

**ORDINANCE NO. ORD-2016-01**

**AN ORDINANCE TO AMEND THE ZONING MAP  
FOR WASHINGTON COUNTY, MARYLAND  
(RZ-15-004)**

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), Robert G. and Mary O. Rotz, the Applicants, have petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), for a zoning reclassification and a zoning map amendment of property known and designated as 9729 Garis Shop 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-15-004.

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-15-004 be, and hereby is, granted a Rural Business (RB) 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 9<sup>th</sup> day of February, 2016.

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, Room 202  
Hagerstown, MD 21740

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

**DECISION  
Rezoning Case RZ-15-004**

Property Owners:	Robert G. and Mary O. Rotz
Applicant:	Robert G. and Mary O. Rotz
Requested Zoning Change:	Agricultural (Rural) to RB – Rural Business floating zone with underlying Agricultural (Rural) classification
Property:	9729 Garis Shop Road, Hagerstown, MD 21740

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 property that is the subject of this rezoning request is a one-acre parcel identified as 9729 Garis Shop Road and located on the east side of Garis Shop Road between Wagaman Road on the north and Roxbury Road to the south. The subject property is located approximately 2 miles south of Funkstown. The dwelling located on the parcel is the Applicants' residence. The Applicants are also the owner/operators of Antietam Recreation, a recreational day camp located on a 31-acre parcel that is immediately adjacent on the eastern or rear parcel line of the subject property. The day camp also has a 30-foot panhandle to Garis Shop Road that is adjacent to the property

**The report and recommendation of the Planning Commission.**

The Planning Commission considered the Applicant's request using the criteria outlined in Sections 5E.4 and 5E.6(c)1-6 of the Zoning Ordinance for establishing a Rural Business district, supporting documentation submitted with the application, the Applicants' presentation during the public rezoning information meeting, and

the Staff Report and Analysis. The Planning Commission found that there was sufficient justification to recommend approval of the rezoning request.

**The Neighborhood**

The subject property is currently zoned Agricultural (Rural), as are most of the other parcels in the area. The Antietam Recreation parcel has the Rural Business floating zone with Agricultural (Rural) as the underlying zone. Another parcel located 9639 Garis Shop Road, approximately 800 feet south of the subject property, also has the RB floating zone over the Agricultural (Rural) district, but an active business use is not readily apparent. The neighborhood is a mixture of single-family residences on small parcels scattered among small patches of forest cover and agricultural fields bisected by Garis Shop Road. A visual survey of the vicinity reveals that there are other business uses along Garis Shop Road, including home-based operations. Commercial vehicles are sometimes present and some businesses are identified by small signs.

**Population change in the area of the proposed change.**

The subject property is located in the Funkstown Election District, #10. That District has shown large increases over the 30-year period, all larger than the growth in the County except between 2000 and 2010. Approximately two-thirds of Election District 10 is located in the Urban Growth Area and a large portion of the population growth represented in the table should be expected to have occurred there. The subject property is located in the portion of the election district that is not in the growth area where population increases have been more modest.

**Table 1: Population Trends 1980-2010**

Year	Area	Population	% change from previous
1980	District	7,801	19.60%
	County	113086	7.3%
1990	District	9,330	22.07%
	County	121393	8.68%
2000	District	11,390	6.80%
	County	131932	11.74%
2010	District	12,175	56.1%
	County	147430	30.4%

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

## **Availability of public facilities in the area.**

### **Water and Sewer**

The subject property is not served by any public water or sewer facilities nor is it located in any area programmed for public service. It has S-7 and W-7 service priority designations for sewer and water service in the Water and Sewerage Plan. The dwelling on the parcel utilizes an on-site well and septic system. The Applicants indicate that the day camp and the dwelling have a connected water system.

### **Emergency Services**

The Funkstown Volunteer Fire Company (Company #10) provides fire protection service for the subject property. Community Rescue Service on Eastern Boulevard provides emergency rescue service.

### **Public Transportation**

The County Commuter does not provide service to the subject property.

### **Schools**

The subject property is within the districts of Rockland Woods Elementary School, E. Russell Hicks Middle School, and South Hagerstown High School. The rezoning application request of the Rural Business floating zone will not generate residential development. The requested rezoning will not have an effect on school enrollments or capacities.

### **Present and Future Transportation Patterns.**

The subject property is located on the east side of Garis Shop Road about halfway between Wagaman and Roxbury Road. The property has a paved semi-circular driveway with connections to the public road at the northern and southern corners of the property. There is a dirt/gravel driveway that extends from the southern portion of the driveway, south of the dwelling, through the rear yard and on to the Antietam Recreation parcel. Antietam Recreation has a separate entrance onto the public road north of the subject parcel at 9745 Garis Shop Road. The road network provides connections to Alternate US 40 to the east and Sharpsburg Pike (MD Rt. 65) to the west. Garis Shop Road, Wagaman Road, and Roxbury Road are all designated as local roads by the Functional Road Classification map in the Comprehensive Plan.

