highly susceptible to erosion and is not suitable for regular cultivation. Pastures and woodland are among the suitable uses. This classification represents approximately 0.76 acres with 15 to 25 percent slopes).

3. Watersheds

The property is located in the Liberty Reservoir MDE 8-digit watershed. The Carroll County Water Resource Management Area Guidance Map designates the site as surface watershed area.

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4. Agency Comments

On September 13, 2013, the Bureau of Comprehensive Planning referred the rezoning petition to several agencies and bureaus for any comments that the Planning and Zoning Commission should consider prior to making a recommendation to the County Commissioners.

The following agencies and bureaus were given the opportunity to provide comments:

Carroll County Bureau of Engineering
Carroll County Bureau of Resource Management
Carroll County Bureau of Utilities
Carroll County Roads Operations
Carroll County Health Department
Carroll County Office of the County Attorney
Carroll County Department of Economic Development
Carroll County Zoning Administrator
Carroll County Bureau of Development Review
Carroll County Planning Computer Mapping (GIS)
Maryland Department of Transportation – State Highway Administration
Maryland Department of Planning
Baltimore Metropolitan Council
Supervisor of Assessment

The Bureau of Comprehensive Planning has not received any comments regarding Rezoning Case No. 220. It is anticipated that a comment will be received from State Highway Administration prior to the Public Hearing with the Board of County Commissioners.

5. Immediate Neighborhood

The immediate neighborhood is 151.5 acres and is generally along Gamber Road (MD 91) bounded by segments of Deer Park Road to the west, Clover Meadows subdivision on the south, the intersection of Old Gamber and Preserve Drive to the north and it extends to include properties that front Old Gamber Road opposite of the petition property.

The primary use represented within the neighborhood boundary is Residential. The majority of the residential uses in the neighborhood are comprised of single family homes in the Clover Meadow Subdivision.

6. Public Facilities

- Transportation- The property has 647 feet of frontage on Old Gamber Road (MD 879) and 754 feet of frontage on Gamber Road (MD 91).
- Water and Sewer Service Area- This property is in the No Planned Water Service Area (W-7) and No Planned Sewer Service Area (S-7) in the 2007 *Carroll County Master Plan for Water and Sewerage*

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- Telephone, Electric and Cable- Telephone service is provided to the area by Verizon. Electric service is available through Baltimore Gas and Electric. Cable is provided by Comcast.

7. Zoning

The zoning districts found within the neighborhood are “C” Conservation, “R-40,000” and “B-NR” Business Neighborhood Retail. The properties on the east side of Gamber Road (MD 91) are zoned Conservation and are part of the Clover Meadow Subdivision. Properties located at the intersection of Gamber Road (MD 91) and Deer Park Road are zoned R-20,000 as well as the property on the west side of Old Gamber Road (MD 879) and immediately adjacent to the subject property.

- Conservation- areas that because of natural geographic factors and land use it would be feasible and desirable to conserve open space and other natural resources.
- R-40,000- the purpose of this district is to provide a location for single-family residential development, the individual lots which contain a minimum of 40,000 square feet.
- Business Neighborhood Retail- the purpose of this district is to provide for logical locations where the retail services needed by a neighborhood population can be made available. The areas are in communities and at locations of expected population concentrations which might be termed a neighborhood or small community.

Zoning of the Petition Area

The original zoning of the property in 1965 was Agricultural (“A”). In 1978, the zoning of the property changed to Transitional (“T”). As part of the implementation of the *1981 Finksburg Area and Environs Comprehensive Plan* the property was zoned Business Local (“B-L”). In 2006, the B-L zoning district was replaced by the Business Neighborhood Retail (“B-NR”). Business Neighborhood Retail and Business Local were similar categories with the exact same definition and the majority of the same principal permitted use. It made the transition from the old zoning code to the new coding code a seamless transition. However, in May 2006 language was added to the new Business Neighborhood Retail code regarding “maximum size of use.” With this new language, “Notwithstanding any other applicable regulation, no individual principal permitted use or conditional use may exceed 10,000 square feet gross floor area.”

