

REZONING APPLICATION

DATE FILED: _____ PC MTG: _____
AMT. PD: _____ COM.MTG: _____
ACCEPTED BY: _____ FILE NO: _____

APPLICANT INFORMATION

OWNER REPRESENTATIVE _____

109-111 Providence Road , LLC

610-524-9466

APPLICANT NAME – please print clearly (additional names can be listed on page 2)

PHONE NUMBER

c/o Saul Ewing Arnstein & Lehr, 500 East Pratt St.

Baltimore

MD

21202

ADDRESS

CITY

STATE

ZIP CODE

PROPERTY INFORMATION

CRITICAL AREA? _____ YES NO

109-111 Providence Road

0.7 Acres

SUBJECT PROPERTY ADDRESS

SIZE OF PROPERTY

4th

006410

Map 0013

0010

0360

ELEC. DISTRICT

ACCOUNT#

TAX MAP#

BLOCK

PARCEL

LOT#

PRESENT ZONING: Rural Residential (RR)

REQUESTED ZONING: Northern Agricultural Residential (NAR)

PRESENT LAND

REQUESTED LAND

USE DESIGNATION: _____

USE DESIGNATION: _____

PRESENT USE OF PROPERTY: _____

PROPOSED USE OF PROPERTY: _____

PREVIOUS ZONING CHANGE? _____ YES NO If yes, explain: _____

TIME SCHEDULE FOR PROPOSED DEVELOPMENT: _____

REASON FOR REZONING REQUEST

MISTAKE IN THE COMPREHENSIVE REZONING OF MAY 1, 2011? _____ X _____ YES _____ NO

IF YES, PLEASE EXPLAIN: For the same reasons stated by the Cecil County Council in its March 13, 2020 Decision Rezoning of Applicant's adjacent parcel, 0349 (Exhibit A). Parcel 0360 was mistakenly zoned residential in the 2011. Both parcels are part of the same EPA Superfund Site, prohibiting residential development. See EPA letter, Exhibit B.

SUBSTANTIAL CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD? _____ YES _____ X _____ NO

IF YES, PLEASE EXPLAIN: _____

MISTAKE IN CHESAPEAKE BAY CRITICAL AREA LAND USE DESIGNATION OF JULY 5, 1988 _____ YES _____ X _____ NO

IF YES, PLEASE EXPLAIN: _____

ADDITIONAL COMMENTS (attached sheet if necessary): During the Planning Commission hearing for rezoning of 0349, Applicant amended its rezoning application to also include contiguous parcel 0360, which is also owned by applicant and the subject of the EPA

Superfund cleanup. The Planning Commission recommended approval of rezoning of 0349 and 0360 to County Council, but when

County Council took up the rezoning bill, it did not consider the parcel 0360 Amendment. Compare Exhibit A (the Council opinion) and Exhibit C (Letter dated May 29, 2020 indicating the Amendment was not considered). Applicant, therefore, requests at this time that Parcel 0360 be rezoned for the same reasons 0349 was rezoned and for the additional reason that it was a mistake that the Commission recommendation was not transmitted to County Council for consideration.

EXPLAIN ANY PROBLEM AREAS AND PROPOSALS TO CORRECT THOSE AREAS

LIST THE NAME AND ADDRESSES OF ADDITIONAL APPLICANTS

David Fennimore	c/o Saul Ewing Arnstein & Lehr, 500 East Pratt St., Baltimore, MD 21202
APPLICANT NAME (please print clearly)	ADDRESS
Thomas Prevas	c/o Saul Ewing Arnstein & Lehr, 500 East Pratt St., Baltimore, MD 21202
APPLICANT NAME	ADDRESS
APPLICANT NAME	ADDRESS


LIST THE NAME AND ADDRESSES OF ALL PROPERTY OWNERS

109-111 Providence Road , LLC (David Fennimore)	c/o Saul Ewing Arnstein & Lehr, 500 East Pratt St., Baltimore, MD 21202
OWNER NAME (please print clearly)	ADDRESS
OWNER NAME	ADDRESS
OWNER NAME	ADDRESS
OWNER NAME	ADDRESS


CERTIFICATION – SIGNATURES

I/We certify that the information and exhibits submitted are true and correct to the best of my/our knowledge and belief.

