

LIBERO 007 FOLIOS 47
COUNTY COUNCIL

OF

DORCHESTER COUNTY, MARYLAND

BILL NO. 2023-1 *AS AMENDED*

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY TO AMEND THE OFFICIAL ZONING MAP OF DORCHESTER COUNTY REGARDING A PORTION OF A 7.66 ACRE PARCEL OF LAND OWNED BY DAVID W. NICKERSON, TRUSTEE OF THE DAVID W. NICKERSON REVOCABLE TRUST AND SHOWN ON TAX MAP 12 AS PARCEL 16

WHEREAS, the County Council of Dorchester County (the “County Council”) is authorized by the Maryland Annotated Code to enact a comprehensive zoning map; and

WHEREAS, the Maryland Annotated Code and Maryland law permits the County Council to amend, supplant or modify the duly adopted zoning maps upon a finding that the current zoning designation of a property or properties is no longer consistent with the neighborhood or a mistake in the designation is alleged and proven; and

WHEREAS, David W. Nickerson, Trustee of the David W. Nickerson Revocable Trust (the “Owner”), has petitioned the County Council to rezone a portion of a 7.66 acre parcel of land shown on Tax Map 12 as Parcel 16 (the “Property”) from the Agricultural Conservation – Resource Conservation Area District (“AC-RCA”) to the General Business District (“B-2”); and

WHEREAS, on September 7, 2022, the Dorchester County Planning Commission held a duly advertised public hearing on the rezoning request, after which it unanimously recommended that the County Council approve the petition and rezone the Property from AC-RCA to B-2; and

WHEREAS, the County Council held a public hearing on the rezoning request on March 21, 2023 and received testimony and evidence in support thereof; and

WHEREAS, the County Council has determined that the Owner has demonstrated that the rezoning request is consistent with the requirements for the rezoning of property set forth in Md. Code Ann., Land Use § 4-204(b) and § 155-5(B) of the Dorchester County Code, specifically, that there has been a substantial change in the character of the neighborhood in which the Property is located since the last rezoning of the Property; and

WHEREAS, the County Council has made certain findings of fact that are set forth in Exhibit A which is attached hereto and incorporated herein by reference.

NOW THEREFORE, the County Council of Dorchester County, Maryland hereby ordains as follows:

SECTION 1: The above recitals are not merely prefatory but are a substantive part of this Bill.

SECTION 2: The Official Dorchester County Zoning Map is hereby modified as follows:

The zoning designation of a 1.431 acre portion of the property owned by David W. Nickerson, Trustee of the David W. Nickerson Revocable Trust, shown on Tax Map 12 as Parcel 16 and more fully described by metes and bounds, courses and distances on Exhibit B, attached hereto and incorporated herein by reference, is changed from the AC-RCA District to the B-2 District.

SECTION 3: **The change in the zoning designation set forth in Section 2 herein shall be contingent upon an award of growth allocation to support reclassification of Tax Map 12, Parcel 16, or the applicable portion thereof, from its current classification of Resource Conservation Area (“RCA”) to Limited Development Area (“LDA”) as more fully set forth in Bill No. 2023-3. Upon such award,** the Official Zoning Map of Dorchester County shall be amended and signed by the County Council to reflect the change in the zoning designation of the **Property from AC-RCA to B-2 as set forth herein.**

SECTION 4: With respect to the substantive provisions of this Bill set forth in Sections 2 and 3 and the Findings of Fact attached hereto as Exhibit A, language added after the date of introduction is shown in bold, underlined font and language deleted after the date of introduction is crossed out with a strikethrough. (*Editor’s Note:* The recitals to this Bill have been amended for clarity and consistency and to correct certain typographical errors. Similarly, new sections have been added to this bill and existing sections have been reorganized for clarity and consistency and for legal sufficiency. Such amendments are not substantive, as they do not enlarge or narrow the scope of this Bill as introduced to such an extent that the Bill as passed with such amendments can be said to be misleading or defeat the original purpose of the Bill as introduced. *See Ajamian v. Montgomery Co.*, 99 Md. App. 665, 684-85 (1994).)

SECTION 5: If any provision of this Bill or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, such invalidity does not affect other provisions or any other application of this Bill that can be given effect without the invalid provision or application, and for this purpose, the provisions of this Bill are declared severable.

