

IN THE MATTER OF	*	BEFORE THE
JOHN AND ANGELA GEILFUSS	*	BOARD OF APPEALS
LEGAL OWNERS	*	
BALTIMORE COUNTY, MARYLAND	*	OF
PETITIONER	*	
FOR ZONING MAP CORRECTION ON THE	*	BALTIMORE COUNTY
PROPERTIES LOCATED AT	*	
9 & 15 AIGBURTH ROAD	*	Case No. MC-18-02
	*	
9 th ELECTION DISTRICT	*	
5 th COUNCIL DISTRICT	*	
* * * * *		

OPINION

The above captioned matter came before this Board on July 11, 2018 on a Petition for Zoning Map Correction filed by Michael E. Field, County Attorney, Renee Phillips-Farley, Assistant County Attorney, and Nancy C West, Assistant County Attorney, on behalf of Baltimore County, Maryland, Petitioner.¹ The requested correction involves a technical drafting error and seeks to reclassify the existing zoning on adjacent properties known as 9 and 15 Aigburth Road, owned by John and Angela Geilfuss and located in the Towson community of Baltimore County from D.R.1 - N.C. (Density Residential, 1 density unit per acre, Neighborhood Commons) and D.R.16 (Density Residential, 16 dwelling units per acre) to D.R.5.5. (Density Residential, 5.5 density units per acre).

This corrected zoning would comport with the legislative intention of the County Council in reclassifying approximately 1.16 acres during the 2012 Comprehensive Zoning Map Process (CZMP). The Petition is cognizable under Baltimore County Code (BCC) §§

¹ Since the filing of the Petition, Ms. Phillips-Farley has resigned her position at the Office of Law and Baltimore County was represented by Ms. West at the public hearing for this matter.

32-3-231 to 32-3-236, and, specifically, § 32-3-233 (a), which provides in general that “[t]he Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.”

At the Board’s public hearing, Nancy C. West, Assistant County Attorney, represented Baltimore County, Maryland and Lawrence E. Schmidt, Esquire, represented the property owners, John and Angela Geilfuss. Carole S. Demilio, Deputy People’s Counsel for Baltimore County, also participated. There were no Protestants but several residents from the neighborhood attended the hearing to observe and ascertain the nature of the petition.

At the conclusion of the hearing, this Board conducted a public deliberation and unanimously agreed to approve the requested map correction. This Opinion follows, consistent therewith.

Decision

John and Angela Geilfuss are the fee simple owners of land known and described as 9 and 15 Aigburth Avenue located in the Towson community of Baltimore County, Maryland 21286 (the Property). The Property is actually comprised of three separately described parcels, each with their own tax identification numbers assigned by the Department of Assessments and Taxation. The Property is improved with two dwelling buildings. One is a single family detached dwelling in which the Geilfuss’ reside (9 Aigburth Road) and the other (15 Aigburth Road) a multiunit rental. The Property is located in the Ninth Election District and the Fifth Council District.

On November 16, 2016, John Geilfuss sent a letter to Jeff Mayhew, Deputy Director,

Department of Planning (Planning), indicating that the zoning on the Property was incorrect. He attributed it to the implementation of a County Council decision made during the 2012 CZMP. Upon investigation, Planning agreed and filed this petition with this Board to correct the zoning that resulted from a technical drafting error.

Bill Skibinski, of Planning, testified for the County. Mr. Skibinski has been employed in Planning for approximately three years and is a Community Planner. He testified that upon receipt of Mr. Geilfuss' letter he investigated the zoning history of the Property, in addition to the zoning of an immediately adjacent property owned by the Burkleigh Square Community Association. This adjacent property is used as public open space and is a community park. In investigating the zoning history of these adjacent properties, he examined the archives of decisions made during the 2012 CZMP. He noted that the CZMP takes place every four years on a schedule specified in the Baltimore County Code. During the CZMP, any citizen may request a zoning change on any property in the County, although the usual participants in the process are individual landowners, contract purchasers, community organizations, County staff, the Planning Board and the County Council. The CZMP covers a period of approximately 12 months and results in zoning decisions that are reflected in a Final Log of Issues. 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. Ultimately, the County Council decides on each Issue whether to retain the existing zoning or to enact a different zone(s) or district(s). Generally, each Issue is a single property, but an Issue may cover many adjoining properties and might even cover many hundreds of acres. The zoning on all properties which were not

Issues is re-enacted without change.

