

ORDINANCE NO. ORD-2017-11

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND
(RZ-16-003)**

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), VA AVE, LLC, 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 Applicant and consisting of 32.78 acres of land, more or less, situated on the south side of Virginia Avenue adjacent to Interstate 70, 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-16-003.

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-16-003 be, and hereby is, granted an Industrial Restricted (IR) 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.

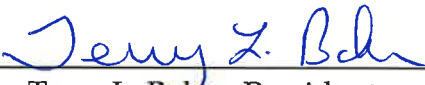
Adopted and effective this 8th day of August, 2017.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

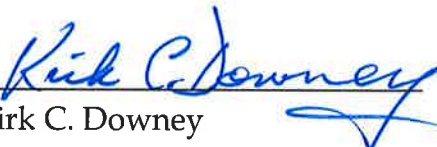


Vicki C. Lumm, Clerk

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

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

DECISION
Rezoning Case RZ-16-003

Property Owner:	VA AVE, LLC
Applicant:	VA AVE, LLC
Requested Zoning Change:	ORT – Office, Research and Technology to IR – Industrial, Restricted
Property:	South side of Virginia Avenue, adjacent to the east side of I-70

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 parcel of land which is the subject of this rezoning request is a vacant parcel located along the south side of Virginia Avenue (US Rt. 11), just east of where it passes under Interstate 70. It has 418' of frontage on Virginia Avenue and 1,400' of common boundary on the east side of Interstate 70. The parcel's southeastern boundary is approximately 1,480' along the CSX railroad line. The Potomac Edison Company offices and materials storage facility are located on the opposite side of this rail line.

The report and recommendation of the Planning Commission.

The Planning Commission recommended approval of the requested reclassification.

Population change in the area of the proposed change.

The subject property is located in the Halfway Election District #26. Population data for the district and Washington County are provided in the chart below:

Population Trends 1980-2010

Year	Area	Population	% change from previous
1980	District	9489	
	County	113086	
1990	District	9418	-0.7%
	County	121393	7.3%
2000	District	9854	4.6%
	County	131932	8.7%
2010	District	10774	9.3%
	County	147430	11.7%

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

The election district has shown a 13.5% increase over the 30-year period, but it has not been a steady or consistent increase. All of the district increases have been smaller than the growth in the County over the same period. The election district experienced a slight loss of population between 1980 and 1990.

Availability of public facilities in the area.

Water and Sewer

The subject property is located in the City of Hagerstown's public water service area and classified as W-1 meaning service is existing.

The subject property is located in a Washington County public sewer service area where treatment is provided at the County's Conococheague wastewater treatment plant. It is classified as W-3 which means that service is programmed for the future. The agency had no objection to the property rezoning.

Emergency Services

The Halfway Volunteer Fire Company provides fire protection services for the subject parcel. The fire station is located at 1114 Lincoln Avenue, approximately one mile to the east. The Halfway Volunteer Fire Company is also the emergency responder for this location.

Public Transportation

The subject property is served by the Williamsport Route (441) of the Washington County Transit System. The route runs between the Transit Center in Hagerstown and Williamsport and the majority of the trip is run on Virginia Avenue. The trip is made 12 times per day on weekdays and 11 times per day on weekends. The bus passes the subject property twice on each run.

Schools

The subject property is located in the attendance districts of Hickory Elementary School, Springfield Middle School and Williamsport High School. There are no students generated from the subject property now because it is vacant. The current Office, Research and Technology zoning district would not generate any school students because residential development is not a permitted use. The requested Industrial Restricted zoning also does not allow residential development so there would be no change as a result of a rezoning on public school facilities.

Present and Future Transportation Patterns.

Traffic volumes on Virginia Avenue (US Rt. 11) have increased since 1985, but without a consistent pattern. Overall there has been a 28% increase over the past 30 years. However, there was also a 29% decrease in the period between 1990 and 1995.

Year	U.S. 11/Virginia Avenue – between Halfway Blvd and I-70
2015	11392
2010	12530
2005	12650
2000	14250
1995	10225
1990	14575
1985	8875

Source: Maryland State Highway Administration

The State Highway Administration did not comment on the application.

Virginia Avenue fronts the property and is classified as an Other Principal Arterial (Non-Interstate). It is a well-traveled route in the Urban Growth Area and provides a direct connection between Hagerstown and Williamsport and

points beyond to the north and south. Other Principal Arterials in urban settings are expected to experience traffic of 20,000 ADT or greater. In most places along its route between Hagerstown and Williamsport, including at the frontage of this property, Virginia Avenue is a two-lane road with varying shoulder widths on each side. At some street intersections, there are multiple turning and through lanes. Several intersections are signalized.

Highway Plan (2002) Comprehensive Plan

I-70 widening is identified conceptually on the Highway Plan in the 2002 Comprehensive Plan. Since it would be a State project, there are no locally budgeted funds or plans for design, acquisition or construction for this project. The identified projects on the highway plan are not prioritized. It is also listed in the Recommendations for Highway Network Improvements at the end of the Transportation chapter of the Comprehensive Plan. I-70 widening is identified in the Hagerstown-Eastern Panhandle Metropolitan Planning Organization (HEPMPO) Long Range Transportation as an unfunded need. It is also identified in Maryland's Highway Needs Inventory for Washington County as an unfunded and unprioritized project. The need is recognized but no definite plans or budget exist at this time.

The section of Virginia Avenue from Halfway Boulevard to Williamsport has been identified in the current Comprehensive Plan as a candidate for sidewalks to improve the urban sidewalk system. The road shoulders in the area can accommodate pedestrians and bicycles, but they are not designated for such use.