SECTION 6: The Publishers of the Dorchester County Code, the Dorchester County Attorney, and the Dorchester County Department of Planning & Zoning, in consultation with and subject to the approval of the County Manager, shall be authorized to make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation to the Dorchester County Code that is incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor’s note following the section affected.

EXHIBIT A

**FINDINGS OF FACT
PLANNING COMMISSION
MEETING SEPTEMBER 7, 2022**

**APPLICATION FOR REZONING OF LANDS OWNED BY
DAVID W. NICKERSON, TRUSTEE OF THE DAVID W. NICKERSON REVOCABLE TRUST**

I. BACKGROUND

These Findings of Fact relate to an application (“**Application**”) by David W. Nickerson, Trustee of the David W. Nickerson Revocable Trust (“**Applicant**”), for the rezoning of a portion of a 7.66-acre parcel of land owned by Applicant located at 6305 Suicide Bridge Rd., Hurlock, Maryland 21643 and further identified as Tax Map 12, Grid 17, Parcel 16 (the “**Property**”) from Agricultural Conservation-Resource Conservation Area (“**AC-RCA**”) to General Business District (“**B-2**”). The portion of the Property to be rezoned from AC-RCA to B-2 consists of 1.431± acres as depicted on the “Zoning Exhibit for the Lands of David W. Nickerson Revocable Trust”, dated July 2022, prepared by Rauch, Inc., and further described by a legal description entitled “Description of 1.431 Acres, More or Less, a Portion of the Lands of David W. Nickerson Revocable Trust to Be Rezoned as ‘B-2’ General Business Fifteenth Election District, Dorchester County, Maryland”, which are attached hereto as Exhibits A-1 and A-2 (collectively, the 1.431 acre area being referred to as the “**Subject Lands**” hereinafter).

The purpose of the Applicant’s request for rezoning is to allow the continued use of the 11,353 s.f. gravel surface parking area on the Subject Lands to support overflow parking from the Suicide Bridge Restaurant, also owned by the Applicant and located on an adjacent parcel of land at 6304 Suicide Bridge Rd., Hurlock, MD 21643 (the “**Restaurant Property**”).

The Dorchester County Planning Commission (“**Planning Commission**”) held a duly advertised public hearing on and reviewed the Application during its September 7, 2022, meeting. After thorough consideration of the information presented, the Planning Commission unanimously recommended that the Dorchester County Council approve the Application and rezone the Subject Lands from AC-RCA to B-2. A copy of the Planning Commission’s letter transmitting its recommendation to the Council is attached hereto as Exhibit A-3.

II. LEGAL BACKGROUND

The Dorchester County Code requires the Planning Commission to make findings of fact in each specific case, including but not limited to the following matters:

1. Population change;
2. Availability of public facilities;
3. Present and future transportation patterns;
4. Compatibility with existing and proposed development; and,

5. Compatibility with the County's Comprehensive Plan.

See Dorchester County Code § 155-5 B(1)(a).

The County Council may grant the reclassification based upon a finding that there was a substantial change in the character of the neighborhood where the property is located since the last rezoning. *Id.* The fact that an application for reclassification complies with all the specific requirements and purposes set forth in this the Dorchester County Zoning Ordinance shall not be deemed to create a presumption that the proposed reclassification and resulting development would, in fact, be compatible with surrounding land uses and is not, in itself, sufficient to require granting of the application. *Id.* at § 155-5 B(1)(b).

In all map amendment cases, the Planning Commission and County Council shall be satisfied that the applicant for the rezoning intends to use or begin construction for the purpose of using the requested zoning within two years of the date of approval of the change in zoning. *Id.* at § 155-5 B(4)(a).

III. FINDINGS OF FACT - GENERAL

In consideration of the Comprehensive Plan, the Dorchester County Code, all submittals and testimony at the Council's public hearing, the advice of the Planning Officer, the recommendation of the Planning Commission, and testimony and comments in relation to the Application contained within the record, the County Council hereby makes the following Findings of Fact with regard to the Application:

1. **Population Change.** The population trends in the County, including the Secretary/East New Market area, support the continued viability of the Suicide Bridge Restaurant and the need for additional parking, which the proposed rezoning would allow. According to the 2021 Dorchester County Comprehensive Plan,¹ the Maryland Department of Planning projects that Dorchester County will experience a 21% population increase between 2010 and 2040. See Comprehensive Plan, at p. 2-2. Thus far, actual population figures have held steady since 2010, according to the U.S. Census Bureau.² However, the Towns of Secretary and East New Market, which are in the same neighborhood as the subject Property, have experienced significant population growth relatively to other Towns in Dorchester County. See Comprehensive Plan, Table 2.2, at p. 2-3. In addition, according to the Comprehensive Plan, the "County has experienced a boom in tourism since the previous Comprehensive Plan." *Id.* at p. 10-12. Tourists are frequent visitors to the Suicide Bridge Restaurant, which, in addition to meals featuring local cuisine, offers river cruises for sightseeing.
2. **Availability of Public Facilities.** The proposed rezoning will not require the availability of additional public facilities to serve the overflow parking area, though such facilities are planned for the adjacent Restaurant parcel. The Subject Lands abut Suicide Bridge Road, a public road, and are adjacent to the Suicide Bridge Restaurant, which is programmed to

¹ Available at <https://dorchestercountymd.com/planning-zoning/comprehensive-plan/>.

² Available at <https://www.census.gov/quickfacts/dorchestercountymaryland>.

receive public sewer service from the Town of Secretary/Twin Cities wastewater treatment plant located in Secretary. On February 15, 2022, the Dorchester County Council approved Resolution No. 645, which confirmed the S-1 sewer designation for the Restaurant parcel and approved the connection to the Town of Secretary/Twin Cities wastewater treatment plant. In a Final Action Letter dated June 10, 2022, the Maryland Department of the Environment approved Resolution No. 645 as an amendment to the Dorchester County Comprehensive Water and Sewer Plan. A copy of MDE's Final Action letter is attached hereto as Exhibit A-4. The Applicant anticipates the execution of a Sewer Extension Agreement with the Town of Secretary in January 2023.

3. **Present and Future Transportation Patterns.** The proposed rezoning is consistent with the continued prevalence of the automobile in Dorchester County and will not have an undue impact on traffic or congestion in the area. The automobile is the dominant form of transportation in Dorchester County, particularly outside of Cambridge. While the County's Comprehensive Plan encourages transportation alternatives, such as public transit, bikeways and pedestrian systems, the Plan also seeks to maintain the County's principal roadways for automobile use. *See* Comprehensive Plan, at p. 8-2. Delmarva Community Transit provides bus service between Cambridge and Hurlock, including stops in Secretary and East New Market, but the bus route does not go past the Suicide Bridge Restaurant.³ Suicide Bridge Road, which provides access to the Suicide Bridge Restaurant and the Subject Lands, is identified in the Comprehensive Plan as a minor collector road. *See* Comprehensive Plan, at Map 8.1, p. 8-11. The Plan defines "minor collector roads" as roads intended to serve both mobility and access needs of County residents. *Id.* at p. 8-3. Although increases in traffic have been noted along MD Route 16, which parallels Suicide Bridge Road, the County's State highways are generally not experiencing significant increases in traffic volume and the increase along MD Route 16 is consistent with the Route 16 corridor serving as the historic growth corridor of the County. *Id.* at p. 8-5.
4. **Compatibility with Existing and Proposed Development.** The proposed rezoning is compatible with existing and proposed development in the neighborhood. The proposed rezoning of the Subject Lands to B-2 is the same as the adjacent Restaurant parcel, also zoned B-2. The Restaurant is the primary commercial development in the immediate vicinity. The proposed rezoning of the Property to B-2 would complement the existing Restaurant development by allowing the continued use of the Property for overflow parking. The proposed parking area would not conflict with possible proposed development in the area. The Comprehensive Plan identifies the general vicinity as slated for Rural Residential Growth generally. *See* Comprehensive Plan, Map 3.4, at p. 3-9. There is existing residential development to the east of the parking area. The parking area is buffered by existing forest. The Restaurant serves the needs of the residential community in this area, both for dining and marina activities.
5. **Compatibility with the County's Comprehensive Plan.** As discussed in the Responses to Findings of Fact 1-4 above, the proposed rezoning is consistent with the County's Comprehensive Plan. In addition, the proposed rezoning supports the County's Economic Development goals set forth in the Comprehensive Plan, including:

³ *See* <https://www.dcsdct.org/uploads/2/5/0/4/25044487/finalmustschedulenov2014.pdf>.

- Create and retain quality jobs, raise local incomes and increase tax revenue base.
- Preserve and enrich the County's natural beauty and cultural heritage while strengthening the economy through increased nature-based heritage tourism opportunities.
- Support resource-based industries, including seafood and aquaculture.

