

ORDINANCE NO. ORD-2018-07

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND
(RZ-17-004)**

Pursuant to the provisions of Section 27.1 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), Bluegrass Commercial, LLC and Michael W. Scott and Kelli S. Scott, 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 owned by the Applicants and consisting of 7.15 acres of land, more or less, situated on the northwest side of Md. Route 60 (Leitersburg Pike), west of Leitersburg, Maryland, and more particularly identified in the Ordinance Amendment Application found in the record herein.

The matter has been designated as Case No. RZ-17-004.

A public hearing was held on the application pursuant to Section 27.2 of the Ordinance, where the Applicants 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-17-004 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 10th day of April, 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

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

DECISION

Rezoning Case RZ-17-004

Property Owner:	Bluegrass Commercial, LLC (Parcels 131 & 174) Michael W. & Kelli S. Scott (Parcel 173)
Applicant:	Bluegrass Commercial, LLC (Parcels 131 & 174) Michael W. & Kelli S. Scott (Parcel 173)
Requested Zoning Change:	RV – Rural Village to RB – Rural Business floating zone
Property:	Northwest side of Md. Rt. 60 (Leitersburg Pike), west of Leitersburg

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 three (3) parcels of land which are the subject of this rezoning request (the “subject property”) are located north and west of the village of Leitersburg, fronting on the northwest side of Md. Rt. 60 (Leitersburg Pike) and its intersection with Leiter’s Mill Road. The Applicant, Bluegrass Commercial, LLC, is the owner of Parcels 131 and 174. Bluegrass Commercial, LLC also owns a parcel that is already zoned Rural Business; that parcel is surrounded by the parcels which are the subject of this rezoning request. Michael and Kelli Scott are the owners of Parcel 173, which is the third parcel comprising this rezoning request.

Parcel 131 is the westernmost of the three subject parcels. It has approximately 245’ of frontage on Leitersburg Pike and the rear property line bounds the Antietam Creek for approximately 200’. This parcel contains the remnants of a log dwelling and an additional concrete block out-building. It is wooded to the rear on the steeper slopes with widely scattered trees and scrub

vegetation on the front portion. This parcel also has an existing driveway onto Leitersburg Pike.

Parcel 174 has 130' of frontage on Leitersburg Pike and is about 280' deep and improved with a dwelling. The frontage has a tree line buffer along its entire length with an opening for an existing driveway to the highway. Portions of the yard surrounding the dwelling have had a gravel surface applied, and there is a connecting driveway to this parcel to the west where a contractor's equipment storage yard is located. The rear portion of the lot is partially wooded. This parcel is also contiguous to the third parcel in this rezoning request, Parcel 173.

Parcel 173 sits at the corner of Leitersburg Pike and Leiter's Mill Road. It has over 450' of frontage on Leitersburg Pike and over 400' of frontage on Leiter's Mill Road. It is the largest of the three parcels, containing approximately 4 acres. There is a dwelling on the property that faces Leiter's Mill Road. There are several outbuildings scattered about this parcel, including a residential garage.

The Applicant plans to expand the existing operations of Bluegrass Commercial, LLC and New Direction Utilities, Inc. on the expanded Rural Business zone, and potentially establish other uses on the subject property. New Direction Utilities plans expansion of its existing storage yard. Mixed-use buildings, including warehouse, retail, wholesale, and office uses, may be established on the enlarged RB zone.

The report and recommendation of the Planning Commission.

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

Population change in the area of the proposed change.

The subject property is in the Leitersburg Election District (#9). Population data for the district and Washington County are provided in the following chart:

Population Trends 1980-2010

Year	Area	Population	% change from previous
1980	District	3070	
	County	113086	
1990	District	2814	-8.3%
	County	121393	7.3%
2000	District	2896	2.9%
	County	131932	8.7%
2010	District	2918	0.8%
	County	147430	

Source: U. S. Department of Commerce, Bureau of Census 11.7%

The election district has shown a 4.9% decrease in its population between 1980 and 2010. Washington County has experienced a 30% increase in population in the same 30-year period. The population in this district neither compels nor prevents a reclassification of the property. The proposed commercial uses of the subject property will serve neighborhood residents and those beyond this particular election district.

