

CARROLL COUNTY PLANNING COMMISSION STAFF REPORT

Rezoning Case No. 228 – Eldersburg Investors II, LLC

January 17, 2023

Petitioner/Owner:

Eldersburg Investors II, LLC (*Petitioner and Owner*)
2650 Lord Baltimore Drive
Baltimore, MD 21244

Attorney:

Shaffer and Shaffer, LLP
73 East Main Street
Westminster, MD 21157

Request Description:

The request is to reclassify approximately 12.4757 acres from Commercial Medium “C-2” to Commercial High “C-3”. The 12.4757 acres subject to be rezoned is made up by four (4) separate and adjoining parcels all owned by the petitioner, Eldersburg Investors II, LLC. The subject properties are located South of Liberty Road (MD 26) approximately .3 miles Southeast of White Rock Road, in election district 14 and tax map 73. The petitioned area is located across MD 26 of what is commonly referred to as the Liberty Exchange development. The properties have a land use designation of Commercial-Medium in the *2018 Freedom Community Comprehensive Plan*. The Petitioned area is in the Freedom Priority Funding Area and Freedom Designated Growth Area.

Request in Detail:

The subject area is comprised of four (4) parcels that total 12.4757 acres. The four parcels have the following property account identifiers: 14-039686, 14-039708, 14-007091, 14-037586 (see Exhibit A – Rezoning Plat). The four parcels totaling the petitioned area are adjoining on the south side of MD 26, approximately 1.75 miles west of the MD 32 and MD 26 intersection.

The property has a land use designation of Commercial-Medium in the *2018 Freedom Community Comprehensive Plan* (see Exhibit B- Designated Land Use).

The rezoning petition is based on an argument of mistake in the current zoning and a substantial change in the character of the neighborhood.

Background of Request:

The Carroll County Department of Planning accepted a revised petition on January 3, 2023, in accordance with the Carroll County Procedures for Rezoning.

Carroll County Planning Commission Staff Report

Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Findings:

1. Property Use and Development History

The approximate 12.4757 acres totals 4 parcels all owned by the petitioner, Eldersburg Investors II, LLC. The property owner is listed as the Grantee of all 4 parcels dated on 4 separate deeds dated July 26, 2022.

Currently, three of the four referenced parcels are improved with residences with the fourth parcel vacant and unimproved (Exhibit G – Aerial). The petitioned area has direct access onto Liberty Road (MD 26). There is a public right of way that runs parallel to MD 26 as reserved by the State Highway Administration (SHA).

2. Soils (Prime or Productive Agricultural Soils for properties outside of DGA)

The property lies within two soil series as identified and defined by USDA's Natural Resources Conservation Service (NRCS) as the following: Glenville Silt Loam (GdB), 3 to 8 percent slopes. This soil type is on prime farmland and is moderately well drained. This soil type occupies most of the Petitioned area, approximately 6.7 acres. Gladstone Gravelly Loam (GdC), 8 to 15 percent slopes. This soil type is on farmland and is well drained. This soil type represents a small amount of the petitioned area, approximately 1.4 acres. Gauley Channery Loam (GaC), 3 to 15 percent slopes. This soil type is highly erodible. This soil type represents a small amount of the petitioned area, approximately 3 acres.

3. Watersheds (Only for properties in Tier I and Tier II Watersheds or in Reservoir Watershed Boundaries)

The property is in the Liberty Reservoir and not located in a Tier 1 or Tier 2 watershed. This rezoning petition has been sent to the Baltimore Metropolitan Council (BMC), specifically the Reservoir Technical Group (RTG) for comments. RTG's purpose and mission is to prepare progress reports of their Action Strategy Items and to prepare technical reports relating to items that may include reservoir and tributary water quality, trends in land use and land cover, pollutants of concern in the watersheds or critical land and water management issues in the reservoir watersheds. RTG helps maintain the Liberty and Pretty Boy watersheds in Carroll County.

4. Agency Comments

On September 13, 2022, the Department of Planning referred the rezoning petition to several agencies and bureaus for any comments that the Planning and Zoning Commission should consider prior to making a recommendation to the County Commissioners.

The following agencies and bureaus were given the opportunity to provide comments:

Carroll County Bureau of Engineering
Carroll County Bureau of Utilities
Carroll County Department of Land and Resource Management

Carroll County Planning Commission Staff Report

Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Carroll County Roads Operations
Carroll County Health Department
Carroll County Office of the County Attorney
Carroll County Department of Economic Development
Carroll County Zoning Administrator
Carroll County Office of Public Safety
Carroll County Department of Public Works
Maryland Department of Transportation – State Highway Administration
Maryland Department of Planning – advisory only
Carroll County Bureau of Development Review
Supervisor of Assessment
Baltimore Metropolitan Council Regional Technical Group

Written comments were received from the following agencies:

Comment received from David Robinson from Carroll County Health Department:

“The proposed use may not be acceptable unless it is demonstrated that there is an adequate water supply and adequate area for the installation of an initial and two replacement septic systems for the proposed use and any existing uses on this property. If food is to be provided, please contact this office to discuss permitting options.”

(This comment is specifically regarding parcel number 703)

5. Immediate Neighborhood

The neighborhood is defined by the intersection of Old Liberty Road, Maryland Route 26 (Liberty Road) and Klees Mill Road to the West, and the intersection of Emerald Lane and Route 26 to the East. The neighborhood encompasses the corridor of Maryland Route 26 spanning between the two intersections and the existing commercial development therein. The subject property is located South of Liberty Road. The existing Liberty Exchange Business/Industrial Park is situated across Liberty Road and to the Northeast of the Property.

