

AN ORDINANCE TO AMEND
ORDINANCE 15-07
OF THE CODE OF EMMITSBURG
ENTITLED
THE 2015 COMPREHENSIVE PLAN AND ZONING MAP

Applicant/Owner: R.J.D. Development Corporation (Richard Demmitt)
Application Type: Zoning Map Amendment
Property Tax Map / Parcel No.: 0031/0683 Parcels C & D
Property Address: Lots C & D on Timbermill Run.
Current Zoning District: Neighborhood Commercial (B-1)
Proposed Zoning District: Low Density Residential (R-1)
File No.: 2022-03

Legislative History:

Date of Application - January 10, 2022
Planning Commission Public Hearing - March 28, 2022
Letter of Recommendation Submitted to Board of Commissioners – March 31, 2022
Mayor and Board of Commissioners Public Hearing - April 4, 2022

BACKGROUND AND FACTS

Applicant has requested that Parcels C and D of the Brookfield subdivision recorded at plat book number 58, page 40, be rezoned from B-1, to R-1 residential based on either mistake or change in the neighborhood.

The Applicant has owned this property for approximately twenty years. During that time period, Mr. Demmitt testified that he has attempted to sell and develop the property for a commercial use including, day care, coffee shop, and small retail commercial. All efforts have been unsuccessful. The surrounding neighborhood is zoned R-1 residential.

As noted by Staff there is no evidence of any factual findings made by the Board at the time of the 2015 comprehensive rezoning and map adoption as to this particular property nor is there any discussion of trends or other factors on which they may have relied. Public comment was put forth by Ms. Walbrecker, among others. Ms. Walbrecker noted that in the 2009 review process the Planning Commission wanted to see these two parcels remain as B-1 to promote walkability and a neighborhood feel. However, there was no testimony indicating that this was a viable proposal and the testimony of Mr. Demmitt and Mr. Dean indicate that it was not and remains unworkable. Mr. Dean testified based on his years of land use experience that development trends are going away from commercial development and that purchasing patterns are changing including significant on-line purchasing as well as the move toward working from home, largely as a result of the unforeseen COVID-19 pandemic. As noted, past boards stated that retail would be beneficial for the surrounding residentially zoned property but any analysis relating to the viability of such zoning is not apparent nor does it appear to have been factually supported.

At this time, there is already a small retail convenience store in the area which is largely supported because it has a liquor license. This is borne out by the fact that a prior retail establishment, Rutters, did not succeed in that general area. Insufficient support exists for another one.

The viability of additional retail (B-1) zoning is doubtful given the fact that substantial commercial development has occurred less than a mile away from the subject site. The impact of that development does not appear to have been considered or even foreseen by the planners at the time of the comprehensive rezoning and adoption of the most recent map. In addition, Lots C and D are not visible from any major arteries and the existing population in that area will not support further commercial.

The total population of Emmitsburg in the 2010 census was noted as 2,814 residents; in 2020 it is reported as 2,770. (Exhibit 1 attached.) This lack of population does not support the need for additional commercial retail space, particularly when such commercial development is already in close proximity to the property.

Development trends demonstrate the need for additional residential housing. There is a tremendous shortage of residential units available and there is lack of inventory in Frederick County generally and Emmitsburg in particular. The proposed R-1 zoning would support the addition of seven new residential units which are much needed.

The Board noted that Emmitsburg Elementary School is in dire need of renovation and that the Board of Education does not seem to be willing to make improvements, particularly as the Emmitsburg schools are under capacity. The Developer offered to work with the Town of bring this to the attention of the Board of Education.

There was no evidence put forward that the valuation of any of the surrounding properties would be harmed by this request for rezoning. The proposed rezoning supports the addition of a small number of additional housing units and is consistent with the housing that has been and is currently being built in this neighborhood. This area of the Town is largely single family residential. Traffic would not be impacted and the addition of seven new homes will not adversely affect the road ways.

Further, this additional development would assist the Town in maintaining its viability with the increase in residents to alleviate the drop in population. The Town has adequate infrastructure to support the development of this property if it rezoned and the transportation patterns will be consistent with that of the neighborhood.

Either the previous Board originally did not take these trends and development and zoning impact of surrounding areas into account or the impact of the location of the commercial areas less than a mile away was not foreseen as affecting the viability of commercial development on these two small parcels.

The Board further adopts the findings of fact of the Planning Commission based on the testimony before the Board. Exhibit 2.

