



City of Gaithersburg

31 South Summit Avenue
Gaithersburg, Maryland 20877

DRAFT

Mayor and City Council Regular Session Minutes City Hall - Council Chambers Monday, July 6, 2015

I. CALL TO ORDER

A Mayor and City Council regular session was called to order at 7:30 p.m. with Mayor Ashman presiding. Council Members present: Drzyzgula, Harris, Marraffa, Sesma, and Spiegel. Staff present: City Manager Tomasello, City Attorney Board, Chief of Police Sroka, Planning and Code Administration Director Schlichting, Economic Development Director Lonergan, Planning Division Chief Matsen, Long Range Planning Manager Robinson, Assistant City Attorney Johnson, Legislative Affairs Manager Marquina, Parks, Recreation & Culture Director Potter, Public Works Operations Division Chief Scafide, Lieutenant Vance, Sergeant Delgado, Corporal Karon, Corporal Eastman, and Municipal Clerk Stokes. Planning Commission present for joint public hearings: Bauer, Hopkins, Kaufman, and Winborne.

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VIII. JOINT PUBLIC HEARING

A. CTAM-7034-2015: Integrated Light Manufacturing Uses in the MXD Zone

Planning and Economic Development staff presented the initiative to modify a specific prohibited use in the MXD Zone. Staff proposed amendments to Chapter 24 (City Zoning Ordinance): Article I, entitled, "In General," § 24-1, entitled, "Definitions," Article III, entitled, "Regulations Applicable to Particular Zones," Division 19, entitled, "MXD Zone, Mixed Use Development," §§ 24-160d.3(b) and (d), entitled, "Uses Permitted," so as to define "Integrated Light Manufacturing Uses" in the MXD Zone. Memorandums (Exhibits 8 and 9) were submitted, detailing the proposed amendment to the Mayor and City Council and Planning Commission. The hearing was duly advertised on June 18 and 25, 2015 in the *Montgomery Sentinel* with 13 exhibits currently in the record.

Long Range Planning Manager Robinson provided background on the rezoning and uses permitted by City Code, noting the prohibited uses of manufacture, compounding, and processing of goods or articles. Staff expressed concern that said language prohibited traditional heavy industrial uses in the MXD Zone, but may be applied to uses beyond what was the original intent. He added that the

above uses are allowed by-right or in some form in the City's traditional Euclidean zones. Pointed out that MXD zoned properties would be impacted and all zones that currently allow said uses by-right such as the I-3, I-1, E-1 and some E-2 Zones.

Economic Development Director Lonergan explained the advantages of integrated light manufacturing and impact on economic development in the City. He reported that the proposed amendments were presented to the City's Economic Development Committee and support allowing integrated light manufacturing uses were received. Stated that the real estate market continues to evolve with a significant decline in inquiries for single use, single tenant spaces and an increase in requests for multi-tenanted locations close to restaurants, shopping and housing. Staff believes that allowing low-impact manufacturing uses in the MXD areas, would better position the City to retain and attract employers, creating more opportunities for redevelopment in aging business parks, as well as the City's freestanding industrial facilities. In addition, the proposed amendment would enhance the variety of workplace settings available; acknowledge contemporary changes in modern manufacturing, and support research and development activities and new innovation.

The three part text amendment would reflect new business models and practices, define integrated light manufacturing, reinforce the purpose and objectives of the MXD Zone by emphasizing compatibility with other uses and expanding employment opportunities. It would also provide clarity and avoid potential conflicts within the Code, and preclude external emissions or nuisance by products for those typically associated with heavy industry.

A letter from Attorney Timothy Dugan suggesting language for consideration was questioned. Following the public hearing and other public input, staff will address whether the request is appropriate. Compatibility standard defined for transit oriented development was questioned and the exclusion of residential dwellings. Staff responded that it was not the intent to exclude residential. It was noted that accessory uses within a neighborhood would be made through the schematic development plan process to determine compatibility with other uses. Concerns were expressed with the implication of creating some light manufacturing uses in MXD areas and staff was asked to further clarify definitions. Staff reiterated that the goal is not to redefine retail and any proposed uses would be reviewed on a case-by-case basis with the site and situation considered, recommended conditions, design guidelines and final decision made by the Planning Commission and City Council.

