

CARROLL COUNTY PLANNING COMMISSION STAFF REPORT

Rezoning Case No. 226 – Max Sweet Property

August 31st, 2022

Petitioner/Owner:

Max Sweet, Owner & Petitioner
2616 Liberty Road
New Windsor, MD 21776

Attorney:

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

Request Description:

The request is to reclassify 7.7161 acres from Agriculture “A” to Commercial Medium “C-2”. The subject property is located along Liberty Road (MD 26) at the intersection of Ridge Road (MD 27), in election district 9. The property has a land use designation of Village-Residential in the *2014 Carroll County Master Plan as amended in 2019*. The Petitioned area is in the Rural Village of Taylorsville as designated by Maryland Department of Planning (MDP) as well as the Carroll County Department of Planning.

Request in Detail:

The subject property is comprised of 1 parcel, 7.7161 acres located on the west side of the Liberty Road (MD 26) and Ridge Road (MD 27) intersection (see Exhibit A – Rezoning Plat).

The property has a land use designation of Village-Residential in the *2014 Carroll County Master Plan as amended in 2019* (see Exhibit C – Designated Land Use).

The rezoning petition is based on an argument of mistake in the current zoning designation and change in the neighborhood (see Exhibit E – Neighborhood Boundary).

Background of Request:

The Carroll County Department of Planning accepted the subject petition on July 1st, 2022, in accordance with the Carroll County Procedures for Rezoning.

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Findings:

1. Property Use and Development History

The approximate 7.7-acre parcel was created through a legal division of land and became an approved off-conveyance, specifically off-conveyance #2, in October 2016. The property was originally owned by Charles Burgess Condon and Hearl G. Condon when the division occurred. The property was then sold to Max Sweet, the petitioner, in March 2020.

Currently this property is largely unimproved other than an existing house along MD 26, built in 1946, as well as driveway entrances from MD 26. The property also has a State Highway Administration (SHA) easement running parallel to MD 26. This easement is specifically for National Pollutant Discharge Elimination System (NPDES) involving an underground pipe. The property is not being served by municipal water or sewer services.

The property is an off-conveyance of Parcel 11 located to the north of the Petition area. The Petition area is legal described as Parcel 694 in Tax Map 61. The title/deed reference for the property is L: 9624, F: 326.

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: Gilead Loamy Sand (GhB), 2 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 6.5 acres. Gwinnett Sandy Loam (GeB), 2 to 6 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 acre.

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

The property is located in the Lower Monocacy River Watershed and not located in a Tier 1 or Tier 2 watershed.

4. Agency Comments

On July 1st, 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 Roads Operations
Carroll County Health Department

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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
Carroll County Department of Fire and Emergency Medical Services
Supervisor of Assessment

Written comments were received from the following agencies:

David Robinson, *Carroll County Health Department*

“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 of this property.”

5. *Immediate Neighborhood*

The immediate neighborhood is approximately 61 acres and is dominated by the intersection of MD 26 and MD 27. This intersection is approximately 400’ from the subject property.

The primary use within the neighborhood is a mix between commercial and residential, specifically large and medium lot single family residences. Commercial entities such as Vanessa’s Corner Pub, two gas stations (7-Eleven and Marathon Gas and Lottery), Cork&Bottle Liquor Store, and two auto-repair shops (Auto Outlet of Westminster and Maryland Auto Damage Appraiser) are all located within the neighborhood boundary.

6. *Public Facilities*

Transportation- The property has approximately 401 feet of frontage on MD 26. This property currently has vehicular access from MD 26. MD 26 is classified by the state as a State Highway with the Maryland Department of Transportation.

Water and Sewer Service Area- This property is located in the No Planned Water Service Area (W-7) and the No Planned Sewer Service Area (S-7) in the *2014 Carroll County Water and Sewer Master Plan*.

Fiber Internet- The MD 26 and MD 27 intersection is connected to the broadband network.