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.

Surrounding properties contain a variety of uses and zoning districts. Virginia Avenue forms the northern boundary and frontage of the subject property. Across the street is some sparse older residential development, some of it on large parcels, and several large areas of forest. Immediately to the east of the subject property and south of Virginia Avenue is a concentration of Business, Local and Business, General zoning, comprising approximately 18 acres with a mixture of small commercial and residential uses. In this area and within 2,000 feet of the subject property is a car wash, a Dollar General store, and a small restaurant. Also to the east and on the north side of Virginia Avenue is a cluster

of single-family residences in Residential Suburban zoning and an area of Residential, Multi-family zoning. Hickory Elementary School is also located in this area. To the east and the southeast are the CSX railroad tracks and the Potomac Edison offices and storage yard in Industrial, General zoning, the only industrial zoning in the area. Further to the southeast is a large area of residential development in Residential, Suburban and Residential, Urban zoning. To the west, on the opposite side of I-70 is a substantial amount of residential development, including hundreds of dwelling units in the Tammy and Van Lear subdivisions in Residential, Transition zoning. A small Business, General zone containing an ice cream shop adjacent to the residential area and immediately adjacent to the west side of I-70.

Historic inventory sites within ½ mile of the subject property include:

- WA-I-382 – “Charlton Farm,” Mid-19th century, 2-story brick house, barn, outbuildings (.4 miles away).

Historic inventory sites with 1 mile of the subject property include:

- WA-I-356 – “Hopewell Hereford Farm,” 19th century, 2-story stone farmhouse, barn and outbuildings;
- WA-I-357 – “Salisbury,” National Register listed, 19th century, 2-story brick home, associated with Sprecher’s Mill (early 19th century grist mill);
- WA-I-414 – “Sterling House,” late 19th century, 2-story brick farmhouse; and
- WA-I-023 – “Tammany Manor,” National Register listed, late 18th Century brick dwelling with elaborate interior and exterior details, associated with Van Lear family, prominent early Washington County residents related to William Findley (Pennsylvania governor) and Benjamin Harrison (U.S. President).

All of the inventory sites noted are on opposite sides of the interstates from the subject property. Reclassification of the property will have no effect on the historic inventory sites.

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

The Comprehensive Plan assigns a Commercial land use designation to the subject property. The property is within the Urban Growth Area (UDA). The UGA is the target area for policies and regulations, including zoning

designations, which promote future growth and development served by publicly provided and maintained infrastructure. The Rural/Agricultural Area designation applies to all other areas of Washington County, where opposite but complementary policies and programs are intended to preserve agriculture, sensitive environments, heritage areas, and open space. Large scale or intense land uses are discouraged in the rural areas.

The subject property is currently zoned Office, Research and Technology (ORT). That district was created in 2002 to effect the recommendations of the 2002 Comprehensive Plan and to assist the Potomac Edison Property in the development of land around its offices as a technology business park. The district is purposely selective in the uses permitted to insure compatibility and to “promote and maintain desirable development activities in a setting that is in harmony with the surrounding areas, preserve open space by creating a “campus-like” setting, and promote architecturally attractive buildings and structures.” The district also has design guidelines for setbacks, landscaping, buffers, lighting, sign and architectural treatments to promote compatibility. It is designed to produce offices and other buildings to house high technology industry that would have a minimal effect outside of the structure in which it is found.

The ORT district was determined to be appropriate for this location, among the mix of uses noted above, by the Urban Growth Area Advisory Committee that recommended it during the Comprehensive Urban Growth Area rezoning approved in 2012.

The purpose of the Industrial, Restricted (IR) district is likewise to allow permitted uses that have a lesser effect on adjacent properties than traditional manufacturing uses normally would. There is Industrial, General zoning immediately adjacent to the subject property across the CSX railroad tracks. The mixture of uses in the neighborhood and the proximity of other IR property to the subject property supports a conclusion that an IR designation for the subject property would not run afoul of the policy 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 argues that the ORT zoning applied to the subject property in 2012 was a mistake because the zoning authority overlooked the property's proximity to railroad tracks and Interstate 70. The applicant also argues that the zoning authority over anticipated the need for ORT-zoned land.

We agree that a mistake has been demonstrated. The property has been marketed for years with no interest from perspective developers, and the property's bordering of a railroad line, an interstate, and an adjacent Industrial General zone probably will not result in the property's evolution into a "campus like" setting. We conclude that the 2012 application of the ORT classification was a mistake.

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

The subject property is undeveloped. It was zoned Business General before the 2012 application of the Office, Research and Technology zone. It is surrounded by major transportation corridors, including a railroad line, Route 11, and Interstate 70. It abuts Business General and Business Local zones to the east and at its westernmost point, and an Industrial, General zone to the south. Residential Transition zoning is found to the west and north. Residential Urban and Residential Suburban uses are found in the more distant extremities of the neighborhood.

Thus, the neighborhood is mixed-use, and transitional in the immediate environs of this property, with commercial areas to the east, an industrial area to the south, and residential uses, mostly, to the north and west. The residential zones are distinctly severed from the subject property by Route 11 and Interstate 70. The presence of the existing IG zone to the south and BL and BG zones to the east supports the reclassification of the property to the requested Industrial Restricted zone. The IR zone is less intense than the IG zone, but allows the uses found in the BL and BG zones. It will well serve as a transitional area, and its suitability for that purpose is far greater than its suitability as a site for a "campus-like" ORT development.

Conclusion

Having considered all of 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 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