



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

September 3, 2020

## TECHNICAL STAFF REPORT

*Planning Board Meeting of September 17, 2020*

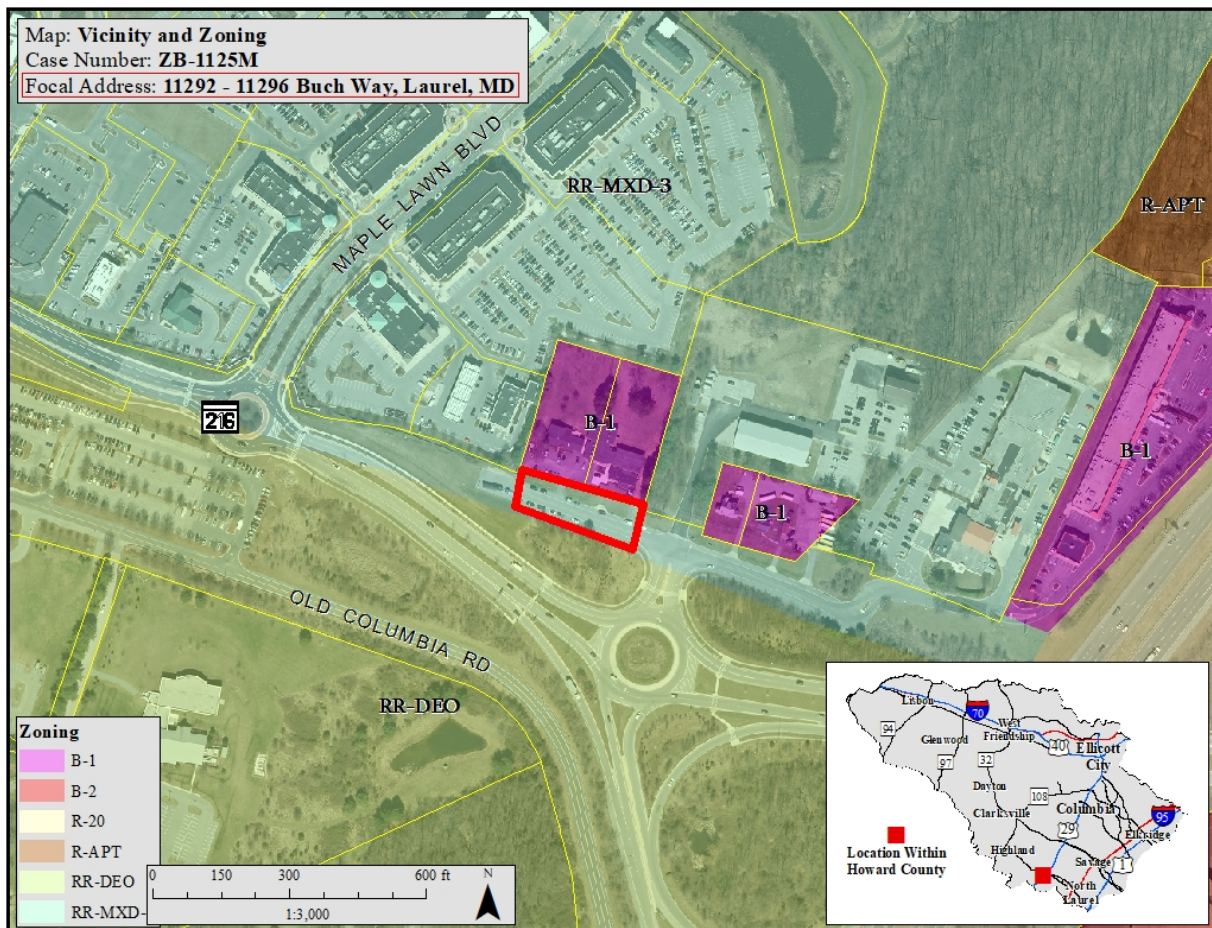
**Case No./Petitioner:** ZB-1125M – Olde Scaggsville, LLC

**Location:** North side of Maryland Route 216 (Scaggsville Road), West of US 29  
Approximately 280 feet west of the intersection of Scaggsville Road and Buch Way  
Tax Map 46, Grid 3. Portion of MD 216 Right-of-way (the "Property")

**Area of Site:** 0.469 acre

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

**Proposed Zoning:** B-1



## I. DESCRIPTION OF PROPOSAL

The Petitioner is the owner of 11292 and 11296 Buch Way, which were rezoned from the RR-MXD-3 (Rural Residential – Mixed Used Overlay) District to the B-1 (Business: Local) District through ZB1107M in 2016. The Petitioner subsequently acquired the right-of-way in front of these properties from the Maryland State Highway Administration, which determined that this portion was not needed for the right of way. Therefore, the Petitioner is proposing to rezone this area from RR-MXD-3 (Rural Residential – Mixed Used Overlay) District to the B-1 (Business: Local) and incorporate it into the properties to the north.

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 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 service.

A plan titled “Exhibit to Accompany Zoning Petition” (the “Exhibit Plan”) submitted with the petition depicts a conceptual development of an office building. This exhibit plan includes the land area north of the public street right-of-way with the addresses of 11292 and 11296 Scaggsville Road, 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.G.2 of the Zoning Regulations and should only be considered as a hypothetical development for informational purposes.

The Petitioner asserts that the proposed Zoning Map Amendment is justified based on a mistake in zoning (“Mistake”) 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 District 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 (Rural Residential – Density Exchange Option). During the 1993 Comprehensive Zoning Plan, the R (Rural) areas to the east, north and west 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 Use Development in 2000.

