



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

## Rezoning Case No. 223 –1320 Liberty Road

### Summary:

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<b>Petitioner/Owner:</b>	Quantum Eldersburg, LLC., Petitioner 49 Del Ray Avenue Bethesda, Maryland 20814
	Wal-Mart Real Estate Business Trust, Owner P.O. Box 8050 MS 055 Bentonville, Arkansas 72712
<b>Petitioner's Attorney:</b>	Clark Shaffer 73 East Main Street Westminster, MD 21157
<b>Current Zoning:</b>	"I-R" Restricted Industrial
<b>Requested Zoning:</b>	"B-G" General Business
<b>Total Acreage:</b>	16.11 acres
<b>Existing Use of Land:</b>	Wal-Mart Retail Store
<b>Comprehensive Plan:</b>	<i>2001 Freedom Community Comprehensive Plan</i>
<b>Land Use Designation:</b>	Industrial Restricted
<b>Public Water Service Area:</b>	Final/Existing Water Service Area (W-1)
<b>Public Sewer Service Area:</b>	Final/Existing Sewer Service Area (S-1)
<b>PC recommendation:</b>	Recommend that the Board of County Commissioners approve the requested rezoning from I-R to B-G for the subject property

### Request Description:

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The request is to reclassify 16.11 acres from Restricted Industrial (I-R) to General Business (B-G). The subject property is located on the north side of Liberty Road (MD 26) near the northeast corner of MD 26 and Sykesville Road (MD 32). The property has a land use designation of Industrial Restricted in the *2001 Freedom Community Comprehensive Plan*.

### Request in Detail:

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The subject property comprises 16.11 acres located on the north side of MD 26 near the

northeast corner of MD 26 and MD 32. (see Exhibit A – Rezoning Plat).

The property has a land use designation of Industrial Restricted 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:**

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The neighborhood delineation was finalized by the Director of Planning on August 27, 2015.

The Carroll County Bureau of Comprehensive Planning accepted the subject petition on August 31, 2015 in accordance with the Carroll County Procedures for Rezoning.

### **Findings:**

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#### ***1. Property Use and Development History***

This property was owned by American Store Realty Corporation (formerly Acme Markets, Inc.) until they sold it to Bevard Farm Corporation in 1993. Bevard Farm Corporation was granted Board of Zoning Appeal Approval in 1994 for a General Business District conditional use to be developed within the Restricted Industrial District; allowing a future Wal-Mart retail store. In 1995, Wal-Mart Stores Inc. purchased the property. The property was vacant until the Wal-Mart was built later in 1995. There is a public water easement running through the property.

#### ***2. Soils***

The property lies within two soil series as identified and defined by USDA's Natural Resources Conservation Service (NRCS) as the following: 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 14.21 acres with 0 to 8 percent slopes). The soil classification for the remaining 1.9 acres is unknown.

#### ***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 August 31, 2015 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 Department:

*Jack Lyburn*, Carroll County Department of Economic Development (Memorandum dated September 2, 2015):

“The Department of Economic Development supports this rezoning request just as we supported the Board of Zoning Appeals decision to allow the development of the Wal-Mart store on the site in 1994.

My reasons are as follows:

1. The site is not conducive to industrial development. Due to its location along MD 32 & MD 26, the property’s best and highest use is commercial, as was the case in 1994.
2. Commercial development virtually surrounds the site today. Retail uses have developed along both MD 26 & MD 32 corridors. It is extremely unlikely that any industrial user would find the site conducive to industrial operations.
3. The Board of Zoning Appeals decision in 1994 permitted the establishment of a Wal-Mart store, a retail use. The contract purchaser intends to use the site in the same retail manner, except the site will contain multiple stores instead of one big box. While the number of tenants will increase, the use of the property will remain retail in nature.