The primary uses within the neighborhood are a mix between commercial/industrial, public institution, agriculture, and residential, specifically large, and medium lot single family residences. The shopping center that is commonly referred to as Liberty Exchange is located inside the neighborhood boundary which is home to multiple commercial uses such as a brewery, multiple restaurants, dentist office, doctor's office, eye doctor, building materials store, bicycle store, multiple health clubs, and an indoor playground. Other entities such as a storage facility, church, kids learning center, general contractor, public park, veterinary clinic, gas station, and a construction equipment supplier all reside inside the neighborhood boundary.

6. Public Facilities

Transportation – The property has approximately 698 feet of road frontage on MD 26. This property currently has vehicular access from MD 26. MD 26 is classified as a Minor Arterial with the Maryland Department of Transportation. The road frontage on MD 26 is listed as a Planned Road Improvement in the *2018 Freedom Community Comprehensive Plan*. The improvement involves improvements on MD 26 extending from MD 97 and MD 32 intersections with MD 26.

Carroll County Planning Commission Staff Report

Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Water and Sewer Service Area – This property is not currently served by public water and sewer. The property has applied for a proposed Fall 2022 amendment to the Freedom Area Water and Sewer Master Plan. The amendment would bring the entire property into the Priority Service Category (W-3, S-3) for both water and sewer service. Currently, the property is in the Existing and Priority Service Category for water (W-1, W-3) and the Long-Range Service Category for sewer (S-6) in the *Carroll County Water and Sewer Master Plan* (see Exhibit E – Water Service Category and Exhibit F – Sewer Service Category).

Fiber Internet – The road frontage on MD 26 is a part of the County’s broadband network.

Transit – There was a TrailBlazer route that ran along MD 26 fronting the petitioned area. The route ran from South Carroll to BERC. The Board of County Commissioners (BCC) made the decision in 2022 to suspend this route until further notice.

Zoning

The petitioned area is zoned “C-2” Commercial Medium (see Exhibit C – Zoning).

- Commercial Medium – the purpose of the “C-2” District is to provide locations for a diverse range of medium-intensity retail, service and professional office uses needed by a larger population than those provided for in the C-1 district. The district is also intended to provide locations for compatible institutional and recreational uses, limited residential uses, and some of the general neighborhood uses associated with the C-1 district. Bicycle and pedestrian access are encouraged where possible to ensure compatibility with nearby neighborhoods.

Zoning of the Petition Area

At the time of the original zoning adopted by the County in 1965, all four (4) parcels were zoned “A” Agriculture. Then, following the adoption of the 1977 Freedom Mini Plan, the four (4) properties were rezoned to R-20,000 or Medium Density Residential. During Carroll County’s Comprehensive By-Request phase, three (3) of the four (4) properties were rezoned to C-2, parcel numbers 003, 0702, and 0703. This rezoning was given the identification number of C2-14-2020-0004 and was adopted in January 2021. The remaining 4th parcel, parcel number 0222, was rezoned from R-20,000 to BG (Business General) during the Commercial and Industrial Comprehensive Rezoning Process, officially adopted in 2002. Parcel 0222 obtained its current zoning of C-2 when the BG and BNR (Business Neighborhood Retail) districts were eliminated in 2019, and the accompanying parcels were placed into the newly created C-1, C-2, and C-3 districts. The petitioner has requested all four properties be rezoned to C-3 “Commercial High.”

8. Relationship of Proposed Zoning to Comprehensive Plan

The subject properties were designated as Commercial Medium in the *2018 Freedom Community Comprehensive Plan*. The petitioned area’s zoning of “C-2” is consistent with the designation of Commercial Medium. The subject properties are in the Freedom Designated Growth Area (DGA) as well as the Freedom Priority Funding Area (PFA).

Carroll County Planning Commission Staff Report

Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

The *2018 Freedom Community Comprehensive Plan* contains visions, goals, objectives, and recommendations that support the properties current zoning of C-2 as well as the proposed rezoning to C-3.

Goal 1 – Pursue policies that facilitate the implementation of the plan vision, including development in appropriate areas within density limits that respect the overall Vision of the community, where water, sewer, and other infrastructure are projected to be available.

Goal 2 – Allow appropriately timed and scaled development which supports, enhances, respects, and reinforces the identity and character of the Freedom CPA.

Goal 4 – Facilitate economic development opportunities that support the local skilled workforce and entrepreneurs and expand the county’s employment tax base.

Recommendation #1 – Look for opportunities to increase the amount of land in the commercial and light industrial districts in the areas targeted for economic development (Element 6: Economic Development)

Objective #2 – Focus on the growth of existing businesses and employment retention, as well attracting new commercial and industrial enterprises (Element 6: Economic Development).

Objective #6 – Promote development that creates areas with a “sense of place” and “destinations” that encourage interaction among residents and users (Element 6: Economic Development).

Objective #7 – Encourage economic development that provides a broader range of skill levels and earning potential for residents who desire to work and live in Freedom and Carroll County (Element 6: Economic Development).

Objective #2 – Limit agricultural land use designations and increase opportunities for variety of residential and employment uses (Element 7: Land Use).

9. Mistake in the Current Zoning

The Petitioner alleges mistake in the current zoning of “C-2” Commercial Medium:

a. The zoning authority did not (and could not), anticipate that these 4 contiguous parcels would come under the control and ownership of a single entity and thus would present commercial development opportunities more appropriate for a C-3 zoning district. The 4 parcels and the residences thereon were more likely viewed as potential smaller redevelopment opportunities in keeping with the C-2 zoning classification. Furthermore, the 3 parcels previously in single ownership (formerly known as the Stockdale properties) were cumulatively under 10 acres in size (the minimum size for a Business Park). Thus, by themselves were likely viewed as not appropriate for a C-3 zoning designation, an assumption that has proven to be incorrect with the amalgamation of the 4 parcels.

b. The Property was mistakenly viewed as not being eligible for immediate sewer service during the most recent comprehensive rezoning of the parcels. That view and assumption was (or will be) rendered inaccurate because the Property is (or will be) added to the immediate service area by means of a sewer Master Plan Amendment, thus making the Property much more attractive and eligible for more expansive commercial users contemplated by the C-3 zoning district, such as a Business Park. Without public facilities, even the C-2 uses could have been a stretch. The difference in the development potential of a commercial parcel on a major state highway with public water and sewer versus septic/well is night and day.

