

ORDINANCE NO. 3778

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, ENTITLED "AN ORDINANCE APPROVING THE APPLICATION TO AMEND THE OFFICIAL ZONING MAP REFERRED TO IN SECTION 25-1 OF THE CODE OF THE CITY OF CUMBERLAND (1991 EDITION) TO REZONE PROPERTY LOCATED AT 208-210 OLDTOWN ROAD, CUMBERLAND, ALLEGANY COUNTY, MARYLAND FROM R-U (URBAN RESIDENTIAL) TO R-R (REHABILITATION AND REDEVELOPMENT)."

WHEREAS, the property which is the subject of this Ordinance is presently owned by Thomas W. Pittman and Christina R. Pittman (the "Applicants"), is located at 208-210 Oldtown Road, Cumberland, Allegany County, Maryland, on the north side of Baltimore Avenue between Goethe Street and Bellevue Avenue, and is more particularly described in the Deed from Harold B. Rice to the Applicants, dated October 13, 2006 and recorded among the Land Records of Allegany County, Maryland in Book 1319, Page 200, the said property hereinafter being referred to as the "Subject Property."

WHEREAS, the Subject Property is presently zone R-U (Urban Residential) and is improved by a two-story building.

WHEREAS, the Applicants made application to the Planning and Zoning Commission of the City of Cumberland

(the "Planning Commission"), requesting that the Subject Property be rezoned to R-R (Rehabilitation and Redevelopment) in order to re-establish a commercial use at that location.

WHEREAS, the first floor of the structure was formerly used for commercial purposes under the nonconforming use provisions of the City of Cumberland Zoning Ordinance; however, since that use was abandoned more than 6 years ago, it cannot be re-established under existing zoning. See Zoning Ordinance Section 7.06.07(4).

WHEREAS, the second floor consists of two residential units, one of which is used by the Applicants as their principal residence, the other of which is available for or being used as a residential rental unit.

WHEREAS, if the requested rezoning is granted, the Applicants will establish a deli/market on the first floor of the Subject Property and they will continue the residential use of the second floor of the building.

WHEREAS, the Cumberland Planning Commission Staff issued a Report dated January 15, 2015 (the "Staff Report"), a copy of which is attached hereto and incorporated by reference herein as Exhibit 1, recommending that the proposed zoning map amendment be approved subject

to the 8 restrictions, conditions and limitations set forth on pages 5 and 6.

WHEREAS, among other things, the Staff Report includes Staff's findings relative to the required considerations set forth in Section 4-204(b)(1) of the Land Use Article of the Annotated Code of Maryland, i.e., population change, the availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, and the relationship of the proposed amendment to the local jurisdiction's plan.

WHEREAS, the Planning Commission held a hearing on March 23, 2015 for the purpose of considering the Applicants' request for a zoning map change, voting 4-0 (with the fifth member of the Planning Commission abstaining from the vote) to recommend that the Mayor and City Council approve the application (see Planning Commission Action attached hereto as Exhibit 2).

WHEREAS, as required by Section 15.04.05(1) of the Zoning Ordinance, the Planning Commission forwarded its recommendations relative to the proposed rezoning to the Mayor and City Council for action.

WHEREAS, as required by Section 4-203(b) of the Land Use Article and Section 15.04.06(1) of the Zoning Ordinance, the Mayor and City Council published notice of

the time and place of the public hearing before it on the matter of the rezoning which is the subject of this Ordinance together with a summary of the proposed rezoning in *The Cumberland Times News*, a newspaper of general circulation in Allegany County and the City of Cumberland, once each week for 2 successive weeks with the first notice being provided at least 14 days before the hearing. The notices were published on May 5, 2015 and May 8, 2015.

WHEREAS, as required by Section 4-203(b) of the Land Use Article and Section 15.04.07 of the Zoning Ordinance, a public hearing on the proposed rezoning was held before the Mayor and City Council on May 19, 2015, at which public hearing all parties in interest and citizens of the City of Cumberland were permitted to be heard concerning the proposed rezoning.

