



September, 2019

Case #: RZ-19-003

## Application for Map Amendment Staff Report and Analysis

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Property Owner(s)	:	Downsville Pike Land, LLC
Applicant(s)	:	Christopher R. Smith
Location	:	NW side of Downsville Pike, ¼ mile North of I-70
Election District	:	#26 – Halfway
Comprehensive Plan		
Designation	:	Low Density Residential
Zoning Map	:	57
Parcel(s)	:	P. 210 & P. 408
Acreage	:	1.60 acres (P. 210: 1.10 ac; P. 408: .50 ac)
Existing Zoning	:	RS – Residential, Suburban
Requested Zoning	:	HI – Highway Interchange
Date of Meeting	:	September 9, 2019

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### I. Background and Findings Analysis:

#### 1. Site Description

The site is located at the intersection of Downsville Pike (MD 632) and Halfway Blvd, approximately .25 miles north of Interstate 70. The total acreage of the two parcels that are the subject of this rezoning case is 1.60 acres. Each is described below:

Subject Parcel #1: Tax Map 57; Grid 002; Parcel 210 – The parcel has a regular rectangular shape consisting of 1.10 acres. A single family detached residence and a dilapidated accessory structure sit currently on the parcel, accessed from Halfway Boulevard. The property sits atop a small hill which slopes moderately to the southwest towards Marty Snook Park. Mature trees and brush cover much of the parcel. There are no environmentally sensitive areas on the property.

Subject Parcel #2: Tax Map 57; Grid 002; Parcel 408 – The triangular shaped parcel comprises .50 acres. The Anita Rice House (historic site WA-I-692) was formerly located on the parcel, but was recently demolished. Mature trees and brush surround the former house site, which sits mid-slope

between Parcel 210 and Parcel 329, the latter of which is not subject to this rezoning. There are no environmentally sensitive areas on the property.

Both properties are located within the Urban Growth Area that surrounds the City of Hagerstown and the Towns of Williamsport and Funkstown. An intermittent stream, Saint James Run, separates adjacent parcel 329 from the Park at the base of the hill, just offsite.

## **2. 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 chosen to show long term population trends both in the election district of the proposed rezoning, as well as the overall trends of the County.

The two parcels subject to this rezoning are located within the Halfway Election District (#26). As shown in the table below, the population in this district has grown more slowly than the County has over the thirty-year time frame between 1980 and 2010. District 26 has grown 13.54% over the thirty-year period (.45%) per year while the County as a whole has increased in population by 30.36% (1.01% per year) during the same period. Both the Halfway Election District and the County experienced their greatest population increase during the thirty-year period surveyed between 2000 and 2010.

**Table 1: Halfway Election District Population Trends**

<b>Population Trends 1980 - 2010</b>			
Year	Area	Population	% change from previous decade
1980	District	9,489	
	County	113,086	
1990	District	9,418	-0.7%
	County	121,393	7.3%
2000	District	9,854	4.6%
	County	131,932	8.7%
2010	District	10,774	9.3%
	County	147,430	11.7%

Source: US Census Bureau

## **3. Availability of Public Facilities**

### **A. 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..."<sup>1</sup> 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.

**Water:**

*W1-Existing Service (County Line – City Treatment)*

Both parcels are served by existing (W-1) public water facilities as they are located within the Urban Growth Area. Water distribution lines in this area are owned by the County while treatment is provided by the City of Hagerstown. Areas immediately adjacent to the subject properties, along Downsville Pike, are designated as W-3, programmed service (City), in the County's 2009 Water and Sewerage Plan. The City of Hagerstown Water Division offered no comment on the proposed development when sent the application for review.

**Wastewater:**

*W1-Existing Service (County)*

The subject parcels are served by existing (W-1) public sewerage facilities within the Urban Growth Area. The County provides wastewater service for this area at the Conococheague Wastewater Treatment Plant. Adjacent areas along Downsville Pike are also programmed for service (W-3) by the County within its Water and Sewerage Plan.

The Department of Water Quality is the wastewater provider for this area and therefore the application was sent to it for review and comment. The Department had no comments on this application.

**B. Emergency Services**

**Fire and Emergency Services:**

Volunteer Fire Company of Halfway (1114 Lincoln Avenue) – 1 mile away

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<sup>1</sup> Washington County, Maryland Water and Sewerage Plan 2009 Update, Page I-2

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Parcels 210 and 408 are located within the service area of the Volunteer Fire Company of Halfway. This same entity also provides the nearest emergency rescue services. Their station is located approximately 1 mile away from the properties subject to the rezoning.

A copy of this application was sent to the Halfway fire company as well as to the Washington County Division of Emergency Services. No comments were received.

### **Schools**

*Elementary* - Lincolnshire, *Middle* – Springfield, *High School* - Williamsport

The subject site is within the districts of Lincolnshire Elementary, Springfield Middle and Williamsport High schools. The requested zoning classification, Highway Interchange (HI), does not allow for residential development. Therefore, there would be **no school capacity mitigation requirements** for pupil generation under the County's Adequate Public Facilities Ordinance.

## **4. Present and Future Transportation Patterns**

### **Highways – Access and Traffic Volume**

The site is located at the intersection of Downsville Pike (MD 632) and Halfway Blvd. Both roads are classified as minor arterials in the Transportation Element of the County's 2002 Comprehensive Plan. This classification accounts for mobility and access characteristics of the roadway in its categorization. **Minor Arterial** roads are designed to carry between 5,000 – 25,000 Average Daily Traffic in urban areas. The County's road classification system is based upon the Federal Highway Functional Classification System, but modified to reflect local road conditions.

Parcel 210 has approximately 300 feet of road frontage on Halfway Boulevard, extending from the intersection of Halfway Boulevard and Downsville Pike to the northwest. The two parcels combined have approximately 500 feet of road frontage on Downsville Pike, extending south from this same intersection.

