

THE EFFECTIVE DATE OF THIS ORDINANCE IS September 5, 2017

ORDINANCE NO. 17-06-006

ORDINANCE
OF
THE COUNTY COUNCIL OF FREDERICK
COUNTY, MARYLAND

RE: **URBANA OFFICE RESEARCH CENTER MXD
REZONING CASE R-16-01(C)**

OPINION/FINDINGS

In Ordinance No. 98-18-220, the Board of County Commissioners of Frederick County, Maryland (BOCC) granted the application of Fairview Properties, Inc., to reclassify 211.6 acres of land, more or less, from the Office/Research/Industrial (ORI) zoning classification to the Mixed Use Development (MXD) floating zone. The BOCC imposed seven conditions in conjunction with the granting of the rezoning. No residential development was proposed in the MXD.

In Ordinance No. 09-04-508, the BOCC granted an amendment to Ordinance No. 98-18-220, amending the Phase I plan to allow an increase in the amount of commercial use and re-orient the commercial use area. Ordinance No. 09-04-508 contained twenty-four conditions, and no residential development was proposed in the MXD.

In Ordinance No. 12-32-627, the BOCC approved the Applicant's request to amend the Phase I plan for the MXD and reduce the number of conditions from twenty-four to seven. Ordinance No. 12-32-627 established the maximum amount of commercial uses at

73,000 square feet of retail/restaurant/business services, 150 hotel rooms, and zero residential use.

In the current application, R-16-01(C), the Applicant, Urbana Corporate Center, LLC and Natelli Communities LP, requested: 1) the rezoning from Office/Research Industrial (ORI) of 166.9 acres of land to Mixed Use Development (MXD); 2) the rezoning from Resource Conservation (RC) of 42.5 acres to Mixed Use Development (MXD) ; and 3) the rezoning from Limited Industrial (LI) of 0.7 acres of land to Mixed Use Development (MXD).

The application also includes a request to amend the Phase I plan of the existing “Southern” MXD to include the additional +/-210 acres described above; to permit “age restricted” residential development to occur on a 99 acre portion of the acreage sought to be added into the existing “Southern” MXD; increase the commercial use area by four acres; and increase the open space/recreational/floodplain area by 98 acres.

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.¹

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 the

¹ 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).

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 23rd, 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 "Southern" MXD, designated R-16-01(C) was held by the Council on July 18, 2017. Near the end of the July 18th hearing a question was raised as to whether the MXD floating zone could be placed over the parcel zoned ORI, for residential development without that area having been "identified within the Comprehensive, Community, or Corridor Plan." County Code §1-19-10.500.7.

The record was held open until July 25, 2017 for the limited purpose of obtaining further information on that issue. The hearing reconvened on July 25, 2017 and limited additional testimony was accepted from County Staff, the Applicant, and members of the public, and cross examination of witnesses was permitted.

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):

1. Population Change:

The current population of Urbana proper is approximately 9,800. The proposed 700 additional age-restricted dwellings will result in a population increase of approximately 1,400 people based on an average household size of 2.0 persons/household.

2. Availability of Public Facilities:

The County Council finds that parks, libraries, and public safety facilities are currently adequate to serve the proposed residential development. The construction of a replacement Green Valley fire station scheduled in 2020 will help to maintain adequate fire/rescue services. For water/sewer service, the proposed 700 dwellings will require no more capacity than the employment uses it is proposed to replace. 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.

3. Present and Future Transportation Patterns:

The County Council finds the existing road to be 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. The potential daily weekday trip generation of 2,597 trips from the proposed age-restricted residential can be adequately accommodated given current traffic volumes and volume/capacity ratios.

4. Compatibility with Existing and Proposed Development for the Area:

The County Council finds that proposed changes to the MXD are generally compatible with existing and proposed development. The remaining employment area in the Southern Employment 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. The Relationship of the Application to the County Comprehensive Plan.

The County Council finds that the proposed amendments to the Southern Employment MXD maintain a sufficient mix of land uses, including employment, consistent with underlying Office/Research/Industrial Comprehensive Plan designation.