Transit- The Trailblazer route does not run near this property.

7. *Zoning*

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The zoning district found within the neighborhood is “Ag” Agricultural.

- Agricultural- the purpose of the “A” District is to provide for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities, and operations as the preferred dominant use of the land within the district, except in an area designated “MR” within the “MRO” where mineral resource recovery is also a preferred use. While relatively small existing hamlets, villages, and residential communities appear within, as do occasional dwellings, and other uses, the district is primarily composed of lands which, by virtue of their highly productive soils, rolling topography, and natural beauty, are the very essence of the county’s farming heritage and character. A substantial portion of the residential development in the county has previously taken place in the “A” District. This has the effect of taking agricultural land out of production and creating a demand for public facilities and services (roads, water and sewerage, schools, and police and fire protection) in areas where provision for such additional services and facilities is not consistent with the purpose of the “A” District. The intent of this section is to recognize the need for and appropriateness of very limited residential development in the “A” District, but to prohibit residential development of a more extensive nature. It is the further purpose of this district to maintain and promote the open character of this land as well as to promote the continuance and viability of the farming and agribusiness uses.

Zoning of the Petition Area

At the time of the original zoning adopted by the County in 1965, a small piece of the 7.7-acre parcel was zoned BG (Business General), approximately .4 acres, with the remaining portion being zoned Agriculture. When the subject property was approved as an off-conveyance in 2016, the entire 7.7-acre parcel was zoned Agriculture (see Exhibit D – Existing Zoning)

8. Relationship of Proposed Zoning to Comprehensive Plan

The subject property was designated as Village-Residential in the *2014 Carroll County Master Plan as amended in 2019*. The zoning classification for the petition property, which is Agriculture “Ag”, is consistent with the *2014 Carroll County Master Plan as amended in 2019* Land Use Designation. The subject property lies within the Rural Village of Taylorsville.

Though the goals for Rural Villages were not explicitly addressed in the *2014 Carroll County Master Plan as amended in 2019*, the Villages are discussed in implementation strategies.

Chapter 15 – Economic Development, page 157 “N. In Rural Villages, encourage small neighborhood commercial development that is consistent with local character and that revitalizes historic properties.”

Rural Villages are also addressed in the *Smart Growth Areas Act of 1997* written by the Maryland Department of Planning (MDP).

Chapter One – PFA Criteria and Terminology, page 5, “Rural Villages: There are many small unincorporated communities in Maryland that are logical centers for rural development that supports the surrounding rural economy and landscape.”

9. Mistake in the Current Zoning

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The Petitioner alleges mistake because the Zoning Authority who planned and zoned the property for “Ag” Agriculture was unaware of the following facts and circumstances:

- The subject property is located immediately adjacent to an existing commercially zoned and commercially used restaurant/bar (Vanessa’s Corner Pub or VCP),
- The petitioner acquired the subject property in April 2020 and is a principal in the real estate and/or business known as Vanessa’s Corner Pub,
- The restaurant/bar known as Vanessa’s Corner Pub is the successor to a long line of restaurant/bar businesses going back historically at least to the 1970s and was at one time known as “Wagner’s Corner.” The property has historically had septic and well issues involving significant review and regulatory attention of the Carroll County Health Department (CCHD); and is currently served by a septic system/holding tank which needs to be pumped out monthly, if not more frequently,
- The subject property has existing driveway entrances onto Liberty Road (MD 26),
- The subject property, if rezoned, would be eligible to provide development opportunities which would provide relief to, and possible relocation of, the Vanessa’s Corner Pub business and in general allow new development of the property which development, if and when it occurs, would comply with modern site plan and environmental code requirements.

The Petitioner respectfully claims the above enumerated points demonstrate that subject property is otherwise ideally suited for a “C-2” Commercial Medium use.

