



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

May 19, 2016

## TECHNICAL STAFF REPORT

*Planning Board Meeting of June 2, 2016*

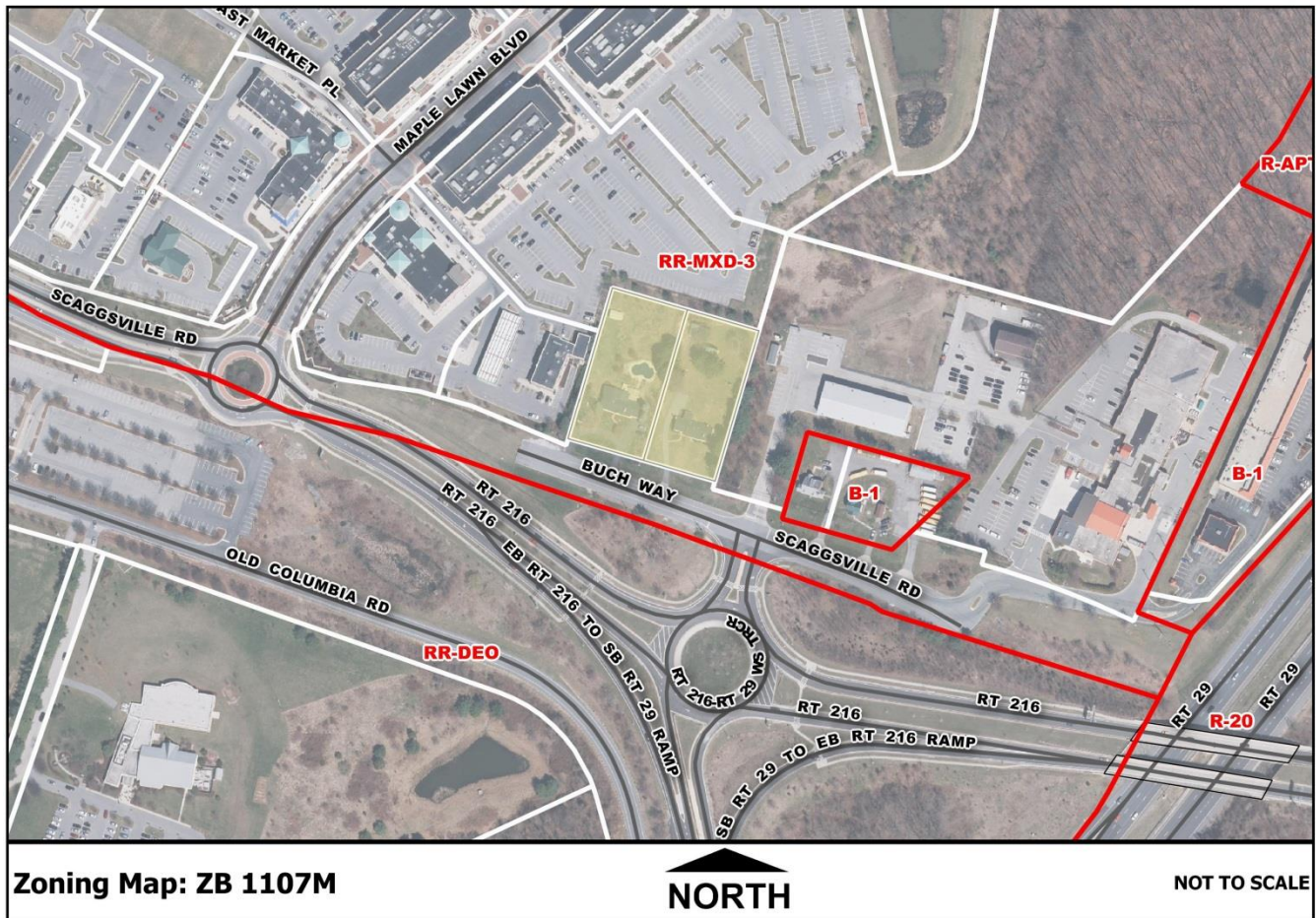
**Case No./Petitioner:** ZB-1107M – Olde Scaggsville, LLC

**Location:** Fifth Election District  
North side of Scaggsville Road approximately 225 feet north of the first MD 216 traffic circle west of US 29  
Tax Map 46, Grid 3, Parcels 200 and 226; 11292 and 11296 Scaggsville Road, also known as 11292 and 11296 Buch Way.  
(the "Property")

