

ORDINANCE NO. ORD-2018-12

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND
(RZ-17-010)**

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), the Washington County Department of Planning & Zoning, the Applicant, has petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), for a zoning reclassification and a zoning map amendment of properties owned by Tyler A. Hoffman, 13229 Dusty Lane, Hagerstown, Maryland; Joshua E. & Sierra N. Hoffman, 13237 Dusty Lane, Hagerstown, Maryland; Kenneth E. Stewart & Donna Certain, 13245 Dusty Lane, Hagerstown, Maryland; Charles L. & Jane E. Prince, 13253 Dusty Lane, Hagerstown, Maryland; and Seth M. & Lorraine M. Eby, 17009 Broadfording Road, Hagerstown, Maryland, all situated south of Broadfording Road and east of Dusty Lane, and more particularly identified in the Ordinance Amendment Application found in the record herein.

The matter has been designated as Case No. RZ-17-010.

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 properties which are the subject of Case No. RZ-17-010 be, and hereby are, granted an Agricultural (Rural) 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 22nd day of May, 2018.

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

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-17-010

Property Owner:	Tyler A. Hoffman, 13229 Dusty Lane, Hagerstown Joshua E. & Sierra N. Hoffman, 13237 Dusty Lane, Hagerstown Kenneth E. Stewart & Donna Certain, 13245 Dusty Lane, Hagerstown Charles L. & Jane E. Prince, 13253 Dusty Lane, Hagerstown Seth M. & Lorraine M. Eby, 17009 Broadfording Road, Hagerstown
Applicant:	Washington County Dept. of Planning and Zoning
Requested Zoning Change:	PI – Planned Industrial to A(R) – Agricultural Rural
Parcel(s):	Parcel 551-Lots 1-4 and Parcel 385
Acreage:	8.46 acres (P. 551 – Lot 1 – 1.79 ac.; Lot 2 – 1.77 ac.; Lot 3 – 1.64 ac.; Lot 4 – 1.41 ac.; Parcel 385 – 1.85 ac.)

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 consists of five (5) parcels located south of Broadfording Road about 2.5 miles west of Hagerstown. The Eby parcel, 17009 Broadfording Road, fronts on the south side of Broadfording Road and the other four (4) parcels have frontage on the east side of Dusty Lane, a private lane that extends southward from its intersection with Broadfording Road. These four (4) parcels are immediately south of the Eby parcel. The Eby, Prince, and Stewart parcels have existing dwellings on them. The remaining two (2) parcels are vacant. Dusty Lane also provides access to a farm complex located further south of

Broadfording Road on the parcel of land (Parcel 72 - 75 acres ±) which was subdivided to create all five (5) parcels that are the subject of this rezoning application. The intention of the owners of Lot 3 to build a dwelling revealed the conflict between the previously-documented intention for residential use of the properties and the discordance of the existing Planned Industrial zoning.

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 parcels are located within the Maugansville Election District (#13). Population trends are shown below. Election District #13 has seen a 22.3% increase in its population between 1980 and 2010. Washington County has experienced a 30% increase in population in the same thirty (30) year period. The district continues to hold about four percent (4%) of the County’s total population over the time period shown.

Election District Population Trends 1980-2010

Year	Area	Population	% change from previous
1980	District	5030	
	County	113086	
1990	District	5351	6.4%
	County	121393	7.3%
2000	District	5698	6.5%
	County	131932	8.7%
2010	District	6154	8.0%
	County	147430	11.7%

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

Availability of public facilities in the area.

Water and Sewer

Four of the five subject parcels have a water service priority classification of W-5 meaning that public water is planned to be available sometime in the future.

These four parcels have existing on-site wells serving the existing dwellings or a designated well location on the subdivision plat for the two lots that have yet to be developed. The remaining parcel, 17009 Broadfording Road, has a service priority designation of W-1 indicating that public water service is currently available. This parcel is also within a public water service district that is designated as Restricted, meaning that the service is being provided to mitigate a documented public health issue for existing development. Future connections or extensions of this service line are limited. This parcel is immediately adjacent to the public right-of-way where the water main is located. A W-1 and W-5 service priority designation is expected since the properties are currently within the Urban Growth Area (UGA) and public health facilities are appropriate for use in areas where development is encouraged.

