



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

Rezoning Case No. 224 –Luers Avenue Properties

Summary:

Petitioner/Owner:	Elders Luers, LP, NJJ, LLC and Luers Lane, LLC., Petition 1205 York Road, Penthouse Lutherville, MD 21093
Petitioner’s Attorney:	Elders Luers, LP, NJJ, LLC and Luers Lane, LLC., Owners 1205 York Road, Penthouse Lutherville, MD 21093 J. Brooks Leahy 127 East Main Street Westminster, MD 21157
Current Zoning:	“B-NR” Business Neighborhood Retail Business
Requested Zoning:	“B-G” General Business
Total Acreage:	15.56 acres (11 individual parcels that will be consolidated if rezoning in Approved)
Existing Use of Land:	11 individual parcels total- 5 properties are being used residentially and the rest are currently vacant
Comprehensive Plan:	<i>2001 Freedom Community Comprehensive Plan</i>
Land Use Designation:	“B-NR” Business Neighborhood Retail
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 B-NR to B-G for the subject properties.

Request Description:

The request is to reclassify 11 parcels that together total 15.56 acres from Neighborhood Retail Business (B-NR) to General Business (BG). The subject property is located on the south side of Liberty Road (MD 26) and eastside of Luers Avenue. The property has a land use designation of Local Business in the *2001 Freedom Community Comprehensive Plan*.

Request in Detail:

The subject property is comprised of 11 parcels that together total 15.56 acres located on the south side of Liberty Road (MD 26) and eastside of Luers Avenue. (see Exhibit A – Rezoning Plat).

The property has a land use designation of Local Business 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 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 October 19, 2015 in accordance with the Carroll County Procedures for Rezoning.

Findings:

1. Property Use and Development History

The eleven parcels included within the petition area were created by deed. Five of these properties are currently being used residentially and developed between 1930 and 1965. The other six parcels within this rezoning petition are vacant.

2. Soils

The property lies within six soil series as identified and defined by USDA's Natural Resources Conservation Service (NRCS) as the following: Brinklow Channery Loam, 8 to 15 percent slopes (BrC- This soil type is on farmland. Classification is well drained. This soil type represents 3.9 acres), Brinklow Channery Loam, 15 to 25 percent slopes (BrD- This soil type is on not farmland. Classification is well drained. This soil type represents 0.2 acre) Glenelg channery loam, 3 to 8 percent slopes (GeB- This soil type is on prime farmland. Classification is well drained. This soil type represents 7.1 acres), Glenelg-Urban land complex, 0 to 8 percent slopes (GfB- This soil type is on not farmland. Classification is well drained. This soil type represents 2.0 acres), Manor loam, 15 to 25 percent slopes (MaD- This soil type is not prime farmland. Classification is well drained. This soil type represents 1.9 acres), Urban Land-Udorthents Complex, 0 to 8 percent slopes (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 0.1 acre). The soil classification for the remaining .368 acre 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 October 19, 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:

Gary Dye, Carroll County Bureau of Utilities (Letter dated October 22, 2015):

“Parcels 506,822, 823 and 824 are served by both public water and sewer. Parcel 341 is served by only public sewer. If the 11 contiguous parcels are to be consolidated, in the event the request to rezone is granted, the existing water and sewer lateral connections shall be removed in accordance with Bureau of Utilities specifications. Each parcel or lot of land shall be permitted one water connection lateral and one sewer connection lateral only. Size of the water and sewer laterals shall be dependent on the proposed use of the newly created parcel and applicable area connection charges shall apply.”

Jack Lyburn, Carroll County Department of Economic Development (Memorandum dated October 26, 2015):

“The Department of Economic Development supports the rezoning request for the rezoning of several parcels totaling 15.56 acres from BNR to BG.

The limited uses and maximum size of square footage allowed in a BNR zone is not the most fitted to these lots. While the highest and best use for the lots in question is a business designation, given the high traffic counts and heavy commercialization that currently exists along MD 26, these lots would be best suited for BG zone.”

Clay Black, Carroll County Bureau of Development Review (Memorandum dated November 3, 2015):

“A planned major street ‘As shown of the Freedom Plan’ impacts this property.”

Eric Beckett, Chief, Regional and Intermodal Planning Division, State Highway Administration (Letter dated November 10, 2015):

“While there is no objection on our part to the actual rezoning, the State Highway Administration has an interest in traffic conditions on MD 26 (Liberty Road) and we want to make sure this rezoning and consolidation of parcels does not run counter to the plan to improve MD 26 from MD 32 to Liberty Reservoir that is part of the Development and Evaluation Program of the Maryland Department of Transportation’s Consolidated Transportation Plan. Eldersburg Commons, the former Carrolltown Mall property, is the recent example of this, where the full movement access points are provided via county or local roads.”

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- The front commercial portion of the property has approximately 348 feet of frontage on MD 26 and 761 feet on Luers Avenue. The properties that are being used for residences currently have vehicular access from Luers Avenue.

MD 26 is classified by the state as an urban principal arterial. Luers Avenue is a Local Urban Roadway. 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 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.

Transit- The Trailblazer route runs in front of the properties that face MD 26. There are multiple Trailblazer stops nearby. The closest stops are at the Freedom Village Shopping Center on Georgetown Boulevard and the Food Lion grocery store on W. Hemlock Road.

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

At the time of the original zoning adopted by the County in 1965, the northwest corner of the petition area was zoned “BG” General Business (fronting on MD 26), with the remainder of the petition area zoned Residential “R-10,000.”

In 1990, the County adopted a small area amendment (known as the Eldersburg Small Area Amendment) to the “Mini” Plan and corresponding comprehensive rezoning for the amendment area. The amendment area included the petition area plus the adjoining parcels fronting on MD 26 and the adjoining property to the east, which is now the Homeland development. The amendment was in response to property owner requests to enlarge areas designated for business uses so that they were more developable. Careful consideration was given to the effect of additional business designations on the surrounding residential areas. The need to remain true to the goals of the “Mini” Plan also was considered, particularly with respect to avoiding the creation of strip development by punctuating areas of commercial development with other uses.

In the October 17, 1989 Special Report to the Planning Commission concerning the Eldersburg Small Area Amendment, staff indicated that “Neighborhood Business” was the most appropriate designation because this designation already existed on several properties in the amendment area and it provided a good transition zone between the “General Business” to the west and the “Medium Density Residential” to the east. The Report also stated that “the much more intense uses allowed in the General Business Designation would present the potential for considerable negative impacts on existing and future residential uses.” (Note: the Report focused on the two residential developments that existed in 1990 and abutted the amendment area: Spencer Village, a multi-family housing development southwest of the amendment area, and Bonnie Brae, a single-family-home development east of the area.) With the adoption of the plan amendment and comprehensive rezoning, the Neighborhood Business land-use designation and corresponding “BL” zoning were extended west to Luers Avenue and south to the south boundary of parcel 61 of the petition area, adding approximately 10 acres of “BL” and subtracting the same acreage from “R-10,000.”

The zoning of the petition area was changed to “B-NR” Neighborhood Retail Business in 2006, when the “BL” district was replaced with the “B-NR” district throughout the county. Ordinance No. 06-08 amended the “BL” district by changing the text to “B-NR.” The purpose of the “B-NR” zoning 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.” The purpose statement for the “B-NR” district is the same as for the “BL” district. The impetus for the change was the concerns expressed by homeowners in residential neighborhoods that high impact uses were allowed in the “BL” district. However, the new “B-NR” district, includes changes to principal permitted uses, building height, and maximum size of individual uses, among other things.

8. Relationship of Proposed Zoning to Comprehensive Plan

The subject property was designated as Local Business in the *2001 Freedom Community Comprehensive Plan*. The zoning classification for the petition property, which is “B-NR” 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*.”

9. Mistake in the Current Zoning

The petition states that before 2006, the subject property was zoned B-L (Local Business). By a zoning text amendment, the district was renamed “Neighborhood Retail Business (B-NR) Zoning District.” The zoning text amendment became law by enactment of Ordinance 06-08, executed June 2, 2006. The Ordinance also limited uses in the new B-NR district to a maximum of 10,000 square feet of floor area per use with a limited 30% variance potential. The permitted variance was subsequently eliminated by Ordinance No. 09-02 dated April 7, 2009. The zoning change from B-L to B-NR occurred without adequate and accurate consideration of the suitability of individual parcels for the new zoning classification. This was especially true as to Parcel 61 which was 11.55 acres and was unlike the vast majority of B-L properties at the time the new B-NR took place. The Valbridge report makes clear that B-NR properties are overwhelmingly small lots only two are in excess of 5 acres, Petitioners’ Parcel 61 (11.55 acres) and EMA headquarters on Johnsville Road (8.01 acres). The restriction of uses over 10,000 square feet is appropriate for nearly all of the B-NR zoned lots, since the average land area is only 1.02 acres (Valbridge Report, page 9). The impact of the 10,000 square feet restriction on a larger parcel (such as Petitioners’ Parcel 61) makes it virtually impossible to develop such parcel for commercial uses (Valbridge Report, page 13).

This mistake was in fact found by the Planning Commission and Board of County Commissioners in Rezoning Case No. 212- Carrolltown Center, which was also B-L zoned property that became B-NR as a result of the 2006 Text Amendment. Carrolltown Center was rezoned to B-G in Rezoning Case 212 as a result of mistake.

The recognition that B-NR was inappropriate for larger parcels was further confirmed when the Finksburg Plaza property (11.46 acres) was recently rezoned from B-NR to B-G was part of the comprehensive rezoning of the Finksburg Corridor Plan.

Petitioners respectfully submit that there should have been consideration of the larger size of Parcel 61, unlike any other commercial properties in the neighborhood, before it was rezoned from B-L to B-NR. As stated earlier, the only other parcels over ten (10) acres at the time of a conversion of B-L to B-NR were Carrolltown Center and Finksburg Plaza, both of which have now appropriately been rezoned to B-G. Further, its location in the heart of the regional shopping hub, and its location in the Boulevard District described in the *2001 Freedom Community Comprehensive Plan*, made it suitable for B-G zoning and unsuitable for the new B-NR zoning.

The proposed consolidation of the ten (10) contiguous small parcels into the 11.55 acre Parcel 61 creates an appropriate commercial parcel consistent with B-G zoning. Large parcels would be more consistent with principal permitted uses with this B-G zone. Principal permitted uses within the General Business district are generally found to be readily accessible to major transportation corridors such as Maryland Route 26 and near population concentrations such as those found within the Freedom Area. Additionally, a B-G use on the subject property would be consistent with the 2001 *Freedom Community Comprehensive Plan* if granted, and would be compatible with the proposed Boulevard District (floating zone) and its main objectives to address land use, design guidelines and traffic control.

10. Change in the Character of the Neighborhood

Rezoning is also justified because of Substantial Change in the Character of the Neighborhood. First there have been a substantial increase in commercial uses in the neighborhood through both mistake/change rezoning and the conversion of many Industrial Restricted (“I-R”) zoned properties into business uses through conditional use applications.

A total of 85.84 acres in the neighborhood have been rezoned to B-G since 2008. Carrolltown Mall (29.78 acres) was rezoned from B-NR to B-G (Rezoning Case No. 212), Main Street Eldersburg, LLC (12.40 acres) was rezoned from I-R to B-G (Rezoning Case No. 213), Eldersburg Marketplace (35.66 acres) was rezoned from I-R to B-G (Rezoning Case No. 214), and Bevard Square (8.00 acres) was rezoned from I-R to B-G (Rezoning Case No. 215). In addition, four smaller properties were rezoned from R-20,000 to B-NR. M&I properties (0.88 acre Rezoning Case No.208), Opposum Hollow (0.56 acres Rezoning Case No. 218), Property on the corner of Bonnie Brae and MD 26 (2.00 acres Rezoning Case No. 221), Dickenson Road (Tract Z-1) property (2.20 acres Rezoning Case No.222) These eight rezonings are shown on “Exhibit 4,” a portion of a map showing rezoned parcel changes from 2001 to 2014 that is part of the Freedom Area Community Comprehensive Plan Area: Changes from 2001 to 2014 document dated June 2015, prepared by Carroll County Planning Staff as part of the current Freedom Comprehensive Plan update now underway.

