



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

Rezoning Case No. 221 –Property located at the corner of Bonnie Brae Road and MD 26

Summary:

Petitioner/Owner:	Mark Frizzera, petitioner 1935 Babbs Court Marriottsville, MD 21102
	Brady Properties, LLC. c/o Lynn Thorne 822 Chanter Drive Westminster, MD 21157
Petitioner's Attorney:	Clark Shaffer 73 East Main Street Westminster, MD 21157
Current Zoning:	"R-20,000"
Requested Zoning:	"B-NR" Business Neighborhood Retail
Total Acreage:	2.00 acres
Existing Use of Land:	Vacant
Comprehensive Plan:	<i>2001 Freedom Community Comprehensive Plan</i>
Land Use Designation:	Medium Density Residential
Public Water Service Area:	Final/Existing Water Service Area (W-1)
Public Sewer Service Area:	Final/Existing Sewer Service Area (S-1)
PC recommendation:	Recommend that the Board of County Commissioners approve the requested rezoning from R-20,000 to B-NR for the subject property

Request Description:

The request is to reclassify 2.00 acres from Residential R-20,000 to Business Neighborhood Retail (B-NR). The property is located on the south side of MD 26 at the southwest corner of MD 26 and Bonnie Brae Road. The property has a land use designation of Medium Density Residential in the *2001 Freedom Community Comprehensive Plan*.

Request in Detail:

The property comprises 2.00 acres located on the south side of MD 26 at the southwest corner of MD 26 and Bonnie Brae Road. (see Exhibit A – Rezoning Plat).

The property has a land use designation of Medium density residential in *2001 Freedom Community Comprehensive Plan* (see Exhibit B- Designated Land Use).

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

Background of Request:

The Carroll County Bureau of Comprehensive Planning accepted the subject petition on October 1, 2013 in accordance with the Carroll County Procedures for Rezoning.

Findings:

1. Property Use and Development History

The property owner prior to 1941, Theodore R. Brown owned 78.2934 acres along what is now MD 26. In 1941, the property was sold to Robert and Eleanor Fluhart. In 1955, the Fluharts deeded 3.3 acres of their property to the state for a road easement. In 1965, Metro Land Inc. purchased the 74.99 acre parcel. Ronald Brady purchased 2.00 acres from Metro Land Inc. in 1974. An individual parcel was created in 1981. In 2005, the property was bought by Linda Brady, a sole proprietor of the Brady Properties LLC. The current use of the property is vacant.

2. Soils

The property lies within two soil series as identified and defined by USDA's Natural Resources Conservation Service (NRCS) as the following: Glenelg- Urban Land Complex (GfB-This soil type is on hillslopes, piedmonts. The parent material consists of loamy residuum weathered from phyllites. This soil type is not flooded or ponded. Classification is well drained. This soil type represents 1.23 acres with 0 to 8 percent slopes) and Urban Land- Udorthents Complex (UrB- This soil type is on ridges and uplands. The parent material consists of graded areas of schist and/or gneiss. Classification is well drained. This soil type represents 0.77 acres with 0 to 8 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.

4. Agency Comments

On October 8, 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

Written comments were received from the following Bureau and agency:

Clayton Black, Carroll County Development Review (Memorandum dated October 11, 2013):

“‘Ridenour Way’ a planned major street, as shown on the Freedom Plan, traverses the front of this property.”

Gregory Slater, State Highway Administration (Letter dated October 31, 2013)

“The State Highway Administration (SHA) recommends the access to the proposed rezoning property be from Bonnie Brae Road or via an inter-parcel connection with the developed property to the west. Once a development proposal is received, the SHA will make an official determination regarding the access to the subject property. Once the development moves forward, the developer will be required to go through the access permitting process even if the access to the subject property is from the local road. The developer will need to fulfill all SHA requirements regarding the traffic impact analysis, road improvements, etc. before SHA concurs with the proposed development. The purpose of this development review process is to ensure the development does not adversely affect the safety and operations of the state road, MD 26 adjacent to the development.”

