



100 West Washington Street, Suite 1101 | Hagerstown, MD 21740-4735 | P: 240.313.2200 | F: 240.313.2201
WWW.WASHCO-MD.NET

BOARD OF COUNTY COMMISSIONERS

September 12, 2023

OPEN SESSION AGENDA

- 7:00 AM WASHINGTON COUNTY EMPLOYEE SERVICE AWARDS BREAKFAST
Washington County Agricultural Education Center, 7313 Sharpsburg Pike, Boonsboro, Maryland 21713
- 10:00 AM INVOCATION AND PLEDGE OF ALLEGIANCE
CALL TO ORDER, *President John F. Barr*
APPROVAL OF MINUTES: *August 22, 2023*
August 29, 2023
- 10:05 AM COMMISSIONERS' REPORTS AND COMMENTS
- 10:15 AM STAFF COMMENTS
- 10:20 AM CITIZEN PARTICIPATION
- 10:30 AM PUBLIC HEARING: APPLICATION FOR ZONING TEXT AMENDMENT RZ-23-004; AND COMPREHENSIVE PLAN AMENDMENT CP-23-001
Jill Baker, Director, Planning and Zoning
- 10:50 AM FY24 HEALTHY FAMILIES HOME VISITING CONTINUATION GRANT-
APPROVAL TO ACCEPT AWARDED FUNDING
Nicole Phillips, Grant Manager, Grant Management
- 11:00 AM FY24 SENIOR CITIZEN ACTIVITIES CENTER OPERATING FUND GRANT –
APPROVAL TO ACCEPT AWARDED FUNDING
Nicole Phillips, Grant Manager, Grant Management; Amy Olack, CEO, Washington County Commission on Aging
- 11:05 AM TERMINATION OF COVID POLICY
Michelle Gordon, County Administrator
- 11:10 AM CLOSED SESSION - *To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals; To consider the acquisition of real property for a public purpose and matters directly related thereto; To consult with staff, consultants, or other individuals about pending or potential litigation; and To consult with counsel to obtain legal advice on a legal matter.*

12:45 PM RECONVENE IN OPEN SESSION

12:45 PM SECOND STAFF COMMENTS

ADJOURNMENT



Agenda Report Form

Open Session Item

SUBJECT: PUBLIC HEARING: Application for Zoning Text Amendment RZ-23-004; and Comprehensive Plan Amendment CP-23-001

PRESENTATION DATE: September 12, 2023

PRESENTATION BY: Jill Baker, AICP, Director, Department of Planning and Zoning

RECOMMENDED MOTION: The purpose of this public hearing is to take public comment on the rezoning and comprehensive Plan amendment applications. The Commissioners may take action to approve or deny the requests or wait until a later date to deliberate.

REPORT-IN-BRIEF: A rezoning case has been applied for by Troy and Elisabeth Jernigan to amend the current zoning of property located at 23226 Fruit Tree Drive, Smithsburg, MD from Residential, Transition (RT) to Agriculture, Rural (AR). The application states that there was a mistake made in the zoning of the property as part of the 2013 Town Growth Area rezoning. This request includes an amendment to the Comprehensive Plan for the County to remove said parcel from the delineated Smithsburg Town Growth Area.

DISCUSSION: 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.

This amendment was reviewed by the Planning Commission at a public information meeting held on July 10, 2023. At that the Planning Commission voted unanimously to recommend approval of this text amendment.

FISCAL IMPACT: n/a

CONCURRENCES: Planning Commission

ALTERNATIVES: n/a

ATTACHMENTS: Proposed text amendments, staff reports, and application

AUDIO/VISUAL NEEDS: none



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

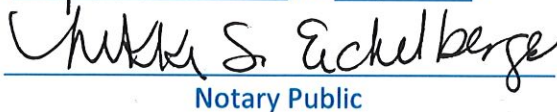
☒ Mistake in original zoning

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

- ☒ Application Form
- ☒ Fee Worksheet
- ☒ Application Fee
- ☒ Ownership Verification
- ☒ Boundary Plat (Including Metes & Bounds)

- ☒ Names and Addresses of all Adjoining & Confronting Property Owners
- ☒ Vicinity Map
- ☒ Justification Statement
- ☒ 30 copies of complete Application Package



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 DISTRICT75 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) DISTRICT⁵¹

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.

Frederick Seibert & Associates, Inc.



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

World Transportation

HL Database

MD_SixInchImagery

Parcels

1:4,514

Distance (mi)	Time (hr)
0	0
0.03	0.06
0.11	0.11

0	0.04	0.09	0.18 km
0	0.04	0.09	0.18 km

Esri, HERE, iPC, Esri Community Maps Contributors, Frederick County, WashCo MD, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph,

WashCo MD, ©
EXHIBIT 1

Maxar | MD IMAP, DoIT | Hagerstown MD | Washington County Planning Department | Source: USDA NRCS, Esri | MD IMAP, USDA | Esri, HERE, IPC | Esri Community Maps Contributors, Frederick County, WashCo MD, © OpenStreetMap, Microsoft, Esri, HERE, DeLorme, Mapbox, TomTom, Swatch, © Mapbox, © OpenStreetMap contributors, and the GIS user community

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	
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 9th 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 19th 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.

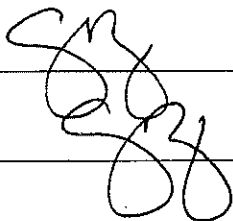
Subject to all of the conditions, restrictions, streets, reservations, easements, covenants and rights-of-way of record, including conditions and restrictions as set forth in the Land Records of Washington County, Maryland.

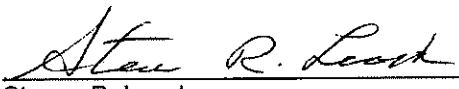
To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Troy A. Jernigan and Elisabeth 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.

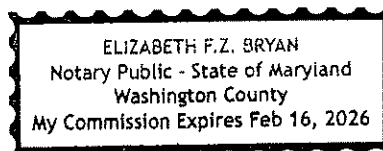
Witness my hand and official seal, this the 4th of March, 2022.



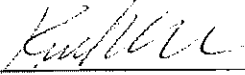
Notary Public

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.

