

ORDINANCE 2023-06

**RESOLUTION AND ORDINANCE AMENDING THE ZONING MAP AND ZONING
ORDINANCE OF THE TOWN OF SMITHSBURG**

WHEREAS, pursuant to the *Zoning Ordinance for the Town of Smithsburg*, a Petition (**Exhibit 1 admitted into the Record of the Public Hearing**) for rezoning and Zoning Map reclassification was made by Clear Ridge Developers, Inc.;

WHEREAS, said application for zoning reclassification and amendment to the Zoning map and Ordinance is known and designated as Ordinance 2023 - 06;

WHEREAS, the various agencies, and the Mayor and Council being the duly constituted legislative body of the Town of Smithsburg, have complied with all of the provisions of the aforementioned *Zoning Ordinance*;

WHEREAS, the Mayor and Council, as the duly constituted legislative body for the Town of Smithsburg, held a Public Hearing in compliance with said Ordinance on October 17, 2023;

WHEREAS, the Mayor and Council subsequent thereto have complied with all of the provisions of the General Laws of the State of Maryland and the *Zoning Ordinance for the Town of Smithsburg*;

WHEREAS, said Mayor and Council do find, based on said Public Hearing and the evidence presented therein, and having considered all of the criteria as set forth by the laws of the State of Maryland and the *Zoning Ordinance*, that the requested Zoning Map Reclassification would be in accordance with said laws; and same is more particularly evidenced in the record and transcript of said Public Hearing, which is incorporated herein and made a part of this Resolution;


WHEREAS, the Mayor and Council did make findings of fact which are attached hereto and incorporated herein as **Attachment "A"** and entitled, "Opinion and Findings of Facts";

Liber 14 Folio 0140
Acts, Ordinances, Resolutions- Town
Clerk of the Circuit Clerk
Washington County

WHEREAS, the Mayor and Council further find as a matter of fact and a matter of law, that a reclassification and amendment of the Zoning Map as requested by the Petitioner would not be contrary to proper planning and the *Zoning Ordinance*.

NOW, THEREFORE, BE IT RESOLVED, ENACTED and ORDAINED, by the Mayor and Council for the Town of Smithsburg, Maryland on this date that the Zoning Map for the Town of Smithsburg and the Zoning Ordinance for the Town of Smithsburg be and is hereby amended, so that the Property described in the Petition, Exhibit 1, incorporated herein, be and is hereby designated for zoning purposes as Town Residential (TR) in accordance with said *Zoning Ordinance* and that the *Opinion and Findings of Fact* attached hereto as **Attachment "A"** be and is hereby incorporated herein by reference. The Zoning Administrator is hereby directed to have the Zoning Map for the Town of Smithsburg, Maryland, amended and revised in accordance with this Ordinance.

MAYOR AND COUNCIL OF THE TOWN
OF SMITHSBURG, MARYLAND

By: 

Donald Souders, Mayor

WITNESS AND ATTEST AS TO
CORPORATE SEAL:



Jenni House, Clerk-Treasurer

Date of Introduction: November 14, 2023
Date of Passage: December 5, 2023
Effective Date: December 25, 2023

Liber 14 Folio 0141
Acts, Ordinances, Resolutions- Town
Clerk of the Circuit Clerk
Washington County

ATTACHMENT A

**Opinion and Findings of Fact
Of Mayor and Council**

ATTACHMENT "A"

ZONING MAP AMENDMENT

Ordinance 2023-06

Petitioner: Clear Ridge Developers, Inc

Property : Pennsylvania Avenue and Eagle Nest Road, Smithsburg, MD

Tax Map: 0040, Parcel: 0284

Date of Public Hearing: October 17, 2023

OPINION AND FINDINGS OF FACT

The foregoing matter was heard at a Public Hearing held by the Mayor and Council for the Town of Smithsburg, Maryland, on October 17, 2023 in accordance with provisions of the Zoning Ordinance for the Town of Smithsburg.

The Petitioner, Clear Ridge Developers, Inc. was represented by William Erskine, Esq. Mark Frizzera, President of Clear Ridge Developers, Inc. testified in support of the Petition to rezone the Property to TR. Mark Keely a traffic engineer from Hanover, Maryland, testified for the Petitioner regarding anticipated traffic issues and concerns. Timothy Lung, Town Planner, presented the Staff Report supporting the claims of change and/or mistake. Greg White, Chairman of the Smithsburg Planning Commission testified that the Planning Commission would be holding a public hearing of its own and make recommendations following that hearing which was held on November 14, 2023.