5. *Immediate Neighborhood*

The immediate neighborhood is 151.4 acres and is generally along MD 26 from approximately Georgetown Boulevard to Oklahoma Road/Ridge Road with parts of the neighborhood on both the north and south sides of MD 26.

The primary use within the neighborhood is commercial. There are also residential uses scattered throughout the neighborhood as well.

6. Public Facilities

- Transportation- This portion of the property has approximately 250 feet of frontage on MD 26. Vehicular access to this property would be from Bonnie Brae Road.
- MD 26 is classified by the state as an urban principal arterial. In the vicinity of this property, the highway is two lanes going in each direction on MD 26.
- Water and Sewer Service Area- This property is in the Final/Existing Water Service Area (W-1) Final/Existing Sewer Service Area (S-1) in the 2007 *Carroll County Master Plan for Water and Sewerage*
- 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

Zoning within the Neighborhood

The zoning districts found within the neighborhood are “R-10,000”, “R-20,000”, “B-NR” Neighborhood Retail Business and “B-G” General Business. The properties on the north side of MD 26 are zoned either “B-NR” or “B-G”, while the properties on the south side of MD 26 are a mix of the business and residential zoning.

- R-10,000- the purpose of this district is to provide for smaller lot sizes [10,000 square feet minimum] for single- and 2-family dwellings, based on the presence of public water and sewerage facilities. This would essentially mean more dwellings per acre [approximately 3 to 4 families] and less open area than in the R-20,000 Residence District.
- R-20,000- the purpose of this district is to provide a location for single-family residential development, the individual lots of which contain a minimum of 20,000 square feet (or approximately 2 families per acre). The area may or may not be served with public water and/or public sewerage facilities.
- Neighborhood Retail Business - 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.

- General Business- the purpose of this district is to provide logical locations of all businesses of a more general nature than might be expected to be found in a neighborhood. The businesses proposed include retail, wholesale, and some light processing operations.

Zoning of the Petition Area

The property was originally zoned “R-10,000” in 1965 when this parcel was part of a larger property. The zoning was changed to “R-20,000” as an implementation of the *1977 Freedom Mini Plan* that changed the Land Use Designation to Medium Density Residential.

8. Relationship of Proposed Zoning to Comprehensive Plan

The subject property was designated as Medium Density Residential in the *2001 Freedom Community Comprehensive Plan*. The zoning classification for the petition property, which is “R-20,000”, is consistent with the *2001 Freedom Community Comprehensive Plan*’s Land Use Designation. The petitioner states in that this request is “consistent with the County Master Plan because it contemplates significant commercial development in and around that section of the Liberty Road corridor.”

