

THE EFFECTIVE DATE OF THIS ORDINANCE IS February 2, 2016

ORDINANCE NO. 16-01-001

OPINION, FINDINGS AND ORDINANCE
OF
THE COUNTY COUNCIL OF FREDERICK
COUNTY, MARYLAND

RE: APPLICATION OF OURISMAN CHEVROLET, INC.

REZONING CASE NO. R-97-03 (A)

OPINION/FINDINGS

A. BACKGROUND

This rezoning request is to amend the Phase I Plan for the Frederick Crossing Mixed Use Development (MXD). The requested changes are for an increase in the amount of permitted commercial area for the entire MXD to 45% and to change the land use designation for Lot 8 (the Site) from "R&D/Office/Employment" to "Commercial."

The Frederick Crossing MXD contains +/- 71.8 acres of land and is located in the Frederick Southeast Community Growth Area, to the north and southwest of Guilford Drive. The Site is located along the northern border of an existing Walmart, in the southwest quadrant of the intersection of MD 355 and MD 85, at the terminus of Frederick Crossing Lane. It is identified as Lot 8 and is on Tax Map 77 as Parcel 314 and contains +/- 7.56 acres of land.

The Frederick Crossing MXD floating zone map amendment was approved in October of 1997 (Ord. 97-15-193). A maximum permitted acreage for

commercial land use within the MXD was established at 40.4% of the gross land area of the MXD. Therefore, at a gross acreage of 71.8 acres within the MXD, a total of 29.01 acres of commercial land was permitted. The Site was designated “R&D/Office/Hotel.”

Since 1997, development of the Frederick Crossing MXD has progressed. The Frederick Crossing Retail Center was constructed under the “Commercial” land use. The Conley Corporate Center, the Guilford Professional Center, and Guilford Office Center have been constructed under the “R&D/Office/Hotel” land use. Two parcels within the MXD remain undeveloped: Lot 7 (Tax Map 77 Parcel 94) on the western boundary of the MXD at New Design Road; and, the subject Site (lot 8, Tax Map 77 Parcel 314).

A parcel of land owned by the Maryland State Highway Administration (SHA) is adjacent to the northern boundary of the Site. A portion of an interchange between I-70 and MD 355 was planned to be constructed on this site. Later, as the planned interchange was relocated to the east to the crossing of MD 85 and I-70, the property slated for I-70/MD 355 interchange was deemed surplus.

The SHA parcel is not a part of the Frederick Crossing MXD. However, a potential “land swap” was discussed during the previous rezoning process, and the rezoning ordinance makes reference to this property and to the desire of the Board of County Commissioners that the SHA site should be designated “R&D/Office/Hotel.” However, as this site was not a part of the rezoning, there was no binding ability to affect its designation. It is currently zoned GC-General

Commercial and continues to be separate from the Frederick Crossing MXD. The applicant is in negotiation with SHA to purchase the surplus property to develop jointly with the MXD parcel.

The Frederick County Planning Commission held a public hearing on November 18, 2015, and voted to recommend approval of the request with two conditions.

The County Council of Frederick County, Maryland, held a public hearing on January 19, 2016.

B. APPLICANT PROPOSAL

This rezoning request is to amend the Phase I Plan for the Frederick Crossing Mixed Use Development (MXD) to increase the overall amount of commercial land use to 45% and to change the land use designation for Lot 8, (the Site) from “R&D/Office/Hotel” to “Commercial.” The request would increase the permitted commercial use for the MXD from 40.4% to 45%, which is the maximum allowed in an MXD.

The request is being made in order to support the Applicant’s intended use of the Site as an automobile dealership. However, a change in designation of the Site to commercial allows for the development of any uses allowed under the GC-General Commercial zone of the Use Table (§1-19-5.310).

As described above, the MXD zone limits the amount of commercial land to a maximum of 45% of the gross land area for projects with no proposed

residential land use. The current Phase I Plan was approved for 40.4 % commercial use, or 29.01 acres.

The Site is 7.56 acres, so even if the permitted percentage of commercial land in the MXD were raised to the maximum allowed by zoning of 45% of the gross land area, the result would not provide enough commercial land to permit the conversion of the entire Site to commercial land use. Only 3.3 acres of the Site could be changed to commercial.

$$71.8 \text{ gross MXD acres} \times 45\% = 32.31 \text{ acres}$$

$$32.31 \text{ acres} - 29.01 \text{ acres} = 3.3 \text{ acres}$$

$$7.56 \text{ acres} > 3.3 \text{ acres}$$

However, the Applicant is proposing that sufficient commercial acreage can be gained through the combination of: 1) an existing surplus of commercial land within the MXD; and 2) the increased acreage that would come from raising the maximum permitted commercial percentage to 45%.