Availability of public facilities in the area.

Water and Sewer

The subject parcels are not served by any public water or sewer facilities nor are they located in any area programmed for public water or sewer in the Water and Sewerage Plan. They have a W-7 and S-7 service priority designations for water and sewer service in the Water and Sewerage Plan, indicative and expected for their location in the rural area outside of any designated urban or town growth area in the adopted Comprehensive Plan. These designations indicate that no public facilities exist or are planned in the future.

The Washington County Health Department will require an evaluation of the existing health facilities and definitive information on the future uses of the subject parcels before an approval to proceed with development would be granted.

Emergency Services

The subject parcels are located less than ½-mile from the Leitersburg Volunteer Fire Company. Smithsburg EMS serves the subject parcels and is located 3.8 miles to the southeast. The reclassification will not overburden the emergency services companies serving the neighborhood.

Public Transportation

This area is not served by the Washington County Transit System and a reclassification of the property will not have an impact on public transportation operations.

Schools

The subject parcels are located within the attendance districts of Old Forge Elementary School and Smithsburg Middle and High Schools. Reclassification of the property to RB would mean that no residential development would be permitted. As such, there would be no pupil yield from the reclassified property.

Present and Future Transportation Patterns.

The subject parcels are located on the northwest side of Md. Rt. 60, Leitersburg Pike. It is a two-lane highway with wide shoulders. The speed limit in the area is 50 mph. The Maryland State Highway Administration has jurisdiction over the permission and design of current and future points of access to the highway. Each parcel that is the subject of this rezoning request has an access point onto the highway. They are all residential access points. If uses on the parcels would change to business activities, each parcel would have to be reevaluated and possibly redesigned, which would occur as part of the site plan review process.

Consolidation of the parcels with other adjacent business occupied parcels owned by the applicant may allow or require that access to the highway be consolidated into one point. A traffic impact study may be necessary if a significant amount of new traffic will be generated from new development if the site is rezoned. That determination will be made when a site plan is submitted. 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 may also dictate a need for turning and bypass lanes to maintain safety on the highway.

The Functional Road Classification map in the Washington County Comprehensive Plan indicates Md. Rt. 60 is a Minor Arterial highway. It is intended to provide intra-regional connectivity. Md. Rt. 60 is a direct link between Hagerstown and Waynesboro and the small communities in between, such as Leitersburg. The highway would be expected to experience an Average Daily Traffic (ADT) of 2,000 to 5,000 in rural areas and between 5,000 and 25,000 in an urban setting. Design specifications include a minimum 500-foot separation between new access points.

Leiter's Mill Road is a Minor Collector and under County jurisdiction for maintenance and access evaluation and design. This classification provides connection and facilitates travel among communities. It's intended to accommodate an ADT of 500 to 1,500 in rural areas and 1,000 to 3,000 in urban areas. The speed limit on this road is 35 mph and there is a one lane bridge approximately 1200 feet north of the Md. Rt. 60 intersection. The road is of sufficient width for the current traffic. There are four single-family dwellings located on the opposite side of the road from the rezoning site. Those dwellings use portions of the variable width road shoulders at their frontage for parking but there are little or no shoulders on the rest of the road.

Traffic Counts are available for two locations along Md. Rt. 60 that may have a bearing on analysis in this case. A ten-year period is represented in the table below. There does not appear to be a strong trend up or down. ADT at the western location shows an increase of 6% over the ten-year period but many year to year decreases in that period may detract from making conclusions about the validity of that increase. The count location at the PA state line shows a 10% decrease over the same period. When the percentage changes are converted to the actual number of vehicles, it is equivalent to a little more than 600 vehicles, either increased or decreased.

There is only one traffic count for Leiter's Mill Road which was 1,196 in 2016.