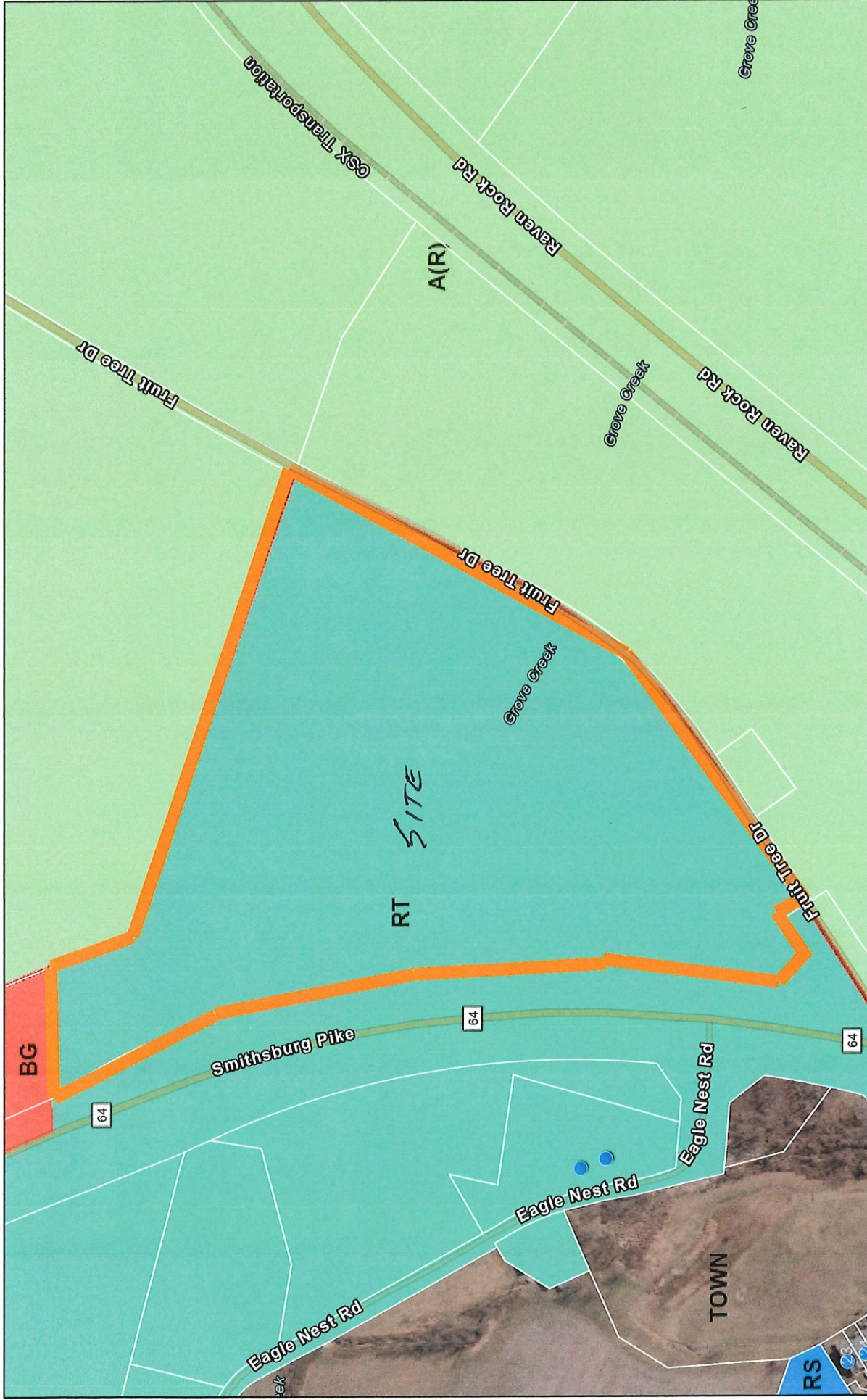


Kent N. Oliver, Esquire

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

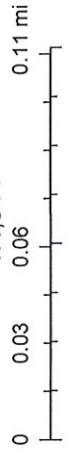
Adjacent Owners List, Troy Elisabeth Jernigan 23226 Fruit Tree Dr Smithsburg, MD

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



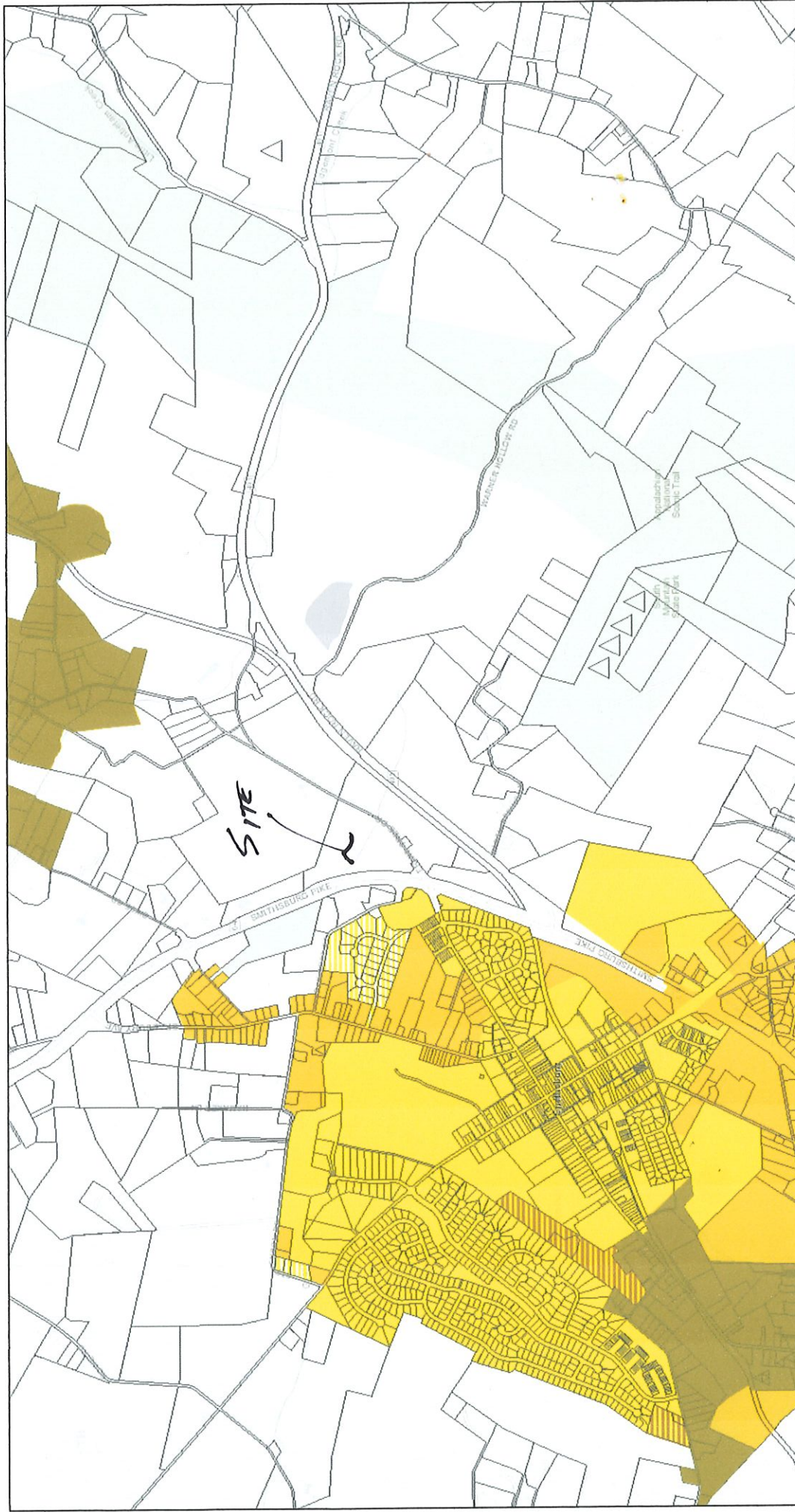
4/18/2023, 8:33:40 AM

1:4,514



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

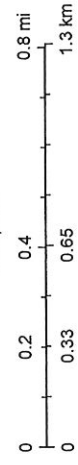
Priority Funding Area Map



April 4, 2023

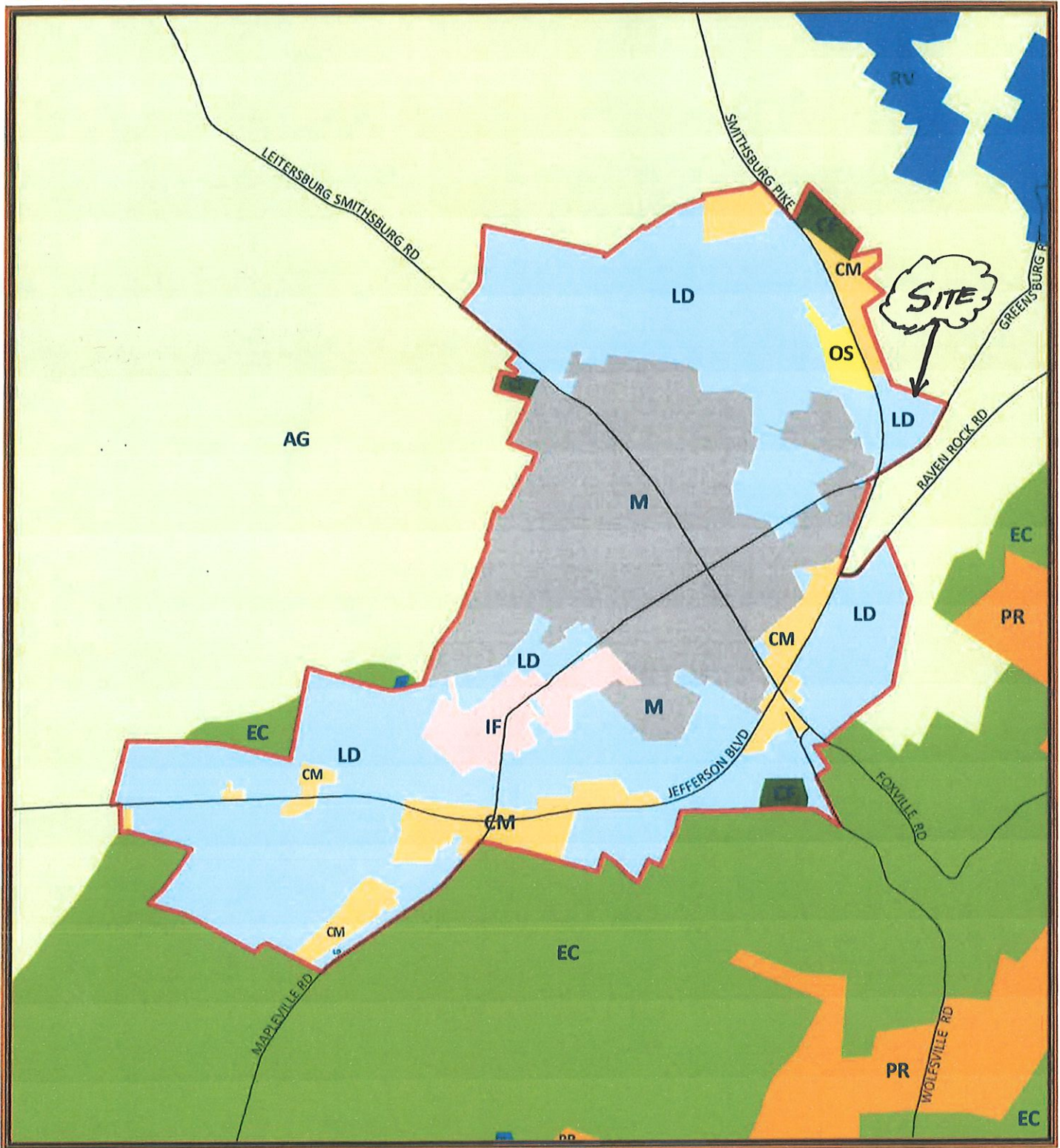
- MD Counties
- Municipalities
- Municipal PFA
- Municipal PFA Comment Area
- Annexed but not PFA

