



# Charles County Planning Commission Meeting of January 23, 2023

## Department of Planning and Growth Management Staff Report

**Project Name & Number: Zoning Map Amendment (ZMA) #22-02**

**Type of Project: Local Map Amendment – Base Zone**

**Rural Residential (RR) to Community Commercial (CC)**

**Applicant: Law Offices of Sue A. Greer, Esq.**

**Prepared by Kelly Palmer, Planner III, Planning Division**

### TABLE OF CONTENTS

	<u>PAGE</u>
Background	2
Applicable Law / Standard of Review	3
Summary of Applicant's Request	3
Analysis	4-5
Conclusion	5
Appendices	

## **BACKGROUND**

There are two properties that are the subject of this Staff Report. The two properties are known as the St. Mary's Gateway Property and the Williams property (collectively called the "Bragg Property"). Both properties were previously under the ownership of the Mary Bragg family. The properties are located along the northeastern boundary line between Charles and St. Mary's Counties in the Hughesville/Charlotte Hall area.

The St. Mary's Gateway property is a 3.793-acre property identified as St. Mary's Tax Map 01, Grid 16, Parcel 77. This property is vacant and unimproved. This property is bifurcated by the St. Mary's County and Charles County boundary line. The majority of the property (approximately 2.83 acres) is within Charles County. There exists no legal or physical address to the St. Mary's Gateway property within Charles County, Maryland. This property has a St. Mary's County premises address of 30525 Three Notch Road, Charlotte Hall, MD 20622.

The Williams property is a 21.043-acre parcel identified as St. Mary's Tax Map 01, Grid 16, Parcel 43. Lying adjacent to the St. Mary's Gateway LLC Property, this property is also vacant and unimproved. This property is also bifurcated by the St. Mary's County and Charles County boundary line. Only one quarter of the property (approximately 5.50 acres) is located within Charles County. There also exists no legal or physical address to the Williams property from Charles County.

The subject properties are contiguous properties located on the southbound side of Three Notch Road/Maryland Route 5 at and near the intersection of Three Notch Road and Mohawk Drive. The majority of the Bragg property and the entire frontage of the Bragg Property lies within St. Mary's County, Maryland. The Three Notch Trail and Three Notch Road traverse the Bragg Property's frontage and bound the Bragg Property's northeastern boundary.

The portion of both properties that are within Charles County are Zoned Rural Residential (RR) and the portions of the properties within St. Mary's County are Zoned Town Center Mixed Use (TMX).

A Zoning Map Amendment application, dated August 1, 2022, was filed by Sue Greer, Esq., to change the current zoning of the Charles County portion of these properties from Rural Residential (RR) to Community Commercial (CC).

Section 297-448 of the Charles County Zoning Ordinance requires the Planning Commission to first consider the application and provide a recommendation to the Board of County Commissioners as to whether the requested rezoning should be granted. As a result, the purpose of this staff report is to provide guidance to the Planning Commission as it evaluates this rezoning request.

## **APPLICABLE LAW / STANDARD OF REVIEW**

The Maryland General Assembly, in its enactment of the Land Use Article of the Annotated Code of Maryland, provided two mechanisms by which a property owner could initiate a request to change the current zoning designation, outside of the more traditional method of rezoning. More specifically, § 4-204(b) of the Land Use Article allows an applicant to petition the local legislative body to change the current zoning designation in one of two situations: (1) there has been a substantial change in the character of the neighborhood, which renders the current zoning inappropriate; and (2) when the local legislative body has made a “mistake” (invalid reliance upon or erroneous assumption of facts) when it rezoned the property to its current zoning designation.

Section 297-448 of the Zoning Ordinance together with the application for a Base Zone Amendment establishes the criteria for evaluating a requested Zoning Map Amendment. In a case in which a property owner argues that a mistake was made during the last comprehensive rezoning, the owner must demonstrate that the requested rezoning is consistent with the Comprehensive Plan and all other applicable plans including, but not limited to the Comprehensive Water & Sewer Plan and the Capital Improvement Program, etc. As explained below, the requested rezoning is inconsistent with the County’s Comprehensive Plan. Therefore, even if the applicant is able to demonstrate that the County Commissioners made a mistake in how the property is zoned, the County Commissioners cannot approve a change in the current zoning of the property **unless and until** the County’s Comprehensive Plan is revised.

## **SUMMARY OF APPLICANT’S REQUEST**

As stated above, the Applicant is seeking a zoning map amendment, as permitted by § 4-204(b)(2) of the Land Use Article of the Annotated Code of Maryland, which requires the County Commissioners to conclude that a mistake was made in the original zoning of the property.

