

ORDINANCE NO. ORD-2020-20

AN ORDINANCE TO AMEND THE ZONING MAP  
FOR WASHINGTON COUNTY, MARYLAND  
(RZ-19-007)

Pursuant to the provisions of Section 18.5 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), WALZC, LLC, the Applicant, has petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), seeking to designate .88 acre (Parcel A extension of RB overlay) of its parcel located on the north side of U.S. 40, ¼ mile east of Spickler Road, as Agricultural, Rural with Rural Business (RB) overlay.

The matter has been designated as Case No. RZ-19-007.

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 June 16, 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-19-007 be, and hereby is, designated as Agricultural, Rural with Rural Business (RB) overlay.

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 14<sup>th</sup> day of July, 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-19-007

Property Owner:	David and Elizabeth Miller
Applicants:	WALZC, LLC (Contract purchaser)
Requested Zoning Change:	Agricultural, Rural to Agricultural, Rural with Rural Business (RB) overlay
Property:	North side of U.S. 40, ¼ mile east of Spickler Road

Pursuant to Md. Code Ann., Land Use § 4-204 and Washington County Zoning Ordinance § 27.3, the Board of County Commissioners of Washington County, acting upon the Applicants' Request, 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 June 16, 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 Rural Business Zoning District (RB) 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. It is established as a "floating zone" which may be located on any parcel in an Agricultural, Environmental Conservation, Preservation or Rural Village Zoning District. A floating zone is a zoning district that delineates conditions which

must be met before that zoning district can be approved for an existing piece of land.

Section 5E.4 of the Rural Business Zoning District describes the criteria that must be met for the establishment of a new Rural Business Zoning District. These criteria include:

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 of 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 historic resources, or agricultural preservation efforts in the vicinity of the proposed district.

Section 5E.6c further expands upon the above noted criteria in describing the basis for which the Planning Commission should base its recommendation to the Board of County Commissioners after the Public Information Meeting, including:

1. The proposed district will accomplish the purpose of the RB District;
2. The proposed site development meets criteria identified in Section 5E.4 of this Article;
3. The roads providing access to the site are appropriate for serving the business-related traffic generated by the proposed RB land use;
4. Adequate sight distance along roads can be provided at proposed points of access;
5. The proposed landscaped areas can provide adequate buffering of the proposed RB land use from existing land uses in the vicinity; and
6. The proposed land use is not of a scale, intensity, or character that would be incompatible with adjacent land uses or structures.

To be established, RB districts must also meet bulk requirements outlined in Article 5E.5. A preliminary site plan which addresses the elements noted above and other criteria in 5E.6.a(3) in greater detail is also a required part of the application process. Finally, approval of the application to create an RB District shall only be for the use identified on the application and preliminary site plan. An approved RB District covers only the portion of the parcel or lot identified in the application. Changes to the use, intensity, or area covered by an approved RB District shall be reviewed by the Planning Commission. A new public hearing may be required to approve the changed use.

### **Background and Findings Analysis:**

#### Location and Description of Subject Properties

The subject parcel is located on the north side of National Pike (U.S. 40) between Spickler Road and Rocky Fountain Lane west of the Rural Village of Wilson. The property subject to this rezoning encompasses .88 acre of land (Parcel A) on Parcel 71 (.88 acre) and is under contract purchase from current property owners David and Elizabeth Miller ("Miller Property"). An existing Rural Business Overlay District currently extends over adjoining parcel 73, which consists of Lot 1 (.72 acre) and Lot 2 (.57 acre). Lots 1 & 2 serve as the location for Mt. Tabor Builders. These properties are improved by an office building, garages, and paved driveway and parking area.

#### Staff Analysis

The staff analysis of the proposed rezoning utilized the criteria outlined in the previous section of this decision to determine the suitability of applying a newly created RB floating zone in the designated location.

1. The proposed district will accomplish the purpose of the RB District;

As this allocation represents simply extending the exiting RB District on Lot 1 that was approved in 2015, it stands to reason that the accessory use which would be covered by the enlarged RB District would also accomplish the stated

purpose of a floating zone. The proposed storage facility would otherwise not be a permitted land use in the underlying Agricultural Rural Zoning District.

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

The proposed site of this rezoning is located in the Rural Area of Washington County outside of any growth areas designated by the Comprehensive Plan.

### 3. Road and Traffic Considerations

#### a. Traffic Generation

As an accessory use to the principal structure located on adjacent Lot 1, the extension of the current RB District onto the adjacent Miller property is estimated by the Applicant in their Exhibit B to generate less than ten trips per day resulting from the creating of the storage building. Additionally, as an office storage facility, the proposed use is unlikely to generate commercial truck traffic to the site. This trip generation estimate falls below the requirements of the RB District which necessitate a traffic study when 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.