APPLICANT(S):

109-111 Providence Road , LLC (David Fennimore)		6/12/2020
PRINT NAME	SIGNATURE	DATE
Thomas Prevas		6/12/2020
PRINT NAME	SIGNATURE	DATE
PRINT NAME	SIGNATURE	DATE
PRINT NAME	SIGNATURE	DATE

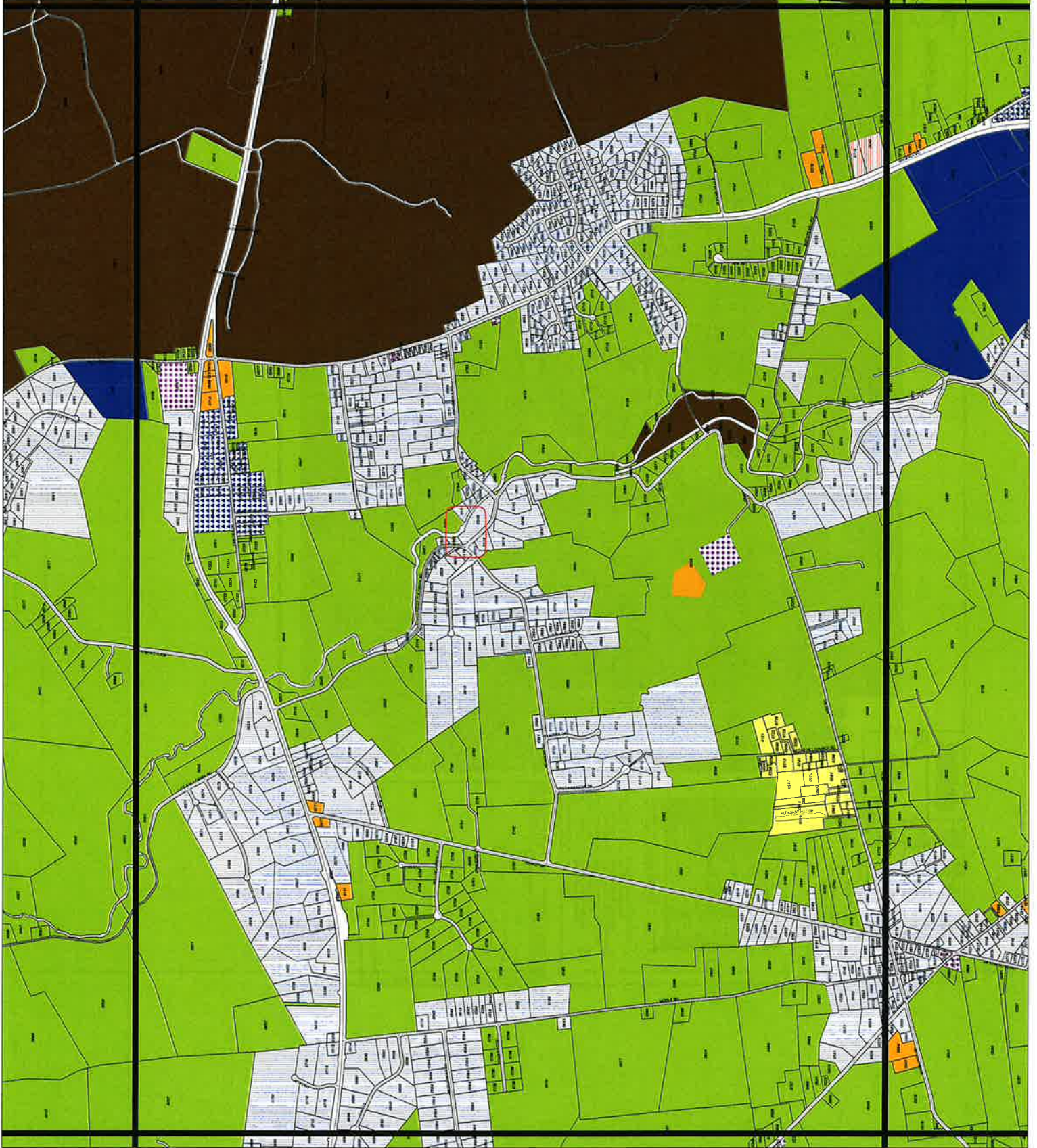
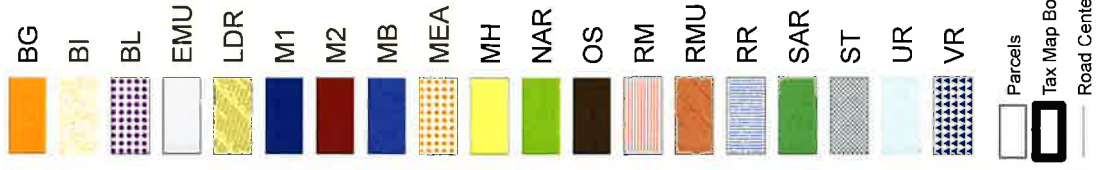
OWNER(S):