Carroll County Planning Commission Staff Report

Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

In the 2018 Freedom Community Comprehensive Plan, these four parcels were identified as appropriate for commercial development and as stated above, were then rezoned C-2. At that time, the Water and Sewer Master Plan for the Freedom Area provided service for these parcels. At some point in time between the adoption of the Freedom Plan and present, the properties were downgraded from “Priority Service” to “Long Range Service” on the Sewer Master Plan.¹

c. The individual rezonings (going all the way back to the rezoning of the Central Maryland Distribution Center at Enterprise Street) show that more intense commercial uses (such as a Business Park) have been recognized as appropriate in the area. The individual rezonings within the neighborhood have allowed for unanticipated commercial development along the Md Rt. 26 corridor in this area. Specifically, the property that lies South of Old Liberty Road at the Old Liberty, Liberty and Klees Mill intersection was rezoned to facilitate the commercial Kubota dealership, and what was formerly known as the Clarke Farm, located South of Liberty Road contiguous to the Tevis Englar LLC small retail strip center, was also rezoned commercially.

Likewise, West Old Liberty Road, which runs parallel to Liberty Road in this corridor, has existing commercial/industrial type uses despite its Agricultural zoning district. There has been at least one BZA Case (Case No. 6392, May 27, 2022), approving a contractor’s equipment storage yard on a property that is zoned Agriculture with a land use designation of Residential-Low. Additionally, this approved use is located next to another similar electrician operation. Both properties are land use designed Residential-Low on the 2018 Freedom Community Comprehensive Plan, yet are used in an industrial/commercial manner.

d. The continuing development of the Liberty Exchange project, including the potential development of the pad sites directly across Liberty Road from the Property, could and likely will, entail a commercial development that would be compatible with C-3 zoning.

e. Unlike some other areas of C-2 zoning along Liberty Road, the Property backs up to Agricultural zoned land, a lower density/mixed use type zone which would be compatible with C-3 uses such as a Business Park. Also, the I-1 zoned property immediately to the East of the subject Property suggests that a heavier zone than C-2 would be appropriate.

f. The Property is appropriate for a C-3 zoning designation, which is the only zoning district in the County allowing for development of a Business Park. It is situated at a signalized intersection, located on an existing State Highway (in an area where recent improvements have widened the existing State Highway), within the Designed Growth Area and Priority Funding Area and contiguous to sites developed with an office building and Business/Industrial Park, respectively.

g. Petitioner is aware that some of the above arguments (paragraphs c, d, e, and f) focus more on the issue of which zone would be appropriate for the Property, as opposed to directly addressing mistake.

¹ Through exploring the history of this process, it also became apparent that a mapping error had occurred where the Freedom Area Water and Sewer Master Plans incorrectly identified the parcels and inserted property lines where none existed.

Carroll County Planning Commission Staff Report

Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

The mistake in current zoning is difficult to prove due to the fact the current zoning was placed on the properties in 2021. In 2020-2021, the Carroll County Department of Planning undertook the county-wide Comprehensive Rezoning By-Request Phase where property owners could apply to have their properties rezoned to the newly adopted Commercial, Industrial, and Employment Campus districts. The desire to make a property's zoning consistent with its land use designation was one of the prevailing themes of this countywide Comprehensive Rezoning undertaking.

As discussed previously in the *Zoning of the Petitioned Area* section, 3 of the 4 petitioned parcels were rezoned from R-20,000 to C-2 during the By-Request phase. Rezoning those parcels to C-2 brought all 4 petitioned parcels to the C-2 zoning district. This new zoning was adopted in 2021. The fourth parcel was rezoned from R-20,000 to BG (Business General) during a previous Comprehensive Rezoning adopted in 2002. This Comprehensive Rezoning was following the adoption of the *2000 Carroll County Challenges and Choices: A Master Plan for the Future*. This Comprehensive Rezoning process was like the 2020-2021 By-Request phase, where property owners could apply to have their property rezoned. Both Comprehensive Rezoning processes involved researching requested properties and the surrounding area for consistency with the requested zoning. The fourth parcels' zoning was then changed from BG to C-2 in 2019 following the elimination of the BG, B-NR (Business Neighborhood-Retail), IR (Restricted Industrial), and IG (General Industrial) districts and the creation of the C-1, C-2, C-3, I-1, I-2, and EC (Employment Campus) districts.

The *2018 Freedom Community Comprehensive Plan* looked at the Freedom Area in its entirety including its land use designations and where new potential growth could be and where potential growth was not ideal. Some places were given a more intense land use designation, such as the petitioned area and the neighborhood boundary, where potential growth could be expanded to. In the *2001 Freedom Community Comprehensive Plan*, the petitioned area had a land use designation of Residential Medium. During the 2018 Freedom Plan and its creation, the petitioned area was discussed as an area that could be suited for more intense commercial development due to transportation and water/sewer infrastructure. Also, the neighborhood boundary in 2018 consisted of the mixed uses seen today with industrial, commercial, and residential development. At the 2018 Freedom Plan, the petitioned area was intentionally given a Commercial Medium land use designation from its original Residential Medium designation. Given the 4th parcel was already zoned C-2, giving the property a Commercial Medium land use designation made it consistent with the zoning. The Commercial Medium designation extending to the other 3 parcels, despite the R-20,000 zoning, is consistent with the industrial uses on the opposite side of MD26 and to the east but also consistent with the residential and conservation areas to the west and south of the petitioned area. A driving factor in the adoption of the "C-2" Commercial Medium Zoning during 2020-2021 By Request Phase was that it was consistent with the land use designation from the *2018 Freedom Community Comprehensive Plan*.