**Area of Site:** 1.99 acres

**Current Zoning:** RR-MXD-3

**Proposed Zoning:** B-1



## **I. DESCRIPTION OF PROPOSAL**

The Petitioner proposes to rezone two adjacent one acre lots from the RR-MXD-3 (Rural Residential-Mixed Use Overlay) District to the B-1 (Business: Local) District. Although the Property is within the MXD-3 Overlay District, it is not within the boundaries of the adjoining Maple Lawn Mixed Use Development (the “Maple Lawn Development”) and it is below the 25 acre minimum lot size requirement, therefore it can only be developed under the RR District regulations.

The Rural Residential District is established to allow low density residential development within a rural environment. The Rural Residential District is intended for an area of the County which is already largely committed to low density residential subdivisions. Within the RR District, agriculture is permitted as well as residential development in both cluster and non-cluster forms. Cluster development is permitted in order to protect environmental and landscape resources and to preserve agricultural land.

The B-1 District is established to provide areas of local business that can directly serve the general public with retail sales and services.

A plan entitled “Exhibit to Accompany Zoning Petition – 11296 and 11292 Scaggsville Road” (the “Exhibit Plan”) submitted with the petition depicts a conceptual development of an office building. This Exhibit Plan does not include the land area of the public street right-of-way in front of the Property in the depicted development, as is mentioned by the Petitioner as a future possibility. However, the Department of Planning and Zoning has received confirmation from the Petitioner that this plan does not represent a site plan zoning petition under Section 100.0.G.2. of the Zoning Regulations and should only be considered as a hypothetical development.

The Petitioner asserts that the proposed Zoning Map Amendment is justified on the basis of Mistake in zoning made during the 2013 Comprehensive Zoning Plan (the “2013 CZP”). This assertion is evaluated in the Evaluation and Conclusion section.

## **II. ZONING HISTORY**

### **A. Subject Property**

The Property was zoned R-40 (Residential – One and Two Family Detached) during the 1961 Comprehensive Zoning Plan and rezoned to R (Rural) during the 1977 Comprehensive Zoning Plan. The Property was rezoned to the current RR-MXD-3 during the 1993 Comprehensive Zoning Plan.

### **B. Adjacent Properties**

The surrounding properties were also zoned R-40 in 1961 and remained so until 1992 when the R (Rural) properties to the south of MD 216 were rezoned to RR-DEO. During the 1993 Comprehensive Zoning Plan, the R (Rural) areas to the west, north and east of the Property were rezoned to RR-MXD-3. Subsequently, the properties to the north and west were designated as an Employment Area of the Maple Lawn Mixed Use Development in 2000.

## **III. BACKGROUND INFORMATION**

### **A. Site Description**

The Property consists of two rectangular shaped parcels with a combined area of 1.99 acres. It is

the only property that fronts the portion of the former MD 216 roadway west of the traffic circle. The property is currently developed with modular office buildings approved by Temporary Use 15-005.

A crushed stone temporary parking area is located southwest of the modular office buildings. The rear of the Property is an open lawn with large deciduous trees. The Property slopes approximately 14 feet from the southwest corner towards the northeast corner.

**B. Vicinal Properties**

East of the Property is Parcel 288, also zoned RR-MXD-3 and used for the Howard County Public Safety Complex, which consists of the Southern District Police Headquarters, Fire Station 11, and a maintenance facility. Also to the east are Parcels 176 and 177, which are within the B-1 Zoning District and improved with single family residences. They were rezoned from RR-MXD-3 to B-1 during the 2004 Comprehensive Zoning Plan. Parcel 176 appears to be used for a school bus business and may operate from both parcels. According to the State Department of Assessments and Taxation (“SDAT”) information for both parcels, the Tax Use designation is “Commercial/Residential”.

South of the Property is the former MD 216 roadway, currently known as both Scaggsville Road and Buch Way, that ends approximately 80 feet past the west side of the Property. An open space area exists between this road and the current MD 216.

West of the Property is Lot C-11 of Parcel 124, also zoned RR-MXD-3, however the RR designation is superseded by the MXD-3 designation, since it is within the approved Maple Lawn Development. It is located within an Employment area of the Maple Lawn Development and is developed with a gasoline station and convenience store.

