

ORDINANCE NO. ORD-08-07

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

(RZ-07-008)

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), Bowman 2000, LLC (*Applicant*) has 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-07-008.

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.

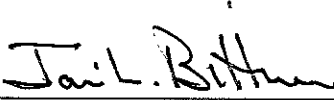
NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND, that the property which is the subject of Case No. RZ-07-008 be, and hereby is, reclassified from the Industrial Restricted (IR) classification to the Highway Interchange 1 (HI-1) classification.

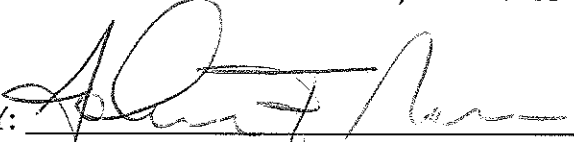
IT IS FURTHER ENACTED AND ORDAINED that the official Zoning Map be, and hereby is, amended accordingly. The Director of Planning and Community Development shall cause the Zoning Map to be amended pursuant to this Ordinance.

Adopted and effective this 7<sup>th</sup> day of October, 2008.

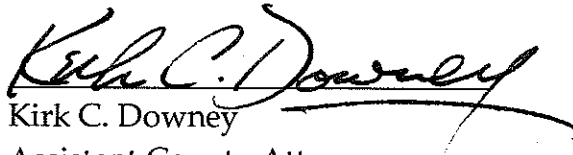
ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

  
\_\_\_\_\_  
Joni L. Bittner, Clerk

BY:   
\_\_\_\_\_  
John F. Barr, President

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
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-07-008

**Property Owner:** Vishay Resistive Systems, Inc. (formerly Angstrom Precision, Inc.)  
**Applicant:** Bowman 2000, LLC  
**Requested Zoning Change:** Industrial Restricted (IR) to Highway Interchange – 1 (HI-1)  
**Property:** 18400 Precision Place; the southwest corner of Mack Truck Road and Precision Place, adjacent to I-81

Pursuant to Md. Code, Art. 66B, § 4.05 and Washington County Zoning Ordinance § 27.3, we make 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 Plan.

### ***Findings of Fact***

#### ***The property.***

The subject 17.4-acre property is located at 18400 Precision Place, Hagerstown, Maryland, at the southwest corner of the intersection of Precision Place and Mack Truck Road. It is adjacent to Interstate 81 on the west and the Mack Truck factory is to the east. The property was formerly used to manufacture electronic components. Numerous commercial properties serving the motoring public are located to the north of the property.

The property is within the Urban Growth Area and is zoned Industrial Restricted (IR). It was originally zoned Highway Interchange (HI) when zoning was implemented in the County, and it was rezoned in 1976 to Industrial Restricted (IR) at the request of a former property owner.

#### ***The neighborhood.***

The Applicant described the neighborhood as including the area one mile to the east and west of the Maugans Avenue interchange and seven tenths of a mile to the north and south. We accept the Applicant's definition of the neighborhood as appropriate

given the variety of uses found in the immediate environs of the property and existing infrastructure features.

***The Planning Commission's recommendation.***

A public hearing was held on the subject application on November 26, 2007. At its meeting on January 7, 2008, the Planning Commission recommended approval of the requested rezoning based on a determination that there was a change in the character of the neighborhood. The Planning Commission opined that the request is logical, appropriate and consistent with the Comprehensive Plan.

The Commission's decision was rendered after consideration of testimony presented at the public hearing on November 26, 2007 and Staff Reports dated November 16, 2007 and December 17, 2007.

***The population change in the area of the proposed change.***

A thirty-year period was analyzed for the basis of population change. This period reflects the population data compiled since the inception of zoning in 1973.

The subject property is located predominately in the Fountain Head – Longmeadow Election District (#27). There is a small portion of the western side of the property located in the Maugansville Election District (#13). Overall population has increased in both districts over the 30-year time frame; Longmeadow by 12.8% and Maugansville by 35.4%. In comparison, the county-wide population increased 27% over the same 30-year period as shown.