In conclusion, the Comprehensive Rezoning process included in depth research into the petitioned area and surrounding area. The staff reports prepared by Planning Staff, County Planning Commission recommendations, and Board of County Commissioners eventual official adoption, demonstrates that this area was looked at intensely for its current zoning. Therefore, there is no mistake in the current zoning of "C-2" Commercial Medium on the petitioned area.

Carroll County Planning Commission Staff Report

Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

9. *Substantial Change in the Character of the Neighborhood*

a. Petitioner incorporates by reference paragraphs a and b from the mistake portion of this Petition and reiterates that there have been substantial changes in the character of the neighborhood related to road improvements, surrounding rezonings, changes to the water and sewer service areas and development of the surrounding area. Petitioner realizes that this “change” can be characterized as a mere paper change, but Petitioner believes that this major change to the eligibility and appropriateness of the Property for commercial development can also be considered a change in the character of the neighborhood. Maryland case law has recognized that such paper changes can be part of a change argument. See *Bowman Grp. v. Moser*, 112 Md. App. 694, 686 A.2d 643 (1996), and *Montgomery v. Bd. of Cnty. comm'rs*, 263 Md. 1, 280 A.2d 901 (1971). Changing the public sewer service status of a property is a substantial change in the character of the property, rendering it a different animal in the neighborhood with real potential to affect and influence the neighborhood in a fundamentally different way than a septic/well property.

b. The neighboring Liberty Exchange Business/Industrial Park, although obviously not a change in and of itself, has developed, in part, according to zoning text amendments that allowed for hybrid retail/industrial uses (e.g. 1623 Brewing Company) to develop, thus changing the character of the neighborhood by creating a tenant mix virtually next door to the Property that would be more compatible with C-3 zoning.

c. The factors set forth above, in the aggregate, constitute substantial evidence of a change in the character of the neighborhood. *Bowman Grp. v. Moser*, 112 Md. App. 694, 686 A.2d 643 (1996).

The neighborhood boundary used in this substantial change argument, extends from the intersection of Old Liberty Road and Klees Mill Road to the West and the intersection of Emerald Lane and Liberty Road to the East. The neighborhood area covers approximately 232 acres. Inside the neighborhood boundary the zoning designations include “C” Conservation, “A” Agriculture, “R-20,000” Residential, “C-2” Commercial Medium, and “I-1” Industrial Light (see Exhibit D – Neighborhood Boundary Zoning). The most dominate zoning district inside the neighborhood boundary by acreage is the “I-1” Industrial Light district. The I-1 district resides both across MD 26 and immediately to the east of the petitioned area.

When discussing a rezoning and the substantial change argument, Maryland Case Law says the arguments should largely be based on changes that have happened since the last Comprehensive Rezoning adoption. As discussed previously, the last adoption was in 2021. Since then, the petitioned area applied for and is currently going through a Water and Sewer Fall Amendment. The property is currently in the Existing and Priority Service Category for water (W-1, W-3) and the Long-Range Service Category for sewer (S-6). Though the subject area is not currently being served with public water and sewer, the purpose of this amendment is to bring the entire petitioned area, approximately 12-acres, into the priority service category for both water and sewer (W-3, S-3). Bringing the petitioned area into these service categories will increase the allowable water and sewer allocation for the area. Properties within the priority service category designations are required to connect to the community systems at the time of development. This requirement is a prerequisite to development. Priority service categories have a range of 0-6

Carroll County Planning Commission Staff Report

Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

years in connecting to community systems. The County Planning Commission gave this amendment a favorable recommendation to the Board of County Commissioners. The amendment is currently going through the Public Hearing process with the Board of County Commissioners before it is sent to the Maryland Department of the Environment (MDE) for final approval.

There are many uses allowed in the C-3 zoning district but not in the C-2. The major differentiating factors in uses allowed in the C-2 and C-3 district are intensity and necessary acreage. The C-3 zoning district allows for more intense uses but those uses also tend to require a larger acreage due to larger distance requirements. The Carroll County zoning ordinance defines the purpose of the C-3 zoning district as to “provide locations for high-intensity, large-scale retail businesses and destinations...Uses in this district should be located in proximity to transportation infrastructure and major corridors.” At the time when the C-2 zoning district was designated to the petitioned area in 2021, county staff were unaware the petitioned area would come under the control and ownership of a single entity ultimately increasing the acreage of the parcels.

If planning staff were aware that the 4 parcels would come under the same ownership and would eventually be placed into the Priority Water and Sewer categories, the C-3 zoning designation would’ve been considered more closely at the time of the Comprehensive Rezoning in 2020 and 2021.