North/northwest of the Property is Lot C-3 of Parcel 124, which is also within an Employment area of the Maple Lawn Development. It is developed with an office building and parking lot.

**C. Roads**

The portion of Scaggsville Road/Buch Way that adjoins the Property has approximately 45 feet of paving and is located within the very wide, variable MD 216 right-of-way.

The road in front of the Property is not a through-road, therefore sight distance is not considered to be an issue. However, the estimated sight distance from the center of the Property frontage is approximately 690 feet to a cul-de-sac in the southeast direction and 230 feet to the terminus of the road to the northwest.

There is no traffic volume data for Scaggsville Road/Buch Way in front of the Property.

**D. Water and Sewer Service**

The Petitioner states that both parcels are within the Metropolitan District, however, according to the Geographic Information System, Parcel 226 is within the Metropolitan District but Parcel 200 is not. Both parcels are within the Planned Service Area.

Parcel 226 appears to have public water service for the modular office buildings. Both parcels have existing septic areas and wells. If the Property is redeveloped for a commercial use the

Property would be required to connect to public water/sewer and the wells/septic areas would have to be abandoned.

**E. General Plan**

The Property is designated as a Targeted Growth and Revitalization place type on the *PlanHoward 2030* maps.

Scaggsville Road/Buch Way is not depicted on the Transportation Map of the *PlanHoward 2030* General Plan. MD 216 is a Minor Arterial highway.

**F. Agency Comments**

See attached comments on the proposal from the following agencies:

1. State Highway Administration
2. Bureau of Environmental Health

The following agencies had no objections to the proposal:

1. Department of Recreation & Parks
2. Department of Fire and Rescue Services
3. Department of Inspections, Licenses and Permits

**G. Adequate Public Facilities Ordinance**

A Site Development Plan for any nonresidential redevelopment of the Property would be subject to the requirement to pass the test for adequate road facilities.

**IV. EVALUATIONS AND CONCLUSIONS**

**A. Relation to the General Plan and the Zoning Regulations**

The Petitioner asserts that the request to rezone the Property to B-1 is in harmony with the *PlanHoward 2030* General Plan because it would be more consistent with the adjoining Maple Lawn Development as a transitional zone and that a B-1 zoning is more consistent with properties located within the PSA.

The Property is within a Targeted Growth and Revitalization Area as designated in the *PlanHoward 2030* General Plan. As described on Page 74 of that plan, such areas are “...*areas where current policies, zoning and other regulations, as well as policies suggested in PlanHoward 2030, seek to focus most future County growth.*”

The following policies in *Chapter 6 Growth* are related to the request:

**Policy 6.4** “*Ensure that the County continues to capture future job and business growth opportunities*”, and the “*Commercially and Industrially Zoned Properties*” Implementation Action to “*Establish policies to protect and promote commercially zoned land for future job and business growth opportunities.*”

**Opportunities Implementation Action of Policy 6.5** “Designate appropriate additional areas within the County’s Priority Funding Area for well-designed, compact development in order to accommodate future job and housing growth”.

Furthermore, the Designated Place Types Map shows that the Property as located within the Priority Funding Area and PSA for water and sewer.

The current RR (Rural Residential) Zoning does not support the Targeted Growth and Revitalization Area policies and is more consistent with the Rural West designation, which is described as “...area [that] is outside of the Priority Funding Area, [and] is not served by public water and sewer.” The Purpose statement for the RR (Rural Residential) District states “The Rural Residential District is established to allow low density residential development within a rural environment. The Rural Residential District is intended for an area of the County which is already largely committed to low density residential subdivisions.” The Property is not within a rural environment with low density residential subdivisions.

The proposed B-1 District is more consistent with the aforementioned General Plan policies and the commercial development pattern of the area. On the Land Use Map, the areas to the west and north of the Property are developed and undeveloped commercial land in the Maple Lawn Development. The areas to the east are mostly institutional and commercial. Furthermore, the proposed B-1 supports nonresidential growth that could lead to the creation of new jobs within the Targeted Growth and Revitalization Area.

**B. Appropriateness of Zoning District**

As noted above, the RR District is no longer an appropriate zoning district because it is a Rural West District and the property is located within a Targeted Growth and Revitalization Area with public water and sewer service. The following is an analysis of alternative zoning districts that may be suitable for the property:

*Residential*

Considering the commercial land use context of the area and General Plan policies, the single family residential districts do not seem to be appropriate. The Property is not eligible for the R-APT District because it does not directly adjoin MD 216.

