

**WASHINGTON COUNTY PLANNING COMMISSION
PUBLIC REZONING MEETING
October 17, 2016**

The Washington County Planning Commission held a public rezoning meeting on Monday, October 17, 2016 at 7:00 p.m. at the Washington County Circuit Court House, 24 Summit Avenue, Court Room #1, Hagerstown, Maryland.

Commission members present were: Chairman Terry Reiber, Drew Bowen, Jeremiah Weddle, Dennis Reeder and David Kline. Staff members present were: Washington County Department of Planning & Zoning - Stephen Goodrich, Director, Jill Baker, Senior Planner, Travis Allen, Comprehensive Planner, and Debra Eckard, Administrative Assistant.

CALL TO ORDER

The Chairman called the meeting to order at 7:00 p.m.

RZ-16-003 – VA Avenue LLC

--Staff Presentation

Mr. Goodrich presented a map amendment request submitted by VA Avenue LLC. The applicant is requesting a change in zoning from ORT (Office/Research/Technology) to IR (Industrial Restricted) on 32.78 acres of land located along the south side of Virginia Avenue east of and adjacent to I-70. The property is currently vacant of any development with a mixture of tree cover to the rear of the property with thinning vegetation and grassy areas closer to the road. Mr. Goodrich submitted the Staff Report for the record and briefly highlighted some of the information contained within the Report.

This property is located in the Halfway election district (#26), which has shown a 13.5% increase over a 30 year period. Population growth has not been steady or consistent. This property is located in the City of Hagerstown's public water service area and is classified as W-1, meaning service is existing; however, the site is not currently connected to the public water system. The property is located in the Washington County public sewer service area and is classified as W-3, meaning service is programmed for the future; however, the property is not currently connected. The Halfway Volunteer Fire Company provides fire protection services for the site. The property does not have a zoning classification that currently allows residential development and the requested zoning designation does not allow residential development. Therefore, there is no net change in the effect on the public school system.

Traffic volumes have increased on Virginia Avenue over the past 30 years; however, there is not a consistent pattern. Virginia Avenue will be the only point of access to this site. There is 1400 feet of frontage on I-70, but no access is permitted from there. Mr. Goodrich stated the exact use of the property is not known at this time; therefore, traffic generated from the site cannot be predicted or its impact on the road network. He noted that 35 acres of ORT zoning or 35 acres of IR zoning would permit a use that could produce significant traffic and it is highly likely there would be an impact on traffic. At the time the applicant proposes to develop the site, a site plan would be required with an analysis of traffic impacts. When an access is established to the property, changes would likely occur to the roadway and traffic patterns. There is a mixture of zoning designations surrounding the site, such as BL (Business Local), BG (Business General), IR (Industrial General) and several types of residential zoning. Most of the uses that exist in this area are residential; the commercial and industrial uses are widely scattered.

Mr. Goodrich noted that the ORT district is designed and intended to be a less intense, non-residential district. He provided a list of permitted uses for both the ORT zoning district and the IR zoning district for Commission members. The ORT zone makes specific statements of its intent for development of a campus-like setting and for the uses to be in harmony with the surrounding area. The applicant claims that a mistake was made in rezoning this site from BG (the zoning of the site before the Comprehensive UGA Rezoning in 2012) to ORT (current zoning). Mr. Goodrich briefly reviewed the criteria used for proving a mistake in zoning. The applicant claims that the County Commissioners failed to take into account that the property's boundaries are formed by heavily travelled transportation corridors. The applicant also believes the County Commissioners failed to take into account that "the amount of undeveloped land zoned ORT in Washington County far exceeded market demand".

--Applicant's Presentation

Mr. Zachary Kieffer, legal counsel for the applicant, addressed Commission members and began by stating there are no current plans for the property. He briefly reviewed Section 21.A of the Zoning Ordinance and the purpose of the ORT district, which is "to support the County's economic development effort in providing an environment that will attract medical, corporate offices, technology and research and development based businesses and institutions. The purpose is to promote and maintain desirable development activities in a setting that is in harmony with the surrounding areas and preserve open space by creating a campus-like setting." Mr. Kieffer expressed his opinion that an ORT district would have a flagship institution on the campus (i.e. Google, Apple, etc.). The ORT district also allows for some commercial uses that support the flagship single use. The district was created in 2002 and was proposed by and for the Potomac Edison Company to assist in its development of a property off of Downsville Pike. The subject parcel has access to the CSX Railroad and shares a boundary with I-70. Mr. Kieffer stated that the applicant believes that the surrounding permitted uses, proximity to the CSX rail line, a shared boundary with I-70, and the small woods that buffer the property from the surrounding residential uses are

all facts that should have been considered during the 2012 Comprehensive Rezoning. The applicant also believes there were certain assumptions that were not taken into consideration or the assumptions ultimately did not come to fruition. It was noted that the 2002 County's Comprehensive Plan designates this site as a commercial area, which is a deviation from the ORT zoning designation.