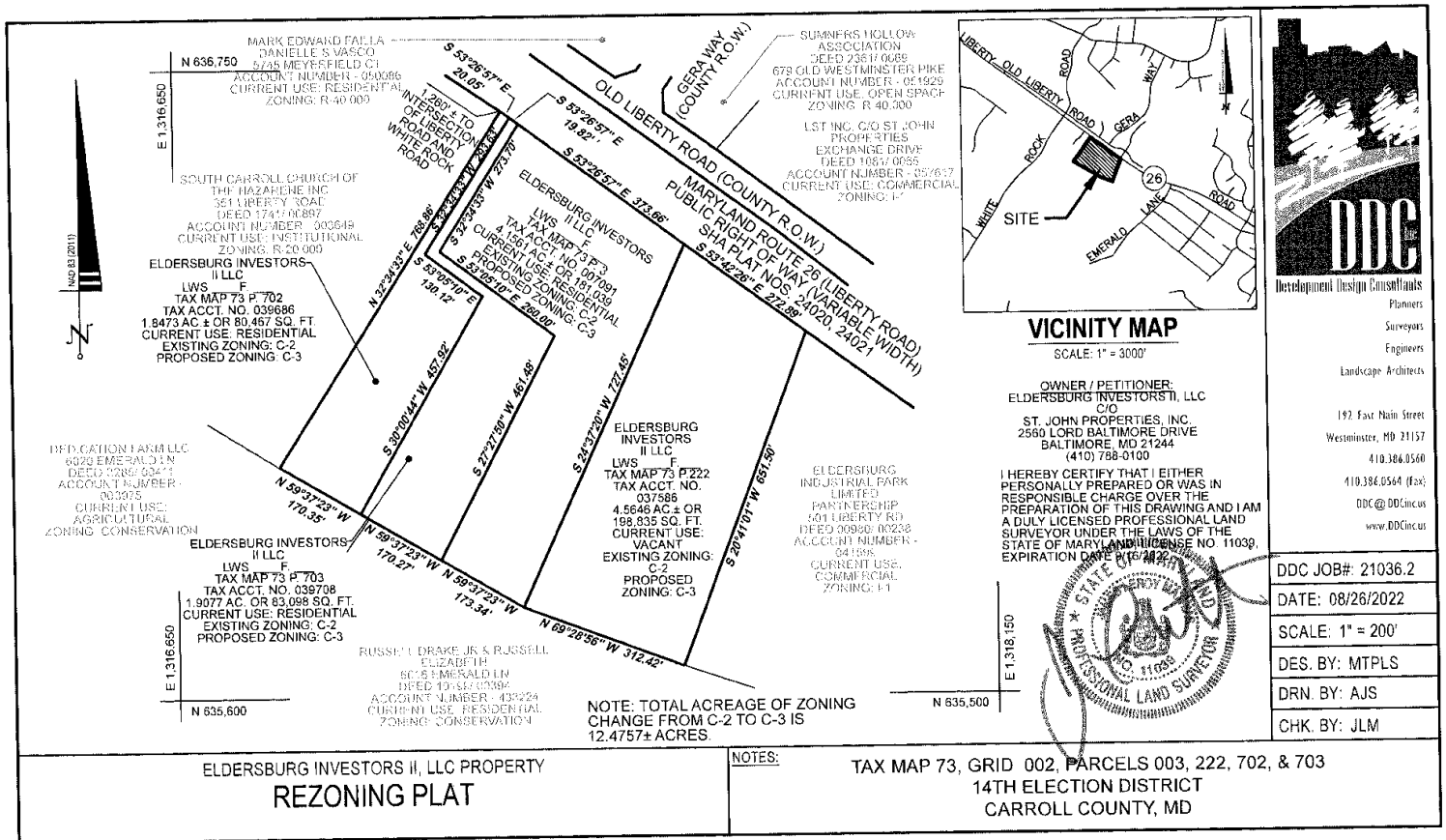
Staff Recommendation:

Based on the facts stated above, planning staff recommends that zoning of the petitioned area be rezoned from “C-2” Commercial Medium to “C-3” Commercial High based on the substantial change in the character of the neighborhood arguments presented.

Carroll County Planning Commission Staff Report

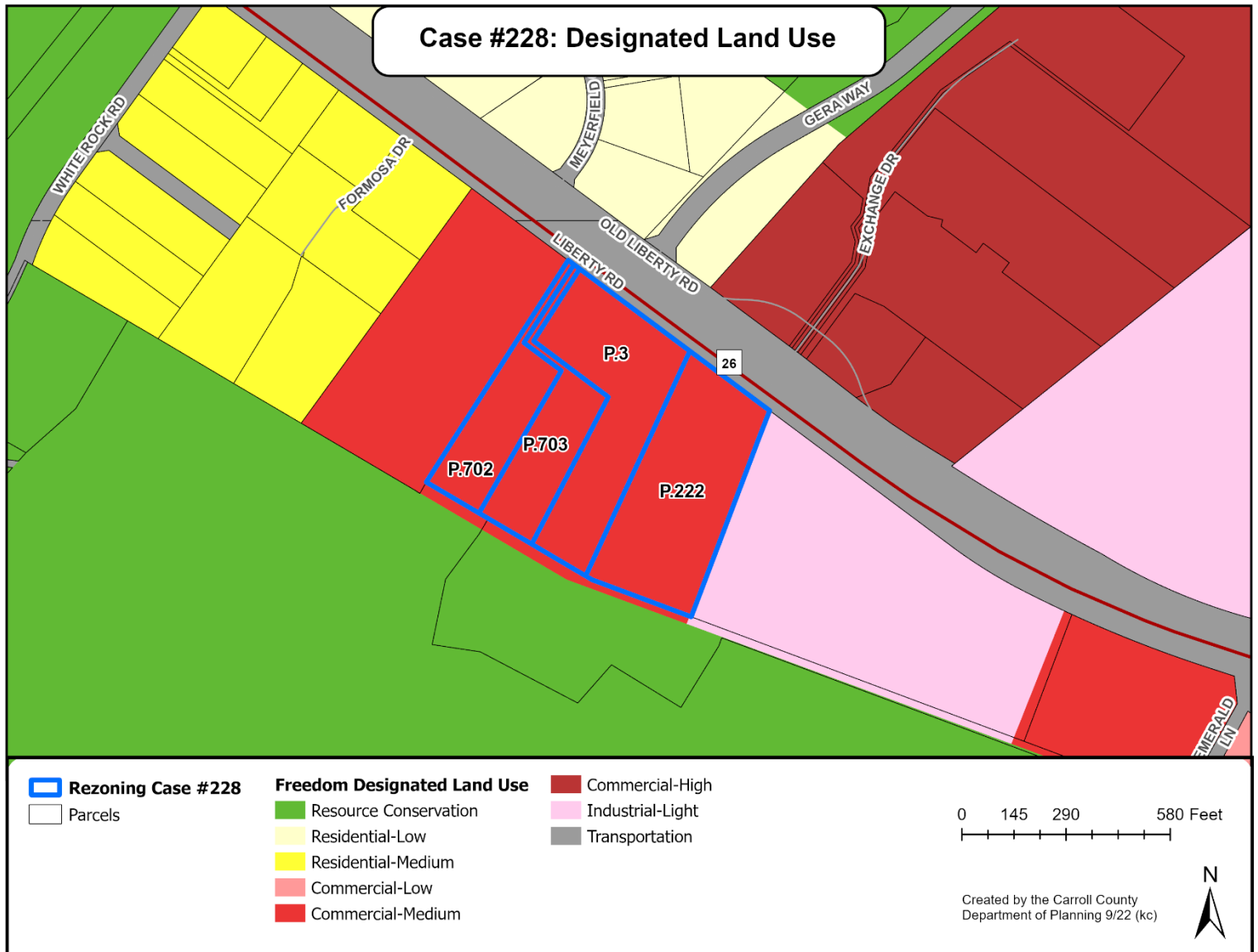
Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Exhibit A – Rezoning Plat