8. Relationship of Proposed Zoning to Comprehensive Plan

The subject property was designated as Neighborhood Business in the *1981 Finksburg Area and Environs Plan*. The zoning classification for the petition property, which is “B-NR” Business Neighborhood Retail, is consistent with the *1981 Finksburg Area and Environs Comprehensive Plan’s* Land Use Designation.

9. Mistake in the Current Zoning

In order to change this zoning using the argument of a “mistake” in zoning there must be

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evidence that there was an error in the information provided in the most current Comprehensive Rezoning. When an initial zoning designation is placed on a property it is the assumption that this zoning is considered permanent. On the *1981 Finksburg Area and Environs* Comprehensive Plan map there are two business classifications: General Business and Neighborhood Business. Concurrent with the Adoption of the plan, the County Adopted the Comprehensive Rezoning. The property was zoned Business Local which is the zoning classification that is consistent with Neighborhood Business Land Use Designation. In addition, Gamber Road (now Old Gamber Road) and New Gamber Road (now Gamber Road) are shown as existing roads in the plan. The decision to assign Business Local to this property was made with the knowledge of these two State roads. The rest of the neighborhood has developed to realize the *1981 Finksburg Area and Environs Plan*. The petitioner has does not include any demonstrable evidence that there was an actual mistake in zoning.

Staff Recommendation:

The *1981 Finksburg Area and Environs Plan* land use map designated the property located at the intersection of Old Gamber and Gamber Road as Neighborhood Business. At the time of the Plan's implementation phase there were two zoning designation choices: "B-L" Local Business District and General Business with "B-L" being less the intense use. The B-L district's intent was to service areas in communities and at locations of expected population concentrations which might be termed neighborhood or small community. Though zoned B-L this particular property does not fit into the typical neighborhood or small community area as discussed in the Plan, and as referenced in the definition contained within the description of the B-L zoning district and its intent (as identified in Chapter 223 of the Carroll County Code). In 2006, the BL district was eliminated and the B-NR district was established. The BL and B-NR are largely identical. The B-NR actually allows a greater number of uses, and in some instances, greater intensities. In a few situations, the B-NR places a greater restriction or imposes more limitations on specific uses. Since the comprehensive rezoning for the *1981 Finksburg Area and Environs Plan* utilized B-L and since the B-NR is simply a substitute for the B-L district, this analysis has focused on the appropriateness of the assignment of B-L to this property. In essence, therefore, the question of mistake relates to the actions of the comprehensive rezoning resulting from the 1981 plan and the assignment of B-L.

At the same time, however, it does not fit the General Business concept either, given that the BG district includes uses and intensities that are not in keeping with the project's location and adjacent uses. This anomaly in the land use description and subsequent zoning of the property are demonstrative of Carroll County's zoning deficiencies where there is not necessarily a zoning district that fits the land use intensity desired.

Until this adjustment of the commercial zoning district descriptions is more closely aligned with land use classifications and based on the other findings described in this report, and in consideration of Article XXX (Section 223-197) of the Code of Public Local Laws and Ordinances of Carroll County, and Section 4.05 of the Land Use Article of the Annotated Code of Maryland, staff recommends that the current zoning of the property and petition area be reaffirmed. Further, staff recommends that the Planning Commission forward an unfavorable recommendation of the petition to the Board of County Commissioners based on a finding of no

