ADJOINING PROPERTY OWNERS FOR 17530 FREDERICK ROAD

Ronald Reese
17536 Frederick Road
Mt. Airy MD 21771-3626
(2.001)

Charles Ridgely
17524 Frederick Road
Mt. Airy, MD 21771-3656
(2.001)

DWW LLC
17560 Frederick Road
Mt. Airy, MD 21771-3626
(2.001)

"
"

Requested Zoning

Search Street:

FREDERICK RD Next

Property Information:

Amendment No.: 2.001
Current Zoning: RC-DEO
Requested Zoning: B-1
Tax Account ID.: 1404330366
Map: 2
Grid: 19
Parcel: 102
Lot:
Acres: 0.92
Address: 17530 FREDERICK RD
City/State/Zip: MT AIRY, MD 21771

Owner:

Name: WALLACE JAMES F JR
Email: dplarkin@gmail.com
Phone: 301-514-4054
Mailing Address: 6612 WESTCHESTER DR NE
City/State/Zip: WINTER HAVEN, FL 33881

Representative:

Name: Andrea LeWinter
Email: alewinter@taylorlegal.com
Phone: 443-420-4075
Mailing Address: 5850 Waterloo Rd. Suite 140
City/State/Zip: Columbia, MD 21045

Decision:

Planning Board Decision:
Planning Board Vote:
Council Decision:
Council Vote:

Zoning Map Amendment Request Form

Howard County
Comprehensive Zoning Plan
Department of Planning and Zoning

[Handwritten/Typed Version]
Before filling out this form, please read the Instructions section at the end of the form.

A. Property Information (Please print or type)

1 Address / Street (Only) 17530 Frederick Road

2 Tax Map Number 0002 Grid 0019

3 Parcel(s) 0102

4 Lot(s) N/A

5 Tax Account Data: District 04 Account # 330366

6 Size of Property: Acres .92 Square feet 40,075

7 The Property is currently zoned: RC-DEO

I request that the Property be rezoned to: B-1

B. Owner Information

8 Owner Name Paul Alan and Diane Patricia Larkin

9 Mailing street address or Post Office Box 17530 Frederick Road

City, State Mt. Airy, MD

ZIP Code 21771-3626

Telephone (Main) 301-703-8163

Telephone (Secondary) 301-514-4054

10 E-Mail dplarkin@gmail.com

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DIV. OF PUBLIC SERVICE & ZONING

C. Representative Information

11	Name	Andrea LeWinter
	Mailing street address or Post Office Box	5850 Waterloo Road, Suite 140
	City, State	Columbia, MD
	ZIP	21045
	Telephone (Main)	410-300-7251
	Telephone (Secondary)	443-420-4075
	E-Mail	alewinter@taylorlegal.com
12	Association with Owner	attorney

D. Alternate Contact [If Any]

Name

Telephone

E-Mail

E. Explanation of the Basis / Justification for the Requested Rezoning

13 Please see attached for full explanation. In summary, the Department of Planning and Zoning has approved this property for a nonconforming use (commercial / light manufacturing) on the first floor of the existing building. The smaller second story houses a residential apartment. The nonconforming use is very narrow in scope and it has been difficult for the owners to find tenants able to utilize the site. Because of the existing building and extensive paving, any alternative non-commercial use of the property is impractical unless all construction were razed. Rezoning the property to B-1, the least intensive of business uses, will clarify permitted uses; streamline the zoning map; alleviate any confusion for the neighbors; and, make the property more marketable and useful. The property abuts a M-1 parcel and is just one parcel removed from a B-1 property and there are two BR parcels in the immediate vicinity, so a re-zone to B-1 is consistent with the character of the neighborhood.

F. List of Attachments/Exhibits

14 1. Full response to Section E. Explanation of the Basis, #13;
2. Decision and Order awarding nonconforming use, case no. 11-004;
3. Section of the Howard County Zoning map with subject property marked, showing other commercially zoned properties in the immediate vicinity.