### III. BACKGROUND INFORMATION

#### A. Site Description

The Property consists of a 0.469-acre rectangle shaped area that was MD-216 right-of-way.

The Property is just south of 11292 and 11296 Buch way, which is currently developed with modular office buildings approved by Temporary Use case TU-15-005.

The Property is relatively flat with an average elevation of 434 feet.

#### B. Vicinal Properties

East/northeast of the Property is the intersection of Buch Way, Scaggsville Road and Route 216, and Parcel 288, all zoned RR-MXD-3 and is 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 of Taxation "SDAT" information for both parcels, the Tax Use designation is "Commercial/Residential".

South of the Property is an open space area and Route 216.

West of the Property is a continuation of Buch Way, which dead ends after approximately 85 feet.

North/northwest 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 as it located within the approved Maple Lawn Development.

#### C. Roads

The portions of Buch Way/Scaggsville Road that adjoin the Property have approximately 50 feet of paving and are located within the varying width Route 216 right-of-way.

There is no traffic volume data for the remainder of Buch Way/Scaggsville Road east and west of the Property.

#### D. Water and Sewer Service

The Property is in the Metropolitan District and the Planned Service Area.

#### E. General Plan

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

MD 216 (Scaggsville Rd) is a Minor Arterial.

#### F. Agency Comments

Agency comments are attached.

#### 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 designation 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. Page 74 of that plan describes such areas as “...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”.

The Designated Place Types Map shows the Property located within the Priority Funding Area and PSA for water and sewer.

The current RR 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 General Plan Growth and Revitalization policies and the commercial development pattern of the area. On the Land Use Map, the areas to the west of the Property are developed commercial land in the Maple Lawn Development. The areas to the east are mostly commercial and residential. 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. 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 regard to the Change Rule.

**C. 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 based on a Mistake made during the 2013 CZP. The basis for this assertion is that the Property is within the PSA and is zoned RR-DEO, which is a Rural West zoning district, 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. DPZ concurs with the Petitioner that the RR-DEO zoning of the Property is a mistake made in the 2013 CZP, for the reasons stated by the Petitioner and for 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."

On October 24, 2016, the Zoning Board approved ZB-1107M, a request to rezone the adjacent properties to the north from RR-MXD-3 to B-1, upon a determination that the RR-MXD-3 zoning district constituted a mistake in the 2013 Comprehensive Zoning Plan. The following is an excerpt from the Decision and Order summarizing the Zoning Board's findings:

"The Board, based on the undisputed facts above, finds that the Petitioner presented substantial evidence that the Zoning Authority erred when it adopted the comprehensive zoning map. The basis for this conclusion is that the Property is within the PSA but is zoned RR, which is a Rural West zoning district that is intended for properties outside of the PSA. Further, at the time of the 2013 Comprehensive Zoning Plan, it was clear that the Property was not part of the Maple Lawn Development and, therefore, that the MXD-3 Overlay was not applicable."

**D. 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 in the vicinity. 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. Furthermore, this parcel will be consolidated with the two adjoining B-1 lots to the north for a unified development; therefore, any zoning district other than B-1 would likely be inappropriate.

**V. RECOMMENDATION**

For the reasons noted above, the Department of Planning and Zoning recommends that that the request to rezone the Property from RR-DEO to B-1 be **APPROVED** subject to the following:

Approved by:

DocuSigned by:  
*Amy Gowan*  
58405DD9470C464  
Amy Gowan, Director

9/2/2020

\_\_\_\_\_  
Date



PETITION TO AMEND THE ZONING MAP OF HOWARD COUNTY

RECEIVED JUN 24 2020 By \_\_\_\_\_

DPZ Office Use Only: Case No. BA-1125m Date Filed: 6/24/20

1. Zoning Request

I (we), the undersigned, hereby petition the Zoning Board of Howard County to amend the Zoning Map of Howard County as follows: To change the zoning of a former Maryland State Highway Administration right-of-way parcel, totaling approximately .469+/- acres, from the RR-MXD-3 (Rural Residential-Mixed Use) to B-1 (Business: Local).

2. Petitioner's Name Olde Scaggsville, LLC

Address 11292 Buch Way, Laurel, Maryland 20723 Phone No. (W) 301-359-3500 (H) Email Address

3. Owner's Name Same As Above

4. Counsel for Petitioner Thomas G. Coale, Esquire, Talkin & Oh, LLP

Address 5100 Dorsey Hall Drive, Ellicott City, MD 21042 Phone No. 410-964-0300 Email tcoale@talkin-oh.com

5. Property Identification

Address of Subject Property Buch Way, Fulton, MD 20759 Location of Subject Property North side of Maryland Route 216 (Scaggsville Road), west of US 29, Fulton, Maryland Election District 5th Tax Map # 46 Block # 03 Parcel # Unlabeled Lot # Total Acreage of Property .469 AC ± (combined)

6. Petitioner's Interest in Subject Property Owner (e.g. owner/joint owner/contract purchaser)

7. Reason for the requested amendment to the Zoning Map: Property is within the Planned Service Area ("PSA") and Metropolitan District, making it undevelopable in the RR-MXD-3 due to the prohibition on septic within the PSA. This rezoning application is submitted to bring the Property's zoning in accordance with its inclusion in the PSA.

8. Statement as to the present use or uses of the subject property Buch Way, Private Drive

9. Statement as to whether or not there is an allegation of mistake in the current zoning, and, if so, the nature of the mistake and the facts to support the allegation SEE ATTACHED SUPPLEMENT FOR PETITION TO AMEND ZONING MAP OF HOWARD COUNTY



10. Statement as to whether or not there is an allegation of a substantial change in the character of the neighborhood subsequent to the most recent comprehensive rezoning. If change(s) is alleged, the nature of the change(s) and the facts to support the allegation and a statement as to why the petitioner concludes that the reclassification sought is the proper one. There is no allegation of a substantial change in the character of the neighborhood.