9. Mistake in the Current Zoning

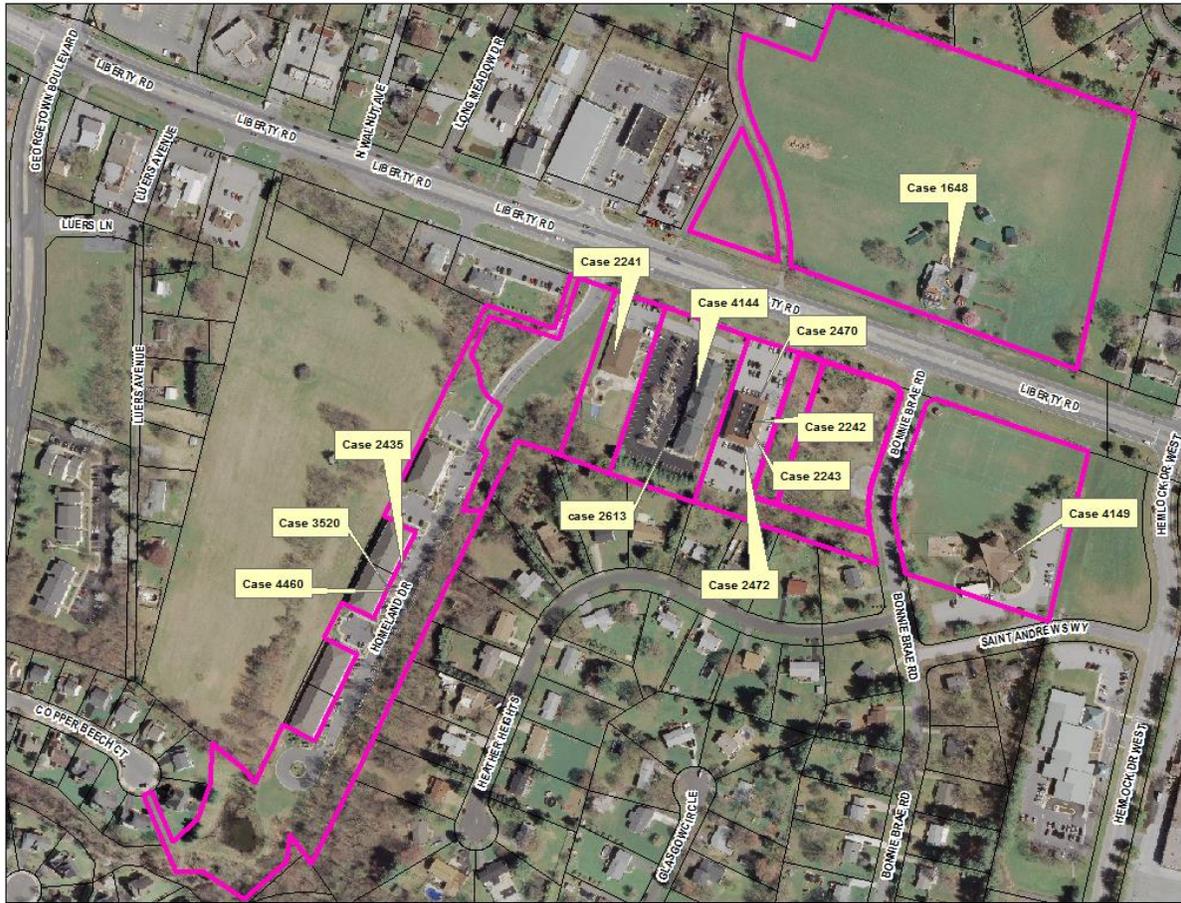
The petition suggests that the same reasoning and analysis for Rezoning Cases Nos. 208 and 218 to be rezoned using “Mistake in Current Zoning” applies to this property as well.

“In 2002, by Ordinance 02-17, the County Comprehensively rezoned several properties [as part of the County Phase 2 rezoning process]. Four of those properties are located within the immediate neighborhood of the petition area and were rezoned from “R-20,000” Residential District to “B-G” General Business and “B-L” Business Local. One result of this comprehensive rezoning was the elimination of all residential zoning on the north side of Liberty Road.”

Through this process within the immediate neighborhood for this rezoning case, “business zoning was increased by 14.5 acres and the business zoning district was extended 1,200 linear feet future east along the north side of Liberty Road.”

10. Change in the Character of the Neighborhood

Through this process within the immediate neighborhood for this rezoning case, “business zoning was increased by 14.5 acres and the business zoning district was extended 1,200 linear feet future east along the north side of Liberty Road.”



Many of the neighboring residentially zoned properties have developed commercially by means of conditional use application. Even though the properties neighboring the petition area are zoning “R-20,000” none of them are being utilized for a residential use. The following Board of Zoning Appeal cases have helped to change the character of the neighborhood and were not intended by the 2001 *Freedom Community Comprehensive Plan*:

- BZA Cases 2435/3520/4460: 1533 Liberty Road- A conditional use request (Case 2435) for the establishment of a residential apartment complex for the elderly, or retirement home development on about 6.7 acres. A conditional use request (Case 3520) for a retirement home apartment complex, and a variance reducing minimum required side yard from 40 feet to 25 feet. A conditional use request (Case 4460) for a retirement home community. The most recent case was granted conditional approval in January 2000.
- BZA Case 1648: 1640 Liberty Road - A conditional use for a retirement home apartment complex, and a variance reducing the minimum required side yard from 40 feet to 25 feet. Conditional approval was granted in November 1980.
- BZA Case 4144: 1643 Liberty Road- An amendment to the previous approval in Case

2470 to allow all of the building to be used for professional offices. Conditional approval was granted in November 1996.