1:21,033



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

EXHIBIT 6



Legend

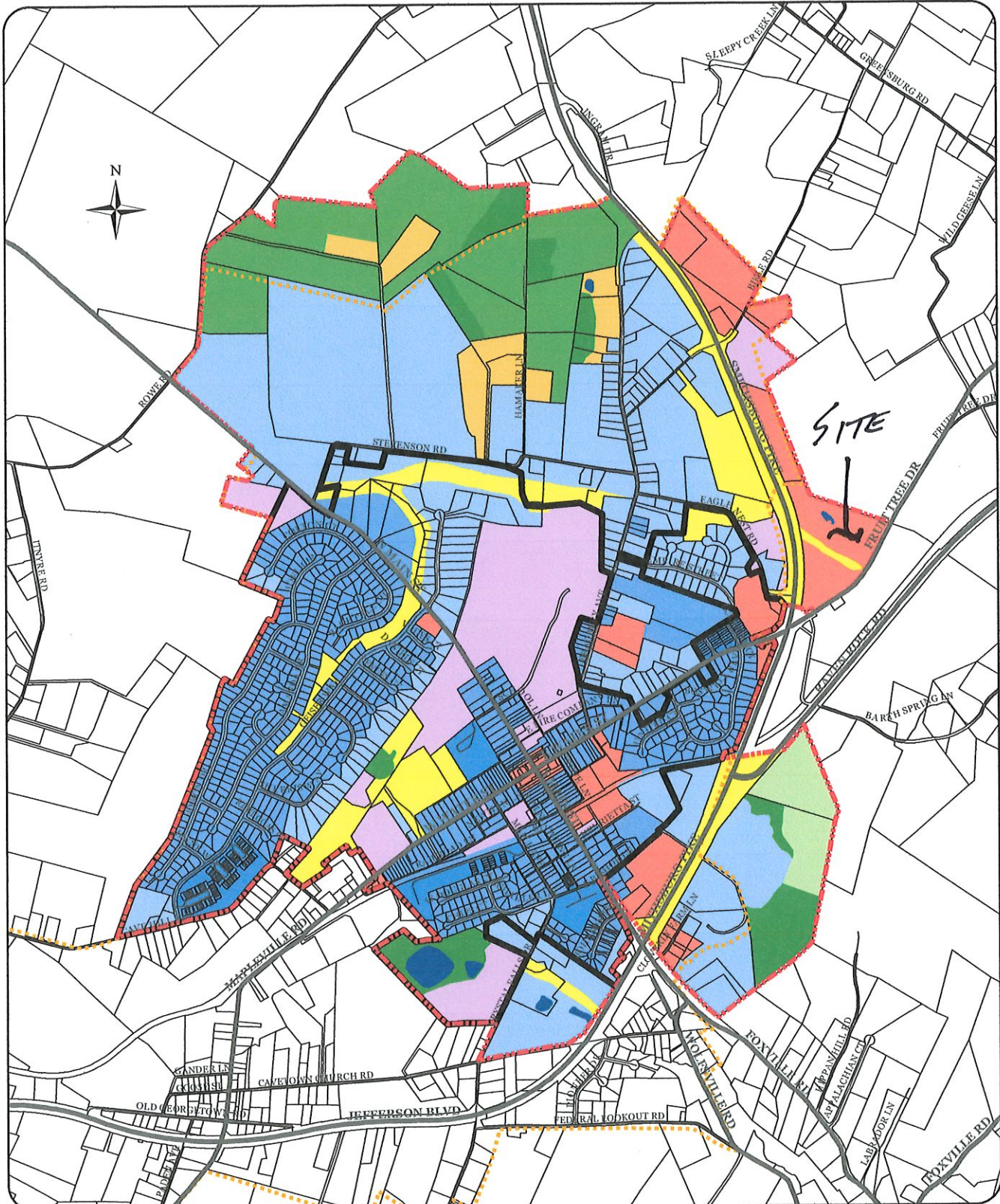
- Roads
- Proposed Growth Area Boundary
- Industrial / Flex
- Commercial
- Low Density Residential
- Community Facilities
- Urban Open Space
- Municipalities
- Rural Village
- Preservation
- Environmental Conservation
- Agriculture

0 0.5 Miles



EXHIBIT 7

Future Land Use



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

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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

