

BEFORE THE
BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

DECISION
Rezoning Case RZ-21-007

Property Owner: Agrimar Company Establishment
Applicant: 19817 Beaver Creek, LLC
Requested Zoning Change: Residential, Multi-Family (RM) to Highway
Interchange (HI)
Property: 19817 Beaver Creek Road—two (2) parcels
(totaling 131.28 acres) immediately adjacent to
Interstate 70/U.S. 40 interchange (Exit 32),
situated on west sides of Dual Highway and
Crossfield Road, south side of U.S. Route (40),
along south side of Beaver Creek 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 (*Board*), acting upon the Applicant's Request, makes findings of fact with respect to the following: (1) population change; (2) availability of public utilities and services; (3) present and future transportation patterns; and (4) compatibility with existing and proposed development for the area. The Board also considers the Planning Commission's recommendations made in this case, as well as the relationship of the proposed reclassification to the Comprehensive Plan and whether there was a mistake in the existing zoning classification. After considering the Planning Commission's recommendations, evidence presented by the Applicant, and testimony of public opposition to the proposed reclassification, the Board denies the requested zoning map amendment.

Findings of Fact

The property.

The subject property, located at 19817 Beaver Creek Road in Funkstown, consists of two (2) parcels totaling 131.28± acres situated immediately adjacent to the Interstate 70/U.S. 40 interchange (Exit 32) on the west sides of Dual Highway and Crossfield Road, the south side of U.S. Route 40, and the south side of Beaver Creek Road. The parcels are shown on Tax Map 58, Grid 15, as Parcel 52 (130.14 acres) and Parcel 351 (1.86 acres). The Property is located entirely within the Urban Growth Area (UGA) that surrounds the City of Hagerstown and the towns of Funkstown and Williamsport.

The smaller Parcel 351 is improved with a single-story brick house. The larger Parcel 52 is undeveloped land currently used for farming. The center of Parcel 52 contains floodplain areas stemming from a section of Landis Spring Branch that intermittently flows across the property before draining southwest into Antietam Creek. No permanent land preservation easement encumbers the property.

The report and recommendation of the Planning Commission.

The Planning Commission held a public information meeting on the proposed change and received comments from staff, the Applicant, and various members of the public. After deliberating on the requested reclassification, the Planning Commission recommended approval of the requested zoning map amendment.

Population trends in the neighborhood.

The subject property is in the Funkstown Election District No. 10. From 1990 to 2020, the population in this district increased by 60.3% (2% per year) while the County's population grew less rapidly by 27.4% (.91% per year). This district experienced its greatest population increase of 22.9% during the most recent decade spanning 2010 to 2020. See Table 1.

Table 1: Funkstown Election District No. 10 Population Trends

Population Trends 1990 - 2020			
Year	Area	Population	% change from previous decade
1990	District	9,330	
	County	121,393	
2000	District	11,390	22.1%
	County	131,932	8.7%
2010	District	12,175	6.9%
	County	147,430	11.7%
2020	District	14,960	22.9%
	County	154,705	4.9%

Source: U.S. Census Bureau

Availability of public utilities and services.

Public Water and Sewer Service – Public utilities are not currently available at the subject property. Any improvements on the subject property would have to be served by a well or wells and would have to utilize an on-site septic system(s) for waste disposal. Other parcels in the property's general vicinity access water by wells and utilize on-site septic systems for waste disposal.

The property's W-5 designation for water service and S-5 designation for sewer service in the County's Water and Sewerage Plan indicate long-term planned public facility services and have been consistently applied to the property in the most recent County Water and Sewer Plan (2009) and its prior versions. These designations reflect future plans to eventually extend public utilities and services to the property's vicinity; if and when such an extension might occur, the County would provide sewer service only. The City of Hagerstown would provide water sewer service.

Public water and sewer service has not been extended south of Interstate 70 (I-70) in the property's vicinity. The Claggetts Mill residential subdivision, located approximately 1.5 miles west of the property, is the closest area south of I-70 that has an existing water and sewer service designation (W/S-1).

