

**Application for Zoning Map Amendment
Parcels C & D – Brookfield**

JUSTIFICATION STATEMENT

I. Introduction

R.J.D. Development Corporation, a Maryland corporation (the “Applicant”), by and through its attorneys, McCurdy, Dean & Graditor, LLC and Bruce N. Dean, Esq., hereby submits this Application pursuant to § 17.44 of the Emmitsburg Municipal Code (the “Code”) to request rezoning of two (2) undeveloped parcels of vacant land commonly known as Parcels C and D in the Brookfield subdivision, which are located along Timbermill Run and more particularly shown on Exhibit A (the “Properties”). This Application requests that the Properties be rezoned from the Neighborhood Commercial (B-1) zoning district to the Low Density Residential (R-1) zoning district. Due to substantial changes in the location and nature of commercial development within the Town, the Properties are no longer suitable for commercial development. For the reasons set forth hereinbelow, the Applicant requests that the Properties be rezoned to the R-1 zoning classification, so that they can be developed with single family homes, consistent with the surrounding residential development within the Brookfield subdivision.

II. Site Description

The Properties contain, in the aggregate, 2.85 ± acres of unimproved land located at the southern entrance into the Brookfield subdivision. Both Parcel C and Parcel D front onto Timbermill Run. Parcel C adjoins a cemetery along its western boundary. Parcel D adjoins an existing convenience store and two undeveloped commercial parcels along its southern boundary, and adjoins “Parcel E”, an undeveloped parcel of land zoned R-1, which is a part of Brookfield and also owned by the Applicant, along its eastern boundary. The Properties are otherwise

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surrounded to the north with the residential portion of the Brookfield subdivision, and with scattered existing residential development to the east and south.

III. Legal Background

The Applicant purchased the Properties in 2000 in conjunction with its purchase of what is now the Brookfield subdivision. At that time, the Town envisioned a small block of commercial development located on the western edge of Town. This planning vision is documented in the Town's 2009 Comprehensive Plan, which stated the following in support of its recommendation to maintain the Properties' then-current B-2 (General Business) zoning classification: "This part of W. Main is suited to both auto and pedestrian access. Nearby subdivisions could benefit from convenient retail." See Exhibit B-1, Extract from 2009 Comprehensive Plan. It is also documented on the Town's 2009 Land Use Map, which includes the Properties within the large block of "Village Center/Town Center" land at the Town's western boundary. See Exhibit B-2, Land Use Map. As a result, the development plans for Brookfield included a small commercial component, to be located on the Properties, and with the intent that they would be developed with commercial uses that would support and be compatible with the 145 lots within the Brookfield subdivision and the surrounding residences along Main Street.

Between the Town's adoption of the 2009 Comprehensive Plan and its subsequent adoption of the 2015 Comprehensive Plan and Zoning Map, the Town's planning vision for commercial development within the Town shifted eastward. The large block of Village Center/Town Center properties on the westside of Town shrunk significantly, leaving only the following properties planned for commercial development: the Properties, a few adjacent parcels that front onto West Main Street, and an approximately 8-acre tract of land west of the adjacent cemetery that fronts onto West Main Street and adjoins the Pembroke subdivision. See Exhibit C, 2015

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Comprehensive Plan Map. At the same time, the adopted land use categories and zoning classifications for properties adjacent to U.S. Route 15 intensified from Village Center/Town Center to Town Commercial on the west. On the east side of U.S. Route 15, several large properties were reclassified from Limited Industrial and Office/Research to Employment Center and Suburban Commercial. See Exhibit D, 2015 Zoning Map.

Since the adoption of the 2015 Comprehensive Plan and Zoning Map, the planned commercial development on the east side of Town has been steadily coming to fruition. New and/or planned commercial development on the east side of the Town now includes a Rutters convenience store, Dunkin Donuts, a creamery, hotel and liquor store, insurance agency, marketing firm, and a large warehouse facility. In stark contrast, there has been no new commercial development in the vicinity of the Properties since the adoption of the 2015 Comprehensive Plan and Zoning Map. Over the course of the more than twenty (20) years that the Applicant has owned the Properties, it has attempted to actively market the Properties for commercial development without success. The owners of the two (2) small commercial parcels adjacent to the Properties have been similarly unable to solicit interest in the development of those properties for commercial uses. There is simply no market for commercial land on the far west side of Town. Indeed, the approximately eight (8) acres of commercial land adjacent to the Pembroke subdivision was rezoned subsequent to the adoption of the 2015 Zoning Map to R-1, Low Density Residential. As a result, the west side of Town now consists almost exclusively of residential development, with the exception of the existing small convenience store adjacent to the Properties.

