



FOR PLANNING COMMISSION USE ONLY

Rezoning No. BZ-23-004  
Date Filed: 4-26-23

WASHINGTON COUNTY PLANNING COMMISSION  
ZONING ORDINANCE MAP AMENDMENT APPLICATION

Troy A & Elisabeth Jernigan

Applicant

22725 Stevenson Road,

Address

Troy Jernigan

Primary Contact

Same as above

Address

☒ Property Owner

☐ Contract Purchaser

☐ Attorney

☐ Consultant

☐ Other: \_\_\_\_\_

240-446-4353

Phone Number

troyjernigan@me.com

E-mail Address

Property Location: 23226 Fruit Tree Drive, Smithsburg, MD 21783

Tax Map: 40 Grid: 8 Parcel No.: 225 Acreage: 22.4

Current Zoning: RT Requested Zoning: A(R)

Reason for the Request:

☐ Change in the character of the neighborhood

☒ Mistake in original zoning

**PLEASE NOTE: A Justification Statement is required for either reason.**

  
Applicant's Signature

Subscribed and sworn before me this 19 day of April, 20 23.

My commission expires on 9/15/2024

  
Notary Public

FOR PLANNING COMMISSION USE ONLY

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Application Form                         | <input checked="" type="checkbox"/> Names and Addresses of all Adjoining & Confronting Property Owners |
| <input checked="" type="checkbox"/> Fee Worksheet                            | <input checked="" type="checkbox"/> Vicinity Map   |
| <input checked="" type="checkbox"/> Application Fee                          | <input checked="" type="checkbox"/> Justification Statement  |
| <input checked="" type="checkbox"/> Ownership Verification                   | <input checked="" type="checkbox"/> 30 copies of complete Application Package                          |
| <input checked="" type="checkbox"/> Boundary Plat (Including Metes & Bounds) |  |



WASHINGTON COUNTY DEPARTMENT OF  
PLANNING & ZONING FEE WORKSHEET

FOR PLANNING COMMISSION USE ONLY  
Rezoning No. \_\_\_\_\_  
Date Filed: \_\_\_\_\_

PLEASE COMPLETE ONLY THE  
SECTION THAT APPLIES.

Applicant's Name: TROY & ELISABETH JERNICAN Date: JAN 25, 2023

**Zoning Ordinance Map Amendment** ..... \$ 2,000.00  
Number of Acres \* 22.4 x \$20.00 [1 acre minimum]  
per acre ..... \$ 448.00  
  
Engineering Review Fee ..... \$ 150.00  
  
Technology Fee ..... \$ 15.00  
  
**TOTAL FEES DUE – MAP AMENDMENT** ..... \$ 2613.00

\*Minimum charge of \$20.00 [if less than one acre]

**Text Amendment** ..... \$ 2,000.00  
Choose One: ☐ Adequate Public Facilities Ordinance  
☐ Forest Conservation Ordinance  
☐ Solid Waste Plan  
☐ Subdivision Ordinance  
☐ Zoning Ordinance  
☐ Other: \_\_\_\_\_  
  
Technology Fee ..... \$ 15.00  
  
**TOTAL FEES DUE – TEXT AMENDMENT** ..... \$ 2,015.00

**Water and Sewer Plan Amendment** ..... \$ 2,000.00  
Technology Fee ..... \$ 15.00  
  
**TOTAL FEES DUE – WATER AND SEWER PLAN AMENDMENT** .... \$ 2,015.00

**Forest Conservation Exemption** ..... \$ 25.00  
  
Technology Fee ..... \$ 15.00  
  
**TOTAL FEES DUE – FOREST EXEMPTION** ... \$ 40.00

Please make checks payable to "Washington County Treasurer".





WASHINGTON COUNTY PLANNING COMMISSION  
ZONING ORDINANCE MAP AMENDMENT

REQUIRED APPLICATION MATERIALS CHECKLIST

All materials must be clearly labeled  
(Original plus 30 copies of all materials are required)

- X 1. **Application Form**: A completed and signed application form.
- X 2. **Fee Worksheet and Application Fee**: A completed Fee Worksheet and the Application Fee must be submitted at the time application is made. Checks must be made payable to the "Washington County Treasurer".
- X 3. **Ownership Verification**: Proof of ownership interest in the subject property, including a copy of the current deed to the property; OR, if the application is made by a contract purchaser, a copy of the fully-executed Contract of Sale. *SEE EXHIBITS 1-4*
- X 4. **Boundary Plat**: A boundary description, including metes and bounds, prepared and sealed by a land surveyor registered in the State of Maryland. *SEE EXHIBIT 4*
- X 5. **List of the Names and Addresses for all Adjoining and Confronting Property Owners**: A list of the names and addresses, obtained from the latest property tax assessment record, of owners of adjoining or confronting properties, improved or unimproved, including properties separated by streets, railroads, or other rights-of-ways. (Must have house numbers or P.O. box numbers.)
- X 6. **Vicinity Map**: An 8 ½" x 11" page size map showing the zoning of all property within 1,000 feet of the site. *SEE EXHIBIT 5*
- X 7. **Justification Statement**: A written explanation of the reasons why the map amendment is being sought, setting forth in sufficient detail to properly advise County officials as to the justifications for the rezoning change. Applications for floating zones shall include such information as required by the respective Articles of the Ordinance. Other applications must address the following information:
  - a. A statement as to whether or not there is evidence of mistake in the current zoning, and, if so, the nature of the mistake and the facts to support the allegation.
  - b. A statement as to whether or not there is evidence of a substantial change to the character of the neighborhood subsequent to the most recent comprehensive rezoning including the nature of the change, all facts to support the allegations, and a description of the neighborhood.

## OTHER REQUIRED APPLICATION MATERIALS

A written analysis considering each of the factors set forth in Section 27.3.

- ☐ 1. The report and recommendations of the Planning and Zoning Commission.
- ☒ 2. Population change of the area of the proposed change.
- ☒ 3. Availability of public facilities.
- ☒ 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.
- ☒ 9. Whether there has been a convincing demonstration that the proposed rezoning would be appropriate and logical for the subject property
- ☒ 10. Any other material facts that support the amendment.



## Justification statement

**Requested Zoning:** Agricultural Rural - A(R)

**Description of The Property:** See exhibits 1,2, 3 & 4.

Hereinafter, "the property"

**Description of any Improvements on the property:** The property is 22.4 acre abandoned farming complex with several buildings (house, barn, equipment sheds) that are in disrepair.

### Zoning:

Current zoning: Rural Transitional (RT). See exhibit 5.

The property's current RT Zoning was granted during the 2013 Comprehensive Rezoning (hereinafter the "2013 rezoning")

### Mistakes in the 2013 Rezoning

Applicant contends that the RT zoning assigned to the property as result of the 2013 Rezoning constituted a good-faith mistake. The applicant has submitted a Zoning Ordinance map amendment application respectfully requesting that the property be rezoned (i.e. down-zoned from RT to A(r).

As per Maryland case law, to sufficiently demonstrate "mistake" the petitioning party must show that existing facts, or reasonable future projects or trends were not taken into consideration at the time of the zoning. See generally Boyce v. Smebly 334 A.2d 137,142-143 (Md. App. 1975): and White v. Spring, 109 Md. App. 692, 675 A.2d 1023 (1996). Moreover, regarding the question of original mistake, "when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning. Mayor and Council of Rockville v. Stone, 271 Md. 655, 662 (Md. 1974).