The neighborhood is dominated by the “Ag” Agriculture District and the “C-2” Commercial Medium zoning districts. As stated previously, the neighborhood is predominately the intersection of MD 26 and MD 27 which itself is completely encompassed by the “C-2” zoning district. The subject property abuts a “C-2” zoned property and an “Ag” zoned property. Inside the neighborhood boundary, there are 21 properties zoned “C-2”, 7 properties zoned “Ag” (including the subject property), and 4 properties zoned R-40,000 (see Exhibit F – Neighborhood Boundary and Existing Zoning). The subject property is the last property in the Rural Village on the west side of MD 26 and adjoins the Rural Village border.

The Carroll County Department of Planning underwent the beginning stages of a Comprehensive Rezoning effort in 2018. The effort began with the Commercial, Industrial, and Employment Campus zoning districts in updating the purposes, uses permitted, and the names of each district. Prior to the Comprehensive Rezoning effort, the commercial districts were B-NR (Business Neighborhood Retail) and BG (Business General). After adoption of the updated Commercial districts in 2019, the new Commercial districts became C-1 (Commercial Low Intensity), C-2 (Commercial Medium Intensity), and C-3 (Commercial High Intensity).

In designating the B-NR and BG zoned properties into the updated districts, the Department of Planning created a matrix to ensure properties were placed in the correct new zoning districts. The matrix includes looking at the road type the property has frontage on, size of the property (acres and sqft) and useable land area for development, existing use of land, and the characteristics/uses of the surrounding area. Following the matrix developed, the subject property would have been placed in the C-2 zoning district, if it’s zoning was not Ag, because of the following reasons:

1. The road frontage being on a major road,

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2. The usable area of the property is less than 5 acres,
3. The property being in a Rural Village,
4. The surrounding area is commercial uses.

In 2020, the Department of Planning accepted applications for a 2-month period for properties requesting and eligible to be placed in the Commercial, Industrial, or Employment Campus districts. This was following adoption of the new Commercial, Industrial, and Employment Campus districts code in 2019. There was correspondence with the Department of Planning and the subject property owner's attorney regarding applying for this rezoning, however, this was months following the application deadline.

There are many uses permitted in the C-2 zoning district, that are not allowed in the Ag zoning district that are currently in use inside the neighborhood boundary. Some of these uses are:

- Automobile service center
- Fuel station
- Tavern/bar
- General retail of any size

In order to change this zoning using the argument of a “mistake” in zoning, there must be evidence that there was an error in the information provided in the most current Comprehensive Rezoning. Staff believe the subject property could have been looked at more closely during the Comprehensive Rezoning effort involving the Commercial districts. This conclusion is drawn due to the subject property residing in a Rural Village, its proximity to a commercial center as well as its proximity to a dominate intersection in this portion of the County. Therefore, planning accepts this could be interpreted as a mistake in the zoning at the time of the comprehensive rezoning.

10. Change in the Character of the Neighborhood

The Petitioner alleges a substantial change in the character of the neighborhood:

- The immediate surrounding area has been subdivided into residential building lots and a commercial development is planned along Liberty Road (MD 26) just east of the property.

As noted in previous sections, specifically in the “***Property Use and Development History***” section, the property was legally divided off of the northern property in 2016 making the subject property an off-conveyance. Though that is a change for the subject property, the petitioner has failed to prove a substantial change in the entire neighborhood. Furthermore, the MD 26 and MD 27 intersection has been zoned commercially, specifically BG prior to 2019, since 1965 contradicting the petitioners' argument of substantial change.