The Freedom Plan currently underway will address land use. I sincerely believe that this particular property would be recommended for rezoning to the General Business zone which permits such retail uses, in the Plan document. While I understand the preference to address rezoning matters at the time of the Plan adoption, the developer of the project needs the zoning assurance so that he is about to first, finance the project, and second, market to quality retail users who are secure in knowing that their use is permitted on the

site. Allowing the rezoning to occur now will clarify the vision for the redevelopment of the site and curtail any chance the site remains vacant and becomes an eye sore for the community.

For these reasons I support the rezoning application for 1320 Liberty Road.”

### **5. Immediate Neighborhood**

The immediate neighborhood is 385 acres and is located generally along MD 26 from Ridge Road/Oklahoma Road to Johnsville 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 431.94 feet of frontage on MD 32 and 1,534 feet on MD 26. This property currently has vehicular access from MD 26 and MD 32.

MD 26 and MD 32 are both 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 and MD 32.

Water and Sewer Service Area- This property is currently served and is in the Final/Existing Water Service Area (W-1) Final/Existing Sewer Service Area (S-1) in the 2014 *Carroll County Water and Sewer Master Plan*

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 “R-10,000”, “R-20,000”, “B-NR” Neighborhood Retail Business, “B-G” General Business, “I-R” Restricted Industrial, and “C” Conservation. 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.
- Restricted Industrial - The purpose of this district is to provide locations for some of the lighter manufacturing processes and which may not be as extensive as those provided in the I-G District. For the most part, the manufacturing is composed of processing or assembly of previously processed materials. It is not the purpose of this district to promote or encourage the use of land within the district for retail services or PBCs normally expected to be located within the established business district; however, it is anticipated that there may be areas or locations where retail services or PBCs can be reasonably and logically considered due to their relationship with other uses existing within the district, as well as their relationship with the district boundary line or the configuration of the property and the relative scale of the project.
- Conservation- The purpose of this district is to prescribe a zoning category for those areas where, because of natural geographic factors and existing land uses, it is considered feasible and desirable to conserve open spaces, water supply sources, woodland areas, wildlife, and other natural resources. This district may include extensive steeply sloped areas, stream valleys, water supply sources, and wooded areas adjacent thereto.

### Zoning of the Petition Area

The property was originally zoned Industrial and Commercial in 1965. The zoning was changed to entirely Industrial as an implementation of the *1977 Freedom Mini Plan* that changed the Land Use Designation to Industrial.

#### **8. Relationship of Proposed Zoning to Comprehensive Plan**

The subject property was designated as Industrial Restricted “I-R” in the *2001 Freedom Community Comprehensive Plan*. The zoning classification for the petition property, which is Industrial Restricted “I-R”, is consistent with the *2001 Freedom Community Comprehensive Plan’s* Land Use Designation. The petitioner states that this request is “consistent with the *2001 Freedom Community Comprehensive Plan*, and especially with the plan’s visions and goals (goal 4) which is to support the retention and expansion of existing businesses and Chapter 11 which emphasizes the promotion of economic development.”

#### **9. Mistake in the Current Zoning**

The petition suggests that the same reasoning and analysis for Rezoning Cases Nos. 208, 212, 213, 215, 218, 221 and 222 to be rezoned using “Mistake in Current Zoning” applies to this

property as well.

The Petitioner alleges mistake because the property is virtually surrounded by commercial uses, is located on a major public road (classified by the State as urban principal arterial), and is otherwise ideally suited for commercial use. In fact, the property was Approved for its present commercial use (a Wal-Mart retail store) in 1994 in Board of Zoning Appeals Case 3910 and it has been operating continuously at the site since about that time. The parcel is not suitable for industrial uses because of the location relative to other commercial uses and because of existing uses. The *2001 Freedom Community Comprehensive Plan* points out that the commercial development of residential and industrially zoned properties as conditional uses “are contrary to the original concept envisioned in the *1977 Freedom Comprehensive Mini Plan* (pages 33-34).”