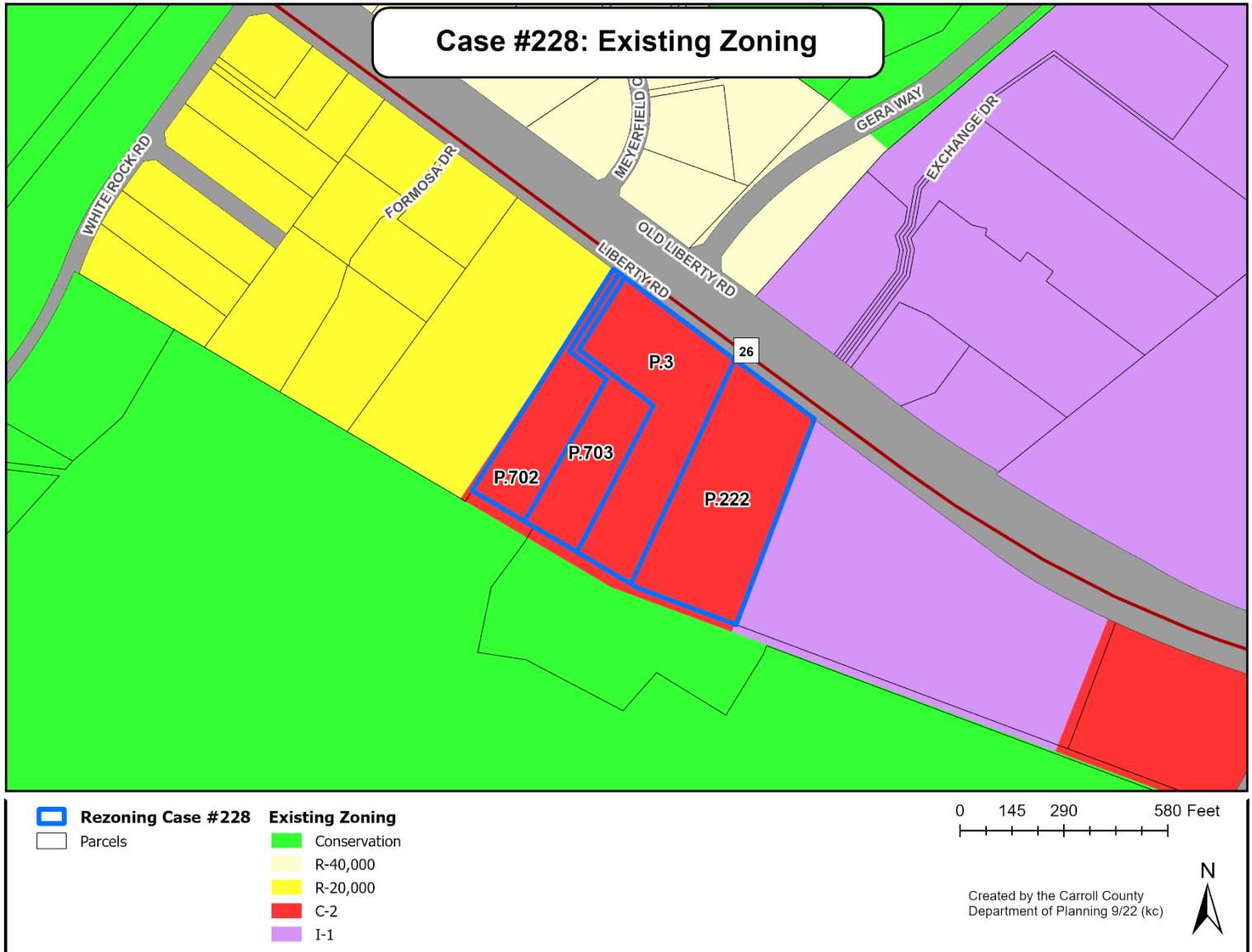
Carroll County Planning Commission Staff Report
Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Exhibit B – Designated Land Use



Carroll County Planning Commission Staff Report
Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