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Miles



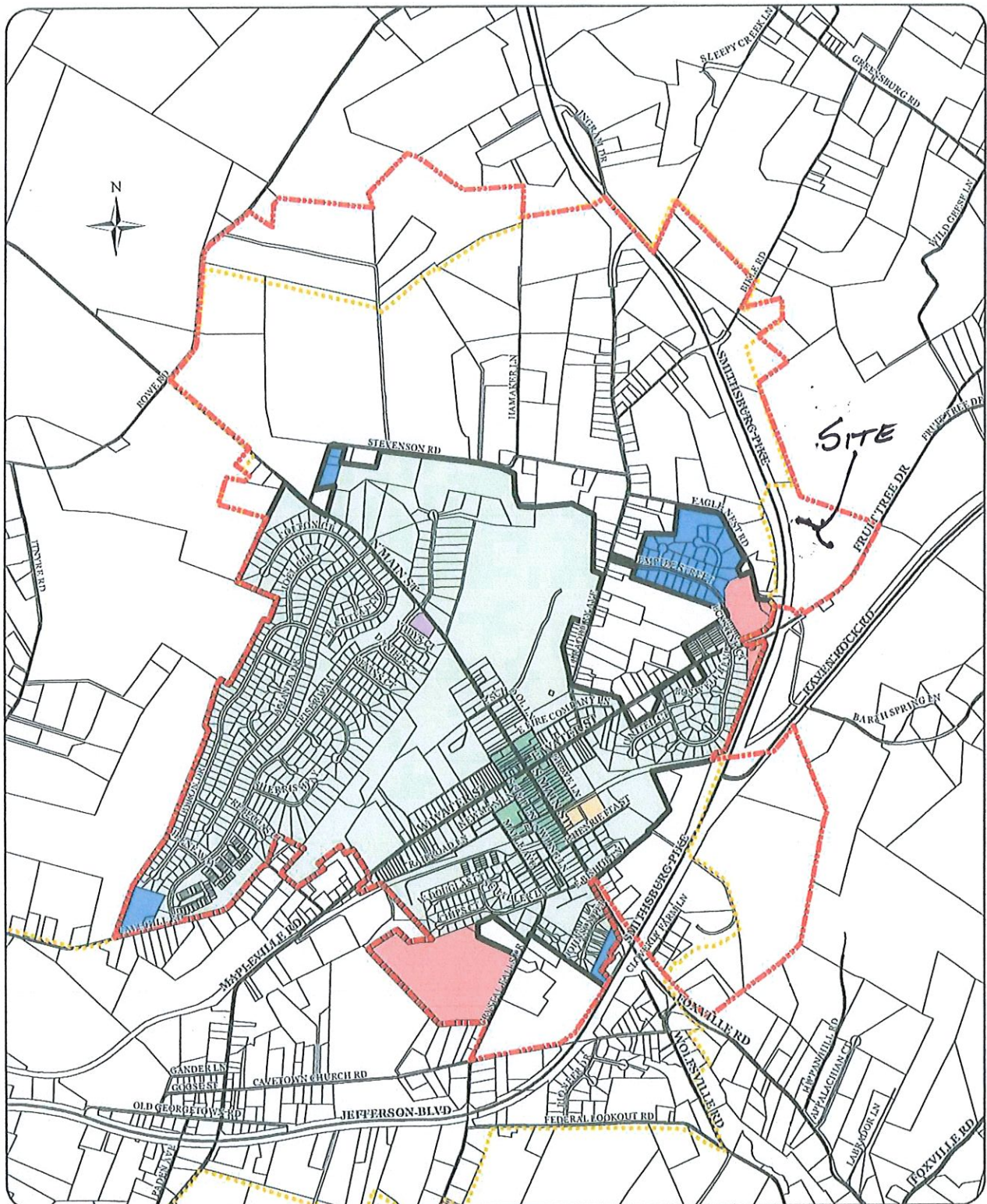
Legend

- 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, including foundation, construction, 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 warranty 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

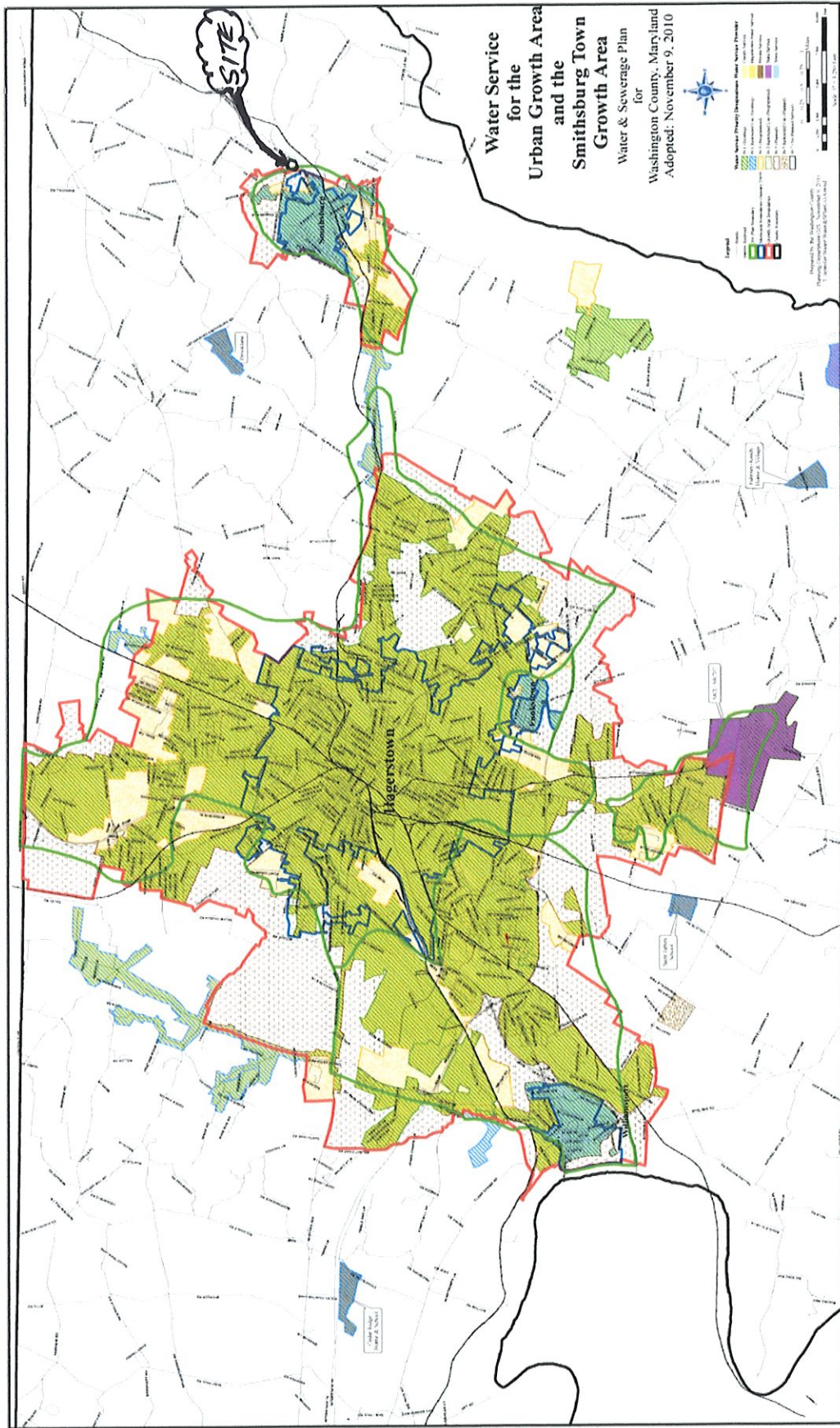


EXHIBIT 10

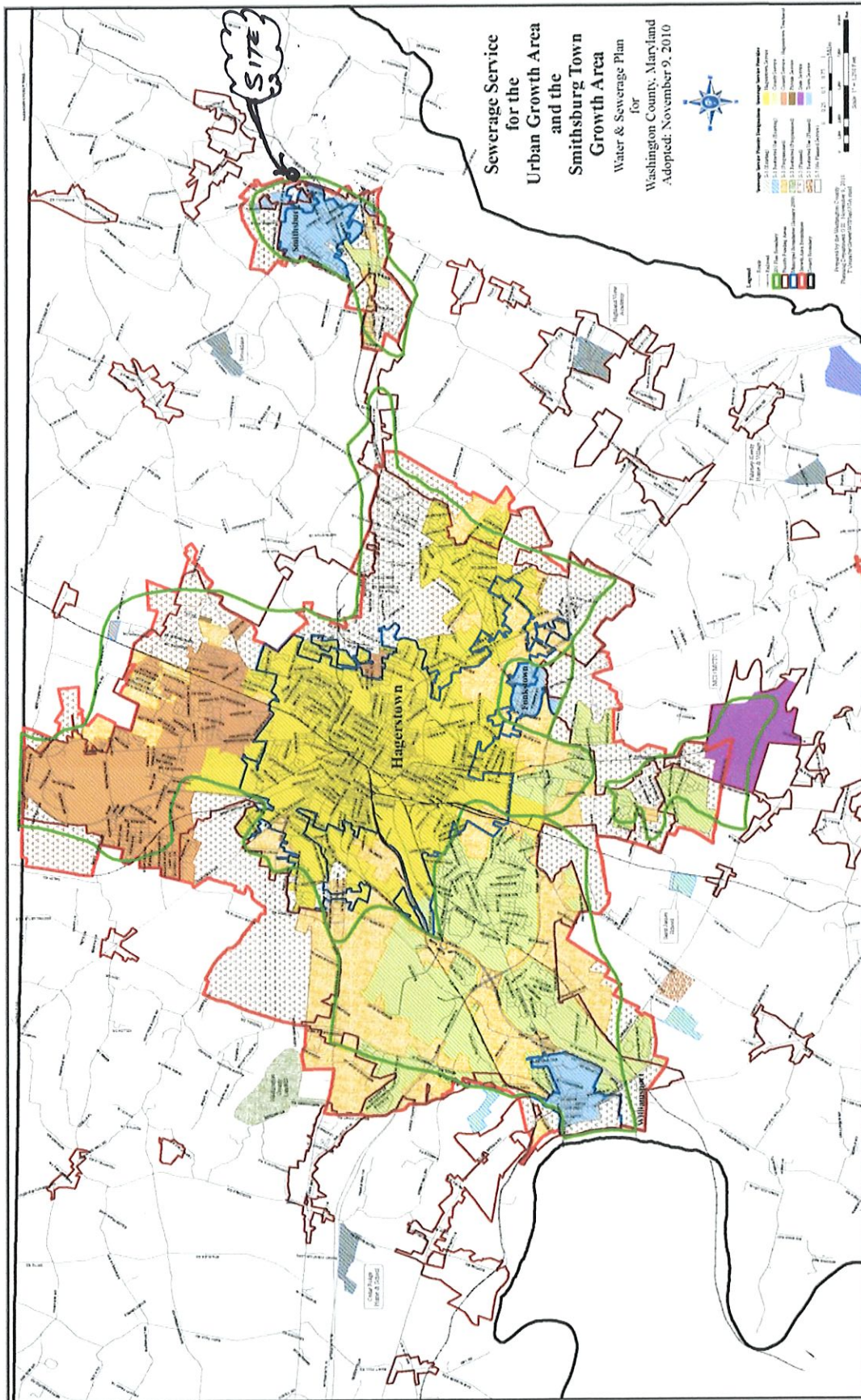
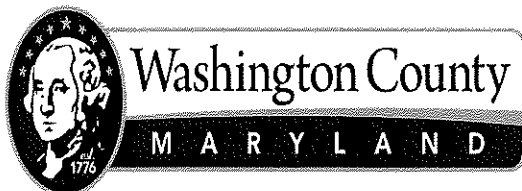


