



FREDERICK COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

TO: Frederick County Council
FROM: County Executive Jan H. Gardner
DATE: February 10, 2020
SUBJECT: Forest Conservation and Environmental and Historic Protection

ISSUE/BACKGROUND:

Growth has been and will continue to be a hot topic in Frederick County. As the County grows, we need to do our best to protect what we love and value about our cherished community including protecting our environmental and historic assets.

We know that Frederick County residents value our rich history, our open spaces and our agricultural heritage. Citizens lament the loss of forest and our historic and cultural amenities as the result of development.

We have witnessed mass grading and significant loss of forest, particularly around Lake Linganore, as development has occurred. Citizens have expressed their displeasure with the loss of forest but have become angry and frustrated when they learn that often no mitigation or planting of trees elsewhere has been required by the County.

The good news is that we can take action to prevent the loss of forest and protect our historic and cultural amenities now into the future.

To protect forest, our environmental resources, and our rich history, I have proposed legislation to ensure that we consider protection of these assets at the time of rezoning, early in the process. We know the beginning often determines the end. If we don't protect these features from the outset, we may lose the opportunity to do so.

As the County Council debates climate change, it is important that we do something very fundamental - protect our sensitive environmental areas and ensure that Frederick County does not lose its forests. This is consistent with Livable Frederick and our mapping of our green infrastructure.

I am proposing two new pieces of legislation:

1. An amendment to our forest resource ordinance to strive for no net loss of forest through the inclusion of a 1:1 replacement of trees lost during the development process.
2. An update to our zoning ordinance adding consideration of our environmental and historic resources at the point of rezoning. This proposal updates and clarifies criteria for these purposes as well as for transportation adequacy.

Forest Resource Ordinance (FRO):

The goal of the amendment to the Forest Resource Ordinance is to stop of the loss of forest in Frederick County. Between 2001 and 2005, 4,000 acres of forest cover in Frederick County disappeared. Some of this loss was due to insect infestation and nature deforestation but much of it was the result of new development and the clearing of trees.

In 2008, the County Commissioners passed a Forest Resource Ordinance amendment to require a 1:1 replacement of every acre of forest cleared for development. Carroll County has had a 1:1 replacement ratio in place for many years, so this requirement brings us in line with our neighbor.

In 2011, the former Board of County Commissioners eliminated this requirement and reduced the local law to minimum state requirements. Between 2012 and 2019, Frederick County experienced a net loss of about 480 acres of forest or an average of about 70 acres annually. We can do better and achieve no net loss of forest by simply restoring the 1:1 replacement ratio.

It is important to note that the County invests millions of dollars to plant trees through efforts like Creek ReLeaf to achieve environmental goals and clean water requirements in our MS4 permit. We know that forest is important to protecting our environment, ensuring healthy streams, and providing habitat. Street trees in new developments cannot achieve these goals. Preventing forest loss is much less expensive than mitigating pollution and cleaning our waterways after the fact. Protecting and preserving our forests makes good financial sense.

Zoning Ordinance Amendments

The goal of the proposed amendments to the zoning ordinance are to protect forest, environmentally sensitive areas, and historic assets at the point of rezoning. Evaluating and protecting environmental features and historic assets prior to development taking place and before land is rezoned for development is forward thinking and puts our community's values first. We know our residents value what is special about Frederick County and want us to protect these resources.

In addition, the zoning amendments update and clarify criteria for evaluating and determining the adequacy of the transportation network at the point of rezoning. While transportation adequacy has long been a topic of consideration, the addition of criteria better defines and considers cumulative impacts on our transportation network.

Clearly road congestion and traffic safety are an issue of concern for our residents and businesses alike. Considering these criteria upfront, early in the development process, ensures a better outcome for the citizens we serve. While we cannot undo some of the decisions of the past, we can and should do better planning now into the future.

County staff has provided the technical details of these two proposals in separate staff reports.

RECOMMENDATION:

As County Executive, I urge the County Council to adopt the proposed amendments to the Frederick County Forest Resource Ordinance and to Chapter 1-19 of the Frederick County Zoning Ordinance. The adoption of these legislative initiatives will protect environmental and historic resources, prevent the net loss of forest cover to new development, and will ensure a bright future for Frederick County.



FREDERICK COUNTY GOVERNMENT
DIVISION OF PLANNING & PERMITTING

Jan H. Gardner
County Executive

Steven C. Horn, Division Director

TO: County Council

THROUGH: Jan H. Gardner, County Executive

FROM: Steven C. Horn, Planning & Permitting Director
Michael Wilkins, Development Review and Planning Department Director

DATE: February 11, 2020

SUBJECT: Proposed Bill - Amendments to Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance)

ISSUE:

Should the County Executive support the staff recommendation regarding amendments to Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance) to update and strengthen the County's law to protect existing forest and strive for no net loss of forest and forward the attached proposed bill ([Attachment 1](#)) to the County Council for its consideration?

BACKGROUND:

The proposed amendments to the Forest Resource Ordinance (FRO) will increase forest conservation efforts, update definitions, and clarify language.

The following changes to the FRO are proposed:

1-21-5 - Definitions

The definitions for intermittent stream and perennial stream have not been updated since 1992. The proposed changes to these definitions better describe the defining elements of each stream type and update the resources that may be used to verify the presence of streams.

1-21-40(B) - Priority Areas for on-site conservation

(B)(a) - Removal of existing verbiage that is slightly different than the definition of hydrologically-sensitive area and is unnecessary due to existing code definition.

1-21-40(C) - Priority sequence for on-site forestation

(C)(6) - Added "areas identified as green infrastructure network and/or sensitive species areas in the green infrastructure sector of the Livable Frederick Master Plan" as a priority planting area. Adding mapped green infrastructure to the list of priority planting areas will make the FRO consistent with the goals and objectives of Livable Frederick.

1-21-42(B): Reforestation and Conservation Threshold

The purpose of revising this section of the code is to restore the 2007 provision that required, at a minimum, a 1:1 replacement for all forest that is cleared for a development project. This requirement was removed from the code in 2011.

Reforestation is the planting of trees to replace forest that has been or is proposed to be removed. Before the adoption of the 2007 FRO Ordinance, and since that ordinance was repealed in 2011, the County uses the State’s formula (aka “standard method”) for determining how much forest must be retained to avoid mitigation (known as the “breakeven point”), and how much reforestation would be required for clearing above the “breakeven point.” In most cases a certain amount of forest can be cleared and if the remaining forest is placed under a FRO easement then no additional mitigation is required. The conservation threshold varies depending on the proposed land use and zoning district:

- 50% for Agricultural and Resource Conservation*
- 25% for R1 Residential.*
- 20% for Institutional, R3 through R16.*
- 15% for Mixed Use, Planned Developments, Commercial, and Industrial.*

The table below illustrates some examples of how the current “standard method” calculations results in the loss of forest cover.