IV. Legal Criteria for Rezoning

Pursuant to Section 17.44.030 of the Code and under Maryland law, an applicant for a zoning map amendment must either prove a substantial change in the character of the

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neighborhood where the property is located since the last comprehensive zoning map amendment or a mistake in the existing zoning classification of the property. Under well-established Maryland case law, to demonstrate a substantial change in the character of the neighborhood, an applicant must 1) define the neighborhood with reasonably defined boundaries 2) prove the changes to the neighborhood that have occurred since the most recent comprehensive rezoning; and prove that the changes that have occurred have changed the character of the neighborhood. Montgomery v. Board of County Comm'rs for Prince George's County, 256 Md. 597 (1970). In order to prove mistake, the applicant must present a strong showing that the assumptions or facts relied on by the legislative body at the time of the original or comprehensive rezoning were incorrect. People's Counsel for Baltimore County v. Williams, 45 Md. App. 617 (1980). Evidence of mistake can include a showing that the initial premises of the legislative body with respect to the property were incorrect or that the legislative body was not aware of physical characteristics of the property and therefore failed to take them into account. Quinn v. County Comm'rs of Kent County, 20 Md. App. 413 (1974). This Application satisfies both of these legal tests.

As discussed in detail above, since the adoption of the last comprehensive rezoning in 2015, the character of the neighborhood surrounding the Properties has changed substantially. See Exhibit E for a map depicting the neighborhood for purposes of this Application. The west side of Town has become almost exclusively residential in character. While many properties with frontage on Main Street continue to be zoned VZ (Village Zone), which permits both residential and commercial development, all of the properties devoted to commercial use are located east of the Properties, near the intersection of Main Street and Seton Avenue. In addition, the commercial land adjacent to the Pembroke subdivision has been subsequently rezoned to R-1, low density residential development. See Exhibit F, 2021 Zoning Map. As a result of these changes, the

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neighborhood in and around the Property has changed from a proposed mixed-use village-type development to a more purely suburban, residential neighborhood.

The above-described changes in the neighborhood in and around the Properties were the foreseeable consequences of the Town's decision, in 2015, to rezone large portions of the area in and around U.S. Route 15 to commercial zoning districts. At the time of the adoption of the 2015 comprehensive rezoning, the Properties had already sat vacant for fifteen (15) years. Time had proven incorrect, the assumption relied upon in 2009 to retain commercial zoning on these Properties – that the residential development in and around the Properties was sufficient to support retail development on these interior lots. These small, oddly-shaped Properties, internal to the Brookfield subdivision, without frontage onto or visibility from West Main Street, are ill suited to attract even the limited traffic traveling west on Main Street. Moreover, with a vibrant commercial corridor developing along U.S. Route 15, residents of the Town and the travelers along U.S. Route 15 have no incentive to detour from U.S. Route 15 for more than a mile in each direction, with access being via Main Street (and several traffic lights), to visit commercial establishments on the Properties scaled to meet the needs of local residents. The newly rezoned land along U.S. Route 15 was and is sufficient to meet the Town's commercial needs, as well as the needs of regional travelers on U.S. 15. Unlike the 2009 Comprehensive Plan, which specially considers the continued appropriateness of retaining commercial zoning on the Properties, there is no evidence that the Town ever considered how the commercial rezonings on the east side of Town would affect the Properties. The absence of such consideration constitutes legal mistake.

In summation, given the size of the Town and the proliferation of commercial development on the east side of Town, there is simply no need for additional commercial development on the west side of Town. The first three (3) phases of the Brookfield development are completely built,

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and the final stage is under active construction. Likewise, the development of the Pembroke subdivision is also complete. The existing convenience store adjacent to the Properties and the commercial development on the east side of Town meet the needs of the residents of these subdivisions. Contrary to the statement set forth in the 2009 Comprehensive Plan, there is simply no additional need or market for “convenient retail” in this portion of Town. The substantial changes in character of the west side of Town and the failure to reconsider the need for additional commercial development on the Properties prior to approving the 2015 Comprehensive Rezoning provide sufficient legal justification for the approval of this Application. Moreover, this Application also satisfies the remaining approval criteria and Findings of Fact applicable to zoning map amendments as set forth in Section 17.44.030 of the Code.

1. **POPULATION CHANGE:** According to the 2010 Census, the population of the Town of Emmitsburg was 2,814. The Applicant is proposing to develop the Property with approximately seven (7) single family dwelling units as part of its development of the adjacent Parcel E, which as noted above is already zoned R-1. A conceptual sketch plan depicting a potential layout of the proposed seven (7) new lots on the Properties is attached as Exhibit G. The development of the Properties with seven (7) single family residences would result in a population increase of approximately 19 residents (7 dwellings x 2.7 persons/household).

2. **AVAILABILITY OF PUBLIC FACILITIES.** Pursuant to Section 17.44.030 of the Code and long-standing Maryland case law, an applicant for a rezoning must demonstrate that there will be adequate public facilities to serve the property at its requested zoning classification. *Montgomery County v. Greater Colesville Citizens Ass’n, Inc*, 70 Md. App. 374 (1987). This requires an applicant to demonstrate that the infrastructure needed to make the public facilities adequate to serve the future development is “reasonably probable of fruition in

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the foreseeable future.” *Id.* As outlined fully herein below, the infrastructure needed to make the public facilities (including water, sewer, schools, fire and rescue services, and police service) adequate to serve the Properties are already located in and around the Properties, and can and will be made adequate to serve future development on the Properties.

a. Schools: The Property is located within the Catoclin High School feeder district, including Emmitsburg Elementary and Thurmont Middle schools. As shown in the chart below, Frederick County Public Schools (FCPS) enrollment projections as of September, 2022 indicate excess capacity as every level.