In addition to the major rezoning previously discussed, Quantum Eldersburg, LLC has recently filed a mistake/change rezoning petition seeking to have the former Wal-Mart property (16.11 acres) rezoned from I-R to B-G in Rezoning Case No. 223.

The change in character of the neighborhood has been substantial and is further discussed in the Valbridge Report on pages 12 and 13.

Secondly, the commitment by the Petitioners to consolidate the ten small parcels and existing large parcel into one large 15.568 acre parcel is itself a substantial change within the neighborhood. This will permit the unified parcel to be developed, and because of its size and location in the heart of the Freedom Boulevard District, B-G zoning is most appropriate. On the other hand, B-NR zoning restriction to a single use no larger than 10,000 square feet makes development under B-NR nearly impossible.

Petitioners respectfully submit that rezoning the subject parcels to B-G would be a logical extension of the existing adjacent zoning district. All parcels west of the subject parcels to Maryland Route 32 are presently zoned B-G. The requested rezoning would be compatible with the existing neighborhood. The requested rezoning gives an opportunity to make an attractive B-G development in the neighborhood rather than a potential series of haphazard, unattractive shops.

Staff Recommendation:

Luers Properties Findings

Mistake

The most discernable land use trend in evidence from 2001 to the present is one of increasing commercialization. Some of this was envisioned by the Plan (2001) and some of it was not. Had the 2001 Plan designated the subject parcels as Agriculture, Residential, or Industrial (or, in other words, something other than Commercial), there would be prima facie evidence to clearly support the argument of “Mistake”. But, the fact that the parcels were designated Commercial (albeit Business Local), makes the case more difficult. However, because this property is in a commercial zoning category the argument of Mistake is harder to determine. The question centers on whether the property could have developed in a commercial manner consistent with the Plan under a Local Business designation. [Note: This designation became “BL” under the implementation of zoning.]

The petitioner suggests that the fact that one of the parcels designated local business under the 2001 Plan is a “Mistake” since the main 11 plus acre parcel’s large size could not have been developed to its highest and best use under a local business land use designation (later a “BL” zoning classification).

While there is some logical basis for a finding of “Mistake” based upon the 2001 designation, the “Mistake” analysis becomes much more evident in 2006, when the County changed the zoning code provisions governing the subject property from “BL” to B-NR”. While still commercial in nature, the provisions of the “B-NR” district are much more restrictive than the provisions of the “BL” District it replaced. When the questions in the analysis above are reevaluated based upon the limiting nature of the “B-NR” District, the answers to those questions change. For example, could the property have developed in a commercial nature consistent with the Plan under a “B-NR” zoning classification? The answer to that question is: Probably not. Would the development of the subject parcels have been facilitated more expeditiously and/or to a greater degree and/or to a greater effectiveness under a “B-NR” designation? The answer is: Definitely not. Staff is much more confident that the petitioner’s case of “Mistake” is supported by these facts. It is extremely unlikely that a parcel as large as 11.55 acres could have been developed in its highest and best commercial use under the provisions of the “B-NR” District. As the applicant alleges in their petition, this was the case with the Carrolltown property and the Finksburg Shopping Plaza property. This may also explain at least some of the reason why this property has remained undeveloped for the past decade.

It is important to note that the “Mistake” in the opinion of staff is with the 2006 imposition of the “B-NR” zoning classification rather than the original classification of “BL” based upon the 2001 Plan’s land use designation of local business. Clearly, the “B-NR” classification was implemented without the benefit of a comprehensive process that included appropriate levels of planning analysis. As such, it was fatally flawed in execution and erroneous in application.

Change

As earlier stated, significant “Change” has taken place in the neighborhood since 2001. Also, as noted, some of this “Change” is consistent with the Plan and some represents a departure from anticipated future conditions. Pursuant to the provision of 4-204 of the Annotated Code, “. . . the legislative body shall make findings of fact that address: population change; the availability of public facilities; present and future transportation patterns; compatibility with existing and proposed development for the area; the recommendation of the Planning Commission; and the relationship of the proposed amendment to the local jurisdiction’s plan.”

It is a judgement call as to whether the majority of the petitioners allegations of “Change” are sufficient to support the claims, however when one factor is parcel consolidation this argument becomes significantly more difficult to refute. As noted in the petitioner’s report, it is the intent of the property owners to consolidate all 11 parcels into one parcel totaling 15.56 acres. This consolidation will be timed to take effect simultaneously with the zoning map amendment. The ability to develop this parcel in a commercial manner consistent with the 2001 Plan representing the highest and best use of this property will be exacerbated under a consolidated scenario and was not envisioned by the 2001 Freedom Community Comprehensive Plan.

Another “Change” factor that demands attention is the “Change” resulting from the 2006 rezoning. The 2006 zoning decision had a huge impact upon the manner in which the subject property and, in fact, all “BL” properties could be utilized. This “Change” was not anticipated by the 2001 Plan, but it clearly has had a “Change” in the character of the neighborhood in terms of types of uses that could occur and the manner in which they could occur, the intensity and the likelihood of a property being developed, and a long-term economic viability of the neighborhood. For these reasons, staff recommends a finding of “Change” in the character of the neighborhood sufficient to justify the requested zoning map amendment.

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 recommended that this property be rezoned from “B-NR” to “B-G” based on a “mistake” in the current zoning and “change in the character of the neighborhood.”

Exhibit A



**Rezoning Case #224
Luers Avenue Properties
Plat**

0 250 500 1,000 Feet

Prepared by the Carroll Co. Dept. of Land Use, Planning, & Development, 10/19/15 (rs)

Exhibit B

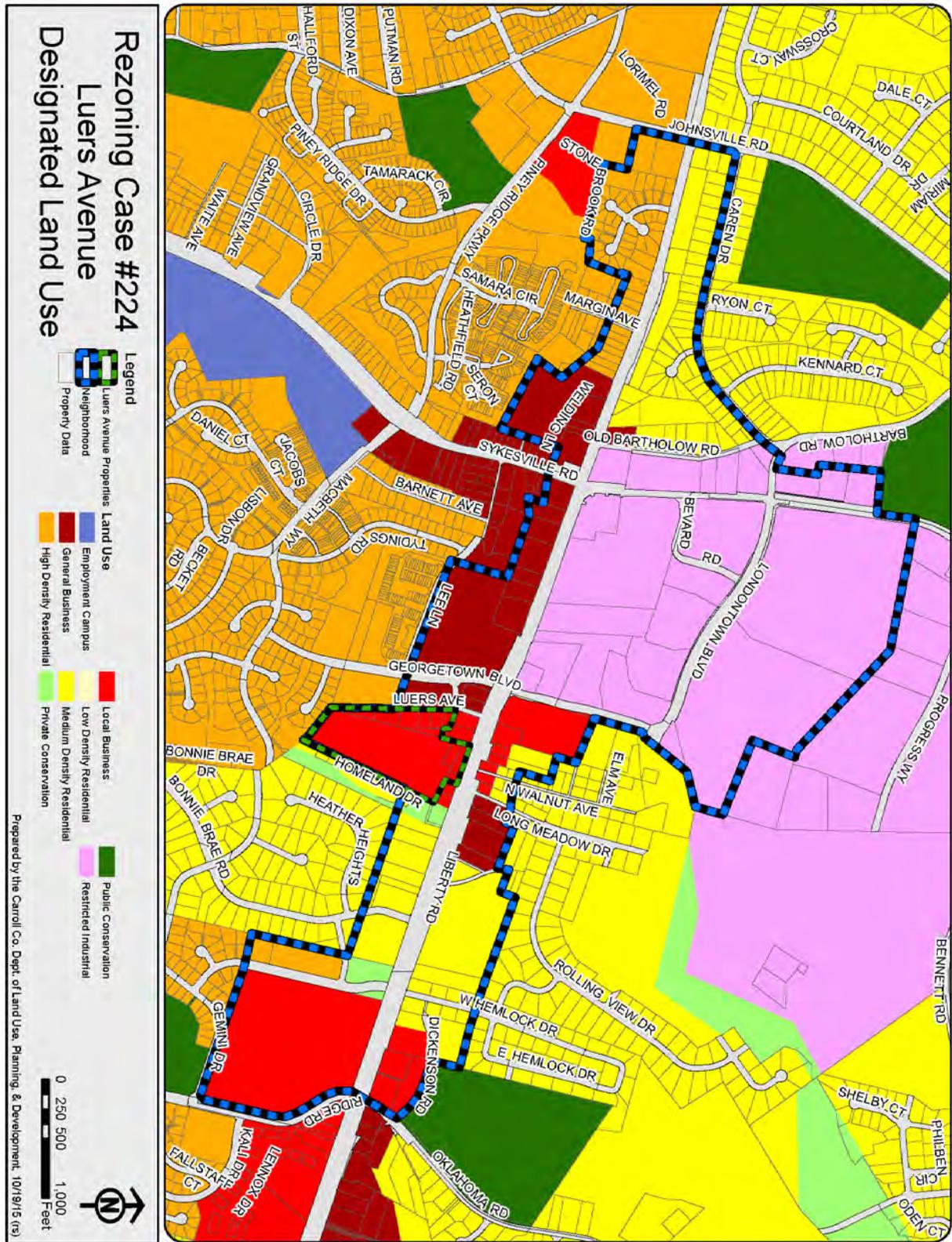


Exhibit C

STATEMENT IN SUPPORT OF PETITION

Petitioners respectfully request a change in the zoning of Tax Map 73, Parcels, 61, 62, 119, 290, 341, 506, 797, 798, 822, 823 and 824, containing a combined 15.57 acres±, located in the Freedom District of Carroll County, Maryland. The subject lots are contiguous properties located between Luers Avenue and Homeland Drive on Maryland Route 26 in Election District 5. Each lot is presently zoned B-NR (Neighborhood Retail Business District), and Petitioners respectfully request a change in the zoning of each parcel to B-G (General Business District).

The current owners of the Parcels are three (3) different entities, ELDER LUERS, LP, a Maryland limited partnership, NJJ, LLC and LUERS LANE, LLC, Maryland limited liability companies, which entities are owned by the Mangione Family. Petitioners have agreed to consolidate the eleven (11) contiguous parcels and have executed and placed in escrow a Deed of Consolidation, copy attached as "Exhibit 1." In the event Petitioners' Request to Rezone the Properties to BG is granted, then the Deed of Consolidation will be recorded among the Land Records of Carroll County. The properties will then constitute a single Parcel owned by LUERS LANE, LLC.

The current use of the subject parcels is mixed. Lots located along Luers Avenue are improved by six (6) single-family residential rental units. The remaining parcels are unimproved. Each parcel was acquired by its present owner prior to 2006, after which time, by action of the county, the subject parcels were rezoned from B-L (Local Business District) to B-NR.

The agreed upon neighborhood for this petition area is located within the Freedom designated growth area and consists of approximately 385 acres as shown on "Exhibit 2." The neighborhood has been defined as the geography along both sides of Liberty Road from Ridge and Oklahoma Roads on the east to Johnsville Road on the west. The neighborhood is predominantly commercial and is in fact the regional

shopping hub for southern Carroll County. A more thorough description of the neighborhood and its predominant commercial character appears in The Valbridge Report attached as "Exhibit 3" at pages 3 through 6.

Petitioners submit two (2) bases in support of its request to rezone the subject property from B-NR to B-G. First, Petitioners submit that mistake in the rezoning of the parcels from B-L (Local Business District) to B-NR rather than B-G justifies the rezoning. Additionally, Petitioners submit substantial change in the character of the neighborhood justifies the rezoning.