Debra Bakner, Dawn Wise, Brad Gee, Brad Hall, Ashley Webb, Lisa Quick, and Carl Montgomery testified against the Petition. Their testimony revolved around concerns regarding the density permitted by TR, the existence of a subdivision near their homes, sight lines, increased traffic, and storm water management.

At the conclusion of the Public Hearing, the record was left open for 30 days to allow for additional public comment and the Planning Commission recommendations. The

testimony and evidence presented at that hearing have been made a part of the record. The Planning Commission, following its Public Hearing, introduced and passed a Motion recommending that the zoning of the Property be changed to Town Residential (TR). It based its action on “*the changing character of the neighborhood, and the “mistake” of the original zoning which did not anticipate Washington County’s comprehensive rezoning of surrounding areas to substantially similar usage. Furthermore, this is logical and appropriate based upon the Town’s Comprehensive Plan.*” (Planning Commission Motion, November 14, 2023).

The Mayor and Council considered all of the criteria set forth in the *Zoning Ordinance* and the *Comprehensive Plan* relating to this request for rezoning.

The Mayor and Council for the Town of Smithsburg, in accordance therewith, find that there was a mistake in the original zoning classification and a change in the that cumulatively and collectively support the requested re-zoning from Suburban Residential (SR) to Town Residential (TR). Thus, the Mayor and Council find that the Zoning Map should be amended to indicate that the Property in question and described in the Petition for Zoning Map Amendment submitted by Clear Ridge Developers, Inc. be designated as Town Residential (TR).

The Mayor and Council for the Town of Smithsburg, after considering all of the evidence, testimony and exhibits presented, base their opinion and decision on the following findings of fact:

1. The Petitioner is the contract purchaser of the property which is the subject of the proposed Map Amendment .

2. The subject property is comprised of approximately 24.35 acres and is unimproved. The property is bounded by Pennsylvania Avenue and Eagle Nest Road and was annexed into the Town of Smithsburg on September 13, 2006 and is more particularly shown and described in the Deeds and Plats attached to the Petition and Petitioners Exhibit 1 which are incorporated herein by reference.

3. The Property is currently zoned Suburban Residential (SR), a designation that was assigned at the time of Annexation.

4. As pointed out by the Town's Planner, Timothy Lung, the designation at the time of Annexation was predicated upon the requirement of Section 405-11A of the *Town of Smithsburg Zoning Ordinance* that newly annexed property be zoned SR unless a request for another zoning is made. In addition, the Annexation Agreement (Exhibit B of Petitioner's Exhibit 1) references "Express Approval" by Washington County which may have been available but not sought.

5. The Annexation Agreement, Section 4, expressly states that the intent was to develop the property as "town residential zoning" even though formal approval to TR zoning was not sought.

6. The Property was subdivided into 29 lots by virtue of the *Final Plat of Subdivision of Gardenhour Estates*, July 8, 2008, recorded at Plat Folio 9505 among the Plat Records of Washington County, Maryland. The minimum side yard and rear yard building setbacks for those lots were modified to match those required in TR Zoning.

7. Approximately 11 years later that 29-lot subdivision was abandoned by the *Replat of Lots 1-29, SWM Lot and Road R/w into Lot A Gardenhour Estates*, May 28, 2019,

recorded at Plat Folio 10964. This replating effectively abandoned the prior plan of subdivision.

8. The 29 Lot Subdivision was abandoned because of the economic changes which occurred as a result of the 2008 recession. The recession resulted in a significant and unanticipated change in demand for residential lots served by water and sewer from larger to smaller mor compact lots. This change in demand has further been driven by the increasing costs associated with providing public infrastructure making it economically impractical and cost prohibitive.

9. The Property adjoins Eagle Nest Road and it abuts lots which are inside and outside the corporate boundaries of the Town. The adjacent parcels in the County are zoned Residential Suburban and Residential Transition under the *Washington County Zoning Ordinance*.