***The availability of public facilities in the area.***

***Water and Sewer***

The Washington County Water & Sewerage Plan designates the subject property as having a water service priority designation of W-3 (programmed service) and water service would be provided by the City of Hagerstown. There are currently water lines in the vicinity of the parcel that appear to be feasible to extend.

The sewer service priority designation is S-1 (existing service). The subject property lies within the Joint Sewer Service Agreement area whereas the sewer lines are owned by the County and the sewage is treated by the City of Hagerstown.

***Emergency Services***

Emergency medical and rescue services are provided by Ambulance Company 75, Community Rescue Service, Maugansville Substation. The rescue service is

approximately one mile from the subject property. The Maugansville Goodwill Volunteer Fire Company provides fire protection to the subject property. The Fire Company is located approximately one mile from the subject property.

### ***Public Transportation***

The County Commuter provides service to this general area as part of the Maugansville route that comes from Hagerstown via Pennsylvania Avenue, loops through Maugansville and the airport, and returns via Pennsylvania Avenue. This service runs every day but Sunday.

### ***Schools***

The subject property is located within the Maugansville Elementary, Western Heights Middle, and North Hagerstown High School districts. Neither the current nor the proposed zoning classifications permit residential uses, so a reclassification would have no effect on school enrollment figures or impact on educational resources.

### ***The present and future transportation patterns in the area.***

The subject property has frontage on Precision Place and Mack Truck Road and has an existing access on Precision Place. Both of these roads are classified as local roads according to the Functional Road Classification Map in the Comprehensive Plan. The primary purpose of local roads is to provide access to the road network. Due to the exclusive use of these roads by the few businesses that exist in the area, there are no historic traffic counts available.

The Washington County Engineering Department has indicated that it takes no exception to the proposed rezoning request. Any future development will be required to meet the APFO and the Stormwater Management Ordinance.

### ***The 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 Industrial Restricted and is improved with a large manufacturing facility approximately 40,000 sq. ft. in size. The purpose of the Industrial Restricted zoning district is to "...provide for locations for some of the lighter manufacturing processes..." whereas the purpose of the Highway Interchange 1 zoning district is to "...provide for those uses allowed in the BL, BG, PB, and IR districts. The HI-1 District is intended to include those lands closest to the seventeen interchanges of the interstate highway system traversing Washington County."

The subject property is immediately adjacent to and bounded by Interstate 81 to the west and Mack Truck Road to the east. Commercial uses including a fast food restaurant and gas station with a convenience store are located on the northern boundary of the property and an industrial use (Mack Truck, Inc.) on the southern boundary. The predominate zoning to the west, north and east of the subject property is HI-1 which allows for more commercial uses. Industrial zoning and uses are located to the south. Residential areas are located further to the east of the subject property and consist mainly of older existing residential subdivisions.

There is one historic site listed on the Washington County Historic Survey that is located within a 0.5 mile radius of the proposed rezoning: WA-IV-066 – Marbeth Farm – a mid to late 19<sup>th</sup> Century concrete block farmhouse, located approximately 2,600 feet east of the subject property.

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

The subject property is located within the boundary of the Urban Growth Area and is further classified in the Industrial Flex land use policy area. According to the 2003 Comprehensive Plan, the Industrial Flex policy area was designed to "...reflect a hybrid policy area comprised of different types of economic development associated land uses." Furthermore, the Comprehensive Plan articulates potential land uses by stating that "Existing and anticipated land uses associated with this policy area include, light industrial parks, office parks, research and development facilities, hi-tech communication and technology facilities, trucking and distribution facilities and minor commercial uses that support job centers."

The Comprehensive Plan recommends that the land use plan be implemented by "Redesignat[ing] the Highway Interchange 1 district as Highway Commercial with the main difference being the elimination of Industrial Restricted as principle permitted uses in the zone." Based on the list of potential uses in the Highway Interchange 1 zoning district, the stated intent of use in the applicant's justification statement, and the general context of the Comprehensive Plan and its recommendations for the Industrial Flex policy area, the HI-1 classification would be consistent with the intent of the Industrial Flex policy area.