I. Mistake

Petitioners respectfully submit that rezoning is justified because of mistake in the zoning of the property. Before 2006, the subject property was zoned B-L (Local Business). By a zoning text amendment, the district was renamed "Neighborhood Retail Business (B-NR) Zoning District." The zoning text amendment became law by enactment of Ordinance 06-08, executed June 2, 2006. The Ordinance also limited uses in the new B-NR district to a maximum of 10,000 square feet of floor area per use with a limited 30% variance potential. The permitted variance was subsequently eliminated by Ordinance No. 09-02 dated April 7, 2009. The mistake is the adequacy and accuracy of the factual premises that underlie the conclusion drawn to rezone the subject parcels from B-L to B-NR.

The zoning change from B-L to B-NR occurred without adequate and accurate consideration of the suitability of individual parcels for the new zoning classification. This was especially true as to Parcel 61 which was 11.55 acres and was thus unlike the vast majority of B-L properties at the time the new B-NR zoning took place. The Valbridge Report makes clear that B-NR properties are overwhelmingly small lots. Only two (2) are in excess of 5 acres, Petitioners' Parcel 61 (11.55 acres) and EMA Headquarters on Johnsville Road (8.01 acres). The restriction of uses over 10,000 square feet is appropriate for nearly all of the B-NR zoned lots, since the average land area is only 1.02 acres (Valbridge Report, page 9). The impact of the 10,000 square

feet restriction on a larger Parcel (such as Petitioners' Parcel 61) makes it virtually impossible to develop such parcel for commercial uses (Valbridge Report, page 13).

This mistake was in fact found by the Planning Commission and Board of County Commissioners in rezoning case no. 212 – Carrolltown Center, which was also a B-L zoned property that became B-NR as a result of the 2006 Text Amendment. Carrolltown Center was rezoned to B-G in Rezoning Case No. 212 as a result of mistake.

The recognition that B-NR was inappropriate for larger parcels was further confirmed when the Finksburg Plaza property (11.46 acres) was recently rezoned from B-NR to B-G as part of the comprehensive rezoning of the Finksburg Mini Plan.

Petitioners respectfully submit that there should have been consideration of the large size of Parcel 61, unlike any other commercial properties in the neighborhood, before it was rezoned from B-L to B-NR. As stated earlier, the only other parcels over ten (10) acres at the time of the conversion of B-L to B-NR were Carrolltown Center and Finksburg Plaza, both of which have now appropriately been rezoned to B-G. Further, its location in the heart of the regional shopping hub, and its location in the Boulevard District described in the 2001 Freedom Mini Plan, made it suitable for B-G zoning and unsuitable for the new B-NR zoning.

The proposed consolidation of the ten (10) contiguous small parcels into the 11.55 acre Parcel 61 creates an appropriate commercial parcel consistent with B-G zoning. Large parcels would be more consistent with principal permitted uses within the B-G zone. Principal permitted uses within the General Business District are generally found to be readily accessible to major transportation corridors such as Maryland Route 26 and near population concentrations such as those found within the Freedom area. Additionally, a B-G use on the subject property would be consistent with the Freedom Community Comprehensive Plan if granted, and would be compatible with the proposed Boulevard District (floating zone) and its main objectives to address land use, design guidelines and traffic control.

II. Substantial Change in Character of Neighborhood

Rezoning is also justified because of a substantial change in the character of the neighborhood. First, there has been a substantial increase in commercial uses in the neighborhood through both mistake/change rezoning and the conversion of many IR zoned properties into business uses through conditional use applications.

85.84 acres in the neighborhood, representing 22.3% of the neighborhood, have been rezoned to B-G since 2008. Carrolltown Mall (29.78 acres) was rezoned from B-NR to B-G (rezoning case 212), Main Street Eldersburg, LLC (12.4 acres) was rezoned from IR to B-G (rezoning case 213), Bevard Square (8.0 acres) was rezoned from IR to B-G (rezoning case 215), and Eldersburg Market Place (35.66 acres) was rezoned from IR to B-G (rezoning case 214). In addition, four (4) other smaller properties were rezoned from R-20 to B-NR. M & I Properties (0.8809 acres, no. 208), Opposum Hollow (0.563 acres, no. 218), Bray Properties (2.0 acres, no. 221), and M & I Properties (2.205 acres, no. 222). These eight (8) rezoning are shown on "Exhibit 4," a portion of a map showing rezoned parcel changes from 2001 to 2014 that is part of the Freedom Community Comprehensive Planning Area: Changes from 2001 to 2014 document, dated June 2015, prepared by the Carroll County Planning Staff as part of the current Freedom Comprehensive Plan now underway.

In addition to the major rezoning previously discussed, Quantum Eldersburg, LLC has recently filed a mistake/change rezoning petition seeking to have the former WalMart property (16.11 acres) rezoned from IR to B-G, rezoning Case No. 223.

The change in character of the neighborhood has been substantial and is further discussed in the Valbridge Report at pages 12 through 13.

Secondly, the commitment by Petitioners to consolidate the ten (10) small parcels and existing large parcel (61) into one large 15.568 acre parcel is itself a substantial change within the neighborhood. This will permit the unified parcel to be developed, and because of its size and location in the heart of the Freedom Boulevard District, B-G zoning is most appropriate. On the other hand, B-NR zoning's restriction to

a single user no larger than 10,000 square feet makes development under B-NR nearly impossible.

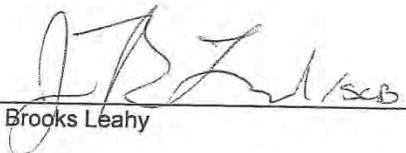
Petitioners respectfully submit that rezoning the subject parcels to B-G would be a logical extension of the existing adjacent zoning district. All parcels west of the subject parcels to Maryland Route 32 are presently zoned B-G, and a part of the grouping is already zoned B-G, and the requested rezoning would be compatible with the existing neighborhood. The requested rezoning gives an opportunity to make an attractive B-G development in the neighborhood rather than a potential series of haphazard, unattractive shops.

III. Standard of Review

Finally, Petitioners submit that a more liberal standard is applicable on the present rezoning petition. The general rule in Maryland is that Courts require substantial evidence of change or mistake to uphold zoning amendment, although the standard may be relaxed when the reclassification is from one use subcategory to another rather than to an entirely different use classification. See, Tennison v. Shomette, 38 Md. App. 1 (1977). The present zoning of the subject property permits uses for retail businesses and services; reclassification to B-G would maintain the use of the property for business purposes. Accordingly, Petitioners respectfully submit a more liberal standard should be applied because the reclassification sought is from one use to a similar use.

The property is served by public water, sewer and roads. Petitioners respectfully request the rezoning from B-NR to B-G for the subject parcels so that retail trades, businesses and services more appropriate to the general business land designation can be developed for the benefit and needs of the neighborhood.

Respectfully submitted,



J. Brooks Leahy

DULANY LEAHY CURTIS & BEACH LLP
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Westminster, Maryland 21157
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E-Mail: leahy@dulany.com
Attorneys for Petitioners
ELDER LUERS, LP
NJJ, LLC
LUERS LANE, LLC

S:\WPDOCS\ - GENERAL FILES\M\Mangione Property Eldersburg\9150-0003 - re Mistake Change
Rezoning 2015\Statement in Support of Petition-clean revised.docx

Return to:
DULANY, LEAHY,
CURTIS & BEACH, LLP
127 E. Main St.
Westminster, MD 21157

DEED OF CONSOLIDATION

THIS DEED OF CONSOLIDATION, made this 18th day of SEPTEMBER, in the year two thousand fifteen, by and between ELDER LUERS LP, a Maryland limited partnership, (also known as ELDER LEURS, LP), NJJ, LLC, a Maryland limited liability company, and LUERS LANE, LLC, a Maryland limited liability company, Grantors, and LUERS LANE LLC, a Maryland limited liability company, Grantee.

WHEREAS, Grantors are the owners of 11 contiguous lots or parcels of ground situate on the south side of Liberty Road east of Georgetown Boulevard in the Fifth Election District of Carroll County, Maryland; and

WHEREAS, the Grantors desire to consolidate the 11 contiguous parcels into a single consolidated parcel; and

WHEREAS, Elder Luers LP and NJJ, LLC are predecessor entities transferring title to real estate to Luers Lane LLC, a Maryland limited liability company and the members of NJJ, LLC and the partners of Elder Luers LP are identical to the members of Luers Lane LLC and the allocation of the profits and losses of Luers Lane LLC are identical to the members and partners allocations of profits and losses of the converting predecessor entities.

NOW THEREFORE, THIS DEED OF CONSOLIDATION WITNESSETH, that for no monetary consideration and other



good and valuable consideration, the said Grantors do hereby grant, convey and assign unto the said Grantee, its successor and assigns, in fee simple, all their right, title and interest unto the consolidated parcel herein described and attached hereto as Exhibit A, being a consolidated parcel containing 15.568 acres of land, more or less.

BEING ALL and the same property as described in the following deeds:

That Deed of Florence N. Munshower dated October 14, 1997 conveyed to Elder Luers LP, a Maryland limited partnership by Deed recorded among the Land Records of Carroll County in Liber 2019, folio 001, etc.;

That Deed dated May 19, 2011 by and between Rosemary M. Juras, et al., conveyed to Luers Lane, LLC as said Deed is recorded among the Land Records of Carroll County in Liber 6561, folio 170, etc.;

That Deed dated September 21, 2006 by and between Elder Luers LP, a Maryland limited partnership, Grantor, to NJJ, LLC, a Maryland limited liability company, Grantee, as said Deed is recorded among the Land Records of Carroll County in Liber 5018, folio 706, etc.;

That Deed dated October 14, 1997 by and between Florence M. Munshower, Grantor, and Elder Luers LP, a Maryland limited partnership, Grantee, as said Deed is recorded among the Land Records of Carroll County in Liber 2018, page 990, etc.; and

That Deed dated May 1, 2011 by and between Rosemary M. Juras, et al., unto Luers Lane, LLC, Grantee,

as said Deed is recorded among the Land Records of Carroll County in Liber 6561, page 160, etc.; and

That Deed dated December 22, 2000 by and between Edward F. Nickoles, Grantor, and Luers Lane, LLC, Grantee, as said Deed is recorded among the Land Records of Carroll County in Liber 2452, page 301, etc.; and

That Deed dated September 21, 2006 by and between Elder Luers LP, a Maryland limited partnership, and NJJ, LLC, a Maryland limited liability company, Grantee, as said Deed is recorded among the Land Records of Carroll County in Liber 5018, page 702, etc.; and

That Deed dated October 14, 1997 by and between Florence M. Munshower, Grantor and Elder Luers LP, a Maryland limited partnership, Grantee, as said Deed is recorded among the Land Records of Carroll County in Liber 2019, page 004, etc.; and

That Deed of two tax parcels dated December 22, 2000 by and between Edward F. Nickoles, Grantor, and Luers Lane, LLC, a Maryland limited liability company, Grantee, as said Deed is recorded among the Land Records of Carroll County in Liber 2452, page 301, etc.; and

That Deed dated My 7, 2001 by and between Edward F. Nickoles, Grantor, and Luers Lane Limited Liability Company, Grantee, as said Deed is recorded among the Land Records of Carroll County in Liber 2536, page 001, etc.; and

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every of the rights, alleys, ways, waters, privileges, appurtenances and

advantages, to the same belonging, or anywise appertaining.

TO HAVE AND TO HOLD the said parcel of ground and premises above described and mentioned and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said Luers Lane, LLC, its successors and assigns, forever in fee simple.

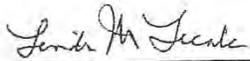
THE PARTIES hereto certify that there was no actual monetary consideration for the transfer of the hereinabove described property. TOTAL PAYMENT FOR WITHHOLDING IS ZERO (0.00).

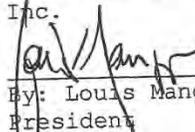
AND THE SAID GRANTORS hereby covenants that they have not done or suffered to be done any act, matter or thing whatsoever to encumber the property conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of the said Grantors.