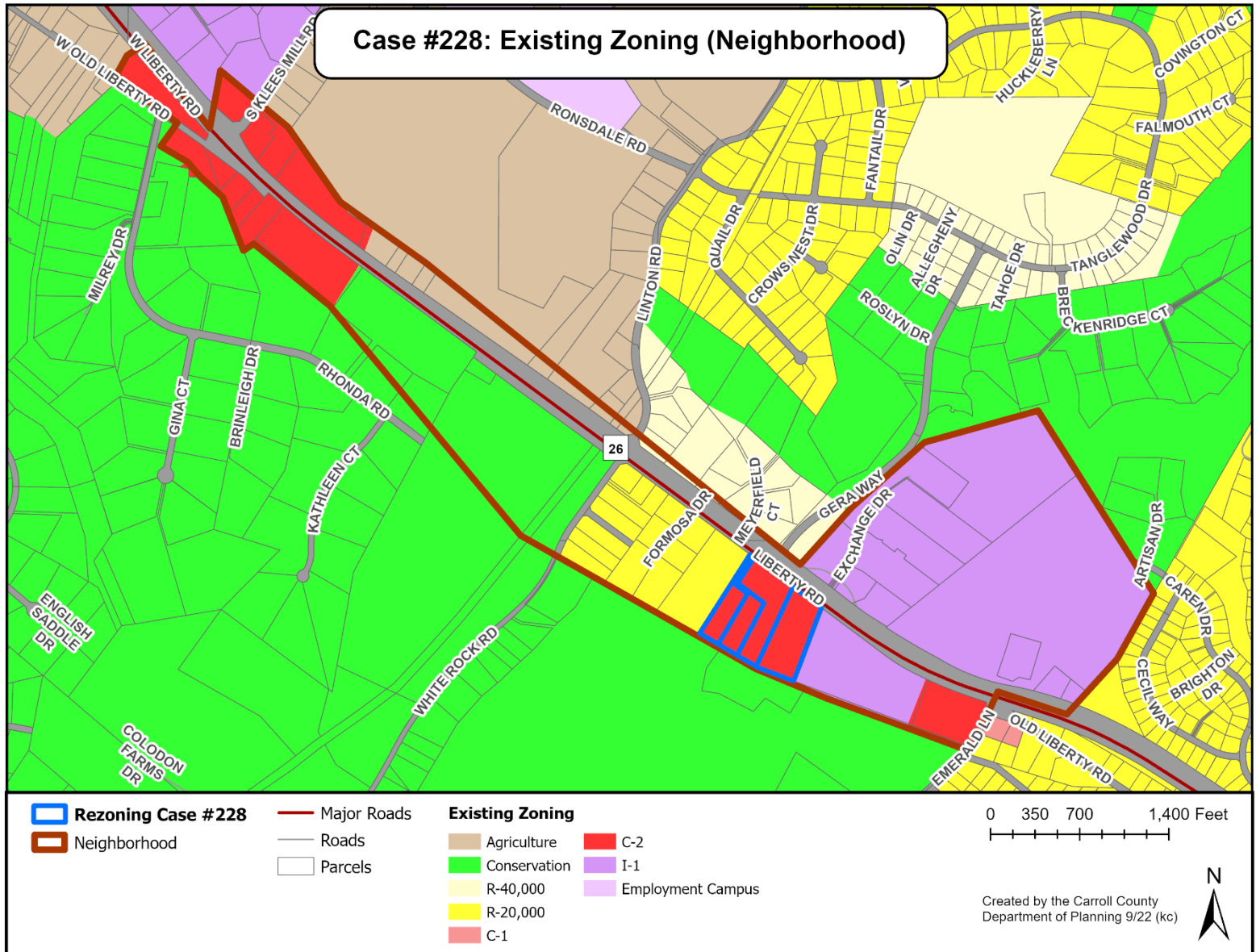
Exhibit C – Zoning



Carroll County Planning Commission Staff Report

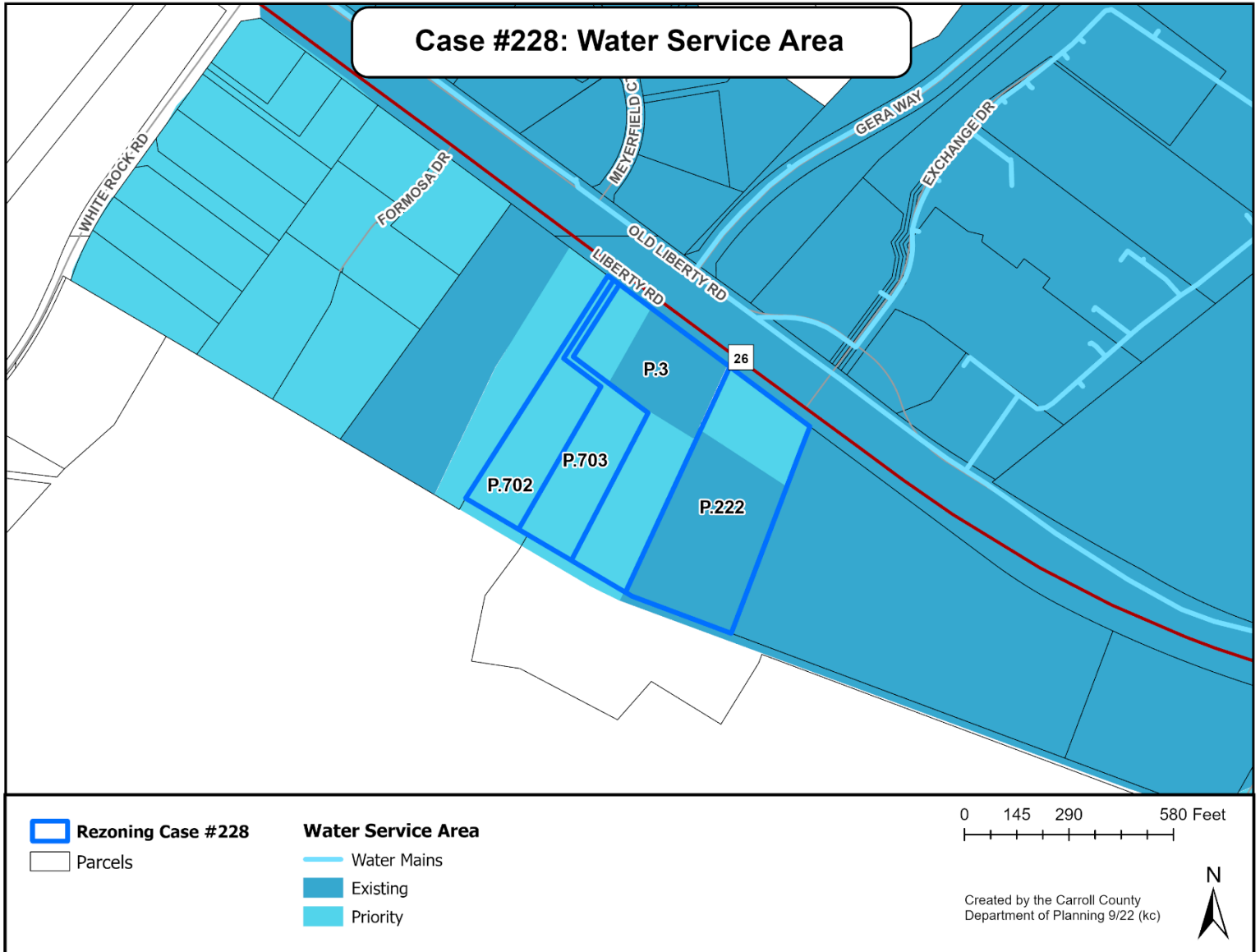
Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Exhibit D – Neighborhood Boundary Zoning



