

ORDINANCE NO. ORD-2024- 16

AN ORDINANCE TO AMEND THE ZONING MAP
FOR WASHINGTON COUNTY, MARYLAND
(RZ-23-008)

Pursuant to the provisions of Section 7A.0 *et seq.* of the Zoning Ordinance for Washington County, Maryland (*Zoning Ordinance*), Williamsport Storage Bins, Inc., the Applicant, has petitioned the Board of County Commissioners of Washington County, Maryland (*Board*), seeking to rezone two properties totaling .74 acres from Highway Interchange (HI) to Residential Transition (RT).

The matter has been designated as Case No. RZ-23-008.

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 13, 2024, 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.

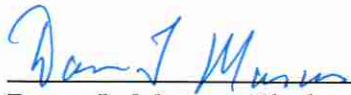
NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of County Commissioners of Washington County, Maryland, that the properties which are the subject of Case No. RZ-23-008 be, and hereby are, designated as Residential Transition (RT).

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 12 day of March, 2024.

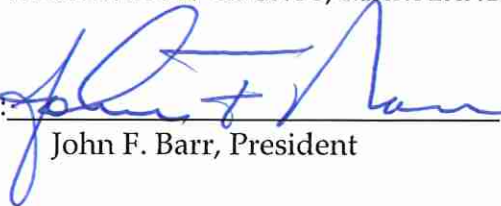
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND



Dawn L. Marcus, Clerk

BY:



John F. Barr, President

Approved as to form and
legal sufficiency:



Aaron Weiss
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-23-008

Property Owner:	Williamsport Storage Bins, Inc.
Applicant:	Williamsport Storage Bins, Inc.
Requested Zoning Change:	Highway Interchange (HI) to Residential Transition (RT)
Property:	429 and 431 South Artizan Street, NW I-81/MD-63 Interchange (the "Properties")

Pursuant to Md. Code Ann., Land Use § 4-204 and Washington County Zoning Ordinance (the "Zoning Ordinance") § 27.3, the Board of County Commissioners of Washington County, acting upon the Applicant's Request, makes findings of fact with respect to the matters set forth in the Zoning Ordinance. We also consider the recommendation of the Planning Commission which was made in this case, the present and future transportation patterns, the relationship of the proposed reclassification to the Comprehensive Plan, whether there was a mistake in the existing zoning classification, and whether there has been convincing demonstration that the proposed rezoning would be appropriate and logical for the subject property. After considering the recommendation of the Planning Commission and hearing evidence presented by the Applicant at a Public Hearing on February 13, 2024, the Board will grant the requested zoning map amendment and makes the following Decision, which largely adopts the findings of the Staff Report and Planning Commission.

Location and Population:

The proposed rezoning site encompasses two undeveloped parcels, totaling .74 acres, which are located at 429 and 431 South Artizan Street just outside the Town of Williamsport. South Artizan Street dead ends roughly five hundred (500) feet south of these properties, in the immediate vicinity of the I-81/MD-63 interchange (Exit 1). Both properties are located within the Urban Growth Area (UGA) that surrounds the City of Hagerstown and the Towns of Williamsport and Funkstown. Both parcels contain floodplain areas that drain into the Potomac

River, roughly a half mile west of the subject site. The majority of Parcel 352, the southern of the two parcels, falls within the floodplain.

The properties subject to this rezoning are located within the Williamsport Election District (#2). The population in this district has grown more slowly than the County has over the thirty-year time frame between 1990 and 2020. More recently, however, the rate of population growth in the Williamsport Election District has outpaced the County overall. Between 2010 and 2020, the District grew at a rate of 16.7% over that ten-year period (or 1.7% per year) while the County grew by only 4.9% (.49% per year).

CRITERIA ANALYSIS

Availability of Public Facilities

Water and Sewer

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..."¹ 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.

A. Water (W-1-Existing Service, Town of Williamsport)

Public water is currently available at the site. The site is given the W-1 designation in the County's 2009 Water and Sewerage Plan, denoting the service. Water service is provided by the Town of Williamsport. A copy of the rezoning application was submitted to the Town of Williamsport; however, no comments were received.