WITNESS/ATTEST:

ELDER LUERS LP, a
Maryland limited
liability partnership,
also known as ELDER
LEURS LP
By: Elder Leurs General,
Inc.



 (SEAL)
By: Louis Mangione,
President

LUERS LANE, LLC, a

Linda M. Justice

Maryland limited liability company
[Signature] (SEAL)
By: Louis Mangione,
Managing Member

Linda M. Justice

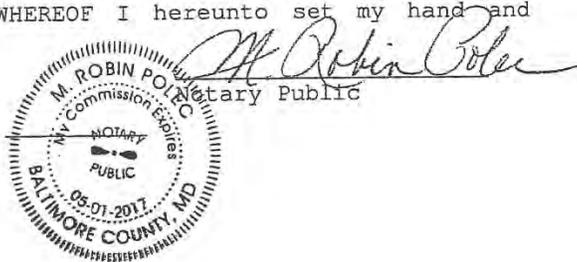
NJU, LLC, a Maryland limited liability company
[Signature] (SEAL)
By: Louis Mangione,
Managing Member

STATE OF MARYLAND)
COUNTY OF BALTO.) TO WIT:
~~CARROLL~~

ON THIS, the 18th day of Sept., 2015, before me, a Notary Public, the undersigned officer, personally appeared Louis Mangione, President of Elder Leurs General, Inc., General Partner of Elder Luers LP, also known as Elder Leurs LP, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained and in the capacity herein stated.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

My Commission expires:



STATE OF MARYLAND)
) TO WIT:

COUNTY OF ~~GARROLL~~ ^{BALTO})

ON THIS, the 18th day of Sept, 2015, before me, a Notary Public, the undersigned officer, personally appeared Louis Mangione, as Managing Member, of Luers Lane, LLC, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained and in the capacity herein stated.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

My Commission expires: _____



STATE OF MARYLAND)
^{BALTO}) TO WIT:
COUNTY OF ~~GARROLL~~)

ON THIS, the 18th day of Sept, 2015, before me, a Notary Public, the undersigned officer, personally appeared Louis Mangione, as Managing Member, of NJJ, LLC, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained and in the capacity herein stated.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

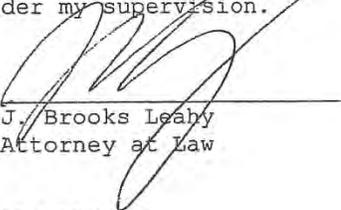
My Commission expires: _____



NO TITLE EXAMINATION _____

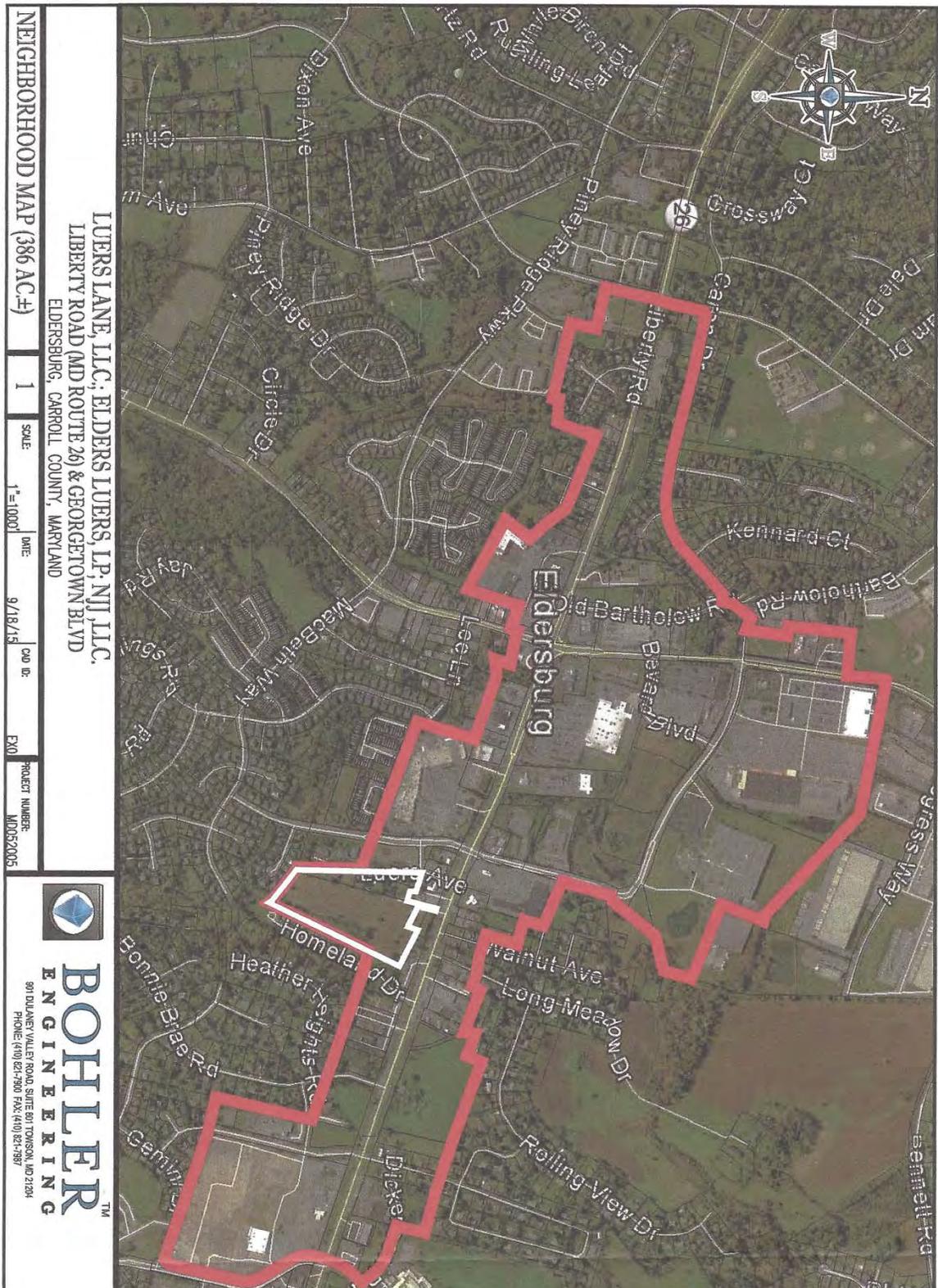
CERTIFICATION

I HEREBY CERTIFY that I am an attorney at law admitted to practice in the State of Maryland and that this instrument was prepared by me or under my supervision.



J. Brooks Leahy
Attorney at Law

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Valbridge
PROPERTY ADVISORS

Lipman Frizzell & Mitchell LLC

Market Feasibility Analysis

B-NR Land in Eldersburg
Carroll County
Maryland

FOR
Dulany Leahy Curtis & Beach LLP
127 E. Main Street
Westminster, MD 21157

Valbridge Property Advisors
Lipman Frizzell & Mitchell, LLC

Liberty Place at Columbia Crossing
6240 Old Dobbin Lane, Suite 140
Columbia, Maryland 21045
410.423.2300
410.423.2410 fax

EXHIBIT

tabbles
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Valbridge

PROPERTY ADVISORS

Lipman Frizzell & Mitchell LLC

September 15, 2015

Mr. J. Brooks Leahy, Esq.
Dulany Leahy Curtis & Beach LLP
127 E. Main Street
Westminster, MD 21157

**SUBJECT: B-NR LAND IN ELDERSBURG
ANALYSIS**

Dear Mr. Leahy:

Enclosed please find Valbridge Property Advisors/Lipman Frizzell & Mitchell's analysis of certain issues regarding the petition to reclassify 15.568 acres of land in the Eldersburg area of Carroll County from a "B-NR" (Neighborhood Retail Business) designation to a "B-G" (General Business) designation.

We find that the reclassification of the petition's Parcel 61 to B-G is warranted because of a mistake in its 2006 rezoning to a B-NR classification, particularly due to its restriction on the maximum size of uses. We further recommend that the Petitioner's ten remaining small parcels should be rezoned B-G in order to achieve their highest and best use in alignment with the County's comprehensive plans for the Liberty Road corridor. In addition, we find that the above rezonings are supported by substantial change in the character of the relevant neighborhood in recent years which had not been anticipated in the County's plans. The enclosed report summarizes our reasoning process.

It has been a pleasure working with you on this project. Call me at (410) 423-2372 should you have any questions or comments.

Respectfully submitted,

VALBRIDGE PROPERTY ADVISORS/LIPMAN FRIZZELL & MITCHELL LLC

Joseph M. Cronyn

Joseph M. Cronyn
Senior Managing Director

LIBERTY PLACE AT COLUMBIA CROSSING • 6240 OLD DOBBIN LANE, SUITE 140 • COLUMBIA, MARYLAND 21045
(410) 423-2300 • FAX (410) 423-2410 • WWW.LFMVALUE.COM

B-NR Land in Eldersburg—Analysis

I. INTRODUCTION

Valbridge Property Advisors/Lipman Frizzell & Mitchell LLC (Valbridge/LF&M) has been engaged by Dulany, Leahy Curtis & Beach, LLP (Attorney) in connection with the petition to reclassify 15.568 acres of land in the Eldersburg area of Carroll County from a "B-NR" (Neighborhood Retail Business) designation to a "B-G" (General Business) designation.

A. SCOPE OF WORK

In conducting this analysis we have accomplished the following tasks:

- Inspected the subject site, neighborhood and Freedom District;
- Reviewed and analyzed Maryland Department of Assessments & Taxation records regarding parcel areas, land use and other characteristics;
- Reviewed the Carroll County zoning ordinance regarding descriptions of zoning classifications;
- Reviewed Carroll County zoning and other maps to determine parcel zoning;
- Reviewed the previous rezoning petition and Planning Department staff comments;
- Reviewed description of relevant "neighborhood" for zoning considerations;
- Reviewed historical comprehensive plans for the Eldersburg area;
- Surveyed neighborhood and other relevant areas within Carroll County regarding characteristics of B-NR zoned land;
- Summarized the analysis, conclusions and recommendations in the following report.

B. ORGANIZATION OF REPORT

Following this Section I, our report is organized in three sections as follows: Section II, site description; Section III, zoning issues; and Section IV, conclusions and recommendations.

C. QUALIFICATIONS OF CONSULTANT

Valbridge/LF&M is a multi-faceted real estate consulting and appraisal firm serving the Mid-Atlantic since 1977. The company is the largest real estate advisory firm headquartered in the Region, with 25 professionals in our Columbia, MD offices. Joseph M. Cronyn, Senior Managing Director, is the principal in charge of this assignment. Cronyn's resume is included as Appendix A at the end of this study. Additional information on the firm and Cronyn is available on the firm's website at "valbridge.com".

B-NR Land in Eldersburg—Analysis

II. SITE DESCRIPTION

In this section, Valbridge/LF&M describes the subject land and its neighborhood location in the Eldersburg area of Carroll County.

A. SITE DESCRIPTION

The petition area consists of 11 contiguous parcels of land totaling 15.568 acres located south of Liberty Road (MD Route 26) and east of Luers Avenue. The Petitioner in this case is various related entities, which ultimately control all of the parcels at issue in this case and which propose consolidation of the parcels for purposes of the rezoning consideration. The inventory of parcels is as follows:

Petition Area	
Parcel	Acres
61	11.55
62	0.471
119	0.391
290	0.312
341	0.576
506	0.381
797	0.189
798	0.443
822	0.353
823	0.352
824	0.550
Total	15.568

The current use of the parcels is mixed, with the six parcels along Luers Avenue being improved with single family detached structures. The remaining parcels are unimproved. The area has limited frontage on Liberty Road and can currently be entered only from Luers Avenue.