WHEREAS, having considered the evidence presented, the Mayor and City Council made the following findings:

1. Since the RR zone is a "floating zone," a determination of a substantial change in the character of the neighborhood or a mistake in the original zoning of the Subject Property under Section 4-204(b)(2) of the Land Use Article is not required. *Aubinoe v. Lewis*, 250 Md. 645, 652-53 (1968)

2. As required under the terms of the Court of Appeals' ruling in *Aubinoe*, the application complies with the express purposes for which the floating zone was established. The purpose of the RR Zone is to provide incentive for the reuse, rehabilitation and redevelopment of abandoned structures that were originally used for industrial, warehouse, or other employment purposes but which have become nonconforming in the district in which they are located. See Zoning Ordinance Section 5.01.12. The first floor of the structure on the Subject Property has been abandoned. By virtue of its design, it cannot feasibly be converted to a conforming use within the neighborhood. If left vacant, it would be likely to have a blighting influence in the neighborhood.

3. The reuse, rehabilitation and redevelopment of abandoned structures in an RR Zoning District should be conducted in a manner such that the integrity of the neighborhood can be preserved. See Zoning Ordinance Section 5.01.12. The applicable criteria (performance standards) for considering an application to rezone a property to the RR Zone in order to determine whether such a use is compatible with the neighborhood are set forth in Section 6.14.04 of the Zoning Ordinance. Additional

requirements relative to the establishment of an RR Zone are set forth in Section 6.14 of the Zoning Ordinance.

4. In addition to considering the aforesaid requirements, the Mayor and City Council are required to make findings relative to the required considerations set forth in Section 4-204(b)(1) of the Land Use Article which were identified previously herein.

5. The Mayor and City Council adopt the findings set forth in the Staff Report as its findings with respect to the subject application.

6. Although the Subject Property was referred to as 208 Oldtown Road in the Application, the State Department of Assessments and Taxation's assessment records reflect that the correct legal description is 208-210 Oldtown Road, Cumberland, MD 21502. Accordingly, the Application and the Planning Commission's recommendation shall be deemed to be applicable to 208-210 Oldtown Road.

WHEREAS, based upon the foregoing, the Mayor and City Council determined that the application for the rezoning of the Subject Property should be granted and the 8 restrictions, conditions and limitations recommended by the Planning Commission should apply.

NOW, THEREFORE:

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that the Applicants' application to rezone the Subject Property from R-U (Urban Residential) to R-R (Rehabilitation and Redevelopment) is granted. The Official Zoning Map referred to in Section 25-1 of the Code of the City of Cumberland (1991 Edition) be and is hereby amended to rezone the Subject Property accordingly.

SECTION 2: BE IT FURTHER ORDAINED, in accordance with Section 15.07 of the City of Cumberland Zoning Ordinance, the aforesaid rezoning is subject to the following restrictions, conditions and limitations:

1. Permitted uses for the Subject Property shall be limited to retail buildings (less than 5,000 square feet), repair services, personal service establishments, and professional services in accordance with the applicable standards for the B-L (Local Business Zone) and residential uses in accordance with the applicable standards for the R-U (Urban Residential Zone) as specified in the Development Regulations Table (Section 6.03.01 of the City of Cumberland Zoning Ordinance). All non-residential uses in the building on the Subject Property shall be confined to the first or ground

- floor and the second or upper floor of the building shall only be used for residential uses permitted within the R-U Zone.
2. The proposed use shall satisfy all applicable off-street parking and loading requirements specified in Section 12 of the Zoning Ordinance.
 3. The proposed use shall satisfy the applicable buffer requirements in Section 13 of the Zoning Ordinance.
 4. The proposed use shall satisfy the signage restrictions of Section 6.14.04 (4) of the Zoning Ordinance, with the addition that no freestanding sign shall be permitted on the property.
 5. The proposed use shall not generate more than 25 vehicle trips per day, as determined by the most recently published edition of the Institute of Traffic Engineers Trip Generation Manual.
 6. No outdoor storage, display, or sales of materials or products shall be allowed on the Subject Property.
 7. The business use shall not operate between the hours of 10:00 p.m. and 6:00 a.m.
 8. Prior to the issuance of an occupancy permit for any proposed non-residential use in the building, the owner shall submit for review and approval an engineering and code inspection report documenting the