EXHIBIT 11



FOR PLANNING COMMISSION USE ONLY

Rezoning No. CP-23-001

Date Filed: _____

WASHINGTON COUNTY PLANNING COMMISSION
ZONING ORDINANCE MAP AMENDMENT APPLICATION

Department of Planning and Zoning

Applicant
747 Northern Avenue, Hagerstown, MD 21742

Address
Jill Baker

Primary Contact
same

Address

☐ Property Owner ☐ Contract Purchaser

☐ Attorney ☐ Consultant

☒ Other: _____

240-313-2430

Phone Number
jbaker@washco-md.net

E-mail Address

23226 Fruit Tree Drive, Smithsburg, MD 21783

Property Location: _____

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

Policy Area: Low Density Policy Area: Agricultural Rural

Current Zoning: Residential Requested Zoning: _____

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 _____ day of _____, 20_____.

My commission expires on _____

Notary Public

FOR PLANNING COMMISSION USE ONLY

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



RZ-23-004

Applicant

- Troy and Elisabeth Jernigan

Location

- 23226 Fruit Tree Drive

Present Zoning

- RT - Residential, Transition District

Proposed Zoning

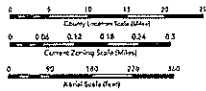
- A(R) Agricultural (Rural) District

Acreage

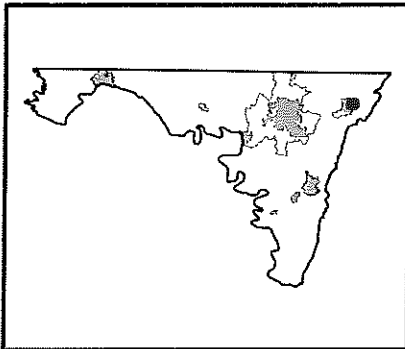
- 22.4 acres

Map/Parcel

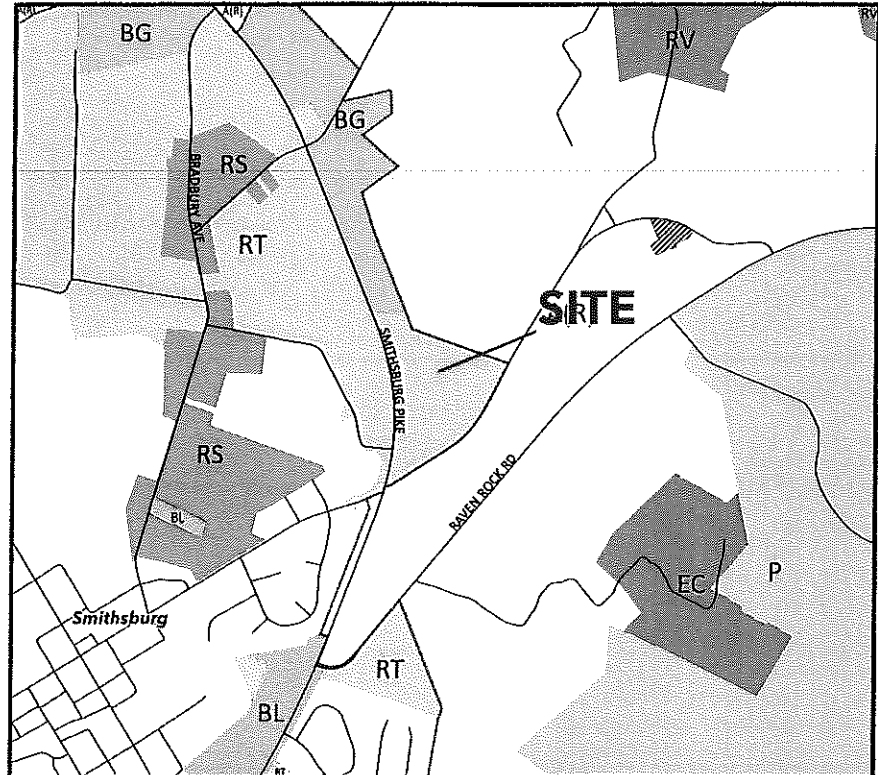
- Map 40, Parcel 225



County Location



Current Zoning



Aerial (2017 NAIP/USDA)





DEPARTMENT OF PLANNING & ZONING

PLANNING | ZONING | LAND PRESERVATION | FOREST CONSERVATION | GIS

CP-23-001

June 20, 2023

APPLICATION FOR TEXT AMENDMENT WASHINGTON COUNTY COMPREHENSIVE PLAN

STAFF REPORT AND ANALYSIS

Land Use Plan Map

The Washington County Planning Department proposes to coordinate an amendment to the land use plan map of the Comprehensive Plan to be consistent with the proposed rezoning request for Troy and Elisabeth Jernigan, Case No. RZ-23-004.

Background:

A rezoning case has been applied for by Troy and Elisabeth Jernigan to amend the current zoning of property located at 23226 Fruit Tree Drive, Smithsburg, MD from Residential, Transition (RT) to Agriculture, Rural (AR). The application states that there was a mistake made in the zoning of the property as part of the 2013 Town Growth Area rezoning.

The property is located at the edge of the delineated Town Growth Area (TGA) for the Town of Smithsburg. The growth area boundary establishes the demarcation between urban and rural zoning districts for the purpose of growth management in the County. The land use policy area assigned to this particular property in the Comprehensive Plan is Low Density Residential.

This property is also under the influence of the Town of Smithsburg Comprehensive Plan. The property is also included within the Town delineated growth area and has two policy areas assigned to it. The majority of the parcel is assigned a commercial policy area while a thin strip of land that bisects the property is assigned an open space policy area. The open space area was assigned to associate itself with the existing stream that exists on the property.

Analysis:

The location and environmental features of this property contribute to a complicated evaluation of what type of growth could possibly occur on this site. That can be readily seen in the diverging opinions of the County comprehensive plan versus that of the Town. The County designates a policy area of low density residential, while the Town Plan designates a policy area of commercial.

The fact that two independent planning documents delineate this parcel as being included with a growth area lends some weight to the determination that the parcel is appropriately designated. The parcel has access to a good transportation network, is

relatively flat and is close proximity to an existing population center. Conversely, the property also contains environmentally sensitive areas, is heavily wooded, and does not have access to water and sewer utilities. Based upon these conditions, it appears that this parcel is currently more suited for limited growth than would be expected for a parcel located within a growth area. This does not preclude the opportunity that this parcel may become more suitable for urbanized development once appropriate infrastructure can be extended.

