

ORDINANCE NO. ORD-2018-01

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND
(RZ-17-009)**

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), A&W Plus, Inc. (contract purchaser), 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 Board and consisting of 11.74 acres of land, more or less, having an address of 12408 Learning Lane, Hagerstown, Maryland, and being situated on the south side of U.S. Route 40 and the west side of Learning Lane, and more particularly identified in the Ordinance Amendment Application found in the record herein.

The matter has been designated as Case No. RZ-17-009.

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-17-009 be, and hereby is, granted a RB – Rural, Business floating zone.

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 16th day of January, 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

BEFORE THE
BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

DECISION

Rezoning Case RZ-17-009

Property Owner:	Board of County Commissioners of Washington County, Maryland
Applicants:	A&W Plus, Inc. (contract purchaser)
Requested Zoning Change:	Rural Village (RV) to Rural Business (RB)
Property:	12408 Learning Lane, South side of US Route 40 and the west side of Learning Lane

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 requested zoning reclassification of the subject property. Since the requested reclassification is for a floating zone, the Board may grant the requested amendment without finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification.

Findings of Fact & Rationale

The property.

The subject property is the location of the former Conococheague Elementary School located at 12408 Learning Lane, Hagerstown, Washington County, Maryland. The subject property consists of 11.74 acres. The subject property is improved with a one-story brick former elementary school building of approximately 26,000 square feet. The subject property also contains a paved parking area as part of a looped entrance/exit arrangement on the south side of the school building. There is also a paved play area. The area of the subject property that is not occupied by the building and parking area is devoted to lawn and minimal landscaping and some remaining play equipment.

The subject property is generally flat. There are no streams or floodplains located on the subject property.

The report and recommendation of the Planning Commission.

Having determined that the Applicant’s application met the criteria set forth in Section 5E4.b of the Washington County Zoning Ordinance to establish an RB district, the Planning Commission recommended approval of the requested rezoning.

Population change in the area of the proposed change.

Population trends are evident in the charge below. The Wilson election district (#23) has seen an 83% increase in its population between 1980 and 2010. Washington County has experienced a 30% increase in population in the same 30-year period. The district’s share of the County’s total population has increased from 2.5% to 3.5% over the time period shown.

YEAR	AREA	POPULATION	% CHANGE FROM PREVIOUS YEAR
1980	District	2863	
	County	113086	
1990	District	3507	22.5%
	County	121393	7.3%
2000	District	3923	11.9%
	County	131932	8.7%
2010	District	5256	34.0%
	County	147430	11.7%

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

Availability of public facilities in the area.

Water and Sewer

The subject property is classified W-7 and S-7 in the Water and Sewerage Plan, indicating that there are no existing public health facilities in the area and the subject property is not programmed for public service. This is the expected classification in a location outside of any designated growth area. Expenditures by the County to provide public water and sewer facilities in rural areas are discouraged by the Water and Sewerage Plan except to resolve existing health issues.

The former school utilized an on-site system located in the southwest corner of the property. It will need to be evaluated for its ability to accommodate a new use

and the applicant will need to provide data on the expected population and effluent generated from the new use. Augmentation of the system may be necessary due to increased loading and changed regulations.

The Washington County Health Department will require an evaluation of the existing health facilities and definitive information on the future uses of the subject property before an approval to proceed with development would be granted. This would likely come at a time when a site plan is submitted, although it would be recommended that determination be made prior to that.

Emergency Services

Both fire and emergency response are provided by Williamsport companies. These stations are both located in the Town of Williamsport approximately four miles to the south.

Public Transportation

The property is not served by any public transportation.

Schools

If the requested rural Business district is approved, no residential development would be permitted and there would be no pupil yield from the development. Accordingly, there will be no impact to schools as a result of this reclassification.

Present and future transportation patterns in the area.

The subject property is located on the west side of Learning Lane, south of US Rt. 40. Learning Lane is classified as a Local Road by the Functional Road Classification map in the Washington County Comprehensive Plan. Local roads are designed and intended to provide individual property access and linkage to the larger transportation network. Learning Lane intersects US Rt. 40 approximately 500 feet north of the subject property's driveway. The speed limit is 25 mph. It is a dead end road and the County owns the right-of-way that is 60 feet wide and approximately 900 feet long. This portion has pavement wide enough for two lanes and has five dwellings and the former school on the subject property addressed to it. An unpaved one-lane extension of the road further to the south and east provides access for nine additional addresses.