soundness of the structure for the proposed use and the compliance of all alteration work completed since 2008 with all applicable building, plumbing, and electrical code requirements. Where code deficiencies are identified in the first or ground floor alteration work, the owner shall undertake improvements, which shall be re-inspected upon completion, to achieve compliance with the applicable code requirements prior to the issuance of an occupancy permit for the first or ground floor commercial space.

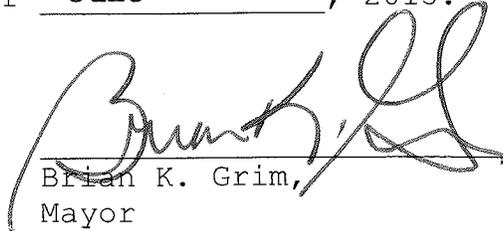
SECTION 3: BE IT FURTHER ORDAINED, that the said change shall be made on the Official Zoning Map immediately by inserting an entry on said Map stating: "On _____, 2015, by official action of the Mayor and City Council of Cumberland, the following changes were made on the Official Zoning Map:

1. The property located at 208-210 Oldtown Road shall be zoned RR; and
2. The said property is and shall be subject to those certain restrictions, conditions and limitations set forth in the Exhibit A attached hereto."

The Exhibit A shall set forth the restrictions, conditions and limitations set forth in Section 2 of this Ordinance.

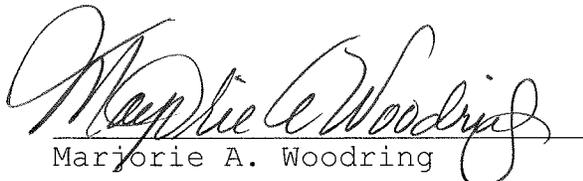
SECTION 4: AND BE IT FURTHER ORDAINED, That this Ordinance shall take effect on the eleventh day following its passage.

PASSED this 2nd day of June, 2015.



Brian K. Grim,
Mayor

ATTEST:



Marjorie A. Woodring
City Clerk

1st reading: 4/21/15
2nd reading: 6/2/15
3rd reading: 6/2/15
Public Hearing 5/19/15

Passed: 5-0

EXHIBIT 1

CUMBERLAND PLANNING COMMISSION STAFF REPORT

ZMA 15-01 – 208 Oldtown Road – RR Rezoning

January 14, 2015

Overview:

A petition has been submitted by Thomas Pitman to apply the RR – Rehabilitation and Redevelopment Floating Zone to property that he owns at 208 Oldtown Road. The applicant is seeking to re-establish a former commercial use designation for the ground floor of the two story building. The former commercial use was abandoned more than 6 years ago, and the ground floor has remained vacant over that time. The upper floor of the building has historically been divided into two apartment units, at least one of which is currently occupied by the owners (Thomas Pitman and his wife, Christina). The property is currently zoned R-U – Urban Residential, which, according to Section 6.14.01 of the Zoning Ordinance is a zoning district that is eligible to receive the proposed RR zoning. The property adjoins R-U zoned properties on all sides, but several grandfathered, non-conforming non-residential uses remain in the immediate neighborhood, including Corwell’s market and Klauvan’s moving company. The legal “grandfathered” status of the former first floor commercial use has expired in accordance with the terms of **Section 7.06.07 (4)**, which states:

“When a nonconforming use of a structure, land, or structure and land in combination is discontinued or abandoned for twenty-four (24) consecutive months, the structure, land, or structures and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located.”

In the case of 208 Oldtown Road, the prior commercial use has been abandoned for at least 6 years and the owner has established the upper floor residential area as a primary residence, which is now consistent with the current R-U Zone. Furthermore, according to the Conceptual Future Land Use Map (Map 9) in the 2013 Comprehensive Plan City-Wide Element, the subject property and all adjoining parcels are planned for Residential Uses, which is consistent with the current R-U zoning and the current residential use of the building.

