

ORDINANCE NO. ORD-2016- 11

AN ORDINANCE TO AMEND THE ZONING MAP  
FOR WASHINGTON COUNTY, MARYLAND  
(RZ-15-002)

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), Brian Kurtyka, Esq., on behalf of Heritage Huyett, LLC, has petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), for a zoning reclassification and a zoning map amendment of 90.5 acres of property located along the west side of Md. Route 64 approximately 0.1 mile north of US 40, owned by Heritage Huyett, LLC, and more particularly identified in the Ordinance Amendment Application found in the record herein.

The matter is designated as Case No. RZ-15-002.

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-15-002 be, and hereby is, granted a reclassification as follows: 29.09 acres, Business Local (BL) and 61.41 acres, Planned Industrial, as set forth on the Application and related materials filed herein.

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

Adopted and effective this 10<sup>th</sup> day of May, 2016.

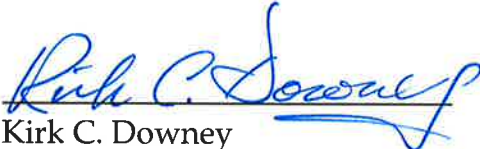
ATTEST:

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, Room 202  
Hagerstown, MD 21740

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

**DECISION**  
Rezoning Case RZ-15-002

Property Owner:	Heritage Huyett, LLC
Applicant:	Brian Kurtyka, Esq.
Requested Zoning Change:	RT – Residential, Transition to BL – Business Local (29.09 acres) & PI – Planned Industrial (61.41 acres)
Property:	West side of Md. Route 63 (Greencastle-Williamsport Pike) approximately 0.1 mile North of US Route 40 (National Pike)

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: the report and recommendations of the Planning Commission; population change in the area; the availability of public facilities; present and future transportation patterns in the area; compatibility with existing and proposed development of the area; the relationship of the proposed reclassification to the Plan; whether there was a mistake in the existing zoning classification; and whether there was a convincing demonstration that the proposed rezoning would be appropriate and logical for the subject property.<sup>1</sup>

**Findings of Fact and Conclusions of Law**

**The Property.**

The property that is the subject of this rezoning is boot-shaped and comprised of two parcels located along the west side of Maryland Route 63 (Greencastle-Williamsport Pike) approximately 0.1 mile north of US Route 40 (National Pike). The total acreage of the two parcels is 90.5 acres, further described as follows:

Parcel #1: Tax Map 36; Grid 15; Parcel 393. The parcel has a regular rectangular shape consisting of 82.18 acres and is currently unimproved. The property has a rolling topography that generally rises up from Md. Route 63 to a

---

<sup>1</sup> We need not consider whether there was a substantial change in the character of the neighborhood where the property is located since the last relevant comprehensive rezoning because the Applicant proceeded on the basis of mistake.

high point in the back third of the property. The rear of the property drops severely and borders the Conococheague Creek. The property consists mostly of grassland. The rearmost portion of the property along Conococheague Creek has a significant stand of forest.

Parcel #2: Tax Map 36; Grid 15; Parcel 561. This parcel also has a regular rectangular shape consisting of 8.32 acres and is currently unimproved. The topography is primarily flat with a gentle upward slope moving away from Md. Route 63.

Both properties are located within the Urban Growth Area. These properties from the westernmost boundary of the UGA along Md. Route 63.

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

The Planning Commission considered the applicant's claim that there was a mistake in the property's original zoning, the supporting documentation submitted with the application, the applicants' presentation during the public rezoning information meeting, the Staff Report and Analysis, and the verbal comments of interested parties provided during the public rezoning information meeting. The Planning Commission found that there was sufficient justification to recommend approval of the rezoning request based upon a mistake in the original zoning.

#### **The Neighborhood**

The property is located in the Huyett's Crossroads area. For the purpose of this zoning classification analysis, the neighborhood will be considered to include the area encompassed by circular area, centered on the property, with a radius extending ½ miles therefrom.

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

The property is located in the Wilsons Election District, #23. That District has shown a large population increase over the 30-year period between 1980 and 2010. Population increase in this election district have far outpaced the average growth rate of the County over the same period. This district has increased approximately 83.58% (2.79% per year) while the County has increased in population by 30.37% (1.01% per year) during the same period.

### Population Trends 1980-2010

Year	Area	Population	% change from previous decade
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**

###### Water:

Parcel #1 (Parcel 393) is delineated as a W-3 Programmed Water Service area Water and Sewerage Plan. Parcel #2 (Parcel 561) has a split delineation between W-1 Existing Service and W-1 Restricted Use Existing. There is an existing restricted use water line running along the same trajectory as Md. Route 63. Water service is available to the property.

###### Wastewater:

Both of the subject parcels are located within an S-3 Programmed Wastewater Service Area. There are existing sewer service lines within the vicinity of the parcel that will need to be extended to the property. The Washington County Department of Water Quality is the service provider. The developer would be responsible for extending the sewer to this property at their expense. Sewage from this site would flow into the Cedar Spring Pump Station.

##### **Emergency Services**

###### Fire:

Parcel #1 is located within the service area of the Williamsport Volunteer Fire Company (Company #2). Parcel #2 is located within the service area of the Maugansville Goodwill Fire Company (Company #13). The property is approximately 5 miles away from both fire companies.

Emergency Rescue:

Emergency rescue services are provided by Williamsport Volunteer Ambulance Service (Company #29). The property is approximately 5 miles away from the station.

**Public Transportation**

The property is not served by public transportation.

**Schools**

The requested classification change for the parcels to BL and PI would eliminate the potential for residential development. Therefore, reclassification and development of the property would not generate pupils or affect school capacities.