*Non-residential*

The Property is not eligible for the POR, PEC, or OT districts. The Property does not meet the CCT District’s purpose to serve as a transition between residential neighborhoods and nonresidential development. Therefore, the B-1 District is the least-intense nonresidential district that might be appropriate for the Property.

Another alternative would be to incorporate the Property into the adjacent Maple Lawn Development to the west and north. The adjacent properties are designated as Employment area of this Mixed Use Development. The uses permitted as a matter of right in the Employment areas of the Maple Lawn Development are those allowed in POR, B-1, and M-1 Districts. Therefore, the B-1 District will result in less intense land uses.

**C. Evaluation of the Petition Concerning the Change Rule**

To substantiate a change in character of the neighborhood, the petitioner must establish the “neighborhood” boundary and specify the changes that occurred after the comprehensive zoning that altered the character of the “neighborhood”.

No statement was provided in the petition as to whether or not there is an allegation of substantial change in the character of the neighborhood since the 2013 CZP. Furthermore, the Petitioner did not provide any neighborhood boundaries, so DPZ did not evaluate the petition in regards to the Change Rule.

**D. Evaluation of the Petition Concerning the Mistake Rule**

To substantiate a mistake in zoning, evidence must show that the Zoning Authority erred when it adopted the comprehensive zoning map.

The Petitioner asserts that the proposed Zoning Map Amendment is justified on the basis of Mistake in zoning made during the 2013 Comprehensive Zoning Plan (the “2013 CZP”). The basis for this assertion is that the Property is within the Planned Service Area (“PSA”) and is zoned RR (Rural Residential), which is a Rural West zoning district that is intended for properties outside of the Priority Funding Area and PSA.

The Petitioner maintains that the Property is “...undevelopable under existing zoning” due to its inclusion in the PSA. Furthermore, the Petitioner notes that at the time of the 2013 CZP, the Property consisted of two residential parcels with separate owners and that both of these parcels had separate driveway access to a dead-end public street. Since the 2013 CZP, the two parcels were purchased by one owner, the process to purchase the portion of road in front of the parcels as excess public street right-of-way has started, and the owner intends to redevelop the two parcels for commercial purposes.

DPZ concurs with the Petitioner that the RR-MXD-3 zoning of the Property is a mistake made in the 2013 CZP, for the reasons conveyed by the Petitioner and for other additional reasons as expressed below:

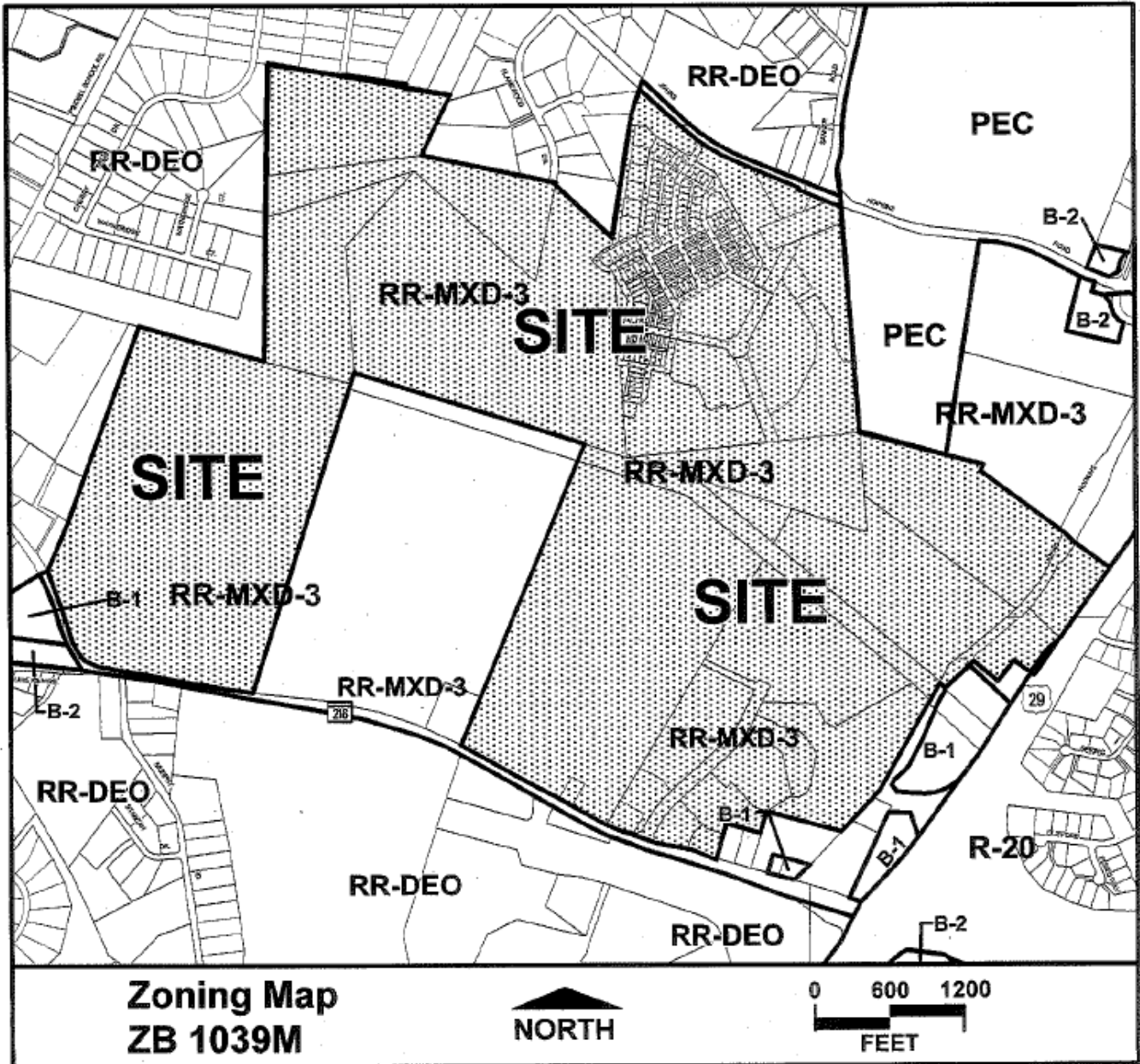
On September 13, 2010, the Zoning Board rezoned 221.1 acres of the Doughoregan Manor property from RC-DEO to R-ED (ZB 1087M). The Decision and Order for this case established that the location of a property in a Rural West zoning district and in the PSA may be considered a factor in determining mistake in zoning:

“Petitioners’ principal contention as to mistake in comprehensive zoning was based on the County Council’s inclusion of the subject property in the PSA by CB 9-2010. The Board concluded that there was substantial evidence from this change in policy by the County Council to remove the subject property from the non-PSA Rural West and put it in the area of the County in which properties must be served with public water and sewer facilities is indisputably an event or fact occurring subsequent to the 2004 Comprehensive Zoning. The Board concludes that this shows that the Council’s premise in zoning the property RC-DEO in 2004 has proven to be incorrect over time.”

The following historical information supports the petitioner’s contention that the Zoning Authority was aware of the Property’s location in the RR District and PSA in 2013.