¹ Washington County, Maryland Water and Sewerage Plan 2009 Update, Page I-2

B. Wastewater (*S-1-Existing Service, County*)

Public sewer service is also available to the site of this rezoning. The S-1 Existing Service designation is applied to these parcels in the Water and Sewer Plan. The area is served by the Conococheague Wastewater Treatment Plant.

Fire and Emergency Services

The proposed rezoning site is located within the service area of the Williamsport Volunteer Fire Company. This same entity also provides the nearest emergency medical services. Their station is located approximately half a mile away from the subject properties.

Schools

School capacity is regulated by the County's Adequate Public Facilities Ordinance (APFO). The subject site is within the school districts of Lincolnshire Elementary, Springfield Middle, and Williamsport High. The requested zoning classification, Residential Transition (RT), does permit residential development.

The APFO, however, does not apply to lots subdivided prior to the effective date of the Ordinance (2004). Lot 1 (429 South Artizan Street) was created in 1998 on Washington County Plat 5723. 427 South Artizan Street is shown as the remaining lands on the same plat. Minor subdivisions are also exempt from mitigation requirements. Therefore, there would be no school capacity mitigation requirements for pupil generation under the APFO.

Present and Future Transportation Patterns

A. Highways – Access and Traffic Volume

The proposed rezoning site is located on South Artizan Street which would provide access to the sites. The Functional Road Classification for South Artizan Street is a Local Road in the Transportation Element of the 2002 Comprehensive Plan. Washington County Engineering Plan Review had no comment on this application.

B. Public Transportation

Route 441 (Williamsport) of the County Commuter stops at the intersection of Potomac and Conococheague Streets in the center of Williamsport roughly three-fourths of a mile northwest of the site.

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 different types of growth and development to foster compatibility between different land uses. In general, this is accomplished through the evaluation of existing conditions, projections of future conditions, and creation of a generalized land use plan that provides a blueprint to achieving this compatibility while maintaining the health, safety, and welfare of the general public.

Both of the subject properties are located in the Low Density Residential sub-policy area. The Comprehensive Plan offers the following definition for this policy area:

*"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."*²

Compatibility with Existing and Proposed Development in the Area

A. Zoning

The subject parcels are currently zoned Highway Interchange (HI) and are requesting to rezone to Residential Transition (RT). The purpose of the RT zoning district is to *"provide appropriate locations for single-family and two-family residential development in Urban and Town Growth Areas. The Residential, Transition District is usually located on the outer fringes of the Growth Areas, rather than the inner core, and is*

² 2002 Washington County, Maryland Comprehensive Plan, Page 243

intended to be the least dense residential district in the Growth Areas at a density of between 2 and 4 dwelling units per acre”³.

RT is primarily a residential zoning designation that allows for single-family, two-family, and semi-detached dwellings.

Zoning in the area of these subject properties is defined to a significant degree by proximity to the I-81/MD-63 interchange (Exit 1). County lands on the Williamsport side of the interchange are primarily zoned RT (adjacent to the Town boundary) or Preservation (“P” – along the C&O Canal National Historic Park). These properties fall within the outer limits of a small block of HI properties that abut the interchange.

B. Land Use in the Vicinity.

The I-81 interchange segments property usage in the immediate vicinity into varying types and intensities. The two subject properties are found on County lands just outside of what is the southernmost extent of residential development in the Town of Williamsport. A self-contained neighborhood of sorts, which includes these properties, is bounded by South Artizan Street and East Sunset Avenue. This triangular wedge of properties is predominantly residential in nature, excepting Greenlawn Cemetery and a building supply store at the intersection of the two roads noted above.

On the other side of East Sunset Avenue is the Williamsport public school complex. Along MD-63 to the west are a mix of commercial or industrial uses such as Dollar General, D&D Truck Repair & Towing, Valicor Environmental Services and the park-and-ride lot.

Much of the land to the west of the I-81 interchange includes the range of planned industrial uses along Governor Lane Boulevard. A number of Bowman properties, used for trailer storage, are southwest of the interchange.

³ Washington County Zoning Ordinance, Article 7A

C. Historic Resources.

The subject site is located immediately outside the Town of Williamsport. Williamsport's Historic District was listed on the National Historic Register in 2001. It includes 337 contributing historic resources.