G. Signatures

15 Owner	Diane P. Lah	Owner (2)	Paul H. Lehn
Date	12/11/2012	Date	12/11/12

☐ **Additional owner signatures?** **X the box to the left and attach a separate signature page.**

16 Representative Signature	[signature]
Date	12/12/2012

DPZ Use Only	JR	Amendment No.	2.001
Notes			

ATTACHMENT 1

Since the 1940s, the main building on the premises has housed a commercial/ manufacturing space on the first floor with a modest residential apartment above. There is also a one-story detached garage and two large paved areas, utilized for parking personal and delivery vehicles. The dual commercial/residential use has existed since the original purchase and development of the property, and the current owners, who reside on the second floor, continue to actively solicit tenants for the commercial space.

On November 16, 2011, DPZ confirmed the property's existing dual use, approving the property for a non-conforming use for "Manufacturing, compounding, assembling or treatment of articles or merchandise from previously-prepared materials such as: ceramics, clay, cloth, fiber, glass, leather, paper, pipe, plastics, precious or semi-precious metals or stones, wire and wood." *See Decision and Order, Nonconforming Use Case No. 11-004.* Of note, until 1990, the non-conforming use of welding also existed on the property. *See Id.*

Because of the unique construction of the building -- the first floor designed for warehouse and/or manufacturing use, not suitable for or connected to the living space -- and the wide swath of paving, commercial space is the most logical use of the property and other uses are impractical, unless the existing development were to be completely razed. Further, the property is adjacent to M-1 (Wally's Iron Works, across the street), only one property removed from a B-1 (a veterinary clinic), with two BR properties in the immediate vicinity. *See attached map.*

Unfortunately, the permitted nonconforming uses at this time are very narrow. The prior commercial tenant was a sewing kit manufacturer and future tenants must be similarly extremely low impact. The result has been that the current owners have had tremendous difficulty finding qualified tenants interested in the space and the commercial portion of the property has remained vacant for some months, causing a significant loss of income to the owners and a loss of tax revenue to the County.

From a land planning and community perspective, nonconforming uses pose difficulties because of the complexity of record-keeping, monitoring, and the on-going approval process, and because of community confusion about appropriate and approved uses. From a residential homeowner perspective, a nonconforming use is far from ideal because of the restrictions placed on allowable tenants and the impact on the marketability of title. From a business perspective, nonconforming uses severely limit the types of commercial vendors interested in investing in the property as they fear unavoidable restrictions on their ability to expand and develop, resulting in a development and tax loss to the County. If this property is rezoned to B-1, which permits a dwelling unit, there would be no need for continuation of the nonconforming

use and the permitted commercial uses of the property would be clear and easier to access. This would benefit the County, the property owner, and the community.

B-1 is also the least intensive of all business zones and so would not significantly extend the already approved uses. Further, as a practical matter, because the property is less than 1 acre, it is appropriate for only a limited number of uses within B-1; thus, any perceived or feared incompatibility with or nuisance to residential neighbors would be minimized. The B-1 zoning would also be compatible with the M-1, B-1, and BR properties in the immediate vicinity.

Attachment 2

IN THE MATTER OF PAUL AND DIANE LARKIN, PETITIONERS

* BEFORE THE DIRECTOR OF DEPARTMENT OF PLANNING & ZONING
* NONCONFORMING USE CASE NO. 11-004
* 17530 FREDERICK ROAD

* *

DECISION AND ORDER

On October 25, 2011, the Designee for the Director of the Department of Planning and Zoning conducted a public hearing to consider the petition of Paul and Diane Larkin, for confirmation of a nonconforming use for the use of the subject property as a welding business, sewing kit manufacturing and small engine motor repair, as authorized under Section 100.H. and Section 129.D. of the Zoning Regulations. The notice of the hearing was posted on the subject property in accordance with all applicable regulations.

Prior to the introduction of testimony, the following items were incorporated into the record:

1. The current Howard County Zoning Regulations.
2. The Subdivision and Land Development Regulations.
3. The Administrative Procedures Act of the Howard County Code.
4. The 1948, 1954, 1961, 1977, 1985, 1993, and 2004 Howard County Zoning Regulations.
5. The Land Use map records of the Department of Planning and Zoning.
6. The aerial photograph records of the Department of Planning and Zoning.