In the original Statement of Justification, the Applicant asserts that the Commissioners failed to take into account the bifurcation of the Bragg Property by the St. Mary’s County/Charles County boundary line, access to the Bragg Property, the proximity of the Bragg Property to Three Notch Road, adjacent commercial development in St. Mary’s County, and St. Mary’s County’s exercise of jurisdiction over the Bragg Property. The Applicant believes that if the Commissioners had taken all of this into account, they would not have zoned the Bragg Property Rural Residential (RR).

Then, in response to feedback provided by Planning staff, the Applicant’s position changed somewhat. In a letter dated September 29, 2022, the Applicant also asserted that the County Commissioners “never applied a zoning category to the Bragg property.” However, as explained below, this assertion is incorrect.

## ANALYSIS

### **A. Overview**

After thorough review of the zoning map amendment application and the statement of justification provided by the Applicant, Planning Staff present the following findings, observations, and conclusions regarding the requested rezoning for the Planning Commission's consideration.

### **B. Current Zoning**

As explained to the Applicant in a letter dated November 22, 2022, the County Commissioners have been consistent in the zoning of the Bragg Property and the surrounding area (see attached letter). As the letter explains, the Bragg Property and its immediate vicinity under the jurisdiction of Charles County was included in the R-1 Zone (Residential & Agricultural uses) since at least 1971. Then, as a result of the 1992 comprehensive rezoning, the Bragg Property and its immediate vicinity, the Subject Property was rezoned to Rural Residential (RR), and the zoning (of both the Subject Property and the immediate vicinity) has remained unchanged.

The Zoning Ordinance explains that the two rural zones (Rural Conservation Zone and the Rural Residential Zone) are “intended to maintain rural character in many County areas consistent with the Comprehensive Plan objectives” (see § 297-88.A.) Section 297-88.A(2) further explains that the Rural Residential zone is a zone that “provides for low to moderate residential densities in areas closer to portions of the development district and incorporated towns. These areas contain or are within the sphere of influences of community facilities and services, including schools, and are in proximity to major transportation network components.”

### **C. Requested Rezoning**

The Applicant is requesting that the County Commissioners rezone the Charles County portion of the Bragg Property from Rural Residential (RR) to Community Commercial (CC).

The Charles County Zoning Ordinance describes the Community Commercial Zone as a zone that “provides a wide range of commercial uses and establishments to serve several neighborhoods in appropriate locations along major roads while discouraging strip development.” The current development adjacent to the subject property, within the Charlotte Hall Town Center (located in St. Mary’s County), contains a mix of industrial, commercial, institutional, and residential uses.

The St. Mary’s County Commissioners have zoned the St. Mary’s portion of the Bragg Property in the Town Center Mixed Use (TMX). As stated in the St. Mary’s County Zoning Ordinance, the TMX zone establishes certain standards that “are intended to create an urban character and make the core area safe, pedestrian friendly, and visually attractive.”

## **D. Consistency with Applicable County Plans**

The Planning staff has reviewed the subject application for consistency with the goals and objectives of the 2016 Charles County Comprehensive Plan as required under § 297-448(G) of the County's Zoning Ordinance. The Bragg Property and its vicinity is located in an area that has long since been designated as the "Rural Residential District" on the County's Land Use Map (found in the County's Comprehensive Plan).

The following is an excerpt from Chapter 3 of the County's Comprehensive Plan: "The intent of the Rural Residential land use district is "to allow for rural residential development at one unit per three acres while preserving the rural character and open space whenever possible." Additionally, Rural Residential Districts are intended to provide for "a full range of agricultural and farming uses..." It is not the intent of the Plan that commercial uses be located in this district. Thus, staff finds that the proposed rezoning is not consistent with the current land use designation for the Bragg Property and its immediate vicinity in the Comprehensive Plan.

## **CONCLUSION**

In filing the application for a Zoning Map Amendment, the Applicant has petitioned the County Commissioners to rezone the Subject Property from Rural Residential (RR) to Community Commercial (CC). Even if the Planning Commission and/or the County Commissioners conclude that commercial zoning is more appropriate, especially given the extent of development in St. Mary's County, the requested CC Zoning is inconsistent with the Land Use Concept Map adopted as part of the Charles County Comprehensive Plan. Therefore, if the County Commissioners agree with the Applicant that CC zoning is more appropriate, this application cannot be approved **unless and until** the County Commissioners revise the County's Comprehensive Plan.

### Appendices:

- Zoning Map
- Location Map
- Aerial Map
- Adjacent Property Map
- Application, Justification Statement, and Exhibits
- Letter to Applicant dated November 22, 2022