Accordingly, there are numerous historic sites located within half of a mile or less from the location of this rezoning. However, there are no historic sites in the immediate vicinity of the properties proposed for rezoning, and the proposed rezoning will not negatively impact the contributing resources on the National Historic Register listing, or the Maryland Inventory of Historic Properties.

Change or Mistake 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. The "Change or Mistake" Rule requires proof by the applicant that there has been either: a substantial change in the character of the neighborhood since the last comprehensive zoning plan (2012), or a mistake in designating the existing zoning classification.

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 proposed amendment to the local jurisdiction's Comprehensive Plan*

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 the neighborhood surrounding the property has changed enough since the governing body's last assessment to require a new evaluation of the established zoning designation.

The Applicant has indicated in its justification statement that it believes that a mistake was made by the local legislative body to rezone the property in 2012. As noted, the Washington County's Zoning Ordinance requires data to be presented to the local legislative body on factors such as population change, present and future traffic patterns, the availability of public facilities, the relationship of the proposed change to the Comprehensive Plan and its compatibility with existing and proposed development in order to determine how the area subject to rezoning has evolved since the comprehensive rezoning.

Evidence for Mistake in the Current Zoning

In order to demonstrate that a mistake was made by the regulatory body in applying the existing zoning classification to the parcel, the applicant must establish that an error occurred as a result of factors such as:

1. A failure to take into account 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; or
5. Ignoring facts in evidence at the time of zoning application.

The last Comprehensive Rezoning in Washington County was completed in 2012, affecting the Urban Growth Area (UGA) that surrounds the City of Hagerstown and the towns of Williamsport and Funkstown. The Rezoning

affected approximately 17,000 parcels and 38,000 acres of land.⁴ Information such as population projections, growth trends, transportation and infrastructure data, and the recommendations of the Comprehensive Plan were considered as a part of this effort. The input of property owners, local officials, County staff and the general public was also solicited and considered in the assignment of each parcel affected by the Comprehensive Rezoning. Landowners were also given the opportunity to appeal the rezoning of their property at that time if they felt aggrieved by the Board's decision.

The applicant contends that the Board of County Commissioner's (BOCC) erred in their decision during the 2012 UGA Comprehensive Rezoning to rezone the lots in question to HI. The applicant claims that the following factors were not fully considered by the Board in their 2012 decision:

- The properties consist of two small lots associated with existing residential development along South Artizan Street;
- Access to the property is provided by and limited to a local street through existing residential development;
- The configuration of the property severely limits its ability to be developed under the provisions of HI zoning;
- The property remains vacant, proving the assumption that the property would be developed under the HI zoning incorrect with the passage of time.

Recent Zoning History

Prior to 2012, the properties were 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 closest to interstate highway interchanges, with HI-2 zones then buffering adjacent lands in the vicinity of the interchanges. In this case, the HI-2 zoning was applied to a block of properties north of the I-81 interchange to serve as a transitional buffer between it and the Town of Williamsport. South of the interchange, properties were given either the HI-1 or PI zoning designation, anticipating a greater intensity of land uses beyond the limits of the Town and adjoining the interstate highway.

⁴ Washington County Ordinance No. ORD-2012-08

HI-2 allowed low intensity business and industrial uses as well as a residential development at varying densities. Permitted uses were pulled from the BT, RM, PUD, IT, RR, RS and RU Districts. It did not require connection to public water and sewer, but merely allowed higher density development if connection was possible. The HI-2 zoning district was eliminated during the 2012 UGA Rezoning.

These properties were rezoned to the present HI designation in conjunction with the Comprehensive Rezoning of the Urban Growth Area in 2012 (RZ-10-005).