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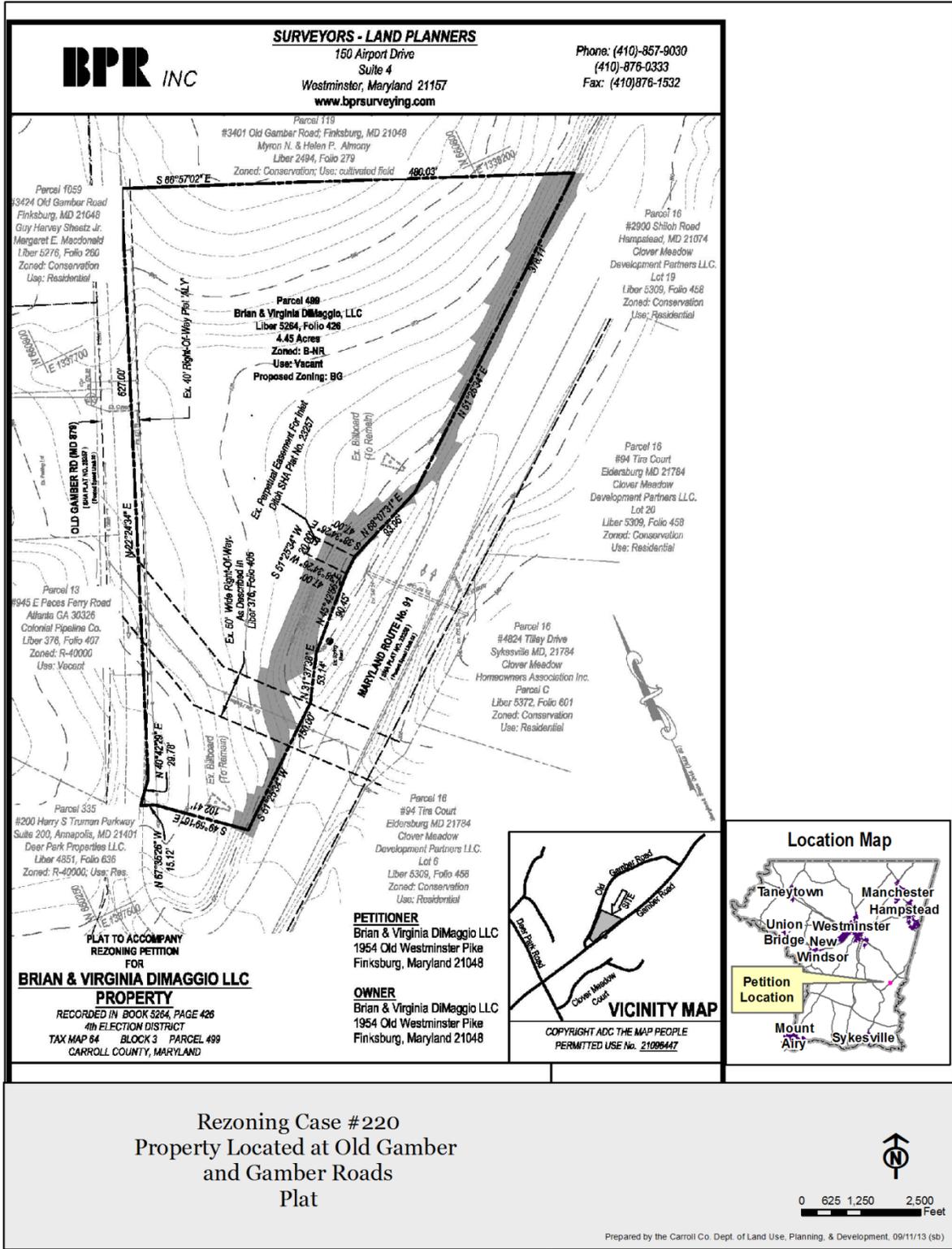
mistake in current zoning.

Planning Commission Recommendation:

Based on the above findings, and in consideration of Article XXX (Section 223.197) of the Code of Public Local Laws and Ordinances of Carroll County, and Section 4.05 of the Land Use Article of the Annotated Code of Maryland, the Planning and Zoning Commission recommended that the current zoning of “B-NR” Business Neighborhood Retail be reaffirmed.