Recommendation:

While it does seem plausible that this parcel could eventually see a more urbanized land use, its current lack of utilities coupled with existing sensitive areas seem to make it more suitable for less intensive development activity. In order to be consistent with long term land use policies outlined in the Comprehensive Plan, this amendment should be directly linked to the decision of the corresponding rezoning case. Should the Planning Commission recommend changing the zoning of the property to a rural designation, this amendment should also be approved to remove the parcel from the Smithsburg growth area. Conversely, if the rezoning would be denied, this amendment should also be denied in order to keep consistency between zoning and the Comprehensive Plan.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Jill L Baker".

Jill Baker, AICP
Director



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

July 14, 2023

RZ-23-004 and CP-23-001

**APPLICATION FOR MAP AMENDMENT
AND COMPREHENSIVE PLAN AMENDMENT
PLANNING COMMISSION RECOMMENDATION**

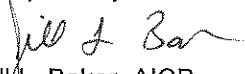
Property Owner(s)	:	Troy and Elisabeth Jernigan
Applicant(s)	:	Same
Location	:	23226 Fruit Tree Drive, Smithsburg
Election District	:	#7 – Smithsburg
Comprehensive Plan	:	
Designation	:	Low Density Residential
Zoning Map	:	40
Parcel(s)	:	225
Acreage	:	22.4 acres
Existing Zoning	:	RT – Residential Transition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

RECOMMENDATION

The Washington County Planning Commission took action at its regular meeting held on Monday, July 10, 2023 to recommend approval of proposed Map Amendment RZ-23-004 and Comprehensive Plan Amendment CP-23-001 to the Board of County Commissioners. The Commission considered the applicant's application and supporting documents as well as the Staff Report and Analysis.

Copies of the application packet and Staff Report and Analysis are attached.

Respectfully submitted,


Jill L. Baker, AICP
Director, Washington County
Department of Planning & Zoning

JLB/dse
Attachments
cc: Kirk Downey



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

June 2023

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...”¹ This is achieved through implementing recommendations within the County Comprehensive Plan and the Water and Sewerage Plan to provide for services in a timely and efficient manner and by establishing an inventory of existing and programmed services.

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.

¹ 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-19th 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 19th century brick farmhouse and bank barn, located approximately 1200 ft. northeast of the subject property.

WA-IV-023 – Gardenour Fruit Farm site, Mid-19th 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.”²

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.

² 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

R. Matthew Harsh
13220 Edgemont Rd
Smitshburg, MD 21783

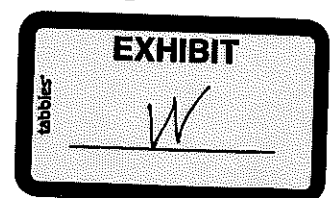
Sept 12, 2013

Ms. Jill Baker
Washington County Depart of Planning & Zoning
County Administrative Annex
80 West Washington St.
Hagerstown, MD 21740

Ms Baker:

It has recently come to my attention the county plans to make significant revisions to the town growth area (TGA) boundaries for multiple municipalities in Washington County. In fact I attended and spoke at the public information meeting that you conducted on these proposed changes at the Smithsburg Town Hall on August 29, 2013. At that meeting you invited the attendees to submit written comments to your department on the proposed changes; the following are my comments and opinions.

1. Planning for an additional 50,000 residents in Washington County is not necessary. It has been stated that Washington County has grown by over 40,000 residents since 1970 and that an additional 50,000 residents should be expected over the next 30-40 years. I personally do not agree with this projection. While a growth rate of 40,000 residents in 40 years is significant, I think you may be better served to analyze the data from the previous 5 years. How many of those 40,000 residents moved here during that time period? In general, the trend of living in rural areas and commuting to city centers for work appears to be one of the past. I believe that future generations of Americans are not as interested or likely to chose this path. A reversal of decades of migration out of the cities is changing in many parts of our country with younger Americans choosing to live and work in urban settings. Many studies and articles have documented the decline in driving amongst younger Americans. My own personal experience as a vendor at farmers' markets in the Washington D.C./Northern Virginia area indicates that this change is real and not just statistical. My customers in Washington DC are young, educated, professional, and not interested in living anywhere beyond the beltway now or in the foreseeable future. While I am not a planner and I am certainly not trying to argue that our county will not see growth, I do not believe we will see the magnitude of growth in the future that we have seen in the past. Simply put, from my point of view, making long-term land use decisions based on declining trends is foolish.



2. Expansion of the TGA boundary of Smithsburg to the North/East of MD-64 is not appropriate. The area to the north/east of Smithsburg along South Mountain is mainly rural farm/orchard land and large lot subdivisions. This area is not suited in my opinion for large-scale urban type development for several reasons. Public water and sewer are not readily available in this area. The topography is generally not conducive to development and is much better suited to agriculture – particularly perennial specialty cropping systems. Smithsburg has traditionally been known as a fruit-farming town. Although the fruit industry currently plays a much smaller role in town matters than in the past, this heritage and industry contribute significantly to the uniqueness of Smithsburg. Expansion of the TGA boundary north of MD-64 would potentially bring large-scale development right into the heart of Smithsburg's remaining orchard country. Not only would this create many possibilities for homeowner/orchard conflicts, it would, more significantly, "use up" some of Washington County's most unique agricultural lands and scenery.
3. Expansion of the TGA boundary of Smithsburg to the North/East of MD-64 is not necessary. According to the Washington County Planning Department, Smithsburg currently has 125 buildable, approved lots, "in the pipeline," within the current urban growth area. This is a significant number of unused lots for a town the size of Smithsburg. Surely, it is prudent and responsible to build on the currently approved lots first before further expanding the TGA. Additionally, the current TGA already contains some significant tracts of un-subdivided land. Several of these tracts have been for sale within recent memory, and I'm sure that more would be available should the real estate market improve.
4. Large-scale subdivisions to the north/east of MD-64 will alter future development patterns significantly by making public water and sewer readily available. The Washington County Planning Department has stated that any new development within the proposed expanded TGA will be required to hook onto public water and sewer. Thus, if the TGA expands to the north/east of MD-64, and a development is approved in this area, public water and sewer will need to be run beyond MD-64 for the first time in a significant way. Crossing MD-64 with water and sewer is a potential game changer in my opinion. MD-64 forms a natural boundary to the town of Smithsburg, both physically and psychologically. Should water and sewer become readily available on the other side of MD-64 it would potentially open up a large area of untouched rural land to development. True, most of this land would be outside of the TGA; but the property on the border would become only one step away from being included in the TGA. The current TGA boundary to the north/east of Smithsburg essentially follows MD-64. This state road forms a natural boundary to town that is appropriate and finite; it seems unnecessary and unwise to change this boundary.

5. The proposed TGA boundary does not match that of the current County Comprehensive Plan. One of the reasons stated for changing the TGA around Smithsburg is to fully implement the current County Comprehensive Plan and match the county's comprehensive plan with the town of Smithsburg's comprehensive plan. The current TGA, as defined in County Comprehensive Plan, does not include significant areas that are being proposed for inclusion – presumably at the behest of the town or other interested parties. These changes have been characterized as minor, insignificant, and in cases merely clerical in nature. I would submit that in fact this is not the case, and upon closer examination many discrepancies and irregularities exist between the county's published 2012 TGA map of Smithsburg and the proposed 2013 map. For example, at the corner of MD-64 and MD-77 the 2012 TGA map shows the boundary line taking in all of the intersection, cutting through parcel 29, and going between parcel 350 and 262. The 2013 proposed TGA map takes in all of parcel 29 (presumably to correct having two zoning classifications on the same parcel of land) but also parcels 262 and part of 195. These inclusions are hardly insignificant or clerical in nature. By my rough calculation, this adds approximately another 70 acres to the TGA in this one area alone, where previously perhaps 12-15 acres was within the TGA. Additionally, this new boundary bisects parcel 195. Obviously this parcel is subject to a natural subdivision in the form of MD-491, but by bisecting 195, the planning department is creating another property where multiple zoning classifications exist within the same parcel. A situation that is contrary to their own stated motives. In my opinion such inconsistencies show the flaws of expanding the TGA simply to match a planning document drawn up by another municipality. Surely the County Comprehensive Plan, which has been fully developed and vetted through open public procedures with input from the public at large, should take precedence over proposals from interested parties and lesser municipal entities.
6. Rezoning at MD-64/Fruit Tree Drive/East Water Street intersection is not appropriate. The intersection of MD-64 and Fruit Tree Drive/East Water Street is essentially a rural intersection with no commercial development. No services, traffic control devices, or utilities exist at this intersection. In fact, the current TGA does not include this intersection within the growth area of Smithsburg. However the proposed TGA expansion would see half of this intersection rezoned to residential transition (RT) while the other half would remain agriculture (A) zone. Not only is expansion of the TGA to the north of MD-64 not a good idea in my opinion, it seems inappropriate to create this sort of inconsistency within zoning classifications. In my opinion this area is best left rural, undeveloped, and totally within the domain of the county.