Conservation Threshold	Size of Parcel	Existing Forest	Break-even Point (minimum retention to avoid mitigation requirement)	Area Allowed to be Cleared Without Mitigation	Area To Be Cleared	Area Retained	Additional Mitigation required	Forest Loss
50 (Ag/Rc)	20	16	11.20	4.80	4.80	11.20	0	4.80
50 (Ag/Rc)	40	32	22.40	9.60	20	12	19	1.00
25 (R1)	20	8	5.60	2.40	2.40	5.60	0	2.40
25 (R1)	20	8	5.60	2.40	5	3	4.75	0.25
15 (MU, PD, C, I)	20	16	5.60	10.4	12	4	2	6.00
15 (MU, PD, C, I)	80	64	22.40	41.60	60	4	29	31
15 (MU, PD, C, I)	200	100	44	56	56	44	0	56

The 2007 FRO Ordinance established a 1:1 replacement requirement for all forest that was cleared, which was in addition to the “standard method” for calculating forest conservation and reforestation requirements. Under the 2007 provision, even if the “standard method” allowed a certain amount of forest to be cleared without penalty, the amount of forest that was cleared would have to be replaced, either by planting new forest on site or by utilizing one of the methods for mitigation offsite (such as using forest banking credits). However, in a case where the “standard method” generated a mitigation requirement greater than a 1:1 replacement, then the “standard method” would apply.

Under the “standard method,” a 300-acre property zoned Mixed Use, Planned Unit Development, Commercial, or Industrial has a 15% forest conservation threshold. If the 300-acre property contained 150 acres of forest, then up to 84 acres of forest could be cleared without triggering a reforestation requirement. Under the proposed 1:1 replacement provision, mitigation for the 84 acres of cleared forest would be required.

The current regulations do not discourage development projects from claiming the maximum amount of forest clearing allowed without penalty. Projects typically preserve the minimum amount of existing forest necessary to “break even.” There is little incentive to explore alternative site designs that would reduce forest clearing while allowing the development to move forward.

Carroll County currently requires a 1:1 replacement of all forest cleared for development except in the Agricultural Zone, where a 2:1 replacement is required for clearing over 25,000 square feet of forest.

The loss of forest that is permitted under the current regulations is extremely difficult to replace, even with the afforestation requirements that are generated by development projects that do not contain forest.

- Between 2008 and 2011, when the County had the 1:1 replacement provision, 414 acres of forest was cleared and 424 acres of new forest was planted. During this period the County did not lose forest, and actually gained 10 acres of forest.
- From 2012 to 2019 (the period since the 1:1 replacement provision was repealed), 807 acres of forest was cleared and 328 acres of forest was planted, for a net loss of 479 acres, an average of 68.42 acres of forest per year.

Restoring the 1:1 replacement provision will curb the significant loss of forest. The 1:1 provision will encourage more thoughtful planning and design of developments, potentially avoiding unnecessary forest clearing in order to reduce the amount of mitigation that is required.

The proposed amendments do not change the existing exemptions from the code requirements. Farmers may still be exempt if clearing forest for agricultural activities, and up to 20,000 square feet of forest may be removed without mitigation for subdividing a lot for a child of the owner.

RECOMMENDATION:

Staff recommends the County Executive forward the proposed bill to amend Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance) to the County Council for its consideration.

Approve? Yes _____ No _____

**Jan H. Gardner, County Executive
Frederick County, Maryland**

Date

FINANCIAL IMPACT: No

ATTACHMENT(S):

Attachment 1 – Proposed Bill – Amendments to Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance)



Bill No. 20-

Concerning: Amending Chapter 1-21 of the County Code (Forest Resource Ordinance) to increase forest conservation efforts

Introduced: _____

Revised: _____ Draft No. _____

Enacted: _____

Effective: _____

Expires: _____

Frederick County Code, Chapter 1-21

Section(s) 5, 40, and 42

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: _____ on behalf of the County Executive

AN ACT to: amend Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance) to increase forest conservation efforts.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter 1-20 Section(s) 5, 40, 41

Other: _____

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law.</i>
[Single boldface brackets]	<i>Deleted from existing law.</i>
***	<i>Existing law unaffected by bill.</i>

Bill No. _____

The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance) to increase forest conservation efforts and to update certain definitions.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

AND BE IT FURTHER ENACTED that the following transitional provisions shall apply:

(1) The amendments and revisions to Chapter 1-21 enacted by this Bill shall apply to:

(a) Any Forest Stand Delineation, Preliminary Forest Conservation Plan, Final Forest Conservation Plan, or any combination thereof, and any exemption application, received by the Department for approval, reapproval, or extension on or after the effective date of this Bill.

(b) Any revised Forest Stand Delineation, Preliminary Forest Conservation Plan, Final Forest Conservation Plan, or any combination thereof, and any exemption application, received by the Department for approval, reapproval, or extension on or after the effective date of this Bill.

M.C. Keegan-Ayer, President
County Council of Frederick County,
Maryland

CHAPTER 1-21 FOREST RESOURCES

§ 1-21-5. DEFINITIONS.

INTERMITTENT STREAM. [A stream in which surface water is absent during a part of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.] A stream that has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from precipitation is a supplemental source of water for stream flow. These streams are identified through field verification and as approved by the Department. The most recent county hydrography layer may be used as a guide for the preliminary establishment of possible watercourses.

PERENNIAL STREAM. [A stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey, as confirmed by field verification.] A stream that has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from precipitation is a supplemental source of water for stream flow. These streams are identified through field verification and as approved by the department. The most recent county hydrography layer may be used as a guide for the preliminary establishment of possible watercourses.

§ 1-21-40. CONSERVATION AND FORESTATION PRIORITIES.

(A) *In general.* In the implementation of any subdivision or development project, priority shall be given:

(1) First, to conservation of existing on-site forest areas according to the sequence listed in subsection (B) of this section;

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

***** - indicates existing law unaffected by bill.

(2) Second, to forestation of on-site areas according to the sequence listed in subsection (C) of this section;

(3) Third, to forestation or mitigation off- site according to the sequence listed in subsection (D) of this section.

