

ORDINANCE NO. ORD-2020-05

AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND
(RZ-19-006)

Pursuant to the provisions of Section 18.5 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), Heritage Huyett LLC, the Applicant, has petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), seeking to designate all 90.34 acres of its parcel located on the west side of MD 63 (Greencastle-Williamsport Pike), approximately 0.1 mile north of US 40 (National Pike) as Planned Industrial (PI) .

The matter has been designated as Case No. RZ-19-006.

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 conducted on February 11, 2020, 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-19-006 be, and hereby is, designated as Planned Industrial (PI).

IT IS FURTHER ENACTED AND ORDAINED that the official Zoning Map for Washington County 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 March, 2020.

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-19-006

| | |
|--------------------------|---|
| Property Owner: | Heritage Huyett LLC |
| Applicants: | Heritage Huyett LLC |
| Requested Zoning Change: | BL – Business Local (29.57 acres) and PI – Planned Industrial (60.77 acres) to PI – Planned Industrial |
| Property: | West side of MD 63 (Greencastle-Williamsport Pike), approximately 0.1 mile north of US 40 (National Pike) |

Pursuant to Md. Code Ann., Land Use § 4-204 and Washington County Zoning Ordinance § 27.3, the Board of County Commissioners of Washington County makes 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 which were made in this case, and the relationship of the proposed reclassification to the Comprehensive Plan. After considering the recommendation of the Planning Commission and hearing evidence presented by the Applicant at a Public Hearing on February 11, 2020, with no evidence or witnesses presented in opposition, the Board will grant the requested zoning map amendment and makes the following Decision, which largely adopts the findings of the Planning Commission.

Preliminary Consultation:

The stated intent of the Planned Industrial (PI) zoning district is to assign this zoning to *“large single parcels or an assemblage of parcels for planning, re-subdivision, and development of a cohesively designed industrial park with multiple lots, interior*

streets, and other amenities"¹. To assist developers and citizens in planning a cohesive and compatible development, applicants for new PI zoning districts are required to first hold a preliminary consultation with the Planning Commission that outlines the intent of the developer and gives an early opportunity to supply guidance and feedback on the proposal.

On June 20, 2019 a Preliminary Consultation was held with the property owner and developer, Heritage Huyett LLC. A copy of the meeting summary is included within this report as Exhibit 1. This consultation has not yet been presented to the Planning Commission for their review and comments.

Background and Findings Analysis:

Location and Description of Subject Properties

The subject parcels are 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 that are the subject of this rezoning case is 90.5 acres and is further described as follows:

Subject 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 63 to a high point in the back third of the property. The rear of the property drops severely and borders the Conococheague Creek. The property consists of mostly grassland. The rearmost portion of the property along Conococheague Creek has a significant stand of forest.

Subject 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 up away from MD 63.

¹ Washington County, Maryland Zoning Ordinance, Article 18, Section 18.0

Both properties are located within the Urban Growth Area that surrounds the City of Hagerstown and the Towns of Williamsport and Funkstown. These properties form the westernmost boundary of the UGA along MD 63.

Population Analysis

To evaluate the change in population, information was compiled from the US Census Bureau over a thirty-year time frame. A thirty-year horizon was picked to show long term population trends both in the election district of the proposed rezoning, as well as the overall trends of the County.

Both of the properties that are the subject of this rezoning are located in the Wilsons Election District, # 23. As shown in Table 1 below, this district has shown large increases in population over the thirty-year time frame between 1980 and 2010. Population increases within this election district have far outpaced the average growth rate in the County as a whole of this thirty-year time 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.

Table 1: 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: US Census Bureau

Availability of Public Facilities

Water and Sewerage

The adopted Water and Sewerage Plan for the County establishes the policies and recommendations for public water and sewer infrastructure to help guide

development in a manner that helps promote healthy and adequate service to citizens. By its own decree, the purpose of the Washington County Water and Sewerage Plan is "...to provide for the continued health and well-being of Washington Countians and our downstream neighbors..."² This is achieved through implementing recommendations within the County Comprehensive Plan and the Water and Sewerage Plan to provide for services in a timely and efficient manner and by establishing an inventory of existing and programmed services.

