

24 July 2017

Frederick County Council
Winchester Hall
12 East Church St
Frederick, MD 21701

Dear Council President Otis, Vice President Keegan-Ayer, and Council Members

I'm writing to you in response to the memo from Planning Director Jim Gugel, dated 21 July 2017, written in part, as a response to the zoning issue that I raised during the public hearing on the Urbana zoning amendments on 18 July. I trust that you will receive this memo, incorporate it into the record, and give it due consideration in your deliberations. I recognize that public comment period has expired; however, in light of the fact that you voted to leave the record open and have received substantive additional testimony from Staff (in the form of Mr. Gugel's memo), then I trust that you will see fit to consider this rebuttal to that input. I would have liked to have sent this to you earlier, so that you would have the time to consider it. Unfortunately, I was only made aware of the Staff memo late this afternoon.

The Issue

The issue that I raised during the public hearing, and to which Mr. Gugel referenced in his memo, pertains to Section 1-19-10.500.7 (A)(1) of the Zoning Ordinance, which addresses land used permitted within the MXD District, and states:

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.** (bold type added)

Specifically, since the land within the Southern Employment District, subject to the Urbana rezoning amendment, consists primarily of ORI, I questioned whether a plan exists that identified residential use of that land – as dictated by the Zoning Ordinance. Lacking such plan should disqualify this zoning request, at least until such time as the land use designation has been changed under the Comprehensive Plan process.

Mr. Gugel's Memo

In his memo, Mr. Gugel slightly restated the issue and, in so doing, framed the discussion in a somewhat misleading direction, in my opinion. Specifically, in the opening of his memo, he states that I raised a question “regarding a reference in the Zoning Ordinance that addresses the ability to include a residential component within an MXD development.” In fact, I am well aware that residential may be included within an MXD. My point was based on specific land within an MXD, based upon its Comprehensive Plan classification, as dictated by the Zoning Ordinance.

On page 2, Mr. Gugel then makes a factual mis-statement when he states the following:

“Because the land use plan designation for the MXD floating zone must still be either Limited Industrial or Office-Research-Industrial, ...”

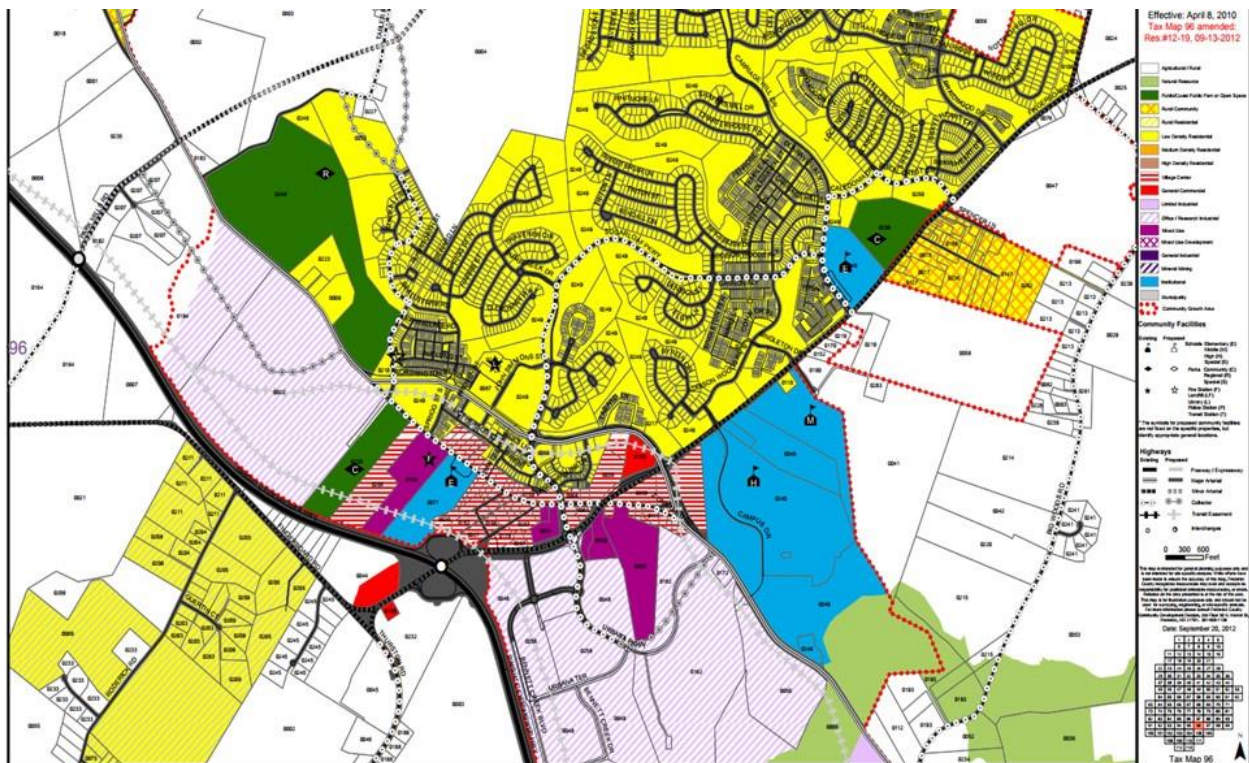
In fact, Section 1-19-10.500.2(A) states that

“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. ...”