(B) *Priority areas for on-site conservation.*

(1) Trees, shrubs, and plants in priority areas shall be retained and protected and shall be left in an undisturbed condition. The applicant must demonstrate to the satisfaction of the Department that reasonable efforts have been made to protect them and that the plan cannot reasonably be altered. Priority areas include:

(a) Hydrologically-sensitive areas [, including the 100 year floodplain and all other floodplains listed in the Zoning Ordinance, § 1-19-9.100, as amended; streams and their buffers; steep slopes (25%) contiguous to or within 50 feet of hydrologically-sensitive areas; and wetlands];

(b) Forest segments that connect large forested or heavily vegetated tracts of land within or adjacent to the site;

(c) Areas that contain trees, shrubs, or plants identified as rare, threatened, or endangered under the Federal Endangered Species Act of 1973 in 16 U.S.C. §§ 1531-1544 and in 50 CFR 17, or under COMAR 08.03.08;

(d) Critical habitat areas for sedentary animal species; identified as threatened, endangered or in-need-of-conservation under the Maryland Nongame and Endangered Species Conservation Act, Md. Code Ann., Natural Resources Article, §§ 10-2A-01 through 10-2A-09.

(e) Nonhazardous trees that:

1. Are part of a historic site;
2. Are associated with a historic structure;
3. Have been designated by the state or the Department as a national, state, county, or municipal champion tree; and

4. Are specimen trees, or are 75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current state champion tree of that species as designated by the Department of Natural Resources.

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(2) Any of the priority areas listed in subsection (B)(1) of this section that are not retained shall be deemed a modification requiring approval under § 1-21-21 of this chapter, unless the exception is authorized by § 1-19-9.110, as amended, of the Zoning Ordinance.

(3) The following trees or forested areas shall be retained and protected unless the applicant has demonstrated to the satisfaction of the Department that reasonable efforts have been made to protect them and the plan cannot reasonably be altered:

(a) Forest areas that buffer significantly noncompatible land uses, such as industrial and residential, as determined by the Department; and

(b) Other forested areas that because of their size, location, species composition, or quality are deemed by the Department as being worthy of conserving permanently.

(C) *Priority sequence for on-site forestation.* After every reasonable effort to minimize the cutting and clearing of trees and other woody plants in on-site priority areas listed in § 1-21-40(B) has been exhausted, the following areas shall be considered the priority sequence for on-site forestation:

(1) Buffers adjacent to intermittent and perennial streams to widths of at least 50 feet from stream banks;

(2) Areas in 100 year floodplains and all other floodplains listed in the Zoning Ordinance, § 1-19-9.100;

(3) Corridors to connect existing forests within or adjacent to the development site with a minimum width of 300 feet where practical to facilitate wildlife movement;

(4) Buffers adjacent to critical habitats where appropriate;

(5) Slopes of 25% or greater and slopes of 15% or greater with a soil K value greater than 0.35, including the slopes of ravines or other natural depressions;

(6) Areas identified as green infrastructure network and/or sensitive species areas in the green infrastructure sector of the Livable Frederick Master Plan;

~~[(6)]~~ (7) Buffers between differing land uses that are deemed to be noncompatible by the Department or buffers adjacent to highways; and

~~[(7)]~~ (8) Lands adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.

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§ 1-21-42. REFORESTATION AND CONSERVATION THRESHOLD.

[Subsection 1-21-42(A) remains unchanged]

(B) Calculation of Requirements. There are two methods to calculate reforestation requirements.

The method that results in the most reforestation shall be used.

(1) The first method shall require a 1:1 replacement. This means that for every one acre (or portion thereof) of forest removed, one acre must be planted.

(2) The second method, the “Standard Method”, is set forth in subsection 1-21-42(D).

([B]C) Definitions restated. **REFORESTATION** under this section means the planting of trees to replace forest that has been recently or is proposed to be removed by development. **CONSERVATION THRESHOLD** means the percentage of the net tract area at which the reforestation requirement changes from a ratio of one-quarter acre planted for every 1 acre removed to a ratio of 2 acres planted for every 1 acre removed according to the land use categories as listed below:

<i>Category of Use</i>	<i>Threshold Percentage</i>
(1) Agricultural and Resource Conservation Zones, except for cluster developments therein which shall utilize R-1 values	50
(2) R-1 Residential zoned areas	25
(3) Institutional use areas in any zone	20
(4) R-3, R-5, R-8, R-12, R-16 and Mobile Home Park zoned areas	20
(5) Mixed Use and Planned Unit Development zoned areas	15
(6) Commercial and Industrial Use zoned areas	15

Required reforestation under the Standard Method shall be calculated according to the formulas provided in subsection ([C]D) of this section.

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(C)D *Standard Method Calculations.*

(1) For all existing forest cover cleared on the net tract area above the applicable conservation threshold established by subsection (A)C of this section, the area of forest removed shall be reforested at a ratio of one quarter acre planted for every acre removed.

(2) For all existing forest cover cleared on the net tract area below the applicable conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for each acre removed.

(3) For each acre of forest retained on the net tract area above the applicable conservation threshold, credit shall be given against the total number of acres required to be reforested under subsection (C)D(1) of this section.

(D)E *Accuracy Standards.* All calculations of reforestation requirements shall be calculated to the nearest one-hundredth acre and shall be in accordance with the worksheet provided in the Technical Manual and approved by the Department. However, forest field measurements may be measured to the nearest one-tenth acre.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

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FREDERICK COUNTY GOVERNMENT
DIVISION OF PLANNING & PERMITTING

Jan H. Gardner
County Executive

Steven C. Horn, Division Director

TO: Frederick County Council

THROUGH: Jan H. Gardner, County Executive

FROM: Steven C. Horn, Planning & Permitting Director
Michael Wilkins, Development Review and Planning Department Director

DATE: February 11, 2020

SUBJECT: Proposed Bill - Amendments to Chapter 1-19 of the Frederick County Code (Zoning Ordinance)

ISSUE:

Should the County Executive support the staff recommendation regarding amendments to Chapter 1-19 of the Frederick County Code (Zoning Ordinance) to update and clarify transportation, environmental resource protection and historic preservation criteria and forward the attached proposed bill (Attachment 1) to the County Council for its consideration?

BACKGROUND:

The proposed Zoning Ordinance amendments will add more specific approval criteria for evaluating rezoning applications.

Changes to §1-19-3.110.4 adds environmental and historic preservation criteria for all Euclidian zoning requests.

Changes to §1-19-10.500 adds environmental, historic preservation, and transportation infrastructure criteria to the Planned Development Districts, which includes the Planned Unit Development (PUD) and Mixed Use Development (MXD) floating zones. These additional criteria will insure that the existing Purpose and Intent language found under § 1-19-10.500.1 is being met.

Additional Criteria for Zoning Amendments

§1-19-3.110.4 lists the specific criteria that must be met in order to change zoning district boundaries or changing a property from one zoning designation to another. This bill proposes to add two new criteria:

(7) Identification of sensitive environmental resources and how impacts to these resources are avoided or minimized to the maximum extent practicable.