The southbound and northbound travel lanes on Downsville Pike are divided by a median. This median extends north of the Halfway Boulevard intersection for approximately 500 feet until ending near Venture Drive. It runs south of this intersection

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for approximately ½ mile until ending at the I-70E off-ramp. The median then extends briefly again for approximately another 600 feet in front of Callas Contractors as Downsville Pike turns southwest.

At present, **no new major roadway projects** affecting capacity or traffic flow realignment are currently slated to occur in the *immediate vicinity* of the subject parcels on County, State or Federal roads, according to a review of short and long-term transportation planning documents.

In 2017, a traffic signal was installed at the intersection of Venture Drive and Downsville Pike as a part of the opening of the new Sheetz. This signal was synchronized with the signal at Downsville Pike and Halfway Blvd. Venture Drive was restriped to 3 lanes at that time as well. The store is located just north of the rezoning site.

The extension of Halfway Blvd from Hopewell Valley to its connection point with Greencastle Pike (MD 63) is approaching the construction stage, with money appropriated in the current County CIP through 2022 supplementing ARC grant funding. This portion of Halfway Blvd, however, lies outside the “neighborhood” affiliated with this rezoning and is intended to provide an alternative route for heavy truck traffic traveling to Hopewell Valley from I-81 or I-70 west of the rezoning site.

The Hagerstown/Eastern Panhandle MPO’s current Long-Range Transportation Plan (Direction 2045) does propose widening I-81 between Exit 1 and U.S. 40 to six lanes. So far, Phase 1 of this project, running from MD 11 to MD 68 has received funding. The widening of I-70, including in the vicinity of this rezoning, is also a long-term priority of both the County’s 2002 Comprehensive Plan Transportation Element and the HEPMPO LRTP.

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. The intersection of Halfway Boulevard and Downsville Pike, located immediately adjacent to the two parcels to the northeast, offers a proximate location which has had recorded traffic counts from the Maryland State Highway Administration (SHA) throughout the time period shown below. The traffic volume data shown in the chart is expressed in annual average daily traffic volumes (ADT).

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**Table 2: Traffic Volumes 1980-2015**

Year	Downsville Pike @ Halfway Blvd
2015	12,361
2010	12,152
2005	13,175
2000	6,900
1995	6,250
1990	14,600
1985	11,000

Source: Maryland State Highway Administration

As shown in the table above, traffic volumes have remained relatively consistent during the last ten years. Traffic volumes have grown 1.7% between 2010 and 2015. The significant dip in traffic volumes at this location between 1995 and 2000 is likely explained by I-70 interchange construction during that same period, causing traffic to divert onto other roads. Accordingly, the sharp increase in traffic volume in 2005 at this location coincides with the project's completion. Traffic counts in 2016 and 2017 approached but did not yet exceed 13,000 ADT.

The County's Division of Engineering & Construction Management also collected single day traffic counts on roads in the vicinity of this proposed rezoning in 2016. Since these were first time collections at these locations, trends cannot be discerned. These counts do however give us an idea of traffic volume occurring in the adjacent residential and commercial areas along Downsville Pike and Halfway Blvd. The highest traffic volume was recorded at Oak Ridge Drive near its intersection with Downsville Pike at 3440 vehicles. The lowest count was at Venture Drive at 369 vehicles, taken prior to the Sheetz opening in 2017.

**Table 3: 2016 County Traffic Volumes**

Oak Ridge Drive at MD 632	3440
Fairway Lane at MD 632	1273
Venture Drive at MD 632	369
Oak Valley Drive at Halfway Blvd	1020

Stone Valley Drive at Halfway Blvd	1071
Meadowood Drive at Halfway Blvd	1885

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

The State Highway Administration had no comment after receiving a copy of the rezoning application.

The zoning application was also sent to the Division of Plan Review and Permitting and they have supplied the following comment regarding traffic related impacts:

1. Engineering Plan Review: *“Any development of the area to be rezoned that generates a large amount of traffic may require a **new access location onto Halfway Boulevard**. Any access location onto Halfway Boulevard will necessarily be in close proximity to the intersection with MD 632, which may result in traffic flow issues. A **traffic study** may be required to determine, among other things, the impact on MD 632/Halfway Blvd intersection. In addition, Halfway Boulevard is classified as a minor arterial which requires a **minimum 500 feet spacing requirement between access locations**. Any new access onto Halfway Blvd would have to meet that requirement.”*
2. Land Development Plan Review: *“Any proposed development will require a site plan prepared in accordance with Zoning Ordinance Article 4, Section 4.11 to be submitted, reviewed, and approved by the Washington County Plan Review Department.”*
3. *“New development will have to meet the requirements of the Highway Interchange District found in Article 19 of the Washington County Zoning Ordinance. In particular, additional buffer yards with solid fencing and vegetative screening will be required between the HI zoned property and the adjacent Residential Suburban zoned properties.”*

### **Public Transportation**

This area is not served by public transportation. Routes 111 and 112 (Valley Mall Via Rosehill/Summit) of the Washington County Commuter both travel south along Downsville Pike to its intersection with Oak Ridge Drive, roughly ½ mile north of the subject parcels, but the routes then continue to the northwest along Oak Ridge Drive.

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#### 4. Compatibility with Existing and Proposed Development in the Area:

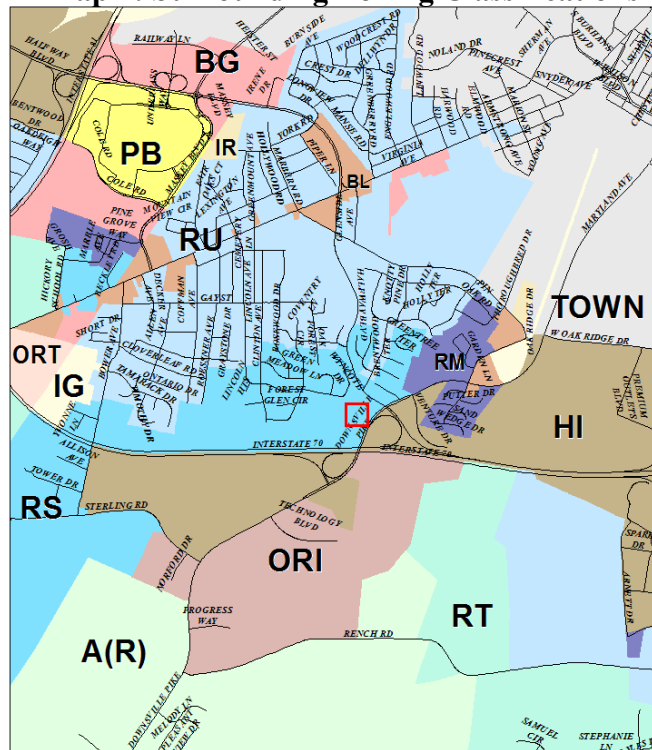
##### A. Zoning

Both of the subject parcels are currently zoned Residential Suburban (RS) and are requesting to Highway Interchange (HI). The purpose of the HI zoning district is:

*“...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...”<sup>2</sup>.*

The HI Zoning District does not establish its own selected list of principal permitted uses aside from agriculture. Instead it draws permitted uses from the Business Local, Business General, Planned Business and Office Research and Technology Zoning Districts. Select principal permitted uses within those zoning districts that might be technically feasible to develop at a site of this size include a **bank, bakery, office, alcohol beverage package store, produce stand, vehicle sales and service shop, drive-in restaurant, or a clinic.**

**Map 1: Surrounding Zoning Classifications**



<sup>2</sup> Washington County Zoning Ordinance, Section 19.1, Purpose

There is a mix of zoning classes in the immediate vicinity of the two parcels (red box) in question, as shown in Map 1 above. Residential Suburban surrounds the properties to the north and west above Interstate 70. The RS block gives way to Residential Urban just beyond that, in those same directions. To the northeast is a Residential Multifamily (RM) district, while Highway Interchange (HI) lies due east across Downsville Pike above I-70. Below I-70, one finds HI to the southwest; Office, Research and Industry (ORI) to the south and Residential Transition (RT) to the southeast.

## **B. Land Use**

Land use in the area surrounding the rezoning varies significantly depending on where one is in relation to the I-70 interchange at Downsville Pike. Marty Snook Memorial Park borders the subject parcels to the west. Substantial single and multi-family residential development borders the Park to the north and northeast in the rezoning “neighborhood.” A park and ride lot is immediately south of adjacent parcel 329. At Venture Drive to the north of the Halfway Blvd & Downsville Pike intersection, one can find the new Sheetz as well as Health at Work, a health care facility in the Meritus system. Callas Contractors, a construction firm, is found just after the I-70 underpass on Downsville Pike to the south. A small cluster of mostly retail businesses is found at the intersection of Downsville Pike and Oak Ridge Drive roughly a ½ mile northeast.

## **C. Historic Sites**

Another important component of compatibility is the location of historic structures on and around the parcels being proposed for rezoning. According to the Washington County Historic Sites Survey there are approximately 5 historic sites located within a 0.5-mile radius of the proposed rezoning areas. A 6<sup>th</sup> historic site, the Anita Rice House (WA-I-692), was formerly located within the boundary of parcel 408 but was demolished in 2018 after many years of neglect. Below is a listing existing historic resources left within a 0.5 mile radius of the subject parcels.

- WA-I-691: “Eldridge Tenant House,” ca. 1900 vernacular, 2-story wood frame dwelling constructed as employee housing for adjoining Shafer Farm (.25 miles away).
  - WA-I-264: “Shafer Farm,” mid-19<sup>th</sup> agricultural complex encompassing five buildings including a 2-story brick farmhouse, two barns, smokehouse and stone springhouse associated with prominent early residents of Washington County (1/3 mile away).
  - WA-I-388: “David’s Friendship,” 18<sup>th</sup> century, 2-story stone farmhouse associated with prominent early residents of Washington County (1/2 mile away).
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- WA-I-389: “Thomas-Adams House,” late 19<sup>th</sup> century 2-story brick farmhouse and wash house outbuilding associated with prominent early residents of Hagerstown (1/2 mile).
- WA-I-376: “Stockslager Farm,” mid-19<sup>th</sup> century 2-story brick cased log house now converted to commercial through property adaptive reuse (1/2 mile).

##### **5. 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.

Each of the properties is located in the sub-policy area Low Density Residential. 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.”<sup>3</sup>*

##### **6. “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 in 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*

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<sup>3</sup> 2002 Washington County, Maryland Comprehensive Plan, Page 243

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*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.

## **II. 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.

The applicant of this case has indicated in their justification statement that they believe that there has been both a **mistake** in the current zoning and a **substantial change in the character of the neighborhood** since last comprehensive rezoning in 2012. As noted in the prior section describing the "Change or Mistake" Rule, 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.

### **A. 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 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.
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The last Comprehensive Rezoning in Washington County was completed in 2012, affecting the Urban Growth Area 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.<sup>4</sup> 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.

The applicant contends that the Board of County Commissioner's erred in their decision during the 2012 UGA Comprehensive Rezoning to rezone the land radiating northeast and southwest from the I-70 interchange to HI, but not the adjacent parcels which are the focus of this rezoning.

The applicant claims that factors such as following were not fully considered by the Board in their 2012 decision:

- Residential usage of the subject properties would continue to be viable despite the effects on livability from adjacent roads and the geographic separation of the properties from adjacent residential neighborhoods;
- The similarly situated Interchange Parcel was rezoned to HI while the subject properties were not.

**i. Impacts Affecting Continued Residential Use**

Looking first at the applicant's first argument in favor of "mistake," which concerns the continued viability of a residential usage at the site, it is important to be initially reminded that the subject parcels have a **long history of residential usage**. Residential use on parcel 408 goes back more than 100 years, for example.

In considering the Board's decision not to rezone the subject parcels at the time of the 2012 Comprehensive Rezoning, it's essential to zero in on what has and has not changed since that time to impact the current residential use. In 2012, all residences at the subject site were still occupied, so there would have been a disincentive by the Board to change to a commercial zoning class. In the years since 2012, the tenants have either passed away and/or sold the property to developers and been left vacant of new owners or tenants. Maintenance of these properties has not been kept up since the properties were vacated, and the result has been their continual deterioration.