The Applicant has demonstrated that not all of the 29.01 acres of permitted commercial land should be counted towards the commercial use and has determined that the actual amount of commercial land currently in use in the MXD is only 24.9 acres. The rationale for this determination is tied to the open space requirements of the MXD zone.

The MXD zone requires that a minimum of 20% of the gross area dedicated to commercial and employment uses must be open space. At the time of approval,

the function, configuration, or appearance of the open space required by the MXD zone was not specifically described in the Zoning Ordinance.

The Phase I approval of the Frederick Crossing MXD did not specifically delineate all of the required open space in graphic form. Open space was defined as any piece of land that was not covered by built structures (buildings, sidewalks, parking fields, etc.). Annotation was included in the rezoning documents that specified the provision of a minimum of 20% open space as the development progressed.

As construed in the progressive build out of the Frederick Crossing MXD, and as approved in the Site Development Plan for the Frederick Crossing Retail Center, all land without buildings or pavement is included in the open space tally (see Figure 1). For the commercial land in the MXD, this includes all landscaped parking islands, a “Guilford House Interpretive Walkway” area, and all residual land not covered by buildings or pavement within the Site. The subtraction of these open space areas from the total permitted commercial land results in a surplus of 4.11 acres of undeveloped commercial land within the Frederick Crossing Retail Center parcel.

	29.2 acres – Frederick Crossing Retail Center parcel
-	4.3 acres – Open Space
	<hr/> 24.9 acres – Net area of developed commercial land
	29.01 acres – permitted (45% maximum) commercial land in the entire MXD
-	24.9 acres – net area of developed commercial land
	<hr/> 4.11 acres – Surplus area of commercial land in the MXD

This surplus of 4.11 acres from the Frederick Crossing Retail Center parcel added to the 3.3 additional acres that could be gained by converting the maximum of 45% of the MXD to commercial provides a total of 7.41 acres available for commercial use (32.3 acres total commercial).

The maximum available commercial acreage of 7.41 acres leaves a balance of 0.15 acres of the Site that cannot be designated for Commercial use.

This issue is resolved by applying the 20% open space/green area requirement to the Site. The amendment proposes 20% (1.5 acres) of the Site to be designated Open Space with approximately 6.0 acres to be designated Commercial use (see Figure 2). This is below the allowable 7.41 acres of commercial area, and does not exceed the total land area permitted for commercial uses (32.3 acres) to stay within the 45% maximum.

C. FINDINGS PURSUANT TO MARYLAND ANNOTATED CODE, LAND USE ARTICLE

Proposed Land Use, Design and Density

The MXD zone allows a maximum commercial acreage of 45% of the gross acreage of the project land (exclusive of floodplain), and does not prescribe a minimum acreage for employment uses. The Applicant's request to increase the maximum percentage for commercial land is therefore consistent with the requirements of the MXD zone.

Additionally, the request is consistent with the intent of the Planned Development Districts. The MXD zone (as a Planned Development District) is intended, in part, to provide development flexibility to respond to market demand.

As stated in the Applicant's Justification Statement, as substantiated by general feedback from other members of the development community, and as concluded by professional economic forecasts produced for the Frederick County region, a significant shortage of space for Office, Industrial, and Flex/R&D uses is not foreseen. Vacancy rates for these categories of use are high, reflecting a general regional trend related to growth in employment. Current demand characteristics support commercial uses, with a specific supply gap identified among auto dealerships. A change in land use allocation from employment to commercial will provide the stated flexibility outlined in the intent statement of the Planned Development Districts. The gross project acreage of the Frederick Crossing MXD is 71.80559.

1. Consistency with Comprehensive Plan

The Frederick Crossing MXD has a Comprehensive Plan land use designation of Office/Research/Industrial and is within the Frederick Southeast Community Growth Area. As such, the Site is within an area that has been targeted for growth and development, and therefore this request is consistent with the general policy in the Comprehensive Plan that supports the location of growth within designated areas. Additionally, the project's Comprehensive Plan land use designation is consistent with the requirement for application of the MXD floating zone, namely that the MXD floating zone may only be applied to land with a plan designation of Mixed Use Development, Limited Industrial, or

Office/Research/Industrial. Therefore, the proposed amendment of the MXD zone is consistent with the County Comprehensive Plan.