The Eby parcel will retain its W-1 designation if rezoned because that parcel is currently served by the public system. The other four parcels could retain the W-5 designation and be connected to the restricted use water line or be changed to W-7 indicating the continued use of the existing and proposed private well on site. The lines that serve the parcel are already designated as Restricted because the line was installed to resolve a public health issue outside of the Urban Growth Area. There are many other existing dwelling on the north side of Broadfording Road, outside the UGA connected to this same restricted water line. The Health Department would have to determine if future development on these parcels would be required to connect to the public water line.

There are also fire hydrants along a portion of Broadfording Road connected to this water line.

All five of the subject parcels are not served by any public sewer facilities and have a service priority designation of S-5, indicating that public sewer service is planned sometime in the future. This status is the result of the parcels' current location within the UGA, where public utility connections are desirable and expected to allow urban densities and to make full use of the investments in public sewer infrastructure. The three parcels that have dwellings on them utilize on-site septic systems. The remaining two undeveloped parcels have had successful percolation tests and areas designated on the respective subdivision plat for septic system installations and repairs. Use of septic systems is permitted as an interim measure in areas where public facilities are planned for the future S-5 area. Rezoning of the property will result in the parcels being designated as

S-7 Service Priority during the next Water and Sewerage Plan amendment since public facilities are not planned outside of the UGA.

Fire and Emergency Services

The subject property is in the service area of the Maugansville Volunteer Fire Company. The station is located two miles north and east of the subject parcels, although actual vehicle travel distance is approximately three miles. The Community Rescue Service substation that provides emergency medical and rescue services operates from the same station in Maugansville.

Public Transportation

The property is not served by public transportation. Rezoning does not affect this status.

Schools

The subject parcels are located within the school districts of Maugansville Elementary School, Western Heights Middle School, and North Hagerstown High School. The current zoning of Planned Industrial would not permit any future residential development. If the zoning designation is changed to Agricultural (Rural), residential development could occur on the two vacant parcels. The two new dwellings which could be built after a zoning change to Agricultural (Rural) could generate 1.64 additional students in addition to the current or future students from the existing dwellings. An additional 1.64 students spread among three schools would not be expected to create capacity issues. An equal or greater number of additional students could result from a change in family size in any one of the existing dwellings.

Present and Future Transportation Patterns.

Highways

Broadfording Road is a county public road, classified as a Minor Collector. It is intended to provide connections between villages and neighborhoods. It also collects traffic from local roads and individual properties and funnels it on to other locations on the transportation network. The road has a hard-paved surface and is in good condition. Some locations are winding or hilly which is reflective of the 35-mph speed limit. The shoulders are very narrow and in many places, nonexistent. Between the western fringes of the urban area surrounding Hagerstown and Md. Rt. 63 (Greencastle Pike) on the west, it serves scattered rural residential development and many large farm parcels.

If the subject parcels were to be developed under the current Planned Industrial zoning, it would be difficult to predict the type of access needed because the district allows a wide variety of industrial uses, but the parcels' small size could restrict the feasible uses. Traffic studies may be required before additional access could be permitted. Road improvements, which could be significant depending on the type of use, could become the burden of the developer. Industrial development on the larger farm parcels surrounding the subject parcels would require site plan approvals where access and traffic concerns would be addressed through traffic studies and design standards for new access to public roads. Broadfording Road would be the least desirable point of access for new industrial development. Md. Rt. 63 and US Rt. 40 are more suitable for industrial traffic. Reclassification of the properties to allow for residential use eliminates these road adequacy concerns.

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 parcels are currently zoned Planned Industrial and are currently inside the UGA. If the zoning remains unchanged, nothing would change until these parcels and adjacent farmland would be proposed and approved for development uses allowed in the Planned Industrial zone. The existing single-family dwellings on three of the subject parcels would remain. The surrounding area is open farmland and similar single-family dwellings uses. Construction of two additional dwellings on the vacant parcels would not be incompatible with the existing neighborhood.

The surrounding area of the subject parcels is a mix of rural residential lots clustered along the public road frontage and at crossroads with larger farm parcels behind them—an arrangement typical of many other rural areas in Washington County. The residential lots are usually one acre or larger. There is little obvious commercial or industrial development until one travels approximately two miles in any direction. Two miles to the east, one would find the edge of the urbanizing area around Hagerstown, evidenced by the several commercial strip centers containing Best Buy, Wal-Mart, Home Depot, etc. Two miles to the south and west, a commercial/industrial area is emerging containing a Sheetz mixed retail use, a liquor store, and a Pilot truck stop further to the south. Two miles to the north and east is the village of Maugansville with

substantially denser residential development and accompanying commercial services.