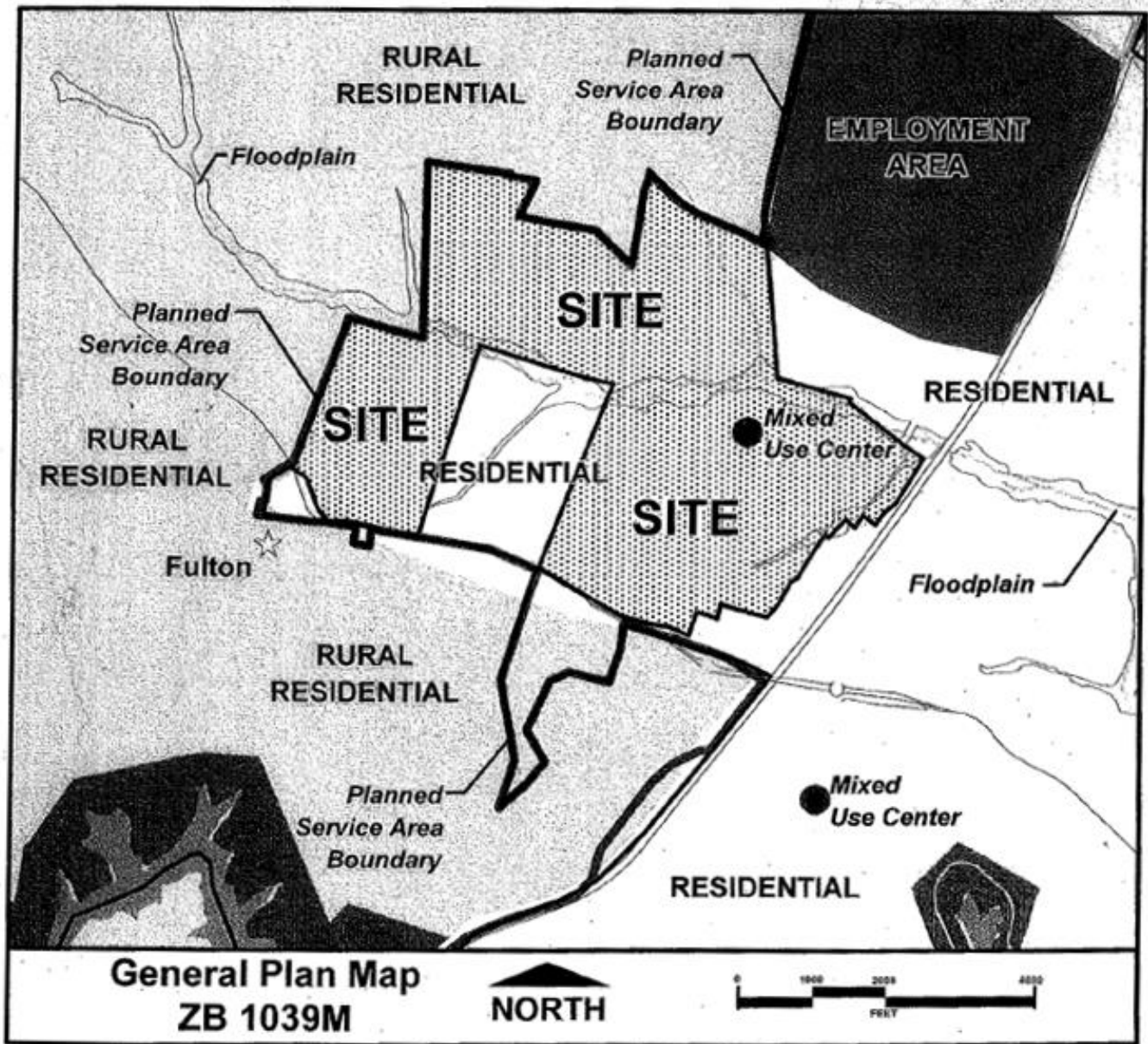
In 2005, Zoning Board Case ZB 1039M case amended the Maple Lawn Development Preliminary Development Plan to add new properties and to amend various criteria. The Zoning Map for the ZB 1039M Technical Staff Report (shown below) clearly showed that the Property was between the Maple Lawn Development and the B-1-zoned Parcels 176 and 177.

**ZB 1039M – Zoning Map from Technical Staff Report**



Furthermore, the General Plan Map associated with ZB 1039M Technical Staff Report (shown below) depicted the general area of the Property within the PSA.