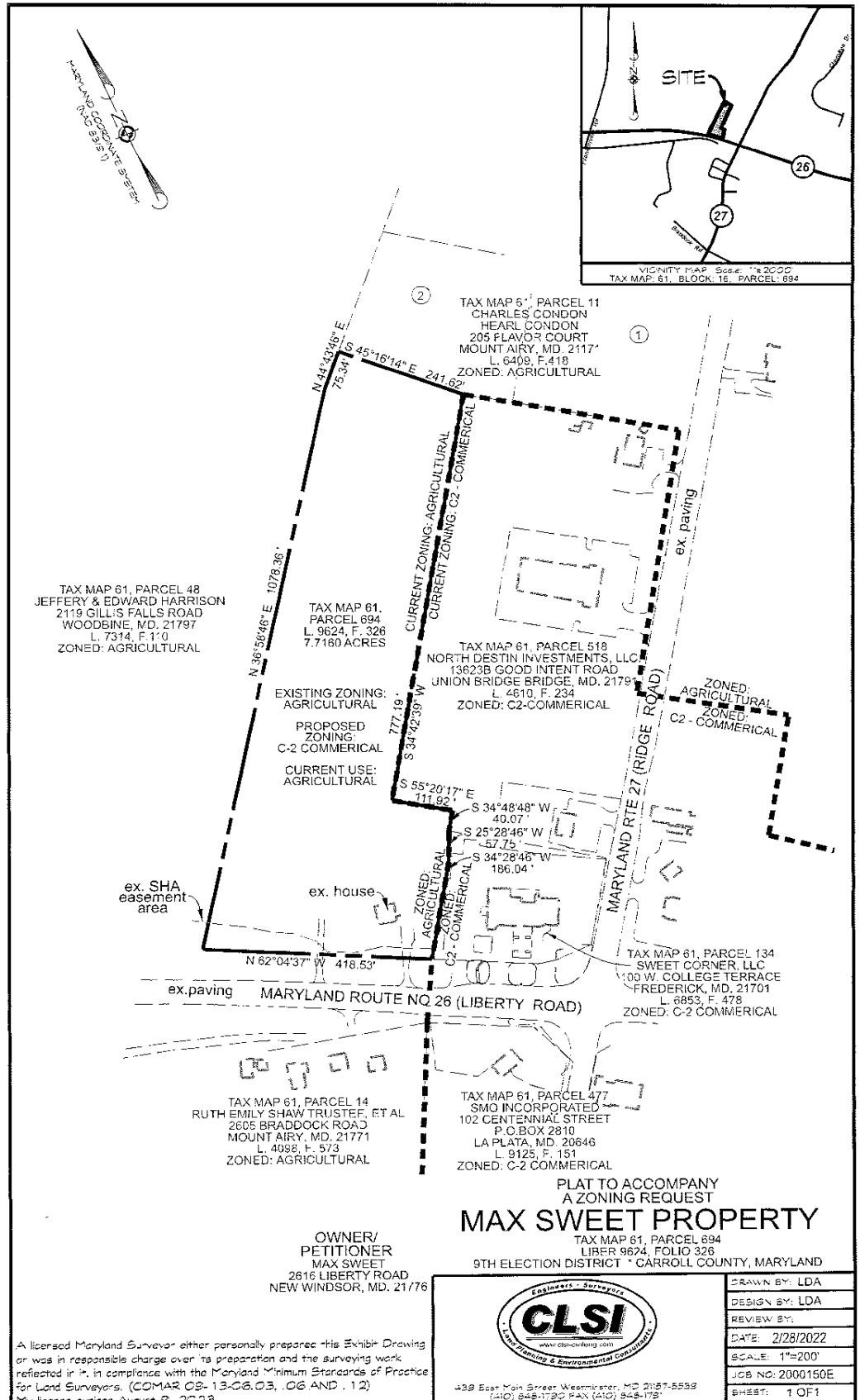
Staff Recommendation:

Based on the facts stated above, planning staff recommends that the zoning for the petition area be rezoned to “C-2” or Commercial Medium. Though the petitioner failed to prove a substantial change occurred in the neighborhood, staff believes there is reasonable information constituting a mistake in the zoning during the most current Comprehensive Rezoning.