In this case, at the time of the 2013 Rezoning, the County did not take into account that,

1. The property has not been designated as a State Priority Funding Area, which is necessary to obtaining public facilities to be developed under RT standards. See exhibit 6.
2. The amended Smithsburg growth area boundary established by the 2013 Comprehensive Plan amendment CP-13-001 is not consistent with the Growth Area land use designation for the property in the Town of Smithsburg 2012 Comprehensive Plan. See exhibits 7, 8, & 9.
3. The property is designated as W-7, S-7, (No Planned Service) by the Adopted Water & Sewerage Plan for the County and service is not generally available to the property. See exhibits 10 & 11.
4. The property is bisected by a stream with associated sensitive areas which severely limits its practicality to be developed as envisioned by its current RT zoning.
5. The access limitations due to SHA access controls along MD 64 and Fruit Tree Lane, a County designated "local road".

### **Comprehensive Plan**

2002 Comprehensive Plan land use designation for the property - Agricultural/Rural Area  
2013 Comprehensive Plan Town Growth area amendment land use designation- Low Density Residential/Town Growth Area. See exhibit 7.

2012 Town of Smithsburg Comprehensive Plan land use designation - Commercial/growth area. See exhibit 8.

### **Development Assumption Proved Erroneous with the passage of time**

The use of the property for agricultural purposes has not changed since the 2013 rezoning. The original 2001 Comprehensive Plan land use classification of agricultural has proven to be correct; the subsequent 2013 County Comprehensive Plan reclassification to include it in the Growth area with a low density residential designation and rezoning to RT was a mistake.

Developing the property as called for by RT zoning would require annexation into the Town of Smithsburg. The Smithsburg Comprehensive Plan designated the property as Commercial, this inconsistency with the County designation and Zoning would be problematic when pursuing annexation.

Applicant has no interest in developing the property residentially nor pursuing annexation in order to obtain public facilities.

Availability of sufficient water capacity to serve all of the designated Smithsburg Town Growth Area, including the subject property is questionable.

### **Proposed A(R) zoning to be logical and appropriate**

General description of RT zoning:

#### **ARTICLE 7A "RT" RESIDENTIAL, TRANSITION DISTRICT**75 Section 7A.0 Purpose

The purpose of the Residential, Transition 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 intended to be the least dense residential district in the Growth Areas at a density of between 2 and 4 dwelling units per acres.

All new development in the Residential, Transition District, should be served by public water and sewer facilities approved by the Washington County Health Department.



General description of A(R) zoning:

#### ARTICLE 5A – "A(R)" AGRICULTURAL (RURAL) DISTRICT<sup>51</sup>

##### Section 5A.0 Purpose

The purpose of this district is to provide for continued farming activity and the many uses that do not require public water and sewerage facilities and which may be more suitably located outside of the urban-type growth of the larger communities of the County. The Agricultural zoning district has been purposely drawn to enclose large blocks of the best soils for intensive agricultural production as well as gently rolling topography for farming. Most of the operating farms as well as the largest block of farmland preserved through the Agricultural Preservation Program is located in this area.

#### **List of Exhibits:**

1. Aerial Photograph.
2. SDAT-Real Property Data.
3. Recorded Deed L. 6945 F.21.
4. Property outline plan with metes & bounds.
5. Zoning map, Washington County.
6. Priority Funding Areas Map.
7. County Comprehensive Plan Land Use Map, CP-13-001.
8. Town of Smithsburg Comprehensive Plan Map, Future Land Use.
9. Town of Smithsburg Comprehensive Plan Map, Zoning
10. County Water Service Map.
11. County Sewer Service Map.



4/18/2023, 8:36:14 AM

World Transportation ● HL Database  
MD\_SixInchImagery Parcels



Real Property Data Search ( )  
Search Result for WASHINGTON COUNTY

View Map

View GroundRent Redemption

View GroundRent Registration

**Special Tax Recapture: None**

Account Identifier: District - 07 Account Number - 016166

**Owner Information**

Owner Name: JERNIGAN TROY A Use: RESIDENTIAL  
JERNIGAN ELISABETH Principal Residence: NO  
Mailing Address: 22725 STEVENSON ROAD Deed Reference: /06945/ 00021  
SMITHSBURG MD 21783-

**Location & Structure Information**

Premises Address: 23226 FRUIT TREE DR Legal Description: 22.4 ACRES  
SMITHSBURG 21783-0000 23226 FRUIT TREE DRIVE

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:  
0040 0008 0225 7010120.22 0000 2022 Plat Ref:

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use  
1800 3,087 SF 22.4000 AC

StoriesBasementType ExteriorQualityFull/Half BathGarageLast Notice of Major Improvements  
2 YES STANDARD UNITBRICK/ 3 3 full

**Value Information**

	Base Value	Value As of 01/01/2022	Phase-in Assessments As of 07/01/2022 As of 07/01/2023	
Land:	262,000	262,000		
Improvements	28,900	42,300		
Total:	290,900	304,300	295,367	299,833
Preferential Land:	0	0		

**Transfer Information**

Seller: LEACH STEVEN R	Date: 03/04/2022	Price: \$270,000
Type: NON-ARMS LENGTH OTHER	Deed1: /06945/ 00021	Deed2:
Seller: UPTON EVERETT H	Date: 08/11/2004	Price: \$249,000
Type: ARMS LENGTH IMPROVED	Deed1: /02407/ 00409	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

**Exemption Information**

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00 0.00	0.00 0.00

**Special Tax Recapture: None****Homestead Application Information**

Homestead Application Status: No Application

**Homeowners' Tax Credit Application Information**

Homeowners' Tax Credit Application Status: No Application Date:

Taxes Paid \$0.00  
 Todd L. Hershey, Treasurer  
 TY 03-04-2022

Prepared by:  
 Lincoln Title & Settlement Services  
 19638 Leitersburg Pike, Suite 202  
 Hagerstown, MD 21742  
 File No.: LT22-1713-MD

Washington Cty Cir Crt  
 IMP FD SURE \$40.00  
 RECORDING FEE \$20.00  
 TR TAX STATE \$1,350.00  
 CTY TR TAX \$1,100.00  
 CTY REC TAX \$2,052.00  
 TOTAL \$4,562.00  
 KRT KB 03:49 pm  
 Mar 04, 2022

1 of 1"

Tax ID No.: 07-016166  
 Title Insurer: Security Title Guarantee Corporation of Baltimore

**This Deed**, made this 4th day of March, 2022 by and between **Steven R. Leach and Dawn D. Leach**, husband and wife, party of the first part, Grantor; and **Troy A. Jernigan and Elisabeth R. Jernigan**, husband and wife, party of the second part, Grantee.

- Witnesseth -

That for and in consideration of the sum of **TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$270,000.00)**, the receipt whereof is hereby acknowledged, and other good and valuable consideration, the said Grantor does grant and convey to the said party of the second part, as tenants by the entirety, in fee simple, all that lot of ground situate in the County of Washington, State of Maryland and described as follows, that is to say:

All that lot or parcel of land, together with the improvements thereon, if any, and all rights, ways, alleys, privileges and appurtenances thereunto belonging or in anywise appertaining, situate, lying and being along the Northwest side of the Smithsburg-Camp Ritchie Highway, and along the East side of the Smithsburg Bypass on State Route #64, in Election District #7, Washington County, Maryland and being more particularly described as follows:

Beginning at a post in the Northwest margin of the said Smithsburg-Camp Ritchie Road, said post being at the beginning of the deed from Robert E. Longnecker and wife to Howard L. Oyler and Dale E. Martin, Partners t/a Oyler and Martin, dated November 6, 1962 and recorded in Liber #386, folio 755, one of the Land Records of Washington County, Maryland, said post having been erroneously described as being in the Northeast margin of said Highway in said deed, and running thence with a portion of the first line of said deed, South 70° 31' East 20.18 feet into the center of said Highway, thence along or near the center thereof South 27°08' West 532.04 feet, thence by a curve to the right having a radius of 1000.0 feet for a distance of 522.14 feet, the chord being South 42° 05'30" West 516.23 feet, thence South 57° 03' West 376.31 feet to intersect the 9<sup>th</sup> line of the aforementioned deed, thence with the remainder of said line North 32° 57'27" West 49.53 feet to the end thereof, thence continuing with the lines of said Deed South 57° 02'33" West 79.71 feet, thence North 40° 25'59" West 47.24 feet to the East margin of the right of way of the Smithsburg Bypass opposite base line station 29+0, thence binding on said right of way by a curve to the left having a radius of 2350.83 feet for a distance of 1270.99 feet, the chord being North 7° 30'41" West 1255.56 feet, thence continuing along said right of way North 23° 00' West 306.04 feet, thence leaving said right of way and running along an existing fence line South 88° 53' East 276.58 feet to intersect the 19<sup>th</sup> line of the aforementioned deed, thence with the remainder of said line South 22° 18' East 159.78 feet to a post at the end thereof, thence with the closing line of said deed South 70° 31' East 1014.0 feet to the place of beginning, containing 22.4 acres of land, more or less.