109-111 Providence Road , LLC (David Fennimore)		6/12/2020
PRINT NAME	SIGNATURE	DATE
PRINT NAME	SIGNATURE	DATE
PRINT NAME	SIGNATURE	DATE
PRINT NAME	SIGNATURE	DATE

Tax Map 13

2011

Zoning Districts



1 inch = 500 feet

April 5, 2011

Exhibit A

President Robert Meffley, District 1
Vice President Jackie Gregory, District 5
Councilman William Coutz, District 2
Councilman Al Miller, District 3
Councilman George Patchell, District 4



James Massey
Council Manager

County Council Office
410.996.5201
FAX 800.865.0587
Email: council@ccgov.org

COUNTY COUNCIL OF CECIL COUNTY
Cecil County Administration Building
200 Chesapeake Boulevard, Suite 2110, Elkton, MD 21921

March 13, 2020

Tom Prevas
Saul, Ewing, Arnstein & Lehr
500 East Pratt Street
8th Floor
Baltimore, MD 21202-3133

RE: Rezoning File No. 2019-05
Final Decision

Dear Applicant:

On March 3, 2020 the Cecil County Council voted to approve the requested rezoning from Rural Residential (RR) to Northern Agricultural Residential (NAR) for the property located at 109-111 Providence Road, Elkton, MD 21921.

Enclosed is a copy of the decision for your review. Please be advised that you have thirty (30) days to appeal this decision to the Cecil County Circuit Court. If you have any questions regarding this matter please contact the Director of Land Use and Development Services, Eric Sennstrom at 410-996-8352 or esennstrom@ccgov.org.

You are being notified as the applicant of this rezoning case.

Sincerely,

A handwritten signature in blue ink that reads "James Massey". The signature is written in a cursive, flowing style.

James Massey
Council Manager

**109-111 PROVIDENCE ROAD LLC, DAVE FENNIMORE, AND TOM PREVAS,
ESQUIRE REZONING DECISION**

This is an application received by the County Council from 109-111 Providence Road, LLC, Dave Fennimore and Tom Prevas, Esquire (“Applicants”), to rezone 7.29 acres of land located at 109-111 Providence Road, Elkton, Maryland 21921 (“the Property”), in the Fourth Election District of Cecil County, designated as Parcel 349, Tax Map 0013, from Rural Residential (“RR”) to Northern Agricultural Residential (NAR) based upon a mistake in the 2011 Comprehensive Rezoning. The Property is owned by 109-111 Providence Road, LLC.

David Fennimore presented the application and indicated that rezoning of the Property, which consists of 7.29 acres from RR to NAR was sought on the basis of a mistake in the 2011 Comprehensive Rezoning. Mr. Fennimore stated that their future plans for the property are to install solar power generation equipment and continue environmental remediation. He further stated that the property was formerly a Superfund site and has no other beneficial use.

Mr. Eric Sennstrom, Director of the Department of Land Use and Development Services, testified that the Planning and Zoning staff and Planning Commission recommended approval of the rezoning based upon a demonstrated mistake in the 2011 Comprehensive Rezoning. Mr. Bryan Lightner, Zoning Administrator for the Division of Planning and Zoning, provided the Findings of Fact. Mr. Lightner stated that the neighborhood is an area within a one-half (½) mile radius of the subject parcel. Mr. Lightner further testified that the subject property and all of the immediately adjoining properties are zoned Rural Residential (RR) and Northern Agricultural Residential (NAR). The properties within the neighborhood are zoned Rural Residential (RR) and