Both properties are located within the County designated Urban Growth Area that surrounds the City of Hagerstown as well as the Towns of Funkstown and Williamsport. Both parcels are currently unimproved. Subject Parcel #1 previously had two dwelling units on the property that have since been demolished.

Water:

Subject Parcel #1 (Parcel 393) is delineated as a W-3 Programmed Water Service area in the 2009 Water and Sewerage Plan. Subject Parcel #2 (Parcel 561) has a split delineation in the 2009 Water and Sewerage plan W-1 Existing Service and W-1 Restricted Use Existing. There is an existing restricted use water line that runs along the same trajectory as MD 63. It is unclear if there had been public water service to either or both of the now demolished dwellings. The City of Hagerstown is the service provider.

This application was sent to the City of Hagerstown Water Department for review and comment. Kathy Maher from the City of Hagerstown Department of Planning and Code Enforcement has offered the following comments:

"The City has a pre-annexation agreement for water service for the Powers Estate when it was going to be housing. We honor those agreements even when the plans change under current policy. There are parts of this area behind Sheetz that are not covered by a pre-annexation agreement however and this area is outside the MRGA. No guarantees of City Water Service for properties outside the MRGA. The City's Water & Wastewater Policy has an exception for economic development projects outside the MRGA which are sanctioned by the County and

² Washington County, Maryland Water and Sewerage Plan 2009 Update, Page I-2

supported by the City, but our Mayor and City Council have put those requests on hold while the City and County staff work through the current MRGA prioritization discussions. If the proposed MRGA boundary adjustments are made in the City's Comp Plan, the goal would be to include this area. If agreement cannot be reached at the elected level on the areas that would be removed from the MRGA so new areas can be added, City staff cannot provide any assurance that the Mayor and City Council will move forward with the MRGA adjustments."

Wastewater:

Both parcels are located within an S-3 Programmed Wastewater Service Area as delineated in the 2009 Water and Sewerage Plan. 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.

This application was sent to the Department of Water Quality for review and comment. The Department replied that they had no comments.

Emergency Services

Fire:

Subject Parcel #1 is located within the service area of the Williamsport Volunteer Fire Company (Company #2). Subject 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 properties are approximately 5 miles away from the station.

A copy of this application was sent to each of the volunteer companies as well as to the Washington County Division of Emergency Services. Kevin Lewis,

Director of Emergency Services commented that during review of the previous development proposed on this property (Powers Estates – a residential subdivision of 100+ dwellings), a request was made by the multiple involved agencies to have the developer set aside land within the development for the establishment of a new sub-station for fire and/or emergency services. They are asking for the same provisions from the developer of this proposed development.

Schools

The subject site is within the districts of Jonathan Hager Elementary, Clear Spring Middle and Clear Spring High schools. The properties currently have zoning split between two districts; BL and PI, commercial districts which do not permit residential uses and, therefore, have no impact on school capacity. The requested change for the subject properties to be rezoned to PI would be a continuation of the existing commercial/industrial zoning districts and should not have an impact on school capacities.

Present and Future Transportation Patterns

Highways

Both of the subject parcels in this case have existing road frontage along Maryland Route 63 (Williamsport-Greencastle Pike). This frontage lies within a designated restricted access corridor regulated by the Maryland State Highway Administration (SHA). There is currently an approved entrance onto Subject Parcel #2 and an existing curb cut already constructed. Access to Subject Parcel #1 is proposed to be via Lager Drive and a newly constructed access road located behind the lands of McRand Huyetts Limited Partnership (L.920 F. 104).