- BZE Cases 2613: 1645 Liberty Road- Conditional authorization (Case 2242) was given for a nursing home with professional offices of various medical practitioners. The request was amended again (Case 2613) to allow substitution of medical or dental clinic or offices in lieu of the forty percent space approved for the construction and operation a nursing home. Conditional approval was granted in November 1986.
- BZA 2242/2243/2470/2472: Property located on the south side of Liberty Road approximately three hundred and fifty feet west from Bonnie Brae Road intersection- This original request (Case 2242) was amended (Case 2470) to allow for some unrelated professional offices, and to confirm authorization of the variance to the maximum density provisions of nursing homes. A request to amend the Board's conditional approval (Case 2243) of a one story medical clinic, sixty feet in width by one hundred and forty feet in depth to allow a two story building with the first story sixty feet in width by one hundred feet in depth and the second story seventy feet in width by one hundred ten feet in depth and increase the parking facilities (Case 2472). The most recent case was granted conditional approval in April 1986.
- BZA Case 2241: Property located on the south side of Liberty Road about six hundred feet west from Bonnie Brae Road intersection- A conditional use request for the establishment of a nursery school or child care center. Conditional approval was granted in March 1985.
- BZA Case 4149: 1700 St. Andrews Way- A conditional use request for a day care center in lower level of the Faith Lutheran Church. Conditional approval was granted in November 1996.

In addition to the various Board of Zoning Appeal Cases the petitioner also mentions the following as examples of change in the character of the neighborhood:

- "The large property immediately across Liberty Road from the subject property was rezoned in November 2002 from "R-20,000" Residence Suburban to "B-G" Business General by Ordinance No. 02-17."
- "The nearby property known as the Carrolltown Mall has changed from a thriving commercial enterprise to a struggling commercial enterprise in need of redevelopment and was individually rezoned to "B-G" General Business."
- "Highway improvements to Liberty Road have been made in the area."

Staff Recommendation:

With regards to the argument of "Change in the Character of the Neighborhood", the applicant

has failed to demonstrate the requisite change that was not envisioned by the *2001 Freedom Community Comprehensive Plan*. The change that has occurred in the vicinity since 2001 falls into two categories: (1) it was envisioned by the Plan or (2) it has occurred as a zoning map amendment. Neither category satisfies the legal burden associated with “Change.”