### ***10. Change in the Character of the Neighborhood***

The Petitioner’s property may not have been individually considered as part of a comprehensive plan or comprehensive rezoning involving land use changes for as far back at 1985. The property was included in the Boulevard District described in the *2001 Freedom Community Comprehensive Plan*. Nevertheless, the neighborhood has substantially changed in at least the following respects:

- Many neighboring properties have developed with commercial type uses by means of piecemeal rezonings and conditional use applications (Rezoning Cases Nos. 208, 212, 213, 215, 218, 221 and 222). Petitioner requests that staff consider these zoning actions as evidence of mistake in zoning.
- The nearby property known as the Carrolltown Mall has changed from a thriving commercial enterprise to a struggling retail center in need of redevelopment and was individually rezoned to General Business in recent years (Rezoning Case 212). That property is currently being redeveloped with a Wal-Mart Superstore as the anchor.
- Highway improvements to MD 26 have been made in the area and further improvements are planned for the area.
- The property cannot be reasonably utilized under the purposed of the I-R Industrial Restricted district. That district contemplates manufacturing and other intense uses as primary uses in that zone. The location of the property is such that it is not appropriate for any such use, especially given the existing building, the size of the parcel, and the surrounding land uses. In fact, an industrial manufacturing or warehouse use (and the heavy truck traffic usually involved with such uses) on the property would be blatantly incongruous with the immediate neighborhood.

### **Staff Recommendation:**

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Based on the facts stated above in this petition, staff recommends that the Planning and Zoning Commission forward a favorable recommendation for General Business Zoning (B-G) to the Board of County Commissioners based on “mistake” of the original zoning. The mistake was made when the change in the character of the neighborhood was not recognized in 2001. Many of the surrounding properties, including this site, either were rezoned to a commercial

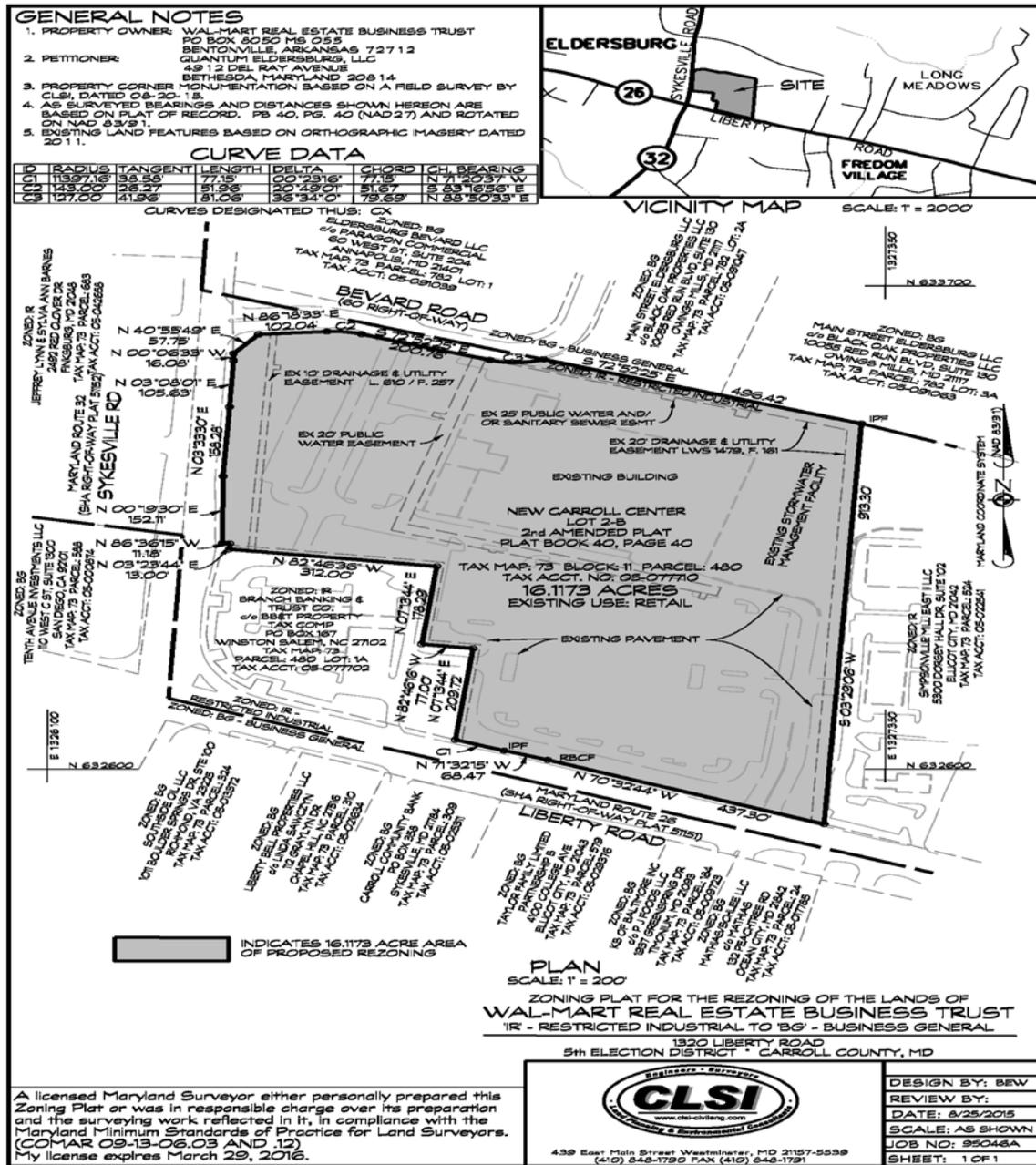
classification or have BZA approval for commercial use. This property, prior to 2001 and going back to 1994, has been operating as a commercial property, not in an industrial manner. This use should have been recognized as part of the 2001 Freedom Community Comprehensive Plan and should have been designated and rezoned as such to reflect existing conditions. Therefore, by not recognizing this change, a mistake in the original zoning was made. It is recommended that the zoning classification be changed to B-G to reflect its past and current use.