(8) Identification of historic resources and how impacts to these resources are avoided or minimized to the maximum extent practicable.

Whether a property is being rezoned through a comprehensive planning effort or at the request of a property owner, the evaluation of impacts to environmental and historic resources would be required before a decision of the rezoning request could be made.

Additional Criteria for Planned Development District Zoning Applications

The Planned Development Districts (PDD) section of the Zoning Ordinance outlines the requirements for establishing Planned Unit Development (PUD) zoning or Mixed Use Development (MXD) zoning on a property. The PDD section of the code begins by establishing the purpose and intent of these floating zones.

§1-19-10.500.1 of the Zoning Ordinance establishes the purpose and intent of a PDD and includes the following;

- (D) Promote building and site design that reduces dependence on vehicular movement through the provision of bicycle, pedestrian, and transit friendly elements which include transportation circulation networks linking internal and external residential, commercial, employment areas, and recreation, open spaces and public facilities;
- (F) Promote the protection, preservation, and integration of historic resources into the planned development through reuse, adaptive use, and rehabilitation;
- (G) Promote the evaluation and integration of natural features into building and site design;

The only proposed changes to the purpose and intent section is to add language to (G):

(G) Promote the evaluation, protection, and integration of natural features and sensitive environmental resources into building and site design

While the purpose and intent language identifies environmental features, historic preservation, and transportation infrastructure as important elements, the Approval Criteria (§1-19-10.500.3) and Application requirements (§1-19-10.500.5) do not include adequate language to fully evaluate how applications are meeting these goals.

Changes to §1-19-10.500.3 (Approval Criteria) include:

- New language in §1-19-10.500.3 (E) further addresses adequacy of the transportation network by including consideration of pipeline uses in the area of an application, safety of the road network, natural resource impacts, bicycle safety, and an assessment of changes to future traffic volumes.
- Addition of (K) to protect sensitive environmental resources.
- Addition of (L) to protect historic resources.

Changes to §1-19-10.500.5 (Application) include:

- Additional language to include environmental buffers and mapped green infrastructure on the required environmental and natural features map.
- Additional language to add priority forest conservation areas, wetlands, streams, steep slopes, and nonresidential components to the list of areas to be excluded from the buildable acreage calculations.
- New language to analyze impacts to scenic view sheds.
- New language to identify and preserve historic resources.
- New language that identifies sensitive environmental features and protect requires maximum effort to avoid impacts to those resources.
- New language to require analysis of road network adequacy and identification of necessary road improvements.

§ 1-19-10.500.6. LAND USE, MIXTURE, AND DESIGN REQUIREMENTS WITHIN THE PUD DISTRICT.

Unlike the previous code section discussed above, which apply to both PUD and MXD applications, § 1-19-10.500.6 applies only to PUD applications. Changes to this section are limited to adding additional verbiage to further identify the environmental resources that must be excluded from density calculations.

§ 1-19-10.500.7. LAND USE, MIXTURE, AND DESIGN REQUIREMENTS WITHIN THE MXD DISTRICT.

This section applies only to MXDs. Changes to this section are limited to adding additional verbiage under (H) (1) (d) (3) to further identify the environmental resources that must be considered when approving density.

ARTICLE XI: DEFINITIONS

Adding a definition of “Division,” which is defined in other sections of the County’s code but is missing from the Zoning Ordinance.

RECOMMENDATION:

Staff recommends the County Executive forward the proposed bill to amend Chapter 1-19 of the Frederick County Code (Zoning Ordinance) to the County Council for its consideration.

Approve? Yes _____ No _____

Jan H. Gardner, County Executive
Frederick County, Maryland

Date

FINANCIAL IMPACT: No

ATTACHMENT(S):

Attachment 1 – Proposed Bill – Amendments to Chapter 1-19 of the Frederick County Code (Zoning Ordinance)



Bill No. _____

Concerning: _____

Introduced: _____

Revised: _____ Draft No. _____

Enacted: _____

Effective: _____

Expires: _____

Frederick County Code, Chapter _____

Section(s) _____

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: _____

AN ACT to: amend Chapter 1-19 of the Frederick County Code (Zoning Ordinance) to update and clarify transportation, environmental resource protection, and historic preservation criteria on rezoning requests.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, _____ Section(s) _____

Other: _____

Boldface

Underlining

[Single boldface brackets]

Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

Bill No. _____

The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend the Frederick County Code to update and clarify transportation network analysis, environmental resource protection, and historic preservation criteria on rezoning requests, and to update definitions.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

M.C. Keegan-Ayer, President
County Council of Frederick County,
Maryland

DIVISION 1. ZONING AMENDMENTS

§ 1-19-3.110.4. APPROVAL CRITERIA.

(A) Approval or disapproval of a request for an individual zoning map amendment or floating zone reclassification shall be determined through review of several criteria. The Planning Commission and County Council review will include, but not be limited to:

- (1) Consistency with the comprehensive plan;
- (2) Availability of public facilities;
- (3) Adequacy of existing and future transportation systems;
- (4) Compatibility with existing and proposed development;
- (5) Population change; and
- (6) The timing of development and facilities.

(7) Identification of sensitive environmental resources and how impacts to these resources are avoided or minimized to the maximum extent practicable.

(8) Identification of historic resources and how impacts to these resources are avoided or minimized to the maximum extent practicable.

(B) In addition to the criteria above, approval or disapproval of a request for an individual zoning map amendment 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.

DIVISION 5. PLANNED DEVELOPMENT DISTRICTS

§ 1-19-10.500. PLANNED DEVELOPMENT DISTRICTS.

§ 1-19-10.500.1. PURPOSE AND INTENT.

The Planned Development Districts (Planned Unit Development and Mixed Use Development) are floating zones established to provide for new development and redevelopment within identified growth areas that result in an integrated mixture of commercial, employment, residential, recreational, civic and/or cultural land uses as provided within the appropriate Frederick County Comprehensive, Community, or Corridor Plan. These uses planned and developed as a unit are intended to:

- (A) Result in an efficient use of land and the efficient extension of public facilities;

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

(B) Allow innovative design involving flexibility not permitted within Euclidean zoning districts;

(C) Promote continuity of new development with existing development through building and site design, including consideration of architectural elements, landscape design, building placement, and street network;

(D) Promote building and site design that reduces dependence on vehicular movement through the provision of bicycle, pedestrian, and transit friendly elements which include transportation circulation networks linking internal and external residential, commercial, employment areas, and recreation, open spaces and public facilities;

(E) Result in an integrated mixture of uses within the Mixed Use Development District and a mixture of housing types within the Planned Unit Development District;

(F) Promote the protection, preservation, and integration of historic resources into the planned development through reuse, adaptive use, and rehabilitation;

(G) Promote the evaluation, protection, and integration of natural features and sensitive environmental resources into building and site design;

(H) Provide development flexibility to respond to market demands.