Certainly I realize that change will come to Washington County and Smithsburg. As a life long resident of the Smithsburg area and a farm owner/operator I am deeply

invested in this community. I am not opposed to growth and development, but I am opposed to the unwise use of resources and the alteration of the character of Washington County, a place where my family has lived for six generations and where I have chosen to raise my own family.

Thanks you for your time and attention to this matter,

A handwritten signature in black ink, reading "R. Matthew Harsh". The signature is written in a cursive style with a large, stylized initial "R".

R. Matthew Harsh

R. Matthew & Mary C. W. Harsh
78 Acres, LLC/Raven Rock Investments, LLC
23340 Fruit Tree Drive
Smithsburg, MD 21783

May 28, 2016

Jill Baker
Chief Planner
Washington County Department of Planning & Zoning
County Administrative Annex
120 West Washington Street
Hagerstown, MD 21740

Dear Ms. Baker:

We are the owners of two properties north/east of Smithsburg in the vicinity of MD - 491, MD - 64, and Fruit Tree Drive (map 0040, parcels 0260, 0095). We are concerned about the proposed expansion, and subsequent rezoning, of the Smithsburg town growth area (TGA).

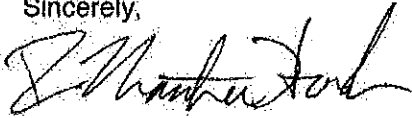
We are apprehensive about the potential for any non-agriculture related development in this area. North/east of Smithsburg offers some of the best fruit and vineyard sites anywhere in the County. The type of agriculture that thrives here is successful in large part due to the unique combination of topography, soil, and elevation that is found in this particular location. This area also provides a backdrop and view shed for the town of Smithsburg that is key to its identity. Development on the north/east side of MD-64 has the potential to change the character of the Smithsburg area in a significant way and needs to be carefully considered. Allowed land uses in this area should be low intensity in nature, and compatible with existing farms and residences.

At the public hearing held on May 24, 2016 by the County Commissioners to take public input on the proposed TGA rezoning, a representative for Cloverly Hill, LLC asked for a change in zoning for a portion of their property located along the east side of MD-64 between MD-77 and MD-419 (map 0040, parcel 0262). The request was for 12 acres of the aforementioned property (at the intersection of MD-491 and MD-64) to be given commercial zoning (BL) rather than the proposed residential zoning (RT). We do not feel that this zoning designation (BL) is appropriate. In addition to not preserving the rural character of the area, it would potentially allow commercial activity at the uncontrolled intersection of two major state roads. The types of businesses that would be attracted to this sort of parcel are unlikely to be compatible with the existing land uses in the area.

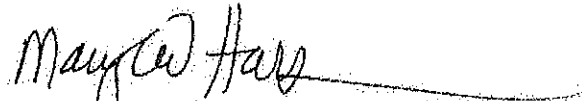
Furthermore, the proposed zoning of this parcel as shared with the public to this point has been RT. This is a much less intensive (residential) usage than what would be allowed under BL (commercial). Cloverly Hill, LLC requested 12 acres of their property be given BL zoning. The parcel in question, 0262 is only 47.53 acres. Granting BL zoning as requested would mean 25% of this parcel would be available for commercial development. Even if all the parcel's Cloverly Hill, LLC owns in this vicinity are considered (0120, .57 acres and 0029, 14 acres) this request would still mean 19% of Cloverly's property in this area would be zoned commercially.

We feel a change of this magnitude is inappropriate. Such a proposal should be subject to further scrutiny by the public at the very least, as it was not part of the original proposed maps. This is not a case of a property owner asking to be excluded from the TGA or a small fix to a glitch in the zoning maps. Allowing 12 acres of BL zoning at the corner of MD-64 and MD-491 is a material change that would have a significant impact on this area.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Matthew Harsh".

R. Matthew Harsh

A handwritten signature in cursive script, appearing to read "Mary C.W. Harsh".

Mary C.W. Harsh



Agenda Report Form

Open Session Item

SUBJECT: FY24 Healthy Families Home Visiting Continuation Grant – Approval to Accept Awarded Funding

PRESENTATION DATE: September 12, 2023

PRESENTATION BY: Nicole Phillips, Grant Manager, Office of Grant Management

RECOMMENDED MOTION: Move to approve the acceptance of funding awarded under the FY24 Healthy Families Home Visiting Continuation Grant Program from the Maryland State Department of Education in the amount of \$138,996.50.

REPORT-IN-BRIEF: The Washington County Office of Grant Management on behalf of the Local Management Board is seeking approval to accept awarded funding from the Maryland State Department of Education for the Fiscal Year 2024 Healthy Families Home Visiting Continuation Grant Program.

DISCUSSION: The Healthy Families Home Visiting Program is a comprehensive program modeled after a nationally renowned initiative Healthy Families America. The goals of the program are to prevent child maltreatment through early intervention, promote healthy growth, development, and strengthening of the parent-child relationship. This funding is valid from July 1, 2023 until December 31, 2023. Funding in the amount of \$3,302 is included in the award for County administrative support. No County funds are involved in this award.

FISCAL IMPACT: Provides \$3,302 for County administrative expenses.

CONCURRENCES: Rachel Souders, Interim Director, Office of Grant Management

ALTERNATIVES: Deny acceptance of awarded funds

ATTACHMENTS: N/A

AUDIO/VISUAL NEEDS: N/A



Agenda Report Form

Open Session Item

SUBJECT: FY24 Senior Citizen Activities Center Operating Fund Grant– Approval Accept Awarded Funding

PRESENTATION DATE: September 12, 2023

PRESENTATION BY: Nicole Phillips, Grant Manager, Office of Grant Management and Amy Olack, CEO, Washington County Commission on Aging

RECOMMENDED MOTION: Move to approve the acceptance of funding awarded under the Senior Citizens Activities Center Operating Fund Grant program from the Maryland Department of Aging in the amount of \$36,426.00.

REPORT-IN-BRIEF: The Washington County Office of Grant Management is seeking approval on behalf of the Washington County Commission on Aging to accept funding in the amount of \$10,963.00 which will be utilized to offset the cost of salaries for the Senior Center staff.

In addition, the Washington County Commission on Aging was awarded \$17,364.00 of competitive funding and an additional \$8,099 in FY23 rollover funds to support the “Stepping Into Wellness Expansion” program. This program will provide participants with the necessary tools to meet their individual needs through nutrition, self-care, and community-based service and program navigation.

DISCUSSION: The Maryland Department of Aging requires applications to only be submitted by local governments; therefore, the County is the grant applicant and will enter into a sub-recipient agreement with the Washington County Commission on Aging to implement the grant funded projects. The awarded funds will be received and disbursed through the County’s Budget and Finance office and the Office of Grant Management will ensure all required fiscal and programmatic reports are submitted in an accurate and timely manner. The grant performance period is from July 1, 2023 through June 30, 2024 and matching funds are not required.

FISCAL IMPACT: Recurring expenses will be the sole responsibility of the Washington County Commission on Aging.

CONCURRENCES: Rachel Souders, Interim Director, Office of Grant Management

ALTERNATIVES: Deny acceptance of awarded funds

ATTACHMENTS: N/A

AUDIO/VISUAL NEEDS: N/A



Agenda Report Form

Open Session Item

SUBJECT: Termination of the COVID Policy

PRESENTATION DATE: September 12, 2023

PRESENTATION BY: Michelle Gordon, County Administrator

RECOMMENDATION: Move to approve the termination of the COVID Policy as of _____.