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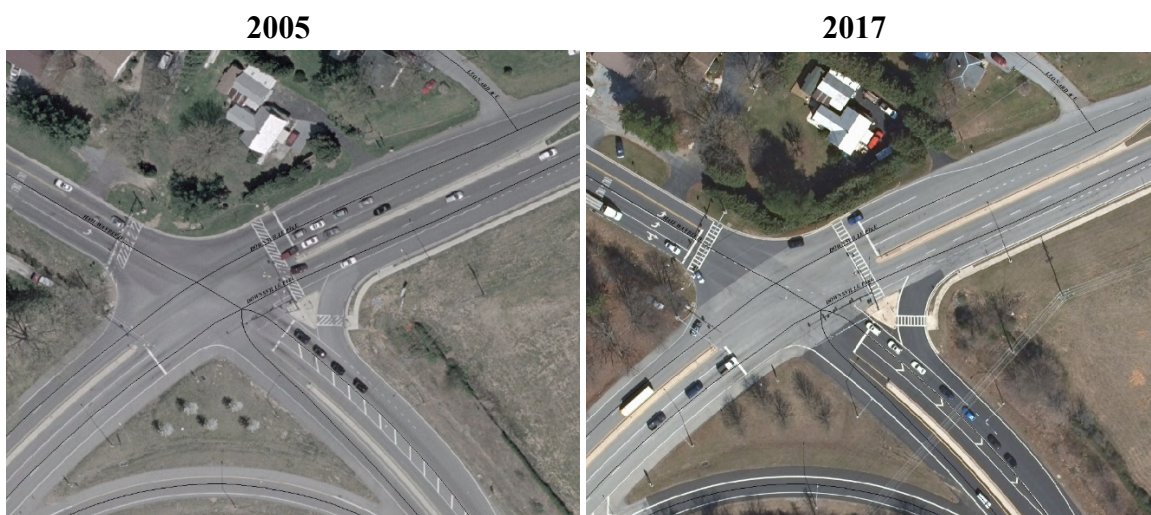
<sup>4</sup> Washington County Ordinance No. ORD-2012-08

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Accordingly, while the applicant may contend that this deterioration was due to lack of buyer interest as a result of spillover effects from the adjacent roads, staff would contend that this is a clear case of **demolition by neglect**. By not keeping up on the maintenance of the existing structures, it removed almost any likelihood that the houses would be sold re-occupied by new owners or tenants. We have already seen the inevitable result of this neglect in the actual demolition of the Anita Rice home on parcel 408 in 2018.

Thus, while staff would certainly agree that the site is impacted by its location at the corner of a busy intersection near an interstate on-ramp, we would contend that the neglect of the properties has had a greater impact on their current marketability for continued residential use. There are certainly numerous homes located along busy roads in Washington County that continue to be occupied despite such impacts. Some might even find the location advantageous for a residence as currently situated because of its immediate proximity to a park and easy access to commuting routes. Greater examination of the effects of traffic on the site will be further discussed in this report when looking at the evidence for “change in the neighborhood.”

It is also important to note that, since 2012, significant roadway changes have not been made to the **Halfway Blvd and Downsville Pike intersection**. Aerial photography shows the configuration and flow of traffic has remained largely the same since the interchange was built in 1999. The images below show the intersection in 2005 and in 2017, the most recent year available.



As shown above left, Halfway Blvd is already 4 lanes at the intersection in 2005. The median already divides Downsville Pike above and below Halfway Blvd in 2005 as well. By 2017, there is no change to this configuration. The only change in traffic flow at this intersection occurred when its already existing traffic lights were synchronized with the

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new light at Venture Drive when the Sheetz was built in 2017, north of the subject site. Staff would therefore disagree with the applicant's assertion that new roadway improvements have significantly impacted the continued residential viability of the site. Again, further examination of the effect of the Sheetz's construction on neighborhood changes will be looked at in the next section of this report.

## **ii. 2012 Interchange Parcel Rezoning**

The applicant's second major argument in support of a mistake in the current zoning is a contention that the Interchange Parcel was rezoned in 2012, while the parcels subject to this rezoning were not, despite being similarly situated. The applicant further contends, within this same portion of their justification statement, that the subject site should have been rezoned to HI because it is needed to service the regional HI uses that cannot be satisfied on the undevelopable Interchange Parcel.

The effect of the Interchange Parcel's rezoning on this site will be addressed shortly, but to the above charges, staff would point to the ample available land already zoned HI around the other three quadrants of the interchange to satisfy these regional uses. The subject rezoning site is simply not essential to serving the regional needs of highway travelers when other land is already available to pursue these uses in the immediate area.

## **iii. Site Access Considerations**

Other factors are worth considering in why the Board may have decided not to rezone the subject site in 2012 to HI as well. In addition to the well-established history of residential use at these properties, including at the time of the 2012 Comprehensive Rezoning, there are also **challenges with the existing transportation patterns**. The location of the two parcels at the intersection of Halfway Blvd and MD 632 presents a challenge in terms of access, as noted by Engineering Plan Review in their comments on page 5 of this report.

As noted earlier, there is a concrete median running north and south along MD 632 from approximately 500 feet south of the intersection with I-70 eastbound off ramp north to Venture Drive, with the only interrupted area being at Halfway Blvd in the vicinity of the site. It is evident from this configuration that the State Highway Administration is attempting to limit the number of left-hand turn movements in this vicinity due to its proximity with Interstate off ramps and high volumes of traffic. While the developer may not decide to ask for an additional break in the median, creating a retail destination area on these properties could increase the amount of U-turn traffic at the intersection with Halfway Boulevard and create additional traffic issues at this intersection.

