

IN THE MATTER OF
BALTIMORE COUNTY, MARYLAND;
-Petitioner
2400 NORTH POINT, LLC
-LEGAL OWNER
Co-Petitioner
2400 North Point Road
7TH COUNCILMANIC DISTRICT
RE: ZONING MAP CORRECTION

* BEFORE THE
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
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* CASE NO. M.C. 13-01
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ORDER

The above entitled matter came on for hearing before this Board on October 4, 2012, on a Petition for Zoning Map Correction filed by Michael E. Field, County Attorney, and Nancy C. West, Assistant County Attorney, on behalf of Baltimore County, Maryland, Petitioner, and by John B. Gontrum, Esq., on behalf of 2400 North Point LLC, Co-Petitioner and Legal Owner of the 2400 North Point Road property. The requested correction involves a technical drafting error and would reclassify approximately 0.1 acre from D.R. (Density-Residential) 5.5 to B.R. (Business-Roadside) to accord with the legislative action of the County Council in reclassifying 1.8 acres during the 2000 Comprehensive Zoning Map Process (CZMP). The petition is cognizable under Baltimore County Code Sections 32-3-231 to 32-3-236, and specifically 32-3-231(b) (1), which provides for such correction in the event of:

“A technical drafting error made by the Department of Planning in transferring the County Council’s enacted zoning classification to the comprehensive zoning map.”

At the conclusion of the October 4 hearing, this Board conducted a public deliberation and decided to approve the map correction. This opinion follows, consistent therewith.

Nancy C. West, Assistant County Attorney, represented Baltimore County, Maryland, and John B. Gontrum, Esq., represented the Legal Owner. Peter Max Zimmerman, People’s Counsel for Baltimore County, participated. Jay Doyle of the Department of Planning, and Francis Taylor,

Chairman of the Baltimore County War of 1812 Bicentennial Advisory Committee, attended to indicate an interest in the historic preservation of the monument memorializing the War of 1812, described below.

2400 North Point, LLC is the legal owner of 2400 North Point Road, a 2.8 acre parcel lying approximately 100 feet at its intersection with German Hill Road in the 7th Council District of Baltimore County (Property). The Property is identified in the Maryland Department of Assessments and Taxation tax records as Parcel 0302 on Map 0096. The Nolen Graves family is the owner of the LLC, and the subject property along with adjacent land has been in their family for about 70 years. This parcel's deed is recorded among the Land Records of Baltimore County in Liber 23146, folio 187. The Property currently is split zoned D.R. 5.5 and B.R.

This Property played a significant part in the War of 1812's Battle of North Point. According to the information presented, a Methodist Meeting House existed at one time on the Property dating back to the 1700s. It was used by the American General John Stricker the night before the battle that took place concurrently with the bombardment of Fort McHenry. The Meeting House served as a field hospital during the battle treating both American and British casualties. Although the Meeting House no longer exists, during the Centennial Commemoration of the battle, a monument was erected on the Property to recognize the role of the Meeting House during this battle. The monument still exists, and is also known as the Bread and Cheese Creek Monument for a nearby creek.

The monument is a large, brown granite marker set back from the road in a grassy field; it faces south and has a smooth, tapered inscription surface that carries a circular relief carving of the church that stood at the time of the Battle of North Point. The other sides of the stone are rock-faced in finish and the stone is mounted on a tall, rock-faced granite base. The monument is

contained by a black, wrought and cast iron fence of the Otterbein style, made by Krug and Son of Baltimore.

In a vacant field between the monument and the existing dwelling on the Property lies a cemetery, which is not evidenced by any tombstones or outward signs. However, an archeological research project funded in part by the Maryland Historic Trust has located tombs and burial sites on the Property.

As part of and pursuant to Baltimore County's 2000 Comprehensive Zoning Map Process (CZMP), the Graves family initiated a zoning request, namely, CZMP Issue No. 7-040 (Issue), on the Property to rezone 1.75 acres that were classified as D.R. 5.5 to B.R. With the addition of property in the roadbed of North Point Road, the requested rezoning area became 1.8 acres.

At the conclusion of the 2000 CZMP process, the Baltimore County Council on October 10, 2000 adopted B.R. zoning for the entire 1.8 acre area as reflected in the 2000 CZMP Final Log of Issues. The 2000 CZMP 1 inch =200 feet scale zoning map shows that the requested and granted area for the B.R. zone included the existing house with a line running from North Point Road along the southeastern side of the house to the rear property line.

Eventually, it came to light that there was a drafting error when the line was drawn on the official 2000 comprehensive zoning map. After the property owner's attorney, John Gontrum wrote to the Department of Planning to bring the problem to their attention, the Director determined, as certified by letter dated March 26, 2012, from Planning Director Andrea Van Arsdale to John B. Gontrum, Esq., a technical drafting error occurred sometime subsequently that resulted in an inaccurate reclassification of the Property. Instead of including the residence as part of the B.R. zone, the zoning line separating the D.R. 5.5 and B.R. zones runs on the current map on the northwest side of the house from North Point Road to the rear property line, and comprises only 1.69 acres of land zoned B.R., instead of the intended 1.8 acres.

The petition herein requests that the difference, the missing additional 0.1 acre (as calculated by the Department of Planning) be rezoned to B.R. as approved by the County Council in the 2000 CZMP. The property was not identified as an issue in the 2004, 2008, and 2012 comprehensive zoning map processes. Consequently, the technical drafting error has persisted for over a decade, so that, the County Council's duly enacted 2000 zoning classification on the Property is inaccurately reflected on the County's zoning maps

As a condition precedent to the filing of the Petition in this case, the Department of Planning notified the County Council of its intention to correct this technical drafting error by a letter dated March 26, 2012 to Councilman John Olszewski, (also a member of the Council in 2000), who did not communicate any opposition.

The Board has given due consideration to the Petition, the Certification, exhibits presented at the time of the hearing, as well as the cogent testimony of Ms. Kui Zhao of the Baltimore County Department of Planning.

The Board finds that the present split-zoning of D.R. 5.5 and B.R. on the Property known as 2400 North Point Road (Tax Map 0096, Grid 0024, Parcel 0302) was incorrectly mapped as a result of a technical drafting error, and that the line should be adjusted as reflected on Petitioner/County Exhibit 13, the corrected zoning map prepared by the Department of Planning. The Board further finds that there was no intent on the part of the County Council to rezone the battle monument to a commercial use, and that the battle monument will not be affected by the corrected location of the zoning line. Indeed, the petitioners affirmatively represented their interest in protecting the monument.

ORDER

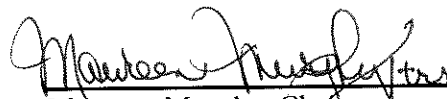
IT IS, THEREFORE, this 24th day of October, 2012, by the Board of Appeals of
Baltimore County

ORDERED that the present split-zoning of the Property at 2400 North Point Road be corrected to reflect 1.8 acres of B.R. zoning in accordance with the legislative intent of the County Council, as reflected on Petitioner/County Exhibit 13; and it is further

ORDERED that the Department of Planning make the necessary change and correction as set out herein on the latest Comprehensive Zoning Map for Baltimore County with regard to the subject Property.

Any petition for judicial review from this decision must be in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen Murphy, Chairperson


Andrew M. Belt


Edward W. Crizer, Jr.