Year	MD 60, w/o rezoning site	MD 60, s/o PA state line
2016	11,070	5,370
2015	9,485	4,505
2014	9,254	4,394
2013	9,263	4,393
2012	9,302	4,412
2011	9,281	4,407
2010	9,460	4,480
2009	9,902	5,542
2008	9,701	5,431
2007	10,210	5,710
2006	10,452	5,992

Source: Maryland State Highway Administration

In short, reclassification of the property will allow further commercial development, which will be analyzed and regulated as part of the site plan review process. Traffic changes occasioned by the end uses will be adequately

addressed at that time.

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 currently contain dwellings. The unit on Parcel 131 is unoccupied and uninhabitable. It is listed in the County's historic sites inventory (WA-1-202), and it is the Applicant's intent that it will be removed from the parcel and reconstructed and restored in a new location. It is unclear whether the dwelling on Parcel 174 is still occupied as a dwelling. There are no apparent past or pending applications for use or structural changes that indicate that commercial or non-residential activities are occurring in the building. The parcel surrounding the structure is clearly supportive of the adjacent contractor's equipment storage yard. The existing dwelling on Parcel 173 also appears to be compatible with adjacent uses. There are four single-family dwellings directly across the street, a dwelling on the parcel immediately to the north and a large farm parcel with the expected complex of farm buildings adjacent and across Antietam Creek to the west. There are dwellings on adjacent parcels to the southwest. On the opposite side of Leitersburg Pike, there are residential properties, a church, and a small commercial operation below the intersection with Md. Rt. 62.

All three parcels are close in proximity to the rural village of Leitersburg. Leitersburg has a historic core and a clearly defined central square and street pattern that survives from its 18th century establishment. There is more modern development, including the subject parcels, included in the rural village zoning district applied to the village. It would be safe to conclude that the vicinity of the subject parcels is considered part of the village.

The RB district establishment guidelines specify compatibility as one of the evaluation factors. The district is also approved for the site 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 states that uses proposed for the sites include "Mixed Use Buildings-warehouse, retail, wholesale..." and business and professional offices. These uses are listed in the Table of Land Use Regulations in Article 3 of the Zoning Ordinance as permitted in the RB district. The specific use, its specific size and location on the parcel, the nature and intensity of the use including its hours of

operation, potential for noise and the effects of a predicted amount of traffic all contribute to a determination of compatibility.

A portion of the subject parcels requested to be rezoned to Rural Business is to accommodate the expansion of the current owner, Bluegrass Commercial, LLC, and user New Directions Utilities, Inc. The further intensification of the current use on the adjacent parcel must be balanced with maintenance of compatibility with other adjacent uses. The existing contractor's equipment storage yard was originally approved as a special exception in the Business, General district in 2004. The Rural Area comprehensive rezoning changed the zoning on the parcel to Rural Business and the use is considered permitted.

Leitersburg's historic core and more modern development is overwhelmingly residential. There are some commercial entities scattered widely in the village, including a tavern and landscaping business. The village also includes a church and a volunteer fire company and station. The village also has a scenic/historic overlook at its northeastern end. There is Rural Business districts and uses on properties adjacent to the rezoning parcels. The village of Leitersburg exists at this location due in part to the convergence of several transportation routes, Md. Rt. 60, Md. Rt. 418, and Md. Rt. 62. This reinforces its continued focal point as a location for more recent development and business uses to serve the village and its surrounding rural population.

Beyond the Rural Village and scattered Rural Business zoning, the zoning in the surrounding area is exclusively Agricultural. It contains a mixture of scattered residential development on small and moderate sized parcels and large farm properties. The agricultural zoning implements the County's intent to protect the area from intense development. The proposed reclassification and use would not be incompatible with the surrounding neighborhood.

