Edna May Harbin, Robert Harbin, Jr., Kimberly Harbin Taylor, Petitioners ZB 1073M	*	**PLANNING BOARD OF HOWARD COUNTY, MARYLAND**

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MOTION: *To recommend denial of the proposal for a Zoning Map Amendment to rezone 1.295 acres of land located at the northwest corner of the MD 99 intersection with Old Mill Road/Bethany Lane from R-20 to B-1 with an option.*

ACTION: ***Recommended denial of Petition with an option; Vote 2 to 1.***

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RECOMMENDATION

On May 28, June 18, and July 15, 2009, the Planning Board of Howard County, Maryland, considered the petition of Edna May Harbin, Robert Harbin, Jr. and Kimberly Harbin Taylor to rezone 1.295 acres of land located at the northwest corner of the MD 99 intersection with Old Mill Road/Bethany Lane from R-20 (Residential: Single) to B-1 (Business: Local) with a documented site plan. The subject property is located in the Second Election District, is described as Tax Map 17, Grid 8, Parcel 27, Lot 2; and the address is 9920 MD 99.

The petition, and the Department of Planning and Zoning Technical Staff Report and Recommendation were presented to the Board for its consideration. The Department of Planning and Zoning recommended that the Petitioner's request be denied as there is no justification for the proposed map amendment to rezone the property to B-1 based on a finding of mistake or change. The recommendation for denial included an option that if the Zoning Board finds that the rezoning is justified on the basis of mistake and/or change, that as a condition of approval the Decision and Order include limitations which would restrict the use of the property to only the activities as described in the petition and supplement and as depicted on the Zoning Board Exhibit.

The Petitioner was represented by Thomas Meachum, Esq. Testimony was presented in opposition and in support of the petition.

May 28, 2009

Mr. Meachum explained that the Harbin family has sold produce at the stand for many years. He said the failure of the Council to rezone the property to B-1 constitutes a mistake because the Council did not realize the property did not qualify as a nonconforming use and it needed to be rezoned in order for the use to continue. Mr. Meachum said that according to zoning law, if assumptions were made which later prove to be untrue, then this meets the test for mistake and that is the case here. He said the use should actually be more like a farmer's market and amended the petition to be a farmer's market and not an open air market. He said the use does fit the General Plan criteria because it is in keeping with the residential character of the area. He said this is where the distinction of a documented site plan comes in because it

would not be a blanket rezoning to B-1. There would be no domino effect from rezoning because the property is too small to affect change to such a degree that larger parcels could be rezoned using the Harbin property as justification. He said the combination of the small property size and a documented site plan will prevent other uses from being placed on the property as well as other similar rezonings.

Testimony in opposition to proposal:

Ralph Ballman presented Howard County General Plan maps and testified that the great majority of land surrounding the Harbin property is residentially zoned. He said there are problems with the site plan including access and stacking issues. He stated that the Harbins should have been aware that a nonconforming use did not apply any longer since the accessory farm stand use in a residential zoning district was tied to the farm use which no longer exists. He suggested moving the stand to the Howard County Conservancy.

Veronica Clark testified that she is aware of the long time use for the stand, but she is concerned that a change to business zoning is a bad idea and a slippery slope. She questioned what would happen if the property was sold and said once the business zoning is in place, future owners could put in a convenience store or other permitted use in the zoning district on the site. She said that changing to business zoning in the Rt. 99 corridor is a legitimate concern because it could become a gateway for other rezoning. She said the proposed parking on the plan appears too intense and commercial in nature and does not look like what has been on the site for many years.

Karen Busher testified that she does not want B-1 zoning because of the domino effect on other properties seeking rezoning that could result.

Testimony in support of proposal:

Greg Freed, Debbi Kahn, Sharon Barry and several other citizens testified that the stand provides a valuable community service by providing fresh vegetables and fruit, that it has been a long standing family business and that the Harbins do not want to change the community. There was testimony that the Harbin family is very active in the community and frequently donates items to schools and for community events.

Due to the late time, Mr. Grabowski continued the meeting and left the record open to receive written testimony.

June 18, 2009:

David Grabowski opened the June 18, 2009 continuation and stated that only people who had previously signed up to testify would be heard.

