

ORDINANCE NO. ORD-2023-20

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND
(RZ-23-004)**

Pursuant to the provisions of Section 18.5 of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), Troy and Elizabeth Jernigan, the Applicants, have petitioned the Board of County Commissioners for Washington County, Maryland (*Board*), seeking to designate all 22.4 acres of its parcel located in between Smithsburg Pike (MD 64) and Fruit Tree Drive as Agricultural Rural (AR).

The matter has been designated as Case No. RZ-23-004.

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 conducted on September 12, 2023, 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.

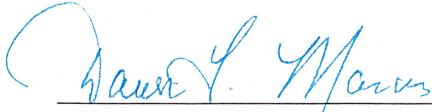
NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of County Commissioners of Washington County, Maryland, that the property which is the subject of Case No. RZ-23-004 be, and hereby is, designated as Agricultural Rural (AR).

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 28th day of November, 2023.

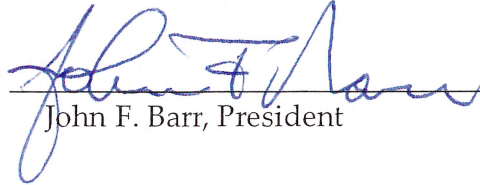
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND



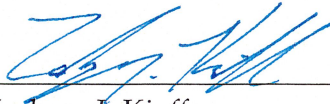
Dawn L. Marcus, Clerk

BY:



John F. Barr, President

Approved as to form and
legal sufficiency:



Zachary J. Kieffer
Deputy 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-23-004
Comprehensive Plan Amendment CP-23-001

Property Owner:	Troy A. & Elisabeth Jernigan
Applicant:	Troy A. & Elisabeth Jernigan
Requested Zoning Change:	RT Residential Transition to A(R) Agricultural Rural
Property:	23226 Fruit Tree Drive, Smithsburg, MD 21783

Pursuant to Washington County Zoning Ordinance § 27.3, the Board of County Commissioners of Washington County (the “Board”) makes findings of fact with respect to the following matters: (1) The report and recommendations of the Planning Commission; (2) Population change in the area of the proposed change; (3) Availability of public facilities in the area; (4) Present and future transportation patterns in the area; (5) Compatibility with existing and proposed development of the area including indication of neighboring sites identified by the Washington County Historic Sites Survey and subsequent revisions or updates; (6) The relationship of the proposed change to the Adopted Plan for the County, Development Analysis Plan Map and Policies; (7) Whether there was a substantial change in the character of the neighborhood where the property is located; (8) Whether there was a mistake in the existing zoning classification; and (9) Whether there has been a convincing demonstration that the proposed zoning would be appropriate and logical for the subject property.

Findings of Fact

The Property.

The subject property is located at 23226 Fruit Tree Drive, Smithsburg, MD 21783, at the edge of the delineated Town Growth Area for the Town of Smithsburg (the “Property”).

The Property is currently improved with an historic single family dwelling unit and several outbuildings in various states of disrepair. The Property is triangular in shape and generally slopes upward from the southeast to the northwest. The

Property consists partly of forested lands and partly of actively farmed fields and includes a stream the runs east to west and bisects the Property near its midpoint. The Property also contains high-power overhead electrical transmission lines that follow the same general path as the stream bed. The Property is located within a designated growth area that surrounds the Town of Smithsburg.

The applicant intends to use the Property for agricultural purposes, which are otherwise not allowed in the RT District.

(1) 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 allowed an opportunity for comments from members of the public. The Planning Commission also received written comments. Following deliberations at its regular meeting, the Planning Commission unanimously recommended approval of the map amendment.

(2) Population change in the area of the proposed change.

The Property is in the Smithsburg Election District #7. Between 1990 and 2020, the 30-year average change in population shows that Election District #7 has outpaced the average growth rate of the County. This district increased 45.8% while the County has increased in population by 27.4%.

(3) Availability of public facilities in the area.

Water and Sewerage- The Property is currently improved and contains a private well and private on-site sewerage disposal system. Despite the Property's inclusion in the Town of Smithsburg's Town Growth Area, the Property is designated in the Water and Sewerage Plan as having a priority service area of W-7/S-7. This designation means that there is no planned public water or sewerage

service to the Property. There are currently no plans to extend public water or sewer services to the Property in the County Capital Improvement Plan.

Emergency Services- The Property is located within the service area of the Smithsburg Volunteer Fire Company and Smithsburg Emergency Medical Services. The Property is approximately 1 mile away from each.

Schools- The Property is within the districts of Smithsburg Elementary, Middle, and High Schools. The change in zoning from RT to A(R) would make the impact from residential development much lower, all but eliminating prospects for development under the A(R) zoning designation. Therefore, the impact on the local schools would be minimal and less impactful than the current zoning of the Property.

(4) Present and Future Transportation Patterns in the area.