**Planning Commission Recommendation:**

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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 recommended that this property be rezoned from “I-R” to “B-G” based on a “mistake” in the current zoning.

**Exhibit A**



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**Rezoning Case #223**  
**1320 Liberty Road**

Prepared by the Carroll Co. Dept. of Land Use, Planning, & Development, 08/27/15 (rs)



**Exhibit C**

IN THE MATTER OF THE	*	BEFORE THE BOARD
PETITION OF QUANTUM	*	OF COUNTY COMMISSIONERS
ELDERSBURG LLC TO REZONE	*	CARROLL COUNTY
16.11 ACRES FROM IR-	*	
INDUSTRIAL RESTRICTED TO	*	REZONING CASE No. <u>223</u>
BG-BUSNISS GENERAL, ON	*	
THE NORTH SIDE OF	*	
MARYLAND ROUTE 26	*	
(LIBERTY ROAD) AT OR NEAR	*	
THE NORTHEAST CORNER OF	*	
LIBERTY ROAD AND	*	
SYKESVILLE ROAD.	*	
TAX MAP 73, PARCEL 480	*	
*****		

**PETITION FOR ZONING MAP AMENDMENT**

**EXHIBIT A**

Quantum Eldersburg LLC (Quantum) hereinafter referred to as Petitioner, by his attorney Clark R. Shaffer files the accompanying Petition for Zoning Map Amendment and in support thereof says as follows:

1. Petitioner requests a change in zoning classification from IR- Industrial Restricted to BG-Business General.
2. The current use of the property is a Wal Mart retail store which was approved by the Carroll County Board of Zoning Appeals in Case No. 3910.
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. There are some residential and light industrial uses in the neighborhood, with the residential uses being generally located off of and some distance from Liberty Road and Sykesville Road. A map delineating the neighborhood is attached hereto. The predominant defining feature of the neighborhood is Liberty Road (Maryland Route 26) an urban principal arterial. The neighborhood is predominantly linear because of that feature. The eastern and western boundaries of the neighborhood are defined by the collector County roads, namely Johnsville Road and Ridge Road. The depth of the neighborhood in the immediate vicinity of the property is increased because of the commercial development north of the subject property, which utilizes the same road network and common features as the subject property.