The applicant is proposing to establish a deli or market on the ground floor of the building, which he hopes to sell (see the attached site plan and summary for the ZMA 15-01 petition). To re-establish the proposed commercial use, the applicant is seeking application of the RR-Revitalization and Redevelopment Floating Zone to the property.

Procedural Status:

On August 6, 2008, Thomas and Christina Pitman filed a number of permit applications in support of a proposed grill and retail sales commercial operation on the first floor of the subject property. These applications included RB 889, a building permit application for a commercial alteration of the first floor space; EC 1688, an electrical permit application for wiring work in support of the proposed commercial operations; PP 648, a plumbing permit application for plumbing work in support of the proposed commercial operations; and OP 1145, an occupancy permit for proposed retail sales of beer and wine and a commercial grill. These permits were never approved for the following reasons:

1. The "grandfathered" status of the former first floor commercial use had expired.
2. The owner could not satisfy the off-street parking requirements for the proposed commercial use as required by Section 12 of the Zoning Ordinance.
3. The proposed commercial use was not permitted by the applicable R-U (Urban Residential) zoning of the property.

Both the first floor and the upper floor apartments in the building were vacant. In speaking with the owner at that time, staff apprised him that, if he could satisfy the off-street parking requirements for the proposed commercial use, he could petition the city for RR (Revitalization and Rehabilitation) zoning. The owner subsequently established a primary residential use in the upper floor of the building, thereby creating a permitted occupancy use within the building in accordance with the applicable zoning. Also during the intervening time, the owner acquired a vacant property across the street from the building as a potential future off-street parking area for his primary property.

On January 13, 2015, the owner filed a Zoning Map Amendment petition (ZMA 15-01) to request application of the RR – Revitalization and Rehabilitation Floating Zone to his property at 208 Oldtown Road with parking to be located on the vacant parcel across Gay Street from the principal building. Staff scheduled the petition for a February 9, 2015 public hearing before the Planning Commission.

Staff Review:

City records do confirm the previous ground floor commercial use of the building. That pre-existing, non-conforming (grandfathered) use has been abandoned for more than two years, and cannot be reinstated under the current R-U Zoning of the property. The upper floor of the building has been maintained as a principal residence for the owner since the 2008 permit denial.

Staff has not determined whether or not the commercial alteration work originally denied in 2008 was continued or completed without a valid permit and, if so, whether or not any such work was done in compliance with the applicable Building, Electrical, and Plumbing Codes. However the applicant did assert that his permits were approved and verbally acknowledged that the work was completed. Since staff never approved the original permits, no inspections of any alteration work undertaken in the building since 2008 has been conducted to ensure code compliance.

According to Section 5.01.12 of the Zoning Ordinance, the spirit and intent of the RR – Rehabilitation and Redevelopment Floating Zone is to allow certain abandoned buildings originally used for industrial, warehouse, or other employment uses that are no longer permitted by the current zoning to be re-established in a manner that will allow them to be occupied and contribute to the active tax rolls of the city. The zoning classification is customarily restricted to abandoned and vacant buildings which cannot, by virtue of their design, be feasibly converted to a conforming use within the neighborhood and would, if left vacant, create a blighting influence on the neighborhood. The R-U (Urban Residential) zoning district is specifically eligible for the RR Zone.

Although the building was initially vacant when acquired by the current owner (and the ground floor remains vacant today), the owner subsequently established a conforming use within the building.

The applicant's proposed uses are consistent with the historic uses for the buildings and are not inconsistent with the general development patterns that exist in the area. The owner also acquired an adjoining property on the opposite side of Gay Street from the principal building for a proposed parking area. The property is served by all necessary city utilities, including City water and sewer.