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Exhibit A: Rezoning Plat



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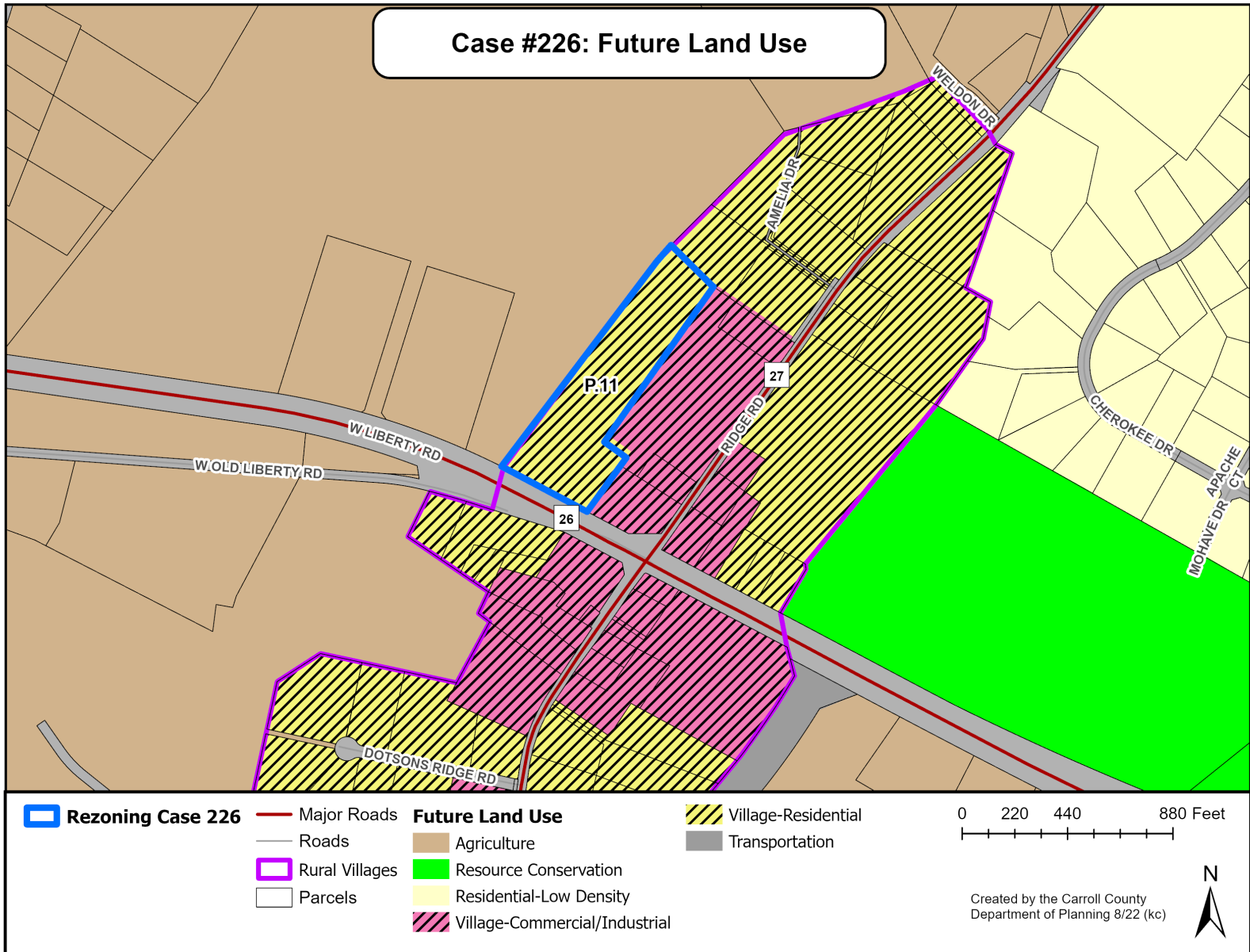
Exhibit B – Aerial