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11. Statement as to whether or not the petitioner can use the subject property in its present zoning classification and, if not, the reasons why. No, the Property cannot be used for single-family detached homes in accordance with the cluster subdivision regulations of RR-MXD-3 because it is within the Planned Service Area for Water and Sewer.

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12. Statement as to whether or not such amendment will be in harmony with the General Plan for Howard County and whether such amendment will adversely affect the surrounding and vicinal properties. SEE ATTACHED SUPPLEMENT FOR PETITION TO AMEND ZONING MAP OF HOWARD COUNTY

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13. State whether or not the subject property is currently served by public water, sewerage, and public roads. The subject properties are within the PSA, and front on public water and public sewerage. The subject properties are served by Md. Route 216, a public road.

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14. Any other factors which the petitioner desires the Board to consider including copies of any written reports intended to be introduced at the hearing and a written summary of verbal evidence of any expert which will be proffered at the hearing.

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15. DRAWINGS (PLEASE TAKE NOTE)

Petition forms must be accompanied with **24 copies (if on a county road)**, with equal amount of required drawings, folded to approximately 8 ½" x 14" (**27 copies if a state road is involved**). Plats of the subject property, plus other such scale drawings as may be required by the Department of Planning and Zoning, must show the following:

- a. Courses and distances of the boundary lines of the subject property and the acreage
  - b. North arrow
  - c. Existing zoning of subject property and adjoining properties
  - d. Location, boundary lines, and area of any proposed reclassification of zoning
  - e. Existing structures, uses, natural features and landscaping on the subject and adjacent properties which may be relevant to the petition
  - f. Location of subject property in relation, by approximate dimension, to the nearest intersection of two public roads
  - g. Ownership of affected roads
  - h. Election district in which subject property is located
  - i. Tax map/zoning map number on which subject property is shown
  - j. Name of local community or neighborhood in which subject property is located or is near
  - k. Name and mailing address of property owner
  - l. Name and mailing address of the petitioner
  - m. Name and mailing address of petitioner's attorney, if any
  - n. Any other information as may be necessary for full and proper consideration of the petition
16. If the petition includes site plan documentation, the petition shall include all information as required by Section 100.0.G.2. of the Zoning Regulations.
17. The Petitioner agrees to furnish such additional plats, plans or other data as may be required by the Zoning Board and/or the Department of Planning and Zoning.
18. The Petitioner further agrees to install and maintain Zoning Hearing Poster(s) as required in the Affidavit of Posting provided by the Department of Planning and Zoning. The Poster(s) must be posted for at least 30 days immediately prior to the Zoning Board hearing and remain posted until 15 days after the final hearing.
19. The Petitioner agrees to insert and pay for the newspaper advertising costs as required by the Zoning Board Rules of Procedure. Said advertisement shall be in a format deemed adequate by the Chairperson of the Zoning Board and must be published once in at least two newspapers of general circulation in Howard County at least 30 days prior to the Zoning Board hearing. The Petitioner also agrees to submit certification of the text and publication dates of the approved advertisement prior to the Zoning Board hearing to the Administrative Assistant to the Zoning Board.
20. The Petitioner certifies that no petition for the same or substantially the same proposal as herein contained for the subject property has been denied in whole or in part by the Zoning Board or has been withdrawn after the taking of evidence at a public hearing of the Zoning Board within twenty-four (24) months of the Zoning Board hearing unless so stated herein.

21. The undersigned hereby affirms that all of the statements and information contained in, or filed with this petition, are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

  
Thomas G. Coale, Attorney for Petitioner Date 6/23/2020

  
Olde Scaggsville, LLC, Petitioner Date 6/8/2020

22. FEES

The Petitioner agrees to pay all fees as follows:

- a. Filing fee including first hearing.....\$695.00\*  
Each additional hearing night..... \$510.00\*
- b. Public Notice Poster(s): ..... \$25.00

\* The Zoning Board may refund or waive all or part of the filing fee where the petitioner demonstrates to the satisfaction of the Zoning Board that the payment of the fee would work an extraordinary hardship on the petitioner. The Zoning Board may refund part of the filing fee for withdrawn petitions. The Zoning Board shall waive all fees for petitions filed in the performance of governmental duties by an official, board or agency of the Howard County Government.

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For DPZ office use only:

Hearing Fee \$ \_\_\_\_\_  
 Poster Fee \$ \_\_\_\_\_  
 Total \$ \_\_\_\_\_

Receipt No. \_\_\_\_\_

PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: [www.howardcountymd.gov](http://www.howardcountymd.gov)

### INSTRUCTIONS TO THE APPLICANT/PARTY OF RECORD

- As required by State Law, applicants are required to complete the AFFIDAVIT AS TO CONTRIBUTION that is attached, and if you have made a contribution as described in the Affidavit, please complete the DISCLOSURE OF CONTRIBUTION that is attached.
- If you are an applicant, Party of Record (i.e., supporter/protestant) or a family member and have made a contribution as described in the Affidavit, you must complete the DISCLOSURE OF CONTRIBUTION that is attached.
- Filed affidavits and disclosures will be available for review by the public in the office of the Administrative assistant to the Zoning Board during normal business hours.
- Additional forms may be obtained from the Administrative Assistant to the Zoning Board at (410-313-2395) or from the Department of Planning and Zoning.
- Completed form may be mailed to the Administrative Assistant to the Zoning Board at 3430 Courthouse Drive, Ellicott City, MD 21043.
- Pursuant to State Law, violations shall be reported to the Howard County Ethics Commission.