Mr. Kieffer briefly reviewed the difference in uses between the IR and the ORT zones. He noted that light manufacturing and warehouse support is permitted in the ORT zones; however, the light manufacturing is limited to 40% of the floor area of the building and warehouses must be physically attached to the principle permitted use and are limited to 20% of the gross floor area. The commercial uses are linked to the flagship use (such as child care centers, motels, etc.). The applicant believes that rezoning the property would be compatible with the existing uses in the area given the uses permitted in the IG zone and would allow for development of more viable uses outside of the limited uses permitted in the ORT zone and would provide additional relief from the buffers and setbacks required in the ORT district.

--Discussion and Comment: Mr. Kline stated that the subject parcel backs up to the Potomac Edison site, which he believes is an industrial site that is a storage yard for regional operations (poles, conductors, etc.). The PE site is located along the railroad for ease in deliveries and tractor trailers visit the site several times per day. He expressed his opinion that a corporate office would not want to locate next to this type of use.

--Public Comment

Brenda Embly, 17133 Virginia Avenue – Ms. Embly asked if the zoning is approved, how would it affect property taxes and property values. She expressed her opinion that until a use is determined for the site, the change in zoning should not occur.

Michael Boyer, 10816 Archer Lane – Mr. Boyer believes the change in zoning should be postponed until a use is determined for this site. He expressed his concern with regard to traffic issues and property values. He asked if there is any access to the site except from Virginia Avenue; if not, he believes there would be too much traffic for one access point. He believes that more property owners should have been notified of the public meeting.

Robert Clemson, 10728 Church Hill Road, Myersville – Mr. Clemson asked if a railroad spur is planned for this site. He believes there are too many unknowns at this time.

Daniel Clemson, 16909 Virginia Avenue – Mr. Clemson expressed his concern with regard to traffic issues; if the zoning is approved, there would be additional tractor trailers and more train traffic. He is concerned about his property value being lowered.

Kara Clemson, 16909 Virginia Avenue – Mrs. Clemson expressed her concern with regard to the safety of the residents in the area, especially children. She is also concerned about traffic issues.

--Applicant's Rebuttal

Mr. Divilbiss stated there would be no direct impact on neighboring property taxes because taxes are based on the assessment of each person's property. He noted that property values are difficult to predict; however, it is unlikely that the proposed zoning would have any impact on adjacent properties. Mr. Divilbiss stated that Route 11 traffic issues are a concern to the property owner as well as the State Highway Administration. He believes that traffic issues will be thoroughly reviewed and addressed before any development would be allowed on this site.

RZ-16-004 – ACH LLC

--Staff Presentation

Mr. Goodrich presented a map amendment request submitted by ACH LLC. The applicant is requesting a change in zoning from ORT (Office/Research/Technology) to HI (Highway Interchange) on 21.436 acres of land located in the southeast quadrant of the intersection of I-81 and US Route 40 across the street from First Data Corporation and Parkway Neurosciences. The parcel is currently vacant of any development and is covered by trees and scattered grassy areas. The entire southern boundary (over 1100 feet) is formed by Maryland Route 144 (West Washington Street Extended). Mr. Goodrich submitted the Staff Report for the record and briefly highlighted some of the information contained within the Report. The parcel is located in the Cedar Lawn Election District (#24), which has experienced a population increase of more than 50%, or approximately 460 people, over a 30 year period. The subject site is located in the Urban Growth Area (UGA) where public water and sewer services exist. The parcel has a W-1 classification, meaning water service exists in the area and a S-1 classification, meaning sewer service exists in the area; however, the parcel is not currently connected to either service. The City of Hagerstown provides both services to the site. Neither the current zoning nor the proposed zoning of the site allow residential development; therefore, there would be no net change in the effect on public school facilities.