§ 1-19-10.500.2. SIZE AND LOCATION.

(A) The PUD District may only be established where the tract of land receiving the PUD District has a County Comprehensive Plan Land Use designation of Low Density Residential, Medium Density Residential, or High Density Residential except as provided in § 1-19-10.500.2(D) below.

(B) The MXD District may only be established where the tract of land receiving the MXD District has a County Comprehensive Plan land use designation of Mixed Use Development, Office Research Industrial, or Limited Industrial except as provided in § 1-19-10.500.2(D) below.

(C) The Planned Development Districts may only be established where the tract of land receiving the Planned Development District has a category of Planned Service or higher as shown on the Frederick County Water and Sewerage Plan.

(D) The Planned Development District may be applied to a County Comprehensive Plan land use designation of Natural Resource where the Natural Resource land use designation is a minor portion of the overall tract receiving the Planned Development District. Those portions of the project having a land use designation of Natural Resource may not be included in the density calculation [but may only be developed as provided in § 1-19-10.500.9(B)(2)].

(E) There shall be no minimum tract size, lot area, or lot width for the Planned Development Districts.

§ 1-19-10.500.3. APPROVAL CRITERIA.

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The County Council may approve or disapprove a request for rezoning of property to a Planned Development District if persuaded that granting the request is appropriate and serves the public interest. The approval or disapproval of a request for the application will be determined through evaluation of several criteria to establish whether the proposed project meets the purpose and intent of the zoning district. In addition to the requirements in § 1-19-3.110.4, the Planning Commission and County Council must find that the project adequately addresses the following criteria:

(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;

(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;

(E) The transportation system is or will be made adequate to serve the proposed development in addition to existing and pipeline uses in the area. Factors to be evaluated include: roadway capacity, [and] level of service and safety, on-street parking impacts, access requirements, neighborhood and natural resource impacts, projected construction schedule of planned improvements, pedestrian and bicycle safety, and results of travel demand modeling assessing the change in future daily travel volumes, with and without the proposed development;

(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;

(H) Natural features of the site have been adequately considered and [utilized] 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;

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(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;

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

§ 1-19-10.500.4. REVIEW AND APPROVAL PROCEDURES.

Review and approval of the Planned Development District includes a preapplication conference, neighborhood meeting, Phase I justification and floating zone reclassification, and Phase II execution. The applicant must obtain all necessary approvals at each phase prior to proceeding to the next phase.

(A) *Preapplication conference.* Prior to a Phase I application submission, a preapplication conference shall be held with the [Community Development] Division. The conference is intended to provide information to the applicant regarding application requirements, review and approval procedures, neighborhood meeting requirements, discussion of development constraints and opportunities, county policy initiatives, and the County Comprehensive Plan. The applicant shall submit preapplication information in a format acceptable to the [Community Development] Division, including: a description of the tract of land for which the Planned Development District is proposed; existing and proposed land uses; existing historic and natural features; or other information as required to adequately evaluate the application.

(B) *Neighborhood meeting.* Prior to submitting a Phase I application the applicant shall hold a neighborhood meeting. The meeting will provide an opportunity to identify impacts that the project may have on the neighborhood surrounding the proposed project.

(C) *Phase I justification and floating zone reclassification.* The procedure for Phase I approval is the same as for zoning map amendments set forth in §§ 1-19-3.110.1 through 1-19-3.110.6.

(1) Prior to Phase I application the tract of land receiving the proposed Planned Development District shall be classified as Planned Service or higher on the Frederick County Water and Sewerage Plan.

(2) Phase I approval shall include approval of a concept plan graphically illustrating the project. The concept plan shall be submitted for review as part of the Phase I application.

(D) *Phase II execution.* The procedure for Phase II approval shall follow the applicable subdivision or site development plan review process.

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(1) Prior to Phase II application the Planned Development District property must be classified at least W4/S4 on the Frederick County Water and Sewerage Plan.

(2) Subsequent to Phase I approval and prior to or concurrent with Phase II approval the applicant shall obtain Adequate Public Facilities Ordinance (APFO) approval in accordance with Chapter 1-20 of the Frederick County Code.

(3) Subdivision shall occur in accordance with county subdivision regulations. Site development plan review shall occur in accordance with §§ 1-19-3.300 through 1-19-3.300.4.

§ 1-19-10.500.5. APPLICATION.

A Phase I application for Planned Development District reclassification and concept plan approval must include sufficient information to provide the County Council with a basis to approve the overall concept of the project, rezone the property, and set a maximum permitted land use density, or the County Council may in its sole discretion, disapprove the rezoning request. At a minimum, a Phase I application shall include: information regarding the existing site conditions, a concept plan providing a graphic illustration of the proposed development, a justification statement, and a proposed phasing plan in accordance with the following standards:

(A) *Existing site conditions.* Existing site conditions information shall include the following:

(1) A vicinity map at a scale of 1 inch equals 2,000 feet or more to the inch, depicting the tract of land proposed for development with respect to surrounding properties and streets. At a minimum the map will show all streets and highways within 2,000 feet of the property proposed for development. Where available, the vicinity map shall include state assessment tax map, parcel number, and tax identification for all properties depicted.

(2) A boundary survey prepared and certified by a registered land surveyor within the State of Maryland. The boundary survey shall identify all easements affecting the tract of land proposed for development, and other physical encumbrances readily identified by a field inspection.

(3) A transportation map indicating the location of the tract of land proposed for development, with respect to local, collector, and arterial streets, existing easements and rights-of-way on or abutting the tract of land proposed for development, all existing bicycle and pedestrian facilities, and existing and planned transit facilities including routes and stops. The transportation map scale shall be determined at the preapplication conference based on project specifics.

(4) A land use map at a scale of 1 inch = 100 feet, indicating the type, location, acreage, and density of all existing land uses, the general street layout and circulation pattern, including existing zoning and County Comprehensive Plan land use designation. Existing land uses shall be included to a distance of 500 feet surrounding the tract of land proposed for development.

(5) An aerial photograph with the tract of land proposed for development and project site clearly delineated.