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Furthermore, there is very limited road access to Halfway Boulevard. Almost the entire road frontage along Halfway Boulevard has dual left turn lanes meaning that traffic entering the site will need to cross two lanes of on-coming traffic. Washington County Engineering Plan Review has commented that there is a minimum 500-foot spacing requirement on minor arterial roads such as Halfway Blvd. Measured from the corner of parcel 210 at the Downsville/Halfway intersection, this would put the only likely access point at the entrance of Marty Snook Regional Park. While a safer location for an access point, an entrance location from that road would impact traffic entering and exiting the park. 500 feet south of the site extends to the park and ride lot. Access from this lot to a commercial use at the corner may also lead to traffic and parking conflicts between the two uses at certain times of the day or week.

For all these reasons, it is reasonable to assume that the local legislative body took in the relevant factors and concluded that the continuation of the RS zoning class was a good fit at this particular location.

## **B. Evidence for Substantial Change in the Character of the Neighborhood**

In addition to the claim that the Board made a mistake in the application of the current zoning, the applicant also argues that there has been a substantial **change** in the character of the neighborhood since the time of the last comprehensive zoning plan. In order to demonstrate that a substantial change has occurred in the character of the neighborhood since the passage of the last Comprehensive Zoning Plan, the applicant must establish:

1. What area reasonably constitutes the “neighborhood” of the subject property;
2. The changes that have occurred in the neighborhood since the comprehensive zoning;
3. Proof that these changes resulted in a change in the character of the neighborhood.

Maryland case law has consistently established that these factors must be considered cumulatively, not individually, if the applicant is to demonstrate proof that a substantial change in the character of the neighborhood has occurred. Correspondingly, a substantial change in any one individual factor doesn’t necessarily illustrate that substantial change has occurred in the neighborhood overall.

## **C. Neighborhood Definition**

The Applicant’s Exhibit B presents his interpretation of the boundaries of the neighborhood. This Exhibit displays an aerial photo utilizing a 1-mile radius around the site to encompass both the residential and commercial uses within the “neighborhood.”

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Within the text of the Justification Statement and on the aerial photo however, the applicant marginalizes the inclusion of the residential portion of the neighborhood by saying:

*“The portion of the neighborhood that faces the same situation as the Site, in reality, is not the nearby residential neighborhoods along Halfway Boulevard but more appropriately the commercial corridor along Downsville Pike and near or adjacent to its interchange with I-70.”<sup>5</sup>*

While the concept of a neighborhood is flexible according to its geographical context, as the applicant notes citing *Montgomery v. Board of County Commissioners for Prince George’s County (1971)*, subsequent Maryland case law demonstrates that the neighborhood must be reasonable, not “unduly restrictive” and include the “immediate environs of the subject property.”<sup>6</sup>

The neighborhood defined by the applicant in the aerial photograph meets this test, appropriately encompassing the influence of the commercial and residential areas that are immediately adjacent. The applicant’s above written statement however fails the “immediate environs” and “unduly restrictive” tests that would render their interpretation of the neighborhood’s boundaries fairly debatable by marginalizing all of the surrounding property zoned for residential uses (zoning classes RS and RM) in the immediate vicinity of the property to the west, north and northeast as being immaterial to the site. By extension, Marty Snook Park, which is also zoned RS, and directly abuts the property on two sides, would also be excluded by this narrow neighborhood definition. The applicant reinforces this narrowed interpretation by highlighting the Downsville Pike commercial corridor in Exhibit B.

#### **D. Changes that have occurred in the Neighborhood**

The applicant contends in their Justification Statement that a substantial change has occurred in the character of the neighborhood since the 2012 Comprehensive Rezoning of the UGA. As evidence, they offer:

1. *The rezoning of several adjacent parcels as a part of the 2012 Urban Growth Area Rezoning to all for more intensive uses*
2. *An increase in annual average daily traffic at the intersection of Halfway Boulevard and Downsville Pike from 2012 to 2015*
3. *The construction of a new Sheetz across Downsville Pike nearby the site*

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<sup>5</sup> Applicant’s Justification Statement, P.9

<sup>6</sup> Sedney v. Lloyd, 44 Md. App. 633, 410 A.2d 616 (1980)

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**i. Zoning Changes in the Vicinity**

Typically, piecemeal rezoning cases seeking to establish a claim that there has been a change in the character of the neighborhood should use the last comprehensive rezoning of the area as their starting point to illustrate substantial change (2012). *“Changes contemplated prior to the last comprehensive rezoning are usually not relevant in determining whether a substantial change has occurred to support rezoning of the property.”*<sup>7</sup>

Though not typical, there have been cases whereby the Maryland Court system has provided leeway for applicants to use zoning and other changes that occurred prior to the last comprehensive rezoning to be used as evidence of a substantial change; however, they must be coupled with evidence showing substantial change after the fact.

In this case the applicant contends that the comprehensive rezoning in and of itself constitutes a substantial change in the character of the neighborhood. This argument has repeatedly been struck down in the court system because the purpose of a comprehensive rezoning is to analyze historic changes and future growth projections to establish the appropriate zoning on parcels in their jurisdiction. Put simply, a comprehensive rezoning is almost guaranteed to result in some intentional change to the character of select neighborhoods as the new zoning designation is intended to reflect projected land use changes in a given area. If the property owner felt aggrieved by the Board’s decision in 2012 to retain the previous RS zoning designation, they had the option to appeal at that time.

**a. Neighborhood Zoning Changes from 2012 Comprehensive Rezoning**

As stated above, although the 2012 Comprehensive Rezoning in and of itself does not constitute a change in the neighborhood, it useful to understand what zoning changes took place in 2012 to determine what, if any, change has occurred since. First, Map 2 shows the zoning in the vicinity just before the Comprehensive Rezoning of the UGA below.