Speakers from the public:

1. *Timothy Dugan, Attorney for Shulman Rogers*, submitted a letter in support of the proposed text amendment and asked that the suggested list of uses be considered to strengthen Gaithersburg's economy.
2. *Brian Fitzgerald, Regional Director for Equus Capital Partners*, spoke in support of additional uses in the MXD Zone.
3. *Lawrence Cain, Boland Services*, expressed support for the MXD rezoning to consider more permitted uses.

4. *Joe Allen, 641B Main Street*, thanked the City for entertaining the proposed text amendment. State he is in support of additional permitted uses in the MXD Zone to create new economic opportunities.

There were no other speakers from public.

Motion was made by Lloyd Kaufman, seconded by Danny Winborne, that the Planning Commission record on CTAM-7034-2015: Integrated Light Manufacturing Uses in the MXD Zone, remain open until 5 p.m. on Monday, July, 2015 (21 days), with anticipated recommendation on August 5, 2015.

Vote: 4-0

Motion was made by Michael Sesma, seconded by Ryan Spiegel, that the Mayor and City Council record on CTAM-7034-2015: Integrated Light Manufacturing Uses in the MXD Zone, remain open until 5 p.m. on Friday, August 21, 2015 (46 days) with anticipated Policy Discussion on September 8, 2015.

Vote: 5-0

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XVI. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at approximately 10:40 p.m.

Respectfully submitted,
Doris Stokes, Municipal Clerk

Robert Wu
328 Grand Street
Gaithersburg, Maryland 20878

July 27, 2015

Mayor and City Council
31 S Summit Ave
Gaithersburg, MD 20877
Via email: cityhall@gaitthersburgmd.gov

Dear Mr. Mayor and Honorable City Council:

I am submitting these comments in response to Item No., CTAM-7034-2015, Integrated Light Manufacturing Uses in the MXD Zone, discussed at the joint session of the Mayor, City Council (MCC) and Planning Commission held on July 6, 2015. Please include these comments with any materials that will be considered by the MCC on this issue.

I would first like to extend my congratulations and appreciation to the City's staff for the comprehensive presentation on this matter given at the joint session. I was in attendance at the July 6th session, and was very impressed by the level of detail and the thoughtfulness of the recommendations made by the staff. I was also impressed by the substance of the questions asked by both the MCC and the Planning Commission to the City's staff on this matter. It is clear to me that the City is giving a great deal of thought and deliberation to this issue.

After the meeting, I went back to my community, the Parklands, to discuss this agenda item with community members. The purpose of these comments is to express both my own concerns, as well as those concerns conveyed to me by members of the Parklands Community. However, I must emphasize that I am submitting these comments in my personal capacity, and not on behalf of the Parklands Community.

As you may know, the Parklands is zoned MXD, and will be impacted by the proposed amendment, if passed. The Parklands, along with the adjoining Urban Core, and the Spectrum will be a premiere live, work, and play destination here in Gaithersburg. Our community is the quintessential expression of the new urban development concept embodied by the MXD zone. Instead of the traditional, segregated residential, commercial and industrial zones of the past, MXD zoning permits vibrant, mixed developments like the Parklands to exist. It is a very exciting concept that is correctly being embraced by the City.

However, the MXD zone does present issues that are not typically associated with traditional segregated zones. That concern is, the potential conflict between different uses of property within the zone, whether it be residential, commercial, office, or as now being proposed, industrial. As anyone who has played the classic video game, Sim City

knows, conflicts do arise when different uses or zones abut each other. The most obvious example from that game is when industrial zones are placed next to residential zones, which, if the MCC is not familiar with the game, causes reduced property values due to various causes, pollution being one.