Traffic counts from four different locations were included in the Staff Report from 1980 to 2015. There has been an increase in the average daily traffic around the property; however, there is no distinct trend or pattern from any particular location. The construction of Western Maryland Parkway in the mid-1990s may have had an effect on traffic patterns in the area. Mr. Goodrich stated that the bridges and a portion of I-

81 on the southern end of the Maryland portion will be widened starting in 2016. He noted there is no particular use planned for the property at this time. A list of permitted uses for both the ORT and the HI zoning districts were provided to Commission members. It was noted that the HI district allows many more uses than the ORT zone. All industrial uses permitted in the IR zone, including manufacturing, should be considered when reviewing this rezoning request.

The applicant claims that the County made a mistake in assigning the ORT zoning designation to this property during the 2012 Comprehensive Rezoning of the UGA. Mr. Goodrich again reviewed the criteria used for proving a mistake in zoning. The applicant claims that the County did not consider this parcel's proximity to and influence from the commercial area known as the Center at Hagerstown located on the opposite side of I-81 and US Route 40 or the amount of undeveloped ORT zoned land that far exceeds market demand.

--Applicant's Presentation

Mr. Jason Divelbiss, legal counsel for the applicant, stated that the property was zoned HI-1 prior to the comprehensive rezoning of 2012. He noted that during the comprehensive rezoning, the HI-1 and HI-2 zoning districts were both replaced by the current HI zoning district, which is the closest zoning designation to the previous HI-1 district. A mistake in zoning does not mean there is an accusation of poor judgement on behalf of the County in 2012; it focuses on "the adequacy and accuracy of the factual premises upon which the conclusion was reached in 2012 to rezone the property". The proximity of this parcel to the Center at Hagerstown, which is a big box development, is a key factor in the argument that a mistake was made in the zoning. Mr. Divelbiss stated that numerous parties from the retail sector have approached the property owner regarding this property. He compared this property's location to the Wesel Boulevard area, whereby you leave the highway (I-81) via a major route (Halfway Boulevard) and then turn onto a side road (Wesel Boulevard), which is predominantly a retail area in close proximity to the Valley Mall. He expressed his opinion that there was an abundance of ORT zoned property in 2012; and, the market for permitted uses allowed in the ORT district have not come to fruition. Citing a report dated October 10, 2010, Mr. Divelbiss quoted from the report that states, "Zoning in general is a tool to set a path for the future. Where areas are in a state of change, zones can be used to push the conversion along by assigning categories to encourage future development in a desired direction." He believes this was the philosophy and motivation for rezoning this property from HI-1 to ORT in 2012. The primary difference between the ORT and the HI zone is retail trade. Mr. Divelbiss assured the Commission that there is no intention or expectation that any light manufacturing uses permitted in the IR zoning district will occur on this property due to concerns with regard to compatibility with existing residential or office uses in the area; the land owner is focusing primarily on the retail component of the HI district.

Mr. Divelbiss contends that the requested HI zoning district is consistent with some of the policies of the Comprehensive Plan, primarily that it would place an HI district within the Hagerstown Growth Area boundary and in close proximity to the interstate as well as US Route 40. The applicant claims that the property is better suited for the principle permitted uses of the HI district as opposed to the medical business, technology or research campus-type uses anticipated by the ORT zoning district. Mr. Divelbiss stated that the property has been actively listed with four different real estate brokers since 2012 and attempts by the applicant to bring ORT uses to the property have been unsuccessful. According to the Comprehensive Plan, this property should be an Industrial Flex property. Mr. Divelbiss noted there is a wide spectrum of uses that could be permitted on this property.

--Public Comment

Debbie Kline, 1106 W. Washington Street – Ms. Kline expressed her concerns with regard to traffic issues, speeding, the increased number of tractor trailers, the congestion on the off-ramp of I-81, and people using Hellane Park. She presented, for the record, photographs of the posted speed limit signs in the area. She also discussed a new housing development on Merbaugh Drive and an island barrier constructed for that development by the State which prevents residents from turning left.

Jim Kline, 1106 W. Washington Street – Mr. Kline expressed his concern with regard to traffic issues, speeding and the number of trucks in the area. He also expressed his concern with regard to the island barrier that allows a right turn only. He believes that more property owners should have been notified of the public meeting.

--Applicant's Rebuttal

Mr. Divelbiss stated that the use of the property is not known at this time and therefore it is difficult to determine what the impacts will be in the area. However, it is anticipated there will not be a separate access onto West Washington Street, access will be onto Western Maryland Parkway and, therefore, will not add to significant traffic concerns.

