

IN RE: ZONING MAP CORRECTION
10000, 10135 and 10155
BEAVER DAM ROAD

BALTIMORE COUNTY, MARYLAND
a body corporate and politic

Petitioners

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: M.C.-17-01

* * * * *

OPINION

The above entitled matter came on for hearing before this Board on October 25, 2016 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. The requested correction involves a technical map error and seeks to reclassify the existing zoning on the following three properties located in the Cockeysville section of Baltimore County, Maryland, 21030, namely:

a. 10000 Beaver Dam Road that consists of 500.761 acres of land, more or less, and is owned by Bluegrass Materials Company, LLC. The property was formerly known as the LaFarge Texas Quarry. The eastern portion of the property that consists of 195.55 acres of land, more or less, is the subject of the requested zoning map correction. The property is located west of Beaver Dam Road and east of I-83, immediately south of West Warren Road and north of West Padonia Road;

b. 10135 Beaver Dam Road that consists of 3.99 acres of land, more or less, and is owned by Cinder & Concrete Block Corp. The northern segment of the property that consists of 1.09 acres of land, more or less, is the subject of the requested zoning map correction. The property lies on the east side of Beaver Dam Road, north of Industry Lane and south of Resource Road; and

c. 10155 Beaver Dam Road which consists of 4.55 acres of land, more or less, and is owned by Beaver Dam Road, LLC. The property lies roughly in the middle of an industrial enclave and is surrounded by York Road to the east, West Padonia Road to the south, I-83 to the west, and West Warren Road to the north. More specifically, it is located on the east side of Beaver Dam Road, across from the former LaFarge Texas Quarry, and immediately to the south of the Baltimore County Central Acceptance Facility, a/k/a the Texas Acceptance Facility in Cockeysville.

All three properties are collectively referred to hereinafter as the "Property." The County seeks to

reclassify the Property from MH (Manufacturing, Heavy) to MH-IM (Manufacturing, Heavy - Industrial, Major) in accordance with the legislative intent of the County Council.

The Petition is cognizable under Baltimore County Code (BCC) §§ 32-3-231 to 32-3-236, and, specifically, § 32-3-233 (a), which provides that the Department of Planning may initiate a petition on its own if it discovers a technical error on the zoning map.

Nancy C. West, Assistant County Attorney, represented Baltimore County, Maryland. Carole S. Demilio, Deputy People's Counsel for Baltimore County, participated. Michael T. Wyatt, attorney for Beaver Dam Road, LLC and Edward J. Gilliss, attorney for Bluegrass Materials Company, LLC, were present during the hearing and supported the requested zoning map correction but did not formally participate in the proceedings. There were no Protestants. At the conclusion of the October 25th hearing, this Board conducted a public deliberation and unanimously agreed to approve the requested map correction. This Opinion follows, consistent therewith.

Background

On August 14, 2014, Michael T. Wyatt (Wyatt), attorney for Beaver Dam Road, LLC, sent a letter to Andrea Van Arsdale, Director of the Department of Planning (Department) about a zoning map error on a portion of his client's property at 10155 Beaver Dam Road. He stated that while many of the properties in the vicinity of his client's property were designated as commercial, "flex," or industrial spaces, only one large tract, which includes the LaFarge Texas Quarry, his client's property, and a portion of the property immediately to its south, has the MH or Manufacturing-Heavy zoning designation. Wyatt believed that the MH designation without the IM or Industrial, Major overlay classification was an error. Further, he opined that in reviewing the 2004 Comprehensive Zoning Map Process (CZMP) Final Log of Issues there did not appear to be any Issue that could have served as the basis for the removal of the IM overlay. Wyatt emphasized that the Hunt Valley-Timonium Community Plan adopted by the County Council on October 19,

1998 did not contain any provisions suggesting the removal of the IM overlay from his client's property, the adjacent quarry, or a portion of the property immediately to its south. He opined that the MH designation without the IM overlay classification was attributable to an error that Planning made when it prepared the zoning maps adopted by the County Council following the 2004 CZMP. Accordingly, Wyatt requested that the County take the necessary action to correct this mistake. *See County Exhibit 1.* Upon investigation, the County agreed and filed a petition to correct the technical error with this Board. A hearing before this Board followed.

Decision

In the County's case-in-chief, it presented one witness, Kui Zhao. Ms. Zhao has been with the Department for 16 years and is a Senior Planner. She has a BS in Geography from Beijing Normal University in Beijing, China, an MA in Rural Geography from Northern Arizona University, and an MCP from the University of Maryland at College Park. She also possesses the coveted AICP which is a certification from the American Institute of Certified Planners granted following a rigorous course of study and testing, and continuing education.