2. Consistency with Community or Corridor Plans

There has not been a specific Community or Corridor Plan developed for the vicinity of the Site. However, the proposed use of the Site as a car dealership is consistent with the uses in the existing surroundings.

3. Compatibility with Adjoining Land Use

The Site is zoned MXD, which was originally applied in 1997. Adjoining the Site to the west is the Frederick Crossing Retail Center, to the north is I-70, and to the south is Walmart. Directly to the east of the Site is MD 355 and MD 85, beyond which are other commercial uses including the existing Ourisman car dealership, the Renn Kirby car dealership, a car rental use, a bank, and a motel. The proposed change from office to commercial on the Site would be compatible with the existing zoning and land uses on surrounding properties.

4. Natural Features

The Site does not contain wetlands, floodplain, wet soils, or steep slopes of any note. An existing, densely grown stand of trees is located along the northern boundary of the Site.

5. Population Change

As no residential development is proposed, there is no potential additional population change in the surrounding neighborhood as a result of the proposed

zoning amendment and as measured by the existence or proposal of residential dwellings.

6. Availability of Public Facilities and Services

Public Schools

No residential land use is proposed in this revision; therefore schools will not be directly impacted by this project.

Water and Sewer

The Site is classified S-1/W-1 in the Master Water and Sewerage Plan. This denotes properties where publicly-owned community sewer or water systems are completed and operational.

Water is supplied to the Site from the Potomac River via the New Design Water Treatment Plant. Wastewater from the Site is treated at the Ballenger/McKinney Wastewater Treatment Plant along the Monocacy River.

There are no programmed improvements for water and sewer utilities in the FY2016-2021 Capital Improvements Program (CIP) in the vicinity of the Project.

Public Safety Facilities

There are no programmed improvements for public safety facilities in the vicinity of the Site in the FY2016-2021 CIP. The Site is within the service area of the Westview/United Fire Company and borders the service area of both the United Steam Fire Engine Company #3 and the Citizens Truck Company. The nearest fire station is the United Steam Fire Engine Company #3 located on Market Street in downtown Frederick City approximately 1 mile from the Site.

Libraries

The Frederick County C. Burr Artz Public Library is in downtown Frederick City serves this area. There are no library improvements programmed in the vicinity of the Site in the FY2016-2021 CIP.

Parks and Recreation Facilities

There are no park improvements programmed in the vicinity of the Site in the FY2016-2021 CIP.

Transportation

Existing Site Access Characteristics

The Site has approximately 600 feet of frontage along MD 85 and has access on Frederick Crossing Lane, which terminates with a cul-de-sac at the western end of the Site. At this time there are no approved access points along MD 85 for the Site.

The Applicant's objective is to purchase the SHA parcel to the north of the Site and develop it under the General Commercial zone as a companion car dealership with internal site circulation that is continuous between the subject Site and the SHA parcel. The SHA parcel has frontage on MD 355, and the Applicant has stated that an additional access point will be sought at this road frontage. Approval of access to MD 355 will be at the discretion of SHA, but to date SHA has not been receptive to any access along MD 355.

Existing Traffic Volumes on Adjoining Roads

Location	AADT: 2014 Annual Average Daily Traffic
MD 355, .5 miles south of MD 85	19,671
MD 85 between MD 355 and I-70	32,271
MD 85 west of MD 355	24,362

Comprehensive Plan Designations for Adjoining Roads

The County Comprehensive Plan classifies MD 355 and MD 85 as existing Major Arterials. Frederick Crossing Lane is considered a local commercial street on the Comprehensive Plan. South of the Site, Guilford Drive is designated as an existing Collector Road.

**D. FINDINGS PURSUANT TO FREDERICK
COUNTY CODE SECTION 1-19-10.500.3**

Based on the entire record in this case, including, but not limited to, the Application, the Staff Report, and the other documentary and testimonial evidence presented at the public hearing(s), the County Council of Frederick County, Maryland, makes the following specific findings of fact under Frederick County Code Section 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.

The Site is surrounded by developed land, and is located in the Frederick Southeast Community Growth Area. Development of the Site would not intensify the outward spread of urbanized land into rural areas, and employs an infill development pattern where infrastructure already exists.

