

ORDINANCE NO. ORD-2018-06

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND
(RZ-17-006)**

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), 17119 Virginia Avenue, LLC, the Applicant, has petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), for a zoning reclassification and a zoning map amendment of property owned by the Applicant and consisting of 0.528 acres of land, more or less, situated on southeast of the intersection of Virginia Avenue and Hickory School Road, Hagerstown, Maryland, and more particularly identified in the Ordinance Amendment Application found in the record herein.

The matter has been designated as Case No. RZ-17-006.

A public hearing was held on the application pursuant to Section 27.2 of the Ordinance, where the Applicant and others presented evidence, testimony, 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 Md. Code Ann., Land Use § 4-204 and Section 27.3 of the Zoning Ordinance.

The Board has made factual findings and conclusions of law that 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-17-006 be, and hereby is, granted a BG – Business, General zone classification.

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

Adopted and effective this 27th day of March, 2018.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

Vicki C. Lumm
Vicki C. Lumm, Clerk

BY: Terry L. Baker
Terry L. Baker, President

Approved as to form and
legal sufficiency:

Kirk C. Downey
Kirk C. Downey
Deputy County Attorney

Mail to:
Office of the County Attorney
100 W. Washington Street, Suite 1101
Hagerstown, MD 21740

**BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND**

DECISION

Rezoning Case RZ-17-006

Property Owner:	17119 Virginia Ave., LLC
Applicant:	Divelbiss & Wilkinson
Requested Zoning Change:	RS – Residential Suburban to BG – Business, General
Property:	0.528 acres located southeast of the intersection of Virginia Avenue & Hickory School Road

Pursuant to Md. Code Ann., Land Use § 4-204 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 property is located in the Urban Growth Area that surrounds the City of Hagerstown and the Towns of Funkstown and Williamsport. The subject property is found immediately adjacent to the intersection of Virginia Avenue (U.S. Route 11) and Hickory School Road, approximately 1/3 mile northeast of the I-70 overpass. It is 0.528 acres in size.

The report and recommendation of the Planning Commission.

Having determined that the Applicant demonstrated that there was a mistake in the zoning of the property during the 2012 Comprehensive Urban Growth Area Rezoning and concluded that the request was logical, appropriate, and consistent with the Comprehensive Plan, the Planning Commission recommended approval of the requested rezoning.

Population change in the area of the proposed change.

The subject property is located within the Halfway Election District (#26). As shown in the table below, the population in this district has grown more slowly than the population in the County generally over the thirty-year period between 1980 and 2010. District 26 has grown 13.54% over the thirty-year period (.45% per year) while the County as a whole has increased in population by 30.36% (1.01% per year) during the same period. Both jurisdictions experienced population increases between 2000 and 2010.

Election District Population Trends 1980-2010

Year	Area	Population	% change from previous
1980	District	9489	
	County	113086	
1990	District	9418	-0.7%
	County	121393	7.3%
2000	District	9854	4.6%
	County	131932	8.7%
2010	District	10774	9.3%
	County	147430	11.7%

Source: U. S. Department of Commerce, Bureau of Census

Availability of public facilities in the area.

Water/Sewer/Wastewater

The subject property is located within a W-1, Existing Service, area as delineated in the 2009 Water and Sewerage Plan. Water service in this area is provided by the City of Hagerstown, which also owns the distribution system. The City of Hagerstown Water Division offered no comment on the proposed development when sent the application for review.

The subject property is located within an S-1, Existing Service, area as delineated in the 2009 Water and Sewerage Plan. The County owns the collection system and handles the effluent treatment at the Conococheague Wastewater Treatment Plant. Nearly all adjacent properties are also designated S-1 and served by the same treatment facility.

The Washington County Department of Water Quality is the wastewater provider for this area and therefore the application was sent to the Department of

Water Quality for review and comment. The Department had no comments for this rezoning request.

Fire and Emergency Services

Fire and emergency services are provided to the subject property by the Volunteer Fire Company of Halfway located at 1114 Lincoln Avenue, Hagerstown, Maryland, approximately one mile away. A copy of the rezoning application was sent to the fire company as well as to the Washington County Division of Emergency Services. No comments were received.