Northern Agricultural Residential (NAR). The periphery of the neighborhood is zoned Rural Residential (RR), Northern Agricultural Residential (NAR), and Business Local (BL). Mr. Lightner testified that there had not been any rezonings in the area since the Comprehensive Rezoning of 2011. Lightner further testified that the Property is located in Census tract 306.01, which had a population of 3,748 at the time of the 2000 Census, but had a population of 3,818 as of the 2010 Census. Mr. Lightner testified that the property is not located within any future water or sewer service area per the adopted Master Water and Sewer Plan. With regard to present and future transportation and traffic patterns, in character and volume, Mr. Lightner testified that access to the Property is from Providence and Little Elk Creek Road. Mr. Lightner further testified that the proposed rezoning would not have an effect on future transportation and traffic patterns, character and volume. Mr. Lightner testified that the requested rezoning should be compatible with existing and proposed development in the area. Regarding compatibility with the intent of the Comprehensive Plan, Mr. Lightner testified that the Property is located within the Rural Conservation District of the Comprehensive Plan. The intent of the Rural Conservation District is intended to encourage the retention of agricultural and forestry uses to support the County's agricultural industry and to maintain rural character. Regarding compatibility with the purposes of any special district in which the Property is located, Mr. Lightner testified that the Property is not located within any special district.

President Meffley opened the floor to questions from the other councilmembers.

There were no questions from the other councilmembers.

President Meffley opened the floor to public comment. There was one resident of the neighborhood who indicated that he did not see how it was in the community's and adjacent property owners' best interests that the property be rezoned.

President Meffley opened the floor for final comments from the other councilmembers. The councilmembers did not have any final comments. President Meffley provided the Applicant a final opportunity to speak. The applicant had no further comments.

At the next legislative session on March 3, 2020, the Council considered action upon the Rezoning Application of 109-111 Providence Road, LLC, Dave Fennimore and Tom Prevas, Esquire. Councilman Coutz made a motion to approve the Application based upon convincing evidence of a mistake in the 2011 Comprehensive Rezoning. Vice President Gregory seconded the motion, and the motion carried by a unanimous vote of the Council.

The Council makes the following findings of fact based upon the evidence presented:

1. The neighborhood is an area within a one-half ($\frac{1}{2}$) mile radius of the subject parcel. The subject property and all of the immediately adjoining properties are zoned Rural Residential (RR) and Northern Agricultural Residential (NAR). The properties within the neighborhood are zoned Rural Residential (RR) and Northern Agricultural Residential (NAR). The periphery of the neighborhood is zoned Rural Residential (RR), Northern Agricultural Residential (NAR), and Business Local (BL).

2. That there was a mistake in the last Comprehensive Rezoning of 2011 as represented, and that the Property should have been correctly zoned Northern Agricultural Residential (NAR) at that time for the reasons described hereinabove.

3. The Property is located in Census tract 306.01, which had a population of 3,748 at the time of the 2000 Census, but had a population of 3,818 as of the 2010 Census.

4. The property is not located within any future water and sewer service areas per the adopted Master Water and Sewer Plan.

5. That as to present and future transportation and traffic patterns, in character and volume, access to the Property is from Providence and Little Elk Creek. The proposed rezoning would not have an effect on future transportation and traffic patterns, character and volume.

6. The Property is located within the Rural Conservation District of the Comprehensive Plan. The purpose of the Rural Conservation District is to encourage the retention of agricultural and forestry uses to support the County's agricultural industry and to maintain rural character. Regarding compatibility with the purposes of any special district in which the Property is located, the Property is not located within any special district.

7. The Council further finds that rezoning of the Property is appropriate as the evidence presented demonstrates that there was a mistake in the 2011 Comprehensive Rezoning with respect to the Property. Therefore, in accordance with the above findings of fact, Council approves the requested rezoning from Rural Residential (RR) to Northern Agricultural Residential (NAR).

