

**THE EFFECTIVE DATE OF THIS ORDINANCE IS NOVEMBER 10, 2020**

**ORDINANCE NO. 20-06-006**

**ORDINANCE  
OF  
THE COUNTY COUNCIL OF FREDERICK  
COUNTY, MARYLAND**

**RE: DELAUTER/HUTZELL MXD  
REZONING CASE R-19-02**

**OPINION/FINDINGS**

**I. HISTORY**

Roger Delauter, et al., Sharon Delauter Wichaël, Patricia Delauter O'Toole, and Hutzell Investments, LLC (Together "Applicant") filed this application to change the zoning classification of 27.58 acres, more or less, from Office/Research/Industrial (ORI) to Mixed Use Development (MXD) in order to accommodate proposed employment and commercial land uses. The Site adjoins the Oakdale Elementary and Middle Schools' sites immediately to the east.

The Site has been zoned Office/Research/Industrial since 2006 as part of the New Market Region Plan update adopted that year. The surrounding neighborhood, including the Oakdale Elementary and Middle Schools located immediately to the east, has a mix of zoning including Agricultural, Resource Conservation, R-1, Institutional, PUD, and Mixed Use.

The Frederick County Planning Commission considered this request in a public hearing on January 22, 2020 and recommended approval of the application, with recommended conditions.

The County Council of Frederick County, Maryland, considered the request in a public hearing on September 10, 2020. The application was approved unanimously by the County Council on September 22, 2020.

Based upon all of the evidence submitted in this case, the County Council makes the following specific findings of fact of the items below as identified in the Annotated Code of Maryland, Land Use Article §4-204(b) and included in Chapter 1-19 of the County Code:

## **II. PROPOSED DEVELOPMENT**

### **A. County Plans and Regulations**

#### **1. Concept Plan**

The application proposes to rezone 27.58 acres (Site) from Office/Research/Industrial (ORI) to Mixed Use Development (MXD). The Site is proposed for both employment and commercial uses. In addition, the application cites the flexibility to have institutional uses as well. The application did not include a residential component. The application does not identify a specific use or businesses for the Site. Specific uses will be subject to a subsequent Phase II site plan/subdivision review process. The proposed land use mix allows for 12.4 acres commercial, 5.1 acres employment/institutional, 8 acres open space, and 2.1 acres for road right-of-way.

The MXD zone regulations allow for a maximum commercial use of 45% of the gross acreage of the Site when there is no residential component. The proposed Concept Plan table shows 12.4 acres (45%) which is the maximum allowed for commercial use. The Plan does not identify a specific land bay or area for the commercial uses, but would instead allow this activity to be located anywhere within the 17.5-acre development area (up to the proposed 12.4 acre total).

The MXD regulations allow for the entirety of a project to be designated for employment uses. The Plan, however, proposes 5.1 acres of employment uses, which like the commercial uses, could be distributed anywhere within the 17.5 acre development area. The Plan also proposes institutional uses, either in combination with employment uses, or for the entire 5.1-

acre employment area. The institutional uses could be distributed anywhere within the three development land bays identified in the Plan.

The area designated for open space incorporates the two stream corridors, including buffers which extend 100 feet from each side of the stream. The existing pond and most of the existing woodlands are also within the proposed open space area. The 8 acres proposed as open space exceeds the minimum 3.5 acres required by the County Code.

## **2. Phasing Plan**

Section 1-19-10.500.5(D) requires a phasing plan to be submitted with a MXD floating zone reclassification application that describes the timing and sequence for dedication of public lands and development of public facilities and utilities including public road and water and sanitary sewer service.

Public water and sewer service will be provided by developer funded extensions of the existing 12” sanitary sewer located on the property and water service is anticipated to be provided by the extension of the existing 12” water line located just east within the Oakdale Village Community and the existing 12” water line just south in Old National Pike. Water and Sewer Service are requiring prior to any building permits.

Depending on final road alignment, the MXD property could accommodate uses prior to Lake Linganore Boulevard being completed as the property has direct frontage on Meadow Road. The proximity to the interchange is also expected to limit or eliminate any need for other off-site transportation improvements when the Adequate Public Facilities (“APF”) is evaluated at the time of the Preliminary/Final Site Plan.

The public roadway infrastructure immediately serving the Site is Lake Linganore Boulevard. Lake Linganore Boulevard improvements will continue to be extended through the

MXD project and intersect with the improvements at the I-70/Meadow Road Interchange. The interchange improvements are currently moving forward. Phase 1 of the interchange, which includes the ramp improvements to provide access to westbound I-70, is currently under final engineering with anticipated construction in 2019. Phase 2 would include the off-ramp from I-70 headed eastbound. The design and engineering is also underway, however the construction would likely not begin for 1-3 years.