In Map 2 we can see that both before and after the adoption of the Comprehensive UGA Rezoning in 2012, the subject parcels were zoned Residential Suburban (RS). At that time, the properties were bounded on the north and northwest by RS zoning; Agricultural (A) zoning to the south and west; Highway Interchange (HI-1) to the east, and Residential Multi-family to the south, east and northeast. South of I-70, Office, Research and

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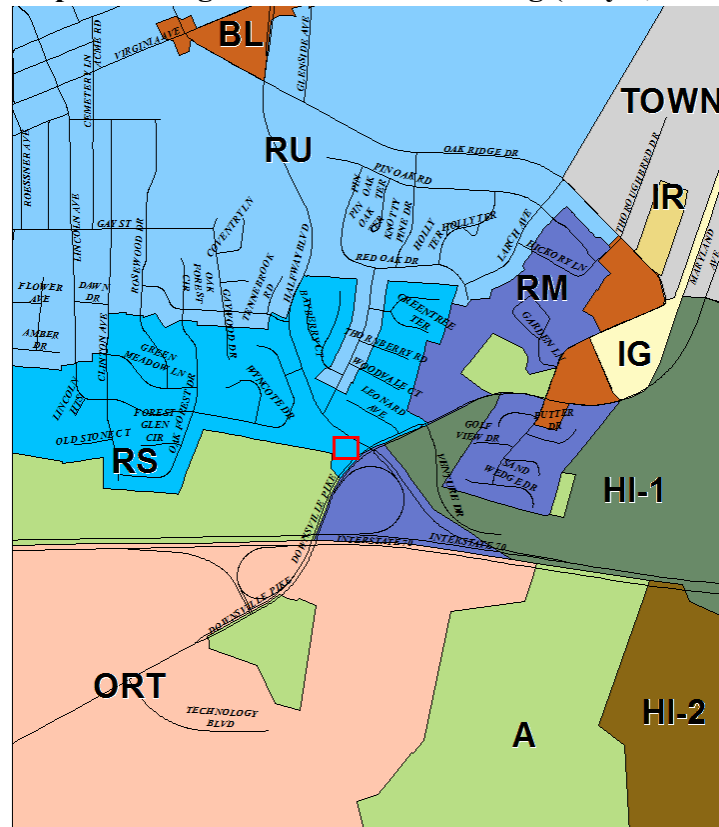
<sup>7</sup> Guide to Maryland Zoning Decisions, 5<sup>th</sup> Edition, Stanley Abrams referencing Maryland Court of Appeals Case Buckel v. Board of County Commissioners of Frederick County, 80 Md. App. 305, 562 A.2d 1297 (1989)

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Technology (ORT), Agricultural and Highway Interchange (HI-2) zoning could be found within the immediate vicinity of the site.

Contrary to current, commercially oriented HI zones, the HI-2 zoning district was a predominantly high-density residential zoning district that also allowed some light industrial uses, was located roughly ½ mile southeast of the subject parcels. These prior zoning classifications can be seen in Map 2 below, which approximates the site location in a red box.

**Map 2: Zoning Prior to UGA Rezoning (July 1, 2012)**



The current zoning, shown below in Map 3, demonstrates the effects of Urban Growth Area Comprehensive Rezoning. The old Agricultural zoning classification that applied to several adjacent parcels in the vicinity was eliminated, necessitating their reassignment to new zoning classes. **By and large, most of these parcels were assigned to new zoning districts that allowed the same uses under a different district name.** Many were assigned to various residential districts that are fitting of the gradually decreasing density that signals the transition from the core to the fringes inside of the Urban Growth Area. Notably, Marty Snook Park was assigned to the RS zoning class as it was determined that this designation most closely fit its most immediate neighborhood, in addition to allowing the park as a principal permitted use. The HI-2 district has also been

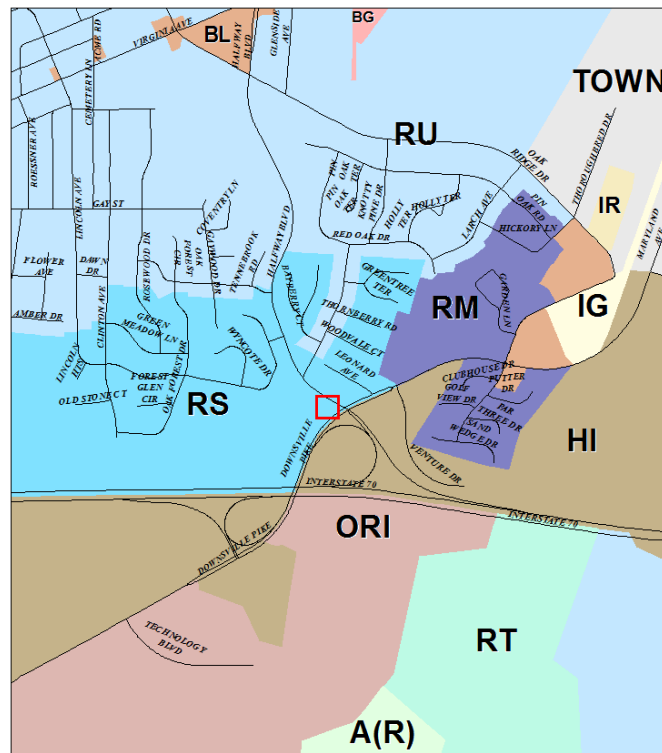
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replaced by the similar Residential Urban (RU) zoning class with the repeal of the HI-2 classification in 2012.

As pointed out by the applicant, the RM zoning on the Interchange Parcel was changed to HI during the 2012 UGA Comprehensive Rezoning. It's important to understand that the RM zoning for this parcel was in place prior to the completion of the I-70 interchange that significantly transformed immediate portions of the neighborhood following its completion in 1999. Thus, in 2012 when the UGA Comprehensive Rezoning occurred, the rezoning of the Interchange Parcel reflected administrative recognition that the site conditions on the parcel had been transformed by the construction and reflected that in the zoning. **In reality, the Interchange Parcel could have been given almost any zoning classification in 2012 because it is undevelopable.** Therefore, the change to the HI zoning for the Interchange Parcel was simply an administrative action, not a projection of its future land use.

In 2012, the parcels subject to this rezoning remained largely the same as they were in the past. The dwellings on these parcels were occupied and commercial growth around the interchange since its construction had been fairly negligible. Therefore, there is little evidence to support a direct comparison between the Interchange Parcel and the site of this proposed rezoning based upon the site-specific conditions of each both before and after the 2012 Comprehensive Rezoning.