The current development is clearly agricultural and rural residential. However, the UGA boundary is concurrent with Broadfording Road and Md. Rt. 63. All the area south of Broadfording and east of Md. Rt. 63 is in the growth area and is zoned for industrial uses. This was intentional, following recommendations of the Comprehensive Plan to apply that zoning to reserve the large tracts of undeveloped land for future industrial and employment-generating land uses. The area is served by State highways and connections to the interstate system and is within the planned service area of the County's Conococheague Wastewater Treatment Plant, which has capacity for such development. The land area on the north side of Broadfording Road is outside of the UGA and zoned Agricultural (Rural), where retention of rural character and preservation of agricultural land is the priority. The area west of Md. Rt. 63 is zoned Environmental Conservation and is outside of the growth area due to the corridor created by the meandering Conococheague Creek.

Historic Inventory Sites

There are three Historic Inventory sites within one-half mile of the subject parcels.

WA-I-334 is the identification number for the H.H. Martin House and property approximately ½ mile to the northwest on the north side of Broadfording Road, near the intersection with the Greencastle Pike. It is a 19th century, 3-part log, frame and brick house.

WA-I-314 is the second inventory site, located ½ mile to the southeast and is known as the Miller-Conrad house. It is a 19th century log house covered with wood siding. It was a tenant house to the dwelling on the third and adjacent site, WA-I-322.

WA-I-322 is known as the Tice-Eby farm. This farm complex is an 18th century two-story log house with a stone bank barn containing a date tablet inscribed with "1774."

Reclassification of the property to allow for existing and expanded residential use will not negatively impact the existing historic sites. In fact, such a use would be significantly less impactful than would establishment of Planned Industrial uses on the property.

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

In 1981, Washington County adopted a Comprehensive Plan that contained a generalized growth area boundary that did not follow property lines. Study committees evaluated each growth area and boundaries were further refined based on the studies. Eventually, growth area boundaries for the UGA were adopted and mapped.

The growth area boundaries were further refined and defined in the 2005 Rural Area and 2012 Urban Growth Area rezoning. Currently, there is an exact demarcation between urban and rural zoning districts which is how the UGA boundary came to be drawn along Broadfording Road, placing the subject five parcels inside the UGA and land on the opposite side of the road outside the UGA.

The subdivision plat for the two additional lots, now owned by Joshua Hoffman and Tyler Hoffman, did not exist at the time the comprehensive rezoning of the UGA was approved. The plat was submitted to the County's Plan Review Department on December 12, 2011, and approved on May 23, 2012.

The zoning classification on three of the subject parcels is consistent with the Comprehensive Plan because it was applied as a direct result of the Plan's recommendations. The creation of the two additional lots is not directly contrary to the Plan, but the use that was approved on the subdivision plat for the two lots clearly is not consistent with the Plan's intent for this area to be reserved for industrial development. Accordingly, a revision to the Plan is appropriate and will occur commensurate with the reclassification of the property.

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 decision to zone this area Planned Industrial was made without knowledge that two additional residential lots were under subdivision review and would soon come into existence. That approval, and the proposed use of the lots, would be contrary to the purpose of the Planned Industrial zoning district. The property owners' plans were approved by the County and then negated by the County. Had the County known of the intended subdivision action at the time the property was classified as Planned Industrial, another zoning designation would have been applied to the parcels.

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

Adjusting the UGA boundary to exclude the subject five parcels and changing the zoning from Planned Industrial (an urban designation) to Agricultural (Rural) will more closely align the zoning with the existing and intended residential uses of the parcels. The zoning and growth area boundary change needs to include all five subject parcels so an island of incompatible zoning will not be created. The Eby, Stewart, and Prince parcels need to be included to connect the Hoffman properties to the rural agricultural area on the north side of Broadfording Road. This change will not seriously impair the ability of the Planned Industrial land area that remains inside the UGA boundary to be developed as contemplated in the Plan and as effected with the last comprehensive rezoning. As such, the requested reclassification is appropriate for the subject property and will allow it to realize its intended and existing residential use.

Conclusion

Having considered all 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.

Adopted this 22nd day of May, 2018.

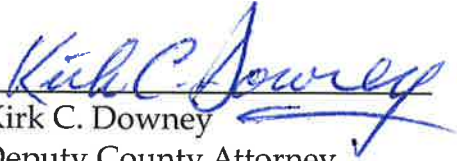
ATTEST:

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
Deputy County Attorney

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