

THE EFFECTIVE DATE OF THIS ORDINANCE IS September 5, 2017

ORDINANCE NO. 17-05-005

ORDINANCE  
OF THE  
COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND

RE: URBANA NORTHERN TOWN CENTER MXD  
REZONING CASE R-16-01(B)

OPINION/FINDINGS

What is now known as the Northern Town Center MXD (f.k.a. Urbana Town Center Employment MXD) is comprised of 181.42 acres, rezoned from Office Research Industrial (ORI) to Mixed Use Development (MXD) floating zone by Ordinance No. 06-31-427, in October of 2006. That Ordinance approved a mix of uses in the MXD comprised of: residential at a maximum of 23.42%; commercial at a maximum of 50,000 square feet; employment at a minimum of 49.84%; and civic/open space/recreation at a minimum of 19.29%.

Ordinance No. 06-31-427 also established the maximum number of dwelling units at 500, at least 200 of which were required to be age restricted to persons age 55 or older, and required that a minimum of 50,000 square feet of employment uses be constructed prior to the construction of residential units. Additional conditions addressed right-of-way dedication along I-270, a contribution to initiate an I-270 Transitway study, the construction of a collector roadway along the northern and southern boundaries, and a pedestrian trail system connection to the Urbana Community Park.

In 2012, by Ordinance No. 12-31-626, the conditions were modified to increase the residential use percentage to 25% of the gross acreage, and the maximum number of dwelling units allowed increased to 610. Additional conditions limited the number of single family attached and detached building permits to 150 per year, and allowed 128 multifamily flats to be built per market demand and without affecting the 150 per year dwelling unit permit limit. The revised conditions also allowed non-residential construction to occur according to market demand. The I-270 Transitway and other development conditions remained unchanged.

The current application seeks to amend the MXD Phase I Plan to change approximately 26 acres designated for employment uses to residential uses, without increasing the number of dwelling units already approved.

The area to be changed from employment to residential use is identified as “Land Bay 2A.” The area identified as “Land Bay 2C” would remain designated for employment uses.

The Frederick County Planning Commission considered this request originally as part of a combined application containing two other requests affecting nearby properties on December 13, 2016 and recommended approval with conditions.<sup>1</sup>

The County Council held public hearings on February 21 and February 28, 2017, when this application was part of the “combined” application reviewed by the Planning Commission. The record was closed at the end of the February 28, 2017 discussion on

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<sup>1</sup> The application was originally designated R-16-01, and included requests affecting two different MXDs and one PUD. The original application was later separated into three applications designated R-16-01(A), R-16-01 (B) and R-16-01 (C).

the combined application. During the Council's next meeting on March 7, 2017, the Council voted to deny the "combined" application for procedural reasons due to the lack of "contiguity" of all the properties included in the combined application, and because the two MXDs, and the PUD, had each received separate zoning approvals in the past.

On May 2, 2017, the Council approved a motion to: 1) postpone the signing of the Resolution which would have memorialized the denial of the "combined" application, and 2) to reopen the record for the limited purpose of considering two letters submitted on behalf of the applicant. A public hearing was scheduled for May 23, 2017 for that purpose.

Following the public hearing, on May 23<sup>rd</sup>, the Council determined it would continue to postpone signing the Resolution on the "combined" application, allow the applicant to amend its application, and have the Division of Planning and Permitting process separately and prepare separate reports for each of the three components of the previously "combined" application.

A hearing on this individual application, for the Northern Town Center MXD, designated R-16-01(B) was then held by the Council on July 18, 2017. Near the end of the July 18<sup>th</sup> hearing, the Council voted to approve the request with conditions recommended by Staff.

Based upon all of the evidence submitted in this case, the County Council makes the following specific findings of fact on each of the items below as identified in the Ann. Code of Md., Land Use Article §4-204(b) and codified in the Frederick County Code:

## **§ 1-19-3.110.4(A) – Approval Criteria for Zoning Map Amendments**

### **(1) *Population change;***

The current population of Urbana proper is approximately 9,800. The proposed amendment will not increase the population beyond the 610 dwellings currently approved.

### **(2) *Availability of public facilities;***

Parks, libraries, and public safety facilities are currently adequate to serve the proposed development. The construction of a replacement Green Valley Fire Station scheduled for 2020 will help to maintain adequate fire/rescue services. There is approximately 9 MGD of water supply and 9.3 MGD of sewage treatment capacity currently available in the New Design water system and the Ballenger-McKinney WTTP.