ZONING MATTER: Olde Scaggsville, LLC

**AFFIDAVIT AS TO CONTRIBUTION**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

I, Michael L. Buch the applicant in the above zoning matter

X HAVE \_\_\_\_\_ HAVE NOT

made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate or the treasurer of a political committee during the 48-month period before application in or during the pendency of the above referenced zoning matter.

I understand that any contribution made after the filing of this Affidavit and before final disposition of the application by the County Council shall be disclosed within five (5) business days of the contribution.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Printed Name: Mike L. Buch

Signature: *Mike L. Buch*

Date: June 23, 2020

ZONING MATTER: Olde Scaggsville, LLC

**DISCLOSURE OF CONTRIBUTION**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

This Disclosure shall be filed by an Applicant upon application or by a Party of Record within 2 weeks after entering a proceeding, if the Applicant or Party of Record or a family member, as defined in Section 15-849 of the State Government Article, has made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate of the treasurer of a political committee during the 48-month period before the application was file or during the pendency of the application.

Any person who knowingly and willfully violates Sections 15-848-15-850 of the State Government Article is subject to a fine of not more than \$5,000. If the person is not an individual, each officer and partner who knowingly authorized or participated in the violation is subject to the same penalty.

APPLICANT OR

PARTY OF RECORD: Michael L. Buch

RECIPIENTS OF CONTRIBUTIONS:

<u>Name</u>	<u>Date of Contribution</u>	<u>Amount</u>
<u>Committee to Elect David Yungmann</u>	<u>10/25/2017</u>	<u>\$1,000.00</u>
<u>Committee to Elect David Yungmann</u>	<u>10/12/2018</u>	<u>\$2,000.00</u>
<u>The Calvin Ball Team</u>	<u>10/30/2018</u>	<u>\$5,000.00</u>
<u>The Calvin Ball Team</u>	<u>3/27/2019</u>	<u>\$4,000.00</u>
<u>Committee to Elect David Yungmann</u>	<u>9/30/2019</u>	<u>\$1,000.00</u>
<u>The Calvin Ball Team</u>	<u>10/21/2019</u>	<u>\$2,000.00</u>

I understand that any contribution made after the filing of this Disclosure and before final disposition of the application by the County Council shall be disclosed with five (5) business days of the contribution.

Printed Name: Mike L. Buch

Signature: 

Date: June 23, 2020

ZONING MATTER: Olde Scaggsville, LLC

**AFFIDAVIT AS TO ENGAGING IN BUSINESS WITH AN ELECTED OFFICIAL**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

I, Michael L. Buch, the applicant in the above zoning matter

                   AM                   X                   AM NOT

Currently engaging in business with an elected official as those terms are defined by Section 15-848 of the State Government Article of the Annotated Code of Maryland.

I understand that if I begin engaging in business with an elected official between the filing of the application and the disposition of the application, I am required to file an affidavit in this zoning matter at the time of engaging in business with elected official.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Printed Name: Mike L. Buch

Signature: *Mike L. Buch*

Date: June 23, 2020

ZONING MATTER: Olde Scaggsville, LLC

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**AFFIDAVIT AS TO CONTRIBUTION**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

I, Buch Construction, Inc., the applicant in the above zoning matter  
X HAVE \_\_\_\_\_ HAVE NOT  
made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate or the treasurer of a political committee during the 48-month period before application in or during the pendency of the above referenced zoning matter.

I understand that any contribution made after the filing of this Affidavit and before final disposition of the application by the County Council shall be disclosed within five (5) business days of the contribution.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

By: BUCH CONSTRUCTION, INC.

Printed Name: Mike L. Buch

Signature: *Mike L. Buch*

Date: June 23, 2020



ZONING MATTER: Olde Scaggsville, LLC

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Any person who knowingly and willfully violates Sections 15-848-15-850 of the State Government Article is subject to a fine of not more than \$5,000. If the person is not an individual, each officer and partner who knowingly authorized or participated in the violation is subject to the same penalty.

APPLICANT OR

PARTY OF RECORD: Buch Construction, Inc.

RECIPIENTS OF CONTRIBUTIONS:

<u>Name</u>	<u>Date of Contribution</u>	<u>Amount</u>
<u>Friends of Opel Jones</u>	<u>9/27/2018</u>	<u>\$1,000.00</u>

I understand that any contribution made after the filing of this Disclosure and before final disposition of the application by the County Council shall be disclosed with five (5) business days of the contribution.

By: BUCH CONSTRUCTION, INC.

Printed Name: Mike L. Buch

Signature: 

Date: June 23, 2020



ZONING MATTER: Olde Scaggsville, LLC

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**AFFIDAVIT AS TO CONTRIBUTION**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

I, Ellen C. Buch the applicant in the above zoning matter  
X HAVE \_\_\_\_\_ HAVE NOT  
made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate or the treasurer of a political committee during the 48-month period before application in or during the pendency of the above referenced zoning matter.

I understand that any contribution made after the filing of this Affidavit and before final disposition of the application by the County Council shall be disclosed within five (5) business days of the contribution.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Printed Name: Ellen Buch

Signature: 

Date: June 23, 2020

ZONING MATTER: Olde Scaggsville, LLC

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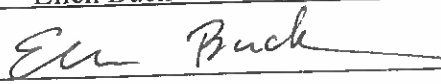
APPLICANT OR  
PARTY OF RECORD: Ellen C. Buch

RECIPIENTS OF CONTRIBUTIONS:

<u>Name</u>	<u>Date of Contribution</u>	<u>Amount</u>
<u>The Calvin Ball Team</u>	<u>10/30/2018</u>	<u>\$5,000.00</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

I understand that any contribution made after the filing of this Disclosure and before final disposition of the application by the County Council shall be disclosed with five (5) business days of the contribution.