While not a perfect example, it illustrates the concern that industrial uses have the potential to conflict with other uses, such as residential, particularly when in close proximity to those other uses, which MXD zoning allows. Granted, the proposed amendment does include the restriction that integrated light manufacturing uses, “must be low impact and compatible with residential uses.” However, this restriction is vague, and while most of the examples of permitted integrated light manufacturing uses in the proposed amendment are apparently compatible with residential uses, some may not.

Moreover, not all MXD zones are created the same. In the case of the Parklands, as well as other neighborhoods, such as the Kentlands and the Washingtonian, while zoned MXD, are primary residential. Other MXD zones in Gaithersburg have primarily office and commercial uses, with little or no residential component. Respectfully, the proposed amendment does not adequately address this distinction. In this regard, what may be appropriate for areas with little or no residential use may not be appropriate for areas, such as the Parklands, with high residential densities. Conversely, under the proposed amendment those areas that have primarily or exclusively commercial or office uses would have to comply with the restriction that uses be “compatible with residential uses” even though there is no residential component to the zone.

This would appear to be the case with the industrial properties adjacent to the Parklands owned by Equus Investments, whose representatives testified at the July 6th session. That area is zoned I-3, but it appears that Equus intends to ask for rezoning to MXD if the amendment is passed. However, it would appear to this casual observer that some of the businesses in that area are arguably not compatible with residential uses, but would be subject to that restriction if rezoned. Such a restriction might not be appropriate under the circumstance, but the proposed MXD zone does not permit any variance.

One solution would be for the city to consider implementing two mixed-use zones, one with a residential component and one with only commercial, office and industrial components. A two-zone solution would permit mixed uses that are more appropriate for dense residential communities, but also permit those mixed-use zones with low residential density more liberal access to industrial uses that would not be appropriate for communities like the Parklands. The MXD zone with residential uses could, for example, be more restrictive with respect to industrial uses as a matter of right, and have a more restrictive list of special exempt uses. The MXD zone without residential could be less restrictive with respect to industrial uses. Such, a solution recognizes that a one-size-fits-all approach is not appropriate for the various, unique mixed-use communities in Gaithersburg.

While the opinion was expressed during the session that acceptable uses for any given community would be addressed through the SDP process, that process is expensive and time consuming. As Councilmember Sesma aptly observed, one important issue here is notice. Communities, including residents, businesses and developers, should know up front what is, and is not permitted in a community. Addressing these issues up front in the zoning ordinance itself would likely be more efficient and cost efficient than handling these issues later during the SDP process.

Short of enacting a two-zone solution, the City should consider enacting concurrent guidance addressing the unique characteristics of the various MXD zones in Gaithersburg. For example, the guidance could notify stakeholders that in high-density residential MXD zones, certain industrial uses will not be permitted. This would be another mechanism for the City to notify stakeholders of appropriate uses, which, again, may be more efficient in the long-run.

Thank you for taking the time to read these comments. Please include them with any materials that will be considered by the MCC on this issue. I am available to discuss these comments at your convenience.

Respectfully,

/s/

Robert T. Wu

STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: August 5, 2015

TEXT AMENDMENT: CTAM-7034-2015

TITLE: CTAM-7034-2015: AN ORDINANCE TO AMEND CHAPTER 24 (CITY ZONING ORDINANCE), OF THE CITY CODE, ARTICLE I, ENTITLED, "IN GENERAL," § 24-1, ENTITLED, "DEFINITIONS," ARTICLE III, ENTITLED, "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 19, ENTITLED, "MXD ZONE, MIXED USE DEVELOPMENT," §§ 24-160D.3(b) AND (d), ENTITLED, "USES PERMITTED," SO AS TO DEFINE INTEGRATED LIGHT MANUFACTURING USES IN THE MXD ZONE

REQUEST: RECOMMENDATION TO M&CC

STAFF LIASON: Rob Robinson, Long Range Planning Manager

Enclosures:

Staff Comments
Revised Draft CTAM-7034-2015 Ordinance
CTAM-7034-2015 Index of Memorandum and Exhibits (in **Bold**)

STAFF COMMENTS

This item is on the Commission's agenda for a transmittal of a recommendation to the Mayor and Council. The consolidated joint public hearing regarding CTAM-7034-2015 was held on July 6, 2015. There were four members of the public who testified during the hearing. The Planning Commission held open its record until 5:00 PM on July 27, 2015. At the time of the Commission's record closing, no further testimony was received into the record.