(6) An environmental and natural features map at a minimum scale of 1 inch = 100 feet. Unless otherwise specified by the [Community Development] Division, the map shall reflect the tract of land proposed for development and the first 100 feet of adjoining land or width of the adjacent lot, whichever is less, and include the following:

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(a) Intermittent and perennial streams, drainage courses, and historic flow-ways on or within 200 feet of the tract of land proposed for development, including stream setbacks as required in § 1-19-9.400;

(b) Areas of 100 year floodplain as depicted by the Federal Emergency Management Agency flood insurance rate maps or amendments thereto, including floodplain and stream setbacks as required in § 1-19-9.110;

(c) Topography at a minimum of 5 foot contour intervals unless otherwise required by the [Community Development] Division;

(d) Moderate slopes (15% to <25%) and steep slopes (25% or greater);

(e) Wetsoils and flooding soils, including buffers;

(f) Tree lines, forested areas, and rock formations including historic, champion, and specimen trees and green infrastructure hubs and corridors;

(g) Location and type of native, exotic, and invasive vegetation;

(h) Jurisdictional wetlands and their buffers, including total acreage;

(i) Any other relevant information as required by the [Community Development] Division;

(7) The location and description of all sites, buildings, structures, or other objects listed on or eligible for the National Register of Historic Places, Frederick County Register of Historic Places, or as listed on the Maryland Inventory of Historic Properties.

(B) *Concept plan.* The concept plan shall be scaled to fit the sheet size of 24 inch x 36 inch, and shall also be submitted at 11 inch x 17 inch, and include the following:

(1) Generalized location and type of existing and proposed easements;

(2) Generalized location, configuration, and typical dimensions of all proposed subdivision lots;

(3) Generalized location, configuration, and description of proposed land use areas including: land use, square footage, height, and number of stories of proposed buildings, proposed density, parking and loading areas, ingress and egress, natural features, historic and cultural features, and recreation/open space areas;

(4) Existing land use surrounding the subject property including zoning and County Comprehensive Plan land use designation;

(5) A transportation map detailing the generalized location and design of the proposed internal and external vehicular and nonvehicular transportation network, connections to existing transportation facilities, and general trip generation for the proposed land use(s).

(6) A table and comparative analysis providing an explanation of the project gross and net density as proposed within the PUD or MXD District compared to the gross and net density as permitted within the existing land use designation. For the purposes of calculating gross and net density the following formulas shall be used:

total number of dwelling units ÷ total project acreage = gross density

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total number of dwelling units ÷ the total project buildable acreage = net density

The calculation of net density excludes: [floodplain, roadways, and other land proposed to be dedicated for public purposes].

- a. FEMA floodplain boundaries, including 25' floodplain buffer.
- b. Flooding soils, including 25' buffer.
- c. Priority forest conservation and forestation areas as listed under § 1-21-40.
- d. Jurisdictional wetland boundaries and 25' buffers.
- e. Hydrography, including perennial and intermittent streams and stream body buffer setback.
- f. Steep slopes (over 25%) associated with hydrological features and/or erodible soils.
- g. Nonresidential components (i.e. commercial areas).
- h. Roadways and other land proposed to be dedicated for public purpose.

(7) Building and spaces visualization. The Phase I application shall include a buildings and spaces visualization component to serve as a graphical translation of the Planned Development District concept plan. This application component may utilize any visualization tool necessary to adequately demonstrate the conceptual layout of streets, buildings, open spaces, and structures in the Planned Development District. The primary purpose of this component shall be to communicate the conceptual form of the proposed development for the purpose of evaluating whether the project meets the Planned Development District provisions.

(8) Identification of scenic views onto the tract from surrounding roads and public areas and how impacts to these view sheds are mitigated.

(9) Identification of historic resources and how 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.

(10) Identification of sensitive environmental resources and how impacts to these resources are avoided or minimized to the maximum extent practicable. Sensitive environmental resources include but are not limited to;

- a. FEMA floodplain boundaries, including 25' floodplain buffer.
- b. Flooding soils, including 25' buffer.
- c. Priority forest conservation and forestation areas as listed under § 1-21-40.
- d. Jurisdictional wetland boundaries and 25' buffers.
- e. Hydrography, including perennial and intermittent streams and stream body buffer setbacks; and
- f. Steep slopes (over 25%) associated with hydrological features and/or erodible soils.
- g. Areas identified as green infrastructure network and/or sensitive species areas in the green infrastructure sector of the Livable Frederick Master Plan

(C) The justification statement. The justification statement shall address each of the approval criteria set forth above and within §§ 1-19-3.110.1 through 1-19-3.110.6 of this chapter.

(D) The phasing plan. The proposed phasing plan shall describe the timing and sequence for dedication of public lands and development of public facilities and utilities.

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(E) The Phase II application shall be provided in accordance with all applicable subdivision or site development plan review requirements, in addition to other required submissions and approvals (including without limitation, Adequate Public Facilities Ordinance studies, Forest Resource Ordinance plans, sight-distance studies, and stormwater management concepts).

(F) A combined application for PUD and MXD Districts may be submitted where the subject property is to be divided into development areas which correspond to a different planned development category; and where each development area is identified by a separate legal description.

(G) Traffic analysis. Based on an approved scope of work by the county and the methodologies set forth in the Guidelines For The Preparation Of Traffic Impact Analyses For Development Applications, analyze the adequacy of the road network based on pertinent criteria from 1-19.10.500.3(e) and detail improvements, timing of improvements, and phasing of development necessary, if the impact of the development causes inadequacy of the road or a high degree of reduction of service.

§ 1-19-10.500.6. LAND USE, MIXTURE, AND DESIGN REQUIREMENTS WITHIN THE PUD DISTRICT.

(A) *Land use permitted within the PUD District.* General land use type and location shall be approved by the County Council in concept at Phase I and specifically by the Planning Commission through site development plan review at Phase II. Land uses permitted within the PUD district are limited to:

(1) Residential. All residential uses including single family, duplex, townhouse, multifamily, or a continuing care retirement community (CCRC).

(2) Commercial. Those uses permitted within the Village Center zoning district, indoor sports recreation facilities without racetracks, and funeral homes.

(3) Employment. Those uses permitted within the ORI zoning district as approved by the Planning Commission.

(4) Institutional. Institutional uses shall be limited to recreational and community activities, public services and facilities, health care facilities, schools, and institutional uses as provided within § 1-19-5.310 Use Table.

(5) Uses which are customary, accessory or associated with uses as permitted within this section or specifically approved by the Zoning Administrator including: private garages, storage spaces, tool sheds, or other similar uses.

(6) A CCRC PUD or a CCRC as a portion of a PUD may include related accessory uses for the benefit or convenience of the residents and their guests including but not limited to: kitchen and dining facilities, restaurants, places of worship, indoor and outdoor recreational uses, retail and banking facilities, beauty salon and barbershops, gift shops, classrooms, medical offices, medical clinic, laboratory services, exercise and vocational activity areas. A complete listing and range of square footage for each individual accessory use must be shown on the Phase I plan. The

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County Council may deny or reduce the size, type, location, and/or mixture of the various accessory uses if determined that it is inappropriate for the site or overall area of the CCRC.