B. IMMEDIATE SURROUNDINGS

The petition area is adjacent to Parcel 731/Lot 3 which is controlled by the Petitioner and is located on the west side of Luers Avenue. That Lot 3 is 2.32 acres and currently zoned B-G. It could be assembled with the subject land, permitting an assemblage totaling 17.89 acres with frontage on and direct access from Georgetown Boulevard.

B-NR Land in Eldersburg—Analysis

The area is adjoined by the Spencer Village apartments to the west, single family detached homes on Copper Beech Court to the south and elevator condominium buildings along Homeland Drive to the east. The area sits at an elevation significantly above those residential uses due to changes in topography.

The area is immediately adjoined by commercial uses at its northern edge:

- 6309 Luers Avenue is located a converted detached residential dwelling currently housing Cathy's Tag & Title.
- 6301 Luers Avenue (corner of Liberty Road) is located a Midas auto service center with four service bays.
- Traveling east along Liberty Road towards Homeland Drive are located:
 - Linkoff Dental Center at 1445 Liberty Road,
 - Rippel's Florist at 1519 Liberty Road,
 - Eldersburg Veterinary Hospital at 1527 Liberty Road.

C. NEIGHBORHOOD

The petition area's "neighborhood" has been defined as the geography along both sides of Liberty Road from Ridge and Oklahoma Roads on the east to Johnsville Road on the west, which is overwhelmingly commercial in use (though some limited residential and institutional uses are present).

The neighborhood's area is estimated by Planning at approximately 385 acres. Our analysis of tax records in the area indicates that approximately 189 of those acres (49.1%) are devoted to commercial land uses—including principally retail uses. The tax records also indicate that structures on that land total approximately 1.16 million sq.ft. of improved space. We have not included "exempt commercial" (i.e., religious or public) or industrial uses in our total. The neighborhood's major commercial uses include:

- Freedom Village Shopping Center
- Eldersburg Marketplace
- Londontown Square
- Wal-Mart (former site)
- Eldersburg Plaza
- Eldersburg Commons (Carrolltown Mall)
- Princess Shopping Center
- Numerous small strip shopping centers, office buildings and individual small commercial uses

The neighborhood includes two commercial uses which have been relatively recently re-zoned to "B-G": Carrolltown Mall (from B-NR) and Eldersburg Main Street (from I-R). There is at least

B-NR Land in Eldersburg—Analysis

one additional rezoning application (from I-R to B-G) now pending—for the former Wal-Mart site at 1320 Liberty Road.

The neighborhood contains a concentration of retail uses which together constitute the regional shopping hub for Southern Carroll County. The scale and concentration of retail square footage enable residents of Southern Carroll County to satisfy virtually all of their consumer needs and wants along Liberty Road, without the necessity of traveling to Westminster, Randallstown or Columbia.

D. SUMMARY

In summary, the subject is 15.568 acres of land located within an intensely developed neighborhood stretching principally along Liberty Road in Eldersburg. The neighborhood serves as the regional commercial hub for Southern Carroll County with an estimated 1.16 million sq.ft. of commercial space. The neighborhood is characterized by a concentration of retail and other commercial uses, much of which are located in the B-G zone.

The subject is immediately adjoined by commercial uses on the north, by residential multifamily uses on the west and east, and by residential single family uses on the south. There is, however, significant grade separation between the subject and residential uses.

B-NR Land in Eldersburg—Analysis

III. ZONING ISSUES

In this section, Valbridge/LF&M reviews the purpose and principal permitted uses of the B-NR and B-G zoning classifications, analyzes the inventory of B-NR land in Carroll County, then finally reviews certain goals of comprehensive planning by the County along the Liberty Road corridor. Our purpose is to compare the County's stated goals with the actual B-NR supply, particularly as they might help us to understand the status of the Petitioner's land.

A. B-NR CLASSIFICATION

The purpose of the B-NR (Neighborhood Retail Business District) zone 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." (§223-97)

Principal permitted uses enumerated in the ordinance are "local retail business or service shops," though Planned Business Center and department store (within a PBC) uses are also permitted. Office, clinics, retirement homes and other uses are also permitted. Maximum height is three stories or 40 feet.

The maximum size of uses within the zone is capped at 10,000 sq.ft. gross floor area. No variances are permitted to this provision. Even within a PBC, no individual use can exceed 10,000 sq.ft. gross floor area. We note that the provision (§223-105B) regarding maximum size of use is unclear. It seems to limit the size of any principal permitted or conditional use to 10,000 sq.ft., which most restrictively can be interpreted to permit only 10,000 sq.ft. of office (or any other use) on a parcel—no matter what the parcel's size. On a larger parcel (e.g., the Petitioner's Parcel 61), that would require multiple small buildings—with uses strictly segregated and limited.

The B-NR zone is the re-naming of the former B-L (Local Business District) zone in 2006. We are informed that, subsequent to the re-naming of the zone, the restriction on the maximum size of principal uses was added. It seems that the intent of the B-NR zone's restrictions on principal uses exceeding 10,000 sq.ft. was to deal with "concerns expressed by homeowners in residential neighborhoods that high impact uses were allowed in the 'B-L' district." (Staff report 12/21/10, p. 6) Otherwise, the purpose of the B-NR zone is the same as that of the B-L zone.

As best we can determine, since 2006 there has been only one substantive change made to the requirements of the zone. In 2009, the authority to permit variances of up to 3,000 sq.ft. (10%)

B-NR Land in Eldersburg—Analysis

to increase the maximum size of a use was removed from the Zoning Administrator and Board of Zoning Appeals.

B. B-G CLASSIFICATION

The purpose of the B-G (General Business District) zone 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.” (§223-106)

Principal permitted uses enumerated in the ordinance are “retail trades, businesses and services of a general commercial nature” including typically larger scale commercial uses (e.g., amusement parks, drive-in eating/drinking establishments, hotels, certain manufacturing/assembly, motor freight terminals) as well as mini-storage facilities and B-NR uses. Maximum height for a structure is 50 feet for nonresidential buildings.

Shopping centers are typically zoned B-G.

C. ANALYSIS OF B-NR LAND INVENTORY

We have analyzed the B-NR land inventory in Carroll County using: (1) the GIS (Geographic Information Systems) maps provided on the Carroll County website to verify zoning category and (2) Maryland Department of Assessments & Taxation’s “Maryland Property View” database to verify parcel size. Though the data we have been able to retrieve is not perfect, we judge that it reasonably mirrors reality.

We have found what we consider to be 32 B-NR clusters in the County—which total approximately 310 acres including 290 parcels according to the County GIS map. The B-NR clusters include anywhere from one to 39 parcels in full or in part. (County staff is in general agreement, finding 291 properties totaling 316 acres in the County.) We also find that the County acreage estimates for the clusters most often include the rights-of-way for adjoining roads, so they tend to over-estimate the amount of land in the clusters in comparison to what is actually in the privately-owned land parcels.

The parcels are located on 20 tax maps within the County—though the greatest number of parcels are located on Tax Maps 73 and 74 (Eldersburg/Sykesville – 32.4%), 14 (Manchester – 13.5%) and 59 (Finksburg – 10.0%). Our analysis of B-NR clusters by tax map location (Valbridge/LF&M descriptor) and size (Carroll GIS) is summarized on the following page. A key parcel within each cluster is noted for identification purposes, rather than detailing information on each of the 290 individual parcels. We find the following:

**B-NR LAND INVENTORY
CARROLL COUNTY, MARYLAND
2015**

Cluster	Location	SDAT Key Parcel			Acres	Parcels
		Map	Grid	Parcel		
1	Manchester	14	16	134	18.83	39
2	Millers Station	24	3	95	3.73	6
3	Keymar	26	12	52	4.6	10
4	Old Taneytown at Tyrone	29	22	139	3.98	8
5	Pleasant Valley Road	30	8	72	8.04	23
6	Snydersburg	32	22	138	2.78	6
7	Middleburg	35	16	263	4.38	8
8	Malcolm Drive	46	15	333	1.1	3
9	Baltimore Blvd at Sandymount	53	14	1033	5.58	3
10	Sykesville Road at Deer Park	58	3	18	4.5	6
11	Deer Park Road at Cresleigh	58	12	217	2.38	3
12	Baltimore Blvd at Mayer	59	3	533	21.1	9
13	Baltimore Blvd at Gamber	59	17	941	45.73	20
14	Klees Mill at Bartholow	63	20	503	5.65	4
15	Sykesville Road Finksburg	64	13	283	6	11
16	Sykesville Road Louisville	64	20	70	3.4	5
17	Liberty at Salem Bottom	67	2	69	16.25	1
18	Woodbine at Fanny Dorsey	72	1	3	7.06	5
19	Woodbine at Gills Falls	72	19	361	4.57	8
20	Johnsville Road	73	10	732	11.32	6
21	Lee Lane at Tydings	73	11	93	2.5	4
22	Liberty near Luers	73	12	61	26.09	24
23	Waters Edge	73	15	739	19.98	11
24	Oakland Mills Rd	74	4	519	0.93	1
25	Liberty near Oklahoma	74	7	30	8.55	7
26	Liberty near Ridge	74	13	631	4.22	4
27	Liberty near Monroe	74	14	741	30.16	25
28	Liberty Shervettes	74	16	381	12.86	12
29	Old National Pike	75	16	292	12.9	7
30	Woodbine	77	7	89	2.72	1
31	Woodbine	77	13	409	3.07	3
32	Hampstead	502	15	2976	5.01	7
Total					309.97	290

Source: Carroll County GIS Zoning Map; compiled by Valbridge/LF&M

B-NR Land in Eldersburg—Analysis

- Typical Size - The B-NR parcels tend to be small. The average land area of a B-NR parcel is 1.02 acres. (We have not considered our Cluster #17 since there seems to be some discrepancy between the County GIS map and the SDAT data.)
- Large Parcels - The number of B-NR parcels exceeding 5.0 acres is only two. Those parcels represent only 0.6% of the inventory, though they contain 6.3% of the B-NR land area. In addition to the subject's Parcel 61 at 11.55 acres, the other property is the EMA headquarters office building on 8.01 acres at 576 Johnsville Road in Eldersburg. We do not consider the EMA office use to be convenience retail as intended in the zoning ordinance.
- Location - The B-NR parcels tend to be in groupings along major highways or in rural crossroads locations.
- Function - The uses on the B-NR parcels tend to be single-purpose business operations with their own access, parking and detached structures.

Finksburg Plaza

We find the rezoning of the Finksburg Plaza property to be instructive. That property had been the next-largest B-NR parcel in the County after the subject until relatively recently. As part of the Finksburg Corridor Plan in 2013, the property (Map 59, Parcel 146) was rezoned from B-NR to B-G. The property is 11.46 acres containing 85,319 sq.ft. of improvements according to tax records. The County recognized the fact that the size of the parcel and its scale of improvements (clearly much larger than the 10,000 sq.ft. maximum) were inappropriate for the B-NR zone—and fit well within the B-G classification.

Evaluation

An analysis of the B-NR land inventory indicates that—judging from the characteristics of the vast majority of the parcels involved—the purpose of the zoning designation is to support the appropriate development of smaller parcels typically in more rural settings where the parcels will be improved with convenience retail uses serving the immediate area. We consider the B-G rezoning of the Finksburg Plaza property to be an acknowledgment of those goals.

We also observe that any “concerns expressed by homeowners in residential neighborhoods that high impact uses were allowed in the ‘B-L’ district” seem to have been largely misdirected. The overwhelming majority of the B-L (and subsequently B-NR) land inventory is comprised of very small parcels which could never have supported such “high impact” (presumably big box retail) uses.

B-NR Land in Eldersburg—Analysis

D. FREEDOM COMMUNITY COMPREHENSIVE PLAN

The historical comprehensive planning efforts of Carroll County government within the Freedom Area offer additional context for evaluation of commercial zoning issues along the Liberty Road corridor in Eldersburg. These goals of the 1977 and 2001 comprehensive plans are still valid today.