See Comprehensive Plan, at p. 10-3. The proposed rezoning will allow additional customers to use the Restaurant, which will help create and retain jobs, promote the sightseeing activities through the Restaurant's riverboat tours, and support the seafood industry by promoting demand for seafood products.

6. **Growth Allocation.** The Applicant has applied for growth allocation to reclassify a 6.86 acre portion of the Property, which includes the area subject to rezoning and the parking area, from Resource Conservation Area ("RCA") to Limited Development Area ("LDA"). The LDA designation is consistent with and supports the continued use of the parking area in connection with the Restaurant.
7. **Recommendation from Planning Commission.** Although the County Council are not bound by the recommendation of the Planning Commission, the County Council note the Planning Commission's unanimous favorable recommendation.

IV. CHANGE OR MISTAKE

Maryland's "Change or Mistake" Rule is intended to regulate piecemeal zonings by protecting the presumption that the existing zoning is well planned and intended to be permanent. The "Change or Mistake Rule" is codified in the Land Use Article:

- (2) The legislative body may grant the amendment to change the zoning classification based on a finding that there was:
 - (i) a substantial change in the character of the neighborhood where the property is located; or
 - (ii) a mistake in the existing zoning classification.

Land Use Article § 4-204(b)(2), MD. CODE ANN. (emphasis added). The Maryland Court of Appeals has explained the standard for establishing a rezoning based on change as follows:

In demonstrating change in the neighborhood the applicant must show (a) what area reasonably constituted the 'neighborhood' of the subject property, (b) the changes in that neighborhood since the comprehensive [or prior piecemeal] rezoning and (c) that these changes resulted in a change in the character of the neighborhood.

Rockville v. Stone, 271 Md. 655, 661 (1974) (citations omitted).

The concept of a “neighborhood” is broader in the rural context than in the urban or suburban context. *See Pattey v. Board of County Comm’rs*, 271 Md. 352, 363 (1974). In addition, changes which may have occurred prior to the last comprehensive rezoning need not be wholly disregarded. *See Somerset v. County Council for Montgomery County*, 229 Md. 42, 48 (1962). This is so because it may be that “it was a rather close question in the minds of the officials concerned whether a change in the zoning of the land involved should not have been made at the time of the last comprehensive rezoning, and additional changes thereafter may bring the zoning status of the land as to which action is sought over the line dividing different zones.” *Id.*

Upon consideration of the Findings of Fact-General in Section III above and the testimony and comments in relation to the Application contained within the record, the County Council hereby makes the following Findings of Fact with regard to “Change or Mistake”:

1. **Defining the Area Constituting the “Neighborhood”.** The area comprising the “neighborhood” includes both the immediate vicinity of the Property and the broader Secretary/East New Market vicinity.
2. **Changes in the Neighborhood Since the Comprehensive Rezoning.** The principal changes in the neighborhood include the evolution and expansion of the Restaurant over time, population growth of the Secretary and East New Market areas, and the planned extension of public sewer to the Restaurant pursuant to Dorchester County Resolution No. 635.
3. **Changes Resulted in a Change in the Character of the Neighborhood.** The cumulative effect of the changes described above is to change the character of neighborhood to a place of greater population and economic activity.

Therefore, the Planning Commission finds that there has been a “Change in the Character of Neighborhood” that would justify the rezoning requested by the Applicant.

SECTION 7: The title and summary of this Bill shall be published promptly at least once in a newspaper of general circulation in Dorchester County following its passage in accordance with § 308 of the Charter of Dorchester County, Maryland (the "Charter").

SECTION 8: In accordance with § 306 of the Charter, this Bill shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and notice of the time, date, and place of hearing, and the title of Bill No. 2023-1 having been published, a public hearing was held on March 21, 2023 at 6:02 p.m. in the Council Chambers, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

PASSED *AS AMENDED* THIS 21st DAY OF March, 2023.

ATTEST:

COUNTY COUNCIL OF DORCHESTER
COUNTY, MARYLAND

By: [Signature]
Jeff Powell, Interim County Manager

By: [Signature]
George L. Pfeffer, Jr., President

- Pfeffer - aye
- Detmer - aye
- Kramer - aye
- Nichols - absent
- Travers - aye

EFFECTIVE DATE: May 20, 2023