Limitations on Developing Under HI

Although there was some logic in assigning the HI designation to the subject properties, following the line of reasoning described above, they have not been successfully developed under the current zoning classification. As asserted by the applicant in their justification statement, there are a number of limitations posed by the specific characteristics of these two small properties which make their development difficult under an HI classification. These are noted briefly below:

- A. Zoning setbacks – the small size of these properties (.74 total acres) makes meeting HI setback requirements difficult.
 - a. The buffer yard requirement is 75' for HI land uses that originate from the IR or ORT zoning districts, and 25' from uses originating from BL, BG, or PB districts. Any outside storage of equipment, materials, or goods must provide a buffer yard of 50'. These setbacks apply when the adjoining lot is not zoned HI and is either zoned for or contains dwellings, hospitals, nursing homes, schools, or other institutions for human care.
 - b. These setbacks, when coupled with other site planning requirements for a commercial or industrial use such as parking and stormwater management facilities, would leave little space available for development.
 - c. The notable amount of floodplain would further reduce the developable area on these parcels. Meeting the requirements of the County's Floodplain Management Ordinance may be more

feasible for a residential land use versus a commercial or light industrial one given these constraints.

B. Road Access - South Artizan Street is a relatively narrow local road without direct access to the interchange.

- a. Commercial traffic originating from the subject site must travel roughly 1 mile away to encounter the north and southbound ramps for I-81 at Exit 1, including travel through residential neighborhoods. Depending on the time of day, school buses could be traveling portions of the same route.

C. Compatibility with the Neighborhood – the character of this neighborhood has been detailed in multiple sections of this report. The area immediately around the subject site is almost entirely small residential lots or the open space of the cemetery. The only notable exception is the storage units located at the dead end of South Artizan Street.

- a. Though occurring prior to the 2012 cutoff for evaluating a mistake in the zoning, it is also worth noting that these lots were originally subdivided as residential parcels on Washington County plat 5723 in 1998 and their historical use for residential purposes preceding that date.

Consistency With the Comprehensive Plan

Both of the subject properties were given the Low-Density Residential classification in the 2002 Comprehensive Plan's Land Use Plan. The HI zoning classification applied in 2012 to these two parcels is therefore not consistent with the adopted Comprehensive Plan.⁵

⁵ The draft land use plan for the Comprehensive Plan update which is currently in progress, also currently proposes to retain the Low-Density Residential classification.

Planning Commission Recommendation

On January 8, 2024, the Planning Commission held a rezoning public information meeting for the purpose of considering this application. Following that meeting, at which no members of the public voiced any opposition, the Planning Commission recommended approval of the map amendment.

Conclusion

The Applicant has made claim that a mistake was made to rezone these properties from HI-2 to HI in 2012 due to their inadequate size to serve most commercial or industrial uses allowed under the current zoning, the existing context of the neighborhood, and due to inadequacy of the road.

The burden of the applicant in a “Mistake” case is to provide evidence that the Board:

1. Failed to take into account projects or trends probable of fruition,
2. Made decisions based on erroneous information,
3. Used facts that later prove to be incorrect,
4. Couldn't have foreseen Events that have occurred since the current zoning, or
5. Ignored facts in evidence at the time of zoning application.

Based upon the available evidence, the characteristics of the property which make it difficult to develop under an HI zoning classification today, would also have been present in 2012 at the time of the Comprehensive Rezoning.

1. The small size of the parcels make meeting zoning requirements difficult, even before considering other site planning requirements that would have to be met for a commercial or light industrial land use to be successfully permitted.
2. The roads in the immediate vicinity are not of a capacity to serve substantial traffic flows, and do not provide immediate access to the I-81 interchange.

3. There was notable prior precedent for the usage of these properties in a residential context, which was more in keeping with the character of the surrounding neighborhood.

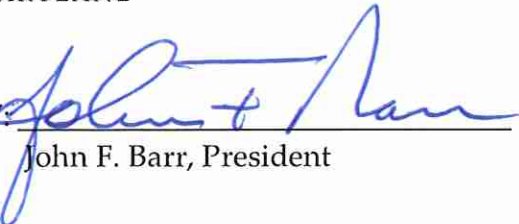
It can accordingly be concluded that there is sufficient evidence to suggest that a mistake may have been made in applying the HI zoning classification to these properties in 2012. Further, the requested RT zoning classification is logical and appropriate for the area where these properties are found. Finally, at no point either before the Planning Commission on January 8, 2024, or before the Board Of County Commissioners on February 13, 2024, has any member of the public voiced an opposition to this rezoning request.

Therefore, the Applicant's petition for map amendment in Case No. RZ-23-008 is hereby GRANTED.

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:


Aaron Weiss
Assistant County Attorney