REPORT-IN-BRIEF: Establish a termination date for the County COVID Policy.

DISCUSSION: The attached County COVID Policy was last updated on 11/11/2022. Frederick County, Maryland terminated its COVID Policy effective 10/07/2022. Staff would like to establish a termination date for the County's COVID Policy and recommend that it be terminated. In the event of employee illness, the affected employee would need to follow County sick leave policy and procedures. This means that the affected employee would need to follow the instruction and recommendations of their primary care physician with regard to:

- Potential absence from work;
- Potential return to work date; and,
- Potential / required quarantine, mask or care instructions.

FISCAL IMPACT: None

CONCURRENCES: N/A

ALTERNATIVES: None

ATTACHMENTS: COVID Employee Policy as of 11-11-2022

AUDIO/VISUAL NEEDS: None

Washington County Employee COVID Procedures

THIS POLICY EXPIRES EFFECTIVE

Forward

As a result of the emergence of the COVID-19 virus, employers have found it necessary to enact procedures to isolate employees who have been identified as primary and secondary exposures and to address those employees who have tested positive for the virus in order to protect the workforce and the services the employer provides to the public. The following procedures apply to all Washington County employees and will be followed for all reported employee exposures or reports of positive test results related to COVID-19.

Employee Tests Positive

- 1) Employee is removed from the workplace.
- 2) Employee must quarantine for a minimum of 5 days (total quarantine period usually does not exceed 10 days). If after the 5th day symptoms have improved and the employee has been fever free for 24hrs without the use of fever reducing medications, the employee may return to work but must wear a mask at all times while at work for another 5 days.
- 3) The Director or their designee must determine if first report of injury and/or exposure forms are required to be completed.
- 4) The Director or their designee must determine which co-workers, if any, have been exposed.
- 5) Contact with the Emergency Manager can be made by the Director or their designee regarding any questions or specific cases. Attempts to protect employee health privacy will be made.
- 6) The Director or their designee should make a request to janitorial staff to sanitize the employee's work area.
- 7) The positive employee will be required to utilize banked leave time while they are in quarantine. Time utilized will be sick leave. If an employee exhausts all sick leave and still requires time off the following time should be utilized in the order provided:
 - Personal Leave
 - Charity Leave
 - Vacation Leave
 - Leave Without Pay (requires County Administrator approval after 40hrs)
 - The employee is not permitted to telework during their time off unless approved by the County Administrator.

Employee Reports COVID Related Symptoms

- 1) Employee is removed from the workplace with a COVID test recommended. Since the employee is symptomatic, a COVID test can be performed immediately. Employee must utilize banked leave time in the following order:
 - Sick leave
 - Personal Leave
 - Charity Leave
 - Vacation Leave
 - Leave Without Pay (requires County Administrator approval after 40hrs)
 - The employee is not permitted to telework during their time off unless approved by the County Administrator.
- 2) If an employee refuses to get tested, the employee must remain removed from the workplace for 5 days unless a return-to-work note from their doctor is provided to their immediate supervisor. Employee must utilize banked leave time in the following order:
 - Sick Leave
 - Personal Leave
 - Charity Leave
 - Vacation Leave
 - Leave Without Pay (requires County Administrator approval after 40hrs)
 - The employee is not permitted to telework during their time off unless approved by the County Administrator.
- 3) If employee receives a negative test result, the employee may return to work when able to do so providing that a return-to-work note is presented if they have been absent for 3 or more days.
- 4) If employee receives a positive test result, they should notify their direct supervisor immediately who will follow the “Employee Tests Positive” section of these procedures.
- 5) Contact with the Emergency Manager can be made by the Director or their designee regarding any questions or specific cases. Attempts to protect employee health privacy will be made.
- 6) The Director or their designee should make a request to janitorial staff to sanitize the employee’s work area.

Employee is Identified as a Contact

Contacts are defined as anyone who was less than 6 feet from the positive employee for a total of 15 minutes or more over a 24-hour time period regardless of the use of PPE, vaccination status, or previous infection.

- 1) A recommendation should be made to the employee to get a COVID-19 test after 5 days from the date of exposure.
- 2) If the employee is not experiencing symptoms, they may continue to work however they must wear a mask at all times while working and self-monitor for 10 days from the date of the exposure. If the employee refuses to wear a mask at all times while working, the employee should be removed from the workplace for the remainder of the masking and self-monitoring period utilizing banked leave time in the following order:
 - Personal Leave
 - Charity Leave
 - Vacation Leave
 - Employee is not permitted to telework during their time off unless approved by the County Administrator.
 - Sick time is not permitted since the employee is not sick but is choosing not to comply with the policy.

Directors will report all instances of employees who refuse to wear a mask after an exposure and who have been sent home for 10 days to the Emergency Manager.

- 3) If symptoms develop, the employee should immediately notify their direct supervisor who will follow the procedures “Employee Reports COVID Related Symptoms” within this policy. Symptoms include fever of 100.4 or greater, cough, and shortness of breath.
- 4) All vaccinated and unvaccinated employees who receive a positive test result are required to immediately notify their direct supervisor who will follow the “Employee Tests Positive” section within these procedures.
- 5) Contact with the Emergency Manager can be made by the Director or their designee regarding any questions or specific cases.
- 6) The Director or their designee should make a request to janitorial staff to sanitize the employee’s work area.

Employee Exposure Reduction Efforts

- 1) It is strongly recommended that a facemask be worn anytime employees cannot socially distance or are around known individuals who may get very sick from COVID-19.
- 2) It is strongly recommended that social distancing of 6 feet or more be observed where practicable.

Employee Expectations

- 1) Employees will report all potential exposures to their direct supervisor, including but not limited to, co-workers, family, friends, or any other persons they have had contact with that the employee believes to be either experiencing symptoms or has tested positive.
- 2) Employees will follow CDC recommendations while on their personal time in an effort to ensure that the COVID virus is not brought to the workplace.
- 3) Employees will notify their direct supervisor of all COVID-19 tests performed and the results of those tests in a timely manner.
- 4) Employees who are unsure if they should report to work due to a potential COVID related issue will contact their direct supervisor prior to reporting to work, explain the situation, and wait for the direct supervisor to provide direction as to whether the employee may report to work that day.
- 5) While in the workplace, employees will make every effort to ensure the COVID-19 virus is not spread throughout their department or other County departments or jurisdictions.

Director/Direct Supervisor Expectations

- 1) Employees are provided the information contained within this policy and ensure their understanding.
- 2) This policy will be enforced and followed to ensure that all steps are taken within each category.
- 3) Questions or concerns will be discussed with the Emergency Manager in a timely and efficient manner to ensure a quick response to employee needs and safety of their respective department.
- 4) Immediately provide to the Emergency Manager any employee issues as they relate to adhering to this policy.

- 5) Immediately provide to the Emergency Manager any operational issues that may arise, as policy requirements are met, which may directly impact the services provided to the citizens of Washington County.
- 6) Employee health privacy is a top priority.

County Administration Expectations

- 1) Conduct a continual review of this policy in an effort to keep it in line with CDC and Local Health Department recommendations.
- 2) Maintain communication with the Local Health Department in an effort to ensure, to the extent possible, employee safety and to make changes to County operating policies as required.
- 3) Provide information and instructions to Directors/Direct Supervisors in a timely and efficient manner as required.
- 4) Ensure the Emergency Manager or his designee is available to provide timely information as required.
- 5) Ensure employee health privacy is a top priority.

Due to the very nature of providing EMS and Fire service to the citizens of Washington County, EMS and Fire providers will have contact with individuals who may be COVID positive on a consistent basis. All **front-facing** DES, EMS, and Fire providers should follow previously established procedures by the Medical Director and the Assistant Director of Operations for DES as it relates to exposures. All **non-front-facing** DES, EMS, Fire, personnel should follow the procedures outlined within this policy.

This policy was created utilizing the most current CDC and Local Health Department recommendations available at the time. The Local Health Department is ultimately responsible for the local response and recovery efforts to the COVID-19 public health emergency. Any deviations from CDC recommendations within this policy were made in an effort to respond to specific local issues caused by the COVID-19 virus and to ensure, to the extent possible, a safe working environment for County employees and continuation of public services.