ATTEST:

ATTEST:

James Massey
James Massey, Council Manager
WITNESS

Bob Meffley
Bob Meffley, President

Jackie Gregory
Jackie Gregory, Vice-President

Bill Coutz
Bill Coutz, Councilman

Al Miller
Al Miller, Councilman

March 10, 2020
DATE

George Patchell
George Patchell, Councilman

Exhibit B



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

VIA FIRST CLASS MAIL

Mr. Bryan Lightner
Zoning Administrator, Cecil County
200 Chesapeake Blvd., Suite 2300
Elkton, MD 21921

RE: File No. 2019-05; 109-111 Providence Road, LLC Rezoning Application
Cecil County Parcel # 04006410

Dear Mr. Lightner,

EPA Region III understands that an application has been made by 109-111 Providence Road, LLC ("Applicant") to rezone Cecil County Parcel # 04006410, which comprises the Spectron, Inc. Superfund Site, located at 109-111 Providence Road, Elkton, Maryland 21921 ("Site"). The Site was added to EPA's National Priorities List, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, on May 31, 1994, due to significant historic soil and groundwater contamination. EPA has been and continues to oversee remediation of the Site.

EPA believes that almost all Superfund sites have the potential for some form of reuse and supports the reuse of sites where there is such potential. EPA understands that the Site was classified as Rural Residential ("RR") in 2011 during Cecil County's Comprehensive Rezoning process; however, the Site does not, and most likely will never, support residential use. In its September 16, 2004 Record of Decision ("ROD"), EPA selected the remedy for the Site ("Selected Remedy"). In the ROD, EPA stated that it considers the contamination at the Site to be "so pervasive, that there are no technologies available today that could reasonably be expected to return [the Site] to a condition that would allow residential use." However, EPA recognized in its ROD that there are other potential uses of the Site, other than residential, that could be allowed if they are designed not to interfere with the Selected Remedy. EPA suggested in the ROD that such uses could include a community park, development of the Site for commercial use, light industry, or a County utility vehicle maintenance yard, if the local community so chooses.

It is EPA's understanding that the Applicant wishes to rezone the Site from RR to Northern Agricultural Residential ("NAR"), since residential use was prohibited in the 2004 ROD. While zoning is a local issue, EPA would have no objection if Cecil County were to rezone the Site as NAR.



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*

If you have any questions, please contact me at 215-814-3172 or mroz.aaron@epa.gov, or have your attorney contact Robin Eiseman, Senior Assistant Regional Counsel, at 215-814-2612 or eiseman.robin@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Mroz', with a long horizontal stroke extending to the right.

Aaron Mroz
Remedial Project Manager
Superfund and Emergency Management Division
EPA Region III

cc: John Banks (3SD22)
Robin Eiseman (3RC10)

Exhibit C

Victor R. Jackson, LLC
Attorneys-at-Law
190 East Main Street
Elkton, Maryland 21921

Douglas R. Cain, Esquire
Victor R. Jackson, Esquire

Telephone: (410) 398-7900
Facsimile: (410) 620-4800

May 29, 2020

James Massey
Council Manager
200 Chesapeake Boulevard
Elkton, Maryland 21921
jmassey@ccgov.org

County Council
200 Chesapeake Boulevard
Elkton, Maryland 21921

Re: Legal Opinion 109-111 Providence Road LLC

Dear Mr. Massey and Council:

As you are aware, an application for rezoning was filed by applicant 109-111 Providence Road, LLC, to rezone Parcel 0349, consisting of 7.29 acres from Rural Residential (RR) to Northern Agricultural Residential (NAR) and was presented before the County Council at the Legislative Meeting on February 18, 2020. The Legislative Agenda and signed Meeting Notes both indicate that the request by the applicant is to rezone 7.29 acres from Rural Residential (RR) to Northern Agricultural Residential (NAR). The property location was noted as 109-111 Providence Road, Elkton, Maryland 21921, Election District:4, Tax Map: 13, Parcel: 349.

It has been brought to my attention that at the Planning Commission Meeting held on January 22, 2020, the attorney for the applicant, Tom Prevas, Esquire, testified that he had intended to include Parcel #360 on the application for rezoning. The minutes from said Planning Commission meeting state that the application was intended to include both parcels 349 and 360. After reviewing the approved and signed County Council Legislative Session Minutes from February 18, 2020, there is no mention of any amendment of the application by 109-111 Providence Road, LLC to include Parcel #360 in the rezoning request and parcel #360 was not discussed at the session based upon the minutes. The application presented at the session was to rezone 7.29 acres from rural Residential (RR) to Northern Agricultural Residential (NAR) with the property being identified as 109-111 Providence Road, Elkton, Maryland 21921, Election District:4, Tax Map:13, Parcel: 349. After reviewing the Maryland Department of Assessments and Taxation Real Property Data Search results, Parcel #349 is identified as consisting of 7.29 acres and Parcel #360 is identified as consisting of .7 acres. Therefore, Parcel #360's acreage

was not included in the application or in the discussion at the meeting.