The request rezoning does not include concrete plans for expansion of the business uses on the subject property; only justification for the zoning change due to the past use for business. At such time that additional uses on the subject property are proposed and site plans are reviewed, a determination will need to be made if potential additional traffic will trigger a need for a traffic study.

**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 a one-acre parcel with a dwelling on it. It is used for residential purposes but it also has accessory uses related to Antietam Recreation. The area surrounding the subject property is a mixture of rural residential development on small parcels clustered along the road. The neighborhood includes other small businesses (usually in conjunction with a residential use), open space with forest cover, and some farmland. The Maryland correctional facilities are located approximately 1 mile to the southwest. The entire area is zoned Agricultural (Rural) with the exception of the Rural Business floating zone on the 31 acres at Antietam Recreation and on a 1.5-acre parcel approximately 800 feet south of the subject property.

The purpose of the Rural, Business District is to permit the development of business that support the agricultural industry and farming community, serve the needs of the rural residential population, provide for recreation and tourism opportunities as well as establishing locations for businesses and facilities not otherwise permitted in rural areas of the County. The Rural, Business District can be established as a floating zone in an Agricultural (Rural), Environmental Conservation (EC), or Preservation (P) zone.

The Applicants have provided a detailed description of existing uses on neighboring properties as part of the justification supplied with the rezoning application. At the present time, there are no concrete plans for additional uses or changes to the uses that currently exist on the subject property. If the application for the Rural Business zone is approved, the Applicants indicate possibilities for additional uses on the subject property that are of the same nature as what currently exist at Antietam Recreation, day care, or recreation day camp activities. The RB use of the property would be compatible with the existing neighborhood.

The following historic inventory sites are located within a one-half mile radius of the subject property:

WA-I-275 – brick farmhouse and farmstead (east side of Antietam Creek)

WA-I-347 – Rose’s Mill Bridge

WA-I-413 – Rose’s Mill (remains)

WA-I-418 – Rocky Spring farm, brick and stone farmstead (east side of Antietam Creek)

The reclassification would have no detrimental effect on the identified historic sites.

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

The purpose of the Comprehensive Plan is to evaluate the needs of the community and balance the different types of growth and preservation to create a harmony between different land uses. This is accomplished through evaluation of existing conditions, projections of future conditions and creation of a long term plan that promotes compatibility while maintaining the health, safety, and welfare of the citizenry.

The Washington County Comprehensive Plan identifies two general areas for growth, development, and preservation policy implementation: Urban and Town Growth areas and the Rural Agricultural Area. Growth and development are encouraged in areas where infrastructure is available or can be extended efficiently, the designated growth areas. 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 can be the priority. The subject property is located in the Rural Agricultural area and the proposed reclassification would be consistent with the applicable provisions of the Comprehensive Plan.

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

Not applicable. The change or mistake rule does not apply to a “floating zone.”

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

Not applicable. The change or mistake rule does not apply to a “floating zone.”

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

The proposed change from Agricultural (Rural) to Rural, Business (RB) floating zone with underlying Agricultural (Rural) classification is consistent with the Comprehensive Plan for Washington County. This parcel has long been used in

concert with the adjacent 31-acre parcel. This reclassification will not create any incompatibilities with neighboring uses. It is consistent with the Comprehensive Plan, and it meets all requirements for reclassification.

### **SPECIFIC CRITERIA FOR A RURAL BUSINESS DISTRICT**

Section 5E.4 of the Washington County Zoning Ordinance outlines additional criteria to be considered when determining whether a Rural Business (RB) zoning classification should be affixed to a property. The referenced § 5F.3 criteria are as follows.

**1. The proposed RB District is not within any designated growth area identified in the Washington County Comprehensive Plan.**

The subject property does not fall within any designated growth area.

**2. The proposed RB District has safe and usable road access on a road that meets the standards under the "Policy for Determining Adequacy of Exiting Road." 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.**

There is no proposal for the current use on the subject property to change and there have been no concerns stated by reviewing agencies and no concerns of record that indicate the existing use has created traffic issues that need to be addressed. If a change in use is initiated, site plan review would allow the consideration of new road adequacy evaluations.

**3. Onsite issues relating to sewage disposal, water supply, storm water management, flood plains, etc. can be adequately addressed.**

The current use occurs without issue. A change in use or intensity would trigger additional review of adequacy of the subject property for water and sewer facilities and storm water management. There are no floodplains on the subject property.

**4. 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 proposed district.**

The 31 acres of existing RB zoning used as a recreation day camp since 1977 have demonstrated no incompatibilities. An additional acre of the same use immediately adjacent thereto will likewise create no incompatibilities.



Conclusion

Having met all of the criteria necessary for a reclassification, and having satisfied all criteria necessary for the application of the RB floating zone, the requested reclassification of the subject property to Rural Business (with an Agricultural (Rural) underlay) is hereby granted.


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