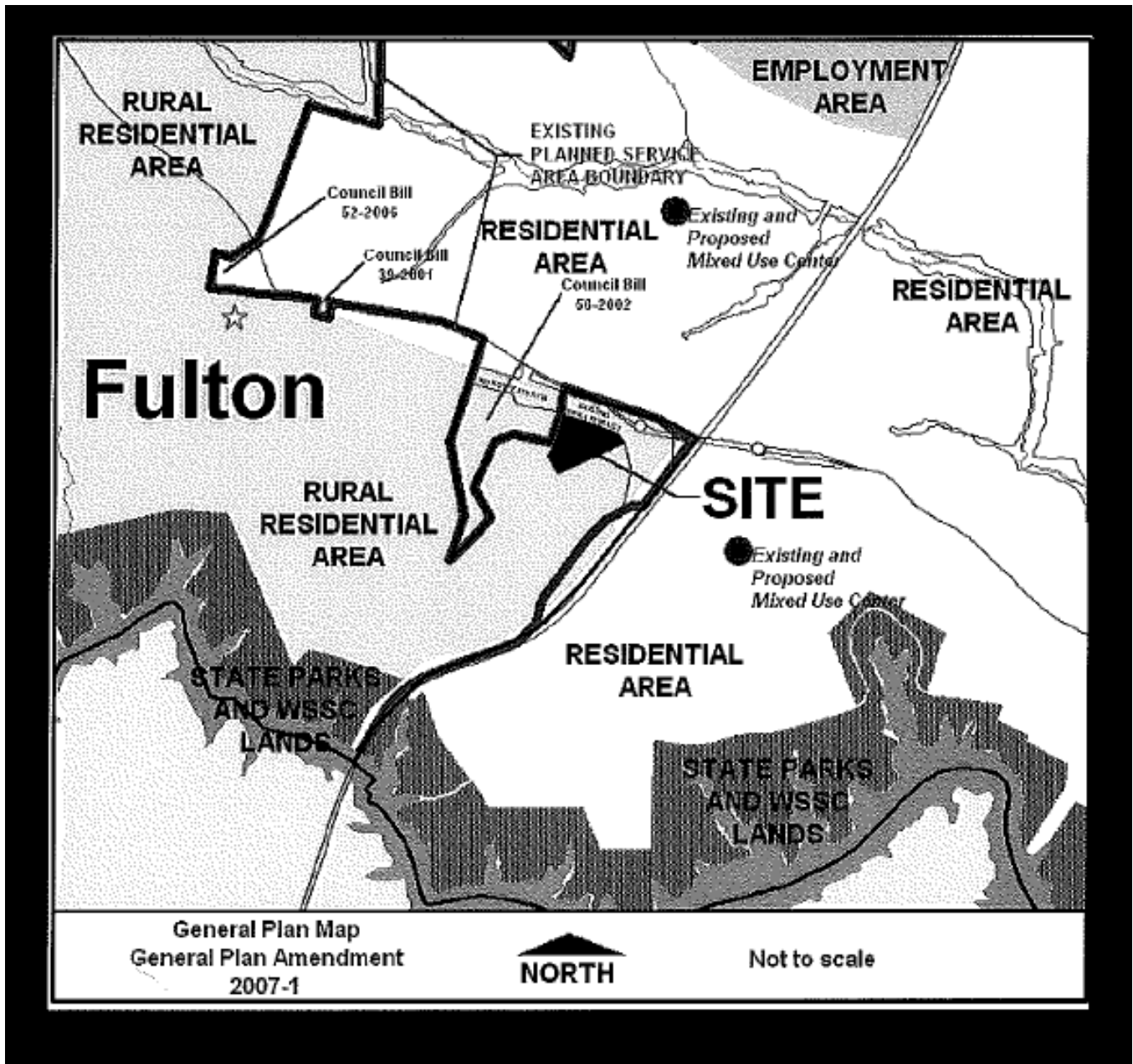
**ZB 1039M – General Plan Map from Technical Staff Report**



In 2007, General Plan Amendment 2007-1 incorporated the St Francis of Assisi religious facility property, located south of MD 216, into the PSA. The exhibit map (shown below) depicts the PSA boundary as still following the old alignment of MD 216. This General Plan Amendment was approved and the PSA boundary consequently went to the south side of the MD 216 right-of-way and connected with the prior PSA boundary change for Grace Community Church approved in Council Bill 56-2002.



General Plan Amendment 2007-1 Map



Therefore, at the time of the 2013 CZP, the Zoning Authority should have been aware that the Property was not part of the Maple Lawn Development and that the MXD-3 Overlay was not applicable. Additionally, the Zoning Authority should have been aware that the Property was zoned RR and located within the PSA.

Thus, the inclusion of the property in the RR-MXD-3 District during the 2013 CZP can be viewed as a "Mistake" in zoning.

**E. Other Issues**

In the records for the 2004 Comprehensive Zoning Plan Amendment No. 46.99, which changed the zoning of Parcels 176 and Parcel 177 from RR-MXD-3 to B-1, the Planning Board commented that this amendment was “Consistent with adjoining uses.”

**V. RECOMMENDATION**

For the reasons noted above, the Department of Planning and Zoning recommends that that the request to rezone the Property from RR-MXD-3 to B-1 be APPROVED.

Approved by:

  
Valdis Lazdins, Director

5/17/16  
Date

**NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.**

**Aerial Photograph of the Property and Vicinity**

