

ORDINANCE NO. ORD-2019- 33

**AN ORDINANCE TO AMEND THE ZONING MAP  
FOR WASHINGTON COUNTY, MARYLAND  
(RZ-19-004)**

Pursuant to the provisions of Section 5E.6 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), JPK Properties, LLC, the Applicant, has petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), seeking to add a Rural Business floating zone to the subject area located on the south side of Breathedsville Road consisting of 2.86 acres.

The matter has been designated as Case No. RZ-19-004.

This application was reviewed by the Planning Commission, and the Planning Commission recommended that the application be approved.

The Board has considered all information presented at the public hearing and the recommendation of the Planning Commission. 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.

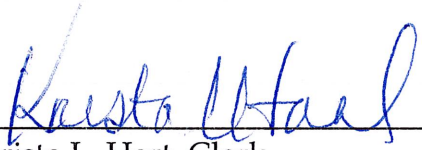
NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of County Commissioners of Washington County, Maryland, that the property which is the subject of Case No. RZ-19-004 be, and hereby is, granted a RB – Rural, Business floating zone.

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 3rd day of December, 2019.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

  
\_\_\_\_\_  
Krista L. Hart, Clerk

BY:   
\_\_\_\_\_  
Jeffrey A. Cline, President

Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_  
B. Andrew Bright  
Assistant County Attorney

Mail to:  
Office of the County Attorney  
100 W. Washington Street, Suite 1101  
Hagerstown, MD 21740

BEFORE THE  
BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

**DECISION**

Rezoning Case RZ-19-004

Property Owner:	JPK Properties, LLC
Applicants:	JPK Properties, LLC
Requested Zoning Change:	Agriculture Rural to Agriculture Rural with Rural Business (RB) overlay
Property:	South side of Breathedsville Road

Pursuant to Md. Code Ann., Land Use § 4-204 and Washington County Zoning Ordinance § 27.3, the Board of County Commissioners makes findings of fact with respect to the requested zoning reclassification of the subject property. Since the requested reclassification is for a floating zone, the Board may grant the requested amendment without finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification.

**Findings of Fact & Rationale**

**The property.**

The subject property is located on the south side of Breathedsville Road approximately 2800 feet west of Lappans Road. The parcel contains 2.86 acres of land and is currently improved with an accessory building used for storage. The parcel is located in the Rural Area of the County as designated by the Comprehensive Plan and is currently zoned Agriculture Rural.

**Eligibility for the property to receive the RB floating zone designation.**

For a property to be eligible to receive the RB floating zone designation, there are four basic criteria that first need to be met:

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

Existing Roads". In addition, a traffic study may be required where the proposed business, activity, or facility generates twenty-five (25) or more peak hour trips or where forty percent (40%) of the estimated vehicle trips are anticipated to be commercial truck traffic;

3. Onsite issues relating to sewage disposal, water supply, stormwater management, floodplains, etc. can be adequately addressed; and
4. The location of an RB District would not be incompatible with existing land uses, cultural or historical resources, or agricultural preservation efforts in the vicinity of the proposed district.

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

The Planning Commission took up the application at its regular meeting held on September 9, 2019, to recommend approval of Map Amendment RZ-19-004. The Planning Commission considered the application, the supporting documentation submitted with the application, the applicant's presentation, the public comment during the public rezoning meeting, and the Staff Report and Analysis and opined to this body that there has been adequate evidence submitted to meet the various criteria that would support the application of a Rural Business floating zone to the subject area. The Planning Commission made detailed recommendations to this Board. This Board conducted a public hearing on December 3, 2019 at which the Board heard testimony and other documentary evidence from the Applicant and Applicant's attorney, which corroborated the findings and recommendations of the Planning Commission. No person appeared in opposition to the application. Accordingly, the recommendations of the Planning Commission are substantially restated and adopted in this Decision.

In accordance with Section 5E.6 of the Washington County Zoning Ordinance the procedure for creation of a new RB zoning district includes the Planning Commission making a recommendation to the Board of County Commissioners on six points of interest, as outlined and analyzed below.

### **The proposed district will accomplish the purpose of the RB District.**

The purpose of the Rural Business floating zone is "...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 recreational and tourism opportunities, and to establish locations for businesses and facilities not otherwise permitted in the rural areas of the County...".

According to the applicant's justification statement, the purpose of requesting an RB floating zone on this property is to establish a business office and equipment storage building for an existing excavation and construction business. The current property owner, Mr. Keplinger, currently has an existing business located on the Sharpsburg Pike and would like to relocate the business to this new location.