Upon investigation, Ms. Zhao determined that there was a technical error on the Baltimore County Zoning Geodatabase Maps (Zoning Geodatabase Maps) that has existed on the Property since the 2004 CZMP as Wyatt averred in his correspondence. She stated that in 1996 and 2000, the Zoning Geodatabase Maps showed that the zoning classification for the Property was MH-IM (Manufacturing, Heavy - Industrial, Major). *See County Exhibits 3 and 4.* Ms. Zhao testified that when the Department prepared the zoning maps after the 2004 CZMP, it inadvertently omitted the IM overlay district on the Property and left only the underlying zoning classification of MH. She emphasized that the intent of the IM district was to encourage greater use of prime industrial land.

Ms. Zhao testified that this technical error was perpetuated in the 2004, 2008, and 2012 CZMP as the Zoning Geodatabase Maps indicated that the zoning classification has been solely MH without the IM overlay district. *See County Exhibits 5, 6, and 7.* Further, she noted that this

error by the Department was independent of and not associated with any Issue that was raised by any party in any CZMP since 2004. An "Issue" under the CZMP "means a tract or parcel of land proposed for a change in zone or district classification." See BCC § 32-3-211.

On July 13, 2015, Andrea Van Arsdale, Director of the Department, notified the Honorable Wade Kach, 3rd District, Baltimore County Council, and all affected property owners of the County's intention to correct this technical error in accordance with the BCC. *See County Exhibits 8-11.*

This Board finds that the notice provisions of the BCC § 32-3-234 have been met, as Ms. Zhao testified that the Property was duly posted with signs of the scheduled public hearing on the proposed zoning change at least 15 days before the Board hearing. Also, Ms. Zhao testified that she took pictures of the signs that she posted at each location on Beaver Dam Road, namely, 10000, 10135, and 10155, on October 4, 2016. *See County Exhibits 12-19, and 21-23.*

In considering the reasoned testimony of the County's witness, Kui Zhao, of the Department of Planning, along with a review of the extensive exhibits introduced by the County, and arguments of counsel presented at the hearing, this Board is persuaded that when the Department prepared the zoning maps after the 2004 CZMP, it inadvertently omitted the IM overlay district on the Property and left only the underlying zoning classification of MH. Further, this Board finds that this technical error was perpetuated in the 2004, 2008, and 2012 CZMP as the Zoning Geodatabase Maps indicated that the zoning classification has been solely MH without the IM overlay district.

ORDER

IT IS, THEREFORE, this 4th day of November, 2016, by the Board of Appeals of Baltimore County hereby **ORDERED** that:

- a. The zoning on the following properties located in the Cockeysville section of Baltimore County, Maryland, 21030, be reclassified from MH (Manufacturing, Heavy) to MH-IM

(Manufacturing, Heavy - Industrial Major) in accordance with the legislative intent of the County Council, namely,

i. The eastern portion of 10000 Beaver Dam Road that consists of 195.55 acres of land, more or less;

ii. The northern segment of 10135 Beaver Dam Road that consists of 1.09 acres of land, more or less; and


iii. 10155 Beaver Dam Road that consists of 4.55 acres of land, more or less; and

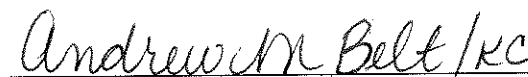
b. The Department of Planning make the necessary zoning changes on the official Baltimore County Zoning Geodatabase Maps as reflected on *County Exhibit 20*.

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 E. Murphy, Chairman


Meryl W. Rosen


Andrew M. Belt



Board of Appeals of Baltimore County

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November 4, 2016

Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of: Baltimore County, Maryland – Petitioner
10000 Beaver Dam Road
10135 Beaver Dam Road
10155 Beaver Dam Road
Case No.: MC-17-01

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Her".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure

c: See Attached Distribution List

In Re: Baltimore County, Maryland – Petitioner
10000 Beaver Dam Road
10135 Beaver Dam Road
10155 Beaver Dam Road

Distribution List
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Michael T. Wyatt, Esquire
Edward J. Gilliss, Esquire
Beaver Dam Road, LLC
Ted Baker, II, President & CEO/Bluegrass Material Company, LLC
Gregory F. McElwee, President/Cinder and Concrete Block Corp.
The Honorable Wade Kach, 3rd District, Baltimore County Council
Office of People's Counsel
Andrea Van Arsdale, Director/Department of Planning
Fred Homan, Administrative Officer
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Jeff Mayhew, Deputy Director/Department of Planning