Highways- The Property has existing road frontage along Maryland Route 64 and Fruit Tree Drive. There is currently an approved entrance from Fruit Tree Drive that accommodates the existing residential use. There is no existing access onto Smithsburg Pike.

Public Transportation- Washington County Transit provides bus service to the Smithsburg area, but the service does not reach the subject parcel.

(5) Compatibility with existing and proposed development of the area including indication of neighboring sites identified by the Washington County Historic Sites Survey and subsequent revisions or updates.

The Property is bounded to the north, east, and south by parcels zoned A(R) Agricultural Rural. A small portion of the northern boundary of the subject parcel is adjacent to land zoned BG Business General. Across MD 64 on the west side of the Property is land that is zoned (RT)Residential Transition.

All of the parcels surrounding the Property are currently open space or very low density with large lot residential uses. There are 4 historic sites listed on the Washington County Historic Site Survey located within a 0.5-mile radius of the

Property.

(6) The relationship of the proposed change to the Adopted Plan for the County.

The purpose of the Washington County, MD Comprehensive Plan (the "County Plan") is to evaluate the needs of the community and balance the different types of growth to create a harmony between different land uses. The County's comprehensive plan designates the Property as low density residential, while the Town of Smithsburg's Plan (the "Town Plan") designates a policy area of commercial. Both comprehensive plans include the Property in a growth area. The Property has access to a good transportation network, with relatively flat topography and proximity to an existing population center. However, the Property contains environmentally sensitive areas, is heavily wooded, and does not have access to sewer utilities. The current conditions of the Property suggest it is more suited for limited growth as proposed herein.

(7) Whether there was a substantial change in the character of the neighborhood where the property is located.

Applicant did not argue there was a substantial change in the character of the neighborhood.

(8) Whether there was a mistake in the existing zoning classification.

The Property is not within a State approved Priority Funding Area. The designated land use policy area in the County Plan is not consistent with the designated policy area in the Town Plan. Currently, the Property's use is inconsistent with both County and the Town of Smithsburg's designation. The Property has a priority service area designation of W-7/S-7, no planned service. Maryland State Highway Administration's control and limitation of access along MD 64 frustrate development consistent with its current zoning designation. These factors augur towards the requested rezoning.

(9) Whether there has been a convincing demonstration that the proposed zoning would be appropriate and logical for the subject property.

The application included exhibits showing the adjoining parcels with the same zoning designation requested for the Property. One of the Applicants, Troy Jernigan, testified at the public hearing that the current state of the Property was

agricultural in nature and that he intended to continue to use the Property as such. Applicant's engineer, Fred Frederick, presented additional information and provided testimony concerning the current condition of the Property, the most logical use of the Property and the appropriateness of the proposed A(R) zoning for the Property. Despite the Property's inclusion in both the County Plan and Town Plan as a future site for development, based on the evidence presented in the application materials and at the public hearing, the Applicant has convincingly demonstrated that the proposed zoning of A(R)-Agricultural Rural would be appropriate and logical for the Property.

Conclusion

The requested rezoning would align the Property's zoning designation with that of the adjoining parcels to the north, east, and south of the Property. Moreover, the uses of the Property's neighbor parcels are distinctly agricultural in nature. While there is some residential use, orchards and agricultural fields dominate the adjoining landscape. Nearby parcels sharing the Property's current zoning of RT-Residential Transition are separated from the Property by MD 64. While identified within the growth area for the Town of Smithsburg, the Property's water and sewer designation, W-7/S-7, respectively, is evidence that the Property is likely unsuitable for development in accordance with its current residential zoning designation. Moreover, while no floodplain is associated with the creek bisecting the Property, the County's sensitive area regulations would require an associated stream buffer.

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 is hereby granted.

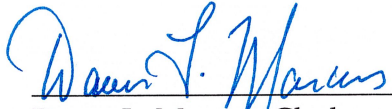
Comprehensive Plan Amendment

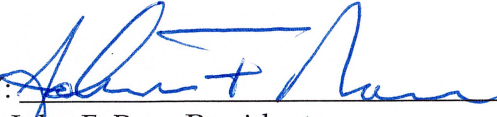
Despite the Property's inclusion in the growth area of both the County Plan and the Town Plan, the Property's environmentally sensitive areas and lack of access to water and sewer utilities are compelling justification for the Board to conclude that the Property is better suited to its current agricultural character than to some type of urbanized development, whether commercial or residential. Commensurate with this Board's grant of Applicant's Map Amendment rezoning request, the Board shall certify the Planning Commission's corresponding

amendment to the County Plan, excluding the Property from the Town of Smithsburg growth area.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY,
MARYLAND


Dawn L. Marcus, Clerk

BY: 
John F. Barr, President

Approved as to form and legal sufficiency:


Zachary J. Kieffer
Deputy County Attorney