Public Transportation

The area is served by Route 441 of the County Commuter. Route 441 travels between the Washington County Transit Center in Hagerstown and the Town of Williamsport. The route operates six days per week, between Monday and Saturday.

Schools

The subject property is within the districts of Hickory Elementary, Springfield Middle, and Williamsport High Schools. The requested zoning classification, Business, General, does not allow for residential development. Any impact on schools would be lessened because a BG use will not generate pupils.

Present and Future Transportation Patterns.

Highways

The subject property is located on Virginia Avenue/U.S. 11. The stretch of U.S. 11 that border the subject property is classified as Other Principal Arterial in the Transportation Element of the County's 2002 Comprehensive Plan, in terms of mobility and access characteristics. Other Principal Arterial roads are designed to carry greater than 20,000 vehicles in Average Daily Traffic. The County's classifications system is based upon the Federal Highway Functional Classification System, but modified to reflect local road conditions.

The subject property has approximately 135 feet of road frontage on Virginia Avenue, extending northeast from the intersection of Halfway Boulevard and Downsville Pike to the northwest. An existing right turn lane runs in front of the subject property on northbound Virginia Avenue for approximately 500 feet, primarily to provide access to the Valley Car Wash located immediately southeast of the parcel in question. A driveway spurs off the access road serving the car wash into the subject property, providing its only current access. There is

no middle turn lane on Virginia Avenue in the vicinity of the subject property, but there is ample shoulder space on both sides of the road allowing traffic to pass around vehicles turning across two lanes of traffic.

No new major roadway projects affecting capacity or traffic flow realignment are currently slated to occur in the immediate vicinity of the subject property on County, State, or federal roads.

Traffic counts from the Maryland State Highway Administration (SHA) were recorded at a select few points on the portion of Virginia Avenue between Halfway Boulevard and the I-70 overpass. These counts offer the most stable location during the 30-year time period surveyed below. The traffic volume data shown in the table is expressed in annual average daily traffic volumes (ADT).

Traffic Volumes 1985-2015

Year	Virginia Ave/U.S.11 between Halfway Blvd & I-70
2015	11,392
2010	12,530
2005	12,650
2000	14,250
1995	10,225
1990	14,575
1985	9,700

Source: Maryland State Highway Administration

Traffic volumes near the subject property reached their peak in 1990, at 14,575 ADT. Between 2000 and 2015, traffic on U.S. 11 near the property declined by 20%, dropping from 14,250 to 11,392 ADT during the 15-year period. ADT for 2016, not shown above, was 12,080, a 6% increase from 2015.

The State Highway Administration had no comment in its review of the rezoning application.

The zoning application was also sent to the Division of Plan Review and Permitting and staff has supplied the following comment regarding traffic impacts:

1. Any proposed development that has the potential to generate a significant amount of new traffic may require a traffic impact study as part of the Site Plan.
2. Access management is controlled by the Maryland State Highway Administration due to this being located on a State road. A new access onto a State road would require a Maryland State Highway Administration entrance permit and would need to comply with MD SHA requirements.
3. Determination of adequate site plan requirements (landscaping, buffering, parking, lighting, etc.) will be required and reviewed during the Site Plan stage.

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

The subject property is presently zoned Residential, Suburban and a reclassification to Business, General is requested. The purpose of the BG zoning district is: "to provide appropriate locations for businesses of a more general nature than might be expected to be found in a neighborhood."§ 12.0.

Select principal permitted uses within this zoning district include retail businesses, hotels, drive-in restaurants, veterinary clinics, auto sales and service facilities and more. New development in a BG zoning district must be served by public water and sewer facilities.

There is a mix of zones in the immediate vicinity of the subject property. South of Virginia Avenue, in the land that immediately abuts the roadway, is a mixture of commercial zoning classifications. Blocks of BG and BL (Business, Local) border the subject property to the south and west. The nearest active residential use proximate to the subject property on this side of U.S. 11 is located roughly 375 feet to the northeast. North of Virginia Avenue is primarily residential zoning classes of various densities, including Residential, Suburban (RS), Residential, Transition (RT), and Residential, Multifamily (RM).