FINDINGS:

Based on the foregoing facts, the Board finds that the Applicant has met its burden to establish legal mistake.

With respect to legal mistake, as set forth above, there is no indication that the prior Board undertook any analysis regarding the propriety of maintaining B-1 zoning on these two commercial parcels that are not located on a major road way or visible outside the neighborhood. Likewise, the impact of commercial development less than a mile away for the designated parcels and lack of adequate population to support commercial development were not anticipated by the board in 2015. Likewise, the changes toward on-line purchasing and impacts of COVID 19 on retail were not and could not have been anticipated in 2015. The trends in development were not considered or evaluated in designating this area for commercial development.

The Applicant also met the established criteria set forth in Section 17.44.040(B):

The population of Emmitsburg has decreased and seven new residential units will assist in maintaining the population of Emmitsburg as well assist in connection with the current housing shortage. The addition of this zoning will not adversely affect current development and is consistent with the zoning in the immediately surrounding area.

Adequate public facilities exist to serve the property as rezoned, and there will be no adverse impact on existing or future transportation patterns in the area.

The proposed rezoning and does not adversely impact the comprehensive plan. The development of these two parcels will add residential population to Emmitsburg and the land will no longer lie fallow in the Town but instead can be put to use and provide future tax revenue to the Town.

Therefore,

BE IT RESOLVED, ENACTED AND ORDAINED by the Mayor and Board of Commissioners of the Town of Emmitsburg, Maryland, pursuant to the authority granted to them by the laws of Maryland and the Charter of the Town of Emmitsburg, that the 2015 Comprehensive Plan and Zoning Map of the Town of Emmitsburg, based on the findings of fact pursuant to the Town of Emmitsburg Code, Section 17.44.030(B) as set forth in the minutes of the meeting held on April 4, 2022, shall be amended as follows:

To amend paragraphs 1, 3 and 5 of the 2015 ordinance adopting the Comprehensive Plan and Zoning Map to delete the B-1 Neighborhood Commercial zoning designation on Lots C and D as shown on the Final Plat of Section 1 – Plat Parcels “C”, “D” & “E” for the Brookfield Subdivision recorded in Plat Book No. 58, page 40, Property tax Map/Parcel No. 0031/0683 Parcels C and D as reflected in the comprehensive plan of 2015 and as shown on the zoning map adopted in 2015, (Exhibit 3), and to rezone Parcels “C” and “D” as R-1, Low Density Residential as shown on Exhibit 4. Except to the extent amended herein, the 2015 Comprehensive Plan and Zoning Map is re-affirmed as stated in Ordinance 15-07 and Exhibit 3 until such time as it may be further amended or restated.

THE NEIGHBORHOOD COMMERCIAL (B-1) ZONING DESIGNATION SHALL BE STRICKEN ON LOTS C AND D OF SECTION 1 – PLAT PARCELS “C”, “D” & “E” FOR THE BROOKFIELD SUBDIVISION RECORDED IN PLAT BOOK NO. 58, PAGE 40, PROPERTY TAX MAP/PARCEL NO. 0031/0683 PARCELS C AND D, AND REDESIGNATED AS LOW DENSITY RESIDENTIAL (R-1). THE TOWN OF EMMITSBURG 2015 ZONING MAP IS HEREBY AMENDED AS SHOWN ON EXHIBIT 4 TO REFLECT THIS ZONING CHANGE.

New language is indicated by being in **BOLD, CAPITAL LETTERS**, and deleted language is designated by being in ~~[brackets and strike out]~~.


BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Ordinance shall take effect on the date on which the Mayor approves the Ordinance after passing by the Board of Commissioners or on the date on which the Board of Commissioners passes the Ordinance over the veto of the Mayor.


PASSED this 2nd day of May, 2022 by a vote of

Commissioners:	For	Against	Absent	Abstain
O'Donnell	✓			
Sweeney	✓			
Ritz III	✓			
Burns	✓			
Davis	✓			
TOTAL:	5			

ATTEST:

BOARD OF COMMISSIONERS:


Julie Scott, Town Clerk


Timothy J. O'Donnell, President

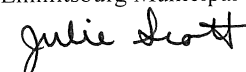
MAYOR

APPROVED VETOED

this 2nd day of May, 2022.


Donald N. Briggs, Mayor

I hereby certify that the foregoing Ordinance has been posted as required by Chapter 2.04 of the Emmitsburg Municipal Code.


Julie Scott, Town Clerk
Date: 05/03/2022