During the hearing the following items were introduced as exhibits:

1. Petition, Nonconforming Use Plan and Documentation submitted by Petitioners, including all pre-hearing correspondence concerning the use of the property.
2. Photographs of the subject site submitted by the Department of Planning and Zoning.
3. Petitioner Exhibits #1-#4.
4. Opposition Exhibit #1.

Testimony in favor of the petition was presented by Paul Larkin, Diane Larkin, Dennis Wallace, Charles Ridgely, III, Lorraine Ridgely and Jackie Raines. The Petitioners were not represented by counsel. Beverly Blanchfield and Jane Athey testified in opposition to the petition.

<u>Supporting testimony and cross examination:</u>

Diane Larkin testified that the petition arose as a result of applying for permits to improve the second floor residential portion of the building. She said the Department of Inspections, Licenses and Permits would not

approve permits unless the building complied with certain fire code regulations and it became apparent at that time that the current zoning of the property did not permit commercial uses. Ms. Larkin stated that before undertaking further property improvements she wants to verify that operating a business on the property is legal. She said she applied for a nonconforming use confirmation and originally thought the building was constructed in 1957 but now believes it was constructed in 1947. She stated that there was a lease agreement with Milton Morera who operated a small engine repair business on the property since January, 2011 but he was released from the agreement at the end of September, 2011. She said that currently there is no tenant in the lower level but she has been approached by a potential tenant to operate a chocolate production business in the space.

Paul Larkin testified that a business has been on the property since 1947 and it recently became apparent that business uses do not comply with current zoning regulations. He submitted Petitioner Exhibit #1, a report of Metropolitan Regional Information Systems, Inc. which he stated shows a tax record that codes the land use as commercial. He stated that income from a business is needed in order to make needed property repairs and improvements.

Ms. Larkin submitted Petitioner Exhibit #2 comprising three deeds; Petitioner Exhibit #3, a portion of the Howard County zoning map and Petitioner Exhibit #4, photographs of the first floor interior space. She said the nearby property at 17500 Frederick Road is shown on Exhibit #3 as residentially zoned but she believes there was a nonconforming use hearing for this site which changed the zoning to a business classification. She said this map shows that there are several nearby properties which have industrial zoning.

Jane Athey asked the Petitioners how it came to be that a business that started as small engine repair became an automotive repair business. Mr. Larkin responded that the lease was for small engine repair for lawn mowers, farm equipment and tractors but the business gradually evolved to auto repair and that was a reason the lease was terminated early. Ms. Athey also asked about the rezoning process and the Director's Designee briefly explained that the petition, if granted would not rezone the property from residential to commercial but that the hearing was solely for the confirmation of an alleged nonconforming use.

Beverly Blanchfield stated that a small engine repair business seems like it would involve things like lawn mowers and small engines. She asked what the difference is between a small engine repair business and an auto repair business. Ms. Larkin responded that she does not wish to have an auto repair business on the property because fumes are an issue since she lives upstairs and that she would like the chocolate manufacturing business to be able to operate on the site but that she does not know at this time what type of business will occupy the space. Mr. Larkin responded that there was some confusion in the petition about the requested confirmation. He said he wishes to amend the petition to allow chocolate manufacturing, a self storage facility or office use.

Ms. Athey asked if a nonconforming use has to state what it is going to be and if the use will be allowed to change. She said the Petitioners said small engine repair and now they are not sure what it will be. She asked if the paved parking area is for residential or commercial use. Mr. Larkin said the parking area could be used for either use.

Ms. Blanchfield questioned how the petition could meet the nonconforming use criteria if the Petitioners do not know what kind of business will be on the site.

Dennis Wallace testified that his father had a welding and iron works business on the subject property from 1970 until January, 1990. He said that when his father bought the property, he was told it had a nonconforming use on it. Mr. Wallace said when he had the adjoining property to the west rezoned to M-1 to operate Wally's Iron Works his intention was to move the nonconforming use from the subject property to the adjacent M-1 zoned site but he did not because his father would have lost the income from the commercial space. He said the sewing kit business came to the subject property in January, 1990 after the welding business moved out.

Ms. Blanchfield asked what happens to the nonconforming use if the use changes. Mr. Larkin responded that the tax record may support the nonconforming use.