Printed Name: Ellen Buch

Signature: 

Date: June 23, 2020



ZONING MATTER: Olde Scaggsville, LLC

**AFFIDAVIT AS TO CONTRIBUTION**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

I, Carl J. Buch the applicant in the above zoning matter  
X HAVE \_\_\_\_\_ HAVE NOT  
made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a  
candidate or the treasurer of a political committee during the 48-month period before application in or  
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I understand that any contribution made after the filing of this Affidavit and before final  
disposition of the application by the County Council shall be disclosed within five (5) business days of  
the contribution.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents  
of the foregoing paper are true.

Printed Name: Carl J. Buch

Signature: 

Date: June 23, 2020

ZONING MATTER: Olde Scaggsville, LLC

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State Government Article, Sections 15-848-15-850**

This Disclosure shall be filed by an Applicant upon application or by a Party of Record within 2 weeks after entering a proceeding, if the Applicant or Party of Record or a family member, as defined in Section 15-849 of the State Government Article, has made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate of the treasurer of a political committee during the 48-month period before the application was file or during the pendency of the application.

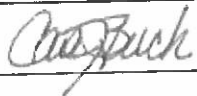
Any person who knowingly and willfully violates Sections 15-848-15-850 of the State Government Article is subject to a fine of not more than \$5,000. If the person is not an individual, each officer and partner who knowingly authorized or participated in the violation is subject to the same penalty.

APPLICANT OR  
PARTY OF RECORD: Carl J. Buch

RECIPIENTS OF CONTRIBUTIONS:

<u>Name</u>	<u>Date of Contribution</u>	<u>Amount</u>
<u>The Calvin Ball Team</u>	<u>10/21/2019</u>	<u>\$2,000.00</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

I understand that any contribution made after the filing of this Disclosure and before final disposition of the application by the County Council shall be disclosed with five (5) business days of the contribution.

Printed Name: Carl J. Buch  
Signature:   
Date: June 23, 2020





SUPPLEMENT FOR PETITION TO AMEND ZONING MAP OF HOWARD COUNTY

9. *Statement as to whether or not there is an allegation of mistake in the current zoning, and, if so, the nature of the mistake and the facts to support the allegation*

In ZB Case No. 1107M, the Howard County Zoning Board rezoned 11292 and 11296 Scaggsville Road, two parcels to the immediate north of the subject property, from the RR-MXD-3 zoning district to the B-1 zoning district. The Zoning Board held that the 11292 and 11296 Scaggsville Road had been mistakenly zoned RR-MXD-3 despite being within the planned service area for public water and sewerage ("PSA"). The Zoning Board found that:

[T]he Zoning Authority erred when it adopted the comprehensive zoning map. The basis for this conclusion is that the Property is within the PSA but is zoned RR, which is a Rural West zoning district that is intended for properties outside of the PSA. Further, at the time of the 2013 Comprehensive Zoning Plan, it was clear that the Property was not part of the Maple Lawn Development and, therefore, that the MXD-3 Overlay was not applicable."

ZB Case No. 1107M at 4, attached hereto as Exhibit A. Notably, Zoning Council acknowledged in her presentation to the Board that "there were facts in the record which would support the finding of mistake." *Id.*

The same reasoning applies for the property that is the subject of the instant rezoning application. The subject property was previously a county right-of-way, but has since been conveyed to the Petitioner by the Maryland State Highway Administration, which determined that the subject property was not needed for right-of-way.

The former right-of-way is zoned RR-MXD-3, but is not within the boundaries of the adjoining Maple Lawn Mixed Use Development and is below the 25 acre minimum lot size. Therefore, it can only be developed under the RR District Regulations.

Under RR zoning, the property owner has two options for development: shared septic or individual septic. Zoning Regulations Sec. 105.E. The bulk regulations in RR do not contemplate or allow the use of sewer. The Howard County Code, however, requires all residential properties where public sewer is available to be connected to public sewer. Howard County Code, Sec. 16.131. Sewer is readily available to the Property and, in fact, because of its inclusion into the Metropolitan District, the Property must be sewerred.

June 10, 2020

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Since the Property, cannot be developed with sewer under RR bulk regulations, and cannot be developed with septic under the Howard County Code, the Properties cannot be developed at all. The Zoning Authority failed to take into account this regulatory taking when imposing an RR zone and, as such, this represents a mistake in zoning.

There is a second basis for mistake in zoning, which is the assemblage of this former right-of-way property with the two adjoining B-1 parcels to the north. The assemblage of all of these properties was not contemplated by the Zoning Authority during the last Comprehensive Zoning process; nor had the Zoning Authority considered the right-of-way strip of property as a privately owned parcel. Had the Zoning Authority known: (i) that the two adjoining B-1 parcels to the north would be put in common ownership such that this right-of-way would no longer be required to serve both lots as public road access; (ii) that the two adjoining parcels would be rezoned from RR-MXD-3 to B-1 and (iii) that all three properties could be zoned to B-1 to allow one commercial development with public water and sewerage rather than two septic lots with public road frontage, the Zoning Board would not have designated the subject PSA property as RR-MXD-3.