As you are aware, pursuant to Chapter A387, County Council Policies and Procedures, Article VII, Rezoning Cases, for each rezoning application filed, the Department of Planning and Zoning is responsible for causing legal notice of the rezoning request to be published in a newspaper of general circulation in Cecil County, for sending notification letters to the applicant and all adjoining property owners, with such notice to state the time, date and location of the public hearings to be held before the Planning Commission and the County Council, respectively, and a copy of the rezoning application and any supporting documents appended thereto. Notices were sent to adjoining property owners on January 24, 2020 with regard to Parcel #349 and a Public Hearing notice was published in the Cecil Whig on February 5, 2020 and February 12, 2020 with regard to Parcel #349. Proper notice as required by the County Council Policies and Procedures as described above was not given to adjoining property owners, the applicant, and no notice of public hearing was published in the Cecil Whig concerning Parcel #360.

Therefore, based upon the fact that the rezoning application was not amended to include Parcel #360 at the Legislative Session before the County Council on February 18, 2020 and that proper notice as required was not given to adjoining property owners, the applicant and published for the general public, I do not believe that Parcel #360 can be added as part of the previous rezoning application and subsequent approval. The applicant will need to file a new application for rezoning of Parcel #360 so that proper procedures can be followed, adequate notice can be given, and the application can be properly considered by the council.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Victor R. Jackson".

Victor R. Jackson

VRJ;jhh

REZONINGS

FILE NO: 2020-03

APPLICANT: 109-111 Providence Road, LLC

LOCATION: 109-111 Providence Road, Elkton, MD 21921 (Tax Map 13, Parcel 360)

REQUEST: Rezone 0.7 acres from Rural Residential (RR) to Northern Agricultural Residential (NAR).

STAFF RECOMMENDATION: Approval, based on a demonstrated mistake in the 2011 Comprehensive Rezoning.

PLANNING COMMISSION RECOMMENDATION: Approval, based on a demonstrated mistake in the 2011 Comprehensive Rezoning.

FINDINGS OF FACTS

NEIGHBORHOOD: The neighborhood is an area within 1/2 mile radius of the subject property. The subject property and all of the immediately adjoining properties are zoned Rural Residential (RR) or Northern Agricultural Residential (NAR). The properties within the neighborhood are zoned Rural Residential (RR) or Northern Agricultural Residential (NAR). The periphery of the neighborhood is zoned Rural Residential (RR), Northern Agricultural Residential (NAR), and Business Local (BL).

CHANGES IN AREA: There have not been any rezonings in the neighborhood since the 2011 Comprehensive Rezoning.

POPULATION CHANGES:	<u>2000</u>	<u>2010</u>	<u>% of Change</u>
Cecil County	85,951	101,108	17.7%
Census Tract: 306.01	3,748	3,818	1.87%

AVAILABILITY OF PUBLIC FACILITIES: The property is not located within any future water or sewer service areas per the adopted Master Water & Sewer Plan.

PRESENT AND FUTURE TRANSPORTATION AND TRAFFIC PATTERNS, CHARACTER, AND VOLUME: Access to the property is from Providence and Little Elk Creek roads. The proposed rezoning should not have an effect on future transportation and traffic patterns, character, and volume.

COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT IN THE AREA: The proposed rezoning should be compatible with existing and proposed development.

COMPATIBILITY WITH THE INTENT OF THE COMPREHENSIVE PLAN: The property is located within the Rural Conservation District of the Comprehensive Plan. The Rural Conservation District includes sparsely developed areas between towns and rural villages. The Rural Conservation District is intended to encourage the retention of agricultural and forestry uses to support the County's agricultural industry and to maintain rural character.

COMPATIBILITY WITH THE PURPOSES OF ANY SPECIAL DISTRICT IN WHICH THE AREA REQUESTED TO BE REZONED IS LOCATED: The subject parcel is not located within any special district.