The property is located outside the City's MRGA. The City prioritizes properties located within its MRGA for public water or sewer service as connectivity to such services becomes available. Properties located outside the MRGA, such as the subject property, are not eligible for connection except by a special exception obtained pursuant to the City's water and wastewater connection policies. Even though the property falls within the County's UGA, the

property has never been inside the City's comprehensive plan which underwent major updates in 2008 and 2018. It appears that the City has no plans to extend public water service to the subject property

Fire and Emergency Services – The property is in the service area of Funkstown Volunteer Fire Company would provide fire suppression and emergency rescue services to the property.

Present and future transportation patterns.

Access – The Property is accessible from Beaver Creek Road, classified as a Local Road in the County's 2002 Comprehensive Plan and designed to carry less than 1,000 Average Daily Traffic in rural areas and greater than 2,000 vehicles daily in urban areas. The Property also fronts on a stretch of Dual Highway (U.S. Route 40/National Pike), a Major Collector road designed to carry between 1,000 to 3,000 Average Daily Traffic in rural areas and 2,000 to 10,000 vehicles daily in urban areas.

Traffic Volume – In 2016 the County's Division of Engineering and Construction collected data from first-time, one-day traffic counts on Beaver Creek Road in the property's vicinity at two (2) locations surrounding the intersection of Beaver Creek Road and Auto Place. This data cannot yet be used to discern trends but is informative as to traffic volume in the property's vicinity.

The highest traffic volume of 2,231 vehicles was recorded at Auto Place, just north of its intersection with Beaver Creek Road. At Beaver Creek Road just east of the Auto Place intersection, 1,200 vehicles were counted during the one-day traffic survey. *See Table 2.*

Table 2: 2016 County Traffic Volumes

Auto Place North of Beaver Creek Road	2,231
Beaver Creek Road East of Auto Place	1,200

Source: Washington County Division of Engineering and Construction Management Traffic Count Inventory Map

Traffic counts conducted at select points along the major federal and state transportation routes in the property's immediate vicinity show consistently increasing traffic volume between 1990 and 2020. Traffic counts were conducted at five-year intervals in this location on National Pike (U.S. Route 40) north and south of the I-70 interchange, as well as on I-70 eastbound at Exit 32 (U.S. Route 40). During the 25 years between 1990 and 2015, traffic volume increased 67% at I-70 eastbound and 56% at U.S. Route 40 north of I-70. During the decade

between 2005 and 2015, traffic increased 4% at U.S. Route 40 south of I-70 (no counts are available for this data collection point before 2005). The marked decreases in traffic counts at these locations in 2020 are likely attributable to drastically reduced vehicular trips during the COVID-19 pandemic. Although traffic volume dipped in 1995, it rebounded steadily in future years. See Table 3.

Table 3: Traffic Volumes 1990-2020

Year	I-70 East of Exit 32	U.S. 40 North of I-70 Exit 32	U.S. 40 South of I-70 Exit 32
2020	62,512	30,541	9,204
2015	69,320	35,492	11,415
2010	61,391	36,010	11,170
2005	60,025	34,150	10,950
2000	56,975	25,150	NA
1995	39,750	14,475	NA
1990	41,500	22,800	NA

Source: Maryland State Highway Administration

Public transportation.

The property's vicinity is not directly served by public transportation. However, Route 331 of the County Commuter makes stops in Funkstown and at Hagerstown Commons (anchored by Martin's grocery store), approximately 1.5 miles northeast of the property.

Compatibility with existing and proposed development in the area.

Zoning – The property is currently zoned Residential, Multi-family (RM). The Applicant requests that the Property be rezoned Highway Interchange (HI). The purpose of the HI zoning district is as follows:

...to provide suitable locations for commercial activities or light industrial land uses that serve highway travelers, provide goods and services to a regional population, or uses that have a need to be located near the interstate highway system to facilitate access by a large number of employees, or the receipt or shipment of goods by highway vehicles. In addition to providing accessible locations, the Highway Interchange District is intended to protect the safe and efficient operation of the interchange and to promote its visual attractiveness.¹

¹ Washington County Zoning Ordinance, Article 19.