Comprehensive “Mini” Plan (1977)

The “Mini” Plan contains the following provisions within its defined “Land Use Goals & Objectives” for the Freedom Area overall:

Promotion of good civic design and management, particularly guarding against “strip zoning and “string development” with its attendant visual ills and disadvantages, including excessive “curb cuts” and excessive “signing”

(Comprehensive “Mini” Plan, 1.2.5, p.3)

In addition, when the “Mini” Plan focuses on Eldersburg, its “Liberty Road Corridor Goals and Objectives” and “Business Development” provisions include the following statements:

“To develop a detailed plan which will serve to promote the aesthetics and function of the road in a “parkway”-type treatment involving strategic landscaping, minimal signing, minimal curb cuts, maximum use of common service drives, minimal traffic signalization and other measures, it being recognized that the Liberty Road corridor is of major significance and impact on adjoining land uses as well as of major importance for the movement of goods and services in, around and through the community.”

(Comprehensive “Mini” Plan, 1.2.5, p.5)

“A major objective of the Land Use Plan is to avoid or minimize the disadvantages of “strip” business development along Route 26. “Strip”, as used here, refers to a nearly unbroken string of business establishments generally fronting on the highway, each with its own entrances and exits as opposed to separate business groupings with proper depth to accommodate the same amount of total activity over less highway frontage and fewer entrances.

(Comprehensive “Mini” Plan, 3.2.4, p.5)

We also observe that the “Mini” Plan (pp. 27-29) presumes that Eldersburg’s Liberty Road corridor could not (and would never) compete with more established commercial districts in Randallstown, Security Square, Howard County and Westminster. The Plan clearly did not anticipate the creation of “big box” stores nor the development of a regional retail center in Eldersburg. The B-L and B-NR zones are—in the context of Eldersburg—an out-dated remnant of obsolete ways of looking at the neighborhood, its function within Carroll County, and at the overall commercial/retail real estate environment.

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Freedom Community Comprehensive Plan (2001)

The Freedom Community Comprehensive Plan (approved August 14, 2001) describes relevant land use designations for the Freedom area which were carried over from the 1977 Freedom Comprehensive "Mini" Plan as follows:

Local Business - The purpose of the Local Business designation is to provide for logical, easily-accessible locations where convenience-type retail establishments can be provided. Typically, these designations are near existing and projected population concentrations and tend to serve those neighborhoods.

General Business - The General Business designation provides for businesses of a more general type than would normally be found in a neighborhood. This type of business may be described as commercial, retail, wholesale, and some light processing operations. These uses are generally found along major transportation corridors and near population concentrations."

(Freedom Community Comprehensive Plan, Chapter 5, p. 38)

Update of the Freedom Community Comprehensive Plan

The Freedom Community Comprehensive Plan is currently under review. In the County's June 2015 discussion documents, we find that the central location of the MD Routes 32 and 26 crossroads for the Freedom Designated Growth Area is noted. We also find that the rezoning of certain parcels mentioned in the "Land Use, Development & Zoning" report is relevant to the Petitioner's request:

- Carrolltown Mall (Business Neighborhood Retail to Business General);
- Mainstreet Eldersburg (Industrial Restricted to Business General);
- Bevard Square (Industrial Restricted to Business General);
- Eldersburg Marketplace (Industrial Restricted to Business General)

In addition, the document speaks of demand for office and retail space having increased as a result of residential growth. Pressure on the Restricted Industrial (IR) zone to accommodate commercial uses "indicates that land supply and demand still needs to be addressed" through rezoning.

E. SUMMARY AND CONCLUSION

We find that, though the purpose of the B-NR zone seems to be most appropriate for smaller land parcels located in rural neighborhood environments, the zone historically has included some larger land parcels which are B-G in character. That phenomenon is attributable to the re-naming of the B-L zone (and all land within the zone) as B-NR, despite the fact that the new maximum size of uses provision of the B-NR classification was a significant change. The

B-NR Land in Eldersburg—Analysis

rezoning of the Finksburg Plaza property in 2013 is an acknowledgement of the B-G character of that land in size and improvements.

The rezoning of certain Eldersburg area parcels in recent years is an acknowledgement of substantial change in the neighborhood. The B-G character of Carrolltown Mall (from B-NR) and others (Mainstreet Eldersburg, Bevard Square, Eldersburg Marketplace from IR) has been affirmed.

We also find that, though the County's comprehensive planning efforts along the Liberty Road corridor have had a major goal to reduce the impact of "strip zoning" and "string development," they have not succeeded in that goal. At least some of that failure is attributable to a fundamental failure of vision regarding the evolving nature of the corridor as a regional commercial/retail center rooted in the 1977 "Mini" Plan.

B-NR Land in Eldersburg—Analysis

IV. CONCLUSIONS & RECOMMENDATIONS

Valbridge/LF&M has come to the conclusion that a mistake was made in the re-zoning of Parcel 61 to the B-NR classification and that substantial change in the character of the relevant neighborhood has occurred in recent years, which had not been anticipated in the County's plans.

Further, we recommend that a rezoning of the Petitioner's 11 parcels to B-G (to be consolidated with the existing Parcel 731/Lot 3) is the best way to remedy the mistake and meet the intent of the County's historical planning efforts in Eldersburg over the past four decades.

Mistake in Re-Zoning

We find that Parcel 61 should never have been re-zoned to B-NR for the following reasons:

1. The size (11.55 acres) and location (off Liberty Road) of the parcel are inappropriate for the B-NR zone. All B-L land in Carroll County was re-named B-NR as a group without due consideration of the particular characteristics of the individual properties. In the cases of Carrolltown Center and Finksburg Plaza, for example, it was clear to the County that the property never belonged in the B-NR zone due to the scale of its improvements and that a mistake had been made in zoning the property B-NR. Those properties are now properly zoned as B-G.

Parcel 61 is the largest B-NR parcel in the County and located off Liberty Road. Its characteristics are more typical of B-G-zoned land.

2. The restriction on building size in the B-NR zone makes it virtually impossible to develop commercial uses which might be marketable. Were typical surface parking allowances to be observed, Parcel 61 could perhaps support 106,000 sq.ft.+/- of retail space (an FAR of 0.21). Constructing up to 11 separate buildings each of <10,000 sq.ft. is not reasonable and far exceeds the Eldersburg area's need for "small shop" space. The zone's <10,000 sq.ft. building restriction makes better sense for three-quarters (74.2%) of B-NR parcels which could only reasonably support a building of such dimensions; those are the parcels for which the zone was principally intended.
3. On the face of it the B-NR classification contains inherent contradictions. Relating to this case in particular, one of the zone's principal permitted uses is "Department stores, as part of a planned business center" (§223-99). Having consulted numerous appraisal and other real estate reference sources, we have not been able to find any which define a "department

B-NR Land in Eldersburg—Analysis

store” as being as small as 10,000 sq.ft. In our experience, typical department stores range from 60,000 sq.ft. to 100,000 sq.ft. and more.

Given its scale, Parcel 61 can achieve its highest and best use potential with development of a department store as typically defined, not as restricted in the B-NR zone.

Change in Character

There has been a substantial change in the character of the subject’s neighborhood which was not anticipated in the County’s plans. The “neighborhood” defined in this case describes a regional retail district, not a neighborhood-serving retail district as intended for the B-NR zone. The purpose of the B-NR zone is to support “retail services needed by a neighborhood population.” This is particularly evident in the small sizes (1.0± acre) and locations (major road frontage, rural crossroads or small town) typical of the B-NR land inventory.

We are of the opinion that the neighborhood defined for the subject in this case by the Planning Department and the Petitioner is reasonable—and that it perfectly captures the regional nature of the commercial development in the Eldersburg area. Our analysis demonstrates that the neighborhood focusing on the MD Routes 32 & 26 crossroads now has an extremely high concentration of commercial uses: 1.16 million sq.ft. of commercial improvements on 189 acres. This is certainly atypical of the neighborhoods surrounding most B-NR parcels.

1. In the earlier comprehensive plans (e.g., “Mini” Plan, pp. 27-29) it was presumed that Eldersburg’s Liberty Road corridor could not (and would never) compete with more established commercial districts in Randallstown, Security Square, Howard County and Westminster. The plans clearly did not anticipate the creation of “big box” stores nor the development of a regional retail center in Eldersburg. The B-L and B-NR zones are—in the context of Eldersburg—an out-dated remnant of obsolete ways of looking at the neighborhood, its function within Carroll County, and at the overall commercial/retail real estate environment.
2. Due to that obsolete perspective, unintended consequences have resulted. The intent of comprehensive plans since at least 1977 has been to reduce the impact of strip development, especially numerous curb cuts and disjointed uses along Liberty Road. The sheer number of B-NR parcels in the Eldersburg area—most with their own highway access and independent piecemeal development impacts—has tended to increase (or at least not diminish) curb cuts and strip development. In order to meet the goals of the comprehensive plans, B-NR zoning should be discouraged in Eldersburg’s Liberty Road corridor. The development of B-G uses with limited access points and coordinated designs is consistent with planning goals.
3. The rezoning of certain Eldersburg area parcels in recent years is an acknowledgement of substantial change in the neighborhood. The B-G character of Carrolltown Mall (from B-NR)

B-NR Land in Eldersburg—Analysis

and others (Mainstreet Eldersburg, Bevard Square, Eldersburg Marketplace from IR) has been affirmed.

Remedy

Valbridge/LF&M, therefore, recommends that changing the Parcel 61's zoning to "B-G " is appropriate and desirable. In addition, we recommend that the Petitioner's remaining ten parcels also be zoned "B-G" in order to facilitate coordinated development consistent with Carroll County's goals as embodied in successive comprehensive plans.

1. Parcel 61's size (11.55 acres) and location (off Liberty Road and adjacent to other B-G land) are consistent with B-G zoning.
2. The highest and best use of the Petitioner's remaining ten parcels (totaling approximately 4.02 acres+/-) is to be consolidated with Parcel 61 and the adjoining Parcel 731/Lot 3 (2.32 acres), which is already zoned B-G. This judgment is based principally on the size (0.189 acres to 0.576 acres) and location (most off Liberty Road with very limited visibility) of the individual parcels:
 - The individual parcels have such limited development potential (1,700 sq.ft. of potential improvements on the smallest parcel up to perhaps 5,000 sq.ft. on the largest) as to render them virtually unmarketable.
 - Most of the individual parcels have such limited visibility from Liberty Road that they are undesirable as commercial/retail development sites.
 - Most of the parcels are located between Parcel 61 and Parcel 731/Lot 3—and Georgetown Road.
 - Development of the individual parcels piecemeal will be in direct opposition to the County's intent to reduce curb cuts and strip development.
 - In a positive light, development of the entire assemblage (including the Petitioner's 11 parcels and Parcel 731/Lot 3) as one B-G-zoned property will permit direct access of all of the land to Georgetown Road. Georgetown Road has a signalized intersection with Liberty Road (in contrast to Luers Avenue). The assemblage can support a larger, department store type of retailer which can offset visibility issues with a stronger marketing effort and broader offerings. B-G development is consistent with the adjoining Freedom Village Shopping Center, adding weight to cumulative retail space on the south side of Liberty Road and making it more competitive with the concentration to the north.