Map 3: Current Zoning



Aside from the Interchange Parcel, the HI also did expand northeast and southwest of the I-70 interchange. Again however, in the 2012 Comprehensive Rezoning, one commercial zoning class is simply being replaced with another one that is slightly more flexible in the uses permitted. The new HI wedges shown radiate outward from the boundaries of this interchange, replacing notable portions of the former ORT immediately south of I-70. ORT became ORI (Office, Research and Industry) in the remaining portion, which allowed for a greater range of uses within a similar zoning class.

Even though the 2012 zoning changes in these locations speak more to a desire for greater flexibility than substantial neighborhood change, it's helpful to examine differences in the lands around the interchange that were rezoned. For example, look at the rezoning of the parcels northeast of the interchange, where land uses such as the new Sheetz and Premium Outlets are located, from HI-1 to HI. This was a mandatory administrative action because the HI-1 and HI-2 zoning districts were repealed and replaced with a single commercially focused HI zoning district. The HI-1 district also was commercially focused, so replacing it with the very similar HI district to serve regional needs of highway users is both logical and in keeping with long term planning for that area. Further, the lands east of the interchange have a substantially smaller residential footprint than the proposed rezoning site and do not back up to a large County park.

A similar situation exists with parcels 258, 262, and 264 southwest of the interchange. These parcels, which were also rezoned in 2012, are specifically noted by the applicant in their Justification Statement as being indicative of substantial neighborhood change. Beyond the inapplicability of conferring neighborhood change from the Comprehensive Rezoning itself, staff would contend that these properties are qualitatively different sites than the site of the current piecemeal rezoning.

These three parcels have long been used for agricultural purposes, are located distant to any dense residential neighborhoods and have long been planned for either commercial or light industrial use. Additionally, their location directly on I-70 makes their use unsuitable for anything but these types of uses, in contrast to the subject parcels, which clearly are influenced by the adjacent park and residential neighborhoods. Above all, the change from ORT to HI in that area simply provided more zoning flexibility for attracting prospective developers when the growth was slow to occur at that location after the construction of the interchange.

It's also important to know that the last approved piecemeal rezoning in the immediate vicinity of the site occurred in 2000 (RZ-00-002), lending further credence to the stable character of the neighborhood.

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The Park and Ride adjacent to the proposed rezoning site has been there since at least 2000, as indicated by aerial photography. Therefore, that facility is not a new addition to the neighborhood.

The only change in the neighborhood worth examining more closely is the construction of the Sheetz just northeast of the proposed rezoning site in 2017. As has been elaborated upon earlier in this report, staff would consider this a minor change because:

- A commercial or light industrial use has long been planned for that location, so its construction is indicative mostly of long-term planning;
- No substantial roadway changes affecting traffic flow or capacity have occurred the intersection of Halfway Blvd and Downsville Pike since 2012
- The 2017 installation of a traffic light and restriping to 3 lanes on Venture Drive only indirectly impacts the Halfway Blvd/Downsville Pike intersection;
- The most recent traffic counts (including 2017) do not yet provide a basis for showing substantial traffic growth at the Halfway Blvd/Downsville Pike intersection.

To sum up, only changes to the neighborhood since 2012 should be considered in evaluating this applicant's request. Even in considering the zoning changes that occurred at the time of the 2012 Comprehensive rezoning, the evidence suggests that that these changes were primarily administrative in nature and not indicative of change in the neighborhood. The elimination of the old Agriculture, HI-1 and HI-2 zones merely necessitated allotment of these lands to new zoning classes that permitted the same or similar uses.

*Note: Applicant's Exhibit C is labeled "2012 Zoning" but actually shows the Current Zoning just after the UGA Rezoning took place in that year.*

## **ii. Changes in Average Annual Daily Traffic**

To expand upon the point made above concerning traffic at Halfway Blvd and Downsville Pike, it is important to understand the caveats to the Applicant's conclusion that traffic is increasing to a considerable degree in the neighborhood.

First, traffic count data was considered by the Board as a part the Urban Area Comprehensive Rezoning in 2012, and was factored into the ultimate decisions about the appropriate zoning classification for the subject parcels, and the surrounding area. Second, traffic data can vary considerably from year at any given location, due to factors that may not necessarily be locally derived. If, for example, construction work on a nearby arterial

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road necessitates closure or diversion of traffic to alternate routes, neighboring roads can see short-term upticks in traffic that may not necessarily be indicative of long-term traffic increases.

More importantly, in contrast to the selective time period examined by the applicant, **long-term traffic data does not support a conclusion of increasing traffic at the Halfway Boulevard/Downsville Pike intersection.** The applicant's Exhibit E makes this clear, as does Table 2 of this report on page 5.

Exhibit E does shows that traffic increased from 2012 to 2015 (10,871 to 12,361 ADT) as the Applicant contends. This short-term trend obscures a largely **stable trend of approximately 12,000 to 13,000 in ADT at this intersection for the last 10-15 years.**

Further, putting aside long-term trends, one can see several short-term fluctuations in the data that refute a conclusion of continuous traffic growth.

- The 2012 traffic count also represented a slight decrease in traffic volume from 2011 (10,960 in 2011 to 10,871 ADT in 2012).
- Traffic also decreased in the three years prior to 2012 (12,152 in 2010 to 10,871 in 2012).
- The 2015 traffic count represents a 15.33% decrease from the peak traffic count at this location, which occurred in 1990, as shown in Table 2 on page 5 (14,600 in 1990 to 12,361 in 2015 ADT).