BEING the same property conveyed unto Steven R. Leach and Dawn D. Leach, husband and wife, by Deed from Everett H. Upton, by David Upton Guardian of the person and property of Everett H. Upton by virtue of that Decree of Guardianship dated April 29, 2004 as entered by the Circuit Court for Washington County, Maryland in Civil Case No. 21-C-04-18424 GS, dated August 10, 2004 and recorded among the land records of Washington County, Maryland in Liber 2407, folio 409

Which has an address of 23226 Fruit Tree Drive, Smithsburg, MD 21783



**Together** with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

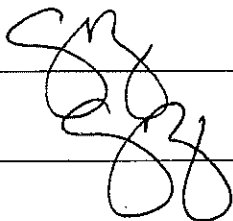
**Subject to** all of the conditions, restrictions, streets, reservations, easements, covenants and rights-of-way of record, including conditions and restrictions as set forth in the Land Records of Washington County, Maryland.

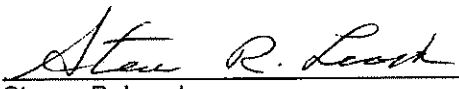

**To Have and To Hold** the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Troy A. Jernigan and Elisabeth R. Jernigan, husband and wife, party of the second part, in fee simple.

**And** the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property hereby granted; and that they will execute such further assurances of the same as may be requisite.

As Witness the hand and seal of said Grantor, the day and year first above written.

WITNESS:


  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Steven R. Leach  
  
\_\_\_\_\_  
Dawn D. Leach

STATE OF MARYLAND  
COUNTY OF WASHINGTON

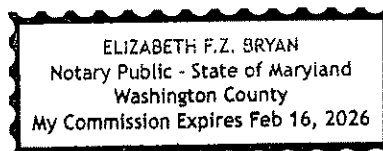
I, Elizabeth F.Z. Bryan, a Notary Public for the County of Washington and State of Maryland, do hereby certify that Steven R. Leach and Dawn D. Leach, husband and wife personally appeared before me this day and acknowledged the due execution of the foregoing instrument, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

Witness my hand and official seal, this the 4th of March, 2022.

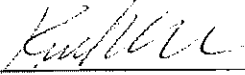
  
\_\_\_\_\_  
Notary Public

My Commission Expires: February 16, 2026

(SEAL)



THIS IS TO CERTIFY that the within Deed was prepared by a party to the instrument or by a person authorized to sign on behalf of such party.



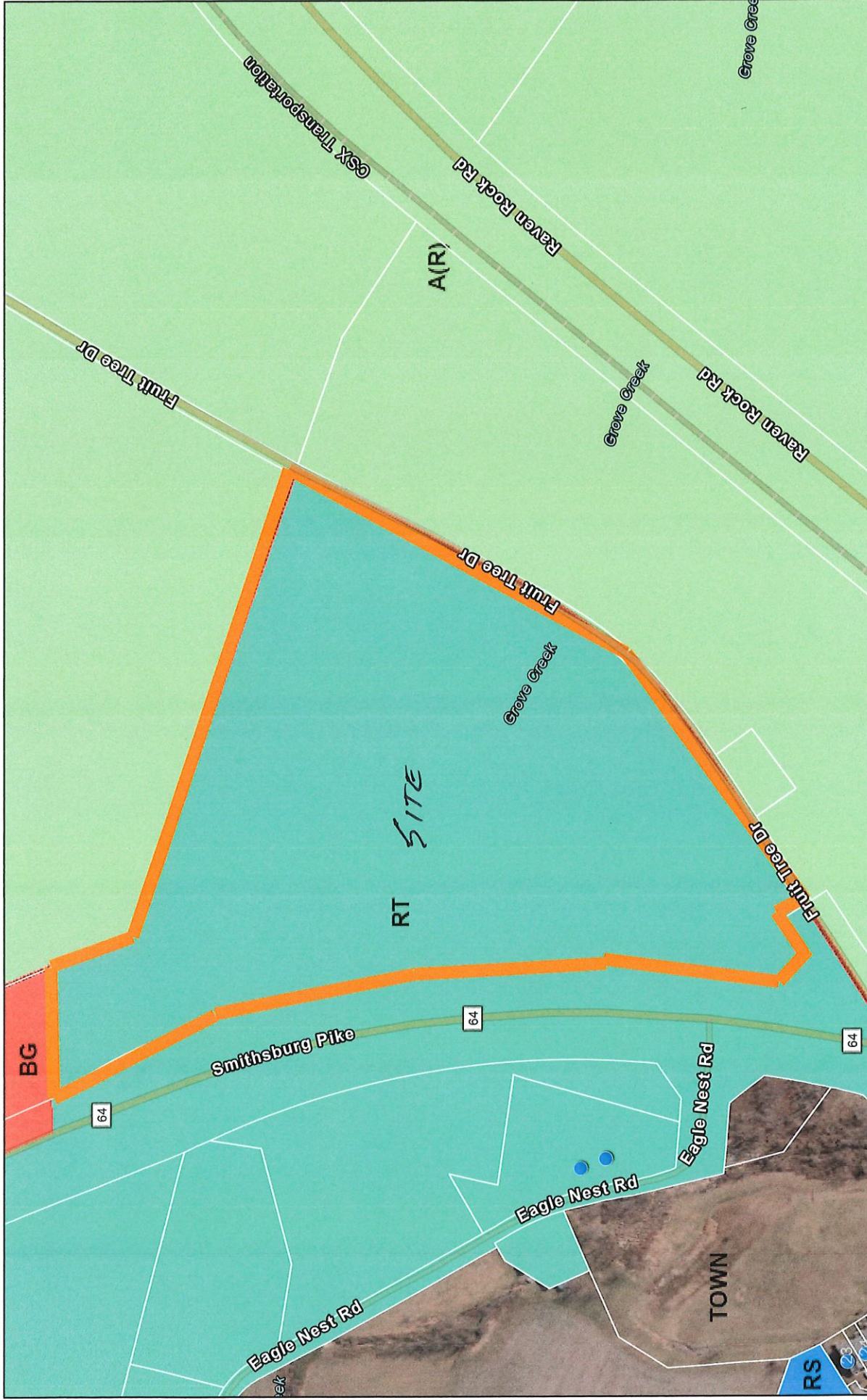
Kent N. Oliver, Esquire

AFTER RECORDING, RETURN TO:  
Troy and Elisabeth Jernigan  
22725 Stevenson Road  
Smithsburg, MD 21783



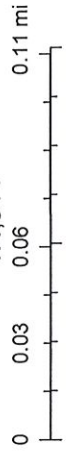
# Adjacent Owners List, Troy Elisabeth Jernigan 23226 Fruit Tree Dr Smithsburg, MD