RZ-16-007 – Pennsylvania Avenue 2003 LLC

--Staff Presentation

Ms. Baker presented a map amendment request submitted by Pennsylvania Avenue 2003 LLC for two adjacent properties located at 13520 and 13522 Pennsylvania Avenue to be rezoned from RS

(Residential Suburban) to BG (Business General). Each property is approximately 14,200 square feet in size and part of a residential subdivision approved in 1933 known as Sprigg's Delight. Ms. Baker reviewed the criteria used to justify the applicant's claim for a mistake in the zoning of the property. The Staff Report was submitted in its entirety for the record.

Ms. Baker stated that these properties are located within the Fountainhead Election District (#27), which has increased by approximately 44% over the past 30 years. Both properties are improved by single-family homes and are served by public water and public sewer. Water service is provided by the City of Hagerstown and sewer service is provided by the Washington County Department of Water Quality and the City of Hagerstown. Washington County owns the wastewater collection system and the effluent is treated by the City. Fire protection service is provided by the Longmeadow Volunteer Fire Company and rescue services are provided by Maugansville Community Rescue. The properties are currently in the Maugansville Elementary, Western Heights Middle and North Hagerstown High schools. Ms. Baker stated if the rezoning request is approved, the BG zoning district does not allow residential uses; therefore, there would be no net impact on school capacities.

Both parcels have existing access onto Pennsylvania Avenue (US Route 11), which is classified as a Principal Arterial highway according to the Functional Roads Classification Map. The purpose of higher order roads is to provide unhindered mobility for regional "through" traffic. Traffic counts along US Route 11 were taken from data published by the Maryland State Highway Administration, which shows that the average daily traffic has been fairly consistent between 1980 and 2015. Traffic data from 2008 was also collected from the County for Maugans Avenue and Longmeadow Road 8. Traffic counts on Maugans Avenue show an average daily traffic count of approximately 8,000 vehicles and 7,000 vehicles on Longmeadow Road. Ms. Baker stated there are no road improvement projects planned in the direct vicinity; however, there are some recommended improvements shown in the Comprehensive Plan and the County's Capital Improvements Program in the vicinity close to the subject properties. Public transportation is provided by the Washington County Commuter.

Ms. Baker noted that the purpose of BG zoning district is "to provide appropriate locations for businesses of a more general nature than might be found in a neighborhood....". The subject properties are bounded on the north by land zoned BG, on the south and west by lands zoned RS, and across Pennsylvania Avenue to the east by land zoned PB (Planned Business). There is only one historic resource located within ½ mile of the property, "Marbeth Farm", a two-story stone and concrete block farmhouse with a large frame bank barn constructed around 1850.

--Applicant's Presentation

Mr. Jason Divelbiss, legal counsel for the applicant, presented an exhibit for the record, which depicts the two parcels that are the subject of this rezoning request. He stated the two parcels are located between the northern gravel parking lot of the Sylvania Building and the Maugans Road/Pennsylvania Avenue intersection. The corner property at the intersection is owned by the Board of County Commissioners and the second property to the south of the intersection is owned by the applicant; both are currently zoned BG. Those properties were zoned BG in 2012. To the south on the opposite side of April Street is another home (north of the gravel parking lot) that was zoned BG prior to 2012.

The applicant claims that a mistake was made in the zoning of these two parcels in 2012 because the effects and influences that contributed to rezoning the two parcels just south of the intersection of Pennsylvania Avenue and Maugans Road to BG equally apply to the two parcels that are the subject of this rezoning. It was noted that the applicant did not own these properties at the time of 2012 Comprehensive Rezoning. The applicant also contends that a mistake was made in the zoning due to the influence of the commercial uses in the immediate vicinity. Mr. Divelbiss noted that in addition to the 14,000 vehicles per day on Pennsylvania, there are also approximately 8,000 vehicles on Maugans Avenue, which is another factor that should have been taken into consideration during the 2012 rezoning. Because these two properties face Pennsylvania Avenue, have access to and from Pennsylvania Avenue, and are oriented to Pennsylvania Avenue, the applicant contends that rezoning these two parcels to BG would be compatible with the surrounding neighborhood (the commercial areas at the intersection and across Pennsylvania Avenue). These properties do not have access to Sprigg's Avenue and will not add traffic into the residential development on Spriggs Avenue. The Comprehensive Plan specifies that these properties would be most appropriate for low density residential use; however, the Comprehensive Plan also specifies that the two properties at the corner should be low density residential. Mr. Divelbiss reminded members that the Comprehensive Plan is only a guide and does not mandate a specific use. He expressed his opinion that the requested zoning would be consistent with the following policies of the Comp Plan: sustain and expand existing businesses and industries; attract new firms in order to diversify the commercial and industrial base; and encourage development, revitalization or rehabilitation of existing developed areas or sights where appropriate.