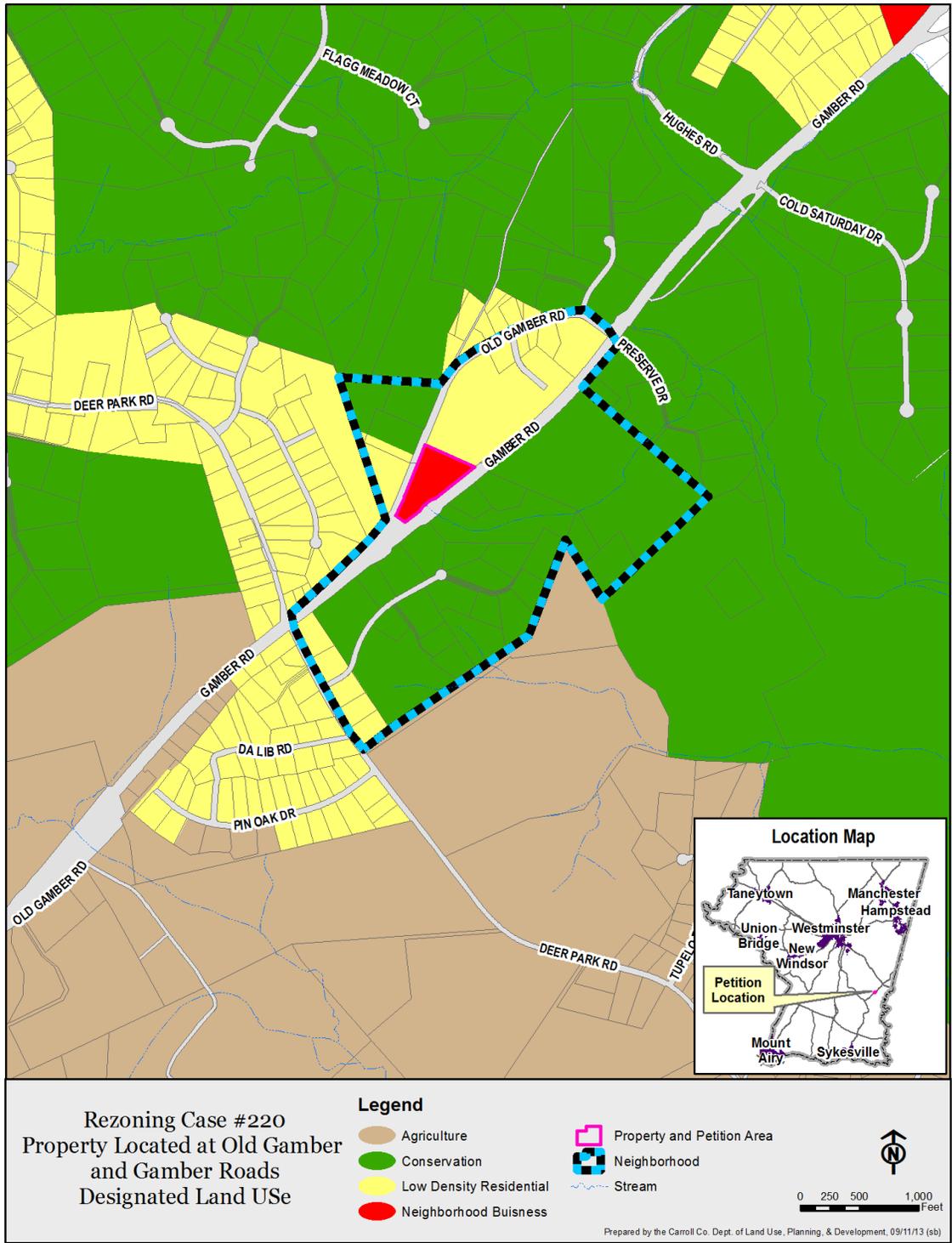
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Exhibit A



Carroll County Planning Commission Staff Report
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Exhibit B



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Exhibit C

Commissioners of Carroll County c/o Department
of Planning of Carroll County 225 North Center
Street Westminster, MD 21157

Re: **DiMaggio Property:** Corner of MD Route 879/Old Gamber Road and
MD Route 91/Emory Road
(Tax Map 64, Grid 3, Parcel 499)

August 12, 2013

Dear County Commissioners:

Kindly be advised that I, Brian DiMaggio, President of “Brian and Virginia DiMaggio LLC,” owners of the subject property located adjacent to the intersection of MD Route 879 and MD Route 91 in Finksburg, Maryland (Tax Map 64, Grid 3, Parcel 499) have enclosed a revised Petition for Zoning Map Amendment and supporting documentation for a proposed change in the zoning designation for this property. Also enclosed, is my check in the amount of \$125.00 in payment of the required filing fee. I am requesting a rezoning of our property from the existing Business-Neighborhood Retail (BNR) designation to the BusinessGeneral (BG) designation.

The current use of the property is vacant. There are however 2 billboards located on the property that are rented to “Zion Media”: a company who is committed to keeping billboard rents in the area affordable and whose primary focus is on advertising for locally owned companies here in Carroll County instead of national advertising. There is also a plan for an automotive repair facility on file with the county: file # S07035 The property is not served by public water and sewer. It has however, been Perc. tested and approved by Carroll Co. Health Dept. for private well and septic.