10. Timothy Lung, Town Planner, succinctly discusses the basis for the finding that a change has occurred which warrants rezoning the property: *Directly south of the subject property is an area consisting of numerous properties located in the County. At the time of the subject 2006 annexation and zoning, this property was zoned A-Agricultural and RS-Residential Suburban. In 2013 the County comprehensively rezoned this area entirely to RS-Suburban Residential excepting a small piece of property occupied by Osbourne Funeral Home (sic) zoned BL-Business Local. The County RS zoning is essentially the same as the Town's TR zoning in terms of density (4.4 du./ac.) and permitted uses. As part of the comprehensive rezoning in 2013, the County rezoned the majority of the Smithsburg Growth area to the north of the subject property from A-Agricultural to RT-Rural Traditional. A lower density residential district than RS at 2.9 du/ac vs 4.4.*

11. In addition to Petitioners analysis of the mistake of the original zoning which appears to have been the non-analytical acceptance of SR as the “default zoning” and the economic factors resulting from the 2008 recession and its aftermath that could not have been anticipated, the Petitioner’s claim of mistake is also supported by the fact that at the time of original zoning the elected officials “failed to anticipate the County’s Comprehensive rezoning of a substantial area of land directly adjacent to the subject property to RS thus eliminating the apparent inconsistency that was identified when the property was originally zoned as part of the annexation process.” (Timoty Lung Report).

12. Rezoning the Property to TR which has density zoning similar to the County RS zoning is the logical extension of zoning and associated density of the nearby and adjacent County parcels.

13. The Council finds that the statements made by the Petitioner in Exhibit 1, *Additional Considerations* are accurate and correct. Those statements are incorporated herein by reference.

14. That the current and/or proposed future use of the property in question is consistent with the *Comprehensive Plan of the Town*, policy of the Mayor of Council to promote orderly growth, and consistent with the purpose and intent of the *Zoning Ordinance* and the uses allowed in a Town Residential (TR) Zoning District).

15. That all public facilities and services are available to the property in question.

13. That the requested rezoning will not significantly alter the neighborhood population and/or the nature and character of the neighborhood.

14. That adverse testimony that was presented at the time of the Public Hearing held before the Mayor and Council and the public hearing before the Planning Commission primarily relates to issues that will and should be addressed by the Planning Commission and/or Mayor and Council in accordance with the applicable Town Ordinances at the time of subdivision and development. No relevant or credible testimony or evidence was received during either public hearing that contravenes the Mayor and Council's findings set forth herein as they relate to the standards controlling a rezoning, i.e., change or mistake.

CONCLUSION

Therefore, the Mayor and Council find as a matter of fact and as a matter of law that a mistake was made by initially zoning the Property as Suburban Residential. In addition, changes since annexation have occurred which support a rezoning of the Property from Suburban Residential (SR) to Town Residential (TR). Although a rezoning of the property may result in the construction of more homes that could be designed or constructed in SR, the density, lot sizes, etc. are substantially similar to what the County allows on the land which abuts the Corporate Boundary - one of the property lines of the Property. The proposed change of zoning is also consistent with the Annexation Agreement which was entered into by the owner and the Town at the time of Annexation, the intent of which was to have "town residential development." The concerns addressed by the opponents are all of a nature that can and should be addressed through the site plan review and approval process which allows public input and the imposition of safeguards to protect against the concerns expressed by the opponents. **For all of the above reasons, the Mayor and Council find that the current Zoning Classification of the property in question (SR – Suburban Residential) should be amended to Town Residential (TR)**

**and that the Zoning Map should be amended to indicate that the property in question
be designated as Town Residential (TR).**

**TOWN OF SMITHSBURG,
MARYLAND**

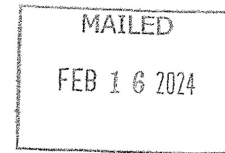
WITNESS AND ATTEST
AS TO CORPORATE SEAL

By: Jenni House
Jenni House, Clerk-Treasurer

By: Donald Souders
Donald Souders Mayor

Please send Original Documents to:

Jenni House
Clerk -Treasurer
Town of Smithsburg
21 W. Water Street
P. O. Box 237
Smithsburg, MD 21783



Liber 14 Folio 0150
Acts, Ordinances, Resolutions- Town
Clerk of the Circuit Clerk
Washington County

LR - Government
Instrument 0.00
Agency Name: Town of
Smithsburg
Instrument List:
Agreement / Easement
Describe Other:
Ref:
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Total: 0.00
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Washington County, Maryland
Kevin R. Tucker, Clerk
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Hagerstown, MD 21740
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