

ORDINANCE NO. ORD-07-02

**AN ORDINANCE TO AMEND THE ZONING MAP  
FOR WASHINGTON COUNTY, MARYLAND**

**(RZ-06-016)**

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), Antietam Investments, LLC, William and Maude Kaplan, and David Taylor (*Applicants*) have petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), for a zoning reclassification and a zoning map amendment of property more particularly identified in the Ordinance Amendment Application found in the record herein.

The Petition has been designated as Case No. RZ-06-016.

A public hearing was held on the application pursuant to Section 27.2 of the Ordinance, where the Applicants presented evidence and information relating to the zoning reclassification.

The Board has considered all information presented at the public hearing, the recommendation of the Planning Commission, and each of those factors set forth in Maryland Code Ann., Article 66B, Section 4.05 and Section 27.3 of the Zoning Ordinance.

The Board has made factual findings and conclusions of law which are set forth in the attached "Decision." The findings of fact and conclusions of law are incorporated herein.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND, that the property which is the subject of Case No. RZ-06-016 be, and hereby is, reclassified from the Residential, Urban (RU) classification to the Business, Local (BL) classification.

IT IS FURTHER ENACTED AND ORDAINED, that the official Zoning Map be, and hereby is, amended accordingly. The Director of Planning and

Community Development shall cause the Zoning Map to be amended pursuant to this Ordinance.

Adopted and effective this 5th day of June, 2007.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

Joni L. Bittner

Joni L. Bittner, Clerk

BY:

Terry L. Baker

Terry L. Baker, Vice President

Approved as to form and legal sufficiency:

Kirk C. Downey

Kirk C. Downey  
Assistant County Attorney

Mail to:  
Office of the County Attorney  
100 W. Washington Street, Room 202  
Hagerstown, MD 21740

**DECISION**  
**Rezoning Case RZ-06-016**

**Property Owner:** Antietam Investments, LLC; Sheldon Eby;  
William and Maude Kaplan; and David Taylor  
**Applicant:** Antietam Investments, LLC and Sheldon Eby  
**Requested Zoning Change:** RU- Residential, Urban to BL – Business, Local  
**Property:** 17318, 17320, 17322, and 17326 Virginia Avenue,  
approximately 350 feet east of the intersection with  
Massey Boulevard (3.1 acres)

Pursuant to Md. Code, Art. 66B, § 4.05 and Washington County Zoning Ordinance (WCZO) § 27.3, the Board of County Commissioners makes findings of fact with respect to the following matters: population change, availability of public facilities, present and future transportation patterns, and compatibility with existing and proposed development for the area. We also consider the recommendation of the Planning Commission and the relationship of the proposed reclassification to the Comprehensive Plan (*Plan*).

***Findings of Fact***

***The property.***

The parcels that are the subject of this rezoning (collectively, the *Subject Property*) are designated as Parcels 551, 579, 675, and a portion of Parcel 578 on Zoning Map 48. Each of the parcels fronts Virginia Avenue (US Route 11) and is improved with a dwelling and accessory buildings. The total area of the parcels is 3.1 acres. The property was zoned Residential Urban (RU) in 1973 when zoning was adopted in the County. It is located within the Urban Grown Area and is designated Low Density Residential in the Comprehensive Plan.

***The neighborhood.***

The Applicant defined the neighborhood as the Virginia Avenue corridor from the I-70 overpass (southwest of the Subject Property) to the Virginia Avenue/Halfway Boulevard intersection (northeast). Those limits create a neighborhood that is approximately 1 ½ miles long. The width of the corridor was not specified but its boundary was stretched to the northwest to include the area of the Valley Mall and Crosspoint Shopping Center, a distance of approximately ¾ of a mile.

***Planning Commission Recommendation.***

A public hearing was held on the subject petition on January 22, 2007. At its meeting on March 5, 2007, the Planning Commission was unable to make a recommendation due to a tie vote.

***Population change.***

Zoning was adopted in Washington County in 1973. Therefore, population data was reviewed for a 30-year period, with the 2000 census data being the most recent available. The Subject Property is located in the Halfway Election District (#26). Population has increased in this district by 34% since 1970. In comparison, the county-wide population increased 27% over the same thirty (30) year period.