4. Petitioner alleges that the current IR zoning is mistaken because the property is virtually surrounded by commercial uses, is located on a major public road (classified by the State as urban principal arterial), and is otherwise ideally suited for commercial use. In fact, the property was approved for its present commercial use (a Wal Mart retail store) in 1994 in Board of Zoning Appeals Case 3910 and has been operating continuously at the site since about that time. The parcel is not suitable for industrial uses because of its location relative to other commercial uses and because of its existing use. Petitioner cites the County Commissioner's reasoning and analysis in Rezoning Case Nos. 208, 212, 213, 215,

218, 221 and 222 as applicable to the subject property. All of the cited rezoning cases involved individual rezonings to commercial zoning categories. Rezoning cases 213 and 215 are especially relevant because they involve properties in the immediate vicinity of the subject property. Case 213 was the Main Street Eldersburg rezoning (this property is currently undeveloped). It is adjacent to the subject property and involved a change from Industrial Restricted to BG. In that case, the Planning Commission recommended rezoning based on a substantial change in the character of the neighborhood, citing a “proliferation of commercial and nonindustrial uses, which typically have been approved as conditional uses...” in the neighborhood and rezoning was granted based upon change. In rezoning Case 215, the Safeway property was rezoned from IR to BG, based on a mistake. The staff report and Planning Commission rationale also cited the many nonindustrial uses now established in the neighborhood and pointed out that the character of the neighborhood is different from the industrial character envisioned in the plan. In addition, many of the properties in the neighborhood have developed as conditional uses approved by the Board of Zoning Appeals. For instance, BZA Case 4149, 4144, 868, 2470 and 2243 approved commercial uses in the neighborhood.

All of the above support Petitioner’s argument that it was a mistake to place an IR zoning designation on the subject property or, in the alternative, that there

has been substantial change in the character of the neighborhood. The 2001 Freedom Community Comprehensive Plan points out that the commercial development of residentially and industrially zoned properties as conditional uses “are contrary to the original concept envisioned in the 1977 Freedom Comprehensive “Mini” Plan. (Page 33-34).

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 individually considered as part of a comprehensive plan or comprehensive rezoning involving land use changes for as far back as 1985. Petitioner’s property was included in the Boulevard District described in the 2001 Freedom Community Comprehensive Plan. Nevertheless, the neighborhood (see attached map) has substantially changed in at least the following respects (Petitioner also submits these items in support of its mistake allegation):

A. Many neighboring properties have developed with commercial type uses by means of piecemeal rezonings and conditional use applications. 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. The zoning actions cited in paragraph 4 above are specific examples of these developments.

B. 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 in recent years (Rezoning Case 212). That property is currently being redeveloped with a Wal Mart superstore as its anchor.

C. Highway improvements to Liberty Road have been made in the area and further improvements are planned for the area.

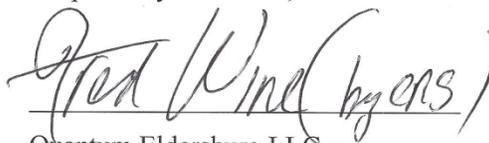
6. The property cannot be reasonably utilized under the purposes of the IR-Industrial Restricted district. That district contemplates manufacturing and other intense uses as primary uses in that zone. The location of the property is such that it is not appropriate for any such use, especially given the existing building, the size of the parcel, and the surrounding land uses. In fact, an industrial manufacturing or warehouse use (and the heavy truck traffic usually involved with such uses) on the property would be blatantly incongruous with the immediate neighborhood.

7. The proposed rezoning would be consistent with the Freedom Community Comprehensive Plan, and especially with the plans visions and goals (goal 4), which is to support the retention and expansion of existing businesses, and Chapter 11 which emphasizes the promotion of economic development.

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,

A handwritten signature in cursive script that reads "Fred Wine (by CLS)". The signature is written in black ink and is positioned above a horizontal line.