The HI Zoning District does not define its own standalone permitted uses. Rather, it subsumes all Principal Permitted Uses allowed in the following districts: Business, Local (BL); Business, General (BG); Planned Business (PB); Office, Research and Technology (ORT); and Industrial, Restricted (IR) (except heliports and Commercial Communications Towers). Truck stops are among other land uses allowed by special exception in the HI District.

I-70 forms an illustrative dividing line for the zoning classifications in the property's vicinity. The area north of I-70 is largely a mix of varied-density residential zoning, together with a few areas of HI zoning in the vicinity of the I-70 interchange at Dual Highway. In the area south of I-70, parcel size increases, directly correlating with an increase in HI zoning and a decrease in residential density further away from the UGA. Parcels immediately south of the referenced I-70 interchange are solidly HI-zoned. The property (currently zoned RM) is contiguous to this block of HI-zoned parcels. Residential Urban zoning is applied to many parcels west of the property, generally northwest and southeast of Poffenberger Road.

Land Use – Commercial businesses, particularly automobile dealerships, surround the I-70 interchange on all sides. The stretch of Beaver Creek Road from which the property is accessed has historically been used for farming, woodlands, and single-family residences. More recently, a few commercial businesses (e.g., Vinny's Truck Repair & Towing and U.S. Lawns) have opened along this part of Beaver Creek Road. Housing south of I-70 is typically low-density; significant agricultural activity is evident, as are areas in their natural state.

Various low-intensity commercial businesses (i.e., storage facilities, truck repair shops, construction contractors, a shooting range) line both sides of National Pike east toward Frederick. Apartment complexes (Londontowne and Robinwood) provide higher-density housing options north of and adjacent to Dual Highway. Active residential subdivisions in this area include Claggetts Mill and Gaver Meadows.

Historic sites.

According to the Washington County Historic Sites Survey, six (6) historic sites are located within an approximate one-half mile radius of the property which also contains the standing ruins of a limestone farm complex that was destroyed by fire in the late twentieth century. The historic sites are listed below.

- WA-II-142: "Adams-Paulsgrove Farm," mid-19th century farm complex consisting of a two-story limestone house, a frame bank barn, a log kitchen, and other outbuildings
- WA-II-143: "Grossnickle Farm," late 19th century farm complex consisting of a two-story brick house, a stone bank barn, and an outdoor root cellar
- WA-II-229: "Blarneystone Farm (Kelly's Delight)," early 19th century two-story stone home built in two parts, a stone out-kitchen, and a stone bank barn
- WA-I-421: "Welty Farm," late 19th century farm complex including a two-story log home encased in brick, a barn, and outbuildings
- WA-I-432: "Deep Meadow Farm," early 19th century farm complex including a two-part, two-story log and stone home and a stone bank barn
- WA-II-1113: "Bridge," 1936 stone and concrete bridge over Landis Run on National Pike

The presence of these sites in the neighborhood of the subject property neither compel nor prohibit reclassification of the property.

The property's recent zoning history.

The County's most recent Comprehensive Plan was completed in 2012 (2012 *Comprehensive Rezoning*). Pursuant to the 2012 Comprehensive Rezoning, the property was reclassified to its present RM designation as recommended by the UGA Advisory Committee.

Prior to 2012, the property was zoned Highway Interchange District (HI-2). The HI-2 Zoning District was intended to serve as a transitional zone between HI-1 zones and nearby residential areas. Typically, HI-1 areas were designated on lands close to interstate highway interchanges with HI-2 zones then buffering adjacent lands in the vicinity of the interchanges. HI-2 zones allowed low-intensity business and industrial uses as well as residential development at varying densities but did not require connection to public water and sewer. However, the HI-2 Zoning District allowed higher-density development if connection to public water and sewer was possible. The HI-2 Zoning District was eliminated during the 2012 Comprehensive Rezoning.