Parcel	Name	Premise Address	Mailing address (if different from premise)
40-8-107	Robert & Salley Clopper	Fruit Tree Dr	23431 Raven Rock Rd, Smithsburg, MD 21783
40-14-108	Aaron Clopper	23221 Fruit Tree Dr, Smithsburg, MD 21783	
40-14-195	Raven Rock Investments	Raven Rock Road	13220 Edgemont Rd, Smithsburg, MD 21783
40-8-132	Kenneth Plume L/E	23136 Eagles Nest Rd, Smithsburg, MD 21783	
40-8-370	MD Roads Commission	Stevenson Road	301 W. Preston St, Baltimore, MD 21201-2305
40-8-369	Gardenhour Orchards Inc	23042 Eagles Nest Rd	PO Box 275, Smithsburg, MD 21783-0275
40-7-104	Town of Smithsburg	12835 Bikle Rd	PO Box 237, Smithsburg, MD 21783-0237
40-8-226	TDR Enterprises Inc	12745 Smithsburg Pike	13201 Sleepy Creek Lane, Smithsburg, MD 21783
40-8-260	Raven Rock Investments	23340 Fruit Tree Dr	13220 Edgemont Rd, Smithsburg, MD 21783
SITE			
40-8-225	Troy & Elisabeth Jernigan	23226 Fruit Tree Dr	22725 Stevenson Rd, Smithsburg, MD 21783



4/18/2023, 8:33:40 AM

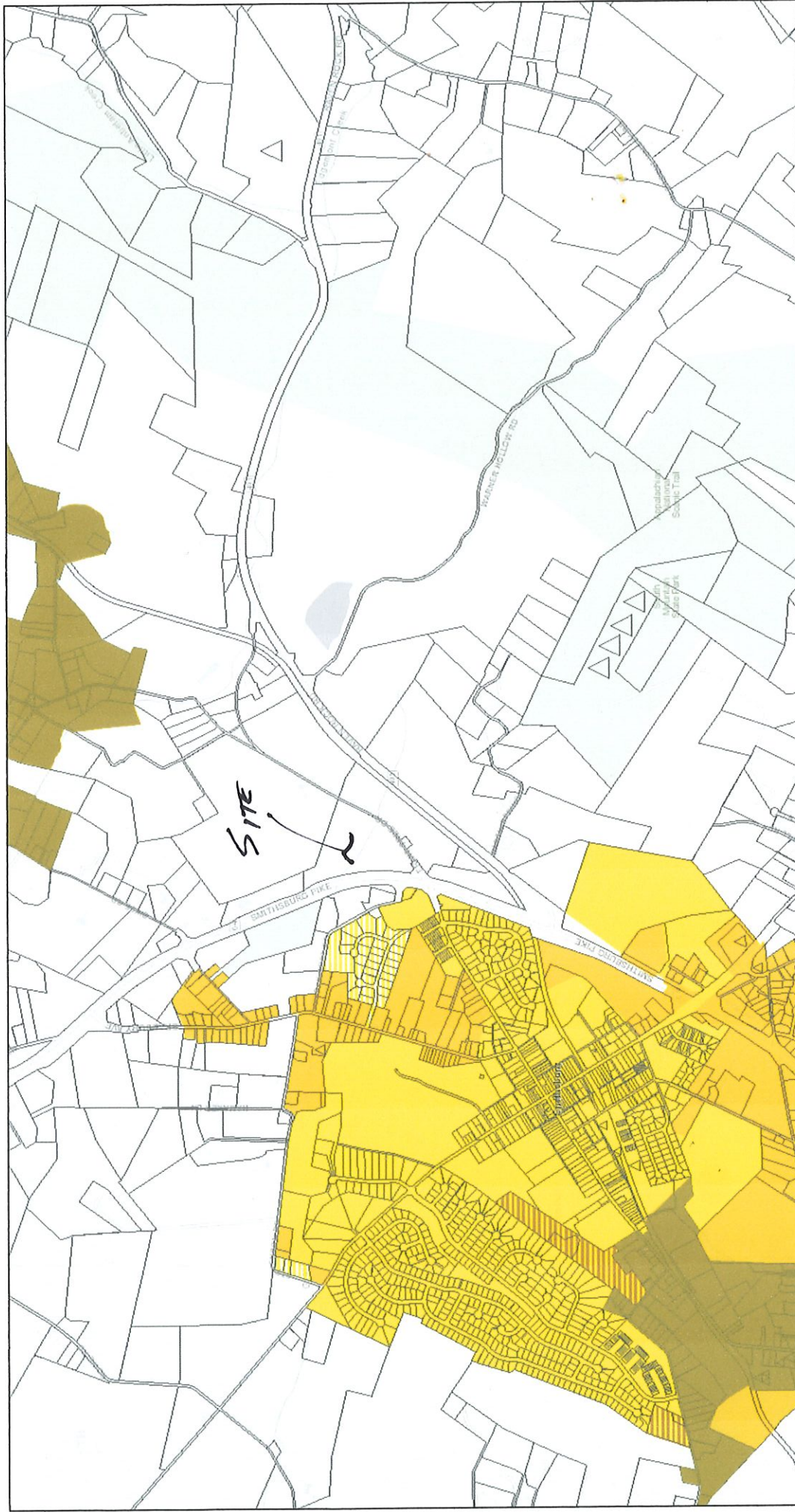
1:4,514



- World Transportation
- MD\_SixInchImagery
- HL Database
- Parcels
- Zoning
- Business, General
- Residential, Suburban
- Agricultural (Rural)
- Municipal
- Growth Area Boundaries
- Residential, Transition



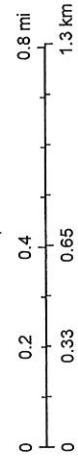
# Priority Funding Area Map



April 4, 2023

- MD Counties
- Municipalities
- Municipal PFA
- Municipal PFA Comment Area
- Annexed but not PFA