Traffic counts on county and state roads in the vicinity of the rezoning site provide limited information traffic flow or congestion that might be impacted by an expanded business at this location. Single day traffic counts were collected for one, twenty-four-hour period in both 2008 and 2016 on Spickler Road near its intersection with U.S. 40. Slightly more than seven hundred (700) vehicles were recorded at this location in both years. State Highway Administration (SHA) does not maintain a permanent traffic counter in the immediate vicinity of the site. The closest is located one (1) mile away on St. Paul Road where annual average daily traffic (AADT) has grown at a rate of less than one percent (1%) per year since 2000 from approximately two thousand three hundred (2,300) AADT to roughly two thousand six hundred (2,600) AADT in 2018.

b. Road and Site Circulation Improvements

The existing driveway in its current state on Lot 1 is anticipated by the Applicant to continue serving as the point of ingress and egress for access to Mt. Tabor Builders. The business is located on U.S. 40, which is classified as a minor arterial in the Transportation Element of the County's 2002 Comprehensive Plan. Minor arterials serve a mean ADT of two thousand (2,000) to five thousand (5,000) vehicles in rural areas such as this. The storage building on the Miller property will be surrounded by a gravel parking lot.

A review of the County's ten-year Capital Improvement Plan (CIP) and the State Highway Administration's Consolidated Transportation Plan did not note any road improvements in the vicinity of this proposed rezoning that affect road capacity or traffic flow. The Highway Plan in the 2002 Comprehensive Plan and HEPMPO's LRTP also did not indicate any immediate road improvements in the vicinity.

4. Site Planning Considerations

a. Water

The proposed rezoning site is designated as W-7 in the 2009 Water and Sewer Plan with no planned connections to public water. Therefore, the wells depicted on Washington County Plan 8126 on Lots 1 & 2 would continue to serve the proposed rezoning site. As a building anticipated to be used for storage purposes, water use from the new building on the Miller property would likely be minimal. Well locations are approved by the Washington County Health Department. The Health Department is also responsible for monitoring wells for water quality issues.

b. Sewer

The proposed rezoning site is designated as S-7 in the 2009 Water and Sewer Plan with no planned connection to public sewer. Therefore, the site would continue to utilize the on-site septic system found on Washington County Plat 8126 for sewage disposal. Expansion of the existing septic reserve area is not presently anticipated, according to the Applicant.

The Washington County Health Department is responsible for approving the location and method of sewage disposal on individual properties in the County. Upon reviewing the application, the Health Department has offered the following comment on the proposed rezoning: "The septic reserve area has been compromised. Any expansion of the business or change in [land] use [would] require this to be addressed."

c. Stormwater Management

A bio-retention pond is proposed in the northwest corner of the Miller Property on the preliminary site plan to capture stormwater from the storage facility. A gravel parking lot will surround the building.

d. Floodplain

The proposed rezoning site does not contain floodplain.

e. Bulk Regulations

The proposed use is anticipated to comply with all bulk regulations outlined in the RB Zoning District, including lot size, setbacks, height limitations, lot overage, parking, signage, lighting, material storage, and screening. Further detail about each of these individual items are found in the Applicant's Justification Statement.

5. Compatibility with Adjacent Land Uses

a. Land Use in the Vicinity

Zoning in the vicinity of this proposed rezoning is heavily agricultural and the surrounding lands constitute some of the better farmland in the County. Land use along National Pike in the immediate area is comprised mostly of small residential lots fronting the highway. Scattered commercial uses can be found in the vicinity, particularly in the Rural Village of Wilson where there is a General Store and Sweetsie's Eats and Treats. The Hagerstown Speedway is across



Conococheague Creek, along with Zach Greenlee's restaurant. Myers Building Systems is found directly across U.S. 40 from the site.

The Rural Business Overlay Zone has been applied to a number of properties in the vicinity. As mentioned, Mt. Tabor Builders, which presently occupies parcel 73, already has RB designation. This is also the case for Miller's Farmstead, a wedding and events reception facility located at Spickler Road and U.S. 40; Myers Building Systems, Sweetsies, and the Wilson General Store. All properties mentioned are within one (1) mile of the proposed rezoning site.

b. Historic Resources

There are eight (8) existing historic sites in the vicinity of this proposed rezoning that should be considered in evaluating. Three (3) of the eight (8) are located within approximately ¼ mile west of the site near the intersection of U.S. 40 and Spickler Road. Three (3) others are located approximately ½ mile south of the site across U.S. 40 near I-70 west. These six (6) sites are documented on the Maryland Historic Sites Inventory by the Maryland Historical Trust but were not recommended for listing as National Historic Register Properties. They are described in the inventory as follows:

- WA-V-065: "Rocky Fountain Farm"

Early 19<sup>th</sup> century vernacular farm complex including large stone dwelling built in two (2) sections, a log house sheathed with German siding, a stone spring house, and large stone end bank barn.