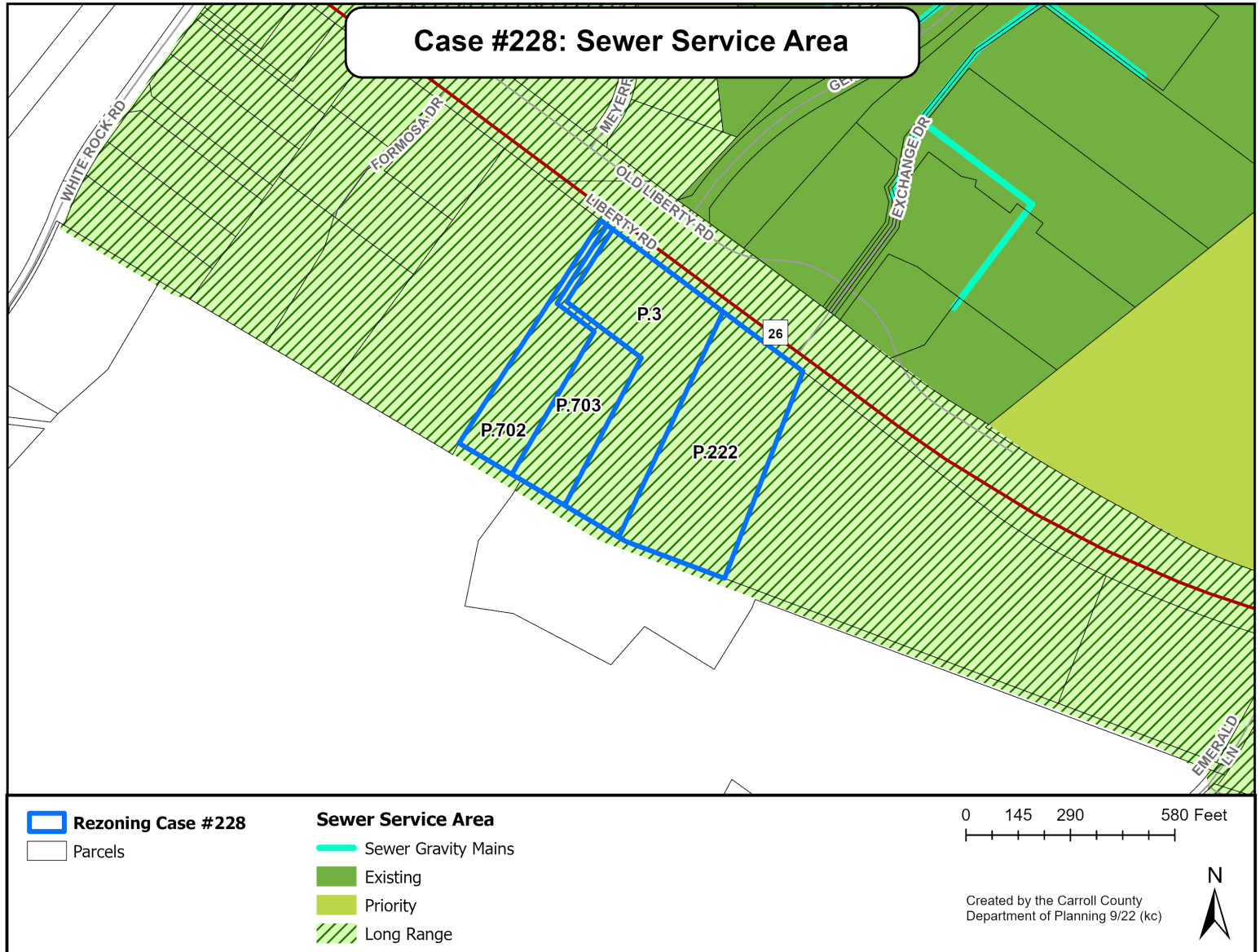
Carroll County Planning Commission Staff Report
Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Exhibit E – Water Service Category



Carroll County Planning Commission Staff Report
Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Exhibit F – Sewer Service Category



Carroll County Planning Commission Staff Report
Re: Rezoning Case No. 228 – Eldersburg Investors II, LLC

Exhibit G – Aerial