B-NR Land in Eldersburg—Analysis

APPENDIX A
Qualifications of Consultant
JOSEPH M. CRONYN

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Qualifications of Joseph M. Cronyn
Senior Managing Director
Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC



Independent Valuations for a Variable World

Education

MBA—
Loyola University Maryland,
Executive Program

BA—
Boston College

Background

Valbridge | Lipman Frizzell & Mitchell LLC (1997-Present)
Legg Mason Realty Group, Inc., Baltimore, MD (1989-1997)
Financial Associates of Maryland, Baltimore, MD (1987-1989)
Baltimore Federal Financial, F.S.A., Baltimore, MD (1982-1987)
Neighborhood Reinvestment Corp, Washington, DC (1978-1982)
Baltimore Federal Savings & Loan, Baltimore, MD (1976-1978)

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jcronyn@valbridge.com
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Expert Witness

Before Maryland public administrative bodies, zoning hearing examiners and/or boards of appeals: Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Charles County, Frederick county, Harford county, Howard County, Montgomery County, Prince George's

Membership/Affiliations

Neighborhood Housing Services of Baltimore, Chairman Emeritus
Lambda Alpha International Land Economics Society (Baltimore), Member
Citizens Planning and Housing Association, Member
National Trust for Historic Preservation, Member
Maryland Affordable Housing Coalition, Member

Experience

Cronyn has more than three decades of professional experience in real estate research, sales and marketing, development, public policy financing and appraisal. His experience includes market and financial feasibility analyses of major real estate projects; land acquisition and marketing for commercial and residential development; planning for mixed use development, including historic preservation concerns; tax-motivated and conventional financing for single family and multifamily residential projects; TIF (Tax Increment Financing) bond financed development; due diligence research; and advising public, nonprofit and private clients concerning economic and community development strategies.