### **3. Land Use Proposal**

The Concept Plan does not include a residential component. The Applicant seeks to maintain flexibility with the proposed employment, commercial, and institutional uses and does not identify specific locations for each use. Rather, the Plan proposes specific acreages that could be applied anywhere within the 17.5 acre development area. The proposed land use mix allows for 12.4 acres commercial, 5.1 acres employment/institutional, 8 acres open space, and 2.1 acres for road right-of-way.

### **4. Consistency with the County Comprehensive Plan**

The application is consistent with the County Comprehensive Plan. The Site has a land use plan designation of Office/Research/Industrial (ORI) and is within the Linganore Community Growth Area. An ORI land use plan designation permits the application of the MXD floating zone district.

The application is also consistent with the broad Livable Frederick Master Plan (LFMP). The LFMP embodies a focus on policy and general growth strategy in order to articulate a clear direction for Frederick County in the face of future change. This application is consistent with the broad LFMP policies that seek to establish land uses which are generally supportive of the economic, employment, and service needs of our communities and neighborhoods located within

designated Community Growth Areas such as the Linganore and Spring Ridge CGA's that surround this Site. The rezoning of land that is the subject of this Application would continue to allow for non-residential, employment, commercial retail, and institutional uses in an area long identified for such development in County planning documents.

### **5. Compatibility with Adjoining Zoning and Land Uses**

The Site has been zoned Office/Research/Industrial (ORI) since 2006 as part of the New Market Region Plan update adopted that year. The surrounding neighborhood has a mix of zoning, including Agricultural, Resource Conservation, R-1, Institutional, PUD and Mixed Use. The proposed MXD zoning is generally compatible with surrounding zoning and land uses, as well as with potential development options with the ORI District.

### **6. Availability of Public Facilities and Services**

No residential land use is proposed; therefore, schools will not be directly impacted by this project. The proposed rezoning would not impact library facilities, parks, or recreation facilities. There are existing water and sewer lines in the vicinity of the Site. Water is supplied to the Site from the New Design Water Treatment Plant. Sewage treatment is provided by the Ballenger-McKinney wastewater treatment plant.

The Site is served by the Spring Ride Fire Station (Station #33) which is approximately 1.5 miles from the Site. This is within the recommended maximum distance of 2 miles for high value employment/commercial development. Police protection would be provided by the County Sheriff's Office.

## **B. Approval Criteria**

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

*(1) Consistency with the comprehensive plan;*

The Site is designated Office/Research/Industrial on the current Comprehensive Plan Map which is consistent with the application of the MXD floating zone district. The proposed uses of the Site, including employment, commercial and institutional, would be appropriate in supporting the employment and residential uses in the vicinity.

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

The proposed MXD rezoning will not affect the adequacy of public facilities, including schools, parks and library facilities.

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

The proposed MXD rezoning should not affect the adequacy of existing and future road networks. The planned extension of Lake Langanore Boulevard will provide additional capacity to serve the Site as an alternative to Old National Pike.

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

The proposed employment and commercial uses, especially given the small area of the Site, would be compatible with the existing and planned residential uses in the area.

***(5) Population change;***

As no residential development is proposed, there would not be a population change resulting from the development for the neighborhood.

***(6) The timing of development and facilities;***

The application does not propose a schedule for development of the Site. The Site will be subject to subsequent subdivision, site plan, and AFPO review.

**§ 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 proposed Site will have a relatively compact development area due primarily to the small size of the land bays as the property will be split by the planned Lake Langanore Boulevard. The area has extensive existing infrastructure including water/sewer lines and road improvements that would support development of the Site.

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

The application does not identify a specific business or user for the Site, so it is difficult to address building and site design at this stage. There is no current Community or 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 plan;***

The proposed employment and commercial use is compatible with existing and planned residential development in the surrounding area. The small size of the Site along with the small land bays will keep the scale of development to buildings with small footprints at 1-2 stories. The subsequent site plan review for the Site would address detailed design issues such as parking, landscaping, screening, etc.

***(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 subsequent Site Development Plan review will evaluate the safety and efficiency of the arrangement of on-site buildings and infrastructure.

***(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;***

With the planned Lake Linganore Boulevard, the transportation system will be adequate to accommodate the traffic from the Site and more importantly will provide alternative routes in the area.

***(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 application does not include a specific employment or commercial use or layout of the Site. The primary pedestrian access will be along Lake Linganore Boulevard as there are no existing sidewalks along Old National Pike to the east of the Site to connect with.