§ 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 Southern 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 Southern Employment MXD proposal are consistent with the County's Comprehensive Plan goals regarding efficient and well planned development patterns supporting a variety of housing types and employment opportunities for current and future County residents. 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 Southern Employment 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 existing employment uses and the proposed age-restricted residential or assisted living/nursing care facility.

(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 development of the Southern Employment MXD provides a safe and efficient arrangement of land uses, whether it is developed as age-restricted or with an assisted living/nursing care facility. The road network that is mostly existing provides alternative access points while also providing some degree of separation of traffic generated by the employment uses.

(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 transportation system is 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 Facility 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. The potential daily weekday trip generation of 2,597 trips from the proposed 700 age-restricted residential dwellings can be adequately accommodated given current traffic volumes and volume/capacity ratios.

(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;

While the network of streets and pedestrian facilities appears to have expanded organically into the land areas previously planned for office employment uses in the Northern Town Center MXD, the proposed expansion of a significant residential component (700 dwelling units) into the southernmost land areas of the Southern Employment MXD creates a challenge for connecting future residents to the jobs, shopping areas, and institutions critical to a successful community. The Applicant has maximized connectivity in the southernmost sections of the MXD by providing multiple pedestrian paths, apparent vehicular/pedestrian interconnections to previously developed parcels, and placed the highest density residential structures in close proximity (within 500 feet) to existing commercial development and potential transit routes along Urbana Parkway, Urbana Pike, and Fingerboard Road.

(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 Urbana Fire Station is within 2 miles of the site. This station has professional staff and a full complement of fire and rescue equipment. The Green Valley Station is approximately 5 miles from the respective developments and would serve as the second due station. County Fire and Rescue Services plans to add career staff to support tactical staffing of equipment to better serve the community.

(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 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 residential land use in the Southern Employment MXD component is consistent with the Comprehensive Plan as it provides for an integrated mix of land uses in an area that is currently limited to employment and commercial uses.

(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.

The parks, libraries, and public safety facilities are currently adequate to serve the proposed residential development. The construction of a replacement Green Valley fire station scheduled for 2020 will help to maintain adequate fire/rescue services. For water/sewer service the proposed 700 dwellings will require no more capacity than the employment uses it is proposed to replace. 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.

Based upon all of the evidence presented, the County Council determines that the request to rezone the 210 acres of land to MXD is appropriate, provided that any residential use will be, and remain, age-restricted, so that the minimum age of residents will be 19 years.

The County Council also finds it to be appropriate to grant the request to amend the existing Office/Research/Southern Employment MXD Phase I Plan, to add into the MXD the additional 210 acres as identified in this application.

No residential development within this MXD area shall be available for permanent residence by individuals under the age of 19.

The rezoning of the 210 acres and the addition of the land into the Office Research/Southern Employment MXD shall be subject to the following conditions.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, the rezoning of 210 acres of land (as depicted in the application) to MXD is hereby granted, and the 210 acres are hereby added into the existing MXD by amendment to its Phase I Plan, subject to the following conditions:

1. The proposed street connections between the employment uses and commercial uses shall be maintained in a way that allows for pedestrian access through the

development of the project. These pedestrian/street links between employment and commercial uses shall be strengthened through the use of wider and generously landscaped walkways.

2. The MXD project shall be subject to the *Frederick County Community Design Guidelines and Development Principles* (adopted July 16, 2002) throughout the Planning Commission's review process.
3. Convenient bicycle and pedestrian access shall be established and maintained in order to fully interconnect the Villages of Urbana PUD with the Office/Research Southern Employment MXD. Such access shall accommodate reasonable attempts to find convenient connections to the MXD ORI lands rezoned by this ordinance.
4. An integrated trail/walkway shall be constructed for the use of employees of, and visitors to, employment and commercial uses in the MXD.
5. The Applicant shall coordinate with Frederick County's TransIT Division to optimize future public transportation service to the MXD.
6. An extension of Bennett Creek Avenue through the Fannie Mae site, either as a pedestrian or vehicular thoroughfare, shall be identified on the land use plan and illustrative document so as to protect the opportunity for access to the central land bay.
7. The Applicant shall confirm and demonstrate at or prior to the time of MXD Phase II (preliminary plan) approval, through a traffic review satisfactory to

County staff, that the traffic impacts, including distribution of trips, resulting from the change in zoning and use approved by this Ordinance are not greater than the traffic impacts resulting from the current approved uses defined in the APFO LOU.