As you can see, there are actually three types of designated land uses that may be zoned MXD, not just the two referenced by Mr. Gugel. This is a very significant issue because the Mixed Use Development land class includes residential use, while ORI and LI do not. We see this in the Comprehensive Plan (p. 10-26), which states:

Mixed Use Development - The intent of this new designation is to accommodate a mix of medium to high intensity commercial, civic, employment, and residential uses within new and existing Community Growth Areas.

To further illustrate that this is a distinct land use designation under the Comprehensive Plan, we can see an example of Mixed Use Development immediately adjacent to the land subject to this request. The graphic below is from the County website, and shows the current Comprehensive Land Use Plan for Urbana.



To better orient you, the land subject to this zoning request is in the bottom middle of the map. The land in magenta has a land use designation of Mixed Use Development. It sits between the current Southern MXD and the land subject to this proposed zoning amendment, and consists largely of the Urban Green development. As indicated in the legend, the land in pink slashes is ORI.

The reason that I'm making this point is to be clear that I am not questioning whether residential use is allowed within an MXD. The Zoning Ordinance clearly allows this. However, the Ordinance also clearly places a limit on residential use within two of the three land use classifications which are allowed within an MXD. In other words, the Zoning Ordinance doesn't impose additional limits on residential use of Mixed Use Development within the MXD zone; however, it does impose limits on residential use within ORI and LI, within the MXD zone. Regardless of the intent of this language, this is the clear and reasonable interpretation.

Having limited the discussion to only the ORI and LI land within an MXD, Mr. Gugel then goes on to justify residential use within MXDs by citing various goals in the Comprehensive Plan which pertain to the desire to have mixed developments, a diversified economy and to support senior housing. All of these are fine and wonderful, and they are used to support his argument that residential is a proper use within an MXD, and that it can be broadly justified within the Comprehensive Plan, overall.

However, you are not addressing the County, as a whole. You are being asked to decide upon the rezoning of a specific set of parcels, each with separate land use designations, and to apply the MXD zone. The parcels clearly conform to the MXD zone, that isn't at issue. However, the ORI portions of this land must be tested against Section 1-19-10.500.7 (A)(1) to determine whether residential use shall be allowed. This determination isn't about whether residential use is appropriate for any MXD. No, this is about whether residential use is appropriate to the ORI portion of this individual proposed MXD. Thus, it cannot be justified by the global goals of the Comprehensive Plan which guide toward mixed use developments. Rather, as an individual zoning map amendment, it must be justified by more specific plans identified for this property within the appropriate planning documents.

Mr. Gugel's memo provides no planning information which identifies this land for future residential use. In fact, just the opposite. He references Chapter 11 of the Comprehensive plan and states:

"there is a statement under the Residential heading that the [I-270 Employment] Corridor is not intended for residential development, ..."

He then goes on to cite that the Plan allows for limited residential use within an MXD, as well as Staff's evaluation of the appropriateness of this proposal. In other words, he would have you ignore the most directly relevant plan language identified for properties that include the land in this proposal and, instead, to rely upon the larger, broader goals of the Plan.

Conclusion

I'm really not all that opposed to this development. I have my concerns, yes. Principally, however, I want you to approve or dis-approve this request for the correct reasons. I am tired of seeing the clear language in the Zoning Ordinance abused in these ways. The Zoning Ordinance clearly allows residential use within three land use types that are suitable for MXD zoning. The Ordinance also imposes additional restrictive criteria for residential use of two of those land uses, one of which is part of this proposal. This is very clear and straightforward.

You have not been shown any authoritative plan which identifies the subject property for future residential use. Just the opposite. In fact, you've been shown Comprehensive Plan language that specifically calls out the I-270 Employment Corridor, of which the proposed land is a part, and were told that it isn't intended for residential use.

My request is a simple one. If you choose to approve this zoning amendment, do it for good, legitimate reasons – not based on a twisted interpretation of very clear language in the Zoning Ordinance. On the other hand, if you choose to dis-approve the zoning amendment, then tell the applicant to follow the correct process – apply for a land use designation change under the Comprehensive Plan and then return for the zoning amendment.