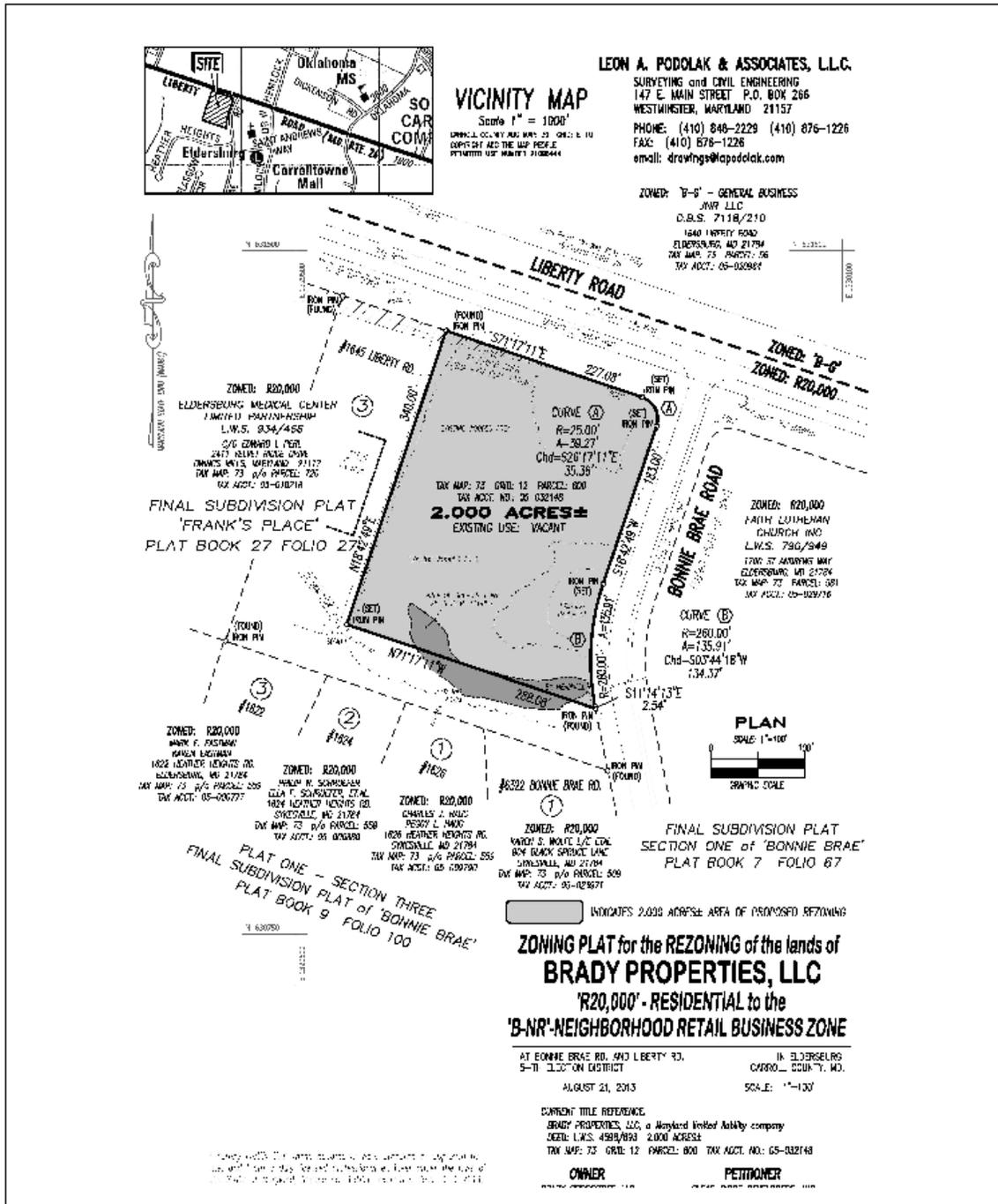
The matter of “Mistake”, however, warrants further evaluation. The fact that numerous Board of Zoning Appeals cases that served to substantially alter the landscape, as well as the character of the neighborhood occurred prior to 2001 when the Freedom Community Comprehensive Plan was Adopted; the fact that the outcome of those decisions led directly to the development of properties in a manner other than residential; and the fact that this development occurred prior to 2001, support the contention of “Mistake”

Commercial development was present on the properties adjoining the subject parcel when staff was developing the *2001 Freedom Community Comprehensive Plan*. It seems inescapable the existing land use could have been designated as anything other than Commercial. Therefore, the future land use designation should have been Commercial as well. The fact that neither designation was incorporated in the 2001 Plan suggests that the Plan was in error and thus supports the argument for Mistake. Consequently, staff recommends that the zoning of the subject parcel be changed to “B-NR”, Business Neighborhood Retail.

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 unanimously recommend that this property be rezoned from “R-20,000” to “B-NR” based on a finding of “mistake” in the current zoning.

Exhibit A



Rezoning Case #221
Property at the Corner of Bonnie Brae Road and Liberty Road

Prepared by the Carroll Co. Dept. of Land Use, Planning, & Development, 09/27/13 (RS)

Exhibit C

IN THE MATTER OF THE	*	BEFORE THE BOARD
PETITION BY MARK	*	OF COUNTY COMMISSIONERS
FRIZZERA	*	
TO REZONE	*	CARROLL COUNTY
2.00 ACRES FROM	*	
RESIDENTIAL "R-20,000" TO	*	
"B-NR" BUSINESS	*	
NEIGHBORHOOD-RETAIL OR	*	REZONING CASE NO. <u>221</u>
IN THE ALTERNATIVE,	*	
BG-GENERAL BUSINESS	*	
ON THE SOUTH SIDE	*	
OF MARYLAND ROUTE 26	*	
(LIBERTY ROAD)	*	
AT THE SOUTHWEST CORNER	*	
OF LIBERTY ROAD AND	*	
BONNIE BRAE ROAD	*	
ELDERSBURG, MD	*	
TAX MAP 73, PARCEL 600	*	