The reasons to support the requested rezoning, in summary, are based upon a mistake in the current zoning classification. Specifically, the decision to zone the property with the BNR classification was predicated upon existing facts, conditions, projects, and/or trends that were either unknown to or disregarded by the County at the time that zoning classification was applied. Previously, the property’s zoning classification was BusinessLocal (BL). However, this designation was deleted from the County ordinance in June of 2006, and the property (along with other similarly zoned properties) was summarily reclassified to BNR. This reclassification was done without proper consideration of the existing facts, conditions, projects, and/or trends associated with the subject property and surrounding locale.

Moreover, the existing BNR zone is an improper zoning classification for the subject property. The BNR zone is appropriately applied to “logical locations where the retail services needed by a neighborhood population can be made available. The areas are in communities and at locations of expected population concentrations which might be termed a neighborhood or small community.” (See Carroll County Code of Public Local Laws and Ordinances §223-97) The subject property clearly does not fit within the criteria stated in the Code. The BNR zoning designation is typically applied to a more densely populated contiguous neighborhood. The subject property is not located in such a neighborhood or in an area of expected population concentration. Thus, the BNR zoning classification is inappropriate and the limitations stated within that classification would be overly burdensome to any business that would attempt to locate on the subject property.

Additionally, Code §223105 imposes significant bulk limitations on the area of any permitted or conditional use. These limitations permit a maximum square foot gross floor area for any such use of 10,000 square feet. This restriction is so strictly enforced that it states that no variance may be granted. Given the 4.5 acre area of the subject property, this limitation is unduly restrictive and does not permit the most efficient and best use of this commercial property.

As noted above, the subject property is located at the intersection of MD Route 879 and MD Route 91. Route 91 is a major arterial route in this area of Carroll County. Thus, this excellent transportation network appropriately and easily serves a more intense business zoning classification on the subject property.

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Additionally, much of the surrounding area of the property is open and/or an agricultural use. Thus, there is minimal impact to existing residential development. The general neighborhood, as shown on the attached schematic drawing, is from just below Deer Park Road to the southeast, extending along and on both sides of Old Gamber Road in a northwesterly direction to Lauren Hill Drive.

In summary, the existing zoning classification is premised upon a legal mistake and it is respectfully submitted that the existing designation should be changed to BG. This Change in Zoning Request is consistent with the Master Plan and the most current 1981 Finksburg plan on file with the county. The Finksburg Plan seems to have two major concerns as they pertain to businesses. The first concern is that access to new businesses is not from the major highways, but instead, from a service road that would be less impacting to traffic. The second is the unsightly appearance of large groups of small businesses, one after another in long monotonous rows. On page 30, under the subtitle, “Business and Industrial Development,” the plan states, “A major objective of this land use plan is to avoid, where possible, strip business development along primary highways in the interest of traffic safety and efficient use of the roadway” It goes on further to describe the conditions that the plan wishes to avoid under subsection (2) “perpetuation of a seemingly endless string of small individual businesses that provide no visual or spatial separation, thereby creating an aesthetically displeasing, unsightly, and monotonous landscape.” It is important to note that what makes this request for a zoning change so consistent with the Finksburg plan, is that it gets right to the heart of what the writers of this plan were looking for. The ingress and egress, or access to this property is from Old Gamber Road, which is considered a service road, not from the major highway, which is Route 91. Also, since there are no other commercial properties contiguous to this one, it more than meets any expectations for, “Spatial separation.” between businesses. It is also important to note that this zoning change, if granted, will help to remove the implied need caused by the smaller nature of the allowed businesses in the BNR zone to divide the extensive cost of development by building several small businesses together, further proving its consistency with the plan. The proposed rezoning will also help promote much needed economic vitality in this area of Carroll County.

There are many reasons why this zoning change to BG is needed on this property and why the uses in the BNR zone will not work for us, or others on this property. It is important, however, to first understand, that for any Business development to succeed and be viable, it needs to have a solid, well thought out financial plan.