B-1 zoning would be appropriate for the Property and consistent with the zoning bestowed on the adjoining parcels to the north in ZB Case No. 1107M. Due to the fact that all three properties have a common owner, B-1 zoning will allow for cohesive development and provide for use of the land consistent with its status of inclusion in the PSA. Moreover, this property is situated between the Maple Lawn Development to the west and north and institutional and commercial development to the east. A B-1 designation would be the most appropriate zoning considering the surrounding uses and zoning.

12. *Statement as to whether or not such amendment will be in harmony with the General Plan for Howard County and whether such amendment will adversely affect the surrounding and vicinal properties*

The amendment of the zoning for the Properties from RR-MXD-3 to B-1 will be in harmony with the General Plan for Howard County and will not adversely affect the surrounding and vicinal properties.

First, B-1 zoning is consistent with properties in the PSA. The existing RR-MXD-3 is not.

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Second, the B-1 zoning will be in harmony and consistent with the RR-MXD-3 Maple Lawn Development that surrounds the Properties. The General Plan explicitly contemplates that Maple Lawn properties are to provide "transitional" zoning that is compatible with the surrounding properties. B-1 meets this objective perfectly, particularly in light of the commercial uses of all of the vicinal properties.

Finally, the B-1 zoning would permit development connected to public water and sewer, which is harmonious with the General Plan.

Olde Scaggsville, LLC,  
Petitioner

\* Before the Zoning Board of  
\* Howard County  
\* Zoning Board Case No. ZB-1107M

\* \* \* \* \*

**DECISION AND ORDER**

On October 24, 2016, the Zoning Board of Howard County, Maryland considered the petition of Olde Scaggsville, LLC for an amendment to the Zoning Map of Howard County so as reclassify 1.99 acres of land located on the northwest corner of the intersection of Scaggsville Road and Old Columbia Road from the RR-MXD-3 Zoning District to the B-1 Zoning District. The proposed reclassification was submitted with a Documented Site Plan. The subject property is identified as Tax Map 46, Block 03, Parcel 200 & 226, in the Fifth Election District of Howard County (the "Property").

The notice of hearing was advertised, the subject property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedures, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's recommendation, were entered or incorporated into the record of the hearing. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition.

The Petitioner was represented by Sang W. Oh, Esq. Eileen Powers, Esq., the Zoning Counsel, appeared pursuant to Section 16.1000 of the Howard County Code, to support the comprehensive zoning of the subject property. There was no opposition to the petition.

After careful evaluation of all the information presented, the Zoning Board of Howard County makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner requests rezoning of the Property from the RR-MXD-3 District to the B-1 Zoning District. The petition was filed with a documented site plan. All of the testimony in support of the petition was presented by Robert H. Vogel, a professional engineer.

2. The Petitioner's request for rezoning is based on a mistake in the last comprehensive zoning of the subject property. The testimony and documentary evidence produced the following undisputed facts.

3. 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.

4. 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.

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

6. At the time of the 2013 Comprehensive Zoning Plan, the parcels were separately owned and had separate driveway access to the dead-end public street. Since the 2013 Comprehensive Zoning Plan, 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. The Property is currently developed with modular office buildings approved by Temporary Use 15-005.

7. Although the Property is within the MXD-3 Overlay District, it is not within the boundaries of the adjoining Maple Lawn Mixed Use Development, and it is below the 25 acre minimum lot size requirement. Therefore, it can only be developed under the RR District Regulations.

8. However, RR zones have been specifically designed for agricultural preservation and low density development in the western part of the County. The PlanHoward 2030 General Plan defines the Rural West as being “outside of the Priority Funding Area” and “not served by public water and sewer.”

9. Notwithstanding its zoning classification, the Property is within the Planned Service Area (“PSA”). The Howard County Code requires that all residential properties where public sewer is available be connected to public sewer. *See* HCC § 16.131(c)(2). However, under RR zoning, a property owner must use shared septic or individual septic. *See* Howard County Zoning Regulations, § 105.E.

10. The Petitioner proposes redeveloping the Property for a commercial development; specifically, the development of a three-story office building.



11. The Department of Planning and Zoning in its Technical Staff Report found that the RR-District is no longer an appropriate zoning district for the Property because (1) the Property is within the PSA; and, (2) RR-Zoning is intended for an area of the County which is already largely committed to low density residential subdivisions, and the Property is not within a rural environment low density residential subdivisions. The Department of Planning and Zoning further found that B-1 District is an appropriate zoning district because the areas to the west and north of the Property are developed and undeveloped commercial land in the Maple Lawn Development; and, the areas to the east of the Property are mostly institutional and commercial. It also noted that the B-1 district supports nonresidential growth that could lead to the creation of new jobs within the Targeted Growth and Revitalization Area.

12. The Zoning Counsel acknowledged in her presentation that there were facts in the record which would support the finding of mistake.

13. The Board, based on the undisputed facts above, finds that the Petitioner presented substantial evidence that the Zoning Authority erred when it adopted the comprehensive zoning map. The basis for this conclusion is that the Property is within the PSA but is zoned RR, which is a Rural West zoning district that is intended for properties outside of the PSA. Further, at the time of the 2013 Comprehensive Zoning Plan, it was clear that the Property was not part of the Maple Lawn Development and, therefore, that the MXD-3 Overlay was not applicable.

14. The Petitioner presented testimony and documentary evidence to support its contention that B-1 zoning was appropriate for the subject property. Areas to the west and north of the Property are developed and undeveloped land in the Maple Lawn Development. The areas to the east are largely institutional and commercial. Thus, the proposed development for the

Property is consistent with the General Plan policies and the commercial development pattern of the area.