Quantum Eldersburg LLC

BY: Fred Wine, Authorized Member

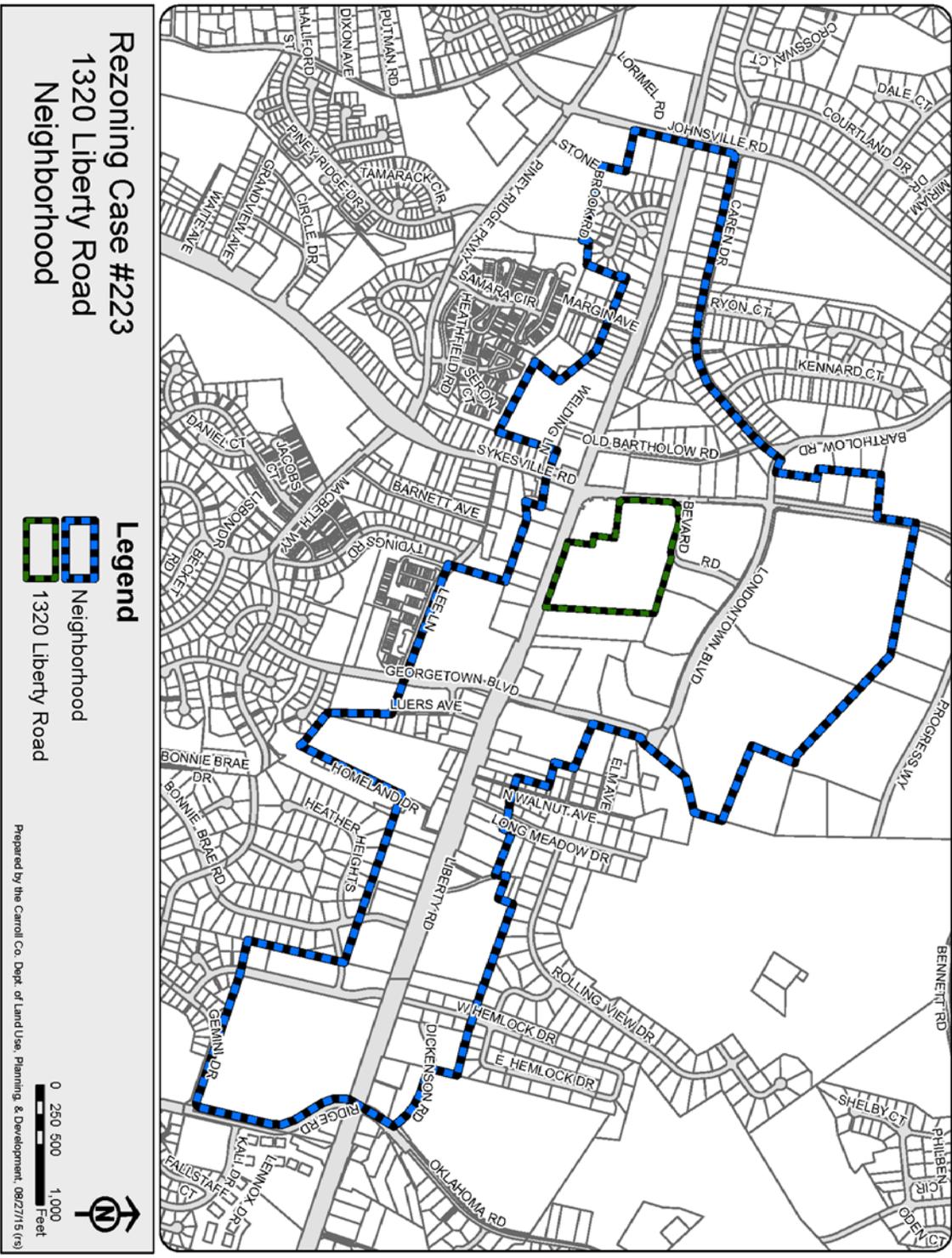
By: Clark R. Shaffer, Esquire