8. The Southern Employment MXD is permitted to develop as depicted on the concept plan and up to 30% of the property may be developed as residential and commercial, in accordance with § 1-19-10.500.7(A) of the County Code.
9. A maximum of 700 dwelling units may be developed in the Southern Employment MXD, one hundred percent (100%) of these dwelling units shall be age-restricted.
10. Some or all, of the proposed residential area for the age-restricted dwellings may be developed as a CCRC, nursing home, or assisted living facility. For land areas within the proposed MXD that are developed as a CCRC, nursing home, or assisted living facility, the number of units permitted for these institutional uses will be determined during the site development plan review process, and will not be counted against the 700 dwelling unit cap.
11. Covenants shall restrict 100% of the dwelling units in the Southern Employment MXD project to be age-restricted per the Federal Fair Housing Act and the Housing for Older Persons Act of 1995, and limit the minimum age of permanent residents to 19 years of age. These covenants shall be recorded prior to the recording of the first subdivision plat. The covenants shall be recorded and made part of the title for each dwelling unit. Every property owner within the age-

restricted development and the Home Owners' Association shall be beneficiaries of the covenants, with the ability to enforce them through administrative or judicial proceedings. These covenants are to be reviewed by the County Attorney's Office, to ensure that the MXD zoning district is invalid if these covenants are not recorded and do not restrict age as proffered in a binding and enforceable manner. The required biannual federal surveys (24 CFR 100.307) shall be made available to the County for its review and records.

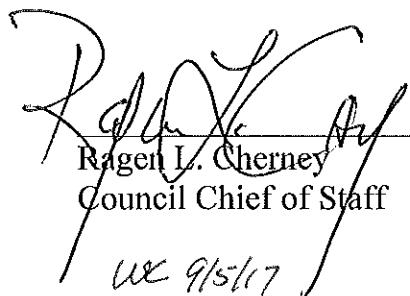
These conditions, included as part of the granting of the rezoning to MXD, and the addition of the property hereby rezoned into the existing MXD by an amendment to its Phase I approval; are an integral part of the decisions to rezone and amend the MXD Phase I Plan; and are not severable from the decisions to rezone and 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, all of the property rezoned herein shall revert to its prior zoning classification.

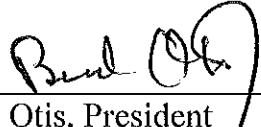
AND BE IT FURTHER ENACTED AND ORDAINED, that the Zoning Administrator is hereby authorized and directed to make the appropriate changes to the zoning map as reflected in this decision.

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

ATTEST:

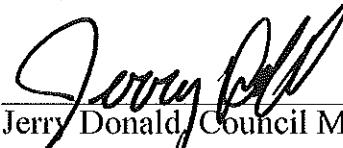

Regan L. Cherney
Council Chief of Staff
UC 9/5/17

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

By: 
Bud Otis, President

M.C. Keegan-Ayer, Vice President


Tony Chmelik, Council Member


Jerry Donald, Council Member

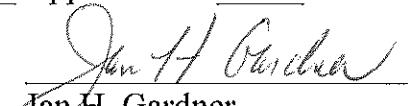

Jessica Fitzwater, Council Member

Billy Shreve, Council Member

Council Member Delauter did not attend the July 25, 2017 public hearing or vote on this matter.

COUNTY EXECUTIVE ACTION:

Approved Vetoed


Jan H. Gardner
Frederick County Executive