Land use in the area surrounding the property follows naturally with the

zoning described above. Single-family residences are interspersed with commercial businesses such as the Valley Car Wash, Carmine's Italian Restaurant, and Dollar General.

According to the Washington County Historic Sites Survey, there is one historic site located within a 0.5-mile radius of the subject property. This site, the Charlton Farm, is located within a half-mile and is identified in the Maryland Historic Sites Inventory as WA-I-382 - late 19th century farmstead with 2-story brick house, frame bank barn and outbuildings on 27 acres. Given the mixed uses already in the neighborhood, a reclassification of this property would not create any greater incompatibility with the Charlton Farm than presently exists.

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

The 2002 Washington County Comprehensive Plan designates eight policy areas specific to Urban and Town Growth Areas. The subject property is located in the Commercial sub-policy area. The Comprehensive Plan provides as follows concerning the Commercial sub-policy area:

This classification encompasses all types of commercial uses. The areas zoned Business Local, Business General[,] and the High Interchange One areas primarily devoted to commercial land uses make up this policy area. Existing and anticipated land uses include retail shopping from malls down to neighborhood shopping centers, as well as restaurants, specialty stores and offices. Major policy areas are located around Valley Mall, Prime Outlets and the I-70 & MD 65 Interchange, along the Dual Highway and the I-70 & US 40 Interchange, Pennsylvania Avenue, Virginia Avenue, and the I-81 and Maugan's Avenue Interchange. [sic] Page 243.

Reclassification of the property to a Business General zone, with its attendant commercial uses, obviously promotes the commercial vision for this area as expressed in the Plan.

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

This factor is not applicable as the applicant's request is premised upon a mistake in the existing zoning classification.

Whether there was a mistake in the existing zoning classification.

The applicant contends that a mistake was made by the governing body in the continued assignment of the Residential, Suburban (RS) zoning classification. Prior to 2012, the subject property was zoned RS, in keeping with predominant residential and agricultural character that dominated land in the vicinity of the subject property during much of the 20th century. The applicant contends that the retention of the existing zoning classification in 2012 was a mistake principally because the property was designated as Commercial in the Land Use Plan of the 2002 Washington County Comprehensive Plan, is surrounded by other parcels zoned Business, Local (BL) and Business, General (BG), and has frontage along the heavily-travelled Virginia Avenue.

The evidence supports the assertions made by the applicant and was known to the local legislative body at the time of the 2012 comprehensive rezoning. The intended land use for the subject property in the 2002 Comprehensive Plan was Commercial. Nearly all of the land along Virginia Avenue in this area was given the same Commercial land use designation in the Plan, creating a buffer between Virginia Avenue and the Low Density Residential areas behind. BL and BG zones are found in the immediate vicinity of the subject property, particularly on the south side of Virginia Avenue where immediately adjacent parcels were rezoned from residential to commercial zones in 1981 (RZ-229), 1992 (RZ-92-11), and 1998 (RZ-98-13). The subject property has approximately 135 feet of road frontage on Virginia Avenue. These facts were known at the time of the 2012 Urban Growth Area Comprehensive Rezoning and should have been considered at that time. The evidence supports the conclusion that a BG classification was appropriate for the parcel and should have been assigned at that time.

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

The evidence clearly shows that the commercial Business General zone is appropriate and logical for the subject property. The property is located in a transitional mixed-use neighborhood, with other commercial uses in its immediate vicinity. It has ample road frontage along an established route that will support a commercial use. The commercial use of the property is envisioned by the Comprehensive Plan and it would be compatible with the existing neighborhood.

Conclusion


Having considered all of the testimony, evidence, and arguments presented, the facts and conclusions set forth in this Decision, and applying the Commissioners' "extensive local knowledge in determining zoning issues[,]" *Burgess v. 103-29 Ltd. Partnership*, 123 Md. App. 293, 301 (1998), this application for a zoning district reclassification is hereby approved

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND




Vicki C. Lumm, Clerk

BY: 

Terry L. Baker, President

Approved as to form and legal
sufficiency:



Kirk C. Downey
Deputy County Attorney