Regarding school adequacy, the total number of dwellings currently approved (610) is not proposed to increase. The residential component of this MXD received Adequate Public Facilities approval in June 2013.

### **(3) *Adequacy of existing and future transportation systems;***

The existing roads are adequate to accommodate additional traffic. Both MD 80 and MD 355 throughout the immediate Urbana area have volume/capacity ratios less than 1.0 indicating the ability to accommodate additional traffic. Current Adequate Public Facilities Ordinance (APFO) approvals will require additional improvements to MD 80 east of MD 355 and on MD 355 in the vicinity of the Urbana District Park.

**(4) *Compatibility with existing and proposed development;***

The proposed changes to the MXD are generally compatible with existing and proposed development. The remaining employment area in the Northern MXD will be separated from the residential uses by a natural buffer (stream valley and open space areas).

**(5) *Recommendation of the Planning Commission;***

The Planning Commission recommended approval of the application.

**(6) *Consistency with the comprehensive plan; and***

The proposed amendment to the Northern MXD maintains a sufficient mix of land uses – including employment uses – to be considered consistent with the underlying Office/Research/Industrial Comprehensive Plan designation.

**(7) *The timing of development and facilities.***

The water/sewer and road infrastructure are mostly in place to accommodate the MXD development. At the elementary level, capacity provided by the new Sugarloaf ES and an Urbana ES replacement will not be available for new students until at least the fall of 2020.

**§ 1-19-10.500.3 – Approval Criteria for Planned Development Districts**

**(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 proposal for the Northern Employment MXD is relatively compact and efficient in its consumption of land and infrastructure in this section of the MXD. A complex mix of medium-density residential, employment, commercial, and open space/recreational uses are woven together to maximize privacy and separation where necessary and to

encourage interconnection between residential neighborhoods and the services and facilities needed to sustain them.

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

The general Phase I design components of the Northern MXD proposal are consistent with the County's Comprehensive Plan goals regarding efficient and well planned development patterns supporting future mixed residential and employment areas. Currently, there are no Community or Corridor Plans 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;*

To the extent discernible in a Phase I Land Use Concept Plan, the proposal for the Northern MXD appears to reflect a development scheme that makes wise use of natural and man-made features to diminish differences in intensity, building scale, and appearance between the proposed employment uses and the proposed residential. The Council finds the development proposal to be compatible with current and future land uses in the community.

(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;*

The proposed arrangement of land uses in the Northern Town Center MXD provides adequate buffering between the employment and residential uses while maintaining an appropriate mix of land uses. The concept plan preserves the well-planned physical connections between residential neighborhoods, schools, and recreational facilities.

(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 servie, on-street parking impacts, access requirements, neighborhood impacts, projected construction schedule of planning improvements, pedestrian safety, and travel demand modeling;*

The transportation system is adequate. Both MD 80 and MD 355 throughout the immediate Urbana area have volume/capacity ratios less than 1.0 indicating the ability to accommodate additional traffic. Current Adequate Public Facilities Ordinance (APFO) approvals will require additional improvements to MD 80 east of MD 355 and on MD 355 in the vicinity of the Urbana District Park.

(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 network of streets and pedestrian facilities proposed in this application appears to have expanded organically into the land areas previously planned for office employment uses in the Northern Town Center MXD. The applicant has maximized connectivity in the MXD by providing multiple pedestrian paths, apparent vehicular/pedestrian interconnections to previously developed parcels, and placed the highest density residential structures in closer proximity to existing and planned commercial

development in the PUD and older village, the new elementary school under construction, the existing Urbana Community Park, and potential transit routes along Worthington Boulevard, Urbana Pike, and Stone Barn Drive.

(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 nearest fire station is the Urbana Fire Station, located on Urbana Pike next to Urbana Elementary School. The County's Division of Fire and Rescue Services plans to add 9 Firefighters to the Urbana Fire Station to fully implement tactical unit staffing. The Northern Town Center MXD is approximately 1,100 feet from the Urbana Fire Station.

(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 proposed concept land use plan maintains the open space areas from currently approved plans. These open space areas protect several stream corridors that include woodlands, and moderate slopes. Sensitive natural areas and open spaces are utilized strategically to provide natural land use buffers and provide opportunities for passive and active recreational amenities to serve both residential and employment uses in the MXD.

**(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 proposed mix of land uses that would maintain employment uses along I-270 while allowing for an expanded residential area is consistent with the intent of the Office/Research/Industrial Comprehensive Plan land use designation.