The 2012 Comprehensive Rezoning affected approximately 17,000 parcels constituting 38,000 acres in the UGA surrounding the City of Hagerstown and the towns of Funkstown and Williamsport.² Information including population projections, growth trends, transportation, and infrastructure data, together with the Comprehensive Plan's recommendations, were considered during the

² Washington County Ordinance No. ORD-2012-08.

process. The Board solicited, received, and considered input of property owners, local officials, County staff, and the general public on the proposed reclassification of affected parcels.

Relationship of the proposed change to the adopted plan for the County.

The property is located in the Low Density Residential sub-policy area of the County's Comprehensive Plan and is defined as follows:

This policy area designation would be primarily associated with single-family and to a lesser degree two-family or duplex development. It is the largest policy area proposed for the Urban Growth Area and becomes the main transitional classification from the urban to rural areas.³

"Change or Mistake" Rule.

A rezoning that is not part of a comprehensive rezoning is known as an individual map amendment or a piecemeal rezoning subject to analysis under the "Change or Mistake" Rule. The Applicant's rezoning request proposes such an individual map amendment on the ground that an alleged mistake in designation of the property's current zoning classification occurred in 2012. Under the "Change or Mistake" Rule, the Applicant bears the burden to prove the alleged mistake. Pursuant to Md. Code Ann., *Land Use* § 4-204, and Washington County Zoning Ordinance § 27.3, the Board must make findings of fact that address the following to determine whether the Applicant has met its burden of proof: (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 County's Comprehensive Plan.

To overcome the strong legal presumption that the property's current zoning is correct, the Applicant must prove that the Board erred in the 2012 Comprehensive Rezoning as a result of factors including the following:

1. Failure to consider projects or trends probable of fruition;
2. Decisions based on erroneous information;
3. Facts that later prove to be incorrect;
4. Events that have occurred since the current zoning; and
5. Ignoring facts in evidence at the time of the zoning application.

³ 2002 Washington County, Maryland, Comprehensive Plan, page 243.

Even though the Applicant demonstrates the occurrence of a mistake in the property's current zoning classification, the Board may grant the Applicant's rezoning request but is not required to do so. The Applicant must also convincingly demonstrate that the requested rezoning is appropriate and logical for the property.

Applicant's claim of mistake in the current zoning.

The Applicant asserts that the property was mistakenly rezoned from Highway Interchange (HI-2) to Residential, Multi-family (RM) in the 2012 Comprehensive Plan. In support of its assertion, the Applicant claims that the Board erred by failing to fully consider two (2) factors in the zoning reclassification of the property during the 2012 Comprehensive Rezoning. First, the Applicant asserts that the Board failed to fully consider that the property cannot meet the requirement of the RM Zoning District to be served by public water and sewer facilities. Second, the Applicant points out that other similarly situated parcels within the County's UGA, but outside the City's Medium Range Growth Area (MRGA), were zoned HI in 2012. We analyze each of these assertions in turn.

Public water and sewer requirements in HI and RM Zoning Districts.

The Board's decision to rezone the property from HI to RM was correct in the 2012 Comprehensive Rezoning. Therefore, the property's current zoning designation of RM is also correct.

The Applicant's primary argument is that the property is not served by public water and sewer facilities; therefore, the property's reclassification to the RM Zoning District was a mistake because the property cannot meet the RM zoning requirement of access to public water and sewer service. However, the Applicant fails to acknowledge that this is a distinction without a difference. Whether the property had been designated HI or RM in the 2012 Comprehensive Rezoning would have been of no moment from a water and sewer perspective because both designations have identical public water and sewer requirements. Rezoning the property from RM to HI, as the Applicant requests, will produce the same issue about which the Applicant now complains.

