

**Testimony Presented by Kristina Bostick
In the Matter of: Frederick County: Request for Zoning Reclassification:
UR 41 and UR 42 Submitted by Global Mission Church of Greater Washington**

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Members of the Board,

I am here on behalf of Montgomery Countryside Alliance (MCA) and our members in both Montgomery and Frederick Counties. MCA is a non-profit group whose mission is the preservation of farmland, natural resources and open space in Montgomery and southern Frederick Counties. My comments are aimed at both the current comprehensive rezoning process in general, and at the application of Global Mission Church (UR 41-41) specifically.

With regard to the current comprehensive rezoning process, I offer the following comments:

1. When a comprehensive rezoning has occurred, as it did in Frederick last year, there is a strong presumption that it had a rational basis. Every property owner was notified, had an opportunity to be heard at that time, and a decision was reached that took all views, facts, and interests into account to produce a zoning map that was based on the general welfare, safety and health of the whole community. MCA testified during that process and so did other property owners, including Global Mission Church.
2. It is for that reason that changes in the zoning of individual properties, whether processed one by one or in batches, must, even before considering the merits of the zone applied for, meet the burden of proving either a substantial **change** in the zoning neighborhood or a **mistake** in the original zoning of the comprehensive rezoning – undertaken *last year*.
3. Without a master plan amendment or at least a new study that offers a rational basis for changing the zones applied by comprehensive amendment, or evidence that the county mistakenly applied the wrong zone to each of the 194 properties, this appears to be an impermissible (i.e., arbitrary) change of mind. Keep in mind that mistake is not demonstrated by evidence that a zoning authority used bad judgment. This change/mistake doctrine is not a tool for property owners and their attorneys to second-guess comprehensive zoning decisions. Strong evidence is required to overcome the presumption the validity or correctness of comprehensive rezoning.*

**Dorsey*, 292 Md. At 355; See also, *Beachwood*, 107 Md. App. At 641; and *Boyce*, 25 Md. App. At 49

4. That some property owners have not asked for a change makes this effort at *spotty zoning* all the more problematic because it changes the comprehensiveness of the reclassification. Take the case, for example, of adjacent properties, both zoned to the same class in the comprehensive map amendment of 2010. Now one of them is reclassified, absent any change in the neighborhood, to a zone that allows different uses or densities without consideration of the effect on the neighbor. If property A runs a farm, and B creates a subdivision under the new zone, it can have adverse effect on the former's livelihood. The impact is most severe when the higher density spots are distributed at random across the landscape based solely on the desires of individual owners, fragmenting agricultural areas and reducing the viability of farming, the sustenance of which was part of the rationale for the original comprehensive map amendment.

5. This action is in the nature of serial or multiple rezonings of individual properties by local map amendments. Local map amendments involve quasi-judicial review, requiring the finding of facts about each property in a more formal hearing, including--if timely requested--the right of cross-examination. Therefore, even though the county has invited the applications (the waiver of fees indicates they are in the nature of local rather than comprehensive map amendments), they must be considered individually rather than as a batch, in a quasi-judicial forum where they must first meet the change/mistake threshold and if that is crossed, that the zone requested may be appropriate.

In the case of **Global Mission Church's** application to rezone 2 parcels of land along Little Bennett Creek, I submit the following:

1. The applicant fails to meet the burden of proving either change or mistake in the 2010 comprehensive rezoning. Instead, the applicant's justification asserts that last year's rezoning of their property was "unnecessary," "did not make sense" and was not "equitable." These were the same arguments made during public hearing last year when the full comprehensive process was undertaken
2. There can be no case made that change has occurred, or for that matter will occur, in the zoning neighborhood. The two subject parcels remain in proximity to a high quality stream and steep slope, in diverse woodland, atop highly fractured rock underneath which the important (and federally designated) Piedmont Sole Source Aquifer flows. Adjacent properties land use is unchanged. Little Bennett watershed is rightly planned as an important "greenway" between Sugarloaf Mountain and Little Bennett Regional Park. Many, including our members, benefit from the protection of this area.

For these reasons, I respectfully urge the Board, if this process is to proceed undeterred, to carefully scrutinize each application for reclassification and, absent clear proof of change or mistake, uphold the 2010 Comprehensive Rezoning. In the case of Global Mission Church, we request denial of their application.