--Public Comment

Patti Stine, 13517 Spriggs Road – Ms. Stine recited the purpose of the BG zoning and noted that the proposed zoning allows for buildings and signs up to 75 feet in height. She expressed her opinion that this is a residential area, not a commercial area. She noted that signs from other businesses in the area already have a negative impact on the residences on Spriggs Road. Ms. Stine expressed her concern with regard to traffic, the loss of mature trees and shrubs that help block noise, and the decline of property values in the area if this rezoning is approved.

Jim Kalk, 13518 Spriggs Road – Mr. Kalk stated that the neighborhood has been impacted by the expansion of Maugans Avenue and Longmeadow Road. He expressed concern with regard to traffic issues, safety, and possible accidents. He believes the two properties on the corner should be rezoned for residential uses instead of commercial uses.

Gary Martin, 13513 Spriggs Road – Mr. Martin expressed concern regarding safety issues for his family, noise and lighting issues from a commercial use and the decrease in property values for his residence. He discussed the concrete barrier on Pennsylvania Avenue that only permits a right-hand turn from the two properties in question.

Richard Hawkins, 13506 Spriggs Road – Mr. Hawkins agreed with Mr. Martin's comments. He expressed his opinion that there would not be a safe access into these properties.

Mark Binford, 13311 Briarwood Circle – Mr. Binford expressed concern with someone purchasing all of the properties along this stretch of Pennsylvania Avenue and constructing a building for business use. He is concerned for the residents on Sprigg Road if that happens. He discussed traffic related issues and potential problems, such as more accidents, if a large scale commercial use is put on this side of Pennsylvania Avenue.

Tim Light, 13318 Maugansville Road – Mr. Light noted that he owns several properties in this area. He expressed concern regarding traffic accidents at the intersection of Pennsylvania Avenue and Maugans Avenue. He believes ingress and egress from these sites would be a problem and there would be sight distance issues. He also believes the traffic count data is inaccurate.

Paul Spickler, 13502 Spriggs Road – Mr. Spickler expressed his concern with regard to traffic issues and accidents on Maugans Avenue. He noted that because of the median on Pennsylvania Avenue, these properties have right turn only egress and he believes that people would use April Street onto Spriggs Road as a shortcut to go north on Pennsylvania Avenue. He stated there are many empty commercial buildings in this area that should be re-used; more commercial space is not needed.

--Applicant's Rebuttal

Mr. Divebiss submitted Applicant's Exhibit #2 for the record. He explained that the entire west and east sides of Pennsylvania Avenue in this area are zoned for commercial uses with the exception of the two properties in question and the next two homes to the south. He believes that Spriggs Road is a residential area; however, Pennsylvania Avenue is not. The recent improvements to the Pennsylvania Avenue/Maugans Avenue intersection were completed due to the volume of traffic and the potential concerns and dangers discussed this evening. Mr. Divebiss believe that these factors contribute to the justification that these properties should be commercial, not residential. He pointed out there is a right in/right out access directly across the street at the Martin's shopping center; however, you do not typically see this type of access for residential development. He expressed his opinion that having more depth and combining these properties with the property just to the north would provide a safer access.

RZ-16-005 – Text Amendment

--Staff Presentation

Ms. Baker presented a Text Amendment to amend several sections of the Washington County Zoning Ordinance to update, correct, and clarify language pertaining to various aspects of zoning regulation. She briefly reviewed each of the proposed changes, which include but are not limited to the following: the Table of Land Use Regulations (Rural Areas), definitions, principle permitted uses in various zoning districts, etc.

Discussion and Comments: There was a brief discussion regarding the definition of a mobile home and a modular home. Mr. Reiber expressed his opinion that the definition of a grocery store needs to be better defined and expanded. Ms. Baker stated she would do more research and provide an update at the next meeting.

--Citizen Comments

There were no citizens present to make public comment.

RZ-16-006 – Text Amendment

Ms. Baker presented a Text Amendment to amend portions of Article 19 "H" Highway Interchange District and Article 22, Division IX of the Washington County Zoning Ordinance. The proposed language would clarify language in Article 19 regarding buffering and landscaping requirements as well as correct errors and redundancies existing in Article 22 Division IX related to landscaping requirements.


--Citizen Comments

There were no citizens present to make public comment.

ADJOURNMENT

Mr. Bowen made a motion to adjourn the meeting at 9:45 p.m. The motion was seconded by Mr. Kline and so ordered by the Chairman.

Respectfully submitted,



Terry Reiber, Chairman