B. The proposed development design and building siting are in accordance with the County Comprehensive Plan, and any applicable community and corridor plans.

The Frederick Crossing MXD is located in an area with an appropriate land use plan designation of Office/Research/Industrial and is within the Frederick Southeast Community Growth Area. The Frederick County Zoning Ordinance allows for the application of the Mixed Use Development floating zone (MXD) on properties with a Comprehensive Plan land use designation of Office/Research/Industrial. There is no Community and Corridor Plan for this area.

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.

The proposed commercial use is compatible with uses that are currently in operation in the area. Specifically, auto dealerships exist across MD 355 and further south along MD 355, including the existing Ourisman, the Renn Kirby, and the Hi Lo auto dealerships.

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.

A Site Development Plan must be submitted to proceed with development of the Site. The safety and efficiency of the arrangement of on-site buildings and infrastructure will be evaluated upon application for Site Development Plan approval. Access to the Site is being pursued by the Applicant, in cooperation with the SHA, to provide possible entrances at MD 355 and/or MD 85. Sidewalks are currently provided on all streets surrounding the Site, and Staff will work with the Applicant to explore appropriate on-site connections to off-site sidewalks.

E. The transportation system is or will be made adequate to serve the proposed development in addition to existing uses in the area. Factors to be evaluated include: roadway capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts, projected construction schedule of planned improvements, pedestrian safety, and travel demand modeling.

The current Adequate Public Facilities Ordinance (APFO) Letter of Understanding (LOU) addressed the roadway capacity and level of service needs of the surrounding transportation system. Required improvements have been completed. Any additional improvements, including pedestrian safety that may result from the proposed change of use within the MXD will be evaluated as the plan proceeds through the development review process. No on-street parking is proposed or needed at this time, and access to MD 355 or MD 85 is being pursued.

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.

The proposed layout of the Site illustrates a potential drive aisle connection between Frederick Crossing Lane and either MD 355 or MD 85. Pedestrian connections from the Site to the surrounding road network can be easily provided either at Frederick Crossing Lane or MD 355/MD 85 (even if a vehicular connection to the State roads is not feasible).

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.

The Site is within the service area of the Westview/United Fire Company and borders the service areas of both the United Steam Fire Engine Company #3 and the Citizens Truck Company. The nearest fire station is the United Steam Fire Engine Company #3 located on Market Street in downtown Frederick City, approximately 1 mile from the Site.

H. Natural features of the site have been adequately considered and utilized 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.

The Site does not contain wetlands, floodplain, wet soils, or steep slopes of any note.

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.

The Site is designated Office/Research/Industrial and zoned Mixed Use Development (MXD). The Office/Research/Industrial land use plan designation is described in the Comprehensive Plan as an employment designation. The Frederick County Zoning Ordinance allows for the application of the MXD on properties with a Comprehensive Plan land use designation of Office/Research/Industrial. The MXD zone is designed to enhance the opportunities for employment uses in the County by allowing a greater variety of mutually reinforcing land uses to occur within a single development. While an increase in commercial land use is proposed, employment uses continue to be a part of the MXD, thus employing the development flexibility offered by the MXD zone without eliminating employment uses altogether.

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.

As the Frederick Crossing MXD has proceeded through the development review process since its approval in 1997, mitigation requirements established by the APFO LOU have been satisfied. All necessary services and infrastructure to serve the Site are existing and adequate to handle the proposed commercial use.

**E. FINDINGS PURSUANT TO FREDERICK
COUNTY CODE SECTION 1-19-3.110.4**

Based on the entire record in this case, including, but not limited to, the Application, the Staff Report, and the other documentary and testimonial evidence presented at the public hearing(s), the County Council of Frederick County, Maryland makes the following specific findings of fact under Frederick County Code Section 1-19-3-110.4(A):

1. Consistency with the comprehensive plan

The Frederick Crossing MXD is located in an area with an appropriate land use plan designation of Office/Research/Industrial and is within the Frederick Southeast Community Growth Area. The Frederick County Zoning Ordinance allows for the application of the Mixed Use Development floating zone (MXD) on properties with a Comprehensive Plan land use designation of Office/Research/Industrial. The proposed change to commercial use would be consistent with the Comprehensive Plan.

