



p. 301.934.7988 | f. 301.934.7989 | suegreerlaw.com

**VIA HAND-DELIVERED AND EMAIL**

April 26, 2021

Wayne Magoon, Chair  
Charles County Planning Commission  
200 Baltimore Street  
La Plata, Maryland 20646

***Re: Zoning Map Amendment (ZMA) #20-03; Estate of Julia D. Hungerford; Tax Map 5, Grid 23, Parcel 132, Lots 8-13***

Dear Mr. Magoon:

On behalf of the Julia D. Hungerford Estate I would like to thank the Planning Commission for the opportunity to supplement the record and to respond to comments made at the Public Meeting on April 12, 2021 regarding the above referenced matter.

The public testimony appeared to center on the request to rezone the four (4) acre WCD portion of the eight (8) acre parcel. Therefore, this response will focus on that segment of the Property. The request to rezone the four acre portion of the property from WCD to CB was based on a "mistake" in the original zoning. As noted by the Court of Appeals in the *Mayor and Council of Rockville et. al, v. Ryllys Enterprises, Inc.*, 372 Md. 514 (2002), there is a difference between land use planning and zoning. Per the Court in the *Ryllys* decision:

Plans are long term and theoretical, and usually contain elements concerning transportation and public facilities, recommended zoning, and other land use recommendations and proposals. Zoning, however, is a more finite term, and its primary objective is the immediate regulation of property use through the use of use classifications, some relatively rigid and some more flexible.

The Court citing various treatises noted

Zoning, in theory, is the process whereby the comprehensive plan is put into effect. The local legislative body that makes zoning decisions divides districts within the locality into zones, and the legislative body defines, *inter alia*, the height, building size, lot size, population density, location, and use of buildings that are permissible in the particular zone.

Discussing original or “Euclidean” zoning the Court cited Rouse–Fairwood Dev. Ltd. P’ship v. Supervisor of Assessments for Prince George’s County, 138 Md.App. 589, 623 (2001) which stated:

The term ‘Euclidean’ zoning describes the early zoning concept of separating incompatible land uses through the establishment of fixed legislative rules...’ 1 ZIEGLER, RATHKOPF’S THE LAW OF ZONING AND PLANNING (4th Ed. Rev.1994), § 1.01(c), at 1–20 (“Rathkopf’s”). Generally, by means of Euclidean zoning, a municipality divides an area geographically into particular use districts, specifying certain uses for each district. “Each district or zone is dedicated to a particular purpose, either residential, commercial, or industrial,” and the “zones appear on the municipality’s official zoning map.” 5 Rathkopf’s, § 63.01, at 63–1–2. In this way, the municipality ‘provides the basic framework for implementation of land use controls at the local level.’ 1 Rathkopf’s, § 1.01(c), at 1–22.

The *Rylins* court noting the benefits and drawbacks from the rigidity of Euclidean zoning recognized the “Change-Mistake” rule. The “Change-Mistake” rule exists to “protect and stabilize existing land use and property values from interference by inharmonious and discordant uses.”<sup>1</sup> The “mistake” option of the rule requires a showing that the underlying assumptions or premises relied upon by the legislative body during the immediately preceding original or comprehensive rezoning were incorrect.

The only issue before the Planning Commission is whether there was a mistake in 2017 Comprehensive Rezoning of the four acres to WCD. The County, as noted in the staff report acknowledges that such a mistake was made. When the County engaged in the 2017 WCD rezoning, it did not engage in a property by property analysis. If the County had it would have noted:

- The 2016 Land Use Map did not designate the Property as WCD but rather as part of a Mixed Use District. The Mixed Use District should have guided the zoning (i.e. Appropriate category to designate uses, height, etc.) to a zone more compatible with the surrounding geographic district, which is an employment, business or commercial use
- The Property is located in a Priority Funding Area, a State designation meaning the land is intended for public infrastructure and development
- The Property is located in a Septic Tier 1, which means that the Property is proposed for and anticipated for development

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<sup>1</sup> §1.01 Guide to Maryland Zoning Decisions, Fifth Edition, Stanley D. Abrams

- Split zoning approximately four (4) acres of the eight (8) acres of the Hungerford Property to WCD has created a small, isolated and fragmented “WCD Island” that does not further and is wholly inconsistent with the objectives of the WCD.

Public comment centered on two issues, concern for environmental impact and that any rezoning should be part of the update of the Bryans Road Subarea Plan.

With respect to concerns related to environmental impact, the County has a long standing tool that protects environmental features. The Resource Protection Zone (“RPZ”) is a floating zone which encompasses

stream valleys, steep slopes, associated wetlands and floodplains, if present; and a buffer, as called for in §§ 297-171 and 297-172. Except as permitted in this chapter, the land within this zone is to remain in an undisturbed natural stage, and the outer edge of this zone shall constitute the limit of clearing and grading.

The RPZ is field delineated and contains buffer standards and use restrictions. The RPZ adequately protects the Mattawoman while allowing the Property to be used consistent with surrounding properties.

With respect to the comments regarding the update to the Bryans Road Sub-Area Plan, piecemeal rezonings exist to protect and stabilize land use. Any update to the Bryans Road Sub-Area Plan will take into consideration the Mixed Use Designation on the 2016 Comprehensive Land Use Map. Noting the changes in the Comprehensive Plan that reduced Bryans Road from a “Development Center” to a “Large Village”, the Applicant proposed and the County agreed that “Central Business” (“CB”) zoning was the more appropriate zoning and more consistent with surrounding properties. It would be imprudent and unfair to both the landowner and the County, to keep the Property stagnate and unusable for an unknown and indefinite time period. Such action runs contrary to sound fair land use practices.

Public comment and participation during the planning and zoning process is important. It is equally important to remember that Maryland has long recognized that “a plebiscite of the neighborhood does not determine zoning.” Zoning decisions, such as piecemeal rezonings, are based on the facts and evidence presented. As noted by the Court of Special Appeals of Maryland in *Entzian v. Prince George’s County*, 32 Md. App. 256 (1976) citing *Rockville Fuel and Feed Company, Inc. v. Board of Appeals of the City of Gaithersburg*, 257 Md. 183 (1970)

Zoning is not a plebiscite’ and therefore testimony in opposition restricted solely to lay witnesses, petitions of objection to the proposal by residents, and testimony amounting to unsupported dislike and fear of (a) project, ‘ . . . amounted to no evidence at all.

No evidence was presented or is before the Planning Commission that rezoning the Property is detrimental to the Mattawoman Creek or the WCD as a base zone. Nor has any evidence been presented that there was

Thank you again for your consideration. Please do not hesitate to contact me with any questions or concerns you may have.

Professional Regards,



Sue A. Greer

cc: Client  
file