73 EAST MAIN STREET

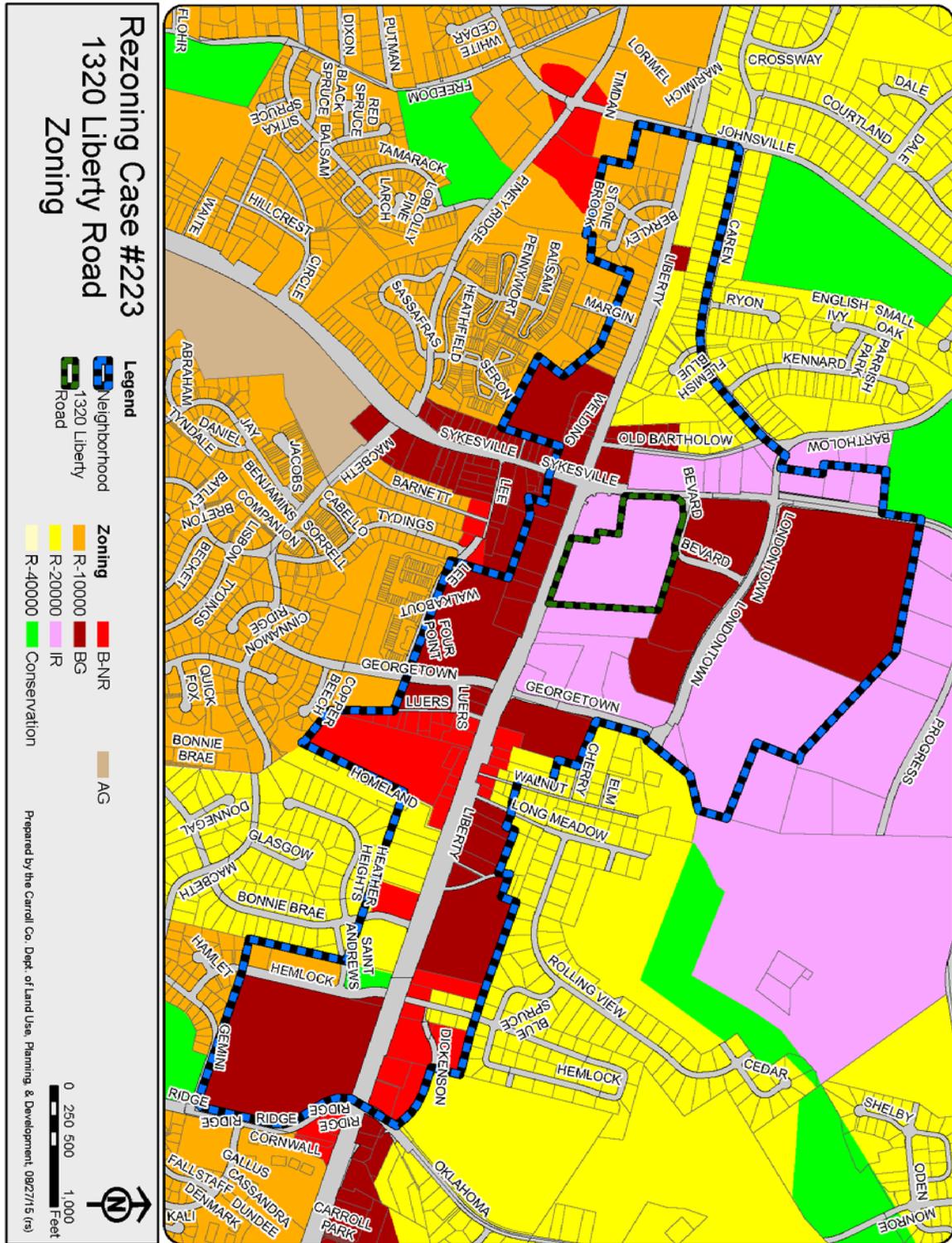
WESTMINSTER MD 21157

PHONE (410) 848-3737