- WA-V-098: "Bloyer House"

Mid-19<sup>th</sup> century small farmstead including large, two (2) story brick home that may have served as an inn or tavern along the historic National Pike, small frame bank barn, and wagon shed.

- WA-V-099: "Carriage Factory"

Late 19<sup>th</sup> century vernacular farm complex including German sided frame house, large frame barn, and numerous outbuildings. Reported to have been a production place for horse drawn carriages.

- WA-V-112: "Mid-19<sup>th</sup> Century House"

Mid-19<sup>th</sup> century vernacular two (2) story brick house.

- WA-V-114: "Brick Farmhouse"

Mid-19<sup>th</sup> century farm complex including two (2) story brick home, log smoke house, frame out kitchen, and other outbuildings. Evidence of old road predating U.S. 40 that served several area farms.

- WA-V-192: "Brick House"

Late 19<sup>th</sup> century two (2) story brick home.

Two (2) other historic sites are located approximately  $\frac{3}{4}$  mile east in the Rural Village of Wilson. These two (2) sites are National Historic Register Properties described as:

- WA-V-007: "Wilson School"

Mid-19<sup>th</sup> century schoolhouse built by local merchant Rufus Wilson that was incorporated into County's public education system in 1890s. Remained in use until 1950 and was the last operating one (1) room schoolhouse in the County.

- WA-V-074: "Rufus Wilson Complex"

Mid-late 19<sup>th</sup> century rural commercial complex which comprised the small rural settlement of Conococheague on National Pike. The buildings include a general store with attached feed room, post office, two and a half (2  $\frac{1}{2}$ ) story limestone dwelling, carriage house, bank barn, and small corn crib. The rural commercial complex served the local community and travelers on the National Road in the latter half of the 19<sup>th</sup> century.

c. Agricultural Land Preservation

The proposed rezoning site does fall within the County's Priority Preservation Area (PPA). Properties within a PPA are considered as potential targets for state or local agricultural land preservation programs to ensure the continued viability of this industry in Washington County.

Immediately adjacent to the Miller property is the Myers Charolais Ag District (AD-96-004). The Ag District program encourages landowners to voluntarily enter into an Ag District in which it is agreed that the land will not be developed for a period of five (5) years. In return for the restrictions, the landowner receives protections from nuisance complaints, becomes eligible to sell development rights easements through the Maryland Agricultural Land Preservation Program, and receives a tax credit on all County property taxes associated with agricultural land and buildings, as well as up on Seven Hundred Eleven Dollars (\$711) toward property taxes on dwellings.

While numerous Ag Districts are located in the vicinity of the proposed rezoning site, particularly to the north, AD-96-004 is the only one which lies immediately adjacent to the site. The removal of less than one (1) acre from the agricultural land comprising the Miller property wouldn't necessarily remove the remaining acres on that property from consideration for agricultural land preservation in the future. Therefore, the proposed rezoning wouldn't be incompatible with this broader land use objective for the rural area.

6. Additional Considerations

a. Emergency Services

The Clear Spring Volunteer Fire Company is the nearest emergency services provider to this site, located approximately three and a half (3.5) miles west on U.S. 40 in the Town of Clear Spring.

b. Comprehensive Plan

The 2002 Comprehensive Plan designated this site as falling within the Agricultural Policy Area in its Land Use Plan. This Policy Area is primarily

associated with the Great Hagerstown Valley and includes the best soils for agricultural production. Rural businesses in this Policy Area are limited, but a permitted land use through the RB floating zone application process.

c. Hours of Operation, Employees

The anticipated hours of operation for the proposed use are Monday through Thursday, eight (8) am to four (4) pm with three (3) onsite employees.

Recommendation

The Washington County Planning Commission took action at its regular meeting held on Monday, March 2, 2020, to recommend approval of Map Amendment RZ-19-007 to the Board of County Commissioners. The Commission considered the application, the supporting documentation submitted with the application, and the applicant's presentation during the public rezoning information meeting. The Commission also considered the Staff Report and Analysis, comments of interested parties received by the Planning Commission, and the specific items for consideration of Section 5E.6c in the Zoning Ordinance.

Based upon this information, the Planning Commission found that the application can meet criteria set forth in Section 5E4.b of the County's Zoning Ordinance to establish the RB district in this location; and, therefore, recommended approval of this application. The Board of County Commissioners has considered all of the foregoing, as well as information that was presented during the public hearing of this matter.

**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 Agricultural Rural with Rural Business (RB) 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:

  
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Assistant County Attorney