Testimony in support of proposal:

Fourteen citizens testified in support of the proposal. Testimony included statements that the Harbins have been a stable part of the community for decades and the stand is a landmark institution, and that the stand is a family oriented business and it is a livelihood rather than a commercially oriented

business. One person stated that this was more of a moral issue than a legal one because it is wrong to shut down a family business due to a technicality.

Michael Taylor, the co-owner of the stand said he supports his family with the operation of the stand and he feels good that restrictions will be placed on the plan which will remain in the future and prevent other types of businesses from being established on the site.

One person testified that the Harbins have had the stand for years and the family has donated profits from Christmas tree sales to help the community.

Several people testified that they had worked at the stand when they were young and the Harbins hired many people from the community and they learned skills that benefitted them throughout their lives. Several people who are currently employed at the stand testified that they would be very upset if the stand went out of business. One person questioned what would become of the site if the stand were no longer there and speculated that the lot would remain vacant which would be a negative change.

In response to a question from the audience, Mr. Grabowski stated that approximately 139 emails had been received and the opinions expressed seemed to be about half in support of and half in opposition to the proposal.

Kimberly Harbin Taylor responded that they had no hidden agenda when they say nothing will change, but the use is so deeply ingrained in their family, that the way the family sees it is as a continuance of the long standing use.

Testimony in opposition to proposal:

Carol Simpson commented on and submitted a list of questions about when the traffic study would be done, the permitted uses that would be allowed with B-1 zoning, and the seemingly excessive amount of parking shown on the plan.

One person stated that she feels the public was misled into believing the issue being debated was whether people wanted the stand to remain or not. She said they believed the site would not change, but now it is evident from the appearance of the plan that the site would change and the overall look of the property would become more commercial than it has traditionally appeared, for example, by the addition of so many parking spaces and the large food preparation building.

Closing remarks:

Kimberly Harbin Taylor reiterated that they had no hidden agenda as far as changing the use of the property in the future and the family found out the business did not comply with County regulations when County engineers told them about changes that were being made to the site's access. She said the documented site plan makes the most sense in protecting the land.

Thomas Meachum stated that a mistake was made in the 2004 Comprehensive Zoning Plan in not rezoning the property to B-1. He said the site plan rezoning ties the uses to the land and they would carry with the land and it is clear the property can only be used for proposed restricted uses. He said a mere

rezoning cannot change the character of an entire neighborhood and this case is just a confirmation of an existing use. He reminded the Planning Board members that he had amended the petition to be a farmer's market and not an open air market.

Motion:

Paul Yelder made a motion to accept the recommendation of the Technical Staff Report with an option for approval in order to go into a work session. Gary Rosenbaum seconded the motion.

Work session:

Paul Yelder said the real issue is a need to discuss the site plan in the work session. From the testimony several people talked about the number of parking spaces provided as being too extreme. He said more specificity of exact uses would need to be defined if the proposal was approved. He said he understands the fear of allowing other B-1 uses, but the stand has been in existence for over 30 years and from the testimony, he has not heard anyone say they were opposed to a farm stand, but that he has heard testimony that people are opposed to the B-1 zoning on the basis that it may allow the site to be developed for other commercial uses in the future once B-1 zoning was in place. Given the historical use and character of the area, the farm stand is not out of character with the surrounding area.

Gary Rosenbaum said they need to look at the issue of spot zoning. W hen one looks at the zoning history noted in the Technical Staff Report, the property's long standing residential zoning that has been in place is clear, so any discussion about rezoning would necessarily be based on an allegation of mistake. He said the Petitioner's counsel brought up a mistake by the County Council but he believes that to be an assumption on their part. He said he disputes whether a vacant lot would remain at the site if the stand were no longer there. As noted in the Technical Staff Report, the property does have potential for residential use and he is not convinced a case has been made to change the zoning, even with restrictions. He said that people have talked about the long standing use as a farm stand, but it has in fact changed over time.