**(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.***

Parks, libraries, and public safety facilities are currently adequate to serve the development. The construction of a replacement Green Valley Fire Station scheduled for 2020 will help to maintain adequate fire/rescue services. There is approximately 9 MGD of water supply and 9.3 MGD of sewage treatment capacity currently available in the New Design water system and the Ballenger-McKinney WWTP.

The Council determined based upon the evidence in the record that it is appropriate to grant the request to change the amount of acreage in the MXD to be used for residential units by an amendment to the Phase I Plan.

### **ORDINANCE**

BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, the request to increase the amount of acreage in the MXD to be used for residential uses by 26 acres is granted, subject to the following conditions:

1. A maximum of 610 dwelling units may be constructed within the MXD site. In lieu of construction of the required MPDUs, the requirement to provide MPDUs may be satisfied through a payment in lieu of construction as provided for by Section 1-6A-5.1 of the County Code.
2. The applicant shall follow a phasing plan for the MXD as described below:
  - a. Building permits for no more than 150 single-family detached and attached units may be issued per year with a previous year's unused allocation permitted to be carried into the following year.
  - b. 128 multifamily flats may be developed with timing based upon market demand and shall not be counted against the maximum of 150 single-family detached and attached building permits per year.
  - c. Non-residential employment and commercial uses shall be developed according to market demand, consistent with the applicable requirements contained in the APFO LOU associated with the project.
  - d. Timing and sequence of infrastructure improvements (roadways, water, and sewer) shall be approved under the project's APFO Letter of Understanding.
3. The applicant shall reserve up to a 70 ft. wide transit right-of-way for the ultimate use of the I-270 Transitway project -- as described in the County Comprehensive Plan – the precise location of which shall be determined during the Phase II process.

4. Consistent with the County Comprehensive Plan for this site, the applicant shall design the roadway network within the MXD in a manner as to accommodate the possible future connection to Park Mills Road.
5. The applicant shall provide convenient and safe connections to both the Urbana District Park and the Urbana Community Park through the provision of direct links between the vehicular, pedestrian, and trail systems in the park facilities and the MXD. These connections shall be developed in such a way as to provide safe, controlled access points to the parks.
6. Site plans for residential and non-residential components of the MXD shall comply with Section 1-19-10.500.9 and consistent with Section 1-19-10.500.5 (B) (7) Building and Spaces Visualization.
7. The Northern MXD shall utilize no more than 40% of the total acreage as residential and commercial land uses as permitted under Section 1-19-10.500.7(A).

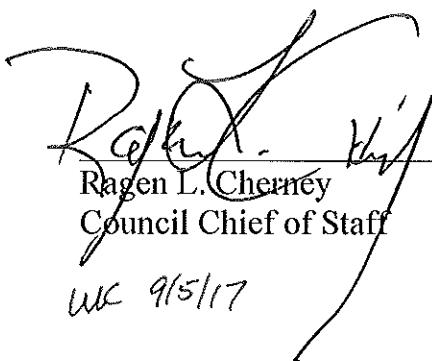
These conditions, included as part of the granting of the request to approve the use of an additional 26 acres of property for residential use, are an integral part of the decision to amend the Phase I Plan, and are not severable from the decision to amend the Phase I Plan.

If for any reason a court of competent jurisdiction finds any condition or portion thereof to be invalid or unenforceable, the property shall revert to its prior Phase I Plan approval.

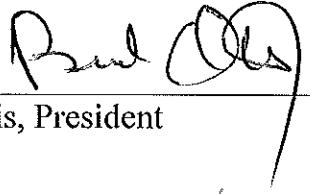
AND BE IT FURTHER ENACTED AND ORDAINED, that the Zoning Administrator is hereby authorized and directed to make the appropriate changes to the MXD Phase I Plan as reflected in this decision.

The undersigned hereby certify that this Ordinance was approved and adopted on the 5<sup>th</sup> day of September, 2017.

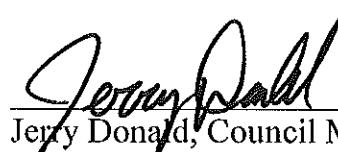
ATTEST:

  
Ragen L. Cherney  
Council Chief of Staff  
WC 9/5/17

COUNTY COUNCIL OF  
FREDERICK COUNTY, MARYLAND

By:   
Bud Otis, President

  
M.C. Keegan-Ayer, Vice President

  
Jerry Donald, Council Member

  
Tony Chmelik, Council Member

  
Jessica Fitzwater, Council Member

  
Kirby Delauter, Council Member

  
Billy Shreve, Council Member

COUNTY EXECUTIVE ACTION:  Approved  Vetoed

  
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Jan H. Gardner  
Frederick County Executive