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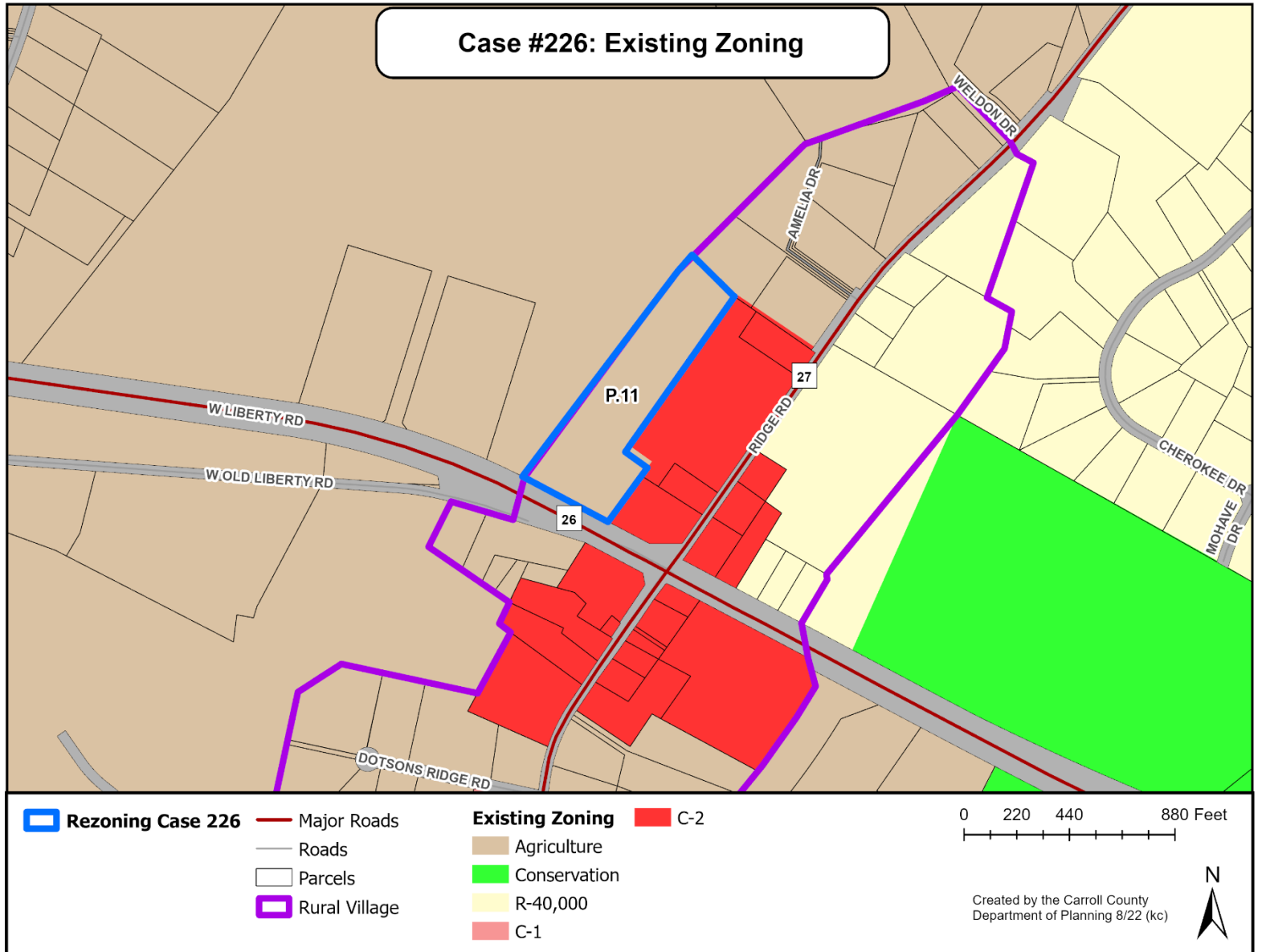
Exhibit C – Future Land Use