In addition to evaluating public access of a parcel for rezoning purposes, it is also important to evaluate traffic generation and existing traffic volumes. This is commonly accomplished through analysis of historic and existing traffic counts as well as any existing traffic impact studies. Due to the subject properties location along a State owned and maintained route, traffic volume data was retrieved from MD SHA. Given the two properties' proximity to the intersection of two major routes, traffic volume data for all four legs of the intersection of MD

63 and US 40 have been included in the chart below. The data shown in the chart is expressed in annual average daily traffic volumes.

Table 2: Traffic Volumes 1980-2014

| Year | MD 63 @ Huyett Lane | MD 63 south of US 40 | US 40 west of MD 63 | US 40 east of MD 63 |
|------|------------------------|-------------------------|------------------------|------------------------|
| 2014 | 5820 | 11354 | 9382 | 12484 |
| 2010 | 5852 | 9652 | 11610 | 12740 |
| 2005 | 5975 | 10075 | 14150 | 13675 |
| 2000 | 7050 | 8100 | 14450 | 12418 |
| 1995 | 5925 | 7350 | 10625 | 10745 |
| 1990 | 3775 | 5500 | 9675 | 10044 |
| 1985 | 3300 | 3750 | 8000 | 8502 |
| 1980 | 2900 | 3500 | 8000 | 7736 |

Source: Maryland State Highway Administration

As shown in Table 2, traffic volumes have been steadily increasing over the last three decades. Because the figures are expressed in annual average daily traffic there are some inconsistencies in year to year data but there is an obvious increase in traffic on all four legs of this intersection. More specific to this rezoning request is the traffic volume data in the column labeled MD 63 @ Huyett Lane. It is apparent from the data that traffic volumes on this leg of the intersection have doubled over the last three decades; however, it is also important to note that this leg of the intersection also has the least amount of annual average daily traffic. In comparison to the other three legs of the intersection, traffic volumes on MD 63 north of US 40 has been about half the volumes of the other three legs.

A copy of this rezoning application was sent to SHA for comment, however, there has been no comment received in response to this request.

As part of the rezoning application for properties seeking a PI zoning district, the Zoning Ordinance states that the developer shall provide "...*preliminary traffic data that includes available current traffic counts for existing roads within a one mile radius of the site, a projection of the additional traffic (amount and type) predicted to be*

generated by the proposed development, peak hour estimates, and the distribution and direction of travel of the projected vehicles.³

As part of a previous rezoning case reviewed in 2015, the applicant did complete a preliminary traffic analysis evaluating existing and projected traffic impacts along MD 63 from its intersection with the Interstate 70 Eastbound off ramps up to the intersection of US 40. The traffic analysis was completed assuming a mixture of traffic that would be produced from uses permitted in the BL and PI zoning districts. While this serves as a good basis from which to build traffic impact assumptions, it is important to realize that there are a wide variety of uses permitted in the BL and PI districts that can have different traffic impacts and that the assumptions made in this analysis may change over time. Ultimately, a full traffic impact study will need to be completed and approved at the site plan development stage to ensure traffic impacts will be appropriately mitigated.

Public Transportation

This area is currently not served by public transportation.

Compatibility with Existing and Proposed Development in the Area:

Currently Subject Parcel #1 is split between two zoning districts; Business Local (BL) and Planned Industrial (PI). Subject Parcel #2 is zoned BL and both parcels are requesting to be wholly zoned PI. 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. Subject Parcel #1 is bounded to the south by properties zoned Residential Transitional (RT) and BL and bounded on the north by properties zoned EC (Environmental Conservation) and RB (Rural Business). Subject 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, institution, and commercial uses. The majority of the property is bordered by large lot residential uses. There is also a scattering of institutional uses within a one-half mile radius of the subject parcels including the former Huyetts Mennonite School, Emmanuel Baptist Church and school, and the WACOHU

³ Washington County Zoning Ordinance, Article 18, Section 18.6

grange hall. Commercial uses dominate the intersection of MD 63 and US 40 and radiate north to the boundary of Subject Parcel #1.