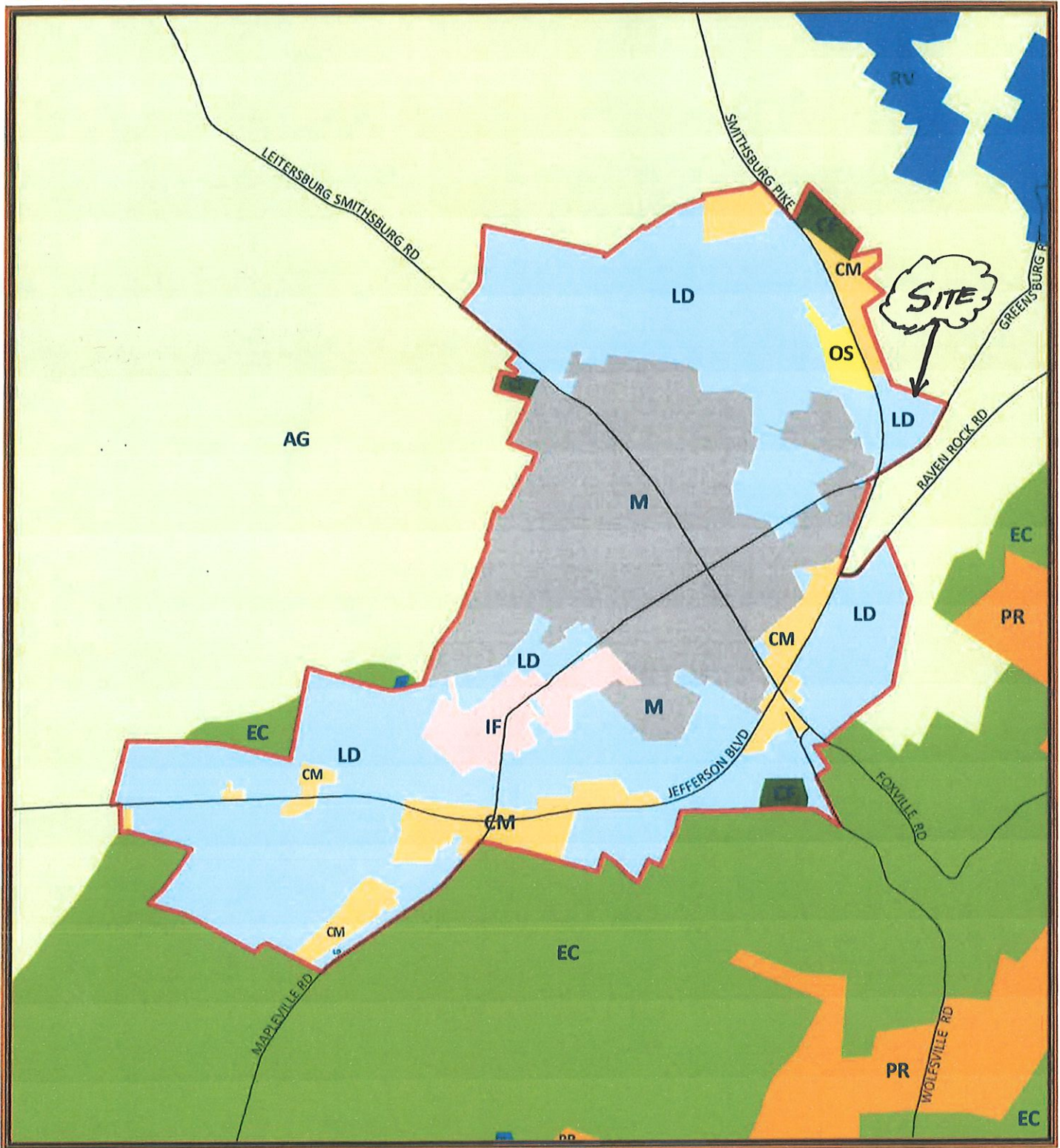
1:21,033



MD IMAP, MDP, SDAT, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

*EXHIBIT 6*





## Legend

- Roads
- Proposed Growth Area Boundary
- Industrial / Flex
- Commercial
- Low Density Residential
- Community Facilities
- Urban Open Space
- Municipalities
- Rural Village
- Preservation
- Environmental Conservation
- Agriculture

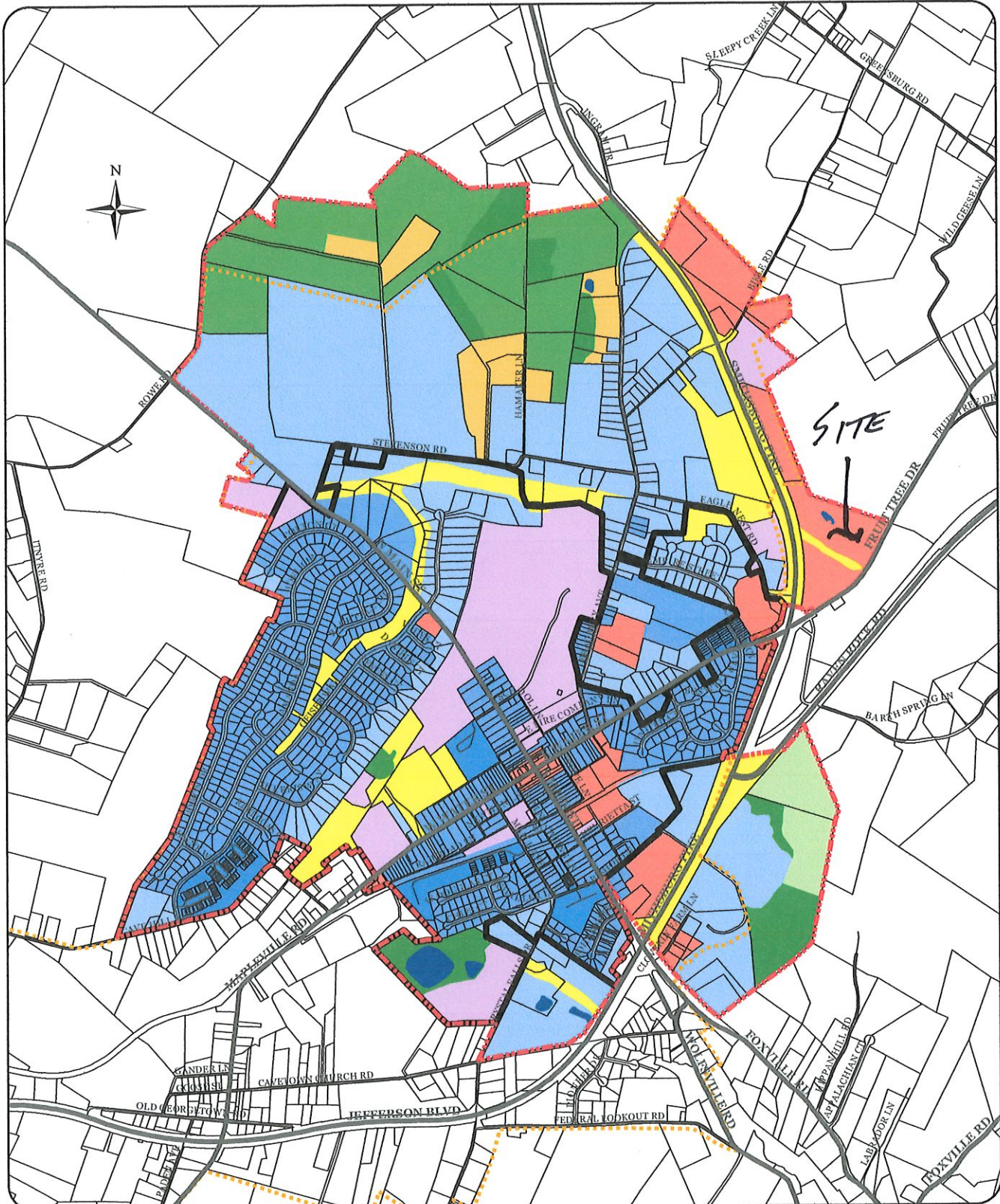
0 0.5 Miles



EXHIBIT 7



# Future Land Use



Created By: Washington County, MD Planning Dept. GIS  
Date: February 2011

**WARNING:** This map was created by the Washington County Planning Department and is intended for the recipients use only. It is not for general distribution to the public, and should not be scaled or copied. Any modifications or changes to this map are prohibited without the express prior written approval of the Planning Department GIS. Sources of the data contained hereon are from various public agencies which may have use restrictions or disclaimers.

**NOTICE:** The parcel lines shown on this map are derived from a variety of sources which have their own accuracy standards. The parcel lines are approximate and for informational purposes ONLY. They are not guaranteed by Washington County Maryland or the Maryland Department of Assessments and Taxations for any errors including errors of omission, commission, positional accuracy or any attributes associated with real property. They are currently in DRAFT format and shall not be copied, reproduced or scaled in any way without the express prior written approval of Washington County Maryland Planning and Zoning Department. This data DOES NOT replace an accurate survey by a licensed professional and information should be verified using the relevant deeds, plats and other recorded legal documents.