As discussed during the public hearing, the purpose of the subject text amendment is to modify a specific prohibited use identified in § 24-160D.3.(b) "Uses Permitted" in the MXD zone. The "Manufacture, compounding, and processing of goods or articles" is specifically prohibited. Staff presented that the above statement is overly broad given that neither "manufacture," "compounding," nor "processing" are defined in Chapter 24 and may be applied to uses beyond what was the original intent; namely to prohibit traditional "heavy" industrial uses. Staff has proposed amending this section to exclude "integrated light manufacturing" from the prohibition in order to accommodate changes in technology and advanced manufacturing practices that have created "industrial" uses that neither conflict with retail, office and residential uses, nor conflict with the intent of the MXD Zone.

The proposed amendment includes a definition for "integrated light manufacturing" in § 24-1 "Definitions." Staff has amended the definition since the public hearing in response to comments made by the Council and Commission. To better clarify staff's intent that these uses must be "low impact" and not only compatible with, but allowed with solely residential uses, the revised definition reads:

Integrated light manufacturing. The manufacturing, compounding, assembly, and/or processing of articles in a building, unit or floor thereof where the operations, emission, and by-products, such as external excessive noise, particulate matter, vibration, smoke, dust, gas, fumes, odors, radiation and/or other adverse effects or nuisances are neither created nor present outside the enclosed building, unit or floor thereof. Integrated Light Manufacturing uses must be low impact and compatible with residential uses. Integrated Light Manufacturing should be located within a business park/campus, retail commercial center or transit oriented development with additional residential, retail, office, or research & development uses, but these uses should be compatible with and may be included in predominately residential developments, should the zoning allow. Uses defined as Integrated Light Manufacturing include, but are not limited to:

Staff remains of the opinion that these uses should be preferably sited and contribute to or enhance a (re)development that provides a mix of uses. However, as was discussed during the hearing and so defined, a variety of uses can be identified as "integrated light manufacturing," some of which would incorporate well within a residential community. The revised definition reflects this. Staff notes that the incorporation of these uses as stand-alone businesses in solely residential would still require Council approval at either the sketch or schematic development plan stage following a Planning Commission recommendation and would be weighed on an application by application basis. It is important to note that the subject

amendment is not related to "home-based" businesses which are governed separately under Article X of the City Code.

The definition of "integrated light manufacturing" includes examples of uses which characterize this subset of "Manufacture, compounding, and processing of goods or articles." As was stated, these examples are not to be considered an exhaustive list. In response to comments received by Mr. Dugan and raised during the public hearing, staff is not in support of adding additional proposed uses. The definition list is intended to illustrate the scope of uses covered under this definition. Staff has concerns that continuing to add uses, especially when they appear to focus on a specific sector, will create an unintentional default checklist for applicability and therefore may preclude the approval of appropriate uses because they are not identified.

Staff, as discussed during the public hearing, has included in CTAM-7034-2015 an amendment to § 24-160D.3.(d) "Special exception uses." Staff has proposed removing, "Assembling from prepared materials of electronic devices and electrical appliances" as a special exception use for the reasons cited in Exhibits 7 and 8 of the record. No changes to this amendment have been proposed since the public hearing.

Conclusion:

Staff recommends that the Planning Commission **RECOMMEND ADOPTION OF TEXT AMENDMENT CTAM-7034-2015 TO THE MAYOR AND CITY COUNCIL.**