The parcel also has 150 feet plus of frontage on National Pike, but there is no access existing or proposed at this location. In this vicinity, the National Pike is classified by the Functional Highway Plan as a Minor Arterial. In the area of the

subject property, it is two lanes with wide shoulders. The speed limit is 50 mph. There are no turning or bypass lanes at the Learning Lane intersection.

The Engineering Plan Review section of the County's Plan Review Department commented that a significant amount of new traffic might require a Traffic Impact Study as part of the site plan review. The applicant has estimated 50 trips per day for the new use, which will be further evaluated by the County Engineering Department and the State Highway Administration (SHA). Learning Lane will also be evaluated with regard to road condition and intersection adequacy. The Maryland State Highway Administration reviewed the rezoning application and offered no comments. A traffic impact study would be reviewed jointly by the County and the State. Its conclusions will determine any needed modifications to current access points, the design and location of new ones, if permitted, and the need for turning and bypass lanes to maintain safety on the highway.

Compatibility with Existing and Proposed Development in the Area.

Conococheague Elementary School, now closed, was established on the subject property in 1960, 13 years before zoning was adopted in Washington County. The subject property received a "Public" zone designation as did most schools and many other publicly owned properties during the 1973 adoption of the County's first zoning ordinance. In 1983, the "Public" zoning district was deleted from the Zoning Ordinance text and maps and all of the affected parcels received a designation appropriate for the existing use. Schools were permitted in the Agricultural zoning district, as were single-family dwellings and many other agricultural and rural uses. The school site and a majority of the surrounding area was zoned Agricultural in 1983. All uses established between 1983 and 2005 are consistent with the Agricultural zone and therefore compatible with each other.

During the Comprehensive Rural Area rezoning in 2005, several new rural zoning districts were created, adopted, and applied to rural properties. The requested Rural Business (RB) district was created at this time and applied to some selected parcels in this vicinity where businesses had already been established. The Rural Village (RV) zoning designation was also created and applied to the recognizable concentration of residential development in this area that included Conococheague Elementary School. The RV district is not an exclusively residential district and some small, limited service providers or shops of the type that might be needed or expected by a rural population are included as permitted

uses. These rural village locations often had historic place names that are maintained. This particular village was labeled Conococheague/Wilson.

The school and much of the surrounding residential development, nearby agricultural uses, and the few rural business locations appeared to have co-existed peacefully in this area since the 1960s. Any new uses allowed by the Rural Village and Rural Business districts have not caused any apparent compatibility issues. There are four existing single-family dwellings that front on US Rt. 40 immediately adjacent to this parcel on the north property line. Four additional dwellings on the east side of Learning Lane were built well after the school was established. There are nine additional dwellings on the private lane that extends to the south from Learning Lane that used this road as their only access to the highway. There is an adjacent mobile home park on the southwest corner of the subject property and countless residences on small and medium size lots all along US Rt. 40 and Walnut Point Road to the south of the subject property.

Another Rural Business district established as a result of this rezoning request would not be unusual in the neighborhood and would allow for the adaptive reuse of the existing building. The purpose of the RB district is to provide locations for uses and services needed by the rural population or to take advantage of a rural resource. Assisted living facilities, adult day cares, and medical offices are all permitted uses in the Rural Business district. However, any use permitted in the district is evaluated for its suitability to the specific site where it is proposed to be located and its compatibility with the existing uses around the subject property.

The RB district is also approved for the subject property based in part on a clear understanding of what the actual use will be and not on a broader assumption that any of the uses permitted in the district may be established. The applicant has clearly stated the proposed uses: assisted living facility in the former school building and new construction for adult day care and medical offices. All of these uses are permitted in the RB zone.

Within approximately ¼ mile of the subject property are four properties that contain resources listed in the County's Historic Inventory. They are listed and described below.

- | | |
|----------|---|
| WA-V-228 | 12302 Walnut Point Road, probable log house, mid 19 th century |
| WA-V-229 | 15602 National Pike, mid 19 th century brick house |
| WA-V-230 | 15709 National Pike, mid 19 th century brick Haner house |

WA-V-264 15651 National Pike, mid 19th century Haner farmstead containing frame house, barn, and other buildings

All four sites are recognized for their architectural merits as being vernacular or unusual examples of their type. The reclassification will not negatively impact these sites.