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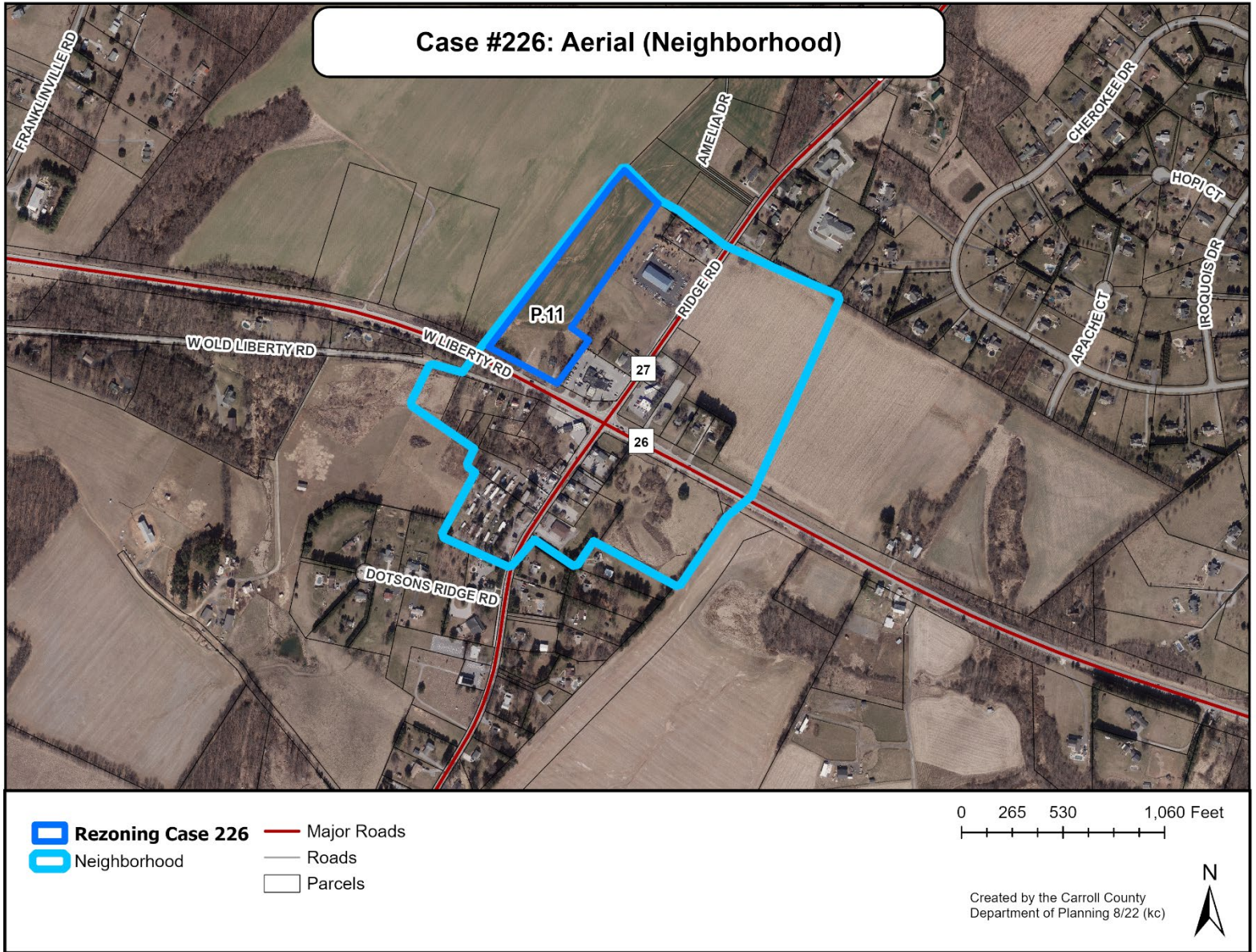
Exhibit D – Existing Zoning



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Exhibit E – Neighborhood Boundary Aerial



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Exhibit F – Neighborhood Boundary and Existing Zoning