	State Rated Capacity	September 30, 2022 Projected Enrollment	Percentage of Capacity
Emmitsburg Elementary	225	207	92%
Thurmont Middle School	945	551	58%
Catoclin High School	1066	782	73%

Utilizing the Applicant’s proposed development scenario and the rates developed in the 2019 FCPS Pupil Yield Study, the total pupil yield from the development of the Properties with seven (7) additional residences would be approximately 1 elementary student (.13 x 7) 1 middle school student (.07 x 7), and 1 high school student (.10 x 7). All of the schools identified above have adequate capacity to serve these additional students.

b. Fire and Rescue and Police Services: The Properties can be adequately served by the Vigilant Hose Fire Company and the Frederick County Sheriff’s Office.

c. Libraries: No additional library facilities are needed to serve the Properties as they can be adequately served by the Emmitsburg branch library located on North Seton Avenue.

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e. Water and Sewer: Existing public water and sewer connections located within the right-of-way for Timbermill Run can be extended to serve the Properties. The 2015 Comprehensive Plan indicates that 173 water taps are currently available to serve new development and that a greater number of sewer taps are available as well. Thus, the Town has existing water and sewer capacity to serve the seven (7) residences proposed in connection with this rezoning Application.

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS

The Properties have direct frontage on and access to Timbermill Run, which intersects Maryland Route 140 (West Main Street), a minor arterial. Brookfield is connected with a well-planned road internal road system. A planned improvement to Brookfield Drive that will allow for two-way traffic on and off of Irishtown Road is being constructed as part of the completion of Phase IV of Brookfield. Access to U.S. Route 15 is approximately one (1) mile east of the Properties.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA

As noted above, the Properties are surrounded by residential development to the north and east. The Applicant is proposing to develop the Properties with single family dwelling units similar in size and scale to the existing homes in Brookfield, and as an integrated component of its development of the adjacent Parcel E. The construction of seven (7) single family dwellings on the Properties would not be incompatible with either the adjacent cemetery or the existing convenience store located to the south and east of the Properties, as any necessary buffers between these uses will be determined in connection with a future subdivision and site development approval process. Thus, the Applicant submits that this Application proposes the use of the

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Properties that is most compatible with the surrounding development – low density residential development.

5. THE RELATIONSHIP OF THE PROPOSED AMENDMENT TO THE TOWN'S
COMPREHENSIVE PLAN

The 2015 Comprehensive Plan is consistent and clear in outlining the policy considerations that should guide the Town's future zoning decisions. The Executive Summary states that zoning map amendments should be determined based upon water supply and wastewater treatment capacity, compatibility of land uses, and the benefit to the community from the proposed amendment. The remaining chapters of the Comprehensive Plan expand upon these broader policy statements, acknowledging that water and sewer capacity issues will restrict the Town's long-term growth and development potential, and directing the Town to i) weigh the relative benefits to the community of any development proposal before allocating water and sewer taps, ii) to prioritize infill development and iii) analyze potential development's impact on the Town's fiscal health. See Comprehensive Plan at pp. 1-16, 7-7, and 12-1.

This Application is consistent with and furthers all of the above-described land use and development policies. The Properties are vacant, infill properties that have been undevelopable at their current zoning for more than twenty (20) years. The Town has planned to and can easily serve the Properties with public water and sewer service through connections to existing infrastructure. The Town's water and sewer allocation formulas indicate that development of the Properties under the requested R-1 zoning, rather their current B-1 zoning classification, would result in a negligible increase in the water and sewerage allocation needed (3.5 taps per acre instead of 3.1 taps per acre). In exchange for this small additional allocation of capacity, the Town will receive revenue from seven additional households. Thus, while the Comprehensive Plan notes

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generally that non-residential development contributes a larger percentage of the Town's tax revenue than does residential development, these Properties have proven over the course of the past twenty (20) years to be simply undevelopable for nonresidential use. See Comprehensive Plan at pp. 1-16. Thus, approving this Application to rezone the Properties to the R-1 zoning classification maximizes the revenue-producing potential of the Properties at minimal cost to the Town, allows vacant, infill properties to be developed in a manner that is wholly consistent with the surrounding residential development, contributes positively to the Town's fiscal health, and thus furthers the land use objectives of the Town's Comprehensive Plan.

V. Conclusion

In conclusion, the Properties' B-1 zoning is no longer appropriate due to substantial changes in the character of the neighborhood in and around the Properties that have occurred since the 2015 comprehensive rezoning and resulted from legal mistake. The Applicant requests that the Town rezone the Properties to the R-1 zoning district so that they can be developed for low density residential uses. In accordance with Section 17.44.030 of the Code, the Applicant requests approval of this Application.