***Availability of public facilities in the area.***

***Water and Sewer***

The Water and Sewerage Plan designates the Subject Property as W-1 (existing service). Water service is provided by the City of Hagerstown. There is a 24" water line in the right-of-way of Virginia Avenue. The City of Hagerstown Water and Sewer Department responded to the rezoning request without comment. The Department would have to approve any reconfiguration of connections to the system to serve commercial development that may be needed if the rezoning is approved. The Department would also have authority over any changes in allocation for new uses.

The Water and Sewerage Plan designates the Subject Property as S-1 (existing service). Service is provided by County sewer lines. Treatment of effluent occurs at the County's Conococheague wastewater treatment plant.

The Washington County Health Department responded to the request for review with an "approval" and no additional comment.

System capacities do not appear to be a concern for service providing agencies since the Subject Property connected to the public utilities and will need the same services if rezoning occurs.

***Emergency Services***

Emergency medical and rescue services are provided by the Halfway Volunteer Fire Company. The station is located less than a mile to the east of the Subject Property.

***Public Transportation***

The County Commuter passes the Subject Property twelve (12) times per day in service of the Williamsport route. The Valley Mall located on the north side of the railroad tracks that touch the rear of the Subject Property also receives regular County

Commuter service but this route does not pass the Subject Property.

### **Schools**

The Subject Property is located within the Hickory Elementary, Springfield Middle, and Williamsport High School districts. Hickory Elementary and Williamsport High are both overcapacity and deemed inadequate per the APFO threshold. Springfield Middle is currently below capacity and is deemed adequate. The proposed Business, Local classification would not impact school enrollments with additional students because the permitted uses are commercial, not residential, in nature. Furthermore, removal of the residential units currently on the Subject Property may reduce current enrollments slightly.

### **Transportation Patterns.**

The Subject Property has frontage and access to Virginia Avenue. This portion of Route 11 is classified as an "Other Principal Arterial Highway" according to the Functional Road Classification Map in the Comprehensive Plan. The primary purpose of higher order highways such as Route 11 is to provide unhindered mobility for regional "through" traffic. In an urban setting, arterial highways can expect to exceed 20,000 ADT (*Average Daily Traffic*). Traffic counts taken by the State Highway Administration were collected on Route 11 between the Subject Property and the I-70 bridge west of the property. They indicate an 11% decrease in ADT between 2000 and 2005. In this area and on this type of roadway, it may be unexpected to see that ADT has decreased, but this may be due in part to the recent construction of the Virginia Avenue/Massey Boulevard intersection. The roadway infrastructure in the vicinity of the property is sufficient to accommodate additional commercial uses.

### **Compatibility with existing and proposed development in the area, including indication of neighboring sites identified by the Washington County Historic Sites Survey and subsequent revisions or updates.**

The Subject Property is currently zoned Residential, Urban. Each parcel contains a dwelling. The parcels immediately adjacent to the west are zoned Business, Local and contain a furniture store and self-storage or mini-warehouse units.

The subject parcels are on the western edge of a very large area of residentially zoned property, the residential community of Halfway. Some limited new residential development has occurred recently along Mt. View Circle to the northeast of the Subject Property. To the north of the railroad tracks that border the rear of the Subject Property is the Valley Mall, a large commercial complex with a mixture of Planned Business and Business, General zoning. To the west of the Subject Property is a growing and changing pocket of commercial zoning. Many rezonings have been approved on parcels

along Virginia Avenue to the west. The community is a mixture of large and small commercial uses and single- and multi-family units, and the subject properties are on a boundary between the two types of uses.

There are no sites listed in Washington County's historic sites inventory within the immediate vicinity of the Subject Property.

***The relationship of the proposed change to the Adopted Plan for the County, Development Analysis Plan Map, and Policies.***

According to the 2002 Comprehensive Plan for Washington County, there are two general classifications listed for growth and development policy implementation. The two areas are the Urban/Town Growth Areas and the Rural Area. This distinction is made in order to encourage growth and development in areas where infrastructure is available, or can be extended efficiently and economically. These areas are further broken down into land use policy areas. These policy areas are established on a generalized basis in an attempt to address compatibility issues between different land uses.