Path: T:\Policy\Develop\Smithsburg\10maps\smithsburg\_FUTURElanduse.mxd

0 0.1 0.2 0.3 0.4  
Miles



## Legend

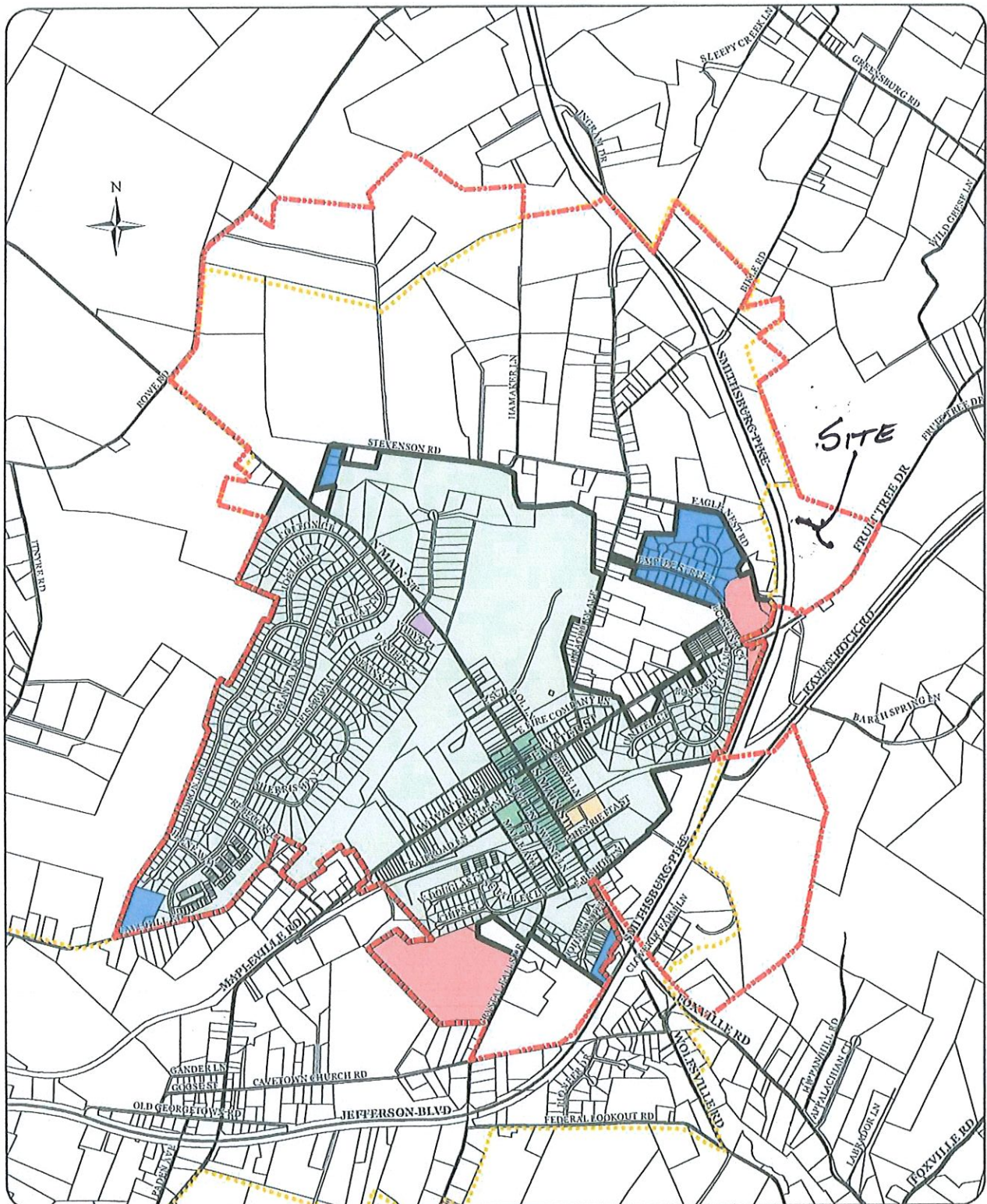
- Roads
- Smithsburg Town Growth Area
- County Growth Area
- Town Boundary
- Land Use
  - Agriculture
  - Commercial
  - Institutional

- High Density Residential
- Medium Density Residential
- Low Density Residential
- Rural Residential
- Mixed Forest
- Open Spaces/Parks/FP
- Orchard
- Water

**EXHIBIT 8**



# Zoning



Created By: Washington County, MD Planning Dept. GIS  
Date: February 2011

**WARNING:** This map was created by the Washington County Planning Department and is intended for the public use only. It is not for general distribution to the public, and should not be used or copied. Any modifications or changes to this map are prohibited without the express prior written approval of the Planning Department GIS. Sources of the data contained herein are from various public agencies which may have use restrictions or disclaimers.

**NOTICE:** The parcel lines shown on this map are derived from a variety of sources which have their own accuracy standards. The parcel lines are approximate and for informational purposes ONLY. They are not guaranteed by Washington County Maryland or the Maryland Department of Assessments and Taxation for any commercial use, regardless of function, commercial, political, accuracy or any other use associated with real property. They are currently in DGNAT format and shall not be copied, reproduced or scaled in any way without the express prior written approval of Washington County Maryland Planning and Zoning Department. This data does not constitute a survey by a licensed professional and information should be verified using the relevant deeds, plats and other recorded legal documents.

Path: T:\Policy\Develop\Smithsburg\maps\smithsburg\_townzoning.mxd

0 0.1 0.2 0.3 0.4  
Miles



## Legend

- Roads
- Smithsburg Town Growth Area
- County Growth Area
- Town Boundary
- Smithsburg Zoning
  - EMPLOYMENT CENTER
  - GENERAL COMMERCIAL
  - NEIGHBORHOOD COMMERCIAL
  - SUBURBAN RESIDENTIAL
  - TOWN CENTER
  - TOWN RESIDENTIAL