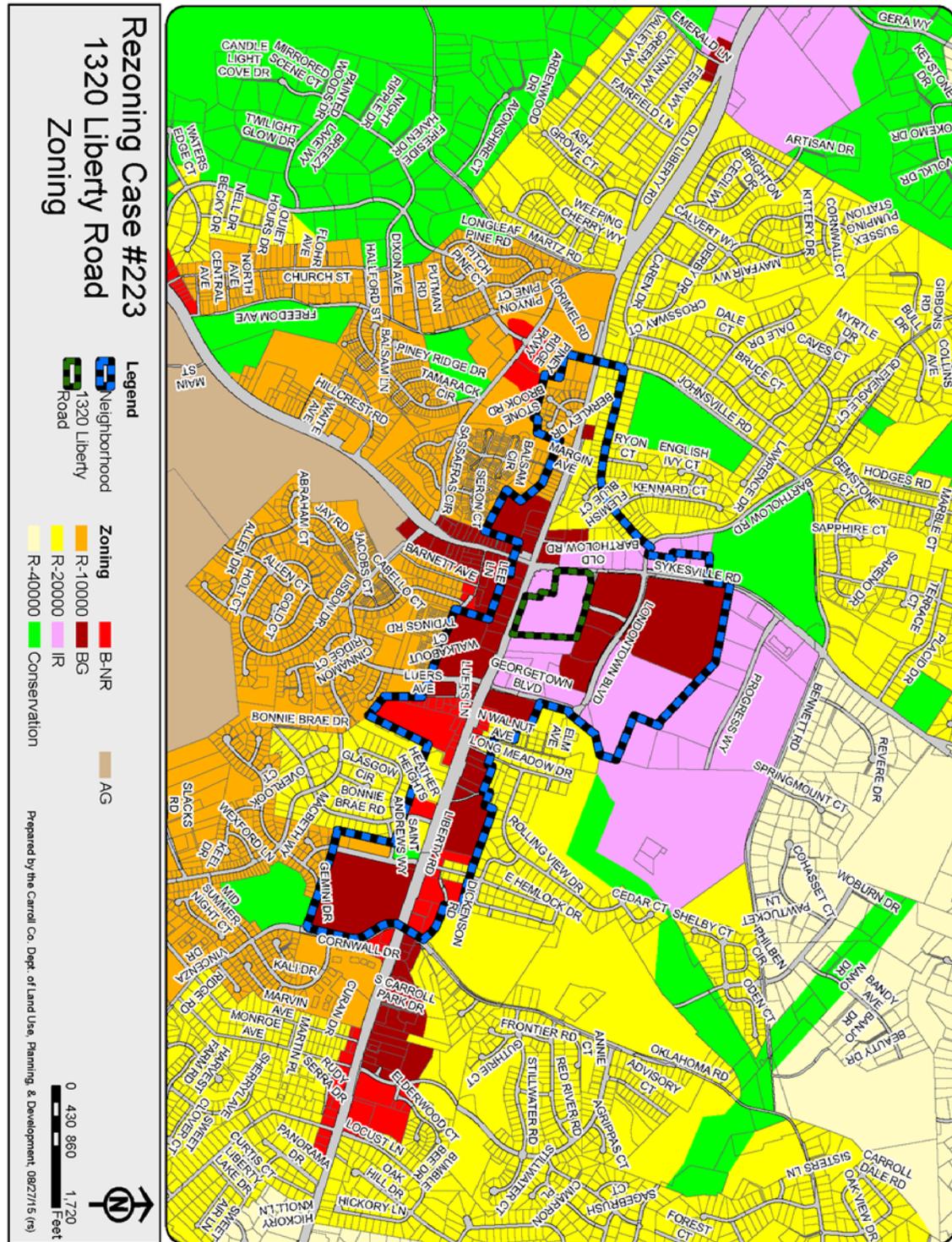
**Exhibit D**



**Exhibit E**



**Exhibit F**





**Exhibit H**