Present and Future Transportation Patterns

**Highways**

Both parcels have existing road frontage along Md. Route. This frontage lies within a designated restricted access corridor regulated by the Maryland State Highway Administration (SHA). There is currently an approved entrance onto Parcel #2 and an existing curb cut already constructed. Access to Parcel #1 is proposed to be via Lager Drive and a newly-constructed access road located behind the lands of McRand Huyetts Limited Partnership.

A traffic impact study will be required as part of the site plan approval process. The infrastructure serving the property is anticipated to have adequate capacity to serve the property if the reclassification is granted.

**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.**

Both parcels are currently zoned RT-Residential Transition. The applicant is requesting to rezone Parcel #1 to a mixture of BL and PI zoning and Parcel #2 to BL zoning. The purpose of the Business Local zoning district is to provide for routine daily shopping needs of the nearby neighborhood residents; development should be of an appropriate use, intensity, and scale compatible with the adjacent and surrounding residential neighborhood. The purpose of the PI zoning district is to foster industrial development in Planned Industrial Parks that can be built and operated with a minimum of nuisance to the community. Parcel #1 is bounded to the south by properties zoned RT and BL and bounded on the north by properties

zoned RT, EC (Environmental Conservation), and RB (Rural Business). Parcel #2 is surrounded on the north and west by RB zoning and on the south by RT zoning.

The area surrounding the subject parcels contain a mixture of residential, institutional, and commercial uses. The majority of the property is bordered by large-lot residential uses. There are also a scattering of institutional uses within a one-half mile radius of the subject parcels, including Huyetts Mennonite School, Emmanuel Baptist Church and school, and the WACOHU grange hall. Commercial uses dominate the intersection of Md. 63 and US 40 and radiate north to the boundary of Parcel #1.

The following historic sites listed on the Washington County Historic Sites Survey are located within a 0.5 miles radius of the proposed rezoning areas.

WA-V-263 – Stunkle-Keefer Farm, early 19<sup>th</sup> Century brick house and bank barn, located on an adjacent property.

WA-V-054 – Kershner-Summers-Groh House, late 18<sup>th</sup> Century limestone house, located on an adjacent property.

WA-V-425 – Huyett Public School #7 (currently Huyetts Mennonite School), constructed in 1924, located on an adjacent property.

WA-V-427 – Early 20<sup>th</sup> Century brick house, located approximately 800' from the subject property.

WA-V-420 – Early 20<sup>th</sup> Century wood frame house, located approximately 800' from the subject property.

WA-V-421 – Early 20<sup>th</sup> Century wood frame house, located approximately 800' from the subject property.

WA-V-422 – Early 20<sup>th</sup> Century brick house, located approximately 820' from the subject property.

WA-V-423 – Early 20<sup>th</sup> Century brick house, located approximately 820' from the subject property.

WA-I-846 – Early 20<sup>th</sup> Century formed concrete brick commercial building, located approximately 1200' from the subject property.

WA-I-852 – Early 20<sup>th</sup> Century brick house, located approximately 1800' from the subject property.

WA-I-853 – Early 20<sup>th</sup> Century wood frame house, approximately 2000' from the subject property.

Because the use of the property will not affect the above sites, the reclassification of the property will not negatively impact the 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. Both of the subject parcels are located in the Industrial Flex sub-policy area. The Comprehensive Plan offers the following recommendations for this policy area: "This classification reflects a hybrid policy area comprised of different types of economic development associated land uses. It is an outgrowth of the change taking place in the workplace as more and more jobs move from manufacturing to the hi-tech [sic] and service sectors of the economy." Pp. 242-243. The proposed mix of industrial and retail uses thus conform to the provisions of 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 alleges that a mistake was made in zoning the property RT. Before the last comprehensive rezoning, the property was originally proposed to be zoned PI, but it was given an RT designation upon the request of the then-owner who anticipated developing the property as the Powers Estate residential subdivision. That 118-unit subdivision was approved in 2007, but it was never recorded, and the approval lapsed. After the collapse of the housing market, the lender ended up in possession of the property. The local legislative body was not aware of the lapsed approval at the time of the rezoning, nor did it consider the effect that the housing market collapse would have upon the future development of the property. Therefore, a case has been made that there were facts existing at the time of the Urban Growth Area rezoning that were not known to the legislative body at the time of its decision. Had these facts been know, the local legislative body would likely have classified the property as something other than RT.

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

The proposed reclassification of the property is appropriate and logical. The reclassification of the 61.41 acres to PI would correct the mistaken RT zoning by restoring the majority of that parcel to the classification that was previously envisioned for the property, prior to its consideration as a site for a residential subdivision. The reclassification of the 29.09 acres to BL would be consistent with



the property immediately adjacent thereto. The uses allowed in the BL district will provide amenities to area residents and to employees working in the uses to be established on the PI sector. Moreover, there is other PI- and BL-zoned districts in the immediate environs of the property. The requested reclassification is consistent with the Plan and compatible with the existing neighborhood.

**Conclusion**

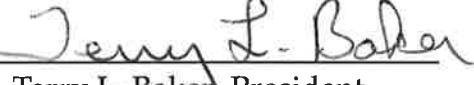
In summation, the requested reclassification is warranted for the property. The Applicant has satisfactorily satisfied each of the criteria necessary for a reclassification. Furthermore, in our opinion, this reclassification is appropriate and warranted for the property and the uses allowed by the reclassification will be compatible with the existing neighborhood. Accordingly, we hereby grant the requested reclassification.

Dated: May 10, 2016

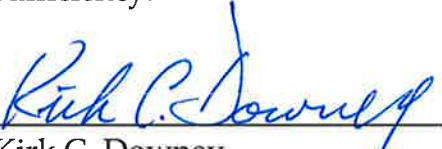
ATTEST:

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