



October 6, 2011

TECHNICAL STAFF REPORT

*Petition Accepted on September 20, 2011
Planning Board Meeting of October 20, 2011
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-136 – The Liparini Company

Request: Zoning Regulation Amendment to amend Section 127.C.6.a. of the MXD District regulations to reduce the minimum percentage of employment use land area which may be used in MXD-6 developments that provide age-restricted adult housing from the current 9% to a proposed 7%.

Department of Planning and Zoning Recommendation:

DENIAL

I. DESCRIPTION OF PROPOSAL

- **The Petitioner proposes one amendment to the Zoning Regulations. This proposed amendment is generally described as follows:**

Section 127.C.6. of the MXD District regulations principally sets forth the maximum residential density requirements for the two types of Mixed Use Developments. There is also a provision that for MXD-6 developments, which ordinarily can only have a maximum density of 6.0 dwelling units per acre, a bonus density of an additional 1.25 dwelling units per acre is possible if these additional units are provided as age-restricted adult housing units (the "Bonus Density Provision"). When this Bonus Density Provision is used, the minimum area for employment uses in the development can be reduced from the standard 15% of the gross area to 9% of the gross area, and the maximum area for employment uses in the development becomes 11%.

The Petitioner requests that Section 127.C.6.a. be amended to lower the Bonus Density Provision minimum area for employment uses in a MXD-6 development to 7% of the gross area, but keep the maximum area for employment uses in the development as 11%.

- **As justification for this request, the Petitioner states that "This amendment would allow the option to provide a lower percentage of required employment land area given the ongoing struggles of the national and local economies. In several mixed-use developments within the County, the commercial component has struggled to attract tenants to provide the employment opportunities envisioned by a mixed-use development."**

I. DESCRIPTION OF PROPOSAL

Additionally, the Petitioner states that reducing the minimum employment area to 7% will mean greater flexibility for "...providing a more appropriate balance of land uses specifically tailored to the needs of each mixed-use development."

- **In answering the petition question as to whether the petition affects more than one property, and if so, in the event the petition only applies to 12 or less properties, to specifically list these properties and provide an analysis of how the proposed amendment would affect them, the Petitioner's response is "Yes" and "The Amendment could potentially impact any MXD-6 development."**
- **The subsection proposed to be amended and the amendment text is as follows (CAPITALS indicates text to be added; text in [[brackets]] indicates text to be deleted):**

Section 127.C.6.

- a. In the MXD-6 District, a density bonus of up to 1.25 units per acre shall be allowed for the purpose of providing those additional units as age restricted adult housing units which meet all requirements of the POR district for such units. If this bonus density is utilized, the minimum percentage of gross area set forth for employment uses under Section 127.C.3.A shall be reduced to [[9]]7% and the maximum shall be no greater than 11%.

II. EXISTING REGULATIONS

- **The existing regulation which allows the reduction in the employment land area from a minimum of 15 percent to as little as nine percent was established with ZRA 63 which became effective January 9, 2006.**

The Department of Planning and Zoning recommended denial for ZRA 63. In the Technical Staff Report, one principal reason for this recommendation was stated as follows:

"The MXD District was created to combine a mix of types of land uses; employment, commercial, residential, and open space. If a residential use were allowed to be substituted for employment use, the mix of uses and the purpose behind the creation of the MXD District would be lost or diminished. The proposal would generate a mix of different types of housing units, i.e., single-family detached, single-family attached, condominiums or apartments and age-restricted adult housing, but the prevailing nature of the land use would be solely residential."

- **The Planning Board also recommended to deny ZRA 63 on a unanimous vote. In its formal Recommendation, the Planning Board "...members agreed that maintaining the intent of the MXD zone that combines residential and commercial is worthwhile."**

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendments

- If it were to be approved, ZRA 136 could be applicable to any MXD-6 Mixed Use Development. To date, there are two such developments; Cherry Tree Park located to the southeast of the MD 216 intersection with US 29, and Ellicott Mills Overlook located on Rogers Avenue and recently approved in ZB 1093M.

B. Agency Comments

- The following agencies had no objections to the proposal:
 1. Department of Fire and Rescue Services
 2. Department of Inspections, Licenses and Permits

IV. EVALUATIONS AND CONCLUSIONS

A. Relation to the General Plan

- Although there is not a General Plan policy statement that specifically addresses the issue of the appropriate percentage of employment land within a Mixed Use Development, in Chapter 4 Balanced and Phased Growth there is a list entitled "Benefits of Mixed Use Centers" that addresses this issue in a general manner.

"Mixed use centers make more efficient use of increasingly limited land resources by...mixing housing, employment and public facilities to create a more balanced traffic pattern...[and] ...ensuring that sites at prime locations are not limited to housing or employment."

- To reduce employment land within a Mixed Use District on the basis of current market conditions, and especially to further reduce the relatively small amount of employment land within small Mixed Use Developments like Cherry Tree Park and Ellicott Mills Overlook, does diminish the important intent to have a true mix of uses in such developments, and is therefore not in harmony with the Balanced and Phased Growth Policy 4.4 to "Make efficient use of land resources for long-term economic growth".

If the employment land area is required to remain, eventually it will be able to be used for employment uses. If it is reduced, to as little as less than half of the original 15 percent as is proposed in ZRA 136, the employment land and the potential for it contributing to even a small part of the County's long-term economic growth are lost forever.

- Similarly, the proposed amendment is not in harmony with the Balanced and Phased Growth Policy 4.5 to "Encourage economic growth, provide job opportunities for County residents and ensure the County's fiscal health."

IV. EVALUATIONS AND CONCLUSIONS

B. Relation to the Zoning Regulations

- One important factor to recognize is that the Zoning Regulations are not meant to be an impediment to development, but are instead meant in part to provide a clear understanding of development potentials and requirements over time, so that the private business sector can better plan and make sound business decisions.

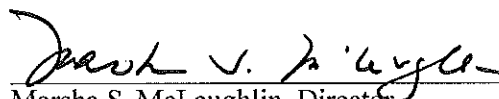
Section 100.A.4 states that one of the Legislative Intents of the Zoning Regulations is to "...provide a guide for ... private enterprise in undertaking development, investment and other economic activity relating to uses of land and structures throughout the County."

- Private enterprise is, of course, subject to the attributes of the marketplace, which is beneficial when positive and impairs when negative. It is quite understandable that a private enterprise will want to change the "guide" of the Zoning Regulations when the marketplace is negative so as to improve matters on a short term basis, but this can potentially detract from some of the longer-term purposes of the Zoning Regulations.
- The MXD District regulations were devised and eventually approved in the 1993 Zoning Regulations after a comprehensive consideration of many factors, including the issue of the appropriate mix of land uses. A significant, generous concession to the minimum employment land area was already allowed to be granted with the approval of ZRA 63 in 2006.

Allowing yet another additional reduction in the minimum employment land area to as little as seven percent as proposed is not recommended.

V. RECOMMENDATION *DENIAL*

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-136 as noted above, be DENIED.



Marsha S. McLaughlin, Director

10/4/11

Date

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.