PETITION FOR ZONING MAP AMENDMENT
MARK FRIZZERA

EXHIBIT A

Mark Frizzera (hereinafter referred to as "Petitioner"), by his attorney Clark R. Shaffer, files the accompanying Petition for Zoning Map Amendment and in support thereof say as follows:

1. Petitioner requests a change in zoning classification from R-20,000 to B-NR or, in the alternative, BG-General Business.
2. The current use of the property is none (i.e. it is unimproved and vacant)
3. The property is located in a neighborhood along Maryland Route 26 (Liberty Road) in the Eldersburg area of Carroll County, Maryland, which is predominately commercial along with residential away from the road. It runs along Liberty Road from about Georgetown Boulevard to Oklahoma Road/ Ridge Road and includes a reasonable area on each side of Liberty Road. The

road is the dominating feature of the neighborhood. A map delineating the neighborhood is attached hereto. The property is virtually the only property on Liberty Road in its neighborhood which is not either zoned commercial or actually used for commercial or institutional.

4. Petitioner alleges that the current R-20,000 is mistaken because the property is virtually surrounded by commercial uses and institutional uses, is located on a major public road (classified by the State as urban principal arterial), and is otherwise ideally suited for commercial use. To the contrary, the parcel is not suitable for residential use. Petitioner cites the County Commissioner's reasoning and analysis in Rezoning Case Nos. 208 and 218 as applicable to the subject property.

5. In the alternative, Petitioner alleges that there has been a substantial change in the character of the neighborhood subsequent to the most recent comprehensive plan or comprehensive rezoning. Petitioner's property may not have been considered as part of a comprehensive plan or comprehensive rezoning involving land use changes for as far back as 1985. Nevertheless, the neighborhood (see attached map) has substantially changed in at least the following respects (Petitioner also submits these items in support of his mistake allegation):

A. Many neighboring properties have developed with commercial type uses by means of conditional use applications. For example, see the Decisions of the Carroll County Board of Zoning Appeals in Case Nos. 1648, 2241, 2243/ 2472, 2435, 2470, 2613, 3520/ 4460, 4144, and 4149. Petitioner respectfully requests that staff consider these zoning actions (as well as numerous other zoning actions in the neighborhood) as evidence of mistake in zoning.

B. The large property immediately across Liberty Road from the subject property was rezoned in November 2002 from R-20,000 Residence Suburban to BG-Business General by Ordinance No. 02-17.

C The nearby property known as the Carrolltown Mall has changed from a thriving commercial enterprise to a struggling commercial enterprise in need of redevelopment and was individually rezoned to BG-General Business..

D. Highway improvements to Liberty Road have been made in the area.

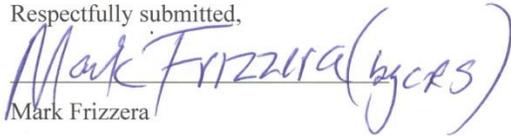
6. The property cannot be reasonably utilized under the purposes of the R-20,000 residence district. The purpose of the R-20,000 residence district is to provide a location for single family residential development with lots containing a minimum of 20,000 sq. ft.. The location of the property is such that it is not appropriate for any such use, nor are any of the other principle permitted uses appropriate for the property given its size and situation. Although certain conditional uses may be appropriate for the Property, its highest, best and most appropriate use is for uses permitted in the B-NR zone and any further investment in the property would likely occur only with that zoning in place. Furthermore, neighboring properties have already developed with conditional uses meaning that the market is already saturated.

7. The proposed rezoning would be consistent with the County Master Plan, which contemplates significant commercial development in and around that section of the Liberty Road corridor.