(B) *Residential land use mixture within the PUD District.* A goal of the PUD district is to provide an optimal mixture of housing types, including single family dwellings, townhouses, and multifamily dwellings. It is recognized that each development project is unique and will benefit from its own mixture of housing types. The specific mixture of housing types for each development project shall be established by the County Council at Phase I, based on an evaluation of the following:

(1) Existing County Comprehensive Plan land use designation and the intended dwelling type and density.

(2) Need for a particular dwelling type based on existing and proposed residential dwelling types surrounding the tract of land receiving the PUD district.

(3) The County Comprehensive Plan community design policy of including a variety of dwelling types in all communities in Frederick County.

(4) The mixture of dwellings recommended within the County Comprehensive, Community, and Corridor Plans for the tract of land receiving the PUD district.

(5) The amount and type of moderately priced dwelling units provided.

(C) *Commercial land use mixture within the PUD District.* In establishing the mixture of land uses in the PUD District the County Council shall include an evaluation of the relationship between proposed residential land uses and surrounding existing and proposed commercial land uses. This evaluation shall establish whether existing and proposed commercial land uses can adequately provide retail, business, and personal services to the proposed residential land use. Where it is determined that existing and proposed commercial and employment land uses will not adequately provide for the proposed residential land use, a minimum amount of commercial and employment land uses shall be required as part of the proposed development. The requirement of additional commercial and employment land uses shall be determined based on an evaluation of the following factors:

(1) Whether the number and type of existing or proposed commercial/employment land uses located within a distance that may be reasonably expected to serve a majority of the proposed residential dwelling units adequately provide retail, business, and personal services to the proposed residential land use.

(2) Whether the design of the proposed development maximizes use of alternate modes of transportation (pedestrian, bicycle, and transit) reducing the need for vehicular movement between residential and commercial/employment land uses.

(3) Whether the proposed development reflects a land use mixture consistent with the County Comprehensive, Community, and Corridor Plans.

(D) *Open space/green area within the PUD District.*

(1) Open space/green area within the proposed PUD development shall be calculated based on gross project area, and provided at the following minimum rates:

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<i>Gross Density</i>	<i>Required Minimum Percentage of Open Space/Green Area Exclusive of Floodplain and Stormwater Management Facilities</i>
3-6 du/acre	30%
6-12 du/acre	35%
12-20 du/acre	40%

(2) The County Council may require public parks and recreation facilities in addition to open space/green area. (See also § 1-19-10.500.8(A).)

(3) A reduction of not more than 50% of the open space/green area requirement may be granted where the County Council finds that open space/green area requirements are met through the use of low impact development techniques, environmental site design techniques, open space green area located in close proximity to the proposed development (to include public park facilities), or a combination thereof. (See also § 1-19-10.500.8(A)).

(E) Building square footages will be used to determine the land use percentages within mixed-use buildings.

(F) The County Council may in its sole discretion, deny, reduce, or increase the size, type, location, and/or mixture of the various land use components if it determines that the change is appropriate for the site or overall area of the PUD.

(G) As part of Phase II execution, the Planning Commission may approve minor modifications to individual land use location (such as single-family detached, duplex, or townhouse), provided that the location of the overall land use component (residential) within the site has not been modified. Any change in the amount or percentage mix of commercial and/or residential development of a PUD project having Phase I approval, must be approved by the County Council under the provisions of this division.

(H) *Design requirements: density, setbacks, and height within the PUD district.*

(1) *Density.*

(a) Gross density of a proposed PUD development shall comply with the following table. The gross density may not exceed the maximum density specified by the County Comprehensive Plan residential land use designation of the subject property:

<i>County Comprehensive Plan Land Use Designation</i>	<i>Dwelling Units per Acre</i>
Low Density Residential	3-6 du/ac
Medium Density Residential	6-12 du/ac

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High Density Residential	12-20 du/ac
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(b) Where the tract of land receiving the PUD District has 2 or more residential land use designations, then the density may be calculated as a weighted average of the density ranges as specified for the residential land use designations in which the PUD is proposed.

(c) Where the tract of land receiving the PUD District has both residential and natural resource land use designations, the density may be calculated based on the combined area of the land use designations. (See also § 1-19-10.500.9(B)(2).)

(d) The maximum density of the Planned Development District shall be approved at Phase I by the County Council after review and evaluation of the following factors:

1. Existing and planned availability of public facilities and utilities.
2. Access to existing or planned transportation networks with consideration that the highest density commercial, employment, and residential developments should be located near access to major thoroughfares, public transportation systems, and transit hubs to facilitate smart growth principles and compact development.
3. The physical characteristics of the site proposed for development with particular emphasis on development constraints which may restrict achievable density and dwelling type, including natural features such as: [steep slopes and floodplain.]
 - a. FEMA floodplain boundaries, including 25' floodplain buffer.
 - b. Flooding soils, including 25' buffer.
 - c. Priority forest conservation and forestation areas as listed under § 1-21-40(B).
 - d. Jurisdictional wetland boundaries and 25' buffers.
 - e. Hydrography, including perennial and intermittent streams and stream body buffer setback.
 - f. Steep slopes (over 25%) associated with hydrological features and/or erodible soils.
 - g. Nonresidential components (i.e. commercial areas).
 - h. Roadways and other land proposed to be dedicated for public purpose.
4. The shape of the site proposed for development.
5. The design of the proposed development.
6. Any other relevant information that may have a bearing on the achievable density of the proposed development.

(e) Planned Development Districts are subject to the MPDU requirements set forth in this chapter. Density bonus will be determined as part of the Phase I review process.

(2) *Setbacks and height.* Setbacks and height shall be established by the Planning Commission at Phase II consistent with the general development standards as provided in § 1-19-10.500.9, reflecting the proposed development pattern and land use within the Phase I project concept plan or portion thereof, reflecting the location of the project within the county with

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consideration of the existing development pattern surrounding the proposed development, and consistent with the appropriate community and corridor plans.

§ 1-19-10.500.7. LAND USE, MIXTURE, AND DESIGN REQUIREMENTS WITHIN THE MXD DISTRICT.

(A) *Land use permitted within the MXD District.* General land use type and location shall be established by the County Council in concept at Phase I and specifically by the Planning Commission through site development plan review at Phase II. Land uses permitted within the MXD District are limited to:

(1) *Residential.* Medium density and high density residential uses including single family, townhouse, and multifamily. Residential land uses shall be permitted within the limited industrial and office research industrial land use designations only as identified within the Comprehensive, Community, or Corridor Plan.

