

REZONING

2 Types:

- **Comprehensive Rezoning** – Where multiple properties are reviewed at the same time and changes to zoning may be made.
- **Piecemeal Rezoning** – Where an owner/contract purchaser files a request to change the zoning of one or more properties or to have a “Floating zone” applied to one or more properties.

Quasi-judicial Decision Maker's Role

- Similar to the role of a judge in a judicial proceeding. Must apply the legal criteria to the facts of the case in the application, other documents, and comments in the “record”.
- The applicant has the “burden of proof”.
- Decision must be based upon information presented to the Planning Commission/Council and contained in the record.
- Council/Planning Commission Members may ask questions during the hearing to obtain additional information.
- Council/Planning Commission Members should not engage in their own research or base a decision on information not contained in the record.

The Record

- All quasi-judicial decisions must be based upon the information contained in the record.
- The record includes the application, Staff Report, Public hearing presentations, Public Comments, other documents submitted into the record during the Planning Commission and Council hearings.
- Planning Commission/Council Members may not consider information “outside the record” to make their decision.

Closed or Open:

- It is important to decide whether the record will be closed or remain open if the Planning Commission or County Council does not decide the matter at the conclusion of the public hearing.

Approval Criteria for Piecemeal Rezoning

(General) (1 of 3)

For an individual zoning map amendment or floating zone reclassification, the Planning Commission and County Council review will include the following criteria (per§ 1-19-3.110.4):

- (1) Consistency with the comprehensive plan;
- (2) Availability of current and planned public facilities;
- (3) Adequacy of existing and planned future transportation systems;
- (4) Compatibility with existing and proposed development;
- (5) Population change, including availability and location of land zoned to meet the ten-year need for residential development;

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Approval Criteria for Piecemeal Rezoning

(General) (2 of 3)

- (6) The timing of development, planned future transportation systems and planned public facilities;
- (7) Sensitive environmental resources have been identified and impacts to these resources are avoided or minimized to the maximum extent practicable; and
- (8) Historic resources have been identified and impacts to these resources are avoided or minimized to the maximum extent practicable.

Approval Criteria for Piecemeal Rezoning

(General) (3 of 3)

(B) In addition to the criteria above, approval or disapproval of a request for an individual zoning map amendment that is not a floating zone shall be granted only where a finding has been made that there was:

- (1) A substantial change in the character of the neighborhood where the property is located; or
- (2) A mistake in the existing zoning classification.

Approval Criteria for Planned Development Districts (MXD/PUD) (1 of 5)

For Planned Development District rezoning, the Planning Commission and the County Council will consider whether the project adequately addresses the following criteria (per § 1-19-10.500.3.):

- (A) The proposed development is compact, employing design principles that result in efficient consumption of land, efficient extension of public infrastructure, and efficient provision of public facilities;
- (B) The proposed development design and building siting are in accordance with the County Comprehensive Plan, and any applicable community and corridor plans;

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Approval Criteria for Planned Development

Districts (MXD/PUD) (2 of 5)

- (C) The proposed development is compatible with existing or anticipated surrounding land uses with regard to size, building scale, intensity, setbacks, and landscaping, or the proposal provides for mitigation of differences in appearance or scale through such means as setbacks, screening, landscaping; or other design features in accordance with the County Comprehensive Plan, and any applicable community or corridor plans;
- (D) The proposed development provides a safe and efficient arrangement of land use, buildings, infrastructure, and transportation circulation systems. Factors to be evaluated include: connections between existing and proposed community development patterns, extension of the street network; pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;

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Approval Criteria for Planned Development Districts (MXD/PUD) (3 of 5)

(F) The proposed development provides design and building placement that optimizes walking, biking, and use of public transit. Factors to be evaluated include: extension of the street network; existing and proposed community development patterns; and pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;

(G) Existing fire and emergency medical service facilities are or will be made adequate to serve the increased demand from the proposed development in addition to existing uses in the area. Factors to be evaluated include: response time, projected schedule of providing planned improvements, bridges, roads, and nature and type of available response apparatus;

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Approval Criteria for Planned Development

Districts (MXD/PUD) (4 of 5)

(H) Natural features of the site have been adequately considered and protected in the design of the proposed development. Factors to be evaluated include: the relationship of existing natural features to man-made features both on-site and in the immediate vicinity, natural features connectivity, energy efficient site design, use of environmental site design or low impact development techniques in accordance with Chapter 1-15.2 of the Frederick County Code;

(I) The proposed mixture of land uses is consistent with the purpose and intent of the underlying County Comprehensive Plan land use designation(s), and any applicable community or corridor plans;

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Approval Criteria for Planned Development Districts (MXD/PUD) (5 of 5)

(J) Planned developments shall be served adequately by public facilities and services. Additionally, increased demand for public facilities, services, and utilities created by the proposed development (including without limitation water, sewer, transportation, parks and recreation, schools, fire and emergency services, libraries, and law enforcement) shall be evaluated as adequate or to be made adequate within established county standards;

(K) Sensitive environmental resources are protected to the maximum extent practicable; and

(L) All efforts have been made to promote the protection, preservation, and integration of historic resources into the planned development through reuse, adaptive use and rehabilitation.

Planning Commission Public Hearing

Procedures

The Planning Commission shall hold a public hearing for rezoning applications:

- Applicant testimony, the staff report, and reviewing agency comments will be presented at the public hearing.
- Public testimony will be permitted.
- Written comments are accepted, but must be filed and received by DPP at least 48 hours in advance of the public hearing in order to be considered by the Commission in making its decision.
- The Commission shall base its findings and recommendations on the information presented at the hearing.
- The Commission must allow “reasonable” cross examination of witnesses.

Planning Commission Action (after the public hearing)

- The Planning Commission must forward its written recommendation to the County Council within 62 days of the public hearing or the Planning Commission will be deemed to have made no recommendation.
- A recommendation of denial by the Planning Commission does not end the proceedings. The County Council should take the Planning Commission recommendation into consideration, but is not required to follow it.

Council Action (1 of 3)

- The County Council must hold a public hearing on the application and follow generally the same rules as the Commission.
- If a majority of Council Members agree the criteria have been met and to grant the request by an affirmative vote, then Staff will be directed to prepare the appropriate documentation for signature.
- If the Council Members do not find the criteria have been met or decide not to approve the request, then Staff will prepare a Resolution reflecting denial of the request.
- The application is deemed denied if not approved within 90 days of the conclusion of the Council's public hearing.

Council Action (2 of 3)

- The County Council may impose additional restrictions, conditions, or limitations as appropriate to preserve, enhance, or protect the general character and design of the lands and improvements being zoned or rezoned or of the surrounding or adjacent lands and improvements.
- The Council may also reserve the power and authority to approve or disapprove the design of structures, construction, landscaping or other improvements, alterations and changes made or to be made on the subject land or lands to assure conformity with the intent and purposes of this chapter.
- Conditions imposed or requested may not include the prohibition of any uses expressly permitted in the requested zoning district.

Council Action (3 of 3)

- If the burden of proof has been met, Council may but is not required to approve the requested zoning change.
- Once approved by the County Council, the signed ordinance of approval is forwarded to the County Executive for approval or veto.
- If the County Executive vetoed the ordinance, then it may but is not required to, go back to the Council for a possible vote to override the veto.