8. The property is served by public water, public sewer, and public roads.

9. And for such other and further reasons as may be brought forth at the hearing on this matter.

Respectfully submitted,


Mark Frizzera

BY: CLARK R. SHAFFER, ESQUIRE

73 EAST MAIN STREET

WESTMINSTER MD 21157

PHONE (410) 848-3737

Exhibit D



Exhibit E

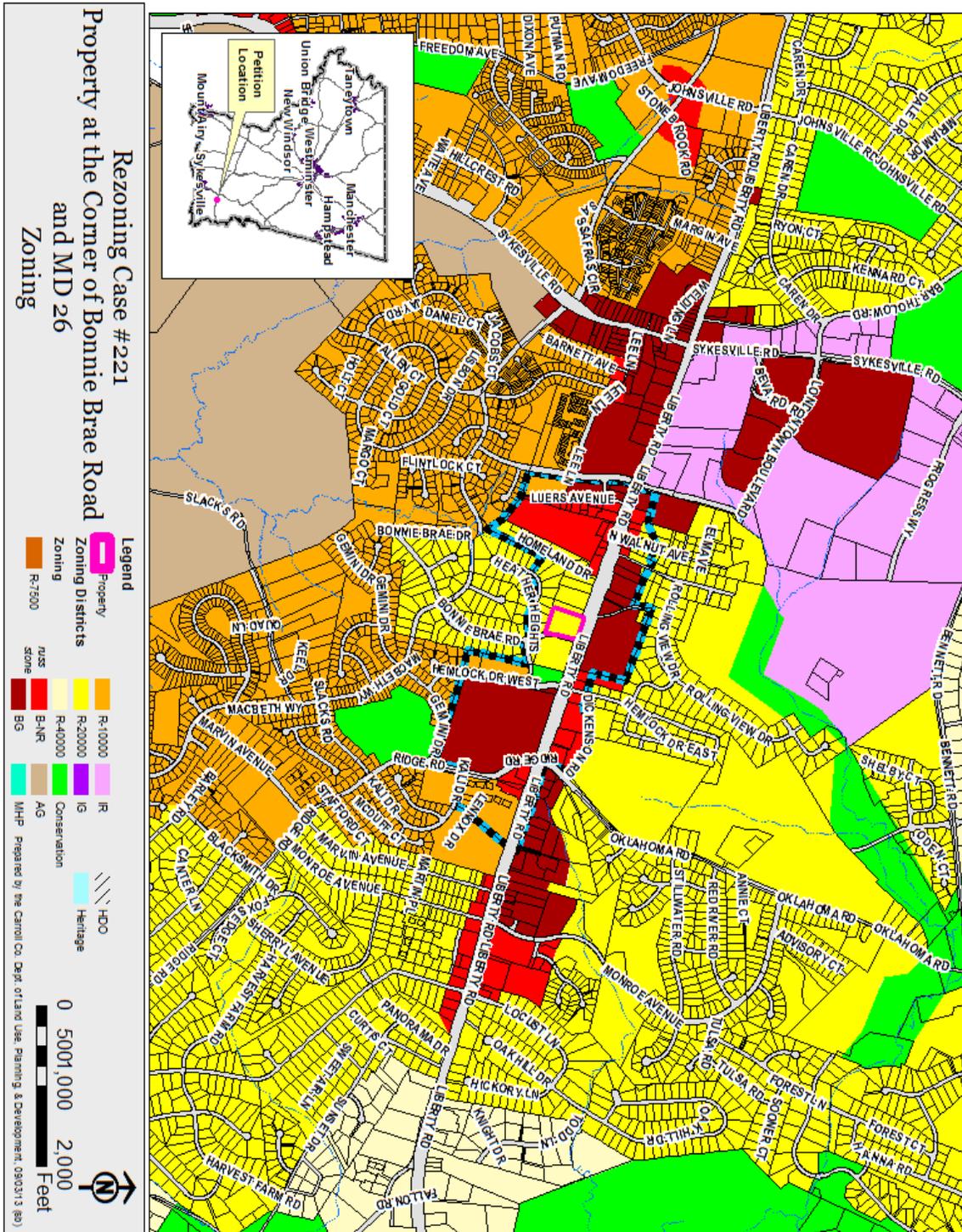


Exhibit F

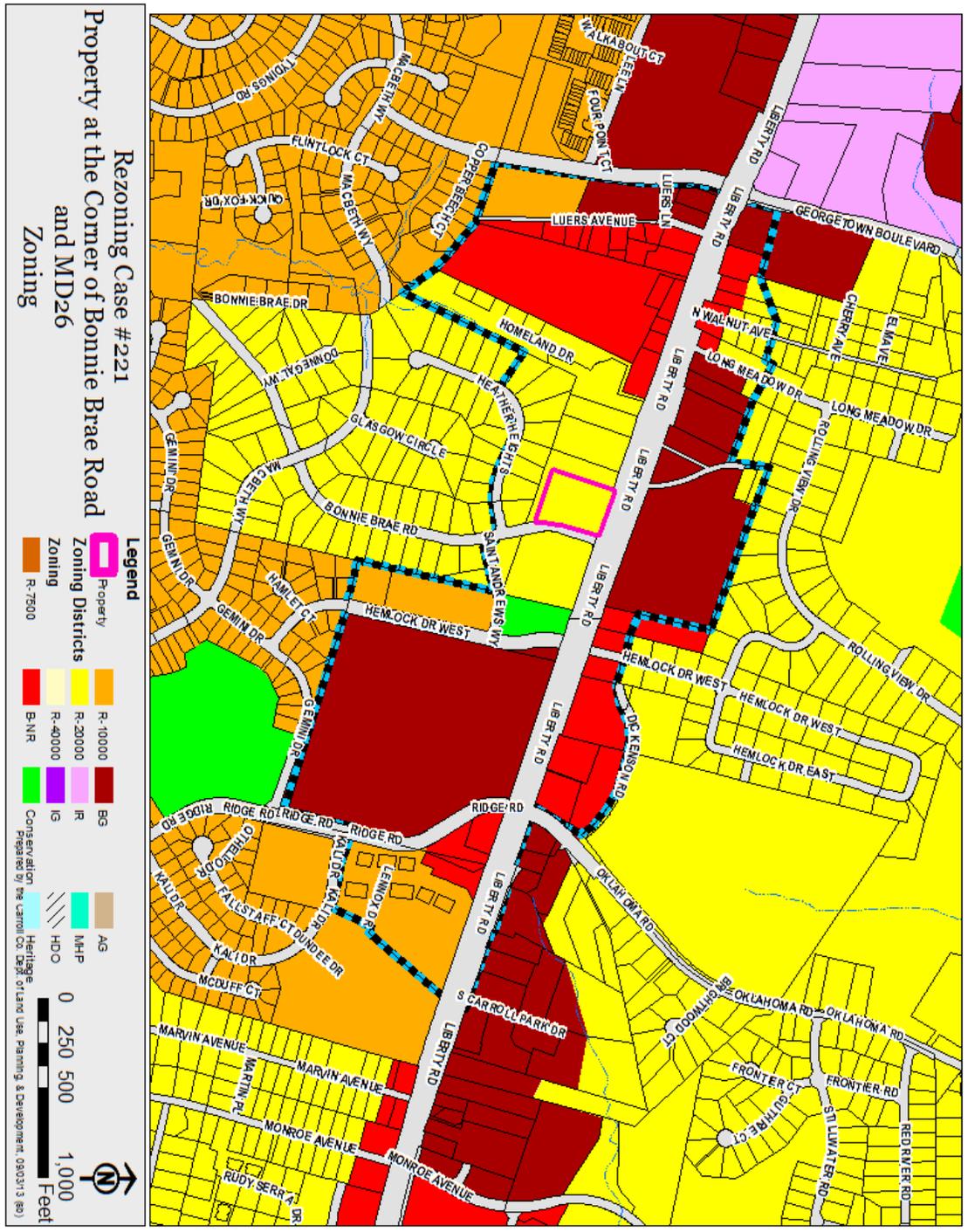


Exhibit G