We purchased this land with a very good comprehensive business development plan in place. It included research in May of 2005 with Gail Fritz in Zoning who assured us that our use was allowable in the BL zone, and also a meeting with the Chief of development review Dick Owings to get his opinion. He asked only that I consider building my building larger and consider allowing a second business to rent from me to help create more jobs in the county. His concern was that Finksburg had so little commercial land left that it shouldn't be wasted. We had a cost analysis done for our proposed development and had also secured financing for the project with projected increases in growth for our business based on our past 5 years performance.

After all this was in place, we purchased this parcel of land back on August 15, 2005. As we put our application through the county processes, we encountered a fatal problem; our property was summarily changed from BL (Business Local) to a more restrictive BNR zone in June of 2006. The changes that occurred as a result have prohibited us from completing our development project. One of the hardest changes for us was the added definitions that restricted the size of vehicle that we could work on. Even though only about 1 out of 5 vehicles we service fall in this larger size range, nearly half of our income comes from medium sized trucks, shuttle busses, box trucks, and school buses. This restriction made it impossible for our financial plan to work. We can not afford to move if we are forced by these new created zoning restrictions to lose nearly half of our income. This restriction was placed on our project by the BZA because of the way the definitions were worded. It restricts us from working on any vehicle larger than a small pick up truck. The second problem was that it restricted our new building to a maximum of 10,000 Sq. Ft. This new restriction would leave us with a size building that would barely work with the customers we already have, and would leave no room for growth. We believe the best size for our business would be 13,000 – 15,000 sq. ft. but with no possibility of a variance to this restriction, our well thought out development plans had become derailed.

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When we started to encounter the increasingly restrictive nature of the new zone imposed on us, we suspected that it may be our best interest to just sell the land and let someone else try. We have contracted several realtors over the past 7 years to try to sell this property. Each of them finally gave up and told us that the zoning issues are the main reason buyers aren't interested in our land. Although some of the problem may be that very few investors are willing to attempt new development, it was definitely not for lack of effort on my part, or from lack of knowledge or experience, as the Realtors we employed include some of the top names in the county including companies like KLNB, Colliers Pinkard, Haynes Realty, Remax, just to name a few. The list of uses that are allowed in the BNR zone was given to each of the realtors and they worked hard to try to find anyone willing to build one of those businesses there. We told them that any offer was to be considered. Each realtor came back with the same report. No Interest because the zoning is too restrictive for the location.

In considering what viable businesses could survive on this parcel of land, it is important to know that the cost for most any business to develop this land must include a comprehensive parking lot with a very costly storm water management system that keeps all storm water on the property, an improved road access on Route 91 and along Old Gamber Road, a large water storage tank for fire suppression, reforestation costs, a considerable amount of landscaping, and also additional costs for the building to meet increased demand for aesthetic appearance standards. The total cost of our project was expected to exceed one million dollars. This range of cost would instantly rule out many of the BNR uses that could not withstand a large rental expense. For instance, if the cost of the property, development, and expected taxes were totaled with even no profits, the cost of the building rent would exceed 10,000 – 12,000 per month. This cost varies only slightly with different size buildings as all components still need to be completed. To date, no viable offers to buy the land have been received. It seems clear to us that the reason there are no offers is because the cost to build it too high and the zoning is too restrictive to allow a use that could survive there.

If there were a large enough attached neighborhood to draw from, it may be possible for a few of these uses to band together and exist in the limited capacity that this zone allows. BNR zoning seems to be counting on a large customer base from nearby residents to be established. But since that is not the case here; the property seems useless for commercial development unless the zoning is changed to BG.

We humbly submit to your opinion on the matter as to whether or not it is reasonable to believe that we should continue to be forcibly limited by this overrestrictive, improperly imposed, BNR zone. Or weather it is time to set us free from the bondages we have been placed under for the past 7 years that have cost our family an immense financial hardship.

We look forward to the opportunity to present in full any further justification you may require for the requested rezoning of the property at the required public hearings and through the rezoning process. Please do not hesitate to contact us should you have any further questions regarding this application.