CONCLUSIONS OF LAW

1. The Petitioner, as one seeking a piecemeal zoning reclassification, has the burden of demonstrating mistake in the last comprehensive zoning of the subject property and/or change in the character of the neighborhood of the subject property since the last comprehensive zoning. If this burden is met, the Board is permitted, but not compelled to grant the rezoning request.

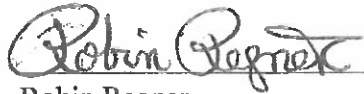
2. There is sufficient evidence in the record that supports finding a mistake in the 2013 Comprehensive Zoning of the subject property in the RR-MXD-3, as identified in the Department of Planning and Zoning's Technical Staff Report and the Board's findings of fact set forth above, sufficient to overcome the strong presumption of correctness attached to that comprehensive zoning.

3. The Petitioner has also presented sufficient evidence for the Board to conclude that the appropriate zoning category for the subject property is the B-1 District based on the Board's findings of fact No. 12 above, and the Board concludes that B-1 is the appropriate zoning for the subject property.

WHEREFORE, for the foregoing reasons, the Zoning Board of Howard County, on this 26<sup>th</sup> day of January 2017, hereby **GRANTS** the Petitioner's request for rezoning of the 1.99 acre subject property from the RR-MXD-3 to the B-1 Zoning District, as requested by the Petitioner.

ATTEST:

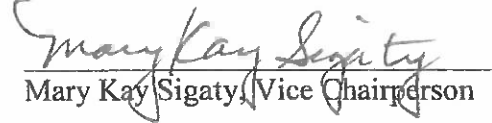
ZONING BOARD OF HOWARD COUNTY



Robin Regner  
Administrative Assistant



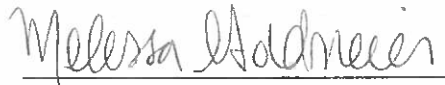
Jen Terrasa, Chairperson



Mary Kay Sigaty, Vice Chairperson

PREPARED BY HOWARD COUNTY  
OFFICE OF LAW  
GARY W. KUC  
COUNTY SOLICITOR

Absent  
Greg Fox



Melissa E. Goldmeier  
Assistant County Solicitor



Calvin Ball

Absent  
Jon Weinstein

**OLDE SCAGGSVILLE, LLC**

10945 Johns Hopkins Road

Laurel, Maryland 21029

**Notice of Pre-Submission Community Meeting**

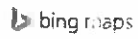
This is notice that Olde Scaggsville, LLC, Petitioner, intends to submit a Petition to Amend the Zoning Map of Howard County to change the zoning of the subject property from the RR-MXD-3 (Rural Residential-Mixed Use) zoning district to the B-1 (Business: Local) zoning district. The subject property consists of 2 parcels totaling approximately .469 acres, more or less, and is located on the north side of Maryland Route 216 (Scaggsville Road), west of US 29, Fulton, Maryland 20759 (Tax Map 46, Grid 3, Parcels Unlabeled) (see enclosed site location map). The type of initial plan submission to DPZ is a rezoning.

You are invited to attend a pre-submission community meeting to meet with the Petitioner, who will provide information concerning the Petition, and to ask questions, make comments and discuss this project.

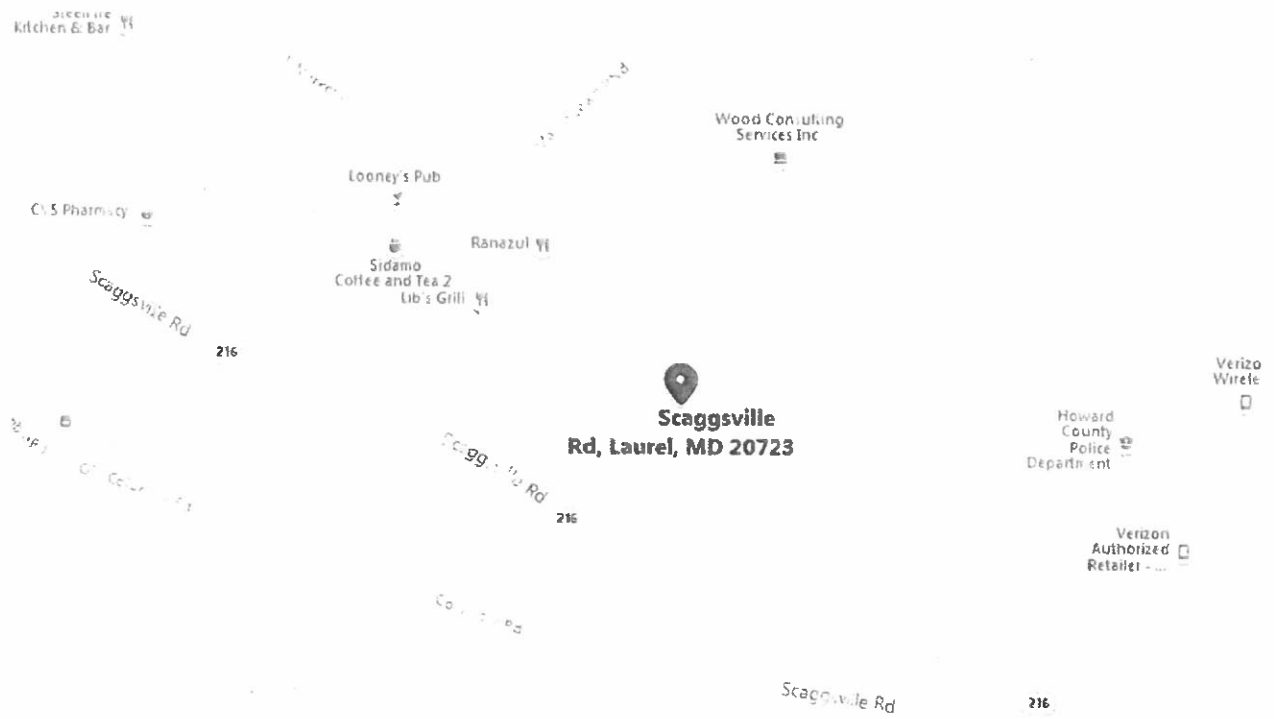
The presubmission community meeting will be held on Monday, June 24, 2019 at 6:00 p.m. at Emmanuel United Methodist Church, 10755 Scaggsville Road, Laurel, Maryland 20723.