As is relevant to this matter, the County Council initiated Issue No. 5-039 during the 2012 CZMP. Issue No. 5-039 designated the community park property owned by Burkleigh Square Community Association and proposed that it be re-zoned from D.R.5.5 to D.R.1 as shown on *County Exhibit 2*, the Log of Issues for Council District Five. Significantly, the Issue also indicated that the Burkleigh Square property was 1.16 acres in area. This measurement was taken based upon information taken from the County's Geographic Information System (GIS) mapping of Baltimore County, which is developed and maintained by the Baltimore County Office of Information and Technology. This GIS mapping is designed to capture, store, manipulate, analyze, manage, and present geographic data. Ultimately, the County Council changed the zoning of the Burkleigh Square Community Association park property to D.R.1 – N.C. (1.14 acres) and D.R. 5.5 (.01 acre). (*See County Exhibit 2.*)²

Mr. Skibinski also testified that subsequent to the 2012 CZMP, the Office of Information Technology conducted a geospatial analysis and determined that the property lines (and the resulting land area) for the Burkleigh Square Community Association property were incorrect within the GIS mapping system. That is, rather than being 1.16 acres as shown on the CZMP Log of Issues, the actual area of the Burkleigh Square Community Association property is 1.01 acre. (*See County Exhibit 6.*) Further, the incorrect mapping showed that the Burkleigh Square Community Association park property extended into the Geilfuss property.

² Due to the precise acreage of the property (measured to a one hundredth of an acre) and the rounding of the acreage re-zoned, the total acreage re-zoned is shown to be 1.16 acres.

(See County Exhibits 3 and 4.) As a result of this error, when the 2012 CZMP maps were adopted and Issue 5-039 was approved, approximately 0.15 acres of the Geilfuss property were improperly re-zoned to D.R.1 – N.C.

Planning perpetuated this technical drafting error - as reflected on the 200' scale zoning map - when it transferred the zoning classification enacted by the County Council in the 2012 CZMP to the official zoning map. Further, Mr. Skibinski testified that this error by Planning was independent of and not associated with any Issue that was raised by any party in the subsequent 2016 CZMP.

Mr. Skibinski averred that Planning conducted a thorough review of its archived CZMP files and zoning changes/polygons through time before concluding that a technical drafting error was made in transferring the legislatively approved zoning classification during the 2012 CZMP.

On January 4, 2018, Planning sent a letter *(See County Exhibit 10)* to the Honorable David Marks of Council District Five, and other members of the County Council, advising of its intention to correct the zoning map error as provided in the BCC. Mr. Skibinski testified that he communicated with Councilman Marks to discuss the matter before filing the Petition. Likewise, Planning sent a letter of the same date to Mr. and Mrs. Geilfuss *(See County Exhibit 9)*, advising of its intention to pursue a zoning map correction with this Board.

Finally, this Board finds that the notice provisions of the BCC § 32-3-234 have been met as Mr. Skibinski testified that the Property was duly posted with the requisite particulars at least 15 days before the scheduled hearing date. *(See County Exhibit 11.)*

In considering the thorough and articulate testimony of Mr. Skibinski, along with a review of the extensive exhibits introduced by the County detailing the history of the Property since 2012, this Board is persuaded that a technical drafting error occurred when Planning incorrectly transferred the legislatively approved zoning classification during the 2012 CZMP to the official zoning maps. Significantly, as noted by Peoples' Counsel during the hearing (*See Peoples' Counsel Exhibits 1 and 2*), the N.C. district is to be applied only to public (or publicly used) properties such as the Burkleigh Square community park property. The N.C. district is not intended to be applied to private residential properties. For all of these reasons, it is apparent that the legislative intention of the County Council was not to re-zone the Property during the 2012 CZMP.

ORDER

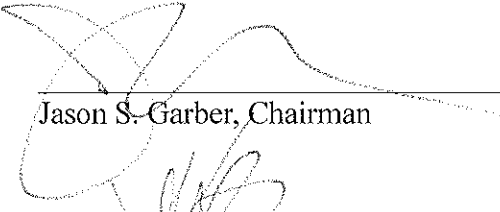
IT IS, THEREFORE, this 25th day of July, 2018, by the Board of Appeals of Baltimore County hereby

ORDERED, that the Department of Planning reclassify the zoning on the properties known as 9 and 15 Aigburth Avenue in the Towson community of Baltimore County, Maryland from D.R.1 - N.C. (Density Residential – 1, Neighborhood Commons) to D.R.5.5 (Density Residential 5.5 units per acre) in accordance with the legislative intent of the County Council as reflected on *County Exhibit 2*; so that the entire acreage of 9 and 15 Aigburth Road are zoned D.R. 5.5 and it is further,

ORDERED, that the Department of Planning make the necessary changes to the official zoning maps as reflected on *County Exhibit 12*.

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*.


**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Jason S. Garber, Chairman



Kendra Randall Jolivet



William A. McComas



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 25, 2018

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*
9 and 15 Aigburth Road
Case No.: MC-18-02

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" followed by a small mark.

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: See Attached Distribution List

In Re: Baltimore County, Maryland – Petitioner
9 and 15 Aigburth Road
MC-18-02

Distribution List
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John F. and Angela M. Geilfuss
Tracey Marcantoni/Burkleigh Square Community Association
Greg Bauer
The Honorable David Marks, 5th District, Baltimore County Council
Office of People's Counsel
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
Kui Zhao/Department of Planning