2. Availability of public facilities

Water is supplied by the New Design Water Treatment Plant. Sewer is treated by the Ballenger McKinney Wastewater Treatment Plant. Both systems currently have adequate capacity to serve the proposed commercial use. Water and Sewer services are provided to the surroundings, and connections will be required to be provided by the Applicant. Upon submission of a Site Development Plan, the project will be subject to Adequate Public Facilities Ordinance (APFO)

review for Water/Sewer availability. Previous development applications for the MXD have received APFO approval. However, APFO review will be conducted to evaluate whether proposed future changes will result in the need to modify the improvement requirements outlined in the existing APFO Letter of Understanding (LOU).

3. Adequacy of existing and future transportation systems

The Site is located in a region of the County marked by the abundance of transportation infrastructure. Direct access to the Site is attained from Frederick Crossing Lane. The MXD has attained APFO approval during previous development applications for the MXD. However, the capacity of the surrounding roads and the impact that any new development project may have on those roads will be re-evaluated for adequacy relative to the pertinent proposal should the trip generating intensity increase over already approved levels. Access to State roads, if any, will be evaluated by SHA as part of a subsequent development review process.

4. Compatibility with existing and proposed development

The proposed commercial use is compatible with uses currently in operation in the area. Specifically, auto dealerships exist across MD 355 and further south along MD 355, including the existing Ourisman dealership, the Renn Kirby auto dealership, and the Hi Lo auto dealership.

5. Population change; and

As no residential development is proposed, there is no potential additional population change in the surrounding neighborhood as a result of the proposed zoning amendment and as measured by the existence or proposal of residential dwellings.

6. The timing of development and facilities

The Site has access to an existing road and water/sewer infrastructure is also in place serving surrounding uses. There would not be any timing constraints for the development to proceed.

THEREFORE, based on all of the findings discussed above, and the evidence submitted in this matter, including, but not limited to, the entire records of the Planning Commission and County Council meetings and hearings, the Staff Reports and other documentary and testimonial evidence, the County Council of Frederick County, Maryland, determines that:

A. The Applicant has satisfied the requirements of §4-204(b) of the Land Use Article; Frederick County Code §§1-19-3.110.4 and 1-19-10.500.3.

B. The requested rezoning of the property is both feasible, desirable and in the public interest;

C. The proposed amended Phase I Plan complies with the purposes of the MXD classification and will further these purposes;

D. The proposed amended Phase I Plan is compatible with adjoining land uses and, with the imposition of the conditions stated below, will have no significant adverse impacts;

E. The required conditions are related both in nature and extent to the impact of the proposed development;

F. The proposed amended Phase I Plan meets the objectives and requirements set forth in the Frederick County Code, as described above, and the applicable requirements of the Land Use Article.

Therefore, the Applicant's request of application of the MXD Floating Zone to the property is hereby granted subject to the conditions stated below.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth in this Ordinance, Rezoning Case No. R-97-03(A) is hereby approved and the amended Phase I Plan is approved subject to the following conditions:

1. A maximum of 20% of the Site (Lot 8) may be open space/green area and will comply with the requirements for open space/green area set forth under §1-19-10.500 and §1-19-11.100 of the Zoning Ordinance.

2. The Site Development Plan shall provide landscaping and design of buildings acceptable to Staff for frontages of the Site that are oriented toward MD 85 and MD 355.

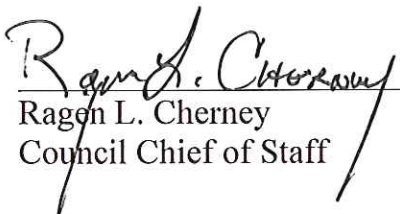
The conditions included as part of the granting of this MXD floating zone Phase I request are deemed necessary for the health, safety and welfare of the community; are imposed as an integral part of the approval; and are not separable from the decision to grant the requested floating zone classification. If, for any reason, a court of competent jurisdiction finds that any material portion of these conditions are substantially invalid or in enforceable, the property shall revert to the previously approve MXD zoning classification.

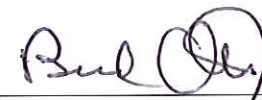
AND BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Zoning Administrator is hereby authorized and directed to make the appropriate change on the Zoning Map showing this zoning classification as indicated above.

The undersigned hereby certify that this Ordinance was approved and adopted on the 2nd day of February, 2016.

ATTEST:

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND



Ragen L. Cherney
Council Chief of Staff

By: 
Bud Otis, President

NTC 2/2/16

APPROVED:

Date: 2-12-16



Jan H. Gardner
Frederick County Executive