General information regarding the pre-submission community meeting can be found on the Department of Planning and Zoning's webpage at:  
[http://data.howardcountymd.gov/Search\\_Plans/Search\\_Plans\\_Web.aspx](http://data.howardcountymd.gov/Search_Plans/Search_Plans_Web.aspx)

If you are unable to attend the meeting, you may contact Sang Oh at (410) 964-0300 to receive meeting minutes and follow-up correspondence.



### Scaggsville Rd, Laurel, MD 20723



List of Adjoining and Confronting Property Owners – Buch LLLP/Route 216 ROW  
Parcels

Subject Property: Scaggsville Road  
Fulton, Maryland 20759  
Tax Map 46, Grid 3, Unlabeled Parcels (former SHA parcels--  
formerly Old Scaggsville Road and formerly Charles R. Soper)

Adjoiners:

Parcel 288: Howard County MD Public Works  
3430 Courthouse Drive  
Ellicott City, Maryland 21043

Parcel 220: Olde Scaggsville, LLC  
11292 Buch Way  
Laurel, Maryland 20723

Parcel 226: Olde Scaggsville, LLC  
11292 Buch Way  
Laurel, Maryland 20723

Parcel 124/

Parcel C11: R&D Oil, LLC  
8181 Maple Lawn Blvd.  
Fulton, Maryland 20759

Mailing address: 13309 Balmoral Greens Avenue  
Clifton, VA 21024

Parcel 337/

Lot 1: St. Francis of Assisi Howard County  
Roman Catholic Congregation, Inc.  
8300 Old Columbia Road  
Fulton, Maryland 20759

School Principals

Fulton Elementary School  
11600 Scaggsville Road  
Fulton, Maryland 20759  
Attention: Sharon Lewandowski, Principal

Lime Kiln Middle School  
11650 Scaggsville Road  
Fulton, Maryland 20759  
Attention: Scott Conroy, Principal

Reservoir High School  
11550 Scaggsville Road  
Fulton, Maryland 20759  
Attention: Pat Saunderson, Principal

PTA Presidents

Fulton Elementary School  
11600 Scaggsville Road  
Fulton, Maryland 20759  
Attention: PTA PRESIDENT

Lime Kiln Middle School  
11650 Scaggsville Road  
Fulton, Maryland 20759  
Attention: PTA PRESIDENT

Reservoir High School  
11550 Scaggsville Road  
Fulton, Maryland 20759  
Attention: PTA PRESIDENT



**OLDE SCAGGSVILLE, LLC**

10945 Johns Hopkins Road  
Laurel, Maryland 21029

PETITION TO AMEND THE ZONING MAP OF HOWARD COUNTY

2 parcels totaling approximately .469 acres, more or less,  
located on the north side of Maryland Route 216 (Scaggsville Road), west of US 29,  
Fulton, Maryland 20759  
(Tax Map 46, Grid 3, Parcels Unlabeled)

REPORT OF PRE-SUBMISSION COMMUNITY MEETING

held on Monday, June 24, 2019 at 6:00 p.m.  
at Emmanuel United Methodist Church,  
10755 Scaggsville Road, Laurel, Maryland 20723

A Pre-Submission Community Meeting was held on the above-referenced date, time and location. Representatives of the Petitioner were Mike Buch (*Petitioner*), Sang Oh (*attorney*), and Rob Vogel (*engineer*).

There was no one in attendance. The meeting was adjourned at approximately 6:30 p.m.

**AFFIDAVIT OF POSTING  
Pre-submission Meeting**

Case: Olde Scaggsville, LLC

STATE OF MARYLAND)

COUNTY OF HOWARD )

I, MIKE L. BUCH, HEREBY CERTIFY that to the

best of my information, knowledge and belief the property which is the subject of the above-captioned petition has been posted in accordance with the following requirements of the Department of Planning and Zoning:

1. The poster(s) shall be erected and shall remain on the subject property for three weeks prior to the pre-submission meeting.
2. The poster(s) shall be erected using 2 wooden stakes, one on each side of the poster.
3. The posters shall be erected perpendicular to the road which serves as the mailing address of the subject property.

I further certify that the poster(s) has been posted at least 21 days immediately prior to the pre-submission meeting scheduled for **June 24, 2019** giving notification of the place, date and time of the meeting.

Subscribed and sworn to before me on this 2<sup>nd</sup> day of June, 2019.

Petitioner's/Agent's Signature

Michael L. Buch  
OLDE SCAGGSVILLE, LLC.

TERESA M. RICE  
Notary Public-Maryland  
Anne Arundel County  
My Commission Expires  
August 30, 2022

Notary Public:

Teresa M. Rice

My Commission expires: 8-30-2022

**Note: It is the responsibility of the Petitioner to ensure that all of the Posting requirements have been met. Failure to meet any of these requirements may result in the postponing and rescheduling a meeting in order to ensure the proper posting of the property. It is also the petitioner's responsibility to remove the poster 2 weeks after the meeting.**