The Washington County Zoning Ordinance's consistent and long-standing policy requiring connection to public water and sewer service within the HI and RM Zoning Districts is worth noting.⁴ The language relating to this requirement

⁴ Washington County Zoning Ordinance, Article 10 (RM) and Article 19 (HI).

is identical for both districts and was applicable to each at the time of the 2012 Comprehensive Rezoning. However, this requirement is not absolute. The Planning Commission, in consultation with the Washington County Health Department, may waive the public water and sewer service as to a particular parcel within either district upon consideration of specified criteria.⁵

Given its present capacity, Beaver Creek Road is ill-suited to serve high-intensity development. Potential development can occur in the RM Zoning District on well and septic instead of public water and sewer service; therefore, it stands to reason that the property, with its current RM zoning classification, possesses development potential as it is also permitted to access water by well and to utilize an on-site septic system for waste disposal, subject to the above-described waiver process. The property would be subject to the same waiver process under the HI zoning classification. The property's current zoning designation of RM is correct and is not a mistake.

Consistency with the Comprehensive Plan.

The Board's decision to rezone the property from HI to RM was—and remains—consistent with the 2012 Comprehensive Rezoning. Therefore, the property's current zoning designation of RM is correct.

The Applicant's secondary argument is that other parcels in the property's vicinity, within the UGA but not within the City's MRGA, are zoned HI; therefore, the property's reclassification to the RM Zoning District in the 2012 Comprehensive Rezoning was a mistake because the property should have been reclassified to the HI Zoning District also. We disagree.

Other parcels in the property's vicinity were rezoned to HI in 2012. However, that rezoning did not result in disparate treatment of the property vis-à-vis the same or similar parcels situated in the property's proximity as the Applicant alleges. Rather, as a result, the same or similar development constraints applicable to the property also apply now to those HI-zoned parcels. One example of such a development constraint, as previously stated, is that the HI and RM Zoning Districts have identical public water and sewer requirements. By way of a speculative example and not as a factual finding, another potential development constraint applicable to both zoning designations is the likely need for road improvements to accommodate more intensive land uses. However, less intensive uses, permitted in the HI Zoning District and able to be developed on

⁵ Washington County Zoning Ordinance, Article 10.6 (RM) and Article 19.9 (HI).

well and septic systems, are potentially feasible from an economic and land use intensity standpoint.

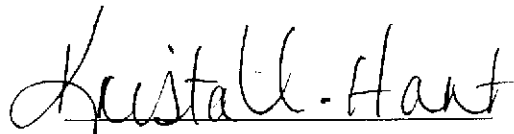
The UGA Advisory Committee recommended that the property be reclassified as RM to create additional opportunities for multi-family housing development in the County. In the context of analyzing population change, availability of public utilities and services, present and future transportation patterns, and compatibility with existing and proposed development in the property's vicinity, the Board followed the Committee's recommendation and correctly applied the RM designation to the property to advance land use goals in furtherance of the County's Comprehensive Plan.

Conclusion

Based on the information provided by the Applicant in the initial application, further analysis by County staff, and evidence presented at the public hearing, the Board finds that the proposed reclassification is incompatible with the surrounding neighborhood and inappropriate for the subject property. The Board further finds that no mistake occurred in 2012 when the property was rezoned to its current Residential, Multi-Family (RM) designation and that said RM designation is consistent with the County's Comprehensive Plan. Therefore, having considered all of the testimony, evidence, and arguments presented, 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 rezoning of the property from Residential, Multi-Family (RM) to Highway Interchange (HI) is denied.

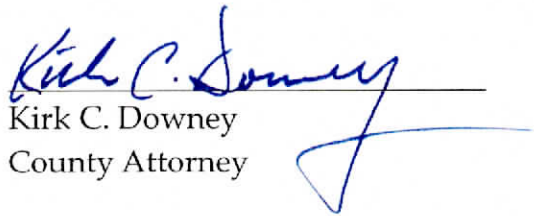
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY,
MARYLAND


Krista L. Hart, Clerk

BY: 
Jeffrey A. Cline, President

Approved as to form and legal sufficiency:


Kirk C. Downey
County Attorney