There are three Historic Inventory Sites of relevance to this rezoning request. WA-I-202 is a log structure located on Parcel 131 which is one of the subject parcels. It is described as an 18th century log house and its construction is tentatively attributed to Jacob Leiter whose family is the namesake of the village. The construction date is estimated in the 1760's. Since then, the original construction has been modified, added to, and covered with layers of more modern materials. Following an application for a demolition permit in 2016, the property owner agreed to follow the Historic District Commission's recommendation to uncover and further investigate the nature of the building. The structure proved to be of significant historic value but is inconsistent with the owner's intentions for future business uses on the parcel which lead to the Applicant's intent to move and reconstruct it.

The second inventoried historic site is the historic portion of the village of Leitersburg. Its inventory site number is WA-I-174. In addition to being inventoried, the village of Leitersburg has been further evaluated and was listed in the National Register of Historic Places, a federal designation, in 2003. The village is listed because it is an intact example of an early 19th century rural Washington County village with a comprehensive variety of vernacular buildings as well as examples of Georgian, Federal, Greek Revival, Victorian, and Four Square architectural styles. There are over 140 contributing structures within the boundary of the listed district. The designation does not carry additional regulatory control unless an undertaking utilizes federal or state dollars or requires a federal or State license or permit. Parcels 131 and 173 are included in the boundaries of the National Register district and the buildings on them are considered contributing structures. Parcel 174 and the adjacent parcel where the equipment storage yard is located (but not part of this rezoning request) are not included within the National Register district boundary. The log building described as site WA-I-202 on Parcel 131 is also described on a separate form.

New development on these parcels may require a traffic study which results would dictate highway or access improvements. A permit for access location/reconstruction or highway lane reconfiguration could trigger additional review for the effects of those activities on a National Register site.

The Diller Farm, mentioned previously as being contiguous on the rear of Parcels 131 and 173 across the Antietam Creek, is also listed in the historic inventory. It is a mid-19th century farm complex that contains a farm house representative of three distinct construction periods and materials, a stone and brick barn, and a private cemetery. It is site WA-I-179.

Finally, site WA-I-174, a mid-19th century brick farm house, is also in the vicinity of the subject parcels. It is located on the parcel contiguous on the south and west of Parcel 131.

The purpose statement from the RB district reads 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 subject property is located in a mixed-use area, and its RB

classification will allow for the continued development of the subject property and its adjacent parcels into commercial uses that benefit the rural residential population and the agricultural industry and farming community. Moreover, the Applicant's intent to move and reconstruct the historic log house will preserve that unique historical and architectural artifact.

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. 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 resources can be the priority. Within the Rural Agricultural Area there are delineated 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 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. Implementation of that recommendation occurred with the approval of the Comprehensive Rural Area rezoning approved in 2005. It included a completely new article in the Zoning Ordinance text for the RB district and was established on the zoning map on several hundred existing rural businesses. The RB district was created specifically for this purpose as recommended by the Comprehensive Plan.

The Plan addresses Rural Business Policy Areas 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.”

For the foregoing reasons, the Applicant’s intended use, and the necessary reclassification to support it, are compatible with the Comprehensive Plan. There is an existing commercial use on the property which serves the rural residential populace and agricultural and farming operations. Reclassification comports with the provisions of the Plan and will allow further development, expansion, and intensification of the existing use.

Whether there has been a substantial change in the character of the neighborhood where 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 specific site and use requirements must be evaluated for their individual and unique characteristics and how they are appropriate and compatible with existing uses on surrounding parcels and the subject parcels.

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.

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, and the like can be adequately addressed and will be analyzed and regulated as part of 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. The commercial uses are intended to support the rural residential population and the agricultural and farming uses found in the area.

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[,]" this application for a zoning district reclassification is hereby granted.

ATTEST:

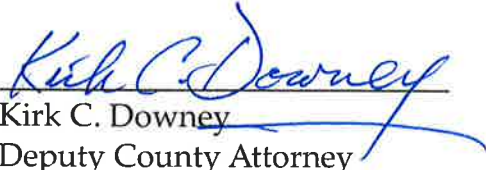
BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY,
MARYLAND

Vicki C. Lumm
Vicki C. Lumm, Clerk

BY: Terry L. Baker
Terry L. Baker, President

* *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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