***(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 served by the Spring Ridge Fire Station (Station #33) which is approximately 1.5 miles from the Site. This is within the recommended maximum distance of 2 miles for high value employment/commercial development.

***(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 natural features of the Site will be incorporated into the planned open space areas.

***(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 which allows for the application of the MXD floating zone. The addition of the commercial use is consistent with the intent of the MXD zone to provide the opportunity for commercial uses to support the surrounding residential community, and is in keeping with the Livable Frederick Master Plan police of supporting suburban retrofit in appropriate areas.

***(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 proposed employment/commercial uses will not impact schools, libraries, or park facilities. Fire/Rescue services are adequate to serve the Site. Any proposed subdivision or site plan for the Site will be subject to Adequate Public Facilities Ordinance (AFPO) which will apply specific adequacy tests for traffic impacts and the availability of water and sewer.

Based upon the findings herein and the record evidence, the County Council has determined that it is appropriate to grant the rezoning request in Case No. R-19-02, with the conditions listed below.

### **ORDINANCE**

BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, the rezoning of



27.58 acres of land (as depicted in the application) to Mixed Use Development (MXD) is hereby granted, subject to the following conditions:

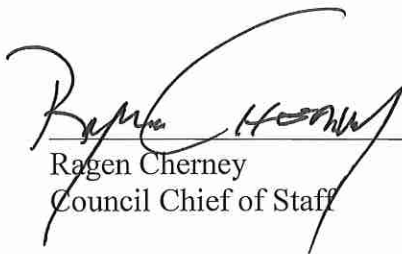
1. The Applicant shall prepare a feasibility report documenting any potential adaptive reuse of the property located at 9820 Old National Pike, known as the Cordelia Dorsey House/Pennybaker-Dean Tavern (MIHP# F-5-55). This report shall be made available to the County prior to the submission of the first subdivision plat or site development plan application.
2. The Applicant shall consult SHA's Context Sensitive Solutions for the Maryland National Historic Road Scenic Byway as part of the preparation of subdivision and site plans for the property.
3. Milestone marker No. 40 shall be protected during any construction or site preparation activity associated with the proposed development of the MXD, and retained in its current location along Old National Pike.
4. The dedication of right of way for Lake Linganore Boulevard shall be provided at the earliest of either the first subdivision plat, or on demand by the County, or on demand by the developer of Cromwell, to facilitate completion of the Master Planned Road.
5. The Applicant shall provide natural and substantial buffers along the western and northern property boundaries of the property. The buffer along the western property boundary shall extend southward from the northwestern property corner (at Meadow Road) to the intersection of Meadow Road and Lake Linganore Boulevard (extended).

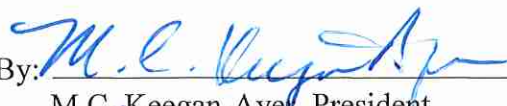
AND BE IT FURTHER ENACTED AND ORDAINED, that the Zoning Administrator is hereby authorized and directed to make the appropriate changes to the zoning map as reflected in this decision.

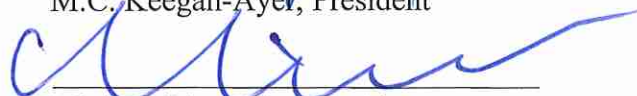
The undersigned hereby certify that this Ordinance was approved and adopted on the 10th day of ~~February~~ <sup>November</sup> <sup>CK</sup>, 2020.

ATTEST:

COUNTY COUNCIL OF  
FREDERICK COUNTY, MARYLAND

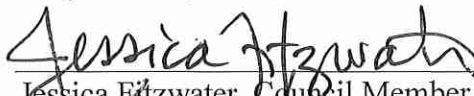
  
Ragen Cherney  
Council Chief of Staff

By:   
M.C. Keegan-Ayel, President

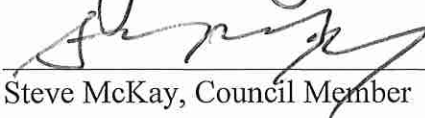
  
Michael Blue, Vice President

  
Phil Dacey, Council Member

  
Jerry Donald, Council Member

  
Jessica Fitzwater, Council Member

  
Kai Hagen, Council Member

  
Steve McKay, Council Member

Received by the County Executive on December 1, 2020.

County Executive Action: \_\_\_\_\_ Approved \_\_\_\_\_ Vetoed \_\_\_\_\_

\_\_\_\_\_  
Jan H. Gardner, County Executive  
Frederick County, Maryland <sup>CK</sup>

\_\_\_\_\_  
Date

No Action taken by County Executive  
on 12/10/2020