*In effect, the traffic at this intersection has yet to regain the volume that it reached prior to the construction of the interchange at I-70 and Downsville Pike. Thus, while traffic has marginally increased in the last few years at this intersection, the increase has not increased traffic volume to past its historic levels.*

A traffic impact analysis was also conducted in February 2017 as a part of the development review process for the Sheetz gas station and convenience store recently constructed near the site of this proposed rezoning. The study concluded that traffic volume has remained largely flat at the Downsville Pike/Halfway Blvd intersection in the time since the interchange was constructed in 1999.<sup>8</sup>

### **iii. Relationship to 2002 Washington County Comprehensive Plan**

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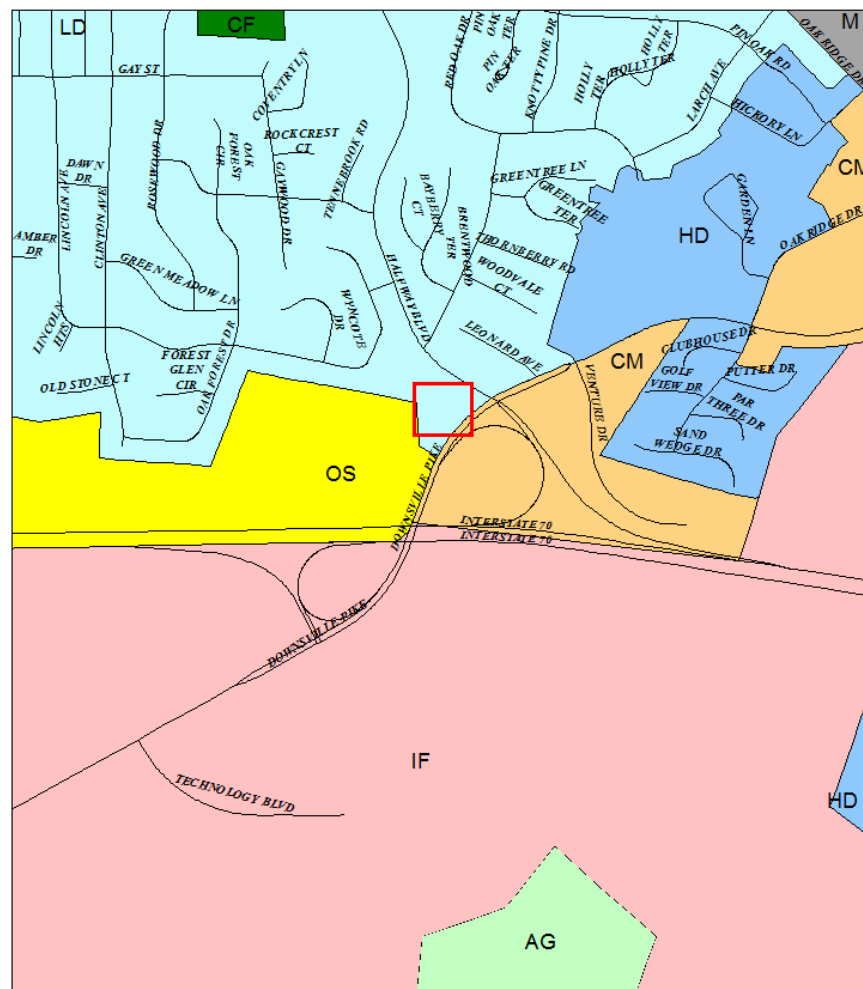
<sup>8</sup> Traffic Impact Analysis (TIS-17-001) conducted February 13, 2017 by Street Traffic Studies, Ltd.

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In 2002 the Washington County Comprehensive Plan was updated. As part of that update an evaluation of existing and projected land uses were evaluated to develop a guide for future land use decisions in the County; the Land Use Map. This map provides a generalized analysis and projection of land uses in various regions of the County. The Land Use Map was heavily consulted as part of the Urban Growth Area Rezoning.

As shown in the map below, the County projected that land within and surrounding the subject parcels to develop in the manner eventually realized in the 2012 Comprehensive Rezoning: Industrial Flex (IF) south of I-70 and east of Downsville Pike; Low and High Density Residential (LD, HD) to the north, Commercial (CM) surrounding the northern Interchange Parcel and Open Space (OS) for Marty Snook Park. By and large, what was projected in this map has been borne out on the ground over the last 14 years. Thus, projected changes in the neighborhood were largely accounted for in prior long range planning and comprehensive rezoning efforts by the County. The 2002 Comprehensive Plan Land Use Map can be seen below.

**Map 4: 2002 Comprehensive Plan Land Use Map**



### **III. Recommendation:**

The applicant claims that both a mistake in the designation of the existing zoning and a substantial change in the character of the neighborhood have or did occur since the time of the last comprehensive zoning, thereby warranting their petition to rezone the property from RS to HI.

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
5. Ignored facts in evidence at the time of zoning application.

The burden of the applicant in a “Change” case is to illustrate three points:

1. Defining the boundaries of the neighborhood,
2. Demonstrating that substantial changes have occurred since the last Comprehensive Zoning Plan, and
3. Showing that those changes resulted in the altered character of the neighborhood.

Regarding the charge of mistake, this analysis has revealed that the neglect of the existing structures has played an equal if not larger role than road and traffic related impacts in the continued viability of residential use at the site since 2012.

The analysis has also revealed that the applicant has not met the burdens in proving that a substantial change has occurred in the neighborhood since the 2012 UGA Rezoning. First, the applicant fails to reasonably define the neighborhood boundaries by marginalizing the inclusion of adjacent residential neighborhoods and parkland that immediately abut the property to the north and west in favor of those parcels in the vicinity that are zoned to allow commercial or industrial uses.

Second, insufficient evidence beyond the intentional zoning changes resulting from the Comprehensive Rezoning of the Urban Growth Area itself have been offered by the applicant demonstrating substantial change in the character of the neighborhood since 2012. The Comprehensive Rezoning in and of itself is not evidence of neighborhood change.

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Consequently, the staff analysis has concluded that convincing proof has not been offered by the applicant demonstrating either a mistake in the current zoning, or a substantial change in the character of the neighborhood since the 2012 UGA Rezoning in their petition to rezone the property from RS to HI.

Please do be reminded that all permitted uses within the BL, BG, PB and ORT Zoning Districts could potentially be allowed at the site if the zoning on the site is changed from RS to HI.

Respectfully Submitted,

Travis Allen  
Comprehensive Planner