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

The Washington County Comprehensive Plan identifies two general areas for growth and development or preservation policy implementation: Urban or Town Growth areas and the Rural Agricultural Area. Large scale or intense development is not promoted in the rural policy area so that preservation of productive agricultural land, the agricultural industry, historic, cultural and open space resources can be the priority. Within the Rural Agricultural Area there are also Rural Villages. This designation identifies area of existing population concentrations and the intent to preserve and support them but without encouragement for any significant additional growth or infrastructure. The properties that are the subject of this rezoning application are located in the Rural Village and Rural Agricultural area.

The requested Rural Business floating zone designation is specifically recommended by the current Comprehensive Plan, adopted in 2002. Rural Business Policy Area recommendations from the adopted Comprehensive Plan are as follows: "No specific policy area is recommended to be created to address rural business development. It is recommended that few businesses be allowed, by right, in the rural policy areas. Most of the businesses that should be allowed by right would be associated with or support the agricultural industry. A new zoning classification called Rural Business is recommended as an overlay district and not a Euclidean zone. The Rural Business Overlay District would be permitted to be located anywhere in the Rural District not prohibited by other constraints in the Zoning Ordinance. Uses should be limited to those supporting tourism development or needed to provide services to the residential population. Procedures for implementation of a Rural Business overlay would include participation in a public hearing process as a rezoning request."

The purpose statement of the RB district is as follows: "The "RB" Rural Business District is established to permit the continuation and development of businesses

that support the agricultural industry and farming community, serve the needs of the rural residential population, provide for recreation and tourism opportunities and to establish locations for businesses and facilities not otherwise permitted in the rural areas of the County. The Rural Business District is established as a "floating zone" which may be located on any parcel in an Agricultural, Environmental Conservation, Preservation or Rural Village Zoning District."

The RB district is appropriate for this property and this neighborhood. The proposed use will support the continued residential use of the area and will provide necessary services to local residents.

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

The change or mistake rule does not apply to a floating zone reclassification.

Whether there was a mistake in the existing zoning classification.

The change or mistake rule does not apply to a floating zone reclassification.

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

The RB zoning designation request is appropriate for this location in the rural area and Rural Village vicinity. The proposed use is supportive of the residential uses already occurring in the area. The use of the existing school building as an assisted living facility is an appropriate adaptive reuse of the structure. Moreover, the proposed adult day care center and medical office uses would support the

Specific Criteria for a Rural Business District

Whether the proposed RB District is within any designated growth area identified in the Washington County Comprehensive Plan.

The property does not fall within any designated growth area. Therefore, this requirement is satisfied, and it is not a bar to the grant of the requested floating zone.

Whether the proposed RB District has safe and usable road access on a road that meets the standards under the "Policy for Determining Adequacy of Existing Roads."

The proposed RB District has safe and usable road access on a road that meets the standards under the "Policy for Determining Adequacy of Existing Roads." In

addition, a traffic study may be required where the proposed business, activity or facility generates 25 or more peak hour trips or where 40% of the estimated vehicle trips are anticipated to be commercial truck traffic. The property is served by adequate roadways. The need for additional traffic enhancements, if any, will be addressed during the site plan review process.

Whether on-site issues relating to sewage disposal, water supply, stormwater management, flood plains, etc. can be adequately addressed.

On-site issues relating to sewage disposal, water supply, stormwater management, flood plains, etc. can be adequately addressed during the site plan review process.

Whether the location of a RB District would be incompatible with existing land uses, cultural or historic resources, or agricultural preservation efforts in the vicinity of the site.


The location of an RB District would not be incompatible with existing land uses, cultural or historic resources, or agricultural preservation efforts in the vicinity of the subject parcels.

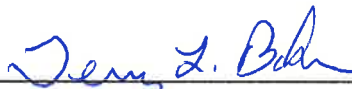
Conclusion

Having considered all of the testimony, evidence, and arguments presented, the findings of facts and rationale set forth in this Decision, and the Commissioners' "extensive local knowledge in determining zoning issues[.]"¹ this application for a zoning district reclassification is hereby granted.

ATTEST:

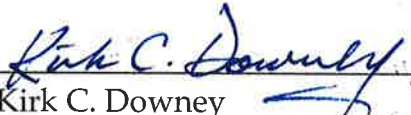
BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY,
MARYLAND


Vicki C. Lumm, Clerk

BY: 
Terry L. Baker, President

¹ *Burgess v. 103-29 Ltd. Partnership*, 123 Md.App. 293, 301 (1998).

Approved as to form and legal sufficiency:


Kirk C. Downey
Deputy County Attorney

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