The property currently contains an existing three thousand six hundred (3600) square foot accessory structure. The previous property owner obtained approval from the Board of Zoning Appeals (Ap2015-003) to establish an accessory use on a property without a principle permitted use. The stated intention of the building was for residential storage of vehicles and recreational vehicles. As part of this rezoning request the current property owner is proposing to use the existing structure and construct an additional three thousand six hundred (3600) square foot building as part of the business.

**The proposed site development meets criteria identified in Section 5E.4 of this Article [Article 5E – Rural Business District].**

- a. The proposed RB District is outside of any designated growth area.

The subject parcel is in fact located outside of any designated growth area boundary as illustrated in the adopted Plan for the County.

- b. The proposed RB District has safe and usable road access.

The property has an existing access onto Breathedsville Road which is owned and maintained by the County. The applicant states that the business will generate a small number of new trips and therefore the existing road is safe and usable for the proposed use.

- c. On-site issues relating to sewage disposal, water supply, stormwater management, etc. can be adequately addressed.

According to the preliminary site plan submitted with the application there is a platted septic reserve area on the property as well as an existing well. The preliminary site plan does not address stormwater management; however, the limited amount of disturbance should be capable of an on-site management plan.

d. The location of the RB District would not be incompatible with existing uses, cultural or historic resources or agricultural preservation efforts.

There are three historic resources documented within a one-half mile of the proposed rezoning area as outlined below. There appears to be no negative impact on the physical or contextual appearance of these historic resources.

WA-II-284 – Log and Stone House – early 1800s house that provides an example of the County’s vernacular architecture. Located approximately five hundred (500) feet from subject property.

WA-II-280 – Woodley Farm – early 1800s farm complex that provides an example of agricultural practices in the County. Located approximately two thousand (2,000) feet from the subject property.

WA-II-101 – The Everly House – 1800s log home that provides an example of the County’s tradition of log homes in this time frame. Located approximately one thousand three hundred (1,300) feet from the subject property.

The property is located approximately seven hundred (700) feet from an existing Rural Legacy easement commonly referred to as the Woodley Farm. The property is also located within the County designated Priority Preservation Area (PPA) therefore additional land preservation easements may occur in this area. While located within the PPA the subject property would not meet the general criteria to obtain a land preservation easement due to existing development and the size of the property.

**The road providing access to the site is appropriate for...the proposed RB land use.**

This issue has already been discussed in other portions of the Staff Report. There appears to be good access already existing to the site and there are no proposals to alter the access point.

**Adequate sight distance along roads can be provided at proposed point of access to the site.**

The applicant has not provided this information as part of their application. However, the point of access for this parcel is existing and is assumed to meet adequate sight distance standards for residential use. This may be reevaluated as part of the final site plan process due to the commercial nature of the proposed use.

**The proposed landscaped areas can provide adequate buffering of the proposed RB land use from the existing land uses in the vicinity.**

The property is currently surrounded on three (3) sides by actively farmed agricultural land. There is an existing farmhouse located approximately four hundred (400) feet from the rear property line of the subject property. There is an existing line of mature trees that exist along the south and southeast edges of the property that provide some visual barrier. To the east, the property is immediately adjacent to a vacant residential lot that is also owned by JPK Properties, LLC. There is no landscaping buffer between the two properties nor is one proposed. It is assumed that because the same entity owns both parcels, the applicant does not intend to add a buffer between the two properties.

**The proposed land use is not of a scale, intensity or character that would be incompatible with adjacent land uses or structures.**

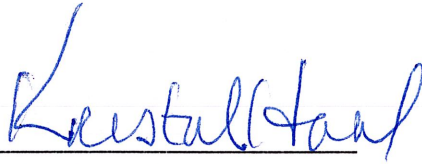
In their justification statement the applicant contends that the proposed use of this property as a storage facility for excavation and construction equipment is compatible with existing land uses in the area. The business is expected to be most active between early spring and late fall to coincide with a typical construction season. Employees and customers of the business are not expected to use this site. In addition, the applicant claims that the structure to be built will be in the same size and style of typical farm accessory buildings already existing in the area.

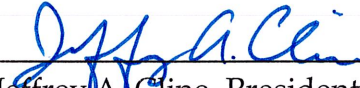
### **Conclusion**

Based on the information provided by the applicant in the initial application, further analysis by Staff, and evidence presented at the public hearing, the Board of County Commissioners believes that there has been adequate evidence submitted to meet the various criteria that would support the application of a Rural Business floating zone to the subject area.


ATTEST:

BOARD OF COUNTY COMMISSIONERS  
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MARYLAND

  
\_\_\_\_\_  
Krista L. Hart, Clerk

BY:   
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Jeffrey A. Cline, President

Approved as to form and legal sufficiency:

  
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B. Andrew Bright  
Assistant County Attorney