Another important component of compatibility is the location of historic structures on and around the parcels being proposed for rezoning. The following historic sites listed on the Washington County Historic Sites Survey are located within a one-half mile radius of the proposed rezoning areas.

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

WA-V-054 – Kershner-Summers-Groh House, late 18th 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 20th century brick house, located approximately 800' from the subject property

WA-V-420 – Early 20th century wood frame house, located approximately 800' from the subject property.

WA-V-421 – Early 20th century wood frame house, located approximately 800' from the subject property

WA-V-422 – Early 20th century brick house, located approximately 820' from the subject property.

WA-V-423 – Early 20th century brick house, located approximately 820' from the subject property.

WA-I-846 – Early 20th century formed concrete brick commercial building, located approximately 1200' from the subject property.

WA-I-852 – Early 20th century brick house, located approximately 1800' from the subject property.

WA-I-853 – Early 20th century wood frame house, approximately 2000' from the subject property.

Relationship of the Proposed Change to the Adopted Plan for the County:

The purpose of a Comprehensive Plan is to evaluate the needs of the community and balance the different types of growth to create a harmony between different land uses. In general, this is accomplished through evaluation of existing conditions, projections of future conditions, and creation of a generalized land

use plan that promotes compatibility while maintaining the health, safety, and welfare of the general public.

Both of the properties are located in the sub-policy area Industrial Flex. The Comprehensive Plan offers the following recommendations for this policy area:

Industrial Flex Policy Area recommendations:

*"This classification [Industrial Flex] 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 and service sectors of the economy."*⁴

Change in the Character of the Neighborhood or Mistake in Original Zoning Rule

When rezonings are not part of a comprehensive rezoning by the governing body, individual map amendments (also known as piecemeal rezonings) are under an obligation to meet the test of the change or mistake rule. As part of the evaluation to determine whether the applicant has proven whether there has been either a change or mistake in the zoning of a parcel, the Maryland Annotated Code Land Use Article and the Washington County Zoning Ordinance state that the local legislative body is required to make findings of fact on at least six different criteria in order to ensure that a consistent evaluation of each case is provided. Those criteria include: 1) population change; 2) the availability of public facilities; 3) present and future transportation patterns; 4) compatibility with existing and proposed development for the area; 5) the recommendation of the planning commission; and 6) the relationship of the proposed amendment to the local jurisdiction's Comprehensive Plan.

Even when change or mistake has been sufficiently sustained, it merely allows the local governing body the authority to change the zoning; it does not require the change. When conditions are right for a change, the new zone must be shown to be appropriate and logical for the location and consistent with the County's Comprehensive Plan.

⁴ 2002 Washington County, Maryland Comprehensive Plan, Pages 242 and 243

Staff Analysis:

The analysis of a rezoning request begins with a strong presumption that the current zoning is correct. It is assumed that the governing body performed sufficient analysis, exercised care, and gave adequate consideration to all known concerns when zoning was applied to a parcel of land. However, there are instances by which a case can be established to show that the governing body either erred in establishment of the proper zoning of a property or that enough change has occurred within the neighborhood surrounding the property since the governing body's last assessment to require a new evaluation of the established zoning designation.

In this case, the Applicant has submitted testimony to the effect that at the time of the current zoning designation, it was believed or assumed by the Board and all involved that public sewer could not extend in any financially feasible manner to the subject parcels in the then foreseeable timeframe. Evidence has been adduced that the parcels are now in fact served by a public sewer line. We find that there has been a satisfactory showing of a significant and unanticipated change in the immediate surroundings of the property in question since its last comprehensive rezoning. We further find that there has been a satisfactory showing that the underlying assumptions relied upon by the Board during the immediately preceding comprehensive rezoning were based upon a demonstrated mistake of fact.

The development being proposed by the Applicant will not compromise existing uses on the site. Furthermore, rezoning the property will conform to the adopted Comprehensive Plan Policy Area of Industrial Flex.

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 Planned Industrial (PI) to the subject area.

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