Charles Ridgely, III testified that he purchased his house on the lot behind the subject property in 1953 and there was a house on the subject property at that time. He said Mr. Saas had long hay feeders on the subject property and operated a welding business there. He said he has never had any problems with the business operations on the site.

Lorraine Ridgely testified that when she and Mr. Ridgely bought the house behind the Saas property, Mr. Saas was well established in the welding business. She said there was a nice apartment above the shop and she never heard noise from the business operations. She said when the sewing business was there UPS trucks would come into the driveway but she did not have complaints about the trucks and the parking area has been there for as long as she can remember.

Jackie Raines testified that he remembers going to the subject property with his father to have equipment repaired and there has always been a tenant in the apartment above the shop.

Opposition testimony and cross examination:

Jane Athey submitted Opposition Exhibit #1, a letter signed by residents of Country View Way. Ms. Athey testified that she and several neighbors are opposed to the petition because they believe it represents a change in use which would not qualify as a nonconforming use. She said she has lived in the area for about four years and to her knowledge a small engine repair business was operating on the property when she moved there and this business expanded to an automotive repair business. She said this involved large vehicles parked on the concrete pad and she has concerns about oil and gas runoff leaking into the ground in an area where everyone has a well. She said she is concerned about noncompliance with the criteria and questioned whether the business will be for small engine repair or auto repair. She expressed concerns about the impact of traffic from the business on the safety of children in the area since the subject property is in the immediate area of a main bus stop.

Beverly Blanchfield testified that she has lived in the area for about 19 years and she is concerned that a change in the type of business being operated would be approved and that the Petitioners do not seem decided on what type of business would be located on the property. She said she is opposed to a business which would bring large lawn mowers and other equipment which could leak gas and oil into the ground water and would generate fumes. She also expressed concerns about the safety of neighborhood children boarding buses near a business which involves large vehicles.

Summation:

Diane Larkin said the building has been on the property since 1947 and she is surprised that there are concerns. She said she and Mr. Larkin have continued to improve the appearance of the property. Paul Larkin

stated that they have moved past wanting to have a welding shop or auto repair business and they are leaning toward chocolate manufacturing. He said the chocolate business would require a large investment for building conversions and suggested that a self storage facility may be operated as an alternative because only minor interior changes would be required for such a facility. He requested that the petition be amended to include chocolate manufacturing, self storage or office uses.

Jane Athey said a small engine repair shop would be problematic because it would bring increased traffic and change the character of the neighborhood.

Beverly Blanchfield stated that a business involving large trucks and lawn mowers should not be allowed but that she had no problem with the sewing kit shop.

Based upon the testimony and exhibits presented at the hearing, the description of the subject property and vicinal properties resulting from a site inspection by a member of the planning staff, as well as the plans and materials submitted by the Petitioners as part of the petition, the Director makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Petitioners, Paul and Diane Larkin, are the owners of the subject property of this proceeding. The subject property is located on the north side of Frederick Road approximately 400 feet west of West Watersville Road. This property is identified as Tax Map 2, Grid 19, Parcel 102, and the address is 17530 Frederick Road (the "Property"). The Property is located in an RC-DEO Zoning District, is 0.942 acres in area and is irregular in shape.

2. The Property is improved with a two-story block building (the "Two-story Building") located approximately 31 feet from Frederick Road. The petition states the first floor has been a nonconforming use and the second floor is residential consisting of a two bedroom apartment which is occupied by the owners.

There is a one-story detached garage located to the northwest of the Two-story Building. There is a large paved parking area in the southwest portion of the site between the Two-story Building and the detached garage. There is a paved driveway/parking area on the east side of the Two-story Building.

3. The Petitioners request the confirmation of a nonconforming use for a welding business, sewing kit manufacturing and small engine motor repair (collectively, the "Described Uses"). At the hearing Mr. Larkin requested the petition be amended to allow a chocolate manufacturing business, a self storage facility or office use (the "Amended Uses"). In the current RC District and DEO Overlay District zoning regulations, neither the Described Uses nor Amended Uses are permitted as a matter of right.