EXHIBIT 9



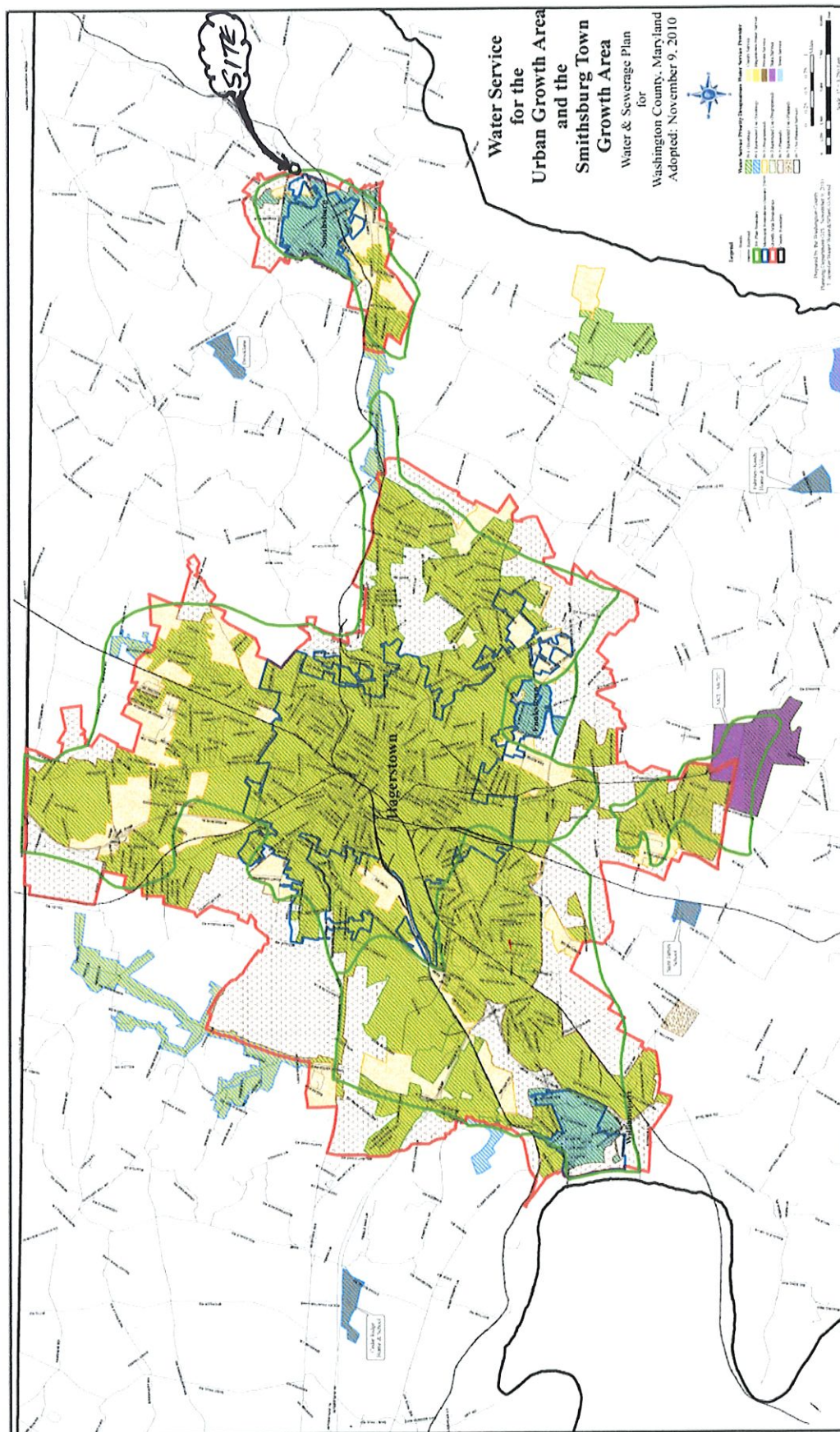


EXHIBIT 10



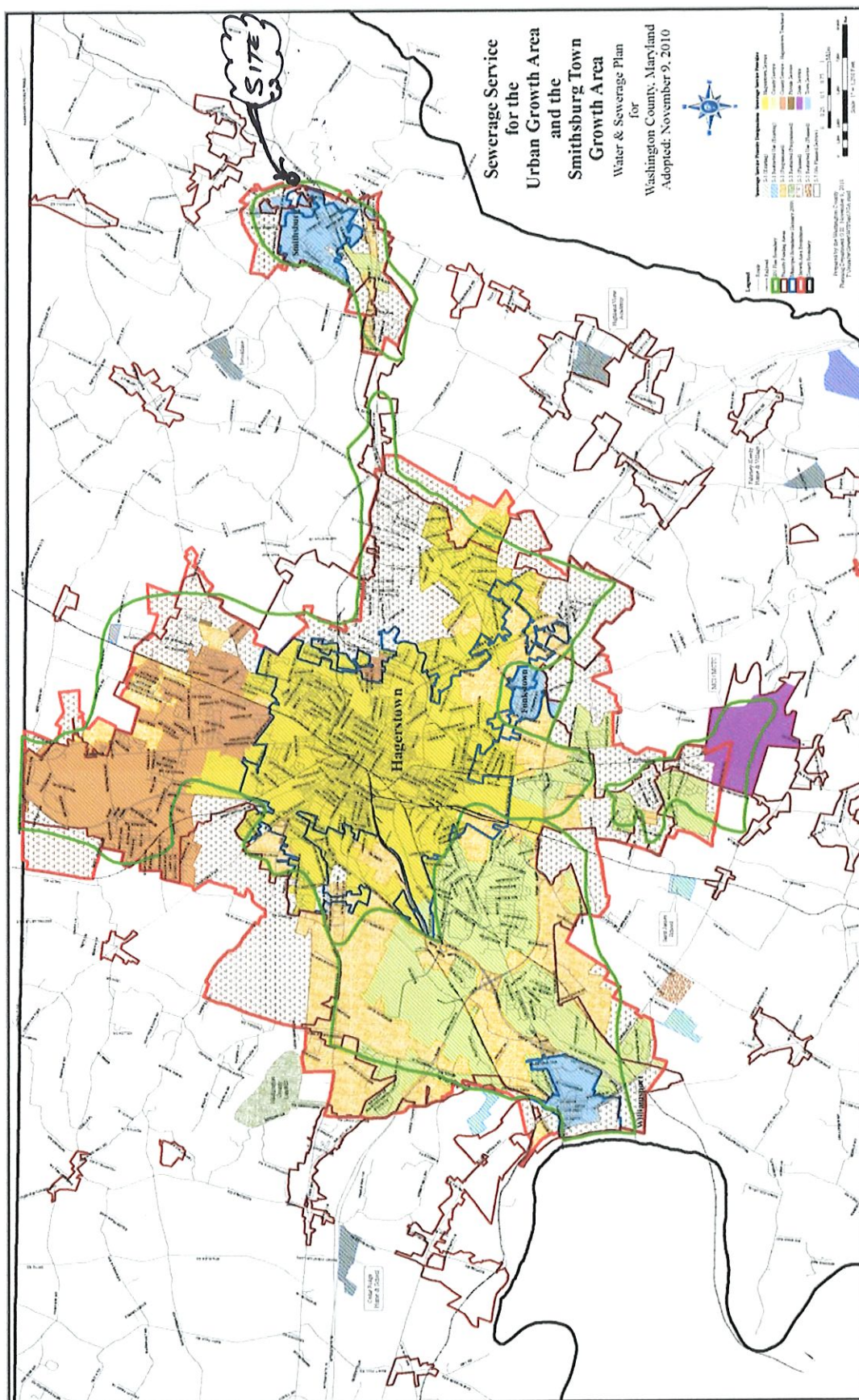


Exhibit 22









DEPARTMENT OF PLANNING & ZONING  
COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

June 2023

Case #: RZ-23-004

**Application for Map Amendment  
Staff Report and Analysis**

---

---

Property Owner(s)	:	Troy and Elizabeth Jernigan
Applicant(s)	:	Same as property owner
Location	:	23226 Fruit Tree Drive, Smithsburg
Election District	:	#7 - Smithsburg
Comprehensive Plan		
Designation	:	Low Density Residential
Zoning Map	:	40
Parcel(s)	:	P. 225
Acreage	:	22.4 acres
Existing Zoning	:	Residential Transition (RT)
Requested Zoning:		Agricultural Rural (AR)
Date of Meeting	:	July 10, 2023

---

---

**Background and Findings Analysis:**

Location and Description of Subject Property

The subject parcel is located in between Smithsburg Pike (MD 64) and Fruit Tree Drive. The total acreage of the parcel is 22.4 acres and is currently improved with an historic single family dwelling unit and several outbuildings. The parcel has a triangular shape that generally slopes upward from the southeast to the northwest. The property consists partly of forested lands and partly of actively farmed lands. The property is located within a designated growth area that surrounds the Town of Smithsburg. The parcel also includes a stream that 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 path as the stream bed.

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 picked 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 subject property is in the Smithsburg Election District, # 7. As shown in Table 1 below, this district has shown large increases in population between 1990 and 2010 before showing a slight

decrease over the last 10-year period. Between 1990 and 2020 the 30-year average change in population shows that this election district has outpaced the average growth rate of the County as a whole. This district has increased approximately 45.8% (1.5% per year) while the County has increased in population by 27.4% (0.91% per year) during the same period.

Table 1: Population Trends 1980 - 2010			
Year	Area	Population	% change from previous decade
1990	District	4297	
	County	121393	
2000	District	5370	25.0%
	County	131932	8.7%
2010	District	6343	18.1%
	County	147430	11.7%
2020	District	6267	-1.2%
	County	154705	4.9%

Source: US Census Bureau

### Availability of Public Facilities

#### 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.

The subject parcel is located within the County designated Town Growth Area that surrounds the Town of Smithsburg. The property is currently improved and contains a private well and private on-site sewerage disposal system. Even though the property is located within a growth area, it is delineated 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.