Staff Recommendation:

In support of the requested rezoning, the applicant has submitted a site plan of the property and adjoining parking area and current photographs showing both the building and adjoining vacant lot for the required off-street parking (see attached supporting documents to ZMA 15-01). However, the applicant did not submit the following supporting documents required in Section 6.14.03 of the Zoning Ordinance:

1. **An engineering report as to the soundness of the structure.** This document is especially important for the subject property, since evidence has been provided suggesting that alteration work was conducted within the building without valid permits and no code compliance inspections for any such work were completed.
2. **A justification statement as to why the structure should be converted to a non-residential land use and how the application satisfies the purpose and intent of the RR Floating Zone.** Again, this document is important since the building is not currently vacant and is being occupied and maintained for a conforming use within the R-U Zone. As such, the building is also actively generating property taxes to the city and does not appear to be visibly blighted.
3. **A proposed exterior plan of the structure including architectural modifications, changes, or additions to the façade, landscaping, screening, and other such information as the Zoning Administrator may require.** Since staff is not aware of any proposed or planned exterior modifications to the building, this requirement may be satisfied by a written statement to that effect by the property owner.

The applicable performance standards for the RR Floating Zone are specified in Section 6.14.04 of the Zoning Ordinance. These standards are as follows:

1. Comply with all applicable environmental standards and requirements listed in Section 6.08 (noise, lighting, vibrations, noise pollution, etc.);
2. Satisfy the off-street parking and loading requirements of Section 12;
3. Provide required buffers along existing residential uses required in Section 13;
4. Satisfy specific signage limitations;
5. Comply with certain trip generation limitations or provide a traffic study to show that the use will not exceed the capacity of local streets;
6. Require no access for loading and unloading from a local street;
7. Require no outside storage of materials or products associated with the use;
8. Ensure that any light manufacturing uses will be conducted in an entirely enclosed space; and
9. Comply with operating hours restrictions between 10:00 p.m. and 6:00 a.m.

Staff has not determined if the proposed parking depicted on the applicant's site plan is adequate to satisfy the applicable requirements for the proposed use, but the vacant lot *appears* to have adequate area to do so. The site plan does not appear to have been drawn to scale, which makes it impossible for staff to confirm that the proposed spaces can be accommodated on the property as depicted. However, if the requested rezoning is ultimately approved, the applicant would be required (at a minimum) to: provide handicapped accessible parking with more convenient and direct access to the building entrance than is depicted on the site plan, confirm that the parking spaces will comply with the required dimensions (the parking space dimensions shown on the site plan do not appear to conform with the applicable requirements), provide an on-site drive or access aisle, and document that the surface of the parking area will be constructed with a dustless, durable, all-weather pavement as required in Section 12 of the Zoning Ordinance. The applicant would also need to redesign the proposed parking area to ensure that parked cars will not be required to back out into an adjoining street in compliance with Section 12.02.012 (11) of the Zoning Ordinance.

Additionally, under the provisions of The Land Use Article of the Maryland Annotated Code, the Mayor and City Council must render a series of specific findings in making its decision regarding the proposed zoning. A recommendation regarding these findings must be made by the Planning Commission. The specific findings are outlined in Section 4-204 (b) (1) of the Land Use Article. Staff recommends the following findings be determined with respect to these statutory considerations:

1. **Population change:** Staff notes the findings in the 2013 Comprehensive Plan that the population of the City of Cumberland has been in decline since the 1940's. The Plan further notes that the city desires to reverse that trend and support the future growth and economic development of the city, and it contains a number of recommendations to support that goal. The plan calls for a 150% increase in the City's population over the next 20 years. The proposed zoning would provide for limited future economic expansion of the city's commercial base, thereby increasing employment opportunities, expanding the City's tax base, and promoting

population growth that could be consistent with the recommendations of the City's Comprehensive Plan.