In response to the petition request to identify a date the use became nonconforming, the petition states "When constructed in what we now believe is 1947". The Petitioners allege the Property has been continuously used for business uses.

4. The Petitioners allege that the Property was first used for commercial purposes in approximately 1947, prior to the date of the first Zoning Regulations in Howard County, which were adopted on July 27, 1948 (the "Initial Zoning Regulations").

5. The full zoning history for the Property with regard to district designations, is that in 1948, the Property was zoned Residential; the 1954 Zoning Regulations retained the Residential district zoning; and the 1961 Comprehensive Zoning Plan zoned the Property R-40. The 1977 Comprehensive Zoning Plan rezoned the Property to the R District, and this R District zoning was retained by the 1985 Comprehensive Zoning Plan. The Property was rezoned RC-DEO in the 1993 Comprehensive Zoning Plan and this zoning was retained by the 2004 Comprehensive Zoning Plan and the 2005 Continuation of that Comprehensive Zoning Plan.

6. At the time of the Initial Zoning Regulations, the Property was zoned Residential. It should be noted that the Initial Zoning Regulations declared that any use of land existing prior to the adoption of those regulations that did not comply with the new zoning district designation automatically became a legal nonconforming use, without any need for a formal confirmation process.

7. As documentation in support of the nonconforming use, the Petitioners submitted documents and affidavits as the following petition attachments:

A – Charles and Lorraine Ridgely's statement that they have lived in area for 50 years and Mr. Saas built the building to have welding business on the first floor and an apartment on the second floor.

B - Harry M. Fleming, Jr.'s statement that the building was built by Clarence Saas in 1947 who lived in the apartment above the first floor welding business which was there until James Wallace purchased the building and moved Wally's Iron Works to the Property.

C –Calvin Pickett's statement his brother worked for Mr. Saas in the late 1940s until James Wallace moved his business to the property.

D –Jackie Raines' statement that his father took machines to the Property for welding repairs in the 1940s and there was an apartment above the shop.

E –Bernard Dennison's statement that in 1952 there was a welding business on the first floor of the Property which remained until James Wallace moved his business to the Property.

F – Photographs of Mr. Saas and a dog taken at subject property developed in 1952.

G – Letter of Dennis Wallace, President of Wally's Iron Works stating that his father James Wallace (now deceased) purchased the Property in September, 1970 from Mr. Sass who had a welding shop at that address. James Wallace operated Wally's Iron Works on the Property from September, 1970 until January, 1990 when Wally's Iron Works moved to the adjacent property and another business moved in.

H – Letter of Lee Ann Asher, Owner of Lama Sewing Kits stating she operated a sewing kit manufacturing and mail order business on the first floor from January, 1990 until September, 2010.

I – Commercial/industrial Real Property Income Questionnaire for 2007-2009.

J – Rent checks to James Wallace from Lama Sewing Kits.

K – Letter of Milton Morera stating that he has a lease to operate an auto repair business for the period January, 2011 through January, 2012.

L – Lease Agreement between Petitioners and Milton and Jessica Morera for the period January, 2011 through January, 2012.

8. The following are documents of the Department of Planning and Zoning:

a. The Land Use Map of 1961 which depicted the Property as M 14, or "Light manufacture of iron, steel and their products".

b. A record entitled "Nonconforming Uses Active as of January, 1977" containing the annotation, "James Wallace, 442-2202, Route #144 (17535), Mt. Airy, Maryland, Business operation, Iron Works – fabrication, Non-Conforming" (the "Archived Record").

c. Site Development Plan 88-100, approved in March, 1988 for Wally's Iron Works, depicts the subject Property with the notation "Existing 2 story steel fabrication shop".

9. Properties on the north side of Frederick Road are zoned RC-DEO except for Parcel 54, the adjoining property to the west which was rezoned from R to M-1 in ZBC 841M approved in April, 1987 and is the site of Wally's Iron Works and a communications tower (SDPs 88-100 & 05-137).

following advisory:

1. The Petitioners are advised that if the operation of a nonconforming use lapses for a period of more than two years, the permissibility of any and all nonconforming uses on the Property is permanently extinguished. The last date the Latest Confirmed NCU existed on the Property is established as September, 2010.