The Subject Property is located within the boundary of the Urban Growth Area and is further classified in the Low Density Residential land use policy area. Therefore, the request for the Subject Property to be rezoned to Business, Local may appear to be inconsistent with the Land Use Plan. The Land Use Plan chapter of the Comprehensive Plan elaborates on the policy area approach as follows:

Future land use decision locations should be based on how well a land use fits into a policy area. Rezoning applications, comprehensive rezoning proposals, Water and Sewerage Plan revisions as well as other land use planning actions should take these policies into consideration. Many of the land use policy area classifications presented in the Land Use Plan parallel zoning ordinance classifications. However, the policy areas are not zoning districts as used in the Zoning Ordinance. The policy areas should be used as a guide to help formulate an overall structure to the community. (P. 231-232).

However, the immediately adjacent property to the west is shown on the Land Use Plan map with a Commercial land use policy classification. The Comprehensive Plan anticipates that conditions and needs can change over time. Zoning changes that are not perfectly consistent with land use policy assignments in the Comprehensive

Plan can be made when additional detailed analysis can support them.

This rezoning request involves a proposed zoning classification that likely will result in a change in the way this property is utilized from residential to commercial use.

The Comprehensive Plan offers the following recommendations for application of the Commercial land use policy area:

It is recommended that Planned Business and Business Transitional classifications be eliminated. Both classifications have deficiencies in their application and their purposes can be better addressed through other business classification. It is also recommended that the Business Local classification be revised with the number of potential uses restricted. This new classification would support neighborhood commercial needs as well as acting in the capacity of a transitional zoning district. P. 243-244.

The following Zoning District classifications be eliminated: Business Transitional (BT), Industrial Transitional (IT), Planned Business (PB), and Highway Interchange-Two (HI-2), since there is no need for these classifications in their current form. P. 289.

Reconstruct the Business Local (BL) classification so that it acts as a neighborhood business and/or business transitional classification and not a specialty shop commercial classification. *Id.*

***Whether there has been a substantial change in the character of the neighborhood were the property is located.***

There has been a substantial change in the character of the neighborhood. Since 1973, and before, the corridor has contained a mixture of residential and commercial activities. A trend has appeared during the recent past that shows commercial uses increasing in quantity, intensity, and scale. Crosspoint Shopping Center has opened with the presence of several national retailers in sizeable buildings, and the Valley Mall and Massey/Wesel Boulevard commercial areas continue to thrive. Massey Boulevard's extension to Virginia Avenue has facilitated the flow of customers, retail workers, and suppliers about the neighborhood. The commercial core of the area is clearly expanding.

***Whether there was a mistake in the existing zoning classification.***

The Applicant presented a case based entirely on change in the character of the neighborhood.

***Whether there has been a convincing demonstration that the proposed rezoning would be appropriate and logical for the Subject Property.***

Residential uses continue to exist in the area of the Subject Property. Commercial zoning in the area is a mixture of BL, BG, PB, and HI-1 designations, many of which are due to individual rezoning requests, on a piecemeal, as-needed basis, rather than according to a comprehensive rezoning. The property borders both commercial and residential areas, but its proximity to the intersection of Massey Boulevard and Virginia Avenue weighs towards a commercial designation for the Property. The Applicant owns the corner property, which contains several commercial uses, and the Subject Property may be put to good use in conjunction therewith. Moreover, railroad tracks to the rear of the Property create a natural division from neighboring residential uses.

***Conclusion***

The Subject Property is located in an area with mixed residential and commercial uses. Recently, the commercial uses have been expanding both in number and intensity. The Subject Property's location next to an existing commercially-zoned corner parcel and its access potential access to Massey Boulevard through that corner parcel suggests a reclassification to Business, Local. Furthermore, the Subject Property is delineated from bordering residential uses by standing trees that further the appropriateness of this rezoning. Accordingly, having considered each of the mandated factors and for all of the reasons set forth herein, this application for a zoning reclassification is granted with the following conditions as set forth below.

***Conditions***

1. Adequate buffer, in the opinion of the Planning Commission, shall be maintained from the existing trees on the Subject Property along its boundary with the residential uses on Mountain View Circle as screening.

2. The Subject Property's parcels shall, to the extent practicable in the discretion of the Planning Commission, share a common access to Virginia Avenue and Massey Boulevard.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

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