This is an atypical priority service area designation for a property located within a growth area. Growth areas are meant to include parcels that have existing public water and/or sewer services or are planned/programmed for service within a 10-year planning period. The reason for the current configuration is because the 2009 Water and Sewerage Plan has not been updated to include amendments made as part of the Comprehensive Town Growth Area rezonings that occurred in 2013. It should be noted that there are currently no plans to extend public water or sewer services to this property in the County Capital Improvement Program.

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



### Emergency Services

The subject parcel 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 service.

### Schools

The subject site is within the districts of Smithsburg Elementary, Middle and High schools. The zoning of the property is RT and has a residential density of approximately 4.02 dwelling units per acre. The requested change for the subject properties to be rezoned to AR would also have opportunities for residential development. However, the AR zoning district has a residential density of one dwelling unit per five acres thus making the impact from residential development much lower. Therefore, the impact on the local school district would be minimal and less impactful than the current zoning of the property.

### Present and Future Transportation Patterns

#### Highways

The subject parcel has existing road frontage along Maryland Route 64 (Smithsburg Pike) and Fruit Tree Drive. There is currently an approved entrance Fruit Tree Drive that accommodates the existing residential use. There does not appear to be an existing access point onto Smithsburg Pike other than for potential farm use.

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. Due to the subject properties location along a State owned and maintained route, traffic volume data was retrieved from MD SHA. Given the property's proximity to several intersections of State routes, traffic volume data 3 major intersections along MD 64 have been included in the chart below. The data shown in the chart is expressed in annual average daily traffic volumes.

**Table 2: Traffic Volumes 1990-2020**

Year	MD 64 @ MD 491	MD 64 @ MD 77/Main St.	MD 64 @ MD 66
2020	6094	4272	n/a
2015	6665	4314	11822
2010	6650	4552	11380
2005	6750	4675	10750
2000	6200	3500	14200
1995	4850	3050	10950
1990	5425	2500	9275

Source: Maryland State Highway Administration

As shown in Table 2, traffic volumes have been steadily increasing over the last three decades. Because the figures are expressed in annual average daily traffic there are some inconsistencies in year-to-year data but there is an obvious increase in traffic at all three intersections. The traffic count spot closest to the subject parcel (MD 64 @ MD 491) has shown some overall growth but compared to the other two intersections, the growth appears fairly moderate.

A copy of this rezoning application was sent to SHA for comment, however, there has been no comment received in response to this request.

#### Public Transportation

There is a service route provided by Washington County Transit that provides bus service to the Smithsburg area. The route extends out Jefferson Blvd. to Main St. in Smithsburg where the services loops in the Town and returns to the transfer station. The service route does not reach the subject parcel.

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

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

All of the properties surround the subject parcel are currently open space or very low density with large lot residential uses. There is a more densely developed area near the point of the property where Fruit Tree Drive and Smithsburg Pike intersect. On the west side of Smithsburg Pike there is a single-family development and a town house development that are located within the incorporated boundaries of the Town of Smithsburg.

Another important component of compatibility is the location of historic structures on and around the parcels being proposed for rezoning. The following historic sites listed on the Washington County Historic Sites Survey are located within a 0.5-mile radius of the proposed rezoning areas.

WA-IV-033 – Mountain Hall, mid-19<sup>th</sup> Century brick house and outbuildings, located on subject property.

WA-IV-275 – Small structure over Little Grove Creek, reinforced concrete slab structure constructed in 1931, located approximately 650 ft southwest of the subject property.

WA-IV-034 – Mid 19<sup>th</sup> century brick farmhouse and bank barn, located approximately 1200 ft. northeast of the subject property.

WA-IV-023 – Gardenour Fruit Farm site, Mid-19<sup>th</sup> century brick farmhouse and bank barn, demolished.

#### 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.

The subject parcel is located within the Low-Density Residential policy area. The Comprehensive Plan offers the following recommendations for this policy area:

Industrial Flex Policy Area recommendations:

*“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>2</sup>*

Change in the Character of the Neighborhood or Mistake in Original Zoning 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. 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 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.

**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.

---

<sup>2</sup> 2002 Washington County, Maryland Comprehensive Plan, Pages 245 and 246

The applicant of this case has indicated in their justification statement that they believe that there was a mistake made by the governing body in the last comprehensive rezoning of the properties in 2016 (RZ-13-003). There can be many reasons provided by an applicant to prove that the governing body erred in its application of zoning. However, previous MD case law has consistently found that in order for an applicant to prove that the governing body erred in its application of zoning on a property, evidence must be provided that clearly shows that the body failed to consider certain facts and conditions existing at the time of the rezoning.

The applicant contends that as part of the Comprehensive Rezoning of the Town Growth Area adopted in 2016 the local legislative body did not sufficiently take into account certain factors existing at the time that should have had a greater impact on the zoning of the subject properties. These factors include:

- The property is not within a State approved Priority Funding Area (PFA).
- The designated land use policy area in the County Comprehensive Plan is not consistent with the designated policy area in the Smithsburg Comprehensive Plan.
- The property has a priority service area designation of W-7/S-7, no planned service.
- The property contains environmentally sensitive areas that limit development; and
- There are access limitations along MD 64 due to MD State Highway Administration control.

All of the statements made by the applicant are factually true. When considered as a whole each of the points made by the applicant build upon one another to suggest that there may have been a mistake made in the zoning of the subject parcel in 2016.

The first point made by the applicant is that the County failed to consider that the property was not located within a State approved PFA at the time of the rezoning. PFA's were enacted in Maryland in 1997 and are defined as existing communities and places designated by local governments indicating where they want state investment to support future growth. According to State law, the standard requirements for an area to be designated as a PFA are as follows:

- Zoning: If residentially zoned, the area must at least have a density of 3.5 dwelling units per acre. The zoning also qualifies if the area is zoned for employment uses, such as commercial, industrial, or institutional.
- Water and Sewer Plan: The area must be planned for sewer service in the 10-year water and sewer plan.
- Growth Areas: The area must be within a locally designated growth area.

While this property is zoned for a residential density of greater than the 3.5 dwelling units per acre and is located within a growth area, there are no sewer facilities within several hundred feet of the property available for extension. The added fact that the property is not included within a planned sewer service area adds credibility to the applicants point.

The applicant also points out in their justification statement that the land use designation assigned by the County Comprehensive Plan (Low Density Residential) is not consistent with the land use designation assigned by the Town of Smithsburg Comprehensive Plan (Commercial/Open



June 2023

Space). While there is a difference between the two plans, they both agree that the property should be located within the Town Growth Area. But the difference in analyses also points out the flexibility of the property in how it may develop.

Finally, the applicant points out that there may be limitations to how the property may develop based upon access to the transportation network and environmental issues. As noted previously, the property has frontage onto two road networks, Smithsburg Pike and Fruit Tree Drive. Smithsburg Pike is maintained by MD SHA and according to the applicant, has control over access in the area. There are some topographic issues that may preclude access in some areas along the frontage of the parcel. Fruit Tree Drive is a County maintained facility that accommodates mostly local traffic. Development that could occur based on the current RT zoning district would likely require substantial upgrades to both road networks to accommodate the level of development permitted.

The property also contains Grove Creek, a stream that bisects the property as it runs in an east-west corridor. There is no floodplain associated with the stream but in accordance with County sensitive area regulations there would be an associated stream buffer that is variable upon slopes adjacent to the stream bed. The property also contains potential wetland habitats associated with a small pond on the property. These features lend credibility to the applicants request to downzone the property to a less intensive zoning district.

**Recommendation:**

Based on the information provided by the applicant in the initial application and analysis by Staff, we believe that most of the evidence that has been provided shows a case that would support the request to amend the zoning map from RT to AR.

Respectfully submitted,



Jill Baker, AICP  
Director