David Grabowski agreed with Mr. Rosenbaum about the long history of residential zoning in the area but he said he cannot support B-1. He said he hasn't accepted the argument that the Council did not consider rezoning, so there is no conclusion that a mistake was made. He said that even with a documented site plan, the property will not look like what is currently there with 37 proposed parking spaces and the new curb and gutter and paving. He said he has concerns about setting a precedent for rezoning.

Paul Yelder said the use seems to be somewhere between B-1 and BR; he doesn't see the corner as strictly residential but it's not commercial either. He said this is a legacy issue but he still has issues with the site plan.

Mr. Grabowski said as much as the business should remain there, even with a documented site plan, B-1 zoning should not be placed there and he cannot support B-1 zoning at this time. He asked Mr. Meachum about limiting the uses and Mr. Meachum said they would develop a list of items for sale.

Due to the late time, Mr. Grabowski continued the meeting.

July 15, 2009:

Continuation of work session:

David Grabowski opened the July 15, 2009 continuation of the work session and noted that Thomas Meachum had submitted a list of items that were intended to be sold at the stand.

Paul Yelder began the session by stating that he looks at this case somewhat differently than some others, and that while he doesn't agree that blanket B-1 rezoning is appropriate, he believes that what is being presented on the plan is appropriate. He said he understands the future implications that could come with B-1 rezoning, but placing restrictions on the property for such things as parking would be adequate to ensure that the property will only be used for the stated use.

Mr. Grabowski said he still has issues with rezoning to B-1. He said the documented site plan takes the existing site improvements and regiments the site with things like a new curb and gutter and paving that makes it look like standard commercial B-1 zoning. He asked Ms. McLaughlin about whether the zoning allows for an agri-business conditional use and she responded that it is only allowed in areas outside of the planned service area so it would not apply here.

Gary Rosenbaum said that B-1 zoning could present future problems to surrounding residential areas.

Mr. Grabowski agreed that B-1 zoning even with a documented site plan is not the way to go; that it is a slippery slope. Even with a documented site plan, if the property is rezoned and sold in the future an argument could arise that since it is already zoned B-1, it may as well be used for other permitted B-1 uses. He said he is concerned that once it is zoned B-1, the opportunity for other uses would develop. He said B-1 zoning would give future petitioners a step forward toward other uses.

Mr. Rosenbaum said that on the issue of mistake or change, the case does not fit the criteria and he has the same concerns as Mr. Grabowski.

Paul Yelder asked if constraints on the site wouldn't bind it only to the stated use. He said the history of the site should be taken into account.

Mr. Rosenbaum said the list of items sold shows it has been expanded over the years so it now includes sodas and bottled juices and it seems to be getting into the realm of a convenience store.

Mr. Yelder said in referring back to the site plan, if the use is limited then a retail store for example could not go on the site because it wouldn't fit into the building mass shown on the plan. He said he understands the zoning issue, but from a planning standpoint the proposal makes sense.

Ms. McLaughlin commented that the case is a difficult one because the use has been there for a long time. She said the intention of allowing for documented site plans was to bridge difficulties on some sites. The documented site plan means limitations would apply and any future purchaser who was overly

optimistic about getting a quick approval for other uses would have to go through the same approval process and that there would certainly be public testimony against future changes in use.

David Grabowski restated the motion before the Planning Board: to accept the recommendation of the Technical Staff Report with the option for approval with limitations on the property.

Vote:

The motion for denial of the petition with an option for approval with limitations in accordance with the DPZ Technical Staff Report passed by a vote of 2 to 1. Mr. Rosenbaum voted for denial of the petition without the option.

For the foregoing reasons, the Planning Board of Howard County, Maryland, on this 18th day of August 2009, recommends that the Petitioner's request to rezone 1.295 acres of land from R-20 to B-1 as described above, be **DENIED** with an option for approval in accordance with the recommendation of the Technical Staff Report.

HOWARD COUNTY PLANNING BOARD

David Grabowski

David Grabowski, Chairperson

Gary Rosenbaum

Gary Rosenbaum, Vice Chairperson

Paul Yelder

Paul Yelder

ABSENT

Linda A. Dombrowski

ABSENT

Tammy J. Citara Manis

ATTEST:

Marsha S. McLaughlin

Marsha S. McLaughlin
Executive Secretary