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

The Applicant argues that there has been a substantial change in the character of the neighborhood. First, the Applicant argues that increased commercial uses within the general vicinity of the property show a substantial change. Second, a 2004 application

for reclassification (RZ-04-002) was approved by the Board of County Commissioners based on a change in the character of the neighborhood; the application was for a 3-acre parcel to be rezoned from Agricultural to Business General. Third, the Applicant argues that road improvements were unforeseen by the County when it adopted the Comprehensive Plan in 2002.

While there has undoubtedly been growth in the neighborhood, both of commercial uses and population, this growth was evident in 1995 when the Highway Interchange classification was applied to many of the properties in the immediate area. We do not find that there has been a substantial change in the neighborhood's character since 1995, but we do believe that omission of this property from the Highway Interchange classification was a mistake.

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

The subject property was originally zoned Highway Interchange (HI) when zoning was first established in the county in 1973. The property was then rezoned (RZ-142) in 1976 at the request of the property owner to Industrial Restricted (IR). The uses allowed in the IR zoning district at that time were also permitted in the HI zoning district. If the property was already zoned for the now existing use, there should have been strong evidence to affirm the conclusion derived in the establishment of zoning in 1973 that the zoning of Highway Interchange was appropriate and logical for the subject property.

In 1995, a Comprehensive Rezoning was initiated by the County Planning Department to review the Highway Interchange designation. A mistake occurred in the rezoning of the property in 1976 to IR when the governing body ignored the fact that the Highway Interchange zoning established on the property in 1973 already allowed for the industrial use existing in 1976. Furthermore, this mistake was exacerbated by the 1995 Highway Interchange rezonings based on the property's immediate proximity to the interchange and the rezoning of the majority of parcels surrounding the subject property to Highway Interchange 1. The Highway Interchange rezoning left a small island of IR zoned land in an area dominated by commercial uses. It appears the governing body at that time applied a zoning classification based more on what was then-existing use on the property rather than applying the overall vision of the Highway Interchange zoning goals.

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

Based on the evidence presented, the proposed zoning reclassification would be consistent with the Comprehensive Plan, compatible with surrounding properties in the

neighborhood, and compelled by the existing road infrastructure in the immediate vicinity.

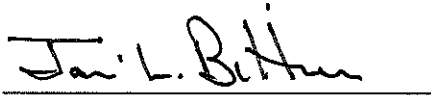
### **Conclusion**

To sustain a piecemeal change in the zoning classification of a property, "... strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced..."<sup>1</sup>

The Applicant has met its burden of demonstrating that a mistake was made in the zoning designation of this parcel. The surrounding properties support commercial uses that have logically grown from their proximity to Interstate 81 and Maugans Avenue. The existing IR designation has made this property an island amongst other commercial uses. Having considered all of the testimony, evidence, and arguments presented, the facts and rationale set forth in this Decision, and the Commissioners' "extensive local knowledge in determining zoning issues[,]"<sup>2</sup> this application for zoning district reclassification is hereby GRANTED.

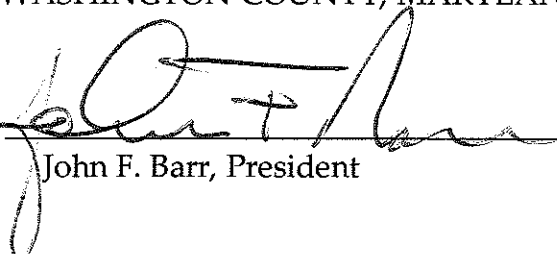
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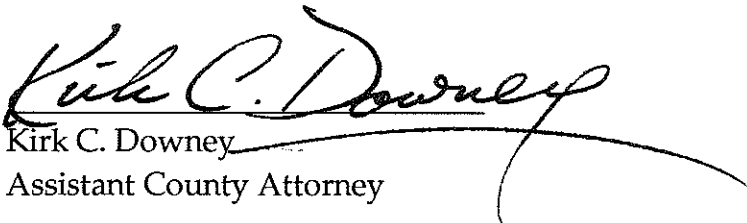
Joni L. Bittner, Clerk

BY:



John F. Barr, President

Approved as to form and legal sufficiency:



Kirk C. Downey  
Assistant County Attorney

<sup>1</sup> *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

<sup>2</sup> *Burgess v. 103-29 Ltd. Partnership*, 123 Md.App. 293, 301 (1998).