2. **The availability of public facilities:** Public facilities in the City of Cumberland were designed to serve the City's peak population of 39,483 in 1940. With a current population of approximately 20,800, the Water Resources Element in the 2013 Comprehensive Plan documented that adequate capacity exists within the city's current public facilities to accommodate the city's planned growth. The subject property is already served by City water and sewer.
3. **Present & future transportation patterns:** The 2013 Comprehensive Plan and the 2011 Cumberland Area Long Range Transportation Plan have identified and scheduled transportation improvements necessary to serve planned growth and development. The subject property is directly accessed by Oldtown Road and Gay Street, which are functionally classified as local streets in that area. The potential traffic impacts of the proposed use are anticipated to be minor and would not reduce the level of service on the adjoining streets to "D" or lower. The property owner has acquired property to serve as off-street parking for the proposed uses, but no determination of adequacy under Section 12 of the Zoning Ordinance has been made at this time.
4. **Compatibility with existing and proposed development for the area:** The current zoning and immediately neighboring uses are vacant or residential in nature. Other commercial uses are scattered around the area. The proposed uses are generally consistent with the existing mix of uses in that area.
5. **Relationship of the proposed amendment to the local jurisdiction's plan:** The R-U (Urban Residential) base zoning classification of the property makes it eligible for application of the RR – Revitalization and Redevelopment Floating Zone. The current upper floor residential use is allowed by the R-U Zone and is consistent with the future uses contemplated by the 2013 Comprehensive Plan. The proposed ground floor use is not specifically consistent with the future uses contemplated by the 2013 Comprehensive Plan for the area. The ground floor of the building was clearly designed for commercial use, but the former commercial use has been abandoned for more than two years.

Should the Planning Commission and Mayor and Council agree to rezone the property as requested by the applicant, staff recommends that the following conditions be applied to ensure compliance with the applicable zoning requirements:

1. Permitted uses for the property at 208 Oldtown Road shall be limited to Retail buildings (less than 5,000 square feet), Repair services, Personal Service Establishments, and professional services in accordance with the applicable standards for the B-L (Local Business Zone) and residential uses in accordance with the applicable standards for the R-U (Urban Residential Zone) as specified in the Development Regulations Table (Section 6.03.01 of the Cumberland Zoning Ordinance. All non-residential uses in the building shall be confined to the first or

ground floor and the second or upper floor of the building shall only be used for residential uses permitted within the R-U Zone.

2. The proposed use shall satisfy all applicable off-street parking and loading requirements specified in Section 12 of the Zoning Ordinance.
3. The proposed use shall satisfy the applicable buffer requirements in Section 13 of the Zoning Ordinance.
4. The proposed use shall satisfy the signage restrictions of Section 6.14.04 (4) of the Zoning Ordinance, with the addition that no freestanding sign shall be permitted on the property.
5. The proposed use shall not generate more than 25 vehicle trips per day, as determined by the most recently published edition of the Institute of Traffic Engineers Trip Generation Manual.
6. No outdoor storage, display, or sales of materials or products shall be allowed on the property.
7. The business use shall not operate between the hours of 10:00 p.m. and 6:00 a.m.
8. Prior to the issuance of an Occupancy Permit for any proposed non-residential use in the building, the owner shall submit for review and approval an engineering and code inspection report documenting the soundness of the structure for the proposed use and the compliance of all alteration work completed since 2008 with all applicable Building, Plumbing, and Electrical Code requirements. Where code deficiencies are identified in the first or ground floor alteration work, the owner shall undertake improvements, which shall be re-inspected upon completion, to achieve compliance with the applicable code requirements prior to the issuance of an Occupancy Permit for the first or ground floor commercial space.

EXHIBIT 2

Planning Commission Action:

- Recommend adoption of the requested RR Zoning for the affected property at 208 Road to the Mayor and City Council in accordance with the following findings of fact and recommended conditions:

With Staff Conditions

- Recommend denial of requested RR Zoning for the affected property at 208 Oldtown Road to the Mayor and City Council, based on the following findings:

Motion by: Las Merrill

Seconded by: Ben Walters

Vote:

In favor of motion: 4 Opposed: 0 Abstained: 1

Number of voting members present: 5

Signed: *[Signature]*
 Chair, Cumberland Planning Commission

Date: 3/23/15

[Signature]
 Secretary, Cumberland Planning Commission

Date: 3/23/15