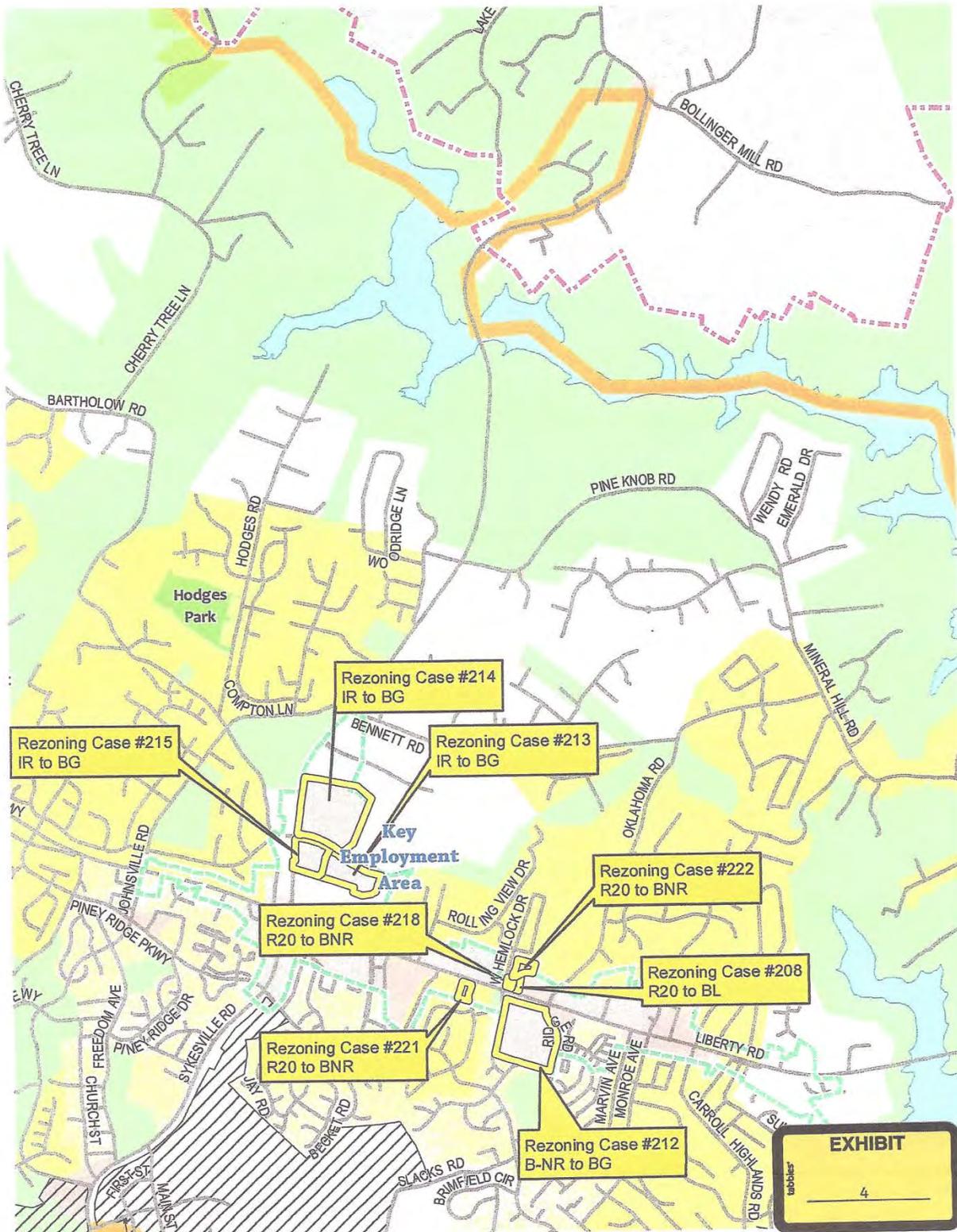


Exhibit D

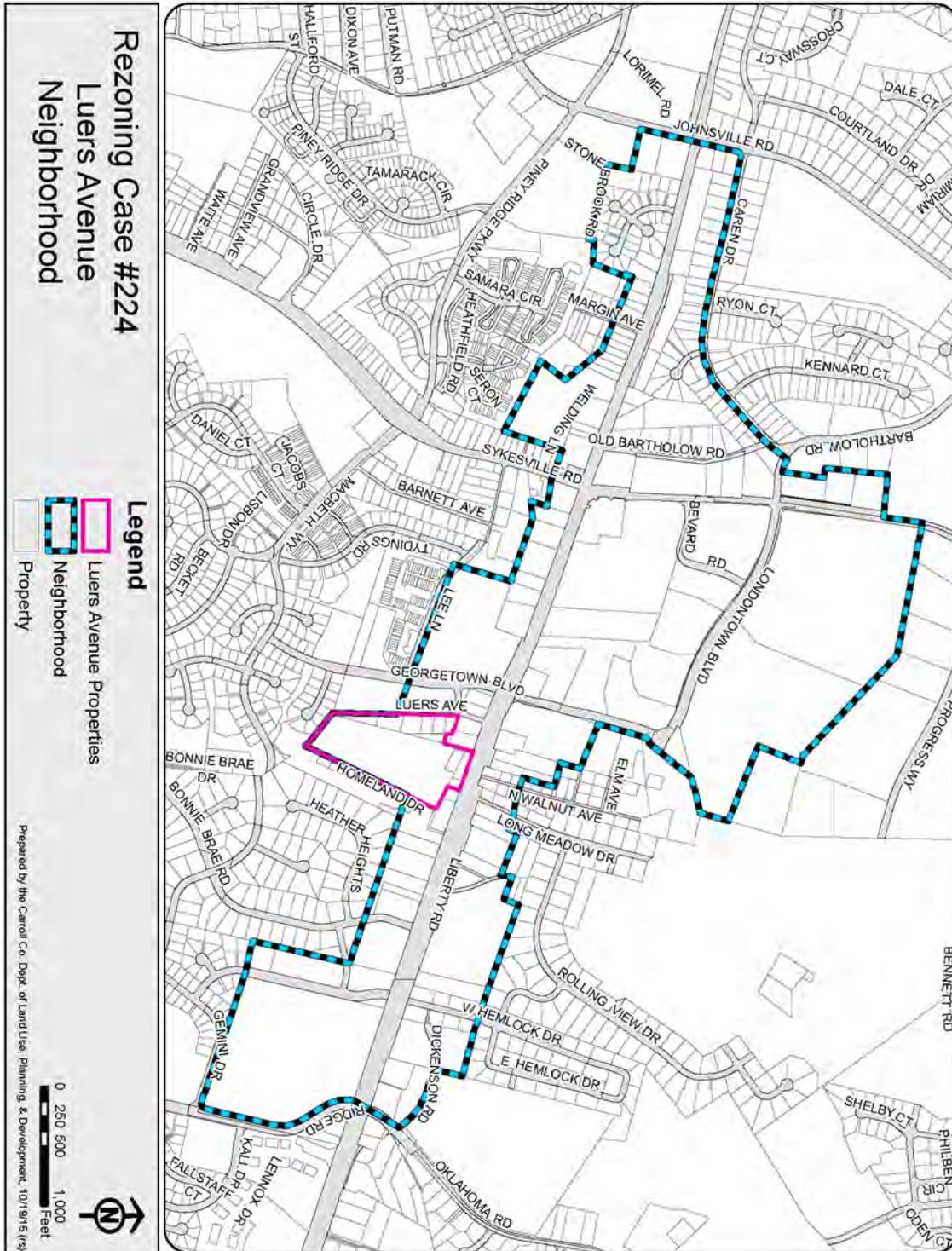


Exhibit E

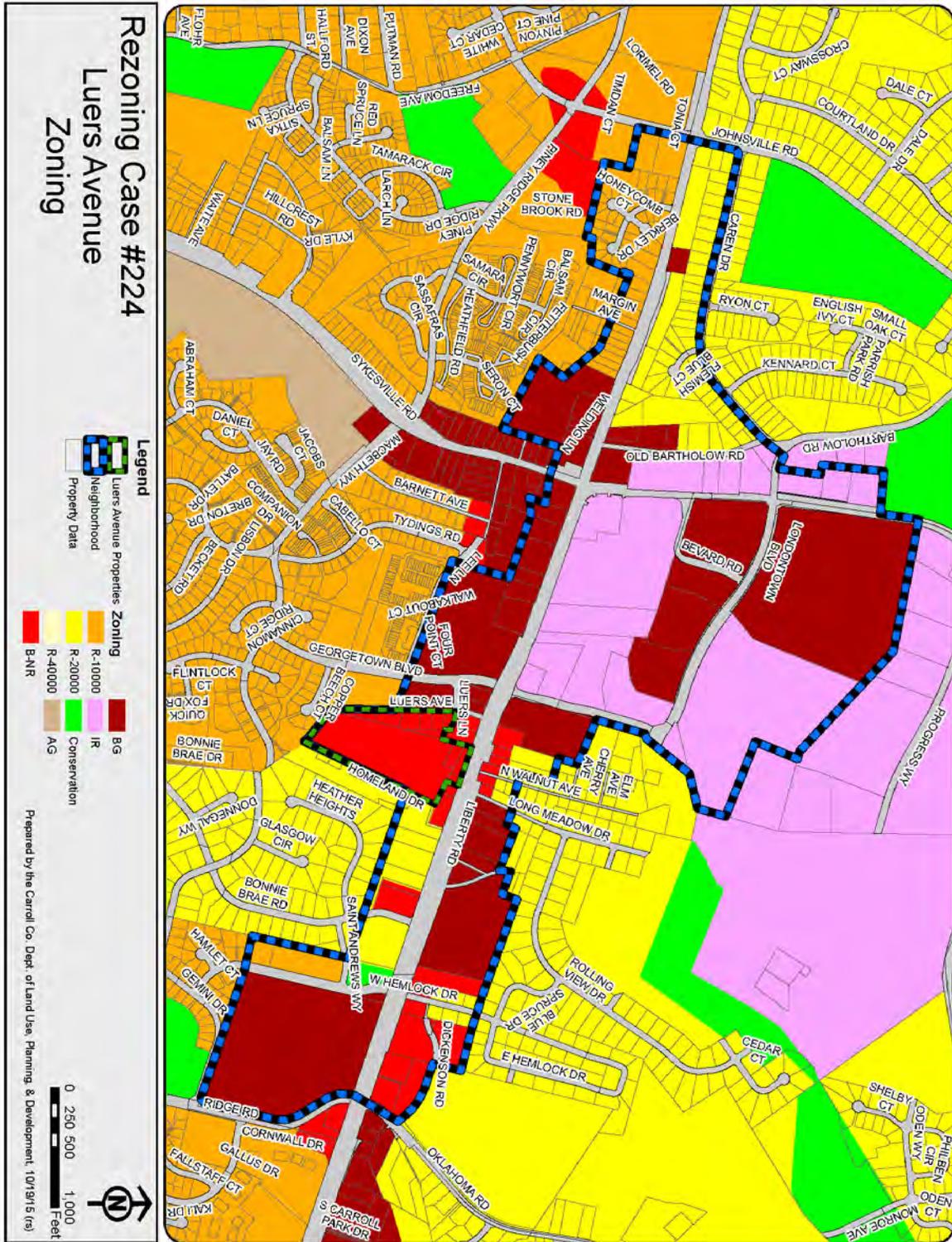
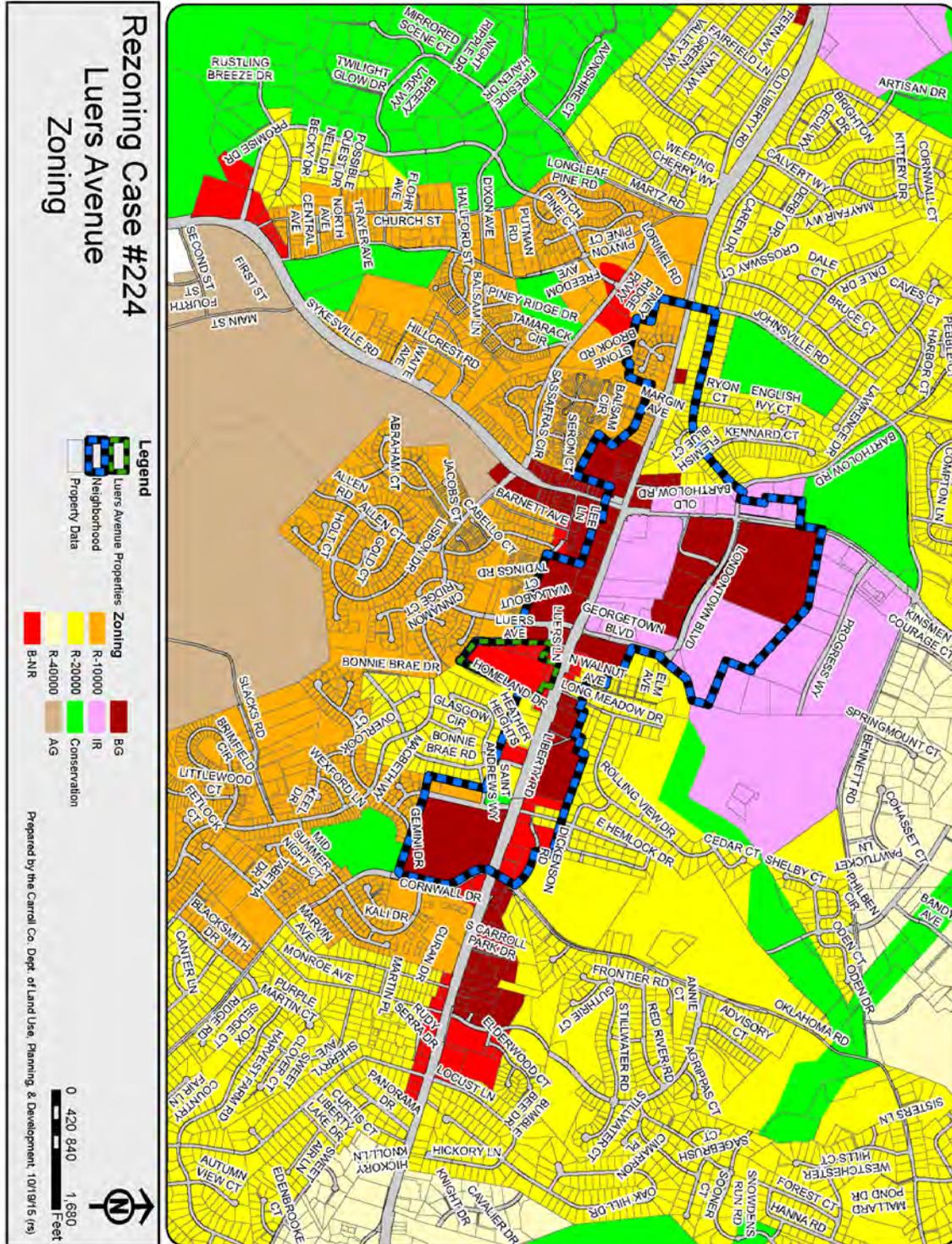


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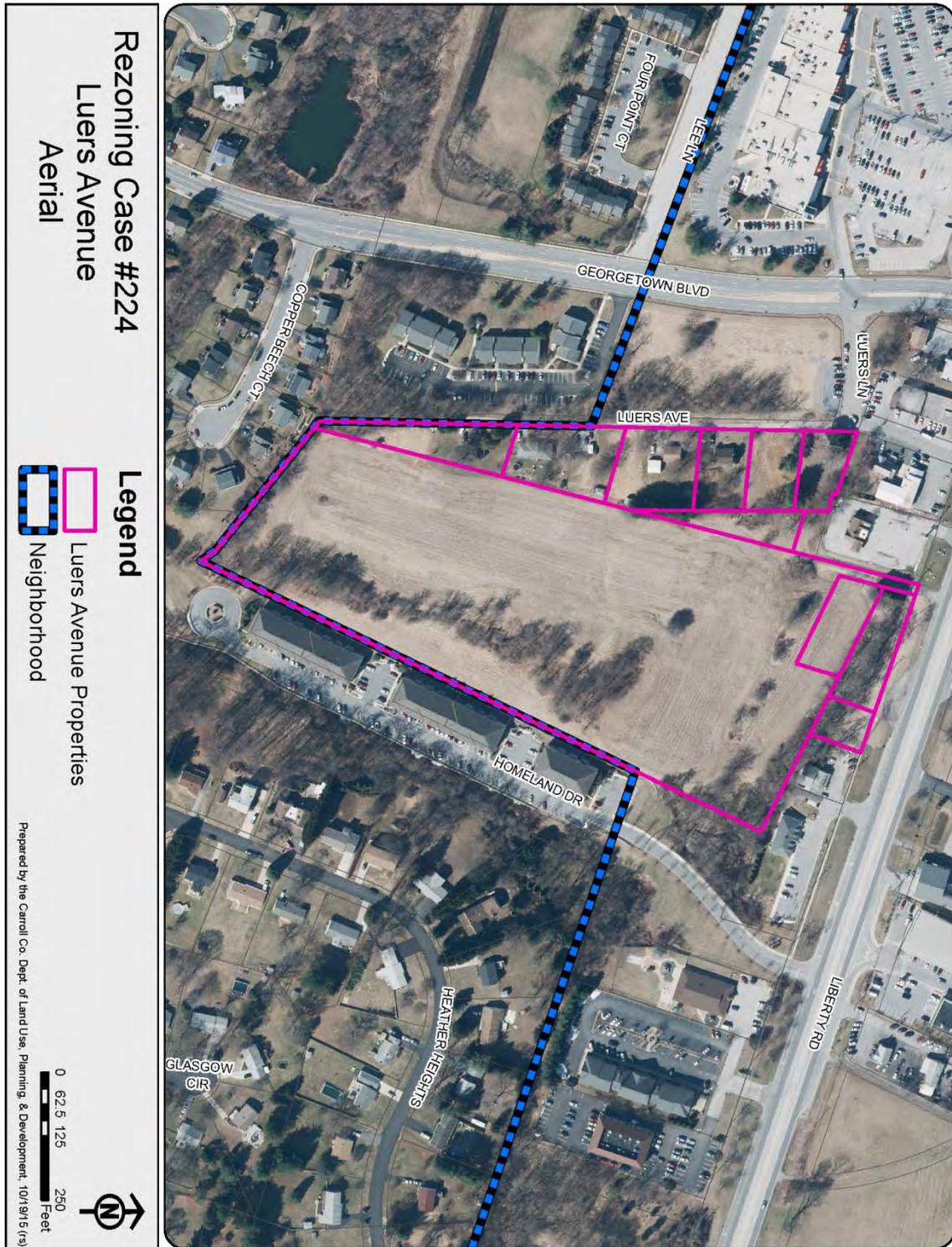


Exhibit H

Uses Permitted in the Business Zones

Use	B-NR	B-G
Agriculture	P	P
Local retail business or service shops, including:	P	P
Alcoholic beverage stores	P	P
Antique shops	P	P
Appliance stores	P	P
Automobile accessory	P	P
Bakery shops	P	P
Banks, S&L institutions	P	P
Beauty shops & barber shops	P	P
Candy stores	P	P
Clothing stores	P	P
Convenience stores	P	P
Dress or millinery shops	P	P
Drugstores	P	P
Dry goods or variety stores	P	P
Florist or garden shops	P	P
Food & grocery stores	P	P
Fruit or vegetable stores	P	P
Fuel stations	P	P
Furniture & upholstering stores	P	P
Gift or jewelry stores	P	P
Hardware stores	P	P
Laundromats	P	P
Laundry or dry-cleaning establishments & pick-up stations	P	P
Meat markets	P	P
Office supply stores	P	P
Pet shops	P	P
Photographic studios	P	P
Produce stands	P	P
Radio & TV studios or repair shops	P	P
Restaurants & lunch rooms	P	P
Shoe repair shops	P	P
Specialty shops	P	P
Sporting goods or hobby shops	P	P
Tailor establishments	P	P

Uses Permitted in the Business Zones

Use	B-NR	B-G
Taverns	P	P
Taxi stands	P	P
Commercial parking lots	P	P
Funeral establishments	P	P
Offices & clinics, professional & business, including animal hospitals or veterinary clinics without runways	P	P
Planned Business Centers (PBC)	P	P
Retirement homes, nursing homes, continuing care retirement communities & assisted-living facilities, or boarding homes	P	P
Schools, art, trade, business, or nursery & day care centers	P	P
Social clubs, fraternal organizations, & community meeting halls	P	P
Department stores, as part of a PBC	P	P
Amusement arcades	P	P
Custom carpentry & woodworking shops	C	P
Custom printing shops	C	P
Custom sign painting shops	C	P
Sheet metal & light metal working shops	C	P
Automobile service centers	C	P
Any use permitted in the A, R-20,000 or R-10,000 Districts	P	P
Religious establishments	P	P
Circus, carnival or other transient enterprise	P	P
Single-family & two-family dwellings	P	P
Recreation areas & centers	P	P
Conservation areas	P	P
Riding academies	P	P

Uses Permitted in the Business Zones

Use	B-NR	B-G
Sawmills, for cutting timber grown primarily on the premises	P	P
Colleges	P	P
Public buildings	P	P
Planned Unit Development	P	P
Amusement parks	X	P
Automobile, motorcycle, trailer or implement sales	X	P
Bottling of soft drinks or milk or distribution stations	X	P
Bowling Alley	X	P
Department stores	X	P
Drive-in eating or drinking establishments	X	P
Golf driving ranges	X	P
Hotels/motels	X	P
Manufacture & assembly of electrical appliances, electronics, & communication equipment, professional, scientific, & controlling instruments, & photographic or optical products	X	P
Newspaper & publishing establishments	X	P
Skating rinks	X	P
Swimming pools	X	p
Telephone central office or service center	X	P
Tourist homes	X	P
Truck or motor freight terminals or warehouses	X	P
Wholesale business, warehousing, or service establishments, except as first allowed in the Industrial Districts	X	P
Any use permitted in the R-7,500 District	X	P

Uses Permitted in the Business Zones

Use	B-NR	B-G
Multifamily dwelling, in a PUD	X	P
Boarding or lodging houses	X	P
Mini storage	X	P
Building material sales & storage yards	X	C
Feed & grain sales, milling and/or storage	X	C
Outdoor drive-in theaters	X	C
Animal hospitals, kennels with runways	X	C

- Dark blue shaded areas designate uses that are regulated differently between the B-NR and B-G Districts.

P – Permitted use by right

C – Conditional use

X – Prohibited use