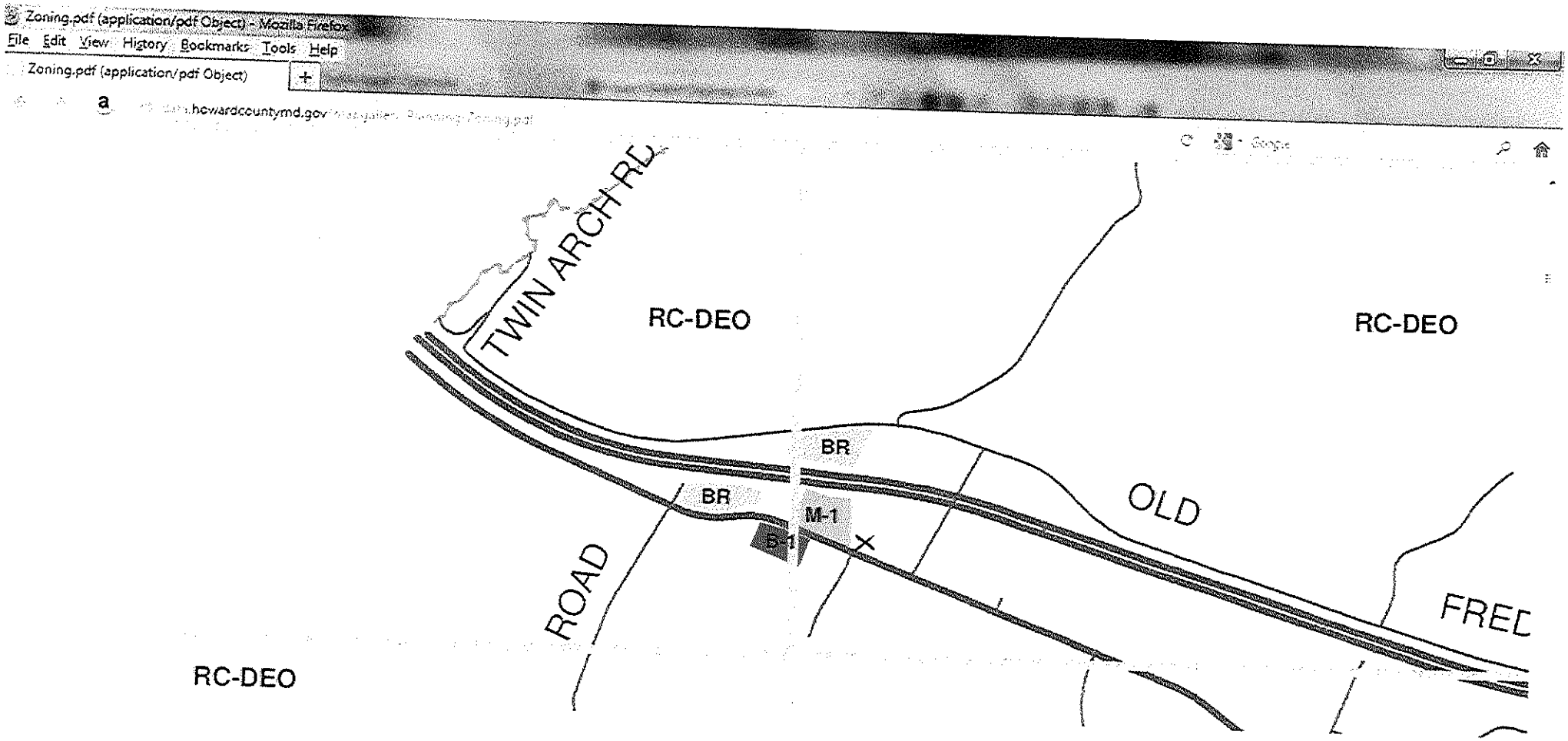
Prepared By:
Howard County Department of
Planning and Zoning,
Division of Public Service and
Zoning Administration

Marsha S. McLaughlin, Director
Department of Planning and Zoning

Zan Koldewey, Planning Specialist II
Director's Designee

A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.

Attachment 3



X=subject property