(2) *Commercial.* Those uses permitted within the General Commercial Zoning District Except for the following: auction house, lumber yard, mobile home sales, boat sales and service, farm equipment sales and service, carpentry, electric, plumbing, welding, printing and upholstering establishments, fencing/pool/siding contractors, agricultural products processing, bottling plant, stone monument processing and sales, bus depot, animal auction sales, and racetrack.

(3) *Employment.* Employment shall be limited to those uses permitted within the Office Research Industrial Zoning District.

(4) *Institutional.* Institutional uses shall be limited to recreational and community activities, public services and facilities, health care facilities, schools, and institutional uses as provided within § 1-19-5.310 Use Table.

(5) Uses which are customary, accessory or associated with permitted uses as provided within this chapter, or those accessory uses specifically approved by the Zoning Administrator.

(B) *Land use mixture within the MXD District.*

(1) Land use mixture within the MXD District shall be established by the County Council at Phase I in accordance with the following:

<i>Land Use</i>	<i>Minimum Percentage of Total Project</i>	<i>Maximum Percentage of Total Project</i>
Residential	n/a	25% gross project acreage exclusive of [floodplain] <u>FEMA floodplain boundaries, including 25' floodplain buffer, flooding soils, including 25' buffer, priority forest conservation and forestation areas as listed under § 1-21-</u>

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		<p><u>40(b), jurisdictional wetland boundaries and 25' buffers, hydrography, including perennial and intermittent streams and stream body buffer setback, steep slopes (over 25%) associated with hydrological features and/or erodible soils.</u></p>
<p>Commercial (where project includes residential component)</p>	n/a	<p>25% gross project acreage exclusive of [floodplain] FEMA floodplain boundaries, including 25' floodplain buffer, flooding soils, including 25' buffer, priority forest conservation and forestation areas as listed under § 1-21-40(b), <u>jurisdictional wetland boundaries and 25' buffers, hydrography, including perennial and intermittent streams and stream body buffer setback, steep slopes (over 25%) associated with hydrological features and/or erodible soils.</u></p>
<p>Commercial (Where project does not include residential component)</p>	n/a	<p>45% gross project acreage exclusive of [floodplain] FEMA floodplain boundaries, including 25' floodplain buffer, flooding soils, including 25' buffer, priority forest conservation and forestation areas as listed under § 1-21-40(b), <u>jurisdictional wetland boundaries and 25' buffers, hydrography, including perennial and intermittent streams and stream body buffer setback, steep slopes (over 25%) associated with hydrological features and/or erodible soils.</u></p>
<p>Combined commercial and residential portions of the MXD</p>	n/a	<p>40% gross project acreage or 50% of the gross project acreage exclusive of [floodplain] FEMA floodplain boundaries, including 25' floodplain buffer, flooding soils, including 25' buffer, priority forest conservation and</p>

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		<u>forestation areas as listed under § 1-21-40(b), jurisdictional wetland boundaries and 25' buffers, hydrography, including perennial and intermittent streams and stream body buffer setback, steep slopes (over 25%) associated with hydrological features and/or erodible soils, whichever is less</u>
Open space/green area	20% of total area devoted to commercial and employment/industrial uses	n/a
	30% of total area devoted to residential uses	
The remainder of the site shall be used for employment, civic/institutional, and cultural uses.		

(2) A mixture of residential and commercial/employment land uses shall be provided within the MXD District where applied to areas reflecting a County Comprehensive Plan land use designation of Mixed Use Development. The proposed development shall provide a mixture of land uses consistent with applicable County Community or Corridor Plans.

(3) The County Council may require public parks and recreation facilities in addition to open space/green area. (See also § 1-19-10.500.8(A).)

(4) A reduction of not more than 50% of the open space/green area requirement may be granted where the County Council finds that open space/green area requirements are met through the use of low impact development techniques, environmental site design techniques, open space green area located in close proximity to the proposed development (to include public park facilities), or a combination thereof. (See also § 1-19-10.500.8(A)).

(C) Building square footages will be used to determine the land use percentages within mixed-use buildings.

(D) The County Council may in its sole discretion, deny, reduce, or increase the size, type, location, and/or mixture of the various land use components if the County Council determines that the change is appropriate for the site or overall area of the MXD and necessary to achieve the purpose and intent of the MXD District.

(E) As part of Phase II execution, the Planning Commission may approve minor modifications to individual land use location (such as single-family detached, duplex, or townhouse), provided that the location of the overall land use component (residential) within the site has not been modified. Any change in the amount or percentage mix of commercial and/or residential development of a MXD project having Phase I approval, must be approved by the County Council as a new Phase I application.

(F) *Design requirements: density, setbacks, and height within the MXD District.*

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(1) *Density.*

(a) Gross density within a MXD District including residential dwelling units shall be established by the County Council at Phase I.

(b) The maximum density of the [Planned Development District] MXD shall be established at Phase I by the County Council after review and evaluation of the following factors:

1. Existing and planned availability of public facilities and utilities.
2. Access to existing or planned transportation networks with consideration that the highest density commercial, employment, and residential developments should be located near access to major thoroughfares, public transportation systems, and transit hubs to facilitate smart growth principles and compact development.
3. The physical characteristics of the site proposed for development with particular emphasis on development constraints which may restrict achievable density and dwelling type, including natural features such as [steep slopes and floodplain] FEMA floodplain boundaries, including 25' floodplain buffer, flooding soils, including 25' buffer, priority forest conservation and forestation areas as listed under § 1-21-40(B), jurisdictional wetland boundaries and 25' buffers, hydrography, including perennial and intermittent streams and stream body buffer setback, steep slopes (over 25%) associated with hydrological features and/or erodible soils.
4. The shape of the site proposed for development.
5. The design of the proposed development.
6. Any other relevant information that may have a bearing on the achievable density of the proposed development.

(c) Planned Development Districts are subject to the MPDU requirements set forth in this chapter. Density bonus will be determined as part of the Phase I review process.

(d) Where a portion of the tract of land receiving the MXD District reflects the natural resource land use designation the density may be calculated based on the combined area of the land use designations. (See also § 1-19-10.500.9(B)(2).)

(2) *Setbacks and height.* Setbacks and height shall be established by the Planning Commission at Phase II consistent with the general development standards as provided in § 1-19-10.500.9, reflecting the proposed development pattern and land use within the Phase I project concept plan or portion thereof, reflecting the location of the project within the county with consideration of the existing development pattern surrounding the proposed development, and consistent with the appropriate community and corridor plans.

ARTICLE XI: DEFINITIONS

DISTRICT. A portion of the unincorporated territory of the county within which certain uniform regulations or requirements apply under this chapter.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

DIVISION. The Frederick County Division of Planning and Permitting, and any successor to this Division.

DOG RUN, OUTSIDE. An enclosed outdoor area intended for the exercising and/or containment of dogs and similar animals.

DRAFT

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.