Sincerely,

Brian K. DiMaggio

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Gerhard, Andrea

From: XROADS@netscape.com
Sent: Friday, August 09, 2013 1:48 PM
To: Gerhard, Andrea
Subject: Re-Zoning Letter
Attachments: Final Letter with Re-Zoning Application.pdf

Dear Andrea,

Please review the attached letter and let me know if it meets the standards needed to finish filing for the rezoning application process. If so, I will bring the check and the revised neighborhood files from Randy at BPR along with a signed copy of this letter and the application Monday Morning.

Also, please be advised the my relationship with our previous lawyer Lawrence Schmidt ended this morning and he is no longer representing me or my company. I will attempt to finish the Re-Zoning process without legal representation. so please be patient with me as I will do my best to follow all of the proceeedures as required.

Thank you for your consideration in this matter.

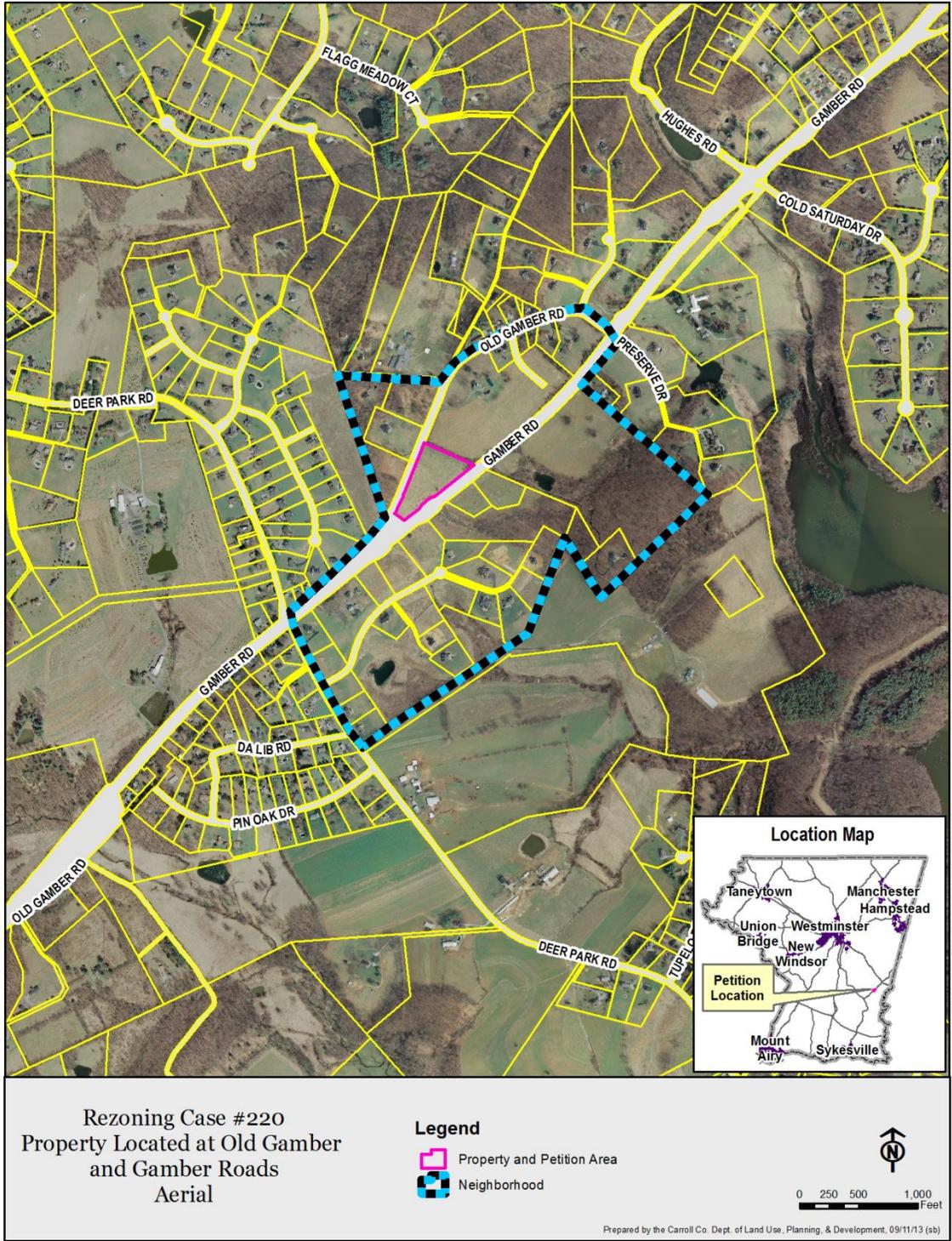
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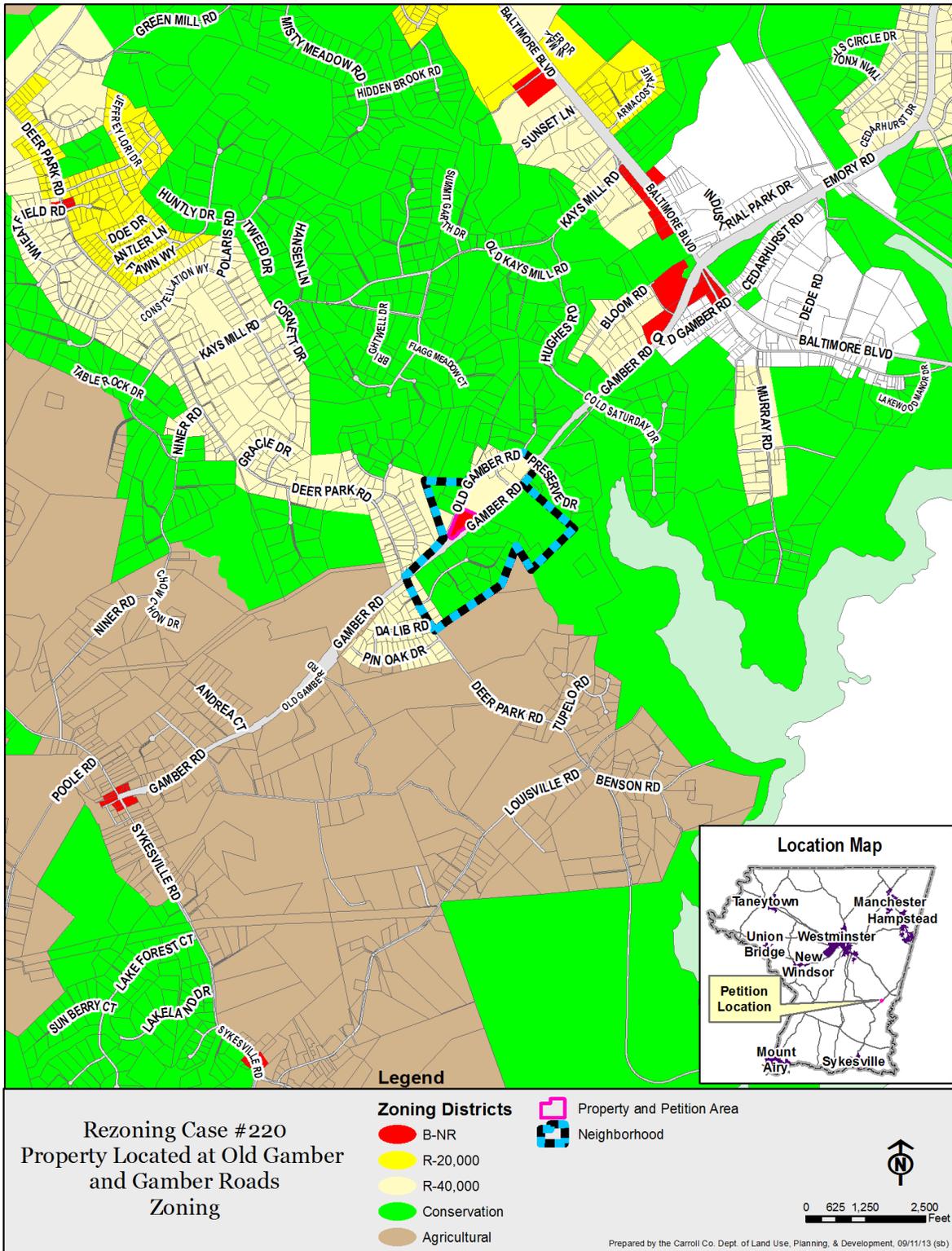
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Exhibit D



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Exhibit E



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Exhibit F

